

NEW MEXICO ENVIRONMENT DEPARTMENT

PUBLIC HEARING

120 Civic Plaza Drive

Taos, New Mexico

Monday, October 21, 2019

10:19 a.m.

VOLUME II

HELD BEFORE: Felicia Orth, Hearing Officer

REPORTED BY: REBECCA FELLA
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1 HEARING OFFICER ORTH: Good morning. My name is
2 Felicia Orth, appointed by the Secretary of Environment to
3 conduct the hearing in the matter of the application of
4 S & R Septic for the renewal of a septage disposal
5 facility discharge permit. This is DP-465, documented by
6 the hearing clerk as GWB 19-28P.

7 We opened the evidentiary record in this hearing
8 last Wednesday, and although we went for several hours, we
9 did not finish.

10 When we broke, we were agreed on the following:
11 That this morning we would begin with the Applicant in
12 terms of wrapping up the Applicant's presentation.

13 We would then turn to El Prado Sanitation
14 District to hear from their witness due to some scheduling
15 circumstances, and then we would turn to the Groundwater
16 Bureau witnesses.

17 I will also solicit nontechnical public comment.
18 You need not have entered an appearance as a party or
19 otherwise prefiled anything in order to give nontechnical
20 public comment if you did not already give it last
21 Wednesday.

22 I'll invite public comment after we have
23 addressed the end of the Applicant's presentation and
24 we -- El Prado's witness, and I'll invite it again at the
25 very end of the hearing, so you've got at least two more

1 opportunities to offer nontechnical public comment if you
2 have not already done so.

3 The hearing -- as last Wednesday -- will be
4 conducted pursuant to 20.1.4 and 20.6.2 of the New Mexico
5 Administrative Code. These are the Department's
6 permitting -- permitting procedures and groundwater
7 regulations.

8 The hearing is being recorded by the hearing
9 clerk and transcribed by Rebecca Fella of Williams &
10 Associates court reporter service.

11 Please contact Ms. Fella directly to purchase a
12 copy of the transcript. It also becomes a public record
13 in the hearing clerk's files. It can be viewed in his
14 office.

15 You have the sign-in sheet there. Please sign
16 in if you haven't done so, and also please reach for your
17 devices and silence them.

18 Are there any purely procedural questions about
19 what we're going to be doing today?

20 MR. DOMENICI: I think there's a desire to put
21 on briefly that we think we might have a settlement on the
22 conditions that are in dispute, and then I think they
23 would actually come on in the direct testimony of NMED,
24 but just to give you a heads-up for that and -- and for
25 perhaps the audience, because then we'll have a witness

1 and it would be nice, I think, for him to know where we're
2 headed.

3 HEARING OFFICER ORTH: All right. Thank you
4 very much, Mr. Domenici.

5 So Mr. Domenici is here on behalf of the
6 Applicant. Mr. Johnson is here on behalf of the Bureau.
7 Mr. Brockmann is here on behalf of El Prado.

8 Are there other counsel present? No. All
9 right. Thank you.

10 Mr. Domenici, if you would and -- will you be
11 coming up here to use the microphone or there?

12 MR. DOMENICI: I would -- I would request
13 that -- that NMED counsel notify -- give you the
14 notification of what the settlement is.

15 HEARING OFFICER ORTH: Oh, I'm sorry. All
16 right. So you wanted to -- I thought you wanted to talk
17 about that as part of the Bureau's case, not as part of --

18 MR. DOMENICI: Well, just to be clear --

19 HEARING OFFICER ORTH: Okay.

20 MR. DOMENICI: -- since we have the El Prado
21 witness, I thought -- I think they might desire that
22 there's something that gives a gist of the settlement
23 before he testifies and has to talk about two different
24 proposals that might not really be the proposal we're
25 really going to talk about.

1 HEARING OFFICER ORTH: Okay. Thank you. I
2 didn't understand that by your earlier comment.

3 In that case, Mr. Johnson, if you would, and can
4 you find a microphone or -- or speak very loudly?

5 MR. JOHNSON: I will try to speak loudly. I
6 don't think we've tested these yet.

7 MR. BARNES: They -- they -- they work.
8 These -- these guys up here work --

9 MR. JOHNSON: All right.

10 MR. BARNES: -- and they're already on, I
11 believe.

12 MR. JOHNSON: So just briefly, as -- as
13 Mr. Domenici said, we'll cover this a little more in-depth
14 when we get our -- our own testimony out, but what we've
15 agreed upon is to limit it to a single borehole that would
16 go to the basalt with some continuous sampling along the
17 way.

18 And I'll -- I'll ask my -- my people can correct
19 me if I misrepresent anything here.

20 We'll also be watching for two things primarily,
21 contamination from the discharges at the site and also any
22 perched groundwater that might be there, or saturation in
23 general.

24 If there's contamination detected as far as 150
25 feet or -- or below, then that would trigger a monitoring

1 well; otherwise, there's going to be some vadose zone
2 monitoring that --

3 COURT REPORTER: I'm sorry; there's going to be
4 some what?

5 MR. JOHNSON: Vadose, v-a-d-o-s-e, zone
6 monitoring that would be ongoing, and -- and that
7 satisfies the -- the Department as to condition 22 of the
8 draft permit.

9 Anything else?

10 HEARING OFFICER ORTH: Okay. Anything to add,
11 Mr. Domenici?

12 MR. DOMENICI: We're -- we're prepared to move
13 forward with the -- with that -- those changes to what
14 our -- our proposed monitoring was.

15 HEARING OFFICER ORTH: Okay. Is there anything
16 else that the Applicant needs to do this morning then
17 before we go to El Prado?

18 MR. DOMENICI: Yes. So -- test, test -- okay.
19 So I have -- I presented a book of exhibits that had both
20 our -- my NOI with specific witnesses, and then I had
21 behind that a series of -- yes -- a series of documents
22 that were Bates numbered NMED.

23 HEARING OFFICER ORTH: Uh-huh.

24 MR. DOMENICI: And those -- all of those -- with
25 the exception of the last few documents in there, which

1 are still Bates numbered, but actually are photographs
2 that my client took, but when the numbers got -- when the
3 documents got Bates numbered, they still had NMED.

4 So the record is clear, those last
5 photographs -- which are drone photographs -- were taken
6 by my -- at the request of my client.

7 So I would move for admission of the documents
8 that are in that -- in that binder that you have, Madam
9 Hearing Officer, which start at NMED 002. There is quite
10 a few taken out, but they end -- the last NMED document --

11 HEARING OFFICER ORTH: 13 and 16?

12 MR. DOMENICI: -- 13, 16, and then there are
13 approximately ten photographs.

14 They were all taken on -- at -- at the same
15 time. One of them was previously introduced and used as
16 a -- as an oversized document by Mr. Steve Rael, so I'd
17 move those, along with the other documents.

18 HEARING OFFICER ORTH: All right. Are there any
19 objections?

20 MR. JOHNSON: No.

21 MR. BROCKMANN: No objection.

22 HEARING OFFICER ORTH: All right. Thank you.
23 They're admitted.

24 (Applicant's exhibits admitted into evidence.)

25 MR. DOMENICI: And then I had one other

1 document, which I didn't -- wasn't able to get in these
2 while I was skimming the files.

3 And this is dated April 19th, 1999, and it's
4 NMED an S & R Septic's joint stipulated proposed --
5 proposed findings of fact and conclusions of law.

6 I had some attachments, but I will take those
7 off, so it's just that pleading, which is 13 pages long,
8 and I have a copy of that.

9 HEARING OFFICER ORTH: And what is the date?

10 MR. DOMENICI: April 19th, 1999.

11 HEARING OFFICER ORTH: April 19, 1999. All
12 right.

13 MR. DOMENICI: And with that, that's -- I'll
14 tender that, but that is my last exhibit.

15 HEARING OFFICER ORTH: And how is it marked?

16 MR. DOMENICI: I'm going to mark it as Rael
17 Number 8.

18 HEARING OFFICER ORTH: 8, okay. Objections?

19 MR. JOHNSON: No objection.

20 MR. BROCKMANN: I thought El Prado would say no
21 objection, but I do not believe I have a copy of that yes,
22 so I'd ask if Mr. Domenici could provide me a copy by
23 email after the hearing.

24 MR. DOMENICI: Yes, I will.

25 HEARING OFFICER ORTH: Okay.

1 MR. DOMENICI: I'll provide it to counsel.

2 HEARING OFFICER ORTH: Thank you. Rael 8 is
3 admitted.

4 (Rael Exhibit No. 8 admitted into evidence.)

5 MR. DOMENICI: And with that, I have nothing
6 further for -- for our direct case.

7 HEARING OFFICER ORTH: All right. Thank you,
8 Mr. Domenici.

9 MR. DOMENICI: And do you have those records
10 there or do I need to provide another copy?

11 HEARING OFFICER ORTH: So I have the Bates
12 stamped and the photos. I don't have Rael 8.

13 MR. DOMENICI: Okay. So just Rael 8?
14 Do you have an exhibit sticker?

15 THE CLERK: Yes, I do.

16 MR. DOMENICI: Thank you.

17 MR. BARNES: Uh-huh.

18 HEARING OFFICER ORTH: Mr. Brockmann?

19 MR. BROCKMANN: Thank you. El Prado has one
20 witness. We'd like to call John Painter.

21 HEARING OFFICER ORTH: Okay.

22 JOHN PAINTER,
23 having been first duly sworn, testified as follows:

24 HEARING OFFICER ORTH: Thank you. And is it
25 P-a-i-n-t-e-r?

1 MR. PAINTER: Yeah --

2 HEARING OFFICER ORTH: Okay.

3 MR. PAINTER: -- just like a painter.

4 MR. BROCKMANN: Before we begin, we filed an
5 unopposed motion to exhibit -- to introduce as Exhibit --
6 El Prado's Exhibits 1 through 4, and I've got copies of
7 that that I'd like to provide to the Hearing Examiner and
8 any of the other parties that are -- are here, and so let
9 me start by handing those out.

10 Do you want a set for the record?

11 MR. BARNES: Yeah, that'd be wonderful. Thank
12 you.

13 MR. BROCKMANN: Before Mr. Painter begins, I
14 want to just give an extremely brief opening.

15 El Prado Water & Sanitation District is --
16 serves a little over 1,000 people, and they are located
17 just north of the town of Taos.

18 They have a number of municipal wells in that --
19 in the area of -- I'll have -- let Mr. Painter point those
20 out, but they have one in pretty close proximity to S & R
21 Septic's facility that's -- that's the subject of this
22 particular hearing.

23 El Prado is concerned based upon some past
24 noncompliance by this permittee and also a little bit of
25 lack of oversight by NMED in the past that has allowed

1 some of those noncompliance to go on for some period of
2 time.

3 So we have read the permit, and Mr. Painter is
4 going to be talking generally about those areas and what
5 their concerns are with renewal going forward.

6 DIRECT EXAMINATION

7 BY MR. BROCKMANN:

8 Q. Mr. Painter, would you please give the Hearing
9 Officer some background on -- on you personally as part of
10 the District?

11 A. Yes. Just as a matter of disclosure, I was the
12 real estate agent involved in the sale of that piece of
13 property to Mr. Rael back in -- I guess it was 1987 when
14 this all started.

15 There was absolutely nothing out there. I mean,
16 there -- there was one house out there in that whole area,
17 and it's certainly changed.

18 Mr. Rael has also pumped my septic tank numerous
19 times over the period since then, so just to let everybody
20 know.

21 My history is, I was -- I'm a native of
22 Colorado. I was born in Greeley, Colorado, and grew up
23 east of Greeley on a cattle ranch out there, so at a very
24 early age -- I think I was about three when I started
25 putting pipes together, because we had irrigation wells,

1 we had a lot of windmills for livestock wells, and
2 obviously a few domestic wells.

3 I was also involved with septic tanks and
4 cesspools and all of that at a very young age, so
5 that's -- that was the beginning of my experience with
6 water.

7 I came to Taos -- I think the first time I was
8 ever in Taos was in the spring of 1960, but I was here
9 permanently from '67, basically, on.

10 I've lived in Taos for 52 years -- I should say
11 lived in El Prado for 52 years, because that's where I
12 made my home, in that community.

13 Back when -- when I got here, El Prado had
14 nothing -- had no water system, no sewer system, and there
15 was a real problem with shallow wells, hand-dug wells, and
16 septic tanks and cesspools all intermixing, so there was a
17 big problem out there.

18 The community discussed doing something for a
19 number of years, but in about 1980 they began to get
20 serious about trying to solve the problem.

21 There were a number of meetings held in the
22 community with some of the community leaders, and I guess
23 about 1981 or so I was invited to come to one of those
24 meetings. And I saw that people were actually getting
25 quite serious about it, so I got involved in it.

1 And I started out -- I was basically the grunt,
2 because once it was decided by the community that it
3 needed to happen, we had an attorney who lived in the area
4 there and he said he'd do the paperwork pro bono, but
5 somebody had to go out and organize all the meetings and
6 then -- and get together several commissions to follow
7 procedure under the water and sanitation statutes in order
8 to form a district.

9 And we did this through petition -- basically
10 signatures -- through the District Court here in Taos, and
11 I was involved in that.

12 He did all the paperwork, and I ran around
13 getting everybody organized and getting meetings organized
14 and all the various agencies that had to be involved for
15 the court proceedings, and that took approximately a year.
16 And then there was a vote held, and the -- the community
17 voted to form the district and everything.

18 And I was one of the original board members.
19 There was three of us that were originally elected once
20 the board was formed, and I've been basically involved in
21 that district for 37 years. A couple of years there I was
22 off a little bit, but still I was still involved somewhat
23 on that.

24 Now, as far as my background here, I hold a
25 Level 4 certification from the Drinking Water Bureau here

1 for an operator's license for the District, and that's the
2 highest one you can have in this state. I can basically
3 work on any public water system in the state of New
4 Mexico.

5 I hold a Level 1 wastewater. That's all we need
6 at this point because the Town of Taos treats our
7 wastewater.

8 But I also hold a general contractor's license,
9 the GB-98, and an electrical contractor's license, an
10 EE-98, as well as I have my qualifying broker's license,
11 and I've been licensed since 1974 to -- to sell real
12 estate in this -- in this state.

13 So I've been -- also, when we started the
14 District, I've been involved in all of the wells that the
15 District has basically drilled or gotten their hands on.

16 Initially when we formed the District, we
17 basically leased a well from the Town of Taos for ten
18 years, and the town acted -- they -- we pumped that water
19 into their system, and they stored it for us in return for
20 it going back to the community.

21 But eventually, we were able to get funding and
22 everything to get on our own, and we drilled our first
23 well, which was called the Overland Sheepskin well, up by
24 the Overland Sheepskin complex there, which is very close
25 to the pueblo.

1 And then we were able to get our hands on an old
2 1972 Bureau of Reclamation production well when they were
3 doing testing in this valley for the San Juan-Chama
4 project. They drilled a number of test wells and two
5 production wells.

6 We got our hands on that -- which we called it
7 the Las Colonias well -- which we -- has been a great well
8 and we've used for years and years and still is in use.

9 Back in about 1999, because the Overland
10 Sheepskin well was not capable of -- of serving the
11 community on its own anymore, we needed to get another
12 well, which we did, and that is over here in El Prado and
13 it's called our El Torreon Well, which is probably the
14 best production well in this valley here. It's capable of
15 up to 1,300 gallons a minute on that.

16 Well, that was all fine and dandy, and we had a
17 good source there, but as you know, this valley here is
18 under Abeyta Taos Pueblo Settlement wherein the State
19 filed to adjudicate the water in this valley, and the Taos
20 pueblo had their claims basically claiming all the water
21 in the valley.

22 So rather than fighting legally in the courts
23 for the next 50 years, the Taos Valley Acequia Association
24 basically suggested to the pueblo that maybe we ought to
25 try to settle this.

1 And that started out, I guess, probably the late
2 '80s or so on that. There was a lot of meetings held.
3 There was a lot of talk going on, a lot of recriminations
4 against each other and this and that and the other thing.

5 And then finally around about -- I guess it was
6 the end of that late '80s, early '90s, people got serious,
7 and then the state and the federal government brought in a
8 mediator and decided to pay for that, and then we sat down
9 and negotiated basically over a three, four-year period
10 the settlement that we're now basically under.

11 The reason I'm talking about this settlement is
12 because the pueblo is extremely concerned about our wells
13 being so close to their sacred buffalo pasture and what
14 effect that had on that pasture.

15 So as a compromise -- and everybody had to
16 compromise to make this thing work -- we finally agreed to
17 cap a certain amount of water that we would take out of
18 our existing wells every year.

19 In fact, we agreed that the Overland Sheepskin
20 well would completely go away, but we had to cap our
21 really good El Torreon to many acre feet a year, and the
22 same thing with our Las Colonias well.

23 Well, in return for that, the state and the
24 federal government agreed to replace that capacity with
25 newer -- two new wells out in the area towards the airport

1 where Mr. Rael's facility is.

2 And if -- when he bought that property out
3 there, if you would have asked me if El Prado was ever
4 going to be out there producing water, I would have said
5 you were crazy, that that was totally inconceivable.

6 Well, it ends up that now forever that has to be
7 our area out there for any new water production that we do
8 in the future.

9 Under the Abeyta -- which is a fairly complex
10 settlement -- everybody agreed what areas future
11 development of water could be in for who and what and all
12 of that, and under the settlement, we're also very
13 restricted on where we can do these wells, how we can do
14 them, and how close we can be to other parties or not and
15 all of that.

16 So we ended up out there, and the well that we
17 have in question here is a well that was, again,
18 negotiated in the area where we've drilled it.

19 We have -- this whole valley has been divided up
20 into basically quarter-acre cells by the State Engineer,
21 and --

22 Q. Mr. Painter, let me -- let me interrupt you for
23 a second. I'm going to hand you what we've marked as El
24 Prado Water & Sanitation District Exhibit 5 -- and I'm
25 going to give a copy to the -- to the Hearing Officer and

1 counsel -- and let that -- and see if you want to refer to
2 that in this testimony.

3 A. Okay.

4 Q. Mr. Painter, would you please describe what I've
5 just handed you and -- and the Hearing Officer and counsel
6 as El Prado Exhibit 5?

7 A. Basically, when I said that the -- the -- the
8 valley has been divided into basically sort of quarter --
9 I guess you'd called them quarter sections here -- or are
10 these cells, which are basically a quarter mile square --
11 you can see on this map there's two -- if you -- right in
12 front of you there -- I guess they're kind of a brownish
13 color -- one has a single cell, and then there's another
14 one on there with five different cells, and the well that
15 we are talking about is in that far eastern cell that --
16 where the five cells are.

17 And we drilled a test well we call the Rio
18 Grande one in that single cell there, which was a dud.
19 There's very little water there.

20 Then we ran into the Ojo Caliente Formation,
21 which is basically -- when you drive down towards
22 Espanola, you go down in the valley here, you see all that
23 nice beautiful white sand that -- that outcrops there as
24 you drop down towards Pilar.

25 You know, they call it basically buff sand, but

1 it -- it's -- it's very difficult, very, very fine, and
2 it's extremely hard to develop, and there was very little
3 water in that.

4 So we basically have had to abandon that, and we
5 moved over and did the Midway well where -- where we've
6 been successful in creating a pretty -- what I call a good
7 medium-sized production well there.

8 And that is where, you know, then our concern
9 came up when Mr. Rael was again filing for -- to extend
10 his permit on that.

11 That well, at this point there's no direct --
12 basically, his facility over there has no direct threat at
13 this moment to that well, but our concern is that we don't
14 have a problem in the future on that, that we protect that
15 groundwater out there, because it's very vital that that
16 not become ever basically polluted out there, because
17 we've all got to live with that forever and ever.

18 So our concern was that we just -- based on, you
19 know, some of the past history that we have seen here --
20 and I refer to basically the Environment Department's
21 history that they have presented here -- that there have
22 been, you know, past violations and stuff not done
23 according to time and -- and when it should have in a
24 timely manner, as well as -- let's say there's faults on
25 both sides, that we just want to make sure that, going

1 forward in the future, that it's run more professionally
2 out there and everybody does what they're supposed to do.

3 And basically we want to see monitoring so that
4 the problem is solved before it becomes a huge problem, if
5 it becomes a problem.

6 Now, listening to Mr. Snyder's testimony the
7 other night from EA Engineering, we're quite -- I mean,
8 we're basically quite willing to go along and -- and see
9 that. We think it's a good solution to the problem.

10 The only thing, in -- in discussion with our own
11 hydrogeologist, who's been involved in these wells that
12 we're drilling out there, she's -- who is Maryann Wasiolek
13 from Hydosciences out of basically -- I guess it's
14 Corrales now is where she's living there -- but she's been
15 our hydrogeoscientist for the last -- basically existence
16 of the -- of the District.

17 She had recommended there should be two -- two
18 basically test holes bored instead of one, so I mean, that
19 was, you know, again, her -- her recommendation on that.

20 We certainly want to see the one done, and in
21 the discussion which you'll hear more about, I think the
22 District is pretty much on board on that.

23 We certainly are not out here to put Mr. Rael
24 out of business. He provides a very needed business in
25 this area.

1 The other concern we had a little bit about and
2 that's, he does pump grease out of septic -- I mean, out
3 of grease traps on these restaurants around Taos.

4 I mean, I have pictures of him on October 1st
5 basically pumping a grease trap out of the -- over by the
6 Overland Sheepskin complex there, out of one of the
7 restaurants -- the sushi restaurant over there.

8 Now, in his testimony the other evening he said
9 that that was taken to -- basically he takes his grease
10 pumpings to Pojoaque, that they will accept them down
11 there at a facility, and yet we have also under the
12 Environment Department's testing that they did out there,
13 one of his cells showed elevated -- basically the test
14 showed an elevated amount of grease and stuff in one of
15 the cells there, along with hydrocarbons, oils -- you
16 know, oils in there.

17 That's probably a really big concern of ours is
18 hydrocarbons, because we certainly don't want to see that
19 getting into the groundwater by any means, so we would
20 hope that, you know, under this method of testing going
21 forward that -- that that is all very much looked into and
22 that we don't have that problem.

23 So, you know, I assume that there's records
24 somewhere of his basically disposing of the grease in
25 Pojoaque and whatnot, but we have -- we do have a concern

1 there, that -- that -- you know, that hydrocarbons and
2 stuff aren't being disposed of out there at that -- at
3 that site.

4 And I think, you know, we just want to see
5 basically in the future that everybody does what they're
6 supposed to.

7 Certainly the Water & Sanitation District is
8 under a lot of rules and regulations from the NMED,
9 Drinking Water Bureau, and all the -- EPA, and all of that
10 stuff, and if we aren't doing stuff that we're supposed to
11 be doing, they climb all over us in a hurry.

12 And so it's just, you know, good practice here
13 that this needs to be cleaned up and run more
14 professionally on both the parts of Mr. Rael and the
15 Environment Department and not slacking off on stuff just
16 so that everybody can be assured of the fact that we are
17 really keeping good track of what's really going on out
18 there.

19 Q. Has the District been involved in the past
20 with -- as the objector or protestant to any other
21 discharge permits in the area?

22 A. Yes, we have.

23 Q. Okay.

24 A. We objected, obviously, to the Las Colonias
25 Mobile Home Park, because that's -- actually, our well is

1 closer to them than -- than our well out there is to -- to
2 Steve's.

3 And -- and, you know, we forced them to put in a
4 new monitoring well and stuff because, again, nobody was
5 paying much attention and things weren't being --
6 basically, nobody was following the rules and regulations
7 on that, and we certainly have concerns on that well about
8 nitrates and stuff, and so yes, that has happened.

9 And also with Bill Whaley's mobile home park
10 there, that we, you know, protested that, and -- and
11 basically a monitoring well was put in with that, and
12 so --

13 Q. Mr. Painter, when you say nobody was paying
14 attention to the permit conditions, who specifically are
15 you talking about, the permittee or NMED?

16 A. Both. There was no enforcement, and the
17 permittee was being pretty lax about doing his testing, so
18 again, this is -- this seems to be kind of a universal
19 problem.

20 Q. Okay. So that just about wraps it up.

21 Mr. Painter, anything else you want to testify
22 to in summary?

23 A. I would say that if this proposal that --
24 between Mr. Rael and the New Mexico Environment Department
25 is accepted, that then that -- that it's very essential

1 that the EA Engineering be on site when that -- when that
2 work is being done, as well as the NMED personnel be on
3 site, so that that is, you know, professionally done and
4 there's no room for any shenanigans to sort of go on
5 there.

6 It's just -- it always makes it much easier if
7 third parties are there that are supposed to be, you know,
8 observing and stuff so that the public is basically
9 guaranteed that what they have agreed to be done is being
10 done.

11 MR. BROCKMANN: Okay. That's -- that's El Prado
12 Water & Sanitation District's only witness.

13 Before we -- before I close, I would like to
14 move the admission of El Prado Exhibit Number 5.

15 HEARING OFFICER ORTH: Objections?

16 MR. JOHNSON: No objection.

17 MR. DOMENICI: No objection.

18 HEARING OFFICER ORTH: Thank you. El Prado 5 is
19 admitted.

20 (El Prado Exhibit No. 5 admitted into evidence.)

21 HEARING OFFICER ORTH: Mr. Painter, you may be
22 questioned now by the other parties.

23 Mr. Domenici, do you have questions of
24 Mr. Painter based on his testimony?

25 MR. DOMENICI: No questions.

1 HEARING OFFICER ORTH: Mr. Johnson?

2 MR. JOHNSON: No questions.

3 HEARING OFFICER ORTH: Does anyone in the room
4 have a question?

5 Sir, if you will come up and give us your name
6 first.

7 MR. DAUBERT: Up over here or --

8 HEARING OFFICER ORTH: Sure. That's -- that's a
9 good spot.

10 MR. DAUBERT: Yes, my name is Douglas Daubert.

11 CROSS-EXAMINATION

12 BY MR. DAUBERT:

13 Q. Mr. Painter, I'm just curious. You mentioned
14 the Las Colonias trailer park there.

15 The facility they -- are they dumping into an
16 open unlined pit?

17 A. No. They have septic tanks with drain fields.
18 They have a series of septic tanks and a series of drain
19 fields on that -- on that particular site.

20 Q. Did they have to change that at -- at your
21 request or at any protest or anything at that point, or
22 how did that occur?

23 A. I think they had to increase their drain field a
24 little bit, but our concern was whether there was a plume
25 of septic moving towards our well.

1 So basically they had one monitoring well there
2 that hadn't been functioning very well. We -- we
3 requested and they -- and -- and -- and they complied with
4 that under the -- their permit with NMED -- and NMED went
5 along with us on that -- that a second well a little
6 further out was -- was drilled in order to, you know,
7 monitor whether that plume was -- how far out.

8 Q. Was it moving laterally or horizontally?

9 A. Horizontally.

10 Q. Horizontally?

11 A. Yeah.

12 MR. DAUBERT: Okay. Thank you. That's all I
13 have.

14 HEARING OFFICER ORTH: Thank you, Mr. Daubert.

15 Is there anyone else who has a question of
16 Mr. Painter based on his testimony? No.

17 Thank you very much, Mr. Painter.

18 MR. PAINTER: Thank you.

19 HEARING OFFICER ORTH: So the next technical
20 presentation will be the Groundwater Bureau, but let me
21 ask if there is anyone who did not offer public comment
22 last Wednesday and will not be able to stay with us until
23 after the Bureau is done and would like to offer that
24 public comment now. Is there anyone?

25 Ma'am, if you would come up.

1 COURT REPORTER: Can we go off the record for
2 one second?

3 HEARING OFFICER ORTH: I'm sorry?

4 COURT REPORTER: Can we go off the record for
5 one second? I need to get a tissue.

6 HEARING OFFICER ORTH: Okay. Let's go off the
7 record just a second.

8 (Discussion off the record.)

9 MS. RODIN: Do you need my name?

10 HEARING OFFICER ORTH: All right. If you would
11 give us your name first and spell it.

12 MS. RODIN: Lois, L-o-i-s, Rodin, R-o-d-i-n.

13 HEARING OFFICER ORTH: All right.

14 LOIS RODIN,
15 having been first duly sworn, testified as follows:

16 HEARING OFFICER ORTH: Thank you. Please go
17 ahead.

18 MS. RODIN: Okay. This is just a public
19 comment. I wanted to talk about what's a good sewage cell
20 system and what is a bad sewage cell system.

21 The sewage and effluent are broken down by germs
22 in the cells. The sun and wind play an important role in
23 having this work. They provide light, warmth, and oxygen
24 to the sewage. This is necessary for the growth of
25 bacteria in the cells.

1 Okay. A good, healthy cell system is able to
2 break down sewage or effluent properly and makes it a
3 healthy place.

4 It has to have the following requirements: It
5 must not be more than one millimeter deep. The banks need
6 to be sloped at approximately 15 to 20 degrees and made of
7 concrete, gravel, or rock, and not be broken.

8 There must be no grass, trees, or other
9 vegetation on the banks or surrounding areas that would
10 stop the sun and wind action needed by the cells.

11 The cells must be free of vegetation or objects,
12 and it must be surrounded by a high fence and a lockable
13 gate.

14 I understand that the -- the vegetation was said
15 to be for evaporation, and I understand that before the
16 Wednesday hearing, that all that vegetation in the cells
17 was plowed under, so how can it be for evaporation if it
18 was plowed under?

19 Signs of improperly working cells are vermin,
20 mosquito breeding, and bad smell, and all of these things
21 have been reported in the history of violations of the
22 S & R facility. Okay. So that's -- that's that part.

23 Now, as far as capacity of the Taos Valley
24 Regional Wastewater Treatment facility that all the other
25 haulers use, it's 10,000 gallons of septic per hauler per

1 day, and in the permit for S & R, they can -- he can
2 discharge 9,857 gallons a day average on a weekly basis,
3 so there's no reason about capacity that -- that S & R
4 can't use the -- the town -- the regional facility on --
5 on that basis.

6 That's it. That's all I wanted to say. Thank
7 you.

8 HEARING OFFICER ORTH: Thank you, Ms. Rodin.

9 Is there anyone else who would like to offer a
10 comment?

11 Ma'am, if you would come up.

12 MR. DAUBERT: I have just a quick question. If
13 you don't offer it now, you said there would be a time at
14 the end where you could also do it, or is this the only
15 opportunity to offer it?

16 HEARING OFFICER ORTH: So I will ask again at
17 the very end of the hearing. If you spoke Wednesday
18 night, though, I have to ask you to put your additional
19 comments in writing.

20 MR. DAUBERT: Okay. I only asked questions. I
21 didn't speak as public comment.

22 HEARING OFFICER ORTH: Okay. Great.

23 Tell us your name and spell it.

24 MS. ATCITTY: My name is Cherylin Atcitty,
25 C-h-e-r-y-l-i-n, my last name is A-t-c-i-t-t-y.

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CHERYLIN ATCITTY,

having been first duly sworn, testified as follows:

HEARING OFFICER ORTH: Thank you. Please go ahead.

MS. ATCITTY: Thank you. My name is Cherylin Atcitty. I am the environmental program manager for Taos Pueblo Environmental Office.

We're here to provide comment that the discharge for the discharge permit 465 can have impacts -- negative impacts to the subsurface water, and it can have impacts to future -- future activities that will occur on Tract A Taos Pueblo, on their future plans to bison herds and other wildlife activities, and it will have impact especially with the -- the fencing which they might be able to access from that area.

There's also concerns about the groundwater, the use of wells in -- which will be used for the animals, but those are the -- the main points are just the -- the use of the wildlife and bison.

HEARING OFFICER ORTH: All right.

MS. ATCITTY: That's all.

HEARING OFFICER ORTH: Thank you, Ms. Atcitty.

Is there anyone else who would like to offer public comment now?

Okay. We'll ask one more time after we're done

1 with the Bureau. Thank you.

2 Mr. Johnson?

3 MR. JOHNSON: Okay. Just a real brief opening.

4 HEARING OFFICER ORTH: Yes.

5 MR. JOHNSON: It is important to remember that
6 in a hearing such as these that the burden of proof is on
7 the Applicant to show that its preferred version of the
8 permit remains protective of groundwater and human health.

9 Environment Department feels that after hearing
10 last week's testimony it has largely been shown, and that
11 the Department's witness will testify about revisions that
12 it has agreed to make to the draft permit.

13 So I -- I call Jason Herman.

14 JASON GLENN HERMAN,
15 having been first duly sworn, testified as follows:

16 HEARING OFFICER ORTH: Thank you.

17 DIRECT EXAMINATION

18 BY MR. JOHNSON:

19 Q. All right. Mr. Herman, please state your name
20 for the record.

21 A. Jason Glenn Herman.

22 Q. And where are you employed?

23 A. The New Mexico Environment Department,
24 Groundwater Quality Bureau, Pollution Prevention Section.

25 Q. And how long have you worked for the Groundwater

1 Bureau?

2 A. Just a little over two years -- about two years
3 and one month.

4 Q. What is your job title?

5 A. I am the domestic waste team lead.

6 Q. And what are your job duties?

7 A. So I oversee a caseload of high-profile and
8 complex permits, and I also provide guidance, approval,
9 and technical -- technical decision making for domestic
10 waste sites and discharge permits in New Mexico, as well
11 as many other aspects of the permitting process, including
12 public notice.

13 Q. And how many permits have you written in the
14 past year?

15 A. Twenty-one have been issued.

16 Q. How many since starting with the Department?

17 A. Thirty.

18 Q. Okay. Please describe your educational and
19 professional qualifications.

20 A. So before going to school I worked in
21 groundwater treatment and in the regulatory industries in
22 Florida for more than eight years where I provided
23 regulatory compliance, analysis, and design for
24 groundwater treatment systems.

25 I then returned to school to get my bachelor's

1 degree in environmental planning and design, and two
2 master's degrees, one in community regional planning and
3 another in water sources management, all from the
4 University of New Mexico.

5 And after graduation I immediately began working
6 for the New Mexico Environment Department as an
7 environmental scientist, and then later I was promoted to
8 the domestic waste team lead.

9 Q. All right. Did you prefile written testimony in
10 this proceeding?

11 A. Yes.

12 Q. And did you provide a resume with your prefiled
13 written testimony?

14 A. Yes, I did.

15 Q. Do the testimony and resume appear in the
16 submissions -- the written submissions -- as Exhibits 1
17 and 2 respectively?

18 A. Yes.

19 Q. Do you adopt that written testimony today?

20 A. I do.

21 MR. JOHNSON: We offer Exhibits 1 and 2 into
22 evidence.

23 HEARING OFFICER ORTH: Objections?

24 MR. BROCKMANN: No objection.

25 HEARING OFFICER ORTH: They're admitted.

1 (NMED's Exhibits No. 1 and 2 admitted into
2 evidence.)

3 BY MR. JOHNSON:

4 Q. Okay. So does a proposed permit like this one
5 go through a notice and comment period?

6 A. Yes, it does.

7 Q. And when did that happen?

8 A. I believe in May of 2019, and it was open for 30
9 days.

10 Q. And what transpired during that time?

11 A. I received multiple requests for hearing from
12 members of the public, as well as from El Prado Water &
13 Sanitation District.

14 Q. Okay. And did the Applicant make any contact
15 with you?

16 A. No.

17 Q. All right. How did the comments affect the
18 draft permit?

19 A. They supported the decisions made by my
20 management, as well as myself, to require some sort of
21 geological study of the site to understand the geology of
22 the facility -- under the facility specifically.

23 Q. Okay. And what about the request to have a
24 hearing, what did those accomplish?

25 A. So they met the Department's requirement for

1 significant public interest, and a hearing determination
2 memo was drafted to the Secretary and a hearing was
3 granted by the Secretary.

4 Q. So even if the Department and the Applicant had
5 agreed on the content of the permit from day one, would
6 this hearing still have been held?

7 A. Yes.

8 Q. All right. Please describe how the conditions
9 in the draft permit were determined.

10 A. So when an application is submitted, the permit
11 reviewer -- in this case, myself -- plans for a scoping
12 meeting, as well as an inspection of the facility, to
13 determine if there's any deficiencies with the facility or
14 with the operations.

15 And then the appropriate management is involved
16 in the scoping meeting to determine what additional
17 conditions will be required and what additional -- if
18 there's any problems with the facility that we need to
19 address through the draft permit renewal.

20 Q. I haven't heard the Applicant's proposed
21 modifications to the draft permit on Wednesday and in
22 meetings since then.

23 Does the Groundwater Bureau wish to alter any of
24 the conditions?

25 A. Yes. The Bureau finds that most of the

1 Applicant's proposals to be adequate for protecting
2 groundwater and human health, and with a few adjustments,
3 the Bureau would be willing to endorse its content.

4 Q. Okay. The Applicant's proposed revisions are
5 found in Exhibit 6 of the EA Engineering report. Let's go
6 through that, and you tell me what the Bureau finds
7 reasonable.

8 Beginning with borehole drilling, what would
9 that look like?

10 A. So we would like the purpose of the drilling to
11 be done in a way that would accomplish three major goals.
12 First, to identify the depth of contaminants and the
13 impacts at the site.

14 Second, we would want to identify any soil
15 moisture and any saturated zone above the regional aquifer
16 at a minimum -- we would also -- at a minimum, above the
17 first vertically extensive basalt layer.

18 And finally, to identify any lithological zone
19 capable --

20 COURT REPORTER: I'm sorry; any what?

21 THE WITNESS: Any lithological zone.

22 A. -- capable of creating a perched aquifer zone --
23 i.e., some sort of clay, for example.

24 Regarding permit condition 21, which was the
25 five borehole condition originally, the Department agrees

1 with the Applicant that a single borehole will be
2 sufficient to fully characterize the site with proper
3 planning and implementation.

4 NMED agrees with the suggested soil sampling
5 frequencies for laboratory analysis of physical properties
6 at ten-foot intervals and the -- I'm sorry; for physical
7 properties, and the ten-foot intervals for the --
8 suggested for the chemical analysis.

9 I'm going to start that sentence over again so
10 that I can get it clearly.

11 So the physical properties will be of all of the
12 soil types as they advance through, so it will be
13 determinant upon how often the soil types change, but the
14 chemical properties will be at ten-foot intervals
15 according to their proposal.

16 And assuming the drilling does not identify any
17 perched groundwater, NMED also would agree that if
18 chemical analysis indicates elevated nitrogen content at
19 150 feet below ground surface that the facility should be
20 closed and the closure plan outlined in the permit be
21 implemented.

22 I have some duplication on my testimony here.

23 Q. All right. Let's go ahead and talk about, what
24 adjustments would the Bureau require that are beyond what
25 was already in the Applicant's revised version of the

1 permit?

2 A. So we have discussed that we would like to see
3 the drilling method to be either hollow stem auger or
4 sonic, that the single borehole be terminated at the top
5 of the basalt, that the original borehole have a section
6 lysimeter or some sort of vadose zone monitoring system
7 installed into it, and that if chemical analysis indicates
8 elevated total nitrogen content extends to the first
9 basalt layer, that the Department will require complete
10 vertical characterization of contaminant through and below
11 the basalt, and we would like a chronological work plan to
12 be submitted no more than 60 days following the issuance
13 of final permit.

14 Q. Will anyone else aid in the preparation of
15 the --

16 COURT REPORTER: I'm sorry; could you say that
17 again?

18 BY MR. JOHNSON:

19 Q. Will anyone else aid in the preparation of the
20 work plan?

21 A. Yes. We have invited -- we would like to see
22 Jerome Hansen from the public, as well as Mr. Painter from
23 the El Prado Water District, involved in the meetings, so
24 that's --

25 Q. Thank you. Please continue.

1 A. And we would like the borehole to be placed
2 where the Bureau believes is most representative of the
3 worst-case scenario at the facility, that the borehole be
4 continuously cored to total depth, and if the permittee --
5 or if the borehole encounters a moisture or a moist clay,
6 that it be allowed to rest for two hours to determine if
7 there's any fluid accumulation.

8 If there is a saturated zone that is identified,
9 a monitoring well would need to be constructed into the
10 zone identified and a second borehole to be drilled that
11 will include a surface casing across the saturated
12 interval and advanced to total depth to characterize
13 lithology and moisture content.

14 Then Applicant would like to -- will -- to
15 pursue the lateral extent of any perched groundwater that
16 is identified, and then we would also insist that the
17 boreholes be sealed with bentonite chips instead of
18 concrete.

19 Q. Okay. Let's talk about sampling next.

20 How would that work?

21 A. As I said earlier, that as in the Applicant's
22 proposal, laboratory analysis of the physical
23 properties -- the five listed physical properties -- based
24 on representative soil types as they encounter them and
25 then the chemical analysis at ten-foot intervals for the

1 list of constituents, the nitrogen species, chloride, and
2 total --

3 COURT REPORTER: I'm sorry; and total --

4 THE WITNESS: Total dissolved solids.

5 A. So we are actually insisting that a
6 representative from the Groundwater Quality Bureau be
7 present for the drilling, as well as the sampling, and
8 also we would like to retain the option to split samples
9 with the engineering firm to confirm the analytes within
10 them.

11 One -- one portion that we cannot agree to --
12 that the Department will not agree to is no additional
13 soil sampling and analysis.

14 In the Applicant's proposal, during -- they have
15 suggested during the term of the permit that we would not
16 be able to require any additional sampling.

17 While the terms we are describing would satisfy
18 the initial investigation requirements that we would like
19 to see satisfied, the Bureau must retain discretion to
20 respond to any new information, such as ascertaining of
21 improper dumping of fats, oils, and greases, or any
22 inappropriate gasoline spills or other unforeseen
23 developments at the facility.

24 Q. Is there anything else in the Applicant's
25 proposed conditions that the Bureau would modify?

1 A. No. After consulting with management, the
2 vadose zone monitoring outlined in proposed condition 22
3 would be protective of groundwater and human health.

4 MR. JOHNSON: Thank you. That concludes our
5 primary testimony, but I would like to get a couple of
6 exhibits in.

7 HEARING OFFICER ORTH: Okay.

8 BY MR. JOHNSON:

9 Q. Okay. All right. Now, Mr. Herman, can you tell
10 us what that is?

11 A. This is a spreadsheet that I created that
12 further compares the sites identified by the EA testimony
13 to S & R Septic.

14 Q. Okay. And what is the significance of that to
15 this hearing?

16 A. So this identifies considerably more of the
17 parameters that are considered when permitting a facility,
18 including the requirement on other facilities that they
19 have 200 pounds of -- of total nitrogen per year per acre
20 allowed to be disposed of on their facilities, as well as
21 some of the facilities have wastewater treatment plants or
22 nitrification, denitrification systems or advanced
23 treatment -- like a membrane bioreactor --

24 COURT REPORTER: I'm sorry; like what?

25 THE WITNESS: Membrane bioreactor.

1 A. -- that accounts for a vast difference in
2 discharge types and quantities, as well as loading.

3 MR. JOHNSON: Okay. So we -- we offer what is
4 marked as NMED Exhibit 7.

5 HEARING OFFICER ORTH: Objections?

6 MR. DOMENICI: No objection.

7 MR. BROCKMANN: No objection.

8 HEARING OFFICER ORTH: It's admitted.

9 MR. JOHNSON: Thank you.

10 (NMED Exhibit No. 7 admitted into evidence.)

11 BY MR. JOHNSON:

12 Q. Is there anything else about that comparison
13 with the other Exhibit 1 that you wanted to mention?

14 A. So the -- the main thing that I looked at was
15 the amount of waste that is being allowed to be disposed
16 of, and I measured it in gallons per acre per day.

17 And the vast majority of facilities are allowed
18 a much more limited quantity of -- of disposal for the
19 amount of acreage that they have, or they have much larger
20 quantities of acreage and dispose of across a much more
21 spread out area, which creates a much less concentrated
22 nitrogen loading of the facilities selected for Table 1
23 here.

24 The next closest is around one quarter of the
25 total allowable disposal quantities per acre.

1 Q. Thank you. One more exhibit.

2 And what is that one?

3 A. So I took that idea and I expanded it to all of
4 New Mexico that -- all the facilities that we permit that
5 are allowed to dispose of septage, and that same --
6 that -- that same trend is true throughout the entire
7 state of New Mexico.

8 Most facilities are under 1,000 gallons per acre
9 per day allowable discharge. The one facility that is
10 actually above S & R Septic's authorization is Berry
11 Septage, DP-1878, but they are restricted to 200 pounds of
12 nitrogen per acre per year, and they're also required to
13 characterize their septage with the nitrogen species prior
14 to disposal, so their operational authorization is
15 actually much closer to around 500 gallons per acre per
16 year.

17 Q. And where did you get this information?

18 A. From NMED's files, as well as my experience in
19 permitting and accessing the most recent permits.

20 MR. JOHNSON: Okay. We offer Exhibit NMED
21 Number 8.

22 HEARING OFFICER ORTH: Objections?

23 MR. BROCKMANN: No objection.

24 MR. JOHNSON: No objection.

25 HEARING OFFICER ORTH: It's admitted.

1 (NMED's Exhibit No. 8 admitted into evidence.)

2 BY MR. JOHNSON:

3 Q. And anything else you'd like to say about that,
4 Mr. Herman?

5 A. No.

6 MR. JOHNSON: All right. No further questions.

7 HEARING OFFICER ORTH: All right. Thank you,
8 Mr. Johnson.

9 Mr. Domenici, do you have questions of
10 Mr. Herman based on his testimony?

11 CROSS-EXAMINATION

12 BY MR. DOMENICI:

13 Q. Mr. Herman, you -- NMED issued a draft permit in
14 this proceeding, correct?

15 MS. DAUBERT: I can't hear you.

16 COURT REPORTER: Would it be easier if you came
17 over here to this one?

18 MR. DOMENICI: Everybody else worked from here.

19 HEARING OFFICER ORTH: I can hear him. Can you
20 hear him?

21 MR. DOMENICI: Let me try down here. Can you
22 hear me now?

23 MULTIPLE SPEAKERS: Yes. Thank you.

24 BY MR. DOMENICI:

25 Q. Mr. Herman, NMED issued the draft permit in this

1 proceeding, correct?

2 A. That's correct.

3 Q. Which meant that NMED was prepared to issue a
4 renewed permit subject to conditions?

5 A. Yes.

6 Q. And then if I understand your testimony today,
7 the content of two of those conditions has changed?

8 A. Correct. So our -- our agreement to change
9 two -- two of those conditions and the contents within
10 them, yes.

11 Q. But the remaining portions of that draft
12 discharge permit have not changed?

13 A. Correct.

14 Q. Now, when you issued the draft permit with
15 conditions, did NMED or did you, as the permit writer, did
16 you agree that the draft permit as you wrote it met all of
17 the requirements of 20.6.2.3109?

18 A. Yes.

19 Q. And it met requirements of the Water Quality
20 Act?

21 A. Yes.

22 Q. And now with the revised, agreed-upon
23 conditions, will you agree that the permit as revised
24 meets all of the requirements of 20.6.2.3109?

25 A. Yes.

1 Q. And meets all the -- the permit requirements of
2 the Water Quality Act?

3 A. Yes.

4 Q. And just one question on your Exhibit 8 --

5 A. Uh-huh.

6 Q. -- the top of the second page. I have a little
7 familiarity with Johnny's Septage Disposal.

8 A. Uh-huh.

9 Q. So I see that it has 20,000 gallons per day
10 authorization, but I don't see the acreage.

11 A. So according to the permit, they're a total
12 evaporative system that does not discharge and only relies
13 upon a synthetically --

14 COURT REPORTER: I'm sorry; only --

15 THE WITNESS: Relies upon a synthetically-lined
16 lagoon system for disposal.

17 BY MR. DOMENICI:

18 Q. Is that what it means by evap?

19 A. Yes, sir.

20 MR. DOMENICI: Okay. That's all I have. Thank
21 you.

22 HEARING OFFICER ORTH: Thank you.

23 Mr. Brockman, do you have questions of
24 Mr. Herman?

25 MR. BROCKMANN: Just one or two.

CROSS-EXAMINATION

1
2 BY MR. BROCKMANN:

3 Q. Mr. Herman, did you review what -- what we
4 provided as El Prado Exhibits 1 through 4?

5 A. Yes, I did.

6 Q. When did you do that?

7 A. Your hydrologist, Maryann, provided them to me
8 after our meeting about two and a half months ago.

9 Q. And that was after the draft permit had -- had
10 already -- or after the initial permit had already been
11 drafted?

12 A. That's correct. So there -- I had some
13 confusion as to the 2004 Drakos report. I actually did
14 have that and had reviewed it prior to drafting the
15 permit, but I admit I had said that I had not renewed it,
16 but I had.

17 Q. Can you tell me generally your conclusions from
18 reviewing those four reports?

19 A. That there's a great need to understand the
20 geology underneath the facility as clearly and concisely
21 as possible.

22 Q. So basically, confirmatory of your original
23 opinions?

24 A. Correct.

25 Q. The -- the -- the negotiated conditions -- 21

1 and 22 -- as -- as negotiated between NMED and the
2 Applicant on this, I believe there was an indication that
3 El Prado could be involved in the meetings with the work
4 plan; is that correct?

5 A. That is correct.

6 Q. And as part of those meetings, will El Prado be
7 provided with any well design and, you know, method of
8 testing and materials, that type of information?

9 A. By that do you mean the work plan or --

10 Q. Yes, sir.

11 A. It would be my general understanding that
12 because it's part of work that NMED is requiring or has a
13 permit for, that that would be part of public record, but
14 I -- I don't see any problem myself with providing you
15 guys with that information.

16 Q. Okay. Well, I would like to request that El
17 Prado be provided with that information as soon as it
18 becomes available.

19 In some cases, I think just because of their
20 experience in the area of well drilling, they'd like to
21 come at -- as that information becomes available.

22 A. So I can -- I can speak on -- for NMED, but I
23 don't -- NMED would not have any objection.

24 Q. Okay. I'll -- I'll make the request separately
25 then with Mr. Domenici also and -- and see if I can get

1 his concurrence.

2 And does that testing also include testing for
3 hydrocarbons?

4 A. There is separate conditions for hydrocarbon
5 testing.

6 Q. Okay. But it will be done?

7 A. On a semiannual basis.

8 Q. On a semi -- but not as part of this particular
9 drilling?

10 A. No, sir.

11 Q. And then finally, as part of the discussion, I
12 understood that given the timing, 60 days after issuance
13 of a draft -- or the issuance of a permit, the work plan
14 would be due.

15 About when would that -- that -- that new
16 wellbore be drilled? At what time?

17 A. I don't want to restrict -- I don't -- I don't
18 want to -- I don't want to speculate or make any
19 predictions on the time frame.

20 I -- there's going to be a final order that
21 occurs and all kinds of different stuff that have to occur
22 before the issuance of the permit.

23 It seems like that 60-day time frame would put
24 us for a finalized work plan in the, you know,
25 February-March time frame, but there's a long range

1 depending on availability of equipment and, you know,
2 different parameters within the -- the sampling regimen
3 that we decide upon that would dictate further when the
4 actually drilling would occur.

5 I would guess it's probably going to occur in
6 the summer, but that would be a guess.

7 Q. Okay. If -- if El Prado is involved with the
8 development of the work plan, I think it has a concern
9 that I want to make sure you and -- and the Applicant are
10 aware of that -- and I think it was also expressed by
11 Mr. Rael -- that that drilling be done like in April or
12 May at the soonest to make sure we -- we get past the
13 winter season.

14 A. Yeah, understood.

15 MR. BROCKMANN: Okay. Thank you. No more
16 questions. Thanks.

17 HEARING OFFICER ORTH: All right. Thank you,
18 Mr. Brockmann.

19 MR. BROCKMANN: Just a second.

20 HEARING OFFICER ORTH: Okay.

21 MR. BROCKMANN: Let me check with him. So I do
22 have one more question.

23 BY MR. BROCKMANN:

24 Q. Why -- you mentioned that in this particular
25 monitor well drilling that there's not testing for

1 hydrocarbons.

2 Why is that?

3 A. So the hydrocarbon testing that we required in
4 the other permit conditions is more than sufficient to --
5 it's -- it's sufficient to determine if the cells have
6 been impacted by hydrocarbons, but it's not -- it's not an
7 indication of what type of discharge is authorized for the
8 facility and what type of discharge has been reported to
9 be occurring at the facility.

10 We only have one report of improper -- potential
11 improper disposal of hydrocarbons at the facility, so
12 we're not -- we're not operating under the assumption that
13 that's occurring on a daily basis or on any regular basis.

14 Q. So if you don't test for hydrocarbons when
15 you're doing this test well, this monitor well, it will
16 show up in the next semiannual if there is hydrocarbons
17 present; is that what you're saying?

18 A. Correct. The requirement is that all surface
19 cells be sampled for TPH and fats, soils, and greases, and
20 so -- and if one of the surface cells shows extremely high
21 levels similar to what was previously seen, then they're
22 required to remediate that soil or remove -- remove the
23 soil.

24 Q. Are -- are there any internal changes at NMED
25 that can give El Prado confidence that NMED is going to be

1 a little more active going forward in terms of monitoring
2 than they have been in the past?

3 THE WITNESS: Can I -- can I quickly defer to my
4 bureau chief if I'm allowed to say something?

5 HEARING OFFICER ORTH: Yes.

6 A. Okay. So we've just been given approval by
7 our -- by our Cabinet Secretary and Provision Director to
8 hire three new people.

9 We've been operating at or around 50 percent
10 vacancy, so this will actually bring us up to full staff
11 within the next year.

12 While that's not a promise that we'll be
13 perfect, but we are going to actually have staff going
14 forward, and we have the support of our -- our Cabinet
15 Secretary, so --

16 MR. BROCKMANN: Thank you.

17 HEARING OFFICER ORTH: Thank you.

18 Is there anyone else who has a question? I saw
19 Mr. Smith's hand first, and then Mr. Daubert.

20 MR. SMITH: Good morning.

21 COURT REPORTER: State your name, please.

22 MR. SMITH: My question --

23 HEARING OFFICER ORTH: Dion Smith.

24 COURT REPORTER: Thank you.

25 CROSS-EXAMINATION

1 BY MR. SMITH:

2 Q. My question is, despite well-documented evidence
3 of the risk of airborne contaminants and pathogens that
4 pose a threat to -- to human health, bringing illness
5 and -- possible illness and disease, and it's well
6 documented in scientific research, why is there no
7 monitoring or treatment plan to guard against these
8 threats?

9 A. So your groundwater discharge permit regulations
10 frame the requirements that we have to satisfy in order to
11 issue a permit, and those are generally framed in
12 protection of groundwater, as well as protection of human
13 health and how it relates to groundwater.

14 And we're allowed to monitor the vadose zone,
15 monitor in different areas that is associated with
16 groundwater, but we do not have specific provisions that
17 allow us to monitor for air quality, but I will say that
18 we do look -- we do -- we do like looking for things that
19 address both problems or that could be utilized.

20 At this facility Mr. Rael has been adding lime
21 to his septage loads in order to account for vector
22 attraction, which is one of the air quality issues that's
23 mentioned in a lot of the research.

24 So we like those kinds of solutions that -- that
25 address our problems and our requirements within the

1 Groundwater Quality Bureau, but also something that's also
2 ultimately beneficial to the air quality issues that are
3 associated with the discharge.

4 Q. My other question is, I know that you have had
5 staff shortage, and there has been commentary in the past
6 that you were not allowed to deny a permit or an extension
7 of a permit.

8 Is that true?

9 A. There's very specific provisions that are set
10 out in our regulations for denial of a permit.

11 For me to deny a permit is for me to say that
12 discharge -- this discharge cannot be done in a way that
13 is protective of groundwater.

14 My Cabinet Secretary has a completely different
15 set of -- of rules and requirements that govern his
16 ability to deny a permit.

17 Q. Which is?

18 A. I don't know them by heart, but I could look
19 them up and -- and read them to you, but it's going to be
20 mind numbing to listen to if you want --

21 Q. Well, the short story.

22 A. The short story? I have -- I have them right
23 now.

24 Essentially, I mean, it comes down to he's
25 determined that human health cannot be protected in

1 accordance with how human health is defined -- defined in
2 the 20.6.2 definitions, and that if it can't be proven
3 that groundwater is being protected, then he has to deny
4 it.

5 Q. So he would deny if -- if compliance and there
6 were problems with protocols?

7 A. So the Water -- Water Quality Act, which is the
8 statute that authorizes our regulations, it does have a
9 requirement that no one can hold a permit -- an
10 environmental permit or a discharge permit -- that has
11 shown wanton disregard for environmental regulation --

12 Q. Uh-huh.

13 A. -- but the level of noncompliance that's been
14 seen at this facility is generally historically -- I can
15 speak only historically, not for anything else -- has not
16 risen to that level.

17 MR. SMITH: Okay. I would like it to be on the
18 record that I think it's important, considering those
19 threats, that the State -- your agency -- look into ways
20 of implementing better protection or guarding against
21 those threats and the ability to deny a permit when there
22 is, you know, disregard -- blatant disregard -- in the
23 future.

24 I think as an agency that your vision is to
25 protect environment and human health, so in order to have

1 teeth and power to do so, you need to be able to have
2 consequences that are appropriate.

3 THE WITNESS: Yes, sir.

4 MR. SMITH: So I would like that on the record.
5 Thank you.

6 HEARING OFFICER ORTH: All right. Thank you,
7 Mr. Smith.

8 Mr. Daubert?

9 CROSS-EXAMINATION

10 BY MR. DAUBERT:

11 Q. Mr. Herman, during your tenure at NMED, how many
12 sites that are unlined and opened pits have you guys
13 approved to be opened?

14 A. There's -- by my estimation or by my --

15 Q. I'm talking new pits, new -- new --

16 A. New facility?

17 Q. -- new facilities that have opened.

18 A. So the -- there's one in the county with a Berry
19 Septage.

20 Q. One?

21 A. Yes.

22 Q. Okay. Do you know when that was approved to be
23 opened?

24 A. Yeah. It just was issued its permit last month.

25 Q. Last month. Is it standard or is this a common

1 practice to be opening new septic lagoons or pits or cells
2 or whatever term we'd like to use?

3 A. So out of those previous permits that have been
4 issued in the recent term -- within the last five years --
5 many of them are evaporative systems that are
6 synthetically-lined lagoon systems.

7 Berry Septage is an exception, I would say, to
8 the other five that were issued.

9 There's another facility that is in the process
10 of getting a permit that's on the plateau -- I think in
11 the San Ysidro area -- that will also be doing open cells.

12 The permitting process for these facilities is
13 weighted in a couple of different ways.

14 In the southeast portions of the state, we have
15 a lot of illegal dumping occurring and a high need for
16 facilities for disposal of septage, so we've -- we've been
17 pushing for additional facilities to accept that waste
18 down there.

19 Q. So in your opinion, most of the -- would it be
20 accurate to say that most of the -- those new permitted
21 facilities are based on not having the ability or not
22 having a treatment facility plant accessible?

23 A. That would be one of the factors that definitely
24 feeds into it. There's -- there's limitations to that
25 ability to evaluate where people are getting their septic

1 systems pumped and what's available to them disposal-wise.

2 Q. And to the best of your knowledge, the site that
3 S & R currently monitors, would that be an acceptable site
4 that -- the way it is currently designed or permitted,
5 started, would -- what I'm -- I guess what I'm asking is,
6 is that an obsolete or they now have new and improved --
7 you mentioned the lined pits. This one is not lined.

8 Is that acceptable practice now?

9 A. Is that -- we evaluate each permit on a -- on a
10 very site-specific basis, so I'll use the example of the
11 facility in Lea -- I believe it's Lea County.

12 They -- they came to us with significant
13 geological study that was done. There's multiple oil
14 wells that have been dug in the --

15 Q. Uh-huh.

16 A. -- vicinity, and we have a very good
17 understanding of what geology is underneath the site, as
18 well as the -- the water quality and the water depth, and
19 they also are required to spread out over 200 pounds of
20 total nitrogen per acre per year.

21 So there -- there's a lot more restrictions that
22 went along with that facility, but it was a site-specific
23 evaluation that occurred.

24 And with this facility, the depth to groundwater
25 and now along with some sort of understanding of -- of the

1 geology, of course going forward with the results of that
2 understanding of the geology, that's how we would provide
3 clarification as to the protectiveness of groundwater,
4 so --

5 Q. And the last site in Taos that was approved was?

6 A. For?

7 Q. Taos County that is comparable to Mr. Rael's
8 facility.

9 A. It is my understanding that there is none.

10 Q. I'm sorry?

11 A. It's my understanding that there is not one
12 that's comparable in Taos County.

13 Q. Okay. One last question. As you're not allowed
14 to necessarily deny the permit -- we understand that -- is
15 S & R still allowed to discharge unpermitted?

16 A. So I'm -- I'm --

17 Q. They -- they currently don't have a permit, if
18 I'm -- if I'm understanding the process and what we're
19 going through right now, and it expired December 27th,
20 2017.

21 A. Correct. And so our requirements for
22 enforcement and our ability to enforce upon a permittee
23 that has an expired permit would involve first issuing a
24 Notice of Noncompliance to notify them that their permit
25 has expired, and the remedy for that would be to submit an

1 application and place them in the renewal process.

2 Mr. Rael has already performed that compliance
3 request, and thus, our next step would not -- so we
4 wouldn't be able to further enforce upon him because right
5 now it's in our -- the renewal process goes into our
6 court, and issuance of a permit is then dependent upon our
7 work time and our work product that is developed after it.

8 So that's a long way of saying you're correct,
9 but we are following our standard procedures when it comes
10 to permitting without a discharge permit in a renewal
11 process.

12 Q. So if I do my calculations correct, forty
13 percent of the time -- he was permitted for five years,
14 and now we're at two years, so forty percent of the time
15 he's allowed a grace period?

16 A. I -- I don't -- I wouldn't put it in that
17 terminology. I would put that in the permitting -- he's
18 in the renewal process.

19 MR. DAUBERT: Okay. Thank you.

20 HEARING OFFICER ORTH: Mr. Herman, actually, to
21 follow up on Mr. Daubert's last question, do the terms of
22 his expired permit continue to apply to him while he's in
23 the renewal process, or what is the -- what is the status?

24 THE WITNESS: So the regulation for a permit to
25 be administratively continued requires that an application

1 be submitted in a timely manner -- I believe it's 180 or
2 120 days prior to expiration -- and that the permit is in
3 compliance when it expires, so renewal application and
4 compliance.

5 There's no definition or no further
6 clarification in the regulations as to whether an expired
7 permit does continue with its conditions.

8 There's been discussion that our only
9 enforcement action against someone who has an expired
10 permit would be to have a compliance order for them
11 discharging without a permit.

12 It's on a big Post-It note on my desk for the
13 future reg revisions in order to address that.

14 HEARING OFFICER ORTH: Yeah. All right. Thank
15 you.

16 Is there anyone else with a question of
17 Mr. Herman based on his testimony?

18 Mr. Domenici?

19 MR. DOMENICI: I'll just do it from here, if
20 that's okay.

21 RECROSS-EXAMINATION

22 BY MR. DOMENICI:

23 Q. Mr. Herman, is -- are the conditions of the
24 prior permit in effect -- or let me say it this way: Does
25 NMED treat them as being in effect?

1 A. Yes.

2 Q. So you could do an inspection six months ago and
3 you would have had a permit --

4 A. Yes, sir.

5 COURT REPORTER: I'm sorry; a permit to what?

6 MR. DOMENICI: To compare it against.

7 HEARING OFFICER ORTH: Okay.

8 MR. DOMENICI: Thank you.

9 HEARING OFFICER ORTH: Anything else?

10 Mr. Johnson, any follow-up?

11 MR. JOHNSON: No.

12 HEARING OFFICER ORTH: All right. Thank you
13 very much, Mr. Herman.

14 Is there addition further, Mr. Johnson? Did
15 you -- oh, yeah, you did, you moved 7 & 8.

16 MR. JOHNSON: Yeah. Nothing further for the
17 Department.

18 HEARING OFFICER ORTH: All right. With that
19 being the case, is there anyone of the parties who intends
20 to present rebuttal of any kind? I see no hands.

21 Let me ask then if there is anyone who has not
22 yet given public comment who would like to, and I see
23 Mr. Daubert's hand. Is there anyone else? I see the
24 gentleman in the blue shirt.

25 Please come up, Mr. Daubert.

1 DOUGLAS DAUBERT,
2 having been first duly sworn, testified as follows:

3 HEARING OFFICER ORTH: Thank you.

4 MR. DAUBERT: First, Judge, I'd like to ask --
5 I'd submitted an article last time we met. Is that
6 article an admission? Was that admitted? I am not sure.

7 HEARING OFFICER ORTH: It --

8 MR. DAUBERT: If not, I'd like to admit that.

9 HEARING OFFICER ORTH: So we have incorporated
10 it into the larger record of this proceeding. It is,
11 obviously, subject to objection that I heard Mr. Domenici
12 make to the effect that it's hearsay, which means we're
13 not quite sure what weight it will be given going forward,
14 but it's in the administrative record.

15 MR. DAUBERT: That's fine. Thank you.

16 I'd also like -- Mr. Jerome Hansen could not be
17 here, so am I -- can I read a quote that he sent in and
18 would like me to be able to forward to the Court --

19 HEARING OFFICER ORTH: All right.

20 MR. DAUBERT: -- if that's possible?

21 HEARING OFFICER ORTH: Yes.

22 MR. DAUBERT: And again, this is a quote from
23 Mr. Hansen. I thought I was caught off guard during
24 cross-examination by Mr. Domenici on Wednesday.

25 It turns out there was a massive amount of

1 information he was supposed to send me, and he didn't. I
2 would have been better prepared had I known what S & R's
3 arguments were going to be.

4 I asked Cody why I never received the S & R
5 Notice of Intent, and Mr. Cody then said, I don't want to
6 drag this thing out any more than it has to be.

7 And I'll just leave that as Mr. Hansen's quote.
8 Okay?

9 HEARING OFFICER ORTH: Okay.

10 MR. DAUBERT: This is more of an observation.
11 We were -- we were given and we have possession of a
12 report that was sent to NMED on 9/5/18, and it was a log
13 of reports that S & R provided them on the number of
14 gallons and the -- the number of people that they pumped
15 out for each month from January to June.

16 I just thought it was interesting -- and it came
17 up when El Prado was talking about other possible
18 contaminants to the groundwater, and again, I'm just
19 throwing -- putting this out here -- that during that log
20 that was provided, there is a facility, Zog, which is an
21 industrial -- which makes furniture -- metal furniture --
22 was pumped out during the month of -- during that
23 six-month period six times and pumped nine thousand
24 gallons.

25 Now, my understanding -- and I'm just asking --

1 is Mr. Rael's permit only for human waste? I find that
2 hard to believe that a business can pump out nine thousand
3 gallons of human waste in a six-month period. I'll just
4 leave that as that.

5 The second thing is, we are -- SNA is very
6 dismayed at the change of boreholes, because we also feel
7 that it's not going to be able to adequately test for
8 off-site seepage.

9 I'd like to now read the statement that I had
10 prepared for today.

11 I want to begin by saying, this is not a
12 personal attack on you, Mr. Rael, as you've continually
13 stated throughout the years, and more importantly, that
14 you have repeatedly stated during this hearing. We want
15 your business to be successful.

16 It appears to me the reason we continue to have
17 public meetings is because of a history of noncompliance.
18 Your documented actions are louder than your words. We
19 want you to be an environmentally responsible sewage
20 hauler.

21 From my viewpoint, your testimony was
22 inconsistent. You were unable to answer questions related
23 to the amount of sewage you discharge because there are
24 many years that you did not provide your monitoring
25 reports.

1 It is also troubling that you did not take
2 responsibility for filing your discharge permit, that you
3 expected the State to tell you when to do that. It is a
4 five-year renewal, which I believe can be easily tracked
5 on your part.

6 How can we believe you when you say that you are
7 properly treating your site when your actions led us down
8 this path of mistrust?

9 We can smell it. Let me remind you that when a
10 representative of NMED made a surprise visit to your site
11 September 2018, they also reported a small -- strong smell
12 of septage.

13 You also met with a past president, Doug West,
14 of SNA in 2002 and told him you'd be willing to discharge
15 your sewage at the wastewater treatment facility and stop
16 discharging at your current site. Clearly you're not a
17 man of your word. That has not happened.

18 I personally visited the treatment facility on
19 October 19th and found the facility to be state of the
20 art. Staff of the facility gave me a tour and let me know
21 that their equipment is being fixed and that you will not
22 have to wait two hours to discharge.

23 The facility has stringent regulations and
24 random testing of discharge, which I hope that you would
25 embrace rather than avoid.

1 You also continue to say that your septic site
2 has been there long before any current residents and
3 businesses were built.

4 My interpretation of this statement is that you
5 don't care what impact your site is having on your fellow
6 businesspeople or your fellow citizens.

7 The question has been raised several times about
8 what has changed since your permit was first issued. Here
9 are a few: The increased residential housing, two
10 businesses that cater to the public, and an SNA 2006
11 zoning overlay which would restrict your open, unlined
12 septic cells.

13 The Town of Taos has also passed a resolution in
14 2014 which recognizes the need to provide the community
15 and the citizens of Taos County with a means for disposal
16 and treatment of septic waste which is environmentally
17 acceptable.

18 May I -- I have -- I have a copy if you'd
19 like -- if you want me to present that, Judge.

20 It seems to me the use of the open, unlined
21 septic cells in the location of S & R is no longer
22 appropriate.

23 I am hoping that your permit is not renewed so
24 that you can continue to dump within our residential area.
25 I believe that if your permit is renewed, it is a permit

1 to continue to do harm to public health and to the
2 environment itself. It is a permit to do harm as
3 evidenced by your noncompliance and avoidance of following
4 regulations.

5 There are cases around the world where it has
6 been proven that the environment has the right to be free
7 of pollutants.

8 I have calculated that it would have costed
9 you -- costed you roughly \$849.75 to discharge the 56,150
10 gallons of sewage that you reported for the month of
11 January 2018 to NMED.

12 This is based on the current rate of \$75 per
13 4,000 to 5,000 gallons of septage which was supplied to me
14 by the treatment facility. My calculations are based on
15 the information received by the Groundwater Bureau.

16 This is a small price to pay for being an
17 environmentally responsible hauler. I believe that as
18 a -- as a group of concerned citizens that we have proved
19 that there are viable options for S & R Septic to use the
20 waste treatment facility.

21 I simply cannot understand why it would be
22 appropriate for S & R to continue with this
23 less-than-desirable practice for disposal of human waste
24 and why NMED would support it. It is no longer acceptable
25 that NMED renew a permit they cannot monitor.

1 I know the focus of this hearing has been on
2 water contamination, but the airborne contaminant issue
3 also needs to be addressed.

4 I cannot understand why S & R has been allowed
5 to continue to discharge septage without a current permit
6 to do so. Why didn't NMED use their authority to stop
7 S & R Septic from operation until the permit was
8 officially renewed?

9 NMED's lack of oversight and S & R's
10 noncompliant behavior has led to this public concern. If
11 any other licensed business did not renew their license,
12 can they continue to provide service to the public?

13 Is there supposed to be vegetation on the septic
14 cells as expert witnesses testified? Why then did
15 Mr. Rael get rid of the vegetation in preparation for this
16 hearing?

17 Mr. Rael, please do what you know in your heart
18 to be right. We will all respect you for it. I may even
19 use you as my septic hauler and be happy to refer you to
20 others for your service.

21 Thank you so much for hearing me.

22 HEARING OFFICER ORTH: Thank you, Mr. Daubert.

23 MR. DAUBERT: How would I admit --

24 HEARING OFFICER ORTH: If you'd give it to the
25 court reporter --

1 MR. DAUBERT: Sure.

2 HEARING OFFICER ORTH: -- it will be helpful.

3 MR. DAUBERT: Thank you.

4 HEARING OFFICER ORTH: Thank you.

5 Sir, if you would give us your name first.

6 MR. POPHAM: My name is Bruce Popham. Last name
7 is P-o-p-h-a-m.

8 BRUCE POPHAM,
9 having been first duly sworn, testified as follows:

10 HEARING OFFICER ORTH: Thank you.

11 MR. POPHAM: I'm a relatively new resident in
12 Stagecoach Hills department -- community.

13 In the last 20 years I've had the opportunity to
14 work with the water quality protection program for a
15 county in the state of Florida, and in dealing with that
16 water quality protection program, which was -- which was
17 passed by the U.S. Legislature in the late '90s -- early
18 '90s, we were put into a situation where we had to do a
19 lot of things to come in compliance.

20 So I'm very familiar and I've worked very
21 closely with the Department of Environmental Protection,
22 State of Florida, with the Environmental Protection Agency
23 in the United States government, with the South Florida
24 Water Management District, the municipalities and the
25 county in which this water quality protection program was

1 put in place for.

2 When I moved here, quite frankly, we thought
3 that Taos was a beautiful and very environmentally sound
4 and progressive community.

5 I was shocked to find out that we have a sewage
6 company that is dumping in open pits literally within our
7 development.

8 In addition to the two public businesses that
9 are open to the public in -- in front of this and all of
10 the residents -- the 80-plus homes in Stagecoach Hills
11 that are all on wells that we're having sewage dumped on
12 top of where our well fields are.

13 In addition to that, I'm extremely shocked that
14 New Mexico Environmental Department of Protection allowed
15 a permit that had been expired to be renewed considering
16 all the facts and changes that have happened in this
17 community in -- in the last 20 years.

18 So what I'm asking you to do is consider this in
19 your process as you move forward with certifying that
20 permit, because quite frankly, with my background and
21 experience, this is a no-brainer for us. And that's not a
22 threat; that's a fact.

23 Thank you very much.

24 HEARING OFFICER ORTH: Okay. Thank you,
25 Mr. Popham.

1 Is there anyone else who would like to offer
2 public comment regarding -- we're about to close the
3 record, so this is your last chance. No.

4 All right. Thank you all very much. If there's
5 nothing further -- Mr. Domenici.

6 MR. DOMENICI: We -- we have a couple of short
7 rebuttal --

8 HEARING OFFICER ORTH: Oh, you do have --

9 MR. DOMENICI: -- questions --

10 HEARING OFFICER ORTH: -- okay.

11 MR. DOMENICI: -- based on the -- just on the --
12 limited to the public testimony we just heard.

13 HEARING OFFICER ORTH: All right. Is it
14 Mr. Rael?

15 MR. DOMENICI: Yes, it is.

16 HEARING OFFICER ORTH: Mr. Rael, you're still
17 under oath.

18 MR. DOMENICI: Just a couple of questions,
19 Mr. Rael.

20 STEVE RAEL,
21 having been previously duly sworn, testified as follows:

22 EXAMINATION

23 BY MR. DOMENICI:

24 Q. So one was a mention that -- that you pumped the
25 Zag (sic) facility nine thousand gallons over six months.

1 What kind of -- what kind of facility do they
2 have?

3 A. They have a facility that's a holding tank, and
4 as soon as it fills up, it needs to be pumped out.

5 Q. So they don't have a septic tank and -- or leach
6 field?

7 A. It does not have a leach field. It does have a
8 septic tank, but it's considered a holding tank.

9 Q. So those kind of tanks need to be pumped more
10 frequently?

11 A. Yeah. His needs to be pumped quite a bit
12 because, you know, it doesn't have a leach field.

13 Q. Then there was mention again of this article --
14 I'm not even sure of the date on that -- can you show me
15 the date -- in 1995, 24 years ago.

16 Is that article accurate?

17 A. That's an article that was a misprint, and
18 anybody that wants to look into it -- into the courts, I
19 never pleaded guilty to what is said there.

20 That was a misprint, and they did correct it
21 afterwards, but it was a -- it was a misprint by the Taos
22 News.

23 Q. Now, several people pointed out that you should
24 be using the Town of Taos wastewater treatment plan.

25 What happens at that plant after it receives

1 30,000 gallons in -- in a single day?

2 A. After 30,000 gallons they shut it -- shut it
3 off. They do not allow you to dump any more.

4 And I just wanted to say real quick, I dump in
5 Red River, I dump in Pojoaque, I dump at the wastewater
6 treatment plant, and I dump at my site, so it's four
7 different sites that I dump in.

8 MR. DOMENICI: That's all I have. Thank you.

9 HEARING OFFICER ORTH: All right. Thank you.

10 Other question of Mr. Rael based on his answers
11 just now? No.

12 Thank you very much, Mr. Rael.

13 HEARING OFFICER ORTH: So let me discuss the
14 post-hearing process at this point.

15 We expect the transcript to be prepared in a
16 couple of weeks. That transcript will go to Cody Barnes,
17 the hearing clerk.

18 Cody will then send a notice of transcript
19 receipt to the parties, and if you're curious about
20 whether he's received the transcript or not, I believe we
21 have some of your business cards around --

22 MR. BARNES: Yes. I can give them out too.

23 HEARING OFFICER ORTH: -- and you can always
24 call him or email him and ask him if he's received the
25 transcript.

1 Notice of transcript receipt -- not the
2 transcript, but notice of receipt does go to the parties.

3 On that notice there is a date identified, which
4 is approximately 30 days subsequent -- it could be 31 if
5 it falls on a weekend -- and that date is the deadline for
6 post-hearing submittals.

7 So if you would, please, in your post-hearing
8 submittals propose whatever finding of fact, conclusions
9 of law that you would hope to see adopted, and also, if
10 you believe some closing argument is appropriate, that's
11 where you would include it.

12 From that date I have 30 days to do a report.
13 The parties then have about two weeks to comment on that
14 report, and the Cabinet Secretary has 30 days from then to
15 issue an order.

16 I don't ask the parties to shorten their time
17 typically. Sometimes I shorten my own time and, of
18 course, the Cabinet Secretary, depending on his schedule,
19 may be able to shorten his time, but we -- we're a couple
20 of months from a decision at this point.

21 So ma'am, do you have a question? Tell us your
22 name.

23 MS. POPHAM: I have a question, yes. When you
24 say interested parties would be notified, does that mean
25 those represented by an attorney or would that be anyone

1 who had expressed -- made a request for this hearing?

2 HEARING OFFICER ORTH: Okay. So when I was
3 using the word parties just now, I was referring to those
4 who submitted NOIs -- mainly the Bureau and the
5 Applicant -- and entered appearances -- Mr. Brockmann for
6 El Prado, Mr. Smith, and Mr. Hansen.

7 And I'm sorry; tell me your name.

8 MS. POPHAM: My name is Sherry Popham.

9 HEARING OFFICER ORTH: Okay.

10 MS. POPHAM: And just a follow-up to that
11 question, so for us to -- as SNA members -- to enter an
12 NOI --

13 MR. POPHAM: Notice of Intent.

14 MS. POPHAM: -- do we have to be represented by
15 an attorney?

16 HEARING OFFICER ORTH: No, you don't. That's
17 part of the prehearing process that's set out in 20.1.4,
18 the Department's permitting procedures.

19 However, you're not prevented from having the
20 information. It's all public record, it's all handled
21 publicly, and if you're curious, about two weeks from now,
22 whether, in fact, the hearing clerk has received the
23 transcript, all you have to do is call or email him.

24 MS. POPHAM: And -- and one final question along
25 those lines. So in the future, if we filed an NOI, we

1 would also be privy to the documents that were circulated
2 among those that had?

3 HEARING OFFICER ORTH: (Nods head.)

4 MS. POPHAM: Okay. Thank you very much.

5 HEARING OFFICER ORTH: Yes. And again, you can
6 always take the initiative to see it -- because it's all
7 public record -- by contacting the hearing clerk.

8 MS. POPHAM: Thank you.

9 HEARING OFFICER ORTH: Okay. Any other
10 questions about the post-hearing process? No.

11 Thank you all very much. We're adjourned.

12 (PROCEEDINGS CONCLUDED AT 12:04 P.M.)

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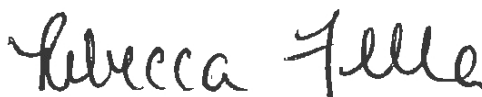
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1 STATE OF NEW MEXICO)
2)ss
3 COUNTY OF BERNALILLO)
4

5 I, Rebecca Fella, the officer before whom the
6 foregoing PUBLIC HEARING was taken, do hereby certify that
7 the foregoing PUBLIC HEARING was personally recorded by
8 machine shorthand; that said PUBLIC HEARING is a true
9 record; that I am neither attorney nor counsel for, nor
10 related to or employed by any of the parties to the action
11 in which this PUBLIC HEARING is taken, and that I am not a
12 relative or employee of any attorney or counsel employed
13 by the parties hereto or financially interested in the
14 action.

15 

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