

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

APPLICATION OF CHISHOLM ENERGY
OPERATING, LLC FOR A NONSTANDARD
SPACING AND PRORATION UNIT AND
COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO.

CASE NO. 16027
(De novo)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

August 21, 2018

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRWOMAN
ED MARTIN, COMMISSIONER
DR. ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the
New Mexico Oil Conservation Commission on Tuesday,
August 21, 2018, at the New Mexico Energy, Minerals and
Natural Resources Department, Wendell Chino Building,
1220 South St. Francis Drive, Porter Hall, Room 102,
Santa Fe, New Mexico.

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1 (9:03 a.m.)

2 CHAIRWOMAN RILEY: Good morning, everyone.
3 Sorry we're running a little bit late. Lots going on
4 this morning.

5 Let's go ahead and get back on the record,
6 and we are going to bring up Case Number 16027, de novo,
7 the application of Chisholm Energy Operating, LLC for a
8 nonstandard spacing and proration unit and compulsory
9 pooling.

10 So if I can please get who is here and who
11 is representing who.

12 MS. KESSLER: Madam Chair, members of the
13 Commission, good morning. Jordan Kessler and Michael
14 Feldewert, from the Santa Fe office of Holland & Hart,
15 representing Chisholm Energy.

16 CHAIRWOMAN RILEY: Thank you.

17 MS. BRADFUTE: Commissioners, good morning.
18 Jennifer Bradfute on behalf of Cimarex Energy Company.

19 CHAIRWOMAN RILEY: So we need to go ahead
20 and get this started. Who wants to -- who has brought
21 this case? This one has kind of been back and forth.

22 MS. KESSLER: This was Chisholm's initial
23 case and then Cimarex asked to go de novo, so we'll go
24 first.

25 CHAIRWOMAN RILEY: Okay.

1 MS. BRADFUTE: Would you-all like opening
2 statements?

3 CHAIRWOMAN RILEY: That would be great.

4 OPENING STATEMENT

5 MS. KESSLER: Again, good morning,
6 Commission.

7 Here, two parties did not reach agreement.
8 Chisholm proposed a well and negotiated for several
9 months with working interest owners, including Cimarex.
10 A deal in principle was reached with Cimarex, and
11 Chisholm went to a compulsory pooling hearing in front
12 of the Division. After the hearing and for another
13 approximately two-and-a-half months, the parties could
14 not agree on a form of term assignment. So with pooling
15 order in hand, Chisholm went and drilled this well --
16 proposed the well under the pooling order and drilled
17 the well.

18 Even after Cimarex was nonconsent under the
19 pooling order, Chisholm did attempt to negotiate in good
20 faith with Cimarex. The language of the assignments is
21 what's left. The parties have agreed to an amount of
22 money. Despite having negotiated since January, those
23 two issues are outstanding. The well's been drilled.
24 The completions are nearly finished. And now, months
25 after the well's -- after the order has been entered and

1 after the well has been drilled, Cimarex is looking to
2 unwind both the pooling order and the risk penalty.

3 I'd remind the Commission, the party
4 challenging the risk penalty is the party with the
5 burden of establishing that it is unwarranted. But
6 today we will establish that this well warrants a 200
7 percent risk penalty. There is no other Wolfcamp A well
8 in the township. This is a step-out well for Chisholm,
9 and due to the method of the azimuth drilling, there has
10 been -- there is increased risk for this well.

11 I'll also say this. The purpose of a risk
12 penalty is to allocate risk among the parties and to
13 compensate the operator for incurring the burden of
14 drilling. In other words, Chisholm drilled the well and
15 has already incurred the risk. It's too late to
16 challenge the risk penalty. The risk has already been
17 shouldered by Chisholm because the well has already been
18 drilled. Chisholm should be compensated for having
19 burdened that risk -- or having shouldered that risk and
20 for having drilled the well.

21 And in prior orders, both the Division and
22 the Commission have imposed a 200 percent risk penalty
23 when a well has already been drilled. And, in fact, the
24 order establishing the current regulations for the 200
25 percent risk penalty -- in that order, the Commission

1 contemplated that for wells that had already been
2 drilled, the Commission included a finding that the well
3 was -- that it was the applicant and not the pooled
4 party whose risk is reduced due to the opportunity
5 afforded to the party by statute to participate on a
6 heads-up basis without any risk charge by electing to
7 advance its cost of drilling after the pooling order is
8 entered based on information developed by the drilling
9 and not known to the applicant at the time the decision
10 is made.

11 And the order went on to say that,
12 accordingly, the maximum 200 percent risk charge should
13 ordinarily be applied in such cases.

14 Other Division and Commission orders have
15 also confirmed that a 200 percent risk penalty should be
16 applied when wells have already been drilled, and the
17 reason for that is because the risk or burden has
18 already occurred.

19 Now, Cimarex failed to raise a challenge of
20 the risk penalty at the Division level. Now with the
21 benefit of the well already been drilled, they're coming
22 in to challenge how risky it is, but that risk has
23 already been undertaken.

24 So today, testimony and exhibits will show
25 that Chisholm has attempted since January to reach an

1 agreement with Cimarex and has been negotiating in good
2 faith and ask that the Commission affirm the pooling
3 order entered by the Division.

4 OPENING STATEMENT

5 MS. BRADFUTE: Good morning, Commissioners.

6 This case involves conduct by an operator
7 who is seeking to get something for nothing and trying
8 to manipulate the system in order to achieve that.

9 Back in February or March of 2018, Chisholm
10 offered Cimarex a price of \$2,500 per net mineral acre
11 for their interest, and Cimarex owns a substantial
12 amount of interest within the west half of Section 10,
13 which comprises approximately half of the proration unit
14 that Chisholm sought to establish. The parties then
15 negotiated for several weeks a deal in principle that
16 reached a higher price, closer to a market value price.
17 Part of that deal involved Cimarex not presenting
18 evidence during the Division hearing. So Chisholm
19 bought peace before the Division hearing by reaching a
20 deal in principle, and the parties needed to finalize
21 the form to memorialize that agreement. In response,
22 Cimarex did not present evidence before the Division on
23 April 5th.

24 Following the hearing, Chisholm continued
25 to act as if that deal was in place with Cimarex and

1 made several representations about that deal being in
2 place. The parties worked on form agreements, and a
3 preferential purchase right had to be sent out to a
4 third party. Cimarex received confirmation from
5 Chisholm that they wanted to go forward with the deal on
6 several occasions. At all times that are relevant,
7 Cimarex was operating under the understanding that that
8 deal in principle was effective and that the parties
9 were working in good faith to get the form signed.

10 After an order was entered by the Division,
11 Chisholm became less responsive to Cimarex. Cimarex was
12 still operating under the understanding that they were
13 going to execute forms. The day after the election
14 period expired for when they proposed the well, Chisholm
15 said, Let's get the form signed. And Cimarex, again,
16 was working towards that. The preferential purchase
17 period for that right had been timed out, and they were
18 able to start to work on signing the forms.

19 Within a few days later, Chisholm backed
20 out of the deal and said, No. You're subject to a 200
21 percent risk penalty, or we'll acquire your interest at
22 \$2,500 per net mineral acre; those are the terms that
23 we're going to offer now.

24 By that point in time and before the well
25 was drilled, Cimarex had filed a de novo appeal with the

1 Commission. And so Cimarex had already appealed with
2 the Commission, and despite the fact that that appeal
3 was pending and Cimarex was hopeful that the forms would
4 be signed, Chisholm went ahead and drilled the well.
5 Chisholm knew at all relevant times that Cimarex could
6 assert objections before the Commission and had the
7 right to be here today to present a case, a different
8 case than it would have presented had Chisholm not
9 bought peace before the Division hearing.

10 Chisholm's conduct raises serious
11 questions, and it has serious implications first when a
12 party engages in conduct like that and indicates that
13 there is very low risk associated with the property at
14 hand. If an operator is willing to risk its reputation
15 with a partner in order to obtain an advantage and
16 obtain a property, they want that property at almost any
17 cost, and they see a good prospect; they want to do it
18 develop it. And that's exactly what Chisholm did.

19 Second, it raises concerns about whether or
20 not Chisholm satisfied prerequisites that nearly every
21 operator satisfies before they go to a Division hearing.
22 Did they negotiate in good faith? There are serious
23 questions about that, and you're going to hear evidence
24 about that today.

25 Nearly every case that I've been involved

1 in before the Division has included some evidence in
2 which the operator states that they acted in good faith
3 to obtain voluntary joinder in the well before going to
4 hearing. Here, Chisholm's actions do not demonstrate
5 good faith, and they weren't a waiver of Cimarex's
6 objections to their conduct. Instead, Cimarex, at the
7 outset, could have shown and will show today that this
8 area presents no risk. This is an area in which
9 Chisholm initially proposed to simultaneously drill
10 three Upper Wolfcamp wells and zipper-frac those wells
11 together. That was their original proposal to the
12 parties. They then backed out of that proposal even.
13 You're going to hear evidence that they, after
14 presenting evidence to the Division about their proposed
15 operations, without providing any notification to pooled
16 parties, significantly changed their operations on the
17 property, not because of risk but because that was how
18 they preferred to operate.

19 So after the fact, now, the operations have
20 changed. The deal has changed. And Chisholm is saying,
21 No, Cimarex, you don't get a second chance; you're
22 subject to a 200 percent risk penalty, and that's it;
23 we're going to walk away from this. The Commission has
24 to decide if that's conduct that it wants to encourage.

25 Under the New Mexico Oil and Gas Act, the

1 Commission has discretion to impose a risk penalty or
2 not. What the Commission has looked at in determining
3 whether risk exists is whether there is geologic,
4 reservoir or operational risks associated with the
5 property. Cimarex is going to present evidence here
6 today which shows at no relevant time were there
7 geologic, reservoir risks associated with this property,
8 and any operational risks associated with Chisholm's
9 operations were those normally incurred by every other
10 operator within Eddy County who is drilling Upper
11 Wolfcamp wells and has successfully completed them.
12 Those wells are oil productive, and they're offsets
13 within a couple of miles of where this well has been
14 drilled.

15 Finally, the other implication that
16 Chisholm's actions raise is was proper notice given
17 before the Division hearing. As I stated earlier,
18 Chisholm significantly changed its operations from the
19 facts and the evidence that were presented to the
20 Division during the Division hearing. Instead of
21 simultaneously drilling three wells and zipper-fracking
22 them, they chose to drill one well near the center of
23 Sections 3 and 10, and that is going to be their
24 operations for that section to hold the acreage. Had
25 parties known that going into the hearing, there could

1 have been objections. People could have appraised
2 whether or not they wanted to participate or not.
3 Instead, you get nothing after the fact. It's all
4 unraveling as the parties are discussing going into a
5 Commission hearing. Was due notice given to those
6 individuals?

7 In addition, you're going to hear evidence
8 about an existing joint operating agreement which covers
9 Section 10 in this case. There are contractual interest
10 owners who are subject to that JOA and who have rights
11 to drill Wolfcamp wells within that area. After the
12 Division hearing, it was discovered that Chisholm did
13 not give notice to those working interest owners -- to
14 certain working interest owners, so those parties also
15 were also not notified of Chisholm's applications.

16 So you have a situation where you have an
17 operator who has backed out of the deal, who has changed
18 its operations, who, after the fact, it's discovered did
19 not give notice to all of the parties, and the
20 Commission has to decide what effect does that pooling
21 order have.

22 Cimarex is requesting three different forms
23 of relief in this case. The first form of relief that
24 it's requesting is that the Division case be re-opened
25 or that this case be continued so that working interest

1 owners and other parties are given due notice of the
2 operations that Chisholm now seeks to pool. There are
3 parties who have never been given notice of these
4 operations, and they should be afforded an opportunity
5 to object if they want to.

6 Second, you're going to see a difference in
7 the exhibits presented by Chisholm. One has three
8 wells. One has one well. The operations described
9 before the Division are materially different. The costs
10 for those operations have likely materially changed.
11 Parties should be afforded a new option to elect into
12 the well. And you're going to hear evidence about
13 discrepancies within the various election letters that
14 were sent to parties again raising notice concerns.

15 And finally, you're going to hear evidence
16 that there is no risk in this area and that it would be
17 inappropriate to impose a 200 percent risk penalty in
18 this case in a situation in the outset where everybody
19 knew that there was no risk involved in drilling this
20 well, and that Chisholm just simply tried to buy peace
21 before the Division proceeding and then strung Cimarex
22 along so it wouldn't raise those objections.

23 Thank you.

24 MS. KESSLER: We'll call our first witness,
25 please.

1 CHAIRWOMAN RILEY: Mary, would you please
2 swear in the witness?

3 DAVIS ARMOUR,
4 after having been first duly sworn under oath, was
5 questioned and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. KESSLER:

8 **Q. Good morning. Can you please state your name**
9 **and tell the Commissioners by whom you're employed and**
10 **in what capacity?**

11 A. Davis Armour. I'm employed by Chisholm
12 Operating as a senior landman.

13 **Q. Have you previously testified before the Oil**
14 **Conservation Commission?**

15 A. I have not.

16 **Q. Can you please summarize your educational**
17 **background?**

18 A. Yes. In 2007, I received a Bachelor of Arts in
19 History from Texas Christian University. In 2016, I
20 received an MBA from the University of Houston.

21 **Q. What has been your primary focus in the oil and**
22 **gas industry?**

23 A. I'm primarily focused on operation of lands
24 since 2010. Since 2011, dealing with the Permian Basin
25 in New Mexico.

1 **Q. What has been your work experience?**

2 A. From 2007 to 2010, I was a field landman. In
3 2010, I became an in-house landman working operations
4 for Range Resources in their Appalachian Pittsburgh
5 office. From 2011 to 2017, I worked for Concho Oil &
6 Gas in Midland, working specifically in the Permian
7 Basin in New Mexico. And since 2017, I've been working
8 for Chisholm Energy in Eddy and Lea Counties.

9 **Q. Are you a member of any professional**
10 **organizations?**

11 A. Yes. I'm a member of the PBLA, the Permian
12 Basin Landmen's Association, and the AAPL.

13 **Q. And do you have any professional**
14 **certifications?**

15 A. Yes. I received the designation of certified
16 professional landman from the AAPL in 2016.

17 **Q. Are you familiar with Pooling Order R-14719?**

18 A. Yes.

19 **Q. And were you the landman that provided**
20 **testimony regarding this case and the spacing unit**
21 **before the Division?**

22 A. Yes.

23 **Q. Are you familiar with the application that's**
24 **been filed in this case?**

25 A. Yes.

1 **Q. And are you familiar with the status of the**
2 **lands in the subject area?**

3 A. Yes.

4 MS. KESSLER: I would tender Armour as an
5 expert in petroleum land matters.

6 MS. BRADFUTE: No objection.

7 CHAIRWOMAN RILEY: So tendered.

8 **Q. (BY MS. KESSLER) Mr. Armour, let's turn to**
9 **Exhibit 1. Can you please identify this exhibit and**
10 **explain what Chisholm sought and requested under its**
11 **original pooling application?**

12 A. Yes. This is a Form C-102, an APD, that
13 identifies the lands which we seek -- which we sought to
14 form a nonstandard spacing unit consisting of the west
15 half of Sections 3 and 10, Township 24 South, Range 26
16 East. It was a 638.16-acre spacing unit, and it was
17 dedicated to the Purple Sage; Wolfcamp pool.

18 **Q. Did you originally seek to pool uncommitted**
19 **interest owners in the Wolfcamp Formation?**

20 A. Yes.

21 **Q. And the C-102 is for the 4H well, correct?**

22 A. That is correct.

23 **Q. Initially, did you seek to dedicate the spacing**
24 **unit to three initial wells?**

25 A. Yes.

1 Q. And those would be the 2H, 3H and 4H wells?

2 A. That's correct.

3 Q. And you initially testified that those wells
4 would be drilled and simultaneously completed, correct?

5 A. Yes, that's correct.

6 Q. Was a pooling order issued?

7 A. Yes.

8 Q. And that would be Order R-14719, correct?

9 A. That's correct.

10 Q. Does the pooling order require drilling of all
11 three wells to remain effective?

12 A. No, it does not.

13 Q. And that would be highlighted in paragraph
14 seven on pages 4 and 5 of the order, correct?

15 A. Correct.

16 Q. Has the 4H well been drilled and completed?

17 A. It has been drilled, and it's in the process of
18 being completed.

19 MR. BRANCARD: Excuse me, Counsel. Do we
20 have a copy of the order?

21 MS. KESSLER: No. I'd be happy to hand one
22 out, though.

23 MR. BRANCARD: That would be great. I
24 don't think it's in the exhibits.

25 MS. KESSLER: I don't believe this needs to

1 be made an exhibit. The Commission can simply take
2 notice of it, since it's --

3 Q. (BY MS. KESSLER) So the 4H well has been
4 drilled and is in the process of being completed,
5 correct?

6 A. That's correct.

7 Q. Why was only one well drilled and completed?

8 A. From the time that we proposed the wells and
9 from the time of this hearing, Chisholm Energy Operating
10 has gone from four to two drilling rigs. The engineer
11 will expand on that in his testimony.

12 Q. What type of acreage is involved in this area?

13 A. This is federal acreage.

14 Q. And what pool is involved in the application?

15 A. The Purple Sage; Wolfcamp pool.

16 Q. Is this well subject to special pool rules for
17 the Purple Sage pool?

18 A. Yes.

19 Q. 330-foot setbacks, correct?

20 A. That's correct.

21 Q. Does the completed interval comply with those
22 special rules?

23 A. Yes.

24 Q. All right. Let's move to Exhibit 2. Is this a
25 land plat identifying the number of tracts and working

1 **interests involved in the spacing unit?**

2 A. That is correct.

3 **Q. What interests were pooled pursuant to the**
4 **pooling agreement?**

5 A. The interests highlighted in yellow on Exhibit
6 2 -- excuse me -- were pooled under the order.

7 **Q. And those were working interest owners,**
8 **correct?**

9 A. Correct.

10 **Q. What percent does Chisholm own?**

11 A. Chisholm owns approximately 67 percent working
12 interest.

13 **Q. And were other working interest owners**
14 **committed by virtue of a joint operating agreement?**

15 A. Yes. 4.6 percent joined voluntarily through
16 the JOA.

17 **Q. And those are the interest owners in white,**
18 **correct?**

19 A. That's correct.

20 **Q. Did other operators or working interest owners**
21 **consent under the pooling order?**

22 A. Yes, they did. 1.9 percent of the working
23 interests participated -- made an election to
24 participate under the order.

25 **Q. So basically, it's all of the working interest**

1 owners, except for Cimarex and Marathon?

2 A. Yes. Marathon elected to go nonconsent under
3 the order.

4 Q. And Cimarex did not make an election under the
5 order, correct?

6 A. That's correct.

7 Q. Does Chisholm own an interest in each of the
8 tracts penetrated by the wellbore?

9 A. Yes.

10 Q. And if I turn to page 2 of this exhibit, does
11 this show overriding royalty interest owners?

12 A. Yes, it does.

13 Q. Do you also seek to pool overriding royalty
14 interest owners?

15 A. Yes, we did.

16 Q. Why is Conley Resources, LLC scratched out?

17 A. That was scratched because the underlying
18 document that created the override allowed for pooling.

19 Q. So it was not necessary to pool them?

20 A. Correct.

21 Q. Does Exhibit 3 provide a sample of the
22 well-proposal letter that was sent to working interest
23 owners for each of the wells?

24 A. That's correct.

25 Q. And they also included AFEs, correct?

1 A. That's correct.

2 Q. Now, this letter, I see, was sent to Cimarex,
3 but were all of the working interest owners provided a
4 well-proposal letter?

5 A. Yes.

6 Q. And this is just for the 4H well, but
7 initially you sent well-proposal letters for the 2H and
8 3H wells?

9 A. That's correct.

10 Q. If I look at the AFE, which is the second page
11 of this exhibit, did the AFE reflect the plan for a
12 three-well pad?

13 A. Yes.

14 Q. And did the well-proposal letter identify
15 overhead and administrative costs for drilling and
16 producing wells?

17 A. It did.

18 Q. What were those costs?

19 A. \$7,000 while drilling and completing and \$700
20 thereafter.

21 Q. Are those rates consistent with what Chisholm
22 and other operators in the area charge for Wolfcamp
23 wells?

24 A. Yes.

25 Q. All right. Let's turn to Exhibit 4. Is this a

1 **timeline of communications between Cimarex and Chisholm?**

2 A. That's correct.

3 **Q. This begins on January 12th, correct?**

4 A. That's correct.

5 **Q. And it includes, on the first page,**
6 **negotiations up to the Division hearing, and the second**
7 **page is after the Division hearing, correct?**

8 A. That's correct.

9 **Q. Can you please review the efforts that you**
10 **undertook to reach an agreement with Cimarex before the**
11 **Division hearing?**

12 A. Sure. We sent them our maps for a potential
13 acreage swap. We offered a technical meeting. We
14 negotiated a form of term assignment and went so far as
15 to agree to -- to have an agreement in principle for a
16 term assignment that was contingent upon a mutually
17 agreeable form of term assignment.

18 **Q. Okay. And that deal in principle was for a**
19 **term assignment of \$7,000 an acre, correct?**

20 A. That's correct. That's correct.

21 **Q. As well as an acreage swap?**

22 A. That's correct.

23 **Q. Were you told initially that a letter agreement**
24 **was unnecessary?**

25 A. Yes.

1 Q. And on March 15th, did you request Cimarex's
2 form of term assignment?

3 A. Yes.

4 Q. And then did you email them, Cimarex,
5 Chisholm's form of assignment on April 3rd?

6 A. Yes, that's correct.

7 Q. Were you also told on April 3rd that Cimarex
8 might own an assignment to Fuel Products under a pref
9 rights provision?

10 A. Yes.

11 Q. And did you ask at that time if there was an
12 additional operating agreement that you needed to
13 review?

14 A. Yes.

15 Q. On April 4th, did you again request information
16 on pref rights?

17 A. Yes.

18 Q. And at the hearing on April 5th, you testified
19 that you and Cimarex had reached a deal in principle,
20 correct?

21 A. That's correct.

22 Q. Then what happened?

23 A. After the hearing, I requested, again, the form
24 of term assignment, made an offer to meet with Cimarex
25 while I was in town. I requested updates for the

1 preferential right language and if they had determined
2 whether or not they owed an assignment on that interest
3 to another party.

4 Q. And on April 16th, you requested a form of term
5 assignment again; is that correct?

6 A. That's correct.

7 Q. On May 7th, did you again request an update on
8 the pref rights?

9 A. Yes.

10 Q. And that email included a request for the term
11 assignment language, the pref rights update and also an
12 update on the farm-out agreement?

13 A. That is correct.

14 Q. Did you request those updates five times?

15 A. That's correct.

16 Q. On May 29th, did Cimarex send you their form of
17 term assignment?

18 A. Yes.

19 Q. And that was approximately three months after
20 you initially requested it, correct?

21 A. Correct.

22 Q. The pooling order was then entered on June 8th,
23 correct?

24 A. That's correct.

25 Q. On June 12th, did you email Cimarex and let

1 them know that there were issues with their form of term
2 assignment, including that there was no treatment of the
3 pref rights issue and that there were questions
4 remaining regarding the farm-out of the assignment?

5 A. Yes.

6 Q. But you still sent over -- or you sent over at
7 that time the proposed term assignment to Cimarex, is
8 that correct, Chisholm's?

9 A. Yes, Chisholm's -- Chisholm's proposed form of
10 term assignment.

11 Q. On June 19th, did you propose the 4H well
12 pursuant to the pooling order?

13 A. Yes.

14 Q. Did you include an AFE?

15 A. I did.

16 Q. And on June 22nd, were you the told that you
17 would receive comments on their term assignment form?

18 A. Yes.

19 Q. On June 24th, the well was spud, correct?

20 A. That's correct.

21 Q. And when was the election period going to run?

22 A. On July 22nd.

23 Q. Did you call Cimarex before the election period
24 ran and let them know that the election period was going
25 to run?

1 A. Yes.

2 Q. And requested information about whether or not
3 they were intending to elect?

4 A. Yes.

5 Q. Did you receive any response?

6 A. I did not.

7 Q. So the election period ran on July 22nd.

8 On July 23rd, did you send an email
9 confirming that Cimarex intended to go nonconsent?

10 A. Yes.

11 Q. What was their response?

12 A. I believe their response was that they were
13 under the impression we were under negotiations for a
14 term out -- or term assignment at \$10,000 an acre.

15 Q. So did you send back the same questions
16 regarding pref rights and the form of assignment?

17 A. Yes, I did.

18 Q. Why did you continue negotiating with them if
19 you considered them a nonconsenting pooled party?

20 A. Well, the well had been spud. We wanted to
21 wrap things up, and we really wanted to be a good
22 working interest partner.

23 Q. So you were trying to still reach some type of
24 agreement rather than using the pooling --

25 A. That's correct.

1 Q. And you received an email from Cimarex that
2 they did not agree to the form of term assignment; is
3 that correct?

4 A. I think the next thing I heard was the motion
5 to stay.

6 Q. Okay. Do you recall looking at this timeline?
7 What happened on July 26th?

8 A. Yes. There was -- there was a phone call
9 between Cimarex and Chisholm wherein Cimarex indicated
10 they would still be interested in term assigning. I
11 said I would have to clear that through management, as
12 they had been deemed nonconsent.

13 Q. On July 30th, what happened?

14 A. On July 30th, we decided to issue another
15 offer. It was -- the offer was at \$2,500 an acre for a
16 two-year term, which represented the original offer less
17 one year of term.

18 Q. Why did you keep negotiating after the election
19 period had run?

20 A. In the interest of being a good working
21 interest partner and as well as we felt we really needed
22 to wrap things up, as this well had been spud.

23 Q. So you were trying to reach some type of
24 agreement.

25 A. That's correct.

1 Q. And why did you only offer \$2,500 per acre?

2 A. We did take a year off of the term of the
3 original, and we had successfully acquired farm-outs and
4 other acquisitions in the very near area at prices that
5 were consistent that justified the \$2,500-an-acre price.

6 Q. Rather than receiving a response, did Cimarex
7 then file -- or sending your response, did Cimarex then
8 file a motion to stay on July 31st?

9 A. That's correct.

10 Q. And a hearing on that motion to stay occurred
11 on August 8th; is that correct?

12 A. That's correct.

13 Q. Following that hearing, were you informed by
14 Holland & Hart that Cimarex's counsel indicated that if
15 we returned to \$7,000 an acre, the deal in principle,
16 that this issue would be resolved?

17 A. Yes.

18 Q. So what happened then?

19 A. We went back to our \$7,000-an-acre offer, and I
20 indicated that we needed to get things wrapped up
21 quickly on that term assignment.

22 Q. Since that time, have you been negotiating
23 various forms --

24 A. Yes.

25 Q. -- to effectuate this agreement?

1 A. Yes.

2 Q. Have you reached an agreement on the term
3 assignment?

4 A. We have.

5 Q. So what remains?

6 A. The letter agreement and the acreage exchange
7 remain.

8 Q. And you simply have not been able to agree to a
9 form of letter agreement; is that correct?

10 A. That's correct.

11 Q. Were you originally told that no letter
12 agreement was necessary?

13 A. Yes.

14 Q. And that you could cross-convey those
15 interests?

16 A. Yes.

17 Q. What are the two issues that the parties are
18 stuck on?

19 A. At this moment, the parties are stuck on the
20 treatment of the preferential-right-to-purchase issue,
21 as well as a potentially owed assignment earned under
22 the farm-out agreement between Mallon Oil Company,
23 M-A-L-L-O-N, and Fuel Products.

24 Q. So can Cimarex not deliver clean title with
25 respect to the traded acreage?

1 A. That's correct.

2 **Q. Why?**

3 A. To do our research under the farm-out
4 agreement, it appears that an assignment was -- was
5 earned by Fuel Products that would be greater than or a
6 large portion of the acres that were to be exchanged in
7 the assignment.

8 **Q. So Cimarex wouldn't have the acres that they**
9 **are now offering to trade?**

10 A. Correct.

11 **Q. Did you request clarification on this**
12 **assignment under the farm-out agreement multiple times?**

13 A. Yes.

14 **Q. And when was the farm-out agreement actually**
15 **provided to Chisholm?**

16 A. Three days ago.

17 **Q. Did Chisholm propose a red line to the letter**
18 **agreement allowing Chisholm to back out of the deal if**
19 **clear title wasn't established for this acreage?**

20 A. Yes.

21 **Q. Why was Cimarex's form of letter agreement**
22 **unacceptable?**

23 A. Because the -- we didn't have a walk [sic]
24 right in regard to the acreage exchange, that even if
25 Fuel Products elected to take all of the interest that

1 was to be term assigned, we would still have to do an
2 acreage exchange, and we didn't believe that they could
3 fulfill the like kind nature of that exchange.

4 Q. So can you explain that just a little bit more?
5 There wasn't an opportunity to back out of the acreage
6 exchange, correct?

7 A. That's correct.

8 Q. So even if they could not establish clear
9 title, you would have still had to perform the acreage
10 exchange?

11 A. That's correct.

12 Q. And Chisolm sent a red line back to Cimarex of
13 this letter agreement addressing that issue; is that
14 correct?

15 A. That's correct.

16 Q. Have you received a response?

17 A. No, we have not.

18 Q. And has this well been completed?

19 A. It's in the process of being completed.

20 Q. Is Exhibit 5 a copy of the proposal letter
21 pursuant to the pooling order that was sent to Cimarex?

22 A. That's correct.

23 Q. Did this include the original AFE?

24 A. It did.

25 Q. But you only sent the well-proposal letter for

1 the 4H well, correct?

2 A. That's correct.

3 Q. Why didn't you include an updated AFE?

4 A. The engineering group that actually -- did not
5 prepare an updated AFE. They did -- they did, however,
6 upon request -- upon request for the purposes of this
7 hearing prepare one, and that's what you see attached,
8 the increased costs from not pad drilling. The well
9 costs went from around 6.9 million to \$7.2 million,
10 which is about a 5 percent increase in cost.

11 Q. So did the engineering department not revise
12 the AFE when the plans changed because the cost increase
13 was minimal?

14 A. That's correct.

15 Q. If I look at Exhibit 6, is this the updated AFE
16 that was prepared for this hearing?

17 A. Yes.

18 Q. And the engineer will discuss why only one well
19 was drilled, correct?

20 A. That's correct.

21 Q. Was this application filed prior to the new
22 horizontal well rules going into effect?

23 A. It was.

24 Q. And accordingly, did Chisholm identify the
25 operators or at least the mineral interest owners in the

1 tracts surrounding the proposed nonstandard unit?

2 A. Yes.

3 Q. Were they included in notice of this hearing?

4 A. Yes.

5 Q. Is Exhibit 7 an affidavit prepared by my office
6 with letters providing notice to the pooled parties,
7 offsets and overriding royalty interest owners of notice
8 of the original hearing?

9 A. Yes.

10 Q. And on the last page of that exhibit -- last
11 two pages -- excuse me -- is this a Notice of
12 Publication in the newspaper in Eddy County?

13 A. Yes, that's correct.

14 Q. Were Exhibits 1 through 6 prepared by you or
15 compiled under your direction and supervision?

16 A. Yes.

17 MS. KESSLER: I would move admission of
18 Exhibits 1 through 7, which includes our Notice of
19 Affidavit.

20 MS. BRADFUTE: No objection.

21 CHAIRWOMAN RILEY: Please note for the
22 record Exhibits 1 through 7 have been accepted.

23 (Chisholm Energy Operating, LLC Exhibit
24 Numbers 1 through 7 are offered and
25 admitted into evidence.)

1 MS. KESSLER: Thank you.

2 Q. (BY MS. KESSLER) One more thing, Mr. Armour.
3 There are other pooled parties under this order,
4 correct?

5 A. That's correct.

6 Q. Did any of them challenge the 200 percent risk
7 penalty?

8 A. No.

9 Q. How many other pooled parties are there?

10 A. I have to count them up. Those highlighted in
11 yellow on Exhibit -- I believe it's 2.

12 Eight.

13 Q. No challenge from those eight?

14 A. The other seven.

15 Q. From the other seven pooled parties?

16 A. Uh-huh. Correct.

17 Q. Okay. Thank you.

18 MS. KESSLER: That concludes my direct.

19 CHAIRWOMAN RILEY: Ms. Bradfute.

20 CROSS-EXAMINATION

21 BY MS. BRADFUTE:

22 Q. Good morning.

23 A. Good morning.

24 Q. How are you?

25 A. Good.

1 Q. I want to begin with some questions about the
2 initial well proposals that were sent out to pooled
3 parties. If you could look at -- you have a big exhibit
4 packet in front of you from Cimarex, and it has tabs in
5 it, and we provided tabbed copies to everybody this
6 morning. If you could turn to Tab 8 within that packet
7 and could you please flip through this exhibit? It
8 contains several pages.

9 A. Uh-huh.

10 Q. Mr. Armour, does this exhibit contain the well
11 proposals and AFEs that were originally sent by Chisholm
12 to Cimarex and the other parties it was seeking to pool?

13 A. Yes.

14 Q. And it states that these well-proposal letters
15 were sent around January 12th, 2018, correct?

16 A. That's correct.

17 Q. Okay. Did you send all three of these well
18 proposals together within one mailing packet to the
19 parties that you were proposing the well to?

20 A. I believe so.

21 Q. Okay. So they were sent together.

22 And did you have conversations with any of
23 the working interest owners concerning the fact that
24 Chisholm wanted to simultaneously drill these three
25 wells together?

1 A. Yes.

2 Q. Okay. So you did. So you have representations
3 to parties that you were seeking to pool about your
4 plans to simultaneously drill -- frac and drill?

5 A. I believe so.

6 Q. Okay. If you look at the middle of the first
7 page of this exhibit, there are four bullet points, and
8 I want to look at the very last bullet point there.

9 A. Uh-huh.

10 Q. It says, "Initial Well Black River 3 10 Federal
11 WCA 2H."

12 A. Uh-huh.

13 Q. Why was the 2H listed as the initial well for
14 the proposed spacing unit?

15 A. That was the way that our drilling schedule
16 looked at the time, that that would be the initial --
17 the initial well.

18 Q. Okay. So you intended that well to be the well
19 that would define the proposed spacing unit in the
20 proposals you were sending to parties?

21 A. That's correct.

22 Q. In this letter, do you include footages for the
23 well that you were proposing?

24 A. Yes.

25 Q. You did? Okay. I don't see exact footages.

1 Can you point those out to me?

2 A. Sure. In the first paragraph about halfway,
3 "This well will have a targeted interval in the Wolfcamp
4 formation to a Measured Depth of approximately 18,210."
5 And then AFE behind it shows the -- which it does state
6 to an AFE enclosed. It says the measured depth and the
7 total vertical depth.

8 Q. So it has the measured depths, but it doesn't
9 have footage calls for where the surface hole and bottom
10 hole are located, correct?

11 A. That's correct.

12 Q. Okay. And is that true for the other two well
13 proposals that Chisholm sent out as well?

14 A. Let me verify (reading).

15 It appears to be correct from what I'm
16 looking at. Yes, that's correct.

17 Q. Okay. I want to now turn to Chisholm's pooling
18 application, if you could look at Exhibit Number 9,
19 please, within the same exhibit packet.

20 A. Uh-huh.

21 Q. Is this the application Chisholm filed in this
22 case, 16027?

23 A. Yes.

24 Q. Okay. If you could look at paragraph two of
25 this application, and I want to focus on the last

1 sentence of that paragraph. Okay?

2 A. Okay.

3 Q. Chisholm represented in its application that
4 the three proposed horizontal wells would be pad drilled
5 from a specific surface location, correct?

6 A. Correct.

7 Q. So in the application, you were actually
8 seeking to pad drill the wells?

9 A. Yes.

10 Q. Okay. If you could please turn to the next
11 page of this application and look at paragraph six.
12 Does paragraph six state that the proposed well will be
13 simultaneously drilled and completed?

14 A. Uh-huh.

15 Q. And just to clarify, that was a yes?

16 A. Yes. I apologize. Yes.

17 Q. And if you could look at the last page, which I
18 believe is the advertisement for this case, which was
19 advertised by the Division on its Web site. And it's
20 about -- it's right before the bolded well names.

21 A. Okay.

22 Q. The advertisement also says that "Said
23 non-standard unit is to be a project area for three
24 proposed initial wells, to be drilled and completed
25 simultaneously," correct?

1 A. Yes.

2 Q. Yes. Okay.

3 So in your application that was filed with
4 the Division, you stated that there would be three wells
5 that would be initial wells in the unit and that all
6 three wells would be pad drilled and simultaneously
7 completed, correct?

8 A. That's correct.

9 Q. And that's also what was advertised on the
10 Division's Web site?

11 A. Correct.

12 Q. And that would also correspond with the
13 information and applications that were actually sent in
14 Chisholm's notice letters when you sent certified
15 mailings to parties in this matter; is that correct?

16 A. I believe so. Maybe -- can you clarify that
17 for me?

18 Q. Yeah.

19 A. Are you talking about the well proposal with
20 the AFEs?

21 Q. No. The notice letters --

22 A. Oh, the notice. Yes.

23 Q. -- that your attorney would send out.

24 A. Yes.

25 Q. Yes.

1 Okay. So all that information was also
2 sent in the notification letters that were sent to
3 parties? Yes?

4 A. Yes.

5 Q. Okay. I want to look within Cimarex's packet
6 at Exhibit 7, if you could turn there. And the first
7 page of Exhibit 7 indicates that this is a portion of
8 the transcript from the Division's hearing in this
9 matter on April 5th, 2018; is that correct?

10 A. That's correct.

11 Q. And the second page just provides appearances.
12 The third page of this exhibit is page 7 of the
13 testimony transcript; is that correct?

14 A. Can you repeat the question? I'm sorry. I was
15 trying to read.

16 Q. That's okay.

17 The third page of this exhibit states it's
18 page 7 of the testimony transcript; is that correct?

19 A. That's correct.

20 Q. Okay. And if you could please look at --
21 starting at line 2 and go through line 8.

22 A. Okay.

23 Q. Did Chisholm also represent to Division on the
24 record during the Division's hearing that these wells
25 would be drilled back-to-back and then completed with a

1 zipper frac at the same time?

2 A. Yes.

3 Q. So that was the evidence that was presented to
4 the Division in the pooled case?

5 A. Yes.

6 Q. Mr. Armour, when did Chisholm change its plans
7 to only drill one well within this unit?

8 A. I'm not sure exactly. It was done at some
9 point -- some point after -- after the hearing when
10 the -- when the decision to go from four rigs to two
11 rigs was made. That changed the rest of our drilling
12 schedule for the rest of 2018.

13 Q. Was it made before you had an order from the
14 Division?

15 A. I'm not -- I'm not certain -- I'm not 100
16 percent certain. I can try to identify that by talking
17 to our engineering and counsel and the schedule --
18 schedules that shows when the change occurred.

19 Q. Okay. I would appreciate that.

20 Do you know why that change was made to
21 change the development plans?

22 A. I think the engineer could speak better to
23 that.

24 Q. Okay. I'll ask the engineer about that.

25 Did you provide notice to the Division

1 about these change in plans after going to hearing on
2 this matter and presenting this evidence?

3 A. No.

4 Q. No.

5 Did you provide notice to any of the
6 parties that you were seeking to pool about the change
7 in these development plans after the hearing?

8 A. I did not, but I proposed only one well instead
9 of three. So I hesitate to make assumptions, but I was
10 maybe hoping that would indicate that we were only going
11 to do one.

12 Q. But you didn't specifically tell anybody, We
13 have changed plans?

14 A. No. You're right. I did not specifically
15 state that.

16 Q. You just allowed people to assume that the
17 plans had been changed?

18 A. Right.

19 Q. I want to look at Chisholm Exhibit Number 5 in
20 the packet -- the Chisholm packet that you were
21 questioned by counsel on earlier.

22 A. Okay.

23 Q. And you testified that Exhibit Number 5
24 consists of the election letter that was sent out to
25 Cimarex under the pooling order; is that correct?

1 A. That's correct.

2 Q. Okay. You testified -- I just want to confirm
3 this -- that you sent out the original AFE that was sent
4 out with your well-proposal letters when you sent this
5 letter; is that correct?

6 A. I did. Correct.

7 Q. Okay. And what is Cimarex's ownership
8 percentage under this election letter that is listed?

9 A. We listed 21.54 percent in the spacing unit.

10 Q. Okay. You were seeking approximately
11 \$1.5 million from Cimarex to participate in the well?

12 A. That's correct.

13 Q. And then later you sought to impose a 200
14 percent risk penalty on top of that \$1.5 million, if I
15 understand your testimony correctly?

16 A. Yeah. I think by virtue of proposing under the
17 order, yes.

18 Q. Okay. Mr. Armour, are you aware that there is
19 a JOA -- several JOAs -- a couple of JOAs that cover
20 Section 10 or a portion of Section 10 within this area?

21 A. Yes. I am now aware. I was not aware at the
22 initial hearing.

23 Q. So you were not aware at the initial hearing
24 that there was a JOA that covered part of Section 10?

25 A. I was aware of a JOA that covered part of

1 Section 10. It was a JOA that we were a party to.

2 Q. Okay.

3 A. It was a 1968 JOA.

4 Q. It was a 1968 JOA. And you had reviewed that
5 JOA prior to sending out notices in this matter?

6 A. Uh-huh.

7 Q. And did you provide notice to working interest
8 owners under that JOA?

9 A. We did. I've actually prepared flowcharts that
10 show ownership. I can get those printed off and
11 submitted. I have flowcharts for each one of those
12 contractual interest owners from 1968 to current, the
13 day the title opinion was rendered.

14 Q. And are you aware that Cimarex is the operator
15 under that 1968 JOA?

16 A. Yes.

17 Q. At any point in time, did you reach out to
18 Cimarex to ask who the working interest owners were
19 under the joint operating agreement?

20 A. I believe I asked if we could review the joint
21 operating agreement, but I didn't specifically ask for
22 other contractual interest owners.

23 Q. Okay. So you didn't try to confirm if they had
24 a pay deck in place and would share the ownership with
25 you?

1 A. A pay deck was sent -- was sent over.

2 Q. Oh, so you did receive a pay deck?

3 A. I received a pay deck.

4 Q. If you could turn to Exhibit 6 in front of you,
5 Mr. Armour, I will represent to you that this is the pay
6 deck that Cimarex has in place for the Black River 10
7 Federal Com 1 well and Federal Com 2 well within Section
8 10.

9 A. Uh-huh.

10 Q. Is this the pay deck that Cimarex sent over to
11 you?

12 A. I'd have to confirm, but it looks like it.

13 Q. Okay. So this is the pay deck that was sent to
14 you?

15 A. Uh-huh.

16 Q. Do you know if all of the parties listed within
17 this pay deck were provided notice of your pooling
18 application?

19 A. Under the JIB deck for the Black River Fed Com
20 #1, it appears to me that all parties except for Fuel
21 Products received notice. And then under pay deck
22 number two, I'm not familiar with Paw Prints Oil & Gas.

23 Q. Okay. And let's look at your notice exhibit,
24 Exhibit Number 7 --

25 A. Okay.

1 Q. -- and let's compare the two.

2 A. Okay.

3 Q. It looks like probably the easiest page to
4 reference is going to be this ConnectSuite page within
5 this exhibit, several pages into it. It provides a list
6 of names who were given notice.

7 A. Uh-huh.

8 Q. Do you see Moon Royalty, LLC anywhere within
9 this list of parties?

10 A. We acquired Moon Royalty's interest.

11 Q. Okay. So you did acquire Moon Royalty's
12 interest?

13 A. Uh-huh.

14 Q. And do you see James Finley's address anywhere
15 within this list?

16 A. Finley Production Company, I see, which I know
17 is James Finley, but I don't see the name "James
18 Finley."

19 Q. Okay. And then you didn't give notice to Fuel
20 Products even though they were listed under the pay
21 deck, correct?

22 A. When we gave notice, Fuel Products -- we had
23 not seen any instruments that indicated -- we had
24 received notice that -- they said they were -- they were
25 contractual interest owners, but we had not seen the

1 documentation to prove it, and there was no ownership of
2 record title. And our representation -- we proposed to
3 parties that had title recorded in the courthouse and
4 parties that we had knowledge of their contractual
5 interest owners, as we were a party to those contracts.

6 **Q. But you had a pay deck which listed them as**
7 **receiving payments from this property?**

8 A. I mean, that's correct. That could very well
9 be wellbore only -- an interest in wellbore only, not in
10 the lands. I can't make that determination without the
11 documents.

12 **Q. Okay. So you err on the side of thinking that**
13 **it's a wellbore only interest, that they're subject to a**
14 **pay deck that covers the whole -- the whole Section 10**
15 **interest?**

16 A. Well, the pay deck covers the well, each
17 individual well, and I know that you can buy an interest
18 in a well that would effectuate the lands underlying the
19 lands. What I'm getting at is I'm not saying that was
20 the case. That's possible. But without the contract, I
21 just don't know what the ownership is. So we go off of
22 record, and we go off of contracts that we have.

23 **Q. Okay. And what about Paw Prints Oil & Gas,**
24 **LLC?**

25 A. I don't --

1 MS. KESSLER: Madam Chair, I'd object to
2 this line of questioning on the grounds that it assumes
3 contractual interests are owed notice under the Division
4 requirements.

5 MS. BRADFUTE: Parties whose correlative
6 rights might be impacted are typically entitled to
7 notice. If you have a contractual right to drill a well
8 within a joint operating agreement area and your
9 interests are pooled and there is a different operator
10 established, there's a question. Can you propose a well
11 to the operator who is not the operator of the unit?
12 And does that impact your correlative rights? And so I
13 think if your correlative rights are impacted, under the
14 Division's regulations, you're entitled to notice of
15 that application.

16 MS. KESSLER: Well, that's not what the
17 Division regulations say for this --

18 CHAIRWOMAN RILEY: Mr. Brancard?

19 MR. BRANCARD: Well, I think we can
20 continue this line of questioning, but I think we have
21 an issue here about whether there really is -- people
22 are entitled to notice. The parties can discuss that
23 further.

24 CHAIRWOMAN RILEY: Please proceed.

25 Q. (BY MS. BRADFUTE) Mr. Armour, what about Paw

1 **Prints Oil & Gas, were they provided notice?**

2 A. They were not. I don't know who Paw Prints Oil
3 & Gas is in regard to Section 10.

4 **Q. Okay. So we clearly have parties who are**
5 **listed on the pay deck who were not provided notice of**
6 **the pooling application, correct?**

7 A. Yes, that's correct.

8 **Q. Mr. Armour, the leases involved within this**
9 **proposed spacing unit are two types of leases, correct,**
10 **or do I have that mischaracterized?**

11 A. I believe there are three.

12 **Q. Three leases?**

13 A. Three leases.

14 **Q. And are all three of them federal leases?**

15 A. Yes.

16 **Q. Have you put together a federal communitization**
17 **agreement for this acreage?**

18 A. Yes.

19 **Q. Has that agreement been circulated to the**
20 **parties?**

21 A. It has.

22 **Q. And when did you provide that agreement to**
23 **Cimarex?**

24 A. We sent it to Cimarex -- I believe it was early
25 last week.

1 Q. And how did you send that? Was it via email?

2 A. Via certified email.

3 Q. Via certified mail early last week?

4 A. Uh-huh.

5 Q. And whose attention did you send that to?

6 A. I believe I sent it to Ms. Pierce's attention,
7 but I'd have to verify that with my assistant who does
8 the mailings.

9 Q. I now want to dig into the issue at hand which
10 has been a large part of the discussions between the
11 parties, which is the negotiations between Cimarex and
12 Chisholm. Is it your opinion that Chisholm entered into
13 good-faith negotiations with Cimarex to obtain voluntary
14 joinder in this development project?

15 A. Yes.

16 Q. Okay. And what does the term "good faith" mean
17 to you, Mr. Armour?

18 A. I'm not sure of the legal --

19 Q. I'm not looking for a legal definition.

20 A. I think just attempts -- attempts to reach an
21 agreement. I don't know how to put it more specifically
22 than that. Just moving forward with attempts to get
23 instruments executed and -- and -- good faith is hard to
24 define to me, but -- but --

25 Q. That's okay. Yeah. So in your terms of good

1 faith, does it mean to be a fair effort to try to reach
2 an agreement?

3 A. I think so, yes.

4 Q. Okay. Would that involve proposing a fair
5 price for the acreage at issue?

6 A. Yes.

7 Q. Do you feel that Chisholm offered a fair price
8 at \$2,500 per net mineral acre for Cimarex's interests?

9 A. Yes. Based on acquisitions we've made in 2018
10 in the area, yes, I think that was a fair price.

11 Q. Okay. I have a document that I want to look
12 at.

13 A. Thank you.

14 Q. Mr. Armour, in 2017, did Chisholm acquire
15 acreage within Section 15, Township 23 South, Range 26
16 East through the New Mexico State Land Office bidding
17 process?

18 A. Yes.

19 Q. Did it obtain approximately 160 mineral acres
20 in that bidding process?

21 A. Yes.

22 Q. And where is Section 15, Township 23 South,
23 Range 26 East in relation to the sections at issue in
24 this case here today?

25 A. That would be to the north.

1 Q. To the north.

2 And it's approximately how many miles to
3 the north?

4 A. I'd have to get a plat. Maybe -- maybe ten --
5 six to ten miles, something like that.

6 Q. Six to ten miles?

7 A. Somewhere in there. Maybe not that far.

8 Q. Yes. But it's within six to ten miles away
9 from the subject property, correct?

10 A. Correct.

11 Q. And if you look at the document that I just
12 handed to you, which I'm going to mark as Cimarex
13 Exhibit 20 --

14 A. Uh-huh.

15 Q. -- it states that Chisholm paid \$17,500 per
16 acre for that property, correct?

17 A. That's correct.

18 Q. That's a substantial difference between the
19 \$2,500 offered to Cimarex to acquire its interest,
20 correct?

21 A. That is correct. This would have been on a
22 five-year term to deliver an 80 NRI on a clean title, is
23 what I would say to that.

24 Q. Okay. So the term -- there is a slight
25 difference in term, and there is a slight difference in

1 **NRI, but does that justify a \$15,000 difference in**
2 **price?**

3 A. I have other documentation that I can provide
4 where we have secured a farm-out agreement for \$1,000 an
5 acre, where we have paid \$10,000 an acre for brand-new
6 leases, and we acquired infills in the proration unit
7 all right, title and interest for \$3,500 an acre, which
8 is no obligation to drill wells. So -- and those are
9 from 2018. So this is a little bit older. And I will
10 say that in my opinion, there has been some change in
11 the area as to valuation, as happens from time to time.

12 **Q. The value decreased in this area significantly?**

13 A. I think that things have cooled down as far as
14 competitive lease sales. I think you can see that if
15 you pull more lease sales.

16 **Q. Okay. So it's your opinion that acreage in**
17 **this area is now being valued for less?**

18 A. All I can speak to is that we successfully
19 acquired interests for much less than this price.

20 **Q. Okay. So let's talk about some of those**
21 **acquisitions. Who were the parties you were dealing**
22 **with?**

23 A. Could you allow me to grab a -- I have a folder
24 with some --

25 **Q. Sure.**

1 Mr. Armour, anything you look at to answer,
2 I'd ask that I be given an opportunity to review.

3 A. Sure.

4 This is -- that is a lease sale from May of
5 this year where it's \$10,000 an acre, but it's for
6 300 -- I believe it's for 300 net acres.

7 Q. Okay. In this lease sale, it looks like this
8 document is from the New Mexico State Land Office --

9 A. Correct.

10 Q. -- a lease bid, correct?

11 A. Uh-huh.

12 Q. And this is from 2018?

13 A. Correct.

14 Q. And this is for Section 6, Township 23 South,
15 Range 26 East, correct?

16 A. Uh-huh. So same township as the -- as this
17 lease sale (indicating).

18 Q. As that lease sale.

19 And the acreage was priced at \$10,207.99
20 per net mineral acre?

21 A. Correct.

22 Q. So I now want to focus on your timeline.

23 A. Okay.

24 Q. And I want to start -- and your timeline is
25 located in --

1 A. Is that Exhibit 6?

2 Q. **It's Exhibit 4 of Chisholm's exhibits.**

3 MS. KESSLER: Ms. Bradfute, can we get that
4 back?

5 MS. BRADFUTE: Yeah.

6 MS. KESSLER: Thank you.

7 Q. **(BY MS. BRADFUTE) And actually I want to start**
8 **on February 27th --**

9 A. Okay.

10 Q. **-- which looks like it's in the top quarter of**
11 **the page of the timeline.**

12 A. Uh-huh.

13 Q. **You initially offered to Cimarex a price of**
14 **\$2,500 per net mineral acre for a three-year term**
15 **assignment term; is that correct?**

16 A. That's correct.

17 Q. **And on March 2nd, you have a note that you were**
18 **told by Cimarex that \$2,500 was not a fair price,**
19 **correct?**

20 A. That it was not enough to gain traction, is
21 what I was told.

22 Q. **Okay. Fair enough.**

23 **And then the parties entered into**
24 **negotiations to settle on a price between March 2nd and**
25 **March 19th. Is that your understanding?**

1 A. Yes.

2 Q. Okay. And the parties did settle on a price,
3 correct?

4 A. That's correct.

5 Q. And what was that price?

6 A. That was \$7,000 per acre.

7 Q. Okay. And you testified on April 5th before
8 the Division that the parties had reached an agreement
9 in principle and that you just needed to reach a
10 mutually acceptable form, correct?

11 A. Correct.

12 Q. Was your counterpart at Cimarex who you were
13 dealing with Caitlin Pierce?

14 A. Uh-huh. Yes.

15 Q. Did you speak with Caitlin on a regular basis
16 about the terms of this deal and the negotiations that
17 were involved?

18 A. There were several emails. I think they're
19 denoted here. I don't want to -- I don't know if I can
20 define what regular basis means.

21 Q. Okay. Did you have more than ten phone calls
22 with Cimarex on this --

23 A. I would say so, or ten at least.

24 Q. More than 15?

25 A. I'm not sure about that. Most of our

1 communication was through email -- or maybe half and
2 half, e-mail and phone calls.

3 Q. Okay. So most of your documented
4 communication, I can find in emails. Is that what
5 you're indicating to me?

6 A. Yes.

7 Q. Okay. You had a deal in principle prior to
8 April 1st, 2018. Is that -- is that your understanding,
9 or around April 1st, 2018?

10 A. Yeah. Yes.

11 Q. And that was before the Division hearing?

12 A. That's correct.

13 Q. On April 3rd, were you contacted by Cimarex and
14 informed about a preferential purchase right that
15 existed within part of Cimarex's interest in the west
16 half of Section 10?

17 A. Yes.

18 Q. Okay. And let me back up. As part of the
19 initial deal reached by the parties, there were two
20 components. There was going to be a trade of 32 --
21 approximately 32 net mineral acres, and that was just
22 going to be an acreage swap, right?

23 A. Yes.

24 Q. And then Cimarex was going to term assign in
25 between 96 and just over 100 net mineral acres under a

1 term assignment in which Chisholm was going to pay
2 \$7,000 per net mineral acre?

3 A. That's correct.

4 Q. And the parties were going to execute a term
5 assignment form?

6 A. That's correct.

7 Q. And exchange forms on that?

8 A. That's correct.

9 Q. And even within the past week, essentially
10 agreed to most of the terms in the term assignment form?
11 That was your testimony?

12 A. That's correct.

13 Q. Right. So the parties came to that agreement.

14 The sticking point between the parties most
15 recently was indicated by you to be a preferential
16 purchase right that existed in the property, right?

17 A. And an owed assignment under the farm-out.

18 Q. And an old assignment under the farm-out.

19 A. I'm sorry. Owed. An assignment that was owed.

20 Q. Okay. And what is your understanding of that
21 owed assignment?

22 A. Through our research, it looks as though
23 from -- the 1996 farm-out agreement set forth terms and
24 conditions which Fuel Products could back in and earn an
25 assignment within the acreage once certain things --

1 once certain obligations were met, and that obligation
2 being to drill a well.

3 As I testified earlier, we received that
4 farm-out agreement three days ago, so this is kind of
5 new analysis. I don't know that we've even had a chance
6 to review the farm-out agreement completely, but it
7 looks like that assignment was owed but never -- from
8 Mallon to Fuel Products, but it has not been effectuated
9 through a transfer of operating rights or a conveyance
10 in the Eddy County records.

11 **Q. And Cimarex had informed you about this**
12 **assignment and the pref rights very early on in this**
13 **process, before the Division hearing, right?**

14 A. That's correct.

15 **Q. So you were aware of this before the April 5th**
16 **Division hearing in this matter, that this could be an**
17 **issue?**

18 A. Not -- let me -- I need to check my notes. I
19 know the preferential rights issue, I was notified of.
20 The owed assignment, I don't think I knew about until
21 after.

22 **Q. Until after the hearing?**

23 A. After the hearing.

24 **Q. But you were notified about it sometime in**
25 **April of 2018, correct?**

1 A. Correct.

2 Q. And that was before any order had been issued
3 in the case, correct?

4 A. That's correct.

5 Q. Do you dispute at all, Mr. Armour, that you
6 were notified about the existence of the preferential
7 purchase right as of April 3rd, 2018?

8 A. "Dispute" is not -- not the word I would
9 choose. I would say it may exist. I don't think we
10 knew for certain that it existed until we received a
11 copy of the JOA.

12 Q. Okay. And how did you respond to Cimarex's
13 notification when they told you that a preferential
14 purchase right might exist?

15 A. I said that every JOA that I have reviewed has
16 the preferential right to purchase clause stricken and
17 asked if there was a JOA that I needed to review.

18 Q. Okay. And did Cimarex follow up with you
19 within a couple of weeks and provide you with more
20 information about that preferential purchase right?

21 A. There was more information provided on April
22 27th.

23 Q. Okay. Let's go through that information.
24 Mr. Armour, I want to start with the second page of this
25 email train --

1 A. Sure.

2 Q. -- which is the email -- well, actually I want
3 to start one email before that so at the bottom of the
4 first page, and it's an email from Caitlin Pierce to
5 yourself, sent on Friday, April 27th at 11:00 a.m.

6 A. Okay.

7 Q. And does this email state that Cimarex is
8 sending you a message from their title attorney
9 providing information about the Fuel Products'
10 assignment and the preferential purchase right?

11 A. Yes.

12 Q. Okay. And if you could please turn the page
13 and there is highlighted language in that second page
14 within this email.

15 A. Uh-huh.

16 Q. And take a minute and please review it.

17 A. (Witness complies.)

18 Okay.

19 Q. Within this notice -- within this email, were
20 you informed that there was a 9.375 percent interest in
21 operating rights that needed to occur to Fuel Products?

22 A. Yes.

23 Q. Okay. And were you also informed about the
24 existence of the preferential purchase right clause
25 contained within the joint operating agreement?

1 A. Yes.

2 Q. And so you were specifically informed about
3 both of those issues on April 27th?

4 A. That's correct.

5 Q. Coming from Cimarex's title attorney?

6 A. Yes.

7 I would also like to point out that my --
8 above, on my email from May 7th, that it does -- I did
9 inquire as to if they planned on assigning the interest
10 to Fuel Products, Eddy County record files, and if they
11 were able to determine if the term would be subject to
12 preferential right to purchase. And granted, the
13 counsel does say that it is. I think what -- what I was
14 trying to get at was that we would like to be able to
15 make our determination of what was owed.

16 Q. Okay. So let's back up a little bit. Let's
17 look at May 7th. Caitlin Pierce emails you, correct?

18 A. Yes.

19 Q. And she says, "How do you want to move
20 forward?" She's basically asking you: Is this deal
21 still in place; does Chisholm want to move forward on
22 the terms given the below notification from our title
23 attorney? Right?

24 A. Uh-huh. Uh-huh.

25 Q. Is that a yes?

1 A. Yes.

2 Q. And your response, I have it highlighted here
3 in yellow. On May 7th, you say, "Chisholm wants to move
4 forward with the exchange and the term assignment."
5 Correct?

6 A. Correct.

7 Q. Is it your understanding that after Cimarex
8 received that information, they engaged counsel? They
9 hired an attorney to send out preferential purchase
10 rights notices to move forward with the assignment?

11 A. I was not aware of that, or I don't recall -- I
12 don't recall that.

13 Q. Okay. Okay. And then let's look at what you
14 were explaining earlier. You do have questions in your
15 May 7th email, but do you specifically ask for a copy of
16 the term assignment or the JOA?

17 A. I think what I was trying to ask for was a
18 resolution of the issue rather than a copy.

19 Q. Okay. Okay. So -- but you still indicated
20 that you wanted to move forward with the deal, right?

21 A. Yes, with -- with the information -- with the
22 questions answered of what we know we're going to do
23 with these -- and the interests, we want to move
24 forward.

25 Q. Let's back up. Did you say: Subject to the

1 above conditions on getting these questions answered,
2 Chisholm wants to move forward with this deal?

3 A. No. That's not what it says in the email.

4 Q. That's right. That is not what it says.

5 Did you call Cimarex and tell them that you
6 had to get those questions answered before moving
7 forward with the deal?

8 A. I do not have that in my timeline. I'm not
9 sure about any phone calls placed at that time.

10 Q. Okay. All right. Let's look at -- let's
11 return to your timeline here.

12 A. Okay.

13 Q. You state on the second page of your timeline,
14 on April 16th, that you requested a term assignment
15 again and that you offered to meet in Midland while you
16 were there; is that correct?

17 A. That's correct.

18 Q. Okay. So let's take a look at that email that
19 you sent on April 16th.

20 A. Okay.

21 MR. FELDEWERT: You're going backwards?

22 MS. BRADFUTE: No. We're going from
23 April -- well, yes, slightly. The last exchange
24 encompassed April 27th, yeah, through May 7th.

25 Q. (BY MS. BRADFUTE) Mr. Armour, you earlier

1 testified that on April 16th, you requested the term
2 assignment again, and you tried to meet with Cimarex,
3 right?

4 A. Uh-huh. Yes.

5 Q. Well, let's look at the communication that you
6 actually sent to Cimarex.

7 A. Okay.

8 Q. It says, "I hope all is well. I wanted to give
9 you a heads-up that I'll be traveling to Midland
10 tomorrow for the PBLA Education Seminar and Shrimp
11 Boil."

12 MR. FELDEWERT: Nice.

13 Q. (BY MS. BRADFUTE) "If you're attending either,
14 I hope to see you there." That does not look like a
15 request for a term assignment or a meeting about the
16 term assignment, correct?

17 A. That's correct.

18 Q. But this is the communication that you sent on
19 April 16th, right?

20 A. Yes. This is the -- this is the email. I
21 don't know if we had a phone call that day.

22 Q. But you testified earlier that most of your
23 communications were documented in the emails?

24 A. That's correct.

25 Q. That's what you said.

1 Okay. Let's talk about the recent
2 negotiations between the parties, and I want to focus on
3 the exchange of the form agreements. Cimarex did send
4 you a form agreement on May 29th for the term
5 assignment, correct?

6 A. That sounds right. Let me look at my -- yes.
7 Yes.

8 Q. Okay. And it took -- based on your timeline,
9 it took approximately 15 days, until June 12th, for
10 Chisholm to review that proposed form agreement,
11 correct?

12 A. Correct.

13 Q. Okay. And during that time frame, was Chisholm
14 starting to make preparations to drill the 4H well?

15 A. I would have to ask the operations team. I'm
16 not sure when the pad was built, but I can tell you as
17 far as when the Black River spud was heavily dependent
18 upon rig release from the previous scheduled well.

19 Q. Okay.

20 A. So it's I think after -- I think the first -- I
21 want to say that I seem to recall conductor pipe being
22 set on the 14th.

23 Q. On the 14th. So about two days later after you
24 got revisions to Cimarex?

25 A. Uh-huh.

1 Q. And you said conductor pipe being -- I'm
2 sorry -- released or set?

3 A. Set.

4 Q. Set.

5 And that's on the 4H well?

6 A. Correct.

7 Q. So you were starting operations as you were
8 reviewing the term assignment changes sent by Cimarex?

9 A. My -- my review had been finalized. I had sent
10 my -- our form of term assignment before conductor was
11 set.

12 Q. Okay. And while the conductor was being set on
13 that well and you were negotiating this term assignment
14 with Cimarex, did you give them an update about that?

15 A. No, we did not.

16 Q. On July 20th, the well had been drilled,
17 correct?

18 A. It had spud. The drilling was not completed.

19 Q. Okay. So --

20 A. No. I'm sorry. I'm sorry. I believe we spud
21 on the 24th. Or was that -- maybe that was June. Did I
22 put "spud" in here in the timeline? I don't have "spud"
23 on my timeline. I think it -- yeah. It must have been
24 June 24th. I'm sorry for the confusion.

25 Q. Okay. And then by July 20th, Cimarex was -- or

1 Chisholm was calling Cimarex indicating that the
2 election period had expired under the well? Sorry.
3 That's the date I want to focus on, July 20th.

4 A. July 20th was the call to inform that the
5 election period was about to run. It had not run yet.

6 Q. Was about to run.

7 And is it your recollection that July 20th
8 was a Friday?

9 A. Yes.

10 Q. Do you remember what time you called that
11 Friday?

12 A. I do not.

13 Q. Okay. Could it have been Friday afternoon?

14 A. I believe it was in the morning.

15 Q. Okay. But you don't remember for sure?

16 A. I don't remember.

17 Q. Okay. On July 23rd, that Monday, after
18 returning to work, you did receive an email from
19 Cimarex, right?

20 A. I emailed Cimarex to ask -- to confirm whether
21 or not they intended to go nonconsent.

22 Q. Okay. And did you receive an email back from
23 Cimarex --

24 A. I did.

25 Q. -- about that issue?

1 A. I did.

2 Q. And did that email indicate to you that Cimarex
3 still thought that the deal in principle was in place?

4 A. Yes.

5 Q. And that they had moved forward under the pref
6 rights provision and were wanting to execute a term
7 assignment for the acreage?

8 A. They indicated that they wanted to do a term
9 assignment. I don't know that -- I don't -- I need to
10 review on the pref rights issue. What was the question
11 regarding pref rights on that email on the 23rd?

12 Q. Well, let me just rephrase. Is it your
13 understanding from that July 23rd communication that
14 Cimarex still thought the parties were moving forward
15 under the original deal that was entered into before the
16 Division hearing?

17 A. Yes.

18 Q. Okay. And did you inform Cimarex that that
19 deal was no longer in place during that conversation on
20 July 23rd?

21 A. I don't think that I communicated that until
22 the July 26th phone call.

23 Q. Okay. And during the July 26th phone call,
24 what did you tell Cimarex?

25 A. I said that I was going to pass along to

1 management the -- Cimarex's intention to enter into a
2 term assignment but also informed that they had been
3 deemed nonconsent under the compulsory pooled well
4 proposal.

5 Q. So now Chisholm was seeking to impose a 200
6 percent risk penalty on Cimarex's 21 percent working
7 interest in the project area, correct?

8 A. That's correct.

9 Q. After months of working towards finalizing this
10 deal?

11 A. Correct.

12 Q. On July 30th, was an email sent which
13 specifically stated that Chisholm was now offering
14 \$2,500 per net mineral acre to Cimarex for the acreage?

15 A. Yes.

16 Q. Okay. And was that deal contingent on
17 providing a 78 percent NRI in the acreage?

18 A. I believe that's correct.

19 Q. Okay. And during the deal that was being
20 negotiated by the parties, it had been a 75 percent NRI,
21 correct?

22 A. That is -- the original was a 78, but I think
23 by the agreement in principle, we had discussed 75 NRI.

24 Q. Okay. There was a motion to stay that was
25 filed by Cimarex the day after it received that email,

1 correct?

2 A. Yes.

3 Q. Do you know why Cimarex -- do you understand
4 why Cimarex moved to stay Chisholm's operations after
5 Chisholm backed out of the deal?

6 A. That would only be a guess. I don't -- I don't
7 know for certain.

8 Q. Okay. Okay. Is it your understanding that
9 they moved to stay because this was the first written
10 communication they had that the deal had been backed out
11 of?

12 MS. KESSLER: Objection. He just testified
13 about that.

14 MR. BRANCARD: I think he already said he
15 doesn't know why.

16 MS. BRADFUTE: Okay.

17 Q. (BY MS. BRADFUTE) Following the motion-to-stay
18 hearing that was held with the Division, the parties
19 entered into new negotiations, right?

20 A. That's correct.

21 Q. Chisholm once again recognized the original
22 deal that had been struck by the parties, right?

23 A. Yes.

24 Q. So you came back to the table recognizing that
25 that deal was in place?

1 A. Yes, that the \$7,000 an acre, specifically, was
2 back on the table for --

3 Q. Okay. And you also talked about the
4 32-net-mineral-acre swap?

5 A. And the acreage exchange, yes.

6 Q. And the parties agreed -- basically agreed on a
7 form for the acreage swap, correct? Chisholm had
8 proposed its form -- preferred form?

9 A. Uh-huh.

10 Q. Cimarex provided red lines, right, minimal, if
11 any?

12 A. Yeah, that sounds correct.

13 Q. Okay. And then there were no further
14 negotiations on that acreage swap form, correct?

15 A. That's correct.

16 Q. Okay. And the parties agreed on the term
17 assignment form, right? That's what you testified to
18 earlier.

19 A. Yes. We did reach an agreement.

20 Q. But Chisholm indicated, contrary to its May 7th
21 communication, that its concern was the preferential
22 purchase right that was burdening the property, correct?

23 A. Yes. And I think the quantum of interest
24 involved in the preferential purchase right.

25 Q. Okay. And what is the concern with that

1 **quantum of interest?**

2 A. The quantum of interest, according to our
3 counsel's interpretation, that they would have the right
4 to elect to take all of the interest and not just a
5 portion.

6 Q. I apologize, Mr. Armour. I'm just reviewing to
7 make sure that I have everything.

8 A. Okay.

9 Q. Why didn't you raise those concerns with
10 Cimarex, about the preferential purchase right, when you
11 received the April 27th email with Doug Lundsford about
12 the preferential purchase right?

13 A. I think that we did raise those on a number of
14 occasions. A determination of a preferential purchase
15 right was still owed, since the original communication
16 was that it may be subject to a preferential right to
17 purchase.

18 Q. Okay. Well, I think if we look back to the
19 April 27th email, we all know what was communicated
20 there, and that's something we can all look at.

21 A. Yeah, we can.

22 But also that we would have asked for our
23 counsel to have an opportunity to provide -- to examine
24 the documents in order to make our own determination,
25 which was maybe not clearly stated. Maybe it was more

1 of an implication that we needed to see those.

2 I think I did say in my May -- my June 12th
3 email, responding to the -- to Cimarex's proposed form
4 of assignment, that -- in their -- in their form of
5 assignment, we were asked to indemnify Magnum Hunter and
6 hold harmless with respect to their actions and
7 elections under an operating agreement that Chisholm has
8 never been provided with. Once again, it's not stated
9 black and white that we want to see it, but we had a
10 problem with joining into an agreement binding us to an
11 OA that we had never seen.

12 Q. And one final question, Mr. Armour. During the
13 motion-to-stay hearing, Chisholm was provided with the
14 joint operating agreement, right? It was attached as
15 one of the exhibits that was provided during that
16 hearing.

17 A. It was my understanding that the first time
18 that we saw that was the pre-hearing statements for this
19 de novo hearing.

20 Q. Okay. Well, I'm going to represent to you that
21 it was provided to Chisholm's counsel. Perhaps you did
22 not see it.

23 A. Okay.

24 Q. Okay. That concludes my questions.

25 CHAIRWOMAN RILEY: It's 10:30. Mary, do --

1 MR. BRANCARD: Do we want to mark some of
2 these as exhibits?

3 MS. BRADFUTE: Yes. The State Land Office
4 is Exhibit 20, the State Land Office lease sale. The
5 April 16th email, we'll mark as Exhibit 21. And the
6 exchange of emails involving April 27th through May 7th
7 will be Exhibit Cimarex 22. And I would like to tender
8 those exhibits into the record.

9 MS. KESSLER: No objection.

10 CHAIRWOMAN RILEY: All right. Are you
11 tendering 20 through 21 or all of your exhibits?

12 MS. BRADFUTE: 20 through 22. So it would
13 be Cimarex 20 -- or I'm sorry.

14 CHAIRWOMAN RILEY: 20 through 22, but
15 not --

16 MS. BRADFUTE: But not the binder. Yes.

17 CHAIRWOMAN RILEY: Okay. Mary, please note
18 for the record that Exhibits 20 through 22 are accepted
19 into the record.

20 (Cimarex Energy Company Exhibit Numbers 20
21 through 22 are offered and admitted into
22 evidence.)

23 CHAIRWOMAN RILEY: So it is 10:30. I'd ask
24 if you need to take a break at this time, or do you want
25 to do redirect?

1 Okay. Go ahead.

2 MS. KESSLER: Commission, I'd ask you-all
3 to go first, if that's okay.

4 CHAIRWOMAN RILEY: Okay.

5 CROSS-EXAMINATION

6 BY COMMISSIONER MARTIN:

7 Q. I just have one question. And if maybe another
8 witness can answer this more complete, let me know.

9 What stage -- the completion phase of this
10 well, what stage is it in?

11 A. I believe the coil tubing has been drilled out
12 and we are preparing go flow back.

13 Q. Okay. That's my only question.

14 A. Can I verify that? I think that's accurate.

15 UNIDENTIFIED SPEAKER: We can answer that
16 later. Very close to that.

17 CHAIRWOMAN RILEY: Dr. Balch?

18 COMMISSIONER BALCH: No questions.

19 CHAIRWOMAN RILEY: Mr. Brancard?

20 CROSS-EXAMINATION

21 BY MR. BRANCARD:

22 Q. Let's get clear here. We're in a de novo
23 proceeding, so you have a Division order that granted
24 you certain rights. What would you like from the
25 Commission? The Division order creates a nonstandard

1 spacing unit and project area and orders compulsory
2 pooling for 638.16 acres.

3 A. Uh-huh.

4 Q. Is that what you're asking for?

5 A. Yes.

6 Q. Okay. The Division order dedicated that unit
7 to three wells. Are you asking the Commission to
8 dedicate that unit to three wells or one well?

9 A. I believe to one.

10 Did we make a motion to change that to one?

11 MS. KESSLER: There was no motion filed.

12 THE WITNESS: Okay. To one. To one well.

13 Q. (BY MR. BRANCARD) And so other than that, all
14 the other conditions that are in the Division order are
15 acceptable --

16 A. Yes.

17 Q. -- to Chisholm?

18 A. (Indicating.)

19 Q. Okay. Thank you.

20 MS. KESSLER: Brief redirect.

21 CHAIRWOMAN RILEY: Okay. Thank you.

22 REDIRECT EXAMINATION

23 BY MS. KESSLER:

24 Q. Mr. Armour, you were originally told by Cimarex
25 that a letter agreement was not necessary to accomplish

1 this trade and the term assignment, correct?

2 A. That's correct.

3 Q. And that this could be accomplished through
4 cross advances?

5 A. That's correct.

6 Q. And there are clearly still issues with the
7 title? Is that also correct?

8 A. That's correct.

9 Q. Both with an owed assignment and with pref
10 rights?

11 A. Yes.

12 Q. And Cimarex has not finalized the issue of the
13 assignment that's owed?

14 A. That's correct.

15 Q. And you asked Cimarex for updates, and the
16 documentation was provided on Saturday? Is that also
17 correct?

18 A. That's correct.

19 Q. Today, based on the title, is it your
20 understanding that Cimarex cannot swap the same number
21 of net acres acre for acre?

22 A. That's how I understand it today. Yes.

23 Q. And the letter agreement does not have a
24 back-out provision for this swap. It would require the
25 same number of acres to be swapped regardless of how the

1 title situation turns out?

2 A. That's correct.

3 Q. And Cimarex has in front of them a letter
4 agreement that's acceptable to Chisholm that they have
5 not signed? Is that also correct?

6 A. Yes, that's correct.

7 Q. At \$7,000 an acre for the term assignment?

8 A. Yes, for the term assignment. Yes.

9 Q. That's all.

10 CHAIRWOMAN RILEY: I think we're probably
11 done with this witness. Do you want to excuse him, or
12 do we have any reason to call him back?

13 MS. BRADFUTE: That's okay. I'm good.

14 CHAIRWOMAN RILEY: You don't have any more
15 questions?

16 Okay. This witness can be excused.

17 So I suggest we take a brief break.

18 You-all good with that?

19 (Recess, 10:33 a.m. to 10:49 a.m.)

20 CHAIRWOMAN RILEY: All right. Let's go
21 back on the record, please, and if you'd like to call
22 your next witness.

23 MS. KESSLER: We will, yes.

24

25

1 GEORGE ROTH,

2 after having been first duly sworn under oath, was
3 questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. KESSLER:

6 **Q. Please state your name for the record and tell**
7 **the Commission by whom you're employed and in what**
8 **capacity.**

9 A. My name is George Roth. I'm a geologist, and
10 I'm employed by Chisholm Energy.

11 **Q. Have you previously testified before the**
12 **Commission?**

13 A. No, I have not.

14 **Q. Can you please review your educational**
15 **background?**

16 A. In 1974, I received a Bachelor of Science
17 degree in geology from the State University of New York
18 at Buffalo.

19 **Q. What has been your primary focus in the oil and**
20 **gas industry?**

21 A. Since then, I have been in oil and gas
22 exploration, development and geology.

23 **Q. 40-some years?**

24 A. Yeah. Thanks for reminding me (laughter).

25 **Q. Can you please summarize your work experience?**

1 A. In '75, I started with City Service in Denver,
2 in the Rocky Mountain Division, a few smaller
3 independents there in Denver. And then in about '82, I
4 joined Hunt Oil Company in Denver as their chief
5 geologist for the Frontier Division. In '89, they
6 transferred me to Dallas, and I worked in their
7 international group to about 2000. In 2000, I joined
8 Range Resources in Fort Worth and worked east Texas,
9 west Texas and then the Marcellus Shale. In 2014 -- I
10 think I have that right -- I joined Burnett Oil Company
11 as their VP of exploration. They have extensive
12 holdings in the Delaware Basin or still do. And in
13 2017, I joined Chisholm as a senior geologist.

14 **Q. Does your current experience and area of**
15 **responsibilities include the Permian Basin?**

16 A. Yes.

17 **Q. Are you a member of any professional**
18 **organizations?**

19 A. I'm a member of the AAPG. I'm a member of the
20 Society of Independent Professional Earth Scientists,
21 SIPES. I'm a member of the Alaska Miners Association,
22 Fort Worth Geologic Society, and I'm a certified
23 geologist in the state of Wyoming.

24 **Q. Were you the geologist who provided testimony**
25 **regarding the case and spacing unit at the Division**

1 hearing?

2 A. Yes.

3 Q. And are you familiar with the application filed
4 in this case?

5 A. Yes, I am.

6 Q. And the resulting pooling order?

7 A. Yes.

8 Q. Have you conducted a geologic study of the
9 lands that are subject to this spacing unit?

10 A. Yes, I have.

11 MS. KESSLER: I would tender Mr. Roth as an
12 expert in petroleum geology.

13 MS. BRADFUTE: No objection.

14 CHAIRWOMAN RILEY: All right. George Roth
15 is accepted as an expert witness by the Commission.
16 Thank you.

17 Q. (BY MS. KESSLER) Mr. Roth, what is the target
18 formation of the subject well?

19 A. Wolfcamp A.

20 Q. Have you prepared a structure map and cross
21 section for the targeted formation?

22 A. Yes, I have.

23 Q. Let's turn first to Exhibit 8 in Chisholm's
24 exhibit packet.

25 A. Yes, ma'am.

1 **Q. Is this a structure map on the top of the**
2 **Wolfcamp?**

3 A. Yes. This is a subsurface structure map on the
4 top of the Wolfcamp, and the wells you see there -- the
5 symbols that you see for wells, that's the subsea
6 elevation for the top of the Wolfcamp. And then the
7 contour interval is that resulting map, 25-foot contour
8 interval. The, I guess, salmon color that you see on
9 some of those wells indicates some Wolfcamp A
10 production, and then there is the outline for the unit,
11 Black River Federal Unit, the proposed unit, and then
12 cross section, A, A prime, is the cross section that I
13 did -- a three-well cross section for the area.

14 **Q. What do you see with respect to the structure**
15 **in this section?**

16 A. What I see, at least in this area, is the
17 structure dips to the east and strikes more or less
18 northeast-southwest to the -- updip to the west, downdip
19 to the east.

20 **Q. And on A to A prime, are these the wells that**
21 **you used to create your cross-section exhibit?**

22 A. Yes.

23 **Q. Why did you select these wells?**

24 A. I felt like those wells, the vertical wells
25 that they represent, had the best quality logs,

1 modern -- as modern as they can be, open-hole logs that
2 I used in my interpretation throughout this area.

3 Q. Is Exhibit 9 your corresponding cross-section
4 exhibit?

5 A. Yes. Yes, it is.

6 Q. And this shows the targeted formation, correct?

7 A. The targeted formation, right. Yes.

8 Q. Can you please walk us through this exhibit?

9 A. The three wells from left to right are -- first
10 of all, the image below that is a raster copy of a log,
11 and then the colored log on the left-hand side of each
12 one of those is a gamma ray. I used a gamma ray for
13 some of the lithologies. So where you see the blue, I'm
14 assuming that to be a limestone. Where you see the
15 yellow, I think that's more of a reservoir-quality
16 sandstone.

17 Then moving down the section, top of the
18 3rd Bone Spring is identified. Another marker within
19 the 3rd Bone Spring that I call the 3rd Bone Spring
20 Lower is identified. Then in bold letters, Wolfcamp.
21 That's the horizon that the map is built on. And then I
22 begin to break out the Wolfcamp A into two individual
23 intervals, the Wolfcamp A top there, and then there is a
24 Wolfcamp A lower top. And then the highlighted portion
25 of that interval is the proposed target interval for our

1 #4H.

2 And then finally, the last top there is the
3 Wolfcamp B.

4 **Q. Does the 4H well cross through the Upper and**
5 **Lower Wolfcamp A?**

6 A. Well, it lands in the lower, yes, and it would
7 cross through the upper.

8 **Q. Okay. Can you please explain how this well was**
9 **drilled?**

10 A. Well, we targeted the lower section in the
11 north part of the unit, and we landed -- the heel of the
12 well is in that lower section. And as we drilled south
13 through the unit, we have -- we feel like the reservoir
14 quality within that section changes. So to get the best
15 reservoir quality, we changed the inclination of that
16 lateral at about a 4,000-foot vertical section so that
17 we could transgress that section from the lower to the
18 upper. We felt like that is the best way to really
19 drain this unit and this reservoir.

20 MS. KESSLER: Members of the Commission,
21 you have an exhibit packet that looks like this
22 (indicating) in front of you, and these are supplemental
23 exhibits. I'm going to hand one to the witness here.

24 **Q. (BY MS. KESSLER) Was this well intentionally**
25 **drilled on an azimuth to contact the best reservoir**

1 **quality and geology along the well path?**

2 A. Yes.

3 **Q. Let's look first at Exhibits A and B. What are**
4 **these two exhibits?**

5 A. A and B represent two isopach maps that I have
6 generated over a much larger area but specific to this
7 map over our Black River unit. And I break out,
8 referring back to my cross section, A to A prime, those
9 two intervals, the A Upper and A Lower. So that's what
10 these maps represent, an upper and a lower isopach.
11 I've mapped the porosity -- conventional porosity within
12 those reservoirs using an 8 percent cutoff. So anything
13 greater than 8 percent, I consider reservoir-quality
14 rock. That is a net map of that porosity interval --
15 intervals.

16 **Q. And with the Upper Wolfcamp A, which is Exhibit**
17 **A, what happens to the reservoir quality as you go**
18 **southwest?**

19 A. As I said, when we landed our well in the north
20 there, the reservoir quality in the upper part is poor,
21 based upon this upper isopach map. If you refer to the
22 lower isopach map, where we landed the well in the upper
23 part -- I'm sorry -- in the lower part, the reservoir
24 quality down there is very good. That's why we landed
25 down there. Then as counsel refers to, as we drill

1 south, the upper isopach is better. I'm looking at the
2 wrong -- it gets better as you drill south, and the
3 lower isopach gets worse. That's why we had, at about
4 section line, changed our inclination on that well to 92
5 degrees, so we could get back into a reservoir that we
6 considered much more prospective.

7 **Q. And this was Chisholm's plan from the**
8 **beginning, correct?**

9 A. Well, I noticed -- and it's fair to say I did
10 this cross section (indicating) probably two or three
11 months before the hearing. We had, after that, received
12 other data, more mapping, that made us change our
13 interpretation prior to the drilling. So --

14 **Q. And this was -- this was Chisholm's plan when**
15 **they began to drill the well?**

16 A. This was the plan when we submitted, yes, to
17 drill this well.

18 **Q. And this was presented to management?**

19 A. Yes.

20 **Q. Was staying in zone and geosteering this well a**
21 **geologic risk?**

22 A. Yes, I think it is.

23 **Q. And you mention that's because of the**
24 **deterioration of both of the formations?**

25 A. Yes. I think it's important to be able to

1 steer that well properly and get it in the right
2 reservoir.

3 **Q. I'm going to keep these exhibits in front of me**
4 **and then also go to Cimarex's Exhibit 12. What is this**
5 **exhibit?**

6 A. That looks like a structure map on the top of
7 the Wolfcamp, very similar to mine, I think.

8 **Q. I'm looking -- I think you might be looking at**
9 **11. I'm looking at 12, which is --**

10 A. Oh, sorry. I got the tabs upside down.

11 Yeah. Okay. That looks like -- well, it
12 says it's "Upper Wolfcamp Isopach," and then the title
13 is "Upper Wolfcamp Gross Isopach."

14 **Q. What is the difference between your two**
15 **isopachs exhibits and this exhibit?**

16 A. Well, what I see just quickly looking at the
17 map is a bigger interval. Obviously, there are numbers
18 that range upwards of 450 to 500 feet of thickness.
19 Whereas, mine is 10 percent of that. I'm looking at 20
20 to 30 feet of thickness porosity. And this -- and I
21 consider my map a net. I consider this, as it says, a
22 gross isopach.

23 **Q. So does their isopach map show that the gross**
24 **interval is relatively consistent across the proposed**
25 **sections?**

1 A. It looks like it goes actually -- I think
2 it's -- it varies a little bit, but you can say it's the
3 same. I see numbers 400 at the toe and 390 at the heel,
4 so it doesn't vary that much.

5 Q. And this includes both the Upper and Lower
6 Wolfcamp A, correct?

7 A. I think it includes a lot more than that,
8 actually.

9 Q. And this is different than our two isopachs of
10 the area that show significant deterioration in each of
11 the two reservoirs as broken out, Upper and Lower
12 Wolfcamp A?

13 A. Yeah, I think so. They're both isopach maps,
14 but we're mapping different things.

15 Q. Is moving towards the southwest considered a
16 step-out well for Chisholm?

17 A. Yes, I think it is.

18 Q. And in your opinion, does moving towards the
19 southwest represent a greater geologic risk?

20 A. Well, I think based upon my mapping, these are
21 not sands that are all over. They're not thick.
22 They're not unique -- or they're not ubiquitous. So I
23 think it does create a risk. Yes.

24 Q. And are supplemental exhibits -- I'm turning to
25 the last page, which is marked as Exhibit E. Can you

1 **please identify this exhibit?**

2 A. Okay. That's a regional cross section, and it
3 doesn't lend itself well to this type of picture, I'm
4 sorry to say. But what I'm doing here is -- it's a
5 north-south cross section basically across the property
6 and tying in some regional well control. And what I'm
7 trying to do here and what I've demonstrated to
8 management is that the Wolfcamp B, upper and lower
9 intervals, that's -- the Upper B is colored in yellow on
10 this cross section, and the Lower B is colored in
11 orange. They're two prospective intervals, below the
12 Wolfcamp A that we consider very prospective in the area
13 and, in fact, have two wells producing from both those
14 intervals in the area.

15 **Q. What are your Lower Wolfcamp drilling plans in**
16 **this area?**

17 A. Well, like I said, we've got two wells right
18 now that are producing. And we would like to watch the
19 results of those, of course. They just began producing.
20 They're less than six months old. But in my opinion,
21 those two intervals, the Upper and Lower B, are
22 persistent across this area, and we certainly would
23 consider them and are considering those as targets, and
24 we will develop them at some point in time.

25 **Q. In your area -- in your opinion, can this area**

1 are be efficiently and economically developed by
2 horizontal wells?

3 A. Yes.

4 Q. And do you believe that each of the tracts
5 will, on average, contribute more or less equally to the
6 production of the well?

7 A. I think they will. Yes.

8 Q. In your opinion, was granting Chisholm's
9 application at the Division level and will it be at the
10 Commission level in the best interest of conservation,
11 for the prevention of waste and the protection of
12 correlative rights?

13 A. I think it does. Yes.

14 Q. Were Exhibits 8 and 9 and A through E prepared
15 by you or compiled under your direction and supervision?

16 A. They were prepared by me.

17 MS. KESSLER: I would move admission of
18 Exhibits 8 and 9 and A through E into the record.

19 MS. BRADFUTE: No objection.

20 CHAIRWOMAN RILEY: Mary, please note for
21 the record said exhibits are accepted.

22 (Chisholm Energy Operating, LLC Exhibit
23 Numbers 8 and 9 and Exhibit Letters A
24 through E are offered and admitted into
25 evidence.)

1 MS. KESSLER: I'll pass the witness.

2 CROSS-EXAMINATION

3 BY MS. BRADFUTE:

4 Q. Good morning.

5 A. Morning.

6 Q. I wanted to first turn to Chisholm's Exhibit 8,
7 which is your structure map.

8 A. Okay. Let me get the right tab here. Yes.

9 Q. In reviewing this structure map, I just wanted
10 to confirm whether there were any changes between this
11 map and the structure map that was presented to the
12 Division during the April 5th hearing.

13 A. I thought this was it.

14 Q. That is it?

15 A. Yeah.

16 Q. These are exhibits from the April 5th hearing?
17 And could you just quickly confirm that they're the
18 same?

19 A. Yes.

20 Q. They are?

21 A. Yes.

22 Q. Okay. Okay. Thank you. Thank you.

23 So nothing in your structure map has
24 changed since the April 5th hearing?

25 A. No.

1 Q. And, likewise, have you used the same cross
2 section that you're presenting today that was used in
3 the April 5th hearing?

4 A. This cross section is the one that was
5 presented. Is that your question?

6 Q. Yes. That is my question.

7 A. Yes.

8 Q. Okay. Thank you.

9 Okay. In Exhibit Number 9 of Chisholm's
10 exhibit packet, which is your cross section --

11 A. Okay. Thank you.

12 Q. I'll try to identify the documents as we go.

13 It's a cross section. Why did you select
14 the wells that are listed within this cross section?

15 A. Well, I think that those particular wells mimic
16 or are close to the position that we're proposing to
17 drill our wells. So in other words, it would be very
18 close to the lateral. And they had modern logs, and I
19 could look at those logs and interpret the porosity from
20 those logs.

21 Q. And did those logs indicate to you that the
22 reservoir was continuous throughout the project area and
23 the Wolfcamp A was a good target zone for the well?

24 A. Well, it indicated that the section -- or the
25 interval is there, but my mapping from the porosity

1 indicates that it deteriorates.

2 Q. Okay. So -- and I just want to unpack that
3 question a little bit -- or your testimony during direct
4 a little bit.

5 A. Uh-huh.

6 Q. You testified that in your opinion, each tract
7 will contribute more or less equally to the production
8 of the 4H well included within the spacing unit,
9 correct?

10 A. That's right.

11 Q. Okay. So that is a little contrary to what you
12 just said, saying that the reservoir is not continuous
13 throughout the project area for the proposed well,
14 correct?

15 A. It's contrary in that -- well, no, it's not
16 contrary, because I believe when we drill our well, we
17 started, as I said, on the isopach map where the
18 reservoir was best. As we transgress or move south and
19 drill the lateral, we moved up-section, where the
20 isopach indicates the porosity is better. So it will
21 drain this entire lateral in the best way that it can
22 because we've contacted what I consider to be the best
23 reservoir-quality rock under this lateral.

24 Q. Okay. And you found good, quality reservoir
25 rock under the lateral, you believe?

1 A. Oh, yes. Well, from the information that we
2 have when we drilled the well, yes. I don't have
3 open-hole logs. I have an MWD gamma ray and very good
4 core shows and -- or not core shows but mud log shows
5 during the drilling of this well.

6 Q. Okay. And you feel like the lateral is going
7 to cross through areas that have productive zones in the
8 Wolfcamp A reservoir throughout the whole length of the
9 lateral, correct?

10 A. Yes, I do.

11 Q. Okay. Do you believe that there is any risk
12 that the lateral will not cross through a section where
13 there is productive reservoir rock?

14 A. As it's drilled, I believe we've crossed
15 through the reservoir rock. Yes. If we did not drill
16 it that way, I believe we would not have encountered
17 good reservoir rock.

18 Q. Okay. But this was your drilling plan,
19 correct?

20 A. This was the drilling plan.

21 Q. Okay. I want to now look at your new exhibits
22 that were presented to counsel late yesterday afternoon,
23 which is your isopach --

24 A. Yes.

25 Q. -- net porosity. Could you explain to me what

1 the difference between a general isopach map is and an
2 isopach net porosity map?

3 A. Well, what I see between -- and I guess you're
4 referring to this isopach map.

5 Q. Just in general, yeah.

6 A. This is a much thicker interval, much bigger
7 interval. These are much smaller and, in fact, are a
8 different interval in that they're porosity versus just
9 an isopach map of an interval, so within a porous
10 interval. That's what these are. This is just a big
11 interval.

12 Q. So the main difference that you see between the
13 isopach that Cimarex prepared and your isopach net
14 porosity map are the intervals?

15 A. The size of the intervals, yes.

16 Q. The size of the intervals.

17 You don't see that these maps are looking
18 at different -- different measures, different parameters
19 at all?

20 A. Well, yes, I think they are looking at
21 different parameters.

22 Q. And would an isopach -- isopach net porosity
23 map -- the map that you prepared, you're looking at
24 porosity, right?

25 A. Correct.

1 Q. That's your measurement that that map shows?

2 A. That's correct.

3 Q. Are you looking at any other factors like net
4 thickness or any other reservoir factors in this map?

5 A. Yes. The porosity that I mapped is porosity
6 greater than 8 percent. So everything within that
7 particular interval, the upper or lower, that's greater
8 than 8 percent is tabulated by feet. So the numbers you
9 see on each one of these maps is 26 feet or it's 10 feet
10 or it's 20 feet of porosity greater than 8 percent, and
11 in some cases, that porosity gets up to 12 percent. So
12 I'm mapping that parameter.

13 Q. Okay. And that's the parameter. That's what
14 I'm trying to get to.

15 A. Okay. I'm sorry.

16 Q. That's the parameter. It's a porosity cutoff,
17 and this shows the feet above that cutoff for the
18 porosity in that area?

19 A. Exactly.

20 Q. Okay. I wanted to look at Exhibit C in the new
21 exhibit packet which Chisholm has, which is the diagram
22 of the wellbore.

23 A. Okay.

24 Q. What are the other wells identified? I can't
25 read that honestly.

1 A. If you go back to the isopach maps, these maps
2 (indicating) -- I didn't explain those. There are two
3 cross-section lines on there, A, A prime -- do you see
4 that?

5 **Q. Yes, I do.**

6 A. -- and B, B prime. Those are the two new
7 exhibits, A, A prime and B, B prime. So there are wells
8 on A, A prime starting on the left. And we're still
9 talking about Exhibit C, correct?

10 **Q. Yes, we are.**

11 A. Starting on the left is the MWD gamma ray from
12 our 4H well. And then that's on the left side of the
13 depth column. And then the red curve that you see along
14 with that is the mud gas or the gas that we recorded as
15 we drilled through that section. So it's a mud log, if
16 you will.

17 **Q. Yeah, but what is the well? I understand your**
18 **description of what the chart is showing, but what are**
19 **these wells -- other two wells?**

20 A. It's not easy to see on here, but if you look
21 at cross section A prime, you'll see some very faint
22 lines that draw to that blue line. And I'm sorry. I
23 apologize. It's not very clear. But it represents
24 those wells on that section. And there are two wells
25 immediately -- if you look at Section 3. There are two

1 wells just north of the southern section line there.

2 Q. Uh-huh.

3 A. Do you see those? And those are projected into
4 that cross-section line.

5 Q. Okay.

6 A. And that's what they represent, those two wells
7 represent. So there are two very closely spaced wells
8 to the lateral, and actually the lateral goes right
9 between them.

10 Q. And looking at those wells, they're not
11 actually on your A to A prime line, correct?

12 A. No. Again, I apologize. The display is not as
13 clear as it should be, but they are on that
14 cross-section line because they are projected -- the
15 program allows you to draw a line and project those in
16 there. And it takes into effect your structure and
17 projects those into the cross-section line, and that's
18 what they're doing.

19 Q. And which program are you using?

20 A. Petra.

21 Q. And are those wells the same wells as the wells
22 you included in your cross section?

23 A. No. Cross section B, B prime is the next cross
24 section.

25 Q. Okay. But are those wells the same wells that

1 you included in your cross section in Exhibit 9?

2 A. Yes.

3 Q. Okay.

4 A. I'm sorry. They're presented a little bit
5 differently --

6 Q. Yes.

7 A. -- but they are the same wells.

8 Q. Okay. And then in your -- so next I want to
9 turn to Exhibit D in your B to B prime.

10 A. I'm sorry.

11 Q. It's Exhibit D, as in David.

12 A. Okay.

13 Q. It should be in that packet right in front of
14 you.

15 A. Yeah, I got it.

16 Q. Okay. There are different wells included in
17 this cross section. Can you explain why that is?

18 A. Yeah. I just used the Pennzoil well, which is
19 the well on B, B prime, instead of the Black River,
20 Cimarex, 10. I'm not sure why I did that. I just chose
21 that well.

22 Q. Okay. You just decided to use that well
23 instead?

24 A. Yeah. It's as good a well. I think I had
25 better log control on that because the porosity on that

1 well was better defined on the open-hole logs.

2 Q. Okay. So if you look at -- what I want you to
3 do is look at Exhibit 9 and compare it to this cross
4 section B, B prime on Exhibit D.

5 A. Yeah. The difference -- I'm sorry; I think I
6 probably misspoke there -- is the well on the right-hand
7 side of the cross sections. B, B prime is a different
8 well than the well on cross section A, A prime.

9 Q. Okay. And it's the B prime well and the A
10 prime well, right? Those are the two different ones?
11 Am I classifying that right? It's the Pennzoil Federal
12 10 and the Cimarex Black River Federal Com well?

13 A. You'll need to go back to the structure map
14 that was presented at the hearing --

15 Q. Okay.

16 A. -- and look at cross section A, A prime. The
17 well on the right-hand side of the cross section is
18 about 600 feet from the well that I used in this
19 section. And all I can tell you is that I think that
20 that well, in B, B prime, had a little better log
21 quality, and that's why I chose to use in the most
22 recent cross section.

23 Q. Okay. And also it looks like there is a
24 difference in the porosities recorded for these two
25 wells, right?

1 A. Yes.

2 Q. So your B to B prime, it looks like you may
3 have picked a well that better supported your argument
4 on porosity instead of using the original well from the
5 cross section?

6 A. Yes. I think that's a fair statement.

7 Q. How would this look if you substituted in the
8 well that you originally used during your cross section?

9 A. Well, it still has porosity in that lower
10 section but not much. And it still has porosity in the
11 upper section just like the maps indicate.

12 Q. I want to flip ahead -- and I realize that you
13 didn't testify about these exhibits, but I want to
14 quickly look at Exhibit 12, Chisholm's Exhibit 12.

15 A. Okay. Yes.

16 Q. This exhibit appears to chart out Wolfcamp A
17 wells within the area; is that correct?

18 A. Horizontal wells.

19 Q. Horizontal wells within the area.

20 A. Yes.

21 Q. Okay. Have you studied these wells?

22 A. Yes.

23 Q. Okay. So are you familiar with the offsets in
24 Township -- I can barely read it -- Township 23 South,
25 26 East?

1 A. The Red Light well? Marathon's Red Light well?
2 I'm familiar with that well. Yes.

3 Q. Are you familiar with the other wells that are
4 shown on the map?

5 A. Familiar how? I mean, I've looked at them.

6 Q. You've looked at them?

7 A. Yes.

8 Q. But you can't remember their names?

9 A. Ghostrider, I think is one of them.

10 Q. Okay. Does Chisholm have a well that's been
11 drilled in that township and range?

12 A. What do you mean?

13 Q. Do you operate a Wolfcamp A well that's been
14 drilled in Township 23 South, 26 East?

15 A. Yes.

16 Q. Okay. Did you study these wells when you were
17 putting together your geologic study for the area?

18 A. Study the wells that we drilled?

19 Q. Yeah. Did you study that well?

20 A. Yes.

21 Q. Did you study these offsets when putting
22 together your geologic exhibits?

23 A. Yes. Yes.

24 Q. So I want to look at Exhibit A. This is your
25 map.

1 A. Yup.

2 Q. And look at the area to the north, right, where
3 those wells are located?

4 A. Uh-huh.

5 Q. What are you showing as the porosity for those
6 wells to the north?

7 A. It's not very good in the Upper Wolfcamp.

8 Q. Okay. So it's not very good for those wells --
9 those offset wells?

10 A. No. That's why we landed the wells in the
11 Lower Wolfcamp.

12 Q. You mean the lower part of the Wolfcamp A,
13 correct?

14 A. We landed the wells based upon the cross
15 section that you see here -- or I'm sorry -- on this
16 map, where the porosity is much better. They're landed
17 in the Lower Wolfcamp A.

18 Q. The Lower Wolfcamp A, which is still part of
19 the Upper Wolfcamp, correct, with the nomenclature?

20 A. Nomenclature? Right. But from a geologic
21 perspective, it's different.

22 Q. Yes, I understand. I just wanted to confirm.

23 A. Yeah.

24 Q. Okay. So those wells -- those offset wells to
25 the north are in an area that you believe to be less

1 **productive from a geologic standpoint, correct?**

2 A. Which wells are you referring to?

3 **Q. The wells that we just discussed, Marathon's --**

4 A. The Red Light?

5 **Q. -- wells, Chisholm's well located in Township**
6 **23 South --**

7 A. Well, the Red Light well was drilled in Section
8 25, I believe.

9 **Q. Yes, in Township 23 South, Range 26 East.**

10 A. Uh-huh. And what I see there is the Upper
11 Wolfcamp looks very good for that well, and they landed
12 those wells in that section.

13 **Q. Okay. And you just testified earlier that when**
14 **you looked at the porosity to the north, that it looked**
15 **poorer. And now you're saying that it looks better?**

16 A. Well, you have two different intervals that I
17 mapped here. If you're looking at the Upper Wolfcamp,
18 it's better to the north. If you're looking at the
19 Lower Wolfcamp, it's not as good. And that's what those
20 maps tell me.

21 **Q. Okay. I think that concludes my questions.**
22 **Thank you.**

23 CHAIRWOMAN RILEY: Ms. Kessler, do you want
24 to do your redirect now, or would you like us to ask
25 questions?

1 MS. KESSLER: I'll ask after you.

2 COMMISSIONER MARTIN: I don't have any
3 questions.

4 CHAIRWOMAN RILEY: I don't have any
5 questions.

6 CROSS-EXAMINATION

7 BY COMMISSIONER BALCH:

8 Q. Good afternoon -- it's not afternoon yet.

9 A. Good morning.

10 Q. Good afternoon in Texas, right?

11 A. That's right.

12 Q. Thank you for your testimony today.

13 On your Exhibit 8 --

14 A. Did you say A or 8?

15 Q. 8.

16 -- you mentioned that there was
17 salmon-colored Wolfcamp A production in the area.

18 A. It's in the next township to the north, that
19 one well. Yeah.

20 Q. Right.

21 I'm trying to find the scale on this map,
22 besides the township.

23 A. Well, those are sections, but there is -- once
24 you take that out of your project and put it in Petra --
25 or in PowerPoint, it loses the scale factor.

1 Q. Right.

2 So really within a mile to the north, a
3 mile to the west and a couple of miles to the northeast,
4 there is other Wolfcamp A?

5 A. Well, the well that you're referring to -- I
6 assume you're referring to in Section 4, that's a
7 vertical well.

8 Q. Okay.

9 A. And that's why it doesn't show up on whatever
10 display that was, where we have just the horizontal
11 wells depicted.

12 Q. Right.

13 So these -- the salmon color on this map,
14 those three wells that have salmon color --

15 A. Yes.

16 Q. -- those are Wolfcamp A?

17 A. Horizontal wells.

18 Q. Horizontal wells.

19 And these aren't bubble maps or anything,
20 right?

21 A. Well, that one is a bubble. That's 271,000
22 barrels of oil from that.

23 Q. Oh, I see. Yeah.

24 Okay. And the other two are --

25 A. They have no value. I mean, they were

1 perforated and didn't produce anything from those zones
2 in the vertical well. Or I'm sorry. That's a
3 horizontal well, and I don't have any data on that one.

4 **Q. You don't have data?**

5 A. Yeah. So it's still a new well.

6 **Q. And when were those horizontals drilled; do you**
7 **know?**

8 A. The Red Light I think is the one to the north,
9 and I want to say it was drilled in '16 maybe. I don't
10 know exactly the date on that. It's been around awhile.

11 **Q. Has a substantial Wolfcamp A production to the**
12 **south?**

13 A. To the south?

14 **Q. A little further south.**

15 A. From --

16 **Q. From your map.**

17 A. Yes. It's in the next township, I believe.

18 **Q. I think I heard you say that you want to watch**
19 **the production of the current well before you**
20 **green-light the other two wells that were initially**
21 **proposed in the Division order.**

22 A. I don't know if I was referring to those or to
23 the Wolfcamp B. I know I did say something to that
24 effect, but I thought it was in context to the two wells
25 when we were talking about this other cross section that

1 shows the other horizons. But the same would hold true,
2 to your question, that we want to watch this Black River
3 well that we've just completed in the Wolfcamp A and see
4 what kind of results we get before we go out and drill
5 more Wolfcamp A wells.

6 Q. That's pretty true with geologic maps, that
7 they're refined when new data is available --

8 A. Yes, clearly.

9 Q. -- or you find some other data that you didn't
10 have before.

11 A. That's, again, a very good statement.

12 Q. So have you updated your maps with the new data
13 from your horizontal that's been drilled?

14 A. Not yet, no. That just got completed, and I
15 haven't gotten any results yet.

16 Q. You haven't gotten logs yet?

17 A. All I've got on that is the MWD gamma ray. And
18 for what that's worth, I look at it as a correlation
19 tool, and I don't try to map off of that.

20 Q. Do you have a gut feeling for how close your
21 interpretation was to what you see?

22 A. Well, if we look at -- if I can find it here.
23 If we look at this cross section (indicating), that's
24 the actual as-drilled gamma ray from that well. And
25 what I see there is some pretty good sand quality

1 indicated by the gamma ray. I also see some very good
2 shows from the mud log, for what that's worth. They're
3 good indicators. But if I was to tell you I'm going to
4 predict that to be a great well, I wouldn't do that
5 because I don't think they're that indicative, but they
6 certainly make me feel better.

7 Q. Okay. The two offset wells that were
8 originally proposed in the OCD order, do you expect them
9 to have the same type of characteristic where you have
10 to go from the Wolfcamp Lower --

11 A. Definitely.

12 Q. -- to Upper?

13 A. Yes. I think that's definitely the way those
14 wells will be proposed.

15 Q. Nothing you've seen has changed that
16 interpretation?

17 A. Nothing at all.

18 Q. Any particular reason to delay drilling those
19 two wells?

20 A. Other than we'd like to see the results of this
21 one because it is a little bit unique in that we went
22 from one interval to the other. And to my knowledge, at
23 least in Chisholm's inventory, we don't have a well that
24 does that. So there is certainly some risk, if you
25 will, about this productive -- or how productive this

1 well might be.

2 Q. You've probably seen more wells -- horizontal
3 Wolfcamp logs than I have. Good. Interesting. All
4 right. Thank you. Those are all my questions.

5 CHAIRWOMAN RILEY: Mr. Brancard?

6 MR. BRANCARD: No questions.

7 CHAIRWOMAN RILEY: Redirect?

8 REDIRECT EXAMINATION

9 BY MS. KESSLER:

10 Q. Mr. Roth, there was some testimony about the
11 wells to the north, and can you point me towards what
12 exhibit you think best explains that? But there was
13 some confusion about what zone they were in.

14 A. Are we talking about this map or -- Number 8?

15 Q. Let's use -- let's use Exhibit 12 of Cimarex's
16 exhibits.

17 A. Okay.

18 Q. Ms. Bradfute was asking you about some wells to
19 the north and asking what zone they were in, and you
20 were using the terminology "upper" and "lower" zones.
21 Do you remember that?

22 A. I was, yes.

23 Q. Yes.

24 And I think there was some confusion about
25 what those upper and lower zones meant. Were you

1 referring to upper and lower zones to the Wolfcamp A?

2 A. Yes.

3 Q. And were those wells to the north drilled in a
4 different zone of the upper -- of the Wolfcamp A than
5 the current well?

6 A. Well, it's my understanding that the one that
7 I'm most familiar is the Red Light well, and it's
8 drilled in the Upper Wolfcamp A, in my mapping and my
9 nomenclature.

10 Q. And our well crosses portions of the Upper and
11 Lower Wolfcamp A, correct?

12 A. Yes.

13 Q. So it's a partially different zone?

14 A. In my mind, it is, yes.

15 Q. Okay. That's all I have.

16 MS. BRADFUTE: I just have one follow-up
17 question.

18 RE CROSS EXAMINATION

19 BY MS. BRADFUTE:

20 Q. Could you please look at -- I think this best
21 shows it, your B, B prime cross section, which is
22 Exhibit D.

23 A. Yes.

24 Q. I'm looking at the Upper Wolfcamp A that you've
25 identified and the Lower Wolfcamp A that you've

1 identified.

2 A. Yes.

3 Q. It looks like the differences between those
4 intervals is about 100 feet; is that correct?

5 A. The overall interval is 100 feet. Yes.

6 Q. The overall interval is 100 feet?

7 A. Yes.

8 Q. Okay. That's it. Thank you.

9 CHAIRWOMAN RILEY: I think we're done with
10 this witness. You can be excused.

11 THE WITNESS: Thank you.

12 CHAIRWOMAN RILEY: Thank you. Thank you
13 for your testimony.

14 JAMES HULING,
15 after having been first duly sworn under oath, was
16 questioned and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. KESSLER:

19 Q. Please state your name for the record and tell
20 the Commission by whom you're employed and in what
21 capacity.

22 A. My name is James Huling. I'm a reservoir
23 engineer for Chisholm Energy.

24 Q. Have you previously testified before the
25 Commission?

1 A. Before the Commission, no. For the Division,
2 yes.

3 **Q. Please summarize your educational background.**

4 A. I attended the University of Missouri, Mirawa
5 [sic; phonetic]; subsequently, the University of
6 Oklahoma where I graduated in 1985 with a degree in
7 petroleum engineering.

8 **Q. Was there anything more with respect to your**
9 **education?**

10 A. No. No.

11 **Q. What has been your primary focus in the oil and**
12 **gas industry?**

13 A. I have worked probably equal reservoir
14 production over my 33 years in the industry.

15 **Q. Can you please summarize your work experience?**

16 A. I interned during college with Kerr-McGee
17 Corporation in Oklahoma City. I went to work for them
18 upon graduation. I worked in production and reservoir
19 there. I actually first worked in Eddy County in 1986
20 in the Indian Basin field. I left Kerr-McGee after,
21 roughly, ten years.

22 I worked for an independent where I served
23 as engineering manager. All of that work was in the
24 Permian Basin. That was about four years.

25 I subsequently moved to Fort Worth and went

1 to work for Lomak, which became Range. I was a district
2 engineer there handling both production and reservoir
3 engineering.

4 I went to Encore Acquisition Company
5 through their start-up. I was initially a reservoir
6 engineer, ultimately a reservoir engineering manager. I
7 subsequently left and had two private equity companies
8 where I ran engineering, both reservoir and production.
9 Those two both had properties in the Permian, as well as
10 other basins. I subsequently had focused on
11 engineering, consulting, advising.

12 I went to work for a company handling
13 reserves. I basically went in as a reservoir
14 engineering manager, Longfellow Energy, and
15 transatlantic and ended up as chief operating officer.
16 After a couple of years, I was ready to go back to
17 engineering, and so I stepped away from that.

18 And then in June of 2016, joined up with
19 Chisholm Energy, and I handle reservoir engineering for
20 Chisholm Energy.

21 **Q. Your current responsibilities include the**
22 **Permian Basin, correct?**

23 **A.** That is correct.

24 **Q. Are you a member of any professional**
25 **organizations?**

1 A. Society of Petroleum Engineers.

2 **Q. Are you familiar with the application that was**
3 **filed in this case?**

4 A. Yes.

5 **Q. Are you familiar with Pooling Order R-14719?**

6 A. Yes, I am.

7 **Q. Finally, have you conducted a study of the**
8 **reservoir underlying the subject spacing unit?**

9 A. Yes, I have.

10 MS. KESSLER: Madam Chair, I would tender
11 Mr. Huling as an expert in petroleum engineer.

12 MS. BRADFUTE: No objections.

13 CHAIRWOMAN RILEY: Mr. Huling is accepted
14 as an expert witness by the Commission.

15 **Q. (BY MS. KESSLER) Mr. Huling, why was one well**
16 **drilled instead of three?**

17 A. Directive from management to go from four rigs
18 to two rigs.

19 **Q. Okay. What happened?**

20 A. There were two drivers in that. One was what I
21 will refer to as the MidCush blowout, basically capacity
22 restrictions coming out of the Permian Basin resulting
23 in reduced wellhead oil prices. Specifically, we
24 were -- a year and a half ago, we were seeing
25 somewhere -- 280 to 380, \$1-per-barrel-of-oil reduction

1 from market prices, and then in the summer of this year,
2 2018, we've seen that increase up to 12 to \$15 per
3 barrel, which substantially affected or impacted the
4 cash flow and economics on wells. To that tune,
5 Chisholm Energy is a -- is backed by Warburg Pincus, and
6 they did provide directive, looking at this, to move
7 towards -- from four to two rigs.

8 This also paralleled some of our results
9 also in Eddy County where we drilled an immediate
10 step-out one section away and saw less production on
11 those wells. And with that in mind, assessing and
12 trying to drill where most proved, where the direct
13 step-outs, drill those first, push back or lower
14 priority on some of the probable location. So that's
15 why we went from three wells to one well.

16 **Q. So is Chisholm waiting for the results of the**
17 **first well that was drilled before drilling the second**
18 **two wells?**

19 A. At this point, yes.

20 **Q. Let's turn to Exhibit 10. What is this**
21 **exhibit?**

22 A. Exhibit 10 is simply Eddy County, southeastern
23 New Mexico, about 4,200 square miles, I think, something
24 like that.

25 **Q. What is Exhibit 11?**

1 A. Exhibit 11 depicts red dots. You can see the
2 legend to the right, Wolfcamp A targeted intervals. And
3 the yellow is the proximity of the acreage in this case,
4 what we refer to as the Black River, which are Sections
5 3 and 10.

6 **Q. Looking at Exhibit 12, what is this exhibit?**

7 A. Exhibit 12 shows the amount of activity in the
8 Wolfcamp A in the townships north of the Black River,
9 significantly more activity up there in the Wolfcamp A
10 to date.

11 **Q. And then finally Exhibit 13?**

12 A. Exhibit 13 shows no Wolfcamp A wells in
13 Sections 3 and 10 or in the entire township of 24 South,
14 26 East.

15 **Q. In your opinion, does the reservoir in the**
16 **Wolfcamp A change as you move towards the south and the**
17 **west?**

18 A. We do not -- does it change? We do see
19 changes, as Mr. Roth testified, in the upper and lower
20 sections of the Wolfcamp A. We do not yet know the
21 results of horizontal development and those results yet
22 compared to the north.

23 **Q. Is this a step-out well for Chisholm?**

24 A. Yes, it is.

25 **Q. Can you please explain that?**

1 A. As you can see, in Exhibit 13, in Sections 3
2 and 10, there are no east-west horizontals. There are
3 horizontals to the north, but they are not directly in
4 line. This location -- or these two locations are
5 classified as probable reserves in our reserve report,
6 which we use Cawley, Gillespie. And the risk assessment
7 on these is a higher risk being a step-out than the
8 wells to the north where there is more activity.

9 **Q. So a third party has designated this area as**
10 **more risky? Is that what I understand?**

11 A. Yes, ma'am, that is correct. Cawley, Gillespie
12 & Associates is our reserve third-party reservoir
13 engineering firm that we use that our equity provider
14 and our auditors require.

15 **Q. Is there anything else you'd like to say about**
16 **that?**

17 A. No.

18 **Q. In your opinion, what risks exist?**

19 A. Well, we do not know how horizontal wells are
20 going to directly -- we have a reasonable degree of
21 confidence of reasonable performance or we wouldn't
22 drill, but there is certainly more risk. We do not know
23 the exact percentage of gas to oil here. We don't know
24 if there is going to be more water present here, which
25 we have seen in some areas with a one-location-away

1 step-out. Until we have that production, we will not
2 know that.

3 Q. Mr. Huling, I've placed in front of you Order
4 Number R-11992. Are you familiar with this order?

5 A. Yes, ma'am, I am.

6 Q. Is this a rulemaking order from the Commission?

7 A. Yes, it is, pertaining to percentage of risk.

8 Q. Okay. As you understand it, are these the --
9 is this a rulemaking that adopted the current risk
10 penalty provisions that are in place?

11 A. That is my understanding.

12 Q. Can you please turn to page 5 of this order?

13 A. Yes.

14 Q. And I've highlighted certain paragraphs. Do
15 you see that?

16 A. Yes, I do.

17 Q. Could you please read these paragraphs aloud?

18 A. Yes. Number 25, "In support of the
19 application, a 200 percent risk charge in all existing
20 wellbore situations, Mr. Patterson testified that (A)
21 the fact that a well exists or that the applicant has
22 drilled to the objective formation before the hearing
23 actually benefits the pooled party in that the pooled
24 party gets to make its election at a time when it
25 possesses substantially more information to assess risk

1 than it would have had if the well had not already been
2 drilled;

3 "(B) The necessity of the applicant to
4 bring its application to hearing prior to drilling
5 increases the cost of hearings to the applicant, since
6 otherwise it could achieve efficiency in use of its
7 resources by deferring the hearing to a time when it was
8 presenting other cases;

9 "(C) 200 percent is not a high-risk
10 allowance in light of current industry conditions in
11 current industry practice;

12 "(D) Reduction of the risk charge when a
13 well has been drilled prior to the hearing encourages
14 delaying tactics on the part of responding parties;

15 And (C) -- or "(E)" -- excuse me -- "the
16 industry and work group consensus supports a 200 percent
17 risk charge in such situations."

18 MS. BRADFUTE: I'm going to object to this
19 line of questioning if it's just merely reading the
20 order. My understanding is the order is an issue of
21 law, so if we want to have argument on what the order
22 says, that's something that the attorneys could do. But
23 if we're just going to sit here read the order into the
24 record, I have an objection to that. The witness is not
25 a qualified legal expert.

1 CHAIRWOMAN RILEY: I think he's done.

2 MR. BRANCARD: Yeah. We can take notice of
3 whatever's in the order.

4 MS. KESSLER: Yeah, that's fine.

5 MS. BRADFUTE: Okay.

6 Q. (BY MS. KESSLER) Mr. Huling, is it your
7 understanding that this was testimony provided by an
8 industry representative in support of the 200 percent
9 risk charge?

10 A. Yes. That is my understanding.

11 Q. Okay. And then if I turn to pages 8 and 9 of
12 this order, there are some more highlighted
13 paragraphs --

14 A. Yes.

15 Q. -- that I read into the record earlier today.
16 Does this briefly -- to summarize this, do these two
17 paragraphs state that an applicant who has already
18 drilled the well is entitled to a 200 percent risk
19 penalty as standard practice?

20 A. That is my understanding of this order. Yes.

21 Q. Okay. And these are included in the findings
22 paragraph; is that correct?

23 A. That is correct.

24 Q. In your opinion, was the 200 percent risk
25 penalty appropriate?

1 A. Yes.

2 Q. And is that because Chisholm shouldered the
3 actual risk for Cimarex while the well was being drilled
4 and completed?

5 A. That is correct.

6 Q. And they have yet to make an election, correct?

7 A. That is my understanding. Yes. They have not.

8 Q. Were Exhibits 10 through 13 prepared by you or
9 compiled under your direction and supervision?

10 A. Yes.

11 MS. KESSLER: I would move the admission of
12 Exhibits 10 through 13.

13 MS. BRADFUTE: No objection.

14 CHAIRWOMAN RILEY: Please note for the
15 record that Exhibits 10 through 13 have been accepted by
16 the Commission.

17 (Chisholm Energy Operating, LLC Exhibit
18 Numbers 10 through 13 are offered and
19 admitted into evidence.)

20 MS. KESSLER: That concludes my direct for
21 this witness.

22 CROSS-EXAMINATION

23 BY MS. BRADFUTE:

24 Q. Good afternoon.

25 A. Good morning.

1 Q. Good morning.

2 (Laughter.)

3 COMMISSIONER MARTIN: It just seems like
4 afternoon.

5 MS. BRADFUTE: That's right. That's right.

6 THE WITNESS: Good afternoon on my time
7 clock. I'm with you.

8 MS. BRADFUTE: That's right.

9 Q. (BY MS. BRADFUTE) So I wanted to briefly
10 discuss with you first Chisholm's frac models put
11 together for this area and frac design.

12 A. Okay.

13 Q. How are Chisholm's fracs for the 4H well
14 designed?

15 A. They are designed to maximize net present value
16 of the asset.

17 Q. Okay. So how many frac stages are in your
18 design for this well?

19 A. Let's see. I'm trying -- I don't remember if
20 it was -- I want to say it's 42.

21 Q. Okay. And how many pounds of sand?

22 A. Roughly, 1,500 pounds.

23 Q. Okay. 1,500 pounds.

24 In your opinion, is Chisholm's frac design
25 expected to perform on par with the frac designs that

1 are used by other operators in the area?

2 A. Yes.

3 Q. Okay. Have you studied the estimated
4 half-lengths for the fractures of this well?

5 A. For this well in particular, we did not perform
6 any microseismic, so we have not done any measurement.

7 Q. Does Chisholm have frac-modeling software that
8 it uses when it designs its wells?

9 A. We do have frac modeling software. Yes.

10 Q. Did you run frac models before you planned this
11 well?

12 A. I personally did not, but our production
13 operations department did.

14 Q. Okay. And is that information that you have
15 about how this well is going to be completed that you
16 can testify about today?

17 MS. KESSLER: I would object to this line
18 of questioning. I'm not sure what the relevance is.

19 MS. BRADFUTE: The relevance is they have
20 argued that there is some risk because this well is
21 drilled into a lower portion of the Wolfcamp A and then
22 goes up approximately 100 feet into the Upper Wolfcamp
23 A, and so frac lengths of 100 feet are relevant in the
24 area and how this fracture is designed.

25 MS. KESSLER: I'm not sure that fracture

1 design specifically relates to the risk-penalty issue,
2 which is what seems to be at issue here.

3 COMMISSIONER BALCH: I guess I kind of
4 disagree with that. I think that understanding the
5 pressure orientation and length is an interesting part
6 of this discussion. In fact, I have notes to ask
7 questions about it, because you have a 100-foot lower
8 net -- a 100-foot lower gross and an 80-foot higher
9 gross. Those are well within the range of at least of
10 what you would expect to see in a horizontal frac. Now,
11 vertical, of course, doesn't go nearly as far.

12 Perhaps you'd like to testify in that
13 direction in response to the question.

14 Sorry about that.

15 CHAIRWOMAN RILEY: No, no. Thank you. I
16 appreciate that.

17 Q. (BY MS. BRADFUTE) Would you like me to rephrase
18 my question?

19 A. Please.

20 MS. BRADFUTE: And, Mary, could you help me
21 read back? I'm sorry. We were kind of whispering.

22 (The last question was read by the court
23 reporter.)

24 Q. (BY MS. BRADFUTE) So do you have information
25 related to Chisholm's frac lengths that you can testify

1 **about today in this hearing?**

2 A. I do not have it with me. No. I did not bring
3 it.

4 Q. Okay. Do you have -- are there any witnesses
5 who are present here today that could provide
6 information about Chisholm's frac lengths?

7 A. No. But I do know that we offered to have a
8 technical meeting with -- with Cimarex, and to the best
9 of my understanding, that was declined by Cimarex.

10 Q. Well, we might, you know, oppose that
11 viewpoint.

12 But here today we're talking about risk
13 associated with development from the well. Do you have
14 any information here today that could talk about your
15 expected fractures from --

16 A. I did not bring frac models. No.

17 Q. Have you studied the frac models for the
18 closest offsets to these wells within the Wolfcamp A
19 Formation?

20 A. I know that our production completion group
21 did. Yes.

22 Q. Did you personally?

23 A. Did I personally? No.

24 Q. No.

25 Do you have any data that you can testify

1 **to here today?**

2 A. Other than looking at the -- I have looked at
3 the reservoir -- excuse me -- the production performance
4 of all the wells, and I did look at the -- I do have the
5 prop concentrations, all the public data and did not see
6 a material difference in the methodology, the 1,500
7 pounds, to what I see in the Wolfcamp A across. I've
8 seen an evolution of increases as far as more prop
9 concentration -- higher prop concentrations in recent
10 years, but I've also seen some older wells with less
11 prop sometimes outperform. So I do see some scatter to
12 that data.

13 **Q. Okay. So you have confidence in Chisholm's**
14 **fracture design, that it's going to achieve recovery --**

15 A. Yes.

16 **Q. Okay. I want to look at Exhibit 11 within**
17 **Chisholm's exhibit packet. This map outlines several**
18 **wells that are noted in red, as red dots, correct?**

19 A. Yes.

20 **Q. Are those all Wolfcamp A wells that are in**
21 **production?**

22 A. To the best of my knowledge, yes.

23 **Q. Have you studied the information on all of**
24 **these wells?**

25 A. I have all of those wells in a database. I

1 can't tell you that I can recall each one to name, but
2 they are in a database. And so all of the wells that we
3 have -- we pulled the Wolfcamp intervals from the
4 regulatory body. Our geologists then subdivide those
5 into intervals, break them up into A, B and C for
6 consistency. So this map was prepared based on those
7 tops, and I have all of those tops in a reserves
8 database that I project reserves and projected rates and
9 EURs. So yes.

10 Q. Okay. And you've testified today about
11 reserves and projected recovery from the well and the
12 fact that this is a step-out well, correct?

13 A. Yes, that's correct.

14 Q. So do you have the data for these wells that we
15 could look at to see if these wells are similar or
16 different from the well that Chisholm has proposed?

17 A. I have it in a database.

18 Q. Okay. Are you prepared to testify about the
19 differences between these wells or similarities between
20 these wells?

21 A. As best I can, yes. Yes.

22 Q. Okay. Let's look at the wells to the north of
23 the project area.

24 A. Yes.

25 Q. I believe it's Marathon's Red Light well and

1 the Ghost rider well that's been identified.

2 A. Yes. Uh-huh.

3 Q. So where is Marathon's Red Light well?

4 A. It's due north.

5 Q. Due north.

6 So there are a couple due north. Is it due
7 north to the east or due north to the west?

8 A. Actually, I think that -- let me pull up the
9 Cimarex exhibit with that map. I think we can see it
10 better on there. I think it's the one due north, but I
11 don't have it committed to memory.

12 Q. Okay. It looks like it's in the west corner of
13 Section 27?

14 MR. BRANCARD: Which exhibit are you
15 looking at now?

16 MS. BRADFUTE: It's going to be Exhibit 17
17 in Cimarex's exhibits.

18 THE WITNESS: Okay. Yes.

19 MS. BRADFUTE: I'll let everybody get
20 there.

21 THE WITNESS: So the blue X would be the
22 Red --

23 Q. (BY MS. BRADFUTE) That's the Red Light well --

24 A. Yes.

25 Q. -- to your knowledge?

1 A. Yes.

2 Q. And then you have showing on your map, on
3 Exhibit 11, two other wells directly to the right of the
4 Red Light well, correct?

5 A. Yes.

6 Q. And what are those wells?

7 A. The Ghost- -- the Ghost rider 25-36. And I'm
8 referring to the Chisholm map -- I mean to the Cimarex
9 map.

10 And I do not see the next location to the
11 right. I cannot answer that.

12 Q. Okay. So you don't know what that well is?

13 A. No, ma'am, not off the top of my head. I would
14 have to -- I'd have to pull up a Petra database and look
15 at it in more detail.

16 Q. And when you studied the reserves of these
17 three wells, including the well you can't identify, what
18 observations did you make about the production?

19 A. I don't recall specifically, you know, other
20 than to say I did project EURs. I did project
21 recoveries, you know, for all of these.

22 Q. You don't know what the EURs were that you
23 projected?

24 A. Not off the top of my head, no.

25 Q. Okay. And you don't know what the recoveries

1 are that you projected?

2 A. Not off the top of my head, no.

3 Q. Okay. You stated that you used a third-party
4 auditor to study the development in the proposed project
5 area, correct? It was Gillespie --

6 A. I didn't say it that way.

7 Q. Okay. So recharacterize, so I get the
8 terminology right.

9 A. Okay. We have a third-party engineering firm.

10 Q. Okay. Okay. And --

11 A. Cawley, Gillespie & Associates.

12 Q. Okay. Third-party engineering firm that you
13 use.

14 A. Yes. Yes.

15 Q. And they made an assessment about this area,
16 the proposed project area for the 4H well, correct?

17 A. Yes, that's correct.

18 Q. And their assessment was that there was some
19 risk in that project area as compared to the wells to
20 the north?

21 A. That is correct.

22 Q. Okay. What data did they study? Do you know
23 the inputs?

24 A. I know that they have a comprehensive database
25 that they keep of all of Eddy County. The Bone

1 Spring --

2 Q. But do you know -- did they look at the
3 reservoir? Did they look at the geology --

4 A. Yes.

5 Q. -- or were they just looking at the fact that
6 there are more wells to the north?

7 A. They -- they have, I know, internal geological
8 mapping of these horizons. They track all of the
9 completion intervals and the completions that are going
10 on, and so they look at it from a geological and
11 reservoir perspective.

12 Q. Do you have any of that data? I mean, it's one
13 thing to testify that they said there is risk, but we
14 haven't been presented with that information to analyze
15 and ask questions about it.

16 A. I did not bring that data, but I can firmly
17 tell you absolutely, 100 percent, as I swore to tell the
18 truth, in Sections 3 and 10, those are probable
19 reserves, and they were proved to the north, period.

20 Q. They were proved to the north, but you don't
21 know what that basis was done on?

22 A. Yes. It was done on geology and reservoirs, as
23 I testified.

24 Q. Okay. But you don't have the data here today
25 to show that analysis or any proof actually from the

1 **assessment of the third-party engineering firm other**
2 **than your own testimony?**

3 A. I do not -- I did not bring their data with me.
4 No.

5 Q. **Okay. Can reserves be proved until there is a**
6 **well drilled in the section?**

7 A. There could be -- if it's a direct offset, yes.
8 Generally within -- if there are wells bounded on both
9 sides that are proved producing, then the wells in
10 between those locations will be classified as proved.

11 Q. **But here, if you look at Cimarex's Exhibit**
12 **Number 17, the map --**

13 A. Let's go there. 17. I'm sorry. Yeah. I'm
14 sorry. I'm on it. Yes.

15 Q. **When you have a well that just skips a section,**
16 **so it's, you know, the next section up from the**
17 **adjoining section, that would not prove reserves in the**
18 **adjoining section, correct? Is that how I'm**
19 **understanding it? So if you have a well in Section 27,**
20 **it wouldn't establish reserves in Section 3? Is that**
21 **your understanding of that?**

22 A. Because there is not a direct offset --

23 Q. **Okay.**

24 A. -- in between -- there is not a well in between
25 them -- in other words, in 27 and 26, where you have

1 bounded existing Wolfcamp A production, the locations in
2 between with consistent geological mapping, those are
3 classified as proved. And that's how we have classified
4 it. That's how our third-party engineer has classified
5 it.

6 **Q. Okay. But even though you have production from**
7 **established wells to the just north, a couple of miles**
8 **away from the project area --**

9 A. Those move to probable.

10 **Q. Okay.**

11 A. And there is roughly a 90 percent confidence on
12 proved and about a 75 percent confidence on probable.

13 **Q. Okay. So there is a 75 percent confidence on**
14 **probable.**

15 **And if there had been a well drilled in the**
16 **adjoining section, in the township and range, it would**
17 **have been a 90 percent?**

18 A. No. No, because you do not have an offset in
19 the same section bounded. So no.

20 **Q. Okay. So it's got to be in the actual same**
21 **section? I'm thinking about offsets --**

22 A. Or adjacent -- or the adjacent section, and it
23 does not. It's to the north, as you clearly stated in
24 your question.

25 **Q. So it has to be east or west to be adjacent,**

1 not north --

2 A. Or bounded on both sides.

3 Q. East, west or bounded on both sides?

4 A. Correct.

5 Q. Okay. I want to go through your economic
6 analysis for the production from this well. Do you run
7 an economic analysis to determine risk when you're
8 drilling a well, proposing a project?

9 A. Define economic analysis.

10 Q. Do you look at when the well is going to pay
11 out? Do you have a model that you use?

12 A. Yes.

13 Q. Okay. And what are the inputs that are used
14 for that model?

15 A. Price, well costs, royalty, expected
16 performance.

17 Q. Do you run a production profile --

18 A. Yes.

19 Q. -- when you're putting together --

20 Okay. And what goes into that production
21 profile?

22 A. Generally a type curve or an estimate of wells
23 in the general area.

24 Q. Okay. Do you know what type curve was used for
25 the 4H well?

1 A. We have -- okay. There was -- we had a general
2 type curve for this area drawing on Wolfcamp A wells.
3 However, we did adjust that with -- there were some
4 reservoir thickness parameters and quality parameters
5 that we adjusted, and then we downgraded because this is
6 a probable location. So there were -- there was a type
7 curve we started with. We had a factor we applied based
8 on the geology thickness, and then we had an additional
9 risk factor apply because it's a step-out well.

10 **Q. Okay. Do you have any documentation which**
11 **shows those factors that you applied in your own**
12 **internal economic analysis?**

13 A. I did not bring those.

14 **Q. So we don't have anything to analyze that?**

15 A. Other than my sworn testimony.

16 **Q. Okay. You did say your type curve was based on**
17 **Wolfcamp A wells within the area, correct?**

18 A. That is correct.

19 **Q. And those would be the type of wells that were**
20 **listed on the exhibit we just looked at prepared by**
21 **Chisholm?**

22 A. That's correct.

23 **Q. Okay. Those would be the wells that you looked**
24 **at when you created this type curve for your economic**
25 **analysis on this well?**

1 A. Yes.

2 Q. Okay. I have just one last question just to
3 clarify a couple of things about the exhibits. Could
4 you please turn to your Exhibit 12?

5 A. Yes.

6 Q. And this exhibit states that it's the area to
7 the west of the Black River well.

8 A. It's really should have been north.

9 Q. North. Okay.

10 A. That is a correction. Yeah.

11 Q. This shows the wells directly to the north of
12 the section where the proposed project area is?

13 A. Let's see. It's actually north and -- and
14 east.

15 Q. North and east?

16 A. Correct. Yes. That was mislabeled.

17 Q. Okay. I wanted to confirm that. I knew it was
18 not west.

19 A. Good catch. Thank you.

20 Q. Why did you break out Exhibit 12 from Exhibit
21 13?

22 A. Because -- okay. Exhibit 12 shows where the
23 activity is in the areas where there are more proved,
24 less risky locations. If you go to the next section --
25 or the next exhibit, 13, as you pointed out, there are

1 no Wolfcamp A wells in the township, period.

2 Q. In the township. But two sections to the
3 north, there are some?

4 A. There is not a Wolfcamp A in the direct -- you
5 know, directly offsetting.

6 Q. Okay. Okay. That concludes --

7 A. It's a step-out well. It's a probable -- under
8 SEC definitions, as I interpret and as our engineering
9 firm interprets its probable location, it's a step-out
10 well.

11 Q. Okay. That concludes my questions. Thank you.

12 CHAIRWOMAN RILEY: All right. We are very
13 close to being straight-up noon. Why don't we break for
14 lunch for an hour and 15 minutes? And then we'll come
15 back, and the Commission can ask their questions, and
16 you can redirect.

17 We are off the record.

18 (Recess, 12:02 p.m. to 1:27 p.m.)

19 CHAIRWOMAN RILEY: Let's get back on the
20 record, please.

21 Do you want us to ask questions first?

22 MS. KESSLER: Sure.

23 CHAIRWOMAN RILEY: Okay. Mr. Martin.

24 COMMISSIONER MARTIN: I don't think I have
25 any questions.

1 CHAIRWOMAN RILEY: I'll have you go first.

2 CROSS-EXAMINATION

3 BY COMMISSIONER BALCH:

4 Q. Good afternoon for real this time, Mr. Huling.

5 A. Good afternoon.

6 Q. Even in New Mexico.

7 A. Yes.

8 Q. Early on in your testimony, you were talking
9 about the decision to go from four rigs to two rigs.

10 A. Yes.

11 Q. Part of that was the economics --

12 A. Yes.

13 Q. -- the discount for WPI, risk of completions,
14 et cetera?

15 A. Yes.

16 Q. Is it kind of safe to say that you're in a mode
17 where you're drilling wherever you need to hold your
18 acreage until that situation improves?

19 A. No, I don't think that's correct. I think it's
20 not to hold. We are not looking to immediately flip
21 like some private equity companies. We're looking at a
22 longer-term approach, although we are looking to high
23 grade and assess where our better opportunities are and
24 then come back and drill, as we have done over in Lea
25 County. So -- so I would say no. If the economics are

1 a justified example, if this well -- this Black River
2 well is very strong, we would come back in very short
3 order and drill more appraisal wells in the area.

4 **Q. Possibly even meet the original order?**

5 A. Absolutely. We had those on the drilling plan,
6 I know, in early June, and we have them in our
7 inventory. They could arrive back on the drilling
8 schedule sooner than later, especially if we see
9 favorable results here. We definitely like this area.

10 **Q. So the original plan in the first OCD order was**
11 **to drill all three and zipper frac?**

12 A. Correct.

13 **Q. That's a \$20 million wildcat, isn't it --**

14 A. Over 20 million, yeah.

15 **Q. -- to do all three wells?**

16 A. Lock, stock and barrel, yeah.

17 **Q. In Exhibit 13 from you shows no nearby Wolfcamp**
18 **production, particularly in 24 South, 26 East, right?**

19 A. That's correct. Yes, sir.

20 **Q. But if I go to Exhibit 8, immediately north one**
21 **section --**

22 A. Yes.

23 **Q. -- there is -- there are no wells at all shown**
24 **on this particular slide, 13.**

25 A. That's in the next township. Yes.

1 Q. Right.

2 Just to the north of your Black River
3 prospect, 371,000 barrels, I guess.

4 A. Yes. Yeah, BOE equivalent.

5 Q. And a show immediately to the west?

6 A. Yes. There are vertical shows all over here.

7 Q. And a vertical show to Sections -- roughly to
8 the east, but slightly above the 24 South, 26 East
9 section?

10 A. Yes, sir.

11 Q. So there is some indication that there is
12 petroleum in the Wolfcamp A there?

13 A. Absolutely. No question.

14 Q. I'd like to talk a little bit -- I mean, I took
15 the time to read Order R-19992 --

16 A. Yes, sir.

17 Q. -- 2003 on risk assessment. In particular, I
18 was looking at 25C. I'm not going to read it. I'll
19 paraphrase it: 200 percent is not high in light of the
20 current industry conditions. So in 2003, if I remember
21 right, I think about 3 or 4 percent of the wells were
22 horizontal; everything else was vertical in New Mexico.
23 And today I think that's almost completely flipped.
24 Ninety-five percent are horizontals. Not only that but
25 completion technology has improved, and you're going to

1 30, 40, 50, 100 frac stages in some cases, maybe not in
2 New Mexico but other places.

3 A. Right. Right.

4 Q. So I think current industry conditions have
5 changed dramatically since 2003. And I know it's not
6 the place here to modify the 2003 risk assessment rule,
7 but things have changed a lot.

8 A. Yeah. Yes.

9 Q. It's safe to say there is more -- stayed the
10 same.

11 A. I would -- however, I will say -- and as you
12 brought up the point of talking about going from four
13 rigs to two rigs being the differential and WTI
14 received, I will point out that we drilled wells to the
15 south of here in a prospect. We drilled two
16 mile-and-a-half laterals in one section, two
17 mile-and-a-half laterals in an adjoining section to the
18 west -- granted it's a little ways away from here. It's
19 in southern Eddy County.

20 Q. Uh-huh.

21 A. -- and the step-out I would have assessed
22 pre-drill as being equal risk, probably less risk than
23 here because it was east-west in the same direction, and
24 those wells didn't, you know, perform as well.

25 So even though you do have, as you pointed

1 out, vertical wells in close proximity, they're not
2 horizontal. And when you exploit that horizontal, you
3 really don't know what the inflow performance is going
4 to be because saturations may be different, core thread
5 size distributions may be different, you know, relative
6 permeabilities can vary. So that decision, to go from
7 four rigs to two rigs, as I testified previously, was
8 driven on price differentials but also the risk that we
9 saw in drilling in southern Eddy County. Granted, it's
10 not the immediate area. We fully accept that. I'm not
11 going to say it is. But just from a general observation
12 perspective, it was a step-out much like this, and we
13 presented to our board: This is a low-risk opportunity
14 stepping out here. We have vertical control. We don't
15 have any reason to believe that this is going to be any
16 less. We felt very good about it. Those wells
17 underperformed. The same thing could happen here.
18 That's the reason why these are classified as probable.

19 Now, does that -- I'm not quantifying the
20 200 percent, but I will say that -- and I'm not a
21 landman, but I still regularly see a 200 percent
22 penalty. Conditions have changed, but I still see that
23 customary.

24 **Q. The argument that -- and as you can probably**
25 **imagine, you're not the first to come in here to force**

1 pool a horizontal in the Wolfcamp unit.

2 A. I understand. Yeah.

3 Q. So the argument that people have made for risk
4 typically is that it's the drilling risk, it's the order
5 of magnitude, the cost of the rig time, and if the well
6 fails, that's where the real risk is. Because, you
7 know, both parties have been -- in those cases will
8 always tell you that the risk is pretty low. The well
9 means nothing. The real risk is whether it pays off or
10 how fast it pays off.

11 A. And I would even caveat that. One other area
12 would be the steering component, I think is very
13 important. I can say ten years ago, when we drilled
14 horizontal, we assumed, oh, gosh, we're going to have
15 this serendipity frac, and we're going to get into
16 whatever. Well, if you look at it now and you go back
17 postmortem on many horizontal wells, at least what I've
18 looked at, I see over and over the better performers
19 were wells that were more technically steered to stay in
20 the best-developed, the best portion of the reservoir.
21 So I think that's another risk component that -- does
22 that reduce the risk? But then there are operators that
23 don't pay as much attention, you know, to the steering
24 component. So I would enter that in as well.

25 Q. So resource plays in general, though, they're

1 treated quite a bit differently than conventional oil --

2 A. Yes, sir.

3 Q. -- I would say.

4 In fact, it's kind of hard to find somebody
5 to go out and shooting a 3D seismic over a resource
6 play. They might acquire it, and somebody else does it
7 on spec.

8 A. Actually -- yeah. We have some agreements in
9 place, but I can tell you that we do factor in many
10 geological data sources.

11 Q. Sure. So -- but in general, you're relying
12 more or less on well control --

13 A. Not always, no. We do value other data as
14 well.

15 Q. Okay. I think geosteering is interesting.

16 Related to that, there is also then the
17 completion that's done --

18 A. No question.

19 Q. -- how many stages, where the staging is
20 located, the timing of the stages, altering the
21 orientation of your frac wings. Frac length, of course,
22 is going to get you further out of the reservoir. And
23 then alluded to by counsel was height of the fracture --

24 A. Right.

25 Q. -- also is a critical component.

1 And you indicated that you didn't -- you're
2 staying in zone, right? You indicated you didn't have
3 exact numbers for this particular play, but from your
4 experience in other horizontal wells in the Wolfcamp,
5 what are you seeing in frac length?

6 A. Gosh. Anywhere from -- I mean, I'm going to
7 say low end. I think there are cases that can be down
8 below 100, 250 feet. I mean, I think it can be all over
9 the map.

10 Q. Frac height or frac length?

11 A. Frac height, we're talking about there.

12 Q. I looked at the cross section. I think it's in
13 Exhibit D. It looks like to me about 100 feet of
14 8 percent porosity in the lower for the first part of
15 the horizontal.

16 A. I'm sorry. Which exhibit are you looking at
17 again?

18 Q. Exhibit D.

19 A. Okay. D. Oh, over here. Which one is D?
20 I've got numbers. I'm lost.

21 This one. Okay.

22 Q. It looks like about 100 feet of 8 percent or
23 greater porosity in the lower, and then you go to about
24 80 feet thickness in the upper. And I think that's why
25 we talked about the impact of the frac height.

1 A. Right.

2 **Q. Perhaps you can go straight through the middle**
 3 **and impact both of these zones.**

4 A. Again, fractures are -- as you probably well
 5 know, are going to occur in the general path of least
 6 resistance. A rock that has higher porosity has -- is
 7 generally going to break, fail before a rock that has,
 8 you know, less porosity. You know, there is less
 9 material. You know, an obvious analogy there. So I
 10 would say that there is some proportionality to the
 11 quality of the rock relative to the height.

12 **Q. Sure. And the further away you are from the**
 13 **wellbore, the less through -- you have to the fracture.**

14 All right. So does Chisholm ever do
 15 microseismic?

16 A. We have not. We have done tagging -- detail
 17 tagging and perform volumetric flowbacks on timing of
 18 recovery from the stages to try to estimate how far out
 19 and the capacity of that fracture. We have done
 20 simul-fracs in the Wolfcamp and Bone Spring and tried to
 21 see what impact we've seen in child wells to parent
 22 wells. So as far as microseismic, we have not, to date.

23 **Q. And the zipper fracs, have you guys**
 24 **successfully implemented one of those?**

25 A. We have. In fact -- well, I don't -- define

1 the word "successful." But we have mechanically --

2 **Q. The well pays off.**

3 A. Yeah. We have mechanically performed them and
4 actually just north of here. And that was our original
5 plan here. I think in theory, it absolutely makes
6 sense. I haven't seen enough data here to put me
7 firmly -- theoretically, I think it absolutely makes
8 sense. It can't hurt you, but I really haven't seen
9 enough results to totally prove that. I can tell you in
10 other areas like the Woodford in Oklahoma, absolutely,
11 very definitive. Here, I'm not seeing it as much.

12 **Q. So if you were still on four rigs, you think**
13 **you'd be drilling a third hole right now?**

14 A. Yes.

15 **Q. For -- for your reserves calculations, you want**
16 **to predict how well the well's going to do beforehand.**
17 **Do you do any simulation, or is it really just**
18 **volumetrics based on the --**

19 A. Most of it is statistical, but we did
20 actually -- we did early on perform some simulation
21 work, single well, you know, two-dimensional, very
22 quick, back of the envelope, and we did those in
23 conjunction with Cawley, Gillespie.

24 **Q. So I presume you've looked at the -- the**
25 **completion's almost done on this well, right?**

1 A. This well has been fracture stimulated. It was
2 46 stages. I did look that up. I didn't recall off the
3 top of my head. I should have had that. And we are
4 drilling out frac plugs presently.

5 Q. Okay. So from the completion job and from your
6 current state of drilling back out, do you see anything
7 that indicates what quality of oil you might expect?

8 A. From the completion, nothing out of the
9 ordinary, but I really wouldn't expect it to. But I
10 would say -- from the mud log shows, the drilling shows,
11 I would say it looks similar, encouraging to other wells
12 in this area.

13 Q. That's all I have for you. Thank you very
14 much.

15 A. You're welcome.

16 CHAIRWOMAN RILEY: I don't have any
17 questions.

18 Mr. Brancard, do you?

19 MR. BRANCARD: No questions.

20 CHAIRWOMAN RILEY: So redirect?

21 MS. KESSLER: Nothing.

22 MS. BRADFUTE: I have one follow-up
23 question.

24

25

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1 CHAIRWOMAN RILEY: This witness can be
2 dismissed.

3 Thank you.

4 THE WITNESS: Thank you.

5 CHAIRWOMAN RILEY: Do you have any more
6 witnesses?

7 MS. KESSLER: No more witnesses.

8 CHAIRWOMAN RILEY: Ms. Bradfute?

9 MS. BRADFUTE: I'll call my first witness.

10 CAITLIN PIERCE,
11 after having been first duly sworn under oath, was
12 questioned and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. BRADFUTE:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. Could you please state your name for the
18 record?

19 A. Yeah. Caitlin Pierce.

20 Q. And, Ms. Pierce, who do you work for?

21 A. Cimarex Energy.

22 Q. And what is your position at Cimarex?

23 A. I'm a landman.

24 Q. What are your responsibilities?

25 A. Reviewing title, reviewing contracts,

1 negotiating term assignments, farm-outs, deals, et
2 cetera.

3 Q. And have you previously testified before the
4 Commission?

5 A. I have not.

6 Q. Could you please explain your educational
7 background to the Commissioners?

8 A. Yes. I have a Bachelor of Arts, focus in
9 psychology, from Southern Illinois University, and I
10 also completed the Petroleum Land Management
11 Certification Program from the University of Denver.

12 Q. And can you please describe your work
13 experience to the Commissioners?

14 A. Yes. I've been with Cimarex for eight years.
15 I started out as a land tech and moved over into working
16 production lands, and then most recently, I moved into
17 exploration in August of 2017.

18 Q. Okay. And do you hold any certifications?

19 A. A petroleum land management certification from
20 the University of Denver.

21 Q. And are you familiar with the application
22 that's been filed by Chisholm Energy Operating, LLC in
23 the New Mexico case, 16027?

24 A. I am.

25 Q. Are you familiar with the status of the lands

1 **which are the subject matter of that application?**

2 A. Yes.

3 MS. BRADFUTE: I'd like to tender
4 Ms. Pierce as an expert witness in petroleum land
5 matters.

6 MS. KESSLER: No objection.

7 CHAIRWOMAN RILEY: Please note for the
8 record that Ms. Pierce is accepted as an expert witness.

9 Q. **(BY MS. BRADFUTE) Ms. Pierce, could you please**
10 **look at Cimarex's exhibit packet in front of you, and**
11 **could you please turn to Exhibit Number 9 in this**
12 **packet? Does Exhibit 9 contain the application filed by**
13 **Chisholm in Case Number 16027?**

14 A. It does.

15 Q. **Okay. And what is your understanding of what**
16 **Chisholm sought under this application?**

17 A. To create a 638.16-acre nonstandard spacing and
18 proration unit comprised of the west half of Sections 3
19 and 10, in which they were going to drill three wells.

20 Q. **Okay. And was it your understanding based on**
21 **this application that Chisholm was going to pad drill**
22 **these wells and then simultaneously complete them?**

23 A. Yes.

24 Q. **Okay. And, in fact, Chisholm advertised that**
25 **it was going to perform simultaneous completion**

1 operations within the advertisement for this
2 application, correct?

3 A. Correct.

4 Q. Does the application specify a pool that's been
5 created by the Division that the wells will develop?

6 A. Yes, ma'am.

7 Q. What pool is that?

8 A. It should be the Purple Sage; Wolfcamp Gas
9 Pool.

10 Q. Okay. So these wells are not located in a
11 wildcat area? They're actually located in a pool
12 established by the Division?

13 A. Correct.

14 Q. Does Cimarex currently operate wells that it's
15 drilled and completed within the Purple Sage; Wolfcamp
16 pool in Eddy County?

17 A. Yes.

18 Q. And do those pools consist of both Upper
19 Wolfcamp and Lower Wolfcamp wells?

20 A. Yes.

21 Q. When approximately did Cimarex receive
22 Chisholm's application in this matter?

23 A. I believe it was early February.

24 Q. Would it surprise you if it was sometime after
25 February 20th?

1 A. No.

2 Q. And prior to receiving Chisholm's application,
3 had you received a well-proposal letter from Chisholm?

4 A. We had.

5 Q. Okay. If you could please turn to Exhibit
6 Number 8 in the same exhibit packet and if you could
7 just quickly flip through the pages within this exhibit.
8 Does this exhibit contain three different well-proposal
9 letters -- a well-proposal for each of the wells named
10 in Chisholm's pooling application?

11 A. Yes.

12 Q. And does it also contain an AFE for each of
13 these wells?

14 A. It does.

15 Q. I now want to focus on the 4H well, which is
16 the third well-proposal letter in this exhibit, and it
17 will be the last well-proposal letter within the
18 exhibit. It is your understanding from Mr. Armour's
19 testimony earlier today that Chisholm is seeking to
20 amend its application and now only wants to pool for the
21 4H well?

22 A. Yes.

23 Q. And the letter that we're looking at here is
24 the well-proposal letter for the 4H well, correct?

25 A. Correct.

1 Q. I want to focus on the first paragraph of this
2 letter. Does this well-proposal letter contain any
3 footages for the 4H well?

4 A. It does not.

5 Q. Is it your understanding that under Division
6 Order R-13165 -- 13165 that operators are required to
7 put footages in their well-proposal letters or AFEs
8 before they file a pooling application?

9 A. Yes.

10 Q. And that was not done here?

11 A. Correct.

12 Q. Do you know why Chisholm failed to include
13 footages within its well-proposal letter?

14 A. I do not.

15 Q. I want to focus on the four bullet points that
16 are located near the center of this letter, and I want
17 to look at the fourth bullet point on the letter. That
18 bullet point says that the initial well for the proposed
19 spacing unit is going to be the Black River 3 10 Federal
20 WCA 2H well, correct?

21 A. Correct.

22 Q. Is it your understanding that Chisholm no
23 longer seeks to drill that 2H well, which was going to
24 be the basis of the spacing unit --

25 A. Yes.

1 Q. -- as proposed?

2 Okay. I want to now turn and look at the
3 AFE on the next page for the 4H well, and I want to look
4 at the last page of the AFE which provides the total
5 well costs. Could you please identify what the total
6 well costs are estimated to be for the 4H well?

7 A. \$6,936,543.

8 Q. And were similar costs proposed for the 2H and
9 3H wells when Cimarex originally received these
10 proposals?

11 A. They were.

12 Q. What is Cimarex's interest in the proposed
13 spacing and proration unit?

14 A. It's roughly 21 percent.

15 Q. Okay. And if Cimarex had decided to
16 participate under each one of these well-proposal
17 letters, for an amount of 6.9 million, just above, what
18 would it be expected to pay?

19 A. It would be roughly 1.5 million per well, so
20 about \$4-and-a-half million.

21 Q. So about \$4-and-a-half million.

22 So now I want to focus on the timing of
23 conversations that you had with Chisholm and what
24 efforts Chisholm made to reach out to you before it
25 filed its pooling application.

1 A. Okay.

2 Q. Ms. Pierce, do you remember Chisholm contacting
3 you before February 20th to talk about these well
4 proposals?

5 A. We did discuss, you know, that they were
6 coming, and then we reviewed those and sort of went back
7 and forth discussing trade, which sort of indicated that
8 we wouldn't necessarily be interested in that high of a
9 working interest in a non-op position.

10 Q. Okay. And did Chisholm try to enter into
11 negotiations beyond that kind of initial conversation?

12 A. I don't recall the timing of when we started
13 negotiating, you know, a trade.

14 Q. Okay. Is it your memory that Chisholm first
15 began discussing its development plans with Cimarex only
16 a few weeks before it filed for its pooling application
17 on February 20th?

18 A. Yes.

19 Q. Okay. So it would have been shortly after the
20 well-proposal letters were sent in this matter when it
21 started to contact you and discuss its operations?

22 A. Yes, ma'am.

23 Q. And there were not extensive negotiations that
24 occurred before Chisholm filed for compulsory pooling?

25 A. I believe so.

1 Q. When Cimarex initially reviewed these
2 well-proposal letters, did it have concerns with
3 Chisholm's development plans?

4 A. It did.

5 Q. And what were those concerns?

6 A. One of the main concerns was the existing JOA
7 in place at the time, the 1968 JOA, in which we're the
8 operator in Section 10.

9 Q. Okay. And if you could turn to Exhibit Number
10 4 in the packet in front of you and I believe the first
11 couple of pages are a ratification.

12 A. Yes.

13 Q. But if you flip a few pages into this exhibit,
14 does it contain the JOA that you were just discussing,
15 the 1968 JOA?

16 A. Yes.

17 Q. Okay. And is this joint operating agreement
18 limited in depth at all?

19 A. No.

20 Q. And what lands does the joint operating
21 agreement cover?

22 A. It covers all of Section 10 of 24-26.

23 Q. And is this JOA still in effect?

24 A. It is.

25 Q. To your knowledge, was Chisholm aware of this

1 joint operating agreement prior to the Division hearing
2 on April 5th?

3 A. Yes.

4 Q. Could you please turn to Exhibit Number 5 in
5 the packet in front of you. This is a second joint
6 operating agreement, isn't it?

7 A. Yes.

8 Q. Could you please explain what this joint
9 operating agreement is to the Commissioners?

10 A. This joint operating agreement is between Fuel
11 Products and Mallon Oil Company, which was the
12 successor, and it was tied to the farm-out agreement
13 that Fuel Products tendered to Mallon.

14 Q. And under this agreement, there is a
15 preferential right of purchase --

16 A. Yes.

17 Q. -- that Fuel Products has, right?

18 A. Yes.

19 Q. And could you briefly explain to the
20 Commissioners what a preferential right of purchase is?

21 A. A preferential right of purchase is, under the
22 operating agreement of the two parties, in the event
23 that there is a sale of acreage, then we would have to
24 first offer, in this case, Fuel Products, their option
25 to purchase that acreage for the same terms, which in

1 this case was Chisholm. We would have to offer to Fuel
2 Products the opportunity to purchase that acreage under
3 the same terms.

4 Q. And have you conducted research related to this
5 preferential purchase rights provision --

6 A. Yes.

7 Q. -- included in the JOA?

8 Is it your understanding that when there is
9 a trade or a swap of acreage, that a preferential
10 purchase right doesn't exist under the --

11 A. Correct. It's my understanding that when there
12 is an exchange of monetary value, then the pref right
13 comes into effect.

14 Q. And that is because the purchaser may not
15 possess property -- like property to swap with you, so
16 it couldn't fully participate under the offer if a swap
17 was agreed to by the parties; is that right?

18 A. That's my understanding. Yes.

19 Q. Whereas, when somebody holds an option and the
20 only thing they have to do is provide monetary
21 compensation, there is nothing -- there is no
22 consideration issues as to whether or not they're
23 providing the same consideration under the provision; is
24 that right?

25 A. Yes.

1 Q. So the pref right provision in the 1996 JOA did
2 not apply to the acreage swap that had been negotiated
3 between the parties?

4 A. Correct.

5 Q. And it would apply for the remaining term
6 assignment for approximately 100 net acres?

7 A. Correct.

8 Q. Is this 1996 JOA still in effect?

9 A. It is.

10 Q. I want to briefly talk about the effect of the
11 this joint operating agreement if the preferential
12 purchase right was elected.

13 A. If the preferential purchase right was elected,
14 that would mean that Fuel was purchasing this acreage
15 instead of Chisholm, in which there would no longer be
16 two parties to the operating agreement, and the
17 operating agreement would effectively cease. There
18 would only be one -- one left, so there is no operating
19 agreement needed.

20 Q. So there is no concern that if -- you know, if
21 Chisholm went through with the swap for 32 net acres,
22 which is not subject to the JOA, that the property would
23 still be burdened by the preferential purchase right if
24 Fuel Products elected, right?

25 A. Right.

1 Q. Did you inform Chisholm about the existence of
2 this 1996 JOA in April of 2018?

3 A. Yes.

4 Q. And are there various working interest owners
5 that are subject both to the 1968 JOA and the 1996 JOA?

6 A. Yes. There are multiple under the 1968 JOA and
7 only Fuel Products and Cimarex under the 1996 JOA.

8 Q. Okay. If you could turn now to Tab 6 of the
9 exhibit packet in front of you, does Tab 6 include the
10 pay decks for the 1968 JOA?

11 A. It does.

12 Q. Okay. And under these pay decks, I want to
13 focus on Fuel Products' interest.

14 A. Okay.

15 Q. To your knowledge, does Fuel Products only have
16 a wellbore interest under that joint operating
17 agreement?

18 A. Yes.

19 Q. They do have a wellbore interest specifically?

20 A. Well -- I'm sorry. Let me backtrack that. We
21 believe now, based on our research, that we actually owe
22 Fuel Products a leasehold interest of 9.375 percent,
23 which comes out to about 12 net acres, that would be
24 involved under the term assignment.

25 Q. And that's working interest that they own

1 within the contract area, right?

2 A. Correct.

3 Q. And they have a contractual interest under the
4 joint operating agreement in general; is that correct?

5 A. Yes.

6 Q. So they could -- Fuel Products, if they wanted
7 to, could elect to drill a well within the JOA area?

8 A. Correct.

9 Q. Okay. And that's a right that they have under
10 the agreement?

11 A. Yes.

12 Q. The acreage at issue that's subject to the 1968
13 JOA and the 1996 JOA involves federal mineral interests,
14 correct?

15 A. Correct.

16 Q. So the working interest owners listed in the
17 pay decks that Cimarex has also have ownership reflected
18 in the Bureau of Land Management's records, correct?

19 A. Correct.

20 Q. Ms. Pierce, were all of the parties listed in
21 Cimarex Exhibit Number 6 notified of Chisholm's pooling
22 application, to your knowledge?

23 A. No.

24 Q. Why does that lack of notification matter to
25 Cimarex?

1 A. We are obligated under the JOA to protect some
2 contractual rights there.

3 Q. And that's because Cimarex has certain
4 obligations as operator under the joint operating
5 agreement --

6 A. Yes.

7 Q. -- to fulfill for operations that are conducted
8 within the operating agreement; is that right?

9 A. Correct.

10 Q. And Cimarex is the operator under both the 1968
11 and the 1996 agreement?

12 A. Yes.

13 Q. In your opinion, should the parties listed in
14 Cimarex's pay decks have been notified or should they be
15 notified of Chisholm's application in this matter?

16 A. Yes.

17 Q. And why is that?

18 A. They should have a say in, you know, what is
19 being drilled and what's not. They have rights there
20 that are being infringed upon.

21 Q. I want you to now turn to Exhibit Number 1
22 within Cimarex's exhibit packet. Does this document
23 consist of a timeline that you have prepared concerning
24 your conversations or communications with Chisholm?

25 A. This only details email contact.

1 Q. Okay. And so is it just emails that are listed
2 within this timeline, or would you also have some phone
3 calls listed in here?

4 A. So you'll see reference to phone calls in some
5 of these, and that's where the phone calls were
6 referenced in the email as well. But there were
7 multiple conversations via phone that went on in between
8 those emails that you'll see detailed here.

9 Q. I want to take a step back and talk about just
10 the nature of the communications between Cimarex and
11 Chisholm generally. Did you typically communicate with
12 Chisholm via email or via phone?

13 A. I would say it's probably 50/50. We talked
14 quite a bit on the phone. We had a pretty good rapport,
15 and I tend to be that person that just picks up the
16 phone to discuss things. And so we talked on the phone
17 quite a bit outside of what's detailed here.

18 Q. So you had several conversations that are not
19 even included within this lengthy timeline of just the
20 email communication?

21 A. Correct.

22 Q. I want to focus on the dates occurring between
23 February 23rd and the middle of March of 2018. During
24 that time period, what was going on between Cimarex and
25 Chisholm?

1 A. So in that time frame, we were still trying to
2 figure out how we were going to, you know, handle our
3 interest and whether or not we wanted to, you know, do
4 an acreage swap or farm-out or do a term assignment.
5 And we reviewed Chisholm's acreage position to see if
6 there was, you know, enough that we could do a full
7 trade, and we finally settled on a term assignment via
8 swap, roughly 32 net acres. They had interest in the
9 east half, and our interest was in the west half where
10 they were drilling. And so we decided that we would
11 swap, you know, that 32 net acres, and then we would
12 term assignment the remaining portion of that.

13 **Q. And near the middle of March, had the parties**
14 **started to firm up a deal in principle related to this**
15 **acreage?**

16 A. Yes.

17 **Q. And what were the terms of the deal that the**
18 **parties were negotiating in the middle of March and the**
19 **beginning of April?**

20 A. \$7,000 per net mineral acre for the term
21 assignment portion outside of the swap, delivering a
22 75 percent NRI.

23 **Q. Okay. And then the remaining acreage, the 32**
24 **net acres, was going to be subject to a swap; is that**
25 **correct?**

1 A. Correct.

2 Q. And there was a hearing set in this matter that
3 was set for April 5th, 2018, correct?

4 A. Correct.

5 Q. And that was the Division's pooling hearing in
6 the case.

7 On April 2nd, did you first inform Chisholm
8 that Cimarex had found a farm-out agreement which gave
9 Fuel Products the interest that you previously described
10 within the west half of Section 10?

11 A. I did.

12 Q. Okay. And that was prior to the Division
13 hearing?

14 A. Yes.

15 Q. And on April 3rd, did Cimarex inform Chisholm
16 that the Fuel Products' interest was likely subject to a
17 preferential purchase right?

18 A. Yes.

19 Q. And how did you notify Chisholm about that
20 issue?

21 A. I know that we discussed it. We were trying to
22 work through of all the issues to really understand it
23 with the title attorney. And so I did make him aware of
24 that, and Davis helped us go through, and we sent
25 somebody out to the County to see if there had been any

1 conveyances. At that point, we were really working
2 together to figure out what, you know, exactly was going
3 on with the farm-out and preferential rights and the
4 potential owed assignment to Fuel.

5 Q. And after your notice -- you notified Chisholm
6 about the -- about the farm-out and the pref rights
7 issue, did they raise any concerns with you?

8 A. Raise any concerns as far as?

9 Q. The deal.

10 A. The deal?

11 Q. Yeah.

12 A. No.

13 Q. So did they indicate to you that the deal was
14 still in effect?

15 A. They didn't indicate that it wasn't.

16 Q. Okay. And then, in fact, at the April 5th
17 hearing, Chisholm testified on the record that there was
18 a deal in principle between the parties, correct?

19 A. Correct.

20 Q. On April 3rd, did Cimarex ask its counsel to
21 request a continuance of Chisholm's application?

22 A. Yes.

23 Q. And did Chisholm refuse to agree to that
24 continuance request?

25 A. Yes.

1 Q. On April 5th, did Cimarex decide to let this
2 hearing go on in front of the Division since it felt
3 comfortable with the deal that was in place?

4 A. We did.

5 Q. On April 27th, did you send an email to
6 Chisholm containing confirmation from Cimarex's title
7 attorney that the acreage was, in fact, burdened by a
8 preferential purchase right?

9 A. Yes.

10 Q. And that Fuel Products was entitled to the
11 assignment that has been previously discussed?

12 A. Correct.

13 Q. And on May 7th, did you receive a response from
14 Chisholm to that email?

15 A. Yes.

16 Q. Okay. And did they indicate that they wanted
17 to go forward with the deal that had been agreed to by
18 the parties?

19 A. It did.

20 Q. Okay. Prior to that May 7th email, what was
21 Cimarex doing?

22 A. We were -- we were trying to, you know,
23 determine the pref right issues and whether there was
24 assignment to Fuel, and we were also working on trying
25 to put together a term assignment. That's actually what

1 spurred the preferential right issue, is that we had
2 tried to work through, put a term assignment together.
3 My land manager felt like it was a little bit too
4 complicated to do in-house, and so we requested that the
5 title attorney put something together, in which he
6 noticed the issue, you know, with the farm-out and Fuel
7 Products and the JOA attached to it. And so there were
8 sort of multiple things going on at the same time.

9 **Q. And did you contact Chisholm asking them if**
10 **they wanted to go forward with the deal after you had**
11 **discovered the issue with the preferential purchase**
12 **right and assignment to Fuel?**

13 A. I did.

14 **Q. And after you received confirmation on May 7th,**
15 **did Cimarex take any actions to move the deal forward?**

16 A. We did. At that point, we requested that the
17 title attorney put together a term assignment and
18 assignment for the swap.

19 **Q. And did you specifically wait for that**
20 **confirmation from Chisholm before you hired counsel to**
21 **prepare the pref rights notification letter?**

22 A. Yes.

23 **Q. Did Chisholm ever inform you after May 7th --**
24 **between May 7th and July 26th, that the existence of a**
25 **preferential purchase right would upset the deal that**

1 was in place between the parties?

2 A. No.

3 Q. Did they ever tell you you no longer have a
4 deal in effect?

5 A. No.

6 Q. And did you have multiple conversations with
7 Chisholm concerning the preferential purchase right
8 issue?

9 A. We did.

10 Q. And could you explain those conversations to
11 the Commissioners?

12 A. We discussed the pref right and how that would
13 affect the trade. The trade itself, as I mentioned,
14 would not have been subject to the preferential right.
15 It would only have been the term assignment. And so,
16 you know, we discussed how we should address that, you
17 know, in the term assignment, in the assignment, and
18 just sort of going back and forth on how we should put
19 the -- put the assignment together.

20 Q. And Mr. Armour testified this morning that he
21 tried to call you on July 20th to leave a voice message
22 stating that the election period was about to run on the
23 4H well under the pooling order. Do you remember that
24 testimony?

25 A. Yes.

1 Q. Okay. And when did you receive that voice
2 message from him?

3 A. On Monday.

4 Q. On Monday?

5 A. Uh-huh.

6 Q. And what date would that have been?

7 A. That would have been the 23rd, so the
8 following --

9 Q. So it was the 23rd?

10 A. Uh-huh.

11 Q. And what was your response to that voice
12 message when you received it?

13 A. He actually sent an e-mail, and that's what I
14 saw first. And so I responded to his email, in which I
15 stated that it was not our intention to go nonconsent
16 under the orders, that we were still under the
17 impression that we were working through to execute a
18 term assignment and trade.

19 Q. Okay. And did he send you an email on July
20 23rd saying he wanted to get the deal worked out ASAP?

21 A. Yes.

22 Q. So was the deal still in effect at that point
23 in time?

24 A. Yes.

25 Q. And then on July 26th, 2018, did you have

1 **another conversation with Chisholm?**

2 A. We did.

3 **Q. And could you please explain that conversation?**

4 A. Sure. It was a conference call. I think it
5 was Davis and, I believe, his land manager as well. And
6 Davis indicated that he wasn't sure that management
7 would agree to move forward with the deal because the
8 election period under the pooling orders had expired,
9 and we were considered nonconsent at that point but
10 that, you know, he would speak to them. And in the
11 meantime, we were going to still try to move forward and
12 come to an agreement on the term assignment, and he said
13 he was going to send me that Word document so I could
14 work on that.

15 **Q. So he was still sending you the draft agreement**
16 **to revise and review?**

17 A. Correct.

18 **Q. At any point in time prior to July 26th, does**
19 **Chisholm tell you that if you didn't elect under the**
20 **pooling order election, that the deal would die?**

21 A. No.

22 **Q. When Chisholm contacted you about -- well, let**
23 **me back up.**

24 Did Mr. Armour ever give you a call to let
25 you know personally that the election letter had been

1 **sent?**

2 A. No.

3 **Q. Did he ever follow up with an email?**

4 A. No.

5 **Q. And you-all had been working pretty closely**
6 **together on this deal for several months, correct?**

7 A. Yes.

8 **Q. On July 30th, did you receive an email from**
9 **Chisholm?**

10 A. I did.

11 **Q. And could you explain what that -- in fact,**
12 **let's turn to -- if you could turn to Exhibit Number 3**
13 **in the packet in front of you. Is this the email that**
14 **you received on July 30th?**

15 A. Yes.

16 **Q. Could you please walk through this email for**
17 **the Commissioners?**

18 A. Sure. So it's stating that Cimarex is
19 currently deemed nonconsent under the pooling order and
20 that they would still move forward with, you know, a
21 deal, but it was different than what we had initially
22 had in principle. It would now be for a term of two
23 years, for \$2,500 per net mineral for roughly 92 net
24 acres, and that they would earn all right, title in
25 interest to 100 feet below the base of the producing

1 formation, and that we would deliver a 78 percent NRI,
2 which was different than the 75 percent we had under the
3 deal in principle and that the 32-net-acre swap would
4 still happen.

5 Q. Okay. And did this new offer raise concerns
6 within Cimarex?

7 A. It did.

8 Q. Was this the first indication -- firm
9 indication that you had that Chisholm was officially
10 backing out of the deal?

11 A. Yes.

12 Q. And what happened on the next day, July 31st?

13 A. We filed a motion to stay.

14 Q. Okay. And that was filed with the director?

15 A. Correct.

16 Q. At that point in time, did Cimarex have any
17 knowledge of the operation -- the completion operations
18 that were taking place on the 4H well?

19 A. I did not.

20 Q. In fact, when that motion to stay was filed,
21 were there any completion operations happening on the 4H
22 well, to your knowledge?

23 A. I believe they were.

24 Q. Let's turn to Exhibit 10 within the packet in
25 front of you, and I want to look at the second page of

1 this exhibit, in paragraphs eight and nine. Paragraph
2 eight states that on July 31, 2018, Cimarex filed its
3 motion for stay; is that correct?

4 A. Yes.

5 Q. And then after that motion was filed, in
6 paragraph nine, it says that Chisholm began its
7 completion operations on August 5th -- moved operations
8 to the location on August 5th and started completions on
9 August 7th; is that correct?

10 A. Yes.

11 Q. And the Division had actually had set the
12 hearing for this matter for the next day, on August 8th;
13 is that right?

14 A. Right.

15 Q. Following the hearing on the motion to stay,
16 did Chisholm once again recognize the deal that had been
17 reached by Cimarex and Chisholm prior to the April 5th
18 hearing?

19 A. They did.

20 Q. And they recognized all of the terms of that
21 deal, right?

22 A. Correct.

23 Q. Okay. And the parties once again started
24 negotiating the term assignment form?

25 A. We did.

1 Q. And were the parties able to reach agreement to
2 all of the essential terms on the term assignment form?

3 A. Yes.

4 Q. And were the parties able to reach agreement to
5 all the essential terms on the swapping acreage form, to
6 your knowledge?

7 A. Yes.

8 Q. And so what happened?

9 A. They indicated to us that the existence of the
10 pref right basically killed the deal.

11 Q. And it was just the mere existence of that
12 preferential purchase right? That's what was conveyed?
13 That's what killed the deal?

14 A. That was my understanding.

15 Q. And Chisholm had had knowledge of that
16 preferential purchase right since prior to the Division
17 hearing, correct?

18 A. Correct.

19 Q. In your opinion, Ms. Pierce, should Chisholm be
20 required to renotify parties of its operations within
21 the proposed spacing and proration unit?

22 A. Yes.

23 Q. And why is that?

24 A. Specifically, they intended to drill three and
25 there's only one now being drilled, and there were also

1 parties that were not notified.

2 Q. And in your opinion, should pooled parties,
3 including Cimarex, be afforded a new opportunity to
4 choose whether or not they want to elect into these
5 operations?

6 A. Yes.

7 Q. And why is that?

8 A. Again, the operations had changed, and so they
9 should be able to review that based on the current plan.

10 Q. In your opinion, did Chisholm engage in
11 good-faith negotiations with Cimarex throughout this
12 process?

13 A. I believe they did for a while, and then it
14 just sort of went south really without -- sort of out of
15 nowhere.

16 Q. Do you believe that Cimarex had any notice that
17 Chisholm was not going to follow through with the deal
18 that had been reached by the parties?

19 A. No, we didn't.

20 Q. So at all relevant times, you were under the
21 impression that the deal was in place until July 30th?

22 A. Correct.

23 Q. Ms. Pierce, were Exhibits 1 through 6 and
24 Exhibits 8 and 9 created by you or compiled under your
25 supervision or direction or compiled from company

1 **business records?**

2 A. Yes.

3 MS. BRADFUTE: I would like to tender
4 Exhibits 1 through 6 and Exhibits 8 and 9 into the
5 record.

6 MS. KESSLER: No objection.

7 CHAIRWOMAN RILEY: Thank you.

8 Please make note that Exhibits 1 through 6
9 and 8 and 9 are accepted into the record.

10 (Cimarex Energy Company Exhibit Numbers 1
11 through 6 and 8 and 9 are offered and
12 admitted into evidence.)

13 MS. BRADFUTE: And that concludes my
14 questions.

15 CHAIRWOMAN RILEY: Okay.

16 CROSS-EXAMINATION

17 BY MS. KESSLER:

18 **Q. Good afternoon, Ms. Pierce.**

19 **Did you receive the proposal letter under**
20 **the pooling order for the 4H well?**

21 A. I did.

22 **Q. Did you receive any other letter?**

23 A. Not that I recall.

24 **Q. Did you call Mr. Armour and ask if there were**
25 **any other letters coming?**

1 A. I didn't.

2 Q. So you believed that there might be other
3 letters coming, but you didn't call and ask about them?

4 A. I didn't.

5 Q. Did you hear your counsel earlier state that
6 Cimarex is asking for a new election period?

7 A. Yes.

8 Q. Would Cimarex now elect under a pooling order?

9 A. I don't know.

10 Q. Who would make that decision?

11 A. I think it would be a collective team decision.
12 It would be reviewed by our engineer, our geologists and
13 then our management.

14 Q. So even though you're asking for a new election
15 period, you don't know whether or not you would elect?

16 A. Correct.

17 Q. Why would you not elect?

18 A. We do have, you know, an OB -- outside operated
19 well budget, and it's not a high budget. And so we have
20 to be discreet about what we would operate and what we
21 wouldn't -- I'm sorry -- I mean what we would
22 participate in and what we wouldn't, on top of the fact
23 that, you know, we -- we like to be in an operator
24 position, and we have a significant percentage in that
25 well.

1 Q. Okay. So let me try and get this straight.
2 You're asking for a new election period.

3 A. Uh-huh.

4 Q. You're asking for an additional notice period
5 pursuant to that election period.

6 A. Uh-huh.

7 Q. But there is no indication here that you would
8 elect to participate, that you would use that election
9 period to participate?

10 MS. BRADFUTE: Objection. Mischaracterizes
11 the testimony.

12 MS. KESSLER: I'm sorry. I'm just trying
13 to get my head around it.

14 CHAIRWOMAN RILEY: Can you restate it? I
15 can restate that.

16 MS. KESSLER: Yeah. I can restate that.

17 Q. (BY MS. KESSLER) Can you please tell me why you
18 would be asking for a new election period if you're not
19 intending to elect under it?

20 A. I didn't say that we intend to not elect under.
21 But the operations have changed, and so I think that,
22 you know, we should have the opportunity to review the
23 proposal as it currently stands not only with our
24 engineer and geologist but also our management.

25 Q. And you haven't been reviewing those issues

1 **since the pooling order was entered on June 8th?**

2 A. We did not review that because our
3 understanding was the deal in principle was still in
4 place and moving forward.

5 **Q. Despite the fact that you received an election**
6 **letter under the pooling order?**

7 A. Correct.

8 **Q. Have you attended a compulsory pooling hearing**
9 **in front of the Oil Conservation Division before?**

10 A. I have not.

11 **Q. Have you prepared an application or prepared**
12 **notice to file an application for a pooling hearing in**
13 **front of the Division?**

14 A. I have worked with Jennifer to do so, but we
15 have not moved forward with the actual forced pooling
16 hearing at this time.

17 **Q. Are you aware under Division regulations who**
18 **notice is supposed to be provided to of a pooling**
19 **application?**

20 A. To a degree, yes.

21 **Q. Can you please tell me what your understanding**
22 **is?**

23 A. My understanding is that all working interest
24 owners and overriding royalty interest owners need to be
25 notified.

1 Q. And that would be of record, correct?

2 A. Correct.

3 Q. Are you aware that the two operating agreements
4 are not of record in Eddy County?

5 A. I was not.

6 Q. And are you aware that the Fuel Products'
7 interest with the -- the interest is not of record?

8 A. Yes.

9 Q. And so when you testified earlier that there
10 might be BLM records reflecting some ownership by Fuel
11 Products, have you actually reviewed the BLM records?

12 A. I didn't testify to Fuel Products specifically.
13 We were just talking in general on the list, that there
14 are some that should be of record.

15 Q. Okay. Would it surprise you to know that there
16 are not?

17 A. No.

18 Q. What type of interest is Fuel Products?

19 A. They should have a leasehold working interest
20 in which we owe them an assignment, a 9.375 percent
21 working interest of our current working interest in the
22 west half of Section 10, in addition to contractual
23 interests under the 1996 JOA.

24 Q. So do they own an interest in the spacing unit
25 contractually, or do they own actual minerals?

1 A. They should own both in the event we execute
2 the assignment that we now understand they are owed.

3 Q. Okay. So once Cimarex has finished its title
4 work and cleared title, they will own an interest?

5 A. Correct.

6 Q. But right now, they do not?

7 A. That is my understanding.

8 Q. So they are not a working interest owner of
9 record in the spacing unit?

10 A. That is my understanding.

11 Q. Ms. Pierce, were you the person at Cimarex who
12 received the initial well-proposal letters and -- not
13 under the pooling order but the initial well proposals
14 in January?

15 A. I believe -- well, yes. Yes. I think they
16 were titled to go to Cody Elliott, but I think they did
17 come eventually to me.

18 Q. Okay. And did you review them at that time?

19 A. Yes.

20 Q. Do you recall that the well-proposal letter
21 included a C-102?

22 A. I don't recall.

23 Q. Okay. Did you attend the hearing at the
24 Division level for this well?

25 A. I did not. Jennifer attended on our behalf.

1 Q. Okay. Did you review the transcript?

2 A. Most recently, yes.

3 Q. Do you recall in that transcript testimony from
4 Mr. Armour stating that a C-102 was provided with the
5 initial well-proposal letters?

6 A. I don't recall, but I'm sure that he did.

7 Q. Okay. I'll present to you that that was the
8 testimony.

9 A. Okay.

10 Q. Would those C-102 letters -- C-102 forms have
11 footages on them?

12 A. They should, yes.

13 Q. So if that was included in the well-proposal
14 letter, you would have known the footages, correct?

15 A. Correct.

16 Q. Are you aware that there's a remaining issue
17 with the pref rights?

18 A. Yes.

19 Q. What have you offered to resolve that issue?

20 A. We were working through a letter agreement
21 trying to address that issue and the different things
22 that could occur in the event that Fuel Products elected
23 to exercise their pref rights. And if they didn't, I
24 think there is some misunderstanding as to what actually
25 is covered under the pref right and what isn't, and I

1 think that might be -- might be an issue with Cimarex
2 and Chisholm. I don't fully understand -- I know that
3 Chisholm mentioned that they were concerned that we
4 wouldn't have the net acreage to swap.

5 My understanding of the pref right, again,
6 is that if there is not monetary value exchanged, so
7 that it's just an exchange of acreage itself, then that
8 portion wouldn't apply, and so I didn't see any issue
9 with moving forward with the acreage swap itself.

10 Q. But you're not a title attorney, so that's not
11 something that you would have legal understanding of?

12 A. It's my understanding.

13 Q. With respect to the swap and -- the acreage
14 swap and the ability to deliver like-kind net acres --

15 A. Uh-huh.

16 Q. -- are you familiar with this provision of the
17 letter agreement?

18 A. Yes.

19 Q. And is it your understanding that the current
20 version of the letter agreement as proposed by Cimarex
21 would not allow Chisholm to back out of that swap?

22 A. I am.

23 Q. Even if Cimarex had fewer acres to swap?

24 A. We didn't see that as being an issue because of
25 our understanding of the pref right, and so we didn't

1 see why that was needed.

2 Hearing Chisholm's concerns today, I can
3 understand why they might want that in the letter
4 agreement, but at the time we were negotiating prior --
5 you know, up until Saturday, it was my -- it was not my
6 understanding that they had the impression that this --
7 that we wouldn't have the net mineral acres to swap.

8 **Q. Okay. So would you be agreeable to some type**
9 **of provision clarifying that if Cimarex did not have the**
10 **net acres to swap, that Chisholm could back out of any**
11 **type of acreage swap?**

12 A. I would understand why they would want it.
13 Obviously, I would have to get management approval on
14 that wording.

15 **Q. That's all. Thank you.**

16 CHAIRWOMAN RILEY: Do you want to redirect,
17 or do you want us to go first?

18 MS. BRADFUTE: You guys can go first.

19 COMMISSIONER MARTIN: No questions.

20 CROSS-EXAMINATION

21 BY CHAIRWOMAN RILEY:

22 **Q. I have a question just because I'm trying to**
23 **follow along with all the pref right stuff. It is a**
24 **little confusing.**

25 A. Sure.

1 Q. So I hope -- I hope I'm not going to make us
2 more confused. And maybe this has already been
3 testified to, but on the pref rights, has Fuel indicated
4 what they want to do? Are they going to exercise, and
5 do they have a time frame that they have to exercise?

6 A. They do have a time frame. That overlapped
7 with the basically backing out or, you know, falling
8 apart of our deal. And so, you know, we are now
9 considered nonconsent under the pooling order. The
10 acreage follows -- you know, it is governed under that
11 pooling order. And so we need to renotify Fuel Products
12 that in the event that we do have a deal in place with
13 Chisholm, that not only, you know, do we have a deal
14 with the 7,000 per net mineral acre in which they could
15 elect to purchase, but that that acreage is currently
16 considered nonconsent under the pooling order. So if
17 Fuel Products purchased that acreage, then it would be
18 purchasing acreage that is nonconsent under the pooling
19 order, so we would need to renotify Fuel of the current
20 situation.

21 Q. So then they would own acreage that would be
22 subject to the 200 percent risk penalty?

23 A. Correct. Yes, ma'am.

24 Q. So that has to happen. They have to have that
25 opportunity first?

1 A. Correct.

2 Q. And so then -- okay. I won't ask you that
3 question.

4 I do want to touch a little bit on the
5 notice provisions. And so if notice -- kind of just go
6 over this a little bit. Notice is required to working
7 interests and your overriding working interests of
8 record, and we've already talked about that the
9 operating agreements weren't of record, right?

10 A. Uh-huh.

11 Q. So then I thought I -- that you agreed to what
12 Jordan said, that the BLM did not have all of those on
13 record or maybe --

14 A. Fuel Products.

15 Q. I don't know if you agreed, but you didn't
16 disagree, right?

17 A. I agreed with Fuel Products, that it probably
18 is not of record.

19 Q. Okay. So then how is it that they should have
20 gotten -- I mean, is that still a contention on your
21 guys' side, that --

22 A. Not with Fuel Products. I believe there are
23 one or two other parties that we had raised an issue
24 with earlier. I don't recall those off the top of my
25 head, but not with Fuel Products.

1 Q. It would be interesting to know if there is any
2 need to have noticed them. I mean, I think that's
3 something we might be interested in knowing at some
4 point.

5 MS. BRADFUTE: And just to interject, it's
6 more of a legal issue and not a fact issue. But looking
7 at the rule in effect at the time, notice was not --
8 which is 19.15.4.12A.(1)(a). Notice was not just
9 required to parties of record but also interests that
10 were known to the applicant at the time they filed their
11 application. So if the applicant had a copy of the 1968
12 JOA, many operators will perform that due diligence and
13 figure out who is subject to that JOA and provide
14 notice.

15 MS. KESSLER: And I would respond with two
16 things. First of all, the application was filed in
17 February, I believe, so I think the testimony reflects
18 that there weren't operating agreements that were
19 provided to Chisholm at that point.

20 And second of all, it's working interest
21 owners, and these are simply contractual interest
22 owners, and they don't own oil and gas minerals in the
23 spacing unit, per the language of the statute, which I
24 would be happy to find.

25 MS. BRADFUTE: But the rule actually says,

1 "The applicant shall give notice to an owner of an
2 interest in the mineral estate of any portion of the
3 lands." And that is defined broadly under the old
4 regulations. I realize that it has changed somewhat
5 under the new regulations. But that definition, "an
6 owner of an interest in the mineral estate," when you
7 look up those terms under the definition provision, were
8 very broad.

9 MR. FELDEWERT: I'm looking them up now.

10 MS. KESSLER: And in the statute, it does
11 say, "Where owners of royalty interests are undivided
12 interests in the oil and gas minerals -- owned any
13 combination thereof embraced within such spacing unit."
14 That doesn't mean a contract interest owner who doesn't
15 own within the spacing unit. They own a contract.
16 They're a party to a contract. They don't own oil and
17 gas minerals in the spacing unit.

18 MS. BRADFUTE: It's an undivided interest.
19 So I think the question is it includes undivided
20 interests and what is an undivided interest. And that
21 is undefined. I tend to always err on the side of
22 providing people notice and process.

23 MR. FELDEWERT: So, Ms. Bradfute, are you
24 stating on the record that in every single pooling case
25 you do, that you have your client go out and ascertain

1 if there is a JOA and ask them for a list of the current
2 contractual owners in that JOA, and then you take that
3 list of every current contractual owner in that JOA and
4 you give them notice of a pooling application?

5 MS. BRADFUTE: No. But I do ask if there
6 are contractual interests that are owed notification.

7 MR. FELDEWERT: Which are defined in the
8 statute as working interest owners in the acreage that
9 is subject to be pooled. But this is a legal issue. I
10 guess we can brief it if we need to. But it's been
11 pretty clear up until now that you don't go out and try
12 to ascertain what contracts are involved in the acreage,
13 what JOAs may or may not apply that are recorded or not
14 recorded and then send a pooling application to every
15 single contractual owner under a JOA. That's not how
16 it's done. That's not what's required under the
17 statute, and that's not what's required under the rules.

18 MS. BRADFUTE: Well, I've had conversations
19 with Jim Bruce and David Brooks who disagree otherwise
20 and said that contractual interest owners are entitled
21 to notice because they have the right to drill.

22 And really in a situation here, you have
23 contractual owners who are subject to a JOA that covers
24 only part of the project area, the west half. Their
25 agreement is with Cimarex, and under that joint

1 operating agreement, they have the right to drill a well
2 within the contract area, anywhere within the contract
3 area, at all depths. And they have to propose that well
4 to Cimarex, and Cimarex then gets to decline and say,
5 "No, I don't want to drill the well." Then they can
6 drill it. They have no relationship with the Chisholm
7 because Chisholm is not a party to the JOA. And so how
8 does Chisholm ever find out if the contractual interest
9 owner wants to drill a well within the unit established
10 by the Division?

11 CHAIRWOMAN RILEY: But isn't it, at that
12 point, up to the operator of the JOA to reach out to --

13 MS. BRADFUTE: There is nothing that binds
14 that, so there is no obligation anywhere within the
15 regulations for Cimarex to reach out to Chisholm, nor is
16 there any obligation -- and let's say it's not Cimarex.
17 Let's say it's some other company that doesn't want to
18 deal fairly with the operating rights owner or -- so I
19 think you always have to assume the best- and worst-case
20 scenarios and make sure that people are notified so they
21 can be apprised of their rights and how they're
22 changing. That operating rights owner has no obligation
23 to reach out to Chisholm and --

24 CHAIRWOMAN RILEY: Would they, in the other
25 scenario, have an obligation to reach out to the parties

1 of the JOA if they're the operator?

2 MS. BRADFUTE: Yes, but the issue is that
3 Chisholm is not a party to the JOA.

4 CHAIRWOMAN RILEY: No, but Fuel is.

5 MS. BRADFUTE: Fuel is. So they reach out
6 to Cimarex, and then there is no other obligation beyond
7 Cimarex. So the contract --

8 CHAIRWOMAN RILEY: That's a hypothetical,
9 right?

10 MS. BRADFUTE: Yeah. That's a
11 hypothetical.

12 CHAIRWOMAN RILEY: But back to this
13 scenario, would it be the obligation of Cimarex to reach
14 out to Fuel under the JOA and let them know what's going
15 on and notice that you've received? I don't know the
16 answer to this. I'm asking it.

17 MS. BRADFUTE: Yeah. You know, there is
18 nothing that -- they have an obligation to take on the
19 operations for the well, and if they don't assume those
20 operations, then the working interest owner can drill
21 the well. That's what the JOA says.

22 CHAIRWOMAN RILEY: Those are all my
23 questions.

24

25

1 CROSS-EXAMINATION

2 BY COMMISSIONER BALCH:

3 Q. Well, I have similar questions that I might ask
4 slightly differently of Ms. Pierce.

5 A. Sure.

6 Q. Good afternoon.

7 Did Cimarex reach out to Fuel Products?

8 A. We did.

9 Q. What time was that?

10 A. It was -- it was sent out mid-June. They
11 received it, I believe, end of June, and I did have
12 discussions with Fuel Products on the phone. However,
13 by the time their notice time frame would have expired,
14 we had already lost the deal in principle with Chisholm
15 and effectively killed the pref right at that time.

16 Q. So what -- does the JOA say anything about when
17 you talk to them? You had an offer -- an initial offer
18 from Chisholm and then you negotiated and got to a
19 certain point, 7,000.

20 A. Sure.

21 Q. At what point are you supposed to under the JOA
22 tell them that there is that offer on the table?

23 A. There is a 30-day notice period that you need
24 to give them in order to elect. I don't believe there
25 is anything that really gives a time frame, you know, on

1 when you start negotiating a deal to when you need to --

2 **Q. More like when you have an offer in hand?**

3 A. Correct. I don't believe that the JOA
4 addresses that.

5 **Q. So when you contacted them in June, you thought**
6 **you had a \$7,000-an-acre deal?**

7 A. Correct.

8 **Q. And you were saying, "Do you want to buy this**
9 **acreage instead"?**

10 A. Correct.

11 **Q. Did they respond?**

12 A. They did. They requested the JOA and farm-out.
13 And, again, it was -- it was between Mallon, and it just
14 didn't really click to him at first. And he reviewed
15 that, you know, and said that he would be interested in
16 potentially exercising his pref right. But there was no
17 official answer, and I did not get an official answer by
18 the time the deal with Chisholm had fallen apart. And
19 so there's been no election to exercise or not. And we
20 would need to re-offer because the -- the land situation
21 is now different. It's now considered nonconsent by the
22 pooling order, and Fuel Products would inherit that.

23 **Q. So I don't see Fuel Products here today, I**
24 **don't think.**

25 A. Correct.

1 Q. Did they -- did you have any other discussions
2 with them? Were there any other concerns that they had
3 about notice?

4 A. I haven't received any concerns about it.

5 Q. The hearing was on April 5th.

6 A. Sure.

7 Q. So it was a couple of months later when you
8 were talking to them about it.

9 A. I have not heard any concerns about it.

10 Q. No complaint about a lack of notice?

11 A. (Indicating.)

12 Q. So the real problem right now, the reason that
13 we're having this hearing today is because you couldn't
14 come to an agreement?

15 A. Correct.

16 Q. All the way up to the 11th hour, I assume, last
17 night?

18 A. Yeah.

19 Q. So the real stopping points is the terms of the
20 agreement and the land swap, are the last two things
21 that need to be resolved?

22 A. We've come to terms for the most part, I
23 believe, on the term assignment form and the swap. The
24 issue is really the pref right. And I think it -- I
25 think it's a misunderstanding between Cimarex and

1 Chisholm on, you know, what really occurs with that pref
2 right. I think their main concern was the language in
3 the letter agreement concerning the swap acreage. And,
4 again, I'm not a title attorney. It's my understanding
5 that the swap would not be subject to the pref right.

6 And so, you know, as we were, you know,
7 reviewing the letter agreement, our intention was to
8 give Chisholm, you know -- if Fuel Products elected to
9 exercise their preferential right, then the portion of
10 acreage that would be under the term assignment
11 essentially just dies. The term assignment does not
12 occur because now Fuel Products has that, and that the
13 swap, again, was not subject to the pref right. And so
14 it was our intention to move forward with the swap under
15 the letter agreement. And so the letter agreement did
16 not -- did not address the issue of whether or not we
17 would have enough acreage to swap net for net with
18 Chisholm. And I think that's the biggest issue here as
19 far as negotiations between the two parties.

20 **Q. That and the price per acre?**

21 A. Well, we -- they did come back on the price per
22 acre and agree to the 7,000, so that is not an issue for
23 us.

24 **Q. All right. I'm just curious if we come to a**
25 **conclusion today and start to draft an order, comes to**

1 **agreement before it's signed.**

2 **RECROSS EXAMINATION**

3 BY CHAIRWOMAN RILEY:

4 **Q. I need to ask another question. On the net for**
5 **net, why is there concern on net for net? Can you**
6 **remind me of that?**

7 A. Sure. So it all goes back to the preferential
8 right. Again, our understanding is that if you were
9 going to swap net-for-net acre, then that portion would
10 not be subject to the preferential right. Chisholm has
11 roughly 32 net acres in the east half of Section 10.
12 And we have -- gosh. I think it's about 135 net acres
13 in the west half of Section 10. And so we did
14 not -- Cimarex did not see an issue with being able to
15 execute the swap. We have more net acres than what
16 Chisholm has, and so -- that we believe is not subject
17 to the pref right. So we thought that we could go ahead
18 and move forward with the swap, and regardless of what
19 the election was on the preferential right, the swap
20 portion would not be subject to it. So I think
21 Chisholm's concern there -- and I'm not speaking for
22 them, but it's my understanding that they were afraid
23 that all was subject to the pref right and that we
24 wouldn't have the net acres to be able to swap with
25 them.

1 Q. So you would have to exercise the swap first in
2 order to eliminate that from the pref right?

3 A. Yes. Well, that was our intention.

4 REDIRECT EXAMINATION

5 BY MS. BRADFUTE:

6 Q. And, Ms. Pierce, that is how it was structured?

7 A. That was our intention. Yes.

8 MS. KESSLER: I think I can do just a
9 little bit of clarification from Chisholm's perspective,
10 if I may.

11 CHAIRWOMAN RILEY: Yes.

12 RE CROSS EXAMINATION

13 BY MS. KESSLER:

14 Q. We're discussing the farm-out agreement, right?

15 A. Correct.

16 Q. And this is not subject to the pref right. I
17 think we can agree on that.

18 A. Okay.

19 Q. But it is subject to an assignment, correct?

20 A. 9.375 percent, yes.

21 Q. So the amount of acres that Cimarex has would
22 be reduced. So it was going to be net for net, correct?
23 Is that the right way to use that term?

24 A. Right.

25 Q. 32 to 32?

1 A. Yeah.

2 Q. But approximately 9 percent of those acres
3 owned by Cimarex is subject to a farm-out agreement and
4 a term assignment, so they're not yours anymore?

5 A. 9 percent. So that would be roughly 12 net
6 acres of -- I know it's 20 percent. I think we had --
7 was it 135 or 120 net acres? I don't recall off the top
8 of my head now. But even with the assignment that we
9 would owe to Fuel Products under the farm-out, we would
10 still have more than enough net acres to do the swap net
11 for net. And also the remaining portion -- I think it
12 would be left with roughly 80 net acres -- it would be
13 subject to the term assignment, which we would first
14 have to offer to Fuel Products. Assuming they didn't
15 offer -- or exercise their pref right, then at that
16 point, we would term assignment to Chisholm.

17 So from our perspective, there was never an
18 issue even -- even including the 9.375 percent, which,
19 again, is roughly 12 net acres, there was never an issue
20 of whether or not we would have enough to execute the
21 swap, from our perspective.

22 MS. BRADFUTE: Perhaps maybe -- could we
23 take a break and go off the record and have the landmen
24 talk to one another?

25 CHAIRWOMAN RILEY: That would be awesome.

1 So we're off the record, and we'll take a
2 break until 3:00.

3 Would that give you enough time, because if
4 you-all work out a deal --

5 MS. BRADFUTE: Yeah. I don't know if we'll
6 actually work out a deal today because of the management
7 approvals for various --

8 CHAIRWOMAN RILEY: Sure.

9 (Recess, 2:44 p.m. to 3:14 p.m.; continued
10 examination of the witness, Ms. Pierce.)

11 CHAIRWOMAN RILEY: Mr. Brancard, did you
12 have any questions?

13 MR. BRANCARD: I did not.

14 MS. BRADFUTE: And I do not have any more
15 questions for this witness.

16 CHAIRWOMAN RILEY: Okay.

17 MS. KESSLER: And I have just one or two.

18 MS. BRADFUTE: Well, then I reserve. I may
19 have some questions after Jordan's questions.

20 RE CROSS EXAMINATION

21 BY MS. KESSLER:

22 **Q. There were discussions of the pref rights**
23 **issues and the assignment of the farm-out issues dating**
24 **back to April, correct?**

25 A. Correct.

1 Q. Why didn't you reach out to resolve -- well,
2 and the \$7,000-per-acre agreement in principle was
3 reached in early April, correct?

4 A. Uh-huh. Correct.

5 Q. Before the Division hearing?

6 A. Uh-huh.

7 Q. Why at that point did you not reach out to Fuel
8 Products?

9 A. I was just still working through the term
10 assignment and just focused. You know, I could have,
11 although I was working with our title attorney, and he
12 was, you know, attempting to put an assignment together.
13 And because our deal in principle relied on the term
14 assignment, it was sort of one of those things where I
15 wanted to make sure that we had a term assignment in
16 place prior to reaching out to them. At that point, it
17 took so long that I did reach out to Fuel. But I was
18 hoping that we would have an assignment in place to
19 really solidify our deal in principle.

20 Q. I think that's all I have.

21 MS. BRADFUTE: Okay. That concludes the
22 questions for this witness.

23 CHAIRWOMAN RILEY: Okay. Thank you.

24 THE WITNESS: Thank you.

25 MS. BRADFUTE: I'd like to call my second

1 witness, Mr. Hastings.

2 HARRISON HASTINGS,

3 after having been first duly sworn under oath, was
4 questioned and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. BRADFUTE:

7 Q. Could you please state your name for the
8 record?

9 A. Harrison Hastings.

10 Q. And, Mr. Hastings, who do you work for?

11 A. Cimarex Energy.

12 Q. And what is your position at Cimarex Energy?

13 A. I'm a geologist.

14 Q. And what are your responsibilities as a
15 geologist for Cimarex?

16 A. I'm the lead geologist over Eddy County. I'm
17 responsible for everything from exploration, concept,
18 idea generation to regulatory operations. And I work
19 with my engineer for -- with completion design and early
20 production.

21 Q. And have you previously testified before the
22 Commission?

23 A. I have.

24 Q. You have? Okay. Was that before the Division
25 or the Commission?

1 A. It was before the Division.

2 **Q. The Division.**

3 **Okay. Could you please explain your**
4 **educational background to the Commissioners?**

5 A. Yeah. I have a Bachelor of Science in Geology
6 at Texas A&M, as well as a Master of Science in Geology
7 also at Texas A&M.

8 **Q. And could you please describe your work**
9 **experience for the Commissioners?**

10 A. Yeah. I have four different internships, two
11 of which were with Cimarex, both about three-and-a-half
12 months of experience in 2014 and 2015 summers. Prior to
13 that, I worked a summer for Carrizo Oil & Gas,
14 C-A-R-R-I-Z-O. And then I also had an internship with a
15 small E&P private equity group called Paloma Resources
16 in the fall of 2015. And I've been a geologist with
17 Cimarex for roughly 18 months, which I started right
18 after graduating from graduate school.

19 **Q. And are you familiar with the application**
20 **that's been filed by Chisholm in Case Number 16027?**

21 A. I am.

22 **Q. Are you familiar with the status of the lands**
23 **which are the subject matter of that application?**

24 A. Yes.

25 **Q. And have you conducted a geologic study of the**

1 lands embracing the proposed proration unit requested in
2 that application?

3 A. I have.

4 MS. BRADFUTE: I would like to tender.
5 Mr. Harrison [sic] as an expert witness in geology
6 matters.

7 MS. KESSLER: No objection.

8 CHAIRWOMAN RILEY: Mr. Harrison is accepted
9 as an expert. Mr. Hastings.

10 MS. BRADFUTE: Mr. Hastings. I apologize.
11 I said it wrong (laughter). I'm so sorry.

12 THE WITNESS: No worries.

13 Q. (BY MS. BRADFUTE) Mr. Hastings, could you
14 please turn to what's been marked as Exhibit 11 in the
15 packet in front of you? Could you please identify what
16 this document is?

17 A. Yeah. This is a structure map hung on the top
18 of the Wolfcamp. The contour interval for the black
19 lines you see is 50 feet, and the green and lighter
20 green colors you see to the west represent updip or
21 higher structural features. And the dark -- the blue
22 and darker blue colors represent the deeper structural
23 setting. And, you know, a comment based on the exhibits
24 that Chisholm submitted, these structure maps are
25 showing relatively the same thing.

1 Q. Okay. And could you please turn to the next
2 exhibit, Exhibit 12?

3 A. Sure.

4 Q. And could you please identify what this
5 document is?

6 A. Yeah. This is an Upper Wolfcamp isopach map.
7 It stretches from the top of the Wolfcamp to the top of
8 what we call the A2 marker, which is a clay-rich
9 interval below the Wolfcamp A. So it represents, on a
10 gross basis, the interval that we find perspective in
11 the Upper Wolfcamp. And I can shed more light on that
12 when we look at the cross section, A to A prime.

13 Q. Mr. Hastings, do you have Chisholm's
14 exhibits -- supplemental exhibits in front of you?

15 A. I do.

16 Q. Can you take a look at their Exhibit A --

17 A. Yes.

18 Q. -- which is labeled as an isopach net
19 porosity --

20 A. Yes.

21 Q. -- map?

22 What is the difference between Chisholm's
23 Exhibit A and what's submitted on their isopach net
24 porosity map and the isopach map that you've prepared?

25 A. Sure. So two main differences. The first is

1 that this -- my Upper Wolfcamp isopach map is covering a
2 greater -- a larger interval. It covers both the Upper
3 Wolfcamp Sand, as well as the Wolfcamp Shale above what
4 I call the A2 marker. And so it's covering a greater
5 area vertically.

6 And then the second and more significant
7 difference is that this is just a gross map, so it has
8 no basis on porosity versus the -- the Exhibit A map
9 looks at porosity -- footage of porosity over a certain
10 cutoff. So on a general basis, this isopach map is
11 relevant and shows kind of the trend that the Upper
12 Wolfcamp follows versus this net porosity map which we
13 might use to be a little bit more correlative to
14 production on a single well basis.

15 **Q. And, Mr. Hastings, when you prepared your**
16 **structure map and your isopach map, did you notify --**
17 **or did you notice any impediments -- any structural**
18 **impediments that would impair drilling the 4H well**
19 **within this area?**

20 A. I didn't.

21 **Q. No pinch-outs or faults?**

22 A. No.

23 **Q. Did you also prepare a cross section of logs**
24 **when you put together these maps?**

25 A. I did.

1 Q. And is that cross section of logs contained in
2 Exhibit Number 13?

3 A. Yes.

4 Q. Could you please turn to Exhibit Number 13 and
5 explain what that document shows?

6 A. Yeah. So similar to the qualifications that
7 Mr. Roth used to pick his wells, I chose wells that,
8 one, were close to the proposed wellbore to give an idea
9 of the geology that the well would encounter and, two,
10 which had high-quality log data.

11 And so one thing I do want to clarify is
12 just some nomenclature. The nomenclature that I use and
13 we at Cimarex use, it's a little different than what
14 Chisholm used in their cross section. We both picked
15 the top of the Wolfcamp in the same -- at the same
16 point. The A2 marker is what I mentioned was the base
17 of that gross interval that I mapped on the previous
18 exhibit. And, two, it's significant because
19 we -- it represents the base of the overall prospective
20 interval in the Upper Wolfcamp, and that's mainly
21 because the Wolfcamp becomes really clay rich. We have
22 core data that confirms that, as well as -- to give you
23 an idea of what you're looking at here, the left-hand
24 column in each of these wells shows gamma ray. The
25 center column shows resistivity, and the right-hand

1 column shows neutron density and density porosity
2 curves. The density porosity is in green, and the
3 neutron porosity is in red.

4 Whenever you see resistivity shift to the
5 left and you start to see more separation in those green
6 and red lines, it's a strong indicator you're getting
7 into a more clay-rich interval, as I mentioned. So you
8 can see that's happening below the A2, and we've got
9 core data that confirms that.

10 The other thing just to point out is two
11 very widely recognized pieces of nomenclature for the
12 Upper Wolfcamp are the Wolfcamp X and Y sandstones.
13 Those are present throughout most of the Delaware Basin
14 at the top of the Wolfcamp. Here, the Wolfcamp X is
15 very thin. The top of the X is represented by the tan
16 line just below the top of the Wolfcamp. And the top of
17 the Y is the Y sandstone top. It's a piece of text next
18 to the black line. And most of the wells in this area,
19 this far north, are drilled in that Y -- targeting that
20 Y sand, and that's because the shale interval in between
21 the base of the Y sand and the top of the A2 marker is
22 much more poorly developed here relative to deeper into
23 the basin.

24 And then getting back to how this compares
25 to Chisholm's nomenclature, if you look at their Exhibit

1 D, the B to B prime, they don't actually mark on this
2 cross section where the top of their lower interval
3 starts and where the bottom -- where the base of their
4 upper interval starts, but overall what they're
5 calling -- what they're marking as both the Upper and
6 Lower Wolfcamp A spans from the top of the Wolfcamp X
7 here down to this blue A1 shale marker. And so, you
8 know, when I -- when I reference this stuff -- and some
9 of the other exhibits will show you, and the porosity
10 map I've brought along, that covers the overall -- the
11 overall same interval. So it's just -- we describe them
12 a little differently and use different nomenclature.

13 **Q. Mr. Hastings, what does this cross section of**
14 **logs show you about the Wolfcamp A within the zones that**
15 **Chisholm is targeting?**

16 A. Well, one other thing I didn't point out is in
17 the depth track, there is some green shading. That
18 represents porosity throughout the interval over 10
19 percent, density porosity. And so the main thing it
20 shows me is that you're seeing a correlative amount of
21 porosity development along the wellbore where they
22 drilled their well relative to some of the other wells
23 that have targeted the same interval that are in the
24 very nearby area. And so it tells me you could have a
25 reasonable expectation of achieving the same results or

1 similar results.

2 Q. To other Wolfcamp A wells that have been
3 drilled in the area?

4 A. That's correct.

5 MS. KESSLER: Excuse me. Are you looking
6 at Exhibit 13?

7 THE WITNESS: Yes.

8 MS. KESSLER: All right.

9 Q. (BY MS. BRADFUTE) Yesterday afternoon we
10 received the supplemental exhibits from Chisholm in this
11 case; is that correct?

12 A. Yes.

13 Q. And we heard testimony earlier today concerning
14 those exhibits and specifically about the Upper Wolfcamp
15 A isopach net porosity map --

16 A. Yes.

17 Q. -- and the Lower Wolfcamp A isopach porosity
18 map --

19 A. Correct.

20 Q. -- and a related cross section that was
21 prepared for those maps; is that right?

22 A. Yes.

23 Q. Have you prepared a rebuttal exhibit to those
24 maps that were provided?

25 A. I have.

1 Q. I'm going to mark this as Cimarex Exhibit 23.

2 **Mr. Hastings, can you please explain what the first page**
3 **of this exhibit shows for the Commissioners?**

4 A. Yes. So this is -- I'm sorry. My exhibit?

5 Q. Yes, your Exhibit 23.

6 A. Okay. So this is a net sandstone map or a net
7 pay isopach, a very similar type of map to Chisholm's
8 Exhibits A and B, just covering a slightly different
9 interval.

10 So as I mentioned, it's basically the
11 equivalent of Chisholm's Upper and Lower A combined.
12 And so we believe that when you're targeting the
13 Wolfcamp sands, particularly in this area, that you're
14 going to be encountering both what they're calling the
15 upper and lower pay zone. And so we do have maps
16 mapping the different sand lobes individually, but we
17 feel a more relevant map to show or try to predict the
18 results and productivity would include both the entire
19 Upper Wolfcamp zone or all those things.

20 And so relating to the cross section on the
21 next page, this represents porosity from the top of the
22 Wolfcamp to the A1 shale marker, that blue line, over 10
23 percent -- footage over 10 percent density porosity.

24 Q. And how does this compare to the cross section
25 that has been prepared by Chisholm and is marked as

1 **Chisholm Exhibit D?**

2 A. Overall, the trends are pretty similar. If you
3 were to combine the two maps, I think you would see
4 something very similar. I can't speak to the
5 methodology used to -- to contour Exhibits A and B.
6 This map, it honors all the data points we have, as well
7 as has geologic bias built in. But if you look at the
8 two maps and where it coincides, especially in both the
9 upper and lower, it coincides where you would see things
10 in the XYZ net sandstone map.

11 **Q. Mr. Hastings, based on your study of the area,**
12 **do you recognize any geologic risk towards developing --**
13 **that would affect developing a Wolfcamp A well?**

14 A. I don't.

15 And one thing I want to point out is I
16 think that risk is -- you know, both risk and a geologic
17 map need context to really have meaning. There is risk
18 in almost every decision we make. And, you know, these
19 geologic maps are important, but they don't really mean
20 anything until you add context so that the offset
21 production, mud-log shows, the DFTs or defits [sic;
22 phonetic] -- you need something to kind of compare
23 different locations. And so one thing we take a close
24 look at are the offset wells, the results of those
25 offset wells and how the geology at those locations

1 compare to the prospective location.

2 And so I put together this cross section, B
3 to B prime, which have wells offset the two. In our
4 minds, most significant offset Upper Wolfcamp wells.
5 That's Mewbourne's Ghost rider and Marathon's Red Light.
6 And so that cross section is represented by the blue
7 line on the map, B to B prime.

8 And if you look at that same cross section
9 on the next page, you see similar -- similar porosity
10 development from basically the Y sandstone top to the
11 top of the A1 shale marker, which represents the target
12 represented by the Black River 4H.

13 I'd also comment that the Red Light 2H, if
14 you notice, was drilled with a surface location in the
15 contour interval below 20 feet and into a contour
16 interval greater than 40 feet.

17 Very similarly, the Chisholm Black River
18 starts above 20 feet, goes into a small section of below
19 20 feet and then back into an interval of greater than
20 60 feet. So geologically they're very correlative
21 locations.

22 That Red Light well has, in our minds, a
23 pretty good result. It IP'd over -- a little over 700
24 barrels a day, and there were rig constraints initially
25 flowing that well back. In addition, it's a mile and a

1 half. And so if you were to extrapolate both the IP and
2 EUR to a two-mile well, the IP might be closer to 900,
3 950 barrels a day and an EUR of closer to 800,000
4 barrels, similar to what we saw in the Ghost rider. So
5 it's reasonable to expect something similar on this well
6 assuming that you didn't have any operational setbacks
7 or issues.

8 **Q. So when I look at Exhibit 23, the Red Light**
9 **well is located just north to the project area, correct?**

10 A. Immediately north. The toe of the Red Light
11 well is about a half mile away from the surface location
12 of Chisholm's Black River 4H.

13 **Q. Okay. And where is the Ghost rider well located**
14 **in relation to the development area?**

15 A. The toe of the Ghost rider is about 1.7 miles
16 east of the surface hole for the Black River, and that's
17 also indicated by the white box that points to that
18 Ghost rider well. And then there are two more wells in
19 the east half of that section. Those are two wells that
20 Mewbourne has drilled and are waiting on completion, but
21 there is no production data on those wells.

22 **Q. Okay. And have you studied the production from**
23 **the Red Light well and the Ghost rider well?**

24 A. I have in detail. Almost every well you see on
25 the map, I take close note of how they perform and if

1 they have production data and where exactly they were
2 landed. For reference, the Red Light -- both the Red
3 Light and the Ghost rider had the same landing zone,
4 which was right in the middle of the Y sand, which would
5 be roughly 30 feet below the brown line or Y sandstone
6 top of the cross section on the next page.

7 **Q. How does that compare to the landing zone for**
8 **the 4H well at issue here?**

9 A. It's similar. I haven't seen a geosteering
10 interpretation for where exactly the Black River 4H was
11 landed, but Chisholm's indicated it's been -- it was
12 landed roughly 50 to 70 feet below that Y sandstone
13 landing zone now utilized by the Red Light and the
14 Ghost rider.

15 **Q. And how thick is the Wolfcamp A Formation**
16 **within this area, approximately?**

17 A. Well, again, it depends on what you'd classify
18 as the Wolfcamp A, what Chisholm has referred to as the
19 Wolfcamp A Upper and Lower, which I say effectively
20 characterizes the prospective reservoir interval up here
21 since you don't have a lot of porosity development in
22 the A shale below. The sands, you're looking at about
23 250 to 270 feet overall as far as thickness.

24 **Q. And have you studied frac heights or lengths at**
25 **all within this area, or is that better left for the**

1 **engineer who is going to be testifying?**

2 A. That's generally more in the engineer's
3 wheelhouse. And, you know, that's, I'll say, a major
4 point of contention throughout the industry. There are
5 a lot of people with totally different theories. But I
6 would say universally, it's pretty safe to assume, with
7 completions these days, you're seeing frac heights
8 definitely over 100 feet, unless you've got a
9 significant geologic barrier that will exceed those frac
10 heights.

11 **Q. You were present earlier today to hear**
12 **Chisholm's testimony that their fracs perform similar to**
13 **operations of other operators within the area, correct?**

14 A. I did, yes. I heard that.

15 **Q. And geologically speaking, the area where the**
16 **Red Light and the Ghost rider wells are located is**
17 **similar in geology to the project area for the 4H well?**

18 A. Yeah. I'd say it's very similar. I'd say
19 particularly the location for the Red Light is very
20 geologically correlative to the location for the Black
21 River. The Ghost rider -- a portion of the Ghost rider's
22 lateral does encounter some geology where you get more
23 porosity development than we see in either the Black
24 River 4H or the Red Light. But that well also drills
25 into what we're mapping below 20 feet of net porosity

1 for just a part of the lateral, so it's not far off.

2 I'd say overall, they're all fairly correlative.

3 Q. Going back to your Exhibit Number 12 and the
4 big exhibit packet, when I look at the acreage to the
5 north of the project area, where the Red Light and the
6 Ghost rider were also located --

7 A. Sure.

8 Q. -- it looks like that area has less thickness
9 across the reservoir than the well in this project area;
10 is that correct?

11 A. Yes and no.

12 So as I mentioned, this map is showing the
13 gross interval over -- over a larger interval than just
14 the Upper Wolfcamp sands. So it does show and agree
15 with the general trend, but it doesn't reflect porosity
16 development. And most of what we're seeing when we see
17 this thinning from green to red -- green to reddish-tan,
18 at least in the area mapped here, corresponds to things
19 we see at the bottom of the overall -- of the Upper
20 Wolfcamp interval. So that would be on the cross
21 section in the next exhibit. Below that blue line, that
22 Al shale marker, we're seeing that overall interval thin
23 more than we're seeing the interval from the top of the
24 Wolfcamp to that blue line thin. And so for the
25 purposes of where these wells are drilled, the -- marker

1 is fairly similar to the Red Light and Ghost rider
2 location.

3 Q. Okay. Have you reviewed Chisholm's testimony
4 from the April 5th Division hearing?

5 A. Yes.

6 Q. And did Chisholm's geologist reach a similar
7 conclusion when conducting the study of the area?

8 A. Yes.

9 Q. Did Chisholm note any geologic impediments to
10 horizontal development within the area?

11 A. They didn't at all.

12 Q. And did Chisholm testify that the reservoir was
13 very continuous throughout the project area?

14 A. They did.

15 Q. Based on your study of the area, is it your
16 opinion that there is very low or no geologic risk to
17 drilling the 4H well?

18 A. Again, I think that how you define risk is --
19 that answer is depending how you define risk. But I'd
20 say relative to the offset wells targeting the same
21 interval, that there is no additional risk that you see
22 in Chisholm's Black River 4H well target interval.

23 Q. Based on the geology and your geologic study,
24 do you believe that a 200 percent risk penalty is
25 warranted in this case?

1 A. I don't, specifically because they've
2 successfully drilled and almost completed the well
3 without any operational setbacks, which would bear the
4 bulk of that risk.

5 Q. And looking at Chisholm's exhibits that they
6 presented at the April 5th hearing, did you see any
7 notice that there were any sort of geologic risks with
8 the area?

9 A. Not at all.

10 Q. Were Exhibits 13 through 15 and Exhibit 23
11 prepared by you or compiled under your supervision and
12 direction or from company business records?

13 A. They were.

14 MS. BRADFUTE: I'd like to tender
15 Exhibits --

16 Q. (BY MS. BRADFUTE) I'm sorry. Actually, 12 --
17 was 12 also prepared by you?

18 A. It was.

19 MS. BRADFUTE: I'd like to tender Exhibits
20 12 through 15 and Exhibit 23 into the record.

21 MS. KESSLER: No objection.

22 CHAIRWOMAN RILEY: Okay. So Exhibits 12
23 through 15 and 23 are accepted.

24 (Cimarex Energy Company Exhibit Numbers 12
25 through 15 and 23 are offered and admitted

1 into evidence.)

2 MS. BRADFUTE: And that concludes my
3 questions.

4 CHAIRWOMAN RILEY: Ms. Kessler, would you
5 like to go? I have lost track of where we were. The
6 day's been long.

7 CROSS-EXAMINATION

8 BY MS. KESSLER:

9 Q. What is your name, again?

10 A. Harrison Hastings.

11 Q. Hastings?

12 A. Yes.

13 Q. Mr. Hastings, did you hear testimony earlier
14 that the Lower A degrades as you move to the south?

15 A. I did.

16 Q. Looking at Exhibits A and B and I'm
17 specifically looking at the Lower Wolfcamp map -- the
18 Lower Wolfcamp A isopach map, which is Exhibit B, do you
19 agree with this conclusion?

20 A. Well, I'd say relative to the northern half of
21 the well, that you're encountering lower total porosity
22 values. However, that's also depending on which well
23 you use. As we mentioned before, there were -- a
24 different well was used in the initial hearing. At the
25 toe, a different B prime well was used. And, you know,

1 the well that was initially used, which is the same well
2 shown on my cross section, showed a little more porosity
3 development in that lower lobe. And then at the same
4 time -- I just want to reiterate -- I think a more
5 accurate way to evaluate the overall interval is to look
6 at both the upper and lower, what you guys are calling
7 the Upper and Lower Wolfcamp A, together, considering
8 that total interval's not much more than 180 feet thick.
9 It's more representative of what you're going to
10 encounter geologically.

11 **Q. Okay. That was a lot, and I was just looking**
12 **for whether, based on this map, you agree that the lower**
13 **Wolfcamp does degrade as we move south, based on this**
14 **map.**

15 A. I would just reiterate what I said. I think I
16 explained or answered the question pretty thoroughly.

17 **Q. Okay. You mentioned that you're in charge of**
18 **Eddy County; is that correct?**

19 A. That's correct.

20 **Q. You're the supervisor?**

21 A. I oversee all the -- all the geologic matters
22 and review stuff. We run pretty lean. I have some
23 geologic techs that work under me, but we don't have any
24 additional geologists under me.

25 **Q. So you're it for Eddy County?**

1 A. So I'm it.

2 Q. All right. Have you ever done a pooling
3 hearing in Eddy County?

4 A. I have.

5 Q. I'm going to pass out a handful of -- I've
6 placed in front of you several compulsory pooling
7 applications filed by Cimarex in Eddy County. Just take
8 a moment to look through these -- one, two, three --
9 four applications.

10 COMMISSIONER BALCH: Were you going to
11 share those exhibits?

12 MS. KESSLER: They're of record -- part of
13 the administrative record, so I'd ask they be taken
14 notice of. And I can happily make copies. I just don't
15 have very many of them.

16 MR. BRANCARD: Do you have order numbers?

17 MS. KESSLER: I have case numbers: 15819;
18 Case Number 15687; Case Number 16291; and Case Number
19 16292.

20 Q. (BY MS. KESSLER) Are you familiar with these
21 applications, Mr. Hastings?

22 A. I took over Eddy County in March of this year,
23 so these were done -- let me finish going through to
24 make sure -- most likely before I was overseeing the
25 area.

1 Q. Are these all compulsory pooling applications
2 seeking to compulsory pool the entire Purple Sage Pool
3 in Eddy County?

4 A. Give me a moment to keep reviewing (reading).

5 Q. Sure.

6 A. Okay. Could you ask the question again?

7 Q. In each of those applications, did Cimarex ask
8 to compulsory pool the Purple Sage Pool in Eddy County?

9 A. Yes.

10 Q. And for each of these compulsory pooling
11 applications, did Cimarex request a 200 percent risk
12 penalty?

13 A. Yes.

14 Q. Why did they request a 200 percent risk
15 penalty?

16 A. I'm going to defer that question. I mean, I
17 handle and oversee the geologic side of the regulatory
18 issues, but these are applications that were worked up
19 by our land department.

20 Q. So should the land person answer the question
21 about why they requested a 200 percent risk penalty?

22 A. They may be more qualified than I am.

23 Q. To your knowledge, have each of those four
24 wells been drilled?

25 A. Two of the four have.

1 Q. And did you incur -- was a 200 percent risk
2 penalty applied, to your knowledge?

3 A. I couldn't tell you whether we had parties that
4 did not elect under the pooling order.

5 MS. BRADFUTE: And I'm going to object. I
6 can't remember. One of these or both of these cases may
7 have been dismissed because everybody might have signed
8 a voluntary agreement.

9 MS. KESSLER: Okay.

10 Q. (BY MS. KESSLER) But in each of these cases, a
11 200 percent penalty risk was requested in the Purple
12 Sage Pool in Eddy County; is that correct?

13 A. I think I already answered that question.

14 Q. Does Cimarex have a geosteering program?

15 A. We do.

16 Q. Have you geosteered wells in Eddy County?

17 A. I have. I wanted to understand what our
18 geosteerers go through, and so I've geosteered more than
19 one well. But we have in-house geosteerers that do our
20 geosteering, so I'll work with them and give them
21 targets to utilize, and they'll steer the wells.

22 Q. So there is a specialized group or set of
23 people that take care of that?

24 A. That's correct.

25 Q. Would you agree that when geosteering occurs, a

1 **company undertakes risk in performing that program, in**
2 **performing that geosteering.**

3 A. I'm not sure how you define risk in that
4 respect.

5 **Q. Okay.**

6 A. If you get gamma ray data that correlates well
7 with the type logs used in the geosteer, there is a very
8 high confidence that you are where you think you are in
9 the stratigraphic section.

10 **Q. So in your opinion, there is no more risk of**
11 **not geosteering than there is of geosteering?**

12 A. No. I think it's important to geosteer,
13 because if you drill the well without geosteering, then
14 it's hard to say -- you know, geology is difficult to
15 predict on a -- on a -- over very small intervals, and
16 so you could unintentionally drill in the wrong spot.

17 MS. KESSLER: That's all I have.

18 CHAIRWOMAN RILEY: Mr. Martin, do you have
19 any questions?

20 COMMISSIONER MARTIN: I don't have any
21 questions.

22 CHAIRWOMAN RILEY: Dr. Balch?

23 COMMISSIONER BALCH: I've got a couple of
24 questions.

25

1 CROSS-EXAMINATION

2 BY COMMISSIONER BALCH:

3 Q. Good afternoon, Mr. Hastings.

4 A. Good afternoon.

5 Q. Did you read the response that Chisholm had to
6 the stay order?

7 A. I don't think so.

8 Q. Well, okay. So one of their concerns was
9 formation damage from clay --

10 A. Sure.

11 Q. -- leaving the produced water in there, not
12 flowing back could cause swelling and damage the
13 formation. What's your opinion of that, considering you
14 noted the clay-rich levels inside the Wolfcamp A?

15 A. Yeah. So we don't typically encounter very
16 clay-rich intervals in the interval targeted by these
17 wells, which specifically are the Wolfcamp sands. But
18 where we really see a lot of clay -- again, if you look
19 at the B to B prime on the second page, you don't start
20 to see that separation of the green and red lines until
21 you get quite a bit below the targeted interval. And
22 so --

23 Q. How far is quite a bit?

24 A. Well, let's see. So the third well, the B
25 prime well, Black River 10 Fed 2, was the type log that

1 Chisholm used for the proposed TVD on their AFE at
2 8,650. And so from that landing zone to the top of the
3 A2 is 250 feet, plus or minus 20 feet below.

4 Q. So a little bit outside the frac height that
5 you discussed of around 100 feet or so?

6 A. Correct.

7 Q. But not necessarily out of potential range of
8 the frac -- could occur?

9 A. Sure. But I would say that most of your
10 concern when you're talking about a clay-rich interval
11 is near wellbore that's going to inhibit flow to the
12 wellbore. So if you encounter a clay-rich interval at
13 the outward extents of your fractures, you know, it
14 might -- it would inhibit flow outside of that interval.
15 But what you have in between that clay-rich interval and
16 the wellbore itself wouldn't be inhibited by that high
17 clay.

18 Q. If it was your well --

19 A. Yeah.

20 Q. -- a Cimarex well and you were told to stop
21 your completion and not flowback, what would your
22 opinion of that be?

23 MS. BRADFUTE: And as a point of
24 clarification, Commissioner Balch, Cimarex did not for a
25 stay of the completion operations. They weren't aware

1 of the completions operations when they filed the stay,
2 and then agreed to allow Chisholm to complete the well.

3 COMMISSIONER BALCH: Sure. I'm just trying
4 to establish if there is that risk.

5 MS. BRADFUTE: Yeah.

6 THE WITNESS: Yeah. So in general, that
7 would hurt us because we have forecasted production and
8 expectations that we need to meet, and so that would
9 delay that. And we would try to avoid that if at all
10 possible.

11 Q. (BY COMMISSIONER BALCH) You might have
12 completion contracts and penalties and things like that?

13 A. Sure.

14 But with that said, if we -- if it came to
15 our attention that we went through and bypassed certain
16 obligations leading up to that point, then it becomes
17 out of our control, and it's about doing what's right, I
18 think.

19 Q. So on a 100 percent scale, what do you think
20 the risk of formation damage would be in that 4H well --

21 A. Relative to --

22 Q. -- if you -- if you stopped your completion now
23 and then did flowback?

24 A. Oh. Oh, I'm sorry. Okay. So you mean just
25 post-completion, having the well shut in and

1 assessing --

2 **Q. Not flowing back your frac water.**

3 A. Yeah. So zero percent. We actually have a
4 good sample. One of the best wells we drilled this year
5 is a one-mile Wolfcamp A well, and that well was shut
6 in -- our engineer can clarify the actual time period,
7 but it was shut in for several months post-completion
8 because of water-takeaway issues we had, and we saw
9 excellent results and, in fact, better results than our
10 closest offsets.

11 **Q. No real clay presence in the formation?**

12 A. No. Same landing point as these wells, and so
13 I don't see that as a concern whatsoever.

14 **Q. So if you look on your Exhibit 23, you've got a**
15 **well directly to the north about a mile --**

16 A. Correct.

17 **Q. -- one to the northeast about one-and-a-half**
18 **miles --**

19 A. Yes.

20 **Q. -- and then one eight or so miles to the**
21 **southeast.**

22 A. That's correct.

23 **Q. The two wells to the north average 675,000 EUR,**
24 **and the well to the south averages 900,000 EUR?**

25 A. Yeah.

1 **Q. Your expectation for this entire area would be**
2 **that you would expect those ranges or at least the high**
3 **grades or at least the top targets?**

4 A. What you're seeing is every well targeting the
5 Upper Wolfcamp that's been drilled to date on this map.
6 So we're calling out basically the bounding offsets for
7 the 4H location. And I would absolutely expect some
8 results -- the difference between that DaVinci well you
9 see to the south and the two wells to the north, the
10 biggest difference is that -- I mentioned on the cross
11 section right below that blue line, you don't really get
12 porosity development in the -- what we call the A shale.
13 And farther to the south, we do see that A shale
14 developed as a second target below the Wolfcamp sands.
15 And so it's hard to say --

16 **Q. Extra EUR comes in for the DaVinci well?**

17 A. Perhaps you're getting contribution from the
18 shale below. In addition, this is a Cimarex well that
19 we completed, and we've got high -- we've got a lot of
20 confidence in our completion design and our ability to
21 get as good or better results than another well in the
22 same location.

23 **Q. So no particular concern that these are**
24 **high-grade locations and the best of the best?**

25 A. No. I think they're very correlative. In

1 fact, that DaVinci well is drilling similar nets to both
2 the Red Light and the 4H.

3 And I'll also point out, in previous
4 testimony, there were some Chisholm wells near the Eddy,
5 Lea -- I'm sorry -- Eddy-Culberson County line and the
6 state line that were drilled, and they were used as an
7 example of a well that they thought was going to be
8 prospective but turned out not to be. And one of the
9 drivers there was water cut being different. And those
10 are Chisholm's Cottonwood wells, I believe. And I would
11 argue that the geology is not correlative at all, and
12 you've got thinner nets in your sands.

13 And more importantly, you don't have nearby
14 offsets that are drilled in similar nets to those wells.
15 Your closest offsets are a few miles to the south in
16 Culberson. Whereas, in this location, as we mentioned a
17 few times, you've got the Red Light less than half a
18 mile away and nets that are very similar. You've got
19 the Ghost rider. And so, you know, you've got offset
20 wells and correlative geology with positive results that
21 indicate you could expect a similar result, which is --
22 and then you've got water cuts ranging over a broad area
23 at 83 percent, down to 80 percent without -- so very
24 small delta in the water cuts that you see.

25 So I just think that differs significantly

1 to a situation where you've got locations that are
2 step-outs and don't have nearby wells drilled in similar
3 nets.

4 Q. And you were here for Mr. -- testimony?

5 A. Sorry? Yes, I was here for that.

6 Q. So does Cimarex treat these resource plays
7 differently than Chisholm for purposes of those offsets
8 and step-outs, and you have to be perpendicular or
9 parallel to the well?

10 A. No. I'd say that, especially from a Wall
11 Street perspective, if you will, when you're trying to
12 prove locations, to really have 100 percent proved
13 undeveloped locations, you want to have your location
14 bounded on at least two different sides immediately
15 north and south. And so, you know, it's fair to add --
16 it's fair to say it's not 100 percent proven, but at the
17 same time, there are a lot of other variables you can
18 look at, particularly geologically, where you can
19 make -- make assumptions that -- that prove to be pretty
20 consistent and, you know, proven time and time again
21 that when you look at wells drilled nearby in similar
22 geologic conditions, you get a pretty predictable well
23 result.

24 Q. So pretty low geologic risk in this --

25 A. Very low geologic risk.

1 **Q. So a lot of the risk is going to be on the**
2 **drilling and completions?**

3 A. Yeah. I think, as you mentioned before, in
4 this day and age with horizontal drilling versus
5 vertical, your risk of not encountering oil is -- is
6 almost nil. It's a matter of whether you're going to
7 make an economic well and what you're going to spend
8 drilling it. And so a lot of the times we see really
9 poor results. You've got operational issues where you
10 spend -- you know, having a frac crew on your location
11 or a drilling rig is really expensive on a daily basis,
12 and so if something goes wrong, it can cost you a lot,
13 and that's where I think the bulk of the risk lies.

14 **Q. Yeah. We've seen a case with triple drilling**
15 **costs. We've also seen cases with three- to four-mile**
16 **offset wildcats. So --**

17 A. Sure.

18 **Q. -- in these resource plays, things seem to be**
19 **quite a bit different than in a conventional play where**
20 **even going a couple of quarter sections away might take**
21 **you off a play.**

22 A. Absolutely.

23 **Q. I'm going to ask you a curiosity question.**

24 A. Sure.

25 **Q. So I'm guessing that your drill costs and**

1 completion costs are pretty similar to Chisholm, \$6-,
2 \$7 million for these wells?

3 A. Yeah. It depends on the formation, but they're
4 not far off in general.

5 Q. What kind of EUR do you need to break even?

6 A. That's a question better served for our
7 engineer. And it's highly dependent on what we spend on
8 the well and the agreements we have for what we're going
9 to receive for the hydrocarbons we produce. But, you
10 know, I can tell you that the Red Light and Ghost rider
11 wells offset our economic wells and at our cost would
12 make satisfactory returns.

13 Q. Let's see. 100,000 times, say, 50. Yeah?

14 A. Yeah. Pretty good, \$25 million.

15 Q. That's a pretty good payoff.

16 A. I think so.

17 Q. And probably give money to some poor people at
18 some point.

19 A. Yes.

20 Q. I think I heard you say that for this
21 particular well a 200 percent risk is not needed because
22 the engineering risk has already been resolved; the well
23 has already been drilled and mostly completed.

24 A. Correct.

25 Q. I mean, the risk was there when they drilled

1 the well.

2 A. Correct.

3 Q. I think that's kind of the point. The risk is
4 gone now, but it was certainly there when they drilled
5 the well.

6 A. Yeah. I wouldn't say there was any additional
7 operational risks than you would expect for any other
8 well drilled, but yeah, certainly that risk applies to
9 this well also prior to it being drilled and completed.

10 Q. I believe Ms. Kessler pointed out four cases
11 where Cimarex, in the same pool, asked for a 200 percent
12 risk penalty. Now, whether or not it was assigned or
13 not because of agreements, I don't know, but it seems to
14 be the case that people ask for the 200 percent when
15 it's to their benefit and object to it when it's not.

16 A. Yeah. I'd say as a rule that's, you know,
17 obviously the standard from what I've seen, but I don't
18 think this is a standard instance. This case isn't --
19 you know, there are a lot of variables at play that
20 aren't -- that we don't have at every well we force
21 pool.

22 Q. Thank you.

23 CROSS-EXAMINATION

24 BY CHAIRWOMAN RILEY:

25 Q. So is there an alternate risk penalty that

1 you-all are asking for, or is it, as it's stated in the
2 pre-hearing statement, a no-risk penalty? Are you
3 proposing a different risk?

4 COMMISSIONER BALCH: I think they're asking
5 to reset the period -- the selection period.

6 CHAIRWOMAN RILEY: Well, that's one of
7 them.

8 MS. BRADFUTE: And then the other claim for
9 relief is the risk penalty should be different. And my
10 understanding is the risk penalty, based on the
11 Commission's most recent order, is a multiplier of
12 geologic risk times operational risk that's assessed.
13 And so here, Harry can speak to geologic risk, which is
14 minimal, if any.

15 Q. (BY CHAIRWOMAN RILEY) Okay. So then another
16 clarification is on your relief number three, which is
17 "The entire Wolfcamp Formation will not be developed by
18 the wells." So I feel like I heard a couple of
19 different things in here. One --

20 MS. BRADFUTE: We have not really presented
21 that argument.

22 CHAIRWOMAN RILEY: You haven't done that
23 yet?

24 MS. BRADFUTE: Yeah. And we're not going
25 to, I don't think, today. So I think we're just

1 focusing on our motion.

2 CHAIRWOMAN RILEY: All right. Then I'm
3 done.

4 Mr. Brancard?

5 MR. BRANCARD: I have no questions.

6 CHAIRWOMAN RILEY: Okay. So redirect?

7 MS. BRADFUTE: No redirect. That concludes
8 my questions.

9 CHAIRWOMAN RILEY: Okay. This witness can
10 be dismissed.

11 MS. BRADFUTE: And I'm calling my third
12 witness, Mr. Riser.

13 LONDON RISER,
14 after having been first duly sworn under oath, was
15 questioned and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BRADFUTE:

18 Q. Could you tell us please your name?

19 A. Landon Riser.

20 Q. And who do you work for?

21 A. Cimarex Energy Company.

22 Q. And what is your position at Cimarex?

23 A. Reservoir engineer.

24 Q. And what are your responsibilities as a
25 reservoir engineer with Cimarex?

1 A. So I'm a reservoir engineer for our Eddy County
2 assets, and so among other things, I evaluate well
3 performance, propose wells to be drilled, run cash flows
4 and then just manage our process of getting wells from
5 idea mode to fruition.

6 **Q. And have you previously testified before the**
7 **Commission?**

8 A. I have not.

9 **Q. And could you please explain your educational**
10 **background to the Commissioners?**

11 A. So I have a Bachelor's of Science and a Master
12 of Science in Petroleum Engineering from Texas A&M
13 University.

14 **Q. And could you please describe your work**
15 **experience for the Commissioners?**

16 A. So I have four years and six months -- four
17 years and eight months of industry experience all in the
18 Permian Basin as an engineer.

19 **Q. And was that experience all at Cimarex?**

20 A. No. The first three years and three months of
21 my career were at Hunt Oil Company.

22 **Q. Are you a member of any professional**
23 **associations?**

24 A. Yes. I'm a member of the Society of Petroleum
25 Engineers.

1 Q. Are you familiar with the application that's
2 been filed by Chisholm in Case Number 16027?

3 A. I am.

4 Q. And are you familiar with the status of the
5 lands that are the subject matter of that application?

6 A. I am.

7 Q. And have you compiled a reservoir engineering
8 study related to that application?

9 A. I have.

10 Q. I would like to tender Mr. Riser as an expert
11 witness in petroleum engineering matters.

12 CHAIRWOMAN RILEY: Ms. Kessler?

13 MS. KESSLER: Sorry. No objection.

14 CHAIRWOMAN RILEY: Mr. Riser is accepted as
15 an expert witness. Thank you.

16 Q. (BY MS. BRADFUTE) Mr. Riser, have you been
17 present for the hearing today?

18 A. I have.

19 Q. And have you heard testimony from various
20 witnesses from Chisholm admitting that they have changed
21 their development plans from what was originally
22 proposed in the pooling applications filed in this case?

23 A. I have.

24 Q. To your knowledge, was Cimarex ever notified by
25 Chisholm about those changes in development plans?

1 A. Not to my knowledge.

2 Q. Okay. And how does changing a development plan
3 from three wells that are going to be pad drilled and
4 simultaneously completed to a one-well development plan
5 change Cimarex's analysis on the development in this
6 area?

7 A. Well, the way we look at it when we do that is
8 it's a material economic change to -- on a per-well
9 basis for a three-well project versus just a single
10 well. So it's a material change to the economics of the
11 project.

12 Q. And is it your understanding that that
13 development change on Chisholm's behalf was made because
14 of a decrease in the number of rigs that are operating
15 in Eddy County?

16 A. I have to assume that that's -- that was a
17 statement by Chisholm's representative as one of the
18 reasons.

19 Q. And did you hear any testimony today indicating
20 that that change was made because of reservoir risks in
21 the area?

22 A. I did not. Quite the contrary, actually.

23 Q. Could you please flip to Exhibit 17 in the
24 packet in front of you? Is it your understanding that
25 Chisholm now seeks to drill a single Wolfcamp A well

1 that's going to develop the west half of Sections 3 and
2 10?

3 A. Yes.

4 Q. Okay. And generally speaking, in your opinion,
5 is there any reservoir risk associated with that
6 development?

7 A. There is not.

8 Q. And why is that?

9 A. Because you have a strong result immediately to
10 the north. I have a following exhibit that'll show that
11 in the worst case -- the worst well out of this entire
12 section of the offset Wolfcamp A wells to this requested
13 proration unit, in the worst case, with Chisholm's cost
14 structure and some other very conservative assumptions
15 on Chisholm's behalf, that the economics are strong to
16 stellar that any operator that currently operates in the
17 Delaware Basin would have in their portfolio and be
18 happy to drill.

19 Q. Let's back up and let's take a look at Exhibit
20 17. Could you identify what that document is?

21 A. Exhibit 17? So this is just a base map showing
22 all the Wolfcamp As or the nearest offset Wolfcamp A
23 wells to the requested proration unit of the Black
24 River 3 10. As you can see on the legend on the top
25 right, these wells are colored by operator and they're

1 shaped by the year of their first production.

2 Q. And you have studied all of these wells that
3 are shown here within this map?

4 A. I have.

5 Q. Okay. And you've studied the production from
6 each of those wells, the production numbers?

7 A. Yes. I've -- yes.

8 Q. And for wells operated by Cimarex, have you
9 looked at the cost to drill those wells?

10 A. The cost for Cimarex to drill the wells?

11 Q. Yes. Or did you look at the cost of Chisholm's
12 proposed costs?

13 A. I did. I did.

14 Q. Okay. And so you were basing your study based
15 on the wells shown on this map, which are all Wolfcamp A
16 wells, correct?

17 A. Correct.

18 Q. And then you looked at production from each of
19 those wells, correct?

20 A. Correct.

21 Q. And you have further looked at the estimated
22 costs provided by Chisholm within its exhibits for this
23 hearing, correct?

24 A. Yes.

25 Q. And I want to quickly look back at Chisholm's

1 exhibits. Could you turn to Exhibit Number 6 in
2 Chisholm's exhibit packet in front of you. Mr. Riser,
3 could you look at the smaller Chisholm packet in front
4 of you?

5 A. The one with the one well?

6 Q. Yes. Yes.

7 A. Okay.

8 Q. And it's Exhibit Number 6.

9 A. Uh-huh.

10 Q. Earlier this morning, Chisholm's experts
11 testified that this was an estimated well-cost statement
12 that has more recently been conducted by Chisholm after
13 it sent out its AFEs. Have you reviewed the cost within
14 this statement?

15 A. I have.

16 Q. And the cost listed after they conducted some
17 drilling operations is \$7,288,543, correct?

18 A. Correct.

19 Q. So now after looking at the information that
20 was used to compile your study which is shown in Exhibit
21 17, I'd like you to turn to the next exhibit, Exhibit
22 18. Could you please explain what is shown in Cimarex's
23 Exhibit 18?

24 A. So this is an oil rate versus time normalized
25 up to 9,500 foot to account for a two-mile well that

1 Chisholm just drilled, their Black River 4H. And it's
2 showing the oil rate versus time for all the wells shown
3 in the previous exhibit of that -- or that base map
4 Wolfcamp A wells. And then in addition to that, we have
5 a -- you know, three dashed lines, three dashed curves,
6 the top one representing an 1,100 MBo EUR curve, the
7 middle one at 900 MBo curve, and then the lower one, a
8 700 MBo curve.

9 **Q. And what does this information tell you about**
10 **the Wolfcamp A wells that are producing in the area?**

11 A. Well, it tells you that not only is there a
12 well with -- there is not a well in the area, when you
13 consider a poor result. If we were to run this low case
14 model, a 700 MBo curve, at Chisholm's cost structure, a
15 semi-aggressive opex model, a current strip file
16 accounting for the MidCush blowout differential, we're
17 looking at about a 72-percent-rate-of-return project.

18 **Q. And that's a pretty good rate of return, right?**

19 A. It's very good. And, again, that assumes the
20 low case example here, not the midpoint average of this
21 distribution.

22 **Q. Could you please turn to the next exhibit,**
23 **Exhibit 19, and could you please identify what this**
24 **document is?**

25 A. So this is just sort of another way of looking

1 at the previous exhibit. This is cumulative oil
2 production normalized to 900 feet versus time. And,
3 again, we have the same 1,100 MBo type curve, 900 in the
4 middle and 700 at the bottom. So it's just another way
5 of looking at the previous plot. And you can see just
6 from this plot that, you know, the 1,100 down to the 700
7 pretty well bounds the full distribution of these 13
8 Wolfcamp A wells that are nearest offsets to this Black
9 River 4H.

10 **Q. And based on your study of these Wolfcamp A**
11 **wells drilled within the area, what is your opinion**
12 **concerning risk?**

13 A. Reservoir risk, economic risk, essentially
14 none. Essentially none, based on an immediate offset to
15 the north. We've already discussed -- we've already
16 discussed the similarities in geology, and, you know, my
17 previous statements that the current strip file, you
18 know, is just the marker of the standards we use,
19 everybody uses to make decisions. If we're on the very
20 low end of this distribution, which would mean, you
21 know, it's the worst well, it's a great economic result.

22 **Q. And the worst well, is that the 72 or the 75**
23 **percent return --**

24 A. Correct.

25 **Q. Have you analyzed what volumes of production**

1 **are needed to achieve payout for the 4H well?**

2 A. Yes. Again, so with the same model that I
3 mentioned previously, in just adjusting the decline
4 model to get to an EUR to where your PV10 -- is barely
5 PV10 positive, it's about 300 -- a little over 300 MBo,
6 which clearly that would be less than half of the worst
7 well we've seen to date.

8 Q. And were you present during the hearing for
9 Chisholm's engineer's testimony about the economic
10 analysis that Chisholm has performed for the 4H well?

11 A. I was.

12 Q. And have you performed your own analysis and
13 put something on paper related to production from the 4H
14 well?

15 A. Sorry. Could you repeat that?

16 Q. Have you performed your own analysis and ran
17 numbers concerning the 4H well?

18 A. Yes. Everything I've referred to prior to this
19 is in reference to a model trying to mock up this exact
20 project.

21 Q. And is this the analysis that you conducted?

22 A. It is.

23 Q. Mr. Riser, could you kind of walk us through
24 what that analysis shows?

25 A. Sure. So just starting at the top, we have a

1 title. This is one sensitivity. This cash-flow model
2 assumes water disposal at 75 cents, and so the opex is
3 based on that assumption. There is a lot to impact
4 here. This is basically a spreadsheet output of an
5 ARIES case run with, you know, the model I showed
6 previously, the low case oil as far as the production
7 schedule. Chisholm's AFE -- the most recent updated AFE
8 is built into the investment portion of this model. GOR
9 is based on the offset wells in the area as far as their
10 profile, and then you can see here, once this model is
11 run, the oil reserve, 675 MBo.

12 Looking in the middle portion of the bottom
13 of this cash flow, we've got an internal rate of return
14 of just under 74 percent, and then the discounted payout
15 years of basically two years and three months.

16 Seventy-five cents a barrel is based on kind of market
17 value right now to dispose of water on pipe. And so I
18 ran -- for my opex, I ran a base fixed cost of \$10,000 a
19 month, which is more than adequate to cover, you know,
20 non-water-disposal-related costs, which water disposal
21 is far and away the highest cost, particularly in the
22 Delaware Basin.

23 **Q. Are there any other important variables in**
24 **there?**

25 **A.** Well, the PV10, the \$4-and-a-half million.

1 Again, this was run at Chisholm's working interest and
2 their NRI.

3 Q. Okay. And did you calculate Chisholm's working
4 interest based on the information that they presented in
5 their exhibits during the Division hearing on April 5th?

6 A. I did.

7 Q. Okay. And did you run this analysis also using
8 the AFE costs that were proposed in Chisholm's initial
9 well-proposal letter?

10 A. I used their most recent one, with the 5
11 percent, roughly, increase.

12 Q. Okay. And Chisholm's proposed well costs were
13 actually lower than were attached in their AFEs; is that
14 correct?

15 A. The previous?

16 Q. Yes, the previous.

17 A. Yes. The most recent one is about a 5 percent
18 increase from the initial.

19 Q. Okay. And so had you used costs from what they
20 had initially proposed, the payout would have been
21 greater?

22 A. Yeah. Not materially, but yes, it would have
23 been improved.

24 Q. I want to talk a little bit about operations
25 risk in this area. Have you reviewed the exhibits that

1 Chisholm presented to the Division during the April 5th
2 hearing?

3 A. Yes.

4 Q. And when you reviewed those exhibits, did you
5 see anything that indicated to you that there were
6 operations risks that were unusual with drilling the
7 three wells that have been proposed by Chisholm?

8 A. Nothing unusual from drilling any other well in
9 the basin.

10 Q. Okay. What is an unusual operating risk? I
11 mean, what would be a situation where Cimarex would
12 identify: This is a really risky area to operate in?

13 A. Somewhere where there is known -- known
14 faulting. You could potentially get lost returns, lose
15 well control, somewhere that's an extreme step-out or,
16 you know, targeting a deeper interval to where you do
17 not know the pore pressure. Those are two that come to
18 mind immediately.

19 Q. Do you see any of those factors here within the
20 project area?

21 A. I do not, no.

22 Q. Mr. Riser, in your opinion, should a 200
23 percent risk penalty be granted by the Commission in
24 this case?

25 A. In my opinion, no.

1 Q. Why not?

2 A. I just feel there's no risk that applies to
3 that -- to this -- this project. I just don't believe
4 it's applicable.

5 Q. Is this a well that Cimarex would feel
6 comfortable drilling in this area?

7 A. It is. And we actually have tentative plans --
8 more than tentative plans. We have fairly firm plans to
9 drill a well, offset this well, in the east -- to the
10 east within the next year.

11 Q. Okay. And were those plans on Cimarex's drill
12 schedule before the pooling hearing before the Division?

13 A. Yes.

14 Q. Okay. And, Mr. Riser, just to confirm, is it
15 your opinion that there are no reservoir risks within
16 the project area?

17 A. That is my opinion.

18 Q. Okay. And is it your opinion that the
19 operational risks within this area are minimal for
20 horizontal development?

21 A. Yes.

22 Q. That concludes my -- oh, Mr. Riser, were
23 Exhibits 17 through 19 and Exhibit 24 prepared by you or
24 compiled under your supervision and direction?

25 A. Yes, they were.

1 MS. BRADFUTE: I would like to tender
2 Exhibits 17 through 19 and Exhibit 24 into the record.

3 CHAIRWOMAN RILEY: Ms. Kessler, do you have
4 any objections to the exhibits?

5 MS. KESSLER: Oh, no. No objections.

6 CHAIRWOMAN RILEY: So 17 through --
7 Exhibits 17 through 19 and Exhibit 24 are accepted, for
8 the record.

9 (Cimarex Energy Company Exhibit Numbers 17
10 through 19 and 24 are offered and admitted
11 into evidence.)

12 CHAIRWOMAN RILEY: Do you want to start
13 your cross?

14 MS. KESSLER: Thank you.

15 CROSS-EXAMINATION

16 BY MS. KESSLER:

17 Q. Mr. Riser --

18 A. Yes.

19 Q. -- could you please turn to Chisholm's Exhibit
20 12? How many two-mile wells does Cimarex have in this
21 area?

22 A. Within this map right here?

23 Q. Yes.

24 A. We do not have any.

25 Q. Would it surprise you to know that there are

1 **only two two-mile wells in this area?**

2 A. No, it would not.

3 **Q. Do you believe that there are any additional**
4 **risks associated with drilling two-mile wells?**

5 A. As opposed to one-mile wells?

6 **Q. One-mile wells.**

7 A. Perhaps.

8 **Q. What might those risks be?**

9 A. From an operational standpoint drilling?
10 You've got more torque and drag. You're in the well
11 longer. You've got more pipe, more stress. All that
12 said, where it's possible, companies are drilling
13 two-mile wells because the risks -- or the reward is
14 worth the risk.

15 **Q. But there are risks, which you just enumerated?**

16 A. Yeah, perhaps. Yes, there are risks.

17 **Q. And companies may be drilling two-mile wells,**
18 **but there are only two in this area?**

19 A. So I would just like to add that I think a lot
20 of these wells in this selection that you-all chose are
21 drilled and operated by Matador, and that's sort of been
22 their preference for whatever reason. A lot of those
23 are 2016, 2017. And, you know, however their acreage
24 position is set up, they chose to drill one-mile wells,
25 and they continue to this date.

1 Q. Is there a better exhibit in this area showing
2 more two-mile wells?

3 A. In this area? In this exact map?

4 Q. Showing the area at question. So showing the
5 subject spacing unit and the Purple Sage; Wolfcamp wells
6 in the area, are there more two-mile wells?

7 A. Are you asking if I'm claiming that there are
8 two-mile wells that aren't listed here?

9 Q. No. I'm asking if, in one of these exhibits,
10 there is another exhibit that shows more two-mile wells
11 in any area?

12 A. I'm not aware of that.

13 Q. Does Cimarex have plans for the offsetting
14 acreage to drill a two-mile well?

15 A. Are you talking about in the east half of 2 and
16 3?

17 Q. Right.

18 A. Yeah. I just got through saying that we have
19 plans probably in the next calendar year to drill a well
20 1,000 feet offset to the east.

21 Q. Okay. So it would be a two-mile well?

22 A. It would be --

23 Q. It's not two one-miles?

24 A. Exactly. Yeah. We generally don't drill
25 one-mile wells. So, you know, back to your question

1 about risk, yeah, perhaps there is some nominal risk,
2 but we drill one-mile wells only when we absolutely have
3 to. Two miles is the thing, and that's, like we said,
4 for just about everybody in the industry, almost.

5 **Q. Will you have to compulsory pool the well in**
6 **the east half of Sections 3 and 10?**

7 A. That's a question better asked for the landman.

8 **Q. Okay. If you do have to compulsory pool, can**
9 **you warrant to the Commission today that you will not**
10 **request a 200 percent risk penalty?**

11 A. I can't. I can't say that.

12 **Q. Did you hear Ms. Pierce testify earlier if**
13 **Cimarex was offered a new election period -- I believe**
14 **her testimony was something like Cimarex would consider**
15 **electing or not electing?**

16 A. Uh-huh.

17 **Q. Is that a fair representation of what she said?**

18 A. Would you repeat that, please?

19 **Q. Sure. It's the end of the day.**

20 **If Cimarex was offered a new election**
21 **period --**

22 A. Uh-huh.

23 **Q. -- in your opinion, would Cimarex elect or not**
24 **elect?**

25 A. So my opinion is in line with hers. I refer to

1 her statements.

2 Q. Which would be?

3 A. Which would be that we're not sure. We'd like
4 the opportunity to re-evaluate.

5 Q. Okay. Why would you not elect in a well with a
6 70 percent rate of return?

7 A. For the same reasons that she answered
8 previously.

9 Q. Which was?

10 A. Do you remember what that was?

11 Q. No.

12 A. Okay. So we -- we have a constrained non-op
13 budget to reach by the end of the year, and we, as a
14 company, prefer to operate our stuff. You know, we
15 can't do that everywhere. But in a situation where we
16 have a considerable working interest -- you know,
17 considerable being, let's say, double digits, 10 percent
18 or more -- any chance we get, we like to trade out, make
19 a trade, swap, for lack of a better phrase, get out of
20 each other's way, to where we kind of control our own
21 destiny, timing, how we go about it, our cost structure,
22 our timing structure, things of that nature. And so,
23 you know, that's sort of our preference.

24 While yes, I've stated multiple times today
25 that this well appears to be a really attractive

1 economic project, we'd just as soon swap out a term
2 assignment and drill our own good wells just to be -- in
3 this particular part of the basin.

4 Q. So is it the company's position that they don't
5 participate in other operator's wells?

6 A. That is not the company's position universally.
7 No.

8 Q. Now, you've testified that there is a limited
9 budget, correct?

10 A. Sure.

11 Q. Now, this was initially proposed as a
12 three-well project, but it's gone down to a one-well
13 project. Why would that influence Cimarex's decision to
14 participate or not based on budget constraints?

15 A. Could you reword? I don't think I understand.

16 Q. Sure. If Chisholm is going from drilling three
17 wells to only drilling one well, that would be less
18 money, correct?

19 A. Correct.

20 Q. So why would that be a budget issue for
21 Cimarex?

22 A. Well, I mean, that assumes that the three-well
23 is materially different than the one well. So --

24 Q. I'm probably not being clear. We were
25 initially -- Chisholm was initially going to drill

1 **three separate wells --**

2 A. Correct.

3 Q. -- and there was going to be an election for
4 **each of those three wells.**

5 A. Yes.

6 Q. Now you're only electing for one well --

7 A. Right.

8 Q. -- so it's considerably less capital for
9 **Chisholm -- for Cimarex, correct?**

10 A. So it's considerably less, but it still could
11 exceed the threshold that we have currently.

12 Q. You also testified that there was no risk or
13 **very limited risk operationally; is that correct?**

14 A. Relative to the risk that is the oil and gas
15 business, yes.

16 Q. Why would Cimarex not participate in a well
17 **where there was no risk or very limited risk?**

18 A. Well, I answered that a couple of questions
19 ago, with our preference to not participate in non-op,
20 wells or spacing units when we can. And so that's why
21 we've been actively trying to work this agreement.

22 Q. So regardless of -- regardless of how
23 **attractive this prospect may be, Cimarex would not want**
24 **to participate; they would want to reach a different**
25 **kind of deal?**

1 MS. BRADFUTE: Object to form. I'm not
2 sure that's what he testified to.

3 MS. KESSLER: Okay.

4 CHAIRWOMAN RILEY: Can you rephrase?

5 Q. (BY MS. KESSLER) Regardless of how attractive
6 or how little risk there may be in a project, Cimarex
7 would always want to reach some type of agreement that
8 was not participating?

9 A. You said "always." That's a -- that's a --
10 that's a strong word.

11 Q. How about most of the time?

12 A. That's probably not for me to answer.

13 Q. Okay. That's all I have. Thank you.

14 CHAIRWOMAN RILEY: Thank you.

15 Anything from the Commission?

16 COMMISSIONER MARTIN: I'm good.

17 CROSS-EXAMINATION

18 BY CHAIRWOMAN RILEY:

19 Q. I just have a couple, and I don't know if you
20 can answer these. But I know that you're referring to
21 Exhibit 18, the two-mile normalized, that these wells
22 were looked at normalized for the two-mile. Do we know
23 which of the two wells are the two-mile wells?

24 A. Yes. So the southernmost well, the DaVinci
25 Federal Com 6H, that is a two-mile well. The Ghost rider

1 25-36 is a two-mile well. Also on here is -- the
2 northernmost well, the Wolfman is a two-mile well. So
3 on my map, there are -- there are three.

4 REDIRECT EXAMINATION

5 BY MS. BRADFUTE:

6 Q. Mr. Riser, is the Roadster State Com 1H also a
7 two-mile?

8 A. Yes. Thank you. So is the Roadster.

9 CHAIRWOMAN RILEY: I don't see that.

10 THE WITNESS: The Roadster is sort of in
11 the middle of the map. Yeah.

12 Q. (BY MS. BRADFUTE) And, Mr. Riser, are there two
13 additional wells that have recently been drilled and not
14 completed that aren't on this map that are two miles
15 long? The Ghost rider --

16 A. Yes. Yes. The Ghost rider is in the east half
17 of the Ghost rider section. Yes.

18 CONTINUED CROSS-EXAMINATION

19 BY CHAIRWOMAN RILEY:

20 Q. Okay. And I don't know that this is relevant
21 for what we're looking at, but just out of curiosity, do
22 you know why, looking again at your Exhibit 18, that
23 just before the one-year mark, nearly all of these wells
24 decline in production strongly?

25 A. Well, so -- yeah. So if you see something with

1 a drastic drop, that's sort of a nonphysical thing.
2 That's downtime related to -- could be a multitude of
3 things that I'm not privy to, offset development for --
4 some shut-in for offset development, any number of
5 things, artificial lift change-out.

6 COMMISSIONER BALCH: That's ironic.

7 CHAIRWOMAN RILEY: Yeah.

8 Q. (BY CHAIRWOMAN RILEY) It's just ironic that
9 they're all literally fall --

10 A. It is. But anytime you see something that's
11 that drastic, you know it's nonphysical.

12 Q. Okay. And then looking at your model, so that
13 I understand it correctly, looking at longitudinal
14 production is showing a BOP of just under 800 barrels.
15 Am I looking at that correct?

16 A. Are you talking about the cash flow?

17 Q. Yeah, the cash-flow model. So whose prediction
18 is that? Is that off of your prediction, or is that off
19 of Chisholm's?

20 A. That's mine. But I'm glad you asked.

21 So if you look at the gross wet gas MCF per
22 day, that volume, that 1,785, you know, that's based on
23 a GOR profile associated with the oil production
24 schedule, and that number is very close to the number
25 that they submitted on their -- on their flare permit

1 and submitted with the OCD in the event that they had a
2 gas pipeline shut-in.

3 So I'm assuming, if you back that out, that
4 my model, at least in terms of the peak month production
5 in terms of oil phases, is probably very close to how
6 Chisholm's model is.

7 Q. Okay. That sounds like a reasonable way to
8 approach that.

9 So 800 per IP, 800 barrels, then falls into
10 your MBo curve of in between the lowermost and the
11 medium?

12 A. Right. This model is -- I mean, it's a carbon
13 copy of this low dashed line model. That's the low
14 case.

15 Q. It would be in between those two, wouldn't it?

16 A. No. It's -- it's right on it. This is a log
17 scale on the vertical axis, so it compresses as you move
18 up each quarter magnitude.

19 Q. Okay.

20 A. And so it might throw you off a little bit.

21 Q. Okay. Okay. Those are all my questions.

22 Thank you.

23 CROSS-EXAMINATION

24 BY COMMISSIONER BALCH:

25 Q. I have some questions along the same line for

1 you, Mr. Riser.

2 So what would be the EUR for -- I'm not
3 very good at reading this. My eyes are not that great
4 for the numbers. But what's the EUR?

5 A. The EUR for this cash-flow model?

6 Q. Uh-huh.

7 A. Yeah. So it's 675,000 barrels of oil.

8 Q. Okay. So that's actually slightly below your
9 700,000 curve.

10 A. Okay. So I'm glad you brought that up. What
11 these curves are is they're noneconomic. They're
12 50-year volumes.

13 Q. 50-year. Okay.

14 A. Right.

15 Apply that same model and then apply an
16 opex that goes to life, and then there is -- there is an
17 economic limit that takes over and cuts off the well's
18 life and says that's the economic EUR. So that's what
19 you're seeing here.

20 Q. All right. So what would be the 50-year model
21 so I can look at this Exhibit 19 correctly?

22 A. So the 50-year model would be 700.

23 Q. So it would be a 700?

24 A. Yes.

25 Q. Okay. So really it's kind of on the bottom end

1 of the curve, but it's still a 70-percent-rate-of-return
2 well?

3 A. That's what I'm trying to show.

4 Q. That's pretty darn good.

5 A. Yes.

6 Q. And in that case, you're looking at two years,
7 three months for -- to break even, right?

8 A. Correct, discounted 2.7 years, so
9 two-and-a-quarter years, three months.

10 Q. Five years, not counting the surface facilities
11 and other costs before force pooling would start to see
12 anything.

13 A. So I believe that Chisholm's AFE --

14 Q. It's not exactly five years, actually. It
15 would be more like six or seven years.

16 A. Oh, are you saying on a --

17 Q. If you were being force pooled under this well.

18 A. With a 200 percent deal?

19 Q. Yeah.

20 A. Yeah. It's not linear, I don't think.

21 Q. It's actually worse. So two and a quarter
22 turns into, I want to say, six to seven years --

23 A. I would think.

24 Q. -- before you see any return. And that's not
25 counting penalties -- or penalties assessed for surface

1 **facility development, things like that.**

2 A. Well, I think we're all under the assumption
3 that Chisholm's AFE included facilities, if you would
4 like me to speak to that.

5 Q. **So this is pretty much kind of the**
6 **bottom-of-barrel well that you would expect to see in**
7 **this area?**

8 A. Yeah. If this well -- if Chisholm's well
9 performs like the worst well on a -- basis of anywhere
10 within, you know, a 12-mile radius, then --

11 Q. **So I can see why Cimarex would not want to be**
12 **involved at 200 percent because it might be six or seven**
13 **years before they would start to see that return. Now,**
14 **ultimately, it would pay off very well, but six to seven**
15 **is a long time in shareholder quarters.**

16 A. It is.

17 Q. **Interesting. Okay.**

18 A. That's 24 meetings, right?

19 (Laughter.)

20 Q. **And how many stock market reports, right?**

21 A. Yeah.

22 Q. **A lot.**

23 **So you're tasked much like your geologist.**
24 **You're almost a one-man shop.**

25 A. Yeah. We do run -- like he said, we run pretty

1 lean.

2 Q. Any sort of partnership agreement would come to
3 you and to him, and you would evaluate it and say,
4 "We're going to get our money in seven years"?

5 A. Right.

6 Q. Or whatever number you use to give to
7 management that they want to make a decision based off
8 of?

9 A. Yeah. We're lean, but we're a lot like anybody
10 else. We do the work. We put it together and present
11 it to management and present our recommendation, and
12 they either agree or disagree, and we might reiterate.

13 Q. Right.

14 And no wells in that area are really below
15 that curve? Everything is above it?

16 A. Right.

17 You can extend the map to the east or even
18 the northeast, like Chisholm had as one of their
19 exhibits, and, you know, those wells would even improve
20 the distribution. So we try to keep it a little bit
21 closer and more representative of, you know, where we
22 are in the basin.

23 Q. Earlier there was testimony that there were two
24 two-mile wells. At least in your data, there are five,
25 including the new 4H, out of nine of ten wells, so it

1 **seems to be the direction people are going.**

2 A. Right.

3 And, you know, Chisholm asked me about
4 operational risk of two miles, but we wouldn't be here
5 right now if they would have drilled a one-mile in
6 Section 3, is my understanding. So it indicates to me
7 the risk is more over one mile relative to what they
8 stand to gain in value.

9 Q. Right.

10 Now, the Roadrunner well is a
11 mile-and-a-half lateral, I guess?

12 A. The Roadrunner? The Roadster. That's a
13 two-mile. That's a two-mile well. But there are some
14 Roadrunner wells about eight or ten miles south.

15 Q. I'm thinking of those two-miles directly to the
16 north. So you have --

17 A. The Red Light?

18 Q. The Red Light. That's it. The
19 mile-and-a-half.

20 A. That's 6,800-foot lateral.

21 Q. And the other one, the one that is a little bit
22 northeast --

23 A. That's the --

24 Q. -- that's a two-mile.

25 A. -- Ghost rider.

1 Q. And that one has, essentially, 25 percent more
2 EUR -- EUR than the mile-and-a-half well.

3 A. Right.

4 And we happen to have daily data on that
5 well, and so that kind of helps clarify some things,
6 particularly when you only have six months of data or
7 four months of data. If you've got dailies, it's like
8 you can protract out -- you can almost protract out what
9 the well's going to do relative to --

10 Q. So I guess my question would be: Even on a
11 limited budget -- I'm going to follow Ms. Kessler on
12 that -- if you're not going to see money for six or
13 seven years at a 200 percent penalty, then why not
14 participate?

15 A. It's just -- it's a little bit against our
16 business model.

17 Q. It's just not your corporate philosophy.

18 A. (Indicating.)

19 Q. Thank you very much.

20 A. Thank you.

21 CHAIRWOMAN RILEY: Mr. Brancard?

22 MR. BRANCARD: Oh, I just had a concern
23 over Exhibit 24. What I was given shows a rate of
24 return of 34 percent, maybe because you gave me the one
25 that is water at \$3 a barrel.

1 MS. BRADFUTE: Oh.

2 THE WITNESS: That's a second sensitivity
3 that I ran to show --

4 MS. KESSLER: I got one of those, too.

5 MR. BRANCARD: And the court reporter needs
6 a copy.

7 COMMISSIONER MARTIN: I want to invest in
8 your well.

9 COMMISSIONER BALCH: I must have a
10 saltwater disposal well.

11 MS. BRADFUTE: Who needs 24?

12 THE WITNESS: So you just have a question
13 about it?

14 MR. BRANCARD: No. I just -- there was a
15 little confusion on the exhibits.

16 THE WITNESS: I'll just clarify that the
17 only difference between these two cash-flow models is
18 assuming the water disposal cost at \$3 a barrel if
19 Chisholm had to haul water to a disposal for the life of
20 the well, which is probably unrealistic. But
21 nonetheless, I just wanted to show that on a worse case
22 on top of a worse case, there is still money to be made.

23 RECROSS EXAMINATION

24 BY COMMISSIONER BALCH:

25 Q. What kind of -- what kind of rate of return on

1 investment does Cimarex look for normally? What are you
2 attempting?

3 A. That's tough to say.

4 Q. I know it's a moving target, but you've got to
5 beat [sic] mutual funds, right, and then you add in
6 risk?

7 A. Yeah. Yeah. I'd like to punt there, if I may.

8 Q. Small producers would say three times; three
9 times.

10 CHAIRWOMAN RILEY: I think we're back to
11 you.

12 MS. BRADFUTE: Okay. I have no further
13 questions for this witness.

14 RECROSS EXAMINATION

15 BY MS. KESSLER:

16 Q. You said that you would -- that part of your
17 responsibilities is to make recommendations to
18 management.

19 A. Uh-huh.

20 Q. Would you recommend to your management that you
21 participate in this well?

22 A. I'm not sure yet.

23 Q. Okay.

24 A. I don't know.

25 MS. BRADFUTE: I do have a follow-up

1 question.

2 REDIRECT EXAMINATION

3 BY MS. BRADFUTE:

4 Q. In part of recommending if you're going to
5 participate in a well, does part of your decision have
6 to do with your dealings with the partner who has been
7 proposing the well to date?

8 A. It is. It's not something you can -- so we're
9 in the business of making money, and it's not something
10 you can quantify monetarily necessarily. But yeah,
11 business is in part about relationships and having a
12 strong one that you have confidence in, you know, know
13 there is good faith involved is much more likely to get
14 your attention, everything else being equal. So I
15 would -- I would say yes, relationships play a part in
16 our decision-making.

17 Q. And Cimarex and Chisholm are still trying to
18 reach an agreement in this matter, correct?

19 A. Correct.

20 Q. But currently as it stands, Chisholm has backed
21 out of the deal that it agreed to twice now, correct?

22 A. That's my understanding.

23 Q. Okay. So that creates some additional
24 management discussions that occur when you're deciding
25 whether or not to participate in the 4H well; is that

1 **right?**

2 A. Yes.

3 **Q. So it changes the scenario a little bit from a**
4 **typical scenario when you're just handed a well proposal**
5 **with a company you deal with on a regular basis and have**
6 **a good relationship with?**

7 A. It does.

8 MS. BRADFUTE: That concludes my questions.

9 CHAIRWOMAN RILEY: This witness can be
10 excused.

11 Do you have any more questions?

12 Do you want to do closing statements?

13 MS. BRADFUTE: Do you want to do closings
14 today or do written closings?

15 MS. KESSLER: I would be happy to do
16 closing right now and then --

17 CHAIRWOMAN RILEY: Can we take maybe a
18 five-minute break?

19 MS. BRADFUTE: Yeah. That sounds good.

20 (Recess, 4:49 p.m. to 4:55 p.m.)

21 CHAIRWOMAN RILEY: Back on the record.

22 Should we do a rock-paper-scissors draw?

23 CLOSING ARGUMENT

24 MS. KESSLER: Members of the Commission,
25 there are two issues here. The first is the good-faith

1 issue and election period extension that's been
2 requested by Cimarex, and the second is the risk
3 penalty.

4 With respect to whether or not these
5 parties have been negotiating in good faith,
6 negotiations have been ongoing since January. I mean,
7 you saw as late as this afternoon, we were still trying
8 to make something happen. There has been no lack of
9 communication. The parties have, in good faith, been
10 trying to reach an agreement, but they haven't. And at
11 some point, we just have to move forward. The well's
12 been drilled. Chisholm needs to move forward with
13 flowing the well back. At some point there needs to be
14 some decisiveness, and we cannot seem to get there.

15 Chisholm does object to a new election
16 period that would be -- that might potentially result
17 from this order. Chisholm would be delighted if Cimarex
18 was a partner in this well, but the time for continuing
19 negotiations regarding the term assignment -- I'm
20 sorry -- the term assignment has been finalized.
21 Regarding the letter agreement, at some point that has
22 to end, and that needs to be now.

23 With respect to the risk penalty, you know,
24 hindsight is a wonderful thing. This well has been
25 drilled and completed and will be flowed back very

1 shortly.

2 With respect to the geologic risk, the SEC
3 designation was probable. You've seen maps showing that
4 there were other wells to the north and that the
5 isopach -- the net isopach for the two intervals at
6 issue showed the reservoir degraded as you move
7 southwest towards our well.

8 Trying to make contact for geosteering for
9 a two-mile well with between 20 and 25 feet of net pay
10 is not an easy thing, and that does not come without
11 risk. And operationally, a two-mile well has the risk
12 associated with -- that Cimarex's own witness pointed
13 out. And there is a very simple solution to avoid a 200
14 percent risk penalty, and that's simply to participate.

15 So that's all I have. I would ask that
16 this order from the Division be reaffirmed with the
17 exception that we do agree to a new 30-day election
18 period for Cimarex to participate.

19 MR. BRANCARD: And you're only dedicating
20 it to one well?

21 MS. KESSLER: Correct.

22 CLOSING ARGUMENT

23 MS. BRADFUTE: Commissioners, thank you for
24 taking the time and the day to hear the parties' cases
25 in this matter.

1 The dealings between these two parties have
2 been difficult, to say the least, and they may continue
3 to be difficult as the parties move forward. But the
4 facts that were stated routinely from witnesses from
5 Chisholm and Cimarex throughout the hearing today
6 confirm that the parties reached a deal in principle
7 before the Division hearing on April 5th. Nobody
8 contests that. And part of that agreement was that
9 Cimarex wouldn't contest issues at the Division level.
10 Cimarex at all relevant times thought that that
11 agreement was in place and didn't have notice until
12 after Chisholm was very close to starting completion
13 operations of the well.

14 Cimarex timely filed a de novo appeal with
15 the Commission to preserve its rights to raise any
16 challenges and objections that it had to Chisholm's
17 development plans in the area, and it had some issues
18 with the risk penalty in this case.

19 Cimarex greatly appreciates the new
20 opportunity to participate in the well, and that's a new
21 development, because starting on January 26th, Chisholm
22 took the viewpoint that there was no new election period
23 in the well and they would be subject to the 200 percent
24 risk penalty, which is why we're here today.

25 When you look at the decision that a

1 company makes when they're deciding whether or not they
2 want to participate in a well, there are a variety of
3 factors that go into that decision. Likewise, when
4 operators want to drill wells, there are a variety of
5 factors that go into that decision.

6 Here, Cimarex is looking at its partner,
7 potentially. It's got a 21 percent working interest
8 within this development plan. It's looking at when it
9 could potentially see any money from this well, and it's
10 looking at the risk involved. And here, it knows that
11 there is no risk involved in drilling this well. There
12 is no geologic risk. Chisholm did not present evidence
13 of geologic risk to the Commission today. There is no
14 real reservoir risk with the well. Even when you look
15 at the lowest-performing wells within the area, they
16 perform well. Operational risks, it's not been shown
17 that they are above average. There are no faulting, no
18 pinch-outs. There is no reported problems with
19 geosteering in the area. Chisholm didn't report
20 problems in such operations.

21 The New Mexico Oil and Gas Act, under
22 Section 70-2-17, governs how pooling orders should be
23 issued by the Commission, and it states that all orders
24 affecting such pooling shall be made after notice and
25 hearing and shall be upon terms and conditions that are

1 just and reasonable and will afford the owner or owners
2 of each tract or interest in the unit the opportunity to
3 recover or receive without unnecessary expense his just
4 and fair share of oil and gas --

5 So here I think you have to ask yourself:
6 Is there unnecessary expense that's going to be placed
7 on Cimarex in this situation? If you read further down
8 in the Oil and Gas Act in the same section, it addresses
9 the risk penalty issue. And it states that the
10 Commission may, at its discretion, charge a risk
11 involved with the drilling of such well. So it's a
12 discretionary act taken by the agency. It is not a
13 given.

14 Now, pursuant to that statute, the
15 Commission enacted a rule which created a presumption.
16 There's a presumption that a 200 percent risk penalty
17 applies, and the vast majority of operators that appear
18 before the Division operate under that presumption. And
19 that presumption came about for a reason, for many of
20 the reasons that were talked about in the order that
21 Ms. Kessler presented in Order R-11992. And it's
22 because at the Division level, back in the day, people
23 were raising concerns. They were raising objections
24 about the risk penalty, and there was no resolution to
25 those cases.

1 That's not the situation here. Here you
2 have a situation where the presumption applies, and
3 under the rules, any party can come and challenge that
4 presumption. That's the right that the rules give, and
5 that's exactly what Cimarex is doing here. It's
6 challenging is there any risk. And when you take a step
7 back and you analyze is there risk in this area, I think
8 objectively you have to say no. At the very most, you
9 have to say minimal. And those are the factors that
10 need to be analyzed.

11 Cimarex would have brought this challenge
12 at the Division level had this case gone before the
13 Division on April the 5th. Chisholm bought peace that
14 day, but it backed out of that deal. And that's not a
15 waiver of Cimarex's objections to Chisholm's plan.

16 So we ask that the risk penalty be reduced.
17 I don't think there is any risk in this area, but we'd
18 ask that it be reduced, and we appreciate the fact that
19 Cimarex will be afforded a new opportunity to elect into
20 the well.

21 Thank you.

22 CHAIRWOMAN RILEY: Do we get to ask
23 questions at this point (laughter)?

24 MR. BRANCARD: I think we're done.

25 CHAIRWOMAN RILEY: I have one I forgot to

1 ask.

2 MR. BRANCARD: Not of the witnesses.

3 COMMISSIONER BALCH: If you don't mind, I
4 do have a question for the attorneys.

5 CHAIRWOMAN RILEY: I do, too.

6 COMMISSIONER BALCH: You go first. You're
7 the Chair.

8 CHAIRWOMAN RILEY: So my question is: At
9 the time when the letter went out from Chisholm about
10 whether or not they wanted to elect to get into the
11 well, was there ever communication back from Cimarex to
12 Chisholm requesting an extension of the 30 days pending
13 the negotiations that were going on?

14 MS. BRADFUTE: No. There was an assumption
15 that -- Cimarex didn't think that that election
16 letter -- they just thought it was part of the process,
17 somebody was just sending out letters. There was an
18 assumption on Cimarex's end that the deal was still in
19 place because the parties were still exchanging term
20 assignment forms.

21 CHAIRWOMAN RILEY: Except there was an
22 email that came from Chisholm that said, "Hey, letting
23 you know --

24 MS. BRADFUTE: It came after, on the 23rd.

25 MS. KESSLER: There was a phone call on the

1 Friday before the election period ran, and then it --

2 CHAIRWOMAN RILEY: A phone call. That's
3 right. A phone call on Friday.

4 Ms. BRADFUTE: But nobody received it until
5 Monday.

6 MS. PIERCE: Just a heads-up, we work half
7 day on Fridays.

8 MS. BRADFUTE: How nice.

9 CHAIRWOMAN RILEY: Okay. Thank you.

10 COMMISSIONER BALCH: So my question is more
11 procedural, because we could go into deliberation right
12 now and possibly have a decision this evening on this
13 case, or we can wait to deliberate for a week or two.
14 If we wait, is there any realistic chance that we would
15 not be having to write an order?

16 MS. KESSLER: I think at this point,
17 Commissioners, Chisholm just needs resolution. We need
18 something to happen.

19 COMMISSIONER BALCH: It takes two to tango.
20 So there's the answer to that question.

21 MS. BRADFUTE: Yes.

22 COMMISSIONER BALCH: With that, I move we
23 go into closed session.

24 COMMISSIONER MARTIN: Second.

25 CHAIRWOMAN RILEY: All right. We are

1 officially off the record, and we'll go into closed
2 session and start deliberations, see how far we get.

3 MS. BRADFUTE: Should we clear out and head
4 out?

5 COMMISSIONER BALCH: You have to leave the
6 room.

7 MS. BRADFUTE: And stick around?

8 CHAIRWOMAN RILEY: I would suggest that --
9 (Executive session deliberations, 5:06 p.m.
10 to 5:33 p.m.)

11 CHAIRWOMAN RILEY: Back on the record,
12 Mary.

13 So we are --

14 Remind me of the process.

15 COMMISSIONER BALCH: We need a motion.

16 CHAIRWOMAN RILEY: We need a motion. Thank
17 you.

18 Can I get a motion?

19 COMMISSIONER BALCH: I move we come back
20 into open session.

21 COMMISSIONER MARTIN: Yes. I so move --
22 second.

23 (Laughter.)

24 CHAIRWOMAN RILEY: All right. So we're
25 back, and assurances that we did not discuss anything

1 during closed session except for the deliberations of
2 the case we heard today.

3 We're prepared to tell you now what we've
4 decided, and I'm going to let Mr. Brancard do it. He
5 took notes.

6 MR. BRANCARD: So in this case, the
7 Commission is considering the application of Chisholm,
8 in Case 16027, for a nonstandard spacing and proration
9 unit, 638 acres with compulsory pooling. The Commission
10 approves such unit and approves compulsory pooling
11 subject to the conditions currently in the Division
12 order below, except that this will be dedicated to a
13 single well, the 4H, and that there will be a new 30-day
14 period to allow nonconsenting working interest owners to
15 elect whether to participate or not participate in the
16 well.

17 On the other issue, at this point the
18 Commission considers the only other outstanding issue,
19 that of the risk charge related to this order. The
20 Commission is being consistent with the precedent set in
21 the Matador-Jalapeno case, our Order R-14053-E, which
22 the Commission believes established a precedent for
23 horizontal wells at a risk charge of 150 percent. And
24 the Commission believes, with the reduced risks involved
25 in horizontal drilling and the reduced geologic and

1 reservoir risk of this well, that that is an appropriate
2 risk charge for this well also.

3 We need an order drafted.

4 MS. KESSLER: I guess that would be me.
5 When would you like that order?

6 MS. BRADFUTE: We meet on September 13th.

7 COMMISSIONER MARTIN: 13th?

8 MR. BRANCARD: Yeah.

9 MS. KESSLER: Would you like it circulated
10 beforehand or --

11 MR. BRANCARD: Just send it to me in
12 advance.

13 I'm done.

14 CHAIRWOMAN RILEY: Do you want to say
15 anything else?

16 COMMISSIONER MARTIN: Not me.

17 COMMISSIONER BALCH: Uh-uh.

18 CHAIRWOMAN RILEY: Okay. That concludes --

19 MS. BRADFUTE: We would certainly welcome
20 an industry group nudging the OCD to look at horizontal
21 risk. They really would know more about it than we do.

22 MS. KESSLER: I'll hide under the table.

23 Thank you for your time.

24 CHAIRWOMAN RILEY: Yes. Thank you,
25 everyone. And we are now done and off the record.

(The proceedings conclude, 5:36 p.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither
17 employed by nor related to any of the parties or
18 attorneys in this case and that I have no interest in
19 the final disposition of this case.

20 DATED THIS 19th day of September 2018.

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23 MARY C. HANKINS, CCR, RPR
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