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PUBLIC HEARING  
STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

Pecos Hall, 1st Floor, Wendell Chino Building  
1220 S. Saint Francis Drive  
Santa Fe, New Mexico

TRANSCRIPT OF PROCEEDINGS  
June 24, 2025  
9:00 a.m.

HEARD BEFORE: HEARING OFFICER CHANG

COMMISSION MEMBERS:

COMMISSION BLOOM

DR. WILLIAM AMPOMAH

COUNSEL FOR THE COMMISSION: ZACHARY SHANDLER, ESQ.

1 MS. APODACA: Good morning. It is  
2 9:00. This is Sheila Apodaca. I am the clerk for  
3 the Oil Conservation Commission.

4 Our meeting is going to be starting a  
5 little bit late this morning. We have a new  
6 director and a new chair of the Commission that  
7 is -- that will be attending the meeting today, but  
8 he did have a scheduling conflict. So he's going to  
9 log on as soon as he can, but we will be running  
10 just a little bit late.

11 (Recess was taken.)

12 MS. APODACA: Good morning,  
13 Mr. Chang. We see you are online.

14 CHAIR CHANG: Great. Good morning.  
15 Sorry I'm late. Are the -- my other  
16 commissioners -- are the -- I see Dr. Ampomah.

17 Hello, Dr. Ampomah.

18 Is Commissioner Bloom in the room with us  
19 or in -- or online with us?

20 Sheila?

21 MS. APODACA: He is. Let's see, I'm  
22 looking for him.

23 CHAIR CHANG: Okay.

24 COMMISSIONER BLOOM: All right,  
25 Mr. Chair. I thought it might be a little bit

1 longer. I checked in with Sheila. I'll be ready to  
2 go in about two or three minutes here.

3 CHAIR CHANG: Okay. Sorry, yeah.

4 COMMISSIONER BLOOM: Be there  
5 momentarily.

6 CHAIR CHANG: We can wait. No  
7 worries.

8 COMMISSIONER AMPOMAH: Good morning,  
9 Chair.

10 CHAIR CHANG: Good morning.

11 Thank you, everybody, for your patience.  
12 It's -- this is my -- my second day with the Oil  
13 Conservation Division, so . . .

14 It was a bit of a surprise to me, we'd be  
15 doing this this morning, so -- all right.

16 MS. APODACA: Also our court reporter  
17 lost her internet service.

18 CHAIR CHANG: Okay.

19 MS. APODACA: So we're not going to  
20 have a court reporter on, but I am recording the  
21 hearing, which they can transcribe. She is going to  
22 log on as soon as she gets service back, but we may  
23 be starting out without a court reporter.

24 CHAIR CHANG: Got it. Okay. No  
25 problem.

1 COMMISSIONER BLOOM: All right.  
2 Mr. Chair, congratulations on your -- on your new  
3 position. Look forward to working with you.

4 CHAIR CHANG: Thank you very much.

5 COMMISSIONER BLOOM: And I'm ready to  
6 start whenever you are, sir.

7 CHAIR CHANG: All right.

8 Dr. Ampomah, are you ready as well?

9 COMMISSIONER AMPOMAH: I'm good.  
10 Yes. Yes.

11 CHAIR CHANG: All right. Sheila,  
12 would you like to start us -- so I guess we'll call  
13 this meeting to order.

14 Sheila, would you like to start the roll  
15 call?

16 MS. APODACA: Yes. Okay. Can we  
17 have a roll call of the commissioners, starting with  
18 Dr. Ampomah?

19 COMMISSIONER AMPOMAH: Present.

20 MS. APODACA: Okay. Mr. Bloom?

21 COMMISSIONER BLOOM: Present.

22 MS. APODACA: And Chair Chang?

23 CHAIR CHANG: Present.

24 MS. APODACA: Okay. All right. We  
25 have a full quorum.

1 CHAIR CHANG: Next on the agenda, I  
2 see the approval of today's agenda. Any issues or  
3 questions? Discussion?

4 COMMISSIONER BLOOM: No, Mr. Chair.  
5 I would move to approve the agenda.

6 CHAIR CHANG: Thank you. So moved.

7 COMMISSIONER AMPOMAH: And I second.

8 CHAIR CHANG: Great. We have a mover  
9 and a second. All the -- all in favor say aye.

10 COMMISSIONER AMPOMAH: Aye.

11 COMMISSIONER BLOOM: Aye.

12 CHAIR CHANG: Perfect. Nays?

13 Without objection.

14 Meeting minutes from May 15th and May 19th  
15 through the 21st of 2025. Any discussion on that?

16 COMMISSIONER BLOOM: Yes. Mr. Chair,  
17 I was not the designee of the Commissioner of Public  
18 Lands for that period. So as I've done in the past,  
19 I will abstain from voting for those minutes as I'm  
20 not familiar with the proceedings.

21 CHAIR CHANG: You know -- so I would  
22 be held to that same if -- so I would have that same  
23 problem. And then I don't know that we would have a  
24 quorum to be able to approve if we both abstained.  
25 So I'm actually going to refer this to our

1 Commission counsel.

2 My understanding is that generally  
3 speaking, even when members are swapping out, as  
4 long as we are comfortable with the veracity -- or  
5 the trustworthiness of the meeting minutes, we can  
6 approve. But I'll defer to Commission counsel to  
7 advise on that.

8 Is Commission counsel with us?

9 MR. SHANDLER: This is Zach Shandler.  
10 Yes, in this circumstance, I think that is the  
11 proper course, that if we can rely on the  
12 representation of the commissioner that was present  
13 that the meeting minutes are accurate for the  
14 purposes of having a vote, I'd advise that you do  
15 not have to abstain in this fact pattern.

16 CHAIR CHANG: Okay. In the interest  
17 of -- are you comfortable with that, Commissioner  
18 Bloom? Or would you still prefer to abstain?

19 COMMISSIONER BLOOM: No, I'm  
20 comfortable with -- with Mr. Shandler's thoughts  
21 there.

22 CHAIR CHANG: Great. Okay. Any  
23 further discussion? Any changes? Any amendments or  
24 anything like that? Dr. Ampomah or Commissioner  
25 Bloom?

1 COMMISSIONER AMPOMAH: Yes, so I  
2 would like to draw Mr. Bloom's attention to the  
3 May 15th minutes, which you were present for that,  
4 but certainly not the May 19th.

5 So I've reviewed the May 19th through 21st  
6 minutes. Everything is all good. To me, I do not  
7 have any additions to that.

8 CHAIR CHANG: Great. No -- so no  
9 amendments, no changes to the minutes?

10 COMMISSIONER AMPOMAH: Yes, sir.

11 COMMISSIONER BLOOM: Mr. Chair, I'm  
12 sorry. I would -- yeah, let me start over there.

13 Mr. Chair, I would prefer to take these --  
14 vote on these minutes separately. And with respect  
15 to the May 15th minutes, I just had one minor change  
16 there.

17 CHAIR CHANG: Sure.

18 COMMISSIONER BLOOM: Let's see.  
19 Under Action, third paragraph, second sentence, the  
20 word "provide" should be "provided."

21 CHAIR CHANG: Okay. Sheila, will you  
22 be handling that change?

23 COMMISSIONER BLOOM: I would --

24 CHAIR CHANG: Sorry, I think I talked  
25 over somebody there.

1 COMMISSIONER BLOOM: Mr. Chair, I  
2 would move to approve the May 15th Commission  
3 meetings, making the change that the word "provide,"  
4 as I identified, be changed to "provided."

5 CHAIR CHANG: So moved.

6 Dr. Ampomah, is there a second?

7 COMMISSIONER AMPOMAH: I second.

8 CHAIR CHANG: Great. Well, any  
9 opposed?

10 Without objection, May 15th is approved.

11 May 19th through the 21st, is anybody  
12 willing to move that?

13 COMMISSIONER AMPOMAH: Mr. Chair, I  
14 do move that May 15 -- May 19 through 21st minutes  
15 be accepted into record.

16 CHAIR CHANG: Great. Thank you very  
17 much, Dr. Ampomah.

18 Commissioner -- is there a second?

19 COMMISSIONER BLOOM: Mr. Chair, I  
20 would -- I will second.

21 CHAIR CHANG: Great. Any objections?

22 Without objection. Thank you very much.

23 Looks like we're moving on into the  
24 pending cases. Are -- do the commissioners have any  
25 thoughts on just taking them in order or -- or are



1 you fine with taking them in the order that they  
2 show up in the agenda?

3 COMMISSIONER BLOOM: I'd be fine with  
4 that, Mr. Chair.

5 CHAIR CHANG: Okay. Great. All  
6 right. In that case, I call -- are the parties for  
7 case 25371 ready to proceed?

8 MR. RANKIN: Yes, Mr. Chair.

9 MS. HARDY: Yes.

10 MR. SAVAGE: Yes, Mr. Chair.

11 CHAIR CHANG: Well, I will turn the  
12 floor over -- so this is my first -- we're getting  
13 quite a bit of feedback here, so if -- I don't know  
14 if we can get somebody to mute.

15 This is technically my first status  
16 conference, so I'll rely on Dr. Ampomah and  
17 Commissioner Bloom to advise me here and to help me  
18 here. What -- I guess I'll let the parties start  
19 and take the floor and advise us on what you guys  
20 need in terms of scheduling and what the -- what  
21 you-all envision for the matter to be heard.

22 MR. SAVAGE: Good morning, Mr. Chair,  
23 commissioners, counsel, and attendees. Darin Savage  
24 of Abadie & Schill with co-counsel Owen Anderson,  
25 who is online, together appearing on behalf of

1 Coterra Energy Operating Company. And I have two  
2 other colleagues, Andrew Schill and Bill Zimsky from  
3 Abadie & Schill, who are also online observing these  
4 proceedings.

5 And as I understand, we are here for a  
6 status conference to set dates, but we also have a  
7 Motion to -- to Stay before the Commission.

8 CHAIR CHANG: Okay. Well, since  
9 you're the move -- you're the mover of the motion,  
10 correct?

11 MR. SAVAGE: Correct.

12 CHAIR CHANG: Yes. I guess we'll  
13 hear from you first, and then we'll go to the  
14 respondents.

15 MR. SAVAGE: Okay. So thank you for  
16 your time and consideration of Coterra's appeal and  
17 request for a Motion to Stay the Division's  
18 pooling -- the Motion to Stay the Division's pooling  
19 order and these proceedings.

20 We believe that this case presents  
21 important and serious legal issues that need to be  
22 addressed and resolved by the Commission before the  
23 subject lands. The approximately 1280 acres, more  
24 or less, are permanently drilled under an invalid  
25 development plan and, thereby, harmed at great and

1 unnecessary cost to the owners.

2 In effect, these cases involve violations  
3 and transgressions of fundamental principles of oil  
4 and gas law, conservation regulations, and sound  
5 conservation practices regarding both the failure to  
6 prevent waste and the failure to protect correlative  
7 rights which, Coterra respectfully submits, must be  
8 addressed and resolved. Thus, this appeal involves  
9 a return to oil and gas conservation law 101.

10 More than two years ago the Division was  
11 presented with two development plans. One is  
12 legally valid under the Oil and Gas Act and its  
13 regulations, and one is not. Permian Resources  
14 presents a plan that drills a duplicate --  
15 duplicative and unnecessary set of eight wells in  
16 the Upper Wolfcamp interval of the Wolfbone Pool  
17 that will produce primarily from the Third Bone  
18 Spring interval because geologically, the Third Bone  
19 Spring interval contributes most of the production  
20 that comes from the Wolfbone Pool.

21 Making matters worse, Permian Resources  
22 plans to distribute all production from its  
23 additional eight wells only to Wolfcamp owners.  
24 This is clearly an unauthorized taking of  
25 hydrocarbons by the owners of the Third Bone Spring,

1 and, thus, should not be allowed.

2 On this basis alone, Permian Resources'  
3 plan violates the fundamental principles of oil and  
4 gas spacing and pooling laws. But Permian further  
5 envisions a total of 48 wells, all to be drilled  
6 within one year. A voluntary depth severeness  
7 transaction, that's the boundary of which cuts  
8 through the Wolfbone Pool, results in nonuniform  
9 ownership across the Wolfbone Pool creating  
10 different ownership between the Third Bone Spring  
11 and the Upper Wolfcamp intervals.

12 While this -- while these transactions  
13 assumed that the boundary between the Third Bone  
14 Spring and Upper Wolfcamp intervals created two  
15 separate pools representing two common sources of  
16 supply, as would be the correct assumption in most  
17 areas of the Permian basin, this is not true and is  
18 the wrong assumption where the subject lands are  
19 located due to a very different geology.

20 Here, due to the lack of baffling between  
21 the Third Bone Spring and Upper Wolfcamp interval,  
22 the depth severance boundary does not divide two  
23 separate pools, but rather cuts through a single  
24 pool and common source of supply.

25 Coterra recognizes geological fact from

1 the outset when it first began conceiving its  
2 development plan. Consequently, Coterra recognized  
3 that one set of wells were needed to produce from  
4 this single reservoir.

5 Prior to the contested hearing, Coterra  
6 provided the Division -- the Division with an  
7 extensive brief and made a good-faith effort to  
8 fully explain the proper development of this single  
9 reservoir. First, to drill fewer wells to prevent  
10 economic waste of drilling too many wells. And  
11 second, to allocate production from these fewer  
12 wells over the entire reservoir pool using an  
13 allocation formula that will -- that will protect  
14 the correlative rights of the owners within this  
15 single reservoir.

16 Thus, Coterra is the operator who  
17 presented the only legally valid plan for developing  
18 the Wolfbone Pool pursuant to the Oil and Gas Act.  
19 Unlike Permian's plan, the Coterra plan prevents the  
20 unauthorized taking without compensation from owners  
21 in the Third Bone Spring by wells drilled in the  
22 Upper Wolfcamp that would be allocated only to Upper  
23 Wolfcamp owners, even though the majority of  
24 production would come from the Third Bone Spring.

25 In short, Coterra presented a development

1 plan that drilled significantly fewer wells, thereby  
2 presenting economic waste and proposes a production  
3 allocation formula that protects rather than  
4 violates correlative rights.

5 Permian Resources counters that its  
6 greater number of wells will prevent underground  
7 waste because they will recover slightly more  
8 hydrocarbons. The negligible amount of underground  
9 waste that Permian Resources' plan claims to prevent  
10 is highly speculative and nonadditive to the  
11 estimated ultimate recovery of the reservoir. To  
12 attempt to extract a speculative amount, if there is  
13 any amount to extract, Permian Resources proposes to  
14 drill additional unnecessary wells that create  
15 excessive amounts of economic waste.

16 In addition to Permian Resources'  
17 unauthorized taking that violates correlative  
18 rights, the magnitude of economic waste inherent in  
19 Permian's plan also violates correlative rights  
20 because it will deny owners their just and equitable  
21 share of production.

22 And last, but certainly not least, there  
23 is the necessary requirement of coordinating to the  
24 fullest extent possible the proper application of  
25 the Oil and Gas Act and its regulatory framework

1 with New Mexico's initiatives under the executive  
2 order 2019-003. Coterra takes seriously its  
3 responsibilities and obligations to be a good  
4 steward of the land and to comply with the spirit of  
5 the executive order -- of this executive order to  
6 reduce the environmental disturbance of its  
7 operations.

8 Thus, Coterra's plan takes seriously the  
9 State's initiative to reduce emissions. In clear  
10 contrast, Permian Resources' plan completely ignores  
11 this matter -- this important initiative.

12 Coterra respectfully asks the Commission  
13 to stay order R-23089-A in order to prevent waste,  
14 to prevent the violation of correlative rights, to  
15 prevent the unauthorized taking of production from  
16 the Wolfbone Pool, to stay a development plan that  
17 promotes the drilling of unnecessary wells, to  
18 prevent irreparable harm to Coterra as -- as a  
19 working interest owner, and to prevent irreparable  
20 harm to New Mexico's efforts to reduce emissions.

21 And I have my co-counsel online, Professor  
22 Owen Anderson, if -- if you would like to -- if it  
23 would please the Commission to hear any comments in  
24 this matter from him.

25 Thank you for your consideration.

1 CHAIR CHANG: Thank you.

2 If the commissioners wish to hear from  
3 Mr. Savage's colleague, should we briefly perhaps,  
4 five to ten minutes? Is that all right with the  
5 commissioners?

6 MR. RANKIN: Mr. Chair, Adam Rankin  
7 on behalf of Read & Stevens and Permian Resources.

8 CHAIR CHANG: Sure.

9 MR. RANKIN: I -- I'm not sure of the  
10 procedure here, but I guess normally one -- one  
11 counsel argues a motion at a time. And so I think  
12 it's a little bit improper, I guess, to make  
13 available a second attorney to make uncertain  
14 arguments at this point.

15 So I would just object to -- to the  
16 introduction of an additional counsel making  
17 uncertain arguments at this point about the motion  
18 that has been presented by Mr. Savage.

19 CHAIR CHANG: Okay.

20 COMMISSIONER BLOOM: And, Mr. Chair,  
21 I -- I think that would be in standing with how we  
22 typically handle these matters.

23 CHAIR CHANG: What would be?

24 COMMISSIONER BLOOM: As stated by  
25 Mr. Rankin, yes.



1 CHAIR CHANG: Okay. All right.

2 Well, then --

3 THE COURT REPORTER: I just joined,  
4 sorry.

5 CHAIR CHANG: Okay. Great. Thank  
6 you.

7 THE COURT REPORTER: Do you want me  
8 to start writing or -- is this the meeting I'm  
9 supposed to be taking down?

10 CHAIR CHANG: I believe so.

11 Sheila?

12 MS. APODACA: Yes, it is. And I've  
13 been -- I've been recording up until this point. So  
14 I can provide you with the video recording up till  
15 this point.

16 THE COURT REPORTER: Okay. Sorry,  
17 the other reporter had an issue, and so she couldn't  
18 get on. So here I am in the middle of the hearing.  
19 So sorry for interrupting. And keep going.

20 CHAIR CHANG: We'll have a -- yeah,  
21 sounds like we'll have a recording for you to catch  
22 up on later.

23 THE COURT REPORTER: Okay. Thank  
24 you.

25 CHAIR CHANG: All right. All right.

1 Well, then, moving on to Mr. Rankin.

2 MR. RANKIN: Good morning, Mr. Chair,  
3 Chair Chang, Commissioner Bloom, Commissioner  
4 Ampomah. Welcome, Chair Chang, to your second day  
5 on the -- on the Commission at the -- at the  
6 Division and your first day on the Commission. We  
7 all welcome you. Look forward to getting to know  
8 you.

9 Thank you for the opportunity. May it  
10 please the Commission.

11 I have -- given that you guys have -- have  
12 very little background in this matter, I do have a  
13 presentation I think that might be helpful. And so  
14 I -- I will show on my screen here in just a moment.  
15 Once I get it up, we can walk through a little bit  
16 of the background of this case. And if -- at the  
17 end, if you have questions, I'm happy to address  
18 them.

19 So in this situation, commissioners,  
20 Permian Resources requests that the Commission deny  
21 Coterra's Motion for Stay. Supporting Permian  
22 Resources in this motion are working interest owners  
23 who have submitted letters of support, including  
24 working interest owners who were previously  
25 Coterra's largest working interest supporters by a

1 percentage. They now support Permian and Read &  
2 Stevens' plan.

3 Coterra fails to establish that they meet  
4 the stringent elements necessary to invoke a stay of  
5 an administrative order because they don't present  
6 actual evidence supporting each of the elements.  
7 Coterra simply rehashes the legal arguments and the  
8 evidence it presented to the Division and completely  
9 ignores the updated evidence that we provided in  
10 response to their motion that dispositively  
11 establishes that Coterra cannot meet the elements  
12 necessary for a stay.

13 So what -- what are the elements for a  
14 stay? The Commission has adopted the rules provided  
15 by -- under Tenneco in the Court of Appeals. Those  
16 elements are that the applicant for a stay must show  
17 that they're likely to prevail on the merits, that  
18 there is irreparable harm to the applicant unless  
19 the stay is granted, that evidence -- that there's  
20 evidence that no substantial harm will result to  
21 other interested persons, and that no harm will  
22 ensue to the public interest.

23 Applying the standard, the Commission has  
24 required that applicants for stay make an  
25 evidentiary showing on each of those elements. So a

1 showing is a -- is a proffer of evidence, actual  
2 proof. Okay? And not just mere allegations, which  
3 would be argument of counsel. Here, Coterra simply  
4 rehashes the arguments and the evidence that was  
5 presented and rejected by the Division below.

6 In addition, the Commission has its own  
7 regulations that govern this issue, and it provides  
8 that the Commission may, but is not required to, may  
9 grant a stay if it's necessary to prevent waste,  
10 protect correlative rights, protect the public  
11 health or the environment, or to prevent gross  
12 negative consequences to an affected party.

13 So here, Coterra's motion fails to  
14 establish evidence on each of those requirements.  
15 They do not show that they're likely to prevail on  
16 the merits; they can't. They do not show that  
17 they're going to suffer irreparable harm; they  
18 can't. Nor do they show that substantial harm will  
19 result to other interested persons in the case; they  
20 can't.

21 Coterra is a lone wolf here. They're the  
22 only ones at this point. No other working interest  
23 owners support Coterra. All other working interest  
24 owners who have been active in the case now support  
25 Permian and Read & Stevens' approach.

1 Nor do they show that there will be harm  
2 to the public interest or that a stay is necessary  
3 to prevent waste, protect correlative rights, and so  
4 on.

5 So just a quick background here. The area  
6 and the acreage that we're talking about is  
7 Permian's proposed development. I'm going to refer  
8 to Permian here. Read & Stevens is a subsidiary --  
9 wholly-owned subsidiary of Permian Resources, so I'm  
10 going to refer to them going forward as Permian  
11 Resources or Permian.

12 The acreage at issue here, the  
13 developments are called Joker or in Bane by Permian  
14 Resources and they're up in the northern part of Lea  
15 County, identified here on this slide by the red.

16 These are the -- each of these are  
17 two-mile tracts. In total, it's four sections, or  
18 approximately four square miles. So these 48 wells  
19 that Permian Resources is proposing are going to be  
20 across four square miles, and each of them is going  
21 to be two miles in length.

22 So since the time this case was heard back  
23 in '23, up -- up -- within a year, Permian Resources  
24 and its subsidiaries in this area depicted on these  
25 maps have drilled the completed -- more than

1 500,000 feet of lateral line in 64 wells. They've  
2 continued the appraisal. And you can see the  
3 acreage here at issue are these two -- two-mile  
4 section -- tracts here on the outline right here.  
5 Permian Resources continued the appraisal, and they  
6 drilled all the way around. They've completely  
7 developed this acreage to the --

8 MR. SAVAGE: Mr. Chair, I would  
9 object to this presentation because this is going  
10 into the weeds of facts that were part of the  
11 underlying case, and it does not address the matters  
12 of law on which a motion is -- is based. He went  
13 through the Tenneco provisions, the four provisions  
14 of Tenneco.

15 And now we're going way afield, dealing  
16 with rehashing is -- as he claims we're doing, he's  
17 rehashing the -- these facts of the underlying case,  
18 which we don't feel is appropriate.

19 CHAIR CHANG: Well, yeah. There's --

20 MR. RANKIN: May I respond?

21 CHAIR CHANG: Something is  
22 happening -- sure.

23 MR. RANKIN: Sorry to --

24 So, obviously one of the main elements --  
25 the first element is whether or not Coterra's been

1     able to establish they are likely to prevail on the  
2     merits. So I do believe it's necessary to some  
3     extent to explain what the merits are. And I -- I  
4     do not intend to linger on this, but I do need to  
5     explain to the Commission, because I'm going to  
6     explain to you, as -- as was outlined in the motion,  
7     how each of these -- how the case is likely to go,  
8     based on the updated information that was presented  
9     to the Commission, so you understand the context,  
10    where the wells are located, what the development  
11    plans are, because we haven't -- haven't established  
12    that at this point.

13                   CHAIR CHANG: Right.

14                   Commissioner Bloom?

15                   COMMISSIONER BLOOM: Yeah.

16    Mr. Rankin, how long do you anticipate that your  
17    intervention here will -- will take you?

18                   MR. RANKIN: Oh, I think like 12  
19    minutes at most to complete the entire presentation,  
20    yeah.

21                   COMMISSIONER BLOOM: Okay. And --  
22    all right. Thank you. I'm fine with that.

23                   CHAIR CHANG: You both need to --  
24    Dr. Ampomah, did you want to weigh in before I do?

25                   COMMISSIONER AMPOMAH: No, Mr. Chair.

1 CHAIR CHANG: On both sides, you guys  
2 have to -- there is that factor of the underlying  
3 likelihood of the merits. So I understand that you  
4 both will need to dive a little -- or at least touch  
5 on the underlying matter, and you both have a little  
6 bit.

7 But -- so -- but in the interest of --  
8 but, Mr. Rankin, if you could not linger and if you  
9 could keep it brief --

10 MR. RANKIN: Sure.

11 CHAIR CHANG: -- we'd appreciate it.

12 MR. RANKIN: I appreciate that.

13 I just want -- I just want to make clear,  
14 so -- because in the motion, there's a discussion of  
15 location of wells, so I won't -- I won't linger.

16 But essentially, the acreage at issue is  
17 in the box here. There is an offsetting development  
18 which is in this -- identified by this yellow star  
19 that is a test that establishes the basis for why  
20 Coterra is unlikely to prevail. Okay?

21 So the next slide here is a little bit of  
22 background. The development plans -- the dispute in  
23 this case is primarily focused on the development of  
24 the lower Third Bone Spring interval and the Upper  
25 Wolfcamp, all within this new Wolfbone Pool that was



1 created by the Division.

2 Coterra's plan, as -- as Mr. Savage  
3 articulated, proposes to target only the Third Bone  
4 Spring interval, partially draining the Wolfcamp,  
5 and allocating all that production, including the  
6 costs, based on accrued PhiHt formula. That is not  
7 supported by any data or evidence and not supported  
8 by the statute.

9 The PhiHt is essentially the porosity of  
10 the rock multiplied times the height, which gives  
11 you a total pour space or thickness. It's a proxy,  
12 approximately, for how likely the rock is going to  
13 produce oil. However -- and we'll -- we'll discuss  
14 this shortly -- it's not an appropriate proxy in  
15 this case.

16 In addition, as Mr. Savage alluded to,  
17 there's an additional complication here, and that is  
18 that there's depth severance, an ownership depth  
19 severance between the Third Bone Spring interval and  
20 the Wolfcamp. This is a common issue. It happens  
21 all the time. And it's addressed by developing  
22 separately these tracts. And I'll explain that as  
23 we walk through.

24 Now, under the statute, the ownership --  
25 an ownership depth severance means that mineral

1 ownership across the entire special Wolfbone Pool  
2 here is nonuniform. That makes it impossible under  
3 Coterra's plan to allocate production and costs  
4 across all owners in the proposed special pool,  
5 spacing unit, on an acreage basis, as required by  
6 statute.

7 The Oil and Gas Act requires that  
8 production under compulsory pooling orders be  
9 allocated to the respective tracts within the unit  
10 in proportion to the number of surface acres  
11 included within each tract, as they bear to the  
12 number of acres in the entire unit. The Commission  
13 and the Division have always interpreted that to  
14 mean that when you're forced pooling, the ownership  
15 has to be uniform within each spacing unit in order  
16 to accomplish that goal.

17 Coterra here proposes to allocate  
18 production in that manner from their single bench  
19 development in the Third Bone Spring, but then to  
20 allocate it further using a formula of  $\frac{\text{P}}{\text{H}} \times \text{T}$  that  
21 would result in approximately 27 percent going to  
22 Wolfcamp owners and 72 percent -- or 73 percent  
23 going to the Bone Spring owners.

24 That would reduce the statutorily mandated  
25 allocation of 100 percent of production to each

1 spacing unit tract by some made-up PhiHt formula.  
2 That would violate the express mandate of the Oil  
3 and Gas Act. It impairs the Wolfcamp owner  
4 correlative rights, as I will show you in updated  
5 data from actual offsetting production. It  
6 conflicts with the Division's long-held  
7 production -- long-held approach for forced pooling  
8 spacing units with ownership depth severances and  
9 would upend years of precedent, since horizontal  
10 well -- production has -- has been commenced with  
11 the Division. And there's no actual supporting data  
12 that would justify using phi height in this  
13 instance.

14 So just a quick overview of Permian's  
15 plan. This is just the lower Third Bone Spring in  
16 the -- in the Wolfcamp. As part of the -- the  
17 Wolfbone Pool, Permian proposes a wine rack pattern  
18 in order to fully develop both the lower Third Bone  
19 Spring and the Upper Wolfcamp all within this new  
20 Wolfbone Pool.

21 Under this approach, it allows -- it will  
22 create separate pool space units for the Bone Spring  
23 and the Wolfcamp portions of the Wolfbone Pool.  
24 This will -- allows for uniform ownership. So  
25 basically, the -- there's different ownership in the

1 orange -- or yellow portion than there is in the  
2 blue; in some cases, different owners. And by  
3 separate pooling those tracts, it allows for the  
4 ownership to be maintained uniformly.

5 It allows the -- the order to comply with  
6 the Oil and Gas Act, which would mandate the  
7 allocation of production to owners is on a --  
8 strictly on an acreage basis.

9 This also follows the Division's  
10 long-enforced approach for forced pooling of  
11 depth-severed pools. And most importantly, it  
12 avoids waste and protects all correlative rights by  
13 producing incremental reserves that would not be  
14 produced under Coterra's plan and generates more  
15 production and more -- more revenue than under  
16 Coterra's development plan.

17 How -- how do we know that? Because  
18 immediately offsetting, we have a test that  
19 establishes that fact. And these are updated data,  
20 up through May and April of this year.

21 On the left-hand side, you'll see the test  
22 that Permian has prepared. On the left-hand side,  
23 you'll see the co-development test where there are  
24 wells in the Third Bone Spring and the Wolfcamp.  
25 And then on the right-hand side, you see -- which is

1     what Permian is proposing. And then on the  
2     right-hand, you'll see a single bench development  
3     plan, which is what Coterra's proposing.

4             On the right, you'll see the difference in  
5     production between those two approaches. All in  
6     blue is the co-development. All in right -- all in  
7     red is the single-bench development. And you'll see  
8     there is a substantial uplift resulting from  
9     co-development.

10            So accordingly, our position is, as  
11     demonstrated by offsetting production,  
12     co-development is necessary to protect waste and  
13     protect correlative rights. Because what happens  
14     here is that owners in the Wolfcamp and in the Bone  
15     Spring get more production as a result.

16            What happens when we take that production  
17     and we do -- we do an allocation to the owners by  
18     each company's approach? On the left-hand side with  
19     the co-development approach, you'll see that when we  
20     allocate on a surface acreage basis, owners in the  
21     Third Bone Spring and the Wolfcamp get far more  
22     production and value than would owners under  
23     Coterra's plan with a single-bench approach. This  
24     is -- you know, this is clearly being demonstrated  
25     and immediately offsetting acreage.

1           So as a result, our view is that  
2     correlative -- in order to protect correlative  
3     rights, there must be co-development. In order to  
4     prevent waste, there must be co-development.

5           Now, what about this allocation plan  
6     that -- that Coterra is proposing? In this  
7     instance, in this acreage, it's been proven, based  
8     off -- immediately offsetting production, that using  
9     phi height, okay, the porosity times thickness is  
10    not -- not an accurate predictor of the volume of  
11    oil that is inherent or may be produced in the  
12    acreage. As you can see on the left, there's a --  
13    there's a demonstration of that fact.

14           When you look at cumulative oil production  
15    and you -- and you -- and you plot it by phi height,  
16    there's no relationship whatsoever. It's almost  
17    random, which means that it is not an accurate  
18    predictor. You could have a high thickness, high  
19    porosity, phi height, and relatively low oil  
20    production. Or you could have low phi height  
21    thickness and high oil production.

22           So there's no correlation between PhiHt  
23    and oil production, which means that you're going to  
24    violate correlative rights if you rely on that  
25    formula as a method of allocation. It's not an

1 accurate predictor here, and that's generally  
2 because there's higher water saturations in certain  
3 portions of the Third Bone Spring than there are in  
4 the Wolfcamp, which upsets this allocation  
5 methodology.

6           You'll see in the briefing -- I just  
7 wanted to address this briefly. If you have any  
8 questions about it, I'm happy to go into more  
9 detail. But Mr. Savage and Coterra make a point  
10 that there is another situation at the Division  
11 level where the Division did allocate production in  
12 a forced pooling order. That's the only one I'm  
13 aware of ever happening, number one. Number two,  
14 it's -- at the Division, it's not precedential for  
15 the Commission, so it's only persuasive at best.

16           Now, in that case, it involves a single  
17 vertical gas well. It's not a horizontal  
18 vertical -- not a horizontal oil well. So the facts  
19 are not analogous, and the holding is inapposite to  
20 pooling two-mile oil wells in this instance.

21           It's uneconomic -- it was uneconomic to  
22 drill multiple vertical wells to develop different  
23 intervals where there's nonuniform ownership. It  
24 would be uneconomic to do that. So it was  
25 necessary, to accomplish it, to target all that gas

1 using one single vertical well.

2 That's not the case here, where we have --  
3 it's possible to drill horizontal wells that target  
4 different ownership intervals. All parties agreed  
5 in that case that an order allocating production was  
6 necessary for the well to be drilled. If -- if  
7 there wasn't an order from the Division allocating  
8 production, that well never would have been drilled,  
9 and there was uncontroverted testimony in that case  
10 that that was the -- that was the case.

11 Also, no party opposed the proposed  
12 allocation formula that was presented by Devon, the  
13 applicant in that case at the hearing. So there was  
14 no -- there was no protest, no dispute that that was  
15 an appropriate allocation formula. And that is not  
16 the case here.

17 Finally, in this situation, while Coterra  
18 did have some working interest support -- and even  
19 almost the majority of the working interest support  
20 at the Division level, after seeing the production  
21 and the offsetting results in the Batman well that  
22 Permian has presented, those working interest owners  
23 have now shifted their support to Permian. And we  
24 presented those letters of support as part of our  
25 response.



1           So as a result now, Permian Resources has  
2 more than 25 percent -- in excess of 25 percent more  
3 working interest control for both the Bone Spring  
4 and the Wolfcamp formations. And under precedent,  
5 that is -- that is a substantial differential and  
6 almost a controlling factor in terms of who should  
7 prevail. And no -- no working interest owner  
8 currently is actively supporting Coterra's plan in  
9 this case.

10           Finally, whether or not there is  
11 irreparable harm to Coterra, Coterra argues that  
12 Permian's plan will cause economic waste because  
13 they're going to drill all these wells, and it's  
14 going to cost a lot of money. They also say that --  
15 that under the order, these additional parties,  
16 including Coterra, are required to pay, and -- and  
17 it will result in waste.

18           First of all, as I showed, it will not  
19 cause economic waste because there's going to be  
20 more development. Also, these parties, including  
21 Coterra, is not required to pay a penny out of  
22 pocket under the pooling order or the Oil and Gas  
23 Act. Compulsory pooling is specifically designed to  
24 prevent recalcitrant owners, such as Coterra here,  
25 from unjustly holding up reasonable development and

1 preventing other interest owners here, now the vast  
2 majority, from accessing and developing their own  
3 minerals.

4 If Coterra believes the Permian plan is  
5 imprudent or ill-advised, it can simply elect to go  
6 nonconsent under the pooling order, but shouldn't be  
7 permitted to hold up Permian's proven development  
8 plan, especially when Coterra is unable to show,  
9 through evidence, that it will result in waste.

10 The third element here of the stay order,  
11 no substantial harm will result to other interested  
12 persons, again, the pool parties are not required to  
13 pay any out-of-pocket costs, but can go nonconsent  
14 under the pooling order if they deem the plan  
15 imprudent or ill-advised.

16 Immediately offsetting development show a  
17 tremendous production in economic benefit that will  
18 come to owners both in the Bone Spring and in the  
19 Wolfcamp. That will not be the case under Coterra's  
20 development plan. So there's no ability -- no way  
21 they can show substantial harm to those other  
22 additional interest owners.

23 Also, no harm to the public interest. The  
24 public interest will benefit from Permian's  
25 development due to the substantial uplift in

1 production taxes that are expected to be generated  
2 from Permian's plan in comparison to Coterra's.

3 Permian's immediately offsetting Batman  
4 shows -- the development in the Batman shows that  
5 3 -- 3.4 million production tax benefit from  
6 co-development just from three wells compared to a  
7 Third Bone Spring standalone development.

8 Finally, a stay is not necessary under the  
9 regulations to prevent waste, protect correlative  
10 rights, or protect public health or the environment  
11 or gross negative consequences for all the reasons  
12 outlined in the slide and that I just reviewed.

13 So based on all of this, Mr. Chair and  
14 commissioners, we -- we ask that the Commission deny  
15 Coterra's motion. They don't establish through  
16 evidence that they meet the stringent elements  
17 necessary to invoke a stay.

18 Most importantly, they're not likely to  
19 prevail on the merits. That's the first element.  
20 And they can't get -- they have to prove all, and if  
21 they can't get past the first, they -- they don't  
22 get a stay.

23 Coterra simply rehashes the legal  
24 arguments and evidence that were presented to the  
25 Division below and rejected. Coterra provides no

1 substantive response to our updated evidence  
2 showing, in fact, with actual offsetting data that  
3 they're going to develop more oil and more revenue  
4 for both owners in the -- in the Third Bone Spring  
5 and Wolfcamp.

6 Now, as a result of those -- that  
7 demonstrative proof and the offsetting test, the  
8 vast majority of working interest owners support  
9 Permian over Coterra. No single working interest  
10 owners actively supporting Coterra. And no working  
11 interest -- yeah, so that was the last point.

12 So with that, Mr. Chair and commissioners,  
13 we ask that the Commission deny Coterra's motion and  
14 that we -- we now set this for an evidentiary  
15 hearing on the merits.

16 CHAIR CHANG: Thank you. I imagine  
17 Coterra probably wants to respond, but first let me  
18 turn to my commissioners and ask whether they have  
19 any questions at this time or whether they want to  
20 wait until after.

21 COMMISSIONER BLOOM: Mr. Chair, it  
22 might be helpful to hear from the OCD or see if they  
23 have anything that they might want to contribute.

24 CHAIR CHANG: OCD has not entered as  
25 a party in this case, so --

1 COMMISSIONER BLOOM: Then, no. Sorry  
2 about that.

3 CHAIR CHANG: Yeah, sorry.

4 Mr. -- Dr. Ampomah, any questions at this  
5 point in time before we ask Coterra to respond?

6 COMMISSIONER AMPOMAH: Yeah,  
7 Mr. Chair. Probably if we can listen to the  
8 response so we can have all the information. And  
9 then probably we can proceed with some questions  
10 after that, if that is okay.

11 CHAIR CHANG: Okay. Of course, it's  
12 the Commission's pleasures.

13 Go ahead, Coterra.

14 MR. SAVAGE: Thank you. Thank you,  
15 Mr. Chang, Chair.

16 Mr. Rankin, could you go to your slide  
17 where you have the Joker, Bane plan of the stat  
18 wells? Okay.

19 So, Mr. Commissioner, Mr. Chair, this is  
20 what Permian proposed during the -- during the  
21 contested hearing. As you can see, there's four  
22 Basil Third Bone Spring wells in the yellow and  
23 proposed four Wolfcamp wells. And they're claiming  
24 that all of these Wolfcamp wells must be drilled in  
25 order to prevent waste. And we're claiming that if

1 you drill all of these Wolfcamp wells, you will  
2 create waste and violate the owners' correlative  
3 rights.

4 Now, Mr. Rankin, would you please go to  
5 that the Batman slide?

6 Okay. Here is the Batman -- the Batman  
7 development plan as it was drilled. Now, as you can  
8 see, the majority of the wells are located in the  
9 Basil Third Bone Spring, and that's because, as  
10 our -- as we point out in the geology in this area,  
11 that is where you get the primary production.

12 Notice that they only have one Wolfcamp  
13 well. Now, if you look at the original applications  
14 and you look at the original pooling orders, they  
15 propose the exact same stat plan in the Batman that  
16 they proposed in the Joker and Bane. They proposed  
17 four in the -- wells in the Basil Third Bone Spring,  
18 and they proposed, as necessary wells -- they argue  
19 the necessary wells, four in the lower -- in the  
20 Upper Wolfcamp.

21 But when you actually look at how -- what  
22 they -- what the plan that they actually developed,  
23 it basically mirrors Coterra's plan. And that is  
24 the emphasis on the Third -- the Basil Third Bone  
25 Spring.

1           And if -- what they did is, they drilled  
2 all of the Basil Third Bone Spring, and then they  
3 drilled this one token Upper Wolfcamp well. And  
4 then they had three other orders R-2278, R-2279,  
5 R-2280, in which they let expire. They basically --  
6 basically relinquished their rights to drill the  
7 additional three.

8           So this really contradicts the development  
9 plan that they actually proposed and argued for at  
10 the original hearing and that basically supports the  
11 need to develop the Basil Third Bone Spring.

12           In addition, I'd like to respond to the --  
13 the PhiHt -- or Coterra's allegation program  
14 based -- allocation formula based on the PhiHt  
15 criteria.

16           So here's the baseline -- the base  
17 argument, the baseline on this -- on the differences  
18 between the plans. And that is, it is -- it is  
19 incontrovertible that -- that Permian Resources'  
20 plan is going to drill the Upper Wolfcamp, and then  
21 they're going to produce the Wolfbone Pool.

22           Now, if you look at the findings of the --  
23 of the Division, you will see that any well drilled  
24 in the Wolfbone Pool, whether it's in the Upper --  
25 in the Wolfcamp or in the Bone Spring, it's going to

1 produce the entire Wolfbone. It's going to produce  
2 both -- from both intervals.

3 So what they're going to be doing -- and  
4 they're giving all -- they're distributing all the  
5 production from their Wolfcamp wells only to the  
6 Wolfcamp owners. That means they're taking  
7 72 percent of the -- of the hydrocarbons from the  
8 Third Bone Spring, different owners up there, and  
9 they're giving it to the Wolfcamp owners only. Now,  
10 that is a classic taking. It's a taking without  
11 compensation.

12 And so it's clearly -- it's clear that  
13 Permian Resources' plan is illegal. It is illegal  
14 under oil and gas law.

15 So the conclusion of that is that there  
16 needs to be an allocation formula. There needs to  
17 be some kind of allocation that protects the rights  
18 of, and distributes -- to protect the rights of both  
19 the Third Bone Spring and the Wolfcamp production,  
20 regardless of which wells are producing those.

21 Now, we have been wrestling with this over  
22 two years to come up with the best allocation. And  
23 we -- we stated this initially in our -- in our  
24 comprehensive brief that we submitted prior to the  
25 contested hearing, in which we discussed various



1 ways to allocate interests so that interest -- so  
2 that the correlative rights protected.

3 Now -- so we finally came up with this  
4 idea of doing it based on the PhiHt. And -- now,  
5 this is getting -- really getting into the weeds,  
6 but there is a lot of factual matters that Coterra  
7 can show you that Permian Resources did not show you  
8 in their presentation of why the PhiHt would be a  
9 very reasonable, logical, and accurate basis for an  
10 allocation formula. And I think that would be  
11 reserved for a hearing on the merits.

12 But basically, you know, the case -- I  
13 mean, Mr. Rankin said that there's only one case,  
14 and that was a Devon case, in which they deviated  
15 from the surface acreage requirement under the  
16 statutes, but that's actually not true. There's  
17 actually several cases where the Supreme Court --  
18 New Mexico Supreme Court actually allowed the OCC to  
19 modify the surface acreage interpretation in order  
20 to arrive at a -- at a plan that would not violate  
21 the oil and gas rights -- Oil and Gas Act.

22 So one of those -- one of those cases is  
23 Rutters vs. OCC. In that case, there was a tract  
24 that was nonproducing. And I mentioned this -- I  
25 talk about this in my motion. But there's a tract

1 in the unit that was nonproducing or it looked like  
2 it was nonproducing. So if you went based just on  
3 the surface acreage requirement, those owners in  
4 that tract would not receive any -- any share of  
5 production.

6 So what the OCC did, is that they modified  
7 the interpretation of that provision in the pooling  
8 statute to allow them to receive their share of  
9 production. And it was not based on surface  
10 acreage. It was -- it was a deviation from that.

11 And the Supreme Court actually said that  
12 they would uphold that formula, that allocation  
13 formula because it was reasonable and logical and it  
14 prevented -- it prevented the violation of  
15 correlative rights.

16 So it's a clear dividing line. Their --  
17 their plan is -- is legally invalid. Our plan is  
18 legally valid. It just needs the proper allocation  
19 formula. And we believe that the PhiHt is the  
20 proper allocation formula.

21 And then in terms of economic waste, under  
22 Coterra's plan, the owners would receive -- and we  
23 have exhibits that we presented at the contested  
24 hearing -- anywhere from 2.4 to 3 times as much  
25 revenue as they would receive under Permian

1 Resources' plan because of the severe financial  
2 burden on the working interest.

3 Now, he claims there's all these owners  
4 that have gravitated towards Permian Resources'  
5 plan, but that would be reasonable if they -- if  
6 they're shown a -- what they believe is a valid  
7 order from the Division. And they say that these  
8 wells can be drilled immediately based on this  
9 order. Of course, there are going to be a number of  
10 owners that are going to be enticed to gravitate.  
11 But I don't believe that they fully comprehend the  
12 legalities involved in that order and the  
13 implications and the consequences of that order.

14 So, for example, that order actually  
15 completely disregarded any form of economic waste by  
16 what we believe was a misapplication of a specific  
17 provision in the Commission order, a previous  
18 Commission order. And, therefore, none of the  
19 evidence that dealt with economic waste in the  
20 underlying hearing, the contested hearing, was even  
21 considered or reviewed because they categorically,  
22 as a matter of law, excluded it.

23 Here, at the Commission, we believe that  
24 the commissioners should look at the evidence  
25 de novo. And that is also the evidence for the

1 Motion to Stay. And a de novo review -- that means  
2 looking at the evidence anew -- would show that we  
3 satisfied the Tenneco requirements.

4 If the underlying case were decided on  
5 proper legal grounds, we would be very much likely  
6 to -- to prevail. Because economic waste was not  
7 even considered, that is a -- that is a harm, an  
8 irreparable harm that would occur if this -- if  
9 Permian Resources' plan is allowed to go forward.

10 Other interested parties would not be  
11 harmed, because if Coterra's plan were found to be  
12 the proper plan for protecting correlative rights  
13 and preventing waste, the owners would receive 2.5  
14 to 3 times as much revenue from production of its  
15 plan.

16 The -- the amount of -- the incremental --  
17 the incremental amount of production that they claim  
18 is very speculative. And you can see that in the  
19 testimony. It's very negligible, and it's not  
20 added to -- added to the EUR.

21 And then what we consider the most  
22 important thing and the -- Permian Resources doesn't  
23 even address this -- is that the Oil and Gas Act  
24 prohibits the drilling of unnecessary wells. And if  
25 you drill unnecessary wells and you promote a policy

1     that encourages the drilling of unnecessary wells,  
2     then you basically promote excess -- excessive  
3     emissions that the state is on record as trying to  
4     reduce.

5             So -- and that is something that Permian  
6     Resources did not even address in its response, nor  
7     did it address in its presentation, even though it  
8     is a simple thesis of Coterra's Motion to Stay.

9             And there's also another case that shows  
10    how the Division and Commission has reinterpreted  
11    that pooling statute. And if it would please the  
12    commissioners, I would like my co-counsel, Owen  
13    Anderson, who has a lot of experience in dealing  
14    with conservation regulation, to address that  
15    particular case.

16            CHAIR CHANG: Well, that drew an  
17    objection last time.

18            But, commissioners, it's your -- it's your  
19    decision. Would you like to hear from Mr. Savage's  
20    co-counsel?

21            COMMISSIONER AMPOMAH: Is Mr. Rankin  
22    objecting to that or he has no objection to that?

23            MR. RANKIN: Well, generally -- thank  
24    you, Commissioner Ampomah and Chair Chang.

25            Generally, you know, when presenting

1 arguments, you know, one -- one counsel is assigned  
2 to that, respond to questions and make the  
3 arguments. So I think it's important for the  
4 decorum of the forum to maintain that.

5 And Mr. Anderson is not being -- he's not  
6 an expert witness, and so -- he's co-counsel. And I  
7 think it's -- it'd be inappropriate to have him sort  
8 of be testifying to the Commission on something  
9 rather than allowing Mr. Savage to make the  
10 arguments.

11 CHAIR CHANG: I --

12 MR. SAVAGE: Mr. Chair, I -- go  
13 ahead.

14 CHAIR CHANG: I mean, I hear  
15 Mr. Rankin, but I think ultimately it's up to the  
16 pleasure of the commissioners.

17 So it's up to you, Dr. Ampomah and  
18 Commissioner Bloom. We can certainly proceed  
19 without at the moment. So it's your -- I'll -- I  
20 mean, I guess I'll give Mr. Savage a quick minute  
21 for -- for his thoughts.

22 MR. SAVAGE: So Professor Anderson  
23 has written over 100 articles, many including  
24 spacing, allocation, pooling, correlative rights,  
25 waste. He's a noted expert, a legal expert. He is

1 part of our legal team. I -- I discussed with him  
2 the areas that he would discuss to -- for the  
3 benefit of the Commission and the areas that I would  
4 discuss for the benefit of the Commission.

5 So if the commissioners want the full  
6 benefit of the analysis, the legal analysis, that is  
7 directly impacting and affecting this decision, I  
8 think it would be useful and beneficial. And we  
9 respectfully request that the Commission avail  
10 itself the benefit of his presence.

11 CHAIR CHANG: Thank you. I want to  
12 try to keep some boundaries on this hearing so it  
13 doesn't devolve into a full-on trial on the merits  
14 right here with everybody sort of -- without us  
15 being fully organized for that. But I will take the  
16 opinions of my -- of my commissioners.

17 Commissioner Bloom?

18 COMMISSIONER BLOOM: Yeah.  
19 Mr. Chair, I would just ask Mr. Shandler if he has  
20 any insights to share with us here?

21 MR. SHANDLER: Mr. Chair, I don't  
22 have any unique insights.

23 MR. RANKIN: May I make a brief just  
24 comment on this point, Mr. Chair?

25 CHAIR CHANG: Sure.

1 MR. RANKIN: You know, generally  
2 speaking, when we -- when we are arguing motions,  
3 we're limited to the papers. So if Mr. Anderson is  
4 going to be making additional arguments outside what  
5 has been presented in the papers, I have a problem  
6 with that, number one.

7 Number two, I have a problem that he's  
8 being presented as an expert here, as if he were a  
9 witness. I think that's also inappropriate.

10 If there's arguments that were made in the  
11 papers that Mr. Savage wants to articulate, he's  
12 welcome to do that. If there's specific issues that  
13 I raised in my response, he can address those on a  
14 legal basis. But I don't think it's appropriate to  
15 introduce an expert in legal matters at this point,  
16 in this argument.

17 CHAIR CHANG: Commissioner Bloom --  
18 yeah. Oh, sorry, who was -- who was speaking?

19 MR. SAVAGE: Oh, I'm sorry. I was  
20 going to respond real quickly to that, so . . .

21 Mr. Anderson is not a witness or -- an  
22 expert witness. He is an integral member of our  
23 legal team. He would address the legal issues that  
24 were addressed and raised in the papers, both in the  
25 Motion to Stay and in the response and in the reply.



1           So, if -- again, if the commissioners want  
2   to have the benefit of the full scope of our legal  
3   team, then Mr. Anderson is available.

4           CHAIR CHANG: Commissioner Bloom, you  
5   still have your hand up. I wasn't sure if that was  
6   an objection.

7           COMMISSIONER BLOOM: Mr. Chair, yes,  
8   thank you.

9           Traditionally, we have heard from one  
10   attorney from each side. And I believe that's  
11   appropriate, and we should stick with that.

12          CHAIR CHANG: Okay. So unless -- and  
13   that doesn't --

14          Dr. Ampomah, you don't have a concern with  
15   that? You're all right with that?

16          COMMISSIONER AMPOMAH: Yes,  
17   Commissioner Bloom -- Commissioner Bloom, so  
18   Mr. Rankin is saying that Professor Anderson can  
19   respond to the motions that -- or propose that he  
20   presented in his document, but I think he can also  
21   object to any additional item that is outside the  
22   scope.

23          So if Mr. Rankin is not objecting to that,  
24   I will say that probably let's hear from Professor  
25   Anderson, but Mr. Rankin does reserve the right to

1 object to anything that is outside the documents  
2 that are being presented to the Commission.

3 CHAIR CHANG: Oh, boy. Yeah, I mean,  
4 I think that's the issue here, right? Like neither  
5 side should have witnesses or -- expert or otherwise  
6 at this hearing. Though the co-counsel is being  
7 offered as co-counsel and not as expert witness,  
8 would be limited to what is in the scope of the  
9 briefing.

10 So really, it comes down to: Do the  
11 commissioners have specific issues that -- that  
12 second counsel would be able to address that  
13 Mr. Savage would not be able to address if that's  
14 already in the briefings? I'm leaning towards --

15 MR. SAVAGE: Mr. Chair -- I'm sorry.  
16 Mr. Chair, if I may -- I'm sorry to interrupt, but  
17 if I may. If this would help, if I cede any  
18 additional time that I have available to my  
19 co-counsel, Mr. Anderson, would that help resolve  
20 this -- this matter?

21 CHAIR CHANG: Mr. -- go ahead,  
22 Commissioner Bloom, please.

23 COMMISSIONER BLOOM: Mr. Chair, I  
24 believe that -- you know, typically for these sorts  
25 of motions in front of the OCC, each side comes

1 prepared. Their -- they select a lead attorney, and  
2 that person makes their arguments. And that's -- I  
3 can't think of another time we've done it  
4 differently, so . . .

5 CHAIR CHANG: Fair enough. So my  
6 apologies, Dr. Ampomah.

7 And my apologies if anybody traveled  
8 without the opportunity to hear today.

9 But I would -- I will defer to -- what I  
10 will agree with Commissioner Bloom's advice and --  
11 rather that we continue today.

12 Mr. Savage, do you have anything else to  
13 add from your side or can we open the floor for  
14 commissioner questions?

15 MR. SAVAGE: I guess open the floor  
16 for questions. Thank you.

17 CHAIR CHANG: Okay. Appreciate it.  
18 Dr. Ampomah or Commissioner Bloom, I turn the floor  
19 over to you two.

20 COMMISSIONER BLOOM: Mr. Chair, I  
21 just have, I think, a couple quick questions.

22 CHAIR CHANG: Go for it.

23 COMMISSIONER BLOOM: Yeah.

24 Mr. Rankin, Mr. Savage stated that -- if there's any  
25 legal taking here. I wanted you to address that

1 specifically.

2 And, Mr. Savage, you can have the  
3 opportunity to rebut.

4 MR. RANKIN: Yeah, I appreciate that.  
5 I mean, I think -- I think it's important to  
6 understand what -- first of all, I'm not going to go  
7 into detail about what a legal taking is. A taking  
8 is a -- taking a property without compensation.  
9 That's not the case. Okay? As demonstrated by  
10 the -- this, in fact, presentation of the data  
11 offsetting.

12 There is a clear demonstration that  
13 operator -- that owners in the Third Bone Spring  
14 will get more production and Wolfcamp owners will  
15 get more production under Permian's plan because of  
16 the co-development.

17 When you co-develop properties and you --  
18 and you just complete them and stimulate them at the  
19 same time, you're going to get a more complex  
20 fracturing between -- between the two benches. And  
21 you will get more production, and that was -- that  
22 will be demonstrated at the hearing on the merits.  
23 But that's what's happening when you co-develop.

24 And that's why when you co-develop and  
25 stimulate at the same time, you get enhanced

1 production. And that was what was the purpose of  
2 this test, to show that offsetting. And that's why  
3 they didn't drill the Wolfcamp immediately adjacent  
4 to this Wolfcamp co-develop test.

5 So, in fact, when you look at it and you  
6 compare between the two, is there a taking from the  
7 Bone Spring owners as a result of the drilling of  
8 the Wolfcamp? Well, the answer is no, because these  
9 owners are actually getting more production and more  
10 value. The Wolfcamp owners, are they getting a  
11 taking occurring to them? No, because they're  
12 getting more production and more value.

13 What is important to understand, when you  
14 look at the definition and the statute and the  
15 regulation of what correlative rights are, okay,  
16 it's difficult to ascertain specifically with  
17 complete accuracy how much oil or gas is -- is due  
18 to any one owner. And it's what -- the way the  
19 correlative rights statute and regulation is set up,  
20 it's based on what is practicably determined. Okay?  
21 What can be practicably determined.

22 Coterra proposes that can be practicably  
23 determined using a phi height formula. But as shown  
24 in the evidence, that is not the case. So what is  
25 the alternative? The alternative is to -- is to

1 co-develop. And not only is that the best  
2 alternative, but it also results in the best  
3 production. And so while we -- you know, while  
4 we're not having an allocation -- which is a  
5 separate allocation from what the statute requires,  
6 okay, which is, per se, protective of correlative  
7 rights, because it's what the statute requires -- we  
8 are also showing that by doing what the statute  
9 requires, you're also protecting correlative rights,  
10 and there is no taking.

11 Now, I want to make sure one other thing  
12 is abundantly clear for the Commission so the  
13 Commission is not misled. Mr. Savage referred to  
14 this case, the Rutter & Wilbanks case, and he said  
15 that the Commission in that case diverged from  
16 statutory formula. That is not the case.

17 The Commission, as you'll see in -- and  
18 I've highlighted in yellow here. This is -- you'll  
19 see this is the Rutter & Wilbanks case that he was  
20 referring to. In that opinion, they specifically  
21 state that what the Commission did was, establish "a  
22 participation formula giving each owner in the unit  
23 a share in production in the same ratio as his  
24 acreage bears to the acreage of the whole units."

25 That's exactly what the statute says.

1 They did not diverge from what the statute required.  
2 And they did what the statute required. It's  
3 exactly -- it's exactly what the statute says, which  
4 is exactly what we say needs to be done here. Okay?

5 So there is no taking. There is no taking  
6 because the owners are going to both get more than  
7 they otherwise would get.

8 COMMISSIONER BLOOM: Mr. Savage?

9 MR. SAVAGE: Yes. Thank you,  
10 Commissioner Bloom. If -- okay. If Mr. Rankin  
11 would pull that Rutter's statement, holding up.

12 So in that Rutters case -- so the literal  
13 terms of the pooling statute, it says that in order  
14 to account -- in order to determine the original  
15 ownership, you first have to do it on a -- you have  
16 to determine what the surface acres -- what the --  
17 each individual tract, based on the surface tracts,  
18 would be allocated production.

19 So -- and there could be a whole number of  
20 owners within a particular surface tract. If you  
21 project it down onto the unit of the -- that's going  
22 to be producing the minerals. So you could have,  
23 for example, five owners within -- within a  
24 particular tract, based on the surface acreage,  
25 based on the shape and size of the surface tract.

1     Okay?

2                 So those five owners within that tract  
3     would be allocated ownership based on how much is  
4     allocated specifically to the specific service  
5     tract. Okay? So if the geologist says that's a  
6     nonproductive tract in that particular area in the  
7     unit -- that particular area in the unit, that tract  
8     would not produce any hydrocarbons, then those five  
9     owners in that tract get zero. They get zero  
10    production. Okay?

11                That's -- that's what occurred in this  
12    Rutter's case. And so instead of applying the  
13    literal language of the pooling statute, which says  
14    you have to allocate to the surface tract, what they  
15    did is, they allocated -- instead of on the basis of  
16    a surface tract, they allocated across the unit on  
17    an individual basis.

18                So everybody -- regardless of where you're  
19    located, everybody who has net acres in that unit is  
20    going to get the amount of interest as the net acres  
21    is in proportion to the total acres of the unit.  
22    That's completely different, very different. That's  
23    a total deviation from the pooling statute. And  
24    they did that to protect the correlative rights of  
25    these owners in this one tract where they thought



1     that tract would not produce.

2             So in terms -- in terms of a taking -- so  
3     it -- the OCD actually found that these Wolfcamp  
4     wells that Permian Resources plans to drill just in  
5     the Upper Wolfcamp and produce, they are --  
6     that's -- those wells are going to take actual  
7     production from the Third Bone Spring. And  
8     actually, it's going to be the majority of  
9     production going to those Wolfcamp wells. It's  
10    going to come from the Third Bone Spring because  
11    that is the most productive interval, and that was  
12    found to be the most productive interval by the  
13    Division and by the -- Coterra's geologists. Okay?

14            Now, there are owners -- there are owners  
15    in the Upper Wolfcamp who own exclusively in the  
16    Wolfcamp. They do not own in the Third Bone Spring  
17    at all. Therefore, they would -- they have no right  
18    to receive any production from the Third Bone  
19    Spring. But Permian Resources is going to give --  
20    distribute that allocation, that production to those  
21    owners that own only in the Upper Wolfcamp. They're  
22    going to give -- probably two-thirds of that  
23    production comes from the Upper Wolfcamp -- from the  
24    Third Bone Spring. They're going to give it to  
25    those owners that have no right. That is a classic

1 textbook taking.

2 Now, it doesn't matter that -- we don't  
3 know -- we don't know what the -- what the overall  
4 allocation would be in the Wolf, but we don't know  
5 that the Third Bone owners are going to receive more  
6 or that the -- or to compensate that loss -- to  
7 compensate that taking. Basically, the Wolf Bone  
8 Reservoir is a single reservoir that has a -- that  
9 has a limited and restricted EUR.

10 Now, if you drill two duplicate sets of  
11 wells, you may accelerate production, but you're not  
12 going to get extra production. If you drill the  
13 Basil Third Bone Spring, you're going to get the  
14 same EUR, practically. There might be some  
15 negligible difference, but that is very speculative.  
16 So you are going to get the same EUR, and you're  
17 going to get it in a matter that prevents the actual  
18 taking.

19 Now, if you'll -- in a footnote in our  
20 Motion to Stay, we cite Manning vs. Energy,  
21 Minerals. And -- so it says -- actually, there was  
22 a holding. It's New Mexico Supreme Court that shows  
23 that an agency that uses its police powers to  
24 authorize a taking without compensation is  
25 unconstitutional and it's subject to the takings

1 class.

2 So we think this is a very serious legal  
3 issue. And we think this is a legal issue that  
4 prohibits -- that would prohibit, as a matter of  
5 law, Permian Resources' development plan that's  
6 proposed.

7 COMMISSIONER BLOOM: Thank you,  
8 Mr. Savage.

9 So my next question to both of you, then,  
10 and I think kind of extends from -- from this.

11 Mr. Savage, why did we see this exodus of  
12 working interest owners from Coterra to Permian  
13 Resources? Looks like, you know, people voted with  
14 their feet here. Most of the companies that come in  
15 front of us are pretty savvy. They do an economic  
16 analysis. I guess probably the last question here  
17 would be: Are you suggesting that -- that these  
18 companies are allowing their minerals to be taken  
19 then?

20 MR. SAVAGE: Commissioner Bloom,  
21 that's a good question. So if you look at that, the  
22 first group is the Hudson Group. And I believe that  
23 they -- they're a family that has a lot of ownership  
24 interest. They have been supporting Coterra since  
25 the concept -- its conception of its plan. And

1 they -- they did gravitate.

2 Now, I would say that their motivation  
3 would probably be, they just want the wells drilled.  
4 And I don't -- you know, they -- I don't think they  
5 understand the full implications of this -- this  
6 order. I think the -- the order is -- clearly  
7 misapplied the Commission policy.

8 Commission -- Commission orders and OCD  
9 orders are like the case law of the Commission and  
10 the Division. They are equivalent, setting  
11 precedent, setting conclusions of law within the  
12 parameters of application of the Oil and Gas Act,  
13 the same as district court cases set precedent.

14 The -- the order clearly misstates  
15 Commission policy, and it does that and -- and it  
16 uses that misstatement to exclude a very important  
17 issue of waste.

18 I don't think that somebody like the  
19 Hudson Group could understand -- understands the  
20 full legal implications. I don't think that they  
21 understand the liability the other owners could  
22 possibly act upon and it all -- because based on the  
23 taking, that they, as working interest owners, would  
24 possibly be entangled in and be involved in. I  
25 think they just see that the Division, they assume

1 it has expertise and that they, you know, want to  
2 get those wells drilled.

3 Now, if I -- if I'm correct, I don't  
4 believe the Hudson Group actually issued a letter.  
5 I believe Javelina --

6 Is that correct, Mr. Rankin? In their --

7 The Hudson Group did not actually issue a  
8 letter of support. Javelina has a much smaller  
9 interest, issued a letter of support. So that's  
10 one. And then -- let's see, what was the other  
11 letter of support? There was one other letter of  
12 support.

13 So I -- that does not address all the  
14 working interest owners. The Hudson Group is -- is  
15 the larger group. They claim -- Permian Resources  
16 are claiming that it creates like about a 25 percent  
17 working interest difference now; however, they are  
18 basing their calculation of working interest based,  
19 again, on presumption that these are two separate  
20 pools.

21 So they calculate working interest in  
22 terms of the working interest for the Wolfcamp and  
23 then working interest for the Third Bone Spring.  
24 But actually, what we're looking at is the working  
25 interest in the Wolfbone Pool. And if you actually

1 do the calculations of the Wolfbone Pool based on  
2 the weight of each interval that would be  
3 contributing, you actually get a very different  
4 calculation of working interest that very much  
5 closes that gap.

6           At the time of the hearing, using the --  
7 looking at the -- after the Wolfbone Pool was  
8 created, we ran numbers that looked at the working  
9 interest. And in that working interest, Cimarex --  
10 or Coterra was way ahead of the game in terms of  
11 working interest. We believe that if you run the  
12 numbers based on the allocation of the Wolfbone --  
13 the Wolfbone Pool itself, you would get probably --  
14 interest that's probably closer to being on par.

15           And he also should point out that, you  
16 know, in the seven factors that the Commission and  
17 the Division considers, those are prioritized, and  
18 geology is the number one factor. And I believe  
19 working interest is down at the bottom, somewhere  
20 around number six.

21           So working interest is not dispositive.  
22 And if -- if there's a legal issue that prohibits a  
23 development plan, it doesn't matter how many working  
24 interest owners would support it. It is just  
25 prohibited under the Oil and Gas Act.

1           And the -- geology is number one, and we  
2 wouldn't be here today unless Coterra's geology was  
3 correct and Permian Resources' geology was wrong.  
4 And that's what it turned out to be. We proposed --  
5 from the very beginning, we even asked for a  
6 prehearing conference to confirm that the Third Bone  
7 Spring interval and the Upper Wolfcamp interval  
8 represented a single reservoir and that the Division  
9 should make a decision based on that.

10           And Permian Resources fought that tooth  
11 and nail all the way up to the hearing and through  
12 the hearing. And then if you notice that the final  
13 order that was issued, they confirmed Coterra's  
14 geological analysis, and they rejected Permian  
15 Resources premise that there are two pools.

16           So I do not think the working interest is  
17 dispositive. I don't think it's reflective of the  
18 actual intent of all the working interest owners or  
19 the harm that they would receive from the  
20 implementation of this plan.

21           COMMISSIONER BLOOM: All right.  
22 Thank you, Mr. Savage.

23           Mr. Rankin?

24           MR. RANKIN: The question is why do  
25 I -- why do I think that working interest owners

1 shifted over to Permian Resources' plan?

2 COMMISSIONER BLOOM: Correct, yes.

3 Or just -- yeah, if you have any sort of response to  
4 Mr. Savage there.

5 MR. RANKIN: Yeah. I mean, I  
6 think -- you know, I can't speak for them or what  
7 they think, only what they put on the paper.

8 Hudson Group and Javelina, they are a very  
9 savvy group. They've been around for a long time,  
10 and they have been involved with many, many deals.  
11 And they've -- I think very well understand what's  
12 at play here and understand the benefit of  
13 co-development.

14 And so I think, you know -- without  
15 speaking for them, all I can say is, I think the  
16 numbers and the offsetting tests speak for  
17 themselves. And I think ultimately, that is what is  
18 driving the interests of the parties, is to maximize  
19 production for the benefit of all, including the  
20 State, and that is what the offsetting test shows.

21 And that's the development plan that  
22 Permian has implemented in all of its offsetting  
23 tracts and tends to do so here and is eager to be  
24 able to get that development project on the ground  
25 and running.



1 COMMISSIONER BLOOM: All right.

2 Thank you. No further questions.

3 CHAIR CHANG: Dr. Ampomah?

4 COMMISSIONER AMPOMAH: Thank you,  
5 Mr. Chair. I do have some -- few questions for both  
6 parties.

7 So the first one is to Mr. Savage. So  
8 just following up from the previous -- just the end  
9 of previous discussion. So there is a shift of the  
10 working interest owners to the site -- to the site  
11 of Permian. So then how are you going to operate if  
12 you do not have the majority interest, you know,  
13 let's say to more or less develop those pools?

14 MR. SAVAGE: Okay. Thank you,  
15 Commissioner. So those -- those few letters, and  
16 they're not a substantial amount, they are just a  
17 support letter. They are not -- although I  
18 believe -- okay. So Hudson Group did sign a JOA.

19 But if you look at just the amount of  
20 working interest, we are still on par. We have a  
21 substantial amount of working interest and are still  
22 on par, for all practical purposes, with Permian  
23 Resources. Like I said, working interest is a lower  
24 factor in the factors that the Commission and  
25 Division consider.

1           Now, if the Commission decides that  
2   Coterra's plan, as a matter of law, protects not  
3   just -- not just, you know, popular support, but as  
4   a matter of law, protects correlative rights and  
5   prevents waste and Permian Resources does not, then  
6   an order issued to Coterra would allow Coterra to  
7   control and govern all of the working interest.

8           So there would not -- they would be able  
9   to operate under an order, a pooling order issued to  
10   Coterra because all -- at that point, all the  
11   interest would be pooled in the unit, and Coterra  
12   would be granted operatorship with the right to  
13   operate that interest. So that -- you know, that's  
14   really how that operates.

15           So, you know, that is why this question of  
16   a matter of law and taking is really the critical  
17   question. And, you know, it's -- you know, it's a  
18   complicated legal question, and I really do think  
19   that -- I know the Commission said they didn't want  
20   to hear from Mr. Anderson, although Commissioner  
21   Ampomah said he would consider it. But I really  
22   think that it would be -- benefit to the Commission  
23   to have the analysis provided by Mr. Anderson.

24                   COMMISSIONER AMPOMAH: Thank you,  
25   sir, for your response.

1           Now to Mr. Rankin. So in your  
2 presentation, you talked about, there will be no  
3 out-of-pocket costs to the other owners. So can you  
4 explain that to the Commission?

5           MR. RANKIN: Thank you, Dr. Ampomah.  
6 Under the pooling statute, once a pooling order is  
7 issued, the operator who's been awarded the right to  
8 operate a spacing unit under a pooling order is then  
9 required to submit AFEs and an opportunity to elect  
10 under the pooling order.

11           So if a party hasn't already voluntary --  
12 voluntarily joined into a proposed JOA and is  
13 voluntarily committed to the development of that  
14 acreage, once a pooling order is issued, the  
15 operator is required to send out an updated  
16 opportunity to elect under the pooling order --  
17 pooling order substituting for a -- for a JOA.

18           At that point, then, a forced-pooled  
19 interest owner has the opportunity to elect to  
20 participate and pay their share of the costs under  
21 the pooling order. Or they can elect to go  
22 nonconsent and not pay their share under the pooling  
23 order.

24           If they elect to go nonconsent because  
25 they don't think it's a good plan, they think it's

1 ill-advised or imprudent, then they are deemed a  
2 nonconsenting pooled working interest owner, and  
3 they don't have to pay any money out of pocket.  
4 The -- but as a -- as a consequence, however, they  
5 are normally assigned a 200 percent -- maximum  
6 200 percent interest charge, risk charge, plus  
7 actual charges. So that -- that amount comes out of  
8 the production from the well.

9 So they don't have to pay anything out of  
10 pocket, but once the well produces, then their share  
11 of costs comes out of production until the well pays  
12 out, and then they -- and then they get their share  
13 of the revenue.

14 COMMISSIONER AMPOMAH: Thank you.  
15 Mr. Rankin, so did Permian oppose the de novo  
16 request from Coterra?

17 MR. RANKIN: Is your question, Dr.  
18 Ampomah, whether Permian sought the de novo appeal?

19 COMMISSIONER AMPOMAH: No, no, no.  
20 Are you opposing the de novo --

21 MR. RANKIN: Oh.

22 COMMISSIONER AMPOMAH: Yeah.

23 MR. RANKIN: Yes, 100 percent. Yes,  
24 we oppose it, and we want to -- well, I mean, we  
25 have to -- I mean, by statute, Coterra has a right

1 to de novo hearing, but we continue to oppose  
2 Coterra's planned development and think that Permian  
3 Resources' plan is the proper and most prudent plan.

4 COMMISSIONER AMPOMAH: So I'm asking  
5 this to both parties. Is there any items that has  
6 changed, you know, from the original case, aside  
7 from the working interest that we have just  
8 discussed?

9 MR. SAVAGE: If you don't mind, I'll  
10 answer that initially. But, Mr. Ampomah, if I may  
11 just make a comment real quick on the question that  
12 you asked Mr. Rankin about the costs under the  
13 pooling order.

14 So Permian Resources have been required,  
15 has been mandated to drill 48 wells in a year. And  
16 there is -- there is no way. They actually  
17 acknowledged under the hearing that there is no way  
18 they can do this. That is a total cost of  
19 \$529 million, or thereabout -- I think that's the  
20 correct -- somewhere in that range, over  
21 \$500 million. And that's \$256 million more than  
22 Coterra's plan. That's a quarter of a billion  
23 dollars more than Coterra's plan.

24 Now, Mr. Rankin is correct. He mentioned  
25 that there's a 200 -- a party can go nonconsent, but

1     there is a 200 percent penalty, risk penalty that  
2     you incur when you do that.  When you start applying  
3     the risk penalty to those amounts, that is a huge  
4     cost that you incur that would -- we believe -- we  
5     believe that additional \$256 million is economic  
6     waste and violates correlative rights.

7             But, you know, we want to make sure that  
8     there is a perspective on what it means to go -- the  
9     consequences of going on consent.

10            So, tell me -- I'm sorry, tell me your  
11     original question, the question I --

12                    COMMISSIONER AMPOMAH:  Mr. Savage, so  
13     I'll follow up with your response on what -- on what  
14     you just said.  Now, is it also the case for Coterra  
15     that -- let's say the Commission grants you your  
16     request to develop, you're also now going to apply  
17     the 200 percent to the other parties who do not  
18     consent to participates?

19                    MR. SAVAGE:  Coterra -- Coterra wants  
20     to participate in the development plan, but they  
21     want to participate in the development plan that's  
22     economically reasonable, not economically  
23     irrational.

24                    As you can see on those Batman wells, they  
25     did not drill all of those Wolfcamp wells that they

1 proposed. They proposed the same kind of stack  
2 that -- that -- that -- in the Batman that they did  
3 in the Joker and the Bane, but they did not follow  
4 through because these know it's an economic waste.  
5 And now the OCD has mandated that they drill all  
6 those Wolfcamp wells.

7 But in terms of -- in terms of the  
8 exact -- the exact plan that's going to be proposed  
9 under de novo -- I believe that was your question.  
10 You know, is there going to be any modifications?  
11 Do I understand that correctly?

12 COMMISSIONER AMPOMAH: Yeah. So the  
13 last -- the question was: Is there any items that  
14 has changed, you know, from the original case that  
15 the OCD issued the order?

16 MR. SAVAGE: Is there any -- any  
17 change that has occurred since the last case that  
18 the Commission should take into consideration?

19 COMMISSIONER AMPOMAH: You can put it  
20 that way, yes.

21 MR. SAVAGE: So let me just address a  
22 couple of aspects of that -- of that question. So  
23 one is, when Coterra developed this plan, they --  
24 they saw very well that the Basil Third Bone Spring  
25 is the emphasis, is the primary produce -- the Third

1 Bone Spring is the primary producer. The Upper  
2 Wolfcamp is ancillary. The Batman -- the Batman  
3 plan that Permian Resources did, you know, basically  
4 confirms that.

5 And it basically mirrors Coterra's plan of  
6 emphasizing the Basil Third Bone Spring. They  
7 drilled one token well in the Upper Wolfcamp, and  
8 they're claiming that that is sufficient to prevent  
9 waste. But -- so, you know, on a de novo review,  
10 you know, we still have the same basic plan, and  
11 that is, emphasis of producing from a location at  
12 the Basil Third Bone Spring.

13 But as Permian Resources pointed out in  
14 its response to our Motion to Stay, you know,  
15 these -- these plans were originally configured also  
16 influenced by there being two pools. So it's  
17 possible that it might be -- it might be useful to  
18 consider an additional single Wolfcamp well properly  
19 positioned that might account for some incremental  
20 interest. And I think that -- I think our --  
21 Coterra discussed that during the hearing, and I  
22 believe that Coterra -- Permian Resources referenced  
23 that discussion.

24 So I think given the fact that we're  
25 looking at this decision in relation to a newly



1 created Wolfbone Pool that was created after the  
2 decision -- after the contested hearing that was  
3 based on there being -- the presumption of there  
4 being two pools, I think that really kind of changes  
5 the number of issues that the OCC might want to  
6 consider and allow, you know, maybe some variation  
7 to account for this new addition of the Wolfbone  
8 Pool that OC -- the OCD confirmed that Coterra's  
9 geology was correct.

10 So the other thing that I really would  
11 like to emphasize, that thing -- that what has  
12 changed, and that is the nature of the Division  
13 order. And we feel -- if you look at that, we talk  
14 about it in our Motion to Stay. Very clearly we  
15 isolate the provision that the Division used to  
16 exclude all the evidence that addressed -- and the  
17 questions that addressed economic waste. And they  
18 actually changed that.

19 They actually changed that statement.  
20 They altered the meaning of the statement and the  
21 purpose of the statement, and they use it to exclude  
22 a comparison of the total development cost  
23 between -- and that statement was never intended --  
24 that statement was intended only to look at  
25 individual AFEs on individual vertical wells.

1           And to use that to exclude a whole area of  
2 waste that the statutory definition requires -- and  
3 case law requires you to include and to address,  
4 we -- we feel that's a gross misapplication. And  
5 we -- actually, we think that the -- if the OCC  
6 decides in favor of whatever party, decides in favor  
7 of Permian Resources, decides in favor of Coterra,  
8 that order needs to be rewritten to -- in order to  
9 address the negative policy implications and  
10 consequences of that order.

11           So, you know, that -- I would say that's  
12 really an important consideration, that that order  
13 needs to be revised to account for the negative  
14 policy implications of promoting the drilling in  
15 unnecessary wells and promoting excessive emissions,  
16 which we think it violates the executive order and  
17 the State's initiatives.

18           COMMISSIONER AMPOMAH: Mr. Savage, so  
19 you made a comment that, in your view, interest  
20 owners did not, you know, fully ascertain the order  
21 that was issued by the -- by the OCD. Do you have  
22 any evidence to this or just speculative thoughts?

23           MR. SAVAGE: You know, I have hearsay  
24 evidence in discussions with my client. If you want  
25 to hear that -- because the OCC and the OCD can --

1     they can -- they can review -- they can consider  
2     hearsay as -- as probative evidence. But, you know,  
3     that would be up to you.

4                   COMMISSIONER AMPOMAH: So you also  
5     made a comment that -- or what I -- what I got from  
6     your comment -- or your statement was that the OCD  
7     did not do due diligence on the geology; is that  
8     correct?

9                   MR. SAVAGE: Yes. We think that that  
10    is -- we -- I mean, it's clear on record. When the  
11    parties went to the OCD to get the pool  
12    classifications, they designated the Third Bone  
13    Spring interval as a separate pool and common source  
14    of supply. Then the Upper Wolfcamp interval, also  
15    they designated as a separate common source of  
16    supply.

17                  Now, our geological analysis from the very  
18    beginning, that's why we -- we maintain -- we stood  
19    by our geological analysis, and that's the number  
20    one factor. That is the number one factor to  
21    consider in granting operatorship, is the nature of  
22    the geology. We were correct on that.

23                  And we actually asked for a prehearing  
24    conference. We wanted the Division to look at  
25    the -- to reevaluate these two pools and determine

1 whether or not there are two pools and two  
2 reservoirs or a single reservoir and one pool. And  
3 the OCD refused to -- they agreed to the objections  
4 of Permian Resources. They said that the OCD, it  
5 wasn't their responsibility to assign pools, even  
6 though they did. I mean, it is their  
7 responsibility. It is our responsibility to -- I  
8 guess, to argue that during the hearing.

9           So they agreed with Permian Resources, so  
10 we did not have a prehearing conference that would  
11 have determined it was a single reservoir. And we  
12 went through the whole contested hearing on the  
13 presumption -- on the assumption that it was two  
14 pools. And under cross-examination, Permian  
15 Resources, their witnesses admitted that there was  
16 no natural barrier and no baffling between those  
17 intervals, and it constituted, you know, a shared  
18 production.

19           So the OCD, instead of awarding one of the  
20 parties operatorship, which we believe they should  
21 have awarded us -- and we don't know what the  
22 original -- we don't know what the original hearing  
23 examiner actually -- what her report was. We don't  
24 know what she recommended to the Division about who  
25 should be operator because that has not been

1 disclosed.

2 But we -- you know, but she was -- she's a  
3 very sophisticated hearing examiner with lots of  
4 experience in oil and gas. So we would not imagine  
5 that she would have granted -- or recommended that  
6 Permian Resources be granted operatorship, but we  
7 don't know because we had a change of hearing  
8 officers and transitions, and other -- other folks  
9 took over the supervision.

10 So -- so nine months after the contested  
11 hearing, the OCD issues an order, and they confirm  
12 Coterra's geological analysis. And then that's when  
13 they asked the parties to propose an application for  
14 a Wolfbone -- for a Wolfbone Pool, which we did.

15 And -- and we -- and Coterra joined in a  
16 joint Wolfbone application on the reliance that it  
17 would be able to later submit its allocation formula  
18 and revised pooling applications. And that was --  
19 we saw that as being agreed to at the -- at those  
20 hearings for the Wolfbone Pool. And then that was  
21 later denied. We feel that's arbitrary -- that was  
22 arbitrarily and capriciously denied.

23 And so -- yes, so the -- you know, we're  
24 two years out now. If we would have had that  
25 prehearing conference, we -- this thing would have

1     been settled at the contested hearing at this point,  
2     we believe. But the OCD did misclassify those, and  
3     then they fortunately corrected and created the  
4     correct pool. But they allowed Permian Resources to  
5     maintain its antiquated development plan that was  
6     based on two pools and unnecessary wells for that  
7     Upper Wolfcamp.

8                   COMMISSIONER AMPOMAH: Thank you for  
9     that. So I do have one question for Commission  
10    counsel.

11                   So, Commission counsel, you know, we've  
12    listened to Mr. Savage and Mr. Rankin with regards  
13    to the illegalities that Mr. Savage pointed out.  
14    You know, I wrote down two items. One is all the  
15    misapplied -- meaning the OCD order misapplied OCC  
16    precedents, order misstate OCC policy. And then he  
17    also talked about, you know, the apparent order do  
18    have negative policy implications. I mean, can you  
19    comment on this?

20                   MR. SHANDLER: Mr. Chair, I cannot  
21    comment right now. These are just allegations, and  
22    the allegations are that the Division hearing  
23    officer acted inconsistently with prior precedence.  
24    And I have not conducted a review to give you an  
25    analysis at this point.

1                   COMMISSIONER AMPOMAH: So here, we do  
2 have two issues. One is the de novo request, and  
3 then one is the Motion to Stay.

4                   Is it correct that these are all  
5 interdependent on each other? Because if we pick  
6 out the de novo case, then automatically does that  
7 stay -- does that stay the motion? Or no? I just  
8 need some guidance on that.

9                   MR. SHANDLER: Mr. Chair, I do not  
10 think taking up the de novo grants an automatic  
11 stay. And I base that on the fact that they have  
12 filed the motion.

13                   I do not know the practical effect -- the  
14 lawyers have been arguing the law -- or the status  
15 of the current application is. Nor have we heard  
16 the specifics of when the lawyers intend to have the  
17 hearing, how long it will last, when the decision  
18 might be reached.

19                   But I'm talking too much. Your question  
20 was: Does a filing of a de novo create an automatic  
21 stay? The answer is no.

22                   COMMISSIONER AMPOMAH: Okay.  
23 Mr. Chair, I will not have any further questions at  
24 this time. Thank you.

25                   CHAIR CHANG: Okay. Thank you.

1 Unless commissioner -- do the commissioners feel  
2 like we're ready to deliberate on at least -- let's  
3 take them separately. We'll deal with the status  
4 and the scheduling separately. Let's just deal with  
5 the motion on the stay at the moment -- Motion for  
6 Stay. Are you ready for deliberations?

7 I'd like to -- this is my first one, and  
8 I'm not ready to have a deliberation in -- I'd like  
9 to have a closed -- or an in-camera for  
10 deliberations. So if -- no objections to  
11 deliberating at this time, Commissioners?

12 COMMISSIONER AMPOMAH: Yeah, I do  
13 support closed session to deliberate on this. So,  
14 yeah, I do support your suggestion on this one.  
15 Thank you.

16 CHAIR CHANG: Okay. You were saying  
17 something, Commissioner Bloom?

18 COMMISSIONER BLOOM: I'm sorry, yes.  
19 Yes, Mr. Chair, I would be comfortable with a closed  
20 deliberation. And perhaps just one final question  
21 for Mr. Rankin -- I'm sorry -- for Mr. Savage,  
22 regarding how this plays out, if you'd permit me?

23 CHAIR CHANG: Of course, please.

24 COMMISSIONER BLOOM: Mr. Savage, so  
25 you're asking for the -- if you can just speak to



1 the necessity of the stay before the de novo.

2 MR. SAVAGE: We believe that the stay  
3 is necessary. We believe that we've fulfilled all  
4 of the Tenneco tenets for satisfying the stay.

5 We also feel like there is a due process  
6 issue that should be considered. And that is the  
7 70-2-13, which grants a de novo hearing. We -- we  
8 don't see where if -- you would have a fair de novo  
9 hearing if, while you're having a hearing on the  
10 merits, that Permian Resources is out there drilling  
11 their wells and implementing their plan and  
12 basically permanently damaging -- from our  
13 perspective, damaging the subject lands.

14 It would seem like it would be more fair  
15 to allow a hearing on the merits, especially -- now,  
16 I can see in a situation where you don't meet any of  
17 the Tenneco tenets, you don't have any arguments,  
18 there's no policy issue, and there's no serious  
19 issue on a legal matter, a breach of the Oil and Gas  
20 Act and a clear violation of -- if you don't have  
21 any of those, I could see where you would not grant  
22 a stay and allow, you know, a party -- parties to go  
23 forward on the hearing on the merits, because there  
24 is less risk.

25 But here we have a whole variety of

1 issues, matters of law which we feel very  
2 strongly -- and those are appealable issues, you  
3 know, to -- to district court. It would be the next  
4 level.

5 And, you know, the policy issues that --  
6 this is an order that actually encourages the  
7 drilling of unnecessary wells. And it encourages it  
8 as a pretext for parties, for larger companies who  
9 can actually afford to drill a lot more wells. They  
10 can present, let's say, "We're going to drill six  
11 wells in this unit because we're going to have --  
12 we're going to prevent incremental underground  
13 waste." And it doesn't matter that you have all  
14 this economic waste that the owners have to pay for,  
15 because that's not even a fact to be considered when  
16 it is under the Oil and Gas Act.

17 And they can -- they can do that as a  
18 pretext, and then they can just like go down their  
19 way and say, "We'll drill whatever we want." You  
20 know, "We've been granted operatorship. We said  
21 we're going to drill four wells in the Upper  
22 Wolfcamp, but we have this Batman development plan.  
23 We're just going to drill one token Upper Wolfcamp  
24 well."

25 I think those are serious policy issues,

1 and I think a stay is warranted and merited and is  
2 very prudent under these circumstances.

3 COMMISSIONER BLOOM: Thank you,  
4 Mr. Savage.

5 Mr. Rankin, one -- one final question to  
6 you, as Mr. Savage reminded me of -- kind of going  
7 back to the beginning there with Tenneco. Should  
8 there be -- I'm not going to say how low of a bar,  
9 but how do we set a bar? How do you think about the  
10 Tenneco irreparable harm and harm to others if --  
11 you know, just to issue a stay? I mean, we are  
12 talking -- we've seen Mr. Savage's/Coterra's  
13 position that their development would cost  
14 \$250 million less. So that does get into some  
15 issues of waste and, you know, considerable harm to  
16 others, given the larger cost.

17 I'd like to know your thoughts on that,  
18 please.

19 MR. RANKIN: Thank you, Commissioner  
20 Bloom. That's the whole point of the Tenneco  
21 factors, is that an applicant seeking to stay an  
22 order has the opportunity to come forward to the  
23 Commission, and any administrative body, to present  
24 actual evidence that would justify issuance of a  
25 stay precluding an operator here under a validly

1 issued division order from going forward to do what  
2 they are not only authorized to do, but, as  
3 Mr. Savage pointed out, required to do, which is to  
4 drill these oils.

5 The fact that Mr. Savage is here arguing  
6 about economic waste but hasn't actually shown it  
7 with any data, I think is a strong indication that  
8 they're unable to meet the very first element of  
9 Tenneco.

10 In contrast, we have clear offsetting  
11 production that has been updated, showing that there  
12 is no economic harm. There is no economic waste.  
13 There's only increased production, increased  
14 revenue, and increased production taxes.

15 Now, Mr. Savage asserts that that's just  
16 one token well. Well, it's not the case. We  
17 actually have a whole other set of development in  
18 the Riddler -- partly in the Riddler and then in the  
19 Robin that is also immediately offsetting to the  
20 south. All that data will come out at the hearing.

21 My intention here was not to overwhelm the  
22 Commission with merits, but simply to show the one  
23 simple case with the most production data showing  
24 immediately offsetting that there -- that they can't  
25 meet the very first element.

1           So I understand the Commission's concern  
2   about harm, irreparable harm, but that's the whole  
3   point of this hearing and the whole point of the  
4   elements and the whole point of requiring the  
5   applicant to come forward with actual evidence and  
6   actual showing. And we didn't see that today.

7           COMMISSIONER BLOOM: Okay. Thank  
8   you. Thank you, all.

9           COMMISSIONER AMPOMAH: Mr. Chair, so  
10   just one follow-up, quick one.

11          CHAIR CHANG: Please.

12          COMMISSIONER AMPOMAH: Mr. Rankin --  
13   thank you.

14          Mr. Rankin, so are you saying that  
15   Mr. Savage or Coterra has not shown the harm? But  
16   assuming the Commission denied the stay and then  
17   Permian goes ahead and drills all the wells, would  
18   that not be harm to Coterra if the Commission is to  
19   consider the de novo case or to grant the de novo  
20   hearing?

21          MR. RANKIN: Let me put it this way,  
22   Dr. Ampomah. In many situations, there's going to  
23   be a party who wants their plan to be the one to be  
24   selected. Is it a harm to them that their plan  
25   wasn't chosen? Well, they probably feel badly about

1 it, and they want their plan to be the one that's  
2 being drilled. But unless they can show that  
3 there's actual waste or show that there's actual  
4 harm, then -- then they just have to be the upset  
5 loser, right? I mean, because they haven't  
6 demonstrated that -- the evidence necessary to  
7 effect a stay.

8 So, you know, the bottom line is that  
9 whenever there's a forced pooling where there's a  
10 contested -- a party contesting, they're going to  
11 argue that there's harm because they lost.

12 But the fact of losing itself isn't  
13 sufficient to justify stay. The fact that they lost  
14 is not sufficient to justify stay. They have to  
15 actually make a showing.

16 So if the Commission were to deny a stay,  
17 which would allow Permian to go forward and drill  
18 its wells, then Permian would do so at its own risk  
19 if, in the end, the Commission were, in the unlikely  
20 event, to overturn the Division and issue an order  
21 granting Coterra the right to develop this acreage.  
22 It would be at Permian's own financial risk because  
23 they would be the ones to drill the well.

24 MR. SAVAGE: Commissioner, if I may  
25 clarify some of that as a follow-up. So first of

1 all, the OCC and the OCD, they don't have  
2 enforcement powers. So if they -- if they deny the  
3 stay and Permian goes out and drills, what would be  
4 the remedy? It would be a very difficult situation  
5 to determine what the remedy would be and probably  
6 would end up going to district court and be tied up  
7 into all kinds of legal entanglements.

8 But let's look at, you know, what  
9 Mr. Rankin says about, you know, asserting harm  
10 during the contested hearing and then losing, you  
11 have to look at the basis of the loss and -- to see  
12 if that was legitimate.

13 So Coterra demonstrated and showed a lot  
14 of evidence, plenary evidence that there's economic  
15 harm and the disparity of the total development  
16 cost. Because a quarter of a billion dollars of  
17 additional and unnecessary wells would not justify  
18 any negligible amounts that would not -- that would  
19 be not added to the EUR. The EUR is pretty set in  
20 the Wolfbone Pool.

21 So what the OCD did, is they basically, as  
22 a matter of law, they ignored all that evidence that  
23 we presented, because they said that economic waste  
24 is not to be considered. Differences, disparities,  
25 and total development plan, a quarter of a billion

1 dollars difference is not to be considered. So  
2 that -- all that -- so they did not define that as  
3 economic waste, and that, as a matter of law, goes  
4 against statutory definition of waste.

5 Now, there's Supreme Court cases and --  
6 for example, Santa Fe Exploration, where a  
7 commissioner -- the Commission granted a right to an  
8 operator to drill a well and then to drill a second  
9 well without moving the rig off-site and coming  
10 back. And that was objected to by another operator  
11 because they said they didn't have a right to drill  
12 that second well.

13 The Supreme Court said the Commission has  
14 to consider it's obligated to prevent waste. They  
15 didn't say economic waste. They said waste. And  
16 what they said was, it would -- it would be extra  
17 cost to move the rig off the well and bring it back  
18 on. So it was justified to prevent waste on a  
19 purely economic basis to allow the operator to drill  
20 the -- subsequently and sequentially the second  
21 well.

22 Now, that is a pure -- and that's in  
23 Santa Fe Exploration vs. OCC. That is a pure matter  
24 of considering financial and economic waste to be  
25 waste under the statutory definition. And that is



1     what the Division completely disregarded. And that  
2     is the evidence that we're asking the OCC to  
3     consider anew, to consider de novo in this motion  
4     hearing.

5                     CHAIR CHANG: Okay. Any further  
6     questions from commissioners?

7                     COMMISSIONER BLOOM: Mr. Chair, one  
8     other, if you'll allow me?

9                     CHAIR CHANG: Of course.

10                    COMMISSIONER BLOOM: Just looking at  
11     19.15.4.23(A), do both parties agree that the  
12     de novo was filed -- the -- sorry -- the request for  
13     a de novo hearing was filed within 30 days from the  
14     time of the original hearing -- or decision, rather?

15                    MR. SAVAGE: I don't have any  
16     objections to that. And we counted out the days,  
17     and we see that we satisfied that rule.

18                    MR. RANKIN: I think, Commissioner  
19     Bloom, that I looked at it when they filed it, and  
20     they were within the timeframe. I'm sure I would  
21     have raised it at the time. I don't recall, having  
22     gone through so many different things since that  
23     time, whether -- you know, what my calculation was.

24                    But nevertheless, if it were not timely,  
25     that would be jurisdictional and anytime we would be

1     able to raise it. So I don't -- I don't know off  
2     the top of my head, but I'm sure I would have raised  
3     it if that were the case.

4                   COMMISSIONER BLOOM: Okay. Thank you  
5     both. Okay.

6                   Thank you, Mr. Chair. No further  
7     questions.

8                   CHAIR CHANG: Okay. Well, in that  
9     case, looking at the time, should we ask everybody  
10    to come back at around -- how much time do you guys  
11    want to reserve -- Commissioners, would you like to  
12    reserve for deliberation? Do you think we can be  
13    back by 11:30? Or should we ask -- or should we  
14    just give people a lunch hour and just have them  
15    come back after lunch?

16                  I see nodding from Commissioner Bloom  
17    there. Is 11:30 okay? 11:45?

18                  Dr. Ampomah, thoughts?

19                  COMMISSIONER AMPOMAH: Yeah, I mean,  
20    11:45 should be okay, but I don't know if the -- if  
21    counsel believe we can get this through by that  
22    time.

23                  CHAIR CHANG: Let's give it a --  
24    let's say 11:45. And if it turns out that we need  
25    longer than that, we'll just come back to the

1 general session and let people know that they should  
2 go to lunch. How about that?

3 MR. SHANDLER: This is -- some quick  
4 mechanics. I need a motion to go into closed  
5 session under 10-15-1(H)(3). Can someone make a  
6 motion to go into closed session under  
7 10-15-1(H)(3)?

8 COMMISSIONER BLOOM: Mr. Chair, I  
9 move to go into closed section under 10-15-1(H)(3),  
10 where we -- where we only discuss matters related to  
11 this case.

12 MR. SHANDLER: And I need a second.

13 COMMISSIONER AMPOMAH: And I second.

14 CHAIR CHANG: Sheila, can you call  
15 the roll, please.

16 MS. APODACA: Okay. Commissioner  
17 Bloom, do you --

18 COMMISSIONER BLOOM: Yes.

19 MS. APODACA: Yes.

20 Commissioner Ampomah?

21 COMMISSIONER AMPOMAH: Approved.

22 MS. APODACA: Okay. Commission  
23 Chair?

24 CHAIR CHANG: Yes.

25 MS. APODACA: Okay.

1 MR. RANKIN: Is there going to be a  
2 breakout session? Or how do we do it computer-wise,  
3 do you know?

4 MS. APODACA: I can send out a  
5 separate Teams meeting.

6 CHAIR CHANG: Okay. Great. We'll  
7 look for that in our emails then. Or --

8 MS. APODACA: Yes. Right now.

9 CHAIR CHANG: Okay. All right.  
10 Thank you. Please enjoy your coffee breaks,  
11 everybody.

12 (Recess was taken from 11:02 a.m. until 11:48 a.m.)

13 CHAIR CHANG: Okay. The  
14 commissioners and I deliberated, so we'll talk about  
15 our decision in the matter of the stay. Just let me  
16 pull up my -- everything I need here for -- in a  
17 second.

18 MR. SHANDLER: While you're doing  
19 that, can you just state for the record that only  
20 the matters discussed in the closed session were  
21 those listed in the motion? Can you confirm that?

22 CHAIR CHANG: Yes. Yes --

23 MR. SHANDLER: Thank you.

24 CHAIR CHANG: -- I can confirm that.  
25 Yes, we discussed only the -- only the

1 Coterra case in the closed session.

2 Give me a second here.

3 I'll give a brief just oral record here,  
4 and the commissioners please feel free to jump in  
5 and add whatever you feel is necessary. But after  
6 reviewing the papers that were submitted in this  
7 Motion for Stay and hearing the arguments of  
8 counsel, as well as having the -- the responses to  
9 the questions from the commissioners, we walked  
10 through the four factors for -- under Tenneco. And  
11 we find -- the commissioners found that there was  
12 sufficient showing under all four factors to support  
13 the granting of a stay pending de novo hearing of  
14 this matter.

15 Is there anything else you'd like to add  
16 on the record, Commissioner Ampomah or Commissioner  
17 Bloom?

18 COMMISSIONER AMPOMAH: Mr. Chair, not  
19 from my side. Thank you.

20 COMMISSIONER BLOOM: No, Mr. Chair.  
21 Thank you.

22 CHAIR CHANG: Okay. We will ask  
23 Commission counsel to finalize an order, and we will  
24 issue that forthwith.

25 MR. SHANDLER: Just for the record,

1 if you could make a motion granting the order to  
2 stay with a second and a vote, that would be great.

3 CHAIR CHANG: Of course.

4 Commissioners?

5 COMMISSIONER BLOOM: Mr. Chair,  
6 I so -- I move to grant the Motion to Stay.

7 COMMISSIONER AMPOMAH: Mr. Chair, I  
8 second.

9 CHAIR CHANG: Thank you. Did you  
10 want a roll call vote or is no objections good  
11 enough?

12 MR. SHANDLER: This one you can do  
13 oral vote.

14 CHAIR CHANG: Okay. Any objections?  
15 No objection. So moved. Stay is granted.

16 Okay. Now, if I could have the parties  
17 talk -- well, let's talk about setting this for  
18 hearing. Given that there is a stay, we would -- do  
19 like to minimize the delays in this matter and would  
20 like to set it as quickly as possible.

21 The commissioners currently have a meeting  
22 set for August 14th. Our July dates are already  
23 full. But we have an August 14th date, and the  
24 Commission is able to offer and set this for  
25 August 13th and 14th.

1           Is that -- I'd like to hear from parties  
2       as to whether that will be viable for the parties.

3           MR. SAVAGE: Mr. Chair, so I talked  
4       to my client prior to this hearing, and they said  
5       that they have witness problems because it's a  
6       summer, July and August. And September would be the  
7       earliest date we could get everybody together. I  
8       apologize for that. I don't know how to get around  
9       that. I can -- I can inquire again and tell them  
10      about the August 14th date and see if we can figure  
11      out a way to get folks arranged around that date.

12           CHAIR CHANG: Mr. Rankin, you're  
13      muted.

14           MR. RANKIN: Thank you, Commissioner  
15      Chair -- Chair Chang and commissioners. Permian  
16      Resources would strongly prefer to be able go  
17      forward in August; however, I can -- I can save a  
18      fight over that because I'm going to be out, and my  
19      co-counsel is not -- has a conflict on that date --  
20      around those dates and is unable to manage a  
21      contested hearing the week of August 14th.

22           So -- however, looking at the next  
23      availability, I understand from Ms. Apodaca that  
24      September potentially could work for the Commission.  
25      I have confirmed with my witnesses that the --

1 September would work. I do believe we should be  
2 able to get this done in two days.

3 So my -- my request would be to set this  
4 at the earliest opportunity in September. And if a  
5 special hearing is something the Commission would  
6 entertain, I'm open for that as well. The only date  
7 in September that doesn't work for my witnesses is  
8 September 10th. But otherwise, in and around the  
9 regularly scheduled meeting would work for Permian  
10 Resources. And we're eager to get this case heard  
11 and presented to the Commission.

12 Appreciate it.

13 CHAIR CHANG: Okay. Commissioners, I  
14 understand for Dr. Ampomah, once the school year  
15 starts, that is -- the calendar can get challenging.

16 September -- I mean, we currently have a  
17 regular meeting set for the -- for the 18th. I  
18 would be able to make myself available the 17th and  
19 the 18th. I don't know about the other two  
20 commissioners. If the 10th is not available, I --  
21 well, I would be available, too, if the 10th and  
22 11th is workable for everybody else. The 3rd or the  
23 4th of September is also viable.

24 What are your schedules like,  
25 commissioners?



1 COMMISSIONER AMPOMAH: Mr. Chair, so  
2 if we can do 18th and 19th of September, that works  
3 pretty well for me. I teach Monday and Wednesdays,  
4 so . . .

5 CHAIR CHANG: 18th and -- okay.

6 COMMISSIONER AMPOMAH: 18th and 19th,  
7 yeah.

8 CHAIR CHANG: I see.

9 Commissioner Bloom?

10 COMMISSIONER BLOOM: Let me get to  
11 the 18th and 19th.

12 If I'm not able to attend those days, I  
13 would have the Land Office appoint an oil and gas  
14 engineer to hear the case. So I think -- it's my  
15 short way of saying we can -- we can make that work.

16 CHAIR CHANG: Okay. Any objections  
17 from the parties to the -- setting this for the 18th  
18 and 19th?

19 MR. SAVAGE: No. No, Mr. Chair, that  
20 should work for us. I should be able to make that  
21 work.

22 There's another option that the Commission  
23 might want to consider that could actually expedite  
24 some of the proceedings. Now, the de novo hearing  
25 is a right that Coterra is granted when they apply

1 for it under the statute. But it's been clear that  
2 there are unresolved matters of law that have yet to  
3 be reviewed and determined. And it looks like that  
4 those matters of law would be dispositive about  
5 which development plan could be selected under the  
6 law.

7 So if one of the plans is invalid, legally  
8 invalid or illegal, then that -- that would be  
9 dispositive for excluding that plan, the other one  
10 would have to be accepted.

11 So I would propose if the -- if it pleases  
12 the Commission and they grant leave, that it would  
13 be useful to have a motion to address the matters of  
14 law to see where the Commission comes down on it.

15 MR. RANKIN: May I respond?

16 CHAIR CHANG: Of course.

17 MR. RANKIN: Commission members,  
18 Director Chang. I think that any legal issues can  
19 be properly addressed at the close of the hearing.  
20 There are contested facts that need to be resolved,  
21 and counsel can address the legal issues in the  
22 context of those disputed factual issues and should  
23 be done at the close of the hearing.

24 So I don't dispute that there are legal  
25 issues; however, I don't -- I don't think it's worth

1 the parties' time to spend on -- or for the  
2 Commission to have to spin through additional legal  
3 issues that potentially may no longer be of concern,  
4 depending on how the facts are presented and the  
5 findings of the Commission at the hearing.

6 So I would ask that the Commission direct  
7 the parties to instead brief any legal issues at the  
8 close of the hearing.

9 MR. SAVAGE: Mr. Chair, I --

10 CHAIR CHANG: I was going to ask a  
11 question of you, Mr. -- of Coterra. I -- tell me if  
12 I'm wrong, but what I'm hearing is that you wish to  
13 propose filing a motion for partial summary judgment  
14 or summary judgment.

15 MR. SAVAGE: It would be similar to  
16 that. Now, under the rules of the Division and  
17 the -- and the cases and the case law, there is a  
18 form of summary judgment, a type of summary judgment  
19 that can be reviewed.

20 Now, if -- if that's dispositive, then it  
21 would be a complete waste of administrative  
22 resources to go through a full-blown administrative  
23 hearing when you can't even select a particular  
24 development plan that was presented because it  
25 violated the law. We could find that out prior

1 to -- long before the hearing, and the commissioners  
2 would not be burdened with a -- you know, additional  
3 administrative duties.

4 CHAIR CHANG: I understand your  
5 argument.

6 Mr. -- let me -- oh, let's go to  
7 Commissioner Bloom, and then I have a question for  
8 our Commission counsel.

9 COMMISSIONER BLOOM: Mr. Chair, thank  
10 you.

11 Mr. Savage, could you tell us, you know,  
12 briefly in a minute or two what the dispositive  
13 issues are?

14 MR. SAVAGE: Yes, sir. Thank you.  
15 The biggest dispositive issue is the taking issue.  
16 That is completely prohibited under fundamental  
17 principles of oil and gas law. It's completely  
18 prohibited under Commission regulation -- yeah,  
19 conservation regulations. Once you decide that, you  
20 know, as a matter of law, which -- which plan is the  
21 feasible plan.

22 And then the other issue may not be quite  
23 as dispositive. I mean, the taking is truly  
24 dispositive. The other issue that is -- bears  
25 strongly on this case is the -- is the question

1 about whether or not statutory definition of waste  
2 under the Oil and Gas Act includes economic waste.

3 Because that has been an unresolved legal  
4 issue that has come up in numerous Division  
5 hearings. And the Division will use it in certain  
6 ways in one way during hearings, and then they will  
7 use it a different way.

8 So it would be really helpful if the  
9 Commission could confirm that economic waste is, in  
10 fact, part of the definition of waste. And I think  
11 that would be strongly dispositive. Maybe not  
12 absolutely dispositive, but strongly dispositive, if  
13 there's -- if there's such a thing on the case.

14 COMMISSIONER BLOOM: Mr. Savage --  
15 or -- so you're imaging that both parties come in  
16 with the same plan that they had before and that  
17 Permian wouldn't make any changes during the de novo  
18 hearing?

19 MR. SAVAGE: So Permian's plan is  
20 premised on it being at least one well in the upper  
21 Wolfcamp, and that's what they show with the Batman  
22 development plan, one well. And if -- even with one  
23 well, if they decide to drill less than the four or  
24 less than the eight, four per section, eight per --  
25 both -- all four sections, if they -- if they drill

1 even less, which I assume they wouldn't because  
2 their -- today we've heard that their whole plan is  
3 premised on getting a deeper Upper Wolfcamp well.  
4 Even one well would violate the takings under the  
5 facts.

6           So it would -- it would be dispositive.  
7 The only way they could come in and deny that  
8 they're not doing a taking, if taking applies, would  
9 be to come in and say they're just drilling just the  
10 Third Bone Spring or they're just drilling the Upper  
11 Wolfcamp and -- or they could do both, but they have  
12 to -- they have to come in and say their doing an  
13 allocation formula.

14           And their plan precludes an allocation  
15 formula by law because they've argued already on the  
16 record that they cannot violate the pooling statute  
17 based on surface acres. So they've already  
18 established the legal premise of their development  
19 plan on the record.

20           So, you know, I guess if they could come  
21 in and they could say "Then we're going to do an  
22 allocation formula now," then -- you know, then you  
23 would have a fair -- a fair foundation for a hearing  
24 on the merits. But if they're not willing to say  
25 that they're going to do an allocation formula, then

1 you got two binary -- you got a binary decision  
2 between two very different legal interpretations.

3 COMMISSIONER BLOOM: Okay. Thank  
4 you, Mr. Savage.

5 Mr. Chair, I think those are all things  
6 that could be dealt with, perhaps probably should be  
7 dealt with in the de novo hearing based on what we  
8 would learn from -- from both parties.

9 So that's where I'm at. Thank you.

10 CHAIR CHANG: Okay. Did you want to  
11 add something real briefly, Mr. Rankin, before I  
12 turn to Commission counsel?

13 MR. RANKIN: Thank you. I would. If  
14 you look at the exhibits that we presented, the  
15 question about taking that Mr. Savage says is  
16 dispositive against Permian Resources is equally  
17 applicable to Coterra because they're going to be  
18 pulling substantial volumes from the Wolfcamp.

19 So to say that it's a one-way street is  
20 just -- is nonsense. That's why it's important  
21 first to hear the evidence. And then subsequent to  
22 the evidence presentation, the parties can  
23 articulate how the legal principles apply and  
24 support their -- their case and their ultimate  
25 approval.

1           So I -- I don't think that there's any  
2     need for -- for the parties -- or the counsel to  
3     spend -- spend time or money and resources or the  
4     Commission's valuable time and resources reviewing  
5     briefing before we actually get the facts on the  
6     table.

7           CHAIR CHANG:   Okay.   Turning to  
8     Commission counsel here.   While certainly I  
9     appreciate that everybody wants to be as efficient  
10    with time and avoid unnecessary briefings and  
11    unnecessary procedures, does the Commission -- if  
12    one of parties wishes to file for summary judgment  
13    or partial summary judgment, what is the  
14    Commission's power to decline to hear that, I guess,  
15    or decline -- does the Commission even have the  
16    power to decline to take that up?

17           MR. SHANDLER:   So, Mr. Chair, I'm  
18    sure there's a section about prehearing motions and  
19    things of that matter.   So the parties are free to  
20    file whatever documents they want.   I think that --  
21    I have not heard sufficient information that the law  
22    can be separated from the facts.

23           So I think Commissioner Bloom's response  
24    that it's two days and -- one side gets one day, the  
25    other side gets the other day, they can use their



1 time however they want, if they want to spend it all  
2 on legal argument, if they want to have three  
3 witnesses.

4 But after spending a morning listening to  
5 the information, I have not been able to have  
6 Mr. Savage stop himself from intertwining facts into  
7 his legal argument. So I have not been persuaded  
8 that there is a dispositive legal issue. But,  
9 again, he's free -- he is free to file papers  
10 pursuant to the adjudicatory rules.

11 CHAIR CHANG: Okay. I think I'm  
12 going to leave it there, because I think he is -- I  
13 think the parties are free to -- the parties are  
14 free to file papers that the rules allow them to  
15 file and -- but that we are going to go ahead and  
16 set the -- those -- I'm sorry, not August, but  
17 September dates and at least hold that in the  
18 calendar so that they can be set for hearing.

19 And then it will be amongst the parties if  
20 they can -- if they can agree to not -- agree not to  
21 relitigate this 20 times over and to keep it all  
22 at -- on the -- to keep it all on the 18th and 19th.  
23 I trust that counsel between the parties will be  
24 able to figure out what is most efficient for  
25 everyone involved.

1           I will just caution the parties that,  
2       because we are setting it for a Thursday and a  
3       Friday, there will be -- there will not be an option  
4       to extend if things went long. So I urge both  
5       parties to try to keep things as brief and as  
6       concise and as to the point as possible and to think  
7       about how best to present their case, given those  
8       time constraints so that we don't run over.

9           In that case, I will -- it sounds like we  
10      are all agreed to at least hold the 18th and the  
11      19th for -- like to set this matter for the 18th and  
12      19th of September. If so, I would entertain a  
13      motion.

14                   COMMISSIONER BLOOM: Mr. Chair, I so  
15      move.

16                   COMMISSIONER AMPOMAH: Mr. Chair, I  
17      second.

18                   CHAIR CHANG: Any objection?

19                   Without objection, so ordered.

20                   Okay. Looks like we've already run into  
21      lunch, so I would entertain a motion to break for  
22      lunch and come back at 1:00 p.m. and continue the  
23      agenda for today's meeting at 1:00 p.m.

24                   MR. SHANDLER: So, Mr. Chair, the  
25      next item would be like three minutes, so if I could

1 beg your indulgence to do the next one.

2 CHAIR CHANG: Sure. We can do that.

3 In that case, I call case number 24594.

4 MS. HARDY: Good afternoon, Mr. Chair  
5 and commissioners. Dana Hardy with Hardy McLean on  
6 behalf of Targa Midstream.

7 CHAIR CHANG: Thank you.

8 MR. TREMAINE: Good morning,  
9 Mr. Chair, and welcome. And to the commissioners.  
10 My name is Jesse Tremaine. I represent the Oil  
11 Conservation Division.

12 CHAIR CHANG: Thank you.

13 MS. HARDY: Would you like us to  
14 proceed or --

15 CHAIR CHANG: I believe so,  
16 Mr. Shandler, unless you have -- unless you advise  
17 otherwise, should the -- may the parties proceed?

18 MR. SHANDLER: Yes, they may.

19 CHAIR CHANG: Okay. Go ahead,  
20 please.

21 MR. TREMAINE: I'll take it from here  
22 initially and let Ms. Hardy jump in as necessary.

23 This was a case that was heard last  
24 summer. There was -- Ms. Hardy prepared a proposed  
25 order at the request of the Commission. There was

1 some substantial delay in getting updates to that.  
2 And then after further correspondence, I submitted  
3 and -- the updated version recently through the law  
4 clerk for -- for approval by the Commission.

5 But based on the record of hearing and  
6 after review by OCD's technical staff and with  
7 minimal proposed edits to what was prepared by  
8 Ms. Hardy, I believe that the parties are in  
9 agreement on the form of the order and request that  
10 the Commission adopts that order today.

11 MS. HARDY: And, Mr. Chair, I agree  
12 with Mr. Tremaine. Both parties agree on the form  
13 of order and request that it be entered by the  
14 Commission.

15 CHAIR CHANG: Okay. Looks like an  
16 unopposed request.

17 Commissioners, did you have any discussion  
18 or questions?

19 COMMISSIONER BLOOM: No, Mr. Chair.

20 COMMISSIONER AMPOMAH: No, Mr. Chair.

21 CHAIR CHANG: In that case, I would  
22 entertain a motion to -- I guess, to adopt the final  
23 order of the Commission.

24 COMMISSIONER BLOOM: Mr. Chair, I  
25 would so move.

1 COMMISSIONER AMPOMAH: Mr. Chair, I  
2 second.

3 CHAIR CHANG: Before taking the vote,  
4 I'm just going to confirm with Commission counsel.

5 Do you need a roll call or a voice vote  
6 good enough?

7 MR. SHANDLER: The roll call was only  
8 specific to go into closed session. Everything else  
9 you can do roll call.

10 CHAIR CHANG: All right. You mean --  
11 okay.

12 Well, any opposition?

13 Hearing none, so ordered.

14 Congratulations, parties.

15 MS. HARDY: Thank you. And thank you  
16 for your time. We appreciate it.

17 CHAIR CHANG: No problem.

18 MS. LUBBOCK: Good afternoon -- oh.

19 CHAIR CHANG: Go ahead.

20 MS. LUBBOCK: I apologize. I'm here  
21 for the third matter. My name is Abby Lubbock. I  
22 here on behalf of Silverback Operating.

23 This Commission has already suggested that  
24 we continue the case, so I don't know if you would  
25 like to discuss that matter now or later. So I

1 apologize for interrupting, but . . .

2 CHAIR CHANG: I was just going to ask  
3 the commissioners: If you -- if you guys are fine  
4 working a little bit into lunch hour here. I see  
5 some nods, and I don't see vigorous opposition. So  
6 let's go ahead.

7 In that case, I will call case number  
8 25237. I will turn it over to the -- I will turn it  
9 over to all the parties, all the various counsels of  
10 record. If you could keep your opening comments on  
11 this brief, five minutes, please, no more.

12 Unless, Commission counsel, you wanted to  
13 jump in?

14 MR. SHANDLER: I do not want to jump  
15 in. I'm waiting for the parties to appear and then  
16 make their statements.

17 MS. LUBBOCK: Of course. My name is  
18 Abby Lubbock. I'm here on Ben Holliday and  
19 Silverback Operating. I just wanted to say at this  
20 time we have no objection to any sort of continuance  
21 in this matter.

22 CHAIR CHANG: Thank you. Great.

23 Any --

24 MR. SAMAMIEGO: Jonathan -- Jonathan  
25 Samaniego representing -- representative of American

1 Energy Resources.

2 CHAIR CHANG: Okay. Go ahead.

3 MR. TREMAINE: Good morning. This is  
4 Jesse Tremaine. I represent the Oil Conservation  
5 Division.

6 MR. SAMAMIEGO: And I object to the  
7 motion to continue. American has complied with the  
8 rules and the Division orders. I believe that it  
9 needs to be handled today.

10 MS. LUBBOCK: From what I  
11 understand -- I apologize. Go ahead.

12 CHAIR CHANG: That's okay. Go ahead.

13 MS. LUBBOCK: From what I understand,  
14 in accordance with subsection A of 19.15.4.13 of the  
15 NMAC, any sort of prehearing statements must be  
16 received at least four business days in advance, but  
17 in no event, later than 5:00 p.m. Mountain Time on  
18 Thursday preceding the scheduled hearing date.  
19 Unfortunately, we did receive that statement from  
20 the opposing party last night I think  
21 around 6:00 p.m.

22 So that's kind of where we're -- we stand.  
23 We understand that these prerequisites are necessary  
24 to these hearings. So we would -- we would just  
25 like to be in compliance with those rules just so

1     you-all can, you know, determine the matter and  
2     be -- again, us being compliant.

3                     CHAIR CHANG: Great. Thanks. I will  
4     turn this over to Commission counsel.

5                     Commission counsel, was there a -- are --  
6     there is -- yeah. The Commission counsel, could you  
7     advise us on whether or not the parties are properly  
8     situated to proceed, having filed papers on time or  
9     not.

10                    MR. SHANDLER: No parties filed  
11     papers on time, whether that was by choice or not,  
12     but that is -- it is what it is. So there's --  
13     that's a mandatory requirement.

14                    There was paper that was filed, but it was  
15     untimely, and it also did not include all the  
16     required elements. I'm sure the Commission could  
17     proceed and have oral arguments, but it would  
18     probably lead to a district court case.

19                    So probably the cleanest way to do it is  
20     just to postpone until the parties have sufficient  
21     time to follow the rules. That way, it's -- there  
22     isn't a decision where a court feels like it's a  
23     decision made on form rather than substance.

24                    So my advice to you would be actually --  
25     and I'm looking for the exact verb.



1 Under rule 19.15.4.15, I would recommend  
2 the Commission continue this hearing until it's next  
3 regularly scheduled meeting.

4 CHAIR CHANG: Give me that -- could I  
5 have that citation again, please.

6 MR. SHANDLER: Yes. 19.15.4.15.

7 CHAIR CHANG: Okay. Reviewing the  
8 record, commissioners, unless the other two  
9 commissioners saw something that I didn't, I don't  
10 believe we got timely and thorough -- and sufficient  
11 records from any of the parties. So we are not in a  
12 position to be able to proceed because it appears to  
13 me that the parties have not fulfilled their burdens  
14 under the rules.

15 So I would --

16 MR. SAMAMIEGO: I object. I --  
17 American. And on the grounds -- on the grounds and  
18 merit, is that I was provided by the OCC clerk to be  
19 able to provide the documents the -- that same day.  
20 I got an email, her requesting both parties to file  
21 the -- the statements the same day. They were  
22 filed. I filed them before 5:00, the ending of the  
23 day. I -- I also sent them to Mr. Ben Holliday  
24 before the -- the end of the day at 5:00. There was  
25 sufficient time for all parties to act within

1 Division orders.

2 CHAIR CHANG: Commission counsel,  
3 will you please read the rule again and advise us on  
4 what the deadline was. Wasn't it -- wasn't it four  
5 days ago?

6 MR. SHANDLER: Mr. Chair,  
7 19.15.4.13(B)(1), New Mexico Administrative Code, "A  
8 party to an adjudicatory proceeding who intends to  
9 present evidence at a hearing shall file a  
10 pre-hearing statement...serve copies on other  
11 parties or, for parties that are represented...at  
12 least four business days in advance of the scheduled  
13 hearing before the division or the commission, but  
14 in no event later than 5:00 p.m. mountain time, on  
15 the Thursday preceding the scheduled hearing date.  
16 This statement shall include: The names of the  
17 party and the party's attorney; a concise statement  
18 of the case; names of the witnesses the party will  
19 call to testify at the hearing, and in the case of  
20 expert witnesses, their fields of expertise; the  
21 approximate time the party will need to present  
22 [the] case; and identification of any procedural  
23 matters that are to be resolved prior to the  
24 hearing."

25 CHAIR CHANG: So if -- if you could

1 help us, does that mean this -- in order to be  
2 timely, the -- all of the documents would need to  
3 have been filed by 5:00 on June 17th?

4 MR. SHANDLER: That's correct.

5 CHAIR CHANG: Okay. Is there any  
6 factual dispute that the documents were filed by  
7 5:00 p.m. on June 17th?

8 MR. SHANDLER: Mr. Chair, there's no  
9 factual dispute. There's computer timestamps.

10 CHAIR CHANG: Right. Okay. So  
11 unfortunately, in order to preserve your right to  
12 have this hearing at all -- or to preserve American  
13 Energy Resources' right to have a hearing at all,  
14 the best that we can do for you, Mr. Samaniego, is  
15 to give you the opportunity to cure the defect.  
16 Because the other option is that we don't have a  
17 proper jurisdictionally viable hearing at all.

18 So we're -- I would recommend to the  
19 commissioners that we give you -- give the  
20 appropriate party an opportunity to cure by offering  
21 to continue this case.

22 And I'm open if any commissioner wishes to  
23 make a motion.

24 MR. SAMAMIEGO: I agree if we can  
25 orally motion for a stay.

1 CHAIR CHANG: It's a continuance,  
2 not -- well, I don't think -- I think it -- yeah,  
3 what -- I would imagine you're asking for the same  
4 thing that we're offering you, which is to  
5 reschedule for slightly later so that you have time  
6 to file the documents that would keep your case  
7 alive. If you -- so I believe -- and Commission  
8 counsel can advise, but I believe the word for that  
9 is a continuance, not a stay.

10 MR. SAMAMIEGO: Well, I agree. I  
11 understand the difference between a continuance and  
12 a motion for a stay. A stay needs to be implemented  
13 in this matter for the fact that it involves gross  
14 negative consequences. American is going to suffer  
15 irrelevant -- irreversible harm. And American, as  
16 you can see just by the numerous evidence that has  
17 been presented, has standing and merit -- standing  
18 and merit.

19 So American would like to -- agrees with  
20 the continuance, but would also like to orally  
21 motion a stay on the drilling of these wells.

22 CHAIR CHANG: So we can't decide on a  
23 stay today. Counsel, I believe -- I mean, you're  
24 certainly -- unless otherwise barred, I'm certainly  
25 happy to hear a request for a stay. You will have

1 to step through the proper procedures to properly  
2 bring that before the Commission.

3 At this point to preserve your current --  
4 to preserve the applicant's current case before the  
5 Court -- or before this hearing -- before this body,  
6 before this Commission, I would invite one of the  
7 commissioners to move to continue and reset case  
8 number 25237.

9 COMMISSIONER BLOOM: Mr. Chair, thank  
10 you. Yes, you know, I don't believe we've seen a  
11 written motion for a stay, even to react to. And  
12 given that, and the time and attention we've already  
13 given this today, and given what we've heard about  
14 how these matters are handled in accordance with New  
15 Mexico's rules and the OCC's rules from  
16 Mr. Shandler, I move to continue this case at our  
17 next regularly scheduled meeting.

18 COMMISSIONER AMPOMAH: Mr. Chair, I  
19 second.

20 CHAIR CHANG: Okay. Any objections?

21 Hearing no objections from commissioners,  
22 so ordered.

23 To the applicant -- to the applicant here,  
24 Mr. Samaniego, if you -- if you proper -- if you are  
25 able to step through and properly bring us a motion

1 for a stay, I'm sure the Commission will -- will  
2 give it the due consideration. We're not able to  
3 consider that today, but it is now reset for the  
4 next regularly scheduled meeting. And I -- I urge  
5 you to work with legal -- work with either retained  
6 counsel or find some -- somebody who can advise you  
7 on the procedural steps to protect your rights with  
8 this Commission. But we look forward to working  
9 with you to give you your -- your chance to say your  
10 peace at the next regularly scheduled date of  
11 this --

12 MR. SAMAMIEGO: I want it on the  
13 record -- I want it on the record. I'm not pro se  
14 to save a dollar. Okay? I'm financially -- I'm  
15 financially capable. Okay?

16 The big problem with me being here pro se  
17 is that there's very few oil and gas attorneys that  
18 handle these matters, and it's created -- it has  
19 created an atmosphere within the few that ethics and  
20 standards don't matter and that it is just to  
21 blackmail an operator, stonewall an operator from  
22 being able to have justice here in America and here  
23 in the New Mexico judicial system.

24 CHAIR CHANG: I hear your  
25 frustration. We're certainly happy to -- you're

1 certainly more than entitled to proceed pro se. I  
2 just look forward to --

3 MR. SAMAMIEGO: I have to say --

4 CHAIR CHANG: -- being able to hear  
5 your case.

6 MR. SAMAMIEGO: I -- I . . .

7 CHAIR CHANG: We look forward to  
8 being able to review your case at the next regularly  
9 scheduled hearing.

10 So, Ms. Apodaca, would you remind us when  
11 that date is?

12 MS. APODACA: That date is July 17th.  
13 And actually, there is a hearing scheduled on that  
14 date that has the potential to take the entire day.  
15 So we may have to put it on the August.

16 CHAIR CHANG: Well, let's set it  
17 for -- well, we'll set it for July 17th -- well,  
18 we've already ordered it set for July 17th. So it  
19 will be set for that, and we'll have to manage our  
20 docket as necessary when July comes around.

21 MS. APODACA: Okay. Okay.

22 CHAIR CHANG: Okay? In that case,  
23 the next item -- thank you all very much. And the  
24 next item of business is any pending litigation. Is  
25 there any other pending litigation that we need to

1 discuss at the moment?

2 MR. SHANDLER: Mr. Chair, there's no  
3 pending litigation.

4 CHAIR CHANG: Okay. Other business?

5 Commissioners, any other business you wish  
6 to bring up?

7 COMMISSIONER BLOOM: No, Mr. Chair.

8 CHAIR CHANG: Okay. The only thing  
9 that I have there is, I know -- if I'm understanding  
10 correctly, there's -- I don't know that the  
11 Commission has typically designated a vice chair  
12 before. I just thought that -- I don't want to put  
13 anybody on the spot here today, but just food for  
14 thought for next time, or whenever we meet again,  
15 if -- if either commissioner wishes to be designated  
16 a vice chair in case I am delayed or -- or unable to  
17 make it to portions of the meeting -- just a thought  
18 as to whether that might be logistically helpful for  
19 the Commission.

20 And then looks like we've already noted --  
21 or we've already advised everybody that the next  
22 meeting is July 17th. So at this point, I would  
23 invite a motion to adjourn.

24 COMMISSIONER BLOOM: Mr. Chair, I  
25 move to adjourn.



1                   COMMISSIONER AMPOMAH: Mr. Chair, I  
2 will second.

3                   CHAIR CHANG: Thank you very much.  
4 Thank you.

5                   Hearing no opposition, so ordered. We are  
6 adjourned. Thank you all very much.

7                   (The proceedings concluded at 12:25 p.m.)  
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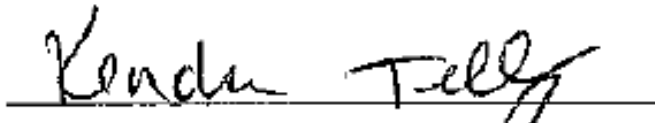
AFFIRMATION OF COMPLETION OF TRANSCRIPT

I, Kendra D. Tellez, DO HEREBY CERTIFY that on the 24th day of June, 2025, a hearing of the New Mexico Oil Conservation Commission was taken before me via video conference.

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

I FURTHER affirm that I am neither employed by nor related to any of the parties or attorneys in this case, and that I have no interest in the final disposition of this case in any court.

July 8, 2025

A handwritten signature in black ink, reading "Kendra Tellez", is written over a horizontal line.

KENDRA D. TELLEZ

Veritext Legal Solutions

**[& - accelerate]**

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[bloom - chair]

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[mirrors - nonconsent]

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[nonconsenting - okay]

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[owners - permian]

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[possible - problem]

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[public - reduce]

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[savage - shandler]

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[shandler - spending]

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[spin - subsidiary]

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