

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

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

CASE NOS: 20865, 20866
VOLUME 2

Application of Marathon Oil Permian LLC
for Compulsory Pooling,
Eddy County, New Mexico.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

November 15, 2019

SANTA FE, NEW MEXICO

This matter came on for hearing before the New Mexico Oil Conservation Division, EXAMINERS LEONARD LOWE, KATHLEEN MURPHY, PHILLIP GOETZE, and LEGAL EXAMINER ERIC AMES, on Friday, November 15, 2019, 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.

Reported by: Irene Delgado, NMCCR 253
PAUL BACA PROFESSIONAL COURT REPORTERS
500 Fourth Street, NW, Suite 105
Albuquerque, NM 87102
505-843-9241

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

For the Applicant:

DEANA BENNETT
MODRALL SPERLING ROEHL HARRIS & SISK PA
500 4th Street, NW, Suite 1000
Albuquerque, NM 87102
505-848-9710
deana.bennett@modrall.com

JENNIFER BRADFUTE
MARATHON OIL COMPANY
5555 San Felipe Street
Houston, TX 77056
713-296-2027
jbradfute@Marathonoil.com

For BTA:

GARY W. LARSON
DANA HARDY
HINKLE SHANOR LLP
P.O. Box 0268
Santa Fe, NM 87504
505-982-4554
glarson@hinklelawfirm.com

INDEX

REBECCA HORNE

Direct by Ms. Bennett 05
Cross by Mr. Larson 26
Redirect by Ms. Bennett 27

BILLY MOORE

Direct by Ms. Bennett 30
Cross by Mr. Larson 48
Redirect by Ms. Bennett 53

1	WILLIS D. PRICE III	
2	Direct by Mr. Larson	59
	Cross by Ms. Bennett	68
3	Redirect by Mr. Larson	74
	Recross by Ms. Bennett	75
4	Further Redirect by Mr. Larson	76
	Further Redirect by Mr. Larson	79
5	Further Recross by Ms. Bennett	80
	Further Redirect by Mr. Larson	81
6		
	BRITTON McQUIEN	
7	Direct by Mr. Larson	83
8	Cross by Ms. Bennett	89
	Redirect by Mr. Larson	107
9	Recross by Ms. Bennett	107
	Further Recross by Ms. Bennett	114
10		
11	EXHIBIT INDEX	
		Admitted
12		
13	Exhibit 1-Rev	10
14	Exhibit 13	09
15	Exhibit 14	12
16	Exhibit 15	13
17	Exhibit 16	17
18	Exhibit 17	21
19	Exhibit 18	25
20	Exhibit 19	47
21		
22	Exhibit BTA 1	68
23	Exhibit BTA 2	68
24	Exhibit BTA 3	
25	Exhibit BTA 4	68

1 HEARING EXAMINER LOWE: We will now commence
2 the -- continue the cases we started yesterday, which is
3 Case Number 20865 and 20866.

4 MS. BENNETT: Deana Bennett on behalf of Marathon
5 Oil Permian LLC and Jennifer Bradfute, senior attorney at
6 Marathon Oil.

7 MR. LARSON: Good morning, Mr. Examiner. Gary
8 Larson and Dana Hardy for BTA Producers. Ms. Hardy had an 8
9 o'clock conference call and she'll be joining us shortly.

10 MS. BENNETT: Examiners, Michael Feldewert
11 e-mailed counsel a moment ago and said he would not be here
12 today.

13 MS. BRADFUTE: Examiners, I will be stepping out
14 around 9:30 for a function with my children.

15 HEARING EXAMINER LOWE: Okay.

16 MR. AMES: Before we start, I would just like to
17 ask counsel for some help going forward. As you know, under
18 Rule 4, the rules of evidence do not control in this
19 proceeding but they are used as guidance. Rule 4 also says
20 that the proceedings should be conducted without rigid
21 formality.

22 We're not in a court of law. It's an
23 administrative proceeding, and so I would like to ask your,
24 your help exercising discretion in your presentations trying
25 to conform to the rules of evidence to the extent possible

1 in terms of leading and direct questions, in terms of
2 characterization of evidence, characterization of testimony,
3 stating facts not in evidence, asked and answered, try and
4 respect the witnesses, not too much badgering to get your
5 answer, and also exercise some discretion in your
6 objections so that the Hearing Examiner can manage the
7 hearing easily.

8 Of course, you are fully entitled to raise, you
9 know, to present in the manner you believe is appropriate
10 and make objections you think are important, but just
11 remember we have broad guide rails on the proceeding, but
12 the rules of evidence don't strictly apply.

13 Thank you.

14 MS. BENNETT: Thank you.

15 HEARING EXAMINER LOWE: Okay.

16 MS. BENNETT: At this time I would like to call
17 my next witness, Ms. Rebecca Horne, and I would like to let
18 the record reflect that Ms. Horne was sworn in yesterday.

19 HEARING EXAMINER LOWE: Yes, she was.

20 MS. BENNETT: Thank you.

21 REBECCA HORNE

22 (Sworn, testified as follows:)

23 DIRECT EXAMINATION

24 BY MS. BENNETT:

25 Q. Good morning, Ms. Horne.

1 A. Good morning.

2 Q. Will you please state your name for the record
3 and spell your last name for the court reporter?

4 A. Rebecca Horne, H-o-r-n-e.

5 Q. Thank you. As a reminder, as you saw yesterday,
6 it's important that we don't speak over each other or that
7 we speak over other parties so that the court reporter can
8 get a full transcript. So please try to keep that in mind
9 as you're presenting today.

10 For whom do you work?

11 A. Marathon Oil.

12 Q. What are your responsibilities at Marathon?

13 A. I'm a geologist in the Permian asset team.

14 Q. How long have you been working at Marathon?

15 A. A little over six years.

16 Q. And you haven't testified before the Division,
17 have you?

18 A. No.

19 Q. Let's talk a bit about your background then.

20 A. I got my BS in geosciences from Virginia Tech in
21 2011 and my MS in geophysics from University of Oklahoma in
22 2013.

23 Q. And did you do any internships or have any work
24 experience while you were in college?

25 A. Yes. I interned with Marathon my first summer of

1 grad school.

2 Q. After you graduated did you go work for Marathon
3 right away?

4 A. Yes.

5 Q. So you worked for Marathon you said for six
6 years?

7 A. Yes.

8 Q. Have you provided a resume for the Division?

9 A. Yes.

10 Q. And is that Exhibit Number 13 in the packet in
11 front of you?

12 A. Yes.

13 MS. BENNETT: And we will be following the same
14 process as we did yesterday where we discussed each exhibit
15 and then admit them.

16 HEARING EXAMINER LOWE: Okay.

17 BY MS. BENNETT:

18 Q. So let's look at Exhibit 13 which is that Page 67
19 of the packet. Is that the resume that you provided to me?

20 A. Yes.

21 Q. Does it identify the same experience that you
22 just -- more details --

23 A. Yes.

24 Q. -- obviously, but the same experience that you
25 just discussed?

1 A. Yes.

2 Q. Are you familiar with the applications that
3 Marathon filed in these two matters?

4 A. Yes.

5 Q. Are you familiar with the status of the lands
6 that are the subject of these applications?

7 A. Yes.

8 Q. Have you conducted a geologic study of the area
9 embracing the proposed spacing unit for these wells?

10 A. Yes.

11 MS. BENNETT: At this time I would like to tender
12 Ms. Horne as an expert in geology matters.

13 HEARING EXAMINER LOWE: She is so qualified.

14 MR. LARSON: No objection.

15 HEARING EXAMINER LOWE: Oh, sorry.

16 MS. BENNETT: Thank you.

17 And just to recall for the Examiner's benefit,
18 Ms. Horne is the geologist who supplied the affidavits in
19 the Valkyrie case yesterday, as well as the Ripley case.

20 And as I mentioned yesterday, she would be
21 present to get qualified in person today, and I will
22 supplement the Valkyrie and Ripley materials with the resume
23 attached as Exhibit 13 in these materials.

24 At this time I would like to move the admission
25 of Exhibit 13.

1 MR. LARSON: No objection.

2 HEARING EXAMINER LOWE: Exhibit 13 is accepted
3 for the cases.

4 (Exhibit 13 admitted.)

5 MS. BENNETT: Thank you.

6 So as a reminder yesterday when we were going
7 through the exhibits, our Exhibit Number 1 had some typos,
8 and we've prepared a revised Exhibit Number 1 for use today.
9 And I have that now, and I would like to pass that out to
10 the Examiners. And it is revised only to update the well
11 numbers.

12 HEARING EXAMINER LOWE: Okay.

13 MS. BENNETT: We are marking it 1 R-e-v, and we
14 will include the revision in our packet when I e-mail the
15 revision to the Examiners. It will take a minute to hand it
16 out to everybody. I apologize for the short delay.

17 BY MS. BENNETT:

18 Q. Ms. Horne, did you prepare Exhibit 1-Rev?

19 A. Yes.

20 Q. Were you in the room yesterday when Mr. Feldewert
21 mentioned that there were some duplications on the Wolf --
22 on the N/2 and S/2 of the Wolfcamp wells?

23 A. Yes.

24 Q. Did you revise Exhibit 1 to reflect -- well, did
25 you revise Exhibit 1?

1 A. Yes.

2 **Q. What revisions did you make to Exhibit 1?**

3 A. I updated the well numbers for all the Wolfcamp
4 wells on the Marathon Valkyrie side to reflect the
5 proposals.

6 **Q. Thank you.**

7 MS. BENNETT: With that, I would like to move the
8 admission of Exhibit 1 Rev into the record.

9 MR. LARSON: No objection.

10 HEARING EXAMINER LOWE: Exhibit 1 will be
11 accepted.

12 (Exhibit 1 Rev admitted.)

13 MS. BENNETT: Thank you.

14 BY MS. BENNETT:

15 **Q. Would you mind running us through Exhibit 1 again**
16 **and explain to the Examiners what information you have**
17 **captured on Exhibit 1?**

18 A. Yes. So on the far left I have a representative
19 type log for this area so you can have an idea of the
20 thicknesses of each of these.

21 On the left side is Marathon's development plan.
22 We have three phases for the entire N/2 and S/2 of Sections
23 12 and 7. Phase 1 is outlined in the red dash box, and that
24 would be the Upper Wolfcamp wells.

25 We consider Wolfcamp XY and Wolfcamp A Upper

1 Wolfcamp. So the N/2 would have the WXY 1H, the WA 3H, and
2 the WXY 5H.

3 Phase 2 is outlined in the green box, and these
4 are the Lower Wolfcamp wells. We use C2 and D2 as internal
5 nomenclature, but these are all considered the Lower
6 Wolfcamp. So the N/2 wells would be the WD 2H, WD 4H, and
7 WD 6H.

8 And then in the Second Bone Spring we have --
9 that's dashed in the gray boxes. And in the N/2 we just
10 have the 13H because, as was mentioned yesterday, there are
11 some existing wells in the N/2 N/2 from WPX. And so we
12 would plan to complete both the N/2 and the S/2 together in
13 each phase for a comprehensive development plan.

14 On the right is BTA's development plan that I put
15 together from well proposals. They only have Lower Wolfcamp
16 wells, and from what I could tell, the 2H and 3H were in the
17 same location, but I believe that to be an error. That was
18 the only well proposal that I saw.

19 So you can see in their JOA area, all I have seen
20 are four Lower Wolfcamp wells.

21 **Q. Thank you. So no Upper Wolfcamp wells then and**
22 **no Bone Spring wells?**

23 **A.** Not that I have been made aware of.

24 **Q. Okay. Let's turn now to Exhibit 14. Can you**
25 **explain to the Examiners what Exhibit 14 is?**

1 A. Yes. This is a locator map showing the
2 approximate location of our proposed Valkyrie 12 Federal Com
3 well location in the red box. And there is an outline of
4 the Capitan Reef showing our wells in relation to that. We
5 are located basinward of that in Eddy County.

6 **Q. Thank you.**

7 MS. BENNETT: With that, I would move the
8 admission of Exhibit 14.

9 MR. LARSON: No objection.

10 HEARING EXAMINER LOWE: Exhibit 14 is accepted
11 for the cases.

12 (Exhibit 14 admitted.)

13 BY MS. BENNETT:

14 **Q. Let's look now at Exhibit 15. Could you describe**
15 **for the Examiners what Exhibit 15 is?**

16 A. Exhibit 15 is the geologic study that I prepared
17 for the Second Bone Spring well, Valkyrie 12 SB Federal Com
18 13H.

19 **Q. And what is the well orientation that Marathon is**
20 **proposing for these wells?**

21 A. We are proposing east-west to maximize our
22 lateral length.

23 Referring to the Snee and Zoback paper shown
24 below, the SHmax in this part of Eddy County is
25 approximately 45 degrees, so you can use either north-south

1 or east-west orientation.

2 **Q. Thank you.**

3 MS. BENNETT: With that I would move the
4 admission of Exhibit 15.

5 MR. LARSON: No objection.

6 HEARING EXAMINER LOWE: Accept Exhibit 15.

7 (Exhibit 15 admitted.)

8 BY MS. BENNETT:

9 **Q. Let's look at the exhibit behind Tab 16 now.**
10 **Those are Pages 71 through 74. Do you have those in front**
11 **of you?**

12 A. Yes.

13 **Q. Okay. What is -- what are Pages 71 through 74,**
14 **generally speaking?**

15 A. These are the geologic exhibits that I prepared
16 for the Second Bone Spring well, Valkyrie 12 SB Federal Com
17 13H.

18 **Q. Thanks. So let's start with Page Number 71, and**
19 **can you describe for the Examiners what Page Number 71 is?**

20 A. Yes. This is a structure map of the base of the
21 Second Bone Spring Sand. Marathon's acreage is shown in
22 yellow, and the project area for this well is the black dash
23 box, and the proposed well is in blue, SBSG next to that in
24 the legend stands for Second Bone Spring Sand. And on this
25 structure map, you can see that the structure is dipping to

1 the east.

2 Q. And what is the contour interval that you used
3 for this map?

4 A. 25 feet.

5 Q. Thank you. So are there, when you look at this
6 map, is there anything shown structurally that would
7 interfere with the contribution of this acreage to the
8 proposed well?

9 A. No.

10 Q. Did you see any pinchouts or faulting or other
11 impediments in the geologic study that you prepared?

12 A. No.

13 Q. Let's turn to Page 72. Can you describe for the
14 Examiners what Page 72 is?

15 A. This is a reference map for the cross section.
16 The cross section line is shown in pink from A to A Prime,
17 and the project area is again highlighted in the black dash
18 box, and the dark blue wells are producing Second Bone
19 Spring wells.

20 Q. And when you say this is a cross reference map,
21 or the line goes from A to A Prime, those are three wells
22 that you chose -- are those the three wells that you chose
23 to use to prepare your cross section?

24 A. Yes.

25 Q. In your opinion, are those three wells

1 **representative of Second Bone Spring in this area?**

2 A. Yes.

3 **Q. When I look at this map I see a lot of**
4 **north-south laterals, and Marathon is proposing east-west.**
5 **But based on your earlier testimony, do you see a problem**
6 **with east-west versus north-south here?**

7 A. No.

8 **Q. Why is that again?**

9 A. Because SHmax is 45 degrees, so you can drill
10 either north-south or east-west.

11 **Q. Thank you. Let's turn then to Page 73, which is**
12 **an 11 by 17 schematic. Would you please describe for the**
13 **Examiners what Page 73 is?**

14 A. Yes. This is the stratigraphic cross section of
15 the three wells that were shown on the previous exhibit.
16 The datum is the base of the Second Bone Spring Sand, and
17 the producing area is highlighted in green with a red arrow
18 showing the proposed target depth. And the Second Bone
19 Spring Sand in this area looks contiguous across this
20 proposed unit.

21 **Q. And did you note on this exhibit any of your**
22 **conclusions about the -- you did note on this exhibit your**
23 **conclusions about the relative thickness?**

24 A. Yes. The thickness is relatively consistent from
25 west to east.

1 Q. Thank you. And what are the three columns in the
2 logs that you looked at?

3 A. Yeah. So each log has four tracts. The first
4 track on the left is gamma ray, depth and TVD, resistivity,
5 and porosity is the far right log.

6 Q. And again, this slide uses the acronym SBSG, and
7 you testified earlier that was the Second Bone Spring; is
8 that right?

9 A. Yes.

10 Q. All right. Let's turn then to Page 74, and could
11 you describe for the Examiners what Page 74 is?

12 A. This is a gross interval isochore map for the
13 Second Bone Spring Sand. Again, the Marathon acreage is in
14 yellow, the project area is in the black dash box, and the
15 proposed well is the blue line. And across the proposed
16 well you can see that the thickness is relatively
17 consistent.

18 Q. What is the contour interval that you used for
19 this particular slide?

20 A. 25 feet.

21 Q. Based on your geologic study for the Bone Spring
22 formation, are there any impediments -- in your opinion, are
23 there any impediments to a horizontal well in this Bone
24 Spring formation?

25 A. No.

1 Q. Will each quarter-quarter section, in your
2 opinion, be productive in the Bone Spring formation?

3 A. Yes.

4 Q. Do you anticipate that each tract quarter-quarter
5 section will contribute approximately equally to production
6 from the well?

7 A. Yes.

8 Q. In your opinion, will the granting of Marathon's
9 application for the Bone Spring well be in the best interest
10 of conservation, the prevention of waste, and the protection
11 of correlative rights?

12 A. Yes.

13 Q. Thank you.

14 MS. BENNETT: With that I would like to move the
15 admission of Exhibit 16.

16 MR. LARSON: No objection.

17 HEARING EXAMINER LOWE: Exhibit 16 will be
18 accepted.

19 (Exhibit 16 admitted.)

20 BY MS. BENNETT:

21 Q. Let's turn then to Exhibit 17. And Exhibit 17,
22 like Exhibit 16, has four pages; right?

23 A. Yes.

24 Q. Can you describe generally what those four pages
25 are for the Examiners?

1 A. These are the geologic study I prepared for the
2 Upper Wolfcamp wells.

3 A. Thank you.

4 **Q. Could you remind the Examiners of what the WXY
5 and the WA stand for?**

6 A. Yes. WXY stands for targeting the Wolfcamp XY
7 sand, and WA stands for targeting Wolfcamp A.

8 **Q. That's the internal naming protocol that Marathon
9 gives the Upper Wolfcamp wells?**

10 A. Yes.

11 **Q. With that background then, will you please
12 explain to the Examiners what the first page is of Exhibit
13 17, which is Page Number 75?**

14 A. Yes. This is a structure map for the top of the
15 Upper Wolfcamp. The Marathon acreage again is in yellow,
16 and the project area is the black dashed line. The Wolfcamp
17 XY wells are shown in purple, and the Wolfcamp A wells are
18 shown in red, and the structure is dipping to the east.

19 **Q. What's the contour interval that you used for
20 this map?**

21 A. 25 feet.

22 **Q. Based on your review of this map, is there
23 anything, in your opinion, that would interfere with the
24 contribution of the acreage to the proposed well?**

25 A. No.

1 Q. Did you see any faulting or pinchout or other
2 geologic impediments?

3 A. No.

4 Q. Did you prepare a cross section of logs to
5 determine the relative thickness and porosity of the Upper
6 Wolfcamp formation in this area?

7 A. Yes.

8 Q. Turning to Page 76, could you explain for the
9 Examiners what this is?

10 A. This is a reference map for the cross section for
11 the Upper Wolfcamp wells. The same three wells are shown
12 here from A to A prime in the pink line. And again, the
13 producing Upper Wolfcamp wells are shown in dark blue.

14 Q. And so on this map, how many producing Upper
15 Wolfcamp wells are there that you have identified?

16 A. There is only one in this area.

17 Q. And, in your opinion, are the wells that you
18 chose for your cross section representative of the Upper
19 Wolfcamp in this area?

20 A. Yes.

21 Q. Turn then to Page 77. Can you describe to the
22 Examiners what Page 77 represents?

23 A. This is the stratigraphic cross section for the
24 Upper Wolfcamp wells. The datum is the top of the Wolfcamp,
25 and it's the same three logs that you saw in the last cross

1 section and the same tracts in each of those logs. The
2 producing area is highlighted in green, and the two target
3 depths for the Wolfcamp XY and the Wolfcamp A are shown with
4 the red arrows. And across here you can see that the
5 interval thickness decreases slightly from west to east, but
6 it's still very continuous.

7 Q. Thank you. And so when I look at this Page 77, I
8 see sort of a faint yellow line in the first green area, and
9 that is marked as Wolfcamp Y Sand. Is that right?

10 A. Yes.

11 Q. Just trying to clarify. And that's the WXY area?

12 A. Yes.

13 Q. Okay, thanks. Let's turn to Page 78 of this
14 exhibit then. And what does Page 78 or what is Page 78 and
15 can you explain it for the Examiners, please?

16 A. This is the gross interval isochore for the Upper
17 Wolfcamp. It goes from the top of the Wolfcamp to the base
18 of the Wolfcamp A. And again, the wells are shown in purple
19 and red for the Wolfcamp XY and Wolfcamp A. And across here
20 you can see that the thickness is decreasing as you move
21 from west to east.

22 Q. And what's the contour interval you used for this
23 map?

24 A. 25 feet.

25 Q. Thank you. Based on your geologic study of the

1 Upper Wolfcamp formation in this area, in your opinion, are
2 there any impediments to a horizontal well or to the
3 horizontal wells that Marathon is proposing in the Upper
4 Wolfcamp formation?

5 A. No.

6 Q. In your opinion will each quarter section be
7 productive in the Upper Wolfcamp formation?

8 A. Yes.

9 Q. Do you anticipate that each quarter section will
10 contribute approximately equally to production from the
11 well?

12 A. Yes.

13 MS. BENNETT: With that I would like to move the
14 admission of Exhibit 17.

15 MR. LARSON: No objection.

16 HEARING EXAMINER LOWE: Exhibit 17 is accepted
17 for the cases.

18 MS. BENNETT: Thank you.

19 (Exhibit 17 admitted.)

20 BY MS. BENNETT:

21 Q. Let's turn now to Exhibit 18. Exhibit 18 also
22 contains four pages; is that right?

23 A. Yes.

24 Q. And could you explain to the Examiners what those
25 four pages are, generally?

1 A. They are the geologic study I prepared for the
2 Lower Wolfcamp wells.

3 **Q. And again, what are the acronyms or initials that**
4 **Marathon uses for the Lower Wolfcamp wells?**

5 A. Internally we use Wolfcamps B2 and D2, but on the
6 well names we just use WD to stand for all Lower Wolfcamp
7 wells.

8 **Q. Thank you. With that background then, will you**
9 **please describe to the Examiners what Page 79 represents and**
10 **what it tells you?**

11 A. This is the structure map for the Lower Wolfcamp
12 wells. It's shown at the top of the Wolfcamp C2, Marathon's
13 internal naming system. The Marathon acreage again is shown
14 in yellow, and the project area is the dashed black box, and
15 all three of Lower Wolfcamp wells are shown in green, and
16 again, the structure is dipping to the east.

17 **Q. What is contour interval that you used for this**
18 **map?**

19 A. 25 feet.

20 **Q. Based on your geologic study of the structure,**
21 **did you find -- did you see anything that would interfere**
22 **with the contribution of this acreage to the proposed Lower**
23 **Wolfcamp wells?**

24 A. No.

25 **Q. Did you see any pinchouts or faulting or other**

1 **impediments?**

2 A. No.

3 **Q. Thank you. Did you prepare a cross section of**
4 **logs to determine the relative thickness and porosity of the**
5 **Lower Wolfcamp formation in this area?**

6 A. Yes.

7 **Q. Are those cross section wells identified on Page**
8 **80?**

9 A. Yes.

10 **Q. And could you describe again for the Examiners**
11 **what Page 80 is?**

12 A. It is the reference map for the cross section of
13 the Lower Wolfcamp wells, and the same wells that we used in
14 the previous two cross sections are shown in the pink line
15 from A to A prime, and again the producing Lower Wolfcamp
16 wells are shown in dark blue.

17 **Q. In your opinion, are the three wells that you**
18 **chose for -- or to create your cross section representative**
19 **of the Lower Wolfcamp in this area?**

20 A. Yes.

21 **Q. Let's turn to Page 81, then. Can you describe**
22 **for the Examiners what Page 81 is, please?**

23 A. This is the stratigraphic cross section for the
24 Lower Wolfcamp hung on the top of the Wolfcamp C2 datum,
25 same three logs and same tracts as the previous cross

1 section, with the producing zone highlighted in green, and
2 the two target depths shown in the red arrows. And across
3 here the thickness is relatively consistent from west to
4 east.

5 Q. Thank you. And now let's turn to Page 82. Can
6 you describe for the Examiners what Page 82 is?

7 A. This is the gross interval isochore map for the
8 Lower Wolfcamp from the top of the C2 down to the base of
9 the D2. And the three wells are shown again in green, and
10 you can see that the thickness is relatively consistent from
11 west to east across the project area.

12 Q. What was the contour interval that you used for
13 this slide?

14 A. 25 feet.

15 Q. Based on your geologic study of the formation of
16 this specific area, the Lower Wolfcamp, are there any
17 impediments to a horizontal well in the Lower Wolfcamp
18 formation?

19 A. No.

20 Q. Do you anticipate that each quarter section will
21 be productive in the Lower Wolfcamp formation?

22 A. Yes.

23 Q. Do you anticipate that each tract quarter section
24 will contribute approximately equally to production from the
25 wells?

1 A. Yes.

2 MS. BENNETT: At this time I would like to move
3 the admission of Exhibit 18.

4 MR. LARSON: No objection.

5 HEARING EXAMINER LOWE: Exhibit 18 is also
6 admitted.

7 MS. BENNETT: Thank you.

8 (Exhibit 18 admitted.)

9 BY MS. BENNETT:

10 Q. I want to ask you a question now more generally
11 about all three of the geologic studies that you prepared
12 and that we have discussed. In your opinion, based on the
13 geologic studies that you prepared, would the granting of
14 Marathon's applications, the Bone Spring application, and
15 the Wolfcamp application, be in the best interest of
16 conservation, the prevention of waste, and the protection of
17 correlative rights?

18 A. Yes.

19 Q. Thank you. Were Exhibits 13 -- well, Exhibit 1
20 revised, and 13 through 18 prepared by you or compiled under
21 your direction and supervision or compiled from company
22 business records?

23 A. Yes.

24 Q. Thank you.

25 MS. BENNETT: With that, I have no further

1 questions for Ms. Horne.

2 CROSS-EXAMINATION

3 BY MR. LARSON:

4 Q. Good morning.

5 A. Good morning.

6 Q. I direct your attention to what's been marked as
7 Exhibit 1-Rev, And I'm looking at the line that I believe
8 those are Second Bone Spring wells --

9 A. Yes.

10 Q. -- at the top there, what would be the length of
11 that lateral?

12 A. 2 miles.

13 Q. And what would, moving down into the Wolfcamp,
14 what would be the length of those laterals?

15 A. 2 miles.

16 Q. I'm curious why you have denoted the WPX
17 development there in the Bone Spring.

18 A. So their wells are going north-south from 12, and
19 they were actually penetrated the Second Bone Spring back in
20 the N/2 N/2 of Section 12, and it's our opinion that they
21 would be in the way of trying to drill a Bone Spring well
22 through Section 12 here from an anti-collision standpoint.

23 We could potentially work with WPX around the
24 anti-collision, but as of right now, with the information we
25 have, we don't think we would be able to drill a well right

1 there.

2 Q. How much acreage would you not be including in
3 your Bone Spring wells because of the WPX wells?

4 A. It would just be the N/2 N/2 Bone Spring.

5 Q. Okay. So if you're not able to work around WPX's
6 wells, is it still a 2 mile lateral?

7 A. The rest of the Second Bone Spring wells are
8 still 2 miles.

9 Q. Which one wouldn't be?

10 A. All three of the wells we have proposed would be
11 2 miles. We have not proposed one in the area where WPX
12 would block us.

13 Q. I see. That's all the questions I have.

14 HEARING EXAMINER LOWE: Okay.

15 MS. BENNETT: May I ask a clarifying question, I
16 hope, which will clarify Mr. Larson's questions?

17 MR. AMES: You want redirect?

18 MS. BENNETT: Just for the Examiner's benefit, if
19 that's okay with you.

20 REDIRECT EXAMINATION

21 BY MS. BENNETT:

22 Q. When you -- a moment ago you said that the WPX
23 wells are in the N/2 N/2; right?

24 A. Yes.

25 Q. And where are the proposed Marathon wells? Are

1 **they in the N/2 N/2?**

2 A. No.

3 **Q. Where are they?**

4 A. They're in the S/2 N/2 and both S/2 sections.

5 **Q. So there is no chance of -- they are in two**
6 **separate half sections or N/2 S/2 -- S/2 N/2 N/2?**

7 A. Correct.

8 **Q. Okay.**

9 MS. BENNETT: That didn't really add any benefit,
10 so --

11 MR. LARSON: Thank you clarifying that.

12 MS. BENNETT: Anything I can do to clarify, I'm
13 here.

14 MR. AMES: Recross? Any additional
15 clarification?

16 MR. LARSON: Not going to go there.

17 HEARING EXAMINER LOWE: I have -- I think it was
18 on Exhibit 17, now I just need a clarification on your WXY,
19 I thought you had used a different term for what -- what did
20 you indicate that meant for?

21 THE WITNESS: WXY is for the XY Sand that's at
22 the top of the Wolfcamp.

23 HEARING EXAMINER LOWE: And the WA is where?

24 THE WITNESS: The Wolfcamp A, which is just below
25 the XY Sand.

1 HEARING EXAMINER LOWE: And the WC 2?

2 THE WITNESS: That is basically the top of the
3 Wolfcamp D. It's a Marathon internal name.

4 HEARING EXAMINER LOWE: Yeah.

5 Any questions?

6 EXAMINER MURPHY: Back to what Ms. Bennett said,
7 so the Bone Spring well is in the top half of the N/2.

8 THE WITNESS: Yes.

9 EXAMINER MURPHY: And nothing is proposed in the
10 N/2.

11 THE WITNESS: Correct.

12 EXAMINER MURPHY: Thank you.

13 HEARING EXAMINER LOWE: Whenever, whenever you
14 submit all these exhibits, are you going to submit the
15 revisions in the, in the typing?

16 MS. BENNETT: I will, and if it's the Examiner's
17 preference, I can remove the Exhibit 1 that had the error
18 and just replace it in the materials that I provide.

19 HEARING EXAMINER LOWE: I would prefer that if it
20 was to replace it, unless -- is that okay?

21 MR. AMES: I think it should be submitted as is,
22 and then submit the additional exhibit.

23 MS. BENNETT: Okay. Thank you. That's what I
24 will do. Are there any other questions for Ms. Horne?

25 HEARING EXAMINER LOWE: I have no questions any

1 further. Any questions?

2 MR. AMES: No.

3 MS. BENNETT: At this time I would like to ask
4 Ms. Horne to step down and we'll call our next witness.

5 At this time I would like to call Mr. Billy
6 Moore. I would like the record to reflect that Mr. Moore
7 was sworn in yesterday as well.

8 HEARING EXAMINER LOWE: Yes, he was.

9 BILLY MOORE

10 (Sworn, testified as follows:)

11 DIRECT EXAMINATION

12 BY MS. BENNETT:

13 Q. Good morning, Mr. Moore.

14 A. Good morning.

15 Q. Thanks for being here today. Will you please
16 state your name for the record?

17 A. Billy Moore, M-o-o-r-e.

18 Q. Thank you. And for whom do you work?

19 A. Marathon Oil.

20 Q. And in what capacity?

21 A. I'm a reservoir engineer.

22 Q. How long have you worked for Marathon?

23 A. Right at three years.

24 Q. What are your responsibilities as a reservoir
25 engineer?

1 A. Day-to-day activities of looking at total well
2 set for Eddy County, looking at the decline curve analysis,
3 and taking it further into well evaluations when we are
4 looking for development.

5 **Q. Have you previously testified before the**
6 **Division?**

7 A. Yes, in 2016.

8 **Q. And your credentials were accepted as a matter of**
9 **record at that time?**

10 A. Yes.

11 **Q. Let's take just a minute and briefly remind the**
12 **examiners about your education and work experience.**

13 A. My degree is petroleum engineering from
14 University of Texas, Permian Basin, and I interned for two
15 years with BC Operating from 2012 to 2014. Worked with BC
16 Operating from 2014 to 2017 in capacity as an operations
17 petroleum engineer, and then since 2017 until this point I'm
18 a production engineer and reservoir engineer for Marathon
19 Oil.

20 **Q. Okay. Thank you. Are you familiar with the**
21 **applications that Marathon filed in these two cases?**

22 A. Yes.

23 **Q. Are you familiar with the status of the lands**
24 **that are the subject of these application?**

25 A. Yes.

1 **Q. Are you familiar with the drilling plans for**
2 **Marathon's proposed wells?**

3 A. Yes.

4 MS. BENNETT: I would like to tender Mr. Moore as
5 an expert in engineering matters at this time.

6 HEARING EXAMINER LOWE: Any objection?

7 MR. LARSON: No objection.

8 HEARING EXAMINER LOWE: He is so qualified.

9 MS. BENNETT: Thank you.

10 Before we get started, I do want to hand out an
11 exhibit, and this is an Exhibit 19 which has an additional
12 page from the packet that we handed out yesterday. My
13 apologies for that confusion. Because this has 19 and 19 is
14 actually supposed to be two pages.

15 BY MS. BENNETT:

16 **Q. Mr. Moore, before we talk about Exhibit 19, I**
17 **just want to talk about Exhibit 1-rev first. The Exhibit 1-**
18 **rev shows Marathon's proposed well density and BTA's**
19 **proposed well density; is that right?**

20 A. Yes.

21 **Q. What is Marathon's proposed well density per**
22 **section?**

23 A. For the Second Bone Spring, we are looking at
24 four wells per section, for the Upper Wolfcamp we are
25 looking at six wells per section, and for the Lower Wolfcamp

1 we are looking at six wells per section.

2 Q. Have you had a chance to review BTA's proposal?

3 A. Yes. For what we have, yes.

4 Q. Those -- you were not provided those proposals
5 from BTA, were you?

6 A. No.

7 Q. So based on what you have reviewed, do you know
8 how many wells per section BTA is proposing?

9 A. Based on what we have, it's either a funky six
10 wells per section, or it's most likely eight wells per
11 section for the Lower Wolfcamp only. There is not
12 additional development.

13 Q. Does Marathon -- let me backtrack. How did
14 you -- how did Marathon decide on this well density, six
15 wells per section, the Wolfcamp wells?

16 A. So we have extensive development in Eddy County,
17 New Mexico, and based off of that, in trials we have
18 decided, with the geological perspective we were delivered,
19 we would look at six wells per section in the Upper and
20 Lower Wolfcamp, and four wells per section in the Second
21 Bone Spring.

22 Q. And does Marathon have experience with this
23 density -- I believe you just testified that it did, but
24 does Marathon have experience with this density that you are
25 proposing?

1 A. We do. To the west about eight miles as the crow
2 flies, we have this density specifically.

3 **Q. Assuming for the moment that BTA is proposing**
4 **eight wells per section, have you looked at any OCD files,**
5 **or have you done any research that would enable you to know**
6 **whether BTA has previously proposed the same well density,**
7 **eight wells per section?**

8 A. It looks like in 2019 they might have this same
9 density in their Pardue 808 Number 1 through Number 4 wells.
10 That being said, those wells were spud late July,
11 and on the NMOCD website, they currently do not have
12 deviation surveys, so we can't make a true attestation to
13 that analysis to this point. And it does not look otherwise
14 than that that this year they have went out and drilled at
15 this density.

16 **Q. Thank you. In your opinion, is Marathon's well**
17 **density more efficient and more likely to prevent waste?**

18 A. Yes.

19 **Q. Why is that?**

20 A. In my experience, if BTA develops the N/2 and we
21 develop the S/2, there is going to most likely parent-child
22 effects.

23 **Q. What does that mean, parent-child effects?**

24 A. Parent-child effects is where a company drills
25 their wells, start producing, and some time later another

1 company, or that same operator could do it to themselves,
2 comes in and drills wells in that same zone, and you see
3 those minerals not being produced as efficiently.

4 **Q. Does that result in depletion or is it just an**
5 **efficiency issue?**

6 A. It is most likely going to be attributed to
7 depletion.

8 **Q. So, in other words, could BTA's operations in the**
9 **N/2 impact Marathon's operations in the S/2?**

10 A. Yes. If we are both given our own operatorship
11 of this, our two companies specifically do not go out and
12 develop our drill schedules at the same time, and so one of
13 us will get out there and drill the wells, and then the
14 other is going to be following up at the same capacity, and
15 someone will have a child relationship.

16 **Q. Does Marathon's plans to develop both the N/2 and**
17 **S/2 eliminate or minimize the depletion, in your opinion?**

18 A. It does. We would get out there, and for
19 example, in the Upper Wolfcamp we have our S/2. If we were
20 given the 2 miles for also the N/2, we would have all those
21 wells on our drilling schedule at the same time.

22 **Q. And, in your opinion, that would minimize the**
23 **likelihood of a parent-child issue?**

24 A. Yes. That would be a co-development which has
25 been proven to be the best development.

1 Q. Thank you. I wanted to talk a minute about the
2 length. What length of lateral is Marathon proposing for
3 the -- let's just talk about the Lower Wolfcamp for now
4 because they are the only ones we know of that BTA has
5 proposed. So what are the lengths that Marathon is
6 proposing for its Lower Wolfcamp wells?

7 A. 2 miles.

8 Q. And what is the length of laterals that, based on
9 your information that you are having today, that BTA is
10 proposing?

11 A. 1.5 miles.

12 Q. In your opinion, what -- which length is better,
13 2 mile, or 1.5?

14 A. 2 miles. 2 miles would be better because you
15 would be capturing another half mile more of minerals within
16 one wellbore. So you would be reducing surface area needed
17 for those initial wells to capture those minerals.

18 Q. Let's take a look for a moment at the second page
19 of your Exhibit 19. Does this second page of your Exhibit
20 19, which is labeled, "Effects of Lateral Length on Well
21 Performance," is this a slide that you prepared to -- or why
22 did you prepare this slide?

23 A. Prepared this to show the difference in what a 2
24 mile and a 1.5 mile could produce looking at the average
25 EUR, number of barrels by the average lateral length per

1 foot.

2 Q. This is based on an average. This isn't for
3 these particular wells, right, this is just information you
4 were able to get publicly available?

5 A. So this is public data from Drilling Info and
6 IHS, all the wells that were pulled in looking specifically
7 at the Upper Wolfcamp.

8 Q. Okay. And how many wells did you look at when
9 you prepared this?

10 A. So we looked at all of Malaga, Eddy County, and
11 for the two results in the 2 mile lateral length, there were
12 36 wells utilized in that well count. And for the 1.5 mile
13 lateral length there was 37 wells, so we can look at each
14 one individually if you'd like.

15 Q. Sure. So what does the -- what does the slide
16 reveal to you or what did you take away from that slide?

17 A. So if you look at 2 mile lateral length, we have
18 the 36 wells, average proppant of 1992 pounds per foot in
19 all these wells, averaging five wells per section, and an
20 average lateral length of 9694, being the 2 mile lateral
21 length. You get an average EUR of barrels of oil in
22 comparison to average lateral length of 97.9.

23 And in the 1.5 mile lateral length you have a
24 well count of 37 wells with the average proppant of 2200
25 pounds per foot. The average wells per section was also

1 five. The average lateral length was 6818 feet, which is
2 the mile and a half development, and you get an average EUR
3 of barrels of oil per average lateral length foot at 86.4.

4 So what you can conclude is longer laterals, EURs
5 are higher than the shorter laterals. And then also with
6 the two average EURs per average lateral length foot, in the
7 2 miles there is a 13 percent greater difference than the
8 1.5 miles. It's not a linear relationship.

9 **Q. Okey doke. So what does EUR stand for?**

10 A. Ultimate recovery, estimated ultimate recovery.

11 **Q. What does BO stand for, barrels of oil.**

12 A. Barrels of oil.

13 **Q. And LL?**

14 A. Lateral length.

15 **Q. So if you could, with that in mind, and I'm not**
16 **trying to testify for you or ask you a leading question, so**
17 **could you restate your conclusion with the understanding of**
18 **what EUR stands for?**

19 A. So based on our estimated ultimate recoveries,
20 you would see that there -- the longer laterals are higher
21 than the shorter lateral EURs, and then also the average EUR
22 per foot in the 2 mile lateral is 13 percent greater than
23 what a 1.5 mile lateral is.

24 **Q. So with respect to that last conclusion, are you**
25 **saying that there is not a one-to-one correlation between**

1 additional length and estimated recovery, but instead it's
2 sort of a cumulative effect?

3 A. Correct. So if you have had a one-to-one
4 relationship, you would take that same average EUR per
5 average lateral length foot of the 1.5 mile, that 86.4, and
6 multiply that by the average lateral length in the 2 mile,
7 the 9694, and you get somewhere -- I don't got my calculator
8 on me, but 850 to 870,000 EUR. So that would be a linear
9 relationship, and in this we see that's not the case.

10 Q. So when I look at the final column of each of the
11 tables or the charts at the top, is that a comparison of the
12 average estimated recovery for a 2 mile lateral as compared
13 to the average recovery for a 1.5 mile lateral?

14 A. Can you ask that again?

15 Q. When I look at the last table or the last row of
16 the two tables you prepared, it says average EUR BO per
17 average lateral foot, and for the 2 mile lateral it's 97.9
18 and for the 1.5 it's 86.4.

19 A. Correct.

20 Q. So is that what correlates to your bullet point,
21 longer lateral EURs are higher than shorter laterals?

22 A. That's more an attestation to the 13 percent
23 greater.

24 Q. Oh, okay. Is there anything else about this
25 slide that you would like to discuss with the Examiners?

1 A. No.

2 Q. Would a 2 mile lateral as opposed to a 1.5 mile
3 lateral also eliminate some setbacks?

4 A. Yes.

5 Q. And if a setback is eliminated, would that, in
6 your opinion, increase potential productivity of the
7 minerals?

8 A. Not productivity, but it would correlate to an
9 increase in the ultimate recovery of that well.

10 Q. Thank you. In your view then is Marathon's plan
11 more likely to efficiently recover the oil reserves
12 underlying the acreage in this area?

13 A. Yes.

14 Q. Why is that?

15 A. We would be eliminating a setback, so you are
16 going to be adding additional minerals that you are
17 capturing, along with we are seeing that the 2 miles produce
18 better than any 1.5 mile well.

19 Q. And how about the fact that -- or what can you
20 say about the fact that Marathon is proposing Upper Wolfcamp
21 wells and Bone Spring wells while BTA is only proposing
22 Lower Wolfcamp wells?

23 A. Yes. So we talked Phase 1 is our WXY and A
24 wells, and that's because of all the activity we've had in
25 Eddy County, we believe those are actually going to be the

1 better wells of this area. And then we would come back and
2 develop Phase 2, the Lower Wolfcamp, followed by Phase 3,
3 the Second Bone Spring, for those reasons.

4 **Q. So in your opinion is Marathon's plan a more**
5 **comprehensive plan to recover the oil reserves underlying**
6 **the acreage in this area?**

7 A. Yes. If granted, the 2 miles from NMOCD, we
8 would be looking at a full development, not just looking at
9 Lower Wolfcamp being developed, which is best -- best in
10 line for what the NMOCD would be looking for. They want the
11 most revenue from their minerals.

12 **Q. And a minute ago you mentioned a phase**
13 **development, and you mentioned a reason why Marathon was**
14 **going to pro -- develop the Upper Wolfcamp first. Could**
15 **you repeat that for the Examiners?**

16 A. We believe with the geological parameters
17 delivered to our reservoir engineering team, that that's a
18 better quality rock that we should chase for our first set
19 of production.

20 **Q. Is BTA proposing Upper Wolfcamp wells at all?**

21 A. That's not the case for what we perceive to this
22 point.

23 **Q. In your opinion, are the Lower Wolfcamp wells**
24 **gassier than the Upper Wolfcamp wells?**

25 A. Yes. Their GOR seems to be significantly higher

1 than the Upper Wolfcamp's, and gas prices are not the best
2 at this time.

3 Q. What does GOR stand for?

4 A. Gas oil ratio.

5 Q. How about surface impacts, is Marathon's plan
6 more likely to efficiently use the surface?

7 A. I would believe so. With us having a full
8 development plan, we can look at central tank battery
9 solutions for everything combined, and you wouldn't have to
10 have two separate companies having surface impacts.

11 Q. Based on your experience, if -- if this is an
12 accurate depiction of what BTA is intending for the Lower
13 Wolfcamp wells, if BTA wanted to come in and -- or if a
14 company wanted to come in, not necessarily BTA, but if a
15 company wanted to come in after having drilled Lower
16 Wolfcamp wells to target the Upper Wolfcamp or the Bone
17 Spring, would that company be able to use the same drill pad
18 that it had used to drill those first set of wells?

19 A. Based off what Marathon would have to do in this
20 situation, you would either have to build a larger-than-
21 needed surface facility to start, so you would have a larger
22 impact that's just sitting out there. Or you would have to
23 come back and bring all the dump trucks, everything in to
24 clear the land a second time to add additional spacing for
25 you to implement your wells.

1 Q. Thank you. Let's talk about the first page of
2 your slide 19, of your Exhibit 19. Could you explain to the
3 Examiners what this first page is that's labeled, "Drilling
4 Performance," and explain what it is and where you got the
5 information.

6 A. Looking at the drilling performance of operators,
7 and so the source of this data is Drilling Info for the
8 average feet per day. And then we have slight internal data
9 utilized for Marathon operating's drilling, but that's just
10 for the wells we are currently on, so you are looking at
11 about three wells, and I will tell you why that's important
12 here in a bit.

13 And then this is excluding operators with less
14 than three wells, and then also a New Mexico OCD well search
15 is utilized as well. So on the right-hand side for the Y
16 axis is average feet per day for drilling, and on the bottom
17 axis is the operators in which are drilling. And the black
18 bar is going to be for Bone Springs. The blue bar is going
19 to be for Wolfcamp.

20 And you can see that Marathon is about 1200 feet
21 per day when drilling, and BTA averages less than 800 feet
22 per day.

23 Q. And I don't -- is there a Wolfcamp information
24 for BTA?

25 A. They do have Wolfcamp drilling average feet per

1 day, but they do not have Bone Springs in Eddy County where
2 we are looking specifically.

3 **Q. Oh, I'm sorry, I looked at that backwards. I'm**
4 **sorry. Thank you. What is your take-away from the average**
5 **foot per day ability of Marathon versus the other operators**
6 **or BTA?**

7 A. So this should correlate with cost effectiveness
8 and efficiency for how long we are going to have a drilling
9 rig out and taking up the surface impacts. And then it also
10 shows that we're one of the fastest drillers in Eddy County,
11 so we are able to get in and do this style of work.

12 And you see that it's top quartile performance in
13 Lea County even for us in which we don't have as many wells
14 drilled as some of the other larger operators. So with
15 that, BTA Oil's drilling performance is one of the least
16 efficient in Eddy County.

17 And then you can look at it at an even larger
18 scale. We have 159 wells that we've spud since since May
19 30, 2017. BTA has 34 wells spud since May 30, 2017, which
20 is based off the NMOCD records.

21 **Q. A moment ago you testified that you had looked at**
22 **some internal Marathon data as well. Does that impact the**
23 **overall analysis that you put here?**

24 A. It shouldn't. So you are looking at 159 total
25 wells, and we have three drilling rigs running at this time,

1 so the impact would be very minimal for this 1200 feet per
2 day.

3 Q. If you hadn't looked at the Marathon figures, the
4 wells spud since May 30, 2017, would be --

5 A. Yes.

6 Q. So that would be 156?

7 A. Yes

8 Q. Okay, thanks. Based on the information in the
9 drilling performance slide, would you say that Marathon, in
10 your opinion, is best fit to prudently and efficiently
11 develop this acreage?

12 A. Yes.

13 Q. Would you also say that this information
14 indicates that Marathon is in the best position to timely
15 locate wells and operate on the surface?

16 A. Yes.

17 Q. Do Marathon's development plans mirror production
18 trends, in your opinion?

19 A. Yes.

20 Q. And what -- why is that?

21 A. You can see that we're looking at it in phase
22 development, and so we are also looking at it, if we can get
23 both 2 mile sections, that we can co-develop, and so it
24 would be the best development plan for these acreages,
25 instead of someone gaining a parent-child relationship, or

1 in the case for what we have BTA at this time not coming in
2 and drilling the Second Bone Springs or the Upper Wolfcamp,
3 the more prospective zone.

4 Q. When an operator, in your opinion, just speaking
5 hypothetically here, if an operator doesn't drill
6 prospective zone for that density, is there a potential for
7 the operator to just be sitting on that acreage without
8 pursuing later development?

9 A. Yes.

10 Q. And does this result in waste, in your opinion?

11 A. Yes.

12 Q. Does this also increase surface impact, could
13 potentially increase surface impact?

14 A. Yes.

15 Q. Now, a moment ago -- I believe these are federal
16 minerals. Is that your understanding?

17 A. That's my understanding, yes.

18 Q. So under this hypothetical, or even looking at
19 BTA's development, would BTA's development fully recover the
20 federal minerals in the Second Bone Spring?

21 A. No, it would not.

22 Q. Would it recover any?

23 A. No.

24 Q. How about in the Upper Wolfcamp?

25 A. No.

1 **Q. Is there anything that you would like to say in**
2 **conclusion about your slides or about your overall opinion**
3 **about Marathon's development plan for the N/2 and S/2?**

4 A. I believe it is going to be the most efficient
5 development as we are coming in co-developing, doing Upper
6 Wolfcamp, Lower Wolfcamp, Second Bone Spring wells, we are
7 looking at a comprehensive plan that's looking to extract
8 these minerals, eliminating a setback, so there's another
9 benefit.

10 And our surface facilities impacts could also be
11 heavily weighed here where we -- we could look at a
12 centralized position and then, as you have seen with our
13 performance of how quickly we can move in a rig and get a
14 rig out of the way, we are going to be off that surface
15 impact as well.

16 **Q. Thank you.**

17 MS. BENNETT: With that, I would like to move the
18 admission of Exhibit 19, both pieces.

19 MR. LARSON: No objection.

20 HEARING EXAMINER LOWE: Exhibit 19 is accepted
21 for the cases.

22 (Exhibit 19 admitted.)

23 MS. BENNETT: Thank you.

24 BY MS. BENNETT:

25 **Q. And I just have one final question for you, Mr.**

1 **Moore, before I pass you as a witness. In your opinion, is**
2 **the granting of Marathon's applications in the interest of**
3 **conservation and the prevention of waste?**

4 A. Yes.

5 Q. Thank you.

6 MS. BENNETT: And I have no further questions for
7 Mr. Moore at this point.

8 CROSS-EXAMINATION

9 BY MR. LARSON:

10 Q. Good morning, Mr. Moore.

11 A. Good morning.

12 Q. You mentioned you received some BTA well
13 proposals for the N/2 of 7, NW/4 of 8?

14 A. I --

15 Q. You have looked at some, maybe I misunderstood.

16 A. I'm not sure about 8, but I know 7, yes. Yes.

17 Q. Okay. And how many proposals have you looked at?

18 A. We received four proposals.

19 Q. And who did you receive those from?

20 A. I would have to ask our geologist.

21 Q. Okay. So you, you wouldn't have any knowledge
22 that there might be additional well proposals that BTA has
23 sent out?

24 A. To what we have seen, correct.

25 Q. In looking at the first page of your Exhibit 19,

1 under the second bullet point there's a dash that says,
2 "Implies higher costs." Can you describe for me what you
3 mean by that?

4 A. So implying higher cost is, if you can drill a
5 well quicker, you can get that drilling rig off the
6 location, and so day rates or even however long you are out
7 there, that would be a higher cost if you're a slower
8 driller.

9 Q. Have you looked at any of BTA's actual well
10 costs?

11 A. We have not received any well costs for these
12 wells.

13 Q. For the wells that are indicated on your exhibit?

14 A. For BTA, correct.

15 Q. If Marathon's application is denied, would
16 Marathon be in a position to drill 1 mile laterals in
17 Section 12?

18 MS. BRADFUTE: Objection, outside of the scope of
19 the direct examination.

20 HEARING EXAMINER LOWE: Mr. Larson?

21 MR. LARSON: He talked about your development
22 program, which includes 12 and 7. I'm asking, if the
23 application is denied, could he drill 1 mile laterals.

24 MR. AMES: Mr. Larson, counsel, direct your
25 response to the Hearing Examiner. Objection overruled.

1 MR. LARSON: Thank you.

2 BY MR. LARSON:

3 A. For what we are here for, we were looking at 2
4 mile laterals is what we were here for.

5 Q. Understood. And I'm asking you to consider the
6 scenario of the Division denying your application for 2 mile
7 laterals in the N/2 of 12. Would Marathon be in a position
8 to drill 1 mile laterals in the N/2 of 12?

9 A. What I can say is, at this time, based off of our
10 goal as a company for the best development here is, in the
11 S/2 we are looking at 2 mile wells, and the only -- not the
12 only -- what we are looking at is the 2 mile development
13 for the N/2.

14 We have not evaluated a 1 mile possibility. It
15 wouldn't be -- it would not be out of the realm if we were
16 not granted this, but we wouldn't see that as the best
17 development.

18 Q. Understood. Is there any geologic or engineering
19 reason why you couldn't drill a 1 mile lateral?

20 A. In this specific area?

21 Q. Yes.

22 A. In this specific area there is not a reason why
23 we could not, but we are looking at it for what is known in
24 the industry to be the best development, whether --
25 which is 2 miles development in trying to reduce surface

1 impacts.

2 MR. LARSON: Thank you, Mr. Moore. I pass the
3 witness.

4 EXAMINER MURPHY: I have no questions.

5 HEARING EXAMINER LOWE: Good morning, Mr. Moore.

6 THE WITNESS: Good morning.

7 HEARING EXAMINER LOWE: I have a question on
8 your -- you referenced a parent-child effect earlier. And
9 that effect you indicated there are two outcomes to that,
10 one is depletion, which is what you are referencing for
11 today's case. What was your other reason again?

12 THE WITNESS: So can you state your question
13 again? I'm sorry.

14 HEARING EXAMINER LOWE: When you talked about
15 your parent-child effect, you indicated there could be --
16 well, you stated there is two results out of that, one is
17 depletion and then there's another one that you indicated.
18 What was that one?

19 THE WITNESS: So if you're having parent-child
20 effects, you are going to see depletion. And the other risk
21 you have of that is that it may sway other operators not to
22 come in and develop those minerals for a further time, but
23 that's also going to be related to depletion. I don't
24 remember stating a second. I apologize.

25 HEARING EXAMINER LOWE: I just, I thought I heard

1 you state there was -- when you brought up the parent-child
2 effect, I thought I heard there was two outcomes to that,
3 and you chose depletion as the reason why that -- where you
4 were going with now.

5 THE WITNESS: So you would -- it all ties to
6 depletion, but your estimated ultimate recovery is going to
7 go down as well, but that's still going to be tied to the
8 depletion issue.

9 HEARING EXAMINER LOWE: Okay. Okay. And on your
10 exhibit, your second page of your exhibit, your well count,
11 you indicated there is 36 in the 2 mile, and there is 37 in
12 the 1.5 mile. These are quantified from the OCD website
13 information? Is that where you got that from, all of this,
14 actually? Well, I guess the general --

15 THE WITNESS: Okay.

16 HEARING EXAMINER LOWE: This data you got here is
17 gathered from the OCD website?

18 THE WITNESS: Correct. Drilling Info and IHS
19 actually, so this data is being pulled in from Drilling Info
20 and IHS for this source data.

21 HEARING EXAMINER LOWE: Okay. Who is the surface
22 owner of this location?

23 THE WITNESS: Surface owner? I would have to
24 ask. I'm not sure who the surface owner is.

25 HEARING EXAMINER LOWE: Okay. All right. That's

1 all I have for questions for now.

2 THE WITNESS: Thank you.

3 MS. BENNETT: I have one question on redirect, if
4 that's okay.

5 REDIRECT EXAMINATION

6 BY MS. BENNETT:

7 Q. Mr. Moore, would you turn to what's been marked
8 as Exhibit 4 from Mr. Chase's testimony?

9 MR. LARSON: Mr. Rice's testimony?

10 MS. BENNETT: I have -- I've got a problem today.
11 I'm going to start calling him Mr. Rice any time I talk to
12 him on the phone, too.

13 BY MS. BENNETT:

14 Q. So if you look at Exhibit 4 that Mr. Rice
15 prepared, it's shows the Marathon proposed 2 mile
16 development and the Novo development and the BTA
17 development; is that right? Were you here yesterday when he
18 testified?

19 A. Yes.

20 Q. And so what Mr. Larson was just asking you about
21 was whether Marathon could theoretically drill a 1 mile
22 lateral in Section 12. Is that what you understood his
23 question to be?

24 A. Yes.

25 Q. If Marathon were to theoretically drill a 1 mile

1 lateral in Section 12, would that increase or decrease the
2 number of setbacks that Section 12 and Section 7 would be
3 subject to?

4 A. That would be part of increasing that setbacks
5 that would be seen.

6 Q. With an increase in setbacks, would that have a
7 decrease on the recovery of hydrocarbons?

8 A. Yes, there would be minerals that would not be
9 efficiently developed.

10 Q. And so, in your opinion, would a 1 mile lateral
11 be less efficient than a 2 mile lateral here?

12 A. Yes.

13 Q. And would it possibly lead to the stranding of
14 minerals in the setback area?

15 A. Yes.

16 Q. So while theoretically possible, it would be not
17 in the prevention of waste and not in the protection of
18 correlative rights?

19 A. Correct.

20 Q. In your opinion.

21 A. Correct.

22 MS. BENNETT: Thank you.

23 EXAMINER MURPHY: Could I ask a question or did I
24 lose my --

25 MR. AMES: No, you did not, but I ask Mr. Larson

1 if he has any recross within the scope.

2 MR. LARSON: I do not.

3 EXAMINER MURPHY: Along those lines, and I lost
4 it and you just found it, but -- so the setback is a 100
5 feet, so if you had to drill a 1 mile lateral, you would
6 lose 200 feet on each side.

7 THE WITNESS: That is correct.

8 EXAMINER MURPHY: Time six times, so 1200 feet of
9 line resources. Is that true?

10 THE WITNESS: I believe that to be true. If
11 you're talking the full section, I would have to clarify we
12 are -- that would be the case in the N/2, so actually just
13 half of that.

14 EXAMINER MURPHY: But if you had six wells, you
15 have -- okay.

16 MS. BENNETT: Yes. Six wells for the N/2, right,
17 Upper and Lower Wolfcamp.

18 THE WITNESS: Correct. I'm sorry. I was talking
19 either Upper Wolfcamp or Lower Wolfcamp, but, yes. Yes, you
20 are correct.

21 EXAMINER MURPHY: And am I -- the drill island
22 in the BTA development area complicates where wells could be
23 for that development should that development go forward;
24 right?

25 THE WITNESS: For Novo?

1 EXAMINER MURPHY: For Novo and BTA, the drill
2 island.

3 THE WITNESS: For what I'm able to see, I would
4 agree, yes.

5 EXAMINER MURPHY: So the best you could do out of
6 another scenario would be two 1.5 mile laterals and a 1 mile
7 lateral?

8 THE WITNESS: Yes.

9 EXAMINER MURPHY: Okay. Thank you.

10 MS. BENNETT: Thank you.

11 HEARING EXAMINER LOWE: You may be excused.

12 THE WITNESS: Thank you.

13 MS. BENNETT: At this time Marathon has no
14 further witnesses, but we reserve the right to recall our
15 witnesses as rebuttal witnesses if necessary after Mr.
16 Larson's witnesses.

17 HEARING EXAMINER LOWE: Can we take a ten-minute
18 break here?

19 (Recess taken.)

20 HEARING EXAMINER LOWE: We are back on the
21 record.

22 MS. BENNETT: I have no further witnesses at this
23 time, although I reserve the right to bring them back on as
24 rebuttal witnesses if necessary, and I pass to Mr. Gary --
25 Mr. Larson.

1 HEARING EXAMINER LOWE: Mr. Larson?

2 MR. LARSON: Mr. Examiner, if I understood
3 Mr. Ames correctly yesterday, you were going to afford me
4 the opportunity to do an opening statement before I call my
5 witnesses up.

6 MR. AMES: Yes.

7 MR. LARSON: From my perspective, BTA and
8 Marathon have fundamentally different views with regard to
9 Marathon's pooling application. Marathon is approaching
10 this case as if it were a contest between competing pooling
11 applications and taunts its development plan for all of
12 Sections 12 and 7.

13 That is not actually the focus of this case,
14 since, as Mr. Rice properly acknowledged yesterday, BTA has
15 no need to pool the acreage in the N/2 of 7 and NW of 8
16 because it holds 100 percent of the interest under the joint
17 operating agreement or JOA.

18 So rather than taking a broader view of
19 Marathon's development plans for 12 and 7, we need to zoom
20 into the N/2 of Section 7 and focus on the acreage that BTA
21 will refer to as it's Ochoa acreage. And BTA purchased this
22 acreage solely because of the existing JOA and the ability
23 to develop the acreage as the operator.

24 Marathon would have the Division believe that the
25 JOA is irrelevant. But even in the new world of horizontal

1 drilling and compulsory pooling, I'm not aware of any
2 Division or Commission order or New Mexico Supreme Court
3 decision stating that voluntary JOAs need not be considered
4 in relation to a pooling application.

5 And the Division order cited by Marathon, Number
6 R 14140 certainly doesn't do that. That case involved
7 opposition to a pooling application by a non-operating
8 working interest owner subject to a JOA. The non-operator
9 did not have any plans to propose a well within the JOA
10 acreage.

11 The non-operator opposing the pooling application
12 initially filed a motion to dismiss the application, which
13 was denied and then challenged the applicant's well costs
14 and requested a risk factor. Whether the JOA was an
15 impediment to pooling simply wasn't a factor in that case.

16 And rather than being irrelevant, the JOA is the
17 most relevant issue in this case. Again, BTA acquired its
18 position based on the reasonable expectation that it could
19 develop the acreage as the operator under the JOA.

20 As you will hear from our witnesses, BTA is in
21 the process of developing its interests and is ready to
22 commence drilling as soon as it receives approval of the
23 APDs and development area that is submitted to the BLM.

24 And the other relevant issue in this case is the
25 protection of BTA's correlative rights. It will become

1 apparent through the testimony of BTA's witnesses that the
2 granting of Marathon's application will unreasonably
3 interfere with BTA's development plan, strand the acreage in
4 the NW/4 of Section 8 and impair BTA's correlative rights.

5 And due to the impairment of its correlative
6 rights, BTA submits that Marathon's application should be
7 denied. With that, I will call my first witness.

8 WILLIS D. PRICE III

9 (Sworn, testified as follows:)

10 DIRECT EXAMINATION

11 BY MR. LARSON:

12 **Q. Good morning, Mr. Price.**

13 A. Good morning.

14 **Q. Would you state your full name for the record.**

15 A. My full name is Willis D. Price III.

16 **Q. And were you sworn in by the court reporter
17 yesterday?**

18 A. Yes, I was.

19 **Q. So you understand you are still under oath?**

20 A. Yes, I do.

21 **Q. And where do you reside?**

22 A. Midland, Texas.

23 **Q. By whom are you employed and what capacity?**

24 A. BTA Oil Producers LLC as the land manager.

25 **Q. Does your responsibility as land manager include**

1 BTA's development of what it calls the Ochoa acreage?

2 A. Yes.

3 Q. And does the Ochoa acreage include the N/2 of
4 Section 7 that Marathon seeks to pool?

5 A. Yes, it does.

6 Q. Are you familiar with the land matters that
7 pertain to Marathon's application?

8 A. Yes.

9 Q. Have you previously had the pleasure of
10 testifying in a Division hearing?

11 A. I have not.

12 Q. Given that, would you briefly summarize for the
13 Examiners your educational background and your professional
14 experience in the oil and gas business?

15 A. Yes. I graduated from Texas Tech University with
16 a degree in agricultural economics in 1979. I became an
17 independent landman in 1981 and have worked for various
18 companies including Marathon, Tom Brown Inc., and now BTA.
19 I have been at BTA for 14 years.

20 MR. LARSON: Mr. Examiner, I tender Mr. Price as
21 an expert in petroleum land matters.

22 HEARING EXAMINER LOWE: He is so qualified.

23 MS. BENNETT: No objection.

24 HEARING EXAMINER LOWE: Okay.

25 BY MR. LARSON:

1 Q. Mr. Price, would you identify the document marked
2 as BTA Exhibit 1?

3 A. Yes. Identified, I see it. It is the Bone
4 Spring and Wolfcamp spacing units outlined for the Loving
5 area.

6 Q. And was this map prepared under the direction and
7 supervision of Mr. McQuien of BTA who will also be
8 testifying today?

9 A. Yes.

10 Q. And what is the area identified by the green
11 line?

12 A. The green line is the N/2 of 7, NW of 8, is the
13 Ochoa acreage -- the Ochoa acreage. It's covered by a joint
14 operating agreement covering 474.11 acres.

15 Q. And is BTA the designated operator under the JOA?

16 A. Yes.

17 Q. And what is the breakdown of the working interest
18 governed by that JOA?

19 A. BTA, as operator, has 73 percent, and Oxy-Y-1
20 Company has 20 -- 27 percent.

21 Q. And would Oxy, because of the JOA, would Oxy-Y-1
22 be able to voluntarily join a horizontal prepared by
23 Marathon or any other operator that comes into the N/2 of 7?

24 A. No.

25 Q. So is 100 percent of the interest in the Ochoa

1 acreage committed to the JOA?

2 A. Yes.

3 Q. And does the JOA cover all intervals underlying
4 the N/2 of Section 7 and the NW/4 of 8?

5 A. Yes, it does.

6 Q. So would it be correct to say that BTA controls
7 100 percent of the working interest in that acreage?

8 A. Yes.

9 Q. Have any wells been drilled in that acreage
10 that's covered by the JOA?

11 A. Yes. If you see the Ds, there's Yates drilled a
12 Culebra BLV Number 1H. It's a Delaware well, and it covers
13 a mile and a half.

14 Q. And does BTA currently plan to drill additional
15 wells in the Ochoa acreage covered by the JOA?

16 A. We do. BTA made a trade with EOG for this
17 acreage because it was under a JOA, and we plan to develop
18 the Bone Spring and Wolfcamp.

19 Q. And has BTA proposed any wells to Oxy as the
20 other interest owner in that acreage?

21 A. We have. We proposed four Wolfcamp wells.

22 Q. And would you direct your attention to Exhibit 2
23 and identify it for the record.

24 A. This is a letter agreement between BTA and
25 Oxy-Y-1 Company. And at the time we made our proposals, we

1 did not have an approved APD, so this is an agreement
2 between BTA and Oxy that as soon as BTA notifies them of an
3 approved APD, that they will have 30 days to elect on our
4 four well proposals.

5 Q. And those proposals are mile and a half laterals
6 in the Wolfcamp?

7 A. Yes.

8 Q. And will the completed laterals be in the potash
9 area?

10 A. Yes, they will be.

11 Q. And will the well pad also be located in the
12 potash area?

13 A. No. The well pad is off lease in Section 12.

14 Q. And because the laterals are in the potash area,
15 was BTA required to notify Mosaic Potash?

16 A. Yes.

17 Q. Did you provide that notice?

18 A. Yes.

19 Q. And have you received any negative feedback from
20 Mosaic?

21 A. No.

22 Q. And you mentioned the surface hole location being
23 off lease in Section 12. Have you done an off-site with the
24 BLM?

25 A. Yes, we have.

1 **Q. And has the BLM conditionally approved it based**
2 **on approval of your APDs and development plan?**

3 A. Yes, they have. They approved the -- well, the
4 APDs are awaiting approval. We had to file a development
5 area covering the acreage in the Ochoa acreage shown in
6 green. And when we did that, we notified Novo, and they
7 objected to our development area. And so the B -- so the
8 BLM will approve our APDs upon, if -- upon resolution that
9 Novo removes their objection.

10 **Q. And does BTA have plans to propose any Bone**
11 **Spring wells in the Ochoa area?**

12 A. Yes, we do.

13 **Q. Those would also be 1.5 mile laterals?**

14 A. Yes.

15 **Q. And are any additional Wolfcamp wells in the**
16 **planning stage?**

17 A. Yes. As I mentioned earlier, we traded for this
18 acreage with the purpose of fully developing the Bone Spring
19 and Wolfcamp.

20 **Q. And I would like to get into BTA's discussions**
21 **with Marathon about Marathon's proposed Valkyrie wells. Do**
22 **you recall when you received well proposals from Marathon**
23 **for the Valkyrie wells that would come into the N/2 of 7?**

24 A. I don't -- I don't remember the exact date, no.

25 **Q. Summertime?**

1 A. Yes.

2 Q. Okay. And upon receiving those well proposals,
3 did you reach out to Marathon?

4 A. We reviewed the well proposals, and we set up
5 a -- or I set up a meeting with Marathon to discuss our
6 Ochoa development plan and their Valkyrie wells and traveled
7 to Houston. And at that -- at that meeting, Marathon had
8 previously offered a trade to BTA for our interest in the
9 Ochoa, and we -- we discussed that at the meeting.

10 Q. Okay. I'm going to skip an exhibit number and
11 direct your attention to Exhibit 4. And could you identify
12 this document for the record?

13 A. Yes, as I mentioned, Marathon had offered a trade
14 proposal to BTA for our Ochoa acreage, and this is the
15 e-mail proposing that trade proposal.

16 Q. Okay. Could you read into the record the
17 highlighted first sentence in the second paragraph?

18 A. "The goal of the trade is to avoid a contested
19 hearing for our Valkyrie proposal and BTA's Ochoa JOA
20 contract area."

21 Q. So is it reasonable to assume that, at least as
22 of September 29 of this year, Marathon was aware of the JOA
23 that BTA has was an issue in relation to their well
24 proposal?

25 A. Yes.

1 **Q. And you mentioned that meeting, I believe Mr.**
2 **Rice said it was October 10 --**

3 A. Yes.

4 **Q. -- it took place in Houston, how did that meeting**
5 **come about?**

6 A. I scheduled a meeting with Marathon and traveled
7 to Marathon's office and met with them and set out BTA's,
8 you know, how we got in this area and obtained our interest
9 in the Ochoa and how that our preference was to drill mile
10 and a half laterals in order to fully develop the Bone
11 Spring and Wolfcamp wells.

12 **Q. And did you give the Marathon representative at**
13 **that meeting your feedback on their initial proposal?**

14 A. Yes. The proposal was, without getting into
15 specifics, they had proposed acreage where BTA would be the
16 operator, but it was not comparable, in our mind,
17 geologically.

18 Again we -- we got this acreage because we liked
19 the area in order to operate and develop other wells in this
20 area. We have other wells in the area. So we declined the
21 offer, and that led to other discussions of other potential
22 opportunities to trade, and we kicked around some ideas, but
23 never received another proposal from Marathon.

24 **Q. Did Marathon tender a second proposal prior to**
25 **filing its pooling application?**

1 A. No.

2 Q. Did Marathon discuss any alternatives that would
3 recognize BTA's correlative rights in the N/2 of Section 7?

4 A. No.

5 Q. And, in your opinion, has Marathon made a good
6 faith effort to resolve the conflict between BTA's
7 development of the Ochoa acreage and Marathon's proposed
8 well?

9 A. No.

10 Q. In your opinion, if Marathon's application is
11 granted, will BTA's acreage in the NW/4 of Section 8
12 effectively be stranded?

13 A. Yes.

14 Q. And in your opinion, would the granting of
15 Marathon's application result in an impairment of BTA's
16 correlative rights?

17 A. Yes.

18 MR. LARSON: Mr. Examiner, I move the admission
19 of BTA Exhibits 1, 2 and 4.

20 HEARING EXAMINER LOWE: Deana?

21 MS. BENNETT: I don't recall -- so not 3?

22 MR. LARSON: Not 3.

23 MS. BENNETT: Okay. No objection.

24 HEARING EXAMINER LOWE: Exhibits 1, 2 and 4 are
25 admitted for this case.

1 (Exhibits BTA 1, 2 and 4 admitted.)

2 MR. LARSON: I will pass the witness.

3 HEARING EXAMINER LOWE: Ms. Bennett?

4 CROSS-EXAMINATION

5 BY MS. BENNETT:

6 Q. Good morning. Thanks for being here today. When
7 did BTA acquire the interest in this JOA?

8 A. I would have to get the specific date, but it was
9 in 2000 -- I think it was 11 of 2018.

10 Q. So almost a year ago, or a year ago, essentially?

11 A. Yes.

12 Q. You -- your testimony today is that you acquired
13 this interest to develop all of the formations within the
14 interest or to fully develop the JOA contract area; is that
15 right?

16 A. Yes.

17 Q. But you have only proposed four Wolfcamp wells to
18 date?

19 A. That's right.

20 Q. Mr. Larson asked you if you had plans to develop
21 the Bone Spring wells, and you said yes.

22 A. We do.

23 Q. What are those plans?

24 A. We haven't -- I mean, we have plans internally,
25 yes.

1 Q. So you have internal plans. Are they conceptual
2 plans?

3 A. No, we -- we will develop them to be determined.

4 Q. So as of today you couldn't tell the Examiners
5 when you intend to develop the Bone Spring, the Second Bone
6 Spring?

7 A. It's to be determined.

8 Q. Okay. How about the Upper Wolfcamp wells, have
9 you proposed formally to Oxy the Upper Wolfcamp wells?

10 A. No, we have not.

11 Q. Do you have any proposals that you could provide
12 to the Division today as examples of what your plans are?

13 A. We do not.

14 Q. Are those -- would you say that the plans to
15 develop the Upper Wolfcamp are conceptual plans?

16 A. I would say that, yes, we conceptually know how
17 we are going to develop the property.

18 Q. But you don't have any formal plans to develop
19 the property, the Upper Wolfcamp at this point?

20 A. I will let Britton speak to that as far as the
21 development plan, but we do have a plan.

22 Q. Would, would Mr. McQuien -- and I will ask him
23 this question, but to your knowledge, has BTA identified a
24 target date for developing the Upper Wolfcamp wells?

25 A. It's to be determined.

1 Q. To be determined. Okay. You testified that the
2 wells had -- your surface location is going to be off lease
3 in Section 12; is that right?

4 A. Yes.

5 Q. Who has the minerals in Section 12.

6 A. Section 12 is -- I'm referring to this Exhibit 1.

7 Q. Uh-huh.

8 A. I believe the one in 12 is a federal lease. And
9 I believe the S/2 is -- I believe it's also federal.

10 Q. And have you been present during the testimony
11 yesterday and today?

12 A. Yes.

13 Q. Were you present when Mr. Rice testified that
14 Chevron has -- is supporting Marathon's development of
15 Section 12?

16 A. Yes.

17 Q. Are you aware that Chevron is one of the working
18 interest holders in Section 12?

19 A. Yes.

20 Q. How far back on Section 12 would your surface
21 facilities be located?

22 A. I would have to look at the plat.

23 Q. So have you determined how much of Section 12 you
24 would encumber by your surface facilities?

25 A. Again, it would be on the plat that we have

1 submitted.

2 Q. The plat that you submitted to?

3 A. To BLM.

4 Q. To BLM, and you don't have that with you today?

5 A. No.

6 Q. You testified that Marathon had offered you a
7 trade, but that you didn't find it to be geologically
8 comparable to what you have here under the JOA contract
9 area; is that right?

10 A. Yes, that's correct.

11 Q. And yet you haven't made plans, concrete plans to
12 drill or recover any of the reserves from the Bone Spring or
13 Wolfcamp, Upper Wolfcamp; is that right?

14 A. We do have plans to develop it.

15 Q. But you can't say when those plans will be
16 implemented?

17 A. It's to be determined, but we do have plans.

18 Q. Why is BTA proposing a 1.5 mile lateral?

19 A. Because we have a JOA covering that 1.5 mile
20 acreage.

21 Q. And is the JOA contract area more or less -- I
22 believe your testimony was that it's more or less 480 acres;
23 is that right?

24 A. Yes.

25 Q. And I believe you testified that the Marathon

1 proposal would strand some of BTA's acreage?

2 A. Yes.

3 Q. Does that assume that the Novo proposal is not --
4 Novo's compulsory pooling application is denied? Because
5 Novo also has a proposed compulsory pooling application that
6 covers the area that BTA contends will be stranded?

7 A. It's to this pooling application that strands our
8 acreage.

9 Q. And you mentioned that Marathon's proposal would
10 impair your correlative rights. Is that right?

11 A. Yes.

12 Q. Were you here earlier when Mr. Moore testified
13 about the benefit of a 2 mile lateral reducing the number of
14 setbacks?

15 A. Yes.

16 Q. Do you disagree with his testimony that a 2 mile
17 lateral reduces the number of setbacks required?

18 A. I don't disagree with that.

19 Q. Would you agree with that decreasing the number
20 of setbacks also increases the potential for recovery?

21 A. I would agree with that, but there are reasons to
22 have setbacks.

23 Q. I understand that. But if there aren't setbacks
24 that are, if you can drill through a setback because it
25 doesn't even exist, that would allow for more recovery?

1 A. Yes, but for the JOA, I would agree with that.

2 Q. And would you say that if you have to -- if you
3 were developing Section 12 and Section -- I'm sorry, Section
4 7 and Section 8, the contract area, you would have to apply
5 for setbacks and you would be subject to Division setbacks?

6 A. Yes.

7 Q. So portions of Section 7 would not be recovered
8 under your plan?

9 A. Yes.

10 Q. Because of the setbacks?

11 A. Yes.

12 Q. But those portions of Section 7 would be
13 recovered under Marathon's plan?

14 A. They would be.

15 Q. Thank you. Are you aware of the order that we
16 discussed yesterday, that your counsel discussed this
17 morning which he and I disagree about the effects of, but
18 that did allow a pooling order to be entered even though
19 there was a JOA?

20 A. I'm vaguely aware of it, yes.

21 Q. Is BTA proposing four wells in this half section?

22 A. Yes.

23 Q. So an eight well per section density would be
24 your full proposal if you had the opportunity to do that?

25 A. Again, I will let Britton speak to that.

1 Q. Okay. Earlier today Mr. Larson asked Mr. Rice
2 if -- or Mr. Moore -- excuse me -- if there was any
3 impediment to drilling a 1 mile lateral on Section 12. And
4 are you familiar with the Division's preference or
5 operator's preference to drill 2 mile laterals when
6 available to reduce surface impacts and to increase
7 recovery?

8 A. When available, but again there is many factors
9 that enter into that.

10 Q. Understood. And are you also from -- having sat
11 through the testimony yesterday and today, is it fair to say
12 that Marathon's proposed horizontal spacing unit encompasses
13 more acreage than the JOA contract area?

14 A. Yes.

15 Q. And different acreage than the JOA contract area?

16 A. Yes.

17 Q. And Marathon's proposal would target hydrocarbons
18 that are both within and without -- within and without,
19 outside the JOA contract area?

20 A. Yes, I understand that.

21 MS. BENNETT: No further questions. Thank you.

22 HEARING EXAMINER LOWE: Mr. Larson, redirect?

23 REDIRECT EXAMINATION

24 BY MR. LARSON:

25 Q. A couple of questions, Mr. Price. If you look at

1 **Exhibit 1.**

2 A. Yes.

3 Q. **And that acreage in the NW of 8.**

4 A. Yes.

5 Q. **That's the acreage that would be stranded if**
6 **Marathon's application will be granted?**

7 A. That's correct.

8 Q. **And we are going to hear another case in a few**
9 **minutes on Novo's applications coming from the east?**

10 A. Yes.

11 Q. **Will that also strand acreage in the NW of 8?**

12 A. It will strand -- I mean, it will strand our
13 acreage as far as our rights, yes.

14 MR. LARSON: That's all I have.

15 MR. AMES: Ms. Bennett?

16 MS. BENNETT: Just a quick follow-up question.

17 RE-CROSS-EXAMINATION

18 BY MS. BENNETT:

19 Q. **When you talk about stranding the NW/4 of 8, that**
20 **assumes that no other operator would come in and develop**
21 **that acreage; is that right?**

22 A. That's right.

23 Q. **So it actually might not be stranded?**

24 A. Well, it strands us from being the operators, and
25 that's the reason we bought the acreage or traded for the

1 acreage, yes.

2 Q. And yet, though, you haven't proposed, formally
3 proposed Upper Wolfcamp or Bone Spring?

4 A. Internal -- I mean, internally we are going to
5 fully develop the Wolfcamp and the Bone Spring.

6 Q. To be determined?

7 A. Well, that's why we bought the acreage.

8 MS. BENNETT: Thank you.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. LARSON:

11 Q. Again, focusing on Exhibit 1, that 80 acres in
12 the NW of 8 --

13 A. Yes.

14 Q. -- in today's world, would you drill a half mile
15 horizontal well?

16 A. No.

17 Q. It just wouldn't be economically feasible, would
18 it?

19 A. It would not.

20 MR. LARSON: Thank you.

21 MR. AMES: Anything further on that?

22 MS. BENNETT: No, thank you.

23 HEARING EXAMINER LOWE: Ms. Murphy?

24 EXAMINER MURPHY: You had meetings with Marathon.

25 I mean, do you have any other meetings scheduled?

1 THE WITNESS: Another meeting with Marathon, no.

2 EXAMINER MURPHY: It seems to me you have
3 every -- you have everybody by the tail here that some
4 decisions could be made. I mean, some deals could be made.
5 You, you guys have the -- are holding everybody -- you have
6 all the keys right here.

7 I mean, it just seems odd that -- I can't see
8 where we would be stranding -- I mean, I understand the
9 concept, if groups got together and negotiated instead with
10 this pending notice, we might not be sitting here for this
11 case and the next case.

12 In 60 days or two weeks from now, there can be
13 deals made. I just -- it's frustrating to, to not see
14 companies get together and really try to make a decision as
15 opposed to coming to us to make a decision for you.

16 THE WITNESS: And -- I mean, I'm free to answer;
17 right? At the meeting we did -- I mean, we did discuss,
18 you know, our different objectives. So, yes, we did say
19 that this acreage is important to us because of the ability
20 to operate the acreage. So we just -- we haven't been able
21 to work out a solution to that, but BTA initiated the
22 meeting, and so we feel like we have talked to them about
23 the possibility of developing this acreage.

24 EXAMINER MURPHY: But, and correct me if I'm
25 wrong, did Ms. Bennett say that there was the chance to

1 continue, and you guys could have maybe negotiated over the
2 next several weeks or couple of months.

3 THE WITNESS: They offered us a proposal that we
4 did not feel like was equal, so we did not, we did not think
5 it was -- it was in our best interest to accept that
6 proposal. And then they offered potential things that we
7 might be interested in, but we never got an answer back from
8 Marathon on those potential proposals.

9 EXAMINER MURPHY: It just seems that with a
10 little more time that maybe you could have come to a better
11 agreement, and this is my own opinion, but I will leave it
12 at that. Thank you.

13 THE WITNESS: Could I -- a little more time, but
14 we had -- with this pooling order, I mean, we don't have any
15 more time.

16 EXAMINER MURPHY: Didn't they offer to continue?

17 THE WITNESS: They offered some other proposals,
18 but they never sent them to us.

19 EXAMINER MURPHY: Okay, thank you.

20 HEARING EXAMINER LOWE: Eric?

21 MR. AMES: No.

22 HEARING EXAMINER LOWE: I have just a
23 clarification on my end, Mr. Larson. In your -- you
24 reference Exhibit 4, the e-mail from Mr. -- the Willis Price
25 e-mail. You reference a date or you indicated September 29.

1 I mean, it says September 26 here, but I thought I heard you
2 say September 29.

3 MR. LARSON: You are absolutely correct. If I
4 said September 29, I was wrong.

5 HEARING EXAMINER LOWE: I have to go back and
6 verify everything by transcript, scratching my head all over
7 the place to verify which one was it. I just want to
8 clarify that from my end.

9 MR. LARSON: I propose that's our discussion when
10 we are off the record, I will --

11 HEARING EXAMINER LOWE: That's all the questions
12 I have for now. Thank you.

13 MR. LARSON: Can I ask a follow-up question
14 referring to Ms. Murphy's comment?

15 MR. AMES: You will get a chance to recross on
16 this, too.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. LARSON:

19 Q. Ms. Murphy is right, we did oppose a continuance;
20 is that correct?

21 A. We did.

22 Q. Was it because we looked at the OCD docket and
23 realized the case probably wouldn't be heard for three or
24 four months, and BTA would like to get moving on its
25 development plan?

1 A. Yes.

2 Q. And at the time Marathon asked for a continuance,
3 was there a viable offer on the table from Marathon?

4 A. No.

5 MR. LARSON: Thank you.

6 MS. BENNETT: Thanks for the opportunity to
7 recross.

8 FURTHER RECROSS-EXAMINATION

9 BY MS. BENNETT:

10 Q. So what I understand your answer to that question
11 is that you did not want to agree to a continuance because
12 you feel like you're under some time constraints given the
13 OCD's schedule?

14 A. No. I feel like we're being held up from
15 developing our acreage under our JOA.

16 Q. But how does a continuance or the inability to
17 go -- the hearing on Marathon's compulsory pooling
18 application impact your ability to go forward on your JOA
19 unless you feel like that's a time constraint?

20 A. We just didn't -- I mean, we felt like that we
21 would like to get on with our development of our acreage
22 under the JOA.

23 Q. Of the Lower Wolfcamp wells only?

24 A. Of our whole development plan going forward.

25 Q. But you haven't even formally determined when you

1 are going to start the Bone Spring, so how could a
2 continuance to February 2020 impact your ability to plan and
3 prepare for the Bone Spring wells or Upper Wolfcamp wells?

4 A. We would like to move forward with developing our
5 acreage, the Ochoa acreage.

6 Q. Did -- in that discussion it sounded like there
7 was some back and forth between Marathon and BTA about trade
8 proposals?

9 Q. Did BTA ever propose something back to Marathon?

10 A. No, we did not.

11 Q. Thank you.

12 MR. LARSON: One more question.

13 HEARING EXAMINER LOWE: Okay.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. LARSON:

16 Q. During those discussions, did you identify some
17 potential areas that BTA would be interested in?

18 A. We did, yes.

19 Q. And you didn't get a response to that?

20 A. We didn't get a response, but, yes, in our
21 conversation, in the meeting in Houston, there were ideas
22 floated of things we might be interested in, but we don't
23 know what Marathon owns, necessarily, so it was -- I
24 understood the question, was there a proposal from BTA, and
25 there was talks about what we might be interested in, but we

1 never heard back from Marathon.

2 MR. LARSON: That's all I have.

3 EXAMINER MURPHY: Can I still ask another
4 question?

5 MR. AMES: Sure.

6 EXAMINER MURPHY: So the meeting was October 10?

7 THE WITNESS: Yes.

8 EXAMINER MURPHY: And you did make some proposals
9 back?

10 THE WITNESS: At the meeting Marathon indicated
11 that they might have some other areas that we might be
12 interested in, BTA.

13 EXAMINER MURPHY: Right.

14 THE WITNESS: And so it was my understanding that
15 if they wanted to float those proposals to BTA, we would
16 look at them, and it didn't happen.

17 EXAMINER MURPHY: So they never formally --

18 THE WITNESS: Made another proposal other than
19 the first one that they made and we rejected that.

20 EXAMINER MURPHY: And you could not make counter
21 proposals because you don't necessarily know what they're
22 lands are.

23 THE WITNESS: We don't know what their lands are,
24 and I mean --

25 EXAMINER MURPHY: So after October 10, did all

1 the communication stop? I mean, has there been more
2 communication? We had an extra month here, both sides.

3 THE WITNESS: It basically stopped here. We
4 didn't move. I mean, the insinuation was they might send us
5 a proposal, and that didn't happen.

6 EXAMINER MURPHY: Okay. Thank you.

7 THE WITNESS: Yes.

8 MR. LARSON: Thank you. You are excused,
9 Mr. Price.

10 MR. AMES: Mr. Larson, will you call your next
11 witness out loud for the reporter.

12 MR. LARSON: Certainly.

13 BRITTON MCQUIEN

14 (Sworn, testified as follows:)

15 DIRECT EXAMINATION

16 BY MR. LARSON:

17 Q. Good morning, Mr. McQuien.

18 A. Good morning.

19 Q. State your name state your full name for the
20 record?

21 A. It's Britton McQuien.

22 Q. Where do you reside?

23 A. Midland, Texas.

24 Q. By whom are you employed and in what capacity?

25 A. BTA Oil Producers as permian exploration manager.

1 Q. Your responsibilities include BTA's drilling
2 activities in southeast New Mexico?

3 A. That's correct.

4 Q. Are you personally involved in the development of
5 BTA's acreage that Mr. Price has referred to as the Ochoa
6 acreage?

7 A. Yes.

8 Q. Are you familiar with Marathon's applications for
9 the proposed Valkyrie wells?

10 A. Yes.

11 Q. And have you previously testified at a Division
12 hearing?

13 A. Yes.

14 Q. Did the Examiner accept your qualifications as an
15 expert in petroleum engineering?

16 A. Yes.

17 MR. LARSON: Mr. Examiner, I tender Mr. McQuien
18 as an expert in petroleum engineering.

19 MS. BENNETT: No objection.

20 HEARING EXAMINER LOWE: He is so qualified.

21 BY MR. LARSON:

22 Q. Would you identify a document marked as
23 Exhibit 3.

24 A. Yes, sir.

25 Q. Would you identify it for the record?

1 A. Yes, okay. Exhibit 3 is a map of, in this
2 portion of Eddy County, New Mexico, just refer to it as the
3 Loving area around the town of Loving, New Mexico. Would
4 you like me to expand?

5 Q. And just to authenticate, did you prepare this
6 exhibit or did somebody at BTA prepare under your direction
7 and supervision?

8 A. It was.

9 Q. And redirecting your attention to Exhibit 1.

10 A. Yes.

11 Q. Was that also prepared under your direction and
12 supervision?

13 A. Yes.

14 Q. And what additional information does Exhibit 3
15 contain regarding the start of development in what you call
16 the Loving area?

17 A. So in this, on this map, what I'm showing, there
18 are several areas shaded in the solid blue color that those
19 are areas where BTA has operating rights as it stands today,
20 including a project we call our Ogden, Pardue in Section 11,
21 our Harroun Ranch area in Section 17 and 20 just south of
22 our Ochoa project that we are discussing today covering the
23 N/2 of Section 7 and NW/4 of Section 8.

24 This map also shows -- stop for a second. There
25 is also some blue crosshatched areas, these are areas where

1 BTA has participated in wells as a non-operating working
2 interest owner as well, so demonstrates BTA has pretty
3 extensive acreage position out here, has been involved in a
4 lot of wells, both as operator and non-operator.

5 I have also highlighted several wells just with
6 the yellow attribute that really part of the intention of
7 this display was to help go with Exhibit 1 to just show the
8 wells that are defining some of these spacing units that we
9 are discussing today.

10 Q. And if I'm interpreting your map that's Exhibit 3
11 correctly, we see one mile, one and a half mile, and 2 mile
12 wells that BTA has drilled?

13 A. That is correct.

14 Q. And generally what is the determining factor with
15 regard to the length of the laterals that BTA drills?

16 A. The -- in this area the main determining factor
17 has been the length of the contiguous acreage position that
18 we have ultimately determines the length of the lateral
19 we're drilling.

20 Q. Of the one and a half mile wells that BTA has
21 drilled and indicated on Exhibit 3 that have been drilled
22 since 2014, have those wells been economic?

23 A. Yes.

24 Q. So you view one and a half mile lateral, if
25 that's dictated by the circumstances, to be an economic well

1 to be drilled and produced?

2 A. Yes.

3 Q. And in Exhibit 3, who operates the wells in
4 Sections 19 and 30?

5 A. Well, specifically, Sections 19 and 30 of
6 Township 23, 28, are in the -- all of the wells in Section
7 19 are operated by Marathon. The wells in the -- I believe
8 the main issue here, the wells operated in the E/2 of
9 Section 30 are also operated by Marathon.

10 Q. What are the lengths of those laterals?

11 A. Those are all 1 mile laterals.

12 Q. Direct your attention back to Exhibit 1.

13 A. Yes.

14 Q. What is the red crosshatching that's shown in
15 that long rectangular box in Section 5 and 8?

16 A. Okay. I would like to refer to this in
17 Exhibit 1, as well as Exhibit 4 side by side here. The red
18 crosshatching, if you see, if you look at both exhibits,
19 Concho drilled a well targeting the Bone Spring,
20 specifically the Second Bone Spring Sand, drilled north to
21 south, and the spacing unit for that well is indicated in
22 red crosshatching on Exhibit 1.

23 Q. And what impact does COG's well, north-south well
24 have on BTA's development?

25 A. So for the Bone Springs, you know, we're fine if

1 the integrity of our pool acreage and JOA is maintained.
2 However, if we have to give up the N/2 section for the Bone
3 Spring, you know, we are locked in going back to the east by
4 the Road Lizard Well.

5 Q. And given that, do you agree with Mr. Price that
6 Marathon's proposed development of its Valkyrie wells would
7 effectively strand BTA's section in the northwest of Section
8 8?

9 A. Yes.

10 Q. In your opinion, will the 1.5 mile horizontal
11 wells that BTA plans to drill in the N/2 of 7 and the NW/4
12 of 8 be efficient and economic?

13 A. Yes.

14 Q. In your opinion, would the granting of Marathon's
15 application result in the impairment of BTA's correlative
16 rights?

17 A. Yes.

18 MR. LARSON: Mr. Examiner, I move the admission
19 of Exhibit 3.

20 HEARING EXAMINER LOWE: Ms. Bennett?

21 MS. BENNETT: I have no objection to the
22 admission of Exhibit 3.

23 HEARING EXAMINER LOWE: Exhibit 3 will be
24 admitted for the cases.

25 (Exhibit BTA 3 admitted.)

1 MR. LARSON: I will pass the witness.

2 MS. BENNETT: Thank you.

3 CROSS-EXAMINATION

4 BY MS. BENNETT:

5 Q. Good morning.

6 A. Good morning.

7 Q. Thanks for being here.

8 A. Happy to be here.

9 Q. So I just have a few follow-up questions, and
10 trying to orient myself to the two, Exhibit 1 and Exhibit 3.
11 The yellow that says all Bone Spring units, those aren't
12 Bone Spring units that BTA is proposing, are they?

13 A. No. You have some one and a quarter mile units.
14 I believe Marathon testified to those. They were
15 established by W -- no -- originally RKI now WPX's Longview
16 wells. And then covering the S/2 of the N/2 of Sections 12
17 and 7, Marathon has proposed a 2 mile unit.

18 Unfortunately that kind of cut -- between those
19 two, BTA is kind of cut off in the -- for the N/2 of 7, N/2
20 N/2 of 7. As well as I believe y'all also testified to
21 the -- y'all are establishing two additional Bone Spring
22 units in the S/2 of Section 7 and 12.

23 Q. Were you here earlier today when I tried to
24 clarify that Marathon is not proposing a Bone Spring in the
25 N/2 N/2.

1 A. Yes, I am aware of THAT.

2 **Q. So we are not actually impacting any of your**
3 **rights in the N/2 N/2 of Section 7? Because I thought**
4 **that's what you just said, that Marathon's plan would impact**
5 **your ability to drill something in the N/2 N/2 of Section 7?**

6 A. We -- with Marathon's plan, basically we are
7 going to -- if I could have a second here. Okay.

8 BTA, if Marathon's plan is approved, we could
9 potentially be in a 2 mile Bone Spring well being in the S/2
10 of the N/2 of Section 7, we would potentially have, you
11 know, the N/2 of 7 and the N/2 of the NW/4 of 8 potentially
12 stranding the S/2 of the NW/4 of 8 -- or I shouldn't say
13 "potentially," it will strand if we drill that as a mile and
14 a half well.

15 If we go to a mile well, which that doesn't seem,
16 you know, Marathon saying that they are not -- don't want
17 to drill mile wells, but the same BTA, once you drill a mile
18 well east-west in the N/2 of 7 and then go mile wells
19 north-south and NW of 8, I think, you know, we are going to
20 be in a lot of different units potentially here.

21 **Q. Just to clarify, Marathon hasn't asked you to**
22 **drill a 1 mile lateral, have they?**

23 A. For us to be able to develop our acreage, these
24 are the scenarios we are having to kind of --

25 **Q. I'm sorry, just not understanding what you are**

1 saying, but I just want to be clear. Marathon is not
2 proposing anything in the N/2 N/2. And so nothing
3 Marathon -- no pooling order would cover the N/2 N/2 of
4 Section 7?

5 A. Marathon has not proposed a pooling order for the
6 N/2 N/2 of Section 7.

7 Q. Thank you. And you highlighted the S/2 of the
8 N/2 of Section 7 as a Bone Spring unit?

9 A. S/2 of the N/2.

10 Q. N/2 of Section 7 as a Bone Spring unit.

11 A. It would be S/2 of the N/2 of 7 and 12.

12 Q. Right.

13 A. Yeah.

14 Q. But that's not a Bone Spring unit that you are
15 proposing?

16 A. We have not proposed Bone Spring wells.

17 Q. So the yellow on here does not reflect any Bone
18 Spring proposals from BTA?

19 A. No, it does not.

20 Q. Okay. I just wanted to confirm because to me
21 that was a little bit -- could have been misleading. Or I
22 misunderstood it, is a better way to put it.

23 I didn't really understand what you meant by the
24 Road Lizard 5 Federal Com cutting off your rights if that's
25 a Bone Spring well.

1 A. Yes.

2 Q. Well, let me take a step back. Could you,
3 theoretically, could BTA propose a 2 mile lateral, assuming
4 for the moment that this federal Road Lizard doesn't exist,
5 hypothetically speaking, could BTA propose a 2 mile lateral?

6 A. It's a hypothetical. It does exist.

7 Q. It does?

8 A. The Road Lizard does exist.

9 Q. Could you propose a 2 mile lateral for the Lower
10 Wolfcamp?

11 A. 2 mile well in what orientation?

12 Q. East-west.

13 A. We don't own any acreage over there.

14 Q. Could you pool those acreages?

15 A. We could attempt to pool. I don't know if we
16 would be successful.

17 Q. But you do could, essentially?

18 A. We could apply -- let me say. We could apply to
19 pool, but that's all we could do.

20 Q. So the Road Lizard 5 Federal Com does not
21 prohibit your ability to run a 2 mile lateral in the
22 Wolfcamp if you were so inclined to apply for pooling?

23 A. The Road Lizard is a Bone Spring well. It would
24 not have any impact on the Wolfcamp.

25 Q. I just wanted to be clear, because earlier I

1 thought you were testifying that the Road Lizard was boxing
2 you in entirely, but that's --

3 A. It boxes us in certainly for the Bone Spring, and
4 we would like to develop all of our acreage commonly.

5 Q. Do you want to develop it commonly? You don't
6 want to co-develop it, you just want to own all of the
7 wells. You want to operate all the wells, is what you are
8 saying?

9 A. Yes.

10 Q. So you are saying that the Road Lizard blocks you
11 in from doing Bone Spring wells, but you haven't proposed a
12 Bone Spring well?

13 A. If I could go back to Exhibit 2, this was the
14 letter agreement between Oxy and BTA --

15 Q. Uh-huh.

16 A. -- where we did propose, it would be similar to
17 Marathon's Phase 1 type development where we proposed our
18 Lower Wolfcamp wells, and at that point Oxy said, "We are
19 not going to elect until y'all have an APD," and we cannot
20 get an APD until all of this is resolved here.

21 So at this point, putting out additional steps in
22 a development plan doesn't seem like it's a productive
23 effort since Oxy has already said, "We are not going to
24 respond until we have an APD to work with."

25 Q. So the BLM has put your APD approval on hold, it

1 **sounds like, then?**

2 A. The BLM is, yes, they have -- they said, when the
3 development area is -- well, Novo has objected to our
4 proposed development area, and BLM said they will wait until
5 this is resolved to approve our APDs.

6 **Q. Is BTA proposing four Lower Wolfcamp wells?**

7 A. Yes.

8 **Q. What's the TVD of the -- let's look back at our**
9 **Exhibit 1, which I will hand to you.**

10 MS. BENNETT: If that's all right with you.

11 MR. LARSON: That's fine.

12 BY MS. BENNETT:

13 **Q. I don't have the revised Exhibit 1 in front of**
14 **me, so do you mind if I just hand you Exhibit 1 from --**

15 A. Yes, please do.

16 **Q. Because all I will be talking about is the BTA**
17 **wells. On that Exhibit 1 you see where the BTA wells are**
18 **platted --**

19 A. Yes.

20 **Q. -- marked for the BTA wells. So when we were**
21 **reviewing your materials, it seemed as if two of the wells**
22 **were identified to be in the exact same location. Is that a**
23 **typo in your proposal?**

24 A. Without looking at the proposal specifically, I'm
25 not sure what y'all were seeing to be able to create this.

1 MR. LARSON: Mr. Examiner, I have to object to
2 the form. I don't know who we is.

3 MR. AMES: Ms. Bennett?

4 MS. BENNETT: I can't remember when I used "we,"
5 but --

6 MR. AMES: The objection is sustained. Reframe
7 your question, please.

8 MS. BENNETT: Okay. Sure.

9 BY MS. BENNETT:

10 **Q. Are you familiar with the proposals that BTA**
11 **prepared?**

12 A. Yes.

13 **Q. Do those four proposals provide four different**
14 **TVDs?**

15 A. I don't know what y'all saw to put --

16 **Q. I'm not asking you about the exhibit anymore, I'm**
17 **just asking you about what you know about your own**
18 **proposals.**

19 A. I would have to go back and look at our proposals
20 specifically. I don't know -- without having them here in
21 front of me to see what the TVDs were.

22 **Q. You don't have them in front of you?**

23 A. I do not have them.

24 **Q. Okay. Would you normally propose a well in the**
25 **exact same location with the exact same TVD, would you**

1 propose two wells in the same location with the exact same
2 TVD?

3 A. No, we would not do that.

4 Q. Thanks. I will take this back.

5 A. Okay.

6 Q. Have you done any studies to determine whether
7 the Upper Wolfcamp or the Lower Wolf has the better initial
8 prospect?

9 A. Better is --

10 Q. Is the Lower Wolfcamp -- have you done studies
11 about the gassiness of the Lower Wolfcamp?

12 A. Yes.

13 Q. Is the Lower Wolfcamp gassier than the Upper
14 Wolfcamp?

15 A. Yes. Lower Wolfcamp produces with a much higher
16 GOR than the Upper Wolfcamp.

17 Q. In your opinion -- let me take a step back. Have
18 you studied the prospectivity or the recovery that you would
19 anticipate from the Upper Wolfcamp wells when you decide to
20 propose them?

21 A. Yes.

22 Q. What have you determined about the prospectivity
23 of Upper Wolfcamp wells?

24 A. Upper Wolfcamp wells are highly prospective and
25 economic.

1 Q. Are they more highly prospective than the Lower
2 Wolfcamp wells, in your opinion, based on your --

3 A. I think they are both very quality prospects and
4 would be happy to drill either one.

5 Q. When do you propose to formally -- oh, I think
6 you mentioned this already, but I will ask you anyway. When
7 do you plan to formally propose to Oxy the Upper Wolfcamp
8 wells?

9 A. Turning back to Exhibit 2, I'm going to say
10 that's going when we get some clarity on this situation and
11 are able to obtain regulatory approvals, that will be --
12 that's really a huge consideration for us being able to
13 propose more wells. So I can't give you really a time frame
14 because it's dependent on getting this whole matter settled.

15 Q. Were you here -- have you been here for both days
16 of testimony?

17 A. Yes.

18 Q. So were you here earlier when we talked about the
19 development of the 2 mile laterals being a preferred length
20 of lateral in terms of surface impact and rates of recovery?

21 A. I remember y'all testifying to that.

22 Q. Is it your opinion, generally speaking, that a 2
23 mile lateral would reduce the amount of surface impact?

24 A. There's a lot of considerations, you know,
25 specifically, like in our case, if BTA is -- looking at

1 Exhibit 1 again -- if BTA is able to maintain the integrity
2 of its JOA acreage, we will be able to develop this, you
3 know, our entire position from one surface location.

4 If it's broken up, well, we are going to be left
5 with a N/2 and still not really even sure what we are going
6 to do with the NW/4 of 8, how we would develop that. So at
7 the end of the day I don't think you can say that 2 mile
8 wells will necessarily result in fewer surface disturbances.

9 Q. If Marathon were to -- or if an operator were to
10 decide to drill a 1 mile lateral on Section 12, that would
11 increase the amount of surface disturbance because you need
12 pads on 12 and pads on -- well, you are proposing your pads
13 on 12?

14 A. You said you didn't -- you know y'all hadn't made
15 a proposal --

16 Q. We haven't --

17 A. -- for 12 --

18 HEARING EXAMINER LOWE: Can we give time to speak
19 and respond to each one of them.

20 MS. BENNETT: Sorry. Thank you for the reminder.

21 BY MS. BENNETT:

22 Q. Right now we talked about -- were you here
23 earlier when Mr. Moore testified about the need -- if an
24 operator were to propose four wells initially, and then come
25 back in to drill four more wells, that either the operator

1 would have to overcompensate now by drilling a larger -- or
2 by having more surface facilities or come back in and
3 increase the footprint of surface to address -- to be able
4 to drill those other wells. Were you here for that?

5 A. Yes, I heard that.

6 Q. What's BTA's plan in terms of surface facilities?
7 Is BTA planning on overcompensating now for wells it intends
8 to drill in the future, or will BTA have to come back in
9 later?

10 A. I would say that I don't know that I necessarily
11 agree with Mr. Moore's statement about having to -- that
12 that's our only option. We have been active developers out
13 here throughout all of New Mexico and been able to right
14 size our facilities through all of our developments.

15 Q. When you right size your facilities, does that
16 mean you don't have to bring in any more equipment to update
17 or upgrade the pad?

18 A. No. The equipment we do -- yes, you have to add
19 equipment if the rates are beyond what the current capacity
20 is.

21 Q. Have you made your surface plans for the Ochoa
22 development?

23 A. I am -- I really can't speak to that. I'm the
24 exploration manager and that would have been handled by our
25 operations group.

1 Q. Is Mr. Price in your operations group?

2 A. No, he is our land manager.

3 Q. So there is no one here to testify about the
4 surface facilities that you intend to place on Section 12?

5 A. Unfortunately, no.

6 Q. Okay. Has BTA proposed or developed any acreage
7 using an eight well per section development plan?

8 A. I'm sorry, would you restate that question?

9 Q. Sure. Sure. So it looks like BTA, based on the
10 letter --

11 A. Uh-huh.

12 Q. -- to Oxy, BTA is planning four wells per half
13 section?

14 A. Yes.

15 Q. Has BTA ever planned or developed four wells per
16 half section in New Mexico?

17 A. Yes.

18 Q. And where is that?

19 A. It's over in Lea County.

20 Q. And is that -- is that one -- have you had
21 experience with one development plan like that, or multiple?

22 A. Multiple.

23 Q. So that's in Lea County, not in Eddy County?

24 A. Yes.

25 Q. On the map that you provided here where BTA is

1 operated and non-operated, did you identify any of the areas
2 where Marathon operates or Marathon is not the operator?

3 A. On the map specifically?

4 Q. Uh-huh.

5 A. I did not identify Marathon.

6 Q. Okay. And I guess the Longview wells, the WPX
7 well that we talked about earlier today --

8 A. That's correct.

9 Q. -- by we, I mean Ms. Moore -- I'm sorry -- Ms.
10 Horne was testifying about the WPX Longview, that's what we
11 are talking about.

12 A. Yes.

13 Q. Thank you for this map. I think that shows the
14 north-south orientation well, so thank you for providing
15 that.

16 HEARING EXAMINER LOWE: Ms. Bennett, can you
17 reference what map you are looking at?

18 MS. BENNETT: Exhibit 3. In the upper part of
19 Exhibit 3 there are four wells that have yellow highlighting
20 and yellow circles with green on the interior, those are the
21 Longview federal wells that Ms. Horne identified on her
22 revised Exhibit 1 as the WPX Longview, so that gives the
23 Examiners an idea of those wells and space.

24 BY MS. BENNETT:

25 Q. Were you here earlier today when we talked about

1 the fact that a 2 mile lateral was essentially drilled
2 through what would otherwise have to be a setback between
3 Section 7 and Section 12?

4 A. Yes.

5 Q. And in, your opinion, do you agree that a 2 mile
6 lateral would eliminate the need for a setback op Section 7
7 and Section 12 if it were to traverse Section 7 and 12?

8 A. Let me make sure I understand your question here.
9 When you say, eliminate the need for a setback, you are
10 saying we would no longer have that offset space down the
11 section line?

12 Q. Uh-huh.

13 A. That setback would be eliminated, specifically.

14 Q. And would that protect BTA's correlative rights
15 in that setback area?

16 A. Would you give me a little more what you really
17 mean or referring to with correlative rights?

18 Q. What I mean there is, so if there is a setback,
19 that means that BTA will not be recovering minerals from
20 that portion of Section 7?

21 A. That's the part I don't know that I necessarily
22 agree with because that, for that, that means that the
23 drainage can only be from setback point to setback point,
24 and I think that's still an open question in the industry as
25 to how much radial drainage are you getting, you know, past

1 your last -- first and last take point, so I don't think I
2 could say, no, that we're, you know, or that we're giving up
3 correlative rights with that setback.

4 Q. Okay. But I understand that might be an open
5 question in the industry, but it would be a clear -- the
6 clear answer would be that if the 2 mile lateral went
7 through there, it would be -- you would be benefiting
8 from --

9 A. Let me say that, that interval would then be --
10 would be completed, to say that that oil and gas there, you
11 know, if it's not completed won't be drained, I don't think
12 that's a correct statement, or I don't think that's an
13 absolute statement by any stretch.

14 Q. But the converse is an absolute statement, the
15 converse being that if a 2 mile lateral went through there,
16 your -- BTA's minerals would be recovered?

17 A. Yes.

18 Q. Do you agree that a 2 mile lateral would --
19 well, I think we have already been over that one, so --

20 A. Okay.

21 Q. When you mentioned that you had drilled some four
22 wells per half section spacing in Lea County, have you
23 drilled any or planned any apart from Ochoa in Eddy County?

24 A. This would be our -- when you say four wells,
25 that, you know, that is, as demonstrated on y'all's

1 Exhibit 1, even though it appears there may have been a
2 misprint or something read in wrong, that is two different
3 landing points that are approximately 200 feet apart, so

4 Q. So you are doing wells from -- you are doing all
5 four wells from two different landing points, so two wells
6 from one landing point and two wells from another landing
7 point?

8 A. Two wells landed at one depth, and two wells
9 landed at another depth approximately 200 feet apart.

10 Q. And but you're not contesting the fact that there
11 are four wells per half section; right?

12 A. If you define -- by Marathon's definitions and
13 then I believe our geologist, she did actually call them C
14 and D landing point, so, you know, I do think you are maybe
15 recovering a discrete resource there at the different
16 landing points, so --

17 Q. Okay. I do have one more question, which is, we
18 talked earlier with Mr. Moore -- or I talked earlier with
19 Mr. Moore about the the fact these are BLM minerals.

20 A. Yes.

21 Q. And the minerals BTA is seeking to produce are
22 BLM minerals as well?

23 A. That's correct.

24 Q. And I know we talked a lot about, or you all have
25 talked about stranding the minerals in NW/4 of Section 8?

1 A. Yes.

2 Q. -- if Marathon's plan is approved?

3 A. Yes.

4 Q. And isn't, though, right now, there is no plans
5 to recover minerals FROM the Bone Spring in the NW/4 Section
6 of 8 for BTA?

7 A. Would you restate that?

8 Q. Right now BTA doesn't have any proposal for a
9 Bone Spring well?

10 A. That is correct. There are no proposals for Bone
11 Spring wells that currently exist.

12 Q. Right now BTA doesn't have any proposals for
13 Upper Wolfcamp wells?

14 A. That is correct.

15 Q. So isn't BTA effectively -- you haven't proposed
16 to recover hydrocarbons that would be beneficial to the BLM,
17 having those hydrocarbons recovered because BLM gets a
18 royalty off of those hydrocarbons?

19 A. I'm sorry, I'm still having trouble following
20 what you are saying. I don't understand the question.

21 Q. Uh-huh. So I guess my point is that, or my
22 question really is, Marathon's proposal would effectively --
23 would efficiently and is ready, Marathon is ready to recover
24 BLM minerals under Section 12 and 7 in the Bone Spring and
25 Upper Wolfcamp. So Marathon is poised to effectively

1 recover the federal minerals?

2 A. Well --

3 Q. My understanding from you, though, is BTA hasn't
4 yet proposed Bone Spring or Upper Wolfcamp federal -- to
5 recover the federal minerals in the Bone Spring.

6 MR. LARSON: Is there a question in there?

7 MS. BENNETT: Yes, I was trying to --

8 MR. AMES: Is there an objection?

9 MR. LARSON: Objection to form.

10 MR. AMES: It sounds like you are starting to
11 make statements. Ask questions.

12 MS. BENNETT: Sure.

13 BY MS. BENNETT:

14 Q. Does BTA intend to -- does BTA have a proposal to
15 recover the Bone Spring, Second Bone Spring hydrocarbons
16 that are currently the federal mineral interest in the
17 Second Bone Spring?

18 A. So proposal --

19 Q. Has BTA proposed --

20 A. BTA has not proposed Second Bone Spring wells on
21 this tract. I think we have discussed that several times.

22 Q. So -- thank you.

23 MS. BENNETT: No further questions.

24 HEARING EXAMINER LOWE: Mr. Larson, redirect?

25

REDIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. LARSON:

Q. Mr. McQuien, you were asked several questions by Marathon's counsel about would a 2 mile lateral be better than a one and a half mile lateral in the Ochoa acreage.

A. Yes, sir.

Q. You simply don't have the opportunity to do a 2 mile lateral based on the acreage under the JOA?

A. That's correct.

Q. And she also asked you about proposals to produce BLM minerals in the N/2 of 7 and NW of 8. Given Marathon's and Novo's pooling applications, there is no reason to propose those wells, is there, until those issues are resolved?

A. Exactly.

MR. LARSON: That's all I have.

MR. AMES: Anything else, Ms. Bennett?

MS. BENNETT: Yes. Let me look at Exhibit -- I think I misplaced the letter that BTA sent to Oxy -- I'm sorry, I can't find it.

MR. LARSON: Exhibit 2.

MS. BENNETT: Here it is. I got it.

RE CROSS-EXAMINATION

BY MS. BENNETT:

Q. That letter was sent on July.

1 A. That's correct.

2 Q. Which coincidentally, that's the same day as my
3 birthday.

4 A. Happy belated birthday.

5 Q. Thank you. So -- and the e-mail exchange that
6 your counsel provided is dated September 26, 2019; is that
7 right?

8 A. That's correct.

9 Q. So between July 25 and 20 -- July 25, 2019, and
10 let's say mid September of 2019, there was no competing --
11 there was no compulsory pooling hearing set; is that right?
12 And the hearing's today, November 14.

13 A. Right.

14 Q. Was there any time between July 25 and September
15 26 or mid September that BTA could have, but didn't -- could
16 BTA have sent out Bone Spring proposals between July 25 and
17 September 26?

18 A. Well, we were, on this, what was -- we were
19 waiting on the BLM to approve the development area, and so
20 we were in negotiations with back and forth with Novo and
21 trying to get something resolved there.

22 So that, you know, for why, you know, what was
23 holding up the APDs was approval of the development area.
24 So, you know, I can say, once we got this letter, I mean, we
25 discussed, should we go ahead and send Bone Spring

1 proposals, and I don't really see what that gains
2 anything -- and I understand why Oxy would respond this way,
3 under a JOA, if we don't drill within 30 days our proposal
4 is invalid, anyway. So why don't we wait until we get all
5 of this resolved, get all of the APDs in and give them 30
6 days to elect.

7 And that would be the case for any well proposal
8 we make. The four well proposals we made so far, that was
9 their response and it was a perfectly legitimate response.

10 Q. That's really helpful because I don't think I
11 understood what this letter was before we just had that
12 conversation.

13 So you had actually proposed Ochoa 1H 2H 3H and
14 4H before July 25, 2019?

15 A. That's correct.

16 Q. Do you remember when you sent the proposal to
17 Oxy?

18 A. I do not remember.

19 Q. But sometime before July 25, 2019 because it
20 looks like there was some -- I'm sorry to interrupt.

21 A. No, I don't remember the date on the well
22 proposal.

23 Q. This letter seems to reflect some back and forth
24 between BTA and Oxy. Is that accurate?

25 A. I assume -- I don't know. Mr. Price was the one

1 who was negotiating or talking with Oxy.

2 Q. And actually I see now the letter says BTA sent
3 well proposal letter dated July 8, 2019 to Oxy?

4 A. Yes.

5 Q. And then BTA agreed to amend the election period?

6 A. Yes.

7 Q. Was there a reason why BTA didn't send Oxy a Bone
8 Spring proposal letter on July 8, 2019?

9 A. Our first proposal was for the Lower Wolfcamp.

10 Q. Mr. Larson asked you a question about why BTA
11 isn't proposing 2 mile laterals or proposing to go beyond
12 the JOA contract area?

13 A. Uh-huh.

14 Q. And he asked you, that's because you don't have
15 the opportunity to do so, and you answered yes?

16 A. That's correct.

17 Q. Is that accurate? Does BTA have the opportunity
18 to have a 2 mile lateral and just has chosen not to do so?

19 A. Under the JOA -- and we acquired this because
20 there was a JOA. There was a vehicle for us to propose
21 wells and be able to drill right away. If -- to get to 2
22 miles we would have basically had to propose something
23 outside the JOA, which is, I mean, basically what brings us
24 out here.

25 Q. Okay. Thank you.

1 MS. BENNETT: I don't have any other questions,
2 thank you.

3 MR. LARSON: Nothing further.

4 EXAMINER MURPHY: However, if you had proposed
5 something in the northeast of 8, then you could have drilled
6 a 2 mile lateral, and everybody else could have drilled a 1
7 mile lateral.

8 THE WITNESS: You said if we had proposed in the
9 northeast of 8 or northwest?

10 EXAMINER MURPHY: Northeast of 8.

11 THE WITNESS: Well, you know, this is what
12 attracted us so much to this tract here was the JOA. It
13 allowed us, you know, to make well proposals and drill the
14 wells under that JOA, you know, as Mr. Larson said, we
15 controlled 100 percent of the interest because Oxy had to
16 make an election.

17 You know, for us to do something else, that JOA,
18 there was no vehicle in existence. We would have had --
19 would have had to create an entirely new legal agreement to
20 be able to propose that type of a well which, you know, I
21 mean, that's not a -- there's no certain outcome on that,
22 and you know, so I don't know how that would have turned
23 out.

24 EXAMINER MURPHY: You know, I mean, I have sat
25 through some hearings, and I have seen one mile, one and a

1 half mile, and 2 mile.

2 THE WITNESS: Yes, ma'am.

3 EXAMINER MURPHY: It's mainly based on land, and
4 we really do accept that.

5 THE WITNESS: Yes, ma'am.

6 EXAMINER MURPHY: But one of my concerns about
7 your proposal was that if the Lower Wolfcamp is gassier,
8 then what will you do with the excess gas? Do you have
9 pipeline capacity or would you flare it?

10 THE WITNESS: No, we'll sell it. We, here we
11 have three, 2 mile wells, if you look at back at Exhibit 4,
12 you can see we've got three, 2 mile wells in the Lower
13 Wolfcamp. We've had those on selling gas, you know, that
14 was all we drilled was just those Lower Wolfcamps right
15 there and have been able to market the gas continuously.
16 It's own our intention to do the same here.

17 EXAMINER MURPHY: So you won't have a flare on --

18 THE WITNESS: I wouldn't say we won't flare.
19 Operationally sometimes if the gas goes down, but, no, we
20 intend to market all of the gas here.

21 EXAMINER MURPHY: Okay. Thank you.

22 MR. AMES: No questions.

23 HEARING EXAMINER LOWE: Good afternoon.

24 THE WITNESS: Good afternoon.

25 HEARING EXAMINER LOWE: A clarification in your

1 Exhibit 3.

2 THE WITNESS: Yes, sir.

3 HEARING EXAMINER LOWE: On the map where it
4 indicates the red stars --

5 THE WITNESS: There's a BTA proposed location.
6 The red stars, is that where the surface location is going
7 to be, or is it on the left side?

8 THE WITNESS: No. The surface location will be
9 on the left side in Section 12, and then that is the
10 proposed well pad.

11 HEARING EXAMINER LOWE: So the red stars are
12 basically your digging of your well.

13 THE WITNESS: Bottom hole location, yes, sir.

14 HEARING EXAMINER LOWE: Okay. And your first
15 proposal was for the Lower Wolfcamp; correct?

16 THE WITNESS: That's correct.

17 HEARING EXAMINER LOWE: That's all I have in
18 questions for now.

19 THE WITNESS: All right. Anything else?

20 MR. AMES: Counsel, do we have any follow-up?

21 MS. BENNETT: May I ask follow-up questions?

22 MR. AMES: Yes, hopefully within the scope of the
23 questions asked.

24 MS. BENNETT: Yes, questions asked by Ms. Murphy.

25

FURTHER RECROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MS. BENNETT:

Q. You were asked about flaring gas in your plans to deal with the gassiness of the Lower Wolfcamp, and you said you intend to market it. Did you have an off-taker or any facilities in place to market that gas?

A. Yes. There is an exist producing well there.

Q. I'm talking about the Ochoa development. Sorry if I wasn't clear about that. For your Ochoa Lower Wolfcamp wells, do you have a third party, contract with a third party to take the gas from those wells?

A. I don't know at this exact time where we are in our contract negotiations for takeaway. I'm sorry, I have to punt on that question.

MS. BENNETT: Thank you.

HEARING EXAMINER LOWE: Mr. Larson?

MR. LARSON: Nothing further.

HEARING EXAMINER LOWE: Okay. Are you done with the witness?

MR. AMES: This is Mr. Larson's witness.

MR. LARSON: I am finished.

HEARING EXAMINER LOWE: You may be excused.

THE WITNESS: Thank you.

HEARING EXAMINER LOWE: Mr. Larson, call your next witness.

1 MR. LARSON: That was my final witness. I
2 identified three on my prehearing statement, but we only had
3 two to testify today.

4 HEARING EXAMINER LOWE: Two to testify, okay.
5 All right.

6 MS. BENNETT: If it's possible would it be -- or
7 if it's desirable or helpful, would it be in the Division's
8 preference if we give short closing statements, or does the
9 Division not feel a need for closing statement?

10 MR. AMES: I don't believe we need closing
11 statements at this time, but what we would like is the
12 parties to prepare proposed findings of fact and conclusions
13 of law and a memorandum of points and authorities.

14 There was some legal argument in the opening
15 statements where there can be clarification regarding the
16 points being made there. If you could submit those 30 days
17 after receipt of the transcript, or after the notice of
18 availability of the transcript, I should say.

19 And if we can limit the legal memorandum -- legal
20 memoranda to 15 pages, unless there is a clear reason to
21 exceed, and then, then make a request.

22 MS. BENNETT: Thank you. And just to confirm or
23 to clarify, we don't often -- or we don't get receipt of the
24 transcript being filed, and so I would suggest that Mr.
25 Larson and I coordinate and we will perhaps work with the

1 Division to figure out when the transcript is filed, if
2 that's acceptable.

3 MR. AMES: Yes. Yes. We'll -- we'll figure out
4 how to give notice of transcript. I wasn't aware that --
5 it's a routine occurrence in most other, I didn't know it
6 didn't happen here.

7 MR. LARSON: I agree it's not something we are
8 normally notified.

9 MR. AMES: We'll figure out how to make that
10 happen and make sure you gets notice of availability of the
11 transcript.

12 MR. LARSON: I have one point of clarification.
13 You are contemplating two separate filings, one would be
14 proposed findings and conclusions and the other would be a
15 memorandum on points and authorities.

16 MR. AMES: Yes, I suppose you could combine them
17 as long as the text of your legal argument is confined to 15
18 pages. I was going to suggest ten, but I have been on your
19 side of the table and that may not be so easy. So does 15
20 sound reasonable to you at this point?

21 MR. LARSON: It does.

22 MR. AMES: So if you can keep the written text to
23 15, if you want to put it all in one document, that's your
24 choice.

25 MS. BENNETT: Thank you.

1 MR. AMES: Anything further?

2 MS. BENNETT: Normally at this time I would be
3 asking for the cases to be taken under advisement. I don't
4 know if that's an appropriate request at this time given we
5 still have these outstanding issues of providing legal
6 memoranda and legal conclusions and findings of fact, but
7 that would be my normal request at this time would be to
8 take these cases under advisement.

9 MR. AMES: I think the answer is yes, subject to
10 the receipt of your pleadings.

11 HEARING EXAMINER LOWE: I will keep you apprised
12 of the transcripts when it's received, I will make you both
13 aware when they are ready for review.

14 MR. LARSON: We will have 30 days after that for
15 simultaneous filings?

16 HEARING EXAMINER LOWE: Yes. I will make note of
17 that.

18 MR. AMES: Counsel can always file earlier.

19 MS. BENNETT: I'm assuming if the 30th day falls
20 on a Saturday or Sunday we would have through the following
21 Monday.

22 MR. AMES: The next business day, the normal
23 rules of civil procedure.

24 MS. BENNETT: Thank you very much. Thanks for
25 being here.

1 HEARING EXAMINER LOWE: Case Number 20865 and
2 20866 will be taken under advisement.

3 MS. BENNETT: Thank you very much.

4 (Proceeding concluded.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF NEW MEXICO)
)SS
2 COUNTY OF SANTA FE)

3 I, IRENE DELGADO, certify that I reported the
4 proceedings in the above-transcribed pages, that pages
5 numbered 1 through 118 are a true and correct transcript of
6 my stenographic notes and were reduced to typewritten
7 transcript through Computer-Aided Transcription, and that on
8 the date I reported these proceedings I was a New Mexico
9 Certified Court Reporter.

10 Dated at Santa Fe, New Mexico, this 15th day of
11 November 2019.

12
13
14
15
16
17
18
19
20
21
22
23
24
25

Irene Delgado, NMCCR 253
Expires: 12-31-19