

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

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

APPLICATION OF GOODNIGHT MIDSTREAM PERMIAN, LLC
FOR APPROVAL OF SALT WATER DISPOSAL WELL
LEA COUNTY, NEW MEXICO

Case No. 22626

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
EXAMINER HEARING
June 16, 2022
SANTA FE, NEW MEXICO

This matter came on for virtual hearing before
the New Mexico Oil Conservation Division, HEARING
OFFICER WILLIAM BRANCARD and TECHNICAL HEARING
OFFICER DYLAN ROSE-COSS on Thursday, June 16, 2022,
through the Webex Platform.

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A P P E A R A N C E S

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1 HEARING OFFICER BRANCARD: With that, we
2 have the final item on our list today. Item
3 Number 50. This is Case 22626. Goodnight
4 Midstream.

5 MR. RANKIN: Good morning, Mr. Examiner.

6 May it please the Division, Adam Rankin
7 with the Santa Fe Office of Holland & Hart appearing
8 on behalf of the applicant in this case Goodnight
9 Midstream.

10 MR. PADILLA: Mr. Examiner, Ernest L.
11 Padilla appearing for Empire New Mexico, LLC.

12 HEARING OFFICER BRANCARD: Thank you.

13 Are there any other interesting persons
14 for Case 22626? All right. Thank you.

15 All right. We had a variety of motions
16 filed in these cases so this is scheduled for a
17 motion hearing. The motions were filed by Empire.
18 We had a motion for a continuance, which we'll deal
19 with, I think, at the end of hearing today. And
20 then a motion to quash the subpoena and a motion to
21 dismiss.

22 I guess it will be my preference to handle
23 the biggie first and have the motion to dismiss be
24 heard. And so I would offer to the parties a chance
25 to have a short oral argument on each of those.

1 So Mr. Padilla, are you prepared to go
2 forward?

3 MR. PADILLA: Yes, I am, Mr. Examiner.

4 HEARING OFFICER BRANCARD: Okay. So on
5 the motion to dismiss, then.

6 MR. PADILLA: Mr. Examiner, this motion to
7 dismiss is based on what we, what Empire Field
8 System encroachment into an oil and gas lease. In
9 this case that lease is committed to the unit
10 agree -- the east Eunice south unit agreement.

11 Goodnight is coming in here just
12 simply saying, well, that acreage is not productive;
13 therefore, by virtue of surface ownership, we can't
14 go ahead and disperse salt water on a commercial
15 basis.

16 The area of the unit, the unit, the
17 purpose of the unit is a water flood. The injection
18 rates, the injection pressures and all that sort of
19 thing is very likely to disrupt the water flood
20 operation. But I think we had cited -- we have
21 cited the Penrod case issued by the Interior Board
22 of Land Appeals.

23 Here we have a surface or split estate
24 surfaces private, the minerals are Federal and
25 they're under valid oil and gas lease committed to

1 the unit.

2 Goodnight takes a position that they can
3 disperse of water coming from, I believe the
4 applications stems from the Wolfcamp and the Bone
5 Spring wells in the area. But our thrust is that
6 this interferes and encroaches on a valid property
7 right that Empire has.

8 Now, Goodnight offers instances of where
9 there have been other salt water disposal wells in
10 the area. We don't know exactly what the
11 arrangements were. Empire took over this property
12 two years ago and there's a lot of documentation
13 that needs to be examined from the standpoint of
14 whether that was permissive use or not. And whether
15 there were any objections by the predecessors
16 entitled to the salt water disposal applications
17 that exist.

18 To the extent there are other wells,
19 producing water wells for injection into the unit,
20 that's part of the -- that's part of the authority
21 that Empire has under the unit agreement.

22 So now to say that the BLM does not need
23 to issue a right-of-way for disposal, it's sort of
24 nonsense. They sent a memorandum, BLM, essentially
25 saying that, generally that the surface owner has a

1 pour space.

2 First of all, we don't know and I believe
3 that probably the surface is owned under an original
4 patent under the Stock-Raising Homestead Act of
5 1916. Under that, that has been litigated pretty
6 well up to the United States Supreme Court a couple
7 of times and Circuit Court of Appeals cases. Those
8 cases say surface owner doesn't own anything below
9 the surface, but that needs to be examined.

10 I'm just arguing that if the surface is
11 owned under an original patent or that Homestead
12 Act, then I think that the law is set that the
13 surface owner does not own the pour space and the
14 grant under the Stock-Raising Homestead Act was only
15 for the surface for stock raising and for
16 agricultural purposes. That goes beyond the scope
17 of this hearing, but in terms of who, who, what
18 authority the surface owner has in terms of
19 ownership of the pour space.

20 Going back to the oil and gas lease,
21 Goodnight contends that the San Andres in this area
22 is not productive in oil and gas; therefore, we can
23 dispose of water there.

24 And they also go back to the original Gulf
25 Oil application for secondary recovery and approval

1 of the unit. That unit now is 17,000 acres. It's
2 got about 750 wells on there and just the push well
3 is right smack in the middle of the unit. To say
4 that it won't disrupt or affect water operations or
5 whether or not there may be oil in the San Andres is
6 not a matter that they can simply say or base it on
7 the 1984 hearing before the Division to approve this
8 unit and secondary recovery operations.

9 The point is, is that the oil and gas
10 lease, as a matter of fact, excludes third parties
11 or strangers to the title. Empire owns nothing in
12 the unit and certainly doesn't own an interest in
13 the oil and gas lease submitted to the unit.

14 Now, there is no question that the
15 operator may use salt water disposal wells because
16 that right is granted under the oil and gas lease
17 and it's inherent in the water flood operation. But
18 to simply come in and say this area or this zone,
19 San Andres is not productive, first of all, we don't
20 know whether it constitutes pour space.

21 Secondly, it just creates no right to
22 dispose of and interfere with a vested property
23 until that unit expires or until the oil and gas
24 lease expires.

25 There's no question that this is a very

1 prolific water flood. Empire makes money doing
2 this, and to allow Goodnight to impair it without
3 any right other than contend that the surface owner
4 owns the pour space, is really not an issue to be
5 decided by the Division. It's a property right
6 issue, and to that extent, that needs to be resolved
7 in accordance with the memorandum of the BLM that it
8 should be decided early on as to whether that is
9 pour space or not.

10 Now, I would agree that in Wyoming or
11 Montana where there's statutes that say that the
12 surface owner owns the pour space. That may be
13 correct, but you still have other rights, especially
14 with regard to the reservation of the United States
15 and the Homestead Act.

16 So I don't -- I don't see how in the world
17 as a matter of law we can -- the Division should
18 grant this application for commercial salt water
19 within the exterior boundaries of the unit.

20 There has been no waiver by Empire to
21 allow salt water disposal in this case especially
22 considering the location and where it is with
23 respect to the unit itself. So we don't want to go
24 over this Penrod case that we cited. It speaks for
25 itself but that case simply, clearly states that you

1 cannot -- Federal oil and gas lease issued to a
2 third person, issued to a lessee, have a third
3 person come in and simply say, like in Penrod where
4 the BLM issued a right-of-way, to allow salt water
5 disposal into plugged and abandoned well.

6 This is the same situation you have here
7 is that that lease is a grant for oil and gas
8 purposes that may or may not be productive but it
9 doesn't allow a third party to come and say that
10 it's not productive and hasn't been productive or to
11 say that it's not within the vertical limits of the
12 unitized formation.

13 We've cited -- one of our exhibits to this
14 motion is the original order issued by the division
15 and it clearly defines the San Andres as being
16 within the unitized formation.

17 So we ask that this Division deny this
18 application. Thank you.

19 HEARING OFFICER BRANCARD: Thank you. I
20 will note that joining us for this case, along with
21 Mr. Rose-Coss as a technical examiner is Mr. Gets.

22 So I will ask if Mr. Rose-Coss has any
23 questions.

24 MR. ROSE-COSS: Sure. I guess my
25 questions specifically for Mr. Padilla?

1 HEARING OFFICER BRANCARD: Yes.

2 MR. ROSE-COSS: Specifically for
3 Mr. Padilla, no. No, I suppose I don't.

4 Thank you.

5 HEARING OFFICER BRANCARD: Thank you.

6 Mr. Gets, any questions for Mr. Padilla?

7 MR. GETS: Mr. Brancard, no I have no
8 questions with the presentation by Mr. Padilla.

9 HEARING OFFICER BRANCARD: Okay. All
10 right.

11 So Mr. Padilla two things: One, if you
12 could just sort of, if it's possible to concisely
13 say the application of Goodnight Midstream should be
14 dismissed as a matter of law because, and you fill
15 in the blank.

16 MR. PADILLA: The application will allow a
17 third party to encroach on the mineral rights that
18 Empire has with the oil and gas lease in the unit
19 agreement and it may impair further development of
20 the unit boundary and unitized formations.

21 HEARING OFFICER BRANCARD: Thank you.

22 So, second, Goodnight has cited to a
23 number of instances where the Department has
24 approved injection well permits, reduce water
25 injection well permits within this statutory unit.

1 Is it Empire's position that those
2 approvals were incorrectly granted or that somehow
3 there was a waiver that allowed the Division to
4 approve those?

5 MR. PADILLA: I can't answer that question
6 without further discovery. But if I may speculate,
7 I think there had to have been some kind of
8 communication between the applicants for those
9 disposal applications and the operators in the unit
10 starting out with Gulf, then Chevron. I think XCO
11 was next, but I don't know. And we're trying to
12 figure out whether those were -- whether there were
13 any agreements between the unit operators and those
14 applicants for those cases. So it's a little
15 premature for me to answer that question precisely.

16 But in any respect, Empire now feels
17 that's it got, despite those approvals, it's got to
18 oppose these applications because all of a sudden
19 you have Goodnight. Goodnight now has a second well
20 here it seems like. And cart blanche is
21 inappropriate for the Division to approve those
22 applications because of the rights given to him
23 under the unit.

24 And the oil and gas lease, certainly this
25 Penrod case talks about further development where

1 you can come up, up the wellbore and explore within
2 the San Andres formation. And you should be able to
3 do that without having to deal with the water that
4 has been injected into that formation.

5 HEARING OFFICER BRANCARD: Thank you.

6 I guess with that, we'll move to Goodnight
7 to make a presentation in response to the motion to
8 dismiss.

9 MR. RANKIN: Good morning, Mr. Examiner,
10 may it please the Division. In response, I think we
11 addressed all these arguments pretty clearly and
12 directly in our response to the motion to dismiss.

13 In summary, it sounds to me a lot like
14 Mr. Padilla was making essentially a merits argument
15 for why the Division should deny this application.
16 And that really is a fact-based issue that should be
17 presented to the Division in a contested hearing.

18 Empire in its motion has made vague
19 arguments about how Goodnight's proposed application
20 would interfere with unit operations but they don't
21 actually explain how it would. And also they seem
22 to be making basically a property rights issue which
23 is outside the scope of the Division's jurisdiction.
24 Empire can bring those claims elsewhere.

25 The issue for the Division, is whether

1 there will be impairment or interference with the
2 water flood. That's really a factual issue that we
3 can address at hearing.

4 And as to the arguments Empire is saying
5 that, you know, that, we, Goodnight, can look to the
6 Division records to determine whether or not there's
7 oil in the zone or whether or not there's
8 impairment, as I understand it. In the separate
9 motion, they're resisting the production of
10 documents and so let's look at the records that the
11 Division has and you'll see that their concerns and
12 arguments, are, I think, frankly and squarely
13 addressed by the records that the Division has,
14 including that hearing that created the unit itself.

15 In the -- on the motion to dismiss issue,
16 you know, Empire is relying on the fact that the
17 Division order approving the statutory unit includes
18 the San Andres formation within the vertical limits
19 of the unit. Now, just to be clear, the San Andres
20 is at the base. Okay. Overlying the San Andres is
21 the Grayburg and Penrose.

22 In the definition that is cited in the
23 order for the unitized formation, it relies on the
24 location of the oil, oil column. The oil column is
25 what is unitized under the statutory order. And

1 when you read through the exhibits and the
2 testimony, you'll see, as we've cited in our papers,
3 that the oil column in the unitized formation is
4 limited to the Grayburg and the Penrose.

5 The only reason the San Andres is included
6 in the vertical limits of the unit is because the
7 applicant in the case, Gulf, determined that the
8 water source for the flood should be and must be
9 included within the unitized, within the vertical
10 limits of the unit and that's the San Andres.

11 San Andres is a prolific aquifer. The
12 applicant and the operators have relied on it
13 throughout the course of the water flood operations
14 as a source of water to fill up the oil bearing
15 zones which are overlying, and over the course of
16 the operations of the unit have produced more than
17 300 million barrels from the San Andres, and over
18 that timeframe, zero oil.

19 So and, in fact, Mr. Examiner, the motion
20 to dismiss should be denied because under the terms
21 of the order itself that created the statutory unit,
22 the unitized formation is limited to the Grayburg
23 and the Penrose which contain the oil column.

24 The San Andres under the terms of the
25 order is not a unitized formation and does not

1 contain any of the oil; therefore, will not
2 interfere -- injection in that zone will not
3 interfere with water flood operations, oil
4 production, or any of the mineral interests that
5 Empire is claiming to be protected.

6 So as to that, I think that the record of
7 the statutory unit squarely addresses Empire's
8 motion to dismiss. Moreover, the history here is
9 that even before the unit was formed, injection into
10 San Andres was approved and recognized by the
11 Division; therefore, it's been long established as a
12 disposal zone by the Division, and for good reason.
13 You know, it's a prolific aquifer and now after
14 having removed more than 300 million barrels of oil
15 from that zone, it is a prime location for disposal.

16 As you will see when we get to the
17 hearing, and as you have seen in previous cases
18 where Goodnight has approved two prior salt water
19 disposal wells, that zone is so depleted that the
20 water is accepted, basically a vacuum. There is
21 very little injection pressure. Water is
22 essentially sucked into the zone and it's an
23 excellent location for disposal.

24 So unless Empire can, on the merits,
25 demonstrate that there's some interference with the

1 unit operations, which is really a merits question,
2 then that application should be approved.

3 As to the Penrod case that Mr. Padilla
4 cites, you know, the holding in that case is limited
5 to the fact that the BLM had granted easement, a
6 right of access through the lessee's, existing
7 lessee's wellbore. And IBLA determined that that
8 was improper because the lease was still active.
9 Moreover, and I didn't mention this in the papers,
10 but that case makes it clear that the Division
11 records reflect that there's still oil potentially
12 in that zone.

13 Different facts here. You know, we're not
14 seeking to inject into Empire's wellbore. There is
15 no demonstration at all if there's any oil in San
16 Andres capable of being recovered. And, finally,
17 you know, I just didn't have the time, but I can
18 tell you that there are -- I deal with a lot of
19 cases that squarely address the pour space issue and
20 we can pull those and provide those if you'd like.

21 But essentially the BLM policy is clear
22 that where the surface owner, the surface owner has
23 control over the pour space.

24 The whole issue about the Homestead Act
25 and so forth is really, those cases involve whether

1 or not the minerals have been reserved or not. Here
2 we're talking about pour space.

3 So in summary, you know, the history of
4 the creation of the statutory unit, the language of
5 the order itself and the testimony and evidence
6 presented at the hearing makes clear that the
7 purpose or inclusion of the San Andres was for
8 source of water for the unit. That zone was not
9 included within the definition of the unitized
10 formation, which was squarely and concretely limited
11 to the oil column which is limited to the Grayburg
12 and Penrose that overlies the San Andres.

13 If Empire believes that there's a
14 possibility of any oil remaining or located within
15 the San Andres, you know, we're asking them to
16 produce it and come up with the evidence that there
17 is any. And so that's another motion to be
18 addressed, but that again, it should be a merits
19 issue that can be addressed at hearing.

20 With that, Mr. Examiner, we would ask that
21 Empire's motion be denied that we allow this case to
22 go to hearing on the merits.

23 HEARING OFFICER BRANCARD: Thank you.

24 Mr. Rose-Coss, any questions for
25 Mr. Rankin?

1 MR. ROSE-COSS: So it's kind of a question
2 for you, Mr. Brancard. What we're discussing now is
3 the motion to dismiss, not the motion to quash the
4 subpoena?

5 HEARING OFFICER BRANCARD: Correct.

6 MR. ROSE-COSS: Okay. Sure.

7 So I'll focus my thoughts on that topic
8 specifically, then.

9 And, Mr. Rankin, so you're kind of stating
10 that you don't believe Holland & Hart, Goodnight
11 doesn't believe that this is a pour space issue and
12 that the San Andres was excluded from the unitized
13 interval, you know, but like -- so you'll have to
14 explain that for me or maybe point out in your -- in
15 the testimony or hearing specifically because it
16 does seem to me, you know, part of the argument that
17 it is within the -- kind of within the depth bracket
18 that the unit was given, right?

19 And so you're saying that, you know, if
20 they were given the mineral rights to this whole
21 depth unit and they wanted to use -- they thought
22 that they wanted to use that depth interval, that
23 the unit operator wanted to use that depth interval
24 for injection and that your injection was kind of
25 infracturing on it, they don't have the right to

1 use of the interval for injection, they only have
2 the right of the use of that interval for oil
3 production and that there was an oil production. Is
4 that basically what you-all are claiming?

5 MR. RANKIN: Yeah, I guess just to step
6 back a little bit, you know, and I haven't
7 investigated or reviewed their lease. But in
8 general oil and gas leases grant the lessee the
9 exclusive right to explore for produce and develop
10 the oil and gas as a mineral. It doesn't give them
11 the right to anything else, including the pour space
12 or any other minerals. So they are limited in their
13 grant to the right to explore or produce and develop
14 the oil and gas minerals.

15 Now obviously, you know, those are limited
16 to certain zones. The lease itself doesn't apply
17 generally what zones those are limited to.
18 Sometimes there are ownership depth severances and
19 it may. I don't believe that's the case here. So
20 that lease, then, was committed to the statutory
21 unit either by voluntary agreement or under this
22 unitization of the acreage. And nevertheless,
23 whether it was committed or not, the lessee is still
24 limited to the grant -- to the rights granted under
25 the lease.

1 So here, in our view, there being no
2 demonstration of any oil and gas minerals within the
3 San Andres, there's no possibility that injection
4 into that zone would interfere in any way with their
5 ability to pursue their rights under the lease. As
6 to the unit itself, the unit agreement that was
7 approved by the order of the Division expressly
8 limited the unitized formation as defined to that
9 zone that includes the oil column.

10 You have to go to the testimony itself to
11 determine what zones contain the oil column. And
12 I've identified that in our transcript that we've
13 attached to the response, but you'll see that
14 clearly stated, it listed it from the applicant's
15 counsel is that the oil column is limited to the
16 Grayburg and Penrose and that is the only zone that
17 the original applicant and subsequent operators, as
18 I understand, have in which they've conducted water
19 fill operations because those are only zones in
20 which oil is located.

21 So the only formations that stand to be
22 impacted by -- the only zones that were water flood
23 operations where oil recovery would be impaired from
24 those zones within the oil column which would be the
25 Grayburg and Penrose.

1 So while the vertical limits of the
2 statutory unit include the San Andres, we think in
3 error, because we're not clear what the Division's
4 authority would be to include within a unitized
5 interval purely, pure aquifer. Nevertheless, the
6 order does clearly include the San Andres within the
7 vertical limits of the unit.

8 The unusual point here, as I just
9 discussed, is the fact the order goes on to limit
10 the unitized formation to only that portion that
11 includes the oil column. So, you know, my -- I
12 guess what I'm trying to say here, as for our motion
13 to dismiss, there's no legal basis to grant it
14 because the language itself on the order limits the
15 oil column and unitized formation to an area that is
16 not subject to our proposed injection and that the
17 question of whether there is any permitted oil is a
18 merits question for a hearing.

19 MR. ROSE-COSS: Okay. Mr. Rankin, it
20 sounds like we're wandering into topics that --
21 where it could be discussed at a hearing and the
22 motion to dismiss. But I'll let Mr. Brancard decide
23 on all of that. That's my only question.

24 Thank you.

25 HEARING OFFICER BRANCARD: Thank you.

1 Mr. Gets, any questions?

2 MR. GETS: Yes, I'm intrigued. Good
3 morning, Mr. Rankin. The order establishing the
4 unit, those define the vertical limits very
5 specifically. Oil is in text and on a log, it is
6 your intention that we can modify that by selecting
7 testimony and including and excluding portions of a
8 unitized interval based upon not going back to
9 hearing and changing that statutory definition?

10 MR. RANKIN: No. I'm saying the Division
11 itself in its order identified that portion of the
12 formation that is actually unitized. It defines
13 unitized formation as the portion of the vertical
14 limits that contain the oil column. That is what
15 the order itself holds. I believe that, and you'll
16 see in the language of the exhibits that were
17 presented by the applicant that they included the
18 San Andres for the sole purpose of providing a water
19 source within the unitized -- within the vertical
20 limits of the unit.

21 It's a little bit funny. I've not seen
22 language like this, you know, in many cases but they
23 clearly differentiate between the vertical limits of
24 the unit and the zone that is defined as the
25 unitized formation. I'm just saying under the terms

1 of the order itself there's a distinction.

2 MR. GETS: So with regards to that, then,
3 the Commission decided in the formation of this
4 unit, that the source water for the operation of the
5 unit, which came out the San Andres, was critical
6 enough to be included as part of the vertical limits
7 of the unit?

8 MR. RANKIN: I don't get that from the
9 order itself. I don't see any language in the order
10 that discusses the water. I know the applicant
11 believes that.

12 MR. GETS: We're saying the San Andres is
13 included because it's a makeup water. We say it's
14 not part of it because it's not part of the oil
15 formation. The argument made by the operator is
16 that this was part of the critical element to make
17 this water flood successful.

18 Are we saying that, again, going back into
19 what is in the order of the paragraph where the
20 vertical limits of the said unit that we're going to
21 pick and choose and decide just solely based upon
22 what we think without having gone back to a hearing
23 and having a determination as to whether the
24 predicality of the San Andres water which was
25 included as part of this water flood is no longer

1 needed?

2 MR. RANKIN: I'm saying, Mr. Gets, that
3 the Division doesn't have authority to unitize
4 formations for water production. And that's the
5 position that the Commissioner and Division is going
6 to take, I think there's a problem. But they do not
7 have authority to do so.

8 Under the leases themselves, in general,
9 operators and lessees have a right to make use of so
10 much of the face as is reasonable and necessary to
11 produce their minerals. In general that includes
12 the right to produce water. And so under the leases
13 themselves they would have had the right to drill
14 and operate water production wells.

15 I don't understand the basis for including
16 it within the vertical limits. So I guess my point,
17 Mr. Examiner, is that the Division itself doesn't
18 have authority to lock away that zone as purely
19 aquifer zone under any authority that I'm aware of
20 granted by the legislature.

21 So my point simply is that, for whatever
22 reason, the Division did recognize the vertical
23 extent of the unit to include that zone, but
24 nevertheless, constrained by their statutory
25 authority, limited the unitized formation to that

1 zone that contains the oil which was the Grayburg
2 and Penrose.

3 MR. GETS: That's not what I'm seeing in
4 the order, but I will stop there with this
5 discussion. And as far as Empire's correlative
6 rights in San Andres, how are we addressing that?

7 MR. RANKIN: Well, Mr. Gets, I think
8 that's a merits issue. We've asked Empire to
9 provide any evidence, documentation or information
10 that would support any demonstration of hydrocarbons
11 within that zone. And, number one, and this for the
12 second motion, have objected to the request to
13 produce such information and on the other hand have
14 pointed to Division records as being sufficient to
15 demonstrate whatever we need to demonstrate.

16 As I'm saying, the Division records show
17 there is zero oil produced from the San Andres
18 within that zone over the 60-plus years of water
19 production. And so unless and until Empire is able
20 to provide us any documentation of the presence of
21 oil, it's a non-hydrocarbon bearing zone base on the
22 Division's records.

23 MR. GETS: No further questions, thank
24 you.

25 HEARING OFFICER BRANCARD: Thank you.

1 I guess, Mr. Rankin, I share Mr. Gets'
2 concern that perhaps you're reading too much in to
3 this Order R-7765. The order clearly in Paragraph 8
4 says, "The vertical limits of said unit," and then
5 indicates the lower limit is the base of the San
6 Andres. You're hanging your hat on Paragraph 10,
7 which says, "The unitized information," in quotes
8 not sure why that's in quotes or what that means,
9 "will include the entire oil column of the unit
10 area."

11 Okay, the words, "Will include," to me are
12 not limiting language. It doesn't say the unitized
13 formation is limited to the entire oil. It says,
14 "will include." Will include means that there can
15 be more than that, at least the way I read the
16 language. So I do not see the implication that
17 somehow this order has limited the unit to not
18 including the San Andres, when it seems to clearly
19 include the San Andres.

20 MR. RANKIN: Well, Mr. Examiner, I guess I
21 take a different view and the reason I do is because
22 the evidence and testimony that supports the order
23 and the finding in Paragraph 10 includes that the
24 oil column is limited to the Grayburg and Penrose.
25 And that the reason for the request to include the

1 San Andres within the vertical limits of the
2 unitized area, was simply because it was going to be
3 the water source. And I think that an order that
4 locks out and prevents any other operator from using
5 an area that's purely been confirmed to be an
6 aquifer is an error and not justified or supported
7 by the statute or any other authority.

8 And so, you know, I have concerns about
9 the way this order was written, number one, but
10 nevertheless, I think the proper way to interpret it
11 is to read the definition and the finding of
12 Paragraph 10 of the unitized formation as properly
13 limiting the unitized formation to the Grayburg or
14 Penrose where oil is present. The rest was included
15 simply for purposes of oil -- of water production
16 and not for any other reason, which is not a proper
17 basis for it to be unitized under the Division's and
18 Commission's own authority.

19 So that's why I believe Paragraph 10 is
20 important because it does limit the unitized
21 formation to only the portion that has been
22 confirmed and has presented to the Division as
23 having oil.

24 HEARING OFFICER BRANCARD: Well, if you're
25 concerned that the order is overbroad or improper as

1 you put it, why not file an application to amend the
2 order?

3 MR. RANKIN: Well, Mr. Examiner, I guess
4 if that's where the Division is heading, if that's
5 where we need to go with this, we'll certainly do
6 that. I don't believe it's necessary because I
7 believe that it can be addressed on the merits at a
8 hearing in light of the express language of the
9 order itself, which limits the unitized formation
10 only to that oil bearing zone.

11 HEARING OFFICER BRANCARD: The order
12 establishes a unit. It establishes what the
13 horizontal limits of the unit is and then it
14 names -- this a statutory unit. We're not talking
15 about property rights. It's a statutory unit, it
16 names an operator of that unit. And that operator,
17 once upon a time Gulf, seems today to be Empire,
18 operates that entire unit.

19 I'm not sure how we work our way around
20 that other than as appears what has happened in the
21 past, that the applications as your client has made
22 have been made in the past and either with the
23 consent of or lack of a (audio cut out) of (audio
24 cut out) unit operator.

25 THE COURT REPORTER: Mr. Hearing Officer,

1 you're breaking up.

2 MR. RANKIN: Mr. Brancard, you need to
3 (audio cut out) for me, anyway.

4 HEARING OFFICER BRANCARD: (Audio cut out)
5 one fashion or another. I mean the statutory unit
6 means something. Sorry. I'm not seeing you very
7 well either, Mr. Rankin, but it could be my voice.

8 The statutory unit must mean something, we
9 have to figure that out. I mean, I hate all of us
10 being trapped by old documents and old orders, but
11 it's there.

12 So that's my concern that we have a unit,
13 we have a unit operator. But, you know, limits to
14 what that unit. Whether that was done improperly
15 or, you know, should really be, you know, and it
16 seems like if they needed the water from that -- if
17 that's the only reason the San Andres is there to
18 get the water out of it, well, I think that purpose
19 is over, right, because now they just use the water
20 from the operations for reinjection. So you might
21 have a good argument for limiting the scope of that
22 unit.

23 All right. It's very difficult as I try
24 to push Mr. Padilla to come up with a motion to
25 dismiss that works because the reality is that the

1 motion to dismiss means we can't rely on (audio cut
2 out) of facts that haven't been put in the record
3 through an evidentiary hearing. So that's a
4 difficult burden to establish. We may need an
5 evidentiary hearing in this case. But for now, I
6 say we will take the motion to dismiss under
7 advisement.

8 I think at the end of this, I think we
9 will move forward assuming that we were going to
10 have a hearing. We may end up issuing an order
11 granting the motion to dismiss and that will vacate
12 the hearing. But at this point let us assume that
13 we're going to have a hearing and so we can discuss
14 the next two issues, which is the subpoena issue and
15 then when to have a hearing.

16 Let's start, Mr. Padilla, with the motion
17 to quash subpoena.

18 MR. PADILLA: Mr. Examiner, our contention
19 with regard to the motion to quash the subpoena is,
20 first of all, it was never served on me or on
21 Goodnight. We discovered that a subpoena had been
22 issued with the day to go, I think, a day or maybe
23 or two to go before the due date of June 1st.

24 Mr. Rankin and I discussed this subpoena
25 after he sent an email with a copy of the subpoena.

1 And I responded to that and that's why we had the
2 telephone call. There's no way in the world that we
3 could produce any of those documents within two
4 days.

5 After that, we generously were granted an
6 additional three days to come up with the
7 documentation. But if you look at the subpoena, it
8 may have as well had asked us, give us your hard
9 drive for the unit because it asks for everything.
10 17,000 acres, it's not limited. The last line of
11 that documentation request is within the Eunice
12 Minus South unit. That's a whole bunch of property.
13 It's a whole bunch of -- every well there we would
14 have to produce every log of any of that well -- if
15 you, and it's just overly broad.

16 It's not limited to the disposal zone or
17 extent of where in Section 9, whether there's any
18 analysis or reports or summaries, we have to produce
19 everything for the entire unit. It's absurd to have
20 this kind of thing issued because it's like some of
21 that stuff is propriety information.

22 This unit was purchased by Empire about
23 three, two years ago. There's a lot of data there
24 that we need to get. But to try to mass produce all
25 this stuff is just, it just needs to be curtailed

1 and limited in scope.

2 Every memorandum, every communication,
3 emails, interoffice emails and external -- and
4 external correspondence it really requires, for
5 example, the purchase and sale of this property to
6 Empire from XEO. There's a lot of documentation
7 here that needs to get limited.

8 But, first of all, 15 days to produce this
9 stuff is totally inadequate. I felt it's just
10 not -- it's just not possible to make that document
11 production in 15 days, let alone three, after
12 what -- to begin with you have to serve the subpoena
13 properly.

14 So the -- we've listed the -- I'm not so
15 much -- I don't think the Division probably should
16 consider this as avoidance of subpoena, but it
17 certainly has to be extended and time period for
18 response. We said we need at least 30 days for a
19 response. We've cited Rule 45 of the Rules of Civil
20 Procedure. The first item there is reasonable time
21 for compliance. We didn't get it. You can't hand
22 over privileged or other protected matter without
23 some kind of confidentiality order.

24 So we would have to list those documents
25 and oppose it and obtain some kind of

1 confidentiality order that we do want in the public
2 record at the OCD. But trade secrets, that sort of
3 thing, propriety stuff, this is not limited. We
4 could object to a lot of this stuff and hand over
5 nothing, and argue about the scope of the subpoena,
6 but the request is incredibly broad.

7 So the motion should be squashed until, or
8 the subpoena should be quashed because it's overly
9 broad. It's not designed to obtain relevant
10 information unless you define, you restrict the --
11 refine the request a little bit better. So we ask
12 that the subpoena be quashed.

13 HEARING OFFICER BRANCARD: Thank you.

14 Mr. Rankin, so if we go to a hearing,
15 we're going to be discussing, I think, what you may
16 have phrased the issue which is will this proposed
17 well from Goodnight Midstream interfere with the
18 operation of the unit? And so considering that
19 scope, please address how this subpoena is asking
20 for relevant documents.

21 MR. RANKIN: Well, Mr. Examiner, Empire
22 appears to be making two conflicting arguments. On
23 the one hand they contend, without explaining how,
24 Goodnight's application to inject within the San
25 Andres is going to interfere with the unit

1 operations. On the other hand they're saying that
2 the request for information by Goodnight is not
3 seeking relevant information.

4 So the only way that injection into San
5 Andres would interfere with unit operations is if
6 there is any oil or recoverable hydrocarbons within
7 that zone. So we have asked for Empire to present
8 us with any documentation of evidence or information
9 that reflects the presence of hydrocarbons in that
10 zone as well as the contrary evidence, which would
11 be any evidence reflecting the nonexistence of
12 hydrocarbons within that zone. Both of which are
13 highly relevant to the objections that Empire has
14 raised with respect to Goodnight's application.

15 We have not sought all documents across
16 the entire unit, across the entire unit formation,
17 it is limited to the San Andres zone.

18 And based on the objections raised by
19 Empire, you know, we don't have any more information
20 to go on other than that there may be hydrocarbons,
21 they may be claiming that there are hydrocarbons
22 within the San Andres. We are asking for documents
23 that would reflect the presence or nonpresence of
24 hydrocarbons, period. This is a pretty narrowly
25 targeted document request.

1 In response I'll point out that Empire
2 suggested that there's enough insufficient
3 information in the Division records to establish
4 whatever it is that we need to establish. And so
5 I'm pretty well aware of the records at the
6 Division, many of which I've cited in our papers or
7 in argument, none of which reflect the presence of
8 hydrocarbons, all of which indicate that the San
9 Andres in the unit area is purely an aquifer and has
10 been designated as a disposal zone by the Division.

11 So I guess my thought I don't see how it's
12 not relevant. I don't see how it's overbroad. It's
13 limited to the zone we're proposing to inject into.
14 And to the extent that there are proprietary or
15 confidential documents, the relief, the remedy under
16 New Mexico law is not to preclude the production of
17 those includes, but simply to shield them from
18 public dissemination to protect them under a
19 protective order. So that the parties, who have a
20 right to see them and view them, if they're going to
21 be raised, if they are irrelevant to the objections
22 or the case itself are material, have an opportunity
23 to review them under a protective order so that it
24 is not disseminated.

25 My understanding is the Division has the

1 means to do that, ensure that these documents, that
2 they exist and that they truly do meet the standards
3 for a confidential, proprietary trade acts
4 information can be protected.

5 So, you know, I don't see how any of this
6 is either not relevant or overbroad. So as to
7 timing, we asked recognizing the mishap on the
8 service, it was not served during -- on counsel
9 because I understood that he already had it and had
10 already submitted it to his client. Nevertheless,
11 when I realized that was not the case, had it
12 reissued and did so with the request to produce the
13 documents within the timeframe for the hearing that
14 was going to be set for today.

15 I also asked counsel for Empire whether,
16 you know, how much time they would need to produce
17 the documents, didn't get a response. So I -- my
18 position is that having been aware of the request
19 prior to June 1st, and having properly been served
20 on June 6th, that the deadline for production should
21 be July 6th, which is more than 30 days to produce
22 and prepare the documents and more than they would
23 generally have in District Court.

24 So that, Mr. Examiner, I would ask that
25 the subpoena be enforced and that Empire be

1 requested to produce the documents.

2 Now I'll say that if Empire is willing to
3 stipulate that there are no hydrocarbons in that
4 zone as the Division records reflect, then I'll be
5 happy to drop the subpoena. But failing that, then
6 Empire should be required to produce responsive
7 documents.

8 HEARING OFFICER BRANCARD: So I assume,
9 Mr. Rankin, you are looking for documents other than
10 documents that are in the Division files?

11 MR. RANKIN: That is correct.

12 HEARING OFFICER BRANCARD: Okay. So we
13 can make that a limit, okay? They don't have to
14 give you things that are in the Division files. And
15 clearly if the issue becomes whether their interests
16 are impaired, you don't want them showing up at
17 hearing with documents you have never seen before.

18 MR. RANKIN: I think that will be a
19 prejudice to Goodnight, Mr. Examiner, so, yes,
20 correct, and if that's the case, they should be
21 precluded from presenting those documents.

22 HEARING OFFICER BRANCARD: Okay. Is there
23 any limit to the timeframe? I guess it really
24 wouldn't matter, would it, whether they discovered
25 something in the last ten years, 20 years?

1 MR. RANKIN: Well, I guess if somehow that
2 would impact their arguments or on impairment or
3 what their objections are, but I don't see that
4 being the case. Either there's oil or not.

5 HEARING OFFICER BRANCARD: Yeah. It
6 hasn't just arrived.

7 Mr. Rose-Coss or Mr. Gets, any questions?

8 MR. GETS: Mr. Brancard, Mr. Gets has no
9 questions.

10 Thank you.

11 MR. ROSE-COSS: No, I don't have any
12 questions either, Mr. Brancard.

13 Thanks.

14 HEARING OFFICER BRANCARD: All right.
15 Mr. Padilla, looking at the subpoena that was
16 issued, is there any specifying language in that you
17 would like to see omitted or --

18 MR. PADILLA: Well, first of all, I think
19 you brought up a good point, it's not limited in any
20 time. If it's limited to the time that Empire
21 acquired this property, maybe that may be relevant
22 as to whether or not some analysis had been as to
23 production from the San Andres formation, but I
24 think to include the entire unit is pretty
25 ridiculous.

1 I think that if they limit it to Section 9
2 or at least the confined area of the San Andres,
3 there may be something that would comply to the
4 entire unit but some of this is probably going to be
5 included in our prepared testimony if we have to go
6 to hearing.

7 And obviously if there's some information
8 that consultants have provided that might be
9 relevant that is not privileged, we can do that.
10 But the time limit for doing all of this is pretty
11 severe in terms of, I guess, it's dependent on when
12 the hearing will be held.

13 MR. GETS: Mr. Brancard, may I suggest
14 something?

15 HEARING OFFICER BRANCARD: Certainly.

16 MR. GETS: Would we be suitable to limit
17 the subpoena to permit application area of review?

18 MR. RANKIN: May I make a response to
19 that, Mr. Examiner?

20 HEARING OFFICER BRANCARD: Yes, please.

21 MR. RANKIN: You know, the problem with
22 doing it that way, is that on the one hand Empire is
23 arguing that this whole zone has been unitized,
24 okay? And so the area of review is a small segment
25 of that area. And my concern would be that there's

1 going to be potentially valuable testimony that may
2 be applicable to the entire San Andres that for
3 whatever reason was extracted from an offsetting
4 section that would be the Division's limitation not
5 responsive. In other words, you know, if
6 Mr. Padilla said some of this would be included in
7 their proposed testimony, they may be selecting
8 information that may be helpful to them but then
9 maybe, obviously, trying to exclude information that
10 is highly relevant that would be -- would undermine
11 their position.

12 And I don't want to be in a situation
13 where based on their knowledge of the facts, they're
14 picking and choosing what areas are responsive or be
15 allowed to be produced. So my concern is that the
16 entire San Andres has been unitized, there's no
17 basis to limit it to simply the area that this area
18 of review of the injection. So we are requesting
19 that we get discovery on the entire San Andres.

20 MR. ROSE-COSS: Mr. Brancard, I suppose my
21 question here, for clarification in my own mind
22 about what's going on here.

23 Mr. Rankin, is it -- am I coming to the
24 understanding that essentially Goodnight is
25 attempting to call a bluff of sorts, like Goodnight

1 doesn't believe that Dominion or Gulf, that other
2 company, is going to be able to produce any
3 information that says there's any oil in the zone?
4 And it's only going to be able to produce
5 information that says there's only, you know, it's
6 an aquifer. And you just want to prove that that's
7 the case, essentially?

8 MR. RANKIN: Well, Mr. Examiner, I don't
9 know what information they have. I do know what the
10 Division records show and I do know the basis. I do
11 know what the records reflect for the formation of
12 the unit. And we know what the water production
13 records show. We know that within the unit there's
14 no been oil production from that zone. We know
15 certain things, but we don't know everything. Of
16 course, the unit operator and the records that have
17 passed from operator to operator are going to be,
18 you know, potentially more informative on these
19 issues.

20 So, you know, if Empire, as they have, is
21 objecting to the injection on the grounds that
22 there's going to be interference or impairment of
23 their water flood operations including within that
24 zone, we want to know the basis for it.

25 And presumably it's because either they

1 believe there's oil recoverable in that zone but if
2 that's not the case, I mean, yeah, I want
3 demonstration in the records, their own, that they
4 don't have any evidence of oil being present, that's
5 all.

6 MR. ROSE-COSS: So if they came forward
7 hypothetically and said there is oil and we're
8 planning to move in there next week, Goodnight
9 Midstream would rescind its application?

10 MR. RANKIN: Depending on that strength of
11 that evidence, I mean, we may not have any choice,
12 but I would like to see it. In other words, you
13 know, our request isn't one I would think that
14 Empire should be resisting, if it exists.

15 MR. ROSE-COSS: I understand, yeah. And,
16 Mr. Padilla, is any of this easing the concerns of
17 Empire? Does any of this sound less onerous or in
18 his clarification or does it still sound overly
19 broad and egregious?

20 MR. PADILLA: Still overly broad because,
21 good God, you know, you have to go into everybody's
22 computer, any memorandum that they did. That's why
23 I'm making this statement, that you almost have
24 to -- they're asking for the entire hard drive
25 portion of -- for the unit. I mean, I guess if we

1 limit this to simply a very simple thing that says
2 hydrocarbons do not exist, or in the San Andres
3 formation maybe none, but it begs the question that
4 with technological advancement like horizontal
5 drilling that even in the San Andres horizontal
6 drilling has occurred that would produce oil. We
7 don't know that.

8 And they're simply making the assumption
9 coming out of the stranger to title or anything,
10 note no ownership interest in the unit and certainly
11 not in the oil and gas lease committed to the unit
12 that would -- I mean, just because you simply say
13 it's all water, it's an aquifer, therefore there's
14 no oil, therefore we can dump water in there without
15 a property interest and you go back to the pour
16 space issue. And it can avoid, I think that the
17 best thing to say is the issue that Mr. Gets brought
18 up is that if you're going to say that that's simply
19 an aquifer that is useless, therefore you have to go
20 back and amend the unitized vertical of the unit.

21 MR. ROSE-COSS: I guess my understanding
22 of what's being asked for, then, is that any
23 additional potential information and I like the
24 caveat you had of something that could be found on
25 the OCD records and I imagine most of it can be that

1 proves that it is either just an aquifer or that
2 there isn't oil in there.

3 And, Mr. Rankin, is that where we're
4 limiting it, right, is that -- because when I first
5 read through the request, that did seem incredibly
6 broad, but because I'm calling on Mr. Rankin again.
7 Is there a way in your mind that you've limited it
8 for Empire?

9 MR. RANKIN: To address your question,
10 we're not asking for all documents, records,
11 memoranda, you know, discussions that pertain to the
12 San Andres. We're asking for all records,
13 documents, information, memoranda that reflect the
14 existence or nonexistence of oil, period. It's not
15 that we're asking for all logs or anything that
16 pertains to the San Andres, it's to that limited
17 issue of whether or not there are hydrocarbons or
18 not.

19 To the point about whether or not we're
20 seeking documents that are available on the Division
21 website, no. If those documents or information is
22 available on the Division website, we're not -- or
23 database, we're not seeking those documents.

24 But if there are documents that are
25 otherwise not present on the Division's website,

1 production records, analyses, potential reserve
2 estimates, that sort of thing and that goes to the
3 objection that Empire has raised, it's highly
4 relevant and we have a right to see it.

5 MR. ROSE-COSS: So might have just changed
6 my understanding of it again. You would like
7 everything on everything not just you were
8 continuing limiting to the San Andres?

9 MR. RANKIN: We are limiting to the San
10 Andres. To the San Andres only, but to whether or
11 not there's hydrocarbons or not that's in the San
12 Andres. Not anything about the San Andres, only the
13 existence or nonexistence of hydrocarbons.

14 MR. ROSE-COSS: Okay. The existence or
15 nonexistence of hydrocarbons specifically in San
16 Andres?

17 MR. RANKIN: Correct.

18 MR. ROSE-COSS: Okay. That sort of limits
19 the line of questions that I have.

20 Thank you, Mr. Rankin and Mr. Padilla.

21 HEARING OFFICER BRANCARD: So to try to
22 move this on, what I would like the parties to
23 consider is the possibility of a hearing in August
24 or September. And whether having a date such as
25 that would make it easier for a subpoena to be

1 complied with.

2 MR. PADILLA: Mr. Examiner, I have
3 deadlines on a Federal case, discovery deadlines in
4 August and for which I have to be ready for a
5 settlement conference, I think mid-August, I think
6 August 16th, so September would work better for me.

7 HEARING OFFICER BRANCARD: Mr. Padilla,
8 I'm shocked that you do anything beside OCD work
9 but --

10 MR. PADILLA: Sometimes I'm an idiot and
11 I'll admit to that.

12 MR. RANKIN: Mr. Examiner, if I might just
13 interject a consideration. Empire filed its
14 objection to Goodnight's administrative application
15 in September of 2021 in which they raised this
16 objection that the injection would interfere with
17 their unit operations. They've had a long time to
18 contemplate and evaluate what those objections are
19 based on. We served them with a subpoena at the
20 beginning of June.

21 Mr. Padilla was aware of that a few days
22 earlier. They will have had plenty of time to
23 evaluate the bases for their objection and they
24 ought to know by now whether and what documents are
25 responsive to this request. So whether or not

1 Mr. Padilla has a deadline in a Federal case in
2 August, the objector, Empire, should be required to
3 produce those documents far in advance of August.

4 HEARING OFFICER BRANCARD: Well --

5 MR. PADILLA: You got to assure that
6 subpoena is all I'm saying. Whether I knew or not
7 of a subpoena it's not my duty to go around
8 searching for it.

9 MR. RANKIN: Yeah.

10 HEARING OFFICER BRANCARD: Mr. Rankin, I'm
11 guessing and maybe I'm being a little out of hand
12 here, but I think Mr. Padilla's client may be going
13 through 40 years of boxes accumulated by many
14 different operators of this unit and they're not all
15 sitting on one little thumb drive. So this may be a
16 bit of a chore to get at these documents,
17 particularly if they're older.

18 So why don't we charge ahead here and
19 schedule a hearing for September 15th. And we will
20 deny the motion to quash the subpoena. It can be
21 reissued however you want to do it, Mr. Rankin, but
22 it would require at least 30 days to comply with the
23 subpoena. It would be limited to exclude all
24 documents that are currently available on the OCD
25 website. If there is any way for Empire to phase

1 production, we do that all the time with IPRA
2 requests, that might be helpful. Perhaps starting,
3 as was suggested, with the area, information on the
4 area closest to the proposed injection well.
5 Because in a lot of ways that area of review is
6 going to be key.

7 In other words, will that wonderful sauce
8 that Goodnight puts down into the ground go out and
9 interfere within that radius, what could happen? So
10 I would think that would be the priority. You know,
11 hypothetical arguments about maybe somewhere ten
12 miles away the San Andres could produce
13 hydrocarbons. I don't know it's going to be very
14 helpful during a hearing. What's happening in the
15 area near where the proposed injection well will be
16 most important to the Division. Again, assuming if
17 we get to a hearing.

18 So what would, Mr. Rankin, would you want
19 the Division to reissue the subpoena or how would
20 you like to rephrase it then and --

21 MR. RANKIN: I have a concern about
22 rephrasing it and drawing additional objections
23 because of some issue with my rephrasing. I prefer
24 an order of some kind from the Division providing a
25 deadline and incorporating the limitations because I

1 don't want to get in a situation where additional
2 time is lost because I've rephrased and reissued a
3 subpoena to only to draw additional objections from
4 Mr. Padilla.

5 So my strong preference and I think the
6 appropriate step would be just to have an order that
7 writes a deadline with the limitations imposed by
8 the Division.

9 HEARING OFFICER BRANCARD: That seems
10 fair.

11 Mr. Padilla?

12 MR. PADILLA: Fine. I think as long as we
13 have 30 days, at least, to comply with the subpoena.

14 HEARING OFFICER BRANCARD: All right.
15 We'll -- okay, so that should deal with the motion
16 to quash and the motion for the continuance. We
17 will set this for hearing on September 15th. But we
18 will hopefully have an order, a short order out on
19 the motion to dismiss in case it may obviate the
20 need for a hearing.

21 Are there any other matters to come forth
22 on Case 22626?

23 MR. PADILLA: Not from me, Mr. Examiner.

24 HEARING OFFICER BRANCARD: Mr. Rankin.

25 MR. RANKIN: No. But I guess one thing,

1 I'm just sort of thinking out loud to myself, which
2 can be dangerous. But, you know, I wonder if it
3 might be helpful to the Division for us to, if
4 there's -- you know, I'm not -- I may follow-up on
5 this actually with Mr. Padilla, and Mr. Examiner,
6 but I'm wondering if it may be helpful to have a
7 short briefing to address the unitization issue or
8 if the Division would prefer just to decide that on
9 its own. The only concern is that, you know, some
10 of the questions that are going to be considered by
11 the Division haven't been briefed or addressed. And
12 I'm wondering if it might be helpful for the parties
13 to provide guidance on some of those issues?

14 HEARING OFFICER BRANCARD: Well, I don't
15 want you to be the only one thinking on your own
16 here, I do it all day long. As I said, I think the
17 key with the motion to dismiss issue is whether the
18 mere fact of a statutory unit that includes this
19 interval and that creates a unit with an operator
20 negates the possibility of any injection into that
21 interval absent some sort of waiver or agreement.
22 That's the way I see the motion to dismiss. Okay?

23 So a threshold legal issue, don't need
24 factual findings to come to that conclusion one way
25 or the other. If we deny the motion to dismiss,

1 then it becomes a hearing on the application for an
2 injection well. And with the injection well we have
3 to follow the Safe Drinking Water Act which says we
4 don't impact freshwater supplies and we have to
5 follow the (audio cut out) act which says that we
6 don't allow water to interfere with hydrocarbon
7 production.

8 And I would think that would be sort of
9 the core issue at a hearing in this case. Because
10 clearly the Division has issued orders including at
11 least one that I found after a hearing allowing for
12 an injection well in this unit. So that's sort of
13 how I see the issues playing out at this point. You
14 know, you-all have raised property rights issues,
15 BLM issues, you know, we know from dealing with the
16 Division we tend to run screaming away from all
17 those issues and avoid them.

18 So try to keep it to the Oil and Gas Act
19 and also the Statutory Unitization Act and what are
20 the limitations imposed by those statutes. Is that
21 helpful?

22 Now having said that, there is absolutely
23 nothing that would prevent Goodnight and Empire
24 working out a deal on their own. So I said my
25 peace.

1 With that, anything else?

2 MR. PADILLA: Not from me, Mr. Examiner.

3 HEARING OFFICER BRANCARD: Thank you.

4 MR. RANKIN: Nothing further.

5 Thank you.

6 HEARING OFFICER BRANCARD: Mr. Rose-Coss,

7 Mr. Gets, any words for the gathering?

8 MR. GETS: No comments.

9 HEARING OFFICER BRANCARD: I'll take that
10 as a no. Thank you all. I appreciate everyone's
11 participation today. It's been an interesting day.
12 I'm glad we survived.

13 MR. PADILLA: Thank you.

14 MR. GETS: Take care.

15 HEARING OFFICER BRANCARD: You'll have
16 three weeks to the next hearing unless you're here
17 tomorrow for that special hearing, but that's a
18 different story.

19 (Proceedings concluded at 11:59 a.m.)

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REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: June 16, 2022

/s/ Edwina Castillo

EDWINA CASTILLO, RPR, CCR
Certified Court Reporter #407
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