

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

September 16, 2021

9:00 a.m.

APPEARANCES:

Adrienne Sandoval: Chairwoman  
Estevan Baca: Commissioner  
Terry Warnell: Commissioner

REPORTED BY: Barbara Jean Morgenweck, RPR, CCR  
New Mexico CCR #526  
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12 Also Present:

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14 Florene Davidson, Commission Clerk  
15 Gregory Bloom, Recused Commissioner for Titus matter

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1           MADAM CHAIR SANDOVAL: Good morning,  
2 everybody, once again.

3           Oh, I've got to record it.

4           All right. It is September 16, 2021.  
5 It is 9:19 a.m., and this is a regularly  
6 scheduled meeting of the Oil Conservation  
7 Commission.

8           I am Adrienne Sandoval. I am chair of  
9 the Oil Conservation Commission and director of  
10 the Oil Conservation Division.

11           Also with me today are the two other  
12 commissioners. Would you please introduce  
13 yourselves for the record.

14           COMMISSIONER BLOOM: Good morning. I'm  
15 Greg Bloom. I'm the designee of the  
16 Commissioner of Public Lands, Stephanie Garcia  
17 Richard.

18           COMMISSIONER WARNELL: Good morning.  
19 Terry Warnell, designee for EMNRD.

20           MADAM CHAIR SANDOVAL: Thank you.

21           Also with us today is Chris Moander, who  
22 is counsel for the commission, and Florene  
23 Davidson, who is commission clerk.

24           All right. First item of today is  
25 approval of the agenda. I'm going to note

1 actually quite a few things on here.

2 Agenda Item No. 4, De Novo Case  
3 No. 21744 has been continued until I believe the  
4 next docket in October.

5 Case -- or Agenda Items No. 5, 6, 7, and  
6 8, those were settled and removed off of the  
7 agenda.

8 Agenda Item No. 9 still is retained on  
9 the agenda for today and will be the only matter  
10 that we are hearing, as well as the remaining  
11 Agenda Items 10, 11, 12, and 13.

12 So with those changes, is there a motion  
13 to adopt the agenda?

14 COMMISSIONER BLOOM: Madam Chair, I move  
15 to adopt the agenda.

16 COMMISSIONER WARNELL: I second that  
17 motion.

18 MADAM CHAIR SANDOVAL: All right. Thank  
19 you.

20 Mr. Moander, would you please do a  
21 roll call vote?

22 MR. MOANDER: Yes, Madam Chair.  
23 Commissioner Bloom?

24 COMMISSIONER BLOOM: Yes.

25 MR. MOANDER: Commissioner Warnell?

1 COMMISSIONER WARNELL: Yes.

2 MR. MOANDER: And Madam Chair?

3 MADAM CHAIR SANDOVAL: Yes.

4 MR. MOANDER: The motion passes.

5 MADAM CHAIR SANDOVAL: It looks like we  
6 are having -- the lawyer from the land office  
7 can't participate. Let me -- let's go through  
8 the next agenda item and then I'll try to work  
9 on seeing if we can get your settings working.

10 Agenda Item No. 3, approval of the  
11 August 12th, 2021 and August 27, 2021 meeting  
12 minutes. Commissioners, have you reviewed the  
13 minutes and is there a motion for approval?

14 COMMISSIONER BLOOM: Madam Chair, I have  
15 reviewed the minutes, and I would move to  
16 approve the minutes from our last meeting.

17 COMMISSIONER WARNELL: Madam Chair, I  
18 second that motion.

19 MADAM CHAIR SANDOVAL: Just to confirm,  
20 Commissioner Bloom, you said the last meeting.  
21 Do you mean both the August 12th and 27 minutes?

22 COMMISSIONER BLOOM: That is correct,  
23 yes. Thank you.

24 MADAM CHAIR SANDOVAL: Okay. And just  
25 to confirm, Mr. Warnell, is that for your second

1 of the motion as well?

2 COMMISSIONER WARNELL: Yes, I second  
3 that motion.

4 MADAM CHAIR SANDOVAL: Thank you.

5 Mr. Moander, would you do a roll call  
6 vote, please?

7 MR. MOANDER: Yes, Madam Chair.

8 Commissioner Bloom?

9 COMMISSIONER BLOOM: Approve.

10 MR. MOANDER: Commissioner Warnell?

11 COMMISSIONER BLOOM: Approved.

12 MR. MOANDER: Madam Chair?

13 MADAM CHAIR SANDOVAL: Approve.

14 MR. MOANDER: Motion carries.

15 MADAM CHAIR SANDOVAL: Thank you.

16 All right. Let me see if I can -- I'm  
17 sorry if I'm going to say your last name  
18 right -- Mr. Koluncich? I'm sorry, that's  
19 probably very wrong.

20 You have like three things. I have to  
21 see you three different times. I can try to  
22 move the other two entries over to a panelist  
23 and then see if you can -- I moved all of your  
24 entries over to panelist; so hopefully, you  
25 should be able to either mute or unmute one of

1     them and speak.

2             Can we test that out?

3             (Zoom technical issues).

4             MADAM CHAIR SANDOVAL:  There's a lot  
5     of -- I heard something, but there's a lot of  
6     background noise.

7             (Zoom technical issues).

8             MADAM CHAIR SANDOVAL:  Same thing.

9             COMMISSIONER BLOOM:  Nicholas, you might  
10    try and see if there are any other Webex open  
11    and close those out.  And if you would unmute,  
12    perhaps the Chair can permeate the other two  
13    appearances.

14            MADAM CHAIR SANDOVAL:  Two that are  
15    unmuted -- okay.  I can't hear anything if  
16    you're trying to say something.

17            MR. KOLUNCICH:  Can anyone hear me?

18            MADAM CHAIR SANDOVAL:  Yes, I can hear  
19    you now; but there's a lot of feedback.

20            (Zoom technical issues)

21            MR. KOLUNCICH:  Can you hear me now?

22            MADAM CHAIR SANDOVAL:  Ooh, that's  
23    better.  I kicked one of your profiles off.

24            MR. KOLUNCICH:  Okay.  I regret the  
25    challenges here.  I don't know, it appears that

1 people can hear me. If that's going to meet  
2 the -- that's going to meet the requirements for  
3 the basic rules of parliamentary procedure, I  
4 guess I can -- I guess we can move forward.

5 MADAM CHAIR SANDOVAL: Okay. All right.  
6 I think we are good now. Let's hope so, at  
7 least.

8 Are the remaining parties on here that  
9 we can -- as panelists? I think so.

10 Chris, do you see any more missing? I  
11 don't want to like go back in the middle of  
12 this.

13 MS. SHAHEEN: Madam Chair?

14 MADAM CHAIR SANDOVAL: Okay. Go ahead.

15 MS. SHAHEEN: This is Sharon Shaheen on  
16 behalf of Titus. I just note we have a Titus  
17 representative who has joined through the agenda  
18 plank. And if you have some questions for him  
19 today, then you may need to make him a panelist  
20 as well.

21 MADAM CHAIR SANDOVAL: Okay. All right.  
22 We can do that if we get to that point.

23 MS. SHAHEEN: Okeydoke. Thank you.

24 MADAM CHAIR SANDOVAL: All right. Well,  
25 with that, let's go ahead and jump to Agenda

1 Item No. 9. This is a -- let's see -- in a  
2 Case No. 21872, which is an application of Titus  
3 Oil & Gas Production for approval of production  
4 allocation.

5 We will be doing basically a status  
6 conference today. This case was heard in front  
7 of the Division, and all of that information  
8 appears to have been sent up to the Commission.  
9 So thank you.

10 I think we will start -- Ms. Shaheen, if  
11 you would like to introduce yourself and your  
12 client, and then we can go through the other  
13 parties. And then we will provide each person  
14 an opportunity to speak.

15 COMMISSIONER BLOOM: Madam Chair, if you  
16 permit me, I'm going to recuse myself from this  
17 case; and Mr. Estevan Baca, the director of  
18 Royalty Management Division, will take my place  
19 as the designee of the Commissioner of Public  
20 Lands.

21 MADAM CHAIR SANDOVAL: Okay. Thank you.

22 COMMISSIONER BLOOM: Thank you.

23 MADAM CHAIR SANDOVAL: And with that,  
24 Mr. Bloom will be leaving us.

25 And, Mr. Baca, can we hear you.

1 MR. BACA: Can you hear me?

2 MADAM CHAIR SANDOVAL: Yes, fantastic.

3 All right. Now, Ms. Shaheen, would you  
4 like to introduce yourself and your client  
5 briefly? And then we will move forward.

6 MS. SHAHEEN: Thank you, Madam Chair.

7 Good morning, everyone. Sharon Shaheen  
8 on behalf of applicant, Titus Oil & Gas  
9 Production, LLC.

10 Also with me today is Walt Jones. He  
11 is -- I believe he is vice president of land  
12 with Titus.

13 MADAM CHAIR SANDOVAL: Thank you.

14 Is there -- I think Jesse,  
15 representative from the Division?

16 MR. TREMAINE: Yes, Madam Chair. My  
17 name is Jesse Tremaine. I'm counsel for the Oil  
18 Conservation Division.

19 MADAM CHAIR SANDOVAL: Thank you.

20 Let see here. Mr. Feldewert?

21 MR. FELDEWERT: Good morning, Madam

22 Chair and members of the Commission.

23 Michael Feldewert with the Santa Fe office of

24 Holland & Hart, appearing on behalf of EOG

25 Resources, Inc.

1 MADAM CHAIR SANDOVAL: Thank you.

2 Am I correct that there's also -- the  
3 Land Office is a party?

4 MR. MOANDER: At this point, no,  
5 Madam Chair. I don't believe there's been an  
6 entry or an attempted entry that I'm aware of.

7 MADAM CHAIR SANDOVAL: All right.

8 MR. KOLUNCICH: Can people hear my  
9 voice?

10 MADAM CHAIR SANDOVAL: Yes.

11 MR. KOLUNCICH: Good morning,  
12 Madam Chair, panelists, and participants.

13 This is Nicholas Koluncich, appearing on  
14 behalf of New Mexico State Land Office. I  
15 appreciate the opportunity to be heard.

16 Sorry about the technical difficulties  
17 here, but we -- we wanted to chime in on our  
18 position in this matter.

19 (Reporter requests clarification.)

20 MR. KOLUNCICH: I can barely hear you,  
21 but I think you asked who we represent. It's  
22 actually the State Land Office. Thank you.

23 MADAM CHAIR SANDOVAL: Mr. Moander, just  
24 to confirm, was there an entry of appearance on  
25 behalf of the State Land Office.

1           MR. MOANDER: I did not see one. I last  
2 looked at the file about 2:00 yesterday. I can  
3 certainly take another look if you would like,  
4 Madam Chair.

5           MADAM CHAIR SANDOVAL: Okay. All right.

6           MR. KOLUNCICH: I can represent that I  
7 have yet to file a written entry of appearance.  
8 Is it permissible to do an oral motion to appear  
9 or oral notice?

10          MADAM CHAIR SANDOVAL: Mr. Moander?

11          MR. MOANDER: The rules -- I'd have to  
12 look at the rules on it. I don't think there's  
13 anything that says one way or the other about  
14 that. I could take a look.

15                 I'm going to still request that one be  
16 submitted in writing. If you'll give me just a  
17 second, I'll -- I'll check the rules.

18          MR. KOLUNCICH: And we'll be -- we'll be  
19 happy to go ahead and enter a written one  
20 thereafter. If it gives anyone any comfort, the  
21 New Mexico State Land Office doesn't -- doesn't  
22 intend to soapbox here.

23          MADAM CHAIR SANDOVAL: Okay. Well,  
24 Mr. Moander, while you're confirming that, why  
25 don't we go ahead and move forward.

1           Ms. Shaheen, we have -- keeping in mind  
2           that the Commission has reviewed the records  
3           that have been provided, would you like to  
4           provide a status update for the Commission,  
5           please?

6           MS. SHAHEEN: I believe Ms. Hardy is  
7           here to enter an appearance as well for Pegasus.

8           MADAM CHAIR SANDOVAL: Okay.

9           MS. HARDY: That's correct.

10          MADAM CHAIR SANDOVAL: Thank you,  
11          Ms. Hardy.

12          MS. HARDY: I've just been waiting.

13          Dana Hardy with the Santa Fe office of  
14          Hinkle Shanor on behalf Pegasus Resources, LLC;  
15          Fortis Minerals II, LLC; and Santa Elena  
16          Minerals IV, LP. Thank you.

17          MADAM CHAIR SANDOVAL: All right. Thank  
18          you. Just to confirm, did you send in an entry  
19          of appearance?

20          MS. HARDY: Yes, Madam Chair, we did  
21          file one.

22          MADAM CHAIR SANDOVAL: All right. Go  
23          ahead, Ms. Shaheen -- oh, sorry.

24          What, Mr. Moander?

25          MR. MOANDER: I didn't realize I'm

1 muted. I'm yelling at -- or like raging at my  
2 computer at the moment. So I apologize.

3 MADAM CHAIR SANDOVAL: Great. Okay.  
4 That's all right. We understand that, I think  
5 everybody here at this point.

6 Now, Ms. Shaheen, would you like to  
7 begin? Thank you.

8 MS. SHAHEEN: Yes. Thank you.

9 I thought it might be helpful to talk  
10 briefly about the procedural posture of this  
11 case because, as everyone knows, this was not a  
12 request for a de novo refute by the Commission.

13 Rather, there was an order entered by  
14 the director, who referred this to the  
15 Commission under Section 70-2-6(B) and  
16 19.15.4.20(B) in that. And those are very  
17 simple rules that -- in a statute.

18 The 70-2-6(B) says: Any hearing on any  
19 matter may be held before the Commission if the  
20 Division director determines that the Commission  
21 shall hear the matter. And the reg provides the  
22 hearing on the matter shall be held before the  
23 Commission as the director directs the  
24 Commission to hear the matter.

25 So under those circumstances, since we

1 did present all of our evidence below to the  
2 Division, I'm wondering whether there is a need  
3 for another evidentiary hearing. So I just want  
4 to put that out there.

5 I spoke with Mr. Moander yesterday and  
6 then had this revelation early this morning,  
7 that maybe there is no need for an evidentiary  
8 hearing. So I'll just put that out there.

9 If the Commission feels there is a need  
10 for another hearing, Titus would ask that a  
11 special hearing date be set. And that is  
12 because these -- this well is on the imminent  
13 drilling schedule. And as -- as the Commission  
14 is well aware, moving rigs around, changing a  
15 schedule like that is very costly. And frankly,  
16 Titus needs to know by October 1 whether or not  
17 it can drill this well into Texas.

18 So if you have any questions about that,  
19 I'm happy to -- to help there. Or Mr. Jones can  
20 probably weigh in as well if you have questions  
21 for him.

22 So this -- would it be possible for me  
23 to share my screen?

24 MADAM CHAIR SANDOVAL: Yeah. Let me  
25 give you permission.

1 MR. MOANDER: Madam Chair, I'm going to  
2 put on the record here, under 19.15.4.11(B)  
3 NMAC, a party may enter an appearance by oral  
4 appearance on the record at the hearing that the  
5 party wishes to be a party to.

6 So the forum -- the motion is  
7 acceptable. I would always encourage a written  
8 one for the integrity of the record.

9 MR. KOLUNCICH: You'll have it.

10 MADAM CHAIR SANDOVAL: Thank you for  
11 confirming that.

12 And just -- just provide help. Can you  
13 pronounce your last name again so I don't mess  
14 it up, please?

15 MR. KOLUNCICH: Oh, Madam Chair, it's my  
16 pleasure. It's Nicholas Koluncich. And there's  
17 no apology necessary. I've had time to get used  
18 to it being mispronounced with people. They can  
19 just call me Nick.

20 MADAM CHAIR SANDOVAL: Okay, thank you.

21 All right. Thank you, Ms. Shaheen.

22 I think for the commissioners, let's go  
23 through all of the parties and then direct  
24 questions as necessary to any of the counsel or  
25 if we need additional technical testimony from

1 Titus's witness.

2 All right. Mr. Tremaine, would you like  
3 to make any statements on behalf of the  
4 Division?

5 MR. TREMAINE: Thank you, Madam Chair.

6 The Oil Conservation Division's position  
7 is that this case represents unique and novel  
8 legal and technical issues, which I won't get  
9 into in detail here. But ultimately, the OCD  
10 believes that prior to issuance of any order in  
11 this matter, that a memorandum of understanding  
12 is necessary between the States of New Mexico  
13 and Texas.

14 Can I identify enumerated authority for  
15 the OCC to issue an order that would effectively  
16 indicate an agreement related to allocation and  
17 other issues between New Mexico and Texas, or  
18 any other state for that matter.

19 The OCD, too, believes that this context  
20 is actually a situation that is likely to be  
21 repeated in the future. And so this particular  
22 well, while we understand the proposed drilling  
23 schedule for Titus, should not be handled in  
24 isolation and that the MOU and -- a negotiated  
25 MOU between New Mexico and Texas is necessary as

1 the framework for an order that the OCC would --  
2 would issue.

3 We do see a couple different  
4 alternatives going forward. And one is to  
5 continue this matter until such time as a lawful  
6 MOU is executed between New Mexico and Texas.  
7 And I want to point out that that does not  
8 necessarily mean that an order would look  
9 radically different from the current proposal or  
10 other orders, but that has yet to be negotiated  
11 between the states.

12 And the second alternative is to proceed  
13 to hearing. And I would concur with what I  
14 understood Ms. Shaheen's sentiment to be, that  
15 it is not necessary to conduct an entirely new  
16 evidentiary hearing; that if this does go a  
17 hearing date, a special hearing that the OCC's  
18 review the matter, I would recommend it  
19 primarily based on the record below, along with  
20 any other supp -- supplemental findings.

21 The OCD would be taking the position  
22 in -- in that case that the -- an OCC order  
23 approving the application be made contingent  
24 upon the execution of an MOU between New Mexico  
25 and Texas.

1 Thank you.

2 MADAM CHAIR SANDOVAL: Thank you,  
3 Mr. Tremaine.

4 Mr. Feldewert?

5 MR. FELDEWERT: Madam Chair, members of  
6 the Commission, EOG has nothing further.

7 MADAM CHAIR SANDOVAL: Okay.

8 All right. Hopefully, I don't mess this  
9 up. Mr. Koluncich?

10 MR. KOLUNCICH: Thank you, Madam Chair.  
11 Nicholas Koluncich from the New Mexico State  
12 Land Office. [Indiscernible]

13 (Reporter requests clarification.)

14 MADAM CHAIR SANDOVAL: -- a written  
15 agreement is sometimes between Texas and  
16 New Mexico is -- is necessary. And from our  
17 perspective, I would argue it's abjectly  
18 desirable.

19 The advantage is that -- to this  
20 approach would be, you know, it at least  
21 follows it would minimize the instances of  
22 inevitable future controversies that will  
23 concern litigation and administrative resources  
24 down the road. This will be replicated in the  
25 future, such that putting in a little bit of

1 time now to get it right will probably spare all  
2 of us time and expense down the road.

3 And I can further represent that the  
4 New Mexico State Land Office is -- is committed  
5 to -- to moving forward with this relatively  
6 quickly. The perspective is that the NMSLO  
7 wants to be an active participant in whatever is  
8 going to happen so we can make sure that we can  
9 optimize -- optimize and our beneficiaries.

10 In the past, from what I was able to  
11 review in the record that was submitted both  
12 here and in Texas, it was seen to be largely --  
13 largely a New Mexico jurisdiction. Bonding is a  
14 solution for any possible plugging problems.  
15 And then more granular specific deal points like  
16 allocation, recording requirements, financial  
17 assurance, permitting, environmental issues like  
18 air, and -- and releases, notices, inspections,  
19 plugging, abandonment, we could address all  
20 those issues now on the front side.

21 Or we could wait until they become much  
22 bigger problems down the road. So that is the  
23 New Mexico State Land Office's position.

24 And I would like to repeat that we  
25 have -- we have shared interests in -- in making

1 this happen on the [indiscernible]...

2 (Reporter requests clarification.)

3 (Discussion held off the record.)

4 MR. KOLUNCICH: I'm happy to go ahead  
5 and repeat the points that I made before.

6 So just to review, thanks very much for  
7 their time. The New Mexico State Land Office  
8 doesn't have any vociferous opposition in this  
9 project.

10 A review of the record provided to date  
11 in forums that were largely in alignment with --  
12 with Titus on this matter, the New Mexico  
13 jurisdiction's bonding specific deal points such  
14 as allocation, reporting, financial assurance,  
15 permitting, environmental issues, notice,  
16 inspection, plugging, abandonment, all of this  
17 appears in the record.

18 And the New Mexico State Land Office  
19 stands poised to assist in getting this done  
20 relatively quickly to -- well, to optimize  
21 revenues for everyone, you and our  
22 beneficiaries.

23 Unless anyone has anything further, you  
24 know, I'll stop talking.

25 MADAM CHAIR SANDOVAL: Thank you.

1           Ms. Hardy, would you like to say  
2 anything?

3           MS. HARDY: Just briefly. Thank you,  
4 Madam Chair.

5           Pegasus, Fortis, and Santa Elena have  
6 submitted a brief in support of Titus's  
7 application in this case and would like to see  
8 the application approved. They have an interest  
9 in the well. And so that's our position, and we  
10 concur with Titus and Ms. Shaheen.

11           Thank you.

12           MADAM CHAIR SANDOVAL: Thank you.

13           Commissioners, do you have any questions  
14 for any of the parties at this time?

15           COMMISSIONER BACA: Madam Chair, no --  
16 no questions from me at this time.

17           MADAM CHAIR SANDOVAL: I can't hear you,  
18 Mr. Warnell. You look muted, though, so don't  
19 panic.

20           COMMISSIONER WARNELL: I am muted,  
21 sorry.

22           MADAM CHAIR SANDOVAL: Okay, good.

23           COMMISSIONER WARNELL: Okay.

24           Madam Chair, I have -- I share the  
25 concerns of the State Land Office and of OCD.

1 My biggest concern looking through this material  
2 last night was the allocations between the  
3 states. I didn't see anything on that, and that  
4 seems like it should be a high priority. I  
5 would like to see that.

6 Other than that, I'm ready to proceed.

7 MADAM CHAIR SANDOVAL: All right. I  
8 have a couple questions.

9 Mr. Tremaine, is there a status that you  
10 can provide the Commission on the MOU?

11 MR. TREMAINE: Yes, Madam Chair. The --  
12 there is a draft MOU. The -- actually, my  
13 predecessor in this matter has had ongoing  
14 contact with the parties, particularly  
15 Ms. Shaheen; but in reference to the -- to the  
16 MOU, has been in contact with the Bureau of Land  
17 Management and the Railroad Commission in Texas.

18 Our point of contact with the Railroad  
19 Commission in Texas has changed, so there will  
20 be some work necessary to -- to move that  
21 forward from the state that it is in; but it is  
22 in draft stage and parties are -- well, the Oil  
23 Conservation Division is ready to work with the  
24 State Land Office and continue negotiations with  
25 the Railroad Commission in Texas.

1           MADAM CHAIR SANDOVAL: Do you have any  
2 type of -- do you have any idea how long that  
3 could take? I imagine there are quite a few  
4 issues to probably work through.

5           MR. TREMAINE: I think there are a  
6 number of issues. I haven't had the benefit of  
7 speaking directly with the State Land Office on  
8 this matter, so I think that's the next step.

9           I don't want to guess. I would suggest  
10 it's in the order of weeks, rather than days.

11          MADAM CHAIR SANDOVAL: Okay. Thank you.

12          Ms. Shaheen, does your client intend to  
13 drill more wells that have this same scenario  
14 being kind of cross-border.

15          MS. SHAHEEN: Yes, that is correct.  
16 They do have a development plan that -- that  
17 covers more than is presented in this particular  
18 application.

19          If I may -- if that answers your  
20 question, I believe there's an exhibit attached  
21 to the affidavit of Mr. Jones that talks a  
22 little bit about the development plan overall.  
23 And so I just -- if I might be able to address  
24 some of the points that counsel for the Division  
25 and for the State Land Office made, it might

1 help -- help me at least focus my presentation.

2           So first, I would note that this well,  
3 like I said, is -- is on the drilling schedule  
4 now. And we appreciate the State Land Office  
5 indicating that it supports the drilling. And  
6 we understand that the Division and the State  
7 Land Office believe there's a need for an MOU.

8           I think what we are wondering if it's  
9 possible for us to do, what I believe someone  
10 suggested earlier, which is to enter an order  
11 contingent on having an MOU in place --  
12 contingent on production not occurring until  
13 December and having an MOU in place.

14           That way, we would be able to drill this  
15 particular well. And otherwise, the -- the  
16 acreage in Texas will be stranded because it's  
17 highly unlikely that anyone would be drilling a  
18 vertical well in that 40 acres or so that is in  
19 Texas.

20           As far as -- you know, frankly, I know  
21 that Mr. Moander suggested that there are  
22 inevitable future controversies. I think that  
23 might be more related to wells that would be  
24 drilled from Texas into New Mexico. Here, Titus  
25 is only asking to drill from New Mexico into

1 Texas; and we believe there's no need for an MOU  
2 that addresses drilling from Texas to New Mexico  
3 at this time.

4 If somebody later on, another operator,  
5 wants to come along and drill from Texas to  
6 New Mexico, then they can come to the Division  
7 and the Commission and ask for that. But here,  
8 we're simply asking to be able to drill from  
9 New Mexico into Texas, and we believe the MOU  
10 should address that circumstance only. And we  
11 think that would help alleviate the concern  
12 about any possible future controversies.

13 With respect to Mr. Warnell's --

14 Oh, and my client is reminding me that  
15 Texas has already approved this permit. That  
16 permit has been issued. And Titus has full  
17 approval to drill into Texas.

18 So Mr. Warnell asked about the  
19 allocation between the states, and that is  
20 really the -- the sole purpose of the  
21 application. I'll back up just a little bit.

22 Titus began working on this project back  
23 almost a year ago and first began conferring  
24 with the Division, I believe, February and March  
25 and was instructed that Titus would need to file

1 an application for approval of production of  
2 allocation. So that is addressed in Mr. Jones'  
3 affidavit below.

4 And it's very simple, and Texas has  
5 approved this proposal. Titus proposes to  
6 allocate to New Mexico and to Texas based on  
7 their proportionate share of the acreage. In  
8 the alternative, they could also do it with  
9 respect to -- you know, I'm -- I'm going to have  
10 to look. There was an alternative.

11 So New Mexico -- my understanding is  
12 New Mexico historically has -- has allocated  
13 production based on acreage, and Texas has  
14 historically allocated production based on  
15 completed lateral length.

16 And so we have those two alternatives.  
17 And Texas -- the Texas permit and approval  
18 indicates that it's open to either one. And in  
19 this particular instance, the -- the interests  
20 that go to New Mexico and the interests that go  
21 to Texas are about the same, regardless of  
22 whether it's based on acreage or completed  
23 lateral.

24 So that's addressed in Mr. Jones'  
25 affidavit and also, I believe, in the

1 transcripts below. And it's also addressed in  
2 the order that was issued by Texas and the  
3 permit.

4 Just taking a quick look here.

5 I know that Mr. Tremaine mentioned that  
6 there's nothing that -- there's no authority  
7 that allows New Mexico to allocate production  
8 between the states. And I would only point out  
9 that there's nothing that precludes the Division  
10 from exercising its authority to approve the  
11 allocation of production that we're proposing  
12 with respect to New Mexico.

13 So Texas has already approved the  
14 allocation of production with respect to Texas.  
15 And all we need now is for the Division to  
16 approve the allocation of production to  
17 New Mexico, and I believe its pretty clear that  
18 the Commission and the Division have authority  
19 to do that.

20 Just give me a second here to -- to run  
21 through my notes, make sure I haven't forgotten  
22 anything I wanted to address.

23 So then I did have a -- have a question.  
24 I think you asked the Division attorney the  
25 question of how long would it take to put

1 together an MOU. So if anyone else has any  
2 inside on that, for example, once an MOU has  
3 been drafted, how much time it would take before  
4 the Division or the Commission or whomever is  
5 party to that agreement needs to approve it,  
6 that would be helpful for us to know.

7 As for there was a comment that this  
8 presents unique and novel technical issues,  
9 frankly, I don't think that there are any unique  
10 technical issues here. It's the same formation.  
11 Nothing changes. There's nothing unique about  
12 the drilling of the well or production from the  
13 well.

14 The only thing that is unique is that it  
15 crosses the interstate line. So it seems to me  
16 the real issues are simply reporting issues and  
17 regulatory compliance issues. Titus, of course,  
18 is bonded in both states, is willing -- is, you  
19 know, ready and willing and will comply with the  
20 requirements of both states.

21 Texas has already indicated how it wants  
22 reporting to occur in Texas. I think it would  
23 be just a very simple method of instructing  
24 Titus as to how New Mexico would like for  
25 production to be reported. And I believe -- so

1 for example in Texas, production is being  
2 reported on Texas production; and then in a  
3 separate box on the form, they indicate total  
4 production.

5           There are two API numbers for the well.  
6 We already have a federal permit from BLM for  
7 this well, and we have been told that the only  
8 change that needs to be made with respect to  
9 that federal permit is to submit a sundry  
10 indicating that it would be a longer well than  
11 it's currently permitted.

12           So all reporting would be done with  
13 respect to each of the two API numbers, one to  
14 the New Mexico API number and the other to the  
15 Texas API number.

16           So I think that covers most of my  
17 comments. I wanted to also note that there is a  
18 joint operating agreement with the sole working  
19 interest owner in Texas, which is Foxy; though  
20 if you think it would be helpful, I'm happy to  
21 walk through the packages that we have. They  
22 have been bookmarked, and I can show everyone  
23 where they can find the information that they  
24 believe is important to know.

25           And I stand ready to answer any other

1 questions you might have.

2 MADAM CHAIR SANDOVAL: Thank you.

3 MR. TREMAINE: Madam Chair, this is  
4 Jesse Tremaine. If I could really briefly  
5 respond?

6 MADAM CHAIR SANDOVAL: Yeah. I'm going  
7 to give all of the parties an opportunity to  
8 respond.

9 And then, Ms. Shaheen, I'll come back to  
10 you.

11 Mr. Tremaine, would you like to go  
12 ahead?

13 MR. TREMAINE: Sure.

14 Just a couple of points really briefly.

15 One, I take Ms. Shaheen's point about the -- my  
16 earlier phrasing with the technical issues.

17 Primarily, the OCD is concerned with potential  
18 or probable conflict between -- between the laws  
19 and regulations in New Mexico and Texas. And  
20 some of those issues are reasonably foreseeable  
21 and inconsistent between the states.

22 The OCD's position is that the direction  
23 of the lateral doesn't matter. Many of the  
24 issues are going to exist regardless of the  
25 surface hole location, whether that's in

1 New Mexico or Texas. The allocation issues  
2 are -- are the same.

3 And I wanted to clarify. In setting out  
4 the alternatives earlier, OCD's preference and  
5 recommendation is that this matter be continued  
6 until -- until the MOU is in place. I think  
7 that that will allow the OCC to make more a  
8 informed decision and order.

9 And -- and while in general matter, this  
10 project is not objected to by the OCD, the --  
11 the alternative that I've outlined of proceeding  
12 to hearing and issuing an order making this  
13 contingent upon the MOU is the -- is an  
14 alternative. It's not OCD's preferred  
15 alternative. And that would be our suggestion  
16 if the Commission were inclined to hear this.

17 And lastly, the issue in terms of the  
18 timing of the MOU, to clarify when I -- when I  
19 said weeks, I don't want to guess as to the  
20 number of weeks; but our current projection is  
21 not that this would be executed in advance of  
22 the currently proposed drilling schedule. We're  
23 not looking at early October. We're looking  
24 later October or potentially later in the fall.

25 There's a lot of interested parties that

1 will be looking at this. We need to incorporate  
2 not only the State Land Office, but the Bureau  
3 of Land Management. And I -- and I think as we  
4 move through this, there's going to be a number  
5 of other interested agencies that we need to at  
6 least consult with as a threshold matter, even  
7 if they are not taking as active of a role as  
8 OCD and the State Land Office.

9 And that's all. Thank you.

10 MADAM CHAIR SANDOVAL: Thank you.

11 Mr. Feldewert?

12 MR. FELDEWERT: Madam Chair, members of  
13 the Commission, I have no questions or  
14 statements to make at this time.

15 MADAM CHAIR SANDOVAL: Thank you.

16 Mr. Koluncich?

17 MR. KOLUNCICH: Thank you very much.

18 New Mexico's State Land Office is -- is  
19 comfortable here and gratified to report that we  
20 appear to be in agreement with much of what was  
21 said by both the applicant and by Mr. Tremaine.

22 We think it is probably best to go ahead  
23 and have a -- have a thoroughly written and firm  
24 document stipulated and agreed to before there's  
25 a formal ruling on this.

1           Another matter that -- that I jotted  
2 down swiftly as he was speaking was the  
3 practical one, just in COVID times, one I don't  
4 think we -- one I don't think we'll belabor  
5 here. Regrettably, anything that requires  
6 collaboration COVID times seems to be taking a  
7 little bit longer.

8           I find that the matters I can do  
9 individually go quicker, but things just --  
10 things just seem to take longer. I have learned  
11 only now that it -- we think it may take a  
12 little bit longer than we were hoping; but I  
13 approve of the idea of goal setting to try and  
14 get these matters decided for -- excuse me --  
15 get the MOU or, more accurately, some sort of  
16 written contract by December, with the -- with  
17 the provision that if there's good cause for an  
18 extension of that timeline, that we -- that we  
19 at least have that option.

20           Unfortunately, it looks like -- it looks  
21 like the COVID numbers are going up. And I just  
22 don't -- there's just -- there are just a lot of  
23 question marks hanging over this.

24           Now, the desire for a firm and  
25 enforceable written contract of some kind is

1 needed. About this, we seem to agree. We do  
2 not want to kick the can down the road for  
3 future controversies by at least considering  
4 cross-border issues. The matters of  
5 jurisdiction, there's potential bills, potential  
6 releases, we'll want to at least consider those  
7 matters in -- in forming those.

8 Now, I also agree with -- with Titus's  
9 representation with respect to bonding. That's  
10 an important issue that we need to resolve  
11 before we can really nail down or look for an  
12 order from the Commission authorizing this  
13 project. You want to have some certainty as  
14 to -- as to what we're doing.

15 The final point here is that goal  
16 setting is always, always a desirable goal. I  
17 find that sort of motivates and pushes -- pushes  
18 participants and stakeholders to prioritize  
19 things with a -- with a deadline. But to  
20 repeat, I believe that because this allocation  
21 has -- is in a new and novel thing, subject  
22 to -- subject to possibly being repeated in the  
23 future, it's worth putting some time, it's  
24 worth.

25 If I may have one more minute to review

1 my notes.

2 The New Mexico State Land Office has  
3 nothing further. If there are any questions on  
4 how we stand, I'm happy to answer them.

5 Thank you.

6 MADAM CHAIR SANDOVAL: Thank you.

7 Ms. Hardy?

8 MS. HARDY: Thank you, Madam Chair and  
9 Commissioners. We concur with Titus, and I  
10 don't have any other comments to add.

11 Thank you.

12 MADAM CHAIR SANDOVAL: Okay.

13 Commissioners, do you have any  
14 additional questions?

15 COMMISSIONER BACA: I have a question  
16 for Ms. Shaheen.

17 The drill date of October first, I want  
18 to say I read it in hearing notes that were  
19 there, is that to maintain any state lease?  
20 That if no action was taken on that, it could be  
21 possibly lost?

22 MS. SHAHEEN: I'm not aware of any  
23 potential lease terminations here.

24 COMMISSIONER BACA: Okay.

25 MS. SHAHEEN: Yes.

1           COMMISSIONER BACA:     So do you have any  
2     idea why that October 1st was chosen?   Just part  
3     of the drilling schedule?

4           MS. SHAHEEN:   It is part of the drilling  
5     schedule.   It has been on the drilling --  
6     actually, it was on the earlier drilling  
7     schedule; but this -- it has been moving around.

8           The drilling schedule has been changed;  
9     but at this point, Titus is committed to  
10    drilling that well.   It will be drilled.   Now  
11    whether it will be drilled into Texas, which  
12    would allow additional -- which would prevent  
13    waste by allowing additional production, would  
14    be dependent on the timing of an order on this  
15    application.

16           And I -- I would just reiterate that --  
17    that Titus would request that an order be  
18    entered now contingent on the finalizing of an  
19    MOU that all of the parties agree to.

20           I'm encouraged by Mr. Tremaine's  
21    estimate that an MOU could be completed later in  
22    the fall.   And in light of that information, I  
23    believe that it is feasible to consider the  
24    alternative that's proposed by the Division,  
25    which is to enter an order now approving the

1 application for production allocation  
2 contingent -- having production contingent on  
3 having an MOU completed by December, sometime in  
4 December.

5 With respect to the bond issue that was  
6 raised, I -- I don't think there's an issue  
7 there. Titus is compliant with the bond  
8 requirements in both Texas and New Mexico  
9 already. It's an operator in both states, so  
10 that should not be on an issue.

11 With respect to other interested  
12 agencies, respectfully, I would note that --

13 MADAM CHAIR SANDOVAL: Sorry to  
14 interrupt you, Ms. Shaheen. But can we just at  
15 this point stick to the Commissioners'  
16 questions?

17 And I will give you an opportunity at  
18 the end to address any of the comments from the  
19 other parties.

20 MS. SHAHEEN: Absolutely. My apologies  
21 for running off on a different tangent.

22 MADAM CHAIR SANDOVAL: Mr. Baca, did you  
23 have any other questions?

24 COMMISSIONER BACA: Madam Chair, I do  
25 not.

1           MADAM CHAIR SANDOVAL: All right. Thank  
2 you.

3           Mr. Warnell? I think you're muted.

4           COMMISSIONER WARNELL: No questions at  
5 this time.

6           MADAM CHAIR SANDOVAL: I'm not sure  
7 exactly who to direct this question to, but  
8 either the Division or Ms. Shaheen. Has BLM  
9 said anything regarding this, have any concerns,  
10 questions, et cetera?

11          MS. SHAHEEN: Not to my knowledge. As I  
12 mentioned earlier, we already have a permit from  
13 BLM and have been informed that the only thing  
14 that needs to be done if we are drilling the  
15 well into Texas is to file a sundry notice.

16          MADAM CHAIR SANDOVAL: Do you know what  
17 the application processing time on that is?

18          MS. SHAHEEN: I don't think there's much  
19 of a processing time. It's just a matter of  
20 filing the sundry notice.

21          My client is telling me a couple of  
22 weeks.

23          MADAM CHAIR SANDOVAL: So you -- I think  
24 you mentioned that you're basically planning to  
25 drill the well, regardless of the MOU. It's

1 just an issue as to do you stop it at the  
2 New Mexico border or do you drill it into Texas.

3 Would you be drilling on October 1st,  
4 regardless? Like is that the plan? Like it's  
5 on the drilling schedule, October 1st is it, we  
6 either drill it to the border or we drill it  
7 over the border, depending on where we're at.

8 MS. SHAHEEN: And that may be a question  
9 that I need to confer with my client on.

10 But I understand that they are going to  
11 drill the well. And the question is whether  
12 they will stop at the appropriate -- within the  
13 standard setbacks and/or whether they will  
14 continue to drill into Texas.

15 I don't know if that answered your  
16 question. Maybe I need to hear it again. My  
17 apologies.

18 MADAM CHAIR SANDOVAL: I guess my  
19 question is: You know, you basically said like  
20 it's on the October 1st drilling schedule. Is  
21 it going to be drilled, regardless, on  
22 October 1st and it's a decision point of how  
23 long it is, is it stopping at the border or is  
24 it going across the border?

25 MS. SHAHEEN: I think that's the

1 decision point.

2           And I -- I need to correct a  
3 misstatement that I made earlier. I understand  
4 there is a State Land Office lease that will be  
5 expiring if we don't drill. And so that is why  
6 they are drilling one way or another, because  
7 there's a State Land Office lease that would be  
8 otherwise expiring.

9           So I think October 1 is the decision  
10 point date. And they may have already spud this  
11 well, frankly. I don't -- I don't know, and I  
12 may get some information here any minute.

13           But the State Land Office lease expires  
14 the end of October, so they will be drilling in  
15 October to prevent expiration of that lease.  
16 And October 1st, I understand, is the date of  
17 the decision point as to whether they're going  
18 to stop and -- and only drill in New Mexico or  
19 whether they will continue to drill into Texas.

20           That's my understanding. I may get --  
21 I'm getting information as we speak. So...

22           MADAM CHAIR SANDOVAL: Okay. So that  
23 sort of answers my next question, I think.

24           It may be a question for the State  
25 Land Office. Are there on opportunities to

1 extend that lease if we are -- if there's like  
2 pending MOU negotiations?

3 MR. KOLUNCICH: Thank you, Madam Chair,  
4 Commissioners. New Mexico State Land Office  
5 again.

6 I was not prepared and the record here  
7 seems to be a little unclear as to the -- as to  
8 the lease expiration; thus, the State  
9 Land Office can't make any representations or  
10 promises other than that I can represent the  
11 promise. But as soon as I leave this hearing,  
12 I'll check with the boots-on-the-ground oil and  
13 gas people to see if they -- to see if we're  
14 authorized under the law to do some sort of  
15 extension.

16 It is my recollection that we are, but  
17 it is not -- it's not for me to make some sort  
18 of ad hoc promise if I don't know that to be the  
19 case.

20 MADAM CHAIR SANDOVAL: Thank you.

21 MS. SHAHEEN: Madam Chair, I do have a  
22 little more information if you would like for me  
23 to provide it to you.

24 Titus is currently drilling a four-well  
25 pad, one of which is this well, the

1 El Campeon 404H. It's pad drilling, so they'll  
2 be drilling portions of each release vertical  
3 than horizontals of each well. And that is how  
4 they've started the drilling, but still have  
5 time to make a decision as to the length of the  
6 lateral for the El Campeon 404H.

7 MADAM CHAIR SANDOVAL: Thank you.

8 Sorry. Two seconds. They're drilling,  
9 and it's very hard to hear. Okay. There's a  
10 break.

11 So on that note, Ms. Shaheen, if  
12 they're -- I guess I'm trying to understand. Is  
13 there going to be waste, not on the Texas side,  
14 on the New Mexico side if this well is not  
15 drilled in that October time frame because you  
16 won't be able to go back and add this additional  
17 well later due to potential spacing on the  
18 well pad, being able to get a rig in there,  
19 whatever it may be if this sort of kind of  
20 October date is not met?

21 Or is it just this is the ideal  
22 time frame to do it because it's on the drilling  
23 schedule and it costs money to move?

24 Those are two very different things.

25 Can you clarify?

1 MS. SHAHEEN: I'm sorry. Could you -- I  
2 got the last part of it, of your question, but  
3 I'm not sure I'm clear on the first part of your  
4 question.

5 MADAM CHAIR SANDOVAL: It -- it sounds  
6 like you've already started drilling on that --  
7 it's a four-well pad, right? Correct?

8 MS. SHAHEEN: Yes

9 MADAM CHAIR SANDOVAL: Are you -- are  
10 the other wells -- okay. Let me do this in  
11 parts.

12 Are the other wells on that pad, they're  
13 not going across the border, correct?

14 MS. SHAHEEN: I -- correct.

15 MADAM CHAIR SANDOVAL: Okay. So you --  
16 you started drilling on the pad, the other wells  
17 aren't going across the border, this is the only  
18 one that's going across the border, correct?

19 MS. SHAHEEN: That's my understanding,  
20 yes.

21 MADAM CHAIR SANDOVAL: Okay. So if you  
22 do not drill this well in the October  
23 time frame, are you going to not be able to go  
24 back to that site and basically add this well in  
25 later due to maybe spacing issues on the site,

1 like logistical problems? So you would end up  
2 with a three-well pad instead of a four-well pad  
3 because you can't get a rig onsite later due to  
4 like spacing and logistical problems?

5 I'm trying to -- to figure out if that  
6 is the issue with this October time frame or  
7 it's more of an issue...

8 Maybe start with that. Sorry.

9 MS. SHAHEEN: My understanding is there  
10 are surface issues here which require them to  
11 drill all four wells at this time.

12 MADAM CHAIR SANDOVAL: Okay. That is  
13 what I'm trying to figure out.

14 So there are surface issues on this site  
15 that if you do not drill sort of the one well  
16 after another, you're going to be -- will you be  
17 stranding that entire acreage?

18 MS. SHAHEEN: Now, with -- it's possible  
19 with respect to that formation. I'm not sure  
20 about the answer to that question.

21 But I understand that there would be a  
22 new federal permitting, and there would be  
23 drilling next to producing wells. And that's --  
24 these are all issues that -- that require them  
25 to drill all four wells now.

1           MADAM CHAIR SANDOVAL: Okay. And so  
2 then it will be a question of because you have  
3 to drill all four wells now because of spacing  
4 problems and surface issues -- or more surface  
5 issues, then the question becomes do you drill  
6 it to the border or do you go across the border,  
7 correct?

8           MS. SHAHEEN: That's right.

9           MADAM CHAIR SANDOVAL: But you have got  
10 to drill it in October?

11          MS. SHAHEEN: That's correct.

12          MADAM CHAIR SANDOVAL: Okay. Okay.  
13 That is helpful. I'm just trying to understand  
14 those pieces.

15                I have no further questions at this  
16 time.

17                Ms. Shaheen, as -- I'm sorry if you can  
18 hear that.

19                I'll let you address -- or finish up  
20 with any additional statements before I go to  
21 the Commissioners.

22                MS. SHAHEEN: Going back to the mention  
23 of the bond issue, as I noted, Titus is fully  
24 bonded in both New Mexico and Texas. And so I  
25 don't believe there's an issue there.

1           With respect to other interested  
2 agencies, all of these agencies were noticed.  
3 They received the notice letter for this  
4 application. That includes BLM, the State  
5 Land Office, Tax and Rev, the Texas Railroad  
6 Commission, and the -- the corresponding  
7 agencies there in Texas.

8           All of these agencies received notice of  
9 the application, and none of them entered an  
10 appearance. So I don't -- and after conferring  
11 with BLM, Titus's understanding is there's not a  
12 big concern there. So I -- I don't think it's  
13 going to be a huge problem to get an MOU ready  
14 with respect to those agencies.

15           There was a concern about differences  
16 between regulations in New Mexico and in Texas.  
17 Mr. Tremaine, if I understood his comments  
18 correctly, he believes that the direction of the  
19 lateral doesn't matter. With all due respect, I  
20 think it does matter.

21           And -- and that is because Titus will be  
22 regulated with respect to -- will be under  
23 New Mexico regulations because the surface hole  
24 is going to be in New Mexico. So it will be  
25 required to be compliant with all New Mexico

1 regulations that apply to any well that's  
2 drilled in New Mexico.

3 So if -- if the MOU only addresses the  
4 New Mexico to the Texas -- into Texas drilling,  
5 then you avoid those regulatory issues that  
6 Mr. Tremaine referenced.

7 So again, I would just follow up, we  
8 would request the alternative proposal that  
9 Mr. Tremaine offered, which was to enter an  
10 order allowing the drilling into Texas  
11 contingent on a fully drafted and executed MOU  
12 by December -- or in December.

13 MADAM CHAIR SANDOVAL: Thank you.

14 MR. MOANDER: Madam Chair, I have got a  
15 question that I would like to ask, if I may.

16 MADAM CHAIR SANDOVAL: Go ahead.

17 MR. MOANDER: So I'm trying to summarize  
18 kind of what I'm hearing today. Because this  
19 is -- it sounds like there's no -- at this  
20 point, there's no opposition to Titus's  
21 proposal, save for the issue of the MOU.

22 Is that a -- is that a fair and accurate  
23 understanding on my part? And anyone can  
24 answer. I mean, I -- or everyone can answer if  
25 they want.

1           MR. KOLUNCICH: Thank you for the  
2 question, Mr. Moander. It's Nicholas again from  
3 the New Mexico State Land Office.

4           We are -- the New Mexico State  
5 Land Office is -- has no opposition to this  
6 project on condition that here, there, and are  
7 in a position to have our voice heard with  
8 respect to the practicalities.

9           I'm very interested in how -- how such  
10 things as this have been done in other -- in  
11 other jurisdictions. Is an MOU a legally  
12 binding document? Is that established practice  
13 when we have somewhat of a model or dual unusual  
14 drilling setups?

15           But the New Mexico State Land Office is  
16 committed to helping -- you know, helping --  
17 helping this project go through so long as our  
18 concerns are addressed in some form of written  
19 contract.

20           MR. TREMAINE: Mr. Moander, this is  
21 Jesse Tremaine for OCD.

22           I agree that there is not any inherent  
23 objection to the project itself. It has -- our  
24 concerns have to do with the -- with the timing  
25 and the lack of an agreement between Texas and

1 New Mexico. And I don't have any reason to  
2 foresee, in particular, issues in getting to an  
3 MOU other than the process -- you know, the --  
4 the issues that I brought up about that process.  
5 It's just that it takes time.

6 MR. MOANDER: Thank you, gentlemen.

7 I do have a follow-up, and this is for  
8 SLO's counsel. So just to clarify, it's the  
9 land officers -- the Land Office is interested  
10 in just being heard about any of Titus's  
11 proposals, which to me sounds like the  
12 Land Office wants to proceed to a full hearing  
13 on this matter. Is that -- is that a fair  
14 understanding?

15 MR. KOLUNCICH: I can't represent that  
16 that's necessary at this time. I just don't  
17 know if we need an order from the -- an order  
18 from this Commission until we've -- until we  
19 have an MOU to actually explain what the rights  
20 are.

21 MS. SHAHEEN: If I may, Madam Chair? I  
22 would like to make one response to Mr. Moander's  
23 comment earlier about other interstate wells.

24 MADAM CHAIR SANDOVAL: Proceed.

25 MS. SHAHEEN: I'm sorry?

1           MADAM CHAIR SANDOVAL: Oh, I'm sorry.

2           You can proceed. Go ahead.

3           MS. SHAHEEN: Thank you.

4           In the second status report that was  
5           submitted on September 1st, Mr. Jones talks  
6           about his communications with West Virginia and  
7           Pennsylvania. There are some interstate wells  
8           in that part of the region because there are --  
9           four states come together there.

10           And so there is no memorandum of  
11           understanding between -- I believe it's  
12           Pennsylvania and West Virginia. Instead, I  
13           believe one of the states permits the well. And  
14           then the other state has an MOU with the  
15           operator, and that's spells out the  
16           understanding.

17           Now, that is another alternative. I'm  
18           sure that Titus would be willing to execute an  
19           MOU directly with the Division with -- with  
20           respect to this particular well while the  
21           parties move forward getting the more complete  
22           MOU.

23           MADAM CHAIR SANDOVAL: Thank you.

24           Mr. Moander, do you have any more  
25           questions?

1           MR. MOANDER: No, Madam Chair. Thank  
2 you.

3           MADAM CHAIR SANDOVAL: All right. At  
4 this point, I think that there are a couple  
5 questions before the Commission:

6           One, do we feel like we need a full  
7 evidentiary hearing on this? And two, sort of  
8 just -- well, I guess in general, how to proceed  
9 and what pieces we need in place.

10           Mr. Moander, what's the mechanism for  
11 this? Could the Commission issue an order out  
12 of this hearing, sort of either directing the  
13 parties to do X, Y, and Z or an evidentiary  
14 hearing or an MOU? Or sort of could you walk me  
15 through the -- like what the mechanisms here  
16 are?

17           MR. MOANDER: Well, so I have taken a  
18 look at this. And so the issue is on a lack of  
19 opposition or whether the petition is, you know,  
20 unopposed.

21           In this case, we have got I think two  
22 issues that kind of cloud this a bit.  
23 Because in one, it stems through the Division if  
24 they're asking for -- if they're seeking the  
25 MOU.

1           And please pardon my new puppy. He's  
2           being a bit of a brat this morning, so give me  
3           one second. I'm going to take care of this.

4           MADAM CHAIR SANDOVAL: They're adorable.

5           MR. MOANDER: This is Dutch, and Dutch  
6           is a one-year-old pittie mix, and he's being a  
7           real pill.

8           MADAM CHAIR SANDOVAL: He's very cute.

9           MR. MOANDER: That's the problem, right?  
10          Come on.

11          MR. KOLUNCICH: That's the best thing  
12          about working from home.

13          MR. MOANDER: Out of here, come on.

14          Okay. So the issue is that it's -- if  
15          there's an issue with presenting the MOU is  
16          effectively contingency and order, which I think  
17          that's a fair description here, is that the  
18          order lack -- would lack effect if the MOU isn't  
19          entered. I think that could be construed as  
20          it's an opposition not necessarily to substance,  
21          but to procedure.

22          And then with the State Land Office, it  
23          isn't clear to me that they -- and correct me if  
24          I'm wrong -- but it sounds like to me there's a  
25          desire to at least proceed with the hearing so

1 that there's an opportunity for the Land Office  
2 to be heard, which I think also puts it in what  
3 could be viewed as an opposition, maybe not to  
4 substance but, again, in terms of procedure.

5 So I -- this is a tough situation  
6 because I don't think the parties actually have  
7 an issue with Titus's proposal at its core. But  
8 with the two situations outlined, it would seem  
9 to me you would have to proceed, at least to  
10 some extent, unless we can get some sort of  
11 agreement or stipulation universally here. And  
12 I have my doubts, kind of given what I've heard  
13 today.

14 So, you know, that, I think is the big  
15 issue. Because the rules refer to unopposed  
16 drilling applications. I think up to this  
17 point, it's been pretty clear that there has  
18 been opposition of some kind. And I think  
19 that's enough to meet the standard of  
20 opposition.

21 MADAM CHAIR SANDOVAL: And by move  
22 forward, do you mean move forward to an  
23 evidentiary hearing?

24 MR. MOANDER: Correct. Correct.

25 MADAM CHAIR SANDOVAL: Okay.

1 MS. SHAHEEN: May I respond,  
2 Madam Chair?

3 MADAM CHAIR SANDOVAL: Briefly.

4 MS. SHAHEEN: And really, it's more of a  
5 clarification. Because what I understood  
6 Mr. Koluncich -- I'm going to try that, try  
7 pronouncing it -- to be saying is that they want  
8 a seat at the table in negotiating the MOU.

9 I didn't understand him to be saying  
10 that they believed there needed to be an  
11 evidentiary hearing. I could be wrong -- and,  
12 Nick, please correct me -- but that was my  
13 understanding.

14 MR. KOLUNCICH: May I?

15 MADAM CHAIR SANDOVAL: Yeah, go ahead  
16 and address that.

17 MR. KOLUNCICH: May I communicate the  
18 NMSLO's new information?

19 MADAM CHAIR SANDOVAL: Yes, please.

20 MR. KOLUNCICH: We -- we -- I was only  
21 informed a moment ago via email that evidently  
22 an extension was offered to Titus, but nothing  
23 has been entered and I don't know what the  
24 status of the response is. But whatever it is,  
25 an extension was offered.

1           Our position is that we need to be at  
2 the -- we need to be at the table with respect  
3 to agreement is written. Again, I'm not  
4 100 percent certain that a memorandum of  
5 understanding is sufficient. My preliminary  
6 research informs that that may not as robust a  
7 contract as sufficient to --

8           (Reporter requests clarification.)

9           MR. KOLUNCICH: The New Mexico State  
10 Land Office reports that there is a -- an  
11 extension was offered. We also want to  
12 re-emphasize that the New Mexico State  
13 Land Office needs a memorandum of understanding,  
14 to participate in the drafting of that contract,  
15 be it called an MOU or something else.

16           I also am persuaded by what has been  
17 heard here that perhaps we do need an  
18 evidentiary hearing down the road, and I'll tell  
19 you why. If -- if we're able to come up with  
20 something that's acceptable to all of us, we  
21 vacate the hearing. We have it on calendar, we  
22 have another motivation -- another form of goal  
23 setting for us to get things done in the  
24 interim.

25           MR. MOANDER: So, Madam Chair, I think

1 with -- I mean, unless the parties have anything  
2 additional, I'm just going to -- for purposes of  
3 clarity, NMAC 19.15.4.12(D), I believe -- or  
4 wait, hold on -- (A)(1)(d) allows -- I mean, a  
5 lot of this, it talks about the division. But  
6 if an application is unopposed and is -- the  
7 record is complete based on the Commission's  
8 interpretation, an order can be issued on the  
9 record.

10 But the key, again, is unopposed. And  
11 what I just heard from SLO's counsel, I think,  
12 constitutes sufficient opposition that a hearing  
13 probably would need to be set.

14 MADAM CHAIR SANDOVAL: Okay. So in that  
15 case, do we really need to decide any of if  
16 other issues, such as the MOU timing, all of  
17 that, or an allocation if we need to have a full  
18 hearing?

19 MR. MOANDER: I would suggest that the  
20 Commission reserve making that determination  
21 until the -- because I would fully expect at  
22 this point that this is where -- because it's  
23 de novo, there is still some ability to put on,  
24 you know, relevant evidence. And relevant  
25 evidence might be considered by the -- well, let

1 me rephrase that.

2 I'm not applying the rules of evidence,  
3 but we have got a -- a nexus here between the  
4 substance of the application and then the  
5 legalities of an MOU. I would expect that there  
6 would probably be some kind of testimony on that  
7 to some extent.

8 I don't know what that would necessarily  
9 look like because, really, what would -- I guess  
10 the parties would be arguing issues of law more  
11 than fact, which is a little -- a little  
12 different for the adjudications for the  
13 Commission than the norm.

14 But I would encourage the Commission to  
15 reserve ruling on the MOU issue until the record  
16 is complete for the adjudicatory hearing.

17 MADAM CHAIR SANDOVAL: Okay. And so --  
18 sorry, I'm just stepping through this one piece  
19 at a time.

20 MR. MOANDER: Well, and, Madam Chair,  
21 the other thing about this, too, is that I've  
22 not started research on MOUs and how they might  
23 impact. This only landed I think on our desk a  
24 little over a week ago. I would like to be able  
25 to take some time too -- and I'm guessing some

1 of the other attorneys would as well -- to make  
2 sure we -- we understand the actual  
3 ramifications.

4 Because some of these have -- I see them  
5 all the time, but I -- but they don't -- it's  
6 not clear exactly where they are rooted,  
7 necessarily, for their authority in certain --  
8 in given situations. So I recognize that we  
9 have got a hard -- the Commission has an  
10 issue -- well, Titus has an issue with the  
11 October 1st.

12 For the sake of making sure this is done  
13 correctly and for the edification of future  
14 counsel and commissions, I think there's some  
15 value in that, having that hearing.

16 MADAM CHAIR SANDOVAL: Okay. I just  
17 have a couple questions, then, maybe.

18 One, is it on the schedule for  
19 October -- is on the drilling schedule for like  
20 literally October 1st or is it the month of  
21 October?

22 MS. SHAHEEN: It is currently being  
23 drilled, the decision point, yes -- well,  
24 they're drilling all -- all four wells  
25 vertically.

1 MADAM CHAIR SANDOVAL: Right.

2 MS. SHAHEEN: October 1st is the date on  
3 which Titus needs to know whether it can drill  
4 into Texas or not. So we would request that if  
5 there is a need for an evidentiary hearing --  
6 and again, I -- I don't think there is. If you  
7 want briefing on the MOU question, we're happy  
8 to provide that.

9 And so we would request that a hearing  
10 be -- be set as soon as possible so that, you  
11 know, there is still a hope, a possibility, that  
12 this will well could be drilled as planned into  
13 Texas. It will -- it will prevent waste, and it  
14 will protect -- rights.

15 Now, my client Mr. Jones is offering to  
16 speak if you think it would be helpful. So with  
17 that, I will -- I'll stand down.

18 MADAM CHAIR SANDOVAL: Okay. So,  
19 Mr. Moander, we would basically have to have  
20 this evidentiary hearing -- the evidentiary  
21 hearing before October 1st, right?

22 MR. KING: That -- it sounds like that's  
23 what Titus has respectfully requested.

24 As for -- to do that, I think with  
25 notice requirements, we'd probably be -- I mean,

1 it's going to be tough. We're probably looking  
2 at the last week of the month. But I think if  
3 we got notice out properly, we could probably  
4 get this scheduled for the 28th.

5           Yeah, that would be -- maybe the --  
6 well, yeah, I think we could get it the 27th --  
7 yeah, 28th -- 27th, 28th, 29th. And I would  
8 think that the Commission would probably not  
9 want to necessarily do this on the 30th, and  
10 Titus might appreciate that as well.

11           And this would also require a really  
12 aggressively abbreviated briefing schedule  
13 because I anticipate this would generate some  
14 significant research and -- and pleadings. So  
15 it's a bit -- and briefing is always good for  
16 the Commission, I think.

17           So if we wanted to stick with -- yeah,  
18 I'd say that -- so yeah, it would actually be  
19 the 28th; and we would have to -- the notice  
20 would need to go out tomorrow. And if we're  
21 going to do briefing, it would be pretty  
22 short-term, like three or four days and maybe no  
23 replies.

24           So we're really going to -- a motion or  
25 brief, followed by a reply if there was

1 opposition or other thoughts pertaining to it,  
2 and then that would be the end of it. I would  
3 think the Commission would probably want those  
4 briefs no -- well, the briefing packet done by  
5 the 24th.

6 I hate to make attorneys work on  
7 weekends because they already do enough as it  
8 is, but that's what we would be looking at.

9 MADAM CHAIR SANDOVAL: Okay. And  
10 basically -- well, what -- from your  
11 interpretation of the rules, we need to have an  
12 evidentiary hearing because there is enough  
13 opposition?

14 MR. MOANDER: Yeah, I think that's  
15 right.

16 And let me ask this too, though, before  
17 we get too deep into the scheduling. Do the  
18 parties anticipate any need for -- any other  
19 potential motion practice that might need to be  
20 conducted in advance -- like before -- at least  
21 briefed before the hearing?

22 MS. SHAHEEN: Not from Titus, other than  
23 the point that you raised.

24 MR. MOANDER: Okay.

25 MS. SHAHEEN: And actually, too, we're

1 thinking about what evidence would be necessary  
2 at this hearing. Because I believe Titus has  
3 presented all of the evidence that it would need  
4 to present with respect to its request here.

5 And so I'm assuming that this would be  
6 an opportunity for the State Land Office to  
7 present evidence and for the Division to present  
8 evidence. Is that your thought on it?

9 MR. MOANDER: I mean, it could be. I  
10 never -- I don't assume who's going to put what  
11 on anymore with these hearings. But yeah. And  
12 it sounds like, if nothing else, that the  
13 Land Office might seek to attack the record in  
14 some capacity from below and some of your  
15 evidence. That's kind of what I'm -- but again,  
16 I'm not totally sure.

17 But it kind of -- to clarify this, I've  
18 heard the Land Office essentially express  
19 opposition. And it's -- and I'm not totally  
20 clear on the particulars of that, which they  
21 don't necessarily need to lay out in detail at  
22 this point.

23 But that opposition is enough to -- to  
24 stop the Commission from being able to just  
25 issue an order on the record, because that's

1 what the rule requires. And I -- I specifically  
2 use the term, you know, opposition or unopposed  
3 because that's what's in the regulations.

4 So I -- yeah, like I don't know what I  
5 don't know yet, to be frank, not to pull a  
6 Rumsfeld on anybody here. But I think that --  
7 that's where I'm stuck, and that's where my  
8 concern is.

9 MS. SHAHEEN: Well, I'm --

10 MR. MOANDER: So --

11 MS. SHAHEEN: I'm sorry.

12 MR. MOANDER: No, no. Go ahead. I'm  
13 not a commissioner.

14 MADAM CHAIR SANDOVAL: Okay. So it  
15 sounds like we're having a hearing. And I  
16 guess, Commissioners, I can do the 28th. I  
17 cannot do the 27th, the 29th, or 30th. So I  
18 don't know what you guys's schedules look like  
19 on the 28th.

20 MR. KOLUNCICH: Madam Chair, may I ask a  
21 question, please? Nicholas.

22 MADAM CHAIR SANDOVAL: Go ahead.

23 MR. KOLUNCICH: In communicating with  
24 the -- with the oil and gas folks, it looks like  
25 I may have missed some information with respect

1 to the timing and procedure here.

2 Now unless -- am I unclear or am I  
3 mistaken, wouldn't Titus availing itself of the  
4 offer of extension, wouldn't that buy us all  
5 time? Wouldn't that solve this problem in your  
6 term, thus affording us all the opportunity to  
7 work with the -- work with -- work cooperatively  
8 to craft some sort of written agreement between  
9 the parties?

10 Wouldn't that allow us to reach out  
11 to -- to reach out to Texas, if need be, to see  
12 if they had any opinion or stake in the game?  
13 It seems that 14 days in COVID times -- and I'm  
14 not trying to be -- I'm not trying to be  
15 dramatic, but it just seems extraordinarily  
16 difficult to do.

17 MADAM CHAIR SANDOVAL: Ms. Shaheen, I'll  
18 let you answer.

19 MS. SHAHEEN: Yes, I'm -- I'm  
20 communicating with my client. My client would  
21 like to speak on this issue. Apparently it's  
22 just -- not just a simple extension that Titus  
23 has been offered. And so he would like to speak  
24 on this issue if that's possible.

25 MADAM CHAIR SANDOVAL: Mr. Moander, is

1 there a process for that? I mean can we --

2 MR. MOANDER: So this sounds to me like  
3 testimony.

4 MADAM CHAIR SANDOVAL: I know.

5 MR. MOANDER: Which I'm a little  
6 concerned about because that's not the portion  
7 of this case that we're in.

8 And if -- if there is a proposed  
9 witness, he would need to be sworn in and he  
10 could be subject to cross-examination. I think  
11 that's fair because then -- is -- so is he going  
12 to produce --

13 It's Mr. Jones, right? Did I get the  
14 name right?

15 MS. SHAHEEN: Yes. Yes.

16 MR. MOANDER: So is he going to talk --  
17 what does he wish to speak about? Because if  
18 we're going to get into any substance  
19 effectively of the application, then that sounds  
20 like testimony to me. You know, if there's  
21 perhaps -- see, even if he's going to discuss  
22 the status of the lease extension, I still think  
23 that touches on ultimately the substance of the  
24 case.

25 So yeah, I -- my concern is here is that

1 we're heading into actual -- the actual case,  
2 and we're going to start getting testimony. And  
3 if we're going to do that, then we need to  
4 reserve that for the hearing.

5 I'm happy to, you know, hear what you  
6 know and I think the Commission is, Ms. Shaheen;  
7 but I'm a little nervous about that.

8 MS. SHAHEEN: All right. So can I --

9 MADAM CHAIR SANDOVAL: I think maybe,  
10 Ms. Shaheen, if -- if I understand the issue  
11 correctly, and maybe you can confirm this, is  
12 like the horse is out of the barn at this point  
13 because they have already started drilling that  
14 four-well pad, which has this well on said pad.

15 If they hadn't have already started to  
16 drill this well pad, then yes, I think that the  
17 lease extension -- from the sounds of it, and I  
18 need you to confirm this -- would have given us  
19 more time. The problem is that at this point,  
20 the four-well pad, they've started to drill it.

21 And if they don't continue from Well 1  
22 to Well 2 to Well 3 to -- this is probably  
23 Well 4 on the schedule, then it's sort of like a  
24 use it or lose it in the situation of surface  
25 problems that, with the spacing on that well

1 pad, you're not going to be able to re-get a rig  
2 or completions at -- equipment back in to go  
3 back after the fact and complete that well.

4 So is that the situation that we're in  
5 and why a lease extension is not going to buy us  
6 more time?

7 MS. SHAHEEN: That is correct. And you  
8 said that much better than I could have. Thank  
9 you.

10 MADAM CHAIR SANDOVAL: That's why I got  
11 fancy engineering degrees.

12 MR. KOLUNCICH: I'm glad one of us does.  
13 This is Nicholas with New Mexico State  
14 Land Office. Can I communicate?

15 MADAM CHAIR SANDOVAL: Yes. Go ahead.

16 MR. KOLUNCICH: I'm reviewing this  
17 agenda here, and my understanding of the reading  
18 of this thing is this is a -- this is more of a  
19 status conference than the evidentiary hearing,  
20 which -- which I think you consistently -- the  
21 applicant is saying they don't need. We  
22 don't -- we haven't had an opportunity to put up  
23 any witnesses. I haven't had an opportunity  
24 to -- to prepare for any sort of  
25 cross-examination.

1           With respect to, again, to the -- my  
2 primary concern, which is timing on this thing,  
3 what would -- what would a status conference in  
4 two weeks even be about? Is that tight  
5 schedule, would that under any set of  
6 circumstances be adequate timing to negotiate an  
7 MOU, terms of an MOU, or anything like that?  
8 And wouldn't an extension solve that whole  
9 problem?

10           MADAM CHAIR SANDOVAL: So what -- I  
11 think, Mr. Koluncich, that's sort of what I was  
12 just trying to confirm with the applicant. The  
13 extension is not going to solve that problem  
14 because they have already started to drill the  
15 pad. And if they do not drill this well while  
16 they are drilling -- while they have a rig  
17 onsite on that pad, basically it's that  
18 use-it-or-lose-it scenario and the acreage in  
19 Texas would be stranded. So --

20           MR. KOLUNCICH: Well, I regret,  
21 Madam Chair, I don't -- I don't understand or  
22 recognize that position. I don't -- I --  
23 forgive me, I'm not an engineer litigator.

24           I don't understand why they couldn't  
25 just do that -- do that later. Is it a matter

1 where it can actually be done, but it's going to  
2 cost more? I just don't -- I regret I don't...

3 MADAM CHAIR SANDOVAL: I cannot speak to  
4 the specific situation, but I will speak  
5 broadly.

6 In general, a lot of times there's  
7 limited amount of space on a well pad. And if  
8 you have a four-well pad or an eight-well pad,  
9 it is not like you can drill seven of those  
10 wells and then come back at a later time and  
11 drill number eight because of the spacing  
12 constraints on the well pad.

13 So if you don't drill all of the pieces  
14 of the well pad at once, basically, you know,  
15 you drill seven and then you don't drill number  
16 eight, then you're never going to drill number  
17 eight because you can't get the equipment out  
18 there in the space that is there because you now  
19 have active wells or drilled wells and other  
20 pieces on that site.

21 So if it -- I can't -- you know, that's  
22 sort of the big broad general like 40,000-foot  
23 view. But it does sound like in general,  
24 Mr. Moander -- and I think this -- we just need  
25 to proceed, is we need to go ahead and get this

1 scheduled because it sounds like we do not have  
2 a choice. It sounds as if there is enough of  
3 opposition that the rules necessitate an  
4 evidentiary hearing.

5 And I think it will be a question to the  
6 commissioners, one, whether -- well, I think if  
7 it's the point of the rule, I don't think we  
8 have a lot of choice on scheduling an  
9 evidentiary hearing, but I would like to hear  
10 both of your feedback on that; and then, two,  
11 the timing of it. It sounds like the earliest  
12 that it could be done would be the 28th with the  
13 noticing requirements.

14 And so first, let's take a step back.  
15 And, Commissioners, are we in agreement that  
16 there is a need for an evidentiary hearing on  
17 this matter?

18 MR. MOANDER: Might I -- is this  
19 discussion, Madam Chair, or are you requesting a  
20 motion --

21 MADAM CHAIR SANDOVAL: I think so. I  
22 think we're discussing. Is that allowable? Can  
23 we just -- yeah?

24 MR. MOANDER: You're absolutely able to  
25 discuss, but I'll recommend a roll call vote

1 once discussion has ended.

2 MADAM CHAIR SANDOVAL: Yeah, understood.

3 Commissioners, any thoughts on the need  
4 for an evidentiary hearing?

5 COMMISSIONER WARNELL: Madam Chair,  
6 Commissioner Warnell here.

7 I could make the 28th work if we do  
8 decide to have the hearing. I'm sitting here  
9 thinking about this lease that may expire. I'm  
10 not so sure that's even an issue in this case.  
11 Because if Titus is out there drilling on the  
12 pad, it's my understanding that the lease would  
13 not expire. They're out there doing the  
14 something. So that's my take on the matter.

15 Thank you.

16 MADAM CHAIR SANDOVAL: I think it's a  
17 waste issue at this point.

18 COMMISSIONER WARNELL: The waste issue?

19 MADAM CHAIR SANDOVAL: Yeah. To your  
20 point, I think it's a waste -- we're -- I'm  
21 sorry. I was agreeing with you. Yes, I think  
22 that the lease extension is not going to solve  
23 the problem at this point. I mean, we're  
24 looking at more of an issue of is any acreage  
25 going to be stranded as they move forward.

1           COMMISSIONER WARNELL: And the  
2 stranded -- if there was stranded acreage, then  
3 that acreage would be in Texas?

4           MADAM CHAIR SANDOVAL: I think so.

5           MS. SHAHEEN: If I may, it would also be  
6 that other 100 feet we would be drilling in  
7 completing up to the state line.

8           MADAM CHAIR SANDOVAL: Okay. Thank you  
9 for that clarification.

10          Mr. Baca?

11          MR. MOANDER: I'm sorry, Madam Chair.  
12 May I ask a question, Madam Chair?

13          MADAM CHAIR SANDOVAL: Go ahead.

14          MR. MOANDER: Just to clarify,  
15 Ms. Shaheen, so there -- there would be  
16 potential waste specifically as to the  
17 New Mexico side because it would not -- that  
18 100 feet you just mentioned would not be, for  
19 lack of a better term, actualized, I guess? And  
20 that -- and then that falls within New Mexico;  
21 is that right?

22          MS. SHAHEEN: That's correct.

23          MR. MOANDER: Okay. Thank you.

24          MADAM CHAIR SANDOVAL: Mr. Baca?

25          COMMISSIONER BACA: Madam Chair, I am

1 available on the 28th.

2 I think my only thought is what  
3 additional evidence would be presented? It  
4 sounds like Titus said that they wouldn't be  
5 presenting anything, so we would just be hearing  
6 from the SLO and if they have any objections; is  
7 that correct?

8 MADAM CHAIR SANDOVAL: Mr. Moander, I  
9 mean, I think it would be limited to sort of new  
10 information, correct?

11 MR. MOANDER: And they -- I would expect  
12 there will be some discussion about the  
13 legalities of the MOU, which will come through  
14 the briefing cycle as well, which that --

15 I mean, I'm -- the problem we've got  
16 here is we don't know -- I don't think that  
17 Mr. Koluncich is going to be able to tell us  
18 what the Land Office would anticipate putting  
19 into evidence. So I think Mr. Baca's  
20 description is about half right.

21 COMMISSIONER BACA: With that being  
22 said, I think we can do the hearing on the 28th.

23 MADAM CHAIR SANDOVAL: All right. Is  
24 there -- I think let's take this in pieces.

25 Is there a motion from one of the

1 commissioners to set or to recommend this for an  
2 evidentiary hearing?

3 COMMISSIONER BACA: So moved.

4 COMMISSIONER WARNELL: This is  
5 Commissioner Warnell. I second that motion.

6 MADAM CHAIR SANDOVAL: Mr. Moander,  
7 would you do a roll call vote, please?

8 MR. MOANDER: Yes, Madam Chair.  
9 Commissioner Baca?

10 COMMISSIONER BACA: Yes.

11 MR. MOANDER: Commissioner Warnell?

12 COMMISSIONER WARNELL: Yes.

13 MR. MOANDER: Madam chair?

14 MADAM CHAIR SANDOVAL: Yes.

15 Do we need to make a motion to set the  
16 date for it?

17 MR. MOANDER: Usually with scheduling,  
18 that's not an issue. We will just set it for  
19 the hearing, the notice will go out, and I'll  
20 work with Florene on that.

21 MADAM CHAIR SANDOVAL: All right. Do we  
22 need to set any briefing dates?

23 MR. MOANDER: I think so, Madam Chair.

24 So looking at the calendar, I'm going to  
25 suggest we could have motions due on the 21st by

1 5:00 and responses due on the 24th by 5:00 and  
2 no replies. That would give everyone an  
3 opportunity -- and this, I think just to  
4 clarify, Madam Chair, I think this should cover  
5 essentially any motions.

6 I'm hoping the parties aren't going to  
7 bombard with motions that were unanticipated. I  
8 trust that won't happen, but we'll leave that --  
9 I think we could -- we should leave that open,  
10 just to be sure since there are a lot of unknown  
11 factors here.

12 So that would be my recommendation.

13 MADAM CHAIR SANDOVAL: Do we need to  
14 make a motion on those dates, probably? Yeah.

15 MR. MOANDER: Yes, Madam Chair, I would.

16 MADAM CHAIR SANDOVAL: Is there a motion  
17 to require all motions in this case to be due by  
18 the 21st of September at 5:00 and any responses  
19 due on the 24th of September by 5:00 p.m.?

20 MR. MOANDER: And no replies,  
21 Madam Chair.

22 MADAM CHAIR SANDOVAL: And no replies.

23 COMMISSIONER BACA: I so move.

24 MADAM CHAIR SANDOVAL: Thank you. Is  
25 there a second?

1           COMMISSIONER WARNELL: Madam Chair, I  
2 second that motion.

3           MADAM CHAIR SANDOVAL: Mr. Moander,  
4 would you do a roll call vote again, please?

5           MR. MOANDER: Happily, Madam Chair.  
6 Commissioner Baca?

7           COMMISSIONER BACA: Yes.

8           MR. MOANDER: Commissioner Warnell?

9           COMMISSIONER WARNELL: Yes.

10          MR. MOANDER: And, Madam Chair?

11          MADAM CHAIR SANDOVAL: Yes.

12          MR. MOANDER: And just for the sake of  
13 clarity, this was the evidentiary -- actually to  
14 be an evidentiary hearing and a motion hearing  
15 set for the 28th. Because if there's motions,  
16 we probably -- the Commission probably should  
17 hear those first.

18                 And what time would the Commission like  
19 to convene that meeting -- or that special  
20 meeting?

21          MADAM CHAIR SANDOVAL: The normal time,  
22 9:00?

23          MR. MOANDER: That works. I was just  
24 asking in case there were any accommodations  
25 issues that might be needed.

1 MADAM CHAIR SANDOVAL: Does that work  
2 for the commissioners and for you, Mr. Moander?

3 MR. MOANDER: It works for me.

4 COMMISSIONER BACA: It works for me,  
5 Madam Chair.

6 COMMISSIONER WARNELL: It works for me.  
7 We'll make it work.

8 MADAM CHAIR SANDOVAL: 9:00 a.m., it is.  
9 We're just going to be spending quality time  
10 this month. All right.

11 MR. MOANDER: I think this is the first  
12 special meeting that we have had in a long time,  
13 so that's always a good sign.

14 MADAM CHAIR SANDOVAL: We got the hear  
15 your training. That's good for me.

16 MR. MOANDER: No, that doesn't count.

17 MADAM CHAIR SANDOVAL: All right. Are  
18 there any other procedural pieces on this that  
19 we need to go through, Mr. Moander?

20 MR. MOANDER: No. I think we've got  
21 everything set. The Commission is working to  
22 accommodate Titus, see what we can do. I think  
23 we're good.

24 MADAM CHAIR SANDOVAL: Okay, great.  
25 Well, let's see.

1           With that, if I can pull my agenda up  
2 again, we can move on to Agenda Item No. 10. Is  
3 there any pending litigation updates,  
4 Mr. Moander?

5           MR. MOANDER: Madam Chair, it looks like  
6 a new appeal was filed by Mr. Marker,  
7 A-1-CA39578. The notice of appeal was filed on  
8 9-8-21. The docketing statement by Mr. Marker  
9 will be due -- I think it was October 8th and --  
10 which would trigger the briefing cycle.

11           This -- just speaking broadly, this is a  
12 different appeal than we customarily see from  
13 this particular appellant. This one focuses on  
14 some significant constitutional -- state  
15 constitutional questions, so it's a little  
16 different.

17           There's a possibility that I may have  
18 another attorney in my office handling this, but  
19 we will see. But other than that, there is no  
20 further update.

21           MADAM CHAIR SANDOVAL: Okay. Is there  
22 any other business before the Commission?

23           All right. Well, with that, our next  
24 meeting will be the special hearing on  
25 September 28th, followed by the regularly

1 scheduled OCC meeting on October 14th.

2 And with that, it is 11:03 on  
3 September 16th. And we will close the meeting  
4 for today.

5 Thank you, everybody.

6 (At 11:03 a.m., the matter was  
7 completed.)

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STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

September 16, 2021  
9:00 a.m.

REPORTER'S CERTIFICATE

I, Barbara Jean Morgenweck, CCR # 526, DO  
HEREBY CERTIFY that on September 16, 2021, the  
above mentioned hearing, was taken before me at  
the request of and sealed original thereof  
retained by:

Ms. Florene Davidson  
Commission Clerk

I FURTHER CERTIFY that the recoverable  
cost of the original and one copy of the  
Deposition, including exhibits, to \_\_\_\_\_ is  
\$\_\_\_\_\_.

I FURTHER CERTIFY that I did report in  
stenographic shorthand the questions and answers  
set forth herein, and the foregoing is a true  
and correct transcript of the proceeding had  
upon the taking of this Deposition to the best  
of my ability.

I FURTHER CERTIFY that I'm neither  
employed by nor related to nor contracted with  
(unless excepted by the rules) any of the  
parties or attorneys in this case, and that I've  
no interest whatsoever in the final disposition  
of this case in any court.

/s/ Barbara Morgenweck  
Barbara Morgenweck  
Barbara Jean Morgenweck,  
RPR, CCR