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

DOCKET NUMBER 28-15

ORIGINAL

APPLICATION OF MATADOR PRODUCTION Case 15363  
COMPANY FOR A NON-STANDARD  
SPACING PRORATION UNIT AND  
COMPULSORY POOLING, LEA COUNTY  
NEW MEXICO

TRANSCRIPT OF PROCEEDINGS  
SPECIAL EXAMINER HEARING

September 29, 2015

Santa Fe, New Mexico

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This matter came on for hearing before the New Mexico Oil Conservation Division, PHILLIP GOETZE, P.E.;, GABRIEL WADE, Legal Counsel; and WILL JONES, Chief Engineer, on Tuesday, September 29, 2015, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, Santa Fe, New Mexico.

REPORTED BY: PAUL BACA, CCR #112  
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I N D E X

Opening Statement by Mr. Bruce	6
Opening Statement by Mr. Gallegos	8

APPLICANT'S WITNESSES

WITNESSES:	PAGE:
RUDY H. SIMS, JR.	
Examination by Mr. Bruce	10
Examination by Mr. Gallegos	31
Further Examination by Mr. Bruce	53
JAMES ANDREW JUETT	
Examination by Mr. Bruce	68
Examination by Mr. Gallegos	77
Further Examination by Mr. Bruce	89

I N D E X

APPLICANT'S WITNESSES

3	WITNESSES:	PAGE:
4	AARON MICHAEL BYRD	
5	Examination by Mr. Bruce	101
	Examination by Mr. Gallegos	111
6	Further Examination by Mr. Bruce	125

PROTESTANT'S WITNESS

8	WITNESS:	PAGE:
9	HARVEY E. YATES, JUNIOR	
10	Examination by Mr. Gallegos	134
	Examination by Ms. Arnold	179
11	Examination by Mr. Bruce	206

APPLICANT'S REBUTTAL WITNESS

13	WITNESS's:	
14	AARON MICHAEL BYRD	
15	Examinatin by Mr. Bruce	222
	Examination by Mr. Gallegos	228
16	Closing Statement by Ms. Arnold	230
17	CERTIFICATE OF COURT REPORTER	233

18  
19  
20  
21  
22  
23  
24  
25

1                                    APPLICANT'S EXHIBITS ADMITTED

2	1 - 11	31
3	12-15	77
4	16 and 18	111
5	17	77

6  
7                                    PROTESTANT'S EXHIBITS ADMITTED

8	1-4	178
9	7-9	178
10	14	178

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 LEAD EXAMINER GOETZE: Good morning,  
2 ladies and gentlemen.

3 This is the OCD Docket Number 28-15. It's  
4 a special examiner hearing for Tuesday,  
5 September 29th, 2015, in Porter Hall.

6 We are here to hear the continuance of  
7 Case Number 15363, application of Matador Production  
8 Company for a nonstandard oil spacing and proration  
9 unit and compulsory pooling, Lea County, New Mexico.

10 I call for appearances, please.

11 MR. BRUCE: Mr. Examiner, Jim Bruce, of  
12 Santa Fe, in association with Dana Arnold, of  
13 Matador, representing Matador Production Company.

14 MR. GALLEGOS: Mr. Examiner, Gene  
15 Gallegos, Santa Fe, New Mexico, and I am appearing  
16 for Jalapeno Corporation and Yates Energy.

17 LEAD EXAMINER GOETZE: We'll introduce the  
18 folks in the front also at this point.

19 To my right is Will Jones, who has come  
20 along. He is the engineer, chief engineer.

21 And then Gabriel Wade, to my left, is the  
22 legal counsel.

23 We also summarize that an application, a  
24 motion for dismissal, was submitted by Jalapeno.

25 At this point we have made a decision on

1 that which the director has approved and issued an  
2 order denying that dismissal.

3 So at this point we will continue with  
4 this case.

5 Witnesses?

6 MR. BRUCE: I have four potential  
7 witnesses.

8 LEAD EXAMINER GOETZE: Okay. Four  
9 potential witnesses.

10 And you, sir?

11 MR. GALLEGOS: We have one witness,  
12 Mr. Examiner.

13 LEAD EXAMINER GOETZE: Okay. Well, at  
14 this point we will go ahead and we will have them  
15 sworn in as they are called forward.

16 Opening statements?

17 OPENING STATEMENT

18 BY MR. BRUCE:

19 I think the issues are pretty clear in  
20 this matter, and one of them was the motion to  
21 dismiss that was denied.

22 Another one is good faith efforts to get  
23 the parties to voluntarily join in the well.

24 At this point there's about -- 92 percent  
25 of the interests have voluntarily joined in the well

1 one way or the other.

2 Matador has been trying to get this well  
3 put together for six months. I think you will see  
4 from the land evidence that the massive number of  
5 contacts that Matador has had with the people who  
6 own interests in this well will show that good  
7 faith, the good faith requirement of pooling, has  
8 been met.

9 Another issue that's come up is risk. I  
10 think I would rather hold off on that until I get to  
11 my drilling witness, for the most part. But there's  
12 always risk in drilling a well.

13 Certainly there are drilling risks,  
14 geologic risks. At this point, of course, the issue  
15 of oil prices come up. That's a risk too.

16 They try to -- Jalapeno and Yates is  
17 saying that that risk should be solely on the  
18 operator. I think that's a ridiculous position to  
19 take, and I've never seen that happen before in my  
20 lifetime of dealing with oil and gas poolings and  
21 JOAs.

22 If they don't like the well their remedy  
23 is to not participate, period. Their rights are not  
24 being taken. It's provided for in the statutes, the  
25 pooling statutes, that if they don't like the well

1 they don't have to join in it. They don't have to  
2 pay any money, and they're not at risk.

3 I think what you're looking at here is  
4 what Matador is doing is protecting the correlative  
5 rights of the parties. They are preventing waste,  
6 and I think in the end you will see that this  
7 application should be granted and that the usual  
8 200 percent risk charge be assessed against any  
9 non-consenting interest owners.

10 Thank you.

11 LEAD EXAMINER GOETZE: Mr. Gallegos?

12 MR. GALLEGOS: Yes, Mr. Examiner.

13 OPENING STATEMENT

14 BY MR. GALLEGOS:

15 Let me just point out the issues. I'm not  
16 going to attempt to argue them at this point.

17 But one of the issues is that there has  
18 not been a reasonable good faith effort by Matador  
19 to secure voluntary participation with Jalapeno, and  
20 we will present the evidence on what communications  
21 have been between parties, including the efforts to  
22 obtain information from Matador critical to  
23 decision-making, which has not been supplied.

24 It's also an issue that the AFE put  
25 forward by Matador in this case was compiled in

1 March, and the AFE increased to \$9 million over a  
2 prior AFE involving this well except in the Bone  
3 Springs formation, and that the AFE does not reflect  
4 the current market for expenses in the Permian  
5 Basin, given the oil price reduction and the  
6 reduction in expenses by the service companies.

7 We do challenge the allowance of a risk  
8 penalty in this case almost of any magnitude, and we  
9 will present evidence that demonstrates why a  
10 200 percent risk penalty is inappropriate.

11 I do want to just say for the record,  
12 these are legal issues more than factual issues,  
13 Mr. Examiner. But we do challenge the legal effect  
14 of Order R11992, because that is the order for  
15 the -- you know, the automatic 200 percent risk  
16 penalty. And we think that under the statute under  
17 70-2-17 is -- it's basically unlawful, and we  
18 continue the challenge that was raised by our motion  
19 to dismiss, that there is basically no statutory  
20 authority for these nonstandard spacing units which  
21 seek to combine already existing 40-acre oil spacing  
22 units.

23 Thank you.

24 LEAD EXAMINER GOETZE: Very good.

25 Mr. Bruce, please proceed with your case.

1 (The witness was sworn.)

2 THE WITNESS: My name is Rudy H. Sims, Jr.

3 RUDY H. SIMS, JR.,

4 after having been first duly sworn under oath,

5 was questioned and testified as follows:

6 EXAMINATION

7 BY MR. BRUCE:

8 Q. Mr. Sims, where do you reside?

9 A. I currently reside in Plano, Texas.

10 Q. And who do you work for and in what  
11 capacity?

12 A. I work for MRC Energy Company, an  
13 affiliate of Matador Production Company.

14 I am the operations land manager.

15 Q. Does Matador Production Company operate  
16 wells for MRC entities?

17 A. Yes.

18 Q. And have you previously testified before  
19 the division?

20 A. I have.

21 Q. What are your responsibilities as a  
22 landman at Matador?

23 A. I supervise a team of land professionals  
24 who are primarily charged with getting wells ready  
25 to be drilled.

1           Much of our focus is on obtaining run  
2 sheets and title opinions, acquisition of oil and  
3 gas interests, curing title issues, working with  
4 other companies to try to jointly drill wells.

5           Q.     Could you describe your educational and  
6 employment background for the examiner?

7           A.     I can. I have a BA from the University of  
8 Southern Mississippi, a JD from Mississippi College  
9 School of Law.

10           I've worked in the oil and gas business  
11 for an excess of 35 years in various land roles  
12 around the country.

13           The companies that I've worked for include  
14 Husky Oil Company, Marathon Oil Company, Devon  
15 Energy, Chesapeake Energy, Murchison Oil and Gas,  
16 and Matador.

17           Q.     Do you hold any certifications or belong  
18 to any professional associations?

19           A.     I'm a member of the Mississippi Bar  
20 Association and the American Association of  
21 Professional Landmen.

22           Q.     Does your area of responsibility at MRC or  
23 Matador include this area of Southeast New Mexico?

24           A.     It does.

25           Q.     And are you familiar with the land matters

1 pertaining to the application filed by Matador in  
2 this case?

3 A. I am familiar with it.

4 Q. And are you familiar with the status of  
5 lands which are the subject of this application?

6 A. Yes, I am.

7 MR. BRUCE: Mr. Examiner, I tender  
8 Mr. Sims as an expert petroleum landman.

9 MR. GALLEGOS: No objection.

10 LEAD EXAMINER GOETZE: Very good. He is  
11 so qualified.

12 Q. (By Mr. Bruce) Mr. Sims, could you refer  
13 to Exhibit 1, which is a two-part exhibit, and  
14 explain what Matador seeks in this application?

15 And maybe first turn to page 2 in  
16 Exhibit 1.

17 A. Page 2 of Exhibit 1 is a Form C-102 for  
18 the well. It is the Airstrip 31, 18 south, 35 east,  
19 State Com Number 201H, a horizontal well with a  
20 surface location of 50 feet from the south line,  
21 330 feet from the west line of Section 31.

22 The producing interval will be orthodox,  
23 with the first penetration point 330 feet from the  
24 south line and 330 feet from the west line of  
25 Section 31. The last perforation 330 feet from the

1 north line and 710 feet from the west line of  
2 Section 31.

3 Matador wishes to form an oil spacing and  
4 proration unit comprised of the west half/west half  
5 of Section 31, township 18 south, range 35 east, Lea  
6 County, New Mexico, in order to drill the horizontal  
7 well identified in Exhibit 1.

8 Q. Referring to the first page of Exhibit 1,  
9 can you explain a little bit of the permitting  
10 history of this well?

11 A. Yes, I can.

12 This well was -- there was a well  
13 initially permitted to drill to the Bone Spring  
14 formation by HEYCO.

15 Matador purchased HEYCO through a merger,  
16 and we elected to -- to drill a different interval  
17 in the -- in the Wolfcamp formation. We thought  
18 that was more prospective in that interval.

19 Q. And will Matador's other witnesses discuss  
20 the reason for the change in formation?

21 A. Absolutely.

22 Q. And what is the acreage of the nonstandard  
23 spacing unit?

24 A. It's approximately 154 acres. It's some  
25 lots, so they're not an exact 160 that we're

1 probably more accustomed to.

2 Q. And what pool is the Wolfcamp well in?

3 A. It's in the Airstrip Wolfcamp pool, pool  
4 code 970.

5 MR. BRUCE: And, Mr. Examiner, it is --  
6 it's -- the first page of Exhibit 1 does show the  
7 lots and their acreage, for the record.

8 Q. (By Mr. Bruce) What is the working  
9 interest ownership of the well unit, and who do you  
10 seek to pool?

11 And I refer you to Exhibit 2.

12 A. MRC Permian holds 89.85 percent of the  
13 working interest. We have voluntary joinders of  
14 2.83 percent, and we seek to pool 7.32 percent.

15 And those parties include Yates Energy  
16 Corporation, Jalapeno Corporation, Louis Kadane and  
17 Michael L. Gustafson, trustees of the 4-K Trust, at  
18 the request of Edward G. Kadane, II, former interest  
19 of George Kadane.

20 In addition, Louis Kadane and Michael L.  
21 Gustafson, trustees of the 4-K Trust, at the request  
22 of Matthew D. Kadane, former interest of George  
23 Kadane.

24 And finally, Brent Ray Robertson.

25 Q. Is there a chance that you will reach

1 agreement with other interest owners regarding  
2 joiner in the well?

3 A. We are hopeful. We -- we think we've made  
4 some progress with Yates Energy over the last few  
5 days, and hopefully we can -- we can get that across  
6 the finish line. And we're always eager to bring  
7 everyone aboard.

8 Q. And if additional parties voluntarily join  
9 in the well, will you notify the division?

10 A. Yes, we will.

11 Q. Okay. What is the character of the lands  
12 involved in this case?

13 A. The lands involved are state lands  
14 encompassing two state leases.

15 Q. And is that shown, not only on Exhibit 1,  
16 but on Exhibit 4?

17 A. Yes, it is. It's shown on the Midland map  
18 and also on a tract map that was prepared by  
19 Matador.

20 Q. Okay. One exhibit we skipped over is  
21 Exhibit 3. But that is simply a restatement of the  
22 parties being pooled at this time, is it not?

23 A. That is correct.

24 Q. Okay. What is Exhibit 5?

25 A. Exhibit 5 contains a copy of our proposal

1 letter that was sent to uncommitted working interest  
2 owners.

3 Q. This letter, in particular, is to Billie  
4 Kirby.

5 Were virtually identical letters sent out  
6 to all of the originally uncommitted interest  
7 owners?

8 A. They were.

9 Q. Have you had any other contacts with the  
10 parties you seek to pool?

11 A. Yes, we have.

12 Q. And what is Exhibit 6?

13 A. Exhibit 6 is a summary of the  
14 communication with uncommitted working interest  
15 owners.

16 We also have, as part of Exhibit 6,  
17 several letters and communications that have  
18 occurred between various parties.

19 Q. How long have you been in touch with the  
20 working interest owners to try to obtain voluntary  
21 joinder?

22 A. Since March of 2015.

23 Q. In your opinion, has MRC or Matador made a  
24 good faith effort to obtain the voluntary joiner of  
25 the interest owners in the well?

1           A.       We have been negotiating in good faith  
2 since March, to reach a voluntary joinder with the  
3 uncommitted working interest owners.

4           Q.       Tell me about some of the different  
5 alternatives that you have presented to the interest  
6 owners to get them to join in the well.

7           A.       In our initial proposal, way back in  
8 March, we offered the uncommitted working interest  
9 owners the opportunity to participate in the  
10 drilling of the well. Some of the parties elected  
11 to participate at that time.

12                   We also offered the option of uncommitted  
13 parties assigning all of their net revenue interest  
14 in the proposed contract area for the well to  
15 Matador for \$1,800 an acre.

16                   We -- we did not have anyone elect under  
17 that -- under that provision.

18                   We also offered the parties the option of  
19 assigning all of their interest to Matador retaining  
20 a proportionately reduced override equal to the  
21 positive difference between existing burdens and  
22 25 percent.

23                   Bob Kadane actually elected to do that.

24                   Then we also offered the option of parties  
25 to sell all of their interest in the governmental

1 section, including the existing wellbores.

2 No one elected to do that.

3 Later, we increased our offer to \$5,000  
4 per net acre, delivering a 75 percent net revenue  
5 interest.

6 We had a number of parties -- in fact the  
7 majority of the outstanding working interest  
8 owners -- elected under that offer.

9 As to Jalapeno and Yates Energy, we  
10 offered them the option to participate, sell their  
11 interest at 5,000 an acre, sell to JV that -- my  
12 understanding, that they have either legal or  
13 beneficial interest in that JV that Matador also has  
14 an interest in.

15 They could, of course, be force pooled as  
16 a last resort.

17 And finally, sell down and retain a  
18 certain amount of interest, so they would  
19 participate for part and sell to Matador a part.

20 Q. In today's economic environment, is \$5,000  
21 an acre a fair and reasonable offer?

22 A. Yes, sir, very much so.

23 Q. In your summary of communications, on  
24 June 3, there's a listing for a working interest  
25 owners' meeting.

1           Could you describe that meeting in Dallas  
2 with -- and who was present?

3           A.     Yes, I would be happy to.

4           On June 3, in our offices in Dallas, Fred  
5 Yates, Becky Pemberton, and Mike Stewart represented  
6 Yates Energy.

7           Emmons Yates represented Jalapeno.

8           Including -- representing Matador were Joe  
9 Foran, our CEO, and much of our executive  
10 management, much of our technical and land teams  
11 that work this particular area of New Mexico, and  
12 specifically, those that are entrusted with getting  
13 this particular well ready.

14           Approximately 20 people met with -- with  
15 the representatives of these two companies. And we  
16 were there probably a couple of hours discussing  
17 this particular well.

18          Q.     And what was discussed?

19          A.     Well, the various options that we were  
20 offering them to participate. In fact, there were  
21 even some discussions on additional options, where  
22 the buy-down and they participate for half, were  
23 kind of viewed as an elegant solution to the issue  
24 that we were facing.

25           We were not seeing a whole lot of

1 interest, unfortunately, in what we thought were --  
2 were very good offers to them. And so we were  
3 trying to find some way, somehow, to make this thing  
4 work.

5 Q. Is it usual and customary to have that  
6 sort of meeting with uncommitted working interest  
7 owners?

8 A. It's very unusual. It's especially  
9 unusual to have a CEO of a public company with over  
10 \$2 billion of market cap sit down at a meeting of  
11 this type.

12 Q. Now your Exhibit 6, besides the summary,  
13 contains the -- some other correspondence.

14 But let's concentrate on maybe the last  
15 eight or nine pages of Exhibit 6.

16 There are two letters I would like to have  
17 you discuss.

18 The first letter is a letter dated  
19 August 17, 2015. That's from Jalapeno Corporation  
20 to Matador.

21 And then there's a letter dated August 26,  
22 2015, from MRC to Mr. Harvey Yates at Jalapeno  
23 Corporation.

24 MR. GALLEGOS: I'm sorry, Mr. Bruce.

25 You're on Exhibit 6?

1 MR. BRUCE: Exhibit 6, towards the end of  
2 it.

3 MR. GALLEGOS: Oh, okay.

4 MR. BRUCE: The last eight or nine pages.

5 MR. GALLEGOS: Okay.

6 Q. (By Mr. Bruce) Without going into detail,  
7 can you tell me your takeaway from the letter that  
8 Jalapeno sent on August 17 from Mr. Yates?

9 When you read it, what was your  
10 impression?

11 A. I personally was shocked by the tenor of  
12 the letter, the allegations that -- that Matador did  
13 not make a good faith effort to negotiate. It just  
14 simply didn't comport with the facts.

15 Q. If you were not related to -- not employed  
16 by Matador, not involved in this situation, and you  
17 had no knowledge of the surrounding circumstances  
18 regarding this well and this proceeding, what would  
19 you think if you read this letter?

20 MR. GALLEGOS: I object to the relevancy  
21 of that.

22 LEAD EXAMINER GOETZE: Are you trying to  
23 give an opinion with regard to -- let's clarify  
24 that.

25 What are you after?

1 MR. BRUCE: Well, that's a very short  
2 answer.

3 Q. (By Mr. Bruce) But, Mr. Sims, if you --  
4 reading this letter, if you had no knowledge of  
5 prior discussions between the parties, what would  
6 you think had occurred between Jalapeno and Matador  
7 up to that point?

8 A. From this letter, you would think that we  
9 had not made any contact at all and had not made  
10 anything -- any reasonable effort to work out a deal  
11 with these two companies.

12 Q. Then if you would move forward to the  
13 Matador letter, the final letter in the Exhibit 6  
14 package.

15 A. (Witness complies.)

16 Q. Could you -- does this letter summarize  
17 the efforts the people at Matador made to get a deal  
18 done with Jalapeno?

19 A. Yes, it does.

20 Q. And again, in the last six months, has  
21 Matador made a good faith effort to reach voluntary  
22 agreement with not only Jalapeno, but with all of  
23 the interest owners in the well?

24 A. We have made Herculean efforts to reach an  
25 agreement with every uncommitted working interest

1 owner.

2 Q. And again, other parties have accepted the  
3 terms offered by Matador related to the well, have  
4 they not?

5 A. Yes, indeed, they have.

6 Q. Does MRC or Matador request the maximum  
7 cost plus 200 percent risk charge if a working  
8 interest owner goes nonconsent in the well?

9 A. Yes, we do.

10 Q. Mr. Sims, how long have you been -- you  
11 said you've been in the business now 35 years?

12 A. Over 35 years, yes, sir.

13 Q. And as part of your work for the various  
14 companies, have you been negotiating JOAs?

15 A. Yes, I have.

16 Q. And over the course of that time, how many  
17 JOAs have you negotiated?

18 A. Well over 2,000.

19 Q. Were those JOAs for horizontal  
20 development?

21 A. They were for both.

22 Q. Vertical and horizontal wells?

23 A. Correct.

24 Q. Have those JOAs ever been in areas where  
25 there was existing production?

1 A. Yes, indeed.

2 Q. And were you -- in your negotiations with  
3 JOAs, were you both an operator and a non-operator?

4 A. Yes, I was.

5 Q. And what nonconsent penalty is common in  
6 those JOAs?

7 A. We typically see 100/300 percent  
8 nonconsent penalty. I think that's probably the  
9 most prevalent.

10 But you also -- you also see a number of  
11 different versions of that.

12 In fact, as I -- I was sitting on the  
13 other side of the table from -- from Matador back in  
14 2008 working for Chesapeake. And the play of the  
15 day back then was the Haynesville Shale in and  
16 around Shreveport.

17 Chesapeake acquired a 75 percent interest  
18 in a fairly sizable position that Matador had.

19 The JOA in that case had a  
20 200 percent/400 percent nonconsent penalty.

21 So we do see a lot of different versions  
22 of that.

23 Q. If Matador was a non-operator in this  
24 well, would it sign a JOA with a 300 percent  
25 nonconsent penalty, cost plus 200 percent?

1 A. We would.

2 Q. From a land standpoint, is a risk charge  
3 of cost plus 200 percent justified in this case?

4 A. It is.

5 Q. In your experience of over 35 years  
6 working in the oil and gas business, has the price  
7 of oil and gas been constant?

8 A. No, it has not.

9 Q. You've been in the business about the same  
10 length of time as me. There's been at least a half  
11 a dozen major downturns in the industry over that  
12 period?

13 A. There have been a number of downturns.  
14 Price -- I remember \$9 oil a couple of times. So  
15 yes, there's -- there's a lot of variability with  
16 respect to the price of oil and gas.

17 Q. In negotiating JOAs have you ever seen a  
18 provision in the JOA, where prices are low, all the  
19 risk is on the operator?

20 A. Could you repeat that?

21 Q. Have you ever seen a JOA provision where,  
22 if oil prices when you start drilling are \$9 a  
23 barrel, that any risk involved in drilling the well  
24 is only on the operator and not on the  
25 non-operators?

1 A. No, sir. I've never heard of such.

2 Q. Okay. Have you ever seen a provision in a  
3 JOA where, if prices decline, the participating  
4 working interest owners would get a new election in  
5 oil?

6 A. No, sir. I haven't seen that either.

7 Q. And vice versa. What about if prices go  
8 up? Should non-consenting working interest owners  
9 get a new election in the well?

10 A. I don't think so, sir.

11 Q. You said you've worked in several states,  
12 correct?

13 A. I have.

14 Q. What sort of risk charges have you seen in  
15 compulsory pooling cases in other states?

16 A. Well, in those states that have a risk  
17 premium mechanism like New Mexico, you typically do  
18 see cost plus 200 percent.

19 And that's the -- that's the case in  
20 North Dakota, Colorado, Louisiana.

21 You'll find some states, like Wyoming, it  
22 can be up to 300 percent there, and even higher in  
23 Idaho.

24 Mississippi has an alternative election  
25 that you can wipe at 250 percent.

1 I think Alabama you can have a percentage  
2 that's a little higher than 250, or around the 300  
3 range.

4 So 200 plus cost is very common, and a  
5 higher number of cases as well.

6 Q. Does -- moving forward a little bit.

7 What is Exhibit 11, Mr. Sims?

8 A. Exhibit 11 is the AFE for the well.

9 Q. And what are the costs set forth in that  
10 AFE?

11 A. The dry hole costs are 5.376 million.  
12 And the completed well cost is 9,099,000.  
13 Those are approximations.

14 Q. Are those costs in line with the cost of  
15 other horizontal wells drilled to this depth in this  
16 area of New Mexico?

17 A. Yes, they are.

18 Q. Have these costs come down since the  
19 March proposal?

20 A. Yes.

21 Q. Will a subsequent witness discuss the well  
22 costs?

23 A. Yes.

24 Q. Have other parties agreed to participate  
25 in the well based on the -- this AFE and the

1 March proposal letter?

2 A. Yes.

3 Q. And once that pooling order is issued,  
4 will an updated AFE be provided to all of the  
5 non-con- -- the working interest owners who have not  
6 yet consented to the well?

7 A. Absolutely.

8 Q. Who do you request be appointed the  
9 operator of the well?

10 A. Matador Production Company.

11 Q. And do you have a recommendation for the  
12 amounts which Matador should be paid for supervision  
13 and administrative expenses?

14 A. I do.

15 Q. What are they?

16 A. 7,000 per month for a drilling well, and  
17 700 per month for a producing well.

18 Q. And are those amounts equivalent to those  
19 normally charged by Matador and other operators in  
20 this area for horizontal wells of this depth?

21 A. Yes, they are.

22 Q. Are those the rates that is -- that are in  
23 the JOA for the well?

24 A. Yes.

25 Q. Do you request that the overhead rates be

1 adjusted periodically as provided by the COPAS  
2 accounting procedure?

3 A. We do.

4 Q. Were the parties being pooled notified of  
5 this hearing?

6 A. Yes, they were.

7 Q. And is that reflected in my affidavit of  
8 notice marked as Exhibit 7?

9 A. It is.

10 Q. And what is Exhibit 8?

11 A. Exhibit 8 is a list of offset operators,  
12 or working interest owners, to the unit.

13 Q. And were those persons notified of this  
14 hearing?

15 A. Yes, they were.

16 Q. And is that reflected in my affidavit of  
17 notice marked as Exhibit 9?

18 A. It is.

19 Q. And was notice of this application  
20 published as to certain interest owners to be sure  
21 that they received notice?

22 A. Yes.

23 Q. And is that marked Exhibit 10?

24 A. Yes, it is.

25 MR. BRUCE: Mr. Examiner, two things, both

1 with respect to -- let's go to Exhibit 7.

2 The very last page of Exhibit 7, with  
3 respect to Edward Kadane and Matthew Kadane, the  
4 postal service website shows this was delivered.  
5 But in two months I've never gotten the green card  
6 back.

7 And in Exhibit 9, which is the notice to  
8 offsets, the same thing with respect to one of the  
9 offsets, KC Resources.

10 The postal service shows it was delivered,  
11 but they never delivered the green card back to me,  
12 the third page from the back of Exhibit 9.

13 But notice was published as to those  
14 parties, and that is shown on Exhibit 10. I believe  
15 they received actual notice, but they did also --  
16 notice was published as against them.

17 I don't know how to disgorge those green  
18 cards from the postal service.

19 Q. (By Mr. Bruce) Mr. Sims, were Exhibits 1  
20 through 11 prepared by you or under your supervision  
21 or compiled from company business records?

22 A. They are.

23 Q. And in your opinion, is the granting of  
24 this application in the interest of conservation and  
25 the prevention of waste?

1 A. Yes, it is.

2 MR. BRUCE: Mr. Examiner, I would move the  
3 admission of Matador Exhibits 1 through 11.

4 MR. GALLEGOS: No objection.

5 LEAD EXAMINER GOETZE: No objections?  
6 Very good.

7 Exhibits 1 through 11 are so entered.

8 MR. BRUCE: I pass witness.

9 LEAD EXAMINER GOETZE: Your witness,  
10 Mr. Gallegos.

11 EXAMINATION

12 BY MR. GALLEGOS:

13 Q. Mr. Sims, let's just take one moment for  
14 Exhibit 11. That's the AFE.

15 A. Yes, sir.

16 Q. Is it your testimony that in respect to  
17 any details concerning the -- this AFE and any  
18 modifications of it, you are not the witness to  
19 address that?

20 A. That is correct.

21 Q. Okay. And that will be who? Who will be  
22 the witness?

23 A. One of the subsequent witnesses of Matador  
24 will address that.

25 Q. All right.

1 MR. BRUCE: Mr. Gallegos, his name is  
2 Aaron Byrd.

3 MR. GALLEGOS: Okay. Thank you.

4 Q. (By Mr. Gallegos) On the matter of the  
5 risk penalty, Mr. Sims, do I understand your  
6 testimony that you have stated that the 200 percent  
7 risk penalty is common in the industry, and that you  
8 frequently see a 300 percent risk penalty in JOAs in  
9 the industry?

10 A. I did not say a 200 percent risk penalty  
11 is common in a JOA.

12 Q. Okay. Well, what is your testimony in  
13 that regard?

14 A. My testimony is a 100/300 percent  
15 nonconsent penalty is common in JOAs.

16 Q. Okay. Meaning what, then? The cost of  
17 the well is the 100 percent, and then three times  
18 the cost of the well would be the 300 percent risk  
19 penalty?

20 A. Well, the -- the 100 percent covers some  
21 of the tangible costs. The 300 percent covers the  
22 intangible costs. The vast majority of the costs  
23 are going to come in under 300.

24 So basically, you're getting  
25 100 percent -- you're getting your cost back and

1 200 percent.

2 Q. So when you refer to a 300 percent  
3 penalty, as far as the intangible costs are  
4 concerned, the nonconsent party would pay three  
5 times that cost?

6 A. Repeat your question, please.

7 Q. Well, I'm trying to clarify what you're  
8 telling -- what you're telling the division.

9 A. I'm telling --

10 Q. What happens in terms of recovery of cost  
11 by the operator of a non-consenting working interest  
12 owner when there is a 300 percent penalty?

13 A. Okay. In the case of a JOA with a  
14 nonconsent 300 percent penalty, the -- the operator  
15 recovers its cost plus 200 percent.

16 Q. Okay. Recovers its cost three times?

17 A. Correct.

18 Q. All right. And you -- you agree, do you  
19 not, that the terms of JOAs are matters of  
20 negotiation, like any other contract? In other  
21 words, if the parties are addressing the terms of a  
22 JOA, they can negotiate the terms including the risk  
23 penalty.

24 Do you agree?

25 A. My experience, in having been responsible

1 for negotiations of over 2,000 in my career, I have  
2 not seen a single instance where the nonconsent  
3 penalty was less than the 100/300.

4 To answer your question, it is a voluntary  
5 document between parties, and it can be negotiated.  
6 But we operate in this business under custom and  
7 practice. And the custom and practice is not what  
8 you're saying.

9 Q. The custom and practice is not to  
10 negotiate?

11 A. The custom and practice is not to  
12 negotiate below 100/300. That is not custom and  
13 practice.

14 Q. And if an operator such as Matador can  
15 come before the division with a forced pooling  
16 application, there is no need to agree to anything  
17 less than a 200 percent -- 100 percent/200 percent  
18 penalty, because that's going to be imposed by order  
19 of the commission.

20 Isn't that the circumstance?

21 A. The commission does set the penalty cost  
22 plus 200 percent, or whatever they -- they set.

23 If that's -- I hope I answered your  
24 question.

25 Q. Okay. Well, I would say in the case of

1 communications with a potential non-consenting  
2 party, Matador knows that if it comes before the  
3 commission it's going to receive the 200 percent  
4 risk penalty?

5 A. We don't necessarily know that until they  
6 grant that.

7 Q. Okay. All right.

8 So the -- the other factor that you  
9 testified to is that you've seen that there are some  
10 other states, and they -- their law, their statutes,  
11 allow for up to a 200 percent risk penalty?

12 A. Yes.

13 Q. Is that your testimony?

14 A. That is my testimony.

15 Q. And then the other subject matter you  
16 addressed on the question of risk penalty was price  
17 risk.

18 Could you explain what you mean by that?

19 A. That I mean by price risk?

20 Q. Yes. I mean, I assume your testimony  
21 about price risk had something to do with assessment  
22 of a risk penalty for non-consenting owners, or am I  
23 mistaken?

24 It had nothing to do with that?

25 A. Well, obviously, a change in the price of

1 the commodity of oil or gas does have an effect  
2 on -- in a component of risk.

3 Q. Well, that's what I'm asking you to  
4 explain.

5 And maybe -- again, if -- if oil prices  
6 are \$90 a barrel as opposed to \$40 a barrel, then is  
7 that the price risk that you're talking about?

8 A. Well, I think no matter where you are in  
9 the -- in the continuum of what the price is, if  
10 price goes down it affects your economics. If price  
11 goes up it, arguably, enhances your economics.

12 Q. What does that have to do with the risk  
13 penalty for a non-consenting owner?

14 A. I'm trying to answer your question, sir.

15 Q. No, but I'm asking you.

16 What does that have to do with the risk  
17 penalty for a non-consenting owner?

18 A. There is a risk component related to the  
19 price of crude. That is my answer.

20 Q. And if prices of oil are \$40 a barrel and  
21 it's not economic, then the operator doesn't drill  
22 the well, does it?

23 A. I think every operator has a risk profile  
24 that they've got to deal with. And I would -- I  
25 would say that in -- that's probably -- as a

1   generality, that's probably true. We would not  
2   drill the well if it is uneconomic to you unless  
3   there are other circumstances.

4       Q.     Does it make a difference if the operator  
5   has financial arrangements, hedges, so that it's  
6   receiving \$70 a barrel, but the parties who it's  
7   seeking to have participate are going to receive \$40  
8   a barrel?

9       A.     Is this a hypothetical that you're asking?

10      Q.     Yes. I'm trying to understand how --  
11   how -- if price risks fit into the risk penalty, if  
12   it does.

13      A.     Obviously, if there's a -- an operator  
14   that's hedged crude, then that would be a factor  
15   that would affect the economics of the project as to  
16   that operator.

17      Q.     Well, does it also affect the economics of  
18   the other working interest owners who might wish to  
19   participate or decline to participate?

20      A.     Well, it would be -- other working  
21   interest owners would likewise have had the same  
22   opportunity to hedge production.

23      Q.     And you think that's common, that the  
24   working interest owners, like -- you know, like  
25   these Gustafson trusts, for example, you don't

1 really -- you don't really contend, Mr. Sims, that  
2 they're -- that they're hedging their oil prices,  
3 are you?

4 A. I don't even know who they are, other than  
5 their names.

6 Q. Well, is there -- besides what you've told  
7 us now, is there anything else that you present to  
8 the division in support of the applications -- in  
9 support of the applicant's request for a 200 percent  
10 risk penalty?

11 A. I think the support of the risk penalty  
12 will come in witnesses that follow me.

13 Q. I see. So that -- that covers what you  
14 have to say about it?

15 A. It does.

16 Q. Okay. You were asked if you would present  
17 to the examiner the well permitting history.

18 Do you remember that question?

19 A. Why don't you ask me specifically.

20 Q. Well, are you -- are you the witness for  
21 Matador to tell the examiner about the well  
22 permitting history of the -- of this Airstrip well?

23 A. Well, I can tell you that there was a well  
24 permitted by HEYCO for Bone Springs, a Bone Spring  
25 well.

1           And once the merger occurred, I can tell  
2    you that Matador chose not to drill that well.

3           And then we subsequently permitted the  
4    Airstrip Wolfcamp well that we're talking about  
5    today.

6           Q.     I didn't see in your exhibits a permit for  
7    the Airstrip Wolfcamp well.

8           Why don't you -- do you have -- can you  
9    provide the APD for -- for a Wolfcamp 201H well?

10          MS. ARNOLD:  If I may, Commissioner.  The  
11    permit that he's discussing is of public record.  
12    It's filed with the OCD.

13          Typically we only include the C-102, but  
14    we would be happy to provide the permit that he's  
15    discussing.

16          Q.     (By Mr. Gallegos)  Okay.  Well, Mr. Sims,  
17    there's a white notebook -- it should be on the  
18    exhibit stand there.

19          Would you flip to Exhibit 14?

20          A.     (Witness complies.)

21          LEAD EXAMINER GOETZE:  And for the record,  
22    this is exhibits of Jalapeno and Yates Energy  
23    Corporation?

24          MR. GALLEGOS:  Yes, Mr. Examiner.  Thank  
25    you.

1 Q. (By Mr. Gallegos) Is the first page,  
2 Mr. Sims, a Form C-101 application for permit to  
3 drill?

4 A. Yes.

5 Q. Okay. And is this a permit for drilling a  
6 Bone Springs well?

7 A. It is a permit to drill a third Bone  
8 Spring well.

9 Q. Okay. And if you will flip through here,  
10 does it -- does the form include information on the  
11 point of diversion that -- the TVD for the well?

12 A. What page are you on, sir?

13 Q. It's the third page.

14 A. And your question again?

15 Q. Does this give information on the point of  
16 diversion, the TVD, where you go from vertical to  
17 horizontal?

18 A. It appears to.

19 Q. Okay. Does it look like that's at --  
20 10,510 would be the depth we're talking about?

21 MR. BRUCE: I'd object to this. I mean,  
22 the permit says what it is. It's for a well that's  
23 not being drilled. I fail to see the relevance.

24 LEAD EXAMINER GOETZE: Where are we going  
25 with this line of questioning?

1 MR. GALLEGOS: Well, the line of  
2 questioning is the absence of a permit for the  
3 Wolfcamp well.

4 All we have is a permit and the  
5 information well plan and other information  
6 necessary to present to the division for the  
7 Wolfcamp well.

8 Q. (By Mr. Gallegos) Let me ask you to flip  
9 through these pages, Mr. Sims, and see if you can  
10 find, at the next-to-the-last page, a C-103 which is  
11 approved by the division on May 21, 2015.

12 A. (Witness complies.)

13 Q. Do you find that? Do you find that page  
14 of Exhibit 14?

15 A. Yes, I do.

16 Q. All right. And are you familiar with the  
17 form which is called -- referred to as the sundry  
18 notice?

19 A. Yes.

20 Q. And does that have, in print sort of in  
21 the open space there:

22 "Note: Change of formation being  
23 Airstrip; Wolfcamp 970, see attached C-102."

24 A. I see those words.

25 Q. All right. Do you know if there is

1 anything else provided to the division other than  
2 this, such as a directional plan for this Wolfcamp  
3 well?

4 A. I'm not the right witness for that. I do  
5 not know.

6 Q. Well, you were asked whether you would be  
7 able to provide the permitting history, and that's  
8 what I'm asking you about.

9 What has been presented to the division  
10 other than what we have here?

11 A. My understanding is we have a permit to  
12 drill this Wolfcamp well.

13 Q. And it's a permit other than the permit  
14 for what was a Bone Springs well?

15 A. It is a different permit, yes, sir.

16 Q. Okay. And that will be provided by some  
17 other witness.

18 Is that your understanding?

19 A. They will be prepared to discuss the  
20 permit.

21 Q. I see. Okay.

22 Let's go back to your exhibits.

23 And Exhibit 2, is this your exhibit that  
24 shows the 7.3 percent ownerships, various ownerships  
25 of parties that you are asking the division to force

1 pool?

2 A. Yes. Exhibit 2 of Matador's exhibits sets  
3 out 7.32 percent that we are asking the division to  
4 compulsory pool.

5 Q. What has Matador done in regard to these  
6 Gustafason trustees, other than send them a well  
7 proposal and an AFE?

8 A. We -- you may recall that we had one  
9 party, that was a Kadane, who did elect under one of  
10 our options. We had discussions with that  
11 individual about the family members.

12 And I believe also, we did send either an  
13 e-mail or make additional contact, and these people  
14 would not communicate with us.

15 Q. What would be their share, in dollar  
16 amount, of this \$9 million well?

17 A. Are you referring to all of these parties  
18 below?

19 Q. I'm referring to the two trusts.

20 A. The two trusts?

21 It looks like it's about -- it's a very  
22 small percentage, sir. I --

23 Q. I was asking about dollar amount, what it  
24 would mean to these people, trustees, if they  
25 were...

1           A.     I don't know. I am not familiar with the  
2 trust.

3           Q.     No. You're familiar with \$9 million and  
4 their percentage of interest, are you not?

5           A.     Yes, I am.

6           Q.     So that's the question.

7           A.     I do not follow your question.

8           Q.     The question is: In dollar amount, what  
9 would it be required of these parties to participate  
10 in this well?

11          A.     They would have to pay their pro rata  
12 part, whatever the amount is, of the percentage of  
13 that well.

14          Q.     Or --

15          A.     Or they would --

16          Q.     Or engage an attorney to protest the  
17 proceeding?

18          A.     Or engage with us so we can try to do a  
19 deal with them.

20          Q.     I probably missed it, but if you will turn  
21 to your Exhibit 9.

22          A.     (Witness complies.)

23          Q.     I didn't see anything there that referred  
24 to attempts to work out a deal with the Gustafason  
25 trusts.

1 MR. BRUCE: Excuse me.

2 Do you mean Exhibit 6?

3 MR. GALLEGOS: Did I say 9? I was upside  
4 down. 6. I was looking at the back side of the  
5 tab.

6 Q. (By Mr. Gallegos) I'm sorry, Mr. Sims. I  
7 meant to refer to Exhibit 6.

8 A. So you're in Exhibit 6 now?

9 Q. Yes, sir.

10 A. Okay.

11 Q. So in March of 2015, you sent out the  
12 proposal?

13 A. That is correct.

14 Q. And then as I understand, the rest of this  
15 summary was presented for purposes of informing the  
16 division of what had gone on in terms of seeking  
17 voluntary agreement with these working interest  
18 owners?

19 A. Correct.

20 Q. I -- do we understand that you did nothing  
21 in terms of those trusts, other than send out the  
22 proposal? Because I see nothing on here that refers  
23 to that, unless I missed it.

24 A. We had discussions with Mr. Bob Kadane.

25 Q. Okay. And what -- can you tell us, what

1 was the contents of those discussions?

2 A. To encourage him to get the trust to  
3 respond to our letter.

4 Q. And what happened?

5 A. We received no response.

6 Q. Now, let's turn to Jalapeno.

7 Again in our exhibit book -- it's the  
8 white notebook, Mr. Sims.

9 Turn your attention to Exhibit 4, please.

10 A. I'm ready.

11 Q. Okay. This is a letter from Harvey Yates,  
12 Junior, to Melissa Randall, land manager.

13 Is she part of your division or group at  
14 Matador?

15 A. She is an employee of Matador, correct.

16 Q. Okay. And did Mr. Yates present an  
17 alternative or a counterproposal to the proposal  
18 that was sent out in March to all the working  
19 interest owners?

20 A. Mr. Yates did send a letter where he  
21 suggested various options on how to proceed.

22 Q. Okay. And he closed the letter by saying:

23 "We would agree to sell MRC a one-year  
24 term lease covering our interest in the Wolfcamp  
25 underlying the spacing unit for \$5,000 per net acre.

1 We would receive an ORR equal to the difference  
2 between 25 percent in the existing burdens.

3 "If you are interested in this, please let  
4 us know."

5 Wasn't that a fair and reasonable  
6 proposal, Mr. Sims?

7 A. It is not the entire entirety of the  
8 offer.

9 Q. Well, did the offer also complain about  
10 the risk penalty in the proposed joint operating  
11 agreement?

12 A. That is correct.

13 Q. Okay. And Matador was not willing to  
14 budge 1 percent on the risk penalty, was it?

15 A. We are not, and were not, willing to  
16 accept something that does not represent custom and  
17 practice in our industry.

18 Q. Okay.

19 A. So we would not go below a 100/300 percent  
20 nonconsent penalty in the JOA.

21 Q. And that's because it's custom and  
22 practice in the industry?

23 A. It is absolutely custom and practice.

24 Q. Thank you, sir.

25 Did Mr. Yates also raise some questions

1 about why the well cost had moved from 7 million to  
2 9 million?

3 A. Yes, he did.

4 Q. Was he provided any information in that  
5 regard?

6 A. I think the \$7 million cost was for a Bone  
7 Spring well. And obviously, when you're going  
8 deeper and you may need another string of pipe or  
9 something -- and our other witnesses can testify to  
10 this better than I can. Clearly, costs will  
11 increase as you drill deeper.

12 Q. How much deeper -- and that's why I was  
13 asking before about the -- about the deviation.

14 What was the difference in deviation depth  
15 between the Bone Springs and this Wolfcamp well?

16 A. I'm not your right witness.

17 Q. Well, let's say -- let's say it's  
18 300 feet. Do you think that's -- that adds  
19 \$1.8 million to the well cost?

20 A. I'm not going to speculate. I have no  
21 knowledge.

22 Q. All right. So in terms of Mr. Yates'  
23 proposal of 5,000 an acre, the proportionately  
24 reduced override, Matador was not willing to give  
25 one inch or one percent concerning the risk penalty.

1           Isn't that the circumstance?

2           A.     Well, the circumstance is that Jalapeno  
3 was not willing to give one inch.

4           Q.     By not accepting what Matador requires as  
5 the risk penalty?

6           A.     Superimposed in every communication is, I  
7 will not do this. I -- how many times -- and I can  
8 point to it in various letters -- where Mr. Yates  
9 indicates, I'm not going to accept anything with a  
10 risk -- to any JOA with a risk penalty of 100/300.

11          Q.     Is it accurate to say that was the single  
12 condition that stood in the way of reaching  
13 voluntary agreement?

14          A.     Well, there were a lot of various side  
15 issues. But clearly, this was a major stumbling  
16 block between the two parties.

17          Q.     Now, you referred to a -- I think you said  
18 a June 3, 2015, meeting.

19          A.     I did.

20          Q.     Was not this forced pooling application  
21 proceeding already underway?

22          A.     I don't recall exactly when we started  
23 that process. I -- to my knowledge, it was not. We  
24 had not filed anything by that point.

25          Q.     Was it -- was it said by Mr. Foran, or

1 anybody else who was representing Matador at that  
2 meeting, that we are -- we expect to or plan to file  
3 an application with the New Mexico Oil Conservation  
4 Division to force pool your interests?

5 A. As I've mentioned, there were I believe,  
6 like, five different options made available to them,  
7 and one of those options was a forced pool. It is  
8 one of the tools that we use in this industry to get  
9 wells drilled when we can't get voluntary joinder.

10 And so Mr. Foran would have listed the  
11 five or so options made available.

12 And I don't recall precisely the wording  
13 that he would have used, but I would agree that the  
14 words of forced pool were probably used in some  
15 context.

16 Q. And I -- and I appreciate that your answer  
17 might be an estimate, not specific.

18 But how many horizontal wells has Matador  
19 drilled in the Permian Basin of Southeast  
20 New Mexico?

21 A. Well, you know, I don't want to guess.  
22 I've been an employee for about six months, and  
23 there were a number of wells drilled before I  
24 started with Matador, so I really wouldn't be aware  
25 of that number.

1           So I'm not going to give you some  
2 inaccurate information.

3           Q.     Well, to your knowledge, in any of those  
4 wells has there been a voluntary agreement between  
5 Matador's operator and nonoperating working interest  
6 owners in regard to a negotiated percent of a risk  
7 penalty?

8           A.     A negotiated percent of a risk penalty?

9                     Now, explain. Are you referring to a risk  
10 penalty under a forced pooling or under a JOA  
11 nonconsent?

12          Q.     I'm starting with a JOA and just asking  
13 you: Has there been a situation where Matador said,  
14 Okay. We want to work with you so we'll -- we'll  
15 give, and we won't require the  
16 100 percent/300 percent in order to have agreement.

17                     Has there been any instance of that sort  
18 that you can tell us?

19          A.     And as I said, custom and practice in our  
20 industry is for a 100/300 percent nonconsent  
21 penalty.

22                     That is the penalty that Devon uses.  
23 That's the penalty that Cimarex uses. That's the  
24 penalty that virtually all oil and gas companies  
25 use.

1           If not that, it is more.

2           Q.     I guess I'm not making my question clear.  
3     You've told us that.

4           I understand you're -- you're land  
5     manager?

6           A.     Operations land manager.

7           Q.     Operations land manager. Which means, I  
8     guess, several other landmen work under your  
9     supervision?

10          A.     That would be correct.

11          Q.     You head the department. Is that the  
12     status?

13          A.     I have a vice president of land that I  
14     report to.

15          Q.     Okay. So, Mr. Sims, to make my question  
16     as clear as possible, I'm not asking about custom  
17     and practice.

18                 I am asking if you can tell us if there  
19     has been any occasion in which Matador has agreed to  
20     a lesser nonconsent risk penalty with a nonoperating  
21     working interest owner in order to arrive at  
22     agreement?

23          A.     I don't recall, other than this particular  
24     instance here, where anyone has asked for something  
25     less than what is custom and practice.

1 Q. And in the case of any forced pooling  
2 applications, do you know of any instance in which  
3 Matador has achieved other than the 200 percent risk  
4 penalty -- other than the 200 percent risk penalty?

5 A. Not to my knowledge. I'm not aware of  
6 that.

7 Q. Okay.

8 MR. GALLEGOS: That's all the questions  
9 that I have. Thank you, Mr. Sims.

10 FURTHER EXAMINATION

11 BY MR. BRUCE:

12 Q. First to clarify, so that there's no  
13 question, when you're talking about forced pooling,  
14 you're talking about cost plus 200 percent --

15 A. Correct.

16 Q. -- on the risk charge.

17 That is equivalent to a JOA 300 percent  
18 nonconsent?

19 A. Roughly, it would.

20 Q. And Mr. Gallegos asked you about the  
21 Kadane trust.

22 I think your answer was they never  
23 responded to you.

24 A. That is correct.

25 Q. It's hard to negotiate with someone who

1 won't respond to you?

2 A. It's difficult.

3 Q. And when you were being questioned  
4 about -- about Matador using -- you know, raising  
5 the issue of forced pooling, Matador would prefer to  
6 have everybody voluntarily join in the well one way  
7 or the other, would it not?

8 A. Yes, absolutely.

9 Q. And not pay me?

10 A. Yes. Especially not pay you.

11 Q. But in looking at the proposal letters --  
12 (Discussion off the record.)

13 Q. (By Mr. Bruce) But originally, other than  
14 the Matador entities there were, it looks like,  
15 20-plus uncommitted working interest owners?

16 A. Correct.

17 Q. And now there's five, I believe. So you  
18 have --

19 MR. GALLEGOS: I have to object. This is  
20 not proper redirect. This is just starting the case  
21 over. We've gone through that.

22 LEAD EXAMINER GOETZE: Well, I'll give  
23 Mr. Bruce the opportunity to highlight those, and  
24 we'll continue to move on.

25 MR. BRUCE: This is the last question.

1 Q. (By Mr. Bruce) You went from 20 to over  
2 5. It shows that Matador wanted to negotiate with  
3 the parties?

4 A. Absolutely. We -- we did everything we  
5 could do, reasonably do, with all of these  
6 uncommitted owners to get them rounded up and  
7 perhaps make some kind of a deal that we could live  
8 with.

9 MR. BRUCE: Thank you.

10 That's all I have, Mr. Examiner.

11 LEAD EXAMINER GOETZE: Let's take a break.  
12 We'll let you have -- let's come back at 10:30 and  
13 we'll start up again.

14 (A recess was taken from 10:14 a.m. to  
15 10:31 a.m.)

16 LEAD EXAMINER GOETZE: We are back on the  
17 record, and we will continue with the questions for  
18 this witness.

19 Mr. Wade?

20 MR. WADE: I do not have any questions at  
21 this time.

22 LEAD EXAMINER GOETZE: Very good.

23 Mr. Jones?

24 MR. JONES: Mr. Sims, is there a -- can  
25 you explain the relationship between MRC and

1 Matador? It was talked about before already.

2 But who's making the application in this  
3 case? Is it MRC or is it Matador?

4 THE WITNESS: It's -- Matador Production  
5 Company is the operator of the well.

6 MR. JONES: Are they the applicant in the  
7 case?

8 MR. BRUCE: They are, Mr. Examiner.

9 MR. JONES: Okay.

10 MR. BRUCE: It's on the application.

11 MR. JONES: Okay. All right.

12 I was kind of brought in late here. I  
13 have it in front of me.

14 Do you -- these are two state leases.

15 Is that correct?

16 THE WITNESS: That is correct.

17 MR. JONES: It looks like they are older  
18 leases. They are one-eighth royalty?

19 THE WITNESS: Yes. I believe that is the  
20 case.

21 MR. JONES: And they've got several  
22 assignments. This is like numerous assignments down  
23 the line?

24 THE WITNESS: Right.

25 MR. JONES: Do you know the history of

1 them?

2 THE WITNESS: I'm not personally familiar  
3 with the history of the -- the assignments that have  
4 occurred over time.

5 Obviously we have recently acquired some  
6 of these interests, as we've tried to get this thing  
7 ready for drill.

8 MR. JONES: So you're pooling only working  
9 interests, and you're pooling only working interests  
10 that can be located, even though you didn't get some  
11 green cards back?

12 MR. BRUCE: I think Mr. Sims could answer  
13 this, Mr. Examiner.

14 But I think everybody was locateable. As  
15 I said with respect to the notice exhibits, I did  
16 not get one green card back from one interest owner.  
17 But the post office records show that it was  
18 delivered. The green card disappeared somewhere  
19 along the way.

20 MR. JONES: And as far as notifying the  
21 people around them, you didn't get one back from  
22 them either?

23 THE WITNESS: Correct.

24 MR. JONES: Okay. So -- but that was  
25 posted in the newspaper, those names?

1 MR. BRUCE: Those names are in the  
2 affidavit of publication.

3 MR. JONES: Okay.

4 So as an attorney, did you do the opinion  
5 on this 154-acre --

6 THE WITNESS: No, sir.

7 MR. JONES: You farm that out --

8 THE WITNESS: We have outside --

9 MR. JONES: -- outside --

10 THE WITNESS: -- attorneys that do that,  
11 yes.

12 MR. JONES: And the JOA that -- is that --  
13 you use -- pretty much use the standard JOA for  
14 New Mexico or...

15 THE WITNESS: We typically use the 1989  
16 version of the form JOA that's put out by the  
17 American Association of Professional Landmen.

18 MR. JONES: Okay. It hasn't changed much  
19 over the years?

20 THE WITNESS: It -- you know, there have  
21 been four or five different versions of the JOA. In  
22 fact, I believe they're working on a newer version  
23 as we speak.

24 Most companies will also add some changes  
25 or modifications to the form to fit circumstances.

1           For example, with horizontal drilling, a  
2 lot of the form doesn't work real well, so we try to  
3 make it work a little better.

4           MR. JONES: So this is all happening since  
5 March of this year.

6           Is that correct?

7           THE WITNESS: Yes, that is correct.

8           MR. JONES: Because that is when you took  
9 it over from HEYCO?

10          THE WITNESS: Right.

11          MR. JONES: And you do intend to get a  
12 more -- as far as the application for permit to  
13 drill, it -- I see that Paul Kautz signed off on the  
14 sundry, but you -- are you going to send him a new  
15 C-101, or is that another witness, or is that  
16 something you know about or not?

17          THE WITNESS: Well, I do not know the  
18 details on that. If we aren't -- if we haven't  
19 supplied the OCD or any other agency of the  
20 government with something that's required, we will  
21 do that.

22          MR. JONES: Okay. As of March of 2015,  
23 did you know everybody that -- how soon -- how soon  
24 after that did you get your title opinion down for  
25 this?

1 THE WITNESS: I don't have that -- that  
2 information of when the title opinion was finalized.

3 But we do, as a matter of course, wait  
4 until we know the working interest owners, based on  
5 the title opinion that is rendered by outside  
6 counsel.

7 And usual practice after that, is to then  
8 make a well proposal based on what we believe is  
9 the -- is the ownership confirmed by the opinion of  
10 an attorney.

11 MR. JONES: So basically, you don't know  
12 exactly when?

13 THE WITNESS: I don't know exactly when.

14 MR. JONES: Okay. But it was relatively  
15 soon, or would you like to speculate or not? That's  
16 fine if you don't.

17 THE WITNESS: You know, I don't know. I  
18 would hate to speculate exactly when it occurred.

19 But I mean, we can -- we can provide that  
20 to you at some point if you would like.

21 MR. JONES: It wasn't -- it wasn't a month  
22 ago, though? It was further back than that?

23 THE WITNESS: No, this was quite a while  
24 back. Yeah.

25 MR. JONES: 75 percent net NRI. That is

1 low, don't you think? I mean, how can you make any  
2 money doing that?

3 THE WITNESS: Well, obviously, we would  
4 prefer something a little higher. But...

5 MR. JONES: When you start out with a base  
6 lease that has one-eighth royalty and you're willing  
7 to go down 75 percent?

8 THE WITNESS: You know there's been a lot  
9 of assignments. There's probably overrides and  
10 whatnot to other individuals that have capped along  
11 the way.

12 I don't know exactly what the -- what the  
13 net revenue interest that Yates and Jalapeno has.

14 But you know, we were proposing a deal  
15 that would allow them to keep potentially up to  
16 25 percent of eight-eighths as well.

17 It -- it's -- sure. We would like  
18 something better, but I think we can live with the  
19 25 percent of the eight-eighths as outstanding  
20 burdens.

21 MR. JONES: Okay. The economics of --  
22 of -- I guess they're --

23 THE WITNESS: I can -- I can clarify one  
24 thing.

25 With the proposal that went out on

1 March 24, that's an indication that we had title  
2 before then.

3 MR. JONES: Okay. But basically, if you  
4 agree to go down to 75 percent with some owners that  
5 haven't signed, in order to get them to sign, that  
6 penalizes the other owners also, doesn't it, on it,  
7 or does it?

8 THE WITNESS: Penalize?

9 MR. JONES: In other words, that lowers  
10 their NRI also, the people that have already joined  
11 in the well.

12 THE WITNESS: No. A deal that we would do  
13 with someone that's not associated with a party  
14 that's already elected, their NRI is what it is.

15 MR. JONES: Okay.

16 THE WITNESS: We're not going to affect  
17 that by -- by a -- by an agreement that we enter  
18 into with a third party.

19 MR. JONES: Okay. But it would penalize  
20 Matador's NRI?

21 THE WITNESS: Yes, it would. It would  
22 lessen our NRI.

23 MR. JONES: So it would make your  
24 decisions to go forward with drilling -- obviously,  
25 you -- you want to drill this well. But even

1 subsequent wells it would make them more difficult?

2 THE WITNESS: We -- we, obviously, look at  
3 what we could live with from an economic standpoint,  
4 and we would not agree to -- to these terms if we  
5 couldn't make it work for us.

6 I have a point of clarification, if I  
7 could, Mr. Examiner.

8 I would like to point to the April 28  
9 letter that Jalapeno sent to Matador, to Melissa  
10 Randall. The last -- effectively the last paragraph  
11 was mentioned about Mr. Yates, Mr. Harvey Yates,  
12 saying that he's willing to sell his position at  
13 5,000 an acre.

14 I'm sure you will remember that.

15 MR. GALLEGOS: Mr. Examiner, this -- I  
16 don't think this is proper, the witness deciding  
17 he's going to start his direct again.

18 LEAD EXAMINER GOETZE: Let's state  
19 comments to what the questions are asked at this  
20 point and you have already offered up.

21 THE WITNESS: Okay.

22 LEAD EXAMINER GOETZE: I mean, we can read  
23 the exhibits.

24 THE WITNESS: Okay.

25 LEAD EXAMINER GOETZE: So let's stay

1 within the bounds of the questions asked by the  
2 examiner, please.

3 THE WITNESS: Okay.

4 MR. JONES: Okay. What do you -- what  
5 is -- what do you think the maximum dollars per acre  
6 you've offered for any lease in New Mexico so far,  
7 MRC, and actually procured the property?

8 THE WITNESS: Well, we -- we've paid  
9 less -- greater than 10,000 an acre in certain  
10 instances.

11 MR. JONES: Okay. When we -- obviously,  
12 you're not the person to ask about the Wolfcamp  
13 formation.

14 What about -- which working interest owner  
15 would have -- would be the most -- most experienced  
16 in -- and have the most facilities in this area?

17 Does Matador have any other wells in this  
18 area?

19 THE WITNESS: It's a fairly new area for  
20 us, in terms of drilling Wolfcamp wells. We're in  
21 what we call a delineation mode, and so we're kind  
22 of stepping out. And this would be an example of a  
23 well that would pick that category.

24 We do have probably some -- some vertical  
25 wells in that neighborhood. And I don't know of

1 any -- I don't think we have any Wolfcamp wells  
2 anywhere near this location.

3 But as with every company, you try to  
4 build your position from where you are. In most  
5 cases you're going to start from zero and try to  
6 grow your position.

7 MR. JONES: These -- this risk penalty  
8 discussion, that -- our order that actually  
9 established the uniform risk penalty, the compulsory  
10 pooling, is -- have you read that order?

11 THE WITNESS: Yes, sir, I have.

12 MR. JONES: Okay. Do you -- is there a  
13 provision in there to contest the risk penalty?

14 THE WITNESS: There's a provision in there  
15 that says that the penalty is 200 percent unless  
16 somebody -- a party opposes that and argues that a  
17 different penalty should -- should prevail.

18 MR. JONES: Okay. Thank you. I have no  
19 more questions.

20 LEAD EXAMINER GOETZE: Very good. I only  
21 have one question.

22 The application was made on a petition for  
23 compulsory pooling, not only to Wolfcamp, but all  
24 pools with 40-acre spacing.

25 What is the reason behind that form of the

1 application? Why are we seeking other than Wolfcamp  
2 to compulsory pool?

3 THE WITNESS: I think probably other  
4 witnesses can better answer that question,  
5 Mr. Examiner.

6 LEAD EXAMINER GOETZE: Okay. So at this  
7 point, as far as lands?

8 THE WITNESS: I'm not -- I'm not the best  
9 witness on that question.

10 LEAD EXAMINER GOETZE: Very well. Then at  
11 this point there are no more questions for this  
12 witness.

13 Thank you very much.

14 Your next witness.

15 MR. BRUCE: Okay. I would make -- to your  
16 last statement, Mr. Examiner, the application  
17 clearly asks only to pool the Wolfcamp formation.

18 LEAD EXAMINER GOETZE: Well...

19 MR. BRUCE: If we go to the wherefore  
20 ones...

21 LEAD EXAMINER GOETZE: At that point,  
22 let's let the examiner play.

23 And in my application I have oil spacing  
24 and proration project area for any formations or  
25 pools developed on 40-acre spacing within the

1 vertical extent.

2 MR. BRUCE: And I think if you go to the  
3 very first paragraph it says:

4 "Applies for an order approving a  
5 nonstandard unit in the Wolfcamp formation and  
6 pooling mineral interests in the Wolfcamp  
7 formation."

8 LEAD EXAMINER GOETZE: That's true. But  
9 then we include everything else in Number 2. So...

10 MR. BRUCE: And at the end it also asks  
11 just for the Wolfcamp, and that's all that Matador  
12 is asking for.

13 LEAD EXAMINER GOETZE: So it is clearly  
14 that, in this application, you're only looking at  
15 Wolfcamp?

16 MR. BRUCE: We are only looking at  
17 Wolfcamp.

18 LEAD EXAMINER GOETZE: Very good. Thank  
19 you very much.

20 Continue.

21 MR. BRUCE: I will call Mr. Juett to the  
22 stand.

23 (Witness sworn.)

24 THE WITNESS: I'm James Andrew Juett.

25

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

4                                   EXAMINATION

5   BY MR. BRUCE:

6           Q.     Mr. Juett, where do you reside?

7           A.     Flower Mound, Texas.

8           Q.     Who do you work for and in what capacity?

9           A.     I am employed by MRC Energy Company, an  
10   affiliate of Matador Production Company, as a senior  
11   geologist.

12          Q.     What are your responsibilities as a  
13   geologist for Matador?

14          A.     To recommend and evaluate new drill  
15   opportunities, workovers, recompletion candidates,  
16   evaluate potential acreage acquisitions, and  
17   generate new prospect ideas.

18          Q.     Have you previously testified before the  
19   division and been qualified as an expert geologist?

20          A.     Yes, I have.

21          Q.     For the record, could you summarize your  
22   educational and employment background?

23          A.     Yes. I received a bachelor of science  
24   degree from West Texas State University in Canyon,  
25   Texas, with a math minor.

1 I began my career as a geologist with Mesa  
2 Petroleum in Amarillo, Texas, which is now Pioneer  
3 Natural Resources.

4 I left Pioneer in 1998 and joined Prize  
5 Energy, who was then bought by Magnum Hunter  
6 Resources.

7 And after leaving Magnum Hunter Resources  
8 I joined Matador in 2003, where I -- my work  
9 concentrated basically on unconventional reservoirs  
10 including the Haynesville Shale, the Eagleford  
11 Shale, the Phosphoria Shales. In West Texas that  
12 included Bone Spring and Wolfcamp formations in the  
13 Midland and Delaware Basins.

14 And then in 2013 I went to work for  
15 Comstock Resources. And after a brief stay at  
16 Comstock, I moved to Laredo Petroleum.

17 And then in February of 2015 I came back,  
18 after Laredo closed their office in Dallas. I came  
19 back to Matador to work the Delaware Basin.

20 Q. Do you have any certifications or belong  
21 to any professional associations?

22 A. Yes. I'm a member of the American  
23 Association of Petroleum Geologists, a member of the  
24 West Texas Geological Society, and a member of the  
25 Dallas Geological Society. And I'm a past treasurer

1 of that organization.

2 Q. Are you familiar with the geology of the  
3 land involved in the -- this application?

4 A. Yes, I am.

5 Q. And have you conducted a geologic study of  
6 the area embracing the proposed spacing unit for the  
7 Airstrip State Com 201H well in Section 31?

8 A. Yes.

9 MR. BRUCE: Mr. Examiner, I tender  
10 Mr. Juett as an expert petroleum geologist.

11 LEAD EXAMINER GOETZE: Mr. Gallegos?

12 MR. GALLEGOS: No objection.

13 LEAD EXAMINER GOETZE: Very well. He is  
14 so qualified.

15 Q. (By Mr. Bruce) Mr. Juett, could you  
16 identify Exhibit 12 for the examiner and discuss its  
17 contents?

18 A. Yes. Exhibit 12 is a structure map that  
19 is made on -- it's a subsea structure map that is  
20 made on the top of the Wolfcamp formation in the  
21 subject area.

22 And it also shows the different producing  
23 formations for each of the horizontals that we have  
24 been able to land from state records, the first,  
25 second, and third Bone Spring.

1           It shows the -- the unit that we are  
2 looking to pool, with the surface and bottom hole  
3 location of the Airstrip well in the dark blue  
4 circle and square. And then also the data points  
5 used to make this map are in the purple.

6           And then you will also see the  
7 cross-section AA prime, which will be in a future  
8 exhibit, its location.

9           Q.     And does Matador intend to drill and  
10 complete this well in the Wolfcamp formation?

11          A.     Yes.

12          Q.     The land witness testified earlier that  
13 HEYCO originally proposed this well as a Bone Spring  
14 proposal.

15                 Is that correct?

16          A.     That is correct.

17          Q.     Why did you recommend changing the target  
18 formation to the Wolfcamp?

19          A.     When we looked at the third Bone Spring,  
20 the formation thins as we move across the section.  
21 The porosity in Wolfcamp is much better than the  
22 porosity in the third Bone Spring, and we thought we  
23 would make a much better chance of making an  
24 economic well out of the upper Wolfcamp zone here.

25          Q.     Are there any known geological impediments

1 to drilling this well to the Wolfcamp formation?

2 A. There are none that I can see by the  
3 mapping that I've done.

4 Q. And did you prepare a cross-section for  
5 this hearing?

6 A. Yes, I did.

7 Q. And is that marked as Exhibit 13?

8 A. Yes, it is.

9 Q. Please discuss the contents of that plat  
10 for the examiner.

11 A. Okay. This cross-section shows it's a --  
12 it's hung on the top of the upper Wolfcamp, the  
13 formation. That's the datum on the cross-section.

14 It shows the relative thickness of the  
15 Wolfcamp formation is fairly uniform across it.

16 It also shows that the third Bone Spring  
17 sand thins as we move to the east. In the cross --  
18 this cross -- the cross-section.

19 What -- the other thing that this  
20 cross-section shows is that the porosity is greatly  
21 diminished from the -- in the third Bone Spring than  
22 it is in the upper Wolfcamp zone.

23 And then we also show the -- the bold red  
24 line shows the proposed lateral in the upper  
25 Wolfcamp.

1 Q. Now, do you consider the wells in this  
2 cross-section representative of the Wolfcamp  
3 formation in this area?

4 A. Yes, I do.

5 Q. Would you move on to Exhibit 14, and  
6 identify that for the examiner?

7 A. Yes, sir. This is a gross thickness  
8 isopach map of the Wolfcamp formation in the area.  
9 And it shows that over the unit well area that we  
10 have fairly uniform thickness. There's no major  
11 thickness changes in this area and in the Wolfcamp  
12 zone.

13 It also shows that the thickness is around  
14 a thousand to 1,100 feet across the area.

15 Q. And what conclusions have you drawn from  
16 your geologic study of this area?

17 A. We believe there will be no impediments to  
18 drilling a horizontal well in this area, and we  
19 fully expect each quarter/quarter section to be  
20 productive in the Wolfcamp formation.

21 We also expect horizontal drilling to be  
22 the most efficient method to develop this acreage  
23 and we will avoid drilling unnecessary wells.

24 Q. Mr. Juett, during preparation over the  
25 past couple of months for the hearing, do you know

1 that Jalapeno and Yates claim that the forced  
2 pooling of horizontal wells is not permissible?

3 A. Yes.

4 Q. As a geologist, would you recommend to  
5 management drilling four vertical horizontal wells  
6 in this 160 acres?

7 A. No, I could not.

8 Q. Why?

9 A. It gets down to area of reservoir that's  
10 going to be touched in a vertical well. In this  
11 upper Wolfcamp section, each four vertical wells  
12 would be the equivalent of basically one stage of a  
13 horizontal well. And we plan on putting 15 stages  
14 in the well, and I believe that it would strand  
15 reserves and create waste.

16 Q. Moving ahead a couple of exhibits to  
17 Exhibit 17.

18 A. (Witness complies.)

19 Q. Could you identify that exhibit and  
20 discuss its contents briefly?

21 A. Yes. This is a map that shows the unit  
22 area that -- where we're proposing the pooling. And  
23 the green outline with the -- the green box with the  
24 red outline.

25 This also shows the Wolfcamp wells that

1 have been drilled in the area. And what this  
2 shows -- what we've posted on the map is -- is  
3 that -- are the casing designs that were used for  
4 each of these wells.

5 The other thing to note is that -- on this  
6 map -- is that all of these wells have been drilled  
7 to a deeper zone in the Wolfcamp. They have not  
8 been drilled for the upper Wolfcamp zone.

9 Q. Even with that in mind, how close is the  
10 nearest Wolfcamp well?

11 A. The nearest Wolfcamp well is a well that  
12 Matador drilled, and it is five miles to the  
13 north -- northwest.

14 Q. And of course this does show -- going back  
15 to a prior question by Mr. Jones -- who the other  
16 Wolfcamp operators are in this area?

17 A. Yes, sir.

18 Q. How do you define geologic risk?

19 A. Well, there's multiple parts in that. The  
20 first part is, is the zone present or absent?  
21 That's the big question. Is the zone present or  
22 absent?

23 And then after that we get down to, is the  
24 zone going to be -- have porosity, permeability,  
25 well enough to produce at economic rates?

1           And so there are several variables. One,  
2 the porosity and permeability being preserved in the  
3 area. But...

4       Q.     And you won't know that until you drill  
5 the well?

6       A.     That's right.

7       Q.     From a geologic standpoint, is a risk  
8 charge of cost plus 200 percent justified in this  
9 case?

10      A.     Yes, sir. I believe it is.

11      Q.     Finally, could you move back to Exhibit 15  
12 and just briefly discuss that for the examiner?

13      A.     Yes, sir. This is a wellbore diagram that  
14 shows the location of how the well will be placed in  
15 the section.

16            It shows the surface and bottom hole  
17 locations and their respective measurements to the  
18 section lines.

19            It shows the first and last take points  
20 that we plan in this well.

21      Q.     And will -- the completed interval, will  
22 it -- the beginning and the ends of the completed  
23 interval be orthodox?

24      A.     Yes, sir.

25      Q.     In your opinion is the granting of

1 Matador's application in the interest of  
2 conservation and the prevention of waste?

3 A. Yes.

4 Q. And were Exhibits 12 through 15 and 17  
5 prepared by you or compiled under your direction and  
6 control?

7 A. Yes, they were.

8 MR. BRUCE: Mr. Examiner, I would move the  
9 admission of Exhibits 12 through 15 and 17.

10 LEAD EXAMINER GOETZE: Mr. Gallegos?

11 MR. GALLEGOS: No objection, Mr. Examiner.

12 LEAD EXAMINER GOETZE: Very good.

13 Exhibits 12 through 15 and 17 are so entered.

14 MR. BRUCE: I pass the witness.

15 LEAD EXAMINER GOETZE: Mr. Gallegos, your  
16 witness.

17 EXAMINATION

18 BY MR. GALLEGOS:

19 Q. Mr. Juett, let's first direct your  
20 attention to Section 31.

21 A. Okay.

22 Q. What are the extent of vertical  
23 penetrations by wells in Section 31 in the Wolfcamp?

24 A. There are the -- there's two penetrations  
25 in Section 31, vertical penetrations.

1 Q. What are those wells? Would you identify  
2 those?

3 A. One is the southeast Airstrip well, in the  
4 southwest quarter section.

5 And the other, I believe, is the Airstrip  
6 Number 1 well in the northwest quarter.

7 Q. And did they establish the presence of the  
8 Wolfcamp formation?

9 A. Yes, they did.

10 Q. Okay.

11 A. One of those is actually on the  
12 cross-section.

13 Q. Oh, it is? It's one of your cross-section  
14 wells?

15 A. Yes, sir.

16 Q. Now, your Exhibit 12 is illustrating what  
17 land area? Is that -- are those four townships  
18 illustrated, or what are we seeing there?

19 A. What we're seeing is an area that --  
20 around Section 31 it's basically two and a half  
21 miles north, south, east, and west of Section 31.

22 So there are four townships represented,  
23 but they're -- this is just in -- since Section 31  
24 is in the corner, you're seeing four townships. Not  
25 the whole township, though.

1 Q. Okay. So can you tell the examiner the  
2 extent of vertical wells penetrating the Wolfcamp in  
3 that area?

4 A. In the area of the map, the Wolfcamp  
5 structure data points you'll see is the light purple  
6 attributes.

7 All of those wells penetrated the Wolfcamp  
8 and went all the way through to the Strong.

9 There are a few other wells out here that  
10 went into the top of the upper Wolfcamp, but those  
11 are not depicted.

12 I use these because these are the wells  
13 that I used for the iso- -- gross thickness isopach  
14 map.

15 Q. So all -- all of the wells that -- I guess  
16 purple, whatever it is, kind of a violet color?

17 A. Yeah. It's kind of a violet color, the  
18 way it came out.

19 Q. Whatever it is.

20 All of those are vertical wells that  
21 penetrated the Wolfcamp?

22 A. Yes, sir.

23 Q. Okay. And the formation is present in all  
24 of those wells?

25 A. Yes, it was.

1 Q. The -- so you have -- you do show on here  
2 some -- a few third Bone Spring producers?

3 A. Yes. Those -- what I'm showing is third  
4 Bone Spring horizontal producers.

5 Q. Right. And are there not several of those  
6 that are lying, what I would say, just to the  
7 southwest of the -- of this west half/west half of  
8 Section 31?

9 A. Yes, there are.

10 Q. What are the -- they're in the -- in  
11 Section 1 -- well, section -- adjoining Section 36  
12 and offsetting Section 1?

13 A. Yes, they are.

14 Q. All of those are successful producers?

15 A. They were producers. I don't know if I  
16 would call them successful.

17 Q. Okay. Well, I'm interested, then, if you  
18 could tell the examiner about your porosity  
19 contrast.

20 I think you said that your porosity was  
21 much better in the wolf springs [sic] here than in  
22 the Bone Springs.

23 Can you give us the values?

24 A. The Bone Spring production -- or porosity,  
25 if you will, go to the cross-section. The porosity

1 of the --

2 Q. Okay. That's Exhibit 13?

3 A. Yes, sir. Exhibit 13.

4 The third Bone Spring sand is the interval  
5 between the green marker and the purple marker on  
6 this cross-section.

7 And what I've highlighted here is porosity  
8 greater than 8 percent. And on this cross-section,  
9 porosity --

10 Q. I'm sorry. Is that -- how is that  
11 highlighted? I'm trying to follow.

12 A. In the porosity curve, if you will notice  
13 the label at the top, there's a red line on each one  
14 of the wells.

15 Q. All right. The red vertical line?

16 A. Yes, sir.

17 Q. Okay. And it has 8 percent above it?

18 A. Yes, it has 8 percent. That is the  
19 8 percent porosity cutoff for that well.

20 And then also, we have highlighted the  
21 density porosity over 8 percent.

22 And when you look at the third Bone Spring  
23 section there's very little of the sands that show  
24 up with 8 percent porosity or greater.

25 But when we move down into the Wolfcamp,

1 we see an increase in porosity in the upper  
2 Wolfcamp.

3 Q. Are we seeing a greater than 8 percent in  
4 the Wolfcamp?

5 A. Yes.

6 Q. What would you say that value is?

7 A. That value is anywhere between 8 to 12,  
8 and stringers of 14 percent porosity.

9 Q. As opposed to the Bone Springs porosity,  
10 which looks to you to be about what?

11 A. It looks to me to be mostly less than 8,  
12 with a few stringers of up to possibly 10 in the  
13 unit area.

14 Q. Now, the -- the Wolfcamp is a vertically  
15 extensive formation, correct, of a thousand feet or  
16 more?

17 A. Yes, sir.

18 Q. I've seen some references, I think maybe  
19 in your materials, that your aim is the X, Y -- X  
20 and Y portion of the Wolfcamp?

21 A. Yes, sir. The X and Y sands are upper  
22 Wolfcamp target sands, and that nomenclature is what  
23 we use down south.

24 And these sands have similar  
25 characteristics to the sands that we have down

1 south.

2           Whether they're actually X, Y, correlative  
3 sands or not, they are -- have a similar nature.  
4 And so they are basically what we're looking to  
5 complete and drill as the upper Wolfcamp portion of  
6 the Wolfcamp section.

7           Q.     And why do you consider that particularly  
8 prospective?

9           A.     When we look at the Wolfcamp wells that  
10 have been drilled in the area, on exhibit -- I  
11 believe it's 17. Yes.

12                  On Exhibit 17 all of these wells were  
13 drilled in the lower part of the Wolfcamp, and they  
14 are marginal producers.

15                  And down south, in the upper Wolfcamp,  
16 in -- we see much better production than what these  
17 wells have proved to be in the lower Wolfcamp up  
18 here.

19           Q.     And in fact, has Matador had considerable  
20 success in the Wolfcamp -- not in this immediate  
21 area, but in that portion of the -- of the  
22 Wolfcamp --

23           A.     Yes, we have.

24           Q.     -- in other wells?

25           A.     Yes, we have.

1 Q. Can you give us some information in that  
2 regard?

3 A. Most of my knowledge of that is down in  
4 Texas in Loving County. We have had some X, Y sand  
5 wells that have -- we have reported reserves  
6 greater -- and I'm trying not to speak too much off  
7 the cuff here. But I know that in excess of 500-,  
8 600,000 barrels of ultimate recoveries.

9 Q. What do you expect the recovery to be in  
10 this Airstrip well?

11 A. In this Airstrip well, I -- we're hoping  
12 to get somewhere in the 350- to 400,000-barrel  
13 range. It's -- it's hard to tell. I mean, we -- we  
14 really don't know. We know what we would like to  
15 have. But without having any producers or anything  
16 in the area to really tighten the curve, it's hard  
17 to tell what we might expect.

18 Q. But in order for the decision to be made  
19 by Matador to drill this well, you have done a  
20 reserve estimate, have you not?

21 A. Yes, sir.

22 Q. And what did that reserve estimate show?

23 A. Actually, it's going to be in the -- I  
24 believe the 400,000-barrel range is our estimate.

25 Q. Okay. I've seen reference somewhere to

1 cross-leaf development in these shale wells.

2 What does that mean?

3 A. I'm not familiar with that term, sir.

4 Q. You're not familiar with that?

5 A. No, sir.

6 Q. You have drilled, in Southeast New Mexico,  
7 some Wolfcamp wells --

8 A. Yes, sir.

9 Q. -- have you not?

10 A. Yes, sir, we have.

11 Q. And what has been the experience with  
12 those wells in terms of recovery?

13 A. I'm really -- not really the person to  
14 speak to that, because several of those wells were  
15 drilled before I came back to Matador.

16 When I left Matador the first time we had  
17 3,500 acres. When I came back we had 90,000 acres  
18 in the basin. So I -- there's been a lot of  
19 activity going on out there that I haven't been  
20 privy to since I've been gone.

21 Q. When did you come do back?

22 A. February of 2015, so I've been back about  
23 seven or eight months.

24 Q. Okay.

25 Is it a fact that you're not targeting the

1 Wolfcamp in order to -- to have the 160 acres so  
2 that then at some later time you would go up to the  
3 Bone Springs?

4 A. Please restate the question, because I  
5 don't --

6 Q. Well, the objective of the Wolfcamp is  
7 really because of what you expect to be the success  
8 in that formation as opposed to, say, we're going to  
9 get this lower formation, and then we've held the  
10 acreage to get -- to come up to the Bone Springs.

11 A. Yes. We -- we plan on and want to drill  
12 the Wolfcamp. And if holding the third Bone Spring  
13 through this well is a benefit, then that is  
14 something that takes place.

15 But the main reason for this well is to  
16 drill and produce the Wolfcamp formation.

17 Q. What is the depth at which the well is to  
18 go horizontal?

19 A. We are targeting, as you can see -- we  
20 should have that on --

21 Q. Is that Exhibit 16?

22 A. Yes, sir. Exhibit 16 is the well plan  
23 that has not been introduced yet.

24 Q. Okay. So it shows the deviation at  
25 10,974?

1 A. Yes, sir.

2 Q. And the lateral -- or if I'm asking some  
3 questions that somebody else is going to testify to,  
4 let us know.

5 A. Okay.

6 Q. Is there another witness that will talk  
7 about the well plan and the --

8 A. Yes, sir.

9 Q. Okay. All right. I won't take you  
10 through that, then.

11 So in terms of your opinion, the  
12 geologist, the Wolfcamp zone is present?

13 A. Yes, it is.

14 Q. And the porosity is a -- is at a favorable  
15 rate, the 8 to 12 percent rate that you told us  
16 about, which you believe is indicative of success?

17 A. It's at a much more favorable rate than  
18 the third Bone Spring.

19 One thing, we never know with these --  
20 this perm, we can't really -- it's hard to tell the  
21 perms, which is the ability of the formation to  
22 flow. Because we can have higher porosity and low  
23 perm, and the rock could be higher and it may not  
24 flow at economic quantities.

25 Q. Do you not have some pores of this very

1 close vertical Wolfcamp wells?

2 A. No, sir.

3 Q. You don't know whether they are available  
4 or not?

5 A. I do not.

6 Q. Have you studied the porosity in those  
7 wells?

8 A. In the -- yes.

9 Q. In the -- in the vertical wells that are  
10 just adjacent? In fact, two of them are in this  
11 Section 31?

12 A. Yes. And they -- and when you look at the  
13 porosity on the cross-section, Exhibit 13, the  
14 Southeast Airstrip well, which is in the section, is  
15 the third well from the right -- or the left of the  
16 page, that the lateral is going through.

17 Q. Oh, I see. Yes. Okay.

18 And that tells you what, in terms of  
19 porosity?

20 A. It's encouraging that we have the porosity  
21 there, that we should expect to encounter the same  
22 porosity.

23 But we have seen wells where, in a pilot  
24 hole we've had great porosity and perm. And as we  
25 get out into the lateral and get way from the pilot

1 hole -- this is basically an 8-inch wellbore, and  
2 this tool measures the area around that 8-inch  
3 wellbore.

4 When we get away from this, we don't know  
5 what we're going to find.

6 Q. Okay.

7 A. And we've seen wells that we've had  
8 150-foot of section, and when we get -- by the time  
9 we get to the lateral, we're down to 75. We've seen  
10 thicknesses change and porosities and perms change.

11 Q. Is it not your opinion, then, that every  
12 quarter section will be similar and be productive?

13 A. I believe it will be. But until we drill  
14 it we're not going to know.

15 Q. Okay. But your opinion is that it is?

16 A. In my opinion, yes, it is.

17 MR. GALLEGOS: Okay. Thank you.

18 No further questions.

19 THE WITNESS: You're welcome.

20 LEAD EXAMINER GOETZE: Redirect?

21 MR. BRUCE: Just a couple, Mr. Examiner.

22 FURTHER EXAMINATION

23 BY MR. BRUCE:

24 Q. Once again, Mr. Gallegos questioned you  
25 about this.

1           This -- as you stated, this is an upper  
2   Wolfcamp test?

3           A.     Yes, it is.

4           Q.     And the other ones, for instance, that are  
5   shown on Exhibit 17 that you tes- -- that you  
6   testified about, are lower Wolfcamp producers?

7           A.     Yes, sir.

8           Q.     Without being, you know, giving the  
9   mileage in decimal points, is the nearest upper  
10   Wolfcamp producer quite some distance away?

11          A.     Yes, it is.

12          Q.     We're talking tens of miles or even more?

13          A.     Probably 20.  20 plus.

14          Q.     Okay.

15          A.     Horizontal producers.

16          Q.     Horizontal producers.

17                 Now you've talked a little bit about  
18   estimated ultimate recoveries, et cetera.

19                 At this point, because the nearest upper  
20   Wolfcamp producer is so far away, it's just a guess  
21   what might happen here in Section 31?

22          A.     Yes.  I believe it is.

23                 Our engineers do a great job in trying to  
24   do the best they can in planning.  But until we  
25   actually drill the well and try to produce it we

1 don't know.

2 Q. But if Matador does successfully drill the  
3 well, would that -- would that be proof of its  
4 hypothesis of what might happen when drilling upper  
5 Wolfcamp wells?

6 A. Yes, sir.

7 Q. But a hypothesis is just that. It's a  
8 guess at this point?

9 A. That's right.

10 Q. Okay. And you talked about some other --  
11 you know, other Eddy County wells.

12 Are there different teams at Matador for  
13 different areas of New Mexico?

14 A. Yes, there are. We have, actually, three  
15 teams. We have the -- in the Delaware Basin. The  
16 New Mexico portion of the Delaware Basin is broken  
17 into two teams, and it's a north/south delineation  
18 that -- I want to say it's around the row of  
19 townships that are 21.

20 And then the other team takes 21 south  
21 down to Texas.

22 And then the other team has the Texas  
23 wells. So we have...

24 Q. So when you're talking about other areas,  
25 there's a number of other wells that aren't in your

1 area that you're not fully knowledgeable about?

2 A. That is right. Yes.

3 Q. That's not your job. Your job is to  
4 concentrate on this particular team area?

5 A. Yes, sir.

6 MR. BRUCE: Thank you.

7 LEAD EXAMINER GOETZE: Very good.

8 Mr. Wade, any questions?

9 MR. WADE: I have no questions.

10 LEAD EXAMINER GOETZE: Mr. Jones?

11 MR. JONES: Yes.

12 Mr. Juett, the -- first of all, I'm not a  
13 geologist, and -- but I do remember the Wolfcamp/Abo  
14 play that was going on a few years ago, and it was  
15 drilling right on the base of the Abo or right on  
16 the top of the Wolfcamp.

17 And where was -- where is that, compared  
18 to where we're at now? Where are we now, anyway?  
19 It's kind of smoky outside, I know. But...

20 THE WITNESS: I wish I had a whiteboard to  
21 draw you a picture.

22 We should have probably put a locator map  
23 in the exhibits to show where we are.

24 This section, if you will look at the  
25 Delaware Basin, there's reef trend that goes across

1 the top of the Delaware Basin, and then the  
2 San Simon Channel breaks that reef trend. It runs  
3 on the eastern side and around the north. And part  
4 of the San Simon Channel breaks through, and it's  
5 bringing sediment in.

6 The -- this particular area is -- if you  
7 think about New Mexico and the Delaware Basin, it is  
8 in the northeast corner of that, and it's a few  
9 miles south of the reef trend.

10 Those Wolfcamp/Abo wells that you  
11 referenced are further north. They are probably --  
12 the closest one is going to be probably 10 miles to  
13 the north.

14 And they are actually on the Bone Spring  
15 sands, climb up out of the basin, and -- and go  
16 away. And that Abo is the Bone Spring equivalent,  
17 basically. And the formation below that is the  
18 Wolfcamp, and that's where those were.

19 MR. JONES: Okay. Yeah. So the Abo is  
20 10 miles way from here?

21 THE WITNESS: Yes, sir.

22 MR. JONES: And here it's just Bone  
23 Spring.

24 And is this called an unconformity?  
25 Disconformity? What is this?

1 THE WITNESS: I could call this an  
2 unconformity between the Wolfcamp and the Bone  
3 Spring.

4 MR. JONES: Is that why it's productive,  
5 predicted to be productive?

6 THE WITNESS: It -- there are various  
7 reasons. I mean the sands were laid down and you  
8 have to have -- I mean, the Wolfcamp section has  
9 more organic matter in it than the Bone Spring  
10 section does. The organics are higher.

11 As the organics cook, they make more  
12 porosity. And hopefully they stay around and let us  
13 produce them.

14 MR. JONES: Okay. Let's see here.

15 Your porosity you're talking about, that's  
16 total or is that effective?

17 THE WITNESS: That's just a total gross  
18 porosity, yes, sir.

19 MR. JONES: Total? Okay.

20 And your -- this area is pretty well  
21 explored vertically.

22 Is that correct?

23 THE WITNESS: Yes, it is.

24 MR. JONES: And so basically, when you  
25 start talking about risk here, you're talking

1 about -- first of all, how much of the risk is done  
2 by the time you get your well drilled and before you  
3 frac the well? Is it --

4 THE WITNESS: There will be quite a bit  
5 of -- the drilling risk, which the next witness is  
6 going to speak to, is a big part of the risk.

7 And then we also have reservoir risk that  
8 comes into play as well.

9 Once we get -- if we get the well down  
10 successfully, then we have reservoir risk that goes  
11 into that.

12 And there's still operational risk  
13 after -- and just putting the frac away, and  
14 mechanical risk with that.

15 But our drilling guy will be able to speak  
16 to that better than I can.

17 MR. JONES: But you're not doing a casing  
18 point election or anything like that? You're...

19 THE WITNESS: No, sir. In most of these  
20 shell plays, a casing point election typically was  
21 done when we ran vertical wells and you could run  
22 logs through them.

23 MR. JONES: Okay.

24 THE WITNESS: And if we want to greatly  
25 increase the AFE, we can run logs through this and

1 give a casing point election, but we have to tractor  
2 them down in horizontal wells because gravity won't  
3 let us -- the tools flow sideways down the well.  
4 So...

5 MR. JONES: Well, why do they do it in the  
6 Gulf, then? They do it -- logging while drilling,  
7 don't they?

8 THE WITNESS: They do it logging while  
9 drilling. We will log-well drill, but we will get a  
10 gamma ray curve.

11 MR. JONES: You don't want anything more  
12 than that?

13 THE WITNESS: The price goes up quite a  
14 bit as we start adding tools to that string.

15 MR. JONES: But you're the geologist. Do  
16 you want anything else?

17 THE WITNESS: I want a lot of things, but  
18 they don't give them to me.

19 MR. JONES: Okay.

20 So your geologic risk is -- what would you  
21 say? That's one in two here, or is it one to one?  
22 Or pretty much geologically, you know you're here,  
23 right? You know these formations?

24 THE WITNESS: We know we're here, and we  
25 have -- the big part of the risk in this well is the

1 reservoir risk, is, will it produce?

2 MR. JONES: Okay.

3 THE WITNESS: Does it have the fact -- the  
4 components to make it produce and flow?

5 MR. JONES: Okay. What is that? Is that  
6 one in five or is that one in two or what is that?

7 THE WITNESS: Well, most of the wells will  
8 flow and produce. We will get some oil out of this.

9 But the risk is, is it going to be in  
10 economic quantities?

11 MR. JONES: And what is the risk of  
12 commerciality here?

13 THE WITNESS: Uh...

14 MR. JONES: What did you provide your  
15 engineer for his economics?

16 THE WITNESS: One of the things -- I would  
17 say it's probably a 30 percent chance of success,  
18 but I have a hard time speaking to that.

19 MR. JONES: So one in three?

20 THE WITNESS: One in three for --  
21 averaging everything.

22 MR. JONES: But would you call this a  
23 wildcat or a development well?

24 THE WITNESS: I would call this a wildcat  
25 for this formation, because it has not been drilled

1 horizontally yet.

2 MR. JONES: Do you think your engineer  
3 could book those reserves as wildcat reserves if you  
4 found it, or since you've got -- already got  
5 vertical wells already drilled through here -- I  
6 guess that's a question for the engineer.

7 THE WITNESS: Yes, sir.

8 LEAD EXAMINER GOETZE: Are you done?

9 MR. JONES: I'm done.

10 LEAD EXAMINER GOETZE: Okay.

11 And give me equal time. I'm not an  
12 engineer.

13 So other than your geology from wells in  
14 the area, were there any other sources of  
15 information? Was there seismic used or proprietary  
16 information used?

17 THE WITNESS: For this location, no, sir.

18 LEAD EXAMINER GOETZE: Okay. And your  
19 interpretation of logs, other than porosity and --  
20 did we use any density, TOC, that's total organic  
21 carbon, for evaluation?

22 THE WITNESS: We -- we can generate TOC  
23 estimated values off of these logs. We don't have  
24 any hard TOC facts --

25 LEAD EXAMINER GOETZE: To correlate?

1 THE WITNESS: -- to correlate from these  
2 wells right here.

3 LEAD EXAMINER GOETZE: And if you were --  
4 and I'm assuming -- going to continue developing the  
5 Wolfcamp if this comes out, would you not suggest  
6 something other than gamma ray, in addition to what  
7 you have planned already for this Wolf? It's a  
8 wildcat. Why not have additional information? Are  
9 you going to obtain core samples, wall samples --  
10 wall cores and...

11 THE WITNESS: Sidewall cores, and -- and  
12 we are not going to drill a pilot well right here.

13 LEAD EXAMINER GOETZE: Okay.

14 THE WITNESS: But that -- that greatly  
15 adds to the cost of the well also.

16 But we -- we think this zone is worth a  
17 test, from the log responses. And if we do drill  
18 additional wells, that will have to be determined on  
19 what data we think we need at the time.

20 LEAD EXAMINER GOETZE: I have no further  
21 questions for this witness.

22 MR. BRUCE: I have no further questions.

23 One comment. Mr. Jones asked about that  
24 Abo/Wolfcamp.

25 Since I spent three or four years of my

1 life doing hearings every month on that, it's 15  
2 south 31 east.

3 MR. JONES: Thank you.

4 LEAD EXAMINER GOETZE: We could start  
5 another witness, and then we'll break for lunch.

6 Do we have another witness?

7 MR. BRUCE: One more.

8 MR. GALLEGOS: Mr. Examiner and Counsel,  
9 you know, I -- sitting here, we -- obviously, we  
10 didn't talk before the hearing because we -- both  
11 sides numbered their Exhibits 1, et cetera. So  
12 there's going to be some confusion in this record.

13 I'm trying to think -- maybe if we could  
14 just say that, you know, this is Applicant's  
15 Exhibit 12 or 15 or whatever, and I'll try and say  
16 intervener's or something. Otherwise, we're going  
17 to have witnesses talking about Exhibit 6 that's --

18 LEAD EXAMINER GOETZE: Well, to the court  
19 reporter, what would you like?

20 Let's go off the record for a moment.

21 (Discussion off the record.)

22 (A recess was taken from 11:26 a.m. to  
23 11:27 a.m.)

24 (Witness sworn.)

25 THE WITNESS: I'm Aaron Michael Byrd.

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

4                                   EXAMINATION

5   BY MR. BRUCE:

6           Q.     Mr. Byrd, where do you reside?

7           A.     Dallas, Texas.

8           Q.     And who do you work for?

9           A.     I am employed by MRC Energy Company, an  
10   affiliate of Matador Production Company, as a senior  
11   drilling engineer.

12          Q.     And what are your responsibilities as a  
13   drilling engineer at Matador?

14          A.     I am responsible for all aspects  
15   associated with drilling a well, for as many as  
16   three rigs at a time.

17                   In addition to all engineering  
18   responsibilities, I also ensure plans and procedures  
19   are carried out in the field according to our  
20   regulatory requirements, and as planned from an  
21   engineering standpoint.

22          Q.     Have you previously testified before the  
23   division?

24          A.     No, I have not.

25          Q.     Could you describe your educational

1 background and work history for the examiner?

2 A. I received a bachelor of science in  
3 petroleum engineering and a business foundation  
4 degree from the University of Texas in 2005. So  
5 I've been in the industry for about 10 years now.

6 I began my career as a petroleum engineer  
7 with EnCana. I spent three years going through  
8 their training program, where I spent time in  
9 completion, production, reservoir, and drilling.

10 I then spent three years drilling  
11 horizontal wells in the Haynesville Shale in North  
12 Louisiana.

13 After nearly six years with EnCana, I  
14 moved to Legend Natural Gas. At Legend, I was the  
15 only member of the drilling group, and I started up  
16 a two-rig drilling program drilling horizontal in  
17 the Barnett Shale for them.

18 I controlled all drilling operations from  
19 cradle to grave for a year and a half at Legend  
20 before leaving and coming to Matador.

21 I joined Matador Resources in 2012, where  
22 my work centered -- concentrated on horizontal  
23 drilling in the Eagleford Shale, South Texas, as  
24 well as the Delaware Basin in West Texas and  
25 Southeast New Mexico.

1 Q. Do you hold any certifications or any --  
2 belong to any professional associations?

3 A. Yes. I'm a member of SPE, Society of  
4 Petroleum Engineers, since 2001, as well as a member  
5 of the AADE, American Association of Drilling  
6 Engineers.

7 Q. And are you familiar with the application  
8 filed by Matador?

9 A. Yes, I am.

10 Q. And are you familiar with the drilling and  
11 operations proposed for the well which is the  
12 subject of this application?

13 A. Yes.

14 MR. BRUCE: Mr. Examiner, I tender  
15 Mr. Byrd as an expert drilling engineer.

16 LEAD EXAMINER GOETZE: Mr. Gallegos?

17 MR. GALLEGOS: No objection.

18 LEAD EXAMINER GOETZE: Very well. He is  
19 so qualified.

20 Q. (By Mr. Bruce) Mr. Byrd, could you  
21 identify Exhibit 16 for the examiner and discuss its  
22 contents?

23 A. Yes. This wellbore schematic details how  
24 we plan to drill the well for the Airstrip State Com  
25 Number 201H. It includes surface and bottom hole

1 information. It details formation tops, expected  
2 formation tops, expected mud weights and mud types  
3 for the wellbore, logs and directional data we plan  
4 to obtain, casing and cementing details for each  
5 hole section planned for this well.

6 Q. And what is Exhibit 18?

7 A. Exhibit 18 is our directional drilling  
8 plan. This directional plan shows the surface and  
9 bottom hole locations as well as the geometry of the  
10 wellbore. It details our directional plan for the  
11 well, and it includes holding the well vertical down  
12 to 10,224 feet measured depth and TVD, at which  
13 point we'll start the curve at a build rate of  
14 10 degrees per hundred to approximately 75 degrees  
15 in the curve.

16 We will then pick up the lateral assembly  
17 and drill the remaining part of the curve at  
18 6 degrees per hundred in order to land the curve at  
19 11,224 measured depth, 10,810 TVD, and then continue  
20 drilling the lateral to 15,378 measured depth,  
21 10,810 TVD.

22 Q. These -- the directional drilling plans,  
23 does Matador normally file those with the division?

24 A. Not to my knowledge, no.

25 Q. How many completion stages, and what

1 volumes of fluid and proppant are planned for this  
2 well?

3 A. 15 stages, with a total of 9 million  
4 pounds of proppant and approximately 5.67 million  
5 gallons of fluid.

6 Q. How many horizontal wells has Matador  
7 drilled in the Delaware Basin?

8 A. Over 35.

9 Q. And how many of those are Wolfcamp wells?

10 A. 25.

11 Q. And how many casing strings are you  
12 proposing for this particular well?

13 A. Four.

14 Q. Is it possible to drill a Wolfcamp well  
15 with only three strings of casing?

16 A. The answer to that is yes, but you always  
17 need the lower 7-inch casing string.

18 Q. And why is that?

19 A. You need that because we -- Matador's  
20 experience in drilling Delaware wells has validated  
21 the need for 12.5 pounds per gallon mud weight when  
22 you're drilling horizontal.

23 Q. Horizontal Wolfcamp?

24 A. Yes, the horizontal Wolfcamp, the  
25 horizontal portion of a Wolfcamp well.

1           The upper Bone Spring formations and  
2 Delaware Mountain Group sands will not withstand a  
3 12.5-pound per gallon environment; and, therefore,  
4 it's necessary to place those formations behind  
5 casings before drilling the lateral portion of the  
6 Wolfcamp well.

7           On previous wells Matador has experienced  
8 the Wolfcamp formation will begin collapsing and  
9 become unstable if drilled with mud weights lower  
10 than 12.5 pounds per gallon.

11         Q.     Okay. So you need that mud weight, first  
12 of all?

13         A.     Yes.

14         Q.     And in order to do that, you need the  
15 fourth string of casing?

16         A.     Correct.

17         Q.     If the Wolfcamp formation began  
18 collapsing, what are the implications?

19         A.     Just like we talked about. You will have  
20 collapsing which can lead to a stuck pipe or bottom  
21 hole assembly, as well as it can lead to sidetracks  
22 and loss of the well.

23         Q.     Could you go back to Exhibit 11, which is  
24 the AFE?

25                 LEAD EXAMINER GOETZE: And that would be

1 Applicant's Exhibit 11?

2 MR. BRUCE: Applicant's Exhibit 11,  
3 Mr. Examiner. Thank you.

4 Q. (By Mr. Bruce) Who prepared the AFE?

5 A. I did, along with my coworkers at Matador.

6 Q. There's -- you've been sitting here  
7 listening to the testimony, have you not?

8 A. Yes.

9 Q. And the comments made about the cost of  
10 this well.

11 Is the extra string of casing part of the  
12 increased cost on the AFE over and above the prior  
13 Bone Spring AFE?

14 A. Yes, it is.

15 Q. What parts of this AFE are different than  
16 the original HEYCO Bone Spring AFE?

17 A. It is a deeper well. It requires a fourth  
18 string of casing.

19 It's a higher stimulation cost, when you  
20 compare a higher frac rating of a Wolfcamp versus a  
21 Bone Spring well.

22 You have a larger frac design than the  
23 original HEYCO well, a considerable larger frac  
24 design.

25 The mud type and mud weight needed in the

1 Wolfcamp well.

2 Those are probably five or six of the  
3 larger reasons.

4 Q. And if it's a deeper well, just in the  
5 abstract, would it take longer to drill, just in a  
6 general basis?

7 A. Yes.

8 Q. And you say a larger frac design.

9 Have the fracs been getting larger and  
10 more substantial over the last couple of years?

11 A. Yes.

12 Q. It's not just Matador using the larger  
13 fracs, it's other such companies as Concho,  
14 et cetera?

15 A. Correct.

16 Q. Is this AFE representative of your best  
17 estimate of costs at the time it was prepared?

18 A. Yes.

19 Q. Have costs, drilling costs, declined since  
20 the AFE was prepared?

21 A. Yes, they have.

22 Q. And after an order is issued, will a  
23 revised and current AFE be prepared and sent to all  
24 parties subject to a pooling order?

25 A. Yes.

1 Q. And after the proposed well is drilled and  
2 completed, will all actual costs be made available  
3 to the parties subject to the pooling order?

4 A. Yes.

5 Q. In your opinion, from an operations  
6 standpoint, is a cost plus 200 percent risk charge  
7 justified in this case?

8 A. Yes.

9 Q. How would you define operational risk, in  
10 general terms?

11 A. I would say it's not only the possibility  
12 of losing the wellbore, but also drilling completion  
13 issues that you have to have extensive planning to  
14 mitigate, as well as anything unforeseen while  
15 drilling or completing the well that could add days  
16 or costs to the well.

17 Q. Could you tell the examiner about some of  
18 the surface to TD drilling risks involved in drilling  
19 horizontal wells in this area of Southeast  
20 New Mexico?

21 A. There are examples of shallow air and  
22 shallow gas pockets; shallow water flows; caverns;  
23 boulders, while trying to run casing; lost  
24 circulation across the entire wellbore; red beds and  
25 swelling in the surface holes; thick salt sections,

1 sometimes leading to washouts; severe deviation  
2 issues; H2S hazards; saltwater disposal wells;  
3 anticollision with old wellbores; chert and hard  
4 limestones; faults; pilot hole sidetracking issues;  
5 logging issues; build rate issues; drill string  
6 wear; and geo-pressured zones.

7 Q. One final question. I hadn't thought of  
8 this before.

9 But under ideal circumstances, what is the  
10 approximate time for drilling the well -- days, I  
11 should say.

12 A. The well we're proposing?

13 Q. Yes.

14 A. It would be the drilling time plus the  
15 completion time to get it online?

16 Is that the question?

17 Q. Yes.

18 A. Probably 45 days. Maybe as much as 60.

19 Q. Unfortunately, that doesn't always happen?

20 A. No.

21 Q. And that's an operational risk, just the  
22 days required to drill and complete a well?

23 A. Correct.

24 Q. And were Exhibits 11, 16, and 18 prepared  
25 by you or under your supervision?

1 A. Yes, they were.

2 Q. Applicant's Exhibits 11, 16, and 18.

3 MR. BRUCE: Mr. Examiner, Applicant's  
4 Exhibit 11 was already moved into the record. So I  
5 would request to have Applicant's Exhibits 16 and 18  
6 entered into the record.

7 LEAD EXAMINER GOETZE: Mr. Gallegos?

8 MR. GALLEGOS: No objection.

9 LEAD EXAMINER GOETZE: Applicant's  
10 Exhibits 16 and 18 are so entered into the record.

11 Do you pass the witness on to  
12 Mr. Gallegos?

13 MR. BRUCE: Yes.

14 LEAD EXAMINER GOETZE: Your opportunity.

15 MR. GALLEGOS: Can I have a moment?

16 LEAD EXAMINER GOETZE: Yes, you may.

17 EXAMINATION

18 BY MR. GALLEGOS:

19 Q. Do I understand, Mr. Byrd, that one of  
20 your responsibilities has to do with regulatory  
21 filings for Matador?

22 A. I supply operational information to our  
23 regulatory department for that, for their filing.

24 Q. Have you filed a C-101 application or  
25 permit to drill for this Wolfcamp well?

1 A. Personally, I have not.

2 Q. Is that -- would that not be within the  
3 scope of your responsibility?

4 A. No, it is not. That's our regulatory  
5 department.

6 Q. Okay. Do you know whether one has been  
7 prepared and filed?

8 A. I do not know that answer.

9 Q. Okay. So when you're showing us  
10 Exhibit 16, Applicant's Exhibit 16, a wellbore  
11 schematic, that's presented just on a form -- on a  
12 Matador form, correct?

13 A. This is -- yes. It's an internal Matador  
14 exhibit.

15 Q. So this well plan and wellbore plan has  
16 not been -- other than in this hearing -- been part  
17 of the filing before the division.

18 Is that a fact?

19 A. I don't know that we ever submit a  
20 wellbore plan to the division.

21 Q. Okay. And your drilling plan, likewise,  
22 that's on a Matador form, not -- not a form  
23 submitted to the division?

24 A. Correct.

25 Q. You mentioned that there were 35 wells in

1 the Delaware Basin, 25 of which are Wolfcamp wells.

2 What were you referring to? Matador wells  
3 or other operators' wells?

4 A. That's only Matador wells.

5 Q. All right. So that would be in the  
6 Delaware Basin of New Mexico that you're talking --  
7 speaking about?

8 A. New Mexico and Loving County, Texas, just  
9 south of the border.

10 Q. You've been -- is it true that the  
11 Wolfcamp wells in Loving County, Texas, in the  
12 Wolfcamp, have been highly successful?

13 A. Yes.

14 Q. So the -- and how many Wolfcamp wells has  
15 Matador done in the Permian Basin of Southeast  
16 New Mexico?

17 A. We've drilled six.

18 Q. Okay. What are those wells? Can you give  
19 us the well names and the area in which they're  
20 situated?

21 A. Yes. Okay. So we have -- are you  
22 familiar with the Rustler Breaks area just south of  
23 Carlsbad, if I can call that an area?

24 Q. Yes. We've seen references to that.

25 A. We have the Rustler Breaks 12, 24, 27,

1 Number 1H. And that's a Wolfcamp well.

2 We have the Guitar 202H, and that's a  
3 Wolfcamp well.

4 We have the Scott Walker 204H. That's a  
5 Wolfcamp well.

6 We have the Tiger 224H. That's a Wolfcamp  
7 well.

8 We have the Tiger 204H. That's a Wolfcamp  
9 well.

10 We also have the Pickard Number 2H. And  
11 that's a Wolfcamp.

12 All of those wells have section, township,  
13 and range in the well name. I just can't remember  
14 it off the top of my head right now. I'm surprised  
15 I remembered all the other ones.

16 Q. Yeah. That was -- I was trying to write,  
17 but I write slower than you talk.

18 There are eight wells?

19 A. Six.

20 Q. Six. Okay. And --

21 A. The first five were in Eddy County.

22 Q. Was there only one Rustler Breaks well?

23 A. So let me clarify something here real  
24 quick.

25 We have Rustler Breaks, an area, but the

1 very first well we called Rustler Breaks, the well.  
2 There's one Rustler Breaks well. There's five in  
3 the Rustler Breaks area, including that Rustler  
4 Breaks well. I apologize for the nomenclature, but  
5 that's how the company decided to do it. So...

6 Q. Okay. So the Guitar well, for example, is  
7 in the Rustler Breaks area?

8 A. Area, yes, sir.

9 Q. Okay. And was the Rustler -- the well  
10 that's named the Rustler Breaks was the first well  
11 drilled there?

12 A. For Matador, yes, it was.

13 Q. So we would understand that that would not  
14 be a development well, correct?

15 A. Yeah. I would not call it a development  
16 well.

17 Q. All right. What are the results of that  
18 well?

19 A. Well, there was challenges with that well  
20 moving into that area. Taking what we've learned in  
21 Loving County and trying to apply it up there, there  
22 were challenges drilling and completing the wells to  
23 start with.

24 But the -- the results of the well were  
25 very favorable.

1 Q. Can you tell us what the production is,  
2 cumulative production has been, and what the  
3 estimated reserves are?

4 A. I don't know that number.

5 Q. But very favorable results today?

6 A. Favorable, yes.

7 Q. And when you drill in the Wolfcamp like  
8 that, on the New Mexico side, would you say that  
9 that's a learning process? In other words, you --  
10 the company has learned something about drilling and  
11 completing the Wolfcamp that it can take to other  
12 wells?

13 A. Yes.

14 Q. What are the other wells in the Rustler  
15 Breaks area?

16 A. Besides the ones I just named?

17 Q. The Guitar, yeah. The Guitar.

18 A. 202.

19 Q. Okay. Let's just take them one at a time.

20 What have been the production results and  
21 the reserves?

22 A. I don't know any of the reserves numbers  
23 for any of these wells, other than they are all  
24 operational based, from a reservoir standpoint. I  
25 don't know those numbers as far as -- I know what

1 they approximately came on at, but I don't know  
2 EURs, and I wouldn't feel comfortable addressing  
3 those questions.

4 From an operational standpoint, I can tell  
5 you if we had any problems drilling them, or that I  
6 know of, completing them.

7 Q. You -- you were the drilling engineer --

8 A. Correct.

9 Q. -- on each of these wells?

10 A. Correct.

11 Q. Okay. And each of the wells was drilled  
12 to target?

13 A. To the plan target?

14 Q. To the plan target.

15 A. Yes.

16 Q. And each of the wells was completed as  
17 planned?

18 A. Correct.

19 Q. There then is one well -- is it the  
20 Pickard that's not in the Rustler Breaks area?

21 A. That is correct.

22 Q. Can you tell us where that is, township  
23 and range, at least?

24 A. It was the one that was five or six miles  
25 northwest of the Airstrip well that we're discussing

1 today.

2 Q. Okay. In Lea County rather than Eddy  
3 County?

4 A. Correct.

5 Q. All right. Did the -- was the drilling  
6 achieved as planned?

7 A. Yes.

8 Q. Okay. And was the completion achieved as  
9 planned?

10 A. Yes, it was.

11 Q. Was there a particular rig that has been  
12 used on each of these Wolfcamp wells?

13 A. We used a variety of our rigs on the  
14 Wolfcamp wells.

15 Q. That was the question. It's not been the  
16 same -- it's not been the same rig on -- on the six  
17 wells, the six Wolfcamp wells?

18 A. No.

19 Q. I'm sorry?

20 A. No, it hasn't been.

21 Q. Okay. What was your cost per foot on the  
22 drilling of -- let's take -- let's take the Pickard,  
23 which is five or six miles from the Airstrip.

24 A. Well, that well was -- I don't know the  
25 number off the top of my head. It was a -- it was a

1 lengthly well.

2 Q. Lengthy?

3 A. Time to drill it, operational problems.

4 Q. So you can't tell us what the cost per  
5 foot was?

6 A. The cost per foot, no, I don't.

7 Q. What's the cost per foot in your AFE for  
8 the Airstrip well?

9 A. On a drilling basis?

10 Q. Yes.

11 A. For the original AFE I think it was in the  
12 340 range.

13 Q. That's calculated out to be about 345, 347  
14 a foot?

15 A. That sounds like you know it.

16 Q. Okay. Have you -- any of the other wells  
17 that have approached that, that cost per foot?

18 A. Some of our wells, yes.

19 Q. Is the -- is the rig contracted for that  
20 would be drilling the Airstrip well?

21 A. Is it contracted? Yes.

22 Q. Yes.

23 And is it contracted, so whether you drill  
24 this well or not, you're going to be paying a set  
25 rate to keep the -- to keep the rig available?

1 A. If the rig is under contract, yes.

2 Q. Okay. These are, I think, some references  
3 in your -- are these UT Patterson rigs?

4 A. Yes.

5 Q. When -- when were they contracted for?

6 A. Some of them have been --

7 MS. ARNOLD: Objection. How is this  
8 relevant?

9 MR. GALLEGOS: I'm talking about costs and  
10 the expense.

11 LEAD EXAMINER GOETZE: Well, can we get to  
12 some finality with this, or do we have a point where  
13 we're going towards?

14 MR. GALLEGOS: I think we have a point --

15 LEAD EXAMINER GOETZE: Okay. Let's --

16 MR. GALLEGOS: -- where we're going, I  
17 hope.

18 LEAD EXAMINER GOETZE: Let's --

19 MR. GALLEGOS: I mean, if we're -- if  
20 we're dealing with contracts in a hundred dollar a  
21 barrel oil environment, and now we're having to bear  
22 this in this environment, I think it has to do with  
23 the reasonable well expense.

24 A. No. Our rigs are actually on a sliding  
25 scale for the oil price.

1 Q. (By Mr. Gallegos) Okay.

2 LEAD EXAMINER GOETZE: Please speak up for  
3 the court reporter.

4 Q. (By Mr. Gallegos) All right. Let's --  
5 your Applicant's Exhibit 11 is the AFE.

6 Do you have that in front of you,  
7 Mr. Byrd?

8 A. I do.

9 Q. Did you prepare this?

10 A. I did.

11 Q. And you prepared it in March of this year?

12 A. Correct.

13 Q. Now you are aware, are you not, that there  
14 was an AFE issued in September of 2014 for this  
15 well, except for a completion of the Bone Springs?

16 A. Correct.

17 Q. Okay. And the AFE on that well was in the  
18 neighborhood of \$7 million?

19 A. 7.3.

20 Q. Okay. And is it your testimony that the  
21 increase of about \$1.8 million is because the  
22 formation is now the Wolfcamp rather than the Bone  
23 Springs?

24 A. I think that there are numerous reasons  
25 why it's higher.

1           If you look at the original completion  
2 design, it's approximately half the amount of  
3 proppant that operators, including Matador, are  
4 pumping these days. It's about two-thirds the  
5 amount of fluid in the frac design.

6           I also will tell you that there's a fourth  
7 string of casing that is required in order to drill  
8 a Wolfcamp well, and that is part of the cost as  
9 well as, like I mentioned before, some of the other  
10 technical reasons of drilling a Wolfcamp well  
11 require the higher mud weight oil-based mud in the  
12 lateral. So yes, that would...

13          Q.     Isn't the completion cost in your  
14 Applicant's Exhibit 11 AFE significantly less than  
15 the completion cost was in the AFE for the Bone  
16 Springs well?

17          A.     That looks roughly similar to me, because  
18 the Bone Spring, if you're looking at the original  
19 AFE, it doesn't include what we include in our end  
20 of well rig release costs.

21                If you're comparing dry hole costs on the  
22 original HEYCO AFE, it's what Matador considers a  
23 drilling cost, they're not apples to apples  
24 comparisons. They don't include the production  
25 casing in their cost, the production cement, the

1 production casing crew, and anything else.

2 So if you take that amount and put it back  
3 over on drilling, I would say the completion costs  
4 are almost -- are very similar.

5 Q. Okay. I was just looking at the line on  
6 stimulation, which was 2.5 million for the Bone  
7 Springs well, and I think it's, what, 1.8 for your  
8 Wolfcamp well.

9 A. Okay.

10 Q. Okay. Do you have bids from various  
11 contractors in order to compile an AFE like this,  
12 Mr. Byrd?

13 A. We have ongoing bids from contractors,  
14 yes.

15 Q. Okay. And that's basically the process by  
16 which you construct the AFE, right?

17 A. That, and looking at previous well  
18 perform- -- previous well information cost data.

19 Q. Have you done nothing since -- since March  
20 to re-request bids from the various service  
21 companies?

22 A. No. As I state in my testimony, costs  
23 have come down.

24 Q. Okay. And as you state in your testimony,  
25 your rig cost actually is indexed some way with oil

1 prices?

2 A. Correct.

3 Q. So that would mean from March to now, here  
4 at the end of September, that rig cost has gone down  
5 significantly, correct?

6 A. Correct.

7 Q. Is there any reason you did not redo the  
8 AFE so we would have it today, so that the division  
9 would be able to consider what the estimated cost  
10 for this well is today, rather than in March of this  
11 year?

12 A. As an operations engineer, I work directly  
13 with my land group. And I -- if they've asked me to  
14 redo an AFE to submit to partners, I would do it.

15 Q. But they have not asked you to do that?

16 A. To my knowledge, no.

17 Q. Do you have experience, Mr. Byrd, in the  
18 Permian Basin in Southeast New Mexico with vertical  
19 Wolfcamp wells?

20 A. We've drilled one vertical, and a couple  
21 of pilot holes that would have been essentially  
22 vertical wells.

23 Q. But otherwise, your experience is what has  
24 been with hor- -- strictly with horizontal wells?

25 A. Yes, sir.

1 MR. GALLEGOS: Thank you.

2 That's all the questions I have.

3 LEAD EXAMINER GOETZE: Redirect?

4 FURTHER EXAMINATION

5 BY MR. BRUCE:

6 Q. Simply, Mr. Byrd, talking about preparing  
7 an updated AFE for this hearing, depending on  
8 appeals and everything else, it might be several  
9 more months before a final order is issued.

10 Would the AFE change again from here to  
11 three or four months in the future?

12 A. Very likely.

13 Q. So it's always a moving target?

14 A. Correct.

15 MR. BRUCE: Thank you.

16 LEAD EXAMINER GOETZE: Mr. Wade?

17 MR. WADE: I have no questions.

18 LEAD EXAMINER GOETZE: Mr. Jones?

19 MR. JONES: Okay.

20 I'm sorry. Could you spell your last  
21 name?

22 THE WITNESS: B-Y-R-D.

23 MR. JONES: Okay. Okay.

24 A three-year training program for a  
25 graduating petroleum engineer?

1 THE WITNESS: Yes, sir.

2 MR. JONES: That was -- that was nice.

3 That means riding around -- starting to  
4 ride around with the gangs and the pumpers and  
5 production superintendents and the whole bit?

6 THE WITNESS: Yes, sir.

7 MR. JONES: But you're -- you're not the  
8 one that would have done the well size distributions  
9 or -- for the economics or...

10 THE WITNESS: No, sir.

11 MR. JONES: Someone else would have done  
12 that?

13 And -- or book the reserves after you  
14 drill? Someone --

15 THE WITNESS: Correct. I'm not the guy.

16 MR. JONES: You maybe have a third party  
17 do Matador's reserves or...

18 THE WITNESS: Well, no. We do it  
19 internally and --

20 MR. JONES: And externally?

21 THE WITNESS: -- and a third party as  
22 well.

23 MR. JONES: Okay. Where do you need this  
24 12 and a half pounds? Is it right at the top of the  
25 Wolfcamp or...

1 THE WITNESS: We have experience drilling  
2 a lot of these X, Y sands, both in Eddy County and  
3 Loving, and we have seen that you need that -- in  
4 any part of the Wolfcamp -- that you need a higher  
5 mud weight before -- or else your well will start  
6 collapsing on you.

7 MR. JONES: Okay.

8 THE WITNESS: And it will start flowing as  
9 well.

10 MR. JONES: Okay. Wow.

11 I guess I should ask the most critical  
12 things first.

13 Why are you drilling north/south here and  
14 not east/west or not -- do you have any stress data  
15 from the geologist or from your own DAPPLE sonics or  
16 some sort of pore data that shows you which way to  
17 drill?

18 THE WITNESS: We do, and I know we've had  
19 that discussion. I just know that probably Andy  
20 would be a better person to answer that question.

21 I don't know exactly what the stress data  
22 is. I just know that we were requested to drill  
23 north/south.

24 MR. JONES: And they requested you to  
25 drill pretty much toe up -- or toe down, toe up?

1 THE WITNESS: We think this is actually  
2 very -- pretty flat here.

3 MR. JONES: Okay.

4 THE WITNESS: It's 10,810 at the heel and  
5 10,810 at the toe.

6 MR. JONES: Okay.

7 THE WITNESS: Until we get in there and  
8 learn otherwise.

9 MR. JONES: Okay.

10 THE WITNESS: But per his cross-sections,  
11 it seems it would be fairly flat.

12 MR. JONES: Okay. Do you have -- do you  
13 subscribe to drill time plots or do you have your  
14 own -- your own, like, a drilling service that  
15 provides your plots in a given area or do you have  
16 your own drill time --

17 THE WITNESS: We do a lot of our own. And  
18 one, we do all of our own in-house for Matador.

19 But we also do a lot of evaluation on  
20 other operators and in different areas. Being in  
21 New Mexico, as you know, everything is public, so we  
22 can pull any of that data we want and see how we  
23 compare against other operators.

24 MR. JONES: Okay. And if you're a working  
25 interest owner with another company you can obtain

1 that area that way also?

2 THE WITNESS: Absolutely. Yes, sir..

3 MR. JONES: If you have time to do it, I  
4 guess?

5 THE WITNESS: Yeah, we do.

6 MR. JONES: Speaking of that, your info  
7 sharing -- once somebody becomes a working interest  
8 owner with you and you drill -- and you're the  
9 operator, you're going to share your data with them.  
10 Is that correct?

11 THE WITNESS: We go out of our way to  
12 share our data. We have non -- we have other  
13 working interest partners that -- we share data with  
14 them daily. That is almost non-customary, but we  
15 want them -- their input.

16 Some of the other operators have been here  
17 longer. We have lunches and conversations with them  
18 about things they've learned. We try to attack it  
19 as a team.

20 MR. JONES: Okay. So is this going to  
21 flow, this well, do you think, or you'll put a  
22 pumping unit on it pretty quick?

23 THE WITNESS: One is, I would fully expect  
24 for it to flow. Every Wolfcamp well we have drilled  
25 to date has flowed out the casing. And we don't

1 expect anything otherwise here.

2 MR. JONES: Really?

3 THE WITNESS: That is my opinion.

4 MR. JONES: Are you going to frac down the  
5 casing?

6 THE WITNESS: Right. Yes, sir.

7 MR. JONES: You will frac down the casing?

8 THE WITNESS: (No verbal response.)

9 MR. JONES: So that's why you're running  
10 that last string down to surface?

11 THE WITNESS: Yeah. We prefer not to frac  
12 down a liner top or a -- or a frac string.

13 MR. JONES: Okay.

14 THE WITNESS: We think this is the better  
15 route to go.

16 MR. JONES: So you're not gathering bottom  
17 hole pressure data while you frac, or you just infer  
18 it from the -- Halliburton or...

19 Okay. From --

20 THE WITNESS: We'll get it on flowback and  
21 we'll get it as we frac the well, yeah. We'll have,  
22 you know, pressure gradients and pressure profiles,  
23 that stuff.

24 MR. JONES: Okay. They're predicting  
25 what's happening. So...

1 THE WITNESS: Correct.

2 MR. JONES: Okay. Your -- just quickly,  
3 on your logs that you're going to run -- there's no  
4 logs, I take it?

5 THE WITNESS: We would get mud logs --

6 MR. JONES: Mud logs.

7 THE WITNESS: -- and the gamma ray that we  
8 discussed before.

9 MR. JONES: Because you've got some pretty  
10 good control?

11 THE WITNESS: Yes, sir.

12 MR. JONES: When you frac it, can you just  
13 explain quickly the -- are you going to run chemical  
14 tracers in your frac stages to try to tell where  
15 your oil is coming from versus your water, that kind  
16 of thing?

17 Was that part of their quote that they  
18 gave you?

19 THE WITNESS: Not really. Sometimes on a  
20 horizontal -- sometimes we'll do that in the heel,  
21 you know, because you kind of go up into the -- up  
22 into the wellbore.

23 I don't -- I don't know the answer to that  
24 from a frac standpoint.

25 MR. JONES: That's okay.

1 THE WITNESS: That wasn't the plan.

2 MR. JONES: Okay. What about some more  
3 details on the -- on the frac job? Your -- your gel  
4 and type of gel, the gel loading, is it like  
5 30-pound or --

6 THE WITNESS: We run a 20-pound cross-link  
7 and slick -- and a slick kind of design as well.  
8 It's a combination of -- sorry. It's 30 barrels per  
9 foot of slick water and a 20-pound cross-link  
10 hybrid.

11 MR. JONES: Okay. And what's the sand  
12 sizes you're going to use?

13 THE WITNESS: 100 mesh and 30/50.

14 MR. JONES: Okay. So nothing smaller than  
15 100 mesh?

16 THE WITNESS: No, sir.

17 MR. JONES: And this business about the  
18 different stages, how -- how does that work? How do  
19 you -- when you run your -- is this going to be a  
20 slotted line area that you run or...

21 THE WITNESS: No. Matador came to the  
22 Delaware Basin with our Eagleford experience, and we  
23 fully believe in perf and plug, as you have seen  
24 more operators going to that these days. That --  
25 you know, we'll go in there and do our first -- I'm

1 sure you're familiar with -- we'll go in there and  
2 do our first system, pump out our guns and do our  
3 next stage, and then just plug and perf all the way  
4 back --

5 MR. JONES: Okay.

6 THE WITNESS: -- about a 300-foot stage  
7 length.

8 MR. JONES: Okay. I don't have any more  
9 questions.

10 Thank you.

11 LEAD EXAMINER GOETZE: Very good. Just  
12 one question.

13 The proppant, is that going to be natural  
14 sand or is that going to be a ceramic?

15 THE WITNESS: It's a natural sand.

16 LEAD EXAMINER GOETZE: Okay. I have no  
17 other questions for this witness.

18 You have one more witness?

19 MR. BRUCE: Not at this point.

20 LEAD EXAMINER GOETZE: Okay. So this is  
21 going to be the final witness for your side of this  
22 argument.

23 MR. BRUCE: Unless I want to recall  
24 someone for rebuttal.

25 LEAD EXAMINER GOETZE: Okay. Very good.

1           At that point, we will take a break for --  
2 let me see -- 1:30.

3           (A recess was taken from 12:04 p.m. to  
4 1:30 p.m.)

5           LEAD EXAMINER GOETZE: All right. Are we  
6 all here?

7           Then let's go back onto the record for  
8 Case Number 15363.

9           And at this point, turn over to  
10 Mr. Gallegos for your presentation, sir.

11           MR. GALLEGOS: Thank you, Mr. Examiner.  
12 Yes.

13           The protestants call Harvey E. Yates,  
14 Junior.

15           (Witness sworn.)

16           THE WITNESS: My name is Harvey E. Yates,  
17 Junior.

18                       HARVEY E. YATES, JUNIOR,  
19 after having been first duly sworn under oath,  
20 was questioned and testified as follows:

21                               EXAMINATION

22 BY MR. GALLEGOS:

23           Q.     Where do you live, Mr. Yates?

24           A.     Albuquerque, New Mexico.

25           Q.     What is your business address?

1           A.     1429 Central, Northeast, Albuquerque --  
2 Northwest, Albuquerque.

3           Q.     What is your connection with Jalapeno  
4 Corporation?

5           A.     I'm the president of Jalapeno Corporation.

6           Q.     And what is the business of that  
7 corporation?

8           A.     Two businesses:  Primarily oil and gas  
9 business, and real estate.

10          Q.     Do you have a college education?

11          A.     I do.

12          Q.     Would you tell the examiner about that?

13          A.     I have a BA from the University of Texas,  
14 though having concentrated primarily on geology.

15                   I went to law school at Cornell  
16 University.

17          Q.     And did you graduate?

18          A.     That, I did, yeah.

19          Q.     And you have a degree, a JD degree?

20          A.     Yes, sir.

21          Q.     What year was that achieved?

22          A.     '73.

23          Q.     Beginning with your very first exposure to  
24 the oil and gas business in New Mexico, would you  
25 tell the examiner what that experience has been?

1           A.     Well, my father put all of his sons on a  
2 cable tool rig as a tool dresser at age 14.  So  
3 that's, for me, 60 years ago.  It's gone downhill  
4 since then.

5           Q.     The industry or you?

6           A.     Well, the industry goes up and down.

7                   I have done most jobs in the industry, in  
8 the sense that I've worked as a landman.  I've done  
9 some engineering, in the sense of getting wells  
10 drilled, where I created the AFE, and was a drilling  
11 engineer.

12                   I have done a lot of geology, and I've  
13 worked in various executive positions.

14          Q.     Let's focus on Jalapeno Corporation.

15                   How long has that company been in  
16 business?

17          A.     Oh, I'm guessing.  I think it's 15 to 17  
18 years.

19          Q.     Can you give the examiner a general idea  
20 of the scope of its business, you know, the  
21 properties and the locale and the...

22          A.     It is an operator, operating primarily  
23 shallow holes.  We explore primarily in Chaves  
24 County, but we have drilled in a number of other  
25 places.

1 I -- it has a large nonoperating position.  
2 For instance, it has -- it almost mirrors Matador's  
3 position in the Delaware Basin, in the -- in a  
4 portion of the Delaware Basin.

5 Q. I'm going to ask you some more about that,  
6 some specifics about that.

7 But as president of the corporation, do  
8 you oversee others in the company who perform their  
9 work in other disciplines?

10 A. Yes, I do.

11 Q. Now at some time, from an acreage position  
12 or leasehold position, would -- were -- did your  
13 company have relations with the Harvey E. Yates  
14 Corporation?

15 A. Yes, it did.

16 Q. Could you give us the background in that?

17 A. Harvey E. Yates Company was a company  
18 formed out of my father's assets. My brother George  
19 became president of that corporation. My brother  
20 Fred and I had earlier both spun off, taking our  
21 proportionate of share of assets and added to them.

22 And Fred spun off Yates Energy, and I spun  
23 off as Cibola Energy, later part of Jalapeno  
24 Corporation.

25 Q. Did that result in approximately one-third

1 divisions of the acreage positions that HEYCO had in  
2 Southeast New Mexico?

3 A. I think we -- I think Jalapeno has less  
4 than one-third. You're talking about what HEYCO and  
5 Matador had?

6 Q. Yes. From the division, yes.

7 A. Probably less.

8 Q. And is your -- the Fred Yates company, is  
9 that Yates Energy Company?

10 A. Yates Energy, yes.

11 Q. Now at some time, did the -- HEYCO's  
12 properties become the properties of the applicant  
13 here, Matador?

14 A. Yes. HEYCO merged into Matador. And I  
15 think that agreement was struck in February --  
16 January or February of 2015.

17 Q. Okay. Now, what effect has that had in  
18 regard to your companies doing business that will be  
19 impacted by Matador's activities?

20 A. Well, because we have a large joint lease  
21 spread, we'll be dealing with Matador for an awfully  
22 long time.

23 Some of that acreage is covered by  
24 operating agreements, and a great deal is not.

25 Q. About roughly how many acres would be

1 involved that -- that you have a working interest in  
2 and Matador has a working interest position?

3 A. I don't -- I cannot give you an exact  
4 answer. It depends on whether you're including  
5 rights earned. Say you take 40 acres and enter into  
6 a section operating agreement that is a section, so  
7 you end up with some kind of interest in that whole  
8 area.

9 If you take that whole area, we're  
10 probably looking at something like 90,000 acres in  
11 which we would have a very small interest.

12 If you just -- if the question has to do  
13 with our gross acreage position outside of those  
14 operating agreements, you're probably looking at  
15 30,000 acres or something.

16 Q. And is that about the same situation with  
17 Fred's company, Yates Energy?

18 A. I think Fred's company probably has  
19 slightly more than we do.

20 Q. Because of this overlap, I would call, of  
21 leasehold interests, does the -- do the issues in  
22 this particular proceeding have a much greater  
23 significance than just your 3 or 4 percent working  
24 interest in the proposed spacing unit?

25 A. Yes. Yes, they do. Because subsequently,

1 we're going to be dealing with Matador. And  
2 consequently, both Fred and I have gone out of our  
3 way to try to work with Matador. Not necessarily  
4 because of this spacing unit, but because we have  
5 many acres with which to work with them in the  
6 future.

7 Q. Okay. Is -- what experience have you had  
8 with Matador, if any, prior to this proceeding  
9 involving horizontal wells?

10 A. Do you mean prior to the receipt of an AFE  
11 from them?

12 Q. Yes.

13 A. Well, I'm on the board of directors of a  
14 company called Spiral, which is a company that also  
15 has acreage within what I will call the Matador box  
16 in the Delaware Basin.

17 And in that role as director, I met with  
18 Joe Foran and participated in the negotiation of a  
19 joint venture agreement between Spiral and Matador.

20 Q. And did that involve the potential  
21 drilling of horizontal oil wells?

22 A. Yes, it did. It was put together, in  
23 large part, for that purpose.

24 Q. Before you received the proposed AFE and  
25 joint operating agreement involving what we're

1 calling the Airstrip well, had you had any other  
2 direct experience with Matador in horizontal wells?

3 A. No.

4 Q. Have you been qualified, Mr. Yates, to  
5 give testimony as an expert oil and gas lease and  
6 well operator before this division?

7 A. Yes, I have.

8 Q. Have you also been qualified and given  
9 testimony as an expert oil and gas lease well  
10 operator before the Oil Conservation Commission?

11 A. Yes, I have.

12 MR. GALLEGOS: Mr. Examiner, a good bit of  
13 Mr. Yates' testimony will be factual, but we offer  
14 that he will be giving opinion testimony on  
15 operations -- drilling operations of oil and gas  
16 companies that are pertinent to the issues here.

17 We offer him as qualified to give such  
18 opinion testimony.

19 LEAD EXAMINER GOETZE: Mr. Bruce?

20 MR. BRUCE: Well, generally, I have no  
21 objection, but I might have objections to specific  
22 questions and we'll address them at that time.

23 LEAD EXAMINER GOETZE: We'll review them  
24 as they go along.

25 At this point you are so qualified as an

1 expert witness in oil and gas leasing and  
2 operations.

3 Q. (By Mr. Gallegos) What do you understand  
4 Matador is seeking by this application?

5 A. They are attempting to essentially take  
6 our property in the spacing unit, at least as to the  
7 Wolfcamp.

8 And they are seeking to do that by  
9 imposing on us a risk penalty that has no  
10 relationship to actual risk.

11 They're seeking to create a spacing unit  
12 which I do not think is authorized under the law,  
13 but which in -- so long as the -- such agreements  
14 are reached voluntarily, which I believe that they  
15 are permissible.

16 Q. Have you -- in your opinion, has Matador  
17 made a good faith effort to obtain your agreement  
18 to -- agreement of Jalapeno -- to participate in  
19 this well?

20 A. Well, I do think that the men who  
21 testified here earlier today believe that they have  
22 made a good faith effort, but that there's a problem  
23 with that.

24 The -- and I'll go through each part of  
25 what happened.

1           But the basic problem is that company --  
2   that Matador and companies like it use the oil  
3   conservation division's propensity, if not rule, to  
4   give 200 percent risk penalty regardless of the  
5   facts on the ground. That they use that as  
6   leverage, as a bargaining tool.

7           And that these gentlemen who testified  
8   today -- Mr. Sims, for instance, has every reason to  
9   believe they have negotiated in good faith.

10           But once -- but he has no capacity to  
11   alter the noncon- -- for instance, the nonconsent  
12   provisions of an operating agreement.

13           So I want to address that, but I'll go  
14   through specifically.

15           Q.    I'm going to ask --

16           A.    Okay.

17           Q.    Excuse me.

18           I'm going to ask you about the specific  
19   instances and letters that have been exchanged.

20           But I do want to ask you: In your  
21   experience in the industry, are JOAs often modified  
22   from the particular APL forms that are in common use  
23   by reason of mutual negotiations between the  
24   parties?

25           A.    Yes. From time to time they are. Let me

1 give you my experience on that.

2 As we have received operating agreements  
3 from other companies other than Matador, prior to  
4 Matador's entry into the area, I would receive a  
5 proposed operating agreement that might have  
6 300 percent nonconsent.

7 And to these companies I would send a  
8 letter. I often would -- if we were going to  
9 participate in the well, I would sign the AFE, but  
10 would tell them that we would not sign an operating  
11 agreement that contained nonconsent provisions that  
12 did not meet reality in -- in the horizontal  
13 drilling world, in the horizontal drilling era.

14 And so from time to time I would -- one of  
15 them would back off and we would enter an operating  
16 agreement. Often they wouldn't, and we would drill  
17 a well where we just had signed an AFE, no operating  
18 agreement.

19 Q. Has the current commonly-used form of  
20 joint operating agreement been in use for  
21 approximately 25 years?

22 A. Yes. It has varied some over time. Those  
23 major companies, primarily, get together and make  
24 changes to the operating agreements.

25 But the one that Matador referenced

1 earlier, I think, was created in 1989, I will point  
2 out, during the vertical well era.

3 Q. Okay. And what -- what change in the  
4 industry has come about now, as far as drilling  
5 techniques, as opposed to what, for decades, was the  
6 vertical well approach?

7 A. Horizontal drilling. And the geologist  
8 here today gave a very good rendition of why risk is  
9 less with horizontal drilling. And it's been  
10 remarkable.

11 Two things have happened: Cost of wells  
12 have gone up and the risk has dropped way down.

13 Q. Do you believe that the form JOA that  
14 has -- I think was promulgated some 20, 25 years  
15 ago -- accommodates the change in the industry  
16 that's come about with the advent of horizontal  
17 drilling and completion?

18 A. No. No, I don't.

19 Q. Let me -- was this -- was this well first  
20 proposed by HEYCO rather than Matador?

21 A. Yes, it was.

22 Q. Let me direct your attention, Mr. Yates,  
23 to our exhibits which will be Protestant's Exhibit  
24 Number 2.

25 A. I have it here.

1 Q. Okay. Would you identify what that is?

2 A. That is a certified letter from Harvey E.  
3 Yates Company to us. And it has to do with the  
4 Airstrip 31 State Com 2H well.

5 And it's proposing a well, and with it was  
6 an AFE.

7 Q. Okay. And is it proposing that the well  
8 be completed in the third Bone Springs formation?

9 A. Yes, it is.

10 Q. Is the AFE the third page of Protestant's  
11 Exhibit 2?

12 A. Yes.

13 Q. What did you do when you received this  
14 letter and the AFE?

15 A. We signed the AFE. I signed the AFE and  
16 sent it back.

17 Q. All right. And how much is the proposed  
18 well cost?

19 A. I think it's 7.3 million. Yeah, a total  
20 of \$7,317,000.

21 Q. So Jalapeno was willing to participate in  
22 the well?

23 A. Yes.

24 Q. What happened after that?

25 A. Nothing, for an awfully long time. And we

1 would call HEYCO to see if they intended to drill.

2 Then a merger took place with Matador, and  
3 we received a letter dated April 28, 2015.

4 Fred received the same letter.

5 And -- I'm sorry. Dated earlier. I -- on  
6 March 31, I think. And...

7 Q. Is that Exhibit 3, Protestant's Exhibit 3?

8 A. Yes, it is.

9 Q. Okay. Let's -- just so we've got the  
10 sequence straight.

11 So September you get the -- you get the  
12 proposal, the AFE, you sign it, you're willing to  
13 participate in the \$7 million drilling.

14 Nothing happens.

15 And then you say you believe that it was  
16 about February when HEYCO merged with Matador?

17 A. That's correct.

18 Q. Okay. So then the next thing that has  
19 anything to do with this property was this March 24,  
20 2015, letter to you from Matador?

21 A. Yes. Two other things happened in the  
22 in-between time.

23 Q. Okay. Tell us about that.

24 A. Oil prices fell markedly, and service cost  
25 prices fell markedly.

1 Q. About what was the oil price in September,  
2 when you received the first proposal for the  
3 Airstrip well?

4 A. I would have to go back and look. I  
5 believe it was between 80 and \$90.

6 Q. And by the time -- March 2015 -- do you  
7 recall roughly what the price was?

8 A. I think between 45 and \$50, probably.

9 Q. Okay. Now, what was your reaction to this  
10 letter from Matador signed by Melissa Randall?

11 A. Well, actually, I was offended by the  
12 letter for several reasons.

13 There's the fact that the AFE is a  
14 million-seven higher, but that might be explained if  
15 one set aside the fact that there had been  
16 significant declines in service company prices.

17 But the reason I was offended -- and I  
18 believe the same is true for Fred -- is that the  
19 letter sent a JOA. The JOA had 100/300 percent,  
20 covered the whole section. It sent an AFE, as I  
21 said, that was a million-seven more than the earlier  
22 AFE.

23 He gave us 15 days to make a decision.  
24 And if we decided to participate, we were to  
25 consider the letter from Melissa Randall as an

1 invoice and send our money in for the well.

2 Q. And is it your testimony that the  
3 operating agreement was not just for the proposed  
4 well, 160 acres, but for the entire Section 31?

5 A. That's correct.

6 Q. Okay. And what was your opinion of  
7 whether that was appropriate or not?

8 A. Well, I thought, first off, because of the  
9 nonconsent provisions, I'm not -- I'm not going to  
10 sign an operating agreement like that. As I said,  
11 it doesn't reflect actual risk.

12 So I -- I thought it inappropriate, and I  
13 went back with an alternative offer.

14 Q. Okay. Before that, I want to point out in  
15 this letter.

16 Did -- as an alternative to participating,  
17 in the second page of Ms. Randall's letter, were  
18 there other proposals that were presented to you by  
19 Matador?

20 A. Yes, there were.

21 Q. Okay. What were they, and what was your  
22 reaction?

23 A. Well, assign all of your interest to MRC  
24 Delaware for \$1,800 per net acre was one of them.

25 And assign all of your interest in the

1 same company delivering a 75 percent net revenue  
2 interest reserving an overriding royalty, which  
3 would equal the difference between existing burdens  
4 and 25 percent interest proportionately reduced.

5 Q. What was your opinion of the fairness of  
6 this \$1,800 per acre offer?

7 A. Remember, I had just participated in a  
8 joint venture with Matador, where Matador paid  
9 \$8,000, valued the acreage at \$8,000 an acre in this  
10 same general area.

11 And so now they're offering \$1,800 an  
12 acre.

13 So I thought it unreasonable.

14 Q. Okay. Did you reply to Ms. Randall, and  
15 is that reply reflected in Petitioner's [sic]  
16 Exhibit 4?

17 A. Yes, it is.

18 Q. What is the date -- what was the date of  
19 that letter?

20 A. April 28, 2015.

21 Q. What was your purpose in writing Matador,  
22 addressed to this land manager?

23 A. I felt she was deserving of a response,  
24 and -- or not equivocating about the problems.

25 And so in my letter I raise the issue of

1 the \$1.7 million additional AFE.

2 I discuss the issue of the nonconsent  
3 provision, I believe.

4 Q. Yes. I'll direct your attention to the  
5 second full paragraph.

6 What did you have to say regarding the  
7 risk issue?

8 A. I said:

9 "While we may be willing to participate in  
10 the proposed well, we are unwilling to execute a JOA  
11 written as you have proposed. The nonconsent  
12 provision included in your JOA suggests a much  
13 greater geologic risk, a risk inherent in the  
14 vertical well world, but far overestimates the  
15 geologic risk inherent in the Bone Spring or  
16 Wolfcamp horizontal drilling world.

17 "Because of this, any JOA we execute with  
18 terms even approaching those you have suggested  
19 would have to be limited to the well's spacing unit  
20 and be limited to the horizon to be drilled in the  
21 wells proposed lateral, in this case, the Wolfcamp."

22 Q. What is the rationale between the risk  
23 inherit in a vertical -- vertical well development  
24 as opposed to the horizontal well development?

25 A. I'm -- I'm sorry. I don't -- why am I

1 saying that?

2 Q. Yes. Why are you saying that?

3 A. Okay. Well, we have spent a great deal of  
4 time analyzing risk in the horizontal era. And I  
5 think at some point we will probably show some  
6 slides as to that, but let me -- let me just analyze  
7 it.

8 We analyzed the well -- all the horizontal  
9 wells drilled in the four townships surrounding the  
10 Airstrip, the proposed Airstrip well.

11 There were 87 wells drilled there,  
12 horizontal wells.

13 Of those 87 horizontal wells, I believe  
14 there was one dry hole, and that was drilled to the  
15 Delaware.

16 And there was one well lost to an en- --  
17 to an engineering problem. That was a well drilled  
18 by Matador. It lost -- it had a casing collapse, I  
19 think it was, and it was a Wolfcamp attempt. But I  
20 think it -- they had a problem with the casing  
21 collapse, and they went on and completed it in the  
22 Bone Springs, if I remember right.

23 So out of 87 wells -- and this includes  
24 some first Bone Springs wells, Delaware wells, one  
25 or two Wolfcamp wells, and Bone Springs wells.

1           80 percent of those wells are capable of  
2 producing 100,000 barrels or more.

3           If you analyze the risk -- the engineering  
4 risk -- every AFE you receive has a contingency for  
5 the sort of risk that the gentleman up here was  
6 discussing earlier today.

7           As to actual loss of well, you've got 1  
8 out of 87. As to actual dry holes, you've got 1 out  
9 of 87.

10          Now, I -- I want to say that you're  
11 looking at a guy who was once force pool king. I  
12 came to this commission at one point and force  
13 pooled nine locations at the same time. I was  
14 engaged in a wildcat program covering four  
15 townships.

16          At another date I came here, I think, for  
17 seven.

18          I understand risk. And the drilling  
19 program that I engaged in, I have ample evidence  
20 that 200 percent was insufficient as a risk.

21          But when you get to -- when you start  
22 drilling these horizontal wells and you're drilling,  
23 for instance, 87 wells and you come up with a  
24 circumstance where the -- you're at the risk guard,  
25 that you're going to get 100,000 barrels or more,

1 you don't have a 200 percent risk.

2 And I'll say that these four townships are  
3 not quite as good as some other townships.

4 We've analyzed a multitude of townships  
5 where people have sent us AFEs and so forth, to try  
6 to analyze the actual risk.

7 There's another thing.

8 One of the issues, of course, that was  
9 addressed here today, Is the geologic zone there?

10 Now where I was drilling rank wildcat  
11 wells, there were aways -- there's always a  
12 question: Is the -- is the horizon actually there?

13 Well, this particular -- these four  
14 townships have been penetrated by more than 300  
15 wells. The Wolfcamp has been penetrated by more  
16 than 300.

17 So how can you -- how can you say there's  
18 a geologic risk there?

19 I am vociferous. I'll stop and you can  
20 ask questions.

21 Q. No. The only -- the only other question I  
22 had relates back to our Exhibit 4, and to ask you:  
23 Did you also, in that letter, raise with Matador the  
24 issue of the expenses?

25 A. Yes, I did.

1 Q. And did you provide a counterproposal?

2 A. I did. I said:

3 "As an alternative to your proposal we  
4 would offer:

5 "One, we would agree to sell Matador a  
6 one-year term lease covering our interest in the  
7 Wolfcamp underlying the spacing unit for \$5,000 per  
8 net acre. We would reserve an overriding royalty  
9 equal to the difference between 25 percent and the  
10 existing burdens."

11 Q. And what happened as to -- as a response  
12 to your proposal or any other communications with  
13 Matador?

14 A. Well, nothing happened for a long time. A  
15 landman with Matador called and talked to my -- a  
16 land person in my office. I was not in the office  
17 at that time.

18 I called that person back, did not get a  
19 return call.

20 Subsequently, in meetings, I think perhaps  
21 Rudy -- it was a phone conversation. What I was  
22 told is that this was not going to work. This  
23 spacing unit concept was not going to work because  
24 they wanted me to sign an operating agreement  
25 covering the entire section.

1 Q. Now, we have heard some testimony this  
2 morning about a Dallas meeting. I think the date  
3 was June 15, 2015.

4 Did you attend that meeting?

5 A. No, I did not.

6 Q. Did you have a representative attend?

7 A. My son, Emmons, attended, and my brother  
8 Fred attended. And my niece, Becky, attended.

9 Q. Did you learn that Matador had put up on a  
10 whiteboard the alternatives that you working  
11 interest owners might have in this proposal?

12 A. Well, yes, I did. My son actually  
13 photographed it and brought it back to me.

14 Q. Okay. And what does that show? What did  
15 it show?

16 A. I'm going to pull it up. But essentially,  
17 as I remember, it shows -- two things stood out to  
18 me.

19 One, that -- one was that one alternative  
20 deal we can make with them was to be force pooled.

21 As I said, Matador uses forced pooling as  
22 leverage to make other things work.

23 The other issue, the other thing that  
24 stood out to me, is no JOA is acceptable to them  
25 unless it covers the entire section.

1 Q. Okay. Did any -- anything come out of the  
2 meeting in terms of possibilities, even, for a  
3 voluntary agreement?

4 A. Well, we had -- we had subsequent  
5 conversations as a result of that.

6 But today, earlier, there was testimony  
7 that that was -- that meeting was something caused  
8 by Matador. And I suppose, in a sense, it was.

9 But the reason the meeting took place,  
10 Fred and I conversed about it. Fred had, years  
11 earlier, played handball with Joe Foran, the  
12 president of Matador.

13 Because we have a great mutual interest in  
14 the future, we thought it was best to see if we  
15 could not start the relationship on a bad note. And  
16 so Fred called Joe Foran and requested that a  
17 meeting take place.

18 And Foran called back, and eventually,  
19 that meeting took place at our request.

20 Q. At any time in these various  
21 communications did Matador indicate any willingness  
22 to accommodate your request concerning a risk  
23 penalty and a JOA and confining the JOA to the  
24 specific property being developed?

25 A. No.

1 Q. Let me turn your attention to Protestant's  
2 Exhibit Number 1, which is dated August 17, 2015.

3 A. (Witness complies.)

4 Q. Did you write this letter to Van Singleton  
5 at Matador?

6 A. Yes, I did. Let me give you a little  
7 background on this letter.

8 Van Singleton was the gentleman that I had  
9 met, and I think that he probably is the boss -- is  
10 Rudy's boss here.

11 But in any case, he's, I think, the chief  
12 landman for Matador.

13 Because we had been able to make no  
14 headway, I sought out Van Singleton at an oil and  
15 gas event here in Santa Fe and told him what we were  
16 interested in doing, that we wanted to -- we would  
17 like to see Matador drill this well. We wanted to  
18 get off on a good foot. And so we discussed the  
19 various possibilities.

20 And so I laid those out to Van. The  
21 crunch point always became the nonconsent provisions  
22 of the...

23 And in the course of time between the  
24 letter to Melissa Randall and to Van Singleton, I  
25 had -- I laid out several other possible trades that

1 would work for us.

2 Q. Now this letter was characterized by one  
3 of Matador's witnesses as having a tone, I think was  
4 the word, that they thought was inappropriate.

5 What was your purpose in writing this  
6 August 17, 2015, letter?

7 A. I wanted to see if we could reach a deal.  
8 And I wanted all of -- much of our conversation,  
9 almost all of the conversation up to that point, or  
10 the negotiation, had been verbal. So I wanted to  
11 lay out in writing what we had offered to Matador  
12 beforehand.

13 Q. And is that memorialized on page 3 of this  
14 letter?

15 A. Yes, it is.

16 Q. Explain to the examiner what you were  
17 willing to do to try and achieve an agreement with  
18 Matador.

19 A. I agreed -- the first one was this -- now  
20 this is actually the second one, because the first  
21 one was laid out in the letter to Melissa Randall.  
22 I've already read that.

23 Q. Right.

24 A. "It can simply" -- as to Matador -- "It  
25 can simply change the terms of the nonconsent

1 provisions in its proposed JOA to 100/150."

2 That is a 50 percent risk penalty.

3 "Jalapeno will nonconsent as to the  
4 drilling of Airstrip Wolfcamp well, but may well  
5 consent to the Bone Springs horizontal wells, or  
6 even later Wolfcamp wells, within acreage covered by  
7 the JOA depending, of course, on the then posted oil  
8 price."

9 Second:

10 "It can trade its Section 17" -- let me --  
11 let me explain that in the trade with HEYCO, Matador  
12 received some interest in some acreage in Chaves  
13 County, where we have a joint interest, and we  
14 developed a prospect there. And before Matador ever  
15 came along, we had proposed to HEYCO that they farm  
16 that out to us. And that involves 320 acres in  
17 Chaves County.

18 But between the time we had made the  
19 proposal to HEYCO and the time of this letter, we  
20 had bought the interest of other -- of another party  
21 for \$250 an acre there. So a little background.

22 "It can trade its Section 17 Chaves County  
23 acres..."

24 Q. This is the second proposal?

25 A. Yes.

1 "It can trade its Section 17 Chaves County  
2 acreage."

3 And incidentally, Matador did not know  
4 they owned this property. These landmen who were  
5 talking to me didn't know. They said, We don't own  
6 it.

7 I -- one of the things I did with  
8 Singleton is I said, You go back and look. You got  
9 this acreage. In fact, they paid nothing for it,  
10 but they ended up getting it.

11 "It can trade its Section 17 Chaves County  
12 acreage for our interest in the Airstrip spacing  
13 unit at the earlier specified prices."

14 And that was \$250 for the Chaves County  
15 acreage, 5,000 for the Lea County acreage that we're  
16 talking about, Airstrip acreage.

17 And you may think the differential in  
18 those prices is great, but let me tell you, the  
19 capacity of Airstrip acreage to produce is much,  
20 much greater.

21 "It could then place its newly-acquired  
22 interest in the Airstrip unit into a JOA and drill  
23 the well."

24 In other words, just acquire the acreage  
25 and put it in a JOA. Didn't have to worry about my

1 concern about nonconsent provisions.

2 Or next:

3 "It can purchase Jalapeno's acreage within  
4 Section 31," the whole section, "on a term  
5 assignment and convey to us its acreage in the west  
6 half of Section 17, as discussed above."

7 And as discussed above --

8 Q. Yeah. Explain that.

9 A. As discussed above is \$5,000 a net acre.  
10 What I said above is that would give  
11 Matador the capacity to drill within that whole  
12 section. They could take that acreage and put it in  
13 the JOA. My condition was, if they -- if we got  
14 back the acreage, any -- any acreage we got back as  
15 a consequence of their failure to drill, to drill  
16 and earn all the acreage under the term assignment  
17 we offered, that acreage would come back  
18 unencumbered with a 100/300 percent nonconsent  
19 agreement.

20 Q. Mr. Yates, were the proposals you made  
21 here something beyond ordinary, or unique, as  
22 opposed to the kind of terms that are frequently  
23 made in industry agreements?

24 A. Well, as I told Van Singleton, it looked  
25 to me like we had gone way overboard trying to reach

1 a deal.

2 Now I want to say, I would like to see  
3 Matador drill this well. That's not the problem  
4 here. And I agree horizontal wells are the better  
5 way to do it rather than vertical wells.

6 But this risk, the real risk, needs to be  
7 taken into consideration.

8 Q. And has Matador ever given the slightest  
9 ground on that particular --

10 A. No.

11 Q. -- issue of your negotiations?

12 A. No.

13 Q. Let -- let me ask you.

14 On your first proposal, you mention then  
15 posted prices of oil.

16 How does that bear on your  
17 decision-making?

18 A. Well, we -- in my company we generally  
19 look for the period -- calculate -- attempt to  
20 calculate the period of time it will be until we get  
21 our money back.

22 And I'm going to show the division some  
23 slides later, here, that will evidence this, our  
24 experience.

25 That while this division was imposing a

1 200 percent nonconsent penalty for risk, we were  
2 getting payback in less than a year on wells in the  
3 Bone Springs.

4 Our general rule of thumb was -- and this  
5 is, in part, because of other opportunities we had  
6 in the industry in Texas, where we have participated  
7 in better wells.

8 Our general rule of thumb was that we did  
9 not want to drill a well where we had payout in more  
10 than two years. That was it. With the higher oil  
11 prices later, that stretched. But...

12 Q. Okay. Let me turn now to our Exhibit 7,  
13 Protestant's Exhibit 7, which is a slide.

14 A. (Witness complies.)

15 Q. Did you prepare this?

16 A. Yes.

17 Q. Explain what you are conveying by this  
18 particular slide.

19 A. Well, years ago the Oil Conservation  
20 Commission decided -- had a hearing, and I think it  
21 was in 2003. And that had to do with setting an  
22 automatic 200 percent risk penalty.

23 And at that hearing, a gentleman who --  
24 before whom we had appeared often -- said he divided  
25 risk. The legislature said to the commission, You

1 can impose up to a 200 percent risk.

2 Well, this gentleman had divided that risk  
3 into three parts. One was geologic risk. Is the  
4 zone there? Is the horizon there?

5 Second was operational risk. Sometimes we  
6 refer to it as engineering risk.

7 And the third was reservoir risk.

8 Reservoir risk deals with such things as  
9 was testified to here today. Will the reservoir  
10 produce?

11 And he had taken that 200 percent, divided  
12 it into thirds, 66.6 percent, whatever that works  
13 out, and then he would reduce each of those based on  
14 the evidence in the case as to each of those risks.

15 So for instance, geologic risk, if there's  
16 no question that you're going to find the zone, then  
17 that would be reduced proportionately, and on and  
18 on.

19 Q. Right. Was that the testimony of -- when  
20 you would say "he," was that the testimony of Former  
21 Examiner Michael Stogner?

22 A. Yes, it was.

23 Q. And so have you -- have you attempted to  
24 evaluate risk on the same basis that he indicated  
25 was an appropriate standard?

1 A. Yes, we have.

2 Q. Okay.

3 What is Protestant's Exhibit 8?

4 A. That is a four township map. The Airstrip  
5 is right in the center of those four townships.

6 And that shows every penetration we could  
7 identify through the Wolfcamp in those four  
8 townships.

9 And so that goes to the geologic risk.  
10 Can a geologist take -- and I think there's  
11 something like 300 points there.

12 Can a geologist go to management and say,  
13 Wolfcamp is here.

14 Q. And what does that tell you about --

15 A. There's no geologic risk in terms of  
16 finding the zone.

17 Q. Now, the -- and what is the second page of  
18 Exhibit 8, Protestant's Exhibit 8?

19 A. Let me find it here.

20 This is -- this shows the wells drilled in  
21 those four -- horizontal wells drilled in the --  
22 those four townships.

23 I believe there are 87 of them.

24 They are color coded based -- this is  
25 important to keep in mind -- based on production so

1 far, not based on expected ultimate recoveries.

2 And so when I gave you a minute ago  
3 100,000 barrels out of more than 80 percent of the  
4 wells, this is how we went about it.

5 We took -- we took the 20 oldest wells in  
6 these four townships. We construct -- we  
7 constructed a decline curve based on the average of  
8 those 20 oldest wells. And so we would take, in  
9 each of these cases, the actual production of a  
10 well. And then when actual production stopped,  
11 because it hadn't been producing long enough, we  
12 would use the average decline curve from those 20  
13 oldest wells in order to attempt to ascertain how  
14 much the ultimate recovery of those wells would be.

15 And I would point out that the one dry  
16 hole drilled is on the far bottom right-hand corner.

17 It's a Delaware well, a Delaware dry hole.  
18 And there --

19 Q. This is --

20 A. Yeah.

21 Q. That's right down in there?

22 A. I believe that's the well.

23 Q. Okay.

24 A. But when we went through and used this  
25 process, and we -- we used -- the question of price

1 came up today, and that's always a very interesting  
2 thing, isn't it, related to -- to risk.

3 We used actual prices, and then we used  
4 not our judgment as to where prices are going, but  
5 the Bank of Oklahoma's price deck on where -- if  
6 we -- if we put dollars in there.

7 And the reason that was important,  
8 where -- even where we're talking about barrels  
9 coming out rather than dollars coming out, is that  
10 if the prices collapse, just absolutely collapse,  
11 they shut in wells.

12 But if the prices continue at a reasonable  
13 level, then you continue to produce.

14 So the price does affect the life of the  
15 well, and so that's what we did.

16 And you can go through and do that  
17 yourself. I think that the division ought to be  
18 doing that, to let just -- if a citizen walked into  
19 an agency, or the governor, or the -- a state  
20 legislature or legislative body and asked, Where is  
21 the depository for knowledge about the oil and gas  
22 industry in the whole government, what would the  
23 answer be? It would be the OCD.

24 So I would sure recommend to the OCD that  
25 it be looking at actual risk, what's going on here.

1           There's been a world change. What  
2 happened is that in 2003 there -- because a number  
3 of larger producers came in here and asked to  
4 eliminate the need to come and give testimony as to  
5 actual risk, and because dealing with that testimony  
6 was also cumbersome on the division, the OCC decided  
7 that it was going to automatically impose a  
8 200 percent risk unless a person came in here to  
9 object.

10           Well, I want to show you in a minute the  
11 results of that issue to some people.

12           But something tremendous happened then, in  
13 2007 and 2008.

14           Cimarex, I think, came in with the first  
15 forced pooling application in 2007, and then they  
16 ballooned in 2008.

17           From that time forward, drilling in this  
18 state turned from vertical drilling, for the most  
19 part, to horizontal drilling, and risk markedly  
20 changed.

21           And yet, we continue with this automatic  
22 200 percent business.

23           In any case, this slide up here goes --  
24 you can look at it. Just keep in mind that it's  
25 production up to that date. It's not estimated

1 total recoveries.

2 Q. You've pointed out, in the lower  
3 right-hand corner, the Delaware dry hole well.

4 Where is the one operational failure well?

5 A. You know, I --

6 Q. I'm sorry to --

7 A. Yeah. I think it is up in Section 34, if  
8 I remember correctly, that Matador drilled a  
9 Wolfcamp and had a -- that collapsed.

10 That's the only lost well we are familiar  
11 with. So when they talk about engineering or  
12 operational risk, keep in mind two things.

13 One is the AFE usually has something like  
14 a 15 percent contingency fee for problems.

15 But in terms of lost well, one out of 87?  
16 In terms of just absolutely losing, one out of 87.  
17 I mean, what kind of risk are you looking at?  
18 That's less than a 2 percent risk.

19 Q. Okay. Does Protestant's Exhibit Number 9  
20 illustrate your conclusions, from the information  
21 concerning what the risk is, on a proposed well?

22 A. Yes. I've already been through geologic  
23 risk, where you have four sections penetrated by  
24 more than 300 holes.

25 Any geologist can map evidence that the

1 Wolfcamp is there, so there's zero geologic risk.

2 Operational risk. If you have one out of  
3 87 wells, you come up with about a 1.1 percent  
4 chance of risk, setting aside the fact that AFEs  
5 will cover smaller risk through their contingencies.

6 And then reservoir risk, we came up with  
7 an 81 percent chance that you're going to get  
8 100,000 barrels or more.

9 I'm not sure that the legislature ever  
10 meant that there is risk in a well --

11 MR. BRUCE: I would object to this. I  
12 don't know that Mr. Yates has any knowledge of what  
13 the legislature meant.

14 And I would like him to point out in the  
15 statute where it describes what its intent was.  
16 You'd just have to look at the statute.

17 And even these risk factors that they  
18 noticed in Exhibit 7, those aren't set forth  
19 anywhere in the pooling statute.

20 And I would object to him speculating  
21 about the intent of the New Mexico legislature over  
22 the decades.

23 MR. GALLEGOS: I'll phrase a question I  
24 think that would be appropriate.

25 Q. (By Mr. Gallegos) What is -- what is your

1 personal view of the provision in Section 70-2-17 in  
2 the statute which provides that up to 200 percent  
3 risk penalty can be allowed by the division?

4 A. My personal opinion on that is, the  
5 legislature gave the Oil Conservation Commission and  
6 division the authority to impose -- to inquire as to  
7 the actual risk and impose that actual risk penalty  
8 on it.

9 And that the division attempted, earlier,  
10 to divide that risk into three parts, as I have  
11 explained before, and that's what we are following  
12 here.

13 Q. How did you arrive at the 19 percent for  
14 the reservoir factor?

15 A. Well, as I -- as I was trying to say,  
16 where we found that looking at those producing  
17 wells, among the 87, that 81 percent of them would  
18 produce 100,000 barrels or more, then we came up  
19 with that 19 -- the reciprocal of that --  
20 19 percent. And that's how we came up with that.

21 Now as I started to say, I'm not at all  
22 sure that one would have had to produce  
23 100,000 barrels. I mean, let's say a well produces  
24 50,000 barrels. There are many -- anyway, point  
25 made.

1 Q. All right. Mr. Yates, because of your  
2 interest in this particular issue, have you  
3 investigated into what -- what happens to small  
4 working interest owners, unlike Jalapeno, who are  
5 force pooled and subjected to this automatic risk  
6 penalty?

7 A. Yes, I have.

8 MR. BRUCE: I object as to the relevancy  
9 of that question.

10 MR. WADE: Mr. Gallegos, why is the  
11 question relevant?

12 MR. GALLEGOS: The question is relevant to  
13 show the propriety of having just a 200 percent risk  
14 penalty without investigation into the actual risk,  
15 and the effect that it has on parties, small  
16 interest owners, who are unable to take any steps to  
17 protect their interest.

18 And we're talking about correlative  
19 rights. It bears directly on correlative rights,  
20 because if people are losing their right to share in  
21 production because of this practice, then that's  
22 pertinent evidence. The division should be  
23 considering that.

24 MR. WADE: I'm not sure that it's relevant  
25 to this particular case, though.

1           So we'll sustain.

2           Q.       (By Mr. Gallegos) Mr. Yates, would, in  
3 your opinion, a decision by the OCD allowing a  
4 200 percent risk penalty protect the correlative  
5 rights of Jalapeno and Yates Energy, who elect not  
6 to participate in this \$9.1 million well proposal?

7           A.       No, for -- for this reason.

8                    If -- what you're talking about is  
9 300 percent, the cost of the well back plus twice  
10 that, the 200 percent penalty, plus operating.

11                   So you can look at these wells, and what  
12 you'll see is that companies often will drill these  
13 wells, get their money back within the first year,  
14 sometimes the first two years, as I said, or three  
15 years.

16           MR. BRUCE: Objection. He's speculating  
17 again.

18           A.       I have seen this over and over in these  
19 wells that we've participated in.

20           Q.       (By Mr. Gallegos) Well, you're relating  
21 your experience, Mr. Yates?

22           A.       Yes, I am.

23           LEAD EXAMINER GOETZE: Let -- let's --  
24 we'll let experience -- his experience be presented,  
25 and we'll go forth from there. Okay?

1           A.       So what you will often find is that those  
2 wells, even though they have been fabulous wells,  
3 never reach that 300 percent.

4                    So the question then comes, and from our  
5 standpoint, what have we received from those  
6 correlative rights?  If a company gives you a  
7 \$9 million AFE, they're going to have to receive  
8 \$27 million plus operating costs back before we see  
9 any benefit at all from that oil and gas that was  
10 ours in the ground.

11                   Now, how is that protecting correlative  
12 rights?

13           Q.       (By Mr. Gallegos)  Mr. Yates, did you hear  
14 the testimony this morning that recognized that the  
15 AFE before the division and the parties was prepared  
16 in March of this year, it's conceded that costs have  
17 gone down, but the AFE has not been revised to  
18 reflect current costs?

19                   And I ask, if you had current cost  
20 information, would that bear on your decision and  
21 participation as a working interest owner?

22           A.       Yes, it would have.  If -- if they had  
23 gone back and -- if two things had happened -- well,  
24 three things, I guess.

25                   If they had gone back and that -- if they

1 had revised their AFE, and it had come back in the  
2 \$7 million range, number one, if prices -- oil  
3 prices had jumped up to about \$60 a barrel, which  
4 they were for a while, and if Matador did not  
5 require an operating agreement that is 300 percent  
6 nonconsent penalty, then we likely would have  
7 gone -- would have participated.

8 Q. In your negotiations, did -- did you take  
9 the position that there was to be no risk penalty  
10 whatsoever?

11 A. No, I didn't.

12 Q. Were you willing to -- to compromise and  
13 meet Matador --

14 A. Yes. We -- we have this data from these  
15 four townships, and many others, showing that the  
16 risk is actually something like 20 percent, just  
17 like I've shown here.

18 Q. But were you willing -- but were you  
19 willing to accept a JOA?

20 A. We more -- we more than doubled that, and  
21 we offered to sign a JOA that had a 100/150, which  
22 is equivalent to 50 percent risk penalty.

23 MR. GALLEGOS: Mr. Examiner, I -- I move  
24 the admission of Protestant's Exhibits 1, 2, 3, 4,  
25 7, 8, and 9, and pass the witness.

1           Oh, yeah. And I need to move the  
2 admission of exhibit -- Protestant's 14, which was  
3 referred to earlier.

4           MR. BRUCE: Could you identify those  
5 exhibits again for me?

6           MR. GALLEGOS: Yes. 1, 2, 3, 4 -- all of  
7 those are letters -- 7, 8, 9, and 14.

8           MR. BRUCE: Just a second here,  
9 Mr. Examiner.

10           I would -- I don't have any objection to  
11 those, except as to Exhibit 7, because I don't think  
12 there is any backup that the legislature intended --  
13 discussed these particular -- all of these as the  
14 only risks to be covered by the forced pool  
15 legislation.

16           MR. GALLEGOS: I don't -- I don't think  
17 the exhibit is meant to do more than illustrate the  
18 factors that Mr. Yates applied because of the  
19 Stogner -- what I call the Stogner factors in the  
20 Order 11.

21           LEAD EXAMINER GOETZE: Who prepared  
22 Exhibit 7?

23           THE WITNESS: I did.

24           LEAD EXAMINER GOETZE: That is your  
25 interpretation?

1 THE WITNESS: Yes.

2 LEAD EXAMINER GOETZE: Okay.

3 And then 1 through 4, 8, and 9 were  
4 prepared by you, as far as the summary of the wells?

5 THE WITNESS: 8 was prepared under my  
6 direction.

7 LEAD EXAMINER GOETZE: Okay.

8 And Number 9?

9 THE WITNESS: The same.

10 LEAD EXAMINER GOETZE: And then 14 is just  
11 public -- the APD for the well that was previously  
12 approved at this location for the Bone Springs.

13 We'll go ahead and admit Protestant's,  
14 Exhibits 1, 2, 3, 4. We will do 7, 8, and 9 and 14  
15 also.

16 We also notice that the presentation and  
17 discussion given on the screen matches the exhibits  
18 that were submitted in the notebook, so any  
19 references -- it's the same material?

20 MR. GALLEGOS: It is.

21 LEAD EXAMINER GOETZE: Okay.

22 At that point, let's take a break in honor  
23 of Mr. Stogner and be back here in 10 minutes,  
24 please.

25 (A recess was taken from 2:34 p.m. to 2:46

1 p.m.)

2 LEAD EXAMINER GOETZE: All right. Okay.  
3 We're back on the record for Case Number 15363.

4 Mr. Bruce, I believe it is your witness.

5 MR. BRUCE: And this witness, I'll let my  
6 cocounsel, Dana Arnold, cross.

7 LEAD EXAMINER GOETZE: Very good.  
8 Proceed.

9 EXAMINATION

10 BY MS. ARNOLD:

11 Q. I want to start with the dataset that you  
12 were talking about before, I believe Exhibits 8, 10,  
13 and possibly some of the other ones.

14 LEAD EXAMINER GOETZE: And that would be  
15 Protestant's exhibits?

16 MS. ARNOLD: Protestant's exhibits,  
17 exactly.

18 Q. (By Ms. Arnold) What formation were these  
19 wells -- I believe there's 86 or 87 wells -- drilled  
20 to?

21 A. All the horizontal wells in that -- those  
22 four townships -- are shown here that we could  
23 identify. We took those wells off of the OCD  
24 information. And so Delaware -- most of them are  
25 for Bone Springs, I believe.

1 Q. Do you know how many of them were Bone  
2 Spring wells versus Wolfcamp wells?

3 A. Most of them, but I can't tell you  
4 exactly. Wolfcamp -- versus Wolfcamp wells?

5 Q. Yes.

6 A. There were, I think, only one or two  
7 Wolfcamp wells, as I said in my testimony.

8 Q. Is that the same dataset that you used  
9 when you were calculating the risk numbers that you  
10 put forth earlier?

11 A. Yes. We took -- we took the Delaware  
12 well -- ev- -- all the horizontal wells in those  
13 four townships.

14 Q. So when you were calculating your risk  
15 with the numbers that you put forth earlier, you  
16 were -- you used primarily, you know, let's say,  
17 86 -- around 86 of them were Bone Spring wells not  
18 Wolfcamp wells?

19 A. Fewer were Bone Springs. But yes, your  
20 analysis is more or less right.

21 Our rationale for that was this. Matador  
22 is a good operator, would not be drilling a Wolfcamp  
23 well if it were going to be worse and a Bone Springs  
24 well; therefore, we thought that this analysis was  
25 justified.

1 Q. So do you think that -- in your opinion,  
2 is the risk of drilling a Wolfcamp well, then, the  
3 same as the risk of drilling a Bone Spring well?

4 A. Well, based on the testimony that I heard  
5 today, it ought to be a better well.

6 Q. But is the risk the same?

7 A. You know, that's difficult to say. It  
8 probably isn't, but I can't tell you exactly what it  
9 would be.

10 Q. So you don't --

11 A. But -- but if you -- our point is that if  
12 you drill a horizontal well in those four townships,  
13 here are the results.

14 Q. But in the case here, we have a horizontal  
15 Wolfcamp well, correct?

16 A. Right.

17 Q. So the risk that we're talking about for  
18 this specific well is the risk that would be  
19 associated with a horizontal Wolfcamp well?

20 A. Is it what?

21 Q. The applicable risk standard.

22 A. It seems to me that the risk is  
23 approximately the same; that is, that you have at  
24 least an 80 percent chance of having  
25 100,000 barrels, and probably almost no chance of a

1 dry hole.

2 Q. Let's start with the 100,000 barrels.

3 What -- where did you get that number and  
4 what exactly is driving that number?

5 A. Well, as I said, we took the actual  
6 production from those 87 wells, from the oil  
7 producing wells out of the 87. And as long as we  
8 had the actual production, then that went on a  
9 chart.

10 And then we imposed on that, after the  
11 production was no longer there -- and of course you  
12 have wells in a variety of lengths of time they have  
13 been producing.

14 We imposed, like, a declining curve. And  
15 where did we get that declining curve?

16 We took the 20 oldest wells in the four  
17 townships and averaged those declining curves, and  
18 then estimated from that how much those wells would  
19 produce.

20 Q. And how many of that 20-well dataset were  
21 Wolfcamp wells versus other formations?

22 A. Well, as I say, about a -- one or two  
23 Wolfcamp wells.

24 Q. So one or two out of the 20 of the dataset  
25 that you used here were Wolfcamp?

1 A. Oh, no. You mean the older wells?

2 Q. Yes.

3 A. I'm -- I could ask that question of my  
4 son, but I don't know. I don't know if any of them  
5 were. Maybe one was.

6 Q. And the 100,000 barrel number, is that  
7 what you're saying is what makes this well economic?  
8 Or what --

9 A. Well, I was trying to get at that  
10 unartfully, based on the earlier question.

11 My point is, when they talk about risk,  
12 what are they really talking about? Is it risk of  
13 getting a certain number of barrels? What is it?

14 And that -- if you go through and look at  
15 the various price points, 100,000 sort of jumps out  
16 at you as something you have a chance to get payback  
17 in at low prices and do very well, do much -- much  
18 better at higher prices.

19 You choose a figure. I mean, it could be  
20 80,000 barrels, but that's the reason for it.

21 Q. So that's the number.

22 I guess my question is: What is the  
23 number to you, number of barrels, that would make it  
24 economic?

25 A. Make what economic?

1 Q. The well here.

2 A. You mean this particular well right here?

3 Q. Yes.

4 A. What price? What price level?

5 Q. Well, let's use the prices that you used.

6 I think it was -- around \$45 was one of the price  
7 scenarios that we saw.

8 A. Well, I would have to go -- what is the  
9 AFE? At the AFE you gave us?

10 Q. Yes.

11 A. It would probably be more than  
12 100,000 barrels. If the AFE dropped down where it  
13 ought to be, 100,000 barrels would probably make it  
14 economic.

15 Q. Where -- when you say "where it ought to  
16 be," in your opinion, where ought it to be?

17 A. Well, that's 7 million, something like  
18 that. 7.3 million.

19 Q. So more akin to an AFE for a Bone Spring  
20 well?

21 A. Uh-huh.

22 Q. Even though it's a different formation?

23 A. It's a little bit different. I mean, it's  
24 a little bit deeper.

25 Q. Are there any other things that you think

1 make the Wolfcamp -- drilling the Wolfcamp well  
2 different that might account for additional costs  
3 over and above a \$7 million Bone Spring AFE?

4 A. There are some things about the Wolfcamp  
5 that perhaps cause the cost to be better.

6 But as it was pointed out earlier today,  
7 the \$7.3 million HEYCO AFE had as much fracing or  
8 completion cost as -- as the Wolfcamp well.

9 And that was given as one of the reasons,  
10 by your engineer, one of the reasons for the higher  
11 cost. And yet, I believe that the completion cost  
12 of a Bone Springs well was about as much.

13 You know there were a number of things  
14 about the AFE that created concerns for us.

15 The 200- -- the supervision cost. There  
16 was a supervision cost of \$105,000, and your  
17 supervision cost of \$234,000. I mean, things like  
18 that. For how many days out there? Now, that's  
19 strange.

20 So there were a number -- a number of  
21 things that caused us angst there.

22 But the point you're asking is what --  
23 whether 100,000 barrels is a rational breakeven cost  
24 at some price level and some -- some AFE cost.

25 I don't know. It depends. You -- you

1 choose another figure. If you can tell me a figure  
2 of the number of barrels there is, we'll run those  
3 figures.

4 But what you'll find is that it's not  
5 200 percent. It's not rational to impose a  
6 200 percent nonconsent penalty.

7 Q. Can we flip to your -- I think what the  
8 legislature intended slide, to talk about those  
9 points a little bit?

10 A. What number is it?

11 Q. I think it's Exhibit 7, Protestant's  
12 Exhibit 7.

13 LEAD EXAMINER GOETZE: Thank you.

14 Q. (By Ms. Arnold) You define geologic risk  
15 here as the risk that the targeted zone doesn't  
16 occur at the well's location.

17 Are there any additional types of geologic  
18 risk?

19 A. Well, there are -- you can -- if you go  
20 through the documents on risk in these kinds of  
21 discussions, you can sometimes find that people  
22 categorize all these risks as geologic risk.

23 For instance, reservoir risk is geologic  
24 risk.

25 The reason we categorized it, even though

1 some gentlemen up here don't like that, categorized  
2 it this way, was because of the -- the fact that  
3 someone else here in the OCD had used this  
4 breakdown.

5 Q. So I guess specifically, are there  
6 additional types of risk, besides just that the  
7 targeted zone won't be there, that you would put  
8 into the geologic risk category?

9 A. Well, as I said, some people will put what  
10 is called here, reservoir risk, in there.

11 Will the zone produce? Will there be  
12 permeability and porosity in those zones?

13 And that is intended, here, to be covered  
14 by reservoir risk.

15 Q. So you don't consider porosity or  
16 permeability to be geologic risks?

17 A. As I said, if you want to -- if you want  
18 to lump together reservoir and geologic risks,  
19 that's fine with me. Many people do.

20 But because here at the OCD they had been  
21 separated out, we separated them out.

22 You can go back and -- the documents where  
23 people write about these things, and sometimes they  
24 talked about geologic risk as encompassing more than  
25 we do right here. There's more than the existence

1 of the zone, because they include what we call here  
2 reservoir risks. But we have provided for it.

3 Q. So the definition of risk, as it pertains  
4 to geology, but perhaps also reservoir or other  
5 components, are open to interpretation depending on  
6 who you ask in the industry?

7 A. Absolutely. We -- absolutely.

8 If you could refer me to a hard-and-fast  
9 statement as to what risk is, we'll be glad to use  
10 it. We -- we searched for what someone else, a  
11 neutral party here in the OCD, had categorized as a  
12 risk, and we used it.

13 Q. Let's talk about the operational risks.

14 You know you define it here, perhaps with  
15 OCD influence. It's the risk that the hole will be  
16 lost by equipment malfunctions or by mistakes.

17 Are there any other kinds of operational  
18 risks, then, specifically pertaining to horizontal  
19 wells, that you think is applicable here?

20 A. Of course. But my point was that those  
21 risks -- there's a continued -- all the AFEs --  
22 virtually all the AFEs I've seen have some sort of  
23 contingency provision, and it is to cover some of  
24 those risks you are talking about.

25 Q. Does this AFE have it? Can you point it

1 out to us?

2 A. I haven't looked at that in a long time.  
3 But it seems to me, with all of the extra costs,  
4 that it has it in there. Let's -- if you will  
5 direct me to that.

6 Q. It's Exhibit 11 for applicant, and I don't  
7 know what one it is for you.

8 A. There's a contingency risk on the drilling  
9 of 390,000, completion of 289,000, production of  
10 98,000.

11 I think -- I have trouble reading it, but  
12 I think 690,000 of contingency here.

13 Q. So --

14 A. In the -- as to intangibles.

15 Q. So what about -- how would you define this  
16 contingency? What types of risks do you think fall  
17 into this category?

18 A. Well, if -- I mean, you -- somebody -- on  
19 every well I've been on, from very simple to more a  
20 complicated well, somebody screws up somewhere.  
21 Someone brings the wrong equipment out there and  
22 consequently creates a delay of a day or whatever.  
23 I mean, that always happens. And I think those  
24 kinds of things are intended to be covered by  
25 contingency.

1           And often what happens is engineering  
2 departments in these companies do not want  
3 management to come back and say, Why did you  
4 underestimate that drilling cost, and so they puff  
5 up the figures to cover just the kinds of things  
6 that I've talked about.

7           Sometimes it's done through extra  
8 contingency costs. Other times it's done because  
9 they bought -- they bought the pipe three months ago  
10 at this price. Even though it's dropped down, they  
11 use this price.

12         Q.     So what you mentioned there as your  
13 examples are relatively small, you know, risks or  
14 failures that might occur.

15           You're talking about a day or pipe.

16           What about some bigger risks? And I think  
17 our drilling engineer talked about them earlier:  
18 Shallow air, gas pockets, water flows, caverns, lost  
19 circulation.

20         A.     Those are encountered every day in the  
21 drilling operation. And generally, they would be  
22 covered by the AFE cost.

23           There is -- every time I go out and drill  
24 a well there are problems of some kind like that,  
25 and they're -- generally an engineering department

1 in a company like Matador is going to not want  
2 management to come in and say, Well, you know, last  
3 time you drilled here there was an air pocket that  
4 created a problem. Why in the hell didn't you cover  
5 it this time? You know, that kind of thing..

6 And so they build these AFEs to cover  
7 those things.

8 Q. What about some, you know, doubling the  
9 days on a rig because of encountering chert? And  
10 would you think that would be -- fall under this  
11 contingency or --

12 A. Yes, generally, because they will look at  
13 the drilling in similar wells elsewhere and will  
14 take that into account on the number of drilling  
15 days they have imposed.

16 But the question is whether -- you're  
17 really addressing -- is whether the risk -- the  
18 operational risk should escalate the amount by which  
19 you can impose a risk penalty on someone who is  
20 being force pooled.

21 You have control when you come into the  
22 commission with your AFE.

23 Q. Agreed. So I guess my real -- my question  
24 here is, you would think that if we were to say  
25 double the days on a well, that you would expect the

1 drilling contingency to be double, to account for  
2 that risk that always exists when you go out  
3 there --

4 A. No. What I said --

5 Q. -- or do you think it would be a smaller  
6 percentage?

7 A. What I think is that an engineering  
8 department will look at the last 10, 15, 20 wells  
9 they've drilled, and -- and those having encountered  
10 these various problems you're talking about, those  
11 will be built into those averages, and they will be  
12 in the AFE as a consequence.

13 Q. So there's no other operational risks that  
14 are not covered by this contingency factor that an  
15 operator might encounter?

16 A. Well, yeah, loss of the hole. And  
17 that's -- we pointed out how often that happens. In  
18 the 87 wells it happened once.

19 Q. So that is the only way that you define  
20 that?

21 A. Well, why don't you -- if you want to  
22 specifically ask me about other risks -- I mean,  
23 you're suggesting that there are other risks that  
24 aren't covered by the operating agreement or that  
25 aren't represented in that lost hole.

1 Q. Pilot hole, sidetracking, logging issue,  
2 build rate issues, drill string wear, washout,  
3 severe deviation, H2S.

4 A. Common in the industry. All common in the  
5 industry, and taken into account by the  
6 engineering -- a good engineering department, and  
7 I'm sure Matador has one.

8 Q. If a revised AFE -- let's turn back to the  
9 AFE.

10 If a revised AFE were provided, would you  
11 change your election?

12 A. I -- I was asked that question earlier,  
13 and I said there are three issues.

14 What is the price of oil when it comes in?

15 And the revised AFE, what is it going to  
16 come in at? That's an issue.

17 The price of oil, and do I have to sign an  
18 operating agreement that is a 300 percent  
19 nonconsent?

20 I'm not going to sign one of those.

21 Q. Have you ever signed one before?

22 A. Of course I have.

23 Q. In the last five years?

24 A. I have in these circumstances, where I've  
25 raised the same issues, and the operator had

1 wanted -- might have sent an operating agreement  
2 covering a section or covering 320 acres or  
3 whatever, and they were going to drill on a  
4 proration unit. And I have agreed, in that specific  
5 proration unit, to sign that operating agreement  
6 because I was going to participate in the well.

7 Under those circumstances I have signed,  
8 because it won't be imposed -- the terms of that  
9 won't be imposed on me -- very unlikely that the  
10 terms of that would be imposed on me, because I am  
11 participating in that particular well.

12 Q. So if you are not going to participate in  
13 a well, you would never sign a JOA that would  
14 impose, in your words, 100/300 percent?

15 A. No, I would not.

16 Q. But --

17 A. But I have. Now, please understand me.  
18 Let's make clear what we're talking about.

19 If we're talking about an area where we're  
20 drilling vertical wells, a 200 -- or a 200 percent  
21 risk penalty in that 100/300, which is built in, is  
22 often not enough.

23 My point is, we need to have these  
24 nonconsent provisions tailored to the real world.  
25 The real world changed with horizontal drilling.

1 Q. And that's -- it's not enough, based on  
2 your experience being an operator of vertical wells?

3 A. That's right. Sometimes it is. If you're  
4 in the development area, then sometimes it  
5 overstates it.

6 But if you are in a wildcat area, it  
7 understates it. I've drilled a number of wells on a  
8 wildcat basis where the chances of success are  
9 5 percent, 7 percent, something like that. In that  
10 case it doesn't begin to --

11 Q. How many wells have you operated -- how  
12 many horizontal wells have you operated in  
13 New Mexico?

14 A. None. None.

15 Q. How many horizontal Wolfcamp wells?

16 A. Probably over 100. I -- I don't know.

17 Q. But you yourself haven't operated any  
18 horizontal wells in New Mexico?

19 A. No. We have participated in many, and we  
20 have participated in many in Texas.

21 Q. But you've never, yourself, borne the  
22 risks as an operator of horizontal wells in  
23 New Mexico?

24 A. No. I've watched the risk. I've borne  
25 the risk in the sense that, as a non-operator, I

1 bear that risk as well.

2 Q. Let's talk about, again, the AFE.

3 If Matador were to provide you with an  
4 AFE, would you expect that it would provide all of  
5 the potential working interest owners with an  
6 updated AFE?

7 A. They should.

8 Q. Even interest owners that they've already  
9 reached a deal with?

10 A. I think that a number of the interest  
11 owners Matador has reached a deal with were put in  
12 that position because their choice was forced  
13 pooling, 200 percent risk penalty, or sign Matador's  
14 deal. Sure, it ought to.

15 Q. And what does that do as -- you know,  
16 every time AFE numbers change, you think that an  
17 operator should be required to provide an updated  
18 AFE?

19 A. It depends on how material they are. If  
20 it's -- if it's significantly material, the answer  
21 is -- is yes.

22 I understand. We're -- we operate as  
23 well. You can't provide a new AFE every time you  
24 turn around. But if there's a material difference,  
25 we try to go back to nonparticipants and let them

1 know that.

2 Q. So let's talk about the timing in the last  
3 six months and everything that's occurred.

4 Between March and June, when the first  
5 meeting was that we talked about earlier, was there  
6 a material change in pricing, would you say, in that  
7 time period? Would we have already -- would Matador  
8 have already had to provide an updated AFE at that  
9 point?

10 A. Yes. My guess is that Matador's figures  
11 for the March AFE came from earlier -- earlier  
12 periods. I mean, that's just -- that's just  
13 reasonable, and came from a period before the oil  
14 prices started collapsing and before all the service  
15 companies were scattered around looking for work.

16 And so in that period of time I think it  
17 very likely that had Matador rerun the AFE it would  
18 have dropped.

19 Q. If an order is issued in this case, we get  
20 to that point, Matador has testified that they'll  
21 provide an updated AFE at that point where you  
22 would, again, have the opportunity to participate or  
23 not.

24 Why is that insufficient?

25 A. Well, because we can make it -- if we get

1 an AFE at this point, we can go back and consider  
2 that AFE, we can look at oil prices and consider  
3 that.

4 And of course, then, the question with  
5 Matador, the question you're posing, what would the  
6 nonconsent penalties be? What are you talking  
7 about? In that single well?

8 Listen. I have offered to sell my acreage  
9 lock, stock, and barrel to Matador, sell it. I'll  
10 be out of it. Matador can take that spacing unit  
11 and go enter an operating agreement of its choice.  
12 They don't have to worry about me.

13 That has been on the table for an awfully  
14 long time.

15 But Matador won't do that because it wants  
16 me to sign an operating agreement covering the whole  
17 section, having nothing to do with that particular  
18 well.

19 Q. I'm sorry. I don't think that you  
20 answered my question, so I am going to try to  
21 rephrase it.

22 A. All right.

23 Q. Why, specifically, is receiving an updated  
24 AFE after an order is issued and Matador is  
25 approaching drilling the well, with its best

1 estimates of the cost at that time, insufficient?

2 A. Well, because we -- we've got -- we'll  
3 have to make a decision very quickly at that point,  
4 to participate or not, rather than having the time  
5 to look at this and consider the matter.

6 Q. What -- when you say "quickly," what's the  
7 time period that we're talking about here?

8 A. I forget what the commission's orders are,  
9 but I think that it's probably 30 days or less.

10 Q. Is 30 days atypical for a decision to make  
11 an election as to whether you're going to  
12 participate in a well?

13 A. No, not if -- not if you have all the  
14 other information.

15 But I'll tell you that -- the thing about  
16 having an AFE that is -- has gone -- you go back and  
17 you really take a look at -- you take a look at it  
18 is, you have time to consider that AFE, match it  
19 with prices, do your own internal economics to see  
20 if you can participate or not, which is a lot  
21 different than the cir- -- a lot different than this  
22 circumstance.

23 I'm not going to participate in the well  
24 unless the prices are right, unless the nonconsent  
25 provisions -- or their equivalent from this

1 division -- is right and the AFE is right.

2 Q. In all of your years of experience, when  
3 you sign -- or see, for that matter, operating  
4 agreements -- do they typically cover just the unit  
5 or do they cover the whole section?

6 A. They vary markedly.

7 Q. So most of the time what do you see?

8 A. Generally, an operating agreement is put  
9 together covering more than one lease.

10 Q. More than one lease.

11 What about more than one unit?

12 A. Spacing unit?

13 Q. Yes.

14 A. Yeah. Generally they cover more than one  
15 spacing unit.

16 Q. And why is it objectionable to you that  
17 Matador requests a JOA covering more than one  
18 spacing unit?

19 A. Because Matador wants, in that spacing  
20 unit, a 300 percent nonconsent penalty.

21 I have already offered Matador the  
22 alternative. I've said I would enter a JOA covering  
23 the entire section if it were a 100/150 percent.

24 What's Matador's objection to that?

25 Q. I think I'm the one asking the questions.

1 But...

2 A. Oh.

3 Q. Let's talk about the 150 --  
4 100/150 percent. I believe it was in your letter,  
5 which is Protestant's Exhibit 2 -- 4?

6 Both letters, whichever sections that they  
7 may be. Both letters that you have sent to Matador  
8 in the last six months, seven months.

9 Your attorney and you briefly discussed  
10 earlier -- in depth, discussed that Matador would  
11 not budge on its 100/300 percent.

12 Do you feel like you budged at all on your  
13 100/150 percent number?

14 A. Well, as I showed you earlier today, the  
15 number ought to be 100 and 20 percent. 100 and 20  
16 percent. So we moved it up to 50 percent.

17 If you double the risk -- if you think  
18 there's more risk in a Wolfcamp well, you double  
19 those risks, you're about at that level, at 140  
20 or -- 40 or 50 percent.

21 Q. But at any point, did you try to negotiate  
22 at some middle ground between 100/150 and 100/300?

23 A. Well, listen. Did -- I don't remember  
24 Matador being willing to discuss anything but  
25 100/300 percent.

1 I had a discussion with Joe Foran about  
2 that on the Spiral deal I testified to earlier.

3 But Matador hasn't, in this circumstance,  
4 been willing to budge an iota.

5 If they had been willing to budge, they  
6 could have sent me a letter back saying, We'll do  
7 this. Or one of these guys' landmen could have  
8 called me and said, Look. What do you think about  
9 this?

10 That never happened. The only thing that  
11 happened was the visual sheet that Joe Foran put up  
12 when my son, Emmons -- I've got a copy of it --  
13 force pool or the operating agreement as he  
14 specified.

15 Q. I'm glad you brought that up. You called  
16 yourself the forced pool king earlier.

17 Did you ever use forced pooling to get  
18 wells drilled or to -- as a bargaining negotiation,  
19 as you said earlier?

20 A. Not -- not to -- not in the sense that it  
21 is used -- used today.

22 Where I -- in the circumstance where I  
23 used it, I had acquired most of the leasehold  
24 interest in about four townships, and -- in Chaves  
25 County -- and was attempting to drill a number of

1 wildcat wells to find fields.

2 And I attempted to negotiate these. These  
3 were risk -- this was a risky endeavor, much riskier  
4 than this right here.

5 But you're asking me whether I went to  
6 someone and said, I will just force pool you if you  
7 don't agree to my terms.

8 Q. Did Matador say that, or did they present  
9 you with four or five different options, one of  
10 which was forced pooling?

11 A. Well, that -- yes, they did that. They  
12 presented options. I -- but every one of them has  
13 to do with my entering a JOA with 300 percent.

14 And I say -- I'm overstating the matter,  
15 actually, when I say they numbered -- offered a  
16 number of options.

17 Those options are the ones that were  
18 discussed earlier, related to what Joe Foran did. I  
19 don't know that Matador has done anything else.

20 Q. I'm sorry. Can you -- let's just go into  
21 that a little bit more.

22 In your opinion, do you usually see, when  
23 you're working with operators, meetings with --  
24 publicly-traded large operators -- meetings with  
25 around 20 of their executive staff and CEO?

1           And secondary question --

2           A.     Well, restate that one. 20 people around  
3 the table seems to be of significance to the  
4 question. I don't understand that.

5           Q.     When you are negotiating or working in  
6 good faith to reach a deal to avoid forced pooling,  
7 is it typical in your experience to see the entire  
8 executive staff come to you and set up a meeting?

9           A.     Well, let me give you my impression about  
10 that.

11                     First off, the meeting was set up as a --  
12 as a consequence of my brother Fred's call to Joe  
13 Foran. We did not expect 20 people.

14                     I have seen the song and dance of Matador  
15 before in earlier meetings with -- that I had  
16 discussed earlier. The same people.

17                     I think those people are brought into the  
18 room to try to impress the person who is meeting  
19 with them with Matador's strength and capacity,  
20 meaning that we're going to force this thing down.

21                     The -- what had happened -- I've got a  
22 visual of what Foran offered. He walked in, raised  
23 up --

24                     MS. ARNOLD: I object to this a little bit  
25 because, first of all, hearsay. He wasn't

1 specifically there.

2           And second of all, this visual is not  
3 being introduced as an exhibit.

4           LEAD EXAMINER GOETZE: Well, let's --

5           THE WITNESS: We will next time.

6           LEAD EXAMINER GOETZE: Well, let's confine  
7 ourselves to what you -- the experience.

8           But you opened the door, so if you're  
9 going to ask these questions, be a little more  
10 specific as to where you're going with it.

11           MS. ARNOLD: Do you object to having Jim  
12 Bruce ask the second half of the questions?

13           LEAD EXAMINER GOETZE: Mr. Gallegos?

14           MR. GALLEGOS: The second half? You're  
15 just halfway through?

16           MS. ARNOLD: I don't know how many  
17 questions he has.

18           MR. BRUCE: I wouldn't have many.

19           MR. GALLEGOS: I suggest that Mr. Bruce  
20 can write a note to his cocounsel and she can  
21 complete her examination.

22           LEAD EXAMINER GOETZE: I don't really -- I  
23 think it just behooves us to get this procedure  
24 going again.

25           Let's allow you to finish up with the

1 final questions you have.

2 MR. BRUCE: Okay.

3 EXAMINATION

4 BY MR. BRUCE:

5 Q. Just briefly, Mr. Yates.

6 You mentioned correlative rights.

7 Can you define correlative rights without  
8 reading a statute or a rule?

9 A. I'm going to read it.

10 Q. Go ahead.

11 A. "The opportunity afforded, so far is  
12 practical, to do -- to do so to owner of each  
13 property in a pool to produce without waste to a  
14 just and equitable share of oil or gas from a pool."

15 Q. And if this well is drilled, wouldn't your  
16 just and equitable share of oil and gas be produced?

17 A. No. It would be produced by Matador for  
18 Matador's interest under the terms of this deal.

19 Q. Well, then, your problem is really with  
20 the state legislature for adopting pooling statutes,  
21 correct?

22 A. No, it's not. It's with the Oil  
23 Conservation Commission for automatically assuming  
24 that it ought to be 200 percent rather than applying  
25 the actual risk.

1 Q. And then --

2 A. To be clear to you, Mr. Bruce, I do not  
3 object to the driller receiving his money back for  
4 the drilling. It is the risk portion that we're  
5 talking about.

6 Q. Okay. But when you said -- I think early  
7 on you said you objected because Matador would be  
8 taking your property.

9 A. Exactly right. They take the difference  
10 between the actual risk and the risk and the  
11 200 percent, whatever the --

12 Q. You would -- Jalapeno and Yates would  
13 still own their leasehold interest, wouldn't they?

14 A. Minus extricated from Matador.

15 Q. They wouldn't have lost their leasehold  
16 rights?

17 A. They would have lost -- those leasehold  
18 rights are only of value because of what's in the  
19 ground.

20 Q. Pursuant to statute?

21 A. Well, I don't think it's --

22 MR. GALLEGOS: Well, this has turned into  
23 just an argument.

24 LEAD EXAMINER GOETZE: We're not getting  
25 very far, and this is something that is --

1 Q. (By Mr. Bruce) But you're talking about  
2 risk.

3 If Matador drills an economic well, a  
4 successful well at this location, it will prove up  
5 Jalapeno and Yates' offsetting acreage, won't it?

6 A. Yes, it will. That's one of the reasons  
7 I've said I want them to drill this well.

8 Q. And that's of benefit to you, to Jalapeno  
9 and Yates?

10 A. Well, it would be -- if we can  
11 participate, yes.

12 Q. Well, if it proves up offsetting acreage,  
13 is benefiting the offset acreage?

14 A. That's right. That's why I offered to  
15 virtually give this acreage to Matador, but I'm not  
16 going to enter a JOA of their...

17 Q. And I think you discussed this. When you  
18 and people in your company looked at oil prices,  
19 they don't remain constant, do they?

20 A. They certainly don't.

21 Q. You have been in the business longer than  
22 me.

23 A. I am not going to admit that. But...

24 Q. I'll speculate to that, Mr. Yates.

25 Just over the last 35 years there's been

1 constant fluctuation of prices, has there not?

2 A. There has been fluctuation of prices.

3 Q. And pricing is always a risk, isn't it?

4 A. If your -- the question, pricing is always  
5 a risk, of course, in terms of a person figuring out  
6 what they are going to do.

7 And so then come back. Is it a rational  
8 decision to drill a well at low oil prices?

9 Of course you always get back to that.

10 Did the legislature intend for that to be  
11 part of the calculus of risk?

12 I think that's arguable.

13 Q. Just one final question.

14 But let's go back to -- after the sixth  
15 recession that I've been through in the business,  
16 let's go to 2008.

17 Oil prices got up to \$135, and then they  
18 went down to \$35.

19 A. 36.

20 Q. Well, plus or minus.

21 A. Sure.

22 Q. You might have been -- anybody might have  
23 been -- proposed a well when the oil prices are  
24 \$135, might have taken a little while to drill the  
25 well, and all of a sudden you're looking at

1 \$35-a-barrel-oil when you're producing that well,  
2 it's coming on line?

3 A. Yeah.

4 Q. That's a risk?

5 A. It sure is.

6 MR. BRUCE: Thank you, Mr. Yates.

7 LEAD EXAMINER GOETZE: Mr. Gallegos?

8 MR. GALLEGOS: I have no redirect,  
9 Mr. Examiner.

10 I do suggest that since counsel asked  
11 about Protestant's Exhibit 7, which had been  
12 objected to and not admitted, now that it's been  
13 questioned about --

14 LEAD EXAMINER GOETZE: No, no, it was  
15 admitted.

16 MR. GALLEGOS: Oh, it was admitted?

17 LEAD EXAMINER GOETZE: Yeah. We're not  
18 going to waste your time. It was admitted.

19 MR. GALLEGOS: Okay. Good. I have no  
20 redirect.

21 Thank you.

22 LEAD EXAMINER GOETZE: So at this point,  
23 do you have any questions?

24 MR. WADE: I will have a couple of  
25 questions.

1 LEAD EXAMINER GOETZE: Very good.

2 MR. WADE: Do you want to take a break  
3 or...

4 LEAD EXAMINER GOETZE: Well, one more  
5 question.

6 Do you have any other witnesses?

7 MR. GALLEGOS: No, I do not, Mr. Examiner.

8 LEAD EXAMINER GOETZE: Okay. So we're  
9 going to pare it down.

10 Let's take another 10-minute break and  
11 let's wander back in and have another discussion.

12 Thank you.

13 (A recess was taken from 3:25 p.m. to 3:34  
14 p.m.)

15 LEAD EXAMINER GOETZE: Well, let's return  
16 to the record for Case Number 15363.

17 And we have our questions from the  
18 examiners.

19 We'll start off with Mr. Wade, legal  
20 counsel.

21 MR. WADE: I just have a couple of  
22 questions.

23 You keep referring to a -- I believe a  
24 commission hearing in a -- or a commission --  
25 leading to a commission order where I think,

1 Mr. Yates, you said Mr. Stogner actually testified.

2 And that's what you are basing, now, your  
3 slide, I think 7?

4 THE WITNESS: I'm trying to get a case  
5 number for you.

6 MR. WADE: Yes, that would be helpful.

7 THE WITNESS: If that's what you need.

8 MR. GALLEGOS: If I might help. The order  
9 number is 11992.

10 THE WITNESS: July 2003, and it was a case  
11 on charge -- it was a charge for the risk case.

12 MR. WADE: Okay.

13 THE WITNESS: And I think he gave you the  
14 order number. The case number was 13069.

15 MR. WADE: Is that something that you took  
16 part in or is that something you just --

17 THE WITNESS: In 2003? No.

18 MR. WADE: Okay. That's something that  
19 you have reviewed. And I believe, ultimately, your  
20 Slides 7 and 9 --

21 THE WITNESS: I have reviewed Stogner's  
22 testimony in that.

23 MR. WADE: And that's --

24 THE WITNESS: It went -- there was much  
25 more than that.

1 MR. WADE: Okay. But specifically,  
2 Mr. Stogner's testimony is what you would have based  
3 7 -- your Slides 7 and 9 on?

4 THE WITNESS: Yes.

5 MR. WADE: Okay. And going to your  
6 Slide 9, I just want to clarify.

7 The risk factor that you assigned in this  
8 particular case would be -- I think you testified  
9 120 percent, or was it ultimately 150 percent?

10 THE WITNESS: The risk is -- well, to  
11 avoid confusion, 100 percent recovery of the well  
12 cost plus --

13 MR. WADE: 20 percent?

14 THE WITNESS: -- 20 percent.

15 MR. WADE: I see. Okay. And that's what  
16 Exhibit 9 would reflect?

17 THE WITNESS: Right.

18 MR. WADE: Okay.

19 But in your letters, the offer was  
20 150 percent?

21 THE WITNESS: That is correct.

22 MR. WADE: Okay.

23 I have no further questions.

24 LEAD EXAMINER GOETZE: Examiner Jones,  
25 please.

1 MR. JONES: Mr. Yates --

2 THE WITNESS: Mr. Jones.

3 MR. JONES: -- I guess I should say  
4 quickly, I apologize for the reaction when Michael  
5 Stogner's name was mentioned. We didn't really mean  
6 to negate any of his statements about risk. We were  
7 just talking -- kind of his personality.

8 THE WITNESS: No. We were searching -- I  
9 think I said before -- we were searching for some  
10 basis for analyzing risk that was an objective  
11 standard.

12 Now, there are some things about the way  
13 Mr. Stogner went about it that I thought lacked the  
14 final approach. But this was, at least, his  
15 approach. It wasn't ours. So that was the basis.

16 MR. JONES: Okay. So the risk penalty you  
17 would ask for would be -- instead of the 100 plus  
18 200, would be 100 plus 20 percent?

19 THE WITNESS: Correct.

20 MR. JONES: Okay. And you've showed some  
21 evidence of that in your exhibits.

22 Do you believe this is more of a  
23 development well? It's not a -- you don't -- you  
24 believe it's less of a wildcat and more of a  
25 development well.

1 Is that correct?

2 THE WITNESS: Well, it's sure not a rank  
3 wildcat well, like drilling in the Tularosa Basin.  
4 It's not that.

5 MR. JONES: Well, the Mescalero --

6 THE WITNESS: But I -- I think that the  
7 evidence that Matador produced suggests that the  
8 well will likely be better than many of the third  
9 Bone Spring wells.

10 And the evidence from other places where  
11 it's drilled also suggests that.

12 But I know that it's a step-out. It's --  
13 it's a step-out.

14 That is why we then go back to looking at  
15 all the wells, all of the horizontal wells in those  
16 four townships, and ask what the results were.

17 I don't think you're going to get worse  
18 results in drilling the Wolfcamp than you did in the  
19 average of all of those others.

20 MR. JONES: The -- the issue of signing a  
21 JOA that would have a higher risk, but also for the  
22 whole section where you might drill at least four  
23 wells and maybe -- maybe a lot more wells.

24 And so is it true that you would almost  
25 never be able to go nonconsent on those wells

1 because you've already signed away your rights to do  
2 so?

3 THE WITNESS: If you go under the  
4 horizontal deal -- I mean, we were going to put some  
5 graphs on which dis- -- I mean some decline curves  
6 -- which displayed this.

7 They start very high, have a very steep  
8 decline curve. Generally you get payout in that  
9 period when it's steep, and then it comes out. And  
10 by the time you get out here, nothing is left.

11 So 300 percent means, often, that you get  
12 nothing, even though the operator, the driller, has  
13 made -- for instance in this, if there were a  
14 50 percent penalty in this case, Matador would have  
15 to make 4 million bucks -- 4.5 plus million bucks.

16 This is -- this is after all of the  
17 operating -- and on its investment.

18 Now I mean, look around the world.  
19 Where -- where do you get those investments?

20 MR. JONES: The JOA that you would sign,  
21 does that have a percentage of the working interests  
22 that would -- would have to sign before the operator  
23 could proceed with CAPEX cost?

24 In other words, is it like a 5 percent --  
25 I'm sorry -- 95 percent sign-on, and the 5 percent

1 could -- could not -- if 5 percent didn't sign that  
2 they would go ahead and spend the money for, let's  
3 say, drilling or facilities or whatever you're -- in  
4 other words, your joint operating agreement, would  
5 that have -- does that require 100 percent sign-up  
6 by everybody, all --

7 THE WITNESS: In order to drill?

8 MR. JONES: In order to do anything out  
9 there.

10 THE WITNESS: No. No, that's why that  
11 nonconsent provision is there.

12 MR. JONES: Right. Okay.

13 But what I mean is, there's no limiting  
14 percentage in it to actually...

15 THE WITNESS: Let -- let me ask is -- see  
16 if this is -- are you saying if someone proposes a  
17 well and he owns 25 percent in an operating  
18 agreement, can he cause the drilling to go forward?

19 Is that what you're asking?

20 MR. JONES: Yes. But kind of the  
21 opposite, but yeah.

22 In other words, if 5 percent --

23 THE WITNESS: If he's willing to carry the  
24 consent interest, my understanding is yes.

25 MR. JONES: Okay. Okay.

1 Do you agree with the direction  
2 north/south in this case for the well?

3 THE WITNESS: Uh-huh.

4 MR. JONES: It's okay?

5 THE WITNESS: I would point out that  
6 Matador could have drilled this east/west under an  
7 existing operating agreement.

8 MR. JONES: But --

9 THE WITNESS: An old operating agreement,  
10 and we wouldn't be here.

11 MR. JONES: Okay.

12 THE WITNESS: And I trust their -- they  
13 did not bring the testimony forward related to how  
14 the formation is laid down and how they wanted to  
15 cross it.

16 MR. JONES: But you would -- your sign is  
17 to agree that north/south is a more logical way to  
18 drill?

19 THE WITNESS: In this area.

20 MR. JONES: In this area.

21 What about one mile versus one and a half  
22 mile or...

23 THE WITNESS: I'd like to see the  
24 commission, and if necessary the legislature,  
25 establish horizontal well rules that allowed that to

1 happen.

2 It's unfortunate that we've walked up to  
3 the door and haven't got that done.

4 MR. JONES: But optimally, if there was no  
5 rules, just engineering and geology and economics,  
6 you would drill a longer than one mile well?

7 THE WITNESS: Well, it depends on where  
8 you're doing it. But yes.

9 MR. JONES: Okay. But -- okay.

10 But you're okay in this case with the one  
11 mile?

12 THE WITNESS: When you say am I okay, I  
13 hope you're not asking me to set aside our objection  
14 to stringing together these --

15 MR. JONES: I guess that's --

16 THE WITNESS: I object to that.

17 MR. JONES: Okay.

18 THE WITNESS: Because what we're not  
19 doing, in my opinion, is following the law. So...

20 MR. JONES: What about the 7,000 and the  
21 700? Is that too much COPAS or not enough?

22 That \$7,000 a month while drilling and  
23 \$700 a month while producing, is that an issue?

24 THE WITNESS: I think that sounds all  
25 right to me.

1 MR. JONES: That sounds all right?

2 Is this Wolfcamp -- I know they've got it  
3 placed on an oil pool. But do you agree that -- do  
4 your people agree that it's going to be oil? Do you  
5 know the gravity and the -- that kind of stuff?

6 THE WITNESS: There was a DST in the  
7 Wolfcamp in one of the wells that penetrated in this  
8 section. And I believe that it flowed, and that  
9 there was a lot of gas with it.

10 And I think it was maybe a little lower --  
11 I'm surprised Matador didn't bring that up.

12 But I think it was maybe not right in the  
13 top, where they're drilling maybe a little bit  
14 lower. I would have to go back and look at that.

15 But I suspect there would be some gas, but  
16 I think it was primarily oil.

17 MR. JONES: I saw some of them were open  
18 hole completions in the lower Wolfcamp in those  
19 surrounding wells.

20 Those -- those might be gas, and then the  
21 upper part might be oil?

22 THE WITNESS: Uh-huh.

23 MR. JONES: Do you believe that Matador  
24 has made a good faith effort to obtain joinder by  
25 not only Yates and Jalapeno, but all of the

1 non-consenting owners of this well?

2 THE WITNESS: No, for the reasons I stated  
3 before. And I don't mean to state that the  
4 gentlemen here, the land people, don't think they  
5 have.

6 But I think they have a baseline, you  
7 cannot change these nonconsent provisions.

8 MR. JONES: Okay. Thank you.

9 LEAD EXAMINER GOETZE: And I just have one  
10 final question.

11 In your letter to MRC Delaware, you quote  
12 footage prices based on two wells. That's COG's  
13 CTA, and Devon's Bellatrix.

14 Where are those two wells completed? Are  
15 they...

16 THE WITNESS: I think they're third Bone  
17 Springs.

18 LEAD EXAMINER GOETZE: Okay.

19 I have no more questions for this witness.

20 And we do have one thing to clean up. We  
21 have an Exhibit 5, 6, 10, 11, 12, and 13 included in  
22 your package.

23 Are we going to visit this during the  
24 hearing or are we going to take them out or...

25 MR. GALLEGOS: We have not offered those.

1 LEAD EXAMINER GOETZE: Okay.

2 MR. GALLEGOS: And if it's best -- I mean  
3 as far as the reporter's exhibits, those would not  
4 be included.

5 LEAD EXAMINER GOETZE: Would you please  
6 amend it so that what he has is what has been  
7 entered, please?

8 MR. GALLEGOS: Yes, Mr. Examiner.

9 LEAD EXAMINER GOETZE: At this point you  
10 have another witness.

11 Is that correct?

12 MR. BRUCE: I have one rebuttal witness.

13 LEAD EXAMINER GOETZE: Yeah, I know.

14 We're getting to rebuttal. Thank you.

15 Rebuttal, please.

16 MR. BRUCE: I'll be recalling Mr. Byrd to  
17 the stand. And if the record could reflect that he  
18 was sworn in and previously qualified as an expert.

19 LEAD EXAMINER GOETZE: It is so noted.

20 AARON MICHAEL BYRD,  
21 after having been previously duly sworn under oath,  
22 was questioned and testified further as follows:

23 EXAMINATION

24 BY MR. BRUCE:

25 Q. Mr. Byrd, let me hand you -- this is

1 Applicant's Exhibit 17 Mr. Gallegos is looking at.

2           You were sitting here during Mr. Yates'  
3 testimony, were you not, Mr. Byrd?

4           A.     Yes, I was.

5           Q.     And you heard something about -- and I  
6 forget the exact number now -- 86 or -7 -- 87 wells  
7 that he used on -- for his analysis?

8           A.     Correct.

9           Q.     Only one or two of which was Wolfcamp, if  
10 I can so summarize.

11          A.     I believe that's what he said, yes.

12          Q.     First of all, do you think it is proper to  
13 use Delaware and Bone Spring wells when you're  
14 analyzing the Wolfcamp?

15          A.     I don't, for -- when you have another  
16 casing string required, you have a different mud  
17 system, you have a geo-pressured zone that you don't  
18 see in those shallower zones.

19          Q.     Okay. Now, in looking at Exhibit 7 --  
20 Applicant's Exhibit 17, there are seven wells on  
21 there. Seven existing wells, correct?

22          A.     Yes.

23          Q.     Does Matador's proposed well -- Airstrip  
24 well -- is that proposed to test a different zone  
25 than the other Wolfcamp wells on this plat?

1 A. Yes, it is.

2 Q. Does drilling a first well to a specific  
3 zone in an area incur risk, extra risk?

4 A. In Matador's experience, the first well in  
5 an area has incurred more risk -- more cost than  
6 subsequent wells, yes.

7 Q. And second, there's, I think like I said,  
8 seven wells on that plat.

9 Have any of them experienced difficulty  
10 and risk in drilling -- during drilling operations?

11 A. Yes. I can tell you that the COG Poptart  
12 12 Federal Number 4 was sidetracked three times,  
13 including one off the pilot hole, one in the curve,  
14 one in the lateral, and then taking the TD.

15 Total operations on that well was 136  
16 days. I --

17 Q. Go ahead.

18 A. I believe that was, if not their first, it  
19 was one of their first couple wells of Wolfcamp  
20 wells.

21 Q. Wolfcamp wells in this general area?

22 A. Yes, sir.

23 Q. What about any problems with time and  
24 drilling on other wells?

25 A. Well, we all know about the Pickard

1 State -- well, at least the guys at Matador do.

2 That was -- that well was over 100 days. It had to  
3 do with a lot of the pilot hole and other operations  
4 that were specific to that well.

5 And that was our first well in the area as  
6 well.

7 Q. To a deeper zone?

8 A. Correct.

9 Q. So what you're looking at is, rather  
10 than -- Mr. Yates was talking about 1.1 percent  
11 operational risk for these wells. All of a sudden  
12 you're up to almost one out of three of the wells is  
13 having significant operational risk?

14 MR. GALLEGOS: I object to the leading  
15 question.

16 Q. (By Mr. Bruce) Well, how many -- how many  
17 wells -- okay.

18 How many wells have severe operational  
19 problems out of the seven on this plat?

20 MR. GALLEGOS: Are we talking about just  
21 the seven on Exhibit 17?

22 MR. BRUCE: The seven.

23 MR. GALLEGOS: Seven or 87?

24 MR. BRUCE: Seven.

25 LEAD EXAMINER GOETZE: The seven on the

1 exhibit?

2 MR. BRUCE: The seven on exhibit --  
3 Applicant's Exhibit 17.

4 MR. GALLEGOS: Okay.

5 Q. (By Mr. Bruce) So out of those seven, how  
6 many have had substantial operational problems?

7 A. Two that I know of.

8 Q. That's a little bit higher than  
9 1.1 percent, isn't it?

10 A. Yes.

11 Three of those had shorter laterals, as  
12 you can see, too. They are only about 1,500-foot  
13 laterals on the Wolfcamp.

14 So I don't know what they would have  
15 experienced if they would have ran all the way to --  
16 to a 4,500-foot lateral.

17 Q. Were -- were they originally proposed as  
18 shorter laterals or did that just happen during  
19 drilling?

20 A. I can't answer that question. I don't  
21 know.

22 Q. Okay. Certainly, Matador wouldn't be  
23 proposing to drill a 1,500-foot lateral?

24 A. No.

25 Q. One final thing, then I'll be quiet.

1           A well was mentioned, a CTA well. Are you  
2 aware of that well?

3           A.     I am.

4           Q.     Do you have any comments about that well?

5           A.     The CTA well is in the northern part of  
6 Eddy County. It is a second Bone Spring well, not a  
7 third Bone Spring well.

8           It was to an equivalent depth of our Bone  
9 Spring wells in Eddy County, of roughly 13,000-foot  
10 measured depth, close to 75- to 80,000-foot TVD.

11          Q.     75 to 8,000?

12          A.     75 to 8,000 TVD. What did I say?

13          Q.     80,000.

14          A.     Oh. Sorry about that.

15                 7,500 to 8,000-foot TVD.

16                 And when you compare what our first Bone  
17 Spring in Eddy County well was, our rig released  
18 cost for our well was within plus or minus \$5 per  
19 drilled foot of their CTA Number 6 AFE.

20          Q.     So Matador is drilling at very comparable  
21 rates?

22          A.     Absolutely.

23                 MR. BRUCE: That's all I have.

24                 I pass the witness.

25

1 EXAMINATION

2 BY MR. GALLEGOS:

3 Q. Mr. Byrd, looking at Exhibit 17 -- I -- I  
4 don't take notes very rapidly.

5 The two wells that you said were a  
6 problem, would you identify those again for me,  
7 please?

8 A. On the far west side, the COG operating  
9 the Poptart 12 Federal.

10 Q. Okay. Just a second. Okay. The Poptart.  
11 All right.

12 A. As well as the Matador well on there.  
13 It's the northeast well, Pickard State Number 2H.

14 Q. All right. Then as far as comparison of  
15 Bone Springs wells versus Wolfcamp wells, you said  
16 the -- you thought the comparison was inappropriate  
17 because of the different casing strings?

18 A. You have a different casing string.  
19 The -- what you see on this design is, everybody has  
20 either drilled down vertically and kicked out or  
21 else they have either set a 7-inch at an angle and  
22 drilled the remaining part of the lateral. So...

23 Q. Or sidetracking?

24 A. That's correct.

25 MR. GALLEGOS: Okay.

1           That's all the questions I have. Thank  
2 you.

3           LEAD EXAMINER GOETZE: Anybody have any  
4 questions for this witness?

5           MR. WADE: I don't have any questions.

6           LEAD EXAMINER GOETZE: Mr. Jones?

7           MR. JONES: No questions.

8           LEAD EXAMINER GOETZE: We have no more  
9 questions for this witness at this time.

10           We will offer the opportunity, unless  
11 anybody has anything else to provide in testimony, a  
12 closing statement by those folks who wish to give  
13 one.

14           Mr. Gallegos, do you have a closing  
15 statement?

16           MR. GALLEGOS: I don't have a closing  
17 statement. I -- what I would like to do, and I do  
18 this so we have it clear.

19           We continue the grounds that were  
20 previously stated for our motion to dismiss  
21 regarding the lack of the division authority for  
22 entertaining these applications and granting them as  
23 nonstandard spacing units.

24           And then we raise the legal issue we have  
25 regarding Order Number 11992, which is the order

1 that adopted what I think is referred to often as  
2 Rule 35, the automatic 200 percent risk penalty  
3 rule.

4 Otherwise, we -- we just -- we stand on  
5 the -- on the evidence as presented on our case,  
6 Mr. Examiner.

7 If the division would be assisted by  
8 closing briefs we'll be happy to provide them.

9 LEAD EXAMINER GOETZE: Mr. Bruce?

10 MR. BRUCE: Let me defer to Ms. Arnold on  
11 that.

12 I do like -- she may do the closing  
13 argument, but I would like the opportunity, like  
14 Mr. Gallegos, to present a proposed order, or at  
15 least proposed findings.

16 CLOSING STATEMENT

17 BY MS. ARNOLD:

18 Just really briefly. You know we talked a  
19 lot here about Order R11992.

20 Mr. Yates said that he didn't oppose it at  
21 the time. It's been in effect for several years  
22 now, and Matador operated under the rules in this  
23 case.

24 On Number 38 -- this is a finding, or it's  
25 number -- Finding 38 of this order says that the

1 maximum 200 percent risk charge is appropriate in  
2 the vast majority of cases being assessed by the  
3 division.

4 And this case we have here falls into the  
5 vast majority of the case -- cases.

6 And you know, there's no unique  
7 circumstances that were presented by the opponents  
8 here.

9 Most of the testimony and the facts that  
10 they presented were for Bone Spring wells, and we  
11 have a Wolfcamp well at hand here. And it's not  
12 apples to apples when you look at it on any of the  
13 different risk components.

14 Further, it seems like opponent's main  
15 issue is with the statute itself, and this is an  
16 inappropriate forum to be challenging that. If they  
17 really have a problem with it, then he should be  
18 going to the legislature.

19 Lastly, you know, Matador has operated in  
20 good faith for several months trying to -- to reach  
21 a deal here, and feels like just because it didn't  
22 want to give on the 100 percent/300 percent does not  
23 mean that it did not go over and above what would be  
24 considered good faith negotiations, and would like  
25 to drill this well to protect correlative rights,

1 including the rights of the State, and believes that  
2 drilling a horizontal well here will prevent waste.

3 LEAD EXAMINER GOETZE: Thank you.

4 MR. GALLEGOS: Mr. Examiner, may we submit  
5 a requested form of order?

6 MR. WADE: I would defer to the hearing  
7 examiners. It seems to me the practice here is to  
8 not take into account proposed findings of fact.

9 LEAD EXAMINER GOETZE: We -- we tend to  
10 write our own. And in this case, I think we  
11 probably will be ending up writing our own. This is  
12 going to be something different.

13 So you will have to suffer with our poor  
14 penmanship and wordings, and we will make our own  
15 order.

16 We do thank you for the offer, but we will  
17 take it up within our own group and provide you with  
18 the findings.

19 At this point, let's go ahead and close  
20 this case and take it under advisement.

21 And thank you very much for coming for  
22 this special hearing.

23 (The proceedings concluded at 4:00 p.m.)

24 I do hereby certify that the foregoing is  
25 a complete record of the proceedings in  
the Examiner hearing of Case No. 15363  
heard by me on September 29, 2015

CERTIFICATE

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I, Paul Baca, RPR, CCR in and for the State of New Mexico, do hereby certify that the above and foregoing contains a true and correct record, produced to the best of my ability via machine shorthand and computer-aided transcription, of the proceedings had in this matter.



\_\_\_\_\_  
PAUL BACA, RPR, CCR  
Certified Court Reporter #112  
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