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STATE OF NEW MEXICO
ENERGY, MINERAL 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. 21361, 21362, 21363,
21364, 21489, 21490, 21491,
21393, 21394, 22947, 22845,
23318, 23319, 23320, 23321,
23020, 23021, 23022, 23023,
23024, 23025, 23677, 23678,
21568, 21572, 22653, 23738,
23739, 23762, 23763, 23765,
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VIDEOCONFERENCE HEARING
DATE: Thursday, September 21, 2023
TIME: 8:15 a.m.
BEFORE: Hearing Examiner Gregory Chakalian
LOCATION: Remote Proceeding
Santa Fe, NM 87501
REPORTED BY: Dana Fulton, Notary Public
JOB NO.: 5528939

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Marlene Salvidrez, Host (by videoconference)
Sheila Apodaca, OCD Law Clerk (by
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Case 23665:		
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Case 23689:		
Exhibit 1	Application and Proposed Notice	69/
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Exhibit 3	Geologist and Plats and Affidavit	69/
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Exhibit 6	Affidavit of Publication	69/
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NO.	DESCRIPTION	ID/EVD
Cases 23475, 23477, 23365, and 23366:		
Exhibit 1	Unidentified	84/86
Exhibit 2	Unidentified	84/86
Exhibit 2-2	Tract Ownership List	84/86
Exhibit 3	Unidentified	84/86

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NO.	DESCRIPTION	ID/EVD
Cases 23475, 23477, 23365, and 23366 (Cont'd):		
Exhibit 4	Unidentified	84/86
Exhibit 5	Unidentified	84/86
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Exhibit A	Unidentified	90/91
Exhibit A1	Unidentified	90/91
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P R O C E E D I N G S

THE HEARING EXAMINER: -- 21st, 2023.

These are the hearings of the Oil Conservation Division. Do we have our court reporter present?

THE REPORTER: I'm here -- I'm here.

THE HEARING EXAMINER: Okay. Are you ready to start?

THE REPORTER: I'm ready.

THE HEARING EXAMINER: Okay. Let's call the first couple of cases, 21361, 21362, 21363, 21364.

MS. HARDY: Good morning, Mr. Examiner. Dana Hardy on behalf of Mewbourne Oil Company.

THE HEARING EXAMINER: Thank you, Ms. Hardy.

And do we have the other interested parties or parties that have filed entries of appearance in this case -- these cases?

MS. BENNETT: Good morning, Mr. Examiner. Deanna Bennett on behalf of Apache.

THE HEARING EXAMINER: Good morning.

MR. SAVAGE: Good morning, Mr. Hearing Examiner. Darin Savage on behalf of Matador Production Company, who is the successor in interest to Ascent Energy.

1 THE HEARING EXAMINER: Thank you. Good
2 morning.

3 MS. SHAHEEN: Good morning,
4 Mr. Examiner, everyone. Sharon Shaheen, Montgomery &
5 Andrews, on behalf of Colgate.

6 THE HEARING EXAMINER: Good morning.

7 Ms. Hardy, we're here for a status
8 conference on these four cases. How are we
9 proceeding?

10 MS. HARDY: Mr. Examiner, that's
11 correct. And these cases are actually consolidated
12 for hearing with the next several cases on the docket.

13 THE HEARING EXAMINER: Okay.

14 MS. HARDY: I believe it's cases 1
15 through 9. There are --

16 THE HEARING EXAMINER: Okay.

17 MS. HARDY: -- applications by Apache
18 and Ascent with Matador as the successor in interest.

19 THE HEARING EXAMINER: Before you
20 continue, let me just announce those then, because I
21 wasn't sure they were all connected.

22 So we're also hearing right now 21489,
23 21490, 21491, 21393, and 21394. And are there any
24 other entries of appearance before we continue?

25 MS. KESSLER: Good morning,

1 MR. Chakalian, this is Jordan Kessler. I'm with EOG
2 Resources. I believe that Mr. Padilla, Ernie [ph]
3 Padilla, had entered an appearance for us, but since I
4 haven't heard his name, I'll enter mine, as well.
5 Jordan Kessler with EOG. Thank you.

6 THE HEARING EXAMINER: Good morning,
7 Ms. Kessler. By these numbers, it indicates to me
8 that these cases are almost three years old.

9 Ms. Hardy?

10 MS. HARDY: That's correct,
11 Mr. Examiner. The parties have been negotiating a
12 number of trades, and I think due to the acreage
13 involved and the number of parties, that's taken quite
14 a while.

15 But it's my understanding that
16 significant progress has been made, and the parties
17 have discussed setting another status conference on
18 November 16th if that's acceptable to the division.

19 And I believe we're optimistic that
20 these matters could be completed by then.

21 THE HEARING EXAMINER: Okay.
22 Ms. Bennett, let me hear from you?

23 MS. BENNETT: Thank you. Apache is
24 agreeable to another status conference on November
25 16th.

1 THE HEARING EXAMINER: Okay. What I
2 was also looking for from you is the progress of
3 negotiations. It has been almost three years since
4 these cases have been filed, and I'm not sure that the
5 division is the proper place for these cases to stay
6 on hold.

7 So, Ms. Bennett, would you inform me
8 why these cases should not be dismissed without
9 prejudice, so that the parties can refile when they
10 have finished their negotiations?

11 MS. BENNETT: Sure. And just to give a
12 bit of background on -- I mean, I agree with
13 everything that Ms. Hardy said. But part of the delay
14 here was also due to COVID and a emergency -- like, a
15 storm that happened in Houston.

16 So we have been working towards going
17 to hearing on these cases in fits and spurts, but due
18 to circumstances beyond our control the cases have
19 been delayed a number of times.

20 And so that -- I did -- I'm not saying
21 that's an excuse for why they're still on the docket,
22 but that certainly has hampered or has caused some of
23 the delay in moving the cases forward.

24 But we -- the parties are in
25 discussions, and I do think that keeping the cases on

1 the docket for now, anyway, does provide some touch
2 points for us to come back before the division.

3 But of course if it's the division's
4 preference to dismiss the cases without prejudice,
5 then, you know, that's understandable too, given the
6 length of the time of the cases being on the docket.

7 One thing I would note is in the past
8 when cases have been on the docket for, say, two or
9 three years, the division has given the parties an
10 opportunity to confer with their clients and then
11 present a more formal status to the division.

12 And rather than, you know, dismissing
13 the cases outright today, perhaps that's a process
14 that the division could follow here, which is ordering
15 the parties to prepare a more formal status update for
16 the division and for the division's review, and then
17 the division could make a decision at that point.

18 THE HEARING EXAMINER: So before I go
19 to the other parties, when you say, "A more formal
20 status," what does that mean?

21 MS. BENNETT: We have actually had to
22 file something with the division that shows the status
23 of the discussions between the parties.

24 And it wasn't something that said, you
25 know, "On June 25th there was a call between the

1 parties," but it was a more formal filing that the
2 division required, given the circumstances.

3 THE HEARING EXAMINER: Okay. All
4 right. Thank you.

5 Ms. Hardy, I'll come back to you in a
6 moment.

7 Mr. Savage?

8 MR. SAVAGE: Yes. Thank you.

9 Mr. Hearing Examiner, if you look at the file, you'll
10 note that there's quite a number of pleadings on these
11 cases, and they're rather complicated.

12 In fact, the status of them is that
13 they are actually part of a de novo proceeding at the
14 commission level. And they're really not -- the part
15 that is to be reviewed at the division level is part
16 of that de novo hearing at the OCC.

17 So it's rather, you know, complicated
18 to just dismiss it at this point at the division
19 level, given the direction of the commission.

20 But the recent acquisition by Matador
21 of Ascent's interest, that was fairly recently, and
22 that kind of opened up some new doors for some
23 possibilities, and negotiation, and trade, and I think
24 it would be useful to provide that a little bit more
25 time to see if some fruition can come of that.

1 But these are -- you know, there was a
2 lot of debate about how these should proceed, whether
3 they even should be at the division and what should be
4 at the division level.

5 So, you know, the division, I think,
6 should take that into account when they make a
7 decision.

8 THE HEARING EXAMINER: Mr. Savage, can
9 you be more specific, since I'm new here? I'm not
10 familiar with the commission case. Do you have a
11 number, or a date, or something for me to refer to?

12 MR. SAVAGE: No. I can't remember the
13 number off the top of my head. It seems like it was
14 24177, something along those --

15 THE HEARING EXAMINER: All right.
16 Well, let me come back to you then. When you have the
17 specific information on the commission case, I'd like
18 to get it from you.

19 MR. SAVAGE: Yes. I will look for that
20 real quick and provide that for you. Thank you.

21 THE HEARING EXAMINER: Thank you.

22 Let me hear from Ms. Shaheen.

23 MS. SHAHEEN: Thank you, Mr. Examiner.
24 Colgate is simply monitoring this in order to protect
25 its interest and preserve its right to seek de novo

1 review. And at this time it has no objections to the
2 way in which the applicants are proceeding.

3 THE HEARING EXAMINER: Okay. Thank
4 you, Ms. Shaheen.

5 Ms. Kessler?

6 MS. KESSLER: Thank you, Mr. Chakalian.
7 Like Ms. Shaheen -- virtual connectivity
8 interruption -- monitoring this case -- virtual
9 connectivity interruption -- to the division.

10 THE HEARING EXAMINER: Okay.
11 Ms. Kessler, you were very broken up. What I
12 understood is that, like Ms. Shaheen, your client is
13 just monitoring this.

14 MS. KESSLER: That's -- Mr. Examiner.
15 I'm finishing -- drop off, so I'll -- virtual
16 connectivity interruption --

17 THE HEARING EXAMINER: Not sure the
18 court reporter is going to be able to get everything
19 you said, Ms. Kessler, but I understand.

20 Ms. Hardy, I didn't ask you for your
21 position on this.

22 MS. HARDY: Mr. Examiner, I agree with
23 Ms. Bennett and Mr. Savage. I think that the status
24 of these cases, really, to give you a little bit of a
25 summary, is that there were hearings held on a sent

1 application. There was a de novo appeal to the
2 commission.

3 The Mewbourne file competing
4 applications, and so did Apache. We sought to
5 consolidate those new applications with the cases that
6 were being heard in the commission.

7 The commission, instead of doing that,
8 stayed the commission cases and asked the division to
9 hear these other cases, and then they would be
10 consolidated, the commission -- so it's been a long
11 and complicated proceeding, and that's part of the
12 reason for the delay.

13 And so the parties have been working
14 over the past couple of years, really -- and this was
15 impacted by COVID significantly -- to resolve all of
16 the cases and come up with a comprehensive solution.

17 So that's what's going on. And I think
18 it would be -- would conserve resources of the
19 parties, really, and ultimately the division to just
20 continue these cases for another status conference.

21 And we would be happy to provide
22 another -- a formal response to explain the status of
23 the negotiations, if that would be helpful.

24 THE HEARING EXAMINER: So, Ms. Hardy,
25 that was very helpful, what you told me. When was

1 this hearing that was appealed?

2 MS. HARDY: The initial hearing at the
3 division level on Ascent's applications, I believe,
4 was in 2018.

5 THE HEARING EXAMINER: When you -- are
6 you speaking of the two cases, 21393 and 21394?

7 MS. HARDY: No. It's the cases that
8 are now on appeal for de novo hearing with the
9 commission. And those are the case numbers that I'm
10 hoping Mr. Savage can provide.

11 THE HEARING EXAMINER: Mr. Savage?

12 MR. SAVAGE: Yes. So to show you how
13 convoluted this is, the original Ascent cases that
14 were awarded operatorship were case numbers 16481 and
15 16482. Those were the cases that were appealed.

16 And I believe that was around 2018, as
17 Ms. Hardy points out. The OCC -- the commission case
18 numbers for those were assigned 21277 and 21278. And
19 then Apache's commission, they -- Apache was the
20 original opposing party in this matter. Mewbourne was
21 not involved as a competing application.

22 And their OCC cases were assigned 21279
23 and 21280. Then a dispute arose between Ascent and
24 Mewbourne. And so Mewbourne got involved and filed
25 four cases. After the de novo hearing was accepted,

1 they filed four cases, and it became an issue of where
2 those cases would fit.

3 And those cases are 21361 through
4 21364. And part of those cases covered the lands of
5 the de novo hearing, and part of the cases cover lands
6 outside the de novo hearing, and so Ascent, in order
7 to cover the lands outside filed 21393 and 21394.

8 And then the division decided that
9 everything should go back to the division -- be
10 remanded back to the division for hearing at that
11 level.

12 So the -- I mean, so we -- the de novo
13 hearing and cases are still active. So, you know, the
14 division dismisses these cases. They're still in the
15 system, and they would have to be addressed in some
16 matter, in some capacity.

17 THE HEARING EXAMINER: Okay. I
18 understand. So, Mr. Savage, you mentioned commission
19 cases 21277, 21278, 21279, and 21280. Are all four of
20 those cases stayed?

21 MR. SAVAGE: Yes. All the commission
22 cases are stayed.

23 THE HEARING EXAMINER: Waiting for the
24 division to make a decision on all of these nine
25 cases?

1 MR. SAVAGE: I believe that that is
2 correct. I'm looking at the caption. I'm looking at
3 the earlier captions on the pleadings, and that's all
4 the cases that have been listed.

5 I can give you also orders -- there's
6 orders of the commission that have been issued, and
7 those fall into the range of R-21454. And then
8 there's various orders, A, B, C, et cetera, addressing
9 various --

10 THE HEARING EXAMINER: And, Mr. Savage,
11 without getting into details, what are the parties --
12 what are the issues that the -- what are the actual
13 issues here?

14 MR. SAVAGE: Well, there's a number of
15 issues, but you -- the parties were much more
16 intransigent with Ascent as the competing party. But
17 with Matador coming in, I think I opened up the door
18 for a lot more opportunity.

19 Matador is a much larger company, and
20 there's some more opportunity on the table to resolve
21 this. Ascent was a smaller company.

22 So I really think we're kind of in our
23 last leg of this. And it is -- because procedurally
24 it is very burdensome on the division.

25 But yeah. There's a number of issues

1 that would be, you know, a laundry list to go through,
2 but, you know, I wouldn't have -- I wouldn't know
3 where to start at this point to --

4 THE HEARING EXAMINER: Okay. Well,
5 Mr. Savage, what I'm asking you is do you feel as
6 though the parties will be able to negotiate all of
7 the issues, so that a hearing won't be necessary on
8 these competing compulsory pooling applications or are
9 you thinking that there still will be some need for a
10 hearing?

11 MR. SAVAGE: I am hopeful and I believe
12 that these can be resolved. And I think it would be a
13 matter of just finding the right solution with parties
14 involved. And I think that would relieve a lot of
15 headache for everybody involved, if that can come to
16 fruition and be realized.

17 You know, that's all I know at this
18 point, because I'm not involved directly in those
19 negotiations between those.

20 THE HEARING EXAMINER: I see. Okay.
21 All right. Well, here's what I'm going to do. I'm
22 going to order the parties to brief the issue on
23 dismissal, whether I have the authority to dismiss
24 them. I believe I do.

25 But if that's wrong, then I'd like to

1 know why that's wrong. And I would like those briefs
2 within two weeks. So I'm going to set a deadline for
3 two weeks from today for any party that wishes to
4 brief the issue to submit a brief to me.

5 And if you want to include a formal
6 status, as recommended by Ms. Bennett, then I am --
7 you know, that will be part of the record, of course,
8 the formal status, but I'm not willing to set this for
9 another status conference in November until I give it
10 some serious thought.

11 I'm happy to help parties resolve the
12 issue. I just don't feel the division is a receptacle
13 for old cases. I understand that there was an issue
14 with COVID. We all dealt with that, but life went on.

15 So is there anything left on these nine
16 cases before we move on?

17 MR. PADILLA: Mr. Examiner, I'm Earnest
18 L. [ph] Padilla appearing for EOG Resources. I had
19 connectivity problems at the beginning of the hearing,
20 but --

21 THE HEARING EXAMINER: Yes,
22 Mr. Padilla.

23 MR. PADILLA: We're just monitoring
24 these cases.

25 THE HEARING EXAMINER: Thank you,

1 Mr. Padilla.

2 I don't hear anything else from any
3 parties, so Marlene, do you have a date two weeks from
4 today, so I can put it in my notes?

5 MS. SALVIDREZ: It should be October
6 5th.

7 THE HEARING EXAMINER: I think you said
8 October 6th.

9 MS. SALVIDREZ: October 5th.

10 THE HEARING EXAMINER: October 5th.
11 Okay. And, Marlene, would those briefs or formal
12 status reports, would they come in through the portal?

13 MS. SALVIDREZ: Yes, they will need to
14 come in through the portal for all nine cases.

15 THE HEARING EXAMINER: Fantastic.

16 Okay. We're going to move on. So I'm
17 now calling 22947 and 22845. I believe those are --
18 I'm not sure if those are together, so let me just
19 call 22947.

20 MR. FELDEWERT: Good morning,
21 Mr. Chakalian. Michael Feldewert with the Santa Fe
22 Office of Holland & Hart. I'm appearing on behalf of
23 EOG Resources, Inc. And you are correct that the next
24 case, 22845, is related to the current matter.

25 THE HEARING EXAMINER: Thank you.

1 Are there any other parties here for
2 those two cases?

3 MR. RODRIGUEZ: Good morning. Michael
4 Rodriguez with the applicant Tap Rock Operating, LLC
5 in case number 22845. And also we entered an
6 appearance on 22947, which is a competing --

7 THE HEARING EXAMINER: Good morning.

8 MS. BENNETT: Good morning, everyone.
9 Deanna Bennett from Modrall Sperling on behalf of
10 Marathon Oil Permian in both cases.

11 THE HEARING EXAMINER: Good morning.

12 Mr. Bruce, are you involved in this
13 case, as well?

14 MR. BRUCE: Yes, sir, Mr. Examiner.
15 I'm representing MRC Permian Company, both cases.

16 THE HEARING EXAMINER: Okay.

17 Mr. Rodriguez, these are -- well, one of these is your
18 case. Is that correct?

19 MR. RODRIGUEZ: That's correct. It is
20 case number 22845.

21 THE HEARING EXAMINER: Okay. Well,
22 let's just talk about that case for the moment. I
23 know they're related, but this -- we're here for a
24 status conference. What's the status of this case?

25 MR. RODRIGUEZ: So Tap Rock and EOG

1 have been in production ongoing discussions. There
2 have been several trade concepts that have been
3 exchanged between the parties.

4 And believe Tap Rock and EOG are closer
5 to striking a mutually-agreeable deal. Tap Rock is
6 hopeful that the parties can resolve their differences
7 in the near future and potentially avoid contestant
8 hearing.

9 And as such, Tap Rock believes -- would
10 request a status conference be set sometime in
11 December.

12 THE HEARING EXAMINER: In December?

13 MR. RODRIGUEZ: Yes. I think that
14 would be -- from Tap Rock's perspective, that should
15 allow sufficient time to finalize the deal and
16 hopefully either move forward with the uncontested
17 hearing or dismiss these applications.

18 THE HEARING EXAMINER: And is 22947 and
19 22845, are they competing pooling applications?

20 MR. RODRIGUEZ: Yeah.

21 THE HEARING EXAMINER: They are
22 competing?

23 So let's hear from -- Mr. Feldewert,
24 are you representing the other application?

25 MR. FELDEWERT: Yes. I would be. I'm

1 representing EOG Resources in case 22947. And I agree
2 with what Mr. Rodriguez has stated.

3 I also note that there has been a new
4 party in the -- entered as appearance in the matter.
5 That would be Civitas Permian [ph] Operating, which I
6 think is going to have an influence on the ultimate
7 outcome with these matters.

8 So to get things sorted out with
9 respect to the new Civitas [ph] entry and how that
10 impacts his, we agreed at a status conference on
11 December 7th, makes sense.

12 THE HEARING EXAMINER: Okay.

13 Marlene, do we know of that entry of
14 appearance from Civitas [ph]?

15 MS. SALVIDREZ: I would need to look in
16 the file.

17 MR. FELDEWERT: I just looked, Marlene.
18 It was -- it's in the file for both cases.

19 THE HEARING EXAMINER: Thank you,
20 Mr. Feldewert.

21 Okay. Marlene, do we have room on
22 December 7th for another status conference on these
23 two cases?

24 MS. SALVIDREZ: We do. And they can
25 just file continuances, and just state on that

1 continuance that they would like another status
2 conference.

3 THE HEARING EXAMINER: So,
4 Mr. Rodriguez, and Mr. Feldewert, we're not issuing
5 scheduling orders.

6 And let me let everyone know that for
7 things like this, we're not going to issue scheduling
8 orders. We're going to issue prehearing orders, but
9 not scheduling orders, so everyone is on notice.

10 MR. FELDEWERT: So let me just inquire,
11 Mr. Chakalian, if I may. It sounds like all we need
12 to do here and all of it is -- all we need to do is
13 file our continuance for status conference. The
14 division is not going to do anything other than put
15 the case on a December 7th docket, I believe.

16 THE HEARING EXAMINER: That sounds
17 correct.

18 Marlene, is that correct?

19 MS. SALVIDREZ: You are correct. You
20 just need to file continuances via the portal, and
21 just state that you would like another status
22 conference on December 7th.

23 THE HEARING EXAMINER: Mr. Rodriguez,
24 when was this case filed?

25 MR. RODRIGUEZ: I believe the Tap Rock

1 case was filed in May of 2022. Yeah. And the EOG
2 case in July or August of 2022.

3 THE HEARING EXAMINER: Thank you, sir.
4 My preference is to keep cases moving along.

5 I understand that previous hearing
6 examiners have different philosophies on older cases.
7 I'm not saying a case that's been around for a year is
8 an older case, but that is my preference, is to move
9 these cases along.

10 So thank you for your input. I guess
11 we will continue. If there's nothing else on these
12 two cases, we can continue with the docket.

13 MR. RODRIGUEZ: Thank you.

14 THE HEARING EXAMINER: Thank you.

15 We're calling now 23677 and it looks
16 like 23678.

17 MS. BENNETT: Good morning, Mr. Hearing
18 Examiner. Deanna Bennett from Modrall Sperlman on
19 behalf of Avant Operating, the applicant in these two
20 cases.

21 THE HEARING EXAMINER: Thank you.

22 Do we have any other parties present?

23 MR. FELDEWERT: Good morning,
24 Mr. Chakalian. It's Michael Feldewert with Santa Fe
25 Office of Holland & Hart appearing on behalf of XTO

1 Energy, Inc.

2 THE HEARING EXAMINER: Good morning to
3 both of you. How are we doing with these two cases?

4 MR. FELDEWERT: We're still --

5 MS. BENNETT: -- I think there's one
6 more entry of appearance.

7 MS. KESSLER:: Mr. Chakalian, if I may,
8 Jordan Kessler on behalf of EOG Resources. Thank you.

9 THE HEARING EXAMINER: Thank you. I
10 didn't see your entry. Thank you. And good morning.

11 So, Mr. Bennett, can you give me a
12 status update on these cases?

13 MS. BENNETT: Yes. So Avant Operating
14 filed these applications in June, and has been ready,
15 and desires to go to hearing on these cases.

16 We were ready to go, and XTO filed a
17 notice of objection to the cases proceeding by
18 affidavit. And so that brings us to the status
19 conference today.

20 And Avant wants to take these cases to
21 hearing, wants to -- has some timing issues. These
22 are on Avant's development plan in the near term.

23 And so Avant is interested in talking
24 through today the possibility of how we can -- and I
25 think this is consistent with what you were just

1 saying, Mr. Hearing Examiner -- how we can thread the
2 needle, so to speak, to allow the parties some time to
3 continue to engage in negotiations, because Avant is
4 hopeful that it can work out any issues with XTO.

5 But at the same time, we don't want
6 this lingering and having to come back before the
7 division in a month, only to find that the next
8 available contested hearing date is two months or
9 three months out.

10 And so I have kind of an unusual
11 proposal for the division to consider, but I think I
12 should wait maybe to make that proposal until after we
13 hear from Mr. Feldewert on his views on whether -- on
14 XTO's position and how, you know, if they think they
15 can reach agreement with Avant in the near term, which
16 might eliminate my need to come up with this
17 interesting proposal.

18 THE HEARING EXAMINER: Thank you,
19 Ms. Bennett.

20 Mr. Feldewert?

21 MR. FELDEWERT: Well, I'm very
22 interested in her interesting proposal. But, I mean,
23 all I know that there have been discussions about
24 reaching an agreement.

25 I suggest they might want to -- if

1 they're confident that an agreement could be reached
2 if they might want to drop XTO as a full party, but at
3 this point there has not been an agreement.

4 So, you know, their choice is they
5 either -- we either reach an agreement or they proceed
6 to hearing. So that's kind of where things stand.

7 THE HEARING EXAMINER: So,
8 Mr. Feldewert, you filed an objection. What was the
9 objection based on?

10 MR. FELDEWERT: The objection was based
11 on the fact that the parties have not reached an
12 agreement. I know that there's some discussions about
13 potential agreement. I'm not privy to those
14 discussions.

15 But in a circumstance where a party has
16 not agreed to be pooled by affidavit, you file your
17 objection, and then the division can set the matter
18 for hearing if necessary.

19 THE HEARING EXAMINER: All right.
20 Ms. Kessler?

21 MS. KESSLER: Thank you, Mr. Hearing
22 Examination. EOG is just monitoring this case, like
23 the last one. So we don't have an opinion. Here to
24 do whatever the division decides. Thank you.

25 THE HEARING EXAMINER: All right.

1 Thank you.

2 So back to you, Ms. Bennett. What is
3 the creative suggestion?

4 MS. BENNETT: What I would like to
5 suggest is another status conference on October 5th,
6 which would allow Avant and XTO a couple more weeks to
7 try to figure out how to resolve XTO's concerns.

8 And if those concerns are resolved by
9 October 5th, then Avant would be able to proceed by
10 affidavit.

11 But going back to my concern that on
12 October 5th if we were to come to the division, the
13 next available contested hearing may be in December or
14 January.

15 I would like to ask the division's
16 thoughts on tentatively also scheduling these cases
17 for a contested hearing on November 16th, so that we
18 don't find ourselves on this sort of unending trailing
19 docket, so to speak.

20 THE HEARING EXAMINER: Okay. That
21 makes sense.

22 MS. BENNETT: And I know that's an
23 unusual request, but I think it does make sense.

24 THE HEARING EXAMINER: Makes sense to
25 me too unless Marlene doesn't like the idea.

1 Marlene, how do you feel about
2 reserving time on November 16th for a contested
3 hearing, and setting this for an October 5th status
4 conference?

5 MS. SALVIDREZ: So if we will set it
6 for an October 5th status conference, those
7 continuances will need to be filed today, so I can get
8 the docket out. And November 16th sounds fine for a
9 contested hearing.

10 THE HEARING EXAMINER: Okay. So it
11 sounds like, Ms. Bennett, we're able to do that. But
12 it sounds like you also have to file for a
13 continuance, it sounded like.

14 MS. BENNETT: Yes. And we're prepared
15 to do that today.

16 THE HEARING EXAMINER: Okay. So,
17 Ms. Bennett, sounds like you got what you needed. We
18 have an October 5th status conference and a November
19 16 contested hearing.

20 So if, at the October 5th status
21 conference, you've not reached a deal, there won't be
22 any more continuances. We will have the contested
23 hearing on November 16th.

24 MS. BENNETT: Sounds great to me.

25 THE HEARING EXAMINER: Okay.

1 Mr. Feldewert, is there anything else
2 on this case?

3 MR. FELDEWERT: No, sir. Thank you.

4 MS. BENNETT: Thanks very much.

5 THE HEARING EXAMINER: Thank you.

6 All right. Okay. So we're going down
7 to -- looks like we have a hearing in 23664, 23665,
8 BTA Oil Producers, in the Capitan Formation.

9 Mr. Feldewert, are you ready to proceed?

10 MR. FELDEWERT: I am, except I'm
11 wondering -- I think we were on the docket -- at least
12 on the docket sheet, the next case would involve MRC.
13 Case number 14. Or are we skipping around?

14 MS. SALVIDREZ: We should be on 14 and
15 15, cases 23738 and 23739.

16 THE HEARING EXAMINER: Okay. I see,
17 Marlene. Okay. 23738. We're continued from
18 September 7th. Oh, I see. Thank you.

19 So I'm calling 23738 and 39. MRC
20 Permian.

21 MR. FELDEWERT: Good morning,
22 Mr. Chakalian. Michael Feldewert with the applicant,
23 MRC Permian.

24 THE HEARING EXAMINER: Wonderful. So
25 where are we in this hearing?

1 MR. FELDEWERT: Mr. Chakalian, if you
2 recall back at your first hearing, I believe, had a
3 discussion about this case -- these two cases. The
4 problem MRC had was that newspaper publication -- not
5 get into the paper until a day later than it needed to
6 to be timely for the -- September 7th hearing.

7 So we continued the matter to allow
8 that notice of publication to run and meet the
9 deadline for the timeframe. And that was Exhibit F,
10 as in Frank, to our original hearing package. That
11 has now been accomplished, so notice -- has been
12 perfected.

13 The other nice discussion we had with
14 Mr. McClure was the pool that was involved for this
15 matter. And you recall --

16 THE HEARING EXAMINER: Mr. Feldewert,
17 hold on one second. Let me just look at my notes on
18 this case. 23738 and 39. "Application filed.
19 Continue to nine twenty-one. Secure notice and to
20 amend checklist to pool." Okay. I'm with you now.

21 MR. FELDEWERT: So I'm on the second
22 part of that now. And --

23 THE HEARING EXAMINER: Yes.

24 MR. FELDEWERT: -- the checklist to
25 amend the pool. So what you'll see in the file for

1 each case is that on Tuesday we filed an amended
2 compulsory pooling checklist, along with a cover
3 pleading for that.

4 And that amended checklist now
5 identifies the new pool that the division identified
6 for us, and provided the vertical extent of that pool,
7 which was also provided by the division.

8 So with those filings, I believe we've
9 done everything that was requested by the division,
10 and all outstanding matters have been addressed. And
11 so we would ask that these two cases be taken under
12 advisement.

13 THE HEARING EXAMINER: Before I go to
14 the technical examiner, I'm going to look on the
15 imaging to see. 23738. Okay. Let me see what you
16 filed here. So I have a filing here on the 19th. I
17 have two filings, it looks like. Notice of Amended
18 Co-Pooling Checklist. Okay.

19 And I do see page 3 of 5, 4 of 5, and 5
20 of 5, just a checklist. And then we have also here --
21 that's not it. Okay. How does this filing satisfy
22 the notice of hearing?

23 MR. FELDEWERT: It does not. The
24 Exhibit F with the original filing, the original
25 hearing package, as the affidavit of publication by

1 the newspaper. So with the date of that publication
2 reflected therein, the timeframe for that notice by
3 newspaper to occur has now been complied with.

4 THE HEARING EXAMINER: Okay. I
5 understand.

6 Do we have our technical examiner with
7 us?

8 MR. LOWE: Yes, sir. This is Leonard
9 Lowe.

10 THE HEARING EXAMINER: Good morning,
11 Mr. Lowe. Did you happen to take a look at the filing
12 in this case correcting the checklist?

13 MR. LOWE: It appears that everything
14 that was done, as far as naming of the pooling goes,
15 is in accordance with what I see so far.

16 But I don't know the in-depth details
17 of what Mr. McClure was looking into, as far as the
18 notice issue was concerned. Haven't gotten that far
19 yet. But the full indication seems to be updated.

20 But I got one question for you,
21 Mr. Feldewert. The pool referenced in this situation
22 here, was that brought up on OCD's end or was it a
23 correction? Was it just a current name change to the
24 pool name? Is that what happened here?

25 MR. FELDEWERT: Well, it was very

1 interesting, Mr. Lowe. My understanding is that the
2 division was apprised of the -- I'm sorry -- MRC was
3 initially apprised of the pool that was involved.

4 Then the -- my understanding is that
5 the division has now changed the pool for this
6 particular area, and have identified a pool now that
7 runs from the top of the first Bone Spring sand to the
8 base of the second Bone Spring sand.

9 And so they provided us then --
10 Mr. McClure by email provided that information to me,
11 both the name of the new pool, which you'll see on the
12 compulsory pooling checklist, and then asked that we
13 include the vertical extent covered by this pool in
14 the compulsory pooling checklist on page 1.

15 MR. LOWE: Okay. And basically it was
16 on OCD's side updating the pool references here.

17 MR. FELDEWERT: Yes. This all came
18 from the OCD. Correct.

19 MR. LOWE: Okay. And I just need
20 clarification on that. From what I see, it looks
21 okay. I have yet to, like I said, go in depth on the
22 notice issue.

23 Oh. So the notice issue portion, was
24 that just a last catch-all for noticing in the
25 newspaper to catch all the other interested parties

1 that pertain to this case?

2 MR. FELDEWERT: Yeah. I can't
3 remember. There was very few. I think it was only
4 one or two, but therefore published by name in the
5 newspaper.

6 But on September 7th, because of the
7 Labor Day Holiday, a newspaper had not published the
8 notice in time, so we had to continue the case for two
9 weeks to allow that notice of publication to run the
10 full period of time.

11 MR. LOWE: Okay. And in that notice,
12 it is basically referenced if there's any inquiries on
13 our -- any interested parties that want to partake in
14 these cases to come to the OCD?

15 MR. FELDEWERT: Correct.

16 MR. LOWE: Okay.

17 MR. FELDEWERT: Provided all the usual
18 information to give them the notice and the
19 opportunity to be heard.

20 MR. LOWE: Okay. Those are the only
21 questions I have pertaining to this issue. Thank you,
22 sir.

23 THE HEARING EXAMINER: Okay. Thank
24 you, Mr. Lowe.

25 Is there any objection to taking these

1 under advisement at this point?

2 MS. BENNETT: Thank you.

3 THE HEARING EXAMINER: Mr. Lowe?

4 MR. LOWE: As far as I can see, it
5 looks okay. I have to -- like I said, look into
6 in-depth detail upon this. But I guess it would be
7 okay to take it under advisement in the meantime.

8 And if we see any other issues or
9 flaws, or if we -- once we look at it with
10 Mr. McClure, then we can decide otherwise at that
11 time.

12 But I think according to what
13 Mr. Feldewert submitted, it looks okay to me so far.

14 THE HEARING EXAMINER: Okay. Thank
15 you, Mr. Lowe.

16 So, Mr. Feldewert, we will take these
17 cases under advisement at this point.

18 MR. FELDEWERT: Thank you, sir.

19 THE HEARING EXAMINER: Okay. We're
20 going to move onto 23762, and 63, and 6 -- let's stop
21 there.

22 Do we have Mr. Bruce?

23 MR. BRUCE: Yes, Mr. Examiner,
24 representing Mewbourne.

25 THE HEARING EXAMINER: We continued

1 these from September 7th for issues with the -- let me
2 look at my notes. But I remember we had issues on
3 these, as well. 23762 and 63. Okay -- yes.

4 But also, sir, it wasn't just to
5 perfect the constructed notice, but also we were
6 waiting for Exhibits 5 and 7 on both of these.

7 MR. BRUCE: And they've been filed.
8 Yeah, they were filed, I think, over that following
9 weekend.

10 THE HEARING EXAMINER: Oh, okay. Good.
11 And that's what the deadline was, was that following
12 Monday, close of business.

13 Marlene, do you have what you need
14 filed now, so that we can take these under advisement?

15 MS. SALVIDREZ: So I don't keep track
16 of what's been filed as far as exhibits. That's -- a
17 technical examiner would need to --

18 THE HEARING EXAMINER: Oh, okay.

19 MS. SALVIDREZ: -- case file.

20 THE HEARING EXAMINER: Okay. Thank
21 you.

22 Mr. Lowe, would you take a look at
23 23762 and 63, and see if you have now the exhibits you
24 need?

25 MR. LOWE: Just, Mr. Bruce, the issues

1 here were basically you need to get a checklist in;
2 correct?

3 MR. BRUCE: Yeah. I got the pooling
4 checklist in. Filed -- like I said, I think I filed
5 it on the weekend, either on Sunday or Monday
6 following the hearing.

7 And then it was -- needed to let the
8 publication notice period run, because it was not
9 timely published. And that has been -- two weeks.

10 MR. LOWE: So there was two concerns
11 here with a spreadsheet, and indicated affected
12 interest owners.

13 MR. BRUCE: Yes.

14 MR. LOWE: And the pooling checklist
15 for how many cases here? For all --

16 MR. BRUCE: Two.

17 MR. LOWE: Two --

18 MR. BRUCE: Oh. Well, two -- these
19 two, and then the subsequent three cases, Mr. Lowe.

20 MR. LOWE: Okay. According to the last
21 submittal, it looks like those two items were
22 submitted. As far as comparing in detail to what was
23 initially submitted and all the, you know, effective
24 interested parties and so forth, I have yet to go into
25 depth of that yet.

1 But according to what I see, those --
2 that information is provided.

3 THE HEARING EXAMINER: Okay. So,
4 Mr. Lowe, do you have any objection if we take these
5 two cases, 23 -- well, let me go back to my other
6 spreadsheet. I have too many open at a time. 23762
7 and 23763. I had that we needed Exhibits 5 and 7. It
8 looks like Mr. Bruce filed Exhibits 6 and 7.

9 Mr. Bruce, why are they not labeled
10 Exhibits 5 and 7? Instead you listed 6 and 7.

11 MR. BRUCE: One sec. Simple reason,
12 typo.

13 THE HEARING EXAMINER: I see. So it
14 really is Exhibits 5 and 7 you filed -- you mislabeled
15 5 and 6.

16 MR. BRUCE: Correct.

17 THE HEARING EXAMINER: Okay. Mr. Lowe,
18 I hope that helps you --

19 MR. LOWE: It -- yeah.

20 THE HEARING EXAMINER: Mr. Lowe?

21 MR. LOWE: Yes, sir?

22 THE HEARING EXAMINER: Does that help
23 you?

24 MR. LOWE: Yeah. I didn't -- all I
25 know -- I'm looking at -- I see what Dean was looking

1 for, as far as the checklist and no spreadsheet. And
2 as far as, you know, that information or that -- those
3 details, I do have -- we do have. So looks good so
4 far.

5 THE HEARING EXAMINER: Okay. So,
6 Mr. Lowe, according to my notes, they were missing
7 Exhibits 5 and 7, plus the notice needed to be cured.
8 The notice has been cured. And they filed Exhibits 5
9 and 7, but they called 5 Exhibit 6.

10 MR. LOWE: Yes.

11 THE HEARING EXAMINER: So is there
12 anything preventing us from taking this under
13 advisement at this point?

14 MR. LOWE: I don't think so, unless
15 Dean has any concerns or issues here after hearing,
16 you know, specific naming of them.

17 But as far as what the detailed
18 information that we're requesting, it appears was
19 provided.

20 THE HEARING EXAMINER: Okay. Then
21 we're going to take these two cases under advisement,
22 Mr. Bruce.

23 And we're going to move onto 23765, 6,
24 and 7. And I believe these were the same problems.
25 They were all of the same problems. Is that correct?

1 MR. BRUCE: That is correct. There's
2 two things -- yeah. The certified notice spreadsheet
3 and the pooling checklists were all filed over the
4 weekend.

5 And then I also submitted a
6 recently-received certified green card. And if you
7 would look at the certified notice spreadsheet, the
8 only party that had not returned a green card was BP
9 America Production Company.

10 And that actually arrived at my P.O.
11 box late last night. So I was -- I am going to file
12 that. It pertains to all three cases. And so the
13 certified notice was accurate, and we no longer need
14 the publication notice to be cured.

15 THE HEARING EXAMINER: I see.

16 I see Mr. Rankin turned his camera on.
17 Mr. Rankin?

18 MR. RANKIN: Good morning,
19 Mr. Examiner. Adam Rankin appearing in these cases on
20 behalf of MRC Permian Company and Forhan [ph] Oil
21 Company. No objections to the admission of the
22 exhibits or the cases being taken under advisement.

23 THE HEARING EXAMINER: Okay. So very
24 good. Thank you.

25 Mr. Bruce, I'm just looking at what you

1 filed for our last hearing. On the 11th we have
2 Exhibit 4A, a recently-received certified green card.
3 Exhibit 5, a certified notice spreadsheet. And
4 Exhibit 7, a pooling checklist.

5 And that's for 23765. I haven't looked
6 at 66 and 67 yet.

7 MR. BRUCE: Okay. They were filed for
8 all three.

9 THE HEARING EXAMINER: Are you saying
10 you filed the same document for all three?

11 MR. BRUCE: Yes, sir. Well --

12 THE HEARING EXAMINER: Okay. All
13 right.

14 MR. BRUCE: Obviously the pooling
15 checklist were different for each case.

16 THE HEARING EXAMINER: Okay. And is
17 this the green card you were just talking about or you
18 have yet another green card?

19 MR. BRUCE: No -- green card I received
20 about two weeks ago, but after -- right after the
21 hearing. And just last night when I went to the post
22 office I got the final green card.

23 And if you look at the spreadsheet, the
24 only green card I had not gotten back was from BP
25 America. And I've got that green card in my grimy

1 little meat hooks here, and I'm going to file it with
2 the division just to show that certified notice.

3 THE HEARING EXAMINER: Okay. Mr. Lowe,
4 do you have any questions from Mr. Bruce on these
5 three consolidated cases?

6 MR. LOWE: Yeah.

7 I have a -- one question for you,
8 Mr. Bruce. You just -- out on a recently-submitted
9 checklist -- not checklist, but the spreadsheet.
10 Which -- which green card did you get the last green
11 card?

12 MR. BRUCE: BP America Production
13 Company.

14 MR. LOWE: BP America Production
15 Company. Would they be referenced in your latest list
16 of interest owners?

17 MR. BRUCE: Yeah. That was -- they
18 were in the list of interest owners for the -- in the
19 landman's exhibit, Exhibit 2, which was submitted two
20 weeks ago.

21 MR. LOWE: Okay. I have no more
22 issues. I don't know questions within. Thank you.

23 THE HEARING EXAMINER: Okay.
24 Mr. Bruce, we're going to take these three cases under
25 advisement and expect you to file the copy of the

1 green card you just received last night.

2 MR. BRUCE: Thank you.

3 THE HEARING EXAMINER: And that green
4 card is from BP.

5 MR. BRUCE: Yes, sir.

6 THE HEARING EXAMINER: Very good. Is
7 there anything else on those three cases?

8 MR. BRUCE: No, sir.

9 THE HEARING EXAMINER: Okay. We're
10 going to move onto 23664, 23665, back to
11 Mr. Feldewert.

12 Sir, are you ready to proceed with the
13 hearing?

14 MR. FELDEWERT: Actually, I am
15 appearing for another party other than the
16 applicant -- Ms. Hardy is here for the applicant in
17 these two matters.

18 MS. HARDY: That's correct,
19 Mr. Examiner.

20 Dana Hardy with Hinkle Shanor on behalf
21 of BTA Oil Producers, LLC.

22 THE HEARING EXAMINER: Thank you. And
23 are you ready to proceed?

24 MS. HARDY: Yes, I am.

25 MR. FELDEWERT: And, Mr. Chakalian,

1 just -- I'm sorry. Just for the record, I'm appearing
2 on behalf of Greyhound [ph] Resources Company.

3 THE HEARING EXAMINER: Thank you. And
4 are you objecting to proceeding by affidavit?

5 MR. FELDEWERT: No, sir.

6 THE HEARING EXAMINER: Okay. Very
7 good.

8 So, Ms. Hardy?

9 MS. HARDY: Thank you. In case number
10 23664, BTA seeks an order pooling all and committed
11 interest in the Pennsylvanian Shale formation
12 underlying a 320-acre, more or less, standard
13 horizontal space standard horizontal spacing unit
14 comprised of the west half of sections 27 and 22,
15 Township 16 South, Range 36 east in Lea County.

16 That spacing unit will be dedicated to
17 the Capitan 22301, 27-22 State Com 19H well.

18 In case number 23665, BTA seeks an
19 order pooling interest also in the Pennsylvanian Shale
20 underlying a 320-acre standard horizontal spacing unit
21 comprised of the west half -- I'm sorry -- the east
22 half of the west half of sections 22 and 27, Township
23 16 South, Range 36 east.

24 That spacing unit will be dedicated to
25 the Capitan 22301 27-22 State Com number 20 well.

1 Our exhibits include the affidavits of
2 landman Adam Davenport and geologist David Childers.
3 Mr. Davenport provides the standard land exhibits.
4 The tracked ownership and pooled parties are shown in
5 Exhibit A3.

6 And as you can see from that exhibit,
7 BTA controls about an 85 percent interest in the unit,
8 and we are only pooling the interest of two working
9 interest parties and one overriding royalty interest.

10 Mr. Childers provides the standard
11 geology exhibits, including a location map, structure
12 map, gross isopach map, and cross section.

13 The notice information is included in
14 Exhibit C and its associated attachments. We received
15 certified mail receipts from all but one party, and we
16 did timely publish notice.

17 And with that, unless there are
18 questions, I request that the exhibits be accepted
19 into the record and that these two cases be taken
20 under advisement. Thank you.

21 (Exhibit A3 and Exhibit C marked for
22 identification.)

23 THE HEARING EXAMINER: Any objections,
24 Mr. Feldewert?

25 MR. FELDEWERT: No, sir.

1 THE HEARING EXAMINER: Then these
2 exhibits are admitted into evidence.

3 (Exhibit A3 and Exhibit C were received
4 into evidence.)

5 Mr. Lowe, any questions on these two
6 cases?

7 MR. LOWE: I have a question,
8 Ms. Hardy. Good morning.

9 MS. HARDY: Good morning.

10 MR. LOWE: You just -- you're
11 consolidating 23664 and 23665. Is that what's going
12 on here?

13 MS. HARDY: That's correct.

14 MR. LOWE: Okay. And then which well
15 is for 23664?

16 MS. HARDY: 23664 is the -- should be
17 the 19H -- let me look at my -- yes. 23664 is the 19H
18 well.

19 MR. LOWE: Okay. The 23665 is the 20
20 well.

21 MS. HARDY: Correct.

22 MR. LOWE: Okay. I just got confused
23 on what you verbalized earlier. I just heard a "20."
24 I -- I didn't understand which case was for which --
25 and as far as the -- this is a compulsory -- a

1 compulsory pooling case. They all basically hover
2 over the same horizontal spacing unit; correct?

3 MS. HARDY: Collectively, the two
4 applications pool the west half of these sections. So
5 one is pooling the west half west half, and one is
6 pulling the east half west half.

7 MR. LOWE: Okay. And then as far as
8 the forced pooling portions of -- okay. They're
9 almost the same or are they the same?

10 MS. HARDY: Well, there's a separate
11 spacing unit for each well, but when you put the two
12 applications together they pool the west half. But
13 one of the wells is west half west half, and one is
14 east half west half.

15 MR. LOWE: Okay. So I'm still looking
16 through your exhibits for the 19 well right now. I
17 think those are all -- the only questions I have.
18 Thank you, ma'am.

19 MS. HARDY: Thank you.

20 THE HEARING EXAMINER: Okay. So,
21 Ms. Hardy, since there are no other questions and
22 there's no objections, these cases will be taken under
23 advisement by the division.

24 MS. HARDY: Thank you very much.

25 THE HEARING EXAMINER: Thank you.

1 Let's move onto 23670 and I think
2 23671. I think they are today.

3 MS. VANCE: Good morning, Mr. Hearing
4 Examiner. Paula Vance with the Santa Fe Office of
5 Holland & Hart on behalf of MRC Permian. And you are
6 correct. Both of those cases go together. So yeah.

7 THE HEARING EXAMINER: Thank you,
8 Ms. Vance. Good morning.

9 Do we also have -- do we have any other
10 interested parties or other entries of appearance on
11 these two cases? Okay.

12 MS. SHAHEEN: Good morning again,
13 Mr. Examiner. Good morning again. This is Sharoon
14 Shaheen, Montgomery & Andrews, on behalf of S.K.
15 Warren Resources.

16 THE HEARING EXAMINER: Good morning
17 again. Any objection to proceeding by affidavit?

18 MS. VANCE: Mr. Hearing Examiner --
19 I'll go ahead and start.

20 I think Sharon and I were probably
21 going to explain the same thing. She and I spoke this
22 morning, and we'd actually like to request to continue
23 these cases to the October 19th hearing date.

24 There's still some additional
25 negotiation and paperwork, I believe, that needs to be

1 completed between Matador and S.K. Warren.

2 And also, we were going to ask to
3 present today, but we do have some additional notice
4 that needs to be perfected and additional overrides
5 that we are -- need to notice for pooling purposes.

6 So again, we would ask that we can
7 continue these cases to the October 19th hearing date,
8 and we will file that continuance today after the
9 hearing.

10 THE HEARING EXAMINER: Marlene?

11 MS. SALVIDREZ: That sounds perfect.

12 THE HEARING EXAMINER: Was that
13 Marlene? I'm not sure.

14 MS. SALVIDREZ: Can you not hear me?

15 THE HEARING EXAMINER: I hear you now.
16 I just wasn't sure who was speaking.

17 MS. SALVIDREZ: So this is Marlene.
18 And that sounds perfect.

19 THE HEARING EXAMINER: Okay. Great.

20 Ms. Shaheen, is there anything else
21 from you?

22 MS. SHAHEEN: No. S.K. Warren has no
23 objection to moving forward as Ms. Vance proposes.

24 THE HEARING EXAMINER: Okay. So,
25 Ms. Vance, let me take some notes here, so I remember.

1 So we're going to continue this hearing -- we're going
2 to set it for a hearing October 19th, so that you can
3 perfect notice and continue negotiations.

4 MS. VANCE: That's correct. And I
5 believe that we will have all of our -- those items
6 taken care of by that point.

7 THE HEARING EXAMINER: You're also
8 going to file and pay for a continuance later.

9 MS. VANCE: That's correct. We will
10 file a motion to continue to the October 19th hearing
11 date after the hearing this morning.

12 THE HEARING EXAMINER: So you're filing
13 a motion to continue that?

14 MS. VANCE: That's correct. So we're
15 requesting. Hopefully it's okay and the division
16 concurs and provides approval of that at the hearing
17 today.

18 THE HEARING EXAMINER: I have no
19 problem with that. Marlene has no problem.

20 Mr. Lowe, do you have a problem with
21 granting a continuance on these two cases?

22 MR. LOWE: Well, no.

23 THE HEARING EXAMINER: I didn't think
24 so.

25 Okay. So the continuance is granted

1 once you file and pay for the continuance. And on
2 October 19, are you proceeding with the hearing by
3 affidavit or will you need a hearing at all if you
4 work out the negotiations?

5 MS. VANCE: We should be moving forward
6 by affidavit --

7 THE HEARING EXAMINER: As opposed to
8 contested?

9 MS. VANCE: That's correct.

10 THE HEARING EXAMINER: I understand,
11 Ms. Vance. I understand now. Okay. Anything else on
12 these two cases?

13 MS. VANCE: I don't have anything.

14 THE HEARING EXAMINER: Thanks,
15 Ms. Vance.

16 We're going to move onto 23689, and it
17 looks like 23690, and 91.

18 And, Mr. Bruce, are you with us?

19 MR. BRUCE: Yes, sir.

20 THE HEARING EXAMINER: Okay. And do we
21 have any other counsel? I see some other cameras
22 going on, so let's get entries of appearance from the
23 other parties.

24 MR. RANKIN: Good morning,
25 Mr. Examiner. Adam Rankin with the Santa Fe Office of

1 Holland & Hart appearing on behalf of Colgate
2 Production, Colgate Operating Permian Resources
3 Operating.

4 THE HEARING EXAMINER: Okay. And
5 before I go to the next counsel, do you have any
6 objection on a proceeding by affidavit?

7 MR. RANKIN: We do not at this time.

8 THE HEARING EXAMINER: At this time.
9 Okay. All right.

10 Ms. Kessler?

11 MS. KESSLER: Good morning again,
12 Mr. Hearing Examiner. Jordan Kessler with EOG
13 Resources. On behalf of EOG, we don't have any
14 objections to continuing by affidavit with this case.
15 We're simply here to monitor.

16 THE HEARING EXAMINER: Perfect. Thank
17 you, Ms. Kessler.

18 And, Mr. Savage?

19 MR. SAVAGE: Good morning. Darin
20 Savage with Abadie & Schill on behalf of Coterra [ph]
21 Energy and Cimarex [ph] Energy Company, et al. And we
22 have no objections to going forward by affidavit.

23 THE HEARING EXAMINER: Perfect.

24 Mr. Bruce, I want to look at the
25 filings in these three cases, so let me pull this up,

1 23689. Are the filings complete?

2 MR. BRUCE: Yes.

3 THE HEARING EXAMINER: They are
4 complete. Okay. Excellent. Let me get to it, and
5 let me look at it.

6 Mr. Lowe, 23689 --

7 MR. BRUCE: And, Mr. Examiner, just for
8 ease of filing, I -- or for my computer filing, the
9 PDF packages, in each case there are parts one and two
10 of the exhibits.

11 THE HEARING EXAMINER: Okay. No
12 worries. Let me get there. The system is a bit slow.
13 We have here different documents, so let me look first
14 at this document filed on 9/18. Okay. I see part one
15 of two. It's a 31-page document. I see.

16 So you have Exhibits 1 through 3 on
17 this document and 4 through 7 on the other document.

18 MR. BRUCE: Correct. And that's the
19 same --

20 THE HEARING EXAMINER: Okay. And -- go
21 ahead.

22 MR. BRUCE: Really nothing. I said the
23 parts one and two of each of the other two cases are
24 split up the same way, the two exhibit packages.

25 THE HEARING EXAMINER: Okay. Mr. Lowe,

1 do you see the documents in this case?

2 MR. LOWE: Yes, sir, I do.

3 THE HEARING EXAMINER: Okay.

4 Wonderful. Let's start with 23689. Do you have any -
5 -

6 Well, Mr. Bruce, do you want to
7 present a brief presentation?

8 MR. BRUCE: Yeah. I'll present -- I'll
9 do it briefly on the first case, 689, and then just
10 mention a couple of things very briefly on the other
11 two cases.

12 THE HEARING EXAMINER: Okay. Please.

13 MR. BRUCE: You know, the exhibit
14 packages completed, Exhibit 1 is the application and
15 proposed notice. Exhibit 2 is the landman's affidavit
16 containing the usual plats and working interest,
17 ownership, et cetera.

18 You will notice Exhibit 2C -- got to
19 find it here -- a lot of people were notified. If you
20 look at Exhibit 2C, there is a long list of interest
21 owners. Many of them have very small interest. They
22 are -- I notified more people than this, but these are
23 the ones who now need to be pooled.

24 And one thing, the third page of
25 Exhibit 2C shows that records -- certain record title

1 owners of the federal leases were also forced -- are
2 also being force pooled, because sometimes it's
3 difficult to get a signature out of a record title
4 owner, which is necessary for communitization
5 purposes.

6 And both the BLM and the State Land
7 Office accept a pooling order as a substitute for a
8 signature on the com agreement. So that's why that is
9 done. I just want to point that out. It contains all
10 the other necessary information, the AFEs, et cetera.

11 Exhibit 3 is the geologist and plats
12 and affidavit with the usual plats showing that the
13 geologic formation testified that third Bone Spring
14 sand, but -- and the entire Bone Spring is being
15 pooled and shows that it's continuous.

16 The second package, the affidavit of
17 notice showing all of the notice letters sent out,
18 plus all the white cards and green cards.

19 Exhibit 5 is the certified notice
20 spreadsheet. Exhibit 6 is the affidavit of
21 publication. There were a number of people who did
22 not return green cards. Affidavit was timely
23 published.

24 And Exhibit 7 is the pooling checklist.
25 All of these exhibit packages are the same. In the

1 first case, the lands involved are the south half,
2 north half of section 3 and south half, north half of
3 section 4 of 20 South 29 East.

4 As to the next case, it's the north
5 half, south half of those two sections. Same township
6 and range. And then in case 691, it's the south half,
7 south half of those two sections, all the same
8 township and range.

9 I believe the exhibit packages are
10 complete. And I'd move the admission of Exhibits 1
11 through 7 in each case, and ask that being taken under
12 advisement.

13 (Exhibit 1, Exhibit 2, Exhibit 2C,
14 Exhibit 3, Exhibit 5, Exhibit 6, and
15 Exhibit 7 were marked for
16 identification.)

17 THE HEARING EXAMINER: Mr. Lowe.

18 MR. LOWE: Good morning again,
19 Mr. Bruce.

20 MR. BRUCE: Good morning.

21 MR. LOWE: Case 23689 -- actually, each
22 of these cases, are they separate wells?

23 MR. BRUCE: They're -- spacing --
24 different wells, different spacing units. All the --
25 the Bone Spring is being force pooled in every case.

1 And in this case, all of the wells are -- they're Bone
2 Spring sand wells.

3 But yeah, they're separate spacing
4 units with three separate -- with a well on each
5 spacing unit.

6 MR. LOWE: Okay. I think it would help
7 OCD out, as far as for everybody, if you all placed
8 your checklist up front of all your -- of your
9 exhibits that you submit -- that -- that you are
10 presenting for these cases. It just --

11 MR. BRUCE: -- I will do that -- that
12 was a hard -- always put it as the last exhibit.

13 MR. LOWE: Yeah. Because that's -- I
14 know you all want your hearing orders done quickly.
15 To help us out, to help you out, you know, to put a
16 little ease on that if you put the checklist up front.

17 MR. BRUCE: Okay.

18 MR. LOWE: And as far as kind of
19 from -- okay. It's the computer. I thought I had to
20 get Michael McMillian [ph] on you there. And as far
21 as all the affected parties, they were all notified,
22 and they were all verified, and basically promptly
23 noticed; right?

24 MR. BRUCE: Yeah. They were notified
25 by -- as I said, Exhibit 5, the certified notice

1 spreadsheet shows that there were a lot of parties --
2 a number of them, anyway, a lot -- I did receive a
3 bunch of green cards back.

4 But there are a number of parties who I
5 did not receive these green cards back from. But that
6 was cured by the affidavit of publication marked
7 Exhibit 6.

8 MR. LOWE: Okay. And as far as
9 exhibits goes for -- for each of these three cases,
10 they're all pretty much about the same in general
11 then.

12 MR. BRUCE: Yeah. And it's pretty
13 uniform. Yes.

14 MR. LOWE: Okay. I think those are the
15 only questions I got, Mr. Bruce.

16 THE HEARING EXAMINER: Okay, Mr. Lowe.
17 I'm just looking through -- I wanted to make sure
18 they're all complete before I move on. So our imaging
19 website is a little slow. So I've already checked
20 23689, and I do see that is complete. Here we go.

21 23690 is also complete. Okay. Let me
22 check the -- yeah. And the last one, 91. Okay. Here
23 we have yellow pages. All right. Mr. Bruce, I am
24 finding all the exhibits as expected in 23689, 23690,
25 and 23691.

1 So unless there's an objection to
2 taking this under advisement from anyone -- and I
3 haven't heard anything -- and Mr. Lowe is finished
4 with his questions, we will take these three
5 applications under advisement.

6 Okay. And now we're moving on to
7 23475, 77, 23365, 23366. Here we have a contested
8 hearing or hearings. We're consolidating these. It
9 looks like we have -- let's just have people introduce
10 themselves.

11 Let's start out with the counsel for
12 Earthstone.

13 MR. BECK: Good morning, Mr. Hearing
14 Examiner. Matt Beck on behalf of the applicant for
15 Earthstone Operating, LLC.

16 THE HEARING EXAMINER: Mr. Beck. Okay.
17 Then, Mr. Beck, I think you filed a motion to strike.
18 Is that correct?

19 MR. BECK: Yes, Mr. Hearing Examiner.

20 THE HEARING EXAMINER: We'll continue.
21 Let's have other entries of appearance, please.

22 MR. BRUCE: Mr. Examiner, Jim Bruce
23 representing Mewbourne Oil Company in all cases.

24 THE HEARING EXAMINER: Okay. Thank
25 you, sir.

1 MR. JONES: Good morning, Mr. Hearing
2 Examiner. Blake Jones with Steptoe & Johnson
3 monitoring the cases on behalf of Northern Oil and Gas
4 for all cases.

5 THE HEARING EXAMINER: Thank you, sir.

6 MS. RYAN: Good morning, Mr. Examiner.
7 Beth Ryan on behalf of Conoco Phillips and COG
8 Operating.

9 THE HEARING EXAMINER: Okay. Thank
10 you. Good morning.

11 MR. FELDEWERT: Good morning,
12 Mr. Chakalian. Michael Feldewert with Santa Fe Office
13 of Holland & Hart appearing on behalf of Devon Energy
14 Production Company and on behalf of MRC Permian.

15 THE HEARING EXAMINER: Okay. Thank
16 you.

17 Do we have any other entries of
18 appearance on these four cases? Not hearing any. Do
19 we have any interested parties? Also not hearing any.
20 Okay. So let's deal with the motion to strike first.

21 So, Mr. Beck, I read your motion. I
22 did not get a response from anyone. I didn't feel
23 like we needed a response. I'm denying the motion on
24 the following grounds.

25 I understand that you were objecting

1 to the delay in the rebuttal witness and any possible
2 rebuttal exhibits. I'm denying the motion, because
3 the way I view -- let me grab the rule here.

4 The way I view this rule in my
5 authority is as follows. And I'm citing to nineteen
6 fifteen four. And here we have prehearing statements.
7 And it says, "But in no even later than 5 p.m.
8 Mountain Time on Thursday proceeding the scheduled
9 hearing date."

10 So this was filed one day later. So I
11 understand your objection. However, in subpart 14 of
12 the rule, under A, it talks about testimony. And it
13 says, "Hearing before the commission or the division
14 examiner shall be conducted without breach of
15 formality." So I take that into consideration.

16 I also go to part 17 of the rule,
17 "Rules of Evidence and Exhibits, A, presentation of
18 evidence. Subject to other provisions, the
19 commissioner, examiner shall afford a full opportunity
20 to the parties and the judicatory hearing."

21 Okay. So I look at those parts of the
22 rule. There isn't a lot -- there isn't a lot in this
23 rule otherwise that controls how I rule on this
24 motion.

25 However, as a trial attorney, when I --

1 and I was a prosecutor for six years -- when I had a
2 rebuttal witness, that rebuttal witness did not need
3 to be listed on my witness list, but the judge
4 construed the need for a rebuttal witness or rebuttal
5 exhibits very strictly.

6 So what I'm going to do, Mr. Beck, is I
7 leave it to you to make an objection. If you want to
8 object to a rebuttal witness if one is called or
9 rebuttal evidence in the form of a document or an
10 exhibit, you are free to make the argument that this
11 witness should have been listed on the original
12 witness list that was filed timely in this matter.

13 And if you can make that argument, then
14 I will exclude that witness or the exhibits. But
15 until you make that, I'm going to deny your motion.

16 So are we ready to proceed with the
17 hearing?

18 MR. BRUCE: Yes. I am, Mr. Examiner.
19 I would point out one thing. I never saw this motion
20 to strike, so that's why --

21 THE HEARING EXAMINER: Okay.

22 Mr. Beck?

23 Okay, Mr. Bruce.

24 Mr. Beck?

25 MR. BECK: Mr. Hearing Examiner, I'll

1 take a quick look, but I know that as soon as it was
2 filed, I think Monday morning, it was sent out to all
3 the parties who had appeared, including Mr. Bruce, via
4 email. So let me make sure that's correct.

5 It also appeared on the docket at 10:47
6 a.m. on Monday morning, on the OCD docket, so --

7 THE HEARING EXAMINER: Well, Mr. Bruce,
8 I'm looking at the certificate of service, page 12 of
9 the document. He does state that he served it on you.
10 Whether you received it or not, I can't, obviously --
11 but it is denied anyway, so I don't think that we
12 should waste time on this any longer.

13 MR. BRUCE: Correct.

14 THE HEARING EXAMINER: So, Mr. Bruce,
15 are you presenting the case?

16 MR. BRUCE: Yes.

17 THE HEARING EXAMINER: Okay. Please
18 proceed.

19 MR. BRUCE: Okay. I don't know if you
20 want any opening statements or not, or just dive into
21 the case, Mr. Examiner.

22 THE HEARING EXAMINER: You know, is it
23 your pleasure -- Mr. Bruce, you have the burden of
24 persuasion, of course. So if you want to give a
25 succinct opening statement, please feel free.

1 MR. BRUCE: Okay. I will be brief, but
2 normally I am.

3 Mr. Beck, in his prehearing statement,
4 set forth an order, R 21834, stating factors involved
5 when we had competing pooling situations like this.

6 There is another older case, the
7 commission order, R 10731-B. And the main -- the
8 commission set forth the main issues to look at,
9 number one, the geology. Number two, good faith
10 negotiations.

11 Number three, AFEs, although that's a
12 minor consideration, and then working ownership or
13 control. I think both parties will get into that in
14 the hearing.

15 I would just point out that there's a
16 couple of key factors here. Mewbourne has been
17 working on this project for several years now, and I
18 believe it's been diligent in the good faith
19 negotiations.

20 Furthermore, in these particular well
21 units, working ownership or control is a key factor,
22 because Mewbourne's cases are supported by about 75
23 percent of the working interest owners, which is a
24 substantial factor involved.

25 And finally, we believe that the

1 geology, the zones Mewbourne refers to be tested, are
2 the better zones to test.

3 And with that, the only other issue, I
4 think, that you want to look at is under division
5 regulations, when you're dealing with unitized lands,
6 like Mewbourne's are, in section 7, a party who wants
7 to drill has to get the approval of the state land
8 commissioner to drill those lands.

9 Mewbourne has that approval and
10 Earthstone does not. And therefore, we think
11 Mewbourne has the superior position in this -- in
12 these cases. Thank you.

13 THE HEARING EXAMINER: Okay.
14 Mr. Bruce, before you continue, who is the technical
15 examiner on this case today?

16 MR. LOWE: I believe it's still me,
17 Mr. --

18 THE HEARING EXAMINER: Okay. I wasn't
19 sure if we were going to have a different one for
20 compulsory pooling competing applications or not. So
21 it is still you, Mr. Lowe?

22 MR. LOWE: As far as I know. Nobody
23 else told me otherwise, but --

24 THE HEARING EXAMINER: Okay. All
25 right. Sounds good. This is my first contested

1 hearing.

2 And what I want to ask the parties is
3 does Mr. Bruce have the burden of persuasion for all
4 four cases or does he only have it for 23365 and 66,
5 whereas Earthstone would have the burden of persuasion
6 in 75 and 77? Can anyone advise me on that?

7 MR. BRUCE: I guess I've never really
8 put it that way, Mr. Examiner, but -- the examiners
9 have generally looked at these and decided who has the
10 better argument.

11 So I guess -- I guess it's probably
12 proper what you're saying. Mr. Beck has the burden of
13 persuasion on his cases, and I have the burden of
14 persuasion on mine.

15 THE HEARING EXAMINER: Okay. All
16 right.

17 Mr. Beck, how do you feel about that?

18 MR. BECK: I agree with Mr. Bruce.

19 THE HEARING EXAMINER: Wonderful. So,
20 Mr. Beck, do you have a brief opening statement?

21 MR. BECK: Yes, Mr. Hearing Examiner.
22 Earthstone is filing competing applications with
23 Mewbourne in these matters. As Mewbourne points out,
24 previously Mewbourne had looked to extend the North
25 Wilson Deep Unit in the September -- or excuse me --

1 in 2020.

2 In December of 2020, it agreed with
3 Earthstone's predecessor in interest, Chisholm, to
4 remove the sections from the expansion of the North
5 Wilson Deep Unit that it now seeks to drill.

6 And it did that because of Chisholm's
7 opposition to including these areas in that expansion
8 of the North Wilson Deep Unit.

9 Chisholm opposed that expansion for the
10 exact reason that Earthstone has submitted competing
11 applications for these wells.

12 And that is because Earthstone owns
13 interest in both the east half, east half section 18
14 and the west half, east half of section 18. Mewbourne
15 does not own working interests in those sections.

16 So when the division looks at the
17 working interest ownership for these competing
18 applications, that's a key factor.

19 Also looking at the good faith
20 negotiations, which is a factor in both of the cases
21 that Mr. Bruce listed for you, Chisholm's opposition
22 and Mewbourne's agreement for that opposition factor
23 into those good faith negotiations.

24 Also, when the division is looking at
25 the protection of correlative rights, waste, the

1 factors that it looks at in all applications, should
2 be notable to the division.

3 When you're looking at the geology of
4 the two competing applications and development plans
5 that Earthstone, unlike Mewbourne, is applying for
6 four wells in the spacing units, whereas Mewbourne is
7 applying for two wells in the spacing units.

8 Mewbourne is targeting only the second
9 Bone Spring sand formation. Earthstone, on the other
10 hand, is targeting both the first and second sand
11 formations within the Bone Spring.

12 The final factor to that is that for
13 the second sand formation, the Bone Spring,
14 Earthstone's application is providing for what's
15 referred to as a wine rack formation for the drilling
16 sections and the testing.

17 And that's a more modern approach to
18 ensure that the spacing between the wells is further
19 apart, which allows for a more efficient and
20 eventually more economical production from these
21 wells.

22 And so Earthstone will be asking the
23 division and will show today that its development plan
24 is superior to that of Mewbourne's.

25 THE HEARING EXAMINER: Okay. Thank

1 you, Mr. Beck.

2 Mr. Bruce, do you want to -- your case
3 in chief?

4 MR. BRUCE: Yes. What I planned on
5 doing was running through the -- well, first I'll go
6 exhibit by exhibit -- I mean, excuse me -- witness by
7 witness. And I'd like to get the pertinent witness
8 sworn in as a -- geologist, engineer, or whatever.

9 And then I would run briefly through
10 the exhibits and ask some follow-up questions if that
11 procedure is acceptable to you.

12 THE HEARING EXAMINER: Let me -- before
13 we get -- I think I'd like to get all the witnesses
14 sworn in at one time by the court reporter. But
15 before we do that, let's talk about the exhibits for a
16 moment.

17 Each party has multiple exhibits. Let
18 me take a look first. Do I have an exhibit list from
19 you? Let's see. This here is a prehearing statement.

20 Give me a moment here. What is this?
21 This is Earthstone's exhibits list. Let's go back
22 now. Earthstone's amended prehearing statement.
23 Okay. This is still Earthstone.

24 Mr. Bruce, I'm looking for your exhibit
25 list. I'm sure I'll find it. We have an amended

1 prehearing. Mr. Bruce, on what date did you file your
2 exhibit list?

3 MR. BRUCE: Last Thursday,
4 mid-afternoon.

5 THE HEARING EXAMINER: What was the
6 date, sir?

7 MR. BRUCE: What is that? The 14th.

8 THE HEARING EXAMINER: Okay. I'm
9 looking. I have all the documents open here. I have
10 a prehearing statement from you. I don't see your
11 exhibit list. Can you point it out to me?

12 MR. BRUCE: Hold on. I got to get to
13 my computer, sir.

14 THE HEARING EXAMINER: Let's take a
15 five-minute break. It's 9:45. We're going to come
16 back on the record at 9:50 this morning. Thank you.

17 (Off the record.)

18 THE HEARING EXAMINER: September 21st.
19 We are continuing the contested hearing in 23475,
20 23477, 23365, and 23366.

21 Mr. Bruce, I think I found your
22 exhibits. I think I found your exhibits. So I have a
23 green cover sheet with Exhibits 1 through 9. Is that
24 correct? Mr. Bruce, are you with us?

25 //

1 (Exhibit 1 through Exhibit 9 were
2 marked for identification.)

3 MR. BRUCE: Yes, I am. Sorry. Muted
4 myself. Yes. The green package is the main exhibit
5 list. And then --

6 THE HEARING EXAMINER: And then I see
7 additional exhibits filed on the 19th. It looks like
8 Exhibit 10. Then there's a self-affirming statement
9 by Nick Stowers, but it doesn't have an exhibit number
10 next to it. And then I have Exhibit 12.

11 MR. BRUCE: Yeah. The affidavit should
12 be Exhibit 11. It's marked in the package.

13 THE HEARING EXAMINER: I see. So you
14 are, what, amending Exhibits 10, 11, and 12 through
15 this filing?

16 MR. BRUCE: No. Exhibits 10 and 12 are
17 new exhibits. And then Exhibit 11, the Nick Stowers
18 affidavit, that's the rebuttal witness.

19 THE HEARING EXAMINER: I see. That's
20 your rebuttal witness. Okay. And then we have
21 another -- filing -- hold on a second. Then we have
22 another filing on the 20th, which was yesterday, with
23 the yellow cover page.

24 MR. BRUCE: Yeah --

25 THE HEARING EXAMINER: -- the colors

1 are actually helpful. And it looks to me like you are
2 revising Exhibit 2-2.

3 MR. BRUCE: Yes. Two in each case,
4 because there was -- we discovered some mistakes in
5 the original filing, and so we wanted to correct what
6 was in there --

7 THE HEARING EXAMINER: Okay. Well,
8 let's go to -- I understand. Let's go to Mr. Beck.

9 Mr. Beck, are any of -- do you object
10 to the admission of any of these exhibits into
11 evidence?

12 MR. BECK: Yes, Mr. Hearing Examiner,
13 as I think you're probably anticipating from the
14 motion to strike and exclude.

15 We do object to the exhibits that were
16 filed on Tuesday, the 19th, about 4 in the afternoon,
17 as well as the testimony by Mr. Stowers, the purported
18 rebuttal witness whose testimony was disclosed two
19 days before. And it's not rebuttal testimony, but
20 testimony that should've been set forth originally.

21 We -- don't object to the -- let me --
22 I don't want to cut you off. Just to complete it for
23 you, we don't object to the admit to 2-2, because I
24 think that that's probably a closer representation of
25 the working interests, and is certainly something that

1 we would've anticipated originally being corrected,
2 whether now or at a later date.

3 THE HEARING EXAMINER: Okay. So let me
4 very clear and specific. Which exhibits are you not
5 objecting to or are you stipulating to?

6 MR. BECK: Sure. And let me make sure
7 I've got it in front of me, as well. It's Exhibits 1
8 through 9, which were timely filed under the Court's
9 pre-hearing order and under the rules applicable to
10 these proceedings.

11 And we object to Exhibit 10, what I
12 think is Exhibit 11, but let me check -- yes. Exhibit
13 11, and Exhibit 11A and B, and Exhibit 12.

14 THE HEARING EXAMINER: Okay. And then
15 you're not objecting to the revised Exhibits 2-2. Is
16 that correct?

17 MR. BECK: That's correct.

18 THE HEARING EXAMINER: All right. Let
19 me make notes of this. Revised 2-2. Okay. So
20 Exhibits 1, 2, revised 2-2, 3, 4, 5, 6, 7, 8, and 9
21 are hereby admitted into evidence by stipulation.

22 (Exhibit 1, Exhibit 2, Exhibit 2-2,
23 Exhibit 3, Exhibit 4, Exhibit 5,
24 Exhibit 6, Exhibit 7, Exhibit 8, and
25 Exhibit 9 were received into evidence.)

1 And Exhibits 10, 11, and 12 are not
2 admitted into evidence at this time. Mr. Bruce can
3 attempt to lay a foundation and make arguments, but
4 that's for the future.

5 So, Mr. Bruce, do you understand that?

6 MR. BRUCE: Yes, sir, Mr. Examiner.
7 And I did want to point out one thing. There's
8 actually been three pre-hearing statements I filed.
9 One was filed in February of this year when we thought
10 we were going to hearing. I amended that, and that
11 one was filed.

12 And we filed September 14th in the
13 mid-afternoon. And then the next morning when my
14 witnesses saw Earthstone's exhibits, that I filed for
15 an amended statement to say that we may file rebuttal
16 exhibits and -- witness Mr. Stowers. I just wanted to
17 get that timeline down straight.

18 THE HEARING EXAMINER: Okay. I
19 understand that. So are you -- okay. Well, what I'm
20 doing here now is I'm looking for the parties -- I'm
21 looking toward the parties for stipulations on each
22 other's exhibits.

23 So some have been stipulated to,
24 Mr. Bruce, and some have been objected to.

25 MR. BRUCE: Okay.

1 THE HEARING EXAMINER: I've admitted
2 some into evidence. Some have not been admitted into
3 evidence at this time. So now, Mr. Bruce, I'm going
4 to turn to you for the same question.

5 Mr. Beck, let me get your exhibit list.
6 I have a table of contents on page 2 of 150. We have
7 how many -- let me ask you. It looks as though you
8 have Exhibits A, B, C, D, and subparts Number 2. Is
9 that correct?

10 MR. BECK: That's correct.

11 THE HEARING EXAMINER: Okay.
12 Mr. Bruce, do you have the filing that I'm referring
13 to? It was filed on September 14th.

14 MR. BRUCE: Yes, I do.

15 THE HEARING EXAMINER: Okay.
16 Wonderful. Now before I ask you a question,
17 Mr. Bruce, Mr. Beck, are there any amendments, or
18 changes to these exhibits, or did you add any?

19 MR. BECK: There was an amendment filed
20 the next morning, Exhibit -- amended Exhibit C. And
21 what it added was the resume or CV of Mr. Nicholas
22 Goree, which is Exhibit C. It just included his
23 resume after his direct testimony.

24 THE HEARING EXAMINER: Okay. And
25 you're marking that as Exhibit C, but I already showed

1 that you have, in tab number 4, Exhibit C, C1, C2, C3,
2 C4. So you already have an Exhibit C. So I'm
3 confused.

4 (Exhibit C and Exhibit C1 through C4
5 were marked for identification.)

6 MR. BECK: Yeah. So I apologize for
7 that. I probably could've made it more clear for you.
8 Exhibit C is an eight-paragraph direct testimony from
9 Nicholas Goree.

10 THE HEARING EXAMINER: Okay.

11 MR. BECK: And then paragraph 4 in
12 that says -- in the, I guess, the penultimate
13 sentence, "My resume is attached for the division's
14 review and consideration."

15 I omitted his resume when I filed it --
16 for 14. And so the amended Exhibit C, which I filed
17 in the morning of the 15th, just includes his resume.

18 THE HEARING EXAMINER: I see. So
19 you --

20 MR. BECK: Otherwise it's the same.

21 THE HEARING EXAMINER: Okay. All
22 right. I understand now what happened. So you're
23 amending -- but you didn't mark it -- you didn't mark
24 Exhibit C as "Amended Exhibit C," which is what's
25 confusing here.

1 MR. BECK: Yeah. I apologize for that.
2 It had a cover page on it.

3 THE HEARING EXAMINER: I see.

4 MR. BECK: And I should've been more --

5 THE HEARING EXAMINER: I see it now.
6 So Exhibit C is actually an amended Exhibit C on the
7 filing from the 15th of September. Okay.

8 So, Mr. Bruce, I don't know -- do you
9 have all those documents there?

10 MR. BRUCE: Yes, I do, sir.

11 THE HEARING EXAMINER: Okay. Very
12 good. So let's start with Exhibit A, A1, 2, 3, 4, 5,
13 and 6. Do you stipulate to any of those?

14 (Exhibit A and Exhibit A1 through
15 Exhibit A6 were marked for
16 identification.)

17 MR. BRUCE: I have no objection to
18 Exhibit A and its attachments. And I have no --

19 THE HEARING EXAMINER: Okay. Hold on,
20 Mr. Bruce. Just let's go one step at a time, because
21 I'll get confused if we don't.

22 MR. BRUCE: Okay.

23 THE HEARING EXAMINER: Okay. So A --
24 and then we have 1 through 6. They're admitted into
25 evidence through stipulation.

1 (Exhibit A and Exhibit A1 through
2 Exhibit A6 were received into
3 evidence.)

4 Okay. Let's go to Exhibit B.

5 MR. BRUCE: Okay.

6 THE HEARING EXAMINER: Mr. Bruce?

7 MR. BRUCE: Yes. I -- this is the
8 testimony of the geologist. And in particular, I
9 object to the admission of Exhibits B6 through B10,
10 because they pertain to reservoir engineering, not --

11 THE HEARING EXAMINER: Okay.

12 MR. BRUCE: And I --

13 THE HEARING EXAMINER: You don't have
14 to explain to me, Mr. Bruce. I just want to hear what
15 you're going to stipulate to and what you're not going
16 to. So back to B.

17 MR. BRUCE: Okay.

18 THE HEARING EXAMINER: It sounds like
19 you're stipulating 1 through 5. Is that correct?

20 MR. BRUCE: Yeah. Exhibit B, and then
21 B1 through B5.

22 (Exhibit B and Exhibit B1 through B5
23 were marked for identification.)

24 THE HEARING EXAMINER: Perfect. All
25 right. Good.

1 So they are admitted now into evidence
2 by stipulation.

3 (Exhibit B and Exhibit B1 through B5
4 were received into evidence.)

5 But we are objecting to 6 through 10
6 based on the foundation.

7 MR. BRUCE: Correct.

8 THE HEARING EXAMINER: So we have a
9 lack of foundation.

10 Okay. So, Mr. Beck, you know what the
11 objection is.

12 Now let's go to C and its subparts,
13 including the amended C, the amended direct testimony
14 of Nicholas Goree.

15 Are those stipulated to, Mr. Bruce, or
16 not?

17 MR. BRUCE: Yeah. Mr. Goree's
18 testimony and exhibits I have no objection to.

19 THE HEARING EXAMINER: All right. Let
20 me make notes.

21 MR. BRUCE: And that would be the
22 amended stuff filed on Friday, I believe.

23 THE HEARING EXAMINER: Plus 1 through
24 4.

25 MR. BRUCE: Correct.

1 THE HEARING EXAMINER: All right. So
2 they are now admitted into evidence by stipulation.

3 (Exhibit C and Exhibit C1 through C4
4 were received into evidence.)

5 Now we're going to go to D, and then
6 its subparts, 1 through 4.

7 (Exhibit D and Exhibit D1 through
8 Exhibit D4 were marked for
9 identification.)

10 Mr. Bruce.

11 MR. BRUCE: Which other exhibits now?

12 The --

13 THE HEARING EXAMINER: D as in David.

14 MR. BRUCE: I'm sorry. I don't have
15 the -- what are they? I don't have the exact list
16 right in front of me --

17 THE HEARING EXAMINER: Okay. Sure. It
18 says here, "Exhibit D, affirmation of notice, Matthew
19 Beck." D, notice -- well, let's just wait till the
20 end -- notice letters, D1. Mailing list receipts, D2.
21 Affidavit of publication, D3, and supplemental letters
22 and affidavits of publication D4.

23 MR. BRUCE: No objection.

24 THE HEARING EXAMINER: Okay. Very
25 good.

1 So Exhibits D and D1 through 4 are
2 admitted into evidence by stipulation.

3 (Exhibit D and Exhibit D1 through
4 Exhibit D4 were received into
5 evidence.)

6 Okay. So, Mr. Bruce, do you have all
7 your witnesses here?

8 MR. BRUCE: Yes, I do.

9 THE HEARING EXAMINER: Okay. Very
10 good. How many do you have?

11 MR. BRUCE: I have three witnesses,
12 Adriana Salgado, landman, Jordan Carrell,
13 C-A-R-R-E-L-L, geologist, and then Nick Stowers,
14 engineer.

15 THE HEARING EXAMINER: Okay. And Nick
16 Stowers is the rebuttal witness. Is that correct?

17 MR. BRUCE: Yes.

18 THE HEARING EXAMINER: Okay. Well,
19 we're going to get them all sworn in.

20 So I need everyone to turn their
21 cameras on. So far I have one person with their
22 camera on.

23 In the meantime, Mr. Beck -- there, we
24 have another -- there we have all three. Very good.

25 And, Mr. Beck --

1 Hold on. Hello. One moment.

2 Mr. Beck, do you have your witnesses
3 available?

4 MR. BECK: Yes, Mr. Hearing Examiner.
5 We have Amanda Redfearn, who is the landman, Jason
6 Asmus, who is the geologist, and Nicholas Goree, who
7 is the petroleum engineer. They should be -- their
8 cameras here.

9 THE HEARING EXAMINER: Okay.
10 Wonderful. I'm sorry. What did you say about their
11 cameras?

12 MR. BECK: They should be activating
13 their cameras now --

14 THE HEARING EXAMINER: I see --

15 MR. BECK: Yeah.

16 THE HEARING EXAMINER: Okay. I know --

17 MR. BECK: Ms. Redfearn is --

18 THE HEARING EXAMINER: I think we're
19 missing one; right?

20 MR. BECK: Yeah. Mr. Goree should be
21 coming on just momentarily here.

22 MR. GOREE: I know. I'm sorry. There
23 you go.

24 THE HEARING EXAMINER: There we go.
25 Thank you, sir.

1 Okay. Let's have everyone raise their
2 right hand.

3 WHEREUPON,

4 ADRIANA SALGADO,
5 called as a witness and having been first duly sworn
6 to tell the truth, the whole truth, and nothing but
7 the truth, was examined and testified as follows:

8 WHEREUPON,

9 JORDAN CARRELL,
10 called as a witness and having been first duly sworn
11 to tell the truth, the whole truth, and nothing but
12 the truth, was examined and testified as follows:

13 WHEREUPON,

14 NICK STOWERS,
15 called as a witness and having been first duly sworn
16 to tell the truth, the whole truth, and nothing but
17 the truth, was examined and testified as follows:

18 WHEREUPON,

19 AMANDA REDFEARN,
20 called as a witness and having been first duly sworn
21 to tell the truth, the whole truth, and nothing but
22 the truth, was examined and testified as follows:

23 WHEREUPON,

24 JASON ASMUS,
25 called as a witness and having been first duly sworn

1 to tell the truth, the whole truth, and nothing but
2 the truth, was examined and testified as follows:

3 THE HEARING EXAMINER: All right. The
4 only person I'm not sure I heard from was Mr. Goree.

5 Did you affirm?

6 WHEREUPON,

7 NICHOLAS GOREE,

8 called as a witness and having been first duly sworn
9 to tell the truth, the whole truth, and nothing but
10 the truth, was examined and testified as follows:

11 THE HEARING EXAMINER: You do. Okay.
12 Wonderful.

13 May the record reflect that all the
14 witnesses have affirmed to tell the truth and are
15 under oath at this point.

16 So, Mr. Bruce, you're putting on your
17 case first, your case in chief first. And then, of
18 course, it'll turn to Mr. Beck for his case in chief.

19 So, Mr. Bruce, please proceed.

20 MR. BRUCE: Okay. Mr. Examiner, first
21 I would go to the landman, Adriana Salgado. She's
22 been sworn in. Her exhibit with number 2 states her
23 experience. And I would ask that she be admitted as
24 an expert -- be qualified as an expert petroleum
25 landman.

1 THE HEARING EXAMINER: Okay.

2 And, Mr. Beck, I know you didn't object
3 to the exhibit, but do you object to her being
4 qualified as a expert?

5 MR. BECK: No.

6 THE HEARING EXAMINER: Okay. Very
7 good.

8 Mr. Bruce, please proceed. She is
9 admitted as an expert.

10 DIRECT EXAMINATION

11 BY MR. BRUCE:

12 Q Okay. Ms. Salgado, the section 7 lands here
13 today in all four cases are in the North Wilson Deep
14 Unit. Is that correct?

15 A I'm sorry. I couldn't hear you. Could you
16 repeat, please?

17 Q Yeah. The section 7 lands that all four
18 cases are involved in today, those are lands within
19 the North Wilson Deep Unit. Is that correct?

20 A Yes, sir.

21 Q And that is -- virtual connectivity
22 interruption --

23 THE HEARING EXAMINER: Mr. Bruce, your
24 connection is not good. And if we're going to proceed
25 with the case in chief, we have to have a clear

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1 connection.

2 MR. BRUCE: Can you hear me better now?

3 THE HEARING EXAMINER: Yes, I can.
4 Yes. But -- we couldn't before, and your witness
5 couldn't understand you, and I'm sure the court
6 reporter couldn't either.

7 MR. BRUCE: Okay. Well, I was hearing
8 some interference on the line, and that wasn't here,
9 because this room is pretty silent. So anyway, let me
10 move forward.

11 THE HEARING EXAMINER: Please.

12 BY MR. BRUCE:

13 Q Ms. Salgado, the Deep Unit, or the unit,
14 I'll just call it, that's 100 percent State of New
15 Mexico land; correct?

16 A Correct.

17 Q And when did you start trying to put
18 together the unit, and when did we get unit approval?

19 A I began working on the North Wilson Deep
20 State Unit expansion in 2020. We filed an application
21 in 2020, and we received final approval in the middle
22 of 2021.

23 Q And then did shortly after that Mewbourne
24 commence the process of getting wells drilled within
25 the unit?

1 A Yes, sir. We have so far drilled four unit
2 wells to date.

3 Q And did all of those well units have to be
4 force pooled, because of uncommitted mineral interest
5 within the unit area boundary?

6 A Yes, sir, they did.

7 Q Okay. Now under the unit agreement, what is
8 the drilling obligations that the state land office --
9 go ahead.

10 A -- the drilling commitment of 14 wells in
11 the first five years, and the unit will contract to
12 producing drill blocks after 10 years. Therefore, we
13 need to drill.

14 Q Okay. And Mewbourne has sole right to
15 operate within the exterior boundaries of the unit.
16 Does it not?

17 A Yes, sir. Mewbourne is the designated unit
18 operator.

19 Q Okay. And section 18 clearly is not in the
20 unit.

21 A Correct.

22 Q And we'll get into some other things with
23 the other witnesses, but this land formed by
24 Earthstone, section 18, they own a large interest in
25 section 18 that's set forth in your land exhibits.

1 A Yes, sir. That's correct.

2 Q Who originally -- who was the original
3 interest owner?

4 A Chisholm -- Energy -- Chisholm Energy
5 Operating.

6 Q And at one time, could Earthstone have
7 drilled from section 18 south into section 19 if it
8 wanted 2-mile lateral?

9 A Correct. When we negotiated or when I
10 negotiated with Chisholm to remove the east half of
11 that section 18 from the proposed unit, they asked us
12 to do that. We agreed to it.

13 They simply did not want to spread their
14 interest throughout the entire unit, because they had
15 a larger working interest in that tract, in the east
16 half of section 18.

17 At the time that we negotiated, section 19
18 to the south of section 18 had not been drilled upon
19 yet.

20 Since then, things have changed in that
21 area, so it's kind of boxed Earthstone and other
22 parties into that section 18. So they could have
23 possibly drilled there, like, a year ago, but never
24 attempted to do that.

25 Q Okay. And now if they want to drill 2-mile

1 laterals in the east half of section, including the
2 east half of section 18, they would have to go north
3 into the unit area; correct?

4 A Correct.

5 MR. BRUCE: Okay. Mr. Examiner, there
6 is --

7 THE HEARING EXAMINER: I'm waiting for
8 you, Mr. Bruce.

9 MR. BRUCE: Yes. I know, sir. I just
10 wanted to get the correct rule. NMAC 19.15.16.15.B6.

11 THE HEARING EXAMINER: Okay. Hold on.

12 MR. BRUCE: Yes, sir.

13 THE HEARING EXAMINER: Hold on. I
14 wasn't prepared to have to look up a rule, so give me
15 a minute. I'm not familiar with every rule yet. One
16 moment, please.

17 MR. BRUCE: Sure.

18 THE HEARING EXAMINER: Okay. And what
19 are you relying on this rule for?

20 MR. BRUCE: Mr. Examiner, in part it
21 says that no horizontal spacing unit may be designated
22 that lies partly within and partly outside of a state
23 exploratory unit, which is what the North Wilson Deep
24 Unit is, or the federal exploratory unit if the
25 horizontal spacing unit includes state trust lands

1 without the written consent of the commissioner of
2 public lands.

3 BY MR. BRUCE:

4 Q Ms. Salgado, does Mewbourne have that
5 support from the state land office?

6 A Yes.

7 THE HEARING EXAMINER: We couldn't hear
8 you, ma'am --

9 THE WITNESS: Yes, sir. We do.

10 THE HEARING EXAMINER: Good. Please
11 speak up, Ms. --

12 BY MR. BRUCE:

13 Q And is that marked Exhibit 4 in the exhibit
14 package?

15 A Yes, sir.

16 Q Okay. To the best of your knowledge, does
17 Earthstone have a similar approval from the state land
18 office?

19 A To the best of my knowledge, they do not.

20 Q Okay. Just a couple more questions,
21 Ms. Salgado. Another thing regarding your revised
22 tract ownership list, they show that Mewbourne has
23 about 28 1/2 percent interest in each well unit. Does
24 it have support via a joint operating agreement from
25 other interest owners?

1 A Yes, sir, we do. Currently, with -- sorry.
2 Go ahead.

3 Q Go ahead.

4 A I was just going to state currently with the
5 letter of support from Devon Energy, we have a total
6 of about 72 percent approval of working interest
7 owners to drill these wells.

8 Q Okay. And --

9 THE HEARING EXAMINER: Mr. Bruce.

10 MR. BRUCE: Yes?

11 THE HEARING EXAMINER: Mr. Bruce, I'm
12 confused about Exhibit 4. I thought Exhibit 4 was the
13 state land office support.

14 MR. BRUCE: Oh, I'm sorry, sir. I was
15 moving forward after that. Yeah. You'll see at the
16 bottom of the letter -- or not the bottom -- toward
17 the end of the email where Mr. Dawson, who is a
18 longtime employee not only of the state land office,
19 but the oil conservation division, he does give
20 approval for Mewbourne to drill.

21 THE HEARING EXAMINER: Okay. I
22 understand. That's Exhibit 3, though. That's why I
23 was confused.

24 MR. BRUCE: Oh, Exhibit 3. I am sorry,
25 sir. I'm looking at -- I was looking at letter 4,

1 which is the letter of support from Devon.

2 THE HEARING EXAMINER: Yes, I know. I
3 understand. Okay. I'm clear now. I understand.
4 Please proceed with your examination of this witness.

5 MR. BRUCE: Okay.

6 BY MR. BRUCE:

7 Q Now your Exhibit 2-2 is the tract ownership
8 list. They list all the working interest owners in
9 these two wells. Do they not?

10 A Yes, sir.

11 Q And then the asterisk by certain companies,
12 those are the parties who need to be pooled.

13 A Correct.

14 Q Now there's Earthstone, Oxy USA, MRC
15 Permian, and Oxy USA WTP. There is also Devon Energy
16 needs to be pooled. And so this is the correct thing.
17 The letter of support from Devon supporting
18 Mewbourne's proposal over Earthstone's is marked
19 Exhibit 4. Is it not?

20 A That's correct.

21 Q Now tell me a little bit about Devon, that
22 they own interest inside the unit area, but I don't
23 know if all or most of them are uncommitted. They own
24 various mineral interests or working interests in
25 various tracts. Is that a fair statement?

1 A Yes, sir. Devon has participated in our
2 first four wells. We have pooling order. Their
3 preference is just to be pooled into elect under a
4 pooling order. So yes, sir, they -- they do own
5 their --

6 Q So even though they haven't signed a JOA,
7 they are supporting Mewbourne in its application.

8 A That is correct. They have stated that they
9 would prefer to drill 2-mile laterals instead of being
10 confined to 1 mile.

11 Q They have a pretty large interest in section
12 18. Is that where their interest ownership arises?

13 A Yes, sir. That is correct.

14 Q Okay. One thing that came up in
15 Earthstone's testimony was the surface use. Does
16 Mewbourne have a surface use agreement with the
17 surface owner?

18 A Yes, sir. We do. There are no surface
19 issues affecting Mewbourne.

20 Q And again, what was that rough interest with
21 Devon's approval? How much support do you have for
22 drilling your wells, percentage-worth -- support?

23 A That's approximately 72 percent.

24 Q And then one -- matter is -- I've marked it
25 Exhibit 10. It's a letter between Mewbourne and

1 Chisholm. What does that -- it's dated December 1,
2 2020. What does that letter state?

3 (Mewbourne Exhibit 10 was marked for
4 identification.)

5 THE HEARING EXAMINER: Hold on. That
6 letter is not in evidence, so you're going to need to
7 present a foundation for that letter to come in, and
8 we're going to let Mr. Beck object and make an
9 argument. So let's slow down here on Exhibit 10.
10 Please proceed.

11 BY MR. BRUCE:

12 Q First of all I'll just ask, Ms. Salgado, who
13 is this letter agreement between?

14 A This letter agreement is between Chisholm
15 Energy Operating, LLC, Chisholm Energy Holdings, LLC,
16 and Mewbourne Oil Company.

17 Q And were you responsible for negotiating
18 this letter agreement?

19 A Yes, sir.

20 Q And so did you essentially draft this
21 letter?

22 A Yes, sir.

23 Q And I think you just said it had agreed to
24 exclude certain tracts from the North Wilson Deep
25 Unit. Does it say any -- are there any other

1 agreements in this letter other than those specific
2 excluding the tracts?

3 A Chisholm agreed to commit to participate in
4 the expansion of the North Wilson Deep State Unit once
5 those tracts were removed. That's all.

6 Q Okay. The interests that did commit to the
7 unit, are they fairly small interests compared to its
8 roughly 50 percent interest in section 18?

9 A That is correct.

10 Q And because they had a large interest in
11 section 18, did they want to keep that excluded from
12 the unit?

13 A That is correct. They didn't want to dilute
14 their interest.

15 MR. BRUCE: Okay. Mr. Examiner, I move
16 the admission of Exhibit 10 -- Mewbourne Exhibit 10.

17 THE HEARING EXAMINER: Mr. Beck?

18 MR. BECK: Yeah. May I voir dire the
19 witness for just a minute on a couple of these issues?

20 THE HEARING EXAMINER: Please do.

21 MR. BECK: Thank you.

22 EXAMINATION

23 BY MR. BECK:

24 Q Ms. Salgado, did you ever read Mewbourne's
25 motion to dismiss Earthstone's applications in these

1 proceedings?

2 THE HEARING EXAMINER: We can't hear
3 you, Ms. Salgado. Can you speak louder?

4 THE WITNESS: Yes, sir.

5 BY MR. BECK:

6 Q Do you need me to ask the question again,
7 Ms. Salgado?

8 A No, sir.

9 Q Did you ever --

10 A I -- I responded with a "Yes, sir."

11 Q You did read that. Did you read
12 Earthstone's response to the motion to dismiss in
13 April of this year?

14 A I -- I did, sir. I can't tell you if I have
15 that -- if I remember everything that it said, but
16 yes, sir.

17 Q Do you remember that it talked a lot about
18 the agreement between Chisholm and Mewbourne regarding
19 exclusion of section 18 from the expansion of the
20 North Wilson Deep Unit?

21 A Yes, sir.

22 Q And when did you sign this letter from
23 Mewbourne that's marked Exhibit 10?

24 A Sorry. Could you --

25 Q Yeah. I assume that -- you said you drafted

1 this letter that's Exhibit 10; right?

2 THE HEARING EXAMINER: Ms. Salgado, we
3 can't hear you and neither can the court reporter.

4 THE WITNESS: Yes, sir.

5 BY MR. BECK:

6 Q So when did you find this document that's
7 Exhibit 10 to be marked for this hearing?

8 A When did I sign it or find it? I can't hear
9 you. I'm sorry.

10 Q Find, F-I-N-D.

11 A It's been in our file, sir. I don't
12 remember the exact date.

13 Q You think it was in your files in April or
14 May of this year?

15 A Yes, sir.

16 Q But you didn't provide it to the Court when
17 it was deciding the motion to dismiss that was going
18 to dismiss these applications for Earthstone. You
19 didn't provide it to the hearing officer or the
20 division then, did you?

21 A Correct.

22 Q Why not? Did you answer that? You must've
23 cut out.

24 A I said I don't know how to answer that.

25 Q And according to you, in exchange for

1 signing this letter, Chisholm agreed to participate in
2 the North Wilson Deep Unit expansion that was in front
3 of the division in December 2020; right?

4 A That's correct.

5 Q And that interest of Chisholm you know is
6 now with Earthstone; right, as the successor in
7 interest of Chisholm's interest in the North Wilson
8 Deep Unit?

9 A That is correct.

10 Q But Mewbourne did not provide this signed
11 letter purporting to be signed by Chisholm in this
12 matter until two days ago; right?

13 A That is correct.

14 Q And do you know sitting here today that
15 Earthstone's only ability to file any kind of response
16 to this letter under the rules of the division, as
17 stated in the prehearing order, would've been a week
18 ago today?

19 A That is correct, sir.

20 Q Did you -- so you knew that our only
21 chance -- Earthstone's only chance to respond to this
22 in writing would've been a week ago today; right?
23 Your sound is cutting out. I saw your lips move, but
24 I don't know the court reporter would be able to read
25 lips as well as mine.

1 A I'm sorry. Yes.

2 MR. BECK: That's all I have,
3 Mr. Hearing Examiner. Thank you.

4 THE HEARING EXAMINER: Mr. Beck, I
5 appreciate that the voir dire is finished. But do you
6 maintain your objection? Do you want to make an
7 argument about it? What do you want to do?

8 MR. BECK: Yes, Your Honor. Yeah.
9 Earthstone maintains its objection. I understand your
10 position as the hearing officer. This letter is news
11 to Earthstone.

12 It apparently -- I would expect it's
13 news to the division, considering that the division
14 directly addressed this issue on the motion to
15 dismiss.

16 And it was not as if -- I mean,
17 everything in those briefings -- granted, I did not
18 argue it. I didn't draft those briefings. But
19 everything in those briefs was directed at this
20 agreement.

21 And then not only was it not filed what
22 is now over four months ago or three months ago before
23 the division issued the order, not only was it not
24 timely filed last Thursday -- and perhaps we could've
25 done something about it, but it wasn't filed until two

1 days ago.

2 So I think it should be excluded.
3 Earthstone has not had the opportunity to talk to
4 anyone who is a signatory to this. We didn't know who
5 prepared it until a few moments ago.

6 And so that's the reason Earthstone
7 believes it should be excluded from this hearing and
8 from the division's consideration.

9 THE HEARING EXAMINER: Thank you,
10 Mr. Beck.

11 Mr. Bruce?

12 MR. BRUCE: Mr. Examiner, she has
13 testified to its authenticity. And there's two
14 things. That in the letter there's nothing agreeing
15 not to pool certain acres.

16 The other thing, it's been stated on
17 the order -- or in the order approving the expansion
18 of the unit area, which was issued two years ago, and
19 it was in the testimony that Chisholm asked Mewbourne
20 to exclude the acreage described in Exhibit 10 from
21 the unit, and Mewbourne said, "Yes." Period.

22 That's all that was ever said at the
23 commission hearing -- or at the division hearing. I
24 don't know what there is. I mean, that's -- and I
25 thought this was a dead issue, and I didn't know

1 anything about it until I saw their pre-hearing
2 statements late Thursday night.

3 So I think it's perfectly acceptable.
4 And going along with the idea that you should let in
5 all relevant evidence.

6 And the thing that I find amazing is
7 what they're saying is that there's an agreement that
8 Mewbourne cannot drill into section 18, but they're
9 saying that they can drill into Mewbourne's operated
10 acreage in section 7. That simply doesn't make sense.

11 THE HEARING EXAMINER: Mr. Bruce, we're
12 getting off the subject here. Mr. Beck is arguing
13 that this letter should have been produced -- this
14 exhibit should've been produced timely. And he's
15 arguing that it was not produced timely.

16 I'm not quite sure what your argument
17 is. I do see what the -- I do see that this was dated
18 December 1, 2020. Your witness stated she drafted
19 this letter.

20 So I'm not understanding why this
21 wasn't produced in a timely fashion. Can you directly
22 answer that question?

23 MR. BRUCE: I didn't -- all I know is
24 when the unit area was formed, I was the attorney for
25 Mewbourne in that case, and I never saw the letter. I

1 just was told that Mewbourne agreed to exclude this
2 acreage. I had to go amend the application --
3 actually, dismiss one application and file another.

4 And I think there was another entity
5 who asked for some acreage to be deleted. And that
6 was done. That's all I knew about it.

7 And it really just mirrors what was
8 known to Chisholm years ago. And Earthstone is the
9 one who bought Chisholm. They ought to know about it.
10 I don't see the big issue.

11 THE HEARING EXAMINER: But, Mr. Bruce,
12 the rules here are very specific about exhibits and
13 when they need to be filed. This is late filed. And
14 unless you have a good reason, I'm going to sustain
15 the objection and not admit Exhibit 10.

16 MR. BRUCE: Well, I think you said at
17 the beginning that, you know, that these hearings
18 are -- the evidentiary part of the hearing is formal.
19 And I would just rely on that.

20 But Ms. Salgado -- I can ask their
21 witness about it, but I would just say it's been
22 common practice just to file exhibits as you get them,
23 and -- but I'll agree with whatever you say,
24 Mr. Examiner.

25 THE HEARING EXAMINER: Okay. Thank

1 you, sir. I'm not aware of what common practice was
2 before I got here, but as a trial attorney and as
3 someone who can read these rules and interpret the
4 rules, you though there's such a thing as fair play
5 and not, you know, unnecessarily surprising your
6 opponent.

7 And I feel like this exhibit was not
8 timely filed, and there's no good reason to let it in
9 at this point.

10 So Exhibit 10 is excluded from evidence
11 at this point.

12 So, Mr. Beck, you voir dired this
13 witness. Now I believe this is your opportunity for
14 cross-examination of this witness.

15 MR. BECK: Yeah. I don't know if
16 Mr. Bruce has more with her, Mr. Hearing Examiner. I
17 don't know that he was finished. And so I'll
18 reserve --

19 MR. BRUCE: Just one follow-up
20 question. Thank you, Mr. Beck.

21 DIRECT EXAMINATION

22 BY MR. BRUCE:

23 Q Ms. Salgado, do you know or are you aware of
24 any agreement with either Chisholm or Earthstone,
25 verbal or written, never to pool the east half of

1 section 18?

2 A I am not.

3 MR. BRUCE: Thank you.

4 THE HEARING EXAMINER: Mr. Beck?

5 MR. BECK: Thank you, Mr. Hearing
6 Officer.

7 CROSS-EXAMINATION

8 BY MR. BECK:

9 Q Ms. Salgado, I want to talk to you and make,
10 first of all, clear, when you said that all of the
11 acreage in Mewbourne's applications here is part of
12 the Northwest Deep Unit, that's not accurate, is it?

13 A The east half of section 18 is not part of
14 the unit.

15 Q And that east half of section 18 is included
16 in the application for the division; correct?

17 A Correct.

18 Q Right?

19 A Correct.

20 Q I want to direct your attention to Exhibit 3
21 in Mewbourne's application exhibits, which is the
22 letter you were referring to earlier -- excuse me --
23 the email you referred to earlier from the state land
24 office. Do you have that in front of you?

25 A Yes.

1 MR. BECK: And I don't know if it's
2 showing up on your computer, but I brought it up in
3 front of mine. Are you seeing that, Mr. Hearing
4 Officer?

5 THE HEARING EXAMINER: I am.

6 BY MR. BECK:

7 Q It looks to me like, Ms. Salgado, this is an
8 email from Scott Dawson to you. Is that right?

9 A Yes.

10 Q Now this says -- the subject line is "EXT RE
11 North Wilson Deep Unit"; right?

12 A Right.

13 Q So this was an email from Mr. Dawson in
14 response to something that you provided.

15 A Yes.

16 Q Do you still have a copy of whatever you
17 provided him?

18 A Not -- I don't have it in front of me.

19 Q Well, since we don't have that, maybe we can
20 just look at this a little bit more closely.

21 It looks like in the first paragraph there,
22 the second sentence, he's providing you his
23 understanding, which says that Earthstone is not a
24 part of the unit agreement; therefore, they cannot
25 drill into or beneath the North Wilson Deep Unit."

1 Is that what -- that's what that says right
2 there in Exhibit 3; right?

3 A Yes.

4 Q But that's not correct.

5 A No.

6 Q Correct is that Earthstone actually is a
7 part of the North Wilson Deep Unit; right?

8 A That is correct. And I have spoken to him
9 since then. He understands that.

10 Q Okay. And in this letter, further down he
11 says that "We," meaning the state land office,
12 "Discourages from drilling across unit boundaries, but
13 understand and agree to Mewbourne's request for doing
14 so in this case." That's what he said; right?

15 A Correct.

16 Q So even though they generally discourage it,
17 because they thought at that time, at least, that
18 Earthstone was part of the unit agreement, that they
19 were approving your request?

20 A I'm -- I don't understand your statement or
21 your question.

22 Q So even though we agreed the state land
23 office generally discourages drilling across unit
24 boundaries, but they approved your request here to
25 drill across the North Wilson Deep Unit boundary based

1 on their understanding that Earthstone wasn't part of
2 that agreement; right?

3 A I -- I cannot speak on behalf of the state,
4 sir.

5 Q Now I'm showing you what's marked as --
6 let's see here. This is Exhibit 1. And what we
7 talked to earlier about -- this is Earthstone's
8 response to Mewbourne's motion to dismiss these
9 applications. Do you see that email in front of you?

10 A I see it.

11 Q And this is an email from Amanda Redfearn.
12 You know who Amanda Redfearn is; right?

13 A Yes -- yes.

14 Q She's the landman for Earthstone in these
15 applications; right? And this is an email from her to
16 Scott Dawson at the state land office; right? Can you
17 say that one more time?

18 A Yes.

19 Q Okay. And you've seen this before, because
20 when Ms. Redfearn wrote this email to the state land
21 office, she carbon-copied it to you; right?

22 A Yes.

23 Q You didn't include Amanda Redfearn or anyone
24 from Earthstone on your correspondence with the state
25 land office. Did you?

1 A No.

2 Q And in this email that you were copied on,
3 Ms. Redfearn asked the state land office to hold back
4 on its approval of your application for this or
5 Earthstone's application if it's granted these pooling
6 orders to approve of either of those for drilling
7 these wells in front of the division today; right?

8 A It's really small, sir. I can't read it.

9 Q See if I can fix it up for you. I don't
10 know if I can.

11 I'm reading the last paragraph, the last
12 sentence -- or excuse me -- the penultimate paragraph,
13 the last sentence there, that says, "We respectfully
14 ask that you and the SLO reserve judgment with halting
15 a position in this controversy until the parties have
16 had the opportunity to present their positions to the
17 OCD." Is that right?

18 A That -- that's what it says.

19 Q Okay. And to your knowledge has the state
20 land office told Earthstone that it won't approve
21 their application with the division, grant speed
22 applications today?

23 A Sir, I can't speak on behalf of the state.

24 Q I'm not asking you to. I'm asking you to
25 testify whether the state land office has told you

1 that it will take a position on whether it will grant
2 Earthstone the ability to drill these wells if the
3 division grants its application today.

4 A All I have is the letter that they sent me
5 or the email that they sent me. That's what I have.

6 Q Meaning what we just looked at as Exhibit 3
7 in Mewbourne's application, that email.

8 A Yes, sir.

9 Q You have no other communications from the
10 state land office about Earthstone's applications
11 today other than that email that's Exhibit 3?

12 A No.

13 MR. BECK: I'm now showing you what's
14 exhibit -- this is the original Exhibit 2-2. I just
15 want to point out -- well, hold on. This is going to
16 confuse everybody, since we haven't updated 2.2. Give
17 me one second here.

18 THE HEARING EXAMINER: Mr. Beck, do you
19 want to take a five-minute break?

20 MR. BECK: We can, but I'm pulling it
21 up right now, if we don't need to. So I'm fine
22 just --

23 THE HEARING EXAMINER: Okay.

24 MR. BECK: All right. I don't want to
25 slow you down, but I can pull it up.

1 BY MR. BECK:

2 Q Showing you a notice of filing additional
3 exhibits that was filed last night. This is Exhibit
4 2-2. I was correct. But let's look at this.

5 When I look at the updated revised Exhibit
6 2-2 here, and it's providing a leasehold percentage
7 interest in tract ownership for the North Wilson Deep
8 Unit 8H. Do you see that in front of you?

9 A Yes.

10 Q And this exhibit was prepared by you, I
11 assume. Is that right?

12 A Yes.

13 Q Then I'm looking at what's the third page in
14 this exhibit. It's labeled as page 1 for the -- I
15 guess this is for the North Wilson Deep Unit, number
16 9H. Do you see that in front of you?

17 A Yes.

18 Q You prepared this, as well?

19 A Yes.

20 Q Now I want to show you Exhibit A2 from
21 Earthstone's application.

22 And if we look at the working interest
23 owners on page 2 of Exhibit A1 -- or excuse me --
24 Exhibit A2 for tract ownership, it reflects that there
25 are uncommitted working interest owners Devon, Timothy

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1 R. MacDonald, Maverick Oil and Gas Corporation
2 highlighted in green. Do you see that?

3 A Yes.

4 Q I did not see anywhere in Mewbourne's
5 application that Mewbourne reflected Timothy R.
6 MacDonald or Maverick Oil and Gas Corporation as
7 working interest owners in the lands to be pooled
8 here. Is that right?

9 A That's correct. That has since been
10 corrected, and we have proposed to those parties.

11 Q And where would I find that in Mewbourne's
12 exhibits pre-hearing packet here today?

13 A It's not submitted.

14 Q Okay. And nowhere in Mewbourne's exhibits
15 or pre-hearing packet does it reflect that any notice
16 of these applications was presented to those two
17 parties, Timothy R. MacDonald or Maverick Oil and Gas
18 Corporation; right?

19 A Right.

20 Q But I guess it's your position today that
21 they were provided notice.

22 A They've been proposed.

23 Q When did that happen?

24 A -- virtual connectivity interruption --

25 Q I couldn't hear you.

1 A This week.

2 Q This week that happened?

3 A Yes, sir.

4 Q And was that -- let me ask, did Mewbourne
5 provide those parties notice based on seeing
6 Earthstone's preapplication or pre-hearing packet that
7 included them as working interest owners?

8 A Based on a review of the internal takeoff.

9 Q The internal takeoff to Mewbourne?

10 A [No audible response.]

11 Q I saw you nod, but for some reason we're
12 having trouble picking you up.

13 A Yes -- yes, sir.

14 Q And when was that takeoff?

15 A It's been an ongoing takeoff, sir, that we
16 review.

17 Q And so sometime this week during this
18 ongoing kickoff you saw that Timothy R. MacDonald and
19 Maverick Oil and Gas Corporation were working interest
20 owners, and you then provided them notice sometime
21 this week. Is that right?

22 A Yes, sir.

23 Q And so do you agree with me when we're
24 looking at the second page of Earthstone's Exhibit A2,
25 which reflects Timothy R. MacDonald and Maverick Oil

1 and Gas Corporation as working interest owners, that
2 is more accurate than what we see on the first page as
3 Exhibit 2-2 to the North Wilson Deep Unit, which does
4 not reflect them as owners. You agree with me?

5 A Yes.

6 Q And also here on the first page of Exhibit
7 2-2 in the application for the North Wilson Deep Unit
8 H, it reflects that Mewbourne Oil Company is a working
9 interest owner for the west half, east half of section
10 18. That's not accurate, is it?

11 A Those are blended numbers, sir.

12 Q What does that mean?

13 A I'm sorry. I can't -- you're talking about
14 Exhibit 2-2, the new one, or the one you're looking
15 at?

16 Q The one I'm looking at. The new one does
17 not have this first page, the section plat; right?

18 A Right.

19 Q I don't know if you knew that. And so when
20 I'm looking at the section plat from the original
21 exhibits and it says that Mewbourne Oil Company has a
22 working interest in the west half, east half of
23 section 18, that's not accurate?

24 A That's not accurate.

25 Q When you testified on direct examination a

1 minute ago that with Devon Energy you have
2 approximately 72 percent of support of the approval to
3 drill wells or something along those lines, that
4 calculation didn't include Timothy MacDonald and
5 Maverick Oil and Gas's interests, did it?

6 A Yes. Their -- their percentages are so
7 small, we just carry them.

8 Q So I guess that's a different answer than
9 the question that I asked. The question I asked is
10 when you calculated that 72 percent number, did that
11 include --

12 A Yes -- yes, sir.

13 Q -- Timothy MacDonald's and Maverick Oil and
14 Gas's interests? I didn't catch your answer.

15 A Yes, sir.

16 Q Okay. Have they agreed to participate in
17 the wells or are they being force pooled by Mewbourne
18 here?

19 A They have not agreed yet.

20 Q You talked about the surface use for
21 Mewbourne and its application proposal. Do you
22 remember that?

23 A Yes.

24 Q Let me ask if Earthstone -- or excuse me --
25 if Mewbourne is successful in these applications,

1 Mewbourne will have to traverse off the path and
2 across different sections in the land, for example,
3 section 17, to reach these wells. Is that true?

4 A I'm going to defer those questions to my
5 geologist or engineer.

6 Q Okay. So if I asked you whether physical
7 disturbance would be made to the land if these
8 applications are granted, you wouldn't know the answer
9 to that?

10 A Yeah. I'm going to defer those questions to
11 the geologist or engineer.

12 MR. BECK: Okay. That's all the
13 questions that I have for you, Ms. Salgado. Thank you
14 for your time.

15 MR. BRUCE: Mr. Examiner?

16 THE HEARING EXAMINER: Mr. Lowe, do you
17 have any questions for this witness?

18 MR. LOWE: Yes. Good morning. I just
19 have a few questions.

20 Good morning, Ms. Salgado.

21 THE WITNESS: Good morning.

22 MR. LOWE: I just need to reassure that
23 I even heard it correctly. You were sworn in as a
24 landman for the company. Is that correct?

25 THE WITNESS: Yes, sir.

1 MR. LOWE: Okay. Just want to reassure
2 that on my side.

3 From what was stated -- well, what was
4 presented to far, as I understand it, there were two
5 parties that were not initially noticed, but later on
6 in the process of what you all were doing, you
7 realized that, and you noticed those individuals this
8 week. Is that correct?

9 THE WITNESS: Yes, sir. We -- yes,
10 sir. That's correct.

11 MR. LOWE: Okay. And those two
12 parties, I guess from what I've been hearing, is
13 Timothy MacDonald and Maverick Oil and Gas. Is that
14 right?

15 THE WITNESS: Yes, sir.

16 MR. LOWE: So as that came about, you
17 did provide that, I guess, exhibit to the OCD, as
18 well, or are you going to?

19 THE WITNESS: I can. It was not
20 included, but I can send that.

21 MR. LOWE: Okay. And I think I heard
22 you say that these two parties were a small
23 percentage. Do you happen to have the -- do you know
24 the amount --

25 THE WITNESS: Sure. The percentage

1 that we show in each well for Maverick Oil and Gas is
2 0.010417 percent, and the percentage we show for Tim
3 MacDonald in each well proposed was 0.03125.

4 THE HEARING EXAMINER: Ms. Salgado, are
5 you taking this information from an exhibit?

6 THE WITNESS: I'm taking it from --
7 yes, sir, my personal --

8 THE HEARING EXAMINER: I'm asking are
9 you taking this information from any --

10 THE WITNESS: Oh, I'm sorry -- sorry.
11 No, sir. We did not submit this in an exhibit.

12 THE HEARING EXAMINER: Okay. I'm going
13 to give --

14 Mr. Lowe, when you're done, I'm going
15 to give Mr. Beck a chance to cross-examine her on that
16 point.

17 MR. LOWE: Okay.

18 Also, in reference to the subject
19 matter pertaining to the state land office, that email
20 that was presented by Mr. -- I forgot your name,
21 sir --

22 MR. BECK: Beck. That's all right.

23 MR. LOWE: Mr. Beck. Was that an
24 exhibit in any of the cases here, as well?

25 THE WITNESS: Yes, sir.

1 MR. LOWE: Okay. And that whole
2 subject pertained to the unit and exclusion are the
3 subject matter pertaining to the east half of section
4 18; right? But that was resolved. Is that what I
5 heard of the subject matter?

6 THE WITNESS: No, sir.

7 MR. LOWE: I couldn't hear what you
8 stated.

9 THE WITNESS: No, sir. That -- that
10 was not what that was.

11 MR. LOWE: Okay. Well, let's see here.
12 I think those are the questions I have for now.

13 THE HEARING EXAMINER: Okay. Thank
14 you, Mr. Lowe.

15 Mr. Beck, did you want to cross-examine
16 on that point or not? I'm not sure if you're muted,
17 sir.

18 MR. BECK: Thank you, Mr. Hearing
19 Officer.

20 BY MR. BECK:

21 Q Ms. Salgado, the document that you're
22 looking at to get the working interest calculations
23 for Maverick and Tim MacDonald, have you compared that
24 with what's in Exhibits -- or excuse me -- what's in
25 Exhibit A2 in Earthstone's application?

1 A No.

2 Q And so you wouldn't know whether what's
3 reflected in Earthstone's application is the same
4 percentage interest as you're calculating on behalf of
5 Mewbourne?

6 A No.

7 Q If you know, how did you find that
8 percentage interest that Mewbourne calculated for
9 Maverick and Tim MacDonald?

10 A Are you asking for a formula?

11 Q I'm asking if you know --

12 A No, sir. I don't --

13 Q -- Mewbourne calculated --

14 A I don't have those notes in front of me.

15 MR. BECK: All right. That's all the
16 questions I have, Mr. Hearing Examiner. Thank you.

17 THE HEARING EXAMINER: Okay.

18 Mr. Bruce, do you have redirect on the
19 cross-examination questions?

20 MR. BRUCE: Yeah. Just a couple
21 questions. Thank you, Mr. Examiner.

22 REDIRECT EXAMINATION

23 BY MR. BRUCE:

24 Q Ms. Salgado, I jotted the numbers down, but
25 I didn't quite get them accurate. But if you're

1 looking at the MacDonald and the Maverick numbers that
2 you gave a verbal answer to, that totals up to about
3 maybe a little more than 0.04 percent interest in each
4 well unit?

5 A That's correct.

6 Q And if you can look at Exhibit A2, second
7 page, I'll represent to you that the combined
8 MacDonald and Maverick working interest that
9 Earthstone sets out comes to a little about 0.03
10 percent interest.

11 So the numbers are not significant. Are
12 they?

13 A No.

14 Q And whatever number is used, yours or
15 theirs, with Devon's support, you still have 72
16 percent approval of Mewbourne's proposals. Is that a
17 fair statement?

18 A Yes, sir. That's approximate. Yes.

19 MR. BRUCE: Okay. Let me just check
20 for a second here, Mr. Examiner. Believe I'm done.
21 One final question.

22 BY MR. BRUCE:

23 Q You were asked about Earthstone's email to
24 Scott Dawson at the land office. After that, did the
25 land office ever retract Mewbourne's approval, which

1 is Mewbourne's Exhibit 3?

2 A No.

3 MR. BRUCE: Thank you.

4 That's all I have, Mr. Examiner.

5 THE HEARING EXAMINER: Okay. Mr. Beck,
6 is there any cross-examination on the redirect?

7 MR. BECK: No. Thank you.

8 THE HEARING EXAMINER: Okay.

9 Let's take a break. Let's take a --
10 it's 11:04. Let's take a break to 11:10, and we'll
11 come back with your next witness, Mr. Bruce.

12 MR. BRUCE: Thank you.

13 THE HEARING EXAMINER: Thank you.

14 (Off the record.)

15 THE HEARING EXAMINER: On the record.

16 Mr. Bruce, do you want to call your
17 second witness?

18 MR. BRUCE: I will, Mr. Examiner. Let
19 me grab my exhibits. Okay. I call Jordan Carrell.
20 And his affidavit is -- or self-affirm statement is
21 Exhibit 5. And he's previously testified numerous
22 times before the division.

23 I would submit him as a qualified
24 expert petroleum geologist without objection.

25 THE HEARING EXAMINER: Okay.

1 Mr. Beck?

2 MR. BECK: I seem to be having some
3 trouble with my camera. I might stop it for a second.
4 I'm still here audibly, and I don't have any
5 objections.

6 THE HEARING EXAMINER: Very good.

7 Mr. Carrell, you are admitted as an
8 expert. Please proceed. You're under oath.

9 DIRECT EXAMINATION

10 BY MR. BRUCE:

11 Q You've submitted the usual exhibits,
12 structure map, and a cross section. I'd ask you to
13 look at your Exhibit 5A for just a little while, which
14 is the structure map.

15 A Okay, sir. Yes, I have it.

16 Q Yeah. One thing about surface use out here,
17 you obviously -- the other unit wells are located
18 immediately to the east of the lands that we're here
19 for today. And those wells, in which direction were
20 they drilled?

21 A Those wells were drilled south from the --
22 the center of section 17.

23 Q Okay. But were they drilled from the north
24 to the south?

25 A Yes, sir. They were drilled from the north

1 to the south.

2 Q Okay. So as a result, Mewbourne's surface
3 facilities are up in the south half of section 17. Is
4 that true?

5 A Yes, sir.

6 Q And so they're nearby. In what direction
7 are you proposing to drill your two wells --

8 A We're proposing --

9 Q -- in these cases?

10 A I'm sorry. In this case we're proposing to
11 drill our wells from the south to the north from
12 surface in section 18 up into section 7.

13 Q Okay. So your existing surface facilities
14 will be nearby, including stuff, like, pipeline
15 connections, et cetera?

16 A Yes, sir.

17 Q Now looking at Exhibit 5B as in boy, you
18 have a cross section of the second Bone Spring sand.

19 A Yes, sir.

20 Q What part of the second Bone Spring sand are
21 you going to -- do you desire to complete the well in?

22 A Yeah. Our plans for the North Wilson Deep
23 Unit State Com numbers 8H and 9H are both to target
24 the lower second Bone Spring sand, which I have a red
25 arrow pointing towards on this cross section, A to A

1 prime.

2 We think that that lower second sand looks
3 consistent, and thick, and forest. We drilled several
4 wells in the area in that same zone, and that is our
5 plan for the east half of 18 --

6 Q So the lower second Bone Spring, in your
7 opinion, is more consistent, number one. Is it also
8 thicker than the upper Bone Spring zone?

9 A Yes, sir. I believe so.

10 Q Now, is there a well nearby that was
11 drilled -- and I don't know if it was drilled by you
12 or not -- that was drilled in the upper sand in Bone
13 Spring?

14 A Yes, sir. One reason that we decided not to
15 target the upper second sand here, like Earthstone has
16 proposed, is in section 13, Matador has drilled their
17 Bruce Keplinger well. And they targeted the upper
18 second sand.

19 Q Okay. Hold on a minute. You said section
20 13. Is that over to the west of the wells we're here
21 for today?

22 A Yes. One section immediately to the west of
23 18.

24 Q Okay. Then go ahead.

25 A That well targeted the upper second sand.

1 It's unobjectively a -- it's a poor well. And we have
2 it for the first 12 months of cumulative production at
3 about 11 barrels of oil per foot, which is nearly half
4 of some of our -- our lower second sand wells in the
5 area to the south, the Dolly Varden wells.

6 Also, based on this -- this cross section
7 here, A to A prime, the reason we wanted to target the
8 lower second sand was the -- the upper second sand
9 seems to be not as uniformly thick.

10 In certain areas, such as the east half,
11 east half of section 18, there's a well where the
12 upper second sand looks half as thick as it does in
13 some of this other areas.

14 We saw that there was more risk in trying
15 to -- to wine rack lower second sand and upper second
16 sand. We think that the -- the better targets here
17 are two lower second sand wells.

18 Q Earthstone, also in their presentation, said
19 they want to -- they proposed also drilling first Bone
20 Spring wells. Does Mewbourne object to drill first
21 Bone Spring wells?

22 A No, sir. We'd actually -- we would like to
23 drill first Bone Spring sand wells here, as well, and
24 we plan to if we're able to become an operator of
25 this -- this -- these units.

1 The problem is we've drilled first Bone
2 Spring sand in the area, we have a well just to the
3 north in section 6 called the La Trucha [ph] well. It
4 has had high H2S. The last time we tested it was in
5 August. It had 6,000 parts per million of H2S.

6 And so for the last couple years we've been
7 working with a third party to build infrastructure
8 here for sour takeaway. And we -- we plan to have
9 that infrastructure construction constructed, or
10 hopefully they'll be able to take that next year.

11 So we would like to come back at a later
12 date and drill first Bone Spring sand here.

13 Q Okay. And approving an order with just a
14 second Bone Spring sand well doesn't preclude
15 Mewbourne from using that order to subsequently drill
16 a first Bone Spring well. Does it?

17 MR. BECK: Object to foundation.

18 THE HEARING EXAMINER: Hold on,
19 Mr. Bruce.

20 MR. BRUCE: Okay.

21 THE HEARING EXAMINER: Mr. Beck, you're
22 objecting to the foundation --

23 MR. BECK: Yeah. I don't know if the
24 witness knows the answer to this question. If he
25 does, he can answer it, but I think he should be asked

1 a preliminary question first.

2 MR. BRUCE: Mr. Carrell, you've been --

3 THE HEARING EXAMINER: Mr. Bruce,
4 what's your response?

5 MR. BRUCE: Could I lay a foundation
6 then?

7 THE HEARING EXAMINER: Of course. Then
8 I'm going to sustain the objection, and so you can
9 rephrase your question.

10 BY MR. BRUCE:

11 Q And, Mr. Carrell, you've been involved in --
12 have you been involved in quite a number of forced
13 pooling hearings on behalf of Mewbourne?

14 A Yes, sir.

15 Q And so you've done the geology. You've also
16 reviewed a number of these pooling orders, because you
17 have to know what the division land -- was at. Is
18 that a fair statement?

19 A Yes, sir.

20 Q And often times people do what Earthstone is
21 doing, proposal of a unit with one, two, or even three
22 Bone Spring wells in the well unit. Do you agree?

23 A Yes, sir.

24 Q But if you only propose one, based on your
25 experience, can you still propose additional, if you

1 want to call them, in-field wells in another Bone
2 Spring zone?

3 A Yes, sir.

4 Q So just because you're only seeking at this
5 time to get approval for a second Bone Spring well,
6 that pooling order will cover subsequent wells?

7 A Yes, sir. Correct.

8 Q Thank you. Let me see. Oh, another thing.
9 You mentioned that Keplinger well, that Matador well.
10 You said that's a very -- you said it's a very poor
11 well, words to that effect.

12 A Correct.

13 Q Was there a large frack put on that well?

14 A Yeah. It's similar to what our companies
15 are -- Earthstone and Mewbourne are proposing here. I
16 believe it was about 2,000 gallons per foot and close
17 to 2,700 pounds of sand per -- per foot.

18 Q And that really didn't help? Well, of
19 course it helped, but the results in the end, were
20 they good?

21 A It doesn't -- no. I would say no. But I
22 would say I think the geology of that upper second
23 south Bone Spring sand is -- it's just too variable.

24 You have to look at it on a -- a proration
25 unit basis, and even though, yeah, you can -- you can

1 drill and put a modern frack on it, it doesn't mean
2 you're going to make a good well.

3 You have to look at the geology, I think,
4 the ferocity, the thickness. And in this case, we
5 don't think that the upper second sand looks as good
6 as the lower second sand, especially in the east half,
7 east half where Earthstone proposes to drill a well
8 there.

9 Q Before Mewbourne started drilling in the --
10 area -- virtual connectivity interruption -- any or
11 very much development over the past number of years,
12 Bone Spring development, in this general area?

13 A No, sir. This area was -- as far as
14 horizontal drilling, was very slow until we started to
15 put together this unit in the area for 2135.

16 Q And that kind of spurred other people to
17 jump on the bandwagon. Would that be fair?

18 A Seems like yes, we had spurred on more
19 activity in this area.

20 Q And you keep a good eye on not only what
21 Mewbourne is doing as part of your job, but do you
22 also keep an eye on offsetting wells, offsetting
23 operators, offsetting production?

24 A Yes, sir.

25 Q In your opinion, is it better to drill

1 2-mile wells or even 2-mile plus wells than 1-mile
2 wells in this area?

3 A I believe it's much better to drill 2-mile
4 laterals or extended laterals.

5 Q And keeping an eye on development, at one
6 point could Chisholm -- and actually, for fairly long
7 period of time, could they have drilled 2-mile
8 laterals in sections 18 and 19?

9 A Yeah. They -- they could've worked out
10 something with Matador in 19, and potentially have
11 drilled 2-mile laterals in 18 and 19 going south.

12 Q But they never took advantage of that, and
13 they only responded when Mewbourne proposed its wells.

14 A Correct.

15 Q Does it seem that they do not want to drill
16 1-mile laterals?

17 A I would say based off of them trying to pool
18 2-mile laterals, it's evident that they don't want to
19 drill 1-mile lateral.

20 Q Mr. Carrell, could I refer you to what's
21 been marked Mewbourne Exhibit 12? And I'll just have
22 you just briefly -- at this point. Just identify what
23 it is.

24 A Exhibit 12 is a cross section B to B prime
25 showing first Bone Spring and second Bone Spring from

1 east to west across the proration units.

2 Q And was this prepared by you?

3 A Yes, sir.

4 Q Does this show why -- another example of why
5 Mewbourne wants to drill the lower second Bone Spring?

6 A Yes, sir. It shows that that middle well,
7 18A, which is in the east half, east half of the
8 proration unit --

9 MR. BECK: Objection. Mr. Hearing
10 Officer, this is one of these exhibits that was
11 untimely disclosed, and we've objected to. So I'm
12 objecting to any testimony about this exhibit.

13 THE HEARING EXAMINER: Okay.
14 Mr. Bruce?

15 MR. BRUCE: Mr. Examiner, take a step
16 back with Mr. Carrell.

17 BY MR. BRUCE:

18 Q Mr. Carrell, did you review Earthstone's
19 cross sections?

20 A I did. Yes, sir.

21 Q Do you think that they were adequately
22 represented the status of the second Bone Spring in
23 sections -- in the east half of sections 18 and 7?

24 A I do not. As you'll see through their
25 exhibits, their cross sections, most of the wells that

1 they show on the line of the cross section are in the
2 east half of 7 and 18 -- or sorry -- excuse me -- the
3 west half of 7 and 18.

4 And they specifically left out the well in
5 lot 18A, which was the -- the Packer [ph] 18 State 1,
6 which is on my cross section A to A prime attachment
7 5B. It's the third well.

8 And you can see in that -- that well, that
9 upper second sand there is, from my account,
10 approximately 36 feet of sand versus the other three
11 wells on the -- on the cross section show
12 approximately 60 feet of -- of sand.

13 So -- and those -- those other three wells
14 are all in the west half of the east half. We -- we
15 believe that -- that to be a riskier target.

16 Q And until you got to review Earthstone's --
17 exhibits, you were not aware that they had not
18 included that well in their cross section?

19 A Correct.

20 THE HEARING EXAMINER: Mr. Bruce,
21 what's your argument?

22 MR. BRUCE: My argument is that this is
23 a rebuttal exhibit to theirs to show that the upper
24 second Bone Spring is not as good as the third Bone
25 Spring. It was prepared and submitted. The geology

1 out here is something that I don't think Earthstone's
2 geologist is surprised by.

3 So I don't think there's the -- there
4 is not -- there is no unfairness in presenting them,
5 because their geologist can talk about it too. It's
6 different than the Exhibit 10 that you disallowed.

7 THE HEARING EXAMINER: Okay.

8 Mr. Bruce, the argument --

9 Mr. Beck, the argument is that this is
10 a rebuttal exhibit, and that they could not have
11 prepared this until they saw Earthstone's exhibits.
12 Your response?

13 MR. BECK: Well, obviously I'm
14 hamstrung, since I just got this. But let me ask a
15 couple questions of Mr. Carrell, if I may, Mr. Hearing
16 Officer.

17 THE HEARING EXAMINER: Go ahead.

18 CROSS-EXAMINATION

19 BY MR. BECK:

20 Q Mr. Carrell, and forgive me for my ignorance
21 here, but it looks like what you're referring to here
22 in Exhibit 12, 18A is a cross section of the Nearburg
23 [ph] Producing Packer [ph] 18 State 1. Is that right?

24 A Yes, sir.

25 Q Okay. And when was that well drilled?

1 A Don't know.

2 Q Okay. How did you get this cross section?

3 A Trix [ph] mapping software.

4 Q Yeah. Okay. And could you have gotten this
5 cross section from the graphics mapping software
6 you're talking about two weeks ago, September 7th?

7 A Yes, sir.

8 Q And you got this because it shows a well in
9 the east half of section 18; right?

10 A Yes, sir. This well -- I mean, my cross
11 section A to A prime does too, so we could go off of
12 the other.

13 Q And the cross section A to A prime that we
14 can go off of either, I assume that's what you're
15 referring to is represented in Exhibit 5B.

16 A Yes, sir.

17 THE HEARING EXAMINER: Hold on,
18 Mr. Beck. Let me get to Exhibit 5. Five B. It's on
19 its side, so it's hard to see it. So, Mr. Beck, back
20 to Exhibit 5B. Excuse me.

21 Mr. Carrell, you're saying -- what are
22 you saying in relation to Exhibit 5B and Exhibit 12?

23 THE WITNESS: Yeah. It sounded like
24 Mr. Beck was saying that that well in lot 18A -- or he
25 was bringing up -- I -- I was just pointing out that

1 that well is on both cross sections. So I could refer
2 to it on the rebuttal cross section or the original
3 submitted cross section.

4 THE HEARING EXAMINER: Mr. Beck --

5 MR. BECK: So every -- sure. Thank
6 you, Mr. Hearing Officer.

7 BY MR. BECK:

8 Q So, Mr. Carrell, everything that you're
9 talking about in 18A, the Packer [ph] that you were
10 just discussing with Mr. Bruce, that's reflected in
11 Exhibit 5B and the same 18A Packer [ph] 18 State 1;
12 right?

13 A Say that again.

14 Q Everything that you discussed with Mr. Bruce
15 about Exhibit -- or excuse me -- in Exhibit 12 for the
16 Packer [ph] 18 State 1 was also reflected in Exhibit
17 5B, the Packer [ph] 18 State 1 there in 18A?

18 A That well is in both exhibits. Yes.

19 Q Okay. So I guess why do we need Exhibit 12?

20 A Exhibit 12 makes it a little bit clearer in
21 breaking out the upper second sand and the lower
22 second sand. So I have those highlighted in green and
23 in brown on Exhibit 12.

24 And it also shows the first Bone Spring sand
25 and the -- the vertical separation between the first

1 Bone Spring sand and in the lower second sand with an
2 approximate vertical separation of 750 feet, which
3 shows that we don't believe that these need to be
4 codeveloped.

5 It's not going to hurt production to come
6 back later and drill the first Bone Spring sand.

7 Q So other than the highlighting and zooming
8 in, is there anything in Exhibit 12 that you think
9 Exhibit 12 adds that's not reflected in Exhibit 5B?

10 A Yes, sir. The first Bone Spring sand, the
11 vertical separation there between our lower second
12 sand, and then highlighting showing just how that one
13 particular well in the east half, east half of the
14 proration unit is thinner than surrounding.

15 Exhibit 5B shows the same thing. It's just
16 not highlighted, so it's harder to see.

17 Q And everything -- let me ask this question.
18 When was the first time that you read Earthstone's
19 applications in case numbers 23475 and 23477?

20 A I can't remember the exact date. It was
21 earlier -- earlier this week.

22 Q Earlier this week was the first time you
23 read those?

24 A Could find out. I could look at my email
25 and see when I was given those.

1 Q No. That's all right. It was sometime
2 earlier this week, meaning Monday, the 18th, Tuesday,
3 the 19th, something like that?

4 A It could've been -- it could've been Friday.
5 I'd have to look to see exactly when I got those.

6 Q Okay. And so when you got those
7 applications or the case numbers Friday, the 15th, at
8 the earliest or Monday, the 18th, or Tuesday, the
9 19th, that's the first time that you knew that
10 Earthstone was targeting the upper first or the -- or
11 the -- or excuse me, the first Bone Spring or the
12 upper second Bone Spring?

13 A No, sir. I believe they sent us well
14 proposals before that.

15 Q And did you see those well proposals?

16 A I did. Yes.

17 Q Okay. And when you saw those well proposals
18 could you have looked at those well proposals and
19 created what we see in Exhibit 12?

20 THE HEARING EXAMINER: I didn't hear
21 the answer.

22 THE WITNESS: Oh, sorry.

23 I -- I could've made -- he -- I believe
24 you asked if I could have made -- this cross
25 section --

1 THE HEARING EXAMINER: I know what the
2 question was, Mr. Carrell. I know what the question
3 was. I just didn't hear the answer.

4 THE WITNESS: Yes. The answer was yes.

5 THE HEARING EXAMINER: Okay. Thank
6 you, sir.

7 MR. BECK: And that's all I have,
8 Mr. Hearing Examiner.

9 Just an example of the fact that I --
10 probably my ignorance shows the prejudice that
11 Earthstone is under in not knowing what this exhibit
12 reflects, and the fact that this exhibit could've been
13 created not only over a week ago had he been shown the
14 application, but could've been created -- and again,
15 I'm not the one who sent out the applications, but my
16 recollection is that it was sometime in the spring of
17 this year, March, which would've been six months ago.

18 And obviously I wouldn't expect we
19 would've created those by then, but I would've
20 expected that Mewbourne would have created these
21 exhibits in compliance with the prehearing order and
22 submitted them by September 14th.

23 THE HEARING EXAMINER: Mr. Beck -- what
24 I understand from --

25 Hold on, Mr. Bruce.

1 Mr. Beck, what I understand from
2 Mr. Bruce is that this Exhibit 12 -- that the
3 information on Exhibit 12 is already encompassed by
4 Exhibit 5B. The difference here is the highlighting.
5 Did I understand that correctly?

6 MR. BECK: I think that that's part of
7 it. I think another part of it -- and again, I'm
8 learning this just a few minutes ago, the same as you
9 are, Mr. Hearing Examiner, for this very reason. I
10 understand that Exhibit 12 also shows the first Bone
11 Spring sand formatting, which is not shown on Exhibit
12 5-B.

13 THE HEARING EXAMINER: Mr. Carrell, is
14 that correct?

15 THE WITNESS: That is correct.

16 THE HEARING EXAMINER: Okay. And why
17 did you add that?

18 THE WITNESS: To show the -- the
19 vertical separation of the first Bone Spring sand and
20 the second Bone Spring sand, the lower, where we plan
21 to target as 750 feet.

22 The reason to show it was because we
23 think that's a sufficient enough separation where
24 we -- these zones don't need to be codeveloped. We
25 can come back at a later date, drill the first Bone

1 Spring sand, and not worry about any type of depletion
2 issues there.

3 THE HEARING EXAMINER: Mr. Bruce?

4 REDIRECT EXAMINATION

5 BY MR. BRUCE:

6 Q Mr. Carrell, just one follow-up question.
7 You never saw anything about the need to codevelop or
8 depletion from one sand to the other. Did you know
9 anything about that until you saw their exhibits?

10 A No.

11 Q So the newest part of this -- or the only
12 real new part is it just shows the 750 feet of
13 vertical segregation. And so there's no need to
14 develop the first at the same time as the second.

15 A Correct.

16 THE HEARING EXAMINER: Mr. Beck --
17 Mr. Bruce, please don't keep asking questions
18 eliciting testimony from this witness on an exhibit
19 that hasn't been admitted yet, or else I'll have to
20 strike it.

21 Mr. Beck, ultimately what Mr. Bruce and
22 his witness are testifying to is they didn't realize
23 the need to show that separation until they saw your
24 exhibits.

25 MR. BECK: And I'm sure that that's one

1 way to look at it when you're being led through that
2 testimony.

3 But the applications both identify --
4 meaning both Mewbourne's applications -- identify that
5 Mewbourne was targeting the first Bone Spring and the
6 second Bone Spring, and that it was targeting the
7 upper second and the lower second in the wine rack
8 formation.

9 So this testimony could have been there
10 in the first place. As far as what separates the
11 testimony from what's reflected in Exhibit 12, I think
12 that the testimony that we had there at the end, that
13 you pointed out went a little bit too far, is fine.

14 I think that that Mr. Carrell was
15 competent to testify to. I think a foundation has
16 been developed that he can testify to that.

17 And I don't think that Earthstone has a
18 solid basis to object to that testimony coming in, as
19 opposed to Exhibit 12, which could have been developed
20 and could've been presented timely by September 14th.

21 That's what I think -- that's what I
22 think is improper, and they were on notice that this
23 needed to be filed beforehand.

24 THE HEARING EXAMINER: Mr. Bruce, the
25 argument is that you and your client should not have

1 been surprised, and that this Exhibit 12 is not
2 timely, because had you and your client reviewed the
3 applications, you would have seen this development.
4 What is your answer to that?

5 MR. BRUCE: Well, Mewbourne certainly
6 knew that they were proposing the first Bone Spring
7 well, but they didn't see anything about this need to
8 immediately codevelop, because there are new
9 allegations not in their application that you have to
10 codevelop them promptly to avoid any type of reservoir
11 drainage from, say, the second to the first or first
12 to the second, whatever you're looking at.

13 THE HEARING EXAMINER: Okay. All
14 right. So it's the co-development, Mr. Beck, that
15 prompted their submission of Exhibit 12. What do you
16 say to that?

17 MR. BECK: I say that, again, this is
18 showing my ignorance, because I'm just being presented
19 with this. I don't know if that's what Mr. Asmus, our
20 geologist, would say. And that's showing that I am
21 not the expert here, and he is, which is why he's
22 testifying to this sort of stuff.

23 So I guess what I'd say is that if that
24 is accurate, Mr. Asmus can probably tell us what it
25 is. I ask that -- I'd ask the hearing officer just

1 reserve admitting Exhibit 12 until we hear from
2 Mr. Asmus, because, again, I just -- I'm not prepared
3 to answer that question right now.

4 THE HEARING EXAMINER: Okay. That's
5 fair. I'm not going to make a ruling on Exhibit 12 at
6 this moment, Mr. Bruce. You have a good argument.
7 And if that argument withstands the exhibits, then I
8 will let it in.

9 I'm also going to give Mr. Beck and his
10 client opportunity to, you know, examine exhibits, so
11 that they don't feel as though they're surprised by
12 this late submission.

13 So why don't you continue with your
14 direct examination of this witness? You can discuss
15 Exhibit 12, but I haven't admitted it yet.

16 (Exhibit 12 was marked for
17 identification.)

18 MR. BRUCE: Okay. Don't think that I
19 have too much more from this witness before I turn him
20 over. Let me just check my notes, please, sir.

21 THE HEARING EXAMINER: Of course.

22 MR. BRUCE: That's all I have at this
23 time, Mr. Examiner.

24 THE HEARING EXAMINER: Okay. Thank
25 you, Mr. Bruce.

1 Mr. Beck, any cross-examination for
2 this witness?

3 MR. BECK: Yes, Mr. Hearing Examiner.
4 Thank you.

5 REXCROSS EXAMINATION

6 BY MR. BECK:

7 Q Mr. Carrell, I'm going to ask you about
8 Exhibit 5A and 5B. And bear with me just a little
9 bit.

10 Your testimony is that one reason -- or I
11 guess the reason that Mewbourne isn't targeting --
12 isn't doing a wine rack formation of these wells is
13 because it believes that the upper second Bone Spring
14 sand formation is too inconsistent. Is that right?

15 A Yes, sir. In the east half of the unit.

16 Q And that's where both of Mewbourne's wells
17 are being proposed and all four of Earthstone's wells
18 are being proposed, right, that you saw?

19 A Sorry. I meant the -- the east half of the
20 east half, but yes.

21 Q And some of that -- let me ask. That
22 conclusion that the upper second is inconsistent is
23 based off of these cross sections of existing wells
24 that you have in Exhibit 5B. Is that right?

25 A Yes, sir.

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1 Q But none of these cross sections that you
2 have in Exhibit 5B give the cross section of where
3 Earthstone's proposed -- make sure I'm asking this
4 correctly -- proposed outland 187214H is proposed to
5 be drilled. Is that right?

6 A My logs go through the outland -- units. Is
7 that what you're asking?

8 Q Right.

9 A That is correct.

10 Q So with the inconsistency, you don't know
11 and we don't know for certain what kind of production
12 we could get from that proposed outland 187214H well;
13 right?

14 A Are you referring to the -- the west half of
15 the sections?

16 Q The east half.

17 A I apologize. All of my wells go through the
18 east half of the section. I apologize. I thought you
19 were referring to the west half for some reason,
20 because it shows in the inset map and on attachment
21 5A, the map, my line of cross section.

22 Q So these reflect the portion of the upper
23 second Bone Spring that Earthstone is proposing to
24 drill through. Is that what you're saying?

25 A Yeah. The third well on the lateral is

1 directly where they -- where that upper second sand is
2 the skinniest.

3 Q And you talked about Earthstone drilling
4 2-mile wells versus 1-mile wells with Mr. Bruce;
5 right?

6 A Yeah.

7 Q And you know that in both of its
8 applications, Earthstone is proposing 2-mile wells;
9 right?

10 A Correct. Yes, sir.

11 Q And you said that Earthstone could've worked
12 out something with Matador beforehand to drill into
13 section 19?

14 A Seems like that could've been an option,
15 yeah, prior to Matador drilling wells in section 19.

16 Q Do you know if Earthstone and Matador are in
17 negotiations about that? Whatever you said didn't
18 come through, or at least I didn't hear it, so --

19 A I'm sorry. I said no. I don't know if they
20 ever had negotiations.

21 Q All right. And what about Chisholm and
22 Matador? Do you know if they ever had negotiations?

23 A I do not know that.

24 Q Okay. So you don't know one way or the
25 other whether Chisholm or Earthstone actually agreed

1 or tried to agree with Matador about drilling into the
2 section 18?

3 A Section 19 or 18? I -- I don't know that.
4 No.

5 MR. BECK: That's all I have. Thanks,
6 Mr. Carrell.

7 THE HEARING EXAMINER: Mr. Lowe?

8 MR. LOWE: Yes, sir. Are you giving me
9 the opportunity to ask questions?

10 THE HEARING EXAMINER: Yes, sir.

11 MR. LOWE: Okay.

12 Good afternoon, Mr. -- what's your name
13 here -- Carrell. Mr. Carrell. Sorry. Jordan
14 Carrell. You were a sworn witness, and you were sworn
15 in as a geological witness.

16 THE WITNESS: Yes, sir.

17 MR. LOWE: Okay. I just want to
18 reassure where I'm at on all this. I just had a
19 few -- a brief question for you. I think it was
20 stated up front that the wells of interest here --
21 that I think you stated that the first Bone Spring
22 sands will be eventually drilled in this location.

23 When do you intend to do that? And
24 does that pertain to the outcome of this case?

25 THE WITNESS: We intend to get

1 infrastructure built in the area that can take H2S.
2 So the first Bone Spring sand here is known to have
3 high H2S in it.

4 And we'd also -- yeah. We would like
5 to drill more first sand wells here, so we're in
6 negotiations with a third party to put infrastructure
7 in here for sour takeaway, which should come to
8 fruition next year.

9 And so at that point we would be -- you
10 know, if this rules in our favor, we would be able to
11 drill first Bone Spring sand in these locations.

12 MR. LOWE: Okay. And I think I wanted
13 to reassure where that determination came from. I
14 think I heard you verbalize that you were going off of
15 evidence adjacent to this section to the west, I think
16 it was, from the wells located there. Is that what I
17 understood?

18 THE WITNESS: Our first Bone Spring
19 sand well that has had H2S in it is directly north in
20 section 6 on -- on Exhibit 5 -- or attachment 5A. Is
21 that what you're referring to?

22 MR. LOWE: I'm trying to get my -- my
23 exhibits up here. I don't know what map I was
24 referring to or looking at under the multiple exhibits
25 here that I'm trying to look through.

1 But I thought that's what I heard, that
2 you all are wanting to go for the first -- or you
3 didn't -- I think -- I don't recall if it's -- the
4 reason why you didn't want to go with the first Bone
5 Spring. And I think the term -- it was stated because
6 it was the high H2S and basically what you stated just
7 now.

8 I think that's kind of where we're
9 going at. Also, another question, I'm not too sure
10 about the titles of these cases that are having been
11 presented.

12 Earthstone is coming forward with a
13 nonstandard spacing unit request as well too. Is that
14 what I -- is that still going on?

15 THE WITNESS: Is that a question for
16 me? Sorry.

17 MR. LOWE: Yes.

18 THE WITNESS: Oh. I -- I believe so,
19 if that's what the -- the title says. I don't -- I
20 don't have their -- their stuff in front of me.

21 MR. LOWE: And it's kind of hard for me
22 to look at all these exhibits with the slow computer
23 on my side. But I'm trying to find out the C102s
24 pertaining to all these -- well, the subject matter
25 for both operators here.

1 I guess from what I'm seeing Earthstone
2 and Mewbourne are trying to get the east half of these
3 two sections; correct?

4 THE WITNESS: Correct.

5 MR. LOWE: And in that sense, I guess
6 the question is posed to Earthstone, what portion of
7 those -- is that nonstandard spacing unit request
8 pertaining to?

9 THE HEARING EXAMINER: Mr. Lowe, I'm
10 confused. Are you asking Mewbourne's witness a
11 question that is directed to Earthstone?

12 MR. LOWE: No. It's just my question.
13 Well, you know what? I could wait until the end. Let
14 me --

15 THE HEARING EXAMINER: I'm not --

16 MR. LOWE: Yeah.

17 THE HEARING EXAMINER: Mr. Lowe, I'm
18 not suggesting when you ask your question, but I
19 didn't -- by what you said, it didn't sound like that
20 question was meant for this witness.

21 MR. LOWE: Okay. Well, it could be
22 made for the landman maybe then. But --

23 MR. BECK: Yeah. I think Earthstone's
24 landman, Ms. Redfearn, can answer those questions,
25 Mr. Lowe. And I can try to make it a point to ask

1 her. But it's my understanding, and I think she'll
2 confirm this, is that Earthstone is not requesting
3 nonstandard spacing unit.

4 MR. LOWE: Okay. If that's the case,
5 then --

6 THE HEARING EXAMINER: Mr. Lowe, this
7 is not a witness. The attorney is not a witness. So
8 if you want to consider evidence later, and I have to
9 consider evidence later, please direct that question
10 to the proper witness.

11 MR. LOWE: Okay. Can do that then.
12 Those are the only questions I have.

13 THE HEARING EXAMINER: Okay.

14 MR. LOWE: Thank you.

15 THE HEARING EXAMINER: Thank you,
16 Mr. Lowe.

17 Mr. Bruce, are there any redirect
18 questions for this witness? Mr. Bruce, are you still
19 here?

20 MR. BRUCE: Forgot to unmute myself,
21 Mr. Examiner.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. BRUCE:

24 Q The depths in Mewbourne's wells from what's
25 in your exhibits, the AFEs and the pooling checklist,

1 is somewhere -- what is the vertical depth?

2 A For our -- our wells?

3 Q Yes.

4 A Got to be approximately -- let's see --
5 right around 10,000 feet, close to.

6 Q And I'm looking at this -- of course this is
7 a new exhibit, but the landman's affidavit contains,
8 as Exhibit 24, the AFEs for the wells. And those
9 exhibits show something like -- somewhere in the 9850
10 range. Does that seem familiar?

11 A Yes. I have their -- oh, okay. Yeah.

12 Q Okay. Now if you can dig it out, I would
13 like for you to look at Earthstone Exhibit A-3. Let
14 me know when you've found it.

15 A I have it here in front of me.

16 Q Okay. That's a proposal letter that all the
17 operators -- of the type that every operator sends
18 out, and you've seen those before. Haven't you?

19 A Yes, sir.

20 Q If you go back about six pages, they have
21 their AFEs attached.

22 MR. BECK: Mr. Hearing Examiner, this
23 is definitely outside the scope of my
24 cross-examination, and I think it's outside the scope
25 of what Mr. Lowe asked.

1 MR. BRUCE: Well --

2 THE HEARING EXAMINER: Mr. Bruce?

3 MR. BRUCE: Well, it goes to a key
4 point, and I can bring it up later when the decision
5 is made on Exhibit 12, or I can get it out of the way
6 now.

7 THE HEARING EXAMINER: Okay. So this
8 has to do with whether or not Exhibit 12 was a
9 surprise and it is a true rebuttal exhibit?

10 MR. BRUCE: Yes.

11 THE HEARING EXAMINER: Okay.

12 And, Mr. Beck, why is that outside the
13 scope?

14 MR. BECK: Well, I didn't know where
15 this was coming from. I didn't ask about Exhibit 12
16 for the reason that I don't think it should be
17 admitted.

18 But I certainly think that it makes
19 sense to get this out of the way now to see if my
20 understanding is incorrect or if there's something new
21 that I wasn't aware of, so I'm --

22 THE HEARING EXAMINER: Mr. Bruce, I
23 didn't know where you were going with this either, but
24 now that you've clarified, I'll override the
25 objection.

1 But please let's get to the point
2 quickly, because we're going to take lunch after this.

3 MR. BRUCE: Okay.

4 BY MR. BRUCE:

5 Q Mr. Carrell, there's four AFEs. Forget
6 about the first Bone Spring. But the final two AFEs
7 are for their proposed second Bone Spring wells. Is
8 that correct?

9 A Yes, sir.

10 Q And over in the upper right hand, there's a
11 a little paragraph talking about the wells. What do
12 both of their second Bone Spring sand AFEs state the
13 approximate completion total vertical depth is?

14 A They both say the same depth, 10,400
15 vertical feet, which would be approximately in the
16 lower second sand.

17 Q And it's not where they're proposing right
18 now?

19 A No. So yeah. The -- the first time I
20 would've realized that they were targeting the upper
21 second sand was when they filed their -- their
22 prehearing exhibits.

23 MR. BRUCE: Okay. That's where I'm
24 going with that, Mr. Examiner.

25 THE HEARING EXAMINER: Okay. Thank

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1 you, Mr. Bruce.

2 Mr. Beck, did you have anything to --
3 did you have any questions for this witness or any
4 argument further?

5 MR. BECK: Yeah. I guess -- I think I
6 can make this brief, because I know you want to take
7 lunch.

8 FURTHER RECROSS EXAMINATION

9 BY MR. BECK:

10 Q Mr. Carrell, does Exhibit B -- I'll get to
11 it. Does Exhibit 5B include the upper second Bone
12 Spring sand formation?

13 A Exhibit 5B, is that my cross section?
14 Sorry. Yeah. Right here. It does include the upper
15 second Bone Spring sand in it.

16 Q Okay. So even though that the AFE that you
17 may or may not have reviewed does not include that
18 upper second Bone Spring formation, that would include
19 and is included in Exhibit 5B; right?

20 A The information about Earthstone's target is
21 not included in 5B.

22 Q That's not the question I asked. I asked --
23 you've talked with Mr. Bruce about how the two second
24 Bone Spring AFE proposals of Earthstone both target
25 the lower second; right?

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1 A It appears so. Yes.

2 Q And what changed was targeting the upper
3 second. Yes?

4 A It seems like that has changed. Yeah.

5 Q Okay. But both the upper second and lower
6 second Bone Spring formation are captured on Exhibit
7 5B?

8 A Yes, sir.

9 MR. BECK: Okay. That's all I got.

10 THE HEARING EXAMINER: You know,
11 Mr. Beck, I understand the point you're trying to
12 make, but I'm going to let Exhibit 12 in. I'm letting
13 it in, because I can see the confusion. I can see why
14 it's been submitted.

15 I don't think it's so surprising that
16 you can't deal with it. I'll give you the time you
17 need to deal with it. We'll take a lunch break now.
18 And if your witness needs additional time to consider
19 Exhibit 12, you let me know and we'll add that time in
20 here, Mr. Bruce.

21 So I am admitting Exhibit 12 into
22 evidence. I am not admitting 10 and 11 at this time.

23 Mr. Bruce, how many more witnesses do
24 you have?

25 //

1 (Exhibit 12 was received into
2 evidence.)

3 MR. BRUCE: I have one.

4 THE HEARING EXAMINER: You have one.
5 How -- long will that direct examination take?

6 MR. BRUCE: That direct examination --
7 get them admitted and ask about half a dozen -- five
8 or six questions. So --

9 THE HEARING EXAMINER: Okay.
10 Mr. Bruce, is this your rebuttal witness?

11 MR. BRUCE: Yes.

12 THE HEARING EXAMINER: Well, I've never
13 heard of calling a rebuttal witness in your case in
14 chief.

15 MR. BRUCE: Well, I can leave it until
16 the end, and that's fine.

17 THE HEARING EXAMINER: I think that's
18 what we're going to do here.

19 MR. BRUCE: Okay.

20 THE HEARING EXAMINER: So do you have
21 any other evidence to admit in your case in chief?

22 MR. BRUCE: That's it. Yeah. I
23 believe you admitted original Exhibits 1 through 9,
24 and Exhibit 12, and Exhibit 11 is -- until the end.
25 So I -- nothing further at this time, Mr. Examiner.

1 THE HEARING EXAMINER: Okay. So you're
2 resting your case then?

3 MR. BRUCE: Correct.

4 THE HEARING EXAMINER: Okay. Very
5 good.

6 So, Mr. Beck, we will come back after
7 lunch for your case.

8 How much time do the parties -- I mean,
9 I don't need a full hour for lunch. I don't know how
10 the parties feel. Is it okay to come back at one
11 o'clock and pick this up?

12 MR. BECK: I think it should be,
13 Mr. Hearing Examiner, with the exception of if I need
14 some more time -- Exhibit 12 -- whatever we may
15 have --

16 THE HEARING EXAMINER: Sure. We've
17 already -- yeah. I've already said that. So you have
18 that in your back pocket if necessary.

19 MR. BECK: One sounds reasonable.

20 THE HEARING EXAMINER: Okay. Very
21 good. So we have -- we're taking about a 52-minute
22 lunch, and we will reconvene at one o'clock today for
23 Mr. Beck's case in chief. Thank you.

24 MR. BECK: Thanks.

25 (Off the record.)

1 THE HEARING EXAMINER: On September
2 21st, we are in the middle of a contested hearing.
3 Mewbourne has put on its case in chief. We are now
4 waiting for Earthstone to put on its case in chief.

5 Its witnesses have been sworn in. But
6 before a witness begins testimony, please state your
7 name and spell it for the record. It'll make it a lot
8 easier for the court reporter later.

9 Mr. Beck?

10 MR. BECK: Yeah.

11 THE HEARING EXAMINER: The forum is
12 yours.

13 MR. BECK: Thank you, Mr. Hearing
14 Examiner. Earthstone calls the landman, Amanda
15 Redfearn.

16 THE WITNESS: Hello. Mr. Hearing
17 Examiner, as you requested, my name is Amanda
18 Redfearn, spelled A-M-A-N-D-A. Last name Redfearn,
19 R-E-D-F-E-A-R-N.

20 MR. BECK: Mr. Hearing Examiner,
21 Ms. Redfearn's experience is outlined in paragraph 3
22 of her direct testimony, and she's previously been
23 accepted as a petroleum landman expert by the
24 division, and Earthstone tenders her as a petroleum
25 landman expert for these matters today.

1 THE HEARING EXAMINER: Mr. Bruce, any
2 objection?

3 MR. BRUCE: No, sir.

4 THE HEARING EXAMINER: She is accepted
5 as a expert. Please proceed.

6 DIRECT EXAMINATION

7 BY MR. BECK:

8 Q Ms. Redfearn, I know that a lot of what
9 you've prepared for this hearing is in your packet,
10 and I'm not going to talk with you about a lot of
11 those.

12 What I want to highlight is what you found
13 first when you were preparing this application -- this
14 competing application in terms of the negotiations
15 between Chisholm and Mewbourne coming before the
16 division.

17 What's your understanding -- or I guess not
18 your understanding. How did Earthstone come to be a
19 mineral interest owner in the sections proposed to be
20 drilled in these applications?

21 A Sure. Yes. So we came to our interest by
22 the acquisition of Chisholm in 2022, and succeeded in
23 their interest.

24 Q And how long after that did Earthstone
25 decide to proceed with its development plan in these

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1 two applications?

2 A We -- shortly thereafter I didn't -- these
3 areas were identified prior to diligence or during
4 diligence.

5 And then, you know, when we started doing
6 our applications for this and negotiations will
7 receive Mewbourne's plans, that's when I started
8 digging in a little bit deeper into the records that
9 we received from Chisholm.

10 And the case number was written on the
11 operating agreement for the expansion in North Wilson
12 Deep Unit, which then I did some research and to our
13 internal records received from Chisholm, and then the
14 OCD case files, which brought to light that Chisholm,
15 a predecessor, expressed their thoughts to exclude the
16 east half of section 18, and wanted to remain operator
17 of that.

18 Q I'm going to show you what's been admitted
19 as Earthstone's Exhibit A2, which shows the tracks for
20 first the wells proposed as outland Exhibit -- or
21 excuse me -- outland 18-7 State Com 114H and outland
22 18-7 State Com 214H.

23 And it shows that it's proposed on the east
24 half, east half of section 18 and the east half, east
25 half of section 7. Is that right?

1 A Correct.

2 Q Did you prepare what's been admitted as
3 Exhibit A2?

4 A Yes, I did.

5 Q And it lists the working interest owners on
6 tract 1, tract 2, and tract 3, and then the working
7 interest pool and the overriding royalty interest --
8 or excuse me -- overriding royalty parties to pool.
9 How did you come up with the parties listed on Exhibit
10 A2?

11 A A combination of things. I had a broker
12 that went out and updated the title out in the
13 courthouses, and also look into the state land office
14 records. Once he fully prepared all those run sheets,
15 I forward that onto our title attorney.

16 Our title attorney examined all those
17 materials and prepared a DOTO for the subject spacing
18 units. And that is where I direct to those interest
19 figures for each tract, the spacing unit, et cetera,
20 on my ownership exhibits.

21 Q All right. We heard during Mewbourne's
22 testimony earlier today about the state land office
23 and its communications about the -- before the
24 division in these matters. I understand that you had
25 an email exchange with the state land office. Is that

1 accurate?

2 A Yes, that is true.

3 Q I'll show you what I showed Ms. Salgado
4 earlier, and that's what was marked as Exhibit 1 to
5 Earthstone's response to Mewbourne's motion to dismiss
6 these applications. Is that a copy of an email that
7 you sent to Scott Dawson at the state land office?

8 A Yes.

9 Q What prompted you to send that exhibit?

10 A I had received a bunch of phone calls from
11 Scott Dawson. And when I talked to him prior to
12 sending that email, he had let me know Mewbourne had
13 contacted him, and he wanted to give the courtesy to
14 let me know that he was not going to allow us to drill
15 into the unit, et cetera, et cetera.

16 During those conversations, it came to light
17 that the SLO and Scott Dawson was not aware of our
18 competing applications, that Mewbourne did not notify
19 them that they would actually be drilling from section
20 18 into the unit.

21 And so long story short, he was not fully
22 apprised of the situation and the matters at hand. So
23 I went ahead and I included all parties, so there was
24 complete, full transparency between Earthstone, the
25 state land office, and Mewbourne, and Mewbourne's

1 counsel.

2 The matters at hand, you know, respectfully
3 requesting the state land office to reserve judgment
4 on awarding operatorship and/or denying any potential
5 APD permits until the OCD has had the opportunity to
6 listen and hear both of our cases.

7 Q Now you saw earlier what was marked Exhibit
8 3 in Mewbourne's application the email from Mr. Dawson
9 to Ms. Salgado?

10 A Yes.

11 Q Did you have any knowledge about Mewbourne's
12 communication with the state land office at that time?

13 A Mewbourne asserted that they had
14 conversations, but would not give me any of those
15 details or forward me any of that information. It
16 wasn't till Scott Dawson himself forward me a little
17 bit of those communications when he was trying to
18 contact me prior to sending that email to all parties.

19 Q And then when you talked with Scott Dawson,
20 and as reflected in Exhibit 1 to the response, the
21 state land office was under the impression that
22 Earthstone was not a party to the North Wilson Deep
23 Unit agreement; right?

24 A Correct. And I -- I had to let Mr. Dawson
25 know that we succeeded in Chisholm's interest and it

1 just doesn't appear to be reflected in the state land
2 office records that Earthstone is now the successor in
3 interest to Chisholm.

4 Q And the state land office also didn't know
5 that Mewbourne intended to drill from section 18 into
6 section 7; right?

7 A Correct.

8 Q And has the state land office ever told you
9 or anyone at Mewbourne that it will not consider or
10 even approve an application if you're granted these
11 compulsory pooling orders?

12 A No.

13 THE HEARING EXAMINER: Mr. Beck, is
14 this a good opportunity for me to ask you where is
15 Exhibit 1 that you showed your witness a little while
16 ago?

17 MR. BECK: That's Exhibit 1 attached to
18 the Earthstone's response to Mewbourne's motion to
19 dismiss. It was filed by the division on April 28,
20 2023, at 4:02 p.m. It's page 18 of 20 of that
21 pleading in the case file.

22 THE HEARING EXAMINER: So just to be
23 clear, are you asking for it to be admitted into
24 evidence in this case or are you just referring to it?

25 MR. BECK: You know, I hadn't really

1 thought about it. I think the testimony is clear.
2 But since you're prompting me, I guess I'd move at
3 this time to include it in the exhibits that the
4 division will look at as it takes these under
5 advisement.

6 THE HEARING EXAMINER: Mr. Bruce?

7 MR. BRUCE: I would object.

8 THE HEARING EXAMINER: Can you give me
9 a basis for the objection?

10 MR. BRUCE: Well, they knew they had
11 it, and they haven't submitted it in their exhibit
12 packages.

13 THE HEARING EXAMINER: So the objection
14 is --

15 MR. BRUCE: Lack of timely -- yeah.

16 THE HEARING EXAMINER: Okay. Mr. Beck?

17 MR. BECK: The reason that I -- the
18 reason that Earthstone didn't submit any is it's -- my
19 understanding is it's part of the record in this
20 matter, and that's why I said I haven't thought of
21 admitting it as an exhibit.

22 I think that in the corollary to
23 whatever is taking judicial notice is the files in the
24 record, I think, that the division can.

25 But as I said, I think it makes since,

1 since we've been discussing it, just to include it as
2 an additional exhibit for the hearing.

3 THE HEARING EXAMINER: And the purpose
4 of it coming into evidence is what?

5 MR. BECK: That we discussed it, that
6 it's relevant to, I think, the argument that Mewbourne
7 has made, although not come out and said it, that the
8 state land office somehow has put its finger on the
9 scales in this. And it's -- as I said, it's obvious
10 that it -- that is has.

11 And I think it also goes to probably
12 the credibility of the witnesses in the good faith
13 negotiation, which obviously is a consideration for
14 the division here.

15 And the fact that you've got an exhibit
16 from Mewbourne in Exhibit 3 of their exhibits, that
17 that does not include the original email sent to the
18 state land office that prompted the reply Ms. Salgado
19 said she received.

20 Whereas on the other hand, you've got
21 an email from Ms. Redfearn and Earthstone that was
22 sent to the state land office in which Mewbourne was
23 copied.

24 THE HEARING EXAMINER: Mr. Bruce, do
25 you want to voir dire the witness on that exhibit?

1 MR. BRUCE: No, Mr. Examiner. I mean,
2 it exists. That email exists. I'll -- questions for
3 her, but not really for voir dire. Okay?

4 THE HEARING EXAMINER: Okay. All
5 right. So I do find that the credibility of a witness
6 is crucial at any point in a proceeding, such as this,
7 where we're trying to get at the truth.

8 So I am going to admit that as an
9 exhibit, but I'm going to ask Mr. Beck to mark it
10 appropriately and submit it, so that it's part of your
11 exhibit list here.

12 What do you propose marking it?

13 MR. BECK: I'll do that as soon as we
14 finish here. And I propose that it be admitted as
15 Exhibit E.

16 THE HEARING EXAMINER: I'm sorry.
17 What? E as in echo?

18 MR. BECK: E as in echo. Yes.

19 THE HEARING EXAMINER: E as in echo.
20 Okay.

21 Exhibit E -- Earthstone's Exhibit E is
22 admitted into evidence for the purpose of the
23 credibility of the former witness. And that's why
24 it's being admitted. It's not being admitted for any
25 other purpose. So we're letting it in for that one

1 purpose. And I'm taking notes.

2 Okay. And we'll expect you to mark it
3 as Exhibit E and submit it through the portal,
4 Mr. Beck.

5 (Earthstone's Exhibit E was marked for
6 identification.)

7 (Earthstone's Exhibit E was received
8 into evidence.)

9 MR. BRUCE: Yes, Mr. --

10 THE HEARING EXAMINER: Okay. So please
11 continue with this witness.

12 BY MR. BECK:

13 Q Ms. Redfearn, have you had the opportunity
14 to examine Mewbourne's Exhibit 2, which is the
15 verified statement of Adriana Salgado for this --

16 A Yeah. I have.

17 Q Brought that up in front of you. And in
18 terms of Exhibit 2-2, the section plat for 8H -- for
19 the North Wilson Deep Unit 8H where it says, "Tract
20 3," that Mewbourne Oil Company's minimal interest
21 owners, is that accurate as far as your records
22 reflect?

23 A No. That is inaccurate. And in fact,
24 Mewbourne has admitted that they do not have any
25 interest in the east half of section 18, specifically

1 that lease referenced there in Exhibit 2-2.

2 Q And then I'm going to take you to revised
3 Exhibit 2-2, which reflects the leasehold interest for
4 the well 8H and the proposed well 9H. Are those
5 interests reflected there -- do you agree based on the
6 records you reviewed those are accurate or do you
7 think those are inaccurate?

8 A Those are inaccurate for more than one
9 reason. One main reason being Timothy MacDonald and
10 Maverick are not credited and listed there yet. Their
11 exhibit still totals to 100 percent.

12 Secondly, as I mentioned before, in my
13 ownership that Earthstone pooled together, we got a
14 full-blown DOTO done on it. And I believe Mewbourne
15 was saying they just had a leasehold takeoff. So with
16 that said, this is firstly inaccurate.

17 Although, this revised exhibit is a little
18 bit closer to the numbers than that they had
19 originally stated in their original exhibits. But
20 it's just still not quite accurate.

21 Devon has a larger percent of interest in
22 that, and I'm not quite sure of how their accounting
23 or where they're putting Timothy MacDonald and
24 Maverick's interest in here into play.

25 Q And this is -- again, this is probably

1 showing how ignorant I am, but it'll probably help out
2 me and some others listening in. What is a DOTO that
3 you're referring to that was done?

4 A Sure. It's a division order title opinion.

5 Q And who does that for Earthstone and who --
6 let me ask a better question. Who did that for
7 Earthstone for these applications?

8 A Our title attorney that we used, KMD.

9 Q Want to talk to you about Exhibit A6 in
10 Earthstone's prehearing exhibit packet. Are you
11 familiar with this exhibit?

12 A Yes, I am.

13 Q What does this show?

14 A This here is showing the pad location that
15 we got approved from the surface center that we staked
16 on March 27th.

17 And then the two additional pads over on the
18 west half that we recently got pooling orders on that
19 we would -- are hoping to codevelop together if we
20 were able to be awarded operatorship here on this east
21 half of 18 and 7.

22 Q You referenced the compulsory pooling order
23 that you were just awarded in the well that will --
24 this will out of that -- or is being developed out of
25 that. What's the status off those wells?

1 A Those wells have already been permitted. We
2 already have API numbers. And I have proposed them
3 already to the parties that were under order.

4 Q How did the facilities for those wells play
5 into the development plan here for the proposed
6 outland 18-7 wells in these two cases?

7 A Well, due to the proximity, and the existing
8 infrastructure, and everything else like that, it --
9 it's just -- it's codeveloping the east jointly
10 together. It's just more efficient. It's cost
11 effective.

12 There's already existing roads and other
13 infrastructure there that we would not have to
14 traverse any other lands outside of the spacing units,
15 much less traverse into the North Wilson Deep Unit.

16 Q Did you compare the surface impacts for
17 Earthstone's applications in these cases with the
18 surface impacts from Mewbourne's applications and the
19 cases competing with it today?

20 A I did.

21 Q And what conclusions about the differing
22 surface impacts did you reach in those comparisons?

23 A To me, in my opinion, it looks like there
24 would be a lot more surface disturbance.

25 There would also be -- you know, it's hard

1 to tell exactly, but with those two batteries that
2 they reference in the sections, they would have to,
3 you know, traverse off these pad locations across
4 state land trusts, and although right away is not
5 required there, it -- it's also the physical
6 disturbance crossing over those lands, in addition to
7 flow line paths and not knowing that, you know,
8 they -- they could have to potentially bury under
9 Highway 176 to reach their existing facilities and
10 batteries that they referenced.

11 MR. BECK: May I have a minute,
12 Mr. Hearing Examiner?

13 BY MR. BECK:

14 Q Ms. Redfearn, I'm showing you what's been
15 admitted as Mewbourne's Exhibit 4 for these cases. Do
16 you see that in front of you?

17 A Yes, I do.

18 Q This is a letter of support dated July 18,
19 2023, from Devon Energy Production Company to
20 Mewbourne Oil Company. Is that right?

21 A Yeah.

22 Q And is the support in this letter supporting
23 the applications of Mewbourne different than what
24 you've heard Mewbourne talk about as its development
25 plan today at the hearing?

1 A Yes, in the sense that today is the first
2 time I'm hearing, and then also with the addition of
3 those -- believe it was Exhibit 12 where they were
4 speaking upon targeting the first Bone Spring
5 formation at a later date.

6 It kind of signals a little bit different to
7 me in the sense that Devon's letter of support here is
8 supporting these specific wells and these specific
9 applications, and supporting a two-well development in
10 the Bone Spring only. And --

11 Q And that's what --

12 A I'm sorry. Go --

13 Q -- the case number 23365 seeks authorization
14 to drill and complete a producing total of one Bone
15 Spring well in a proposed spacing unit, and then same
16 thing in the next sentence for case number 23366, they
17 produced a total of one Bone Spring well; right?

18 A Correct.

19 Q And then as far as your reading of this
20 letter, nowhere does it say Devon would support the
21 drilling of additional Bone Spring wells on these
22 units; right?

23 A No. If you could please scroll down to the
24 second page, I think it expressly states in there
25 "Devon urges -- the commission approved Mewbourne's

1 request for authorization to drill and complete a
2 producing total of two Bone Spring wells within the
3 east half of section 7 and east half of 18."

4 So only a total of two does that letter
5 support. And it doesn't support any additional
6 targets in the Bone Spring that has now come to light
7 that Mewbourne is interested in targeting at a future
8 date.

9 Q Did Earthstone ever talk with Devon about
10 the application for -- two applications with a total
11 of four wells versus only drilling two wells into the
12 spacing unit?

13 A Yes.

14 Q What were those discussions?

15 A The discussions they had is that they were
16 more in favor of a two-well development versus the
17 four-well development. But there was also some other
18 business reasons, and -- as to why they were looking
19 to support that.

20 MR. BECK: That's all that I have for
21 the direct of Ms. Redfearn.

22 THE HEARING EXAMINER: Okay. Before I
23 turn this over to Mr. Bruce, I do want to remind you,
24 Mr. Beck, that Exhibits B and B1 through 5 are
25 admitted, and I don't think this witness is dealing

1 with B. But 6 through 10 are objected to.

2 MR. BECK: B6 through 10.

3 THE HEARING EXAMINER: Yes. Exactly.

4 MR. BECK: Yeah. Thank you. Yeah.

5 She's not testifying about the exhibits marked B. I
6 appreciate that.

7 THE HEARING EXAMINER: I understand.

8 Just wanted to make that very clear to all the
9 parties.

10 MR. BECK: Thank you.

11 THE HEARING EXAMINER: Okay.

12 Mr. Bruce, cross-examination, please.

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

14 CROSS-EXAMINATION

15 BY MR. BRUCE:

16 Q Well, let's start with the last thing you
17 said that you've spoken -- or you looked at the letter
18 of support from Devon to Mewbourne. Mewbourne at this
19 time is only proposing two wells; correct?

20 A Correct. Yes.

21 Q And so that letter supporting two wells is
22 perfectly accurate; correct?

23 A Yes. In the sense that it's -- it's
24 supporting a two-well development only in the Bone
25 Spring. I -- latter -- latter paragraph of that

1 letter.

2 Q And under a pooling order, Mewbourne gets a
3 pooling under. Under the order, under the OCD's
4 statewide rules, additional wells can be proposed to
5 the working interest owners who are being pooled. Is
6 that correct?

7 A That is correct.

8 Q Okay. And you cannot predict what Devon may
9 do in that case.

10 A I -- I cannot. I cannot speak for Devon.

11 Q Okay. And now in your affidavit you state
12 in your -- a couple of places, but in paragraph 8,
13 Chisholm -- toward the bottom you talked about
14 Chisholm didn't want to have some of its lands in the
15 state unit, you know, impede development plans of the
16 acreage for those who choose to commit to the
17 expansion.

18 Now both Chisholm and Earthstone could've
19 developed this acreage, their section 18 acreage, with
20 section 19 to the south. Couldn't they? Prior to
21 that.

22 A Yes, sir. They could've. But to my
23 understanding, those wells were drilled shortly after
24 Mewbourne got their order to expand their unit. And
25 there's -- those conversations that were held between

1 the operator down to the south in section 19 in
2 Chisholm I'm not privy to.

3 They could've had those conversations and
4 try to develop, but I do know that Chisholm, our --
5 our predecessor, and now Earthstone does not have any
6 interest in section 19. So it just wouldn't make
7 sense for us to try to develop that when we have no
8 ownership in section 19 down to the south.

9 Q Well, isn't that the purpose of pooling? I
10 mean, after all, you obviously don't want to drill
11 1-mile laterals in section 18. Is that correct?

12 A That is correct. It's more economical to --

13 Q Okay. So impeding development -- by
14 Mewbourne proposing 2-mile wells, they're not impeding
15 development. They're doing exactly what you want to
16 do.

17 A Yes. But -- I'm sorry. Go ahead.

18 Q No. Go ahead.

19 A No. As you pointed out in my paragraph 8 of
20 where it's been made a matter of record, but, you
21 know, it was grave concerns that Mewbourne would use
22 its designation as a unit operator to the state unit
23 to challenge and impede the development plans of other
24 working interest owners.

25 And to me, exactly what Mewbourne is doing

1 here is challenging, impeding our ability and our
2 development plans for our leasehold acreage in section
3 east half of 18 that we have a working interest in
4 that Mewbourne does not.

5 Earthstone also has a working interest in
6 the east half of 7. So we have interest in both
7 proposed spacing units in these cases.

8 Q And section 7 is in the unit area operated
9 by Mewbourne; correct?

10 A That is correct.

11 Q And so what you're seeking to do is impair
12 their development of the unit by not allowing them to
13 operate.

14 A No. I think what we're seeking here is just
15 a fair and equal opportunity to have our cases heard
16 of who has the superior development plan to develop
17 the acreage prudently.

18 Q And Mewbourne could've simply proposed
19 2-mile wells to the north starting in section 7
20 heading to the north. And where would Earthstone be
21 at this point?

22 A I don't think they could've, because of
23 the -- there's current wells already located to the
24 north of 7.

25 And then also I'm very familiar with the

1 surface use agreement and the location that it --
2 the -- you have to have permission from the surface
3 owner 14 days in advance to even enter the property,
4 and then you need to advise them of all your locations
5 and plans. And they have to agree upon that.

6 And I know speaking with the surface owner
7 of 7, it's just not feasible for that kind of
8 developed -- for that. And then also to the sure fact
9 that there's already development north of 7 that would
10 make it almost impossible for development to occur
11 there.

12 Q Well, let me ask you. I think if you look
13 at the exhibits, yeah. In one part of section 6 there
14 is an existing well, but I don't know if Earthstone
15 has done it.

16 But you obviously -- pay attention to the
17 OCD's docket, and there are many units being drilled
18 where there are existing wells where you just apply
19 for approval of overlapping well units. Isn't that
20 correct?

21 A That is correct, but we just didn't feel the
22 need that --

23 Q So what I'm getting at, you answered, is
24 that Mewbourne is not impaired from drilling from
25 section 7 into section 6. They can go ahead and

1 propose that, and drill unit acreage, and what would
2 be the recourse of Earthstone if they decided -- if
3 they had decided some months ago to do that?

4 A Well, if they were staying wholly in unit --

5 MR. BECK: I'm going to object to that
6 as compound. I think there was three questions in
7 there, and I don't know Ms. Redfearn knows which one
8 she's being asked to answer --

9 THE HEARING EXAMINER: Mr. Bruce, could
10 you reformulate the question?

11 MR. BRUCE: Yeah. And I can't even
12 remember if I remember it, but --

13 THE HEARING EXAMINER: Well, we have a
14 court reporter, Mr. Bruce. We have a court reporter
15 who could read it back to us -- and you could split it
16 up if you like.

17 MR. BRUCE: I think I can remember --

18 BY MR. BRUCE:

19 Q First of all, you admitted you have well
20 units with overlapping well units. Secondly,
21 Mewbourne could drill 2-mile laterals to the north
22 from section 7 into section 6. Is that correct?

23 A If Mewbourne wished to do that, yes. It
24 seems like that could be a potential that they could
25 work out.

1 Q And if Mewbourne had decided to do that --
2 this case was originally scheduled to be heard in
3 February. I can't remember when I filed the
4 application. Would Earthstone be better or worse off
5 only having section 18 to develop?

6 A You -- I -- I don't -- not sure how to
7 answer that one, as far as being better off. I think
8 in that case they would be wholly within unit and
9 within their bounds.

10 And I think, you know, our position here is
11 that the east half of 18 was meant to be excluded from
12 the unit, being Mewbourne is an operator to it. And
13 therefore --

14 Q Can you point to me any -- okay. Can you
15 point to any explicit written agreement between
16 Chisholm and Mewbourne or Mewbourne and Earthstone
17 that says that Mewbourne cannot propose a well unit,
18 including east half section 18 acreage?

19 A I do not see an agreement for that, but I
20 think that is implied in part of this -- all of the
21 case proceedings in the expansion of the unit, and why
22 that was specifically excluded is because Chisholm,
23 our predecessor and other operators wanted to have the
24 ability to operate their leasehold.

25 Q Okay. Well, you know, there's no guarantees

1 that an operator or that a company will get to operate
2 a well.

3 A I understand that. And that's why we're
4 here today, Mr. Bruce.

5 Q And let me move onto a couple of other
6 things. Okay. The land exhibits. Mewbourne filed an
7 additional -- a revised Exhibit 2-2, which you looked
8 at. First off, you'll admit that Mr. MacDonald and
9 Maverick own quite small interests. Do you not?

10 A They do. Working interests, nonetheless.

11 Q Oh, sure. But if you look at Mewbourne's
12 exhibits and who has -- who is the parties who are not
13 being pooled -- in other words, they signed JOAs and
14 then the letter of support for Devon -- you still get
15 up to about 72 percent approval from working interest
16 owners in the proposed well units who approved of
17 Mewbourne's plans. Is that correct?

18 A Yes, sir. It seems to be that way. But
19 again, like I said, these interest figures are not
20 accurate, so I -- I can't say for certain that you
21 guys are representing the most accurate interest to
22 being pooled.

23 And although there is a letter of support, 7
24 has not signed a JOA, so I'm not sure if you could
25 really count that as being committed at this time,

1 'cause there's still -- it's evident that you guys are
2 still seeking to compulsory pool them the same way
3 Earthstone is --

4 Q Well, and you heard Ms. Salgado say that's
5 because Devon in these situations has not been signing
6 a JOA. They elect under the pooling order, and
7 they've elected to join in all of Mewbourne's wells.

8 A Correct. And I -- you know, I will point
9 out in my exhibit, you know, we do have a letter
10 agreement from Conoco and COG. But I didn't go ahead
11 and count them as being committed there either.

12 A lot of these parties wanted to wait
13 until -- to see how this hearing played out and who is
14 awarded operatorship.

15 And that's why it's in my statement that,
16 you know, if we were referring to an awarded
17 operatorship, that if we were to come to voluntary
18 agreement with other parties, we would sign a JOA with
19 them and not take everyone under pooling.

20 Q So what you're saying is no other working
21 interest owner has committed its interest to
22 Earthstone's wells.

23 A Well, if you want to -- I guess you could
24 say yes, by virtue of a letter agreement. Also if you
25 wanted to count Timothy MacDonald, who has already

1 elected to participate in these proposed wells, as you
2 guys have noticed.

3 And I've also noticed the guy didn't list
4 any overriding royalty interest owners on your Exhibit
5 2-2. So again, I'm -- I'm just -- it just kind of
6 makes me extremely doubt the interest figures that are
7 being purported here on this exhibit.

8 Q Well, the main purpose of pooling is to get
9 working interest owners committed to share the well
10 cost. Would that be an appropriate statement?

11 A Yes. All -- all working interest owners,
12 but two of which were missed on -- on your exhibits
13 and proper notice.

14 Q Was about a 0.03 percent --

15 A Small interest or not -- yes. In small
16 interest or not, they're still a working interest
17 owner that was entitled and due notification and their
18 opportunity to elect or eject.

19 And as I mentioned, we properly noticed
20 Maverick and MacDonald, and Maverick has already
21 elected to participate in all four of our wells.

22 Q And absent a JOA or a pooling order, those
23 election notices carry no legal weight. Do they?

24 A No. But we're currently working with
25 Maverick to get a JOA signed. As I mentioned before,

1 our co-development to the orders that we got on the
2 west half, working through -- we just got those
3 proposals out and working through getting JOAs and
4 everything signed.

5 And we're hoping to codevelop these
6 together. And when that occurs, we will get those
7 parties under JOA based upon the -- the negotiations
8 that I've had with all of the parties.

9 Q And let's assume -- I don't know. The
10 bigger the fight, the longer it takes to get a pooling
11 order out. Are these proposed wells on Earthstone's
12 drilling schedule?

13 A Yes, they are.

14 Q For when?

15 A The dovetail wells are scheduled for early
16 2024, and depending on how the -- this hearing shakes
17 out today, they would be codeveloped there and
18 codesigned together.

19 Q Will Earthstone be the operator of those
20 wells or will another company be?

21 A Earthstone will be the operator.

22 Q Earthstone will still be an independent
23 company in early 2024?

24 A To my understanding, yes, sir.

25 Q Finally, let's go back to the state land

1 office approval, the email you wrote to Scott Dawson
2 last spring, I think. Did he ever give an explicit
3 response stating that they would hold their approval
4 in advance pending the outcome of this hearing?

5 A Not in a written statement or written reply.
6 We spoke over the phone.

7 Q Do you know of any email or anything
8 revoking Mewbourne's state land office approval?

9 A I am not aware. In that conversation that I
10 had with Scott, he said that he respected my email and
11 he's going to reserve and withhold judgment until
12 these cases have been heard and the OCD has made their
13 decision.

14 MR. BRUCE: That's all I have at this
15 time, Mr. Examiner.

16 THE HEARING EXAMINER: Thank you.
17 Mr. Lowe?

18 MR. LOWE: Good afternoon.

19 THE WITNESS: Hello.

20 MR. LOWE: I've just got just a quick
21 question. In all your exhibits that have been
22 presented here, is there any one of the exhibits that
23 has the unit map for the unit in question?

24 THE WITNESS: The spacing unit?

25 MR. LOWE: Entire referenced unit that

1 you guys are referring to for Scott Dawson.

2 THE WITNESS: The North Wilson Deep
3 Unit?

4 MR. LOWE: Yes.

5 THE WITNESS: No. That's a 12,000 some
6 odd acre unit, so it's quite large and didn't fully
7 pertain to these cases. Only the east half of section
8 7 is encompassed in that North Wilson Deep Unit.

9 MR. LOWE: Okay. And that's kind of --
10 I was trying to focus in on in reference to that Scott
11 Dawson subject, and units, and then what we're looking
12 at here. But yeah. I can understand it being quite
13 large.

14 The other question too -- in the
15 beginning of your presentation, I thought I heard you
16 talking about when Earthstone took over this location
17 from the other company -- what was the other company?

18 THE WITNESS: Chisholm?

19 MR. LOWE: Chisholm, yes. At that
20 time, did I understand -- did I hear correctly that
21 that's when you all found out that this location was
22 under -- had a case number at the time? Is that what
23 I understood and what I heard?

24 THE WITNESS: Yes. When I took over
25 this area and started working it, and working with

1 Adriana and the negotiations, that's when I discovered
2 the -- the case at hand that led to a lot of this
3 evidence and history.

4 MR. LOWE: Okay. And from when you
5 found that out at that moment was there any changes to
6 the case when you all took it there afterwards or did
7 it pretty much stay the same as how the case was
8 being -- how the case was, I guess, noted at that
9 time?

10 THE WITNESS: Which case are you
11 referring to?

12 MR. LOWE: I guess the case in --
13 pending at the time when you took over the other
14 company. Was there a list -- I'm assuming all of
15 them. Is that what -- they were all under that
16 scenario?

17 THE WITNESS: I'm not quite
18 understanding. I think -- are you talking about the
19 case that expanded the North Wilson Deep Unit or are
20 you talking about these specific cases that we're
21 speaking about today?

22 MR. LOWE: The one that we're speaking
23 about today.

24 THE WITNESS: Did anything change to
25 that?

1 MR. LOWE: Yeah. 'Cause that's -- I
2 guess that's what I'm trying to understand. From what
3 I heard is when you all -- when Chisholm took over the
4 other company -- not Chisholm -- Earthstone took over
5 Chisholm, at that time you found that these -- this
6 scenario, this location was under these cases.

7 Is that what I -- I guess that's what I
8 need to clarify on my side. Was that the scenario at
9 the time?

10 THE WITNESS: It wasn't at the
11 immediate time that we took over Chisholm, but it was
12 sometime between then and the time that we received
13 Mewbourne's proposals.

14 MR. LOWE: Okay. And that's all I
15 wanted to find out for sure. Okay. Well, thank you
16 for clarifying that for me.

17 Those are the only questions I got.
18 Any other questions I have are going to be from the
19 exhibits that I'm still going through on my side. But
20 thank you much for your presentation, and I appreciate
21 it. And that's all I have.

22 THE WITNESS: All right. Thank you.

23 THE HEARING EXAMINER: Thank you,
24 Mr. Lowe.

25 Any redirect?

1 MR. BECK: Ms. Redfearn, I think it's
2 short.

3 REDIRECT EXAMINATION

4 BY MR. BECK:

5 Q The conversation you had with the state land
6 office over the phone, the state land office confirmed
7 that it would reserve and withhold judgment on
8 approval of either Earthstone or Mewbourne until this
9 division made its decision in these competing
10 applications. Is that right?

11 A Correct.

12 MR. BECK: That's all I had. Thank
13 you.

14 THE HEARING EXAMINER: Okay. Your next
15 witness, sir?

16 MR. BECK: The next witness is
17 geologist Jason Asmus.

18 THE HEARING EXAMINER: Would you state
19 and spell your name, please?

20 THE WITNESS: Yes, sir. First name is
21 Jason, J-A-S-O-N. Last name Asmus, A-S-M as in
22 Michael, U-S.

23 THE HEARING EXAMINER: Okay. And your
24 voice is coming through broken up, and I don't know if
25 the court reporter can hear you clearly. Let's see

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1 what happened -- we may need to switch to a -- now I'm
2 hearing an echo, so.

3 THE WITNESS: All right. Let me try
4 this now. Can you hear me?

5 THE HEARING EXAMINER: Yes.

6 MR. BECK: Yeah. I can hear you a lot
7 better.

8 THE WITNESS: My name is Jason,
9 J-A-S-O-N. Last name Asmus, A-S-M-U-S.

10 DIRECT EXAMINATION

11 BY MR. BECK:

12 Q Mr. Asmus, I'm looking at your direct
13 testimony, and sort of your background is provided in
14 paragraph 3. And your credentials of petroleum
15 geologist have been accepted by the division before.
16 Is that right?

17 A That is correct.

18 Q Attached to your direct testimony there are
19 a number of exhibits, Exhibit B1 through Exhibit B10.
20 Is that right?

21 A That is correct.

22 Q And did you prepare and participate in the
23 preparation of all of the Exhibits B1 through B10?

24 A Yes, sir.

25 Q Who else besides yourself at Earthstone

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1 helped in the preparation of B1 through B10?

2 A That'll be our reservoir engineer, Juan
3 Mata.

4 Q Did you discuss all the contents of your
5 direct testimony, statement, and Exhibits B1 through
6 B10 with Juan -- what was his last name? I'm sorry.

7 A Mata, M-A-T-A.

8 Q M-A-T-A. Did you discuss all your direct
9 testimony and the exhibits with Mr. Mata?

10 A Yes, sir.

11 Q All right. And did you understand and feel
12 comfortable with everything that is written in
13 Exhibits B1 through B10 in your testimony and your
14 direct statement?

15 A Yes, sir.

16 Q You have -- how long have you been working
17 in the oil and gas industry in the Delaware Basin
18 specifically?

19 A Twelve years of my career, and I would say
20 about 11 of those in primarily the Delaware Basin.
21 Going on 12 years.

22 Q And in those 12 years, have you had the
23 opportunity to analyze and compare proppant intensity
24 of wells and the effect on production?

25 A Yes, sir.

1 Q Have you had the opportunity to compare the
2 distance between adult and children wells, and how
3 that may affect production from those child and adult
4 wells?

5 A Yes, sir.

6 Q What is a child versus an adult well?

7 A Typically how we define it -- and I'm sure
8 you can come across many variations of definition of
9 parent versus child.

10 But we typically look at a child well as one
11 that comes in within a similar formation target bench,
12 typically with production being six to nine months
13 after the initial production of the original parent
14 well.

15 Q And is that the definition that you use in
16 Exhibits B9 and B10 when you talk about child versus
17 parent wells?

18 A Yes, sir.

19 MR. BECK: At this time, Mr. Hearing
20 Officer, Earthstone tenders Mr. Asmus as an expert
21 petroleum geologist, and moves into evidence B6
22 through B10. I think those are the exhibits that have
23 not yet been admitted.

24 THE HEARING EXAMINER: That's correct.

25 Mr. Bruce?

1 MR. BRUCE: Mr. Examiner, I -- no
2 development -- no problem with Mr. Asmus testifying as
3 a petroleum geologist. But he is not a reservoir
4 engineer. And Exhibits B6 through B10 are clearly
5 marked "Reservoir Engineer."

6 And primary data -- Earthstone's
7 reservoir engineer, who I will not have any chance to
8 cross-examine.

9 So I don't think there's a -- virtual
10 connectivity interruption -- and I do not -- I will
11 not have the right to cross-examine the person who
12 really formed these exhibits and therefore I object to
13 them being admitted into the record.

14 THE HEARING EXAMINER: Mr. Beck?

15 MR. BECK: Sure. Mr. Hearing Examiner,
16 as Mr. Asmus testified, he's the one who developed
17 these exhibits. He's the one who wrote the
18 information in these exhibits. He feels confident to
19 testify to the information in these exhibits.

20 He has made these comparisons for ten
21 years in the Delaware Basin specifically, so he's
22 competent to testify about all these exhibits. He's
23 laid the foundation to how they come about. They're
24 admissible. They're set forth.

25 Frankly, you know -- and I don't have

1 the experience that others do, but what I've seen in
2 these contested hearings is that rather than being
3 here for days and days on end and having multiple
4 witnesses come in and out, the witness testimony is
5 developed from those who have both education and
6 experience in the field in which they're testifying
7 about are confident to testify.

8 And that's the reason that the rules
9 for the division allow for, as you pointed out earlier
10 as we kicked off today, a more lenient standard for
11 the rules of evidence.

12 And so hearsay can come in. And so to
13 the extent that Mr. Bruce believes that there's
14 evidence he won't be able to explore, I guess he can
15 try to develop that now and voir dire Mr. Asmus, but
16 otherwise they're admissible and they should be
17 admitted.

18 THE HEARING EXAMINER: Mr. Beck, what
19 page number does B6 begin?

20 MR. BECK: If you're talking about the
21 PDF, the 150, I think it's page -- let me find the
22 right -- sorry. I've got a new edition of Adobe
23 that's not helpful, and looking at the web pages wrong
24 here. So let me see if I can find it. Page 78.

25 THE HEARING EXAMINER: Okay. Give me a

1 minute to look at these.

2 Mr. Bruce, while I'm looking at these
3 exhibits, do you want to voir dire this witness as to
4 your concern?

5 EXAMINATION

6 BY MR. BRUCE:

7 Q Well, Mr. Asmus, do you have any degrees in
8 engineering -- petroleum engineering?

9 A No, sir.

10 Q Have you ever taken a reservoir engineering
11 class?

12 A Not particularly named "Reservoir
13 Engineering," but related through my masters work.

14 Q Have you ever testified as a reservoir
15 engineer before?

16 A No, sir, I have not.

17 MR. BRUCE: Well, again, Mr. Examiner,
18 I'd object to his testimony. And his testimony in
19 paragraphs 10 to 13, as well as Exhibit -- B10.

20 THE HEARING EXAMINER: It's hard to
21 hear you, Mr. Bruce, but I'm still looking at these
22 exhibits, so --

23 MR. BRUCE: I'm sorry. I'll wait until
24 you're done.

25 THE HEARING EXAMINER: Thank you.

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1 So, Mr. Beck, now it's my
2 understanding -- let me ask the witness a few
3 questions if I may.

4 The objection is to B6 through B10.
5 And I'm not sure I understand, how were these exhibits
6 created by you?

7 THE WITNESS: Well, they were prepared
8 in tandem with myself and our reservoir engineer using
9 multiple softwares, Microsoft Kingdom, which is a
10 geologic mapping software, and Spotfire, which is more
11 of a data analytics software. A lot of reservoir
12 engineers use this.

13 THE HEARING EXAMINER: So what was your
14 role and what was your reservoir engineer's role in --
15 for example, let's be specific --

16 THE WITNESS: Yes, sir. So my role in
17 vetting these exhibits was identifying the correct
18 well data that were brought in to the analysis
19 overall. So the gun barrel plot or the wine rack in
20 B6, B7, using those exact carryovers from the Exhibit
21 B5, which was geologic testimony.

22 And then the additional vetting of data
23 that were used in the evaluation of Exhibit B8, B9,
24 and B10. So the actual wells themselves that were
25 brought in to the evaluation of prop and size

1 production, dates of production, dates of completion,
2 and well spacing.

3 THE HEARING EXAMINER: What was the
4 reservoir engineer's involvement in these five
5 exhibits?

6 THE WITNESS: Actually putting together
7 the physical exhibits themselves in slides B8, B9,
8 B10, and adding commentary to Exhibits B6 and B7.

9 THE HEARING EXAMINER: Commentary in
10 the box?

11 THE WITNESS: Yes, sir. In the text
12 boxes that are in addition white with black text. So
13 a lot of the work that has been done has been done in
14 tandem.

15 Their primary role was really involved
16 in looking at production analysis and whether there
17 was degradation from parent to child from the
18 production differences, as well as looking at the
19 proppant -- the completion design, the proppant
20 intensity from parent and child wells.

21 THE HEARING EXAMINER: So really I
22 think what we have here is whether this testimony,
23 evidence is within the scope of this expert's opinion.
24 I think that's really where we are here.

25 I don't know that it has anything to do

1 with hearsay, because, of course, the rules of
2 evidence don't strictly apply in these hearings. I
3 can use them for guidance if I want to.

4 But I think ultimately what this comes
5 down to is if this witness is going to give his expert
6 opinion about something that is outside of his field
7 of expertise, then I think that's improper.

8 If it's within, then I think it's
9 proper. That's the issue I'm having right now,
10 Mr. Beck.

11 So with that said, what is your
12 argument that this data in these exhibits, B6 through
13 B10, is within this expert's scope and field of
14 knowledge?

15 MR. BECK: Mr. Hearing Examiner, this
16 is -- I mean, as the witness just explained, this is
17 stuff that he does in his role as a geologist for
18 Earthstone and the other oil and gas companies that
19 he's worked for.

20 And so for the last ten years on a
21 day-to-day basis he has looked at production of wells,
22 production of anticipated wells, production of
23 adjacent wells, and how the development of child wells
24 off of those adult wells and the spacing, the
25 proximity, and the proppant produced in those wells

1 affects the production of those wells.

2 Compared those to decide, in his role
3 as a geologist in the companies he's worked for, how
4 to space the wells and what wells would be drilled and
5 produced going forward.

6 And so that's exactly what the
7 information -- and he may think differently than me,
8 and I'll ask him to speak up, but that's exactly what
9 information he has contained here in Exhibit B6
10 through B10, and whatever paragraphs refer those, 10
11 through 13.

12 THE HEARING EXAMINER: So, Mr. Beck,
13 what you're saying is this is within the scope of this
14 witness' expertise, because it's regarding production
15 data.

16 MR. BECK: Exactly. And comparing the
17 production data from existing wells to anticipate --
18 comparing that with the geology, the known geology of
19 the gun barrel and the cross section to be done
20 anticipate what the production will be, based on the
21 development spacing of the wells at issue in this
22 case.

23 THE HEARING EXAMINER: Okay. I can
24 understand that. Why did he not create these exhibits
25 himself? Why did someone else work in tandem with him

1 to create these exhibits?

2 MR. BECK: Because that's -- my
3 understanding -- and he can correct me if I'm wrong.

4 My understanding is that's the way that
5 this is done in the field, that when you're looking at
6 developing -- you're putting together a development
7 plan, like Earthstone did here, you would compare do
8 you want to do side-by-side wells adjacent on the
9 same -- you know, at the same -- I was thinking
10 altitude -- depth -- at the same depth through other
11 when it's offset in a wine rack.

12 And so just like you would do in a
13 business where the geologist, and reservoir engineers,
14 and petroleum engineers work together in a room to
15 create these development plans, that's how they came
16 up to here.

17 And also on a realistic level, I
18 thought it would be -- I didn't think we would waste
19 our time on this. My understanding is that's how this
20 is done.

21 And so at a baseline, I tried to
22 streamline and Earthstone has tried to streamline the
23 testimony, so we wouldn't have to call in five or six
24 witnesses to testify.

25 And again, I think -- the answer is, is

1 that if there's something outside of his expertise
2 that he's going to testify to, that should be brought
3 out on cross-examination, on voir dire. I mean,
4 that's the whole purpose of it.

5 I haven't heard anything about any area
6 he's not competent to testify to he plans on
7 testifying to today. I'm sure -- well, I'm not sure,
8 because Jason is a particularly smart guy in my
9 experience.

10 But I would expect that there are areas
11 of reservoir engineering that he is not competent to
12 testify to. He is not testifying to anything in that
13 area today.

14 Everything in his statement, as he just
15 told the division under oath -- everything in his
16 statement is an area that he has explored before, he
17 has done before in his work, and he is competent to
18 testify to today.

19 THE HEARING EXAMINER: Mr. Bruce?

20 MR. BRUCE: Well, a couple of things
21 that he's going to testify about is estimate ultimate
22 recovery of wells. He's going to testify about the
23 drainage area. And if you look at Exhibit B6 and B7,
24 and other matters like that -- virtual connectivity
25 interruption -- reservoir engineering.

1 And again, I cannot engineer -- virtual
2 connectivity interruption --

3 THE HEARING EXAMINER: It's very
4 difficult to hear you, Mr. Bruce. But I understand
5 that you're maintaining your objection, because you
6 feel like this witness is outside the scope of his
7 expertise.

8 What I'll do is this in this -- for
9 these exhibits. I'm going to wait until after the
10 testimony is over to decide whether to admit them into
11 evidence or not.

12 I will give you a lot of latitude to
13 cross-examine this witness to show me that this data
14 is not reliable for some reason.

15 But if I feel like it is reliable, then
16 I am going to admit it, because basically the rules of
17 evidence are greatly relaxed in these administrative
18 hearings. And I understand that there's an overlap of
19 this witness' scope of expertise in the creation of
20 these exhibits.

21 I just don't know how much of an
22 overlap there is, and I don't know how reliable these
23 exhibits are until you deal with cross-examination on
24 them.

25 So I'm going to reserve my judgment on

1 this, but please, Mr. Beck, why don't you continue.

2 BY MR. BECK:

3 Q Mr. Asmus, I'm going to walk you through
4 some of the -- I'm sorry. I hit the wrong button
5 here. I'm going to walk you through some of the
6 exhibits that you prepared in anticipation of today's
7 hearing.

8 I'm showing you what's been admitted as
9 Exhibit B1. Will you explain to us what's depicted in
10 Exhibit B1?

11 A Yes. B1 is a location map of regional and
12 local of where the proposed well locations are planned
13 to -- to be drilled from south -- 18 into 7, as well
14 as showing all the vertical, whether producing or not,
15 well border control that we have in the area, as well
16 as corresponding first and second Bone Spring sand
17 horizontal wells that are pertinent to the proposed
18 wells proposed by Earthstone Energy.

19 Q And the pertinent wells that are producing
20 from the first and second, those are delineated by
21 yellow -- blue respectively.

22 A That is correct.

23 Q Showing you what's admitted as Exhibit B2.
24 What is this exhibit showing?

25 A B2 is showing the structure on top of the

1 first Bone Spring sandstone in contoured intervals of
2 25 feet, as well as a cross section in A to A prime
3 that'll be shown in Exhibit B5 and the proposed
4 generic kind of well location stakes as the dashed
5 orange lines.

6 Q Were you involved in the application for any
7 adjacent wells in front of the division for
8 Earthstone?

9 A No, sir.

10 Q So were you not involved in the Earthstone
11 wells for the west half of section 18?

12 A Oh, I'm sorry. Yes, sir.

13 Q So Earthstone previously applied to the
14 division and was granted compulsory pooling orders for
15 wells adjacent to these proposed wells. Is that
16 right?

17 A Correct.

18 Q And where are those wells located, for
19 example, if we're just looking at Exhibit B-2?

20 A The west half of the east half.

21 Q And so that would be the half that is
22 directly adjacent to the left of this red rectangle.
23 Is that right?

24 A Correct. Right.

25 Q And you were the geologist who provided

1 testimony to the division in support of those wells
2 that were eventually granted compulsory pooling
3 orders; right?

4 A Correct.

5 Q Now we're looking at Exhibit B-3. What are
6 we seeing in Exhibit B-3?

7 A Essentially the exact same thing. Only
8 looking at the top of the second Bone Spring sand. So
9 it's the same structure, just different formation, in
10 25 contour intervals.

11 Q Now I'm showing you what's been admitted as
12 Exhibit B4. What is this exhibit?

13 A This is the cross section from A to A prime
14 that was shown on both the structure maps, as we
15 previously discussed, showing all three of the
16 intended horizontal drilling targets.

17 We have first all the way at the top the
18 first Bone Spring sandstone target with an average of
19 about 75-foot thickness from southwest to the east,
20 which is the orientation of this cross section.

21 Going down further, you have the upper
22 second Bone Spring sandstone target, which again on
23 average, is roughly 60 feet.

24 And then below that and lastly, you have the
25 lower second Bone Spring sandstone target, which

1 again, on average, how we pick it, is roughly 60 feet.

2 Q Showing you Exhibit B5. What is shown in
3 Exhibit B5, Mr. Asmus?

4 A B5 is a gun barrel representation of how
5 we -- or wine rack display has been previously used in
6 this hearing -- of how we intend to develop and drill
7 all four horizontal wells.

8 Again, starting at the top you have the 113,
9 114, 1,320-foot spacing in the first Bone Spring sand,
10 550 feet approximately. Below that you have the upper
11 second Bone Spring sand horizontal proposed well, the
12 214H.

13 And then below that, again, approximately
14 220 feet. You have the 223H, which is the -- the
15 lower second sand.

16 Again, in the -- in -- also what you see
17 here are the North Wilson Deep Unit wells that are
18 offset and located directly off to the east, the 3H,
19 and then the 4H was in -- which is in the upper second
20 and lower second targets respectively.

21 Q Okay. I'm showing you -- well, let me ask
22 this question first.

23 A Yes, sir.

24 Q In preparing for the hearing today and
25 preparing for your testimony today, did you have the

1 opportunity to consider the competing applications
2 from Mewbourne?

3 A Yes, sir.

4 Q And in your consideration and comparison of
5 Mewbourne's development plan did you create exhibits
6 with Juan Mata at Earthstone that depict why
7 Earthstone believes its development plan is superior
8 to that of Mewbourne's?

9 A Yes, sir.

10 Q All right. I'm going to show you now what's
11 been marked as Exhibit B6. What's depicted in this
12 Exhibit B6?

13 (Exhibit B6 was marked for
14 identification.)

15 A B6 is essentially a depiction of the overall
16 production coming from the upper and lower set North
17 Wilson Deep Unit wells. And an overall representation
18 of what we -- Earthstone being "we" -- determine to be
19 a drainage radius drawn around the North Wilson Deep
20 Unit 3H wellbore location.

21 Q I'm showing you Exhibit B7. What's depicted
22 in Exhibit B7?

23 (Exhibit B7 was marked for
24 identification.)

25 A B7 is the proposed Mewbourne development

1 plan for the -- the 18 7 section wells and how they
2 are getting within a consideration distance and
3 increasing risk by keeping their 9H well within close
4 proximity to the offset inherent North Wilson Deep
5 Unit 3H horizontal second sand well.

6 Q You talked about risk. What's the risk that
7 Earthstone believes its application avoids better than
8 Mewbourne's application?

9 A Increase in that hypotenuse distance and
10 direct offset horizontal distance from the existing
11 inherent 3H well by targeting the upper second sand.

12 Q And that's depicted here on B6 where we see
13 that there's 1,445 feet between the North Wilson Deep
14 Unit 3H and the proposed 214H; right?

15 A That is correct.

16 Q Compared with 940 feet between the proposed
17 Northwest Deep Unit 9H and the existing 3H.

18 A That is -- correct -- correct.

19 Q And so basically what's depicted and
20 explained here is that having those wells closer
21 together on this -- at the same depth produces more of
22 a risk that the production will be depleted. Is that
23 accurate?

24 A That is accurate.

25 Q Okay. This also talks about proppant

1 intensity. What is that? Explain that to me.

2 A So proppant intensity is just the amount of
3 overall sand and fluid per foot that is proposed in
4 their completion design for the proposed wells.

5 And so just looking and comparing at, you
6 know, our -- our development plans and revised to
7 theirs, typically when you increase this proppant per
8 foot, your enhanced ultimate oil recovery increases.
9 So it's just a comparison of the two different
10 completion designs.

11 Q All right. I'm showing you Exhibit B8, the
12 offset second Bone Spring well performance. What's
13 depicted in Exhibit B8?

14 (Exhibit B8 was marked for
15 identification.)

16 A Eight is essentially showing the exact same
17 thing, just by looking at a case study of -- of
18 further outside of the scope of just the proposed
19 Mewbourne wells, but looking up we look at a 5 mile
20 proximity to the proposed 18 7 section development,
21 showing essentially the same thing; right?

22 Over time, as you increase proppant
23 intensity in a barrel per foot from a fluid
24 standpoint, your EUR and oil UR increase
25 exponentially.

1 Q So it's showing that as you have a higher
2 proppant rate, all things sort of being equal here,
3 you have a larger estimated ultimate recovery, or EUR.
4 Is that right?

5 A That is correct. And also showing, you
6 know, within that same scope, was it within a certain
7 proximity from parent to child well standpoint? If
8 you're too close, having that increased proppant
9 intensity could become detrimental to both either the
10 parent and/or child wells.

11 Q So in the 5-mile proximity that you looked
12 at for these proposed outland 18-7 units, what you
13 found was if children are located closer to the
14 parents, it results in a lower production rate for
15 the --

16 A There is a --

17 Q -- over time for those wells.

18 A Yes, sir. There seems to be a detrimental
19 impact to an extent. Yes, sir.

20 Q And why did you choose a 5-mile proximity as
21 opposed to statewide, or a larger radius, or a smaller
22 radius?

23 A Yeah. You know, so really that depends on,
24 you know, geologic scope; right? Where do you sit in
25 terms of the basin and how these formations are being

1 deposited.

2 You know, as you step east, west, north, or
3 south from any particular distance -- and again, this
4 is going very area in the basin -- your geology and
5 the geological parameters that need to be considered
6 here greatly can vary; right?

7 So there's typically a safe distance, and
8 that, again, can vary by company to company or
9 department from department internal to a company about
10 how far out you feel is safe to -- to pull analog data
11 from as a direct comparison; right?

12 Q I'm showing you Exhibit B9, which is the
13 basin well proposed example one. What's this showing?

14 (Exhibit B9 was marked for
15 identification.)

16 A Again, these are very similar cases to
17 exactly what we've been discussing here in the past
18 exhibits showing both how spacing can be detrimentally
19 affected any wells drilled in the same bench within a
20 certain spacing distance from parent to child wells.

21 Q And is that --

22 A -- study examples that are directly offset
23 to the southwest of section 18 and 7.

24 Q Okay. So these are directly southwest from
25 the proposed spacing units in these applications. Is

1 that right?

2 A That is correct.

3 Q And is this showing that the Dolly Varden
4 B2ED1H is what you've been referring to and what's
5 referred to as an adult well?

6 A Correct.

7 Q And then the two offset on either side of
8 that, the Dolly Varden B2SC1H and the N11H, those are
9 the children wells. Is that right?

10 A That's correct. And so looking at this --
11 offset spacing known as the Dolly Varden 1H, you can
12 see that it has been impacted from an overall EUR
13 barrel per foot standpoint.

14 You have the child or the parent initial
15 well, which I think most people understand is probably
16 going to be ultimately your best well.

17 And as you step offset to that in either
18 direction, east versus west, within a certain distance
19 it's going to be detrimentally impacted, especially at
20 the same vertical target bench. So second sand, all
21 three wells in the same bench, for instance.

22 Q Now I'm showing you Exhibit B10, the spacing
23 well performance Exhibit 2. What's this example
24 showing?

25 //

1 (Exhibit B10 was marked for
2 identification.)

3 A Again, showing the exact same thing, wells
4 that are roughly 1,300 space really. Again, from the
5 Lychee 1H to the Lychee 503H you have roughly 300 foot
6 to 250 foot vertical separation between the wells.

7 But it's again showing that detriment only
8 from a horizontal spacing standpoint from a parent to
9 a child well.

10 Q And is that how you reached your conclusion
11 that the spacing for Earthstone's proposed wells on
12 the east half, east half of section 18 would result in
13 a better expected production than will Mewbourne's
14 proposed well?

15 A We are at least decreasing the risk. Yes,
16 sir.

17 Q Now you were on here when Mr. Carrell
18 testified for Mewbourne; right?

19 A Yes, sir.

20 Q I want to talk with you a little bit about
21 some of his testimony. He testified a lot about some
22 problems he saw with Earthstone's plan to drill into
23 the upper second Bone Spring. Do you remember that?

24 A I do. Yes, sir.

25 Q Now we've got in front of the division here

1 today -- although the cases are consolidated, we've
2 got two different cases for Earthstone. Is that
3 right?

4 A Yes, sir.

5 Q And that's case number 23475. That's the
6 State Com 114H and the State Com 214H; right?

7 A Yes, sir.

8 Q And then case 23477 we've got the outland 18
9 7 State Com 113H and 223H; right?

10 A That is correct.

11 Q All right. Now Mr. Carrell's testimony
12 about the problem with targeting, in his opinion, the
13 upper second Bone Spring, does that relate to both of
14 those cases and both those applications or just one?

15 A Primarily the way that I see it, just one.
16 And that is the east half, east half.

17 Q And his testimony about comparing what he
18 saw as reduced ability to produce hydrocarbons, that
19 was in the east half, east half of section 18; right?

20 A That is correct.

21 Q When we're talking about that, is that the
22 entire 2-mile lateral that he's criticizing or is it
23 the portion of that 2-mile lateral for just that one
24 case?

25 A In my opinion, that's just for a portion of

1 that one case.

2 Q And so as far as you got from Mr. Carrell's
3 testimony, he's not raising concerns about the west
4 half, east half application of Earthstone; right?

5 A No, sir.

6 Q Okay. Now I want to talk with you about --
7 let's see if I've got it here. Give me one second.
8 I'm trying to find the email from Tuesday with the
9 extra exhibits.

10 I'm showing you what I think has been
11 admitted as Exhibit 12 now. This is what we were
12 discussing with Mr. Carrell, his depiction of, I
13 guess, the cross section of the upper second Bone
14 Spring. Is that right?

15 A Yes, sir. That is correct.

16 Q And it says in this middle textbook in the
17 middle that it shows approximately 36 feet of sand in
18 the upper second Bone Spring. See that?

19 A Based on how they interpret the top and base
20 of that target, yes, sir. I see that.

21 Q And you say, "Based on how they interpret
22 that." Do you disagree with what's depicted there in
23 Exhibit 12?

24 A I do. Yes, sir.

25 Q Tell me about that.

1 A Yeah. So really, you know, I think this
2 comes from the standpoint of geologic interpretation.
3 And I doubt that Mr. Carrell would argue with me on
4 this from the standpoint of you put five geologists in
5 a room, ask them to interpret the same cross section,
6 you'll get five different interpretations.

7 And really also it's how each company has
8 determined their target bench, what criteria was used
9 to pick the top and the base of that target bench.

10 Mewbourne may have a different set of
11 criteria than Earthstone, and how they pick that top
12 and base of good reservoir is going to vary.

13 So in his case and his argument that the
14 east half, east half is -- for the upper second sand
15 is exaggerated a little bit thin than how we compare
16 it -- looked at that well, and it is 66 feet on how we
17 determine the top and base of it.

18 So it averages right around that same 60
19 feet that you see in the Exhibit B4. That has been
20 consistent.

21 Whether you're taking it from west to east
22 across the section, as Mr. Carrell did for -- for
23 their exhibits or you go from a south to north
24 orientation in the area, it is consistently present
25 and it is consistently present across the entire -- of

1 the proposed wellbore that we intend to target that
2 bench for.

3 Q So I'm showing you Exhibit B4, which I think
4 you just referred to.

5 A Yes, sir.

6 Q And I think what you were saying was that
7 your determination for the entire second Bone Spring
8 where Earthstone's drill is proposed averages 60 feet
9 thick as opposed to his 36 feet representation; right?

10 A That's correct. And again, I also say,
11 "Average." So do you have variation above and below
12 that? Yes. But for the most part, 60 feet seems to
13 be a fairly consistent number that we get to when
14 looking at that upper second sand target.

15 Q And did you look at that --

16 A The Packer [ph] well?

17 Q The sand when -- yeah. Did you look at that
18 when you were considering replacement of Earthstone's
19 well in the upper second sand?

20 A Yes, sir. There have been quite a bit of --
21 I mean, and calculations that go into determining
22 where we exactly want to drill a horizontal target,
23 because the amounts of millions of dollars that are,
24 you know, having to put forth in drilling one of these
25 wells is not something that we take lightly.

1 So yes, we've looked at every well in the
2 offset area.

3 Q When looking at drilling in the upper second
4 Bone Spring, taking into consideration what
5 Mr. Carrell says versus what you analyzed and the
6 relatively close proximity of Mewbourne's proposed
7 well at the same depth, which in your opinion has a
8 better chance of producing more -- for lack of a
9 better -- oil out of the ground?

10 A Really it's going to depend on offset
11 spacing to a parent well. You know, we really like
12 the lower second sand. It is thick -- just as thick.
13 It is consistent. And that seems to be where a
14 majority of the offset wells are located.

15 However, with the spacing considerations and
16 the development plan that we would like to put forth,
17 we feel like we would be coming too close to that
18 initial parent well, that North Wilson Deep Unit, to
19 feel as if we would get just as much, if not more
20 production drilling in that lower second sand.

21 We feel that would be detrimental to the
22 overall production of this unit and a waste from
23 overall development standpoint. So we decided to bump
24 it up to that upper target, which we feel is just as
25 consistent and productive, and also maintain a

1 reduced risk from that offset parent well.

2 Q I think what I got from you is that all
3 things being equal, maybe you agree that the lower
4 second is a better target, but when you balance that
5 close proximity to the northwestern deep 3H with the
6 offset proximity in the upper second, Earthstone feels
7 like it's going to get a better return on its
8 investment from the plan that it's proposing in its
9 applications today. Is that right?

10 A Correct. But what I can tell you about that
11 upper sand target is that there are quite a few --
12 there is only a couple wells immediately offset to
13 this area that are in that upper target in comparison
14 to the lower.

15 So to say one is exponentially better than
16 the other, I feel like would not be a fully valid
17 comment.

18 Q In addition to targeting the lower Bone
19 Spring formation -- or excuse me -- the second Bone
20 Spring formation, Earthstone's development plan
21 proposes two wells in the first Bone Spring sand
22 formation; right?

23 A That is correct.

24 Q And those are proposed in these
25 applications. If a compulsory pooling order is

1 granted, those wells will be drilled.

2 A Absolutely.

3 Q Compare that with Mewbourne, which in its
4 applications before the division today proposes only
5 one well in each application and only in the second
6 Bone Spring formation. Is that right?

7 A That is what I've heard. Yes, sir.

8 MR. BECK: That's all I have for this
9 witness, right now, Mr. Hearing Officer. Thank you.

10 THE HEARING EXAMINER: Mr. Bruce, are
11 you ready?

12 MR. BRUCE: Sure. Let me get my
13 reading glasses out.

14 CROSS-EXAMINATION

15 BY MR. BRUCE:

16 Q Let's go to your Exhibits B6 and B7.

17 A Yes, sir.

18 Q You're talking about potential effects from
19 the unit 3H well.

20 A That is correct.

21 Q And your little area of drainage, the green
22 area -- virtual connectivity interruption -- ultimate
23 recovery?

24 A I'm sorry. You broke up a little bit there,
25 Mr. Bruce. Can you repeat that question, please?

1 Q Can you hear me better now?

2 A Yes, I can.

3 Q Okay. Sorry about that.

4 A It's okay.

5 Q The green area of drainage, is that based on
6 what has been produced -- virtual connectivity
7 interruption -- ultimate recovery?

8 A So what that green area is representative of
9 is based on parent and child effect analogs that we've
10 looked at from offset area lows. All right.

11 So where we see that reduction in
12 ultimate -- in our oil UR per foot that we proposed in
13 the other exhibits, we've kind of come to a conclusion
14 that that is a representative raise based on the
15 variation in offset spacing within the same zones.

16 So we've kind of looked at a smattering of
17 development plans that have been developed and have
18 production data, had representative parent and child
19 wells, and kind of come to that conclusion that that
20 is an overall -- kind of where your -- your drainage
21 rate is and your impacts really start to appear from
22 one parent well to another well in the same zone.

23 Q And you say, "We." Who are you talking
24 about when you say, "We"?

25 A It would be a collaborative effort between

1 myself and the reservoir engineers, as, you know, I'm
2 sure if you ask Mr. Carrell, we work tandemly day to
3 day very closely when we come to evaluate different
4 well offset production results and spacing, because it
5 impacts both disciplines and how we want to develop a
6 certain area.

7 Q And in fact if you're looking at with this
8 depleted reservoir region, once again, is this today,
9 or is it a year and a half, or two years, or five
10 years down the road?

11 A Yes. So when we say, "Approximately 25 cume
12 oil barrels per foot," that is accumulative
13 production. So that is a to-date production number.
14 And I believe that was last pulled on September 1st.

15 Q Well, I guess what I'm getting at -- well,
16 let me ask a question. When you're looking at the
17 depleted reservoir, what you call it, what factors are
18 you --

19 A So there's a lot of factors that we have to
20 take into account here. Really we have to look at
21 vertical section, so the entire lateral portion of the
22 wellbore that's been treated, their completion design
23 overall within that treated lateral length, so how
24 much proppant per foot, what sand type was used, what
25 fluid was used, if we know how fast or how hard they

1 were pumping fluid into the reservoir first stage, oil
2 stage lengths -- orientation if you have it.

3 I mean, and a lot of this is information you
4 don't have for offset competitor data, unless it was a
5 well you were able to participate in or trade for.

6 Q Well, do you have to use volumetrics,
7 recovery factors, things like that?

8 A Yes, sir.

9 Q And do you have to set a drainage tape and
10 height if you're going to get to this -- the egg --
11 the green egg?

12 A You will get it based on what you know about
13 horizontal and offset vertical and horizontal spacing,
14 is based on where you interpret the wellbores to be
15 located. I don't know -- answers your question or
16 not.

17 Q It still looks like -- and looking at
18 Exhibit B7 -- one I drew on, you're showing the entire
19 east half of section 18, that red outline is that
20 correct?

21 A The red outline? Is that what you said?

22 Q Yes, sir.

23 A Yes, sir.

24 Q So there's no effect on the west half, east
25 half --

1 A That seems to be the -- seems to be the east
2 half, east half, which is right about where the 9H is
3 proposed.

4 Q Say that again.

5 A Well, I was answering your question. You
6 asked if there was no impact on the west half of the
7 east half. Is that correct?

8 Q Yeah.

9 A That would be correct.

10 Q And you don't show east half of section 7,
11 so obviously there's no effect there.

12 A This is a 2D representation, so it says
13 right above that red rectangle that you're looking at,
14 outland 18 7 east half, this is looking at purely a
15 cross sectional 2D view. So this is interpreted to be
16 representative all the way from 18 into 7.

17 It looks to be exact same way the -- showed
18 just in section 7 or versus just in section 18, as the
19 wellbores will cross both sections.

20 Q And let me see. And so what you're -- first
21 of all, you're looking at wells that are 940 feet
22 away, based on your map.

23 A Yes, sir.

24 Q And under division statewide rules, those
25 wells could be placed 660 feet apart.

1 A Could be placed at any spacing the operator
2 wants to drill them at. 660, yes.

3 Q And I'm just saying, the division's
4 statewide rules allow these two wells or any of these
5 wells out here to be 660 feet away from each other
6 east to west.

7 A Okay. I'm waiting for your question.
8 Sorry.

9 Q Well, isn't your problem more with division
10 rules than with Mewbourne, who's proposing what they
11 think is the best zone to produce out here?

12 A I don't have any problem with division
13 rules. I can see that Mewbourne, if they wanted to
14 prevent risk, could propose their wells in the upper
15 second sand or space their child wells a little bit
16 closer together to help mitigate that offset footage
17 risk from the parent -- or from the parent well.

18 Q Well, if there's any potential for the
19 pressure depletion or drainage, isn't the typical
20 remedy to drill an offset well to prevent that
21 drainage?

22 A Say that one more time. You did break up a
23 little bit, but I'm not sure I understand your
24 question.

25 Q Well, I go up there and drill a well next to

1 you, and you're afraid that -- and it's a totally
2 orthodox location. And you own the offset acreage,
3 and you're afraid of my well draining in your acreage.
4 Isn't the remedy for you to go -- drill a well to
5 prevent drainage?

6 A Sir, I'm not sure I want to speak to
7 hypotheticals here, because it could vary by any
8 operator, so not sure if I can answer that question to
9 how you would prefer.

10 Q And both your second Bone Spring wells are
11 proposed as upper Bone Spring wells.

12 A No, sir.

13 Q No?

14 A That is correct. If you were to look at
15 Exhibit B5, which is the gun barrel development of
16 proposal, you can see that we have the 223H, which is
17 a lower second sand, and 214H, which is an upper
18 second Bone Spring sand.

19 Q Okay. Well, I'm just looking at the second
20 Bone Spring wells.

21 A Right. I believe I answered your question.

22 Q Okay. But did you ever look at the upper
23 second Bone Spring thickness in the Nearburg [ph] well
24 in the northeast quarter of section 18?

25 A You're referring to the one that Mr. Beck

1 and myself were discussing earlier, the -- the Packer
2 [ph] 18 State Number 1?

3 Q Correct.

4 A Yes, sir. And I -- I commented that I -- I
5 had in fact looked at that well. And that was when I
6 got into the explanation of every geologist picks a
7 target differently, and we interpret that to be of
8 different thickness than what Mewbourne does.

9 Q I guess my one final question is even if
10 there is some pressure depletion, I mean, the effect,
11 looking at the east half of section 18 would be
12 something like 20 -- acreage pressure deplete.

13 It looks like a very small area of pressure
14 depletion -- potential pressure depletion in the east
15 half, east half of section -- virtual connectivity
16 interruption -- have you calculated that area that's
17 drawn in there?

18 A So we calculated, and what we show in
19 Exhibit 6 and 7 is exactly that. Based on offset
20 analogs, not a hypothetical number that we determined
21 to be small or large.

22 MR. BRUCE: Well, Mr. Examiner, I think
23 that's all I have for Mr. Asmus. But I'd still
24 request that Exhibits B6 through B10, which are based
25 on a lot of engineering factors, and I'm not able to

1 cross-examine the reservoir engineer, used by
2 Earthstone, it's putting Mewbourne at a disadvantage.

3 And those exhibits and the related
4 testimony should be stricken. Thank you.

5 THE WITNESS: Believe you're muted --

6 MR. BRUCE: Mr. Hearing Officer, you're
7 on mute.

8 THE HEARING EXAMINER: Thank you.
9 Appreciate it. Mr. Bruce, before you began
10 questioning this witness, I stated that I was giving
11 you wide latitude to try to determine whether there
12 were questions that you had that this witness could
13 not testify to.

14 I haven't heard any. And you're
15 finished with your cross-examination, and the reason
16 that I would have ruled in your favor and took these
17 exhibits out is if this witness was unable to testify
18 to your question, but he has in every situation.

19 And so I'm going to overrule the
20 objection. These exhibits are admitted into evidence.

21 And I want to know whether or not
22 Mr. Lowe has any questions for this witness.

23 (Exhibit B6 through Exhibit B10 were
24 received into evidence.)

25 MR. LOWE: Yes, sir, I have a few

1 clarification questions.

2 THE HEARING EXAMINER: Please.

3 MR. LOWE: Good afternoon, Jason Asmus.

4 THE WITNESS: Good afternoon, sir.

5 MR. LOWE: Just a quick thing on what
6 you presented to us here.

7 THE WITNESS: Yes, sir.

8 MR. LOWE: Exhibit B5, I just want to
9 get a -- I think you might've stated it, but the wells
10 on the right-hand side of the page, the ones in red,
11 are those the parent wells? Is that what you're here?

12 THE WITNESS: I'm calling those out as
13 offset producing wells within the North Wilson Deep
14 Unit, the 3H and the 4H. Those are existing producers
15 that are directly offset to the east that drill from
16 north to south.

17 MR. LOWE: Okay. And those wells right
18 now, who owns those wells?

19 THE WITNESS: Well, that would be
20 Mewbourne.

21 MR. LOWE: And then Exhibit B8, B as in
22 boy, can you just run through really quick on the oil
23 ERO per foot hypotenuse bin chart here?

24 THE WITNESS: The EUR per foot?

25 MR. LOWE: Yeah. Yes, sir.

1 THE WITNESS: Yes. So that's an
2 estimated ultimate recovery factor that we are
3 calculating. And that is based on -- so if you look
4 at the map in the top left, you can see our selected
5 wells are in the -- the main color of blue.

6 Everything else is kind of in a -- a
7 transparent coloration. So we pool from approximately
8 10-mile radius and look at the estimated ultimate
9 recovery factor for all those wells -- analog second
10 Bone Spring sand producing wells.

11 MR. LOWE: Okay.

12 THE WITNESS: -- we're just looking at
13 how proppant intensity and how completion variation
14 impacts performance on an EUR basis. So basically
15 getting that -- the more -- the larger the completion
16 design, but on some of these wells, at least based on
17 local offset -- wells, the better the ultimate EUR
18 recovery in production that you get.

19 MR. LOWE: All right. Well, thank you
20 for that. And those are the only things that I have.
21 Thank you, sir.

22 THE WITNESS: Thank you.

23 Believe you're muted again, sir.

24 THE HEARING EXAMINER: I've been muting
25 myself to keep out the -- so that we've seem to have

1 developed -- were you and Mr. Lowe discussing Exhibit
2 B8?

3 THE WITNESS: That is what he had asked
4 about. Yes, sir.

5 THE HEARING EXAMINER: That's what I
6 thought. Okay. I just wanted to be clear, because no
7 one mentioned an exhibit number.

8 THE WITNESS: Yes, sir.

9 THE HEARING EXAMINER: Okay. Mr. Beck,
10 is there any redirect for this witness?

11 MR. BECK: Briefly.

12 REDIRECT EXAMINATION

13 BY MR. BECK:

14 Q Mr. Asmus, going in reverse order there, you
15 were talking about the mor -- in Exhibit B8, the
16 greater proppant producing larger EUR recovery. Is
17 that right?

18 A Yes. It's a general observation that we --
19 that we, my reservoir engineering counterpart and
20 myself observed that with improved EUR was an effect
21 of increasing your stimulation design or increasing
22 your completion design.

23 Q And how does that relate to Earthstone's
24 application versus Mewbourne's application?

25 A I believe there was a difference in your

1 proppant intensity, 2,500 pounds per foot versus 1,900
2 pounds per foot.

3 Q Earthstone is proposing 2,500 --

4 A Earthstone is proposing 2,500. Yes, sir.

5 Q Which would, under this analysis, result in
6 a greater expected EUR?

7 A Yes, sir.

8 Q The other question I had is Mr. Bruce asked
9 you about what he said was a small area pressure
10 depletion under your analysis. Do you remember that?

11 A I remember him just mentioning that, yes.

12 Q And my understanding is that when Earthstone
13 developed its application and decided to target the
14 upper second Bone Spring formation, it took into
15 consideration the depletion as expected from what
16 Mr. Bruce referred to as that small area of pressure
17 depletion; right?

18 A Now I can't really speak to what Mr. Bruce
19 was referring to as -- in regards to small versus
20 large. So that I'm not going to speak to.

21 But when you talk about depletion effects,
22 that is exactly what went into our decision in
23 increasing the vertical separation between the offset
24 3H and our upper second Bone Spring sand well, the
25 214.

1 MR. BECK: That answers my questions.
2 Thank you, Mr. Asmus.

3 Mr. Hearing Officer, that's all I have.

4 THE WITNESS: Thank you.

5 THE HEARING EXAMINER: You want to call
6 your third and final witness?

7 MR. BECK: I do, but I would really
8 like to take a five-minute break or if the reporter
9 needs longer than that, longer. But I could use a
10 break really quickly.

11 THE HEARING EXAMINER: Okay. Let's
12 break until 3 p.m. It's 2:53 right now. Thank you.

13 MR. BECK: Thank you.

14 (Off the record.)

15 THE HEARING EXAMINER: Have a third
16 witness for Earthstone.

17 Would you state and spell your name,
18 please?

19 THE WITNESS: Yes, sir. My name is
20 Nicholas Goree, N-I-C-H-O-L-A-S, last name Goree,
21 G-O-R-E-E.

22 THE HEARING EXAMINER: Okay. You're
23 under oath. Please proceed.

24 //

25 //

1 DIRECT EXAMINATION

2 BY MR. BECK:

3 Q Mr. Goree, I'm looking at what's been
4 admitted as amended Exhibit C. And it talks about
5 your experience as a petroleum engineer in paragraph 4
6 and attaches your resume. For how long have you been
7 working as a petroleum engineer?

8 A For 13 years, sir.

9 Q And what's your current position?

10 A Vice president of drilling for Earthstone
11 Energy.

12 Q How long have you been the vice president of
13 drilling for Earthstone Energy?

14 A I've been the vice president for a little
15 bit over a year and a half now, and then inside the
16 drilling department for -- since my employment for six
17 years now.

18 MR. BECK: All right.

19 Mr. Hearing Examiner, Earthstone offers
20 Mr. Nicholas Goree as an expert in petroleum
21 engineering.

22 MR. BRUCE: No objection, Mr. Examiner.

23 THE HEARING EXAMINER: Thank you,
24 Mr. Bruce.

25 So admitted.

1 BY MR. BECK:

2 Q Mr. Goree, when did Earthstone Energy enter
3 New Mexico?

4 A We closed on our acquisition of Chisholm in
5 late 2022, and we've been in it since then, sir.

6 Q I'm going to show you what's been admitted
7 as Exhibit C1. And the first line here in the
8 exhibits shows the Chisholm acquisition. And how many
9 wells did Earthstone acquire in the acquisition of
10 Chisholm?

11 A Fully drilled 78. Those were actual
12 horizontal wells that we've counted as drilled. There
13 was multiple wells beyond that that -- that were
14 vertical wells, et cetera, offset production.

15 But I'm -- in this display here, I'm only
16 counting actually drilled horizontal wells, sir.

17 Q All right. And so in 2022, Earthstone
18 acquired 78 horizontal wells that were fully drilled
19 from Chisholm?

20 A Yes, sir.

21 Q Is Earthstone still the operator of those 78
22 wells?

23 A To my recollection, yes. I can't speak to
24 where its trades or anything along those lines, sir,
25 but yes.

1 Q And the next acquisition you talk about, it
2 ties New Mexico into that.

3 A That happened as well in 2022. They had
4 drilled 51 horizontal wells that we acquired in that
5 acquisition. And to my best recollection, they are
6 still underneath operatorship by Earthstone Energy.

7 Q And then what's the next line, reflect
8 Earthstone operating wells.

9 A Since entering in and taking over acreage by
10 Chisholm and with acreage over with Titus [ph], we
11 have gone into that said acreage and have drilled over
12 seventy -- 74 well -- horizontal wells since taking
13 over that acreage in 2022, sir.

14 Q All right. You also talk about the Texas
15 Midland Basin and that you have -- you currently -- I
16 assume that reflects that you currently operate an
17 additional 136 wells in that Texas Midland Basin.

18 A That is operationally drilled 136 wells.
19 The real numbers that are actually underneath
20 operatorship are much higher.

21 Q Okay. And Earthstone operates additional
22 wells and drills additional wells outside of just New
23 Mexico and Texas Midland Basin; right?

24 A Yes, sir. We have operatorships in South
25 Texas, as well, sir.

1 Q I'm going to show you what's been admitted
2 as Exhibit C2. Do you see that on the computer
3 screen?

4 A Yes, sir.

5 Q What's reflected in this exhibit?

6 A This is showing offset drilling data from
7 where our -- let me back up. The red lines are our
8 proposed wells if we were to get -- our proposed east
9 half wells. We also see the proposed wells there on
10 the west half that we will drill either way.

11 Our east half wells there -- our proposed
12 wells are in red. And what you see there as far --
13 marked by the purple Allen's [ph] date, those are
14 wells that have been recently been drilled by us in
15 the last three months.

16 And below there you'll see a DVD plot
17 showing our well performance, and it's a little bit
18 easier read, as far as overall -- rerelease there, as
19 named, showing our drilling performance that we've
20 been able to recently perform at.

21 Q And you may have mentioned this and it
22 passed me, but I'm not familiar with -- what does RR
23 stand for?

24 A That would be rig release from -- actually
25 from Spinning [ph] -- well to rig releasing and moving

1 onto the next well on a said pad, we have obtained
2 these days.

3 Q And that's 21.4 for the 11H, 10.2 for the
4 12H, and 15.2 for the 13H. Is that right?

5 A Yes, sir. That's correct.

6 Q In preparing for the hearing today, did you
7 compare the AFEs of Mewbourne and the AFEs of
8 Earthstone for these two competing applications?

9 A I did, sir.

10 Q All right. And let me show you -- do you
11 want to give us -- why don't you give us sort of your
12 10,000-foot view of what that comparison shows before
13 we go into the two details, if you would.

14 A Yes, sir. No. So overall it was found that
15 Earthstone was going to be, based off of the AFEs, the
16 more economical operator, as far as money expected to
17 be spent on the wells.

18 That's the 50,000 viewpoint. And if we want
19 to get into the actual specifics on -- discuss more of
20 a breakdown between the drilling intangibles and
21 tangibles side, as you can see here. What's notated
22 in yellow is what I really wanted to bring up, as far
23 as the --

24 Q Let me stop you for one second, Mr. Goree.

25 A Sorry.

1 Q That's all right. When you see, "See here,"
2 I'm now showing you what's been admitted as Exhibit
3 C3, AFE comparison drilling intangibles and tangibles;
4 right?

5 A Yes, sir.

6 Q All right. Go ahead and tell us about what
7 this exhibit shows.

8 A This exhibit here is depicting our apples to
9 apples comparison from what AFEs that Mewbourne
10 proposed that last -- was -- was given to me for an
11 analysis, with yellow being notated as our larger
12 differentials that are seen.

13 As far as overall total drilling difference,
14 we are expected to come in at roughly \$388,000 cheaper
15 than what Mewbourne is proposing. A majority of that
16 can be seen, as far as the day work -- drilling of
17 736,000.

18 As notated by the AFEs that were given to
19 me, that equates to about a 9-day drilling difference
20 on expectations of timeliness as far as executing this
21 well. And this is in reference to a second Bone
22 Spring well, since that is what they were only
23 proposing to drill in the area.

24 Other things that are notable are the --
25 rentals, and then one was the closed loop system

1 cutting to this claim.

2 As I discuss here, do not see anything as
3 far as closed loop or a cutoff following -- it is
4 majority -- I haven't seen or heard of anyone out
5 there building pits.

6 So -- and you have to usually haul off in
7 the state. Of course, this is not federal land, so
8 with it being state, you could do a pit, but it is a
9 very long, lengthy process, and it is very rarely
10 granted.

11 So I was kind of surprised not to see some
12 sort of cost in there for a loss in cutting
13 disposables inside the AFE that was presented to me.

14 And on the -- on the tangible side, as far
15 as casing, anything that's actually in the wellbore
16 itself, they had put their long string production over
17 on the completion side. As you can see, I have a
18 notation for the original completion side.

19 So to make these as more -- as apples to
20 apples as I possibly could, I didn't move that over
21 from Mewbourne's side to represent what you would see
22 here, as far as the long string casing that we do have
23 as 882,000 that is being added on, since they are
24 running a liner hanger, which is represented by the
25 horizontal completion tools.

1 Q And so here in Exhibit C3, this is basically
2 the line item by the line item breakdown, and it shows
3 that for the two competing applications, Earthstone's
4 proposed applications to drill the four wells result
5 in a less amount of \$388,300 for drilling tangibles
6 and intangibles. Is that right?

7 A That is correct, sir.

8 Q I'm going to show you what's been admitted
9 as Exhibit C4, which you've prepared to us. Why don't
10 you go ahead and tell us what's depicted on Exhibit
11 C4.

12 A C4 is an evaluation of said AFE again of the
13 completion facility intangibles and tangibles for both
14 sides. As you can see, on the intangible cost side,
15 Mewbourne and Earthstone are very similar in cost.

16 However, I will say on that, on a
17 stimulation side, even only being a \$3,260 difference,
18 we are pumping a vast -- we are pumping a larger
19 completions job and pumping more sand.

20 So this would show that we have a greater
21 price concession and/or a better operatorship of being
22 able to pump away jobs quicker that would result in a
23 lower cost to have the equal difference being of only
24 \$3,000.

25 As we move over to our tangible cost side,

1 as you can see, the difference there is in Mewbourne's
2 favor of 155,700, resulting in a total completion
3 difference of 152,440 -- I'm sorry -- it's in
4 Earthstone's favor of 155,700.

5 It was on the difference that we were more
6 expensive on the intangibles. I apologize. So we
7 have a total completion difference of 152,440, which
8 is in favor of Earthstone. What's notated in yellow
9 there is the subsurface equipment and artificial lift.

10 We have a very much higher number than that
11 of Mewbourne, and that's due to the fact that in these
12 wells we are prepared to run ESPs. This will help us
13 get a much larger volume of lift and production rates
14 that will be able to get these wells online in a more
15 economic manner for us.

16 Q And even with those uplifts and the
17 substantial up front cost that will result in some
18 costings down the road, Earthstone's tangible costs
19 are still \$155,700 less than Mewbourne's proposals.
20 Is that right?

21 A That's correct.

22 Q For these, when you looked at the two
23 comparisons, if you can remember, make that
24 comparison -- I'm showing you probably your face and
25 mine -- sorry. Let me get to the right screen here.

1 I'm showing you what's been admitted as
2 Exhibit 2-4 from Mewbourne, which is a AFE dated
3 November of 2022. Is that the AFE that you used for
4 Mewbourne?

5 A Yes, sir.

6 Q And then I'm going to show you -- look away
7 for a second while I go through these very quickly.
8 I'm showing you AFEs for Earthstone dated -- I don't
9 know if I see the date on here -- that are part of a
10 packet dated March 30, 2023. Are those the AFEs that
11 you used for Earthstone's comparison?

12 A Yes, sir.

13 Q And for the record, that's part of Exhibit
14 A3 for Earthstone. In terms of the AFEs and
15 Earthstone's drilling plan, does Earthstone's drilling
16 plan include -- does it include the consideration that
17 the first Bone Spring formation may include sour gas
18 or high levels of -- what is it -- hydrogen sulfide?

19 A H2S. Yes, sir. So we are in the same
20 understanding that Mewbourne is that we will expect
21 that we will have high H2s, but that is not begetting
22 the fact that we want to produce these wells now.

23 We have found that it is better and more
24 economic for us to drill all wells at the same time
25 instead of coming back into a location later on where

1 most likely you will have to then go ahead and
2 temporarily abandon and plug your wells to allow for
3 safe production and drilling of your laterals that
4 you're going to drill later on.

5 And or if you do not do that, you're going
6 to have to do a pad extension, which will cause more
7 surface damage that we'll have to reclaim at a later
8 date --

9 Q -- the expenses of -- sorry. Go ahead,
10 Mr. Goree. Go ahead.

11 A Oh, no. I -- you're fine.

12 Q Meaning that the expenses of -- meaning that
13 Earthstone expects that it will be less expensive
14 overall to go ahead and drill all the wells now as
15 opposed to drilling only the second Bone Spring, and
16 then later on coming back and drilling the first Bone
17 Spring.

18 A Yes, sir.

19 MR. BECK: Thank you, Mr. Goree.
20 That's all I have for you at this time.

21 THE HEARING EXAMINER: Mr. Bruce?

22 MR. BRUCE: Just a couple.

23 CROSS-EXAMINATION

24 BY MR. BRUCE:

25 Q First, now AFEs are always just estimates.

1 Aren't they?

2 A It's the best estimate that we can give at
3 the time, since that's what our partners would be --

4 Q Yeah. And you would like to understand the
5 AFE. Isn't that common?

6 A I -- well, it depends on the operatorship.
7 You try to come in at AFE, but it would -- you would
8 like to come underneath it. Yes, sir.

9 Q Now have drilling costs come down in the
10 past year?

11 A That's a broad basis question, sir. I mean,
12 it would depend on your area of operations, et cetera.
13 I can't answer that specifically without more of a
14 specific --

15 Q I'm trying --

16 A Also offshore costs are -- offshore costs,
17 onshore costs. I mean, I -- I need a little bit more
18 specifics than that, sir, I'm sorry.

19 Q I mean, I'm not talking about Eddy County.
20 I'm just saying here in this area of Lea County,
21 drilling -- you said you've drilled wells in this
22 area. Have they come down in the last year?

23 A As far as costs?

24 Q Yeah.

25 A I mean, I can speak to our -- our costs.

1 Operationally more effectively, we're drilling faster
2 than other operators. So yes, our costs have come
3 down.

4 Q Okay. And then you said -- really this is
5 just off the cuff. I just want to make sure. You
6 said you operate 136 wells in the middle of the basin.
7 Those are all in Texas. Aren't they?

8 A Yes, sir. That's Texas wells. Yes, sir.
9 Those are all -- and we operate vastly -- I would say
10 that an answer to that, sir, is those are wells that
11 we have drilled. We operate vastly a larger number
12 than that.

13 Q Okay. Wait a minute. Let me go through a
14 couple others. And so in your opinion, Earthstone is
15 a prudent operator.

16 A Yes, sir.

17 Q And do you think Mewbourne is a prudent
18 operator?

19 A I can't speak on behalf of another operator,
20 as far as opinions. That's just an opinion.

21 MR. BRUCE: That's all I have,
22 Mr. Examiner.

23 THE HEARING EXAMINER: Mr. Lowe?

24 MR. LOWE: Good afternoon. I don't
25 have any questions. Mr. Bruce took care of most of

1 them, so thank you.

2 THE WITNESS: Thank you.

3 THE HEARING EXAMINER: Thank you,
4 Mr. Lowe.

5 Mr. Beck, is there any redirect?

6 MR. BECK: No, Mr. Hearing Examiner.
7 Mr. Goree may be excused.

8 THE WITNESS: Thank you.

9 THE HEARING EXAMINER: Does that
10 conclude your case in chief?

11 MR. BECK: Yes, Mr. Hearing Examiner.
12 That concludes our case in chief.

13 THE HEARING EXAMINER: Okay. Now,
14 Mr. Bruce, it's my understanding that you'd like to
15 put on a rebuttal case.

16 MR. BRUCE: That is correct.

17 THE HEARING EXAMINER: Okay. What are
18 you rebutting?

19 MR. BRUCE: Well, I think a couple of
20 things that just came up. But first off, the
21 exhibits -- the affidavit of Mr. Stowers marked -- he
22 talks about the gun barrel diagrams, which Earthstone
23 raised with its filing of exhibits, and also the
24 completion intensity factors, which Mewbourne really
25 saw no need to address, and I would address that with

1 Mr. Stowers.

2 Couple other things that just came up,
3 Mewbourne has been operating in this state since 1975,
4 Mr. Examiner. I couldn't get the other side to admit
5 that Mewbourne is a prudent operator. So I would like
6 to address that.

7 And then since I couldn't get the
8 reservoir engineering exhibits dismissed, I would like
9 to ask Mr. Stowers just a few brief -- couple of brief
10 questions on the reservoir engineering.

11 THE HEARING EXAMINER: So before I go
12 to Mr. Beck for his response, I want to make sure I
13 understand what you're rebutting, because your
14 connection goes in and out. So just give me a quick
15 list here.

16 MR. BRUCE: Okay. Just came up is
17 Mewbourne a prudent operator, number one. Number two,
18 address some of the drainage issues raised by the
19 geologist for Earthstone.

20 And then what is contained in paragraph
21 5 of Mr. Stowers' -- and his two exhibits, 11A and
22 11B, regarding the -- the proppant and laterals for
23 the fluid and proppant intensity, and then the gun
24 barrel diagrams, which --

25 THE HEARING EXAMINER: Okay. Hold on a

1 second. Let's go back. I understood what you said
2 when you talked about additional drainage issues on
3 the diagrams that came in over your objection. What
4 came next I didn't hear again. What is it?

5 MR. BRUCE: What I was bringing -- what
6 I was going to bring up -- and this is in Mr. -- to a
7 certain extent in Mr. Stowers' affidavit, Earthstone
8 would not admit that Mewbourne is a prudent operator,
9 and I would like to say something very briefly about
10 that. That's item two.

11 And then item three is the gun barrel
12 issue that Earthstone is pushing. And then the
13 completion proppant intensity, which was brought up in
14 their exhibits filed Thursday. So that's what I would
15 like to bring up.

16 THE HEARING EXAMINER: Okay.

17 Mr. Beck?

18 MR. BECK: Let me address these in a
19 different order. In terms of Mewbourne being a -- I
20 guess what you said is a prudent operator, certainly
21 that's not rebuttal testimony.

22 The division's order makes clear that
23 the applicants, you know, put forth their ability to
24 have a superior development plan that -- to protect
25 relative rights to not waste.

1 And it's clear that both parties are on
2 notice when they're submitting competing applications,
3 that the division will take into consideration a
4 comparison to each other, so that Mr. Goree and
5 Ms. Redfearn in her testimony testified both about
6 Earthstone's operation does not mean that it's
7 rebuttal testimony that Mewbourne decided not to put
8 that forth in their case in chief.

9 And that Mr. Goree testified that the
10 company for which he's worked for -- I don't have his
11 resume in front of me, but somewhere in the range of
12 ten years as a prudent operator in a company for which
13 he's never worked for which he does not have
14 experience and said he can't testify about, doesn't
15 mean that that opened a door -- when it was not asked
16 by me in direct opened a door to putting forth
17 evidence that obviously should've been put forth at
18 the front end.

19 In terms of the rebuttal testimony for
20 spacing and proppant, in terms of the spacing, I --
21 and I assume that I'm probably not the only one in the
22 room, but I just don't know enough about this issue to
23 say that Mewbourne should have been put on notice on
24 the front.

25 I'm still -- so I still think that it's

1 improper under the Court's pre-hearing order, but I
2 certainly can see where the Court -- excuse me -- the
3 division's pre-hearing order. But I certainly can see
4 where there's more room for that testimony to be
5 admitted.

6 And in terms of the proppant, I don't
7 know, again, that issue well enough to know whether
8 Mewbourne would've been put under notice outside of
9 what was filed in our exhibits.

10 And so let me say that obviously, you
11 know, we're all here together every other week for
12 years and years.

13 And so if that's the case and those two
14 areas, the distance of the wells, for lack of a better
15 word, and the proppant intensity are something that
16 Mewbourne would not have known about before exhibits
17 are, then Earthstone thinks it's proper and that that
18 be rebuttal testimony.

19 But in terms of going into Mewbourne's
20 operations and whether it's a prudent operator,
21 Earthstone still stands on that objection.

22 THE HEARING EXAMINER: And then there
23 were two other issues, Mr. Beck. One is the
24 additional drainage issues on the diagram. I wasn't
25 sure which diagram Mr. Bruce was talking about. Do

1 you know?

2 MR. BECK: My expectation is that he's
3 talking about the Exhibits B6 and B7 or B8 and B9 that
4 we talked about.

5 And so long as Mr. Stowers' testimony
6 is counted to those issues, as I read it in Exhibit
7 11, 11A and 11B, another set, if they weren't on
8 notice until it -- assuming that's the case, and I
9 have no reason to question whether it is, then that
10 seems to be rebuttal testimony that I think is --

11 THE HEARING EXAMINER: And finally we
12 have the gun barrel issue.

13 MR. BECK: I think that falls in line
14 with the same thing. My understanding is that that
15 goes in line with what is found in Exhibits 11, 11A,
16 11B, which I understand from Mr. Bruce and from
17 Mewbourne that they were not on notice of in any way,
18 shape, or form until we filed our exhibits. And I
19 think that's proper rebuttal testimony.

20 THE HEARING EXAMINER: Okay.
21 Mr. Bruce, I am going to allow rebuttal testimony on
22 the issues that were raised by these exhibits starting
23 with B6 through B10. Please confine your questions
24 and your witnesses' answers to those issues.

25 I'm not sure, because I don't know

1 Exhibit 11 well enough to know whether that Exhibit 11
2 is confined to those issues. So I'm not going to
3 admit Exhibit 11 at this point. Let's deal with these
4 issues that you've raised. Are you ready?

5 MR. BRUCE: Sure, Mr. --

6 THE HEARING EXAMINER: And is your
7 witness available on the screen?

8 MR. BRUCE: I don't know if he's on the
9 screen, but he's here.

10 THE HEARING EXAMINER: He's here.

11 MR. BRUCE: In virtual --

12 THE HEARING EXAMINER: Has he been
13 sworn in?

14 THE WITNESS: I have.

15 MR. BRUCE: Yeah, he was sworn in.

16 THE HEARING EXAMINER: You have? Would
17 you state your name and spell it for the record,
18 please?

19 THE WITNESS: Yes, sir. It is Nick
20 Stowers. That's N-I-C-K S-T-O-W-E-R-S.

21 THE HEARING EXAMINER: Okay.
22 Mr. Bruce, proceed.

23 MR. BRUCE: Mr. Examiner, Mr. Stowers'
24 affidavit shows that he's an engineer for Mewbourne.
25 He has not previously testified before the division.

1 Paragraph 3 of the affidavit is educational or
2 employment background. And he has worked both as a
3 reservoir engineer and an operations engineer.

4 And I would tender him as an expert
5 petroleum engineer.

6 THE HEARING EXAMINER: Okay. Hold on.
7 Let me find your exhibit. Give me a minute here. I
8 think it must be pink in color.

9 MR. BRUCE: Pink. Yeah.

10 THE HEARING EXAMINER: I see it. So
11 self-affirming statement of Nick Stowers, an engineer
12 for Mewbourne. Hold on a second. Let me just review
13 it. So that's Exhibit 10. This is 11,
14 self-affirming --

15 Mr. Beck, have you reviewed Exhibit 11
16 yet?

17 (Mewbourne Exhibit 11 was marked for
18 identification.)

19 MR. BECK: Yes, briefly.

20 THE HEARING EXAMINER: Briefly. All
21 right. Why don't we take -- let's take five minutes
22 and just review -- it's only two pages. Let's take
23 five minutes, just review this Exhibit 11 and see if
24 Mr. Beck has any objections to this exhibit coming
25 into evidence.

1 So I'm not going to stop my video. I'm
2 just going to read this exhibit.

3 (Off the record.)

4 THE HEARING EXAMINER: Okay. Mr. Beck,
5 is there anything in Exhibit 11 that you would argue
6 is outside rebuttal testimony?

7 MR. BECK: Yes. That would be
8 paragraphs 7 through 10.

9 THE HEARING EXAMINER: Okay.
10 Mr. Bruce, if we admit Exhibit 11 -- I'm wondering how
11 best to do that. We admit Exhibit 11 in part. I
12 wonder if it would be too confusing and that maybe you
13 should resubmit Exhibit 11.

14 MR. BRUCE: I have no problem doing
15 that. My comment is that, you know, my landman and
16 geologist did testify as to Exhibit 7 and 8.

17 I think paragraph 9 should be in there,
18 because they made a big point of showing their
19 experience in New Mexico. And Mewbourne has been
20 around a long time, drilled a lot of wells, and has a
21 pretty good record with the division.

22 Paragraph 10, can either take it or
23 leave it. But I think paragraph 9 is proper. But if
24 you want me to resubmit it, excise a couple of
25 paragraphs, I'd be willing to do so, Mr. Examiner.

1 THE HEARING EXAMINER: Okay. Let's do
2 that. Let's keep this simple. So the objection by
3 Mr. Beck was to which paragraph, sir?

4 MR. BECK: Seven through ten. So 7, 8,
5 9, and 10.

6 THE HEARING EXAMINER: Okay.

7 Mr. Bruce, how long would it take for
8 you to -- after this hearing concludes -- hopefully
9 soon -- how long would it take for you to submit a
10 amended Exhibit 11?

11 MR. BRUCE: Tomorrow morning.

12 THE HEARING EXAMINER: Okay. Perfect.
13 Done. Okay, Mr. Bruce. I'm going to admit Exhibit
14 11 -- Mewbourne's Exhibit 11 into evidence with the
15 caveat that you are going to resubmit it and omit
16 paragraphs 7 through 10.

17 So why don't you go ahead and put on
18 your rebuttal witness now, and ask him questions in
19 regards to the exhibits that were admitted over your
20 objection. And I think those were B6 through B10.

21 And if your witness could please refer
22 to the exhibit that he is testifying about when he
23 answers a question, it would be appreciated. Thank
24 you.

25 //

1 (Mewbourne Exhibit 11 was received into
2 evidence.)

3 MR. BRUCE: Okay.

4 DIRECT EXAMINATION

5 BY MR. BRUCE:

6 Q Well, first, Mr. Stowers, I need to get the
7 geologist affidavit here for Mr. Asmus. And I think
8 if we just went to, oh, say, his Exhibit B7. And he
9 talked about this, the little green egg in the lower
10 right corner, as representative of a depleted
11 reservoir region.

12 Now when you're looking at this from an
13 engineering standpoint -- when you're looking at area
14 of drainage or pressure depletion, what factors do you
15 look at? I mean, estimated ultimate recovery. Any
16 others?

17 A Other factors that would be considered would
18 be volumetric factors of the reservoir, such as
19 porosity, water saturation, height and width of the
20 reservoir, and then the recovery factor for the
21 reservoir, as in how much of the oil in place you
22 estimate to be recovered, 'cause that influences
23 how -- how big or small the drainage area would be,
24 and depending on whether or not you're using an
25 estimated ultimate recovery or a recovery to date.

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1 Those would be some other factors that would
2 go into that analysis.

3 Q Would it also depend on the geology of
4 characteristics, like porosity or thickness across the
5 study area?

6 A Yes, sir. Those would greatly influence the
7 study. Those would be the volumetric influences that
8 I spoke of earlier.

9 Q Okay. So viewing that, we don't really know
10 what factored in to, say, Exhibits BC and B7.

11 A That is correct. We do not have the
12 underlying data that would have went into B7 or B6
13 that would show us what assumptions were made to
14 create those drainage bubbles. That is not stated,
15 nor was it stated in the direct testimony.

16 Q And I think the ultimate recovery number --
17 I never got a firm answer on whether he was using
18 production to date or estimated ultimate recovery.
19 That would be a big factor. Wouldn't it?

20 A Yes, sir. That would be a -- a factor that
21 would drastically change the size of that bubble.

22 Q And even if you look at that bubble, and of
23 course, you know, he's picking out an area, many,
24 many, many years ago when people would talk about
25 drainage radius they'd have a circle.

1 This is more of an oval. Even then, there's
2 only a very small area in the south half, south half
3 of -- or actually in the southeast quarter, southeast
4 quarter of section 18 that's affected. Is that fair
5 to say?

6 A Yes, sir. That is correct. When you're
7 looking at this diagram, it is as if you were staring
8 down the wellbore.

9 And I believe what you're referring to is
10 the fact that this offset well, the North Wilson Deep
11 Unit number 3H, only offset the affected lands for 1/2
12 mile. And that would be the southernmost portion of
13 section 18, the -- the south half of section 18.

14 The North Wilson Deep Unit 3H was drilled
15 from the center of section 17 south 2 miles.

16 Q And this is only -- this is kind of
17 speculative at this point. Wouldn't you agree?

18 A Yes, sir. I -- I would agree without
19 knowing the -- the numbers that went in to this
20 analysis.

21 Q And based on Mr. Carrell's testimony,
22 wouldn't you agree that the best thing to do is to
23 drill the lower second Bone Spring?

24 A Yes, sir. Our analysis of the log
25 characteristics in the immediate area is what drove

1 our decision to place the -- the well in the lower
2 second Bone Spring sand.

3 That coupled with our analysis of some
4 offset producers in the -- the upper second Bone
5 Spring sand and accompanying offset producers in the
6 lower second Bone Spring sand.

7 Q And well, when you look at log
8 characteristics, the one well log in Mr. Carrell's
9 Exhibit 12 was in the northeast quarter, northeast
10 quarter of 18, I believe.

11 And I think Earthstone's geologist said,
12 "Well, it only affects -- that's only localized to the
13 east half, east half well." That's not what that
14 cross section shows, is it?

15 Because the other wells in that Exhibit 12,
16 they're about a mile and a half away from the
17 northeast quarter of section 18. Is that fair to say?

18 A The other wells in the cross section in
19 Exhibit 12 were a mile and a half away. I believe
20 I'm referring to the well in 13B and the well in 20C.

21 Q And, I mean, would it be -- you get a -- I
22 mean, there is -- well, there's two things. You've
23 already said that the geology can be variable, and
24 that affects certain things.

25 But would you expect to drill a well in the

1 northeast, northeast of 18 and have that thin
2 reservoir only affect a very small distance away from
3 that wellbore?

4 A We can only make assumptions off of the data
5 that we have. And we take that into account. That
6 being the closest data point to the proposed wellbore
7 led us to make the decision to go into the second --
8 the lower second sand.

9 Q Okay. But again, any pressure draw down on
10 the proposed 9H well is speculative at this point,
11 and -- would you agree with that?

12 A I would say that the amount of impact from
13 offset depletion is speculative at this point.

14 Q Okay. And to prevent any, isn't it best to
15 drill, rather than move the well -- to drill now and
16 offset any potential drainage?

17 A To protect the rights of the owners within
18 our unit, that is correct.

19 Q Okay. Well, let's move onto your Exhibits
20 11A and 11B. And I'm not going to get involved in
21 paragraphs 5 and 6 of your self-affirmed statement.
22 Could you describe what those exhibits are and what
23 they show?

24 A Yes, sir. I'll start with --

25 Q And what --

1 A I'll -- start with exhibit -- go ahead.

2 Q No. Go ahead. You go ahead --
3 interruptions.

4 A Okay. I'll start with Exhibit 11A. As I've
5 stated, this is a gun barrel diagram of Mewbourne's
6 inland 26 23, and also our -- the western most well of
7 our Dolly Varden 25 24 development. This is just
8 showing the -- this is another diagram looking -- as
9 if you were looking down the wellbore of these wells.

10 And it shows their lateral distance from
11 each other east and west, and it also shows where they
12 are relative to each other in a sub C sense.

13 And then there is a box associated with each
14 well that gets the well main, the 12-month cumulative
15 oil production per lateral foot, the completion size,
16 and the first production date.

17 And the purpose of this exhibit was just to
18 draw attention to the fact that there is quite a bit
19 of variability in this area within this reservoir with
20 respect to productivity, and that it is not as simple
21 as "Space your wells much farther apart and increase
22 your proppant intensity."

23 I showed that our Dolly Varden 25 24 was
24 a -- a parent well. It was offset by our inland 26 23
25 B2PI. They were roughly 1,000 foot apart. The inland

1 had a roughly 2,500 pound per foot completion. Its
2 12-month oil cumulative production was 25 barrels of
3 oil per foot.

4 And then I compared that with the inland
5 2623 B2NK. On the other side it was spaced farther
6 apart, roughly 1320 from its offset, and it also had
7 2,500 pounds per foot, yet it achieved a very similar
8 12-month cumulative oil production per foot, being 23
9 barrels of oil.

10 Q So there is really no firm correlation is
11 what you're saying.

12 A Yes, sir.

13 Q And then Exhibit 11B.

14 A Yes, sir. Exhibit 11B, the upper portion of
15 the page is a map, area of second Bone Spring sand
16 producers around the subject lands. And those are the
17 blue stakes on the map. The subject lands are
18 outlined in a dashed red line.

19 And then beneath that is a graph of proppant
20 intensity on the X axis versus 12-month oil cumulative
21 per lateral food on the Y axis.

22 I created this as a -- as a rebuttal
23 exhibit, because of the assertion that proppant
24 intensity is directly correlated with oil EUR.

25 I think that that is a much safer assertion

1 when you're discussing 500 pounds of proppant per foot
2 versus 2,000. But in these particular hearings, we
3 are looking at 2,000 pounds per foot versus 2,500
4 pounds per foot.

5 So I -- I took the -- the data of wells in
6 this area that were completed with greater than 1,900
7 pounds per foot and plotted it versus cumulative oil
8 production.

9 And then I did a -- a best fit linear trend
10 line. And the entire point of this is that there is
11 no discernible correlation in this data set that would
12 say, "Increasing your proppant intensity from 2,000 to
13 2,500 yields greater oil productivity."

14 And that's evidenced by the fact that our
15 squared value, which is quote, unquote your goodness
16 of fit, is very low. I -- I also --

17 Q And so --

18 A Oh, one more thing, Bruce. Sorry. I also
19 noted we've referenced this well several times
20 throughout the proceedings today. The -- the upper
21 second sand well in section 13 that Mr. Carrell
22 referenced, I highlighted it on the map with an arrow,
23 and then a box.

24 And it is also represented by that yellow
25 dot in the -- in the graph on the bottom. So despite

1 it having 2,600 pounds per foot and no offset wells,
2 it's still one of the lowest wells on the graph, as
3 far as 12-month cumulative oil per lateral foot.

4 Q Okay. So there's -- in other words,
5 Mewbourne's proposed completion procedure is perfectly
6 normal.

7 A I would -- I would say so.

8 MR. BRUCE: I think that's all I have,
9 Mr. Examiner.

10 THE HEARING EXAMINER: Okay.

11 Mr. Beck? Mr. Beck, if you need a few
12 minutes to prepare questions, I understand that this
13 witness came out of left field, and we can take a
14 few-minute break.

15 MR. BECK: Thank you. I'll take --

16 THE HEARING EXAMINER: Sorry, sir. I
17 didn't hear you.

18 THE WITNESS: Think you're muted.

19 MR. BECK: I was muted. No. I'll give
20 it a go.

21 THE HEARING EXAMINER: Okay. Please.

22 MR. BECK: Mr. --

23 THE HEARING EXAMINER: You're cutting
24 in and out. We can't hear you. We cannot hear you.

25 MR. BECK: I don't know why I got

1 muted. Can you hear me now?

2 THE HEARING EXAMINER: Yes.

3 THE WITNESS: I can hear you now.

4 CROSS-EXAMINATION

5 BY MR. BECK:

6 Q All right. I'm looking at 11B in front of
7 me. And I think it's probably in front of you too;
8 right?

9 A That is correct, sir.

10 Q Okay. I think you were critical of Exhibits
11 B6 and B7 because they didn't have the underlying data
12 shown. Is that what you said?

13 A I was critical of the drainage bubble. Yes,
14 sir.

15 Q Okay. And so if we look at the drainage
16 bubble here on Exhibit B7, what's your criticism about
17 underlying data not shown?

18 A Mr. Bruce and I already discussed this. All
19 the assumptions that go into calculating a drainage
20 area, such as recovery factors, volumetric
21 assumptions, porosity, fluid composition of the
22 reservoir, height and width of the drainage area are
23 not disclosed.

24 This does show a cumulative barrel of oil
25 per foot, which is one thing that you would need to

1 calculate a drainage area, but not the rest of the
2 data. And that data was not discussed.

3 Q Okay. And where would you get that data if
4 you want to know that data for the North Wilson Deep
5 Unit 3H?

6 A If I wanted to do that, I'd perform that
7 analysis.

8 Q Okay. Do you know whether --

9 A -- that --

10 Q Do you know whether Mr. Asmus performed that
11 analysis with the data?

12 A I believe he stated that this was a
13 representation created. He did not state whether it
14 was him or the -- the reservoir team, but stated that
15 it was created off of offset analogs.

16 And to be honest, I -- I don't know if
17 that's analogs in Lea county, in the Delaware Basin,
18 in Permian. So judged off -- based off of what I
19 heard, I do not know.

20 Q Okay. You didn't know that underlying data
21 when you read this for the first time, what, Friday;
22 right?

23 A That is correct.

24 Q Okay. And now if I look back at Exhibit 11,
25 which was disclosed on Tuesday, nowhere in here does

1 it criticize not having the underlying data or not
2 knowing where these analogs are located; right?

3 A We did not put that in this statement you
4 are referring to. That is correct.

5 Q So the criticisms you just went through for
6 B6 and B7, the underlying data, the porosity, the
7 water saturation, recovery factor, the height and
8 width, the first time that any of us heard about those
9 criticisms you had with those exhibits was just a few
10 minutes ago in your direct testimony here, not in any
11 kind of written statement; right?

12 A That is correct.

13 Q Okay. Do you think that if you would've
14 written on Tuesday these criticisms that Earthstone
15 would've provided you answers today to where that data
16 came from, where those analogs are located?

17 A That is a hypothetical that I do not feel
18 comfortable answering.

19 Q That's fair.

20 THE HEARING EXAMINER: Mr. Beck?

21 Mr. Beck, can you hear me?

22 MR. BECK: Yeah. I can hear -- all
23 right.

24 THE HEARING EXAMINER: Okay. Mr. Beck,
25 I realize that this information is coming as a

1 surprise to you. So if you want to bring back your
2 witness as a rebuttal witness to this testimony, I
3 will allow you that narrow focus.

4 MR. BECK: Thank you. Noted.

5 BY MR. BECK:

6 Q Getting back to Exhibit 11 --

7 A Yes, sir.

8 Q Are these dots on the lower left-hand
9 portion -- I guess what those are showing is that
10 there's -- these are the lowered propensity around
11 2,000 pounds per foot. And it's showing what with
12 those?

13 A So that is a graph of proppant intensity
14 versus cumulative 12-month oil production per lateral
15 foot. I use that number as a -- as a metric to gauge
16 productivity.

17 I -- I try to stay away from EURs and things
18 like this, because that's a subjective number, much
19 like a geologist interpretation -- can give five
20 different reservoir engineers and EUR number or tell
21 them to put an EUR and you'd get five different
22 numbers. One-year cume does not lie.

23 So I use that as a stand-in for
24 productivity. And this just shows and -- and refutes
25 the assertion that there is a correlation that would

1 yield increased productivity when increasing your
2 completion intensity from 2,000 pounds to 2,500 pounds
3 per foot, which are the two different scenarios we are
4 talking about today.

5 Q Should these dots on the left-hand side --
6 is this 12 months cumulative from 0 to 45 -- is that
7 the first 12 months for each one of these or what 12
8 months is that?

9 A Yes, the first 12 months.

10 Q Okay. And which one of these are parent
11 wells versus child wells?

12 A I didn't break those out within these. So
13 this is all wells. So it will be a mixture of parent
14 wells and child wells.

15 Q Okay. And based on Exhibit 11A, you'd agree
16 with me that the child wells are less productive than
17 the parent wells in the first 12 months; right?

18 A Looking at the wells that are just
19 represented in 11A, parent wells in 11A were more
20 productive than child wells.

21 Q Okay. And so would you expect that in 11B
22 parent wells would be less -- or would be more
23 productive than the child wells, regardless --

24 A I think that -- go ahead. Sorry.

25 Q Yeah. If they had the same proppant -- the

1 same propensity, would you expect that parent wells
2 would be more productive than child wells?

3 A I would say that many factors would go into
4 that, and I -- I couldn't make that assertion. For
5 instance, that -- that Bruce Keplinger well that we
6 referenced earlier, the yellow dot is a standalone
7 well, the "parent."

8 And I could not say without a deeper dive
9 into the data whether or not there are instances of
10 child wells in this dataset outperforming their
11 parents, quote, unquote.

12 I can say that I have seen that in my time
13 analyzing data in New Mexico. But with this specific
14 dataset, I couldn't speak to that.

15 Q Well, I mean, we see that in 11A; right?
16 Because what we see is that the inland one in the
17 middle, 2623B20J 12-month cumulative, that was 31,
18 whereas the two children next to it were 23 and 25,
19 which is -- well, it's 7 of the 31.

20 That's almost 25, 30 percent less
21 productive, right, for the children versus the parent?

22 A I have stated in this specific example that
23 it could be said that the parents are more productive
24 than the children.

25 Q Okay. And so it's possible, you'd agree

1 with me, on 11B that by including the children and the
2 parents here, we lose some data that we might compare
3 as to whether proppant intensity has any correlation
4 to production in that first 12 months.

5 A I -- I don't believe I understand your
6 question. Could you rephrase it, please?

7 Q Yeah. Let me break it down for you. Eleven
8 A we said that at least eleven A reflects that parents
9 are more productive than children; right?

10 A In that specific instance, yes, sir.

11 Q Okay. And this looks at five different
12 wells. And what we see is that the parents have less
13 proppant intensity than the children.

14 A That is not true.

15 Q Which one is it not true for?

16 A I believe if you look at -- if you look
17 at -- oh, excuse me. These are codeveloped. I
18 misspoke. That is -- that is the case with respect to
19 the B2PI, the B2ED, and the B2NK has a higher proppant
20 intensity.

21 Q Okay. So the children have a higher
22 proppant intensity than the parents in 11A; right?

23 A In this specific one, yes, sir.

24 Q And notwithstanding that, the children have
25 a lower production than the parents?

1 A That is correct.

2 Q Okay. And then if we look at 11B, which you
3 say shows that there is no correlation between
4 proppant intensity and production, we can't tell which
5 of these low production and which of these high
6 production are parent versus child; right?

7 A That data set is not broken out in this
8 exhibit. Yes, sir.

9 Q The only one we do know, because you focused
10 your attention in on this one, is this MTDR Bruce
11 Keplinger; right? We know that there is no other
12 parent or child. It's just the standalone.

13 A That is correct.

14 Q Okay. And did you hear the testimony today
15 from Earthstone's witnesses that said they agreed, all
16 things being equal, they would like to target the
17 lower half of the second Bone Spring than the upper?

18 A I believe I heard them say they preferred
19 that target. Yes, sir.

20 Q All right. But they didn't go with their
21 preference. Did they?

22 A As evidenced by their proposals, no.

23 Q Okay. And did you hear the testimony today
24 that they didn't do that, because their analysis, the
25 proppant intensity and the analysis of the possible

1 depletion from putting the well on that lower second
2 Bone Spring?

3 A I heard the evidence that they testified to

4 Q And you heard them say what I just asked
5 you?

6 A Yes. I heard their arguments.

7 Q Let's take you back to Exhibit 11A here.
8 And I guess this is showing that roughly the same
9 depth, even when you have spacing of 1,320 feet and
10 1,480 feet between parent and child, you're still
11 seeing a decreased production rate for those children;
12 right?

13 A I -- I don't believe you're accurate with
14 your statement of 1,480. I would refer to those wells
15 as co-completed. The B2PI and the B2OJ came online at
16 the same time. So that would not be a -- a
17 parent/child pair.

18 Q Okay. And so if I'm looking at that, what
19 that's showing is that -- it's showing that when you
20 have two wells coming on at the same time, for some
21 reason there's a lower production rate from the inland
22 B2PI than there is from the inland B2OJ; right?

23 A That is correct.

24 Q Okay. And when we're looking, the B2OJ that
25 came on the same time has higher output, has a lower

1 proppant intensity; right?

2 A That is correct.

3 Q Okay. And that's 1,480 feet from the inland
4 B2PI; right?

5 A That is correct.

6 Q Okay. And then when we look at the B2PI
7 that's only 1,000 feet from the Dolly Varden, we see
8 that even though it has about 500 more pounds per feet
9 of proppant, it's less productive; right?

10 A That is correct. I believe we already
11 covered this.

12 Q Okay. And you can't get from this that
13 closer spacing between an already producing well and
14 one to be drilled reduces the expected production from
15 that later produced well at the same depth?

16 A Based on this specific exhibit, I -- I would
17 not say that, as evidenced by the fact that the B2NK,
18 which is 1,320 feet from its "parent," the B20J,
19 cumulatively produced 23 barrels of oil per foot,
20 whereas the inland B2PI, which is 1,000 feet away,
21 produced 25.

22 So that -- that would kind of fly in the
23 face of that statement.

24 Q Well, I mean --

25 A Which was the -- the point of the exhibit.

1 Q -- the B20J was in production, what, nine
2 months before the B2NK; right?

3 A That -- that looks -- that looks right.

4 Q Okay. And then so we have one that's in
5 production first and another one that's in production
6 second. And this one is over 1,000 feet, as you point
7 out, 1,320 feet from it. And it's producing -- again,
8 it's about 25 percent less oil; right?

9 A I'm -- I'm speaking comparing the -- the
10 B2NK and the B2PI, the -- the children wells. The two
11 child wells in this exhibit, the one that was spaced
12 farther from its parent produced less than the one
13 that was spaced closer to its parent with respect to
14 the B2PI when compared to the B2NK.

15 Q Okay. And we can't get from this, I
16 assume -- and you couldn't tell me, right, if that
17 inland B2NK you're talking about was less than 1,000
18 feet, as Mewbourne's proposing, whether that 23 would
19 be less, because it was closer. You can't give me
20 that answer.

21 A I could not.

22 Q Okay. But at least we know that same depth
23 a well drilled after the well next you have that same
24 depth, from this we can see that it lost -- at least
25 talking about that B2NK and the B20J, it lost about 25

1 percent of what was being produced from that B20J;
2 right?

3 A I -- I haven't calculated the -- the math,
4 but I'll -- I'll trust you on it.

5 Q Okay. Is it possible that that could be
6 because they're close enough that there's this
7 depleted reservoir issue between those two?

8 A Which two are you referring to, sir?

9 Q The two we just talked about. I'm sorry.
10 It's craning my neck, but it's the B2NK and the B20J.

11 A And what's your question about those?

12 Q My question is, is that that lesser
13 production from the B2NK compared to the B20J could be
14 because they're at the same depth and were running
15 into this depleted reservoir issue.

16 A It could be. It could be a number of -- any
17 one of a number of factors.

18 MR. BECK: That's all I've got,
19 Mr. Hearing Examiner. Thank you.

20 THE HEARING EXAMINER: Mr. Lowe?

21 MR. LOWE: Good afternoon. Can you
22 guys hear me?

23 THE HEARING EXAMINER: Yes, sir. We
24 can hear you.

25 THE WITNESS: Yes.

1 MR. LOWE: Just to get, I guess, a
2 cumulative response on the data shown in Exhibit B,
3 the graph --

4 THE WITNESS: Eleven B? Is that what
5 you said, sir?

6 MR. LOWE: Eleven B. Yes.

7 THE WITNESS: Yes, sir.

8 MR. LOWE: The blue dots, those are
9 basically -- are they all your wells or are they just
10 wells in the vicinity?

11 THE WITNESS: They are all the wells
12 that are on this map represented by a blue wellbore.
13 And those are -- there's a combination of many
14 operators in the area, Mewbourne, Permian Resources,
15 Earthstone, one in the same, Matador.

16 MR. LOWE: Okay. And they're all
17 basically in a second sand Bone Springs?

18 THE WITNESS: All of the wells that are
19 represented on this map are in the second Bone Spring
20 sands.

21 MR. LOWE: Okay. And then the yellow
22 dot is basically the Bruce Keplinger well, and that's
23 what you have there.

24 THE WITNESS: Yes, sir. It's the well
25 that is shown by that little fall out box with the

1 arrow. It's the 1-mile well in section 13, 21 south,
2 34 east.

3 MR. LOWE: Okay. And then on the
4 access of the chart on 11B where it says, "Sand per
5 foot pound" --

6 THE WITNESS: Yes, sir.

7 MR. LOWE: -- is that correct?

8 THE WITNESS: That is -- yes, sir.
9 That is represented of the pounds of proppant pumps
10 per lateral foot.

11 MR. LOWE: Okay. All right.

12 THE WITNESS: Also referred to as
13 proppant intensity.

14 MR. LOWE: Okay. All right. Let's see
15 here. Okay. Those are the only questions I got.
16 Thank you for clarifying. Thank you.

17 THE WITNESS: Yes, sir.

18 THE HEARING EXAMINER: Mr. Bruce, is
19 there any follow up to those cross-examination
20 questions?

21 MR. BRUCE: Just a couple,
22 Mr. Examiner.

23 REDIRECT EXAMINATION

24 BY MR. BRUCE:

25 Q Mr. Stowers, look at your Exhibit 11A.

1 A Yes, sir.

2 Q And starting on the left-hand side, the
3 first two wells are completed in the same month.
4 Aren't they?

5 A That is correct.

6 Q And there's a variability there a little
7 bit.

8 A That is correct.

9 Q And then the next two wells, they were
10 completed both in March of 2021. So they've been --
11 they were completed more or less simultaneously.

12 A That is correct.

13 Q And there's still a little variability
14 there.

15 A Yes, sir.

16 Q And so can't that go into other reservoir
17 quality, reservoir thickness, things like that?

18 A Yes, sir. I would say that there are many
19 factors that could play into the -- into the
20 variability and production results seen throughout the
21 area.

22 Q And I don't know, and therefore, being a
23 good attorney, I make sure to not ask these questions,
24 but are these good wells? Are these good productive
25 wells?

1 A We are pleased with the results we have seen
2 out of this particular development. Yes, sir.

3 MR. BRUCE: Thank you.

4 MR. BECK: Mr. Hearing Officer, since
5 I -- you'll indulge me with one or two more questions.

6 THE HEARING EXAMINER: Mr. Beck, based
7 on the redirect?

8 MR. BECK: Sure.

9 REXCROSS EXAMINATION

10 BY MR. BECK:

11 Q Mr. Stowers, comparing the two left inland
12 wells that were drilled at the same time, I think you
13 recognize that they were drilled at the same time, but
14 they have different levels of cumulative output;
15 right?

16 A That is correct.

17 Q And they also have different levels of
18 proppant, right, with the lower producing well having
19 a lower proppant amount than the higher producing
20 well?

21 A That is correct by what's evidenced on this
22 exhibit. Now that you have drawn my attention to
23 that, that may be a typo. Those numbers may need to
24 be flipped, but I couldn't say for certain, so that --
25 that could be an -- error on -- on my part.

1 Q You can't say whether the proppant values in
2 this exhibit is accurate?

3 A With respect to that specific inland,
4 2623B2ML, that is correct.

5 Q Okay. Who prepared this exhibit?

6 A I did.

7 Q Exhibit 11B, there's been a lot about the
8 Keplinger well. Do you remember talking about that a
9 lot today and hearing Mr. Carrell talk about that a
10 lot today?

11 A That is correct.

12 Q Are you aware that that -- what you've all
13 been referring to as a low producing well is a 1-mile
14 lateral well?

15 A Yes, sir. That's why in all of my
16 production numbers that we have been referencing, they
17 are based on cumulative oil production per lateral
18 foot to normalize between 1 mile, 1 1/2, and 2-mile
19 wells.

20 Q Okay. Do we know which of these wells on
21 Exhibit 11B are 1-mile wells versus 2-mile wells?

22 A No, sir. We do not.

23 MR. BECK: That's all I have,
24 Mr. Hearing Examiner. Thank you.

25 THE HEARING EXAMINER: Okay.

1 Mr. Bruce, it's come to my attention
2 that Exhibit 11A may have inaccurate information.
3 What are you going to do to correct it? Mr. Bruce,
4 are you there?

5 MR. BRUCE: Yes. Sorry. Yes. I -- I
6 can get together with Mr. Stowers and have him look at
7 the data, and have him verify it. That may take more
8 than the one day I'm going to use to correct the
9 other -- the affidavit itself, as you asked me to do.

10 THE WITNESS: I can get it to him by
11 tomorrow morning most certainly.

12 THE HEARING EXAMINER: All right. So I
13 am expecting two things from you, Mr. Bruce. Number
14 one, you are going to resubmit Exhibit 11 to omit
15 paragraphs number 7 through 10, and you are going to
16 revise 11A to correct any incorrect data.

17 And, Mr. Stowers, would you please mark
18 any changes in the data in a different color ink, so
19 that it's really obvious?

20 THE WITNESS: Yes, sir. I can do that.

21 THE HEARING EXAMINER: Okay.

22 Wonderful.

23 And, Mr. Bruce, would you please mark
24 Exhibit 11 as Amended Exhibit 11 and Exhibit 11A as
25 Amended Exhibit 11A?

1 MR. BRUCE: Oh, absolutely. I will --
2 I usually do that. Thank you.

3 THE HEARING EXAMINER: All right.
4 Excellent. Mr. Bruce, are you done with your rebuttal
5 case?

6 MR. BRUCE: Yes, I am. And the only
7 thing I was going to ask is how you wish to proceed.
8 We've had a nice darn long -- and that's not a word I
9 use often -- hearing and a lot of stuff to digest.
10 And I was going to -- and I haven't had a chance to
11 speak with Mr. Beck about this, so I'll let him have
12 his input.

13 If you would like a written closing
14 argument, it's getting late, and it may make more
15 sense to get the affidavit, and these revised
16 exhibits, and do a written closing at your
17 convenience, and you can limit the length of them as
18 you see fit. I'm usually pretty concise in what I
19 write.

20 THE HEARING EXAMINER: Okay.
21 Mr. Bruce, thank you for bringing that up. However, I
22 haven't closed the evidentiary record yet. I'm still
23 looking to Mr. Beck to find out whether he is going to
24 present a rebuttal case or not.

25 MR. BRUCE: Okay. I forgot. Sorry.

1 MR. BECK: Thank you, Mr. Hearing
2 Examiner. I'm going to disagree with Mr. Bruce on the
3 procedure, but I'm going to agree with him on the fact
4 that it is late in the day and we're -- Earthstone
5 doesn't have any rebuttal.

6 THE HEARING EXAMINER: Okay.
7 Wonderful. All right. So the evidentiary record is
8 closed, except for these amended exhibits from
9 Mr. Bruce.

10 Now let's talk about the post-hearing
11 procedure. This is the first contested hearing that
12 I've conducted for the OCD. In my previous position
13 parties had an opportunity -- they had a certain
14 number of days to produce post-hearing submissions.

15 Post-hearing submissions included
16 closing argument. It also included proposed findings
17 of fact and proposed conclusions of law. So,
18 Mr. Bruce, you didn't mention part of what I just
19 mentioned. Is that not common in these hearings?

20 MR. BRUCE: Oh, no. Yeah. It is
21 common, Mr. Examiner. I guess I kind of join them
22 together at times, because I put them --

23 THE HEARING EXAMINER: Okay. I
24 understand. So then the parties are going to submit
25 closing arguments and proposed findings of fact and

1 proposed conclusions of law. Is that correct?

2 MR. BRUCE: That's what I would like to
3 do --

4 MR. BECK: Yeah. That's my
5 understanding.

6 THE HEARING EXAMINER: Okay. I saw
7 once before that Ms. Orth [ph], who was a contract
8 hearing officer, she gave the parties two weeks for
9 that. Does that seem fair?

10 MR. BRUCE: It is, Mr. Examiner. I
11 suppose the other thing is often times Ms. Orth [ph]
12 and Mr. Brinkard [ph], the prior hearing examiner,
13 would give, like, two weeks from the time that the
14 hearing transcript was -- and Marlene would --

15 THE HEARING EXAMINER: That makes
16 sense.

17 MR. BRUCE: -- Marlene would inform
18 Mr. Beck and I and the other people of when -- filed.

19 THE HEARING EXAMINER: That's fair.
20 Yeah. That's fair. Sounds good. So I don't remember
21 the court reporter's name.

22 Would you please tell me what your name
23 is?

24 THE REPORTER: Dana.

25 THE HEARING EXAMINER: Dana, when do

1 you anticipate a verbatim transcript?

2 THE REPORTER: It typically takes seven
3 days, but if you guys want to expedite, I can do it,
4 as well.

5 THE HEARING EXAMINER: All right. Who
6 pays -- at the OCD, who pays for verbatim transcripts?
7 Does anyone know?

8 MR. BRUCE: Mr. Examiner, Jim Bruce.
9 Generally it's the division. Somebody wants a
10 verbatim one, they'd ask and offer to pay the court
11 reporter for that. A week or ten days, that is fine
12 with me or two weeks. Whatever the court reporter can
13 do from my --

14 THE HEARING EXAMINER: Okay.
15 Mr. Bruce, I didn't understand your answer to the
16 question. So let me say it again or let me repeat
17 what I think I heard. You said the division normally
18 pays for the court reporter's verbatim transcript. Is
19 that correct?

20 MR. BRUCE: Yes. They have a -- the
21 division has a contract with the court reporter or the
22 court reporting services.

23 THE HEARING EXAMINER: But then is that
24 proprietary to the division and it's not shared with
25 the parties? Is that what you're saying?

1 MR. BRUCE: No, I'm not, because of
2 course that is filed online with the division, and
3 it's available to everyone. But in the past,
4 Mr. Examiner, a party who wanted an expedited
5 transcript --

6 THE HEARING EXAMINER: Oh, I get it. I
7 understand now. Okay. All right.

8 Well, Mr. Beck, do you have a need for
9 an expedited transcript?

10 MR. BECK: No. Seven days is fine.
11 Thank you.

12 THE HEARING EXAMINER: Okay.

13 Dana, if it's going to be longer than
14 seven days, would you send an email to Marlene, so she
15 knows how much longer than seven days it'll be?

16 THE REPORTER: Yes.

17 THE HEARING EXAMINER: Okay.
18 Wonderful. Okay.

19 Then once the transcript is posted
20 online, we'll give the parties two weeks from that
21 date to submit their post-hearing submissions. The
22 way it's been done in the past is if you don't make an
23 argument in the closing argument, then it's waived.

24 And, Mr. Bruce, I don't know, how long
25 does it normally take the hearing officer and the

1 division to produce an order from the post-hearing
2 submissions?

3 MR. BRUCE: Boy, that's beyond my
4 knowledge. It's always been at the pleasure of the
5 division. And I think Mr. -- can agree with that.
6 It's whatever time you need to take care of it.

7 Of course operators always like a quick
8 decision, but when there's a lot to consider, I know
9 it takes time to -- well, for instance, in this case
10 there was a motion to dismiss that was argued, and it
11 took the division about -- just the motion to dismiss
12 took over two months to decide, so.

13 THE HEARING EXAMINER: Okay. I
14 understand. Okay. Then we will take whatever time we
15 need. Okay. I can't think of anything else. Is
16 there anything else from the parties before we end
17 this?

18 MR. BECK: -- my experience. You just
19 assume that Mr. Bruce has more?

20 THE HEARING EXAMINER: I did. My
21 fault. My apologies.

22 MR. BECK: That's all right. My
23 experience -- with yours, so I appreciate you not
24 singling me out.

25 THE HEARING EXAMINER: Oh, you're just

1 razzing me, huh? Okay. Thank you, Mr. --

2 MR. BRUCE: My only request,
3 Mr. Examiner, can I go have a beer now? That's all.

4 THE HEARING EXAMINER: Please. Can you
5 go ahead and what?

6 MR. BRUCE: Anyway, well, thank you for
7 your time, Mr. Examiner and Mr. Lowe, very much.

8 THE HEARING EXAMINER: Okay. Thank --
9 you.

10 MR. LOWE: Thank you, Mr. Bruce.

11 THE HEARING EXAMINER: All right.
12 Enjoy the rest of the day. Thank you.

13 MR. BRUCE: All right. Bye.

14 (Whereupon, at 5:27 p.m., the
15 proceeding was concluded.)

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CERTIFICATE OF DEPOSITION OFFICER

I, DANA FULTON, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



DANA FULTON
Notary Public in and for the
State of Missouri

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CERTIFICATE OF TRANSCRIBER

I, CHRISTINE BROWN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



CHRISTINE BROWN

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