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OIL CONSERVATION DIVISION HEARINGS

Docket No. 23-23

Moderated by Gregory Chakalian

Thursday, November 16, 2023

8:14 a.m.

Remote Proceeding

Santa Fe, NM 87501

Reported by: James Cogswell

JOB NO.: 5528958

A P P E A R A N C E S

List of Attendees:

Gregory Chakalian, The Hearing Examiner

Leonard Lowe, The Technical Examiner

Tony Harris, Oil Conservation Division

Jesse Tremaine, Oil Conservation Division

Deana Bennett, Esquire, Modrall Sperling

Jim Bruce, Esquire

Michael Feldewert, Esquire, Holland & Hart

Brandon Hajny, Esquire, Cavin & Ingram

Dana Hardy, Esquire, Hinkle Shanor

Jordan Kessler, Esquire

Dalva Moellenberg, Esquire, Gallagher & Kennedy

Ernest L. Padilla, Esquire

Elizabeth Ryan, Esquire

Darin Savage, Esquire, Abadie & Schill

Sharon Shaheen, Esquire, Montgomery & Andrews

Sheila Apodaca

Carl Chavez

John Coffman

Million Gebremichael

Phillip Goetze

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

List of Attendees (Cont'd):

Don Johnson

Royce Lanning

Stephanie Marrs

Jason McClain, Expert Witness, Alpha Energy Partners

Preston McGuire

Jackie McLean

Riley Morris, Landman, Alpha Energy Partners

Ocean Munds-Dry

Yarithza Pena

Ward Rikala

Michael Rodriguez

Marlene Salvidrez

Dave Sessions

Miguel Suazo

Hailee Thompson

Paula M. Vance

Steve Warren

Jack Wheeler

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C O N T E N T S

E X H I B I T S

NO.	DESCRIPTION	ID/EVD
Case 22171:		
Exhibit A	Testimony of Landman Mr. Morris	38/41
Exhibit A-6	OCD Notice	38/41
Exhibit B	Geology Testimony of Jason McClain	38/41
Exhibit B-1	Resume - Jason McClain	38/41
Exhibit C	Notice Affidavit	41/41
Case 23666/7:		
Exhibit A	Land Testimony of Travis Macha	53/54
Exhibit B	Geology Testimony of Christopher Cantin	53/54
Exhibit C	Notice Affidavit	53/54
Case 23668/9:		
Exhibit A	Land Testimony of Travis Macha	58/59

1	E X H I B I T S (Cont'd)		
2	NO.	DESCRIPTION	ID/EVD
3	Case 23668/9 (Cont'd):		
4	Exhibit A-3	Plot of tracts,	58/59
5		Ownership interest,	
6		Pooled parties	
7	Exhibit B	Geology Testimony of	58/59
8		Christopher Cantin	
9	Exhibit C	Notice Affidavit	58/59
10			
11	Case 23725/6:		
12	Tab A	Compulsory Pooling	63/65
13		Checklist	
14	Tab B	Declaration of	63/65
15		Farley Duvall	
16	Exhibit B-7	Notice Affidavit	64/65
17	Tab C	Declaration of	63/65
18		Elizabeth Scully	
19			
20	Case 22988:		
21	Exhibit A	Pooling Checklist	69/72
22	Exhibit B	Application	69/72
23	Exhibit C	Affidavit of the Landman	69/72
24		Hannah Bollenbach	
25			

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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
Case 22988 (Cont'd):		
Exhibit C-1	C-102	70/72
Exhibit C-2	Land Flats; List of Interest Owners	70/72
Exhibit C-3	Land Flats; List of Interest Owners	70/72
Exhibit C-4	Same Proposal Letter; AFs	70/72
Exhibit C-5	Summary of Contacts	70/72
Exhibit D	Affidavit of Daniel Brugioni	70/72
Exhibit E	Horizontal Drilling Plans	70/72
Exhibit F	Affidavit of Notice	71/72
Exhibit F-1	Certified Notice Spreadsheet	71/72
Exhibit G	Affidavit of Publication	71/72

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P R O C E E D I N G S

THE HEARING EXAMINER: Welcome. It is 8:14 a.m. on November 16, 2023. These are the hearings of the Oil Conservation Division.

Before we get started, I'm going to make an announcement. As it turns out, the Pecos Hall will not be ready for December 21st docket. We will be testing it in the beginning of January, and I hope that it will be ready for in-person hearings, January 18, 2024.

Okay. It is 8:15. Let us begin by calling Mewbourne Oil Company, 23688.

Mr. Bruce? Mr. Bruce, are you with us? We can come back to this case if you're not here.

Okay. We'll come back to 23688.

Let's call 23621, Matador Production Company. That case is consolidated with 23622, 23623, and 23647.

Entries of Appearance, please?

MR. FELDEWERT: Good morning, Mr. Examiner. Michael Feldewert with the Santa Fe Office of Holland & Hart for the applicants.

THE HEARING EXAMINER: Thank you. Good morning.

MS. BENNETT: Good morning, Mr.

1 Examiner. Deana Bennett, from Modrall Sperling, on
2 behalf of Franklin Mountain Energy.

3 THE HEARING EXAMINER: Good morning.
4 Do we have any other counsel with us on
5 these cases?

6 If not, Mr. Feldewert, do you want to
7 proceed?

8 MR. FELDEWERT: No. I think we're set
9 for a status conference here. And I would alert you
10 to the fact that these are related to the next series
11 of wells, which should be the Remington wells. It
12 would be Cases 23853- to -- through 23867.

13 THE HEARING EXAMINER: Okay. Thank
14 you. Right.

15 Deana?

16 MS. RYAN: Good morning, Mr. Examiner.
17 Elizabeth Ryan on behalf of COG Operating.

18 I couldn't get my video and mute button
19 to work very quickly this morning.

20 THE HEARING EXAMINER: Let me call
21 those other cases since Feldewert advised me, which I
22 appreciate. I'm also calling 23853-, 54-, 55-, 56-,
23 57-, 58-, 59-, 60-, 61-, 62-, 63-, 64-, 65-, 66-, 67.

24 Okay. Are there any other Appearances
25 that have not been entered on all of these cases yet?

1 MR. MOELLENBERG: Good morning, Mr.
2 Hearing Examiner. Dalva Moellenberg of Gallagher &
3 Kennedy in Santa Fe, for Occidental Permian Limited
4 Partnership.

5 THE HEARING EXAMINER: Good morning.

6 Okay. It looks like we -- hold on one
7 second. It looks like we have an e-mail from Mr.
8 Bruce. "Webex won't accept the access code on the
9 docket. I have tried five times."

10 Marlene, or Sheila, would you help Mr.
11 Bruce get online, so we can go back to his case after
12 we finish these?

13 MS. SALVIDREZ: I did send him the
14 docket just now.

15 THE HEARING EXAMINER: Thank you very
16 much.

17 Okay. So who wants to begin with all
18 of these cases?

19 MS. BENNETT: Mr. Hearing Examiner,
20 this is Deana Bennett. I'll begin.

21 THE HEARING EXAMINER: Thank you.

22 MS. BENNETT: Franklin Mountain Energy
23 filed its cases -- the Remington cases -- back in
24 September.

25 And Franklin Mountain Energy's cases

1 cover all of Sections 16- and 21, and also in the west
2 half/east half of portion of Section 28. And so
3 Franklin Mountain Energy's development plan covers the
4 entirety of Sections 16- and 21.

5 In the meantime, MRC, or Matador, filed
6 competing cases, but only for one -- for the west
7 half/east half. So not the entire section.

8 So as of today, there are no competing
9 applications for the west half, or the east half/east
10 half. The only competing applications are for the
11 west half/east half.

12 So two weeks ago, I had submitted a
13 joint motion to set these cases for a contested
14 hearing on January 18th.

15 And then I realized that there was
16 perhaps a path forward -- given the limited nature of
17 the contested matters -- to have these cases be
18 uncoupled, for lack of a better word, and have the
19 west-half cases and the east-half/east-half cases go
20 by affidavit, if possible.

21 And in discussing that with the other
22 parties, it is -- it seems that they're not agreeable
23 to that.

24 And so while that's Franklin Mountain
25 Energy's preferred path forward, it appears that the

1 other parties don't have that same desire, and have
2 instead requested a status conference on December
3 21st.

4 And it would be Franklin Mountain
5 Energy's preference to -- rather than delay these
6 cases, to go back to my original plan -- or our
7 original plan, which just was to set these cases for a
8 contested hearing on January 18th.

9 And if the parties are able to reach
10 agreement before then, then perhaps we could set,
11 hopefully, the uncontested matters at least for an
12 uncontested hearing before then.

13 So that's --

14 THE HEARING EXAMINER: Okay.

15 MS. BENNETT: -- my take on where we
16 stand.

17 THE HEARING EXAMINER: Okay. Thank
18 you.

19 Let's go through the counsel for the
20 other parties.

21 Mr. Feldewert?

22 MR. FELDEWERT: Yeah. Good morning.

23 Just so you got a lay the land here, as
24 Ms. Bennett pointed out, this involves Section 16 and
25 Section 21.

1 ConocoPhillips owns 100 percent of
2 Section 16. Section 21 is -- ownership is split out
3 between MRC, Oxy, and Franklin Mountain. So that's
4 why these parties are involved here.

5 And then there's a portion of Section
6 28 where Matador owns 100 percent, at least for what
7 we have been -- what's been proposed there for that
8 east-half/west-half acreage.

9 There's been some confusion about what
10 Franklin Mountain has filed. When the parties started
11 looking at this, there's -- they appeared to be
12 creating five different spacing units for five
13 intervals within the acreage. But there's only four
14 pools involved, as we understand it from the Division.

15 So I'm not clear what Franklin Mountain
16 is intending with respect to seeking five different
17 spacing or pooling applications with different spacing
18 units when there's only four pools involved. You -- I
19 would think there would only be four.

20 We also understand that the parties
21 have been engaged in discussions -- particularly with
22 ConocoPhillips -- about this development. And I'll
23 let Ms. Ryan speak to what ConocoPhillips intends to
24 do.

25 But it seems to me that my

1 understanding is that there's going to be some
2 additional competing development plans that are put
3 forth. And all this acreage involves the same
4 parties. And so it doesn't seem to me that they
5 should be bifurcated, if we're going to have competing
6 development plans.

7 And there's also no need to rush to a
8 hearing because there's -- nobody's facing any
9 drilling deadlines or anything like that. And the
10 discussions are ongoing.

11 So that's what I know. Hope it helps.

12 THE HEARING EXAMINER: It does. Thank
13 you.

14 Ms. Ryan?

15 MS. RYAN: Yes. Both Deana and Mike
16 have both characterized the case right. It's really
17 all one big development plan, and who is going to be
18 the best operator for all of the -- all of this
19 acreage.

20 And ConocoPhillips has more interest --
21 unlike MRC, has more interest in what is currently in
22 the uncontested spacing unit that Ms. Bennett's
23 talking about.

24 But after the Thanksgiving holiday, COG
25 is going to be sending out competing well proposals.

1 So with that in mind -- and then pooling applications
2 for that section so that everything goes together,
3 continues to move together.

4 So that's our plan. And so we can work
5 backwards -- once those competing applications are
6 filed -- on setting a contested hearing in 2024. But
7 we'll be -- that's where we're headed.

8 THE HEARING EXAMINER: Before I go to
9 Mr. Moellenberg, Ms. Ryan, are you saying that on top
10 of the Matador applications and the Franklin Mountain
11 applications, we're going to have COG applications as
12 well?

13 MS. RYAN: We're going to have C -- MRC
14 has competing applications for a portion of --

15 THE HEARING EXAMINER: Right.

16 MS. RYAN: -- Franklin Mountain's
17 cases. And COG would be what I think is the east
18 half. Deana could correct me on which spacing units
19 those are.

20 So it would be -- yes. That's the
21 current discussion. And to keep these cases
22 continuing to move together. The parties are still in
23 discussion, and that's why it's premature to let any
24 of these go.

25 And so we're filing competing

1 proposals. And we think the most prudent thing would
2 be to set a status conference for December 21st.
3 Because by then, we would have all those well
4 proposals sent out, competing applications done, the
5 parties would have had time to work further amongst
6 themselves.

7 And then we'll know a lot more by that
8 date on setting a contested hearing, and how we're all
9 going to move forward.

10 THE HEARING EXAMINER: Mr. Moellenberg?

11 MR. MOELLENBERG: Thank you, Mr.
12 Hearing Examiner.

13 For the reasons already discussed, Oxy
14 also supports setting this for a status conference on
15 December 21st.

16 THE HEARING EXAMINER: Let me go back
17 to you, Ms. Bennett. Ms. Bennett, you told me that
18 part of this land does not have competing applications
19 attached to it, and you felt as though we could have
20 an uncontested hearing for that part.

21 Is that correct?

22 MS. BENNETT: That's correct.

23 It wasn't until just now that I learned
24 from Ms. Ryan that COG intends to submit competing
25 proposals and competing applications, which is

1 unfortunate to learn that today.

2 When Franklin Mountain Energy proposed
3 these wells, its development, it would have been back
4 at least in August. I don't have the proposal letters
5 in front of me.

6 And now we're already in November, and
7 it sounds like ConocoPhillips -- or COG isn't even
8 going to send out their proposal letters until after
9 Thanksgiving. And so that does seem like quite a bit
10 of delay for applications that were filed back in
11 September.

12 So I understand the Division's
13 preference is to move forward with competing
14 applications, heard together. And I'm not going to be
15 the one who upsets that practice.

16 But I did -- would just like to note
17 for the record that that is a substantial amount of
18 delay since the time we filed our applications.

19 At this point, it seems like if COG
20 files -- sends out its proposals after Thanksgiving,
21 the first docket it could file for would be the
22 February 1st or -- yeah. The February 1st docket
23 based on the timelines for proposal letters, and then
24 applications.

25 So I mean if the parties are amenable

1 to this, and if the Division is amenable to this, we
2 could have -- we could set a contested hearing for
3 February 1st.

4 THE HEARING EXAMINER: You also heard
5 from Mr. Feldewert that the company he represents has
6 ownership. And it sounded like ownership in more than
7 what you thought was uncontested.

8 Is that -- did I hear that wrong?

9 MS. BENNETT: I heard that as well.
10 But that is not my understanding. If --

11 THE HEARING EXAMINER: Okay.

12 MS. BENNETT: -- Mr. Feldewert has
13 further information, that would be helpful.

14 But what I do know for a fact is that
15 Matador has not proposed any competing wells for any
16 sections, other than the -- or any tracts other than
17 the west half/east half --

18 THE HEARING EXAMINER: Okay.

19 MS. BENNETT: -- which supports my
20 supposition, I suppose, that they don't have interest
21 in other tract -- other acreage.

22 THE HEARING EXAMINER: And Mr.
23 Feldewert?

24 MR. FELDEWERT: That is correct.
25 Currently, Matador owns in the -- has 100 percent of

1 the northwest and northeast of Section 28, which is
2 kind of a sliver of -- in terms of the spacing units
3 being proposed. And then they have an 80-acre block
4 in Section 21.

5 ConocoPhillips is the one that has the
6 majority of the acreage, by far, involved here. So I
7 think that's why there's been discussions.

8 And I know Ms. Bennett's right. She
9 did -- they did file their proposals.

10 But that is what initiated the
11 discussions. And that's what the parties have been
12 involved in over the last two months. And I -- those
13 discussions are ongoing. I assume they're being
14 productive.

15 And I -- like I said, I don't --
16 doesn't seem to be a reason to rush to a hearing here.

17 THE HEARING EXAMINER: And Ms. Ryan,
18 let me come back to you for a moment. Are your
19 competing proposals going to cover all of this land?

20 MS. RYAN: They're going to cover the
21 portion -- let me look at my -- they're going to cover
22 the portion that's currently uncontested.

23 So Franklin --

24 THE HEARING EXAMINER: That is what?

25 MS. RYAN: That's currently

1 uncontested. So --

2 THE HEARING EXAMINER: Uncontested.

3 MS. RYAN: And if Franklin Mountain
4 covers --

5 THE HEARING EXAMINER: I see.

6 MS. RYAN: -- all the acreage --

7 THE HEARING EXAMINER: I see.

8 MS. RYAN: -- MRC covers a portion, we
9 would cover the rest of that -- rest of that portion.

10 My -- I think the context of this -- as
11 you have seen from the past several dockets -- is that
12 Franklin Mountain and MRC have proposed a number of
13 wells in a bunch of areas.

14 We have a lot of cases involving the
15 three of us. And we're working to resolve multiple
16 cases. This one -- that had the piece that is
17 uncontested -- kind of slipped through the cracks, so
18 to speak, as far as all of the -- there's just a lot
19 of acreage involved, in addition to these number of
20 cases, which is taking up most of our docket sheet
21 today.

22 So there's just a lot going on, trying
23 to resolve things at a much higher level, more than
24 just this particular case. And so we're just trying
25 to be efficient with resolution of that, and move

1 these together.

2 THE HEARING EXAMINER: Okay.

3 Ms. Bennett, I understand and can
4 commiserate with moving these cases to a contested
5 hearing. But it sounds like we should have a status
6 conference before we set a date for our contested
7 hearing.

8 Do the parties think it would be
9 productive for December 21st? Or should we set it for
10 a contested hearing -- sorry. Or should we set it for
11 a status conference in January?

12 Ms. Ryan, since you're here?

13 MS. RYAN: We're amenable, either way.
14 I mean if Franklin Mountain would like to go ahead and
15 make us touch base in December, we're fine with that.
16 Or we can do that in January.

17 THE HEARING EXAMINER: And Ms. Bennett?

18 MS. BENNETT: Thanks.

19 I'm kind of two minds about this. I
20 think that December 21st may be a bit premature based
21 on the representations about when the proposal letters
22 would go out.

23 On the other hand, I do think it would
24 be useful for all of us to understand earlier --
25 rather than later -- if the proposal letters have been

1 sent out.

2 So that being said, I guess I -- wait.
3 I'm in favor of a December 21st status conference.

4 THE HEARING EXAMINER: Okay.

5 And Mr. Moellenberg, do you have an
6 opinion?

7 MR. MOELLENBERG: Mr. Hearing Examiner,
8 I don't believe that we have a preference. Either is
9 fine.

10 THE HEARING EXAMINER: Mr. Feldewert?

11 MR. FELDEWERT: I'm fine with either,
12 Mr. Examiner.

13 THE HEARING EXAMINER: Ms. Bennett,
14 after doing -- after performing this role for a few
15 months now, I don't believe I have very much power to
16 police the parties, and to corral them into anything.

17 So I'm going to set this for a status
18 conference in January, and not December. If I didn't
19 hear what I heard from Ms. Ryan today, I would set it
20 for a status conference in December. But I think
21 we'll set this for a status conference in January.

22 Do you prefer the first docket, or do
23 you prefer the first? Okay.

24 MS. BENNETT: Yes. Thank you.

25 THE HEARING EXAMINER: Okay. Very

1 good. So let me make notes. And I'm not looking at
2 that schedule right now --

3 MR. FELDEWERT: I think it's --

4 THE HEARING EXAMINER: -- what?

5 MR. FELDEWERT: I think it's January
6 4th, Mister --

7 THE HEARING EXAMINER: January 4th.
8 Perfect. Thank you.

9 And Ms. Ryan, you said that you're
10 going to file competing applications. And when are
11 you filing those?

12 MS. RYAN: The well proposals will go
13 out about a week after the holiday. So end of
14 November, 1st of November [sic]. And we're going to
15 be working on pulling applications at that same time,
16 so -- or first week of December or so.

17 Because these are already together, we
18 -- while we'll still have 30 days for the parties to
19 consider our well proposals, we can -- the practice
20 has normally been that we can go ahead and file those
21 applications just so they're all set together.

22 And that should give us plenty of time
23 before the January 1st -- 4th docket to --

24 MR. FELDEWERT: They should --

25 MS. RYAN: -- have that in everybody's

1 hands.

2 MR. FELDEWERT: Yeah. They'll be --
3 should be filed by then, I would think.

4 MS. RYAN: Yeah.

5 THE HEARING EXAMINER: But the
6 competing proposals, Ms. Ryan, will not be on the
7 January docket? They'll be on the February docket?

8 MS. RYAN: Correct. Correct. But
9 they'll be in -- they will have been filed.

10 THE HEARING EXAMINER: Right. I
11 understand --

12 MS. RYAN: -- by everyone. Yeah.

13 THE HEARING EXAMINER: All right. Very
14 good.

15 I did not hear from our technical
16 examiner and asked him whether he has any questions
17 for the parties. Is it Mr. Garcia today?

18 THE TECHNICAL EXAMINER: It's Mr. Lowe
19 today.

20 THE HEARING EXAMINER: Oh. Very good.
21 Do you have any questions for the parties?

22 THE TECHNICAL EXAMINER: Not really.
23 But I actually have one general question.

24 I think it was what portion of the
25 entire space unit that's being discussed was not --

1 and, I guess, not shared? I think Deana was talking
2 about that. Or it's not -- not under -- that's not
3 being contested? A certain acreage?

4 MS. BENNETT: Yes. I'm happy to answer
5 that, Mr. Lowe, and Mr. Examiner, if that's helpful.

6 Right now, the only contested
7 applications cover the west half/east half. So
8 currently, the west half is uncontested, and the east
9 half/east half is uncontested.

10 But my understanding from Ms. Ryan is
11 that COG will be filing out competing -- or submitting
12 competing proposals and filing competing applications
13 for the west half and the east half/east half.
14 Meaning that the entirety of Section 16- and 21 will
15 be contested.

16 I'm not sure about the northwest
17 quarter or the northeast quarter of Section 28. But
18 at least 16 and 21 will be covered by competing
19 applications.

20 THE TECHNICAL EXAMINER: Oh, okay. And
21 all these pool -- and these concerns here, is it all
22 pertaining to how many pools?

23 MS. BENNETT: No. It's -- I mean Mr.
24 Feldewert did raise that. I don't think that's an
25 issue we need to --

1 THE TECHNICAL EXAMINER: Okay.

2 MS. BENNETT: -- dive into today. But
3 it's really competing development plans.

4 THE TECHNICAL EXAMINER: Okay.

5 And that's my questions for now.

6 Thank you.

7 THE HEARING EXAMINER: Thanks, Mr.

8 Lowe.

9 Okay. We will set that for January 4th
10 status conference. We will look forward to Ms. Ryan's
11 competing applications on behalf of COG.

12 And we will call back Case No. 23688.

13 Mr. Bruce, are you with us?

14 MR. BRUCE: Yes, sir. Sorry about
15 that.

16 THE HEARING EXAMINER: All right.

17 Excellent.

18 Do we have any other parties? I think
19 we do.

20 Mr. Savage?

21 MR. SAVAGE: Yes. Good morning, Mr.
22 Hearing Examiner.

23 Good morning, Technical Examiners.

24 Darin Savage, with Abadie Schill, on
25 behalf of Cimarex Energy Company.

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1 THE HEARING EXAMINER: And do we have
2 Ms. Kessler?

3 MS. KESSLER: Good morning, Mr. Hearing
4 Examiner. Jordan Kessler with EOG.

5 THE HEARING EXAMINER: Morning.

6 Are there any other parties interested
7 in this case before we begin?

8 MR. FELDEWERT: Yes. Good morning, Mr.
9 Examiner. Michael Feldewert, with Santa Fe office of
10 Holland & Hart, for Colgate Production, Colgate
11 Operating, and Permian Resources Operating.

12 THE HEARING EXAMINER: Thank you.

13 Mr. Bruce, this is a status conference.
14 What are we trying to achieve here?

15 MR. BRUCE: Mr. Examiner, the parties
16 have been in -- Permian and Mewbourne have been in
17 discussions regarding settling this matter.

18 And I was told, just a couple of days
19 ago, they're quite close to settling, which would
20 allow Mewbourne to move forward by affidavit. Even
21 filed a pre-hearing statement last week.

22 But that settlement did not eventuate,
23 so I haven't filed any exhibits.

24 I -- we -- Mewbourne wants to get it to
25 hearing. But if it's set for a contested hearing --

1 because at this point it's still contested -- that
2 would probably kick it out to -- I don't know --
3 February.

4 And I was wondering if you set it for a
5 status conference at the second December hearing, was
6 the understanding that if it does settle out, we could
7 just do a four- or five-minute affidavit case?

8 THE HEARING EXAMINER: Okay.

9 Let's hear from the other parties?

10 MR. FELDEWERT: Mr. Examiner, Michael
11 Feldewert. Mr. Bruce is right. My understanding is
12 the parties are very -- have the agreement, or just
13 getting it finished.

14 So I don't foresee any objection by my
15 clients to Mewbourne proceeding by affidavit on the
16 21st. Then we would be in a position to withdraw our
17 objection.

18 THE HEARING EXAMINER: Okay. So you
19 would withdraw your objection once the settlement is
20 signed? Okay.

21 MR. FELDEWERT: Yes, sir.

22 THE HEARING EXAMINER: Are you the only
23 party that filed an objection?

24 MR. FELDEWERT: Good question. I
25 didn't scan the file. I don't --

1 THE HEARING EXAMINER: Okay.

2 MR. FELDEWERT: -- know.

3 MR. BRUCE: Yes. They are.

4 THE HEARING EXAMINER: Oh. They are
5 the only ones? Okay.

6 So then Mr. Savage, and Ms. Kessler,
7 you're just observing or monitoring this case? Okay.
8 All right --

9 MR. SAVAGE: No. Mr. Hearing Examiner,
10 I do have some comments on this, if I --

11 THE HEARING EXAMINER: Okay. Great.
12 I'll come to you in just a moment.

13 I just wanted to see who filed
14 objections. And it seems like it's Mr. Feldewert.

15 Okay. So Mr. Savage, what did you like
16 me to know?

17 MR. SAVAGE: Mr. Hearing Examiner, the
18 -- it would be useful to know that this particular
19 case is going to be -- it looks like it's going to be
20 moved to a de novo case that's currently before the
21 OCC -- before the Commission. And that is Case 21744.

22 This case, the -- with the Judge wells.
23 Mr. Bruce's case -- it overlaps a part of a section
24 that's in -- being contested at the Commission level.
25 And that is Colgate's Case 21629, and then also

1 Cimarex's competing Cases 22018- and 22019.

2 The Commission had a hearing on
3 November 8th. It was a status conference. And they
4 were fully informed and aware that this case is being
5 heard at the OCD.

6 And they were interested in moving
7 forward and doing a contested hearing date. They set
8 a contested hearing date for January 11th on that.

9 So when it is moved, and if it's
10 moved -- and they may settle this. They may just
11 settle this and resolve it before.

12 But if the case is heard by affidavit,
13 and it's moved to the Commission, that is the de novo
14 hearing. And it has been a tradition and practice
15 that at the Commission level, that's a pure de novo
16 hearing and completely brand-new.

17 So I would just ask for, if it's
18 possible, in some way to accommodate that January 11th
19 contested hearing date?

20 THE HEARING EXAMINER: So Mr. Savage,
21 then are you then suggesting that we don't have an
22 affidavit hearing at all in December, and just let the
23 Commission hear this case?

24 MR. SAVAGE: That's a possibility. But
25 I think we could -- what we could do -- I mean it

1 would be good to have the -- I believe it would be
2 good to have the Division hear it. And since it's not
3 contested, they could hear it by affidavit.

4 And then if the Division has time --
5 they take it under advisement. If they have time to
6 address any matters that they -- that concern them, or
7 if they have time to issue an order, they could do so.

8 But if they did not, they could also
9 let it go to the Commission and have them hear it, de
10 novo.

11 THE HEARING EXAMINER: Let me ask Ms.
12 Kessler.

13 Ms. Kessler, I think -- didn't you
14 serve on the Commission for a while?

15 MS. KESSLER: Yes, Mr. Hearing
16 Examiner.

17 THE HEARING EXAMINER: Okay. What do
18 you recommend for a situation like this?

19 MS. KESSLER: This case has a fairly
20 extensive history, Mr. Examiner, and so it's a unique
21 case.

22 I would say that the de novo Commission
23 case that will be heard on the January docket is going
24 to be -- have some bearing on these cases pretty
25 clearly.

1 But I don't think I could issue a
2 recommendation because it's such an odd, sort of very
3 lengthy case.

4 I mean I think that this may have
5 actually been scheduled on the Commission when I was
6 on the Commission. So I think that I would defer to
7 certainly the recommendations of the other attorneys.

8 And EOG is only here to be monitoring
9 the case at this level, at the Commission level.
10 Because we do have an interest in the spacing unit.

11 THE HEARING EXAMINER: So Mr. Bruce,
12 you have heard what Mr. Savage said. What is the
13 purpose of going forward with an affidavit hearing if
14 this is so intertwined with Commission cases, and will
15 be a contested case in January 11?

16 MR. BRUCE: If Mewbourne case moves
17 forward, and they settle with Permian, it will be
18 uncontested, and there will be no need to hear this
19 case before the Commission.

20 THE HEARING EXAMINER: Okay. All
21 right.

22 And okay. So Mr. Feldewert, do you
23 concur with that?

24 MR. FELDEWERT: Yeah. I was trying to
25 figure out the argument. But I do concur with that.

1 THE HEARING EXAMINER: Okay. All
2 right.

3 Then what we'll do is we will set this
4 for an uncontested hearing, December 21st. Obviously,
5 if the parties --

6 Mr. Feldewert, if you don't file a
7 withdrawal of objection, then we won't be able to have
8 the uncontested hearing, December 21st.

9 Or Mr. Bruce, are you suggesting that
10 we have a contested hearing, December 21st?

11 MR. BRUCE: Yeah. It's my firm belief
12 it's going to be uncontested.

13 THE HEARING EXAMINER: Okay.

14 MR. BRUCE: I suppose you could put it
15 down as contested and throw it at the end of the
16 docket. But I think it will be -- if it is contested,
17 then I guess it would have to go up to the Commission.

18 But everything I have been told that it
19 will be uncontested, and --

20 THE HEARING EXAMINER: Okay.

21 MR. BRUCE: -- this case will go the
22 way of the dinosaur, so.

23 THE HEARING EXAMINER: Okay. All
24 right. I understand. So I think what I would like
25 you to do, Mr. Bruce, is to -- we'll set it for an

1 uncontested hearing, December 21st.

2 MR. BRUCE: Okay.

3 THE HEARING EXAMINER: If negotiations
4 do not prove to be productive, then I think that you
5 should file a motion to dismiss the case in front of
6 the Division and hold your contested hearing before
7 the Commission.

8 MR. BRUCE: Okay. Okay.

9 THE HEARING EXAMINER: Are there any
10 objections to that route from any of the other
11 parties? No. I see heads shaking "No." Okay. Very
12 good.

13 Then Sheila, or Marlene, we're going to
14 set this for December 21st, an uncontested hearing,
15 unless what I said happens.

16 Let me make some notes.

17 And Mr. Lowe do you have any
18 questions --

19 MR. BRUCE: Thank you.

20 THE HEARING EXAMINER: -- for the
21 parties before we move on?

22 THE TECHNICAL EXAMINER: No. I do not.
23 Thank you.

24 THE HEARING EXAMINER: All right. We
25 are going to move on now to, it looks like, an

1 uncontested hearing. 22171, 22172. Alpha Energy
2 Partners.

3 Who do we have?

4 Ms. Hardy?

5 MS. HARDY: Good morning, Mr. Examiner.
6 Dana Hardy, with the Santa Fe office of Hinkle Shanor,
7 on behalf of Alpha Energy Partners.

8 THE HEARING EXAMINER: Good morning.

9 And do we have any other party that is
10 either monitoring this case or has a stake in it?

11 MR. FELDEWERT: Good morning, Mr.
12 Examiner. Michael Feldewert, with Santa Fe office of
13 Holland & Hart. I'm here on behalf of MRC Permian,
14 and Matador Production Company.

15 And then I am separately appearing on
16 behalf of Sarvis Creek Energy, LLC, and SEDG1 LLC.

17 THE HEARING EXAMINER: And are you
18 monitoring it?

19 MR. FELDEWERT: Yes, sir.

20 We have no objection to the matter
21 proceeding by affidavit.

22 THE HEARING EXAMINER: Okay.

23 Ms. Hardy?

24 MS. BENNETT: Good morning, Mr.
25 Examiner. Deana Bennett on behalf of -- from Modrall

1 Sperling, on behalf of the City of Carlsbad.

2 And I'm monitoring the case. The City
3 of Carlsbad -- the cases, I should say. The City of
4 Carlsbad does not object to the cases being heard by
5 affidavit.

6 THE HEARING EXAMINER: Okay.
7 Wonderful.

8 MR. HAJNY: And good morning, Mr.
9 Hearing Examiner. Brandon Hajny, with Cavin & Ingram,
10 representing Realeza Del Spear.

11 We're also just monitoring, and do not
12 object to it going forward by affidavit.

13 THE HEARING EXAMINER: Okay. And thank
14 you very much. And welcome. Good morning.

15 Ms. Hardy, I think you have the floor?

16 MR. TREMAINE: One more, Mr. Hearing
17 Examiner. This is Jesse --

18 THE HEARING EXAMINER: Oh --

19 MR. TREMAINE: This is Jesse Tremaine
20 for the Oil Conservation Division.

21 THE HEARING EXAMINER: And good
22 morning.

23 MR. TREMAINE: We are also monitoring
24 this case. We have long been -- it had been entered
25 in Appearance.

1 But OCD's sole update today -- and is
2 not contesting the applications -- is that the
3 director very recently -- as in Monday -- issued an
4 update to the -- an amended notice of resumption of
5 activity and proximity of the Brine Well.

6 So the conditions of approval that will
7 attach to any future APDs in the area will be subject
8 to the conditions as outlined in that notice.

9 It's effectively a loosening of
10 restrictions that were in place within originally five
11 miles, and then down to one mile. Those have
12 effectively dropped off the board.

13 But there are still monitoring and
14 reporting requirements with any wells within the area
15 of concern, and specifically within one mile.

16 But those -- as long as those APD
17 conditions of approval will be met and are consistent
18 with an order issued here, OCD will not take a
19 position on this particular application.

20 THE HEARING EXAMINER: And Ms. Hardy,
21 are you -- have you been apprised of these changing
22 conditions?

23 MS. HARDY: Yes. We have, Mr.
24 Examiner. And they are addressed in our hearing
25 exhibits.

1 THE HEARING EXAMINER: Okay.
2 Wonderful.

3 Are there any other parties, or shall
4 we begin with the uncontested hearing?

5 Ms. Hardy?

6 MS. HARDY: Thank you. And Mr.
7 Examiner, just to be clear, I was intending to present
8 both Cases 22171- and 22172.

9 THE HEARING EXAMINER: Okay. Good.

10 MS. HARDY: In Case No. 22171, Alpha
11 seeks an order pooling uncommitted interest in the
12 Wolfcamp formation underlying a 640-acre, more or
13 less, standard horizontal spacing unit comprised of
14 the north half of Sections 19- and 20, Township 22
15 South, Range 27 East in Eddy County that you know it
16 will be dedicated to the Dude 1920 Fee, 201H-, and
17 Dude 1920 Fee 202H wells.

18 In Case No. 22172, Alpha seeks an order
19 pooling uncommitted interest also in the Wolfcamp
20 underlying a 640-acre standard horizontal unit
21 comprised of the south half of Sections 19- and 20 of
22 that same acreage.

23 This unit will be dedicated to the Dude
24 1920 Fee 203H- and 204H wells. These wells are
25 located in the Purple Sage-Wolfcamp Gas Pool and will

1 comply with the special pool rules for that area.

2 Because the walls are located in
3 proximity to the Carlsbad Brine Well, as Mr. Tremaine
4 mentioned, Alpha will comply with the permit
5 conditions set out in the Division's notice that was
6 issued this week.

7 And that notice is included in our
8 exhibits.

9 The exhibit packets that we have
10 submitted include Exhibit A, which is the testimony of
11 our landman Riley Morris. Mr. Morris provides the
12 standard land exhibits, which include the plot of
13 tracts; ownership interest; pooled parties; well
14 proposal; and summary of communications.

15 The Division's notice on drilling in
16 this area is Exhibit A-6. And Mr. Morris's affidavit
17 confirms that Alpha will comply with those conditions.

18 (Exhibits A- and A-6 were marked for
19 identification.)

20 MS. HARDY: Exhibit B is the geology
21 testimony of Jason McClain. Mr. McClain has not
22 previously testified before the Division, so we have
23 included a copy of his resume as Exhibit B-1.

24 (Exhibits B and B-1 were marked for
25 identification.)

1 MS. HARDY: And as you can see from his
2 resume and testimony, he has extensive experience as a
3 petroleum geologist. And we would like to tender him
4 as an expert in this case in petroleum geology.

5 THE HEARING EXAMINER: Okay. Let me
6 just review his CV. And before I make a ruling on the
7 CV, let me go back to Mr. Tremaine.

8 Mr. Tremaine, on page 30 of their PDF
9 is the amended notice of resumption, which is
10 addressed to "Dear Operators" -- is this -- are these
11 conditions here applicable in full to Alpha?

12 MR. TREMAINE: Yes.

13 And to clarify the addressees of the
14 letter, you may or may not be aware that there were
15 actually a series of OCD cases and orders wherein
16 operators within, originally, five miles of the
17 Carlsbad Brine Well were restricted from operation,
18 for an unknown period of time, in certain ways.

19 That was last July. Fourteen-, fifteen
20 months ago, that was shrunk down to a restriction of
21 one mile.

22 And now it's shrunk down again --

23 THE HEARING EXAMINER: Okay.

24 MR. TREMAINE: So the letter is styled
25 most directly at the operators who were impacted.

1 But it is generally applicable to any
2 operator who is within that one-mile radius of the
3 Brine Well.

4 So yes. It would -- hopefully, that
5 helps clarify. But it would apply, and is OCD's
6 intent that it would apply to these wells.

7 THE HEARING EXAMINER: It does. Thank
8 you.

9 And Ms. Hardy, you are seeking to
10 qualify Mr. McClain as an expert in what science?

11 MS. HARDY: In petroleum geology, Mr.
12 Examiner.

13 THE HEARING EXAMINER: Okay. He is so
14 admitted.

15 Please proceed?

16 MS. HARDY: Thank you.

17 Mr. McClain provides the standard
18 geology exhibits that include a location map,
19 structure map, and stratigraphic cross-section.

20 Exhibit C is my notice affidavit which
21 includes our notice letter to the parties to be
22 pooled, copies of the certified mail cards, and an
23 affidavit of publication which shows that we did
24 timely publish notice of this proceeding to all
25 interested parties.

1 (Exhibit C was marked for
2 identification.)

3 MS. HARDY: With that, unless there are
4 questions, I would request that the exhibits be
5 admitted, and that these two cases be taken under
6 advisement by the Division.

7 Thank you.

8 THE HEARING EXAMINER: Okay. In Case
9 No. 22171, Exhibits A and its subparts-, B, subparts-,
10 C, subparts, are admitted into evidence.

11 (Exhibits A-, A-6-, B-, B-1, and C were
12 received into evidence.)

13 THE HEARING EXAMINER: We'll go to
14 22172 in a moment.

15 Mr. Lowe, any questions for Ms. Hardy,
16 or her witness?

17 THE TECHNICAL EXAMINER: I have one
18 question. Let me see if I can get this going.

19 Good morning. Good morning, Ms. Hardy.

20 MS. HARDY: Good morning, Mr. Lowe.

21 THE TECHNICAL EXAMINER: And what you
22 presented just now was Case No. 22171. And you didn't
23 do 2172 [sic] yet, have you?

24 MS. HARDY: I did, actually. I covered
25 both of them.

1 THE TECHNICAL EXAMINER: Okay. You
2 combined them both? Okay.

3 MS. HARDY: Yes.

4 THE TECHNICAL EXAMINER: I notice on
5 your C-102s for -- I think for sure the 22171, for the
6 Dude 201H- and the 202H wells, your spacing unit
7 indicates they're 634.28 acres. And your down-hole or
8 your bottom-hole location is referenced as a unit
9 letter.

10 You might want to update that to change
11 it to a lot number on your C-102s.

12 MS. HARDY: Is that a lot?

13 THE TECHNICAL EXAMINER: Yes. It's two
14 hundred --

15 MS. HARDY: Okay --

16 THE TECHNICAL EXAMINER:
17 -- thirty-seven-point-two --

18 MS. HARDY: Oh. I see --

19 THE TECHNICAL EXAMINER: -- meters.

20 MS. HARDY: I see that. So on the top
21 -- C-102?

22 THE TECHNICAL EXAMINER: Yeah. That's
23 just --

24 MS. HARDY: Okay.

25 THE TECHNICAL EXAMINER: -- to update

1 that. It's not -- I don't think it's a concern, I
2 mean --

3 MS. HARDY: Sure.

4 THE TECHNICAL EXAMINER: -- in the
5 case. But just in general, you might want to -- in
6 reference to that, those -- they -- that it's a unit
7 or a lot number.

8 And I think that was -- I saw that in
9 the 201 or 202. And I believe it's the same for 203
10 and 204 for the other case. But that's just a --

11 MS. HARDY: -- we --

12 THE TECHNICAL EXAMINER: -- update to
13 that.

14 And in reference to these wells here,
15 when do you intend to drill them?

16 MS. HARDY: Oh. Mr. Lowe, I don't know
17 the answer to that question. I believe that my
18 landman, Riley Morris, is hopefully available if you
19 would like an answer to that.

20 There is Mr. Morris. I see him.

21 MR. MORRIS: Mr. Lowe, this is Riley
22 Morris with Alpha Energy Partners. We have --

23 THE HEARING EXAMINER: Mr. Morris? Mr.
24 Morris, before you --

25 MR. MORRIS: -- yes?

1 THE HEARING EXAMINER: Before you
2 answer any questions, you'll need to be sworn in.

3 MR. MORRIS: Okay.

4 THE HEARING EXAMINER: Would you raise
5 your right hand?

6 WHEREUPON,

7 RILEY MORRIS,

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

12 THE HEARING EXAMINER: Okay.

13 And Mr. Lowe, what is the question?

14 THE TECHNICAL EXAMINER: When do you
15 tend to drill these wells?

16 MR. MORRIS: Right now we're shooting
17 for Q-2 of 2024.

18 THE TECHNICAL EXAMINER: Okay. Okay.

19 And I note there was a concern for notice for the
20 drilling in reference to the Brine Well of concern.

21 How far away are these wells to the
22 Brine Well?

23 MR. MORRIS: Their surface-hole
24 locations are approximately, you know, three-quarters
25 of a mile.

1 THE TECHNICAL EXAMINER: Three-quarters
2 of a mile? So basically -- let's see here. Okay.

3 MR. MORRIS: I think the -- the north
4 half of 201H and 202H are closer.

5 But we're planning on having our
6 surface location in the northeast corner of Section
7 20.

8 THE TECHNICAL EXAMINER: Okay. And
9 then -- well, thank you for that answer.

10 MR. MORRIS: Yes, sir.

11 THE TECHNICAL EXAMINER: I think those
12 are all my questions I have. Yes. I think that that
13 will conclude my questions.

14 Thank you.

15 MR. MORRIS: -- thank you.

16 THE HEARING EXAMINER: So Mr. Morris,
17 is approximately three-quarters of a mile, are you
18 talking three thousand feet? What are we talking
19 about?

20 MR. MORRIS: I think it's approximately
21 -- you know, in between -- you know, around 3,000
22 feet. I need to, you know, kind of put it on a -- you
23 know, a distance calculator.

24 But it's my understanding that the
25 Brine Well is within, you know, kind of the

1 southeast-ish corner of Section 17. But it's a little
2 bit further up in the section.

3 THE HEARING EXAMINER: And Mr.
4 Tremaine, do you have any questions?

5 MR. TREMAINE: Actually, no, Mr.
6 Hearing Examiner.

7 I think that the -- there are specific
8 distances laid out in the amended notice.

9 And my understanding from the
10 presentation is that Alpha Energy's applications
11 comply with those terms and distances such as the
12 vertical portion of the well-bore can't be within a
13 quarter mile of the Carlsbad Brine Well.

14 As it's been measured, the horizontal
15 portion has to be 5,000 feet, or further, below ground
16 surface.

17 So my understanding is the application
18 comports with that. OCD will be reviewing the APDs
19 related to these conditions.

20 And so I think that the previous
21 restrictions being in place were at least a temporary
22 impediment to moving forward with compulsory pooling
23 or APDs in the area.

24 The OCD does not view that as an
25 impediment, at this point, to moving forward with

1 compulsory pooling cases. I mean I think that, as I
2 have said, OCD technical staff will be reviewing the
3 APDs for compliance with the specific terms here.

4 THE HEARING EXAMINER: Okay. Thank
5 you.

6 So Ms. Hardy, it's my understanding
7 that based on what Miss -- Mr. Lowe asked you to
8 correct is both C-102s? Is that correct?

9 MS. HARDY: That's my understanding,
10 Mr. Examiner. The C-0 -- C-102s for each well.

11 THE HEARING EXAMINER: So how will you
12 do that?

13 MS. HARDY: I'm hoping Mr. Morris can
14 provide me with the updated C-102s that just amend the
15 top portion so that we're referring to the lot instead
16 of a unit letter.

17 And then I can submit those to the
18 Division, I expect, early next week.

19 THE HEARING EXAMINER: Okay.

20 Mr. Lowe, is that what you want?

21 THE TECHNICAL EXAMINER: That'll be
22 fine. That'll be fine.

23 THE HEARING EXAMINER: So Ms. Hardy,
24 are you going to submit just the C-102, and call it an
25 amended C-102?

1 MS. HARDY: That's what I would like to
2 do, if that works for the Division.

3 THE HEARING EXAMINER: It works for me.
4 I just need to take notes and understand what's going
5 on. Okay.

6 MS. HARDY: Yes. Then I will do that.

7 THE HEARING EXAMINER: Okay. So in
8 both cases, you're submitting amended C-102s. That's
9 the bottom line?

10 MS. HARDY: Correct.

11 THE HEARING EXAMINER: Okay. Very
12 good. I will make a note to that effect.

13 So unless there's any further questions
14 for Ms. Hardy or her witness, this case -- or these
15 two cases will be taken under advisement.

16 THE TECHNICAL EXAMINER: I have one
17 more question. I forgot.

18 THE HEARING EXAMINER: Great. Let's
19 hear it.

20 THE TECHNICAL EXAMINER: This is
21 Leonard again.

22 Has -- does Alpha Energy Partners have
23 another well in the vicinity that is -- and close to
24 the Brine Well of concern?

25 MS. HARDY: I don't know the answer to

1 that question.

2 Mr. Morris, can you answer?

3 MR. MORRIS: I think it's within the
4 outside of the -- their -- the footage requirement of
5 a mile.

6 We do operate a vertical well called
7 the Merland [ph] No. 1, and it's located in Section 20
8 -- or in Section 19. Excuse me.

9 THE TECHNICAL EXAMINER: Okay. So
10 yeah. There's other areas of concern that --
11 pertaining to the -- between Alpha and the Brine Well
12 of concern? That --

13 MR. MORRIS: It --

14 THE TECHNICAL EXAMINER: That's at
15 play?

16 MR. MORRIS: It's -- it's an existing
17 vertical well.

18 THE TECHNICAL EXAMINER: Okay. Okay.
19 All right. That's all I wanted to know. Thank you.

20 MR. MORRIS: Thank you, sir.

21 THE HEARING EXAMINER: All right. And
22 that concludes this hearing.

23 Thank you, Miss --

24 MR. HAJNY: Mr. Hearing Examiner?

25 I -- sorry --

1 THE HEARING EXAMINER: Yes?

2 MR. HAJNY: Excuse me. I -- this -- I
3 just wanted to add for the record, we're just here
4 just to confirm we'll have one more opportunity to
5 participate under the hearing order.

6 THE HEARING EXAMINER: Okay. Can you
7 be more specific?

8 MR. HAJNY: My understanding is the
9 standard language for pooling orders entered by the
10 OCD requires operators to send out AFEs to pooled
11 parties to give them a chance to participate in the
12 well.

13 And that's just what we're planning on
14 -- or hoping that we'll be included in this order.

15 THE HEARING EXAMINER: Ms. Hardy?

16 MS. HARDY: Yes, Mr. Examiner. That's
17 a standard provision. The pooling order. And Alpha
18 would comply with the pooling order.

19 THE HEARING EXAMINER: Okay.

20 We will take these two cases under
21 advisement --

22 MR. HAJNY: Thank you.

23 THE HEARING EXAMINER: We will wait for
24 amended C-102s from Ms. Hardy.

25 And I'm now calling 23666-, 67-,

1 68- 6 -- well, I don't know. Are these all going to
2 be heard together? These four cases? Or are we doing
3 two, and then two?

4 MS. HARDY: Mr. Examiner, this is Dana
5 Hardy again --

6 THE HEARING EXAMINER: Yes?

7 MS. HARDY: I would like to do two, and
8 two.

9 THE HEARING EXAMINER: Okay. Very
10 good.

11 So we're going to -- we're calling
12 23666, 23667. We have Ms. Hardy representing the
13 applicant, and it looks like there's no other parties.

14 Ms. Hardy, is that correct?

15 MS. HARDY: That's correct, Mr.
16 Examiner. Oh --

17 MR. BRUCE: Mr. Examiner?

18 MS. HARDY: Maybe I'm wrong. Sorry.
19 Mr. Bruce?

20 MR. BRUCE: Mr. Examiner, Jim Bruce,
21 entering an Appearance for Mewbourne Oil Company.

22 I may have one comment. But I do not
23 object to these cases proceeding by affidavit.

24 THE HEARING EXAMINER: Okay. So you're
25 entering an Appearance right now?

1 MR. BRUCE: I filed one yesterday
2 morning.

3 THE HEARING EXAMINER: Very good. For
4 Mewbourne, you said?

5 MR. BRUCE: Yes, sir.

6 THE HEARING EXAMINER: I have to make
7 some notes. Okay.

8 So Ms. Hardy, please proceed?

9 MS. HARDY: Thank you.

10 In Case No. 23666, Colgate seeks an
11 order of pooling uncommitted interest in the Bone
12 Spring formation underlying a 240-acre, more or less,
13 standard horizontal unit comprised of the north half
14 of the northwest quarter of Section 29, and the north
15 half/north half of Section 30, Township 18 South,
16 Range 31 East, in Eddy County that you know it will be
17 dedicated to the Long John 2930 Fed Com 121- and 131H
18 wells.

19 In Case No. 23667, Colgate seeks an
20 order pooling uncommitted interest also in the Bone
21 Spring underlying a 240-acre standard horizontal unit
22 comprised of the south half of the northwest quarter
23 of Section 29, and the south half of the north half of
24 Section 30 of the same acreage that you know it will
25 be dedicated to the Long John 2930 Fed Com 122H- and

1 132H wells.

2 The exhibit packets that we have
3 submitted in both cases include Exhibit A, which is
4 the land testimony of Travis Macha, and the related
5 standard land exhibits, including the plot of tracts;
6 ownership interests; pooled parties; proposal letter;
7 and communication summary.

8 (Exhibit A was marked for
9 identification.)

10 MS. HARDY: Exhibit B is the geology
11 testimony of Christopher Cantin and his exhibits,
12 which include a regional locator map; cross-section
13 map; subsea structure maps; a stratigraphic
14 cross-section; and a gun-barrel diagram.

15 (Exhibit B was marked for
16 identification.)

17 MS. HARDY: Exhibit C is my notice
18 affidavit, which includes our notice list, copies of
19 the certified mail cards and receipts, and our
20 affidavit of publication which shows that we did
21 timely publish notice of this proceeding.

22 (Exhibit C was marked for
23 identification.)

24 MS. HARDY: With that, unless there are
25 additional questions, I request that the exhibits be

1 admitted, and that these two cases be taken under
2 advisement.

3 THE HEARING EXAMINER: Okay. Ms.
4 Hardy, I'm looking for -- I saw that Mr. Macha has
5 been qualified. Has Mr. Cantin been qualified as
6 well?

7 MS. HARDY: Yes. He has, Mr. Examiner.

8 THE HEARING EXAMINER: Very good. I
9 will admit Exhibits A and its subparts-, B and its
10 subpart-, C and its subparts into evidence.

11 (Exhibits A-, B-, and C were marked
12 received into evidence.)

13 THE HEARING EXAMINER: Mr. Lowe?

14 THE TECHNICAL EXAMINER: Good morning
15 again, Ms. Hardy. I notice on your C-102s for the, I
16 think, both 121H and the 131H have reference as an
17 operator as Permian Resources Operating.

18 Is that in the process of being changed
19 to Colgate, or what is --

20 MS. HARDY: Mr. Examiner, so Colgate
21 Production is the working interest owner in these
22 units. So it filed the applications.

23 And the applications asked to designate
24 Permian Resources as --

25 THE TECHNICAL EXAMINER: Okay.

1 MS. HARDY: -- the operator.

2 THE TECHNICAL EXAMINER: Okay.

3 MS. HARDY: So they're affiliated
4 companies. They're owned -- they're all -- I think
5 that Colgate Production is now under the umbrella of
6 Permian Resources.

7 But we applied on behalf of Colgate
8 because of the working interest owner. And that was
9 in accordance with the process that Mr. Brankard [ph]
10 had requested, or he retired.

11 THE TECHNICAL EXAMINER: Okay. Okay.
12 And that's fine. And that's all -- and that's stated
13 with an application, too, or is that just kind of
14 behind-the-scenes information?

15 MS. HARDY: That's stated in the
16 application.

17 THE TECHNICAL EXAMINER: Okay. All
18 right. Thank you for that.

19 I wrote my notes late last night, and
20 I'm trying to understand what I wrote.

21 THE HEARING EXAMINER: Mr. Lowe, before
22 you continue, I have a question for Ms. Hardy.

23 Ms. Hardy, in 23666, I see how you have
24 amended your packet of exhibits to take into
25 consideration the entry of Appearance by Mr. Bruce.

1 But I don't see the same in 67, and I
2 wonder is that on purpose?

3 MS. HARDY: So Mr. Examiner, we amended
4 the exhibits in Case 23666 because Mewbourne had been
5 listed as a pooled party in that case. So we
6 submitted an update to show that they're not being
7 pooled.

8 And in Case 23667, they had not been
9 listed as a pooled party --

10 THE HEARING EXAMINER: Okay.

11 MS. HARDY: -- so we didn't need to
12 admit those --

13 THE HEARING EXAMINER: Thank you. That
14 answers my question. Thank you.

15 Mr. Lowe?

16 THE TECHNICAL EXAMINER: I think that
17 will complete my questions for now.

18 THE HEARING EXAMINER: Mr. Lowe, if you
19 would prefer, I can -- we can move on to the next two
20 cases, and then we can hold these open for any further
21 questions until the end of the docket?

22 THE TECHNICAL EXAMINER: That will be
23 fine.

24 THE HEARING EXAMINER: Okay. And very
25 good.

1 So Ms. Hardy, I -- we're not going to
2 take this under advisement yet. We're going to wait
3 for Mr. Lowe to conclude his questions, if any.

4 And let's move on to the next two
5 question -- cases that you have brought before us.
6 23668, 23669.

7 MS. HARDY: Thank you, Mr. Examiner.

8 In Case 23668, Colgate applies for an
9 order pooling uncommitted interest in the Bone Spring
10 underlying a 240-acre standard horizontal unit
11 comprised of the north half of the northeast quarter
12 of Section 29, and the north half/north half of
13 Section 28, Township 18 South, Range 31 East, in Eddy
14 County that you know it will be dedicated to the
15 Silver 2928 Fed Com 121H- and 120 -- 131H wells.

16 In Case 23669, Colgate seeks an order
17 pooling on committed interest in the Bone Spring
18 underlying a 240-acre, more or less, standard
19 horizontal unit comprised of the south half of the
20 northeast quarter of Section 29, and the south half
21 north half of Section 28, again, Township 18 South,
22 Range 31 East, in Eddy County that you know it will be
23 dedicated to the Silver 2928 Fed Com 122H- and 132H
24 wells.

25 The exhibit packets for these cases

1 include our compulsory pooling checklist. Exhibit A
2 is the land testimony of Travis Macha and his standard
3 land exhibits.

4 Exhibit A-3 includes the plot of
5 tracts, ownership interest, and pooled parties.

6 (Exhibit A- and A-3 were marked for
7 identification.)

8 MS. HARDY: Exhibit B is the geology
9 testimony again of Mr. Christopher Cantin and his
10 geology exhibits, which include a regional locator
11 map; cross-section map; structure maps; stratigraphic
12 cross-section; and gun-barrel diagram.

13 (Exhibit B was marked for
14 identification.)

15 MS. HARDY: Exhibit C is my notice
16 affidavit which includes the list of parties who were
17 noticed, along with the certified mail receipts, and
18 again an affidavit of publication which shows that we
19 did timely publish.

20 (Exhibit C was marked for
21 identification.)

22 MS. HARDY: With that, unless there are
23 questions, I ask that the exhibits in these cases be
24 admitted, and that the cases be taken under
25 advisement.

1 THE HEARING EXAMINER: In Case No.
2 23668-, 23669, I'm admitting into evidence Exhibit A
3 and its subparts-, B and its subparts-, C and its
4 subparts.

5 (Exhibits A-, A-3-, B-, and C were
6 received into evidence.)

7 THE HEARING EXAMINER: Mr. Lowe, any
8 questions for Ms. Hardy on these two cases?

9 THE TECHNICAL EXAMINER: I have no
10 questions.

11 But I want to inform, I guess, Dana,
12 and, I guess, anybody else, whenever they submit their
13 C-102s, it would be great if somehow you all would
14 indicate -- either by highlighting or literally
15 stating on the C-102 -- the horizontal spacing unit
16 that the wells are seeking of concern.

17 So that would be greatly appreciated
18 for our review on our side.

19 And then pertaining to the previous
20 case, I don't have any more questions. I resolved the
21 question, so I don't -- that one -- that other case
22 can be taken under advisement.

23 THE HEARING EXAMINER: So Mr. Lowe, a
24 few weeks ago, Ms. Thompson [ph] sent around -- what
25 would you call it? Templates? Templates. Was what

1 you just asked in that template?

2 THE TECHNICAL EXAMINER: I do not know.
3 I don't know what she sent out.

4 THE HEARING EXAMINER: Well, we have
5 Ms. Thompson [ph] here with us.

6 Ms. Thompson [ph], are you available?
7 Maybe she's not with us. It looks like
8 she is.

9 Mr. Lowe, do you think you could send
10 that request that you just made to Ms. Hardy? Will
11 you send it to Ms. Thompson [ph] and Mr. Garcia, so
12 they can incorporate that information?

13 THE TECHNICAL EXAMINER: Yes. I can.

14 THE HEARING EXAMINER: Okay. Great.

15 So Ms. Hardy, it looks like we have
16 concluded four cases for you today that we're going to
17 take under advisement.

18 Let me just make some notes here.

19 And Ms. Hardy, it's my understanding
20 that you don't need to file amended C-102s in any of
21 these cases? Is that correct?

22 MS. HARDY: That's my understanding,
23 Mr. Examiner.

24 THE HEARING EXAMINER: As it is mine.
25 Okay. So Ms. Hardy, we are going to take those four

1 cases under advisement. Thank you for your
2 presentation.

3 MS. HARDY: Thank you very much.

4 THE HEARING EXAMINER: I am calling
5 23725, and 23726. Marathon Oil.

6 MS. BENNETT: Good morning, Mr.
7 Examiner. Deana Bennett from Modrall Sperling, on
8 behalf of Marathon Oil Permian, LLC.

9 THE HEARING EXAMINER: Good morning.
10 Do we have any other parties who are
11 either monitoring this, or no?

12 I have a note here, Ms. Bennett, that
13 since the last time we met, the parties had agreed to
14 modify the JOA. Do you know if that's been done?

15 MS. BENNETT: Yes. Yes. It has been
16 done. I don't know if it was modified, per se. But
17 Tap Rock and Marathon have reached an agreement, and
18 either have or are going to execute the JOA. I think
19 they have executed it.

20 But in any event, Tap Rock's concerns
21 have been resolved.

22 THE HEARING EXAMINER: I see. Okay.
23 Did they withdraw -- was this ever a contested matter?

24 MS. BENNETT: No. It was not, Mr.
25 Hearing Examiner. Miss -- Tap Rock did not enter an

1 Appearance in these cases.

2 THE HEARING EXAMINER: And then did you
3 file a new pooling list?

4 MS. BENNETT: I did not, Mr. Hearing
5 Examiner. Because I had filed my exhibits under the
6 working assumption that Marathon would not be pooling
7 Tap Rock --

8 THE HEARING EXAMINER: Okay.

9 MS. BENNETT: -- and had continued the
10 case only to allow the JOA negotiations to conclude.

11 THE HEARING EXAMINER: Okay. Perfect.
12 And are you presenting both cases today by affidavit?

13 MS. BENNETT: Yes. Yes. That's my
14 intent.

15 THE HEARING EXAMINER: Okay. Please
16 proceed?

17 MS. BENNETT: Thank you.

18 So we timely filed the exhibits in
19 these two cases prior to the last hearing. And the
20 exhibit packets, so it's for Cases 23725- and 23726.

21 And in these two cases, Marathon is
22 seeking to compulsory pool uncommitted interests in
23 two spacing units. One covering the east half/east
24 half, and one covering the west half/east half.

25 So combined, these two cases cover the

1 east half of Sections 10- and 15, Township 20 South,
2 Range 32 East, Lea County, New Mexico.

3 In the materials I submitted, I
4 included the compulsory pooling checklist as Tab A.

5 (Tab A was marked for identification.)

6 MS. BENNETT: Tab B is the
7 self-affirmed declaration of Farley Duvall, who's
8 previously testified before the Division. And his
9 credentials have been accepted as a matter of record.

10 (Tab B was marked for identification.)

11 MS. BENNETT: And behind his
12 declaration are the usual suite of land exhibits,
13 including a list of pooled parties. And the pooled
14 party list does not identify Tap Rock as a pooled
15 party.

16 Behind Tab C is the declaration of
17 Elizabeth Scully. She's a geologist with Marathon,
18 and her exhibits have -- I'm sorry. She's previously
19 testified before the Division, and her credentials
20 have been accepted as a matter of record.

21 (Tab C was marked for identification.)

22 MS. BENNETT: And behind her
23 declaration are the usual suite of geology exhibits,
24 including a locator map, the well-bore schematic, a
25 geological study of the relevant formation. And then

1 a regional stress-orientation justification, which is
2 the excerpt from the Snee-Zoback paper.

3 And with that, I would ask that the
4 exhibits in Cases 23725- and 23726 be admitted into
5 the record.

6 And I'm happy to answer any questions
7 that the Division may have.

8 THE HEARING EXAMINER: I'm confused
9 about one thing, Ms. Bennett. From my understanding
10 from previous compulsory pooling cases, is there not
11 also a self-affirming declaration --

12 MS. BENNETT: Oh --

13 THE HEARING EXAMINER: -- by yourself?

14 MS. BENNETT: Yes. Thank you. My
15 declaration is part of the landman's or land
16 professional's exhibit packet. It's Exhibit B-7,
17 notice affidavit.

18 (Exhibit B-7 was marked for
19 identification.)

20 MS. BENNETT: And that is my
21 self-affirmed declaration, including examples of -- or
22 a sample of the notice letter that was sent out, and
23 the tracking information for the notice letters, and
24 our notice of publication which was timely published.

25 THE HEARING EXAMINER: Okay. Thank

1 you. I see it now. Thank you. Let me --

2 MS. BENNETT: Thank you.

3 THE HEARING EXAMINER: Yes. Of course.

4 So in Cases 23725- and 23726, I'm
5 admitting the exhibits under Tab A, Tab B and its
6 subparts, and Tab C and its subparts into evidence.

7 (Tabs A-, B-, and C were admitted into
8 evidence.)

9 (Exhibit B-7 was admitted into
10 evidence.)

11 THE HEARING EXAMINER: And Mr. Lowe, do
12 you have any questions for Ms. Bennett?

13 THE TECHNICAL EXAMINER: Yes. I
14 just -- can you -- let's see here.

15 The -- I think it's under Case 23725.
16 Where that pertains to the Queenie Federal Com Well
17 No. 303H- and the 503H? Is that correct, Ms. Bennett?

18 MS. BENNETT: That's correct, Mr. Lowe.

19 THE TECHNICAL EXAMINER: Okay. And
20 then these wells are seeking the Salt Lake Bone Spring
21 Pool formation --

22 MS. BENNETT: That's my understanding.

23 THE TECHNICAL EXAMINER: What are the
24 building blocks for that pool formation?

25 MS. BENNETT: I think they're 40 acres,

1 but I can double-check. I thought I confirmed that
2 before I prepared the --

3 THE TECHNICAL EXAMINER: It might be in
4 that checklist. In this --

5 MS. BENNETT: I did put 40 acres in the
6 checklist.

7 THE TECHNICAL EXAMINER: Okay. And
8 that -- since then, how are -- how is that creating
9 the larger space unit then?

10 MS. BENNETT: So -- and thank you --

11 THE TECHNICAL EXAMINER: What
12 permissions were granted?

13 MS. BENNETT: Thank you for that
14 question.

15 And this is a standard spacing unit.
16 So each of these cases are 40-acre building blocks.
17 So one is the west half/east half, and one is the east
18 half/east half.

19 THE TECHNICAL EXAMINER: Okay. Okay --

20 MS. BENNETT: So they're 320-acre
21 spacing units.

22 THE TECHNICAL EXAMINER: But it -- so
23 one well is the west half? Okay. As you indicated.
24 The west half of the east half? And one is the east
25 half of the east half?

1 MS. BENNETT: That's --

2 THE TECHNICAL EXAMINER: Correct?

3 MS. BENNETT: More or less. So there's
4 two different cases.

5 23725 has two wells, but they're both
6 in the west half/east half.

7 And 23726 has two wells, and they're
8 both in the east half/east half.

9 THE TECHNICAL EXAMINER: Okay. Okay.
10 East half. So the cases are separated by the spacing
11 unit?

12 MS. BENNETT: That's correct.

13 THE TECHNICAL EXAMINER: Okay. And
14 they both are seeking the same pool formation?

15 MS. BENNETT: That's correct.

16 THE TECHNICAL EXAMINER: Okay. That
17 was the clarification I need. I didn't look into the
18 exhibits in detail, so your verbalization was good
19 enough for me. Thank you, ma'am.

20 That's all my questions.

21 MS. BENNETT: Thank you. Thank you
22 very much.

23 THE HEARING EXAMINER: Thank you,
24 Miss --

25 And thank you, Mr. Lowe.

1 And Ms. Bennett, we will take these two
2 cases under advisement.

3 MS. BENNETT: Thank you.

4 THE HEARING EXAMINER: Thank you.

5 And we will move on after I make my
6 note here.

7 We are calling now, 22988. Matador
8 Production Company.

9 MR. BRUCE: Mr. Examiner, this is Jim
10 Bruce representing Matador.

11 I know on the docket sheet, it says
12 Holland & Holland, but I took over this case due to a
13 conflict last March.

14 THE HEARING EXAMINER: Wonderful. Are
15 there any other parties that you know of, involved?

16 MR. BRUCE: COG was involved. And they
17 had objected the presentation of the case by
18 affidavit. But they -- a couple of weeks ago, they
19 withdrew their entry of Appearance and their objection
20 to proceeding by affidavit.

21 THE HEARING EXAMINER: Okay. Great.
22 So Mr. Bruce, please proceed?

23 MR. BRUCE: Okay.

24 Mr. Examiner, the exhibit package,
25 Exhibit A, is the pooling checklist.

1 (Exhibit A was marked for
2 identification.)

3 MR. BRUCE: Applicant seeks to pool the
4 south half/south half of Section 12, and the south
5 half/south half of Section 11 of 24 South, 27 East, in
6 Eddy County for the purpose -- a 320-acre unit for the
7 purpose of drilling into the Bone Spring formation.

8 There are two wells in the well unit,
9 the David Edelstein State Com Well No. 114H, and the
10 Well No. 124H. And I believe those are a first Bone
11 Spring and a second Bone Spring test.

12 Exhibit B is the application which, as
13 you will see, was filed by Holland & Hart.

14 (Exhibit B was marked for
15 identification.)

16 MR. BRUCE: Exhibit C is the affidavit
17 of the landman Hanna Bollenbach, who has previously
18 testified before the Division.

19 (Exhibit C was marked for
20 identification.)

21 MR. BRUCE: And her affidavit contains
22 the usual information, and the exhibits. Exhibit C-1,
23 the C-102.

24 C-2-, and C-3, which are land flats,
25 and listed -- list of interest owners.

1 Exhibit C-4, a sample proposal letter,
2 and the AFEs.

3 And then C-5, a summary of contacts.

4 (Exhibits C-1- through C-5 were marked
5 for identification.)

6 MR. BRUCE: Exhibit D is the affidavit
7 of Daniel Brugioni, who's the geologist, who has also
8 previously testified.

9 And it contains the usual structure map
10 and cross-section showing that the zone is continuous
11 across the well unit and is susceptible to directional
12 drilling.

13 (Exhibit D was marked for
14 identification.)

15 MR. BRUCE: Exhibit E are the
16 horizontal drilling plans for the well.

17 I did not make those part of one of the
18 -- either the landman's or the geologists affidavit
19 because they are included within the APD, which has
20 been approved and is in the well file -- the
21 Division's well file.

22 (Exhibit E was marked for
23 identification.)

24 MR. BRUCE: Exhibit F is -- it is my
25 affidavit of notice. But I reference in there that

1 notice was sent out by Holland & Hart, and it also
2 contains a certified notice spreadsheet showing the
3 status of delivery to the various people to whom the
4 notice was mailed.

5 (Exhibit F- and F-1 were marked for
6 identification.)

7 MR. BRUCE: And then finally, Exhibit G
8 is the affidavit of publication done in Eddy County.

9 (Exhibit G was marked for
10 identification.)

11 MR. BRUCE: And so whoever did not
12 return a green card was notified by -- constructively
13 by the affidavit of public -- by the published notice.

14 And I think all the usual exhibits are
15 here. And also, of course, contains information on
16 the overhead rates and the requested risk charge.

17 And so I move the admission of Exhibits
18 A through G, plus subparts, and ask that the matter be
19 taken under advisement.

20 And I'm open to any questions.

21 THE HEARING EXAMINER: Yeah. I'm just
22 reviewing the affidavits, Mr. Bruce. Hold on one sec.

23 I see that they have both been
24 qualified previously as experts. I see that they are
25 both sworn-to, and notarized.

1 So I will accept Exhibits A-, B-, C and
2 its subparts-, D and its subparts-, E-, F-, F-1-, and
3 G into evidence.

4 (Exhibits A- through G were received
5 into evidence.)

6 THE HEARING EXAMINER: Mr. Lowe?

7 THE TECHNICAL EXAMINER: Mr. Jim Bruce?

8 MR. BRUCE: Yes, sir?

9 THE TECHNICAL EXAMINER: Morning.

10 MR. BRUCE: Good morning.

11 THE TECHNICAL EXAMINER: These two
12 wells are seeking the same horizontal spacing unit?
13 Is that correct?

14 MR. BRUCE: That's correct.

15 THE TECHNICAL EXAMINER: Okay.

16 MR. BRUCE: They're both in the same
17 pool.

18 THE TECHNICAL EXAMINER: And the pool
19 is basically state-wide rules?

20 MR. BRUCE: Yeah. Correct. The Willow
21 Lake Bone Spring Pool, which just an as an historical
22 aside, I have been dealing with for 30 years now, so.
23 Yeah. Yeah.

24 So -- but yes. It's 40-acre building
25 blocks.

1 THE TECHNICAL EXAMINER: Okay.
2 According to what you -- what I heard, I guess, you
3 indicated that Holland & Hart is the one that provided
4 all the notices for this case, and you took it over?

5 MR. BRUCE: That is correct. That is
6 correct. And I was in touch with them numerous times
7 regarding the notice, to make sure everything was
8 properly done. And it was -- I -- and I became quite
9 a pest to Holland & Hart, getting all this stuff ready
10 to go, so.

11 And I double-checked and
12 triple-checked, so it all looks good to me.

13 THE TECHNICAL EXAMINER: Okay. Well, I
14 trust you.

15 So I think that concludes my questions.
16 Thank you, sir.

17 THE HEARING EXAMINER: Yes. Thank you,
18 Mr. Lowe.

19 MR. BRUCE: Thank you.

20 THE HEARING EXAMINER: Mr. Bruce, we'll
21 take this case under advisement.

22 MR. BRUCE: Thank you.

23 THE HEARING EXAMINER: Thank you.

24 We are moving on to 23936-, 23937-, and
25 38. Which I thought were continued, but maybe they're

1 not.

2 So who do we have representing Spur
3 Energy?

4 Let me see if these were continued.
5 23936.

6 THE TECHNICAL EXAMINER: -- for
7 continued --

8 THE HEARING EXAMINER: Yes. I see
9 that. I don't know why they're still on our docket.
10 But they were continued, and we accepted those. And
11 we accepted that filing. It was made on November 13,
12 and they were continued.

13 Let me make some notes.

14 I'm now calling 23614-, 15-, 16-, and
15 17. We are having a motion hearing. This motion was
16 filed on behalf of Goodnight. This was a motion to
17 compel, and a motion to continue.

18 We have received response from Ms.
19 Shaheen on behalf of Empire.

20 Do we have the parties here?

21 MR. FELDEWERT: Mr. Examiner, Michael
22 Feldewert, with the Santa Fe Office of Holland & Hart,
23 on behalf of Goodnight Midstream.

24 MS. HARDY: And Mr. Examiner --

25 THE HEARING EXAMINER: Do we have Ms.

1 Shaheen?

2 MS. HARDY: Oh.

3 THE HEARING EXAMINER: Oh.

4 MS. HARDY: I'm sorry. Apologies, Mr.
5 Examiner. It's Dana Hardy, with the Santa Fe office
6 of Hinkle Shanor, on behalf of Empire.

7 And I believe Mr. Padilla and Ms.
8 Shaheen are also on the line, although I'm planning to
9 present the argument for Empire.

10 THE HEARING EXAMINER: Okay.

11 Wonderful. Excellent.

12 So I see Mr. Padilla. I don't see Ms.
13 Shaheen?

14 MS. SHAHEEN: Here I am.

15 THE HEARING EXAMINER: Okay. Thank
16 you.

17 All right. Well, good morning, Mr.
18 Feldewert. It was your motion, so let's begin with
19 you.

20 But I will let the parties know that I
21 have thoroughly reviewed the pleadings and the other
22 documents in this case.

23 So Mr. Feldewert, without retrenching
24 and going back over what's already been written, in
25 very plain language, what are you still seeking?

1 MR. FELDEWERT: Well, I -- we're still
2 seeking the production -- or confirmation and
3 production of certain documents that apparently are
4 not being produced. And then confirmation that all of
5 the responsive documents are being produced.

6 Now with the caveat that, as you know,
7 I sought to continue this hearing because my partner
8 Adam Rankin [ph] -- who was familiar with the
9 documents, who's the person that drafted the motion.
10 Not Ms. Vance, but Adam. And who had the discussions
11 with Counsel -- lost his father this week.

12 Okay? So he has not had any time to
13 put any attention on this.

14 So I, like you, only know about this
15 dispute from what I see in our motion, and what they
16 filed in their response. So that's what I can
17 address.

18 THE HEARING EXAMINER: Okay. So let's
19 go to your -- the two things that you mentioned --

20 MR. FELDEWERT: Yep. Yep.

21 THE HEARING EXAMINER: You're still
22 seeking production of certain documents?

23 MR. FELDEWERT: Yes. Pardon me --

24 THE HEARING EXAMINER: Okay. Now you
25 have seen Empire's filing? Is that correct?

1 MR. FELDEWERT: Seen their what?

2 THE HEARING EXAMINER: Their filing?

3 MR. FELDEWERT: I have seen their
4 brief. Yes. Their response brief.

5 THE HEARING EXAMINER: Hold on. Let me
6 go to what they filed, though. Because I think they
7 filed more than just that. I think they filed a --
8 23614.

9 Ms. Hardy, what has been filed in this
10 case by way of evidence that you will be presenting at
11 the contested hearing?

12 MS. HARDY: Mr. Examiner, we filed all
13 of Empire's hearing exhibits timely in accordance with
14 the pre-hearing order on, I believe, October 26th.

15 So we -- that information is all in the
16 record and available, of course, to Goodnight.

17 And then we filed our response to
18 Goodnight's motion. And in the response, we listed
19 additional documents that we have already produced to
20 Goodnight.

21 THE HEARING EXAMINER: And Mr.
22 Feldewert, were you -- have you had a chance to look
23 through their October exhibit filing?

24 MR. FELDEWERT: I have their October
25 exhibit filing. So no. And just by way of reference,

1 it's the October exhibit filing that gave rise to the
2 motion to compel; okay? It was what was laid out in
3 there that triggered the motion to compel.

4 And it's clear that there were
5 responsive documents that were not produced until we
6 filed our motion to compel. And it remains a question
7 as to whether all of the responsive documents have
8 been produced.

9 THE HEARING EXAMINER: Okay. All
10 right. And I believe the -- Ms. Shaheen's argument --
11 I know Ms. Hardy is here.

12 But Ms. Shaheen's argument was that
13 some of the information -- that is now in their
14 exhibit packet filed in October -- was not in their
15 control and could not be produced under the subpoena.

16 Is that right, Ms. Shaheen?

17 MS. HARDY: I can answer if you would
18 like, or?

19 THE HEARING EXAMINER: Okay. Sure.

20 MS. HARDY: I'm prepared to answer the
21 questions, Mr. Examiner.

22 THE HEARING EXAMINER: Oh, okay. Okay.

23 MS. HARDY: That's correct. So a lot
24 of the information that Goodnight requested really was
25 being prepared by Empire for the hearing, and so

1 Empire didn't have all of these studies.

2 And I think that's a big problem with
3 Goodnight's motion is that it presupposes that Empire
4 had all of this information, and could pull it off a
5 shelf, and provide it, when that's not correct.

6 We provided the information that we had
7 at the time in response to the subpoena. And
8 basically, everything else was being prepared for
9 hearing, and was provided with our exhibits.

10 With respect to the documents that we
11 did produce, in addition to those, subsequently,
12 really, Goodnight, I think, was requesting all of our
13 experts' underlying data. I think that's really what
14 they wanted after they saw our testimony. And I think
15 that information was not within the scope of the
16 subpoena.

17 In District Court, you can ask for the
18 substance of your experts' facts and opinions that
19 they will address.

20 That's not what the subpoena requested.
21 It certainly didn't request underlying data for the
22 experts. I think, in addition, argued that
23 information is not discoverable in a Division
24 proceeding because we don't have those Rules of Civil
25 Procedure that you have in District Courts.

1 But regardless, we worked in good faith
2 to provide that information to Goodnight, and have
3 done that.

4 So at this point, I don't think there's
5 anything that remains to be addressed. And I think we
6 have produced all the information, and that the motion
7 should be denied.

8 THE HEARING EXAMINER: But in your
9 response, you also relied on the attorney work product
10 protection as well?

11 MS. HARDY: Right. And that was with
12 respect to the documents we were preparing for the
13 hearing because they were not finalized.

14 And we did agree with Goodnight that we
15 didn't need to provide a privilege log unless they
16 asked for one. We had the same agreement with respect
17 to their response to our subpoena. And neither party
18 requested a privilege log.

19 But that was the basis for that
20 objection was that we were preparing those documents
21 for hearing. It was our testimony and exhibits.

22 THE HEARING EXAMINER: Okay.

23 Mr. Feldewert?

24 MR. FELDEWERT: First off, there's a
25 couple of things about their response that I think

1 bears upon my concerns; okay? And that is --

2 And I'm going to look at their response
3 brief, Mr. Chakalian, and I don't know if you have it
4 open in front of you. But there's a couple of
5 sections that I want to draw your attention to
6 because --

7 THE HEARING EXAMINER: Give me a
8 minute. Give me a minute.

9 MR. FELDEWERT: And while you're doing
10 that -- yep.

11 Because I think it outlines their
12 general position that causes me concern.

13 THE HEARING EXAMINER: Okay. Give me a
14 minute. I did read it thoroughly. But I want to have
15 it in front of me.

16 MR. FELDEWERT: Yep.

17 THE HEARING EXAMINER: Okay. It's a
18 seven-page document. I have it in front of me.

19 MR. FELDEWERT: Thank you.

20 So she -- because of their -- what they
21 filed, we're focused primarily on the data and
22 information that's referenced by their testifying
23 witnesses in their testimony; okay?

24 And Empire seems to suggest that those
25 documents are not responsive to the subpoena, and that

1 the Division has no ability to take appropriate action
2 to enforce the -- its subpoena.

3 I'm looking at page 2; okay? And I'm
4 looking at the bottom, under Robert F. Lindsay's
5 statement.

6 Here's what they say. "Goodnight
7 complains that the data underlying the Lindsay report
8 should have been produced in response to the subpoena.
9 However, this data was never in possession of Empire";
10 okay?

11 I totally disagree. Once you retain a
12 witness who's going to testify, the documents and data
13 that that witness is going to rely upon is under your
14 control. And Empire had a duty to produce that
15 underlying information.

16 And if they didn't run those -- this
17 subpoena past their testifying witnesses, and ask them
18 to produce the responsive data, then they made a huge
19 mistake because that should have happened.

20 And then I go to page 4. And I'm
21 looking at the second paragraph -- second full
22 paragraph.

23 And let me know when you're there.

24 THE HEARING EXAMINER: Okay. And just
25 to be clear, I was on page 2 --

1 MR. FELDEWERT: Yep.

2 THE HEARING EXAMINER: -- and I was
3 looking for your citation. But I didn't find it. Can
4 you give me a paragraph number?

5 MR. FELDEWERT: Sure. If I go down now
6 page 2 of their response brief, and I'm under the
7 section that's got a little No. 1. It says, "Robert
8 F. Lindsay Statement"?

9 THE HEARING EXAMINER: Hold on, Mr.
10 Feldewert. I'm looking at the response to Goodnight's
11 motion for a continuance. I think I want a response
12 to a compelling. So hold on.

13 MR. FELDEWERT: You got it. Yes,
14 sir --

15 THE HEARING EXAMINER: Now I understand
16 what the problem is. Hold on a minute.

17 Okay. This is a 12-page document. So
18 when I said it's a seven-page document, I was looking
19 at the wrong one.

20 So now No. 2?

21 MR. FELDEWERT: Yep. Page 2, at the
22 bottom?

23 THE HEARING EXAMINER: Okay. Yes. I'm
24 here. I'm here now. So is this the one --

25 MR. FELDEWERT: You see that?

1 THE HEARING EXAMINER: -- where it
2 starts with subsection B-1, Robert Lindsay Statement?

3 MR. FELDEWERT: Yeah.

4 THE HEARING EXAMINER: Okay.

5 MR. FELDEWERT: And Goodnight complains
6 that the data -- we're talking about data --
7 underlying in the Lindsay report should have been
8 produced in response to the subpoena. However, this
9 data was never in the possession of Empire.

10 That's what I totally disagree with.

11 THE HEARING EXAMINER: Okay. Got it.
12 Okay. Very good. Now we're on page 4?

13 MR. FELDEWERT: Yeah. Now we go to
14 page 4.

15 THE HEARING EXAMINER: Yes.

16 MR. FELDEWERT: And I'm at --

17 THE HEARING EXAMINER: The second full
18 paragraph?

19 MR. FELDEWERT: -- the second full
20 paragraph.

21 THE HEARING EXAMINER: Okay.

22 MR. FELDEWERT: Okay? The Division has
23 authority to issue a subpoena under -- and issue the
24 citation, and require the production of books, papers,
25 and records in any proceeding before the Division.

1 And then they say -- and this is
2 troubling -- "However, neither the statutes nor
3 Division rules authorize the Division to issue
4 sanctions such as the exclusion of evidence in
5 relation to a subpoena response.

6 "Rather the Division may request that
7 the District Court compel a response to the subpoena."

8 I totally disagree with that; okay?
9 The Division does not have to go to a District Court
10 every time to compel a subpoena. That is an option.
11 The statute says, "may."

12 The Division has general authority to
13 exclude evidence based on non-compliance with its
14 subpoena. And I have seen the Division do that, and I
15 have seen the Division threaten to do that, and that
16 is totally appropriate; okay?

17 THE HEARING EXAMINER: Okay.

18 MR. FELDEWERT: The third point -- and
19 I'm on that same page, next paragraph.

20 They state "Even if the Rules of Civil
21 Procedure were applied here, Goodnight has no basis
22 for its contention that documents relied on by
23 Empire's expert witnesses must be produced in response
24 to the subpoena."

25 Now you could substitute the Division

1 there for Goodnight because it's a Division subpoena;
2 okay?

3 And then they go to point out that,
4 well, the Rules of Civil Procedure are not applicable
5 to Division proceedings. And they conclude that the
6 parties are simply entitled to cross-examine
7 witnesses. Nothing more; okay?

8 I totally disagree with that. You have
9 the authority to take all reasonable actions to ensure
10 that the parties have a full and fair opportunity to
11 cross-examine witnesses.

12 That's why the Division, and its
13 director, and its representative is authorized by
14 Division rules to issue subpoena on behalf of a
15 party's request. Happens all the time.

16 So they have directly challenged your
17 authority to require production -- responsive
18 documents from witnesses who are employed by them to
19 offer facts and opinions at the hearing.

20 So I guess you get to tell me, you get
21 to tell them, you get to tell anybody else that's
22 listening, whether you got authority to do anything,
23 or whether we can just ignore these subpoenas; okay?

24 THE HEARING EXAMINER: Okay.

25 MR. FELDEWERT: So that's my first

1 primary concern with their response.

2 My next concern -- if you're in -- is
3 putting aside their general position, let's discuss
4 specific documents; okay?

5 Now the subpoena sought the production
6 of communications, e-mails, and documents exchanged
7 between Empire and these witnesses, addressing
8 Empire's geologic pick for the top of the San Andres
9 formation. That's a Request No. 7.

10 They have refused to produce that
11 information under the work product doctrine.

12 Everyone should know that when it comes
13 to testifying witnesses, the work product doctrine
14 does not apply to that; okay?

15 You are entitled to see communications.
16 You're entitled to see their draft reports. The
17 communications that went back and forth about the
18 subject of their testimony.

19 And they have offered no privilege log
20 to support any claims. I'm not aware of any agreement
21 because I wasn't involved; okay? I'll take Ms.
22 Hardy's word for it. But if they're going to sit
23 there now and hold these back, we do want a log.

24 Then they talk about Robert Lindsay.
25 He's that person we just referenced in their brief;

1 okay?

2 They make note in their response brief
3 that he relied on the database for this unit that was
4 developed by him while he was with another company.
5 They say it contains analysis and illustrations
6 applicable to this -- to the issues raised. That's
7 what they say at the bottom of page 2 of their brief.

8 They note that he relied on this
9 database for his report. Yet that database is not
10 being produced.

11 Now third topic. We clearly have late
12 production of documents. We got the response brief
13 file served on us by five o'clock on Friday.

14 Now I don't know what came with it. I
15 haven't checked it. I can only go by the logs that
16 they put in their brief; okay?

17 And it reflects that it includes,
18 apparently, documents, and information, and data that
19 was in the possession of their testifying witnesses.

20 So now they have produced some of it;
21 okay? But they -- I'm concerned they're
22 cherry-picking. Yeah. They're producing some of the
23 data, but not some of it.

24 And when I look at, for example, Mr.
25 Lindsay's testimony, he references core analysis for

1 various unit wells, which is clearly responsive to the
2 subpoena.

3 Their response briefs say they are
4 providing core analysis for three wells. And I get
5 that from the description on their chart.

6 There's no indication whether there are
7 other responsive core analysis for the unit wells or
8 similar responsive data. Nothing said about that.

9 They just said, "Well, we'll pick these
10 three and give it to you"; okay?

11 They reference water chemistry studies
12 bearing on -- that bears upon communication between
13 the proposed injection interval and the Gray Bird [ph]
14 formation.

15 Clearly responsive. But it's not even
16 talked about in the response brief. It's not on the
17 notice list of what is now, quote/unquote, "being
18 produced."

19 So it appears to me that these are
20 withheld, these water chemistry studies.

21 Mr. Lindsay references a fracture
22 study. Clearly responsive. It should have been
23 produced a long time ago.

24 But the response brief filed on Friday
25 says, "Well, we're finally providing that fracture

1 study." I'm assuming it's in there. I don't know. I
2 haven't had a chance to check. That's Mr. Lindsay.

3 I go to another witness. I'm just
4 going by what's in the brief; okay? I go to another
5 witness. Mr. Nicholas Cestari. I hope I'm saying
6 this right.

7 When he filed his testimony, he
8 referenced multiple -- and I'm quoting. "Multiple mud
9 logs previously interpreted by NUTECH" -- and
10 N-U-T-E-C-K -- N-U-T-E-C-H. Sorry. All capital.

11 Responsive. Not produced until we
12 filed our motion.

13 Empire states, "Well, we didn't
14 discover them until after the -- it was -- your motion
15 was filed. And we're providing it now."

16 Fine. Stuff happens; okay?

17 The problem is they reference seven mud
18 logs in their chart. I don't know if there's other
19 mud logs that have not been produced because there's
20 no confirmation that they have produced all of the
21 responsive mud logs.

22 He references a geochemical analysis of
23 EMSU 679. Another unit well; okay? Responsive. Not
24 produced.

25 Empire now states it is -- here's what

1 they say. "It's part of the fracture study that's
2 finally being produced." I'm not sure what "part of"
3 means. Are they producing the complete chemical
4 analysis study, or just the portion for their fracture
5 study?

6 And we have no confirmation when --
7 about any other geochemical analysis have been done on
8 other unit wells that are being withheld, which is
9 responsive.

10 He references outcrop- and core studies
11 that he relies upon. Responsive. But Empire says,
12 "It's part of the public record. You should be able
13 to find it."

14 Now I don't know if they're identified
15 anywhere. Maybe it's in their report. They certainly
16 didn't identify anywhere in his report where he
17 references how you can find these as the public
18 record. But he's relying on it.

19 Finally, we have Mr. William West,
20 another testifying witness for them. When you look at
21 his -- the information they filed for him, he
22 references an internal well file for EMSU 660 that
23 purports to show San Andres production.

24 That is not discussed anywhere in the
25 response brief, even though we raised it in our motion

1 to compel. It's not clearly listed on any of the
2 documents being produced in their little charts. And
3 it appears to be an internal file that they continue
4 to withhold, even though it's responsive, and it's
5 relied upon by their witness.

6 He references, also, an open-hole
7 repeat formation test that was taken on April 8, 1986,
8 on a unit well prior to the start of injection.

9 Same story here. Not addressed
10 anywhere in their response brief. Not -- it doesn't
11 clearly show up as the list of documents they're
12 producing. So it's unclear to me whether it's being
13 produced, or why they're withholding.

14 So that's my concerns. I could go on,
15 but I think you get the gist of my concern. And at
16 least our motion has brought to light responsive
17 documents not previously produced.

18 Maybe for good reason; okay? Maybe
19 they didn't know about it. I get it. But that
20 doesn't excuse all of it; okay?

21 It is clear that Empire has refused to
22 produce all the responsive documents, such as all the
23 documents within the possession of their testifying
24 witnesses, the communications, the e-mails, the draft
25 reports for testifying witnesses which are not

1 privileged. You know that.

2 Nor had they produced all the report
3 and data that's referenced and relied upon by their
4 witnesses.

5 So that's why I spent all day yesterday
6 trying to figure this stuff out; okay?

7 I'm -- where we ask in our motion that
8 you order them to produce all responsive documents to
9 the subpoena, including those that are held by their
10 testifying witnesses, along with confirmation -- some
11 kind of a sworn statement -- that they have done that.
12 And then we can move forward.

13 But there are serious questions here.

14 THE HEARING EXAMINER: Okay. I hear
15 you loud and clear, Mr. Feldewert.

16 Ms. Hardy, let's go through these
17 different issues and hear what you have to say?

18 MS. HARDY: Sure.

19 Mr. Examiner, to start with, I think
20 there's a real problem here because the subpoena is
21 not as broad -- it doesn't require Empire to produce
22 underlying data of their experts, and draft expert
23 reports, and affidavits.

24 And I would note that Goodnight did not
25 produce that information in response to our subpoena,

1 either.

2 So the subpoena does not request that
3 information. I think that's an incorrect construction
4 if it.

5 THE HEARING EXAMINER: Okay. Hold on
6 one second. I want to look at the subpoena. Let's
7 look at it together because I'm not the one who signed
8 it. So let me look at the subpoena. And I think it
9 was issued in September.

10 MR. FELDEWERT: It might help,
11 Mister -- if I may jump in, Mr. Examiner, since I did
12 this yesterday? If you look at our motion to compel,
13 that may be the easiest thing to look at.

14 THE HEARING EXAMINER: Okay.

15 MR. FELDEWERT: If you look at the
16 Exhibit B as in boy?

17 THE HEARING EXAMINER: Okay.

18 MR. FELDEWERT: Okay?

19 THE HEARING EXAMINER: I have the
20 subpoena itself. It was filed in this case as a
21 matter of record.

22 MR. FELDEWERT: Okay.

23 THE HEARING EXAMINER: It is signed by
24 my Division director, who is now the -- actually, he
25 is now the deputy cabinet secretary, I think, for

1 M-Nerd [ph]. I think we learned that yesterday, so --
2 MR. FELDEWERT: Oh. Really? Great.
3 THE HEARING EXAMINER:
4 Congratulations --
5 MR. FELDEWERT: Yep.
6 THE HEARING EXAMINER: Congratulations
7 go out to Mr. Huge [ph].
8 THE HEARING EXAMINER: All right. I am
9 looking here. It's a two-page document.
10 Ms. Hardy, point to me in the numbered
11 paragraph where you feel this subpoena is more
12 confined than Mr. Feldewert does?
13 MS. HARDY: I think it's asking for --
14 if you look at paragraphs 1-, 3-, 4, it's really all
15 of them. Five.
16 I mean they're -- this was construed,
17 and I think, to apply to documents in Goodnight's
18 possession at the time -- correctly construed -- that
19 addressed these issues. I think it doesn't --
20 THE HEARING EXAMINER: And you said
21 Goodnight's possession. You mean Empire's --
22 MS. HARDY: Sorry. Empire's --
23 THE HEARING EXAMINER: -- possession,
24 don't you?
25 MS. HARDY: Yeah. Sorry about that.

1 Yes.

2 THE HEARING EXAMINER: All right. You
3 know what? Let me --

4 MS. HARDY: Here --

5 THE HEARING EXAMINER: -- read this
6 before you continue. Because I have not read this
7 subpoena carefully, and I want to see.

8 Mr. Feldewert, which numbered paragraph
9 are you relying on in your argument that the
10 underlying data under the control of an expert witness
11 that will be used at the hearing is compelled?

12 MR. FELDEWERT: So look at Request No.
13 1. Documents, communications, correspondence,
14 e-mails, data, analysis reports, and summaries
15 including, but not limited to, internal and external
16 correspondence, memorandum, and assessments that
17 address -- reflect on our concern the existence or
18 non-existence of hydrocarbons in the San Andres
19 formation within the Eunice Monument South Unit.

20 Similarly, Request No. 7.

21 THE HEARING EXAMINER: I don't see a
22 No. 7 on this.

23 MR. FELDEWERT: Should be request No.
24 7.

25 THE HEARING EXAMINER: I -- mine ends

1 with paragraph 5, and then there's another paragraph
2 that's unnumbered after that. I'm looking at the
3 subpoena to Goodnight Midstream Permian. Am I looking
4 at the wrong one?

5 Yes. I am. This is not the right
6 subpoena. I should be looking at the one to Empire --

7 MR. FELDEWERT: You got it. Yep. You
8 got it.

9 THE HEARING EXAMINER: Hold on. And I
10 don't know where that is in this database, so it's
11 going to take me a little time to find it.

12 MR. FELDEWERT: Do you have our motion?

13 THE HEARING EXAMINER: I know that you
14 have a motion here. A motion to --

15 MR. FELDEWERT: But the reason I break
16 it up is because the subpoena is Exhibit A to our
17 motion. And then a breakdown is exhibit B to our
18 motion.

19 THE HEARING EXAMINER: The way these
20 things appear in our imaging system, it's not that
21 easy to find them. So hold on a second.

22 MR. FELDEWERT: I understand.

23 THE HEARING EXAMINER: Motion to
24 compel. Here we are. Here. Okay. Now I have your
25 exhibits. Exhibit A, subpoena to Empire. Okay. Here

1 we go. So No. 1. Okay.

2 MR. FELDEWERT: And then if you go
3 down, you'll see --

4 THE HEARING EXAMINER: I see 7. Yes.
5 I see 7. Let me just read it. Let me read it to
6 myself. Thank you. Okay.

7 Ms. Hardy, I am looking at the subpoena
8 served on your client. The language looks broad to
9 me. How do you -- do you have case law, or is it in
10 the statutes or rules that constricts this subpoena,
11 in your argument?

12 MS. HARDY: Yes, Mr. Examiner. The
13 Division's rules do not provide for expert discovery
14 like you have in District Court.

15 THE HEARING EXAMINER: Okay.

16 MS. HARDY: They just don't. In
17 District --

18 THE HEARING EXAMINER: Could you cite
19 the rule? Because I have the rules here. Will you
20 cite it?

21 MS. HARDY: The rule? The Division's
22 rule, or the --

23 THE HEARING EXAMINER: Well, but
24 whatever you're relying on to -- so that I can make a
25 decision. Is it 19-15-4? Is that what you're citing

1 to?

2 MS. HARDY: Yes.

3 THE HEARING EXAMINER: Okay. Which
4 subpart?

5 MS. HARDY: So 19-15-4-16.

6 THE HEARING EXAMINER: Okay. Let me
7 read it. Before you go on, let me read it.

8 16. Power to require attendance
9 production pre-hearing procedure. Okay. Subpoenas.

10 So you must be -- you're asking me to
11 read Subpart A? Is that correct? Subpoenas?

12 MS. HARDY: Correct. Correct.

13 THE HEARING EXAMINER: Okay. Then give
14 me a minute to read.

15 Now Ms. Hardy, you did not file -- I'm
16 assuming you did not file a motion for protection or
17 quashing of a subpoena, did you?

18 MS. HARDY: We did not.

19 THE HEARING EXAMINER: Okay.

20 MS. HARDY: But I think if we had
21 interpreted it as requesting all of our communications
22 with experts and underlying data, we would have on
23 this basis. But that's not how --

24 THE HEARING EXAMINER: But Ms. Hardy,
25 here's what I'm reading. Here's what I'm reading

1 here. And if you're relying on case law to confine
2 the subpoena, I haven't heard it yet. But if you're
3 relying on the rule, I don't read the rule as
4 restrictive as you do.

5 Because it says here, "The Commission,
6 or the director, or representative has statutory power
7 to subpoena witnesses and to require the production of
8 books, papers, records, or other tangible things, or
9 electronic data in a proceeding before the Commission
10 or Division."

11 I don't see anything restricting
12 production of books, papers, records, or other
13 tangible things, or electronic data.

14 So if it's -- if there's something else
15 I'm missing, please point it out?

16 MS. HARDY: I think the issue, Mr.
17 Examiner, is that they're relying on Rule 26 case law
18 in District Court. And it's very clear that the Rules
19 of Civil Procedure do not apply in Division
20 proceedings.

21 But regardless, in addition to all of
22 these issues is the fact that we provided the
23 information. I mean Mister --

24 THE HEARING EXAMINER: Okay.

25 MS. HARDY: Mr. Feldewert has gone

1 through a big list, and I can go through that if you
2 would like, but --

3 THE HEARING EXAMINER: Not necessary.
4 But before --

5 MS. HARDY: Yeah.

6 THE HEARING EXAMINER: -- you go on,
7 Ms. Hardy, I want to just deal with one issue at a
8 time. Because otherwise, I'm going to get lost here.

9 So I'm looking at the subpoena. The
10 subpoena specifically says, "Documents,
11 communications, correspondence, e-mails, data analysis
12 reports, and summaries including, but not limited to,
13 internal and external correspondence, memoranda, and
14 assessments that address, reflect on, or concern the
15 existence or non-existence of hydrocarbons in the San
16 Andres formation within the Eunice Monument South
17 Unit."

18 Now it -- are the documents that the
19 motion to compel addresses, are they -- do they
20 concern the existence or non-existence of hydrocarbons
21 in the San Andres formation within the Eunice Monument
22 South Unit?

23 MS. HARDY: So yes. I think so. But
24 those are the documents we produced with our hearing
25 exhibits, and the documents that we produced in

1 response to the motion, other than privileged
2 documents.

3 THE HEARING EXAMINER: And we haven't
4 gotten to the privilege aspect yet. So we'll get
5 there in just a moment.

6 But the -- by the way this subpoena is
7 drafted, it's awfully broad. But I don't see anything
8 here or anything in the rule that confines this.

9 And I think -- and I don't see any --
10 you don't see any party filing a motion for protection
11 or quashing of the subpoena.

12 So I believe that this must be complied
13 with.

14 Now if there are protections, let's
15 discuss that. But from my review of the subpoena, and
16 the language in the subpoena, and the rule, I don't
17 find what you're asking me to find.

18 Now you're also saying that you have
19 provided it. But you're also saying protections
20 apply.

21 So going back to Mr. Feldewert's
22 argument, he's arguing that the underlying data that
23 your experts are relying on was discoverable and
24 should have been produced.

25 Now if they have been produced, then I

1 don't believe there's anything for me to do in the
2 motion to compel.

3 If there are still documents that have
4 not been produced that fall under this subpoena, and
5 that are not privileged by the work -- by the attorney
6 work-client privilege, then they must be produced
7 before we have this hearing.

8 So tell me about this protection before
9 we go any further?

10 MS. HARDY: So I think we have produced
11 all of the non-privileged responsive documents.

12 THE HEARING EXAMINER: Okay.

13 MS. HARDY: I think that -- that are in
14 our possession.

15 Mr. Feldewert mentioned a water
16 analysis or a water study. It's my understanding that
17 belongs to Chevron, and that they wouldn't release it.
18 So we can't produce something that we don't have;
19 right? So --

20 THE HEARING EXAMINER: Before you
21 continue, Ms. Hardy -- I have to interrupt you
22 multiple times, and I apologize.

23 MS. HARDY: That's okay.

24 THE HEARING EXAMINER: You will have an
25 opportunity to fully explain your position.

1 But when you say, "under our
2 control" -- so control is definitely an issue here.
3 Mr. Feldewert is saying you have control over more
4 than you are saying you have control over.

5 So is there anything that you are aware
6 of that says -- and as a former prosecutor, I was
7 tasked under Brady [ph] and other laws to be in
8 control of things that my officers had; okay?

9 So my question goes to you under the
10 same idea. Are you saying that if your witness is in
11 control of something, you're not in control of it?

12 MS. HARDY: No, Mr. Examiner --

13 THE HEARING EXAMINER: Okay.

14 MS. HARDY: That's not what I'm
15 saying --

16 THE HEARING EXAMINER: Okay.

17 MS. HARDY: We have produced the
18 information that our --

19 THE HEARING EXAMINER: Okay.

20 MS. HARDY: -- expert witnesses
21 provided, that they relied on, to the extent --

22 THE HEARING EXAMINER: So it sounds --

23 MS. HARDY: -- that they have it.

24 THE HEARING EXAMINER: Yes. So it
25 sounds like what you are saying, though, is that you

1 didn't know that they had certain underlying data
2 until it came out? That's what I hear you're saying.
3 And now it's been produced?

4 MS. HARDY: That's correct, Mr.
5 Examiner. They were preparing their testimony --

6 THE HEARING EXAMINER: Right.

7 MS. HARDY: -- and sent us their
8 testimony and exhibits.

9 THE HEARING EXAMINER: Okay.

10 MS. HARDY: And at that point, we had
11 it.

12 THE HEARING EXAMINER: Okay. I
13 understand. And --

14 MS. HARDY: But we still had to take
15 their underlying data.

16 THE HEARING EXAMINER: -- now it's
17 produced? Okay.

18 MS. HARDY: Yes.

19 THE HEARING EXAMINER: Is there
20 anything that's responsive -- and you heard the list
21 of information that Mr. Feldewert ran down with me.
22 And I wrote it down.

23 Is there any of that information that
24 has not been produced so far that you are claiming a
25 privilege on?

1 MS. HARDY: No. I mean I -- no. I
2 don't think so. I mean I think our attorney-client
3 communications, of course, are privileged.

4 THE HEARING EXAMINER: Okay.

5 MS. HARDY: And so we're not producing
6 them.

7 THE HEARING EXAMINER: Okay. Now it
8 does say here "Documents, communications,
9 correspondence, e-mails," blah, blah, blah.

10 So if you feel that Mr. Feldewert or
11 Mr. Rankin [ph] is requesting impermissible documents,
12 then I think you need to file something with me,
13 saying, "These things are -- he's still asking --
14 they're still asking for this, and yet they're
15 privileged."

16 You need to file something with me, so
17 I understand on what basis you're not producing
18 something that Goodnight wants.

19 MS. HARDY: Okay. So a privilege log;
20 right?

21 THE HEARING EXAMINER: Whatever it may
22 be. I'm not telling you how to do your job. And I
23 was not a civil attorney for long enough to deal with
24 a privilege log, so you'll have to figure that part
25 out yourself.

1 But all I'm saying is if there's
2 something that Mister -- that Goodnight wants, that
3 Empire doesn't want to produce at this point, you'll
4 have to show me that there's some protection in place
5 to protect it from this subpoena.

6 Because the subpoena is drafted very
7 broadly, in my reading of it.

8 MS. HARDY: It is.

9 I think that the other issue, Mr.
10 Examiner, is that the parties had agreed -- I had an
11 agreement with Mr. Rankin [ph] that we would not
12 produce -- we did not need to produce publicly
13 available information.

14 And we made that agreement for
15 Goodnight, also, in their --

16 THE HEARING EXAMINER: Okay.

17 MS. HARDY: -- response to our
18 subpoena.

19 THE HEARING EXAMINER: Okay.

20 MS. HARDY: So we haven't provided all
21 of that. And I think they can access it the same way
22 that we can.

23 THE HEARING EXAMINER: Okay.

24 MS. HARDY: So.

25 THE HEARING EXAMINER: Okay. Mr.

1 Feldewert, did you -- were you aware of that
2 agreement?

3 MR. FELDEWERT: No. But I wasn't
4 involved in the discussions.

5 THE HEARING EXAMINER: I understand.

6 MR. FELDEWERT: So if they're relying
7 upon that, and they say it's publicly available, I'm
8 assuming then they will have disclosed how it is
9 publicly available.

10 THE HEARING EXAMINER: And in their
11 response, they actually cited and said, "Last accessed
12 on" November-something, or other -- at least one
13 document that I remember from reading their response.

14 So -- but I'm going to rely on the
15 parties to work out the publicly-available part
16 between themselves so that I don't have to be involved
17 in that fight.

18 But Mr. Feldewert, from what I have
19 heard from Ms. Hardy is that information that is
20 responsive -- and she's not arguing it's not
21 responsive -- that was in the control of her expert
22 witness that she was unaware of, has now been
23 disclosed to you.

24 I realize that you have some concerns
25 that maybe it's been cherry-picked, or maybe you don't

1 have everything. But I don't feel as though there is
2 enough of a case -- and I realize you're not the lead
3 attorney on this. That is Mr. Rankin [ph].

4 But I don't feel that I'm in the
5 position at this point -- hearing from Ms. Hardy, and
6 hearing from you -- to order them to produce anything
7 specific.

8 If -- when Mr. Rankin [ph] comes back
9 from his bereavement absence, there is still some
10 document that after his review of what Empire has
11 produced, if he still feels is missing, and can't go
12 to hearing without it, and it violates the subpoena,
13 and there's no privilege, that I'm going to rely on
14 him to file a motion with me.

15 And we'll have a very compressed
16 timeline to deal with their response, and some sort of
17 an order.

18 Does that seem fair?

19 MR. FELDEWERT: That seems very fair.
20 I mean I was -- I'm not in a position where I can
21 comment on what agreement exists or what doesn't.
22 Agreement --

23 THE HEARING EXAMINER: Right.

24 MR. FELDEWERT: Or what's been
25 previously produced, et cetera.

1 I just know I was unable to do that. I
2 just could -- I was -- I mean I'm looking at the
3 briefing, and I'm thinking, 'Well, why are they taking
4 these positions"; okay?

5 In other words -- and I can tell you,
6 though, what's my understanding that -- and they can
7 confirm it -- is that they have not produced any
8 communications with their testifying witnesses that
9 are responsive to this subpoena.

10 And just because an attorney's involved
11 doesn't make it attorney-client privilege; okay?

12 Work product doctrine does not apply to
13 testifying witnesses. You don't get to withhold draft
14 documents. You don't get to withhold communications
15 with a testifying witness on -- under the work product
16 doctrine.

17 And for the attorney-client privilege
18 to apply, there's certain thresholds that have to be
19 met; okay?

20 So they have withheld all
21 communications, all drafts, all documents with
22 their -- between Empire and their testifying
23 witnesses. Number 1.

24 There is this underlying database that
25 Mr. Lindsay relied upon, which they contend "Well, we

1 can't get it. We can't get it." Well, if the guy is
2 relying upon it, somebody can get it. And if he can't
3 get it, then he shouldn't be able to rely upon it.
4 It's that simple.

5 So stuff like that; okay?

6 THE HEARING EXAMINER: Okay.

7 MR. FELDEWERT: And there might be
8 certified --

9 THE HEARING EXAMINER: Before you
10 continue -- hold on. Before you continue, I want to
11 go back to Ms. Hardy.

12 Ms. Hardy, Mr. Feldewert makes -- is
13 making a legal point here. And I want to know whether
14 or not you agree with this? And if not, I would
15 really like some citation somewhere to the law here;
16 okay?

17 Mr. Feldewert is saying that the work
18 product doctrine does not apply for a testifying
19 witness, and the underlying materials that he relies
20 on. Agreed, or not agreed?

21 MS. HARDY: I think that testifying
22 experts' communications are discoverable. But I --

23 THE HEARING EXAMINER: Not
24 communications. We're not talking about
25 communications yet.

1 We're talking about the underlying data
2 that the witness -- that your expert witness will
3 be --

4 MS. HARDY: So --

5 THE HEARING EXAMINER: -- using to
6 testify to.

7 MS. HARDY: I agree. But we have
8 provided that.

9 THE HEARING EXAMINER: I'm not asking
10 whether you provided it. I'm asking if you agree with
11 the legal concept that the work product protection
12 does not apply for underlying data that an expert is
13 using, especially a testifying expert witness?

14 Okay. So --

15 MS. HARDY: Yes.

16 THE HEARING EXAMINER: And I remembered
17 that from my Civil Procedure years. And I wanted
18 to --

19 MS. HARDY: Right.

20 THE HEARING EXAMINER: -- make sure
21 that you agreed with that? Okay. But you're also
22 saying that you provided it?

23 MS. HARDY: Correct.

24 THE HEARING EXAMINER: Okay. All
25 right.

1 And Mr. Feldewert, there's no argument
2 on that legal point?

3 Now when it comes to communications --
4 now's talk about communications, Ms. Hardy. Mr.
5 Feldewert is also saying that communications with
6 witnesses is responsive to the subpoena. What is your
7 argument there?

8 MS. HARDY: Mr. Examiner, in Division
9 proceedings, I have never seen these types of
10 communications requests that are discoverable. I mean
11 I -- again, the Division's rules just don't
12 contemplate the type of discovery that we have in
13 District Court.

14 THE HEARING EXAMINER: Well, I
15 understand.

16 MS. HARDY: -- these proceedings are
17 more --

18 THE HEARING EXAMINER: I understand.

19 MS. HARDY: -- abbreviated --

20 THE HEARING EXAMINER: The problem --

21 MS. HARDY: -- and they -- and also, I
22 would note that Goodnight did not provide us with
23 those -- with their communications --

24 THE HEARING EXAMINER: Okay.

25 MS. HARDY: -- in response to our

1 subpoena, and also did not provide a privilege log.
2 So --

3 THE HEARING EXAMINER: Okay. I hear
4 you. What's good for one is good for the other, and
5 the --

6 MS. HARDY: Exactly.

7 THE HEARING EXAMINER: -- subpoenas are
8 worded the same. I'm looking at them.

9 MS. HARDY: Yes.

10 THE HEARING EXAMINER: But without
11 getting into that, I'm just trying to clear -- clarify
12 in my mind the legal proposition that communications
13 are outside the scope of the subpoena.

14 Because it -- I have the rule in front
15 of me. And I have the subpoena in front of me, and it
16 does say, "Documents, communications, correspondence,
17 e-mail, data, et cetera, but not including to, that
18 reflect on or concern the existence of."

19 So the problem, Ms. Hardy, that I'm
20 having is at least the subpoena seems to contemplate
21 certain correspondence and communications in certain
22 circumstances.

23 And I think that and I feel like if you
24 object to that because you feel like the Division
25 director at the time did not have the authority to

1 issue a subpoena for that information, I think it's
2 your responsibility to file something that's with me,
3 saying, "This is too broad. It needs to be cabined.
4 He doesn't have the authority to require us to produce
5 this because of whatever reasons it is."

6 But that wasn't done. So I'm left with
7 the verbiage in the subpoena. I'm left with the rule
8 here, which is again -- it's not a well-written rule.

9 But -- and the rule itself doesn't talk
10 about communications. It doesn't talk about that.

11 It talks about books, papers, records,
12 or other tangible things, or electronic data in a
13 proceeding before. And then it talks about the
14 director. It is what it is.

15 So I'm still left with -- and I
16 understand that your argument is, "Hey. They didn't
17 produce that to us, even though the verbiage is the
18 same in their subpoena."

19 So Ms. Hardy, what I would suggest the
20 parties doing is coming to some understanding of what
21 that means.

22 And if you feel like it's impermissibly
23 broad, file something to say, "We feel like the
24 communications with our experts are off base because
25 of whatever it may be." And let me consider that, and

1 provide citations to controlling case law, and we'll
2 wait for a response.

3 But I feel like by the way the subpoena
4 is written, it's very broad. And it wasn't objected
5 to.

6 MS. HARDY: Mr. Examiner, I understand.
7 I think we would be happy to file something --

8 THE HEARING EXAMINER: Okay.

9 MS. HARDY: -- along those lines.

10 I do think that we objected on the
11 basis of work product. And I think that if you look
12 at -- and I have the case here. It's a Pacific Gold
13 versus United Nuclear, which is 140 --

14 THE HEARING EXAMINER: I remember
15 studying United Nuclear.

16 MS. HARDY: Yes.

17 THE HEARING EXAMINER: I remember
18 studying that case. That was a big one in school.

19 MS. HARDY: It's one of our favorite
20 cases that we all learned about.

21 THE HEARING EXAMINER: I figured it
22 would be.

23 MS. HARDY: And it's -- the citation is
24 143 New Mexico 215.

25 THE HEARING EXAMINER: And let me get

1 there. Hold on.

2 MS. HARDY: Sure.

3 THE HEARING EXAMINER: I wasn't ready
4 for this. And 143 -- 215?

5 MS. HARDY: Yes.

6 THE HEARING EXAMINER: Okay. Hold on.
7 So it's from our Supreme Court?

8 MS. HARDY: This is the Court of
9 Appeals decision. This is Pacific Gold versus United
10 Nuclear.

11 THE HEARING EXAMINER: Okay. Hold on.
12 And Mr. Feldewert, are you familiar
13 with that case?

14 MR. FELDEWERT: Yeah. I cite in our
15 brief.

16 THE HEARING EXAMINER: I -- that's
17 where thought I saw that. Okay.

18 MR. FELDEWERT: Yeah. And what you'll
19 find, Mr. Examiner, is it -- it doesn't -- it does not
20 apply -- the work product doctrine does not apply to
21 testifying witnesses.

22 THE HEARING EXAMINER: Ms. Hardy?

23 MR. FELDEWERT: And she knows that.
24 You can't withhold communications with testifying
25 witnesses.

1 MS. HARDY: Well, I think --

2 THE HEARING EXAMINER: Ms. Hardy,
3 what's your response?

4 MS. HARDY: I think that work product
5 protection can apply unless you show substantial need
6 for the materials.

7 THE HEARING EXAMINER: Oh. That's
8 right --

9 MR. FELDEWERT: Not for testifying
10 witnesses.

11 THE HEARING EXAMINER: And that,
12 there's no other way of getting it? Is that right?

13 MR. FELDEWERT: Yeah. I mean they
14 control all the -- we don't have the data. We don't
15 have the communications that we have asked for.

16 THE HEARING EXAMINER: We're not
17 talking about data, Mr. Feldewert. We're now talking
18 about --

19 MR. FELDEWERT: I'm sorry.
20 Communications. Sure.

21 THE HEARING EXAMINER: --
22 communications. So let's not talk about the data for
23 now.

24 So Ms. Hardy --

25 MR. FELDEWERT: Good point.

1 THE HEARING EXAMINER: -- so let's look
2 at this case for a moment together, if you don't mind.
3 And I need to pull it up here.

4 MR. FELDEWERT: Uh-oh.

5 THE HEARING EXAMINER: This is the fun
6 part about what we do. We get to argue about the law.

7 MR. FELDEWERT: I don't know if I can
8 pull it up right now.

9 THE HEARING EXAMINER: I think this is
10 the fun part of the law.

11 MR. FELDEWERT: It is the fun part. I
12 don't -- I just don't -- I'm not sure I can get it
13 pulled up.

14 MS. HARDY: I agree.

15 MR. FELDEWERT: But if there's a lot of
16 briefing on it, we can brief it. If we really need
17 to.

18 THE HEARING EXAMINER: And we may do
19 that. I just want to see what the parties are relying
20 on. So hold on a second. I know that you cited it.
21 But let me just pull it up. Okay. I'm here.

22 And are the parties representing to me
23 that this case has not been -- that this is still good
24 law?

25 MS. HARDY: Yes. I think it's still

1 good law.

2 THE HEARING EXAMINER: Okay. Very
3 good. Okay. So do I have a --

4 Ms. Hardy, can you give me a paragraph
5 number or something to refer to?

6 MS. HARDY: I am looking at paragraph
7 55.

8 THE HEARING EXAMINER: Toward the end.
9 Okay. Let me get to 55. Hold on.

10 And Mr. Feldewert, what paragraph did
11 you cite to?

12 MR. FELDEWERT: It looks like we cited
13 paragraph 38.

14 THE HEARING EXAMINER: Let me look at
15 55, first, and then I'll go to 38. So hold on a
16 second. Okay. So 55 is the last paragraph in the
17 case. And this deals with hardship --

18 MR. FELDEWERT: Oh. Here we go. Yeah.
19 But yeah. There's paragraph 55. I'm sorry to
20 interrupt. Paragraph 55.

21 MS. HARDY: But I think --

22 THE HEARING EXAMINER: I need to read
23 it, though, without interruption, so give me a --

24 MR. FELDEWERT: Sure.

25 THE HEARING EXAMINER: Give me a minute

1 here.

2 Ms. Hardy, it looks like just from the
3 first sentence of this paragraph, this paragraph is
4 going to talk to establishing hardship?

5 MS. HARDY: Correct.

6 THE HEARING EXAMINER: And it -- and
7 what I think we need to figure out first is, are
8 communications between a testifying expert witness and
9 counsel discoverable? Is that not the issue here?

10 MS. HARDY: I think that's what we're
11 talking about. Correct.

12 THE HEARING EXAMINER: Okay. So let's
13 not talk about hardship yet. Let me read paragraph
14 38, which I'm being directed to. Okay.

15 The work product doctrine is separate
16 and distinct -- providing party management --
17 otherwise discoverable -- substantial need and
18 inability. Is there real --

19 Well, I mean now I am assuming that Mr.
20 Feldewert is claiming that your testifying witness is
21 an agent? An attorney's agent? No? Or a consultant?

22 MS. HARDY: I think that's what he's
23 claiming, but I didn't think -- he would have to
24 confirm that.

25 THE HEARING EXAMINER: Yeah. I plan on

1 it.

2 Mr. Feldewert, where does it talk about
3 a testifying witness and their communications not
4 being protected?

5 MR. FELDEWERT: Now that's good and
6 quiet, I wasn't even looking. I'm trying to look at
7 it right now.

8 THE HEARING EXAMINER: Okay. Well,
9 take your time.

10 And maybe this needs to be briefed if
11 it -- if this continues to be an issue for the
12 parties, maybe it needs to be briefed. But --

13 MR. FELDEWERT: That would be my
14 suggestion.

15 THE HEARING EXAMINER: I understand.
16 And it's mine, too. But I just want to --

17 MR. FELDEWERT: Yeah.

18 THE HEARING EXAMINER: Take a look at
19 No. 43? Paragraph 43.

20 MR. FELDEWERT: Yeah. And I think they
21 talk about distinctions between whether the witness is
22 a consultant, or whether it's going to -- he- or she's
23 going to testify at trial.

24 THE HEARING EXAMINER: That's right.
25 They do. Yeah.

1 MR. FELDEWERT: Yeah.

2 THE HEARING EXAMINER: They do. Okay.

3 And --

4 MR. FELDEWERT: I mean and that's where
5 the briefing comes in.

6 THE HEARING EXAMINER: Well, I
7 understand. I understand.

8 So Ms. Hardy, have you seen this part
9 of the opinion?

10 MS. HARDY: Yes. And also page --
11 paragraph 36, I think, is --

12 THE HEARING EXAMINER: I hadn't gotten
13 to 36 yet.

14 MS. HARDY: But I do think it's an
15 issue that should be briefed.

16 THE HEARING EXAMINER: Okay. Then
17 let's leave at that. Let's leave it that.

18 Now Mr. Feldewert, you had a motion to
19 continue. Is that moot at this point?

20 MR. FELDEWERT: Well, I would hope not.

21 THE HEARING EXAMINER: In your motion
22 to continue, what are you asking for?

23 MR. FELDEWERT: Well, I think in light
24 of these discovery issues that have now been fleshed
25 out by our motion to compel, and their response that

1 was filed on late Friday, okay, that the parties need
2 some time to go through.

3 And perhaps they can provide the
4 assurances; okay? But I couldn't get it out of the
5 briefs; all right?

6 THE HEARING EXAMINER: Okay.

7 MR. FELDEWERT: I hadn't been involved
8 in the prior discussions.

9 But what I would think that when Mr.
10 Rankin [ph] -- who's been involved, and who's much
11 more familiar with this than I. When he gets through
12 the bereavement period -- that I think we can all
13 recognize as appropriate and needed here -- that we
14 can set up a time to address some of this.

15 And then brief or provide a privilege
16 log as needed.

17 And I offer that knowing that the only
18 party harmed is my client; right? They're trying to
19 get their applications to hearing. They recognize
20 this circumstance. They recognize the position Adam's
21 been in. And I have confirmed with them that they
22 have no problem with the delay to get any information
23 to get this sorted out; okay?

24 So yes. We asked for a continuance on
25 this motion. But that's fine. We have argued the

1 motion.

2 And so we are going to need some time
3 now to get through this because I think we have raised
4 -- to me, looking at, there are some issues. There
5 are some issues here. No doubt.

6 THE HEARING EXAMINER: No. I think Ms.
7 Hardy would differ from you in that a lot of the data
8 that you want has been produced on October 27.

9 But the rest of your argument, I
10 understand. I get it.

11 Ms. Hardy, are we set -- oh.

12 Well, I guess I should ask. Mr.
13 Feldewert, are we set for a contested hearing at this
14 point?

15 MR. FELDEWERT: No.

16 THE HEARING EXAMINER: Oh. We're not?
17 Okay.

18 MR. FELDEWERT: No.

19 THE HEARING EXAMINER: All right.

20 MR. FELDEWERT: No.

21 THE HEARING EXAMINER: Very good.

22 Ms. Hardy, what do you have to say in
23 response to what Mr. Feldewert just said about his
24 motion to continue this -- these cases?

25 MS. HARDY: Mr. Examiner, we had

1 originally requested that these cases be set in
2 December. Goodnight vigorously opposed that request
3 and wanted these to go to hearing as soon as possible.

4 So we -- being Empire -- hired
5 additional staff. I think that's --

6 THE HEARING EXAMINER: Oh. That's
7 right.

8 MS. HARDY: -- in our response to their
9 motion for continuance. There was significant
10 expenditure incurred to prepare for a hearing because
11 Goodnight had wanted to push the hearing forward.

12 So Empire --

13 THE HEARING EXAMINER: I remember.

14 MS. HARDY: -- has incurred significant
15 cost associated with this matter, and would like to
16 get these heard really as soon as possible, subject to
17 Mr. Rankin's [ph] bereavement period.

18 I think we had talked -- last time we
19 had a status conference -- about a hearing date the
20 last week of November, which would really be Empire's
21 preference. I think the last couple of days, or, I
22 guess, December 7th- and 8th would work, if necessary.

23 But Empire does feel that it's harmed
24 by the delay and would like to have these cases heard.

25 THE HEARING EXAMINER: Besides the

1 expense of about a third of a million dollars -- which
2 I remember from your witnesses' affidavit -- what is
3 Empire seeking to do in this contested hearing?

4 MS. HARDY: We are seeking to have the
5 applications denied because they damage -- they will
6 damage the reservoir --

7 THE HEARING EXAMINER: Okay.

8 MS. HARDY: -- from which Empire is
9 producing as part of its unitized interval for the
10 Eunice Monument South Unit.

11 THE HEARING EXAMINER: So --

12 MS. HARDY: And we have filed
13 additional applications that are now set on this
14 December 7th docket to revoke existing permits of
15 Goodnight for those same reasons. Because they're
16 injecting into our unitized --

17 THE HEARING EXAMINER: So I didn't know
18 about your other cases?

19 MS. HARDY: Yes.

20 THE HEARING EXAMINER: What case number
21 is that?

22 MS. HARDY: Let me see. It might take
23 me a minute.

24 THE HEARING EXAMINER: That's okay.

25 MR. FELDEWERT: Is it in what you sent

1 to me last night, Dana?

2 MS. HARDY: It is, Mike.

3 MR. FELDEWERT: Let me see if I can.

4 One of them is Case 24027. So I'm assuming it's going
5 to be -- how many you got here? One, two, three,
6 four, five, six. How many applications did you file?

7 MS. HARDY: I think there are ten.

8 MR. FELDEWERT: Ten? Okay. All of
9 which raises the same theory that you're scaling. So
10 you kind of -- we kind of jumped ahead.

11 I'm wondering why we would do this
12 piecemeal --

13 THE HEARING EXAMINER: Right.

14 MR. FELDEWERT: -- if it's all the same
15 theory; right? And so --

16 THE HEARING EXAMINER: That's what I'm
17 wondering, too. Yeah.

18 MR. FELDEWERT: Yeah. And so it seems
19 to me it might be worthwhile to kind of take a look at
20 these applications which we just saw -- I just saw
21 last night. Dana was kind enough to send them over.

22 And as I read through them, they raised
23 the same theory which means you have got the same
24 witnesses, same evidence.

25 So part of me says I need to clear this

1 with my client. But a part of me says, "Why do this
2 piecemeal"?

3 THE HEARING EXAMINER: Ms. Hardy, since
4 you filed these cases, and it does have to do with
5 what we're talking about today, why would you want to
6 go to a hearing in late November or early December,
7 and leave these as separate?

8 MS. HARDY: Well, Mr. Examiner, I think
9 these applications that we're talking about hearing in
10 November are for permits that have not yet been
11 granted. So the hearing would differ in that respect
12 from the applications that we have filed for the next
13 docket.

14 I also know that there was discussion
15 at one of our status conferences about the potential
16 to consolidate these cases with another application
17 that Goodnight has filed to increase injection
18 authority. And I believe that is set in January. And
19 I believe the Division did not want to consolidate the
20 cases.

21 So that was our understanding at the
22 status conference, so --

23 THE HEARING EXAMINER: Mr. Feldewert,
24 are you aware of these cases that we're not
25 consolidating with these four cases that Ms. Hardy is

1 talking about?

2 MR. FELDEWERT: I am not. I am not.

3 THE HEARING EXAMINER: Okay.

4 MR. FELDEWERT: I am only aware of this
5 case, and the cases' application she sent to me last
6 night that will appear on the December 7th docket.

7 Like I said -- and I went -- and I
8 think she just said, the same theory as to why they
9 should be revoked, or why these applications -- that
10 are before you right now -- should be denied.

11 THE HEARING EXAMINER: Okay. Okay.

12 Before I finish up, Ms. Shaheen, and
13 Mr. Padilla, you have sat there. You have listened to
14 all of this. Do you have anything to say that might
15 help me?

16 MS. SHAHEEN: Thank you, Mr. Examiner,
17 for allowing us the opportunity.

18 The only thing that I would note is we
19 did object. In our response to the subpoena, we did
20 object to the extent that Goodnight was seeking
21 information, or communications, or documents that was
22 at that time of the response to the subpoena actually
23 occurring.

24 The subpoena was issued on September
25 14th. I believe we responded approximately September

1 29th. And it was in between that time of September
2 29th and the end of October, when we filed our
3 exhibits, that this -- what the experts would be
4 relying on -- came to light.

5 So I'm -- in a sense, what Goodnight is
6 demanding is that we provide them with -- and they're
7 saying that stuff that didn't exist at the time we
8 responded to the subpoena, is now responsive. And we
9 are -- we should have produced it.

10 And so that's the only thing I'll say.
11 Thank you for the opportunity.

12 THE HEARING EXAMINER: So your comment
13 goes more to the good faith of your actions, and your
14 client's actions?

15 MS. SHAHEEN: You could look at it in
16 that perspective. But we did object. I think that's
17 the point I'm trying to make because you asked whether
18 we had filed a motion for a protective order. Well,
19 we didn't.

20 But we did object in the response to
21 the motion to compel. And I don't think we have
22 looked at that this morning.

23 THE HEARING EXAMINER: Okay.

24 And Mr. Padilla, do you have anything
25 to add?

1 MR. PADILLA: Well, I'm going to echo
2 what Sharon has just said. Simply, I view this as
3 goods in process. We didn't have --

4 I know that I have an agreement with
5 one of the witnesses, and where I was actually the
6 retaining party. Whatever I said to that person, I
7 think it's privilege.

8 I mean we all look at the work as it as
9 it's coming around, but we don't see anything till the
10 final product.

11 And -- but the problem that I have with
12 Goodnight's position is they see the final product,
13 and they say, "Oh. You didn't give them -- give us
14 that well analysis back there. So now we want it."
15 And in the meantime, we didn't know that that well
16 analysis existed.

17 Same thing. We conceded the mud logs
18 at some point simply because they hadn't been found.

19 And the position that Good -- or that
20 Empire's in is they have had this property
21 approximately two years, and you don't have -- and you
22 have a room full of paperwork.

23 And Empire hasn't really had a chance
24 to evaluate everything when you buy up a property with
25 -- I think there's something like 800 wells.

1 And we have had compliance issues
2 ongoing. And that takes a lot of time to satisfy the
3 Division with regard to that sort of thing.

4 So to require us to go back and say,
5 "Oh. That analysis back there, you didn't provide
6 this." And in the meantime, we didn't know it.

7 We didn't know anything about the
8 Chevron documents that I think are 3,600 pages. And
9 we still don't have that. Chevron did not allow well
10 data in preparation for this hearing.

11 For example, there's an argument about
12 sulfur content -- the sulfur -- and that wasn't
13 studied until it was preparation for a hearing.
14 That's work product.

15 And given the short time -- we had
16 15 -- essentially had to produce everything in 15
17 days. That's unrealistic.

18 And yes. I understand going -- doing
19 discovery, you -- we're allowed to discover expert
20 depositions to -- and then you go back, and then you
21 say, "Okay. You can ask questions and ask for
22 supplemental discovery based on that."

23 But in 15 days, it's pretty
24 unrealistic. I don't care how you cut it. And if you
25 don't find it, and you don't have it, and you don't

1 have control over it, then you can't produce it.

2 THE HEARING EXAMINER: Okay. Thank
3 you, Mr. Padilla. Okay.

4 I am not making a decision on the
5 motion to compel at this time. Because it sounds like
6 what I have heard today, everything that is responsive
7 -- except for communications, but the parties are
8 going to brief that issue -- everything that is
9 responsive has now been produced.

10 Some of it may have been produced later
11 than Goodnight would have wanted. But it sounds like
12 Empire didn't know about it until later. Until later.
13 We'll leave it at that. So there's nothing for me to
14 compel there.

15 When it comes to communications, I'm
16 going to rely on the parties' briefing so that I can
17 make a decision about communications between witnesses
18 and counsel, et cetera.

19 So is a week long enough to brief that
20 discrete issue?

21 MR. FELDEWERT: I would suggest this,
22 Mr. Examiner. And that is that before the parties
23 brief it, that they have an opportunity to discuss the
24 issues; right?

25 THE HEARING EXAMINER: Of course.

1 MR. FELDEWERT: Which given I think Mr.
2 Rankin [ph] would probably be the most appropriate
3 person for that. Recognizing that -- I'm looking at
4 my calendar here. I have not talked with Adam. I'm
5 assuming there's a funeral -- shortly at some point in
6 time; right?

7 We have Thanksgiving Week next week.
8 So maybe the parties could talk the week of the 27th;
9 right? And then see where they are, and then decide
10 if briefing is actually --

11 THE HEARING EXAMINER: Okay.

12 MR. FELDEWERT: -- necessary and
13 appropriate.

14 Maybe they can -- they say everything's
15 produced. I hope it is. I mean I have a hard time
16 understanding how some of this stuff was not found,
17 the first time around.

18 But nonetheless, things happen. And
19 perhaps there's some assurances that we can get that
20 can alleviate them.

21 So my suggestion is -- and having heard
22 everything, it's the following. And that is parties
23 get together the week of the 27th. And then if things
24 can't be worked out, then some briefs get filed the
25 first part of December.

1 Maybe we set a status conference on
2 December 7th when their other cases are on the docket.
3 And we can talk about where we think things stand, and
4 whether it makes sense to consolidate them so we're
5 not doing this piecemeal.

6 That's my suggestion.

7 THE HEARING EXAMINER: Okay.

8 Ms. Hardy?

9 MS. HARDY: Mr. Examiner, I think that
10 would work. I think we are concerned about getting
11 this matter heard and decided as soon as possible.

12 But understanding the need for the
13 parties to confer and hopefully reach an agreement
14 that would alleviate the need for briefing, I would
15 agree with that plan.

16 THE HEARING EXAMINER: Okay. And how
17 do you feel about consolidating these -- I think you
18 said there were ten cases -- starting with No.
19 24027 -- with these four cases that we heard today.

20 How do you feel about that?

21 MS. HARDY: I would need to confer with
22 my client about that, Mr. Examiner. And I don't know
23 at this point what their position on that would be.

24 THE HEARING EXAMINER: Okay. All
25 right. Because these four --

1 MR. FELDEWERT: And I --

2 THE HEARING EXAMINER: Sorry?

3 MR. FELDEWERT: And I echo that. I
4 mean I haven't been up to necessarily confirm --

5 THE HEARING EXAMINER: Yeah.

6 MR. FELDEWERT: -- with my client that
7 that's okay. But it seems -- I can tell them it makes
8 sense to me.

9 THE HEARING EXAMINER: Okay. So it
10 sounds like -- and this December 7 docket is unwieldly
11 at this point. There are 150 cases on the docket at
12 this point. To add these four cases to that docket,
13 it's not going to happen.

14 So what we can do is we can hear those
15 -- a status conference for those ten cases -- starting
16 with 24027 -- on December 7.

17 And of course, knowing that the parties
18 will have conferred about this motion to compel
19 communications at this point, they'll confer about
20 possibly joining the cases together.

21 And at the status conference for 24027,
22 they can advise me how they want to proceed on both
23 issues.

24 Does that sound fair?

25 MR. FELDEWERT: Yeah. Makes sense to

1 me. I guess because these cases are -- there's
2 nothing set in these cases. No need to file anything
3 at this point. So that makes sense. Yeah.

4 THE HEARING EXAMINER: Okay.

5 Ms. Hardy?

6 MS. HARDY: If that's the Division's
7 preference, then that would work for Empire.

8 THE HEARING EXAMINER: Well,
9 it's -- whether it's the Division's preference or not,
10 it just seems logical to me.

11 So what I'm saying to you is whether or
12 not it's the Division's preference, how do you feel
13 about that suggestion?

14 MS. HARDY: Well, I think Empire's
15 preference was to have the hearing the last week in
16 November.

17 I know all of our witnesses were
18 available, and they were ready to go, and they feel
19 like everything's been provided and filed. So that
20 was absolutely their preference.

21 THE HEARING EXAMINER: I understand
22 that that's their preference. So then it is -- so
23 then what I am saying is it is the Division's
24 preference to consolidate these matters with the new
25 matters that you just filed.

1 If the parties are willing to do that,
2 it's by all means my preference to do it, which would
3 not allow this to happen at the end of November.

4 Plus, we still haven't resolved whether
5 communications between expert witnesses that are going
6 to testify are privileged under the work product
7 doctrine. So that still has to be decided, and it's
8 not been decided yet. Not by me.

9 Okay. So --

10 MS. HARDY: -- good.

11 THE HEARING EXAMINER: And of course,
12 Mr. Feldewert, obviously, you always have the ability
13 to object during a hearing, if something comes up that
14 has not been ruled on to that point.

15 MR. FELDEWERT: Yes. Yes. Correct.
16 Yeah.

17 THE HEARING EXAMINER: Okay.

18 MR. FELDEWERT: And I -- and just to
19 help, Mr. Examiner, while you were going through that,
20 I went and looked. It looks like the new cases are
21 following -- it goes in the following range, 24018 --

22 THE HEARING EXAMINER: Oh.

23 MR. FELDEWERT: -- to -- through 24027.

24 THE HEARING EXAMINER: Thank you.
25 24018- through 24027. And they're going to be heard,

1 December 7?

2 MR. FELDEWERT: They are on the
3 December 7th docket --

4 THE HEARING EXAMINER: Okay.

5 MR. FELDEWERT: I'm assuming --

6 THE HEARING EXAMINER: All right --

7 MR. FELDEWERT: -- they're not going to
8 be. Yes.

9 THE HEARING EXAMINER: All right. So
10 I'm going to reset these four cases for the December
11 21st docket for a status conference. And we will
12 decide at that time how all of this is going to shake
13 out, and we will set a contested hearing.

14 And Ms. Hardy, you may not know me, but
15 I have never been one to countenance delay. But in
16 this case, I feel like delay is warranted, at least
17 for the parties to work out those two major issues.

18 MS. HARDY: I understand. And Mr.
19 Examiner, can I make one proposal or request?

20 THE HEARING EXAMINER: Yeah. Please?
21 Shoot?

22 MS. HARDY: And so if we -- the parties
23 meet to discuss the remaining issues the week after
24 Thanksgiving, could we have a deadline just because
25 sometimes parties work better if there are deadlines,

1 as we know?

2 Can we -- could we have a deadline of
3 December 4th to file a brief if the parties are unable
4 to reach an agreement?

5 THE HEARING EXAMINER: Sure. I'll set
6 a deadline for -- yes. I'll set a deadline for
7 December 4. But of course -- so let's see. So that
8 will be -- yes.

9 So both parties will file a brief on
10 the issue of -- on the discrete issue of are
11 communications between expert witnesses that are
12 testifying protected under the work product doctrine.

13 That is the discrete issue that you're
14 going to be briefing?

15 MS. HARDY: Right. If the issue is not
16 resolved by the parties.

17 THE HEARING EXAMINER: Of course.
18 Obviously. Yes.

19 MS. HARDY: Yeah --

20 THE HEARING EXAMINER: Okay. Very
21 good. So we do have a deadline of December 4. Thank
22 you for helping me set that.

23 And we will see the parties on December
24 7 for 24018- through 27. And then we'll see the
25 parties again, two weeks later, for these cases once

1 again.

2 And we'll try to get these all set for
3 contested hearings, or one hearing.

4 Is there anything further?

5 MR. FELDEWERT: No. Thank you for your
6 time.

7 THE HEARING EXAMINER: Oh. Of course.

8 MS. HARDY: No. Thank you very much
9 for your time.

10 THE HEARING EXAMINER: Thanks for
11 stepping in, Mr. Feldewert. We sent Mr. Rankin [ph]
12 condolences from the Division yesterday, and we wish
13 him well.

14 MR. FELDEWERT: I appreciate that.
15 Thank you very much.

16 THE HEARING EXAMINER: Have a good day,
17 everyone.

18 And we are adjourned.

19 MS. HARDY: Thank you. Thank you.

20 (Whereupon, the meeting concluded at
21 10:45 a.m.)

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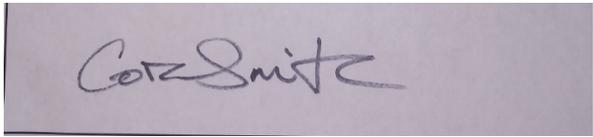


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