
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION
REGULAR MEETING ON JULY 16, 2026

Transcribed from recording by:

Cheryl J. Hammer, Registered Professional Reporter

Idaho CCR 1206; New Mexico CCR 640; Oregon CCR 21-0013

Utah CCR 126919357-7801; Washington CCR 2512

COMMISSION MEMBERS PRESENT

CHAIR:

Albert Chang

MEMBERS:

William Ampomah

Baylin Lamkin

COMMISSION COUNSEL:

Zachary Schandler

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(BEGINNING OF TRANSCRIPTION)

(Proceedings begin.)

CHAIR CHANG: Good morning, everyone.
My name is Albert Chang. I'm the chair of the New
Mexico Oil Conservation Commission.

It is July 16th at 9:00 in the
morning, and I'd like to call this meeting of the Oil
Conservation Commission to order.

Madam Chair, may I please have the
roll, please.

MADAM CHAIR: Yes. Commission Chair
Chang.

CHAIR CHANG: Present.

MADAM CHAIR: Commissioner Ampomah.

COMMISSIONER AMPOMAH: Present.

MADAM CHAIR: Commissioner Baylin
Lamkin.

COMMISSIONER LAMKIN: Present.

MADAM CHAIR: And Commissioner Greg
Bloom is not present today.

CHAIR CHANG: Thank you very much. We
have a quorum.

I will move on to the -- or I will ask

1 to see if there are any discussion or amendments
2 to the agenda.

3 COMMISSIONER LAMKIN: I would move to
4 adopt the agenda, with the exception of hearing the
5 Goodnight matter first and not adopt -- not adopting
6 the previous meeting's minutes.

7 CHAIR CHANG: Okay. It's been moved.

8 COMMISSIONER AMPOMAH: Second.

9 CHAIR CHANG: Okay. It's been moved
10 and seconded that we skip -- skip consideration of the
11 previous minutes and reverse the order of the cases on
12 the agenda today.

13 Is there any objection from
14 commissioners?

15 COMMISSIONER AMPOMAH: No objection.

16 COMMISSIONER LAMKIN: No objection.

17 CHAIR CHANG: Hearing no objection, so
18 adopted.

19 Moving on to the next item on the
20 agenda as adopted, we're on to the pending cases and
21 the first pending case is now Goodnight Midstream
22 versus Empire, New Mexico. So Case Numbers 24123,
23 23614 through 23617, 23775, 24018 through 24020, and
24 24025.

25 I'll take appearances from the

1 parties.

2 MR. WEHMEYER: Corey Wehmeyer, on
3 behalf of Empire. We're ready.

4 MR. TREMAINE: This is Jesse Tremaine
5 for the New Mexico Oil Conservation division.

6 MR. RANKIN: Good morning,
7 commissioners. Adam Rankin with the Sante Fe office
8 of Holland & Hart, appearing on behalf of Goodnight.
9 Thank you.

10 CHAIR CHANG: Nobody else with us.
11 Right?

12 MR. SUAZO: Good morning,
13 commissioners.

14 MS. SHAHEEN: Sharon Shaheen.

15 MR. SUAZO: Mr. Chair, this is Miguel
16 Suazo with Beatty & Wozniak appearing on behalf of
17 Pilot Water SWD.

18 CHAIR CHANG: Thank you.

19 MS. SHAHEEN: Sharon Shaheen, also on
20 behalf of Empire this morning.

21 CHAIR CHANG: Thank you very much.

22 We left off about two months ago now,
23 I think, with us in the middle of a discussion
24 on -- on Empire's motion that's pending. I think last
25 we left off, the -- the discussion was that the motion

1 was seeking review of a letter from Deputy Director
2 Powell, and I think, if I recall correctly, Mr.
3 Wehmeyer, there was discussion that it wasn't an order
4 and that it was merely a letter.

5 So I guess we're at a point where -- I
6 mean, I'll let you start if you have prepared remarks.
7 But my question was first whether or not the
8 commission should be taking up review of mayor
9 correspondence, if that's where we're at. So...

10 MR. WEHMEYER: Yeah, we believe it's
11 appropriately taken up at this time. And I think if
12 you would indulge a little bit of the procedural
13 history, not on the -- on the carrying case, but the
14 last two months, I think is quite telling here.

15 May I approach with a handout?

16 CHAIR CHANG: Sure.

17 MR. WEHMEYER: First, on behalf of
18 Empire, I'll just thank the commission for all the
19 resources that have been spent on what's a very
20 important issue for Empire and what we think is an
21 important issue for the State of New Mexico.

22 I want to -- before getting into the
23 prepared presentation, I just want to very briefly hit
24 the forest so that we don't lose sight of the forest
25 for individual trees.

1 What the commission found after months
2 of testimony and documentary evidence is that there is
3 in fact a ROZ here. There's a residual oil zone. We
4 know that there's oil.

5 They've -- the commission found in its
6 order that Empire alone has the exclusive right to
7 produce that oil within the EMSU. It found that there
8 was substantial evidence adduced of future impairment
9 and potential for waste in the EMSU, and the
10 commission found that there was migration of water out
11 of the San Andres into the Grayburg and that that was
12 demonstrated by the work of Dr. Buckwalter.

13 In terms of the future permits for new
14 saltwater disposal, those were denied based on these
15 findings, and the commission declined to order a
16 permanent revocation of the existing injection, but
17 did order it suspended based on that.

18 So as we just set the stage for what
19 we're asking for by way of the relief today, we know
20 that there's residual oil. And the last question that
21 was put back to Empire to come back with data is
22 through execution of a pilot within Empire's
23 discretion to prove to the commission's satisfaction
24 that the oil there can actually be recovered using
25 CO2.

1 To put the volumes into perspective,
2 what Empire's plan is as submitted to OCD on the
3 Form 101, 102, and 103 is the injection of 1,000 tons
4 of CO2. To put that into perspective, that's about
5 5,600 barrels of what is effectively soda pop.

6 Neither OCD nor Goodnight has been
7 able to demonstrate any kind of harm that 1,000 tons
8 of CO2 might cause to anything by way of injection.
9 And to just juxtaposition that against the Goodnight
10 injection, they're putting down about 150,000 barrels
11 of water per day.

12 You've heard testimony from Mr.
13 McGuire that he doesn't know the chloride content of
14 that water, that they haven't modeled plumage, and
15 plumes of where that water is going, that they don't
16 know what chemical composition is contained in that
17 water.

18 And so to just kind of step back in
19 terms of what Empire's trying to do here, what it
20 submitted to OCD was simply putting down a reentry
21 into a well -- and that well is not even in the EMSU
22 at the moment -- of 1,000 tons of CO2.

23 In response to that, we got a letter
24 that was actually termed by OCD the, quote,
25 implementation order. We didn't call it the order.

1 They said it was an implementation order.

2 And we went through a series of
3 correspondence. These were appended back to the
4 motion that we filed in the first place here, where
5 we tried to get them to revisit the idea that we would
6 need to go in and amend the water flood report.

7 For the part of Empire, there was
8 precedent already established for not needing to go
9 through a C108 procedure to inject CO2. The two
10 instances that Goodnight cites in its responsive
11 papers were both water flood situations, not CO2.

12 And in the Texaco situation, what we
13 presented was past precedent by OCD that it could be
14 done on a Form 103. In fact, that particular instance
15 was a verbal approval.

16 So I guess just before we get into it,
17 as we look at the forest, the question would be in
18 light of this being Empire's EMSU that it purchased
19 and
20 that it had the exclusive vested rights on, why is
21 Goodnight fighting the injection of 1,000 tons of CO2?

22 What concern does Goodnight have by
23 way of this science exercise to come back and bring
24 the commission the data it requested. For the part of
25 OCD and its oil conservation mission, what basis does

1 OCD have to resist Empire simply going forward to
2 inject 1,000 tons of CO2.

3 Now it's been very clear here that the
4 Goodnight objective is simple delay for delay's
5 sake alone, because they know that every day of delay
6 is 150,000 barrels of water that they're getting to
7 put down into the earth for commercial gain. And so
8 what's turned into what -- this process has turned
9 into one of gamesmanship as opposed to allowing us to
10 get going forward within the three years that this
11 commission allowed so that we can bring back the data
12 that was requested.

13 I think here if we go to Slide 5,
14 this was the remarks from OCD council at the last
15 hearing that we had. It was said, quote, this is not
16 an order. It's advisory in nature. This is certainly
17 subject to review. They're taking the position that
18 this is an order from OCD. This is not concrete. OCD
19 hasn't represented that it's concrete.

20 At Slide 6, this is more statements
21 from council for OCD. This was just the beginning.
22 It certainly wasn't the end. That's why that
23 threshold issue was posed in the letter; just to
24 illicit a bare modicum of OCD understands Empire's
25 attentions are.

1 At Slide 7, this is what OCD assured
2 the commission. Empire has provided something
3 to OCD. OCD has to look at it, and OCD is telling us
4 that what they presented to the -- Empire is not in
5 stone, is more flexible.

6 At the next slide, council assured,
7 quote, we can obviously expedite it, meaning move
8 quickly, and, we would expedite review of this. It
9 would be a top priority.

10 So the irony here is that we submitted
11 this on May 1st, 2026, and before the hearing, by all
12 accounts it looked like it was actually moving forward
13 in a OCD system. After the hearing in which OCD
14 council assured the commission that they would
15 expedite this review, they'd review it, this wasn't a
16 final order, it was an open discussion, they actually
17 changed the status, and instead of it being reviewed,
18 at Slide 9, it got put on complete hold pending
19 approval of the OCC motion.

20 So we came all the way out here to --
21 in May. We had the hearing. We were assured by
22 council that now that they knew that they had it in
23 their system as of May 1st -- they told this
24 commission back at that hearing that we had done
25 absolutely nothing. That was false, and we proved

1 that we'd submitted Forms 101 and 103 before.

2 It was moving forward, and they
3 assured you it would be expedited. And then after
4 this hearing it had a complete halt placed on it.

5 So we now stand in the unfortunate
6 situation of coming back 60 days later and nothing
7 whatsoever has happened. There's been no action by
8 OCD. And in fact they stopped all action until we
9 could have today's hearing.

10 This is not fair to Empire. There's
11 no reason that the review of that form should have
12 stopped to simply put 1,000 tons of CO2 down into the
13 earth.

14 At Slide 10, it was -- at the last
15 hearing, we were accused of this not being a final
16 implementation order, as they called it an
17 implementation order, and that we didn't
18 do enough to try to caucus with them.

19 These are just simple examples of all
20 of the efforts for us to cooperate with OCD to get
21 their review and reconsideration of this idea that we
22 would have to amend the water flood.

23 I've highlighted, quote, we are
24 concerned that OCD's hold on the processing of the
25 C101 pending approval of the motion is contrary to the

1 representation of the division at the May 13th hearing
2 as well as the expectations voiced by the
3 commissioners at the time.

4 So in our first motion, we presented the
5 commission with evidence that in a series of
6 correspondence we tried to get OCD to actually give
7 consideration and to move off of the implementation
8 order. They said, quote, we decline, and here are the
9 basis for our declination.

10 After this hearing, when we realized
11 on May 13th that they had now put a complete hold,
12 So exactly opposite of expediting, and giving it
13 prompt review, that they did exactly opposite, we
14 followed up with correspondence raising that concern.
15 And there's been no change of that status quo since
16 the May 13th hold, because we had to come back here
17 today.

18 So we are quite literally from an
19 Empire perspective in a complete stoppage through no
20 fault of our own.

21 In terms of the jurisdictional
22 questions, I won't dwell on this, Commissioner Chang,
23 but at Slides 13, 14, 15, this addresses the
24 jurisdictional questions that you brought up last
25 time.

1 Very simply, we went through an entire
2 process as part of the due process that Empire's
3 entitled to, to have this commission make decisions,
4 which resulted in affirming the denied permits and a
5 suspension of the existing injection.

6 And if there is implementation left to
7 OCD, but OCD strays from the express direction given
8 in the order by the commission, this is the only
9 procedural mechanism left to Empire so that it can get
10 on with its three-year -- within its three-year
11 allotment.

12 At Slide 19, this just goes through,
13 again, some of the procedural history. If you recall,
14 leading up to the hearing on the 2nd order, what OCD
15 had said was they were proposing a 90-day program for
16 Goodnight to shut in (indecipherable), a phase 90 days
17 to shut in per the initial order.

18 After we got the second order, the
19 90-day implementation went completely out the window
20 and OCD's implementation letter arrived at a different
21 procedure whereby Goodnight continues to inject and
22 harm, and even despite the finding of OCC that future
23 impairment has been proved by substantial evidence.

24 that was a complete reverse course.
25 We think that contravenes the order of suspension that

1 the commission has. And so as we bring the commission
2 concrete items that we're asking for action on here
3 today, the chief one is that there is no basis for
4 requiring Empire to amend that water flood order.

5 There's no precedent for that in
6 practice, there's no precedent for that in case law.
7 There's no precedent for that in the rulemaking. And
8 so, and in fact you all posed that commit -- that
9 question. Mr. Schandler posed that precise question
10 to Mr. -- to OCD's counsel at the last hearing. Said,
11 why on earth would these guys have -- why would Empire
12 have to amend the water flood order? They want to put
13 some CO2 down into the ground.

14 And OCD had zero explanation. After
15 filing papers resisting our motion and having time to
16 prepare for the hearing, there was zero explanation
17 for why on earth Empire would have to amend a water
18 flood order in light of the pilot project that they
19 were proposing.

20 At Slide 23, the implementation order
21 fails to protect correlative rights. It deviates from
22 OCC's final order in the sense that we do not have the
23 90-day staged suspension that was discussed by OCD in
24 its written correspondence and that hearing, and now
25 the injection will go on indefinitely unless CO2 is

1 actually flowing into the ground.

2 At Slide 24, we talk about the scope
3 of the project. If you read the implementation order,
4 what OCD has thrust upon Empire is a stepping in and
5 dictating what a pilot program must look like, the
6 timing of the pilot program for it to meet the
7 commission's opportunity to decide if it's successful
8 or not.

9 And that is not the pilot program that
10 the commission ordered. It is not a pilot program
11 that Empire's under any compulsion to perform. What
12 they've -- if you look at the idea that the 108 would
13 be requiring that there's an amendment to the water
14 flood, what that's referring to would be a full scale
15 -- full scale CO2 flood. Basically, an actual EOR
16 process.

17 The pilot that Empire has proposed
18 here is a huff and puff, and for such a small scale
19 project as a huff and puff, again to bring back hard,
20 concrete science and data for this commission to prove
21 that the oil moves with the injection and soaking of
22 CO2, there is no reason that that water flood order
23 would need to be revisited.

24 At Slide 25, this is just the volumes
25 of the existing water flood, the idea that we're going

1 to amend the water flood order that has been out there
2 for decades. We are still presently executing the
3 water flood as we speak. We continue and intend to
4 continue executing the water flood.

5 There is no reason that that water
6 flood order needs to be revised or revisited.

7 At Slide 26, we just go through
8 different bases for why that water flood order doesn't
9 require amendment, and we make the point again at the
10 very bottom that Mr. Schandler questioned OCD at the
11 May 13th hearing.

12 Why should -- why must this water
13 flood order be amended. And there was zero
14 explanation, and in review of the papers, there's been
15 zero explanation or support for why that water flood
16 order would need to be amended.

17 We all know as a practical matter why
18 Goodnight wants it amended. Because there is no
19 possible way that going through all the processes to
20 get that water flood order amended we can come back
21 within the three years we've been allotted to perform.

22 And we made that point at the last
23 hearing, that how on earth as a practical matter is
24 Empire going to be able to perform within the three
25 years if we have to go through that amendment process,

1 being fought by goodnight and delayed by Goodnight and
2 OCD along the way, and we didn't hear any opposition
3 or argument in any shape, form, or fashion that we
4 were off on that, that there was some way that that
5 could possibly be accomplished within the three years
6 that we're allotted.

7 These are details of the pilot project
8 that has been pending with OCD going back to May 1st
9 of 2026. At Slide 27, this was filed on Forms 101,
10 102, and 103. The CO2 project goes into the John
11 Knoxwell. This is Yates, Seven Rivers, and Queen
12 intervals that are going to be squeezed off pressure
13 tested.

14 This is not an EMSU well right now.
15 The San Andres Formation will be perfed at 4150 to
16 4200. The zone gets acidized, swab tested to inject
17 CO2. Bottom hole pressure's taken. 1,000 tons of
18 CO2. Well will be flowed back and tested with a third
19 party test separator. Results will be utilized to
20 verify residual oil can be mobilized with CO2.

21 Again, we may have additional
22 locations we want to attempt to huff and puff on as
23 well, but the first one is starting here to see what
24 the results are. But we can't even get kicked off on
25 this to satisfy our three-year because of the

1 opposition by Goodnight.

2 And again, if you come back as a
3 practical matter, why does Goodnight oppose this?
4 It's just to the ends of establishing that oil can be
5 moved here in the San Andres for the benefit of Empire
6 and for the benefit of the royalty owners, the State
7 of New Mexico, and the BLM.

8 The well bore diagrams were provided
9 at Slide 28.

10 At Slide 29, these are the two
11 examples that Goodnight cites as precedent for
12 requiring an entire C108 process. Each of those were
13 both water floods. I just don't want that to be -- be
14 lost. Those were both water flood injection.

15 What Empire has proposed here by way
16 of the plan it submitted back on May 1st,
17 2026 is not water flood. It's injecting 1,000 tons of
18 soda pop.

19 At Slide 30, this is our express
20 precedent by OCD in the central vacuum unit where a
21 huff and puff was approved even verbally in that
22 instance on Forms 103. We initially submitted on Form
23 103 and were told to go back and -- by OCD staff to
24 submit on Form 101. That's why you see a 101, a 102,
25 and a 103 as part of the May 1st submissions.

1 CHAIR CHANG: If I may briefly
2 interrupt. So I tracked the 101 and the 103. Where
3 did the 102 come from?

4 When was this?

5 MR. WEHMEYER: This -- I wish I had
6 Ms. Hardy or Ms. Shaheen. No 102?

7 MS. SHAHEEN: There was no -- it was
8 we filed a C103. They asked (inaudible).

9 MR. WEHMEYER: Okay. I thought there
10 was a 102 as well. That we filed the 103 first and
11 then commission staff asked us to file a 101. I
12 apologize for creating the confusion.

13 CHAIR CHANG: So no 102. Right?

14 MR. WEHMEYER: I don't think a 102.
15 That's correct.

16 CHAIR CHANG: Generally, a C102 is
17 required to demonstrate the location of the well. I
18 mean, generally that's usually --

19 MR. WEHMEYER: No, I understand.

20 CHAIR CHANG: But was there one filed
21 in this case?

22 I don't think was -- I didn't see it if there...

23 MR. WEHMEYER: I don't believe so.

24 I apologize. In the -- my paper -- there's probably a
25 paper that references a 102, and that's error on my

1 part.

2 CHAIR CHANG: No worries. I just want
3 to make sure I track and didn't miss anything. Thank
4 you.

5 MR. WEHMEYER: So coming back to -- to
6 Slide 32. Again, this is a situation where the
7 commission has already found that Empire has the
8 exclusive right to decide how to best extract oil.

9 In this instance in terms of coming
10 back to the commission with the data requested, we've
11 identified a huff and puff is the most reasonable and
12 appropriate way to come back and bring that science.

13 If you look at the implementation
14 order by OCD, which, again, through a series of
15 correspondence, it's in the record, we asked them to
16 reconsider and they said, we decline, and here are the
17 bases for our declination.

18 These were multiple attempts. These
19 were multiple attempts in writing. The attempts have
20 followed. The last hearing you saw the correspondence
21 that we sent on May 13th, 2026.

22 We are still here, no closer to being
23 able to execute the work required by the commission
24 than we were sixty entire days ago, after being
25 assured that this would receive ex -- after the

1 commission was assured that this would receive
2 expedited consideration.

3 OCD did file papers. None of the
4 papers explained or provided any insight whatsoever as
5 to what's happened on our C101 application over the
6 last 60 days.

7 If there's any questions, I'm, of
8 course, happy to field those. I appreciate the
9 commission's consideration of this. This has gone on
10 long enough. Absolutely, the OCC should be able to
11 implement -- to ensure that its orders properly
12 implemented. That's all Empire asks for.

13 CHAIR CHANG: Okay. Unless
14 commissioners wish to ask questions right now, I
15 figured I'd let at least each party give us their --
16 their take before we go to questions, if that's okay
17 with commissioners.

18 MR. WEHMEYER: I'm okay with that.

19 CHAIR CHANG: Goodnight.

20 MR. RANKIN: Thank you, Mr.
21 Commissioner Chair and commission members. May it
22 please the commission.

23 Based on Empire's filing of a C103
24 seeking authorization to inject CO2 for an EOR pilot
25 project at the end of April after completion of

1 briefing on their motion and the APD to convert a
2 single well into a CO2 EOR huff and puff at the
3 beginning of May, just prior to the hearing that we
4 had last, that's when we first learned about the end
5 -- the proposed administrative filings in the
6 proposed pilot project, after briefing had already
7 been completed on their challenge to OCD's.

8 Not an order. It was directions. And
9 they attached it to their briefing here, and you can
10 see it's -- it's titled implementation of OCC orders,
11 and they say that they're providing the below
12 directions.

13 It's not an order. It's a
14 correspondence that provides guidance in the vacuum,
15 because there's been no submission by -- by Empire at
16 that time. So there's -- there's no action that OCD
17 was taking. It was simply giving guidance on what it
18 understood the order from the commission to require.

19 Now because this is simply seeking an
20 advisory opinion, the motion that Empire filed, it's
21 improper. The issues not ripe before the commission.

22 Since Empire's motion has fully
23 briefed, Empire has made two filings, the APD and the
24 C103, and OCD has not acted on either one. The
25 commission should wait and not wade until any inchoate

1 controversy until the division has actually acted.

2 Now in our view, the only action OCD
3 can take on Empire's administrative filings is to
4 reject both of them. First and foremost, because
5 Empire is not in compliance with OCD regulations
6 governing inactive wells.

7 At the last hearing, they had 21
8 inactive wells. Two months later, they're up to 25
9 inactive wells. That's more than three times the
10 limit under the divisions current regulations.

11 Neither APD's nor EOR projects can be
12 authorized or approved under express division
13 regulations unless the operator is in compliance with
14 the enacted well rule. They can't go forward
15 until they get that done.

16 What have they done in the two months
17 since this has been brought their attention?
18 Actually, it's been more than two years that they've
19 been out of compliance. Nothing. It's only gotten
20 worse.

21 Since Empire first acquired its
22 interest in the -- in the unit, it's been struggling
23 with its inactive wells and -- and they remain -- and
24 remains the case. Now rather than fixing the problem,
25 it's just getting worse.

1 Now it's only going to get worse going
2 forward because, as you all know, the commission just
3 approved an updated financial assurance and plugging
4 rule. That's going to eliminate the seven well
5 cushioned that Empire currently has for operating
6 fewer than 1,000 wells.

7 So now as soon as that rule goes into
8 effect, they're going to have 25 wells out of
9 compliance. And out of all the wells that they
10 operate, 441 production wells, 25 percent of them, a
11 quarter of them, are producing less than 90 barrels of
12 oil equivalent. So that's going to just put them in a
13 desperate situation.

14 Now the other problem that
15 Empire has is that they're not following the
16 regulations. Now Mr. Wehmeyer was addressing that
17 through his presentation this morning. Under the
18 rules and under the commission's order, it's very
19 clear that they must follow the regulations in -- in
20 the -- that the division has before them governing UIC
21 EOR projects.

22 That includes requiring them to file a
23 C108, going to hearing, amending the water flood
24 order, which is simply getting a C108 approved, and
25 then also, in our view, amending the statutory

1 unitization order.

2 Both the water flood order and the
3 statutory unitization order that currently authorized
4 enhanced recovery in the -- in the unitized interval
5 of the EMSU are tied. They go hand in hand. They
6 reference one another.

7 The unitization order expressly
8 references the water flood order. Unitization act
9 requires the operator of unit to provide and
10 demonstrate what type of operations they are going to
11 undertake under the -- within the unitized
12 interval.

13 They've been approved for water flood.
14 The water flood order under C108 authorizes them to
15 inject water for secondary recovery. Under the
16 divisions regulations, they're required to file a
17 C108. That C108 upon approval would be the
18 modification of the water flood order, allowing them
19 to also inject CO2 as part of a pilot project.

20 The central vacuum unit example that
21 Mr. Wehmeyer pointed out, while it's true that somehow
22 they got verbal or written approval on a C103, within
23 months they were required to come back and file a C108
24 for hearing.

25 And it wasn't a full water flood that

1 they wanted, but rather a full CO2 project that they
2 were seeking. It was simply a CO2 pilot project for
3 part of the C -- central va -- central vacuum unit.

4 They weren't seeking a full-on CO2
5 project. It was simply a pilot project. Same rules
6 apply to Empire.

7 But rather than follow the guidelines
8 that the division has provided, rather than follow the
9 express regulations that every other ER operator must
10 follow, and I know this well because I do many EOR
11 projects, including CO2 pilot projects, every CO2
12 pilot project I have ever done and got approved has
13 been required to get a C108. It's express in the
14 regulations.

15 Any ER injection must submit a C108.
16 That's part of the UIC primacy that governs OCD's
17 authority to regulate these projects from EPA.
18 It cannot be avoided.

19 Now instead of trying to, like, you
20 know, choose a different path after being, you know,
21 shown the proper way to proceed and having received
22 resistance and feedback from the division, Empire
23 instead has chosen to double down on its positions,
24 and rather than focus on its three-year window to
25 implement the pilot project and file the proper

1 applications, it's filed now more than a dozen
2 applications with the division to revoke the injection
3 authority of four different disposal operators in and
4 around not just the EMSU, but the Arrowhead Grayburg
5 unit.

6 So rather than actually focusing on
7 the EOR project that they said they were going to
8 do, they're now targeting additional operators through
9 the division to shut in their wells. And they're
10 doing that at a time when they still haven't done what
11 the commission has told them they need to get in order
12 to accomplish that, which is actual data.

13 So rather than focus on what they're
14 supposed to do in the way they're supposed to
15 do it, they're going out and seeking to revoke the
16 injection of multiple additional -- additional
17 operators around the EMSU and AGU.

18 The whole point of the division's
19 engagement with the rehearing process, when both
20 parties filed an application for a hearing to review
21 the commission's order, the commission engaged in that
22 briefing process and made clear to the commission that
23 any order issued by the commission has to authorize
24 the commission -- the division to -- and make clear
25 that Empire's required to follow all regulations

1 governing injection.

2 The commission adopted that approach,
3 made clear in the order that all regulations are
4 required to be followed, baked in this process and
5 into the order.

6 When Empire challenged the order
7 before the district court, they didn't raise this as
8 an issue. They didn't. That issue has sailed. They
9 have no opportunity to challenge it now. They --
10 their opportunity was to raise it before the district
11 court.

12 It wasn't among the issues they
13 challenged. There's no -- no opportunity for them to
14 challenge it here. It's improper.

15 So at least especially in the case
16 where it's simply a advisory opinion from -- from the
17 division on how to proceed, if there's actually an
18 action on an application, where there's an actual
19 controversy, an actual issue, then I think they would
20 have an opportunity to challenge that at the time,
21 but here, it's just purely advisory.

22 Here we are more than seven months
23 after the division issued its guidance, and rather
24 than pursuing the path of least resistance, which is a
25 clear pathway for them, under the regulations, they've

1 chosen, instead to steadfastly choose the harder path,
2 which is the path that is not available to them, which
3 is to violate the regulations and try to short circuit
4 it.

5 If they had simply just gone the right
6 way, we would be in a different position today. That
7 includes fixing their inactive wells.

8 So a few other things. I just -- I
9 think I -- think I covered everything that Mr.
10 Wehmeyer raised, but I want to make sure that I have
11 addressed them.

12 One of the concerns, I guess, is
13 whether why -- why OCD, and OCD can address this --
14 well, first of all, what is -- what is Goodnight's
15 concern? Why are we fighting this? Well, we're not
16 -- we're not necessarily fighting it. We just want
17 the rules to be followed. There should be a level
18 playing field for everyone.

19 Goodnight was required to go to
20 hearing for its injection under the UIC regulations,
21 just as Empire should be required to do the same.
22 Same is true for every other EOR operator in the
23 state. They all have to go through to get their C108
24 approved. I believe the same approach or same
25 justification would apply to OCD.

1 So after they filed their application,
2 their administrative application, I think -- and the
3 division can speak to this, but I think the division
4 was probably thinking, what are we to do. We have a
5 motion pending. You know, I mean, should we -- if
6 Empire had simply withdrawn their motion after filing
7 their administrative application, I think that would
8 have then put the division in a different position.

9 Instead, it maintained its motion
10 before the commission, requiring the division -- the
11 commission to address the issue, I think, put the
12 division in an awkward situation.

13 As to the issue about the 90 days,
14 alleging that the division has somehow backtracked
15 from its original position that it was going to
16 require Goodnight to cease injection within 90 days of
17 issuance of a commission order. That was never the
18 case. The division simply said that the minimum time
19 that they -- that they believe would be reasonable for
20 an orderly, timely shutted would be 90 days not that
21 they were going to require a Goodnight to suspend
22 injection within 90 days.

23 That's just a mischaracterization of
24 what -- what went down at the -- at the hearing and
25 what division -- the division's position was. And I

1 think Mr. -- Mr. Tremaine can address that himself.
2 But that was never, never what the division's position
3 was at the time.

4 I think I just all the issues that Mr.
5 Wehmeyer raised. If commissioners have any questions,
6 I'm happy to address them. Thank you.

7 CHAIR CHANG: I guess I'll turn to the
8 division next.

9 MR. TREMAINE: Thank you, Mr. Chair.
10 Candidly, I'm sure where to start. We've had a lot of
11 discussion about trees this morning, and a lot of
12 those trees are issues of what has been discussed,
13 have all been post motion.

14 So a couple things just to put this in
15 -- in context. OCD currently has about 185 APDs that
16 are in pending review process that have been submitted
17 since May. There's 73 at least that were submitted
18 prior to May.

19 The resolution of the current C101 is
20 completely in keeping with the normal workflow and
21 resources available to the division and is under
22 review.

23 As we noted -- as was noted at the
24 last hearing, Empire did not notify OCD prior to that
25 hearing that they had submitted the pilot project and

1 that there was anything extraneous or urgent that
2 needed to be reviewed. That was a surprise to council
3 and technical staff that that was in the queue with
4 the other filings.

5 I think the motion here is not
6 appropriate for a determination at this time, because,
7 one, it may be potentially dispositively resolved by
8 the appeal and district court, and, two, we expect it
9 to be rendered moot because the division will be
10 making a determination -- I expect a determination on
11 the currency 101 some time this week.

12 There's a number of problems with that
13 submission. I'm not going to get into the exact
14 enforcement status, but -- but the division currently
15 -- the initially entered appearance in this case back
16 before all the water flood discussions because Empire
17 had substantial compliance issues.

18 That is something that we have to look
19 at when reviewing new APDs and other projects.

20 Additionally, based on the content of
21 that substantial hearing that we've talked about
22 extensively, OCD reasonably expected a relatively
23 large scale pilot project that would demonstrate two
24 things -- or seek to demonstrate two things. One,
25 product, and, two, long-term recoverability.

1 Our technical team looking at this one
2 well huff and puff project, does not understand how
3 this demonstrates long-term recoverability.

4 So there are -- this argument that
5 because of the order 24004, Empire does not have to
6 comply with other division rules I think is a red
7 herring. There's nothing in that order that says that
8 this is a different process or procedure. As I said,
9 we expect a determination on the C101 imminently.

10 In response to Mr. Wehmeyer's
11 presentation, the C101 review was never held. There
12 -- there was a status placed in OCD permitting that
13 they've noted in their slide deck. That was removed
14 by Deputy Director Powell. The OCD was reviewing that
15 submission during this process, but because of the
16 other issues that I've implicated, that process is
17 taking longer than expected.

18 Or it's actually a normal review
19 process, but it is taking longer than an expedited
20 review process would be expected to take.

21 The pilot project was not what was
22 reasonably expected. There's questions about the well
23 that are proposed, and the division has to resolve
24 approval of the APD within Empire's compliance status.

25 I will leave it at that.

1 CHAIR CHANG: Any other parties wish
2 to weigh in online?

3 MR. SUAZO: Yes. Thank you, Mr.
4 Chair. Again, Miguel Suazo with Beatty & Wozniak,
5 appearing on behalf of pilot. I'm not going to rehash
6 the arguments and points made by Mr. Tremaine and Mr.
7 Rankin, but I think it's safe to say that pilot
8 supports their positions and arguments as
9 made in briefing and made before the commission today.

10 Pilot requests that the commission
11 deny Empire's motion and affirm the division's
12 implementation decision. And even if the commission
13 concludes that it retains authority to address
14 implementation at this stage, pilot thinks that the
15 immediate shut-in request should still be denied.

16 From pilot's view, the commission gave
17 OCD discretion to implement the suspension on a
18 schedule that the division deemed necessary to provide
19 Empire an opportunity to establish the CO2 EOR pilot
20 project, and the division in this case exercised that
21 discretion.

22 It didn't refuse Empire an
23 opportunity, but what it did do is it provided a
24 pathway that they don't seem to want to follow.
25 I think the rules are clear. 19.15.26A requires

1 injection authority for wells, injecting fluids, for
2 EOR to submit a Form C108, as Mr. Rankin addressed,
3 and that same rule requires OER recovery injection
4 projects to be set for hearing.

5 And then 19.15.59 also imposes
6 operator compliance requirements, including inactive
7 well compliance requirements, as Mr. Tremaine raised
8 for the commission's consideration.

9 Those rules apply across the board to
10 all operators, and they're intended to protect
11 correlative rights, prevent waste, and maintain the
12 integrity of OCD's permitting process. And that's, I
13 think, all that pilot is asking and the other parties
14 are asking for here.

15 That concludes my statements on this
16 matter.

17 CHAIR CHANG: Thank you very much.

18 I don't think there's any other
19 parties who wish to speak today on this.

20 Okay. Do you have questions?

21 COMMISSIONER AMPOMAH: I do.

22 CHAIR CHANG: We've got questions.

23 COMMISSIONER AMPOMAH: Mr. Chair,
24 thank you so much. And if I'm just getting so much
25 into the weeds, you have to prompt my attention to

1 that.

2 But there are some few things that I
3 just need to discuss briefly. So I'll start with
4 Goodnight. So based on your submission, it sounds to
5 me that you were saying that before, let's say, even
6 Empire can proceed with the pilot project, it is your
7 view that even the utilization documentation or let's
8 say even that that approval -- the approved
9 utilization order needs to be amended.

10 Is that correct?

11 MR. RANKIN: Mr. -- Dr. Ampomah and
12 commission members. The original operator of the unit
13 followed the Statutory Unitization Act for a reason,
14 and that was because not every owner voluntarily
15 committed its interests to the formation of that unit
16 for secondary recovery.

17 When that's the case, the only way
18 that a unit operator can proceed with secondary
19 recovery, tertiary recovery, any form of enhanced oil
20 recovery is to invoke the power of the states to
21 enforce -- to use its police power to compel those
22 interest owners to force their interests into the
23 unit, okay, and that's -- that's a severe action.

24 And in exchange, the Statutory
25 Unitization Act requires the operator to demonstrate

1 that the costs they're going to undertake and the
2 effort they're going to take by using other folks'
3 mineral interests is going to result in a positive
4 outcome.

5 Okay. It's going to result in an
6 economic recovery, which is why under the Statutory
7 Unionization Act, it requires operators to make that
8 showing on the front end. Okay. So that's number
9 one.

10 (Interruption.)

11 MR. RANKIN: So that's what the
12 Statutory Unitization Act requires, and it requires it
13 because the police powers of the state are being
14 invoked to combine the interests of these mineral
15 owners against -- and against their will.

16 Along those same lines, in order to
17 undertake an EOR project under the UIC code and the
18 regulations that were promulgated by the division, in
19 order to obtain primacy from the EPA, the authority to
20 do it, requires them to follow those concrete steps to
21 get authority for EOR injection.

22 So when -- when they undertook the EOR
23 project initially, they got -- they filed a C108 for
24 secondary recovery of minerals through water flood.
25 As part of that demonstration, with the Unitization

1 Act, they also had to show how they were going to
2 allocate production among those owners whose interests
3 were taken.

4 Okay. So they had to show how they're
5 going to do that. And they did it at the hearing.
6 They showed that there was going to be a fair
7 allocation of production based on the water flood.

8 In that instance, because it was
9 targeting only the Grayburg, there was
10 some primary production remaining. So they had to
11 show how they were going to account for the
12 difference between primary production and secondary
13 production. So there was a very complex showing on
14 how they were going to allocate production at the time
15 of the Statutory Utilization Act.

16 Here, okay, they're using -- Empire is
17 seeking to use the unitization act as a source, as a
18 weapon, against Goodnight and others to say, look,
19 we've been given exclusive rights to produce this
20 unitized interval. Okay. And that's true. Under the
21 Statutory Unitization Act, they were given the
22 exclusive right to produce minerals from the unitized
23 interval, okay, including the San Andres, which
24 was unitized.

25 The difference is that the San Andres

1 has never undergone primary production and it's not
2 part of -- and therefore the allocation formula that
3 was proposed cannot be applied for tertiary recovery
4 in the San Andres. Okay. There needs to be a new
5 allocation formula.

6 There isn't one. One's not been
7 proposed. We don't know how those interest owners who
8 stand to benefit or not benefit are going to share the
9 costs or production, because it hasn't been amended.
10 We haven't heard a thing about it.

11 So under the rules, under the law,
12 because the entire unitized interval has been
13 essentially authorized for Empire to produce, it's
14 been authorized for the sole purpose of water flood
15 recovery because they've been able to show that it can
16 generate a positive recovery.

17 If they want to do some other form of
18 secondary -- secondary or tertiary recovery, they have
19 to go back and amend the Statutory Unionization Act to
20 show that it's going to have a positive recovery and
21 to show how they're going to allocate the production
22 among owners to shi -- to protect their correlative
23 rights.

24 So that's why ultimately the
25 unitization act needs to be amended. And counsel,

1 who's not present right now for Empire, acknowledged
2 that that was going to be required. At some point
3 they're going to have to amend the unitization act to
4 account for the requirements of the state law.

5 Okay. My point is simply that now
6 that they want to actually do the project and they
7 want to produce unitized substances from the San
8 Andres, the time is now.

9 There's one order that governs how the
10 unitized interval is to be produced, and that's the
11 Statutory Unitization Act, in concert with the water
12 flood order, which is simply recognition that they
13 have been authorized through a C108 to inject
14 for water flood for secondary recovery.

15 What we're saying is that what they
16 need to do is amend the water flood to authorize the
17 in addition to secondary recovery through water flood,
18 injection through CO2. That happens all the time.

19 Operators of water floods that seek to
20 -- to move in to transition into CO2, amend their
21 water flood order, to add additional fluids, including
22 produce gas sometimes, and CO2 to authorize them to
23 inject for enhanced oil recovery.

24 So because those two orders operate in
25 concert, the water flood and the statutory unitization

1 order, both must be amended, because that's what
2 governs the ste -- the production of unitized
3 intervals -- the unitized minerals within the EMSU.

4 COMMISSIONER AMPOMAH: Thank you for
5 the education there. I appreciate that.

6 I will ask OCD one question. Yeah.
7 So it sounds to me that in your submission you
8 SAY that OCDs were based on the order that the
9 commission sign off on. OCD believes that a full
10 scale CO2 EOR will be required to justify the
11 recoverability, not necessarily a pilot.

12 MR. TREMAINE: I'm simply representing
13 what has been relayed through our -- our technical
14 staff, that this has to be reviewed in the context of
15 the objectives of the intended pilot project. And I'm
16 not saying it has to be a certain size or any specific
17 criteria beyond the direction provided by OCD's
18 technical staff.

19 When the APD was submitted -- and this
20 is -- this is what OCD understands to be the scope of
21 the proposed pilot project, it was not what was
22 expected. OCD reframed its analysis and looked at
23 this well in isolation. I'm simply highlighting that
24 what was discussed at hearing, what was expected from
25 OCD was not what we got, and it needs to be looked at

1 in that lens.

2 Now this is one well. There are
3 questions about the well, independent of any
4 compliance status.

5 So I'm not able to answer that,
6 Commissioner Ampomah from a -- from a technical
7 perspective, I was not representing that there's a
8 particular size or number of wells. It's just that
9 this was, based on the record, not anything like what
10 OCD expected.

11 COMMISSIONER AMPOMAH: Is it OCD's
12 understanding that the burden is on Empire to prove to
13 the commission that the ROZ is that can be recovered.
14 And so I'm not sure if OCD is more or less pushing
15 those envelopes to the -- let's say to the extreme
16 end.

17 I mean, I'm trying to understand how
18 there -- there was no more discussion from OCD to the
19 commission with regards to how the pilot is going to
20 be, you know, during the hearing. So I'm a little bit
21 concerned as to the scope, you know, because let's say
22 even it's huff and puff, it's one well.

23 Let's say they could have chosen to do
24 a pattern based. Let's say pilot, which could be one
25 injector, four producers, or let's say four injectors,

1 one producer, and they choose huff and puff. I mean,
2 is that not at their discretion and they're just
3 looking for answers to respond to the commission.

4 MR. TREMAINE: No, I'm -- thank you,
5 Commissioner Apomah. I think I can rephrase and
6 explain.

7 So I'm responding to Mr. Wehmeyer's
8 lengthy set of allegations that the division took too
9 long or put this on a hold. It was not on a hold.
10 Did not. So I'm explaining the division's process,
11 that it was in fact reviewing this. It did reframe
12 its expectations, looked at this project in isolation,
13 and is responding to that, reviewing to C101, and we
14 expect that decision imminently.

15 I am not suggesting that there's a
16 determination on the individual C101 based on -- based
17 on some other factor. It's there's this question
18 about what happened in the last two months. That's
19 the explanation I'm providing to the commission.

20 COMMISSIONER AMPOMAH: Thank you.

21 CHAIR CHANG: Commissioner Lamkin.

22 COMMISSIONER LAMKIN: Yeah. I think I
23 just have one question for Mr. Wehmeyer and Empire in
24 general.

25 What was the reasoning for -- for

1 choosing a nonunit well to implement the pilot, and
2 why is it Empire's belief that that project would be
3 covered under the unit agreement if it's not a unit
4 well to begin with?

5 MR. WEHMEYER: Correct. So and this
6 may -- I wanted to clear up one point of confusion
7 that I created twice now. The C102 was in fact filed
8 with the C103. So it -- I don't think it shows up as
9 a standalone, but it was attached.

10 But to answer your question,
11 Commissioner Lamkin, there were a number of vertical
12 wells out here that Empire has operational control
13 of, as you heard. This particular one's completion
14 interval is not in the EMSU right now. They looked at
15 that well, and from a well bore integrity standpoint
16 and in terms of its location on the structure that we
17 heard all of the geology testimony and engineering
18 testimony from -- from Mr. West, based on its location
19 on structure and based on the well bore integrity,
20 they identified that as the best candidate to come
21 back into.

22 So, so if -- as you look at that well
23 bore schematic and diagram, it will be physically in
24 the EMSU after the new perforation and plug back
25 procedures are set. So it will be producing San

1 Andres in the EMSU.

2 And in terms of that particular well
3 chosen, in terms of no prospect for productivity, in
4 terms of its open intervals at the time, its location
5 on structure and well bore integrity, that that was
6 the thought process.

7 COMMISSIONER LAMKIN: Do you think
8 that that convolutes the process for seems to be the
9 basis of the arguments between the OCD and -- and
10 Goodnight in terms of needing to return to hearing and
11 amending orders and such to choose a well of that
12 nature?

13 MR. WEHMEYER: I do not. And so
14 again, this is a well that there's -- you'll recall
15 the counsel for Goodnight here led an argument. So we
16 have all this paper. At the last hearing back at May
17 13th or May 1st, there was a question appropriately
18 posed by Mr. Schandler of, what on earth does the
19 inactive well list have to do with anything.

20 And that was the argument they started
21 with again today, after having to put to them numerous
22 times, what does this have to do with anything. We've
23 been working on that inactive well list.

24 In terms of going back and taking this
25 well, it's actually one last inactive well for anybody

1 to fuss over or have concern with. And so, again, the
2 well bore diagram shows where the plugs will be set.
3 And so we will now be in EMSU depths and it's just
4 1,000 tons of CO2 to explore recoverability.

5 I did want to comment very briefly.
6 In terms of what the pilot looked like during the
7 months of -- of hearing testimony, Empire never
8 committed -- you know, we obviously needed to see what
9 the commission's final decision was, period. The idea
10 of the three-year and the pilot program, we didn't
11 know that's where the commission was going to go.

12 That's what -- we embraced it. We're
13 trying to execute on it. But we certainly didn't say
14 what the program was going to look like. And I think
15 that what may have been lost in a little bit of this
16 conversation is it's not OCD's discretion under the
17 two final orders in this case to decide if the pilot
18 is successful or not.

19 The commission kept that continuing
20 jurisdiction to say we're not ordering a permanent
21 revocation at this time; just a suspension. Perform
22 your pilot that you and your discretion exercise
23 determine to be appropriate, and then come back to us
24 so that we can make the decision and the hazard lies
25 with Empire.

1 If it -- if what we've done is not
2 good enough for the commission's satisfaction, we bear
3 the consequence of that. That's not OCD decision
4 under the final orders that we have.

5 CHAIR CHANG: Okay. Thank you. I
6 have some comments and perhaps questions. We'll see
7 if...

8 I recall -- I'm looking at the
9 transcripts that -- or snippets of the transcript that
10 Empire has provided and I -- we all sat through this.
11 So I also recall OCD's counsel at the time
12 representing that any review of any application could
13 be expedited.

14 So I think I understand why Empire
15 would be, at the very minimum, confused, if not
16 alarmed by a note that says, hold pending OCC motion.
17 I am currently not aware of any reason why -- I mean,
18 it's just a note in a summary. So whoever wrote --
19 put this in the notes, hold pending approval of OCC
20 motion, I'm hoping that was mere confusion.

21 But is there any reason why OCD thinks
22 this commission should need to hold -- that this is an
23 act, or...? You know, I'll let you respond.

24 MR. TREMAINE: No, Mr. Chair. And I
25 -- I skipped over that point rather -- rather quickly.

1 That was a complete misfire. It was not identified as
2 the status. Mr. Powell was not aware of the status
3 until after some of the filings in this case. He has
4 corrected it. The staff have been reviewing this
5 project.

6 The rest of my presentation was just
7 simply explaining what has gone into that review and
8 how it is actually consistent with OCD's normal review
9 process.

10 CHAIR CHANG: Okay. So to the extent
11 that if any one particular staff member at OCD may or
12 may not have misunderstood or been -- or either
13 erroneously put that note into the system or -- or
14 misunderstood what OCC intended, that it's the
15 position of OCD now that there's no reason why OCD
16 wouldn't be able to proceed reviewing the C101 with
17 all deliberate haste, correct?

18 MR. TREMAINE: And it was not and is
19 not held.

20 CHAIR CHANG: Okay. That's consistent
21 with my understanding as well, that there's -- at
22 least from the commission's perspective -- from my
23 perspective, I wasn't aware that we had, and I
24 certainly did not intend to have anything pending here
25 at the commission that the division would need to --

1 to wait for.

2 And it's my understanding from the
3 presentations today from both Goodnight and Empire
4 that however the division decides on the 101 -- I
5 think Mr. Rankin has stated on the record that he
6 believes the C101 should not be granted. So I imagine
7 he would bring this back to the commission's attention
8 if it is granted and I would be -- and I imagine the
9 position of Empire is that if the C101 was denied,
10 that Empire would wish for the commission to review
11 that. Right?

12 MR. WEHMEYER: You've stated that very
13 succinctly and accurately. That brought it all right
14 there.

15 CHAIR CHANG: So I imagined all of the
16 various issues, and of which there's many points of
17 disagreement between the parties here and questions
18 from both my fellow commissioners about the details of
19 what is going -- I shouldn't say details, but many of
20 the points of contention in this case would invariably
21 be relevant should that C101 decision end up back here
22 at the commission.

23 So my current recommendation to my
24 fellow commissioners is that I am hesitant. I
25 understand that the letter Deputy Director Powell

1 issued sounded fairly authoritative and very direct --
2 provided fairly -- I don't want -- what's the word I'm
3 looking for here -- clear bordering on, I'm sure
4 Empire feels a, strident direction on exactly how they
5 should proceed.

6 But I hesitate to open a precedent of
7 this commission reviewing correspondence, lest
8 all the other parties in every other case start asking
9 this commission to start reviewing all of the emails
10 that might fly back and forth. And I think we've got
11 a pathway for all of the issues that are in front --
12 that the parties wish to raise to come right back
13 before the commission unless the OCD somehow is
14 able to magically grant a decision on that C101 that
15 satisfies both parties.

16 Which for which I will knock on wood
17 that somehow the division can get to a decision on the
18 C101 that satisfies all the parties in this case.
19 But unless that happens, all of these issues are going
20 to come back in that particular forum.

21 So my recommend -- so I will open the
22 floor and take my commissioners' -- fellow
23 commissioners' opinions, but my current inclination is
24 to decline the consideration of this specific motion
25 and take up the issues when the C101 decision is back

1 before us, noting that the commission has instructed
2 OCD to proceed with all deliberate haste, all possible
3 haste, to act on Empire's C101.

4 And I'll open the floor to my
5 commissioners.

6 COMMISSIONER AMPOMAH: Yeah, Mr.
7 Chair, I do agree with you on that. And then in your
8 recommendation, as you said, you know, we are clearly
9 saying that there's no reason why OCD should not
10 proceed, you know, with the review of the application.

11 So I do second or support your
12 recommendation on this. Thank you.

13 CHAIR CHANG: Any thoughts? Any
14 thoughts, Commissioner Lamkin?

15 COMMISSIONER LAMKIN: No. I tend to
16 agree with you guys' synopsis.

17 CHAIR CHANG: Okay. In that case, I
18 think it's a procedural order. I mean, I'm happy to
19 take a motion to make that formal, but otherwise, I
20 think what we're going to do is procedurally, we're
21 not getting into the merits. Many of the merits
22 raised are indeed important and should be explored by
23 the commission, but I think that will come when there
24 -- and will be more procedurally proper when there is
25 a division order on those C101s for us to then -- for

1 us to fully consider.

2 MR. WEHMEYER: May I ask one point of
3 clarification?

4 CHAIR CHANG: Please.

5 MR. WEHMEYER: So just so the record's
6 clear, the motion presented by Empire to require
7 modification of OCD's implementation order is not
8 denied. This issue is being carried until we have
9 some direction on the C101 application, and it would
10 come back as part of a package of decision.

11 CHAIR CHANG: I would rather that you
12 basically raise the same substantive issue. Well,
13 let's hope that somehow everybody walks away satisfied
14 with the C101 decision.

15 But if that is not the case, you're
16 welcome to raise those same substantive issues, but I
17 think it would be cleaner for my record if you're able
18 to just rebring that as an appeal of the C101 as
19 opposed to continuing the motion in front of us. If
20 that makes sense.

21 MR. WEHMEYER: It does. And just with
22 the issue, I guess, in the mind of Empire first, thank
23 you. We appreciate the attention and action.

24 You know the common thread is this
25 idea of having to go back through the full amendment

1 of the water flood and, we still haven't heard anybody
2 say we're wrong about the timing if we're going
3 through an amendment of the water flood.

4 So we just didn't want there to be any
5 argument that that issue has been decided and denied
6 by today's action.

7 CHAIR CHANG: Well, I don't know that
8 we -- again, we're declin -- I think what I'm
9 recommending -- so let me be clear about what I'm
10 recommending to the commission, is that we decline to
11 take up the motion to revisit the -- or to consider
12 the letter. So I don't think we want to get into the
13 merits.

14 But you're welcome to raise the issue
15 about the water flood when there is a -- we would like
16 OCD to be able to explore these questions with you at
17 the division level first, so that if there -- so
18 hopefully you can talk to the technical teams first
19 about exactly what the water -- you know, whether
20 there or not there is a waterfall and what requires
21 amendments.

22 My understanding is that the let --
23 the correspondence thus far, right, not the filings in
24 this case, but the correspondence between Empire and
25 the division is the division's attempt to figure out

1 what the commission meant when the commission said
2 that all applicable and relevant regulations apply --
3 still apply. Right.

4 And so the division has made -- what
5 appears to me, the division has made an attempt to lay
6 out what they perceive as the relevant and applicable
7 regulations in the absence of a application at that
8 time from -- from Empire.

9 Now that there is an application, the
10 division will now have to make a formal decision, and
11 once that happens, you're welcome to come back to the
12 commission and -- if you're dissatisfied with that
13 order, and we will at that time we'll take up all of
14 those consider -- concerns if they're hope -- well,
15 again, I can only hope that there are no concerns
16 left, but given that there are likely to be concerns
17 or if you are -- if there are concerns, then we
18 will take all of that up as a -- as a -- through the
19 mechanism -- procedural mechanism of the -- of an
20 appeal of an OCD order.

21 MR. WEHMEYER: Thank you. Thank you
22 so much for the clarification. That helps a lot.

23 CHAIR CHANG: Thank you very much.

24 If I can -- if that is the
25 commission's decision, I would be happy to entertain a

1 motion to so adopt and then I will write that all up
2 in a hopefully more detailed written order for the
3 parties.

4 COMMISSIONER AMPOMAH: Yeah, Mr.
5 Chair. So the commission finds no reason that OCD
6 will need to wait for anything from the commission to
7 act on Empire's C108 application at this time the
8 commission expects OCD to act on the application with
9 reasonable and deliberate promptness.

10 Also, the commission does not
11 adjudicate mere letter correspondence, therefore this
12 matter is not currently ripe for a review by the
13 commission. OCC review in this matter would be
14 available only after OCD has issued a reviewable
15 order.

16 Therefore, I so move that the
17 commission declines the consideration of Empire's
18 instant motion seeking view of Deputy Director
19 Powell's letter.

20 MR. RANKIN: I second.

21 CHAIR CHANG: Moved and seconded.

22 Is there any opposition from any
23 commissioners?

24 COMMISSIONER AMPOMAH: No.

25 CHAIR CHANG: Hearing no opposition,

1 so ordered.

2 Thank you all very much.

3 MR. WEHMEYER: We additionally had the
4 pending issue of our motion to lift the stay and set
5 status conference and also Goodnight's motion to
6 dismiss without prejudice.

7 There was a little bit of confusion as
8 to whether that particular -- it was initially
9 reflected as an agenda item and then I think that
10 yielded in favor of more general description.

11 We're ready to proceed, and if the
12 commission is not ready to proceed, we can take
13 that up at the next audience.

14 CHAIR CHANG: We are not, but we can
15 -- if you wouldn't mind following up with our
16 commission clerk. I understand the time is of the
17 essence for Empire, so if we need to set something
18 quicker to try to get you guys that to get that
19 moving, we'll do that and we'll see what we can do to
20 get that set as quickly as possible.

21 MR. WEHMEYER: That's perfect. So as
22 far as the commission is concerned, does that conclude
23 the Empire matters?

24 CHAIR CHANG: That's all we're ready
25 for today, I'm afraid.

1 MR. WEHMEYER: Thank you very much.
2 We appreciate your time.

3 COMMISSIONER AMPOMAH: Mr. Chair, can
4 we take about 10 minutes break or so?

5 CHAIR CHANG: Yes. That's fine by me.
6 Let's take a -- let's see. It's currently 10:08. Is
7 10:15 sufficient time?

8 All right. 10:15 -- we'll take a
9 recess until 10:15. Thank you very much.

10 (Recess taken.)

11 CHAIR CHANG: Thank you, all. Sorry
12 for the delay. It's now 10:20 or 10:21 and we're back
13 on the record coming back from recess.

14 The next case is -- the next case in
15 front of the commission is Case Number 26206,
16 application of Marathon Oil Company for de novo
17 hearing on order number R24349.

18 I'll take appearances and then we'll
19 turn to Marathon.

20 MR. RANKIN: Good morning, Mr. Chair
21 commissioners. Adam Rankin. I'm with the Sante Fe
22 office of Holland & Hart, appearing on behalf of the
23 applicant in this de novo application, Marathon
24 Oil-Permian.

25 And with me today in the audience

1 is a Marathon representative, Ms. Kerry Hatley.
2 We appreciate your consideration of our motion.
3 Thank you.

4 MR. HOLLIDAY: Good morning, everyone.
5 Ben Holliday, on behalf of Powderhorn Operating.

6 CHAIR CHANG: I'm sorry. Say that
7 again.

8 MR. HOLLIDAY: Ben Holliday, appearing
9 on behalf of Powderhorn Operating.

10 CHAIR CHANG: Got it. Okay. I will
11 turn to the movant.
12 You are the mover, right, here? No. You. Oh, you're
13 the... I'm sorry. I got them backwards. Go for it.

14 MR. RANKIN: Good morning, Mr.
15 chair, commissioners. This is a stay for the
16 divisions underlying order. It's not about delaying
17 development, but it's about preserving Marathon's
18 statutory right to a meaningful de novo hearing before
19 Powderhorn's drilling makes that hearing academic.

20 Without a stay, Powderhorn can
21 commence drilling operations immediately, which
22 would substantially undermine the purpose of
23 Marathon's de novo challenge and inflict immediate,
24 irreparable harm on Marathon's correlative rights.

25 The division's order underlying this

1 -- this hearing complaints or combines all working
2 interest ownership across Powderhorn's proposed 959
3 acre super horner -- super hornet unit rather than
4 evaluating working interest control in the overlapping
5 contested acreage, which is the analysis the
6 commission's precedent establishes.

7 Marathon controls 100 percent of the
8 working interest in its 320 acre overlapping acreage,
9 which is the north half of Section 2, and it's --
10 under its proposed (indecipherable) development
11 project under a still active 1976 joint operating
12 agreement to which Powderhorn itself is a party.

13 All we ask today is that the
14 commission preserve the status quo, just as it did in
15 the recent Coterra-Permian Resources stay involving
16 the Read & Stevens applicant until the merits can be
17 fully heard and fully and fairly heard.

18 So a stay requires a four factor
19 showing. Likelihood of success on the merits,
20 irreparable harm absent a stay, and then no harm to
21 the -- to the nonmovant, here Powderhorn, and no harm
22 to the public interest. And we believe that we
23 satisfy each of those factors. And Powderhorn cannot
24 rebut a single one without relying on facts and
25 legal theories that the commission's own precedent

1 forecloses that we outline in our reply brief.

2 This is not a novel remedy. The
3 commission granted precisely this relief, as I
4 mentioned, just recently in a case where Permian
5 Resources had won an underlying compulsory pooling
6 case. Coterra challenged it, and in order to preserve
7 the rights and make sure that all parties had a full
8 and fair hearing at de novo, the commission granted
9 the stay and then the parties went on to a hearing
10 timely and were able to have a full hearing before the
11 commission.

12 And even though the commission ruled
13 in favor of Permian Resources and against the movant
14 who sought to stay, nevertheless, the stay was proper
15 because it allowed for all parties to present their
16 full case without upsetting the status quo.

17 Here, on the underlining -- here,
18 first, the first factor is that we believe Marathon is
19 likely going to succeed on the merits, and the reason
20 is because the division undertook a fundamental error
21 in its analysis by failing to apply, make use of the
22 commission's clear precedent where there's contested
23 cases involving partially overlapping acreage in the
24 competing development plans.

25 For at least six years, that

1 commission precedent has required that there be an
2 evaluation of the acreage that overlaps between the
3 two project areas. And the evaluation is what is the
4 working interest control in that acreage. Not the
5 ownership, but who has the greater percentage of the
6 working interest control.

7 Now the division ignored in its
8 analysis, in its findings, and its conclusions that
9 Marathon has 100 percent working interest control
10 through its joint operating agreement in the north
11 half of Section 2. It never made the required finding
12 under the Oil and Gas Act section 70-2-17 subparagraph
13 E, that Powderhorn's plan is necessary to prevent
14 waste before its subordinated overrode Marathon's
15 joint operating agreement to the compulsory pooling
16 order.

17 Now applying the correct three-part or
18 partial overlap test that the commission has
19 established in these partially overlapping, competing
20 development cases, that has been used since at least
21 2020, the division made no finding that Marathon's
22 plan would strand any acreage.

23 That's one of the first steps, is to
24 determine whether any of the plans would strand any
25 acreage. The division made no such finding. So

1 there's no risk or concern there.

2 Powderhorn's superseding JOA theory,
3 the idea that they have a superseding JOA among all
4 the other parties that overrides our JOA is a legal
5 nullity. For that to have any effect, all parties to
6 the underlying JOA would have to agree to their JOA,
7 which isn't the case, and no party takes the position
8 that Marathon's 100 percent voluntary agreement is
9 invalid or void.

10 Now the precedent, the commission
11 precedent that I'm referring to in particular is one
12 case that I'm going to refer to as the BTA case. And
13 Powderhorn invokes that in its response brief, saying
14 that it cuts against Marathon.

15 But in fact the opposite is true,
16 because in that case the commission made clear that
17 that working interest control and 100 percent JOA
18 control by a party governs, and the record here in
19 this case mirrors the facts that led the commission to
20 protect that JOA and the operator in the BTA case and
21 that operator's rights to fully develop their own
22 interest under that JOA in order to protect
23 correlative rights.

24 As in the BTA case, where the
25 commission found that B -- that BTA should be able to

1 develop its own JOA acreage, and in that case it was
2 Marathon at the time, could go on and develop its own
3 other acreage that partially overlapped.

4 As was the case there, in this case,
5 Marathon's plan lets each party develop the acreage it
6 controls. Marathon control its JOA in the north half
7 of Section 2 with one mile wells, while Powderhorn
8 remains free to develop its acreage in the east half
9 of Section 3 and in the South half of Section 2.

10 They can go ahead and develop, each of
11 them, one mile wells. That's the very outcome the
12 commission precedent predicts based on the underlying
13 cases and the precedent that the division until now
14 has faithfully applied.

15 Between the two development plans,
16 only Marathon's protects the correlative rights of all
17 parties by allowing them to each fully develop their
18 own acreage that they control.

19 The case that they -- Powderhorn
20 relies on, a recent division case, in which case the
21 division made an adverse decision contrary to the
22 commission precedent is not binding, is not
23 authoritative, is not persuasive.

24 It was merely an erroneous decision
25 entered by the commission -- division, rather. That

1 was challenged by the adversely affected party, went
2 to commission on de novo, but didn't actually get
3 heard because the parties resolved their issues. And
4 so it carries no persuasive rate.

5 On the second factor, Marathon will
6 suffer immediate irreparable harm without a stay.
7 if Powderhorn is allowed to go forward and drill or
8 under -- continue undertaking efforts to commence
9 drilling and even to complete its wells, it will
10 effectively perfect its rights under the challenged
11 order and de facto, extinguish Marathon's operating
12 rights under the JOA before Marathon ever gets its
13 statutory day before the commission.

14 Once Powderhorn drills and completes
15 the wells in the overlapping acreage, reservoir
16 depletion through parent-child effects becomes
17 permanent and cannot be remedied after the
18 fact.

19 Marathon's operational control under
20 its 1976 JOA, its contractual right to operate its
21 own acreage with 100 percent voluntary commitment will
22 be effectively extinguished and the JOA itself will be
23 rendered a practical nullity, as the commission found
24 in the BTA case below six years ago.

25 That's precisely the dilemma the commission

1 confronted in the Coterra, Read & Stevens case, where
2 the commissioners asked whether denying a stay would
3 allow wells to be drilled before a de novo hearing
4 would itself constitute harm to the objecting party.
5 The commission answered that question by granting the
6 stay.

7 And that -- that the commission
8 ultimately ruled in that case for the nonmovant,
9 Permian or Read & Stevens, does not diminish the
10 point. A stay protected the process itself, ensured
11 that there was a full statutory right to de novo,
12 And that exact -- that's exactly what Marathon asks
13 for here.

14 Third, the balance of harm favors
15 Marathon. Powderhorn's claimed injuries, rig
16 commitments, midstream obligations, sunk costs, these
17 are all risks and costs that Powderhorn voluntarily
18 assumed itself with full knowledge that Marathon had a
19 de novo appeal, right, and if it continues to do so,
20 it's under its own risk, because we've sought this
21 stay.

22 Powderhorn's on motion papers concede
23 that its financial commitments were preliminary to
24 this point. Surface staking, water contracts,
25 takeaway negotiations. Not the type of sunk costs

1 that would outweigh Marathon's irreversible loss of
2 operating rates.

3 For example, Powderhorn still hasn't
4 filed for APDs. Okay. They still don't have APDs.
5 So no harm.

6 If Powderhorn truly controls, as they
7 say in their papers, the undisputed acreage in the
8 east half of Section 3 and the south half of Section
9 2, if they've got 100 percent voluntary commitment, as
10 they say, from all those parties, Powderhorn can go
11 ahead and drill under a voluntary agreement.

12 They don't need to wait for the
13 commission or division. They can do so under a
14 voluntary agreement. That's acres that we're not
15 disputing. We don't own in that acreage.

16 As they say, they have 100 percent
17 commitment and 100 percent voluntary agreement. They
18 can go ahead and drill those wells. They can perfect
19 their term assignment that they're worried about
20 expiring by drilling a single well in any of that
21 acreage.

22 We're not disputing their right to
23 control it, their right to operate in that acreage.
24 It's solely the south -- the north half of Section 2
25 where we have concern.

1 A stay, especially as the disputed
2 acreage, would preserve all the rights, especially the
3 rights of Marathon and its 1976 JOA.

4 Fourth. The public interest demands a
5 stay. Public interest is served by ensuring that the
6 division and the commission follows its own precedent
7 before the state exercises its police powers and
8 compulsory pooling to override a 100 percent voluntary
9 working interest that is operated by Marathon here.

10 That means that predictability will be
11 served in the division's regulatory framework, so that
12 every operator working interest owner in New Mexico
13 can understand and anticipate how this is going to
14 play out.

15 Allowing an order that departs from
16 controlling precedent to take irreversible effect
17 before the commission cannot even review it undermines
18 that framework.

19 So again, the twin purposes, the main
20 obligations of the division and commission, is to
21 prevent waste and protect correlative rights. And
22 you'll see in our papers we make the point that New
23 Mexico appellate courts have made and identify that
24 protection of correlative rights is tantamount to
25 preventing waste.

1 Protect -- if correlative rights are
2 not protected, then waste will occur, which is
3 precisely why back in 2020, when evaluating these
4 types of cases with partially overlapping spacing
5 units, the commission determined that in such
6 particular cases, the particular category of cases
7 it's imperative to evaluate whose plan will best
8 protect each parties' ability to operate its own
9 acreage.

10 And that's why they look at the
11 overlapping acreage to determine which plan best
12 protects correlative rights. And here, the division
13 didn't do that because it didn't take into
14 consideration Marathon's 100 percent JOA in the north
15 half of Section 2 and instead evaluated all the
16 working interest on a whole project basis based on
17 Powderhorn's project.

18 So overriding Marathon's correlative
19 rights by effectively nullifying its JOA is tantamount
20 to causing waste because it would not protect the
21 correlative rights under the JOA. Again, public
22 interest is best served by ensuring that does not
23 happen before the commission has a full and fair
24 opportunity to hear the merits in this case.

25 Finally, a couple of comments on

1 Powderhorn's counter-arguments. Powderhorn makes the
2 point that Marathon has no rival development plan, no
3 affirmative case before the division or the
4 commission, which is just not true.

5 Marathon's plan is to develop its own
6 JOA directly itself, and the oil and gas act in the
7 commission's precedent get preference to a ready,
8 willing, and able JOA operator over a force pooling
9 proposal. And that's clear when you look at the
10 statute 70-2-17, subparagraph E, which
11 makes clear that voluntary agreements among parties to
12 develop a pool should be overridden only by the
13 commission or division if there can be -- if -- in
14 order to prevent waste.

15 And here, the division made no finding
16 that Marathon's proposal would result in waste or that
17 Powderhorn's proposal is necessary to prevent waste.
18 That finding is missing, and it's -- such a finding is
19 necessary to overcome the clear statutory directive of
20 the oil and gas act.

21 And underlying commission precedent
22 makes clear that proposals under a JOA are given equal
23 weight to a proposal under a compulsory pooling order.
24 There's no difference, and the same factors, the same
25 analysis applies. So of course Marathon does have a

1 rival development plan before this commission, as it
2 did before the division.

3 Powderhorn calls the 1976 JOA dormant
4 and a vertical well agreement outdated, but nothing in
5 its language limits it to vertical wells. It remains
6 active. There's no dispute that it's an active and a
7 valid voluntary agreement.

8 It currently supports production in
9 the acreage, and no party, including Powderhorn,
10 disputes its legal validity. It would govern all
11 production from the acreage at hand, including
12 horizontal wells. So the effort to phrase this old
13 JOA as dormant and not -- no longer active is just not
14 valid.

15 We did fail to provide a proposed
16 order, and that was an error on our part. We did
17 submit one as part of our reply brief. That is a
18 nonsubstantive issue that can be easily remedied by
19 the -- by the commission. I think a similar thing
20 happened in the Coterra-Permian case where the
21 applicant for the stay neglected to attach an
22 order. The commission overlooked it and issued a stay
23 nevertheless.

24 Powderhorn also argues its term
25 assignment deadline creates irreparable harm. As I

1 pointed out, the de novo process will run its course
2 over time, regardless of the stay, and the stay does
3 nothing to delay the ultimate resolution of the case.
4 It simply preserves Marathon's rights while the
5 process plays out.

6 As I also stated, if Powderhorn truly
7 has 100 percent voluntary commitment for the east
8 half of Section 3 and the south half of Section 2, it
9 can go ahead and drill wells in those tracts to
10 preserve and perfect its term assignment rights.

11 The change in ownership, which is not
12 of record in the case below that we understand has
13 occurred, often is the situation when one party
14 prevails at the division, parties will sign on to that
15 party's proposal. It doesn't change the impact of the
16 analysis by the commission.

17 Marathon still owns fifty-five -- over
18 fifty-five percent of the interest in the south --
19 north half of Section 2, and it still controls 100
20 percent of the working interest in that acreage. It
21 doesn't change the outcome or the analysis under prior
22 commission precedent one bit.

23 Finally, Powderhorn raises the concern
24 that if the commission were to adopt Marathon's
25 arguments in this case, that a JOA somehow supersedes

1 or has controlling -- controls development and
2 acreage. That the commission will create a perpetual
3 veto for every legacy JOA in the state, but the
4 statute that governs and gives a preference to JOAs
5 and voluntary agreements, 70-2-17E of the oil and gas
6 act, has been around since the start of the oil and
7 gas act, and this has never been an issue or concern.

8 There's never been a rush of any kind
9 to weaponize JOAs because a JOA contract area must be
10 of sufficient size to allow for horizontal well
11 development and the right orientation. And that just
12 hasn't been the case in all that many instances. Plus
13 a JOA operator in order to compete with a compulsory
14 pooling application or a proposed plan needs to show
15 that it's viable -- it has a plan that's viable and
16 ready to go under the JOA.

17 And here, Marathon has demonstrated
18 that. It has APDs in place. It has -- and it is
19 ready and able to slot in these wells into his compul
20 -- into its rig schedule.

21 It hasn't yet drilled the wells
22 because an order has issued from the division
23 designating Powderhorn as the operator of the acreage,
24 and of course Marathon wouldn't do something contrary
25 to a division order. So it has challenged that order

1 here, and upon resolution, hoping that Marathon would
2 prevail, it is ready, able, and willing to go forward
3 with its drilling plan.

4 Commission Chair and commissioners,
5 Marathon satisfies all four of the factors under the
6 analysis, and it's likely to prevail because the
7 division applied the wrong legal test. It faces
8 irreparable and unrecoverable harm to its operating
9 rights absent a stay if Powderhorn were allowed to go
10 forward and drill, and the balance of harms favors
11 Marathon because Powderhorn's exposure is self-created
12 and manageable through having a quick and streamlined
13 hearing before the commission.

14 We support having a quick hearing and
15 we have no interest in dragging it out.

16 Finally, public interest favors
17 adherence to establish precedent and protecting
18 correlative rights and ensuring that the commission is
19 able to be deliberative in its process on de novo
20 cases.

21 We ask that the commission therefore
22 grant the stay and allow the parties to proceed to
23 hearing in a timely manner. We appreciate
24 consideration.

25 I'm happy to address any questions.

1 CHAIR CHANG: I'll turn to the other
2 party at the moment and we'll come back for questions
3 all at once at the end.

4 MR. HOLLIDAY: Thank you, Mr.
5 Commission Chair.

6 So this issues -- the issues that
7 we're discussing today have been extensively briefed,
8 So I'm not going to repeat all of them. I just want
9 to do -- I do want to visit on some of the things Mr.
10 Rankin has talked about.

11 Number one, the burden here is
12 Marathon's. They have to prove two things. One, they
13 have to follow 19-154-23, which says a stay can be
14 granted where it's necessary to either protect
15 correlative rights, prevent waste, to protect health
16 and environment, which is not an issue here, or
17 prevent gross negative consequences.

18 They have to get one of those four.
19 We, as briefed, and I'm happy to discuss for
20 questions, we feel those factors way in favor of
21 Powderhorn.

22 Second, the New Mexico courts are
23 clear that in order to be granted a stay, the party
24 has to satisfy all four of what are commonly referred
25 to as Tenneco factors. That's you're likely to

1 succeed on the merits; that there's irreparable harm
2 to the movant; there's no harm to the nonmovant, which
3 is particularly at issue in this case; and there's no
4 harm to the public.

5 So as we've briefed these two
6 standards, we do not believe they're met. Let's just
7 take first the likelihood to succeed on the merits.
8 If we look at the post -- post-order working interest
9 consolidation, Powderhorn has acquired approximately
10 82 percent of the ownership in the broader Superhornet
11 unit that was approved by the order.

12 That's a pretty significant
13 consolidation post order, and that's something that
14 the commission in 2531 -- or 25371 specifically looked
15 to for -- as a factor in favor of Permian Resources.
16 So that is a factor that we want at -- at the division
17 level, it's only stronger in our case now.

18 Second, Marathon hasn't brought forth
19 any new evidence at the division level, which is the
20 best analog to how we think a decision would be made
21 in this case and the likelihood to succeed on the
22 merits.

23 Powderhorn won on six of the seven
24 factors. This wasn't a close game. The only factor
25 that they didn't win on was decided to be neutral, and

1 that's prudent operatorship. And that really wasn't
2 much of an issue in the case.

3 All right. Mr. Rankin relies a lot on
4 the stay issued in 25371. That's the Joker-Bane case.
5 The facts in that case are just decidedly different
6 than the facts we're faced with here.

7 For one, the fight in that case was
8 over wells that the movant didn't -- did not believe
9 need to be drilled at all. And they said -- part of
10 the discussion was once you drill a well, you can't
11 undrill a well, and that's what we're trying to
12 prevent.

13 In this case, the operators are
14 targeting the same bench, same orientation, same
15 spacing. The only difference -- the only fight is, do
16 you drill one and a half miles laterals, and who gets
17 to operate. So that's the fight here.

18 So these -- this is not a situation
19 where there is an alleged harm that can't be undone
20 under the provisions of the order.

21 Second. In that case there was
22 significant harm alleged by the movant. There was an
23 approximate 200 plus million dollar economic waste
24 claim. We don't have that here.

25 In fact the harm runs the other way.

1 Powderhorn's committed millions of dollars in
2 midstream that would be harmed if this stay were
3 granted.

4 And we also have the issue of the term
5 expiration. We've talked about that. No need to
6 elaborate there.

7 There are also other knock on effects
8 that would be caused -- would cause harm to
9 Powderhorn. As a smaller operator, they have longer
10 lead times for arranging rig contracts. Right now,
11 the rig contracts are currently being held open
12 because of this stay. If those expire, that will be
13 really difficult and a big challenge for Powderhorn to
14 overcome.

15 But I guess really, I want to use the
16 balance of my time talking about this idea that under
17 72.17, that E controls that.

18 Number one, the division who's had
19 more recent at bats at this, Mr. Rankin relies on, you
20 know, a six-year-old case, which is still valid, as
21 persuasive precedent. It's not binding, mandatory
22 precedent.

23 But the division has looked at this
24 several times, and they've come to the same
25 conclusion. They say where the JOA acreage is one

1 component of a broader unit, that JOA -- the fact of
2 that JOA does not bar compulsory pooling within the
3 broader unit.

4 So there's two components that are at
5 issue with 72.17. One is C. C says, where there's no
6 agreement to pool, the division may pool the
7 interests.

8 E says, where the parties have agreed
9 to pool, the division may only modify on the finding
10 of waste.

11 So in this case, the acreage Marathon
12 has a valid JOA on is one -- comprise approximately 30
13 percent of the entire proposed Powderhorn spacing
14 unit.

15 We believe under those facts that 17
16 -- 72.17C controls because there is no broader
17 agreement to pool Marathon's interest within that
18 larger spacing unit. And that's -- that's the whole
19 basis of the hearing we had and that's the whole basis
20 of the hearing that we won.

21 And we feel that if subsection E were
22 allowed to essentially subsume section C, this would
23 grant an automatic delay for every single order
24 granted in the state.

25 If you look at the title, most acreage

1 that's being developed today, including this, its
2 legacy acreage in the sense that it's being held by
3 conventional production, it was drilled a long time
4 ago, and it's subject to JOA, and we're now having to
5 piecemeal smaller tracks into larger horizontal
6 spacing units.

7 If we have some sort of policy or
8 precedent where any JOA within a broader spacing unit
9 is allowed to block development, we're going to be at
10 this -- we're going to have this fight virtually every
11 single time that we seek to pool that acreage.

12 What's more, the factor of working
13 against control there, even if we were to take Mr.
14 Rankin's argument that the working control only in the
15 overlapped acreage controls, it's one factor of seven.
16 It's one.

17 And in the BTA case that he refers to,
18 BTA had an overwhelming majority. They had an 82
19 percent ownership in the unit. Here, Marathon has 55
20 percent. Powderhorn owns or controls 45 percent. So
21 this is not the same case.

22 Then I want to go to, real briefly,
23 this idea that Powderhorn assumed the risk by
24 operating under the order.

25 Number one, they received an order.

1 They waited three weeks. They started moving. As I
2 mentioned, the timelines are different for a smaller
3 company.

4 If we were to operate this blanket
5 rule that it's unreasonable to begin to operate under
6 a valid order, then I want to take a look at the
7 timeline, what that's going to do to operators.

8 So that means effectively you have a
9 30-day stay after an order. We've now shrunk my order
10 time from 12 months to 11 months. I need to have a
11 hearing. That's another, let's call it 20 days to be
12 generous. Now we're 50 days into my hearing order.

13 Then it gets set for a de novo. I'm
14 going to wait another 120 days. Then, assuming the
15 commission acts quickly, we got another 30 days to
16 wait for a hearing. That gets us to 200 days into the
17 order. That leaves us an approximate -- a little less
18 than half of the order time to -- to execute. So we
19 think that's bad policy and should be considered by
20 the division.

21 Finally, under the four part Tenneco
22 test, again, that issue is extensively briefed and I
23 don't want to re-go over all of it, but I do want to
24 focus on one factor that we -- Mr. Rankin leaves out
25 in his argument. And that's factor number three, that

1 there's no harm to the nonmovant.

2 In this case, we have outlined that
3 there will be significant harm to nonmovant. There
4 will be a 2 -- potentially 2.75 million dollar hit on
5 a midstream deficiency if we're not able to proceed
6 with development as we would like to.

7 Term expirement could -- term interest
8 could expire. We could lose a rig. These are all
9 things we would call significant harm to the nonmovant
10 in this case.

11 And finally, Powderhorn does have
12 APDs. They were granted this week. You
13 probably didn't know that, but to the extent that's a
14 factor.

15 So I'll stand by for questions. And
16 we ask that the -- we ask that the motion be denied,
17 that the stay be denied.

18 In the alternative, if the
19 commission's inclined to grant it, we would ask that
20 we would get a very narrowly tailored order that
21 doesn't prohibit all activities. So in the Joker-Bane
22 case, it enforced a mandatory shutdown of all planning
23 everything here.

24 Here, we would ask only that the
25 prohibition be against spud.

1 Second, we would ask for as tight of a
2 timeline as we can get to get the hearing, because
3 we're under significant time pressure here.

4 And third, we'd ask that the division
5 enforce or require of Marathon of bonds sufficient to
6 cover these liquidated costs that could be incurred by
7 Powderhorn.

8 Thank you.

9 CHAIR CHANG: Thank you.

10 OC -- is OCD planning to weigh in?

11 MR. TREMAINE: No. With the various
12 legal arguments on compulsory pooling cases, I'm
13 monitoring to stay abreast. We're not entered in
14 appearance.

15 CHAIR CHANG: Thank you.

16 Commissioner Ampomah, would you like
17 any replies or responses from the counter-party, sort
18 of, do you have questions?

19 COMMISSIONER AMPOMAH: Mr. Chair, so
20 just want to be sure that we are just listening to the
21 stay, the motion to stay, and not necessarily the de
22 novo or is all combined?

23 CHAIR CHANG: Oh. Well, so that's a
24 great question.

25 So the way I understand it, and counsel can objective

1 or advise if I'm getting this wrong, there is a stat
2 -- there is a automatic right to a de novo hearing,
3 but we're not hearing the whole de novo hearing.

4 Today, it is merely -- but we are --
5 I do want to make a distinction, because I do have two
6 sets of -- different sets of questions.

7 One is on just the actual status.
8 Right. So the basic mechanical questions of have the
9 try -- parties try to mediate. Have you guys met and
10 conferred. If this is to go to a hearing, how many
11 witnesses. What part of the underlying record can you
12 possibly stipulate to, to save us the -- you
13 know, save this thing from truly being a full-blown de
14 novo.

15 And so all of those mechanical
16 questions of what does the de novo hearing need to be,
17 right, in terms of the actual status conference part
18 of it.

19 And then the second part, then is the
20 motion for state, which I think the -- which is what
21 the parties have -- what we're just debating, which
22 is, is the commission inclined to grant a stay of the
23 division order pending the de novo until the de novo
24 hearing can occur.

25 COMMISSIONER AMPOMAH: So then my

1 question to Paul Hahn will be, so Mr. Rankin was
2 talking about the fact that -- and even you alluded
3 that, it's only about 30 percent overlap. Is that --
4 is that correct?

5 So, and then you're also saying that
6 if the commission decides to grant a stay, you want
7 it to be very narrow, but I did not get all the latter
8 parts, you know, the -- the conditions that were given
9 to the commission, as to, let's say, whether if we
10 decide to grant a stay, it has to be within that
11 narrow window.

12 So is it also your understanding that
13 probably PH can continue with the activities, but
14 let's say there will be a stay on the acreage
15 that is in contention.

16 MR. HOLLIDAY: Sure. So I'll take
17 those in parts. One, our -- our requests for -- to
18 the extent there is a stay granted, that it be narrow
19 is the request that the division operate under its
20 discretion. Right. That that's up to you guys, and
21 we fully respect that.

22 As to the layout of the tracts and
23 could Powderhorn operate ignoring this overlapped
24 acreage, the answer, we feel, is no. This was
25 discussed.

1 I don't want to -- I know this is not
2 a hearing on the merits, but I think it requires some
3 discussion, and because this was discussed extensively
4 at the hearing.

5 This rectangle is bounded on the east
6 and west by existing development already. So we
7 already have drainage on both sides. There is planned
8 development within one year to the north, and that --
9 from Mewbourne, that we believe is going to happen in
10 the next 12 months. So that's going to -- now we're
11 going to have drainage on east, west, and north.

12 If we were to drill, because the
13 parent-child question was -- there was a big question
14 at the -- at the hearing, if we were to drill this
15 south half of this acreage, now the north half of not
16 only Section 2, but the northeast quarter of Section
17 3, it's going to be quadruple bounded by existing
18 production and then we feel like that could
19 effectively condemn the acreage.

20 And so that would do two things. That
21 would, one -- now I'm not an engineer. That's --
22 that's just what the -- the information I have. And
23 we feel that would have two things.

24 One, it would harm the acreage to the
25 north and it could potentially strand that northeast

1 quarter in which the State of New Mexico owns
2 minerals.

3 COMMISSIONER AMPOMAH: So like just
4 said, Marathon is also -- they have the right to a de
5 novo hearing, right, which we will more or less hear
6 about all of that. So how do you square that, you
7 know? Because definitely if, let's say, a stay is not
8 granted, you go ahead and then you continue drilling.

9 You said a well drill cannot be
10 undone. Right. So definitely, don't you feel like --
11 don't you believe that they do have the right to de
12 novo? So, you know, they need to be heard, you know,
13 about their case.

14 And you also want to argue that they
15 do not meet the four criterias, you know, to grant the
16 stay. So I'm still trying to square that. They have
17 the right.

18 And then also you feel like they
19 do not -- they have not met the burden. So help us
20 understand where the line is.

21 MR. HOLLIDAY: Sure. I'll do my best.
22 So we have two things at issue. One, the statutory
23 right to de novo. Agreed. No argument. That there's
24 no argument there.

25 The second would be the stay pending

1 the de novo hearing. That we can test and we ask that
2 you deny that.

3 There are significant -- it's an
4 extraordinary remedy that you can grant to preserve
5 the status quo if necessary, but there's certain
6 considerations that must be made.

7 One, as I've briefed, we have
8 the 19.15.423, one of four factors. Protect health,
9 correlative rights, health, all that sort of stuff.
10 So that's one thing. That's one hurdle that the
11 applicant or movant has to meet.

12 Second, New Mexico courts have made
13 clear that to impose this extraordinary remedy, they
14 have to meet a four-part test. And they have to meet
15 all four elements of that. And that's where we don't
16 feel.

17 So to the extent our argument strayed
18 into merits, at least from my perspective, I don't
19 want to speak for Adam, but to the extent I strayed
20 into merits, it was to rebut the first factor of
21 likelihood to succeed on the merits. We feel that
22 Marathon has not carried the burden in that respect.

23 We also feel that there is documented,
24 quantified harm to the nonmovant. In this case, it's
25 Powderhorn.

1 Now to your question of could
2 Powderhorn go out and drill a well in the time before
3 we have a de novo hearing. I guess that's
4 academically possible. I would defer to the technical
5 experts on that. I think it's extraordinarily
6 unlikely from a timing perspective. And I'll just
7 leave it at that.

8 COMMISSIONER AMPOMAH: Then my
9 follow-up will be, so you said you don't necessarily
10 have any problem with the de novo hearing. Right.
11 You said that. But you do have a problem with the
12 stay.

13 Now, and then one of your arguments is
14 that Marathon will probably not prevail. So don't you
15 believe that the commission needs to get the
16 opportunity to listen to that argument to make the
17 determination whether they are not going to prevail?

18 MR. HOLLIDAY: Sorry. I said that --
19 I said they have a statutory right to a de novo
20 appeal. I don't think we agree that we should have
21 one. But that -- that's the -- we're starting to --
22 we're cutting -- we're cutting (indecipherable) in
23 there.

24 As to the stay, I think our -- our
25 ask, again, is that it be denied, and if it is

1 granted, we ask that to be narrowly tailored so that
2 we can continue to plan, because we do feel that we
3 will succeed on de novo hearing.

4 We feel that Powderhorn should be
5 allowed to -- within the commission's discretion, to
6 do all activities short of spud, so that we're not
7 prohibited from negotiating contracts, takeaway,
8 ordering casing, inspecting casing. Just all the
9 things that go into drilling a well.

10 In the order that was issued in 25371,
11 it was a full stand-down. Nothing -- no action could
12 be taken at all, pending the de novo appeal. That
13 would be really restrictive.

14 I walked through that timeline of what
15 that practically is going to look like for Powderhorn.
16 Even if we succeed on the merits at de novo appeal,
17 that de novo appeal does not stay the order. So now
18 we've shrunk down our time to perform to 165 days from
19 365 days.

20 So we ask only that the order be
21 narrowly tailored to prevent the -- if the concern is
22 Pu and wells in the ground, that we feel that the
23 order should be directed solely at that and not
24 broadly to prevent all planning activities.

25 CHAIR CHANG: Just to follow up on

1 that timeline thing. If a de novo hearing -- well, a
2 de novo hearing must be granted because there's a
3 statute -- or there's a reg -- I can't remember
4 whether it's a statute or regulation. But either way,
5 there's a rule requiring that.

6 Under de novo, though, wouldn't the
7 commission be able to issue a new 12-month timeline?
8 Because wouldn't the de novo wipe away what the
9 division did and including that timeline and be able
10 to give you that -- a full 12 months when the
11 commission did issue an order on the de novo?

12 MR. HOLLIDAY: I suppose it could. In
13 this case, the facts are a little different because
14 Marathon's not putting forth a competing plan.
15 They're standing on the JOA acreage. We're standing
16 on the order that was granted.

17 I mean, that would certainly be
18 something we would ask to the extent it's not
19 automatically granted.

20 CHAIR CHANG: Thank you. And did
21 either party file a map of these contested acreages,
22 by any chance? Because I'm having a hard time finding
23 one, and I'm really having a hard time tracking which
24 acres are which.

25 MR. RANKIN: Understood. I believe,

1 Mr. Chair, that in the reply brief there is inserted
2 in one of the pages a demonstrative that shows how the
3 acreage is oriented.

4 Unfortunately, I did -- I left those
5 piles of paper behind. But it's --

6 CHAIR CHANG: On page 9, it's -- okay.
7 I think I know. It's not an attachment. It's -- it's
8 sort of -- it's in the actual body, like a --

9 MR. RANKIN: Inserted image.

10 CHAIR CHANG: Is that -- is that --

11 MR. RANKIN: Figure 1 on the reply
12 brief.

13 CHAIR CHANG: Okay.

14 MR. RANKIN: I think is what I called
15 it. And it shows where the orientation of the
16 contested acreage being the north half of Section 2.
17 And I can't tell you the township or range. How that
18 is situated within the greater Powderhorn proposed
19 Superhornet, which would comprise all of Section
20 2 and the east half of Section 3. The north half
21 being approximately 320 acres.

22 A. So Marathon is -- so the blue on your map,
23 which you're not looking at, so I don't even know if
24 this is going to make any sense to you, but the --
25 I'm assuming this is north, south, east, west

1 oriented.

2 So the eastern acres, Marathon has no
3 interest.

4 MR. RANKIN: So the -- would you mind
5 flipping it so I could see it real fast, Commissioner
6 Chair. Yeah. So it's the north half of -- yeah, that
7 would be --

8 CHAIR CHANG: You were --

9 MR. RANKIN: That's Powderhorn's
10 interest right there.

11 CHAIR CHANG: And Marathon, no
12 interest.

13 MR. RANKIN: We have no ownership in
14 there.

15 CHAIR CHANG: Okay.

16 MR. RANKIN: Don't care about
17 it.

18 CHAIR CHANG: Okay.

19 MR. RANKIN: And the south half, the
20 red acreage --

21 CHAIR CHANG: Says.

22 MR. RANKIN: -- which says Devon, is
23 now Powderhorn. When that exhibit was made, we -- it
24 was unknown to us that Devon and Powderhorn had made
25 an agree.

1 CHAIR CHANG: Got it.

2 MR. RANKIN: So now both the south
3 half of Section 2 and the east half of Section 3 are
4 controlled by Powderhorn. And we do not contest that
5 acreage one bit.

6 CHAIR CHANG: Okay.

7 MR. RANKIN: And so all that is --
8 contested is this -- the north half of Section 2,
9 which constitutes Marathon's JOA acreage.

10 CHAIR CHANG: Is that your
11 understanding as well?

12 MR. HOLLIDAY: Yes. That's correct.
13 And there's -- to the extent there needed -- there's a
14 plethora of plats in the underlying exhibits for the
15 -- for the hearing.

16 CHAIR CHANG: Okay. I think what
17 Commissioner Ampomah and I are struggling with is --
18 and we've struggled with this in previous cases, is
19 that the standards -- a stay is indeed an
20 extraordinary remedy and the factors for a stay are
21 phrased in somewhat stringent terms.

22 On the other hand, if we don't grant a
23 stay and there ends up being some -- or there is
24 development, it becomes really, really difficult, to
25 Dr. Ampomah's point, to try to unwind or remedy should

1 the commission come to a different conclusion. Right?

2 So I think we're trying to figure out
3 the most prudent way to thread that needle here.

4 Do you have any...? I interrupted you
5 earlier, Commissioner Ampomah. Did you have any
6 further questions for either party at this point?

7 COMMISSIONER AMPOMAH: Mr. Chair, I do
8 not. I do not.

9 CHAIR CHANG: Okay. I think the point
10 to be, you know, if we were to go ahead and grant any
11 sort of stay, to be as narrow as possible is fair, we
12 certainly want to be as -- as judicious as we can with
13 how we proceed.

14 So let me -- and I'm -- I think both
15 of us are still trying to figure out how to -- how to
16 handle the stay issue. But let me turn to the actual
17 underlying, just sort of the pragmatic matters as to
18 what the de novo is looking like.

19 Could you, each party, advise on some
20 of the just procedural mechanics of what we're looking
21 at in terms of the de novo hearing?

22 MR. RANKIN: Mr. Chair, Adam Rankin.
23 I'll step in first.

24 Mr. Holliday and I have not yet fully
25 discussed. At a high level, I indicated to him,

1 without conferring fully with the client, that I think
2 there's a lot of things we can stipulate to.

3 This is primarily a legal issue, which
4 is why we didn't present any new evidence in our
5 motion for stay. It's primarily an argument that the
6 division misapplied commission precedent and the
7 requirements of the oil and gas act.

8 So I think much of what we can -- that
9 was addressed and presented below can be stipulated
10 to. There's some updates, I think, as to ownership
11 interests. There may be some issues regarding
12 development plans and engineering that we would want
13 to make an effort to clarify, that we think the
14 division misunderstood.

15 But otherwise, I think we can -- we
16 can certainly get this done in a day. I think there's
17 nothing that would prevent us from getting this full
18 hearing done in a single day. And Marathon's interest
19 here is to try to make -- to streamline the process,
20 to satisfy any -- any concerns from Powderhorn or the
21 division -- or commission, rather, about impairment or
22 harm or delay.

23 So that's number one. So I think we,
24 I think probably we would need three witnesses just to
25 touch on those issues, but I think much of it can be

1 stipulated to. So I think the testimony would be
2 fairly streamlined.

3 We'd be happy to submit written
4 testimony, which we think would also curtail time
5 on the stand and make cross more efficient. And then
6 also, we're happy to have a hearing as soon as
7 possible.

8 Another point that you brought up, Mr.
9 Chair, was whether the parties had yet conferred or
10 attempted to meet resolution -- make resolution. The
11 fact is, not yet. I can say for my client that
12 they're open to it. They're hoping to engage
13 discussions.

14 I think we need to get the stay issue
15 out of the way first before -- before we engage in
16 discussions. But I can say that I believe that at
17 least for Marathon's part, there's opportunity for
18 discussions of potential resolution.

19 CHAIR CHANG: Mr. Holliday.

20 MR. HOLLIDAY: I'll agree with some of
21 what Mr. Rankin said. Do we -- we have conferred on a
22 high level. Powderhorn is willing to take efforts to
23 streamline issues at the hearing, at the de novo, that
24 that perhaps we can agree to.

25 I would push back a little bit on the

1 idea that it could be conducted in one day. I think,
2 I mean, this is a full-blown de novo hearing. We're
3 going to want to present all our evidence and all our
4 nonstipulated evidence and witnesses and things like
5 that.

6 So I just, I want to push back on
7 expectations there a little bit.

8 The second is the -- we feel that the
9 negotiation posture in this case, from Powderhorn's
10 perspective, they've made multiple offers, somewhere
11 in the neighborhood of north of 15 offers, and there
12 hasn't been a single counteroffer. So we have made --
13 I think we've exhausted what we're willing to offer.

14 Our request would be that -- and this
15 is a matter, I know, for Mr. Rankin and I to talk
16 about. Our request would be let us know what's in the
17 ballpark of acceptable, and then we can work with
18 that, because from Powderhorn's perspective, a lot of
19 things have been proffered and nothing has been -- we
20 haven't received any feedback other than no.

21 So I think there is a willing to neg
22 -- negotiate willingness to negotiate. I appreciate
23 Mr. Rankin and Marathon's willingness to do this on a
24 tight timeline.

25 Happy to answer any questions if you

1 have more.

2 CHAIR CHANG: Fair enough. So from
3 the commission's perspective -- I'll just speak for
4 myself, but I think Commissioner Ampomah will agree
5 with me, that from our perspective, the more that you
6 guys -- the parties can resolve the issues, the
7 happier the commission is with
8 everybody, and the less likely the commission is being
9 put in the position of making everybody unhappy.

10 So certainly we -- whatever we can do
11 to encourage your respective clients to -- to talk to
12 each other and try to be -- and try to resolve these
13 issues on -- on their own without the commission's
14 intervention, we certainly will be happy to do
15 whatever we can to encourage that. Number one.

16 Number two. I hear you on the -- on
17 the fact that you may want to -- a de novo, you're
18 correct, as, you know, it formally wipes away the
19 original underlying hearing and sort of requires --
20 but the more that you're -- you're -- the parties are
21 willing to stipulate to the existing underlying record
22 and simply import that as the factual record to the
23 commission so that we can treat this more like a
24 record review, with less new evidence, the faster we
25 can get -- we can get you on the books for a hearing.

1 Right? So the faster we can help your
2 client get resolution on this and get finality on
3 this. So I would encourage, if a witness has already
4 stip -- has already testified at the -- at the
5 division level, to see how however much of that
6 testimony that the parties can stipulate to
7 simply adopt.

8 Especially since -- again, speaking
9 only for myself. I don't know that this is a formal
10 position of the commission, but a witness's prior
11 inconsistent testimony could be used for impeachment.
12 So it would seem to me like there is some benefit to
13 adopting what they've already said as opposed to
14 creating -- creating an additional record.

15 So that said, I know the facts can
16 change and things like parties, ownership facts -- or
17 underlying facts may have changed since the division
18 case. So if you need to put new factual evidence into
19 the record, that's certainly -- certainly allowable.

20 So, okay. I know Mr. Rankin has said
21 he's got hopefully three or less witnesses that he's
22 thinking about presenting.

23 Do you have a -- Mr. Holliday, do you
24 have a sense of how many witnesses you might need?

25 MR. HOLLIDAY: I would assume we would

1 have the same three --

2 CHAIR CHANG: Okay.

3 MR. HOLLIDAY: -- at the hearing.

4 Yes, sir.

5 CHAIR CHANG: Okay. Commissioner
6 Ampomah, do you want to -- do you -- you ready to have
7 an opinion on the stay and/or the -- or any other
8 issues related to how we want to organize this
9 hearing?

10 COMMISSIONER AMPOMAH: Yes, Mr. Chair,
11 I do have opinion, and it still goes back to the fact
12 that, let's say Paul Hahn is saying that -- Paul Hahn
13 is saying that Marathon will not prevail, let's say,
14 even in the de novo. Right. So I want to see the
15 evidence as to why they believe that Marathon will not
16 prevail even in the de novo.

17 So with that, I am leaning towards
18 more or less granting the stay to know whether they
19 meet all the four, you know, during the -- the de novo
20 hearing.

21 Other than that, we more or less miss
22 the opportunity to also listen to their portion of the
23 situation. So I'm leaning towards granting the stay,
24 pending the discussions with the -- pending the de
25 novo hearing, and I'm open to also discuss -- and if

1 we want to make it more narrow to minimize the impact,
2 I'm hoping to that as well.

3 Thank you.

4 CHAIR CHANG: I feel -- yeah. Okay.
5 So I think we're all on the same page of trying to --
6 to minimize the -- to grant some sort -- so to
7 minimize potential harm to -- to both potential --
8 both litigants here, I think we're going to grant a
9 very -- we're going to grant as limited of a stay as
10 possible to preserve as much of -- of Powderhorn's
11 ability to keep -- keep -- to prevent as much impacts
12 to Powderhorn as possible by the -- by the de novo
13 proceedings.

14 And we are also -- but we're also
15 going to see if we can provide a very -- some sort of
16 narrow scope of a stay so that we also don't create an
17 unwindable mess to the extent possible for -- for I
18 want to say Goodnight, but it's not Goodnight --
19 Marathon.

20 Okay. I think that will take a little
21 bit of wordsmithing and thinking on my part. So I
22 don't know that I have anything to announce right
23 away, but I will run a draft past my fellow
24 commissioners and we'll take -- or, go ahead.

25 MR. RANKIN: If I may, Mr. Chair and

1 commission -- Commissioner Ampomah. Just to address
2 that point.

3 As we stated in the briefing, and I'll
4 say here again, that, you know, the point of this de
5 novo is to protect Marathon's interests in its JOA,
6 which is limited to the north half of Section 2. We
7 have no dispute and no basis to contend that
8 Powderhorn doesn't have the right or ability to go
9 forward with development elsewhere on those tracts.

10 And as based on their own
11 representations, they have 100 percent of the interest
12 and control on those tracts, and if that's the
13 case, and they should be and probably -- and could
14 under voluntary agreement proceed with that -- that
15 work towards that acreage, even in the event they lose
16 at de novo.

17 The work that they've done would not
18 be in vain, would go towards the development and
19 drilling of those tracks. And so, again, that weighs
20 against their harms. But that is the kind of thing
21 that I think is appropriate here.

22 We just don't want to have anything
23 that would impair Marathon's ability to develop its
24 own acreage at this point, and ask that in terms of a
25 narrow stay, it just preserve the status quo as to the

1 north half of Section 2.

2 CHAIR CHANG: I will -- thank you.
3 And I will do my best to draft it as geographically,
4 temporally, and specific activity wise. I'll draft
5 something as narrow as I think the commission -- and
6 the commission takes that -- takes both your points
7 that we're trying to be as careful as possible to
8 prevent -- or to minimize impacts to both to -- to
9 both parties.

10 And I am happy to commit to working
11 with our commission clerk and respective counsels to
12 try to get the de novo hearing -- to get to the actual
13 hearing on the merits of the de novo as quickly as
14 possible. Our docket is a little full, but I'm sure
15 we can find some way to make that happen sooner rather
16 than later for all parties.

17 Go ahead.

18 MR. RANKIN: On that point, Mr. Chair,
19 shall the parties confer with commission clerk to
20 determine potential available dates after this
21 hearing?

22 CHAIR CHANG: Yes. I think that might
23 be the best way to go about it since -- yeah, that
24 that's probably the best way to go about it.

25 And I, again, once again, encourage

1 both parties to try to settle. You know, even if you
2 don't settle all of the issues, if there's any -- I
3 know a lot of this is legal. So it is what it is.

4 But the more that you guys are even
5 able to agree to stipulate on any factual issues,
6 anything that can help us min -- it's just eas --
7 putting it out there that it's easier to calendar a
8 one-day hearing for the commission than it is to try
9 to calendar a three-day hearing. Right. Just trying
10 to find three days on the calendars of all three of
11 our members is more challenging than one.

12 So the more, the better, and I think
13 the commission highly encourages the parties to at
14 least meet and confer. And we'll do our best to also
15 schedule something as quickly as possible.

16 Okay. And with that, I think the -- I
17 have some general instructions on how to writ -- or
18 what to do about the stay. I'm going to draft up
19 something and then I'll send it around to the
20 commission and commission counsel to review.

21 But as of -- but for today's purposes,
22 we'll take the motion on this day under advisement.

23 Okay. Thank you all very much.

24 That concludes the cases in front of
25 US. Commissioners, are there any other business to

1 discuss, that you would like to discuss?

2 COMMISSIONER AMPOMAH: Not from my
3 side.

4 CHAIR CHANG: Commissioners -- thank
5 you to the parties -- is there any interest in going
6 into a closed session to discuss pending litigation
7 matters or would you prefer to wait with Commissioner
8 Bloom for that discussion?

9 COMMISSIONER AMPOMAH: Yeah. So that
10 was my attempts to discuss, but I'm not sure -- since
11 Commissioner Bloom is not here, I'm not sure. So I'm
12 just on the fence. I'm not sure. By the time too,
13 because our next meeting is going to be July 27th and
14 a all full week.

15 So even I'm -- I'm wondering if it's
16 possible we can squeeze some time in within that
17 to get Commissioner Bloom here so we can get into
18 close session to discuss that.

19 CHAIR CHANG: Okay.

20 COMMISSIONER AMPOMAH: If we have time
21 for that.

22 CHAIR CHANG: Okay. If that's -- any
23 objections from the commission counsel?

24 MR. SCHANDLER: No objection.

25 CHAIR CHANG: In that case, I think

1 I'll take the -- I agree with the advice. So I'm
2 going to ask our commissioner clerk to try to put a
3 special on our calendars as quickly as possible. When
4 Commissioner Bloom is -- all three of us are available
5 -- well, all four, with our commission counsel, so
6 that we can get a litigation update in closed session
7 with commission counsel.

8 And that we'll make a quick
9 announcement that the next -- the next meeting of the
10 OCC that's currently calendared is the special OCC
11 meeting on July 27th, 2026.

12 And with that, I'll take a motion to
13 adjourn.

14 COMMISSIONER AMPOMAH: I move that our
15 meeting gets to a close.

16 CHAIR CHANG: Thank you. I will
17 second that. And without objection, hearing no
18 objection, we're adjourned.

19 Thank you all very much.

20 (Proceedings concluded.)

21 (END OF TRANSCRIPTION)

22

23

24

25

TRANSCRIPTION CERTIFICATE

I, CHERYL J. HAMMER, the undersigned
Registered Professional Reporter, do hereby certify:

That the foregoing transcript was
transcribed under my direction; that the transcript is
true and accurate to the best of my knowledge and
ability to hear the audio; that I am not a relative or
employee of any attorney or counsel employed by the
parties hereto; nor am I financially interested in the
event of the cause.

WITNESS MY HAND this 30th day of JULY 2026.



CHERYL J. HAMMER, RPR

Certified Court Reporter

Washington CCR No. 2512

New Mexico CCR No. 640

Oregon CCR No. 21-0013

Utah CCR 126919357-7801

Cheryl.Hammer.CourtReporter@Frontier.com

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New Mexico Rules of Civil Procedure for the
District Courts

Article 5, Rule 1-030

(e) Review by Witness; Changes; Signing.

If requested by the deponent or a party before completion of the deposition, the deponent shall have thirty (30) days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Subparagraph (1) of Paragraph F of this rule whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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