

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

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

7	APPLICATION OF MEWBOURNE OIL	CASE NOS. 15548,
8	COMPANY FOR A NONSTANDARD OIL	15550,
9	SPACING AND PRORATION UNIT AND	15551,
10	COMPULSORY POOLING, EDDY COUNTY,	15552
11	NEW MEXICO.	(Re-opened)
12		Consolidated with
13	APPLICATION OF MEWBOURNE OIL	CASE NOS. 15547,
14	COMPANY FOR COMPULSORY POOLING	15549
15	AND AN UNORTHODOX GAS WELL	(Re-opened)
16	LOCATION, EDDY COUNTY, NEW MEXICO.	
17		Consolidated with
18	APPLICATION OF MEWBOURNE OIL	CASE NO. 15562
19	COMPANY FOR A NONSTANDARD SPACING	(Re-opened)
20	AND PRORATION UNIT, COMPULSORY	
21	POOLING, AND AN UNORTHODOX GAS WELL	
22	LOCATION, EDDY COUNTY, NEW MEXICO.	

15                               REPORTER'S TRANSCRIPT OF PROCEEDINGS  
16                               EXAMINER HEARING  
17                               November 8, 2017  
18                               Santa Fe, New Mexico

19   BEFORE:   MICHAEL McMILLAN, CHIEF EXAMINER  
20               DAVID K. BROOKS, LEGAL EXAMINER

21               This matter came on for hearing before the  
22   New Mexico Oil Conservation Division, Michael McMillan,  
23   Chief Examiner, and David K. Brooks, Legal Examiner, on  
24   Wednesday, November 8, 2017, at the New Mexico Energy,  
25   Minerals and Natural Resources Department, Wendell Chino  
26   Building, 1220 South St. Francis Drive, Porter Hall,  
27   Room 102, Santa Fe, New Mexico.

23 REPORTED BY: Mary C. Hankins, CCR, RPR  
New Mexico CCR #20  
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500 4th Street, Northwest, Suite 105  
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3 Case Numbers 15547, 15548, 15549, 15550, 15551,  
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## EXHIBITS OFFERED AND ADMITTED

11

The Welch Heirs and Tuffy Oil Company, LLC  
Exhibit Numbers 1 through 8

(attached)

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1 (1:30 p.m.)

2 EXAMINER McMILLAN: I would like to call

3 this hearing back to order. I'd like to call --

4 The first question is are all the cases

5 going to be combined?

6 MR. HALL: Yes.

7 MR. BRUCE: Yes.

8 EXAMINER BROOKS: For purposes of hearing.

9 EXAMINER McMILLAN: For purposes of  
10 hearing.

11 So Case Number 15548, re-opened,  
12 application of Mewbourne Oil Company for a nonstandard  
13 oil spacing and proration unit and compulsory pooling in  
14 New Mexico.

15 The next case to be combined is Case Number

16 15549, re-opened, application of Mewbourne Oil Company  
17 for compulsory pooling and an unorthodox gas well  
18 location, Eddy County, New Mexico.

19                   The next case to be combined is Case Number  
20 15550, re-opened, application of Mewbourne Oil Company  
21 for a nonstandard oil spacing and proration unit and  
22 compulsory pooling, Eddy County, New Mexico.

23                   The next case is Case Number 15551,  
24 re-opened, application of Mewbourne Oil Company for a  
25 nonstandard oil spacing and proration unit and

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1 compulsory pooling, Eddy County, New Mexico.

2                   The next case to be combined is Case Number  
3 15552, re-opened, application of Mewbourne Oil Company  
4 for a nonstandard oil spacing and proration unit and  
5 compulsory pooling, Eddy County, New Mexico.

6                   The last case to be combined is Case Number  
7 15562, re-opened, application of Mewbourne Oil Company  
8 for a nonstandard spacing and proration unit, compulsory  
9 pooling and an unorthodox gas well location, Eddy  
10 County, New Mexico.

11                   Call for appearances.

12                   MR. HALL: Mr. Examiner, Scott Hall,

13 Montgomery & Andrews, Santa Fe, appearing on behalf of  
14 James Wesley Welch, Joe Michael Welch, Barbara Grace  
15 Parker [sic], and Tuffy Oil, LLC.

16 MR. BRUCE: Your Honor -- Mr. Examiner  
17 (laughter) --

18 I was in court this morning, you know, for  
19 a change.

20 EXAMINER McMILLAN: We'll let it slide.

21 MR. BRUCE: Jim Bruce of Santa Fe  
22 representing Mewbourne Oil Company.

23 I would note you omitted Case Number 15547,  
24 the first case to be called.

25 EXAMINER McMILLAN: Okay. Case Number

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1 15547, application of Mewbourne Oil Company for  
2 compulsory pooling and an unorthodox gas well location,  
3 Eddy County, New Mexico shall be combined with the other  
4 cases for hearing, but it will have a separate order.

5 And you also represent, Mr. Hall,  
6 applicants in that case, too, 15547?

7 MR. HALL: I represent the Movants. He  
8 (indicating) represents the Applicant, Mewbourne.

9 EXAMINER McMILLAN: Okay.

10 EXAMINER BROOKS: Yeah, that's correct, as

11 far as I can tell. It's Mr. Hall's motion on behalf of  
12 the various parties. I assume you named them all.

13 MR. HALL: The Welches, for short.

14 EXAMINER BROOKS: The thing I am  
15 probably -- I reread the transcript, and I did screw  
16 this up. But I read the transcript carefully enough,  
17 but I was still unclear on whether all of the parties  
18 who claimed interests in the Welch estate, other than  
19 Blair Seaton Crooke, were actually the people -- the  
20 people you represent and Blair Seaton Crooke, are those  
21 all the parties that claim interest Welch estate  
22 adversely to -- what's the oil company?

23 MR. CARSON: Premier.

24 EXAMINER BROOKS: -- Premier. Is that  
25 correct -- is that a correct statement in the situation?

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1 MR. HALL: That's right.

2 EXAMINER BROOKS: So there is nobody being  
3 left out that we haven't -- assuming you're right and I  
4 think you clearly -- I think you are, but I don't know  
5 what other people are going to say.

6 Except you (indicating) filed an answer.

7 MR. PADILLA: We filed a response for

8 Premier.

9 EXAMINER BROOKS: And Premier is not  
10 claiming under any of Mr. Hall's clients, or are they  
11 claiming adversely to his clients?

12 MR. PADILLA: That's right.

13 EXAMINER BROOKS: Claiming under the other  
14 side of the litigation; is that correct?

15 MR. PADILLA: Correct.

16 EXAMINER BROOKS: Okay. Very good. That  
17 clears some things up a little bit.

18 You may proceed.

19 (The court reporter requested announcement  
20 of appearances.)

21 MR. PADILLA: Ernest L. Padilla, appearing  
22 with Joel Carson III, for Premier Oil & Gas Inc.

23 EXAMINER BROOKS: And nobody is appearing  
24 for Mr. Crooke here?

25 MR. PADILLA: Mr. Morgan.

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1 EXAMINER BROOKS: Yes. He appeared in the  
2 pleadings, but neither --

3 MR. BRUCE: He did not -- yeah. He is not  
4 here today, Mr. Examiner.

5 MR. CARSON: So Mr. Morgan appeared for



6 Crooke initially. Crooke's interest is now owned by  
7 Premier.

8 EXAMINER BROOKS: Oh, okay. So you've  
9 taken -- Premier's taken a lease?

10 MR. CARSON: Well, they took the fee  
11 mineral interests from Crooke.

12 EXAMINER BROOKS: Okay.

13 MR. HALL: And, therefore, they're subject  
14 to the JOA.

15 MR. CARSON: Right.

16 MR. HALL: Well, I'll start. If you've had  
17 a chance to look at our motion, we're --

18 EXAMINER BROOKS: I did.

19 MR. HALL: -- asking for three things. And  
20 what I've given you in the packet are copies of all of  
21 the orders in order of the case number. There are seven  
22 altogether. All but the sixth one are dash A orders,  
23 and they are basically identical.

24 EXAMINER BROOKS: Yeah. And the other was  
25 brought as a new compulsory pooling case.

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1 MR. HALL: That's right. So it has a new  
2 order number, R-14415.

3 And all of these applications sought  
4 basically the same thing, compulsory pooling. Some  
5 sought nonstandard units, and one or more may have had  
6 an unorthodox location. But other than the well  
7 locations and the acreages, they're all basically the  
8 same and you've heard them all together.

9 The A orders came out -- and you can turn  
10 to any one of those. I have highlighted the findings  
11 that I think are a little problematic. Really we just  
12 want them corrected to reflect --

13 EXAMINER BROOKS: Excuse me.

14 MR. HALL: -- the elements that conform to  
15 the pleadings.

16 EXAMINER BROOKS: I did not bring my  
17 glasses, and I'm going to need them.

18 MR. HALL: Okay.

19 EXAMINER BROOKS: So I have to call a very  
20 brief recess to get my glasses because I can't read  
21 these things without them.

22 (Recess, 1:38 p.m. to 1:41 p.m.)

23 EXAMINER BROOKS: Sorry about the  
24 interruption. You were telling me about findings that  
25 were problematic, Mr. Hall.

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1 EXAMINER McMILLAN: This hearing is back to  
2 order.

3 MR. HALL: So I had explained that most of  
4 the dash A orders are just about the same in terms, and  
5 the only different one is the sixth order in the packet,  
6 and I'll address it separately.

7 But as to all of the dash A orders, if you  
8 want to turn to any one of those orders, you can look at  
9 Finding paragraph eight. That paragraph identifies all  
10 the Welches, Tuffy Oil, Mr. Crooke, Premier as  
11 Respondents, all the same. And then if you look at  
12 Finding paragraph 12, it says, "Respondents" -- all of  
13 them -- "claim" -- or "may claim interests in the oil  
14 and gas within the Unit and have not agreed to pool  
15 their interests...." And then paragraph 13 indicates  
16 that "None of the Respondents except...Mr. 'Crooke'  
17 claims a working or unleased mineral interest in the  
18 Unit." I believe those are in error, and that's what  
19 we'd like to have corrected.

20 If you'll turn to Order Number -- under Tab  
21 6, it's Order Number R-14415 --

22 EXAMINER BROOKS: Right.

23 MR. HALL: -- page 2 of that, all of the  
24 uncommitted owners are identified as contingent owners,

25 in paragraphs 6 and 7, and they are specified by name as

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1 well, again, the Welches, Tuffy Oil, Premier and Blair  
2 Seaton Crooke.

3 And then if you look at paragraph 12, it  
4 says simply there are interest owners in the unit that  
5 have not agreed to pool their interests. So those  
6 particular findings in those orders, I think, are  
7 contrary to the evidence.

8 So I think what my job is today is to --  
9 I'll walk you through the transcript very quickly, and  
10 that is under page 8 -- I'm sorry -- Tab 8. And if  
11 you'll look at pages 12 and 13, I've highlighted  
12 testimony there. And this is -- Mr. Corey Mitchell, who  
13 was Mewbourne's landman, was asked by Mr. Bruce who they  
14 were there to pool, and he makes it clear it's only  
15 Mr. Crooke's interest being pooled.

16 And then if you refer to the highlighted  
17 transcript on pages 19 and 20, that testimony, also from  
18 Mr. Mitchell, pursuant to questions from me establishes  
19 that the Welch heirs committed their interest pursuant  
20 to a voluntary agreement.

21 And then you look again at pages 27 and 28,

22 Mr. Bruce again questioning Mr. Mitchell. He clarifies

23 that all of the Welch heirs but one -- that would be

24 Mr. Crooke -- have ratified a JOA provisionally.

25 And then if you look at page 30, I think in

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1 response to questions from you, Mr. Brooks, the witness

2 explained that the disputed interests are mineral

3 interests, and depending on the outcome of the

4 litigation, it would be a lease interest if

5 Mr. Padilla's clients prevail in that litigation, or an

6 unleased mineral interest if my clients prevail in the

7 litigation.

8 So we think those are the particular issues

9 that nunc pro tunc orders could quickly address and then

10 correctly state the types of the ownership interests,

11 whether or not they are committed. That's basically

12 what we're seeking to correct.

13 I can tell you that the litigation in

14 district court, subject to correction, there was, I

15 believe, a summary judgment issued in favor of

16 Mr. Padilla's clients.

17 EXAMINER BROOKS: Yeah. I noticed that --

18 you said a judgment had been issued in August.

19 MR. HALL: Correct.

20 EXAMINER BROOKS: I'm wondering if the time  
21 for appeal has passed.

22 MR. HALL: A notice of appeal has been  
23 filed, and there is also a motion for reconsideration or  
24 for amendment before the district court now. So the  
25 litigation is not final.

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1 EXAMINER BROOKS: Okay.

2 MR. HALL: We don't know the final answer  
3 yet to ownership.

4 EXAMINER BROOKS: To shorten these  
5 proceedings, does anybody disagree with anything  
6 Mr. Hall said?

7 You filed a response?

8 MR. PADILLA: We don't object, but I think  
9 in our response -- well, we did say that we agreed.  
10 Premier was not a respondent in that it had participated  
11 in drilling of the wells in some form or another,  
12 whether a joinder on the JOA or oil and gas leases or  
13 ownership of the minerals, outright purchase of the  
14 minerals. But our main response and objection to the  
15 motion goes to claim of ownership.

16 You'll notice on the last page of the

17 transcript, pages 37 and 38, we were guarding against  
18 any kind of implication that any proceeding before the  
19 Division would be an adjudication of title or some kind  
20 of evidence of claim to ownership. And in light of the  
21 district court judgment, we believe that any claim by  
22 the Welches is really moot. Obviously, I'm not going to  
23 argue about whether or not the motion is for  
24 reconsideration or the notice of appeal or what may  
25 happen in the appellate court. It's still subject to

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1 final determination. But I've been involved in a lot of  
2 litigation involving land interests pretty much --  
3 particularly in northern New Mexico, and people make  
4 arguments of a claim for ownership, and this is one  
5 instance. And this is not the first instance that  
6 someone has tried to jump off the order of the Oil  
7 Conservation Division or the Commission to claim some  
8 entitlement or encroachment to title. And that's our  
9 primary objective here in opposing the motion.

10 But insofar as what's in the transcript as  
11 to whether the Welches participated or not, we really  
12 don't have an objection to that.

13 We also argue that under paragraph nine of  
14 the A orders and the new order, the Division covered it

15 well, and this -- any compulsory pooling case, no one's  
16 left out if you ultimately win. In paragraph nine or  
17 paragraph 11, under the -- under the new order, anyone  
18 can participate. So you fashioned a remedy that works.  
19 So whether or not your findings are incorrect or not, in  
20 the end, anyone can participate based on the ultimate  
21 outcome of the litigation.

22                   So -- but primarily we don't want to be  
23 saying, Well, it looks like maybe they may have an  
24 ownership interest here. We don't want that. But as  
25 far as whether or not somebody is consenting or

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1 nonconsenting, that owner -- that definitely applies.  
2 Whether contingent or not, that definitely applies to  
3 the compulsory pooling before the Division. But to say  
4 that we have an interest or we claim an interest, I  
5 think that implies something that is incorrect and is  
6 properly before the district court or the appellate  
7 court.

8                   But I make the last statement on the last  
9 page of the transcript making sure that anything that  
10 was said here was not an adjudication of title or  
11 implication -- I didn't go that far, but an implication



12 that maybe the Welches had title.

13 MR. BRUCE: And, Mr. Brooks, from  
14 Mewbourne's standpoint, Mewbourne concurred in the Welch  
15 heirs' motion. I think it's pretty clear from your  
16 statement on page 38 of the transcript that the Division  
17 does not adjudicate title.

18 EXAMINER BROOKS: Well, that's been pretty  
19 clear from some things, from some Division orders  
20 that --

21 MR. BRUCE: Yes. But, you know, clearly  
22 there are some factually incorrect findings in the  
23 orders.

24 EXAMINER BROOKS: There are.

25 MR. BRUCE: And I think --

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1 EXAMINER BROOKS: That is to say there are  
2 some findings that are not in accordance with the  
3 transcript.

4 MR. BRUCE: With the transcript, yes. And  
5 we would like to see those corrected also.

6 EXAMINER BROOKS: Well, I think that, if I  
7 understand -- and Mr. Mitchell testified on behalf of  
8 Mewbourne, I believe -- that the -- that the Welch  
9 heirs, Mr. Hall's clients, had ratified the joint

10 operating agreement, correct?

11 MR. BRUCE: Correct. I think there was a  
12 JOA for each well, I think, or at least several JOAs.  
13 But regardless, their interest in each particular well  
14 were subject to -- are subject -- if they own an  
15 interest are subject to a JOA.

16 EXAMINER BROOKS: So it's correct that --  
17 well, no, it's not correct. They do own unleased  
18 mineral interests. They own unleased mineral interests  
19 that are now subject to a JOA.

20 MR. BRUCE: That's subject to the court  
21 proceedings.

22 EXAMINER BROOKS: However, that's what  
23 the -- the record says.

24 MR. BRUCE: That is correct.

25 EXAMINER BROOKS: That's my understanding.

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1 MR. BRUCE: Yes.

2 EXAMINER BROOKS: And I re-read it  
3 yesterday, and that was the conclusion I came to, that I  
4 had misstated the facts in several respects, one in  
5 respect to not recognizing that Mr. Mitchell had, in  
6 fact, testified that they had ratified the JOA. I was a

7 little concerned about that because I was aware of the  
8 statement they had agreed to participate, but, you know,  
9 if somebody has agreed to participate and they haven't  
10 signed the JOA, that's somewhat -- somewhat ambiguous.  
11 But if they have ratified the JOA -- and that's what  
12 your client testified to, I believe.

13 MR. BRUCE: That is correct.

14 EXAMINER BROOKS: -- then I believe there  
15 is no doubt about the situation. So the only person  
16 that needs to be -- and there are no other heirs --

17 MR. BRUCE: I'm pretty sure that's been  
18 thoroughly litigated.

19 EXAMINER BROOKS: -- except the people that  
20 leased to Premier.

21 MR. CARSON: Right. There are a bunch of  
22 heirs, but they're all tied up by Premier, other than  
23 Mr. Hall's clients.

24 EXAMINER BROOKS: And Blair Seaton Crooke?

25 MR. CARSON: And Blair Seaton Crooke is now

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1 tied up by --

2 EXAMINER BROOKS: Okay. Well, then we  
3 don't have to compulsory pool anybody.

4 Well, has he been tied up by the orders, or

5 has he been tied up by something else?

6 MR. CARSON: Both. The Court entered  
7 summary judgment against him, and he forewent appeal as  
8 part of the settlement.

9 EXAMINER BROOKS: Oh, okay.

10 Well, I guess we can go ahead and  
11 compulsory pool him. That doesn't matter because -- I  
12 mean, otherwise, we're going to have to try and figure  
13 out and recite why we don't -- I don't know what you-all  
14 want to do about it.

15 What is your preference? It's your case.

16 MR. BRUCE: Well, I think -- I think you're  
17 factually correct there. I just don't like seeing the  
18 wrong statements of fact in an order.

19 EXAMINER BROOKS: Well, I want to do a new  
20 order that corrects the facts. The thing about Blair  
21 Seaton Crooke is that we have no evidence of what  
22 happened to his interest. So we can compulsory pool  
23 it --

24 MR. BRUCE: And, once again, it doesn't --  
25 assuming -- assuming I can believe Mr. Carson over

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19

1 there --

2 MR. CARSON: That's a rash assumption.

3 (Laughter.)

4 EXAMINER BROOKS: That's the problem. If I  
5 were to enter an order based on what he said, I would  
6 have to have him -- have to get the court reporter to  
7 administer the oath and put him on the witness stand.

8 MR. BRUCE: And if he is, in fact -- just  
9 like any other pooling case where a pooled party  
10 subsequently becomes leased or signs a JOA, a letter to  
11 the Division stating that he is no longer subject to the  
12 pooling order -- orders would suffice.

13 EXAMINER BROOKS: Yeah, it would. But, you  
14 know, if we had -- if I knew judicially that we were  
15 going to dispose [sic] is Blair Seaton Crooke's  
16 interest, then we could avoid these orders and dismiss  
17 the case, because -- dismiss the re-opening of the  
18 applications because the other -- the other pooled  
19 parties we dealt with in the original orders, except in  
20 that one case, right? So that's one alternative. But I  
21 can't make any findings based on what counsel said that  
22 wasn't under oath. So --

23 MR. BRUCE: I see no harm in amending the  
24 orders just to make a factual correction.

25 EXAMINER BROOKS: Okay. Yeah. I won't

1 recite it as nunc pro tunc because that would raise the  
2 question of whether it's clerical error or a judicial,  
3 when actually it's somewhere in between.

4                   But I will just enter corrected orders that  
5 will void these orders and make a recitation -- the  
6 correct recitation, since I now understand them, which  
7 is that there are no other pooled parties that we know  
8 about, except the parties represented here and Blair  
9 Seaton Crooke and that the heirs -- the Welch heirs  
10 claim an unleased mineral interest and that they're not  
11 being pooled because their interests are committed to  
12 the -- are committed to the wells.

13                   MR. BRUCE: That's correct.

14                   EXAMINER BROOKS: Okay. We'll get that  
15 taken care of.

16                   MR. HALL: Let me just clarify because a  
17 question comes in up in your mind.

18                   EXAMINER BROOKS: Okay.

19                   MR. HALL: I believe there was a single  
20 master contract area JOA with individual well election  
21 letters.

22                   EXAMINER BROOKS: Yeah. I don't believe  
23 that was in the record. Mr. Mitchell clearly did

24 testify that they had ratified the JOA. I think he  
25 was --

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1 MR. HALL: Yes.

2 EXAMINER BROOKS: -- asked if they signed  
3 the JOA, and he said it was ratified or something to  
4 that effect.

5 MR. HALL: It went noncons- -- my clients  
6 went nonconsent in two or three wells, but the rest,  
7 they participated in.

8 EXAMINER BROOKS: But they're are bound by  
9 the JOA.

10 MR. HALL: I believe so.

11 EXAMINER BROOKS: You agree with that,  
12 Mr. Bruce?

13 MR. BRUCE: I agree.

14 EXAMINER BROOKS: Okay. That'll take care  
15 of it, because bound by the JOA, their interest would  
16 not be compulsory pooled anyway. And we need to -- but  
17 we'll leave Mr. Crooke alone at this point, and we'll  
18 get the orders entered, and we just handle that under  
19 the provision of the orders.

20 MR. HALL: I didn't move these (indicating)

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21 into evidence. They're already part of the record,

22 but --

23 EXAMINER BROOKS: Yeah. These are all in  
24 the record if they're not evidentiary in the sense that  
25 they -- the transcript, of course, is, but the

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1 transcript -- this is just a copy of the transcript of  
2 the prior hearing --

3 MR. HALL: Yes.

4 EXAMINER BROOKS: -- of which that evidence  
5 was taken, so that's not evidence. And the other things  
6 here are either legal authorities or pleadings. I think  
7 we're okay.

8 MR. HALL: Okay.

9 EXAMINER BROOKS: Case Numbers 15547,  
10 re-opened; 15548, re-opened; 15549, re-opened; 15550,  
11 re-opened; 15551, re-opened; and 15552, re-opened; and  
12 Case Number 15562 will be taken under advisement.

13 MR. HALL: Okay. Thanks.

14 EXAMINER McMILLAN: This hearing is  
15 adjourned.

16 (Case Numbers 15547 through 15552 and 15562  
17 conclude, 2:02 p.m.)

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1 STATE OF NEW MEXICO

2 COUNTY OF BERNALILLO

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4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court

6 Reporter, New Mexico Certified Court Reporter No. 20,

7 and Registered Professional Reporter, do hereby certify

8 that I reported the foregoing proceedings in

9 stenographic shorthand and that the foregoing pages are

10 a true and correct transcript of those proceedings that

11 were reduced to printed form by me to the best of my

12 ability.

13 I FURTHER CERTIFY that the Reporter's

14 Record of the proceedings truly and accurately reflects

15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither  
17 employed by nor related to any of the parties or  
18 attorneys in this case and that I have no interest not  
19 final disposition of this case.

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MARY C. HANKINS, CCR, RPR  
Certified Court Reporter  
New Mexico CCR No. 20  
Date of CCR Expiration: 12/31/2017  
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