

STATE OF NEW MEXICO
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTTTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

Application of Titus Oil & Gas
Production, LLC, for Approval of
Production Allocation,
Lea County, New Mexico

Case No. 21872

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SPECIAL MEETING OF THE OIL CONSERVATION COMMISSION
TUESDAY, SEPTEMBER 28, 2021

This matter came on for hearing before the
New Mexico Oil Conservation Commission, on Tuesday,
September 28, 2021, via Webex Virtual Conferencing
Platform hosted by the New Mexico Department of
Energy, Minerals and Natural Resources

PRESENT:

ADRIENNE SANDOVAL:	COMMISSION CHAIR
ESTEVAN BACA:	COMMISSIONER, NM SLO
TERRY WARNELL:	COMMISSIONER
CHRISTOPHER MOANDER:	LEGAL COUNSEL

Reported by: Mary Therese Macfarlane.
New Mexico CCR #122
PAUL BACA PROFESSIONAL COURT REPORTERS
500 Fourth Street NW, Suite 105
Albuquerque, New Mexico 87102
(505) 843-9241

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A P P E A R A N C E S

FOR TITUS OIL & GAS PRODUCTION:

Sharon T. Shaheen, Esq.
Montgomery & Andrews
325 Paseo de Peralta.
Santa Fe NM 87501.
(505) 986-2678.
sshahen@montand.com.

FOR NM OIL AND GAS DIVISION:

Jesse K. Tremaine, Esq.
Assistant General Counsel,
NMEMNRD
1220 St. Francis Drive
Santa Fe, NM 87505
(575) 741-1231
jessek.tremaine@state.nm.us

FOR EOG:

Michael Feldewert, Esq.
Holland & Hart
110 North Guadalupe, Suite 1
Santa Fe, New Mexico 87501
(505) 988-4421
mfeldewert@hollandhart.com

FOR PEGASUS

Michael Rodriguez Esq.
Hinkle Shanor, LLP
P.O. Box 2068
Santa Fe, NM 87504-2068
(505) 982-4544.
mrodriguez@hinklelawfirm.com

FOR THE NEW MEXICO STATE LAND OFFICE:

Nicholas Koluncich, Esq.
New Mexico State Land Office
P.O. Box 1148
Santa Fe, NM 87504-1148
(505) 827-5756
nkoluncich@slo.state.nm.us

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1 (Time noted 9:28 a.m.)

2 COMMISSIONER SANDOVAL: Good morning, everybody.
3 Today is September 28, 2021. It is 9:28 a.m., and this is
4 a special meeting of the Oil Conservation Commission.

5 I'm Adrienne Sandoval. I'm Chair of the
6 Oil Conservation Commission and head of the Oil
7 Conservation Division. Also with me today are two other
8 commissioners.

9 Would you please introduce yourselves for
10 the record.

11 COMMISSIONER WARNELL: Yes. Good morning, Madam
12 Chair. Terry Warnell.

13 COMMISSIONER BACA: Good morning. Estevan Baca
14 with New Mexico State Land Office.

15 COMMISSIONER SANDOVAL: Thank you.

16 The first item on the agenda today is the
17 approval of the September 16, 2021 minutes.

18 Commissioners, is there a motion to approve the
19 September 16th minutes?

20 COMMISSIONER BACA: I move to approve the
21 minutes.

22 COMMISSIONER SANDOVAL: Is there a second?

23 COMMISSIONER WARNELL: Madam Chair, I second
24 that motion.

25 COMMISSIONER SANDOVAL: Mr. Moander, would you

1 please do a roll call vote.

2 MR. MOANDER: Absolutely, Madam Chair.

3 Commissioner Baca.

4 COMMISSIONER BACA: Yes.

5 MR. MOANDER: Commissioner Warnell.

6 COMMISSIONER BACA: Yes, approved.

7 COMMISSIONER SANDOVAL: Madam Chair.

8 COMMISSIONER SANDOVAL: Yes.

9 MR. MOANDER: The motion passes.

10 COMMISSIONER SANDOVAL: Thank you.

11 The next item on the agenda is approval of
12 the agenda. Commissioners, is there a motion to approve
13 today's agenda?

14 COMMISSIONER BACA: I move to approve the
15 agenda.

16 COMMISSIONER WARNELL: I second the motion.

17 COMMISSIONER SANDOVAL: Thank you. Mr. Moander,
18 would you do another roll call vote, please.

19 MR. MOANDER: Happily, Madam Chair.

20 Commissioner Baca.

21 COMMISSIONER BACA: Approved.

22 MR. MOANDER: Commissioner Warnell.

23 COMMISSIONER WARNELL: Yes.

24 MR. MOANDER: Madam Chair.

25 COMMISSIONER SANDOVAL: Approved.

1 MR. MOANDER: The motion carries.

2 COMMISSIONER SANDOVAL: Thank you.

3 All right. Moving to Agenda Item No. 4,
4 which is Case No. 21872, application of Titus for Approval
5 of Production Allocation.

6 All right. Before we get going on that,
7 let's see. I want to make sure we've got all the parties
8 here.

9 Ms. Shaheen, can you just do a quick sound
10 check.

11 MS. SHAHEEN: Good morning, Madam Chair,
12 Commissioners, Counsel. Sharon Shaheen on behalf of Titus
13 Oil & Gas Production.

14 COMMISSIONER SANDOVAL: Thank you.

15 Do we have the Division?

16 MR. TREMAINE: Good morning, Madam Chair. Jesse
17 Tremaine representing the Division.

18 COMMISSIONER SANDOVAL: Thank you. State Land
19 Office.

20 MR. KOLUNCICH: Good morning, Madam Chair.
21 Nicholas Koluncich on behalf of NMSLO.

22 COMMISSIONER SANDOVAL: Let's see.
23 Representative for EOG?

24 MR. RODRIGUEZ: Madam Chair, members of the
25 Commission, Michael Feldewert, the Santa Fe Office of

1 Holland & Hart on behalf of EOG.

2 COMMISSIONER SANDOVAL: Thank you.

3 Representative for Pegasus.

4 MR. RODRIGUEZ: Good morning, Madam Chair.

5 Michael Rodriguez representing Pegasus Resources, LLC,
6 Fortis Minerals II, LLC, and Santa Elena Minerals IV, LP,
7 collectively called Pegasus.

8 COMMISSIONER SANDOVAL: Thank you.

9 MR. RODRIGUEZ: Thank you.

10 COMMISSIONER SANDOVAL: All right. I think
11 that's everybody.

12 First I will open it up, and if any of the
13 parties would like to make a brief opening statement
14 before we then go into direct testimony.

15 Ms. Shaheen, would you like to make a brief
16 opening statement?

17 MS. SHAHEEN: Yes, if I may. I appreciate that.

18 COMMISSIONER SANDOVAL: Go ahead.

19 MS. SHAHEEN: As a threshold matter, I would
20 note that the Division is taking a position that Titus has
21 somehow created an accelerated timeline, and I just
22 wanted -- we are going to address that today.

23 Titus has been planning this development
24 for about that a year now, and first began conferring with
25 each of the agencies back in November of 2020. And

1 Mr. Jones will testify about that.

2 After conferring with all of the agencies
3 starting in November, the application was filed on April
4 6th, which will be six months ago. When the application
5 was filed, all of the interested parties, including the
6 agencies, received Notice, but only the Division entered
7 an appearance at that time. Of course subsequently the
8 State Land Office entered an appearance, and I believe
9 we've reached an agreement with the State Land Office, and
10 I'll let Mr. Koluncich address that.

11 Some important points about the Divisions's
12 position, because it does oppose the Application: The
13 Division does not take any issue with any of the technical
14 aspects of this well, so they have admitted that at their
15 Prehearing Statement on page 3. They do not dispute that
16 the proposed well will prevent waste, they don't dispute
17 it will protect correlative rights, they don't dispute
18 this well will have less environmental impact. The
19 Division only argues that it has a number of unspecified
20 fears about what might happen if this Application is
21 approved. This is notwithstanding the fact that Titus has
22 agreed that it will be required to comply with all New
23 Mexico regulations.

24 And of course any Order that the Division
25 or the Commission issues will require that compliance, as

1 well.

2 We believe the Division's concerns are more
3 about drilling from Texas into New Mexico. Titus does not
4 propose to drill from Texas into New Mexico. It only
5 proposes to drill this well and any other subsequent wells
6 related to this development plan, from New Mexico into
7 Texas, and this well will be subject to New Mexico
8 regulations.

9 There's nothing unique about this well.
10 There are other interstate wells. Granted they don't
11 include production on both sides, but we know of at least
12 one other well drilled in Texas and completed in New
13 Mexico where no Memorandum of Understanding or any type of
14 agreement was required there.

15 Today I'll be showing you that there's no
16 impediment to the Commission's approval of the
17 application. The Division (sic) has authority, we've
18 addressed that authority at page 7 of Titus' Prehearing
19 Statement, and there's a Section 70-2-6 of the Oil & Gas
20 Act, the delegated jurisdictional authority to the
21 Division and the Commission over all matters relating to
22 the conservation of oil and gas. The Commission is
23 empowered and obligated to prevent waste and to protect
24 correlative rights under Section 70-2-11.

25 Section 70-2-12 provides a broad list of

1 enumerated powers that enable the Commission to exercise
2 it's authority and jurisdiction that satisfy its
3 obligations under the Act.

4 For example, 70-2-12(B)(7) provides that
5 the Division makes Rules and Orders to require wells to be
6 drilled, operated and produced in a manner to prevent
7 injury to neighboring leases and properties, and in
8 Section 70-2-17(B) the Legislature provided that the
9 Division may establish proration units and in so doing
10 consider the economic loss caused by the drilling of
11 unnecessary wells, protection of correlative rights, the
12 prevention of waste, and the usual considerations of the
13 Commission.

14 Notice was proper to all parties that have
15 an interest, and we'll step through that briefly with Mr.
16 Jones.

17 This is a standard spacing unit where Titus
18 proposes to penetrate 40-acre tracts. It satisfies the
19 standard setbacks, except for the fact that the well will
20 cross interstate, as well. As noted, it will prevent
21 waste, protect correlative rights, minimize surface
22 disturbance and environmental impact.

23 If this proposed unit were wholly within
24 New Mexico we would have had no reason to seek approval
25 from the Division, other than approval for the application

1 for the permit to drill. It's a standard provision unit
2 with standard setbacks and voluntary agreement among all
3 the working interest owners.

4 Thank you for allowing me to make an
5 opening statement.

6 COMMISSIONER SANDOVAL: Thank you, Ms. Shaheen.

7 Mr. Tremaine, would you like to make an
8 opening statement for the Division?

9 MR. TREMAINE: Yes, Madam Chair.

10 Good morning, Madam Chair, Commissioners
11 and parties.

12 I want to make a few opening remarks to
13 kind of set the OCD's presentation in context.

14 The Division maintains several legal and
15 policy concerns regarding interstate wells, and what the
16 Division wants is the opportunity to negotiate an
17 interstate agreement with Texas focused on mutual intent
18 and process. Now, No. 1 highlights the difference in
19 regulations and policy, it doesn't benefit the agreement,
20 the parties to this case, the future of interstate
21 development which generally OCD is not opposed to --

22 (Note: Reporter interruption. Discussion off
23 the record.)

24 (Continued) New Mexico and Texas should agree
25 on rules for interstate development before the interstate

1 development occurs.

2 The interstate development, specifically
3 the commingling of resources obtained from both New Mexico
4 and Texas is novel. It's a new development. So a couple
5 of points: Titus has everything it needs to drill an
6 economic well in New Mexico.

7 We will be touching on the waste argument
8 presented by Titus. The Oil and Gas Act should not to be
9 construed to prohibit waste in Texas. That's not how
10 state rules, neither the Division or this Commission,
11 should be comprising (phonetic) New Mexico policy
12 regulations to accommodate prospective interests that are
13 (inaudible) hurdles in other states. When the states
14 agree to those ground rules that I previously mentioned
15 for interstate production, great. Before that, proceeding
16 without knowing what those ground rules are just
17 represents bad policy.

18 Titus' waste argument as it applies to
19 setbacks is overstated and strained. The setbacks exist
20 far a legitimate reason. This particular setback is
21 established in rules set after public hearing and
22 rulemaking. 100 feet was deliberately chosen to avoid
23 stranding acreage without impacting correlative rights
24 beyond a boundary. It's not waste. The 100-foot setback
25 is set for specific reason, and that's one of those

1 reasons: To avoid waste.

2 The other reason is to avoid impacting
3 correlative rights on the other side of the boundary.
4 Titus does not have a current legal right to drill across
5 New Mexico setbacks across the border into Texas. They
6 have known what their rights and permissions have been for
7 quite some time, but despite being told not yet by the
8 Division, Titus put a drill rig on the pad before they had
9 permission to drill into Texas. That is their choice.
10 That's not this Commission's problem, and (inaudible) not
11 a reason to expedite an agreement with Texas.

12 Titus is requesting the Division and now
13 the Commission for approval to start a novel project. I
14 want to stress that point, it should not be lost, no
15 matter of how forcefully Titus asks.

16 Titus' assurance that it will comply with
17 Mexico rules is irrelevant. Titus cannot commit Texas.
18 Texas has authority to regulate oil and gas and other
19 minerals in Texas, so OCD is reasonably concerned that
20 Texas may dispute the application of certain New Mexico
21 rules as to Texas minerals. And more on that later.

22 The precedential value which was
23 (inaudible) in submissionS by Titus is that the value is
24 important. OCD's concern is concrete specifics, and in
25 fact as evidenced by the filing in this case Titus and

1 Pegasus are already making precedential arguments in
2 support of their respective filings. They claim that OCD
3 did something analogous before in another situation and
4 therefore the Commission should approve their application
5 in this situation. That's significant. The suggestion
6 that the Commission could approve a well in New Mexico
7 that produces in Texas, but could deny a well that's in
8 Texas that produces in New Mexico is inherently
9 problematic. Likewise, the suggestion that MOU or any
10 other form of agreement should only address wells in New
11 Mexico to drill into Texas is a non-workable proposition.
12 I think that would be seen as one-sided and patently
13 unfair and subject to collateral legal attack.

14 OCD's concerns are not hypothetical. In
15 fact, I think they are projectable. So what happens when
16 Texas doesn't like the fact that their mineral resources
17 extracted through New Mexico are now subject to a gas
18 capture requirement?

19 Likewise, when there is a well in Texas
20 that extends into New Mexico, is OCD going to agree to a
21 structure that allows operators to circumvent those gas
22 capture requirements?

23 What happens when there is an inconsistency
24 in appropriation down (inaudible). How is that resolved?
25 What happens with problems on drilling a lateral, what an

1 agency takes the lead on that?

2 One of the issues -- what happens when one
3 of the agencies issues an approval with conditions which
4 on their face apply to the well which is located in the
5 other state? I'm pointing this out because it's already
6 happened.

7 What happens down the road when Titus or
8 another operator has an interstate well and the operator
9 goes bankrupt and OCD has to cap a well and remediate the
10 site? Who bears those costs?

11 Those are all examples of legitimate
12 projects. When they come up the parties will wish they
13 had an agreement ahead of time.

14 Lastly I want to say that the deadline for
15 an MOU is patently unreasonable. While the OCD will
16 accept and comply with any deadlines set by this
17 Commission, the (inaudible) deadline for an MOU is
18 completely unenforceable. OCD cannot (inaudible) contrary
19 attempts, because that can impact the quality and the
20 content of an agreement, and OCD wants an agreement,
21 development under an agreement to benefit both states.

22 Titus is focused on production allocation
23 as the only question before the Commission. It is
24 incorrect. That's at best too narrow focused and at worst
25 it's obtuse. The only reason that would be before the

1 Commission is it's the only thing that Titus wants the
2 Commission to look at, and that is the only question they
3 have asked. The Division is asking the Commission to
4 consider other significant concerns that the Division is
5 bringing forward.

6 OCD does not believe that an agreement has
7 to address every outcome but it needs to be in place
8 before the reasonably foreseeable disputes come up.

9 In sum, OCD is generally in favor of
10 interstate agreements but it needs the opportunity to
11 develop that agreement in advance of interstate
12 development so that it's not left figuring out complex
13 interstate policy and how these two particular agencies
14 that have not worked together before share jurisdiction
15 over interstate wells, the commingling of mineral
16 resources on the fly.

17 Thank you.

18 COMMISSIONER SANDOVAL: Okay. Thank you, Mr.
19 Tremaine.

20 Mr. Koluncich, would you like to make a
21 brief opening statement for the State Land Office?

22 MR. KOLUNCICH: Yes, I would. Thank you very
23 much.

24 Good morning, Madam Chair, Commissioners.
25 Nicholas Koluncich on behalf of SLO.

1 After discussions with counsel for Titus
2 the New Mexico State Land office can stipulate to remove
3 its opposition and take no perspective on the Application
4 if we can make a record of Titus' approval and OCD orders
5 certain conditions -- certain conditions of approval for
6 the Application.

7 To be clear, this is a one-off singular
8 agreement in light of time and practical realities of this
9 New Mexico project and to optimize efficiencies with
10 drilling. We do not stipulate to this being some sort of
11 precedent that would be allowed in future cases.

12 There appears to be unanimous agreement
13 that the State of New Mexico has to be adequately
14 represented before the Texas RRC, including New Mexico
15 State Land Office. Similarly put in our submission before
16 the court -- forgive me reading. I'll try to do it
17 slowly.

18 (Reading) Wishing to ensure adequately
19 mutually satisfactory oversight while allowing the
20 application to proceed subject to OCC approval, parties --
21 NMSLO can stipulate and agree that in exchange for the New
22 Mexico State Land Office withdrawing its opposition to
23 Titus' Application, Titus should agree to support
24 regulatory authority by New Mexico and stipulate to the
25 following conditions of approval before both the NMOCC and

1 the Texas RRC:

2 First off, that New Mexico has to be
3 involved in any JOA or MOU that is reached with the Texas
4 Railroad Commission.

5 Allocation of revenues in proportion to
6 surface areas.

7 Reporting of production amounts and
8 revenues.

9 Financial assurance: Maturity Bonds,
10 Letters of Credit, Cash Bonds, et cetera.

11 Permitting of this and related future
12 operations, environmental issues such as regulatory
13 compliance in this instance, specifically venting and
14 flaring, as governed by New Mexico rules.

15 Adequate notice to stakeholders and
16 parties.

17 Inspection of operations and lands,
18 including abandonment.

19 Jurisdiction over all controversies in the
20 New Mexico administrative and judicial forums. Compliance
21 with all regulatory and environmental compliance between
22 the two states under New Mexico law.

23 Titus will agree to argue and support an
24 MOU substantially in conformity with a Draft MOU which
25 we've submitted.

1 Titus will stipulate to agree to present
2 this position before the OCC and the Texas RRC subject to,
3 obviously, approval of an Order from this body.

4 Under these circumstances the NMSLO would
5 not be endorsing the project but withdrawing our
6 opposition.

7 If I was sloppy or incorrect in any of that
8 language, I would welcome a correction from Titus counsel.

9 MR. MOANDER: This is chris Moander, counsel for
10 the Commission.

11 Just to make sure I'm understanding sort of
12 the sourcing of this, it sounds like you reiterated a list
13 from page 3 of SLO's response to other Prehearing
14 Statements. Is that fair and accurate?

15 MR. KOLUNCICH: Very simple. That makes it easy
16 for everyone to see it.

17 MR. MOANDER: Thank you.

18 MR. KOLUNCICH: Thank you.

19 COMMISSIONER SANDOVAL: Thank you.

20 Mr. Feldewert, would you like to make an
21 opening statement?

22 MR. FELDEWERT: Madam Chair, members of the
23 Commission, my statement is more as an explanation of why
24 EOG is present in this case; they actually own leases in
25 Texas to the southeast of Titus' tracts. And so to my

1 knowledge Titus is not engaged with EOG in a discussion on
2 how to develop that acreage along the state border, so
3 that's the reason that EOG is here today, as in interested
4 party in this particular matter.

5 COMMISSIONER SANDOVAL: Thank you,
6 Mr. Feldewert.

7 Mr. Rodriguez.

8 MR. RODRIGUEZ: Yes. Good morning, Madam Chair,
9 members of the Commission and Counsel.

10 I have a short opening statement I would
11 like to present.

12 COMMISSIONER SANDOVAL: Okay.

13 MR. RODRIGUEZ: Thank you. Pegasus, LLC, is a
14 party of record and does have an interest in Title's
15 proposed spacing units, and supports Titus in this matter.
16 Pegasus submitted a brief in support of Titus Application
17 to the Division on September 21, 2021, and included a
18 Prehearing Statement which was submitted on September 24,
19 2021. This set forth Pegasus' position in this matter.

20 I would like to point the Commission to a
21 clarification regarding Pegasus' response to the
22 Division's Prehearing Statement.

23 As to the statement made in paragraph 3 of
24 page 1 regarding OCD-approved wells to drill from New
25 Mexico to Texas, it is Pegasus' understanding that wells

1 have been also drilled from New Mexico to other states,
2 which include Colorado, but that we do not have specific
3 information from wells drilled from New Mexico into Texas.

4 With that Pegasus requests the OCC address
5 Pegasus' brief on the matter and approve Titus'
6 application.

7 Thank you.

8 COMMISSIONER SANDOVAL: Thank you.

9 All right. Ms. Shaheen, would you like to
10 call your first witness?

11 MS. SHAHEEN: Yes. Thank you.

12 Mr. Walter Jones is present. He's the
13 landman for Titus. We also have available for
14 cross-examination Mr. Frierson and Mr. Hickey, a geologist
15 and engineer respectively.

16 My plan today was to walk through the
17 testimony, summarizing the testimony that was presented
18 before the Division with Mr. Jones, and also walk through
19 the rebuttal exhibits that we have.

20 Because the Division had not previously
21 challenged the technical aspects I didn't think it would
22 necessarily be helpful for us to walk through the
23 geologist's testimony or the engineer's testimony, but I
24 think we can facilitate that if you would like.

25 So I would ask that Mr. Jones be sworn in.

1 COMMISSION CHAIR SANDOVAL: Proceed, Ms.
2 Shaheen.

3 MS. SHAHEEN: Thank you.

4 COMMISSIONER SANDOVAL: Ms. Shaheen, would you
5 like to call your first witness?

6 MS. SHAHEEN: Yes. Thank you.

7 Mr. Walter Jones is present. He's the
8 landman for Titus. We also have available for
9 cross-examination Mr. Frierson and Mr. Hickey, a geologist
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12 testimony summarizing the testimony that was presented
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14 the rebuttal exhibits that we have.

15 Because the Division had not previously
16 challenged the technical aspects I didn't think it would
17 necessarily be helpful for us to walk through the
18 geologist's testimony or the engineer's testimony, but I
19 think we can facilitate that if you would like.

20 So I would ask that Mr. Jones be sworn in.

21 COMMISSIONER SANDOVAL: Proceed, Ms.
22 Shaheen.

23 MS. SHAHEEN: Thank you.

24 WALTER JONES,
25 having been duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MS. SHAHEEN:

Q. Good morning, Mr. Jones. I'd like to start with the rebuttal exhibits that were submitted with the Titus Response to the Oil Conservation Division's Prehearing Statement. Do you have that available in front of you?

A. I do.

Q. And I'm hoping everyone else does, as well.

The materials that have been submitted are somewhat voluminous, and what I have done is I've tried to identify the .pdf pages to everything we are going to be looking at today, and I'll try to point you to that .pdf page.

So if everyone has the Response, Titus' Response to OCD's Prehearing Statement, those are the exhibits that we will be taking a look at now.

MR. TREMAINE: Madam Chair, I need to object to production of the exhibits which were filed three days after the Response deadline, but if the Commission wishes to proceed and discuss the exhibits, I will not persist in that objection.

MS. SHAHEEN: And I'm happy to respond if that would be helpful for the Commission.

COMMISSIONER SANDOVAL: Go ahead.

MS. SHAHEEN: These are rebuttal exhibits and

1 they are rebutting arguments made by the Division in their
2 filing on Tuesday, I believe that was September 21st.
3 They are submitted along with our Response to that
4 Prehearing Statement, and as a result under the Rules of
5 Civil Procedure which are ordinarily used in Commission
6 and Division hearings, the rebuttal exhibits are timely.

7 And, as everyone knows, we don't have a
8 jury here so I don't believe that anyone will be
9 prejudiced by misunderstanding the fact that these are
10 rebuttal exhibits.

11 COMMISSIONER SANDOVAL: Since they are rebuttal
12 exhibits they can be added to the record.

13 Your objection is noted, Mr. Tremaine, but
14 I think we can proceed.

15 I guess I'll ask the other parties: Are
16 there any other objections to these exhibits being entered
17 into the record?

18 MR. MOANDER: Madam Chair, something else to
19 keep in mind, as I understand it. I'm only seeing one
20 exhibit attached to the Response, but if they were
21 attached as exhibits to the pleading, I know -- that's
22 generally already part of the record at this point because
23 it's where the company has a filing.

24 So unless there's additional challenges to,
25 like, foundation, I don't see an issue.

1 COMMISSIONER SANDOVAL: Are there any other
2 objections from the other parties? (Note: No response.)

3 How about any of the commissioners? (Note:
4 No response.)

5 Okay. And I think it was Exhibit A is
6 entered into the record.

7 MS. SHAHEEN: These are actually attached as
8 Rebuttal Exhibits 1 through 15.

9 COMMISSIONER SANDOVAL: All right. As to
10 Exhibits 1 through 15, they are entered into the record.

11 Mr. Moander, do we need a vote for that? I
12 can't recall.

13 MR. MOANDER: No, Madam Chair. This is an
14 evidentiary ruling so I don't believe a roll call vote is
15 required for that.

16 COMMISSIONER SANDOVAL: Thank you.

17 Okay. Go ahead and proceed, Ms. Shaheen.

18 MS. SHAHEEN: Thank you, Madam Chair.

19 **Q. Mr. Jones, can we start just by you telling the**
20 **Commissioners when Titus first began working on this**
21 **particular proposal.**

22 A. Sure. I believe, uhm, we originally started
23 having internal conversations in it was likely September
24 or October of 2020. And it was at that point that we
25 decided to pursue it, and so we started reaching out to

1 some of the involved parties just to start factfinding and
2 gathering information as to what it may look like to
3 pursue a project like this.

4 Q. Turning to Titus Rebuttal Exhibit 2, which is
5 .pdf 11 in the response to the OCD's Prehearing
6 Statement, --

7 A. Okay.

8 Q. -- this is an email chain between Ryan Delong
9 and Daniel Sanchez at the Division; is that correct?

10 A. That's correct.

11 Q. Can you explain to the Commissioners who Ryan
12 Delong is.

13 A. Ryan is our -- or is Titus', our company's -- he
14 is our regulatory manager.

15 Q. And you have spoken with Mr. Delong about the
16 exhibits and his emails; is that correct?

17 A. Yes.

18 Q. And later on we'll actually be reviewing some
19 emails on which you were copied, correct?

20 A. Yes.

21 Q. So taking a look at the email that's farthest
22 down on the page here, .pdf 11, what is the date of this
23 email?

24 A. November 10, 2020.

25 Q. And can you just explain briefly what the email

1 **is about.**

2 A. Yes. It's a follow-up to a phone call that Ryan
3 had with Mr. Sanchez just socializing some of the plans,
4 or the plan to drill across the New Mexico/Texas state
5 line. Then he also just followed up with kind of some
6 bullet -- not really bullet points but just some parts of
7 their conversation.

8 Q. **And then the email directly above that is dated**
9 **December 4, 2020. Do you see that?**

10 A. Yes.

11 Q. **And that again is from Mr. Delong to Mr.**
12 **Sanchez; is that right?**

13 A. That's correct.

14 Q. **And can you tell us the nature of this December**
15 **4th email between Mr. Delong and Mr. Sanchez.**

16 A. Yes. After the November conversation and then
17 follow-up email from Ryan to Mr. Sanchez, I do not believe
18 he heard anything back from Mr. Sanchez, so he reached out
19 with a follow-up email, copying his previous email, just
20 to try to get some feedback to the initial email.

21 Q. **And turning now to Rebuttal Exhibit 3, which is**
22 **.pdf 13.**

23 A. Yes.

24 Q. **This email is between Mr. Delong again, and**
25 **you're copied here, and he sends this email to Brandon**

1 **Powell of the Division; is that right?**

2 A. That's correct.

3 **Q. Can you just briefly tell us what this email**
4 **states to Mr. Powell.**

5 A. So he is following up on a voice mail that he
6 left with Mr. Powell. I believe that Mr. Sanchez in a
7 phone call said it would be best for Ryan to continue to
8 pursue this by reaching out to Mr. Powell, and so he
9 called and left a voice mail and then followed up with
10 this email, again with a summary of what the project is
11 and what we are asking -- what we are asking feedback from
12 the OCD for.

13 **Q. And that was January 5th of this year, correct?**

14 A. That's correct.

15 **Q. Turning now to Titus Rebuttal Exhibit 4, which**
16 **is .pdf 15 of the Response, this appears to be another**
17 **email between Mr. Delong and Mr. Powell. Do you see that?**

18 A. I do.

19 **Q. What is the date of this email?**

20 A. March 31st, 2021.

21 **Q. And what does Mr. Delong say to Mr. Powell on**
22 **this email?**

23 A. He's saying "I left you a few messages over the
24 past couple of days that I wanted to follow up with an
25 email of in hopes of finding a time to discuss our

1 multistate wells."

2 In particular he mentions a conversation
3 that he'd had with Mr. Paul Kautz at the OCD suggesting
4 that it may be a production allocation issue for OCD
5 review and approval.

6 Q. And turning now to Titus Rebuttal Exhibit 5,
7 which is .pdf 16, I see here another email between Mr.
8 Delong and Mr. Powell, from Mr. Delong to Mr. Powell, and
9 this one appears to be dated April 15, 2021. Do you see
10 that email?

11 A. I do.

12 Q. And just very briefly with this email, can you
13 summarize it for the commissioners?

14 A. Yes. It's a follow-up to a phone conversation
15 that -- between Mr. Delong and Mr. Powell just confirming
16 that Mr. Powell is reviewing the proposed interstate
17 lateral and that it would not have to go through the NSL
18 application but go through the NSPU application process,
19 which is Non Standard Proration Unit, an NSPU, instead of
20 a Non Standard Location, an NSL.

21 Q. This is the reason that Titus Noticed the
22 Application as if it were a Non Standard Proration Unit;
23 is that right?

24 A. That's correct.

25 Q. And Titus did ultimately file an application for

1 a non-standard location; is that right?

2 A. That's correct.

3 Q. And they did that in an abundance of caution
4 because a similar application had been made with the
5 Railroad Commission. Is that right?

6 A. That's correct.

7 Q. And that NSL application is currently pending --
8 pending a decision on this Application; is that correct?

9 A. Yes, that's correct.

10 Q. Turning to Titus Rebuttal Exhibit 6, this
11 appears to be an email that just has a memorandum --
12 memorializes some notes between Mr. Delong and Mr. Lorenzo
13 Garza. Do you see that?

14 A. Yes, I do.

15 Q. What is the date of these notes?

16 A. This is from November 10, 2020.

17 Q. Do you know who Lorenzo Garza is?

18 A. Yes. I'm not sure of his exact title but he
19 works with the Texas Railroad Commission. I believe he
20 is in their permitting department.

21 Q. So would it be fair to say these notes represent
22 or memorialize a conversation between Mr. Delong and Mr.
23 Garza, who is with the Texas Railroad Commission?

24 A. Yes.

25 Q. And so it appears from this that in early

1 November Titus had reached out to the Railroad Commission.

2 Is that right?

3 A. Yes, that's correct.

4 Q. We are going to skip now to Rebuttal Exhibit 12,
5 which is at .pdf 33. If you will turn to the end of that
6 exhibit, which is at .pdf page -- oops, I'm going to be
7 guessing here -- 33, 34, 35. I believe 36.

8 I'm on -- page 35 I believe that the header
9 begins.

10 A. Yes, I see it.

11 Q. The very bottom of the page there is a date of
12 this email from Mr. Delong. Do you see that?

13 A. Yes.

14 Q. And what is the date of this email?

15 A. This is January 11, 2021.

16 Q. And so going on to the next page this is an
17 email that Mr. Delong sends to Mr. Garza. Can you
18 summarize that email?

19 A. Yes. He's just updating Mr. Garza that Titus is
20 moving ahead with permitting the multistate lateral, that
21 all administrative parties have agreed in theory, and now
22 we've been asked to send sundries and permits so that we
23 can begin -- or they can begin working through the
24 necessary steps to permit the well.

25 He goes on to ask for some feedback as it

1 relates to the Railroad Commission.

2 Q. And so the remainder of this email chain is
3 about some logistics about filing with the Railroad
4 Commission, would you agree?

5 A. Yes.

6 Q. And just to kind of close the door here, taking
7 a look now at .pdf page 33, which is the first page of
8 Rebuttal Exhibit 12, do you see the email from Mr. Delong
9 to Mr. Garza dated February 22nd, 2021?

10 A. Yes, I do.

11 Q. Can you briefly summarize that email for the
12 commissioners.

13 A. Yes. He's just letting Mr. Garza know that he
14 has submitted the Railroad Commission drilling permit that
15 morning, that if there were any adjustments that Mr. Garza
16 could advise. This is obviously a new project on both
17 sides of the state line, so he's just looking for feedback
18 from Mr. Garza as to what he has submitted, and giving him
19 some additional information on how the well is planned to
20 be set up and the proration unit for the well.

21 Q. Turning now to Titus Rebuttal Exhibit 7, which
22 is at .pdf 18.

23 A. Okay.

24 Q. I'm looking at the beginning email there at the
25 bottom of the page, dated January 4, 2021. Do you see

1 **that?**

2 A. Yes.

3 **Q. And can you discuss who the parties to this**
4 **email are.**

5 A. Yes. This is from a BLM rep, Mustafa Haque, and
6 this is to myself and Ryan Delong with Titus, and he has
7 copied Kyle Paradis, who is with the Bureau of Land
8 Management, the BLM as, well as Christopher Walls with the
9 BLM.

10 **Q. Could you summarize that email from Mr. Haque --**

11 A. Yes. It's -- sorry. Go ahead.

12 **Q. -- dated January 4th.**

13 A. Yes. Mr. Haque is following up and just
14 summarizing the conversation that we had had that previous
15 week on the telephone call, talking about the BLM moving
16 forward to communitize agreements between states, and
17 giving us some just further action items such as
18 contacting the NMOCD the NMSLO, the Carlsbad field office,
19 and ONRR, which is the federal government's
20 royalty payment recipient.

21 **Q. And then the email above, dated a day later, Mr.**
22 **Delong follows up on this email; is that right?**

23 A. That's correct.

24 **Q. And in that follow-up he's just thanking**
25 **Mr. Paradis for his help and making it clear that we are**

1 looking forward to working with the BLM to clear hurdles
2 that need to be cleared in order to proceed with the
3 project, and at this time mentions an April, 2020, spud
4 date that we have obviously -- excuse me, that actually
5 should be April, 2021. That is a typo in the email.

6 But we did end up pushing, obviously, a
7 spud date in order to try to continue working through
8 these issues.

9 Q. And were you required to get an extension for
10 the state lease to go past that spud date?

11 A. Yes, we were.

12 Q. Uhm, speaking of the state lease, can we turn
13 now to Titus Rebuttal Exhibit 10, and that would be at
14 .pdf page 24.

15 A. Yes.

16 Q. Taking a look at the second page of Exhibit 10.
17 And this appears to be an email with Ms. Khalsa at
18 the State Land Office dated January 13th; is that right?

19 A. Yes.

20 Q. This represents at least one of the initial
21 emails between Titus and the State Land Office about this
22 project; is that correct?

23 A. Yes, that's correct.

24 Did you tell me to walk through it?

25 Q. You know, I'm looking. There's another email

1 that has more of an email chain in it that's related, and
2 I'm just looking at my notes here.

3 I believe we should turn now to -- wait a
4 minute -- Rebuttal Exhibit 11. And go one, two, three,
5 four pages -- actually five pages into that, so we're
6 looking at .pdf 30, .pdf 31. At the bottom of page
7 .pdf 30 this appears to be an email between Kenda Montoya
8 at the State Land Office and Mr. Delong. Do you see that?

9 A. I do.

10 Q. So Mr. Delong has not reached out only to Ms.
11 Khalsa but also reaches out to Ms. Montoya. And this is
12 on January 14th, correct?

13 A. That's correct.

14 Q. And then going kind of backwards through the
15 exhibit here, there's additional emails between Ms.
16 Montoya, Ms. Khalsa, and Mr. Delong. And I believe you're
17 on some of these, as well. Do you see those emails?

18 A. Yes, I do.

19 Q. And then the bottom of .pdf page 29 there is an
20 email dated January 21st where Mr. Delong informs Ms.
21 Montoya that he's spoken with the Division, in particular
22 with Paul Kautz, with respect to this project. Is that
23 right?

24 A. That is correct.

25 Q. Then in addition he asks for a lease extension

1 on February 1st on .pdf page 27. This is from you to
2 Ms. Montoya. Could you please summarize that email for
3 the commissioners.

4 A. Yes. So Ms. Montoya in her previous email on
5 Monday -- on February 1st, 2021, just asked for
6 clarification on our request for an extension of the
7 lease, and so I responded that -- an update as to why we
8 were requesting an extension, and reiterated that we were
9 preparing to drill the lease in April of 2021 and ended up
10 needing to delay that process in order to get our
11 regulatory approvals, and that was the reason for
12 requesting the 90-day extension.

13 Q. Turning now to Titus Rebuttal Exhibit 13.

14 A. Right.

15 Q. This is an additional communication with Mr.
16 Garza at the Railroad Commission. These are dated
17 sometime in March of this year. Do you see those?

18 A. I do.

19 Q. As I understand it, Mr. Delong had spoken with
20 Mr. Garza about someone who had previously represented the
21 Division with respect to communications with the Railroad
22 Commission. Do you see that?

23 A. Yes. In the March 23rd email.

24 Q. And that person, who was that person who had
25 previously communicated with the Railroad Commission about

1 interstate wells?

2 A. Scott Dawson.

3 Q. And turning to Titus Rebuttal Exhibit 14, that's
4 an email dated January 5th from Mr. Delong to Scott
5 Dawson, who now appears to be at the State Land Office.
6 Do you see that?

7 A. Yes.

8 Q. And could you just summarize that email for the
9 commissioners, as well.

10 A. Yes. So after a conversation that we had with
11 Mr. Mustafa Haque with the BLM, he suggested that we reach
12 out to State Land Office, and in particular reach out to
13 Mr. Dawson so that we could begin discussions with the
14 State Land Office as to how best to proceed with our plans
15 on drilling across the state line.

16 Q. So to summarize communications that Titus has
17 had with the interested agencies here, Titus began
18 communicating in the first part of November, November 10th
19 at the latest, with both the Division and with the
20 Railroad Commission; is that right?

21 A. Yes.

22 Q. Subsequently it appears that no later than the
23 first part of January of this year Titus began conferring
24 with the Bureau of Land Management and with the State Land
25 Office. Is that accurate?

1 A. Yes.

2 Q. And just to make sure we've completed our review
3 here of all the exhibits, this is a slightly different
4 exhibit, Rebuttal Exhibit 15.

5 Can you explain to the commissioners what
6 Rebuttal Exhibit 15 is.

7 A. This is an example of a Memorandum of
8 Understanding or MOU between Louisiana, the Louisiana DNR
9 Office of Conservation and the Railroad Commission of
10 Texas. It was sent to us as an example of something that
11 has been put in place between the State of Texas and
12 another state pertaining to wells in multiple states.

13 Q. It's your understanding that the Railroad
14 Commission, or at least counsel for the Railroad
15 Commission understood that we would be entering into a
16 similar type of MOU with respect to the proposed well
17 here, the El Campeon 404H well; is that right?

18 A. Yes.

19 Q. Let's turn now to the exhibit package and the
20 testimony that was presented before the Division. This is
21 Tab 9 of Part 1 of 2, which was previously submitted to
22 the Commission in the exhibit packages, and it is on .pdf
23 page 61.

24 And here, Commissioners, I don't want to
25 spend a whole lot of time on this but I thought it would

1 be helpful for us to just to go through the basics here of
2 what Titus is proposing.

3 So I would start by having Mr. Jones turn
4 to page .pdf 68 that was submitted to the Division prior
5 to his testimony at hearing on this matter.

6 We will be looking at Exhibits A-1 through
7 A-7 that are attached to his affidavit.

8 So to begin let's turn to your affidavit,
9 Mr. Jones, at paragraph 5, and just describe to the
10 Division what has been proposed here.

11 A. So we have requested approval underlying -- to
12 produce from the Wolfcamp Formation underlying the east
13 half of the east half of Section 29, and the northeast of
14 the northeast quarter and Lot 1 of an irregular Section 32
15 in 26 South, Range 35 East, of Lea County, New Mexico.

16 Yeah, so we've requested approval of that
17 proration unit.

18 Q. And the surface hole location, the bottomhole
19 location, the first take point and the last take point are
20 all within standard setbacks as set forth in New Mexico
21 regulations, correct?

22 A. Correct.

23 Q. And that's evidenced in paragraphs 8, 9, and 10,
24 I believe, of your affidavit.

25 And then paragraph 13 references the

1 approval, the Request for Approval of a Non Standard
2 Location here.

3 Can you tell the commissioners who the
4 working interest owners are in this proposed spacing unit.

5 A. On the New Mexico side it's 100 percent Titus,
6 and on the Texas side it's 100 percent OXY, or Occidental.

7 Q. And you have a Joint Operating Agreement with
8 OXY; is that right?

9 A. That's correct.

10 Q. Turning now to your exhibits here, we're looking
11 at .pdf page -- we will start with .pdf page 75. Just, if
12 you don't mind, just briefly walk through these and inform
13 the commissioners of the significance of each of these
14 exhibits, starting with Exhibit A-1.

15 A. Exhibit A-1 is just a general location map
16 showing very broadly where the project is located. So you
17 can see it's in the far southern portion of Lea County and
18 obviously very near the state line.

19 Exhibit A-2 is our breakdown of the working
20 interest owners by lease or tract in the proposed
21 proration unit. As you can see, Titus Oil & Gas has 100
22 percent of the New Mexico working interest and OXY USA,
23 Inc. has 100 percent of the working interest in Texas.

24 Exhibit A-3 is a blended unit ownership, so
25 blended amongst the entire proration unit. It shows Titus

1 Oil & Gas to have a working interest of 82.16 percent and
2 OXY to have 17.39 percent in the proposed unit.

3 And then it also lists the wells -- I'm
4 sorry, not wells, the lease information. So it's BLM NM
5 125,400, State of New Mexico VB-2563.

6 And then there are fee minerals subject to
7 a few leases in Texas.

8 Then Exhibit A-4 is just -- it outlines the
9 contract area, the working interests of the parties, and
10 further oil and gas lease information.

11 Exhibit A-5 is a Proposed or a Draft C-102
12 for the project.

13 **Q. And I'm going to interrupt you here, Mr. Jones,**
14 **before we go on to the Notice Letter.**

15 **And Madam Chair, if any of the**
16 **commissioners have any questions at any time, if it be**
17 **more expeditious for them to ask them as we go along if**
18 **you would like; if not, we will just plug along and**
19 **hopefully won't become too robotic for Ms. Macfarlane.**

20 COMMISSIONER SANDOVAL: I think we will hold our
21 questions to the end.

22 MS. SHAHEEN: Thank you.

23 **Q. Turning now to Exhibit A-6, Mr. Jones, this**
24 **appears to be a Notice Letter that I sent out with the**
25 **application. Is that correct?**

1 A. Yes. Sorry. Let me pull up my -- I don't know
2 that I printed this out.

3 Q. Yeah. Now we are on .pdf page 80.

4 And really I want to be looking at .pdf
5 page 82, which is the exhibit with those folks who were
6 notified.

7 A. Okay.

8 Q. All right. Almost there.

9 A. Okay. Yes. Sorry. I'm there.

10 Q. So Exhibit A to the Notice Letter is on .pdf
11 page 82. Is it correct that we've notified all of the
12 agencies who have an interest in this application?

13 A. Yes, I believe so.

14 Q. Can you identify them for the commissioners just
15 for the record.

16 A. Yes. In addition to Occidental as the working
17 interest party there is the Texas Comptroller of Public
18 Accounts, the Railroad Commission of Texas, the Bureau of
19 Land Management, the State Land Office of New Mexico, the
20 New Mexico Taxation and Revenue Department.

21 I believe that's it.

22 Q. And attached further in the -- in your exhibit
23 are green cards indicating that they all received Notice,
24 correct?

25 A. That's correct.

1 Q. And the only agency who entered an appearance in
2 the matter was the Division; is that right?

3 A. Yes.

4 Q. Until recently when the State Land Office
5 entered its appearance.

6 And then turning now to the next exhibit,
7 which is Exhibit A-7, .pdf page, I believe, 83, .pdf pages
8 83 and for quite a while here, I don't have the final
9 numbered .pdf page, but these are all exhibits that were
10 submitted to the Railroad Commission; is that right?

11 A. That's correct.

12 Q. And we've summarized in Titus' filings in this
13 matter the process that Titus went through with the Texas
14 Railroad Commission, and we'll turn shortly to the status
15 report on that, but is it your recollection, as well,
16 which is evident in these exhibits -- I don't want to walk
17 through each one of them, but the same agencies were
18 notified of the Railroad Commission hearing, is that
19 right?

20 A. That is correct.

21 Q. And did any of these agencies enter an
22 appearance in the Railroad Commission proceedings?

23 A. No, not to my knowledge.

24 Q. Let's turn now to page 17 in Part 2 of 2. This
25 is Applicant's Status Report and Request for Order of

1 **Approval, or, in the alternative, Referral to the**
2 **Commission that was filed on August 18 at .pdf page 106 of**
3 **Part 2 of 2.**

4 **And let me know when you've found it.**

5 MR. MOANDER: Ms. Shaheen, let me make sure that
6 I have got the right document up.

7 Is this the document Supplemental Exhibit
8 A-9? That is the exhibit binder for -- am I wrong? Oh,
9 I know. I apologize. I've found it.

10 MS. SHAHEEN: Okay. But it does make me wonder
11 if I should have --

12 MR. MOANDER: Because I'm working largely on
13 digital documents, there's moments where it takes a second
14 to find the one I'm looking for. But I did find it, and
15 it's properly labeled. So my apologies.

16 MS. SHAHEEN: No worries. But it is helpful
17 that you pointed that out, because the Supplemental
18 Exhibit A-9 which is at .pdf page 3 in Part 2 of 2 is the
19 operating agreement that was executed with OXY.

20 **Q. Is that correct, Mr. Jones?**

21 A. Sorry, I was at the other page here.

22 **Q. Sorry, but I'm going -- if you will go right**
23 **back to the other page.**

24 A. Yes, That is the Operating Agreement that was
25 executed with OXY.

1 Q. And it's dated May 1, 2021; correct?

2 A. That's correct.

3 Q. Okay. So then in this status report which was
4 filed with the Division on August 18th of 2021, in Part 2
5 of 2, .pdf page 106, we provide the Division with an
6 update on the status of the operating agreement that we
7 just looked at, Supplemental Exhibit A-9.

8 Do you see paragraph 3 there at the bottom
9 of .pdf page 106?

10 A. I do.

11 Q. And then in the following page in paragraphs 4
12 and 5 you update -- we update the Division on the status
13 of the Railroad Commission proceeding, correct?

14 A. Yes, correct.

15 Q. And we also informed the Division that we've
16 provided revisions to the pending administrative
17 application for a Non Standard Location that was requested
18 by Mr. Lowe.

19 Do you see that, paragraph 6?

20 A. Yes.

21 Q. In paragraph 7 we inform the Division that we've
22 prepared a Draft MOU, which has been provided -- which was
23 provided to the Division on July 15th. Is that correct?

24 A. That's correct.

25 Q. And, finally, we inform the Division that this

1 well was anticipated to be on the September drilling
2 schedule. That's in paragraph 8. Do you see that?

3 A. Yes.

4 Q. Turning now to Applicant's Second Status Report
5 and Request for Approvals. This is tab 21 in part 2 of 2
6 at .pdf page 144.

7 A. Okay.

8 Q. So here we've provided an update again to the
9 Division, and we've updated them on the status of the
10 Railroad Commission proceeding.

11 Do you see that, starting in paragraphs 2
12 and 3?

13 A. I do see that.

14 Q. Can you summarize for the commissioners the
15 status of the Railroad Commission proceeding at that time.

16 A. Yes. We were advising that on August 4th the
17 Railroad Commission issued a Final Order approving our
18 application for a permit, and, accordingly, an exception
19 to their Rule 37, in order to drill the El Campeon 404H
20 across the state line.

21 Q. And so that Final Order is attached as Exhibit 3
22 to the status report, correct?

23 A. That's correct.

24 Q. And the Division -- excuse me, the Railroad
25 Commission also issued a permit, a related permit. Is

1 that your understanding, as well?

2 A. Yes, that's correct.

3 Q. And that permit was also attached to the status
4 report?

5 A. Yes. That's Exhibit 5.

6 Q. Okay. And now you have also attached an
7 affidavit here, your Supplemental Affidavit, and that's
8 attached as Exhibit 6 to the second Status Report. Do you
9 see that?

10 A. (Note: No response.)

11 Q. And here we are on -- let's see. Do I have a
12 .pdf page number for this one? Apparently I do not, but I
13 can make a guess -- I'm going to guess it's around .pdf
14 page 170. Somewhere in that vicinity.

15 I imagine if you do a search for
16 Supplemental Affidavit it will pop right up.

17 So, as I understand it, this affidavit was
18 presented to the Division about your communications with
19 other states and other operators in which interstate wells
20 have previously been drilled. Is that correct?

21 A. Yes.

22 Q. Okay. So the Division asked --

23 A. Just for the benefit, I guess, of the other
24 parties, I believe it starts on page 168.

25 Q. Thank you, Mr. Jones.

1 **So can you briefly describe the history of**
2 **the Division requesting information about other interstate**
3 **wells and your investigation into that.**

4 A. Yes. Just in conversations with representatives
5 from the Division, they had asked us to see if we could
6 find other examples, and so we -- frankly, most of my
7 career has been spent working in New Mexico and Texas, and
8 obviously this is not something that there are a lot of
9 examples of there, so I began to look around the country
10 and call other people that work in different areas.
11 Obviously, with the -- in the last couple of decades there
12 have been a lot more horizontal wells, which doesn't
13 really -- it doesn't care, geology doesn't care what state
14 it's in, I guess. I looked at other states that had
15 fields that were near state lines, and just started
16 looking at wells and trying to gather whatever information
17 I could -- and again all of this was at the request of the
18 Division -- and ended up finding a couple of examples and
19 reaching out to some of the interested parties, whether
20 that be the regulatory bodies and/or the companies, and
21 just trying to see who I could get in touch with or have
22 the Division reach out to if they wanted to reach out to
23 someone.

24 **Q. And so in your Supplemental Affidavit you**
25 **provided the names of someone in the West Virginia**

1 Department of Environmental Protection Office of Oil and
2 Gas; is that right?

3 A. That's correct.

4 Q. And then you provided the name of, let's see, of
5 someone employed by the Pennsylvania Oil and Gas
6 Management section; is that right?

7 A. That's correct.

8 Q. And you have also obtained an MOU between the
9 West Virginia Department of Oil and Gas and the operator
10 of the well; is that right? That's Exhibit A, I believe,
11 .pdf page 172.

12 A. Yes, that's correct. That was -- as part of my
13 conversations with the representative from West Virginia,
14 he said that that was the way that they generally handle
15 these types of wells. And he was nice enough to pass
16 along a Memorandum of Understanding between West Virginia
17 Department of Environmental Protection and the operator,
18 which was EQT Production Company.

19 Q. And then there's also a permit that's attached
20 as Exhibit B, a few pages in. Do you see that?

21 A. Yes.

22 Q. And can you explain to the commissioners what
23 that well permit is.

24 A. Yes. This is an approved permit from
25 Pennsylvania of a well that crossed the state line of West

1 Virginia and Pennsylvania, having a surface location in
2 Pennsylvania.

3 Q. And turning to the very next page, Exhibit C,
4 this is a map that illustrates the location of that
5 particular well; is that correct?

6 A. That's correct. That was a map that we put
7 together by using the X/Y coordinates provided by the
8 operator in their permit.

9 Q. Can you just summarize for the Commissioners
10 what you learned when you spoke to these folks in West
11 Virginia and Pennsylvania about interstate wells.

12 A. Yes. It was -- seemed rather straightforward.
13 The general consensus was that these surface operators,
14 the location of the surface location was what would
15 control, in that particularly in West Virginia
16 particularly, their main concerns were addressed between
17 an MOU between the operator and the state.

18 Pennsylvania did mention that they had
19 conversation maybe at a higher level than who I spoke with
20 about entering into some sort of MOU between the States of
21 Pennsylvania and West Virginia, but they weren't waiting
22 on that in order to proceed with the permitting of wells
23 across state lines.

24 Q. And when you spoke with them did either of them
25 note a particular problem that was arising from interstate

1 wells between those two states?

2 A. No, they did not mention any problems that they
3 had had.

4 Q. Do you know whether the Division ever followed
5 up with either of these folks?

6 A. I'm not sure.

7 Q. Mr. Jones, at this point do you have anything
8 else in addition that you think would be helpful for the
9 commissioners to hear from you before I pass you as a
10 witness?

11 A. Yeah. I think my only sort of thought is there
12 have been some discussions as though we could go somewhere
13 else, not work on this project. And I know that often the
14 Commission hears from larger companies that are often
15 public companies. We are a private oil and gas operator.
16 We do not have a large footprint of acreage and places
17 that we can go to to run our business, and so that's the
18 reason that we try to wait, we try to delay, we try to
19 work with everyone for months and months. And we just
20 simply -- it was not -- we were not trying to do anything
21 to upset the Division, upset anyone. We were trying to
22 work very hard to work with all of the regulatory bodies,
23 and we simply just can't wait, because, again, we don't
24 have a lot of places to go. And so in order for us to
25 continue to operate our business we had to drill these

1 wells and satisfy obligations.

2 And so I just wanted to put that out there,
3 that we are -- we are happy to work with everyone. We
4 want to work with the Railroad Commission and the Division
5 and the Commission and the State Land Office to see this
6 happen. We think it's a unique idea and a unique project
7 that we believe is beneficial for all parties.

8 And, yeah, we appreciate all of your time
9 in working on this.

10 **Q. And you've agreed, Titus has agreed to comply**
11 **with all New Mexico regulations with respect to this well;**
12 **is that right?**

13 A. Yes. Absolutely.

14 **Q. To your knowledge has Texas questioned the fact**
15 **that Titus is prepared to comply with all of the New**
16 **Mexico regulations?**

17 A. No, they have not.

18 MS. SHAHEEN: I pass the witness. Thank you,
19 Mr. Jones.

20 THE WITNESS: Thanks.

21 COMMISSIONER SANDOVAL: Mr. Tremaine, do you
22 have questions for the witness?

23 MR. TREMAINE: I do have a few questions. Thank
24 you, Madam Chair.

25 CROSS EXAMINATION

1 BY MR. TREMAINE:

2 Q. Good morning, Mr. Jones. Thank you for your
3 time. I just have a few questions for you.

4 Mr. Jones, you understand that the other
5 states you have referenced have both different drilling
6 statutes related to oil and gas and different regulatory
7 structures than the State of New Mexico, correct?

8 A. Yes, I -- well, I don't -- I definitely don't
9 have a robust understanding of the structures of their
10 regulatory bodies, but I do understand that they are
11 different than New Mexico.

12 Q. Thank you.

13 MS. SHAHEEN: Object for the record to the
14 extent that Mr. Tremaine is asking Mr. Jones to opine on a
15 legal issue here. I would object to that.

16 MR. TREMAINE: I didn't ask for his legal
17 opinion.

18 Q. Mr. Jones, you understand that it's consistently
19 been OCD's policy that an MOU or any other agreement would
20 be between the OCD and the Railroad Commission, correct?

21 A. Yes.

22 Q. In fact the Division informed Titus that an MOU
23 would be necessary prior to drilling into Texas, correct?

24 A. Yes.

25 Q. And, Mr. Jones, you understand that the Railroad

1 Commission in this hearing actually referenced the likely
2 need to have an MOU between the parties, correct?

3 A. They referenced that originally in our
4 conversations but then went on to approve the permit, and
5 in our subsequent conversations made it clear that that
6 permit is approved, drilling could take place on that
7 permit, and that it was their desire, though not
8 requirement, for future permits to have an MOU.

9 Q. Generally the Railroad Commission's position, as
10 I understand it, was that an MOU is necessary but it was
11 not referenced as necessary in the Final Order from the
12 Railroad Commission.

13 Ms. SHAHEEN: Objection, form.

14 A. That's not my understanding. My
15 understanding --

16 MR. MOANDER: Sorry. Was there an objection
17 there?

18 COMMISSIONER SANDOVAL: I'm not sure what the
19 objection was to.

20 Do you want to repeat that?

21 MS. SHAHEEN: The objection was to the form of
22 the question, and I believe it misstates Mr. Jones'
23 previous answer.

24 So that would be my objection.

25 MR. TREMAINE: It was a compound question. I'll

1 just rephrase.

2 COMMISSIONER SANDOVAL: Thanks.

3 Q. So, Mr. Jones, if I understand you correctly,
4 your understanding is that the Railroad Commission feels
5 an MOU is necessary for future wells.

6 A. No, not necessary. That's something that they
7 would like to have in place, but from my conversations
8 with the Railroad Commission in this very particular area
9 on this particular project they have not communicated that
10 it's necessary to have a Memorandum of Understanding prior
11 to approval of future permits.

12 Q. Okay. So your answer is that the Railroad
13 Commission would like an MOU?

14 A. Yes, that's my understanding.

15 Q. Okay. Mr. Jones, you understand that Mr. Powell
16 is the Engineering Bureau Chief for the Oil Conservation
17 Division, correct?

18 A. Uhm, I actually -- I probably don't know his
19 title off the top of my head, but if that is what he is, I
20 don't disagree.

21 Q. Okay. And do you understand that Mr. Powell
22 indicated in April to Titus that your proposal for the
23 interstate well was under review?

24 A. Yes.

25 Q. Okay. In fact, do you agree that Mr. Powell and

1 Mr. Delong were communicating by email and paper, in fact,
2 April 15th? Is that correct?

3 A. I will take your word for it. I'm sure that
4 that is accurate.

5 Q. Okay. And you do understand that Mr. Powell
6 never indicated that the well would be approved absent an
7 MOU, correct?

8 A. Yeah, not as I recall.

9 Q. And you were aware that approximately two weeks
10 after that discussion, in the middle of April, that the
11 OCD entered its Appearance, and Notice of Intervention on
12 April 29th?

13 A. Yes.

14 Q. So it's fair to say that Titus understood that
15 the Oil Conservation Division had some concerns to be
16 addressed and wanted an MOU in April of 2021. Correct?

17 A. Yes, I believe so, though I do think the concept
18 was initially introduced by the Railroad Commission, if I
19 remember correctly, which obviously they changed their
20 mind on its necessity.

21 Q. Thank you. Examples that you have referenced of
22 wells from other states, when were you communicating with
23 the Oil Conservation Division about those other interstate
24 wells?

25 Sorry. Do you understand my question?

1 A. I think like when was the Division made aware of
2 those other wells.

3 **Q. I think you had indicated that you had attempted**
4 **to provide examples of other interstate wells after your**
5 **discussions with the Oil Conservation Division.**

6 MS. SHAHEEN: Objection, form.

7 MR. TREMAINE: I'm simply trying to clarify the
8 question.

9 Ms. SHAHEEN: But you stated he attempted.
10 Well, he did contact the Division. That's my objection.

11 COMMISSIONER SANDOVAL: Will you rephrase that.

12 **Q. When did you provide examples of other**
13 **interstate wells to the Oil Conservation Division?**

14 A. I believe that it would have been by way of my
15 Supplemental Affidavit that we talked through earlier. I
16 can't remember exactly what day. It looks like it was --
17 I signed it on September 1st of 2021.

18 **Q. Okay. Thank you.**

19 **And, Mr. Jones, do you agree that the other**
20 **cross-border wells that have been discussed do not**
21 **commingle resources from two separate states?**

22 A. I don't believe that that -- I don't believe
23 that's true. I believe they are drilling and produce from
24 both New Mexico -- I'm sorry, from each state: West
25 Virginia and Ohio -- I'm sorry, Pennsylvania.

1 Q. So your testimony is that those, the wells
2 from -- you said two states. Would you please--

3 A. West Virginia and Pennsylvania.

4 Q. So are you saying that the West Virginia and
5 Pennsylvania cross-border wells produce minerals from both
6 West Virginia and Pennsylvania?

7 A. I believe so. That was my -- I didn't verify
8 that, but that was something that I had through
9 conversation with the representatives of those governing
10 bodies or the regulatory bodies. I had explained what we
11 were doing and asked for examples of that, and so that's
12 why they sent me that information. But I did not go and
13 verify that independently.

14 Q. Are you aware of the well referenced in filings
15 in this case that -- where the wellhead location is Texas
16 and a lateral that extends into New Mexico?

17 A. Yes.

18 Q. And are you aware of the fact that that well
19 does not produce Texas minerals?

20 A. Yes, I am aware of that.

21 Q. And do you understand that the tank battery and
22 facilities associated with that production are located in
23 New Mexico?

24 A. I don't believe that I'm explicitly aware of
25 that, but again if that is what you're telling me, I

1 imagine that it's true.

2 **Q. Thank you. I just wanted to clarify quickly**
3 **about Titus' plans for future development.**

4 **It's true, Mr. Jones, that if Titus is able**
5 **to proceed with this interstate well that it may pursue as**
6 **many as 40 or more other wells that cross the New Mexico**
7 **and Texas boundary; is that correct?**

8 A. Yes, it could be.

9 **Q. And assuming everything went well with this**
10 **particular Campeon well and there was an MOU -- forget the**
11 **MOU. Assuming everything went well with this particular**
12 **well, what is Titus' timeline for pursuing those other 40**
13 **wells?**

14 A. Uhm, gosh, that's probably a tough question, but
15 I would imagine within the next two years or -- it's
16 frankly hard. I think the outcome of this hearing has a
17 bearing on the economic viability of a lot of those 40
18 possible future wells, so it's hard to know the timing.

19 I do think if we were able to cross the
20 state line that this would be developed sooner rather than
21 later.

22 **Q. Okay. And does Titus have a currently proposed**
23 **spud date for the next of those potentially 40 wells?**

24 A. Uhm, I'm trying -- I could see if I could pull a
25 rig schedule up.

1 As I said, this is a -- it's always -- it's
2 a living document, but I'm -- I actually can't find it,
3 but I believe if we are at -- we are coming up on October.
4 Uhm, I think we would like to be able to proceed with
5 future state-line-crossing wells, you know Q-1 of 2022,
6 something like that.

7 **Q. Okay. So it sound like if the Commission**
8 **approves Titus' plan to move forward with this**
9 **cross-border well that Titus could be looking at the next**
10 **cross-border well between, what, January and March of**
11 **2022?**

12 A. Yes. And again I'm kind of shooting from the
13 hip a little bit.

14 MR. TREMAINE: I understand. Thank you. I
15 don't believe I have any other questions. Thank you for
16 your time, Mr. Jones.

17 THE WITNESS: Thanks.

18 COMMISSIONER SANDOVAL: Let's see.

19 Mr. Koluncich, did you have any questions?

20 MR. KOLUNCICH: Good morning, Madam Chair.

21 Before I launch into questions --

22 COMMISSIONER SANDOVAL: I'm having trouble
23 hearing you.

24 MR. KOLUNCICH: Can you hear me better?

25 COMMISSIONER SANDOVAL: Yes.

1 MR. KOLUNCICH: Okay. This is an external
2 speaker.

3 I'd like to ask a question of Ms. Shaheen.
4 Did she hear the proposal and stipulation I communicated
5 on opening, and does she degree to that? If so, I don't
6 have to ask any questions.

7 MS. SHAHEEN: Yes, I believe that you accurately
8 represented the agreement between Titus and State Land
9 Office, and I understand that we've agreed to the most
10 recent drafts that were circulated with respect to the
11 stipulation between Titus and the State Land Office and
12 also with respect to the Draft MOU that would be attached
13 as an exhibit to that stipulation.

14 MR. KOLUNCICH: She put that more eloquently
15 than I could. No questions, then.

16 COMMISSIONER SANDOVAL: Mr. Feldewert?

17 MR. FELDEWERT: Thank you, Madam Chair.

18 Mr. Jones, I just have a couple of quick
19 questions.

20 CROSS EXAMINATION

21 BY MR. FELDEWERT:

22 **Q. I believe you testified that Titus does not own**
23 **an interest in that tract on the Texas side.**

24 A. We -- that is correct. We have a JOA that
25 governs there.

1 **Q. But you don't have an ownership in the**
2 **underlying minerals on that Texas acreage?**

3 A. That's correct.

4 **Q. Which explains, then, why you would not be**
5 **proposing development on the Texas side with other**
6 **interest owners on the Texas side.**

7 A. Uhm, no. I think there are just existing wells
8 offsetting that tract.

9 **Q. Okay.**

10 A. Yeah, obviously we would -- if we don't have any
11 interest we can't drill a well. Yeah.

12 MR. FELDEWERT: That was what I was trying to
13 get to. Okay. Got it. Okay. Thank you very much.

14 THE WITNESS: Yes, sir.

15 COMMISSIONER SANDOVAL: Mr. Rodriguez.

16 MR. RODRIGUEZ: No questions, Madam Chair.

17 COMMISSIONER SANDOVAL: Commissioners, do you
18 have any questions for the witness?

19 Mr. Warnell or Mr. Baca.

20 MR. BACA: Madam Chair, I have a question for
21 Mr. Jones.

22 COMMISSIONER SANDOVAL: Go ahead.

23 CROSS EXAMINATION

24 BY COMMISSIONER BACA:

25 **Q. Mr. Jones, do you know the age of the wells that**

1 are crossing the state lines in West Virginia and
2 Pennsylvania?

3 A. You know, I don't know off the top of my head,
4 but I do distinctly remember that they were in the last
5 two or three years. So they are recent wells there.

6 Q. And so when you say that there's been no
7 problems with them in your statement, that's within the
8 last two or three years, so they really haven't gone
9 through an audit function or any kind of long-term
10 disbursement of royalties.

11 A. Uhm, I guess not long-term. They certainly
12 established production and established the payment of
13 royalties and likely have been audited. Our company is a
14 small company and we are audited every year.

15 Q. And I guess from a royalty standpoint both
16 federal and state in between West Virginia and
17 Pennsylvania.

18 A. That I can't speak to.

19 COMMISSIONER BACA: That's all the questions I
20 have. Thank you.

21 THE WITNESS: Thanks.

22 COMMISSIONER SANDOVAL: Commissioner Warnell.

23 COMMISSIONER WARNELL: I have a couple of
24 questions for Mr. Jones.

25 CROSS EXAMINATION

1 BY COMMISSIONER WARNELL:

2 Q. Good morning, Mr. Jones. Thank you for being
3 here today.

4 Uhm, I think I remember reading someplace
5 in Titus' paperwork that the acreage in New Mexico for
6 this particular well, the 404H well, has about 280 acres
7 of New Mexico acreage, but I never saw anything, I don't
8 recall seeing anything about the acreage involved with
9 this particular well in Texas. Do you know what that
10 would be?

11 A. Yes. I should know off the top of my head, but
12 I just don't want to tell you the wrong thing. It's
13 actually part of the JOA. Let me do some quick math here
14 and I'll...

15 It's roughly - 49.2 net acres in Texas.

16 Q. So what would be 20 percent or something like
17 that, I guess, of the total acreage.

18 Mr. Jones, has the 404H well been drilled?

19 A. So it has been -- I believe Ms. Shaheen kind of
20 started to explain this, but the way that we often develop
21 is by pad drilling, and so in order to maximize surface
22 and, really, traffic and safety, we will often drill the
23 vertical portion of multiple wells and then come back and
24 drill the intermediate, and so on and so forth, of each
25 well in subsequent order.

1 being safe in how we drill these wells. So I think it's
2 more of an October 8th date.

3 Q. Okay. And so basically you need indication by
4 October 8th as to what the drill plan is.

5 A. Yes.

6 Q. And so what in your mind made it necessary to
7 sort of move forward with drilling this pad during this
8 time frame?

9 A. Yeah. The most pressing matter was the expiring
10 New Mexico State Land Office lease. So we did have
11 conversations about extending that lease, but it would
12 have -- frankly, it was -- we never got to a final number
13 of what that could potentially look like, but it was a
14 significant -- what we felt like was a significant amount
15 of money that we would have had to have spent to extend
16 the lease further. And, again, as we've had these
17 conversations over the past almost year we couldn't
18 continue to delay our operations and, really, the broader
19 company plans.

20 Q. So you made a business decision to move forward
21 with this drilling plan even after the OCD communicated to
22 you that there must be an MOU in place prior.

23 A. Definitely did not make the decision to drill
24 across the state line. So, you know, that's something --
25 that's not something we are currently planning to do,

1 because that has not been approved by the OCD.

2 So -- but we did feel like drilling the
3 well, stopping in New Mexico was something that we needed
4 to do as part of our broader drilling plans for our
5 company, yes, ma'am.

6 **Q. So drilling the well to New Mexico and not**
7 **across the border was a better decision than extending the**
8 **lease?**

9 A. I think based on our experience it is
10 undetermined still when a Memorandum of Understanding is
11 going to be entered into, and the actions that we had seen
12 or not seen have made it very unclear. And so if we knew
13 a date that a Memorandum of Understanding was entered into
14 that we could extend the lease and spend potentially
15 hundreds of thousands of dollars to do so, that's a
16 decision that we could have made with all of that
17 information, but the only information we had was we tried
18 to have this conversation for almost a year, we sent MOUs,
19 and have not been terribly encouraged by -- we don't know
20 when it's going to appear.

21 So it did not feel like there was a hard
22 date that we were aiming for.

23 **Q. So in lieu of that you just decided to move**
24 **forward, correct?**

25 A. That's correct.

1 COMMISSIONER SANDOVAL: Okay. I have no further
2 questions.

3 MS. Shaheen, do you have any redirect?

4 MR. MOANDER: Madam Chair, I've got a question.

5 COMMISSIONER SANDOVAL: Go ahead.

6 CROSS EXAMINATION

7 BY MR. MOANDER:

8 Q. So I want to clarify this, because I think I may
9 have misheard Mr. Jones' testimony just a minute ago.

10 There was discussion about the
11 circumstances that resulted in a line not crossing state
12 lines, and I wasn't clear. So, Mr. Jones, if this permit
13 were to be granted by the Commission, then it's the
14 intention of Titus to basically connect the New Mexico and
15 Texas parcels, right, for purposes of the drilling.

16 A. Yes. So we would drill from our surface
17 location in New Mexico to a bottomhole location in Texas.

18 MR. MOANDER: Okay. I just wanted to clarify
19 that. Thank you.

20 THE WITNESS: Yes, sir.

21 COMMISSIONER SANDOVAL: Ms. Shaheen, do you have
22 any redirect for your witness?

23 MS. SHAHEEN: Yes, briefly, Madam Chair.

24 REDIRECT EXAMINATION

25 BY MS. SHAHEEN:

1 Q. Mr. Jones, with respect to your -- to the
2 questions that Mr. Tremaine posed to you, you were first
3 informed that an MOU would be required by Division
4 Counsel, correct? In other words, Mr. Powell didn't
5 inform you that an MOU would be necessary, did he?

6 A. Not that I recall. But frankly, yeah, I'm not
7 sure exactly who said what. Obviously we spoke to
8 multiple representatives over many months.

9 Q. And so, to your knowledge, Mr. Kautz didn't
10 inform you that an MOU would be necessary, did he?

11 A. That's correct. Not to my knowledge.

12 Q. Mr. Sanchez didn't inform you that an MOU would
13 be necessary; is that right?

14 A. That's right.

15 Q. And, to your knowledge, Mr. Powell didn't inform
16 you that an MOU would be necessary, did he.

17 A. That's correct.

18 Q. And is it your understanding that the purpose of
19 the MOU is to guide the agencies, the Oil Conservation
20 Division/Commission and the Texas Railroad Commission with
21 respect to wells, similar wells in the future? In other
22 words, it's not your understanding that the MOU is
23 necessary for this particular well, the El Campeon 404H,
24 it's just to allow the parties to move forward without all
25 of these hearings going on for each well that Titus may

1 propose in the future. Is that right?

2 A. Yes.

3 Q. And Mr. Tremaine also asked you about when you
4 first provided examples of interstate wells. Do you
5 remember that testimony?

6 A. Yes, I do.

7 Q. And you referred to the Second Status Report,
8 right, when you provided the MOU between West Virginia and
9 the operator and the permit from Pennsylvania. Correct?

10 A. Correct.

11 Q. Prior to that time, though, you had provided
12 additional previous information about interstate wells
13 that you had acquired from drilling info. Do you recall
14 that?

15 A. Yes, I do.

16 Q. And, if I remember correctly, it was sometime
17 the first part of June when we provided that information
18 to the Division. Do you have a similar recollection?

19 A. Yes, I agree. I believe I sent the information
20 to you so that you could then pass it along to counsel at
21 the Division.

22 Q. And do you recall what the Division counsel's
23 response was with respect to that information that you
24 provided from drilling info?

25 A. I believe it was something along the lines of

1 needing additional information from some sort of publicly
2 available repository for that information, maybe a
3 website, or just something that they could refer to that
4 was not drilling info, which I had a very difficult time
5 tracking down.

6 Q. So would it be fair to say that your
7 understanding was the Division didn't have access to
8 drilling info and so did not want to rely on that
9 information? Would that be a fair summary of your
10 understanding?

11 A. Yes.

12 MS. SHAHEEN: I believe that's it for my
13 redirect. Thank you, Madam Chair.

14 COMMISSIONER SANDOVAL: So at this point we have
15 been going a little under two hours.

16 Ms. Macfarlane, I've got a question for
17 you. Would you like to take a break now or do you want to
18 push a little bit longer and then take a lunch break?

19 (Note: Discussion off the record.)

20 COMMISSIONER SANDOVAL: Then Mr. Tremaine -- I'm
21 sorry, Ms. Shaheen, do you have any additional witnesses?

22 MS. SHAHEEN: Madam Chair, I'm happy for us to
23 provide the geologist and the engineer if the Division has
24 any questions. As I mentioned before, I don't believe
25 that the Division challenges the technical aspects here.

1 The formation on the New Mexico side is the same as the
2 formation on the Texas side.

3 So if anyone has any questions about that,
4 we can provide them for cross-examination, but otherwise I
5 don't know that I need to waste anyone's time with
6 presenting their testimony again. It is in their
7 affidavits that were submitted and it's also in their
8 testimony before the Division in the transcripts that were
9 previously provided.

10 COMMISSIONER SANDOVAL: Just to confirm, are
11 there any parties that have concerns about not presenting
12 those witnesses? (Note: Pause.)

13 MR. TREMAINE: No concerns from the Division.

14 COMMISSIONER SANDOVAL: Commissioners, do you
15 have any need for Titus to present those witnesses?

16 COMMISSIONER WARNELL: I don't believe so.

17 COMMISSIONER BACA: I don't believe so.

18 MR. MOANDER: Madam Chair, because we have
19 submission essentially of the record below, you can take
20 judicial notice of those things at this point if you
21 wanted, so this way they are incorporated into the record,
22 and unless there are questions, which it doesn't sound
23 like there are, that would stand.

24 COMMISSIONER SANDOVAL: Okay.

25 All right. That sounds good, then.

1 Ms. Shaheen I don't think it's necessary to
2 put them on as witnesses at this point, but we do, as Mr.
3 Moander said, have the record from the Division hearing,
4 as this was not a de novo case.

5 MR. MOANDER: Madam Chair, are you taking
6 judicial notice of that record for purposes of evidence in
7 this hearing?

8 COMMISSIONER SANDOVAL: We are taking judicial
9 notice of that record as purpose for evidence in this
10 hearing.

11 MR. MOANDER: Excellent. Thank you.

12 COMMISSIONER SANDOVAL: Thanks.

13 All right. Mr. Tremaine, you're up.

14 MR. TREMAINE: Right.

15 Well, the Division has one witness, Ms.
16 Tiffany Polak.

17 TIFFANY POLAK

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. TREMAINE:

21 **Q. Good morning, Ms. Polak. Would you please state**
22 **and spell your name for the record.**

23 A. Good morning. Tiffany Polak, T-i-f-f-a-n-y,
24 P-o-l-a-k.

25 **Q. Ms. Polak, on whose behalf are you testifying**

1 **today?**

2 A. Energy, Minerals and Natural Resources, Oil
3 Conservation Division.

4 **Q. And are you testifying today as a fact witness?**

5 A. I am.

6 **Q. Please provide a brief summary of your education
7 and experience.**

8 A. Sure. I have a Bachelor of Science in
9 Professional Zoology from the University of Oklahoma, a
10 Master's of infectious disease control/epidemiology from
11 the University of Texas, Houston Medical Center. I then
12 somehow ended up in oil and gas and chose to obtain a
13 Master's of Petroleum Engineering from Texas A&M.

14 I then spent almost 25 years working
15 various oil and gas basins and plays, various mid-size
16 operators; worked the past 10 years in conventional shale
17 plays, mainly focused on development; and for something
18 widely different decided to join the State as Deputy
19 Director in April, 2020.

20 **Q. So your current position with the Oil
21 Conservation Division is as deputy director?**

22 A. I am, yes.

23 **Q. And could you please describe for the
24 commissioners and parties how that position relates to
25 this particular proposed interstate well.**

1 A. Sure. So I'm the Deputy Director, and under my
2 charge are the Environmental and Engineering bureaus. And
3 the Engineering bureau is charged with the approval -- at
4 a high level the approval and denial of well permits.
5 Both the bureaus, Engineering and Environmental, are
6 charged with, again, high-level regulation of the wells
7 and the well sites throughout life.

8 **Q. The Engineering and the Environmental bureaus**
9 **would be responsible for regulating if anything went wrong**
10 **with drilling the well?**

11 A. Correct.

12 **Q. Or approving casing and design specifications?**

13 A. Yes.

14 **Q. And if there were any release associated with**
15 **the well?**

16 A. Yes.

17 **Q. And the engineering division would be the**
18 **division responsible for working with their counterpart at**
19 **the Railroad Commission to deal with any issues that come**
20 **related to an interstate well. Is that fair to say?**

21 A. That is correct. I imagine Environmental could
22 have a say, as well, with regards to any type of release
23 reporting and/or remediation that we would want to work
24 out as part of an MOU.

25 **Q. Are you generally aware of the Campeon 404 well**

1 proposed by Titus?

2 A. Yes.

3 Q. And are you aware of communications between the
4 Oil Conservation Division and Titus regarding the proposed
5 Campeon well?

6 A. Yes.

7 Q. Please describe the communications between the
8 Division and Titus.

9 A. Sure. So my awareness began about in March. I
10 have heard testimony today about ongoing communications
11 prior to that, however the engineering department did not
12 come under my leadership until earlier this year, and so
13 it was around the March timeframe that I started becoming
14 aware of more of the details around the project.

15 Beyond that, it was around April/May when
16 I'm aware that counsel was having conversations with Titus
17 to take OCD's position that we wanted the MOU in place
18 before any development activity occurred.

19 Q. Thank you. Could you -- are you aware
20 generally -- strike that. Could you provide an update on
21 the current state of any possible agreements between Oil
22 Conservation and the Railroad Commission.

23 A. Sure. So those conversations are still ongoing,
24 mainly between counsel between the two divisions.
25 Technical staff is working the issue from our end in

1 understanding different regulation details, but based on
2 where the current discussions are now that are ongoing, I
3 am expecting that there will be an update draft for
4 management review.

5 Q. Okay. As a general matter does OCD approve of
6 interstate development such as what is proposed by Titus?

7 A. Yes.

8 Q. Okay. I want to ask you a couple of questions
9 about waste.

10 Titus' applications and filings discuss the
11 prevention of waste, and in this particular matter, and we
12 are talking about -- in New Mexico we are talking about
13 setbacks, so please describe your understanding of the
14 purpose of setbacks.

15 A. So setbacks are put in place to maximize the
16 resource produced from the defined lease and prevent any
17 type of drainage to outside the defined lease.

18 Q. Okay. So in regards to the 100-foot setback
19 within New Mexico with this proposed well, what's OCD's
20 perspective regarding the characterization of that setback
21 as waste at the Texas border?

22 A. So the 100-foot set back is set forth in Rule --
23 and I'm terrible in remembering names and numbers of these
24 rules, so I wrote it down. It is 19.15.16.15C, and that's
25 where the 100-foot setback is defined.

1 Our perspective on that is that again this
2 is the minimum distance that the State deems would protect
3 us from drainage outside the defined lease, and the
4 maximum footage that we could gain off the lateral and
5 capture the most resources and prevent waste.

6 So I believe our 100-foot setback does not
7 allow for waste.

8 **Q. Approximately how many wells does OCD permit to**
9 **drill each year?**

10 A. It depends on the year, but I would -- a couple
11 of thousand, in general.

12 **Q. Does the setback that we've discussed apply to**
13 **those other wells?**

14 A. Yes.

15 **Q. And in the context of those other wells are**
16 **those setbacks considered waste?**

17 A. No.

18 **Q. Can you provide any background on the other**
19 **interstate wells that have been discussed, what has been**
20 **approved and what's not?**

21 A. You know, I can't speak to the details or names
22 specific of any other wells, but what I can tell you is
23 from the discussions with staff around the proposal in
24 general is that we don't have any wells currently approved
25 that are -- that commingle production. So they were

1 either -- any that were approved were either drilled by
2 one state or the other and producing from one state or the
3 other.

4 **Q. Okay. What are the foreseeable issues that OCD**
5 **(inaudible) on agreements between New Mexico and Texas**
6 **prior to either completion or production of the Campeon**
7 **well?**

8 A. Well, I think first and foremost is that
9 allocation agreement. Right now without an MOU in place
10 we don't have a regulatory mechanism for allocation of
11 that production.

12 I think then there's a slew of things that
13 can happen with a developmental well, different
14 regulations that each state has that need to be explored.

15 So some of these were referenced, again
16 generally speaking, in our Prehearing Statement around no
17 venting and flaring and gas capture facilities, and
18 releases and reporting.

19 And those are very general topics. I
20 understand that.

21 Well design, casing. They are general, but
22 I think that each of those things have to be discussed,
23 because all of these states, Texas and New Mexico specific
24 in this one, have very different regulation requirements
25 and expectations of well producing, so that we want to

1 explore those things and understand how we are going to
2 agree on those things, make sure we have agreement in
3 place before those things occur.

4 **Q. How does proceeding without a written agreement**
5 **impact OCD's ability to do its job?**

6 A. Well, so again going back to states have
7 different statutory obligations and regulatory
8 requirements. Without any type of agreement as to how
9 those differences would be handled it's our belief that
10 OCD cannot ensure that we could fulfill our obligations
11 statutorily or regulatorily to prevent waste, protect
12 correlative rights, the environment, unless we have that
13 agreement in place.

14 **Q. Do you believe that it is settled or established**
15 **that the -- that Texas minerals would be subject to New**
16 **Mexico rules if they were accessed through a New Mexico**
17 **wellhead?**

18 A. I don't believe that any formal agreement has
19 been made.

20 **Q. Does OCD have any concerns about relinquishing**
21 **New Mexico minerals to other states' regulations if those**
22 **minerals are accessed through a well located in the other**
23 **state?**

24 A. Yes.

25 **Q. I want to ask you some questions about the**

1 **specific design and proposal put forth by Titus.**

2 **Having had the opportunity to review the**
3 **proposal and hearing Titus' presentation, what is OCD's**
4 **proposal for what could or should be approved prior to an**
5 **agreement being put in place between New Mexico and Texas?**

6 A. So the OCD would have preferred for all of the
7 development activity to hold until an MOU is in place, and
8 I believe we communicated that.

9 As it stands, I understand that the
10 vertical portion of that well has been drilled and not yet
11 the horizontal. Given the OCD doesn't disagree
12 technically, and we do support interstate development, if
13 the Commission were to approve the application contingent
14 on an MOU, OCD could get behind supporting no further
15 development activity beyond drilling of the lateral until
16 an MOU is in place.

17 But again, as OCD has stated before, we
18 would have preferred an MOU be in place prior to any
19 development activity.

20 We do understand the situation that we are
21 in right now, and could, again, get behind the -- a
22 contingent approval based off an MOU with no additional
23 development activity.

24 That was probably way confusing, but...

25 **Q. Well, if you can clarify. Is it fair to say**

1 that if the Commission approved the well contingent upon
2 execution of an agreement between New Mexico and Texas
3 that the stopping point would be at drilling the lateral
4 prior to perforation?

5 A. That's correct. And I would also --

6 Q. Go ahead.

7 A. I would also add that that would also be
8 contingent upon the Division and -- I'm not going to speak
9 for the Railroad Commission, but looking at the well
10 designs, the casing, et cetera, the drilling design of
11 those wells, the well design before they continue
12 drilling.

13 Q. Thank you. Does OCD have concerns about
14 allowing completion of perforation of the lateral
15 contingent upon an executed agreement?

16 A. Yes.

17 Q. Can you describe generally what those concerns
18 are.

19 A. Sure. Again generally speaking, the further we
20 go into any kind of development activity the more risk we
21 have for the differing regulat- -- differing regulations
22 of each state to compete with each other without
23 agreement.

24 So completion is very complicated, as you
25 know. It requires certain designs, certain operational

1 activities, and it does state the OCD would prefer to
2 have an MOU in place on how any mitigation for any type of
3 emergency, design flaw, operational issue would be handled
4 prior to that activity happening.

5 Q. Is the Division, in your opinion, diligently
6 pursuing an agreement with Texas?

7 A. Yes.

8 Q. Okay. If Titus were -- strike that.

9 Can the Division guarantee execution of a
10 written agreement with Texas by any date certain?

11 A. No.

12 Q. If Titus were allowed to complete the well but
13 not produce from the well, could the resource be impacted
14 in any way by the delay between completion and execution
15 of an agreement between New Mexico and Texas?

16 A. Essentially yes.

17 Q. Okay. One moment.

18 So is it fair to say that the Division's
19 position is first that drilling activities across state
20 lines should not commence prior to execution of an
21 agreement?

22 A. Correct.

23 Q. Is it also fair to say that in the alternative
24 if the Commission wishes to proceed on contingently
25 approving Titus' application, that the OCD's

1 recommendation is that the activity only be allowed to
2 finish drilling but not complete the well?

3 A. Yes.

4 Q. Okay. And is it also fair to say that, you
5 know, OCD, as it cannot guarantee execution of a written
6 agreement, that there's no guarantee that an agreement
7 will actually take place?

8 A. There is no guarantee, but the OCD has a vested
9 interest in trying to bring that agreement with Texas,
10 because we do envision bigger projects than just Titus.
11 There are other developers in the area across interstate
12 boundaries, and we would like to get those agreements in
13 place ahead of time to be able to approve and move forward
14 with that development.

15 MR. TREMAINE: Okay. No further questions.

16 COMMISSIONER SANDOVAL: Thanks, Mr. Tremaine.

17 Ms. Shaheen, did you have any questions for
18 the witness?

19 MS. SHAHEEN: I do.

20 CROSS EXAMINATION

21 BY MS. SHAHEEN:

22 Q. Ms. Polak, it's nice to meet you virtually.

23 A. Nice to meet you, Ms. Shaheen.

24 Q. Hopefully in person we will get to meet at some
25 point.

1 A. Fingers.

2 Q. So I did have some questions prepared, but I
3 think what I want to start with is asking you questions
4 about your direct testimony so far.

5 So Mr. Tremaine asked you about the
6 communications between the Division and Titus.

7 Were you actively communicating with Titus
8 at all at any point since the application has been filed?

9 A. No. The communications were mainly handled by
10 counsel at the point of time when I got involved.

11 Q. Okay. And you said you became aware in
12 April/May that OCD counsel was taking the position that
13 the MOU is required. Did I understand that correctly?

14 A. Uhm, I became -- OCD again taking the position
15 that that was -- those were the conversations I was in
16 with counsel in which OCD took that position, and it's my
17 understanding that counsel then began communicating that
18 with Titus.

19 Q. Okay. And is there someone in particular who
20 raised the concern about the need for an MOU with respect
21 to wells other than the El Campeon 404H?

22 A. Well, it's a group of us. It's a team. Counsel
23 involved was Eric Ames, which I am sure you're all aware,
24 and then I have Bureau Chief Brandon Powell who we've
25 mentioned here. Emily Hernandez is our environmental

1 bureau chief.

2 So I can specifically talk to -- again this
3 has been focused so far as mainly the engineering side, so
4 Brandon Powell's group because of the need for the
5 approval of the permit.

6 So is there someone specific? I wouldn't
7 point to anyone specific. It was general conversations
8 around how are we going to handle this and what do we need
9 in place? Because this is much bigger than just one well.

10 **Q. And you're aware that there's already an**
11 **approved BLM permit, correct?**

12 A. I -- hmm. I believe I'm aware of that.

13 **Q. And just to be clear, the approved BLM permit**
14 **applied to the New Mexico portion of the well.**

15 A. That's correct.

16 **Q. But what I understand is that BLM has informed**
17 **Titus that all they need to do is file a sundry to extend**
18 **the well into Texas. Are you aware of that?**

19 A. I'm not aware of those conversations. My
20 caution -- I was aware that BLM had been engaged, so my
21 caution to you guys, and to anyone, would be to make sure
22 their ducks are in a row with BLM before proceeding. But
23 if you say that, I believe you.

24 **Q. And did the Division have any communications**
25 **with BLM about this application?**

1 A. I personally did not. We generally are in great
2 communication with the BLM on things where we cross
3 jurisdictions. I can't say specifically who or when or
4 whether they communicated.

5 **Q. Do you know when the Division first communicated**
6 **with the State Land Office about the application?**

7 A. I do not.

8 **Q. Can you provide us some specifics about**
9 **communications between the Division and the Texas Railroad**
10 **Commission about the application?**

11 A. Hmm. You know, when those conversations started
12 coming up in the March/April time frame and thereafter.
13 It would be sometime after April and before June, I
14 believe, but I could not cite a specific date.

15 **Q. And do you know who would have communicated with**
16 **the Texas Railroad Commission at that time?**

17 A. So I think at this point it would have been
18 mainly counsel. I think there was some technical staff
19 conversations that were going on, but at this point it's
20 mainly counsel between both the states.

21 **Q. And do you know who among that technical staff**
22 **communicated with the Railroad Commission?**

23 A. I don't.

24 **Q. But it's your testimony that someone from**
25 **technical staff communicated with the Railroad Commission;**

1 **is that right?**

2 A. I cannot say that for certain. It would be my
3 thought that upon the legal conversations going on that
4 technical staff would be involved at some level. Whether
5 or not they had specific -- actual technical staff had
6 specific meetings or not, I cannot say that.

7 The level that you communicate with on the
8 status updates of those meetings, it's not necessarily
9 always I know exact who, when, where and what, just what
10 are the next steps and who is engaged in those
11 conversations, and where are we moving towards.

12 So I can tell you that the lead of those
13 conversation thus far has been legal counsel.

14 **Q. And do you know how many times legal counsel has**
15 **conferred with the Railroad Commission counsel about this**
16 **application?**

17 A. I do not.

18 **Q. Would you say it's once, or between one time and**
19 **three times? Do you have any idea on that?**

20 A. Given the status updates that I have been given,
21 I would say more than once. I couldn't tell you how many
22 thereafter.

23 **Q. So you mentioned that the technical staff,**
24 **Engineering, and -- I've lost my -- Engineering and**
25 **Environmental have concerns, and so I have two questions**

1 for you in that regard.

2 One is: Do those concerns relate to this
3 particular well?

4 A. If we are going to commingle production, yes.

5 Q. And can you tell me what those specific concerns
6 are about commingling of production.

7 A. Well, okay. So let's back up.

8 If we are going to drill a lateral through
9 two states, there is multiple concerns, the first of which
10 is the commingling. How are we going to allocate that
11 production? How does the gas capture happen? We do have
12 new gas capture requirements. Are we going to abide by
13 those or abide by Texas? Are there sources of Texas
14 production?

15 Those are all questions that you ask,
16 right, with regard to the commingling effects.

17 Then I think beyond that it becomes about a
18 lateral located in two different states. It could be
19 anything from who and when do inspectors from each state,
20 are they allowed to inspect those wells? If there's a
21 problem, are each state required to give the information
22 on the inspection? All those. There's inspection
23 reports, and any issue we may have, are the states
24 required to give that to each other?

25 I mean, the list is endless. The bottom

1 line here is if you put a lateral in two different states
2 that you are commingling that production, we have to talk
3 about the regulatory differences in the two states and how
4 we are going to resolve that.

5 **Q. So let me ask you this: If Titus is required to**
6 **comply with all New Mexico regulations, why does it matter**
7 **that Texas has a different regulation?**

8 A. Well, I would say that that is particularly good
9 for New Mexico in that one particular case, but I would
10 like to continue conversations with Texas about that.
11 Because let's pretend it's the reverse. I'm not sure that
12 New Mexico agrees that commingled production between New
13 Mexico and Texas drilled from the Texas side should only
14 have to abide by Texas regulations.

15 So this is about bigger than this one well,
16 so New Mexico wants to have that conversation with Texas.

17 **Q. Well, with all due respect, the application**
18 **pending now before the Commission is about drilling from**
19 **New Mexico to Texas. And Titus has represented that it is**
20 **only drilling from New Mexico into Texas, so I guess I'm**
21 **having a hard time wrapping my head around why the**
22 **Division feels it needs to address something that's not**
23 **even before the Division today -- not before the**
24 **Commission at this point.**

25 So maybe you can elaborate a little bit on

1 **that.**

2 A. I understand.

3 First of all, I'll just remind you that it
4 isn't -- you're proposing this one well in this one case
5 but you do have plans that are bigger, broader. I would
6 say Texas has expressed in conversation with us and in
7 testimony that they wish to have the MOU, as well. I did
8 hear testimony they have backed off of that, but in
9 conversations we have with Texas it is their preference to
10 have an MOU in place for broader development.

11 **Q. So two points I want to ask you about. One is,**
12 **first of all you understand that Titus' proposed**
13 **development plan for future interstate wells is only from**
14 **New Mexico to Texas. You understand that, right?**

15 A. I do. Uhm, but I also understand that there are
16 other developments that are being contemplated that aren't
17 structured specifically in that way.

18 Not with Titus.

19 **Q. Can you --**

20 A. Again I'll go back to -- I don't expect Titus to
21 care about this. I once worked operations so I understand
22 your vested interests to your company, but our vested
23 interest is in the broader development of New Mexico. So
24 it's not just Titus who is looking at interstate
25 development, and so if we are going to put something that

1 is as big as an agreement between New Mexico and Texas in
2 place, we would like that to be in place prior to any of
3 those other developments.

4 It's bigger than just this well is all I
5 can say.

6 **Q. So you have mentioned a couple of times that**
7 **there are other interstate developments that are out**
8 **there. Can you provide us with information about those**
9 **existing development plans and --**

10 A. Not "out there," but I think there is great
11 interest. And I think because of the complexity of this,
12 it's -- there is one operator that's made an appearance as
13 a party here today that has potentially some interest in
14 development at some point, from what I heard earlier.

15 But I'm not going to go through and develop
16 all the other operators that have their own company plans.

17 **Q. Wouldn't you agree that that bridge should be**
18 **crossed by the operator who proposes to drill from Texas**
19 **into New Mexico, that that burden should not be**
20 **pre-imposed on an applicant who's not even seeking to do**
21 **that?**

22 A. But Titus is seeking to put a lateral across two
23 states, for which both states have agreed they would like
24 the MOU in place first.

25 **Q. With all due respect, you did hear testimony**

1 earlier that we have a permit, we have approval to drill
2 into Texas. So Texas is not requiring an MOU, it's -- for
3 this particular well. And you're aware of that, correct?

4 A. I understand that Texas backed off their stance
5 of the necessity. I also understand from our
6 conversations that they still want to proceed with an MOU.

7 Q. I got a little off track here. Let me see
8 whether I can get back to where I was.

9 So you said that the concerns by
10 Engineering and by Environmental are about commingling and
11 how production is allocated. So are you aware that Titus
12 has proposed in this Application to allocate production on
13 the same basis that every other well in New Mexico has
14 allocated production, on surface acreage? Are you aware
15 of that?

16 A. Okay. First let me back up to the start of that
17 statement.

18 I think I said in my testimony, and I can
19 clarify here, that that was one of the concerns, not "the
20 concern".

21 Let's start with just commingling of
22 production. It's the most obvious. I am aware there was
23 some proposals around how the allocation of the wells
24 should occur. It is my understanding that we have not yet
25 come to any formal agreement on that. It has not been put

1 forth to me or the director of our division for a verbal.

2 **Q. My understanding is that Titus is requesting for**
3 **approval to allocate production based on surface acreage.**
4 **Is that not your understanding?**

5 A. That's what I've been told. I'm just saying
6 that that, though, has not been approved yet, and we also
7 don't have any formal agreement with Texas on that, to the
8 best of my understanding.

9 **Q. It makes me want to take a look at the Order,**
10 **because the Texas Order does say that production can be**
11 **allocated either by surface acreage or by perforation,**
12 **Texas doesn't care. Either one of those is fine with**
13 **Texas. So because New Mexico regularly allocates**
14 **production based on surface acreage and because Texas has**
15 **agreed that the allocation -- I'm sorry, production can be**
16 **allocated based on surface acreage, is there still an**
17 **issue in your mind about how allocations of production**
18 **should occur?**

19 A. There isn't necessarily an issue. I just don't
20 know that we have formally decided. And that's not the
21 only thing to consider with regard to this development.
22 It is one of them. It's, like I said, the most obvious
23 one. I don't know that there's an issue, I just know that
24 in my mind there has not been formal agreement between the
25 two states on this.

1 Q. Would it be helpful if I found that Order and
2 showed you where Texas agrees?

3 A. I believe you. I believe you.

4 Q. It's on the record.

5 A. I believe you. I just think there are bigger
6 things in place than just that one item.

7 Q. Would you agree at least there isn't an issue
8 with respect to allocation of production, because the
9 states have agreed it could be by surface acreage?

10 A. I would agree that that seems like a plausible
11 solution, but what I can tell you is that that has not
12 been put forth in front of our director for approval.

13 Q. I'm turning now to the Application, and that's
14 tab 1 of part 1 of 2, .pdf page 1 -- sorry, .pdf page 4,
15 and that's the Application.

16 Turning to .pdf page 5, paragraph 5 on the
17 Application it states: Production will be allocated to
18 New Mexico and Texas prorated on the basis of surface
19 acreage in the proration unit, or any other manner
20 mutually acceptable to the Division and the Railroad
21 Commission.

22 So with all due respect I think we've asked
23 that the director approve allocation based on surface
24 acreage. Would you agree?

25 A. Oh, I do. But the last part says "any other

1 manner acceptable." That part, I think, is part of a
2 broader conversation about an MOU with Texas.

3 I don't take any one of these concerns or
4 differing regulatory frameworks of either state in
5 isolation.

6 Q. And so now I just want to turn to -- this is in
7 Part 2 of 2, .pdf page 144, Tab 21, Applicant's Second
8 Status Report and Request for Approval.

9 So here we've got attached the -- uhm, the
10 Final Order as Exhibit 3 is attached as Exhibit 3 on Tab
11 21. And I apologize, I don't have the .pdf page number
12 here, but I'm going to guess it is somewhere around .pdf
13 page 153, 154, somewhere around there.

14 A. So I do not have that pulled up in front of me
15 I'm hoping you will reference the statement that you're
16 going to refer to. Just read it.

17 Q. Right. So page 3 of 7, uhm, with respect to the
18 Final Order issued by Texas, paragraph 20, it says: Titus
19 proposes to allocate production based on either surface
20 acreage or wellbore length.

21 And then paragraph 21 says the proposed
22 alternatives are reasonable.

23 Then paragraph 22 says production will be
24 allocated on the basis mutually acceptable to public
25 agencies having jurisdiction in Texas and New Mexico.

1 So the way that I read this Order is that
2 Texas has said either way works for it.

3 A. Uh-huh.

4 Q. So my understanding is we've asked the director
5 how she would like to allocate production and we've given
6 her two alternatives. And Texas has said that either of
7 those alternatives is fine, so all the director has to do
8 is choose one or the other.

9 And so I guess that's -- I'll leave it
10 there; I'm beating a dead horse at this point. But my
11 point is there doesn't seem to be an issue regarding
12 allocation of production here. And I guess I kind of want
13 you to agree with me, but if you can't, I understand that.

14 COMMISSIONER SANDOVAL: Do you have a question,
15 Ms. Shaheen?

16 MS. SHAHEEN: Yes.

17 Q. My question is: Would Ms. Polak agree the issue
18 of commingling is not an issue with respect to this
19 application?

20 A. (Note: Pause.) I will not agree to that at
21 this moment in context of the broader issues at play. I
22 think that it's part of a host of issues that OCD remains
23 concerned about.

24 I absolutely understand that some agreement
25 has been reached and some solution has been proposed on

1 commingling. Let's pretend that I do agree to that.
2 There are still a lot of other issues at play here that
3 need to be settled, so what the OCD has asked for in Mr.
4 Tremaine's questioning of me wouldn't even get to the part
5 of commingling yet. It would say an MOU needs to be put
6 in place before you're able to track, at the very least.

7 So we wouldn't even get to that stage yet.

8 **Q. So my question is: You reference a number of**
9 **other issues, so let's be specific.**

10 **Provide me an example of one issue that**
11 **exists with respect to this application drilling from New**
12 **Mexico into Texas.**

13 A. Have we talked about casing design? Have we
14 talked about reporting requirements if any type of issue
15 happens? Are they different between the two states? What
16 is -- et cetera.

17 I mean, anything from well design all the
18 way through remediation and plugging. I don't -- anything
19 in the well life, we differ between the two states on a
20 host of fronts. We've communicated, I believe
21 effectively, that we wanted that MOU in place before
22 development of this project.

23 **Q. And so Titus -- and probably here again I'm**
24 **beating a dead horse, but Titus has agreed it will be in**
25 **compliance with both New Mexico and Texas requirements, so**

1 whichever requirement is more stringent, that's what Titus
2 is going to do.

3 And so with that in mind I guess I have the
4 same question that I asked before is: What issues do you
5 foresee with respect to this well drilling from New Mexico
6 into Texas? What difference between regulations do you
7 see could become a problem?

8 MR. TREMAINE: Objection, asked and answered.

9 COMMISSIONER SANDOVAL: Sustained. Ms. Shaheen
10 if you want to -- continue with your line of questioning,
11 but she has answered multiple times. You've asked it
12 using multiple different iterations of wording, but the
13 same question over and over.

14 In addition, I'm just going to do a time
15 check here. It is 11:58 and we're going to need to break
16 from our questions, or do you have an estimate as to how
17 much longer your questioning will take? That will dictate
18 when we will take a break.

19 MS. SHAHEEN: I'm going to guess that -- first
20 of all, I appreciate you telling me to stop with that line
21 of questioning. I would be guessing for 10, 15 minutes,
22 but I would suggest that we take a break for lunch and let
23 me spend some time refining these questions and making
24 sure that I am being as expedient as possible, if that is
25 acceptable.

1 COMMISSIONER SANDOVAL: Yes. So why don't we
2 take a break? It's 11:59 at this point, so why don't we
3 come back at 1:00 o'clock. We will continue with your
4 questions and then go through the rest of the parties.

5 So, Ms. Polak, you will be up again at 1:00
6 o'clock.

7 All right. Thanks everybody.

8 (Note: In recess from 11:59 a.m. to 1:02 p.m.)

9 COMMISSIONER SANDOVAL: All right. Well, I
10 think we've got everybody.

11 It is, because my computer clock is now
12 seven minutes slow, 1:02 on the 28th of September, and we
13 will resume the hearing in Case No. 21872.

14 I think we left off, Mr. Tremaine, with the
15 finishing of questions from Ms. Shaheen to Ms. Polak.

16 MS. SHAHEEN: Thank you. I'd just like to start
17 by thanking Ms. Polak for being so gracious with my what
18 seems to be a little-bit-redundant questioning. I
19 appreciate that, and I think I have streamlined my
20 remaining questions.

21 And I would also like to take this
22 opportunity to thank the commissioners for their patience
23 and for setting this for a hearing today.

24 **Q. So with that, Ms. Polak, you testified in**
25 **response to some questions from Mr. Tremaine about the**

1 purpose of the setback. And if I understand your
2 testimony correctly, the purpose of the setback is to
3 provide maximum recovery of hydrocarbons within the
4 spacing unit and prevent the drainage of minerals in the
5 offset tracts.

6 So I just want to make sure I understand
7 that -- you're protecting minerals. Here the offset
8 tracts are Texas minerals; is that correct?

9 A. That's correct.

10 Q. And so is the Division's position that the
11 Division is charged with protecting Texas minerals?

12 A. No. The Division is charged with making sure
13 that we don't cause drainage outside of our official
14 lease. In this case that happens to be Texas on the other
15 side. Even in our state, though, we want to make sure
16 that we are not draining from a lease outside of the lease
17 in question.

18 Q. Right. But with respect to this particular
19 application, the minerals that you're protecting are
20 located in Texas; isn't that right?

21 A. Correct.

22 Q. Do you personally have any experience with
23 interstate wells?

24 A. I have to think through my career here.

25 Uhm, you know not that I can specify.

1 There may have been some up in the North Dakota area, but
2 not that I can specify or recall any specifics, no.

3 Q. That would have been between North Dakota and
4 another state?

5 A. Correct.

6 Q. Do you recall what the other state is?

7 A. Gosh, I think it was -- no. No. And, you know
8 what, let's not -- let's just for the purpose of this
9 testimony say no, because I wouldn't be able to recall
10 what my specific involvement is, other than cursory.

11 Q. But you do have a recollection of some
12 interstate wells that you --

13 A. I do. I mean, there's been conversation I've
14 been part of in the past. In some cases it was about the
15 sale of mineral interests versus the development. Yeah.

16 Q. And so now coming back to New Mexico, and I
17 think there was some previous testimony about a well that
18 was drilled from Texas into New Mexico. Correct?

19 A. That's correct.

20 Q. And I think it's the Medwig 32 1H, something
21 like that. Does that sound familiar?

22 A. I will trust you. I have no idea the name of
23 that well, but I am aware of the situation with that well.

24 Q. And are you aware that at one time the Division
25 had communicated with the Railroad Commission about

1 interstate wells where production only occurred on one
2 side?

3 A. I have no doubt those conversations happened. I
4 was not part of those conversations then.

5 Q. And you can't describe those conversations
6 between --

7 A. No, because I believe -- if I remember
8 correctly, the well in question, the approval for that
9 happened a couple of years ago, and that would have been
10 even before my time at the Division.

11 Q. Do you know whether there's an MOU that
12 addresses that well?

13 A. No, there's not an MOU that addresses that well.

14 Q. And why not?

15 A. Because the well is -- well, the wellhead is
16 residing in Texas and drilling into New Mexico. All of
17 the production is from New Mexico, which makes it very
18 different than this case in which the lateral is going to
19 sit across two states, as well as the resources coming
20 from both states. In that example you're giving the
21 resources are purely coming from New Mexico.

22 Q. And so is it your testimony today that there
23 aren't issues related to having a surface location in
24 Texas if there isn't production on both sides of
25 the states?

1 A. I would say that there can be issues with that.
2 I would say that in the past we have chosen not to venture
3 down an agreement path, I would say largely because in
4 that instance we were in a different regulatory
5 administration and regime. I would also say that it was a
6 very different case. It was a very different case without
7 the resources coming from both states.

8 **Q. And are you aware of any issues with that well?**

9 A. Not to my knowledge.

10 **Q. And is it subject to New Mexico regulations with**
11 **respect to venting and flaring?**

12 A. I am not sure how that well specifically is
13 being regulated.

14 **Q. So you don't know whether that operator is**
15 **complying with New Mexico regulations with respect to that**
16 **well?**

17 A. Uhm, it is my recollection that they are, but I
18 can't for certain say which portions of that they are.

19 **Q. And do you know whether they're also complying**
20 **with Texas regulations with respect to that well?**

21 A. No. I don't know.

22 **Q. And to your knowledge there haven't been any**
23 **disagreements between Texas or New Mexico regarding**
24 **regulation of that well; is that right?**

25 A. That's true.

1 **Q. Do you know about any interstate wells between**
2 **New Mexico and Colorado?**

3 A. I do.

4 **Q. Tell us about that.**

5 A. Uhm, I am cursorily aware of some wells that
6 were approved and developed, again before my time, that
7 the surface location exists in New Mexico and the
8 resources are being produced solely out of Colorado.

9 **Q. And do you know whether there's an MOU that**
10 **addresses that well or wells?**

11 A. No, there's not. I think there's two reasons
12 for this. One is again it is not a commingled resource
13 across both states, it's purely being produced out of
14 Colorado, the wellhead is being regulated by New Mexico.
15 And I believe -- and I hope I don't misspeak here, that
16 some of those wells also have some tribal authority
17 associated.

18 **Q. Are you aware of any issues that relate to any**
19 **well that was drilled from a surface location in New**
20 **Mexico into Colorado?**

21 A. No.

22 **Q. Do you know whether that well is also subject to**
23 **regulation by Colorado?**

24 A. I am not aware of that.

25 **Q. Do you know whether there has been any dispute**

1 **between New Mexico and Colorado about regulation of**
2 **those -- of that well or those wells?**

3 A. Not to my knowledge.

4 **Q. Do you know whether the Division has made any**
5 **effort to contact the folks in West Virginia or**
6 **Pennsylvania that were identified by Mr. Jones in his**
7 **Supplemental Affidavit?**

8 A. Yes. I believe in one of my status updates I
9 was told that we had a staff engineer reaching out to
10 those states to try to get more information. I'm not
11 aware of what information was obtained, if any.

12 **Q. Do you know which year that would have been?**

13 A. I -- I believe that was -- I am not certain. I
14 don't want to misspeak.

15 MS. SHAHEEN: Okay. That concludes my questions
16 for you.

17 I would like the opportunity to make a very
18 short closing statement, Madam Chair, if and when the
19 Commission is so inclined. Thank you.

20 THE WITNESS: Thank you, Ms. Shaheen.

21 COMMISSIONER SANDOVAL: Right.

22 Mr. Tremaine. Uhm, I think we are going to
23 leave redirect to the end after everybody has asked
24 questions, but you will get an opportunity to.

25 Mr. Koluncich, would you like -- do you

1 have any questions for the witness?

2 MR. KOLUNCICH: I do not. Thank you.

3 COMMISSIONER SANDOVAL: Okay. Mr. Feldewert?

4 MR. TREMAINE: I believe --

5 MR. MOANDER: Madam Chair, Mr. Feldewert emailed
6 during the lunch hour that he would not be attending the
7 rest of the hearing.

8 COMMISSIONER SANDOVAL: Okay. Well, good for
9 him.

10 Mr. Rodriguez.

11 MR. RODRIGUEZ: No questions, Madam Chair.

12 Thank you.

13 COMMISSIONER SANDOVAL: All right.

14 Commissioners? Mr. Baca or Mr. Warnell?

15 COMMISSIONER WARNELL: I --

16 COMMISSIONER BACA: Madam Commissioner, I --

17 Oh, go ahead.

18 COMMISSIONER WARNELL: Sorry, Mr. Baca.

19 I have one question of Ms. Polak.

20 CROSS EXAMINATION

21 BY COMMISSIONER WARNELL:

22 Q. Good afternoon, Ms. Polak.

23 A. Hi, Commissioner Warnell.

24 Q. My one question is: Do you know has there ever
25 been a permit denied because of an MOU?

1 A. I have not heard of that case, but I could not
2 speak for certainty.

3 **Q. Sorry about that. (Note: Pause.)**

4 **That -- sorry about that. That's all I've**
5 **got. Thank you.**

6 COMMISSIONER SANDOVAL: All right, Mr. Baca.

7 COMMISSIONER BACA: Thank you, Madam Chair.

8 CROSS EXAMINATION

9 BY COMMISSIONER BACA:

10 **Q. Just to make sure I heard it right after the**
11 **lunch break, going back to some of the testimony you had**
12 **before, was there a statement that OCD was okay with the**
13 **drilling into Texas but not producing from Texas at this**
14 **point until an MOU was obtained.**

15 A. Yeah. Our initial preference is that no further
16 development activity happen prior to MOU; however, if the
17 Commission were to grant a conditional approval, we could
18 agree to drilling the well and then awaiting an MOU for
19 any perforation.

20 COMMISSIONER BACA: Great. Thank you for that.
21 That's all I have.

22 COMMISSIONER SANDOVAL: I just have a couple of
23 questions.

24 CROSS EXAMINATION

25 BY COMMISSIONER SANDOVAL:

1 **Q. So at this point there isn't active AP -- an**
2 **approved APD for this well; is that correct?**

3 A. Can you restate that? You cut out, Madam Chair.

4 **Q. All right. Is there an approved APD for this**
5 **well?**

6 A. Not to my knowledge. Well, -- (Note: Pause.)

7 I can't tell you for certain.

8 **Q. All right. Let me --**

9 MS. SHAHEEN: I may be able to answer that
10 question if it would be helpful.

11 COMMISSIONER SANDOVAL: It would be. Can she,
12 Mr. Moander, procedurally?

13 MR. MOANDER: Sure. Could she -- or, Ms.
14 Shaheen, can you direct us to a document that might help
15 with this?

16 MS. SHAHEEN: I'm pretty sure it's somewhere in
17 the records of the Division, and let me see if I can --
18 I'm going to start with Tab 9 and see if it's in
19 Mr. Jones' Affidavit.

20 COMMISSIONER SANDOVAL: I'm trying to confirm
21 basically is there an approved APD but not an approved
22 commingling application? Is that where we are here?

23 MS. SHAHEEN: My understanding -- and here again
24 I'm looking to see where it is in the record. BLM has --
25 there's an approved APD by BLM but it's only for that

1 portion of the spacing unit within New Mexico, and Titus
2 has been informed that it can -- that same approved APD
3 will apply to the well drilled into Texas once a sundry
4 has been submitted and approved. If that makes sense.

5 But the Division has not approved an APD.

6 THE WITNESS: So may I, if I can?

7 So I appreciate the help, Ms. Shaheen. The
8 clarification is what I needed.

9 So is there an approved APD? Yes, on the
10 BLM side, no for the Division side. And then there's lots
11 of conversation around conditional approval of APDs, which
12 is where we are now.

13 **Q. But we're also talking about the commingling**
14 **application?**

15 A. That's correct.

16 **Q. Okay. So one of the things you mentioned was**
17 **the well design. Does the Division have concerns with**
18 **what BLM approved in the application for well design?**

19 A. No. I think that the Division's larger concerns
20 are around making sure that well designs require -- go
21 ahead.

22 **Q. No, go ahead.**

23 A. Whether well design requirements among the two
24 states, because the laterals sit in both states, are
25 acceptable.

1 Q. Okay. Uhm, so I just -- so potentially an MOU
2 could, in relation to this one application for
3 commingling, just this application for commingling, an MOU
4 could serve a purpose as to specifying the well design and
5 getting agreement between the states. Yes or no.

6 A. Yes.

7 Q. And so that could be one reason that an MOU
8 might be necessary?

9 A. Definitely.

10 Q. And for this one application, and again in
11 relation to just the commingling, an MOU could serve the
12 purpose of defining the production allocation. Yes or no.

13 A. Yes.

14 Q. Okay. Even -- do you think that --

15 Okay. I may be stepping back to what Ms.
16 Shaheen said in her line of questions that Texas doesn't
17 care how the production is allocated, they will go both
18 ways. Is it the Division's position that an MOU would be
19 necessary to solidify what type of allocation is used?

20 A. Yes, it is.

21 Q. Okay. I believe there was something in -- and I
22 can't put my hand on it, I have too many documents open --
23 I believe in the Division's testimony -- I'm sorry, not
24 testimony, Prehearing Statement, they indicate that the
25 Commission does not have the authority to dictate what's

1 in the MOU. Is that correct?

2 A. That is correct.

3 Q. So it would be -- would it be the Division
4 through the Energy and Minerals Department executing the
5 MOU?

6 A. Correct.

7 COMMISSIONER SANDOVAL: Okay. All right. I
8 think that's all I've got.

9 MR. MOANDER: Madam Chair, I have a couple of
10 questions, if I may.

11 COMMISSIONER SANDOVAL: Sorry, I just looked
12 down at my notes and I had one more quick one.

13 Q. Just to confirm, I think that's what you said to
14 Mr. Baca, the Division would be -- if, I guess, proposes
15 approving the Application with the condition that they
16 cannot -- basically they can go all the way up to --
17 sorry. I'm not speaking well.

18 They can drill into Texas, they just can't
19 complete the well, correct, and begin producing from it.

20 A. That is correct.

21 Q. Okay. And would that production -- the
22 completion and production be contingent upon executing an
23 MOU, whether it's for this application or for multiple
24 applications.

25 A. That's correct.

1 Q. Okay. But specifically the MOU would just have
2 to clarify it for this well. Right?

3 A. Yes.

4 COMMISSIONER SANDOVAL: Okay. Mr. Moander, go
5 ahead.

6 CROSS EXAMINATION

7 BY MR. MOANDER:

8 Q. Good afternoon, Ms. Polak. Thanks for coming
9 back after lunch.

10 One of the questions -- I want to flesh out
11 something that Ms. Shaheen asked and I don't fully
12 understand the answer on.

13 Ms. Shaheen asked a question approximately
14 along the following lines: Based on the Texas Railroad
15 Commission findings you were asked to agree that
16 commingling is not an issue in this matter. Your response
17 is that you would not agree based on bigger issues.

18 So what I'd like -- and I think you have
19 clarified what the other bigger issues are, and I believe
20 Madam Chair just asked some questions that kind of
21 outlined those, but for the sake of argument here, let's
22 remove whatever you meant by "bigger issues". We take
23 those as existing but we remove them from the query.

24 Is it still your position that the Texas
25 Railroad Commission findings, combined with what's going

1 on today, they do not resolve the commingling issues?

2 A. So if we are referring to commingling as just
3 production allocation. That.

4 Q. That's correct.

5 A. Okay. It is my position that I don't yet
6 understand how all of those intricacies work. You know,
7 namely I might mention, you know, gas capture. And those
8 conversations, to my knowledge, are still being had
9 between counsel and the staff.

10 So while I fully accept that Texas has made
11 a statement in their hearing around this, what I'm not at
12 full understanding is that the Division has said that that
13 is it, that we agree to that.

14 Q. Okay. That's what I wanted to just get clarity
15 on that, because it was starting to get muddy. Thank you.

16 Oh, one other thing. This question may
17 draw an objection from your counsel, but so I'll ask it of
18 him.

19 Do you anticipate the MOU would potentially
20 involve the OCC and not just the Division?

21 And again, if you don't feel comfortable
22 answering that, I do understand.

23 A. I can answer to the best of my knowledge but I
24 will invite the legal team to go at it.

25 Q. Okay.

1 A. To the best of my knowledge it's not the OCC's
2 charge to define the MOU, it would be the Division's
3 charge. It's my understanding that the OCC can say, "You
4 need one," but then the Division would have to go work
5 that out with parties involved.

6 MR. Moander: Okay. Thank you.

7 COMMISSIONER SANDOVAL: Sorry. I have one
8 follow-up question.

9 FURTHER CROSS EXAMINATION
10 BY COMMISSIONER SANDOVAL:

11 **Q. Just again stepping back to the application**
12 **that's in front of the Commission, just that application,**
13 **is the Division's position that in order to manage the**
14 **production allocation issues there needs to be an MOA?**

15 A. Yes.

16 COMMISSIONER SANDOVAL: Okay. Thank you.

17 MR. MOANDER: Madam Chair, something that just
18 occurred do me, I've heard MOU and MOA. Is there any
19 objection to using those terms, at least for purposes of
20 this hearing, as interchangeable, so that way the record
21 is clear?

22 COMMISSIONER SANDOVAL: No objection from me. I
23 think I was probably using them interchangeably.

24 MR. MOANDER: That's okay. I just want to make
25 sure that there's no disagreement that those are

1 effectively interchangeable for purposes of this hearing.

2 COMMISSIONER SANDOVAL: That's a good
3 clarification. Thank you.

4 Mr. Tremaine, do you have redirect?

5 MR. TREMAINE: I do have a couple of questions.

6 REDIRECT EXAMINATION

7 BY MR. TREMAINE:

8 Q. So, Ms. Polak, I want to follow up with you
9 regarding the other interstate wells, the one well in
10 Texas and the surface hole location, and the one across
11 the border to Colorado.

12 So has the New Mexico regulatory
13 environment changed since those wells were drilled?

14 A. Yes.

15 Q. What new rules have been put in place since
16 those wells were drilled?

17 A. Well, I probably -- I'll name a few, but not
18 limited to, because some of that was before my time.
19 But --

20 Q. What are the big ones?

21 A. Just this past year the waste rule regarding
22 reduction of methane, venting and flaring, and the spill
23 rule, are two of bigger ones here recently.

24 Q. Thank you. I have a couple of questions --
25 I think Mr. Moander's question really addressed this, but

1 I want to make sure that it's clear in the record, the
2 issue of commingling and production allocation.

3 Is it true that from OCD's perspective the
4 commingling of resources across the state line is the
5 primary difference between this proposed well and the
6 other proposed wells for which there are not MOUs in
7 place?

8 A. Yes.

9 Q. Is production allocation OCD's only concern?

10 A. No.

11 Q. Do you agree that Titus has requested OCD and
12 now OCC approval of surface acreage allocation as a
13 resolution to production allocation issues?

14 A. Yes.

15 Q. And is it also true that OCD has not yet agreed
16 to surface acreage allocation as that resolution?

17 A. That is true.

18 Q. Okay. You were asked a series of questions
19 about OCD's concerns related to this specific well, so I
20 want to touch on some further points that address the
21 chairwoman's questions.

22 In regards to this particular well, could
23 an MOU define the applicability of natural gas capture
24 requirements?

25 A. An MOU could, yes.

1 Q. Could it define who gets the production reports
2 and what information is included in those production
3 reports?

4 A. Yes.

5 Q. Could it define whether or not Texas has access
6 to inspect the well?

7 A. Yes.

8 Q. Could it define who would pay to plug and
9 abandon and remediate the well if it was orphaned?

10 A. Yes.

11 Q. I want to ask you a couple of questions about
12 Titus' argument.

13 Have you generally reviewed Titus' argument
14 in support of their Application filed as part of the
15 Prehearing Statement for this hearing?

16 A. Yes.

17 Q. Are you aware of Titus' argument that an MOU is
18 not necessary?

19 A. Yes. I am aware of that as of the Prehearing
20 Statement, but prior to that I am not aware of any
21 objection that Titus had to an MOU being put in place.

22 Q. Are you aware of Titus' argument that the MOU is
23 not necessary because their proposed well will be drilled
24 from New Mexico into Texas?

25 A. Yes.

1 Q. Are you aware of Titus' argument that an MOU, if
2 it's necessary, should only address wells that are drilled
3 from New Mexico into Texas?

4 A. Yes.

5 Q. What is OCD's perspective regarding a one-sided
6 approval of a well or a one-sided MOU?

7 A. OCD would not be in support.

8 Q. In your opinion as the Deputy Director of OCD,
9 is it good policy to approve wells that are drilled from
10 New Mexico to Texas but potentially deny or condition
11 wells that are drilled from Texas into New Mexico?

12 A. No. No, it wouldn't be good policy. We want to
13 support fair agreement to both approve and deny wells on
14 either side, and certainly wouldn't want to create any
15 type of precedent where operators could choose which
16 regulatory environment they want to be a part of, because,
17 as we've already talked, the regulatory environments
18 change over time greatly.

19 MR. TREMAINE: No further questions. Thank you.

20 COMMISSIONER SANDOVAL: Thank you. Can we take
21 a quick 10-minute break and come back, actually, probably
22 at 1:45?

23 THE WITNESS: Am I dismissed?

24 COMMISSIONER SANDOVAL: You are dismissed.

25 THE WITNESS: Okay. Thank you, Madam Chair and

1 Commissioners. I appreciate it.

2 Thank you everyone. Nice to meet you.

3 MS. SHAHEEN: Thank you.

4 (Note: In recess from 1:32 p.m to 1:45 p.m.)

5 COMMISSIONER SANDOVAL: Mr. Baca, are you back?

6 Oh, there you are. Great. All right.

7 With that, let's -- State Land Office, I don't believe --
8 are you planning to present any witnesses today?

9 MR. KOLUNCICH: No, Madam Commissioner. Thank
10 you.

11 COMMISSIONER SANDOVAL: Sorry, I'm having a hard
12 time hearing you. I don't know if I'm the only one,
13 though. No?

14 MR. KOLUNCICH: No, Madam Commissioner. Thank
15 you.

16 COMMISSIONER SANDOVAL: Do the commissioners
17 have any questions for the State Land Office? Should we
18 address them to you?

19 MR. KOLUNCICH: Yes, Madam Commissioner.

20 COMMISSIONER SANDOVAL: Okay. Do any of the
21 commissioners have questions for the State Land Office?

22 COMMISSIONER BACA: I do not.

23 COMMISSIONER WARNELL: I have none, Madam
24 Commissioner.

25 COMMISSIONER SANDOVAL: Okay. Maybe I'm the

1 only one. I just have maybe a quick clarifying question.

2 So does the -- is the State Land Office's
3 position that there should be an MOA in place before this
4 well produces?

5 MR. KOLUNCICH: What the New Mexico State Land
6 Office did is we removed our opposition and no longer take
7 a position with respect to the Application. We've been
8 quite clear that there is a need downstream for an MOU or
9 an MOA to delineate the responsibilities between the
10 respective parties, but because we received these, I
11 guess, let's say concessions -- I won't say concessions,
12 negotiated deal points to resolve our conflict with Titus,
13 we removed our objection to this Application, whatever
14 that means.

15 COMMISSIONER SANDOVAL: So you don't oppose the
16 Application but you do still think there should be an MOA
17 or MOU, or whatever, to clarify some of those points that
18 you listed.

19 MR. KOLUNCICH: Indeed, Madam Commissioner. And
20 that's the way the agreement was written, albeit somewhat
21 hurriedly, was to say at some point if there is an MOU,
22 those are talking points, deal terms, which actually I'm
23 told from some of the documents or some of the testimony
24 that was submitted before the Texas Railroad Commission.

25 COMMISSIONER SANDOVAL: In your negotiations

1 with Titus, is that agreement contingent upon an MOU or
2 just talks, recommendations?

3 MR. KOLUNCICH: Our position is that we were in
4 support of those specific conditions for approval no
5 matter what was ordered by the -- no matter what was
6 ordered by the OCC, in order to remove our opposition to
7 the Application.

8 COMMISSIONER SANDOVAL: Okay. All right.
9 That's helpful. Thank you.

10 MR. KOLUNCICH: Thank you.

11 COMMISSIONER SANDOVAL: I believe Mr. Feldewert
12 is not with us any longer.

13 Mr. Rodriguez, are you planning to present
14 any witnesses today?

15 MR. RODRIGUEZ: No, Madam Chair.

16 COMMISSIONER SANDOVAL: Okay. Ms. Shaheen, do
17 you have any rebuttal witness you intend to present?

18 MS. SHAHEEN: I do not. Thank you.

19 COMMISSIONER SANDOVAL: Okay.

20 Mr. Moander, I can't recall, do we close
21 the record before we go to closing arguments, or is it
22 open through closing arguments?

23 MR. MOANDER: The record should remain open
24 through closing arguments, at which time it will close,
25 the record would close. But as a reminder, closing

1 arguments are not evidence, they are just that, argument.

2 COMMISSIONER SANDOVAL: Thank you.

3 All right. Ms. Shaheen, would you like to
4 make a closing statement?

5 MS. SHAHEEN: Yes. I'll try to be as brief as
6 possible.

7 As we've stated, Titus does not believe
8 that an MOU is required here to approve this application.
9 To the extent that the Commission feels that an MOU is
10 necessary Titus agrees that it should only pertain to this
11 particular application, and, in any event, it should only
12 pertain to wells that are drilled from New Mexico into
13 Texas.

14 And I would note that that is part of our
15 agreement with the State Land Office. The State Land
16 Office supports that position. To attempt to resolve
17 issues that may arise from wells drilled from Texas into
18 New Mexico is not what this Application is about and not
19 what any of Titus' future development plans is about, and
20 it is therefore unnecessary at this time.

21 But any time in the future another
22 operator, even Titus, decides they want to drill from
23 Texas into New Mexico, then at that time they could come
24 to the Division and seek whatever approvals they need for
25 those types of wells.

1 Titus tried diligently to reach out, before
2 any filings were done, with all the agencies, and it was
3 difficult to get feedback for weeks and even months. As a
4 small company, they were required to proceed with their
5 drilling program, even though this has taken longer than
6 anticipated.

7 The State of Texas, which is actually the
8 state who has the most risk here, has already approved
9 drilling of this particular well, and that's all Titus is
10 asking for here.

11 If the Division -- excuse me, if the
12 Commission were so inclined to condition an approval on an
13 MOU completion of the well and production of the well
14 based on an executed MOU, Titus would suggest that it
15 allow drilling and completion but not production, because
16 there are safety concerns that could arise with having to
17 drill and then come back later and complete.

18 Uhm, the question -- I think the one
19 question that's raised as a legal question is whether the
20 Commission has authority to deny the Application based on
21 the Division's speculative concerns, particularly here
22 when the proposed well satisfies the Commission of the
23 economics by preventing waste, the protection of
24 correlative rights, and minimizing environmental impacts.

25 And I would cite to Continental Oil Company

1 v. Oil Conservation Commission, 1962, NMSC-062:

2 Prevention of waste is of paramount interest.

3 And in this -- with respect to this
4 application Titus would be required to comply with all New
5 Mexico regulations.

6 And I think that completes my closing
7 statement for now.

8 MR. KOLUNCICH: May NMSLO clarify one minor
9 matter? Not argument, just clarification.

10 COMMISSIONER SANDOVAL: I think you can make
11 clarification during a closing statement.

12 MR. KOLUNCICH: Thank you.

13 COMMISSIONER SANDOVAL: Okay. Mr. Tremaine, do
14 you have a closing statement?

15 MR. TREMAINE: I do. And I also will attempt to
16 be very brief.

17 With that, we had a lot of discussion about
18 production allocation today, and that's, in fact, the only
19 question posed to the Commission by Titus' Application.
20 But that production allocation concern is not the
21 controlling concern for the OCD and is frankly probably
22 the easiest to address, but the OCD believes that the
23 production allocation would more appropriately be
24 addressed in an MOU.

25 I want to address another point about the

1 authority to deny the Application, and I want to be clear
2 that an MOU is not specifically a requirement in Titus'
3 Application. If the OCC determined it was appropriate to
4 deny their Application it would not be on the basis that
5 there was a lack of an MOU, it would be on the OCD's
6 presentation that the OCD cannot protect the interests of
7 the State of New Mexico absent reasonable certainty
8 regarding the regulatory environment. Texas is not a
9 party to this proceeding, and its assurance that it will
10 comply with New Mexico regulations does not constrain
11 Texas' conduct, and Texas, I think, can reasonably be
12 foreseen to potentially take issue with application of New
13 Mexico rules to Texas minerals. And the inverse is true
14 in the event that a well is drilled in Texas and extends
15 into New Mexico. That's not speculative. That's
16 projectionable.

17 The MOU or the JPA is simply the mechanism
18 to provide a reasonable amount of certainty as to how the
19 parties are going to cooperate and how to jointly manage
20 wells that are commingling mineral resources from two
21 separate states. That's the goal for getting an MOA or
22 MOU or JPA. It really doesn't matter what we call it.

23 I want to address the authority question
24 that came up, and clarify the OCD's legal position.

25 The OCD and this Commission have concurrent

1 authority, so the OCC could require various actions by the
2 OCD, and the OCD will comply with whatever those demands
3 are from the OCC. For instance, the Commission could tell
4 OCD to negotiate or continue negotiating an MOU, you could
5 tell the Division to be ready to execute that agreement by
6 a certain date, you could indicate what the Commission
7 wants included in the MOA. But what you can't control is
8 the Railroad Commission's participation in that or the
9 ability of the parties to reach an agreement, an executed
10 agreement by a date certain, because of those third
11 parties out of our control.

12 So I want to be clear the Division is not
13 taking a position that OCC generally doesn't have
14 jurisdiction to look at these issues or to weigh in on an
15 interstate agreement. In fact, under the JPA, I think,
16 which was presented by the Division, it is a clear
17 authority for the agency to direct and negotiate with an
18 agency outside the State of New Mexico that could keep the
19 negotiations with the Railroad Commission. I don't see a
20 distinction between the Division and the Commission in
21 terms of the JPA's predictability, but the OCD would
22 recommend to leave that negotiation with the OCD. That is
23 simply our recommendation.

24 So I hope that provides some clarity of the
25 legal position of the Division.

1 The bottom line is that OCD does believe
2 that an MOU is necessary prior to further activity, but
3 especially completion and production on the well in the
4 instant Application. While we understand Titus'
5 resistance to the OCD looking at issues larger than Titus'
6 Application, the OCD feels it is untenable to treat wells
7 moving from New Mexico into Texas differently than wells
8 going from -- you know, originating in Texas and coming
9 into New Mexico. The OCD doesn't believe that that sets
10 New Mexico and Texas up for an agreement that's mutually
11 beneficial, and it will -- the precedent set by accepting
12 that the rule at the wellhead applies for all minerals
13 extracted from that wellhead will create an incentive,
14 which could shift over time between the states, for
15 operators to seek out the most friendly regulatory
16 environment.

17 So approving the Application will be argued
18 that it stands for the proposition that interstate
19 development is acceptable and that the rule at the
20 wellhead controls, and what OCD wants to avoid is getting
21 into any protracted negotiations after the fact with the
22 State of Texas, and avoid any potential legal disputes
23 down the road. It's intended as a preventative measure.

24 Thank you.

25 COMMISSIONER SANDOVAL: Thank you, Mr. Tremaine.

1 Does State Land Office have a closing
2 argument?

3 MR. KOLUNCICH: Thanks very much for the
4 opportunity to be heard. I just wanted to clarify one
5 important point on the record. I thought I communicated
6 that on opening, but it's possible it got lost when I was
7 reciting the potential deal terms.

8 This is a negotiated resolution in a
9 particular set of circumstances, and we thought it was
10 agreed there would be no argument that this single,
11 one-off deal would be precedence in drilling in one
12 direction or the other. This was a situation because we
13 had a situation of uncertainty, both before Texas RRC and
14 with any decision here and with the potential possibility
15 of some waste in the future, that we could get some sort
16 of resolution, some sort of stipulation with counsel for
17 Titus on those, I believe it was, eleven deal points which
18 I articulated at the very beginning.

19 It wasn't meant to be -- again it was not
20 meant to present this is a situation where -- we have a
21 one-off. We have an applicant who, you know, maybe isn't
22 100 percent entitled to this, but we removed our
23 opposition on the basis this was a one-off, not sort of
24 precedent for future leases.

25 That is the only thing I would like to make

1 100 percent clear.

2 COMMISSIONER SANDOVAL: Thank you.

3 Mr. Feldewert is not here, so Mr.

4 Rodriguez, do you have a closing statement?

5 MR. RODRIGUEZ: I do not. I just want to say I
6 thank you all for your time.

7 COMMISSIONER SANDOVAL: Thank you.

8 Ms. Shaheen, do you have any rebuttal
9 closing statement?

10 MS. SHAHEEN: I do not. Just to echo Mr.
11 Rodriguez, thank you all very much for your time.

12 COMMISSIONER SANDOVAL: Thank you. So the
13 record of this Application hearing is now closed.

14 Mr. Moander, in this situation can the
15 Commission go into a closed session to discuss this?

16 MR. MOANDER: Let me -- I was afraid you were
17 going to ask that. Let me take one look, to be thorough,
18 at OMA. My suspicion is probably not, but let me take a
19 look, and give me just one moment, please.

20 COMMISSIONER SANDOVAL: Okay. Historically for
21 technical matters we've been able to, but confirming would
22 be great.

23 MR. MOANDER: Yes, Madam Chair. I apologize.
24 This tells you what type of hearing we have, but my poor
25 Adobe is slowing down from the volume of .pdfs I have

1 open.

2 But I do believe the Commission, under New
3 Mexico Statute 10-15-1H (3) applies: Hearings
4 deliberations by public body in connection with
5 administrative adjudicatory proceedings.

6 Because there are legal rights, duties, and
7 so on to be determined after a trial-type hearing, and at
8 this point the Commission has complied with the
9 requirement of this provision that (Reading) "the actual
10 administrative adjudicatory proceedings during which
11 evidence is offered or rebutted and then ultimately final
12 action taken, must be done in open meeting."

13 And I anticipate the Commission will render
14 its decision after a closed session.

15 COMMISSIONER SANDOVAL: Okay. So that's a
16 longwinded yes?

17 MR. MOANDER: Yes, it is. Got to make that
18 record, Madam Chair.

19 COMMISSIONER SANDOVAL: Okay. I'm trying to
20 think what the mechanism would be to do that. Should I be
21 the one to make a motion to do that?

22 MR. MOANDER: Yes. We didn't necessarily
23 address this because it wasn't the pressing issue of this
24 adjudication. Generally there's a motion to close, again
25 it's 10-15-1H(3), that the meeting would be closed

1 pursuant to that section of OMA, and the only matters to
2 be discussed during the closed session are those that were
3 presented by the parties for purposes of this hearing.

4 COMMISSIONER SANDOVAL: Well, I'll ask that
5 question in a second, but theoretically if there was a
6 motion and that was approved to close per Section 10-15-1H
7 (3), would I, like, set up a separate meeting invite for
8 us?

9 MR. MOANDER: That's usually what is done, but
10 we could also ask the parties to check -- I don't know.
11 We could have the parties check in, and we could excuse
12 everybody. That may be simpler unless it's going to be
13 real easy to generate a link on your end.

14 COMMISSIONER SANDOVAL: Okay. Well, let's first
15 see if that is what the Commission would like to do, and
16 then we can cross that bridge.

17 Is there a motion for the meeting to be
18 closed pursuant to the administrative adjudicatory
19 deliberations exception to the Open Meetings Act, Section
20 10-15-1H (3), to deliberate only matters for Case No.
21 21872?

22 COMMISSIONER BACA: I make the motion.

23 COMMISSIONER SANDOVAL: Is there a second?

24 COMMISSIONER WARNELL: Madam Chair, I second the
25 motion.

1 COMMISSIONER SANDOVAL: Mr. Moander, would you
2 do a roll call vote, please.

3 MR. MOANDER: Yes, Madam Chair.

4 Commissioner Baca.

5 COMMISSIONER BACA: Yes.

6 MR. MOANDER: Commissioner Warnell.

7 COMMISSIONER WARNELL: Yes.

8 MR. MOANDER: Madam Chair.

9 COMMISSIONER SANDOVAL: Yes.

10 MR. MOANDER: The motion unanimously carries.

11 COMMISSIONER SANDOVAL: Thank you.

12 Okay. So the Commission will now close the
13 session and the record.

14 I think -- Mr. Baca, are you guys able to
15 use Teams, and Mr. Warnell? Can you guys all use and get
16 on Teams?

17 MR. BACA: Madam Chair I have had one meeting
18 through Teams and it seemed to work okay.

19 COMMISSIONER SANDOVAL: Okay. All right. For
20 ease, I'm going to send out a link to Mr. Warnell,
21 Mr. Baca and Mr. Moander, and everybody else hang tight
22 here.

23 I would just remind the commissioners, if
24 you want to you can leave the meeting on here and then
25 rejoin. Or make sure that you're muted and all of that

1 jazz for this meeting, or turn off your video for this
2 meeting if you have two meetings running.

3 I will have to continue to have this
4 meeting running so I don't cut everybody off.

5 Okay. All right.

6 Well, with that the public can remain on
7 this meeting during the closed session and wait for the
8 Commission to reconvene.

9 So we will be back.

10 (Note: In recess from 2:08 p.m. to 3:01 p.m.)

11 COMMISSIONER SANDOVAL: Ms. Shaheen, I see you.
12 Great. Mr. Tremaine, and Mr. Koluncich. Right, I think
13 we have the whole crew.

14 It is 3:01 on September 28th, and the
15 Commission meeting and the record is now open.

16 Discussion during closed session was
17 limited to the deliberations in Case 21872.

18 Sorry, didn't hit the record button.

19 I'm just going to repeat for the video
20 recording. I know it's on the transcript.

21 It is a little after 3:00 on the 28th and
22 we are -- the Commission meeting and the record are now
23 open again.

24 The discussion during closed session was
25 limited to the deliberations in Case No. 21872. All

1 right.

2 And with that, Commissioners, I think is
3 there a motion in this matter? Actually, I may make a
4 motion here.

5 So in the matter of Case 21872, I make a
6 motion to approve the Application with some contingencies
7 to that: That the well cannot produce without having a
8 broader agreement between New Mexico and Texas in place.

9 In addition, any substantially similar
10 proposals from the Applicant or other Applicants need to
11 come directly to the Commission.

12 And third, that the Division, starting
13 during the January 13th, 2022 regularly scheduled
14 Commission meeting needs to provide both a written update
15 as well as appear at the January 13th hearing to provide
16 an update on the status of the MOU. Two business days
17 prior to the January 13th regularly scheduled OCC hearing
18 the Division should file a pleading which indicates the
19 status update in writing. After that, the Division needs
20 to continue to provide these updates to the Commission,
21 including the written pleading two days prior to the
22 regularly scheduled meeting, and then appearing at the
23 regularly scheduled OCC meeting, basically every 90 days
24 after until an agreement between New Mexico and Texas is
25 executed.

1 Is there a second to that motion?

2 COMMISSIONER BACA: Madam Chair, I second the
3 motion.

4 COMMISSIONER SANDOVAL: Thank you.

5 I would open it up for discussion before we
6 take a vote on this, and I think I would like to start off
7 as to why I made the motion and why it entailed those
8 pieces.

9 You know, the Commission is charged with
10 preventing waste and protecting correlative rights, and in
11 order to do that there needs to be a level of certainty.
12 And I think all of the parties have recognized that this
13 is, in general, a sort of unprecedented situation; it's
14 not something that's done daily and/or regularly, and
15 that, you know, drilling across state lines and having
16 interesting issues has inherent uncertainties. And in
17 order for waste to be prevented and to ensure correlative
18 rights for all of the interested parties, we need to have
19 a level of certainty, and that will come in the form of an
20 agreement between New Mexico and Texas.

21 Are there any other thoughts or comments
22 from the other commissioners? (Note: No response.)

23 Okay. With that, Mr. Moander, would you
24 please do a roll call vote.

25 MR. MOANDER: Yes, Madam Chair.

1 Commissioner Baca.

2 COMMISSIONER BACA: Yes.

3 MR. MOANDER: Commissioner Warnell.

4 COMMISSIONER WARNELL: Yes.

5 MR. MOANDER: Madam Chair.

6 COMMISSIONER SANDOVAL: Approved.

7 MR. MOANDER: The motion carries unanimously.

8 COMMISSIONER SANDOVAL: Thank you.

9 With that, Ms. Shaheen, would you please
10 draft and circulate a Proposed Order prior to the 8th, or
11 by the end of the day on October 8th so that the
12 Commission can take this matter, the Final Order up during
13 our regularly scheduled meeting on October 14th.

14 MS. SHAHEEN: Yes. Yes. I don't know if it's
15 appropriate for me to ask a clarifying question.

16 COMMISSIONER SANDOVAL: Mr. Moander, I'm fine
17 with that.

18 MR. MOANDER: Yeah, I don't have an issue with
19 that.

20 And, you know, something just occurred to
21 me, Madam Chair. Let me double check. There may be one
22 provision we need to account for here in some of the
23 checklists.

24 But I'm listening to Ms. Shaheen.

25 COMMISSIONER SANDOVAL: Go ahead, Ms. Shaheen.

1 MS. SHAHEEN: I guess the question I have is
2 what is meant by a "broader agreement"? That seems to be
3 a little broad in itself. So I guess that's my question
4 is: What does the Commission envision being in the
5 broader agreement between New Mexico and Texas?

6 COMMISSIONER SANDOVAL: It needs to provide a
7 level of certainty, again in order to manage the issues of
8 preventing waste and protecting correlative rights. There
9 was, I think, testimony by the Division as to the
10 Commission being able to dictate the direct terms in those
11 agreements, and so that it will need to relate to,
12 basically address how this well will be managed, and
13 things such as production allocation, et cetera, and
14 provide certainty of that.

15 Mr. Moander, is there anything additional?

16 MR. MOANDER: Inviting the lawyer to comment?

17 I think, Ms. Shaheen, what the Commission
18 is looking for here, and I'm not speaking for it so I may
19 be corrected, is there have been several issues, and this
20 agreement is not limited to those issues but ought to at
21 least include them, which is going to be issues of -- you
22 know, allocation is -- it's not a big one but it's
23 important. It's not the biggest one but it's important.

24 The other issue is going to be -- give me
25 just a second. Let's see.

1 So we have the well -- I don't have a
2 mastery of the vocabulary here quite yet. Basically not
3 the schematics but the well structure, some of --

4 COMMISSIONER SANDOVAL: Casing requirements.

5 MR. MOANDER: Yes, casings requirements. There
6 you go. I knew you'd have an answer for that.

7 I think those are at least two items, but
8 we would be looking for as-comprehensive-as-possible
9 agreements between New Mexico and Texas that incorporate
10 those two items in particular, but not limited to them, so
11 that wells that are going to be drilled interstate have
12 some regulatory framework they can work under that's clear
13 and the parties can rely upon.

14 MS. SHAHEEN: And would that only be for wells
15 drilled from New Mexico into Texas?

16 MR. MOANDER: It would be great if it was more
17 comprehensive than that, but that would be a scope issue
18 that I think may be relevant in particular.

19 But I would imagine -- just if this goes --
20 I'm not going to say it's been promised, but it's sort of
21 been argued/IMPLIED both sides of that coin ought to be
22 covered. I would expect that. But I don't know that
23 that's -- the Commission is not taking a position -- Madam
24 Chair, correct me if I'm wrong -- specifying high-level
25 detail as to what this agreement needs to say, but it

1 certainly needs to address the issues that are presented
2 in this case.

3 I think that is a simpler way of putting
4 it: That have been presented by the parties.

5 COMMISSIONER SANDOVAL: That's correct.

6 MR. MOANDER: And I don't think the Commission
7 intends -- the Commission doesn't intend to dictate what
8 that agreement entails in any sort of specificity as to
9 whether or not it -- it just needs to address this well at
10 a minimum. The issues for this case need to be addressed
11 in that MOU/MOA/agreement, whatever we want to term it, if
12 it is written in a -- so yes, that's...

13 COMMISSIONER SANDOVAL: Thank you.

14 MR. MOANDER: One further -- one item, Madam
15 Chair, I'm going to suggest be addressed is the
16 precedential value of this Order.

17 COMMISSIONER SANDOVAL: This Order being --
18 you're going to have to remind me of the term here -- only
19 applies to the facts in this case. And -- sorry, what?

20 MR. MOANDER: May I make a proposal of language
21 that you might adopt?

22 COMMISSIONER SANDOVAL: Go ahead.

23 MR. MOANDER: That the Order the Commission is
24 issuing in this case is not intended as precedent for
25 future cases and applies exclusively to the facts and the

1 parties present before the Commission in this matter.

2 COMMISSIONER SANDOVAL: Exactly.

3 Any other questions, Ms. Shaheen?

4 MS. SHAHEEN: Not at this time. Thank you.

5 COMMISSIONER SANDOVAL: All right. If you could
6 circulate that by the end of the day on the 8th and we can
7 put it on the agenda for the -- I should write this
8 down -- the October 14th hearing, the regularly scheduled
9 OCC meeting.

10 Is that turnaround possible?

11 MS. SHAHEEN: Yes.

12 COMMISSIONER SANDOVAL: All right. Mr. Moander.

13 MR. MOANDER: Madam Chair, one other item I'm
14 going to ask our court reporter about.

15 I anticipate a turnaround for this
16 transcript in case, you know, if the parties run into
17 issues having trouble on transcripts, obviously let me
18 know, but I always like to ask the court reporter what her
19 anticipated turnaround time might be.

20 (Note: Discussion off the record.)

21 COMMISSIONER SANDOVAL: All right. With that
22 our next meeting is the regularly scheduled OCD -- I'm
23 sorry OCC meeting on October 14th at 9:00 a.m.

24 And with that, happy Tuesday, everybody and
25 I guess we will see most everybody on October 14th.

1 COMMISSIONER WARNELL: Thank you, Madam Chair.

2 COMMISSIONER SANDOVAL: Thank you, everybody.

3 Have a good Tuesday and rest of the week.

4 (Time noted 3:18 p.m.)

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1 STATE OF NEW MEXICO)

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nor related to nor contracted with (unless excepted by the

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that I have no interest whatsoever in the final

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disposition of this case in any court.

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/s/ Mary Macfarlane

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