

1 Meeting of the New Mexico Oil Conservation Commission

2  
3 Moderated by Commission Chairman Dylan Fuge

4 Thursday, February 9, 2023

5 10:00 a.m.

6  
7 Remote Proceeding

8 Santa Fe, New Mexico 87501

9  
10 Status Conference for Cases:

11 Chevron Cases 22871, 22872 and Cimarex Cases 23088-  
12 23091: pooling cases that are being heard directly by  
13 the Commission under Order No. R-22412 Devon De Novo  
14 Case 23035: Devon appeal of Division Order No. R-22205  
15 addressing Devon Cases 22179-22180, 22382 and Cimarex  
16 Cases 22313-22316 Cimarex De Novo Case 23049: Cimarex  
17 appeal of Division Order No. R-22204 addressing  
18 Chevron Cases 22343-22344 and Cimarex Cases 22519-  
19 22520

20  
21  
22 Reported by: Dana Fulton

23 JOB NO.: 5531744

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A P P E A R A N C E S

List of Attendees:

Dylan Fuge, Commission Chairman

Greg Bloom, Commissioner

William Ampomah, Commissioner

Gabriel Smith, Commission Counsel

Jim Bruce, Esquire

Michael Feldewert, Esquire

Earl DeBrine, Esquire

Adam Rankin, Esquire

Paula Vance, Esquire

Norm Gaume

Sofia Jenkins-Nieto

Florene Davidson

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P R O C E E D I N G S

THE CHAIRMAN: Good morning, everyone. Welcome to the February 9, 2023, meeting of the New Mexico Oil Conservation Commission.

I will start off with just remarks, as everyone heard, but for the record. As was announced last week, Chris Moander, formerly with the New Mexico Attorney General's Office, accepted a job with EMNRD in the Office of General Counsel. So he's no longer commission counsel, and we're joined by Mr. Gabe or Gabriel -- which do you prefer, sir?

MR. SMITH: I go by Gabe.

THE CHAIRMAN: -- Gabe Smith, with the Attorney General's Office. He is now commission counsel. So welcome this morning.

I will do a quick -- since you're brand new to the commission, I'll do a quick roll call here, as you can meet folks and go, but just a quick roll call of attendees.

Commissioner Bloom.

COMMISSIONER BLOOM: Present. Good morning.

THE CHAIRMAN: Dr. Ampomah, Commissioner Ampomah.

COMMISSIONER AMPOMAH: Present.

1 THE CHAIRMAN: And good morning. My  
2 name's Dylan Fuge. I'm the acting Oil Conservation  
3 Division Director and also, as a result, also the  
4 interim chair of the Oil Conservation Commission.

5 The first item on the agenda, the first  
6 item up for today, is approval of the agenda. Do we  
7 have any additions to the agenda?

8 COMMISSIONER BLOOM: No, Mr. Chairman.

9 COMMISSIONER AMPOMAH: Not from my  
10 side. Thank you.

11 THE CHAIRMAN: Can I get a motion for  
12 approval?

13 COMMISSIONER BLOOM: Mr. Chair, I so  
14 move.

15 COMMISSIONER AMPOMAH: Mr. Chair, I  
16 second.

17 THE CHAIRMAN: I'll run through the  
18 roll again.

19 Commissioner Bloom.

20 COMMISSIONER BLOOM: Approve.

21 THE CHAIRMAN: Commissioner Ampomah.

22 COMMISSIONER AMPOMAH: Approve.

23 THE CHAIRMAN: And I also approved.

24 The agenda is approved unanimously.

25 I believe yesterday everyone received a

1 copy of the minutes from our January 12, 2023,  
2 meeting. Does anyone have any addition or comments  
3 for that, to those minutes?

4 COMMISSIONER BLOOM: No, Mr. Chair.

5 THE CHAIRMAN: Can I get a motion for  
6 approval?

7 COMMISSIONER BLOOM: I so move.

8 COMMISSIONER AMPOMAH: I second.

9 THE CHAIRMAN: All right. Mr. Smith,  
10 do you want to go through the roll?

11 MR. SMITH: Oh, sure. Chair Fuge.

12 THE CHAIRMAN: I approve.

13 MR. SMITH: Commissioner Bloom.

14 COMMISSIONER BLOOM: Approve.

15 MR. SMITH: Commissioner Ampomah.

16 COMMISSIONER AMPOMAH: Approved.

17 MR. SMITH: Am I pronouncing all of  
18 those names, by the way? If I'm getting any of them  
19 wrong, please feel free to correct.

20 THE CHAIRMAN: Fuge is just huge with  
21 an F.

22 MR. SMITH: Okay.

23 THE CHAIRMAN: All right. The next  
24 matter before us is a status conference in Chevron  
25 cases 22871, 22872; Cimarex cases 23088 through 23091;

1 Devon De Novo case 23035; Cimarex De Novo case 23049.  
2 And I believe counsel for all of the parties in those  
3 cases are on for the status conference, but I would  
4 ask for confirmation from those parties.

5 MR. BRUCE: This is Jim Bruce. Go  
6 ahead, Mike.

7 MR. FELDEWERT: Good morning,  
8 Mr. Chairman and the Commission. Michael Feldewert,  
9 with Holland & Hart, on behalf of Chevron USA, Inc.,  
10 and then Devon Energy Production Company.

11 MR. BRUCE: Commissioners, this is Jim  
12 Bruce. I am here on behalf of Cimarex.

13 MR. DEBRINE: Good morning,  
14 Mr. Chairman and members of the commission. Earl  
15 DeBrine, with the Modrall Sperling firm in  
16 Albuquerque, here in the second batch of cases on  
17 behalf of Cimarex Energy Company, and those are the  
18 Devon vs. Cimarex cases.

19 THE CHAIRMAN: Okay. I guess since I  
20 know these cases have been pending on the docket, if  
21 folks might indulge a little bit, kind of a thumbnail  
22 sketch overview of sort of where those cases are,  
23 where the parties may feel there are issues left to  
24 resolve.

25 And I suppose my next question, you

1 know: Are we at a place where we are looking to set a  
2 hearing in these cases? And if so, you know, let's  
3 start talking about that.

4 But maybe just start with sort of a  
5 high-level, very high-level, overview, not necessarily  
6 dispute facts and sort of where we are posturewise  
7 with these cases.

8 MR. BRUCE: Commissioners, if I may,  
9 this is Jim Bruce. I would note, looking at the  
10 docket sheet, that, first of all, the Chevron Cimarex  
11 cases, that first group, has been combined at the  
12 commission level with the Cimarex De Novo case, so all  
13 of those cases go together. And really, it's  
14 counter-pooling applications between  
15 Chevron -- between Chevron and Cimarex.

16 The overview is that there are cases  
17 involving pooling of the Wolf Camp formation, separate  
18 cases, of course, pooling of the Bone Spring  
19 formation. There is an order in the Wolf Camp case  
20 that Chevron was victorious in that matter, and  
21 Cimarex appealed to the commission.

22 That first group of cases there, that  
23 23088, et al., and Chevron's 22871 and 72 are the Bone  
24 Spring cases; they have not been heard by the  
25 division. But Cimarex moved without opposition to

1 combine them all at the division level because the  
2 original commission -- or the original division order  
3 in the Wolf Camp cases would probably be the template  
4 for the division in the Bone Spring cases; the facts  
5 are very similar.

6 And so rather than have one De Novo  
7 case and then a division case plus another De Novo  
8 appeal, it seemed easier just to combine them all at  
9 the division level -- I mean, at the commission level.  
10 So that's where we are.

11 I think Mr. Feldewert would agree that  
12 they're ready for a hearing and the only question is  
13 the hearing date.

14 MR. FELDEWERT: And I think -- Jim, I  
15 think you -- and I know you probably -- I think you  
16 mentioned you had a conflict on May 11th.

17 MR. BRUCE: Yes. Commissioners, I'm at  
18 that age where I need cataract surgery, and I'm  
19 probably a menace to society even driving to the  
20 grocery store anymore. But well over five months ago,  
21 I went into the ophthalmologist, and actually they do  
22 one eye at a time. I have one surgery in April, which  
23 is on the commission's April hearing date, and then I  
24 have another surgery in May, which is also on the  
25 commission's hearing date, just by happenstance.

1           And I don't want to let those dates go,  
2 either date go, because it would probably take me  
3 another four or five months to arrange with the  
4 surgeon other operating dates. So I would love to go  
5 to hearing as early as possible, but those April and  
6 May dates are just not doable for me. So I think we'd  
7 have to look at June or something like that.

8           THE CHAIRMAN: Before we get into  
9 dates, another question. The Devon De Novo case, is  
10 it separate and distinct from the Cimarex and Chevron  
11 cases that have been consolidated? Are there similar  
12 issues? If I'm misunderstanding why they're up in a  
13 batch, could someone clarify that, please?

14           MR. FELDEWERT: I would say, well,  
15 certainly, they involve different acreage, okay, and  
16 different areas. So I think Earl, I think, would  
17 agree with me they are separate and distinct from the  
18 Chevron batch of cases. They were subject to a very  
19 similar type of order from the division, okay. In  
20 fact, the orders were issued back to back; they have  
21 sequential order numbers.

22           The structure of the division approach  
23 to it is basically the same, okay, but it does involve  
24 separate acreage, and it seems it would be a subject  
25 of a separate hearing, given the issues and the

1 witnesses that you can expect to have before you.

2 THE CHAIRMAN: Okay.

3 MR. DEBRINE: And I would agree with  
4 that. The two cases are very distinct and standalone  
5 and have unique issues with respect to them and would  
6 need to be heard separately for sure.

7 THE CHAIRMAN: Okay.

8 MR. FELDEWERT: And the only other  
9 thing I would add, and this is for, I think, more for  
10 you, Mr. Smith, or whoever is going to be drafting  
11 whatever orders come out of this, okay. There's an  
12 order that continued all of these matters to May 11th,  
13 and I would suggest not following the captions the way  
14 they are on that particular order because it created a  
15 lot of confusion.

16 Florene did a good job of sorting  
17 things out, and I think the way in which you have them  
18 grouped on your agenda is probably the most -- the  
19 best way to structure them for any kind of order.

20 THE CHAIRMAN: Okay. I want to ask  
21 briefly, do my fellow commissioners have questions  
22 about case status, posture or other pieces before we  
23 get into scheduling questions?

24 COMMISSIONER AMPOMAH: Not from my  
25 side.

1 COMMISSIONER BLOOM: No, not at this  
2 time. Thank you, Mr. Chairman.

3 THE CHAIRMAN: So you know, floating  
4 the discussion out and seeing if there's a consensus  
5 in the parties, it sounds like in -- and  
6 Mr. Feldewert, please correct me if I'm grouping them  
7 incorrectly. But in Chevron cases 22871, 22872 and  
8 the Cimarex cases 23088, et al., and the other Cimarex  
9 case 23049, there is a consensus to have or there's a  
10 request to have that put on the calendar for a hearing  
11 on June 8th to accommodate Mr. Bruce's schedule and  
12 some other constraints that I believe were emailed to  
13 the commission and discussed at last week's meeting.

14 MR. FELDEWERT: Jim, does that work for  
15 you? You're muted, Jim.

16 MR. BRUCE: No, no, no. I mean,  
17 June 8th is fine with me. I'll be able to see by  
18 then, anyway.

19 THE CHAIRMAN: And are there issues  
20 that would be helpful to do some motion practice and  
21 motion hearings before in this particular matter?

22 MR. BRUCE: Commissioners, I don't know  
23 about -- and I'll defer to Mike on the motions.  
24 Certainly, I think both of us could -- Mike and I  
25 could come up with an undisputed statement of the

1 basic facts of these cases so the commissioners can  
2 see how these cases intertwine and why they probably  
3 are going to be subject to the same principles.

4 But Mike, I don't know if you thought  
5 about motions at all.

6 MR. FELDEWERT: Nothing comes to mind.

7 THE CHAIRMAN: Okay.

8 MR. BRUCE: I don't think the facts are  
9 all that -- the facts in all of those Cimarex cases  
10 and Chevron cases are similar, and I don't think  
11 anybody really -- there's really no factual dispute as  
12 to ownership and the proposed well units and things  
13 like that.

14 And I think if Mike and I could work  
15 together, we could get you, even earlier than the week  
16 before, an undisputed statement of facts, and that  
17 would help the commission. And maybe throw  
18 in -- well, I'll just leave it right there.

19 I think we could work something out so  
20 that at least you can get the basic facts down so you  
21 don't have to walk into the hearing in the dark, even  
22 though we do file exhibits, etc., a week before.

23 THE CHAIRMAN: Okay. Mr. Smith, is  
24 there anything else the commission needs to hear from  
25 the parties before we can -- to put together a

1 procedural order, given the discussion we've heard?

2 MR. SMITH: You know, to be honest, I  
3 haven't had a lot of time to look at the rules and  
4 statutes applicable to this commission I was assigned  
5 two days ago. If I could just have a couple of  
6 minutes.

7 THE CHAIRMAN: Yeah.

8 MR. SMITH: Maybe, if you wanted to, if  
9 there's anything else you want to talk about. I'll  
10 just flip through and see if there's anything else  
11 procedurally necessary before we set this.

12 THE CHAIRMAN: We will move -- we'll  
13 table the discussion there, and let's talk about a  
14 hearing date for the Devon De Novo case 23035. And  
15 I'm going to turn it over to Mr. Feldewert and  
16 Mr. DeBrine on sort of scheduling requests.

17 And again, similar question about, you  
18 know, would this be a matter that's appropriate for a  
19 motion hearing prior to?

20 MR. FELDEWERT: No. I think  
21 seeing -- I can't think of any motions that I would  
22 contemplate filing at this point in time. We've had  
23 the division hearing. I think we know where each  
24 party stands. So it seems to me we just need to carve  
25 out a date to get it on a docket for a hearing. I

1 suspect, you know, there will be a number of  
2 witnesses, as there were in the division case below,  
3 but you do have benefit of all the prehearing filings,  
4 so hopefully it can move along as efficiently as  
5 possible.

6 MR. DEBRINE: I would agree. I don't  
7 anticipate any motion practice with respect to the  
8 cases. I would add that the parties are engaged in  
9 fruitful discussions, and there's probably a pretty  
10 good likelihood that we may not need to have a hearing  
11 because those talks are continuing, and we'll see how  
12 it goes.

13 MR. FELDEWERT: Well, that will be  
14 great if we can get Cimarex to agree with somebody.  
15 That's super.

16 THE CHAIRMAN: And based on  
17 presentations at the last hearing, Mr. Feldewert, I  
18 understood you had some constraints in maybe it was  
19 March and April or April, so are we looking at the  
20 May 11th date or later?

21 MR. FELDEWERT: I would ask later,  
22 because I'm going to be out of the country, and so  
23 after -- if we could, I'd like to see it after May.

24 And I agree with Earl; I heard some  
25 good things about the discussions. I hope they pan

1 out. So I don't know, Earl, do you want to try to put  
2 this in July and see what happens between now and  
3 then?

4 MR. DEBRINE: Yeah, that would be fine  
5 with me. I've got a week trial down in Roswell the  
6 week before. It will be difficult to prepare for a  
7 May 11th hearing, but so July would be fine.

8 MR. FELDEWERT: Well, shit, I should  
9 have stuck with the May 11th hearing then.

10 MR. DEBRINE: Yeah, yeah.

11 THE CHAIRMAN: Enjoying the hearing  
12 from a beach somewhere.

13 All right. I think we've got tentative  
14 dates. Mr. Smith, do you think we -- I think we have  
15 what we need to move forward, at least setting the  
16 dates and then putting together a procedural order,  
17 but let me know if we're missing anything before we  
18 move.

19 MR. SMITH: No. That sounds good. And  
20 I'll follow up with you after this meeting to make  
21 sure that I have that all correct.

22 MR. FELDEWERT: I can offer, Mr. Smith,  
23 that when it comes to commission hearings, there's  
24 pretty good structure within the rules in terms of  
25 prehearing filings and dates for that, so I don't

1 think there's a lot you have to do with a prehearing  
2 order.

3 MR. SMITH: Perfect. Good to know.

4 THE CHAIRMAN: And actually,  
5 Mr. Feldewert, that leads to the next question. We're  
6 going to go with the standard scheduling that's set up  
7 in the rules, the standard timing and everything like  
8 that. No one's going -- we're not -- there's no  
9 request on the table to do anything differently, I'm  
10 assuming.

11 MR. FELDEWERT: I don't see a need to  
12 depart from that for either of the cases I'm involved  
13 in.

14 MR. DEBRINE: Yeah, and that's fine  
15 with us. Just like Mr. Bruce was saying, you know, we  
16 can work on a statement of undisputed facts to submit  
17 even earlier than a week earlier, if the commission  
18 were to desire it. Other than that, the standard  
19 scheduling should work.

20 THE CHAIRMAN: Okay. Can I get -- then  
21 let's schedule those for hearings as follows: the  
22 Devon De Novo case 23035 will be set for evidentiary  
23 hearing and adjudication on July 13, 2023, and the  
24 Chevron cases 22871, 22872, Cimarex cases 23088  
25 through 23091, and Cimarex De Novo 23049 will be set

1 for an evidentiary -- added to the agenda and set for  
2 an evidentiary hearing on June 8th, adjudication on  
3 June 8th.

4 And the commission will work after to  
5 get scheduling orders out to the parties, and we'll go  
6 from there. Please keep us apprised if settlement  
7 discussions proceed in any of the matters and they're  
8 resolved in advance.

9 MR. BRUCE: Thank you, Mr. Chairman.

10 MR. DEBRINE: Thank you, Mr. Chairman.

11 MR. FELDEWERT: Thank you very much for  
12 your time.

13 THE CHAIRMAN: Thank you.

14 All right. We're moving to the next  
15 item on the agenda, which is a discussion with YUCCA.  
16 They had requested to appear before the commission  
17 with some questions.

18 I see Mr. Gaume. Apologies if I'm not  
19 saying that correctly. Are you expecting anyone else  
20 to join you? I am looking at the attendees, and I'm  
21 happy to promote them to participants if you just tell  
22 me their name. And Mr. Gaume, you should be able to  
23 unmute yourself. You are a participant -- or  
24 panelist, I mean.

25 MR. GAUME: Thank you. Bianca should

1 be admitted as a panelist, and she would have to tell  
2 you who else might be part of the discussion. Thank  
3 you.

4 THE CHAIRMAN: Okay. I've got just a  
5 general audio login. I will promote that to a  
6 panelist and see if that is Bianca. Good morning.  
7 This is Dylan Fuge, chair of the Oil Conservation  
8 Commission. I just promoted someone in who's on an  
9 audio line. Is this Bianca with YUCCA? You should be  
10 able to unmute yourself.

11 Oh. Never mind. Change role. Turns  
12 out I put -- that's just a recorder. I'll promote the  
13 other panelist. I just promoted a Mr. Lendecker [ph].  
14 Oh, no. He just hung up.

15 Norm, Mr. Gaume, I do not appear to  
16 have Bianca on the line.

17 MR. GAUME: Thank you, Mr. Fuge.

18 THE CHAIRMAN: The only attendee I'm  
19 seeing is the court reporter's audio recorder.

20 MR. GAUME: Thank you, Mr. Chair. I  
21 don't represent YUCCA, but I am aware of their  
22 concerns, if you wish to proceed without them.

23 THE CHAIRMAN: Well, I guess we were  
24 asked to add them to the commission agenda. We did  
25 get an email copy of the questions. You know, we, you

1 know, looked at the questions. Sort of the initial  
2 setup is they do not appear related to a specific  
3 active case or petition before the -- before the  
4 commission, and in some respects, some of the  
5 questions are sort of more akin to information that  
6 may be requested and obtained under IPRA.

7 So I'm not sure there's a specific  
8 commission -- well, I'm not seeing a commission ask,  
9 an ask or a petition, related to a pending commission  
10 case. So I did want to ask that clarifying question  
11 before I sort of suggest a kind of next step.

12 MR. GAUME: Well, thank you, Mr. Chair.  
13 I think I can fill you in on that.

14 The concern is, is that, liquid spills  
15 of oil and gas and other liquids in the oil field were  
16 made illegal by the Oil Conservation Commission's  
17 rule, and I participated in that rulemaking. Since  
18 that rule became effective, I believe the date was  
19 August 21, 2021, there's only been one enforcement  
20 action against these illegal spills.

21 The illegal spills have -- are  
22 not even -- there is a standard in the penalty  
23 schedule that you've added to the schedule of  
24 penalties, the Oil Conservation Commission has added.  
25 No action is being taken to impose those penalties.

1 As I testified in the rulemaking hearing, some oil  
2 producers have up to 20 times as many spills which are  
3 now illegal, as other producers based on a normalized  
4 spill rate; that is, number of spills per million  
5 barrels of energy produced.

6 The bad actors still are the bad  
7 actors. "Normal operations" are still listed as a  
8 cause of illegal spills. And YUCCA -- and I'm a  
9 volunteer. I'm a retired professional engineer. They  
10 contacted me. I took a look at the recent spills  
11 data, and I could see no changes whatsoever since  
12 spills became illegal. So that's the concern.

13 When I testified previously, I brought  
14 many of these points up. You know, most of the spills  
15 appear to be preventable. Several years ago, I spoke  
16 to Bill Brancard, several of us did, who told us that  
17 the commission was going to pass rules that would  
18 shore up standards of construction and materials, you  
19 know, for use in the oil field that would prevent  
20 these spills.

21 Corrosion, equipment failure, are the  
22 predominant causes; overflow of tanks and pits are  
23 common; and as I said, even "normal operations" are  
24 listed as the causes of these illegal spills, without  
25 enforcement action.

1           So the request from YUCCA was for the  
2           commission to ask for the Oil Conservation Division to  
3           come to the commission with a report on what's being  
4           done to stop these spills of toxic oil and gas  
5           liquids.

6           THE CHAIRMAN: That's a helpful  
7           clarification. That was not completely clear in the,  
8           you know, kind of email list of questions we received.

9           I want to look at my other  
10          commissioners to see if they have any other questions.

11          COMMISSIONER BLOOM: Mr. Chairman, I  
12          think you know that YUCCA approached the land office  
13          and just, they had asked me, you know, how they might  
14          appear before the OCC to get information regarding  
15          these matters. And so I forwarded that on to Florene,  
16          who, of course, passed that on to you.

17          And I had asked -- well, in the course  
18          of the time I heard from them, I was looking at some  
19          of our guiding statutory authority and so on, and I  
20          think a case could be made that these are subjects  
21          that the OCC could hear in the course of our regular  
22          monthly meetings.

23          THE CHAIRMAN: I suppose, certainly,  
24          you know, obviously the OCC has oversight authority.  
25          It's over the OCD. Obviously it establishes the rules

1 and other pieces over the OCD. We do not, Mr. Gaume,  
2 undertake enforcement. We would be the appellate body  
3 if someone were to appeal enforcement action by the  
4 OCD. So we don't have independent staff that does  
5 enforcement or other things like that. Enforcement of  
6 the rules established by the OCD is discharged by the  
7 division.

8 A proposal that I would like to put  
9 down, you know, kind of notwithstanding but for  
10 discussion among commissioners, is I would be willing  
11 to take these questions back as the OCD director and  
12 work with my staff to get some answers to those  
13 questions for YUCCA and address the specific questions  
14 asked. I'm not sure we need to have a formal report  
15 up here. I can work with staff to get answers to  
16 those questions and provide them.

17 And I think that may be most  
18 appropriate since, again, the OCC is sort of the  
19 appellate body of any enforcement that may or may not  
20 occur under the established rules.

21 MR. GAUME: Thank you, Mr. Chairman. I  
22 think that YUCCA's hope was as the entity that passed  
23 the rule that's being disregarded, it was appropriate  
24 for the Oil Conservation Commission to be briefed,  
25 along with the public, on this matter. So we request

1 a public briefing, please.

2 COMMISSIONER BLOOM: Mr. Chair, I might  
3 point out that we've had a couple of new attendees  
4 join the meeting. I see Adam Rankin and Sophia  
5 Jenkins-Nieto with YUCCA. She has her hand raised.

6 UNIDENTIFIED SPEAKER: Can you hear me?  
7 Okay. Good. Sorry. We're at the roundhouse, so it's  
8 very loud. We're trying to find a spot where we can  
9 sit and listen and talk to you.

10 Apologies for the situation here, so we  
11 were just able to connect. I'm sorry. Would you mind  
12 letting us know what you've already discussed for this  
13 agenda item so we can kind of catch up, and then folks  
14 from YUCCA can kind of share what they were hoping to  
15 communicate.

16 MR. SMITH: Mr. Fuge, it appears that  
17 you are muted.

18 THE CHAIRMAN: Yes, I was.

19 We had just received a brief overview  
20 from Mr. Gaume about what YUCCA's concerns were, as he  
21 understood them, and what they were hoping to see by  
22 the request, because I requested, as the chair, some  
23 clarification on the request that came in because it  
24 does not appear tied to a particular matter or a  
25 pending petition before the commission.

1 UNIDENTIFIED SPEAKER: So I think what  
2 would be great is if the spokesperson from YUCCA could  
3 speak specifically to what is being requested, and  
4 then maybe you all could clarify if we need to file a  
5 formal petition or what the process would be to have  
6 these issues addressed. But I'll hand things over to  
7 Sophia, who is the spokesperson here from YUCCA. And  
8 again, apologies for our tardiness.

9 MS. JENKINS-NIETO: Hi, I'll just  
10 introduce myself really quick. Sorry. Can you hear  
11 me still?

12 THE CHAIRMAN: Loud and clear.

13 MS. JENKINS-NIETO: Okay. Good.

14 So my name is Sophia Jenkins-Nieto. I  
15 use she/her pronouns. I live in Albuquerque, and I am  
16 a member of YUCCA, which stands for Youth United  
17 Climate Crisis Action. YUCCA is youth-led campaign  
18 formed in 2019, organized around a global climate  
19 strike, and we've continued working for environmental  
20 and climate justice and want responsible and just  
21 climate action, including a just transition for our  
22 state.

23 So we're coming before the commission  
24 today to follow up on enforcement for produced water  
25 spills and leaks, which links to rules promulgated by

1 this commission, which have been illegal for several  
2 years. In fact, you might remember us. We worked on  
3 the rule, and we had a couple dozen youths who  
4 participated in those rulemaking proceedings.

5 We've looked at the website and we see  
6 that there are many spills being reported. We have  
7 members who live in the southern part of the state and  
8 Chaco regions who have witnessed those. In the last  
9 year, there were both large and small spills every  
10 day, with over a thousand spills in the last year.  
11 Despite the rule against these spills and the  
12 violations of the law, we have heard that one fine has  
13 been issued. However, we see no further enforcement  
14 actions have been taken.

15 So we're calling for there to be  
16 accountability. And we understand that we might not  
17 have the whole picture, so we wanted to formally  
18 request a report back from the OCD to the commission  
19 on the status so that the commission and the public is  
20 fully informed.

21 So we have a list of questions. Would  
22 be it be okay if I just read the questions I have for  
23 the information we're wondering about?

24 COMMISSIONER BLOOM: Mr. Chair, I think  
25 that that was a question to you, with Ms.

1 Jenkins-Nieto asking if she could read her questions.

2 THE CHAIRMAN: And of course I answered  
3 it while muted because I didn't think anyone needed to  
4 hear me drinking my coffee.

5 Yes, Ms. Jenkins-Nieto, please read  
6 your questions for the record.

7 MS. JENKINS-NIETO: All right. The  
8 first question is: How many spills have occurred  
9 since NMAC 19.15.29 went into effect, making  
10 unauthorized release of oil, gases, produced water  
11 condensate or liquid, oil field waste illegal, and how  
12 many of these infractions of the law have received  
13 enforcement actions and penalties?

14 Second question is: How does the  
15 agency answer for its failure to assess penalties for  
16 the remaining infractions?

17 And another question: The civil  
18 penalty calculation method is the process by which  
19 violations should be assessed for penalty. Why has  
20 this method not been applied?

21 It is our understanding that one  
22 violation has been assessed a penalty, and why was  
23 this case pursued and not others?

24 How many repeat violators exist? Why  
25 is a repeat offender not being penalized in accordance

1 with the rules and penalty calculation method?

2 Has the lost revenue and failure to  
3 issue penalties or fines been calculated? What is the  
4 amount? Given the revenue potential, why has the  
5 agency not aggressively pursued penalty assessment?  
6 Why are violations that cite "regular operations" as  
7 the cause not being addressed?

8 It is illegal to spill; therefore, any  
9 company whose regular operation is leading to spills  
10 should be required to changed their operations.

11 What is the explanation for the failure  
12 to enforce these policies for the last year and a half  
13 and what is the plan to get enforcement addressed?

14 So those are our list of questions. We  
15 think it's critical that you, as a body, and the  
16 public have an understanding of the status of  
17 enforcement, and so we'd like to formally request a  
18 status report.

19 And if the commission does not know the  
20 answer to our questions and does not have the OCD  
21 statute today to address these questions, that I'm  
22 sure you understand the importance to know the answers  
23 to, then we'd like to request the following: please  
24 schedule a status report from OCD staff that includes  
25 answers to the questions we stated here on the record

1 today at the next meeting so we can all understand the  
2 full picture and ensure that the rules promulgated by  
3 this commission are, in fact, being implemented and  
4 enforced.

5 Thank you, Chair and members of the  
6 commission.

7 THE CHAIRMAN: Looking at my other  
8 commissioners, do you have any follow-up questions?

9 COMMISSIONER BLOOM: Mr. Chairman, no,  
10 not at this time. I may have something to add here  
11 shortly but not now.

12 COMMISSIONER AMPOMAH: Yeah, I do have  
13 a quick one. So Mr. Chair was talking about these  
14 questions; you know, he, as a director, will hand  
15 these questions to the OCD for them to respond to  
16 YUCCA, and probably, if they are not satisfied,  
17 probably they can come back to the commission. So I  
18 want to know what YUCCA has to say about that.

19 MS. JENKINS-NIETO: A little confused  
20 by the question. Can you, like, clarify about --

21 THE CHAIRMAN: So I think the  
22 clarification was, and you may not have joined at the  
23 time I was questioning here, the commission itself is  
24 not an enforcement body. The commission establishes  
25 rules and other things like that and, in fact, is

1 actually the appellate body that someone subject to  
2 enforcement by the division would appeal to if they  
3 wanted to contest an enforcement action that was  
4 undertaken.

5           So the commission doesn't sort of weigh  
6 in on the abstract on enforcement or not. It is the  
7 appellate body for enforcement decisions and orders  
8 issued by the commission -- I mean, by the division,  
9 and the division is the body that enforces the rules  
10 established under the Oil and Gas Act that are  
11 established by the commission.

12           So what I was sort of leading in with  
13 the question, and why I was sort of asking what the  
14 specific ask is, I did not see a specific petition.  
15 There isn't a specific mechanism for the commission to  
16 kind of weigh in on these issues or with staff and  
17 other pieces. And what I was offering was, while I  
18 felt like there was limitations for what the OCC could  
19 do, as the OCD director, I was willing to take the  
20 questions back, some of which, you know, may have been  
21 more appropriately submitted as an IPRA, but take  
22 those questions back and prepare an answer and share  
23 it, you know, with YUCCA, you know, addressing the  
24 questions.

25           Because again, I'm not seeing right now

1 a commission vehicle to move this forward. There's  
2 not a pending case. The commission would be the  
3 appellate body for any potential enforcement, you  
4 know, in the future. So I think that's where that was  
5 coming from, and we may not have -- we may not have  
6 hit that before you joined.

7 Yes, please, Ms. Jenkins-Nieto.

8 MS. JENKINS-NIETO: I'm just wondering,  
9 for clarification, you said that, for instance, a  
10 violator of the law could petition the commission on  
11 appeal for a violation or an infraction that was  
12 enforced. So can -- but it can't go the other  
13 direction, where folks who are saying why wasn't there  
14 enforcement cannot ask about that for all of these  
15 thousands of incidents that have occurred that haven't  
16 had action?

17 THE CHAIRMAN: In the first instance,  
18 and I will, you know, look at the Attorney General's  
19 Office to hit in the first instance, that party would  
20 be appealing an order from the OCD taking enforcement  
21 action against them to do a specific thing, which  
22 would -- which is why it would be coming to the  
23 commission. And it's akin to an appeal of any of our  
24 other orders, whether it's a permit or a permit  
25 condition or other things like that.

1 MS. JENKINS-NIETO: Okay. Thank you.  
2 Sorry. Did someone else want to say something?

3 THE CHAIRMAN: The only thing I was  
4 going to add, the decision of enforcement, you know,  
5 is left to, you know, prosecutorial discretion and  
6 other decisions in terms of how and what enforcement  
7 cases are pursued, you know, which is conventionally  
8 why there isn't a sort of reverse process, but also,  
9 there just isn't an order in that circumstance to be  
10 appealed to the commission.

11 MS. JENKINS-NIETO: Okay. I have  
12 another question, but it looks like Norm had a  
13 follow-up.

14 MR. GAUME: I just wanted to fill in  
15 the YUCCA representative with my comment, that I  
16 believe that the commission should be officially aware  
17 that the rule that made spills illegal is not being  
18 enforced at all and that bad actors remain bad actors  
19 without any action. "Normal operations" are listed as  
20 the cause of spills, many are preventable, yet no  
21 action is taken.

22 Mr. Chairman, would you accept a  
23 petition for the commission to hear from the Oil  
24 Conservation Division about what enforcement is not  
25 taking place on illegal spills?

1 THE CHAIRMAN: Ms. Jenkins-Nieto.

2 MS. JENKINS-NIETO: Sorry. But that's  
3 a perfect, really pointed question. I think the  
4 follow-up that I was going to ask is, I understand  
5 that there's not an expressed authority for the  
6 commission to necessarily force the department to  
7 implement its rules, but I wanted to ask, is there  
8 anything that is preventing the commission from having  
9 a status update on the implementation of rules that  
10 were promulgated by this commission?

11 It feels like a pretty -- again,  
12 without needing to invoke, you know, any specific  
13 authority, the rulemaking that this commission did  
14 seems like it is within the purview of the commission  
15 to wonder about and want to hear about the status of  
16 how that rule is being implemented, and that's simply  
17 what we're requesting.

18 So back to Norm's question. If the  
19 appropriate mechanism would be to petition the  
20 commission, I think, you know, we'd have to take it  
21 back to the YUCCA steering committee, but I would  
22 imagine that YUCCA would want to pursue that. But I'm  
23 just wondering is that necessary, because can't the  
24 commission itself take an interest in the status of  
25 its rule?

1 THE CHAIRMAN: I'm going to look to my  
2 fellow commissioners to see if they have questions or  
3 comments.

4 COMMISSIONER AMPOMAH: You know, I want  
5 to know what Mr. Smith thinks about this, you know, in  
6 terms of what the commission can do and not do.

7 MR. SMITH: I would just note, you  
8 know, for those who came in on the call a little bit  
9 late, I received this assignment two days ago. I  
10 really am not that familiar with the commission's  
11 rules, although, I'm -- you know, I will work  
12 diligently to become familiarized.

13 I would ask that if there are questions  
14 as to the extent of the commission's jurisdiction or  
15 what actions it may take, that I would just need some  
16 time to research that and would be happy to provide  
17 follow-up on that at a later date.

18 THE CHAIRMAN: Thank you.

19 Commissioner Bloom.

20 COMMISSIONER BLOOM: Just thank you,  
21 Mr. Chairman. I was thinking along those same lines.  
22 We could ask Mr. Smith, our newly appointed attorney,  
23 to look at essentially what are the powers and the  
24 authority of the OCC, and I would point him towards in  
25 the NMAC 19.15.4, the statutory authority, which said

1 that this is adopted pursuant to the Oil and Gas Act,  
2 which grants the OCD and the OCC jurisdiction and  
3 authority over all matters relating to the  
4 conservation of oil and gas, prevention of waste of  
5 oil and gas and of potash, all oil and gas operation,  
6 etc., etc.

7 It looks like we might have a, you  
8 know, mandate there that gives us some breadth in  
9 terms of things we can hear. Perhaps that's the  
10 homework for the next meeting.

11 MR. SMITH: Thank you for directing me  
12 towards that rule and the statutory authority. I'll  
13 be sure to review those prior to the next meeting and  
14 have some answers regarding the ability of the  
15 commission to make requests, make informational  
16 requests from the division as far as implementation of  
17 the commission's rules.

18 THE CHAIRMAN: I want to hear if there  
19 are any other questions from the YUCCA  
20 representatives.

21 MR. GAUME: I think the only thing that  
22 I would add, Mr. Chairman, is that I believe that the  
23 division and the commission, in their regulations,  
24 have responsibility to protect public health, the  
25 environment and freshwater resources, and I would

1 submit to you that with the current negligent  
2 practices that caused these spills and the absolute  
3 lack of enforcement, that the commission should look  
4 into this matter under those responsibilities.

5 THE CHAIRMAN: Ms. Jenkins-Nieto.

6 MS. JENKINS-NIETO: Yeah. I just  
7 wanted to thank you all for listening to us.

8 And just a quick clarifying question.  
9 If we should wait until the next meeting to, like, ask  
10 a follow-up on this or if we can follow up in email,  
11 or what's the best way to do that?

12 THE CHAIRMAN: I think what I've heard  
13 from the discussion is we're going to do some circling  
14 back with commission counsel about the best way to  
15 field and handle this request. And so my proposal  
16 would be to add this as an update item to the next  
17 scheduled hearing, which is -- bear with me one  
18 second, I closed that window -- which is March 9th.

19 Ms. Jenkins-Nieto.

20 MS. JENKINS-NIETO: Thank you so much,  
21 Chair and Commissioners. I appreciate your time.

22 MR. GAUME: Thank you.

23 THE CHAIRMAN: Mr. Smith, I'm not going  
24 to pepper you with pending litigation at the moment.  
25 I think we've got a robust update on the last one, and

1 I'm not aware of any movement in those cases. But I  
2 will -- since I know you just got the assignment the  
3 other day, I will flag both of those for -- I'll flag  
4 the cases we're talking and the information I have on  
5 them. You probably already have it, but we can just  
6 compare notes.

7 Is there any other business?

8 COMMISSIONER BLOOM: I would just note  
9 that I've been added as counsel to those two  
10 outstanding cases.

11 THE CHAIRMAN: Perfect. Excellent.

12 Is there any other business before the  
13 commission?

14 COMMISSIONER BLOOM: Mr. Chairman, I  
15 would just note we have -- there are a couple people  
16 on who are attendees: Attorney Adam Rankin; I see a  
17 Paula Vance there as well. I don't know if they might  
18 have anything.

19 MR. FELDEWERT: This is Michael  
20 Feldewert. I'm just observing with a lot of interest  
21 in the discussion.

22 THE CHAIRMAN: Yeah.

23 MR. FELDEWERT: Thank you, though,  
24 Mr. Bloom.

25 THE CHAIRMAN: All right. Hearing no

1 other business, our next meeting is March 9th. We  
2 will be sending out agendas, minutes, other components  
3 and things like that pursuant to a normal schedule.

4 I appreciate everyone's patience with  
5 any little hiccups as we were learning the tweaks to  
6 the new webinar system. And otherwise, I think we are  
7 adjourned.

8 (Whereupon, the meeting concluded at  
9 10:53 a.m.)

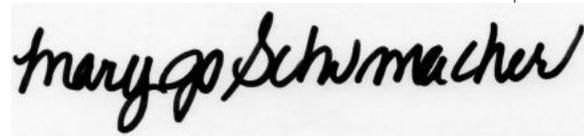
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MARYJO SCHUMACHER, RPR

[& - al]

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[albuquerque - breadth]

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[brief - commission]

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[facts - grouping]

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[guess - justice]

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[moment - outstanding]

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[southern - thinking]

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