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

IN THE MATTER OF THE HEARING DOCKET NO.
CALLED BY THE OIL CONSERVATION 21-22 OCD
DIVISION FOR THE PURPOSE OF
CONSIDERING:

AMENDED APPLICATION OF MEWBOURNE CASE NUMBER:
OIL COMPANY FOR COMPULSORY POOLING 22093
AND APPROVAL OF AN OVERLAPPING
HORIZONTAL WELL SPACING UNIT,
EDDY COUNTY, NEW MEXICO.

APPLICATION OF ASCENT ENERGY, LLC CASE NUMBERS:
FOR A HORIZONTAL SPACING AND 22112, 22184
PRORATION UNIT AND COMPULSORY
POOLING,EDDY COUNTY, NEW MEXICO.

APPLICATION OF ALPHA ENERGY CASE NUMBERS:
PARTNERS, LLC FOR COMPULSORY 22171, 22172
POOLING, EDDY COUNTY, NEW MEXICO.

1	APPLICATION OF MEWBOURNE OIL	CASE NUMBER :
2	COMPANY FOR COMPULSORY POOLING,	22349
3	EDDY COUNTY, NEW MEXICO.	
4		
5	APPLICATION OF GOODNIGHT MIDSTREAM	CASE NUMBER :
6	PERMIAN, LLC FOR APPROVAL OF A SALT	22626
7	WATER DISPOSAL WELL, LEA COUNTY,	
8	NEW MEXICO.	
9		
10	APPLICATION OF MEWBOURNE OIL	CASE NUMBERS :
11	COMPANY FOR COMPULSORY POOLING,	22633 - 22636
12	LEA COUNTY, NEW MEXICO.	
13		
14	APPLICATION OF MATADOR PRODUCTION	CASE NUMBERS :
15	COMPANY TO AMEND ORDER R-21811 TO	22875, 22876
16	ADD ADDITIONAL POOLED PARTIES,	
17	EDDY COUNTY, NEW MEXICO.	
18		
19	APPLICATION OF COLGATE OPERATING,	CASE NUMBERS :
20	LLC FOR COMPULSORY POOLING,	22937 - 22942
21	EDDY COUNTY, NEW MEXICO.	
22		
23	APPLICATION OF TEXAS STANDARD	CASE NUMBER :
24	OPERATING NM LLC FOR COMPULSORY	23005
25	POOLING, LEA COUNTY, NEW MEXICO.	

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VIDEOCONFERENCE HEARING

DATE: Thursday, September 15, 2022
TIME: 9:18 a.m.
BEFORE: Hearing Examiner Bill Brancard
Hearing Examiner Phillip Goetze
Technical Examiner Leonard Lowe
LOCATION: Remote Proceeding
Santa Fe, NM 87501
REPORTED BY: Dana Fulton, Notary Public
JOB NO.: 5425124

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A P P E A R A N C E S (Cont'd)
ALSO PRESENT (Cont'd):
Denise Greer, Esquire
Paula Vance, Esquire, Holland & Hart
Adam Rankin, Esquire, Holland & Hart

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I N D E X
CASE 22626

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
MewBourne Oil Company (Cases 22633, 22634, 22635 and 22636):		
Exhibit 1	Unknown	56/63
Exhibit 2	Unknown	56/63
Exhibit 3	Geologist Affidavit of Jordan Carrell	56/63
Exhibit 4	Affidavit of Mailing	56/63
Exhibit 5	Unknown	56/63
Exhibit 6	Pooling Checklist	56/63
Exhibit 8	Supplemental Exhibit	56/63
Exhibit 9	Supplemental Exhibit	56/63

(Exhibits retained by counsel.)

NO.	DESCRIPTION	ID/EVD
Texas Standard Operating (Case 23005):		
Exhibit 1	Unknown	67/69
Exhibit 2	Landman Affidavit of Matt Roberson	67/69
Exhibit 3	Geologist Affidavit of David Ensminger	67/69
Exhibit 4	Affidavit of Mailing	67/69
Exhibit 5	Pooling Checklist	67/69

(Exhibits retained by counsel.)

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

NO.	DESCRIPTION	ID/EVD
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Colgate Operating (Cases 22937, 22938, 22939, 23940
and 23941):

Exhibit A	Self-Affirmed Statement of Landman Travis Macha	73/79
Exhibit B	Self-Affirmed Statement of Geologist David DaGian	73/79
Exhibit C	Notice Affidavit	73/79

(Exhibits retained by counsel.)

NO.	DESCRIPTION	ID/EVD
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Matador Production Company (Cases 22875 and 22876):

Exhibit A	Affidavit of Landman Rob Helbing	81/
Exhibit B	Self-Affirmed Statement of Notice with Sample Letters	81/
Exhibit C	Affidavit of Notice of Publication	81/

(Exhibits retained by counsel.)

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

NO.	DESCRIPTION	ID/EVD
Goodnight Midstream (Case 22626):		
Exhibit A	C108 Application	120/121
Exhibit B	Self-Affirmed Statement of	
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Exhibit B1	Resume of Nathan Alleman	120/121
Exhibit B2	Notification of Protest	120/121
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(Exhibits retained by counsel.)

NO.	DESCRIPTION	ID/EVD
Empire New Mexico LLC (Case 22626):		
Exhibit N/A	Unknown	201/202

(Exhibits retained by counsel.)

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P R O C E E D I N G S

THE HEARING EXAMINER BRANCARD: Good morning, everyone. It is September 15, 2022. These are the hearings of the New Mexico Oil Conservation Division. I am your hearing examiner, Bill Brancard. With me today is our technical examiner, Mr. Leonard Lowe. Good morning, Mr. Lowe.

THE TECHNICAL EXAMINER: Good morning, Mr. Brancard.

THE HEARING EXAMINER BRANCARD: Excellent. As always, the worksheet for today's agenda is posted on our website. I believe there are 34 cases listed today, so we might be able to get through them today.

But I have a few announcements before we get going. One is you all probably should be getting an email at some point, a blast, but as of Saturday, all of us here at Energy, Minerals and Natural Resources Department will have a different email address; okay? And it will be the same address, the name that you've always looked for, like bill.brancard, but now instead of @state.nm.us, it will be @emnrd.nm.gov.

But don't freak out because all your emails that go to the old addresses will get routed to

1 us hopefully. And that ending of course also is there
2 for ocd.hearings, occ.hearings. That will also
3 change. So anyway, that's the big excitement around
4 here. Supposedly, it's going to make life easier.
5 Can't imagine.

6 Another piece of news, if you haven't
7 all heard, a bit of sad news that one of our
8 colleagues who was part of these hearings for many
9 years, we learned recently Mr. David Brooks passed on.
10 So just a word if -- I don't know if the word has
11 gotten around to folks, but he was apparently living
12 in Missouri recently. I have not seen a full obituary
13 on the internet yet.

14 Anyway, thank you all and so with that,
15 we will go to our list of cases for today and we will,
16 as usual, start from the beginning and with status
17 conferences. So I will --

18 MR. PADILLA: Mr. Examiner? Mr. Ernest
19 Padilla.

20 THE HEARING EXAMINER BRANCARD: Ernest
21 Padilla.

22 MR. PADILLA: Yes, sir. I have a
23 status conference in the District Court or scheduled
24 in at 9:45. So I'm on the last case, the Goodnight
25 case. I don't -- I think if -- we won't get -- start

1 that case, but, if necessary, I'd like to depart the
2 flight pattern about that time. Those things
3 generally do not last more than ten minutes.

4 THE HEARING EXAMINER BRANCARD: Okay.
5 All right. Yes. And I was -- I also forgot to
6 announce that we will have, for that case, a special
7 guest hearing examiner, Mr. Phil Goetze. So he will
8 be arriving later also. So you think you'll be out
9 from 9:45 to about ten; is that what you're thinking,
10 Mr. Padilla?

11 MR. PADILLA: Yes. At the worst. I
12 think most of those things go real quick.

13 THE HEARING EXAMINER BRANCARD: And
14 you're talking about 22626; correct?

15 MR. PADILLA: Right, number 34 on the
16 docket, on the worksheet.

17 THE HEARING EXAMINER BRANCARD: Okay.
18 Thank you. That's very helpful to know. And I forgot
19 to ask, Mr. Lowe, did you have any announcements
20 today?

21 THE TECHNICAL EXAMINER: No, I do not.

22 THE HEARING EXAMINER BRANCARD: All
23 right. Thank you. Okay. Any other statements before
24 we get going here? Hearing none, I will begin with
25 cases one through seven on our worksheet. These are

1 case numbers 22093, 22349, 22112, 22184, 22171, 22172.
2 We begin with appearances for MewBourne Oil Company.
3 MR. FELDEWERT: May it please the
4 examiner, Michael Feldewert with Santa Fe office of
5 Holland & Hart and appearing on behalf of MewBourne
6 Oil Company.
7 THE HEARING EXAMINER BRANCARD: All
8 right. And then we have Ascent, which I believe is
9 now Matador.
10 MR. SAVAGE: Good morning, Mr. Hearing
11 Examiner, Mr. Technical Examiner. Darin Savage in the
12 Santa Fe office of Abadie & Schill on behalf of
13 Matador Production Company, successor to Ascent
14 Energy.
15 THE HEARING EXAMINER BRANCARD: And
16 then we have Alpha Energy Partners.
17 MS. HARDY: Good morning, Mr. Examiner.
18 Dana Hardy with the Santa Fe office of Hinkle Shanor
19 on behalf of Alpha Energy Partners.
20 THE HEARING EXAMINER BRANCARD: All
21 right. We have a few other entries of appearance. We
22 have the Oil Conservation Division? Hearing
23 nothing --
24 MR. TREMAINE: Yes, Mr. Hearing
25 Examiner. I'm sorry. I'm having some computer issues

1 this morning. This is Jesse Tremaine for the Oil
2 Conservation Division.

3 THE HEARING EXAMINER BRANCARD: Thank
4 you, Mr. Tremaine. I see city of Carlsbad.

5 MR. SMITH: Morning, Mr. Examiner.
6 Bryce Smith with Modrall Sperling on behalf of city of
7 Carlsbad.

8 THE HEARING EXAMINER BRANCARD: All
9 right, Mr. Smith. I think there is a call-in user who
10 is not muted and is giving us a little bit of
11 interference. If you could mute yourself, that would
12 be helpful. Thank you. I -- any other entries of
13 appearances then for cases 22093, 349, 112, 184, 171,
14 172?

15 MR. MORGAN: Good morning,
16 Mr. Examiner, Mr. Technical Examiner. Scott Morgan
17 with Cavin & Ingram on behalf of Realeza del Spear in
18 22172.

19 THE HEARING EXAMINER BRANCARD: Okay.
20 Thank you. Any other entries of appearance? Okay.
21 Once again, I think we have a call-in user who is not
22 muted. So please check your options. So with that,
23 I'll start with Mr. Feldewert. This -- these cases
24 have been around. We have, I think, overlapping
25 spacing units here down there south of Carlsbad.

1 MR. FELDEWERT: That is correct,
2 Mr. Examiner. I know the parties are in discussion.
3 I think I'm going to punt to Mr. Savage because I know
4 he worked hard to contact everyone and I believe we
5 all have agreed on an additional status conference in
6 November. Is that right, Mr. Savage?

7 MR. SAVAGE: That's correct,
8 Mr. Feldewert. If there's no objections, Mr. Hearing
9 Examiner, we'd like to propose or I'd like to propose
10 November 17th as a possible status conference to
11 consider. And it's -- and every indication I have,
12 the parties are in negotiation and we believe progress
13 is being made.

14 THE HEARING EXAMINER BRANCARD: Okay.
15 Ms. Hardy, any objections?

16 MS. HARDY: No objection, Mr. Examiner.

17 THE HEARING EXAMINER BRANCARD: Thank
18 you. Mr. Tremaine?

19 MR. TREMAINE: No objections,
20 Mr. Hearing Examiner.

21 THE HEARING EXAMINER BRANCARD: Thank
22 you. Mr. Smith?

23 MR. SMITH: No objection, Mr. Examiner.

24 THE HEARING EXAMINER BRANCARD: All
25 right. And Mr. Morgan?

1 MR. MORGAN: No objections,
2 Mr. Examiner.

3 THE HEARING EXAMINER BRANCARD: All
4 right. Are there any other persons here for these
5 cases? I'm talking cases 22093, 22349, 22112, 22184,
6 22171, 22172. Hearing none, they will be set for a
7 status conference on November 17th. Thank you.

8 UNIDENTIFIED SPEAKER 1: Thank you.

9 MS. HARDY: Thank you.

10 UNIDENTIFIED SPEAKER 2: Thank you.

11 THE HEARING EXAMINER BRANCARD: All
12 right. We now have items 8 through 16. Perhaps a
13 little less agreement here -- 15. Sorry. These are
14 cases 22427, 22428, 22721, 22722, 22702, 22703, 22704,
15 22705, and we'll start with MewBourne Oil Company.

16 MR. BRUCE: Mr. Examiner, Jim Bruce
17 representing MewBourne.

18 THE HEARING EXAMINER BRANCARD: Thank
19 you. Colgate Operating?

20 MR. SMITH: Mr. Examiner, this is Bryce
21 Smith with Modrall Sperling on behalf of Colgate, but
22 I think Earl DeBrine is calling in for this case.

23 THE HEARING EXAMINER BRANCARD: All
24 right. Well, hopefully he can join us.

25 MR. SMITH: If not, I'm here.

1 THE HEARING EXAMINER BRANCARD: Then we
2 have entries from Cimarex Energy.

3 MR. SAVAGE: Darin Savage on behalf of
4 Coterra Energy and Cimarex Energy Company.

5 THE HEARING EXAMINER BRANCARD: Thank
6 you. EOG Resources?

7 MR. PARROT: Morning, Mr. Examiner.
8 This is James Parrot with Beatty & Wozniak for EOG
9 Resources.

10 THE HEARING EXAMINER BRANCARD: Thank
11 you. MRC Delaware Resources?

12 MR. FELDEWERT: Good morning,
13 Mr. Examiner. Michael Feldewert with Santa Fe office
14 of Holland & Hart.

15 THE HEARING EXAMINER BRANCARD: Okay.
16 COG Operating?

17 MR. RITTENHOUSE: This is Joby
18 Rittenhouse appearing on behalf of COG.

19 THE HEARING EXAMINER BRANCARD: All
20 right. And I have Jalapeno Corporation? Peifer
21 Hanson firm?

22 MR. BECK: Good morning, Mr. Examiner.
23 Matt Beck on behalf of Jalapeno.

24 THE HEARING EXAMINER BRANCARD: Thank
25 you, Mr. Beck. Any other entries of appearance then

1 for 22427, 428, 721, 722, 702, 703, 704, 705? All
2 right. We can start going here in the absence of
3 Mr. DeBrine. Mr. Bruce, you objected to this request
4 for continuance, and you would like a hearing soon.

5 MR. BRUCE: Yeah. Whatever works for
6 the Division. I know the calendars are getting quite
7 full, but -- and Mr. DeBrine and I did speak briefly
8 about this. You had said maybe October 6th. He
9 said -- and hopefully he'll get on the line. He said
10 they could make it. They might like another date, but
11 whatever works with the Division. I just don't want
12 it projected two and a half, three months into the
13 future.

14 THE HEARING EXAMINER BRANCARD: Thank
15 you. Yes --

16 MR. DEBRINE: Mr. Examiner?

17 THE HEARING EXAMINER BRANCARD:
18 Mr. DeBrine.

19 MR. DEBRINE: I was having technical
20 difficulties. I don't know what was going on, but I
21 am here. And Mr. Bruce and I did confer. The only
22 concern we had with the October 6th hearing is that
23 the Mexico Oil & Gas annual meeting is on Monday and
24 Tuesday of that week. That could present problems.
25 We can make it work on the 6th, but we would prefer a

1 different date if that's acceptable to everybody else.

2 THE HEARING EXAMINER BRANCARD: All
3 right. Well, we have October 20, November 3, November
4 17.

5 MR. BRUCE: I would prefer October 20,
6 Mr. Examiner.

7 MR. DEBRINE: October 20th is a problem
8 for Colgate because our landman is going to be in Peru
9 on that date, but November 3rd works.

10 THE HEARING EXAMINER BRANCARD: All
11 right. All right. Let's try November 3rd. Are there
12 any objections from any of the -- all the
13 distinguished other parties to this matter? Hearing
14 none, we will set this for a hearing on November 3rd.

15 MR. BRUCE: Thank you, Mr. Examiner.

16 MR. DEBRINE: Thank you, Mr. Examiner.

17 UNIDENTIFIED SPEAKER 3: Thank you.

18 THE HEARING EXAMINER BRANCARD: With
19 that, we are all the way down to item 16 on today's
20 worksheet. This is case 22853, Pride Energy Company.

21 MR. BRUCE: Mr. Examiner, Jim Bruce for
22 Pride Energy Company.

23 THE HEARING EXAMINER BRANCARD: Thank
24 you. And we have Coterra Energy.

25 MR. SAVAGE: Good morning,

1 Mr. Examiner. Darin Savage on behalf of Coterra
2 Energy and Cimarex Energy Company.

3 THE HEARING EXAMINER BRANCARD:
4 ConocoPhillips Company.

5 MR. RITTENHOUSE: This is Joby
6 Rittenhouse appearing on behalf of ConocoPhillips.

7 THE HEARING EXAMINER BRANCARD: And
8 then I have Marathon Oil Permian.

9 MR. SMITH: Morning, Mr. Examiner.
10 Bryce Smith with Modrall Sperling on behalf of
11 Marathon Oil Permian LLC.

12 THE HEARING EXAMINER BRANCARD: Are
13 there any other entries for case 22853? Hearing none,
14 Mr. Bruce, your client has drawn a few objections
15 here, so I guess we need to schedule a hearing.

16 MR. BRUCE: Yeah. Mr. Examiner, just
17 to summarize, this is Pride seeking to force pool a
18 well unit for a upper Wolfcamp well. Cimarex, they're
19 objecting because they're still looking at issues.
20 They -- and Mr. Savage can correct me, but I believe
21 that Cimarex owns a greater interest in the Bone
22 Spring than in the Wolfcamp and it's looking at how an
23 upper Wolfcamp well may affect the lower Bone Spring.

24 As with respect to ConocoPhillips, I
25 know they have been in contact with Pride and they

1 continue to talk. I think there's two issues, which
2 Mr. Rittenhouse can confirm. One is that they have
3 discussed a JOA, but also, ConocoPhillips was possibly
4 looking at filing a counter application.

5 And then with respect to Marathon, they
6 discovered late -- Ms. Bennett [ph] emailed me and
7 said Marathon thinks they own an interest and they're
8 looking into it. So their position at this point is
9 nebulous and I've asked my client to look at whether
10 Marathon owns an interest in the well unit also. So
11 it needs to be set for a hearing regardless one way or
12 the other.

13 THE HEARING EXAMINER BRANCARD: Okay.
14 But it looks like the parties have some talking to do.

15 MR. BRUCE: Yes, sir.

16 THE HEARING EXAMINER BRANCARD: All
17 right. So let me start with Mr. Savage. Is
18 Coterra/Cimarex thinking of its own application?

19 MR. SAVAGE: Mr. Hearing Examiner,
20 Cimarex wants to protect its rights in the Bone
21 Spring, but it doesn't believe it has enough interest
22 to launch a competing application, but we do object to
23 the encroachment and we're concerned about the
24 correlative rights. We would do a presentation if we
25 went to a contested hearing, presentation that either

1 the application should be denied or altered. So that
2 would be our position.

3 THE HEARING EXAMINER BRANCARD: Thank
4 you. Mr. Rittenhouse, is ConocoPhillips COG thinking
5 of competing applications?

6 MR. RITTENHOUSE: I think the term
7 "thinking" is probably appropriate. I think we are
8 awaiting the results of discussions from some of the
9 other parties who have far larger objections at this
10 point. We are continuing to talk to Pride, but I
11 think that's where things stand currently with
12 ConocoPhillips.

13 THE HEARING EXAMINER BRANCARD: All
14 right. And Marathon, Mr. Smith?

15 MR. SMITH: I thank you, Mr. Examiner.
16 Yeah. My understanding is that Marathon wanted to
17 preserve its rights in this case and is looking at
18 its -- at the position it will ultimately take, so ...

19 THE HEARING EXAMINER BRANCARD: All
20 right. So we can set this for November 17th,
21 Mr. Bruce. Do you think that's --

22 MR. BRUCE: That's fine.

23 THE HEARING EXAMINER BRANCARD: Do you
24 want it further out or are you okay with that?

25 MR. BRUCE: I'm okay with that date. I

1 mean, if something comes up, the parties are still in
2 discussions and we can move to continue it, but I
3 would like --

4 THE HEARING EXAMINER BRANCARD: All
5 right -- go ahead.

6 MR. BRUCE: I would like it set for a
7 hearing, not a status conference.

8 THE HEARING EXAMINER BRANCARD: Any
9 objections to setting a hearing on November 17th?
10 Hearing none, I will issue a pre-hearing order for
11 case 22953 on a hearing on November 17th. And as
12 always, if you submit competing applications, please
13 try to let us know other than just putting it in the
14 application, like an email. Thank you.

15 UNIDENTIFIED SPEAKER 4: Thank you.

16 UNIDENTIFIED SPEAKER 5: Thank you,
17 Mr. Examiner.

18 UNIDENTIFIED SPEAKER 6: Thank you.

19 THE HEARING EXAMINER BRANCARD: All
20 right. So a little different status conference here
21 in item 17, case 22323, though not too different from
22 the two cases that follow it. this is the case of
23 Elizabeth Kaye Dillard.

24 MR. MORGAN: Yes. Good morning,
25 Mr. Examiner, Mr. Technical Examiner. Scott Morgan

1 with Cavin & Ingram on behalf of Elizabeth Kaye
2 Dillard.

3 THE HEARING EXAMINER BRANCARD: Thank
4 you. Colgate Operating?

5 MS. HARDY: Dana Hardy with Hinkle
6 Shanor on behalf of Colgate Operating.

7 THE HEARING EXAMINER BRANCARD: Are
8 there any other interested persons for case 22323?
9 Hearing none. So we had a hearing in this case about
10 whether to reopen a prior case, 21226. We issued an
11 order saying we were going to reopen case 21226. So
12 at this point, unless the parties have come to some
13 sort of agreement, we will have a hearing, a reopening
14 hearing. As I envision the reopening hearing, it
15 largely involves submitting notice to everybody, as
16 you would have in the first case, and then we can.
17 And I'm willing to admit the exhibits and all the
18 evidence from the prior case and it could be a very
19 simple hearing or it could be a contested hearing. We
20 will find out after you provide notice.

21 So that's what my idea is. Now let me
22 go around to the parties and find out whether there
23 have been discussions, what you all are thinking and
24 whether you have objections to, say, having a hearing
25 in November on this. I guess I'll start with you,

1 Mr. Morgan.

2 MR. MORGAN: Thank you, Mr. Examiner.

3 We would not have an objection to a hearing in
4 November. I know that we and our client have reached
5 out to Colgate to request the opportunity to
6 participate, kind of to resolve the issues prior to a
7 hearing, but we've not yet heard back at this point.
8 I know Colgate has been quite busy with some of their
9 mergers, acquisitions, et cetera. So I'm not overly
10 surprised that we've not heard back yet at this point,
11 but I'm hopeful that we'll be able to come to a
12 resolution without the necessity of another hearing.

13 THE HEARING EXAMINER BRANCARD: Thank
14 you. Ms. Hardy, Colgate?

15 MS. HARDY: Mr. Examiner, with respect
16 to the notice issue, it would be my understanding that
17 since Ms. Dillard is the party who's reopened on the
18 basis of notice, that we would not need to give notice
19 to all the other parties who were properly noticed.
20 That seems, to me, beyond the scope of the case.

21 THE HEARING EXAMINER BRANCARD: Well,
22 my feeling is that once we reopen it, it affects
23 everybody and so therefore, everybody should know
24 about it. So I would think you would notify everybody
25 who is entitled to notice in this case because I

1 wouldn't want somebody else to come back later and
2 say, "We weren't given notice of the second hearing.
3 Gosh darn," and we have to go through this all over
4 again. So when in doubt, give more notice. There's a
5 lesson here.

6 MS. HARDY: Okay. I think with respect
7 to a hearing date, we would propose December 15th
8 because there are conflicts with our landman in
9 November and I also have a conflict in November. And
10 I know -- I understand that Ms. Dillard has reached
11 out to Colgate and I haven't heard either on
12 the -- from Colgate on the outcome. So it's possible
13 this matter could get resolved before the hearing, but
14 at this point, I think we would request a December
15 15th hearing date.

16 THE HEARING EXAMINER BRANCARD: All
17 right. Thank you. Mr. Morgan?

18 MR. MORGAN: I think December 15th
19 should work out just fine. In the event that
20 something should pop up, we'll correspond with
21 Ms. Hardy and see if there's a change that needs to be
22 made, but I think that should be just fine.

23 THE HEARING EXAMINER BRANCARD: All
24 right. I will issue an order and this case will
25 be -- unless there are any other objections from any

1 other parties, which we don't really have here, I will
2 set this for a December 15th hearing. Thank you.

3 MS. HARDY: Mr. Examiner?

4 THE HEARING EXAMINER BRANCARD: Yes.

5 MS. HARDY: One question on the notice.
6 So typically, when we're providing notice of a
7 hearing, we're sending out our application. Here,
8 what would we be sending? I mean, Ms. Dillard is the
9 party that's set to reopen. Are we providing notice
10 of our original application? Are we providing notice
11 of Ms. Dillard's application? It's not -- or just the
12 hearing date?

13 THE HEARING EXAMINER BRANCARD: Throw
14 in your application just so everybody gets reminded of
15 what this case is about. And again, you'd only give
16 notice to people who are, at this point, uncommitted.

17 MS. HARDY: Right.

18 THE HEARING EXAMINER BRANCARD: If
19 people have, since that time of the original hearing,
20 become committed, they wouldn't need to receive
21 notice.

22 MS. HARDY: And since these -- this
23 order is quite old -- I mean, it's from a couple years
24 ago and I think the wells are already producing. I'm
25 just -- I'm trying to think through what would happen

1 if other parties have already -- they've already been
2 pooled. So I mean, I guess we can send them notice
3 and see what they do, but they wouldn't have a basis
4 to object if they had notice and were already pooled.

5 THE HEARING EXAMINER BRANCARD: Yeah,
6 but they could show up and watch the show.

7 MS. HARDY: Okay. We'll find out if
8 they do that.

9 THE HEARING EXAMINER BRANCARD: Yeah.

10 MS. HARDY: Thank you. Okay.

11 THE HEARING EXAMINER BRANCARD: Thank
12 you. All right. And with that, we'll call perhaps an
13 even more confusing reopening case, items 18 and 19.
14 These -- this is cases 22539, 22540, Rockwood
15 Resources.

16 MR. SAVAGE: Good morning, Mr. Hearing
17 Examiner. Darin Savage in the Santa Fe office of
18 Abadie & Schill on behalf of the Rockwood Group, which
19 consists of Rockwood Resources LLC, Christina Brock
20 and Rebecca Babbitt.

21 THE HEARING EXAMINER BRANCARD: And
22 then we have MewBourne Oil Company.

23 MS. HARDY: Dana Hardy with Hinkle
24 Shanor on behalf of MewBourne.

25 THE HEARING EXAMINER BRANCARD: Thank

1 you. Are there any other persons here for cases
2 22539, 22540? And, Mr. Savage, you're representing a
3 group of people; right? Is that correct?

4 MR. SAVAGE: Rockwood Resources owns
5 all the interest in this matter, but Ms. Brock and
6 Ms. Babbitt have assigned any rights to represent
7 those interests to Rockwood.

8 THE HEARING EXAMINER BRANCARD: All
9 right. So we have an order in this case which is
10 based on a attempt to dismiss an application to reopen
11 the case. We have denied the motion to dismiss the
12 application to reopen. So the question of reopening
13 the case is still alive and it is still basically left
14 with an evidentiary hearing about whether MewBourne
15 provided adequate notice in the first hearing.

16 So we can have a hearing to decide
17 whether MewBourne provided adequate notice in the
18 first hearing or -- and I'll leave this open to
19 MewBourne -- we could just simply have a new hearing
20 on the case and kind of cut to the chase here. And I
21 don't know if the parties have been in discussions.
22 Once again, this is similar to the prior case.
23 Somebody wanted another bite at the apple. Seems like
24 something that could be worked out.

25 MS. HARDY: Mr. Examiner, I think

1 MewBourne would prefer to set a hearing date on the
2 notice issue because I think it's our position that we
3 did what was required by the rules.

4 THE HEARING EXAMINER BRANCARD: Okay.

5 MS. HARDY: And it is possible that the
6 parties -- I know the parties are talking. So it's
7 possible this could get resolved, but I don't know.
8 So at this point, I think we would like a hearing on
9 notice and we would propose, again, December 15th for
10 this one.

11 THE HEARING EXAMINER BRANCARD:
12 Mr. Savage?

13 MR. SAVAGE: Mr. Hearing Examiner,
14 looking at the nature of this case and the facts
15 involved, it looks like discovery is going to be very
16 important in this case to determine whether adequate
17 notice was provided. We are looking at discovery
18 ranging from a requests from LexisNexis Accurint, from
19 MewBourne and possibly some other finds of detailed
20 discovery.

21 We would like to propose the scope
22 either in a motion or in subpoena form. We were
23 thinking in terms of a motion to address the scope of
24 discovery with submitted exhibits of the proposed
25 subpoenas for the OCD to consider to ensure that this

1 will receive the information that it needs to make an
2 assessment in an evidentiary hearing.

3 We request some time to do discovery
4 and we're not sure -- since some other parties, third
5 parties, were involved such as LexisNexis, we're not
6 sure the time frame that would be required. So what
7 we've proposed is that we initiate discovery and then
8 do another status conference to review the progress of
9 that discovery.

10 THE HEARING EXAMINER BRANCARD: Okay.
11 So you're going to want subpoenas for third parties?

12 MR. SAVAGE: That is correct,
13 Mr. Hearing Examiner. The -- there's discrepancies on
14 the affidavits of MewBourne versus the evidence that
15 Rockwood has provided regarding what's -- what was
16 available at the time in the Accurant database. We
17 have a contact with Accurant that we'd like to submit
18 some discovery requests to so that the Division can
19 review those, that information.

20 THE HEARING EXAMINER BRANCARD: Okay.
21 Well, normally, you give us a subpoena, we issue -- we
22 tell you to issue it and then wait to see if somebody
23 files a motion to quash.

24 MR. SAVAGE: That's true. I was
25 looking at the rules and there's provisions for

1 motions, pre-hearing motions, and I know that that's
2 the standard practice. We assume that MewBourne will
3 probably object, but we kind of wanted everything to
4 be up front to the Division to see what the requests
5 are.

6 And I also understand that it's not
7 common to have deposition, but under the facts of this
8 case, that may be appropriate to determine what
9 exactly was conducted for purposes of notice. And so
10 we would like to inform the Division through a motion
11 addressing -- requesting certain scopes of discovery
12 to see what would be appropriate and what would not be
13 appropriate in this case since the case is very
14 complicated.

15 MS. HARDY: Mr. Examiner, can I
16 respond?

17 THE HEARING EXAMINER BRANCARD:
18 Ms. Hardy, please do.

19 MS. HARDY: I don't think this case is
20 complicated at all actually. I mean, I think it's
21 pretty straightforward. What searches were done, what
22 was done and when and that's it. I disagree that
23 there are discrepancies in affidavits. I think
24 affidavits provided additional details. I don't think
25 they're discrepancies. I think the normal procedure

1 for the issuance of subpoenas should apply and if we
2 have an objection, we'll object.

3 But I don't think this is something
4 that needs to drag out for months and months. I think
5 it's pretty straightforward and I think if the case is
6 set for a hearing on December 15th, that should give
7 time for Rockwood to request subpoenas that it wants
8 and then at some point, if there's a need for
9 additional information, we could talk about continuing
10 the hearing at that point. But I don't think this is
11 something that needs to drag out for months and months
12 at all.

13 THE HEARING EXAMINER BRANCARD: Okay.
14 Well, there was a conflict in the evidence which was a
15 significant part of why we were unable to grant a
16 motion to dismiss because there was a conflict in the
17 evidence about what had actually been done. So I
18 would hope that that could be resolved at a hearing.
19 I don't know whether a lot of discovery in advance
20 will help all of that, but that was sort of the point
21 of the hearing, to deal with this sort of conflict in
22 the evidence and what really happened and was it
23 adequate.

24 MS. HARDY: Exactly. Yes.

25 THE HEARING EXAMINER BRANCARD: So I

1 will set a hearing for December 15th. If additional
2 time is needed for discovery, we could -- you can
3 always continue the hearing to deal with those issues.
4 And again, as always, I certainly hope that the
5 parties chat with each other. While it's a
6 fascinating issue about what proper notice is, and I'm
7 sure we will deal with it more and more as we go
8 forward with these cases, what's going on in this case
9 is not that complicated. Thank you.

10 MS. HARDY: Thank you.

11 MR. SAVAGE: Thank you, Mr. Examiner.

12 THE HEARING EXAMINER BRANCARD: So
13 anyway, for all of you, these cases we just went
14 through are sort of lessons about making sure you do
15 your notice properly the first time. Otherwise,
16 somebody can come back later and challenge you.

17 And with that, we'll move on to an
18 actual hearing. We're on item 19. This is case
19 22973, Catamount Energy Partners.

20 MR. FELDEWERT: May it please the
21 examiner, Michael Feldewert with the Santa Fe office
22 of Holland & Hart on behalf of the applicant. And I
23 believe this is number 20 on your docket; right? Yep.

24 THE HEARING EXAMINER BRANCARD: Yes, it
25 is. I'm sorry.

1 MR. FELDEWERT: Okay.

2 THE HEARING EXAMINER BRANCARD: All
3 right. We had a number of interested persons who have
4 filed papers with us and have showed up at -- this is
5 the third hearing on this matter, and I will open it
6 up. Are there any other interested persons today on
7 case 22973? This is the application Catamount Energy
8 Partners, Navajo Lake Well. Thank you. Okay. So I
9 think we left off two weeks ago, Mr. Feldewert, that
10 you had to complete some notice obligations for your
11 non-standard spacing unit.

12 MR. FELDEWERT: Yeah. I think,
13 Mr. Examiner, this was heard on August 4th. I think
14 Mr. McClure was the examiner at that time, Mr. Lowe,
15 just to give you a little background. It was heard
16 again on September 1st and actually taken under
17 advisement at that time. Dylan Rose-Coss was the
18 examiner and as you recall, Mr. Hearing Officer, the
19 only issue was that the notice affidavit didn't have
20 the letter under which notice had gone out to the two
21 parties that had not received notice the first time
22 around, one being Morningstar, who actually appeared
23 at the hearing if you recall, and then Simcoe.

24 So I have filed a supplemental
25 affidavit, which is marked as supplemental Exhibit C2.

1 It contains the letter that actually accompanied the
2 notice that went out to Morningstar and Simcoe and the
3 letter -- the record then fully reflects that both
4 Morningstar and Simcoe timely received notice of the
5 September 1st hearing. So with that, I think there's
6 nothing left to address, Mr. Examiner.

7 THE HEARING EXAMINER BRANCARD: Thank
8 you. And again, the reason this was continued was
9 because without that letter, we couldn't determine
10 whether the letters were timely sent. So --

11 MR. FELDEWERT: Whether it was on the
12 date. Yeah. Totally agree. Yeah.

13 THE HEARING EXAMINER BRANCARD: All
14 right. So let me turn to Mr. Lowe. Any further
15 questions on this case? You may have heard from some
16 of your fellow examiners about this case.

17 THE TECHNICAL EXAMINER: I have a few
18 questions. Good morning, Mr. Feldewert.

19 MR. FELDEWERT: Good morning.

20 THE TECHNICAL EXAMINER: Just to get, I
21 guess, a par on what's going on with this case. The
22 current case as -- that's in motion right now, is
23 it -- it pertains to the -- to Morningstar Operating
24 LLC and the Simcoe LLC lack of notice; is that
25 correct?

1 MR. FELDEWERT: The -- so if we step
2 all the way back, the conclusion was that -- to cover
3 all the bases depending on how you wanted to look at
4 this spacing unit. It was -- the decision was made to
5 provide notice to all of the offsetting affected
6 parties for this non-standard spacing unit.

7 Morningstar and Simcoe were two parties
8 that offset the spacing unit that did not receive
9 notice the first time around. They did receive timely
10 notice of the September 1st hearing.

11 THE TECHNICAL EXAMINER: Okay. And
12 these two affected parties -- and the notices
13 pertained to the -- both the compulsory pooling and
14 the non-standard spacing unit or what references are
15 they affected by?

16 MR. FELDEWERT: The -- my understanding
17 is that both parties are offsetting owners or working
18 interest owners if -- or operators. So they are only
19 affected by -- arguably affected by the request for a
20 non-standard spacing unit.

21 THE TECHNICAL EXAMINER: Okay. And
22 they are located approximately where in reference to
23 the spacing unit?

24 MR. FELDEWERT: I believe that was
25 covered at the last hearing. I don't have it in front

1 of me. That was -- I know that was asked at the last
2 hearing -- transcript from September 1st.

3 THE TECHNICAL EXAMINER: Okay.

4 MR. FELDEWERT: I see that Ms. Greer
5 has popped up. She's the land person who has
6 testified twice now in this case and she might be able
7 to answer that question pretty quickly.

8 THE HEARING EXAMINER BRANCARD: Thank
9 you. So Ms. Greer has been sworn in and -- previously
10 on this matter.

11 MS. GREER: Good morning.

12 THE HEARING EXAMINER BRANCARD: Just
13 give us your full name and then answer the question if
14 you can, please.

15 MS. GREER: Denise Greer with Catamount
16 Energy. I have testified before in this hearing.
17 Morningstar is located to the north -- the operator to
18 the north and the south offsetting our proposed unit
19 and Simcoe is the operator to the west of our proposed
20 unit. Both of them are also participating -- were
21 given notice and are participating in the -- have
22 elected to participate in a well we proposed to drill.
23 So they were notified as offset owners, plus notified
24 as being working interest owners in the unit.

25 THE TECHNICAL EXAMINER: Okay. So

1 these two parties are participating to the compulsory
2 pooling portion and the NSP portion of the case?

3 MS. GREER: Yes.

4 THE TECHNICAL EXAMINER: Okay. And as
5 far as -- I have to look at the exhibits here.

6 There's several cases that -- when they were presented
7 on. The way the notices are presented to the OCD are
8 basically both a -- both subjects together; correct?
9 There's no distinguishing of the CP and the NSP
10 portion? Or they're -- just basically they refer to
11 all the -- what is being requested for the case?

12 MR. FELDEWERT: So let me -- and,
13 Ms. Greer, I want to check one thing on the record. I
14 think you had testified that both Morningstar and
15 Simcoe are participating in the well?

16 MS. GREER: Yes, they are participating
17 in the well.

18 MR. FELDEWERT: Okay. So they would
19 not be compulsory pooled?

20 MS. GREER: Okay. That's correct.

21 MR. FELDEWERT: Okay. So they are
22 just -- they've been notified now as offsetting
23 affected parties because they're not parties that need
24 to be pooled?

25 MS. GREER: Correct.

1 MR. FELDEWERT: Okay. Mr. Lowe, if you
2 look at the letter that went out that's marked as,
3 with my affidavit, supplemental Exhibit C No. 2,
4 you'll see it's addressed to interest owners subject
5 to pooling proceedings and affected by the proposed
6 non-standard horizontal well spacing unit.

7 THE TECHNICAL EXAMINER: Yes.

8 MR. FELDEWERT: Okay.

9 THE TECHNICAL EXAMINER: Okay. And the
10 spacing unit for this request is 987.58 acres. And
11 ideally, this will be great if we could get both
12 sections; correct? And it's just that those
13 southeastern corners are not being leased by the feds
14 is pretty much what I took from the exhibits; is that
15 correct?

16 MR. FELDEWERT: I believe that's -- if
17 you look at the transcript and the hearing, yes, they
18 are -- it's unleased federal acreage, which is why the
19 BLM was also notified of these -- of the hearing.

20 THE TECHNICAL EXAMINER: Okay. And
21 from what I read, 82 percent -- reference to the CP
22 case of this -- of the CP portion of this case, 82
23 percent are committed and 18 percent are not committed
24 and Catamount owns 56 percent. So I guess I'm trying
25 to figure out -- is it 56 percent of the 82 percent

1 committed?

2 MS. GREER: It's -- 56 percent is what
3 we own out of the 82 percent.

4 THE TECHNICAL EXAMINER: Okay.

5 MS. GREER: And the difference between
6 the 56 and the 82 is the other owners such as
7 Morningstar, Simcoe, a few others that have elected to
8 participate.

9 THE TECHNICAL EXAMINER: Okay. Okay.
10 And in the previous cases, there was a pre-hearing
11 statement from Mr. Sanchez from -- of Exxon; correct?

12 MR. FELDEWERT: So Mr. Sanchez appeared
13 at the -- I believe it was the first case,
14 Mr. Brancard. I don't recall. I think it was in
15 first case and we addressed his questions, concerns.

16 THE TECHNICAL EXAMINER: And what was
17 his concerns and questions -- or his concern?

18 MR. FELDEWERT: I think they're
19 outlined in his pre-hearing statement. I
20 don't -- quite frankly, Mr. Lowe, I haven't looked at
21 it since then, but I believe we satisfied those
22 concerns at the hearing.

23 THE TECHNICAL EXAMINER: Okay. Then
24 the other person I saw was a Clara Clark and she was a
25 spokesperson and according to the transcript, it was

1 not -- it wasn't clear, I guess, when she spoke about
2 what -- who she represented. What family did she
3 represent? Is there any clarification to that?

4 MR. FELDEWERT: She was -- she
5 represented -- I know -- if you'll recall that since
6 this is a lake, there are some smaller lots, home
7 sites or cabin sites I guess, et cetera. My
8 understanding is that she was representing a -- I
9 would call it a family group that owns some of that
10 lakeside property.

11 MS. GREER: Yeah.

12 THE TECHNICAL EXAMINER: Yeah, that's
13 what I got from the transcript. I just wanted to know
14 what the -- who the family group was.

15 MS. GREER: This is Denise Greer. It
16 was a property owned by Dick Clark Lake Properties LLC
17 and they have elected not to participate in the well.

18 THE TECHNICAL EXAMINER: Okay. All
19 right. I've got a few more questions. I'm not too
20 sure if this pertains to the C102 portion of the case.
21 Can you answer those, Denise, or Mr. Feldewert?

22 MR. FELDEWERT: We will do our best.

23 THE TECHNICAL EXAMINER: Okay. On the
24 C102s for this -- C102 I should say -- for this case,
25 the three laterals are 330 feet from the eastern

1 boundary line for this request and -- which is fine.
2 The first take point located on the western portion of
3 the spacing unit are 893 feet from the line. I was
4 just curious to know why they chose to go that far if
5 they're allotted to go 330 feet on the western line.

6 Is it geology? Is it just -- I'm
7 asking in reference because I get -- I work a lot of
8 the non-standard location requests.
9 People -- everybody asking about leaving resources
10 behind in references to their requests on that
11 subject. So I was just curious to know why they're
12 going so far from the western line.

13 MR. FELDEWERT: So I'll jump in here.
14 It may be -- Mr. Lowe, I'm trying to pull these down
15 now. It may be because of the acreage that is being
16 excluded. Which lateral are you looking at?

17 THE HEARING EXAMINER BRANCARD:
18 Mr. Lowe is looking at the -- all the laterals.

19 MR. FELDEWERT: Oh, okay.

20 THE HEARING EXAMINER BRANCARD: He's
21 looking at the west, the left side.

22 MR. FELDEWERT: Yes, sir.

23 THE HEARING EXAMINER BRANCARD: The
24 first take point is 800 somewhat feet from the west
25 boundary.

1 MR. FELDEWERT: Gotcha. Yep.

2 THE TECHNICAL EXAMINER: They're
3 already at 893 feet from the western line and they're
4 330 feet from the eastern line of all three laterals.
5 Nothing wrong with that. I was just curious to know
6 why they chose to go so far from the western line when
7 they can be allotted -- when they're allotted to go
8 330 feet.

9 MS. GREER: I believe it's because of
10 the existing vertical wells that are out there.

11 THE TECHNICAL EXAMINER: And there was
12 two -- I think I saw a reference to vertical wells in
13 the northeastern quarter of Section 11?

14 MR. GREER: Correct, and one in the
15 southeast quarter of Section 11.

16 THE TECHNICAL EXAMINER: And those two
17 vertical wells, who are the owners of those wells?

18 MS. GREER: Simcoe is the current
19 operator of them.

20 THE TECHNICAL EXAMINER: Okay. Okay.
21 Okay. That satisfies that question. I don't know
22 if -- I noticed in your long list of working interests
23 that were noticed -- I don't recall what page it is
24 on, but Tract 11, Section 12 it was noted that there
25 are unknown owners of 2.62 percent. I was just

1 curious to know in general, if that situation happens,
2 what does an operator do to provide extensive notice
3 to the unknown owners of that acreage or that
4 location?

5 MS. GREER: We have been working to
6 figure out who the owners are. A lot of the interest
7 out there was -- nothing's been done since the surface
8 was taken by the state for the lake out there, but we
9 did put notice -- or Mr. Feldewert did put notice in
10 the Rio Arriba County paper and in San Juan County.

11 THE TECHNICAL EXAMINER: Okay. So
12 that's basically a newspaper notification.

13 MS. GREER: Correct.

14 THE TECHNICAL EXAMINER: What's the Rio
15 Arriba notification? I guess newspaper. The only
16 newspaper I know up in the northwest is out of the
17 Farmington, which is the Farmington Daily Times and I
18 saw that in the exhibit. But when you said, "Rio
19 Arriba," I don't know what's located there for that.

20 MR. FELDEWERT: So we have notice by
21 the Farmington Daily Times newspaper and the Rio
22 Grande Sun.

23 THE TECHNICAL EXAMINER: The Rio Grande
24 Sun? What is that out of?

25 MR. FELDEWERT: County of Rio Arriba

1 out of --

2 THE HEARING EXAMINER BRANCARD: I
3 believe that's Espapol.

4 MR. FELDEWERT: Thank you,
5 Mr. Examiner. I was looking at -- yeah.

6 THE TECHNICAL EXAMINER: Okay. Okay.
7 Thank you for that. And if -- Ms. Greer, if this
8 hearing order comes to completion and is approved, if
9 you could please have the operator -- once the well is
10 drilled and everything is good to go, please note this
11 hearing order and reference to the NSP portion of it
12 on the C102 that is attached with a C104 packet,
13 please, so that all this is noticed, whoever is
14 reviewing that packet at the time for a final approval
15 of the well to produce is noticed. So just streamline
16 somewhat the process of review for that, and this is
17 for all -- for everybody basically.

18 MR. FELDEWERT: Mr. Lowe, you're
19 talking about referencing the hearing order?

20 THE TECHNICAL EXAMINER: Yes, sir.

21 MR. FELDEWERT: Yeah.

22 THE TECHNICAL EXAMINER: If
23 there's -- there's a little table -- a little box in
24 the C102, as drilled C102 or it references orders. If
25 everybody could place any NSL, NSPs, approval, hearing

1 order approvals that indicate pertaining to the
2 spacing unit or acreages or setbacks that were
3 approved administratively or by hearing, to place it
4 there because we tend to have a lot of our time trying
5 to figure out what's going on when it should have been
6 presented there anyway.

7 MS. GREER: I will definitely make sure
8 that we do that. I will pass that on to the
9 appropriate people.

10 THE TECHNICAL EXAMINER: Yeah. And
11 this is for everybody. Those are my questions for
12 now. Thank you very much.

13 THE HEARING EXAMINER BRANCARD: Thank
14 you. So on the third hearing, Mr. Feldewert, you
15 finally get our expert on non-standard spacing units
16 as the examiner. So ...

17 MR. FELDEWERT: Well, we've had three
18 examiners. We've had extensive analysis.

19 THE HEARING EXAMINER BRANCARD: Yes.
20 All right. Thank you. So I think we've dealt with
21 the non-standard spacing unit issues. This was a
22 little more complicated because it fit both types of
23 non-standard spacing units.

24 We'll take this under advisement, but I
25 will raise with you one question and give you the

1 opportunity if you want to supplement the record on
2 and that's an issue that didn't get discussed very
3 much but from time to time pops up in discussions with
4 folks internally, and that is your request for what
5 appears to us to be a much larger than normal monthly
6 drilling and operating charge; okay?

7 I think there was a question asked and
8 you all responded with, well, that's what normally
9 goes on around here. If you have any more detail
10 about that to justify that charge, that would be
11 helpful because I know that that's sort of a little
12 nagging to our folks because we're much used to the
13 seven to eight thousand that we get down in the
14 southeastern part of the state. So this -- that
15 number really caught people's attention, but it hasn't
16 really gotten much discussion in the hearings because
17 we've been focused on the spacing unit issues here.

18 MR. FELDEWERT: I think we
19 did -- Mr. Brancard, as I recall, it was addressed at
20 the last hearing. I know there was a couple of
21 questions about that that Ms. Greer addressed.

22 THE HEARING EXAMINER BRANCARD: Right,
23 but I think a lot of it was just, "This is what people
24 in the area charge." If you have anything to support
25 that, that would be helpful.

1 MS. GREER: Other than people signing
2 the operating agreement, we haven't had any questions
3 regarding it from the people who've been signing the
4 operating agreement to participate. The other
5 operators are charging that on new agreements that are
6 being sent out. That northwest portion of the state
7 is very tough to get supplies and people in. It's a
8 remote area of the state and it -- costs have -- down
9 there have raised quite a lot in the last five years,
10 so ...

11 THE HEARING EXAMINER BRANCARD: Okay.
12 So if you could just put a few -- a little bit of that
13 into an affidavit, Mr. Feldewert, and if you have an
14 example of somebody else sending you a JOA with those
15 numbers, that would be great, too. You can redact
16 names and whatever, but that would be helpful.

17 MR. FELDEWERT: Okay.

18 THE HEARING EXAMINER BRANCARD: And
19 like I said, we -- maybe we're just not used to having
20 a lot of cases involving the northwest, but all our
21 folks are more used to the numbers down in the
22 southeast.

23 MS. GREER: We were a little surprised
24 at how low it is in the southeast. I haven't seen a
25 JOA with that little of overhead on it in 20 years, so

1 I was a little surprised about that. So ...

2 THE HEARING EXAMINER BRANCARD: Anyway,
3 thank you. So anything else in case 22973?

4 MR. FELDEWERT: No, Mr. Examiner, and I
5 hope the Division move this forward because I know
6 Catamount's anxious to get this project moving.

7 THE HEARING EXAMINER BRANCARD: Thank
8 you. With that, case 22973 will be taken under
9 advisement, the record left open for any supplemental
10 information on drilling and operational charges.
11 Thank you very much.

12 MR. FELDEWERT: Thank you.

13 MS. GREER: Thank you.

14 THE HEARING EXAMINER BRANCARD: All
15 right. Let me check in with our court reporter. How
16 are we doing?

17 THE REPORTER: Doing good. Doing good.

18 THE HEARING EXAMINER BRANCARD: Okay.
19 Let's charge forward then. We are now on items, I
20 believe, 21 through 24 on our worksheet. These are
21 cases 22633, 22634, 22635 and 22636, MewBourne Oil
22 Company.

23 MR. BRUCE: Mr. Examiner, Jim Bruce
24 representing MewBourne.

25 THE HEARING EXAMINER BRANCARD: Thank

1 you. And I have an entry of appearance if they are
2 still really appearing, COG Operating.

3 MR. FELDEWERT: Mr. Examiner, Michael
4 Feldewert with the Santa Fe office of Holland & Hart
5 for COG Operating, but I believe -- Mr. Bruce, correct
6 me if I'm wrong -- COG withdrew its objection to these
7 cases and in fact may have withdrawn its competing
8 application for the Squints [ph] well. I think that's
9 right.

10 MR. BRUCE: I believe that's correct,
11 Mr. Feldewert, and I think they've signed a JOA.

12 MR. FELDEWERT: Okay. That's what I
13 thought.

14 THE HEARING EXAMINER BRANCARD: Thank
15 you. Yes. These cases were competing applications,
16 but now they're not.

17 MR. FELDEWERT: Yes.

18 THE HEARING EXAMINER BRANCARD: So with
19 that, are there any other persons for case 22633, 634,
20 635, 636?

21 MR. BRUCE: Mr. Examiner, Jim Bruce. I
22 just want to note that I did enter an appearance on
23 behalf of BTA Oil Producers who supported MewBourne in
24 these cases and that will come into play as I go
25 through my exhibits a little bit.

1 THE HEARING EXAMINER BRANCARD: Okay.
2 Well, I'm glad you're representing somebody who
3 supports your application.

4 MR. FELDEWERT: If I may, Mr. Examiner,
5 I got one -- I guess Mr. Bruce, you mentioned
6 something. Is COG being pooled anymore or did they
7 sign the JOA?

8 MR. BRUCE: No, they're not being
9 pooled anymore.

10 MR. FELDEWERT: Okay. That's -- okay.
11 That's helpful. Thank you very much. Now I'm really
12 out.

13 THE HEARING EXAMINER BRANCARD: Thank
14 you. With that, Mr. Bruce, you may proceed.

15 MR. BRUCE: Mr. Examiner, in these
16 cases, there's just a couple of odd points. The
17 22633, MewBourne is pooling a 1 mile lateral, the one
18 west half/east half of Section 27, and in case number
19 22634, they're force pooling the -- a 320-acre unit,
20 the east half/east half of Sections 22 and 27 and
21 these are all in 22 South 34 East.

22 Only as to the third Bone Spring
23 formation in those cases because there are existing
24 1-mile -- well, there are existing second Bone Spring
25 wells also drilled by MewBourne in those well units.

1 So they are only seeking to force pool the third Bone
2 Spring, which is defined in the applications as well
3 as in the pre-hearing statement.

4 In case 22635, MewBourne is force
5 pooling another 1-mile lateral in the east half/east
6 half of Section 27. And in case 22636, it's force
7 pooling a 2-mile lateral in the west half/east half of
8 Sections 22 and 27 and in both of those situations, it
9 is force pooling only the second Bone Spring which,
10 again, is defined in the application.

11 I won't go through every application in
12 detail or every exhibit package in detail, but each
13 package contains the application and proposed notice,
14 the landman's affidavit, which contains the usual land
15 plats, tract plats, shows who owns interests in the
16 well units and contains the usual proposal letters, et
17 cetera, et cetera and AFEs.

18 It also contains, pursuant to Division
19 rules, a letter sent to the working interest owners in
20 the Bone Spring regarding overlapping spacing units.
21 That's Attachment E to the landman's affidavit.
22 Geological -- Exhibit 3 is a geologist affidavit by
23 Jordan Carrell who's previously testified before the
24 Division containing the usual. Depending on what zone
25 is being pooled, either the second or third Bone

1 Spring, contains the structure map, Isopack [ph],
2 cross-section, contains an extensive table of
3 offsetting production in the Bone Spring in the second
4 and third Bone Spring.

5 And, Mr. Feldewert, are you still
6 there?

7 Mr. Examiner, I'm afraid I misspoke
8 because when going through the landman's information,
9 in particular Exhibit 2B, COG is being pooled. I know
10 they are working on an operating agreement, but I just
11 noticed this. I thought only MRC Permian was
12 being -- or Delaware Resources was being pooled and I
13 would like to note that they are being pooled, but I
14 will verify that with my client and get back to you on
15 that because these exhibits were prepared in June when
16 it was still a contested case.

17 Exhibit 4 is the affidavit of mailing
18 and that was through the working interest owners. I
19 submitted, couple of days ago, a supplemental exhibit
20 which -- Mr. Examiner, if you recall, there were two
21 parties who were not served, had bad addresses, and
22 there was an offsetting case which I actually believe
23 was a COG case where there were updated addresses for
24 two people, which were Elena Pace and Tara Pace who
25 were minor children and apparently it looks like

1 mother Nurai [ph] K. Pace did have a valid address.

2 And so this matter was continued to
3 shift notice to these people and the supplemental
4 filings I did contains affidavit of the landman with
5 the proposal letter sent to Nurai [ph] Pace and it
6 also discusses his attempt to track her, to call her,
7 to locate a phone number, to call her. He has never
8 heard from her and he's continuing to try to obtain a
9 lease from her. There are other members of the Pace
10 family that MewBourne has obtained leases from and so
11 he's hopeful that he will get it.

12 And I also attached my affidavit of
13 mailing showing that Nurai [ph] K. Pace, as the
14 guardian of the two minor children, did receive actual
15 notice at the address that was used in the offsetting
16 COG pooling case. There is -- there are publication
17 affidavits, but they're really not needed in this case
18 because at this point, everyone has received certified
19 notice.

20 Pooling checklists are attached as
21 Exhibit 6 and every package is pretty much the same.
22 The only notice issue I would bring up is that BTA did
23 receive notice. I am representing them, but the
24 Hinkle law firm which started this proceeding never
25 received a green card back from BTA in both cases,

1 22635 and 22636, but I am authorized to waive any
2 notice objection and so everyone has received notice.

3 Again, each of the exhibit packages are
4 pretty much the same. If you want me to go through
5 them, I will, but other -- with having said that, I
6 would move the admission of Exhibits 1 through 6 in
7 each case, plus the supplemental exhibits, which are
8 marked Exhibits 8 and 9, and ask that these matters be
9 taken under advisement.

10 (MewBourne Oil Company Exhibit 1
11 through Exhibit 6 and Exhibit 8 and
12 Exhibit 9 were marked for
13 identification.)

14 THE HEARING EXAMINER BRANCARD: Thank
15 you. I'll go to Mr. Lowe. Any questions?

16 THE TECHNICAL EXAMINER: Just a few,
17 Mr. Bruce. Good morning, sir. How you doing?

18 MR. BRUCE: Fine. Thank you.

19 THE TECHNICAL EXAMINER: I -- just
20 trying to get a clarification of what's -- in your
21 exhibits here. There's four cases here; correct?

22 MR. BRUCE: Correct.

23 THE TECHNICAL EXAMINER: Four cases and
24 is each case -- is it one well per case?

25 MR. BRUCE: Yes.

1 THE TECHNICAL EXAMINER: So there are
2 basically five Perro Loco-ish wells?

3 MR. BRUCE: Four. Like I said, there
4 are existing wells in certain zones, but those are
5 not -- those pooling orders or those well interests
6 are not affected by these current applications because
7 we are limiting the zones being pooled to either the
8 second or the third Bone Spring to avoid any conflict
9 with the existing wells.

10 THE TECHNICAL EXAMINER: Okay. So the
11 wells -- five wells presented for the pooling
12 requests -- well, there's four -- well, five I should
13 say and the sixth one apparently is basically going in
14 and then there's -- I counted ten checklists with
15 different -- well, I guess I'm confused. Where the
16 requests of the four cases are for five wells and I
17 see references to five wells in the exhibits, but then
18 there are ten checklists.

19 I didn't distinguish you look at each
20 one to find out -- because they all have similar names
21 in a way. It's going to take me a while to look
22 at -- distinguish each one of them, but I was just
23 curious to know -- that's why I asked why
24 they're -- I'm confused about the number of wells
25 being requested and being presented here.

1 MR. BRUCE: Well, there are four cases
2 and four wells. So case 633 is for the Perro Loco 27
3 B3OB 1H well, which is a third Bone Spring well, 634,
4 which is in the west half/east half of 27, 634 is a
5 2-mile lateral in the east half/east half of Sections
6 22 and 27 and that is also a third Bone Spring well
7 and only the third Bone Spring is sought to be pooled.
8 In the other two cases, once again, there's a 1-mile
9 lateral in Section 27 and a 2-mile lateral in 22 and
10 27 and only the second Bone Spring. But I
11 don't -- I'm looking through the exhibits. I don't
12 see where there's ten pooling checklists. Exhibit 6
13 in each application is the pooling checklist and each
14 one only lists one well.

15 THE TECHNICAL EXAMINER: I'm looking at
16 case number 22633, but okay. I mean, I was
17 just -- I'll look into it extensively more so.

18 MR. BRUCE: If -- I will gladly -- I'll
19 go through the exhibits again and make sure, but if
20 you have something you need from me, please email me
21 and I will get right back to you.

22 THE TECHNICAL EXAMINER: Okay. Okay.
23 That's all the questions I have. Thank you.

24 MR. BRUCE: Thank you.

25 THE HEARING EXAMINER BRANCARD: Thank

1 you. So, Mr. Bruce, two things. One is on who is
2 being pooled and who is getting notice. So I don't
3 know if you have your exhibits in front of you, but I
4 think it's page 11 of each exhibit --

5 MR. BRUCE: Certainly -- first of
6 all --and I guess I should have -- there are
7 spreadsheets done by Ms. Hardy from the original
8 mailing which is contained in each exhibit packet.
9 When I first did a mailing to the supplemental people
10 of Larry Long and then the two minor children, I only
11 got a green card back from Mr. Long and obviously not
12 the minor children. So I gave supplemental notice and
13 they did receive notice.

14 So the parties being pooled at this
15 point are -- in each case -- in all cases is Mr. Long
16 and the two minor Pace children and they all received
17 actual notice. And if you want me to file a
18 supplemental pleading summarizing the notice in each
19 case, I will do so --

20 THE HEARING EXAMINER BRANCARD: Yeah.
21 I'm -- Mr. Bruce, I'm looking at page 11 of your
22 exhibits. You can flip to that.

23 MR. BRUCE: Oh, yes. Yes. I see what
24 you're asking. Okay.

25 THE HEARING EXAMINER BRANCARD: So who

1 are all these people?

2 MR. BRUCE: This just shows all of the
3 working interest owners in each case. So in each
4 package, there's land plats and they have listed all
5 of the interest owners. If you turn back another two
6 pages, which would be page 13, you can see in this
7 case, COG Operating was being pooled at the time that
8 these exhibits were prepared, which was a number of
9 months ago, and subsequently, the -- it was determined
10 that Larry Long, Tara Pace and Elena Pace also owned
11 an interest and their interests were not committed.
12 So that is why they were subsequently notified of the
13 pooling application.

14 If you go to 634 and you go to page
15 probably 13 again, you'll see that --

16 THE HEARING EXAMINER BRANCARD: Okay.
17 Well, I guess if you could just --

18 MR. BRUCE: Summarize?

19 THE HEARING EXAMINER BRANCARD:
20 Summarize or revise these pages, 11, 12, 13, to just
21 sort of give us a clue as to who is actually being
22 pooled.

23 MR. BRUCE: Okay. I will do that. I
24 will file that.

25 THE HEARING EXAMINER BRANCARD: Okay.

1 MR. BRUCE: I better do it later today
2 while it's still on my -- whatever mind I have left
3 here.

4 THE HEARING EXAMINER BRANCARD:
5 Mr. Feldewert, did you have a comment?

6 MR. FELDEWERT: And, Mr. Bruce, I
7 apologize. I had stepped out earlier. I think I
8 understand you're going to get back to me on -- just
9 so we're on the same page about where COG is in this
10 pooling?

11 MR. BRUCE: Yeah, on the
12 subject -- COG, I will -- as soon as I get out of this
13 hearing, I will email them and make sure because I've
14 had a few other cases recently with MewBourne where
15 COG has come to terms and signed a JOA. I may be
16 confused, but I will get right back to you.

17 MR. FELDEWERT: Okay. And I'll check
18 on my end, too. Thanks.

19 MR. BRUCE: And -- but, Mr. Examiner,
20 I -- regardless of COG's status, there are people in
21 each well unit who need to be pooled and I will set
22 that forth for you.

23 THE HEARING EXAMINER BRANCARD:
24 Excellent. Thank you. So one other thing. Your
25 checklists. It's just a little confusing because

1 under formation pool where it says, "Pooling this
2 vertical extent," -- I'm looking at the first case,
3 633. It says, "Entire Bone Spring formation," and
4 then down in the well section you say, "Only the third
5 Bone Spring is being pooled."

6 MR. BRUCE: I -- once again, the
7 tribulations of taking an existing pooling checklist
8 and updating. I will submit corrected ones. I will
9 take care of that. Sorry about that.

10 THE HEARING EXAMINER BRANCARD: Okay.
11 And I think it's true of each of the checklists.

12 MR. BRUCE: Yeah, I'm sure it is and I
13 apologize.

14 THE HEARING EXAMINER BRANCARD: Thank
15 you. All right. I have no further questions and
16 thank you for, at the beginning, clarifying the -- why
17 there are 1-mile and 2-mile laterals in the different
18 cases. With that, are there any other questions or
19 concerns for cases 22633, 22634, 22635, 22636?

20 Hearing none, the exhibits, including the supplemental
21 exhibits, will be admitted into the record. The case
22 will be taken under advisement, the record left open
23 for revised checklists and lists of pooled parties.

24 //

25 //

1 (MewBourne Oil Company Exhibit 1
2 through Exhibit 6 and Exhibit 8 and
3 Exhibit 9 were received into evidence.)

4 MR. BRUCE: Thank you.

5 THE HEARING EXAMINER BRANCARD: Thank
6 you. Okay. With that, we are on item 25, case 23005,
7 Texas Standard Operating.

8 MR. BRUCE: Mr. Examiner, Jim Bruce for
9 Texas Standard.

10 THE HEARING EXAMINER BRANCARD: Thank
11 you. Are there any other interested persons for case
12 23005? Hearing none, Mr. Bruce, you may proceed.

13 MR. BRUCE: Mr. Examiner, in this case,
14 Texas Standard seeks to pool the Upper Penn Shale in a
15 proximity tract unit underlying the southwest quarter
16 of Section 9 and the west half of Sections 16, 17
17 South, 36 East for purposes of drilling its 9-16 State
18 Well #1.

19 The exhibit package contains the
20 application, proposed notice, the self-affirmed
21 statement of Matt Roberson, landman. He has not
22 previously testified and he does set forth, in
23 paragraph one of his statement, his qualifications. I
24 would submit him as an expert if there is no
25 objection.

1 THE HEARING EXAMINER BRANCARD: Hearing
2 no objections, so admitted.

3 MR. BRUCE: And the affidavit contains
4 the usual information, the land plats, the C102, the
5 parties being pooled. If you look at Attachment B to
6 the Exhibit 2, the landman's affidavit, the only party
7 being pooled is -- it's actually ExxonMobil, but they
8 are represented by their subsidiary, XTO Holdings.
9 They own 100 percent in the southwest quarter of
10 Section 9. Their interest is being pooled.

11 If you go to Attachment C from the
12 landman, you can see that there have been extensive
13 negotiations dating back 11 months with Exxon.
14 Exxon -- there was a change in the original well
15 proposal. It was supposed to cover Sections 9, 16 and
16 a section to the south of that.

17 However, if you'll recall, there was
18 going to be a hearing on that, but this was adjacent
19 to Manzano's Vindicator Canyon State Unit and they had
20 obtained an interest in that tract and they objected
21 so that, as time went along, Texas Standard said,
22 okay, we don't need to fight this. Let's just modify
23 our proposal just to cover these -- this land and move
24 on down the road, and Manzano was content with that
25 and therefore, there is no fight.

1 The proposal letters, one sent November
2 18, 2021, which was in Sections 9, 16 and 21, that
3 proposal was later modified to cover just the land
4 that we are here for today. There is -- as -- Exhibit
5 3 is a geologist affidavit by David Ensminger and
6 again, he has not testified before the Division.
7 Paragraph one of Exhibit 3 lists his qualifications
8 and he's almost as old as me. So I'm hoping he's
9 qualified, but he has not testified and if there's no
10 objection, I would move to have him admitted as an
11 expert petroleum geologist.

12 THE HEARING EXAMINER BRANCARD: Hearing
13 no objections, he's so admitted.

14 MR. BRUCE: And his exhibits contain a
15 structure map, cross-section map, drilling plan
16 showing that the entire well unit should be productive
17 from the Upper Penn. If you look at his Attachment b,
18 which is the structure map, you can see the -- that
19 there are existing Upper Penn wells in the area, and
20 again, those are related to Manzano's unit testing the
21 same zone or -- I don't know if they've all been
22 drilled at this point, but they are -- they have or
23 will test the same zone that is being proposed by
24 Texas Standard.

25 Exhibit 4 is my affidavit of mailing.

1 And I did receive a green card. Originally when I
2 prepared these exhibits, I did not receive -- I had
3 not received a green card from ExxonMobil Corporation.
4 So I attached the Postal Service tracking history
5 which showed they did receive it. Subsequently, in
6 late August/early September, I did receive the green
7 card back.

8 I would note with interest,
9 Mr. Examiner, that the Postal Service says that August
10 18th it was in transit to the next facility. The
11 actual green card shows it was delivered on August
12 16th. So somewhere, something got messed up.

13 And Exhibit 5 is finally the pooling
14 checklist. One thing I would note in the pooling
15 checklist is if you look at the bottom of the first
16 page of the pooling checklist giving information on
17 the well, the total vertical depth and the measured
18 depth, the distances or footages vary.

19 And so I inquired of my client about
20 this and there is some structural fluctuation in the
21 well unit and Texas Standard is trying to stay
22 approximately 150 feet above the top of the Strawn
23 Formation which varies in depth. And that's why I put
24 down these different footages like this because the
25 actual final footages won't be known until the well is

1 drilled.

2 But I think the information in the
3 exhibits is complete. I would move the admission of
4 Exhibits 1 through 5 and ask that the case be taken
5 under advisement.

6 (Texas Standard Operating Exhibit 1
7 through Exhibit 5 were marked for
8 identification.)

9 THE HEARING EXAMINER BRANCARD: Thank
10 you. Mr. Lowe, any questions?

11 THE TECHNICAL EXAMINER: Yeah, just a
12 few questions. Mr. Bruce?

13 MR. BRUCE: Yes.

14 THE TECHNICAL EXAMINER: This well, is
15 it an infill well or a defining well?

16 MR. BRUCE: It is the defining well.
17 It is -- I think 1,310 feet or -- make sure I got the
18 right distance. It's a stand-up well.

19 THE TECHNICAL EXAMINER: Okay.

20 MR. BRUCE: And it is 1,330 feet from
21 the west line of the Sections 9 and 16. So it is the
22 first well.

23 THE TECHNICAL EXAMINER: It is the
24 first well. And then do you anticipate doing other
25 wells in this same spacing unit?

1 MR. BRUCE: Yes, they believe that
2 there is the potential for additional wells in the
3 unit and that's why they're putting it so close to the
4 center line of the acreage in the well unit.

5 THE TECHNICAL EXAMINER: Okay. And
6 then Texas Standard is basically the 100 percent
7 working interest in section -- of the west half of
8 Section 16?

9 MR. BRUCE: Yes.

10 THE TECHNICAL EXAMINER: And then the
11 party that you're seeking to compulsory pool is
12 located in the southwest corner of Section 9; correct?

13 MR. BRUCE: Yes, and they own 100
14 percent of that. So there's really only two working
15 interest owners and Texas Standard only seeks to force
16 pool ExxonMobil. And they are in discussions, but
17 Exxon doesn't move with lightning rapidity, so ...

18 THE TECHNICAL EXAMINER: Okay. So the
19 entire spacing unit -- hold on really quick. I need
20 to -- okay. And you -- okay. You already presented
21 the -- you just informed about the footages
22 and -- will be determined upon drilling.

23 MR. BRUCE: Yeah, the TBD and the MD
24 will -- they're uncertain at this point as they drill
25 horizontally how it might fluctuate and so that's why

1 those varying footages were put in there.

2 THE TECHNICAL EXAMINER: Okay. Those
3 are my questions. Thank you, Mr. Bruce.

4 MR. BRUCE: Thank you.

5 THE HEARING EXAMINER BRANCARD: Thank
6 you. Just one thing, Mr. Bruce. In your checklist,
7 there is a mistake in the legal description. You have
8 your two tracts in different townships probably about
9 50 miles apart.

10 MR. BRUCE: You got me. I will
11 resubmit --

12 THE HEARING EXAMINER BRANCARD: Okay.
13 Are there any other questions or concerns on
14 cases -- on case number 23005? Hearing none, the
15 exhibits will be admitted into the record and case
16 23005 will be taken under advisement, the record left
17 open for a revised checklist.

18 (Texas Standard Operating Exhibit 1
19 through Exhibit 5 were received into
20 evidence.)

21 MR. BRUCE: Thank you.

22 THE HEARING EXAMINER BRANCARD: Okay.
23 And I'll check in once again with our court reporter.
24 Are you doing okay?

25 THE REPORTER: Doing good.

1 THE HEARING EXAMINER BRANCARD: All
2 right. So I think we have five or six cases here.
3 Let me call cases, on our list, 26 through 31. These
4 are case numbers 22937, 22938, 22939, 23940, 23941 and
5 23942, Colgate Operating.

6 MS. HARDY: Mr. Examiner, Dana Hardy
7 with Hinkle Shanor on behalf of Colgate Operating.

8 THE HEARING EXAMINER BRANCARD: Thank
9 you. Are there any other interested persons for case
10 numbers 22937, 38, 39, 40, 41, 42? Hearing none,
11 Ms. Hardy, you may proceed.

12 MS. HARDY: Thank you. In these cases
13 collectively, Colgate seeks to pool the Bone Spring
14 and Wolfcamp formations in the south half of Section
15 13, Township 20 South, Range 28 East in Eddy County.

16 In case number 22937, Colgate seeks to
17 pool interest in the Wolfcamp formation underlying a
18 160-acre standard spacing unit comprised of the south
19 half of the south half of Section 13.

20 In case number 22938, Colgate seeks to
21 pool uncommitted interest in the Wolfcamp formation
22 underlying a 160-acre standard horizontal spacing unit
23 comprised of the north half of the south half of
24 Section 13.

25 And then case numbers 22939 through

1 22942 address the Bone Spring formation and there is a
2 depth severance at the base of the second Bone Spring
3 formation. So two of the cases seek to pool a third
4 Bone Spring and then two seek to pool the first and
5 second. So case 22939 seeks to pool the third Bone
6 Spring underlying a 160-acre standard spacing unit
7 comprised of the north half of the south half of
8 Section 13.

9 In case 22940, Colgate seeks to pool
10 uncommitted interest also in the Bone Spring -- in the
11 third Bone Spring underlying a 160-acre standard unit
12 comprised of the south half of the south half of
13 Section 13.

14 In case 22941, Colgate seeks to pool
15 interest from the top of the Bone Spring to the base
16 of the second Bone Spring in a 160-acre unit comprised
17 of the north half of the south half of Section 13.

18 And finally, in case number 22942,
19 Colgate seeks to pool uncommitted interest also from
20 the top of the Bone Spring to the base of the second
21 Bone Spring, underlying a 160-acre standard horizontal
22 spacing unit comprised of the south half of the south
23 half of Section 13.

24 Our exhibits in each case include the
25 self-affirmed statement of landman Travis Macha and

1 geologist David DaGian. Mr. Macha's exhibits include
2 the application and proposed notice of hearing, the
3 C102s, the plat of tracts and ownership interests that
4 also identifies the pooled parties, and that is
5 Exhibit A3 in each case. He provides the well
6 proposal letter and AFE and his Exhibit A5 in each
7 case is his chronology of contact with the pooled
8 parties.

9 Exhibit B in each case is the
10 self-affirmed statement of geologist David DaGian. He
11 provides, in his exhibits, a regional locator map,
12 cross-section map, structure map, structural
13 cross-section, stratigraphic cross-section and a gun
14 barrel schematic.

15 Exhibit C is my notice affidavit and I
16 have provided the notice letter that was sent to the
17 parties as well of a chart that shows the dates on
18 which notice was sent and received. We've provided
19 copies of the certified mail receipts and we did also
20 timely publish.

21 Although there are no unlocatable
22 interests in these cases, but we did not receive back
23 a couple of the green cards for reasons that are
24 unclear because if you look at Mr. Macha's exhibits,
25 he sent well proposals to those parties at the same

1 addresses and they were received. So I don't know if
2 it's just a glitch with the post office and them
3 updating their records or what's going on, but all of
4 the parties were locatable and notice was also
5 published timely.

6 So with that, unless there are
7 questions, I would ask that the cases be taken under
8 advisement and that the exhibits be admitted. Thank
9 you.

10 (Colgate Operating Exhibit A, Exhibit
11 B, and Exhibit C were marked for
12 identification.)

13 THE HEARING EXAMINER BRANCARD: Thank
14 you. Mr. Lowe, questions?

15 THE TECHNICAL EXAMINER: Good morning,
16 Ms. Hardy.

17 MS. HARDY: Good morning.

18 THE TECHNICAL EXAMINER: Just to
19 reclarify against your presentation here, cases 22937
20 and 938 are seeking the second Bone Spring?

21 MS. HARDY: 22937 and 22938 are
22 Wolfcamp.

23 THE TECHNICAL EXAMINER: Wolfcamp.
24 Okay. And then the remaining, 939, 940, 941, 942, are
25 all on the Bone Spring; correct?

1 MS. HARDY: Correct.

2 THE TECHNICAL EXAMINER: The third Bone
3 Spring?

4 MS. HARDY: 22939 and 22940 are third
5 Bone Spring and then 22941 and 22942 are the top of
6 the Bone Spring to the base of the second Bone Spring.
7 And the reason for the depth severance is that there
8 are different ownership interests in the Bone Spring.

9 THE TECHNICAL EXAMINER: Okay. And
10 these -- you're basically -- for all the cases here
11 and all the wells are basically in reference to the
12 south half of Section 13 pretty much?

13 MS. HARDY: That's right. That's
14 correct.

15 THE TECHNICAL EXAMINER: Okay. And are
16 they all going to be from the same surface location
17 approximately?

18 MS. HARDY: I would have to look at the
19 C102s. I think they're -- I'm thinking that there are
20 two different surface locations, but I would have to
21 double check. I believe there are two surface
22 locations, one for the north half of the south half
23 and one for the south half of the south half. I could
24 be wrong on that, though. I need to check.

25 THE TECHNICAL EXAMINER: Yeah. I was

1 just --

2 MS. HARDY: Yeah.

3 THE TECHNICAL EXAMINER: No -- I was
4 just wondering.

5 MS. HARDY: Yeah, I think that is
6 right. That's what I'm seeing on the C102s.

7 THE TECHNICAL EXAMINER: Okay. Those
8 are all the questions I have. Thank you, Ms. Hardy.

9 MS. HARDY: Thank you.

10 THE HEARING EXAMINER BRANCARD: Thank
11 you. Okay. So I'm confused about this depth
12 severance here. I'm sorry. It appears that it is
13 just one operator affected, this SBI West Texas?

14 MS. HARDY: They own an interest in
15 only one of the cases. That's right. In 22941.

16 THE HEARING EXAMINER BRANCARD: Okay.
17 Here's my concern: If you look at page 13 -- and I'm
18 on case 939; okay? But it might be the same page 13.
19 This is all your unit -- your interest owners.

20 MS. HARDY: Yes, I see --

21 THE HEARING EXAMINER BRANCARD:
22 Now -- down there on the bottom, it indicates that the
23 depth severance is at 7,900 feet; right? So SBI West
24 Texas owns above 7,900 feet, but not below 7,900 feet.

25 MS. HARDY: Correct.

1 THE HEARING EXAMINER BRANCARD: And so
2 you're saying that your third Bone Spring is the unit
3 below 7,900 feet and therefore, SBI West Texas owns
4 nothing in your third Bone Spring units.

5 MS. HARDY: Right.

6 THE HEARING EXAMINER BRANCARD: Okay.
7 When we go back up to your application here -- or let
8 me just look at -- yeah, let's look at Mr. Macha's
9 exhibit here, page six. He says that the third Bone
10 Spring runs from 7,645 to 8,996. So that would
11 indicate that the party who owns to 7,900 is also in
12 the third Bone Spring.

13 MS. HARDY: Let -- I can check with Mr.
14 Macha to confirm. I think there may actually -- it's
15 possible he needs to correct his Exhibit A3 with
16 respect to those depths. I think that's likely the
17 explanation, but I would need to check with him and
18 confirm that. And if that's the case, I would submit
19 a corrected exhibit.

20 THE HEARING EXAMINER BRANCARD: Well,
21 the problem is is that definition of the Bone Spring
22 is in your application, too.

23 MS. HARDY: Well, I think the
24 application is correct.

25 THE HEARING EXAMINER BRANCARD: No, the

1 application said 7,645 just like Mr. Macha --

2 MS. HARDY: Right. So I -- that's why
3 I think the application is correct and that it may be
4 just be the exhibit that needs to be corrected.

5 THE HEARING EXAMINER BRANCARD: Oh, the
6 exhibit on the severance?

7 MS. HARDY: Yes.

8 THE HEARING EXAMINER BRANCARD: Okay.
9 Okay. If that's -- if that works, then that's fine.

10 MS. HARDY: Okay. I will check on that
11 and confirm.

12 THE HEARING EXAMINER BRANCARD: Because
13 otherwise, you have a real notice problem, but I think
14 just for one case frankly.

15 MS. HARDY: Right, 22941 --

16 THE HEARING EXAMINER BRANCARD: I think
17 just for this 939. Well, 939 because --

18 MS. HARDY: Okay. Yeah. Yes.

19 THE HEARING EXAMINER BRANCARD: I think
20 41, you have that party in because it's second Bone
21 Spring, but 939, you have that party out because it's
22 third Bone Spring.

23 MS. HARDY: Right.

24 THE HEARING EXAMINER BRANCARD: Which
25 you're claiming they don't own an interest in the

1 third Bone Spring, but the evidence is contradictory
2 here.

3 MS. HARDY: Okay. I will clarify that
4 and provide an updated exhibit if that's the case or
5 otherwise, we would probably need to continue or to
6 notice them.

7 THE HEARING EXAMINER BRANCARD: Yes.

8 MS. HARDY: Okay.

9 THE HEARING EXAMINER BRANCARD: I don't
10 think it affects your other cases because it's just
11 the third Bone Spring and it's just that corner;
12 right? It's just that one quarter quarter.

13 MS. HARDY: Right. That's right.
14 Okay.

15 THE HEARING EXAMINER BRANCARD:
16 Northwest/southwest of Section 13 I think is what ...

17 MS. HARDY: I think that's right.
18 Okay. I will do that.

19 THE HEARING EXAMINER BRANCARD: Okay.
20 Are there any other persons with comment or concerns
21 about cases 22937, 22938, 22939, 22940, 22941, 22942?
22 Hearing none, the exhibits will be admitted into the
23 record. And for now, we will take cases 22937, 22938,
24 22940, 22941 and 22942 under advisement and depending
25 on the answer to that question I posed, we can either

1 take 939 under advisement or continue it to the next
2 hearing -- well, if you need to do notice, it's
3 probably another month.

4 (Colgate Operating Exhibit A, Exhibit
5 B, and Exhibit C were received into
6 evidence.)

7 MS. HARDY: Right.

8 THE HEARING EXAMINER BRANCARD: Okay.
9 So if you could try to get an answer to that as
10 quickly as possible, Ms. Hardy.

11 MS. HARDY: I will do that. I should
12 be able to get that today.

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

15 MS. HARDY: Thank you.

16 THE HEARING EXAMINER BRANCARD: Okay.
17 With that, we are at items 32 and 33, cases 22875,
18 22876, Matador Production Company.

19 MS. VANCE: Good morning, Mr. Hearing
20 Examiner. This is Paula Vance with the Santa Fe
21 office of Holland & Hart on behalf of the applicant,
22 Matador Production Company, and good morning,
23 Mr. Lowe.

24 THE HEARING EXAMINER BRANCARD: Thank
25 you. Are there any other interested persons for cases

1 22875, 22876? Hearing none, please proceed,
2 Ms. Vance.

3 MS. VANCE: Thank you, Mr. Hearing
4 Examiner. So in case 22875, Matador seeks to pool
5 additional parties under order R-21811. The spacing
6 unit under order -- under this order is dedicated to
7 the Bubba Burton #111H and #121H wells. And in case
8 22876, Matador seeks to pool additional parties under
9 order R-21812 and this spacing unit is dedicated to
10 the Ken Wilson #112H and #122H wells.

11 In this case, we have provided the
12 affidavit and testimony of landman Rob Helbing who has
13 previously testified before the Division and his
14 credentials have been accepted as a matter of record.
15 Mr. Helbing's affidavit is Exhibit A, which includes
16 sub Exhibits A1, the C102s, A2, a working interest
17 ownership breakdown, A3, which is sample well proposal
18 letters and AFEs, and A4, a chronology of contacts.

19 This is followed by Exhibit B, which is
20 a self-affirmed statement of notice with sample
21 letters that were timely mailed on June 17, 2022, and
22 Exhibit C, affidavit of notice of publication which
23 was timely published on June 19, 2022. And unless
24 there are any questions, I would ask that all exhibits
25 and sub exhibits be admitted into the record and that

1 cases 22875 and 22876 be taken under advisement by the
2 Division at this time. Thank you.

3 (Matador Production Company Exhibit A,
4 Exhibit B, and Exhibit C were marked
5 for identification.)

6 THE HEARING EXAMINER BRANCARD: Thank
7 you. Mr. Lowe, any questions?

8 THE TECHNICAL EXAMINER: I have no
9 questions. Thank you.

10 THE HEARING EXAMINER BRANCARD: All
11 right. Ms. Vance, first, can you try to explain to me
12 how you somehow missed 20 or more interest owners the
13 first time out?

14 MS. VANCE: So it's my understanding
15 that there was a title that was completed. New title
16 was run just as a precaution. Matador -- the area
17 where these subject lands are just southeast of
18 Carlsbad and consist of a lot of town/city lots. So
19 there are a bunch of these little 1- to 2-acre pieces
20 of land and so that was part of the -- from what I
21 understand, the reasoning why additional title was run
22 just to make sure that all parties were accounted for.

23 So out of the hundreds of parties that
24 are involved, this is a very small number of parties
25 that we're coming back to pool with just the 22, and

1 four of which Matador was able to find on addresses.
2 You can see in paragraph -- I believe it's ten of
3 Mr. Helbing where he discusses the efforts that
4 Matador made in doing a diligent search, that they did
5 this diligent search to look for these -- any known or
6 additional addresses to try and reach these parties.

7 So again, the 22 is, I believe, small
8 compared to the number of parties they were able to
9 actually find and reach agreements with.

10 THE HEARING EXAMINER BRANCARD: Okay.
11 Well, still a lot of percentage here. So the summary
12 of interests -- I'm looking at page 17 here -- lists
13 all these persons here, 20 of them I think, but
14 you're -- I'm confused. Are you force pooling all
15 these people who are listed here?

16 MS. VANCE: I'm sorry. Can you ask
17 that one more time?

18 THE HEARING EXAMINER BRANCARD: The
19 list of people -- I'm looking at your summary of
20 interests starting on page 17.

21 MS. VANCE: Yes.

22 THE HEARING EXAMINER BRANCARD: Are you
23 force pooling all of these people?

24 MS. VANCE: Yes, that's my
25 understanding, that these are the interest owners that

1 we're -- that Matador is seeking to force pool this
2 time around.

3 THE HEARING EXAMINER BRANCARD: Okay.
4 So then if you have 20 interests that are being force
5 pulled, how come you only mailed notices to five
6 interests? I'm looking at page 41.

7 MS. VANCE: Correct. So we were only
8 able to locate those addresses and again, I think
9 that's what I was trying to explain, maybe not as
10 artfully as I would have liked to. But in paragraph
11 ten of the landman's affidavit, there was a diligent
12 search done. Of those 22, these were the addresses
13 that Matador was able to locate.

14 However, the other addresses, those
15 parties still remain unlocatable and to cover notice
16 to those parties -- that's why we did -- if you go to
17 Exhibit C, we have the publication of -- our notice by
18 publication that includes those additional parties
19 that have -- from the search that Matador conducted
20 were not able to find an address that worked for those
21 parties.

22 THE HEARING EXAMINER BRANCARD: Okay.
23 So the exhibit then says that they did mail proposals
24 to all these parties. A number were returned. They
25 then found other addresses and mailed again. So in

1 other words, if you sent a proposal to -- am I reading
2 this correctly? If you sent a proposal to somebody at
3 an address and it was returned undeliverable, that
4 when it came to giving notice of the hearing, you
5 didn't even -- you didn't try again at that same
6 address.

7 MS. VANCE: I don't believe that that's
8 the case. The way that I understand it is that
9 proposals were sent to the last known address on
10 record. Those -- the proposals were returned per what
11 Mr. Helbing has provided in his affidavit and then
12 additional searches were done to try and locate those
13 parties and again, there was no address that they were
14 able to locate. And so we provided notice to the
15 known addresses and provided notice by publication to
16 those parties where Matador was unable to find any
17 last known address, either by looking in record title
18 or otherwise.

19 THE HEARING EXAMINER BRANCARD: Okay.
20 So what you're basically saying is that of the 20 or
21 21 people listed that you're trying to pool, you only
22 mailed notice to five of them and the rest, you just
23 gave up.

24 MS. VANCE: I wouldn't characterize it
25 as giving up, but we were able to provide notification

1 by publication to those parties, as exemplified in our
2 Exhibit C.

3 THE HEARING EXAMINER BRANCARD: Oh,
4 come on. Really? Really? These people are going to
5 read a classified in the Carlsbad Current-Argus? Come
6 on.

7 MS. VANCE: I believe we met the intent
8 of the rule. So I -- and again, as you can see from
9 the landman's affidavit, a diligent search was
10 conducted, as he stated in his affidavit, paragraph
11 ten.

12 THE HEARING EXAMINER BRANCARD: Well, I
13 think your landman's going to have to provide a little
14 more detail about what all that involved. Fact that
15 less than a quarter of the people who you're pooling
16 you're actually mailing to the notice of this hearing,
17 that's a pretty big deal.

18 MS. VANCE: I understand that and --

19 THE HEARING EXAMINER BRANCARD: And as
20 you've seen earlier today, we've had several cases
21 reopened because people reappear later on and go,
22 "Hey, they never notified me."

23 MS. VANCE: Yes, Mr. Hearing Examiner.
24 I understand that and I'm --

25 THE HEARING EXAMINER BRANCARD: So if

1 you could provide some more detail from your landman
2 about who -- how they tried -- what addresses were
3 sent to for the initial proposal and how that failed
4 and then what additional addresses were used and that
5 failed, that would be helpful. Just document it;
6 okay.

7 MS. VANCE: I am happy to do that and
8 based on my conversations with Matador, I believe they
9 were prepared to provide supplemental information if
10 questions came up. So I will follow up with them and
11 provide that to the examiner. If there are no other
12 questions ...

13 THE HEARING EXAMINER BRANCARD: Okay.
14 I had some math problems, but I don't know if that's
15 worth trying to figure out. Trying to go from the
16 numbers that were in your original application to the
17 numbers that are in the current application when you
18 say who got force pooled. Like for instance, 22875.
19 It says, "Previously, force pooled 9 percent," but in
20 your original application, it was 18 percent was being
21 force pooled. That may just be a math application
22 issue because you now have more interests and
23 therefore, the number is larger and never percentages
24 go down, but --

25 MS. VANCE: That's correct --

1 THE HEARING EXAMINER BRANCARD: And you
2 may have added some more voluntary joiners along the
3 way. So --

4 MS. VANCE: That's correct, Mr. Hearing
5 Examiner. And I would note -- just maybe this will
6 alleviate any concerns you have. In the original
7 cases, you'll see that the interest breakdown was the
8 18 percent and that was for both the Bubba Burton and
9 Ken Wilson, but if you add both the previously forced
10 pool, that 9 percent you were looking at which is for
11 the Bubba Burton, and then if you scroll down and look
12 at the 11 percent that was previously force pooled for
13 the Ken Wilson, you get, I think, closer to that 18
14 percent that was previously pooled.

15 So there was a shift, I believe, in the
16 interests and how those are broken down, but I don't
17 think that there's as big of a disparity between the 9
18 and 18 percent.

19 THE HEARING EXAMINER BRANCARD: Okay.
20 Thank you. Again, when you have a more complicated
21 title situation, I think it requires more explanation
22 from the land people. Feel free to talk about the
23 fact that these are old town sites with numerous
24 subdivisions, et cetera so we understand what's going
25 on in these cases and the more complicated it is, the

1 more evidence you need. Simple calculation there.

2 MS. VANCE: Understood, Mr. Hearing
3 Examiner. Thank you. Are there any other questions I
4 can assist with?

5 THE HEARING EXAMINER BRANCARD: All
6 right. So what we need then is just a revised
7 landman's affidavit explaining the efforts or -- to
8 reach what appear to be unlocatable parties. Is that
9 clear?

10 MS. VANCE: Yes, Mr. Hearing Examiner.
11 Sorry. I'm jotting that down.

12 THE HEARING EXAMINER BRANCARD: Thank
13 you. All right. Are there any other interested
14 persons for cases 22875, 22876? Hearing none, these
15 cases will be taken under advisement, and we will
16 await submittal of a revised landman's affidavit. Any
17 supplemental documents to be attached to it would be
18 helpful, too.

19 MS. VANCE: Yes, Mr. Hearing Examiner.
20 Thank you.

21 THE HEARING EXAMINER BRANCARD: So like
22 a spreadsheet maybe. I don't know. Thank you very
23 much.

24 MS. VANCE: Thank you, Mr. Hearing
25 Examiner. Thank you, Mr. Lowe.

1 THE HEARING EXAMINER BRANCARD: All
2 right. Now we come to the entertainment part of our
3 morning's proceedings here. This is item 34, case
4 22626. This case may go on for a little while, so
5 maybe we should take a little bit of a break here so
6 people can get ready and the court reporter can take a
7 break and we'll get back here, say, by 10:30. Thank
8 you.

9 THE REPORTER: Thank you.

10 (Off the record.)

11 THE HEARING EXAMINER BRANCARD: Okay.
12 We are back on the record. Oil Conservation Division
13 hearings of September 15, 2022. We are on item 34 of
14 today's worksheet. This is case 22626. I will call
15 the applicant, Goodnight Midstream.

16 MR. RANKIN: Good morning,
17 Mr. Examiner. Appearing on behalf of the applicant in
18 this case is Adam Rankin with the Santa Fe office of
19 Holland & Hart. Along with me today is our -- my
20 colleague, Ms. Paula Vance. We have two witnesses
21 this morning and, Mr. Examiner, we also have some
22 competing motions that I believe need to be addressed
23 before we can proceed. And also, at your discretion,
24 Mr. Examiner, I would like to make a brief opening to
25 help set the context once we work through the

1 preliminary matters.

2 THE HEARING EXAMINER BRANCARD: All
3 right. I have an entry from Empire New Mexico.

4 MR. PADILLA: Mr. Examiner, Ernest L.
5 Padilla for Empire New Mexico LLC.

6 THE HEARING EXAMINER BRANCARD:
7 Mr. Padilla, Do you have witnesses today?

8 MR. PADILLA: I have one witness.

9 THE HEARING EXAMINER BRANCARD: Thank
10 you. Are there any other interested persons for case
11 22626? Okay. We are here because there's an
12 application for a produced water disposal well. There
13 is an objection to that. We had a motion to dismiss
14 the application on the basis of the existence of an
15 overlapping statutory unit. That motion was denied
16 and so now we are on an evidentiary phase which
17 focuses on the objection that this proposed well will
18 interfere with unit operations or otherwise violate
19 the Oil and Gas Act.

20 So we have a few motions here. I
21 think, Mr. Rankin, you filed a motion.

22 MR. RANKIN: Yeah. Mr. Examiner, a lot
23 of them essentially are evidentiary in nature and
24 some -- many respects overlap. And so just to outline
25 what I understand has been filed by the parties, we

1 initially filed a motion in limine seeking to exclude
2 exhibits that Empire's seeking to enter into this
3 case, rely on in this case, that were responsive to
4 our subpoena request and that were not produced.

5 And I've outlined at a high level the
6 reasons for our concern and why we think it's
7 important for the Division to exclude those documents
8 or exhibits from the record today. And so that's one
9 motion to which Mr. Padilla has responded.

10 The others is a motion that actually
11 Mr. Padilla filed seeking leave to file late exhibits
12 and testimony, to which we have responded along with
13 our objections to certain of the exhibits that were
14 filed by Empire. And then those objections are
15 basically on two grounds, one relating to the
16 requirements of the pre-hearing order itself and then
17 secondly on evidentiary grounds that they are
18 essentially hearsay testimony and then shouldn't be
19 permitted.

20 So those are sort of the -- as I
21 understand, the lay of the land in terms of
22 evidentiary exhibits or evidentiary motions or issues
23 that probably need to be resolved before we can
24 proceed to the hearing portion of the -- of this case.

25 THE HEARING EXAMINER BRANCARD: Thank

1 you. Mr. Padilla?

2 MR. PADILLA: Mr. Examiner, we filed a
3 motion for leave to submit late. We had some
4 technical difficulties with regard to submitting those
5 timely. Those are explained in the motion.

6 Mr. Sweeney, Eugene Sweeney, who is our
7 witness was the author of the -- of his testimony he
8 was at a location in Louisiana taking care of a well.
9 He did not have the ability to transmit anything other
10 than -- or print. And we notified -- I notified
11 Mr. Rankin about the difficulty and that we were going
12 to submit late. We found out -- I -- on Sunday, this
13 past Sunday, we submitted most of the information.

14 But the information that we, or at
15 least Mr. Sweeney, relied on is listed on his
16 testimony. These documents that are listed there were
17 not really prepared by him, but going into the motion
18 to dismiss or the motion in limine, that motion seeks
19 to exclude Exhibits C and B.

20 Exhibit C is a data compilation,
21 internal data compilation, that Empire conducts. It's
22 no different than -- the way I see it, it's a
23 completion -- documentation that is contained in the
24 completion report and the production records of the
25 Oil Conservation Division.

1 Those records were not required to be
2 submitted because they were records that were
3 obtainable in the public domain or from the records of
4 the Oil Conservation Division. So I don't see any
5 problem. I'm curious as to why there's an objection
6 to that exhibit even though it was not submitted in
7 response to the subpoena.

8 In addition, the following
9 excluded -- or document that is -- which is Exhibit D
10 which Goodnight seeks to exclude is a Society of
11 Petroleum Engineers paper. I don't know of anyone who
12 doesn't rely on papers of that nature. Specifically,
13 that paper addresses the lithology of the Grayburg
14 Formation.

15 The subpoena asks for information
16 relating to the San Andres Formation. I did not find
17 a reference to the San Andres Formation in that, so I
18 think it was properly excluded. So -- but it goes to
19 performance and operation of a water flood project and
20 that paper, I believe, was authored in 1998 which
21 really addressed only the water flood in the Grayburg
22 and it talked about the performance of the wells and
23 both injection and producing wells.

24 So I find it curious as to why that
25 document is not something that should be excluded.

1 It's simply Empire's knowledge. We're trying to get
2 any information and any operator would probably rely
3 on prior papers, but again, that only addresses the
4 water flood in the Grayburg. So I don't see any
5 reason to exclude those documents, especially because
6 they don't apply to the San Andres, or at least the
7 SPE paper doesn't apply to the San Andres Formation,
8 and that wasn't what was asked in the subpoena.

9 The other information on Exhibit C is
10 equally curious as to why there's even an objection.
11 I mean, that contains information on the production of
12 the 200 unit well, 200H well. That's easily gathered
13 from the Oil Conservation Division records and the
14 completion reports as to the surface location, bottom
15 hole location or total depth and total drill depth.
16 So that was not part of -- should not have been
17 included in the subpoena.

18 Now, let me also address the denial or
19 the late filing. We've addressed -- I've addressed
20 that already, the reason why it was late, but
21 Goodnight knew from the very beginning what the issues
22 were in this case and that were -- we addressed that
23 in the motion to dismiss.

24 And if -- there's no surprise in here
25 as to why Empire is objecting to this application. It

1 concerns disruption of injection patterns, a lot of
2 things make up oil, that kind of -- make up the water
3 and all of a sudden, you have total -- an unusually
4 heavy excessive oil or produced water that is proposed
5 to be dumped in this San Andres Formation, which has
6 also been studied by Empire in order to develop what
7 was called residual oil zone.

8 And I know in the exhibits filed by
9 Goodnight, they're saying there's no residual oil
10 there and so therefore, it's fair to dump all that
11 water in there even though Goodnight does not have any
12 interest in the San Andres Formation within the unit.

13 So I think the -- our submittal, the
14 testimony, should be admitted and the two exhibits
15 that are sought to be excluded should also be
16 admitted. They're just something that somebody would
17 rely on in order to make an objection in this case.
18 How relevant that is in the sense that it doesn't
19 affect the San Andres, that's a different story.

20 But all -- the motion in limine should
21 be denied and our late submittal should be approved
22 because it doesn't prejudice at all Goodnight's
23 application.

24 THE HEARING EXAMINER BRANCARD: Thank
25 you. Mr. Rankin, a brief reply.

1 MR. RANKIN: Thank you, Mr. Examiner.
2 So a couple points. I think there's confusion on
3 Mr. Padilla's part about which exhibits we're seeking
4 to exclude in the motion in limine.

5 The exhibits that we're seeking to
6 exclude were identified clearly. They were attached
7 to the motion and those are the titles, the EMSU,
8 EMSUB and AGU, upside potential infill drilling and
9 ROZ prepared by ExxonMobil. We attached that as
10 Exhibit C to our motion because by the time we
11 prepared this, the exhibits were not yet marked by
12 Empire, so we didn't know how they were going to be
13 labeled by Empire.

14 Same thing with the second exhibit
15 we're seeking to exclude, which is the executive
16 summary, Eunice S, that's Lea County, New Mexico,
17 November 2020, which was prepared by XTO Energy and
18 attached as Exhibit D to our motion. To avoid
19 confusion, we attached them to our motion, so it was
20 clear what we're seeking to exclude.

21 Those two documents were directly
22 responsive to our subpoena and should have been
23 produced. The fact that they weren't raises questions
24 about what else was withheld. Now that Empire has
25 filed their pre-hearing statement and their testimony,

1 we know that and have a pretty good idea that there
2 must actually be some potentially substantial number
3 of responsive documents that were not produced.

4 From their pre-hearing statement, we
5 understand that Empire is studying new oil recovery
6 trends in the San Andres and implementation of new
7 techniques for oil recovery in the San Andres. We've
8 received no documentation or production of information
9 or data regarding what their efforts are to undertake
10 those new recovery techniques.

11 From their testimony, we understand
12 from Mr. Sweeney that one well in particular, the EMSU
13 200H, is their best producing well and is providing
14 them valuable information regarding the exploitation
15 of the San Andres. They're monitoring its
16 performance, collecting needed data and are conducting
17 an analysis that is informing future development plans
18 in the San Andres.

19 None of that data, with the exception
20 of a third-party well file from Enverus, was produced.
21 So other than that well file printout -- okay? That
22 we received, which is just something basically
23 aggregating OCD data files, we received nothing from
24 Empire on information about this well that Empire is
25 collecting regarding potential for production in the

1 San Andres or future production in the San Andres.

2 All of this information that we're now
3 hearing about in sort of general, but none of which is
4 being presented to the Division -- okay? Would be
5 responsive but wasn't produced. So Empire here is
6 seeking, it seems, to pick and choose what it wants
7 the Division to see, what it wants Goodnight to see
8 and that's not how the rules are set up and completely
9 defeats the purpose of the Division's subpoena powers.
10 It unfairly subverts the process and undermines the
11 adjudicatory procedures in place and impedes the
12 Division's ability to get to the truth.

13 And so for those reasons, because we
14 don't know what else was withheld, but we know there's
15 something out there, these two exhibits ought to be
16 excluded.

17 As to the late filed exhibits, the
18 testimony, we all got a pre-hearing order from the
19 division in June indicating the dates, timelines and
20 deadlines by which we were to provide testimony and
21 exhibits. So we've known for some time what was
22 required of us and if those deadlines aren't -- don't
23 mean anything, I don't know what the point of a
24 pre-hearing order is.

25 On the objections that we raised as to

1 the exhibits that were submitted with Mr. Sweeney's
2 testimony, we're specifically objecting to Exhibits E,
3 D and D through H. Those are a mix of things, none of
4 which really are data or facts or facts or
5 information. They're really the opinions of other
6 folks who I can't cross-examine, none of which is
7 narrated or discussed at all in Mr. Sweeney's
8 testimony.

9 So in other words, it's not that he's
10 relying on it because it's not discussed in his
11 testimony. It's simply attached as if it were a
12 replacement testimony for his own. And so that is a,
13 again, subversion of the evidentiary rules and
14 completely impedes my ability to examine the authors
15 of those documents and those opinions.

16 And also, we know nothing about
17 what -- in what way or what manner Mr. Sweeney's
18 relying on those because it's not in his direct
19 testimony. The pre-hearing order is pretty clear. It
20 requires a full narrative of the testimony and the
21 exhibits and we got a narrative testimony, but really
22 did not touch on or address in any way those exhibits
23 that we're seeking -- that we have objections to.

24 So in addition to the motion in limine,
25 which I think is important sort of just in the -- for

1 a rule-based structure, that, in fairness, those two
2 exhibits should be excluded.

3 We also believe that those additional
4 exhibits that I just mentioned, B and then D through
5 H, ought to be excluded as well because they're just
6 a -- serving as a conduit for hearsay testimony and
7 not the kind of information that an expert relies on,
8 or at least if it were to be admitted, it would be
9 admitted in the context where the expert is
10 testifying, expounds on and discusses his own opinion,
11 independent analysis and why he's relying on that
12 information.

13 And so for all those reasons, I think
14 each of our motions should be granted and if you have
15 any questions about that, Mr. Examiner, happy to
16 respond.

17 THE HEARING EXAMINER BRANCARD: Thank
18 you. So my predilection is in an administrative
19 hearing, the more evidence, the better to help us make
20 a decision. So I'm sort of loathe to automatically
21 exclude documents. However, I certainly, and we
22 certainly, appreciate any comments/discussions about
23 particular exhibits in terms of what Mr. Rankin was
24 just referring to, whether they're just hearsay or
25 there's no foundation to them, whatever. In other

1 words, the value of the exhibits.

2 So I think we'll wait till these
3 exhibits are introduced or attempted to introduce and
4 then we can discuss them as we go through the hearing.
5 I'm more concerned, I think, about the violation of
6 our pre-hearing order. Mr. Padilla, you could have,
7 in your pre-hearing statement, provided information
8 about why you were about to submit this information
9 late, and you didn't.

10 So that's pretty disappointing that
11 we're at that point. I mean, there's a whole point to
12 allow other parties the ability to see the information
13 in advance of a contested hearing. I mean, at any
14 point here -- I mean, the other way of remedying a
15 situation like this is always to allow parties
16 additional time to prepare responses and if we need to
17 continue the hearing to provide additional information
18 that you think is necessary, I don't have a problem
19 with that. Like I said, the more evidence, the better
20 is my philosophy.

21 So I'm going to deny the motion in
22 limine and allow the hearing to go forward with the
23 note that as particular exhibits come up or as
24 testimony comes up, objections can be raised. And
25 hearsay is not something that's not part of our rules

1 of procedure, but it is certainly something that you
2 can raise as an issue as to the weight of any evidence
3 that's presented. So that's -- and that's obviously
4 quite important on the value.

5 There's a lot of stuff in these
6 exhibits and how valuable they are and how much they
7 can be connected to people's particular testimony may
8 be the key here to this. So just because somebody
9 throws an article out at us doesn't mean that it
10 really means anything.

11 So with that, I'd like to go forward
12 with the hearing and, Mr. Rankin, can you just give us
13 an outline of what you're about to present?

14 MR. RANKIN: Thank you, Mr. Examiner.
15 In this case, Goodnight Midstream seeks authorization
16 to inject produced saltwater for purposes of disposal
17 through its proposed Piazza SWD #1 Well.

18 The projected or proposed disposal
19 interval will be in the San Andres Formation between
20 approximately 4,125 feet and 5,400 feet below the
21 ground at that location. This location of the
22 proposed well is within the exterior boundaries of the
23 Eunice Monument South Unit, which was formed in '84 as
24 a secondary water flood unit under the Statutory
25 Unitization Act. It's currently operated by Empire

1 Petroleum as of July 2021, as I understand.

2 Total of six other saltwater disposal
3 wells have been approved for injection into the San
4 Andres and are currently operating within the unit
5 area operated by a total of four different operators,
6 OWL, Rice, Goodnight, which operates two, and Empire
7 itself operates a disposal well that is currently an
8 actively disposing in the same injection zone.

9 Five of the saltwater disposal wells
10 are commercial wells. As I mentioned, two belong to
11 Goodnight. The only well that isn't commercial is the
12 one that Empire operates and as I said, it injects
13 into the same zone in the San Andres that we're
14 proposing.

15 Now, Empire, as we understand, opposes
16 the proposed injection because it claims it has the
17 exclusive right to oil and gas operations in the unit
18 area and will interfere with their unit operations and
19 recovery -- current existing recovery within the San
20 Andres and potential future recovery in the San
21 Andres.

22 Now, the Division I think correctly
23 laid out the elements of what the legal issues are
24 here in its order denying the motion to dismiss.
25 Question is whether or not the proposed injection will

1 interfere with unit operations and relatedly, whether
2 or not the injection will cause waste, drown out any
3 formation capable of producing oil and gas or whether
4 the proposed injection will be protective of health,
5 environment, freshwater sources or otherwise is in
6 accordance with the Oil and Gas Act.

7 Now, Empire argues that it will
8 adversely impact current production and future
9 production, but, Mr. Examiner, they have put forward
10 zero evidence that any interval within the proposed
11 injection zone has ever produced oil and gas or is
12 likely ever to produce oil and gas in the future.
13 Though here, Empire testifies they are currently
14 producing in the San Andres and have plans for future
15 development in the San Andres, but in this area, there
16 never has been production from the proposed injection
17 interval and likely never will be.

18 Even using their proposed
19 interpretation of where the San Andres is located, the
20 information and data they've put forward does not
21 depict any production within that zone.

22 The testimony will show that Goodnight
23 has painstakingly evaluated the San Andres and confirm
24 that it's an ideal zone for produced water disposal,
25 making it a critical resource for managing and

1 disposing of produced water from nearby horizontal
2 wells. It's under-pressured and has significant
3 capacity because it has been depleted massively after
4 decades of water production for the Eunice Monument
5 South Unit water flood operation in the overlying
6 Grayburg.

7 It has substantial and effective
8 geologic seal, which prevents communication between
9 the proposed injection zone and the overlying
10 productive Grayburg Formation. And if there were
11 economic oil and gas shows, the San Andres injection
12 zone -- in the San Andres injection zone, none of the
13 existing SWDs permitted and operating within the unit
14 could have been approved or authorized for injection.
15 Goodnight's existing two SWDs are just in the adjacent
16 section to the southeast; okay?

17 In short, the overwhelming evidence and
18 overwhelming weight of the evidence will show that the
19 proposed injection will not interfere with unit
20 operations, will not cause waste and will not -- and
21 will be protective of correlative rights and otherwise
22 will comply with the requirements of the Oil and Gas
23 Act.

24 With that, Mr. Examiner, when my time
25 is right, we have two witnesses to call.

1 THE HEARING EXAMINER BRANCARD:

2 Mr. Padilla, would you like to make a statement now or
3 wait till you present your case?

4 MR. PADILLA: I'll wait, but I'm not
5 going to be too lengthy on whatever I do because I
6 pretty much stated what our objection was to this
7 case. Essentially, Goodnight does not own any
8 interest in the San Andres within the proposed unit,
9 within the vertical limits and so we believe that via
10 trespassed, which is not addressed by -- within the
11 jurisdiction of the Division.

12 But there is a case, Snyder Ranches vs.
13 Oil Conservation Commission, where the Commission
14 allowed or granted a water flood, and it went into the
15 adjoining well or adjoining acreage and damaged a
16 well. In that case, there was a ruling that despite
17 the approval of the Oil Conservation Division, the
18 migration of water into the adjacent was a trespass
19 and disallowed any -- curtailed the approval of the
20 Oil Conservation Division.

21 And that's the same that's happening in
22 this case, is that we have somebody with no ownership.
23 All the information that is going to be submitted by
24 Goodnight does not -- they simply assume that that's a
25 free area within which to dispose of a large amount of

1 produced water from outside of the unit.

2 And whether or not they have pipelines
3 or a series of pipelines does not matter simply
4 because they have absolutely no interest, ownership
5 interest, within the unit horizontally or vertically.
6 But that would be essentially my statement. Anyway
7 ...

8 THE HEARING EXAMINER BRANCARD: Thank
9 you. Mr. Rankin, you may proceed with your witnesses.
10 Are you just going to -- how would you want to
11 proceed? Do you want to like have them summarize
12 their testimony or do you just want to have them
13 available for questions or ...

14 MR. RANKIN: Mr. Examiner, I was going
15 to defer to your preference because while both
16 witnesses have prepared, I think, fairly comprehensive
17 testimony on each of their areas, it's a -- in one
18 case, it's quite a bit. But I'm happy to take the
19 time to walk through and try to summarize with the
20 second witness his testimony.

21 It all really depends, I think, on the
22 preference of the Division. In the interest of time,
23 I think my suggestion would be to have each witness
24 make any clarifications or corrections, if there are
25 any, and I think there are a couple of each one, and

1 then have them just adopt their testimony subject to
2 those corrections and then be available for further
3 cross-examination questions.

4 THE HEARING EXAMINER BRANCARD: Thank
5 you. We have with us -- I forgot to
6 mention -- special guest examiner Phillip Goetze and
7 so I will actually ask Mr. Goetze if he has any
8 preference here, whether we just want to have these
9 witnesses available for questioning or do we want them
10 to summarize their testimony?

11 THE HEARING EXAMINER GOETZE: Well, I
12 think we would go with Mr. Rankin's initial
13 summarization. If we have questions about the
14 specific document or information provided by that
15 expert, then we'll ask questions.

16 MR. RANKIN: I guess I wasn't clear,
17 Mr. Goetze. Do you want me to summarize a little bit
18 what the testimony is --

19 THE HEARING EXAMINER GOETZE: Yeah,
20 with summarize, you're covering a lot of area.

21 MR. RANKIN: I know --

22 THE HEARING EXAMINER GOETZE: You're
23 essentially covering 50 years of activity in this area
24 and as well as bringing points specific to this
25 project by Goodnight. So let's start off with the

1 general and we'll get specific.

2 MR. RANKIN: All right. I'll do my
3 best with each of these witnesses to summarize their
4 testimony. Mr. Examiner, I -- we have two witnesses
5 today and if you'd like, we can swear them in
6 together. The first witness is Mr. Nathan Alleman and
7 the second witness is Mr. Steve Allen Drake.

8 THE HEARING EXAMINER BRANCARD: We
9 would like them to be sworn in together if they're
10 both available. I see Mr. Alleman and I see
11 Mr. Drake. All right. Gentlemen, can you raise your
12 right hands?

13 WHEREUPON,

14 NATHAN ALLEMAN AND STEVE ALLEN DRAKE,
15 called as a witness, and having been first duly sworn
16 to tell the truth, the whole truth, and nothing but
17 the truth, was examined and testified as follows:

18 THE HEARING EXAMINER BRANCARD: All
19 right Please proceed, Mr. Rankin.

20 MR. RANKIN: Thank you very much. At
21 this time, I'd like to call our first witness,
22 Mr. Nathan Alleman.

23 DIRECT EXAMINATION

24 BY MR. RANKIN:

25 Q Mr. Alleman, can you please state your full

1 name for the record?

2 A Nathan Alleman.

3 Q By whom are you employed and in what
4 capacity?

5 A I'm employed by ALL Consulting, and I am our
6 senior regulatory specialist.

7 Q And have you previously testified before the
8 Division, had your status and credentials as an expert
9 in saltwater disposal regulatory matters and
10 permitting accepted as a matter of record?

11 A Yes, I have.

12 Q And is your -- have you prepared a
13 self-affirmed statement that have been marked as
14 Exhibit B in the exhibit packet that was submitted in
15 today's hearing?

16 A Yes.

17 Q And in that self-affirmed statement, do you
18 provide a brief overview, through the attachment of
19 your resume, of your industry experience and expertise
20 in permitting and -- permitting in the regulatory
21 matters surrounding SWD injection wells?

22 A That's correct.

23 Q And that expertise and that experience
24 includes permitting SWDs in New Mexico; correct?

25 A Correct.

1 Q And you're familiar with the C108
2 application that was filed in this case and marked as
3 Exhibit A in the exhibit packet?

4 A Correct.

5 Q And are you the one that had responsibility
6 for aggregating the information and putting together
7 the C108 that was filed in this case?

8 A Yes, that's correct.

9 Q And in fact that's your signature at the
10 bottom of the first page of Exhibit A reflecting that
11 you signed and submitted this on behalf of Goodnight
12 Midstream?

13 A Correct.

14 Q And you're familiar with the status of the
15 lands that are the subject of the application?

16 A Yes.

17 Q And you conducted the work in conjunction
18 with Goodnight to identify all the affected parties
19 who are entitled to notice in the case that was part
20 of the exhibits included in the C108 application?

21 A That's correct.

22 MR. RANKIN: Mr. Examiner, at this
23 time, I would re-tender Mr. Alleman as an expert
24 witness in saltwater disposal regulatory matters and
25 permitting.

1 THE HEARING EXAMINER BRANCARD: Are
2 there any objections?

3 MR. PADILLA: No objections,
4 Mr. Examiner. I believe that I qualified Mr. Alleman
5 initially before the Oil Conservation Division in
6 saltwater disposal case.

7 THE HEARING EXAMINER BRANCARD: Thank
8 you. And he will be admitted as an expert, recognized
9 as an expert. And just remember, we call it produced
10 water disposal these days, not saltwater disposal.

11 MR. RANKIN: Good point, Mr. Examiner.
12 Good point. There is a distinction.

13 BY MR. RANKIN:

14 Q Mr. Alleman, turning to your Exhibit B, your
15 self-affirmed statement. In your testimony, you
16 review all the elements of the C108 with the exception
17 of topics relating to geology; is that correct?

18 A Yes, that's correct.

19 Q And that topic is reserved for Goodnight
20 Midstream's witness, Mr. Drake; is that right?

21 A Correct.

22 Q And in your testimony, then you
23 review -- starting on page two, you review the C108
24 application, identifying the proposed injection well,
25 the injection intervals and the location of that well?

1 A Correct.

2 Q And you identify the proposed maximum
3 surface injection pressure and average surface
4 injection pressures for that well?

5 A Correct.

6 Q And this well will be equipped with a
7 continuously -- a SCADA system that will continuously
8 monitor the injection volumes and rates?

9 A Correct.

10 Q And this well will be treated with a small
11 acid job to clean up debris around the perforations.
12 It's a perforated completion; correct?

13 A Yes, that's correct.

14 Q And you'll use an acid job just to clean up
15 around the perforations?

16 A That's correct.

17 Q And is the well board diagram and the
18 information around the well construction for this well
19 is concluded in the C108?

20 A Correct.

21 Q And will the annular space between the
22 production casing and the tubing be filled with an
23 inert packer fluid?

24 A Yes, it will.

25 Q Is this a well design that was previously

1 approved by -- a well design that was previously
2 proposed and approved by the Division?

3 A Yes, it is.

4 Q How many different wells has Goodnight have
5 permitted that follow the same well design in this
6 area?

7 A I believe we've permitted and -- and had
8 this design approved eight or nine times in -- in this
9 general area. It's the same -- same basic -- same
10 basic design.

11 Q And in your opinion, will the well design
12 and cement plan be protective of freshwater and
13 underground sources of drinking water in the area?

14 A Yes, it will.

15 Q And based on that well design and cement
16 plan, is your opinion that it will be protective of
17 correlative rights in offsetting productive zones?

18 A That's correct.

19 Q And approximately -- you did the analysis
20 for the AOR in conjunction with Goodnight; correct?

21 A That's correct.

22 Q When I say, "AOR," that's the area of
23 review?

24 A Correct.

25 Q And it's a half mile area around the

1 proposed injection well?

2 A Correct.

3 Q And there were 24 wells within the area of
4 review, but -- is that correct?

5 A Yes, that's correct.

6 Q And 15 of them are active producers?

7 A Yes.

8 Q And five have been plugged and abandoned?

9 A Correct.

10 Q And four are injection wells; correct?

11 A Correct.

12 Q And the information for each of those wells
13 within the area of review are on the tabulated data
14 page on page 14 of the Exhibit A?

15 A That's correct.

16 Q And of all those wells, only three that
17 actually penetrate the proposed injection interval; is
18 that correct?

19 A That is correct.

20 MR. RANKIN: And now, at this time,
21 Mr. Examiner, I want to just make a couple
22 clarifications/corrections to Mr. Alleman's testimony.
23 BY MR. RANKIN:

24 Q Mr. Alleman, going back to the first page of
25 your testimony where you refer to your resume, it's

1 listed as Exhibit C1. Is it -- should it be instead
2 referred to as B1?

3 A Yes, that's correct.

4 Q And in paragraph four where you refer to
5 Goodnight Exhibit C2, should that actually be B2?

6 A Yes, that's correct.

7 Q And I skipped over this, but Exhibit B2 is
8 actually a copy of the protest or the notification of
9 the protest that the Division provided you reflecting
10 Empire's protests of the administrative application;
11 correct?

12 A Correct.

13 Q Right. And that protest is the reason we're
14 here today because they were the party that protested
15 requiring a hearing on this case.

16 A Correct.

17 Q Okay. Now, skipping back up to paragraph 15
18 where we were just discussing the area of review and
19 the wells in the area of review. You identified that
20 there are three wells that penetrate the injection
21 interval and two of them are active producing wells;
22 is that correct?

23 A That's correct.

24 Q And they're listed here as the Eunice
25 Monument South Unit #713 well and then you've listed

1 here the Eunice Monument South Unit 319 well; is that
2 what's on your statement? Correct?

3 A Correct.

4 Q But in fact that second well should be the
5 Eunice Monument South #462 well; is that right?

6 A That is correct.

7 Q Okay. So that's a correction that we need
8 to reflect in your statement, that the 319 was
9 incorrectly included here and it should be the #462
10 well.

11 A Correct.

12 Q And that's the API 30-25-29622; is that
13 right?

14 A That's correct.

15 Q Okay. And then the third well that
16 penetrates the injection interval is the Eunice
17 Monument South #461 well; correct?

18 A That's correct.

19 Q And it's your opinion that that well is
20 properly plugged and abandoned?

21 A Correct.

22 Q And as -- in your opinion, all the wells
23 that penetrate the injection interval, they all
24 properly constructed in a manner or plugged back in a
25 manner that what is protective of offsetting

1 production zones and freshwater zones?

2 A Yes.

3 Q Copies of those wellbore schematics are
4 included in your C108 within Exhibit A?

5 A Correct.

6 Q And what's the source of the injection water
7 that you're -- Goodnight's proposing to inject into
8 its well?

9 A That -- that water is coming from nearby
10 horizontal wells from -- from various formations, Bone
11 Springs, Wolfcamp and Delaware Mountain Group --

12 Q The Delaware Mountain Group Wolfcamp and
13 Bone Springs Formations; is that correct?

14 A Correct.

15 Q And did you provide water chemistry analyses
16 of the representative samples of those different
17 formations in your C108 application?

18 A Yes. Yes.

19 Q Did you also include water samples from the
20 reservoir formation in the San Andres that'll be the
21 receiving zone?

22 A Yes.

23 Q And based on those water chemistries, is
24 there any indication that there'll be compatibility
25 issues or scaling issues between those fluids?

1 A No.

2 Q Did you also do a review of freshwater wells
3 in the area?

4 A Yes.

5 Q And is a map identifying each of the
6 water -- freshwater wells and the source of freshwater
7 samples included in your C108?

8 A It is.

9 Q And you also did an analysis of the surface
10 owners and offsetting lessees and operators within the
11 area of review?

12 A Correct.

13 Q Now, those maps and those parties are also
14 identified in the C108, Exhibit A?

15 A Correct.

16 Q And those are the parties that you've
17 identified as requiring notification of the
18 administrative application?

19 A Correct.

20 Q And included in your C108 is a copy of the
21 green cards and the status of those receipts as of
22 time of the application inflecting that each of those
23 parties were given notice by certified mail?

24 A Correct.

25 Q And is it your opinion that you and

1 Goodnight Midstream undertook a good faith effort to
2 locate and identify each of the correct parties and
3 the valid addresses for those parties within the area
4 of review?

5 A Yes.

6 Q And then, Mr. Alleman, based on your
7 analysis of the casing design and the cement job, is
8 it your opinion that the proposed injection well will
9 conserve resources, avoid waste and help protect
10 correlative rights?

11 A It is.

12 Q And, Mr. Alleman, with those additional
13 corrections about the reference to the attached
14 exhibits, B1 and B2, and then the substitution of the
15 462 well in your paragraph 15, do you adopt the
16 self-affirmed statement that you -- as your testimony
17 today that you prepared as Exhibit B?

18 A I do.

19 Q Thank you, Mr. Alleman.

20 MR. RANKIN: I guess with that,
21 Mr. Examiner, I would move the admissions of Exhibits
22 A, B and the attachments, B1 and B2, into the record.

23 (Goodnight Midstream 22626 Exhibit A
24 through Exhibit B2 were marked for
25 identification.)

1 THE HEARING EXAMINER BRANCARD: Thank
2 you. Are there any objections to these exhibits?

3 MR. PADILLA: No objection.

4 THE HEARING EXAMINER BRANCARD: These
5 exhibits are so admitted. I guess it's time for
6 questioning. Mr. Padilla?

7 (Goodnight Midstream Exhibit A through
8 Exhibit B2 were received into
9 evidence.)

10 CROSS-EXAMINATION

11 BY MR. PADILLA:

12 Q Mr. Alleman, long time no see. Mr. Rankin
13 did a good job of doing the testimony for you and you
14 simply acknowledged yes or no or indicated you were
15 correct, but the last thing you said, you stated that
16 the application with its best interests of oil
17 conservation and protection of correlative rights.
18 Can you explain to me how correlative rights would be
19 protected by this application?

20 A Sure. So as a part of the -- as a part of
21 the -- the C108, we review the -- the well design, and
22 again, this is a well design that was prepared by
23 petroleum engineers under -- that -- that I -- that I
24 managed and a -- and a well design that's been
25 approved by OCD in -- in prior applications without

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1 any issues. And so as a part of the C108 and as a
2 part of my testimony, I'm verifying that the -- the
3 well design is -- is protective of -- of correlative
4 rights. I believe Mr. Drake, a geologist for -- for
5 Goodnight, will be able to speak more to the broader
6 picture of -- of correlative rights protections.

7 Q Well, you're the one who made the statement,
8 Mr. Alleman, that correlative rights would be
9 protected. You rendered that opinion, but I'm trying
10 to figure out if there's oil in the San Andres, how do
11 you protect correlative rights?

12 A So again, as a part of the application,
13 we -- we review -- we look at the area of review
14 and -- and we check to see if there is any evidence
15 of -- of oil production in -- in the past or -- or
16 current and -- and then ensure that our well -- that
17 our well design, the casing and cementing program,
18 will -- will protect any of those productive
19 intervals, and -- and we believe that it does.

20 Q Well, you'll be dumping oil into the San
21 Andres; correct? I mean produce water into the San
22 Andres; correct?

23 A That is the -- yes, that is the injection
24 interval, correct.

25 Q Okay. How far away is the unit well 200H

1 from your proposed well?

2 A I would have to take a look at my -- my maps
3 for that. Do you mind if I take a look real quick?

4 Q No. You tell me which map you're looking
5 at.

6 A Sure. So I'm -- I'm currently looking at
7 page 13 of the C108.

8 Q I have that. Is that -- is the 200H well
9 within the small circle?

10 A I'm not seeing that on our -- on our well
11 list within the half a mile area of review. Do you
12 have the API number for that well?

13 Q Do you know whether that well is outside of
14 that 1/2-mile circle?

15 A Do you have the API number for that well?

16 Q Not readily. I'm just asking did you
17 consider that well in your statement that it protects
18 correlative rights?

19 A So as a -- as a part of our application
20 process, we look out to -- to 2 miles and do a -- do a
21 production review, but that -- that information is not
22 necessarily included as a part of the -- the C108. So
23 I don't have all of that data in front of me right
24 now.

25 Q Well, what would be missing in terms of the

1 C108 that you didn't include?

2 A Can you restate that, please?

3 Q What information that you didn't include in
4 this C108 is available?

5 A Well, I don't -- I don't know that there's
6 any missing information that's -- that's required as a
7 part of the -- the C108.

8 Q Okay. Well, then let me ask you how many
9 wells are within the 2-mile radius?

10 A I -- I do not have that counts in front of
11 me right now.

12 Q Do you have any idea how many wells are in
13 there?

14 A I'd -- I'd prefer not to approximate at this
15 time. We could get -- I have the map in front of me,
16 but not the -- not the full number.

17 Q Is there a listing of all those wells
18 anywhere in the application?

19 A There's -- the APIs are listed on page 13 of
20 the C108, but not in a tabular format for the -- for
21 the 2-mile area.

22 Q If you look at the next page, which is your
23 page 14, what are those wells in there? Is that the
24 wells within the 1/2-mile circle?

25 A That's correct.

1 Q And then how many wells are there? Is this
2 the ones that you said were there, some of which are
3 plugged?

4 A That's correct.

5 Q And how many of those wells are producing
6 wells?

7 A Fifteen are currently producing.

8 Q And how many injectors are in there?

9 A Four injection wells.

10 Q Okay. But you don't -- you're not telling
11 me that within the 2-mile circle, you're -- you don't
12 have a tabulation of all those wells; right?

13 A We don't have that available currently.

14 Q Would you agree with me that those are part
15 of the water flood patterns that exist on the water
16 flood?

17 A I'm -- I'm unfamiliar with the -- the exact
18 nature of all of those wells within 2 miles.

19 Q Do you think some of them penetrate the San
20 Andres Formation?

21 A Again, I would have to -- I would have to
22 check the -- I would have to check each of those wells
23 before I could make a statement to that.

24 Q Did Goodnight evaluate the casing on
25 paragraph -- on the wells listed on paragraph 14 -- I

1 mean page 14?

2 A For the wells that penetrated the injection
3 interval, we did.

4 Q And are those -- some of those wells old
5 wells or horizontal wells? What's the composition of
6 the nature of those wells in terms of production
7 capabilities?

8 A One well is -- is currently -- it was
9 completed as a water supply well and then was
10 subsequently plugged. Another one was completed as a
11 water supply well and was recompleted to be shallower
12 and is -- and is currently an active -- active
13 producer above our injection interval. And then the
14 other active well is -- is an active oil and gas well
15 with a cast iron bridge plug set above our injection
16 interval, so it is producing from above the San Andres
17 injection interval.

18 Q Do you know whether any effort had been made
19 to determine whether or not all of those wells shown
20 on page 13 within the 2-mile circle would have any
21 propensity to migrate through the annular space of the
22 wells?

23 A Can you restate that question?

24 Q Well, was there any analysis made as to
25 whether any of those wells within the 2-mile radial

1 would have a propensity to have produced water from
2 your proposed well come up hole through the -- any
3 other space?

4 A Again, we -- we believe that our -- we
5 believe that our well design will -- will contain the
6 fluids to the -- to the injection interval and
7 will -- will not cause any -- any issues with area of
8 review or conduits to surface.

9 Q My question was whether any analysis has
10 been made about potential migration of the annular
11 space.

12 A We -- we reviewed -- in -- in conjunction
13 with with Goodnight and -- and our -- and ALL's own
14 geologists and engineers, we did review all of
15 the -- the wells within 2 miles and -- and it was
16 determined that there were no -- no issues
17 with -- with correlative rights. But again, I think
18 when we're talking about geology and such, Mr. Drake,
19 Goodnight's geologist, will be able to speak to that
20 more clearly.

21 Q Okay. Let's go to page 15. Is that a
22 mineral ownership type of map? Is that what you're
23 trying to show?

24 A Yes, that's correct.

25 Q So it appears that you're on the

1 edge -- well, the proposed well is on the edge, but
2 inside of federal minerals.

3 A That's correct.

4 Q Have you received any permission from the
5 Bureau of Land Management for drilling this proposed
6 well?

7 A The -- the notice of the application was
8 submitted to the Bureau of Land Management to notify
9 them of the application and no correspondence has been
10 received from them.

11 Q Have you filed an APD for these -- for this
12 well?

13 A No.

14 Q Have you gotten any permission from anyone
15 to drill this well? You've stated that you haven't
16 filed anything from -- with the Bureau of Land
17 Management except to send them a copy of this
18 application and -- but have you some kind of agreement
19 with the surface owner?

20 A That would be something that Steve Drake
21 would be able to talk to. Him working directly
22 with -- with Goodnight, he would have more information
23 about those surface use agreements.

24 Q Is he a landman?

25 A No, he's not.

1 Q Have you been in contact with the surface
2 owner in this case?

3 A I -- I personally have not aside from
4 notifying them of the -- of the application.

5 Q Do you know if there's an agreement between
6 the surface owner and Goodnight?

7 A I -- I was told that -- that there was a
8 surface use agreement between the surface owner and
9 Goodnight Midstream.

10 Q Do you know whether that agreement covers
11 injection of -- into the San Andres in this case?

12 A No.

13 Q You don't know?

14 A That's correct. I have -- I have not seen
15 the specific agreement.

16 Q And you don't know whether there's actually
17 a surface agreement or not, or are you saying there is
18 or there isn't?

19 A All -- all that I can say is that I have
20 been told that there is a surface use agreement with
21 the surface owner.

22 Q For disposal of water into the San Andres?

23 A Again, I'm not -- I'm not sure on exactly
24 how specific that gets.

25 Q Why wouldn't that be included in your C108,

1 whether in fact there's an agreement or not allowing
2 you to dispose of water into the San Andres?

3 A That is -- that is not A necessarily
4 required portion of the C108 but can be -- if -- if we
5 want to ask Steve Drake about that since he works
6 directly with Goodnight, he -- he can discuss it in
7 more detail.

8 Q Well, I'm asking you because you filed a
9 C108 and it seems to me that part of your due
10 diligence would require you to figure that out;
11 wouldn't it?

12 A Our due diligence on that was to ask
13 Goodnight if they had that surface use agreement
14 and -- and we did that and they -- they agreed.
15 They -- they said that they did.

16 Q Do you know why it is that you located the
17 well on federal minerals -- to be drilled into federal
18 minerals?

19 A In this case, Goodnight gave us a location
20 and we evaluated it for viability. We did not -- ALL
21 and myself did not choose that particular location.
22 So no, I do not know.

23 Q Did you review order R7765 that
24 was -- formed this unit agreement?

25 A I have not specifically reviewed it.

1 Q And you understand that the unit agreement
2 covers from the top of the Grayburg to the bottom of
3 the San Andres. Do you know that?

4 A Again, I'm not intimately familiar with
5 that -- with that agreement, but I believe Steve Drake
6 can talk to that in more detail.

7 Q Let me summarize. I'm nearly done, but
8 going back to the -- page 13. You're telling the
9 Division here and the hearing examiner that all of
10 those wells were reviewed to determine whether or not
11 there was the propensity for migration of produced
12 water from your well into upper reaches of the -- into
13 the Grayburg?

14 A That's correct. We -- we conducted an
15 evaluation -- ALL, in -- in coordination with
16 Goodnight, conducted an evaluation of all the wells in
17 the 2-mile radius and determined well construction
18 and -- and top of cement for each of those wells.

19 Q And how many wells are there in that 2-mile
20 circle?

21 A As stated previously, I don't have that
22 direct number in front of me.

23 MR. PADILLA: Okay. Think that's all I
24 have of Mr. Alleman.

25 THE HEARING EXAMINER BRANCARD: Thank

1 you. Mr. Goetze, do you have a question or two?

2 THE HEARING EXAMINER GOETZE: Yes, I do
3 have one question. Let me make the screen bigger for
4 me. Okay. With regards to the area of review wells,
5 it was noted that the Eunice Monument South Unit Well
6 #462, API 30-025-29622 -- what is your understanding
7 of the disposition of this well? In other words,
8 where is it completed?

9 MR. ALLEMAN: From a -- from a review
10 of the -- the online well records, it was -- it was
11 originally completed as a water supply well in 1987 or
12 somewhere around that -- that vintage. And then it
13 was -- it was completed from -- originally completed
14 as a water supply well from 4,325 feet to 5,000 feet.
15 And then -- then it was recompleted as a Grayburg
16 production well with perforations from 3,794 feet to
17 3,900 feet, which is above our -- just a couple
18 hundred feet above our injection interval.

19 THE HEARING EXAMINER GOETZE: Do we
20 have any records of this?

21 MR. ALLEMAN: We can certainly supply
22 that. That -- that information came from a completion
23 report found on -- on OCD's webpage.

24 THE HEARING EXAMINER GOETZE: Well, I
25 would contest that. I've gone through this file

1 several times. The only thing I have is an expired
2 APD by XTO to do the proposed action and all I have is
3 proposed. I do not have a new C105 or supplemental
4 documents showing the activity. So at this point, the
5 only thing I have is a well that's still in
6 communication with the San Andres.

7 So you better come up with something
8 because it is our habit and our practice that we do
9 not allow AOR wells to have communications that come
10 out of zones. So I would request that you provide
11 documentation that it has been recompleted, as was
12 originally proposed by XTO, or at least a
13 determination of its current state.

14 MR. ALLEMAN: Okay.

15 THE HEARING EXAMINER GOETZE: Other
16 than that, I have no questions for Mr. Alleman.

17 THE HEARING EXAMINER BRANCARD: Thank
18 you. Mr. Alleman, and you again may be the wrong
19 person to ask this question, but was there an analysis
20 done of the actual area of impact of this injection
21 well over some future period of time, 10, 20, 30
22 years?

23 MR. ALLEMAN: We can -- we can ask the
24 same -- the same question to Steve Drake. I am not
25 familiar -- I'm not sure whether a -- like a

1 volumetric fill-up calculation was -- was done for
2 this -- for this well specifically.

3 THE HEARING EXAMINER BRANCARD: Okay.
4 Thank you. All right. And so you have a list of
5 these wells with the 2-mile area. They're just not
6 part of the C108 submittal; is that correct?

7 MR. ALLEMAN: Yes, that is correct.

8 THE HEARING EXAMINER BRANCARD: I don't
9 know. Mr. Goetze, would that be helpful to see that?

10 THE HEARING EXAMINER GOETZE: Always
11 willing to look at more information. It would be
12 interesting to see it.

13 THE HEARING EXAMINER BRANCARD: All
14 right. Thank you. That's all the questions I have.
15 Mr. Rankin, did you have any follow-up?

16 MR. RANKIN: I do. I do, Mr. Examiner.
17 I appreciate the questions from the Division and if I
18 may just take a moment, I'm going to share my screen
19 and pull up a couple things from the exhibit packet.
20 Let me -- if you would, let me know when you are able
21 to see my screen.

22 REDIRECT EXAMINATION

23 BY MR. RANKIN:

24 Q Just for clarification, can you see my
25 screen, Mr. Alleman?

1 A Yes.

2 Q When preparing a C108 application, does the
3 C108 generally require a tabulated list of all the
4 wells within a 2-mile area of review or does it just
5 require that the applicant submit a map identifying
6 each of those wells within that area?

7 A The C108 only specifies a -- a map as
8 opposed to a tabulation.

9 Q Great. And that's item number five on the
10 C108 that I've got highlighted on your screen?

11 A Correct.

12 Q But in the interest of providing additional
13 information and facilitating the Division's review,
14 you have no problem putting that tabulation together
15 for the Division?

16 A That's correct.

17 Q Okay. Now, when you're doing your review of
18 the area -- your analysis of the area of review,
19 you've looked at the -- and in order to identify which
20 wells penetrate the injection interval, you've looked
21 at all the oil and gas producing wells within the half
22 mile area of review as part of your analysis; correct?

23 A Correct.

24 Q And as part of that, you've determined that
25 there are no wells and have been no wells producing

1 from the proposed injection interval; correct?

2 A Correct.

3 Q Okay. Now, you mentioned -- and I just want
4 to clarify for the record, and I'm going to flip to
5 page 14 of the C108. You mentioned that there were a
6 couple previously operational water supply wells that
7 penetrate the injection zone that have been plugged
8 back or plugged and abandoned and I just want to pull
9 that page up so we can identify which those are
10 because I think they're -- and Mr. Goetze identified a
11 request for additional information on one of them.
12 Which well -- which wells were previously water supply
13 wells?

14 A One second. Eunice Monument South Unit #461
15 and Eunice Monument South #462.

16 Q Okay. And they previously produced water
17 from the San Andres zone, which is the
18 injection -- the particular injection zone for the
19 proposed well; is that correct?

20 A Yes, that's correct.

21 Q And then which well was converted to a
22 production well?

23 A Eunice Monument South Unit 462.

24 Q Okay. And that's the one that Mr. Goetze
25 was asking about for confirmation that that work was

1 actually done; correct?

2 A That's correct.

3 Q But in terms of what was proposed, as far as
4 we know, they proposed to put a cast iron bridge plug
5 at 4,260 feet; correct?

6 A Correct.

7 Q And then to produce from the overlying
8 Grayburg; is that right?

9 A Correct.

10 Q Okay. And then the other well, the 461, was
11 that -- that was simply just plugged and abandoned; is
12 that correct?

13 A Yes, that's correct.

14 Q Okay. Just wanted to make sure we had the
15 record clear on the history of those two wells. In
16 general, Mr. Alleman, when applicants are seeking
17 to -- for authorization to inject on a C108
18 application for produced water disposal, is it a
19 standard requirement to do any sort of modeling or
20 volumetric fill analysis to determine the extent if
21 the previous water may gravel within the injection
22 zone? Is that something that's a standard
23 requirement?

24 A No, it is not.

25 Q And that's why it just wasn't part of this

1 application, because it's not something that's
2 required or standard -- a standard requirement for
3 produced water injection; right?

4 A Correct.

5 MR. RANKIN: Okay. Just wanted to make
6 sure I understood that. No further questions.

7 THE HEARING EXAMINER BRANCARD: Thank
8 you. Your next witness?

9 MR. RANKIN: Thank you, Mr. Examiner.
10 At this time, we'll call Mr. Steve Drake.

11 DIRECT EXAMINATION

12 BY MR. RANKIN:

13 Q Mr. Drake, are you able to -- yeah, I see
14 you there. Want to make sure that we can hear you.
15 Can you give a test so we know that you're there?

16 A Yes. Yes, I can hear you.

17 Q Great. Thank you. Welcome. Mr. Drake,
18 will you please state your full name for the record?

19 A Steve Allen Drake.

20 Q And by whom are you employed?

21 A Goodnight Midstream.

22 Q What is your position with the company?

23 A I am vice president of geology and reservoir
24 engineering.

25 Q Have you previously testified before the

1 Division and had your credentials as an expert in
2 petroleum geology accepted as a matter of record?

3 A Yes.

4 Q And have you prepared a self-affirmed
5 statement that was submitted along with attached
6 exhibits as Exhibit C in the exhibit packet that was
7 submitted with the Division?

8 A Yes.

9 Q And in that self-affirmed statement do you
10 identify your credentials as an expert in petroleum
11 geology as well as your expertise in petroleum
12 engineering?

13 A Yes, I do.

14 Q You've attached an updated copy of your your
15 CV or resume as Exhibit C1?

16 A That is correct.

17 Q And it summarizes your education and
18 relevant work experience?

19 A Yes.

20 MR. RANKIN: Mr. Examiner, at this
21 time, I would move the -- rather I would tender
22 Mr. Drake as an expert in petroleum geology and in
23 petroleum engineering.

24 THE HEARING EXAMINER BRANCARD: Are
25 there any objections?

1 MR. PADILLA: No objection.

2 THE HEARING EXAMINER BRANCARD: So
3 approved.

4 BY MR. RANKIN:

5 Q Mr. Drake, you have conducted an analysis of
6 the geology in the lands around the proposed
7 injection; is that correct?

8 A Yes, I have.

9 Q And your testimony today includes a
10 discussion of the geologic aspects of the C108 as well
11 as a more fulsome discussion around potential impacts
12 to Eunice Monument South Unit operations, potential
13 effects on waste and impairment to correlative rights;
14 is that correct?

15 A That is correct.

16 Q And in summary -- we'll dive into
17 the -- your testimony here, but in summary, it's your
18 opinion that this proposed injection, like the other
19 commercial well injection operations that are going on
20 within the unit, will not impair unit operations,
21 result in waste or impair any correlative rights; is
22 that correct?

23 A That is correct.

24 Q So -- and for the benefit of the Division,
25 Mr. Drake, I think we're going to do our best to try

1 to briefly summarize your testimony and we're going to
2 try to do it by section and then where we come across
3 an item or two I think that needs a correction pointed
4 out or a minor adjustment, we'll touch on that as we
5 go.

6 Looking at your page two of your Exhibit
7 B -- yeah, sorry -- page two of your Exhibit C, which
8 is your self-affirmed statement, you'll see there's a
9 heading there that says, "Goodnight Midstream Permian
10 LLC company overview." Would you just give a short
11 summary for the benefit of the examiners what
12 the -- about -- a little bit more about the company,
13 what it does, where it operates and its operations in
14 particular in New Mexico and the importance of this
15 proposed injection well to its overall operations and
16 the industry in general.

17 A Yes. Goodnight Midstream operates in three
18 states. We began in North Dakota. We have roughly 30
19 saltwater disposal wells in the state of North Dakota
20 and we're the largest commercial conveyor of produced
21 water. We have operations in Texas, roughly 25 wells
22 there, and we move about 250,000 barrels of water in
23 Texas.

24 We also now have nine saltwater disposal
25 wells in the state of New Mexico. They are all

1 associated with our Llano system. We have
2 approximately 80 miles of pipe and we're have a
3 long-term ultimate projected capacity of 400,000
4 barrels per day. We have six water recycling and nine
5 disposal wells. We have 12 dedicated operators and
6 312 producing wells connected at 19 receipt points.

7 And as an example of the type of volumes that we
8 are working with, for the month of March 2022, 2
9 million barrels of oil were produced by our dedicated
10 wells, 3.8 BCF of gas and 4.5 million barrels of
11 water. Of that, 1.9 million were turned back around
12 for reuse and 2.6 million came to the Llano system for
13 disposal.

14 Q Mr. Drake, attached to your testimony is
15 Exhibit C2. Is that a depiction of the Llano system
16 you referred to along with the receipt points and the
17 current permitted --

18 A That is correct. That is correct.

19 Q Okay. And then that also includes the
20 current permitted SWDs that Goodnight operates?

21 A That is correct.

22 Q It also identifies the location of the
23 proposed piazza well, which is a purple triangle;
24 right?

25 A Yes.

1 Q Just so everyone -- so we're following
2 along, on that map if you're looking at it,
3 immediately to the southwest are two wells, the Sosa 2
4 and the Rhino. Are those two wells also within the
5 Eunice Monument South Unit boundary area?

6 A Yes.

7 Q And those are currently injecting into the
8 same injection interval?

9 A Correct.

10 Q And -- okay. And just so we're -- I just
11 want to make sure everyone understood where those
12 wells were so that we had context. Now, would you
13 explain just briefly what the sort of overall idea is
14 behind -- or behind locating and targeting the San
15 Andres as the disposal reservoir that the company has
16 come up with? Just briefly explain why that is the
17 target.

18 A We observed that there were six water supply
19 wells drilled by Chevron USA in the mid-1980s to
20 extract water from the San Andres. Those wells were
21 capable of extracting -- extracting water at extremely
22 high rates with very little drawdown. They had
23 sustained rates over long periods of time, and "long"
24 as in five to ten years.

25 This created a model for us of extremely

1 high transmissibility that allows the wells to be
2 connected in the subsurface in the water supply
3 interval. Well, once the water was taken out, this is
4 an opportunity and a great place to put the water back
5 in. So that's our main concept and that is what we
6 are pursuing.

7 Q Now, looking at page three of your Exhibit
8 C, your self-affirmed statement, the next section of
9 your testimony adjusts -- sorry -- addresses the
10 geologic overview of the injection area and the
11 injection zone. Will you please briefly summarize
12 your testimony in this section, starting --

13 A Adam, your video's freezing.

14 Q I'm going to turn off my video. Mr. Drake,
15 turning to that next section, the geological review of
16 your piazza application, will you review for the
17 examiners that section of your testimony starting at
18 the bottom of page three and provide a general
19 overview of the geologic -- the stratigraphy in the
20 area as well as the target injection zone?

21 A Adam, you're -- you're freezing up on me.

22 Q Apologize.

23 MR. RANKIN: Mr. Examiner, may I ask --

24 THE WITNESS: Adam, can you hear me?

25 MR. RANKIN: I can hear you just fine.

1 Mr. Drake, maybe try turning --

2 THE WITNESS: Okay. For some reason,
3 your video's freezing up for me.

4 MR. RANKIN: Yeah. I've turned it off
5 now. Mr. Drake, will you try turning off your video
6 and see if that will help?

7 THE WITNESS: I'm going to -- I'm going
8 to do that. I did. Okay. I did.

9 MR. RANKIN: Okay. Mr. Examiner,
10 Mr. Padilla, any questions about turning off his
11 video? I just -- for making sure we can get
12 testimony, I'm turning it off.

13 MR. PADILLA: That's --

14 THE HEARING EXAMINER BRANCARD: All
15 right. I mean, I can hear both of you just fine, but
16 please proceed.

17 MR. RANKIN: Okay.

18 BY MR. RANKIN:

19 Q So, Mr. Drake, just to reiterate, I asked
20 you to resume your testimony from your pre-filed
21 statement on page three where you discuss the geologic
22 overview of the area and the injection zone in
23 particular.

24 A That is correct.

25 Q Okay. Will you -- can you provide a brief

1 overview of the stratigraphy, the formation tops and
2 the geology around the proposed injection zone?

3 A I -- yes, that is correct.

4 Q You may not be hearing me. I may be
5 breaking up, but I'm asking you to -- yeah, to provide
6 a summary now, just a short summary.

7 A Yes. On page four, the tops are shown. We
8 are using offset wells for correlations. We have
9 a -- a set top that runs from the Tansill at 2,660
10 down to total depth at 5,400. The Glorieta Formation
11 would be penetrated just above the top of the TD, but
12 we would not complete in the Glorieta. So our San
13 Andres interval will be 4,125 to 5,410.

14 Q And is Exhibit C3 a copy of the
15 cross-section that you prepared identifying the
16 stratigraphy in the area and the wells that you used
17 to create that cross-section?

18 A Yes. Yes, it is.

19 Q Referring to that exhibit, Mr. Drake, can
20 you just review for the examiners the geologic seals
21 that will, in your opinion, contain the injection
22 fluids within the proposed injection interval?

23 A Yes. The exhibit shows -- yes, the exhibit
24 shows four wells. The far left is our Sosa disposal
25 well, the second to the left is our Rhino disposal

1 well, the third well is one of the original Chevron
2 water supply wells and then the one on the right is a
3 well that was originally drilled deep enough to
4 produce from the Blindberry [ph], which is below the
5 San Andres and then later plugged back. So we do have
6 three deep logs. They are in reasonable proximity.
7 That gives us geologic control.

8 We see -- in the interval that is shaded
9 purple-gray is the San Andres interval. We see that
10 there are very low porosities, anywhere from 180 to
11 220 feet of boundary and seal at the top of the San
12 Andres. We feel like this is a more-than-adequate
13 amount and we feel that it is upheld across the field
14 by both geologic and engineering data.

15 Q Mr. Drake, you, in your written testimony,
16 provide a brief summary or a summary of the geologic
17 basis for your determination that it provides an
18 effective seal between the overlying Grayburg
19 producing zone and the underlying saline aquifer zone
20 within the San Andres. Will you please just briefly
21 summarize the geologic and engineering basis for that
22 determination?

23 A Adam, I lost you again.

24 Q Well, I thought that was a great question.
25 Mr. Drake, let me know. I'm going to try to say it

1 again, but basically please summarize, if you
2 would -- breaking up, huh?

3 MR. RANKIN: Well, Mr. Examiner, I
4 wonder -- it's up to you, I guess, of course, but
5 since we're having a little bit of a internet
6 slowdown, if maybe since it's noon, we take a quick
7 break and then resume after lunch.

8 THE HEARING EXAMINER BRANCARD: That
9 would be fine. I guess I would say in contrast to
10 your first witness, Mr. Rankin, this witness's written
11 testimony is much more detailed.

12 MR. RANKIN: Yeah.

13 THE HEARING EXAMINER BRANCARD: So I
14 don't know that you have to go through it with a great
15 amount of questioning because there's a lot of detail
16 for us to look at.

17 MR. RANKIN: There is.

18 THE HEARING EXAMINER BRANCARD:
19 So -- but yes, technical difficulties are a problem
20 here and, Mr. Drake, can you hear the rest of us?

21 THE WITNESS: I can hear you
22 occasionally as, for some reason, the video is
23 freezing up. I have -- I have checked my equipment.
24 It -- I'm not finding anything, but occasionally, I am
25 getting just a loss of signal.

1 MR. RANKIN: Well, maybe, Mr. Examiner,
2 we could take a short break and resume. Maybe
3 Mr. Drake can try to log off and log back on. That
4 maybe resolve the problem and then we can pick up.
5 But I wonder if we maybe try to do that over the lunch
6 hour and then come right back. And I will pick up my
7 review of Mr. Drake's summary because I do agree that
8 his testimony is fairly detailed and if the Division
9 is happy with a higher-level summary, we can speed up
10 that -- his testimony.

11 THE HEARING EXAMINER BRANCARD: Yeah.
12 I think that would be helpful. I do think it's a good
13 time for a lunch break. Why don't we get back here at
14 one and go from there? And, Mr. Drake, I hear you
15 loud and clear, so there's not a -- you're not having
16 a problem transmitting. So maybe -- yeah, maybe shut
17 it off and turn it back on. Who knows? All right.
18 So one o'clock Mountain Daylight time, be back.

19 (Off the record.)

20 THE HEARING EXAMINER BRANCARD: So
21 anyway, where were we? I believe this is the hearings
22 of the New Mexico Oil Conservation Division in the
23 afternoon of September 15, 2022, and we are on case
24 22626. We are in the direct case of Goodnight
25 Midstream and the witness is Mr. Drake. Mr. Rankin,

1 you want to try this again?

2 MR. RANKIN: Thank you, Mr. -- yes, I
3 will, and I will try to speed up with -- and with
4 permission, I may employ the use of some leading
5 questions only to facilitate the speed and the review,
6 but his testimony will stand obviously as his written
7 testimony. With that permission, I will proceed,
8 Mr. Examiner --

9 THE HEARING EXAMINER BRANCARD: Please.

10 MR. RANKIN: Yeah.

11 BY MR. RANKIN:

12 Q Mr. Drake, can you hear me okay?

13 A Yes, I can, and I apologize for earlier.

14 Q It's all your fault. I know. I think we
15 left off -- I'm just kidding because this happens all
16 the time. We left off reviewing your testimony, which
17 is Exhibit C in the exhibit packet that was filed with
18 the Division, and approximately page four of your
19 written testimony. We were discussing the geologic
20 overview of the area of injection and the stratigraphy
21 of the overlying zones and the injection interval in
22 particular.

23 Where we left off and started having
24 connectivity problems, I had asked you to briefly
25 provide an overview of the geologic seal and barrier

1 and evidence for the geologic seal and barrier between
2 the Grayburg and the San Andres. Rather than have you
3 take the time to provide a restatement of your written
4 testimony, I'll simply ask does your testimony provide
5 a basis for your opinion that there's a geologic seal
6 between the Grayburg and the San Andres zones?

7 A Yes, it does.

8 Q And is that determination based on the -- on
9 geologic evidence as well as engineering evidence that
10 you review in your testimony?

11 A Yes, it does. There is both.

12 Q And your testimony reviews the basis for
13 your determination that the San Andres will be a -- in
14 your opinion, an ideal injection zone due to the
15 significant depletions of water, saline water, that
16 were produced from that zone through the history of
17 the Eunice Monument South Unit.

18 A Yes, it does.

19 Q And your testimony, continuing on page six
20 and seven, identifies the specific geologic nature of
21 the -- the geologic barrier between the Grayburg and
22 San Andres as well as the geology comprising the
23 injection interval and the San Andres itself.

24 A Correct. Yes, it does. It describes the
25 barrier. It talks about what we see in terms of

1 pressures above and pressures below are different and
2 they have stayed different for 30 years. They've not
3 equilibrated.

4 Q And moving on to your testimony on page
5 seven, your next topic of testimony is a more
6 detailed, closer look at the geologic barriers that
7 you've identified isolating the San Andres injection
8 interval from those that -- the Grayburg that
9 overlies; is that correct?

10 A Yes.

11 Q And during the course of that testimony, you
12 refer to Exhibits C4, C5 in that portion of your
13 testimony?

14 A Yes. That is a cross-section that I
15 assembled that looks at wells in Section 21 and there
16 is a producing Yates Seven River Queen gas well that
17 is 300 feet from the Rice Engineering EME SWD L21. A
18 very large water -- volume of water has been injected
19 into the L21 and the Ramsey, which is the shallow gas
20 well, has not produced any water in the last 20 years.

21 Q And your C5 Exhibit is an overview of the
22 six water supply wells that were operational for the
23 unit and a reconstruction of the amounts -- the
24 volumes of water that were produced from those wells;
25 correct?

1 A Correct.

2 Q Moving to page nine of your testimony in
3 Exhibit C. The next section of your testimony is a
4 discussion of underground sources of drinking water
5 and freshwater and in that section of your testimony,
6 you have provided a written statement confirming that
7 you've done a geologic and engineering review and
8 confirm that, in your opinion, there'll be
9 no -- there's no connection or conduit between the
10 injection interval and any sources of freshwater or
11 drinking water.

12 A Yes, that has been provided. We did do that
13 review and shallow -- or the depth of freshwater is up
14 around 200 feet, and our casing program will
15 adequately isolate that.

16 Q Okay. And that statement's Exhibit C6;
17 correct?

18 A Yes.

19 Q And on page ten of your testimony,
20 you -- the next section is addressing your
21 determination that injection will not result in waste
22 or impair correlative rights or interfere with the
23 EMSU operations; is that right?

24 A That is correct.

25 Q And in this section of your testimony, you

1 review what you understand to be the basis for
2 Empire's objections based on their submission to the
3 Division and have evaluated the available evidence and
4 data, including what was produced to Empire -- I'm
5 sorry -- to Goodnight from Empire; is that correct?

6 A Yes.

7 Q And this section of your testimony
8 essentially provides a detailed analysis of the
9 publicly available data on the Division's website as
10 well as the information and data that Empire provided
11 to confirm that, in your opinion, there is no history
12 of oil production from the injection interval within
13 the San Andres?

14 A That is correct. We did -- Goodnight did an
15 extensive research. We did not find any wells
16 producing from the injection water supply interval,
17 the interval that we intend to use. We did look at
18 Empire's objections and we found that their references
19 to San Andres oil were all in the Grayburg.

20 Q And in your evaluation, you also looked at
21 whether or not the San Andres is capable of producing
22 oil?

23 A We have not found any evidence of the San
24 Andres' ability to produce oil.

25 Q And you're talking about within the area of

1 the injection well in -- that's the area of your
2 analysis; correct?

3 A Our analysis is for the interval that we
4 will dispose into, which is equivalent to the water
5 supply interval.

6 Q And so this section of your testimony,
7 basically from page ten all the way to the end,
8 identifies the documents that were produced to
9 Goodnight by Empire as well as the publicly available
10 information and confirms, in your opinion, that
11 there -- again, that there's no impairment of
12 correlative rights or that injection will not result
13 in waste and will not otherwise interfere with unit
14 operations.

15 A Yes. We feel confident that there's a
16 62-year history of water being injected into the San
17 Andres inside and outside the unit. It's continuous
18 operations over that entire period of time and we
19 don't see any indication of damage by any of those
20 wells.

21 Q Mr. Drake, I'm going to point out a couple
22 minor details that I think will assist everybody that
23 we need to just correct or clarify in your testimony.

24 A Okay.

25 Q Okay. I'm going to start on page 44 -- or

1 rather paragraph 44 of your testimony on page 16 of
2 Exhibit C.

3 A Okay.

4 Q If you look in the middle of that paragraph,
5 the sentence that begins, "It is operated by Empire as
6 a produced water injection well," you see that
7 sentence?

8 A Yes.

9 Q The next sentence says, "As reflected in
10 Exhibit," and then there's nothing written. It says,
11 "The EMSU #1 SWD"; you see that?

12 A Yes.

13 Q Should that -- should there be a "C-8"
14 inserted after that word "exhibit" in that sentence?

15 A That is correct.

16 Q Okay. And then on the next page on
17 paragraph 46, in the middle of that paragraph, do you
18 see where the sentence begins, "As reflected in
19 Goodnight Exhibit C5"?

20 A Yes.

21 Q Should that reference actually be to Exhibit
22 C8?

23 A You're correct. Yes.

24 Q And then on the next page, paragraph 51, do
25 you see that sentence -- the beginning of that

1 paragraph that says, "Empire also asserts in the
2 comments included with the well log in this exhibit
3 that the EMSU #462"; do you see that portion of the
4 sentence?

5 A Yes.

6 Q Is it correct that after the word "exhibit"
7 should be inserted "C-18"?

8 A Yes.

9 Q Okay. Thank you.

10 MR. RANKIN: Mr. Examiner, just for the
11 record, we identified these epigraphical issues
12 inadvertently left off or typos yesterday and so we
13 filed and served Mr. Padilla revised exhibits. Two
14 other things I guess I should say with the -- in
15 addition to these issues that we just identified in
16 Mr. Drake's testimony, we identified two minor issues
17 in two exhibits.

18 BY MR. RANKIN:

19 Q Mr. Drake, if you would turn to what's been
20 marked as Exhibit C8.

21 A Okay.

22 Q Do you see the entry that refers to the Rice
23 EME SWD 33M well?

24 A I do.

25 Q Which is below the heading that says, "San

1 Andres operated by others."

2 A Yes.

3 Q In the column that's titled, "Volume of
4 water injected," is that the correct projected volumes
5 based on your calculations for that well?

6 A It -- it is not. My spreadsheet had a
7 misappointed cell and the 46 million barrels is
8 actually incorrect. It was looking at the wrong cell
9 and that the estimated total injection should be 58.8.

10 Q Okay. And you prepared and we have
11 submitted and filed revised Exhibit C8 that reflects
12 that correction; is that right?

13 A Yes, we have.

14 Q Okay. And then another correction on
15 exhibits. Mr. Drake, if you would turn to
16 page -- Exhibit C18 in your exhibit packet. Now,
17 this -- let me know when you're there.

18 A Okay. I have it.

19 Q So this is a -- an exhibit that was produced
20 to Goodnight from Empire that you have modified by
21 adding some text -- a text box in the top right
22 corner; is that correct?

23 A Yes.

24 Q And these -- this text box includes
25 your -- some of your initial -- or not initial, but

1 some of your responses to the information and the
2 exhibit that you received from Empire; is that right?

3 A Yes.

4 Q Now, in the third paragraph down from the
5 top of that text box, do you see where it says -- it
6 begins -- the sentence begins, "On average, the
7 Grayburg"?

8 A Yes, and it says, "It is 400, "and there
9 should be a greater than sign or the words "greater
10 than 400" and it is missing from the sentence.

11 Q Okay. And did we -- did you prepare an
12 updated exhibit that we filed as revised Exhibit C18
13 yesterday?

14 A I believe we did.

15 Q And that includes that change that you
16 noticed was inadvertently excluded, but should have
17 been in the --

18 A That is correct.

19 Q Mr. Drake, did you either prepare or receive
20 or are the exhibits either from Division records or
21 obtained from Empire in production of -- in response
22 to production, did you either prepare or oversee the
23 preparation of Exhibits C1 through C20 in your
24 self-affirmed statement?

25 A Yes, I did.

1 MR. RANKIN: At this time,
2 Mr. Examiner, I would move the admission of Exhibits C
3 and attachments C1 through C20 for the record.

4 (Goodnight Midstream 22626 Exhibit C
5 was marked for identification.)

6 THE HEARING EXAMINER BRANCARD: Okay.
7 And this is your corrected versions?

8 MR. RANKIN: Thank you, Mr. Examiner.
9 Yes, I would move the corrected versions of C8 and C18
10 into the record, which were filed yesterday and served
11 to Mr. Padilla, and the original Exhibits C and C1
12 through C20 with the correction of C8 and C18.

13 THE HEARING EXAMINER BRANCARD: Okay.
14 I -- all right. I see C8 in our file. I'll assume
15 the other one is there, too. All right. Any
16 objections to these exhibits?

17 MR. PADILLA: Mr. Examiner, no, I don't
18 have an objection to these exhibits. I've just had a
19 hard time following all those corrections. So I
20 assume that I have them.

21 THE HEARING EXAMINER BRANCARD: You're
22 not the only one. So you -- Mr. Rankin, you also had
23 corrections to the testimony.

24 MR. RANKIN: Correct. There were three
25 minor corrections that, if it's convenient -- if it's

1 preferable, we can submit a revised statement that
2 corrects -- makes those corrections. They were just
3 references to exhibits, but we can make that
4 correction and submit a revised statement from
5 Mr. Drake.

6 THE HEARING EXAMINER BRANCARD: Well,
7 and also from Mr. Alleman. You also had corrections
8 to his testimony.

9 MR. RANKIN: There were two. Just
10 instead of referring to Exhibit C1 and C2, it should
11 be B1 and B2. So if that's preferable, we can make a
12 correction to his statement to reflect those corrected
13 references.

14 THE HEARING EXAMINER BRANCARD:
15 Mr. Goetze, do you have a preference?

16 THE HEARING EXAMINER GOETZE: No, I do
17 not.

18 THE HEARING EXAMINER BRANCARD: All
19 right. Well, please submit the corrected versions.

20 MR. RANKIN: Yeah. We'll do that.

21 THE HEARING EXAMINER BRANCARD: And
22 when you do, put a piece of paper on top that
23 indicates what you're filing.

24 MR. RANKIN: Okay.

25 THE HEARING EXAMINER BRANCARD: That's

1 helpful.

2 MR. RANKIN: Okay --

3 THE HEARING EXAMINER BRANCARD:

4 Otherwise, there's just paper in the file and we're
5 having to figure out where this paper came from.

6 MR. RANKIN: Okay. We'll make a cover
7 pleading -- clarify. So with that, Mr. Examiner, we
8 move the admission of those exhibits. I believe
9 they've been accepted. We'll file cover pleading that
10 identifies and corrects the testimony for each of the
11 witnesses. And I think with that, I am -- I have no
12 further direct questions for Mr. Drake and we'll pass
13 him for questioning by the Division and Mr. Padilla.

14 THE HEARING EXAMINER BRANCARD: Thank
15 you. I'll start with Mr. Padilla.

16 CROSS-EXAMINATION

17 BY MR. PADILLA:

18 Q Good afternoon, Mr. Drake. Let me direct
19 your attention to Exhibits C and 4.

20 THE HEARING EXAMINER BRANCARD:

21 Mr. Padilla, I'm having a little hard time hearing
22 you. Would you mind maybe speaking --

23 MR. PADILLA: Sure. Sure. Sorry. I
24 was looking down.

25 //

1 BY MR. PADILLA:

2 Q Mr. Drake, let me direct your attention to
3 Exhibits C3 and C4.

4 A Okay. C3 first?

5 Q C3 first. You testified that there were
6 barriers that prevented migration of waters, as I
7 understood it, from the San Andres to the Grayburg and
8 Penrose; is that your testimony?

9 A Yes.

10 Q Are you saying that the San Andres -- the
11 barrier between the San Andres and the Grayburg is
12 absolutely impermeable?

13 A Yes.

14 Q And did you -- is that an opinion or is
15 that -- did you do any core analysis for that?

16 A We did not have access to any core. We're
17 using calculated porosities from logs, we're using
18 elevated gamma ray when present and we're using the
19 fact that the pressures are different and we feel that
20 the pressures are the strongest data set we have.

21 Q Now, where did you take those pressures?

22 A While drilling, we were able to hold a
23 complete column of mud as we passed through the
24 Grayburg and into the top of the San Andres. Our
25 drilling mud was in at 10.4 and out at 10.4. When we

1 passed out of the San Andres barrier, highlighted as
2 purple, the top purple band on Exhibit 5 -- or 3 -- on
3 Exhibit 3, we lost complete circulation as we passed
4 out of the barrier. At that point, we could not hold
5 a 8.3-pound water fluid. So we're basically drilling
6 with brine and still could not hold fluid. The fact
7 that that changed so abruptly once we came out of the
8 barrier tells us it is a barrier.

9 Q So do you know why you lost circulation?

10 A Yes.

11 Q Can you explain?

12 A The San Andres was depleted by the water
13 supply wells.

14 Q Doesn't that indicate a potential for
15 migration of wall through that area where you lost
16 circulation?

17 A No.

18 Q When did you drill here?

19 A When did we drill the well?

20 Q Yes.

21 A The well was drilled -- I believe it's 2018.

22 Q And you're now applying for saltwater
23 disposal?

24 A I don't understand the question.

25 Q Well, what well -- let me ask this first:

1 What well did you drill in 2018?

2 A We drilled the Snyder Rhino.

3 Q Where?

4 A In Section 17.

5 Q Is that inside the unit area?

6 A Yes.

7 Q What formation did you drill to the -- that
8 well?

9 A The total depth?

10 Q No, to what formation? Yeah. Well, yes.
11 Where did you complete that well?

12 A It is currently completed in the San Andres.

13 Q And are you disposing of produced water in
14 that well?

15 A Yes.

16 Q And what -- do you have an agreement with
17 XTO about drilling that well?

18 A No.

19 Q What right did you have to complete that
20 well in the San Andres?

21 MR. RANKIN: Mr. Examiner, I object to
22 that question. It's really outside the scope of the
23 Division's authority, which is getting into land and
24 title issues.

25 MR. PADILLA: Well, it's within the

1 unit boundaries, as he testified, so I think it's a
2 fair question.

3 THE HEARING EXAMINER BRANCARD: Well,
4 I'm not sure a geologist knows about legal rights,
5 but --

6 MR. PADILLA: If he knows.

7 THE HEARING EXAMINER BRANCARD: If he
8 knows.

9 THE WITNESS: Can you restate the
10 question so that I can attempt an answer?

11 BY MR. PADILLA:

12 Q Believe my question was what rights did you
13 have to drill that well to the San Andres Formation
14 completed as a saltwater disposal well?

15 A We have a surface use agreement.

16 Q From whom?

17 A Millard Deck Estate.

18 Q And I suppose you're contending that the San
19 Andres in this area is poor space; is that correct?

20 A Yes. Yes. There's poor space, yes.

21 Q Has anybody determined that this is poor
22 space or is it just your conclusion?

23 A I do not understand the -- I don't
24 understand what you're asking.

25 Q I'm asking for -- you're basing your right

1 to have drilled this particular well based on a
2 surface use agreement and you're contending that you
3 don't need permission from the unit operator; is that
4 fair?

5 A That is correct.

6 MR. RANKIN: Mr. Examiner, I guess I'll
7 just kind of interject here and object to the line of
8 questioning if it's going to continue this way because
9 I think the Division has already ruled that that issue
10 is not before the Division currently. The question is
11 whether or not the injection will interfere with unit
12 operations, cause waste or otherwise impair
13 correlative rights. It's not about whether they have
14 the right as a unit operator to exclude any other oil
15 and gas operations.

16 THE HEARING EXAMINER BRANCARD: Yeah.
17 I think we're getting a little outside the scope of
18 this hearing and also a little outside probably this
19 witness's expertise frankly.

20 BY MR. PADILLA:

21 Q Mr. Drake, have you examined order R7765?

22 A I -- I couldn't hear.

23 Q Did you examine the order forming the unit
24 area?

25 A Yes.

1 Q And tell me what are the vertical limits of
2 the unitized interval?

3 A Hydrocarbon is unitized from the top of the
4 Grayburg to the bottom of the San Andres.

5 Q Do you know whether Goodnight has any
6 ownership interest in the unitized interval?

7 A I do not have any specific information.

8 Q Having a hard time reading the legend at the
9 top of Exhibit C3, but is that the water supply well
10 that was mentioned this morning by Mr. Goetze and is
11 within the half mile circle?

12 A It is a different water supply well. This
13 is the 461. The other well was the 462.

14 Q How about the fourth well shown on that
15 cross-section?

16 A That's the EMSU 278 and it is in Lot A of
17 Section 9.

18 Q Is that within the 5-mile circle?

19 A The how --

20 Q The half mile circle.

21 A It is not.

22 Q Are any of these wells in the -- located in
23 the half mile circle?

24 A The 461 would be.

25 Q And which is that? The first well?

1 A That is the third log, counting from the
2 left.

3 Q Let me refer you to your Exhibit C6 and have
4 you explain to me what kind of hydrologic
5 investigation you've made.

6 A Our investigation included identifying what
7 the freshwater zones were, where they were located and
8 if we could identify any faults that we felt could be
9 conduits to fluid motion, movement, and we did not
10 find any.

11 Q And that investigation was limited to
12 freshwater analysis?

13 A No. No. Freshwater is a key part and that
14 is up above the salt, very shallow in the wells, but
15 fluid migration between zones, and in particular
16 between the saltwater aquifer San Andres and the
17 hydrocarbon oil Grayburg, was also investigated and we
18 did not identify any faults.

19 Q So this is just a report that you made, as I
20 understand it; correct?

21 A Yes.

22 Q Okay. Now, looking at Exhibit 7, what's the
23 purpose of that?

24 A This is a document that was filed with the
25 original case, 8397. It's shown as Exhibit 5. It was

1 filed in 1984. And there is a paragraph on page three
2 where it identifies that the producing formation is
3 Grayburg and lower Penrose and that the San Andres is
4 non-productive and for the supply of water to the
5 flood.

6 Q So does this imply that you can inject into
7 the San Andres without any restrictions or without
8 permission from the unit operator?

9 MR. RANKIN: Yes, Mr. Examiner, I'll
10 object as kind of the same line of questioning that I
11 think that we've been objected to previously that
12 doesn't really touch on the topics at hand today.

13 MR. PADILLA: This -- Mr. Examiner,
14 this is an exhibit and I'm asking questions based on
15 the exhibit. He highlighted, on page three,
16 indicating non-productive San Andres Formation and
17 he's testifying that this was, as I understand it,
18 created in 1984.

19 THE HEARING EXAMINER BRANCARD: But
20 you're asking whether that gives them the right to
21 drill?

22 MR. PADILLA: Yes.

23 THE HEARING EXAMINER BRANCARD: Well,
24 the witness can try to answer it. I don't see how he
25 can, but ...

1 THE WITNESS: I don't know that there's
2 any rights associated with that document. That wasn't
3 the purpose of or intent of the documentary. It was
4 to show that even at the time of the formation of the
5 unit, no one was claiming the San Andres produces oil.
6 BY MR. PADILLA:

7 Q Somewhere in here in the exhibits, you
8 indicate -- I think your report says that ROZ, or
9 residual oil zone, is not present in -- within the
10 unit; is that what you're saying or concluding?

11 A No.

12 Q So what was determined in 1984 doesn't
13 necessarily translate to 2022 in terms of oil
14 possibilities; isn't that right?

15 A That is right.

16 Q Have you done an analysis of a unit for ROZ
17 within the boundaries of the unit?

18 A I didn't hear the last part.

19 Q Have you done an analysis of ROZ potential
20 within the boundaries of the unit?

21 A We have done an evaluation of the ROZ
22 potential of the San Andres.

23 Q And what have -- I conclude from your
24 testimony is that you disagree that there's any ROZ
25 potential there.

1 A We feel it's been disproven by the large
2 volume of water extracted by the six water supply
3 wells where over 300 million barrels was taken out
4 with no oil production. That volume is adequate to
5 see ROZ oil if it was present.

6 Q And that's just an analysis; is that right?
7 Wouldn't ROZ potential be more apparent in tertiary
8 recovery?

9 A Or extremely large volumes.

10 Q But that potential may be there; isn't that
11 right?

12 A No. It was 20 years of production with no
13 oil.

14 Q In paragraph seven of your testimony, the
15 last full sentence there states, "By targeting these
16 depleted reservoirs, we avoid adding to the risk of
17 induced seismicity through deep injection into the
18 Devonian and instead target zones such as the San
19 Andres where there has been substantial depletion
20 through the decades of water production to supply
21 water for water floods." How many Devonian wells do
22 you operate -- does Goodnight operate?

23 A Right now, we do not operate any
24 Devonian -- well, no, that's not true. We have -- we
25 have two Devonian in Texas.

1 Q None in New Mexico?

2 A We do not.

3 Q So you're saying there you target San Andres
4 formations that are depleted. Have those formations,
5 San Andres targets, have they been treated with carbon
6 dioxide, CO2?

7 A We did not complete any wells with CO2.

8 Q Well, you're saying you target depleted San
9 Andres Formations.

10 A In this -- in the Llano setting, we see the
11 hundred millions of barrels that have been extracted,
12 depleting the San Andres as an opportunity to put
13 water back in the ground at very low pressures.

14 Q Do you know if Goodnight made any attempt to
15 amend order R7765 to exclude the San Andres Formation?

16 A I -- no, we did not. We have not done that.

17 Q Paragraph eight, I think you're saying that
18 you need this disposal well in order for others to
19 benefit from saltwater disposal; is that the way
20 you -- am I correct in the way I'm reading that?

21 A We have an active system. We have an active
22 customer base. They are adding wells all the time.
23 We are growing our opportunity here and I try to keep
24 our wells and permits out in front of our need because
25 I'd rather have a smaller amount of -- of water going

1 to a larger number of wells, which is why our wells
2 are not at capacity. So we are trying to distribute
3 that load over a larger area.

4 Q And that benefits the operators of wells who
5 don't have an interest in the unitized formation;
6 doesn't it?

7 A The interval we're injecting into is not
8 part of the leased premises.

9 Q The San Andres is not part of the leased
10 premises; is that what you're saying?

11 A The water interval is not part of the leased
12 premises.

13 Q Well, I'm not going to argue with you about
14 that as you could just -- Mr. Rankin is going to
15 object on ownership, so I'll not get into that.

16 Now, at paragraph 35 of your report, you
17 state that, "Once a bubble point pressure is
18 released -- is reached, then a reservoir is no longer
19 a candidate for ROZ play because the reservoir energy
20 needed to drive a residual oil zone play has been lost
21 to depletion." Would a CO2 project or tertiary cover
22 change that conclusion?

23 A No, it would not if no oil is present.

24 Q Well, with new techniques, it could be
25 present; correct? I mean, just because it hasn't been

1 produced for oil in the past doesn't mean that based
2 on new technology that it can't happen; right?

3 A No. No. This is more of a physics
4 situation. The water's been taken out,
5 millions -- hundreds of millions over a long period of
6 time, and no oil was present.

7 Q You will agree that there is a ROZ play in
8 southeast New Mexico and Texas; correct?

9 A Yes.

10 MR. PADILLA: Mr. Drake, I think I
11 don't have any further questions for you. Thank you.

12 THE HEARING EXAMINER BRANCARD: Thank
13 you. Mr. Goetze?

14 THE HEARING EXAMINER GOETZE: Good
15 afternoon, Mr. Drake.

16 THE WITNESS: Good afternoon.

17 THE HEARING EXAMINER GOETZE: So first
18 question. Considering how you've clustered these
19 wells together, which you're going to propose to add
20 this one, what kind of modeling have you done to
21 assess the cumulative effect in the sense
22 that -- historically, we just looked at these one by
23 one and this is proving to be a fatal flaw in our
24 review process. Are we still seeing a radial flow of
25 injection or are we seeing some sort of flow

1 direction? What kind of conditions are we seeing in
2 the reservoir as demonstrated by the drilling of the
3 Rhino?

4 THE WITNESS: We have no indications
5 that anything has changed at this time, that the
6 amount of water that has gone in has been accepted by
7 the reservoir without changing any flow
8 characteristics. This is a -- as I -- as I said
9 earlier, the transmissivity across the area is quite
10 good. We do not have a standing column of fluid yet
11 in our wellbores, so we have negative pressure at the
12 surface. When we shut in, we do not have a full
13 column in our tubing.

14 We do look at our injection profiles.
15 Most of our wells are -- well, all of our wells are
16 currently operating between negative 5 PSI and 150
17 PSI. So at this point, we don't have the -- any
18 information that says radial flow has changed in any
19 way. We are very fortunate that our instantaneous
20 shutdowns are on vacuum within seconds and so we
21 really don't have a falloff test to evaluate.

22 THE HEARING EXAMINER GOETZE: Do you
23 think that the injection is reaching beyond the
24 1/2-mile radius that we use for determining
25 correlative rights and notification?

1 THE WITNESS: We've not injected enough
2 volume to be that far out. We have massive thickness
3 and long intervals of porosity. So the near wellbore
4 porosity can mathematically account for all of our
5 injection.

6 THE HEARING EXAMINER GOETZE: So in
7 your application, you're talking 25,000 barrels a day
8 average and 40,000 barrels max and you do this with
9 all of your wells in this group. Is this something
10 you see as eventually the operation of these wells?

11 THE WITNESS: I do not. We have brief
12 peak load requirements from our customers. They do
13 flowbacks. They have a large number of wells that
14 will come online all at once and it does create peak
15 load problems for us. I believe there is an exhibit
16 in there that shows, for our disposal wells, what
17 their total volume that's gone in the ground and then
18 also what their average is and their long-term average
19 or lifetime average is significantly less than what
20 we've applied for.

21 Yet there are moments in time, usually
22 not more than three days, when a flowback begins that
23 we can hit those rates. We'll get to 31,000 or 36,000
24 a day for 24 hours or 72 hours and then the rates will
25 fall off rather quickly as the flowbacks come to an

1 end.

2 THE HEARING EXAMINER GOETZE: Okay.

3 Very good. And technically, that's all the questions
4 I have with regards to the permit and the information
5 you provided. Thank you.

6 THE HEARING EXAMINER BRANCARD: Thank
7 you. Well, now you leave it to me, Mr. Goetze, the
8 lawyer, to ask the dumb questions. So from your
9 experience and given the -- what you know about this
10 formation, do you expect the flow from this well to be
11 lateral as opposed to -- or vertical?

12 THE WITNESS: I think we're -- we're
13 filling a cylinder to start with. We have a -- a very
14 long vertical interval.

15 THE HEARING EXAMINER BRANCARD: Okay.

16 THE WITNESS: And the porosity is
17 continuous over blocks of, you know, 100 feet or more
18 in the well and there's, you know, an upper, middle
19 and lower porosity interval. I believe that we will
20 fill that in a cylinder walking out away from the well
21 over time.

22 THE HEARING EXAMINER BRANCARD: Any
23 idea, say, 20 years from now how wide that radius will
24 be?

25 THE WITNESS: I do not. You know,

1 the -- the work that we've done is based on looking at
2 and modeling the water coming out because that's a
3 long-term flow and a lot of data. And what we saw was
4 that the wells were capable of their same initial
5 rates, you know, eight years later. They were 27,000
6 barrels a day on day one and they were 27,000 barrels
7 a day on day -- you know, end of their life.

8 So in order for you to pull that much
9 water out and have the transmissivity of the formation
10 be able to refill it so that you can then pull that
11 much water the next day, that is an amazing amount of
12 interconnected pour volume. So as a result, I think
13 the reservoir has a really elastic capability where it
14 can disperse energy and then I don't think that we
15 will over-pressure things for a really long time.

16 THE HEARING EXAMINER BRANCARD: Well,
17 I'm also trying to get a sense of -- I think as
18 Mr. Goetze tried to ask the question whether you're
19 going to go beyond the area of review at any point in
20 time with that volume of injection.

21 THE WITNESS: Well, I would have to
22 make a calculation of what that volume is and when we
23 would reach it.

24 THE HEARING EXAMINER BRANCARD: Okay.
25 What's the distance from the piazza well to the Rhino

1 well?

2 THE WITNESS: Rhino is in the northeast
3 quarter of 17 and piazza is in the -- near the center
4 of the south half of 9, so that's over a mile.

5 THE HEARING EXAMINER BRANCARD: Okay.
6 Because those sections are catty-cornered.

7 THE WITNESS: They're catty-cornered.

8 THE HEARING EXAMINER BRANCARD: All
9 right. So I guess we've -- we're -- for me, this is a
10 whole new experience to learn about ROZ, R-O-Z. You
11 seem to have two theories about -- if I read your
12 testimony -- why ROZ oil is not present, at least in
13 any significant amounts here, and let me try to run
14 them by you.

15 One seems to be that because there's
16 been a huge amount of water withdrawn from the San
17 Andres around this unit with really no significant oil
18 contained with that water, that that's an indication
19 that there's no significant amounts of oil in the San
20 Andres.

21 THE WITNESS: That is correct.

22 THE HEARING EXAMINER BRANCARD: Okay.
23 And the second theory seems to be that all these ideas
24 that we have lots of papers about about how ROZ is
25 created or whatever have certain sort of original

1 conditions in play that no longer exist in this area
2 because of all the water that has been withdrawn and
3 all the water that has been injected into this area.

4 THE WITNESS: That is an important part
5 of it, yes.

6 THE HEARING EXAMINER BRANCARD: So
7 those are your two theories as to why ROZ -- R-O-Z,
8 sorry -- is not really -- is "doubtful", I believe is
9 the word you used.

10 THE WITNESS: Correct.

11 THE HEARING EXAMINER BRANCARD: Okay.
12 So is the assumption then that this oil, which seems
13 to have been pushed by water according to the theories
14 I'm seeing in these reports, that that oil is somehow
15 still part of the water. So therefore, when you
16 produce water, you're going to get the oil; you're
17 assuming that?

18 THE WITNESS: I'm sorry. I didn't
19 follow the -- where -- where we're going --

20 THE HEARING EXAMINER BRANCARD: Well,
21 you produced -- you're saying we've produced all this
22 water from this formation with little or no oil.

23 THE WITNESS: Yes.

24 THE HEARING EXAMINER BRANCARD: So are
25 you assuming then that this oil is somehow

1 interconnected with that water when it does exist?

2 THE WITNESS: In -- in an ROZ where oil
3 is being recovered?

4 THE HEARING EXAMINER BRANCARD: Yes.

5 THE WITNESS: That you have
6 multi-phases present in the reservoir and the relative
7 permeability is such that in the first part of
8 production, relative perm prefers water movement, but
9 as you de-water, some of the oil will become mobile.
10 In our setting, we've already de-watered and no oil
11 became mobile.

12 THE HEARING EXAMINER BRANCARD: Okay.
13 So then -- I think Mr. Padilla was sort of trying to
14 get at this. Then why would you do a tertiary
15 recovery, CO2 injection, to get the residual oil out
16 if the oil is already part of the water?

17 THE WITNESS: You're talking about an
18 oil field -- tertiary recovery in an existing oil
19 field?

20 THE HEARING EXAMINER BRANCARD: In an
21 ROZ. Isn't that the basic way of recovering ROZ is to
22 use CO2 injection?

23 THE WITNESS: The difference -- the
24 difference between what you're saying and what I'm
25 saying is you're assuming you're in an oil field to

1 start with. We've proven this isn't one.

2 THE HEARING EXAMINER BRANCARD: Well,
3 I'm trying to figure out if this is one. So I'm
4 trying to figure out what the conditions are if this
5 was one.

6 THE WITNESS: So you're asking me if I
7 can conclude that we've gone far --

8 THE HEARING EXAMINER BRANCARD: If you
9 are in an ROZ, which you -- I mean, it seems like
10 you're -- you would use CO2; is that -- that's what
11 I'm hearing, that these articles are saying you'd use
12 CO2 injection to get the ROZ out, the residual oil.

13 THE WITNESS: If it was present. Yes,
14 you can do that if the oil is present.

15 THE HEARING EXAMINER BRANCARD: Yes.
16 Yes. Right. Okay. So I'm wondering why you would do
17 that if you're claiming that the oil should have been
18 part of the water when the water was taken out.

19 THE WITNESS: Because you should get
20 some of it. We've reached -- this reservoir, this one
21 right here, reached bubble point. So that's a point
22 where gas starts becoming mobile inside of a liquid
23 solution, like popping the can off of a soda.

24 THE HEARING EXAMINER BRANCARD: Okay.

25 THE WITNESS: This reservoir reached

1 that point. It got there. It got to a low enough
2 pressure that if oil was present, it would have moved
3 even without CO2. CO2 just gets your recovery up.

4 THE HEARING EXAMINER BRANCARD: Okay.
5 Thank you. You've answered my question. Thank you.

6 THE WITNESS: My apologies if I was
7 slow --

8 THE HEARING EXAMINER BRANCARD: No, I'm
9 the slow one. I'm the lawyer. All right. I think
10 that's the questions I have. Did you -- do we have
11 any more further, Mr. Rankin, follow-up?

12 MR. RANKIN: I just had one question
13 because I think I want to make sure the record's
14 clear.

15 REDIRECT EXAMINATION

16 BY MR. RANKIN:

17 Q Mr. Drake, I think -- do you recall when
18 Mr. Padilla was asking you -- I'm going to pull up the
19 paragraph. Because I think you guys may have been
20 talking past each other a little bit. I think it's
21 paragraph 35; okay? Let me know when you get to 35 in
22 your --

23 A I have it.

24 Q Okay. Mr. Padilla was asking you about the
25 fact that you're using the word "depletion" here and I

1 think he was talking about a mineral depletion or
2 hydrocarbon depletion I believe. I'm not going to put
3 words in his mouth, but I think in this paragraph,
4 you're talking about just volume or liquid depletion,
5 pressure depletion, from that zone; is that right?

6 A Yes, that is right. Fluid was
7 pulled -- fluid was pulled out and therefore, the
8 reservoir is depleted. That's how I mean it.

9 Q Yeah. Because in a separate response, your
10 position is you believe that there is no minerals,
11 hydrocarbon minerals, in this zone. So when you talk
12 about depletion, you're talking about the depletion
13 you just described, not mineral depletion.

14 A Yes.

15 MR. RANKIN: Okay. I have no other
16 questions for Mr. Drake.

17 THE HEARING EXAMINER BRANCARD: Thank
18 you. Anything else for Goodnight, Mr. Rankin?

19 MR. RANKIN: Mr. Examiner, just one
20 item that I meant to mention to you and to
21 Mr. Padilla. We have a -- an exhibit, a self-affirmed
22 statement from me, reflecting that we provided notice
23 to Empire by certified mail. Our legal assistant was
24 out of the office until this week and so I could not
25 find the proof of the mailing and so we were not able

1 to provide that.

2 I'm -- it's been submitted and I'm
3 happy to put a cover pleading on it, but I just -- and
4 obviously it wasn't an issue nevertheless, but I'm
5 happy to make that part of the record properly by
6 submitting a cover pleading to reflect that we have
7 provided notice to Empire of this hearing today and
8 that they actually received it and can make that part
9 of the record.

10 (Goodnight Midstream 22626 Exhibit D
11 was marked for identification.)

12 THE HEARING EXAMINER BRANCARD: So
13 you're saying you have a late filed exhibit?

14 MR. RANKIN: Of all the things,
15 Mr. Examiner. Of all the things. I stand for --

16 THE HEARING EXAMINER BRANCARD: Stand
17 for a noodle whipping.

18 MR. RANKIN: Yeah.

19 THE HEARING EXAMINER BRANCARD: All
20 right.

21 MR. PADILLA: I'm glad you caught that,
22 Mr. Examiner.

23 THE HEARING EXAMINER BRANCARD: Any
24 objections? Hearing none, your self-affirmed
25 statement -- yes, but if you could just refile that

1 with a cover so we know what these things are.

2 (Goodnight Midstream 22626 Exhibit D
3 was received into evidence.)

4 MR. RANKIN: It's Exhibit D and we will
5 put it with a pleading cover.

6 THE HEARING EXAMINER BRANCARD: Because
7 right now, our case file is just full of pieces of
8 paper. All right. I think we are on the case for
9 Empire. Mr. Padilla, you had sort of an opening
10 statement a while ago. I don't know if you want to
11 expand upon it.

12 MR. PADILLA: Mr. Examiner, I think the
13 issues in this case are clear. I don't -- in the
14 interest of time, I'll defer opening statement.

15 THE HEARING EXAMINER BRANCARD: Okay.
16 And your witness?

17 MR. PADILLA: At this time, we'll call
18 Eugene Sweeney. Mr. Sweeney, are you there?

19 MR. SWEENEY: I am.

20 MR. PADILLA: Okay. Please state your
21 name.

22 MR. SWEENEY: Eugene Sweeney.

23 THE HEARING EXAMINER BRANCARD: Okay.
24 Let's swear Mr. Sweeney in. Mr. Sweeney, I can't see
25 you, but I'll assume that your right hand is raised.

1 WHEREUPON,

2 EUGENE SWEENEY,

3 called as a witness, and having been first duly sworn
4 to tell the truth, the whole truth, and nothing but
5 the truth, was examined and testified as follows:

6 THE HEARING EXAMINER BRANCARD: Thank
7 you.

8 DIRECT EXAMINATION

9 BY MR. PADILLA:

10 Q Mr. Sweeney, you've detailed, in your direct
11 testimony, your experience and education. Can you
12 briefly state those for the hearing examiner --

13 A I'm -- I'm sorry, Mr. Padilla. You -- you
14 were fading out a little bit there. I didn't hear.
15 Can I do what, please?

16 Q Let me try a little higher.

17 A That's -- that's good.

18 Q Can -- my question was even though you have
19 filed your credentials as a petroleum engineer in your
20 testimony, can you please tell the examiner and
21 Mr. Goetze your educational background and your work
22 experience in the oil and gas business?

23 A Certainly. Thank you. I graduated from MIT
24 with a mechanical engineering degree in 1989. I
25 subsequently have two master's, one in petroleum

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1 engineering from Texas A&M. I am currently the COO of
2 Empire. Previous to that, I was a VP of well
3 interventions at CUD and prior to that, I had a global
4 operational role at BP and then prior to that, I had
5 various engineering jobs and -- in -- in the oil and
6 gas and chemical industries.

7 MR. PADILLA: We tender Mr. Sweeney as
8 an expert witness in petroleum engineering.

9 THE HEARING EXAMINER BRANCARD: Any
10 objections?

11 MR. RANKIN: No objections.

12 THE HEARING EXAMINER BRANCARD: So
13 admitted. Thank you.

14 BY MR. PADILLA:

15 Q Mr. Sweeney, you prepared a self-affirmed
16 statement; is that your true and correct testimony
17 that you're going to provide under oath today?

18 A It is.

19 Q Mr. Sweeney, tell us about the objection
20 that Empire has in this case. I don't want you to go
21 into detail. Just tell us generally what the nature
22 of the objection is.

23 A Sure. So Empire -- you know, Empire is the
24 operator of the Grayburg San Andres Formation in the
25 EMSU and the -- the request to inject this massive

1 amount of oil into the middle of that formation from
2 which we are producing hydrocarbons and which we
3 intend to produce hydrocarbons across the entire
4 interval will be affected by that.

5 Now, this is not a theoretical exercise for
6 us and it's not a joke for us. This is a play that
7 we've spent a lot of money on and a lot of time
8 developing and -- and appraising and we're -- we're
9 currently -- as far as the ROZ and tertiary
10 capability, it's something that's on the table for us,
11 it's something that was delivered to us within the
12 marketing materials and that we reviewed and that we
13 also have presented to investors.

14 We've got a lot of smart investors
15 who -- who agree with us that there is a lot of
16 potential here. We've bet our money on this as
17 a -- as a play. This is not something that we're
18 just -- that's a theoretical exercise for us; okay?

19 I have personally seen, within the interval
20 as we have produced it, how -- how well -- how much
21 there is crossflow and how much communication and
22 channeling is across our unitized interval here. So I
23 do not accept any arguments that -- that we
24 can -- that anything is compartmentalized directly in
25 that field. And part of the exhibit that's -- all of

1 the exhibits that I showed were in support of what I'm
2 telling you right now.

3 Q Now, do you have any specific -- well, first
4 of all, let me correct something you said. You talked
5 about injection of oil. You mean injection of
6 produced water; correct?

7 A Injection of produced water. I'm sorry.

8 Q I interrupted you just to make that
9 clarification, but when did you buy -- when did you
10 purchase this water flood operation?

11 A Last year. The beginning of last year.

12 Q And I take it -- what have you done in the
13 last year in terms of the water flood itself?

14 A So -- so we began with -- we, you
15 know -- with just --

16 MR. RANKIN: Mr. Examiner? I'm sorry.

17 THE WITNESS: Yes.

18 MR. RANKIN: I have to interject to
19 object. I -- it's fine to have summarized
20 Mr. Sweeney's testimony, but I'm not sure that this
21 question is going to elicit testimony that was already
22 provided in his direct testimony, and I object if it
23 goes beyond that.

24 MR. PADILLA: Well, I could ask a whole
25 bunch of leading questions and ask him that way. I

1 think I allowed you to do that without interruption.

2 THE HEARING EXAMINER BRANCARD:

3 Mr. Padilla, is this part of Mr. Sweeney's testimony?

4 MR. PADILLA: It is. I just want him
5 to elaborate on it some more.

6 THE HEARING EXAMINER BRANCARD: All
7 right. You can go ahead a little bit here. I can see
8 that Mr. Sweeney was not able to give us an incredibly
9 detailed written testimony and, Mr. Rankin, you can
10 answer questions if you'd like -- ask questions about
11 it.

12 BY MR. PADILLA:

13 Q So, Mr. Sweeney, Empire purchased this
14 property in 2021 and what have you done during that
15 time in terms of understanding the water flood itself?
16 And then you can elaborate later on on what you have
17 done in terms of the San Andres potential.

18 A Yeah. Well, so when we -- when we took over
19 the water flood, we began with mechanical risks, you
20 know, surface facilities of course, but we -- we
21 RTPed, or returned to production, a lot of the
22 mechanical problems that were in the well, but then we
23 started tackling the water flood conformance issues
24 that are prevalent throughout the whole EMSU field
25 and -- and the -- the AGU and -- and the MCB fields.

1 And what we found was that there is a lot
2 of -- I -- I can inject into one well and I don't see
3 a pressure response into two of the offsets, but into
4 another one, I'll see everything coming and -- or
5 a -- a well that's even bypassed that's going further
6 down. So that's one of the things we've been studying
7 and we've been -- we've been addressing and working
8 on. So it just speaks to how complex the geometry and
9 the channeling is in -- throughout this field.

10 And, you know, we -- we did a literature
11 review and one of the -- one of the papers that
12 I -- had -- had provided as an exhibit that we had
13 talked about earlier talks -- you know, basically
14 confirms all of what we've seen in this field, and
15 that's basically that they -- they had early
16 breakthrough, no -- none of the -- all of the
17 engineers who -- who started the work on this
18 field -- and, you know, when Chevron began water
19 flooding it, they -- they got early breakthrough,
20 exactly contravention to what they were anticipating,
21 but it's the way the field -- the -- the way the field
22 behaves.

23 So, you know, we talked a little bit
24 or -- or, you know, discussion was had about holding
25 pressure in the field and things like that. I could

1 show you -- you know, we've seen in -- in workovers on
2 one well where we don't hold a -- a foot of fluid
3 above -- above the perforations, but then in another
4 where we have pressure at surface.

5 So to tell -- you know, I don't -- I don't
6 want to get too far into it, but to -- to try to say
7 that there's no compartmentalization or anything
8 is -- is wrong. And I cannot -- there is nothing I
9 can tell you about the field that 700 wells, plots
10 that we have across this acreage, that one or two or
11 five or even ten or 20 wells are going to tell you
12 that exist throughout all of them.

13 Q Does that include the San Andres Formation?

14 A The San Andres Grayburg is the formation
15 we're talking about. It -- this is a unitized
16 formation, the Grayburg San Andres Formation, that we
17 operate and which we purchased, yes.

18 Q Now, you have -- there's been an issue
19 raised about relying on papers written by third
20 persons as hearsay. Why would you rely on a report by
21 the Society of Petroleum Engineers?

22 A I'm sorry. What would I rely on for -- for
23 what, Mr. Padilla?

24 Q On a paper authored by engineers from the
25 Society of Petroleum Engineers.

1 A Well -- well, of course. Any -- you know,
2 most of the time when you begin a literature review on
3 an oil field, it starts with SPE papers and of -- of
4 course it's -- it's, you know, it's -- it's not
5 hearsay.

6 And, you know, and -- and, you -- you know,
7 so literature -- we've done literature review. We've
8 had our -- we have our own subsurface team that has
9 looked at -- you know, that looks at the
10 formations -- you know, our productive horizons.
11 We've also have third-party studies that we've done
12 and they do not -- you know, that's what we're
13 going -- that's -- those are the people that I'm
14 listening to on this one.

15 Q There's been a contention by Goodnight that
16 you did not produce -- that you were holding back some
17 documents and not disclosing those; is that accurate?

18 A It's not. The only -- you know, of course
19 there are proprietary and trade secrets that are
20 always an issue that we want to get reviewed before
21 we -- you know, wanted to see if there's anything
22 proprietary in a -- a release we're going to make, but
23 of course I wouldn't hold anything back from the
24 court -- or from the commission.

25 Q So those various exhibits that are listed in

1 your testimony, how did you use them in your
2 evaluation of concluding your testimony?

3 A Well, you know, the -- the comment was made
4 that I wasn't -- that I didn't refer to them. I think
5 I referred to all of the exhibits. One of them, you
6 know, regarding the -- the marketing materials that
7 was provided to us prior to our purchase was -- you
8 know, came from Exxon. Exxon did a lot of review.
9 They did a lot of review on the ROZ and in fact, when
10 we bought this property from Exxon, they demanded, as
11 part of the sale, that 4 percent -- that they take a 4
12 percent override on any production that we get off of
13 a tertiary recovery.

14 So I think that, you know, speaks
15 pretty -- pretty well to any -- any discussion on
16 whether or not we want to make bets on whether or not
17 there's a ROZ potential in this field.

18 Q How do you view the ROZ potential in this
19 field?

20 A We -- we view it as a -- as a cornerstone of
21 our strategy that we're going to appraise it at least.
22 You know, a -- a project starts at appraisal, goes to
23 select, define and execute. We're in the appraisal
24 stage right now and I'm not jumping to, you know,
25 saying a definition or an execution. We're appraising

1 it.

2 We're -- we -- we're -- we feel comfortable
3 that we're going to be able to have a -- a very large
4 production from across the whole interval, including
5 the bottom interval, and we're going to -- you know,
6 that was -- we're -- we're confident that it's going
7 to be aligned with what was marketed to us by Exxon
8 and that I showed in some of those goods and that was
9 also studied by Chevron prior to that.

10 Q You listened to the testimony of Mr. Drake
11 with regard to lack of potential for ROZ, or residual
12 oil zone. What's your take on that -- on his
13 testimony?

14 A My take on his testimony that -- is that
15 that's his opinion. It's purely speculative and,
16 like -- like you mentioned, theoretical. I have
17 other -- our -- our own subsurface team and I've had
18 other reviews that say there's -- there's plenty of
19 potential on the order of basically company-maker type
20 potential in that -- in -- in what you would define as
21 a -- as a residual oil zone.

22 Q Does that include the San Andres Formation?

23 A That -- that includes the -- the whole
24 formation that -- that we have unitized, the -- whole
25 formation of the Grayburg San Andres, which is our

1 formation that's been unitized.

2 Q To your knowledge, has anyone from Goodnight
3 approached you or approached Empire about its well
4 proposal?

5 A We -- we did have one discussion with Empire
6 a -- a while back earlier where they had wanted to
7 talk to us about their proposal when we had gone -- I
8 don't know what the term is -- non-consent or -- or
9 asked that it -- you know, we disagreed with their
10 proposal and we -- we had -- had a meeting with them,
11 virtual meeting.

12 Q You said you had a contact by Empire. You
13 mean by Goodnight; right?

14 A By Goodnight. I'm sorry. Yes.

15 Q So what is the ultimate conclusion that you
16 have reached with regard to the application?

17 A The ultimate conclusion is that we -- we
18 strongly disagree with and -- and are against them,
19 you know, allowing to inject a massive amount of water
20 into our unitized formation. We think it's going to
21 affect our hydrocarbon production -- or we're
22 confident it's going to affect our -- our ultimate
23 hydrocarbon production from the -- from our unitized
24 formation.

25 Q Did you review the cross-sections that

1 Mr. Drake submitted with regard to barriers between
2 the San Andres and the Grayburg Penrose?

3 A I did not review it. I might have seen it
4 the first time we -- before we had that first meeting,
5 but, Mr. Padilla, I have not looked at it again.
6 I -- I know it's been -- you sent it out, but I
7 haven't had the opportunity to look through it again.

8 Q Mr. Drake testified that there was an
9 impermeable base -- correction -- barrier between the
10 San Andres and the Grayburg. What do you conclude
11 from his testimony?

12 A I think that's his theoretical conclusion,
13 but -- but what we're looking at is reality. I look
14 at -- I look at reality every day out in -- in the
15 EMSU field and I see that there's a lot of channeling,
16 there's a lot of communication. I have wells that
17 are -- that are holding a full column of water or oil.
18 I have injectors that take water on a vacuum, just as
19 he was describing, at all levels of -- of
20 the -- at -- at all depths and I have others that are
21 pressured up. So I -- I do not agree with his
22 conclusions at all.

23 Q Do you have any information yourself other
24 than looking at pressures and that sort of thing from
25 well to well?

1 A Well, I -- yeah, I had -- in discussions
2 with Cobb, which is, I mentioned, one of the -- you
3 know, our third-party reports. You know, in regards
4 to this field, Cobb is a -- a well-known reservoir
5 engineering company and they did a lot of work in this
6 field. They've told me that when they unitized it,
7 part of the reason why it was -- why they chose the
8 depths they did was because they thought there was
9 good -- there was communication across the whole
10 interval.

11 Q Meaning the Grayburg San Andres Formations?

12 A Yes, across the whole interval that we have
13 unitized.

14 MR. RANKIN: Mr. Examiner, I object to
15 that testimony. I believe that's straight-up hearsay
16 about what somebody else --

17 THE WITNESS: Hearsay? I've heard it.
18 They told it to me.

19 THE HEARING EXAMINER BRANCARD: Thank
20 you. We'll allow that.

21 BY MR. PADILLA:

22 Q So I conclude from your testimony that
23 you're just simply against any injection into the
24 unitized formation -- the unitized interval from the
25 top of the Grayburg to the bottom of the San Andres.

1 A That -- that we are not controlling as an
2 operator. We spend a lot of time trying to balance
3 the flood and, yes, so -- so that's true as far as
4 somebody else coming in and just injecting whatever
5 rates and -- and volumes they want to.

6 Q Do you have anything further to your
7 testimony, Mr. Sweeney?

8 A I -- not at this time, Mr. Padilla. Thank
9 you.

10 MR. PADILLA: We ask the witness
11 and -- for admission of his testimony together with
12 the exhibits that he relied on in order to make his
13 conclusion.

14 (Empire New Mexico LLC 22626 Exhibits
15 Unknown were marked for
16 identification.)

17 THE HEARING EXAMINER BRANCARD: Thank
18 you.

19 MR. RANKIN: Mr. Examiner, I'd just
20 restate our objection to the same exhibits on the same
21 foundation and arguments that we presented previously.

22 THE HEARING EXAMINER BRANCARD: Thank
23 you. We'll admit the exhibits as submitted and I will
24 pass the witness to Mr. Rankin.

25 //

1 (Empire New Mexico LLC 22626 Exhibits
2 Unknown were received into evidence.)

3 MR. RANKIN: Mr. Examiner, with all due
4 respects, it's been a little bit since lunch and I may
5 need to take a short break and I wonder maybe
6 the -- others do too, but if it's permissible
7 that -- I mean, excuse my desk for -- just for a few
8 moments and return to conduct the across, I'd
9 appreciate it.

10 THE HEARING EXAMINER BRANCARD: All
11 right. Is 2:35 okay?

12 MR. RANKIN: Yep.

13 THE HEARING EXAMINER BRANCARD: All
14 right. We'll be back at 2:35.

15 MR. RANKIN: Thank you.

16 (Off the record.)

17 THE HEARING EXAMINER BRANCARD: Is
18 Mr. Sweeney available?

19 THE WITNESS: I am.

20 THE HEARING EXAMINER BRANCARD:
21 Excellent. So I believe we were all wondering whether
22 Mr. Rankin had any questions.

23 MR. RANKIN: Well, I do.

24 THE HEARING EXAMINER BRANCARD: All
25 right. Please proceed.

1 MR. RANKIN: Thank you.

2 CROSS-EXAMINATION

3 BY MR. RANKIN:

4 Q Mr. Sweeney, nice to make your acquaintance.
5 I'm going to put my screen up so you can see me, but
6 if I have connectivity issues or if you do, I may take
7 my screen off. Looks like it's not working anyway
8 right now, so I'll go ahead and take it off. But I'm
9 going to ask you some questions and if you have any
10 problems hearing me or don't understand a question I'm
11 asking, please don't hesitate to ask me to restate it
12 or rephrase it. And if, due to the technological gaps
13 here between you and me, virtual format, if you can't
14 hear me, just ask me and I'll repeat it for you; okay?

15 A Understood.

16 Q I understand that you're qualified as an
17 expert in petroleum engineering; correct?

18 A That's correct.

19 Q But you're not seeking to be qualified and
20 not qualified to testify as a petroleum geologist
21 today?

22 A That's correct.

23 Q You're relying on your subsurface experts in
24 the company and third parties for your subsurface
25 geological recommendations; is that correct?

1 A To -- for -- for me to make decisions on the
2 field, yes. Not for me to -- to render an expert
3 opinion to you. I -- I mean, they're not here. I'm
4 not sure I understand what -- the question regarding
5 that.

6 Q My question is simply in order to perform
7 your operations at the unit, you're relying on others
8 for their geologic expertise.

9 A Yes. That's correct. Yes.

10 Q It's not something that you possess
11 yourself.

12 A That's -- that's correct. I -- I know -- I
13 know enough to -- to be able to make decisions on it,
14 but I'm not an expert that I would -- so I -- I do
15 rely on my subsurface team, that's correct.

16 Q Okay. Now, about the acquisition of the
17 unit, when you -- I understood you to say -- I think
18 in your testimony actually you say it was acquired
19 second quarter of 2021; is that correct?

20 A Yes.

21 Q And is that when the purchase actually
22 closed?

23 A I'm -- I'm not sure, Mr. Rankin on the date
24 of when it closed. Yeah.

25 Q Okay. Do you know when Empire assumed

1 operations of the EMSU? And I'm going to refer to the
2 Eunice Monument South Unit as the EMSU; okay?

3 A Sure.

4 Q When --

5 A Yeah, it was in -- it was in May that we
6 took over operations.

7 Q In May.

8 A But -- okay. Yes.

9 Q And was there a transition period between
10 when Empire acquired the property and when Empire
11 assumed complete operations of the EMSU?

12 A There -- there was. I -- I went out there
13 for -- for a while while we were handing over.

14 Q What was that transition period? Do you
15 know?

16 A It's on the order of weeks, not months.

17 Q So it would have been in the time frame of
18 May to June 2021?

19 A Probably more like April -- April-May.

20 Q So as chief operating officer, your
21 responsibilities at Empire include the operations of
22 the EMSU?

23 A That's correct.

24 Q And you're the one who's in charge of
25 overseeing EMSU operations?

1 A I'm sorry, sir. Overseeing the what
2 operations?

3 Q EMSU operations.

4 A Yes, ultimately. I'm -- I'm not -- I do not
5 reside in New Mexico.

6 Q Got it. I'm going to -- are you able to see
7 my screen, Mr. Sweeney, if I share my screen so you
8 can see an exhibit?

9 A I could pull it up, yeah.

10 Q Okay. I'm going to ask you to look
11 at -- it's your exhibit. It's Exhibit C, which is
12 that an Enverus well depth sheet.

13 A Okay. I don't -- okay. One second. Yeah.
14 Yes. Okay.

15 Q Are you able to see your -- this on your
16 screen now?

17 A Yes.

18 Q So this wasn't prepared by Empire; right?

19 A No, it's from Enverus.

20 Q Okay. But it -- my understanding is it
21 aggregates public information that's available from
22 the Division's raw files; correct?

23 A That's correct.

24 Q And so this information was otherwise
25 publicly available on the Division's website?

1 A It's -- it's publicly available. I'm
2 not -- I -- I would imagine so. I'm -- I'm not sure
3 exactly where they pulled everything, but it should
4 be.

5 Q And is it your understanding that this
6 accurately reflects the well history for the 200H
7 well?

8 A Where does it -- where -- well, not the part
9 that you're showing there. If you -- if you go down,
10 it'll show the history of it.

11 Q Well, this entire report. It's 14 pages;
12 okay --

13 A Okay. Yeah. So this -- this whole report
14 does, yeah. Not this screen, but yes, the whole
15 report does.

16 Q The whole report does. Okay. And so yeah,
17 you agree with me that it's an accurate
18 characterization or summary of the well information
19 for this 200H well.

20 A Yep. Yes.

21 Q Okay. Now, in your testimony, you state
22 that this 200H well is one of the best producing wells
23 in the unit; correct?

24 A Yeah, it's a high priority well for us.

25 Q And as -- because it's a high priority well,

1 you're familiar with the well history and background
2 on this particular well?

3 A Yes.

4 Q And in your testimony, you state that it's
5 currently open and producing in the San Andres
6 interval; agree?

7 A I do say that, yes.

8 Q Is that still your testimony?

9 A Yes. And my testimony is like what I said
10 earlier, is they -- they -- the formation that
11 we -- that -- there is one formation. It's the
12 Grayburg San Andres.

13 Q Okay. But you're not a geologist and you
14 don't have the ability to determine that; right?

15 A I -- I do not have the -- I do not have the
16 expertise to pick tops of reservoirs. I just know
17 what -- what I'm told, like I said, from the
18 subsurface and that's --

19 Q Okay.

20 A And I -- and I have enough knowledge that
21 when I'm producing from a formation, that it's -- a
22 unitized formation is equivalent across it as far as,
23 you know, capability to produce. I could produce
24 across that whole formation.

25 Q Okay. Well, let's look at this document

1 then. On the first page of the document, it
2 talks -- it identifies the true vertical depth of this
3 well. It's a horizontal well; correct?

4 A It is.

5 Q And that -- the TVD, or true vertical depth,
6 of this well is noted here as being at 3,785 feet;
7 agree?

8 A Yep. Yes.

9 Q Now, the next well -- next page I'm going to
10 flip to here shows -- and it's hard -- a little hard
11 to see, but as I understand it, this graph, this
12 chart, is the graphical representation of the vertical
13 portion of the wellbore in blue down to the
14 approximate depth, the TVD, where it kicks out and
15 becomes a horizontal well out to the total depth or
16 length of the well out here; right? Correct?

17 A Yes.

18 Q Okay. And once it hits the TVD of about
19 3,785 feet, it stays at that depth through the entire
20 completed horizontal lateral of that well; correct?

21 A That's what's shown there, but we know from
22 the well file that it's actually purposed.

23 Q So this is not an accurate representation or
24 is the scale not great enough to --

25 A Probably the scale's not great enough.

1 Q But the total vertical depth that we just
2 discussed, that's the total true vertical depth of
3 this well. It's not any deeper than that; correct?

4 A It's -- it's not any deeper than that.
5 I -- I wouldn't think so. That -- that should be
6 what's -- what's reflected in the well, yeah.

7 Q Thank you.

8 A But -- yeah.

9 Q Now, this well was not originally a
10 horizontal well; agree?

11 A It was not originally a horizontal well, you
12 said?

13 Q Right.

14 A Yes. That's correct.

15 Q It was originally drilled as a vertical well
16 back in 1936; correct?

17 A That's right.

18 Q And then in 2011, it was recompleted as a
19 horizontal well; correct?

20 A That's correct.

21 Q Now, looking at -- I'm going to scooch ahead
22 here; okay? A couple pages and I want to point out
23 that -- you see this heading where it says, "Well
24 tests," about the middle of the page?

25 A Can you -- yes.

1 Q Right here?

2 A Yes.

3 Q Now, that -- looking at this section here,
4 it talks about -- it identifies the production from
5 this horizontal well; agree?

6 A Yes.

7 Q You see on the far right column where it
8 identifies the test formation from which the well is
9 producing?

10 A Yes.

11 Q You see that it says the Grayburg?

12 A Yes.

13 Q It does not say the San Andres; does it?

14 A It does not.

15 Q Now, you agree with me then that this well
16 is completed and producing from the Grayburg and not
17 the San Andres?

18 A I'm saying -- I'm -- I do not. I'm telling
19 you the Grayburg and San Andres are the same formation
20 and I'll -- I'll further say that -- what I said in my
21 report, that it provides valuable information
22 regarding the exploitation of the San Andres.

23 Q It does provide valuable information. I'm
24 going to ask you about that a little later; okay?

25 A Yep.

1 Q I want to find out about what that valuable
2 information is and why we didn't get it when we asked
3 for it. I'm going to pull up another exhibit here;
4 okay? And it's been marked as Goodnight Rebuttal
5 Exhibit E. Can you see that on my screen?

6 A I can.

7 Q Okay. This is from the Division's well file
8 for the 200H well.

9 A Yeah.

10 Q Are you -- let me know when you can see it.

11 A Yep. I'm sorry. Say that again, sir.

12 Q This is from the Division's well file for
13 the 200H well, the one that we're discussing.

14 A Yes. Yes. Yes.

15 Q You're familiar with this well file;
16 correct?

17 A Yes. Let me see. Yep. "Full name,
18 Grayburg San Andres." Yes.

19 Q Okay. You see it identifies the well by API
20 number?

21 A Yes.

22 Q Okay. So you agree with me this is the
23 correct document for this well? It's a well
24 dedication -- well location and acreage dedication
25 flat that was filed back in 2011; you see that?

1 A Yes.

2 Q Okay. So what this is is this is the
3 original APD that XTO filed when they sought to
4 recomplete this well as a horizontal well; okay? Are
5 you familiar with this document?

6 A Not intimately, but it looks familiar, yes.

7 Q Now, in this document, do you see that, on
8 the second page I've got highlighted here, it
9 identifies the total vertical depth for this
10 horizontal well?

11 A Yes.

12 Q This is proposed because this well hasn't
13 yet been drilled at this time; you understand that?

14 A I'm sorry. Say that again, sir.

15 Q That depth is as proposed because at this
16 time this was filed, this well was not drilled yet; do
17 you agree?

18 A Yes.

19 Q Now, as part of the APD, XTO, who was the
20 operator at the time, filed this document indicating
21 the formation tops that the well was going to traverse
22 in the vertical portion of the wellbore and through
23 the horizontal portion; do you see this as item number
24 two on the page before you?

25 A Yes.

1 Q Okay. So you see here that XTO, the
2 operator of the unit and the well at the time,
3 identified each of the formation tops from the Rustler
4 down to the Grayburg, which I've highlighted, and
5 identifies the top of the Grayburg as being at 3,628
6 feet; do you see that?

7 A I do.

8 Q Do you see that XTO has -- did not identify
9 any formation tops for the San Andres because the well
10 does not penetrate the San Andres? Do you see that
11 there?

12 A I see that they do not list the San Andres.
13 I do not see that it says anything about that it
14 doesn't exist there.

15 Q Okay. But you agree with me that the
16 formation top is not listed on --

17 A It is not listed. I -- I agree that it is
18 not listed.

19 Q Okay. And it identified the target for the
20 horizontal well as being at approximately 3,760 feet;
21 correct?

22 A I see that, yes.

23 Q You also agree that the notation at the
24 bottom of that page reflects that the -- that XTO was
25 targeting hydrocarbons at the Grayburg? You see where

1 it says, "Hydrocarbons at Grayburg"?

2 A Yes.

3 Q They have not identified hydrocarbons at the
4 San Andres; did they?

5 A They -- they do -- it's -- I agree that it
6 says, "Hydrocarbons at Grayburg." I do not agree -- I
7 do not know what they -- what they found or didn't
8 find or -- or made a distinction about the San Andres.
9 In fact, at the top of the document, it says,
10 "Grayburg San Andres." So they're probably not making
11 the distinction because of that.

12 Q Do you understand the distinction between a
13 pool and a formation in New Mexico?

14 A I do and I know that we're in a unitized
15 formation that -- that contains the Grayburg San
16 Andres, and it's called the Grayburg San Andres.

17 Q Okay. That's your understanding?

18 A That is my understanding.

19 Q Okay. And the rest of this exhibit,
20 Mr. Sweeney, just reviews the proposals; okay? And
21 just for your information -- and I'll just going to
22 scroll through it real quick and I'm not going to
23 spend any time on the rest of it, but I just -- I will
24 point out for the examiners, for their information,
25 that it does review the history of the well as an

1 original vertical well and reflects that it was -- its
2 original completion date and identifies the
3 top -- rather the total depth of the vertical portion
4 of the well; okay?

5 And then for the remainder after the
6 Pathfinder report for the horizontal portion, it does
7 identify the rest of the elements of the proposed
8 horizontal well, but that's -- those are the topics I
9 wanted to touch on with you, Mr. Sweeney.

10 A Okay. And if I could add something, too. I
11 know that in the NMOCD completion report, that -- that
12 they state, "Grayburg San Andres."

13 Q Let's pull up the completion report; okay.
14 This is my next exhibit, Exhibit F. This is also from
15 the Division's well files for the same well. Do you
16 see that it identifies the 200H as the --

17 A I do. Yes.

18 Q Okay. And this is the completion report
19 that was filed with the BLM subsequent to the well
20 being recompleted as a horizontal well. Are you
21 familiar with this document?

22 A I -- I know that on -- that on it, it said
23 that it was -- I -- I do remember seeing that it said
24 that it was Grayburg San Andres, yes.

25 Q Okay. So same thing. It identifies the

1 pool; right? And identifies it as being the Grayburg
2 San Andres; agree?

3 A I -- I see that it says that, yes, Grayburg
4 San Andres.

5 Q And then down here on item number 18, box
6 18, it identifies the total vertical depth as drilled
7 as being at 3,778 feet; agree?

8 A Yes.

9 Q Okay. So I'm going to scroll down through
10 here and we're going to again identify the formation;
11 okay? The geologic formation, the producing interval
12 that XTO identified here in this completion report to
13 the BLM. And you'll see here -- do you agree with me
14 that they've identified the Grayburg as the interval
15 that was completed by this well?

16 A That's what it says there, yes.

17 Q Thank you. And then you'll see here on
18 the -- as a matter of the well completions, that they
19 actually identify the intervals that were perforated
20 and completed and you'll see -- do you agree with me
21 on item number 30 that they have identified the well
22 as having traversed the Yates Seven Rivers Queen and
23 Grayburg Formations? Do you agree?

24 A Can you hear me?

25 Q No. Mr. Sweeney, are you there?

1 A Can you hear me?

2 THE HEARING EXAMINER BRANCARD: Now
3 we -- we can hear you now. Mr. Sweeney? Now we can't
4 hear you, Mr. Sweeney.

5 MR. RANKIN: Are you there,
6 Mr. Sweeney? One of these days, we'll get back to
7 doing this in person. Mr. Sweeney, can you hear me?

8 THE HEARING EXAMINER BRANCARD:
9 Marlene, have we lost the witness?

10 MS. SALVIDREZ: I see his name and he's
11 unmuted. So maybe he can get off and get back on.

12 THE HEARING EXAMINER BRANCARD:
13 Mr. Padilla, do you have any contact with your
14 witness?

15 MR. PADILLA: Yeah, I can call.

16 THE HEARING EXAMINER BRANCARD:
17 Mr. Sweeney? He lit up there for a second.

18 MR. PADILLA: I'm going to mute myself.

19 THE WITNESS: Can you hear me now?

20 THE HEARING EXAMINER BRANCARD: Yes.

21 THE WITNESS: Can you hear me now?
22 Yes.

23 THE HEARING EXAMINER BRANCARD: Yes.

24 THE WITNESS: I'm sorry if you
25 gentlemen -- I -- I couldn't hear you -- hear you

1 gentlemen. I had to drop out and dial back in.

2 THE HEARING EXAMINER BRANCARD: Well,
3 success.

4 THE WITNESS: Yeah.

5 BY MR. RANKIN:

6 Q Mr. Sweeney are you still able to see the
7 screen?

8 A Yes.

9 Q Okay. So I think the last place we left off
10 was I was just asking about this second page of
11 Goodnight Rebuttal Exhibit F that is the second page
12 and the last page of this completion report. Item
13 number 30 on the report is intended to be all the
14 zones -- important zones of porosity and contents,
15 including the chord intervals and all drill stem
16 tests, including depth interval tested, cushion used,
17 time to open, so on and so forth.

18 And I was asking you whether you agree with
19 me that this report that was provided by XTO reflects
20 that the zones or intervals that were tested by XTO
21 when it drilled this well as a horizontal well include
22 the Yates Seven Rivers Queen and Grayburg. Do you
23 agree with me?

24 A Yeah, I -- I agree that that's what that
25 says there. It says, "Grayburg," yes, that you

1 highlighted.

2 Q And XTO did not include the San Andres as
3 being a formation that was tested; agree?

4 A Well, that's what it said on the BLM report.
5 I know on the OCD, it -- it said, "Grayburg San
6 Andres." So I don't know if it was a clerical error on
7 their part or not, but I -- I could only go off of
8 this, you know, 11-year-old document that you got
9 there and I could tell you that that's what that says.

10 Q Okay. And I think previously, we
11 established your understanding of the difference
12 between a pool and a formation, and I think that's
13 kind of where we left it; right? So that's kind of
14 where we are between the two -- the distinction
15 between a pool, which is referenced here in box number
16 10, and a formation that was actually tested, which is
17 identified here under box number 30.

18 Now, are you aware of any subsequent
19 reports, Division records or anything, that would
20 change XTO's determination that this well was
21 completed in the Grayburg?

22 A Am I aware of any reports that were -- any
23 Division reports that would say that -- different than
24 it was completed in the Grayburg outside of the
25 Division report that says, "Grayburg San Andres," and

1 the -- and the depths? I -- I guess that's -- that's
2 what I would -- I'm not sure if there's anything
3 further, but I know that's what that states. And I
4 know that we had -- the interval of our hydrocarbons
5 is across the full formation called the Grayburg San
6 Andres across this acreage.

7 Q Okay. But other than the Division record
8 that says, "Grayburg San Andres," and where it talks
9 about the pool or field, you're not aware of any other
10 documents that suggest this well is actually completed
11 in anything but the Grayburg?

12 A I'm -- I don't -- I don't know -- I'm -- I'm
13 going to restate what I just said, that the -- the
14 document says, "Grayburg San Andres." So for you to
15 say that that's the only -- the reason why they
16 wrote -- called it the Grayburg is because it's the
17 Grayburg San Andres over this -- over this acreage.
18 I -- I don't know what -- what else I could tell you.

19 Q Okay. Very good. Very good. I'll move on
20 from there. I'm going to pull up another exhibit
21 here; okay? And this is -- this has been marked as
22 Goodnight Rebuttal Exhibit G. Mr. Sweeney, do you
23 recognize this exhibit?

24 A I don't know if -- I -- I don't remember
25 seeing this. Like I told Mr. Padilla, I didn't look

1 through everything again. I -- I was traveling, but I
2 can look at it right now.

3 Q Well, Mr. Sweeney, I'll just represent to
4 you that this is a document, with the exception of my
5 label on the top, that was produced to Goodnight by
6 Empire in response to our subpoena request.

7 A Oh, I thought this was -- I thought you were
8 saying this was something that you -- that was sent
9 from -- from Goodnight. I'm sorry.

10 Q No, I'm sorry. This --

11 A Yes. Yes, I do know -- yes. What's that?

12 Q No, just -- I'm sorry for the confusion.

13 A Yeah.

14 Q No, I just asked if you were familiar with
15 this document.

16 A Yes. I didn't -- I just looked at the top
17 where it said, "Goodnight rebuttal," and I -- I
18 assumed it was a Goodnight document.

19 Q Okay. So you are familiar with this
20 document; correct?

21 A Yes.

22 Q And you've previously seen it before today?

23 A I did.

24 Q Okay. Did you prepare this document?

25 A I did not.

1 Q Okay. At the bottom left-hand corner, do
2 you see where it says, "Geologic Consultants"?

3 A I do.

4 Q Is that the group that prepared this
5 document?

6 A I -- I imagine it is, yes. That's one of
7 our third-party geologists.

8 Q Okay. So you -- I mean, are you comfortable
9 stating that's the case? Are they the ones that
10 produced and prepared this document for you?

11 A It -- yes, I am.

12 Q Okay. Now, are you aware, Mr. Sweeney, that
13 this particular well -- on this exhibit; okay? It
14 identifies the Eunice Monument South Unit #462 well.
15 Are you familiar with that well?

16 A I -- I mean, I'm familiar with -- with the
17 well. I don't -- not intimately, but yes, I'm
18 familiar with it.

19 Q Are you aware that it was originally drilled
20 and operated as a water supply well that was completed
21 within the San Andres?

22 A I'm -- I -- I wasn't -- I'd have to go look
23 at the well file, but no, I wasn't aware of that.

24 Q Okay. And these tops -- I imagine -- as I
25 read this exhibit, the blue lines here represent the

1 tops of these formations; is that your understanding
2 as well?

3 A Yeah.

4 Q Okay.

5 A Yes.

6 Q And do you know -- did Geologic Consultants,
7 did they identify these tops themselves?

8 A It -- it would have been them, yes.

9 Q Okay. Now I want to ask you were you
10 present for the testimony when Mr. Goetze was asking
11 about this particular well and about the current
12 condition of this well?

13 A I was.

14 Q Now, if the Division were to issue a
15 subpoena that would request the well file in
16 possession -- that Empire has in its possession on
17 this well, will you provide us with a well file that
18 you have -- all the records that you have on this
19 well?

20 A If the Division gives a subpoena, I will
21 rely on our counsel to tell me what to do.

22 Q Yeah.

23 A But if he tells me to do that, that's what
24 I -- that's exactly what I would do.

25 Q Okay. And so I guess the preface to that

1 question should have been, Mr. Sweeney, do you have a
2 well file that contains information on the status of
3 this well?

4 A I'm -- I am not sure about that.

5 Q Okay. But if any -- but if you -- during
6 the transition, did you receive documents from XTO
7 that relate to the wells that you're operating now in
8 the unit?

9 A We did and there were some gaps in them.
10 XTO had gone through a period of switching from paper
11 to electronic and -- and we -- we did have some gaps.
12 We're actually trying to fill them. So yeah, we -- we
13 have -- we have some -- some -- you know, some
14 physical files out at location and we have some files
15 over, you know, electronically.

16 Q Okay. So somewhere between electronic files
17 and physical files, whatever XTO conveyed to you is
18 what you have; correct?

19 A That's correct.

20 Q Okay. All right.

21 A Except -- you know, I'd -- I'd premise that
22 with of course any work that we've done ourselves.

23 Q Okay. Very good. Now I'm going to move
24 to -- now this was provided to us, but but didn't use
25 it as an exhibit today; right?

1 A I -- I didn't speak to this slide, no.

2 Q Okay. I'm going to pull up my next rebuttal
3 exhibit, which is -- that's G. I guess I need to go
4 to H. Okay. Do you see on your screen what's marked
5 as Goodnight Rebuttal Exhibit H?

6 A I do.

7 Q Okay. Are you -- and you just testified
8 that you weren't totally familiar with the number 462
9 well, but this is, I can -- I'll represent to you,
10 from the Division's well file on the 462 well. Do you
11 see here on box nine it identifies the #462 well?

12 A I do. Yes.

13 Q Okay. Do you see also on this front page
14 here where I've highlighted that it is identified as a
15 water supply well?

16 A I do.

17 Q Okay. And this was the original APD for
18 this well that was filed, and I'll scroll down so we
19 can look at the date, back in 1987; do you see that
20 down here in the bottom right corner?

21 A In 1987 -- I see 1987. You're asking me for
22 the date?

23 Q You agree with me that it was --

24 A Five something, '87, yes.

25 Q Yeah. Yeah. In the year of '87. Okay.

1 A Yes.

2 Q All right. Now, on the next page of this
3 exhibit, do you see where the operator at the time who
4 filed this application identified on its -- on the
5 sheet here, as required, the formation tops for each
6 of the geologic formations that the well was proposed
7 to penetrate? Do you see that?

8 A I see that, yes.

9 Q Do you see that the Grayburg is listed here
10 as having a formation top in this location at
11 approximately 3,705 feet?

12 A I do.

13 Q And do you see that the San Andres is listed
14 as a separate formation having a depth at this
15 location of approximately 4,200 feet? Agree?

16 A I -- I do. I -- yes.

17 Q And then you'll see here that this is just
18 an additional indication of water SANS that are
19 expected to be encountered during the drilling; do you
20 see that?

21 A "Important water SANS," yes.

22 Q And again, they've listed the intervals,
23 including the Grayburg, and separately the San Andres
24 with the approximate depths in the columns to the
25 left; agree?

1 A Yes.

2 Q Now, looking at the next exhibit I have
3 here, this is from the same OCD well file for the same
4 well. You see how it identifies the Eunice Monument
5 South Unit #462 well; agree?

6 A Yes.

7 Q And again, this is for an application for a
8 permit to drill or re-enter the well; okay? You
9 understand that?

10 A Yes.

11 Q Are you familiar -- have you seen this
12 document before or familiar with -- from the well
13 file?

14 A I've -- I've probably seen it before. Do I
15 remember the details in it? I do not.

16 Q So this was filed -- I guess received by the
17 Division back in April of 2012; okay? Do you agree
18 with that? You see the date here?

19 A I do.

20 Q Okay. So they were -- apparently, according
21 to XTO here, they were seeking to convert the well
22 from a water well to an oil producer; okay? Agree?

23 A Yes. Yes.

24 Q And in order to do that, they state here
25 that they're going to have to cement off or rather

1 insert a cast iron bridge plug; okay? CIBP at 4,260
2 feet, closing off the current Grayburg San Andres open
3 hole; agree?

4 A That's -- that's right. "The Grayburg San
5 Andres open hole," yes, I see that.

6 Q And they state that they're going to run
7 production casing down to 4,200 feet; agree?

8 A I do see that, yes.

9 Q And that's the top of the -- according to
10 the prior exhibits we've been looking at, that's the
11 top of the San Andres in this location; agree?

12 A Could you go back to it just to double check
13 if you want me to agree to that? Down a little --

14 Q Do you see that?

15 A 4,260.

16 Q What's that?

17 A No, it's not. They -- theirs's said,
18 "4,260," and this says, "4,200," so I don't agree.

19 Q What says, "4,260"?

20 A Well, that says, "4,200," and the -- the
21 application said, "4,260"; didn't it? You're asking
22 me to confirm that it was the same number.

23 Q No, I said that they're running production
24 casing down to 4,200 feet.

25 A Oh, to 4,200. Okay.

1 Q Okay.

2 A But the cast iron bridge plug is set at
3 4,260.

4 Q Yeah, but -- yeah, that's right, and I was
5 asking about the production casing; agree?

6 A Okay. Yeah. Gotcha.

7 Q Okay.

8 A So the production casing set at 4,200 and
9 the cast iron bridge plug set at 4,260, agreed.

10 Q Okay. And then they're going to -- they
11 propose to perf the Grayburg from 3,794 to 3,900 feet;
12 agree?

13 A Yes.

14 Q Okay. So the only portion of this proposed
15 production well that will be converted from the water
16 production well would be within the Grayburg within
17 this depth interval; agree?

18 A "Perforate Grayburg from 3,794 to 3,900." I
19 don't know -- was there anything open from -- what's
20 at 4,260 besides -- I don't know if there's any
21 perforations before that or above that.

22 Q Okay. But assuming there were none, I
23 guess, would -- the only portion that would be open
24 for production would be this interval that they've
25 identified here; correct?

1 A Yes.

2 Q Okay. Now, Mr. Goetze points out that to
3 his knowledge -- and I haven't gone through the entire
4 well file -- there's no documentation to confirm
5 whether this work was ever done and I was asking you
6 if we ask -- make a request for a production of
7 documents that Empire has in its records for this well
8 that -- assuming your counselor agrees, that we would
9 be able to get a copy of whatever you have in your
10 possession relating to this well.

11 A Yes.

12 Q Okay. Now, I want to talk more specifically
13 now about the 200H well, the well that you've
14 identified in your testimony as a high priority well;
15 okay? You told us in your testimony that the well
16 provides valuable information regarding the
17 exploitation of the San Andres; agree?

18 A That's right.

19 Q Okay. Now, the only information we got from
20 you when we asked for it -- okay? In the subpoena was
21 the Enverus -- let me find it -- an Enverus document;
22 okay? This is the only information that has any well
23 file information or production data or anything that
24 you've given us; okay? And you agree with me that
25 this well was producing and testing, according to this

1 document, from the Grayburg?

2 A That's right.

3 Q Do you have any additional information
4 regarding the ability of this well to produce from the
5 San Andres?

6 A So again, this -- this well is -- provides
7 valuable information regarding the exploitation of the
8 San Andres. There's a lot of reasons why it does
9 that, partly because it was a re-entry for a
10 horizontal well in the field and the production
11 history that it had associated with that. And as we
12 appraise our options going forward, that's certainly
13 one of the ones -- one of -- one of the exploitation
14 plans that we would consider.

15 I don't -- you know, as far as the
16 information that we want to -- that -- that is
17 available to share with you, there's -- you know, if I
18 have a correspondence internally with some of our
19 subsurface people on what we're seeing or what
20 we -- what we like or don't like about the production
21 from that well, I'm not sure that I would even want to
22 share that and I -- that I would have to. That's not
23 part of the public record and I could value -- I could
24 view a lot of that as trade secret or proprietary. So
25 I'm not really sure what -- what you're asking me to

1 deliver to you.

2 Q Well, I guess, Mr. Sweeney, we asked for all
3 information that is in your possession; okay?

4 Including confidential proprietary information that
5 would reflect the ability of Empire to produce --

6 A So I have to -- I'd -- I'd have to talk to
7 my counsel about whether or not I have to provide
8 proprietary or confidential information to Goodnight
9 because Goodnight is proposing that they want to
10 inject 25 to 40,000 barrels a day into the middle of
11 our unitized formation. Does that -- does that mean I
12 have to go and provide everything that I have
13 on -- you know, regarding this -- you know, our
14 production capability?

15 Q Mr. Sweeney --

16 A I -- I didn't have that full conversation
17 with him, but I -- I don't -- I don't think I'd agree
18 with that.

19 Q Mr. Sweeney, are you alleging that the San
20 Andres is productive?

21 A I am.

22 Q Okay. And you're telling me --

23 A I -- I am alleging that -- I am alleging
24 that the -- the Grayburg San Andres interval in our
25 formation, the formation that we bought last year,

1 is -- has hydrocarbon potential across the whole
2 formation that we -- that we are in the middle of
3 appraising and we're going to move to a select and
4 define once we make our appraisal on it and I am fully
5 confident that it's going to be productive across the
6 whole formation.

7 Q All right. I'm not -- I don't want to get
8 into an argument with you here, but I understand that
9 you're alleging that the San Andres is productive, and
10 I want you to understand --

11 A I'm -- I'm alleging that the -- that the San
12 Andres has -- had production and is -- and -- and has
13 hydrocarbon production potential.

14 Q So if that's the case, Mr. Sweeney --

15 A So that's it. And I -- and we -- and
16 we -- and -- and my company has invested millions of
17 dollars to that effect, too. So yes, that's what
18 I'm -- that's what I'm -- that's my answer to that
19 question.

20 Q Okay. Well, I think it's important,
21 Mr. Sweeney, that we understand and that the Division
22 understand the potential for the San Andres to be
23 productive. We have asked you to produce us
24 documents -- let me finish --

25 A Well, we -- we made a multi-million dollar

1 bet that the San Andres is productive.

2 Q Okay. Well, I guess, Mr. Sweeney, if I
3 can't get my question out, then I may just have to
4 take it up separately with your counsel.

5 But I want to make clear that we have asked
6 for the documents that reflect your position that the
7 San Andres is productive and you're telling me that
8 you may have it, it may be confidential or proprietary
9 and you're not willing to give it to me; okay?
10 Because for various reasons. Now, I just want to make
11 clear on the record that you are refusing to provide
12 these documents because, in your view, they're
13 proprietary and confidential; is that the case?

14 A That -- that is not the case. I did not say
15 that.

16 Q Okay --

17 A I said -- I said that if I have a
18 conversation with my subsurface team and we're
19 reviewing production or -- or information that's
20 coming from that, we have -- that we -- we do not have
21 to document it and send it to you.

22 Q All right. I'm asking about existing data,
23 existing files, records, studies, analyses, reports
24 that you have in process, underway. And I understand
25 you're in the appraisal stage right now and so I'm

1 asking for documents that relate to that,
2 communications, emails with your subsurface team that
3 would reflect the ability of the San Andres to produce
4 hydrocarbons.

5 And now, I'm just saying that if you believe
6 and you're confident in the ability of the San Andres
7 to produce, and I'm talking about the interval that we
8 are injecting into here -- proposing to inject into
9 here, I'm asking you to please let us know if you've
10 got documents.

11 And if you don't, that's fine, but if you're
12 withholding any documents based on a confidentiality,
13 proprietary, I would like to know that as well; okay?
14 Because we -- there's no basis, as I understand, for
15 that to be withheld from a subpoena request. So with
16 that, I'll move on from that line of questioning.

17 A Understood. Understood. Thank you.

18 Q Okay. Now, I want to just query you a
19 little further about what work Empire is doing; okay?
20 So I understand. I understand from your
21 testimony -- okay? That you are in the appraisal
22 stage of your operations of the unit; correct?

23 A That's -- that's correct.

24 Q Has Empire prepared a written plan or some
25 sort of a go-forward analysis that outlines the

1 company's analytical plan for tracking the performance
2 of its wells and capability of producing in the San
3 Andres?

4 A That's -- so our plan as far as going
5 forward, we're -- we're in the appraise stage. Again,
6 we're in the appraise phase of what we -- what -- what
7 our possibilities are and our options are for
8 producing the hydrocarbons which we are confident are
9 present across the interval and we have not moved to a
10 select -- what you're talking about, it sounds to me
11 like you're looking for more like you would like our
12 selections and -- and albeit confidential selection
13 documents and -- and selection phase that we're
14 in -- that we're into and -- and we are not in that
15 stage yet.

16 Q Okay. I guess what I'm trying to find out
17 is do you have a written -- any written plan or
18 document that outlines what your proposal is going
19 forward? How are you going to actually do this
20 appraisal?

21 A How we are going to do the appraising?
22 We -- we are appraising the -- we are appraising the
23 project. We're in the appraise phase of the project,
24 sir. Mr. Rankin, that's all I can tell you.

25 Q Okay.

1 A Do -- do -- if -- if you want -- you know,
2 what -- what -- again, what it seems like you're
3 asking for is -- is what -- what are we selecting to
4 do on -- on it and we're not there yet. And I -- I
5 wish I could move at a different pace that was more
6 comfortable with Goodnight, but we're -- but we're not
7 and we've already made -- we're -- we are -- we are
8 proceeding with it and we've made a multi-million
9 dollar bet on this deal. So you better be sure that
10 we're going to -- we're going to be systematic and in
11 control the way we exploit this -- you know, our
12 field.

13 Q Mr. Sweeney, I'm asking you because you're
14 going to be systematic and in control, do you have a
15 written plan about how you're going to evaluate this
16 field, including the San Andres?

17 A Yes.

18 Q Okay. Mr. Sweeney, I'm asking you to
19 produce that plan because it's responsive to our
20 requests for documents; okay? That's what I just want
21 to make clear. And any emails or correspondence
22 relating to that plan should be reproduced.

23 A Well --

24 Q That's -- that's what I'm trying to get
25 across. All right. Now, are you also tracking --

1 A Well, so -- so, sir, just so you understand
2 Mr. Rankin, part of -- you know, I'm not trying to be
3 obtuse about this, but part of the -- for instance, if
4 you had to -- if we had to procure certain things
5 for -- for our plan or whatever, by providing them is
6 giving a -- is setting us at a competitive
7 disadvantage and that's why if we were going to be
8 reticent to do so, that's a big part of why.

9 Q I -- no, believe me, Mr. Sweeney, I totally
10 understand --

11 A And -- and I -- and I understand you
12 guys -- sorry. I didn't mean to interrupt you. Keep
13 going.

14 Q I understand the concerns around
15 confidential proprietary information.

16 A Yeah. And I -- I understand that -- that,
17 you know, Goodnight has a vested interest in -- in
18 slamming a bunch of water into the middle of our
19 interval, but, you know, I -- I also have to
20 protect -- I have a fiduciary responsibility to -- to
21 my company and my investors, too. So ...

22 Q Mr. Sweeney, when we asked for these
23 documents, did you work with others in your -- at
24 Empire to help identify and track responsive
25 documents?

1 A Yes. Of course.

2 Q Okay.

3 A And we provided the -- the documents -- the
4 documents that we provided were the -- the ones that
5 we sent to you.

6 Q Yeah. Now, you're in the assess phase or
7 the appraise phase, as I understand. Do you have any
8 idea, at this point, about how many infill wells or
9 additional new wells or new drills Empire believes it
10 can drill in the -- within this unit?

11 A How many wells we think we can drill in this
12 unit, you said, sir?

13 Q Yep.

14 A Yes. We -- we think we could -- one
15 of -- one of options in the appraise phase -- and
16 again, it's -- it's not something I want to promote to
17 the whole world, but we think we could go down to
18 10-acre spacing on it.

19 Q How many --

20 A And then we also think we have a -- a -- I'm
21 sorry. Keep going. Sorry.

22 Q How many new wells or new drills would that
23 require?

24 A It would require a significant amount. I
25 don't have the number.

1 Q Do you --

2 A And -- and that number is part of the
3 appraisal is going to be in a select phase
4 where -- where that number is developed.

5 Q And would those be horizontal or vertical
6 wells or is that part of the appraise phase as well --

7 A That -- that is, too, part of the appraise
8 phase. Yes, sir.

9 Q Do you have any notion about the volume of
10 produced water that will accompany each of those
11 proposed wells? When I --

12 A That's something we're -- that's something
13 that -- that we'll determine throughout our appraisal.

14 Q Okay. And then when I say, "Accompany," I
15 guess I should be clear. Do you have any idea of what
16 volume of produced water will be produced with each of
17 these proposed new infill wells?

18 A That -- that will be something that's
19 decided in -- as part of our appraisal. Again, we've
20 had this -- we've owned this field for a year and
21 we're in -- you know, we -- we did what we needed to
22 do mechanically in the -- and -- and we're moving to
23 an appraisal phase for the bigger -- you know, the
24 bigger production on it. I -- I don't -- I -- I know
25 what you -- maybe that's not at the same time -- time

1 frame that you would like, but that's how things -- I
2 think we're moving pretty well. So I'm not up there
3 yet.

4 Q Understand. Now, does Empire have a plan in
5 place for how it's going to manage its produced water
6 from these new drills?

7 A Again, we --

8 THE HEARING EXAMINER BRANCARD:
9 Mr. Rankin -- I'm wondering about the relevance here,
10 Mr. Rankin.

11 MR. RANKIN: Well, I guess,
12 Mr. Examiner --

13 THE HEARING EXAMINER BRANCARD:
14 Produced water from a hypothetical well development
15 here.

16 MR. RANKIN: Well, Mr. Examiner, the
17 fact that --

18 THE HEARING EXAMINER BRANCARD: Is your
19 client looking for customers?

20 MR. RANKIN: No, I think they have
21 plenty --

22 UNIDENTIFIED SPEAKER 7: Sounds like
23 that. I know.

24 MR. RANKIN: The point here,
25 Mr. Examiner, is that if Empire proceeds to drill down

1 to 10-acre spacing, they're going to have a
2 substantial volume of water to deal with and they are
3 not -- as Mr. Sweeney testified, they are not going to
4 be injecting a large volume as makeup water; okay?

5 So they're going to have to do
6 something with it and the question is will they now
7 operate a disposal well themselves that is completed
8 in the San Andres? What are they going to do with all
9 that produced water? And the really only option they
10 have is to inject it into the very same formation that
11 Goodnight is proposing to inject into. So that is the
12 relevance of the questions --

13 THE HEARING EXAMINER BRANCARD: I
14 thought I saw one of your exhibits that had a big
15 pipeline that Goodnight had. So ...

16 MR. RANKIN: That's Goodnight's
17 pipeline, not Empire's.

18 THE HEARING EXAMINER BRANCARD: Yeah.

19 MR. RANKIN: Empire's -- the only
20 options for Empire is to inject it into the San
21 Andres --

22 THE HEARING EXAMINER BRANCARD: Or hire
23 Goodnight.

24 MR. RANKIN: Yeah. That's right.
25 Well, in any event, I'll leave the questioning there,

1 Mr. Examiner. That's the gist of the questioning was
2 to determine -- it sounds like, from Mr. Sweeney, that
3 they have not yet gotten to the point of determining
4 what number of wells they will drill or what they will
5 do with their produced water.

6 THE WITNESS: But we have a lot
7 of -- we have a lot of smart people working on
8 questions exactly like that. That's part of what the
9 appraise is. Exxon had a lot of smart people working
10 on the same problem and that's what they marketed to
11 us and -- and where a lot of our people -- you know,
12 where we're seeing our opportunities. So whatever
13 problems arise, we're going to address them,
14 we're -- and -- and we're going to
15 appraise -- appraise them and develop the option.

16 So I -- I appreciate your concern about
17 us having -- what we have to do with water that we
18 produce in our wells, but I'll rely on -- on myself
19 and our engineers to come up with solutions and
20 options.

21 BY MR. RANKIN:

22 Q Mr. Sweeney, I'm going to move to the last
23 exhibit that I want to review with you today; okay?
24 And that's going to be your own exhibit, Empire
25 Exhibit A, and let's see if I can easily find it. Do

1 you see it on your screen? Unfortunately,
2 there's -- this exhibit's not marked on the exhibit,
3 but do you recognize this as Empire's Exhibit A that
4 was filed in this case?

5 A I do.

6 Q Okay. And as I understand the -- although
7 it's not addressed in your testimony, the purpose of
8 this exhibit is to indicate the proximity of
9 Goodnight's proposed piazza well, which is indicated
10 here with the gold star, to your EMSU 200H well, which
11 is called out here in this box and identified by this
12 dotted box here on the exhibit; correct?

13 A That's right. That's right.

14 Q And the approximate distance between these
15 two is 1.37 miles; agree?

16 A Yes.

17 Q Okay. Now -- and you testified that -- and
18 this is, again, one of the best wells, one of the high
19 priority wells for Empire in this unit.

20 A High priority, yes, that's correct.

21 Q Okay. And you also testified that it's one
22 of the best producing wells; agree?

23 A It is.

24 Q Okay. And now -- and you also testified
25 that it's producing in the San Andres; agree?

1 A I did, yes.

2 Q Now -- and your concern, as I understand, is
3 that with this -- about this well is that it's
4 relatively -- I mean, it's 1.37 miles away from the
5 proposed injection and you're concerned that this
6 injection will impact the ability of this well to
7 produce; agree?

8 A Among many other wells, yes, but
9 I -- we -- we highlighted that because of the
10 proximity to -- it's -- it's right in the middle of
11 outfield, close to one of our best and -- and a well,
12 a high priority well, that we are monitoring for its
13 production as -- you know, to give us indication
14 of -- of horizontal development. That is correct.

15 Q Okay. So let me ask you this, Mr. Sweeney:
16 If your concerns are valid and their -- the injection
17 into the proposed injection interval -- being the San
18 Andres; okay? Will actually impact the production
19 from the 200H well, as you are concerned, isn't it
20 true that if there were an injection well even closer
21 than the proposed Goodnight well that has
22 produced -- rather injected more than 40 million
23 barrels of produced water over the last 60 years, that
24 you would likely see an adverse impact in the
25 production history of your 200H well?

1 A That is not true. Like I testified earlier
2 on, there's a lot of channeling throughout the field.
3 There's a lot of crossflow and channeling throughout
4 the field that nobody anticipated and a lot of people
5 can't -- that -- that is frankly difficult to
6 understand. So I would not agree with that statement.

7 Q So your testimony is that because of the
8 channeling and the uncertainties around the porosity
9 and the -- and so forth within the formations here
10 that you -- there's no guarantee about what may happen
11 with the injected water; correct?

12 A That's correct, especially when you're
13 talking about a volume of 25 to 40,000 barrels a day.

14 Q Okay.

15 A Our typical injector is -- is on the order
16 of -- that we -- that we're constantly tweaking is on
17 the order of 500 to 800 barrels a day.

18 Q And when you talk about injectors, you're
19 talking about water flood injectors, injectors that
20 are being operated --

21 A By -- by us, yes. That's correct, sir.

22 Q Now, going back to this question, though,
23 are you aware of any adverse impact to the 200H well
24 from -- and I'm going to step back here real quick.
25 What I'm talking about, Mr. Sweeney, is there's a Rice

1 engineering well, the EME #33M well, and it's API
2 number 30-025-12786, that's approximately 0.82 miles
3 to the northeast of your 200H well. Are you familiar
4 with that well?

5 A I know -- I've heard of that well.
6 I'm -- again, I'm not intimately familiar with that
7 well.

8 Q Okay. Are you -- so you're not aware that
9 it has injected more than 40 million barrels of
10 produced water over the last 60 years into the San
11 Andres Formation?

12 A I did not look at a well history on that
13 well, that's correct.

14 Q Okay. But you're not also -- you're also
15 not aware of any adverse impacts to the production
16 history of the 200H well that you can --

17 A Well, I -- well, I know the -- the Rice
18 saltwater disposal well is outside of the unit
19 boundaries, too; isn't it?

20 Q That's correct, Mr. Sweeney. It is just
21 outside the unit boundaries. It's right on the --

22 A I don't -- I don't worry too much about
23 wells that are outside of my acreage. I just can't.
24 I don't -- I don't try to drill wells on other
25 people's acreage either.

1 Q Okay. But there's no -- to your knowledge,
2 there's no geologic boundary that would separate the
3 location of that well, the influence of that water,
4 from your producing well; is there?

5 A Again, I'm not prepared to say that. I
6 don't know. We don't look at -- I do not look at
7 stuff that's outside of our control. I don't know if
8 they're making a trespass on our property or not. We
9 haven't -- I haven't studied it and I don't think I've
10 asked anybody -- I haven't asked anybody to study it,
11 if they studied it -- if they studied it independently
12 within the organization here.

13 Q Okay. Let me ask again. But you're not
14 aware of any adverse impact from that injection on
15 your 200H well; agree?

16 A I'm not -- I'm not aware of any impact from
17 that -- that well, sir. That's correct.

18 Q Okay. Now, do you also agree that Empire
19 itself operates a saltwater disposal well within the
20 EMSU unit?

21 A Yes.

22 Q And that that well injects produced water
23 for disposal purposes and not water flood purposes,
24 but disposal purposes within the San Andres, the same
25 injection interval that Goodnight is proposing; you

1 agree?

2 A I -- I agree that we have a saltwater
3 disposal well that -- that we -- that we control and
4 we produce -- or we inject water at our -- at -- at
5 volumes. I -- I -- and I -- I agree that it's leased
6 water from this -- from our lease here. It's not 20,
7 30 miles away, however far where -- that you guys are
8 looking to get the Delaware Basin water in from a
9 different formation and a different basin.
10 It's -- it's leased water from this formation, yes.

11 Q Okay. And you would agree with me that that
12 well is located less than half a mile away from your
13 200H lateral to the southwest; do you agree?

14 A I'm -- I'm not -- I couldn't tell you
15 exactly where it is.

16 Q Okay. Well, that's -- I guess I could pull
17 that up.

18 A You can pull it up. Sure. And -- and if it
19 looks -- I -- I mean, I'll take your -- I'll -- I'll
20 take it -- you could pull it up. I -- I
21 don't -- I -- I wouldn't argue that it's far away. I
22 would say that it's also approximately -- it's more
23 than 6,000 feet deep. So it's a lot further away
24 from -- from our formation interval, the Grayburg San
25 Andres, it's deeper than that. Did I lose you guys

1 again?

2 Q No. No.

3 A No? Okay.

4 Q Sorry. I'm just -- I'm trying to get to
5 my -- sorry. One moment. Apologize for the
6 delay -- one second. All right. Mr. Sweeney, do you
7 see my -- on my screen now, I've got a map here that
8 was part of Goodnight's direct exhibits. It's marked
9 as Exhibit C9. Do you see that on this page here
10 where I've indicated that this is Exhibit C9 from
11 Goodnight Midstream?

12 A I can see it. Yes, sir.

13 Q Okay. I'm going to scroll down and you'll
14 see where I've identified where the piazza SWD well
15 is.

16 A Yes.

17 Q Okay. And do you see where also we've
18 indicated where the EMSU #1 well is located?

19 A I can see that. Yes, sir.

20 Q Okay. And I will represent to you that that
21 well is located in Unit letter O in Section 4,
22 Township 21 South, Range 36E. Do you have any reason
23 to disagree with that location?

24 A I do not. I do not.

25 Q And do you have any reason to disagree with

1 my representation that it's less than half a mile from
2 your 200H lateral?

3 A I -- I don't.

4 Q Okay. And do you agree that that disposal
5 well has has injected for disposal more than 4 million
6 barrels of produced water since 1987 into the San
7 Andres?

8 A I -- I do not have that number. I don't
9 know -- if you're asking me to -- can I confirm that,
10 no.

11 Q Do you have any reason to disagree with
12 the --

13 A I don't have a reason to disagree. That's
14 right.

15 Q Okay. Now, do you --

16 A But it's -- it's also -- it's -- it's at
17 6,350 feet, too. So it's -- just to clarify,
18 it's -- it's apples and oranges to some degree; right?

19 Q Well, I think you told me that the San
20 Andres and Grayburg were all one; is that not true?

21 A I -- I said that -- that our formation
22 is -- is unitized across that and that's our
23 formation. I did say that -- Grayburg San Andres,
24 yes. But I'm just saying it's at 6,350 feet from that
25 location. It's a different depth

1 than -- significantly different -- different depth
2 than what you're talking about.

3 Q Okay. But you agree with me that it's
4 injecting for disposal into the San Andres; agree?

5 A I -- I don't know what that depth is at
6 6,350, if that's still the San Andres. So I -- I
7 don't -- I'm not sure about that.

8 Q All right. Well, I'll leave it there. I
9 think the OCD well files speak for themselves.

10 A Okay. Yep.

11 Q Now, Mr. Sweeney, in terms of the injection
12 from Empire's own injection, are you seeing any -- are
13 you aware of any adverse impacts to the 200H well as a
14 result of Empire's own injection into that zone?

15 A We're monitoring that. We're monitoring
16 the -- the water flood around and how the -- how the
17 horizontal well that's a high priority for us responds
18 to it.

19 Q So to-date; okay? Have you identified any
20 adverse impacts to the injection from that well in the
21 200H well?

22 A I'm not prepared to say -- I'm not prepared
23 to draw a conclusion right now on that.

24 Q Okay. But you've been collecting data to
25 evaluate the potential impacts; correct?

1 A Yes.

2 Q Okay. But at this point, you're telling me
3 that you don't have enough data to make a -- draw a
4 conclusion; is that your statement?

5 A I'm -- I'm saying I'm not prepared -- the
6 analysis has not been done to draw any conclusion
7 regarding -- regarding that.

8 Q All right. But you're objecting to our
9 injection into the same zone, but you're not -- and
10 you're telling me it's going to impair your production
11 almost a mile and a half away, but you're saying you
12 don't even know whether your own injection is going to
13 be impacting your well less than half a mile away.

14 A Well, what I'm saying, sir, is, you know,
15 maybe if -- if Goodnight started doing that, even if I
16 didn't see -- say I saw the production stay exactly
17 the same and -- do I know if it's from Goodnight's
18 injection? If it -- if the injection gets worse,
19 maybe it has absolutely nothing to do with what
20 Goodnight's doing, as you -- as you contend, but, you
21 know, how do I know?

22 You're -- you're slamming 25 to 40,000
23 barrels of water a day into the middle of our field.
24 How do I know -- every data point I get after that
25 point is speculative -- I'm going to speculate on

1 what's -- whether or not it's -- it's being affected
2 by that.

3 Q Okay. But I guess my -- to answer my
4 question, though, you don't have any data yet or you
5 don't have any conclusions about -- any conclusions
6 that there's an adverse effect from your own injection
7 at that distance from your 200H well; correct?

8 A Yes, so -- so if you do the math, sir, at,
9 you know, the numbers you were saying, 4 million
10 barrels at 40,000 barrels a day, in 100 days,
11 Goodnight will have -- will have injected more water
12 than has been injected since 1987 just to give you
13 a -- a sense of the scale and what my concern is about
14 that.

15 Q I understand that you have a calculator
16 nearby and -- but I guess my -- I think you've
17 answered my question previously, but I just wanted to
18 make sure that you you haven't yet drawn any
19 conclusions or identified any adverse impacts from
20 your own disposal on the 200H well; correct?

21 A We -- we have not -- we have not drawn final
22 conclusions regarding our appraisal of -- of
23 what -- of that well and it's being monitored now.
24 Is -- is that an acceptable answer? I -- I -- that's
25 the answer. I'm sorry if it's not --

1 Q That's fine. That's fine. And then my
2 follow-up question to that is Empire is continuing to
3 inject into that well for disposal purposes; correct?

4 MR. PADILLA: That's been asked and
5 answered several times, Mr. Examiner.

6 MR. RANKIN: I didn't ask that
7 question. I'm asking whether they're still injecting
8 into the well.

9 THE WITNESS: That is an
10 active -- that's an active well. Yes, sir.

11 MR. RANKIN: Thank you.

12 THE WITNESS: That we operate.

13 MR. RANKIN: Mr. Examiner, I guess -- I
14 don't have it in front of me and it would be clumsy
15 and time consuming to pull up the information, but
16 the -- I ask that the Division take administrative
17 record of the well file for the EMSU #1 disposal well.
18 It's --

19 THE HEARING EXAMINER BRANCARD:
20 Mr. Goetze takes notice of all well files.

21 MR. RANKIN: Yeah. I know. It's API
22 number 30-025-04484 and I just want to be clear that
23 it's -- my understanding is that it's perforated
24 between the depths of 4,410 feet and 4,834 feet and I
25 just ask the Division take administrative record of

1 the actual perforations where that well is injecting
2 into. With that, Mr. Examiner, I have no further
3 questions of Mr. Sweeney.

4 THE HEARING EXAMINER BRANCARD: Thank
5 you. Mr. Goetze, a question or two?

6 THE HEARING EXAMINER GOETZE: Not much
7 energy left. Mr. Sweeney, welcome.

8 THE WITNESS: Yes.

9 THE HEARING EXAMINER GOETZE: At this
10 point, is Empire -- are they looking at -- I've seen
11 they've acquired numerous projects. Are you looking
12 at similar operations and assessments on this part of
13 New Mexico?

14 THE WITNESS: I'm sorry, sir. I missed
15 the first part of the question. What --

16 THE HEARING EXAMINER GOETZE: Okay.
17 Let me -- Empire acquired a lot of properties,
18 including enhanced recovery. Are there other projects
19 being considered which are similar to this?

20 THE WITNESS: In New Mexico, you mean,
21 or just --

22 THE HEARING EXAMINER GOETZE: Correct.

23 THE WITNESS: In New Mexico? In -- in
24 New Mexico, this is our -- the EMSU, the EMSUB, the
25 AGU and the YUMA [ph] are -- are the only properties

1 we own.

2 THE HEARING EXAMINER GOETZE: Okay.
3 And so you have other areas where you're doing this
4 type of assessment outside of New Mexico --

5 THE WITNESS: In other states, you
6 mean?

7 THE HEARING EXAMINER GOETZE: Yes.

8 THE WITNESS: Yes, in other states?
9 Yes.

10 THE HEARING EXAMINER GOETZE: And where
11 would these be? Just out of curiosity.

12 THE WITNESS: Well, we're looking
13 at -- we're looking at some -- at a similar formation
14 in -- in North Dakota. Not -- not directly analog,
15 but, you know, we -- we operate there and we're
16 considering, you know, enhanced recovery type stuff
17 there also.

18 THE HEARING EXAMINER GOETZE: So on the
19 level of your projects, this is considered high as far
20 as your company is concerned?

21 THE WITNESS: This is the
22 highest -- this is the crown jewel of our company.
23 This is -- this is our deal. This is what our company
24 is -- the cornerstone of our company is the EMSU,
25 EMSUB and the AGU fields in New Mexico.

1 THE HEARING EXAMINER GOETZE: That's
2 the only question I have. Thank you.

3 THE HEARING EXAMINER BRANCARD: Thank
4 you. This may have already been asked, Mr. Sweeney,
5 but I'm looking at the 200H well. It goes down to
6 3,770 or so and the top of injection that's being
7 proposed here is 4,125. So we're looking about 340,
8 350 feet vertical, and is it your opinion that that is
9 a concern despite that vertical difference of
10 interference from that well?

11 THE WITNESS: Yes, it is, sir. It's a
12 huge concern. Like I said, there -- the -- the
13 network throughout that field has confounded people
14 since the start of the water flood.

15 THE HEARING EXAMINER BRANCARD: Okay.
16 And then let's see if I can jump to your statement
17 here. So you say on page two of your statement,
18 "Empire would never even consider injecting 20,000
19 plus barrels of water into a single injector at this
20 point in our development exploitation of this field in
21 the San Andres." So reading between the lines, I
22 assume you're okay with lesser amounts of injection as
23 you are doing at your own wells; is that correct?

24 THE WITNESS: That's not necessarily
25 correct, sir. I mean, we -- we balance a water flood

1 and -- and I'm sure as you know, we -- you monitor,
2 you try to keep it balanced. There -- again, there
3 is -- there's fracturing that -- water flood
4 conformance is a big problem in that field and so I
5 wouldn't -- and -- and the levels that we tweak
6 is -- like I said earlier is 500 to 800 barrels
7 across, you know, a -- a pattern of wells and -- and
8 we adjust it accordingly to -- to -- you know, based
9 upon what we're seeing off of our producers and stuff.

10 So honestly, even if you told me you
11 were going to inject just a thousand barrels into
12 there, I wouldn't necessarily agree with it unless you
13 let me control what, you know -- had control over how
14 it was being operated as far as volumes and rates.

15 THE HEARING EXAMINER BRANCARD: Okay.
16 Thank you. Mr. Padilla, did you have any redirect?

17 MR. PADILLA: Just a couple of
18 questions.

19 REDIRECT EXAMINATION

20 BY MR. PADILLA:

21 Q Mr. Sweeney, you saw the rebuttal exhibits
22 that you were asked to testify about. I noticed that
23 the latest one of those exhibits was in 2012 and I
24 think that was a recompletion that XTO made. The
25 other completion reports or reports that you were

1 directed to were in 1987. What parameters are you
2 looking at in terms of the time span between, say,
3 1987 and even 2012 in terms of your future assessments
4 of ROZ or further development of water flood?

5 A Between 1987 and 2012, what -- I'm sorry.
6 I'm not -- not sure I understand the question,
7 Mr. Padilla. What -- between 1987 and 2012, have we
8 studied the history of the water flood over that time,
9 you're saying, or --

10 Q No, no, no. What I'm getting at is you've
11 indicated that you're studying, in an initial type of
12 evaluation, how you're going to further develop the
13 unitized area. And my question is from 1987 to the
14 present time, how has development of these fields
15 changed over that period of time?

16 A Well, of course there's been a lot of, you
17 know, technical -- technical advances made over that
18 time, you know, for water flood conformance
19 and -- as -- as an example, but also in horizontal
20 drilling, as well as of course the -- the -- any
21 tertiary type recoveries were basically in their
22 infancy back then and -- and are a lot more mature
23 now.

24 Q And does that process include the San Andres
25 Formation?

1 A Yes.

2 MR. PADILLA: Okay. That's all I have,
3 Mr. Examiner.

4 THE HEARING EXAMINER BRANCARD: Thank
5 you and thank you, Mr. Sweeney. All right. I guess I
6 will turn to Mr. Goetze right now and ask what you
7 would like to see from the parties at this point, if
8 anything. Would you just like to take this all under
9 advisement and think about it?

10 THE HEARING EXAMINER GOETZE: I think
11 we need -- we have a log of corrections in Goodnight's
12 testimony that needs to be submitted and information
13 regarding the one well and its completion and so
14 Goodnight has information to offer up. Other than
15 that, I think we could probably -- if they provide
16 that to all parties, we can go ahead and take it under
17 advisement.

18 THE HEARING EXAMINER BRANCARD: Do you
19 have any interest in asking the parties to provide
20 proposed findings or closing arguments? I am not
21 suggesting it one way or the other. I am simply
22 saying what might benefit you? And it's perfectly
23 okay to say, "No."

24 THE HEARING EXAMINER GOETZE: I'm going
25 to say no.

1 THE HEARING EXAMINER BRANCARD: Okay.

2 THE HEARING EXAMINER GOETZE: I think
3 if they want to make closing statements -- at this
4 point, this transcript will be arduous and very
5 thorough. So I think we have enough to make a proper
6 assessment.

7 THE HEARING EXAMINER BRANCARD: So --

8 THE HEARING EXAMINER GOETZE: Other
9 than the questions -- the legal questions about
10 evidence and subpoenas as the technical side is vastly
11 documented.

12 THE HEARING EXAMINER BRANCARD: Thank
13 you. All right. So I'll throw it back to the parties
14 then I guess -- so what you're saying, Mr. Goetze, is
15 if the parties wanted to summarize their case right
16 now, that might be an okay thing?

17 THE HEARING EXAMINER GOETZE: That
18 would be a good thing. That'd be a few more pages.

19 THE HEARING EXAMINER BRANCARD: All
20 right. I will throw it back to the parties. I don't
21 know if you all want to take a few minutes' break
22 before you do so or you just want to jump into it
23 right now. Mr. Padilla?

24 MR. PADILLA: I'd prefer to jump into
25 it right now. I might forget some of the important

1 stuff when we take a break.

2 THE HEARING EXAMINER BRANCARD: All
3 right. Well, since we started with Goodnight, I will
4 have you, Mr. Padilla, start with your presentation to
5 close.

6 MR. PADILLA: Mr. Examiner, I've never
7 had a case like this before where somebody comes in
8 and says, "We're going to dump a ton of water in your
9 unitized formation." You don't do that in drilling oil
10 and gas wells where you complete wells, say, in the
11 third Bone Spring as opposed to the second Bone Spring
12 without some notice to everybody.

13 And prior to that some type of notice,
14 I don't -- I just don't get it how in the world you
15 can have a Division order that was issued in 1984
16 defining the unitized interval and then somebody else
17 comes and determines that that unitized interval,
18 because it's unproductive in the past, is allowed to
19 dump a ton of water, which is going to happen in this
20 case.

21 Despite the science that Mr. Drake gave
22 us, you still can't do that. It's an invasion of
23 somebody else's property. The evidence here has shown
24 that Empire just barely got this unit. They expect
25 that they can make it produce a lot more, whether it's

1 in the Grayburg or wherever it may be.

2 Mr. Rankin asked a bunch of questions
3 that were like, "Well, how much water are you going to
4 produce out of all these additional wells that you're
5 going to drill if you drill them," and it's all
6 speculative. I don't know how you can get beyond -- I
7 mean, ask speculative questions that Empire hadn't
8 even determined how it will further develop the water
9 flood or whether or not residual oil zone oil is going
10 to be produced from the San Andres. Empire just
11 simply has not had a chance to make an evaluation.
12 They've looked at a lot of stuff from other people in
13 southeast New Mexico and Texas about recovery of ROZ
14 oil.

15 So it just baffles me that somebody
16 would say, "Well, we've determined that this area is
17 unproductive. It hasn't been and we don't care
18 whether or not it may be further evaluated for
19 production through tertiary recovery," which probably
20 will happen in the future and may include the San
21 Andres Formation. I mean, no one has determined that
22 this San Andres Formation here is poor space. That's
23 not even been addressed at all. We argued that in the
24 motion to dismiss.

25 I think a very pertinent question that

1 was asked by Mr. Goetze at that hearing was -- on the
2 motion to dismiss was, "Why haven't you attempted to
3 amend the order R7765?" The answer to that is that you
4 would have considerable notice issues arising from
5 that. So the best thing is to file an application for
6 commercial saltwater disposal in the middle of someone
7 else's secondary recovery water flood operations and
8 just say, "We don't care what you think."

9 I mean, to me, it's a matter of
10 correlative rights and trespass. You either have to
11 change the original order to eliminate the San Andres
12 if that's the case or you don't get to invade the San
13 Andres as proposed in this case despite any of the
14 science. I think Mr. Drake made a very good
15 presentation. He obviously knows his stuff, but it
16 still begs the question of how can you authorize this
17 when somebody operates that area?

18 I don't think -- it's insane to me that
19 somebody would simply invade that space. I mean, this
20 whole issue of how much are you going to -- how much
21 oil or produced water are you going to obtain from
22 additional drilling and where will you take that?
23 Well, if Empire decides to drill wells and they
24 produce oil, they should have first crack at disposing
25 the water in the San Andres if that's what they decide

1 to do, but for a stranger in title to come in and
2 simply dump water is insane. It's not right. It
3 doesn't make any sense.

4 To go further and allow this well will
5 certainly result in litigation because, well, it
6 doesn't make sense. It didn't make sense in that case
7 that I mentioned earlier, Snyder Ranches vs. Oil
8 Conservation Commission, and where essentially the
9 court did not allow invasion through trespass despite
10 an Oil Conservation Commission order. It doesn't make
11 it right. You can't cross boundaries. In this case,
12 you're crossing boundaries from -- vertically from the
13 Gallup to the San Andres and it's just wrong.

14 So I think the issues are clear in this
15 case. Now let me address some of the -- Mr. Rankin
16 talked about in his cross-examination of Mr. Sweeney
17 about, "What are your plans and where are they, are
18 they in writing and you didn't turn those over," and
19 I'm not sure that we understood -- I certainly
20 didn't -- the breadth of the subpoena.

21 And just as an information, I think
22 they're still looking at it and there may be
23 information, but I think, as Mr. Sweeney says, it's a
24 confidential matter or proprietary and a
25 confidentiality order would be appropriate if the

1 Division requires production of that information. It
2 just expands further argument in this case to allow
3 that and I don't think Mr. Sweeney went beyond any of
4 the proffered materials, which were sort of extensive.

5 But I can't understand this case from a
6 standpoint of -- in going into somebody else's
7 backyard and saying, "I have the right to be in here
8 because I have a surface use agreement without
9 invasion of, in this case, Empire's rights." So that's
10 what I have to say about this case. Thank you.

11 THE HEARING EXAMINER BRANCARD: Thank
12 you. Mr. Rankin?

13 MR. RANKIN: Thank you, Mr. Examiner.
14 I appreciate the opportunity to have a brief closing.
15 In short, this case is not about property rights. The
16 Statutory Unitization Act does not create a property
17 right on behalf of Empire. It does not lock off the
18 San Andres aquifer to their sole use.

19 What it gives them is the right to
20 institute a secondary recovery project to recover oil
21 and gas and related liquids within the unit area and
22 to the extent there are hydrocarbons, recoverable oil
23 and gas within the San Andres, then they potentially
24 have a right to pursue them under their underlying
25 mineral leases. The Unitization Act, the unit

1 agreement, the order itself doesn't give them any
2 additional rights and I think the Division understands
3 that.

4 Therefore, the issue before us today is
5 simply whether or not the proposed injection is going
6 to interfere with unit operations, cause waste or
7 impair their -- the development of their unit.

8 We asked Empire to produce us all
9 documents reflecting any hydrocarbon presence in the
10 San Andres. We got one document back that had any
11 information or data on it at all that was relevant to
12 the unit, and that was the well card data for the 200H
13 well and as Mr. Sweeney testified, and the exhibit
14 itself shows, that well is completed and producing
15 from the Grayburg, not the San Andres. None of the
16 wells in the unit are producing from the San Andres.

17 Mr. Drake's testimony is uncontroverted
18 and uncontested that there is a impermeable barrier
19 between the two zones. Empire has a team of
20 subsurface experts that is qualified to testify about
21 geology, but we didn't hear from them today and
22 we -- all we heard from was an engineer who was not
23 qualified to testify about the geology.

24 And so what we understand is that in
25 practice, there are six wells that are currently

1 injecting volumes into -- varying volumes into the San
2 Andres, some of which are within a mile of the
3 proposed well itself, and that based on the experience
4 of drilling those wells, the log -- the data acquired
5 from the well logs and from the actual drilling
6 experience, we know that there is an extensive, area
7 wise, impermeable barrier that has maintained a
8 disequilibrium and pressure between the two zones that
9 has been sustained for a number of years.

10 And therefore, based on the data and
11 based on the uncontested evidence, we believe that
12 it's fair and correct to determine that there is no
13 impact to unit operations if Goodnight is permitted to
14 inject into the San Andres and therefore, we ask that
15 the Division take this matter under advisement and
16 find in favor of Goodnight and approve its application
17 to inject.

18 Now, one thing I will say: Mr. Goetze
19 asked that we provide information regarding the 462
20 well to try to confirm the updated history of that
21 well, that XTO, the operator, actually performed the
22 proposed recompletions that were indicated in the well
23 file. And I will just represent to the Division that
24 we're going to need the cooperation of Empire to
25 produce those documents because they are the ones that

1 have possession of the documents from XTO that may
2 answer that question.

3 So I think I will, with the direction
4 of the hearing examiner, likely have to file a
5 subpoena ordering Empire to produce those
6 documents -- all documents in their well file so we
7 have an understanding of what actions were actually
8 taken on that well.

9 And with that, I guess I will stop
10 talking and just ask for guidance from the Division if
11 that's what you would like. I think that probably is
12 the appropriate path forward, is to request a subpoena
13 and then serve Empire with a subpoena for those
14 documents.

15 THE HEARING EXAMINER BRANCARD: Thank
16 you. Mr. Goetze, are you still interested in the 462
17 well?

18 THE HEARING EXAMINER GOETZE: Yes, it
19 is critical. In our AOR reviews, any well that has an
20 issue of communication has to be addressed either
21 through remedial actions or, in most cases, plugging.
22 So to that end, we need to know the disposition of
23 that well and if it's such that a subpoena is
24 required, that's fine. We'll take our time and see
25 what comes up. So if it is such that we do approve

1 something, it will be a condition of approval and in
2 that case, we can go to hearing again as to what the
3 Division can and can't do with someone else's well.

4 THE HEARING EXAMINER BRANCARD:

5 Mr. Padilla, can you have your client search their
6 files?

7 MR. PADILLA: Well, I get that,
8 but -- and I think we'll search the files, but if you
9 look at -- it's one of the exhibits, the one that has
10 all the wells in the 2-mile circle, theoretically,
11 Goodnight is asking for all well files within the
12 unit. That is just too much to do that. I mean, good
13 God --

14 THE HEARING EXAMINER BRANCARD: Well, I
15 think we're focusing on the 462 here right now.

16 MR. PADILLA: Well, if it's only that
17 well, that's probably a piece of cake, but we'll -- we
18 can probably submit that well, but just the
19 information on that well because it touches the San
20 Andres.

21 THE HEARING EXAMINER BRANCARD: And
22 it's within a half mile. It's in the area of review.
23 So we really need to know what the current status of
24 it is and it appears that our well file -- is that
25 correct, Mr. Goetze? Does not have the final action

1 on this well, if it actually happened?

2 THE HEARING EXAMINER GOETZE: That is
3 correct. We have incomplete information as to current
4 status of the well. We have only a notice of intent
5 and in all cases, regardless of the applicant, if we
6 do not have a subsequent record or a recompletion, we
7 assume that this was just filed and forgotten about.
8 The well is in the current status it was prior to the
9 submission of the notice of intent or application to
10 deepen the flood.

11 THE HEARING EXAMINER BRANCARD: Okay.
12 So I will say, Mr. Padilla, we will give you 15 days
13 for your client to go through their files, which I
14 guess they've inherited from other people, and see
15 what information you have about the disposition of
16 that well since that notice of intent was filed and if
17 you don't find anything, you should let us know, too.

18 MR. PADILLA: Okay. Fair enough.

19 THE HEARING EXAMINER BRANCARD: And
20 obviously, Mr. Rankin, if you can come up with
21 something on your own, that would be great, too.

22 MR. RANKIN: Yeah. We'll certainly
23 look. And just to be clear, I appreciate that,
24 Mr. Examiner. I understand that that would include
25 requesting a review of both paper documents,

1 electronic files. Mr. Sweeney testified that they got
2 both, but I just want to make sure that they do a full
3 diligent search and perhaps better than the one on the
4 first subpoena, but something that evaluates both
5 paper files and electronic files.

6 THE HEARING EXAMINER BRANCARD: Yeah.
7 Well, one file, one well. It's pretty narrow. All
8 right. Anything else, Mr. Goetze?

9 THE HEARING EXAMINER GOETZE: No, just
10 one box in the middle of 10,000 boxes.

11 THE HEARING EXAMINER BRANCARD: Well,
12 that may be true. Yeah. That may be --

13 THE HEARING EXAMINER GOETZE: We have a
14 Morgan shed that you can use also.

15 THE HEARING EXAMINER BRANCARD: Yeah.
16 You wouldn't want to ask us to go through our old
17 files. All right --

18 THE WITNESS: I feel -- I feel like I
19 should be asking Goodnight to pay me some. I -- I got
20 to do all of this work for these guys, but all right.

21 THE HEARING EXAMINER BRANCARD: All
22 right. Well, what else? Anything else here before we
23 take this case under advisement?

24 MR. RANKIN: I don't think so,
25 Mr. Examiner. I can't think of anything at this time.

1 We'll file our corrections and wait for the 15 days to
2 see what we get.

3 THE HEARING EXAMINER BRANCARD: All
4 right.

5 MR. PADILLA: Nothing else from Empire.

6 THE HEARING EXAMINER BRANCARD: Well,
7 thank you all and thank you to our court reporter and
8 hope everybody has a fine evening. Thank you. This
9 case, 22626, will be taken under advisement subject to
10 the submittal of the documents requested today. Thank
11 you.

12 (Whereupon, at 5:20 p.m., the
13 proceeding was concluded.)
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Danae Fulton

Notary Public in and for the
State of New Mexico

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CERTIFICATE OF TRANSCRIBER

I, KEARA CONTARTESI, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



KEARA CONTARTESI

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