

1 PUBLIC HEARING
2 STATE OF NEW MEXICO
3 OIL CONSERVATION COMMISSION
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6 1220 S. Saint Francis Drive
7 Santa Fe, New Mexico
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10 TRANSCRIPT OF PROCEEDINGS
11 October 16, 2025
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COMMISSION MEMBERS REGARDING

14 AGENDA ITEM 3a:

15 ALBERT CHANG, Chair

16 JOSEPH THOMPSON, Member
17

COMMISSION MEMBERS REGARDING

18 AGENDA ITEM 3b:

19 ALBERT CHANG, Chair

20 BAYLEN LAMKIN, Member

21 DR. WILLIAM AMPOMAH, Member
22

23 COUNSEL TO THE COMMISSION:

24 ZACHARY SHANDLER, ESQ.
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TRANSCRIPT OF PROCEEDINGS

CHAIR CHANG: It 9 o'clock. I'll call the meeting to order.

Sheila, please call the roll.

MS. APODACA: Roll of the Commission.

Commissioner Thompson.

COMMISSIONER THOMPSON: Present.

MS. APODACA: Commissioner Chang.

CHAIR CHANG: Present.

MS. APODACA: We have a quorum.

CHAIR CHANG: Commissioner Ampomah is absent today.

I guess we'll approve the agenda, which is in front of you all, I think. I'll ask for a to approve the agenda.

COMMISSIONER THOMPSON: Motion to approve the agenda.

CHAIR CHANG: Yes, second. So moved, I will second that motion. Passes without objection.

(2-0 vote. Motion approved.)

CHAIR CHANG: So starting at 9:00, we're here for continued deliberations on the Coterra and Permian case. So I apologize for dragging you all over here in the morning. We're probably going to go back into closed session. We're working through a

1 draft. We're going to go through it line by line to
2 make sure we understand that we have some work
3 product that we're comfortable with. So we're
4 actually going to go into closed session.

5 You all, of course, are more than
6 welcome to hang out or not hang out. But I am not
7 quite sure how long it's going to take us. If you'd
8 like to simply join us online, we're more than happy
9 if you join us online back at your offices. So you
10 can join us online when we have a decision to
11 announce.

12 MR. SHANDLER: Commissioner Thompson, please
13 make a motion to go into closed session pursuant to
14 the Open Meetings Act.

15 COMMISSIONER THOMPSON: I make a motion to
16 go into closed session.

17 MR. SHANDLER: We need a second.

18 CHAIR CHANG: I will second.

19 MR. SHANDLER: And we'll actually need a
20 roll call.

21 MS. APODACA: Okay. Commissioner Thompson,
22 do you accept the motion to go into closed session?

23 COMMISSIONER THOMPSON: Approved.

24 MS. APODACA: Chair Chang?

25 CHAIR CHANG: Yes.

1 (2-0 vote. Motion approved.)

2 CHAIR CHANG: Without objection, we'll go
3 into closed session. Thank you so much. Closed
4 session 9:04 a.m.

5 (Commission adjourned to
6 closed session at 9:04 a.m.)

7 CHAIR CHANG: Good afternoon. It's now 1:32
8 p.m. and the Commission will be coming back out from
9 executive session.

10 MR. SHANDLER: And, sir, can you attest for
11 the record that only the matters discussed in the
12 motion to go into closed session were the only
13 matters discussed? Do you so attest?

14 CHAIR CHANG: I can so attest. Thank you.

15 We're back on the record, back in open
16 session. I see counsel here for our second case, but
17 we need to wrap up our first case for a few minutes
18 here.

19 The Commission deliberated on OCC Case
20 Number 25371 in closed session this morning. We went
21 through, hopefully, a reasonably thorough decision.
22 And the vote on the order was unanimous.

23 MR. SHANDLER: First let's do this.

24 So, Commissioner Thompson, there's an
25 order in front of you. Do you make a motion to

1 approve it?

2 COMMISSIONER THOMPSON: So moved.

3 MR. SHANDLER: Is there a second?

4 CHAIR CHANG: I second.

5 (2-0 vote. Motion approved.)

6 MR. SHANDLER: Please proceed.

7 CHAIR CHANG: So unanimous approval of the
8 Commission's decision in OCC Case 25371. In this
9 case, the Commission has ruled in favor of Permian.
10 So that means we have granted Permian's application
11 in Case Numbers 23508 through 23523; denied Coterra's
12 application in Case Numbers 23448 through 23455 and
13 Case Numbers 23594 through 23601.

14 All other pending motions are denied.
15 This order will go into effect 20 days from the date
16 that this order is filed and served, and all
17 previously issued stays in this case will be lifted
18 on that same date.

19 Hopefully the order will be fairly
20 self-explanatory. We did spend a good amount of time
21 on it. And I have signed it. It will be served
22 electronically by the end of the day. But Sheila
23 will have a hard copy. So for counsel who are with
24 us on that particular case, you're welcome to pick up
25 a hard copy from Sheila, from our Commission clerk.

1 Well, with that out of the way, I think
2 we can turn to the next case on our agenda, which is
3 Goodnight versus Empire, for the prehearing order.
4 So give us just a minute to reorganize ourselves and
5 we'll proceed in just a few minutes.

6 (Pause in the proceedings.)

7 CHAIR CHANG: Everybody appears to be
8 present, so I will call the hearing on the pending
9 motions and consolidated cases between Goodnight
10 Midstream and Empire New Mexico. I won't read the
11 whole list of cases because there's quite a few of
12 them. But I presume we are all here for the right
13 case.

14 So if I could have the appearances of
15 counsel, I'd appreciate it.

16 MS. HARDY: Good afternoon, Mr. Chair,
17 Commissioners. Dana Hardy and Corey Wehmeyer on
18 behalf of Empire New Mexico, LLC.

19 CHAIR CHANG: Thank you.

20 MR. RANKIN: Good afternoon, Chair Chang.
21 Adam Rankin with Holland & Hart, appearing on behalf
22 of Goodnight Permian, LLC, with my colleague Paula
23 Vance.

24 With us today in the audience are some
25 representatives from Goodnight Midstream. There's

1 Grant Adams, who is the chief executive officer; and
2 three Goodnight Midstream board members, Mr. Drew
3 Winston, with Tailwater Capital, Mr. Charles Marsh,
4 and Mr. Patrick Walker, also joining us today. Thank
5 you.

6 CHAIR CHANG: Thank you.

7 MR. SUAZO: Good afternoon, Mr. Chair. This
8 is Miguel Suazo, with Beatty & Wozniak, appearing
9 today on behalf of Pilot Water.

10 CHAIR CHANG: Thank you.

11 MR. MOANDER: Chris Moander on behalf of
12 OCD.

13 MR. BECK: Matt Beck on behalf of Rice
14 Operating Company and Permian Line Service, LLC.

15 CHAIR CHANG: Thank you very much.

16 I believe at this point, unless there's
17 any objections, I believe we're ready to proceed
18 according to order that's laid out in the prehearing
19 order. So please proceed.

20 MS. HARDY: Thank you, Mr. Chair.

21 I will present the first part of our
22 discussion, and Mr. Wehmeyer will present the second
23 part. And we do have a PowerPoint presentation that
24 we are planning to share. And I will be brief here
25 because I know we don't have a lot of time.

1 But just by way of brief background, we
2 had many-week evidentiary hearing in this matter and
3 the Commission announced its decision in August,
4 suspending Goodnight's injection permits and denying
5 its permits for new wells.

6 The order was entered in September, and
7 then there were exchanges between Goodnight and the
8 Division and suggestions that the Commission's order
9 provided guidance. And it seemed unclear to
10 Goodnight that the permits had been actually
11 suspended. So Goodnight continues to disobey the
12 order and has done nothing to curtail its injection
13 at this point.

14 The suspension order clearly stated that
15 the Commission suspends Goodnight's existing wells.
16 It's not ambiguous. That was done to afford Empire
17 the opportunity to commence its CO2 enhanced oil
18 recovery project. But, again, Goodnight continues to
19 inject, despite the order.

20 The Commission's findings were numerous,
21 as I'm sure you all remember. And one of them
22 involved the unit agreement. And it's shown here in
23 Section 10, specifically. It gives Empire the
24 exclusive rights, privilege and duty of exercising
25 rights with the unit with respect to unitized

1 substances.

2 Additional findings of the order that
3 are critical are listed here. The findings were
4 made, again, to allow Empire the opportunity to
5 commence its CO2 project, which it is not able to do
6 while Goodnight is injecting.

7 And this is important. One finding
8 which the Commission was that water is moving from
9 the San Andres into the Grayburg. And that was found
10 based on Dr. Buchwalter's model. That was noted in
11 the suspension order, and that, itself, establishes
12 waste and violation of correlative rights, because
13 the Grayburg, of course, is included within the
14 unitized interval for the Eunice Monument South Unit.

15 And that finding was substantiated by
16 core saturations, which also showed vertical
17 fractures in the San Andres and Grayburg, explaining
18 why high water volumes were produced from the
19 Grayburg prior to the waterflood. So we have
20 presented conclusive evidence that water was
21 migrating from the San Andres into the Grayburg.

22 So in summary, based on the extensive
23 evidence present at the hearing, the Commission
24 correctly denied Goodnight's application to drill new
25 wells, suspended their existing wells and denied the

1 injection increase into the Dawson well. And despite
2 those findings and that order, Goodnight has
3 continued to inject.

4 And Goodnight has also attempted to
5 subvert the Commission's decision through proceedings
6 before the Division. For example, Goodnight recently
7 submitted a filing before the Division where it
8 essentially argued that it prevailed in this
9 proceeding, which is not what the order said that the
10 Commission issued.

11 Goodnight is contesting Empire's
12 standing before the Division to object to the Rocket
13 SWD extension, even though the Commission has already
14 ruled that Empire had standing to apply to revoke
15 that permit. And that application is pending before
16 the Commission.

17 So Goodnight has continued to use
18 processes to sort of -- to try to subvert the
19 Commission's decision and avoid stopping its
20 injection.

21 The Commission properly issued the
22 suspension order. Goodnight would have the
23 Commission sit by until the hydrocarbons are
24 destroyed and Empire has no option for recovering
25 them. But that argument directly contradicts the

1 Commission's obligation to prevent waste and correct
2 correlative rights under the Oil and Gas Act.

3 The standard for rehearing is high. It
4 requires a change in controlling law, new evidence
5 that was previously unavailable, despite due
6 diligence, or the need correct clear error to correct
7 manifest injustice.

8 None of these circumstances exist here.
9 Goodnight merely wants to take a second bite at the
10 apple and rehash its failed claims that it previously
11 made to the Commission. And importantly, a party may
12 not use a motion for rehearing to re-argue issues
13 already decided or to submit evidence that could have
14 been presented earlier. Otherwise, parties would be
15 able to re-litigate proceedings and there would be no
16 finality, if you could wait until the hearing was
17 over and then decided you should have presented
18 something else, which is exactly what Goodnight is
19 going here.

20 So the statutes on waste, I think we're
21 all familiar with them. The Division and Commission
22 have absolute plenary authority to take action to
23 prevent waste and protect correlative rights.

24 And part of that obligation involves the
25 prevention of encroachment of water that tends to

1 reduce the total ultimate recovery of crude petroleum
2 oil from any pool. So it's broad authority and the
3 Commission is obligated to prevent waste, protect
4 correlative rights.

5 And statute, which we've discussed
6 extensively in our briefing, refers to waste as any
7 activity that tends to reduce, which is important
8 language. Because Goodnight is construing it as
9 really actually reduce. And the actual reduction has
10 to be proven, and that is not what is required the by
11 the statute. So we've summarized the statutes in our
12 briefing and Goodnight is misinterpreting them.

13 And in addition, the Commission looked
14 at Statutory Unitization Act, which applies here, of
15 course, and gives Empire the exclusive right to
16 operate within its statutory unitized interval.

17 Goodnight and Rice, in their briefing,
18 incorrectly rely on the Division's provision on
19 injection, which states, it's Part 10 of Rule 26, the
20 Division may restrict the injected volume and
21 pressure for or shut in injection wells or projects
22 that have exhibited failure to confined fluids to the
23 authorized zone.

24 And they have argued that that means
25 that the Commission and Division can only act if

1 there is a failure of an injection well to confine
2 fluid to the approved zone. And that's not correct
3 under the law.

4 The duty to prevent waste and protect
5 correlative rights is an overarching obligation. And
6 really what Goodnight and Rice are trying to do here
7 is read "only" into that provision, the Division may
8 only restrict. And that is not what it says. And
9 according to their interpretation, that would mean
10 that if a producing interval was erroneously included
11 in an injection interval, the Commission and Division
12 could do nothing unless the fluid had escaped the
13 zone. So it's clearly not correct.

14 Goodnight's claim regarding a continuous
15 barrier is raised in their briefing, and that's the
16 reason that they posit several hundred pages of new
17 exhibits. And they raised the continuous barrier
18 theory throughout their testimony and exhibits, and
19 we've discussed that in our brief. They posited that
20 as a reason that they should be allowed to inject.

21 So for them to come back and claim now
22 that the Commission erroneously applied a continuous
23 barrier theory is not correct. And in any event, an
24 applicant for injection must always establish a
25 confining zone with upper and lower barriers. That

1 is always the case, and that is well established in
2 the regulations and even in the permits themselves.

3 Goodnight, again, wants a second bite at
4 the apple. They've attached pages and pages of new
5 evidence. There's nothing new about the continuous
6 barrier theory. It's a confinement determination
7 that they are required to make.

8 Their exhibits could have been presented
9 at the hearing. For example, they've included
10 seismic data now, after the Commission asked
11 Goodnight's witness at hearing if they had seismic
12 data and they said yes, but they could not provide it
13 due to licensing restrictions. Well, they've come
14 back now after they did not get the result they
15 wanted and are presenting seismic data in their
16 exhibits to their motion for rehearing.

17 So it's not appropriate to re-litigate
18 these issues after the fact, based on hindsight, and
19 none of their new evidence should be considered.

20 They raised constitutional arguments.
21 I'm not going to go into detail. I think they lack
22 merit. The injection permits, on their face, state
23 that the Commission and Division retain jurisdiction
24 over them to prevent waste and protect correlative
25 rights. They're revocable permits, depending on

1 those parameters.

2 They raise arguments regarding surface
3 ownership and alleged constitutional rights of
4 service owners, when Goodnight itself sought to
5 exclude any evidence of surface ownership at the
6 hearing. They objected to that evidence and their
7 objection was sustained. So they can't come back now
8 and argue surface ownership should be considered.
9 They've waived that argument.

10 There's no basis to grant Goodnight the
11 do-over that it seeks. The Commission carefully
12 considered voluminous evidence, and Goodnight's
13 litigation choices do not amount to a basis for
14 rehearing.

15 Rice and OCD submitted responses to the
16 rehearing motions that, specifically with respect to
17 Rice, really constitute a joinder in Goodnight's
18 motion, which isn't a proper response because Empire
19 didn't get a chance to respond to it. Because
20 instead of filing their own motion for rehearing,
21 they submitted arguments in response.

22 And with respect to OCD, OCD had
23 withdrawn from the case, as you know, before the
24 hearing, and is not adversely affected by the order.

25 OCD does raise issues regarding

1 enforcement proceedings and how they typically handle
2 them, but this is not an enforcement proceeding. The
3 Commission has already heard and the parties have
4 litigated the validity or invalidity of Goodnight's
5 permits. So the issues regarding the handling of
6 enforcement proceedings are not relevant and they
7 don't apply to this situation. It's a different
8 situation here, where we've had a many-week hearing.

9 Empire has submitted a limited request
10 for rehearing, demonstrating that the permits should
11 be suspended permanently. We have presented evidence
12 of violation of correlative rights and waste.

13 And Goodnight fails to meet its burden
14 for a stay. The Tenneco factors are discussed in our
15 briefing. None of them are met here. They are not
16 met. There's no likelihood that Goodnight will
17 prevail on appeal. There's no irreparable harm.

18 To Goodnight, substantial harm will
19 result to others if a stay is granted. So a stay is
20 inappropriate.

21 Again, we've talked about these issues
22 in our briefing. And clearly, based on the evidence
23 that's been presented extensively and the Commission
24 carefully balanced, the order is correct and the
25 suspension must be enforced.

1 And then I will turn it over to
2 Mr. Wehmeyer.

3 MR. WEHMEYER: Thank you very much.

4 We spent five weeks presenting witnesses
5 in this case. You may recall that despite
6 Goodnight's appearance today, not one single good
7 night witness actually bothered to come here in
8 person. And we also didn't see anybody attend four
9 and a half, five weeks of testimony and official
10 proceedings from Goodnight during the course of the
11 case.

12 History is watching what we're doing
13 right now. During those four and a half weeks, we
14 spent a lot of time reading transcripts from
15 testimony before the Division and Commission from
16 over 40 years ago. Empire is here asking that the
17 commission's final suspension order be enforced,
18 exactly as it's written be forced.

19 If that suspension order is enforced,
20 this can be a wonderful success case for the State of
21 New Mexico. You have Empire who is here ready,
22 willing and able to execute this ROZ development in
23 the San Andres and, for that matter, also in the
24 Grayburg. And it also intends, for the benefit of
25 the State of New Mexico's minerals and the United

1 States' minerals to continue its waterflood
2 operations in the Grayburg.

3 If the permits are not suspended
4 precisely as the final order of the Commission says
5 they are suspended, and if they continue injecting,
6 this is destined to be a failure. There's no two
7 ways about it. There's no halfway about it. It will
8 be a failure.

9 I want the Commission to remember that
10 they went into this knowing that the EMSU unitization
11 order was in effect. They testified that they knew
12 about it and they proceeded anyway. They continued
13 to inject in violation of the suspension order.

14 Empire is merely asking that the
15 suspension order be enforced, that the permits be
16 suspended exactly as the Commission ordered they are.

17 In all of the paper that you've seen
18 over the last two weeks, neither OCD nor Goodnight
19 has pointed this Commission to one single instance in
20 the history of time in which a permit was suspended,
21 that is suspended, but injection continued. And
22 we've looked for such a situation and we haven't
23 found one.

24 Additionally, we heard after witness
25 after witness after witness, there are 77 million

1 acres in New Mexico. We're concerned about the
2 injection within 14,000 acres out of those 77 million
3 acres. Tell us where in the history of time in
4 New Mexico a saltwater disposal trash company
5 operator has injected into a unit that, per its
6 expressed terms, gave exclusivity to Empire.

7 Never in the history of time could any
8 Goodnight representative or expert point to a single
9 place on the face of the planet Earth that has ever
10 allowed injection into a unitized interval except for
11 what they're doing here.

12 They told you, despite them coming in
13 here and doing the injection, that they didn't
14 perceive this as being their charge to provide any
15 kind of a science case or an engineering case for
16 what they were actually doing. Their expert
17 witnesses told you all that they perceived their
18 charge as merely throwing rocks and picking at and
19 trying to destroy the science and engineering case
20 that Empire went to the laborious effort to properly
21 develop and bring here.

22 There's discussion about they want
23 curtailment. They want the injection volumes to not
24 stop, exactly as occurs with a suspended permit.
25 They want the volumes to somehow be curtailed on a

1 going-forward basis. After five weeks of testimony
2 and deliberations and argument, the Commission did
3 not order that suspension should be curtailed over
4 some period of time. The Commission ordered that it
5 should be suspended.

6 This is consistent with the pattern of
7 Goodnight from the very jump of this case, which is
8 delay. Because they know that every single day that
9 they thumb their nose at the rights granted in the
10 1984 unitization order and every single day that goes
11 by that they thumb their nose at this Commission's
12 final order ordering suspension of those permits, is
13 money that they get to put into their pocket and send
14 back to Dallas, Texas, and Fort Worth, Texas.

15 Delay equals money, and it has been the
16 objective of Goodnight from the start to delay this
17 inevitable outcome as long as they possibly can.
18 Enough is enough. It needs to stop now.

19 The Commission's order should have been
20 observed months ago, in August, when it was
21 announced. It should have been observed in September
22 when it came out in writing and was signed
23 unanimously and executed by the Commission. It
24 certainly should stop as we come here today.

25 Why is that so important? You've heard

1 testimony straight from Empire's witnesses about how
2 once the harm is done, it can't be undone. This
3 comes from concepts such as raising the pressure. No
4 doubt the pressure here is being raised in the
5 San Andres through the continued injection. Comes
6 from water incompatibility. This is makeup water
7 that's used in the Grayburg. This is higher
8 operating costs. This is the actual formation being
9 cemented up by the incompatible water.

10 You also heard straight from their
11 expert, Mr. McBeath, he was asked: Will any company,
12 investor, as part of an EOR in the San Andres touch
13 the EMSU while Goodnight continues to inject tens of
14 thousands of barrels of wastewater every single day?

15 And you heard straight from Mr. McBeath
16 that there is nobody on the planet who is going to
17 touch the San Andres ROZ EMSU development, be it
18 pilot project or commercial development, unless and
19 until the injection is stopped.

20 Why are we asking that the Commission
21 step in here and enforce the order? Well, consistent
22 with the Goodnight tactic of delay to the ends of
23 padding its wallet, Goodnight's already reached out
24 to the Commission with a vastly different
25 interpretation of what a suspended permit means as to

1 these four wells. This is in the evidence that has
2 been appended in the recent filings: Goodnight would
3 like to schedule a meeting with the Division
4 regarding the Commission's guidance for implementing
5 the order, when, how, and over what period of time
6 Goodnight will be required to shut in its disposal
7 wells.

8 This Commission did not order
9 curtailment. It did not order that the permits would
10 be suspended at someday in the future. The
11 Commission ordered suspension of the permits, full
12 stop, period, now.

13 Nowhere will you find, other than
14 conclusory allegations, any kind of a safety concern
15 that comes out of stopping the injection. If you
16 wanted to believe Goodnight, these wells operate on a
17 vast vacuum, they just suck the water down with no
18 equipment necessary to even pump it down, that it's
19 on a vacuum.

20 Nowhere in these papers will you find
21 any kind of a safety issue if they just stop putting
22 the waste into the exclusive depths that Empire, per
23 the 1984 order, has the right to operate and develop
24 with them.

25 The OCD's response was that it cannot

1 and will not make any guarantees or assurances as to
2 how it will ultimately decide to implement the order,
3 including timing and nature of actions OCD may
4 require of either Goodnight or Empire.

5 We cannot get going on our pilot program
6 that the Commission has allowed three years to
7 implement and execute unless and until the injection
8 starts. We agree with Mr. McBeath on that, their
9 expert, Mr. McBeath. We completely agree. It has to
10 stop before we can commence the pilot program that
11 the Commission has allowed.

12 OCD has said it cannot and will not make
13 guarantees on any of that time. We didn't want to
14 come here on the motion to enforce. It's shocking to
15 me that this motion to enforce was necessary.

16 On behalf of the Empire and on behalf of
17 the State of New Mexico's minerals and the United
18 States' minerals, we beg the Commission that we leave
19 here today with certainty that the waste injection,
20 that the harm that's occurring stops today so that
21 Empire can proceed precisely consistent with the
22 property rights that it purchased and that have been
23 established since 1984.

24 There's been no drastic departure.
25 Again, this is the only place on the planet Earth in

1 which anybody has identified a disposal company
2 injecting into a unitized interval in violation of
3 Empire's rights.

4 I'm at my time. If there's any
5 questions, we're very happy to field those. The
6 presentation goes in -- there's probably three inches
7 of filings you all have gotten. The presentation was
8 our effort to bring it down to 82 slides of points
9 that might be a little easier to digest and less
10 paper.

11 I very much appreciate the Commission's
12 opportunity. I thank the Commission on behalf of
13 Empire for all of its time, the last four and a half
14 weeks and certainly the time today to present these
15 arguments.

16 CHAIR CHANG: Thank you. Feels like we have
17 close to 3 feet of filings, but fair enough.

18 Commissioners, any questions?

19 COMMISSIONER AMPOMAH: Is it possible to
20 listen to other parties and then probably -- okay.
21 Thank you.

22 CHAIR CHANG: Would you like to also reserve
23 your questions?

24 COMMISSIONER BLOOM: Yeah. I'm fine with
25 that, as well.

1 CHAIR CHANG: I do have a couple of
2 questions. It didn't hear much argument about your
3 own motion for a rehearing. You are also seeking for
4 a motion for rehearing.

5 MR. WEHMEYER: It's very narrow. So in
6 contrast to the arguments we've seen over here that
7 accuse the Commission, after all this work, of
8 arbitrary conduct, capricious conduct, and it having
9 no jurisdiction, apparently we spent four and a half
10 weeks and you all didn't have any jurisdiction and
11 this was no use when we got the final.

12 All we are asking for is that in light
13 of the correct legal standards, which we've cited,
14 that just some minor cleaning up in terms of the
15 verbiage in the order. They've said they're going to
16 challenge which way on appeal that they can. We
17 think there's some places that the verbiage could be
18 altered.

19 Additionally, to just address the
20 appellate points, that they say that this Commission,
21 without jurisdiction, have already committed, and
22 then, again, we would maintain our frontline position
23 that with this valuable ROZ -- everyone agrees it's a
24 ROZ, even their witnesses, that with this valuable
25 ROZ, the permit should just be straight revoked. And

1 in the alternative to revoking, we would ask that the
2 language be cleaned up and against the suspension.

3 We will be back in three years, or
4 earlier, to show this Commission what an outstanding
5 decision it made after four and a half weeks of
6 testimony.

7 CHAIR CHANG: Let me ask a specific question
8 about the Derek versus Standard Nutrition Co. case
9 that you've cited on Page 10 of your packet here.

10 I presume that same standard for
11 rehearing applies to all parties before me. So what
12 new evidence that could not have been presented
13 earlier is Empire proffering to support its motion
14 for rehearing?

15 MR. WEHMEYER: We have no new evidence. So
16 if the standard here is new evidence that wasn't
17 available at the time of hearing, we certainly agree
18 we're not bringing any new evidence. We had four and
19 a half weeks. The Commission was so patient with us.
20 We are not suggesting that any new evidence is
21 appropriate.

22 CHAIR CHANG: That's all the questions I
23 have at this time.

24 Commission counsel, do you have any
25 questions at this time?

1 MR. SHANDLER: No.

2 CHAIR CHANG: All right. In that case, I
3 invite Goodnight for the presentation.

4 MR. RANKIN: Commissioners, Chair Chang,
5 Commissioner Ampomah, Commissioner Lamkin, good
6 afternoon. May it please the Commission.

7 Goodnight respectfully filed its
8 application for hearing to correct several critical
9 errors that were included in the order. To avoid
10 error and entry of an order that's arbitrary,
11 capricious, and not in accordance with the law, we
12 respectfully ask the Commission to grant Goodnight's
13 application and issue in amended order that
14 incorporates the legal and factual corrections that
15 we've outlined in our application.

16 Specifically, we ask that an amended
17 order be issued that approves Goodnight's
18 applications, withdraws the suspension of Goodnight's
19 existing injection operations, and removes the
20 San Andres from the EMSU unitized interval.

21 First, based on the findings in the
22 order, the Commission lacked authority to order the
23 relief Empire requested and properly refuse to revoke
24 Goodnight's injection permits. But the very same
25 findings that were insufficient to revoke Goodnight's

1 injection permits, also were insufficient to grant
2 the partial relief Empire did not even request:
3 Temporary suspension of Goodnight's injection.

4 Second, in granting partial relief, the
5 Commission failed to apply its own regulations that
6 control under what circumstances the Commission or
7 Division even has discretion to curtail, shut in or
8 suspend injection operations. Instead, it applied a
9 new, more stringent, continuous barrier standard that
10 is being invoked for the first time against
11 Goodnight, and only Goodnight, and has not been
12 applied against any other injection operations in the
13 state, including those EOR operations within the EMSU
14 itself.

15 Third, compounding that error, the
16 Commission improperly shifted and applied the burden
17 of proof to Goodnight, when the burden should have
18 been on Empire, as applicants seeking to shut in
19 Goodnight's injection.

20 And finally, the Commission's key
21 findings on two issues, that both Goodnight and
22 Empire agreed are dispositive in these cases,
23 including all the cases that are currently pending
24 before the Commission and stayed, actually support
25 denial of Empire's claims and requested relief.

1 Those dispositive findings are that the
2 purported ROZ is not recoverable, and that there is
3 no finding that it is even capable of producing in
4 paying quantities.

5 And I'll just point out that we
6 strenuously disagree that there is an ROZ down in
7 Goodnight's disposal zone, and that Goodnight's
8 injection is not impairing Empire's operations in the
9 EMSU.

10 Empire agreed in its briefing on the
11 scope of this hearing, that those two issues would be
12 dispositive of all the cases against Goodnight. And
13 the Commission has now found in Goodnight's favor on
14 those two key issues.

15 There are at least four broad,
16 overarching reasons that Goodnight's requested
17 rehearing and modification order is warranted. I'll
18 walk through each point that are outlined in detail
19 in our papers and that support our requested relief
20 here, in whole or in part.

21 First, the Commission's order goes
22 beyond its authority, because it didn't find there
23 was impairment and it didn't find hydrocarbons
24 capable of being produced in paying quantities.

25 Second, Empire failed to carry its

1 evidentiary burden, and the Commission applied the
2 incorrect legal standard.

3 Third, the Commission's findings
4 actually support Goodnight's position and continued
5 injection.

6 And fourth, if the Commission maintains
7 its continuous barrier standard, Goodnight should be
8 given the opportunity to present evidence addressing
9 this new standard that was announced only after the
10 hearing.

11 Finally, if the Commission nevertheless
12 disagrees with Goodnight and declines to grant the
13 requested relief or the alternative relief proposed,
14 Goodnight asks for this alternative relief.

15 First, to amend the order to clarify
16 that suspension of injection is delayed until Empire
17 actually commences CO2 flood operations that actually
18 targets Goodnight's disposal zone, and not some
19 shallower target. Or, provide that Goodnight's
20 suspension is to be implemented over time, as Empire
21 meets its demonstrable milestones necessary to
22 implement a CO2, that they're so certain to do.

23 I'll talk through each point and go
24 through the requested relief. First, the Commission
25 acted beyond its authority. It did so in at least a

1 couple of ways. First, most glaringly, the
2 Commission erroneously reaffirmed the error that it
3 made back in 1984, when it confirmed that there are
4 no recoverable hydrocarbons in the San Andres, but
5 nevertheless allows the San Andres to remain within
6 the EMSU's unitized interval. Thereby, authorizing
7 the unitization of an aquifer, which belongs
8 exclusively to the public in contravention of the
9 State's Constitution.

10 And the order also violates the
11 Statutory Unitization Act, because it confirms in the
12 order that there are no recoverable hydrocarbons in
13 the San Andres, which has never produced any
14 hydrocarbons through primary production, and finds
15 that the San Andres was included in the EMSU solely
16 because it was a water supply source. There's simply
17 no legal or factual basis for the San Andres to be
18 included within the unitized interval.

19 Having found that there are no
20 recoverable hydrocarbons in Goodnight's disposal zone
21 and that Goodnight's injection is not impairing
22 Empire's operations in the EMSU, findings that there
23 is no waste and no impairment of correlative rights,
24 the Commission lacks authority and discretion under
25 its own regulations and statute to shut in

1 Goodnight's injection. There's just no valid legal
2 justification for it.

3 The order only found that there's a
4 potential for future impairment of waste, but that
5 finding is premised on an invalid evidentiary
6 standard, and we believe also incorrect,
7 unsubstantiated facts.

8 Second, Empire failed to carry its
9 evidentiary burden that there is waste and
10 impairment. But the Commission also applied the
11 wrong standard and improperly shifted the burden to
12 Goodnight. As part of its burden to prove waste and
13 impairment, Empire had to show that the purported R0Z
14 is capable of producing in paying quantities.
15 Without that foundational showing, there can be no
16 waste and no impairment of correlative rights because
17 there's no recoverable oil and gas to waste and no
18 share of production to protect.

19 But Empire did not make that showing.
20 It couldn't prove that the hydrocarbons in the R0Z
21 are even recoverable, let alone that they can be
22 produced in paying quantities. Empire has,
23 therefore, been unable to show impairment of
24 correlative rights in either the Grayburg or the
25 San Andres.

1 As to the Grayburg, Empire was unable to
2 show any volumes in the Grayburg that are not being
3 recovered due to Goodnight's injection, or that there
4 has even been a reduction in production from the
5 Grayburg at all. In the San Andres, Empire was
6 unable to show that the alleged ROZ can be
7 practicably produced from the Grayburg or the
8 San Andres, or that it could even be recovered at
9 all.

10 In fact, Empire did not present a single
11 witness who analyzed ROZ recoverability based on
12 actual data from the EMSU, so there's not even an
13 evidentiary basis in the record from which to draw up
14 the necessary conclusion.

15 For a reservoir to be within the
16 jurisdiction and authority of the Commission to
17 protect, it needs two things. One, to find that
18 there are hydrocarbons capable of producing; and that
19 they are capable of being produced in paying
20 quantities.

21 Having found that Empire could not prove
22 and did not prove that the ROZ was even recoverable,
23 especially not in Goodnight's disposal zone, the
24 Commission did not even need to reach the decision
25 about whether the ROZ is capable of producing in

1 paying quantities. But in any event, Empire did not
2 make out even a basic economic case because it failed
3 to use any of the EMSU data or analyses relied on by
4 any of its experts in its made-up economic model that
5 was instead based entirely on assumptions unsupported
6 by actual EMSU data.

7 The Commission, therefore, properly
8 found that Empire did not prove recoverability by
9 preponderance of the evidence and, therefore, did not
10 need to reach the question of whether the ROZ could
11 even produce in paying quantities. Empire's ROZ
12 claim died before proof on the paying quantities
13 element was even necessary to assess. Because
14 without proof of recoverable ROZ, there is no waste
15 and there is no impairment of correlative rights.

16 Now, Empire also failed to carry its
17 burden to show Goodnight's wells have exhibited
18 failure to confine injected fluids within the
19 disposal zone. That's under the regulations. That
20 standard comes directly out of the Commission's own
21 regulations that govern and define under what
22 circumstances the Commission has direct discretion to
23 curtail, shut in or suspend injection. Without proof
24 of actual failure to confine injection fluids, the
25 Commission is without authority to curtail, shut in

1 or suspend Goodnight's injection.

2 The instance where Ms. Hardy referenced
3 where if there was some error in the inclusion of an
4 improper zone, that's not the case here. There's no
5 question that the injection fluids are going into the
6 authorized injection zone. The question is whether
7 or not those injection fluids are being confined.

8 As the applicant to shut in Goodnight's
9 injection, the burden to prove failure to confine was
10 solely good Empire's, and they failed to make that
11 showing. And nowhere in the order does the
12 Commission make the necessary finding that there was
13 lack of confinement. Instead, the Commission
14 improperly flipped the burden and mistakenly
15 determined that Goodnight failed to refute potential
16 future waste and impairment, because it did not prove
17 the existence of a single continuous barrier.

18 But that's a new made-up standard that
19 conflicts with governing regulations, with the
20 agency's federal UIC primacy authority, and
21 improperly shifted the burden from Empire to
22 Goodnight. That standard, to my knowledge, has never
23 been applied before, nor has it been applied to
24 existing waterflood injection operations within the
25 EMSU or anywhere else in the state. That is the

1 definition of arbitrary, capricious and not in
2 accordance with the law.

3 Moreover, the continuous barrier
4 standard creates a new precedent that will have
5 far-reaching negative consequences on the Division's
6 UIC program, including existing and future disposal
7 operations, as well as enhanced oil recovery
8 injection, risking the stability and reliability of
9 the State's injection program and its ability to
10 manage, produce water disposal, and EOR projects
11 going forward. That raises substantial concerns of
12 great public interest.

13 Now, while the Commission did not find
14 Goodnight's wells exhibited a failure to contain
15 injection fluids, a critical finding that they didn't
16 make, it actually found the opposite, that there is
17 no communication between Goodnight's disposal zone
18 and the Grayburg.

19 Now, the citation that the counsel for
20 Empire referenced, Paragraph 47 of the Commission's
21 order, is referencing the potential for future
22 communication. In fact, the very line that they
23 excluded to mention in their citation is that this
24 could lead to communication between the Grayburg and
25 San Andres. The finding regarding Dr. Buchwalter's

1 analysis is that it could potentially lead to
2 communication between the San Andres and the Grayburg
3 and the San Andres, as the Commission ordered
4 subsequently identifies that there has been no
5 communication to date and no impairment.

6 So, based on what it actually found,
7 what the Commission should have determined, based on
8 the findings it made in a correct application of the
9 law, is that because the Empire did not prove failure
10 to confine injection fluids, the evidentiary burden
11 never shifted to Goodnight. There is nothing for
12 Goodnight to refute.

13 Now, the third reason Goodnight's
14 application for rehearing should be granted is that
15 the Commission's findings that are substantiated by
16 the evidence support Goodnight, not Empire.

17 Real quick. The Commission found that
18 ROZ recoverability and paying quantities have not
19 been proven. Without those findings, there is no
20 waste and no impairment of correlative rights.

21 The Commission found that correlative
22 rights are not currently being impaired, based on
23 Goodnight's compelling engineering, injection and
24 pressure data.

25 And the Commission also made no finding

1 that Empire approved Goodnight's wells have exhibited
2 a failure to confine the injected fluids. That
3 Empire was unable to prove lack of confinement after
4 more than six decades of continuous injection into
5 the San Andres in and around the EMSU is substantial
6 evidence that injection is and will be and continue
7 to be confined to the disposal zone.

8 Now, if the Commission rejects
9 Goodnight's arguments and maintains its new
10 continuous barrier standard, Goodnight should be
11 afforded the opportunity to present evidence at a
12 limited, narrow rehearing addressing this new
13 standard.

14 Up to and through the hearing, Goodnight
15 believed and understood reasonably that the
16 applicable standard required to show only that the
17 injection was being confined to the injection
18 interval, which was done. It relied on its
19 engineering and injection data for that reason, which
20 the Commission found to be the most compelling
21 evidence of no communication.

22 Now, if Goodnight had known that it was
23 required to actually prove the existence of a
24 continuous barrier, then it would have presented at
25 the hearing additional evidence and analysis of its

1 3D seismic data.

2 Now, it's in our application for a
3 hearing. We did include an initial analysis of its
4 3D seismic data that ties the geophysical analysis to
5 well logs and confirms the existence of a laterally
6 extensive confining strata 60 to 200 feet thick,
7 demonstrating that Goodnight's injection is and will
8 remain confined.

9 Now, if the Commission maintains this
10 continuous barrier standard, Goodnight should be
11 given the chance to present a full analysis on this
12 data and a subsurface model, to avoid prejudice.

13 Now, in the event the Commission refuses
14 to grant in whole or in part Goodnight's requested
15 relief to rescind the order temporarily suspending
16 its injection and grant Goodnight's pending
17 application, Goodnight requests that the order be
18 amended to provide the requested alternative relief.

19 Why? First, because the evidence
20 supports it; and second, because Goodnight has
21 invested millions of dollars on its four wells at
22 issue in this case that support actively and
23 currently more than 30,000 barrels of existing oil
24 production per day, and it has invested more than
25 \$300 million in its Llano pipeline system and

1 associated injection infrastructure.

2 In contrast, Empire has taken no steps,
3 invested no capital necessary to begin recovery of
4 its purported ROZ, let alone demonstrate that it's
5 recoverable.

6 Given the status and the Commission's
7 finding, why should Goodnight be forced to
8 immediately shed in its wells? It shouldn't.

9 Given that the ROZ contains, by
10 definition, only oil that cannot be mobilized by
11 water, continued disposal of produced water until
12 Empire might be approved for a CO2 EOR project will
13 not affect the ROZ. There's no evidence it will be
14 impacted.

15 Even if the Commission refuses
16 Goodnight's alternative -- rather, even if the
17 Commission refuses Goodnight's rehearing request, we
18 should nevertheless amend the order to clarify that
19 Goodnight's injection can continue until Empire
20 actually begins a CO2 flood that actually targets
21 Goodnight's disposal interval and not some shallower
22 zone.

23 Doing so would require Empire to obtain
24 all the necessary regulatory permits for EOR
25 injection, implement the necessary capital

1 expenditures and facility modifications, procure the
2 necessary CO2 for injection and rights of way, and
3 demonstrate that it's prepared to immediately
4 commence CO2 flood operations.

5 This alternative relief aligns with the
6 Commission's finding in the order that disposal
7 cannot coincide with the proposed CO2 flood operations
8 in the same interval. That's the key. It has to be
9 the same interval.

10 If the Commission determines that
11 Goodnight's injection should nevertheless be
12 curtailed or suspended in advance of CO2 flood, then
13 injection should be curtailed in an orderly schedule
14 tied to Empire's demonstration of concrete milestones
15 towards its EOR project. If any of those milestones
16 are missed, we believe that Goodnight's injection
17 should be allowed and then resumes and the injection
18 suspension lifted and Empire's project terminated.

19 So requiring Empire to meet these
20 milestones is justified and necessary, where its
21 viability as a going concern is uncertain and has
22 been for years.

23 Finally, should the Commission refuse
24 Goodnight's application for rehearing and reject its
25 proposed alternative relief, the Commission should

1 enter a partial stay of the order, staying suspension
2 of Goodnight's injection until final resolution of an
3 appeal. Failure to do so will have substantial
4 adverse effects on Goodnight, offsetting production
5 operations and third-party disposal operators, as
6 well as the state and public interest more generally.

7 We've outlined those arguments in
8 support in our papers, including the self-affirmed
9 statement of Goodnight's chief executive, Mr. Grant
10 Adams, and we believe the motion more than meets the
11 requirements to issue a stay.

12 But I'll make just two points in
13 response to Empire's opposition. First, Empire seems
14 to believe that Goodnight's arguing it has a vested
15 property interest in its injection permits. That's
16 not the case. Goodnight has a vested property
17 interest in the San Anders pore space through its
18 leasehold, the State. And the Commission's order,
19 without a finding of recoverable hydrocarbons and
20 current impairment, completely wipes out Goodnight's
21 property interest in that pore space without a proper
22 purpose. That is a regulatory taking.

23 Second, Empire complains that Goodnight
24 seeks an asymmetrical stay, staying only the
25 provisions applicable to Goodnight and not the

1 three-year time frame to implement the EOR project.

2 Empire elected not to challenge that
3 three-year timeline to conduct the EOR, so there's no
4 basis to stay that aspect of the order.

5 In conclusion, you have been more than
6 attentive throughout these proceedings, briefing and
7 arguments presented by the parties, and we appreciate
8 your careful consideration.

9 The decision in this case, and getting
10 it right based on the facts and the law, is important
11 to Goodnight. It's also critical to the State of
12 New Mexico, offsetting operators and third-party
13 disposal operators.

14 But it's also of utmost importance to
15 ensure a stable and reliable permitting program under
16 the Class 2 UIC, including enhanced oil recovery.

17 Before I conclude, a couple points just
18 to make a response to some of the comments that
19 Empire made in their statements.

20 The evidence of the fractures, this is
21 in our papers, that were presented to the Commission
22 that alleged to be the pathway for communication do
23 not reach the confining zone that Goodnight is
24 identifying. They're more than 90 feet short.
25 There's no direct evidence and no indirect evidence

1 of any fractures that would allow for communication
2 between the two zones.

3 The reason Goodnight objected to the
4 introduction of its leases and arguments around
5 leases at the hearing was because Empire was seeking
6 to introduce that evidence to show alleged trespass
7 outside of its authorized boundary. So we objected
8 for a different reason, not because we objected on
9 the introduction of the surface lease agreements.
10 They were presented to the Commission previously
11 already. They're of record. We just objected for
12 their testimony alleging that there was a trespass.

13 To Mr. Wehmeyer's comment that we were
14 unable to identify any other, in the history of the
15 world, saltwater disposal well, anywhere on the face
16 of the earth throughout history that failed to
17 inject -- that authorized ejection within another
18 unit, that's not true. The testimony actually
19 identified at least one other in the North Monument
20 Unit here in New Mexico. There are more than one
21 instance where the Division or Commission has
22 authorized a saltwater disposal well in a unit. And
23 often it's a similar situation as this one, where
24 it's injecting into the San Andres. Because the
25 San Andres is nonproductive, and it was erroneously

1 included in the unit, and it shouldn't have been.
2 Okay? It's not been a hydrocarbon-producing zone.

3 And that's the reason it's different.
4 It's not that the saltwater came to -- the disposal,
5 came to the unit. The unit came to the pre-existing
6 saltwater disposal.

7 As to the unit itself, again, the unit
8 erroneously included the San Andres, and it shouldn't
9 have.

10 We appreciate your attention. On behalf
11 of Goodnight Midstream and the board, I'm grateful
12 for your attention and careful consideration in this
13 very important matter. Thank you.

14 CHAIR CHANG: Any questions from
15 commissioners at this point?

16 MS. APODACA: I'll reserve my questions.

17 COMMISSIONER BLOOM: Not at this point.

18 CHAIR CHANG: Commission counsel?

19 MR. SHANDLER: No.

20 CHAIR CHANG: Thank you. I don't have any
21 questions for you at this point.

22 We will proceed, then, to OCD.

23 MR. MOANDER: Good afternoon, Commissioners,
24 Chairman Chang. Just a point of clarification on the
25 order. I have not heard any party reserve any

1 remaining time left and just want to clarify that
2 will not be available in the future? Is that
3 correct, Chair Chang?

4 CHAIR CHANG: That is correct.

5 MR. MOANDER: Okay. Thank you.

6 I'm going to do this in slightly reverse
7 order than I had intended. I'll discuss OCD's motion
8 as the secondary aspect of things. But first off,
9 I'm going to address the targeted criticisms towards
10 OCD made by Empire initially to clear that up.

11 The first argument that was made by
12 Empire towards OCD and their role in forcing the
13 subject order at issue here is that OCD was not
14 adversely affected. And that's just pure basura.
15 That is not true.

16 OCD had obligations imposed upon it,
17 additional duties, et cetera, from the Commission.
18 So it has, in fact, actually been adversely affected
19 and it's certainly -- I'll get to the issue of duties
20 and obligations that OCD now has placed upon it by
21 the Commission.

22 The second argument made was that this
23 is not an enforcement proceeding. That's abundantly
24 clear. And at no point did OCD claim it ever was.
25 That's a red herring argument. The reason why that

1 was brought up was only because OCD's primary
2 experience, which was provided through an affidavit
3 and resume, Deputy Director Brandon Powell outlined
4 that enforcement proceedings are the context in which
5 OCD is most familiar with suspension of permits and
6 the process that tends to follow from them. And that
7 is why it's made the proposals that it did, that I'll
8 address here in a minute.

9 Therefore, OCD would contend that its
10 experiences are highly relevant and should inform the
11 Commission about how it handles these suspensions.

12 At this point, this appears that Empire
13 is being coy and disingenuous about matters. I mean,
14 there was a whole bunch of flattery made to the State
15 and the Commission in oral argument.

16 OCD's suspicion here -- because Empire
17 didn't actually touch OCD's proposal for their plan,
18 not at all. And why would that be? Well, during the
19 course of testimony in the hearing, it did, in fact,
20 come out that Empire has financial problems. And if
21 an EOR project is permitted to proceed, which this
22 Commission has, in fact, ordered, there are no
23 guardrails on how that project should proceed. No
24 discussion of filing deadlines, no discussions of
25 proofs provided to OCD that progress is, in fact,

1 actually being made. Because at the end of the day,
2 this is a veiled effort to park this area, park this
3 particular project and hold on for three years
4 without actually having to demonstrate anything until
5 that three-year deadline expires. So this is why OCD
6 is involved and seeks the clarity that I'll address
7 momentarily.

8 OCD has a duty to ensure it complies
9 with this order, and it requires clarity as to, for
10 example, shutting down injection wells, which entails
11 issues like safety and also prevention of additional
12 waste. And there are environmental considerations
13 that also come into play. And it would appear that
14 that's just not a concern of Empire whatsoever here.

15 So having put to rest the criticisms
16 that were made of OCD, I'm going to go ahead and turn
17 to our proposing. OCD had some difficulty in
18 deciding whether a rehearing was actually, in and of
19 itself, the correct vector to take to address its
20 concerns, but ultimately chose to respond to both the
21 application and motions for rehearing.

22 What OCD has proposed here, and this can
23 be found on Exhibit A, Page 5, Paragraph 10, is
24 conventionally, when OCD suspends a permit, it does
25 allow benchmark -- like sub-deadlines under a major

1 deadline of 90 days for winding up operations. This
2 is largely done to ensure that the wind-down is done
3 properly, safely and thoroughly.

4 This can be done a number of ways, which
5 is why I think perhaps some additional testimony
6 might be useful for the Commission as to how that
7 proceeds in more excruciating detail. But
8 ultimately, in no event should it takes longer than
9 90 days to do a shutdown. And from OCD's
10 perspective, that's reasonable, safe and appropriate,
11 because it does prevent potential waste, almost above
12 anything else.

13 There also is a lingering question here
14 in OCD's mind whether or not this suspension is
15 effective immediately, and if so, would seek that 90
16 days in order to allow Goodnight to properly wind
17 down everything and shut in the wells to OCD's
18 satisfaction.

19 Alternatively, if the suspension were to
20 be contingent, although the order doesn't seem to
21 reflect that, I do think it's worth mentioning,
22 contingent on Empire starting, initiating, otherwise
23 advancing its EOR project, that would be a very
24 different scenario and OCD would want some additional
25 guidance on that point.

1 Now, turning to Empire, the order only
2 provides a three-year deadline and nothing more as to
3 how Empire is to proceed with its EOR project.
4 Deputy Director Powell's recommendations are found on
5 Page 7, the enumerated paragraphs of OCD's response.
6 These are a bit more specific, primarily because OCD
7 has handled other pilot projects in the past. That's
8 something that Deputy Director Powell is pretty
9 experienced in. And this sets out some deadlines as
10 to performance by Empire to complete that project.

11 But just as importantly, there's a
12 question of if deadlines are missed, whether or not
13 OCD may be able to construe a failure on Empire at
14 any given point in time as a failure of the project,
15 at which point that would need to be addressed again
16 with the OCC, because the suspensions are contingent
17 on the EOR project. If the EOR project fails, that
18 brings into question the status of the suspension of
19 Goodnight's permits, which will need further
20 clarification.

21 The additional factor in this is that
22 recoverability, as OCD reads the order, is not
23 guaranteed. It has not been proven. That brings
24 into question the potential success of this project.
25 While that may be the intention of the project,

1 that's still a concern for OCD, thus OCD believes
2 that the EOR project that Empire now has the right to
3 proceed with needs additional guardrails, deadlines,
4 clarifications.

5 And so with that, I will pass the
6 microphone back to the Commission.

7 CHAIR CHANG: Thank you.

8 Commissioners, any questions at this
9 point for OCD counsel.

10 MS. APODACA: I'll reserve and then come
11 back. Thank you.

12 CHAIR CHANG: At this point, counsel?

13 MR. SHANDLER: No.

14 CHAIR CHANG: Great. Thank you.

15 I don't have any questions either.
16 We'll proceed to statements from Rice, please.

17 MR. BECK: Commission, Chairman Chang, thank
18 you. Thank you all for your attention. Thank you
19 for bringing us back again. It's wonderful to see
20 you all again. Hopefully this won't be the last
21 time.

22 You know, there's been a lot of
23 criticisms of the Commission's order, and no one has
24 ever accused me of writing ten words when five words
25 was suffice -- let me say that again. No one has

1 ever accused me of writing five words when ten words
2 were suffice. And so sometimes that happens.

3 I think that the Commission's order is
4 clear in context. And I may be not joined by a lot
5 of folks in that opinion. But it seems to me,
6 particularly when you read the headings, that the
7 Commission reached the finding that it is possible
8 that there is a ROZ down in the San Andres that may
9 be produced at some point in the future.

10 It seems the Commission said we want to
11 see if that's possible. It seems the Commission
12 said, seems like the evidence said to us that if
13 there's ongoing injection by Goodnight in the
14 targeted zone, where they want to produce the ROZ,
15 that conflicts with their ability to test that space.

16 Now this seems to me more like a gotcha,
17 or, as my colleague said, coy and disingenuous. I
18 think we can see that from the ad hominem attacks
19 from Empire. I think we can see that from its
20 classification of the Commission's order as, quote,
21 the suspension order, which it is not. It is an
22 order that provides Empire the ability to go and test
23 its pilot project as Empire requested.

24 And it does so after finding that there
25 is not current waste or impairment of correlative

1 rights. It does so in finding that the injection of
2 Goodnight is not impairing recovery or causing waste
3 in the Grayburg currently. But it might, for a pilot
4 project, if and when Empire comes to the Commission
5 or the Division, applies for that and is granted that
6 authority.

7 Empire attacked Goodnight here and in
8 all the papers for seeking guidance from the
9 Division, for going to the Division and saying, we
10 attended the September 12th hearing, we requested of
11 the Commission the timeline for suspension of our
12 permits.

13 The Commission told us the Division is
14 charged with implementing this order, go to the
15 Division. Goodnight heeded that advice, sent an
16 e-mail to the Division requesting that meeting,
17 carbon copied all counsel, inviting everyone to go
18 and do that.

19 The Division took them up on that, and
20 that's when the motion to -- the emergency motion to
21 enforce the order happened and the motion to stay
22 happened.

23 Now that was the proper thing for
24 Goodnight to do. That is being a prudent operator.
25 Is heeding the Commission's directive that the

1 Division would implement this order. And I think
2 that we can all see from the Division's response why
3 that is the proper route for this to take.

4 Now, the Commission was not aided by
5 briefing on what suspension means and what happens
6 when there's a suspension. That's because it came up
7 as an idea in the hearing, was not aided in briefing
8 with the parties. It was not outlined what the
9 standards are or what the effects are of suspension.

10 And again, that makes sense in the
11 context of the Commission's order, that if and when
12 Empire seeks applications to commence a pilot project
13 for CO2 EOR recovery, then the Division will look at
14 that order and Goodnight's injection authority will
15 be suspended at that time.

16 Now, the gotcha nature of this order,
17 this proceeding by Empire, I think is most
18 exemplified by what is now new evidence, which is
19 that they cannot go forward now if Goodnight's
20 injection authority -- Goodnight's injection
21 continues. They just can't do it.

22 And it's interesting that that is
23 nowhere in the Commission's findings. The Commission
24 was very specific in its findings of where it came up
25 with this idea. And that appears in Paragraph 64 and

1 65 of the Commission's orders.

2 When Dr. Ampomah asked whether Empire
3 would be okay with suspending Goodnight's injection
4 permits while it did an EOR project. And in that
5 exchange, it says: Would Empire be open to that?
6 You know, you're getting me in more and more trouble
7 with Mr. West, but I think we could do it within a
8 couple of years.

9 So within a couple of years Empire will
10 have the opportunity to drill the other wells?

11 Yes sir.

12 And proof to see that if any of those
13 claims, you know, real evidence that the ROZ indeed
14 exists, it's recoverable?

15 Yes sir.

16 Commission goes on talking to
17 Mr. Wheeler, mainly speaking about: If you guys had
18 consent from the Commission to establish an EOR
19 project and you committed capital from your company,
20 what do you think the timeline is in reference to
21 Commissioner Ampomah's question about performing a
22 pilot to verify that the ROZ is there and it's
23 producible?

24 You just do a small, small pilot project
25 and the Commission requests it, I believe that we can

1 get it and do it within that two-year period, where
2 we're talking about drilling the wells and coring and
3 then the analysis and everything of that to present
4 it to the Commission.

5 Nowhere in that exchange was it
6 qualified that only if Goodnight's injection stopped
7 immediately they could proceed with that. Why?
8 Because that was never part of it.

9 Now, Mr. Wehmeyer said that this -- I
10 wrote it down, suspension order says that it suspends
11 existing Goodnight's injection wells, the Dawson, the
12 Banks, Sosa, Rhino, full stop, now.

13 If you look at Paragraph 3, on Page 13
14 of the order, that's not at all what it says. And
15 it's important that's not at all what it says,
16 because as I said, I think the Commission's order was
17 clear.

18 It says: Suspends existing Goodnight's
19 injection wells, Dawson, Banks, Sosa, Rhino. And it
20 goes on. In order to provide Empire with the
21 opportunity to establish the CO2 EOR pilot project.

22 And so the Commission had in mind, as is
23 clear from the order, that this would happen if and
24 when Empire sought a CO2 EOR pilot project and was
25 granted that authority.

1 And that makes sense, because if we go
2 back to the beginning of this entire exercise, it is
3 about an ROZ, a residual oil zone. And what you did
4 not hear from Empire, but you did from Goodnight, is
5 what we all know is the definition of a residual oil
6 zone, which is that the oil has been washed out by
7 Mother Nature's waterflood and it is immobile to
8 water.

9 And so the continued injection of
10 Goodnight, even if there is an ROZ down there, does
11 not cause waste, does not impair correlative rights.
12 That oil is immobile to water. It is now, it has
13 been since it was there and it was washed out by
14 Mother Nature's waterflood. And it will be if and
15 when anyone ever seeks to do a recovery project in
16 the Lower San Andres where Goodnight is injecting.

17 So I think it is incumbent on the
18 Commission to, now that you've been presented with
19 this, make that clear. I think that the OCD
20 standards set forth are reasonable.

21 What I do think, that from the
22 Commission's order, that suspension is and should be
23 contingent upon Empire applying for and being
24 authorized to conduct the pilot project.

25 Thank you.

1 CHAIR CHANG: Thank you.

2 Any questions from the Commission at
3 this time, or would you like to reserve?

4 COMMISSIONER AMPOMAH: Yeah, I'll reserve if
5 Pilot has anything. Yeah, thank you.

6 CHAIR CHANG: Counsel?

7 MR. SHANDLER: No.

8 CHAIR CHANG: And thank you. I don't have
9 any questions either at this time. Thank you very
10 much.

11 And I believe we have Pilot Water
12 Solutions.

13 MR. SUAZO: Good afternoon, Commissioners
14 and Mr. Chair. This is Miguel Suazo again, appearing
15 today on behalf of Pilot Water Solutions, SWD. I can
16 assure you I'll be brief.

17 Pilot appears today in support of the
18 motions for rehearing submitted by Goodnight and
19 Permian in an opposition to the one submitted by
20 Empire. We think that a limited rehearing to correct
21 the internal inconsistencies and to make
22 clarifications in the order would be proper,
23 especially since, you know, all the parties here are
24 going to be living under this order for the
25 foreseeable future.

1 Now, Pilot has taken a pretty small role
2 in this proceeding, despite its length and
3 complexity. And that's because the well that it has
4 in the EMSU is pretty marginal compared to some of
5 the other wells in and around it.

6 But Pilot has followed these proceedings
7 very keenly, you know, awaiting the outcome in the
8 Commission's decision. And Pilot is concerned that
9 this decision is going to impact not just it, but
10 others in the industry that perform in the same lines
11 of business.

12 So in my distillation and understanding
13 of what the order entails, we don't believe that
14 Empire did adduce substantial evidence that its
15 correlative rights in the Grayburg are impaired. And
16 we think the record pretty clearly demonstrated that
17 there's no fluid migration, that the San Andres
18 Reservoir is in material balance, and there's no
19 evidence of cross-formational communication.

20 So I think those are pretty important
21 points that should be reevaluated by the Commission
22 as they're thinking through what to do following this
23 proceeding.

24 So for these reasons, you know, Pilot
25 respectfully supports the motions for rehearing we

1 urge the Commission to grant rehearing for the
2 limited purpose of reconsidering the suspension
3 provisions of the order to clarify the Commission's
4 findings of no current waste or impairment, and to
5 reaffirm that any suspension of injection authority
6 must rest on specific findings of failure to confine
7 injected fluids under 19-15-26-10.E. And this
8 approach, we think, respects the Commission's prior
9 work, corrects procedural inconsistencies, and
10 restores the certainty that the Oil and Gas Act
11 requires.

12 Thank you.

13 CHAIR CHANG: Thank you very much. I will
14 open the floor to commissioners again for questions
15 for any of the parties.

16 COMMISSIONER AMPOMAH: Thank you, Mr. Chair.
17 I do have a couple of questions, at least as I think
18 through this to help me at least to be able to make
19 some decisions here. I will start with OCD.

20 So in your prehearing statement, and
21 even you touched on it today, so on Page 4, Item
22 Number 3, OCD request that the OCC provide the OCD a
23 deadline framework for suspension of Goodnight's
24 SWD's injection permits per OCD's suggestion.

25 So my question to OCD is, based on the

1 OCC order, why is it difficult for OCD to actually
2 move forward and implement? You've made some
3 suggestions as to the procedures as, let's say, some
4 of these SWD's can be shut. So why, OCD, do you have
5 these processes? Why is OCD believing that you do
6 not have enough information to be able to execute the
7 order?

8 MR. MOANDER: So a few points on that,
9 Dr. Ampomah. First is OCD reading the order and OCD
10 would agree with Rice's point that Paragraph 3 from
11 OCD's perspective, does not actually specify an
12 immediate suspension or a future suspension. But it
13 does -- potential here for an implication that
14 there's a contingent event before suspension could
15 occur. And that's the last clause after Rhino, in
16 order to provide Empire with an opportunity to
17 establish the CO2 EOR pilot project.

18 That's the main -- so the threshold
19 question from OCD is, when does this suspension --
20 actually is it effectuated? Because it can really be
21 effectuated under two conditions here, at least as
22 the evidence has been provided and the arguments have
23 been made.

24 One of them is effective upon issuance
25 of the order, or, say, you know, 90 days later, some

1 other very date certain determination.

2 The second option would be that that
3 suspension would become effective or it would be
4 triggered by a certain action by Empire in regards to
5 the EOR.

6 OCD is very careful about suspending
7 permits, because those in no way claim that they are
8 constitutional interests of any kind, nothing of that
9 sort. They do remain financial interests that are
10 owned by operators, and so OCD does not take it
11 lightly to just suspend a permit, just sort of ad hoc
12 or without any concern about the effects of that.

13 Now, in addition to that, OCD likes to
14 supervise these wind-downs of these wells with
15 certain filings. OCD response was not intended to be
16 a catchall with all the detail that would be expected
17 if there was a reconvened hearing. So that's why OCD
18 seeking clarification from the Commission as to
19 precisely what it wants OCD to do.

20 Now, when OCD conventionally does
21 suspensions, they do that under enforcement
22 proceedings, which, while they certainly can appear
23 before the OCC, most of the time, they simply don't.
24 And that's the end of it. And it's OCD's discretion
25 that's in play, because the OCC is not brought in.

1 And since both OCD and OCC have concurrent
2 jurisdiction in this instance, OCD prefers to defer
3 to the Commission, sitting as the final adjudicator
4 of this matter to provide that guidance.

5 COMMISSIONER AMPOMAH: Thank you, sir.

6 So I'll move down to Number 6 -- Page 6,
7 Item B. If OCC seeks a suspension date that is not
8 immediate, OCD recommends tying the suspension of
9 Empire's accomplishment of specific criteria tied to
10 Empire's EOR project, such as date of first injection
11 by Empire.

12 So my question to you is, does the
13 Commission have the authority to really impose some
14 strict deadlines on Empire?

15 MR. MOANDER: I am cautious about advising
16 the Commission on its authority because that's not
17 necessarily my role? But from OCD's perspective, OCD
18 doesn't see why the Commission wouldn't have that
19 authority.

20 Here, the enabling act, the Oil and Gas
21 Act, provides extraordinarily broad authority to the
22 Commission. So I don't think there's a restriction
23 on the Commission. I'm sure there may be
24 counter-arguments to that, that I would genuinely be
25 curious to hear, but OCD does not see any prohibition

1 or restriction on the OCC's authority to provide more
2 detailed deadlines, compliance, etc.

3 Now alternatively, you know, and I
4 didn't push this argument terribly hard in the
5 response, if the OCC wishes, they can give OCD
6 essentially what amounts to plenary authority to
7 enforce, with a few clarifications that I think are
8 necessary, like when the suspension is in effect.
9 But I think that's also an option, to allow OCD to
10 conduct this as it sees fits, so long as it
11 accomplishes the purposes and the intent of the
12 order. That's not also made clear here, given
13 there's some language that -- there's some conflict
14 in the final order, what is it, 24004.

15 COMMISSIONER AMPOMAH: I would like to ask
16 the other parties if they can provide a response to
17 the same questions that I just posed to OCD.

18 MR. WEHMEYER: On behalf of Empire, I'll
19 take a shot at it, and Ms. Hardy can clean up behind
20 me.

21 Certainly there's sweeping authority and
22 discretion on behalf of OCC. The issue here with the
23 idea of a milestone approach is one that was in no
24 shape, form or fashion part of the OCC's final order
25 that suspended the permits.

1 Secondly, there was zero technical
2 testimony during the development of the case to
3 inform a staged approach, and so, as you look at
4 economic aspects, as you look at technical aspects,
5 as you look at permitting aspects of the tertiary EOR
6 project in the San Andres, what has come for the
7 first time out of OCD's filing is completely
8 arbitrary. There is zero technical testimony that
9 was developed during the four and a half weeks that
10 anything they say there on paper could be achieved
11 from an economic or technical or practical
12 perspective. And so we understand the OCC's final
13 order that we have three years. And Empire,
14 consistent with its testimony, is prepared to execute
15 and be back here within the three years.

16 In terms of arbitrary milestones during
17 the interim, or that that would somehow affect
18 Goodnight's clear obligation to immediately suspend
19 the injection so that the pilot can go forward,
20 there's zero basis for that in the text of the
21 Commission's suspension order.

22 So I'm not sure if that -- I hope that
23 answered the question. But again, what OCD came up
24 with, they didn't point to any instance in the
25 history of time that the OCD has actually staged -- I

1 wasn't intending to be funny. I apologize to OCD if
2 I was. But the idea of a staged implementation with
3 milestones in the arbitrary fashion that came out of
4 Mr. Moander's filings, there is zero point to any
5 time historically that's ever happened before. And
6 again, it is utterly arbitrary, because there was
7 zero technical testimony about the idea of that being
8 feasible.

9 Ms. Hardy, is there anything I could
10 have said better or more accurately?

11 MS. HARDY: No. You did a good job. Thank
12 you.

13 MR. RANKIN: Dr. Ampomah, if I may just
14 confirm the question that I'm answering. Is it
15 whether the Commission has authority to impose?

16 So I think in this instance, the
17 Commission would have broad authority. If it's going
18 to authorize or request an EOR project, it would have
19 authority to put some guardrails on what that process
20 would look like. And I think, I think as Mr. Moander
21 said, the Commission does have broad authority,
22 especially in areas where it does have clear
23 jurisdiction under the statute, which is to
24 oversee injection, EOR projects.

25 And here, as I read the order, I tend to

1 agree that -- I read the order initially to suggest
2 that injection would not be suspended -- would only
3 be suspended contingent upon the commencement of an
4 EOR project.

5 So to address the question about, well,
6 what would those milestones be, there are a few
7 things we know have to happen for an EOR project to
8 be approved or to go forward. The first of which is
9 there needs to be an application filed for CO2
10 injection. And so what milestones might fall from
11 that, well, we simply would look to the application
12 that Empire, itself, files, what is it planning to
13 do, and then we can dictate from that what the
14 milestone should be.

15 If Empire is ready, willing and able
16 right now to go forward with an ROZ, then let's see
17 the application, and then from that, we can determine
18 what the milestone should be, upon which an orderly
19 and scheduled shut-in or suspension can be
20 implemented.

21 Again, you know, the way I read the
22 order and the way I understand the intent, is that
23 the injection of Goodnight need not be suspended
24 until and when and if Empire actually commences
25 injection. Key to that for an EOR project is it has

1 to be in the zone that Goodnight's injecting into.
2 If Empire decides to pursue a different interval,
3 then it's not clear to us that there would need to be
4 a suspension of injection. But that that's for the
5 Commission to dictate.

6 But as to the milestones, I do believe
7 the Commission has broad authority. I think if
8 there's any question about what the milestone should
9 be, we could certainly have a narrow hearing on what
10 those are, or simply look to what application Empire
11 actually files to dictate what those milestones
12 should be.

13 COMMISSIONER AMPOMAH: Thank you.

14 So back to OCD. So is it OCD's position
15 that the current order does not provide enough room
16 for CD to work with Empire, you know, to implement
17 the CO2 EOR project within the three years?

18 MR. MOANDER: I wouldn't go that far,
19 Dr. Ampomah. OCD wants clear -- well, I think the
20 key, the threshold issue for that determination is
21 how the suspension of Goodnight's permits would
22 operate. Getting clarity on that would certainly
23 make it easier for OCD to start requesting
24 information, and, as Mr. Wehmeyer said, put arbitrary
25 deadlines on Empire's performance, which actually are

1 not going to be arbitrary. There are processes that
2 do exist that apparently Empire is unaware of at the
3 moment.

4 But that's really the threshold issue,
5 to make that determination, would be what is the OCC
6 wanting done with those permits? Because, again, if
7 they're tied to performance milestones by Empire,
8 then that would change how OCD approaches this.

9 COMMISSIONER AMPOMAH: Now to Empire. So
10 you ask about, you know, in the rehearing that you
11 are requesting for the Commission to completely shut
12 the SWDs from Goodnight. Is that a fair description?

13 MR. WEHMEYER: It's the mere distinction
14 between suspended from September to three years
15 versus permanently revoked. This is New Mexico's
16 minerals. This is United States' minerals. This is
17 Empire's vested leasehold.

18 We think the evidence was sufficient and
19 conclusive so that right now we can just say those
20 four permits are full-stop revoked. We respect the
21 Commission's decision about the three-year
22 suspension, but suspension means suspension, not
23 curtailment.

24 If the Commission was disinclined to
25 permanently revoke, and we understand that that's

1 where your decision is, and we respect that, despite
2 the rehearing papers, the suspension means suspended.
3 You cannot inject if your permit is suspended. And
4 the Commission said, present tense, the four permits
5 are suspended. So there should be no saltwater going
6 into that hole while the permit is, present tense,
7 suspended.

8 COMMISSIONER AMPOMAH: So on that, my
9 question to Empire is, if you look at the 1984 order,
10 we discussed during the entire hearing about the
11 intent of the San Andres being added to the unit.
12 There was a lot of discussion about that.

13 So my question to you about what you are
14 requesting, so after a three-year period, or let's
15 say at some point Empire believes that this project
16 is not economical and they don't want to progress on
17 that project, would that more or less support why the
18 OCC probably would say let's suspend for now?

19 MR. WEHMEYER: I understand the Commission's
20 reasoning, and so I think if I take it in pieces,
21 here's why -- so I've told you, we're going to
22 execute in three years on the pilot. If the
23 Commission wants to know why is it important to
24 Empire that right now the rehearing be granted to
25 completely revoke, we heard about \$5 billion in gross

1 revenue, \$1.5 billion approximately in royalty to the
2 State of New Mexico and to the United States. This
3 requires hundreds of millions of dollars in capex
4 expenditure to execute that project.

5 And consistent with what Mr. McBeath
6 conceded for Goodnight on the stand, if it's
7 permanently revoked, as we think the evidence is
8 conclusive it should be, then it's a lot easier to go
9 forward in terms of executing a larger program. But
10 whatever that looks like, whether that's just Empire,
11 whether that's partners, whether that's raising
12 money, whether that's borrowing money, in terms of
13 people, consistent with what Mr. McBeath said, as
14 third parties or internal parties, investors look at
15 the project, the revoked is important.

16 But if the Commission is disinclined to
17 revisit its decision and to leave it as suspended for
18 three years, we are going to make this a success. We
19 will be back on or before three years to show the
20 Commission that at that point in time, permanent
21 revocation is appropriate so that we can go forward
22 and get this value out of the ground and avoid the
23 waste of the State's natural resources.

24 COMMISSIONER AMPOMAH: Thank you.

25 Let me tie my attention to Goodnight.

1 And I read through all your briefs. I appreciate
2 that.

3 Now, I just want to ask you, is it
4 Goodnight's understanding that some way, somehow, the
5 Commission is tying the decision to suspend the
6 injection to the performance of the EOR?

7 MR. RANKIN: Commissioner Ampomah, the way
8 the order was written and the findings that were made
9 and the conclusion that the order would be
10 implemented by the Division, as both counsel for Rice
11 and the Division stated, it appeared to be
12 potentially contingent on the Empire going forward
13 with the EOR project.

14 And because delegation of the order
15 was -- implementation of the order was delegated to
16 the Division, it was unclear to us what was the
17 intent. And if the intent of the Commission was to
18 fully delegate that to the Division -- which is why,
19 at the time the order was issued, I asked a series of
20 questions to understand, as best I could, what the
21 intent of the Commission was, whether there was
22 intended to be an immediate shut-in. So I asked that
23 question. And the response I got was that it was the
24 intent of the Commission to delegate the
25 implementation to the Division.

1 So to answer your question, our
2 understanding was that it was a little unclear, but
3 that the intent was to delegate implementation to the
4 Division, to implement suspension of the injection
5 pursuant to the discretion of the Division. Our view
6 was that the guidance provided in the order was such
7 that suspension could be -- rather, injection could
8 be suspended only as and when any EOR project was
9 commenced.

10 COMMISSIONER AMPOMAH: Thank you. So, I'm
11 reading through your -- this will be your pre-hearing
12 statement, Goodnight Midstream, LLC, for the
13 application for rehearing. I'm reading from Page 3,
14 and I'll start from the last paragraph, and it starts
15 with second.

16 The order creates two clear
17 constitutional conflicts. 1, that it erroneously
18 affirms the utilization of the public waters in
19 contravention of the New Mexico Constitution.

20 But I'm not interested in that one. Let
21 me go to the -- the order confirms there are no
22 recoverable hydrocarbons in the San Andres and was
23 included in the EMSU as a source of water supply
24 violates the Statutory Unitization Act.

25 2, until there is an actual finding that

1 there are recoverable hydrocarbons in paying
2 quantities in Goodnight's San Andres disposal zone
3 and as exhibited failure to confine injected fluids,
4 the order constitutes an impermissible regulatory
5 taking of both Goodnight's property interest and the
6 surface owner's pore space in the San Andres zone.

7 So I do have a couple of -- I just
8 wanted to have some clarification on this one. I
9 thought there was a lot of evidence, you know, a lot
10 of discussion during the hearing about the
11 containment. We asked a lot about it, and if I
12 recall correctly, Goodnight's response was that: We
13 are injecting into a vacuum.

14 Now, you also talked about Empire didn't
15 have the burden of proof. But I thought it was clear
16 that each party had their own burden of proof. So do
17 you believe that Goodnight was able to show the
18 Commission during the hearing, this is how much I'm
19 injecting, this is where it is, during the hearing?

20 MR. RANKIN: So the answer to your question
21 is, I think the question that we need -- the burden
22 that we need to prove, there's two different things,
23 just to break it down.

24 There's a burden that Empire had to
25 carry for its affirmative burden for its applications

1 for new wells. And that was to demonstrate that its
2 proposed injection was going to be confined within
3 the injection interval. That's for the new
4 applications.

5 Conversely, as the applicant seeking to
6 revoke Goodnight's existing injection, Empire had the
7 burden to show, through proof, that Goodnight's
8 existing injection exhibited a failure to confine the
9 injection fluids into the disposal zone. That was
10 its affirmative duty to prove.

11 During the course of the hearing, I
12 believe that Goodnight successfully showed that its
13 injection fluids were not leaving the San Andres
14 disposal zone. They were being confined within that
15 interval, whether it's -- to what extent it went
16 horizontally, is not an issue for the regulations or
17 under the governing regulations.

18 The question is whether it's being
19 confined below and above. And based on the evidence
20 adduced and the engineering and injection data, I do
21 believe that that showing was made, that we
22 confirmed, through evidence, that Goodnight's
23 injection was staying within the disposal zone.

24 COMMISSIONER AMPOMAH: So I'll turn to the
25 order, and I can see -- I know we've had a lot of

1 discussion on that today. So I'll just read that.
2 However the Commission concluded it is pretty much
3 sure at present to grant Empire's application to
4 permanently revoke the injection authority of the
5 existing wells because the Commission found Empire
6 did not adduce substantial evidence that the
7 correlative rights in the Grayburg are currently
8 impaired by a Goodnight's injection into the
9 San Andres.

10 So on this one is it this provision that
11 Goodnight is saying that the Commission says that
12 Empire's resources are not impaired?

13 MR. RANKIN: So there's two reasons we're
14 saying we understand that Empire's resources are not
15 impaired. Number one, the primary one, is that the
16 purported ROZ has been determined not to be
17 recoverable currently. They have not demonstrated
18 recoverability. They cannot show that it's being
19 recovered or can be recovered. If it can't be
20 recovered, then there's no waste, there's no
21 impairment, there's no share of production that they
22 have a right to that we're preventing them from
23 obtaining. Okay?

24 So if there's no recoverability, then
25 there's nothing that's been harmed, whether you're

1 looking at waste or impairment of correlative rights.
2 So that's as to the R0Z, and that's specifically as
3 to the San Andres. Okay?

4 Now, as to the Grayburg, this next
5 section here addresses primarily potential impacts to
6 the Grayburg. Here, as I understand the order and
7 the findings, unlike the potential future impairment
8 that the Commission found, there has been no
9 demonstration of current communication between the
10 San Andres disposal zone and the overlying Grayburg.

11 The engineering data, the pressure data
12 and the injection data presented by Goodnight was, I
13 understand, to be found compelling to show that there
14 is no communication between the disposal zone and any
15 overlying zones as laid out here under Paragraph C.

16 So because of that and because there's
17 no hydrocarbons that are recoverable in the
18 San Andres and the only potential impairment would be
19 operations in the Grayburg and there's no finding
20 that there's been any communication to the Grayburg,
21 there's, therefore, no impairment of any correlative
22 rights in the EMSU based on the Commission's
23 findings.

24 COMMISSIONER AMPOMAH: So then on the same
25 page, that C provision was just specifically to the

1 Grayburg?

2 MR. RANKIN: Correct. I agree. And another
3 finding in the Commission's order that there is no
4 ROZ that's recoverable addresses the San Andres.

5 COMMISSIONER AMPOMAH: You're saying that in
6 the order, the Commission made it clear that the ROZ
7 is not recoverable?

8 MR. RANKIN: Yes.

9 COMMISSIONER AMPOMAH: Can you point me to
10 that?

11 MR. RANKIN: I'll have to take a moment to
12 find it, but I know I cited it several times in the
13 rehearing.

14 COMMISSIONER AMPOMAH: Yeah, it was
15 interesting. I saw that. So during the hearing,
16 there was --

17 MR. RANKIN: Okay. I have it. Sorry.

18 So it's the next paragraph, D, and it's
19 on Page 10 of the order, Paragraph D: In addition,
20 the Commission concluded it is premature at present
21 to grant Empire's applications to permanently revoke
22 the injection authority of the existing wells. The
23 Commission found there was insufficient evidence
24 presented at hearing to prove whether the ROZ was
25 recoverable.

1 So there's no evidence that it is
2 recoverable. Having found that it's not recoverable,
3 at present, there's no current finding that it's
4 recoverable, there's no -- therefore, there can be no
5 finding of waste and no finding of impairment of
6 correlative rights in the San Andres, because that's
7 the only potential hydrocarbon in the San Andres.

8 COMMISSIONER AMPOMAH: So the use of
9 "insufficient evidence," so is that what you are
10 interpreting that was entirely no evidence presented
11 to the Commission?

12 MR. RANKIN: Well, again, as to each party,
13 we each have a burden of proof, and the burden of
14 proof is preponderance of the evidence. And because,
15 under that standard, the Commission found that there
16 was insufficient evidence, meaning they did not meet
17 their burden of proof, they did not meet the
18 preponderance of the evidence standard, there has
19 been a finding that there is no recoverable
20 hydrocarbons in the San Andres.

21 COMMISSIONER AMPOMAH: So from an
22 engineering point of view, during the hearing, the
23 course of the hearing, I recall that, you know, in
24 this type of project, you have to do the, you would
25 have to go through the scooping period. And during

1 the hearing, Empire presented that that would be your
2 first pass, the scoping. And normally you have to
3 use analogous information to be able to back up your
4 analysis. And during that, we believe, at that
5 time -- I think the discussion went back and forth,
6 we really need more specific site field information.

7 So maybe you and I, we are reading it
8 differently, meaning into the insufficient evidence.
9 So don't you believe that at least there was some
10 scoping analysis that was presented to the Commission
11 to prove that this ROZ could be recovered?

12 MR. RANKIN: I disagree, respectfully,
13 Commissioner Ampomah. Because the scoping analysis
14 that was done, remember, was a Kinder Morgan
15 screening tool. And it used an 18 percent oil
16 recovery that was unattached to any data from the
17 EMSU. And Empire, during the course of the hearing,
18 failed to connect that 18 percent recovery to any
19 data, not only within the EMSU, but to any other
20 analogous field. Further, it didn't even identify
21 whether that scoping tool was applicable to a
22 conventional oil field or to an ROZ.

23 And we presented contrary evidence,
24 through Dr. Lake, that, in fact, the 18 percent
25 recovery factor is several standard deviations above

1 what even he identified through actual data is
2 reasonable to expect in a conventional field. And he
3 had uncontroverted testimony that the recovery factor
4 is more likely to be in the range of 1 to 6 percent.

5 So I do disagree, and that actually the
6 evidence in the record establishes the converse, that
7 they did not present any reliable testimony based on
8 any actual data tied to the EMSU that there could be
9 any recovery of any of those hydrocarbons. And that
10 was, I understand, the findings of the Commission.

11 COMMISSIONER AMPOMAH: And don't you believe
12 that that is also the reason why the Commission, in
13 their order, specified that Empire has to proceed
14 with a pilot project to prove that?

15 MR. RANKIN: So I do understand that's why
16 the Commission wanted them to go forth with that
17 project. However, the time for the game has passed.
18 And what happened is, Empire had an obligation to
19 come forward with this evidence. And it came forward
20 in the hearing with this evidence, and it didn't meet
21 the standard of proof.

22 And so at that time and as we sit here
23 today, there's no evidence that any of those
24 potential ROZ hydrocarbons are recoverable.

25 And so I understand the Division -- the

1 Commission is interested in potentially seeing what
2 the future holds, but because there's been no
3 evidence showing that there's impairment or waste in
4 the San Anders disposal zone, there's no basis to
5 shut in Goodnight's injection.

6 COMMISSIONER AMPOMAH: Thank you. I will
7 pause here. I think I do have a lot of answers. So
8 I appreciate that. Thank you.

9 CHAIR CHANG: Any other commissioners, Board
10 counsel, question?

11 COMMISSIONER LAMKIN: I don't have any
12 questions.

13 CHAIR CHANG: My only question is procedural
14 at this point. The two parties provided
15 demonstratives or slide decks or whatever you want to
16 call them. Do you wish them to be admitted into the
17 record? And if so, is there any objection?

18 MR. RANKIN: Well, I haven't had a chance to
19 look at all the pages that are here. I suppose I
20 don't have an objection to Pages 1 through 31 being
21 submitted, but I do have an objection to the others.

22 CHAIR CHANG: Well, do you even want them
23 admitted as part of the record, first question?

24 MR. WEHMEYER: Yeah, I think just given how
25 carefully the proceeding progressed on all matters of

1 evidence and what was actually filed, Empire's
2 position would be that it would be safest to just
3 have them not admitted as part of the record.

4 But both sides have given physical
5 handouts. They could be used if helpful or not, but
6 not be part of the record would be the Empire
7 preference.

8 CHAIR CHANG: Is that fine?

9 MR. RANKIN: I agree.

10 CHAIR CHANG: Fair enough. All right.
11 That's all we've got. I think you have all given the
12 Commission a lot to think through and to sort
13 through, so at this point, I'd like to invite a
14 motion for the Commission to go into an executive
15 session so we can sift through all of the arguments
16 presented today.

17 COMMISSIONER AMPOMAH: Mr. Chair, I do so
18 move.

19 CHAIR CHANG: May I have a second?

20 COMMISSIONER LAMKIN: I second.

21 CHAIR CHANG: Hearing no objection --

22 MR. SHANDLER: A vestige of the law requires
23 a roll call.

24 MS. APODACA: Commissioner Ampomah, do you
25 approve?

1 COMMISSIONER AMPOMAH: Approve.

2 MS. APODACA: Commissioner Chang?

3 CHAIR CHANG: Approve.

4 MS. APODACA: Commissioner Lamkin?

5 COMMISSIONER LAMKIN: Approve.

6 (3-0 vote. Motion approved.)

7 CHAIR CHANG: Thank you all very much. I
8 don't think you all need to stick around for the rest
9 of the day. If we have anything to announce, I'm
10 sure we can announce on the online platform, if that
11 is sufficient. But certainly you are all welcome to
12 stay if you wish.

13 MR. WEHMEYER: And just for clarity, because
14 there was an open possibility of today and bleeding
15 into tomorrow, the online announcement, no one would
16 be here physically tomorrow.

17 CHAIR CHANG: No, I don't think so. I'm
18 sure -- yeah, I'm sure we. Hopefully, I mean -- it's
19 already 4:00 -- well, it's only 3:18. So maybe we
20 can get this done today. But if not, I'm sure
21 whatever happens when we come back out of the
22 executive session will merely be an announcement of
23 whatever decision has been made.

24 MR. WEHMEYER: Thank you so much for the
25 clarity.

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CHAIR CHANG: Thank you.
(Commission adjourned to
closed session at 3:19 p.m.)

AFFIRMATION OF COMPLETION OF TRANSCRIPT

I, Kelli Gallegos, DO HEREBY AFFIRM that on October 16, 2025, a hearing of the New Mexico Oil Conservation Commission was taken before me via video conference.

I FURTHER AFFIRM that I did report in stenographic shorthand the proceedings as set forth herein, and the foregoing is a true and correct transcript of the proceedings to the best of my ability.

I FURTHER AFFIRM that I am neither employed by nor related to any of the parties in this matter and that I have no interest in the final disposition of this matter.



Kelli Gallegos

VERITEXT LEGAL SOLUTIONS

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Albuquerque, New Mexico 87102

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