

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION
NOVEMBER 13, 2025
MEETING
9:00 A.M.

REPORTED BY: KIM KAY SHOLLENBARGER, CSR#236
VERITEXT LEGAL SOLUTIONS
ALBUQUERQUE, NEW MEXICO

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1 CHAIR CHANG: Good morning. The time is 9:00 on
2 November 13, 2025. My name is Albert Chang, I am the Chair
3 of New Mexico's Oil Conservation Commission. Noting the
4 time, I call this meeting to order.

5 If Commission Clerk could please call the roll.

6 COMMISSION CLERK: Good morning. Roll call of the
7 Commission. Commissioner Ampomah.

8 COMMISSIONER AMPOMAH: Present.

9 COMMISSION CLERK: Commission Chair Chang.

10 CHAIR CHANG: Present.

11 COMMISSION CLERK: Commissioner Bloom.

12 COMMISSIONER BLOOM: Present.

13 COMMISSION CLERK: We have a quorum.

14 CHAIR CHANG: We have a quorum. I will then
15 proceed to the Agenda for today's meeting. There has been
16 shared with the Commissioners minor modifications to the
17 Agenda that was earlier published. I recommend that we
18 include an item to discuss commissioner availability and
19 scheduling of the December meeting, and also minor reordering
20 of the cases set for status conference. Moving case number
21 25700 up to the second case to be heard. If that is
22 acceptable to the Commissioners, may I have a Motion to Adopt
23 the Agenda as amended?

24 COMMISSIONER BLOOM: Mr. Chair, I so move.

25 COMMISSIONER AMPOMAH: Mr. Chair, I second.

1 CHAIR CHANG: Thank you very much. Is there any
2 opposition? Without objection. So ordered.

3 (Court Reporter - due to remote setup - cannot
4 distinguish who is speaking)

5 CHAIR CHANG: Are the parties all right if we
6 dispense with court reporter transcription until we get to
7 the Agenda items of the status conferences, because I don't
8 think you need a court reporter for us to discuss approval of
9 meeting minutes, right? Is there any objection?

10 (Discussion regarding record moving forward)

11 CHAIR CHANG: If I recall where I am in the Agenda,
12 I believe we were about to proceed to the discussion of the
13 meeting minutes for September 18th and 19th. Have
14 Commissioners had a chance to review the September 18th and
15 19th meeting minutes?

16 COMMISSIONER BLOOM: Mr. Chair, I was not present at
17 those meetings, so I will abstain from voting here.

18 COMMISSIONER AMPOMAH: I was also not present for
19 this meeting, but I can...

20 CHAIR CHANG: Do you have any additions, changes to
21 the minutes? Commission Counsel can weigh in on this, but I
22 believe members are allowed to vote on meeting minutes even
23 at meetings that they were not present at personally.

24 MR. SHANDLER: That is correct. Although, I
25 think they would have to rely on maybe a statement from a

1 person that was there that the minutes are accurate.

2 CHAIR CHANG: Fair enough. In my review of the
3 meeting minutes, the meeting minutes appear accurate. In
4 that case, I will move to approve the meeting minutes from
5 September 18th and 19th.

6 COMMISSIONER AMPOMAH: Mr. Chair, I second.

7 CHAIR CHANG: For the court reporter, the second was
8 Dr. Ampomah. Commissioner Ampomah. Is there any objection?
9 Without objection, noting Commissioner Bloom's abstention,
10 the meeting minutes are adopted. So I move on to Item Number
11 4 on the Agenda or at least the Agenda as amended, which is a
12 discussion about potential meeting conflicts, scheduling
13 conflicts. Dr. Ampomah, could you refresh my recollection?
14 I believe you may be not available on December 11th; is that
15 correct?

16 COMMISSIONER AMPOMAH: Yes, that is correct. I'll
17 be on international travel.

18 CHAIR CHANG: Commissioners, we do have items on the
19 docket that are likely to need our attention in December. Is
20 there a different date that might work for yourselves?

21 COMMISSIONER AMPOMAH: Mr. Chair, I will be back to
22 U.S. on December 15th, that is when I'll be back.

23 CHAIR CHANG: And when do you depart?

24 COMMISSIONER AMPOMAH: Saturday.

25 CHAIR CHANG: Is there a date after December 15th

1 that -- or a date range, Commissioner Bloom, that would work
2 best for you?

3 COMMISSIONER BLOOM: Mr. Chair, I'm looking at my
4 calendar right now. Wednesday, December 17th would work.
5 The 19th would work. And then our office is closed and I'm
6 out the rest of the year. 17th and 19th.

7 CHAIR CHANG: How do those dates look for you,
8 Commissioner Ampomah?

9 COMMISSIONER AMPOMAH: Any of those dates work.

10 CHAIR CHANG: The 17th or 19th?

11 COMMISSIONER AMPOMAH: Yes.

12 CHAIR CHANG: Okay. If members will bear with my
13 very slow computer here, I will confirm those, confirm my
14 availability for those dates as soon as I am able. I can
15 make myself available on either of those dates as well. The
16 19th is preferable for me. If we could start at no earlier
17 than -- well, if we could do it in the afternoon on the 19th
18 or -- yeah, either way. I think I can make either way work.
19 I've got an in-person meeting Friday the 19th in Albuquerque
20 in the morning that I cannot move. But other than that, I
21 can.

22 COMMISSIONER AMPOMAH: What about the 17th?

23 CHAIR CHANG: I've got meetings, but those I can
24 move. If the 17th is the best date, I can block the whole
25 day on the 17th. Does that work for all the Commissioners?

1 COMMISSIONER BLOOM: The 17th would work better for
2 me, Mr. Chair. And there's nothing I can't move around that
3 day.

4 CHAIR CHANG: In that case, I propose that we -- if
5 I could have a motion then to reschedule the December 11th
6 Oil Conservation Commission Meeting for Wednesday, December
7 17th.

8 COMMISSIONER BLOOM: Mr. Chair, I so move.

9 COMMISSIONER AMPOMAH: Mr. Chair, I second.

10 CHAIR CHANG: Is there any objection? Without
11 objection, the next Commission meeting -- or the Commission
12 meeting in December is now rescheduled for December 17th.
13 Thank you very much for bearing with us. Turning to the next
14 Agenda item, we move on to our pending cases.

15 I call Oil Conservation Commission Case Number
16 25603, application by Matador Production Company for de novo
17 hearing. May I have the appearances of counsel for this
18 case, please,

19 MR. RANKIN: Good morning, Chair Chang. Adam Rankin
20 with the Santa office of Holland and Hart appearing on behalf
21 of the de novo applicant in this case, Matador Production
22 Company.

23 MS. MCLEAN: Good morning. Jackie McLean with Hardy
24 and McLean on behalf of Permian Resources Operating.

25 CHAIR CHANG: All right. If I'm in the right case,

1 I've got a one-sentence filing application. Would Counsel
2 like to perhaps give us a little bit more information so we
3 can understand the scope of the dispute and what may be
4 necessary for scheduling or disposition of this matter.

5 MR. RANKIN: Sure, I'll take a stab. Commissioner
6 Chang, Adam Rankin for Matador Production Company. This is a
7 compulsory pooling case in which Matador opposes a compulsory
8 pooling order that was issued to Permian Resources. And the
9 situation is that Matador has a unit, exploratory unit, and
10 has plans to develop its own acreage within that unit
11 boundary. And Permian Resources has proposed a competing
12 space unit that partially overlaps acreage within the
13 unitized area, and Matador objects to that inclusion of their
14 own acreage into the spacing unit and therefore seeking a de
15 novo review of that pooling order. I've conferred with
16 counsel for Permian. We believe, probably need -- I think
17 it's less than two days, but to be on the safe side, we would
18 ask for two days to walk through the issues. Essentially
19 it's a standard pooling case with the only difference being
20 that one of the parties here, Matador, did not file an
21 application for pooling because it has acreage within its
22 unitized area that it intends to develop and doesn't need a
23 pooling order to do so.

24 CHAIR CHANG: Any other parties wish to chime in as
25 to the scope of the dispute here?

1 MS. MCLEAN: This is Jackie McLean for Permian
2 Resources. I believe that Mr. Rankin did a good job
3 summarizing what the dispute is about. I think that we would
4 add that, at the hearing it was clear that Matador did not
5 really have a development plan of its own for the acreage and
6 that was one of the reasons why Permian Resources prevailed
7 and we'd ask that the Commission uphold that pooling order
8 and that we be set for a hearing, you know, as soon as
9 possible so that this matter can be resolved.

10 CHAIR CHANG: Forgive me, I'm confused here just a
11 little bit. Matador is a subsidiary of Permian Resources, or
12 who is Matador here?

13 MR. RANKIN: Mr. Chair, Adam Rankin from Matador.
14 Matador is a separate operating entity from Permian
15 Resources.

16 CHAIR CHANG: And not represented in this matter.

17 MR. RANKIN: Is, by me.

18 CHAIR CHANG: Oh, okay.

19 MR. RANKIN: Yeah, by me.

20 MS. MCLEAN: I think that it's a little confusing,
21 because Matador didn't have their own set of applications and
22 we typically see, you know, competing proposals and competing
23 cases. And in this case Matador had to file under the
24 Permian Resources case caption, because those are the only
25 cases that are pending before the Commission.

1 CHAIR CHANG: So we're talking about the usual seven
2 factor test here, right? Are there any parts of those seven
3 factor tests that the parties agree upon? Are you able to
4 confer with each other and narrow the scope of which of these
5 factors are, I guess the most in dispute? Is there any
6 motions practice that might be able to help you narrow the
7 scope of a hearing?

8 MR. RANKIN: I'll just say a couple things. I think
9 we would need to kind of -- I need to go back and think about
10 that, Mr. Chair, and happy to do so. And I'll confer with
11 Jackie and Permian counsel as part of that. I'll also just
12 add that the parties are in discussions and have been in
13 discussions. My understanding, from Matador's part, I do
14 believe there's some hope that they will be able to resolve
15 this before a hearing is set. I've committed to doing two
16 things. One, pushing the parties to continue negotiations to
17 see if they can reach a resolution. Number two, I'll also
18 confer with Ms. McLean to see if we can come to some
19 agreement as to the scope of the hearing and whether --
20 everything's on the table, if we can come to an agreement on
21 any aspect of the factors that are going to be evaluated by
22 the Commission. And if not, whether we think there's any
23 opportunity for motions practice to narrow the scope.

24 CHAIR CHANG: Does that sound acceptable to the
25 other parties?

1 MS. MCLEAN: Yes.

2 CHAIR CHANG: Does that sound reasonable?

3 MS. MCLEAN: That sounds good to Permian Resources.

4 CHAIR CHANG: Great. For the Commission's part, the
5 Commission's scheduling between the three commissioners can
6 be quite challenging. And as much as I enjoy weighing in on
7 y'all disputes, it tends to make nobody happy when I have to
8 rule on -- when we have to rule on anything. So certainly to
9 the extent that parties are able to come to a mutually
10 acceptable agreement, even if it's only partial, I think the
11 Commissioners would join me in encouraging that, to the
12 extent possible. I know you asked for a rapid hearing,
13 Ms. McLean, but I don't know that we have two days for you in
14 December, in addition to everything else that's on our
15 docket. I guess I will also open the floor to Commissioners.
16 Should we set this for a follow-up status conference with
17 hopefully a more narrow scope of issues and maybe a list of
18 witnesses with more specific timelines to exactly what you're
19 looking for in a hearing at the December -- so another status
20 conference at the December -- the December 17th meeting that
21 we have scheduled? I think the Commission would be happy to
22 take advice, if the parties would like us to try to put
23 something on the books, but it seems like there might be an
24 opportunity for the parties to further develop exactly what
25 you're trying to get the Commission to do here.

1 MS. MCLEAN: I think it would be Permian Resources
2 preference to set a status conference, as well as get on the
3 calendar for a hearing before the Commission. We would
4 prefer January, but if that's not possible, I think there's
5 February meeting dates as well, but that way -- I know the
6 Commission can get full very quickly and you don't have that
7 many dates available. So I think it would make sense to set
8 us for a status conference, as well as set that hearing date.

9 MR. RANKIN: Just to chime in there, Commissioner
10 Chang. I think having a status conference in December makes
11 sense and will give the opportunity to provide some fire, I
12 think, for the parties to work towards resolution and to
13 identify and narrow the scope of the issues for hearing. I
14 personally have a challenge on the January hearing date, only
15 because I've got a lot on my plate with rulemaking, findings
16 of fact and conclusions. That date is not ideal for me,
17 primarily because of that reason. February date would be
18 preferable, just in terms of competing caseloads.

19 CHAIR CHANG: I think that's true, Ms. McLean, of
20 just about all of the Commissioners as well, as we're also
21 trying to -- our January docket is going to be quite full
22 already with likely deliberations on a rulemaking. Here's my
23 proposal and I'll see how the rest of the Commissioners feel.
24 But my proposal is that we block a hearing for February 12th
25 tentatively, if the parties are able to squeeze it into one

1 day, but that's all that that meeting is noticed for at the
2 moment. So if the parties can squeeze it into one day, then
3 we'll reserve February 12th for you. But if you need more
4 than one day, because this turns into a battle of expert
5 witnesses or whatnot, and you've got a bunch of live
6 witnesses to present with cross and whatnot, the Commission
7 will have to reserve the right to reschedule beyond that.
8 Is that acceptable?

9 MR. RANKIN: I think that is. I think the parties
10 can confer. I think there's some procedural mechanisms that
11 we can use to streamline presentation of the case. So I
12 think it's possible for us to do it in a day. Of course I'll
13 confer with Ms. McLean about it, but I think there's some
14 ways we can accommodate that limitation on the schedule.

15 CHAIR CHANG: If I could turn to the Commissioners,
16 is that an acceptable tentative plan for the Commission?

17 COMMISSIONER BLOOM: Mr. Chair, that works for me.
18 Thank you.

19 COMMISSIONER AMPOMAH: So I have a question.

20 CHAIR CHANG: Please.

21 COMMISSIONER AMPOMAH: Is that going to be the
22 hearing for the Commission to accept the de novo hearing or
23 is it the actual hearing itself?

24 CHAIR CHANG: The hearing itself. I mean, we can
25 actually deal with that today in terms of accepting it,

1 because the de novo -- if I understand, this is a de novo
2 hearing as of -- right, so we don't really have a choice not
3 to accept the de novo hearing. We can only encourage the
4 parties to resolve it themselves. If that's an acceptable
5 plan, I'm happy to entertain a motion to set a status
6 conference at the December 17th meeting for this case with
7 tentatively block February 12th for a merits hearing for this
8 case. Anybody wish to move that?

9 COMMISSIONER AMPOMAH: Chair, I so move.

10 COMMISSIONER BLOOM: I second.

11 CHAIR CHANG: Thank you, Commissioners. Without
12 objection, so ordered.

13 MS. MCLEAN: Thank you.

14 MR. RANKIN: Thank you very much.

15 CHAIR CHANG: With that, we then turn to Case Number
16 25700. Do we have Lillie and Warren Anderson on the
17 platform?

18 MR. ANDERSON: Yes, sir, Commissioner, I'm here.

19 CHAIR CHANG: Thank you very much. Just give us
20 one minute to -- or give me one minute, if you could. Let me
21 just pull up -- Mr. Anderson, if you would spell your name
22 for the court reporter.

23 (Internet feedback)

24 MR. ANDERSON: This is Warren Anderson.

25 W-a-r-r-e-n. A-n-d-e-r-s-o-n.

1 CHAIR CHANG: Great. Madam Court Reporter, I
2 believe Mr. Anderson is on a phone line, which is why he will
3 show up as a phone number on the platform. It doesn't appear
4 that Mr. Anderson has a camera with him, so I believe he will
5 simply show up as a phone number. So given that, Mr.
6 Anderson, for the court reporter, if you could please always
7 start with your name and identify yourself when you speak,
8 I'm sure the court reporter would very much appreciate that
9 in order to be able to capture an accurate transcript of
10 today's proceedings.

11 MR. ANDERSON: Yes, okay. Thank you, I will.

12 CHAIR CHANG: Thank you. We're here because of your
13 application for a hearing, a de novo hearing, of a case that
14 was originally decided by the Division's hearing examiner.
15 Since you're the applicant, I will open the floor to you,
16 sir, to, I guess, advise the Commission as to the scope of
17 the dispute and give the Commission a little bit of context
18 in what evidence that you might need to present so that we
19 can try to figure out how best to chart effective pathways
20 towards resolving your -- towards a fair hearing on your
21 appeal.

22 MR. ANDERSON: Yes, sir. This is Warren Anderson.
23 Phone number (310)980-4531. I'll give you a little
24 background on here. I'm seeking review and relief from the
25 prior action of the Division in the above-captioned matter.

1 Background. Landowners are record interest owners in lands
2 affected by the application of Alpha Energy Partners II, LLC
3 and its affiliate Paloma Permian Asset Company in Eddy
4 County, New Mexico, previously filed an objection and appeal
5 to the Division handling the above-referenced case. My
6 grounds for the plea are that the prior proceedings were
7 marked by, I would say, unfairness, including lack of
8 transparency, insufficient notice, limited opportunity for
9 meaningful participation affected property owners.

10 The operators at Alpha Energy Partners, LLC, and
11 Paloma Permian Asset Company were afforded advantages not
12 extended to the landowner, creating an imbalance where had to
13 prove a matter of good faith or not good faith.

14 CHAIR CHANG: Mr. Anderson, I apologize. This is
15 entirely my mistake, but I believe I should have sworn you in
16 before I had you begin speaking here. Do you mind if I
17 briefly interrupt us to swear you in.

18 MR. ANDERSON: No, sir. Go ahead, please.

19 (Oath administered)

20 CHAIR CHANG: Thank you. And again, I apologize for
21 the interruption. Please proceed.

22 MR. ANDERSON: Thank you, sir. The operator, Alpha
23 Energy Partners II, LLC and the Paloma Permian Asset Company,
24 I believe were afforded advantages not extended to the
25 landowner, creating an imbalance of access of information,

1 since I had the burden of proving good faith or not good
2 faith and I thought I did that. So the result of the
3 Division's prior action effectively sanctioned arrangement
4 that is inequitable and inconsistent with the protective
5 process of the New Mexico and Gas Act, which guarantees
6 correlative rights and fair dealings among the parties.

7 The terms proposed through the Joint Operating
8 Agreement, the JOA, and related filings imposed unreasonable,
9 one-sided and excessive burden on us, the landowners,
10 contrary to principles of equity and fairness and again good
11 faith. So those are the grounds. Do I need to go on with my
12 argument?

13 CHAIR CHANG: I think that's helpful for us to get
14 started, sir, since we're -- today all we're doing here is a
15 status conference to try to figure out the scope of what the
16 dispute might be and to try to figure out how best to squeeze
17 an actual -- if we need to get to a whole trial, what the
18 process is here. So I think that's a good enough start. Let
19 me turn to -- and I apologize for doing things out of turn,
20 but if I could have appearances of counsel for the other
21 parties.

22 MR. SAVAGE: Morning, Mr. Chair, Commissioners,
23 Counsel and interested parties. Darin Savage appearing on
24 behalf of Alpha Energy Partners II, LLC.

25 MR. RANKIN: I haven't yet entered a written

1 appearance in this case, Mr. Chair, but Adam Rankin, Santa Fe
2 office of Holland and Hart. I will be entering an
3 appearance on behalf of Sarvis Permian Land Fund I, LLC, U.S.
4 Energy Development Corporation, and Sarvia Rockmount Permian
5 Land Fund, LLC, as well as Permian Resources Operating LLC.

6 CHAIR CHANG: Okay. No other parties in this matter
7 at this time, right, that you know of, Mr. Savage, at least?

8 MR. SAVAGE: Not that I know of.

9 CHAIR CHANG: Well, Mr. Savage, I will turn to you
10 then as the other party at the moment. Could you please help
11 understand, at least from your perspective, the scope of what
12 is in dispute here? Whether this is a case that could be
13 decided on motions or whether or not this needs any
14 testimonial evidence or whether this can be decided by
15 documentary evidence.

16 MR. SAVAGE: Thank you, Mr. Chair. So under the Oil
17 and Gas Act a party is required to make attempts to reach
18 voluntary agreement before they may proceed with pooling and
19 the nature of those efforts and negotiations should be viewed
20 under a lens of good faith and good faith should be
21 satisfied.

22 My client, Alpha, they negotiated in good faith and
23 they provided evidence to that effect at the Division level.
24 We submitted a Motion for Summary Judgment that goes over the
25 Commission orders and policy that define what good faith is.

1 We provided evidence of all the efforts that Alpha had made
2 to reach a good faith agreement, a voluntary agreement. The
3 efforts were not successful. As a result, we listed the
4 Andersons in a pooling proceeding and proceeded the pool in
5 which the Division approved.

6 We have on file a Motion for Summary Judgment. I
7 think this can be addressed with a response to that summary
8 judgment administratively and the Commission could rule on
9 that.

10 CHAIR CHANG: So your position is, that this could
11 be decided on the merits. Let me turn back to Mr. Anderson.
12 Mr. Anderson, it looks like you tried to file or send us a
13 pleading this morning, but we got what appears to be a
14 picture of just the first page. So it has not made its way
15 to us, or at least we only got the first page of what you
16 seem to want to file. So I want to let you know that. So
17 you might want to try that again. What you just heard from
18 Mr. Savage is that the other party in this case, or at least
19 the party that has entered an appearance, believes that the
20 dispute here is primarily one of law, not one of fact. So it
21 is their position that this may be decided on written
22 arguments and that there are no credibility or factual issues
23 where we would have to have live witnesses come in.
24 Typically these motions are resolved before -- the Commission
25 has to decide on Motions for Summary Judgment before we

1 proceed and figure out exactly what the scope would look like
2 in a full hearing to try to figure out what the scope of the
3 issues are. Have you gotten the copy of the Motion for
4 Summary Judgment?

5 MR. ANDERSON: I don't think so.

6 MR. SAVAGE: It was served by email, but I'd be glad
7 to provide --

8 CHAIR CHANG: A courtesy copy.

9 MR. SAVAGE: Yes.

10 CHAIR CHANG: All right. I think the proper order
11 of things here is that the Commission is going to need all
12 the parties, including Mr. Anderson, to review and respond to
13 the Motion for Summary Judgment that has been filed. And I
14 think the Commission needs to consider those motions before
15 we can properly decide the scope of a hearing and therefore
16 figure out how to set and what to set on our calendars for a
17 hearing. Mr. Anderson, could I also put you on our December
18 17th meeting for a status conference and potential motions
19 practice?

20 MR. ANDERSON: Yes, sir.

21 CHAIR CHANG: And I ask you in the meantime then to
22 -- and we'll do our best as well, either through Mr. Savage
23 or through the Commission Clerk, to make sure that you get a
24 copy of the Motion for Summary Judgment.

25 MR. ANDERSON: Yes sir.

1 CHAIR CHANG: And we would ask you to file a written
2 response to the Motion for Summary Judgment. In the Motion
3 for Summary Judgment you will see arguments of law, which you
4 may take issue with and you may disagree and you may respond
5 to those arguments. And just so you know, a Motion for
6 Summary Judgment -- and I'm sure the counsel here will help
7 me if I get the standard of law incorrect, but generally
8 speaking, Motions for Summary Judgment, when we review them
9 as a Commission, we view the facts in the light most
10 favorable to the non-moving party. So we view the facts in
11 the light most favorable to you. And the question is, even
12 if we take all the facts in the light that is to a reasonable
13 degree most favorable to your arguments, is there
14 nevertheless enough facts to establish that this case can be
15 resolved as a purely legal question and therefore avoid the
16 complications, expense and time and need for a more thorough
17 and complicated or convoluted merits hearing where we would
18 have to go through witnesses, swear people in, take
19 testimony, do cross-examination, so on and so forth. So
20 hopefully that gives you a little bit of context as to what
21 we're looking for. So with that, I think if that sounds
22 acceptable to the parties, I will turn to the Commission and
23 ask if that plan for us to set -- to ask the parties to
24 respond to the motions on the table in front of us and to set
25 this matter for a status conference and motions practice at

1 the December 17th meeting. Is that acceptable to the
2 Commission?

3 COMMISSIONER BLOOM: Mr. Chair, I concur.

4 COMMISSIONER AMPOMAH: Mr. Chair, I concur as well.

5 CHAIR CHANG: Just for formality sake, if I could
6 get that as a motion, Mr. Bloom.

7 COMMISSIONER BLOOM: Mr. Chair, I so move.

8 COMMISSIONER AMPOMAH: Mr. Chair, I second.

9 CHAIR CHANG: Without objection, so ordered.

10 Thank you all. We will see you in December. Mr. Anderson,
11 if you have any difficulties communicating or obtaining the
12 files that you need or making sure that whatever pleadings
13 you might want to file, please do not hesitate to reach out
14 to Commission Clerk Sheila Apodaca and we will do our best to
15 ensure that your filings are properly received.

16 MR. ANDERSON: Yes. Thank you.

17 CHAIR CHANG: Thank you.

18 MR. ANDERSON: Are we finished?

19 CHAIR CHANG: That's it for today, yes. We'll just
20 wait until you have a chance to review the Motion for Summary
21 Judgment and we'll wait for your response, written response
22 to the Motion for Summary Judgment and we'll see you in
23 December.

24 MR. ANDERSON: Okay. Thank you, sir.

25 CHAIR CHANG: No problem. Thank you. Now I'll turn

1 our attention to Case Number 25694. My impression is that
2 cases 25694, cases 25695 and cases 25696, if they haven't
3 already been consolidated, probably should be consolidated;
4 is that correct?

5 UNIDENTIFIED SPEAKER: That's correct.

6 CHAIR CHANG: In that case, I will call all three
7 cases at the same time. May I please have the appearances of
8 Counsel and/or parties for these three cases.

9 MR. SAMANIEGO: Jonathan Samaniego representing
10 American Energy Resources. J-o-n-a-t-h-a-n-,
11 S-a-m-a-n-i-e-g-o.

12 CHAIR CHANG: Thank you very much, Mr. Samaniego.
13 For the court reporter, since Mr. Samaniego also appears to
14 be on a phone line and is not available as an image up on the
15 platform, Mr. Samaniego, I will similarly ask you, just as we
16 did with Mr. Anderson, to identify yourself when you chime in
17 to speak so that the court reporter can capture a transcript
18 accurately for us.

19 MR. SAMANIEGO: Yes, sir.

20 CHAIR CHANG: Thank you very much. Give me just one
21 second to flip to my binder to the right sets of cases here.
22 Mr. Samaniego, you're the applicant here for de novo
23 hearings. Let me first swear you in for these proceedings,
24 sir.

25 (oath administered)

1 COMMISSIONER BLOOM: Mr. Chair, I'm sorry. I'm just
2 wondering who the other parties are as well.

3 CHAIR CHANG: Oh, that's right, I'm sorry. Could
4 the other parties please also enter their appearances.

5 MR. SAVAGE: Yes, thank you. Good morning. Dairn
6 Savage appearing on behalf of Alpha Energy Partners II, LLC.

7 MR. RANKIN: Good morning, Chair, Commissioners.
8 Adam Rankin with the Santa Fe office of Holland and Hart
9 appearing on behalf of Sarvis Permian Land Fund I, LLC, U.S.
10 Energy Development Corporation and Sarvis Rockmount Permian
11 Land Fund, LLC, as well as Permian Resources Operating, LLC.

12 CHAIR CHANG: Anybody know of any other parties that
13 have entered in this case or that intend to enter in this
14 case at this time? Doesn't seem like it. I will turn back
15 to the applicant. Mr. Samaniego, this is just a status
16 conference, so we're just trying to figure out here from the
17 Commission's perspective what the scope of the dispute is,
18 what evidence you intend to present or what evidence you
19 need to resolve the scope of whatever is in dispute, and
20 we're looking for an efficient mechanism to narrow the scope
21 as much as possible and to resolve as many issues as possible
22 so that we can get to a hearing that is orderly and
23 effective. So given that, if you could please advise as to
24 your appeals, or your applications.

25 MR. SAMANIEGO: Yes, sir. American is seeking

1 relief from the Division Order 251 -- in Case 25166, 25496,
2 25495. Alpha is compulsory pooling all interest in 1718 22
3 south 27 east proposing the HSU unit. They infringed,
4 trespass and a hostile takeover and overlapped American site
5 unit causing great harm. American is going to use all
6 exhibits that it has filed in each of the cases to present as
7 evidence in the matter. And American is seeking at this time
8 that if the cases are moved for the status conference, if we
9 can go ahead -- if the Commission could go ahead and grant
10 the emergency stay at this time so that way all parties are
11 protected and all correlative rights are protected from harm
12 from all parties. That way, you know, it pauses the matter,
13 that way relief can prevail.

14 CHAIR CHANG: So you've got a Motion for an
15 Emergency Stay in front of us today. Well, you've got your
16 three de novo appeals, or applications. And then on top of
17 that you've got a Motion for Emergency Stay of these three
18 cases. I think I've captured that correctly, okay. Let me
19 turn to Alpha Energy. Alpha Energy filed a response.

20 MR. SAVAGE: We have a response to the stay
21 and that's our primary concern right now. We also have, in
22 terms of the scope of the hearing, we have proposed a legal
23 theory that we believe would allow the Commission to address
24 these matters and it's a three-prong test. We recognize that
25 the Commission does not have jurisdiction to evaluate title

1 itself to evaluate the validity of a lease itself, but under
2 the orders that require a party to present ownership
3 percentages and ownership exhibits, the Commission certainly
4 has jurisdiction to review the amounts of ownership,
5 comparisons of ownership. And there is discussion in those
6 orders that a party is required to make a good faith claim
7 and to be a prudent operator in the presentation of those
8 kinds of ownership exhibits.

9 So we believe that the Commission can separate the
10 good faith element out, separate from the evaluation of title
11 itself, and look at what the party has done in terms of good
12 faith efforts to collect and present the ownership
13 percentages that the Commission looks at and what the party
14 has done to show that it has been prudent in its efforts and
15 that it is a prudent operator.

16 So we would like opportunity to present evidence and
17 have a hearing on that. That's kind of tied into some of the
18 reasons for denying the stay. So I have 14 slides that I
19 have prepared to present that address a number of issues in
20 which the behavior of AER, American Energy Resources, their
21 bad faith or lack of good faith efforts, their lack of
22 prudence, is tied up to their standing for requesting the
23 stay. So I don't know if you want to go through all that
24 today.

25 CHAIR CHANG: We may very well have time to do

1 that, but let's take this one step at a time, if I could. So
2 it seems like you're vaguely making a Motion for Summary
3 Judgment argument, but it's not been filed as a Motion for
4 Summary Judgment.

5 MR. SAVAGE: I don't believe it rises to the level
6 of summary judgment because I believe there's facts in
7 dispute. So at the Division level, the Division ruled that
8 AER did not present sufficient evidence to show that it was
9 an owner in some of the units, we agree with that. But in
10 terms of the jurisdiction that the Division and the
11 Commission have, we see it more as AER did not provide a good
12 faith review of the ownership and present that to the
13 Commission/Division to show that it had standing to go
14 forward with a stay or to even assert this matter as an
15 appeal.

16 So I think there's issues of fact at play, material
17 fact, so I don't think really you could do a summary
18 judgment, but certainly a hearing that would allow the
19 Commission to look at the facts and the evidence and make a
20 ruling.

21 CHAIR CHANG: But the evidence that you're
22 presenting would be all found in the underlying record,
23 right? Because your argument is that what was presented to
24 the Hearing Examiner is, in your view, whether other parties
25 agree with you or not, is insufficient.

1 MR. SAVAGE: I'm sorry, Mr. Chair, can you repeat
2 that?

3 CHAIR CHANG: Tell me if I'm wrong, but my
4 understanding of your argument then is, that the primary
5 evidence is -- or your argument centers on insufficient
6 evidence of a proper title search or a chain of title or
7 whatever at the underlying hearing, at the hearing in front
8 of the examiner. Therefore, it seems like the primary
9 evidence that you rely on would be the record from the
10 previous hearing; is that correct?

11 MR. SAVAGE: The record from the previous hearing,
12 plus the additional items that AER has provided. For
13 example, they provided shut-in checks dated February 28th,
14 2025, which does not comply with the language of the 1960,
15 circa 1960 leases. I mean, there's a variety of things.

16 The AER has self-reported in 2025 on that -- AER has
17 self-reported once MCF production of gas per month. We
18 believe that reportage is highly suspect. Mr. Kaufman, the
19 landman of Alpha, drove out yesterday to that well and has
20 talked to the pipeline company and there's no meter on that
21 well that could measure any amount of production. The
22 pipeline company had no idea who was operating that well.

23 CHAIR CHANG: So before we get into the whole
24 merits, I imagine Mr. Samaniego probably does not agree with
25 --

1 MR. SAVAGE: I'm just pointing out the types of
2 evidence that we would want to present.

3 CHAIR CHANG: So it sounds like many of that is
4 documentary evidence, right? And that Mr. Kaufman is your
5 one -- so you've got one potential witness.

6 MR. SAVAGE: Affidavit from Enterprise Company. We
7 have photographs of the well.

8 CHAIR CHANG: So mostly documentary, potentially one
9 witness, okay. Just give me one second, Mr. Samaniego, I
10 will turn right back to you, but just hang on for one second.
11 Mr. Rankin has also entered, so let me also hear from Mr.
12 Rankin real quick.

13 MR. RANKIN: Thank you, Mr. Chair. We'll be
14 monitoring this case and we'll be presenting no evidence.
15 Maybe at some point making a statement in support, but that's
16 where we are right now.

17 CHAIR CHANG: Let me turn back to Mr. Samaniego. My
18 understanding, and tell me if I'm wrong, but my understanding
19 is that this dispute, before we get into the faith part, good
20 or bad faith, this stems from a dispute over title, do you
21 agree?

22 MR. SAMANIEGO: Yes.

23 CHAIR CHANG: Is there any proceedings outside of
24 this Commission where this title -- I guess what I'm trying
25 to get at is -- let me rephrase that, my apologies. Is the

1 title dispute currently being litigated in any other forum,
2 like District Court?

3 MR. SAMANIEGO: No.

4 CHAIR CHANG: Is there any intention by the parties
5 to perhaps resolve the title issues with a court ruling from
6 a District Court so that we don't have to get into trying to
7 adjudicate good faith or bad faith claims of title,
8 considering that I think all parties recognize that this
9 Commission is not, generally speaking, a court to
10 adjudicate title disputes.

11 MR. SAMANIEGO: It's to be determined today.

12 MR. SAVAGE: Mr. Chair, I would just say that I
13 think that these issues, and noting the scope of authority of
14 the Commission is important, because the operators and
15 applicants, they do not want to be held hostage by somebody
16 going in and taking antiquated leases from the 1960s, when
17 clearly the group or set of leases that authorized the
18 development occurred in the 2000s, and then use those leases
19 and take advantage of what they perceive as a limitation and
20 loophole in the Division's/Commission's authority to evaluate
21 ownership and then use those leases to basically hold, not
22 only the Commission and the Division hostage, but the good
23 faith operators and the prudent applicants hostage.

24 I think this is a very, very important case to
25 establish some legal precedent that would allow the

1 Commission the tools and the legal theories to negotiate
2 these kinds of situations when they arise.

3 CHAIR CHANG: I'm giving you the floor, Mr.
4 Samaniego, go ahead.

5 MR. SAMANIEGO: I want to start off with Dairn
6 Savage statement just right now when he specified his claims
7 as theory, and I want to go by his first statement at the
8 beginning of his claim and argument as starting off by, this
9 is a theory. Mr. Savage is very good at changing the
10 narrative of the matter. But the fact is, that he's already
11 made two statements that these are theories. Alpha's title
12 is compromised; therefore, the Division making any ruling
13 cannot protect the correlative rights for the fact that
14 Alpha's title is compromised.

15 Dairn Savage is not a regulatory agent working for
16 the NMOCD. He's overreaching his authority and for the
17 Division to allow council's attorney to present and act as
18 regulatory for the Division is erroneous and arbitrary.
19 American has presented evidence of Alpha being not only --
20 not in compliance with numerous wells, but not having
21 adequate financials. Therefore, Alpha has no authority in
22 New Mexico under New Mexico law to operate in compliance.
23 Therefore all of Alpha's claims from this forward should be
24 considered moot, because it's hearsay and they're theories.

25 MR. SHANDLER: It appears the parties have

1 disagreement on many things, but they have one point of
2 agreement. Alpha wrote in its pleadings, "Alpha recognizes
3 the Commission does not have jurisdiction to determine the
4 validity of any title or the continuation in force and effect
5 of any oil and gas lease." American wrote in its pleadings,
6 "Alpha's recognition that the Commission does not have
7 jurisdiction to determine the validity of any title or the
8 continuation in force and effect of any oil and gas lease is
9 correct." It appears both parties have agreed the Commission
10 does not have jurisdiction to determine the validity of the
11 disputed lease. Therefore, I don't think the Commission has
12 jurisdiction to handle this dispute.

13 MR. SAVAGE: We're not asking for the Commission to
14 make a decision whether a lease is valid. The orders that
15 the Commission looked at in which they -- for example, in the
16 Silverback case, the order states, "is it the responsibility
17 of a party to make a good faith claim of title."

18 Now, there's two components here. You can evaluate
19 the validity of the title and you can also evaluate the
20 validity of the good faith claim, those are two different
21 evaluations. We're not asking the Commission to evaluate the
22 title itself. We're asking to evaluate whether the actions
23 that the party took that led to that claim were made in good
24 faith. That is a very important distinction, because
25 otherwise these kind of situations are going to occur

1 repeatedly and the Commission really is obligated under the
2 Oil and Gas Act to protect correlative rights. And if the
3 Commission and Division are not willing to evaluate what it
4 has authority to evaluate, and that's the good faith
5 component and the prudent component, then it will not be
6 protecting correlative rights with the full authority that it
7 has, in our opinion. To say just throw out the baby with the
8 bathwater by saying, we can't evaluate titles, so we're not
9 even going to look at the elements that we have the authority
10 to evaluate to protect correlative rights, to me is not the
11 best way to proceed.

12 CHAIR CHANG: I hear the distinction you're trying
13 to make there.

14 MR. SAMANIEGO: Savage said -- ended his statement
15 with, "in his opinion." All those pretty words are great,
16 but those are his opinions and he's trying to change the
17 narrative of the matter for you to agree with his personal
18 opinions.

19 CHAIR CHANG: What is your opinion then, sir?

20 MR. SAMANIEGO: That Alpha has infringed, trespassed
21 and overreached American's correlative rights and has abused
22 regulatory and the Division creatively to do his dirty work.

23 CHAIR CHANG: I understand your perspective on that,
24 sir, but would you like to respond to what the Commission
25 Counsel has just read from one of your briefs, claiming that

1 -- because if we understand your brief correctly, in your
2 brief you -- both parties told us that we don't have the
3 jurisdiction here at this forum to adjudicate title disputes.
4 Do you disavow that statement in your brief now?

5 MR. SAMANIEGO: There might be issue as far as the
6 jurisdiction, the limitations, but there's no limitations on
7 the obligations and duties of the Division to protect
8 correlative rights. There's no limitations under that. They
9 all need to be protected. So regardless of how the
10 Commission moves forward with this, the emergency stay must
11 be granted, because regardless of the determination,
12 correlative rights are not protected.

13 So the first thing we're doing in protecting
14 correlative rights is pausing, slowing it down. The
15 emergency stay being granted so that we can slowly and
16 cautiously resolve this matter, not brush it under a rug.

17 CHAIR CHANG: The point I was trying to make earlier
18 I think, is that hopefully you can all understand why the
19 Commission would be more comfortable if there was a Court
20 decision telling us clearly one way or the other whether --
21 who has title here, right, because then we know exactly who
22 has -- with title, if there is a clear title decision, then
23 we've got clear correlative rights to specific owners here.

24 MR. SAMANIEGO: Under New Mexico law, it takes a
25 Court order to terminate or expire a lease. Therefore, can't

1 show a demand of release that proceeds action. Therefore,
2 Savage's theory of him having superior leases is inadequate.
3 It's erroneous. It's wrong. Because there is no demand for
4 release that proceeds any action, holds American leases
5 superior.

6 CHAIR CHANG: Commission Counsel.

7 MR. SHANDLER: The way I understand the dispute is
8 that American claims it owns certain leases. Alpha claims
9 that those leases have expired and then they met with the
10 leaseholders and they took over the lease. So it appears
11 there is a dispute over who is the leaseholder or the lessee.

12 MR. SAMANIEGO: Does Alpha's claims follow New
13 Mexico law?

14 MR. SHANDLER: It appears that American's response
15 is no, there has to be a Court order before our lease was
16 expired and the lessors could then negotiate with Alpha to
17 take them over. So it appears to be a dispute over the
18 status of a lease.

19 CHAIR CHANG: Commission Counsel, did you have
20 anything further? I didn't mean to cut you off.

21 MR. SHANDLER: I'm pausing.

22 MR. SAVAGE: Thank you, Mr. Chair. So even if there
23 is a title dispute that needs to go to District Court,
24 Alpha can proceed under a valid pooling order while that
25 decision is being made and whoever prevails in District

1 Court, whoever the Court determines is the owner, would still
2 have the rights to whatever production in that unit that
3 Alpha developed and produced under a valid order. So if you
4 decide to go that route and delay a decision until there's a
5 District Court order, that does not preclude Alpha proceeding
6 with proper development under the pooling order.

7 Now, let me point out one more point that's
8 important.

9 (Multiple people speaking)

10 CHAIR CHANG: In order for the court reporter to
11 capture everything here and build a proper record, we need to
12 do things one at a time. Mr. Samaniego, if you could hold
13 on, I promise I will turn back to you once I let Mr. Savage
14 finish his thought.

15 MR. SAVAGE: Thank you, Mr. Chair. So Mr. Samaniego
16 is arguing that there is harm, there's some kind of harm
17 going on with these owners in what he believes is his unit.
18 Mr. Samaniego had an opportunity at the division level, he
19 made an appearance, he presented evidence, he presented his
20 argument about any harm to correlative rights. After a
21 hearing the Division has the authority to approve overlapping
22 units, and by issuing the order they basically approved the
23 two units could coexist without any violation -- they did not
24 see any violation of correlative rights. So there's no harm
25 here for Alpha to proceed with development under the valid --

1 what we perceive to be the valid division order. And if you
2 want to delay a decision on ownership and who gets that
3 production that's being produced in the Hollywood Star unit,
4 that would be fine as well. We could come back and they can
5 distribute the production accordingly.

6 CHAIR CHANG: Your point is basically that this be
7 resolved with money damages one way or the other or --

8 (Multiple people speaking)

9 CHAIR CHANG: I will turn back to Mr. Samaniego.

10 MR. SAMANIEGO: Everything in this matter is
11 important. Savage claims that American presented evidence at
12 hearing. Savage presented at hearing false claims that
13 American owns a wellbore and no interest at all. The
14 Division moved forward in muting American from participating
15 at hearing and didn't allow American to present its evidence
16 at hearing, because of Savage's false claims. And here it is
17 today, he's changed the narrative of the matter that these
18 are expired and terminated leases whenever he used his false
19 claims of a wellbore to silence American at hearing in
20 presenting its evidence.

21 Further, by American not being able to present its
22 evidence at hearing then and today, that's violation of due
23 rights. That's violation of due process. American has not
24 been able to protect its correlative rights, and for the
25 Division to attempt to move forward in granting the orders as

1 good faith efforts is erroneous and a violation Commission
2 and Division's obligated duties to protect correlative rights
3 under all these numerous false claims that change, that
4 continue to change over time.

5 American's claims have been consistent. In any
6 hearing Judge or jury would understand that an inconsistent
7 story, it's not valid, and that's what Savage has
8 continuously presented in this matter. And the Division to
9 grant them to move forward with their operations and the
10 orders, would cause great and severe harm to American's
11 operations and its unit.

12 American wants to go ahead and also present that if
13 the Division does sway to allow Alpha to operate, American is
14 asking that the Division deny Alpha's 200 percent penalty,
15 because the wells were already drilled. To deny the 1/8
16 royalty and bring it up to 25 percent royalty, because that's
17 under the State of New Mexico State Bill 23. It ruled that
18 new leases, that's what Alpha is attempting to claim this
19 through, as new leases, they're offering 1/8 royalty, which
20 is by far way under the standards of New Mexico law, which is
21 25 percent.

22 So there's many, many, numerous bad faith efforts
23 through Alpha for profits, which I don't think no profit and
24 no money in any kind of development should have any
25 superseding over the protection of correlative rights.

1 CHAIR CHANG: Thank you, Mr. Samaniego. I'm going
2 to cut in here. Again, today is just a status conference.
3 We haven't even proceeded necessarily to motions/arguments on
4 the emergency stay. It seems like everybody wants to argue,
5 or everybody is eager to talk about the merits of the case
6 here, but we need to do this in a somewhat orderly fashion.
7 So let me turn to my Commission Counsel and the Commissioners
8 for a minute here. The applications are granted because
9 these applications are valid as of right; is that correct,
10 Commission Counsel, for de novo hearing?

11 MR. SHANDLER: I believe previously the Commission
12 did issue an order that it was not going to hear a case until
13 the case had been resolved in District Court.

14 CHAIR CHANG: But there is no pending case here in
15 District Court, right?

16 MR. SHANDLER: I'm trying to remember the
17 case...it's on the tip of my tongue, but the Commission
18 within the last two or three months had a case where it
19 denied that it was going to hear the case. Mr. Samaniego
20 filed a case in District Court.

21 COMMISSIONER BLOOM: Mr. Chandler, I believe you
22 might be referring to the case between American Energy and
23 Silverback Energy.

24 MR. SHANDLER: That is the name, yes.

25 CHAIR CHANG: In Silverback there was an existing

1 Court order from the Fifth Judicial District, is that right,
2 in Las Cruces, I believe there was a decision in that case
3 where the Fifth District had ruled against chain of title;
4 isn't that the distinction here, where there is no case even
5 filed here to resolve chain of title?

6 MR. SHANDLER: That was a case, quiet title, that
7 was filed ten years prior to today's date. And it was used
8 as, in my evaluation, showing that the Commission doesn't
9 have jurisdiction on the validity of title. The forum for
10 the jurisdiction of the validity of title is the District
11 Court.

12 MR. SAMANIEGO: But just like in the Silverback
13 case, okay, until it can be resolved in a court of proper
14 jurisdiction, the emergency stay needs to be granted to
15 protect correlative rights until both parties can resolve the
16 matter in the appropriate jurisdiction.

17 CHAIR CHANG: Thank you, Mr. Samaniego. We need to
18 have a little bit of discussion just with the Commission for
19 the moment.

20 MR. SHANDLER: You always have options. One option
21 is to pursue the Silverback route, that may be a productive
22 option, because I note that in that case Mr. Samaniego filed
23 an appeal in District Court, but has now asked the Court
24 to stay his appeal of the Commission's decision while he
25 files a separate case to clear up the title. So it appears

1 that Mr. Samaniego's counsel, Mr. Candelaria, in the
2 Silverback case has realized title issues have to be resolved
3 by the District Court, that's one option.

4 Another option is, maybe it's time to peel off the
5 Band-Aid in this particular case. I'm surprised the Division
6 is not here, because there's allegations that the Sauik well
7 is an orphan well, and we've heard a lot about orphan wells.
8 There was material in the record that the Division filed a
9 Notice of Violation. This might have been an opportunity for
10 the Division to peel off the Band-Aid and resolve a lot of
11 different issues and maybe reach finality on the status of
12 this well. Not only its ownership, but maybe more
13 importantly its orphan or temporary abandoned status where
14 that may be in dispute, as Mr. Samaniego has said that he is
15 now making steps to file certain paperwork that it's not
16 temporary abandoned. So that that's another option. If you
17 want to peel off the Band-Aid and resolve a bunch of
18 different issues at once, that may have been festering since
19 2017.

20 CHAIR CHANG: Well, even that, Commission Counsel, I
21 think is -- I don't know that we would be able to peel off
22 the Band-Aid and resolve everything at a status conference.
23 I'm just trying to figure out what we need to resolve today
24 and how we set this -- I don't know that I'm ready to make a
25 sua sponte Motion to Dismiss without prejudice, certainly

1 especially since all the parties are aligned against or at
2 least against that. I would at least like to invite the
3 parties to brief the jurisdictional issues briefly before we
4 do that, if we even want to do that. I would invite some
5 briefing on that, particularly if it's opposed by all
6 parties.

7 Let me ask the Commission's advice here, the rest of
8 the Commissioners. Would you like to take the issue of
9 jurisdiction under advisement, not rule on it today. We've
10 heard arguments around it already. Take it under advisement
11 for now and potentially reserve that as an option. And then
12 also, does the Commission also wish to hear debate on the
13 Motion for Emergency Stay today?

14 COMMISSIONER BLOOM: Mr. Chair, I see that Mr.
15 Moander, Counsel for OCD, has his hand raised, perhaps he
16 would like to weigh in.

17 CHAIR CHANG: Well, he's not a party, so he would
18 have to public comment.

19 MR. MOANDER: That's okay, Mr. Chair. I recognize
20 that fact. If I may just have a minute to make the following
21 comment, if that's acceptable.

22 CHAIR CHANG: Sure.

23 MR. MOANDER: OCD is happy to provide briefing or
24 information, thoughts, guidance, et cetera, on this case.
25 This is one of many with American and it's increasingly

1 clear there's similar disputes. So if the Commission wishes
2 to invite briefing from the Division on that, that could
3 happily be arranged and addressed per the OCD's pleasure --
4 or OCC's pleasure.

5 CHAIR CHANG: I see another hand raised. Is that
6 you, Mr. Samaniego?

7 COMMISSION CLERK: It is, and I have him disabled.

8 COMMISSIONER BLOOM: It looks like you're unmuted
9 now. I think we should be able to hear you. Go ahead.

10 MR. SAMANIEGO: Okay. Boy, and muting like that,
11 it's inappropriate because -- I mean, that violates
12 individual's right to speak and that's exactly how through
13 each of these hearings and all these matters, these
14 operators pooling have prevailed through the ability to
15 silence parties from presenting their evidence for their
16 claims. Just the way it happened just right there.

17 CHAIR CHANG: Mr. Samaniego, we have given --

18 MR. SAMANIEGO: I've given you the right to talk,
19 I'm talking, okay. I want the Commission and the Division to
20 be aware that I have hired Attorney Domenici and he is
21 handling American's regulatory and we have been in talk with
22 Jesse Tomaine with the Division, and for the Division to
23 attempt to proceed -- or the Commission to attempt to proceed
24 to violate American as stripping off a Band-Aid and violating
25 NOVs through previous operators, would be a violation of due

1 process rights under Federal law. So since American is not
2 in violation, American has adequate financials and American
3 is a prudent operator acting in good faith. Those
4 discussions today are inappropriate and should be considered
5 hearsay and they should be stricken from the record.

6 CHAIR CHANG: Mr. Samaniego, first of all, as
7 Commission Chair, I can always interrupt you, because I'm the
8 Chair here. Number two, if there's any muting going on, it's
9 to make sure that nobody speaks over each other, but we have
10 given you opportunities to speak, just as you were speaking
11 right now. And as long as everybody waits their turn, I will
12 do my best to make sure that everybody gets a fair shot at
13 presenting what they need to present, including you. So
14 putting that point aside, I hear you.

15 Again, it sounds like everybody is chomping at the
16 bit to get to the merit -- again, we're at a status
17 conference at the moment. We haven't even -- the Commission
18 has not even agreed to start hearing arguments on Motion for
19 Emergency Stay. So all of these arguments around the
20 underlying -- the actual disputes, are a little premature
21 until I can figure out and get advice from the Commissioners
22 whether they are, in fact, willing to entertain motions
23 practice on the emergency stay today.

24 So if I could get the parties to hold off for a
25 minute, I'd like to get Commissioners input here as to

1 whether or not the Commission is ready to and/or wishes to
2 hear any argument on the Motion for the Emergency Stay.

3 COMMISSIONER AMPOMAH: Mr. Chair, I just want to
4 know, is it not possible for all of it to be resolved at the
5 District Court, or since it was a decision from the Division,
6 the Commission needs to react on it? I just want some
7 clarity on that.

8 CHAIR CHANG: I think Commission Counsel can
9 probably add to this answer, but I think if a District Court
10 were to weigh in on title one way or the other, it would
11 resolve a lot of the issues here and would leave us with a
12 much simpler decision to make, if any at all. That said, at
13 the very minimum, the Motion for an Emergency Stay, you know,
14 given that court proceedings, if the parties even go there,
15 would take a long time. At the very minimum, I think we've
16 got the issue of whether or not to issue an emergency stay of
17 the Division's order, would be something that we likely need
18 to make a decision on. Commission Counsel, is there anything
19 further or did I capture that?

20 MR. SHANDLER: I have nothing further.

21 CHAIR CHANG: Commissioner Bloom, what is your
22 pleasure or what do you advise?

23 COMMISSIONER BLOOM: Thank you, Mr. Chair. I'm
24 struggling here with how to proceed.

25 CHAIR CHANG: I think all three of us on the

1 Commission, and probably Mr. Shandler as well, I think we're
2 all struggling a little bit to handle this in an organized
3 manner.

4 I will speak only for myself. Noting the time, I'm
5 willing to allow a reasonable amount of brief arguments from
6 both parties on -- from all parties on the Motion for an
7 Emergency Stay and I don't know that I will be ready to make
8 any decisions on anything today regarding this particular
9 case, but I'm happy to hear arguments, give parties an
10 opportunity to say their peace and take all of the issues,
11 whether or not there is jurisdiction, whether or not there
12 should be an emergency or -- whether or not there should be a
13 stay on an emergency basis, to take all the issues under
14 advisement and then take the -- basically give the Commission
15 itself time to try to unwind the issues and invite written
16 pleadings, if necessary.

17 COMMISSIONER BLOOM: Mr. Chair, that's where I am
18 too. I think hearing arguments could be helpful. I don't
19 know that I'd be ready to make a decision either today. So
20 perhaps we proceed along the lines you suggested.

21 CHAIR CHANG: Dr. Ampomah.

22 COMMISSIONER AMPOMAH: So I do have a question,
23 though. Let's say the Motion to Stay, to discuss that, I
24 mean, if the Commission is also going to consider the de novo
25 case, then it sounds like it's tied together. If you deny

1 Motion of Stay, then what will be the need for the de novo,
2 right. So I'm just looking at, if we go ahead and listen to
3 the motion to more or less stay, and then let's say we deny
4 that and we still come back, are we going to deny without
5 prejudice so it can be brought back or -- because I'm still
6 confused.

7 CHAIR CHANG: Well, that's what I'm saying. I think
8 Commissioner Bloom and I are not ready to make any decision
9 on either of those. My proposal is only to give -- since
10 everybody is here, to give everybody the opportunity to also
11 present oral arguments on both questions and then to reserve
12 our decision on both questions.

13 COMMISSIONER AMPOMAH: Thank you so much for
14 the clarification. I support that.

15 CHAIR CHANG: Commission Counsel, does that give you
16 any heartburn or do you have any advice on how you think we
17 may be able to handle that any better?

18 MR. SHANDLER: As I've said, you have several
19 options. So whatever path you want to go forward, that's
20 fine.

21 CHAIR CHANG: It sounds like the Commission is
22 amenable to hearing arguments on the Motion for Emergency
23 Stay, so I will turn it to the parties. I will ask the
24 parties to limit their initial presentations on that to ten
25 minutes, because I have a feeling there's going to be some

1 back and forth.

2 COMMISSIONER BLOOM: Mr. Chair.

3 CHAIR CHANG: Go ahead.

4 COMMISSIONER BLOOM: Perhaps a 10 or 15 minute break
5 before we move into --

6 CHAIR CHANG: Thank you so much, that would be
7 fantastic. I second that motion. In that case, it's
8 currently -- should we return at 10:45 or do you think
9 longer?

10 COMMISSIONER BLOOM: 10:45 would be fine.

11 CHAIR CHANG: Let's take a break and we will come
12 back and hear arguments on the Motion for the Emergency Stay
13 at 10:45. Thank you very much.

14 (Recess at 10:35 a.m. to 10:50 a.m.)

15 CHAIR CHANG: Thank you all. This is the New Mexico
16 Oil Conservation Commission and we are back on the record.
17 Pursuant to the discussion that we just had prior to the
18 break, I will now invite the parties to provide oral
19 arguments on the Motion for Emergency Stay of the three
20 consolidated cases in front of the Commission at the moment.

21 I will invite Mr. Samaniego, as the mover of the
22 motion, to start oral arguments. I do ask that we limit --
23 Mr. Samaniego, I ask that you limit your initial remarks to
24 10 minutes so that we'll have some time and opportunity for
25 questions and/or back and forth following your arguments.

1 MR. SAMANIEGO: Okay. Do I begin?

2 CHAIR CHANG: Please, go ahead, sir.

3 MR. SAMANIEGO: Okay. I want to start off with
4 Alpha's employed landman, John Kaufman. He stated at hearing
5 under oath when asked by Samaniego about a lease terminating
6 under specific laws, does it automatically terminate?
7 Alpha's landman, John Kaufman's, statement was, it depends on
8 the lease. And Dairn Savage, Alpha's counsel, claims of the
9 lease already being terminated and expired by their own
10 landman statement at hearing, Savage's claims would be
11 premature and at this time irrelevant. Should be nothing
12 more than hearsay at this time. Alpha's counsel and landman
13 statements conflict with one another.

14 American will further go that American meets the
15 four prongs of Tenneco. American justly owes dues and will
16 succeed in collecting its just dues on the merit.

17 Second prong, that Alpha failed requirements under
18 law and the final order that cause irreversible harm to
19 correlative rights owners causing economic waste and
20 violating correlative rights of owners through their willful
21 failed efforts to notify and compensate interest owners and
22 imposing severe economic burden on the net returns, thus
23 meeting the second element of the Tenneco standard. A stay
24 pursuant to the Tenneco.

25 Third prong, would not result in any substantial

1 harm to other parties as all owners subject to the order
2 would receive their fair and just compensation due to the
3 parties from the illegal oil and gas sales of Alpha.

4 Last prong, in satisfaction of Tenneco's last prong,
5 there is no harm to the public. In fact, the order is not
6 stayed. The public will be harmed through acts of concealing
7 a crime mandatory reporting and federal law in prison of a
8 felony. So this is a crime that has took place.

9 I want to go on, that Manning and Energy Minerals
10 206 and MFCC 027 showing that an administrative agency using
11 its police powers to authorize a taking without compensation
12 is unconstitutional and subject to the taking clause.

13 So to move forward with granting Alpha the authority
14 to move forward with operations under these orders would
15 violate federal law and would be considered unconstitutional
16 under Federal law under Manning versus Energy Minerals 206.

17 The Division and the Commission cannot guarantee
18 that correlative rights will be protected. So therefore, to
19 not deny the emergency stay would be a violation of obligated
20 duties of the Division and the Commission, the Oil and Gas
21 Act to protect correlative rights. And therefore, since
22 Division would be violating their own law, state law
23 and violating federal law, it would be -- the Commission and
24 the Division should proceed with caution and grant the
25 emergency stay so that this can be heard in the proper

1 jurisdiction at the same time, passing it as emergency stay
2 granted so that correlative rights are protected so that the
3 Division and Commission would have done their duties. Thank
4 you.

5 CHAIR CHANG: Thank you. Commissioners, do you have
6 any questions for Mr. Samaniego at this moment or would you
7 like to hear from Mr. Savage first before we open the floor
8 to questions?

9 COMMISSIONER BLOOM: Mr. Chair, I think my
10 preference would be to hear from Mr. Savage first.

11 CHAIR CHANG: All right. If that's all right with
12 Commissioner Ampomah.

13 COMMISSIONER AMPOMAH: Yes.

14 CHAIR CHANG: I invite Mr. Savage to present his
15 arguments.

16 MR. SAVAGE: Yes, thank you. Mr. Chair,
17 Commissioners. First, I'd like to provide some context
18 regarding chain of title. So every chain of title in a unit
19 from past to present has sensor groupings of antiquated and
20 expired leases that have been forfeited and supplanted by
21 current leases. So, for example, you could have early
22 development in the 1940s, and if you go though you would see
23 the 1940s leases, then you would have later development,
24 let's say in the 1960s, you would see a set or group of
25 leases that supplant the 1940s leases, and then you could

1 see, for example, current development and you would see
2 modern leases in the 2000s.

3 So this case presents a situation in which AER has
4 obtained older leases from the 1960s and it's using that
5 claim, it's a bad faith claim, of these expired leases as a
6 means to sabotage valid pooling orders. This seems to be a
7 recurring pattern in other cases as well.

8 Now, if the Commission grants a stay, it's basically
9 rewarding and endorsing a policy that anybody could go back
10 to the 1940s. They could go back to the 1960s. They could
11 say, "hey, I want to buy these leases, buying them," and then
12 throw a wrench into the proceedings at the Division or the
13 Commission and undermine the proceedings on no basis
14 whatsoever and then force the good faith applicants and good
15 faith operators to have to run to District Court and pay
16 enormous amounts of cost to try to work through this
17 problem that was created by endorsing this policy.

18 Now, the Division found, and I direct you to the
19 slide on the screen. The division found, after AER had ample
20 opportunity to provide a good faith showing of ownership in a
21 number of cases involving the Hollywood Star wells, they
22 found and stated in an order, AER did not provide evidence
23 demonstrating an interest in the unit. And then in the
24 transcripts for the other cases, AER does not have an
25 interest in these cases. Now, that raises a serious issue

1 about whether even AER has standing to request a Motion to
2 Stay.

3 Now, in New Mexico standing requires one, injury in
4 fact; causal relationship between the injury and the
5 challenge conduct; and three, the likelihood the injury will
6 be addressed by a favorable decision. AER has no injury,
7 number one. AER received due process multiple times at a
8 hearing, it stated its arguments, it stated its positions.
9 The OCD heard the arguments and then they issued an order
10 that approved the overlapping units.

11 Now, the OCD -- that is common procedure under the
12 rules, that if somebody objects to an overlapping unit, the
13 OCD will have a hearing and then they will decide whether it
14 violates correlative rights. In this case, they decided it
15 does not. That is common practice. There are thousands of
16 units out there with overlapping units that coexist. It's
17 very rare for the OCD to deny or reject an overlapping unit.
18 So therefore, there's no injury.

19 Number two, there's no causal relationship. The OCD
20 had the authority to approve the overlapping unit after a
21 hearing and allowing both units to produce without injury.
22 And then a decision to grant a stay will not address, that's
23 the third requirement, will a decision to grant a stay
24 actually address the injury and it will not address any
25 purported injury that will directly harm the owners in the

1 subject lands by impeding their just and equitable share
2 production from the pooling orders. So there's a standing
3 issue that -- and that is the ACLU of New Mexico versus City
4 of Albuquerque, the New Mexico Supreme Court addresses.

5 Now, the Commission also considers the Tenneco
6 versus New Mexico Water Quality Control Commission as the
7 standard for whether to grant a stay or not. So the first
8 prong of the test is, will AER -- is likely to prevail in the
9 merits. AER is not likely to prevail on the merits. This is
10 the first prong. It's the most important prong. So AER
11 received due process of a hearing for its objections and the
12 Division issued orders approving overlapping units as not
13 violating correlative rights. We believe that that should be
14 recognized. And I believe that if the Commission used the
15 same standards under the rules for approving overlapping
16 units, that they would come to the same conclusion.

17 Now, Alpha appreciates OCC counsel's comments, they
18 are appreciated, that if you pull back the wound -- the
19 Band-Aid on this, that you would see some very concerning
20 issues and facts. Apparently there's been a lot of festering
21 over this well and other wells that AER has purported to
22 operate. And Alpha has acquired a lot of evidence that Alpha
23 is confident that the OCC -- if this goes to hearing, that
24 the OCC will find that the Sauik well needs to be plugged and
25 that also is a reason that AER is not likely to prevail on

1 the merits.

2 So we have the two main issues there, approval of
3 overlapping units, there's no violation of -- there's no
4 harm, no violation of correlative rights. And also the
5 Commission is likely to find that this well will need to be
6 plugged.

7 A second prong of Tenneco is, AER has not shown
8 irreparable harm. Approval of overlapping units is a common
9 practice and authorization does not result in irreparable
10 harm to AER. AER has not shown any evidence of any kind of
11 irreparable harm. And operators produce with overlapping
12 units all the time without harm.

13 The third prong, AER fails to show substantial harm
14 to interested parties. In fact, there are more than 700-plus
15 owners in the subject lands in the units that AER has pooled
16 and there will be substantial harm to those owners, because
17 they will not -- if you grant a stay they'll be denied their
18 right to share production, would be impeded, and they'll be
19 denied to their share of production and they'll be directly
20 harmed by the stay.

21 Finally, the fourth prong, AER fails to show no harm
22 will ensue to the public interest. Alpha contends that
23 granting a stay will harm public interest by setting a
24 precedent that allows a party to assert bad faith claims, to
25 go back and acquire assignments of leases that are invalid

1 and then use those to undermine proper good faith proceedings
2 and undermine valid pooling orders and violate correlative
3 rights, that would be a harm.

4 The Commission granting a stay would incentivize and
5 reward that kind of bad faith behavior and it would harm the
6 public interest. It would harm the good faith operators that
7 do present -- and good faith applicants that do present
8 ownership exhibits showing proper percentages of ownership in
9 a good faith manner.

10 Now, I'd like to address Commissioner Ampomah's
11 concern about whether granting a stay precludes or preempts a
12 valid de novo hearing, and Alpha would say that clearly it
13 does not. They are two separate issues. They are two
14 separate decisions. You can deny the stay and still go
15 forward and have a fully valid hearing and hear all the
16 merits and make a decision on the merits at a de novo
17 hearing.

18 Now, if the stay is denied, then the party who
19 prevailed, Alpha let's assume, would be in a position to
20 decide what they wanted to do with that option. They would
21 be the ones who would take the risk. You know, if they
22 decide to go forward, that's because they were incredibly
23 confident that that order, that pooling order is valid. If
24 they make that decision and the OCC should decide otherwise,
25 then they would have to deal with the consequences of that.

1 In a free market, that's something that I think an option of
2 -- freedom that should be allowed. So given that AER has not
3 satisfy Tenneco, which is the main standard for deciding
4 this, but also the concerns that they do not satisfy even
5 requirements for standing in New Mexico for asserting a
6 motion to stay. We respectfully request that the Commission
7 deny the motion to stay. Thank you.

8 CHAIR CHANG: Commissioners, any questions for
9 either party or are we ready to just take the matter under
10 advisement for the moment?

11 MR. SAMANIEGO: I have a response.

12 CHAIR CHANG: Fair enough, Mr. Samaniego, but give
13 me one second to ask the Commissioners whether they have any
14 questions and then I'll turn to your response.

15 MR. SAMANIEGO: Okay. Thank you.

16 CHAIR CHANG: Any questions at the moment,
17 Commissioners?

18 COMMISSIONER AMPOMAH: Mr. Chair, I do have a
19 question for AER, American.

20 CHAIR CHANG: Please.

21 COMMISSIONER AMPOMAH: Sir, I do have a question for
22 you. I want to know, what is your thought process or the
23 significance of compulsory pooling?

24 MR. SAMANIEGO: I'm for compulsory pooling so
25 long as it's done appropriately, properly, and within the

1 guidelines of state law. If those are not followed, I think
2 myself and the State under their own laws are all against it
3 if not done appropriately.

4 COMMISSIONER AMPOMAH: Thank you. So another
5 question for you is, as Mr. Savage presented to us, there are
6 about 700-plus owners. So I want to know, are you the only
7 party that is in dispute in this matter?

8 MR. SAMANIEGO: Here today, I suppose. If there is
9 any other individuals pursuing action, I guess we will find
10 out.

11 COMMISSIONER AMPOMAH: Thank you, Mr. Chair. No
12 further questions.

13 CHAIR CHANG: Commissioner Bloom, any questions at
14 this point?

15 COMMISSIONER BLOOM: No, Mr. Chair.

16 CHAIR CHANG: Thank you. In that case, I will turn
17 to responses from the parties. I will give both parties a
18 few minutes to respond. Please keep your comments to, I
19 don't know, six minutes or so, no more, please. But I will
20 start with you, Mr. Samaniego.

21 MR. SAMANIEGO: Yes. I want to start off by, Mr.
22 Savage, the way he ended his statement, requesting the
23 Division to grant freedom when it comes to their operations
24 and the Commission or the Division does not grant freedoms
25 when it comes to protecting correlative rights. I want to go

1 forward with, that the orders that were given in these cases
2 were invalid and erroneous for the fact that American was not
3 able to present its evidence at hearing in all the cases,
4 because Mr. Savage's false claims that changed over time from
5 wellbores, to no interest, to expired wells, to NOV letters
6 to other operators, they've been all over the place. I
7 want to go forward with that because Alpha through their
8 counsel cannot pass not even the first prong of the Tenneco
9 matter involving NOV letters to plug wells, those are for
10 other previous operators. They have no relevance in this
11 matter or relevance moving forward with those claims. That
12 statement to be continuous needs to be mute and thrown out
13 from being continually used as a claim, because it's invalid,
14 we can all see that. So the fact that Alpha through counsel
15 cannot pass the first prong of the Tenneco test; therefore,
16 Alpha's claims are irrelevant and should be considered moot,
17 because they don't have standing or merit against American,
18 who is a prudent operator and passes the Tenneco standards of
19 the four-prong test for the emergency stay to be granted.
20 Thank you.

21 CHAIR CHANG: Thank you. Mr. Savage.

22 MR. SAVAGE: I'll just make one comment. I don't
23 understand how AER was not able to present evidence at
24 hearing because of something I said. He had ample
25 opportunity to present his case. So that's all I would say.

1 MR. SAMANIEGO: Well, through the Commission and the
2 Division they take evidence and statements to make a
3 determination. Mr. Savage, when you present false claims and
4 present evidence that over time changes and the stories are
5 inconsistent, okay, it creates burden on all parties and what
6 it created was the Division to act in such an extreme
7 manner because of the claims that you presented. So it made
8 the Division act erroneous. The Division acts upon evidence
9 being presented and you willfully presented misleading
10 evidence, Mr. Savage, and your landman and Alpha. So again,
11 Commission and Division, I ask for the Division and
12 Commission to move forward with the emergency stay to protect
13 correlative rights.

14 CHAIR CHANG: Thank you. We hear you now and your
15 comments are captured on the record. Any further questions
16 for any of the parties, Commissioners?

17 COMMISSIONER BLOOM: Mr. Chair, if you'd indulge me,
18 a question for Mr. Samaniego.

19 CHAIR CHANG: Please.

20 COMMISSIONER BLOOM: Mr. Samaniego, Mr. Savage says
21 that there would be nothing precluding you from having an
22 overlapping unit here. What's your response to that?

23 MR. SAMANIEGO: I think moving forward on that
24 statement would be premature because rights have been
25 infringed and trespassed and overlapped upon.

1 COMMISSIONER BLOOM: And, Mr. Samaniego, you were
2 noticed as a party to this compulsory pooling, correct?

3 MR. SAMANIEGO: I was not. I was not. What I do
4 is, I spend a lot of my days, whenever I have the little free
5 time, I spend it going through OCD records and agendas
6 and hearings. And the fact that I came across this after
7 permits were already put out there in the field. And as an
8 operator, attempted to enter an appearance and was denied
9 because of false claims of Savage.

10 COMMISSIONER BLOOM: Thank you, Mr. Samaniego.
11 Mr. Savage, would you like to address that? That was my next
12 question, was to you actually. Was notification made to
13 Mr. Samaniego and American Energy?

14 MR. SAVAGE: Yes.

15 MR. SAMANIEGO: No, there wasn't.

16 (Court Reporter-cannot see speakers)

17 CHAIR CHANG: I'll ask anybody who's speaking while
18 the exhibit is up to identify themselves as they speak.
19 We're turning to Mr. Savage now.

20 MR. SAVAGE: Commissioner Bloom, a pooling
21 applicant, when they do an application, they must notify each
22 owner of interest in the mineral estate proposed for pooling,
23 as evidenced by the record, and that's under 19.15.4.12
24 A(1)(a), that's the criteria and the requirement. So Alpha
25 satisfied this notice requirement by number one, running

1 title in good faith to identify the current owners of the
2 subject lands.

3 Two, providing the Division an ownership exhibit
4 reflecting good faith presentation of ownership, all the
5 owners, that was 700-plus. Alpha has invested millions of
6 dollars by hiring title companies to run title on this. And
7 then finally, mailing notice letters to mineral owners in
8 compliance with 19.15.4.12.

9 Now, Alpha's good faith title does not show that AER
10 is an owner in the subject lands. So the Division mailed
11 their notice letters. AER did not receive it because they
12 were not entitled to it under the rules, and the Division
13 found that notice was satisfied.

14 Now, what Mr. Samaniego is referring to is, that he
15 claims that he had a right to notice because he was an
16 operator of the Sauik well. Let me put that in context.
17 These pooling hearings were initially initiated in 2024 under
18 case 24944, that's when Alpha first started sending out
19 notice and started initiating these cases.

20 Now, at that time Wildcat Energy, LLC was the
21 designated operator of this Sauik unit Even though that's the
22 case and even though AER did not have ownership, AER became
23 aware of the pooling cases, became aware of that case, and
24 made an entry of appearance. They made an entry of
25 appearance and they made their position known.

1 Now, AER did not file their C145 change of ownership
2 until two-and-a-half months later, January 7th, 2025. So
3 they were not even the designated operator entitled to notice
4 a until long after they've already started making their
5 appearances in these cases. It was clear to Alpha that this
6 notice issue, and it has nothing to do with who gets notice
7 for pooling, because they have an ownership of record,
8 because AER does not have ownership of record, according to a
9 good faith review of the title. But this other rule,
10 19.15.16.15(B)(9) provides for notice to operators regarding
11 -- in order to adjudicate overlapping units.

12 Now, we see that rule as being satisfied, because
13 AER did make an appearance, they stated their position, their
14 arguments were fully adjudicated, and in the end the Division
15 issued an order in which they approved overlapping units as
16 not violating correlative rights. So we do not see an issue
17 there and we do not see where AER was denied notice or was
18 denied due process.

19 CHAIR CHANG: I understand you have some objections,
20 Mr. Samaniego, but let me, if I could real quick. I believe
21 what I'm hearing from both parties is that Mr. Savage
22 concedes that nothing was specifically mailed to AER.
23 However, your position is that they were not entitled to it,
24 because again this goes back to underlying dispute over chain
25 of title.

1 MR. SAMANIEGO: I want to say that Alpha's claim of
2 multiple millions of dollars to title and that should be the
3 standing to allow them to move forward, it's irrelevant who
4 spent millions and billions of dollars, it's irrelevant to
5 the matter.

6 CHAIR CHANG: I understand --

7 MR. SAMANIEGO: So to use that as who spent more
8 money as a defense, that's irrelevant.

9 CHAIR CHANG: Fair.

10 MR. SAMANIEGO: Go ahead.

11 CHAIR CHANG: I said, "fair." We hear you on that
12 point, but I think we also hear that -- to the scope of
13 Commissioner Bloom's question though, whether or not notice
14 was provided to AER. I'm hearing both of you say that notice
15 was not provided. The dispute is over on whether or not
16 notice was required. right?

17 MR. SAMANIEGO: Alpha's claim to millions of dollars
18 on the title search, I've sent evidence where Alpha purchased
19 all of its interests from Uplift. Uplift Energy went out
20 there and got top leases on a lot of American leases, went
21 and got top leases. And in the evidence it shows that Uplift
22 assigned those interests to Alpha with no warranty to title.
23 No warranty to title. And for Savage to make claim that
24 notice was done because they did the title search, they don't
25 even know what they bought. They didn't know that that title

1 came with no warranty to title, which any prudent operator
2 would not acquire interests with no warranty. So in multiple
3 stages they presented their claims with bad faith and
4 misleading evidence.

5 CHAIR CHANG: Thank you, Mr. Samaniego. I think
6 we're getting a little bit afield from Commissioner Bloom's
7 question, so I just want to go back to Commissioner Bloom.
8 Commissioner Bloom, has your question been answered and/or do
9 you have any follow up to that?

10 COMMISSIONER BLOOM: Yes and no, Mr. Chair. Thank
11 you.

12 CHAIR CHANG: I think at this point, the Commission
13 -- or I'm ready, as Chair, to take the matters under
14 advisement, make no decisions today, because I don't think
15 we're ready to make any decisions today, but I will invite
16 Commissioners to weigh in. Are you ready to take the matter
17 under advisement and to reserve our decision or would you
18 like to hear any more argument or ask any more questions,
19 Commissioners?

20 COMMISSIONER BLOOM: Mr. Chair, I agree with your
21 thoughts on how we proceed.

22 COMMISSIONER AMPOMAH: Mr. Chair, I also agree to
23 that.

24 CHAIR CHANG: Well, in that case, thank you all very
25 much for the spirited debate and discussions today. I think

1 just for recordkeeping clarity purposes, may I recommend that
2 we set this matter back for a status conference at our
3 December meeting, just so that it doesn't fall off the back
4 burner, but that I don't know that we're ready to commit to
5 anything more than a status conference and a status update at
6 December at the moment, but that Commissioners will have a
7 chance to review all of the submissions and to think through
8 the arguments made today at the moment. Does that sound
9 acceptable to the Commissioners?

10 COMMISSIONER BLOOM: Mr. Chair, yes. And if you're
11 looking for a motion, I would move that.

12 CHAIR CHANG: Is there a second?

13 COMMISSIONER AMPOMAH: I second.

14 CHAIR CHANG: Sounds like we've got a plan without
15 objection. So moved and so approved. Mr. Samaniego, just
16 for those of you on the platform just to clarify, we aren't
17 ready to make any decisions on anything related to this case
18 today, but we are going to take everything that you have
19 presented and all of the arguments today under advisement and
20 we're going to think about it carefully. And to make sure
21 that this case doesn't fall off the back burner, we have
22 placed this matter on the December 17th meeting. At the
23 moment we're going to set it for a status conference. If
24 there's anything that changes or if we're ready to proceed
25 beyond that further or other motions or whatnot, we will make

1 sure that we let everybody know before the December 17th
2 meeting.

3 With that, I think we are ready to recess until the
4 case for the afternoon. I don't think we need a motion to
5 recess, so I will just declare, unless -- without objection,
6 I will declare that the Commission is now in recess until
7 1:30 p.m.

8 (Recess at 11:22 a.m. to 1:32 p.m.)

9 CHAIR CHANG: It is just a few minutes past 1:30, so
10 we will return from our recess for today's meeting of the New
11 Mexico Oil Conservation Commission. Just for formality sake,
12 could Commission Clerk please call the roll again.

13 COMMISSIONER CLERK: Yes. This is a roll call of
14 our afternoon session. Commissioner Ampomah.

15 COMMISSIONER AMPOMAH: Present.

16 COMMISSIONER CLERK: Commissioner Chair Chang.

17 CHAIR CHANG: Present.

18 COMMISSIONER CLERK: Commissioner Baylen Lamkin.

19 COMMISSIONER LAMKIN: Present.

20 COMMISSIONER CLERK: We have our quorum.

21 CHAIR CHANG: Thank you very much. Turning to the
22 next item on our Agenda, we have arguments in the
23 Goodnight/Empire rehearing on the two issues that the
24 Commission granted limited rehearing on.

25 Commission Counsel, is there any matter

1 preliminarily that I need to handle before we invite the
2 movement to start arguments? In that case, Mr. Rankin, are
3 you ready to proceed?

4 MR. RANKIN: Good morning, Mr. Chair. Thank you
5 very much. I appreciate the opportunity. With us today in
6 the audience we have some company representatives from the
7 Board and the Company. From left to right, we have Mr.
8 Charles Marsh, who's a board member. Mr. Robert Ruby,
9 who's a co-founder of the company. Mr. Lane Skinner, who's
10 VP of operations. Mr. Matt Osborne, who's president and
11 chief operating officer, and then to his side here is Mr.
12 Drew Winston, who's also a board member, and then Mr. Grant
13 Adams as well. We appreciate the opportunity.

14 CHAIR CHANG: Thank you.

15 MR. RANKIN: May I proceed.

16 CHAIR CHANG: Please.

17 MR. RANKIN: Thank you, Mr. Chair. Madam Court
18 Reporter, my name is Adam Rankin and I'm representing
19 Goodnight Midstream in this case.

20 MR. WEHMEYER: Corey Wehmeyer of Santoyo and
21 Wehmeyer, P.C. I'm joined by Sharon Shaheen. We're here on
22 behalf of Empire and we're ready to proceed.

23 MR. MOANDER: Chris Moander on behalf of the New
24 Mexico Oil Conservation Division.

25 MR. BECK: Matt Beck on behalf of Rice Operating

1 Company and Permian Line Service, LLC.

2 CHAIR CHANG: Is anybody present for Pilot?

3 MR. SUAZO: Yes. Good afternoon. Miguel Suazo with
4 Beatty and Wozniak appearing today on behalf of Pilot Water.

5 CHAIR CHANG: Thank you. Is there anybody else we
6 anticipate speaking up during this hearing? I don't believe
7 so. If anybody else does pipe up, I will do my best to pause
8 and provide identification for our court reporter.

9 Is there any other preliminary housekeeping items
10 that the Commission should take up before we proceed to oral
11 arguments? Hearing none, I invite Mr. Rankin to open on
12 behalf of Goodnight. I have 20 minutes on Direct and five
13 minutes reserved for Rebuttal.

14 MR. RANKIN: That's my plan, Mr. Chair. And if I
15 may approach, I have a hard copy of the presentation I can
16 share with parties. I'm going to share my screen as I walk
17 through my presentation.

18 Mr. Chair, Commissioners, may it please the
19 Commission. The Commission directed the parties to submit
20 briefing on two narrow legal issues and instructed them not
21 to re-litigate any facts or factual findings found by the
22 Commission.

23 First, can the Commission suspend Goodnight's
24 injection given that there's insufficient evidence that the
25 alleged ROZ is recoverable?

1 Second, does the Division have discretion in
2 implementing the Commission's order? In summary, as
3 to both issues, the Commission's finding of insufficient
4 evidence of recoverability precludes shutting in Goodnight's
5 injection, that means the original order should be amended,
6 because there's no finding of current waste or impairment of
7 correlative rights, there's no finding of production in
8 paying quantities as to the ROZ, and there's no lack of
9 confinement as to the injection, within the injection zone
10 conducted by Goodnight.

11 Alternatively, the Commission did delegate and has
12 authority to do so, to delegate its authority to the Division
13 to implement the original order. What does that mean as to
14 the first legal issue presented? The answer is no. The
15 Commission does not have authority to suspend Goodnight's
16 injection without first finding based on substantial evidence
17 and reliable evidence that the claimed ROZ is both
18 economically and physically recoverable.

19 Why not? The Commission's powers are not unlimited.
20 It's a creature of statute created by a statute and limited
21 to the authorities and powers specifically delegated to it by
22 the legislature. While it has broad authority and power to
23 do what may be reasonably necessary to carry out the purposes
24 of the Oil and Gas Act, even if not specified, the purposes
25 of the Act are to prevent waste and protect correlative

1 rights.

2 The Commission's decisions and orders pursuant to
3 that authority are necessarily constrained by the limits of
4 its power. They must be based on substantial evidence and
5 they cannot be arbitrary or capricious.

6 The Commission's powers and authorities are
7 therefore anchored to the prevention of waste and protection
8 of correlative rights, which is the basis of its power as
9 recognized by the Supreme Court. From this delegation of
10 power the Commission has three legal bases to prevent waste
11 and protect correlative rights.

12 First, they have a general power, as I've discussed,
13 to prevent waste or protect correlative rights as reasonably
14 necessary under the Act. They have the specific power to
15 prevent the drowning by water of any stratum or part capable
16 of producing oil or gas in paying quantities. And then they
17 have specific power by regulation where injection fluids have
18 exhibited a failure to be confined within the injection zone.

19 These legal bases apply in every circumstance where
20 there's a claim of waste or impairment or harm resulting from
21 Goodnight's disposal. Whether you're talking about a
22 potential ROZ in the Grayburg or the San Andres or potential
23 communication from the Goodnight's injection zone into the
24 overlying producing Grayburg interval, these three legal
25 bases are broadly applicable across all of Empire's claims,

1 but every one of them requires a threshold finding that the
2 alleged ROZ is both physically and economically recoverable
3 or the Commission's duties to prevent waste and protect
4 correlative rights are not implicated. With no hydrocarbons
5 to recover, there's nothing to be wasted and there's no
6 correlative rights to be protected.

7 With the Commission's determination that it will not
8 revisit the fact findings underlying the Order, the facts
9 supporting the Order are now established and confirmed.
10 There was insufficient evidence to prove that the ROZ, the
11 alleged ROZ, is recoverable, let alone that it can be
12 produced in paying quantities economically or commercially.
13 Because the Commission's powers are limited, it cannot
14 suspend Goodnight's injection just because Empire says that
15 it wants to develop a potential ROZ and refuses to proceed to
16 do so while injection continues. Without proof of
17 recoverability based on substantial and reliable evidence,
18 suspension of Goodnight's injection would be arbitrary,
19 capricious and not in accordance with the law.

20 Now, up until very recently, Empire previously
21 agreed that recoverability is a prerequisite to the
22 Commission to act. It alleged in each of its applications
23 seeking to revoke Goodnight's authority that the alleged ROZ
24 hydrocarbons are recoverable. And up until the hearing in
25 this case, Empire even agreed that proof regarding economic

1 recovery would be dispositive of not only the EMSU cases at
2 issue here, but all the cases in which Empire was seeking to
3 revoke Goodnight's injection outside the EMSU as well. This
4 is not surprising because it is simply a restatement of what
5 every seasoned practitioner of oil and gas before the
6 Commission and Division will tell you the law is on waste.

7 In fact, just this month in the rulemaking pending
8 before the Commission addressing financial assurance and
9 plugging requirements, Calder Ezzell, the former 20-plus year
10 law partner to Empire's current counsel, testified before
11 this Commission on behalf of the Independent Petroleum
12 Association of New Mexico, that waste requires commercially
13 and economically recoverable oil or gas. That's also not
14 surprising because physical and economic recoverability has
15 been a requirement for proving waste throughout the
16 Commission's and Division's orders.

17 Recoverability is a part of the standard industry
18 definition of waste in the Williams and Meyers Oil and Gas
19 treatise, the oil and gas bible. Recoverability is a
20 required element of proof of waste in case law from oil and
21 gas producing jurisdictions around the country. Just a few
22 examples are shown here, but we have cited to many more in
23 our briefing.

24 Now, having established that the recoverability is
25 central to the Commission's analysis and having determined

1 that the Commission has found that has not been proven, let's
2 look at how waste is analyzed in these three legal bases that
3 govern and limit the Commission's authority.

4 First, the general power to do whatever is
5 reasonably necessary to prevent waste and protect correlative
6 rights. Looking at the definition, and the very definition
7 of waste, the basis and the measure for waste is determined
8 by what can be ultimately recovered. In other words, if no
9 waste -- if no oil or gas is recoverable, then there can be
10 no waste.

11 The Commission found that Empire failed to establish
12 that the alleged ROZ is recoverable anywhere within the EMSU,
13 including within Goodnight's disposal zone in the lower San
14 Andres. The Commission also found that by definition the
15 Residual Oil Zone as purported, contains only oil that cannot
16 be mobilized by Goodnight's injection waters. Because the
17 ROZ cannot be mobilized by water or injection of water, the
18 continued disposal cannot tend to cause a reduction in
19 ultimate recovery, even if at some later date the ROZ is
20 proven to be economically, commercially recoverable. But
21 more fundamentally, if none of the ROZ can be recovered or is
22 proven to be recoverable today, technically or economically,
23 then Goodnight's injection cannot cause waste, because it
24 does not reduce the total quantity that can be ultimately
25 recovered.

1 CHAIR CHANG: Counsel, I want to clarify there and
2 push a little harder, because the Commission's finding wasn't
3 that there was sufficient evidence to prove that this
4 formation is -- that this ROZ is not recoverable. What the
5 Commission found is, that there's no evidence one way or the
6 other. We've read your briefing that covers a lot of these
7 arguments, and the hard part for me to struggle with is, the
8 Commission's finding here is that there's not enough evidence
9 -- whether or not each party agrees with that, the
10 Commission's finding was that there's not enough evidence one
11 way or the other. And so, what do we do when there is a
12 possibility of waste, because we don't know one way or the
13 other?

14 MR. RANKIN: Sure. Understood. Our position has
15 been, and because the Commission, as the Division does, has
16 continuing jurisdiction, as and when Empire is able to come
17 forward with actual evidence that the ROZ is recoverable,
18 then they can come back to the Commission and present that
19 evidence. But until they do, they have not met their burden
20 of proof necessary to shut in our injection. They have not
21 met the standard of evidence required under the law to show
22 that there is a basis for recoverability or that there's a
23 basis to substantiate their claims of waste. And until that
24 evidence comes forward, there's no legal basis under the law
25 or the facts, for the Commission to shut in or suspend

1 Goodnight's Injection.

2 CHAIR CHANG: But is that technically possible, for
3 Empire to obtain the kind of evidence that you're looking for
4 without the opportunity to do a pilot project?

5 MR. RANKIN: We have heard from Empire's own
6 witnesses that they can go in and drill cores and take
7 additional evidence from the zone. They haven't done that.
8 They acquired the property back in 2021 with the intent to
9 pursue a potential ROZ development in the acreage, but have
10 done nothing since the time they've acquired it.

11 In the record, which is before the Commission, there
12 is plenty of evidence from Empire's own witnesses that it is
13 possible for them to go do that. They just haven't done it.
14 They've elected to this date not to go and collect that
15 information. Fundamentally here though, however, because
16 none of the ROZ has been proven to this point to be
17 recoverable, either technically or economically, Goodnight's
18 injection cannot cause waste, because it does not reduce the
19 total quantity that can be ultimately recovered, which Empire
20 has not proven to be anything greater than zero to this
21 point. That's not waste, and it does not implicate the
22 Commission's powers to prevent waste.

23 A similar result obtains under the correlative
24 rights analysis. Again, as with waste, in the definition
25 itself, is the basis and the measure of what correlative

1 rights are, and you determine it by looking at the ratio of
2 the volumes of recoverable oil or gas. So you don't need to
3 go any further than this definition to know that without
4 proof of recoverability, there can be no impairment of
5 correlative rights. The ROZ here needs to be recoverable,
6 needs to be proven to be recoverable for there to be an
7 actual injury to correlative rights.

8 Now, the definition provides further support for
9 this conclusion. Correlative rights requires that oil or gas
10 be practicably obtained. To be practicable, recovery must be
11 economical. It's not practicable to attempt to recover
12 non-economic, non-commercial quantities and the quantities
13 must be capable of being obtained; that is, they need to be
14 recoverable.

15 The bottom line is that the Commission's findings
16 that there is no current impairment in the Grayburg and no
17 recoverable ROZ in the EMSU, either the Grayburg or the San
18 Andres, are dispositive on the issue of impairment of
19 correlative rights. Until there's an actual and present
20 finding of impairment, the Commission lacks authority to
21 suspend Goodnight's injection.

22 Now, looking at the second legal basis for the
23 Commission to suspend Goodnight's injection, the power to
24 prevent drowning by water of any stratum or part capable of
25 producing in paying quantities.

1 CHAIR CHANG: I'll briefly ask another question to
2 help you see if you can maybe drill down a little bit more on
3 the specific question that I think the Commission is going to
4 have to wrestle with. On this slide, for example, you've got
5 the word prevent twice, right? Prevent usually means in
6 anticipation. I mean, plain definition of the word prevent
7 means to prevent something that has the possibility of
8 happening, right? To prevent a fire by complying with the
9 fire code.

10 So here's where we're struggling with, if it hasn't
11 been proven that one way or the other, whether or not this
12 ROZ either is or is not recoverable, it doesn't sound to me,
13 at least from my reading of the Commission's prior order,
14 that we foreclosed recoverability, and therefore, if there is
15 the possibility of recovery, but we just don't have enough
16 evidence one way or the other, which is whether parties agree
17 or not, the finding of the Commission in its previous order,
18 what do I do? I mean, doesn't the word prevent here, and --
19 and I think in an earlier slide we looked at the word capable
20 in the statute, aren't those sort of probabilistic words that
21 ask us to take protective measures to protect merely the
22 possibility that this ROZ could be productive.

23 MR. RANKIN: Sure. Understood, Commissioner Chang.
24 And I understand the concern of the Division, where its
25 ultimate obligation, the primary obligation and duty of the

1 of the Commission is to prevent waste, that's a serious and
2 weighty obligation. And where there's a potential where you
3 have a company who's telling you that this is a potential
4 billion-dollar prospect, it's a serious, serious allegation,
5 which requires serious consideration and facts and reliable
6 evidence. And here we have a situation where they're
7 alleging a zone that has for decades been served as a
8 disposal repository for produced water, as well as for
9 production of water.

10 Over 350 million barrels of water has been produced
11 from that zone in that same exact location where they allege
12 there's an ROZ without any production of gas or oil that's
13 been recorded. So there is a strong demonstration, just in
14 the evidence alone, that there is no hydrocarbons in that
15 zone that are capable of being produced, number one.

16 The concern here is that anybody can go along and
17 say, "hey, this formation has a potential for hydrocarbons,
18 but I'm not going to go out and do anything about it, and I
19 haven't done anything about it for the last five or six
20 years, and I may not do it anytime soon. So I'm going to
21 require everybody that has usefully -- beneficially making
22 use of this zone to stop doing so."

23 Even though I presented no evidence after a
24 three-week hearing of any possibility of recoverability and
25 the Commission has found that there's no recoverability, so

1 the issue here again comes down to what is required during a
2 hearing, which is proof, and meeting the burden of proof.

3 So, of course, I believe that the Commission retains
4 continuing jurisdiction. They have an obligation, an ongoing
5 obligation to ensure whenever there's an opportunity or
6 possibility of a zone that may be productive, of always being
7 able to step in and protect those interests.

8 For example, whenever a saltwater disposal well is
9 authorized for disposal of produced water, the Division
10 always requires that, no matter what the evidence was at the
11 hearing, and no matter how firm it was that there was no
12 hydrocarbons in that zone, they always require the operator
13 when they drill that well to take swabs to check for
14 potential oil production in that zone and to report any
15 possibility of oil to the Division, because the Division
16 retains ongoing continuing jurisdiction to ensure that no
17 zone will be watered out by disposal of produced water.

18 Nevertheless, the basis here and the reason that the
19 Commission should have comfort is because after a three-week
20 hearing, there's been no proof of recoverability and the
21 Commission has determined that in this zone that has been
22 targeted for disposal, there's no proof of recoverability.
23 Based on this next legal basis, you'll see again, that while
24 it is anticipatory, nevertheless, it is required to show that
25 such zones are capable of producing oil or gas in paying

1 quantities and is definitely a forward-looking analysis. And
2 to date, Empire has not made that showing, as the Division
3 has found, okay, and as the definition under this provision
4 requires, a stratum must be capable of producing oil or gas
5 in paying quantities, but Empire has failed to prove either
6 with respect to the ROZ claims.

7 And again, Empire must show that the formation is
8 capable of recovery, that the oil and gas is capable of being
9 recovered from that zone and again, they have failed to make
10 that showing. Under this standard, under this legal basis,
11 recoverability is still a threshold issue that has not been
12 established.

13 And now the third basis, which regards the
14 regulatory provision where injection fluids have exhibited a
15 failure to be confined. Here again is the specific language.
16 The Commission or Division are authorized to shut in or
17 constrain or curtail injection from disposal wells only where
18 the wells have exhibited a failure to combine the injection
19 fluids within the authorized injection zone. Without these
20 findings -- and in this instance, as determined by the
21 findings of the Commission, Empire has not established that
22 there are hydrocarbons in the alleged ROZ that are
23 recoverable, that there's an exhibited failure to confine
24 currently injection fluids within the disposal zone, or that
25 there's any current impairment of correlative rights in

1 either the Grayburg or in the San Andres, because there is no
2 proven recoverable hydrocarbons in the San Andres. Without
3 these findings, the Commission has no legal authority or
4 basis to shut in Goodnight's injection.

5 Now, even if these findings are made and exist, the
6 Commission is not required to shut in injection. The
7 regulations only give the Commission discretion about whether
8 to require a shut in or not. The regulation uses the term
9 may. But without these findings, the Commission has no legal
10 or factual basis to require injection to be shut in. In
11 other words, the regulation -- whether to shut in is
12 discretionary, but the Commission has no valid legal basis to
13 shut in injection without making these critical findings,
14 which the Commission did not do.

15 CHAIR CHANG: Why is the finding of the existence of
16 the ROZ itself insufficient, because the Commission did find
17 that there was a ROZ.

18 MR. RANKIN: I agree that the Commission did find
19 that there was a ROZ. I would push back and say, that either
20 under Empire's definition of a ROZ or ours, there's been no
21 determination that actually meets that definition. We
22 disagree that there's a ROZ in the disposal zone. We don't
23 think it meets the criteria that Empire's own experts have
24 identified, which is that it must be above 20% oil
25 saturation.

1 CHAIR CHANG: But the Commission's findings of fact
2 need to stand for this hearing. Even if you want to reserve
3 your objections on that point, given the Commission's
4 finding, why is a ROZ, the mere existence of a ROZ
5 insufficient?

6 MR. RANKIN: There's oil in many places. The
7 question is whether or not it can be recovered. If it's not
8 recoverable, then it's not waste. By definition, waste has
9 to be -- sorry, waste requires proof that the oil can be
10 recovered and it can be recovered in an economic way. The
11 Commissions and Divisions precedence on these matters is rife
12 with circumstances where, unless and until hydrocarbons can
13 be shown to be recoverable and in economic quantities, then
14 there's no waste. So here, again, because there's been no
15 finding and there's been actually an affirmative finding that
16 the ROZ is not proven to be recoverable, there's no basis to
17 shut in.

18 Now, Empire, again, has the ability to go out and
19 collect the data and if they believe truly that it's
20 available and they can do it, then they can come back to the
21 Commission at any time with sufficient data to show that the
22 ROZ is actually recoverable in economic quantities. Until
23 they do so, they have not met their burden, again, under the
24 legal standards, and there's no basis to shut us in. So even
25 if these findings -- I'll move on to the next point here.

1 Now, rather than analyze these legal issues as presented by
2 the Commission, as directed, Empire has instead undertaken
3 the effort to substantially re-litigate the factual findings
4 contrary to the Commission's order and direction. Empire
5 argues repeatedly that the ROZ is recoverable contrary to the
6 findings in the Commission's order and contrary to the
7 evidentiary record. Commission's findings specifically --
8 and here are two examples.

9 The Commission found that Empire -- rather, Empire
10 argued that it has proven at the hearing that hydrocarbons
11 from the ROZ are economically recoverable and they argued
12 that the ROZ is sufficiently oil saturated to be recovered
13 through CO2 flooding. But when you go through and see the
14 findings, these were all rejected by the Commission. The
15 Commission --

16 CHAIR CHANG: Your time is about up, so I will
17 invite you to just wrap up with your highlight reel.

18 MR. RANKIN: Sure. So for all these reasons, the
19 Commission's final decision on whether or not suspension
20 should be approved, we believe is incorrect. There's not
21 sufficient evidence -- having found that there is not
22 sufficient evidence for recoverability, the basis for
23 suspension is not justified.

24 As to the Commission's authority to delegate to the
25 Division the ability to implement the order, we believe of

1 course the Division has authority -- has coterminous,
2 concurrent authority with the Division under the Oil and Gas
3 Act and there are no limitations in the order that would
4 restrict delegation or implementation by the Division. So
5 there's no basis to say that somehow the Division's authority
6 is restricted in its implementation. We think that the order
7 is clear, in our view, that the suspension is only required
8 as and when injection occurs within the disposal zone.

9 With that, I understand my time is up. I appreciate
10 the opportunity.

11 CHAIR CHANG: Thank you very much. I know the
12 Commissioners are maybe less eager to interrupt than I am.
13 So I will give the Commissioners a chance to ask a couple of
14 brief questions if they would like at this point or
15 Commissioners are also welcome to reserve. No questions at
16 this point?

17 COMMISSIONER LAMKIN: I'll reserve my questions.

18 COMMISSIONER AMPOMAH: I'm hesitant to ask, but I
19 just want to ask one. So on slide number 26, you're saying
20 that Empire proved at the hearing that hydrocarbons from the
21 ROZ are economically recoverable, that is the rehearing
22 brief. And then the second one, ROZ in the EMSU sufficiently
23 oil saturated to be recoverable through CO2 flooding. Now,
24 you're saying these are speculative assertions. Can you talk
25 a little bit more about that, because I disagree, actually.

1 So if you can explain that.

2 MR. RANKIN: Sure. So these are claims that Empire
3 has made in its post-hearing briefing. Obviously we spent
4 nearly three weeks arduously arguing over whether this is the
5 case or not. At the end of the day, the Commission's
6 findings in the Order were, that the ROZ has been proven not
7 to be recoverable in either the San Andres or the Grayburg,
8 to date. There's a potential for recoverability,
9 potentially. But as of right now, they have not met their
10 burden to show that it is recoverable. We're living in a
11 world where, unfortunately, you know, we have deadlines and
12 we have time frames and they did not meet their burden at the
13 hearing. The clock has run. The game is up.

14 Now, the Commission always has continuing
15 jurisdiction. And as we said at the close of the hearing,
16 Empire at any time, because it's a leasehold owner, its
17 operator of unit, can always come back and say, look, we've
18 got new technology. We've been able to get new additional
19 information that was not available to us at the time of the
20 hearing and we can show now that this is now potentially
21 recoverable and economically so. But until they have until,
22 until they do so, and they haven't yet, there's no basis
23 under the Division's -- rather Commission's ruling and Order,
24 to hold that they have made that showing.

25 COMMISSIONER AMPOMAH: I'll reserve my further

1 questions for now.

2 CHAIR CHANG: Thank you. Fair enough. Empire.

3 MR. WEHMEYER: Thank you. May I approach with a
4 handout?

5 CHAIR CHANG: Yes, that's fine.

6 MR. WEHMEYER: Madam court reporter, Corey Wehmeyer
7 for Empire. And on behalf of Empire, on behalf of William
8 West and Mr. Lanning, we thank you all for this opportunity
9 to address you on this incredibly important issue. We have
10 the PowerPoint presentation.

11 Chairman Chang, I really appreciate the questions
12 that you directed to Mr. Rankin. I think we'll just actually
13 go a little bit different direction. We've been accused of
14 running from the findings that are contained in the
15 Commission's thoughtful Order, and it's exactly contrary to
16 that. We run precisely to those findings, because all of
17 those findings lead to the same result, which is that the new
18 applications were correctly denied to prevent waste.

19 The application to inject even more saltwater in the
20 Dawson was denied to prevent waste. And the suspension,
21 immediate present tense suspension for the four existing
22 SWBDs was ordered to the ends of preventing waste. Now, that
23 also respects Empire's vested rights within the EMSU under
24 the Statutory Unitization Act, as those are memorialized in
25 the order from 1984 that this Commission has repeatedly

1 rejected Goodnight's efforts to set aside. So the theme here
2 that comes across has always been Empire running to the
3 language in the statute, taking the statute exactly as it
4 exists, living precisely within its rights that were vested
5 in that 1984 Unitization Order, and embracing science
6 and engineering to get to the right result.

7 On the other side of that coin, you have the part of
8 Goodnight who has repeatedly run from this 13-page order and
9 the findings that are contained in it. They've stomped their
10 feet. They've fussed. They don't like it, because the Order
11 in its entire 13 pages all comes down to the theme of this
12 Commission's statutory obligation entrusted pursuant to the
13 Constitution of the State of New Mexico to prevent waste.

14 Now, the position that Goodnight urges here is a
15 dangerous one. They would have this Commission kneecap both
16 it and OCD's jurisdiction by writing in this economic
17 recoverability standard, into statutes that the New Mexico
18 legislature did not see fit to include. Instead of going
19 through this PowerPoint, just to meet your questions head on,
20 I want to go to the actual findings that after 18 days of
21 testimony and 1.3 gigabytes, or whatever it was of
22 information -- let's go to the actual order.

23 So at page 1, if we go up to the top, the position
24 that Rice and Permian and Goodnight urge here is that all
25 this Commission gets to do and all OCD gets to do is to

1 address waste after it's already happened and to completely
2 throw out the window the prevention of waste, which is what's
3 actually in the statute in the first place. So as we look at
4 these Gooden, Hernandez, Hodges and Seaver wells, the
5 Commission was acting correctly to deny those because you
6 were within your statutory jurisdiction of preventing waste
7 of the hydrocarbons that are both in the San Andres and the
8 Grayburg, full stop, period.

9 As we look at the Dawson, if you adopt this position
10 that is wrongly urged by Goodnight and Rice and Permian,
11 looking at the Dawson, you couldn't have done that. They
12 would say you have to prove economic viability and economic
13 recoverability full stop period with direct evidence or
14 you've messed up on the Dawson. And the Commission was
15 acting exactly precisely within its jurisdictional mandate
16 from the Legislature when it denied the additional injection
17 in the Dawson, as well as on the Piazza.

18 The OCD found that it needed to prevent waste by
19 denying the new Piazza application. This is not
20 controversial. Of course this Commission, just as OCD says
21 in its papers, there is no reason on this record to handicap
22 your own jurisdiction to become the Commission and Division
23 that merely steps in after the waste of this State's natural
24 resources already occurred as opposed to preventing it before
25 it happens.

1 In all of this briefing that you've read, they do
2 not have one single case that says, prevention of waste
3 equals mandatory proof of economic recoverability, not one
4 case, even stepping outside of the State of New Mexico to try
5 to get to that result.

6 CHAIR CHANG: So let me ask a question, because it
7 seems -- again, the hard part that we struggle with up here,
8 I think, is that both positions leads us potentially to a
9 fairly extreme outcome. There's got to be a way for us to
10 draw the line somewhere between whether or not you agree with
11 that characterization, mere bold speculation on the one hand
12 that invites chaos to just anybody claiming they have a right
13 with no evidentiary basis, right, or limited evidentiary
14 basis. And on the other hand, certainly it seems like
15 requiring a proof of actual recoverability also goes too far
16 on the other end. How do we as a Commission draw a line that
17 doesn't invite chaos in either direction?

18 MR. WEHMEYER: And I appreciate that question and I
19 think the answer is your 13-page order. You all sat through
20 18 days of patient testimony. You were more patient with me
21 as counsel than you should have been, I own that and
22 acknowledge that. You were more patient with our witnesses.
23 But after all of that work, I read your 13-page Order of
24 trying to capture exactly what you just alluded to.

25 Now, if Empire got to write this thing itself, its

1 EMSU would have been permanently protected. It wouldn't have
2 had a three-year lease on the suspension and it would have
3 had certainty in terms of how it could develop its EMSU ROZ
4 project going forward. We understand that you all made that
5 decision, that was within your jurisdiction to make the
6 decision based on the extensive evidence. And I think your
7 13-page order hits precisely the balance that you just
8 alluded to.

9 If in three years we're not back to you with
10 evidence that is satisfactory to the Commission, then at
11 that point the suspension, not permanent revocation, can
12 resume. And that's what the order says. The order actually
13 says, we're to be back in three years with additional
14 evidence to report to you. What do we find in core? What
15 have we found in admissibility studies? So I guess to your
16 question, the 13-page Order couldn't have done that more
17 perfectly. It's not what Empire would love. Of course, our
18 rehearing was denied, I understand that and we respect that,
19 but it's where we're at.

20 Again, since we've been accused of running from this
21 verbiage, we run straight to the findings that this
22 Commission thoughtfully made. And if we can just scroll
23 down, at 2A on page 5 of 13. In our opinion, this should be
24 the end of it. Based on the 1984 Commission order, and
25 Goodnight has challenged this thing over and over, they don't

1 like what happened nearly or 40 years ago, but under that
2 order, Empire -- it paid millions of dollars to XTO, the
3 exclusive right to produce the ROZ in the EMSU, full stop,
4 period.

5 There's three separate bases for denying this
6 rehearing that's been asked for. One of them is under the
7 Statutory Unitization Act. As I talk about this being a
8 dangerous approach that's urged over here, not to the ends of
9 any good policy for the Commission or the District, it's just
10 a position urged to further the economic ends of companies in
11 Fort Worth, Texas and Dallas, Texas, that's why they're
12 advocating it. It's not out of any concern for the State's
13 natural resources or policy here. They would say, "we can
14 blow open all the units," and they will cite this order. If
15 this order gets changed, they will cite the order as evidence
16 that you can put SWBDs into somebody's producing unit, that's
17 been established under the Statutory Unionization Act.
18 That's dangerous. It's unnecessary. It's out of step with
19 the statute. The Commission has that exactly right, as it
20 writes about it here.

21 CHAIR CHANG: Let me drill down a little bit more,
22 because people use our orders as precedent whether we like it
23 or not. So how do I draw the line? What standard of proof
24 do we need to draw here or do we need to clarify so that we
25 don't have merely bald assertions and without any sort of

1 proof, because we could be opening the door to all sorts of
2 chaos if anybody could make a bare allegation and shut down
3 other people's -- at least what they perceive to be validly
4 obtained permits.

5 MR. WEHMEYER: Dr. Ampomah has this exactly right.
6 I think it's offensive to this Commission after all the
7 thoughtful work it did and the careful attention it paid to
8 the proceeding, to call this a bald assertion. And as you
9 return to the actual verbiage, there are no bald assertions
10 in here.

11 Let's just take the actual findings that the
12 Commission has already made, and to do that, we'll go to
13 Paragraph B and we'll start at 28. So again, we talked about
14 ROZ. Steve Melzer talked about what is a ROZ. ROZes 20
15 percent or more consistent oil saturations. The oil is
16 there. And the idea that this is a bald assertion that
17 there's oil there, with the finding of a ROZ you get with
18 that the cookbook and you get with that Mr. Melzer's
19 description of exactly what that is.

20 And if you recall back to Mr. McBeth's calculations
21 and the calculations done by Mr. Davidson and Mr. Knights,
22 Dr. Davidson and Mr. Knights, under their work, there is vast
23 volumes of oil there. Nobody can question that there's vast
24 volumes of oil in the San Andres that are going to be forever
25 locked in. They try to couch this as, well, it's just an

1 economic question. But you can look at Mr. McBeth, Mr.
2 Knights, Dr. Davidson, and it is monstrous volumes of oil
3 that are in the San Andres, even believing them. Obviously
4 our volumes are different. But you can take them at their
5 word, there's oil. And it's not only Empire's oil, it's the
6 State of New Mexico's oil, it's the United States' oil.
7 That's not bald assertions. That's straight out of their
8 experts mouth.

9 But as we continue on, at paragraph 30, one slide
10 showed pictures with core samples. So this is hard, direct
11 data, came straight out of the earth. We actually brought in
12 the core so you could smell it, you could touch it. And
13 those saturations were between 19 percent and 38 percent.
14 Right here in the San Andres that Goodnight is destroying to
15 further the economic ends of companies in Dallas and Fort
16 Worth, that's not speculation, Chairman Chang, that's direct
17 evidence that you can't argue with.

18 Continuing this running to the language of the
19 Commission's order, let's go to paragraph 36. This is not
20 taking my word for it. This is not bald assertions. The
21 Commission found that Goodnight's own witnesses, Dr.
22 Davidson, Mr. Knights, Dr. Lake and Mr. Tomastik agreed that
23 a ROZ exists, and the Commission cited back to that. So when
24 Counsel suggests, there's no ROZ here and we never agreed
25 there's a ROZ, the Commission expressly found in it

1 fact-finding that their own experts conceded this fact. This
2 is based off of core. It's based off of petrophysics. It's
3 based off of geologic models, off of engineering models.

4 At 37 this should be -- and as we talked about, this
5 isn't the exact order we would have loved if we would have
6 gotten the chance to write it ourself. But here at 37, this
7 is dispositive. Dr. Davidson, this is Goodnight's witness,
8 confirmed that oil saturation exists throughout the San
9 Andres stating, quote, there's some up to 30 to 40 percent in
10 there. They show up periodically up and down the system.
11 So, yes, there's oil down in there. 30 to 40 percent, and
12 it's been said that there's never been a drop of oil
13 produced, the evidence is actually completely counter to
14 that. There was seven barrels of movable oil. So this is
15 past ROZ. There were seven barrels of oil that swabbed up.
16 This is in the record. It's uncontested. It's in the
17 records. For that oil to move, you've got to be at high
18 saturations. No speculation, the oil is there, and
19 this Commission has already found it's there and has noted
20 that -- out of their own expert's mouth, that these
21 saturation -- 30 to 40 percent.

22 CHAIR CHANG: There's no debate for me on that
23 point. So I will, just as I pushed Mr. Rankin to maybe
24 wrestle with some of the findings that are more difficult for
25 him. How do you wrestle with the fact that the Commission

1 found that whatever ROZ we determined to exist or the
2 Commission previously had determined to exist, hasn't been
3 demonstrated to be recoverable. How do we get to exercise
4 our authorities to prevent waste when we haven't made a
5 finding that there is a recoverable resource? I mean, if
6 it's not recoverable, without the finding that it can be
7 recovered, there also isn't a finding, I guess, that there is
8 anything to waste, isn't there? Like, how do you respond to
9 that point from Mr. Rankin?

10 MR. WEHMEYER: The statute doesn't say that. What
11 the statute speaks to is prevention of waste, if we're back
12 to the Oil and Gas Act. It doesn't speak in terms of
13 recoverability, and they don't have a Supreme Court case or
14 any other case that speaks to this arbitrary recoverability.
15 And they've cherrypicked -- and they showed two of them in
16 there.

17 Empire's had fight after fight on this concept of
18 economic recoverability and that that's not in the statute.
19 That's nothing that we've ever conceded or agreed to. But it
20 gets easier. I'll hit these little points here and then I'm
21 going to get to the easy button on all of this. Again, I
22 come back to what the Commission's charge here is, is
23 prevention of waste, not after it's already occurred. If the
24 rule and if the law in New Mexico is as Mr. Rankin and
25 Goodnight urges, there would be zero exploration. It would

1 be a situation that unless you can bring -- until you bring
2 and prove recoverability, you can inject waste anywhere you
3 want in this State into anybody's minerals, into anybody's
4 unit. That is not what the legislature charged this
5 Commission with. It was to step in, based on the totality of
6 the evidence, and assess, is this a situation where waste
7 needs to be prevented.

8 And what the Commission did, in what I say is the
9 middle ground here with its 13-page Order, they said, we're
10 not permanently revoking the permits, we're not permanently
11 revoking them. What we are doing is allowing a three-year
12 window to determine this recoverability issue to bring back
13 the evidence, which is consistent with our ownership of the
14 EMSU and the exclusive rights that go with it.

15 Now, if this injection is not suspended under the
16 Commission's own findings here, the ROZ and Empire's rights
17 are completely and forever condemned. At Paragraph 40,
18 the Commission found that the Goodnight six applications must
19 be denied, because the injection of hundreds of thousands of
20 barrels a day conflicts with Empire's exclusive rights to
21 extract oil in the EMSU in order to perform a successful CO2
22 flood EOR project.

23 The injection of CO2 and water must be monitored
24 closely and adjustments made based on design. Goodnight's
25 SWD wells cannot dispose of water when Empire's active CO2

1 flood is being performed without adversely effecting
2 economics. So without changing any fact findings, we know
3 that these two things, injection and development of an EOR or
4 even execution of a pilot cannot co-exist. We don't have to
5 have new fact finding. We don't run from the fact finding.
6 It's right here in black and white.

7 But coming back to just the easy button on this,
8 here's the easy button, 3A. So they hide from the regulation
9 and rulemaking that says, if the water can escape the zone or
10 is escaping the zone, we don't even have to play the
11 recoverability, economic recoverability game that they try to
12 play, rewriting the statute and creating cases that don't say
13 that. This is the easy button and we're done, because the
14 regulation is perfectly clear. If it's not confined to the
15 zone, the injection must stop. And that's been briefed to
16 death.

17 But here's the fact finding that went with it. We
18 know that the Grayburg is economically recoverable, because
19 right at this moment the Grayburg is being economically
20 recovered as part of secondary operations. We know that. We
21 know the Grayburg is above the San Andres, which is where
22 they're injecting the saltwater. And without changing any
23 fact findings whatsoever, at Paragraph 47 this Commission has
24 found -- this is an established fact, Empire's witness, Dr.
25 Buchwalter, built a model and the model shows to a reasonable

1 degree that water is moving from the San Andres into the
2 Grayburg. This could lead to communication between the
3 Grayburg and San Andres. So with nothing but the regulation
4 on the requirement that this be confined to the injection
5 interval, here San Andres, and this finding that we have
6 shown as a matter of proof here to a reasonable degree, that
7 water is moving from San Andres to Grayburg, we're finished.
8 And that is absolutely consistent with this Commission's
9 charge to prevent waste; that is, don't let the waste in the
10 Grayburg happen in the future, to suspend end it right now
11 while we collect additional data.

12 But again, the easy button here, we don't have to
13 make a sweeping -- you don't have to write this crazy
14 economic recoverability into the statute that the legislature
15 didn't put there. Paragraph 47 all by itself, consistent
16 with the regulation on confining to the zone is there.

17 Additionally, the Commission is going to remember,
18 Goodnight never testified to you that this was never about
19 seeing where the science and the engineering went. It was
20 all about trying to get back to the result of their economic
21 ends. They didn't map any continuous barrier that would
22 confine the liquids to the injection zone. They told you
23 that they saw their role as merely throwing rocks at what
24 Empire did.

25 With the last two minutes I have here, I wanted to

1 address question two.

2 CHAIR CHANG: Please.

3 MR. WEHMEYER: If that pleases the Commission. So
4 question two was, what does OCD get to do here? When the
5 order says suspends, present tense, what nobody has cited is
6 any prior case or any case law or any Division action or any
7 Commission action in which a permit was full stop suspended,
8 but that some waste was allowed to continue, some injection
9 was allowed to continue. Suspend present tense means
10 suspend.

11 CHAIR CHANG: Could we scroll down to that
12 paragraph. Because, Counsel, doesn't that paragraph also
13 say, in order to provide an opportunity -- let's see, I'm not
14 sure exactly which paragraph it was anymore. But I believe
15 it also says in the order that the suspension is in order to
16 provide Empire with an opportunity to established CO2 EOR
17 project, doesn't it?

18 MR. WEHMEYER: That's exactly correct. And this
19 dovetails with the finding in Paragraph 40 that the
20 Commission made, that the two cannot coexist in terms of
21 measuring the pressures, in terms of monitoring the water.
22 And we haven't even talked about the chemical incompatibility
23 of the different waters and the water compatibility aspects
24 of all this, but it needs to stop. We only have three years.
25 Mr. Wheeler's testimony was cited as part of the three-year

1 piece as saying, that's an amount of time. In terms of how
2 and when that goes forward, of course we agree OCD has to
3 permit the process, has to review the process. We did not
4 take this order as carte blanche to go out and just start
5 drilling holes in the ground without OCD's oversight and
6 input. But as a practical matter, three years in the
7 confines here will be difficult enough without having
8 continued injection into the -- there was tons of testimony
9 about the increasing pressure.

10 Goodnight's not going to disagree that the pressure
11 is increasing. It's been seen in the tests they filed back
12 with the Commission. If it's stopped for three years, Empire
13 can get this done, and we're going to come back and show the
14 Commission that this is a wonderful success case, a wonderful
15 ROZ success example for the State of New Mexico, its
16 minerals, its people, the BLM, and for Empire shareholders.

17 CHAIR CHANG: Now, I don't happen to know off the
18 top of my head whether or not, you know, where you are in
19 your processing in a permitting process, but for the sake of
20 argument let's say that you still have permitting to do. How
21 do we wrestle with the words 'in order to'? Doesn't those
22 three words 'in order to' provide OCD with a capacity to
23 tailor the suspension to only the scope as necessary for a
24 CO2 injection? And of course it wouldn't be necessary until
25 -- or do you dispute that suspension wouldn't be necessary

1 until you have a project ready to actually conduct with all
2 the permits in place and all the drilling done?

3 MR. WEHMEYER: Absolutely. So suspends is present
4 tense. All of the testimony is that it has to stop the
5 injection before we can go forward. The harm is absolutely
6 occurring. I'm not fussing with the Commission's finding,
7 but this is moving to the place that Humpty Dumpty can't be
8 put back together again in terms of these volume. Pressure's
9 rising. The volumes are there. The water incompatibility is
10 there. It says suspends, present tense. This is all to the
11 ends of allowing us to go forward with the pilot. So I think
12 that the position that we've urged is absolutely consistent.

13 OCD's frontline position in the briefing that it's
14 done is that this should be implemented over 30 to 90 days,
15 the suspension, that was the frontline position followed by,
16 in the alternative we would get into this, try to figure out
17 how the two of them work together. These parties are not
18 going to work together. I mean, we certainly can agree on
19 one thing in here, Goodnight will do everything it can to
20 make sure that this is the most miserable failure for Empire
21 that it possibly can. They want this to be a trash disposal
22 site, there's no two ways about this.

23 CHAIR CHANG: I'll ask you to avoid the personal --
24 I'm sure you guys can find a way to get along, at least
25 inside this hearing room. Your time is about up. In fact,

1 I'd like to turn to -- or I'll give you briefly, if you want,
2 just one minute to sum up your sort of highlight reel and
3 then I'll turn to the Commissioners for any additional
4 questions.

5 MR. WEHMEYER: Absolutely. I guess to sum up on
6 just that last piece. In our briefing we identified what
7 would be reasonable benchmarks in terms of implementation of
8 the pilot, but again this is all against the backdrop of,
9 right now the water injection by the Commission's findings is
10 not being confined to the injection zone. To not immediately
11 suspend based on the finding that it's not being confined to
12 the injection zone, threatens the Grayburg and it does not
13 honor the Commission's duty to prevent future waste in the
14 Grayburg when we know, based on the finding here, it's not
15 being confined. Of course, if there's any questions, I'd be
16 very happy to...

17 CHAIR CHANG: Commissioners, I'll open the floor for
18 any questions.

19 COMMISSIONER AMPOMAH: Thank you, Mr. Chair. I do
20 have a question. Let's take it this way, the sentiments of
21 the public. So on that question normally I want to move out
22 from the scientific world to come to more or less like a real
23 case, real world scenario. Let's say, based on the
24 information that Goodnight submitted to the Commission, it's
25 more like the injection is supporting about 30,000 barrels of

1 oil production. So from public point of view, they are
2 really interested in their 30,000 barrels of oil. Now, how
3 do we square that where, let's say, Empire is probably going
4 to take about two years to more or less go in there and
5 actually start the pilot project itself. We are canceling
6 permits to suspend or let's say even we don't know the
7 uncertainties associated with the 30, 000 barrels of oil
8 tied to the injection; whereas, you spend about two years
9 doing -- you know, still preparing and not doing the actual
10 pilot. So could there not be a situation where, because of
11 the public, 30,000 barrels a day, there could be a way that
12 OCD can structure when to suspend all the injection, you
13 know, to make sure that we do see actual CO2 project, you
14 know, and then we do see a suspension, because they cannot
15 co-exist, like you said.

16 MR. WEHMEYER: Well, thank you. And I appreciate
17 the confirmation that they can't co-exist, because as we read
18 this, there's just -- and also our witnesses testified,
19 there's no way these can co-exist. What I would say first,
20 is the idea of balancing public interest, that's not in the
21 statutory charge that the Legislature has given you in terms
22 of this operator out -- these operators outside the unit are
23 going to make more money, and so we should hurt Empire inside
24 the unit.

25 First, I would say, there's not a statutory basis

1 for this weighing exercise in terms of the three separate
2 statutory bases that we brief out. The second piece is that
3 the actual evidence that was adduced didn't find that if this
4 injection is shut in, it would affect any other operator, and
5 that's also not in the Commission's fact finding, the idea
6 that if these wells are shut in, something bad happens
7 somewhere else. Third, again, we have pre-existing secondary
8 production in the Grayburg right now, and the Commission's
9 made the finding, it's not being confined to the injection
10 zone.

11 I think the public, as we -- and I understand you're
12 referring to the operating public with that question. The
13 public being the citizens on the street would be outraged to
14 learn that the Commission allowed a situation where there's
15 not a confinement of fluids to the injection zone. So I
16 think that public needs to be considered here as well, in
17 addition to their rights. But again, three years is not a
18 long time in terms of getting going on the project and
19 executing it.

20 Again, these pressures are rising -- I mean, this is
21 just a basic matter of engineering, that the pressures will
22 rise with every barrel. And, Commissioner Ampomah, I would
23 come back to the findings earlier in here that you noted, the
24 Commission noted, injecting these tens of thousands or
25 hundreds of thousands of barrels every single day is not only

1 inconsistent with Empire's pre-existing invested rights, it's
2 also going to leave this ROZ into a place that as a matter of
3 economics and feasibility just cannot be developed, if it
4 continues.

5 COMMISSIONER AMPOMAH: So is it your assertion that
6 there's no way that both parties can really discuss about the
7 suspension timeline? There's no way.

8 MR. WEHMEYER: OCD's weighed in on the suspension
9 timeline. We've now weighed in on the timeline, and
10 Goodnight has weighed in on the timeline. Again, I read
11 OCD's frontline position as being, this is a 30- to 90-days
12 or in the alternative. We've said we can live with 30 days.
13 But the idea that you can go forward while it's happening, I
14 don't think that's feasible at all.

15 And one, they didn't have any testimony at the
16 underlying hearing that could suggest in a technical way that
17 could happen. Second, what you heard from Mr. Birkhead in
18 his testimony was that they literally put these SWDs on the
19 best rock. So when you look at the structure and you look at
20 where the SWDs that we're fussing about are located, they are
21 smack dab where the pilot would likely be executed, and that
22 testimony is in the record.

23 Had this been way up on the northwest -- if the SWDs
24 were some way up on the northwest, maybe this is something we
25 can talk about. They stuck it right on the best structure,

1 right on the best rock, right exactly where the pilot would
2 be executed.

3 CHAIR CHANG: Any further questions, maybe from
4 Commissioner Lamkin or would you like to reserve your
5 questions? Any further questions at this point?

6 COMMISSIONER LAMKIN: No questions from Commissioner
7 Lamkin.

8 CHAIR CHANG: Thank you. Thank you very much.
9 Next up will be OCD; however, for the convenience of the
10 Chair, I propose a brief break. If we could please return at
11 2:45, that would be very much appreciated. Thank you.

12 (Recess at 2:34 p.m. to 2:45 p.m.)

13 CHAIR CHANG: So everybody being present and
14 accounted for, we resume the proceedings and I invite OCD to
15 present their arguments. Just for my timekeeping, Counsel,
16 how much time would you like to reserve for rebuttal?

17 MR. MOANDER: Mr. Chair, why don't we say seven
18 minutes, if that's okay.

19 CHAIR CHANG: That's just fine. All right, I will
20 -- that makes the math more difficult than I want it to be,
21 but fine. I will start your time. Go ahead.

22 MR. MOANDER: Mr. Chair, Commissioners, thank you
23 for the opportunity to provide a little oral argument today.
24 Stepping back, I wanted to reframe -- or frame up again OCD's
25 involvement in these various cases. It originally started

1 out as an issue of OCD seeking to protect sources of
2 underground drinking water, per the Safe Drinking Water Act,
3 and OCD had one plan that was put into play -- or intended to
4 be put into place.

5 We obviously withdrew from the case, but then had
6 the pleasure of re-entry. And the simple reason for that is,
7 OCD had some concerns about order 24004. Those two concerns
8 simplified, but will be addressed a little further down the
9 road here, were the issue of suspension and OCD has provided
10 quite a bit of information on how OCD traditionally
11 approaches suspensions, that it's rather rare to have an
12 immediate suspension. Shut-ins are one thing, but
13 suspensions are quite another.

14 And then the other aspect being the order from OCD's
15 perspective, which will also be addressed a bit further in
16 this discussion about how to supervise Empire's proposed EOR
17 project. Turning to the actual key points here is, the OCC,
18 from OCD's perspective, has authority to suspend permits. To
19 be unequivocally clear here, OCD has not taken a position on
20 the topic of recoverability or paying quantities and won't
21 address that today any more than it's addressed it in the
22 past. OCD sees that as a dispute between two operators and
23 their burdens of proof and quantum's of evidence.

24 Turning first to Goodnight and Rice. As noted, OCD
25 doesn't have a position on the recoverability and paying

1 quantities issue, but both parties agree that the OCD does
2 have broad and deep authority, that ultimately the OCC can,
3 in fact, suspend permits and can, in fact, permit EOR pilot
4 projects to proceed. So OCD doesn't have any particular
5 quibble with either of those parties on the topics presented.

6 Now, Empire is a slightly different story. There's
7 been a lot of shifting positions, interesting innovative
8 theories here. Up until these issues were presented, the two
9 questions before the OCD, or the OCC, Empire hadn't had any
10 real comments on authority, but through various pleadings,
11 Empire states it doesn't object to OCD authority to regulate
12 suspensions or the EOR projects.

13 Now, they've got specific complaints about the
14 suspensions, which will be discussed here briefly. Heading
15 to the pleadings directly and then I'll address commentary
16 argued today. Regarding the EOR project, Empire's argued
17 that OCD's plan is premature, that's a direct quote. That
18 OCD's plan to regulate this project is way too ahead of the
19 game. OCD disagrees rather vehemently about that position.
20 Empire and their counsel have stood before this Commission
21 and insisted they are ready to go. They are prepared.

22 Now, what their excuse will be here is, but not
23 until Goodnight suspends its injection. That's a curious
24 position, given that Empire hasn't communicated, to the best
25 of counsel's knowledge, with the OCD about any of these

1 intentions. And OCD would take that as an indication, Empire
2 never had any intention of following OCD's regulations.
3 Rather, they were going to wave around a carte blanche in the
4 form of, the OC said we have three years to do whatever we
5 feel we need to do. That's, quite frankly, absurd, given
6 what the promises that are being made for the good people of
7 New Mexico.

8 And before I proceed any further, just as a point of
9 order and of the record, OCD is going to move the Commission
10 to take judicial notice that Empire's corporate headquarters
11 are in Tulsa, Oklahoma as reflected on Empire Petroleum
12 Corp.com as of today, and would like that just, at the very
13 minimum, noted in the record. Especially given all the
14 criticisms of those Dallas and Houston oil and gas companies.
15 In New Mexico it is pretty open season on us from --

16 CHAIR CHANG: We're not going to weigh in on whether
17 Tulsa is any nicer than Dallas.

18 MR. MOANDER: And that's, Mr. Chair, suffice to say,
19 that all parties in this case aren't exactly local yokels.
20 Now, turning back to what OCD originally proposed for the EOR
21 project. Empire again has claimed it's ready to proceed and
22 then now essentially is contending it absolutely can't. It's
23 ready to proceed was an evidentiary issue and now it's
24 contention that it isn't, is starting to turn into just mere
25 argument.

1 What OCD has proposed is -- and the term actually --
2 I'll find it here. OCD's brief that was filed on October
3 31st, the opening brief as ordered by the Commission, OCD
4 specifically says it's an EOR project and that the project
5 itself, this is all part of it, and OCD absolutely
6 contemplated that this was not the EOR procedure in and of
7 itself, but that this is a continuum of things that's going
8 to need to be addressed.

9 OCD's main concern here, and the reason why OCD is
10 seeking guardrails as to Empire is because the OCD is aware
11 of a habit of parking properties rights, et cetera, and
12 sitting on them until the last minute for economic tactical
13 purposes. There's no evidence that's necessarily happening
14 here, but OCD does tend to be proactive about that and ferret
15 it out when it thinks it's going on, and there's a potential
16 for that here.

17 Something else though is, Empire's really pushed
18 this immediate suspension thing and that's a reflection that
19 Empire doesn't care one, about the safety and the process of
20 suspension. They don't care whatsoever. They just want it
21 shut down now, which is a problem from OCD's perspective,
22 because part of what it does is it does actually look out to
23 make sure these processes are done in a way that's safe for
24 operators. Now, that's all curious because again, we had the
25 swearing up and down that they're ready to go, but they

1 resist OCD's proposal, which is fairly straightforward and
2 holds them to account. And secondly, Empire misstates its
3 position today. It had no intention of complying with the
4 old regs, and that's proven by the lack of filings,
5 communication, notification.

6 Now, briefly touching one more time on Goodnight.
7 What OCD has proposed is in the alternative option, that
8 there be 30-, 60-, 90-day benchmarks for the wind down, which
9 OCD does think is appropriate, that's what it usually does
10 when it suspends things to ensure the well has been
11 mechanically shut down in a proper fashion and there's been
12 no undue risk to employees and other operators. But
13 additionally, OCD is not going to weigh in on whether it's an
14 either/or issue between injection of produced water and
15 injection of CO2.

16 But if the Commission were to find it appropriate
17 and conclude that Empire is, in fact, not ready to proceed
18 with the EOR pilot project, then it would make sense to have
19 a tiered situation. And while the parties may not get along,
20 and that's something that the OCD has not been involved in,
21 notification -- OCD certainly would simplify that equation as
22 the regulator and at that point what would amount to a third
23 party neutral that would be enforcing its own regulations.

24 CHAIR CHANG: So let me push on that just a little
25 bit more and seek some clarification. It seems like from the

1 filings, everybody says in some version that OCD possesses
2 broad, regulatory powers. Everybody says that in some form
3 or fashion, whether or not they feel the need to, then add
4 some qualifications. OCD, as I understand it, re-entered to
5 seek guidance or clarification on what the Commission
6 intended with suspension, present tense as we've been urged.
7 So the same question that I asked earlier about the words 'in
8 order to.' Doesn't the words 'in order to' provide Empire
9 with the opportunity to conduct a pilot project? Doesn't
10 that provide some guidance to OCD? I understand that OCD has
11 laid out some of its, you know, typical -- well,
12 unfortunately, as OCD laid out, there's nothing particularly
13 typical about this particular case. So I guess, isn't the
14 fact that the Commission ordered the suspension in order to
15 provide the pilot project sufficient guidance for OCD's
16 technical staff experts, who would be sort of in the best
17 position on determining how to organize an orderly
18 suspension, to the extent necessary and therefore in order to
19 facilitate a pilot project?

20 MR. MOANDER: Mr. Chair, in a broad sense, yes, but
21 there's a comma and a but. The way OCD's suspension program
22 -- the way it operates with suspensions is in a pretty
23 narrowly tailored regulatory environment. And this case
24 arguably lacks about everything you'd see in that case.
25 Absent the fact there's been a full hearing, a full

1 opportunity for parties to present evidence, OCD didn't avail
2 itself of that, which I'd be foolish not to acknowledge. We
3 could have been involved in that, we chose not to be. But
4 because of that, we wanted more clarity on what the OCC
5 actually wants this done in terms of sequence. Because if we
6 take our enforcement protocols, then we would be looking at a
7 30-, 60-, 90-day process, which will clearly upset Empire and
8 probably cause us to revisit this stuff all over again in
9 some way, shape or form, barring an appeal perhaps. But
10 that's why OCD wants at least some -- I don't want to call it
11 like surety or anything, but it wants clarification on what's
12 the intention here. Is this a strict, okay, these permits
13 are suspended and here's the -- OCD proceed along your
14 traditional process or is it, OCD you need to proceed along
15 as a suspension followed by an abbreviated process, so we
16 understand exactly how the OCC wants us to go about that.

17 CHAIR CHANG: But given again, that all parties
18 agree that OCD has broad discretion here, why shouldn't the
19 Commission simply leave this to the technical expertise of
20 the Division to figure out what is the most appropriate under
21 the circumstances?

22 MR. MOANDER: The OCC is absolutely free to do so
23 and the OCD would of course comply. But again, OCD is being
24 cautious here given the rather aggressive nature of this
25 litigation and the parties and making sure that it is doing

1 all that it can to properly observe the intentions of the
2 OCC. And so with that, I'll stand for any additional
3 questions. Otherwise, I'll pass the microphone.

4 CHAIR CHANG: Any questions from Commissioners?

5 COMMISSIONER AMPOMAH: Yes, I do. A quick question
6 for you. Based on your submission, it sounds like you
7 believe there has to be some direct benchmarks attached to
8 the CO2 project, just leave it for three years. Can you
9 comment on that?

10 MR. MOANDER: Yes, Commissioner Ampomah. So the
11 concern here is, that Empire has now received a three-year
12 window to establish its EOR pilot project. There were no
13 other constraints placed upon Empire. There were no
14 limitations, deadlines, or even expectations, other than the
15 sole issue of a return date in three years, to theoretically
16 prove up that this EOR operation has a future. The issue
17 with that is, that leaves a lot of things unaddressed and
18 that starts, first of all, with a review of what this project
19 even looks like. From OCD's perspective, there was a variety
20 of evidence put in during the course of the hearing, but that
21 is not necessarily how OCD is going to look at these
22 applications. That tends to be a discussion process where
23 the application, or at least an initial submittal saying,
24 "here's what we're intending to do, we'd like to discuss it
25 with you." Flush out problems that OCD may identify, which

1 -- and this is not in any way a judgment on the OCC, but
2 that's a level of critique and analysis that isn't likely to
3 be rendered in these hearings and that's where OCD's
4 expertise comes into play. And then after that point in
5 time, there needs to be some pushing of this project to
6 ensure it's actually completed, because the other side of
7 this is, when we talk about waste, is that if Empire fumbles
8 this and we -- let's just say three years later Empire comes
9 back and says, "oops, we did fumble this," then there's a
10 lingering question of whether waste actually occurred during
11 that period, because parties that wish to inject have not
12 been allowed to do so. And so OCD foresees that -- to use a
13 legal term of art, the parade of horrors that can come from
14 some of these things where there's a sequela, a series of
15 first, second, third, fourth order facts of a particular
16 legal determination that may not be factored in. And this is
17 OCD's attempt to try to forestall that, prevent it, frankly,
18 and to make sure that Empire's held accountable for the
19 grandiose promises that were made to the people of New Mexico
20 and this Commission. They were big promises. And let's see
21 if that's true, and we'll encourage and help and make sure
22 that process proceeds.

23 CHAIR CHANG: Any further questions? It doesn't
24 sound like Commissioner Ampomah has any further questions.
25 What about Commissioner Lamkin, any questions or would you

1 like to reserve at this time?

2 COMMISSIONER LAMKIN: Yeah, I'll reserve my
3 questions. Thank you.

4 CHAIR CHANG: Thank you. Appreciate it. Well,
5 thank you very much. In that case, we will turn to arguments
6 from Pilot. I'm sorry, from Rice, I believe.

7 MR. BECK: It's all right with me if Pilot goes
8 first, but I'll go. Madam court reporter, this is Matt Beck
9 for Rice and Permian. Chair, you asked in a question, which
10 I think is very important, which is whether the possibility
11 of recovery at some point is sufficient to suspend
12 Goodnight's injection wells. I think on that question,
13 Counsel for Empire says that Rice and Goodnight are asking
14 the Commission to set a dangerous precedent here, one that
15 would, quote, kneecap the jurisdiction of the Commission.
16 And that's not at all the case from Rice's standpoint.

17 What Rice has pointed out is that that
18 jurisdictional limit is provided in the Oil and Gas Act.
19 It's provided in the statute that creates the Commission and
20 it's recognized by the Supreme Court in the Continental Oil
21 case and Simms against Mitchum. And so in the context of a
22 court case, it is almost every single time that when a Court
23 enters a judgment, the parties ask for rehearing, retrial,
24 reconsideration of that judgment to inform the Court why they
25 believe the Court may have erred, to prevent it from

1 coming back down from appeal, and this process is very much
2 like that. It's a rehearing from the Commission, asking what
3 was wrong with our order and what happened? What did we do?
4 And the Commission limited that inquiry to two narrow legal
5 issues.

6 Now, as I said at the beginning, your question
7 whether the possibility of recovery is sufficient is the most
8 important one, because it is not. The Commission is limited
9 to prohibiting waste, and we've talked a lot and we've heard
10 a lot about what waste is, but I think the most important is
11 for the Commission to look at what the statute says.

12 Now, obviously here we're concerned with underground
13 waste. We're not concerned with the first part of that,
14 which is the inefficient excessive or proper use or
15 dissipation of the reservoir energy, but we're concerned with
16 the second part, which is the locating, spacing, drilling,
17 equipping, operating or producing of any well or wells in a
18 manner to reduce or tend to reduce the total quantity of
19 crude petroleum oil or natural gas ultimately recovered from
20 any pool and the use of inefficient underground storage of
21 natural gas.

22 Now, if that said instead, that reduces or tends to
23 reduce the total quantity of crude petroleum oil or
24 natural gas possibly recovered, that would be critical, but
25 it doesn't. It says, "ultimately," which is why, as Rice

1 pointed out, the fundamental problem with the Commission
2 exercising its jurisdiction to suspend a permit after its
3 finding, is error. It does not have jurisdiction to exercise
4 that with the word ultimately recovered there.

5 CHAIR CHANG: Thank you, Counsel. I'm going to jump
6 in here, because all parties cite this particular definition
7 and it seems like you all simply highlight or emphasize
8 different parts of this definition, and this is why we wanted
9 to make sure, or at least I pushed for us to have this
10 hearing partly because -- to explore exactly the disagreement
11 here, so that we can build a sufficient record, because I
12 have no doubt that some Court is going to have to review our
13 homework here. But if you look at the word here, as you've
14 pulled up, isn't the word 'tend' a probabilistic word there,
15 tend to reduce, not proven to reduce, but tend to reduce.

16 MR. BECK: Sure, and there are multiple ways in
17 which it could tend to reduce the ultimate hydrocarbons
18 recovered.

19 CHAIR CHANG: Isn't that enough then to define
20 waste, isn't -- and not beyond the word tend to, you also
21 looked at the word ultimate recovery, isn't that right?
22 Yeah, ultimately. I mean, that doesn't mean proven to have
23 been recovered today, right? Isn't that also a future
24 predictive sort of word?

25 MR. BECK: It is, completely. And that's why you

1 have to have evidence that the hydrocarbons are recoverable,
2 which was not presented in this hearing and it could be at
3 some point in the future, right? If you look at Empire's
4 response brief, the part --

5 CHAIR CHANG: I would find the arguments that Rice
6 and Goodnight makes much easier to follow had the Commission
7 gone as far as to find that there was sufficient evidence to
8 prove that the reserve is not recoverable, but that's not
9 what, in fact, we found. So I'm left again with, we don't
10 know either way. The Commission did not, in fact, find that
11 it's not recoverable. So what do I do now with a, there's no
12 evidence either way.

13 MR. BECK: There has to be evidence. You cannot say
14 that the absence of evidence proves ultimate recovery, that
15 is not the definition of proof, which is a preponderance of
16 the evidence, which is 50 percent or more. And this goes
17 back to the very beginning in this hearing process when we
18 delineated who has the burden of proof to prove what. And so
19 you cannot say, because there is equal evidence on both sides
20 or we didn't make a finding, that we have jurisdiction.
21 That's exactly what the Supreme Court has said in these two
22 cases, Simms and Continental Oil, is that you have to have --
23 they reversed in Continental Oil and found invalid and void
24 two Commission orders that quote, lacked the basic findings
25 necessary, to and upon which jurisdiction depended. That's

1 Paragraph 20 of that case. There has to be a finding. You
2 cannot say that the lack of a finding makes a possibility.

3 And this gets into the second point you pointed out
4 which, is the ROZ sufficient. We found an ROZ. Is that
5 sufficient? And it is not. It is not sufficient, because
6 there are no cores that show that it may be recovered. We
7 don't know the amounts, but more importantly we don't know if
8 it's physically recoverable. So, as I said, when you go to
9 Empire's brief on rehearing, the first point there is that
10 the ROZ is recoverable, arguing with the facts. If you look
11 at the footnote in their brief, it points to -- and sorry, I
12 don't have this on my computer or I would show it to you, but
13 if you look at the footnote -- I can't read the number. It
14 looks like footnote three on page three of their brief. They
15 cite the transcript hearing saying, "that even Goodnight's
16 witnesses agree with them."

17 Well, if you go to the actual transcript of Mr.
18 McBeth and Mr. Wehmeyer, he asks, "look at the oil and place
19 volumes, you didn't calculate under 20 percent. You don't
20 know one way or the other whether that would be recoverable."
21 Mr. McBeth, "I don't know, no." Mr. Wehmeyer, "if it was
22 excluded, you would agree that some of that oil in the EOR is
23 actually going to be recovered here, wouldn't it?" Mr.
24 McBeth, "what oil are we talking about?" Question, "Oil that
25 would be between 0 and 20 percent, but some of those volumes

1 would be recovered." Answer, "depends on if you could
2 efficiently and effectively contact it with CO2." He says,
3 "there are no miscibility studies that show that." I don't
4 know what a miscibility study is, but I assume it would show
5 whether you could contact it with CO2, which gets into the
6 OCD's point about where we stand in this, that there is no
7 application. Where would we find the answer whether the oil
8 in the ROZ is recoverable? I assume we would find it in the
9 application for a pilot project, because if we take a step
10 back here, this whole case is based on the idea that water
11 injected by Goodnight is not confined to the injection layer,
12 right? And if water is not confined, how is CO2 confined? I
13 expect we would find that answer in their application for a
14 pilot project. How they intend to confine CO2 and move oil
15 that by definition is not movable by oil. But we don't have
16 that information. It's very possible that when they look at
17 this project, they will actually say, "you know what, there
18 is a confining layer down there." We're not going to try to
19 get out the oil and the ROZ from below the confining layer in
20 the San Andres. We found that that existed. And in that
21 case, just as was pointed out a moment ago, now we've come to
22 waste, because we've suspended Goodnight's injection
23 prematurely because those hydrocarbons cannot be recovered,
24 which circles back to the definition that there must be a
25 finding of recoverable hydrocarbons for the Commission to

1 exercise its jurisdiction. And that may happen at any point.
2 It could happen a year from now. It could happen three years
3 from now. It could happen ten years from now. It can happen
4 when there is evidence in the Supreme Court's language
5 sufficient to make that jurisdictional finding.

6 CHAIR CHANG: If we adopted that view though,
7 setting aside the legal authority's question for a second,
8 wouldn't there be policy implications there to limit or
9 discourage or chill the potential of exploration? Because it
10 seems like if the argument is that it needs to have been
11 proven in order for people to do pilot projects or in order
12 for people to get out there and try to explore, wouldn't
13 there be a policy concern that taking that line would chill
14 exploration for oil and gas in the State?

15 MR. BECK: Chairman, respectfully, no. Because
16 that's the definition of waste. That's the whole way this
17 system operates and has operated since the introduction of
18 the Oil and Gas Act, is there has to be recoverable oil. And
19 so when they go and they test and they drill a well to test,
20 they're testing for that recoverable oil. And if it's not
21 there and it's not economic, then they don't do anything
22 else. That's why there are penalties, non-consent penalties
23 in pooling orders, because you might test and find a dry
24 well.

25 CHAIR CHANG: But isn't that the problem here,

1 though. Is that if we were to side with Goodnight and Rice
2 here, we would be preventing the exploration. We would be
3 preventing a pilot project from doing that exploration that
4 you just mentioned. That one would have to do exploration to
5 determine recoverability.

6 MR. BECK: Chair, I appreciate the question, and
7 the answer is no. Empire, I believe in February or March or
8 January, or whatever, applied to do, I think, three or four
9 test wells in the EMSU so that they could take core and they
10 could take sponge core and they could take the other kinds of
11 core that I wouldn't know unless I had them in front of me
12 and I still wouldn't know what that means. But they are
13 doing those tests for the purpose of coming up with evidence
14 to see whether there is oil that is recoverable in the ROZ, I
15 expect to use in their application to then go and drill the
16 pilot project.

17 And again, we circle back to the definition of an
18 ROZ here, which is that it is not mobile with water. And so
19 the water being injected right now today by Goodnight is not
20 affecting the ROZ. It has been in place for years and years
21 and it will continue to be in place. There's no evidence to
22 that. What Empire pointed to a moment ago was pressures.
23 And if you look, one thing that they left out when they're
24 running to the findings, is the finding that the Commission
25 made in its order. Under its finding in C, that there's not

1 evidence that their rights in the Grayburg are being
2 impaired.

3 In Paragraph 56, the strongest evidence for no
4 communication currently between the San Andres and
5 Grayburg is material balance, which is volumes and pressure.
6 And the limited change in pressures in the San Andres for the
7 volumes of water that were both extracted and injected,
8 quote, is just amazing, quote, in a unique situation, which
9 is showing that by not approving the new well applications,
10 the Commission exercised its duty to prevent operations that
11 tend to reduce the ultimate amount recovered. Because the
12 evidence in the hearing was all based on the -- if we go
13 back, all of the models, all of the evidence from Empire was
14 based on the approval of these wells for additional hundreds
15 of thousands of barrels of saltwater a day.

16 The Commission exercised its discretion to prevent
17 what tends to reduce the ultimate recoverability by denying
18 those applications for additional wells. And what it leaves
19 in place is, quote, a just amazing reservoir in the lower San
20 Andres that everyone agreed was basically unbounded and
21 inexplicable. And so the Commission's order is entirely
22 consistent with preventing underground waste that tends to
23 reduce the amount ultimately recovered when it denied the
24 applications for additional wells and additional drilling
25 authority. When it found that it was not proven that any oil

1 in the ROZ is recoverable, that finding under the Oil and Gas
2 Act as recognized by the Supreme Court, for lack of a better
3 word, magic words, that prevent the Commission from
4 exercising its jurisdiction to suspend the wells unless and
5 until Empire comes back and can prove that that oil in the
6 ROZ is recoverable.

7 And then turning to the second question, which I
8 agree with -- again, with what you said, Chair, I think
9 everyone's on the same page, that as you pointed out, the
10 Order does not say suspend, quote, full stop. And I'm glad
11 you caught that, because it says, "in order to provide Empire
12 with the opportunity to establish the CO2 EOR pilot project."
13 As the OCD points out, that may never come to pass. And if
14 it doesn't, then faithful execution of this Order is not to
15 suspend Goodnight's wells, because again they are not
16 upsetting any oil, is a ROZ by definition, immobile by water.
17 And so, in order to -- plain, logical language, if then. If
18 Empire comes up with a CO2 EOR project that the Division
19 approves, then the Division can suspend Goodnight's injection
20 wells to faithfully implement the Order.

21 CHAIR CHANG: Anything further, Counsel, or are you
22 ready for questions from Commissioners?

23 MR. BECK: That's it. I'm ready for questions. I
24 was trying to work in sequela, because I really like that
25 word, but I couldn't fit it in.

1 CHAIR CHANG: Fair enough. Any questions,
2 Commissioners?

3 COMMISSIONER AMPOMAH: Yes, I do. Mr. Beck, you
4 agree that once project starts, there could not be saltwater
5 injection into the same zone.

6 MR. BECK: I haven't thought a lot about that. I
7 mean, I think the Commission already found that, right? I
8 think that's in the Order. I've made it a point to follow
9 the Commission's Order, not to argue with you on that and I'm
10 not going to start now.

11 COMMISSIONER AMPOMAH: So from your point of view,
12 it sounds like you're saying that based on the Order, it is
13 tied to suspend injection to allow your project. So it's
14 more or less connected to each other. So without an approved
15 CO2 EOR pilot project order, you believe that the burden has
16 not been reached to suspend the injection.

17 MR. BECK: But Chair, Commissioner, with respect to
18 that question, taking that as itself, again I don't think the
19 Commission has jurisdiction to do that, but if it did,
20 looking at that second part of the Order, yeah, I believe the
21 Order is clear that it suspends it in order to allow the CO2
22 EOR project.

23 My understanding, until Empire has approval to do
24 that EOR pilot project, it can't move forward. Once it does,
25 if that happens, then the OCD shall implement the Order by

1 suspending Goodnight's injection wells. And I agreed with
2 the Chair and I think OCD has the expertise to do that
3 efficiently and effectively and within its statutory
4 bounds of preventing waste.

5 COMMISSIONER AMPOMAH: So it sounds to me that you
6 are in line with OCD's second suggestion with regards to the
7 containment of the suspension, not straight away 90 days, but
8 just tied to the CO2 EOR project.

9 MR. BECK: Chair, Commissioner, yes. And again, I
10 mean, if we just take a step back, it makes total sense when
11 we're looking at an ROZ.

12 COMMISSIONER AMPOMAH: Thank you.

13 CHAIR CHANG: Commissioner Lamkin, any questions for
14 this particular attorney, or party?

15 COMMISSIONER LAMKIN: Commissioner Ampomah covered
16 my questions. Thank you.

17 CHAIR CHANG: I will now turn to Mr. Suazo for
18 Pilot.

19 MR. SUAZO: Thank you, Mr. Chair. I think that Mr.
20 Rankin and Mr. Beck sufficiently captured anything that Pilot
21 intended to say in its oral argument. So I defer to their
22 arguments and positions. As you know, Pilot has a fairly
23 small interest in the EMSU, but is concerned about the
24 implications of the Commission's decision for its interest
25 inside and outside the EMSU. And so I would just reiterate

1 that we support Goodnight and Rice's concerns, as well as the
2 very valid and real concerns that were raised today by OCD.

3 CHAIR CHANG: Thank you very much. In that case,
4 unless anybody is clamoring for a break, I believe we're now
5 ready to start with rebuttals. Seeing nobody needing a
6 break, I will turn the floor over to Mr. Rankin for
7 Goodnight.

8 MR. RANKIN: Thank you, Mr. Chair. We heard a
9 little bit about a revisiting of the Commission's orders and
10 some of the findings of fact, starting with the fact that the
11 Commission found that Empire has the exclusive right in the
12 EMSU. But the exclusive right to produce, that was the
13 limitation of the unit agreement and the authority under the
14 leasehold interest that they have.

15 The Commission's Order and the EMSU Unit Agreement
16 says nothing about other operations, including the rights of
17 other parties with interests in the space to conduct their
18 operations. We know that because the Order issued by the
19 Commission granting the Water Flood Rights and the Unit
20 Agreement did nothing to prohibit the existing saltwater
21 disposal operations that were occurring then in the San
22 Andres and did nothing over the last 40 years to prevent that
23 ongoing injection from continuing.

24 We heard a little bit about also the oil saturations
25 throughout the EMSU, including in the San Andres. What we

1 didn't hear was specifically what depths, specifically what
2 zones. We heard, in fact, even that Goodnight's witnesses
3 testified that there is recoverable ROZ in the San Andres.
4 That couldn't be farther from the truth as to the disposal
5 zone. You need to understand what depths are at issue and
6 all the depths that were just referenced are all above
7 Goodnight's disposal zone.

8 When you go through the record and you see this in
9 our application for rehearing, none of the depths at which
10 there are potentially an ROZ include Goodnight's disposal.
11 We heard a little bit about complaints from Empire counsel
12 that we were focused on economic recoverability. Well, in
13 fact, actually, that's just the icing on the cake. What the
14 Commission found was that there hasn't been proof of physical
15 recoverability, that's the main point, physical
16 recoverability. We just were making the point that the
17 Commission didn't even need to get to the next element, which
18 is whether or not it's economically recoverable.

19 The question about whether or not the Order provides
20 or finds that injection into the disposal zone cannot
21 co-exist with the CO2 flood project. Just to be clear, our
22 view is that, as the Order -- there's no direct finding that
23 they cannot co-exist. What the Order found was that
24 injection into -- if a CO2 flood were to occur within the
25 same zone as disposal is occurring, it may affect the

1 economics negatively and it may affect or impact the
2 management of the CO2 flood. But what matters is whether or
3 not the CO2 flood is occurring in the same injection zone or
4 not. And only then, if injection were to occur, if CO2 flood
5 were to be targeting actually the disposal zone, then there
6 might be an issue at best under the Division's -- under the
7 Commission's order.

8 I'll just pull up on my screen -- now, as to the
9 communication issue between the two zones. The findings that
10 the Commission made, as Mr. Beck pointed out, is that
11 currently the actual, physical proof of communication is
12 non-existent. What the Commission found is that -- even
13 after 60 years, after 300 million barrels have been injected
14 into this disposal zone, there is still not an increase in
15 pressure -- marginal increase in pressure and it is a unique
16 circumstance. So what we know is based on the best physical
17 evidence, is that there has been no communication because, as
18 we know, Goodnight's injection continues to be on vacuum,
19 injecting under vacuum it's a physical impossibility for that
20 fluid to migrate upwards into the overlying zones.

21 Now, on the question of overlapping authority and
22 whether or not the -- how exactly the authority of the Order
23 would be implemented by the Division. We agree that the
24 language in the Order saying, "in order to" is very
25 important. It's critical. And what that means is, at best

1 injection from Goodnight's disposal operations should not be
2 suspended until Empire has the following in place.

3 First, it needs to attain compliance with the
4 Division's regulations and requirements, as pointed out in
5 the Division's briefings, they must comply with all Division
6 regulations. And currently, Empire is out of compliance.
7 It's got more inactive wells than authorized under the rules.
8 We've heard from Commission counsel that they are ready,
9 able, and willing to go forward, but they don't yet have
10 compliance with the Division's rules. They have more than
11 twice the number of inactive wells currently in place. They
12 need to obtain the regulatory approval from the Division for
13 a CO2 EOR pilot project, if that's even possible. As we
14 know, from the record of the hearing, there are serious
15 doubts that CO2 would be contained within the Grayburg or the
16 EMSU, making that project potentially unviable. Then we
17 would also need to implement the necessary capital
18 expenditures and facility modifications in order to
19 receive CO2 and implement their project, and they would need
20 to be prepared to immediately commence CO2. Empire fails to
21 explain why suspension is needed now to accomplish these
22 potential future necessary steps. As the Order points out,
23 suspension, at best, would be required only if and when
24 Empire is prepared to commence CO2 flood in the same zone as
25 Goodnight's disposal.

1 CHAIR CHANG: Your time is about up, so I encourage
2 you to wrap up quickly.

3 MR. RANKIN: On the question about whether or not
4 there's a potential for preventing Empire from conducting
5 this experiment, there's nothing in the record. The
6 testimony actually is, that there's nothing technical
7 preventing Empire from doing this work now, today. Nothing.
8 The only thing that's preventing them is their own management
9 has imposed on them, preventing them from going out and
10 spending additional funds, but there's nothing technical
11 that's preventing them from going out to confirm the
12 viability of their ROZ project today, and they can go do that
13 and bring that evidence to the Commission tomorrow if they
14 are able to obtain it.

15 With that, if there's any further questions, I stand
16 for questions from the Commission. Thank you.

17 CHAIR CHANG: Given that rebuttals are fairly brief,
18 if the Commissioners wouldn't mind holding -- just letting
19 everybody get through their rebuttals and then we can have
20 questions for all counsel at the end, if there are no
21 objections. In that case, I will turn to Empire.

22 MR. WEHMEYER: Thank you very much. We'll go back
23 to the Order very briefly. One thing the Commission still
24 hasn't heard after all this briefing and the argument is how,
25 in light of the Commission's factual finding under Subsection

1 3A of the Order, that we adduced substantial evidence of the
2 possibility of future impairment of correlative rights or
3 waste in the EMSU. How on earth any injection can continue
4 and should not be suspended immediately. If we go down to
5 the discussion that follows that, this all comes back to
6 fluids not being contained to any injection zone. Here
7 they've come back to playing the injection zone game. The
8 Commission recalls, they have perforations from top to
9 bottom. It's throughout our unitized interval. And in the
10 Rhino Well, the Commission even calls out in the Order the
11 proximity to the Grayburg. This cannot co-exist with the
12 idea that they continue injecting. It has been found that it
13 is not being confined to the injection zone in the citation
14 to Dr. Buchwalter's work.

15 Second, the EMSU here gives exclusive rights to
16 Empire to operate here. They purchased those rights. At
17 Paragraph 26 -- we've heard they cannot exist together. At
18 Paragraph 26, this Commission has found that Empire purchased
19 the EMSU for San Andres EOR. Full stop, period. And we own
20 those rights. And the Commission has found at Paragraph 27
21 that we have the exclusive right to decide how to best
22 extract oil. And we have the finding later that says, the
23 two of these things cannot co-exist. That alone is fatal.
24 So Paragraph 3A is fatal, out of the gate, under the
25 regulations on failed to confine. It's fatal in the sense

1 that it's found waste in the future through substantial
2 evidence to the Grayburg and lack of confinement. And it's
3 fatal in the sense here of the EMSU giving us the exclusive
4 rights.

5 Suspended, I want to talk about suspended. If you
6 look up the dictionary definition of suspend, it's different
7 than curtailed. OCD and Goodnight have spoken to curtail,
8 which is to scale back. Suspend, if you look at -- it is
9 stopped. The Commission's Order says stop, suspend and it
10 doesn't give OCD discretion to decide if in the future they
11 will suspend it. It says, "implement the Order," and the
12 Order says, "suspends," present tense, suspends, full stop.

13 Additionally, there's been zero citation of an
14 instance in which someone has a permit that has been
15 suspended, as this Commission ordered, but it's allowed to
16 put in some waste water. The OCD's argument has been so
17 strange in terms of the position. All throughout 18 days of
18 testimony, we heard questioning and time was spent with
19 witnesses, and at the end of that, OCD dropped the case
20 on a settlement that was concerned about water. And just a
21 matter of two months ago, before they dropped their case,
22 they wanted groundwater monitoring. They were so concerned
23 about what Goodnight was doing, not Empire, they were so
24 concerned about Goodnight that what they contracted for were
25 ground monitoring water wells. Have you heard anything

1 whatsoever here about ground -- what testimony came in since
2 the Settlement Agreement for groundwater monitoring wells
3 that has alleviated OCD concern?

4 Additionally, safety. Now, there is -- there is
5 zero -- I would encourage OCD to point out in this record
6 where there is one word about safety concerns anywhere in the
7 evidentiary record, let alone in the Commission's Order.
8 It's not there because there's nothing unsafe about stopping
9 putting injection water down a hole. Staging. There's zero
10 testimony about the staging that would be needed or the exact
11 parameters of an EOR project. There's none of that in the
12 record. And, in fact, here it appears OCD has prejudged this
13 without hearing anything from Empire in terms of particulars.
14 They've already been happy to put out what they think --

15 MR. RANKIN: I'm going to object to that
16 characterization. We're talking about no evidence here, and
17 that's exactly what that statement was.

18 CHAIR CHANG: Noted. Please proceed.

19 MR. WEHMEYER: Mr. Moander for OCD will be able to
20 come back in his rebuttal remarks and direct the Commission
21 to testimony here about a reasonable time frame on the
22 staging of the particular pilot program that the Commission
23 has allowed us. None of that testimony -- in fact, if you
24 look at the OCD's pleadings, as we dealt with OCD pleadings
25 and examination of witnesses, zero concern, zero testimony.

1 They brought no witnesses about staging. With respect to the
2 idea that Empire has suggested that under the Commission's
3 Order, it was allowed to go out there and start an EOR
4 project and start poking holes without going through a
5 permitting process. I would ask OCD in its rebuttal remarks
6 to direct where in the verbiage of anything we've said or
7 filed that came anywhere near the idea that we have carte
8 blanche to do what we want without going through OCD
9 procedures. Never once has Empire taken that. That's a
10 strong man argument. I don't know why OCD here on the record
11 -- you know, OCD being a regulatory body here had remarks
12 about an Oklahoma headquarters. As I just talked about,
13 bizarre. I don't know why we're hearing about Oklahoma from
14 OCD. I also don't know why we haven't heard about the
15 groundwater monitoring wells, which was what they spent all
16 the time in the case on. If Empire fumbles, waste occurs.
17 There's zero testimony that it -- let alone finding in this
18 Order, that if Empire fumbles the EOR project, waste occurs.
19 Waste is a concept of what's happening within EMSU
20 boundaries. If they're talking about there would be less oil
21 recovered outside, there is zero of that testimony anywhere
22 in this record in any shape, form or fashion. I would ask
23 them to direct the Commission where in the evidentiary record
24 it was that actual volumes of oil wouldn't be collected.
25 Physical recoverability. The testimony is uncontradicted in

1 the case. Seven barrels of oil came up out of the San Andres
2 without any water flood efforts and without any -- this is no
3 CO2, this is no water, seven barrels came up, it's there and
4 it's movable, that's in the record. In terms of injection
5 zones, they made the decision to play the zone game. And as
6 found repeatedly in the Commission's final order, they were
7 unable to identify any zone that would be confining. In
8 fact, that's exactly counter to the findings on Dr.
9 Buchwalter's work.

10 CHAIR CHANG: Your time is almost expired, so I
11 encourage you to wrap up quickly.

12 MR. WEHMEYER: I guess, to just close, being my
13 final plea here for Empire, the Commission is exactly -- the
14 injection and the EOR cannot co-exist. Empire purchased
15 these rights, as found by the Commission. It purchased them
16 to conduct the EOR. This has been found. It's in the 1984
17 Unionization Order. There is zero compelling reason here for
18 this Commission to retreat from its order that these volumes
19 are suspended, not curtailed, or to retreat from its finding
20 that we prove by substantial evidence that this ROZ, and that
21 there's a possibility of future impairment down the road.

22 There is zero -- after all of the briefing, there's
23 no case, no statute, no prior OCD action, no prior OCC action
24 to suggest that this Commission should retreat one inch from
25 the findings it's made. Thank you.

1 CHAIR CHANG: Thank you very much. OCD, your
2 rebuttal, if any.

3 MR. MOANDER: Yes. This will be short, Mr.
4 Director. It's curious that Empire's counsel wants to argue
5 the idea that there's no case where there's been a
6 suspension, but allowed more water, but can't provide a
7 counter-example, which sounds a lot like the problem the OCC
8 is currently facing and has been struggling with. But of
9 course Empire wants it to cut one way for them and not
10 necessarily for others. So that's worth noting.

11 Secondly, regarding the saltwater -- the Safe
12 Drinking Water Act, Mr. Wehmeyer is correct, except OCD
13 re-entered the case on a totally separate issue, which was an
14 unanticipated order that had language the OCD did not
15 anticipate would be forthcoming. And so, of course the OCD,
16 as a regulator is interested in sticking its nose into such
17 matters and requesting relief from the Commission.

18 Safety. This is exactly what I'm talking about.
19 Empire doesn't care about any of this, and this is something
20 OCD is obligated to be concerned about. It was raised in
21 Exhibit A to its rehearing filing, it's in there. It was
22 addressed. It's not brand new. Empire didn't avail itself
23 of a response to that.

24 And finally, discussing the issue of, you know,
25 behavior by Empire, OCD doesn't have a record, to the best of

1 counsel's knowledge, of Empire ever expressing any interest
2 in this project. It only got revealed through this
3 litigation. And I think that does reveal a mindset of the
4 company, which is they haven't conferred with OCD at all.
5 They want to ramrod this through a hearing and tried to
6 secure, apparently feeling successfully, that gave them no
7 restrictions. There was no evidence, oddly enough,
8 indicating that Empire intended to comply with OCD
9 regulations and this is why OCD is focused more on Empire
10 this round, is because we foresee greater issues with an EOR
11 pilot project than we do with suspension and that would be
12 why we would be more interested in it.

13 And so at this point, to kind of touch on a few
14 other points. OCD does not have a preference for alternative
15 options that's presented to the OCC. The OCC is in the best
16 position to make that determination at this point, from OCD's
17 perspective. If there is a third rail, which sounds like
18 Mr. Chair may have introduced that of saying, you know what,
19 OCD, go do what you need to do. OCD would be less
20 comfortable with that, admittedly, but would comply with
21 that.

22 And so with that, I will pass the microphone over to
23 Mr. Beck.

24 CHAIR CHANG: Thank you very much. Mr. Beck.

25 MR. BECK: I'll be brief. There is one thing I

1 wanted to respond to which was, that no party addressed 3A of
2 the Commission's Order. And I just wanted to make sure that
3 -- and I'm not surprised that my -- my discussion of your
4 comment, Chair, about tends to reduce the amount ultimately
5 recovered didn't just get lost on everybody. To make it
6 plain, 3 talked about grounds for partially granting,
7 partially denying Empire's applications, the applications to
8 revoke SWD wells. It talks about Empire substantial evidence
9 of the possibility of future impairment of correlative rights
10 or waste in the EMSU.

11 Now, this section talks about the Grayburg and about
12 the possibility exemplified by Dr. Buchwalter's Empire Eunice
13 Monument Study presentation, that with the additional
14 injection from these additional applications for new wells
15 and the additional authority in the Dawson well, that it is
16 very likely under his scenario that water would migrate up
17 into the Grayburg, and that in 49 Goodnight did not prepare
18 any subsurface modeling to support their argument that the
19 water influx from the San Andres to the Grayburg will not
20 occur in the future.

21 Now, no one disputes that there is oil in the
22 Grayburg that will ultimately be recovered today. What the
23 Commission found in its Order is that those additional wells
24 that they denied the applications to permit would have future
25 impairment and future waste for the oil that will be

1 ultimately recovered in the Grayburg. And so 3A is entirely
2 consistent with what the Commission did in its order in
3 denying those applications. And I didn't say it as
4 explicitly as I am now, but that, Chair, was an answer to
5 your question about, what tends to reduce means and how I was
6 trying to exemplify the Commission effectuated that with the
7 Order, is that the Commission found that presently the
8 injection isn't interfering with that. Same amounts going
9 in, same amounts coming up. 300 million barrels of oil, very
10 little pressure. And so to prevent the future impairment
11 from oil -- recovery of oil, everyone agrees will be
12 recovered, they denied the applications. And that's the
13 reduce prong, but it still requires proof of recoverability.

14 Thank you, Chair.

15 CHAIR CHANG: Thank you, Counsel. Pilot did not
16 reserve any time for rebuttal, but I presume Mr. Suazo is
17 planning to adopt and leave it alone.

18 MR. SUAZO: Yes. Nothing from Pilot. Thank you,
19 Mr. Chair.

20 CHAIR CHANG: Thank you. Thank you all, Counsel. I
21 will turn it over now to Commissioner Lamkin and Commissioner
22 Ampomah to see if there are any additional questions or if
23 we've sufficiently exhausted everyone's patience.

24 COMMISSIONER AMPOMAH: I do have a question for OCD.
25 So OCD said that if the Commission decide not to do anything,

1 it will be less painful, but they do not object to that, but
2 I have a question on that. So how is OCD going to
3 implement this Order if the Commission decide not to provide
4 any additional guidance.

5 MR. MOANDER: First of all, Dr. Ampomah, I think you
6 may have misheard me. I said it would be a lot more painful
7 for OCD. We could still do it. It's not preferred. It's
8 not desired. That's going to require us to get creative for
9 basically a matter of first impression that we've not had to
10 deal with like this before. That in and of itself certainly
11 runs a risk of some delay as we sort out how we will staff
12 this, how it will be addressed with its own unique
13 parameters, and it also depends on whatever is altered in the
14 remainder of the Order. So I can't give you a predictive
15 answer to that, but I can tell you we will address it per
16 whatever the OCC requests of us.

17 CHAIR CHANG: Thank you. So a question to Empire.
18 I want to make sure I have the correct description of the
19 document that I'm looking at. So this one will be the OCD's
20 brief, OCC's October 17, 2025 Order. And I want to read
21 something on page 15 out of 17. So OCD is saying that to
22 ensure that Empire acts with proper diligence and
23 thoroughness, OCD proposes the following performance
24 deadlines for Empire in complying with Order R-24004. Can
25 Empire respond to this?

1 MR. WEHMEYER: Yes. So again, as we talk about the
2 particular pilot project that would be executed, when OCD
3 offered this, there had been no dialogue on that. There had
4 been no technical experts weighed in on exactly what this
5 should look like or how the -- Empire, who owns the EMSU and
6 the hydrocarbons in place, what we proposed in counter was,
7 one year following shut in of the SWD wells, that is actual
8 suspension, for EMSU to submit the pilot project to the
9 Division six months following approval of EOR pilot project
10 by the Division for submittal of permits. One year to
11 implement any permits after that, that all honors the
12 Commission's Order to have this completed and to come back to
13 the Commission with data and finding for the Commission's
14 further action on the suspended permits. And so Empire, the
15 one who actually has paid millions of dollars for this, that
16 is the counter-proposal that we have. I guess this is part
17 of the concern, what you heard was -- from Mr. Rankin for
18 Goodnight here, is that -- at page 34 of the handout. You've
19 already heard Mr. Rankin say -- in their papers, in the most
20 recent brief they filed, they said, "hey, we're reserving the
21 right to come and object to anything that Empire files with
22 OCD as part of this process," and he's pointing -- he says,
23 "well, we're going to fuss that they have too many unplugged
24 wells," or whatever he was alluding to there. We know that
25 there's going to be regulatory interference here by

1 Goodnight, it's just the deal. They've told you it in the
2 papers, they told you during oral remarks today they're going
3 to do it, so that is part of why we have great concern over
4 the three years, but we're going to get it done. We know
5 there's going to be regulatory interference there through the
6 Goodnight camp, but our counter would be what's here at page
7 34.

8 COMMISSIONER AMPOMAH: Let me ask you, the level of
9 harm that Empire is going to experience if we are to tie --
10 let's say Goodnight suspension, to the execution of a CO2
11 EOR project. We all know, as Mr. Beck said, once the
12 injection is going on there, it is not really pushing away
13 your resource, that is the oil in place. It's not really
14 impacting that. So what would be the harm here?

15 MR. WEHMEYER: There's several harms. The first one
16 is just in terms of our ability to conduct the EOR project.
17 We've got to have certainty about all of the injection stops.
18 We want to be able to go in and do the science to figure out
19 where might be the ideal places to -- we don't know. Is this
20 re-entering an existing Grayburg well, is this drilling brand
21 new wells? I'm so far from any kind of a technical expert,
22 but Empire was consistent in its testimony that before
23 it can even start making those assessments, it has to be able
24 to measure pressures, water saturations to get smart on that.

25 Second piece, is again consistent with the 3A that

1 we've talked a lot about. This water is not going to be
2 confined full stop, period, and the Commission has said that
3 in citing Dr. Buchwalter. And so we have existing Grayburg
4 production secondary efforts movable oil that is threatened
5 and the harm continues today.

6 Third, the water incompatibility. I'm disappointed,
7 this is -- it's not the Commission, it's my fault. I let
8 this get lost in it, but Mr. West put up the chart in terms
9 of how that secondary water flood operation within the
10 Grayburg is organized, the infrastructure, it's like a
11 spiderweb. When you take one barrel of makeup water out of
12 the San Andres, which is this Delaware water of vastly
13 different chemical composition, when you put it into the
14 secondary water flood up in the Grayburg, like a spider
15 it's in every single wellbore. And you'll remember back,
16 their well was only four years old. And the well was junk.
17 They had to throw away the whole Christmas tree. They had
18 corrosion down the casing. All kinds of problems in a
19 four-year-old well.

20 As Mr. Rankin alludes to, Empire has a lot of wells
21 out here that operate. I mean, that's the harm I hear every
22 single time I have a client call, is this incompatible water
23 is being distributed across hundreds of wellbores with the
24 network, and there's a graphic.

25 The last one that I wanted to point out and I think

1 is very significant. There's the nice graphic that had the
2 historical water volumes in and out, and I think Mr. West
3 talked about it, I think Dr. Buchwalter talked about. And as
4 you look at the historical pressures and volumes in and out,
5 there's been more water taken out as part of the water flood
6 operations in the Grayburg, and so it dipped down. And that
7 graph is climbing very steeply, and if you look at the
8 volumes, Goodnight's been carrying on, it's getting more
9 steep and we're almost exactly back to the original balance
10 point and so those pressure -- I mean, this is just a matter
11 of engineering. Every engineer I've talked to likes to talk
12 about pressures. We are back at that balance point and it's
13 just going to go up. And the Commission has observed, with
14 pressure you're using more CO2. You have all sorts of
15 problems that come with that higher pressure in terms of
16 implementing it. And you heard from Mr. McBeth that CO2 --
17 he only had two variables. If our volumes are right, the
18 only two variables -- I'm sorry, you can use their volumes.
19 Take their volumes. If you just use our CO2 price and CO2
20 volumes and use our forward strip price for commodity sales,
21 it's an economic project, according to Mr. McBeth. So he
22 identified, the key variables are how much are you selling
23 it at? And the other key variable was, how much CO2 are you
24 using and how expensive is it? With that pressure we're
25 right back at kind of the original balance point going back

1 decades. It's going to be more CO2, which leads to lower
2 economics, leads to less interest. I appreciate that
3 question off the cuff. Those are the ones that every day
4 when I visit with the Empire folks, I'm being screamed at
5 about this needed to stop yesterday.

6 COMMISSIONER AMPOMAH: Last question for Goodnight.
7 I'm looking at your PowerPoint, page 34. On your first line
8 you say that Goodnight should be allowed to continue
9 operating until Empire begins CO2 flood in Goodnight's
10 injection interval. My main concern is on Goodnight's
11 injection interval. Let's say Empire decides to do CO2
12 project, let's say the upper part of the San Andres, and then
13 Goodnight is injected into the lower part of the San Andres,
14 as part of the hearing, don't you believe that there was not
15 strong evidence established? Maybe you can look at our order
16 that there is a separation between upper and then lower San
17 Andres.

18 MR. RANKIN: I think Paragraph 56 of the
19 Commission's order establishes that there's a very strong
20 separation between the two and that's based on -- I can share
21 it on my screen, Dr. Ampomah, and that's based on the
22 finding that there is substantial engineering basis for
23 confirming that there's no communication currently between
24 the two zones. Strongest evidence for no communication
25 between the San Andres and the Grayburg is the material

1 balance, which is volumes and pressure. We presented
2 evidence from Mr. Knight and Mr. Maguire where, within nine
3 months Empire had injected close to 35 million barrels all
4 within or just outside the boundary of the EMSU. 35 million
5 barrels within nine months and the pressures raised only .25
6 PSI over that period of time. That is clear evidence -- and
7 those injection wells continue to inject on vacuum, that's
8 clear evidence that as between the injection disposal zone
9 and the immediately overlying zones, there is a clear
10 separation between them, based on the engineering data.

11 COMMISSIONER AMPOMAH: My question is, within the
12 San Andres itself, there is upper San Andres and then lower
13 San Andres. So assuming Goodnight is injected into the lower
14 San Andres, was there any -- I mean, if you read through the
15 Order, was there any establishment of facts that the
16 Commission believe that there is a separation between upper
17 and lower San Andres?

18 MR. RANKIN: Well, I turn to paragraph 56. I
19 believe that that establishes the basis that as between where
20 Goodnight's injection disposal is occurring and any other
21 portions of the San Andres, there is a barrier due to the
22 engineering data that establishes that.

23 COMMISSIONER AMPOMAH: Thank you.

24 CHAIR CHANG: Any further questions from
25 Commissioner Lamkin?

1 COMMISSIONER LAMKIN: I think all my questions have
2 been hashed out pretty thoroughly, thank you.

3 CHAIR CHANG: Thank you very much. In that case,
4 the Commission will go into -- well, later on the Commission
5 will go into a closed session to begin deliberations on these
6 matters. We do not expect to have a decision for you on this
7 anytime today. We will try to get you a decision as quickly
8 as we can, but you have all filed voluminous materials for us
9 to consider. However, before we go into a closed session and
10 let everybody go home -- you're all welcome to go home for
11 the day. But before the rest of us on the Commission go home
12 for the day, I believe we have one more agenda item, which is
13 an update on pending litigation from our Commission Counsel.

14 MR. SHANDLER: Yes, Mr. Chair. There's two pending
15 cases. One of them is in the District Court, that is the
16 Silverback case. In that case, still waiting for Commission
17 --

18 CHAIR CHANG: Counsel, I'm sorry. Why don't we wait
19 a minute and give everybody a chance to start their weekends
20 early. Thank you everybody. We appreciate it. You are all
21 of course welcome to stay. We've got one more procedural
22 thing and then we'll be going to closed session, but thank
23 you, appreciate it. Have a good evening. Go ahead, I
24 apologize.

25 MR. SHANDLER: Zach Shandler, Commission Counsel.

1 There are two items on the litigation updates. One is in the
2 District Court, that is the Silverback case, or the American
3 Energy Resources case. Still don't know what they're going
4 to file. Their deadline to file what their arguments were, I
5 believe was yesterday. And then they asked the Court for a
6 Motion for Continuance to allow them to file a separate court
7 action, which they implied to mean they were going to do a
8 separate court case specifically with Silverback to deal with
9 title issues. So if that's the case, that may be awhile
10 before the District Court case proceeds.

11 CHAIR CHANG: I have a question about that
12 particular case, if I could. It looked like the case was
13 captioned -- I'm sorry, this is the American Energy case,
14 right? It looks like it was captioned American Energy versus
15 the Division as opposed to OCC. Does that create a refiling
16 problem, given that they've named the wrong party?

17 MR. SHANDLER: Mr. Chair, my litigation colleagues
18 have noticed that and they are considering those different
19 options, but they have not shared me with me whether they're
20 going to pursue that course.

21 CHAIR CHANG: Thank you.

22 MR. SHANDLER: The second case is in the Court of
23 Appeals, that is the PFAS case. In that case we still also
24 do not know what the advocates are going to be arguing.
25 We do know the Court of Appeals has put it on the General

1 Calendar, which means they're not going to deal with it
2 quickly. The Court of Appeals has set up a briefing
3 schedule. So later this year the advocates will put in
4 their briefs and then the Department of Justice on behalf of
5 the Commission will respond.

6 CHAIR CHANG: No further updates?

7 MR. SHANDLER: Those are the two pending cases.

8 CHAIR CHANG: Thank you very much. In that
9 case, I will move that we go into closed session in a minute.
10 But first, I think for the purposes of -- even though we've
11 now managed to clear the room, for the purposes of
12 deliberations, I will invite us to reconnect in -- for those
13 of us here in person, up in the OCD conference room. We'll
14 find a way to make sure that Commissioner Lamkin can join us
15 online. with that, I will move that the Commission go into
16 closed session for the purposes of deliberating on the
17 application of Goodnight Midstream Permian, LLC, which is a
18 whole series of associated cases, cases numbers 24123, 23614
19 through 23617, 23775, 24018 through 24020 and also 24025.

20 With that, if there's a second to go into a closed
21 session for deliberations.

22 COMMISSIONER AMPOMAH: Mr. Chair, I second.

23 CHAIR CHANG: Is there any objection?

24 MR. SHANDLER: You technically need a roll call.

25 CHAIR CHANG: That's right, we need a roll call.

1 Madam Clerk, would you please call the roll.

2 COMMISSIONER CLERK: Yes. Commissioner Ampomah.

3 COMMISSIONER AMPOMAH: Approved.

4 COMMISSIONER CLERK: Commissioner Chang.

5 CHAIR CHANG: Yes.

6 COMMISSIONER CLERK: Commissioner Lamkin.

7 COMMISSIONER LAMKIN: Approved.

8 CHAIR CHANG: Thank you very much. We'll be heading
9 into close session. Will we come back to announce? Well, we
10 may or may not at some point come back to announce ourselves
11 out of closed session today. Thank you.

12 (Record concluded at 4:03 p.m.)

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REPORTER'S CERTIFICATE

I, Kim Kay Shollenbarger, Court Reporter, do hereby affirm that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a transcript of those proceedings that were reduced to printed form by me to the best of my ability; that said proceeding was held remotely, thus remote connection was of poor/fair quality.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.

December 1, 2025

Kim Kay Shollenbarger

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Court Reporter

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