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Public Meeting
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Agenda No. 5-24

Moderated by Dylan Fuge, Commissioner
Thursday, June 20, 2024
9:00 a.m.

Pecos Hall, Wendell Chino Building
1220 South Saint Francis Drive
Santa Fe, NM 87505

Reported by: James Cogswell
JOB NO.: 6734835

A P P E A R A N C E S

List of Attendees:

Dylan Fuge, Commissioner/Chair - Oil Conservation
Commission

Greg Bloom, Commissioner - Oil Conservation Commission

Dr. William Ampomah, Commissioner - Oil Conservation
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Sheila Apodaca, Law Clerk - Oil Conservation Division

Daniel R. Rubin, Esquire - New Mexico Department of
Justice

Adam G. Rankin, Esquire - Holland & Hart LLP

Jesse K. Tremaine, Esquire - Oil Conservation Division

Miguel A. Suazo, Esquire - Beatty & Wozniak, P.C.

Ernest L. Padilla, Esquire - Padilla Law Firm, P.A.

Sharon T. Shaheen, Esquire - Montgomery & Andrews P.A.

Ripley B. Harwood, Esquire - c/o Oil Conservation
Commission

James Cogswell, Reporter

Nathan R. Jurgensen, Esquire - Holland & Hart LLP

Dana S. Hardy, Esquire - Hinkle Shanor LLP

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P R O C E E D I N G S

THE COMMISSIONER: Good morning, everyone. Apologies for the late start, but it's the June 20, 2024, meeting of the Oil Conservation Commission. We're going to go ahead and get started. I'm going to do a roll call.

Dr. Ampomah.

DR. AMPOMAH: Present.

THE COMMISSIONER: Commissioner Bloom.

MR. BLOOM: Present.

THE COMMISSIONER: Let the record reflect that a roll call -- that a quorum of the Oil Conservation Commission is present with all commissioners present. A quick note about my availability today. I had a medical dental issue come up so I have a hard stop today at one, but if things are proceeding, there will still be a quorum of The Commission as necessary. I just wanted to flag my availability. The agenda for today's meeting was distributed in advance.

Looking at my fellow commissioners, do you have any edits or additions to that agenda?

MR. BLOOM: No, Mr. Chair.

THE COMMISSIONER: Can I get a motion to approve?

1 MR. BLOOM: Aye. So moved.

2 DR. AMPOMAH: I second.

3 THE COMMISSIONER: Let the record
4 reflect the agenda for the June 20, 2024, meeting was
5 unanimously approved. The OCC clerk also distributed
6 a copy of the meeting minutes from the May 9, 2024,
7 meeting.

8 Have my fellow commissioners had a
9 chance to review and do they have any edits?

10 MR. BLOOM: Yes. I was able to review
11 and no edits.

12 THE COMMISSIONER: Can I get a motion?

13 MR. BLOOM: Aye. So moved.

14 DR. AMPOMAH: Second.

15 THE COMMISSIONER: Let the record
16 reflect that the minutes from the May 9, 2024, meeting
17 were unanimously approved. And now we move on to our
18 consolidated cases which have been on the docket for a
19 bit. And I am going to turn it over to Commission
20 counsel for a moment to use some observations and
21 maybe we'll have a little discussion about how to walk
22 through the various motions I think as Mr. Rubin will
23 explain there are some overlapping issues and we want
24 to do it in an efficient and orderly manner as we work
25 through the motions. But with that, I'll turn it over

1 to Commission Counsel Rubin.

2 MR. RUBIN: Thank you, Mr. Chairman,
3 members of the Commission.

4 Having read the motions to -- regarding
5 the scope as well as the motions to dismiss, my
6 recommendation in doing this in an orderly and
7 efficient manner it is apparent to me that the
8 substantive issues I think are the motion to dismiss,
9 if we could resolve those today, those are certainly
10 fully briefed.

11 I have a few observations about that
12 that I think would probably allow counsel to be more
13 focused in their comments rather than simply going
14 through their whole presentation and about the -- you
15 know, going through the whole history of the case.
16 We've read that. So my suggestion is that we deal
17 with the motions to dismiss. The motions regarding
18 scope are a little more complicated, but I believe
19 they may shake out after the motion to dismiss is
20 decided. And then we have, as a third matter, the
21 motion to reconsider the discovery order, which again,
22 discovery comes last after the substance, but I have
23 separate comments on that to advise The Commission.

24 And as always, we do have the option of
25 going to a closed session to deliberate anything at

1 any time on these pending adjudicatory matters. I
2 know that it's not The Commission's practice to do so,
3 but just as a reminder, doesn't need to be on the
4 agenda for us to do that if you feel like you wanted
5 to talk to me or ask me advice in confidence, in a
6 privileged manner.

7 So with that, Mr. Chair, if I may just
8 dive into what I've observed are the issues as I see
9 it on the motions to dismiss.

10 MR. BLOOM: Mr. Rubin, I'm sorry. What
11 were the three items you mentioned today? Looking at
12 motions to dismiss, discovery order and --

13 MR. RUBIN: And there are separate
14 motions as to the scope of the hearing that was
15 consolidated. There are other -- there are a lot of
16 at least nominally moving parts with other
17 applications that are either before the director still
18 or otherwise not in this agenda. And those, I think
19 they all fundamentally relate to the issue in the
20 motion to dismiss which is what to do about the San
21 Andres unit under the Unitization Act. So those are
22 the three, motion to dismiss, motion for scope, and
23 the discovery order.

24 So if I may, and this is directed of
25 course to counsel as well, Mr. Rankin and

1 Ms. Hard [ph]. I'm sorry.

2 It's my observation that the
3 Unitization Act certainly does not preclude The
4 Commission from amending its prior order defining EMSU
5 if there was proper good cause to do so. And
6 certainly, the relief being suggested by Goodnight, if
7 not part of a request to amend, to change the scope of
8 the unit, specifically with respect to the San Andres,
9 it wouldn't have been proper. But they have couched
10 it properly as whether or not the San Andres, which as
11 far as we know is where produced water is being
12 injected, We do not -- this fact seem to reflect that
13 it has long been used as a produced water disposal
14 unit, disposal zone.

15 No hydrocarbons ebb and flow from it to
16 date. I don't believe that's in any dispute. There
17 might be some issues whether some could be. But I
18 think as a matter of standing, that was one issue
19 raised in the pleadings. And as a matter of whether
20 or not Goodnight has a property interest, the right to
21 inject produce water certainly does not require a
22 state engineer license.

23 And that does not appear to be the
24 proper inquiry though as an aside to state. It's a --
25 a water right is not a property interest anyway. It's

1 a use of -- right, but regardless, the property right
2 that is being asserted here is the right to inject
3 produced water which is a valuable right, a valuable
4 privilege or a contract right. That is there is
5 evidence before The Commission that there seem to be a
6 dispute, that they have contracts in place that would
7 allow the injection of produced water into the San
8 Andres if it was not part of this -- if -- it was
9 otherwise allowed by either those -- members of the
10 unit who would not dispute it or if it was not part of
11 the unit.

12 And it certainly is a financially
13 valuable issue, otherwise we would not be here today.
14 So I do believe that there is standing asserted based
15 on the undisputed facts before The Commission and that
16 Goodnight has a dog in this fight. So this comes down
17 to whether -- now the procedural posture again and
18 this is important to keep in mind, this is a motion to
19 dismiss. And in a motion to dismiss, we would look to
20 the Rules of Civil Procedure to guide us. It's
21 whether there are any issues of fact that would
22 preclude a decision based upon what has been asserted
23 just by the lawyers.

24 And it does appear to me today that
25 there is a concern. There is perhaps a fact issue

1 that the San Andres should not have been or was
2 erroneously included in the original definition of the
3 EMSU. And it is my advice to Commission that if that
4 decision was either made in error or for whatever
5 reason new information has come to light that would
6 indicate that The Commission needs to revisit that
7 position, it certainly should do so.

8 The notion that you cannot correct
9 prior mistakes as a governmental entity, there's no
10 support in the law for that. You just have to have
11 the right parties there. And I'm saying this because
12 I'd like to hear from counsel, particularly from
13 Empire as to whether or if the -- what the issue is
14 with -- if there is produced -- well, it's rather this
15 -- if the San Andres meets the definition of a pool
16 and so far as it has some accumulation of crude
17 petroleum oil or natural gas or both.

18 And if we could go back in time to when
19 this matter was first heard and when the San Andres
20 was included, should it have been included. That's, I
21 think, the most focused point today. And I think the
22 motions of scope I'm hoping that, again, these may
23 shake out if pending resolution of that fact issue,
24 but again, all we have today is the motion to dismiss
25 with us.

1 So that's, as I see it, Commissioners,
2 the crux of the motion today. So before we hear oral
3 argument from the counsel, I certainly would stand for
4 any initial questions.

5 MR. BLOOM: No questions here.

6 THE COMMISSIONER: So I think as we
7 turn things over, obviously you've got voluminous
8 pleadings here. I don't think we need counsel to --
9 The Commission needs counsel to walk through all of
10 the details. You know, I recognize we have two
11 motions to dismiss different parts of the cases, we
12 have motions about the scope of the hearing which
13 present overlapping arguments and issues related to it
14 but I think consistent with Counsel Rubin's
15 suggestions.

16 It would be helpful for The Commission
17 to hear from the parties on the core issues of the
18 case, you know, which at the end of the day are there
19 recoverable reserves in the San Andres. Clearly one's
20 in dispute. Is Goodnight's injection into that
21 formation impairing those correlative rights if they
22 occur and, you know, those correlative rights would
23 attach to the party with a legal interest in the
24 extraction of those rights and then how do we narrow
25 this case to a manageable set of parties and matters

1 for resolution at the currently scheduled hearing in
2 September?

3 And so with that, I do want to go down
4 to counsel table. I'm obviously familiar with the
5 various parties here, but we do have at least one new
6 attorney present. So would just like parties to just
7 -- I know everyone's entered an appearance but just
8 flag who they're here representing so that we can know
9 as we move it forward. And we'll start with
10 Mr. Rankin.

11 MR. RANKIN: Good morning, Chair Fuge.
12 Commissioners. If it'll please The Commission, Adam
13 Rankin with the Santa Fe office of Holland & Hart,
14 appearing on behalf of Goodnight Midstream Permian LLC
15 in these cases. With me today will be also entering a
16 formal appearance and will henceforth be engaged with
17 us as well in these cases, especially during my
18 absence for the next few weeks, is my colleague Nathan
19 Jurgensen who's over here to my right. He'll be
20 actively participating in my absence over the next
21 three weeks.

22 THE COMMISSIONER: Okay. Mr. Tremaine.

23 MR. TREMAINE: Mr. Chair,
24 Commissioners, thank you. Jesse Tremaine for the Oil
25 Conservation Division. I'm standing in today for

1 Mr. Moander [ph] who I expect to return to this case
2 at the next meeting.

3 THE COMMISSIONER: Mr. Suazo.

4 MR. SUAZO: Good morning, Commissioners
5 and Mr. Chair, Miguel Suazo with the Santa Fe Office
6 of Beatty & Wozniak appearing today on behalf of Pilot
7 Water.

8 MR. PADILLA: I'm Ernest L. Padilla,
9 appearing for Empire of New Mexico.

10 MS. HARDY: Good morning, Mr. Chair,
11 Commissioners, Dana Hardy with the Santa Fe office of
12 Hinkle Shanor on behalf of Empire.

13 THE COMMISSIONER: Ms. Shaheen.

14 MS. SHAHEEN: Sharon Shaheen with
15 Montgomery & Andrews on behalf of Empire New Mexico.

16 THE COMMISSIONER: Is there anyone
17 participating virtually for any of the parties in this
18 matter? Hearing none, I think we'd like to entertain
19 I think for kind of expediency as we sort of pack
20 through it, ten minutes from the parties to kind of
21 sort of frame the issues we're thinking about today
22 and sort of the stack of motions.

23 There's arguments to say, "Hey, we
24 could just go through them one at a time," but they
25 really do raise overlapping issues so I think it would

1 be helpful to have some framing remarks from parties
2 and, you know, 10 or 15 minutes so that we can begin
3 unpacking in particular the motions to dismiss.

4 MR. HARWOOD: Mr. Chairman, Rip Harwood
5 here. Can you all hear me?

6 THE COMMISSIONER: Loud and clear.

7 MR. HARWOOD: Okay. Thank you. I
8 don't mean to slow anything down, that's for sure.
9 But I'm not clear what my role is here. In
10 discussions yesterday with Mr. Fuge was my
11 understanding that I was the hearing officer for this
12 proceeding, but maybe I'm just an observer.

13 And good morning to everyone, by the
14 way. I haven't seen you all in a while, but I'll be
15 the hearing officer for the hearing in September and
16 I'm just wondering -- this is my first OCC meeting so
17 maybe you could clue me in a little bit about what I'm
18 -- I'm taking good notes, among other things, but I
19 need to know what my role is so that I don't miss it.

20 THE COMMISSIONER: So, Mr. Harwood, I
21 think as everyone knows from the last meeting when we
22 set the scheduling order given the size of the case,
23 the matters, The Commission also opted to assign a
24 hearing examiner just for administration of the
25 hearing, working through procedural matters,

1 discovery, disputes, discussions that may arise as
2 this case moves forward. I think for today, and I'll
3 look to Commission Counselor -- Counsel to see if he
4 disagrees.

5 Mr. Harwood, I think it is mostly a
6 listening posture as The Commission works through
7 motions to dismiss and other questions as I think that
8 will inform ultimately as we hand the case over today.
9 This is your first hearing in the role as hearing
10 examiner 'cause we will have the case in a little bit
11 better shape as we move it forward in terms of scope
12 and content. But also as the hearing examiner if you
13 have questions, again, please feel free to raise them.
14 But I think right now it's The Commission's going to
15 be asking on the various motions to sort of set the
16 scope of the hearing that will occur and then
17 subsequent meetings about discovery and other matters
18 that would be within the purview of the hearing
19 examiner.

20 MR. RUBIN: Yes, Mr. Chair, members of
21 The Commission, Mr. Harwood, it's always a cardinal
22 rule that hearing officers only would make
23 recommendations at most on dispositive issues, what we
24 have on a motion to dismiss is certainly a dispositive
25 motion. And as long as we are guiding, we're going to

1 provide guidance on the procedural discoveries before
2 us to make your job a little easier. We didn't
3 necessarily have to do those, but we are just because
4 we had them before us before you were appointed. So
5 today you're here to take good notes as you say, sir,
6 listen in and this will hopefully help you as hearing
7 officer at the hearing.

8 MR. HARWOOD: Okay. Thank you very
9 much, Mr. Rubin. It's been a long time since our
10 paths crossed back I think when I worked for the
11 Environment Department in the 1990s. But at any rate,
12 I will take good notes and I have to say that so far,
13 if I were in your shoes, I have analyzed, I've read
14 the pleadings, I've analyzed the standing issue
15 basically the same way that you have. With all of
16 that said, I will turn off my mic and camera and pay
17 attention. Thank you all.

18 THE COMMISSIONER: All right. With
19 that, and I appreciate that we have various motions
20 initiated by various parties, I'm going to go ahead
21 and have us hear from Empire counsel first on these
22 issues. Then we'll go to Goodnight, the OCD and
23 finally Pilot.

24 MS. HARDY: Thank you, Mr. Chair. And
25 you'd like to hear from us regarding sort of the

1 format and the layout of where we are. Right? That's
2 the first thing. Okay.

3 THE COMMISSIONER: Yes.

4 MS. HARDY: So, you know, in these
5 cases, we have competing applications by Goodnight and
6 Empire. Empire, of course, operates the Eunice
7 Monument South Unit and has done so for several years.
8 The unit was approved in the 1980s. It was approved
9 by the Division, the State Land Office and the BLM.
10 So there are of course numerous parties involved and
11 who have interest in the unit. It's not just Empire.

12 And here, Goodnight's injection, of
13 course, and it's our position into the wells within
14 the unit as well as the wells outside of the unit that
15 are in proximity to it are impacting the units by
16 reaching it or increasing pressure or other mechanisms
17 that are impairing the production of hydrocarbons
18 within the unit and will continue to impair that and
19 will limit tertiary recovery possibilities, which of
20 course raises issues for the interest owners as well
21 the State of New Mexico because of course there are
22 substantial revenues resulting from the production of
23 hydrocarbons within the unit.

24 So it's an important issue for The
25 Commission to consider. The pending motions -- the

1 competing motions to dismiss, although they are
2 different and Mr. Padilla will address Empire's motion
3 to dismiss Goodnight's applications to amend the unit,
4 those motions deal substantively with Goodnight's
5 standing and lack of standing because it is not an
6 interest owner in the hydrocarbon unit.

7 With respect to Goodnight's motion to
8 dismiss, that's a different type of motion because
9 it's really based on pleading. It's the claims that
10 Empire did not plead sufficient standing. It's not
11 that we don't have standing. Those are two separate
12 issues. And so I will address that motion. And then
13 with respect to the scope motions which are impacted
14 by the rulings on those motions to dismiss, in some
15 degree Ms. Shaheen will address those.

16 But I will say that I think the crux of
17 the dispute on the scope is whether wells outside the
18 unit are included as well as whether other parties are
19 included in those cases. So I think those are the
20 main issues. So that's where we are on these things
21 today.

22 THE COMMISSIONER: Mr. Padilla.

23 MR. PADILLA: I don't have anything to
24 add. I don't have anything to add with regard to the
25 procedural what goes first and what's next. I will

1 address the motion to dismiss whenever it's
2 appropriate.

3 THE COMMISSIONER: Mr. Rankin.

4 MR. RANKIN: Morning, Mr. Examiner. I
5 think Ms. Hardy has, you know, fairly summed up the
6 issues and I think that, you know, what The Commission
7 needs to deal with here today and then going forward
8 in this case are these competing claims and
9 allegations about whether or not the San Andres is a
10 economic hydrocarbon zone more generally and more
11 specifically whether within the EMSU even if -- within
12 the EMSU whether it's appropriate to inject produced
13 water for disposal purposes.

14 The framing around these issues I think
15 is fairly well laid out in the scope motion and in the
16 motions to dismiss, in particular the motions to
17 dismiss Empire's applications to revoke injection
18 outside the EMSU and then in the scope of the hearing
19 motion that we filed and The Division has filed.

20 I think, you know, without getting into
21 merits, I think there's some significant questions
22 Mr. Rubin has identified with the scope of the
23 Statutory Unitization Act and I think I've started to
24 hint at some of those in the applications. While I
25 didn't fight to the records or attach exhibits from

1 the unit hearing record back in 1984, it's essentially
2 a map, a trail map I laid out in the application if
3 you go through the hearing exhibits and the
4 transcripts, I think you'll see that at the time the
5 unit was created very clearly, the oil column is
6 limited to the Grayburg.

7 There's an effective seal or barrier
8 between the Grayburg and San Andres, otherwise the
9 water flood wouldn't work. They wouldn't be able to
10 take water out of the San Andres immediately below and
11 put it into the Grayburg. And so I think, you know,
12 there's a lot of facts to wade through there and legal
13 issues. Also implicated is whether or not, when
14 there's been no primary production in the San Andres
15 within the unit, whether it's been reasonably defined
16 by production.

17 And because it hasn't been and there's
18 been no current production within that portion of the
19 pool, our view is is that it's not susceptible to
20 tertiary recovery under the Statutory Unitization Act.
21 The Unitization Act expressly limits its authority to
22 development subsequent to primary production and
23 there's a reason for it.

24 And the reason is that the Statutory
25 Unitization Act authorizes The Commission to force

1 interests into the unit who otherwise aren't willing
2 to do so and again to force them to pay cost to
3 production for their share of the cost of operating
4 the unit where production is otherwise exploratory or
5 uncertain, the Statutory Unitization Act is not
6 intended to force people to pay for those costs.

7 And that's why the Unitization Act is
8 set up the way it is. So all that I think is
9 important. I want to just raise that with you 'cause
10 I think down the road it's going to be very important
11 to understand. So other than that, and I got a little
12 bit off track there, but I think -- you know, I think
13 it's important to understand the scope and for all
14 these reasons around Statutory Unitization Act we
15 think that The Commission should focus its interests
16 and its decision-making on these contested issues
17 solely within the unit initially.

18 THE COMMISSIONER: Mr. Tremaine?

19 MR. TREMAINE: Mr. Chair, I understand
20 the immediate question to be about the posture and
21 procedure of the case and so I don't have any further
22 comment other than what's been stated about the
23 procedure. We can provide our response to various
24 motions at any point The Commission desires.

25 THE COMMISSIONER: Suazo.

1 MR. SUAZO: Thank you, Mr. Chair.

2 Just to clarify, Pilot has entered into
3 these proceedings with regard to the scope matters
4 that are before The Commission. That being said, you
5 know, Pilot's here a bit reluctantly given the nature
6 and the extent of the interests in the EMSU. And so
7 depending on what Commission decides today with
8 respect to the motions to dismiss, that could impact,
9 you know, the extent to which Pilot involves itself in
10 future proceedings.

11 But our primary position is to address
12 the scope given that Pilot has one well within the
13 EMSU, the P15, it's a marginal injection well but is
14 nevertheless impacted, potentially impacted, by what
15 The Commission decides in this proceeding.

16 THE COMMISSIONER: I suppose maybe to
17 kick it off with some questions, again, 'cause they
18 were comprehensive briefings here and sort of thinking
19 through the two motions to dismiss that are pending.
20 One relates to Goodnight's actions to amend orders
21 R-7765 and 7767 and the other relates to case numbers
22 that I'm not going to bore the record with reading,
23 but all of the Empire cases to revoke injection
24 authority for wells outside the EMSU. I don't know
25 why I was adding an A. EMSU.

1 A couple of questions at the outset
2 that I had just sort of factually and would welcome
3 the parties input on it as it relates to the orders
4 establishing the EMSU and the question I would welcome
5 in sort of the motion to dismiss context, I had a
6 question about how critical making that amendment is.

7 And if you'll indulge me in a
8 hypothetical, if the hearing shows that there are no
9 recoverable reserves in the San Andres formation,
10 which is part of the unit, and injection is otherwise
11 properly authorized, does it matter that it's within a
12 unitized level because if there are no recoverable
13 reserve, there's no impairment of correlative rights?

14 So does The Commission need to change
15 those orders to get at that question or if there are
16 no recoverable reserves and there's no impairment of
17 correlative rights and it was properly permitted under
18 The Division's authority under the Safe Drinking Water
19 Act, is it even an issue we need to get into and if
20 so, why?

21 And I guess I'd welcome to hear from
22 Empire first since you're moving to dismiss those
23 cases. And understand you may also touch on standing
24 questions and other -- there are other components in
25 your motion that's sort of pushing it but would

1 welcome your perspective on that sort of factual
2 hypothetical.

3 MR. PADILLA: Mr. Chairman, members of
4 The Commission, let me speak for Empire here.

5 In answering your question about the
6 San Andres, it's not producing any oil at this time.
7 At the time of the hearing in 1984, however, there was
8 considerable discussion about inclusion of the San
9 Andres formation because there was a potential for
10 tertiary recovery. Our main case presently is going
11 to be that there are residual oil zones in the San
12 Andres formation and therefore, injection of very
13 dirty water in that formation is going to destroy
14 residual oil zones that has still to be developed.

15 So I don't -- it's not a question right
16 now whether or not there has been past production in
17 the San Andres formation. The potential for
18 production in the San Andres from residual oil zones
19 is clear. Residual oil zones are being developed
20 throughout the Permian Basin in a number of instances
21 and our main case is going to focus on residual oil
22 zones.

23 To say that The Commission was wrong or
24 that it made a mistake in 1984 is inappropriate. In
25 1984, Exxon and Mobil went at it in a contested

1 proceeding and -- prevailed upon the Statutory
2 Unitization. The Commission of Public Lands and the
3 Bureau of Land Management approved that unit. What we
4 don't see here today is that, relating to sanding, is
5 that we don't have Goodnight as to working in persona
6 or having any mineral interests or water right that
7 it's asserting.

8 The sole basis for their entry here is
9 their profit motive. Profit motive that they are
10 asking to eliminate the San Andres from the unitized
11 interval as there's really no basis other than the
12 fact that they want to dispose of water in the San
13 Andres formation. Their primary focus, and as I read
14 the response to the motion to dismiss, is they're
15 saying that Goodnight has had made or they estimate a
16 huge investment in its pipeline and disposal
17 facilities. But that doesn't mean that you go and
18 pick a dump site because it's convenient.

19 So going to the sanding issue, there's
20 no injury. None that -- there's no injury. I
21 disagree with counsel for The Commission on whether
22 there's a valuable property right. There may be that,
23 but Goodnight certainly knew that that unit existed
24 and they knew what the vertical limits of that unit
25 were. And they think that simply from a profit motive

1 to the detriment of the owners of the unit. There is
2 no -- the BLM, the Commission of Public Lands, they're
3 not involved in this case at all from an affirmative
4 standpoint.

5 I've been involved in a number of units
6 for contraction and expansion of units, but those
7 cases are brought by working interest owners for
8 further development of the unit or contraction where
9 production has already declined and it's unfair from a
10 relative standpoint for non-producing properties to be
11 participating in unit operations or revenue.

12 THE COMMISSIONER: So is your
13 contention, Mr. Padilla, just to clarify, and I will
14 give other counsel opportunity to argue, that the mere
15 creation of a unit in 1984, which I think everyone
16 will agree occurred at a time when seismic data wasn't
17 as good, modeling wasn't as good, created effectively
18 -- it sounds like the argument rebuttal presumption
19 that there is a residual oil zone in it, not
20 withstanding the fact that the San Andres formation
21 writ large is used for disposal across the basin.

22 I guess I'd like to understand is the
23 argument here that just creates a presumption that
24 there are correlative rights in the unit just because
25 it was pooled at some point in time and forever more

1 we're stuck with geotechnical engineering from 1984 or
2 reservoir engineering from 1984?

3 MR. PADILLA: Well, essentially what
4 we're having is the applications to delete the San
5 Andres as a reformation of those agreements. The
6 Commission doesn't have that authority. We've cited
7 number of cases where The Commission has ruled on pore
8 space for property rights and we don't have
9 jurisdiction to do any of the same. These
10 applications by themselves would delete the San Andres
11 formation and I don't think The Commission could go
12 that far. I mean, we've cited the unit agreement, the
13 operating agreement where working interest owners
14 would -- can amend the unit, but a commission
15 shouldn't be changing those agreements.

16 And I agree they're -- you can have a
17 corollary in terms of residual oil zones with better
18 information today where you have residual oil zones in
19 the San Andres throughout the Permian Basin. We're
20 contending that residual oil zones could exist in the
21 San Andres underlying the unit.

22 THE COMMISSIONER: Mr. Rankin --

23 MR. RANKIN: Thank you, Mr. Chair,
24 Commissioners.

25 You know, we went into -- Goodnight

1 went into its disposal operations in this area with
2 the understanding -- and I think to assist my
3 discussion, I am going to share my screen because I do
4 think it's just helpful to keep in mind what we're
5 talking about if that's okay.

6 THE COMMISSIONER: Yeah.

7 MR. RANKIN: So what we're talking
8 about here is on the screen that you can see in the
9 red outline is the unit boundary for the EMSU unit.
10 This is a unit boundary that's been in place
11 essentially since its creation back in 1984. The
12 wells that are highlighted yellow are all the wells
13 that are within the unit boundary. The wells that are
14 not highlighted are those that are outside the unit
15 boundary that Empire's seeking to revoke the injection
16 authority for.

17 With the exception of this Parker
18 Energy well, this has not been the target of an
19 application to revoke, okay. Otherwise, every other
20 well, including some that haven't been drilled, are
21 subject to the applications to revoke. Included with
22 the information on each well is the first date of
23 injection.

24 So you'll see that there are two wells
25 in particular that has commenced injection decades

1 before the unit was created. The first one up here,
2 just outside the unit boundary, is the EME SWD #033M
3 well. That well has been injecting since 1960 and now
4 has above 60 million barrels injected. The other well
5 that is in the unit boundary is this EME SWD #021
6 well. That well has been injecting since 1966 and
7 it's upwards of 40 million barrels.

8 So at the time the EMSU was created, it
9 came to disposal within the San Andres zone. There
10 was active disposal occurring at that time for
11 decades. When we came to -- now when Goodnight, you
12 know, first came to this issue and was looking at
13 disposing, it identified the EMSU as a prime location
14 for one reason. It had been the source of a
15 waterflood.

16 So for decades, the operators of the
17 unit have withdrawn millions of barrels from the San
18 Andres zone, upwards of 350 million barrels have been
19 withdrawn over three decades, creating a massively
20 depleted zone that was ideal for disposal.

21 So Goodnight initially came up to the
22 boundaries of the unit, you know, within a mile or so
23 and they initiated injection disposal activities
24 there. It had approached XTO to inquire about, you
25 know, disposing within the unit and those discussions

1 were ongoing when this well, the N11, the P15 were
2 approved by The Division for injection disposal in the
3 unit boundaries.

4 Having seen those wells be approved for
5 disposal, Goodnight then applied itself for wells to
6 dispose within the unit boundaries, four of them.
7 They were approved. XTO never objected. So those
8 wells then commenced injection operations and were
9 going along just swell. And the unit --

10 MR. BLOOM: I'm sorry. Who's the
11 operator of the P15 well?

12 MR. RANKIN: The P15, at the time Rice
13 drilled the well. Rice was the one that drilled it.
14 But I believe in 22 they transferred the rights to Owl
15 and Owl's currently operator still.

16 MR. BLOOM: Okay.

17 MR. RANKIN: Okay.

18 The other wells, the N11 and the EME 21
19 are Rice wells. Now, they have recently been
20 transferred. Operatorship has recently been
21 transferred to Permian Line Service. So they're
22 currently operated by Permian Line Service. And so we
23 came --

24 THE COMMISSIONER: And Mr. Rankin, I'm
25 sorry.

1 MR. RANKIN: Yeah.

2 THE COMMISSIONER: When you made the
3 remark that when Goodnight developed its wells and
4 there were not an objection from XTO, is that because
5 XTO or an XTO entity was the operator of the unit at
6 the time?

7 MR. RANKIN: Right. XTO is the
8 operator of the unit. They got notice of course that
9 Goodnight was proposing to drill these wells and
10 commence injection operations and there was no
11 objection. They were approved. It went forward. So
12 at the time, based on the history, based on the fact
13 that there was existing disposal long before the unit
14 was created, not only in the unit but offsetting
15 within the San Andres itself and based on the fact
16 that the division has approved two recent disposal
17 wells within the unit boundaries, Goodnight understood
18 that it was not necessary to amend the unit interval
19 to address the fact that the San Andres was included
20 in the unitized interval.

21 Now, that position was maintained up
22 through the time that we filed our application for the
23 Piazza well, which is this one here in the middle of
24 the unit area. The Piazza SWD. By the time that
25 application was filed, Empire was the operator unit.

1 They objected to the injections. It went to hearing
2 and they took the position that there should be no
3 third-party operators disposing of produced water
4 within unit boundaries.

5 We made arguments to The Division and
6 it's in as far as the case record that it's not
7 necessary to amend the unit interval because as long
8 as you're not interfering with correlative rights with
9 -- ways otherwise preparing unit operations and
10 otherwise meet the requirements of disposal approval
11 that we can get approval from The Division and proceed
12 without having to deal with the legal issues around
13 the Statutory Unitization Act or the unit border
14 authorizing the unit.

15 Now, Empire, you know, took the
16 position at the time that, no, no, you need to go
17 amend the unit. That's what they should do. You need
18 to go amend the unit. We disagreed and we went
19 through the hearing and we ultimately were denied our
20 application, partially on the basis that the San
21 Andres was included within the unit. It was included
22 for purposes of providing the water source.

23 When you read through and review the
24 testimony at the hearing, you'll see that they
25 expressly identified that the San Andres is going to

1 be the source of water. They're not going to conduct
2 waterflow operations within the San Andres. The oil
3 column extends from the base of the Grayburg up into
4 the Penrose, but it does not go down in San Andres.

5 Mr. Padilla made the statement that
6 actually at the time of the hearing there was a lot of
7 discussion about potential tertiary recovery in the
8 San Andres. I'm going to tell you that I spent a lot
9 of time on that transcript and on the materials and it
10 was never discussed. Okay? It was discussed for the
11 AGU, to the southeast briefly.

12 And you'll see in the Piazza order that
13 there's a reference to the potential for tertiary
14 recovery but it cites to a different unit. There was
15 no discussion at the time of the EMSU that there was
16 any possibility of tertiary recovery CO2 flooding in
17 the San Andres. That discussion was related to the
18 AGU. Okay?

19 And so there was no prior discussion
20 about the San Andres as a hydrocarbon-bearing zone.
21 So based on the order that The Division ordered
22 denying our authority to injection to Piazza with the
23 taking the position that the San Andres was necessary
24 and important for the unit operations as a water zone
25 and that Empire at the time had put forth enough

1 evidence to suggest that there might be concerns about
2 waste flooding out of potential hydrocarbon zone and
3 that they deserve more time to continue to assess the
4 San Andres for hydrocarbon potential, they denied our
5 application.

6 Based on that ruling and Empire's, you
7 know, continued proposition, we felt we had no choice
8 but to apply to amend the unit interval. That injury
9 to us, to Goodnight and to their ability to continue
10 to operate, there's not only the purposed five wells
11 that are subject to The Commission's review and
12 approval, but the four existing injectors essentially
13 put us into a corner where we had no choice but to
14 amend being integral to remove the San Andres.

15 Because at the time the order was
16 issued, at the time the case was presented, there is
17 no question that there was no thoughts but that the
18 San Andres was solely was going to serve as a water
19 management zone both for disposal and for water supply
20 in order to re-pressurize the Grayburg.

21 And so our view is that based on the
22 facts and evidence presented at hearing at the time
23 the EMSU was created, it does not meet the
24 requirements of the Statutory Unitization Act. It
25 should have never been included and that those orders

1 as to the San Andres are void ab initio.

2 So we think it's imperative for The
3 Commission to revisit those orders and do what it
4 should have done initially, which is to recognize
5 that, you know, underground sources of water are
6 subject to the New Mexico constitution. They're not
7 to be included in the unit because there's no
8 hydrocarbons, no. 1. And no. 2, the San Andres is not
9 part of a pool.

10 There was testimony at the time of the
11 hearing that hydrogen, the oil column is limited to
12 the Grayburg which is why they were sweeping only the
13 Grayburg with their water -- I think the necessity
14 here for addressing this issue is now kind of plain
15 because I don't think this dispute will go away unless
16 it's addressed by The Commission.

17 Empire is raising the claim that they
18 want to be able to come in and do a tertiary recovery
19 under their order, under the Statutory Unitization Act
20 order. The EMSU, contrary to Mr. Padilla's argument,
21 is a creature of New Mexico statute. It is a creature
22 of the New Mexico statute. And it's limited and
23 defined by the conditions and requirements of the
24 Statutory Unitization Act.

25 It requires any pool that's going to be

1 unitized to be demonstrated that it's defined by
2 primary production. Any pool or portion of a pool has
3 to be defined by primary production. The San Andres,
4 as we just heard today, has not been. There is no
5 primary production. Every time an operator penetrated
6 -- to San Andres, all they got was water. They came
7 back up, they plugged it off and they produce in the
8 Grayburg. There is no primary production in the San
9 Andres. It is not subject to the Statutory
10 Unitization Act.

11 There is no way that Empire should be
12 allowed to go forward with the tertiary recovery plan
13 in a zone that has not been defined by primary
14 production. To the extent that they want to do that,
15 if they think they've got evidence to demonstrate that
16 there is now potentially economic recoverable
17 hydrocarbons in the San Andres, I think they have to
18 come back and do so through an exploratory unit. It's
19 not susceptible to Statutory Unitization.

20 So that's for them to figure out. But
21 for The Commission I think the issue is it's plain
22 that they need to and should rectify what was done
23 incorrectly in the past, amend the issue so that we
24 don't have this dispute going forward and we could go
25 about our business and dispose of produced water in

1 the San Andres.

2 THE COMMISSIONER: I did have one
3 question because you brought up the sort of necessity
4 to amend these orders based on the OCD's decision in
5 case no. 22626, order no. 22869 which was concerning
6 Goodnight's Piazza well and, you know, at least if I'm
7 understanding your argument, there was some contention
8 that there was a finding that The Commission found
9 some preclusive effect of the unit when instead, at
10 least as I'm reading that order that I've pulled up,
11 you know, essentially it was a finding that in that
12 proceeding, it wasn't necessarily that the scope of it
13 EMSU was the problem.

14 It was that Empire had provided
15 sufficient assessment of the unitized -- for continued
16 assessment of the unitized interval for potential
17 recovery of hydrocarbon resources which ran into our
18 statutory charge or the OCD statutory charge to
19 prevent the drowning out of water or stratum --
20 capable of producing oil and gas and that we did not
21 necessarily -- the division did not necessarily hang
22 its hat on the existence of the EMSU and the strata
23 within it as preclusive of disposal there, assuming
24 you could show that such disposal wasn't going to
25 prevent the grounding out of any stratum capable of

1 producing oil and gas.

2 Which again gets to my central question
3 of do we need to touch the orders at all or can The
4 Commission find that -- either find that Goodnight's
5 disposal does or would not. Yeah.

6 MR. RUBIN: Thank you. I'd like to
7 just comment on that and remind The Commission that
8 there's a basic judicial principle that I think
9 applies here. You only decide what you need to decide
10 and your orders should only cover what you need to
11 cover, which is why it's a very important question, do
12 we need to revisit the order defining the unit.

13 Mr. Padilla, I didn't hear and I'm not
14 -- you know, obviously the phrasing is a hypothetical,
15 but if we did not, as a factual matter, find there
16 would be, for lack of a better word, impairment or
17 production of hydrocarbons or impairment of the
18 production of hydrocarbons, I'm simplifying, would we
19 still need to change the unit?

20 And Mr. Rankin, I'm not sure if your --
21 I thought your proposition was if there is no
22 impairment or production with the San Andres that we
23 don't need to. I know you're hedging quite a bit, for
24 a lack of a better word, and I understand why you
25 needed to file a motion to amend the unit as perhaps a

1 hedge, but is it your position that, as Chairman has
2 said, do we need to even go fix the unit if there's a
3 factual inquiry that results in there's no production
4 of hydrocarbons there and there's no impairment of the
5 other production in the EMSU.

6 Mr. Padilla?

7 MR. PADILLA: Well, I think that
8 assessment is basically correct is that you don't need
9 to touch -- Mr. Chairman, you don't need to touch the
10 orders if you find that ultimately that dumping into
11 the San Andres is appropriate. Mr. Rankin argued --
12 in his argument he's saying that you don't need to
13 touch the unit if there's no production there.

14 There's no oil and gas production. We're contending
15 that there is and that there will be an impairment of
16 the reservoir by introduction of very dirty water.

17 MR. RUBIN: Yes. And I think that goes
18 to the definition of what a pool is under the
19 Unitization Act. It refers certainly to the
20 production, but it also talks about each zone of
21 general structure which does imply -- you know, I'm --
22 well, I'm aware of what I learned at the engineer's
23 office for hydrological connectivity, but I think that
24 does imply that if it affects the -- if it impairs the
25 production of those working interest, it's still a

1 problem. But yes.

2 MR. RANKIN: Mr. Rubin, you are
3 correct. I mean, we initially believed that it wasn't
4 necessary to address the Unitization Act or -- orders.
5 I think as you've heard Mr. Padilla contends that
6 their view is that it's firmly within the unit and
7 should be -- remain in the unit.

8 Our view has necessarily evolved and in
9 closer scrutiny of the hearing testimony exhibits and
10 evidence that was put forward to The Commission at the
11 time in 1984, I believe strongly that The Commission's
12 decision at the time was in error. It was a legal
13 error. And it's got, as a consequence, rippling
14 effects through the top two times into this point and
15 I believe that it is necessary correct at this point.

16 MR. RUBIN: It is. Okay.

17 MR. RANKIN: I believe it is and I
18 understand -- you know, I'm unable to pull up the
19 Piazza order and so I don't have the language right in
20 front of me. For some reason, my Adobe Acrobat is not
21 allowing me to open it. Pry it open.

22 I think it's a little vague, Mr. Chair,
23 that there is some discussion about the use or
24 necessity. There's some discussion in the order about
25 the fact that part of the costs were that -- and the

1 justification for the unit was the fact that they're
2 going to be the supply wells they're producing from
3 the San Andres and that was part of the justification
4 for inclusion of the San Andres in the unitized
5 interval.

6 We read that broadly as in the sense
7 that we thought Empire would and so, you know, I'm not
8 relying solely on the Piazza order for the basis that
9 it must be addressed or resolved. I do believe, you
10 know, looking at the exhibit testimony and the facts
11 put forth at The Commission that it was an error and I
12 believe, you know, it's contrary to the statute and
13 needs to be corrected.

14 THE COMMISSIONER: I have some other
15 questions. My fellow commissioners may. But I did
16 want to hear from Mr. Tremaine.

17 MR. TREMAINE: So, Mr. Chair, I'm going
18 to give you the normal lawyer answer which is it
19 depends. So to directly answer your question, I think
20 it's an apt question that I think really goes more to
21 order of operations and structuring a hearing
22 appropriately.

23 I think there are two threshold
24 questions here, boiling this down to various
25 simplistic two questions and one is that is there, in

1 fact, an ROZ and second, is the injection affecting,
2 negatively impacting, our ROZ? And I think depending
3 on the answer to that first question in particular,
4 then what to do with that previous order is -- that's
5 largely going to dictate what The Commission should
6 see as necessary with that previous order.

7 And so I think that there are quite a
8 few factual questions that cannot be resolved, like
9 the discussion here today is absolutely necessary to
10 appropriately set and schedule the scope of that
11 hearing in September. However, I don't think we can
12 actually answer that question until we get to some --
13 the presentation of evidence and the factual
14 determination that The Commission may or may not make
15 at that time.

16 At a higher level, The Division
17 ultimately sees both motions to dismiss as asking The
18 Commission to reject such as applications that raise
19 larger resource and poor management, poor space
20 management, questions presented to The Commission and
21 The Commission should reject both motions to dismiss
22 those applications and then structure the hearing
23 according to -- well, according to whatever it decides
24 about -- related to the scope question.

25 If the production is not possible from

1 the San Andres, then I think that there is a colorable
2 argument that inclusion of the San Andres was an error
3 based on new information. But I'm not taking that
4 position. The City's not taking that position today.
5 As I said, that needs to be answered after full review
6 of the facts. And I just want to highlight, you know,
7 when distinguishing between other agency permissions
8 and the Statutory Unitization Act and the orders, this
9 Commission retains all necessary authority to review
10 prior orders based on new and updated information.
11 There's concurrent jurisdiction and the question
12 before The Commission is only whether or not specific
13 aspects of prior orders were in error.

14 The implications for what that does or
15 if it creates conflict with other permissions or
16 orders outside of the control of The Commission, that
17 question -- that's a remedy question and it's not
18 actually I think before The Commission. So to
19 Mr. Rubin's point, you know, answer the issues and
20 questions that must be answered by The Commission
21 only.

22 THE COMMISSIONER: Mr. Suazo, anything
23 or --

24 MR. SUAZO: Sure. Just a few points of
25 clarification. And let me preface this by saying

1 that, you know, Pilot has not had the benefit of being
2 involved in these various proceedings for as long as
3 the other parties. We've only been, you know, kind of
4 really brought into this in this last couple of
5 months. So Pilot hasn't had the benefit of doing all
6 the discovery and due diligence and consulting its
7 technical people and so on and so forth.

8 That being said, I did discuss with my
9 clients about, you know, what their take is on some of
10 the claims that were being made and it's Pilot's
11 position, you know, preliminarily that they are not
12 aware of any residual oil zones that exist within the
13 San Andres formation so there's not, you know, to
14 their knowledge any oil bearing concerns.

15 Now, they do want the opportunity to be
16 able to investigate that further, but that is their
17 preliminary position. And they believe that the San
18 Andres can be used and really is only used for, you
19 know, water disposal.

20 And Commissioner Bloom, I know you had
21 a question about Owl. Just for the record and for
22 your own clarification, Pilot essentially merged or
23 acquired Owl back in 2022.

24 THE COMMISSIONER: Sorry.

25 MR. BLOOM: Mr. Suazo, that was in

1 reference to that P15 well?

2 THE COMMISSIONER: The -- okay.

3 MR. SUAZO: The P15, that's right.

4 THE COMMISSIONER: Do you have some
5 questions, Dr. Ampomah?

6 DR. AMPOMAH: Yeah.

7 THE COMMISSIONER: Or questions.

8 DR. AMPOMAH: So, Mr. Rankin, you
9 talked about how -- be made primary recovery in the
10 San Andres. So even if there's a recent technology
11 that shows that there's some kind of oil in there, we
12 should still not admit that.

13 MR. RANKIN: No. Thank you,
14 Dr. Ampomah. That's an important question, a
15 distinction I want to make in partial response to
16 Mr. Tremaine's discussion. What I'm saying is that
17 under the Statutory Unitization Act, the MSU is a
18 creature of statute. Okay? In other words, what
19 Empire's authorized to do and how it's authorized to
20 act and what operations it's authorized to conduct are
21 limited and constrained under the terms and conditions
22 of the act itself and the unit order that was issued
23 by The Commission, okay, and approving the unit
24 operating agreement.

25 When the unit was approved, it was

1 limited to water flood operations. Okay? And that's
2 because for a number of reasons. No. 1, that was what
3 they asked for. And they asked for water floor
4 operations for secondary recovery within the Grayburg
5 zone. And they went into hearing and they said,
6 "We've got an oil column that is from the base of the
7 Grayburg up to -- and up into the Penrose and we
8 intend to take water from the San Andres and flood and
9 produced from the Grayburg.

10 As a result of the demonstration that
11 they made, The Commission had concerns about cost and
12 recovery and they limited the application of their
13 allocation formula to a certain volume of oil. Okay?
14 Under secondary recovery only. So under the terms of
15 the order and the terms of the Statutory Unitization
16 Act, Empire's limited currently to conducting only
17 water flood operations and only allocating production
18 in accordance with the order up to a certain amount of
19 recovery. I don't think they've reached that yet.
20 I'm not sure they ever will. Okay?

21 But that's the limitation of the order,
22 no. 1. No. 2, under the terms of the Statutory
23 Unitization Agreement or rather the Statutory
24 Unitization Act, as a condition for authorizing the
25 forced contribution or commitment of interests into

1 the unit area, the legislature has determined that
2 it's appropriate only to allow operators do so where?
3 Zones, a pool or a portion of a pool has been defined
4 initially by primary production. Okay?

5 So under the Statutory Unitization Act,
6 as part of a condition, a requirement, to getting an
7 order authorizing them to force the interest of other
8 working interests into the unit, they must show that
9 it's been reasonably defined by a development. So
10 they did that at the hearing and they showed that the
11 Grayburg, of course which has been produced since the
12 30s, a lot of these wells are 80-years-old, has been
13 defined by development. And that's what they had a
14 technical committee for.

15 This technical committee for four,
16 five, six years in advance, trying to figure out how
17 best to develop the Grayburg. What they haven't done
18 is under the Statutory Unitization Act, they haven't
19 showed what they need to show, which is that the
20 portion of the pool that they're now saying has
21 hydrocarbons has been defined by development. Primary
22 development. I'm not saying they can't go in there
23 and produce it.

24 If they are -- you know, if they can
25 get somebody to voluntarily pay for the money to

1 deepen their wells, to bring in CO2 resources to
2 upgrade their 80-year-old wells and then pay for all
3 those capital costs, I'm not saying they don't have
4 the ability to go do that if they want to go do that.

5 But no. 1, I'm saying is The Commission
6 made an error by including it as a pool because
7 there's no hydrocarbons. So it should never have been
8 part of a pool. And no. 2, it shouldn't be included
9 in the Unitization Act because it's not defined by
10 production. And so they want to go do that, the
11 exploration, they can do it outside, they must do it
12 outside, the authority of the Unitization Act in their
13 current order because the order doesn't authorize it.

14 Now Mr. Tremaine raised the issue that,
15 you know, potentially, if after a full evidentiary
16 hearing on the merits, we see that there's no ROZ in
17 the San Andres, then maybe The Commission has
18 justification to exclude the San Andres from the unit.

19 My point is, as an initial matter, as a
20 threshold matter, The Commission must first evaluate
21 whether or not the San Andres was properly included
22 because of the legal issues I just raised that needs
23 to be addressed in the first instance.

24 MS. HARDY: Can I -- I would like --

25 THE COMMISSIONER: Ms. Hardy.

1 MS. HARDY: Thank you.

2 So I disagree with Mr. Rankin. I think
3 that The Commission's jurisdiction is not limited of
4 course to the Statutory Unitization Act. The
5 Commission's mandate under the Oil and Gas Act is to
6 prevent waste, to protect correlative rights and as
7 set out in the Piazza order to prevent the drowning by
8 water of any strata capable of producing oil and gas.

9 So those are the Commission's paramount
10 obligations. It's not limited to the Statutory
11 Unitization Act and whether a formation was correctly
12 or incorrectly included. Much broader than that, in
13 here Empire is alleging and will demonstrate at
14 hearing that injection into the San Andres is
15 impairing correlative rights in the unit. It's not
16 just that there is a unit that exists so they can't
17 inject. It's not that simple. There are correlative
18 rights that are being impaired and that's what we will
19 show at hearing.

20 So I think that's the crux of the issue
21 that The Commission and Division need to decide. Even
22 if there were no units, those issues would still exist
23 because there are correlative rights in hydrocarbons.
24 So I think that The Commission does not need to
25 address Goodnight's motions and applications to limit

1 the unit. I think the crux of the issue what are the
2 injections impairing correlative rights and resulting
3 in waste. And I also don't think it's necessarily
4 limited to whether there's a ROZ because if injection
5 is impairing production from the Grayburg, which is in
6 the unutilized interval, that's also a problem. So
7 the ROZ is an important issue and would be addressed
8 certainly at hearing, but that's not the only issue.

9 THE COMMISSIONER: Dr. Ampomah, did you
10 have a follow-up?

11 DR. AMPOMAH: Yeah. So I kind of tend
12 to agree with the OCD position because we need to
13 address whether there's ROZ. If there is ROZ, then
14 certainly the San Andres needs to still be part of the
15 unit. So I believe on -- I'm leaning in the direction
16 that, like OCD suggestion, you know, for us to go to
17 the bottom of it to know whether there's an ROZ
18 existing, for us to more or less make a decision as to
19 whether we have to exclude or not.

20 MR. RANKIN: I don't mean to say that I
21 don't think -- 100 percent agree that The Commission
22 must address the issue of whether there's going to be
23 any ways for impact to correlative rights at all. I
24 agree 100 percent just already on that point. My only
25 point is that I think there are some initial legal

1 threshold issues that are inextricably tied to the
2 question that must be addressed on the front end.

3 Ultimately, of course, the issue is
4 going to be whether or not there are ways to --
5 impairment of correlative rights and we are 100
6 percent prepared to go to the heart of that issue with
7 a demonstration on the claims about ROZ, absolutely.
8 My only point about this is just that I think it's
9 necessary, I'm being a lawyer, no doubt about it, but
10 there are initial legal issues that implicate the
11 question. Because if it's not part -- if it can't be
12 part of the unit, okay, if the San Andres can't be
13 part of the unit, and it can't be part of the unit for
14 a number of reasons, then the question becomes how are
15 they going to develop the ROZ. What's their plan to
16 do it?

17 And that also does weigh into this
18 analysis. So I just want to raise these issues at the
19 outset for The Commission because they are going to
20 come up during the course of these proceedings.

21 THE COMMISSIONER: I guess I just have
22 a broader universal question 'cause I, you know, I'll
23 go back, you know. I know Empire has characterized
24 the unit agreement as purely private. My
25 understanding is the unit includes federal minerals

1 and state minerals so it's not really a private
2 agreement. I know the BLM doesn't develop it as a
3 working interest owner, but the minerals don't belong
4 to Empire, XTO or anyone. They belong to the federal
5 government.

6 Has anyone taken action -- are there
7 any actions pending against BLM or the State Land
8 Office who all approved this unit? Because there were
9 federal and state minerals to get them to contract it
10 or change it.

11 MR. RANKIN: Mr. Chairman, we have not
12 approached the State Land Office. State Land Office
13 was actively involved in our cases that were initially
14 presented before The Division. And I don't have the
15 full layout here of the state's interest, but I know
16 that where Goodnight's wells are located here on the
17 map and I believe it's -- beware of my cursor. I
18 believe these two lower sections or sections 20 and 21
19 and then I can't recall what that -- 'cause I'm not on
20 the land and I can't recall, the sequencing up here.
21 But I believe the State Land Office owns a
22 substantially the middle interest down here in the
23 southern part of the unit.

24 So during the time when we filed these
25 applications, in every instance the State Land Office

1 was a party. And in fact, and I can't recall off the
2 top of my head which one it was, three of the cases
3 they actually appealed. One or two of them were
4 outside the unit and one was inside the unit. They
5 appealed up to The Commission, they sought discovery
6 from Goodnight and information about the San Andres
7 zone pressures, injection rates, so forth.

8 We provided that information to them
9 and they, upon reviewing all that information, they
10 withdraw their appeals at the commission level and
11 stated that they didn't have any concerns about
12 impacts on the unit.

13 MR. RUBIN: Mr. Rankin, if you could
14 stop screensharing. We had a request to do that.

15 THE COMMISSIONER: I think could maybe
16 advance discussion a little bit on some of these and
17 I'd like to hear from my fellow commissioners who
18 obviously if they have other questions we can also go
19 back to just sort of questions on the pleadings. But
20 it seems clear in terms of figuring out what's the
21 bite-sized piece for this hearing that the core -- one
22 of the core questions, regardless of the order, is
23 whether there's an ROZ in the San Andres.

24 That's going to be at issue however we
25 slice it or move it forward. That's a core question.

1 And other things flow, back to the water case, flow
2 from that finding. And that at least in a discrete
3 universe, while we could sweep in all disposal in the
4 EMSU in the San Andres formation and questions about
5 residual oil zones and the entire San Andres
6 formation, that would be a massive unwieldy case.

7 And so it strikes to me, at least where
8 I'm headed and I'd welcome some discussion from the
9 parties on it, on the motion to -- various motions to
10 dismiss is really Goodnight's motion to amend orders
11 R-7765 and R-7767 is really maybe reserved for a later
12 time once we've gotten at the factual question of is
13 there an ROZ in the San Andres zone.

14 And then as to scope and sort of
15 relevance between the parties that there's also a
16 strong case to focus this hearing in September on
17 wells that are in the EMSU. And while I understand
18 technically that the water may not recognize a
19 boundary and injection in the San Andres and sort of
20 other questions, it is discrete -- you know, we can
21 chop it up as sort of looking at the questions and
22 moving it and that maybe it's not a motion -- maybe
23 it's not a we dismiss the applications but we
24 certainly save them until such time as we resolve
25 those core questions which are injection wells

1 operating within the EMSU and questions of whether
2 there's a residual oil zone and whether there are
3 impairments of correlative rights.

4 And then that findings there have, you
5 know, will inform possibly those other cases that had
6 been stayed as to whether we need to deal them. And I
7 guess that's sort of what I was thinking kind of
8 listening to the argument and having reviewed sort of
9 the extensive briefing both on the motions to dismiss
10 and on the scope of the hearing, you know, candidly.

11 And I suppose the last issue, I know
12 there are pending cases before The Division to revoke
13 injection authority in the EMSU, and there were
14 contention made about those parties not singling an
15 interest in participating, the OCD's procedural rules,
16 they don't really have to express an interest. The
17 Commission can pull those cases up or the director can
18 kick them up whether the parties want to participate
19 or not candidly.

20 And that's not a discretionary decision
21 where they're joinder questions or anything like that.
22 That's just the decision-making authority of the
23 director to decide where to refer cases and move them
24 up. And so I suppose there's an open question about
25 what to do with those handfals within that procedural

1 frame for the cases.

2 That at least seems to me, looking at
3 all of this, as a reasonable bite for The Commission
4 to deal with in September that gets at core issues in
5 the proceeding here without overwhelming us with
6 saying, "Hey, we're going to look at disposal in the
7 San Andres writ large."

8 MR. RUBIN: Mr. Chairman, members of
9 the commission, I would hardly agree. I don't believe
10 it's the position of The Division that there are
11 factual issues, as Dr. Ampomah has also pointed out,
12 precluding granting any motion to dismiss. You know,
13 a denial -- but I think would be proper at this point
14 to deny the motion to dismiss 'cause it is only a
15 preliminary motion.

16 And so the parties should have that
17 closure on the motion and of course with all respect
18 to Mr. Rankin's contention that the law comes first, I
19 see the factual issues getting to the bottom of
20 whether there's an ROZ. That -- September.

21 As part of that hearing, the parties
22 can amply brief what the -- whether the unit itself
23 needs to be amended. That is certainly part of the
24 scope of that hearing. And those are of course legal
25 issues, but that is part of what we have a hearing

1 officer for. So at this point, as our decision -- I
2 would recommend denying the motions to dismiss.

3 As to the scope of the hearing, yes,
4 you have a lot of latitude. Parties -- the people who
5 aren't here of course and even goes to Pilot, they can
6 intervene if they want. You can bring them in. Or
7 they can all sit back and see what happens in -- what
8 the result is at the factual inquiry in September.
9 It's hard to decide what is more efficient at this
10 point.

11 I do appreciate Ms. Hardy's outlining
12 of what exactly is at stake in the motion for scope
13 and drawing the line at let's say the wells that are
14 outside the MSU is as good as any. So I would hold
15 the -- it's a -- it's a more difficult issue to decide
16 what to do about the motion to limit the scope.

17 But at least I would recommend a motion
18 to deny the motion, to dismiss based upon what we've
19 heard. I have not even heard from Empire that there
20 is no issue as to whether there's an ROZ.

21 THE COMMISSIONER: I'd like to hear
22 from the parties if that's okay.

23 Ms. Shaheen.

24 MS. SHAHEEN: Thank you.

25 THE COMMISSIONER: Can you turn on your

1 mic, Ms. Shaheen?

2 MS. SHAHEEN: Thank you, Mr. Chair.
3 When you started addressing the scope, that raises the
4 arguments that I was prepared to make today. I think
5 that the first point -- I'd like to make two points.
6 And one is, as you recognized, there's no artificial
7 boundary around EMSU when it comes to the formation.
8 I am not a geologist, but I'm assuming, and I believe
9 this is true, that in the analysis of whether there's
10 a ROZ that exist in the San Andres is going to include
11 that area outside of the EMSU so you're going to be
12 hearing evidence relating to that area outside of the
13 EMSU, whether you like it or not.

14 And I think as a result, you can easily
15 consider the Empire applications relating to
16 Goodnight's wells that are only approximately 1 mile
17 outside of the unit. So I would suggest that you not
18 limit the scope to the wells within the EMSU. As for
19 Goodnight's suggestion that we should be expanding the
20 hearing by including those applications that were
21 filed with respect to the Rice wells, Permian Lines
22 and Owl, I would note a few things.

23 First, today we will be filing motions
24 to dismiss those applications. I understand that
25 Goodnight opposes those. We presume that The Division

1 opposes those in light of their motion on the scope of
2 the hearing. But Rice, I understand that Owl or Pilot
3 also opposes dismissal of its application. Rice,
4 however, supports dismissal of the applications with
5 respect to the Rice wells.

6 So we will be filing those motions
7 today. Second, consolidating any of the Rice
8 applications at this hearing will result in the
9 deprivation of Empire's right to choice of counsel
10 because the Hinkle firm has a conflict with Rice. So
11 I'm sure you're aware, it's blackletter law that we
12 have -- Empire has a right to its choice of counsel
13 and that right arises under the Sixth Amendment.

14 Third, the scope of operations by these
15 third parties is simply not comparable to Goodnight's
16 high volume commercial operations in recent years
17 discussing of highly salient and incompatible water
18 from outside the area. Goodnight's operations far
19 exceeds the operations of these other third parties.

20 Now, I spent a lot of time yesterday
21 looking at Mr. Rankin's Exhibit C, which was very
22 helpful, and comparing it to OCD data that's readily
23 available on the website. And I can provide you with
24 the numbers comparing the volumes that Goodnight is
25 injecting with the volumes that these other parties or

1 these other operators are injecting. You may not want
2 to hear that today.

3 But I am prepared to provide that
4 information for you and I'll just provide you with one
5 example. And that relates to the Owl well or the
6 Pilot well. That's the P15 no. 1. And that's Exhibit
7 C. Goodnight represents that Owl injected 2,160
8 barrels since November of 2020. The Nolan Ryan well,
9 which is the nearest Goodnight well, injected
10 approximately 13.35 million barrels into the Nolan
11 Ryan during the same time period. That's the most
12 extreme example of the difference between the
13 operators that are at issue.

14 So for that reason, and again, if you
15 would like for me to go through the numbers with
16 respect to the Rice well and Permian Line well that
17 Goodnight has raised, as well as the Parker well and
18 the EMSU well that Empire has, I can go through the
19 numbers on those. But I won't bore you with that if
20 it doesn't matter.

21 My point is simply that to include
22 these third-party operators would simply make the
23 hearing that much more difficult. That is what will
24 make the proceeding unwieldy.

25 THE COMMISSIONER: Is it your

1 contention that those operators' rights won't be
2 impaired by a hearing here? I mean, if we find and --
3 if The Commission were to find there's a recoverable
4 oil zone that Goodnight's wells are flooding out, we
5 would almost statutorily -- wouldn't The Division
6 statutorily have to act against those other non-op
7 providers for their injection for doing it?

8 And I think the presumption, yes, I
9 understand Goodnight's scale is larger at the moment,
10 but the OCD is effectively in part a produced water
11 management agency at five million barrels a day of
12 produced water generated in the Permian. If you shut
13 off wells, the water will go to other wells.

14 So is it your contention that volumes
15 at Rice and others will remain low if suddenly
16 Goodnight's wells were to go offline? I find that a
17 little bit of a stretch just given the broad need to
18 dispose of produced water generally and the volumes
19 are not decreasing.

20 MS. SHAHEEN: Well, first, those
21 parties will not be collaterally stopped by anything
22 that happens in these hearings.

23 THE COMMISSIONER: I don't see how
24 that's possible. If we were to find in a hearing that
25 there's a recoverable -- there's an ROZ in the EMSU, I

1 don't know how in a subsequent hearing we could
2 suddenly decide, oh, there's not.

3 MS. SHAHEEN: Well, Rice or Owl or
4 Pilot or Permian Line, if they want to intervene in
5 these cases because they are concerned and want to
6 have a say, then they have every right to do that and
7 The Commission can allow that intervention. My point
8 is we do not need to bring the applications that
9 Empire filed in which we are now dismissing to be a
10 part of the hearing.

11 THE COMMISSIONER: And I guess I just
12 have a follow-up question on the Sixth Amendment
13 argument, which not completely would welcome in a
14 discussion about how that might apply in the
15 administrative context. But Empire's represented by
16 three firms or three lawyers, maybe two firms. And
17 the issue is an existing conflict created by the firm
18 which are waivable. There are ways to manage those
19 conflicts if parties so choose walling off and other
20 components.

21 It's unclear to me about how the OCD
22 exercising its authority to consolidate cases that
23 raise relevant issues, the fact that it may raise a
24 conflict that counsel has to resolve in part by
25 counsel's own business decision necessarily implicates

1 the Sixth Amendment in its purest form that we would
2 be barred from pulling them up. I guess I'd like to
3 understand that.

4 MS. SHAHEEN: There is a Supreme Court
5 case that recognizes that and I think it would apply
6 to the agency. And let me see if I can find it in my
7 notes here. That's Sanders v. Rosenberg, 1997,
8 NMSC-002, a party has a right to be represented by an
9 attorney of her own choosing.

10 And then the Chappell v. Cosgrove, it's
11 also a New Mexico Supreme Court Case, 1996, NMSC-020.
12 In that case, the Court reversed a trial court's
13 disqualification of an attorney from representation
14 because the grounds for disqualification were
15 insufficient to overcome the right to representation
16 by an attorney of the client's own choosing, relying
17 on American Cable publications, a Tenth Circuit case,
18 which stated that a corollary to one's right to
19 self-representation under the Sixth Amendment "Is the
20 right of representation by counsel of his choosing."

21 So those are the cases that I found
22 that relate to this. I don't think counsel is
23 required to seek consent waivers if there's an issue
24 and --

25 THE COMMISSIONER: But we're not

1 proposing to disqualify Hinkle Shanor. We're making
2 no -- in pulling them up or we're making no assumption
3 about Hinkle Shanor's qualification, that you may have
4 an ethical obligation with respect to representation
5 that complicates it is -- would seem to basically say
6 that a large firm's decisions about who they represent
7 forces hand in terms of how we scope cases which I
8 think goes beyond what either of those rulings
9 require. I'm looking to commission counsel, but --

10 MR. RUBIN: Thank you, Mr. Chair. I'm
11 at a loss. I don't believe this was in the briefing,
12 your Sixth Amendment issue or did I miss something
13 there?

14 MS. SHAHEEN: There is a paragraph in
15 the response to the motion on scope I believe that
16 raises this issue. I don't recall whether we cited
17 the cases in that response, but I think -- I'm
18 providing you with the case law now.

19 I realize that this is not a
20 disqualification case per se, but by consolidating
21 these cases, you are effectively disqualifying Hinkle
22 from participating because it has a conflict. And as
23 we all know, Ms. Hardy has provided a tremendous
24 amount of work on behalf of Empire to date on these
25 cases. So by consolidating the Rice and Permian Line

1 case, we would be effectively without Ms. Hardy's
2 assistance.

3 THE COMMISSIONER: And is it your
4 testimony on the record that it would be impossible
5 for Hinkle Shanor through commonly accepted means,
6 ethical screens and other things like that to manage
7 the cases? And I will say, having worked in a very
8 large law firm, I'm aware of these tools to do complex
9 cases.

10 Are you saying it is impossible for
11 Hinkle Shanor to do that or are you simply stating
12 that Hinkle Shanor's unwilling because it's not
13 required to?

14 MS. SHAHEEN: Well, first of all, I
15 would defer to Ms. Hardy as to what Hinkle can do.
16 But in my mind, Ms. Hardy cannot, in her mind,
17 represent two clients who are adverse or would be
18 adverse. I mean, she has to like have a division in
19 her head. I mean, that's impossible for Ms. Hardy to
20 be able to do that.

21 And Hinkle firm is not a huge firm. I
22 mean, it does have two offices. But I -- no, I don't
23 believe Ms. Hardy would be able to do that. And I
24 can't speak to whether waivers would be possible.

25 My only point is we have -- Empire has

1 a constitutional right to its choice of counsel and to
2 consolidate those cases would result in deprivation of
3 our constitutional right to counsel. There are other
4 reasons that the Rice application and the Permian Line
5 application should not be included and I'm happy to go
6 over those if that would be helpful for you in making
7 that decision.

8 MR. RUBIN: Mr. Chair. There's
9 certainly a difference and I want to make sure the
10 commissioners are clear. As to the scope of the
11 hearing, as to where the evidence may lead in the
12 case, we're just deciding whether to include other
13 parties and other applications. None of this will
14 limit in any way the evidence that the party see fit
15 to submit in September on these issues.

16 And I think her point, we could avoid
17 the Sixth Amendment issue, I'm not saying there's any
18 merit to it, but certainly if we -- if whatever other
19 potential parties wish to intervene do, that's fine.
20 But if they don't, we're not trying to do a full -- we
21 don't need to do a full-scale adjudication. If after
22 this commission -- if this commission decides after
23 its September hearing that there is an ROZ, that there
24 are these factual issues, we can then further make
25 sure that nothing happens on the ground until we deal

1 with the rights or potential impairment of these other
2 parties if we get there.

3 I mean, again, this reminds me of the
4 difficulties of adjudicating the whole stream system.
5 Do we try to do a full-scale adjudication or do we
6 just adjudicate these parties' issues, these with each
7 other? And again, because we're not limiting the
8 evidence that these parties may bring, it may include
9 what happens to wells outside the EMSU.

10 I mean, I suspect that you care about
11 the relevance of the Sixth Amendment here, but it
12 would probably be simpler to simply let this hearing
13 proceed.

14 And it is your discretion, Chair, of
15 course, to bring into this as the division director,
16 but we do have the hearing in September. And as an
17 attorney, boy, that's not a lot of time to prepare and
18 for a case of this magnitude. So we could protect --
19 you would not be remiss in statutory duties as
20 commission by simply proceeding with the scope you
21 currently have and with the parties we currently have.

22 THE COMMISSIONER: I'm going to give
23 some of the other parties an opportunity, Ms. Shaheen,
24 to comment on some of these issues unless you had an
25 immediate follow-up.

1 MS. SHAHEEN: My only follow-up was I
2 believe that both Rice and Pilot have now moved to
3 intervene in these cases. That's my only other
4 addition.

5 THE COMMISSIONER: Mr. Rankin?

6 MR. RANKIN: Thank you, Mr. Examiner.

7 I mean, there are a couple of things
8 you raised at the outset before we get into the scope
9 on the motions to dismiss. I understand -- denying
10 those initially and allowing the parties to come back
11 at a later time. I think that's fine and then I think
12 probably those motions hopefully educated The
13 Commission.

14 We do plan to file a summary judgment
15 motion on the applications to amend the unit interval.
16 I understand that The Commission -- my position on
17 that is that it would not preclude in any way The
18 Commission from hearing the ultimate issues on the
19 ROZ, whether those ROZ recoverable or not. But I do
20 want to make it clear that we are going to be filing
21 that motion for summary judgment in advance of the
22 hearing. But I think it will help direct the issues,
23 legal issues, for The Commission going into that
24 hearing. On the scoping issues, it's true, yes, Pilot
25 now have --

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1 MR. BLOOM: I'm sorry, Mr. Rankin, real
2 quick, one more time what would be the scope of the
3 motion for summary judgment?

4 MR. RANKIN: It will be addressing the
5 applications we filed to amend the unit interval and
6 the special pool. Okay? So the summary judgment that
7 we're going to be filing will be addressing
8 specifically tying the facts to the legal -- to the
9 law, demonstrating that the San Andres should be
10 excluded from the unitized interval and from that
11 special pool. Okay?

12 Now, on the scope, Pilot/Owl and
13 Permian/Rice have both now intervened in the cases,
14 but they haven't themselves requested that their
15 pending applications from the division level be
16 referred to The Commission.

17 I understand why they would not want to
18 do that. They want to dip their toes into this debate
19 without actually putting any skin in the game and I
20 understand the reluctance to be dragged in. And
21 intervening is an opportunity for them to make their
22 voices heard and to do so without actually having the
23 risk potentially of an adverse decision.

24 Now, to your point, Mr. Chair Fuge, I
25 don't see how The Commission can make a decision

1 that's adverse say to these operators and have it not
2 substantively affect their authority to inject in it
3 and, you know, obviously, they would come back and
4 argue we have a right to have a separate hearing on
5 this and we want to present our own evidence and
6 testimony.

7 And that would be -- make no sense to
8 require them to do that at a later time. It may
9 result in conflicting decisions. It'd be an
10 administrative burden on The Commission to have to
11 hear these cases subsequently from different points of
12 view. So I think it's important to keep that in mind.
13 If I may show my screen again, I want to make a point
14 about something. And I think this is important to
15 understand.

16 Mr. Fuge, you raised this issue.

17 The P15 here is a well that's isolated.
18 It's not connected to a pipeline. Okay? That well is
19 -- the authority to inject is maintained periodically
20 by produced water being trucked to that well and being
21 injected. The N-11 [ph] up here is connected to a
22 pipeline system. It's connected to the 3 Bear Energy
23 Delek pipeline system recently.

24 Goodnight has an arrangement with
25 Rice/Permian to dispose of some of this water and this

1 well. Okay? I don't see how -- I mean, of course if
2 we lose our authority to inject, that well's going to
3 get a lot of water. A lot more water than it's
4 getting right now. I don't see why The Commission
5 would be reluctant to bring in these cases. They're
6 currently cases pending. They involve the same exact
7 issues. They're under the same exact legal framework.
8 Under the Statutory Unitization Act, any decision that
9 The Commission makes with respect to the San Andres in
10 this area is going to directly impact their rights and
11 ability to continue injection.

12 I think the issue about choice of
13 attorney is the tail wagging the dog. They got three
14 law firms. I think Montgomery Andrews handles massive
15 cases against, you know, representing the state.
16 They're more than adequate with Mr. Padilla's
17 experience to address this case if, in fact, Hinkle is
18 unable to resolve the conflicts. That issue is the
19 tail wagging the dog.

20 My understanding, now I haven't --
21 because no cases were cited, no arguments were made
22 about this in the briefing, we have been unable to
23 review the Sixth Amendment arguments. I don't believe
24 it has any merit. I'm not aware of any situation
25 where despite conflicts or any other reason that a

1 client is authorized to insist on having more than one
2 attorney represent them at any kind of hearing, no. 1.
3 No. 2, my understanding is that that Sixth Amendment
4 argument, it's not appropriate. It can't be used as a
5 sword to preclude a substantive argument or
6 substantive issues from being heard.

7 And here, substantives issues is
8 whether or not these other three wells are also
9 impairing and impacting the correlative rights and
10 affecting ways that Empire claims is occurring.
11 Empire's testimony that they submitted to The Division
12 repeatedly says that no third-party injection should
13 be authorized within the unit. None.

14 All disposal wells within 2 miles of
15 the -- within the unit within 2 miles should be
16 revoked and banned and then any wells from 2 miles to
17 5 miles should get approval from the unit operators.
18 That's their position and sworn testimony. So I don't
19 see how really -- what they're trying to do is avoid a
20 conflict. They just want to avoid a conflict. And I
21 don't see how that justifies limiting in any way the
22 substantive issues that need to be decided by The
23 Commission.

24 Now, I understand, you know, I've
25 spoken with Mr. Suazo and I've spoken with

1 Mr. Beck [ph] who represents Rice and Permian and I
2 understand no clients want to be in a position where
3 their valuable injection rights are at risk. I
4 understand that. Goodnight doesn't want to be in this
5 position at all. And so -- now do we think we should
6 be.

7 But, unfortunately, that's where we
8 are. And I think it'll be important for The
9 Commission to hear from these operators, I mean, not
10 just on a basis of having intervene but actually with
11 skin in the game. So I think -- I would encourage the
12 commissioner and the commissioner to pull those cases
13 up and have the full vetting of these issues before
14 The Commission. I think it can be -- yes, I mean, I
15 think Goodnight has done a lot of work on this
16 already.

17 We do not want to delay the hearing.
18 We have no interest in delaying this hearing. And we
19 do not want to -- we're not encouraging the addition
20 of these parties in order to cause delay or in order
21 to force conflict on any of the counsel. That is not
22 our motivation. Our view is that is something that
23 it's Empire's issue. Empire as the client has created
24 this issue and it's not something that Hinkle or
25 Ms. Hardy has created. It's something that Empire

1 itself has done. So I think, you know, with that -- I
2 think on the scoping issue --

3 The other thing I want to say on scope,
4 Mr. Commissioners, and I know you may be aware, it's
5 been referenced in some of the briefing. It's been
6 referenced in the motions to intervene. But there are
7 two pending district court cases. Okay? Empire has
8 filed a lawsuit against Goodnight down in the Fifth
9 Judicial District Court making similar claims as they
10 make here.

11 We argued -- we briefed a motion and
12 argued that that case should be stayed and the
13 proceeding should be stayed pending under primary
14 jurisdiction pending -- allowing The Commission to
15 first address these factual issues. The court in that
16 case agreed and said basically, "I can't imagine a
17 more apt situation for The Commission to first address
18 these issues. It's something for The Commission to
19 decide initially."

20 While those arguments were being
21 briefed, Empire through only Montgomery & Andrews and
22 Mr. Padilla filed a parallel lawsuit against Rice
23 operating Permian and Owl and Pilot. So to say that
24 somehow they are unable to proceed here
25 administratively when they have filed a very complex

1 lawsuit down on Fifth Judicial District without the
2 aid of Ms. Hardy is confusing to me. I don't
3 understand the basis for that position today. They
4 chose to file a lawsuit with only two law firms. That
5 was their choice. Okay?

6 They're pursuing their claims in
7 district court with only those two law firms. They
8 have not dismissed those complaints and as I
9 understand, they do not intend to. Now, the fact that
10 they do not intend to dismiss that lawsuit or either
11 of those lawsuits indicates to me that it's even more
12 important for The Commission to hear in the first
13 instance to claims as to all those parties.

14 The court has ruled that it's
15 imperative for The Commission in the first instance to
16 make a determination about these factual issues about
17 waste, about correlative rights, about the presence of
18 hydrocarbons. So I don't see how counsel for Empire
19 can argue that they have a right, a constitutional
20 right, to force The Commission to separate these cases
21 when Empire itself has decided already to pursue their
22 claims in district court with only two law firms.
23 That's the tail wagging the dog and I think it should
24 be set aside.

25 So Mr. Director Fuge, I encourage The

1 Commission to consolidate all these cases with the
2 EMSU. The point that, you know, by including these
3 two additional parties and three wells is somehow more
4 complicated than -- including six or seven additional
5 wells outside the unit, even if they're just
6 Goodnights' wells that they're going to each have to
7 be evaluated on an individual basis based on the
8 distances, locations and geologic factors, I don't see
9 how that makes any sense.

10 I think it's far easier and more
11 streamlined to address everything within the unit.
12 There is not an arbitrary boundary. There's a legal
13 boundary that distinguishes what's happening in the
14 unit from outside and that's the basis substantially
15 for why these cases should be consolidated.

16 THE COMMISSIONER: I'd like to give
17 Ms. Shaheen an opportunity to respond on the
18 litigation and other components 'cause there were some
19 issues that were outside the confines of the paper so
20 --

21 MS. SHAHEEN: I believe this focus on
22 the unit is somewhat of a red herring. And Ms. Hardy
23 nailed it on the head I think when she talked about
24 what's really at issue here is protection of
25 correlative rights and the prevention of waste. The

1 unit boundaries and anything that -- all of those
2 requirements and the order and the Statutory
3 Unitization Act, that really, as I think Commission
4 counsel has recognized, that really has no bearing
5 and, I think as the Chair recognized, really has no
6 bearing on whether correlative rights were being
7 adversely impacted and whether there's waste that's
8 occurring as a result of drowning the strata by
9 producing formation.

10 So this whole focus on the unit and the
11 Statutory Act I think is a little bit of a red
12 herring. So I just wanted to say that. I disagree
13 that somehow leaving Rice and Owl and Permian Line out
14 of this hearing as a party with the applications that
15 we are dismissing today precludes consideration of any
16 substantive issue. And I don't believe Mr. Rankin
17 identified any substantive issue that would be
18 precluded from The Commission's consideration if Rice,
19 Owl and Permian Line applications are not consolidated
20 here.

21 Goodnight can subpoena whatever
22 information it believes it needs from third parties.
23 It could even subpoena their witnesses to testify. So
24 I don't believe that requires those applications to be
25 consolidated.

1 As for the litigation, I think, again,
2 that's really of no import here. We have not yet
3 served the complaint on Rice or Owl and the magnitude
4 of that complaint is far outweighed by the magnitude
5 of the litigation against Goodnight and the magnitude
6 of the applications that are at issue with respect to
7 Goodnight's wells. I don't think that is of any
8 import here with respect to The Commission's decision
9 on the scope of the hearing. With respect to
10 conflicts, I would now defer to Ms. Hardy.

11 THE COMMISSIONER: Thank you.

12 Ms. Hardy.

13 MS. HARDY: I'll just be brief. I
14 think we could certainly explore matters like waivers,
15 but I think -- I'm not sure whether that's a
16 possibility or not. So it's not that we're not
17 willing to do that, it's that I'm not sure that would
18 succeed and I think Empire is entitled to have its
19 counsel of choice involved in these matters.

20 And given the scope of the matters, I
21 know there's been a lot of discussion of three groups,
22 three firms or three different attorneys and I think
23 the scope of these matters certainly warrants that.
24 And I also point that out Ms. Shaheen stated, we are
25 planning to file to dismiss the Rice and Owl

1 applications today.

2 THE COMMISSIONER: I have one factual
3 question. With respect to the Goodnight wells that
4 are outside the EMSU, is Empire the mineral interest
5 holder in the minerals adjacent to those wells or is
6 your mineral interests solely bound within the EMSU,
7 at least to those wells?

8 MS. SHAHEEN: Empire does have mineral
9 rights outside of the EMSU.

10 THE COMMISSIONER: Approximate to
11 Goodnight's existing disposal operations?

12 MS. SHAHEEN: Yes. Within that
13 township and range and I believe within the AGU as
14 well and within that same township and range of that
15 AGU which I want to say is 21 South 36 East and 22
16 South 37 East, but I'm not exactly sure. It might be
17 evident on Mr. Rankin's Exhibit C.

18 THE COMMISSIONER: My other -- I have a
19 couple more, but I'm looking at my other
20 commissioners.

21 DR. AMPOMAH: I'm out of advice at this
22 point.

23 THE COMMISSIONER: Yep.

24 We've had a lot of argument here this
25 morning and if I think back to some of the basic

1 standards about a motion to dismiss and some of the
2 arguments made by the parties, I'm not sure there's
3 clear enough facts on either side to that it would be
4 appropriate for The Commission to deny the motions,
5 even facts candidly not addressed by the proceedings.

6 And I'll just observe for the record
7 I'm surprised the party didn't address it. Questions
8 of participation in administrative proceedings leading
9 up to this. I mean, there was no discussion of, you
10 know, I had a question here and I don't think it's
11 relevant to these motions, but you know, Empire's a
12 successor in interest to prior companies that held it.
13 Those prior companies opted not to participate in
14 administrative proceedings related to injection wells.

15 There are I think legitimate questions
16 about how are you bound by, you know, actions by, you
17 know, predecessors and interests. I think there are
18 maybe some similar questions in Empire's posturing of
19 the case. All of that to say, at least where I am
20 right now, is I think The Commission should deny the
21 motion to dismiss Goodnight's applications to amend
22 orders R-7765 and R-7767 filed by Empire, that those
23 applications should be stayed.

24 I think that issue actually clouds a
25 little bit the questions that Ms. Shaheen so

1 eloquently put are most relevant to our hearing in
2 September, which is is there an ROZ in the San Andres,
3 is injection into the San Andres going to impair it.
4 Right? That's the core factual nugget in my mind that
5 carries through all of these cases and, you know,
6 arguments about amending an order, establishing the
7 unit, if there's no ROZ, whether the unit includes it
8 or not, I don't think precludes, you know, the OCD
9 authorization of injection into that formation.

10 So it's unclear. I think in terms of
11 management of scope, we should also deny the motions
12 to dismiss filed by Goodnight related to cases no.
13 24021 through 24024, 24026 and 24027. But for similar
14 reasons of focusing the hearings and focusing the
15 issues to be resolved in September, I would recommend
16 to my fellow commissioners that those cases also be
17 stayed until following a hearing that is focused on
18 the presence or not of hydrocarbons and the
19 recoverable hydrocarbons in the San Andres formation
20 and the disposal wells that are using that formation
21 within the unit.

22 I'll recognize for the group that that
23 may knock-on issues for external cases. It's going to
24 have knock-on issues for other disposal operations in
25 there. And I think it's knock-on issues independent

1 of what applications people file. I think there is a
2 pathway here where if there's recoverable oil in the
3 San Andres, the OCD independently, with its own
4 independent authority, will have to review injection
5 authority within the EMSU because we have potentially
6 authorized injection that is flooding out a zone with
7 recoverable oil inconsistent with our obligations
8 under the -- its obligation under the Oil and Gas Act
9 and its obligations to protect correlative rights.

10 And that's an independent action OCD
11 can initiate and I don't know how we can do that and
12 just pretend they're existing in little silos or rely
13 on an assumption that injections are low. I am also
14 sensitive to adding more parties at a late date and
15 Counsel Rubin's suggestion to narrow what you have to
16 put before you, but I also think there's a question of
17 whether we as The Commission should stay Division
18 Cases 24432, 24434 and 24436 to let these issues --
19 let the factual issues that will be developed here
20 play out.

21 They will have impact on those
22 injection authorities that we can't say independently
23 right now will be zero on the parties that are -- they
24 are depending on the findings.

25 MR. RUBIN: Mr. Chair, I'm sorry to

1 interrupt. Of course, the Open Meetings Act always is
2 the ultimate constraint. I'm just looking through --
3 there are a lot of numbers here. I'm looking through
4 the agenda as to Goodnight's motions to dismiss that
5 you just started talked about.

6 THE COMMISSIONER: Yep.

7 MR. RUBIN: Are those on the agenda?

8 THE COMMISSIONER: Yeah. They're on
9 the --

10 MR. RUBIN: Clearly.

11 THE COMMISSIONER: -- bottom of the
12 agenda.

13 MR. RUBIN: Twenty-four.

14 THE COMMISSIONER: Under "The following
15 consolidated meeting motions regarding the scope of
16 the hearing, motions to dismiss," all which were filed
17 and logged.

18 MR. RUBIN: Yeah.

19 THE COMMISSIONER: And those cases are
20 in the list of if you look at the third bullet, right
21 in the middle, case no. -- they're all in that run,
22 24018 to 24027.

23 MR. RUBIN: Okay.

24 THE COMMISSIONER: The cases are --

25 MR. RUBIN: Thank you.

1 THE COMMISSIONER: The cases are there.

2 MR. RUBIN: Okay. Thank you. Sorry.

3 THE COMMISSIONER: So maybe I'll open
4 it up for some discussion on my fellow commissioners
5 about that as a potential landing spot.

6 MR. BLOOM: So the two issues, you're
7 looking for comments on both of those recommending
8 recommendation regarding staying --

9 THE COMMISSIONER: Well, denying both
10 motions to dismiss.

11 MR. BLOOM: Yeah.

12 THE COMMISSIONER: Staying the cases by
13 the motion to dismiss and then basically moving
14 forward with the hearing that is the EMSU injection
15 cases in September as sort of the best package 'cause
16 we resolve the motion to dismiss that way, the motion
17 as to scope naturally -- the natural consequence,
18 that's where you'd end up is to scope.

19 And then the sort of separate question
20 is whether we want to consider staying 24432, 24434 or
21 24436 or whether we just want to leave those alone and
22 let the parties take their own counsel on, you know,
23 potential impacts to their interests by participating
24 in or not in this matter.

25 MR. BLOOM: I know, Mr. Chair, I don't

1 know if we've heard from the OCD on this or if there's
2 any thoughts there.

3 MR. TREMAINE: I'll try to be brief.
4 Thank you, Commissioner Bloom and Mr. Chair.

5 I think the OCD supports I think much
6 of the outline or recommendation that the Chair just
7 outlined. I think that the current cases before The
8 Commission related to the EMSU are the appropriate
9 bite size for the hearing that's currently scheduled
10 and will allow all parties with interest in the area
11 to participate. There's been a lot of talk and
12 briefing about the issue of joinder and implication of
13 due process concerns.

14 I can concur with the Chair's statement
15 that the Chair and the director have the authority to
16 elevate those cases. I'm dubious of the Sixth
17 Amendment claims that were raised. So that's
18 something that The Commission or the director could
19 do, but ultimately, I think that those concerns may
20 largely be resolved by the entries of appearance this
21 morning. And so while those other cases have not been
22 elevated up, my understanding is Rice and all of the
23 other parties that we've been discussing have actually
24 now entered appearance and notice of intervention.

25 So unless any party is opposing those,

1 I think that question's resolved and could be moot.
2 And so you don't necessarily have to reach a
3 determination on that and all of the parties of
4 interest will have an opportunity to take part in the
5 hearing to address the, as we've discussed ad nauseam,
6 the underlying ROZ question that's driving everything.
7 In addition, you know, OCD's technical team has looked
8 at the information it currently has available.

9 It's not final determination, but it is
10 OCD's position that the EMSU represents the most
11 logical core set of facts raised by the legal
12 questions in the various applications. And so I think
13 both in terms of the actual core of similar facts and
14 circumstances but also when you factor in, and what we
15 haven't really talked about is, administrative
16 efficiency.

17 So I think the inclusion of all the
18 parties who have now entered appearance will -- all
19 interests will be appropriately raised at the hearing
20 in September based on the scope discussed by the
21 chair. But we're not going to have to get into the
22 minutia of minor differences between particular wells,
23 is there going to be X amount of impact to this well
24 versus that well because there will be -- I anticipate
25 factual distinctions between the wells but not to the

1 level of is there an ROZ and is the zone getting
2 watered out.

3 So I think that ultimately, the
4 questions that were raised by the -- put before The
5 Commission has been addressed. And if there is any
6 ongoing concern related to the Sixth Amendment issue,
7 that's something that OCD would ask time to address.
8 I don't think it's an issue. I'm dubious. I also
9 think that there's an issue with using it defensively
10 rather than offensively.

11 And I would just note as a practical
12 matter this is something that The Commission and The
13 Division need to keep in mind because it's the common
14 practice of operators before The Division to cycle
15 through using basically the entirety of the oil and
16 gas bar in New Mexico. So when you look at the docket
17 on any given day, the same operator will be
18 represented by multiple different firms. So this is
19 something that would come up potentially in the
20 future.

21 And lastly, regarding the motion for
22 summary judgment raised by Mr. Rankin, I'm looking at
23 the rules and I don't think that that moves the needle
24 on anything. I don't actually think that The
25 Commission is required to rule on that motion for

1 summary judgment in advance of the hearing so the
2 parties can do what they want to do and that could be
3 essentially stayed until later.

4 In my opinion, the 19.15.4.16 C gives
5 The Chair and The Commission the discretion to rule on
6 dispositive motions. So I think that that's
7 -- basically, I think everything is wrapped up by the
8 entries of appearance and that OCD's recommendation is
9 that The Commission move forward essentially along the
10 lines that The Chair only know.

11 THE COMMISSIONER: Mr. Suazo is
12 representative of a party that, if I'm characterizing
13 this correctly, has one of those Division cases we're
14 talking about that is not currently at issue here but
15 has an entered an appearance in this matter. Would
16 welcome your perspective on those questions.

17 MR. SUAZO: Sure. Thank you,
18 Mr. Chair.

19 I guess let me address first the wells
20 within the EMSU and the wells outside of the EMSU. On
21 behalf of Pilot -- I think I can represent that they
22 clearly prefer that the wells within the EMSU be dealt
23 with on their own and that the wells outside of the
24 EMSU be left to, you know, another proceeding if
25 possible.

1 With respect to the conflict like
2 yourself I worked at a 1,000 plus person law firm in
3 conflicts like this are addressed relatively routinely
4 and I have every confidence that that can be done so
5 here. That being said, you know, it comes down to
6 initiating offer to -- or so this issue going to
7 dismiss the proceeding against Pilot and Owl. And
8 that's a bit of a mixed bag from our perspective
9 because for starters, it's not being dismissed with
10 prejudice. And that still leaves us with the
11 potential implications of the district court case that
12 Mr. Rankin referenced.

13 And the district court case against
14 Pilot is essentially identical to the one against
15 Goodnight here. And the court in that case set the
16 hearing in late May, but it would like OCD and The
17 Commission to weigh in on these various issues with
18 primary authority. And so the concern from Pilot's
19 perspective is what are the implications just 'cause
20 this OCD case goes away in the short-term, what are
21 the implications in the long-term, especially because
22 The Commission needs to have the first insight that
23 the court -- that will guide the court at a later
24 date.

25 So unless Ms. Shaheen is ready to

1 represent that the case against Pilot will be
2 dismissed as prejudice, I still think that at least
3 for right now Pilot's position is that they will
4 oppose the dismissal 'cause they want to reserve the
5 rights -- its rights to assert its right over the
6 formation and the EMSU going forward.

7 MR. RUBIN: Mr. Chair, may we take a
8 very, very brief break so I can talk to the Chair
9 offline for a few moments?

10 THE COMMISSIONER: Yeah.

11 MR. RUBIN: Thanks.

12 THE COMMISSIONER: Let's come back in
13 ten minutes, so 11:25.

14 (Off the record.)

15 THE COMMISSIONER: All right. We are
16 back on and I think we heard from all the parties on
17 the proposal that I had put -- the sort of straw
18 proposal that I had put out. Commission counsel
19 correctly reminded me that any sort of Commission
20 action on cases 24432, 24434 or 24436 would be
21 improper because while I know the parties to those
22 cases were well aware of this hearing, it was not
23 formally noticed on our agenda, those case numbers
24 that we might be taking any sort of action today, at
25 least The Commission may be taking any sort of action

1 on those.

2 So, therefore, I would like to make a
3 motion that The Commission deny the motion to dismiss
4 -- deny Goodnight's motion to dismiss -- sorry. Let
5 me start again. I'm going to make a motion denying
6 Empire's motion to dismiss the applications to amend
7 orders R-7765 and R-7767 that were filed by Goodnight
8 and those are in case no. 24277 and 24278 and that
9 those -- that that motion be denied and that those
10 applications be stayed pending the conclusion of the
11 currently scheduled hearing for September.

12 MR. RUBIN: Mr. Chairman, by stay you
13 mean it'll proceed to hearing in September.

14 THE COMMISSIONER: No. They will be
15 stayed and the OCC will revisit, putting them back on
16 the docket with the parties after the hearing --

17 MR. RUBIN: Oh, yes, yes. Okay.

18 MR. BLOOM: Mr. Rubin, it's okay to do
19 both those -- it sounds like we're doing two things on
20 one motion. Is that okay?

21 MR. RUBIN: Yeah. That's fine.

22 MR. BLOOM: And we're good? Okay. All
23 right. Then I so move.

24 DR. AMPOMAH: I second.

25 THE COMMISSIONER: Let the record

1 reflect that motion was approved unanimously. The
2 second motion I'm proposing to make is that we dismiss
3 the motion to dismiss filed by Goodnight to dismiss
4 cases 24021 through 24024 and 24026 and 24027. Those
5 are Division case numbers that are all part of case of
6 -- Commission case 24123. And much like the first,
7 those cases be stayed until some future date following
8 the hearing in September.

9 MR. BLOOM: I so move.

10 DR. AMPOMAH: I second.

11 THE COMMISSIONER: Let the record
12 reflect that that motion was approved unanimously.
13 And then the final motion I would make as to the scope
14 of the hearing, and I think this flows from the
15 actions that were just approved on the motions to
16 dismiss, that the hearing in September have the
17 following scope: that it is to address the potential
18 for a recoverable oil zone, residual oil zone in the
19 San Andres within the EMSU unit and that it covers any
20 applications to inject or applications to revoke the
21 authority to inject for SWDs located within the EMSU
22 boundary.

23 MR. BLOOM: I so move.

24 DR. AMPOMAH: I second.

25 THE COMMISSIONER: Let the record

1 reflect that --

2 MS. SHAHEEN: Just to clarify, you mean
3 Goodnight's wells within the EMSU?

4 THE COMMISSIONER: I see. Sorry. I
5 should have clarified.

6 That it covers the Goodnight wells that
7 are currently at issue before The Commission.

8 MR. BLOOM: I so move.

9 DR. AMPOMAH: I second.

10 THE COMMISSIONER: Let the record
11 reflect that that motion was approved unanimously.
12 And I think that informs the scope of the hearing for
13 September. And so the last item on the docket for
14 today in this case is a request for reconsideration of
15 the motion partially quashing Goodnight Midstream
16 Permian's subpoena and specifically -- and I was
17 authorized by The Commission to act on the subpoena
18 with advice from Commission counsel.

19 My decision to produce documents
20 responsive to request no. 7 to 9, that was quashed in
21 its entirety and there is a request to restore that.
22 I'd like to offer some brief arguments from the
23 parties related to that motion and we'll start with
24 Mr. Rankin.

25 MR. RANKIN: Thank you, Mr. Chairman.

1 I'm going to go ahead and put these up
2 on the screen. I'm not sure if everybody is familiar
3 with these requests specifically so I want to make
4 sure that you all can see the language here. And I'll
5 just quickly walk through what we're asking for. And
6 I'm going to give a little bit of background because
7 I'm going to explain how it came about that we were
8 seeking this information. Okay? The first request
9 here is a request for reserve reports for the EMSU,
10 including related internal/external communications,
11 emails, summaries and so forth that reflect on or
12 discuss concern, those reserve reports.

13 That's kind of a general request that
14 we're asking for. And the reason we're asking for it,
15 not just the reserve reports but we're asking for the
16 communications and summaries because we want to
17 understand what information or data was provided that
18 relate to the preparation of those reserve reports.
19 While we think that the reserve reports will identify
20 the method, means and the data that went into the
21 calculation, we also want to understand what was
22 provided to the parties that were doing the work.

23 The second one, no. 8, is similar,
24 except it's a little bit broader. As Ms. Hardy
25 pointed out, and she was speaking, just to be clear,

1 in her response, in Empire's response, they were
2 taking a position it seems that we were only seeking
3 SEC reserve reports. And that's not the case. We're
4 asking for a broad range of potential reserves reports
5 because we're trying to identify what Empire or its
6 third-party engineering consultants have looked at and
7 have identified as potential for hydrocarbons in the
8 San Andres and around the EMSU.

9 So the second one, no. 8, is asking for
10 not just reserve reports, meaning proved reserves,
11 okay, which is what the SEC requires, but we're
12 looking for a broader range. We're looking for
13 proved, probable and possible reserves which are
14 defined terms under the Society of Professional
15 Engineers' guidance for determining reserves.

16 So we're looking for a much broader
17 range, anything that would qualify under those
18 definitions for oil, gas and hydrocarbons within the
19 EMSU and again, asking for reports that relate to
20 those, including you've got communications because
21 we're trying to figure out -- and summaries 'cause
22 we're trying to figure out what data went into the
23 preparation of those reports.

24 And the last one is all reserve reports
25 and reserve estimates prepared to underwrite the

1 acquisition of the EMSU again. And I'm going to
2 explain why we asked for this in particular and I'm
3 going to do so by pointing to some testimony that
4 Empire's chief operating officer gave and that will
5 also lay out a little bit of the background to explain
6 why it is that we're focused here today in these
7 requests on reserved reports.

8 So to do that real fast, and I think
9 you all probably have a good idea of what reserve
10 reports are. But I'm going to point out here this is
11 from the SEC paper that we attached as part of our
12 motion, proved reserves. Again, it's the highest kind
13 of standard. It's what the SEC requires. And of
14 course, we understand that the San Andres isn't going
15 to have proved reserves. There's no production from
16 the San Andres as an ROZ. So of course we understand
17 that's likely going to be the case, that there are
18 none.

19 But we're also looking for probable or
20 possible reserves. And you'll see, as I get into the
21 testimony from Empire's chief operating officer, why
22 it is that we think that they may have done this. And
23 if they haven't, that's fine. We'd like to know. So
24 in any event, that's the basis for what probable
25 reserves and proved reserves are.

1 Now, this goes back to the Piazza case
2 when we were initially seeking authority to inject in
3 one of those wells that is subject to this subject set
4 of hearings. It's the only case that's up on de novo
5 appeal. Now, you'll see that I've outlined and
6 highlighted some of the dialogue here between what the
7 -- let me get to my point here -- between -- actually,
8 this is between Mr. Padilla and Empire's chief
9 operating officer.

10 So where you see the A here for answer,
11 that's their chief operating officer responding to
12 questions from Mr. Padilla. And I've highlighted his
13 testimony. You'll see he goes on to say, in response
14 to a question, that Empire has had their own
15 subsurface team that has looked at the formations, you
16 know, our productive horizons. We've also had
17 third-party studies that we've done and, you know,
18 that's what we're going -- those are the people I'm
19 listening to on this one.

20 So he's talking about that he's had
21 third-party studies and he's had their own subsurface
22 team evaluate formations with the EMSU. So, you know,
23 my perspective, I think, okay, they've got internal
24 studies and they've got third-parties who are looking
25 at this. Goes on to say that Goodnight is contending

1 that Empire did not produce, they're holding back
2 documents and not disclosing those. Is that accurate?
3 He says it's not. You know, of course there are
4 proprietary trade secrets that are always at issue.
5 We want to get those reviewed before, you know, he
6 goes on to kind of say you want to make sure there's
7 nothing proprietary. But of course, I wouldn't hold
8 anything back from the court or from the commission.
9 That's great. Okay.

10 He goes on to say that Exxon did a lot
11 of review. They did a lot of review of the ROZ. So
12 I'm out here, that's when I think, okay, ExxonMobil
13 has done some substantive work. I expect to get a lot
14 of documents showing what ExxonMobil has done as the
15 prior operator of the unit. He goes on to say that --
16 you know, responds to our question, "How do you view
17 the ROZ potential in this field?" "We view it as the
18 cornerstone of our strategy that we're going to praise
19 it at least." Okay?

20 So my understanding, based on this
21 discussion and testimony that goes on, is that one of
22 the reasons, the motivations for purchasing this unit
23 because they believe it has an ROZ potential. Okay?
24 He says, "Now a project starts at appraisal, goes to
25 select, define and execute." So you see during this

1 course of his testimony he says, "We're in the
2 appraisal stage right now." This is two years ago.
3 "We're appraising it. We feel comfortable that we're
4 going to be able to have a very large production from
5 across the full interval, including the bottom
6 interval. That would be the San Andres."

7 So he's telling me -- actually telling
8 Mr. Padilla in the course of his testimony that they
9 have the confidence that they have substantial
10 hydrocarbons within the San Andres, that one of the
11 reasons they purchased it was because of the ROZ
12 potential down to the bottom of the San Andres. It's
13 the cornerstone of their strategy.

14 Now he goes on to say, in the course of
15 this dialogue, "I have our own subsurface teams and
16 I've had other reviews say that there's plenty of
17 potential on the order of basically company maker type
18 potential that you would defines as a residual oil
19 zone." That's a substantial statement. I want to see
20 what their internal review say about the company maker
21 type potential and I want to see what these third
22 parties' review say about company maker potential.
23 Okay?

24 This is important to me because during
25 the course of this hearing, this is news to me. Okay?

1 Does the San Andres -- does that include the San
2 Andres formation? Does this company maker potential
3 include the San Andres? His response, "That includes
4 the whole formation that we have unitized, the whole
5 formation of the Grayburg San Andres was -- formation
6 has been unitized." Okay.

7 So I'm hearing to myself, boy, they
8 must have a lot of documents. They must have a lot of
9 stuff that's going to show that the San Andres has
10 potential, not only from them but from ExxonMobil, XTO
11 and from third parties that they've hired to review
12 it. So at that time, okay, I thought to myself, well,
13 we'll see what happens. The Division rules and the
14 Piazza case that they went ahead and demonstrated
15 sufficient evidence that there's at least potential
16 for hydrocarbon so they denied our application to
17 inject.

18 Then we filed these additional cases in
19 the unit, the four that are at issue here. And I
20 served them with discovery. Okay? No. 1, I want,
21 based on everything I heard from Mr. Sweeney, I want
22 documents, communications, correspond, emails,
23 analyses reports, summaries, whatever you've got,
24 okay, that shows whether you believe there's
25 hydrocarbons in the San Andres within the EMSU, but

1 also documents that show that they're not. Okay? I
2 don't want to just know what they're relying on to
3 show that there are. I want to know evidence that is
4 contrary, adverse to their position.

5 I mean, this is it. This is a pretty
6 simple straightforward request for documents. Okay?
7 I got seven documents in response. I got one document
8 that was prepared by Empire. The rest were prepared
9 by Dr. Trentham and Mr. Melzer or one involved
10 Lithuania ROZ potential. Nothing related to anything
11 that he said in his testimony about the internal
12 reviews they did about the third parties they hired to
13 evaluate the ROZ or anything that shows that this
14 company maker type ROZ potential in the San Andres.

15 I was a little disappointed that I
16 didn't get what I asked for. Okay? What else did I
17 ask for? Now, in the course of that testimony, if you
18 were to review it all, you'll see that he's talked
19 about -- that Empire's in the appraisal stage.
20 They're appraising the potential for ROZ. I had
21 substantial dialogue with Mr. Sweeney at the time
22 trying to confirm whether or not Empire had prepared a
23 written plan for how they're going to appraise ROZ.

24 He testified that, yes, we have a
25 written plan. So I came back in the initial subpoena

1 where I'm asking for documents, I ask him, specifying
2 directly to the testimony, "Please produce your plan,
3 how you're going to assess and evaluate the ROZ in
4 this zone." Eventually, I was told, you know, that
5 they don't have a written plan. Okay? They said they
6 did, but they don't. And the written plan that
7 Mr. Sweeney was referring to was an XTO brochure that
8 was produced during the course of the hearing.

9 That's what he meant apparently. Okay.
10 So that is all I got was XTO's brochure that I
11 understand was provided as part of the data room
12 during the acquisition of the Empire ESMU unit when
13 Empire was buying. So in my mind, these three
14 requests also had covered everything that Mr. Sweeney
15 testified about at the hearing. I ought to have
16 gotten their internal documents, their reviews and
17 analyses showing that there is an ROZ potential, that
18 there's company maker type productivity within San
19 Andres, but I didn't get it. Okay?

20 So now, I did have an ongoing
21 discussion with Empire counsel from the time of --
22 from about November until through, oh, man, March,
23 back and forth, back and forth. You know, I was
24 aggressive. I was pushing them. I wanted documents
25 'cause they're claiming that there's an ROZ in the

1 zone and they're seeking to completely extinguish
2 Goodnight's operations. They've got 11 injection
3 wells that they're disposing of that they've
4 authorized and approved within the area and everyone
5 but one Empire seeking to revoke.

6 Empire -- Goodnight has spent over
7 several hundred million dollars developing a pipeline
8 system that brings in produced water and of course
9 they take this very seriously. We have a right to
10 this information and a right to see it and apparently,
11 whether they have it or not, we didn't get it. Okay.
12 So that's the first round of discovery and so, you
13 know, I'm not blaming, you know, counsel for anything.

14 I believe, you know, whether Empire has
15 this information, Mr. Sweeney was puffing about what
16 they have or not, I don't know. But, you know, Empire
17 has not produced what I understood them to have as far
18 as development plans. Now, fast forward to today,
19 okay, I thought to myself, well, they don't have any
20 internal plans or development, maybe they've done
21 reserve reports. Maybe when they went to buy this
22 cornerstone of their strategy in New Mexico, they
23 would have gone and gotten a reserve report for their
24 potential ROZ, maybe it's not proved reserves. Maybe
25 it's probable or possible reserves, but I didn't get

1 what I thought I would get with my first round so
2 maybe I'll try reserve reports.

3 It has nothing to do with the financing
4 of the unit. It's actually -- it's all to do with
5 what data or information Empire provided to its
6 third-party consultants who conducted or audited and
7 gave their sign-off on whether or not their
8 hydrocarbon reserves in the San Andres within the
9 unit. So we served the current discovery that we're
10 at -- I'm discussing here today which are the seven.
11 And whether or not they have reserve reports or
12 whether or not the communications around them is
13 burdensome, I mean, I disagree.

14 I think, you know, we're at a point
15 here where the issue, as we just has laid out, is
16 whether or not there's hydrocarbons in San Andres.
17 And now one other point I wanted to make is when this
18 discovery issue came up, Empire had already filed its
19 exhibits and testimony in the Division cases. And
20 that's when it became apparent to me that they had
21 information potentially that went to our discovery
22 requests in the first subpoena that was not -- that I
23 believe was not provided to us. Okay?

24 And the information that came through
25 in their discovery and their testimony was information

1 that Empire was relying on in support of their claim
2 that there is ROZ. So, again, we went through a
3 process to get that information and I believe we now
4 have all the information that at least Empire is
5 relying on in support of its claims.

6 But what I don't have is documents and
7 information that show the non-existence of
8 hydrocarbons, okay, for -- I mean actually do. I
9 think they actually provide it to us, but I also
10 believe that there is a lot more information out there
11 that they have that shows that there are no
12 hydrocarbons in the San Andres and I -- that's one of
13 the reasons I'm now trying to get the reserve reports.
14 I want to see what data and information Empire
15 provided to its third-party consultants to assess and
16 evaluate the total reserves in San Andres, whether
17 it's proved reserves, probable reserves or possible
18 reserves or even internal estimates of reserves.

19 Whatever it may be, I think we have a
20 right to that information. I think The Division would
21 like to see the information. I think The Commission
22 would like to understand what is out there. And
23 that's why I think these three requests are so
24 important and why I'm asking The Commission to
25 reconsider these three requests because I think, you

1 know, we haven't been able to get to date what I think
2 we are owed, what The Division is owed and what The
3 Commission would want to see, which is, you know, what
4 is out there, what is the evidence you actually show.

5 And so I just, you know, I think maybe
6 my point was made and I want to tell that story a
7 little bit because when you actually review the
8 testimony, what Mr. Sweeney said, you know, it was a
9 very clear statement that they have these reviews,
10 they have these assessments, they've gone to these
11 third parties. And so I haven't gotten anything yet
12 that shows that at all. Nothing.

13 I have no internal reviews or
14 assessments, plans, showing what they've done. Now
15 they're taking evaluation studies of San Andres. I've
16 gotten slides and documents from Dr. Trentham and
17 Mr. Melzer that are, you know, public slideshows
18 about, you know, ROZ potential in carbonite, you know,
19 place, but I haven't gotten anything internal that
20 shows -- now, two years since Mr. Sweeney has said
21 that they're undertaking an appraisal of the zone.

22 And, you know, Empires and the -- they
23 are the operator of this unit. It's been there since
24 1984. They have hundreds of wells, lots of data. And
25 maybe there's zero data that shows there's

1 hydrocarbons in San Andres, fine, but I also want all
2 the data and information that shows there's not.

3 So with that, Mr. Chair and
4 commissioners, I respectfully ask that the
5 Commissioner reconsider the denial of these three
6 requests and move the Empire should be required to
7 produce documents that are responsive to them as well
8 as the data and information underlying them. The data
9 information underlying them is at least responsive to
10 the first request that we asked for back last year.
11 It's at least responsive to that and we didn't get it
12 and we should get it here.

13 And when you look at what, you know,
14 for example, the SEC filings and submissions, you
15 know, they took at -- they review what was provided to
16 them by Empire. Okay? And while the SEC reserve
17 report doesn't break down on the location that's
18 between their North Dakotas asserts or New Mexico
19 assets or any place else, the reserve estimates were
20 based on interpretations and factual data provided for
21 the Empire petroleum corporation.

22 So that information is going to show,
23 you know, whether there are hydrocarbons or not
24 hydrocarbons. And this third party did an assessment
25 to determine in their view how many hydrocarbons there

1 are and what the value of them is. Now, you know, my
2 point simply is that this is responsive. Like what
3 was provided to them is responsive. We didn't get it
4 as far as I know.

5 So that's the reason for this request
6 and the reason for this request for reconsideration.
7 With that, I ask that our motion be granted and we be
8 given the responsive documents both to those three
9 that were initially quashed and to the original
10 request that we filed back last year. Sorry.

11 MS. HARDY: Thank you, Mr. Chair. The
12 three requests that Mr. Rankin is discussing are
13 specific to reserve reports. Reports are, by nature,
14 documents that are reported somewhere. They're not
15 internal analysis. They're reports. And I've stated
16 very clearly in our response to the motion that I
17 filed late yesterday that we do not have reserve
18 reports regarding hydrocarbons in San Andres. We
19 don't have them.

20 The SEC requires reporting of proved
21 reserves only, not possible reserves and not potential
22 reserves. So for that reason, we do not have reserve
23 reports that address whether there are hydrocarbons in
24 the San Andres. Mr. Rankin's request really, it seems
25 to me, is for the data underlying Empire's testimony

1 and position that there are hydrocarbons with San
2 Andres more generally. And he is incorrect that we
3 have not provided that information. I think
4 Mr. Rankin is ignoring our first supplemental response
5 to the subpoena and our second supplemental response
6 to subpoena.

7 If The Commission looks at our reply on
8 our motion to quash at page 21 of the PDF, we provided
9 a copy of our second supplemental response to the
10 subpoena. And Goodnight asked for all documents
11 concerning the existence or non-existence of
12 hydrocarbons in the San Andres. We've supplemented
13 that response. We've provided initial response.
14 We've supplemented it twice. We've provided
15 publications, a fracture study, register logs, another
16 fracture study. We provided communications with our
17 expert witnesses. We've provided a resistivity log, a
18 core analysis, core description, routine core
19 analysis. A 1987 water flood report. A 1988 water
20 flood plan report.

21 So we have provided all of this
22 information and we've provided it again and again.
23 And we are here again listening to the same demands
24 from Goodnight that we've been dealing with for
25 months. And we have fully responded. Whether

1 Mr. Rankin thinks our information is sufficient is his
2 own issue, but we've provided all of the responsive
3 information that we have to their request.

4 So I just respectfully disagree. I
5 don't think there is anything else that they're
6 entitled to get. And I don't think The Commission
7 needs to reconsider its order. And Mr. Rankin
8 previously asked specifically for the reports that
9 Mr. Sweeney was referring to. We responded and said
10 he's no longer an employee. We don't know exactly
11 what reports he was referring to, but anyway, here are
12 all the documents that we have.

13 So that's where we are. We don't have
14 anything else at this point in response to these
15 requests. And I think The Commission's order was
16 appropriate and should be maintained, quashing the
17 subpoena. We've provided all of the information that
18 has been previously requested. And we are providing
19 supplemental information in response to the request
20 that The Commission didn't quash. So I would ask that
21 the motion be denied. And I'm sorry if I was speaking
22 too fast.

23 THE COMMISSIONER: No. I'll offer
24 maybe a little insight 'cause I was authorized by The
25 Commission at our last hearing to act on the subpoenas

1 and the motion to quash. You know, as explained in
2 our motion or in our order -- well, let's stop. Bear
3 with me one second.

4 We had basically decided to quash those
5 because we felt like it was pursuing, yes, that. Do
6 not appear reasonably calculated to provide relevant
7 discovery on the technical issues in this case, but on
8 Empire's financial consideration for acquiring its
9 working interest in the EMSU. You know, looking at
10 the briefing on this question, and again, going back
11 to the breadth of the request, I still see some facets
12 of that conclusion.

13 However, the couple of hours of
14 discussions we had is one of the key issues for
15 resolution at the hearing in September is the question
16 of prove, probable or possible reserves, which is in
17 question eight and it leads the technical basis. It
18 is in a request certainly seven and eight, nine still
19 continues to me going to more financial questions as
20 opposed to necessarily technical ones.

21 But either reserve reports that might
22 be filed or internal reserve estimates prove, probable
23 or possible and Goodnight's subpoena at least into
24 eight did go beyond reserve reports. You know, on
25 reconsideration at least discussing it now does seem

1 to relate to a technical issue squarely up for
2 decision in September. And so I guess I'd welcome a
3 little bit more discussion on that observation after
4 leading both Goodnight's filing and Empire's response.

5 MR. BLOOM: Mr. Chair, a question to
6 you. Have I got this right? No, it slipped my mind.
7 Never mind. I'll come back to it.

8 THE COMMISSIONER: And I guess maybe
9 I'd offer it up first to Empire because it would seem
10 to me that at least, you know, internal or external
11 documents or estimates, I mean, you know, there are
12 reports prepared for public consumption and there are
13 also reports prepared for internal consumption for
14 different reasons relevant to prove, probable or
15 possible reserves seem to be squarely relevant to the
16 issues we're going to be deciding in September.

17 MS. HARDY: And Mr. Chair, I think the
18 issue, right, is whether there are hydrocarbons in the
19 San Andres within the EMSU.

20 THE COMMISSIONER: Uh-huh.

21 MS. HARDY: Right? So if the request
22 pertain to reserve reports prepared regarding or
23 supporting documents for those reports regarding the
24 existence of hydrocarbons in the San Andres within the
25 EMSU, we don't have them because those are not --

1 those are not report. I mean, if you look at the SEC
2 reports that Mr. Rankin is showing, they are combined
3 geographic areas, combined formations. They don't
4 relate to those issues. So I think that's the
5 problem.

6 And the other issue is that reserve
7 reports that are publicly filed with the SEC are for
8 of course a different purpose. Right? I mean, The
9 Commission and Division's obligation is to protect
10 correlative rights in different ways. The SEC has
11 very strict parameters on what they require reporting
12 on 'cause they're looking at it for a different
13 purpose. They're looking at it for whether people
14 should invest in companies or not. Right? So it's
15 just a different purpose. But I think the bottom
16 line, I've said this in our response that I filed
17 yesterday, is that we don't have reserve reports that
18 relate to the existence of hydrocarbons within the
19 EMSU in the San Andres.

20 THE COMMISSIONER: What about under
21 eight which asks for any internal or external
22 estimates not reserve reports of hydrocarbons within
23 the EMSU?

24 MS. HARDY: I think those were covered
25 by Goodnight's other request for production which

1 relate to -- or even broader than that. Right? Their
2 request that we have provided responses to multiple
3 times is for all documents that relate to whether the
4 existence or non-existence of hydrocarbons in the San
5 Andres. I mean, that's an extremely broad request,
6 which is part of why we objected to it to begin with,
7 but then we negotiated extensively over several months
8 and ended up provided the information that we have so
9 --

10 THE COMMISSIONER: Well, where I am
11 today is that in looking at the arguments and the
12 technical discussion we had today about sort of scope
13 of the hearing and the issues that at least as it
14 relates to request no. 8 in the subpoena that we
15 squashed that that was inappropriate and that should
16 be restored because that goes to all internal and
17 external estimates of prove, probable or possible
18 reserves of oil and gas hydrocarbons within the EMSU
19 and, you know, possibly also seven, but I appreciate
20 that those reserve reports or maybe Empire's position
21 that those are what are submitted, you know,
22 referencing reports submitted to the SEC.

23 But some restoration of those requests
24 is proper because they do go squarely to technical
25 issues that are before us. And I guess I would look

1 to Commission counsel. Obviously I was authorized by
2 The Commission to act on the discovery motions. Do I
3 act as chair on reviewing it or would you recommend
4 action by the full commission?

5 MR. RUBIN: Thank you, Mr. Chairman,
6 members of The Commission. It's perfectly fine for
7 The Commission as it is before The Commission at this
8 point to rule on this if it wishes to. It's certainly
9 on the agenda. It's an interesting argument by
10 Mr. Rankin that these seven, eight, nine were
11 propounded in response to what he suspected were the
12 failure to provide documents in response to previous
13 requests.

14 So I understand it more now. But
15 nonetheless, I think no. 8, as you say here and
16 certainly is certainly relevant and especially at
17 today's discussion. If there was some abuse of the
18 discovery system that Mr. Rankin is alluding to, that
19 would be a separate motion if they had not -- if he
20 contends based upon what Mr. Sweeney testified to many
21 years ago that they're withholding something that they
22 have and they're not giving it, that's a separate
23 motion. But the answer is not to provide additional
24 discovery 'cause if they're lying, then they'll just
25 lie again anyway.

1 And certainly I would not want to not
2 amend the motion -- the order with respect to rights
3 simply because there are no more responsive documents.
4 They can -- if the result of this is that Empire
5 submits, says, "Yes, okay. Here's your answer to no.
6 8, we have no additional documents," then so be it.
7 It does not mean we should not amend to allow them to
8 no. 8.

9 So I think it is fine for the Chair to
10 call for a motion by The Commission. And I believe
11 the motion, if I understand it correctly, is to amend
12 the previous order, partially quashing to restore the
13 obligation of Empire to respond fully to no. 8.

14 THE COMMISSIONER: Yes. That's the
15 most -- so I move to amend the prior order of The
16 Commission, partially quashing the subpoena to restore
17 no. 8 as part of the subpoena. So I'm amending the
18 motion to partially quash accordingly.

19 MR. BLOOM: And I will second.

20 THE COMMISSIONER: Dr. Ampomah.

21 DR. AMPOMAH: Approved.

22 THE COMMISSIONER: Commissioner Bloom.

23 MR. BLOOM: Approved.

24 THE COMMISSIONER: Let the record
25 reflect the motion was unanimously approved and we

1 will issue an order amending the motion accordingly.
2 That covers the last items on the matter for these
3 cases.

4 Do we have anything to discuss or flag
5 under pending this litigation, Mr. Rubin?

6 MR. RUBIN: Unfortunately, we do,
7 Mr. Chair, members of The Commission. About a week
8 and a half ago we received an order from the District
9 Court which I've forwarded to you separately. In the
10 Atencio lawsuit in which the District Court, Judge
11 Matthew Wilson, denied the defendant's motions to
12 dismiss except with respect to the legislature's
13 motion on -- which asserted immunity.

14 So the District Court judge did give us
15 language that would allow for interlocutory appeal.
16 We are in the process of working with the other
17 executive defendants which would be under EMNRD and
18 their respective cabinet secretaries to put forth a
19 product that hopefully the Court of Appeals will take
20 up.

21 We're going to make part of that motion
22 to be a request for a stay the District Court
23 decision. Otherwise, discovery and an answer will
24 proceed as per the rules. And so we will file that, I
25 will send you the draft of it. It will probably be

1 pretty short notice because the interlocutory
2 application is due in the middle of next week so the
3 clock is ticking.

4 So as to the second moving part, again,
5 we need -- we're not going to assume that somehow the
6 Court of Appeals will save us from filing an answer.
7 I did. It was pulling teeth, but I received a 30-day
8 extension on the plaintiffs to file the answer. And
9 that is a good thing because it is a 440-something
10 progress complaint. I am almost complete with my
11 initial take through it.

12 We, of course, will coordinate with the
13 executive or co-defendants in the executive branch and
14 we are all positioned roughly similar as needs to be I
15 guess the legislature. However, this is still a
16 significant task for this Commission and I may -- if
17 our next meeting is July 18th, that is cutting it very
18 close to when our deadline is to file the answer. So
19 I may ask to our staff to schedule a special meeting
20 where we will go into closed session. Okay?

21 THE COMMISSIONER: Okay.

22 MR. RUBIN: To go through a draft
23 answer. It is a -- we are responding as a public
24 entity and there are certainly some significant issues
25 that I need to have my client, you three, agree to

1 before I file something. And we're not going to do
2 that today obviously. That's not what we have today.
3 So look for a request for a special meeting.

4 THE COMMISSIONER: Maybe sometime the
5 week prior.

6 MR. RUBIN: Yes. And I understand
7 Dr. Ampomah has some travel plans which we need to
8 work around as well.

9 THE COMMISSIONER: Okay.

10 MR. RUBIN: But we'll need to do that.
11 And again, it's a -- what I will do is I will forward
12 to you all, before that, the privileged matter of
13 course what I am highlighting as what we should deny,
14 what we should admit, what we have no knowledge of.
15 And I encourage -- we are encouraging, especially The
16 Chair because you work with ARCO [ph] defendants that
17 you could start that process collaboratively with them
18 as opposed to just always me going to their attorneys
19 which, you know, the less attorneys involved, the more
20 efficient it is.

21 THE COMMISSIONER: Yeah.

22 MR. RUBIN: So with that, I will keep
23 you posted and stand for any questions.

24 THE COMMISSIONER: That makes sense.
25 We'll work with The Commission clerk to get that

1 special meeting noticed and set.

2 And with that, I would note that our
3 next scheduled public open session meeting is July 18,
4 2024.

5 Mr. Rankin.

6 MR. RANKIN: Thank you. Sorry,
7 Mr. Chair. Just a quick housekeeping questions on the
8 reinstatement of that request no. 8. Will the order
9 provide for a timeframe for production of those
10 responsive documents?

11 THE COMMISSIONER: Yeah.

12 MR. RUBIN: Yes.

13 MR. RANKIN: Okay. And I mean I'm fine
14 with 30 days I guess from the order if it's going to
15 be quickly issued.

16 THE COMMISSIONER: Yeah.

17 MR. RANKIN: Okay. And that's fine
18 with me. Thirty days is fine. We are running out of
19 time, but 30 days should be fine.

20 MR. RUBIN: And it'll also be sending
21 together general rulings in the previous order too.

22 MR. RANKIN: Thank you.

23 MR. RUBIN: Okay.

24 THE COMMISSIONER: And with that, I'll
25 adjourn the July 20th meeting of the Oil Conservation

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Commission. Thanks all.


(Whereupon, the meeting concluded at
12:10 p.m..)

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CERTIFICATE

I, JAMES COGSWELL, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

July 9, 2024



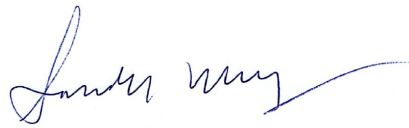
JAMES COGSWELL
Notary Public in and for the
State of New Mexico

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CERTIFICATE OF TRANSCRIBER

I, SANDRA HUANG, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

July 9, 2024



SANDRA HUANG

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[goodnight - hearing]

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[hearing - impair]

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