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STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION SANTA FE, NEW MEXICO

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IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:

Case Nos. 24277, 24278, 23755,  
24018, 24019, 24020, 24022,  
24023, 24024, 24026, 24027,  
24025, 23614, 23615, 23616,  
23617, 23655

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VIDEOCONFERENCE HEARING

DATE: Thursday, March 18, 2024  
TIME: 9:01 a.m.  
LOCATION: Pecos Hall  
Wendell Chino Building  
1220 St. Francis Drive  
Santa Fe, NM 87505  
REPORTED BY: James Cogswell  
JOB NO.: 6492301

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A P P E A R A N C E S (Cont'd)

ALSO PRESENT:

Dylan Fuge, Commissioner/Chair, Oil Conservation  
Commission

Greg Bloom, Commissioner, Oil Conservation  
Commission

Dr. William Ampomah, Commissioner, Oil  
Conservation Commission

Sheila Apodaca, Law Clerk, Oil Conservation  
Division

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NO.	DESCRIPTION	ID/EVD
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NO.	DESCRIPTION	ID/EVD
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P R O C E E D I N G S

THE HEARING EXAMINER: Good morning, everyone. I think we're going to go ahead and get started.

Sheila, are we recording?

MS. APODACA: Yes. We are.

THE HEARING EXAMINER: All right. Good morning, everyone, to the March 14, 2024, meeting of the New Mexico Oil Conservation Commission. For the commissioners, this is the first time we've had the chance to use the new room set-up.

Would remind everyone, some of you who have been in Division's hearing, are familiar with this. You have mics in front of you. Just click the button on the right when it lights up green. You speak, you'll be able to hear out in the crowd. And when you're done speaking, I'd ask that you turn off your microphone.

And with that, I'll do a quick roll call.

Commissioner Ampomah.

DR. AMPOMAH: Present.

THE HEARING EXAMINER: Commissioner Bloom.

MR. BLOOM: Present.

1 THE HEARING EXAMINER: Let the record  
2 reflect a quorum of the Oil Conservation Commission's  
3 here. First item on the agenda is approval of the  
4 agenda for today's meeting. Do we have any questions,  
5 comments, or additions?

6 MR. BLOOM: No, Mr. Chair.

7 THE HEARING EXAMINER: Can I get a  
8 motion to approve the agenda?

9 MR. BLOOM: I so move.

10 DR. AMPOMAH: I second.

11 THE HEARING EXAMINER: Quick roll call  
12 vote.

13 Dr. Ampomah.

14 DR. AMPOMAH: Approved.

15 THE HEARING EXAMINER: Commissioner  
16 Bloom.

17 MR. BLOOM: Approved.

18 THE HEARING EXAMINER: Let the record  
19 reflect that the agenda was approved unanimously.

20 Next item on the agenda, approval of  
21 the meeting minutes from our last meeting, which was  
22 on January 11, 2024. Those were circulated to the  
23 commissioners yesterday evening. Are there any  
24 comments or additions to the minutes?

25 MR. BLOOM: No, Mr. Chair.

1 THE HEARING EXAMINER: Can I get a  
2 motion?

3 MR. BLOOM: I so move.

4 DR. AMPOMAH: I second.

5 THE HEARING EXAMINER: Dr. Ampomah,  
6 roll call vote.

7 DR. AMPOMAH: Approved.

8 THE HEARING EXAMINER: Commissioner  
9 Bloom.

10 MR. BLOOM: Approved.

11 THE HEARING EXAMINER: Let the record  
12 reflect that the minutes were unanimously approved by  
13 the Commission. I think as everyone knows, but I'll  
14 just restate it here, we did not meet in February at  
15 the previously scheduled special hearing for the PFAS  
16 rulemaking, due to an unopposed motion to vacate that  
17 scheduling order and pull that hearing down.

18 We're going to start. We've got a  
19 number of items set up for a status conference. We're  
20 going to start with Case Number 23580. That's the  
21 application of WildEarth Guardians to consider  
22 proposed amendments to address perfluoroalkyl and  
23 perfluoroalkyl substances and their use in oil and gas  
24 extraction and amending 19.15.2, 19.15.16, 19.15.31,  
25 and 19.15.32.

1           Are all the parties who've entered an  
2 appearance in that case here today? Can we start  
3 with -- well, have the parties decided who's making a  
4 report on the status of the case and what the next  
5 steps are?

6           Mr. Tremaine.

7           MR. TREMAINE: I think I can start  
8 there, Mr. Chair. This is Jesse Tremaine for the Oil  
9 Conservation Division. The primary reason for  
10 postponing the previous hearing was to allow  
11 additional time for the Oil Conservation Division to  
12 obtain expert witnesses.

13           We are in the very final stages of  
14 that, finalizing contracts for those services. Expect  
15 that to be completed any day. Additionally, we have  
16 started stakeholder engagement on aspects of the  
17 petition and structure, specifically, with the other  
18 parties entered into the case, related to aspects of  
19 that petition and structure that don't require the  
20 expert services.

21           So OCD has been talking with both the  
22 industry stakeholders and the petitioners to suggest a  
23 potential alternative petition structure. So far,  
24 those discussions have been, I think, productive. We  
25 expect to need another 30 days or so to try to hammer

1 out some areas of consensus, and I put together a very  
2 brief kind of outline of alternative dates.

3 But where we are right now is that  
4 we're seeing the OCD has some availability constraints  
5 in early July, and we think that hearing dates in June  
6 might be a little difficult to provide enough time for  
7 the parties to work through the process. And I  
8 believe that the petitioners may have some conflicts  
9 in -- witness conflicts in July.

10 So my suggestion -- and then I'll turn  
11 over to the other parties -- is to -- that we continue  
12 to work through a schedule and agree here to submit a  
13 revised pre-hearing -- or a scheduling order, as we  
14 did previously, to the Commission once we can kind of  
15 hammer out some of those conflicting availabilities.

16 And so, essentially, as of right now,  
17 the Division would be proposing, potentially, the week  
18 of June 24th -- but I think that's going to be, you  
19 know, tight for a lot of the parties to work  
20 through -- or one of the last two weeks in July. And  
21 I think the other parties have some conflicts there.  
22 So we're going to need a little bit of time to work  
23 through that.

24 THE HEARING EXAMINER: Mr. Davis, or  
25 anyone else, any comments on Mr. Tremaine's

1 presentation?

2 MR. DAVIS: Thank you, Mr. Chair,  
3 Commissioners. We agree with Mr. Tremaine about  
4 continuing talks about potential revised petition.  
5 The petitioners do have some witness conflicts in late  
6 June through July and early August.

7 But I spoke with Mr. Tremaine, and  
8 we're going to go back and speak with one of our  
9 witnesses and see if we can either work that out with  
10 him or potentially work it out with the parties and  
11 either bump the hearing up by a few days or a week, if  
12 possible. And if not, we'll, you know, hammer out a  
13 new procedural order to present to the Commission.

14 THE HEARING EXAMINER: Mr. Feldewert,  
15 for the industry parties.

16 MR. FELDEWERT: You know, I agree. I  
17 know that there has been some movement towards, you  
18 know, having some discussions and having stakeholder  
19 meetings. That may take a little time to see what we  
20 can -- what consensus we can reach. Obviously, we  
21 have not had any discussions about any particular  
22 dates.

23 So it does seem to me that we need some  
24 time to have those stakeholder discussions, try to  
25 figure out if we can come to a consensus on when

1 witnesses can be available on -- for a hearing date.  
2 So it might be premature to schedule something at this  
3 point.

4 THE HEARING EXAMINER: Hearing the  
5 discussion -- and I'll turn it over -- I would suggest  
6 to the parties maybe email myself and the hearing  
7 clerk some weeks that you're looking at. We can  
8 circulate that among the Commission via email to  
9 confirm commissioner availability for a special  
10 hearing.

11 Based on prior discussions, I suspect  
12 we'll probably want to reserve a week. And I think  
13 the Commission's preference would be to reserve a  
14 continuous week so, you know, no party has a weekend  
15 overlap one way or another, depending on you're  
16 looking at, as we're managing it. And if you give us,  
17 you know, two or three options, the Commission can  
18 confer and tell you what works for our schedule at  
19 this juncture.

20 But it sounds like it would be helpful.  
21 And absent any additional discussion or questions from  
22 my fellow commissioners, I think we'll just put this  
23 on the agenda for the April meeting, which maybe the  
24 parties, if everything's worked out, can just present  
25 an updated scheduling order that just has changed

1 dates and other components.

2 But if there are any other changes the  
3 parties would like to discuss, you're obviously free  
4 to propose those as well. Do I have any other  
5 questions from my fellow commissioners?

6 MR. BLOOM: No, Mr. Chair.

7 DR. AMPOMAH: No, Mr. Chair.

8 MS. BENNETT: Mr. Chair, this is Deana  
9 Bennett. And I apologize I'm not there in person.  
10 I'm a little sick today. But I did just want to enter  
11 my appearance on the record for EOG. We are in this  
12 rulemaking for EOG. And I don't have anything  
13 substantive to add to the discussions, but I did just  
14 want to enter my appearance on the record. Thank you.

15 THE CHAIR: Thank you. Sorry I missed  
16 your hand. I just didn't check the screen. But duly  
17 noted, and I assume the parties will reach out and  
18 coordinate with Ms. Bennett, now that she's entered an  
19 appearance.

20 With that, we will move onto -- we  
21 actually have a slate of cases involving similar  
22 parties, similar parties having entered appearances.  
23 Those are cases 24277, 24278, 23755, which was a  
24 referral to the Commission of a number of Division  
25 cases by the director of the Oil Conservation



1 Division.

2 At this point, I'm not proposing that  
3 any of those cases -- or the Chair is not suggesting  
4 that any of those cases go together, other pieces.  
5 I'm actually looking to the parties for some robust  
6 discussion about the best way to handle these cases  
7 and other components so we can look at scheduling a  
8 hearing on the merits for them.

9 So have all the parties who have  
10 entered appearance in those cases, are they either in  
11 the room or online?

12 MS. HARDY: Yes, Mr. Examiner. Dana  
13 Hardy. I'm here on Webex on behalf of Empire  
14 Petroleum. And I believe Ms. Shaheen and Mr. Padilla  
15 are in the hearing room.

16 THE HEARING EXAMINER: They are. And I  
17 see Mr. Tremaine for the Oil Conservation Division and  
18 Mr. Rankin for Goodnight Midstream. I'm going to open  
19 it up to discussion, and I think I'll start with Mr.  
20 Rankin and then move to Empire and then to OCD to  
21 provide some perspective on these or some suggestions  
22 about how we want to unpack scheduling questions  
23 surrounding these cases.

24 MR. RANKIN: Thank you, Mr. Chair,  
25 Commissioners. Good morning. Adam Rankin with the

1 law firm of Holland & Hart here in Santa Fe,  
2 representing Goodnight Permian Midstream, LLC.

3 Yes, Mr. Chair, we have 18 cases now  
4 that have been referred to the Commission. One of  
5 them is a de novo case that is on appeal. Two of them  
6 are direct applications to the Commission, in which  
7 Goodnight Midstream is seeking to amend Eunice  
8 Monument's South Unit orders, addressing the unitized  
9 interval and the special pool that was designated for  
10 that unit.

11 I think it would be helpful, given the  
12 scope of these cases, Mr. Chair, if I would be  
13 permitted to have a few minutes just to kind of give a  
14 historical review. Think putting this into context  
15 would be very helpful. It will lay out a basis for  
16 what we think is important and the procedure and the  
17 issues that we think need to be addressed by the  
18 Commission.

19 So with permission, I may just, if I  
20 may, take a few minutes to walk through the history a  
21 little bit here and explain why we think these cases  
22 are so important.

23 THE HEARING EXAMINER: I'm comfortable  
24 with that, and similar time will be given to the other  
25 parties to help with some perspective on scheduling

1 and other pieces.

2 MR. RANKIN: Thank you. Mr. Chair,  
3 these 18 cases before you are much more than just a  
4 dispute between Empire and Goodnight.

5 On their face, the cases represent a  
6 dispute over whether disposal in the San Andres  
7 Formation within and around the unit is doing two  
8 things; watering out the overlying Grayburg within the  
9 unit, due to purported communication with the San  
10 Andres, where water is being injected for disposal; or  
11 impairing waterflood operations due to the chemistry  
12 of the water that's being injected, and somehow  
13 impairing Empire's ability to recover residual oil  
14 that's allegedly locked away in the San Andres and  
15 immobilized after millennia of water sweeping through  
16 the zone.

17 These are the claims Goodnight's  
18 making, and they give rise to highly technical issues  
19 that we're going to have to deal with on the merits at  
20 a hearing, when we get to that point. Our view is  
21 that these claims have no basis, and we're eager to  
22 get forward to the hearing. But there's a lot to work  
23 through before we do.

24 Exactly how it got to this point in  
25 this dispute, how injection into the San Andres has

1 given rise to this conflict, is extremely important to  
2 understand. And I think -- that's why I just want to  
3 walk through the history here. The dispute is a  
4 culmination of an historic error, in our view, that  
5 was committed early on, decades ago, by the Commission  
6 and has been repeated and perpetuated through time.

7 The -- and by "historic," I mean in  
8 both senses of the word. It was from decades ago and  
9 also historic in the sense of the scale and proportion  
10 of the error. Now, the consequences were maybe unseen  
11 at the time or not understood or appreciated. But  
12 nevertheless, it was an error, and haven't been  
13 corrected.

14 The San Andres in this area, in and  
15 around EMSU, was first designated as a pool when the  
16 Eunice pool was discovered back in 1989. The --

17 UNIDENTIFIED SPEAKER: I'm not Irish,  
18 dude, and if I did --

19 THE HEARING EXAMINER: Chris.

20 UNIDENTIFIED SPEAKER: Oop, sorry.

21 MR. RANKIN: So the well -- the pool  
22 was discovered by a well drilled about two miles south  
23 of the unit. Okay. And that well was drilled and  
24 completed in the Grayburg. But at the time, the  
25 Division included the entire pool, going down to the

1 base of the San Andres, as part of the oil pool.

2           However, all documented production in  
3 this area is from the Grayburg or Lower Penrose.  
4 There is no documented production from the San Andres.  
5 There never has been. The -- starting in at least the  
6 early 1950s, if not earlier, the Division started  
7 authorizing disposal into the San Andres in this area.  
8 By the 1960s, the Division had approved disposal in  
9 the San Andres in and immediately adjacent to what  
10 later became the EMSU.

11           In 1965, the state engineer declared  
12 the Capitan Basin an underground aquifer. It included  
13 the San Andres within its definition of that basin  
14 almost two decades before the unit was ever created.  
15 The Division, to this day, recognizes the authority of  
16 the state engineer to approve wells and completions  
17 that would draw water from the San Andres.

18           By 1984, nearly 30 SWDs have been  
19 approved for disposal into the San Andres in this  
20 area. That means for each of these SWD wells, the  
21 Division must have ascertained that the disposal into  
22 that zone would not cause waste, would not impair  
23 correlative rights, would not remain -- and the  
24 injection would remain in the targeted injection zone.

25           Okay. All that would have had to have

1 been discerned for approval of each of those wells.  
2 Then, in 1984, the Commission issued three orders on  
3 applications that were filed by Gulf Oil. The first  
4 one created the special pool within what was defined  
5 as the EMSU unit. That included the Lower Penrose,  
6 going down into the Grayburg, and below that, the San  
7 Andres.

8 A second order approved the statutory  
9 water flow that unitized for waterflood operations  
10 those same intervals, the Lower Grayburg -- sorry, the  
11 Lower Penrose, the Grayburg down to the base of the  
12 San Andres.

13 The third order -- even though in that  
14 order the source of the waterflood water was the San  
15 Andres, and the waterflood operation was authorized  
16 only for the Grayburg, because that was the only zone  
17 where the oil column was located -- the third order  
18 authorized waterflood operations and injection within  
19 the Grayburg using San Andres water, water within the  
20 unitized interval below the Grayburg.

21 Our view is that creating the special  
22 pool and the unit, to include the San Andres, was  
23 legally invalid. Express testimony at the unit  
24 hearing was that the oil column was limited to the  
25 Grayburg and the Lower Penrose formation. It did not

1 extend into the San Andres. Waterflood operations  
2 would target the oil column in the Grayburg and Lower  
3 Penrose formation only.

4 Gulf proposed to include the San Andres  
5 in the unitized interval in the testimony, simply  
6 because it was historically included within the pool,  
7 and the San Andres would serve as the source of water  
8 for the Grayburg waterflood operations. In short, the  
9 unit and its special pool were erroneously approved by  
10 the Commission at that time to include the San Andres,  
11 when it was already an approved and active zone for  
12 disposal and a known non-hydrocarbon-bearing aquifer.

13 Around this time, then, in the '80s or  
14 early '90s, the Division officially designated the San  
15 Andres in this area as a disposal pool, for disposal  
16 of produced water. In doing so, the Division  
17 confirmed what was already known about the San Andres.  
18 It is a water-bearing-only zone.

19 Since then, many more SWDs have been  
20 authorized for disposal in this pool, in reliance on  
21 the Division's designation and its findings and the  
22 history. In fact, within the designated San Andres,  
23 at least 98 wells within that pool have been  
24 designated for disposal, many of which are still  
25 active -- most of them are -- and many additional

1 proposed SWDs are still pending.

2           This historic -- these historic  
3 contradictory determinations is what has brought us  
4 here. Okay. We have a unit that erroneously included  
5 the San Andres and a history of approval of salt-water  
6 disposal wells and a designation of a salt-water  
7 disposal pool that overlaps that same unit.

8           Empire and Goodnight just happen to be  
9 the two players on the stage at this moment, but there  
10 are many others who will be impacted by the decisions  
11 the Commission has before it today. So what I'd like  
12 to do just real quick is kind of show you what I'm  
13 talking about.

14           MR. PADILLA: Mr. Chairman, I'm going  
15 to object to the presentation and just argue that Mr.  
16 Rankin is going into the historical -- he's not  
17 limiting himself to the historical development of the  
18 Eunice Monument South Unit. He's making an argument  
19 that is improper at this time.

20           We're here, as I understand it, to  
21 schedule and to determine how we're going to schedule  
22 all of these 18 cases. But to go into an argument  
23 about the decision of Goodnight Goodstream [sic] and  
24 attacking the original order as being an error is not  
25 appropriate at this time.



1                   This is a status conference to  
2 determine how we're going to decide these cases, and  
3 the procedural for trying this case is not opening  
4 argument or closing argument of the original cases.

5                   THE HEARING EXAMINER: Mr. Padilla,  
6 point duly noted.

7                   Mr. Rankin, I appreciate the context  
8 and history. I think it was helpful, and we'll allow  
9 similar time for Empire to provide some perspective.  
10 We do have 18 cases, deciding how we're going to  
11 consolidate them, move them together, sort of carry  
12 them forward. Having a little bit of background was  
13 helpful.

14                   But I think we'll pause there, Mr.  
15 Rankin. I think we're verging into arguments on the  
16 merits. But the history was helpful, kind of setting  
17 it and looking it out.

18                   And with that, Mr. Padilla,  
19 Ms. Shaheen, and Ms. Hardy, I'll turn it over to  
20 Empire for some just initial commentary on how we  
21 should be thinking about these as then we look to  
22 think about we schedule it forward, if you would like.

23                   MR. PADILLA: Thank you.

24                   MS. HARDY: Mr. Chair -- and I can  
25 speak here for Empire and see if Ms. Shaheen or Mr.

1 Padilla have anything to add -- this unit that's owned  
2 by Empire in this area is approximately 40 years old.  
3 It was approved by the BLM, the State Land Office, and  
4 the Division and Commission.

5 So it's a longstanding unit. It can't  
6 be unilaterally amended, as Goodnight seeks to  
7 accomplish here. We've filed a motion to dismiss  
8 their application to seek to do that, for that reason,  
9 as well as the reason that they lack standing because  
10 they don't hold an interest in the minerals in this  
11 area.

12 So the BLM, the State Land Office, and  
13 the Commission all found that this unitized interval  
14 was prospective for hydrocarbon production, and that  
15 has been in effect for over 40 years. So to come back  
16 now and allege that all of that was erroneous, I think  
17 is not going to be supported by the evidence. And  
18 that's the history. It's a longstanding, approved  
19 unit.

20 And with respect to the pools -- and  
21 Mr. Padilla may be able to address this more  
22 effectively than me -- but the pools have also been  
23 recognized as hydrocarbon pools. It's not an aquifer,  
24 as Mr. Rankin has represented -- disposal has been  
25 authorized in certain areas -- but it is also an oil

1 pool that's recognized. And the nomenclature orders  
2 discuss that and determined that the Grayburg and San  
3 Andres should both be included.

4 So I think that was a well-reasoned  
5 decision. It's longstanding. And Goodnight seeks to  
6 undo those decisions here. It's too late, and it's a  
7 collateral attack that I think is inappropriate and  
8 will be unsupported by the evidence. So that's  
9 Empire's position.

10 And we can talk about how we would  
11 propose to schedule the cases if you would like,  
12 unless you'd like to hear from OCD, or Mr. Padilla and  
13 Ms. Sheehan have anything else to add.

14 THE HEARING EXAMINER: I think  
15 consistent with how we keyed it up, I'd turn it over  
16 to Mr. Padilla or Ms. Shaheen if they'd like to add  
17 any sort of historical context.

18 MR. PADILLA: Mr. Chairman, I think  
19 that Ms. Hardy has pretty much expressed our position  
20 in these cases. And we're looking at trying to set  
21 aside something that's been in existence 40 years.  
22 1984 is when the unit was approved after notice and  
23 hearing. I was astounded that I was involved in that  
24 hearing in reading the transcript. So that ages me  
25 considerably.

1           But the inclusion of the San Andres and  
2 the Grayburg and pools of Southeast New Mexico is  
3 common. We filed yesterday a motion to dismiss the  
4 two applications. And I don't want to argue those  
5 now, but including our argument on the aquifer and  
6 that kind of thing, that's in the motion to dismiss  
7 the two applications in cases 24277 and 24278.

8           So with that, I think we ought to get  
9 back to the discussions that Mr. Rankin and Dana Hardy  
10 had yesterday in terms of trying to weed out the --  
11 they're more informed. Or Ms. Hardy is more informed  
12 about proposed scheduling, and she has been in contact  
13 with our client and is more -- she's just more  
14 informed about the proper procedure to proceed.

15           THE HEARING EXAMINER: Okay.

16           Mr. Tremaine, do you have any opening  
17 remarks for OCD, or?

18           MR. TREMAINE: Yes, Mr. Chair. Thank  
19 you. So the Division -- several of these cases, many  
20 of these cases were before the Division and with the  
21 Division hearing examiner. And the Division did not  
22 engage at that time. So we've recently entered  
23 appearance and have taken up these cases due to a  
24 number of concerns.

25           And basically, that's a preface to say

1 that I think that OCD's going to require some time to  
2 develop a fully-fledged perspective on these. There's  
3 a number of issues that we've already highlighted of  
4 importance to the Oil Conservation Division that we  
5 need to look into.

6 At a very high level, the claims in  
7 these cases may implicate formation-wide SWD  
8 development, whether that's currently permitted SWDs,  
9 whether that is pending applications or future  
10 injection, that -- the details remain to be seen. But  
11 clearly, those other developments are implicated by  
12 these claims.

13 OCD is also looking at potential  
14 implications for drinking water and any actions that  
15 the Division needs to take regarding its primacy  
16 agreement with the EPA. And just as a practical  
17 matter, we're talking about 18 cases here. The core  
18 technical issues of the claims are complex and will  
19 take some time to develop in and of themselves.

20 But I do note some variation in the  
21 fact patterns between the various cases. And so I  
22 think when we start stacking disputes over the various  
23 fact patterns, we're looking at either a series of  
24 hearings or potentially a very long single hearing  
25 here, which creates some scheduling concerns for the

1 Division.

2 And lastly, at a very high level -- and  
3 this is really a trailing issue -- but it is one of  
4 OCD's concerns that implications for the production  
5 and development in the area may impact Empire's  
6 ability to comply with a current agreed compliance  
7 order for inactive wells, which some portion of those  
8 remaining wells are required to be returned to  
9 production.

10 So, at this point, Mr. Chair and  
11 commissioners, we have somewhat more -- or I should  
12 say many more questions than answers. But our  
13 expectations, I think, going forward, are due to the  
14 factual complexity. I would ask for, before we move  
15 into any actual hearings, about 60 days for the OCD  
16 technical team to fully develop a position and move  
17 forward.

18 I do also anticipate a potential -- the  
19 need to resolve any open discovery disputes. I -- OCD  
20 is not currently engaged in any such dispute, but  
21 being aware of the subpoena history on exchange of  
22 information in this case, I do have general concerns  
23 about diving into a substantial hearing if any of  
24 those issues remain open.

25 So my recommendation to the parties and

1 the Commission is to engage in a somewhat more  
2 structured approach here, where the parties can agree  
3 to or the Commission can issue a scheduling order  
4 providing for a somewhat more process than is typical.

5 We recommend appearing for discovery  
6 briefing and then motions to help decide how these  
7 cases will proceed, whether there are going to be 18  
8 of them or split up into different chunks. And I  
9 think the appropriate timing for that decision is  
10 probably out at the end of the discovery and briefing  
11 period, and then set the cases for hearing. That's my  
12 recommendation.

13 THE HEARING EXAMINER: I'll share some  
14 preliminary reactions, and then -- or some preliminary  
15 questions based on the presentation. Clearly sounds  
16 like 24277 and 24278, the two applications to amend,  
17 which I know are subject to a motion to dismiss, I  
18 don't believe that Goodnight has had an opportunity to  
19 respond to the motion to dismiss.

20 And other components may present one  
21 discrete set of issues that sounds like may be  
22 appropriate for resolution first. But would welcome  
23 the parties' perspective on whether those two cases  
24 and the resolution of them can be separated from 23775  
25 and the -- for lack of a better term -- bundle of

1 cases involved in that, you know, can go forward  
2 separately.

3 Also, sounding from the presentation by  
4 the parties, you know, information that I'm aware of  
5 in my capacity as the Division director and sort of  
6 other components, I think the Commission would at  
7 least initially be looking at the parties to propose a  
8 scheduling order to us. I think this is a more  
9 substantial set -- even just based on the preliminary  
10 presentations here -- a more substantial hearing than  
11 just our typical one- or two-day slot allows on a  
12 Thursday, Friday.

13 So, preliminarily, this -- I'd welcome  
14 the parties' perspective on whether they think this is  
15 sort of a special hearing date, what should be  
16 included in the special hearings, and then prospects  
17 for the parties to come in with a robust proposed sort  
18 of agreed scheduling order that addresses all of those  
19 issues, would sort of be my questions.

20 I'll look to my fellow commissioners to  
21 see if they have anything else on those -- on these.

22 MR. BLOOM: No, Mr. Chair.

23 DR. AMPOMAH: No, Mr. Chair.

24 THE HEARING EXAMINER: I'll turn it  
25 over to you, Mr. Rankin, to start and then go through



1 the parties.

2 MR. RANKIN: Thank you, Mr. Chair. Mr.  
3 Tremaine has brought up a point that I next wanted to  
4 make, and I think it's important for the Commission to  
5 understand the scope -- understand how best to attack  
6 or address these competing issues, because  
7 understanding the scope will help us, I think, narrow  
8 our focus to what is manageable and what is  
9 appropriately addressed in the first instance.

10 Mr. Chair, I agree with you, and I  
11 agree with Mr. Tremaine, that the claims and issues  
12 raised in these cases implicate far more than the  
13 Eunice Monument South Unit. And I'd like to, if I  
14 may, just show a picture, because a picture's worth a  
15 thousand words and I think will help put into context  
16 the issues for -- concerning how best to manage the  
17 schedule and the procedure.

18 May I share that screen? It's just a  
19 map that shows the unit and offsetting SWD wells,  
20 including our wells, and wells that are not included  
21 in this proceeding. If I may show it to you, I can  
22 understand that may be helpful.

23 THE HEARING EXAMINER: Do any of the  
24 parties have any concern with the presentation of the  
25 map?

1 MR. PADILLA: No, Mr. Chairman. But I  
2 don't want him to go into an argument as to --

3 THE HEARING EXAMINER: Understood.

4 MR. RANKIN: I'll stay away from the  
5 argument, and you can tell me if I get too much into  
6 argument. But I just want to show you the map. Okay.  
7 This is a map that shows the Monument trend. In red  
8 outline here where my cursor is hovering over, this is  
9 the EMSU unit. This is the unit at issue in these  
10 cases.

11 The orange triangles are the -- and  
12 squares are the wells -- SWDs. The triangles are  
13 active injection wells. The squares are pending or  
14 proposed SWDs that -- and the orange color represents  
15 wells operated by Goodnight. The red triangle well in  
16 the center here is a disposable well operated by  
17 Empire, and all of these wells inject into the San  
18 Andres Formation.

19 So what's at issue in these cases are  
20 the orange wells that Goodnight operates, and what's  
21 excluded -- what hasn't been addressed by any of these  
22 cases -- are the other SWDs injecting into the unit in  
23 and around the unit. These green wells are operated  
24 by Rice. This yellow well is operated by OWL.

25 And they all inject into the same zone,

1 inside the unit or immediately outside the unit, in  
2 many cases closer to the unit boundaries than  
3 Goodnight's wells. So this, I think, map articulates  
4 the problem and the scope that Mr. Tremaine referenced  
5 here.

6 The claims at issue are that the --  
7 this area that's defined as the Artesia Fairway in  
8 the -- within that green boundary is what Empire's  
9 experts say is a potential residual oil zone. So all  
10 that area is potentially, according to them, subject  
11 to tertiary recovery through -- for an ROZ. So  
12 there's no principal basis to distinguish between  
13 wells inside the unit or outside the unit.

14 So what I would propose, Mr. Chair, is  
15 that, in order to reasonably tackle the cases before  
16 us, is that we first focus solely on wells injecting  
17 into the unit only. And to do so, I think, in order  
18 to accurately and fairly discern the claims, we need  
19 to include more parties. It can't just be Goodnight.

20 There are three other wells and  
21 operators injecting into the unit boundary currently,  
22 into the same zone. Since the '60s, more than 110  
23 million barrels has been injected into that same area.  
24 And if there's concerns about watering out, those  
25 other parties must be included for this Commission to

1 make a fair decision about, you know, who's -- if  
2 there is any communication at all, if there is any  
3 watering out, we need to have all those parties  
4 involved.

5           So my proposal, Mr. Chair, is to first  
6 address only the unit, allow us to hear the issues  
7 that are being raised. And at that point, if there's  
8 a finding that there is ROZ, that there is  
9 communication between the Grayburg and San Andres,  
10 then we can proceed to look at wells and cases outside  
11 the unit.

12           Those wells and cases outside the unit  
13 are going to have individualized analyses that we're  
14 going to have to discern, based on the geology, the  
15 engineering, other factors that would influence the  
16 radius of influence of the injection in those wells.  
17 That is going to bog this process down if we have to  
18 get into these individualized issues, evaluating the  
19 impact would potentially be to these wells on the  
20 injection and whether it reaches the unit boundary.

21           So it would be far easier and a more  
22 straightforward approach just to limit initially to  
23 the unit boundary. Then we can address claims going  
24 forward from there. So that's my pitch. I do think  
25 it's --

1 THE HEARING EXAMINER: Mr. Rankin, what  
2 cases -- just before -- in your view, would cover  
3 wells within the unit question and wells within the  
4 unit. What case numbers?

5 MR. RANKIN: So there are a total of 18  
6 cases, Mr. Chair.

7 THE HEARING EXAMINER: Yep.

8 MR. RANKIN: Of the wells and cases  
9 that are in unit that I think should be included in  
10 one shot -- let me get to my list. Sorry. Moment. I  
11 do have a list, because I wanted to make clear that  
12 those cases were. Just let me find my list.

13 So Empire has four cases that address  
14 injection within the unit boundary. Those are 24018,  
15 24020 -- sorry, 24018 through 24020, and 24025. Those  
16 are applications to revoke current SWDs within the  
17 unit boundary.

18 THE HEARING EXAMINER: And those are  
19 just -- for the record, those are Division case  
20 numbers.

21 MR. RANKIN: Those are Division case  
22 numbers.

23 THE HEARING EXAMINER: Yep.

24 MR. RANKIN: Now, Goodnight has a  
25 number of cases that also deal with injection into the

1 unit boundary, and there are eight of them. Those are  
2 Case Numbers 23614 through 23617, and it includes  
3 23775, which is an application to increase the rate of  
4 injection in one of the wells. It also includes the  
5 de novo case, which is Case 24123. I believe that's  
6 the Commission case number.

7 And then it also includes our  
8 Goodnight's applications to amend the EMSU orders,  
9 which is Case Numbers 24277 and 24278.

10 THE HEARING EXAMINER: So, just for my  
11 own clarity -- and obviously, we'll let the other  
12 parties hear -- it will be Goodnight's proposal that a  
13 package of cases for hearing would be Commission Case  
14 Number 24277, Commission Case 24278, which is your --  
15 which are the applications concerning the unit; and  
16 then a subset of the cases within Commission Case  
17 23755, to include Division Cases 23614 through 23617,  
18 24018 through 24020, and 24025, which is in all of the  
19 cases that are currently sort of referred up as 23755;  
20 and then lastly, the Commission Case 24123, which is  
21 the de novo case, would be sort of a package for  
22 hearing.

23 And your proposal is that anything else  
24 that isn't in that enumerated list would be subject to  
25 separate stand-alone hearings, subsequent to those?

1 MR. RANKIN: Yeah. I mean, I'm not --  
2 I haven't necessarily articulated a position on  
3 whether those remaining six cases should be each  
4 stand-alone separate cases.

5 THE HEARING EXAMINER: Okay.

6 MR. RANKIN: I'm not saying that that's  
7 the case, necessarily. I think we may be able to find  
8 a way to streamline or address those together. But  
9 there are going to be individualized issues within  
10 those six cases, based on the location of the wells.  
11 And I -- and again, I believe it's improper to address  
12 those six cases without consideration of other SWDs  
13 that are closer and similarly situated to Goodnight's  
14 injection.

15 So I think those cases should be  
16 appropriately addressed at a different time. The --  
17 one thing I did want to point out, Mr. Chair, and --  
18 there is a little -- it's a little confusing on the  
19 agenda. But on the agenda, where it references Case  
20 23775, it doesn't actually include the description for  
21 that case.

22 It seems to imply that there are other  
23 cases involved with that, and I just -- it's a little  
24 unclear. I just want to make sure that's -- for the  
25 record that the way that the case caption was

1 articulated there for that case was incorrect. And  
2 I'm happy to help with staff make sure that's correct  
3 going forward. But that, I think, was a little  
4 unclear and maybe provided some confusion about what  
5 cases were currently being discussed today.

6 THE HEARING EXAMINER: I think we'd be  
7 open to some follow-up feedback on there, and  
8 obviously, the case number tracking here. Because  
9 we're dealing with a number of Division cases and a  
10 number of Commission cases, we need some clarity as we  
11 move forward with scheduling.

12 Ms. Hardy, I'll turn it over to you,  
13 for Empire's perspective on scheduling and packaging.

14 MS. HARDY: Thank you, Mr. Chair. Mr.  
15 Rankin, I think, at the initial part of his discussion  
16 just now recognized that there is no basis really, you  
17 know, the artificial distinction to separate the wells  
18 outside of the unit from the wells inside the unit,  
19 because it's all one area, and the formation is the  
20 same.

21 So I think that, from our perspective,  
22 it would really waste resources of the parties and the  
23 Commission and Division to separate out the wells  
24 injecting outside of the unit from the wells injecting  
25 inside the unit. They're all impacting the unit, and



1 I think you can see from Mr. Rankin's map, some of  
2 them are right outside of the boundary.

3 So I think that would be an artificial  
4 distinction that's not necessary to make. I think it  
5 makes more sense to hear all of the cases at once,  
6 because the issues really are the same. It's one  
7 pool, and the issue is whether Goodnight's injection  
8 into those wells, or proposed injection, is impairing  
9 correlative rights or resulting in waste.

10 So I think that it would waste  
11 resources, really, to separate those out. I don't  
12 think it's necessary, and I think it's an artificial  
13 distinction. So I think it would really be more  
14 efficient just to hear all of the cases at once. Even  
15 though there are a lot of them, I don't think the  
16 issues will be that different.

17 In fact, the parties already filed  
18 testimony in the Division cases, and the issues  
19 overlap extensively, almost entirely. So I think that  
20 would make more sense, and I think that we would  
21 propose and that the parties -- and I had run this  
22 idea by Mr. Rankin and Mr. Tremaine, and we discussed  
23 it -- would submit written testimony, along with their  
24 exhibits, as we do currently in Division cases, and  
25 then submit written rebuttal, and we can work out the

1 dates for those submissions.

2 We were talking about a hearing  
3 potentially in August, if that works for the  
4 Commission. And I think that handling the testimony  
5 and exhibits that way would significantly cut down on  
6 the amount of time required in the hearing, and it  
7 would also clarify the issues so that the Commission  
8 will have everything in front of it when we go into  
9 the hearing.

10 And I don't think that the number of  
11 cases should really control. I don't think that  
12 breaking them out really makes any sense.

13 THE HEARING EXAMINER: Thank you, Ms.  
14 Hardy.

15 Mr. Tremaine.

16 MR. TREMAINE: Mr. Chair, I frankly can  
17 see merits to both arguments, putting them all on at  
18 the same time or breaking out the EMSU cases. In  
19 talking with the technical team, I think that  
20 they're -- OCD would be amenable to approaching the  
21 EMSU cases -- I mean, we're still talking about, I  
22 think it's 12 separate cases there.

23 And without making any determinations  
24 or proclamations about the technical nature of the  
25 various different applications, it's my understanding

1 that the parties are going to argue -- at least some  
2 of the parties are going to argue -- that those cases,  
3 not including those other six cases, have distinct  
4 facts. And I do see that as -- the presence of that  
5 argument as extending that hearing.

6 So the core technical issues and the  
7 claims between all of the cases are, I think, quite  
8 similar. So going forward with the EMSU cases would  
9 provide a foundation for the other cases. And so I  
10 could see us going either way.

11 I think the hearing is likely to be  
12 more efficient if we break it out with the EMSU. But  
13 that's not a strong position. Frankly, we'll  
14 accommodate either, the will of the Commission.

15 THE HEARING EXAMINER: Next question, I  
16 suppose, do the parties believe there are existing  
17 discovery disputes and information sharing that need  
18 to be resolved prior to hearing?

19 We'll start with Mr. Rankin again.

20 MR. RANKIN: Thank you, Mr. Chair. We  
21 are working diligently on discovery. As you may be  
22 aware, we did serve -- both parties served discovery  
23 back in 2023, in advance of what was originally  
24 scheduled to be a Division hearing. And we did pause  
25 that hearing in light of discovery disputes that came

1 to light on the eve of the hearing.

2 And so the -- as a consequence of that,  
3 the cases have been stayed while we were continuing to  
4 work through the negotiations, conferring over  
5 discovery. I think we reached the -- I think we  
6 basically have -- both parties have, I think, gotten  
7 to the point where I think we've satisfied that  
8 discovery request.

9 Since that time, Mr. Chair, ten new  
10 applications were filed by Empire, and we filed two  
11 additional applications. So the scope and scale of  
12 these issues has increased. We served recent  
13 discovery last week on Empire. I believe that they  
14 intend to serve discovery through the Division on us  
15 again.

16 I believe that we have probably one  
17 more round ourselves to do, to ensure that our experts  
18 have all the information they need. I do believe --  
19 and I want to flag this for your attention today, Mr.  
20 Chair -- but I do believe that there's a chance, a  
21 likely chance, that we will also move for pre-hearing  
22 depositions to take certain depositions of Empire's  
23 witnesses in advance of a hearing.

24 And we'll lay that out, as and when we  
25 need to, because we believe that the circumstances

1 here are extraordinary and will justify pre-hearing  
2 depositions. But we'll want to wait to make sure that  
3 we can justify that with some additional discovery.  
4 So we are endeavoring to get that done.

5 So as Mr. Tremaine noted, I think  
6 there's a lot left to do and sort out technically, and  
7 we want to go forward with the Commission, and we're  
8 eager to do so. But we want to put on a case that  
9 the -- that is -- that allows the Commission to fully  
10 vet these issues. And to do so, we just need to make  
11 sure we have the time and the resources and get the  
12 information ourselves.

13 Empire, here, is in the driver's seat.  
14 They are the operator of this unit. They have all the  
15 information from their predecessors, the chemistry,  
16 the petrophysics, the costs, the modeling, things that  
17 we would need to do, to put together an economic  
18 demonstration of what they claim is not viable.

19 So we're working towards that, Mr.  
20 Chair, and I think on the -- just want to just kind of  
21 raise some of these discovery issues for you. I think  
22 we're working well together, and I think we can get  
23 through it, but I do think it's going to take some  
24 time. So I'm hopeful that, by the end of June, we  
25 will have what we need for discovery.

1           And then -- and that's why, when I was  
2 speaking with Ms. Hardy yesterday, I was thinking  
3 potentially August would be a good time frame. I  
4 actually appreciate Mr. Tremaine's recommendation that  
5 we wait and see how things go with discovery and  
6 briefing, to make sure we are in a position to proceed  
7 to hearing.

8           And so my recommendation would be that  
9 we set monthly status conferences with the Commission,  
10 just to make sure we're on track, that if there are  
11 any discovery issues or disputes, that we can attend  
12 to those quickly and get them addressed. And then we  
13 can also -- I think the parties should confer and  
14 propose a time frame for legal briefing.

15           I think it's important that the  
16 Commission have our viewpoints, if we can't reach  
17 agreement on what issues need to be decided, so we can  
18 properly frame the dispute. And then we can lay out  
19 the legal issues, such as what standards apply, who's  
20 got the burden of persuasion and proof, how is that  
21 all going to proceed, and are there additional  
22 necessary parties.

23           So I think there's a lot to brief on  
24 the front end, and there's a lot of discovery to do.  
25 So my recommendation is that we take the next month

1 for the parties to confer on a scheduling order and  
2 then, at the next meeting, Mr. Chair, we propose  
3 either what we can agree to, and if not, that we come  
4 up with a schedule for briefing to address these legal  
5 issues and procedure.

6 THE HEARING EXAMINER: Ms. Hardy.

7 MS. HARDY: Thank you, Mr. Chair. The  
8 parties are engaging in discovery. I do want to flag  
9 for the Commission -- and I mentioned this to Mr.  
10 Rankin yesterday -- that we will be filing a motion  
11 regarding Goodnight's recent subpoena. I think it's  
12 duplicative. Some of it goes way beyond the scope of  
13 this proceeding. So we will be filing a motion on  
14 that.

15 And I also want to flag the fact that  
16 this is not a civil litigation proceeding. There is  
17 civil litigation going on between Empire and Goodnight  
18 in which extensive discovery, of course, is occurring  
19 and will occur. But this is not that proceeding.  
20 This is a Commission administrative proceeding that  
21 involves impairment of correlative rights and waste  
22 under the Oil and Gas Act.

23 So I think it is much more limited  
24 than, of course, civil litigation. And so I --  
25 although the parties will engage in discovery, and I

1 agree that some discovery's needed, I think that sort  
2 of a freewheeling inquiry into all types of matters is  
3 not appropriate at a Commission proceeding. This is  
4 an administrative hearing process with limited  
5 discovery by rule. So I do want to mention that.

6 I think it does make sense for the  
7 parties to communicate about a schedule and try to  
8 propose something to the Commission. I do think that  
9 an August hearing date would make sense, and I think  
10 it would be helpful for the Commission to set a  
11 hearing date so that the parties know what they're  
12 working toward and will stay on track, because, as we  
13 know, sometimes when there's not a hard deadline,  
14 things don't get done.

15 So that's where I think Empire's coming  
16 from.

17 THE HEARING EXAMINER: Mr. Tremaine.  
18 Thank you, Ms. Hardy.

19 MR. TREMAINE: Thank you, Mr. Chair. I  
20 don't expect that OCD is going to weigh in on any  
21 discovery disputes. But hearing that there is a  
22 likely motion to quash, and pending further discovery  
23 requests to be exchanged, I would say that OCD's only  
24 real concern is that that discovery's resolved before  
25 we get into briefing and hearings.



1           So just simply reiterating my request  
2           that a hearing earlier in the summer does not seem  
3           practical or effective, and we don't want to engage in  
4           an extended hearing if there's discovery disputes  
5           occurring on the eve of that hearing. So I think I  
6           would concur with the tentatively proposed, like,  
7           August date.

8           The only other thing -- the Commission  
9           just heard about the PFAS rulemaking petition. I  
10          would just like to highlight for OCD's, like, staff  
11          dedication that having two separate two-week hearings  
12          within the same month period of time is going to be  
13          extremely taxing on the staff. So I would -- I will  
14          be working with the parties to try and schedule those  
15          relative hearings with a little bit of break in  
16          between so staff can do their regular work as well.

17          That is just an overarching concern,  
18          because we'll have a lot of preparation in advance.  
19          So these two hearings could take three weeks out of  
20          OCD staff time in the middle of the summer.

21          THE HEARING EXAMINER: Thank you, Mr.  
22          Tremaine. At least from where I sit -- and I'll turn  
23          it over to my fellow commissioners -- I'm not -- I  
24          think there's a little bit more work for the parties  
25          to do to kind of unpack scheduling and other

1 components before the Commission just unilaterally  
2 says we're going to do a hearing on X date and Y date  
3 and other pieces.

4 So at least right now, my inclination  
5 is to set these for another status conference in April  
6 with the direction that I would like the parties to  
7 come in with, ideally, a full scheduling order that  
8 gets it, that sorts of sets it together.

9 But at a minimum, a scheduling order  
10 that resolves any pre-hearing motion, deadlines,  
11 schedules, kind of other pieces, because I think the  
12 Commission is going to need to set that in the near  
13 term to move these cases along. I would also ask the  
14 parties to send us some dates for the hearing.

15 Again, based on the discussion here,  
16 this sounds like something where the Commission will  
17 need to reserve a week, potentially, of hearing time.  
18 And being mindful of my own and my fellow  
19 commissioners' schedules, we're going to need some  
20 proposed dates to sort of put in and look at and nest  
21 it in with other components.

22 So those would be sort of the two key  
23 elements that at least I would encourage the parties  
24 to focus on so that we can set a robust scheduling  
25 order and hearing date at the April Commission

1 meeting.

2                   It sounds like the parties are close  
3 but not quite there, and I personally am inclined to  
4 allow a little more time to let the parties sort those  
5 things out and then provide the Commission with some  
6 dates that might work so we can buck that up against  
7 Commissioner ensure availability for the main hearing  
8 and then set some motion hearings and other components  
9 in between.

10                   And if there are additional information  
11 exchanges under the rules provided, for the Oil  
12 Conservation Commission to sort of contemplate that in  
13 sort of the initial schedule.

14                   Ms. Shaheen.

15                   MS. SHAHEEN: Thank you, Mr. Chair. I  
16 just want to mention that this was originally set to  
17 be heard before the Division in November. And I'm  
18 concerned, with all due respect to Mr. Rankin, that  
19 Goodnight is using discovery disputes to extend the  
20 time for hearing. And Empire's willing to go to  
21 hearing on August.

22                   But I'd just like to note for the  
23 record that the longer we take to get to hearing, the  
24 more advantageous it is for Goodnight. It continues  
25 to inject water on a daily basis in large amounts, and

1 it's a disadvantage to Empire for us to keep kicking  
2 the hearing out.

3 So I would only note for the record  
4 that I'm concerned that discovery disputes will  
5 continue because it's advantageous for Goodnight. And  
6 I encourage the Commission to set a hearing date in  
7 August when we do reconvene in April. Thank you.

8 THE HEARING EXAMINER: Thank you, Ms.  
9 Shaheen. Duly noted. Again, at least from my  
10 perspective, I think I understand the value of setting  
11 a hearing date, if only for my co-commissioners' sort  
12 of scheduling and planning purposes, but also a desire  
13 to move these cases along.

14 Commissioner Bloom, Commissioner  
15 Ampomah, any thoughts on these scheduling questions?

16 MR. BLOOM: Mr. Chair, I don't have  
17 anything to add at this time. Thank you.

18 DR. AMPOMAH: Mr. Chair, I believe you  
19 covered it well, like, we need to have all these dates  
20 in advance so we can plan accordingly. So thank you.

21 THE HEARING EXAMINER: Mr. Rankin.

22 MR. RANKIN: Mr. Chair, I --

23 THE HEARING EXAMINER: Mr. Rankin.

24 MR. RANKIN: I must address the  
25 allegation that we're delaying. We are not delaying.

1 Since that case -- those cases were ready to go to a  
2 hearing -- there were four cases ready to go to a  
3 hearing in November. Since that time, we identified  
4 some serious concerns around discovery. When we asked  
5 for certain documents, they gave us documents on ROZ  
6 in Lithuania. Okay? It was a joke.

7 Since that time, they filed ten  
8 applications to revoke Goodnight's injection wells.  
9 That's a much bigger scale. There's a lot of  
10 discovery to do and to get at the root of their  
11 claims. It is not a delay. So I just want to make --  
12 I just want to respond to that, because it is a  
13 serious allegation.

14 We are interested in fully vetting the  
15 claims, and there's a lot of material to go through.  
16 And so that's what we want to present to Commission is  
17 a full vetting of these issues.

18 THE HEARING EXAMINER: Duly noted, Mr.  
19 Rankin.

20 Again, I would encourage the parties,  
21 when they come back in, in April, to have some more  
22 specific thoughts about open information exchange,  
23 issues that are there, as it pertains to the cases  
24 that are currently before the Commission that are  
25 potentially up for hearing.

1           And then, at a minimum, come in with a  
2 proposal for a hearing date so that we can look --  
3 work backward for motion resolutions and other  
4 components, because I think both the Commission -- and  
5 I can say this, because I referred the cases up in my  
6 capacity as Division director -- there was a desire to  
7 resolve these cases, which is why they were referred  
8 up.

9           And they were referred up because of  
10 the cross-cutting implications for injection in  
11 production operations in a significant area. So we --  
12 I think we're aware of the gravity here, but I think  
13 that's the direction to the parties for the next one.  
14 And obviously, if the parties can come to an agreement  
15 on a full scheduling order, great.

16           But again, at a minimum, we will want  
17 to address ultimate hearing date and some initial  
18 dates for motion hearings and other components to  
19 start keying up these issues for a hearing, because I  
20 am persuaded by the arguments there that when we're in  
21 the actual hearing, we want to get to the merits of  
22 the factual disputes and have resolved sort of  
23 outstanding information exchanges heading into that.

24           So with that, is there anything else to  
25 add on these cases? Otherwise, we'll move on to the

1 next item on the agenda. Thank you, all.

2 I'm going to give us just a ten-minute  
3 break, and we will reconvene to go into the case  
4 that's set for hearing today, 23655. So we will  
5 reconvene at 10:10. Thank you, all.

6 UNIDENTIFIED SPEAKER: Thank you.

7 (Off the record.)

8 THE HEARING EXAMINER: All right,  
9 everyone. Let's go ahead and resume.

10 Good morning. We are moving onto our  
11 affirmative case that's actually set for hearing, Case  
12 Number 23655, "Application of the Joint Industry  
13 Technical Committee to Amend Order Number R-111-P, Lea  
14 and Eddy Counties, New Mexico." I'm not going to read  
15 the very long caption.

16 Order R-111-P is long established -- or  
17 actually, Order R Number 111 -- and there is a  
18 detailed caption in the agenda. Counsel for the  
19 Commission, Mr. Rubin, had to step away for a court  
20 scheduling conference. He will return -- or a brief  
21 court hearing. He will return as soon as that's done,  
22 but we'll proceed.

23 I believe there are three parties that  
24 had entered an appearance in this matter; the Joint  
25 Industry Technical Committee, the Oil Conservation

1 Division, and Strata Energy. Have I missed any  
2 parties? Okay.

3 Seeing counsel for the parties here, I  
4 will turn it over to the applicant, Mr. Feldewert.

5 MR. FELDEWERT: Thank you, Mr. Chair.  
6 Good morning. I handed to each of you R-111-P, as it  
7 appears on the Division's website. So the font and  
8 the text that you see is not my doing. That's what  
9 you get when you go to the Division's website.

10 And that was enacted in 1988, as you  
11 noted, under Case 9316. And since that time, this  
12 order has governed the drilling of oil and gas wells  
13 in what's called the Known Potash Leasing Area, the  
14 KPLA, which sits down there in Eddy and Lea Counties.

15 When you look at this order, it  
16 consists of the following components. Pages one  
17 through four of R-111-P is a series of findings,  
18 Paragraphs 1 through 23, which provide a background  
19 for the adoption of this rule back in 1988.

20 Beginning at the bottom of page four,  
21 you'll see a series of paragraphs, A through J, and  
22 those are the rules and regulations that were adopted  
23 back in 1988 and which currently govern the  
24 exploration and development of oil and gas in this  
25 Known Potash Leasing Area.



1           And it is these paragraphs -- some of  
2 these paragraphs -- that we seek to modify here today.  
3 Then you'll see an "Exhibit A" to this particular  
4 order, towards the back, and it is a listing -- or a  
5 lengthy legal description -- of the Known Potash  
6 Leasing Area in Eddy and Lea Counties. It's about  
7 eight pages. We're not changing any of that.

8           Then "Exhibit B" to this order, which  
9 is at the very end, contains a ten-page statement of  
10 agreement between the potash industry and the oil and  
11 gas industry, which was referenced by the Commission  
12 in '88, and is referenced in their order and was  
13 included as what they said "background information"  
14 for the adoption of the rules. So that's what we  
15 currently have.

16           You should also know that this KPLA  
17 area is not just governed by Order R-111-P. It's --  
18 there's also a secretarial order that was issued by  
19 the Department of Interior in 2012 that governs  
20 federal lands in the Known Potash Leasing Area. But  
21 we're here today to address R-111-P, which has not  
22 been without controversy over the years since its  
23 enactment.

24           Some of you may have been aware of that  
25 controversy. I was involved in the '90s and early

1 2000s in various disputes under R-111-P. However,  
2 with the advent of horizontal drilling and the  
3 establishment of BLM drilling guidelines, that  
4 controversy has largely died down. And this period of  
5 cooperation has resulted in the formation of the  
6 applicant here, the Joint Industry Technical  
7 Committee.

8 And it consists of representatives of  
9 the potash industry and representatives of the oil and  
10 gas industry. This particular committee is also  
11 recognized in that secretarial order that I talked to  
12 you about, the BLM secretarial order. And a technical  
13 group of this committee has met over the last five or  
14 six years to develop modifications to R-111-P.

15 And they utilized experts from both  
16 industries, the potash industry and the oil and gas  
17 industry, to come up with these modifications, which  
18 they believe will improve the practices for the safe  
19 and responsible concurrent development of oil and gas  
20 within the Known Potash Leasing Area.

21 These modifications we've presented to  
22 you in our filings as JIT Exhibits 1, 2, 3, and 4.

23 (JIT Exhibits 1 through 4 were marked  
24 for identification.)

25 Exhibit 4 contains the rule with all

1 the proposed modifications that we ask to be adopted.  
2 And let me briefly discuss how we -- the interplay  
3 here between Exhibits 1, 2, 3, and 4.

4 So what we initially did is, we took  
5 this wonderful order on the Division's website,  
6 converted it into Word, and then took that and began  
7 to do the modifications in redline, strikeout format.  
8 So if you look at what we filed, which begins on page  
9 10 of our 180-page PDF filed last week, you'll see the  
10 modifications to this R-111-P that were initially  
11 proposed.

12 And the yellow shaded and underlined  
13 text is what we had proposed to add to the rule, and  
14 the red shaded text with a line or strikeout through  
15 it is -- signifies text that this committee has  
16 determined should be removed. And when you go through  
17 that Exhibit 1, you're going to see significant  
18 redlines.

19 And that's because the committee  
20 developed new anti-collision measures, more stringent  
21 well casing and cementing requirements for the surface  
22 casing string, the salt protection string, the  
23 intermediate casing string for deep oil and gas wells,  
24 and the production casing string. They also put  
25 together new notification requirements to potash

1 operators.

2 There's new subsidence monitoring  
3 requirements in this rule. And then there were  
4 various edits that were necessary to update, clarify,  
5 and actually correct some of the text of the rule, to  
6 conform with the proposed modifications. So Exhibit 1  
7 is your anchor back to the current rule.

8 And Exhibit 2, when we filed our  
9 application, we took those redline strikeouts and made  
10 a clean version, and that was our Exhibit Number 2.  
11 But you can largely ignore that now, and that's  
12 because since the filing of that Exhibit Number 2,  
13 there's been a lot of discussions between the parties  
14 who entered an appearance.

15 Strata Production Company, the  
16 Division, and even the Joint Industry Technical  
17 Committee, in looking at that Exhibit 2, noticed some  
18 additional corrections that needed to be made. So  
19 since the filing of our application, there has been  
20 some good, productive wordsmithing that resulted then  
21 in some redlines to what we filed as Exhibit Number 2.  
22 And that is Exhibit Number 3.

23 So I want to be clear. That starts on  
24 page 33 of our PDF. Exhibit Number 3 shows the  
25 modifications to what we filed as Exhibit Number 2.

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1 And recall, Exhibit Number 2 is a clean version of the  
2 modifications that are shown in Exhibit 1. These  
3 additional changes in Exhibit Number 3, again, the  
4 added language is shown in either red or blue text and  
5 underlined, the language removed or changed is shown  
6 with a line or strike through it.

7 And when you go through Exhibit Number  
8 3, you're going to see some language that's  
9 highlighted in yellow. And the reason we left that in  
10 there is because that was language that the Division  
11 proposed should be added or stricken from the rule.  
12 So, for example, if you go to page one of Exhibit  
13 Number 3, you're going to see yellow text, where we  
14 added the word "production."

15 If you go to page ten of Exhibit Number  
16 3, there's some language that was added to Paragraph  
17 i5. It's highlighted in yellow, because that was  
18 language that the Division requested. And I'm going  
19 to let them address as needed, but I understand that  
20 this limits the burden on the Division to monitor  
21 drilling locations when BLM drilling islands and  
22 development areas are used by oil and gas operators.

23 So that's what Exhibit 3 is. And then  
24 Exhibit 4 is everything. Exhibit 4 is the final  
25 proposed rule with all modifications accepted. It

1 begins on page 45 of our PDF. That's -- this is what  
2 we ask the Commission to adopt as the new rules. Now,  
3 when you look at that Exhibit 4, we've included within  
4 that legal description, towards the end.

5 But when you go to that legal  
6 description -- and I just noticed this the other night  
7 -- you'll see it's an "Exhibit A," just like we took  
8 it from R-111-P, but you'll see the top. It says  
9 "Exhibit A, Case 9316, Order R-111-P." When you adopt  
10 this rule, and we hope you do, you're probably going  
11 to need to change the heading. Okay?

12 Then we've included -- let me share  
13 here, if I may. Can you see that in front of you?

14 THE HEARING EXAMINER: Okay.

15 MR. FELDEWERT: So that's that "Exhibit  
16 A" in our Exhibit 4 that, you know, we'll need to  
17 change that heading -- okay -- when the new rule gets  
18 adopted. The other thing you'll see with our Exhibit  
19 4 -- and this was in our initial filings, but they've  
20 been modified somewhat -- and that is we included an  
21 "Exhibit B" to the proposed order.

22 It is a series of wellbore diagrams,  
23 "Figures A through F," and they begin on page 65 of  
24 our PDF. These diagrams are referenced in the  
25 proposed rule, and they were referenced -- and they

1 are added -- because we believe they will assist those  
2 who are reading the rule to understand the wellbore  
3 integrity requirements.

4 So we encourage you to adopt these  
5 figures as part of the rule. They make it very clear  
6 what is now required -- or what will be required -- in  
7 the Known Potash Leasing Area. So before I move to  
8 our other exhibits, are there any questions about that  
9 interplay between Exhibits 1, 2, 3, and 4?

10 THE HEARING EXAMINER: Thank you. No.  
11 Not on my end. And just to clarify for the record,  
12 the only error are some -- in Exhibit 4, the proposal  
13 from the JITC, is to adopt that as a R-111-Q, if we  
14 were to approve it, and just some clerical errors,  
15 cleaning it up. But Exhibit 4 includes everything  
16 that you would propose including?

17 MR. FELDEWERT: Yes, sir. And I do  
18 agree. I would -- and this was at the end of my spiel  
19 here. But while you're on that, I would encourage you  
20 to adopt to this R-111-Q for a couple reasons. One,  
21 for historical reasons, so we maintain the evolution  
22 of this, and also to make it easier to tie back to the  
23 prior rules.

24 So if our system allows you to do it --  
25 which I hope it does -- hopefully, this could be R-

1 111-Q. Okay? All right.

2 Then we have -- our next four set of  
3 exhibits, Exhibits 4 -- Exhibits 5, 6, 7, and 8, are  
4 the self-affirmed statements of the witnesses that we  
5 have offered in support of these rules.

6 (JIT Exhibit 5 through Exhibit 8 were  
7 marked for identification.)

8 There are two witnesses from the potash  
9 industry, and there are two witnesses from the oil and  
10 gas industry. And each witness was involved in the  
11 development of these proposed modifications.

12 Exhibit 5 is the self-affirmed  
13 statement of Dan Morehouse. He's here today. He was  
14 the mine engineer for Mosaics Potash Mining near  
15 Carlsbad for many years, and we believe his  
16 credentials qualify him as an expert witness on potash  
17 mining and the potential impact on mining operations  
18 in potash reserves from oil and gas development.

19 Mr. Morehouse was a member of the --  
20 what they call the Wellbore Integrity Working Group  
21 within the JITC that developed the technical aspects  
22 of this proposed rule. And Mr. Morehouse, in his  
23 self-affirmed statement, discusses the JITC, the  
24 applicant here. He discusses the consensus  
25 building -- the significant consensus building -- that



1 resulted in these proposed modifications.

2 And he's here today for any questions  
3 that you may have about that. Okay?

4 Exhibit Number 6 is the self-affirmed  
5 statement of William Morgan. He's employed by  
6 Intrepid Potash and was previously a completions and  
7 production engineer with Mewbourne Oil Company. We  
8 believe his credentials and background qualify him as  
9 an expert witness in oil and gas drilling and the  
10 potential impact on potash mining and potash reserves  
11 from oil and gas development.

12 He discusses in his statement kind of  
13 what I went through with JIT Exhibits 1 through 4, and  
14 he also discusses the new subsidence monitoring  
15 provisions that are placed within this rule. He's  
16 here, present by video, if you have any questions for  
17 him. Okay?

18 Exhibit 7 is the self-affirmed  
19 statement of Greg Caraway. He's employed by  
20 Occidental Petroleum as a reservoir engineer/advisor.  
21 We believe his credentials likewise qualify him as an  
22 expert witness in oil and gas drilling, reservoir  
23 engineering, and the potential impact of oil and gas  
24 development on potash.

25 He was also a member of that working

1 group that developed the technical aspects of these  
2 proposed rules. And he addresses the changes to  
3 "Section C," which is requirements for drilling in the  
4 potash area. He summarizes the new anti-collision  
5 measures and the new casing string requirements in  
6 "Subpart D," as in David, and he addresses  
7 specifically "Section E," which discusses the fluid to  
8 be used while drilling through the salt section.

9 He addresses the new notification  
10 requirements to potash operators in "Section F," and  
11 he discusses the changes in "Section H" to the cement  
12 used for plugging wells. He's also available by video  
13 if you have any questions on those topics.

14 Exhibit 8, then, is our self-affirmed  
15 statement from Alex Podust. He's a well-servicing  
16 engineer/advisor with ExxonMobil. His credentials  
17 qualify him, we believe, as an expert witness in oil  
18 and gas drilling and the potential impact on potash.

19 He was a leading member of that work  
20 group within the JITC that developed the technical  
21 aspects of these proposed rules. And he addresses  
22 most of those technical aspects in the "Key  
23 Provisions." For example, the new anti-collision  
24 measures in "D2," the surface casing string  
25 requirements in "D3," the salt protection stream

1 requirements in "D4," as well as the two wellbore  
2 design methods that are provided to operators and are  
3 part of the figures that are attached to the rule.

4 He addresses the intermediate casing  
5 string requirements in "D5," which includes the  
6 wellbore diagrams associated with the four design  
7 methods that the rule provides to operators. And then  
8 he addresses the more stringent standards for the  
9 production casing string in "D6." And you'll see that  
10 he also then developed our Exhibits 9 and 10.

11 (JIT Exhibit 9 and Exhibit 10 were  
12 marked for identification.)

13 Exhibit 9 talks about the separation  
14 factor, which is discussed and utilized in the new  
15 anti-collision provisions. And then Exhibit 10 talks  
16 about, more specifically, and addresses with some text  
17 the figures that you see as "A through F" in our  
18 proposed modifications. Mr. Podust is here in the  
19 room if you have questions for him.

20 Then our remaining exhibits deal with  
21 notice issues -- okay -- my Exhibit 11 and 12.

22 (Exhibit 11 and Exhibit 12 were marked  
23 for identification.)

24 And I think it's important to point out  
25 that since these rules are not statewide rules --

1 okay -- they are limited to the Potash Area.  
2 Therefore, the notice requirements are actually found  
3 under the "Adjudicatory Provisions," which is Rule 4  
4 of the Division's rules, and, specifically,  
5 19.15.4.12A5, which is labeled "Special Orders  
6 Regarding Any Division-Designated Potash Area."  
7 That's what we have here.

8                   And it required that notice be sent by  
9 Certified Mail to all potash lessees, oil and gas  
10 operators, oil and gas lessees, and unleased mineral  
11 owners of record, within the designated Potash Area.  
12 The Joint Interest [sic] Technical Committee compiled  
13 this notice list of affected parties from the BLM  
14 email list that is used for all potash notices --  
15 that's a pretty good source -- and then the records of  
16 the potash companies and the oil and gas companies  
17 that participated in this Joint Industry Technical  
18 Committee.

19                   We also included notice to the BLM and  
20 to the New Mexico State Land Office. So Exhibit 11 is  
21 my affidavit, reflecting that notice of this  
22 application was provided to this extensive list. We  
23 also note that we included more than one address for  
24 some affected parties, to be overly inclusive, and we  
25 included email addresses where we could not find a

1 mailing address for a particular party, again, that  
2 email address coming from the BLM.

3 Exhibit 12, then -- and this is the  
4 last exhibit -- is the affidavit of publication from  
5 two local newspapers, the "Carlsbad Current-Argus" and  
6 then the "Hobbs Sun News." And the notice of this  
7 application, the notice of this hearing, was directed  
8 by name to each of those affected parties. So that's  
9 what we have provided to you.

10 And I think it's important to know that  
11 these proposed modifications is a culmination of years  
12 of cooperative study and collaboration between the  
13 potash industry and the oil and gas industry, done by  
14 experts from both industry. And I think the testament  
15 to the collaborative effort is the absence of any  
16 objection to these proposed modifications.

17 And we believe that the evidence  
18 presented demonstrates that the adoption of these  
19 proposed modifications to R-111-P will promote the  
20 safe and responsible concurrent development of oil and  
21 gas and potash within the Known Potash Leasing Area.  
22 It'll prevent the undue waste of commercially  
23 recoverable potash and oil and gas resources and  
24 protect correlative rights.

25 So I request that Exhibits 1 through 12

1 be admitted into the record and that the Commission  
2 adopt the new rules that are reflected in our Exhibit  
3 4.

4 THE HEARING EXAMINER: Your request to  
5 put those exhibits into the record is granted.

6 I'm going to turn to Mr. Tremaine for  
7 some opening remarks and then Mr. Shaheen.

8 MR. TREMAINE: Mr. Chair, I'll be very  
9 brief. We concur with Mr. Feldewert. This has been a  
10 long collaborative and iterative process. OCD entered  
11 an appearance to ensure that certain concerns and  
12 updates were being proposed.

13 The Division has long engaged with the  
14 JITC generally and has had input in this process,  
15 generally, but more specifically, responded with  
16 specific but limited editing comments to the initial  
17 proposal. And so as far as the proceedings of the  
18 hearing today, we intend to participate and make Mr.  
19 Powell, OCD's Deputy Director, and Mr. Philip Goetz,  
20 USC Program Manager, available if the Commission  
21 wishes to engage with any questions regarding OCD's  
22 comments, feedback.

23 But in sum, the scope and extent of  
24 this process and then the inclusion and the manner in  
25 which the applicant addressed OCD's concerns with the

1 edits, which are now reflected in Exhibits 3 and 4, do  
2 adequately address OCD's concerns. And so OCD is here  
3 to support adoption of the -- of Exhibit 4, with  
4 reliance on the information and testimony provided by  
5 the witnesses presented by the applicant.

6 THE HEARING EXAMINER: Thank you.

7 Ms. Shaheen.

8 MS. SHAHEEN: Thank you. Strata  
9 likewise concurs with the proposed amendments as  
10 they're set forth in Exhibits 3 and 4. It appreciates  
11 both the JITC participants' and OCD's engagement with  
12 Strata's concerns and joins in asking that the  
13 Commission adopt the amendments to the rule as  
14 proposed.

15 THE HEARING EXAMINER: Thank you.

16 I guess I'll start with maybe just sort  
17 of an open question both to my fellow Commissioners  
18 and the parties. The JITC's application materials, I  
19 found them to be comprehensive and detailed in terms  
20 of written testimony and other things like that.

21 So in terms of just managing the  
22 proceedings here, would like to proceed -- would like  
23 some thoughts from the parties and other things like  
24 that, areas where we have questions, need to present  
25 witnesses, versus more comfortable with sort of the

1 representation and the records or other pieces.

2           What's the sort of plan here, since it  
3 sounds like we have some consensus update or  
4 suggestions about the need to put -- and I am mindful  
5 of the need to ensure that the Commission has a robust  
6 record, sort of before, and then I do want to hear  
7 from my, you know, fellow commissioners about their  
8 thoughts about the filings and areas where they may  
9 have questions as we -- before moving to the next  
10 steps.

11           MR. BLOOM: Mr. Chair, it is a little  
12 bit different than some of our other hearings because  
13 we have consensus in front of us, and, you know, kudos  
14 to the parties here. It's not often that we have  
15 complete agreement between oil and gas, potash, and  
16 the OCD. So it is wonderful, which -- I know you'll  
17 get into this a little bit more, Mr. Chair, about how  
18 we will proceed today.

19           I may have some -- well, I will have  
20 one question about the anti-collision measures. When  
21 I reviewed that, I just couldn't quite get my head  
22 around that. But my questions would be limited to  
23 that. Thank you.

24           THE HEARING EXAMINER: Dr. Ampomah.

25           DR. AMPOMAH: Mr. Chair, thanks so



1 much. So I'm still reviewing through all the  
2 materials and, as Commissioner Bloom said, it's so  
3 exciting to have a consensus here. And I also do have  
4 some few questions with regards to wellbore diagram,  
5 and then also the subsidence monitoring. I'll  
6 probably limit my questions to those pieces. Thank  
7 you.

8 THE HEARING EXAMINER: So it just  
9 sounds like, at least preliminarily, the commissioners  
10 may have questions for Mr. Caraway, and I forget who  
11 discussed subsidence, and Mr. Morgan.

12 DR. AMPOMAH: Yes.

13 THE HEARING EXAMINER: But, Mr.  
14 Feldewert, question posed to you about thoughts about  
15 proceeding there. But it sounds like we may want to  
16 hear -- or at least pose some questions to those  
17 witnesses.

18 MR. FELDEWERT: Yes. And that's why  
19 we're here. I mean, first off, in my humble opinion,  
20 the Commission has in the record what it needs to  
21 adopt the rules, because we were purposely very  
22 specific in making sure that we covered what we needed  
23 to cover. So, you know, this can be a fairly short  
24 hearing.

25 And -- but we do have the witnesses

1 available to discuss the topics that -- for which you  
2 have questions. And when you're ready, we can proceed  
3 to do that.

4 THE HEARING EXAMINER: Mr. Tremaine,  
5 and then Ms. Shaheen, any concern with just calling  
6 the witnesses for whom the Commission has questions  
7 and otherwise relying on the written statements filed  
8 in the record?

9 MR. TREMAINE: No objection to adoption  
10 and noting the written testimony and proceeding  
11 directly to questions or any cross-examination, Mr.  
12 Chair.

13 MS. SHAHEEN: No objection from Strata.

14 THE HEARING EXAMINER: Even though I  
15 know it was presented in a different order in the  
16 filing, I think we'll call Mr. Caraway, who I believe  
17 you said, Mr. Feldewert, is available online?

18 MR. FELDEWERT: Yes, sir.

19 THE HEARING EXAMINER: I'm going to ask  
20 the court reporter to swear him in when we confirm  
21 that he's connected to the audio.

22 Mr. Caraway, can you confirm you can  
23 hear us and speak?

24 MR. CARAWAY: Yes. I can. Can you  
25 hear me?

1 THE HEARING EXAMINER: We can hear you,  
2 and we can see you. Thank you very much.

3 MR. CARAWAY: Thank you.

4 I'm going to ask the court reporter to  
5 swear you in.

6 THE REPORTER: Please raise your right  
7 hand.

8 WHEREUPON,

9 GREG CARAWAY,  
10 called as a witness and having been first duly sworn  
11 to tell the truth, the whole truth, and nothing but  
12 the truth, was examined and testified as follows:

13 THE HEARING EXAMINER: All right. And,  
14 Mr. Caraway, just for the record, but I'd like you to  
15 just confirm it for the record, what's in JITC Exhibit  
16 7, your self-affirmed statement, can you confirm that  
17 you prepared that statement?

18 THE WITNESS: Yes. I did.

19 THE HEARING EXAMINER: Did you work  
20 with anyone or get help with anyone on it?

21 THE WITNESS: I think Mr. Feldewert  
22 helped to adjust some of maybe the verbiage of how I  
23 had written some of the -- some of the testimony.

24 THE HEARING EXAMINER: But it otherwise  
25 reflects your opinions and positions on the matters

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1 discussed therein?

2 THE WITNESS: That is correct.

3 THE HEARING EXAMINER: Based on the  
4 self-affirmed statement, and unless there's an  
5 objection from the parties, I'll just note for the  
6 record that the Commission will recognize Mr. Caraway  
7 as an expert in petroleum engineering for the purposes  
8 of the matters discussed in his testimony.

9 And I'm going to turn it over to  
10 Commissioner Bloom to pose his questions concerning  
11 your written statements.

12 EXAMINATION

13 BY MR. BLOOM:

14 Q All right. Thank you, Mr. Caraway.  
15 Appreciate your time today. Can you hear me okay?

16 A Yes. I can.

17 Q All right. Thank you. Could you just walk  
18 me through the separation factor -- I believe there's  
19 a simple mathematical equation that represents that --  
20 and explain to me how this helps prevent or ensures  
21 that there are not collisions?

22 A Sure. And -- and I'm happy to provide the  
23 testimony on this. I think Mr. Podust actually may --  
24 may be the better witness to testify to this.

25 MR. FELDEWERT: Yeah. Let me

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1 interject. Not knowing what the question was, yes.  
2 The separation factor and actually the exhibit on that  
3 separation factor was done by Mr. Podust.

4 MR. BLOOM: Well, then, I think we  
5 should hear from Mr. Podust, yes.

6 THE HEARING EXAMINER: Okay.

7 MR. FELDEWERT: Unless there's other  
8 questions for Mr. Caraway.

9 THE HEARING EXAMINER: Do we have any  
10 other questions for Mr. Caraway? Do we have any other  
11 questions for Mr. Caraway? His testimony also covered  
12 surface casing strings, but I believe more detailed  
13 discussion is also Mr. Podust, the salt production  
14 casing strings and sort of other components.

15 Is there anything in his testimony that  
16 we have questions on? Otherwise, we'll call Mr.  
17 Podust.

18 DR. AMPOMAH: Yes. I do.

19 THE HEARING EXAMINER: Okay.  
20 Commissioner Ampomah.

21 DR. AMPOMAH: Thank you.

22 EXAMINATION

23 BY DR. AMPOMAH:

24 Q So the first question will be, you know, in  
25 your statement, you talked about only new casings are

1 recommended instead of used. So I would like to hear  
2 more about, you know, the process that you went  
3 through to more or less come to that conclusion?

4 A Sure. So during the discussions with our  
5 counterparts in the -- in the mining industry, we  
6 talked through a little bit about what used versus new  
7 casing means and -- and what some of those  
8 implications are.

9 The -- the main reason that we decided to  
10 adjust the verbiage to -- to new casing was that with  
11 new casing, you are -- you know, there are a set of  
12 standards with minimum wall thickness that -- that are  
13 going to be achieved with that casing.

14 And so, given the criticality of the casing  
15 integrity in these -- in these areas, we wanted to  
16 make sure that, you know, that there wasn't any  
17 opportunity for substandard casing to enter the  
18 wellbore and provide a potential reduction in  
19 integrity of the well design.

20 So that's why we proposed that we would --  
21 that -- that any casing installed should be new casing  
22 to -- to maintain the integrity and to make sure that  
23 we do meet the minimum requirements that are desired  
24 for this design.

25 Q Yeah. Thank you for that. So now, my

1 question will be, are there any proposed modification  
2 to existing well completions, you know, based on the  
3 response that you gave?

4 A I don't -- I don't believe so. Not at this  
5 time in -- in the way that we complete the wells.

6 Q Yeah. So, then, in that case, what is the  
7 impact of the existing completions? You know, so you  
8 have new completions coming in with more advanced  
9 completion technique, and you do have existing wells,  
10 more or less probably with suboptimal completions.

11 So what is the impact, you know, where you  
12 have new ones and then existing ones? So what is the  
13 impact, you know, in terms of the integrity on what we  
14 are trying to prevent here?

15 A And I'm -- I'm not sure that I understand  
16 the question.

17 Q Let me rephrase that.

18 A Can you clarify?

19 Q So you do have new completion techniques  
20 that you want to -- let's say the new -- any new  
21 completion, any new drilling would have to follow  
22 these new completions. My concern is, what about the  
23 existing completions? And how are they, you know,  
24 going the overall program that you're trying to --  
25 more like the amendments?

1           How are we going to achieve the objectives  
2 of these amendment when you have these existing  
3 completions still in existence?

4           A     Sure. So I think that with the way that  
5 we've -- did -- reworded the requirements, I think  
6 that, in my opinion, the -- the current and potential  
7 future completions designs need to fit within those  
8 design requirements.

9           And -- and under the current conditions or  
10 design requirements, they -- they do fit within the  
11 design. And then to make sure that we do have a sound  
12 engineering design to -- to maintain the integrity of  
13 the well.

14          Q     So you talked about evidence-based waiting  
15 time of the cement. So how are you going to quantify  
16 that? Or how are you going to measure that?

17          A     Sure. So what can be done is on a batch.  
18 When we run a -- a cement blend, prior to running it,  
19 we can start doing a -- a test as well on that actual  
20 cement through a laboratory test and model it under  
21 the same conditions that are going to be present in  
22 the wellbore.

23                 And we can monitor what that cement  
24 integrity will look like at a specified time and  
25 understand the compressive strength that that cement



1 has gained over that time period.

2 Q So I presume we will run something like CBL  
3 to quantify the integrity of the cement as part of the  
4 process, too?

5 A Not necessarily. No.

6 Q Okay. Yeah. So if "not necessarily," then  
7 what is the evidence based? Because you talked about  
8 so you can do -- when -- as you are planning, you can  
9 do all this modeling in the lab to more or less know  
10 the cement integrity.

11 But what is the evidence based right at the  
12 site, the field, whilst we are drilling, that we are  
13 going to use here?

14 A Sure. So for -- as an example, for the salt  
15 string, the -- that's of concern, the -- the cement  
16 should achieve -- cement returns to surface. And then  
17 we did have some modification to the language, with  
18 the Division's input, that if and when cement is not  
19 returned to surface, then additional things, like a  
20 CBL, would be required.

21 Q You know, I looked through the wellbore  
22 designs. These are really comprehensive. So are  
23 these options for operators to choose, or there is  
24 more stringent option? Are all these -- so you  
25 presume multiple of them.

1           So are these authorities, and are they new  
2 processes for, let's say, an operator to choose which  
3 option they want to use?

4           A       Correct. So the -- the intent was to give  
5 operators flexibility, but also, again, maintaining  
6 the integrity of the design and the processes, to make  
7 sure that we would maintain the integrity of the  
8 design. So as an example, in general, the -- the --  
9 one of the requests from the potash miners was to be  
10 able to monitor for potential pressure on the back  
11 side.

12           And so all of these designs reflect the  
13 ability to do so, to understand long-term what is the  
14 integrity of the well.

15           Q       Thank you so much.

16                   DR. AMPOMAH: Mr. Chair, thanks.

17                   THE HEARING EXAMINER: Any other  
18 questions for this witness?

19                   Seeing none, Mr. Caraway, you are --

20                   Oh, Mr. Tremaine.

21                   MR. TREMAINE: Yes. Sorry, Mr. Chair.

22                                   EXAMINATION

23 BY MR. TREMAINE:

24           Q       Just a clarifying question here. I'd just  
25 like to clarify with the witness that the proposal

1 would require a four string in the capital reef. Oh,  
2 sorry, Capitan Reef.

3 A Yes. I believe that that was one of the  
4 modifications that we made with the Division's input.

5 MR. TREMAINE: That's my only question,  
6 Mr. Chair. Thank you.

7 DR. AMPOMAH: Mr. Chair, can I clarify?

8 EXAMINATION

9 BY DR. AMPOMAH:

10 Q So -- but I do see three strings in there as  
11 an option. So not necessarily four. Four is an  
12 option, but three, too, is an option here. So if we  
13 can clarify that?

14 A Sure. So the -- the Capitan Reef is -- does  
15 not cover the entirety of the KPLA area. And so areas  
16 outside of the Capitan Reef, a three string is  
17 possible. The Division's concern was in areas where  
18 the -- the Capitan Reef is present that there be a  
19 four-string requirement.

20 THE HEARING EXAMINER: Mr. Caraway, for  
21 the record, can you tell us where that requirement is  
22 reflected in the proposed order?

23 MR. FELDEWERT: I may be able to help.

24 Go ahead, Mr. Caraway. I believe I  
25 have it up on --

1 THE WITNESS: It's --

2 MR. FELDEWERT: Do I have it up on the  
3 screen, Mr. Caraway?

4 THE WITNESS: I believe so. Yes.  
5 That's the -- and -- and then that's actually  
6 highlighted. I think it's the -- the verbiage that we  
7 included at the request of the Division, that a second  
8 intermediate casing string required in areas of the  
9 Capitan Reef.

10 MR. FELDEWERT: And I believe that's  
11 page 39 of our 180-page PDF.

12 THE HEARING EXAMINER: Perfect.  
13 Any additional questions for Mr.  
14 Caraway?

15 Hearing one -- none -- or seeing none,  
16 Mr. Caraway, you may be excused.

17 THE WITNESS: Thank you so much.

18 THE HEARING EXAMINER: I'm going to  
19 call next Mr. Alexey Podust. Please come up.

20 And then I would ask the court reporter  
21 to swear Mr. Podust in.

22 THE REPORTER: Please raise your right  
23 hand.

24 //

25 //

1 WHEREUPON,

2 ALEXEY PODUST,

3 called as a witness and having been first duly sworn  
4 to tell the truth, the whole truth, and nothing but  
5 the truth, was examined and testified as follows:

6 THE HEARING EXAMINER: Mr. Podust, as I  
7 did with Mr. Caraway, just for the record, because of  
8 the nature of how we're posting it, can you confirm  
9 that -- well, give me one second -- that the statement  
10 provided in Exhibit 8 was prepared by you?

11 THE WITNESS: Yes. It is.

12 THE HEARING EXAMINER: Did anyone  
13 assist you with the statement?

14 THE WITNESS: Yes. Mr. Feldewert  
15 helped me, you know, modify some of the wording. But  
16 the -- the -- you know, statement is all mine.

17 THE HEARING EXAMINER: Okay. Thank  
18 you. For the record and based on the statements in  
19 your self-affirmed affidavit, the Commission will  
20 recognize you as an expert in the field of well  
21 development, petroleum engineering, and other pieces  
22 for purposes of the matters covered in your statement,  
23 unless there's an objection.

24 Seeing none, I'm going to turn it over  
25 to Commissioner Bloom for his questions about the

1 anti-collision measures.

2 EXAMINATION

3 BY MR. BLOOM:

4 Q Okay. Thank you, Mr. Podust, for your time  
5 today. Not sure to begin with this one, but I know  
6 there's an equation, and I think Mr. Feldewert said  
7 that it might be referenced here in one of the  
8 exhibits. Is that correct?

9 MR. FELDEWERT: Let me -- give me a  
10 minute, and I'll try to get to the language. Here we  
11 go. Can you see that?

12 MR. BLOOM: Yes. I see the language.

13 THE WITNESS: Believe it's going to be  
14 in the -- it's the PowerPoint slide attachments in --  
15 that's part of my witness testimony.

16 MR. FELDEWERT: Okay. So I'm going to  
17 move to JIT Exhibit 9.

18 THE WITNESS: Yep. I think it's the  
19 next page there. Is that the one that you were  
20 talking about right there on this slide?

21 BY MR. BLOOM:

22 Q That is the one. Yes. So perhaps if you  
23 could walk us through that, I'd actually -- when I was  
24 doing a little bit of research -- found a slightly  
25 different equation and -- but if you could walk us

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1 through that, that would be a great start. Thank you.

2 A Well, I can just -- do I need to provide any  
3 background on what's, you know -- on wellbore --  
4 wellbore surveying, or just talk to the -- to the  
5 specific equation here?

6 Q Yeah. I mean, I -- and let me tell you  
7 where I'm going with that. So you could have a  
8 situation where a separation factor of 1 or just  
9 greater than 1 could be wells -- wellbores just  
10 essentially right next to each other. Correct?

11 A So it's -- when you're talking about  
12 wellbore surveying -- right -- it -- it's a  
13 statistical analysis -- right. So where your wellbore  
14 survey is calculated at, and then the -- the ellipse  
15 of uncertainty separation forms a three-dimensional  
16 shape, where with 95-percent certainty you can say  
17 that the wellbore is -- is located.

18 Q Okay. And I guess where I'm going is, I  
19 just want to understand what ensures that there's not  
20 a collision? And is there a minimum distance, for  
21 example, that has to separate the wellbores?

22 A There's not a minimum distance, because  
23 it -- it comes back to the ellipse of uncertainty, and  
24 the specific tools that were used for the surveying,  
25 and the errors that are associated with those tools.

1 The -- the ellipse of uncertainty is formed because  
2 the surveying tools that you use are not perfect.  
3 There's errors associated with them.

4 And the survey is a series of measurements  
5 as you go down the well, and those errors accumulate.  
6 So the ellipse of uncertainty grows. And you cannot  
7 really say with 100-percent certainty where a given  
8 wellbore is located. So the 95-percent rule is the  
9 industry adopted -- commonly adopted number.

10 Q Okay. Is there -- perhaps the language is  
11 elsewhere. Perhaps it's in OCD regulations that shows  
12 how wellbores are separated.

13 A Mm-hmm.

14 Q You know, the equation that I saw for  
15 separation factor was this AD divided by AB plus CD,  
16 where AB and CD are the wellbore radii, and AD is the  
17 distance between the centers of the wellbores.

18 A Mm-hmm.

19 Q And, I mean, if you're at a separation  
20 factor of 1, I mean, essentially, those wellbores are  
21 just about kissing. Right? I mean, they're real  
22 close.

23 A No. Not necessarily. So the separation  
24 factor of 1 means that the ellipses touch, that  
25 there's -- there's contact between the ellipses. And



1 the -- each ellipse of two wellbores represents a 95-  
2 percent certainty where that wellbore is located. So  
3 a separation factor of 1 means contact of the ellipses  
4 but does not mean contact of the wellbores.

5 Q And is there any minimum distance required  
6 between wellbores?

7 A Again, it -- it's -- we don't define the  
8 minimum distance between the wellbores, because it,  
9 again, depends on the size of the ellipses. If you  
10 have a very inaccurate tool, then that ellipse is  
11 going to be very large, whereas if you have a very  
12 accurate tool, like a gyro survey, then that --  
13 then -- then you have a lot of certainty where that  
14 well is located, and that ellipse is going to be  
15 small.

16 That's why, when we talk about anti-  
17 collision, we don't talk about distance between wells,  
18 because of that statistical uncertainty concept. We  
19 talk about ellipses of uncertainty in the -- the  
20 separation factors or sometimes distance between the  
21 ellipses of uncertainty.

22 Q Okay. Well, I don't understand how we know  
23 our wellbores aren't colliding, but if we haven't seen  
24 protests from the OCD, I'll be -- I'll take their word  
25 for it that we're not going to see collisions out

1 there. Maybe Dr. Ampomah will explain that to me at  
2 some future date.

3 DR. AMPOMAH: Okay.

4 MR. BLOOM: No further questions.

5 Thank you.

6 THE HEARING EXAMINER: Dr. Ampomah.

7 EXAMINATION

8 BY DR. AMPOMAH:

9 Q Yeah. Let me try to rephrase my question  
10 that I asked earlier. So we do have the existing  
11 rules, which was enacted in 1988. So I presume there  
12 are existing wellbores in this area that is producing  
13 oil and gas in this area. Is that correct?

14 A That's correct. Yes.

15 Q So my concern or question is, with this new  
16 regulation or more, like, advanced completion  
17 techniques that we're going to more or less implement  
18 to safeguard the existing -- or to safeguard the  
19 potash, what will be the impact of these existing  
20 wellbores that do not follow this new improvement that  
21 we are more or less passing through this hearing?

22 A Mm-hmm. I will say that this -- this  
23 regulation, you know, it -- it mostly deals with new  
24 wells that are being drilled and are being completed  
25 in the -- the practices of contemporary wells. And,

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1 you know, it's -- it sets requirements for well  
2 design, the well operations practices of the wells  
3 being drilled today. So it does not really talk about  
4 the -- the wells that are currently in existence  
5 and -- and producing at this point.

6 Q So do you believe that this new --  
7 definitely, we all believe that this new completion is  
8 going to ensure integrity of our wells that we are  
9 going to drill into the future.

10 Now, assuming I have existing wellbore,  
11 1,000 feet, that does not conform to this new  
12 completion style that we are proposing today, I just  
13 want to understand the impact of that, you know,  
14 comparable to, let's say, the new wellbores that  
15 conform to the high standard?

16 A You know, again, this standard mostly deals  
17 with the drilling and the hydraulic fracturing  
18 operations on -- on new wells. So it does not -- I  
19 don't believe it's going to put any existing wells out  
20 of conformance.

21 Q So just to understand that, then it means we  
22 are learning from the drilling of the old wells and  
23 then the problems that were -- that occurred during  
24 those drilling periods, more or less assisted the  
25 Joint Industry Team to come up with a new design to

1 more or less support -- to improve the integrity, you  
2 know, to more or less -- any previous problems that  
3 occurred in the past?

4 A Yes. I mean, absolutely. We incorporated  
5 all the learnings that we have collected since 1988.  
6 You know, this -- this R-111-P has been in place for a  
7 very long time, and the industry has moved on  
8 significantly since then. And there's a lot of new  
9 technologies and new -- new operating methods that  
10 have been developed.

11 And all that has been incorporated into  
12 this -- into this update. So we have incorporated all  
13 of those learnings into this new standard.

14 Q So the monitoring techniques that were  
15 proposed in the new rule, is that going to apply to  
16 the existing wells, too?

17 A The monitoring rules -- which -- which  
18 section are you referring to?

19 Q So I will ask more about the subsidence, but  
20 I do know that in the completion, we do have open  
21 section where we are saving that, I guess, more or  
22 less, for monitoring --

23 A Mm-hmm.

24 Q -- in the new wellbores that I've seen. So  
25 those monitoring in the old wells going to be required

1 to also implement the same monitoring strategies, or  
2 not?

3 A You talking about "Section G, Subsidence  
4 Monitoring." Right? Is that what you're referring  
5 to? Just clarifying.

6 Q So I'm more or less looking at the  
7 completions, so "Exhibit B", the wellbore diagrams.  
8 I'm looking at those. And you see that there is open  
9 annulus that is going to be more or less for  
10 monitoring purposes. I believe that is what I read.

11 A Okay.

12 Q So I just want to know, the existing  
13 wellbores, are these monitoring strategies -- proposed  
14 monitoring strategies -- also going to apply to that  
15 as well?

16 A I understand your question. So it depends  
17 on the well design. So this is applicable to new  
18 wells being drilled. Once a well is drilled, you -- I  
19 mean, if it doesn't incorporate an open annulus, if  
20 the annulus was cemented up, then, no. That  
21 monitoring's not possible.

22 So -- so the wells that are currently in the  
23 ground are grandfathered in, if you will.

24 Q Oh, and let's talk about that. So if you  
25 have -- so I do know that these new completion style

1 more or less support strict monitoring. Now, the  
2 existing ones, if we cannot, let's say, monitor  
3 through the annulus, what about -- if it is present  
4 that we are measuring -- is that not -- can we not put  
5 it along the tubing of the production well?

6 A Yes. I mean, the -- the tubing by  
7 production annulus is going to be monitored, and the  
8 wells that, you know, I can speak for -- for  
9 ExxonMobil. The wells that we are currently  
10 producing, we are able to monitor those wells.

11 So this introduces additional means of  
12 monitoring the wells. This is an additional annulus  
13 that can be monitored. So it's not saying that the  
14 existing wells are unsafe. We're just saying we're  
15 introducing additional safeguards to make new wells  
16 that we're drilling even safer.

17 Q Thank you.

18 THE HEARING EXAMINER: Any other  
19 questions for this witness?

20 Mr. Feldewert.

21 EXAMINATION

22 BY MR. FELDEWERT:

23 Q Mr. Podust, I'm want to go back to the  
24 separation factor.

25 A Mm-hmm.

1 Q Okay. Now, was there any discussion about,  
2 you know, adding a set minimum distance within the  
3 group?

4 A "Set minimum distance" between the  
5 separation factors?

6 Q Between wells? Between wells?

7 A No. And that's really not the industry  
8 standard. That's really not appropriate for the  
9 reason I -- I discussed. It really depends on the  
10 size of that ellipse of uncertainty.

11 Q All right.

12 A How -- how accurate your survey of that well  
13 is.

14 Q So you and the other experts that were on  
15 the -- what was it, the Wellbore Integrity Working  
16 Group -- right?

17 A That's right. Yes.

18 Q Thanks. Those included experts from the  
19 industry and the potash companies?

20 A Correct. Yes.

21 Q Both of which had their own means to ensure  
22 that there's sufficient rules to prevent wellbore  
23 collision. Right?

24 A Yes. So each company's going to have their  
25 own set of anti-collision rules. This just sets the

1 minimum requirements. And I'll just point out, this  
2 is an entirely new section. So there was nothing on  
3 anti-collision in the R-111-P at all. So this is all  
4 new requirements.

5 And again, this is minimum requirements that  
6 are set forth and the -- and each operating company is  
7 going to have their requirements that will often  
8 supersede these minimum standards.

9 Q And was it the opinion of the Wellbore  
10 Integrity Working Group that this separation factor  
11 would protect against collisions?

12 A Yes.

13 Q And is it your personal opinion that this  
14 separation factor that has been developed in  
15 collaboration with the other experts, that it will  
16 prevent wellbore collisions?

17 A It will minimize the risk of -- of a  
18 collision event. Yes.

19 Q Okay. Thank you. That's all I have. Thank  
20 you.

21 THE HEARING EXAMINER: Thank you.  
22 Any additional questions for Mr.  
23 Podust?

24 Ms. Shaheen?

25 MS. SHAHEEN: None from Strata.



1 THE HEARING EXAMINER: Thank you, Mr.  
2 Podust. You may be excused.

3 I think the last witness we spoke about  
4 wanting to pose some questions to was Mr. Morgan,  
5 concerning the subsidence monitoring.

6 I believe Mr. Morgan is available  
7 online, Mr. Feldewert?

8 MR. FELDEWERT: Yes.

9 THE HEARING EXAMINE: Mr. Morgan, can  
10 you confirm that you can hear us and have audio?

11 MR. MORGAN: I can confirm I hear you,  
12 and can you hear me?

13 THE HEARING EXAMINER: We can hear you,  
14 and we can see you. I'm going to ask the court  
15 reporter to swear you in.

16 THE COURT REPORTER: Please raise your  
17 right hand.

18 WHEREUPON,

19 WILLIAM MORGAN,  
20 called as a witness and having been first duly sworn  
21 to tell the truth, the whole truth, and nothing but  
22 the truth, was examined and testified as follows:

23 THE HEARING EXAMINER: Good morning,  
24 Mr. Morgan. Just like with the prior witnesses, can  
25 you confirm what's been entered as applicant's Exhibit

1 6 reflects the statement that you prepared?

2 THE WITNESS: Yes.

3 THE HEARING EXAMINER: Did anyone  
4 assist you in the preparation of that statement?

5 THE WITNESS: Mr. Feldewert helped with  
6 some language, but the content is mine.

7 THE HEARING EXAMINER: And based on  
8 statements in your self-affirmed written statement  
9 that was filed, the Commission will recognize you as  
10 an expert in the field of completions and engineering  
11 and production engineering.

12 And with that, I'm going to turn it  
13 over to Dr. Ampomah with some questions.

14 DR. AMPOMAH: Thank you, Mr. Chair.

15 EXAMINATION

16 BY DR. AMPOMAH:

17 Q So I'm looking at the "Section G," and I'm  
18 looking on page nine, where we do have the subsidence  
19 monitoring. So my first question will be, do you  
20 believe that the content there is significantly enough  
21 to really address any potential subsidence issues?

22 A So it's -- it's my opinion -- and keep in  
23 mind, you know, this is a -- a new provision here that  
24 requires subsidence monitoring, where otherwise, that  
25 would not have been in place. So it's -- it's truly a

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1 provision to observe and be able to collect data on  
2 any potential subsidence activity in and around the --  
3 in and around the Potash Area.

4 But this would allow for warning signs of  
5 any subsidence activity that can have negative effect  
6 on producing wells in the area. So not so much that  
7 it is preventative of subsidence, but it is an alert.  
8 So, you know, that new provision being in there is --  
9 is all aimed to alert operators within the Potash Area  
10 to potential subsidence concerns that can be monitored  
11 and reported.

12 Q Yeah. So in the write-up, I did not see any  
13 recommended tools that have been tested, you know, to  
14 be more, like, effective in actually measuring or  
15 monitoring subsidence. So based on your discussion,  
16 was it more, like, let it open to the operator to  
17 decide whichever tool they want to use?

18 A That's -- correct. That is -- that is my  
19 understanding. There's -- there's various subsidence  
20 monitoring tools. I'm certainly not an expert in that  
21 field. However, that is -- that is my understanding.

22 It's -- it's left up to the operator to make  
23 the decision on how to fulfill that requirement,  
24 knowing that subsidence monitoring for wells within  
25 one mile of an active mine in the KPLA needs to be

1 observed.

2 Q So would you agree with me that, to be  
3 appropriate, if we add, let's say, a statement in  
4 there, saying giving the authority to NMOCD to more or  
5 less vet that tool, that is actually going to be  
6 utilized, you know, to catch up, more or less, with  
7 technology?

8 A Yeah. I think that it needs to be probably  
9 discussed more. But as far as who has the authority  
10 to observe or oppose what specific tools or  
11 observation tools need to be put in place, it would  
12 need to be a collective effort. But I can't speak on  
13 who should have authority to implement specific tools  
14 and devices.

15 Q Yeah. So at least you believe that there  
16 should be the wording in there. You know, more or  
17 less I don't know who's going to discuss with regards  
18 to who has the authority to assist. So I'm not saying  
19 that NMOCD should impose which technique. But at  
20 least they have to have an oversight on which device  
21 that the operator is more or less going to use.

22 A I -- I definitely see the reasoning for --  
23 for input on that from all parties that are a part of  
24 the -- the group.

25 Q And one concern I have with this is that you

1 stopped right at the end, where you said "just an  
2 alert" -- right -- it's just going to provide an  
3 alert. But what happens if we see a subsidence? And  
4 what is the magnitude of the subsidence or the  
5 displacement that we should see that should be of a  
6 concern? And if there is a concern, what are the next  
7 steps that needs to be followed?

8 A Yeah. That -- that is a fair point. And,  
9 you know, in my discussions with the working group,  
10 that -- that piece of what next has not necessarily  
11 been addressed in this new provision.

12 Q So how do we address that?

13 A Good question. I -- I don't know how to  
14 answer that at this time.

15 Q I really, really want us to think about  
16 that, because it is a good -- and it is a great  
17 provision. But I feel like it is short, you know, of  
18 the device and then also, what is the displacement  
19 magnitude that we should look out for?

20 And if we supersede that magnitude or  
21 displacement, what are the next steps? This is a  
22 critical monitoring tool or monitoring strategy that I  
23 believe needs to be completed.

24 A Understood.

25 DR. AMPOMAH: Thank you, Mr. Chair.

1 THE HEARING EXAMINER: Mr. Tremaine, do  
2 any of the witnesses for OCD -- would they be in a  
3 position to answer some of these questions, how that  
4 information might be used?

5 MR. TREMAINE: Mr. Chair, I think the  
6 OCD witnesses could speak, potentially, to OCD's  
7 response. You know, Mr. Powell can speak to how OCD  
8 would respond to an alert, you know, shut-ins,  
9 emergency orders, et cetera, when that occurs.

10 My understanding is a subsidence is  
11 more of a mining concern, and the actual monitoring of  
12 subsidence may not squarely be within the expertise of  
13 the OCD. But if you wish, we can make Mr. Powell  
14 available to flesh that out more.

15 THE HEARING EXAMINER: Thank you, Mr.  
16 Tremaine.

17 Any additional questions for this  
18 witness?

19 Seeing none, Mr. Morgan, you are  
20 excused.

21 Mr. Tremaine, is Mr. Powell online?

22 MR. TREMAINE: Mr. Powell is available  
23 through Webex. Yes.

24 THE HEARING EXAMINER: Mr. Powell, can  
25 you confirm that you can hear us and have audio?

1 MR. POWELL: I can. Can you hear me  
2 okay?

3 THE HEARING EXAMINER: We can hear you  
4 and see you. I'm going to ask the court reporter to  
5 swear you in.

6 THE REPORTER: Please raise your right  
7 hand.

8 WHEREUPON,

9 BRANDON POWELL,  
10 called as a witness and having been first duly sworn  
11 to tell the truth, the whole truth, and nothing but  
12 the truth, was examined and testified as follows:

13 THE HEARING EXAMINER: Mr. Powell, can  
14 you just briefly state for the Commission your current  
15 job and your background?

16 THE WITNESS: Currently, I'm the deputy  
17 director for the Oil Conservation Division overseeing  
18 engineering and environmental programs. I've been  
19 with the Division for almost 18 years now, ranging  
20 from an environmental specialist to engineering bureau  
21 chief, district supervisor. So lots of different  
22 avenues with the OCD.

23 THE HEARING EXAMINER: Okay. Would you  
24 care to comment on Dr. Ampomah's questions about  
25 regulatory oversight in this area and how the OCD

1 might respond to subsidence issues or the like?

2 THE WITNESS: Sure. So, subsidence  
3 monitoring isn't something OCD typically monitors. We  
4 think it's a good addition to this, 'cause it starts  
5 setting a baseline, starts setting something that we  
6 can watch as far as what levels we would take action  
7 at.

8 I think we would work with operators  
9 and work with the mines to look at that if we started  
10 seeing issues, similar that we've done with seismic  
11 monitoring. So if there's subsidence that is being  
12 viewed or being seen during this, I -- I would say the  
13 general expectation is for the operators that are  
14 seeing that to then get with the potash mines and with  
15 the OCD to report those and see if -- what actions  
16 need to be taken, whether that be additional  
17 monitoring.

18 Whether that is actual action of --  
19 regarding individual wells or how that is played out,  
20 I don't have that information, since we haven't done  
21 subsidence. But I would think the first step would be  
22 is if we've seen something significant to report it  
23 both to the mines and to the OCD and then look at  
24 possible work with --

25 THE HEARING EXAMINER: So, Mr. Powell,



1 just to clarify, it's your read of that provision that  
2 we're basically collecting data, establishing a  
3 baseline, but if there were actions needed to be taken  
4 in response to the data that was collected, that would  
5 require further collaboration and coordination between  
6 various parties?

7 THE WITNESS: That is correct.

8 THE HEARING EXAMINER: Okay.

9 Any additional questions for Mr.  
10 Powell?

11 DR. AMPOMAH: Yes.

12 EXAMINATION

13 BY DR. AMPOMAH:

14 Q I want to follow up and ask, so looking at  
15 that provision "G," do you believe -- and based on the  
16 discussions that I had with Mr. Morgan -- do you  
17 believe that that provision currently in the rule is  
18 good enough, at least for now?

19 A I think the provision attempts to provide  
20 that notice as it refers to early warning conditions.  
21 But it could potentially use some revisions to  
22 identify, if there are those conditions viewed, how  
23 the operator is to react to those.

24 Q Thank you for that. And do you also believe  
25 that at least NMOCD should have some oversight, not

1 necessarily imposing, but oversight, on what  
2 techniques is going to be utilized in the monitoring?

3 A I think the OCD should be involved in that  
4 process, yes, because it will affect the wells and  
5 future development, potentially in an individual area  
6 or on a larger fashion, to see if there's trends,  
7 those kinds of things looked at. So yes. I think OCD  
8 should be involved.

9 Q Thank you.

10 THE HEARING EXAMINER: Mr. Powell, can  
11 you tell me what the OCD's obligations are, generally,  
12 with respect to potash development?

13 THE WITNESS: It's to ensure that oil  
14 and -- so I didn't prep anything. So this is just  
15 going off general memory. It's to make sure that oil  
16 and gas drilling and production don't negatively  
17 impact the potash drilling.

18 THE HEARING EXAMINER: And, Mr. Powell,  
19 what are our general -- what's the OCD's general  
20 obligations with respect to oil and gas development?

21 THE WITNESS: It's protecting  
22 correlative rights. It's ensuring wellbore  
23 integrities. It's -- it's generally making sure  
24 operations aren't threatening in the environment.

25 THE HEARING EXAMINER: Thank you.

1 Any additional questions for Mr.  
2 Powell?

3 MR. TREMAINE: Mr. Chair, I just have a  
4 couple clarification questions for Mr. Powell.

5 THE HEARING EXAMINER: Okay.

6 EXAMINATION

7 BY MR. TREMAINE:

8 Q Mr. Powell, if OCD became aware of a  
9 significant, like, an emergency issue, does OCD have  
10 the ability to issue temporary cessation orders to the  
11 well operators in the area?

12 A We do.

13 Q And does OCD also have the ability to  
14 promptly issue emergency orders that may require  
15 operators to take additional steps rather than ceasing  
16 a current operational activity?

17 A We do.

18 Q And if such a situation arose, that there  
19 was a significant subsidence alert or other minor  
20 issue that threatened either potash or correlative  
21 rights or presented the opportunity for waste, do you  
22 believe that the Division is situated to respond  
23 promptly to issue either a temporary cessation order  
24 or an emergency order?

25 A They do. And I believe industry is also

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1 committed to that, through the formation of the Joint  
2 Industry Task Force Committee. In looking at that, I  
3 think it's in everybody's best interest to -- to take  
4 appropriate actions.

5 Q No further questions. Thank you.

6 THE HEARING EXAMINER: Any additional  
7 questions for this witness?

8 Mr. Powell, you are excused.

9 Mr. Feldewert, are there any other  
10 witnesses you'd like to call or question? They --  
11 talking to their -- some sidebar discussions  
12 surrounding the discussions we're having here on  
13 subsidence monitoring?

14 MR. FELDEWERT: What I would suggest is  
15 maybe we could take an early lunch break, if that  
16 works for you?

17 THE HEARING EXAMINER: Sure.

18 MR. FELDEWERT: And then I may or may  
19 not have something when we come back. But I don't  
20 anticipate taking very long.

21 THE HEARING EXAMINER: I think I'm fine  
22 with that. It's 11:30. We will reconvene at 12:30  
23 back in here and continue the hearing on this matter.  
24 Thank you.

25 MR. FELDEWERT: Thank you.

1 (Off the record.)

2 THE HEARING EXAMINER: Sheila, have we  
3 resumed recording?

4 MS. APODACA: Yes. We're recording  
5 again.

6 THE HEARING EXAMINER: Mr. Feldewert,  
7 are you ready to resume, or are we giving another  
8 couple minutes for folks to return?

9 MR. FELDEWERT: I -- a couple minutes  
10 would be great, because my battery just died, and so  
11 I'm plugging in.

12 THE HEARING EXAMINER: All right.

13 MR. FELDEWERT: Should have shut it off  
14 when I left.

15 THE HEARING EXAMINER: All right. Good  
16 afternoon, everyone. We're resuming the March 14,  
17 2024, Oil Conservation Commission hearing. We're on  
18 Case Number 2365 [sic], the application of the Joint  
19 Industry Technical Committee to amend Order R-111-P  
20 Lea and Eddy Counties, New Mexico.

21 We had prior to lunch had some witness  
22 testimony, mostly to address questions posed by the  
23 Commission. And I think where we left off was, there  
24 were some questions about the subsidence monitoring  
25 provisions and other pieces and how that data might be

1 used or responded to. And I think there was an open  
2 question to the parties, whether they wanted to  
3 supplement any of the information they provided in  
4 response to those questions from Dr. Ampomah.

5 MR. FELDEWERT: Mr. Chair, if I may,  
6 Michael Feldewert, for the applicants, I would like to  
7 call Dan Morehouse, who has not testified yet. He  
8 came all the way up from Carlsbad, so I'm like to have  
9 him come to the stand and address some of the issues.

10 THE HEARING EXAMINER: Would the court  
11 reporter please swear Mr. Morehouse in?

12 THE REPORTER: Please raise your right  
13 hand.

14 WHEREUPON,

15 DAN MOREHOUSE,  
16 called as a witness and having been first duly sworn  
17 to tell the truth, the whole truth, and nothing but  
18 the truth, was examined and testified as follows:

19 THE HEARING EXAMINER: Mr. Morehouse,  
20 like we've done with other witnesses, did you prepare  
21 the self-affirmed statement submitted as -- or  
22 introduced as applicant's Exhibit 5?

23 THE WITNESS: Yes. With assistance  
24 from counsel.

25 THE HEARING EXAMINER: And do we need

1 to --

2 Mr. Feldewert, do we need to recognize  
3 him as an expert, based on the questions you want him  
4 to discuss?

5 MR. FELDEWERT: I would like to  
6 recognize him as an expert, based on the credentials  
7 that he has in his self-affirmed statement.

8 THE HEARING EXAMINER: Okay. Based on  
9 the credentials listed there, we will -- the  
10 Commission will recognize the witness as an expert in  
11 mine engineering and engineering management.

12 And with that, I'll open it up to  
13 questions.

14 EXAMINATION

15 BY MR. FELDEWERT:

16 Q Mr. Morehouse, you were involved with the  
17 development of these proposed modifications?

18 A Yes. Since the inception.

19 Q Okay. And a member of that Wellbore  
20 Integrity Working Group?

21 A Yes.

22 Q Okay. And did you then assist, or were you  
23 involved on behalf of the potash industry in the  
24 development of what I have up here on the screen,  
25 which is "Subpart G," of the proposed rules?

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1           A     I was involved with all the discussion that  
2 led up to it, anyway. Yes.

3           Q     Okay. Okay. And there were some questions  
4 here about the language that's used, et cetera. First  
5 off, the current R-111-P does not have any provisions  
6 dealing with subsidence monitoring. Correct?

7           A     That's correct.

8           Q     And is this something that the potash  
9 industry thought would be a good start to obtaining  
10 information?

11          A     Yeah. Potash and oil and gas. It was -- it  
12 was in one of those consensus items that we all  
13 thought it was -- keep our eye on that.

14          Q     Okay. And the way this is written, what's  
15 the purpose of this provision?

16          A     Subsidence measuring has been done in  
17 various ways over the years. But about 2010, and then  
18 a little after, the new ways of using LiDAR and InSAR  
19 come along to make it very much easier to do a broad  
20 subsidence.

21                 And we have looked at some information from  
22 that stuff, but we have no real conclusions drawn yet.  
23 We -- we think we need to continue to watch it, and  
24 that's how this language got to be in the -- in the  
25 rule maintenance that we felt it was just necessary to



1 keep our eye on that, when the issues come up, to  
2 bring it to the overall JITC or any other interested  
3 parties and follow through.

4 Q Okay. So if I break that down, if I look at  
5 the rule, it says "shall be monitored." So it's a  
6 requirement now. Correct?

7 A Yes.

8 Q Okay. And as part of that monitoring, will  
9 the JITC be able to gather data?

10 A We expect it to be used by -- yeah. It --  
11 data will be gathered, and it will be available to the  
12 JITC and everyone.

13 Q And then the JITC can take that data and  
14 begin to analyze it?

15 A Yes.

16 Q Okay. And in that sense, then, begin the  
17 process of determining when action should be taken and  
18 what action should be taken?

19 A Yes.

20 Q So is this, like, a first step in -- towards  
21 that process, is you got to get the data first?

22 A Yeah. A continuation of that step. We've  
23 barely begun it. It needs to be carried further.

24 Q Okay. And I think you testified, but just  
25 to make it clear, this data that's obtained by this

1 mandatory provision, that is then going to be analyzed  
2 and utilized by the Joint Industry Technical  
3 Committee?

4 A Yes.

5 Q Okay. That's all I have. Oh, let me -- one  
6 last question. And, Mr. Morehouse, as an expert here  
7 and having been involved in potash mining for a lot of  
8 years, in your opinion, is this the appropriate first  
9 step in dealing with this type -- the issues that you  
10 intend to address with this provision? Is this a good  
11 first step?

12 A It -- it's a good continuation of the steps.  
13 I can't say this is the first step, 'cause we -- we've  
14 attempted to look at it in the past. It's -- it's a  
15 good way of moving forward.

16 Q Okay. Great. Thank you. That's all I  
17 have.

18 THE HEARING EXAMINER: Mr. Morehouse,  
19 so the data that will be required to be collected  
20 under "G" and will be available to the JITC, do you  
21 envision that the data will be reported to BLM and  
22 OCD, or just available to them upon request?

23 THE WITNESS: I don't know that we've  
24 researched that, but it's definitely available on  
25 request, and I'll bet we'd be willing -- if you wanted

1 it set up that way, we'd just send it whenever we have  
2 it.

3 THE HEARING EXAMINER: Dr. Ampomah, do  
4 you have a question?

5 DR. AMPOMAH: Exactly. Yes. I do have  
6 a question.

7 EXAMINATION

8 BY DR. AMPOMAH:

9 Q So based on the testimony, it sounds to me  
10 that that provision is mostly for the JITC. But  
11 there's no -- provision, you know, as to the role that  
12 the regulator is going to play in this.

13 So I feel like this needs to be clarified in  
14 there to make sure that the regulator also has a role  
15 to play, other than just the JITC, to just review the  
16 data to come up with the next steps. The regulator  
17 needs to have a role to play in that. Would you  
18 assent to that statement or not?

19 A My -- my answer would be that the -- the  
20 good thing about having something in here about it is  
21 that if -- if we show a subsidence somewhere, where  
22 people that aren't members of the JITC or -- it should  
23 be every -- every operator in the area out there  
24 should be -- you know, if we look -- if we want to  
25 look at measurement -- casing deformation measurements

1 along the wellbore or something, it's any well out  
2 there.

3 And I guess maybe you guys can do that  
4 independently if we bring up an issue. But having it  
5 in the rule here means that anybody that's out there  
6 drilling may have to -- who may have issues, and this  
7 is in there that they will have to measure their  
8 wellbore or whatever comes up out of the decisions.

9 But I understand -- I don't -- we don't know  
10 what those decisions are yet. We just haven't gotten  
11 that far.

12 Q So let me ask you with regards to the rule,  
13 is it -- give me a second. Is the JITC going to  
14 enforce it, or is the regulators going to enforce it?

15 A JITC will do it, whether you guys tell us to  
16 or not. Just put it that way. But it's good to have  
17 it now that we know we need to do it.

18 Q Yeah. I'm just saying that the whole  
19 provision, the whole object that we are working  
20 through now, who is going to -- who is enforcing it  
21 as -- do you know?

22 A I don't know.

23 Q Okay.

24 MR. FELDEWERT: Dr. Ampomah, I can  
25 probably address that. I mean, if we look at the

1 rule, it says "subsidence shall be monitored." Okay?  
2 So it's now mandatory, which means, just like any  
3 other provision in this rule, it is enforced by the  
4 Division.

5 DR. AMPOMAH: Exactly. If it is  
6 enforced by the Division, but according to the  
7 testimony, the data is going to be shared with JITC,  
8 and then generally, they are going to discuss and come  
9 up with steps as to what are the next steps, you know.  
10 But I feel like the regulator has to be involved in  
11 that.

12 MR. FELDEWERT: Well, I mean, you know,  
13 you can look at this a number of ways. But, you know,  
14 as Mr. Morehouse testified, I mean, the first step is  
15 to get the data. So they don't have data now. And if  
16 you don't have data, you don't know what exactly you  
17 need to look for, you don't know what the thresholds  
18 need to be, and you don't know what needs to be done  
19 at each threshold. That needs to be examined.

20 And that's the purpose of the Joint  
21 Industry Technical Committee. So they determined --  
22 again, this is something that's new -- right -- not  
23 previously required. The JITC said "Look, we want to  
24 make it mandatory that any well that meets this  
25 requirement, it shall be monitored so that we can

1 obtain -- so that we have the data, and we can start  
2 studying the data."

3 And then, from that point, you know,  
4 and remember, now, this JITC is made up of the  
5 industry -- oil and gas industry, potash industry.  
6 Everybody's got the incentive to make sure it's done  
7 right -- okay -- and to make sure that's action's  
8 taken when actions need to be taken.

9 So they set it up to get the data  
10 first. Now, what needs to be done at what threshold  
11 is -- we don't -- they don't really know yet. That  
12 needs -- that's still being examined.

13 DR. AMPOMAH: So subsidence is not  
14 really new. You know, it's been around for quite some  
15 time. So based on your response, it sounds to me, my  
16 question will be, what were the best practices that  
17 were considered in drafting the language?

18 Because if you look at our industry, a  
19 lot of casing collapse, you know, a lot of -- let's  
20 say even communication between injections or  
21 productions or in productions or -- specifically with  
22 regards to this -- and then also let's say about  
23 formation and all of that, subsidence cause some kind  
24 of issues, you know, in relation to those.

25 So definitely there has been a

1 precedence. There has been a lot of studies on that.  
2 So my question is, in terms of what were the best  
3 practices that the team that put this together, you  
4 know, considered before coming up with the language?

5 MR. FELDEWERT: That's a question I  
6 can't answer. I don't know if Mr. --

7 Mr. Morehouse, can you address what was  
8 looked at by the committee?

9 THE WITNESS: To a certain extent.  
10 The -- the evidence we had for subsidence previously  
11 is, you know, is usually done with survey -- you know,  
12 instrument surveys of some kind. And they're kind of  
13 anecdotal. You don't know everywhere subsidence is  
14 occurring, until you go out there and measure in  
15 places.

16 And we haven't universally measured  
17 anywhere. And this -- the advent of LiDAR and InSAR  
18 has made it available to us to see where -- where all  
19 is it going on and give us a more comprehensive --  
20 this is just much more comprehensive than anything  
21 ever done before on subsidence.

22 THE HEARING EXAMINER: So I maybe have  
23 a question and a proposal, listening to the  
24 discussion, you know, back and forth. Agree that the  
25 provision here requires data monitoring and other

1 collection. Acknowledge that, obviously, at least on  
2 the OCD side, OCD has plenary authority to request  
3 data that's generated in the field.

4 But I would wonder what the parties  
5 would think as a sort of subsequent, additional  
6 amendment to "G," listening to this, something along  
7 the lines of "Such data shall be reported at least  
8 quarterly to the BLM and the OCD as appropriate,  
9 except in the event of conditions that threaten the  
10 integrity of any active wells, which shall be reported  
11 within 24 hours of confirmation.

12 "Any remedial steps will be developed  
13 in coordination with the impacted operators, JITC,  
14 OCD, and the BLM." I think that provides a pathway  
15 for data coming in.

16 Since the purpose here is to go to  
17 wellbore integrity questions, you know, that's why I  
18 had a sort of separate reporting period there, because  
19 in -- you know, OCD's concerns at least jump up with  
20 wellbore integrity beyond sort of impact on potash  
21 components. So, you know, preferably wanted to get  
22 parties' reactions, at least conceptually, to that  
23 sort of addition to "G."

24 MR. FELDEWERT: Obviously, the first --  
25 I mean, I don't know where you pulled that, but I'm



1 impressed that you had that. Very good. And  
2 secondly, you know, if you want to give me five  
3 minutes, we could talk about it, see if there's any  
4 issues there. Do you mind sharing that with me, or is  
5 it --

6 THE HEARING EXAMINER: Yeah.

7 MR. FELDEWERT: Okay. Is that all  
8 right?

9 THE HEARING EXAMINER: I mean, to the  
10 extent that you can read it.

11 MR. FELDEWERT: Okay. Yeah. So if you  
12 give me -- can you give me five minutes?

13 THE HEARING EXAMINER: Yeah.

14 MR. FELDEWERT: Okay. Great. Thank  
15 you.

16 (Off the record.)

17 THE HEARING EXAMINER: All right.  
18 We're back.

19 MR. FELDEWERT: Mr. Chair, couple of  
20 comments. First, as you have gleaned from the rule,  
21 there is -- and this may go to some of the concerns.  
22 There's an existing provision that has a quarter-mile  
23 and a half-mile setback from mines. Okay? And that  
24 purpose of that was to address concerns in part about  
25 subsidence.

1                   So, in other words, if there's  
2 something that happens quickly, that setback was  
3 designed to address that. So what we're dealing with  
4 here, then, is beyond that in dealing with trying to  
5 study on a long-term basis -- and I mean a long-term  
6 basis -- the subsidence that occurs further away from  
7 these mines.

8                   So what has been contemplated by the  
9 JITC is that they want to gather this data, and it's  
10 not -- it's going to be more on a longer-term scale.  
11 You're talking about, you know, yearly or so. So what  
12 would make sense to them is to provide the data on a  
13 yearly basis to the Division.

14                   THE HEARING EXAMINER: Okay.

15                   MR. FELDEWERT: Because that fits more  
16 with, you know, the long-term nature of the study.  
17 The second part of the rule -- of your proposed  
18 language, it seems to me, is already addressed with  
19 other provisions in the Division's rules that deal  
20 with casing integrity issues, which are required to be  
21 reported on other aspects of the Division's rule.

22                   So the point being here that any  
23 subsidence over time is not going to have a 24-hour or  
24 a 48-hour impact on casing. Right? It's going to be  
25 something gradually over time. And any event that's

1 going to be 24 or 48 hours in nature is already going  
2 to be addressed by the Division's integrity rule.

3 So our suggestion would be that really  
4 all you need is to add a sentence that, you know, the  
5 data will be provided to the Division and the BLM on a  
6 yearly basis. Because that's kind of when the JITC  
7 was planning on looking at it, anyway, because you're  
8 talking about long-term, miles away from any mine. So  
9 that's our response.

10 THE HEARING EXAMINER: Okay. I'd be  
11 open to that, and I take the point about the casing  
12 integrity components.

13 Any other questions for Mr. Morehouse?

14 Mr. Tremaine.

15 MR. TREMAINE: I had just a general  
16 response to the -- gone back and forth, and not a  
17 question.

18 THE HEARING EXAMINER: Go, both.

19 MR. TREMAINE: So OCD is amenable to  
20 the structure. The yearly reporting does make sense.  
21 I think the line of questions from Commissioner  
22 Ampomah, I think, really break down into two  
23 considerations. There is what to do with the data,  
24 and then there is, how does the regulator know about  
25 the data.

1                   And so I think the open question is  
2 what to do with the data. And this updated proposal  
3 resolves that. The only hesitation we have is that  
4 this most recently proposed structure relies on the  
5 representation of the operator to indicate whether the  
6 subsidence was related to a casing, because we  
7 actually were talking about that, and we think that  
8 OCD's casing integrity rules would likely apply to  
9 these scenarios.

10                   Subsidence may very well be related to  
11 casing integrity. The only issue with that is that it  
12 puts OCD in a position where it may not be able to  
13 determine whether it's associated with casing  
14 integrity or not. And so I think it would be more  
15 straightforward and simple if, you know, there was a  
16 significant subsidence that caused a concern for  
17 potential casing integrity that there was a shorter  
18 notification window.

19                   So the second section, more similar to  
20 the Chair's original proposal, I think that would  
21 kind of thread the needle there.

22                   THE HEARING EXAMINER: Do you have a  
23 question for the witness?

24                   MR. TREMAINE: No questions for the  
25 witness.

1 THE HEARING EXAMINER: Okay.

2 Mr. Morehouse, you're excused. Thank  
3 you.

4 Any other questions for witnesses or  
5 other components?

6 I had a couple of more general  
7 questions for the applicant that I think, Mr.  
8 Feldewert, you're probably going to be in a position  
9 to address.

10 So I see -- what I'm holding here and  
11 looking at is the current version of R-111-P, which is  
12 on the Division website, that Mr. Feldewert passed  
13 out. As I read Exhibit 4, which is what the applicant  
14 is proposing to issue, it basically provides  
15 replacement language starting at page four, where it  
16 says "It is therefore ordered that," all the way  
17 through sort of the end, through the exhibits,  
18 including the new exhibits.

19 So what isn't there is the findings  
20 that the Commission would make here. And in reading  
21 it over, you know, some of these are stale, at least  
22 in the Chair's view, and then I'm not sure there's any  
23 relevance mentioning R-111-A or R-111-B when we're at  
24 R-111-P.

25 MR. FELDEWERT: Right.

1 THE HEARING EXAMINER: And so I wanted  
2 to float in sort of reading through this, you know, up  
3 through Paragraph 1 is sort of boilerplate, and it's  
4 there, as I'm flipping through R-111-P. Paragraphs,  
5 basically, 3, 4, 5, 6, 7 can all be struck, as they're  
6 sort of dated information, at least in our -- at least  
7 in my view, relative to, you know, the circumstances  
8 that led to the amendment at the time.

9 I wanted to ask, in Exhibit 8, is it  
10 the applicant's view that what is currently "Exhibit  
11 B" to R-111-P should be retained, or is that sort of  
12 an artifact that can be dropped? It wasn't in your  
13 set.

14 MR. FELDEWERT: Good question. In my  
15 opinion, that is an artifact that can be dropped for  
16 the R-111-Q. It would be part -- it's already part of  
17 R-111-P, part of the history, but it doesn't need to  
18 be --

19 THE HEARING EXAMINER: Okay.

20 MR. FELDEWERT: -- doesn't really have  
21 anything to do with this proposal.

22 THE HEARING EXAMINER: So Paragraphs 8  
23 and 9 also seem irrelevant for findings; 10 through  
24 17, with some maybe scrivener changes for references,  
25 retain relevance just in terms of setting context.

1 They describe general authority.

2 And then 18 is more of a kind of  
3 summary statement about we heard testimony and  
4 comments reflected here to justify the amendments; 19,  
5 20, 21, again, and 22, seem to be, again, artifacts of  
6 history, don't need to be retained. And 23 is just  
7 sort of a boilerplate language. That's sort of my  
8 thinking on an approach to what the order looks like.

9 And what I'd like to float for  
10 discussion with my fellow commissioners, the R-111-P  
11 is an unusual vehicle. It's sort of written like a  
12 rule set, but it's a Commission order. You know,  
13 probably if we were starting from a blank slate, they  
14 might even be special area rules. But be that as it  
15 may, we are where we are.

16 I think it would be helpful for the  
17 Commission and counsel and other pieces if we got  
18 native file versions of your Exhibit 4, because I  
19 think all we have is a PDF.

20 MR. FELDEWERT: Right.

21 THE HEARING EXAMINER: I'd rather have  
22 a Word version. And I would actually like to propose  
23 to my commissioners -- and I'll put it for discussion  
24 before we move it -- but that I think there was  
25 sufficient evidence to adopt the applicant's proposal,

1 which is Exhibit 4, with the amendment or some version  
2 of the amendment that we just discussed.

3 I think Commission counsel and  
4 Commission staff should go ahead and put together a  
5 draft written order that can be circulated to the  
6 parties in advance of the next meeting so that we can  
7 come to a confirmation that everyone is comfortable  
8 and happy with the updated language, and they get to  
9 see both the findings from the Commission and the  
10 proposed provisions, which are, again, largely  
11 consensus in applicant's Exhibit 4, and that we  
12 actually take action on the order at the April  
13 hearing, once we've seen it written out.

14 So I'm not even sure there's a need for  
15 a motion there. That's just a proposal on the table.  
16 Thoughts, reactions, from my fellow Commissioners?

17 MR. BLOOM: Mr. Chair, that certainly  
18 makes sense to me. Thank you.

19 DR. AMPOMAH: Mr. Chair, I do agree  
20 with that. Thank you.

21 THE HEARING EXAMINER: So I think since  
22 we're not going to be -- approve it till we have it  
23 put together, I think the directions to the party then  
24 are, after this, Mr. Feldewert, if you'll provide us  
25 Exhibit 4 in native Word format so we can incorporate



1 it?

2 MR. FELDEWERT: Where would you like me  
3 to send it?

4 THE HEARING EXAMINER: Send it to the  
5 OCC hearings clerk's address.

6 MR. FELDEWERT: Okay. Yep.

7 THE HEARING EXAMINER: And then we will  
8 circulate it at least two weeks in advance of the  
9 April Commission hearing so folks can look at it as a  
10 totality, and then we'll plan to vote on it at that  
11 hearing.

12 MR. FELDEWERT: Hopefully, we won't  
13 need it, but will we have an opportunity to provide  
14 comment?

15 THE HEARING EXAMINER: The intent here  
16 is, I would intend to list it on the April docket as a  
17 matter that's open for hearing and comment. The  
18 purpose of providing it two weeks in advance is if  
19 there are redline comments to put in, we can go  
20 through it, and we can, you know, talk through any  
21 changes at a public hearing.

22 But in looking at the old order,  
23 reading the new one, other pieces, I'd rather get it  
24 right than have to come back in and do, like, some  
25 technical amendments. So ...

1 MR. FELDEWERT: Yep. Thank you.

2 THE HEARING EXAMINER: Mr. Tremaine,  
3 does that work?

4 MR. TREMAINE: Excellent proposal.  
5 Thank you.

6 MR. BLOOM: Mr. Chair, since we'll be  
7 coming back on this, perhaps our next meeting or  
8 hearing would be a time when the proponents could  
9 maybe take another crack at the anti-collision  
10 explanation. I just -- when I see that the factor is  
11 1, I mean, I think we're in a collision state.

12 I can't get my head around that. I  
13 don't know why that wouldn't be a factor of 3 or 10 or  
14 something like that. But if you could perhaps walk us  
15 through that one more time, I'd appreciate it. Thank  
16 you.

17 THE HEARING EXAMINER: Okay. All  
18 right. Seeing nothing else on that matter, we will  
19 continue Case Number 23655 to the April 2024 meeting  
20 of the Oil Conservation Commission.

21 And then, moving on to the next item of  
22 the agenda, "Other Business, Potential Rescheduling of  
23 the April 11th," that was due to a conflict on my  
24 schedule. But actually, that conflict cleared up. So  
25 we will keep the April 11, 2024, hearing as currently

1 scheduled.

2 And with that, announced our next  
3 meeting date, and I will adjourn this meeting of the  
4 Oil Conservation Commission. Thank you.

5 MR. FELDEWERT: Thank you for your  
6 time.


7 (Whereupon, at 1:18 p.m., the  
8 proceeding was concluded.)

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CERTIFICATE

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



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

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CERTIFICATE OF TRANSCRIBER

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



PENNIE M. HAHN

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[allege - appropriately]

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[concur - counsel]

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[counterparts - delay]

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[delaying - discussion]

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[discussions - early]

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[easier - esquire]

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[esquire - exhibits]

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[resulted - schedule]

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[shaheen - sperling]

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[spiel - subpoena]

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[subsequent - taxing]

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[tdavis - think]

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[think - try]

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