

1 September Meeting of the State of New Mexico Oil
2 Conservation Commission

3
4 Docket Nos. 24683, 24123, 23614-23617, 23775,
5 24018-24027

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8 Moderated by Gerasimos Razatos

9 Monday, September 23, 2024

10 9:06 a.m.

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13 Pecos Hall, Wendell Chino Building

14 1220 S. Saint Francis Drive

15 Santa Fe, NM 87505

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21 Reported by: James Cogswell

22 JOB NO: 6866872

A P P E A R A N C E S

List of Attendees:

Gerasimos Razatos, Chair, Oil Conservation Commission
and Acting Director, Oil Conservation Division

Greg Bloom, Commissioner, Oil Conservation Commission

William Ampomah, Commissioner, Oil Conservation
Commission

Sheila Apodaca, Law Clerk, Oil Conservation Commission

Jaclyn M. McLean, Attorney, Hinkle Shanor LLP

Miguel A. Suazo, Attorney, Beatty & Wozniak, P.C.

Jesse K. Tremaine, Attorney, State of New Mexico Oil
Conservation Division

Adam G. Rankin, Attorney, Holland & Hart LLP

Ernest L. Padilla, Attorney, Padilla Law Firm, P.A.

Daniel R. Rubin, Attorney, New Mexico Department of
Justice

Allyson A. Beasley, Attorney, Western Environmental
Law Center

Michael H. Feldewert, Attorney, Holland & Hart LLP

Sharon T. Shaheen, Attorney, Spencer Fane

Christopher L. Moander, Attorney, State of New Mexico
Oil Conservation Division

Dana S. Hardy, Attorney, Hinkle Shanor LLP

Matthew M. Beck, Attorney, Peifer, Hanson, Mullins &
Baker, P.A.

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P R O C E E D I N G S

MR. RAZATOS: Good morning, everyone. This is the September meeting for the Oil Conservation Commission. I'm Gerasimos Razatos; I'm the Commission chair. And we'll start our meeting now. As always, we'll start with a roll call. So if we can do roll call with the Commissioners, please. Go ahead.

MR. BLOOM: All right. Commissioner Greg Bloom for the State Land Office.

DR. AMPOMAH: Commissioner William Ampomah, designee of the Energy Secretary.

MR. RAZATOS: Excellent. And as I said, I'm the acting director of the Oil Conservation Division, and so I'm the chair for the Oil Conservation Commission.

So we're all in attendance for this, so we can document that roll call was done and everybody is present. We need to do an approval for our agenda for the September 2024 agenda. So if we can do that?

MR. BLOOM: I move to approve the agenda.

DR. AMPOMAH: I second.

MR. RAZATOS: Awesome. So we can document that the agenda was approved for this session. Next, we have the approval of the August 15,

1 2024, meeting minutes. So if we could get an approval
2 for that?

3 MR. BLOOM: I move to approve the
4 minutes of the August meeting.

5 MR. RAZATOS: Great.

6 DR. AMPOMAH: I second.

7 MR. RAZATOS: Awesome. So we can show
8 on record that the meeting minutes were approved.
9 Thank you, everyone. So we have pending cases; the
10 following cases are what we're going to do and have
11 for today.

12 Our first case that we have is case
13 number 24683, application of Western Environmental Law
14 Center, and Citizens Caring for the Future,
15 Conservation Voters of New Mexico Education Fund, Dine
16 C.A.R.E., Earthworks, Naeva, and the New Mexico
17 Interfaith Power and Light, San Juan Citizens
18 Alliance, and the Sierra Club, to amend specific
19 rules.

20 This is a presentation of proposed
21 notice of rulemaking hearing. Are the parties present
22 for that? We'll start on this end and we'll just work
23 our way down.

24 MS. BEASLEY: Yes. I'm Allison
25 Beasley, present for Petitioners.

1 MR. RAZATOS: Awesome. Thank you.

2 MS. MCLEAN: Jackie McLean with Hinkle
3 Shanor on behalf of the Independent Petroleum
4 Association of New Mexico.

5 MR. RAZATOS: Great.

6 MR. SUAZO: Miguel Suazo with the Santa
7 Fe Office of Beatty & Wozniak appearing on behalf of
8 the New Mexico Oil and Gas Association.

9 MR. RAZATOS: Excellent. Thank you.

10 MR. TREMAINE: Jesse Tremaine for the
11 Oil Conservation Division.

12 MR. RAZATOS: Thank you, Mr. Tremaine.

13 MR. FELDEWERT: Good morning,
14 Mr. Chair. Mike Feldewert with the Santa Fe Office of
15 Holland & Hart on behalf of OXY USA, Inc.

16 MR. RAZATOS: Excellent. Thank you,
17 Mr. Feldewert.

18 Anybody else? Okay. So we can get our
19 matter started.

20 Ms. Beasley, please.

21 MS. BEASLEY: Okay. And I do have a
22 copy of the amended notice, if helpful, I can provide.
23 So since the August 15th meeting, which we appreciate
24 the approval of the request for hearing, we have met
25 since to try to work out this agreed-upon notice.

1 And on September 6th, we filed our
2 second amended notice of hearing. It's modeled after
3 notices of hearing in the past by this Commission and
4 other rulemakings, including the PFAS rulemaking.

5 And, in short, we are proposing a
6 hearing date April 14, 2025, to accommodate requests
7 from the Oil Conservation Division, the Independent
8 Petroleum Association, and other parties.

9 And we will endeavor not to use the
10 entire two weeks, but that is the proposed start date
11 to allow time, should we need that full two weeks. We
12 are proposing that parties file full direct testimony
13 and exhibits on January 31, 2025, and rebuttal on
14 March 7, 2025, prior to that April 14th hearing.

15 We'd also like to note that we have
16 worked to find times in October for all of the parties
17 to get together and further try to find common ground
18 and work out any sort of substantive issues, work with
19 language, those sorts of things in the petition, and
20 have found a couple of dates in October that we are
21 aiming to do that.

22 And we appreciate everyone's efforts to
23 come to agreement on the notice and to meet in
24 October, and the Commission's efforts, as well.

25 MR. RAZATOS: Excellent. Thank you.

1 We'll just move right on down and see what everybody
2 else has to say, as well.

3 MS. MCLEAN: IPANM has agreed to the
4 proposed form of order, and we don't have any
5 additions.

6 MR. RAZATOS: Excellent. Excellent.

7 MR. SUAZO: That also goes for NMOGA.
8 We've agreed to the form of notice, and no further
9 comment.

10 MR. RAZATOS: Great.

11 MR. TREMAINE: Jesse Tremaine for OCD.
12 Mr. Chair, the parties worked together through a
13 couple meetings to address various concerns.

14 And we encourage the Commission to
15 adopt the form of order, with any necessary changes
16 that the Commission deems necessary, and also
17 encourage for this subject matter and the rulemaking
18 that the Commission designate a hearing officer for
19 the hearing.

20 MR. RAZATOS: Okay. Thank you.

21 And Mr. Feldewert?

22 MR. FELDEWERT: OXY has no concerns
23 with the proposed notice.

24 MR. RAZATOS: Okay. Great.

25 MR. RUBIN: Mr. Chair, if I may?

1 MR. RAZATOS: Yes, please, Mr. Rubin.

2 MR. RUBIN: One brief non-substantive
3 comment. The paragraph entitled "Oral Comments," I
4 think to better track the language in the State Rules
5 Act, I would like that that read "Public Comment." We
6 could have it read "Public and Oral Comment."

7 Do the parties have any concerns? I
8 just want to make sure "public comment" is
9 highlighted. Okay. So, Ms. Beasley, if you could
10 prepare -- I don't have a Word version of this. You
11 could send us a Word version with that change?

12 MS. BEASLEY: Absolutely.

13 MR. RUBIN: Okay. That's all I have,
14 Mr. Chair.

15 MR. RAZATOS: Okay. Excellent.

16 Commissioners, do you have anything
17 that you wanted to add, or questions?

18 Please.

19 MR. BLOOM: Mr. Chair, I note that
20 Mr. Tremaine asked that we appoint a hearing officer,
21 and I'm just unclear; can't remember at what point we
22 would do that if that's an action we would take today
23 via a vote or we would do it a later date.

24 MR. RAZATOS: Mr. Rubin, did you have
25 any suggestions on that?

1 MR. RUBIN: Mr. Chair, Commissioner
2 Bloom: The Open Meetings Act sometimes is a bit of a
3 constraint in these matters, and our agenda only lists
4 the matters to be heard as presentation of proposed
5 notice of rulemaking. So I think in an abundance of
6 caution, we do not have the Commission formally act by
7 appointing a hearing officer today.

8 However, it is something that I believe
9 can -- I will check the rules, but we might be able to
10 get that done without Commission order if the chair
11 does so, unless if someone else knows if the rules say
12 otherwise.

13 MR. RAZATOS: Mr. Tremaine, did you
14 have any objection to that?

15 MR. TREMAINE: No objection. I mean,
16 that's the decision of of the Commission. I think it
17 was discussed in prior hearings. My understanding and
18 interpretation of the rules is that that's a
19 procedural decision that can be made by the chair.
20 But I will defer to the decision of the Commission.

21 I think that there are going to be some
22 other matters to discuss in this case over the coming
23 months that it would be helpful to have a hearing
24 officer in place for. But if that's not the case,
25 then we can accommodate either way. Yeah.

1 MR. RAZATOS: Okay. Mr. Rubin, then if
2 you would just follow up with the Commission and just
3 let us know exactly, and then we could figure out --

4 MR. RUBIN: Okay. Yeah. I think that
5 the best course is either, if I'm correct, that the
6 chair can appoint the hearing officer to do it in that
7 matter or make sure it's on the next meeting agenda.
8 Either way, I think Mr. Tremaine's point is well-taken
9 that we want a hearing officer in place sooner rather
10 than later.

11 MR. RAZATOS: Sure. Sure. We'll work
12 it out in a moment, get it up. Excellent.

13 So does, as far as the Commissioners,
14 starting April 14th work for everybody?

15 I'll start -- Commissioner Bloom, I'll
16 ask you.

17 MR. BLOOM: Let me check here.

18 DR. AMPOMAH: It works for me, so ...

19 MR. RAZATOS: Commissioner Ampomah, it
20 works for you?

21 DR. AMPOMAH: Yes.

22 MR. RAZATOS: Okay.

23 MR. BLOOM: Yes. That works for me, as
24 well, Mr. Chair.

25 MR. RAZATOS: It works for me, also, so

1 we'll start it. We'll get the rulemaking hearing
2 starting on April the 14th of 2025.

3 We'll set it for a period for two
4 weeks, Sheila, if we can do that.

5 And as you mentioned, Ms. Beasley, you
6 didn't think it would go for two weeks, but better
7 safe than sorry. Right? Okay. Excellent. If no
8 other --

9 Dr. Ampomah?

10 DR. AMPOMAH: Yeah, Chair. So can we
11 have clarity, getting closer to the hearing date, to
12 make sure if we know the timeline? Because I need to
13 make travel arrangements, as well, so ...

14 MR. RAZATOS: Right. I --

15 And, Ms. Beasley, I think since WELC is
16 the petitioners for this, you would just follow
17 through to make sure that we have timelines and all
18 that. Correct? Excellent.

19 MS. BEASLEY: Yes. As best we can,
20 absolutely.

21 MR. RAZATOS: Okay. All righty. So I
22 think that's set for that particular case. Thank you
23 to all the parties for that one.

24 MR. RUBIN: We do need a motion.

25 MR. RAZATOS: I'm sorry. We need that

1 motion.

2 MR. RUBIN: Motion to approve the
3 proposed notice as amended by counsel.

4 MR. RAZATOS: Thank you. So we need a
5 motion to approve for this hearing.

6 MR. BLOOM: And I so move.

7 DR. AMPOMAH: I second.

8 MR. RAZATOS: Excellent. Motion has
9 been granted.

10 MS. BEASLEY: Thank you.

11 MR. RAZATOS: Thank you to everybody.
12 As people are getting seated, our next is the
13 consolidated cases by Goodnight Midstream and Empire,
14 New Mexico.

15 They are case numbers 24123, 23614
16 through 23617, case number 23775, and case numbers
17 24018 through 24027. This is a motion from Empire for
18 clarification on the scope of hearing and burden of
19 proof.

20 To make sure that the parties are all
21 here, is everybody here from the parties? I'll start
22 here from my left, and we'll go through.

23 Ma'am, please.

24 MS. SHAHEEN: Thank you, Mr. Chair.
25 Sharon Shaheen. With me today is Ernie Padilla. And

1 on the internet is Ms. Hardy, who will be doing the
2 argument on the motion today.

3 MR. RAZATOS: Excellent. Thank you.

4 Mr. Padilla? She just introduced you.
5 So did you have anything else?

6 MR. PADILLA: I don't have anything
7 else. Thank you.

8 MR. RAZATOS: Excellent. Thank you.

9 MR. SUAZO: Good morning,
10 Commissioners. Miguel Suazo with Beatty & Wozniack,
11 appearance today on behalf of Pilot Water.

12 MR. RAZATOS: Excellent. Thank you,
13 Mr. Suazo.

14 MR. MOANDER: Chris Moander on behalf
15 of the Oil Conservation Division.

16 MR. RAZATOS: Okay. Thank you.

17 MR. RANKIN: Good morning,
18 Commissioners. Adam Rankin with the Santa Fe Office
19 of Holland & Hart on behalf of Goodnight Midstream.

20 MR. RAZATOS: Thank you, Mr. Rankin.

21 Anybody on -- Ms. Hardy, I know you're
22 on Teams. Was there anything you would like to add?

23 MS. HARDY: No. Good morning. Thank
24 you.

25 MR. RAZATOS: Great. Thank you.

1 Anybody else on Teams? And I apologize, I can't see
2 the screen, so -- and I didn't load it up on this
3 computer.

4 MR. BECK: Good morning, Commissioners.
5 Matt Beck on behalf of Intervenors Rice Operating
6 Company and Permian Line Service, LLC.

7 MR. RAZATOS: Thank you, Mr. Beck.
8 Appreciate it.

9 Anybody else? Okay. We'll start with
10 you, ma'am, and hear -- oh.

11 Actually, Mr. Rubin, I know you wanted
12 to start off this particular one this morning, so if
13 you wouldn't mind.

14 MR. RUBIN: Thank you, Mr. Chair. I do
15 think it might be helpful, for the benefit of the
16 various counsel here, that they hear what I think of
17 the -- you know, I've had the luxury of reading all
18 the pleadings, and I would like to perhaps offer the
19 Commission my advice as to what this all means.

20 And I think it might be helpful then so
21 that the counsel can then direct their comments, their
22 oral argument, accordingly, to the extent that the
23 Commission feels like I have some sage advice on this.

24 So this is clearly an issue of
25 statutory interpretation of a statute the Commission's

1 entrusted with. This is clearly something for the
2 Commission to decide, not the hearing examiner.

3 There is, of course, the option of
4 having the hearing examiner take argument on this and
5 make a recommendation as part of his report. But to
6 the point of the motion, there might be some
7 efficiencies gained by the fact that there was
8 direction and perhaps even an order from the
9 Commission ahead of time.

10 And so, again, this is the
11 interpretation. As I see it, these motions come down
12 to interpretation of 70-2-12(B)(4), under the
13 enumeration of powers, all the things that the
14 Commission and the Division may do. I think that's a
15 hard "may" because it lists a list of horrors that
16 need to be prevented.

17 And I think that goes to the point of
18 Empire that the way this statute is constructed, it
19 lists, not just in paragraph 4 but those other
20 numbered paragraphs, all the things that this
21 Commission is entrusted to prevent.

22 I think some of the controversy is
23 because paragraph 4 groups together two things by
24 subject matter because they both deal with produced
25 water and the chaos it can cause for pooling. And so,

1 I've looked at the structure of this particular
2 paragraph before. And it says, basically, to prevent
3 the -- well, I'll read it.

4 "The Commission may issue orders to
5 prevent the drowning by water of any stratum or part
6 thereof capable of producing oil and gas or both oil
7 and gas in paying quantities and to prevent the
8 premature and irregular encroachment of water or any
9 other kind of water encroachment that reduces or tends
10 to reduce the total ultimate recovery of crude
11 petroleum oil or gas or both oil and gas from any
12 pool."

13 So while I do understand the point made
14 by Goodnight that there is an "and" here and so the
15 argument is that Empire must prove both of these
16 things, and therefore, it is a logical necessity that
17 they establish the paying quantities provision of the
18 first part.

19 However, the fact that the statute --
20 the intent of the statute is to list all the things
21 that must be prevented. And further, it doesn't
22 simply say to prevent X and Y; it says to prevent X
23 and to prevent Y. It adds a verb in there.

24 And, of course, as lawyers, we
25 sometimes dwell too much over what the intent of an

1 "and" or an "or" or a comma is. I think it is telling
2 and I think the legislature intended to reinforce the
3 intent that you need to prevent both things in any
4 order or rule.

5 And so, based on that interpretation, I
6 would strongly advise the Commission that if Empire
7 can prove either of these things, an order should
8 issue accordingly.

9 And now to the point of Goodnight.
10 There is -- you do need to read everything in pari
11 materia, consistent with the other statutes and
12 consistent with each other. And would it not be a
13 problem if we have notions of the oil and gas in
14 paying quantities not somehow incorporated in the
15 second part of (B)(4)?

16 Well, it's an interesting structure
17 here because the first part, the preventing the
18 drowning by water of any stratum, this first part
19 refers merely to stratum.

20 And you all can correct me if I'm
21 incorrect on this, but stratum generally refers to
22 structures; refers to the architecture, if you will,
23 of what we're dealing with, whereas the second part
24 deals with the pool, which is the oil and gas.

25 And so the A and B are intended to

1 cover either one. There's things we must prevent with
2 respect to the structure, and things we must prevent
3 with respect to the oil and gas.

4 So that is why I think you can read
5 these separately, and this Commission should not enter
6 any orders or pass any rules that would violate either
7 of these things. But I do not think, based upon this,
8 that Empire is necessarily out of -- okay, if it only
9 simply proves, tries to prove, the second part.

10 Because the second part, "the
11 encroachment that reduces or tends to reduce the
12 ultimate recovery of crude petroleum or oil and gas or
13 both from any pool," that is taken directly from the
14 waste definition at 70-2-3(A); almost the exact same
15 language.

16 So I think reading these consistently,
17 and with the overall entrustment of the legislature
18 that this Commission shall prevent waste, it would
19 seem to me, although we don't have to decide this
20 today, that some notions of practicalities or profit,
21 if you will, need to still be read into this second
22 prevention.

23 Because if, let's say, in this
24 particular stratum, if this particular pool does not
25 contain enough oil or gas for it to be worth anyone's

1 while or profitable to extract it in the first place,
2 I think that there's no waste.

3 Inherent in waste are notions of -- you
4 want to prevent waste as a prevention of oil and gas
5 that otherwise would be extracted, and it would only
6 be extracted if there was a profit motive to do so.

7 So with that, I think that the
8 Commission should certainly hear from counsel on this
9 because there are certainly different ways to
10 interpret this. I do feel like the way I'm proposing,
11 I think is -- my goal is to make sure that whatever
12 the Commission decides is going to be upheld on
13 appeal. That's my motivation.

14 So I stand for any questions from the
15 Commission. And then at the Commission's pleasure,
16 they could hear argument from counsel.

17 MR. RAZATOS: Thank you, Mr. Rubin.
18 Commissioners, did you have any
19 questions?

20 MR. BLOOM: No, Mr. Chair. But I would
21 like to hear from the parties, as well, as Mr. Rubin
22 suggested.

23 MR. RAZATOS: Okay.

24 DR. AMPOMAH: Yeah. I would like to
25 hear from the parties, as well, so ...

1 MR. RAZATOS: I agree. I think I'd
2 like to hear from the parties, also. So I think that
3 that part's unanimous.

4 So, Mr. Rubin, then, procedurally, from
5 this point, we could turn to the parties now.
6 Correct?

7 MR. RUBIN: Yes, Mr. Chair, members of
8 the Commission: I think it's appropriate for the
9 parties to make their presentations. My hope is that
10 if anything I said will help focus the argument.
11 That's all.

12 MR. RAZATOS: Okay. Excellent. Thank
13 you.

14 So as I did earlier, I'll start here on
15 my left, and we'll work through.

16 So why don't we have you start, ma'am,
17 and we can go from there.

18 MS. SHAHEEN: Thank you. Ms. Hardy is
19 going to speak on behalf of Empire.

20 MR. RAZATOS: Ms. Hardy's going to
21 speak? Okay.

22 Ms. Hardy?

23 MS. HARDY: Yes. Good morning,
24 Mr. Chair and Commissioners. And I would like to
25 share my screen here so we can look at the statute.

1 And I agree with Mr. Rubin's interpretation. Can you
2 see my screen or not?

3 MR. RAZATOS: No, not yet.

4 MS. HARDY: Okay.

5 MR. RAZATOS: There we go.

6 MS. HARDY: There. Can you see that?

7 MR. RAZATOS: Yes.

8 MS. HARDY: Okay. So of course, when
9 you're interpreting statutes, the goal and
10 requirements under New Mexico law is to construe the
11 entirety of the statute at issue, along with the other
12 provisions, so those would be the provisions of the
13 Oil and Gas Act.

14 So as Mr. Rubin stated, this statute
15 which Goodnight is relying on is a list of powers that
16 the Commission and Division have. So it's not a
17 burden of proof statute; it's a list of powers that
18 enumerates all of the different matters that the
19 Commission and Division must address, and may make
20 rules and orders to address.

21 And so Goodnight is relying here on
22 this subpart (B)(4). And they are arguing, as
23 Mr. Rubin mentioned, that Empire cannot prevail on its
24 applications to revoke Goodnight's permits unless it
25 establishes that both of these two items in subpart 4,

1 that the production in paying quantities will be
2 reduced, and that the water encroachment reduces or
3 tends to reduce the ultimate recovery of hydrocarbons.

4 And I think they are misreading that
5 provision in many ways. First, they are using that
6 reference on production in paying quantities to
7 supersede any other provision of the Oil and Gas Act,
8 including the other subparts of this specific statute.

9 So that has never been held by the
10 Commission or Division to be the only way that a party
11 can oppose an injection application. And I want to be
12 really clear that that is what Goodnight is arguing
13 here.

14 They are arguing that the Commission
15 and the Division cannot act to deny injection
16 applications unless the opponent proves a loss of
17 production in paying quantities.

18 That's not the law. That's not in the
19 Oil and Gas Act. It's not in any Commission or
20 Division regulations. And that has not been held in
21 any order, including the order in which the Division
22 denied Goodnight's permit to inject into the Piazza
23 well. That's just simply not the law.

24 And when you look at this subpart (B)
25 of the statute, it also provides that the Commission

1 and Division, under subpart 2, are to prevent
2 petroleum, natural gas, or water from escaping from
3 strata in which it is found into other strata. That's
4 another provision that is relevant here and that the
5 Commission can act on.

6 And then also, when you look at subpart
7 7, that provision requires the Commission and Division
8 to ensure that wells are drilled, operated, and
9 produced in such a manner as to prevent injury to
10 neighboring leases or properties.

11 So you have those two provisions as
12 well as subpart 4. All of those items listed allow
13 the Commission to deal with Goodnight's applications,
14 and potentially deny them if they cause concerns on
15 those issues.

16 So I think, really here, that Goodnight
17 is taking one subpart in isolation. They're
18 misreading that subpart. They are basically cutting
19 it out of the rest of the statute and saying that that
20 supersedes other provisions as well as the rest of the
21 Oil and Gas Act, which is just simply not the way that
22 statutes are read in New Mexico.

23 And it would hamstring the Commission
24 and the Division's ability to address injection
25 applications in this state and ensure that they do not

1 cause waste and violate correlative rights. So I
2 think it's clear here what the Commission can do, and
3 it can act under any of those provisions.

4 And it's simply not correct that Empire
5 can only prevail if it shows a loss of production in
6 paying quantities. That's just not correct, and
7 that's not what the Commission should find here. So I
8 think the argument is actually pretty straightforward,
9 and I think the statute is straightforward.

10 And another point, and we made this in
11 our reply brief, is that Goodnight, in arguing that
12 that one provision uses the word "and," well, the
13 entire list of powers also uses the word "and." When
14 you look at it, there are 21 or 22 powers enumerated
15 there.

16 So if Goodnight's interpretation were
17 correct, that would mean that the Commission could not
18 address any issue unless all 22 of those are
19 satisfied, which is, of course, not the law. So
20 Goodnight's argument lacks merit and should be
21 rejected, and Empire's motion should be granted.

22 And I don't know, Mr. Rubin, if you
23 would like us to deal with the burdens of proof
24 because that was also raised in the motion. And I
25 know you didn't make comments on that, but I'm happy

1 to address that, as well.

2 The other matter addressed by our
3 motion is just, really, a clarification of very clear
4 law, which is that each party bears the burden of
5 proof on its own applications. That should not be
6 controversial. In fact, it's not controversial under
7 the law. It's very clear.

8 For some reason, Goodnight is trying to
9 convolute that and argue that Empire somehow bears the
10 burden of proof on all of the applications, including
11 Goodnight's applications. That's not the law in New
12 Mexico.

13 The case they cite is a Colorado case
14 from the Court of Appeals, which states that the party
15 seeking to change the status quo bears the burden of
16 proof. That is not a novel concept.

17 And when you read the case, it's not
18 saying anything different from the fact that the
19 moving party bears the burden of proof. Here, Empire
20 bears the burden of proof on its applications to
21 revoke, and Goodnight bears the burden of proof on its
22 applications to inject.

23 Goodnight is seeking to change the
24 status quo by obtaining injection permits that it does
25 not currently have, and also to increase its injection

1 rate in an existing well. So it clearly bears a
2 burden of proof on those applications. Empire bears
3 the burden of proof on its applications. I think
4 that's a pretty clear principle of law that really
5 should not be up for debate.

6 Goodnight argues that Empire somehow
7 now bears the burden on Goodnight's applications
8 because Goodnight has established a prima facie case
9 based on its testimony that's been submitted.

10 Well, that's not correct. Empire has
11 opposed Goodnight's applications, and also submitted
12 testimony and exhibits in opposition to those. So no
13 factfinder has held, at this point, that either party
14 has met the burden of proof.

15 So if Goodnight's argument were correct
16 on the burden of proof, then Empire has already met
17 its burden on its own applications. So it's an
18 inconsistent argument on the part of Goodnight. I
19 don't think it really makes any sense, and it's
20 inconsistent with well-established law.

21 So I think, really, to sum up here,
22 Empire's motion should be granted. The Commission
23 should clarify that the issue in these cases is
24 whether Goodnight's injection is resulting in waste or
25 violating correlative rights, and clarify that each

1 party bears the burden of proof on its own
2 applications. So I'm happy to answer questions, if
3 there are any.

4 MR. RUBIN: If I may respond to
5 Ms. Hardy's comment about the burden of proof?

6 MR. RAZATOS: Please.

7 MR. RUBIN: I didn't mention that, and
8 I should have. The way I see it is the burden of
9 proof typically does not wind up being an issue when
10 both sides present their case, and it simply comes
11 down to a matter of preponderance of the evidence,
12 which is what the standard is here.

13 So burdens of proof can come into play.
14 I would recommend that that part of the motion not
15 be -- you know, the Commission does not necessarily
16 have to decide that today, but to leave that to the
17 hearing.

18 And if Mr. Harwood, as hearing officer,
19 believes that, somehow, the burden of proof is how to
20 decide a particular issue, that would be his
21 recommendation. But I suspect there is a very good
22 chance that he will not make a recommendation based on
23 the burden of proof, anyway.

24 MR. RAZATOS: Okay. Thank you,
25 Mr. Rubin.

1 Commissioners, any questions?

2 DR. AMPOMAH: Yes. I do have one or
3 two.

4 So, Ms. Hardy, I want to know: When
5 you talk of ROZ, you know, ROZ need to have a minimum
6 saturation before it can qualify to be an ROZ.

7 So if you say that Empire doesn't
8 necessarily need to prove that there is, let's say,
9 some amount of oil in there, I'm a little bit confused
10 as to how you are going to prove that there is an ROZ.
11 So if you can comment on that?

12 MS. HARDY: Sure, Dr. Ampomah. So
13 Empire absolutely will establish that there is an ROZ,
14 and we are providing information on economics in our
15 testimony, as well.

16 The issue here that came up on this
17 motion is pretty specific, and it is that Goodnight
18 has argued that Empire cannot prevail unless it
19 establishes a reduction in production in paying
20 quantities. That is a specific term of art and
21 analysis.

22 Under Oil and Gas law, to determine
23 production and paying quantities, you look in
24 hindsight and evaluate the cost and revenues. It's a
25 very specific analysis.

1 So that is a narrow view that Goodnight
2 has, and that's not the law. I think Empire is
3 absolutely going to establish that there's an ROZ that
4 can be produced. The issue here is whether we have to
5 establish a specific loss of production in paying
6 quantities.

7 And that's something that is not
8 required, and it's not appropriate here based on the
9 posture of this case because we haven't implemented a
10 tertiary recovery project yet. So you can't look in
11 hindsight at economics and cost and revenues of a
12 specific production plan or unit.

13 And that's what Goodnight is arguing
14 here. So that's the issue. It's not that we don't
15 have to prove any amount of recovery economics,
16 because that's not true, because obviously, if there
17 was not a sufficient amount of oil in the ROZ, we
18 wouldn't be here. Does that answer your question?

19 DR. AMPOMAH: Yes. Thank you.

20 MS. HARDY: Okay. Thank you.

21 MR. RAZATOS: Commissioners, any other
22 questions?

23 Okay. There are no other questions,
24 Ms. Hardy. Thank you. Appreciate it.

25 MS. HARDY: Thank you.

1 MR. RAZATOS: We'll move on to
2 Mr. Suazo.

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

4 Actually, Pilot has not submitted
5 briefing for today's hearing. We may have some
6 comments at the close of the other party's briefing.
7 But just as a reminder, we have intervened in the
8 case, and Pilot's interests in the EMSU are
9 potentially impacted by the findings here.

10 MR. RAZATOS: Okay. Thank you,
11 Mr. Suazo.

12 Mr. Moander?

13 MR. MOANDER: Good morning,
14 Commissioners, Mr. Chair. So the OCD did file a
15 response in this matter, but took a different tact.
16 And I'm going to explain a little bit of that here.

17 So, first off, I do think that
18 Mr. Rubin's correct that we've got issues here of
19 statutory interpretation. OCD took a look at other
20 provisions that fall within 7-2-12(B).

21 As a starting point, Empire's reply
22 states that it does not dispute the Commission has
23 jurisdiction over the Division's water quality
24 concerns or that the concerns may be addressed at the
25 February 2025 hearing if the Commission determines

1 it's appropriate to do so.

2 OCD's position is it's absolutely
3 appropriate, and OCD's case fits within the scope of
4 the original scheduling order. And I'll turn to that
5 here.

6 OCD quoted directly out of the
7 scheduling order, in particular, paragraph 3 on page
8 2, that "such evidence, testimony, and legal argument
9 shall be limited to applications and wells by
10 Goodnight or by Empire, New Mexico, LLC, within the
11 EMSU." Fairly straightforward sentence.

12 The focus here is the applications and
13 wells. Now, OCD's position is that, under 70-2-12 --
14 there's discussion, of course, about the drowning of
15 strata, which has been discussed and will be further
16 elucidated by counsel; that's what I anticipate.

17 But OCD is much more interested in a
18 very key provision here. It's actually subparagraph
19 15, which states in relevant part that OCD has to
20 regulate the disposition, handling -- basically, the
21 touching, if you will -- of produced water during or
22 for reuse during all oil and gas operations.

23 Again, I'm paraphrasing. But the key
24 part here is "including disposal by injection pursuant
25 to authority delegated under the Federal Safe Drinking

1 Water Act in a manner that protects public health, the
2 environment, and freshwater resources."

3 So OCD looks at this matter, when you
4 look at what the Commission originally ordered,
5 disposition of produced water is arguably the key oil
6 and gas concept in play here, which is also going to
7 be modified by concepts of waste and so on.
8 But when you look at that sentence from the scheduling
9 order, OCD's case is precisely at the heart of the
10 case.

11 While the private parties have concerns
12 about waste and interference with their private
13 operations, OCD has an overarching federal duty; not a
14 state duty, but one from the federal government under
15 the Safe Drinking Water Act, to the point that it's
16 actually put into statute. So everybody knows that
17 that's part of OCD's obligation. It's not a
18 regulatory decision.

19 OCD's real argument here, though, on a
20 more substantive level is that -- it's OCD's view that
21 the Commission can't really consider the applications
22 of either Goodnight or Empire without factoring in
23 information about Class 2 UIC permitting.

24 That's one, arguably a foundation for
25 the operations of both operators, which should be

1 addressed in some form in their cases, or at least
2 touched upon.

3 But secondly is that -- and OCD intends
4 to flesh that out more fully and bring as much
5 information as possible to the Commission that is up-
6 to-date to show, essentially, where things were, where
7 things are, and where the future concerns lie about
8 these injection wells and these programs.

9 So, not to belabor the point, but it
10 seems fairly straightforward that OCD'S case is
11 encompassed by the scheduling order. And the fact
12 that OCD didn't finally tip its hand until its witness
13 testimony came out is not a fault of OCD's. OCD
14 understood the scheduling order and has operated
15 accordingly.

16 So there was no, from OCD's position,
17 surprise or anything. Discovery could have been
18 conducted. All of that sort of investigation could
19 have been had. It wasn't. And that's not to cast
20 dispersions upon any one party, but that's a part of
21 the discovery process OCC permitted.

22 So, to summarize: Based on the
23 scheduling order, 70-2-12(B) in some of the enumerated
24 sections, in particular a reference to the Federal
25 Safe Drinking Water Act, OCD's position is its case is

1 viable, appropriate, and acceptable for hearing in
2 this matter, and that any objection to it is off-base
3 as a matter of law and a matter of fact.

4 And I'm happy to answer any questions
5 that the Commission might have,

6 MR. RAZATOS: Thank you, Mr. Moander.

7 Any questions from the Commission?

8 Dr. Ampomah?

9 DR. AMPOMAH: Yeah. So I want to know
10 OCD's position on this particular motion on the floor.
11 Like, if you can tell the Commission, what is your
12 position on Empire's motion?

13 MR. MOANDER: Oh. Our position is that
14 we -- so this is an odd motion, Dr. Ampomah, from the
15 standpoint that what you're asking OCD is to pick a
16 winner here; pick a side that they prefer.

17 Arguably -- and this is always OCD's
18 concern to potentially express a particular
19 institutional bias one way or the other. At this
20 point, OCD's position is that the hearing officers
21 made determinations that have led to the appeal to the
22 OCC that was made through a hearing officer.

23 OCD is not picking a particular party
24 to favor in this action, is interested -- very similar
25 to your request, Dr. Ampomah -- about questions on

1 enforcement and so on. OCD wants to see what all
2 comes out of this.

3 But the decision point, unfortunately
4 or fortunately here, is with the OCC. OCD's case is
5 segregated from those cases and takes a different
6 approach, which is more focused on the issue of the
7 drinking water, injection volumes, and so on.

8 DR. AMPOMAH: So let me be clear. So
9 during the actual hearing, is OCD going to more or
10 less try to be in the middle without, like, bringing
11 in experts to prove that the San Andres or the subject
12 formation, based on the state analysis, whether it's a
13 production zone or is a potential injection zone?

14 MR. MOANDER: So, Dr. Ampomah, I always
15 enjoy your questions because you definitely put me to
16 the press, and I appreciate that. OCD's position in
17 this case is that the San Andres has potentially
18 serious problems in terms of things like communication
19 with the Hobbes channel and a negative impact on
20 drinking water.

21 In a sense, one could construe OCD's
22 position as an overriding position to what the parties
23 are seeking, and that what OCD wants to see is a pilot
24 project enacted to ensure that the water and drinking
25 water integrity in the region is secured. And if it

1 is not, that information will be used to determine
2 future OCD policy positions.

3 And that does include -- because I know
4 that the parties have produced a humongous amount of
5 paperwork to the Commission in this case -- some of
6 what OCD will be talking about will be issues of,
7 like, what's going on with injection on a practical
8 level; what is occurring in these zones, potentially.

9 But the crux of it will not be on which
10 operator has a better case. It is going to be
11 centered on what has happened with all the operators
12 in the area vis-a-vis the water quality issue.

13 DR. AMPOMAH: Thank you.

14 MR. RUBIN: Commissioner Ampomah,
15 members of the Commission: It is clear that you
16 cannot compel an answer from Moander. And so I think
17 he has stated the position of the Division quite
18 succinctly. Thank you.

19 MR. RAZATOS: Thank you, Mr. Rubin, for
20 that clarification.

21 Commissioner Bloom, did you have any
22 questions?

23 MR. BLOOM: No questions.

24 MR. RAZATOS: Excellent.

25 Thank you, Mr. Moander.

1 Mr. Rankin?

2 MR. RANKIN: Thank you, Mr. Acting
3 Director, Commissioner. May it please the Commission.
4 Good morning. So a couple of issues. I'm going to
5 start with the burden of proof and touch on that
6 quickly.

7 Well, first, I would like to address
8 sort of the way this issue has come about, the
9 briefing has come about here. The motion here seeks
10 clarification of the Commission's order.
11 And I guess my comment on that is that the issues that
12 have come about in this motion have come about on sort
13 of an ad hoc basis.

14 I mean, Empire sought clarification of
15 an order that doesn't address burden of proof, doesn't
16 address the elements of the claims. And so I don't
17 think that it's really a proper motion, in that sense.

18 And if the Commission has concerns or
19 would like the parties to address these issues, then I
20 think it may be proper to have a proper briefing on it
21 so that we can actually address it in the proper
22 scope.

23 The Commission's order on the scope of
24 hearing was elicited through the pre-hearing
25 scheduling order. And it asked the parties, it asked

1 Goodnight, to make a motion to clarify or to limit the
2 scope of the hearing.

3 In doing so, the issue was what cases
4 and issues should be heard, not what the burden of
5 proof should be. So at no time in the briefing or
6 previously has the Commission considered burden of
7 proof or elements of these claims.

8 In fact, when the order was issued,
9 what the Commission said was that the parties should
10 address such legal arguments at the time of the
11 hearing.

12 And so the briefing here has been a
13 little bit ad hoc, and I would posit that the motion
14 itself -- the issues have sort of come about through
15 the process of briefing and now through argument.

16 So I would say that if the Commission
17 has concerns, and I think it's a valuable exercise,
18 would be to separately brief these issues in advance
19 of the hearing so that the Commission has a better
20 understanding of, like, what the law is and what the
21 arguments will be.

22 So that's the first thing I wanted to
23 say. Because the way this briefing has come about and
24 the issues have been articulated, you know, it's been
25 a process through the briefing. And now we're hearing

1 some additional input and thoughts.

2 So I would just say that there's no
3 real -- I understand that there's some benefit to
4 having some clarity on some of these issues in advance
5 hearing.

6 To that point, we've already got our
7 direct testimony filed. Okay? It's already been
8 submitted. So each party has already made their
9 direct case. So there's no real rush or need to rush
10 to make this decision. We've already all made our
11 direct case.

12 So on that point, I think if the
13 Commission would like further assistance from the
14 parties to help articulate the burden of proof and the
15 elements here, I think we should do it in a proper
16 sequence so that it's not on an ad hoc basis and it's
17 not on a motion to clarify an order that doesn't even
18 address the issue.

19 So I would urge, potentially, based on
20 the discussions today, that the Commission consider
21 directing the parties to have a separate briefing
22 schedule to address more specifically the specific
23 issues that the Commission's concerned about so that
24 the parties can target and direct their briefing and
25 legal analysis in a way that's most helpful.

1 So that's my first comment on the
2 issues that are before you today. I would say it'd be
3 more helpful, potentially, for you -- I mean, it
4 would've been a different situation, I guess, if we
5 hadn't already presented our direct testimony. And I
6 think it's important that we have. Each party now has
7 put forward what they believe are the facts that
8 support their case.

9 So the next thing I want to address is
10 the burden of proof issues. You know, we've gone back
11 and forth on this a little bit, and it probably
12 sounds, you know, like, a matter of semantics; like,
13 who has the burden? It's your burden. It's my
14 burden. No, it's -- you know, like, a hot potato
15 game. Right?

16 But it does, I think, have some
17 importance here. And I want to point out a few things
18 because I think it's important to understand, you
19 know, what I understand the Division's position to be,
20 what I understand the case law to be.

21 The burden of proof, I think, does
22 ultimately matter here. And I don't disagree that,
23 ultimately, it's a preponderance of the evidence. You
24 know, what does the evidence show? And ultimately,
25 it's the Commission's duty as the factfinder to weigh

1 that evidence between our case and their case and the
2 Division's case.

3 But as to the burden, I think it does
4 matter to some extent because I think it ultimately
5 falls here on Empire. I'm not saying that Goodnight
6 does not have an initial burden to make out a prima
7 facia case.

8 And a prima facia case is simply one
9 where we are able to demonstrate through a
10 preponderance of the evidence that the elements that
11 we are required to show to establish the propriety of
12 injection have been met. Okay?

13 That means we have to demonstrate to
14 the Division's satisfaction that we've met the
15 elements required to receive authority to inject under
16 the UIC program, and that we have demonstrated that
17 our injection's not going to result in waste or impair
18 correlative rights.

19 That's our initial burden. And
20 understanding Ms. Hardy's point that, to this point,
21 there's been no determination one way or the other
22 about, you know, who has, if any party has, met that
23 initial burden. No doubt that has not happened.
24 Our view, however, is that we have met that burden.

25 And now I think it's important to

1 consider here -- I'm going to point out, you know,
2 what the Division's own testimony is here, as well.
3 Here, there is 80 years of precedent where the San
4 Andres in this area has been treated under numerous
5 regulatory bodies as an aquifer, as a water management
6 zone.

7 The Division itself has authorized
8 disposal within the EMSU and around the EMSU for more
9 than 60 years, in an offsetting acreage for more than
10 80 years. That is a regulatory fact. That's the
11 status quo.

12 And within the formation documents that
13 created the EMSU itself, the evidence presented to the
14 Commission confirmed that the San Andres was not a
15 hydrocarbon-bearing zone. It was a water management
16 zone. It was included in the EMSU for the sole
17 purpose of providing water for the water flood
18 operations. That's the status quo.

19 Now, after more than 80 years and after
20 numerous operators have been authorized for injection
21 and have been disposing into the zone, Empire is now
22 suggesting that actually, oh no, this, this is not a
23 water management zone, it's not an aquifer, it's a
24 residual oil zone. It's hydrocarbon-bearing.

25 To make that change will require

1 undoing and unwinding decades of authorizations,
2 approvals for injection, of a determination by the
3 State Engineer's office that this is an aquifer
4 subject to prior appropriation and beneficial use.
5 It's a massive undoing of decades of regulatory
6 approvals and authorizations.

7 So in that context, it requires a firm
8 showing that, sure, there is oil down there and it's
9 going to be economic and it's going to be profitable.
10 And that burden ultimately falls on Empire.

11 And I'll share my screen here. I'm
12 just going to point out, I mean, the Division has
13 taken this position fairly clearly in its direct
14 testimony.

15 Mr. Powell, and I believe I'm
16 interpreting this correctly, you know, has taken the
17 position that's it's OCD's position in this case the
18 burden lies with the operator moving for an adverse
19 modification that demonstrates to the OCC that the
20 level of information to meet such a threshold to
21 justify and order modification with a particular
22 emphasis on the factual predicate required.

23 But that statement is in the context of
24 several previous statements that Mr. Powell made
25 around concern of undoing decades of authorizations

1 for injection.

2 I didn't highlight the rest of this
3 here, but his point throughout his testimony is that
4 operators are relying on the injection permit as a
5 bedrock for their investment in a given well or wells.
6 It doesn't create a property interest, but it does
7 authorize activities undertaking of investments. And
8 it's been that way for decades.

9 And it's not just Goodnight. It's
10 Pilot; it's Rice. Pilot has more than a dozen wells
11 pending approval in the San Andres. This case has a
12 substantial bearing on what is going to happen with
13 Pilot's applications.

14 So what Mr. Powell is saying here, as I
15 understand it, is that given the reliance, given the
16 decades of authority that have been granted in these
17 cases, it's ultimately Empire's burden to show that,
18 in order to revoke these authorities, that the
19 approvals were wrong and that there's, you know,
20 definitely oil in paying quantities.

21 That's the way I've interpreted, you
22 know, this language. Now, he doesn't go so far as to
23 use the word "paying quantities," but it needs to be a
24 clear showing. That's my understanding of the
25 Division's position.

1 And that's why I think it's important
2 to do keep in mind the burden of proof. Yes, we have
3 an initial burden. We are the applicant in our cases,
4 and we must make a prima facie showing sufficient with
5 a preponderance of the evidence to make our proof.

6 Now, I don't have them all up here,
7 but, you know, if you review all the cases authorizing
8 injection, all the previous cases in which Goodnight
9 has gained the approval to inject into the zone,
10 Goodnight has shown repeatedly through hearings that
11 their injection will not cause waste, that their
12 injection will stay within the zone.

13 The Division has asked, repeatedly,
14 questions about the Capitan Reef, and Goodnight has
15 addressed those questions and demonstrated to the
16 Division's satisfaction in every instance that there
17 would not be impairment to the Capitan.

18 So our view is that that is the status
19 quo. This is a zone that has been approved for
20 decades, has been demonstrated to be safe and
21 effective for disposal.

22 I understand that there's questions,
23 and we want to make sure that everything is
24 demonstrated to the satisfaction of the Commission,
25 and we believe that we've done that in this case.

1 Now, as to the elements, I think that
2 the statutory interpretation is an important --
3 obviously, it's the basis of this question. And I
4 don't disagree that when you're interpreting the Oil
5 and Gas Act, you must read the statute as a whole.

6 Now, I'm not going to sit here today
7 and go through, you know, a detailed statutory
8 argument, because I don't think it's necessary. And
9 that's why I would argue that, you know, if the
10 Commission finds it useful, that we have a separate
11 briefing on that issue to address it.

12 But I do want to say that the notion
13 that economics is not or paying quantities is not a
14 consideration that the Division ever looks at or
15 Commission has ever looked at, or it's not the
16 foundation for a decision about evaluating the
17 authority to inject is just not true.

18 Every case when there is a claim that
19 there's offsetting production, every case before the
20 Division and Commission is always evaluated whether or
21 not that claimed production is commercial, would
22 produce in paying quantities, or would be economic.
23 The Commission has used those terms interchangeably.

24 I just pulled up a few cases to show,
25 you know, and I didn't find anything to the contrary.

1 Okay? Whenever there's a claim that there is
2 potential for production in paying quantities, the
3 Division or Commission always evaluates the economics
4 of the production. Is it economic? Is it commercial?

5 And here's a case number 8234. Under
6 order R-7637, the showing was that there was no
7 commercial oil and gas production within the zones
8 that they were proposing to inject into. Therefore,
9 it will not cause the premature drowning by water of
10 any zone capable of producing commercial quantities.

11 Okay? The Commission has always
12 interpreted that requirement together. They're not
13 separate. Paying quantities and premature drowning
14 have always been evaluated in the context of whether
15 or not the production is economic.

16 If the production's not economic,
17 there's no waste. If the production's not economic,
18 there's no impairment to correlative rights because
19 there's nothing to produce, or there's nothing of
20 value to produce. That's inherent, as Mr. Rubin said,
21 in the definition of the term itself.

22 Here's a case that was before the
23 Commission. Although not stated explicitly in the
24 rules, injection operations must not cause waste or
25 threaten correlative rights.

1 Apparently, to address this issue, the
2 parties focused their presentations on the potential
3 productivity of the San Andres and Glorieta
4 formations.

5 The witness at issue here testified
6 that no well in the immediate vicinity of the proposed
7 injection well produced oil or gas from either the San
8 Andres or Glorieta.

9 Data demonstrates that the water
10 saturation levels in the San Andres in the vicinity of
11 the injection exceeds 94 percent. It's not economic.
12 The zone is a water zone here in this case.

13 They go on to determine that, based on
14 the water saturations, it's unlikely that any
15 hydrocarbons would move to a wellbore or could be
16 recovered. So recoverability is a key issue. Okay?

17 Finally, based on all this, the
18 Commission finds, it appears that the Glorieta and San
19 Andres are wet and will not produce commercial
20 quantities of oil or gas. Commercial production is
21 always the basis for the decision.

22 Here's a case before the Division. The
23 BLM was concerned that a well that was proposed to be
24 converted to injection was still producing in paying
25 quantities. Okay?

1 This is unusual because you never
2 usually see the BLM show up in the Division or
3 Commission, but here they do because they're
4 concerned about the fact that this well was still
5 producing in paying quantities.

6 Well, the Division, upon analysis,
7 determined that it was a stripper well. It was still
8 producing some oil. Okay? But it's not economic.
9 And in fact, that well would serve a better purpose if
10 it were converted to injection for disposal.

11 So the Division found that even though
12 it was still capable of producing, it was not
13 economic, and they allowed it to be converted to an
14 injection well for disposal. Okay?

15 Here's another well that, again, was
16 producing from a zone, but it was producing in such
17 small quantities that it was not economic. Okay? So,
18 again, the basis for decision is, is the producing
19 well, is the zone from which it's producing, capable
20 of producing in paying quantities?

21 If it's no longer the case, even a zone
22 that has been known to be producing, known to be
23 productive, has been allowed to be a source for
24 disposal.

25 And it goes on. I mean, again, every

1 single case, if you look it up, you'll find holds the
2 same thing. Economics, paying quantities, has always
3 been the basis for decision.

4 Here, a well is proposed for disposal
5 into the Bell Canyon. The determination was that
6 there was no current commercial production from the
7 zone in the immediate area around the well.

8 A company came in, was concerned about
9 the potential for impairment based on the injection.
10 The Division found that, based on this provision that
11 we're arguing about today, requires the Commission to
12 prevent the drowning of strata capable of producing
13 hydrocarbons in paying quantities.

14 The Commission finds that there was
15 past production and there is potential future
16 production in the Bell Canyon. And therefore, they
17 determined, based on their requirement to prevent the
18 drowning of strata, that the well should be denied.
19 Okay?

20 Again, the question is, is it capable
21 of producing in paying quantities? And here, they
22 found that it was because there was prior and existing
23 production offsetting.

24 Here's a more recent case where the
25 Division approved an NGL well for injection. They

1 were concerned about the potential impacts because
2 there was some offsetting production, so they required
3 the operator to provide copies of subsurface logs to
4 correlate the stratigraphy and to reassess the
5 economic evaluation for hydrocarbon potential prior to
6 injection. Okay?

7 Again, the basis for a decision about
8 whether injection's proper in a zone that may produce
9 is whether or not the production is economic. Because
10 without an economic determination, if it's not
11 economic, then there's no waste. There's no
12 impairment to correlative rights. Okay?

13 So I won't belabor the point. But in
14 every instance, the Commission has always held and the
15 Division has always held that the requirement
16 ultimately at base is whether or not production is
17 economic.

18 I think what's interesting about this
19 argument in the motion here, is that Empire appears to
20 have shifted its position away from claiming that
21 Goodnight's injection is drowning out the San Andres
22 and the Grayburg, and is dissociating itself from that
23 claim because of this issue and concern about
24 economics.

25 Because in their direct case, they did

1 not present an argument that the production will be
2 economic. It's not in there. And it's not in there
3 because I don't think they're going to -- they can't
4 show it.

5 So you can understand their concern
6 here, because they don't have a case to demonstrate
7 that there's any oil in the zone capable of being
8 produced in economic quantities. Instead, they're
9 focused on the concepts of waste and correlative
10 rights.

11 And I think reading the statute as a
12 whole and understanding the way the Commission has
13 interpreted and applied that statute, it's important
14 to understand that, yeah, economics is the basis of
15 all these decisions. Because without showing that the
16 zone is capable of producing economic quantities,
17 there's no waste and there's no impairment to
18 correlative rights.

19 The arguments that the statute and the
20 language in the phrase "producing in paying
21 quantities," Empire has applied a case law authority
22 that addresses that concept in the context of lease
23 terminations.

24 Private lease lessors will come out and
25 argue that operators are not producing in paying

1 quantities, and therefore, under the terms of the
2 lease, the lease is terminated.

3 My view is that that language and that
4 case law is not applicable here to the statutory
5 language. I think the Commission has broader
6 flexibility to apply that term and phrase in a way
7 that is not so wooden.

8 The point is that Empire, in order to
9 upend 80 years of authorizations, injection, and
10 disposal, they must show that the production they're
11 proposing to generate from this zone is economic and
12 is capable of producing paying quantities.

13 It's no different than what they would
14 be required to show to the Commission in order to
15 obtain the right to do so under the Statutory
16 Unitization Act. It's no different.

17 They have to show that the costs are
18 going to be less than the value of the production,
19 plus a little bit of profit. And they'd have to show
20 that in any event in order to undertake a EOR project
21 under the Statutory Unitization Act.

22 It's no different. And to say that
23 they can't do it now, I think, is telling. Because,
24 certainly, they would be required to do so under the
25 Statutory Unitization Act.

1 So my view, and to close -- I
2 appreciate your patience with me, but I think this is
3 important -- is that if the Commission is undecided or
4 has additional concerns, I think it would be
5 appropriate to direct the parties to have a structured
6 briefing around this issue.

7 And we can directly address the
8 questions that the Commission has, because I feel, at
9 this point, the briefing has arisen through a sort of
10 ad hoc approach in a manner that I think is not maybe
11 as helpful for the Commission.

12 So I would ask, if the Commission does
13 have any concerns, to direct us to answer specific
14 questions and to do so in a structured briefing. And
15 with that, I would stand for any questions.

16 MR. RAZATOS: Thank you, Mr. Rankin.

17 Any questions from the Commissioners?

18 MR. BLOOM: No, Mr. Chair.

19 DR. AMPOMAH: I do have one.

20 So, Mr. Rankin, assuming 80 year of,
21 let's say, State Engineer's office demarcating the MSU
22 as an injection unit, do you have a problem with,
23 like, advancement of technology where --

24 ROZs has evolved over the years. So do
25 you have a problem with the advancement of technology,

1 you know, to explore for resources that could be in
2 the San Andres?

3 MR. RANKIN: Not at all, Dr. Ampomah.
4 In fact, I think it's important. And again, there's
5 some of these cases that I cite to, in fact, there's
6 discussion about the advancement of technology.

7 In one case, it was horizontal well
8 development. And Mewbourne was making the argument
9 that, whereas previously, some zones were considered
10 to be uneconomic with vertical drilling, such as, I
11 think, the Brushy, the DMG, but with the advancement
12 of horizontal drilling, some of those zones now have
13 economic prospectivity.

14 And so, of course, as technology
15 evolves, there's a possibility that some zones that
16 were previously non-economic may become economic.
17 My point only is that if you're the party that's
18 making that claim, it's your burden to show it.

19 You must show how it's economic. And
20 you must make a demonstration that your costs and your
21 ability to produce the oil is feasible and can be
22 done, you know, now or in a very reasonable timeframe.

23 The problem is, is it speculative? Is
24 there a basis to make that contention? Does it meet
25 the burden of proof required, which is a preponderance

1 of the evidence, or is it speculative?

2 And here in this case, Dr. Ampomah,
3 when you review the direct testimony that's been
4 submitted, I think you would find that their claims
5 are speculative; that there is no basis to contend,
6 given the nature of the zone and the distribution of
7 these minute oil accumulations, that there's any
8 ability, now or in the future, to target those zones
9 efficiently and effectively, let alone economically,
10 to produce economic volumes of oil.

11 DR. AMPOMAH: Thank you.

12 Mr. Rubin, can you comment? I know
13 you recommended that we do not really talk about the
14 burden of proof. So based on Goodnight's submission,
15 any advice? I mean, I'm a little bit confused here.

16 MR. RUBIN: Okay. Commissioner
17 Ampomah, members of the Commission: After hearing
18 from all the counsel, as to burden of proof, I think
19 what I said before still applies. That both sides --
20 and certainly, to Mr. Rankin's point, there was a lot
21 of history that presupposes that injection was proper
22 in the San Andres.

23 And perhaps that creates some sort of
24 de facto, at least, burden; like, why are we going
25 against all these previous decisions? Strictly, that

1 is not a burden of proof issue, though.

2 And I still maintain that, with respect
3 to that part of the motion, I think the Commission
4 would be well served to simply hold it in abeyance,
5 put in the capable hands of Mr. Harwood.

6 And to the extent that the burden of
7 proof somehow is part of his recommendation, he will
8 do so. As to the other more substantive points raised
9 by Mr. Rankin, Commissioner Ampomah, I'm not sure what
10 to add to what I said before.

11 DR. AMPOMAH: Okay.

12 MR. RAZATOS: Thank you.

13 Mr. Moander, I know you have a
14 question. Would this go to Dr. Ampomah?

15 MR. MOANDER: I would like to just make
16 a brief clarification, if I may, and read something to
17 the Commission regarding references to Deputy Director
18 Powell, if that's acceptable, Mr. Chair?

19 MR. RAZATOS: I don't have a problem.

20 Is it acceptable, Mr. Rubin?

21 MR. RUBIN: Mr. Moander, members of the
22 Commission: To the extent I can, on the fly, help in
23 order to interpret what you're saying, Mr. Moander, I
24 will try to. But I'm limited as to what I can glean
25 from the gist from hearing you say it for the first

1 time now.

2 MR. MOANDER: I think this will be
3 helpful. So in that same witness testimony
4 disclosure, Deputy Director Powell stated a few
5 paragraphs before the quoted sections:

6 "The OCD would specifically point out
7 through the respective applications, one of the
8 remedies sought is adverse actions regarding
9 previously issued OCD orders pertinent to the
10 operator's injection authority.

11 "Deputy Director Powell wishes to
12 convey the importance of only doing so with an
13 abundance of caution," and then offers some of that
14 testimony you saw excerpt. To frame that up, that was
15 not OCD speaking on the burden of proof on scope here,
16 necessarily.

17 This was in the framework of Deputy
18 Director Powell effectively being what amounts to a
19 12(B)(6) witness to discuss the history, background;
20 things of that nature. And so the scope of that
21 testimony is quite broad, and I wanted to ensure the
22 Commission understood that.

23 MR. RAZATOS: Thank you, Mr. Moander.
24 Appreciate that clarification.

25 Dr. Ampomah, you have --

1 DR. AMPOMAH: Yes, yes.

2 So is OCD trying to dissociate, you
3 know, let's say, the arguments from the statement that
4 a deputy director made?

5 MR. MOANDER: Not quite, Dr. Ampomah.
6 What Deputy Director Powell was saying -- and again, I
7 want to be cautious here because we are literally
8 wandering into a evidentiary hearing at this point,
9 which I am slightly uncomfortable with.

10 MR. RUBIN: As am I. I really would
11 like to see presentation of filed testimony to a
12 minimum. I don't think it's fair to Empire, what
13 Mr. Rankin has been citing to. I think we should
14 really keep this clean.

15 DR. AMPOMAH: Then I'm okay. I'm okay.
16 Thank you.

17 MR. MOANDER: Thank you, Mr. --

18 MR. RAZATOS: So I think, in short, the
19 statement is noted, Mr. Moander. Thank you.

20 MR. MOANDER: Thank you.

21 MR. RAZATOS: Any other questions from
22 the Commissioners?

23 Okay. Thank you, Mr. Rankin.

24 Last, but not least. Mr. Beck, did you
25 have anything you'd like to add?

1 MR. BECK: Commissioners, I don't have
2 much to add. I think that Mr. Rankin makes a good
3 point about the sort of ad hoc nature that this has
4 arisen with. And I think Mr. Rubin is correct that it
5 might be best just to hold this in abeyance. I expect
6 that, after the hearing on these matters, there will
7 be proposed findings of fact and conclusions of law.

8 And at that point, I think the parties
9 will be able to put together succinctly their
10 arguments as to what the findings of fact from the
11 hearing are, and how those fit into the conclusions of
12 law for the hearing officer to decide on and the
13 Commission ultimately to decide on.

14 And I expect that playing into that
15 will be the definitions of waste and correlative
16 rights, both of which talk about the amount of oil and
17 gas ultimately recovered for waste, and recoverable
18 oil and gas for correlative rights.

19 And so it does not just talk about the
20 waste of oil and gas, or correlative rights being oil
21 and gas. It talks about recovery. And I expect that
22 the case law would bear out that there is some burden
23 of proof.

24 And I don't mean that precisely. I
25 mean that the party will have to prove, to move

1 forward with their applications for injection permits
2 or their applications to revoke permits, whether they
3 have proved that there is ways to ultimately recover
4 oil and gas, or it affects the correlative rights of
5 recoverable oil and gas.

6 And so that definition will be borne
7 out, I expect, in that briefing after the fact to see
8 how the findings of fact from the hearing fit into
9 those conclusions of law.

10 So I think it's important for the
11 Commission to recognize that there is, I expect, a
12 process in place already for a more precise meaning of
13 the burden of proof of preponderance of the evidence,
14 which I think everyone agrees is on each party in its
15 respective applications.

16 MR. RAZATOS: Thank you, Mr. Beck.
17 Appreciated.

18 Any questions on what Mr. Beck stated,
19 Commissioners?

20 MR. BLOOM: No.

21 DR. AMPOMAH: No.

22 MR. RAZATOS: Okay.

23 MS. HARDY: May I briefly respond to
24 Mr. Rankin's points?

25 MR. RAZATOS: Please, Ms. Hardy. Yes.

1 MS. HARDY: Thank you. So I wanted to
2 explain a little bit about why we filed this motion.
3 And the reason we filed it is that Goodnight has been
4 filing motions, and those have evolved over time. And
5 their motions to compel, I believe, are where they
6 raised this issue.

7 They've repeatedly argued that Empire
8 cannot prevail unless it proves a loss of production
9 in paying quantities. So they repeatedly raised this
10 issue.

11 And because that is -- the Oil and Gas
12 Act is broader than that. Right? It gives the
13 Commission authority to prevent waste, to protect
14 correlative rights however those are defined, and they
15 are defined in the statute.

16 And so that is why we filed the motion.
17 We wanted to make it clear or request clarification
18 that Goodnight has been misconstruing what actually
19 has to be proven in these cases.

20 And, like I explained before, we're not
21 taking the position that economics are not a factor.
22 We have provided that testimony. Mr. Rankin's
23 incorrect; our statement of William West and his
24 attachments goes into detail on the amount and the
25 value of loss production.

1 So we have provided that. We're not
2 disassociating ourself from economics. We've provided
3 that information. But here, Goodnight has persisted
4 in arguing, well that's not production in paying
5 quantities; that's not sufficient. So they keep
6 making this argument.

7 And so we filed this motion to sort of
8 head that off and ask for clarification on what we
9 actually have to prove at the hearing to prevent
10 everyone from wasting time.

11 So that is why we filed the motion. So
12 we were asking for a clarification that the standard
13 here is whether the injection results in waste and
14 impairs correlative rights.

15 And I think Mr. Rankin is ignoring the
16 fact that Goodnight is seeking relief in these cases.
17 They have filed four applications for authorization to
18 inject.

19 Those are applications. They currently
20 don't have that authority; they are asking for that.
21 That's affirmative relief that they are asking for.
22 And they are also asking for authorization to increase
23 their injection rate.

24 So they are asking to change the status
25 quo and for authority that doesn't currently exist.

1 So to put the entire burden on Empire as they are
2 trying to do, simply, it's inconsistent with the law.

3 And with respect to Mr. Rankin's
4 discussion of Empire seeking a massive undoing of
5 injection authority, I disagree with that, as well.
6 Because historically, these volumes that Goodnight is
7 injecting have not been injected into the San Andres.

8 These are massive volumes of water that
9 have come up in the last couple of years with
10 Goodnight's applications and their current
11 applications that are pending. So I don't think that
12 Mr. Rankin's characterization of that is correct.

13 And I think Mr. Rankin also forgets
14 that the Division already ruled against Goodnight in
15 the Piazza case because the Division found that the
16 injection would result in waste and impair correlative
17 rights. So I think that's another thing that he's
18 ignoring.

19 I think to the extent Mr. Rankin argued
20 that we should brief these issues further, I don't
21 think that's necessary. We have fully briefed this
22 issue. Goodnight filed a 20-page response to our
23 motion. So I think that there is sufficient briefing
24 for the Commission to consider.

25 We would just ask for clarification of

1 these issues, which is that the standard that applies
2 is whether the injection results in waste and impairs
3 correlative rights, and that each party bears the
4 burden of proof on their own applications. Thank you.

5 MR. BLOOM: I -- go ahead.

6 MR. RAZATOS: Thank you, Ms. Hardy.
7 Commissioner Bloom has a question.

8 MR. BLOOM: Ms. Hardy, you, and then
9 maybe we'll go back to Mr. Rankin. But, Ms. Hardy,
10 I'm struggling with this. I guess any of the parties
11 here could file a motion discussing what they believe
12 the other side must show, be it loss of production in
13 paying quantities or something else.

14 But what our order says is that "The
15 parties shall submit all evidence, testimony, and
16 legal argument on the issue of the existence, the
17 extent of, and possible interference with a residual
18 oil zone, the Monument South Unit, by produced water
19 injection activities undertaken by Goodnight."

20 I mean, to my mind, that that's pretty
21 clear. And I think it points towards, although it
22 doesn't specifically state, that this would be a
23 hearing where we're looking to see the preponderance
24 of the evidence. Just wanted to get your reaction to
25 that.

1 MS. HARDY: Thank you, Commissioner
2 Bloom. I agree. I think that is what the Commission
3 set out as the scope of the hearing. And that is part
4 of what gave rise to us filing this motion.

5 Because I think that's a broader
6 inquiry, and I think that that is the appropriate
7 inquiry, and I think it encompasses the concepts of
8 waste and correlative rights.

9 And that language is part of the reason
10 we filed this motion, is we felt like Goodnight's
11 repeated arguments on this issue that Empire can't
12 prevail unless it shows a reduction of production in
13 paying quantities was inconsistent with that provision
14 of the order.

15 MR. BLOOM: Mr. Rankin?

16 MR. RANKIN: Mr. Bloom, would you mind
17 repeating your question to me just so I make sure I
18 understand?

19 MR. BLOOM: Yes. My question was, I
20 guess, either side could put forth a motion stating
21 what they believe the other parties must show in this
22 case, be it loss of production in paying quantities or
23 other issues.

24 But we do have an order here from the
25 Commission, which states that the parties shall submit

1 evidence about the existence and extent of possible
2 interference of an ROZ and the effects on that of
3 water injection activity, should it exist. Right?

4 MR. RANKIN: Yeah. Yeah. Okay.

5 Understood. So on that point, I guess, my response to
6 that, Mr. Bloom, is, yeah. That is an issue that the
7 Commission wants the parties to address. But it can't
8 be the legal standard against which that decision is
9 made. Right?

10 It's just an issue that we were meant
11 to address before the Commission and present facts and
12 evidence and testimony and legal arguments around it.
13 But it doesn't define the standard against which the
14 Commission must make its decision. Right?

15 That's something that we have to look
16 to the statutes, we have to look to interpretation of
17 the Oil and Gas Act, to evaluate what the burden of
18 proof is, what the legal standards are that each side
19 must demonstrate.

20 So my point, I guess, is simply that
21 it's a representation of what you want to hear from
22 us -- right? -- in terms of what the evidence should
23 go towards. But ultimately, the decision has to be
24 based on legal standards. Right? And that goes to
25 the statutes and the regulations that govern, or the

1 UIC primacy authority.

2 And that wasn't addressed in the scope
3 of the order on the scope of hearing. And so that's,
4 I think, what Empire was seeking to do here was to
5 kind of define what the legal standards should be.

6 I have clarification on that. And my
7 view is, like what Mr. Beck was saying, is I think
8 that in the normal course, that's usually addressed in
9 the closing briefs or arguments, based on what the
10 facts show. And then, the counsel makes an argument
11 about whether or not those facts or the showing or the
12 evidence is sufficient to make out each party's case.

13 So my answer to you is, yeah, I
14 understand that the Commission had an intent to have a
15 broad showing of the evidence. And I don't disagree.
16 My only point is that what the legal standards are
17 that determines the decision is something that you
18 have to look to the statutes for.

19 And one other thing I wanted to
20 mention, just to respond to you, is the Piazza order
21 that the Division issued did not make a finding that
22 there was waste or impairment of correlative rights.

23 What it found was that Empire had made
24 a sufficient showing to defer that issue, basically.
25 It didn't find that there was waste, didn't find there

1 was impairment of correlative rights.

2 It said that there's a potential for
3 additional production, and they deferred the issue.
4 So there was no finding because there was no evidence
5 in the record of waste or economics. So it wasn't a
6 finding that the Division made, number one.

7 And number two, Empire does not gain
8 the benefit of -- it's a de novo hearing. So in other
9 words, it's from fresh. And so all we have to do is
10 establish through a preponderance of the evidence that
11 injection is proper.

12 We don't have to overcome any other
13 higher burden of proof in order to achieve our
14 authority to inject under that case. It's a de novo
15 case. It means that we start afresh, and so that we
16 don't have to overcome any higher burden in order to
17 prevail on that case.

18 MR. BLOOM: All right. Thank you,
19 both.

20 Mr. Chair?

21 MR. RAZATOS: Any other questions?

22 DR. AMPOMAH: No.

23 MR. RUBIN: Mr. Chair, members of the
24 Commission: So I think at this point, the Commission
25 has a few options in front of it. Just pointing out

1 again. Again, I think with respect to making any
2 written decision on the burdens of proof, I don't
3 think is necessary.

4 Again, I think that's premature. It
5 may not come up. I know that courts never want to
6 decide issues they don't have to decide. There's a
7 certain amount of judicial restraint there that would
8 apply here, too.

9 As to the rest of it, if the Commission
10 has a sense of how it now wants to interpret the
11 statutes at issue, we could formulate an order to that
12 effect, at the Commission's pleasure. We always have
13 the option of going into closed session to carefully
14 construct such an order.

15 Or, as pointed out, we could hold the
16 motion in abeyance. I think the hearing officer has
17 been listening to our entire conversation, as well;
18 this entire colloquy. And so it may be sufficient to
19 simply let this rest for now.

20 I mean, we are backloading this, to a
21 certain extent, but put this in the hands of the
22 hearing officer with the benefit of this informed
23 discussion on the legal issues. Was that too wordy?
24 I'm --

25 MR. RAZATOS: No, it was not too wordy.

1 I think it was a lot to think about.

2 So, Commissioners?

3 DR. AMPOMAH: Yeah. There are a lot of
4 legal issues in here, so I would prefer a closed
5 session for us to discuss this.

6 MR. RAZATOS: Commissioner Bloom?

7 MR. BLOOM: Mr. Chair, I would be fine
8 with Dr. Ampomah's proposal.

9 MR. RUBIN: Okay. So under the Open
10 Meetings Act, if we could have a motion to go into
11 closed session to discuss, under the authority of the
12 Open Meetings Act, this adjudicatory matter
13 specifically and solely the issues under the agenda?

14 MR. BLOOM: Mr. Rubin, I so move.

15 DR. AMPOMAH: I second.

16 MR. RUBIN: And we will need a roll
17 call -- I just want to finish the motion. I just want
18 to identify the agenda item for the motion. It would
19 be -- well, they're not numbered the items -- the
20 consolidated case as identified in the agenda. So if
21 I could have a roll call vote based upon that motion?

22 MR. RAZATOS: We'll start with a roll
23 call vote.

24 Dr. Ampomah?

25 DR. AMPOMAH: Approved.

1 MR. RAZATOS: Commissioner Bloom?

2 MR. BLOOM: Approve.

3 MR. RAZATOS: And I, as the Commission
4 chair, approve, as well.

5 MR. RUBIN: Okay. We are now in closed
6 session.

7 (Off the record.)

8 MR. RUBIN: All right. Mr. Chair and
9 the Commission, I believe we are back in open session.
10 I would just like the record to reflect that the only
11 matters discussed in closed session were those listed
12 in the motion and that no final actions were taken.

13 I understand from deliberations in
14 closed session that the Commission would like to
15 entertain a motion to hold in abeyance Empire's
16 motion, pending the recommendations of the hearing
17 officer at the hearing.

18 MR. BLOOM: I so move.

19 DR. AMPOMAH: I second.

20 MR. RAZATOS: Do we need a roll call on
21 this one?

22 MR. RUBIN: No. You only need a roll
23 call if it's to go into closed session or --

24 MR. RAZATOS: Okay.

25 MR. RUBIN: You could simply do, "All

1 in favor, say 'aye.'"

2 MR. BLOOM: Aye.

3 MR. RAZATOS: Aye.

4 DR. AMPOMAH: Aye.

5 MR. RUBIN: Any opposed? Motion
6 passes.

7 Back to you, Mr. Chair.

8 MR. RAZATOS: Great. Thank you.

9 Okay. So that brings that case to
10 completion.

11 Mr. Rankin?

12 MR. RANKIN: I'm sorry. Just there's
13 one housekeeping matter that the parties have
14 discussed, and I just want to bring to the
15 Commission's attention as to that case.

16 You may recall that the Commission did
17 issue an order directing Goodnight to produce records
18 reflecting its injection rates for certain wells that
19 Empire claimed were in violation of its authorizations
20 to inject. The way the order read was that Goodnight
21 should produce those records at or before the hearing
22 on these cases.

23 Now, the hearing's been continued out
24 to February. It was a little vague whether,
25 nevertheless, the deadline was still to produce that

1 information by today. So it occurred to me sometime
2 before the weekend that there may need to be some
3 clarification about when we should do so.

4 Now, I've conferred with the Division
5 counsel and with Empire counsel, and my understanding
6 is that both Division counsel and Empire counsel
7 believe that they would like to see that data before
8 the February hearing. And so I'll confer with the
9 client, but I think we can get that data produced
10 within two weeks from today's date.

11 And just wanted to bring that up as an
12 order of housekeeping so the Commission was aware that
13 we have not neglected that obligation, and that there
14 was, you know, some discussion about what the intent
15 was, based on the fact that the hearing date has been
16 moved out.

17 So just wanted to make clear that we
18 will go ahead and produce that data, I think there's
19 six wells, and do so within two weeks from today,
20 based on discussion with the parties, if that's
21 acceptable.

22 MR. MOANDER: It is, from the Division.

23 MR. RAZATOS: Okay. So we got a
24 confirmation from the OCD.

25 Ms. Shaheen?

1 MS. SHAHEEN: We are in agreement with
2 producing it within a couple weeks. And I would also
3 note that the order does state that the hearing
4 officer would provide a report after receipt of that
5 information. I don't believe that the hearing
6 examiner is required to wait until the hearing to
7 provide that report, but I just note that that is part
8 of the order.

9 MR. RAZATOS: Okay.

10 MR. MOANDER: And there is, if I may,
11 briefly, one other housekeeping issue. The parties
12 are working on a revised and updated scheduling order
13 based on the initial one. I'm assuming that'll be
14 tendered and can be dealt with at an upcoming
15 Commission meeting.

16 MR. RAZATOS: Okay. So you'll keep us
17 posted?

18 MR. MOANDER: Yes, Mr. Chair.

19 MR. RAZATOS: Okay. Anything else on
20 this particular case? Great. Thank you, everybody.
21 Appreciate it. Our next order of business is any
22 pending litigation that we may have.

23 MR. RUBIN: Mr. Chair, members of the
24 Commission: Nothing to report. No updates there.

25 MR. RAZATOS: Okay. Excellent. Any

1 other business that we have? Okay. I hear none for
2 that. Our next meeting is going to be October the
3 9th, 2024. So this meeting is officially adjourned.
4 Thank you, everybody.


5 (Whereupon, the meeting concluded at
6 11:22 a.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.

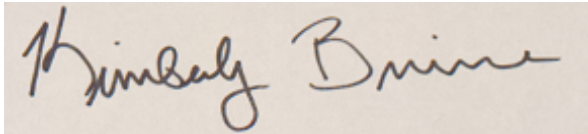


JAMES COGSWELL
Notary Public in and for the
State of New Mexico

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[case - commission]

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[commission - correlative]

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[direct - either]

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[either - existing]

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[expect - front]

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