STATE OF NEW MEXICO OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO OIL CONSERVATION COMMISSION EVIDENTIARY HEARING	) No. 24912

Record of proceedings in the hearing of the above-entitled cause, in the City of Sanfa Fe, County of Lee, State of New Mexico, before Victoria D. Rocks, CSR, Notary Public, commencing at 10:00 o'clock a.m., on the 17th day of January, 2025, A.D.

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I-N-D-E-X

COMMISSIONER RAZATOS: This is the Oil Conservation Commission meeting that is a continuation from yesterday January 16 and 17, 2025.

We are here in case number 24912, which is the application of Apache Corporation for an adjudicatory hearing to contest the Division's conditions of approval on Apacheche Corporation's County, New Mexico.

This is an evidentiary hearing. We will finish up. Just to make sure, are all parties here?

MR. MOELLENBERG:

MR. MOELLENBERG: Apache is present, ready to go.

COMMISSIONER RAZATOS: Mr. Tremaine.

MR. TREMAINE: Jesse Tremaine for the Oil Conservation Division, again attending virtually.

COMMISSIONER RAZATOS: Can we also just show that the commissioners are here as well.

COMMISSIONER AMPOMAH: Dr. William Ampomah, present.

COMMISSIONER BLOOM: Good morning. Greg Bloom, B-l-o-o-m, designee of the commissioner of public lands.

COMMISSIONER RAZATOS: As I said yesterday, I

am Gerasimos Razatos. I am the acting Division director for the OCD, and I am also Commission Chair, and I am present as well.

Yesterday we finished with the Apache witnesses. Just to make sure, Mr. Moellenberg, are you all complete with everything you wanted to present?

MR. MOELLENBERG: Yes. Mr. Chair, as far as our direct. As I indicated yesterday, it's possible we may have some rebuttal and then again we talked about the possibility yesterday of how to deal with the supplemental conditions.

COMMISSIONER RAZATOS: So we'll deal with that later. As far as your direct, you guys --

MR. MULLENBERG: As far as our direct, we're complete and ready to move on.

COMMISSIONER RAZATOS: Mr. Tremaine, are you ready?

MR. TREMAINE: We are ready. Mr. Chair, I would like to update the Commission.

The parties have been at work discussing some next steps to I think hopefully address some of the concerns raised by OCD earlier in the hearing. And so it's my expectation that when we get to that

point, I believe we're going to be able to withdraw OCD Exhibit 9. The original conditions are included in the slide show for Mr. Powell. So I think that will work. We do feel the need to continue expressing OCD's concerns with the sampling reports. We're going to go through the evidence as we have prepared to present it, but I do expect some at least temporary resolution on the part of it.

And I think we could resolve that objection and hopefully position this hearing for a potential order on the original conditions as we have discussed.

COMMISSIONER RAZATOS: So if I am understanding correctly, Mr. Moellenberg, both of you, we may not have to continue this case further on Monday.

MR. MOELLENBERG: That could be based on what Mr. Tremaine has said. If the Division withdraws the supplemental conditions, that may resolve this issue, and we can go on to the rest of it and see how it goes.

COMMISSIONER RAZATOS: We'll carry on. Mr. Tremaine, we're ready for your witness.

MR. TREMAINE: Thank you, Mr. Chair, Commissioners and other parties. The Oil

Conservation Division calls Rosa Romero.

COMMISSIONER RAZATOS: Ms. Romero, we'll have the court reporter swear you in. The witness has been sworn in. Mr. Tremaine, you may begin.

ROSA ROMERO,

called as a witness herein, having been first duly sworn, was examined upon oral interrogatories and testified as follows:

DIRECT EXAMINATION

BY MR. TREMAINE:

Q. Good morning, Ms. Romero. Could you tell us where do you work and what is your job title?

A. My name is Rosa Romero. I am the OCD's environmental bureau chief for approximately the last two and a half to three years.

Q. Are you testifying today on behalf of the Oil Conservation Division?

A. Yes.

Q. And did you prepare a resume for submission in this hearing?

A. I did.

Q. Is that labeled as OCD Exhibit number 1?

A. Yes.

Q. Is that resume true and accurate to the

best of your knowledge?

A. Yes.

Q. Could you please briefly describe your work experience for the Commission.

A. I have a bachelors in science in wildlife with primary research in aquatic health habitat.

Upon graduating from Western New Mexico University, I was employed with the U.S.D.A. forest service in a large scale aquatic surface water habitat management position. From there I also worked for the New Mexico environment department as an environmental specialist.

While I had a wide range of duties, my primary other focus was ground water protection, waste water management and participated in large scale rule changes and regulatory compliance with the ground water issues.

I was also employed at the State Engineer's office where I reviewed hydrologic reports. I did some hydrologic modeling and generally served as a water master for the southeast basin until my employment here at OCD.

Q. Ms. Romero, in your various roles how many site characterizations or investigations

approximately have you reviewed or conducted?

A. Hundreds. I would be hard pressed to put a specific number on that. We didn't keep track of those, but a significant number of via either permitting, reviewing, those kinds of reports and, that sort of thing.

Q. Have you ever testified before the Oil Conservation Commission before?

A. I have not.

MR. TREMAINE: Mr. Chair, I would like to share screen to lay the foundation for a couple of exhibits.

COMMISSIONER RAZATOS: Give him access, please.

BY MR. TREMAINE:

Q. Ms. Romero, I am directing you to my shared screen. Do you see that?

A. Yes.

Q. Is that the exhibit that we referenced as Exhibit 1, your resume?

A. Yes.

Q. Did you also prepare a time line presentation in preparation for this hearing?

A. I did.

Q. And is this OCD Exhibit number 2, which I

have on the screen here?

A. Yes.

Q. We're going to come back to this one. OCD Exhibit number 5 labeled as of February 9, 2021 report, do you recognize this document?

A. I do.

Q. Was this prepared by you or your staff in preparation for the hearing by pulling it from the OCD permitting website?

A. Yes.

Q. I would like to move on to Exhibit 6 labeled Scope of Work for Additional Investigation Exhibit 6 from May 9.

Do you recognize this document?

A. Yes.

Q. Similarly, was this prepared or packaged by you or your staff in preparation for the hearing?

A. Yes.

Q. And was this pulled from OCD permitting?

A. I believe this one was pulled via e-mail, but it is available on permitting.

Q. Thank you. A quick clarifying question on this one. Did you hear testimony yesterday talking about a May 8, 2024 report or document submitted by

Apache?

A. Yes.

Q. And this one is labeled by OCD as May 9th, correct?

A. Yes.

Q. Just to clarify for the record, we're talking about the same document?

A. It is the same document.

Q. Exhibit number 7 we have labeled as October 23, 2023, Apache PD work plan.

Do you recognize this document?

A. Yes.

Q. And is this the same document that was referenced yesterday as Apache's response to OCD's conditions of approval?

A. Yes.

Q. And was this document prepared for hearing by you or your staff?

A. Yes.

Q. Are the exhibits that we discussed, Exhibit 2, 5, 6 and 7 true and accurate to the best of your knowledge?

A. Yes.

Q. Are there any corrections or changes that

you need to make to any of the exhibits before we begin?

A. No.

MR. TREMAINE: Mr. Chair, I move admission of OCD Exhibits 1, 2, 5, 6, and 7.

COMMISSIONER RAZATOS: Mr. Moellenberg, any objection to that?

MR. MOELLENBERG: No objection subject to there's a long narrative on the site history, and I would just mention the fact that there probably are some specific communications that may be the best evidence of that as opposed to these notes. But no objection to their admission.

COMMISSIONER RAZATOS: They will be admitted, Mr. Tremaine.

MR. TREMAINE: Thank you, Mr. Chair.

BY MR. TREMAINE:

Q. Ms. Romero, I'm going to move back to OCD Exhibit number 2. Could you please summarize for the Commission what this exhibit is and the purpose of the exhibit?

A. The purpose of the exhibit was just to highlight key communications. The chronological events as from OCD's perspective. Much of this

information is probably a duplicate from what we already heard from Apache. So it is not intended to go into a lot of detail on these specifics over technical details. It's a time line.

Q. What I would like to do is move through the presentation kind of slide by slide. So I'm directing you to page seven of the packet.

This is OCD Exhibit 20007. Ms. Romero, could you please summarize the significance and importance of the information contained on this slide?

A. As stated previously, some of this is paraphrased and some of this is quotes from some of these reports.

This is intended to be more of s summary. So here we have some direct quotes from the remediation plan. This was the original reporting of the spill. As stated in the plan, it was due to a corroded isolation valve, reported as a major incident.

At this time the report only indicated that it was a soil impact.

Q. Ms. Romero, on slide 8, page 8, please summarize the contents of this slide.

A. These were the initial test sampling results from the soil impact directly after the incident occurred.

It does show that we have some elevated chloride levels above corrosive criteria at that time.

Q. Please summarize the contents of slide nine.

A. This is reference to what was originally proposed in their remediation plan. To summarize, it was a deep soil excavation core sampling.

There were some monitoring wells proposed at that time, liner installation, back filling procedures. At this time there was no ground oil concern, oil impact only.

Q. At this point in time, was OCD's approval of installation in the liner consistent with OCD practice?

A. At that time, yes.

Q. Moving on, please summarize the contents of slide ten.

A. This was some addendums that were made to the original remediation plan. Adjustments from the original plan, sampling expansions. Just approaches

for chloride containment.

As previously stated in testimony heard yesterday, there's a lot of general legal statements of liability that are included in all these e-mails as well as original one.

Q. At this time, is it accurate to indicate that we were seeing chloride results elevated above the remediation threshold?

A. Yes. This addendum in particular was more centered around the excavation, what portions were getting excavated in order to dig out the chlorides that were being seen on samples.

Q. Move on to the continued slide to summarize the information on slide 11.

A. There is the closure report that was previously referenced. The closure report again really only indicated that we were looking at soil contamination at the time.

Confirmation was done via an email with a former employee. There were small amounts of toluene in some of the samples, but at the time the small amounts were not something that would have had any major qualifiers.

We had some qualifier issues that were

outside of the lab control limits, but overall if this was a soil remediation only situation it would have achieved closure at that point.

Q. At the time of the remediation closure report, I believe you just said that if it was the soil remediation it would have been closed.

Is it accurate to state that absent subsequent information related to ground water impact, this site likely would have been closed?

A. The site was actually closed based on the information they had available to them at the time.

Q. Move on to slide 12. Please summarize the information here in 12.

A. This was annual ground water monitoring. Again, these were brief, brief portions of it that we wanted to highlight.

This was initially after the closure of the C 141, part 429 incident. There were some indications that some sampling didn't occur at the windmill, but there were renaming issues. The highlight here is we're seeing chloride concentrations increasing, and the toluene analysis was not detected, but also exceeded lab control limits.

Q. Moving on, please summarize the contents of slide 13.

A. This was the next sampling event that occurred. Primary thing we're see here is chloride concentrations were now being detected above the regulatory limits in two and four as well as the windmill.

The sample was analyzed. Outside of the whole time we see issues with sampling again. TDS for the windmill was listed incorrectly on reports that were submitted. The actual TDS lab sample results were I believe 794, not the 781 as indicated in their documentation.

Q. And moving on, please summarize slide 14 for us.

A. This was the next sampling event. This occurred approximately a year later. Chain of custody was not included in the laboratory analytical report for the sampling event, but we continue to see chloride elevations in the same locations.

Q. And the excerpts on this slide, the maps that are pulled, these are pulled directly from that annual ground water monitoring report?

A. Yes. These have all been pulled from Apache's information.

Q. And at that time am I understanding this correctly that these are the four monitoring wells that were in place up to the date in February of 2022?

A. Yes.

Q. I'm going to move into a new stage here. Please summarize for the Commission how OCD first started communicating with the landowner?

A. Just real brief. I didn't want to go into extreme detail on the communications that were had, just to show that we did have raised concern about the site conditions and the sampling results.

At that time there was no observed leaks, no petroleum smell. So there was no reason to think that we didn't close things appropriately. But we were also looking at potential impacts and just kind of spurred OCD to look at the site and surrounding area in more detail.

Q. Is it accurate to state that at that first communication OCD assessed the site for ongoing surface releases?

A. We did.

Q. Moving on to the next slide, slide 16, please summarize the next step in the process.

A. This is a continuation of some of those communications. Again, we were really just looking at expanding the area that we had originally been looking at to pinpoint where the concerns were.

Q. Was this the point in time when OCD began realizing that there was a ground water concern as opposed to ongoing or a new surface release concern?

A. Yes, this is where conversations started.

Q. Moving on to slide 17, please summarize the next step or the results of those initial conversations.

A. Further efforts in soil and ground water investigation, we had confirmed chloride in all of the additional wells at that point.

So they did further vertical delineation at the original site location and placed two additional monitoring wells.

Q. These additional labeled on the map like this SP locations, what do those reflect?

A. There were some naming issues back then. So I believe those were the additional because they changed them from SP to TMW, but we see the

corrections on the next slide.

Q. Moving on to that next slide, slide 18, please summarize that to the Commission.

A. The BHs were additional bore holes. The SPs were soil analytical results. And the TMWs here on the additional wells were above and below the original site.

So OCD did not initially receive confirmation that five and six were drilled until the scope of work for additional work were received in May of 2023. So they did drill the wells. We just didn't have communication on that until later.

Q. So in the previous flag, communications started in June and picked up in July of 2022, correct?

A. Yes.

Q. Once we get to this stage of the slide, it's really in January of 2023 when we have the initial additional wells going into place?

A. Yes.

Q. I'm going to move on to slide 19. Please summarize the contents of this slide.

A. This is just a short comparison of the ground water monitoring reports received in 2022.

Again, this is short versions.

We did see some issues with the chain of custody again. So some of the sampling name changes and totals, samples collected. There's discrepancies with naming.

This is maybe some of the confusion of number TMW. We have all named them something different it appears.

Q. On the previous slide, Ms. Romero, you indicated that there was confirmation that certain bore holes put in in January, is this when that occurred?

A. Somewhere in between. We didn't actually get the reports of those results until the additional scope of work came in in this annual report, yes.

Q. Moving along to slide 20. Please summarize this content for the Commission.

A. At this point OCD required to meet virtually with Apache and their consultant.

The high chloride in some of the exterior wells were not really making sense. So we discussed adding an additional four wells.

We discussed what type of sampling would

be needed in those. We're looking at exterior boundaries at this point. However, the meeting did end well. Everybody agreed on the placement of those wells during that meeting, just didn't really have any answers to any of our questions at that point.

Q. Is it accurate to state that at this point in time the delineation had not expanded far beyond the original release site?

A. No, we had not looked far beyond the original release site.

Q. Moving on to slide 21, please summarize this slide for us.

A. Let's see. This was a brief summary of the analytical results from the previous meeting. Chain of custody indicates samples collected were not preserved for hydrochloride detects.

It does not include toluene results, but we also continue to see chloride contamination, and we were notified that they would be doing additional sampling.

Q. At this point in time we're a year out from when the communications really picked up, correct?

A. Yes.

Q. The sampling at that point in time had still not really expanded beyond the original investigation or site of investigation?

A. Only slightly.

Q. Moving on to slide 22, please summarize the contents here for us.

A. Upon reviewing the results, OCD requested an additional meeting with Apache. This is just a summary, but what I wanted to really highlight so that we really emphasized that we needed a comprehensive delineation.

Follow the outside boundaries and drilling schedules, analytical results. We were starting to see results that would indicate that possibly we had a secondary release. And we were pushing for that comprehensive delineation to answer that question or not.

We did not get any clean answers from the sampling that occurred, but we did really stress the need for that comprehensive delineation. It was discussed yesterday. This is the point in which Apache agreed to the 11 through 16 wells. OCD also insisted on number 17. Also important to note that

17 has been the highest to date.

Q. To reiterate, just to clarify, from that meeting did Apache propose those wells except for 17 or was that agreed to at the meeting?

A. It was agreed to during the meeting. And also attached the scope of work via e-mail. They also submitted, it was a short e-mail proposing those additional wells.

OCD responded by e-mail and requested 17 as the additional one.

Q. That TMW 17 was requested by OCD in the response to the early November scope of work from Apache?

A. Yes.

Q. As we work through the presentation up to now how would you characterize OCD's level of concern as you started to get additional information?

A. At this point OCD was very concerned. It was again stressed that the comprehensive delineation would be absolutely necessary for decision making processes.

Q. I would like to move to slide 23. Please summarize this one for us.

A. Just a very brief, we did have some additional landowner contact at that time. Apache stated previously did install additional wells beyond the ones that we were required.

We did see the highest levels in well 17. But with all the additional wells that we saw, we saw additional impacts in significant numbers of them.

Q. Did the information you received during this date range alleviate any of OCD's concerns with the site?

A. No. At this time I felt we had probably more questions than we did previously. The sporadic chloride results that we were getting impacts different wells was not making sense, especially in comparison with the flow maps that we had been provided.

Q. As we look at the date range September 4, 2023, getting to January of 2024 did OCD have any concerns or give any consideration to the time line involved of all these communications?

A. We did press multiple time lines. We were following up via e-mail. We were pushing for things to move quickly before.

Q. In your experience and under part 29, what is OCD's baseline expectation for a site characterization for a new release absent any extenuating circumstances or extensions?

A. 90 days.

Q. 90 days?

A. Yes.

Q. I would like to move to slide 24. Please summarize this next slide for us.

A. After reviewing the results, again, we requested an additional meeting. We indicated to Apache that we're still unknown with our boundaries and still unknown if we had any cause. Still unknown if we had any definite modeling.

The report received included sampling results, but did not provide any plans for any additional anything at that point. So we were raising concerns for what next steps would look like.

Q. Did Apache -- I believe you just indicated that Apache didn't provide additional delineation plans at this point? Did I understand that correctly?

A. Yes.

Q. Did Apache want to continue ground water monitoring for some period of time?

A. They did. It was not specified in this particular report. They just indicated that they would continue monitoring.

Q. At this point in time in reviewing the samples and results that OCD had available, did you feel that OCD was able to reasonably identify potential sources of contamination that were showing up in their sample results?

A. I did not.

Q. I would like to move to the next slide, 25. Please summarize this one for us.

A. So at this time Apache proposed an additional scope of work. The scope of work was again intended to locate those external boundaries. They proposed four additional monitoring wells and continued to monitor the existing wells. Some of those were intended for background.

Q. At that time that scope of work from April of 2024, was OCD satisfied with the efficacy of that scope of work?

A. At this time OCD instead of approving or

denying followed up with an additional meeting. The concern was that this would not likely give us enough detail to make a decision.

Q. Moving on to slide 26. Please summarize the slide and OCD's response to that April scope of work.

A. We had the conversation that we would plan on approving the additional wells they proposed, but we also indicated that more drilling was needed, that we were willing to work with anything additional that they might add to the scope of work while in the field as needed to fully delineate.

Q. At this time at the meeting in May, I see here in your summary the statement that OCD felt it was necessary to document and issue formal requirements.

How would you characterize OCD's view of the situation and how it was handling the response at this point?

A. Most of the conversations and communications were happening via e-mail. At this point we felt it necessary to have a more formal record of the conversations and the proposed scopes that were being submitted. So we requested that

everything be handled through OCD online permitting.

Q. I would like to move on to slide 27. Please summarize this one for us, Ms. Romero.

A. So Apache did come back and propose wells and sampling to occur after the discussion about delineation at that meeting.

They did agree to do all 31 and 03 constituent at the windmill well.

Q. We have talked about this earlier, the May 9, 2024 report.

A. The scope of work, yes.

Q. This is the scope of work we reference in OCD Exhibit 6 and also contained in Apache's exhibit?

A. Yes.

Q. Just to clarify for the record here. I think we're moving on to slide 27. If you can please summarize this one for us -- strike that.

You just answered this question. I interjected with the other slide. Is there anything else that you feel is necessary to clarify for the Commission that is contained on this slide?

A. Not at this time.

Q. Moving on to slide 28. Please summarize

the contents here for the Commission.

A. Again, we have a comparison from previous reports. This was an overview of the scope of work we have seen to date. Chloride concentrations.

The more wells we're looking at, the larger the extent of chloride contamination.

Q. So up to this point in time as I understand the slide, every time you got more wells we get more chloride hits.

Up to this point have the samples satisfied OCD's concern in delineating the external perimeter of the impacted area?

A. We have not.

Q. I would like to move on to slide 29. If you could, please summarize this one for us.

A. It is a continuation of the previous slide. We do continue to have chain of custody issues, some improper conversions and so our decision making is still unclear at this point.

Q. Thank you. Moving on to slide 30. Please summarize or describe the follow-up meeting as a result of that information on the last slide.

A. Brief conversations. OCD did communicate that what was provided would not be sufficient to

make any additions on the site and that a comprehensive and complete delineation has not been provided to date.

We did not believe the scope of work was sufficient to be able to do that. As this was submitted now via permitting, we indicated that we would approve or deny that application via permitting and indicated that conditions of approval would likely be attached if it was to be approved.

Q. Ms. Romero, did you attend the hearing yesterday?

A. I did.

Q. Did you hear testimony or review the submissions to the effect that Apache may have felt that there was an agreement as a result of these May discussions?

A. To some extent. We communicated well during the meeting. It was agreed upon that they were willing to work with OCD in what we wanted to see as far as what that delineation looked like.

I felt that OCD communicated effectively that we were looking for that complete delineation and looking for a wider scope to be able to obtain that.

Q. Do you feel that it was communicated effectively during this period of time that OCD wouldn't necessarily -- that OCD may approve the submission with conditions of approval?

A. We did.

Q. Earlier in your testimony you had indicated that OCD had started transitioning to document and issue approvals to the OCD permitting rather than less formal communications.

Was this a continuation of that effort?

A. Yes.

Q. Moving on to slide 31. Please summarize the contents of this slide as -- actually let me ask you, is this representative of OCD's response to that May 8th or 9th scope of work?

A. Yes. We pulled these out because reading them off of our OCD permitting is not as easy -- it's a note format.

My team was taxed with providing rationale for each individual well. I'm not going to go into the rationale in super detail today because my deputy director, Brandon Powell, will be going over that later on.

But OCD's conditions of approval were

aimed at complete delineation, and this was pulled from permitting some of the rationale that we obtained.

Q. So from your review leading up to this approval of the scope of work with conditions of approval and based on what Apache had submitted in the scope of work, if OCD were going to transition to approve a remediation plan that isolated or removed potential contamination, and again, based on what Apache had submitted, would OCD know where it was necessary to complete that remedial work?

A. I don't believe so, no.

Q. The wells listed here, I believe you referenced this, but these are simply the wells that were conditioned in the conditions of approval which Apache subsequently objected to?

A. Yes.

Q. And just to clarify for the Commission, you had indicated that the conditions are difficult to read on the OCD website. Is that right?

A. It's a different formatting. This was just easier to list them all.

Q. I'm trying to just clarify for everyone how the conditions are oriented. So as a result of

OCD's interest in documenting the next steps formally through permitting, the conditions of approval when they're entered, are those documented on the incident page or somewhere else?

A. They are documented on the incident page.

Q. Did that appear on the page in a particular field or how does that appear?

A. It does. It's an annotation to whatever approval that was given.

Q. So this is simply copying that information out and expanding it for the Commission's review?

A. Just for readability.

Q. All right. I would like to move on to slide 32. We're now in August. Please summarize the contents here for us.

A. When OCD proposed the additional wells, this was some excerpts from Apache's response in which they objected to the additional wells that we had indicated.

They did provide their rationale for some of them and did indicate that they were willing to add the additional two wells instead of the OCD requested wells.

Q. And upon review, did OCD feel that

response to that approval would provide important adequate delineation?

A. We did not.

Q. How did OCD respond to that?

A. We requested an additional meeting.

Q. I would like to move on to slide 33. Please summarize the contents here for the Commission.

A. Again, a brief summary of the additional meeting. Mr. Powell did go through the additional wells and provided the rationale for the placement of those wells.

Apache at that time did agree to a revised plan, that they would do revisions and resubmit to OCD.

Q. And did Apache ultimately submit a revised plan or scope of work?

A. They did.

Q. And is that represented on slide 34?

A. It is.

Q. Pleas summarize the content of slide 34 for the Commission.

A. They added the soil boring proposals. They increased from the five wells to an additional

two, which would have been seven total, less than half of what OCD had requested.

Q. And again, like the last one, did OCD feel that that response was adequate to fully delineate the site?

A. It did not.

Q. And this discussion was happening in September of 2004?

A. Yes.

Q. Did OCD have any ongoing concerns regarding the lapse of time during these discussions?

A. Yes.

Q. And how did OCD respond to the additional ground water delineation work plan?

A. At this point it had been approximately two and a half years since we originally started working on this project. So we did not feel that this was adequate.

Q. Moving on to slide 35. I think I jumped ahead of you with my question. Please summarize slide 35 for the Commission.

A. This is fairly self explanatory. This was directly from Apache's proposed additional wells.

The one circled on the map are the additional ones that they agreed to in their scope of work.

Q. Moving to slide 36. Please summarize OCD's review and response to the additional delineation work.

A. I won't go into a lot of detail because I was not on this conversation. But Brandon, our director, Brandon Powell, in communication with our legal counsel did not feel that this was a good faith effort and gave the option to comply with our conditions or let us know if we were going to hearing.

Q. And as far as your participation in the back and forth discussions, this was kind of the end point for that pending Apache's decision in response to our ultimatum, for lack of a better word?

A. Yes. My reviews were for more the technical capacity. This is when it expanded to our legal.

Q. We have moved through the slides. Just to reiterate, Ms. Romero, contents of these slides that we have summarized, this is excerpts and paraphrases from the other exhibit represented both in that -- that we have admitted and that Apache has admitted,

correct?

A. Yes, paraphrased from the environmental bureau's perspective.

Q. So a couple of real high level questions to clarify over the presentation. Between 2019 when the first release was reported and July of 2022, was OCD aware of or did OCD identify any ground water impacts?

A. I believe the initial sampling results showed an increase in chloride, but at that time it had not proved high enough to fall under a ground water investigation. Probably post 2022, when we saw higher numbers that would lead us to that path.

Q. So prior to discussions and review of the sampling in 2022, the information available to OCD, did it provide a basis for which OCD would have required additional investigation?

A. Can you rephrase that.

Q. I'm trying to zero in on when OCD makes the decision to expand the investigation. So I'm wondering from -- go ahead.

A. From the original sampling of the original first two and then four wells, the increased chloride and the continuing increasing chloride

coupled with the increasing chloride from the windmill well led us into further investigation.

Q. So the initial sampling and remediation events, would that have warranted ongoing ground water monitoring with Apache?

A. Not necessarily. The soil excavation -- theoretically, the soil excavation was closed because of sampling done at that time.

MR. TREMAINE: I think these are all my questions on direct, Ms. Romero. Mr. Chair, the witness is available for cross-examination.

COMMISSIONER RAZATOS: Excellent. Thank you. Mr. Moellenberg. Please don't forget to turn on your mic.

MR. MOELLENBERG: Thank you for the reminder.

CROSS-EXAMINATION

BY MR. MULLENBERG:

Q. Thank you very much for your testimony today. I have just a few questions for you.

If you can turn to -- let me make sure that I got the right slide. It's slide 22 at the bottom. Do you have that in front of you? I think we could do this quickly without pulling it up on

the screen.

A. I believe so.

Q. There's a reference to an e-mail dated November 29, 2023, and it says received from legal counsel.

Do you know what legal counsel that was in particular? Do you know if that was the landowner's legal counsel?

A. I believe it was the landowner's legal counsel. I don't have that in front of me. It was not me who originally received this e-mail.

This was through at the time our acting director, Dylan Fuge, but I believe it was their counsel that reached out to him.

Q. And my next question related to a comment that you made, and I think it was regarding your testimony on slide 25.

And you said I believe at this point, and I think that we're in April of 2024, OCD did not have enough detail to make a decision. Could you clarify for us what kind of a decision OCD would have been considering at that time?

A. The decision being is this another release that needs to be removed to OCD, that OCD needs to

point out. Is this a ground water case that OCD needs to request official documentation on.

Really, not enough information to provide any direction or to follow our regulation.

Q. Thank you for that. Ms. Romero, slide number 30 refers to a follow-up meeting on May 16 of 2024.

And then my understanding is that subsequent to that the next communication was OCD transmitting its conditions of approval. Is that consistent with your recollection and understanding?

A. Yes.

Q. Is there any particular reason for the time frame between the May 16th meeting and the July 24th communication regarding the couple of months time frame there?

A. We needed significant research on the rationale for each individual placement.

Q. And then getting to the last slide, number 36, which discusses the time period after communications between Apache and the Division regarding the conditions of approval, I believe in one of his questions to you Mr. Tremaine referred to that as an ultimatum.

In your view, is that an accurate characterization?

A. No. In my view, I don't believe it was an accurate characterization. At this time personally we had been willing to communicate and work with Apache.

At that time a good faith effort, we were willing to discuss placement of wells to some extent. But as previously communicated, we were not willing to back off on the comprehensiveness of what we were looking for.

Q. And that would describe your disagreement with Mr. Tremaine's use of the word ultimatum?

A. I would not call that an ultimatum.

Q. Up until this point in time, during all of the back and forth between Apache and OCD, would you characterize the discussions as being cooperative?

A. For the most part, yes.

Q. And up until this point in time, can you point to any particular instance when Apache had not agreed to particular requests for investigation by the Division?

A. I feel that it was the Division requesting -- continually having to request more work.

Q. Is it fair to say during this entire time up again to this September of 2024 meeting that both Apache and the Division were trying to interpret and address a great deal of information that was being collected at the site?

A. We started with trickling information, and it did increase over time at OCD's request.

Q. Just a point as to your testimony regarding a transition from informal communications to recording information on the Division's website regarding particular incidents. And I believe that took place in around April or May of 2024.

Doesn't the Division post e-mail communications between the Division and an operator into the incident file on the OCD website?

A. At the time and probably to date we still can't confirm or we can't say yes, it is definitively related to the original incident.

So there was some question whether this should be considered a new incident or not. At this time we are uploading all of those emails for documentation purposes.

We have gotten those uploaded, but originally I think that was why things were

happening informally because we were not sure that it was related to the original incident.

MR. MOELLENBERG: Thank you. That is all the questions that I have, Ms. Romero. Thanks again for your testimony.

COMMISSIONER RAZATOS: Mr. Tremaine, was there anything that you wanted to redirect with?

REDIRECT EXAMINATION

BY MR. TREMAINE:

Q. Do you recall Mr. Moellenberg just asked you a question about why it took from May 16, 2024 until July of 2024 for OCD to issue the conditions of approval. Do you recall that question?

A. Yes.

Q. Is it typical practice for OCD and the environmental bureau in particular to define the terms of an extensive delineation for the operator?

A. No.

Q. So is it typical for OCD to provide such an extensive list of conditions or list of additional specific sampling points or wells or anything of that nature?

A. No. Typically the expectation is that the operator consult will provide that to us.

Q. In your opinion, had OCD repeatedly expressed the need for a significantly more comprehensive delineation plan to Apache over the previous meetings and discussions?

A. I feel that was communicated in every discussion.

MR. TREMAINE: No further questions.

COMMISSIONER RAZATOS: Thank you. Let's turn to the Commissioners. Commissioner Bloom, let's start with you.

COMMISSIONER BLOOM: No questions.

COMMISSIONER RAZATOS: Commissioner Ampomah.

CROSS-EXAMINATION

BY COMMISSIONER AMPOMAH:

Q. Thank you, Ms. Romero, for your testimony. I do have a couple of questions for you. The first one is on your slide 15.

You talked about there was a closure to the soil remediation. Now, my question is that is OCD's inspector inspected the site to make sure that the remediation plan and everything was followed before the closure was one that was permitted?

A. This was a very standard site or so we thought at that point. We don't inspect every site

that was -- closures are typically done via laboratory analysis, soil sampling results.

Q. So no?

A. No.

Q. Now, prior to the closure, was the lab results from the soil sampling, did they show that the chloride was in normal range that was acceptable to OCD?

A. Contaminated soils were excavated. There were some contamination left in place, hence the need for the liner. The liner utilized to protect chloride from washing further down, but it did meet closure criteria to close.

Q. It met the closure criteria to close?

A. Yes.

Q. Now, let me ask what is the responsibility of OCD with regard to what would help operators to identify the source of contamination?

A. I misunderstand. Can you repeat that.

Q. My question is what is the responsibility of OCD with regard to identifying the source of contamination?

A. OCD, unless it's a surface contamination OCD doesn't have the equipment to fully investigate

in a situation like this.

Q. So is it correct that OCD relies heavily on the operator for the source of the contamination?

A. Yes.

Q. Now, based on the testimony that we have gone through yesterday and today, one big question still hangs around that I really want your take on.

Is Apache responsible for full delineation and remediation even if it cannot be established that the contamination occurred as a result of the Apache known release that was reported to the OCD?

A. Apache is the only oil field, they are the only operator who has lines, wells in that particular vicinity.

So while it may not be a part of the original release, maybe it could be, we don't know. But if it is not, whatever else is out there is still Apache.

Q. So as of 2022 or as of let me say May 16, 2024, has OCD visited the remediation site?

A. Yes.

Q. So in your testimony you talk about OCD demonstrated that the proposed well was not

sufficient to provide complete delineation.

Can you provide more information on that?

A. I am not going to go into a super amount of detail because Mr. Powell's testimony will likely cover that significantly.

Q. Thank you. Now, on page 31 of your testimony, you say that drilling of all wells is required to commence within 90 days from this date of approval. That was the last statement before the table.

So is it the position of OCD that all the wells listed from 30 to 43 all need to be drilled at once immediately 90 days after the approval?

A. Typically mobilization, you get one drill rig out there, and they do them one after the other.

I really think we were just looking for a commitment, a deadline. Previously we had other deadlines in relation to these wells, and we've been flexible. But it is a way of insuring ongoing communication.

Q. So was OCD flexible with regard to the approach or once you have a rig on site you have to

drill all these wells or there is a flexibility on, let's say, state wise approach?

A. I don't believe we had that conversation, but I believe that would be better suited for Mr. Powell to answer.

Q. Now, let's say when OCD determined that there is a probable, let's say possible ground water contamination, that was way back in 2022, why did OCD not move into ground water remediation efforts?

A. It needs to be fully investigated before ground water remediation efforts. If we start remediation efforts, anything, a pump and treat, if we have an active release that is still actively contaminating, that is not going to do us any good. We really needed to determine where that was coming from before anything else could take place.

Q. So as of 2022 up to now, there has not been an established complete source of release, I guess. Is that a fair statement?

A. I do not have enough information to answer that, no.

Q. Do you have enough information to say whether there has been a full delineation of the

contamination on the site?

A. No.

Q. Now, on September 24, 2024, why did OCD feel that the additional seven wells that Apache proposed were not adequate?

A. Again, that would have to be answered by Mr. Powell.

Q. Let me ask anyway. How confident is OCD that the additional 14 wells that we attached a condition will fully eliminate the contamination?

A. Mr. Powell will go into details.

Q. Now, let me ask does the statewide approach -- it has been established through the hearing that there was a good coordination between OCD and Apache.

So does OCD support a statewide approach to continue to address this problem?

A. I believe so.

Q. So yesterday we went through the Apache C 4.1. I don't know if you want to refresh your memory on that.

A. Can somebody bring it up.

Q. So the green dots show what OCD is proposing. The blue balls is what Apache is

proposing. Have you reviewed this map?

A. To some extent.

Q. Do you believe Apache's proposed well locations and that of OCD proposed well locations are optimized to get the best results that OCD is looking for?

A. I think there are still some discrepancies with this map that leads to additional questions. Obviously, some of that was addressed yesterday and typos that they were indicating were a lot of errors.

I believe that some locations could be negotiated to some extent, but as I look at this, I still have a lot of questions when it comes down to it.

Q. Do you believe OCD and Apache can work together starting with this particular map to come to an optimized well location to help get the answers that OCD is looking for?

A. I do.

Q. Would you prefer that -- let's say would you prefer that option or is OCD asking the Commission to make that determination?

A. I don't think I am equipped to answer that

one. I think that would be a Brandon question.

Q. So based on your testimony, you talked about new additional information as a result of let's say an initiative by OCD.

So I want to ask you was there any initiative that was more or less started by Apache that you feel like they are fully committed to addressing this problem?

A. I do not feel that they put in the effort that we were looking for.

COMMISSIONER AMPOMAH: Thank you for your time.

COMMISSIONER RAZATOS: I have a couple of questions.

CROSS-EXAMINATION

BY MR. RAZATOS:

Q. As stated in the September of 2024 -- and forgive me. I believe I switched screens here, so bear with me.

Slide 34 that Apache proposed, the five wells plus the two additional, which is of what the OCD proposed. I just want to reiterate, and this may be a Mr. Powell question. I realize we've been asking you a lot of those today. I apologize for that.

Why do you feel that the Apache seven wells are not sufficient?

A. Mr. Powell will go into significant detail.

Q. I just want to make sure that we didn't cross anything there. There was an intonation yesterday that the OCD stopped communication.

Can you explain at your level when communication stopped? I think we got the impression that it stopped earlier in the year than what your time line is showing. Can you kind of tell us when communication stopped, in your opinion?

A. That final meeting that I attended, let's figure out what slide that was. It would have been late August.

Really, the conversation centered around we went through significant detail working on the map. Conversation centered around rationale. We really expressed what we were looking for and what we needed.

And when the the plan that came back it did not reflect any of that conversation. I think communication ceased.

Q. Another thing Mr. Moellenberg had asked

you. You had mentioned in your testimony that between May of 2024 through July of 2024, and I believe this is slide number, I want to say 31. It's where you stated about the wells and the rationale behind them.

You stated you needed significant rationale to be able to propose these wells. Why was there significant rationale needed?

A. Because typically this is not OCD's responsibility. They have a consultant. But in this circumstance we felt they needed a push.

Q. You said OCD had the consultant?

A. Apache had a consultant. OCD did not.

Q. It caught my attention as well. This was the phrase that was used, ultimatum. And you said you did not think it was an ultimatum.

What did you feel it was that was presented from the OCD to Apache?

A. Again, I feel we were willing to negotiate to some extent on locations, but we were looking for a comprehensive plan, a complete plan. Short of getting that, there was nothing left to review.

Q. And lastly in the questioning that Commissioner Ampomah had, you were talking about, I

believe it showed the relief, it was Apache C.41.

This last one with all of the wells showing on it, you stated that you felt that some locations could potentially be negotiated, but that you still have a lot of questions. So the OCD is willing to work at going through some of these wells, is that what you meant?

A. I believe so.

COMMISSIONER RAZATOS: I don't have any other questions for Ms. Romero. Mr. Moellenberg or Mr. Tremaine?

MR. TREMAINE: Nothing further, Mr. Chair.

COMMISSIONER RAZATOS: Mr. Tremaine?

MR. TREMAINE: Nothing.

COMMISSIONER RAZATOS: Thank you. We appreciate it. We've been at it for about an hour and 20 plus minutes.

If we could take a ten minute break, come back at 10:30 and pick up again.

(Recess)

COMMISSIONER RAZATOS: This is an adjudicatory hearing to contest the approval on Apache's scope of work for the additional investigation in Lee County, New Mexico. This is an evidentiary hearing.

We just finished listening to the OCD's first witness. So Mr. Tremaine, I believe you have another witness, correct?

MR. TREMAINE: Yes, that is correct. If I may, the Division calls Mr. Brandon Powell.

Mr. Tremaine, your witness has been sworn in. Please proceed.

BRANDON POWELL,

called as a witness herein, having been first duly sworn, was examined upon oral interrogatories and testified as follows:

DIRECT EXAMINATION

BY MR. TREMAINE:

Q. Good morning. Please state your name for the record.

A. Brandon Powell.

Q. Mr. Powell, where do you work and what is your job title?

A. I work in the Oil Conservation Division's Aztec office. My job title is the Deputy Director.

Q. Are you testifying today on behalf of the Oil Conservation Division?

A. I am.

MR. TREMAINE: I would like to start by

directing your attention to exhibits, and I would like to share the screen for that, Mr. Chair.

BY MR. TREMAINE:

Q. Mr. Powell, did you prepare a curriculum vitae for submission in this hearing?

A. I did.

Q. Is that what is labeled as Exhibit 3 and displayed on the share screen right now?

A. It is.

Q. And this exhibit was prepared by you?

A. It was.

Q. Is it necessary to make any corrections or updates to this exhibit that you are aware of?

A. Not that I'm aware of.

Q. All right. Did you also prepare a visual aid presentation in preparation for this hearing?

A. I did.

Q. Is this what's labeled as Exhibit 4?

A. It is.

Q. And you prepared this exhibit?

A. I did.

Q. And is it true and accurate to the best of your knowledge?

A. It is.

MR. TREMAINE: At this time, Mr. Hearing Examiner, I would move admission of OCD Exhibit number 3 and OCD number 4.

MR. MOELLENBERG: No objections.

COMMISSIONER RAZATOS: They have been admitted. Thank you.

BY MR. TREMAINE:

Q. Mr. Powell, I would like to start off by running through your presentation slide by slide and providing a summary for the Commission here. So I'm going to OCD Exhibit 4-0041, slide 41 in the exhibit packet.

Could you please summarize the intended purpose of this visual aid presentation for the Commission?

A. This slide was set up as an overview of the site as a whole, how we got here, what the Division is doing. And I will go through it in more detail in kind of why we're here today.

So summarizing it, this presentation provides information received from Apache's history of investigations in the area. A couple of things I'll point out in that statement to date, a lot of the information we're depending on came from Apache,

what Apache has done.

We're not disputing the prior soil samples. I know that there's some corrections and some COCs, those kinds of things. Overall, we're looking at the information from Apache being correct and complete. And that is the information we used to make our decisions from.

We'll talk briefly basic rules and principals of Part 29, which is the spill rule. A couple of metrics to point out that the investigation release area currently is over four million square feet or approximately 94 acres. This area contains a contaminated area of approximately 2.6 million square feet or approximately 60 acres.

Both areas have the potential to grow until the site is fully delineated and abatement can start on the release. The chloride ground water limit is 250 milligrams per liter or background. I have here that the contaminated area is over 20 times that limit.

Based on the results that we received on the 8th of this month that is now, I believe, over 50 times that limit based on the current sampling results.

Apache's ground water flows and concentration contours drastically change after new wells are set showing additional corrections needed. The ground area continues to potentially degrade or spread while Apache delays action. Again, this is evident since we received the information in January how several wells have degraded over that amount of time.

The goal of the OCD is not to make any final determinations. The actions are to continue to expedite the delineation of the release, which is one of the very first steps that should be taken when classifying a release, a step Apache has taken years to perform so far and has not yet accomplished.

Going a little further in detail, there was a lot of discussion about delineation and what delineation means. I believe Apache is correct when they state the north, south, east and west borders are delineated. While not fully delineated, I think we're close to delineating the exterior borders of the release.

One of the keys to properly remediate something and properly take the next steps is to

identify interior boundaries as well, which includes finding your highest level of chloride, your highest level of impact. I have reviewed probably thousands either directly and indirectly of remediations. I have reviewed hundreds of ground water abatement plans over the years in the 18 years I've been with the OCD.

One of the things you have to delineate is where your concentrations are so then you could properly plan a remediation step. Without knowing where those concentrations are, it's hard to place recovery wells or remediation wells in efficient areas to effectively start that remediation.

On smaller ground water it is typically easier and quicker to find, but the sheer mass of this area makes that difficult. I'll dive into that more as we go through the rest of the presentation and why we selected the wells we did.

One other note. It's been mentioned a couple of times that the Division or that Apache had half of what OCD did as far as their conditions. One time line I want to point out and make sure we're all on the same page at, the overview is a good place to put that. The OCD added 14 wells as

conditions to the original or to the five that Apache had in May. So that is a total of 19 wells that the Division was expecting to be drilled.

When Apache came back with the September plan, they had a total of seven. So the Division was looking at 19, and Apache came back with seven. So that is well more than half. I'll let everybody else do the math. There's a substantial difference between 19 and seven. Talking more about the communication chain I think is important in the overview as well, why we got to where we did.

When OCD received the March of 2024 report, that report didn't propose any additional investigatory actions other than continued sampling in the area. If my memory serves me correctly, Apache stated they want to monitor for an additional year before they took additional actions.

And that discussion, OCD pressed that they wanted more comprehensive investigation. So Apache came back in April with four additional wells. There was a subsequent meeting to that. OCD again pressed that they wanted more comprehensive investigation. Apache came back with five wells. So only one additional well was added in May.

To help expedite the process, OCD took that May report, they added the additional 14 wells, the COAs, for a total of 19 wells that OCD was looking to drill in the area. Apache submitted the information that Rosa previously showed stating that they wanted to meet and see if we could find common ground.

So we met with Apache, and we again emphasized the fact that we wanted a more comprehensive plan. Apache assured us that they would go back, review OCD's conditions and come back with the more comprehensive plan. When they came back with the more comprehensive plan in September they went from five wells to seven wells. So they added two of the additional 14 wells OCD was looking for, which is not in my opinion a good faith effort to address the concerns that was shown by those additional 14 wells.

Each one of those wells had specific reasoning why OCD wanted those. So two wells in addition to what OCD had already reviewed I felt was not a good faith effort. And I felt that negotiations at that point had stalled.

Yes, there was an additional boring

around the original release point, around the junction box in addition to that. And that may be helpful with soil abatement. But to understand ground water and concentrations of the area, I felt that that was not a good faith effort at that point and that negotiations had stalled.

So it was under my decision to contact our legal counsel at that point and give Apache essentially three options. They had the option of either complying with the COAs, taking this to hearing or the Division would look at a notice of violation for failure to comply.

If you want to call that an ultimatum, I'm fine with that statement, but it gave those three options to comply. At the end of the day for this release site, Apache is the responsible party that OCD holds for this. The cleanup, the investigation it should not be OCDs's burden to go out and push and push and push. It should be Apache's burden to go out and perform this investigation.

And even though Apache in several meetings has been cooperative, has added wells where we have asked them to do, it has constantly been

OCD's push to get them in the room to have the discussions to add those wells, to add those things because original plans don't have those.

I say that, that is not from the release when it originally happened in 2019. That's when we started looking at the ground water concerns starting in 2022 moving forward.

And those conversations were very successful early on. It wasn't until that September date that really those negotiations stalled, and OCD felt time was of the essence. So instead of continuing to belabor setting additional meetings, again, two wells out of the 14 additional wells that OCD approved or had as COAs did Apache pick up.

So to expedite that process, that is why I gave the directive to legal staff to cancel further meetings. So I just wanted to clear that up upfront.

Q. Mr. Powell, you've given us an extensive summary to go through. I want to examine a few of these points with you before we move into the presentation, like at the summary level.

You had referenced concentration delineation. I believe you compared or contrasted

that to the next step of remediation. So can you clarify for the Commission what you mean by concentration delineation as the stage that we've been in and what, in your opinion, the next necessary step is going to be in response to this incident?

A. So concentration delineation, really what we're looking at at this point is understanding where the chlorides are and at what levels.

So you find the core of your mass contaminants from the core of your areas. Then you can start looking at what remediation looks like. Is it 20 recovery wells, is it two? You really start looking at what that looks like.

The well that Apache proposed in their plan, TMWs 27 was upgrade from the largest mass of chloride that we had seen. Would it affect 27 from an area of exposure? Possibly, but we don't know if 17 is the highest contamination point or if it's down another 200 feet or 400 feet. We just don't have that information yet.

So 27 may or may not effectively have an effect. Is there an ongoing release. You could be pumping out water as fast as it's being

contaminated. So understanding those particular aspects are key. Soil columns, that is one of our additional conditions we added to this. In each new monitor wells, we're asking for composite samples every 5 feet from the surface to the ground water to see if we encounter another chloride contaminated area in the soil that could be adding to this situation because several of the wells that were drilled to date did not have that level of investigation.

So we could have drilled through another core of contaminated soil and not known it. So understanding that information, that is going to be key to understanding how big an impact we're going to have. How we look at recovery wells, how many recovery wells we're looking for.

And those parameters are going to be key if Apache and others wants to model it. Models are based on key inputs. If you don't have key inputs you typically don't have models, and I am not a modeling expert, and I don't pretend to be, but I do know you have to have proper concentrations to be able to properly model.

if you would have modeled off of the

March report, that model would probably have been totally different than if you modeled it off of the January report because concentrations in key areas went up two to eight times in key wells.

So looking at chloride loads in an area, those models would have been vastly different on overall levels of impact in those areas. And something to point out when you're looking at understanding that, when you're talking chloride versus hydrocarbons because that was something that Apache testified to earlier, they stated that there would be more immediate concern if you were talking free phase product.

Well, chloride is not free phrase, but chloride contaminates an entire water column. It doesn't float on top, it contaminates an entire water column because it is a dissolved constituent. So you're not talking about contamination in the inches or feet of a water column, you're talking about a contaminated water column through the entire column of that.

So understanding those constituents, how far that is, where the highest levels are really key to understanding what those next steps are.

Q. Mr. Powell, I think one last question before we get into the next slides. What is the significance, in your opinion, of OCD specifically requiring TMW 17?

A. So OCD in the last events specifically required TMW 17. And to be honest, it was in an area that just didn't have prior information. And it was a larger area in between those two wells. So we required 17 to kind of close that gap, to see if it was homogeneous in between the two monitor wells that were mentioned in that COA or if there was something different.

I think Apache's witness did a really good job in providing that sometimes contaminants in ground water, you have a gradient, but you can have flows through that gradient in different areas. So 17 was to close a potential pathway or flow through an area just to see if there was something there. And lo and behold, we found the highest contaminated well to date.

Q. At the time that was required, did OCD expect in any way that you were going to get the levels or the hit that we got for chloride or TDS?

A. We did not.

Q. I would like to move into the next couple of areas of slides. I'm going to refer you to slides 42, 43, 44, 45, 46. And without getting into any legal determination, I'm going to ask you were these provided for the Commission and the parties' information as the relevant sections of statute and rule that OCD relies upon in consultation with counsel to respond to incidents and spills?

A. It is. Before we move along, I would like to pull up 43 if you don't mind as a general awareness.

Q. What is significant on slide 43?

A. 43 talks about one of the key aspects of Part 29, which is site assessment and characterization.

This is one of the platforms that OCD needs to be able to understand a release, the significance of the release, and the area of impact that a release has. So this is one of the things in Part 29 which is referred to as a spill rule that is a very significant portion of that rule as to being able to characterize the release as a whole.

And its full characterization, not just delineation, but characterizing the release as a

whole so you know what your remediation plan is at that point. So if you look at subsection C, the characterization should come in with a proposed remediation plan.

At this point in time, we don't have a full characterization of the site to even propose a remediation plan.

Q. So moving on from the authority into what we have labeled as a current state of monitoring wells. I'm going to direct you to slide 48, Mr. Powell.

And please tell the Commission why this slide is provided and briefly summarize the significance of the slide.

A. I'll do that and then I have a favor I'll ask. So this map was to give an overview of the site as a whole, where we're at today. And I apologize, the red lettering did not come out very readable when we created it into an exhibit, but it was to give the area as a whole what we're dealing with, where we're seeing high areas.

And it's essentially what Apache had shown in earlier exhibits. On this map, I'm going to note the aqua blue color starting at TMW 7.

That's the junction box that Apache referred to multiple times.

That is where the original release was that OCD became aware of in 2019 that Apache took actions on. So that release OCD seen at that time through Apache's presentations was a soil only release. The soil was investigated.

The soil was sampled. There was extensive work done by Apache in that area. And all that work was approved by OCD, and I will give credit to Apache for taking those actions because they followed all the procedures on a soil event that OCD required and are typical processes.

The one thing I will point out in monitor well seven, that is the area of the junction box that originally was discovered. There's several mentions that maybe there was historical releases in that same junction box over the years that we just didn't catch that may have contaminated ground water.

The size of the plume of chloride contamination we're looking at in this area is so large I would be shocked if during the original excavation in that area, if the chloride load was

from that area, that you would have enough infiltration over the years to push the chloride low enough where you would have not detected it in monitor well seven area during original excavation.

So that is one of the flags that we had especially when we keep seeing higher and higher numbers. If you had that much produced water flowing in that specific area over a large amount of time you would have thought the soil concentrations would have been so high that it would have required additional delineation and action in that area.

One of the other things that was discussed in excess was the high levels we're seeing in the January 8th report. Maybe it was due to rain and ground water flow because of that.

One of the things that has been determined in this area, if you look at the southernmost part of that aqua area is essentially a tight land area where all that water in that area flows to.

So that is where you have water infiltration at. That water infiltration is west of several of the key wells that increased, which includes TMW 14 on the easterly boundaries. It's

west of TMW 17. And the flow in that area theoretically should be flowing towards the windmill west, towards the southwest.

So that is where your water influx should be sitting. That is where you would have your water infiltration at from your rain events because I am not an expert, but I think you're probably looking at inches of rain in the southeast part of the state and not feet of rain.

So your infiltration, unless you get ahead to push contaminants is very minor for infiltration because the rain hits, it soaks in. It heats up and evaporates. So unless you get water accumulating in an area to cause a head to push contaminants down infiltration is less likely in the southeast part of the state just because they don't get the rainfall event.

That was something that was discussed in extense in the prior hearing in 2008 and 2013 when looking at levels regarding that rule making. That is why I am familiar generally with that concept.

Q. Mr. Powell, a couple of clarifying questions to bring this to a head. If I am understanding you correctly, OCD has a concern that

if there was a prior or a larger release from the original release site near TMW seven, OCD is not seeing an indication that there are ongoing or release in the form of chlorides.

There are the not sampling to indicate that there is chloride that is reaching the ground water, correct?

A. That's correct. It is my opinion that if there was chloride contamination to the extent we just seen in the January report, we should have seen it in that original excavation.

Q. Likewise, am I understanding that another flag for OCD is that surface water flows downhill, and we're not seeing an indication of concentration of contaminants in the wells nearest to what's known to OCD to be the lowest lying area related to the original release site?

A. So to clarify that statement, water flows downhill. And what we extrapolate from that, the water flows the natural topography water channels in area which has been determined to follow that path.

Once it sits, that's where you're going to get potentially mounding from influx of water. Those kinds of things, infiltration. We're not

seeing the mounding in the maps around TW-1, nine or ten or even five. And those are the areas closest to what has previously been determined as the collection area for rain events in that area.

We're seeing it further to the north and to the east around TMW 4, which is essentially upgrading it from that collection area.

Q. Thank you. Are there any other items of significance that we need to point out for the Commission on this?

A. Not on this map, but I would like to go to Apache's revised map because this map was intended to be current state at the site.

And with the January information that was submitted to us, this is no longer a current state map. So I would like to go to this map here on the screen.

Q. So for the record I'm going to direct you to page three of what is Apache Corporation's notice of errata. And this is page three labeled as Apache Exhibit C 4.1.

Mr. Powell, could you please summarize the significance of this slide that you had previously referenced?

A. So this slide kind of shows everything, the current state. I think Apache did a great job in trying to summarize a lot of information in a single slide. So I want to go through that.

There are several points I would like to make as we go through that. So bear with me. So I think this is a really important map that Apache provided. I want to start with some of the wells that we've seen increases on this map. The first well I'm going to bring up is TMW 17. That's the hottest well we've seen continuously to date.

At this sampling event, which was in October, the chloride levels at that well went from 5680 to 14,900. That is almost a tripling of chloride load in TMW 17. That is at a level not previously seen in this entire area.

So if that chloride load came from somewhere, it was an area that was not previously detected, showing that original area of investigation was insufficient in identifying your core contaminants.

Moving to TMW 14, which is to the east of 17, that water quality in chloride alone went from 1810 to 7,790. So again, several

multiplication factors have increased. Again, at 14 that is at a level not previously seen in this area. So again, if that level of contaminants was in the area previously, the investigation was not complete enough to identify a significant chloride plume moving through the area.

Moving down to TMW 15, which is in between those two, TMW 15 went from 2,160 to 7,160. The very same statements regarding that well.

Q. I would like to summarize on this point, Mr. Powell. You've heard the testimony throughout the rest of the hearing, correct?

A. Yes.

Q. And have you reviewed the materials and the prior reports submitted by Apache?

A. I have.

Q. Have you heard or read anything that explains the change in the sample results?

A. I have not.

Q. I believe you had referenced TMW 5. Please explain to the Commission the significance of the map at TMW 5.

A. I have two wells I would like to explain a little more, 5 and 18. So on five, and this is an

area getting close to the windmill.

So it went from 2,980 to 3,990. It's an increase of a thousand milligrams per liter, which is a lot lower than the other ones that I previously mentioned. But it's significant because you're getting closer to being up gradient from a windmill and going up by a factor of a thousand milligrams per liter, which is more up gradient than the current surface concern in the area.

And then TMW 18 is very significant as well because that went from 908 to 7,820 and why that is so significant is because that's your southernmost well that had a significant increase. And why that is significant is because, again, we didn't see those levels before any samplings, and it is downgraded from all of our potential sources.

Again, chlorided don't float on top of the water, they infiltrate an entire water column. So for it to get to 18 through those gradients, it would have had to move through 17 and 15 to get from the original release area as described by Apache to get to 18.

And you're talking several hundred feet of movement through an entire water column to get to

18. That is not typical in a ground water case to see that much movement in that short amount of time. And I understand that's a difference between March and October. So that is several months.

But when you're talking movement in hydrology, that is an extremely fast movement in a very short time. And that is one of the additional reasons why the OCD is concerned that there may be another source because movement from seven through 17 and through 18 in that short amount of time is highly unusual.

Q. Mr. Powell, is there anything else of significance to highlight for the Commission on this map before we move back to your presentation?

A. I would like to point out a couple more things. So the windmill, if you look at the chloride contouring that is drawn on the map, you see the windmill contouring that goes around 10, around one and to the windmill as far as a chloride level.

That is not super surprising because drawing water will create a vacuum effect that will pool concentrations in, but it's pulling from an area to the east of it.

That means it's pulling contaminants essentially towards it. We don't know how close that movement is. And as we know from 18 in this area, movement can happen rapidly. Again, 18 went from 908 to 7,820. So that movement in this area for some reason can happen extremely fast.

I know we talked about water quality with different witnesses going through, but I want to state I pulled averages on the windmill to see where it was trending. In 2019, an average of 245.5. In 2020, it averaged 280.5. 2021, 251. 2022, 233. All of those were indicative of background. 2023 it jumped to 359. 2024, it averaged 505.5. So it's almost now doubled what it originally started at.

The last sampling itself was 540. So in 2023, the trending started going in the wrong direction, and we don't know how fast that is going to change because look how fast the TMW 18 changed. So we need to get an idea of what is going on with the overall chloride load in the area, what the risks to the area are so we could look at what we're going to do for remediation.

I have one last thing I would like to

point out in the map. Look at the circle around TMW 17, the 10,000. That is a fairly large circle as far as contaminants over ten thousand. Again, we heard Apache's expert talk about yes, you have gradient, but you could have individual flow patterns. You could have those kinds of things. You could fit that entire circle between TMW 17 roughly following the gradient between TMW 16 and TMW 18.

Between TMW 19 and TMW 18 and between TMW 24 and TMW 23, you have hundreds of feet in between those two wells, and that is why the OCD required those wells. TMW 36, TMW 40 and TMW 41. So that follows similar to what we did with TMW 17 the flow gradient in the area down gradient of 17 in areas that could be missing again high concentrations of contamination.

There's two wells on this map that with Apache's addition may no longer be needed, and I would like to point those out because the other wells OCD evaluated in their evaluation before they added the conditions of approval.

So Apache added TMW 30 to this. So that essentially if you got 26 and 30 added there we

probably don't need 38 any longer or at least not at this time. If you scroll up a little to the top of the map, so originally OCD proposed TMW 31 in that area.

Apache has since come back and proposed TMW 29. So one of those wells is probably no longer needed. If you follow the gradient arrow in the area TMW 13 is your contaminated well that is close on the northern edge.

Theoretically 31 is more in the climb of the gradient than 29 is, but you don't need both of those wells. Only one of those wells are likely needed.

Q. Mr. Powell, if you would like to clarify for the record, I imagine this is obvious on the screen, but when you say TMW 30 as proposed by Apache, you're referring to this well in the southerly part of the state, but part of the map -- but that was actually labeled by OCD as TMW 39, and you're not referring to the TMW 30 proposed by OCD at the top of the map, is that correct?

A. That's correct.

Q. I want to make sure we're clear because we have overlapping numbering in the proposals for the

wells. I believe that Apache's witness Mr. Graham, has explained this.

A. The rest of the wells that OCD requested as COAs, OCD is still requesting to fill in those gaps in the investigation of where the most concentration chloride columns are at.

So we can then take the next step for remediation. Those wells are still potentially hundreds of feet from the closest well. So we're not talking small areas, and I will go into that more. We're talking large areas that this gap fills as far as what we need.

Q. Mr. Powell, I think I'm going to transition back to the presentation now. I would like to move to the overflow of Apache's ground water flows and direct you to OCD Exhibit 4-0050.

I think you had referenced some of this in your summary, but could you please point out for the Commission, what in your opinion in reviewing these reports is significant about these excerpts from Apache's reports?

A. Yes. And there's a couple of details to point out as well. So from a high level, these are the ground water flow maps in the area based on each

sampling event that Apache has taken. These come from Apache's reports that were taken as factual.

These are not maps that OCD created. These are maps that Apache provided. So I want to cail your attention on each of the maps specifically to TMW 4. So the map on the left, in 2022, the direction around four is not showing a high pressure area, and it is showing flow in the same gradient we're seeing today.

And that was based on the number of wells they had at that time. In the right map I just highlighted the area of the 2022 area, in the December of 2023 area in that yellow box. Again, no abnormalities shown around four. There's some shifts in gradient in specific areas. But again, we're just getting more gradient information in the area. And we are seeing slight shifts, but not major shifts in the area. If we go to the next slide I could further elaborate on that.

Q. Please do.

A. In this slide, I am re-showing the 2023 map and the gradient shown there that was just in the prior slide. I am comparing that to the March of 2024 map.

You see the area around four specifically, all of a sudden you have what is considered on a mounding effect where four instead of being part of the grading of the area, generally you're seeing four as a mound at this point or a high spot in the water, which is an abnormality from all the prior sampling events, which is highly significant.

The other thing to also note in the 2024 event that is kind of an abnormality is the gradient around the windmill is showing now kind of a southeast flow, but if you remember the chloride rings that were on Apache's map showing the chloride moves towards the windmill, that would be contrary to what they're showing in the March of 2024 map as far as gradient flow.

Q. Mr. Powell, we heard some testimony. You're saying mounding. We're on the same point. I heard from that testimony yesterday some testimony and some questions about mounding at TMW 4.

Do any of these maps give you any concern about mounding in that location?

A. So TMW 4 gives me a high concern for that area. It's up gradient to where you have ground

water influx. It didn't show in previous sampling events. All of a sudden it popped up in the March 2024 report as an abnormality.

When they went back and resampled in October of 2024, that mounding is still there. So it's not just an incorrect calculation around four. It's a continuation of mounding in that general area which gives me concern that there may be an active release in that area and that could also be part of why you're seeing the major jumps in chloride loading in TMW 17 and nearby wells.

Q. I am going to move on to the next slide, Mr. Powell. What is on slide 52?

A. Slide 52, again is that March of 2024 report on the flow paths. Again, I think that we hit it in the prior one. It's just a more blownup area shows the flow paths. To note, number 13 is contaminated. If you look from the flow path, I think we talked about that.

The prior witnesses talked about that extensively, so I won't dive into that. I think some of the up gradient wells that OCD and Apache proposed is going to vent that out more to see if that was caused from a cross gradient flow or from

potentially another source up gradient from that well.

Q. I'm going to go on to the chloride concentrations, the contours. We're moving on to slide 54.

Mr. Powell, what is depicted on this slide?

A. So the concentration contours from sampling events that Apache has taken in the area and how they have evolved over time.

So if you look at the concentration contour maps as we have gained more information as time has gone on, we have seen shifts in what those contour maps have done because we have learned more information with the area. There has been some increases, but up until this point they were not massive increases, they were slow progressions. The TMW-5 found a high contaminant level.

It was kind of at that point that it really spurred the thousand chloride, hey, there's something else going on potentially out there. TMW-6 being over that thousand. That was concerning. Some of those other levels prior to that as could be discussed were above potential

background, but they were nominally above background.

So we were taking some time to understand that. So as we hit five and six, those levels went up, which spurred us to look at it further.

Q. Mr. Powell, I'm going to direct you to slide 55. Is this the continuation of the same contours from the previous slide from a later date?

A. It is. This is as information has progressed. So you look at the left hand side. This is December of 2023. It's the chloride contour maps provided at that time. And then on the right is the March 14, 2024 chloride map from that sampling event.

As you could see, even in that time period, there was shifts in chloride contouring that Apache provided showing that there were changes potentially going on in the area that we didn't understand why it was changing or the chlorides were moving. Why they were contouring quite the way they were. You have wells increasing and decreasing.

So 14 was one of the wells that we pointed out previously that went over 7,000

chlorides. Well, in December it was 2500 and March of 2024, it dropped to 1810. So it was trending down before it rended back up.

So because of that in the area, there's movement of the chloride that we don't fully understand at this point. You look at 18, which was the key well I pointed out previously in December of 2023 it was 2000 and in 2024 it was 908. So it was trending at decreasing before. Then it trended at increasing.

Typically, when you have a chloride plume moving through water or contamination plume in general you're going to see the plumb move through, and it is going to go up until the plume moves all the way through. Then it will go down.

Unless you have multiple plumes moving through an area, multiple events sources moving through an area you shouldn't see a lot of variability. As the plume is moving through, you would see an increase until it moved through and then you would see a decrease unless you're on the outer edges of a plume. As the plumb goes in and out, you could potentially see some of those rise and fall, but again we're looking at extremely high

levels in some of these areas.

And if you are on the outskirts of a plume, that's concerning. 18 rising and falling like it has could be indicative we're on the outskirts of a major plume. Whether that is to the east or west I don't know. Or it could be that we're tracking multiple plumes through this area.

Q. Mr. Powell, there's been extensive testimony and questions about this concept of a chloride plume in the ground water.

If chlorides are getting into ground water, in your experience what are the basic mechanisms for those chlorides even getting to ground water in the first place?

A. So I have not seen anything proposed by Apache that this area has natural chloride concentrations. So the way the chloride would be getting to water would be coming from a source infiltrating down through the soils to get to the water or flowing from somewhere up gradient into the area.

Our reviews showed Apache's infrastructure was the only infrastructure in the area that would carry or produce water. If you have

natural gas, for instance, it's not going to carry or produce water.

If it is, it's going to be at minimal amounts. So initial reviews by OCD showed that Apache had all the infrastructure in this area that could contribute to produce water. So the pathways would be potentially be from a release unknown exactly where or at what time period because we haven't fully identified that area yet. And infiltrating into the soil to get into the ground water and then flowing into the ground water column.

Q. Is it possible that there is a pocket or pockets of chlorides in the soil that are leaching into the ground water, but there is not an additional ongoing release?

A. It's possible. The changes that we have seen in January 8 in the chloride levels are concerning. For that much additional chloride to leach into the ground, I don't think it's possible from a preexisting release that is not active unless we didn't previously identify the core of that plume.

If we didn't identify the core of that plume, then it could be the plume moving through.

If TMW 17 previously identified the core of that plume, then I don't see how you could have leached that much chloride into the water and then have it move to that extent from a prior release.

So in my opinion, it's one of those two actions that are probably at play is either you didn't identify it previously or you have something else adding to the area, which is a concern.

Q. On that point, Mr. Powell, if there's a core area of chloride contamination not previously identified in soil that just leached into the ground water through some events, what would be the necessary remediation step needed and ongoing steps to contain that contamination?

A. So if you got a chloride column in the soil that is leaching into the ground water table, you have to address that to stop that leaching because it will have infiltration over time, and that was one of the conditions we added to the conditions of approval was for all future monitoring wells to be drilled taking samples, composite samples every 5 feet to see if we drilled through something that is contaminated.

At this point there are several of these

wells, we drilled these test wells and it wasn't something that OCD asked for before, and it was not a concern previously. We thought we knew the source until we didn't.

We could have drilled TMW 4 or 5 or TMW 17 for that matter through a chloride column in the soil and we don't know it because that is not something that previously was being performed.

I think we are probably looking at a chloride column whether around the junction box or somewhere else that we didn't previously fully define because even if there's no additional chloride leaching into the ground water at the moment, the release size of the water had to be so massive that that soil is still contaminated because you didn't remediate around the junction box in an area large enough to remediate an area that would have caused this scale of contamination.

Q. Now, Mr. Powell, the other potential that we just discussed was an ongoing release. If there's an ongoing release causing this ground water contamination, what are the immediate response actions that are necessary to contain that release?

A. Shutting off the source. A lot of these

are in near pipelines. So that was one of the things in discussion with Apache, and it was a condition that we had previously.

I think we're going to work with Apache separate from this hearing to address with the new operator of the area to look at pressure testing those lines in the area just to insure that it's not a current ongoing release because that is a number one priority.

If it is an ongoing release, shutting off that source. So then we could mitigate what's already been released.

Q. So based on that the immediate response actions we've just discussed, regardless of the potential source and forget what Apache has submitted to this point, if OCD were to have to tell Apache where to go digging to isolate or remove contaminants or identify and prevent a source of further contamination, based on these maps could you tell Apache what they needed to do to prevent this ongoing ground water contamination?

A. No idea. I couldn't tell you anywhere inside of this exterior boundary where to go start digging. And at the same point even on the ground

water remediation I couldn't tell you where the best place to put a remediation well is at this point because I don't know where the largest source of contamination is.

We assume it is 17, but around 17 if you look at the scale of this map, the closest well is probably 300 feet away. So we don't know if 17 is the highest point in the area. We just know that it's the highest point that we've seen to date.

Q. Mr. Powell, is there anything else of significance on slide 55 to identify for the Commission?

A. No, I think we pretty well covered it.

Q. I want to move on to the OCD's conditions of approval. I am going to direct you to slide 57.

Mr. Powell, if you would please remind--you provided some of this in the summary, but please remind the Commission of when and why OCD issued the conditions of approval?

A. So going over the time frame again, just when and why, in March of 2024, we looked at the report that Apache provided.

It provided no additional investigatory actions other than continued sampling. That was a

concern. So we met with Apache and expressed that concern. In April they came back. They proposed four wells.

Again, OCD didn't feel that that was sufficient enough and expressed our concern in that meeting. And so in May, they increased it to five wells. Again, OCD felt that making positive traction was not what we were seeing based on the level of concern that OCD had, and OCD expressed in those meetings.

However, in May they gave the map. They gave the five wells. We agreed to Apache we would review those five wells and review the situation. And internally I directed the staff to review those and that if we had additional wells at that point we would add them as conditions of approval just to help expedite the process because between March and May were a couple of months if we increased by one or two wells each month, again, it's going to take several meetings, a lot of staff time to get to where we need.

So we took that report. We went back, and we reviewed it and then we added conditions and I expressly asked the staff to include the reasons

for each condition so we could make sure that Apache understood why we were adding those wells in the areas we were.

Q. Mr. Powell, when push comes to shove why did OCD determine that it was necessary to transition from asking for additional investigation, delineation of wells, what have you through less formal communication and moving into issuing conditions of approval in a formal manner through OCD permitting?

A. We just were not seeing the progress we were hoping to see, to be frank, for the area. We didn't go into May stating we wanted 14 additional wells. We didn't explain that to Apache because we didn't know exactly how many we were going to end up with, but in those prior meetings we did emphasize we wanted to see significant investigation in the area because of the levels we were seeing were concerning.

You're talking at that point we seen 5600 chlorides in TMW 17, which is multiple times above the regulatory guidelines. You have several hundred feet between it and the closest wells. So there's a big area in that area that was a potential

concern, and we didn't know what it looked like.

And we were not seeing the progress in those meetings that we were wanting to see as fast as we wanted to see it because it was a concern to see those kind of levels and ground water flows.

Again, I mentioned, we're not talking about free phase product of hydrocarbons. We're talking about a fully dissolved column of ground water in the area because of chlorides. So that could be tens of feet or hundreds of feet depending on the water column.

I believe in this area is the Ogwala (phonetic) formation. I'm not a geologist, but I believe I saw that in one of the reports, which is a major water source in that area, and we have a major impact at that point that we're monitoring.

Q. Was there a point in time when OCD became concerned that due to how things progressed to date, it may need to transition from a collaborative process to an enforcement posture?

A. So that point came after we issued the COAs and back and forth withApache. We tried to negotiate those COAs in good faith to again look at additional wells in the area to properly address our

concerns. And when they came back and just added two wells, so they went from five to seven. So again, with our COAs and those original five, we were at 19. They came back with seven.

I didn't feel that was a good faith effort at that point. So that is when it transitioned to a potential enforcement action or they had to comply with the COAs as previously provided.

Q. Mr. Powell, several of these slides in a row are continuations of conditions of approval. I want to ask generally, we have talked at length, both parties have talked about the map, particularly Apache's very useful CD dash 4.1.

Is there anything else we need to discuss of significance in the text of these conditions of approval?

A. So I think that we already addressed the changes that I think the division looks at with the additional Apache wells that would affect the conditions that OCD had for the conditions of the nearby wells in those areas.

So I would scroll down to slide 60, which starts the additional conditions and why those

were added. Condition two and up to date.

It is a map showing proposed monitor wells and the statement of work, that map I would say was accomplished with what Apache provided in this hearing. But it would have to be updated as we go forward. Quarterly monitoring collected to the present, summary table and lab analysis are sufficient.

I would mention in 2024, Apache took two samples or had two major sampling events in March and then in October. So that is not a quarterly sampling event even though that is what had been proposed. I understand there was a lot of negotiations in between there.

Some part of that probably got lost in those negotiations, but I do think that it's appropriate to point out in 2024 we did not have quarterly sampling events.

Q. Could I stop you before moving on and ask to clarify, based on the fourth quarter sampling results and your review of that information we have already discussed, some of the numbers jumped up quite a bit.

Do you believe that quarterly sampling

time frame is still appropriate?

A. I think it is. I think we probably need to communicate in a quicker manner between the parties. Once that sampling takes effect I think OCD getting some of the raw data may be helpful because of what we're seeing.

For example, the last sampling that we received January 8th, the chloride in the TDS was sampled, and the report was generated in October. If I remember correctly, looking at the page from Apache's exhibit, that report was generated by the lab on October 31.

So Apache had the raw data roughly around that period showing that those wells extremely increased in the area. And as testified to yesterday, there was no actions taken by Apache once that was discovered.

Q. I believe we had some discussion yesterday about likely delayed response due in part to the timing of the sampling between chlorides and TDS results and 3103 results.

So I want to ask you is there anything in the conditions of approval for the wells that we just discussed that require additional 3103

constituent monitoring?

A. So there is, and that kind of touches on condition four and five. One of the things that was detected, and I believe it was TMW 17 was cyanide above regulatory limits.

So that assessment needs to be done in the wells surrounding that to see if those are also contaminated to that point. We have seen some early barium hits in the windmill. Looking at that again, we believe that was a conversion error, and it wasn't above standards, but we have seen some exceedances in the 3103 based in the January sampling event.

It wasn't addressed in our prior conditions addressed here. So it would be something I would expert Apache and OCD to discuss in future sampling events going forward because of that constituent.

Q. Is there anything else of significance that needs to be pointed out in the remainder of the conditions approval on this slide?

A. I think we hit the samplings for composite samples as they drill. Drilling commencement within 90 days. I think we hit all of those in previous

slides.

Q. I am going to move on, and we're going to talk about some of the well locations. Some of this you addressed in your summary, Mr. Powell. So if we're going over material unnecessary, feel free to move us along.

I want to ask you on slide 62, we have seen this map before. What's the significance or importance of including this map again on this slide?

A. So we are kind of changing gears again from the conditions. We're going to look at the site holistically again.

Again, this was the most up to date map that I thought was out there when we created the slides. So it's just to bring the Commission's attention back to the area in general.

Q. Then moving on, we have two maps here on slide 63. Please explain why these were included for the Commission.

A. So these I actually took Apache's map. I took their scale and I tried to depict the areas that we were looking at as far as size.

These are general areas. I put them up

as squares because it's easiest because you could always cut off some small corners. But really on the left-hand side I took the outer northern limits and southeast and west limits and seen the wells that we had impact in to depict the beige color on the left.

So you're looking at an area 1950 feet tall by 1340 feet wide. The area on the right in the pink, that is on the outside of that is the additional area that we have investigated to date showing clean samples that we have seen to date, showing that the investigative level is slightly above the area we're at.

You notice the beige square on the bottom of the map does go to the edge of the pink area, showing that we do not have a buffer on the southernmost limits of the impact.

Q. So do you recall during earlier testimony I believe one of Apache's witnesses indicated they felt that the external, the perimeter of the quote, unquote, chloride plume had been delineated.

Do you recall something to that effect?

A. I do.

Q. Do you agree that the beige box here

represents that we likely have a handle on the exterior perimeter of the chloride plume in ground water on the north, east and west sites?

A. A couple of caveats. The east and west site, I would agree. We're not looking to continue exterior delineation there.

I think on the north side TMW 13 did have an elevated level. There is no current wells potentially directly up gradient from TMW 13. It's kind of on the northeast corner of the tan box for reference. So there's no wells directly upgrading it to that, so that potentially could move up.

And then the southern limit is not fully defined at this point because TMW 23, I believe, and it's hard to read this map, was over a thousand chlorides.

Q. So in terms of the strictly horizontal extent of the plume currently, there needs to be further delineation to the southern extent until we get to background.

Is that a fair characterization?

A. It is. And the wells, OCD, and I will hit that a little further. The wells OCD proposed west of 23 and I believe east of 23 is 25 down on the

bottom sufficient because 25 is one point several hundred feet away.

And you're talking about hundreds of feet to the east of 23 that could be contaminated and hundreds of feet west of 23 before you get to 24 that could be contaminated. So I don't know if 25 is going to detect that or not because it's one point several hundred feet away.

So that is why the OCD, and I will show shortly proposed additional wells in those areas.

Q. In that case, I will move to slide 64. Mr. Powell, what is represented on this slide?

A. So this slide was an attempt to provide the Commission with some scale. Sometimes when we're talking about sites that are out in the middle of nowhere it's hard to relate scale and understand what you're looking at. So on this as an overlay of where we're sitting today as a reference, in the bottom left hand corner you see the 1220 South St. Francis Drive address in that scale.

So that is the Wendell Chino building and its parking lot. As you could see, that is a small piece of the overall scale of what we're dealing with today. So if the Commission wants to

understand truly the area we're looking at it includes several state buildings, includes a soccer field. It goes by Trader Joe's. It's a massive area looking at that scale.

So that is what the left picture shows is that general scale for the Commission's understanding of what we're dealing with at this site. The right picture identifies where all the wells are currently located. So the blue wells are the blue points that are showing where existing wells that were testing clean in March were.

The red wells are wells that we're testing above chloride levels at that time. I did miss two wells on this. I missed the windmill well, which is directly below the three blue wells on the west side that are in a line. So it's about where your curser is right now where you moved it. So the windmill well is right there.

And I did miss TMW 27, which is the proposed well by Apache that is directly north of 17 slightly. And I did pick it up in further slides, so I will show that shortly just as far as where TMW 27 is.

But if you look at that scale as far as

what we're dealing with, downgrading of 17, we have half of the state building that is around 17. We've got the tax building south of that road. We have all of that parking lot in that state building and the Chino building that doesn't have a single well in it for scale.

So you have a massive area down gradient of your most contaminated well without a single well in it. So I think this just gives an overall understanding of the size of scale of the area we're looking at.

Q. Mr. Powell, how common is it that you have come across this in reviewing site characterization and delineations that have dealt with impacted area of this size?

A. I would say that it's extremely uncommon. Typically you're looking at areas the size of a well pad, slightly bigger than that as it moves.

You catch things fairly quickly. When it surfaces, so ground water impacts are more limited. So something of this size I would say is more uncommon.

Q. Have you heard or read anything in the materials leading up to this hearing that explained

the volume of produced water that would be necessary to be released to impact an area of this size?

A. I don't, and I don't know that we could calculate that today because we don't know the maximum levels.

We don't know the extent of the plumes where those contours really are because we're hundreds of feet in between there. I think it would be hard to identify. I would say that it's massive, but I don't know to what extent or even if it can be calculated today.

Q. Mr. Powell, I'm going to move on to the next slide, number 65. What is depicted on this slide?

A. Again, this is trying to show scale to the Commission. Ground water flows, I used the March ground water flows because that was the most up to date when I created this slide.

I overlaid that with the area in Santa Fe here where we are just for understanding what it looks like with the wells that are here today on the left hand map. So you look at TMW 17, it's flowing the ground water flow in the area goes

south to southwest and that is an impacted area.

You look at 18 again, it sticks to the southwest. So the contamination we're seeing at 18 today, the TMW, and I can't read it, the very bottom right in the middle would not be directly down gradient, it would be down and across.

And 18 is now a significant concern in the area. It includes -- and again, I'm staying on the left hand side. It includes the proposed wells except for TMW 27, as I previously mentioned where Apache proposed to put in wells in the general vicinity of these wells.

As you could see, there's nothing to the .west of 18 which is the ground water flow of the area. There is really nothing more proposed to the south of 17 along that gradient.

So there's some things to the east and that will help define that area, but there's still major gaps in that area. Again, 17 is your highest area. It is an area that OCD focused on extensively

On the right side with the yellow dot with the circle on it where OCD proposed additional wells, you could see there's down gradient of 17 with one actually at the bottom being down gradient

17 and 18.

There's a well east. That is 25, but I could be wrong. To see if that chloride contamination extends east of that well because, again, we have one point in the middle of hundreds of feet. The ones around 27 are trying to identify the extent of that plume and to see if we're dealing with the most concentrated areas at 17 or if we're at an outer edge of that concentrated area. Again, trying to identify the situation like came up in the January 8th permit where levels extremely rose in between sampling events. Is that something that was there all along or is that something new.

We don't know because we didn't have enough wells in between to show if there was previously chloride in the area that high or if this all new chloride impact.

Q. Mr. Powell, the last couple of exhibits have been overlays of multiple maps. So I want to ask for clarification for the Commission.

How and what did you use to prepare these slides?

A. So the gradient maps and the overall site map I pulled from Apache's information. The scale

of the maps of those maps I measured used Apache scale to get the dimensions in the boxes.

Then I applied the general dimensions of the boxes using Google Earth. And the scale on it to get the overview of where we're at today to get the general area to show the Commission what that really looks like.

Q. Mr. Powell, I'm going to go to slide 66, another set of overlaid maps. Please describe the contents of these slides for the Commission.

A. So the left hand slide is basically what we just went through. So I will skip that.

The right-hand slide is to go over where OCD picked additional wells. I apologize. I didn't number these. But just for general reference, those are the wells that OCD had, and the conditions again as previously discussed for Apache's TMW 30 well.

The proposed well just slightly north and a little east of that one, OCD feels that that may no longer be needed.

Q. May I interject. When you say these wells represented here, are you referring to the bull's eye red and yellow dots are the approvals?

A. That's correct.

Q. Where my curser is above TMW 30, is that the well you were referencing that may be able to be removed?

A. Correct.

Q. Or moved?

A. Or moved, that is correct. And I would say the same thing around TMW 29 to the east of 29, I would say.

Other than that, OCD still feels the rest of the wells are needed for the reasons given in the proposal. And those wells, for the most part there are one or two towards the outer edges are not to define the outer edges of delineation, it's to truly understand what we've got inside of that outer edge delineation.

You could see that there's four wells kind of directly around 17. To understand, are we on the edge of a plume on 17 or in the middle of it. It's kind of interesting. I picked this before the January 8th report came out, but you have a well between 14 and 15. That is going to help define where that contamination is there.

Again, 14 or 15 dramatically rose in between here. If I was to pick one today, I would

pick one north of 14 as well because of the impact levels we saw at 14. Maybe something between 14 and 31 because directly up gradient between 14 and 31 you're looking at an area 500 or 600 feet. So the wells I proposed here that we proposed other than the two wells mentioned, I still feel are needed in the area to properly investigate where the chloride columns are as of today.

Q. It's fair to say Mr. Powell that these wells are proposed in order to enable OCD to say with some degree of confidence where a line has to be shut off or where they have to dig or take some other remedial action?

A. I can't even state with confidence that we'll know that after drilling these wells. I think these are the wells that are needed for that next step, but as far as where to shut off the line, where to put in remediation wells, these should help with that process.

But there may be some more fine tuning there. That is something we could ask Apache and their consultant after drilling these wells and get those levels. Are we confident to go in and start remediation in the area or is there another gap.

I think up to this point that's the problem that there are more questions than we can answer where we can't start that remediation.

This is an attempt to get some information so maybe we could start down the remediation path and remove this site out of 29 into 30 so we could truly start looking at ground water remediation.

Q. Earlier you referenced that most site characterizations and delineations that you reviewed have been closer to the size of a well pad, and I think we have heard some testimony to the effect of Apache believes that the number of wells is abnormal and not reasonable in their opinion.

Would you agree that for an impacted area the size of a well pad 40 monitoring wells could potentially be excessive?

A. I would say yes. Are the wells we're proposing abnormal, absolutely. Is the area I think we're covering abnormal, absolutely. Are they excessive? I don't think so.

I think at the end of the day we're probably going to have more wells in the area. Hopefully they are all recovery wells, and we don't

have to continue investigation, and we could start down the remediation path.

But I think these wells are necessary. Could there be one or two wells in this area that don't provide significant information? That is possible. But even if you show the similar information, you give a definite area of knowing that is what it is in the area as far as quantitatively.

It's all going to be information to identify how big of an area you're looking at, and the attempt was to hopefully get enough information where we could move down the path because again, chlorides are moving through an entire water column as Apache -- and I hate to keep bringing it up. Apache mentioned if it was free phase hydrocarbons they mentioned they may be more attentive to it. Chlorides are dissolve phase. So you're contaminating an entire column as it moves through. I see this as being as much of an immediate concern as several feet of free phase hydrocarbons moving through the area.

Q. In your experience while the number of wells may be abnormal, is it OCD's position that

they are commensurate with the size of the impacted area?

A. It is. I would clarify that. If we would have known how big the area was originally, we could have probably redesigned this into a perfect world, and it would look different. But it has been continued ongoing process of trying to collect information, and I think that is what the Division is attempting to do here.

Q. I would like to now draw your attention to slide 67.

COMMISSIONER RAZATOS: Mr. Tremaine, may I interject. Is this a good transition spot maybe for a lunch break?

MR. TREMAINE: Actually, I was just on autopilot. We're done with the presentation. Slide 67 is a different exhibit. So I think we could come back and wrap up with a couple of questions and then make Mr. Powell available for cross-examination.

COMMISSIONER RAZATOS: Why don't we stop for lunch. Let's come back at 1:10.

(Recess)

COMMISSIONER RAZATOS: We're back on record for case 24912. Again, this is the application for

Apache Corporation for an adjudicatory hearing to contest the Division's conditions of approval on Apache Corporation's scope of work for additional investigation in Lee County, New Mexico. It is an evidentiary hearing.

Mr. Tremaine, we left off with you and your witness, Mr. Powell. So we'll let you continue from here.

MR. TREMAINE: Thank you, Mr. Chair.

BY MR. TREMAINE:

Q. Mr. Powell, we've gone extensively through your slide deck now, and I want to ask in summation if at this point in time and after everything you've heard during the course of this hearing leading up to this hearing, when you look at this matter from an enforcement and regulatory standpoint, do you still believe it is necessary that as a result of this hearing, there is an order issued with definitive investigation requirements with the certain deadlines?

A. I do.

MR. TREMAINE: Mr. Chair, I don't have any further questions, I would like to kind of wrap up the discussion of our rebuttal exhibits.

COMMISSIONER RAZATOS: Sure.

MR. TREMAINE: So you may have noticed we skipped OCD rebuttal Exhibit 8. We believe that the discussion yesterday with Apache's witnesses adequately addressed the questions and that presentation is not necessary. OCD rebuttal 8 is withdrawn.

We also as previously discussed are withdrawing OCD Rebuttal Exhibit 9. I want to make quite clear for the record that we've had what I think this morning are our good faith discussions about how to respond to the fourth quarter monitoring report that has some time sensitive things.

I won't represent that the parties are in full agreement on every detail of that, but it's my understanding we have a path forward over the next couple of weeks for immediate response actions. But we do not withdraw the entire content of Rebuttal Exhibit 9. What I mean by that is OCD still relies on and requests those original conditions of approval.

The additional ones are what is withdrawn, but all are contained within that same document. So

I want to clarify that. With that, it's my belief the appropriate next step is to, one, tender Mr. Powell for cross-examination and then proceed to close this matter. If there are any further and second order, if there is any further action necessary OCD would handle that separate and apart from this case.

COMMISSIONER RAZATOS: Okay. So just to make sure that we understand, you are going to be omitting Rebuttal number 8 and part of number 9. Is that what I understood, Mr. Tremaine?

MR. TREMAINE: Yes.

COMMISSIONER RAZATOS: Mr. Moellenberg, do you understand the same? We're having some technical issues here.

MR. MOELLENBERG: I think I understand what Mr. Tremaine is proposing, and we didn't have a chance to talk about it, but I think I get the gist of it.

I get the gist of his proposal. So we are ready to proceed with cross-examination unless there is anything before that.

COMMISSIONER RAZATOS: Mr. Tremaine, you had a few questions or you're done?

MR. TREMAINE: No. My questions are complete. Mr. Powell is available for cross-examination and questions from the Commission.

COMMISSIONER RAZATOS: Mr. Moellenberg.

MR. MOELLENBERG: Thank you, Mr. Chairman.

CROSS-EXAMINATION

BY MR. MOELLENBERG:

Q. Good afternoon. It is Mr. and not Dr.?

A. It is Mr.

Q. Mr. Powell, thank you very much for your testimony. I have a few questions for you.

I would first like to -- I don't know if we could pull this up. Turn to, I guess it's page 4-0043. It's your exhibit with a copy of 19.15.29.11.

A. I don't have that in front of me. If you want to pull it up.

Q. I think we can do that. I believe we have this page pulled up now. Are you able to see that, Mr. Powell?

A. I am.

Q. And this is the part of the rules that discuss the requirements for site assessment and

characterization, is that right?

A. That is correct.

Q. So turning your attention to the first paragraph here, would you agree with me that the lead into this section says, and I am now reading from sort of the middle.

I guess the second line under .11, the responsible party must assess soils both vertically and horizontally for potential environmental impacts?

A. Yes.

Q. And that is kind of the lead into this whole section, right?

A. Yes.

Q. And then the next part that you have on this exhibit is subsection A. It talks about characterization of the release.

Would you agree that is kind of the operative language here?

A. Yes.

Q. Again, this is the lead in to this is about soils. Then we get to subsection C, which says if the Division determines that more information is needed to understand the character of

the release, and it potential impacts on fresh water public health and the environment the Division may request the responsible party submit additional information.

Have I read that correctly?

A. Correct.

Q. So there is nothing else in the quoted language that you provided here that talks about water or ground water. Would you agree with me on that?

A. Yes. I think having an understanding how this works with 191530, it would be prudent.

Typically on a release you identify the release point, the soils of the release, their delineation both horizontally and vertically what impacts those as stated in the top environmental impact from any major or minor release containing liquids. From there what their impact is on fresh water.

I would state at this site we're kind of working backwards because we have the impact to fresh water, but we don't know where that soil impact is. So we're still performing outside characterization of the soils along with the water.

But we're working backwards because we have the impact to the water, but we don't know where the soil impact is at this point.

Q. And that statement makes sense to me and perhaps explains a little bit of the confusion here from at least a legal standard where we found, I guess, as you would say it some potential ground water impact, but we don't know where they're coming from. Would you agree with that?

A. That would be correct.

Q. And, of course, if you have a unknown source you have some challenges characterizing the source. Right?

A. Exactly, right.

Q. But at any rate I think that we're in agreement that section 19.15.29.11 doesn't really say much about ground water or water characterization?

A. No, because typically once a site is characterized as having ground water impact and assessed to have that, then it's transitioned over 30. At that point this transaction has not happened at this site because we did not finish the characterization under 11.

Q. So if we move ahead a couple of pages to 4-0045, and this part of your exhibit covers 19.15.29.12 NMACK, correct?

A. Correct.

Q. There's a sentence at the end here that says if the director determines that the release has caused water pollution in excess of the standards and requirements of 19.15.30 AC, the director may notify the responsible parties that an abatement plan may be required pursuant to 19.15.30 NMACK. Is that a correct reading of that sentence?

A. Yes.

Q. Is it fair to say that there's been no determination by the Division at this point, at least formally that the release has caused water pollution in excess of the standards and requirements of 19.15.30?

A. At this point I have not requested the director to do that because I don't feel we have the information to require an abatement program at this point based on the site characterizations we have.

So that is why I haven't requested to move it to 30 just because of that lack of information to be able to abate the site as it is

right now.

Q. Fair enough. Do you recall during your testimony this morning talking about some of the monitoring wells required under the Division's conditions of approval in the areas of the highest chloride concentrations?

A. Yes.

Q. And do I recall correctly that -- well, would it be fair to characterize your testimony in that regard as indicating that those wells are not needed to delineate the outer boundaries of the chloride plume?

A. That would be correct. That would be to investigate the concentrations internally of that.

Q. Right, and is it a fair characterization of your testimony that you feel the need for additional characterization in this area of the highest chloride concentrations to be needed to begin to assess how to move toward remediation?

A. That would be correct. I think to clarify, when you say the areas of the highest chloride concentrations, it would be the areas of the highest currently known chloride concentrations because they have changed even between March and

October sampling.

Those levels have changed dramatically. So we didn't know where the areas of highest chloride concentration were in the March report that we responded the conditions to.

Q. Fair enough. So basically you're limiting your answer to the data that is available. And I guess the highest chloride concentrations as shown by the current mapping?

A. Correct. We're trying to get enough information that we could possibly move to the abatement section of 30.

Q. But that concept of collecting information for potential future remediation is not really addressed in 19.15.29.11 NMACK, is it?

A. Generally yes, because it goes over the site characterizations both horizontally and vertically.

We still at this point, like I said, haven't found the source of the soil contamination. We continue to get more questions than we have answers for. So I would say holistically the site is not characterized enough to know where the highest chloride impacts are or where truly the

source of where those impacts came from.

Q. But I guess going back to our earlier discussion of 19.15.29.11, I think we agree that the responsible party must assess soils both vertically and horizontally for potential environmental impact, isn't that right?

A. That's correct. Can we go back to that slide?

Q. Certainly. That is 43.

A. So in C, I would point out the first sentence that if the Division determines more information is needed to understand the character of the release and its potential impact on fresh water, we're still determining that potential impact on fresh water.

And we don't know the soil source. So the site is still being characterized under 2911 because we don't know its potential impact on water at this point.

Q. Right, but if I understand kind of the overall discussion of the process here, one of your criticisms of Apache is that it hasn't, let's say, initiated additional investigation at least to the degree that the Division would like. Correct?

A. It was more a statement of fact of processes to -- you know, I wouldn't say it's a criticism overall of Apache, but it was a statement of occurrences to this point.

Q. But when we look at subsection C that you just mentioned, that sentence ends, and I'm talking about the first sentence of subsection C, the Division may request the responsible parties submit additional information, is that correct?

A. That's correct.

Q. Mr. Powell, do you recall your testimony regarding the Division requesting of Apache in around I believe November of 2023 to drill a monitoring well location -- I'm sorry, do you recall your testimony regarding the Division's request of Apache to drill a monitoring well in the location of what's currently identified as well TMW 17?

A. So I didn't testify to that. I believe Ms. Romero did, but I'm aware of that general statement.

Q. I thought I recalled you testified earlier, but that's fine.

A. If I did I don't remember. I'm aware of it. I would be happy to answer any questions

regarding it.

Q. I think the statement that I had in my notes that you made is that at that point in time the Division didn't have any particular reason to suspect that there might be very high chloride concentrations in that particular area.

Do you recall that?

A. I do. We didn't know what we were going to get out of 17. We had a sample result further east that had a chloride contamination and a sample further west and an extremely large area in between. And we were just closing the gap.

Q. Apache, in fact, did not object to a drilling of a well in that location and, in fact proceeded to install that well in the November of 2023 drilling campaign, is that correct?

A. That is correct. Apache complied with all requests for additional wells up until the COAs in May.

Q. Sorry for the delay, Mr. Powell. I'm looking through my notes. I know I have one other topic of questions, but I don't have a lot more. I am trying to avoid missing anything.

A. No worries, there's a lot to go over.

Q. I think a couple of areas. So I would like to turn to your slides beginning with 4-0064. If you can pull those up for me, please.

Just to explain this a little bit further, on this slide number 64 and the following two slides, 65 and 66, they show some significant buildings and development on this map, is that right?

A. That's correct. These are for scale, our understanding of scale. It's the Wendell Chino building that we are in today in the bottom left hand corner of that map and is identified as the 1220 South St. Francis Drive.

Q. Correct. I think you have explained this well to the Commission, but I want to make sure that it's clear for the record. I think that, in fact, you simply superimposed an image of the area around this building, probably Google Maps, around the site of EBDU 37, is that right?

A. Correct, for an understanding of scale.

Q. You don't mean to suggest in any way that there is any actual buildings or residential or commercial development of any type on this site, correct?

A. Correct.

Q. Do you know where the nearest location of any residential or commercial development might be with respect to this area around the EBDU number 37 well?

A. I did not. Our typical charge is looking at ground water quality as a whole. It's not to identify the residences.

Q. I would like to now turn to your Exhibit 4-0057, which is the conditions of approval. I want to clarify for the record how some of your testimony fits with this.

So in this document we have a series of, at least it begins with several parts of a condition one. I think that they're labeled condition 1A through 1-N. And each of those parts of condition 1 refers to a particular monitoring well location and number that OCD has prescribed. Right?

A. That is correct.

Q. I believe in your testimony you had identified two wells that in combination with the wells proposed by Apache could be eliminated in your view, is that right? Do you recall that?

A. That is correct.

Q. Is one of those wells identified on this document the conditions of approval the well identified in part B, that is 1-B of this list with the well identifier of TMW 31?

A. I would have to see a map because I don't have that in front of me.

Q. Let's pull the C 4.1 figure up. Mr. Powell, can you see this Exhibit C-4.1?

A. I can, and I made a note between 12 and 2. so that would be the well.

Q. So the well TMW 31 shown in the upper right of this Apache Exhibit C 4.1 is the same as would be referenced in condition 1-B of the conditions of approval?

A. That would be correct.

Q. The other one if I recall correctly from your testimony would be a well identified in the conditions of approval as TMW 38. And in particular, conditions of approval 1-I.

So let's see if we could find that on the map.

A. That would be what is marked on this map as TMW 38.

Q. So it would be the well with green TMW 38

in the lower right hand corner.

So based on what we have just talked about, Mr. Powell, based on your testimony part 1-B of the conditions of approval and part 1-I of the conditions of approval referring to wells TMW 31 and TMW 38 respectively could be dropped from the Commission's consideration of the Division's conditions of approval?

A. That would be correct.

Q. The other thing I would like to point out here for clarity, back to the conditions for approval document is at the end of that, in part 1-M and 1-N, would you agree there are duplicates, TMW 42 well identifiers?

A. Yes. That should be 42 and 43. I apologize.

Q. And I guess just to be clear what these are, under part one in the first TMW 42 indicates it's at some location between TMW 25 and 26.

Can we see if we could find that on the map?

A. I think that might be labeled on the map TMW 31 in quotation marks.

Q. Okay. So if we're going to include well

identifiers, I'm just thinking of the form of a Commission order depending on what the Commission decides to do. But the Commission should perhaps consider at least in the conditions of approval TMW 42 being the well identified on Apache's figure C-4.1 as that well in blue with an identifier TMW 31 with 42 in parentheses.

And then let's see if we can find the other one. The other one must be up to the north because it is indicated as being between TMW 13 and 22. That would be the one labeled TMW 43.

Q. And on this map, so perhaps Mr. Graham has clarified that for us, okay. Mr. Powell, you mentioned I believe with regard to the samplings conducted this past October of a lab report dated October 31. Do you recall that?

A. I do.

Q. Do you recall that there is actually a series of I believe four different lab reports reporting from the October sampling?

A. I do.

Q. Would you agree with me or we could pull it up that those dates of the lab reports run from October 30 to December 5?

A. That sounds correct, yes. I think I specifically referred to the TDS and chloride sampling which is that lab report I was talking about I believe was generated on October 31st.

That is not in my exhibits. If you want to look at them further I believe it's in your Exhibit C.

Q. Thank you. I think you're correct.

MR. MOELLENBERG: Mr. Powell, thank you again for your testimony. That is all the questions I have.

COMMISSIONER RAZATOS: Mr. Tremaine, did you have any redirect?

MR. TREMAINE: No redirect, Mr. Chair. Mr. Powell is available for Commissioners.

COMMISSIONER RAZATOS: Excellent. I started with Commissioner Bloom last time. I will start with you, Commissioner Ampomah.

MR. AMPOMAH: I do have a couple of questions.

CROSS-EXAMINATION

BY DR. AMPOMAH:

Q. So the first question that I do have, if we could bring up the Apache Exhibit C 4.1.

Based on your testimony, I really

really do understand this map perfectly now. So if you look at the extent of our reach, we have TMW 21 still recording some elevated numbers. TMW-22, still. You do have B 289.

If you go to the other side, I am trying to look at the extent of boundaries. So TMW 12, 400. So as you go through it on the other side, probably on the west side you have TMW 3,183. And you have 66, 171. But as you go down, it gets up to TMW 19. It gets to 907 TMW 24.

So my question is do the wells proposed by OCD or Apache more or less address the extent of the boundary of the potential contamination?

A. The incident of the OCD wells is to try to address the extent of the contamination. Will they? I don't know, especially on the southern boundaries there are three wells extending down in that area.

We don't know what we're going to find at this point. There may need to be additional investigation down in that area as we find more. To the north, I think the wells north of TMW 13 will identify those. The eastern boundaries, the 284 on TMW 21, we believe that could be background levels at this point based on what we were seeing in the

windmill well.

One note in the windmill well in those westerly wells, those potentially could have been impacted by rain influx. So rain water would potentially be cleaner water than what would be naturally in that ground water zone just because it's picking up contaminants, that may be why the western edge is fresher than the eastern edge.

Q. So if you go down to TMW 19. So OCD is proposing TMW 40. Now, TMW 19 is right at the external boundary to the west.

So why not TMW 40 on the other side of TMW 19 to see if we could nail down the boundary?

A. The intent of TMW 40 was to see if there was a plume coming down below TMW 17 and to try to measure the extent of what that plume may be. But you are correct, TMW 19 being at 907, there may be something westerly as well that may be needed to fully delineate that.

Q. So you do have the TMW 18, and you've also proposed TMW 36. So I believe that TMW 34 or the 36 being combined with the 18 if you are prioritizing where to place the wells, I feel that 40 can probably move to the other side for us to really

nail down on the boundary, but I don't know if the 36 and then the 18 can address the 17 questions or not?

A. So a couple of things to look at when you're looking at 40 in relation to the wells you mentioned ground water flow direction is in a south, southwest flow.

Eighteen is directly south, actually offset a little to the east of 17. So the ground water flow from 17 depending on the plume and the underground characteristics could skirt the edge of 18.

And 18 as a reminder from the March sampling to the current sampling went from 900 to 7800. So we don't know if it's on the exterior boundaries of a plume or if it's actually in the center of a plume wherein the plume goes down through 40 and could end up being directly down gradient from 17.

Q. So you want to still keep the TMW 40 at the current location?

A. I believe it would be prudent to keep TMW 40 just to see where that flow because the distance between TMW 19 and TMW 18 I believe is roughly 600

feet. So it's quite a large area and so that would just close the gap between those two to understand what we're dealing with in that area.

Q. Based on your testimony, I want to confirm that OCD's position is that the seven wells that Apache proposed is just not enough?

A. Correct. And just for understanding, of those seven wells, five wells is what OCD also considered and then added 14 to.

So only two of Apache's wells were not considered in the original COAs. And those were the wells that OCD is going to draw Apache replaced, found an equivalent area for those wells.

So OCD with the five and the 14 additional was looking at 19 were Apache's resubmittal had seven.

Q. So also just to clarify, your testimony is that in your condition of approval 42 wells, only two wells, the one listed on 1-B and 1-I is the one that OCD is willing to drop?

A. That's correct. And I should caveat that. At the end of the day it's the Commission's decision if they want to take the rest. But OCD's preference would be to keep the others.

Q. Then you brought up another good point. So let me ask you the same question that I asked earlier.

So on this particular map, do you believe that -- let's say combining OCD well locations, proposed locations and that of Apache locations, do you believe that something else can be done to optimize to make it more effective or you believe OCD's location is more or less okay?

A. I think some of the other options that are out there are more difficult to use until you have proper input such as modeling and those kinds of things because the drastic change between the March sampling event and the sampling event that was reported in January, it would have been hard to use other methods to do that.

I think that there's some spot methods that can be used, but those are single points in time. As far as drilling down auguring, looking at soil samples, I think to understand what's going on in the ground water column, the additional wells are needed to assess what the ground water impact is.

And then by doing some investigation in the soil as those are placed you may inadvertently

find maybe where some other soil impacts are to start looking at that. There were some clay lenses. It could be that chloride traversed some of those clay lenses and maybe we could find that in the soil investigation during the creation of those wells.

Q. It appears that OCD did a lot of work to fully come up with the conditions of approval. Now, with the new information that is more or less not included in your condition of approval, let me ask is there anything that could have been different assuming you are right in the conditions of approval let's say from the latest data that you have?

A. I think with the latest data I don't know that I would add many other wells. I think it proved some of the concerns that OCD had that we don't fully understand the areas yet because of the drastic changes.

So it showed the concerns OCD had. I think the locations are still necessary. I took the Chair's concern between 17 and the windmill that we don't have a lateral definition there. I take your concern at TMW 19 that we don't have anything to the west at that point. But other than that, I don't know that I would change any of the others, but I

think that it did highlight the concern that OCD had was valid.

Q. So in the 19, 15, 29, 11C, should the Division request additional information, it must be done in writing to the responsible party 30 days from receipt of the current transition report or remediation plan.

What specific information the Division is requesting and the reasons why the additional information is needed. So from your condition of approval I see you provide some reasons, but were they discussed with Apache or is it detailed enough for a party to know for each of these wells that OCD is proposing, the reasons behind that?

A. I think in the prior meetings we had with Apache and those conditions combined, I believe Apache should have understood the reasons behind those conditions in meetings leading up to that.

We were pretty clear that we wanted a more robust or comprehensive investigation in the area to further understand it. And that paired with where we placed the wells and the statements in those conditions provided that reasoning.

Q. Aside from the condition one, do you have

any sense of Apache's contesting 2 to 8, are they contesting any of them?

A. The way I took it when they resubmitted in September and only added 2 wells, that other than 38 and the other well up above, they contested all of them. So of the 14, I took it as they contested 12 of the others.

Q. Now, condition number two.

A. I haven't heard where they contested any of those other conditions.

Q. So specifically one?

A. No.

Q. Is OCD open to statewide deployment of these wells or do you want them all drilled within 90 days?

A. The preference would be as all of them drilled within the single deployment so we could get information as quickly as possible.

Based on the January 8th sampling events, it's apparent that the ground water in the area is degrading quickly. We don't understand why it's degrading.

So the ask would be instead of doing a staged investigation that we would do this in one

deployment.

Q. So in the event that the Commission doesn't more or less agree to all, let's say the ones that OCD is proposing, what impact will it have as it relates to doing your job?

A. I think the impact would be depending on what well the Commission didn't agree on. It could delay action in a particular area. It would be up to the Commission to do it.

If a certain well was picked and the Commission said I don't think this one is needed at this time, we would lose that data point. And then if it's determined we need that data point at a later time it would delay getting that data point.

Q. Did Apache present let's say a written response on each of these wells that OCD is requesting the rebuttal on each of these wells individually?

A. I don't remember if their response in August included each well individually. I think it was more of a holistic reservation of appeal and disagreement with the conditions.

Q. So there's no record showing let's say, for example, why Apache would not agree to A-1, A-C,

1-D, all the way to the end?

A. It's my understanding that Apache found out the outer limits were delineated, and the anterior boundaries didn't need any further delineation is my understanding.

COMMISSIONER AMPOMAH: Thank you for your time.

COMMISSIONER RAZATOS: Commissioner Bloom.

COMMISSIONER BLOOM: Thank you, Mr. Chair, maybe a couple of questions here just so we're headed procedural matters that could in influence my questions for Mr. Powell.

Mr. Chair, have we given any thought to what we're looking at next? Are we going to ask the parties for oral closings or will they be coming back with written closings? Do we anticipate deliberating today?

I think these are all things we need to discuss, and I think we have seen perhaps through this hearing the sides have come to some understanding on certain aspects of OCD's requests. I am wondering if taking time having written closings and perhaps time for the sides to talk, if that would be helpful.

These are all things we want to hear from

both sides about. But I just want to check on this before we get too much further.

COMMISSIONER RAZATOS: It's a very good question. Our legal counsel for the OCD is absent today. He had a prior commitment. I think we will have to kind of put a little bit of a recess under the NMACK, under 19, 15, 4.

We have to continue to be able to deliberate. I want to make sure that we have our legal counsel with us when we're doing that. We could always ask for some closing statements if that is what you as commissioners want as well.

I was going to open the question up for you. We have to majority agree to be able to continue and make sure that the record is officially closed before we continue all of that. So I think at this point in time, Commissioner Bloom, you ask your questions that are pertinent to Mr. Powell. I think I gave you an idea of where we're thinking of going. But I think we should ask the question so we could at least finish with Mr. Powell and then we can proceed with the rest if that makes sense to you as well.

COMMISSIONER BLOOM: Very good. Thank you,

Mr. Chair. Just a few questions for you, Mr. Powell. Thank you for your testimony today.

CROSS-EXAMINATION

BY COMMISSIONER BLOOM:

Q. Mr. Powell, Mr. Moellenberg was exploring with you aspects of 19.15.29.11. And it seems to suggest that assessing water is not perhaps required or authorized here.

Perhaps monitoring wells can't be required in this section. I think you addressed that, but I wanted to ask you that specifically.

A. I think it is a fairly common practice with the Division when investigating a release, they start with 29, especially when you are looking at water starting with the initial investigation. Typically that happens through soil investigation and then moves into water investigatory wells. I remember calling them monitoring well, but, we are calling them investigatory wells. We're monitoring, but investigating the impact in the area.

It's common when looking at impact to an area under 29. I would agree that once we get past that initial investigation and we move on to more actual monitoring of overall status in an area and

looking at abatement that that needs to fall under 30. But I don't know that we are there at this point.

Q. Do you feel if the soil sampling doesn't get you the delineation characterization that you need that a logical next step of the requirement to get delineation or characterization would necessitate investigatory or monitoring wells?

A. I think looking at such a large area I think it's got to be twofold. I think you have to look at the soil and look at the monitor wells.

If we don't find the soil information with Apache's bore hole that they are proposing and the sampling of the monitor wells that we required, if we don't find a possible source in those I think we have to continue investigating the ground water and look at potential other investigatory pathways for the soil itself.

Q. We mentioned 1950, 30. I read it, but I don't work with it every day. How does that enter the picture here?

A. So 30 is how the Division applies to WQCC, water quality conditions and abatements and those kind of things.

So once you have a confirmed ground water case and you're looking at then moving on to abatement of that area of that contamination source, 30 walks you through that process.

Q. I'm sure Mr. Tremaine will address this in his closing, but we heard considerable testimony regarding the spill, the five year history, the recent increases in chloride and TDS levels.

We've heard statements from both sides that characterization delineation of the release are not -- the releases has not been characterized or delineated. It's not well understood. We've heard you say that you would be okay, and correct me if I'm wrong here, if the Apache suggested wells 29 and 30 would work for the OCD rather than the locations that you had.

I'm wondering what ruling is the OCD asking the Commissioner for after the discussion we had?

A. I think the ruling is to uphold the conditions of approval absent the two wells, 1-B and 1-I.

COMMISSIONER BLOOM: Thank you, Mr. Powell, no further questions.

COMMISSIONER RAZATOS: Thank you, Commissioner Bloom. I do have a few questions before we actually go through all of it.

CROSS-EXAMINATION

BY MR. RAZATOS:

Q. On number two under conditions continued you say current and up to date site map showing proposed monitoring wells in the scope of work, and the additional, I think you have a typo there. One says 13 and then you have the number 14 next to it. Still wants the 14 wells plus or minus the two that you discussed?

A. That is correct.

Q. So that should be 14.

A. For clarification, that is likely a typo in the conditions of approval that is online as well. I just transposed that into this.

Q. I just wanted to make sure. Thank you for you testimony, we appreciate it today.

You started off in your direct with Mr. Tremaine, that you mentioned that basically the majority of the external boundary is pretty much set. It's not the most perfect delineation, but pretty much know how far, of course. Commissioner

Ampomah said on the one side and the the west site needs more on that aspect.

Part of the reasons you're asking for all of the wells to be entered, you stated that we need to be able to see the chloride concentrations within the area and delineate that area so that we can have proper remediation.

Can you kind of explain that to us?

A. So understanding where your concentration loads are is part of the key of abatement when you look at the next step because you don't want to set remediation wells where they are going to be the least effective.

If you're updating it from your source and your ground water is going another way, you're fighting nature basically. So if you have a better understanding of where your concentrations are that next step of abatement and where you set those wells, so you are going with the natural flow in the area and you're going with the natural contours, and it makes it where that abatement can be more efficient.

COMMISSIONER RAZATOS: Ms. Catalanos, please put up C 4.1. Put it where the TMW 17 is in the

middle of the page.

BY COMMISSIONER RAZATOS:

Q. I will ask you the same questions I asked Mr. Graham, Apache's witness, as well. Apache is also saying that TMW 27 would be a place that is right just a little south or southeast of the TMW 4 would be a good place to be able to see what's going on not only around that mounding of TMW 4, but also what potentially is coming off of seven, which is above from the original and let us know what is going on with 17.

And they also proposed in that instance to put in a pump test there. Do you think that that would be something that would be logical to put up in that region?

A. So to perform a pump test, if the source is above you, it's not a bad thing to do a pump test in that area. It is going to show what the area responds to.

I think originally TMW 27 was going in and monitoring three to five years. And they didn't state that additional well would be put in place during that time. That is a long time just to do a pump test and monitor without doing any other

actions as far as abatement.

So if TMW 27 is used as a pump test to see the effect in the area, there is going to be a higher concentration of wells around that so you could see hydraulically how it responds. Some other areas don't have that concentration of wells. That is why I'm assuming they didn't pick another area because they couldn't monitor those outside wells as well. So it makes sense to do a pump test where you have monitoring points, but that wouldn't be the extent of any remediation points.

Q. I will also ask you as I asked Mr. Graham the emphasis was put when we first started the hearing yesterday that this Commission is tasked to protect the people and citizens of New Mexico and protect the land of the state of New Mexico.

As was stated with the numbers that were submitted with the October testing done by Apache TMW 17 kind of has skyrocketed. 14,900 is what it states. The windmill is slated as was brought out to water cattle.

Do you feel that a monitoring well needs to be between 17 and the windmill to see what potentially could be creeping over to that windmill?

A. I think I addressed that in my direct. To kind of readdress, I think that was a concern that the Chair brought, and I think it's a very valid concern especially with how quickly the water degraded in the other wells.

It was very alarming how quickly it degraded and if there was another well in the area it could identify a plume and two, it could be identified as a well even if it's not in the plume that could be monitored for risk heading that way.

COMMISSIONER RAZATOS: That was the last question I had for this witness. Any other questions, Mr. Tremaine or Mr. Moellenberg?

MR. TREMAINE: No followup from the OCD.

MR. MOELLENBERG: I have nothing further.

COMMISSIONER RAZATOS: Mr. Powell, thank you. I appreciate it. Mr. Tremaine, this was your last witness, correct?

MR. TREMAINE: This was. We are done.

COMMISSIONER RAZATOS: Okay. Mr. Moellenberg, you had mentioned there was the potential you may want to put individuals back up. Is that still something that you wanted for rebuttal?

MR. MOELLENBERG: Thank you, Mr. Chair. We

discussed that at lunch. And I think that we are complete in terms of the evidentiary record here.

I don't think we have any further testimony to present.

COMMISSIONER RAZATOS: Again, Mr. Tremaine, for the record, are you complete with what you want to present?

MR. TREMAINE: Correct.

MR. MOELLENBERG: I think at this point -- do you have a question, Commissioner?

COMMISSIONER AMPOMAH: I want to ask if Apache can respond to the question that I posed to Mr. Powell, that if there is a written record rebutting on the wells, that OCD is proposing in the condition of approval, if there is any information that could be provided to the commissioner or if not, that is okay too.

MR. MOELLENBERG: Mr. Chair, I guess I would submit that the testimony yesterday primarily of Mr. Graham intended to cover that and address those particular issues and add Apache's view on the additional wells.

So I think that we're complete on that. The correspondence in the record from last summer also

provides some additional information on that. I would suggest that you focus on Mr. Graham's testimony.

Did you have any other questions, Commissioner Bloom?

COMMISSIONER BLOOM: No further questions.

COMMISSIONER RAZATOS: So I think at this point what we do is basically close the record for the evidentiary part of it as was brought out earlier, then how do we proceed.

I stated without our legal counsel here today I think that we do need to do a continuance. I did not want to do a continuance. That will take a month. This is maybe a week or two maximum to get schedules together so that we can deliberate and go over the information with our counsel and then be able to provide an order because in the end that is what's requested, right, to have an order for the parties to be able to proceed. So as I stated, I would like to state that we put in a motion for continuance under 1915.1.

Commissioner Bloom and Commissioner Ampomah, you both agree then we set up a date for within a week or two where we can be able to meet. Now, of

course, the question was do we get some kind of closing statement from both parties.

I'll throw it out to Apache and to the OCD. Would you all be able to provide a closing statement in a relatively short period of time?

MR. MOELLENBERG: Mr. Chair, from my standpoint yes. I think it would be useful, and we'd appreciate the opportunity to submit a closing statement. I would further suggest that the parties be allowed to present suggested forms of orders. I won't rule out the possibility that we might even be able to present you an agreed form of order.

I can't obviously guarantee that would happen and I haven't discussed that with Mr. Tremaine, but you never know. Sometimes that helps everyone out particularly given that we have got some new information that I think both parties are still considering.

Since the conditions of approval were entered, we have talked about doing some additional things. And I think from Apache's perspective, we would appreciate the opportunity to see if we could work out at least as much as we can work out and potentially avoid your need to sort through lists of

20 or so different wells. There's a lot of technical aspects of this.

From my perspective, I would like to make your job as easy for you as we possibly can. So bottom line is yes, I would appreciate the opportunity for closing statements. I'd appreciate the opportunity for the parties to present either their own suggested forms of order for you to consider which again the idea being help you sort out some of the details and if we can agree on one, all the better.

COMMISSIONER RAZATOS: Mr. Tremaine.

MR. TREMAINE: I haven't thought about what I would suggest. Procedurally I haven't thought that quite through, but if there's an opportunity to submit a joint form of order, which I think we'll be able to determine if possible pretty quickly early next week I suspect. Then it may be possible to submit that in lieu of closing.

If there is a stipulation -- I don't think we need to prepare closings. My only hesitation with taking this to a short deadline for written closing is that the finding of fact order with respect to a two day record and thousands of records could be an

onerous task for all of the parties.

I respectfully suggest we give it a week or two deadline and like a page limit. Something like that. So we are working with summary arguments and appropriate references because we could quite easily go overboard there and take up a lot of time. So I think in terms of doing a verbal closing or written closing I'll serve at the pleasure of the Commission.

Commissioner Ampomah, you had a question?

COMMISSIONER AMPOMAH: No, I didn't have a question. I have a statement. I support the statement from Apache. If they would work together that would be awesome.

COMMISSIONER RAZATOS: Commissioner Bloom, any thoughts from you?

COMMISSIONER BLOOM: Thank you, Mr. Chair. No, this seems like a very pragmatic type resolution. The sides can meet if they can come to us with a joint order. If not, then separate written closing statements would be very helpful.

Mr. Tremaine mentioned a page limit. We have certainly done that in the past. I don't remember what we limited them to. It might have

been ten r on 15 pages. Correct me if I'm wrong. I think this looks like a good idea for a path forward.

COMMISSIONER RAZATOS: I actually was also thinking a page limit if a consensus could not be reached. Mr. Tremaine, since you mentioned I'm going to ask you what were you thinking for a page limit?

MR. TREMAINE: Ten.

COMMISSIONER RAZATOS: Mr. Moellenberg, is that something doable?

MR. MOELLENBERG: I think so. I kind of had the same thing in mind, and Mr. Tremaine mentioned findings of fact and conclusions of law.

I hadn't really thought about that. I was thinking more of a wrap up closing and proposed again possibly a stipulated form of order potentially a couple of separate ones if we're going to get this to findings and conclusions, that raises the specter of a longer time period and longer document.

I can't say I fully considered whether those are necessary or not. But at the outset of this discussion I was not thinking that was particularly necessary.

COMMISSIONER RAZATOS: Mr. Tremaine, I want to give you a chance to response.

MR. TREMAINE: I'm happy to hear that. We've kind of go in a lot of different directions with some of these. And those can get quite long. I was worried about this overlapping with some other filing and cases we're working on and needing to submit a 50 page document.

So I think wrap it up with closing argument ten pages in about two weeks. If we can't in advance stipulate to a joint form of order that would be great.

COMMISSIONER RAZATOS: I think we're all on the same page on this one. I do realize that for state government next week it is a short week because of the holiday on Monday. So that may need to expand by plus or minus a day.

So if I understand, both parties if we took it out one week to be able to kind of get something, is that doable so we could deliberate on the second week or do you need two solid weeks to be able to get your paperwork together?

So if we do it one week from today, today is the 17th of January. It would take us to the 24th.

You guys would be able to submit it by the 24th or do you need through the 31st? Mr. Moellenberg?

MR. MOELLENBERG: Mr. Chair, I think we could submit something by next Friday. I don't know that we could get to -- I think that short a time frame reduces the likelihood of having enough time to try to get to a stipulated form of order.

So from my perspective there would be an advantage for a longer time frame to try to do that.

COMMISSIONER RAZATOS: Would the 31st suffice for that?

MR. MOELLENBERG: I think the 31st would give us a fair chance of getting to that. You never know how folks' schedules are. We're talking about a lot of people here. I think that there's a fair chance if we can't get to something like that by the 31st.

COMMISSIONER RAZATOS: You'll let the Commission know, Mr. Tremaine, that the 31st is agreeable with you as well?

MR. TREMAINE: The 24th is the time given staff schedules.

COMMISSIONER RAZATOS: That's why I offered both dates. So let's get your closing statements and/or stipulated orders by the 31st to the

Commission and then Commissioner Bloom and Commissioner Ampomah and myself and Mr. Rubin, we could do the deliberations and then get an order out to the parties.

Commissioner Bloom, are you available that first week of February?

COMMISSIONER BLOOM: Yes, I may have more availability if I can deliberate virtually. I have some availability on the 3rd and the 6th in Santa Fe. And the following week, the 12th and the 15th or so.

COMMISSIONER AMPOMAH: I teach on Thursday. So the third would work and if I can do it virtually I'm more flexible.

COMMISSIONER RAZATOS: I'm not sure about the virtual nature. There's certain aspects of the Open Meetings Act that we do have to maintain. I will run that by Mr. Rubin as well, but right now I think the 3rd would be something that would work for all three of us if that is okay. I will start with that.

COMMISSIONER RAZATOS: We'll try for the 3rd so we could get an answer as fast as possible. And OCD will be able to in the interim work in the

background and come to a resolution as well, which makes it easier for everybody at that point. Thank you for this particular evidentiary hearing.

MR. MOELLENBERG: Thank you, Mr. Chair.

MR. TREMAINE: Thank you, Mr. Chair.

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) ss:
COUNTY OF C O O K)

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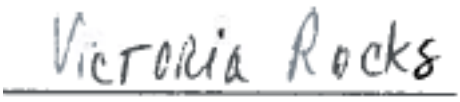

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