

1 STATE OF NEW MEXICO
2 ENERGY AND MINERALS DEPARTMENT
3 OIL CONSERVATION DIVISION
4 STATE LAND OFFICE BLDG.
5 SANTA FE, NEW MEXICO

6 3 June 1987

7 EXAMINER HEARING

8 IN THE MATTER OF:

9 Application of Marathon Oil Company CASE
10 for pool creation, special pool rules, 9145
11 and discovery allowable, Lea County,
12 New Mexico.

13 and
14 Application of Marathon Oil Company CASE
15 for the amendment of Division Order 9146
16 R-8282, as amended, Lea County, New
17 Mexico.

18 BEFORE: David R. Catanach, Examiner

19 TRANSCRIPT OF HEARING

20 A P P E A R A N C E S

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1 MR. CATANACH: Call next Case
2 9145.

3 MR. TAYLOR: The application of
4 Marathon Oil Company for pool creation, special pool rules,
5 and discovery allowable, Lea County, New Mexico.

6 MR. CATANACH: Are there
7 appearances in this case?

8 MR. KELLAHIN: If the Examiner
9 please, I am Tom Kellahin of Santa Fe, New Mexico, appearing
10 in association with Mr. Larry Garcia, Marathon attorney, and
11 we are representing Marathon Oil Company.

12 MR. CATANACH: Are there other
13 appearances?

14 MR. DICKERSON: Mr. Examiner,
15 I'm Chad Dickerson of Artesia, New Mexico, appearing on be-
16 half of Mr. James A. Davidson of Midland, Texas.

17 I have one witness.

18 MR. KELLAHIN: Mr. Examiner,
19 with your permission, we would like to consolidate the next
20 case, which is 9146, for purposes of presenting testimony
21 and we would request that you enter separate orders. I
22 think we can work with a consolidated case arrangement and
23 we'd like to try that.

24 MR. CATANACH: We'll go ahead
25 and do that, then, if it's all right with you, Mr. Dicker-

1 son.

2 MR. DICKERSON: Very good.

3 MR. CATANACH: Okay, at this
4 time I guess we'll call next Case 9146.

5 MR. TAYLOR: The application of
6 Marathon Oil Company for the amendment of Division Order No.
7 R-8282, as amended, Lea County, New Mexico.

8 MR. CATANACH: Okay, same ap-
9 pearances, I assume, in both cases.

10 MR. KELLAHIN: Yes, sir.

11 MR. CATANACH: How many witnes-
12 ses do you have?

13 MR. KELLAHIN: I have three
14 witnesses.

15 MR. CATANACH: Can I get all
16 the witnesses to stand and be sworn at this time?

17

18 (Witnesses sworn.)

19

20 MR. KELLAHIN: Mr. Examiner,
21 I'd like to take a moment and see if I can outline for you
22 in a brief way, the factual presentation, indicate to you
23 Marathon's perspective in terms of these cases so that as
24 you hear the evidence you will recognize those areas of dis-
25 agreement, perhaps some areas of agreement, and I'll have a

1 feel for the kinds of things we'll asking you to render a
2 decision on.

3 If I may begin back a little bit, in Au-
4 gust of '86, after a hearing, Examiner Stogner entered a
5 forced pooling order. We will submit to you a copy of the
6 order. It's in Case 8960. The order number is R-8282.

7 The arrangement is this, is that Marathon
8 had planned at that point to drill a Siluro-Devonian well,
9 it's an oil well. The rule is it was on statewide spacing
10 and Mr. Davidson has an interest in that 40-acre tract. He
11 has, I understand, the same interest in each of the 40-acre
12 tracts that are in that quarter section.

13 The order was entered and the case did in
14 fact go to a Commission Hearing. The result of it, however,
15 was the forced pooling order was entered.

16 Our evidence is that Mr. Davidson was
17 provided notice pursuant to the pooling order and that he
18 did not elect to participate in the well pursuant to the
19 time frame allowed.

20 Thereafter the well was drilled and com-
21 pleted in mid-February of this year. After completion and
22 some initial testing on the well, it is our evidence and be-
23 lief that the oil well constitutes a new Siluro-Devonian
24 discovery. It is our evidence and belief that the well will
25 have the ability to drain more than 40 acres.

1 As a consequence of that, we have sought
2 for and present to you today an application to establish 80-
3 acre spacing. In the event the Division agrees with us and
4 approves temporary 80-acre spacing for this new Devonian oil
5 pool, we would also seek to amend the pooling order. It is
6 our position with regards to the forced pooling cases that
7 Mr. Davidson is not entitled to any new election period;
8 that he cannot now pay his share of the cost of this suc-
9 cessful producing oil well and avoid thereby the impact of
10 the original order.

11 I'm sure we'll have disagreement about
12 that and that will be one of the issues that you'll have to
13 resolve, is to the extent to which the prior forced pooling
14 order may be modified in order to make the pooling order ac-
15 reage consistent with the spacing if you should approved 80-
16 acre spacing.

17 I will save for closing argument my posi-
18 tion on those questions and why I think we're correct.

19 Our proof is going to be through three
20 witnesses. We'll provide a geologic witness who will set
21 the geologic stage upon which we believe the new pool is
22 justified.

23 We have an engineering witness that will
24 provide you engineering calculations upon which he formu-
25 lated the opinion that 80-acre spacing is justified, and

1 then we'll provide our land witness, who is the same land
2 witness in the forced pooling case and he'll provide you the
3 documentation and correspondence with regards to the amend-
4 ment of the order.

5 That is the substance of our case and at
6 such appropriate time we're ready to go forward.

7 MR. DICKERSON: Mr. Examiner, I
8 think that a little bit more detail in the background of
9 this case is in order.

10 Mr. Davidson wears two hats at
11 this hearing. Mr. Davidson is the owner of 38.125 percent
12 working interest in the south half land the south half of
13 the northeast quarter of Section 14, Township 16 South,
14 Range 38 East, Lea County, New Mexico, 400 acres in all.

15 He also is a royalty owner. He
16 owns minerals which are subject to an oil and gas lease un-
17 der that same 400-acre tract.

18 In addition to that he is a
19 royalty owner, again owning minerals subject to an existing
20 oil and gas lease in the Section 23, immediately to the
21 south of the Section 14.

22 We, who practice before this
23 Division, know that in many instances it's fairly common to
24 be faced with a situation when we must resort to forced
25 pooling in which we may not be totally certain whether a gas

1 well is going to be completed; whether an oil well is going
2 to be completed; whether special pool rules affecting some
3 zones may or may not come into effect prior to drilling a
4 well. There are ways to avoid that problem.

5 The problem is avoided in prac-
6 tice, as you know, by filing an application pointing out the
7 possibility of differing spacing units. It may be a 40, it
8 may be an 80, it may be a 160, a 320, depending on what the
9 facts and circumstances in the future holds at the time some
10 party commences to drill a well.

11 That was not done in this case.
12 This was a very straightforward, typical run-of-the-mill
13 pooling case to which Mr. Kellahin referred. It affected
14 only, the evidence in that hearing and we'll cite today the
15 numerous portions of the transcript into evidence before
16 this Division, both at the Examiner Hearing of last August
17 and at the later Commission hearing in October, I think it
18 was.

19 There was no representation, no
20 hint, no inkling, at any point in any of that testimony or
21 evidence given that that was such a situation. This pooling
22 case was fought and won by Marathon and lost by Mr. David-
23 son. No appeal has been taken from it, it is final. It af-
24 fected the southeast quarter of the southeast quarter. At
25 that time Marathon was interested in drilling and subse-

1 quently did drill its Benson No. 1 Well, located, and at
2 that time anticipated to be a 40-acre oil well under the
3 statewide rules.

4 After the election period and
5 subsequent to the forced pooling order becoming final, Mr.
6 Davidson was, in fact, accorded an opportunity to partici-
7 pate by paying his share of the costs in that well. he
8 chose not to do so. He chose not to pay his proportionate
9 part of the cost of a 40-acre oil well.

10 He, by not appealing the Divi-
11 sion order, agreed to suffer the consequences of the penalty
12 imposed upon him by that order, the statutory maximum, cost
13 plus 200 percent.

14 Marathon subsequently drilled
15 and subsequently completed, and it's our information that
16 the well is currently a commercial producer from the pro-
17 jected Devonian formation.

18 It's also our information that
19 since that time Marathon has also now drilled and is at
20 total depth on another well immediately in Section 23, to
21 the south, adjoining Mr. Davidson's interest in the subject,
22 the original subject well, southeast of the southeast quar-
23 ter of Section 13, which, as I said, is now at total depth.

24 Nothing, as far as Mr. Davidson
25 -- Mr. Davidson has not been accorded by Marathon any infor-

1 mation whatsoever, regardless of his position both as a
2 royalty owner and as a working interest owner of the infor-
3 mation gained from drilling these wells.

4 There was great point made of
5 this fact at the Examiner hearing and the Commission hearing
6 fought in 1986. Marathon was not ordered to produce infor-
7 mation as has been the custom of this Division over the
8 years, yet Marathon now comes before us to change the rules
9 of the game after these wells have been drilled.

10 The testimony at the original
11 hearings, Mr. Examiner, was quite extensive testimony that
12 it was perfectly possible for Mr. Davidson's offsetting ac-
13 reage, consisting of 40-acre spacing, the 400 acres in which
14 he owns almost 40 percent working interest, one of which,
15 one spacing unit of which at 40 acres, was involved in that
16 proceeding. But that proceeding left open the possibility
17 of nine additional spacing units in Section 13 in which Mr.
18 Davidson was really the majority interest owner, subject on-
19 ly to farmouts and whatnot from other parties possibly in-
20 creasing Marathon's -- we're not sure of what Marathon's to-
21 tal interest may be.

22 At any rate, he was a substan-
23 tial working interest owner throughout all that acreage.
24 Much of the testimony at that proceeding was to the effect
25 that he may get some benefit from drilling this well. He's

1 going to suffer a penalty which was imposed upon him, the
2 statutory cost plus 200 percent, but he was going to get
3 some benefit, too, if this well was drilled at the cost,
4 risk, and expense of Marathon, and subsequently it was done.

5 The practical effect of
6 drilling and completing a successful well might be to en-
7 hance and improve Mr. Davidson's knowledge of the mineral
8 situation underlying his lands. That, in fact, has come to
9 pass. While our information is very limited because of the
10 refusal of Marathon to furnish any information whatsoever
11 concerning the production history or data obtained from the
12 drilling of either of these two wells, it is only after the
13 fact that Marathon comes in for two separate forms of re-
14 lief. One, to establish, as with this Benson Well in the
15 southeast quarter of the southeast quarter of Section 13, or
16 14, I'm misstating, it is Section 14, to establish special
17 pool rules providing for 80-acre spacing.

18 At the same time Marathon has
19 filed a separate application to, and this is a quote,
20 "amend" the forced pooling order.

21 It is our opinion that the pur-
22 pose of the posing of these two separate applications in
23 this fashion is to present a colorable argument to this di-
24 vision that it may in some manner amend the provisions of
25 that pooling order to expand the force pooled acreage from

1 40 acres to 80 acres without what is otherwise absolutely
2 and unequivocally required by our statute, and that is the
3 prior obligation to have attempted to obtain a voluntary
4 pooling.

5 Mr. Examiner, you know as well
6 as we lawyers who practice in front of you, the custom and
7 practice of this Division. Someone appears before this Di-
8 vision unprepared to show or make a prima facie case to some
9 extent that they have attempted under our statutes to obtain
10 voluntary pooling of the acreage, the customary treatment
11 those parties get is to be invited to come back in two weeks
12 or thirty days after they have attempted to obtain such vol-
13 untary pooling and then, if unsuccessful, and if they have
14 been in good faith, the custom and practice again, as we all
15 know, has been to, in the great majority, if not universal-
16 ly, grant forced pooling applications. We can argue over
17 risk and who's the operator going to be and all those
18 things. That's not the case before us today.

19 Mr. Kellahin has an aspect of
20 credibility around here that he deserves. His clients
21 recognize it. His opponents recognize it, and those of you
22 who sit as judges in these cases recognize it.

23 But we think in this case what
24 is attempting to be done is not permitted by our rules. We
25 do not think it has ever been, to the best of my ability,

1 I've attempted to ascertain where -- whether or not it has
2 ever been attempted before, I cannot find a case where it
3 has been attempted, nor have I been successful in much less
4 finding a case in which it has been successful.

5 It is Mr. Davidson's position
6 that he was pooled in a 40-acre tract. He has to live with
7 that pooling.

8 He was not pooled and cannot by
9 slight-of-hand, by calling it an amendment to a pooling or-
10 der and establishment of special pool rules, in effect lose
11 80 acres of his property, and a valuable property right at
12 this point, and concedably (sic) through the efforts and at
13 the expense of Marathon, but he cannot lose the property
14 right that he owns in that other 40-acre adjoining tract in
15 a procedure such as this.

16 It is our position that this
17 Division, we recognize that under the broad terms of our
18 pooling statute a great deal of discretion in this Division
19 and its examiners to improper circumstances and based on the
20 proper evidence before it, in some cases to amend and modify
21 orders. It's not unusual for orders to be amended.

22 But this is much more than
23 that. This is a retroactive attempt to do what should have
24 been, must have been, but was not done in 1986 prior to the
25 drilling of the well.

1 It's Mr. Davidson's position
2 that Marathon has not made any effort whatsoever, much less
3 any effort in good faith, to obtain a voluntary pooling
4 agreement; that regardless of what this Division does, we
5 submit that the statute requires that he have some option,
6 whether to participate, whether in the normal course of
7 events to farmout, Marathon can withdraw its application,
8 and leave it on 40-acre spacing. He's fought that battle and
9 won a year ago. That decision is final. It is not appeal-
10 able by either or, by either side.

11 The effect of what Marathon at-
12 tempts to do in this case is to avoid these practical prob-
13 lems. This, to put it bluntly, is not the simple, straight-
14 forward, typical run-of-the-mill pooling case that we're ac-
15 customed to seeing and hearing argued in this room.

16 That's all I have.

17 MR. CATANACH: You may proceed.

18 MR. KELLAHIN: Mr. Examiner,
19 just very briefly, we try to bring you interesting cases.
20 We think this is one of them. It is a chicken and egg prob-
21 lem about which you do first and how you guess what to do.

22 We think it might be of, if not
23 comfort, at least help in deciding how to address Mr. Dick-
24 erson's concerns and mine if you'll let us make the factual
25 presentation, and then we will do what you want us to do in

1 terms of briefing this question, submitting proposed orders,
2 and we'd like to go forward at this point with the factual
3 presentation, and give you that framework upon which to make
4 the decisions both Mr. Dickerson and I seek to have you
5 make.

6 MR. CATANCH: Please proceed,
7 Mr. Kellahin.

8 MR. KELLAHIN: I'd like to call
9 at this time our first witness, Mr. West Kubik. It's K-U-B-
10 I-K.

11 MR. KELLAHIN: Mr. Kubik, would
12 you take a moment, sir, and give me a copy of the exhibit
13 packages that you have put together and we'll distribute
14 these.

15 Mr. Examiner, I have distri-
16 buted Marathon Exhibits One, Two and Three, which represent
17 Mr. Kubik's geologic displays.

18
19 WEST KUBIK,
20 being called as a witness and being duly sworn upon his
21 oath, testified as follows, to-wit:

22
23 DIRECT EXAMINATION

24 BY MR. KELLAHIN:

25 Q And at this time I will ask you, Mr.

1 Kubik, to take Exhibit Number One, let's use Exhibit Number
2 One to orient us as to what is being done in this particular
3 area.

4 Let me first of all ask you, sir, did you
5 prepare all three of these exhibits?

6 A Yes, I did.

7 Q Have you previously testified as a petro-
8 leum geologist before the Division?

9 A I have not.

10 Q Would you identify for the Examiner when
11 and where you obtained your degree?

12 A I obtained my Bachelor of Science in geo-
13 logy from Oklahoma State in 1979. I obtained a Master's of
14 Science in geology from Colorado School of Mines in 1982.

15 Q Will you summarize for us in a general
16 way what has been your experience, your employment exper-
17 ience, as a professional petroleum geologist?

18 A I worked for two years as a parttime geo-
19 logist with Kenai Oil and Gas, an independent in Denver
20 while attending school at Colorado School of Mines.

21 After graduation I worked with Kenai as a
22 fulltime geologist in the Rocky Mountain region for nine
23 months, until March of '82.

24 I've worked in a variety of Basins in the
25 Rocky Mountains. In late '82 I became employed with Mara-

1 thon in Midland. I have worked for Marathon in the Midland
2 Office since late '82, that being approximately four and a
3 half to five years, experience with Marathon. I've worked
4 Western Anadarko Basin, Southern Midland Basin, but primar-
5 ily for approximately three, three and a half years, I've
6 worked Lea County, New Mexico, in a variety of formations.

7 Pursuant to that employment,
8 Mr. Kubik, does the prospect that is being developed in
9 what is called the East Garrett Siluro-Devonian Pool, is
10 that an area for which you have made a geologic study?

11 Yes. I've been familiar with
12 this area for some time in working some Wolfcamp zones and
13 some Penn zones and handling the -- the geology for the --
14 for the East Garrett prospect.

15 Q All right, sir.

16 MR. KELLAHIN: We tender Mr.
17 Kubik at this time as an expert petroleum geologist.

18 MR. CATANACH: Mr. Kubik is so
19 qualified.

20 Q Mr. Kubik, let me take you through Exhi-
21 bit Number One in a general way before we talk about the
22 specifics.

23 Would you take a moment and explain to us
24 how to understand the color code at the bottom of the dis-
25 play?

1 A In the color code I've simply undertaken
2 to describe the production, the producing horizons on this
3 index map, encompassing all of Township 16, 38, 16 South, 38
4 East, and portions of 15 -- portions of ranges in 15 South
5 and portions of ranges in 17 South, just as an orientation
6 and index map.

7 It shows a variety of producing forma-
8 tions as listed. They are listed in stratigraphic order,
9 shallowest at the top, deepest at the base. It shows a var-
10 iety of formations, Glorieta, San Andres, Drinkard, Abo,
11 being some of the shallower formations producing from depths
12 of 5-to-8000 feet, Wolfcamp and Brown producing from appro-
13 ximately 10,000 feet, and the interval of interest here, the
14 Siluro-Devonian shown in red and showing the producing wells
15 in nearby fields to the prospect, those fields being -- mov-
16 ing from the north to the south --

17 Q Right, just a moment, to make sure you
18 don't get too far ahead of me.

19 A Okay.

20 Q Let's devote our attention to the other
21 Siluro-Devonian Pools that have been established, at least
22 insofar as this map shows.

23 A All right.

24 Q Before we talk about those, how do we
25 look at the color code and orient ourself to the other Devon-

1 ian oil pools? Are they simply clustered by a color code?
2 They're the orange wells, are they not?

3 A Yes.

4 Q All right.

5 A The Devonian wells are the orange wells
6 on the map, yes.

7 Q Okay. Identify for us, starting in the
8 top right with the Medicine Rock, identify for us the areas
9 that are designated as particular Devonian Pools and then,
10 if you will, also let us know if those pools are designated
11 under statewide 40-acre spacing or whether they're on
12 special rules of 80 acres or more.

13 A All right. Starting with the Medicine
14 Rock Devonian Field in the far upper right of the map, to my
15 knowledge that field was ordered on 80-acre spacing.

16 Q All right, sir.

17 A The very top left of the map is the very
18 southern tip of the Denton Devonian Field. I do not have
19 knowledge of what the word spacing was, whether special
20 spacing was requested in that field. It appears to have
21 been drilled on forties.

22 Moving south, immediately south of there,
23 to the South Denton Devonian Field shown there, seven well
24 producing field, again I do not know if special rules were
25 granted or requested for that field. Again it was drilled

1 on forties.

2 Moving to the south, kind of the center
3 portion of the map, the Knowles Field shown there, eight
4 producers, to my understanding that was special rules of 80-
5 acre spacing were granted on the Knowles Field.

6 The West Garrett Field to the left of the
7 map, it's my understanding was spaced on forties, or granted
8 forties, and then finally, the South Knowles Field, the bot-
9 tom right, again to my understanding was originally granted
10 80-acre spacing.

11 Q On the exhibit there is an orange line
12 that passes through the Marathon Oil Benson 1, which I will
13 call the discovery well just to keep you on to that well
14 point.

15 In addition to the discovery well there
16 are other wells that are aligned with that line. Is that a
17 line of cross section?

18 A Yes, it is.

19 Q All right, and that's your Exhibit Number
20 Three?

21 A That is.

22 Q Okay. When we're looking at what Mara-
23 thon proposes to have the Division establish as the East
24 Garrett Siluro-Devonian Pool, have you reached a geologic
25 opinion, sir, as to whether in your mind this constitutes a

1 new Devonian discovery?

2 A In my opinion, it does.

3 Q Have you satisfied yourself, sir, that
4 this is both vertically and horizontally separated --

5 A Yes.

6 Q -- from other established Devonian pools?

7 A Yes, sir, I have.

8 Q And have you developed a geologic opinion
9 as to whether or not the discovery well is within a reser-
10 voir that ought to be designated as a new pool?

11 A Yes.

12 Q When we look at the shaded area, did you
13 shade that area in around the discovery well? It looks like
14 half of four sections?

15 A Yes, I did.

16 Q What's the purpose of that?

17 A It was just to give it a very rough ball-
18 park outline to -- to what the pool may eventually encompass
19 based on a very rough outline of our seismic map, the dis-
20 tribution of the reservoir shown on our seismic map. It was
21 just a very rough attempt to outline what -- what may be the
22 pool outlines in a very -- in more of a land sense than in a
23 geologic sense.

24 Q Prior to the drilling of the Benson 1
25 Well, the discovery well, when a geologist such as you with

1 this type of experience examines and identifies an area for
2 a well, do you know prior to the drilling of that well in
3 this type of Devonian area whether or not you're going to
4 get wells that you as a geologist would recommend be devel-
5 oped on 40 or 80-acre spacing?

6 A No, sir.

7 Q Let's turn then to the Exhibit Number
8 Two. Let's look at some of the specific geology about this
9 particular discovery, Mr. Kubik.

10 First of all would you take a moment,
11 sir, and simply identify the exhibit for us?

12 A The exhibit is a Silurian depth, Siluro-
13 Devonian seismic depth map based on seismic and well con-
14 trol, constructed by Dave Rebenstorf, our geophysicist for
15 the area, originally. It is based on a number of seismic
16 lines, the critical ones to the prospect outlined in yellow.
17 There are other seismic lines in the area and it is again a
18 structural depth map on the Siluro-Devonian horizon.

19 Q This is the same Mr. Rebenstorf that tes-
20 tified at the forced pooling case in which Mr. Davidson's
21 interest was pooled.

22 A It is.

23 Q All right, and you've taken that base
24 map, then, that was used in evidence and have further eval-
25 uated it and reached certain conclusions?

1 A Yes.

2 Q All right. Describe for us generally,
3 Mr. Kubik, what additional work or any alterations or chan-
4 ges you might have made in the base map.

5 A The -- really the only changes that were
6 made were that the top of the Siluro-Devonian was antici-
7 pated, was encountered at a slightly lower structural eleva-
8 tion, but still -- still anomalously high and it simply
9 caused Mr. Rebenstorf to go back in and provided him with a
10 velocity point, allowed him to just do some very subtle re-
11 contouring and changed some of the contour values but it
12 basically did not alter the reservoir at all.

13 Q But geologic data that was used to update
14 his interpretation is the information derived from the Ben-
15 son 1 Well?

16 A Yes.

17 Q The one we've called the discovery well?

18 A Yes.

19 Q Okay. Just to the south of that is a
20 well that was called, or is called, the No. 1 Roddy Well?

21 A Yes.

22 Q What is the current status of that well,
23 sir?

24 A That well is currently undergoing tes-
25 ting.

1 Q It has reached total depth and --

2 A Yes, it has.

3 Q -- you're preparing completion and tes-
4 ting on it?

5 A Yes.

6 Q OKay. The -- apart from the Benson Well
7 and the Roddy Well, are there any other Siluro-Devonian
8 tests or producing wells in the immediate area?

9 A On this map there are a few I might point
10 out. To the immediate -- to the immediate west of the Ben-
11 son Well there are two Silurian tests, shown as the Sun Yea-
12 ger and the Major, et al, No. 1 Yeager, the two dry holes in
13 Units I and J of Section 15, were dry holes to the Silurian.

14 The well in Unit A, 22, was a dry hole to
15 the Silurian. These probably could be better seen on the
16 index map. I have those dry holes listed but basically the
17 Knowles Field is to the immediate south end of the map,
18 which is Devonian production. That is the only other Devon-
19 ian production on the map and there are -- there are a few
20 dry holes, also.

21 Q The closest Devonian production is in the
22 -- in the Knowles Field to the south.

23 A Yes, it is.

24 Q And how far away is the closest producing
25 well in the Devonian from the discovery?

1 A Appears to be approximately 2-1/2 miles.

2 Q You said earlier that you have reached
3 the geologic opinion that this constituted a new reservoir?

4 A Yes.

5 Q Would you describe for us the reasons
6 that you base that opinion on?

7 A Primarily based on our detailed seismic.
8 We have a very dense grid, as you can see. These reservoirs
9 are fairly straightforward to -- to define seismically. The
10 other reservoirs that produce, such as Knowles and those off
11 of this map, are very similar in that they are faulted anti-
12 clines, faulted on one or more sides.

13 We have dry holes on the flanks of our
14 feature and intermediate positions between our feature and
15 the nearest producing fields and our well did come anoma-
16 lously high for that general area, but primarily it is based
17 on the dense seismic grid. The seismic is a very good tool
18 in here and I think very well defines that we definitely
19 have separation from -- from any of the nearest Siluro-De-
20 vonian Pools.

21 Q What information, geologic information,
22 do the logs from the Benson 1 Well allow you to do in deter-
23 mining and satisfying yourself that this is in fact a new
24 discovery?

25 A I don't really know if that much is going

1 from the logs identified as a new discovery. Perhaps most
2 of that would have had to be based, I think, on engineering
3 information, but again, most of it was based on the seismic
4 and our well just simply confirmed our seismic and the tops
5 in the reservoir development.

6 Q Well, and that is the geologic benefit,
7 then, of the log of the Benson Well is --

8 A Yes, sir.

9 Q -- it tells you the accuracy of the seis-
10 mic.

11 A Yes, it has confirmed the seismic.

12 Q Can you as a geologist determine what the
13 drainage is going to be for this reservoir?

14 A No, I really am not qualified to -- to
15 make very detailed calculations and determinations on -- on
16 what the drainage should be.

17 Q That's an engineering question.

18 A It is an engineering question.

19 Q Fine, let me ask you a geologic question,
20 though, with regards to well spacing.

21 A Okay.

22 Q In terms of the geology, do you see it
23 that this reservoir has an adequate size and shape to it
24 whereby at least from a geologic perspective you would re-
25 commend either 40-acre spacing or 80-acre spacing or 160-

1 acre spacing? Can you not approach it from a geologic per-
2 spective?

3 A Yes.

4 Q All right. Making that assessment, what
5 is your opinion, then, about how you would space wells in
6 order to adequately explore and develop the new pool?

7 A My opinion as a geologist and who having
8 looked at the other fields, their spacing, their correlative
9 reservoir characteristics, it is my opinion that the pool
10 should be drained on eighties.

11 Q Should be spaced on eighties.

12 A Spaced on eighties.

13 Q What kind of geologic parameters or fac-
14 tors have you looked at, Mr. Kubik, to satisfy yourself that
15 this reservoir has the kind of geologic characteristics that
16 would lead you to believe that it is a reservoir that could
17 be spaced upon eighties as opposed to forties?

18 A Primarily in that looking at the surroun-
19 ding fields we see some variability in the relative amounts
20 of fracturing versus matrix porosity that contributes to
21 production. Many of these fields are fractured; many of
22 them also have good matrix porosity. I think it could be
23 said in general that the data that I've been able to come up
24 with for some of the immediately offsetting fields where
25 there is some variation, is that in those fields where frac-

1 turing in a relative sense is more dominant than good matrix
2 porosity, these fields have been ordered on eighties and
3 have been drilled on eighties.

4 In those fields which have better inher-
5 ent matrix reservoir porosity and less fracturing, the South
6 Benton Field being a prime example in this area, that those
7 fields were in fact drilled on forties, so that having that
8 generalization at hand, of -- of more fracturing and less
9 porosity being more conducive to 80-acres, it was certainly
10 my opinion once seeing the Benson drilled, I sat on the well
11 as the reservoir was drilled and was there for the initial
12 test, and it was my opinion, looking at the samples, that
13 we're dealing primarily with a fractured reservoir with very
14 little matrix porosity, and certainly that was confirmed by
15 the logs, the point being that we saw that we had a reser-
16 voir that was dominated by fractures and had very little or
17 no good matrix porosity, therefore, by analogy to other
18 fields that would tend to lend it much more to being spaced
19 on eighties.

20 Q For the Benton Pool could you have made
21 the judgment about the fractured nature of this reservoir
22 and its potential for 80-acre spacing until the Benson Well
23 had been drilled?

24 A We could not. You can make generalities
25 that in general Siluro-Devonian reservoirs have varying

1 amounts of matrix porosities. Some of them are fractures;
2 some of them are not, and -- but the reservoir in the area
3 is -- is complex enough and has enough heterogeneity that
4 that really cannot be judged ahead of time, particularly on
5 a rank wildcat well.

6 Q Let's turn to Exhibit Number Three, Mr.
7 Kubik, and have you identify that exhibit for us.

8 A All right.

9 Q You've previously identified Exhibit
10 Three as a cross section that you have prepared. Would you
11 describe for us the method by which you've made a study to
12 decide how to prepare a cross section?

13 A I made the cross section based on, I wan-
14 ted to show the -- really, the nature of our wildcat rela-
15 tive to immediately adjacent dry holes and other producing
16 fields. I ran the cross section through the South Benton
17 Field to the north, through a -- starting with a dry hole to
18 the north of that field, through the south -- through the
19 north -- through the South Benton Field, and then through
20 some dry holes between the South Benton Field and our well,
21 through our well, and again through some dry holes flanking
22 our wells and on to a producing field to the south, the
23 Knowles, primarily just to show the analogy of field type,
24 the production type, and also to show the separation of our
25 feature from -- to the nearest Devonian Pool.

1 Q This is a structural cross section, is
2 it?

3 A It is a structural cross section.

4 Q Is the methodology you have used in pre-
5 paring the structural cross section one that is a standard
6 method used by geologists?

7 A Yes, sir.

8 Q Having done this, what conclusion do you
9 reach as a geologist based upon the relationship of the Ben-
10 son Well to the other wells on the cross section?

11 A Basically, you can see that I note in the
12 record that this is modeled partially off of our seismic in-
13 formation, which is a very dense grid in the area.

14 Basically you conclude that the Benson
15 Well is on a separate horst-like feature with downthrown
16 faults on either flank, separated from the immediately adja-
17 cent fields by low and wet Devonian.

18 Q Identifying a structure for the Devonian
19 pools is in fact the basic building block upon which you
20 discover and develop Devonian pools?

21 A Yes, it is.

22 Q You're looking for a stratigraphic --
23 structural features in order to trap the oil?

24 A Yes, very definitely out here. That is
25 the -- the only way in this immediate -- that is the only

1 type of field in this immediate area are small. The Denton
2 is somewhat large but for the most part fairly, fairly small
3 structural accumulations faulted on one or more sides is the
4 trapping mechanism.

5 Q Do you have a geologic opinion with re-
6 gards to the continuity or discontinuity of these types of
7 reservoirs so that you can make a judgment that based upon
8 that fact a prudent operator would go either for 40 or 80
9 acre spacing?

10 A Generally, on other fields the -- the
11 continuity of the reservoir within a field appears to be
12 quite good. There -- there really aren't that many ano-
13 malies within fields to suggest a very broken up reservoir.
14 The majority of the field certainly on the index map as well
15 as the immediate area, all have pretty much continuous and
16 even reservoir, although there certainly are some small
17 scale variations well to well, but generally you do have a
18 continuous reservoir over the entire feature and that cer-
19 tainly would allow you the option of either spacing.

20 Q And looking specifically at the Benson
21 area, which Marathon proposes for the new pool, do you see
22 any geologic feature or other characteristics of the geology
23 on any of your work that would cause you to say, "Aha, dis-
24 continuous, we've got to go for 40-acre spacing."

25 A I have not.

1 Q All right. Are there in fact any geolo-
2 gic characteristics, features, sealing faults, that you have
3 located that would preclude you from reaching the geologic
4 opinion that we could space wells in this pool on 80-acre
5 spacing?

6 A No.

7 MR. KELLAHIN: That concludes
8 my examination of Mr. Kubik.

9 I would move the introduction
10 at this time of his Exhibits One, Two, and Three.

11 MR. DICKERSON: Mr. Examiner, I
12 would like to reserve the right to object to any of these
13 until following a small amount of cross examination.

14 MR. KELLAHIN: No objection.

15 MR. CATANACH: All right, go
16 ahead, Mr. Dickerson.

17

18 CROSS EXAMINATION

19 BY MR. DICKERSON:

20 Q Mr. Kubik, I have one question regarding
21 your Exhibit Number One.

22 You've shaded, as Mr. Kellahin described,
23 four half sections of land in the general vicinity of the
24 acreage that we're in dispute here today.

25 A Yes.

1 Q Did you do that shading based on your in-
2 terpretation as a geologist from the information available
3 to you as to the likely productive limits of this, what you
4 have testified in your opinion, is a new Siluro-Devonian
5 Pool?

6 A Again, in a very general sense, yes. I
7 did not intend it to be a very detailed distribution of re-
8 servoir distribution. It was an attempt on my part simply
9 to outline an area on the map and shade it primarily for re-
10 ference purpose. I intended to make a very blocky outline
11 of the feature. I certainly could have gone in and made a
12 much more detailed shaded area to cover, you know, exactly
13 what we have mapped as gray, but it was basically just a
14 very general attempt to -- to cover the pool with a very
15 blocky index-type shading.

16 Q Mr. Kubik, did you have any input into
17 the development of this prospect as a prospect at the time
18 it was presented to Marathon management?

19 A I was not the original geologist on the
20 prospect but at a subsequent time, when that geologist left
21 our office, I was handed responsibility for the prospect and
22 since that time have been the geologist on the prospect.

23 So I have been involved in presenting it
24 to management on a number of occasions and have been
25 Marathon's geologist for the prospect since that time.

1 Q Who was that geologist and when did he
2 leave Marathon's employment?

3 A His name was Jeff Zeeman (sic). He did
4 not leave our employment. He was transferred to Houston and
5 to my knowledge that would have been sometime, perhaps, in
6 '85, I think. This prospect has been on the books for Mara-
7 thon for - for some time.

8 Q So you had performed part of your duties
9 as a geologist in relation to this prospect prior to the
10 time the Benson No. 1 Well was drilled.

11 A Yes.

12 Q In connection with that, or based on your
13 knowledge of what that geology was believed to have been
14 been based on the seismic information and other data that
15 you had prior to the drilling of that well, do you have an
16 opinion as to how the boundaries of the roughly drawn, as
17 you have stated, of the apparently or likely prospective,
18 productive Devonian area may have changed by reason of in-
19 formation gained from the drilling the Benson No. 1?

20 A You're referencing the shaded area on Ex-
21 hibit One?

22 Q Correct.

23 A That was drawn by me just very recently,
24 specifically for this hearing as a -- as a, again, just an
25 index feature.

1 We should probably go to the Exhibit Two.
2 Now I could state simply that drilling of the Benson has not
3 changed our outline or the shaded area of the structural
4 feature on Exhibit Two.

5 Q So had you attempted to anticipate the
6 likely productive area prior to the Benson No. 1 based on
7 the knowlege that you had at that time, you do not think it
8 would have differed greatly from what your opinion has now
9 caused you to shade in?

10 A No, I don't, I don't believe so. Again,
11 this shading I may have done, if asked to do a very gener-
12 alized, blocky shading of -- of the pool area prior to the
13 drilling, it may well have been very, very similar to this,
14 to this shading.

15 Again, the two shadings are really very
16 different features and are -- don't have that much real de-
17 tailed relation to each other. One is a very detailed
18 shading on Exhibit Two; the other one on Exhibit One is,
19 again, is just a very gross generalization.

20 Q In connection with your study of this
21 area prior to the drilling of the Benson No. 1 Well, Mr.
22 Kubik, had you prior to that time familiarized yourselves
23 with some of these other Siluro-Devonian fields in the area?

24 A Yes, I have.

25 Q And I believe it was your testimony that

1 based on your expertise as a geologist, it would not have
2 been possible for you to anticipate the nature of the rock
3 formations that you would in fact encounter when the Benson
4 No. 1 Well was finally drilled.

5 A Not in detail, no.

6 Q Would it not have been, you were aware
7 prior to the drilling of that well, were you not, that some
8 of the wells in the general vicinity in this reservoir,
9 Siluro-Devonian, were developed on forties while others were
10 developed on eighties?

11 A I was aware of that.

12 Q It would not have been a farfetched as-
13 sumption to anticipate that conceivably the rock drilled
14 through when that Benson No. 1 Well was drilled might justi-
15 fy eighties, would it not have been, even prior to the time
16 that well was drilled?

17 A You could have held that as a possibil-
18 ity.

19 Q Would it be fair to characterize the
20 Devonian, other Devonian pools shown on your Exhibit Number
21 Two as roughly half of them spaced on forties, roughly half
22 spaced on eighties, or is there is -- have you calculated
23 the percentages?

24 A You know, if you include the Denton Pool,
25 with just a portion shows up to the upper left, to my know-

1 ledge the South Knowles, Knowles, Medicine Rock, were pooled
2 on eighties; the West Garrett, the South Denton and the Den-
3 ton to my knowledge, at least, were drilled and developed on
4 forties, so -- so that might be fair.

5 Q At any rate, it would not have required a
6 great leap in your geological imagination to anticipate that
7 possibly you would discover a pool which should be developed
8 on 80-acre spacing when in fact the Benson No. 1 was dril-
9 led.

10 A As I said, that certainly was a possibil-
11 ity, but that was not something that I was addressing or
12 that was not -- that I was not addressing at the time. I
13 was responsible for the geology and making sure that we had a
14 successful wildcat.

15 Q Now you did not testify, as I understood
16 it, in the original hearings involved pooling Benson No. 1
17 Well, is that correct?

18 A I did not.

19 Q Who did testify?

20 A Dave Rebenstorf.

21 Q And is he present today?

22 A He is not.

23 Q Is there a reason for that?

24 A We just felt that it was not necessary.

25 His only reason for testifying previously was that he was

1 the -- the individual who made this Exhibit Number Two and
2 therefore that he should be present. This exhibit has al-
3 ready been presented to this Division and he has described
4 it, and it was felt that I could describe it probably as
5 well as him, and that he was really -- really just not
6 needed.

7 Q Does he still serve any function in con-
8 nection with the development of this area?

9 A He's still a geophysicist in this area,
10 handles seismic on this prospect.

11 Q And does the seismic data that Marathon
12 has -- at this point when you have two wells drilled in the
13 -- what you now believe to be a Devonian pool, can you ex-
14 plain to me as a layman how the seismic data may give way or
15 be related to the subsurface data that you now have by vir-
16 tue of drilling these two wells?

17 A Well, the -- what the drilling of the two
18 wells has told us is, it has confirmed the seismic in the
19 sense that we have an anomaly and we have an anomalous up-
20 thrown block and our well was significantly high to two off-
21 setting dry holes. The wells that we drilled, as I testi-
22 fied previously, did change somewhat the numerical values of
23 the contours within the structural feature. Specifically it
24 reduced the total amount of closure slightly, but basically
25 otherwise did not, certainly did not alter the shape. The

1 wells drilled as they were really will not tell you much
2 about the outer limits of the field but it certainly con-
3 firms the feature as mapped with -- with minor modifications
4 of the actual structural horizon.

5 Q One more question with regard to the
6 shaded area on your Exhibit Number One, Mr. Kubik. If my
7 mathematics is correct you have shaded the four half
8 sections of land which would consist of approximately 1280
9 acres of land, do you not?

10 A Yes.

11 Q Without belaboring the point to cite to
12 the specific place in the testimony in the earlier
13 proceeding, assume for a moment that I tell you that I
14 believe that the testimony in that proceeding was that the
15 likely prospective area believed by Marathon to exist for
16 this Siluro-Devonian Pool at the time prior to the drilling
17 of the Benson No. 1 Well, consisted of approximately 320
18 acres.

19 Is that consistent with your testimony
20 now, that your shaded 1280 acres has not been dramatically
21 affected by the information gained from drilling the Roddy
22 and the Benson No. 1 Well?

23 A No, it has not. This again was my
24 attempt on my first trip to Santa Fe to testify to -- to
25 outline and index area for -- for the field. Again, they're

1 different beasts.

2 The shaded area on Exhibit One, every bit
3 of that shaded area that I have shaded is not to imply that
4 every bit of the shaded area there should be productive.

5 Again, it was a very -- I just tried to
6 keep it very blocky and very straight lined, just to ident-
7 ify where the pool is and roughly in a very gross sense
8 where the pool is going to be.

9 I did not make the shaded area on Figure
10 1 anomalously larger because of something that we learned in
11 the drilling of the Benson. Our specific interpretation on
12 the distribution of the reservoir at this point is still on
13 Exhibit Two, the shaded area on Exhibit Two, as far as spe-
14 cifics, and again, I don't know what else I can really say
15 on that. Perhaps, you know, I didn't do enough -- put
16 enough thought into exactly the detail for which I should
17 put the shading area on Figure 1 and perhaps I've gone out
18 of the bounds of what is usual at these -- these hearings.
19 If I have, then I would apologize for that but again it was
20 just a very gross attempt on my part to put a very blocky
21 area over the -- over the pool. It was not intended to rep-
22 resent a productive area.

23 Q That was merely the question -- or the
24 purpose of my question, Mr. Kubik. I did not in any way
25 mean to imply that you had done anything out of the ordin-

1 ary. I simply wanted to find out whether or not that was to
2 be relied upon to any great extent and your answer is it
3 should not be, as far as --

4 A That would be my testimony. The shaded
5 area in Figure 1 should not be referred to as a specific de-
6 lineation of productive area. That should be referred to
7 Figure -- Figure 2 again, as I've stated, but the shaded
8 area in Figure 1 is just a reference area. It should not be
9 referred to in any way as far as production is concerned.

10 Q And as a practical matter, the limits of
11 this pool will be determined by later drilling, will they
12 not?

13 A Yes, they will be.

14 Q Let's look at your Exhibit Number Two.

15 A Okay.

16 Q I notice at the -- what I believe to be
17 the location of the No. 1 Benson Well in the southeast quar-
18 ter of the southeast quarter of Section 13, a figure "S11",
19 which I suppose is Silurian?

20 A Yes.

21 Q -9387?

22 A Yes.

23 Q That is the top --

24 A Yes.

25 Q -- to the -- the subsea to the top of the

1 Silurian?

2 A Yes, it is.

3 Q Subsea, not subsurface?

4 A Subsea.

5 Q Is that -- was that on this map at the
6 time it was prepared for the original hearing or is that in-
7 formation data confirmed by your core sample or your samples
8 from the actual drilling of the Benson No. 1 Well?

9 A That is the top based on logging. It's a
10 log top from the post -- after the drilling of the Benson
11 Well.

12 Q And that is your pick of the top of that?

13 A Yes, it is.

14 Q Based on the log which appears on your
15 Exhibit Number Three of Benson No. 1?

16 A Now that I'm -- I should note here, this
17 top is a true vertical depth top. The top on the log will
18 not -- will not exactly match the top shown here.

19 The bottom hole location, you can see
20 there are two -- two well locations at the Benson, the
21 southerly one being the surface location labeled "SL", the
22 northeasterly one being bottom hole location and there is
23 just, there will be a difference. The log will -- will show
24 actual hole depth, whereas the true vertical depth will be
25 slightly shallower, so they will -- I think the difference

1 was 8 feet, so the log will show a top, I think, somewhere
2 in the range of 9395, I'm not certain, I don't have my num-
3 bers right in front of me, but -- but the number on the map
4 is a true vertical depth, which will not exactly match the
5 log but is correct based on a deviation survey run on the
6 well.

7 Q Directing your attention for a moment to
8 the log of the Benson No. 1 Well, there is a dark, horizon-
9 tal line drawn. Do I understand that correctly to be rough-
10 ly the top of the Siluro-Devonian as you have picked it?

11 A Yes. The lower -- the lower heavy line.

12 Q Okay. Back to Exhibit Number Two, Mr.
13 Kubik, directing your attention to what I understand to be
14 the location of your Roddy Well in Section 23 immediately to
15 the south, there appears another figure, in fact there are
16 two of them, Silurian, -9350 and -9344.

17 What do those figures refer to?

18 A The Silurian -9350 is again a log top,
19 subsea log top, from the Marathon No. 1 Roddy.

20 The 9344 is the subsea Silurian depth as-
21 signed to the -- to the shotpoint from seismic shown imme-
22 diately to the left of the well location. So the 9344 is
23 associated with the seismic point to the -- to the west.

24 The 9350 is the actual Silurian top that
25 we encountered.

1 Q Can you relate for us the difference, if
2 any, with regard to the Benson No. 1 Well --

3 A Yes, sir.

4 Q -- as to the top of this Siluro-Devonian
5 formtion as confirmed by your borehole data, as compared to
6 the projection --

7 A On seismic.

8 Q -- based on seismic?

9 A The Benson is a little different than
10 that. It is a little farther away from our nearest seismic
11 line, but in general, it's certainly -- certainly matched
12 quite well in a general sense.

13 You can see the immediate point immed-
14 iately to the north labeled 9387 is perhaps the closest re-
15 ference point that we have. There's also a 9387 shown just
16 to the south and west of the well, so it certainly tied in
17 quite well, but I do need to mention, you know, this map was
18 -- was remapped after the information was derived from the
19 Benson. These are not the original values on our original
20 interpretation pre-drilling.

21 Q Looking at the No. 1 Roddy Well again,
22 accepting, it appears to me, the seismic projection, you
23 would have picked a top to the Devonian of -9344?

24 A Yes, approximately.

25 Q And in truth it was 9350?

1 A Yes.

2 Q So six feet of difference?

3 A Yes.

4 Q Can you tell us what -- or can you tell
5 from this map what, if any, difference there was in those
6 two picks in the No. 1 Benson Well?

7 A You mean the difference in what we would
8 have anticipated and what we encountered?

9 Q Correct.

10 A Again, that would be based on the pre-
11 viously submitted map and this was not -- this is not the
12 exact map that we used. This is not the map we had before
13 we drilled the Benson.

14 To answer your question, the Benson came
15 in - came in roughly 100 feet, give or take, low to our
16 seismic projection on our original map, and having that data
17 point, having that interval velocity point, we went in and
18 remapped on the seismic and came up with this map, which is
19 certainly a much closer match to what is really there.

20 Q Okay, now you have had access, you have
21 obviously seen the logs of the No. 1 Roddy Well.

22 A Yes, I have.

23 Q And the log of the No. 1 Roddy is not
24 shown in your cross section, is it?

25 A It is not.

1 Q Is there a reason for that?

2 A The cross section is intended to be a
3 very general -- a general description of the Silurian in the
4 area, just trying to keep the wells to a minimum, the clutter
5 to a minimum, and just to show in general our feature
6 and surrounding features. You'll notice I also included only
7 one, one well in the Knowles Field and one well in the
8 South Denton Field.

9 Q So if I understand you correct -- your
10 testimony, the actual drilling of the No. 1 Benson Well determined
11 the Devonian to be lower than anticipated.

12 A Yes.

13 Q Which had the practical effect, did it
14 not, of making the best location the No. 1 Roddy Well, based
15 on the information that you had prior to drilling the No. 1
16 Roddy but subsequent to drilling the No. 1 Benson?

17 A Yes. After evaluating the data from the
18 Benson, we felt at the time that we could get approximately
19 40 feet high to the Benson.

20 Q And at the time the No. 1 Benson Well, it
21 was projected, I suppose, to have been at the highest point
22 on the anticipated Devonian structure?

23 A Yes, it was.

24 Q And the truth has turned out to be that
25 it is not in fact at the highest point on that Devonian --

1 A After, I believe, I do not have the map
2 in front of me, but I think that there was an area encompassing
3 the approximate positions of the Benson and the Roddy
4 that based on the data appeared to be approximately flat, I
5 think.

6 Q Since we are here in disagreement, Mr.
7 Kubik, over the reservoir which has been discovered by the
8 drilling of the No. 1 Benson Well, and I suppose confirmed
9 by the Roddy Well, --

10 A Yes.

11 Q -- would it have not, even given your desire
12 to keep to a minimum the number of wells which are depicted
13 on your cross section, would not it have been more logical
14 to have included the Roddy log on that cross section,
15 eliminated one of the other wells to a further distance
16 away from from this reservoir?

17 A I don't believe so. Again I just picked
18 -- I just picked a well on our feature to just put on the
19 cross section, just to show our structural feature.

20 In the sense of what this cross section
21 is here to describe, there's no advantage in one well over
22 the other.

23 Q Okay. Looking at, from my quick look at
24 your Exhibit Number Three, the cross section, the Benson No.
25 1 Well shows, what is that, initial potential, 313 barrels

1 of oil?

2 A Yes.

3 Q 120 barrels of water per day?

4 A Yes.

5 Q When was that -- when was that well com-
6 pleted?

7 A I believe approximately February 11th or
8 12th, is that -- I believe 7th, I believe.

9 Q And do you know the current status of
10 that well?

11 A Not in detail. It's still producing. I
12 don't know. We in Exploration have not been kept up to date
13 on exactly what the well's doing.

14 If we want to know, we can call them, but
15 I do not know.

16 Q You do not know what the well is doing?

17 A Not exactly, no, sir.

18 Q Do you know approximately what the well
19 is doing?

20 A I think approximately it's making 60 or
21 70 barrels of oil and I don't know how much water.

22 Q Were there-- I noticed on some of the
23 other wells shown on your cross section there some drill
24 stem test results and other information. Were there any
25 drill stem tests conducted on the Benson No. 1 Well?

1 A Yes, there were.

2 Q Is there any reason the results of those
3 tests are not shown on your exhibit?

4 A Again, just to generalize the feature,
5 the perfs indicate that there is oil production on the -- on
6 the feature. The drill stem tests, there were four of them,
7 would have basically cluttered the map quite a bit, and they
8 would show nothing that would be inconsistent with the
9 perfs.

10 Again, I did that on some of the other --
11 other wells. I -- I left out, I just tried to provide the
12 pertinent information to describe our reservoir fluid.

13 Q Did you have any core data in the Benson
14 No. 1 Well?

15 A We did not.

16 Q And the Roddy Well, do you have any core
17 data?

18 A We do have. We do. We cored the well.
19 We do not have the analysis in hand yet.

20 Q Have you physically examined the cores?

21 A I have not.

22 Q Do you as a geologist and as an employee
23 of Marathon, Mr. Kubik, do you know what Marathon's position
24 is on the release of data now in your possession related to
25 the Benson No. 1 Well and the Roddy No. 1 Well?

1 A I really do not in detail know what our
2 status is right now or what our position is as far as
3 releasing that data.

4 Q If I were to ask you for a copy of the
5 log on the Roddy No. 1 Well, have you been instructed what
6 you are to do upon that request?

7 A I have not. I'd certainly forward that
8 to my superiors if we would feel that I would do it.

9 Q Both these wells were drilled tight, were
10 they not?

11 A Yes, they were.

12 Q No information released to anybody, in-
13 cluding Mr. Davidson.

14 A That's correct.

15 Q Do you know whether or not that is re-
16 lated to the dispute that Marathon has had with Mr. Davidson
17 in the history of this proceeding?

18 A I do not know specifically, but in gen-
19 eral it is our -- it is Marathon's policy to drill wildcat
20 wells tight.

21 Q Have you calculated, Mr. Kubik, porosi-
22 ties from the logs in the productive intervals in the Roddy
23 and the Benson wells?

24 A I have looked at the logs. That was pri-
25 marily a job of our engineering section but I have -- I have

1 just looked at them in passing.

2 Q Do you know whether or not an engineer is
3 to testify here for Marathon today?

4 A On either of these wells?

5 Q Yes.

6 A I don't believe so. No.

7 Q Do you have an engineer here?

8 A We do.

9 MR. DICKERSON: I have, Mr.
10 Examiner, no further questions of this witness.

11 I also, let me ask Mr. Kellahin
12 a question, if I may.

13 MR. CATANACH: Sure.

14 MR. DICKERSON: May I ask what
15 is the substance of the testimony of the witnesses to fol-
16 low?

17 MR. KELLAHIN: Engineering wit-
18 ness will provide volumetric calculations. He has some por-
19 osity on the Benson Well I think he's used in that calcula-
20 tion.

21 MR. DICKERSON: So you are
22 calling an engineer.

23 MR. KELLAHIN: You bet, and
24 then the last witness is a landman.

25 Q From your review, Mr. Kubik, of the infor-

1 mation from the Benson and the Roddy wells, have you been
2 able to determine the likely oil/water contact on this Dev-
3 onian structure?

4 A I have not, really. We -- we have some
5 indications from both wells that are tentative but again
6 it's primarily in the Engineering and Operations Department
7 at this time.

8 Q Do you know what that tentative figure
9 is?

10 A I don't know what -- what they are con-
11 sidering. You may certainly ask the engineer when he comes
12 up. I wouldn't want to put words in his mouth as to what
13 it -- what it is.

14 Q No, my question was merely do you know
15 what it is.

16 A I have a ballpark idea.

17 Q Of this tentative figure?

18 A Yeah.

19 Q What is it, approximately?

20 A I think -- well I don't see -- I have the
21 information in my office. Again I'm not handling that. I
22 know what it -- what they determined to be. I got a copy of
23 the analysis they did at Core Lab to -- to determine this.
24 I don't think any final decisions have been made; at least
25 --

1 Q Well, is the answer that you do not remem-
2 ber or --

3 A I do not remember exactly what it is. I
4 have been aware of it but at this point I do not have --
5 have that at hand anywhere.

6 Q At any rate, it's your information that
7 some determination by other Marathon personnel has been made
8 on this point.

9 A Yes, I believe so.

10 MR. DICKERSON: Mr. Examiner, I
11 have no further questions of Mr. Kubik, and I have no objec-
12 tion to the introduction of these three exhibits.

13 MR. CATANACH: Okay, Exhibits
14 One, Two, and Three will be admitted into evidence.

15
16 CROSS EXAMINATION

17 BY MR. CATANACH:

18 Q Mr. Kubik, I just want to -- well, I want
19 you to briefly answer a question for me.

20 I just want to know --

21 A Sure.

22 Q -- in your opinion what separates this
23 reservoir from all the other Devonian reservoirs in the
24 area, very briefly, if you know?

25 A Just simply that it's a structural separ-

1 ation. They are structurally isolated features and -- and
2 in general they would -- would each contain oil in the
3 reservoir, whereas low positions, or flank positions, or in-
4 termediate positions between the fields would be water wet,
5 constituting individual reservoirs.

6 MR. CATANACH: I have no further
7 questions of the witness.

8 He may be excused.

9 MR. DICKERSON: Mr. Catanach,
10 if I may, I have one further question you've reminded me of.

11

12 RE-CROSS EXAMINATION

13 BY MR. DICKERSON:

14 Q Mr. Kubik, with regard to the No. 1 Ben-
15 son Well, and based on the information that Marathon has now
16 obtained and of which you have personal knowledge, what is
17 the relative situation concerning the southeast quarter of
18 the southeast quarter of that section, the original spacing
19 unit for the Benson No. 1 Well as compared to the southwest
20 quarter of the southeast quarter, which is not intended to
21 be included within that spacing unit, and I'm speaking from
22 -- from a structural standpoint?

23 A We expect, well, just looking at the map,
24 we expect that position to -- in a ballpark sense, to be
25 roughly flat with the Benson.

1 Q And relatively lowers to any 80-tract
2 that may be dedicated to the No. 1 Roddy Well?

3 A Based strictly on the map, yes, but it's
4 hard to judge beforehand.

5 MR. DICKERSON: No further
6 questions.

7 MR. CATANACH: Sorry, Mr. Kel-
8 lahin, did you have any redirect?

9 MR. KELLAHIN: No, I didn't.

10 MR. CATANACH: The witness may
11 be excused.

12 MR. KELLAHIN: Mr. Examiner, at
13 this time we'll call Mr. Tom Engler.

14

15

TOM ENGLER,

16 being called as a witness and being duly sworn upon his
17 oath, testified as follows, to-wit:

18

19

DIRECT EXAMINATION

20 BY MR. KELLAHIN:

21 Q Mr. Engler, for the record would you
22 please state your name and occupation?

23 A My name is Tom Engler and I work as an
24 engineer, a reservoir engineer, with Marathon Oil.

25 Q Mr. Engler, have you previously testified

1 before the Division as an engineer?

2 A NO, I haven't.

3 Q Would you describe for the Examiner when
4 and where you obtained your degree in engineering?

5 A In 1982 I received a Bachelor of Science
6 in petroleum engineering in petroleum engineering from New
7 Mexico Institute of Mining and Technology.

8 Q You were a classmate of Mr. Stogner's,
9 were you not?

10 A That's correct.

11 MR. KELLAHIN: Don't hold that
12 against him.

13 MR. CATANACH: He was a class-
14 mate of mine, too.

15 Q After your graduation, Mr. Engler, would
16 you summarize for us what has been your employment exper-
17 ience as an engineer?

18 A For five years I've been working for Mar-
19 athon Oil and a -- both a production and a reservoir
20 engineer, primarily based in fields, producing fields in the
21 southeast New Mexico area, and I've handled the engineering
22 on the East Garrett Siluro-Devonian Field since the incep-
23 tion of the Benson.

24 Q That engineering would include the Benson
25 well that we've been discussing today?

1 A Yes, that's correct.

2 MR. KELLAHIN: We tender Mr.
3 Engler as an expert petroleum engineer.

4 MR. CATANACH: Any objections?

5 MR. DICKERSON: No objection.

6 MR. CATANACH: The witness is
7 considered qualified.

8 Q Mr. Engler, I have placed before you what
9 I've marked as Marathon Exhibits Four through Twelve.

10 Is this a package of exhibits that you
11 have compiled, calculations that you have made, and other
12 information that has been prepared either directly by you or
13 under your direction and supervision?

14 A Yes, sir.

15 Q Let me begin, sir, and have you first of
16 all simply identify for us Exhibit Number Four.

17 A Exhibit Four is simply the filing for the
18 creation of a new pool that we did when the Benson was first
19 completed.

20 Q All right, sir, let's turn to Exhibit
21 Number Five and have you identify that exhibit.

22 A Again, Number Five is the C-105 which was
23 filed with the state and it gives all the pertinent informa-
24 tion between the completion and the IP of the test, and so
25 forth.

1 Q Before we leave that exhibit, let me have
2 you give us some of the production data at the bottom of the
3 exhibit with regards to the date of first production and
4 give us generally the type of test that was conducted and
5 the initial test results.

6 A Well, as you see, the date of first pro-
7 duction was February 11th, 1987, and we had an IP of 313
8 barrels of oil per day, 11.4 MCF per day, and 120 barrels of
9 water per day.

10 This is also -- this is on a 24-hour test
11 with a rod pump, on a pumping unit.

12 Q Let's turn now to Exhibit Number Six and
13 again simply identify this exhibit for us.

14 A Exhibit Six is to show that we're reques-
15 ting 80-acre spacing. It's location is shown as a -- we're
16 requesting a laydown 80 to accommodate the reservoir.

17 Q All right, let's get to Seven, which be-
18 gins, then, your calculations, and have you give me some of
19 the background that you as an engineer will use, or informa-
20 tion that you have by which you approach the aspects of
21 your discipline to decide how you as an engineer will recom-
22 mend to your management that you'll produce and develop the
23 reservoir.

24 A In this case the first attempt was a vol-
25 umetrics calculation and what you see before you is the 30

1 acres. We also ran, of course, 40 acres, but we used the
2 data that we had at hand, and as you see there, to
3 determine the volumetric amount of reserves in place, amount
4 of reserves.

5 Q Why would you elect to use a volumetric
6 calculation?

7 A Well, at the time we had preliminary
8 data which would allow us to go through these calculations.

9 Q For what purpose can you use a volumetric
10 calculation in determining whether or not you should space
11 wells on 40 or 80 acres?

12 A Well, it allows the flexibility of
13 assuming your drainage area, and therefore using the rest of
14 your parameters determined with a -- and in this case, with
15 a comparison of performance, or decline curve in the
16 drainage area.

17 Q Is this a typical methodology or
18 calculation by which a reservoir or production engineer will
19 make calculations to determine how wells ought to be spaced
20 in a given reservoir?

21 A Yes, with the data at hand this is a
22 typical analysis.

23 Q Are you comfortable and satisfied that
24 the parameters you've selected for the volumetric
25 calculation are fair and reasonable?

1 A Yes, I am.

2 Q Let's talk, sir, a moment about the
3 source of the data and how you determined that the para-
4 meters are fair and reasonable?

5 A To start at the top, we have an assumed
6 porosity of approximately 3 percent and on Exhibit Number
7 Eight you can see a data sheet which shows where some of
8 these numbers came from.

9 Q All right, let's look at both of them to-
10 gether, or perhaps it's helpful to look at both Seven and
11 Eight together.

12 A In Exhibit Eight we have data and fluid
13 -- data sheet and fluid data and here you can see, like, for
14 the porosity, 3 percent. We did some log analysis. This is
15 on the Benson, only the Benson, and you can see on the last
16 exhibit, Exhibit 12, a copy of the Benson logs where we used
17 our analysis for the porosity.

18 Q Describe for us generally, Mr. Engler,
19 the relationship of three percent porosity to the type of
20 porosity ranges that you see in other Devonian Pools.

21 A Well, as the geologist mentioned, the
22 Devonian Pool is a typically low matrix porosity, anywhere
23 from 2 to 5 percent. In this case our reservoir quality
24 showed up a little poorer than what we actually had antici-
25 pated originally.

1 Q What conclusions do you reach if now you
2 find the reservoir porosity is a little poorer than you had
3 anticipated encountering prior to drilling the well? What
4 difference does that make to us today in deciding spacing?

5 A Well, what it does is it shows our frac-
6 ture system is more of a dominant producing -- dominant pro-
7 ducer, thus for, as evidenced by some of these other offset
8 fields, the fracture system is more likely drained than has
9 been pooled on 80 acres.

10 Q Describe for us the source of the other
11 parameters that went into the volumetric calculation.

12 A Again, the second one is a net pay of 15
13 feet. This is again based off your logs.

14 And the drainage area in this case is
15 shown as 80-acres; a water saturation of 35 percent is also
16 a log analysis number. A formation volume factor of 1.07 is
17 from a calculation off of our oil analysis from our fluid
18 data which you see in Exhibit Eight, and a recovery of 55
19 percent is, being as it's a water-drive system, is an aver-
20 age water-drive recovery for this type of producing mechan-
21 ism.

22 Q The drive mechanism being a water-drive
23 reservoir, the percentage recovery is in the range of 55
24 percent.

25 A That's correct.

1 Q All right, using those parameters, then
2 you make a volumetric calculation and you get recoverable
3 reserves of what percentage? I mean what number?

4 A In this case it was 100, just a little
5 under 107,000 stock tank barrels.

6 Q And that assumes an 80-acre area.

7 A Area, correct.

8 Q If you used a 40-acre factor in the cal-
9 culation, what would that give you for a recoverable reserve
10 number?

11 A It would give you approximately 53,000.

12 Q Okay. Approximately what did it cost
13 Marathon to drill and complete the well, either dry hole
14 costs or completed well costs?

15 A Completed well costs for the Benson is
16 \$1,142,000.

17 Q Can you drill and complete wells in this
18 reservoir, realizing 50,000 barrels of oil?

19 A No, sir.

20 Q All right. Having done the volumetric
21 calculation, do you have information by which you can study
22 or determine permeability in the reservoir?

23 A I guess I don't know what you --

24 Q Well, we talked about some of the things
25 that you as an engineer will look at. We've got porosity,

1 water saturation. You've got the height of the reservoir,
2 recovery factor. I guess one of the other things we common-
3 ly hear people talk about is the permeability of the reser-
4 voir. Do we have enough information now to discuss perme-
5 ability?

6 A Not at this time. We don't have a good
7 handle on permeability.

8 Q Are you satisfied that there's enough
9 preliminary information to cause you to reach the conclusion
10 that this is a fractured reservoir?

11 A Yes, sir.

12 Q What difference will it make to you as an
13 engineer in deciding spacing whether or not this reservoir
14 is a fractured reservoir or the typical matrix reservoir we
15 see?

16 A Well, I think that ties back into a mat-
17 rix reservoir, in a matrix reservoir you can drain maybe a
18 smaller area and as shown by your offset fields, this, you
19 know, typical -- you have more of a typical 40-acre case.

20 In the case of a more fractured type re-
21 servor you are more of a drainage of 80 acres, because of
22 the extension of the fractures and also the capacity of the
23 flow.

24 Q Having made the volumetric calculation,
25 what can you as an engineer now do to verify or confirm the

1 reliability of that volumetric calculation?

2 A Well, what I did is I -- I did a decline
3 analysis to obtain reserves and another method, the perfor-
4 mance of the Benson production.

5 Q Decline analysis, is that an accepted
6 tool of your profession by which to analyze reserves and
7 make comparisons?

8 A Yes sir.

9 Q Okay, and you did that?

10 A Yes, sir.

11 Q Would you describe for us what you've
12 done? Is that on Exhibit Number Seven?

13 A That's -- yes. On Exhibit Seven on the
14 right side you have a decline analysis. The -- the input or
15 data, we had an average initial rate for the first year of
16 70 barrels of oil per day. We had a final economic limit of
17 3 barrels of oil per day and we inputted a decline of 22
18 percent and this is based on the nearest offset Devonian
19 production, and that's that Knowles Devonian Field, as
20 you've seen previously.

21 Q By taking the -- all right, discuss for
22 us how you analyze and evaluate the Knowles Devonian Field
23 to get a decline number that you have confidence in.

24 A Okay, I took the annual production from
25 -- for the Knowles Devonian and, of course, plotted it up to

1 determine the -- the decline for that field, and that's what
2 it is.

3 Q That decline represents actual --

4 A Actual performance.

5 Q -- field decline for that reservoir?

6 A Correct.

7 Q Okay. Why have you utilized that number
8 for the Benson decline analysis?

9 A Well, the Benson is yet to stabilize. We
10 have, one, limited data, and, two, it hasn't had a stabi-
11 lized rate, enough stabilized rate to get a good decline.

12 Q In order to provide the data are you com-
13 fortable that the Knowles Devonian Field analysis is an ac-
14 ceptable way to put that parameter into the calculation?

15 A Yes, sir, at this time, yes.

16 Q Having those bits of information, you
17 have made a decline calculation?

18 A Yes, I did.

19 Q All right, and what does that tell you?

20 A From the calculations I obtained the re-
21 serve number of a little less than 109,000 barrels of oil.

22 Q Having done it that way, what conclusion
23 do you draw?

24 A Well, with the good agreement between the
25 two methods and using this preliminary data that I have, it

1 seems to show that the temporary pool rules of 80 acres will
2 allow us to effectively drain or effectively develop this --
3 this specific pool.

4 Q What decline analysis result would have
5 caused you to believe that 80-acre spacing is not appro-
6 priate?

7 A In this case, say, your decline was half
8 or 10 percent, and you have much more decline reserves than
9 was shown here.

10 Q I want to have you describe for us how
11 you decide you have a reasonable correlation between the
12 volumetric results and the decline analysis results, to say
13 you ought to go to one spacing or another. How far off
14 would these numbers have to be, in other words, for you to
15 say 80-acre spacing is not going to work?

16 A I guess in my opinion I'd have to say if
17 you were a, say, 75,000 barrels off, you'd probably want to
18 look at possibly another type of either drainage area in
19 your volumetrics to see what kind of drainage area you would
20 get.

21 Q How would you characterize the degree of
22 match between the two calculations in deciding whether or
23 not you ought to stay with 80-acre spacing as a proposal?

24 A Well, in this case, these matched, in my
25 opinion, exceptionally well.

1 Q Do you have an opinion, Mr. Engler, as to
2 whether or not, based upon current available information, we
3 went to 40-acre spacing and started drilling wells on 40 ac-
4 res, whether those would be necessary wells or not?

5 A And my opinion at this time is that it
6 would not be really beneficial to use such a drilling pro-
7 gram.

8 Q Why not?

9 A I think on Exhibit -- Exhibit Nine we show
10 an economic summary.

11 Option one is to drill one 80-acre well.
12 That is the economics, in a sense, of our Benson No. 1.

13 Option two is to drill two 40-acre wells
14 to develop the same amount of reserves of 106,000 barrels of
15 oil.

16 Q Do you know whether or not you would have
17 recommended to Marathon's management, had you known the re-
18 serves were only 106,000, whether you would have recommended
19 to them that they drill the Benson Well in the first place?

20 A If I knew it was 106,000, I would not re-
21 commend drilling it.

22 Q Prior to drilling the Benson Well, what
23 type of reserves had been projected for this area?

24 A I think prior to the drilling of the Ben-
25 son, I believe we gave a half million barrels of oil.

1 Q And had we realized a reservoir that in
2 fact had half a million barrels of oil, in that situation,
3 could we have developed this on 40-acre spacing?

4 A Quite possibly, yes.

5 Q The economic summary is one that you have
6 prepared yourself?

7 A Yes, sir.

8 Q Is this economic summary a typical way
9 for an engineer to evaluate the economics of a prospect such
10 as this?

11 A Yes sir.

12 Q It's a standard tool of your profession?

13 A Uh-huh.

14 Q Is it a tool or a technique by which a
15 management spends money and makes investments?

16 A Yes, sir.

17 Q All right, and what is the result of the
18 analysis?

19 A As you can see, say, with option one,
20 with a gross investment of \$1,143,00 have a profit-to-in-
21 vestment ratio of .11. It takes eight years to pay out the
22 project, have a rate of return of 3.3 percent. Investment
23 per equivalent barrel of oil is \$13.50.

24 Under the second option you drill two 40-
25 acres wells, you have an investment of \$2,000,000 dollars,

1 and as you can see, there's a negative profit-to-investment
2 ratio; you can't calculate a payout; you have no rate of re-
3 turn; it would take \$23.30 per equivalent barrel of oil.

4 Q What's your conclusion, Mr. Engler, from
5 this analysis?

6 A Economics are quite poor.

7 Q And what does that tell you about which
8 option of exercise?

9 A In my opinion, option one is to drill one
10 80-acre well.

11 Q Let's turn now to Exhibit Number Ten, Mr.
12 Engler, and have you simply identify this exhibit for us.

13 A Exhibit Ten is a wellbore schematic of
14 the Benson. It simply shows what we ran in the way of
15 casing, what we have in the way of completion, and where
16 your Siluro-Devonian perms are.

17 Q Is this a typical way to complete and set
18 up for production a Siluro-Devonian Well?

19 A Yeah, this is typical for this depth.

20 Q All right, sir, and let's go to Exhibit
21 Eleven and have you identify that for us.

22 A Exhibit Eleven shows the production
23 history for the Benson No. 1 from the time we installed the
24 pumping equipment till the time we finally dropped it off
25 our report.

1 Q What use is this information?

2 A Well, in this case, you can see, from
3 February 19th through March 25th we still, one, have no
4 real stabilized production rate, and two, it does show that
5 we are cutting a lot of water.

6 Q How comfortable are you in utilizing the
7 70-barrel a day rate in the calculations that were discussed
8 earlier?

9 A 70 barrels a day is based on a May test.
10 A May test shows the well pumping 70 barrels of oil per day
11 and 120 barrels of water per day.

12 Q And that's your most current and -- and
13 best evidence of the capacity of this well to produce?

14 A That's correct.

15 Q How would you characterize the drop in
16 daily producing oil rate from mid-February through the end
17 of March of this year?

18 A Well, in that time frame, as you see,
19 your production dropping, the well still isn't stabilized to
20 where I could obtain any kind of decline.

21 Q All right, sir, let's turn to Exhibit
22 Twelve, then, and have you identify that for us.

23 A Exhibit Twelve is the gamma ray density
24 neutron log off the Benson. It's simply to show again the
25 log top of the Siluro-Devonian, the perforations, and it's

1 the porosity tool that we ran on the -- logging tool that
2 we ran.

3 Q In summary, then, Mr. Engler, what is
4 your recommendation and opinion to the Examiner with regards
5 to how to space the new Benson reservoir that we have iden-
6 tified as the East Garrett Pool?

7 A In -- my recommendation is with the pre-
8 liminary data at hand, that a temporary special pool order
9 of 80 acres would, one, allow us to continue watching per-
10 formance and possibly obtain further information on this re-
11 servoir to see whether 80 acres will be -- is the actual
12 drainage area or not, and two, it's also economical, the
13 best -- economically it effectively and efficiently drains
14 the reservoir that we know at this time.

15 Q Without the benefit of an 880-acre spac-
16 ing, if this is left on statewide 40-acre spacing, what is
17 your in your opinion the concern and problem with doing --
18 leaving the pool on 40-acre spacing?

19 A Well, my concern would be we might drill
20 unnecessary 40-acre wells and develop really no additional
21 reserves as if we developed them on eighties.

22 Q The drop in producing rates from the ini-
23 tial potential down to the present time, can you draw any
24 opinion with regards as to whether or not that is character-
25 istic of a fractured reservoir versus a matrix reservoir?

1 A I do believe a typical fracture reservoir
2 does have a high IP, dropping to some stabilized rate at
3 some future time.

4 Q This would not be characteristic of a
5 typical sand matrix reservoir that is more oftenly developed
6 on 40-acre spacing?

7 A That's right.

8 Q The signals you're getting from the
9 reservoir from your studies and calculations confirm that
10 you ought to be careful, drill the minimum number of wells,
11 and that number is on 80-acre spacing?

12 A That's right at this time.

13 MR. KELLAHIN: I have nothing
14 further of Mr. Engler.

15 We would move the introduction
16 of his Exhibits Four through Twelve.

17 MR. DICKERSON: And, Mr. Exam-
18 iner, I would like the opportunity to cross examine prior to
19 making any possible objections.

20 MR. CATANACH: Okay Mr.
21 Dickerson.

22

23 CROSS EXAMINATION

24 BY MR. DICKERSON:

25 Q Mr. Engler, from your Exhibit Number Four

1 I notice that you filed, evidently, Marathon filed a request
2 for creation of a new pool, and the date of that exhibit was
3 March 4th, 1987.

4 A That's correct.

5 Q And then Exhibit Number Six, which is
6 your Form C-102, I suppose also filed with the Oil Conserva-
7 tion Division, setting forth the 80 acres to be dedicated to
8 your Benson No. 1 Well, was dated May 26th, 1987.

9 A Yes, sir. This Exhibit Six is strictly
10 to show you our location in the laydown 80 acres.

11 Q Right, I understand that.

12 I note a typed provision at the bottom of
13 your Exhibit Number Seven. It says TWE 3/07/DAH. What's
14 the significance of that?

15 A Well, that shows it's from my file and
16 the DAH is the secretary's name, secretary's initials.

17 Q And the significance of 3/07?

18 A I imaging that's her coding for how she
19 files it in her disk.

20 Q That's not a date, do you think?

21 A No, sir.

22 Q Okay, at any rate would it be a reason-
23 able conclusion from Exhibits Four and Six that Marathon has
24 been considering hte establishment of a new Devonian oil
25 pool since not later than March 4th of 1987?

- 1 A Once again, establishment --
- 2 Q Of this Devonian oil pool?
- 3 A Before March 4th?
- 4 Q Or at least by March 4th. It I'm making
- 5 an untrure assumption, or something, correct me. It just
- 6 seems that --
- 7 A This March 4th date is to file with the
- 8 state because after you have potentialled the well you have
- 9 to file for creation of a new pool.
- 10 Q Uh-huh. Okay, let me ask one other
- 11 question, had Marathon determined by March 4th, the date of
- 12 that instrument, the C-123, what spacing for this Benson
- 13 Well would be appropriate?
- 14 A No, sir, we had not.
- 15 Q Had you as an engineer made a
- 16 determination in your own mind on that point?
- 17 A Not by March 4th, no.
- 18 Q When did you make that determination,
- 19 approximately?
- 20 A When we did our calculations would be in
- 21 about the month of May.
- 22 Q At approximately the same time you had
- 23 Mr. Kellahin file applications before the Division today,
- 24 shortly before that?
- 25 A I'm not sure what time we did that.

1 Q Directing your attention to Exhibit Num-
2 ber Seven, and again, I'm a layman here, you have made one
3 calculation and you have assumed, have you not, for your de-
4 termination of the stock tank barrels in place, or recover-
5 able stock tank barrels --

6 A Yes.

7 Q -- an 80-acre spacing.

8 A That's what's shown here, right.

9 Q And you also, although it's not shown on
10 here, assumed a 40-acre spacing and came up with a figure
11 one-half of your stock tank barrels for 80-acre assumed
12 spacing?

13 A That's right.

14 Q Is there anywhere on this exhibit that
15 you actually make a calculation based on engineering data
16 available to you as to the area which is in fact being
17 drained by the Benson No. 1?

18 A I guess I don't understand.

19 Q Have you made a calculation as an en-
20 gineer as to the area not assuming a drainage area, but made
21 a calculation as to the drainage area of the Benson No. 1?

22 A No, I have the comparison that you see
23 there, the decline performance and volumetrics.

24 Q Could you make such a calculation?

25 A Not with the data we have right now.

1 Q What is the data that you would need that
2 you do not have access to now?

3 A We are still waiting for a core analysis
4 which you've heard that we have before.

5 Q On the Roddy Well.

6 A Correct. And we are still, we have still
7 the -- in the works some more pressure trend and testing
8 that we have not done yet.

9 Q Do you have some pressure data available
10 to you from these wells at this point?

11 A We have some limited data, that's right.

12 Q What time frame do you anticipate
13 receiving additional data in the way of, say, the core ana-
14 lysis that you're waiting on?

15 A Core analysis, the next month, month and
16 a half.

17 Q And so at this point you have approxi-
18 mately three, three months of production history on the Ben-
19 son Well?

20 A Well, four months.

21 Q Actually closer to four.

22 A Four months.

23 Q Based on a production history of that, it
24 is possible for you as an engineer to make some calculations
25 with the data that you do have right now or will have within

1 the near term future calculating the actual drainage area of
2 the Benson No. 1 Well?

3 A With the performance production?

4 Q Or with all the data that you now have or
5 will have, you could as an engineer, could you not,
6 calculate, based on that information, a drainage area which
7 is actually taking place?

8 A With more data we could always calculate
9 something, yes, that's correct.

10 Q No, I'm saying with the data that you
11 have now you may -- you could make some calculation,
12 couldn't you?

13 A Not with the data we have now. The data
14 we have now, calculations are shown.

15 Q You have not and you could not make a
16 calculation based on your training as an engineer of the
17 actual area in fact being drained by the Benson No. 1, based
18 on the information you have now?

19 A That's correct.

20 Q Would you tell me just in one, two, three
21 fashion what additional information you need in order to
22 make such a calculation?

23 A We, like I said, one core analysis that
24 we will get, and two, some pressure transient testing that
25 we will obtain.

1 Q Do you have bottom hole pressure? I no-
2 tice on your Exhibit Number Eight you have 4839 build-up
3 from DST. That was virgin reservoir pressure?

4 A On a drill stem test, that's right.

5 Q How many drill stem tests were conducted
6 on that well?

7 A The Benson? Four.

8 Q And was the pressure, was the pressure
9 data that you've shown on your Exhibit Number Eight, was it
10 the same in all four of these tests? Or were all four of
11 these tests in the Devonian?

12 A All four were in the Devonian.

13 Q Were they all four in the interval which
14 is now perforated and producing?

15 A No, sir.

16 Q Well, what was the pressure data obtained
17 on the other three DSTs?

18 A Of the other three, one packer failed and
19 two of the others had a -- I can't recall what the pressure
20 data is at this time.

21 Q Do you have that information with you?

22 A No, I don't have any of the drill stem
23 test data with me.

24 Q You're aware, are you not, that Mr.
25 Davidson has requested Marathon to furnish certain informa-

1 tion to him?

2 A Yes, I've heard that.

3 Q And you're also aware that Marathon has
4 refused to do so?

5 A I know that, yes.

6 Q But it is your testimony that you do have
7 additional information which you, as an engineer, or anyone,
8 attempting to determine the answer to the questions that
9 we're debating here today would find it necessary to have in
10 order to make such calculations?

11 MR. KELLAHIN: I'm going to ob-
12 ject to the question. He did not say that, I do not be-
13 lieve.

14 MR. DICKERSON: I think it's a
15 reasonable question, Mr. Examiner. Wouldn't anybody need
16 that information in order to make a determination about the
17 area actually being drained by this well?

18 A From a drill stem test? I do not see
19 how.

20 Q The problem that I am seeing or I am hav-
21 ing with your testimony, Mr. Engler, is you have assumed a
22 40-acre spacing unit and you've made calculations based on
23 that assumption, and you have assumed an 80 and you have
24 made calculations based on that assumption, but you're not
25 giving us anything that supports the reasonableness of your

1 assumption.

2 A Well, the support, I believe, comes in
3 the decline analysis, the performance that we're seeing on
4 the Benson as tied into the volumetrics that we show.

5 Q How comfortable are you with that decline
6 analysis averaged 70 barrels of oil per day based on less
7 than four months production history?

8 A At this time this is the best data, de-
9 livery data we have.

10 Q You would concede that in ninety days or
11 six months you will have more data and better data from
12 which you can make such determinations?

13 A In six months to a year more points on
14 your curve, yes, you can have a stabilized rate. That's why
15 temporary rules.

16 Q And until that rate does stabilize it's
17 more or less a guess or it has some inherent weaknesses in
18 making an assumption of 70 barrels of oil per day average
19 for the year, does it not?

20 A It's an educated guess.

21 Q But you cannot put one of these formulas
22 down on paper to support that educated guess at this point?

23 A I guess I don't understand. The data is
24 what we have at this time.

25 Q The point I'm attempting to make here is

1 that the calculations you have made on Exhibit Number Seven
2 do not in fact support any testimony by you that that well
3 is in fact draining 80 acres or 40 acres. You have assumed
4 each and based your calculations based on that, correct?

5 A That's correct.

6 Q I mean you could have assumed 160-acre
7 drainage.

8 A Correct.

9 Q And you would have come up with 213,000
10 barrels of oil in place.

11 A Correct.

12 Q It's a question of multiplication only.

13 A That's correct.

14 Q Okay, so the assumption that you're mak-
15 ing is not supported by Exhibit Number Seven, is it?

16 MR. KELLAHIN: I'm going to ob-
17 ject to the question, Mr. Catanach. He says, yes, it is
18 supported.

19 Mr. Dickerson doesn't under-
20 stand the choice of the parameters. I don't know how we
21 could make it any clearer.

22 I think it's repetitious. He's
23 asked the question. He's answered it as best he can, Yes,
24 there is an acceptable engineering technique to examine the
25 volume of the reservoir. He's confirmed it with the decline

1 curve. How many times does he have to say this is what he
2 did?

3 MR. DICKERSON: Mr. Catanach, I
4 think, my understanding of what Mr. Engler agreed to was
5 that this is a mathematical assumption there. This Exhibit
6 Number Seven by itself, was my question, does not by itself
7 support any testimony that this Benson well is in fact
8 draining 80 acres. It's cross examination. I think I'm en-
9 titled to ask the question and I think I'm entitled to an
10 answer to the question, and I think the answer is, no, that
11 Exhibit Number Seven does not support that assumption.

12 MR. KELLAHIN: Well, I think
13 the answer is yes, and he's got to the point where he's ar-
14 guing with the witness.

15 MR. CATANACH: Mr. Dickerson,
16 in cases like this where there's no data available to make
17 an exact determination of what a well is draining, certain
18 assumptions have to be made up front before -- so you can
19 establish temporary rules and then you come in later on with
20 the data you need to -- to make those rules permanent.

21 MR. DICKERSON: I understand,
22 Mr. Examiner. Are you telling me not to ask the question?

23 MR. CATANACH: Well, I don't
24 see -- I don't know why you're pursuing this if you under-
25 stand that point.

1 MR. DICKERSON: Really, I think
2 I do understand it and as long as it's clear here, I'm happy
3 with the record.

4 I'll withdraw that question.

5 Q Mr. Engler, in reviewing your -- all of
6 these exhibits, and again here I'm, I'm sure, ignorant on
7 much of this and merely a layman, but you have two wells in
8 this pool at the present time.

9 A That's correct.

10 Q And the calculations that you have made,
11 unless I've missed something here, are all based on either
12 information that you have, limited though it may be, or as-
13 sumptions that you have made concerning the Benson No. 1
14 Well, is that correct?

15 A This is on the Benson.

16 Q Okay.

17 A Correct.

18 Q But you have additional information ob-
19 tained from the Roddy at this point of which you have know-
20 ledge, do you not?

21 A We have more information from the Roddy,
22 that's correct.

23 Q Now do you as an engineer, you're here
24 on behalf of Marathon testifying in support of an applica-
25 tion to establish 80-acre spacing units. Do you as an en-

1 engineer consider the information that you have in your mind
2 and available to you obtained from the Roddy Well to be per-
3 tinent or relevant to the questions that we're here concern-
4 ing today?

5 A I don't know how to answer that. Yes, I
6 guess it would be pertinent; however, most of the data on
7 the Roddy is not available at the time.

8 Q But some is.

9 A The log is about the only thing I saw.

10 Q Whatever is available, you, as a repre-
11 sentative of Marathon, do not intend to rely upon it today,
12 even though it may be pertinent?

13 A As an engineer I looked at both logs and
14 I used strictly the Benson on this case. The logs in either
15 -- both wells are fairly similar.

16 Q Well, based on your examination and based
17 on the knowledge that you have of the Roddy Well, is it your
18 testimony that the Roddy well, which is higher structurally,
19 as I understand it, than the Benson Well, is an equivalent
20 well as far as it's productive capability?

21 A Well, with the data right now, that's
22 correct.

23 Q It's your testimony that they're equiva-
24 lent wells, one not significantly better than the other?

25 A Until we get the core data we'll have a

1 real, good idea of the actual productive capacity of the
2 Roddy.

3 Q And so the jury is still out. It may or
4 may not be equivalent to the Benson. It may be considerably
5 better than the Benson?

6 A It may be.

7 Q Do the indications that you have based on
8 the knowledge you've gained so far indicate it to be a bet-
9 ter well than the Benson?

10 A At this time with the testing going on it
11 is showing equivalent to the Benson productionwise.

12 Q The equivalent decline rate, you mean?

13 A It's too early for a decline.

14 Q With regard to your Exhibit Number Nine,
15 your economic summary, did I understand you, Mr. Engler, to
16 say based on the data that you have shown under the Option
17 No. 1, drill one 80-acre well, is that or is that not a pro-
18 fitable well for Marathon?

19 A That is not.

20 Q So based on the information that you have
21 from the Benson No. 1, you now only would not drill two
22 wells on 40-acre spacing, you wouldn't even have drilled
23 that one well on 80-acre spacing, would you?

24 A With these reserves, we would not.

25 Q But would it be reasonable to assume that

1 if the Roddy Well is in fact equivalent to the Benson No. 1
2 and it is also an uneconomic well, you're not going to drill
3 any additional wells in the prospect, are you?

4 A If it looks that poor, we would definitely
5 ly have to consider our position.

6 Q You do not think it looks that poor in the
7 Roddy Well, do you?

8 A I don't know at this time.

9 Q You don't have an opinion?

10 A My opinion is that at this time it's
11 looking -- it's initial rate is looking consistent with the
12 Benson, although we do not know what kind of decline we're
13 going to show in the future with four or five months produc-
14 tion.

15 Q How much further down the road towards
16 having the information from the Roddy Well that you would
17 require as an engineer in order to make a similar calcula-
18 tion would you be when you have in your hand the core analy-
19 sis that you're waiting on?

20 A The core analysis and six to twelve months
21 of production definitely help.

22 Q I'm going to ask you, Mr. Engler, would
23 you direct my attention to the one of these exhibits that
24 supports any evidence or that offers any evidence that the
25 Benson No. 1 Well will adequately and efficiently drain an

1 80-acre spacing unit.

2 A Well, the drainage calculations are shown
3 on the Exhibit Number Seven, the reserve comparison sheet.

4 Q Again, without getting the Examiner upset
5 with me, you merely assumed the 80-acre spacing on that
6 sheet, did you not?

7 A That's correct.

8 Q You didn't calculate an area of drainage.

9 A That's correct.

10 Q Are you authorized on behalf of Marathon,
11 Mr. Engler, to state what, if any, information will and will
12 not be available to Mr. Davidson or any other interested
13 parties in this well?

14 A No, I'm not authorized.

15 Q You're not authorized to give any infor-
16 mation?

17 A No, it's not of my -- this is something
18 that's going to have to come above me, management, something
19 other than me, to authorize the --

20 Q Well, are your instructions at this point
21 that you are not to give any information to Mr. Davidson?

22 A We'd give any information that we have
23 here. That's all I really know.

24 Q You pick and choose the information that
25 you're going to give and that you're going to introduce be-

1 fore this Division and on which you base your application.

2 MR. KELLAHIN: I'm going to ob-
3 ject. That's argumentative. This man need not answer the
4 question.

5 MR. DICKERSON: The answer is
6 obvious, I think, Mr. Examiner. I'll withdraw that ques-
7 tion.

8 MR. KELLAHIN: The answer is
9 obvious, Mr. Examiner. On March 3rd, '87, in response to
10 Mr. Davidson's inquiry Mr. Lemay wrote Mr. Davidson and told
11 him that he wasn't entitled to the information, and that's
12 why he hasn't given it.

13 MR. DICKERSON: In argument
14 we'll have a little more on this, Mr. Examiner, but in the
15 interest of time I'm willing to drop it at this point.

16 MR. CATANACH: Okay.

17 Q Mr. Engler, you testified that there were
18 four DST's, I think, on that Benson Well. In your analysis
19 and based on your information obtained from those tests, did
20 you calculate permeability?

21 A We did calculate -- on one drill stem
22 test we got a good enough curve to analyze for a
23 permeability number, that's correct.

24 Q And what was that permeability number?

25 A I believe it was 2-1/2 millidarcies is

1 what was shown on the -- the analysis.

2 Q And based on that calculation, if you were
3 to assume that level of permeability for this reservoir,
4 could you not as a reservoir engineer calculate an area of
5 the radius of drainage?

6 A Only if you had a degree of reliability
7 on a build-up curve on a 4-hour build-up in the drill stem
8 test.

9 Q And you do not have any such curves?

10 A No. We have the curve. We don't have
11 the reliability. On a small drill stem test where you have
12 2-hour flow, 4-hour build-up, you do not have the actual --
13 don't see the transient (sic).

14 Q But if you assume that rate of
15 permeability and together with the rest of the information
16 that you have, you could then calculate an area of drainage,
17 could you not?

18 A I'm not aware that you could.

19 Q Do you have any pressure analysis from
20 bottom hole pressure tests?

21 A For the Benson I do.

22 Q And for the Roddy?

23 A No, I don't.

24 Q Will, in the normal process of completing
25 that well, Marathon make such tests?

1 A I hope so, yes.

2 Q It would be your practice in most cases

3 --

4 A Yes.

5 Q -- to do so?

6 A Yes.

7 Q Would it be fair from an engineering

8 standpoint to say or to use a figure of 20 percent of the

9 recoverable oil to have been produced, Mr. Engler, before

10 you have established a reliable rate of decline?

11 A I -- 20 percent, I suppose it's possible,

12 based more on time than amount of reserves.

13 Q And would at least not be an unreasonable

14 amount of reserves to have been produced prior to making

15 that determination?

16 A It may not.

17 Q In your opinion is decline analysis on a

18 pumping well reliable?

19 A Yes, sir.

20 Q Based on your information and experience

21 as an engineer?

22 A Yes, sir.

23 Q In your examination of this -- what pool

24 was it that you examined that was closest to the --

25 A Knowles Devonian?

1 Q The Knowles Devonian. In your examina-
2 tion of that Knowles Devonian Pool did you also examine any
3 of the other Devonian Pools in the area?

4 A I did.

5 Q Did you not learn anything of any conse-
6 quence from your examination of those other pools?

7 A What I saw was, based on performance from
8 those pools, I got declines again on those and again it ran-
9 ged anywhere from 15 to 25 percent. With those averages I
10 assumed the nearest producing pool as the best analogy to
11 what we have here.

12 Q So based on your investigation into those
13 other pools it was your opinion that the Knowles Devonian
14 was representative of all the pools in the area?

15 A That's correct.

16 Q And that it would be comparable to the
17 Devonian pool that we're here concerning today?

18 A That's correct.

19 Q What is the bottom hole pressure based on
20 the information that you have in the Benson Well as compared
21 to initial bottom hole pressures in other Devonian wells in
22 the other pools in the area?

23 A I don't know what the other pressures in
24 the other fields are on a drill stem test. I believe maybe
25 a geologist might be able to tell you more on the data of

1 those fields.

2 Q You didn't come across that in your in-
3 vestigation of those other --

4 A No, I just looked at production.

5 MR. DICKERSON: Mr. Examiner, I
6 have no further questions of this witness. I do, however,
7 have an objection.

8 I have no objection to the in-
9 troduction of Marathon's Exhibits Four, Five, and Six. I
10 also have no objection to the introduction of Seven and
11 Eight.

12 However, with regard to -- ex-
13 cept to the extent I'm going to state in a moment.

14 With regard to Exhibit Nine,
15 the testimony of this witness was that based on this infor-
16 mation, which is exclusively termed the Benson No. 1 Well,
17 it would not be an economic well to be drilled even on 80-
18 acre spacing. It would not pay Marathon to do that.

19 The witness testified that he
20 has at his control information available to him concerning
21 the Roddy Well, which would be as a matter of law, I submit,
22 relevant to this proceeding.

23 Marathon has chosen to select
24 to pick and choose the information that they will make
25 available to us as opposition in this hearing and to your-

1 self as the examiner charged with making a determination
2 here.

3 To the extent it is pertinent
4 to Mr. Engler as an engineer, it is pertinent to us in our
5 status as opponents here. It is absolutely essential to you
6 in your status as the examiner and in effect judge for this
7 proceeding.

8 We think it is improper to al-
9 low the introduction of Exhibits Seven, Eight, and Nine in
10 this well -- in this case, without along with that, for
11 whatever purpose it may serve, requiring Marathon to intro-
12 duce what other and additional information it has at its
13 fingertips and has chosen to selectively leave out of this
14 proceeding.

15 MR. CATANACH: We understood
16 the witness to comment that not enough data was available
17 from the new well with which to make any kind of determina-
18 tion.

19 MR. DICKERSON: Well, I was pre-
20 cluded, as I understood it, from pursuing too far into that
21 by Marathon's not producing that data and I am blind and
22 blundering in the wilderness trying to guess what may be in
23 the -- some of these witnesses briefcase or back in their
24 office back in Midland, as you are, Mr. Examiner, so none of
25 us know, except Marathon, what that information is.

1 In all likelihood, and in my
2 opinion as an attorney, it is relevant to this proceeding.
3 It is part of the foundation that is necessary to lay for
4 Marathon to come in with evidence that is presented for us.
5 The evidence that it has presented should not be allowed and
6 relied upon in view of the inability of myself to examine
7 it; of yourself to examine it; to cross examine based on
8 this information; to observe and perceive with the help of
9 my witnesses any possible weak assumptions made, any unsupported
10 assumptions, erroneous calculations made, regardless
11 of how skimpy the information is or Marathon may consider it
12 to be. Marathon has information available to it which it is
13 choosing not to make available to the rest of us. It is not
14 fair to Mr. Davidson to introduce part but less than all of
15 the information available when this is a property right of
16 his that is being affected here, and it is for that reason
17 that, in my opinion, the evidence offered with regard to the
18 exhibits that I have objected to is not properly before
19 this body and should not be considered by it without requiring
20 Marathon to come forward forthrightly with other information
21 which it has in hand and let us all in on what information
22 is known about these wells and the likelihood that --
23 or their contention that the proper drainage area for this
24 Benson Pool or this Devonian Pool is 80 acres. We do not
25 have any information to this point and these exhibits do

1 not support that in my opinion.

2 MR. KELLAHIN: Mr. Examiner,
3 may I respond?

4 MR. CATANACH: Yes, sir.

5 MR. KELLAHIN: Under Rule 703
6 of the Rules of Evidence of District Court, this expert wit-
7 ness may in fact rely upon information that is not available
8 here in the hearing room.

9 Mr. Dickerson, however, raises
10 an objection that is not merited. The three exhibits have
11 all been authenticated by this witness as being his work,
12 relying upon information he derived from the Benson Well.

13 He has told you and your recol-
14 lection is like mine, the information from the Roddy Well is
15 not available; just now testing that well, and it's of no
16 use to anybody, particularly Marathon, until they can ana-
17 lyze and study it. When that information is available and
18 studied then that becomes part of the basis upon which you
19 come back and make permanent rules.

20 Mr. Dickerson's objection to
21 the three exhibits is not appropriate. They are properly
22 authenticated. They're admissible under rules of civil pro-
23 cedure, rules of evidence, and we request that they be
24 admitted.

25 His effort to extract from us

1 proprietary information about the Roddy Well by this means
2 and this vehicle of objection, are also without merit. Mr.
3 Davidson didn't pay for any part of that Roddy Well. He
4 doesn't participate in that well. That's not his well;
5 that's our well. He's not entitled to that information.

6 When that information is ana-
7 lyzed and evaluated then we will decide what use to make of
8 it. The information we've given you today is based upon the
9 Benson Well. If you determine in your opinion that it's in-
10 sufficient for temporary rules, then you deny the applica-
11 tion. That's how you solve that.

12 But the three exhibits are ad-
13 missible and Mr. Dickerson's desire to use this hearing for
14 discovery so that Mr. Davidson has an opportunity to decide
15 how he's going to make investments for the rest of his pro-
16 perty is not appropriate.

17 We've presented you with suffi-
18 cient evidence on that question and the documents are cer-
19 tainly admissible and we'd ask that you do so.

20 MR. CATANACH: I'm going to al-
21 low the exhibits to be admitted into evidence in this case.

22 Do you want to do a little
23 redirect of the witness?

24 MR. KELLAHIN: I have no
25 questions of Mr. Engler.

1 MR. CATANACH: I just have a
2 couple of questions.

3
4 CROSS EXAMINATION

5 BY MR. CATANACH:

6 Q Mr. Engler, where did you -- where did
7 you actually get that 55 percent recovery factor that you
8 used in your volumetric calculations?

9 A On that 55 percent, I used that from lit-
10 erature that we have around our office, basically. It's
11 what we normally assume for a water drive reservoir.

12 Q Water drive fractured reservoir?

13 A Water drive fractured (inaudible).

14 Q The 22 percent decline, that's just based
15 on the Knowles Devonian Field. Do you know of any other De-
16 vonian pools in the area with similar declines?

17 A Yeah, I ran declines on two, two or three
18 of those other small pools in that area, and as I mentioned
19 before, declines vary anywhere from 15 to 24-25 percent. So
20 I just used the closest pool as an analogy.

21 Q If the Division decides to grant tempor-
22 ary rules for the new pool, including 80-acre spacing, do
23 you have a recommendation as to the well locations for that
24 pool?

25 MR. Kellahin: Mr. Examiner, we

1 would recommend to you the typical well locations in an 80-
2 acre spacing. I believe they require a well to be within
3 150 feet of the center of a quarter quarter. If that's the
4 standard you wish to apply to this pool, you'll find that
5 the Benson Well is unorthodox and needs to be grandfathered
6 in.

7 I think the Roddy Well is at a
8 standard location.

9 We have no preference about it
10 if you want to apply the standard well location we have no
11 objection to it.

12
13 MR. CATANACH: Mr. Kellahin,
14 what is the period of time that you're asking for the tempo-
15 rary rules to be in effect?

16 MR. KELLAHIN: I have been told
17 24 months. We might want to ask Mr. Engler if that is a
18 period of time that would give sufficient opportunity to
19 evaluate the data. If he's got some other time, we need to
20 ask him, but I was told 24 months.

21 Q Then, Mr. Engler, would it, in fact, take
22 24 months to obtain the necessary data?

23 A I would say a minimum of a year to gain
24 all the data that would be helpful.

25 Q But you're -- are you asking for two

1 years?

2 A Well, I'm -- I'm -- two years, I guess,
3 is a normal procedure on them.

4 MR. CATANACH: I have nothing
5 further of the witness.

6 Any other questions of this
7 witness?

8 He may be excused.

9 MR. KELLAHIN: I realize we're
10 running very short of time. I wonder if you might give us a
11 very short break and let me consult with Mr. Dickerson. My
12 desire will be to show him the balance of the land exhibits
13 and to see whether or not we might dispose with the land
14 witness and let him get to Mr. Davidson so we can hear his
15 position?

16 All I intended to show with the
17 landman was to -- to verify what I think we can perhaps
18 stipulate to about what has occurred.

19 MR. CATANACH: Okay.

20 MR. KELLAHIN: If you'll give
21 me a minute I think we can see if we can do that.

22

23 (Thereupon a brief recess was taken.)

24

25

1 MR. KELLAHIN: During the
2 break, Mr. Examiner, Mr. Dickerson and I have stipulated in
3 principal that I will attempt to summarize Mr. Daniels
4 presentation, identify certain exhibits, and then we'll rest
5 our case to give Mr. Davidson an opportunity to testify to-
6 day so that we can finish the case today.

7 I will ask that Mr. Dickerson
8 listen to me and correct me if I misstate what I think we're
9 trying to do.

10 First of all, Mr. Daniels would
11 testify that Exhibit Number Thirteen represents an accurate
12 land arrangement, ownership plat, so that in regards, parti-
13 cularly to the southeast quarter, but I think it's typical
14 of the south half of Section 14, that the parties and the
15 percentages that are now involved in the 40-acre spacing for
16 the Benson Well, will be the same parties and the same per-
17 centages if either -- if the south half of the southeast is
18 dedicated and we go to 80-acre spacing. There will be
19 change in the people, their percentages, and the ownership
20 then is in common.

21 Fourteen, verification that on
22 September 11th, '86, a certified letter was sent to Mr.
23 Davidson providing him his 30-day election period to prepay
24 his share of the well costs for the Benson Well. A copy of
25 the Marathon order, R-8282, was inclosed in that letter,

1 along with the APE, shown as Exhibit Sixteen.

2 Those documents are shown by a
3 return receipt card that on September 15th Mr. Davidson
4 received that package. It's Exhibit Number Seventeen.

5 Mr. Daniels' testimony would
6 say that within that 30-day period Mr. Davidson did not
7 elect to participate in the well and was pooled.

8 Exhibit Eighteen is my
9 certificate to you with regards to the notices for hearing
10 in the pool case. They include a copy of the cover letter
11 to Mr. Lemay, the application, and the list of working
12 interest owners and offset operators within a mile, all of
13 whom were furnished that case and the application pursuant
14 to the notice rules.

15 Exhibit Nineteen represents a
16 similar certificate for the amendment in the pooling order
17 for which all interest owners in the 40-acre tract, as well
18 as the 80-acre tract, the working interest owners, were sent
19 notification by certified mail pursuant to the notice rules.

20 We further stipulate that
21 Marathon testimony would be that they did not provide Mr.
22 Davidson with a new opportunity to contribute his 40-acre
23 tract but have elected to conform the force pooled acreage
24 to an 80-acre tract should the Examiner order temporary
25 rules.

1 rules, and that we did not go through the standard proce-
2 dures you would normally go through to give Mr. Davidson a
3 new election period or a new opportunity to negotiate a new
4 deal with regards to the well.

5 That is the substance of Mr.
6 Daniels' testimony and that is Marathon's position. If Mr.
7 Dickerson concurs with me, we would, based upon that stipu-
8 lation, then, move to introduce Marathon's Exhibits Thirteen
9 through Eighteen.

10 MR. DICKERSON: I have no ob-
11 jection to that, Mr. Examiner. I would like for you to
12 take, and again I'm attempting, as Mr. Kellahin is, to ab-
13 breviare our day here, to take administrative notice of the
14 proceedings already conducted in Case 8960 and in the --
15 that was the Commission Hearing last fall involving this
16 well and these parties, and in the preceding Examiner provi-
17 sion, in the interest of -- I'm attempting -- we'll have Mr.
18 Davidson --not necessary to have him testify here
19 today. Those proceedings adequately reflect the factual
20 statements as opposed to my legal opinions in my opening
21 statement regarding the extent of his interest in the Benson
22 No. 1 Well, both in the 40-acre unit proposed for it initi-
23 ally, or his interest in the adjoining acreage both as a
24 royalty interest and a working interest owner, and to leave,
25 as far as possible, a record before us here today that pre-

1 sents what I think is the legal issue presented as a matter
2 of record here, and yet save us some time, and if Mr. Kella-
3 hin has no objection to that, I will request a short oppor-
4 tunity for some legal argument but forebear calling Mr.
5 Davidson as a witness because it would unduly and probably
6 unprofitably delay us all and not further the determination
7 of the legal and factual questions in front of us.

8 MR. KELLAHIN: I have no objec-
9 tion, Mr. Examiner.

10 MR. CATANACH: Okay. I will
11 take administrative notice of Case 8960.

12 Would you like to, Mr. Dicker-
13 son, make a statement at this time?

14 MR. DICKERSON: Mr. Examiner, I
15 think it's sufficiently clear from the record here today
16 what is going on. Absent the amendment to the pooling order
17 sought by Marathon to include the offsetting 40-acre tract
18 to the west in which Mr. Davidson owns a 38.125 percent wor-
19 king interest, he would most likely not be of any great con-
20 cern with this pooling case; however, in the present posture
21 of this dispute, the pooling case and the amendment of the
22 pooling order case, are inextricably intertwined so that we
23 cannot have a result reached in one without injuring the in-
24 terest of one party or another in the other case.

25 Marathon's witnesses today tes-

1 title in both of these wells is uniform throughout both the
2 -- a 40-acre spacing unit and the requested 80-acre spacing
3 unit sought by Marathon, it is our position that there will
4 be no prejudice to either party by postponing a decision in
5 these cases until additional data is -- becomes available,
6 and if I mischaracterize it, I have no doubt Mr. Kellahin
7 will correct me, but my memory is that these witnesses to
8 some extent acknowledge the fact that their evidence would
9 be -- they would have better evidence at their control and
10 would presumably use that evidence at a later time. I do
11 not think that any party, including Mr. Davidson, would be
12 prejudiced by doing that, nor do I think Marathon would be
13 prejudiced by doing that.

14 To establish 80-acre spacing
15 based on the state of this evidence, however, and to do the
16 unthinkable, to amend the pooling order to expand a 40-acre
17 spaced unit, clearly spaced as 40 acres in the original
18 proceedings, by more or less rubber-stamp without due
19 consideration of the legal issue involved as to the power of
20 this Division to do that under these circumstances, would
21 have the possible affect of prejudicing Mr. Davidson,
22 however.

23 His interest does not change
24 regardless of what the spacing unit dedicated to that Benson
25 Well is. He has the same interest in both forties; however,

1 position that a reasonable thing for you to do as Examiner
2 would be to delay proceedings in this case pending receipt
3 of additional information that will evidently be forthcoming
4 in the near foreseeable future, and when that information is
5 based, to reconvene -- or is obtained, to reconvene and make
6 your decision based on all the best evidence that can be
7 presented to you.

8 MR. CATANACH: Mr. Dickerson,
9 what information do you think would be necessary ?

10 MR. DICKERSON: Well, I under-
11 stand the core analysis would be helpful to an engineer in
12 determining the nature of the reservoir in this Devonian
13 structure, and it's going to be forthcoming shortly, I think
14 was the testimony.

15 In the normal course of Mara-
16 thon's business some bottom hole pressure tests will be con-
17 ducted and we'll have all the time lengthening period of ac-
18 tual production from which drainage radius can in fact be
19 calculated instead of assumed or estimated, and that it
20 would have the additional benefit of forcing the parties to
21 continue to litigate this under the normal procedures that
22 our rules require when in fact it may all become moot at one
23 point or another based on additional information.

24 I don't know what all informa-
25 tion Marathon will get, Mr. Examiner, I'm in the dark.

1 MR. CATANACH: What would your
2 opinion be, Mr. Dickerson, if the information that you're
3 suggesting was submitted in confidentiality to the Division
4 so that the Division could utilize the information sent in?

5 MR. DICKERSON: My -- I would
6 have no objection to the information being furnished to the
7 Division unless by that you imply, Mr. Examiner, that you
8 would have access to it and we would not have access to it.
9 That is not fair. That is not the way the American system
10 of justice, even at the administrative level operates.
11 We're entitled to know the witnesses against us; we're en-
12 titled to see the evidence against us; to have it presented.
13 This is a public forum and to the extent that it is relied
14 upon by the agency or a party when we're here opposing, this
15 is -- this is people's lives, money, and property that we're
16 talking about. It's not merely hypothetical, theoretical
17 legal arguments or anything. It is -- it is money and it is
18 principal to Marathon and to my client, as well, and so we
19 certainly have no objection to Marathon furnishing it. We
20 do have objection to an order being based on information
21 which is secret to us but known to Marathon and to the Divi-
22 sion that we have no opportunity to see or even know or in
23 any way on appeal attack, question, or obtain.

24 MR. CATANACH: I understand.

25 Mr. Kellahin, would you like to

1 address --

2 MR. KELLAHIN: Thank you, Mr.
3 Examiner.

4 Let me address the forced
5 pooling question first and then talk to you about the inter-
6 relationship of the parties and the acreage.

7 We didn't get into the interre-
8 lationship and some of the timing of the various contracts
9 and leases in Section 23 and 14. That matter is in the
10 transcript for the Commission Hearing in the forced pooling
11 case. I will tell you some of it but it's in the record and
12 you might want to look at it.

13 I will tell you time is of the
14 essence. It would be wonderful to have the time that Mr.
15 Dickerson thinks that we have in order to slowly develop and
16 analyze the reservoirs.

17 First of all, let me direct my
18 attention to the forced pooling order itself.

19 The Division retains jurisdic-
20 tion over the forced pooling case by its continuing
21 jurisdictional language of that order. It's a chicken and
22 egg problem in this kind of situation where you can't force
23 pool anything other than a declared spacing unit and in a
24 wildcat area like this, you're obligated to pool on the
25 spacing pattern and that was 40 acres.

1 Mr. Dickerson would have you
2 believe that this type of case is somehow similar to an ap-
3 plication where the applicant in a forced pooling case ex-
4 pects to encounter multiple formations on varying spacing
5 patterns.

6 That's a different question.
7 What we're talking about here is the same pool that you
8 drill to after you drill the well, then realizing that you
9 now have information that causes you to believe that the
10 spacing ought to be wider.

11 You have a change of facts with
12 regards to the reservoir. It's something you can't know be-
13 fore you drill the well.

14 The law makes provision for
15 this kind of change. You're allowed to change the forced
16 pooling acreage. We don't have to give Mr. Davidson a new
17 election. How can we? You can't. Think about how you
18 physically give him a new election in this situation. It
19 doesn't do anything more than give him a free ride. We've
20 got a completed well. It's producing. He had his opportu-
21 nity to share in that risk and he elected not to do so.

22 If you give him a new election
23 period by requiring us to go through a new pooling case, he
24 gets his thirty day election and he joins. He sends us a
25 check for a producing well. He'd be foolish not to. He es-

1 capes the risk factor penalty and he is allowed to change
2 the effect of not joining in the well.

3 Mr. Dickerson had you believe
4 that you've never done this before. In fact you have. It's
5 in a case called HCW Exploration. It first appeared before
6 Examiner Catanach on May 14th, 1986. It was Case 8894 in
7 which on behalf of HCW Exploration I requested a change in a
8 forced pooling case.

9 This was a Jalmat case. We had
10 force pooled originally in Order No. R-8071, Mr. Doyle Hart-
11 man. Mr. Hartman had an interest in that 160-acre tract and
12 it was a Jalmat gas well and we pooled him.

13 After the pooling and after
14 drilling the well and in fact after producing it for some
15 time, the gas/oil ratio changed in that pool, or in that
16 well, and we had an oil well. We came in here and changed
17 the spacing so that it was now the appropriate oil spacing.

18 Mr. Hartman in that case had
19 his lawyers come in here and say, guys, you've done it
20 wrong. You've got to do it over. I get a new election.

21 It was the Division's decision
22 in that case that, no, you had the continuing jurisdiction
23 and the right to modify forced pooling orders so that they
24 were consistent with the spacing rules. That's the way
25 you've done it in the past. It's not absolutely perfect but

1 necessary wells on spacing patterns that are too close to-
2 gether.

3 So if you're going to make a
4 mistake, make a mistake you can change and the mistake that
5 you can change is one that allows you either infill drilling
6 or down spacing.

7 We've said it a thousand times,
8 you can't undrill the unnecessary well and next month or
9 next year if we get wells on 40-acre spacing we can't take
10 them away.

11 Mr. Dickerson wants you to
12 wait. I have an advantage over him in that I did the forced
13 pooling case before the Commission and I understand the pro-
14 perty interests among the parties.

15 Mr. Davidson is in a very com-
16 petitive situation with Marathon in the two sections. If
17 Marathon, as Mr. Daniels testified before the Commission,
18 does not act within certain time frames, they cannot control
19 the acreage that ought to appropriately be dedicated to a
20 well. They have continuous drilling obligations of 180
21 days, and if we wait for 180 days after the completion of
22 each of these wells while we get data, we'll lose the ac-
23 reage and the primary beneficiary in many of those instances
24 will be Mr. Davidson.

25 In some of that property he's

1 top leased us. In other of the property he has a mineral
2 interest owner and we've got an impossible situation where
3 we do not have the luxury of delay.

4 We would implore upon you that
5 you act quickly. We think the action that you can take is
6 fully allowed by the law and it's the only prudent action
7 that you can take. Avoid drilling unnecessary wells until
8 we know more about it; allow us a opportunity to gain fur-
9 ther data. The information available to you is all we have.
10 If you don't think it's enough, deny the case.

11 That's the answer. We're not
12 required to disclose proprietary data. Mr. Lemay has told
13 us we don't have to give Mr. Davidson information on the
14 well. He's got an override, I think, in the Roddy Well.
15 He's not a working interest owner. He didn't pay for it.

16 You give us an opportunity to
17 analyze it before we have to give it away to give it away to
18 the world.

19 But we think we've given you
20 enough information to justify the spacing pattern. You
21 don't have a standard drainage calculation, but Mr. Engler
22 told you and I think you can calculate it for yourself, that
23 an acceptable alternative is to take a volumetric calcula-
24 tion, match it with a decline analysis, and see if you're
25 going to get a reasonable match, and he got a good match.

1 That's a comfort.

2 We don't have a large reservoir
3 to make lots of mistakes in. We ask that you help us avoid
4 making this mistake and grant us the relief we've requested.

5 Thank you.

6 MR. DICKERSON: Mr. Catanach, I
7 would request that you allow myself and Mr. Kellahin, as
8 well, if he would like it, fifteen days or so in which to
9 submit a brief because I think that the legal issues would
10 make that worth while.

11 MR. KELLAHIN: I would like to
12 very much. I think I concur with Mr. Dickerson. It's --
13 it's an important decision to make and we would like to give
14 you the benefit of both of our perspectives and see if there
15 are some -- some new cases that might help you decide that
16 question, and I would concur that perhaps fifteen days would
17 give us a chance to do that.

18 MR. CATANACH: That would be
19 fine.

20 MR. DICKERSON: Mr. Catanach,
21 may I summarize in one minute or less?

22 In our opinion we did not know,
23 it is not in evidence to my recollection, that Marathon has
24 a 180-day drilling commitment between wells, but I think it
25 is in evidence that the Roddy Well is now in the process of

1 being completed. It is not yet completed; therefore, Mara-
2 thon, while it has a time problem, it is a time problem that
3 is not imminent, not critical, and not going to lose any
4 rights immediately. They've got a relatively long period of
5 time in which to analyze this and decide where and if they
6 want to drill their next well.

7 The gist of the testimony that
8 I heard was why would anybody assuming that the data that
9 has been presented here today by Marathon is correct, why in
10 the world would Marathon or anybody else drill another well
11 here?

12 And so if, however, you choose
13 to go ahead and decide this case, I would agree with Mr.
14 Kellahin that based on this evidence the proper thing for
15 you to do is either grant or deny the application and I
16 would simply submit to you in concluding that based on this
17 evidence it would be perfectly proper for you to deny the
18 application based on current evidence presented.

19 MR. CATANACH: Thank you. Any-
20 thing else?

21 MR. KELLAHIN: That's it.

22 MR. CATANACH: Okay.

23
24 (Hearing concluded.)
25

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY CERTIFY the foregoing Transcript of Hearing before the Oil Conservation Division (Commission) was reported by me; that the said transcript is a full, true, and correct record prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 9145, 9146 heard by me on June 3, 1987.

David R. Catamb, Examiner
Oil Conservation Division

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

20 January 1988

EXAMINER HEARING

IN THE MATTER OF:

Application of Marathon Oil Company CASE
for the amendment of Division Order 9146
No. R-8282, as amended, Lea County,
New Mexico.

BEFORE: David R. Catanach, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Division:

For the Applicant:

W. Thomas Kellahin
Attorney at Law
KELLAHIN, KELLAHIN & AUBREY
P. O. Box 2265
Santa Fe, New Mexico 87504

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I N D E X

STEVE DANIELS

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1
2 MR. CATANACH: Call next Case
3 9145, the application of Marathon Oil Company for the
4 amendment of Division Order No. R-8282, as amended, Lea
5 County, New Mexico.

6 Are there appearances in this
7 case?

8 MR. KELLAHIN: Yes, Mr.
9 Examiner. I'm Tom Kellahin of Santa Fe, New Mexico,
10 appearing on behalf of Marathon Oil Company and I have one
11 witness to be sworn.

12 MR. CATANACH: Any other ap-
13 pearances in this case?

14 Will the witness please stand
15 and be sworn in.

16
17 (Witness sworn.)

18
19 STEVE DANIELS,
20 being called as a witness and having been duly sworn upon
21 his oath, testified as follows, to-wit:

22
23 DIRECT EXAMINATION

24 BY MR. KELLAHIN:

25 Q Mr. Daniels, for the record would you

1 please state your name and your occupation?

2 A Steve Daniels, landman with Marathon Oil
3 Company.

4 Q Mr. Daniels, have you previously testi-
5 fied before the Oil Conservation Division as a petroleum
6 landman?

7 A Yes, sir, I have.

8 Q And have you participated on behalf of
9 your company as a petroleum landman with regards to the com-
10 pulsory pooling applications that your company has sought
11 and obtained from the Division insofar as it concerns the
12 interest of Mr. Davidson?

13 A Yes, sir, I have.

14 Q And you have participated in all the
15 prior hearings with Mr. Davidson and Marathon in these
16 cases?

17 A Yes, sir.

18 Q Subsequent to the order entered by the
19 Division in Case 9146, and it was Order No. R-8282-B, en-
20 tered on September 18th, 1987, have you sought and attempted
21 to secure Mr. Davidson's voluntary agreement concerning the
22 poolage of his acreage in the subject well?

23 A Yes, sir, I have.

24 MR. KELLAHIN: At this time,

25

1 Mr. Catanach, we tender Mr. Daniels as an expert petroleum
2 landman.

3 MR. CATANACH: He is so quali-
4 fied.

5 Q Mr. Daniels, let's take a moment and
6 start off, sir, with what is marked as Exhibit Number One.
7 Would you refresh the Examiner's recollection and commence
8 by identifying for us the well that's the subject of this
9 application?

10 A Okay. Marathon drilled the Benson No. 1
11 at a location of 330 feet from the south line and 990 feet
12 from the east line of Section 14, Township 16 south, Range
13 38 East. This well was successfully completed on February
14 11th, 1987.

15 Q The 80-acre spacing unit to be dedicated
16 to the well is that area outlined in yellow?

17 A Yes, sir, it is.

18 Q Let's commence back at the beginning with
19 regards to the initial proposal that Marathon made by which
20 the first forced pooling order was obtained. Can you go
21 back and give us the time sequence with regards to the sub-
22 ject matter of the various orders and applications involved?

23 A Okay. What I'll do is make just a series
24 or run through all of our cases with Mr. Davidson.

25 Q All right, sir, let's start with August

1 21st of 1986.

2 A Okay. On August 21st, 1986, the Oil Con-
3 servation Division issued Order No. 8282, which compulsorily
4 pooled Mr. James Davidson's 38.125 percent working interest
5 in the southeast southeast quarter of Section 14. This or-
6 der came as a result of August 6th, 1986, compulsory pooling
7 hearing held in Santa Fe.

8 On October 23rd, 1986, a de novo hearing
9 was requested and on that date said hearing was heard before
10 the Director of the Oil Conservation Division and as a re-
11 sult of that hearing on November 4th, 1986, the Commission
12 entered Order No. R-8282-A, which affirmed the previous Exa-
13 miner's order entered on August 21st, 1986.

14 Q All right, let's stop for a moment, Mr.
15 Daniels. The original pooling order was with regards to the
16 pooling of a 40-acre tract, was it not?

17 A That is correct, sir.

18 Q On that 40-acre tract what percentage in-
19 terest did Mr. Davidson have in that acreage?

20 A Mr. Davidson had a 38.125 percent working
21 interest.

22 MR. KELLAHIN: If the Examiner
23 please, I'd like to show you a copy of the original pooling
24 order. It's 8282.

25 Q After the Commission affirmed the

1 original pooling order did Marathon notify Mr. Davidson of
2 his 30-day election period in which he could prepay his
3 share of the cost of that well?

4 A Yes, sir, we did.

5 Q And did Mr. Davidson exercise his elec-
6 tion under the pooling order?

7 A Mr. Davidson did not pay his money and
8 elected to go nonconsent subject to a 200 percent risk pen-
9 alty.

10 Q Chronologically what then was the next
11 thing that occurred?

12 A Well, then --

13 Q The well was drilled and completed, was
14 it not?

15 A -- we completed on February 11th, 1987.
16 After our engineers and geologists reviewed data from this,
17 the production from this well, it was their recommendation
18 that the spacing units out in this area for the Siluro-De-
19 vonian Oil Pool be spaced on 80-acre spacing.

20 As a result, on June the 3rd, 1987, Mara-
21 thon came to the Commission to request that the Siluro-De-
22 vonian Oil Pool in this area be spaced on 80-acre spacing.

23 Q At the same time on the same Examiner's
24 docket on June 3rd of 1987 was there another Marathon case?

25 A Yes, sir, there was.

1 Q And what was that case?

2 A That was, I believe, Case Number 9146,
3 where we were at -- while we were trying to amend the spac-
4 ing rules to 80 acres we were also going to amend the August
5 21st, 1987, pooling order to pool all interest in the addi-
6 tional 40-acre tract, being the southwest southeast quarter
7 of Section 14.

8 Q When we talk about the additional 40-acre
9 tract, what interest did Mr. Davidson, or does Mr. Davidson,
10 have in the additional 40-acre tract?

11 A Mr. Davidson has a 38.125 percent working
12 interest in the southwest southeast quarter of Section 14.

13 Q Same percentage for either of the for-
14 ties?

15 A Yes, sir, that's correct.

16 Q What then occurred, Mr. Daniels?

17 A On August 18th, 1987, by Division Order
18 R-8497, the Oil Conservation Division approved temporary
19 pool rules for the North Knowles Devonian Pool and said
20 rules were to be spaced on 80-acre -- wells were to be
21 spaced on 80-acre spacing units.

22 Subsequent to this order, on October --
23 excuse me, September 18th, 1987, by Division Order R-8282-B
24 the Division denied Marathon's application to amend the ori-
25 ginal 40-acre pooling order and required that Marathon at-

1 tempt to work out a voluntary agreement with Mr. Davidson
2 concerning his interest in the southwest southeast quarter
3 of Section 14.

4 Q Have you attempted to negotiate with Mr.
5 Davidson a voluntary agreement subsequent to that last or-
6 der?

7 A Yes, sir, we did, on -- by letter dated
8 October 19th we requested Mr. Davidson -- we had an offer to
9 Mr. Davidson (unclear.)

10 Q Let me direct your attention now to Exhi-
11 bit Number Two and have you identify that.

12 A Okay. Exhibit Number Two is Marathon's
13 application to -- to reopen Division Case No. 9146 and amend
14 Division Order, the previous Division Order R-8282 and R-
15 8282-A. We were wanting this hearing to be scheduled on
16 January 20th, 1988.

17 Q And what is Exhibit Three?

18 A Exhibit Three is our application to the
19 Oil Conservation Division requesting --

20 Q For the case today?

21 A Yes, sir, for this case today.

22 Q And Exhibit Number Four?

23 A Exhibit Number Four is the order of the
24 Division which was issued on September 18th, 1987.

25 Q And this is the order that required Mara-

1 thon to attempt to secure Mr. Davidson's voluntary agreement
2 before pooling his interest in the additional 40-acre tract.

3 A Yes, sir, that's what it is.

4 Q And Exhibit Number Five.

5 A Okay, Exhibit Number Five is a return
6 receipt in which Mr. Davidson was properly notified of
7 today's hearing.

8 Q All right. Before we talk about Exhibit
9 Number Six, describe for the Examiner what Marathon's
10 proposal was to Mr. Davidson for his participation of the
11 additional 40-acre interest in the completed and producing
12 well.

13 A Okay. What we requested to Mr. Davidson
14 was he owns a 38.125 percent interest in the south half
15 southeast quarter of Section 14, being 80 acres. The
16 southeast southeast quarter is force pooled and we were
17 giving him the opportunity to contribute his interest in the
18 southwest southeast of 14 and participate in the Benson No.
19 1 Well, which was a well which was completed and was
20 presently -- is presently producing. This interest would
21 provide Mr. Davidson with approximately a 19.0625 percent
22 working interest in the well.

23 Q All right, let's go through the
24 methodology of determining what Mr. Davidson's contribution
25 in dollars would have been for his interest in the addition-

1 al 40-acre tract.

2 Now, as to the original 40-acre tract,
3 there's no adjustment being made except to divide that
4 interest in half.

5 A That's correct.

6 Q All right, what is your best estimate of
7 the actual well cost for the Benson Well?

8 A Approximately \$1,151,100.

9 Q How did you calculate based upon that
10 well cost what Mr. Davidson's contribution would have been
11 for participation of his interest in the additional 40-acre
12 tract?

13 A I took that, that well cost figure and
14 multiplied it times his interest in the 80-acre proration
15 unit, which would have been 19.0625 percent.

16 Q All right. In my own simple way, let me
17 show you how I did it and you see if I've done it --

18 A Okay.

19 Q -- another way that's equally correct.
20 Can you simply take the \$1,151,000, divide that in half and
21 then take that number and multiply it by 38.125 percent?

22 A Yes, sir, that would be -- would give you
23 the same figure of 219,400.

24 Q And that is -- that represents in your
25 opinion the contribution Mr. Davidson should make for his

1 interest in the additional 40-acre tract.

2 A Yes, sir.

3 Q And these were based upon the actual
4 costs of the Benson No. 1 Well?

5 A Yes, sir, they were.

6 Q And have you sought to escalate those
7 costs or adjust them?

8 A No, sir, we have not.

9 Q Had you detailed to Mr. Davidson the pro-
10 posal that we have just discussed?

11 A Yes, sir, I did.

12 Q And you submitted that to him as a let-
13 ter?

14 A Yes, sir. On October 19th, 1987, which
15 is, I believe, Exhibit Number Six, we requested, we made
16 this offer to Mr. Davidson and we also would, in order to
17 help make his decision as to participate, we would afford
18 him the opportunity to review production data from the Ben-
19 son No. 1 Well.

20 Q What, if any, response did you receive
21 from Mr. Davidson with regards to your October 19th letter?

22 A Mr. Davidson responded by letter dated
23 October 29th, 1987. He advised Marathon that he is inter-
24 ested in selling his 38.125 percents leasehold interest in
25 the southwest quarter southeast quarter of 14 for \$200 per

1 acre and he would assign Marathon a 75 percent net revenue
2 interest leasehold.

3 What this would be, the leasehold which
4 he presently is in possession of has a -- provides for a
5 1/8th royalty and therefor he would be reserving an 1/8th
6 royalty himself and delivering that 75 percent net revenue
7 interest lease.

8 Q Mr. Davidson's response is set forth as
9 Exhibit Number Seven?

10 A Yes, sir, that is correct.

11 Q Okay, and let's look at Exhibit Number
12 Eight. What is that?

13 A Exhibit Number Eight is in his previous
14 letter on October the 29th he neglected to put \$200 per ac-
15 re. He had originally, in his October 29th letter he ad-
16 vided -- wrote for \$200 only, and he just clarified that of-
17 fer as to \$200 per acre.

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19 son's counter-proposal?

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21 proposal Marathon, by letter dated November 23rd, 1987, ad-
22 vided that his terms were unacceptable to Marathon.

23 We did advise Mr. Davidson, however, that
24 we would still provide him the opportunity to participate as
25 to our previous October 19th offer, that being participate

1 with approximately a 19 percent working interest in the well.

2 Q As to his interest in the additional 40-
3 acre tract, would Mr. Davidson be making his decision about
4 contributing the \$219,000 plus based upon a completed produ-
5 cing well in which he had production information?

6 A Yes, sir.

7 Q Do you believe your proposal to Mr.
8 Davidson represents a fair and reasonable offer for partici-
9 pation in the well on a voluntary basis?

10 A Yes, sir, I do.

11 Q What, if any, response did you receive
12 from Mr. Davidson subsequent to your November 23rd letter?

13 A In that letter we requested that Mr.
14 Davidson respond by December 7th; however, we did not re-
15 ceive any reply and on December the 15th I called Mr. David-
16 son (unclear) and we advised that he was not interested in
17 contributing his interest in the southwest southeast to --
18 and participate in the Benson No. 1 Well.

19 Q The notes that you made of that conversa-
20 tion at a time when recent to that conversation are set
21 forth on Exhibit Number Ten?

22 A Yes, sir, that is correct.

23 Q Would you identify and describe for us,
24 Mr. Daniels, Exhibit Number Eleven?

25 A Exhibit Number Eleven is a letter dated

1 January 12th, 1988, from Mr. Davidson's attorney, Mr. Chad
2 Dickerson, and he was advising Mr. Kellahin that Mr. David-
3 son does not intend to enter an appearance on the captioned
4 hearing for -- set for today's date, and that's what that
5 letter states.

6 Q Do you have an opinion, Mr. Daniels as to
7 whether or not the actual well costs as booked by Marathon,
8 the \$1,151,000 represents reasonable and fair well costs?

9 A Yes, sir, they are reasonable and fair.

10 Q Was the subject matter of the well costs
11 an issue before the Division examiners at one time in the
12 past?

13 A Yes, sir, it was. On August 12th, 1987,
14 Mr. Davidson, under Case Number 9168, advised that he objec-
15 ted to the cost of the well and therefor a hearing was held
16 before the OCD concerning that.

17 Q Did Mr. Davidson subsequently withdraw
18 his objection to the reasonable well costs dispute?

19 A Yes, sir, he did on -- pursuant to an or-
20 der dated November 9th, 1987. The Oil Conservation Division
21 entered Division Order No. 8282-C, which dismissed Mr.
22 Davidson's reasonable well cost hearing.

23 Q Do you have a recommendation to the Exa-
24 miner as to the overhead charges that ought to be assessed
25 against Mr. Davidson's interest in the additional 40-acre

1 tract?

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3 would be \$4,598 for a drilling well rate and \$459 for a com-
4 pleted well rate, and I would request a 200 percent risk
5 penalty.

6 Q What's your basis for that request, Mr.
7 Daniels?

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9 that we -- Marathon took all the risk in drilling the well
10 and I don't feel that those -- the risk involved in the
11 drilling of that well has decreased any to this point.

12 Q Do you recommend to the Examiner that
13 notwithstanding Mr. Davidson's apparent lack of interest in
14 participating his interest in the additional 40-acre tract,
15 that he be provided an additional election period in which
16 to pay his \$219,400?

17 A Let me just go back, first, and say Mr.
18 Davidson was afforded this opportunity after the de novo
19 hearing and he elected not to do so.

20 Q That was on the original 40-acre inter-
21 est.

22 A That was on the original 40-acre, yes,
23 sir. In our subsequent letters and offers made to Mr.
24 Davidson in an effort to get him to participate in the well,
25 and he has repoded negatively, then, you know, I don't feel

1 that he will, you know, I don't really feel that it's
2 needed; however, we would certainly have no objection should
3 the Examiner request it.

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5 about the possibility of the absence of a penalty factor on
6 Mr. Davidson's additional interest in the 40-acre tract and
7 whether or not that would be fair and equitable to Marathon?

8 A I feel that if we were to lessen the
9 penalty it would be an injustice to Marathon.

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11 not the lack of a penalty on that interest would constitute
12 a windfall to Mr. Davidson?

13 A Yes, sir, it would.

14 Q In what way, Mr. Daniels?

15 A He would be able to participate in the
16 well without any -- any penalty.

17 Q Marathon then would recover his interest
18 out of production?

19 A Yes.

20 Q And then upon recovery, you're also seek-
21 ing to recover an additional 200 percent penalty?

22 A Yes, sir, that is correct.

23 Q And that is to compensate Marathon for
24 carrying Mr. Davidson's interest?

25 A Yes, sir.

1 Q And he would have an opportunity to avoid
2 that penalty by contributing the \$219,000.

3 A That's right.

4 Q Do you have anything else, Mr. Daniels?

5 A No, sir, not at this time.

6 MR. KELLAHIN: That concludes
7 my examination of Mr. Daniels, Mr. Catanach.

8 We would move the introduction
9 at this time of Marathon Exhibits One through Eleven.

10 MR. CATANACH: Exhibits One
11 through Eleven will be admitted into evidence.

12

13

CROSS EXAMINATION

14 BY MR. CATANACH:

15 Q Mr. Daniels, referring to Exhibit Number
16 Seven, which is Davidson's counter-offer, is this -- is this
17 a type of offer that Marathon would normally refuse?

18 A Yes, sir. We review this. This would
19 be, certainly be an offer which we would review.

20 MR. KELLAHIN: No, he said re-
21 fuse.

22 A Refuse, oh. In looking at the leasehold
23 price in this area, his -- the bonus consideration which he
24 was requesting is slightly higher than what we'd pay for in
25 this area, and we felt that our original offer was fair and

1 reasonable and that that was the best offer which Marathon
2 would make.

3 Q So you don't think that Mr. Davidson's
4 offer was fair and reasonable?

5 A Not in this particular situation, no,
6 sir.

7 MR. CATANACH: Mr. Kellahin,
8 was Mr. Dickerson aware that the hearing was today? In his
9 letter he says February 20th. It's not just a mistake, or
10 do you know?

11 MR. KELLAHIN: It's a typo, Mr.
12 Examiner. You'll note on Exhibit Number Two that Mr.
13 Dickerson was sent a copy of the original application of the
14 hearing. His copy was mailed to him on December 22nd and I
15 think he simply misspoke.

16 I talked to him on the phone
17 last Friday and he was aware of the hearing today.

18 MR. CATANACH: Okay, that's all
19 the questions I have of the witness. He may be excused.

20 Is there anything further in
21 Case 9146?

22 MR. KELLAHIN: No, sir.

23 MR. CATANACH: If not, it will
24 be taken under advisement.

25

(Hearing concluded.)

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY CERTIFY that the foregoing Transcript of Hearing before the Oil Conservation Division (Commission) was reported by me; that the said transcript is a full, true, and correct record of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is a complete and correct transcript of the proceedings in the Examiner hearing of Case No. 9146, heard by me on Jan 20 1988.

David R. Catanach, Examiner
Oil Conservation Division

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4 STATE LAND OFFICE BUILDING
5 SANTA FE, NEW MEXICO

6
7
8 20 January 1988

9 EXAMINER HEARING

10 IN THE MATTER OF:

11 Application of Marathon Oil Company CASE
12 for the amendment of Division Order 9146
13 No. R-8282, as amended, Lea County,
14 New Mexico.

15 BEFORE: David R. Catanach, Examiner

16 TRANSCRIPT OF HEARING

17
18
19 A P P E A R A N C E S

20
21 For the Division:

22
23
24 For the Applicant:

25 W. Thomas Kellahin
Attorney at Law
KELLAHIN, KELLAHIN & AUBREY
P. O. Box 2265
Santa Fe, New Mexico 87504

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I N D E X

STEVE DANIELS

Direct Examination by Mr. Kellahin	3
Cross Examination by Mr. Catanach	18

E X H I B I T S

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Marathon Exhibit Five, Return Receipt	10
Marathon Exhibit Six, Letter	12
Marathon Exhibit Seven, Response	13
Marathon Exhibit Eight, Letter	13
Marathon Exhibit Nine, Letter	13
Marathon Exhibit Ten, Notes	14
Marathon Exhibit Eleven, Letter	14

1
2 MR. CATANACH: Call next Case
3 9145, the application of Marathon Oil Company for the
4 amendment of Division Order No. R-8282, as amended, Lea
5 County, New Mexico.

6 Are there appearances in this
7 case?

8 MR. KELLAHIN: Yes, Mr.
9 Examiner. I'm Tom Kellahin of Santa Fe, New Mexico,
10 appearing on behalf of Marathon Oil Company and I have one
11 witness to be sworn.

12 MR. CATANACH: Any other ap-
13 pearances in this case?

14 Will the witness please stand
15 and be sworn in.

16
17 (Witness sworn.)

18
19 STEVE DANIELS,
20 being called as a witness and having been duly sworn upon
21 his oath, testified as follows, to-wit:

22
23 DIRECT EXAMINATION

24 BY MR. KELLAHIN:

25 Q Mr. Daniels, for the record would you

1 please state your name and your occupation?

2 A Steve Daniels, landman with Marathon Oil
3 Company.

4 Q Mr. Daniels, have you previously testi-
5 fied before the Oil Conservation Division as a petroleum
6 landman?

7 A Yes, sir, I have.

8 Q And have you participated on behalf of
9 your company as a petroleum landman with regards to the com-
10 pulsory pooling applications that your company has sought
11 and obtained from the Division insofar as it concerns the
12 interest of Mr. Davidson?

13 A Yes, sir, I have.

14 Q And you have participated in all the
15 prior hearings with Mr. Davidson and Marathon in these
16 cases?

17 A Yes, sir.

18 Q Subsequent to the order entered by the
19 Division in Case 9146, and it was Order No. R-8282-B, en-
20 tered on September 18th, 1987, have you sought and attempted
21 to secure Mr. Davidson's voluntary agreement concerning the
22 poolage of his acreage in the subject well?

23 A Yes, sir, I have.

24 MR. KELLAHIN: At this time,

25

1 Mr. Catanach, we tender Mr. Daniels as an expert petroleum
2 landman.

3 MR. CATANACH: He is so quali-
4 fied.

5 Q Mr. Daniels, let's take a moment and
6 start off, sir, with what is marked as Exhibit Number One.
7 Would you refresh the Examiner's recollection and commence
8 by identifying for us the well that's the subject of this
9 application?

10 A Okay. Marathon drilled the Benson No. 1
11 at a location of 330 feet from the south line and 990 feet
12 from the east line of Section 14, Township 16 south, Range
13 38 East. This well was successfully completed on February
14 11th, 1987.

15 Q The 80-acre spacing unit to be dedicated
16 to the well is that area outlined in yellow?

17 A Yes, sir, it is.

18 Q Let's commence back at the beginning with
19 regards to the initial proposal that Marathon made by which
20 the first forced pooling order was obtained. Can you go
21 back and give us the time sequence with regards to the sub-
22 ject matter of the various orders and applications involved?

23 A Okay. What I'll do is make just a series
24 or run through all of our cases with Mr. Davidson.

25 Q All right, sir, let's start with August

1 21st of 1986.

2 A Okay. On August 21st, 1986, the Oil Con-
3 servation Division issued Order No. 8282, which compulsorily
4 pooled Mr. James Davidson's 38.125 percent working interest
5 in the southeast southeast quarter of Section 14. This or-
6 der came as a result of August 6th, 1986, compulsory pooling
7 hearing held in Santa Fe.

8 On October 23rd, 1986, a de novo hearing
9 was requested and on that date said hearing was heard before
10 the Director of the Oil Conservation Division and as a re-
11 sult of that hearing on November 4th, 1986, the Commission
12 entered Order No. R-8282-A, which affirmed the previous Exa-
13 miner's order entered on August 21st, 1986.

14 Q All right, let's stop for a moment, Mr.
15 Daniels. The original pooling order was with regards to the
16 pooling of a 40-acre tract, was it not?

17 A That is correct, sir.

18 Q On that 40-acre tract what percentage in-
19 terest did Mr. Davidson have in that acreage?

20 A Mr. Davidson had a 38.125 percent working
21 interest.

22 MR. KELLAHIN: If the Examiner
23 please, I'd like to show you a copy of the original pooling
24 order. It's 8282.

25 Q After the Commission affirmed the

1 original pooling order did Marathon notify Mr. Davidson of
2 his 30-day election period in which he could prepay his
3 share of the cost of that well?

4 A Yes, sir, we did.

5 Q And did Mr. Davidson exercise his elec-
6 tion under the pooling order?

7 A Mr. Davidson did not pay his money and
8 elected to go nonconsent subject to a 200 percent risk pen-
9 alty.

10 Q Chronologically what then was the next
11 thing that occurred?

12 A Well, then --

13 Q The well was drilled and completed, was
14 it not?

15 A -- we completed on February 11th, 1987.
16 After our engineers and geologists reviewed data from this,
17 the production from this well, it was their recommendation
18 that the spacing units out in this area for the Siluro-De-
19 vonian Oil Pool be spaced on 80-acre spacing.

20 As a result, on June the 3rd, 1987, Mara-
21 thon came to the Commission to request that the Siluro-De-
22 vonian Oil Pool in this area be spaced on 80-acre spacing.

23 Q At the same time on the same Examiner's
24 docket on June 3rd of 1987 was there another Marathon case?

25 A Yes, sir, there was.

1 Q And what was that case?

2 A That was, I believe, Case Number 9146,
3 where we were at -- while we were trying to amend the spac-
4 ing rules to 80 acres we were also going to amend the August
5 21st, 1987, pooling order to pool all interest in the addi-
6 tional 40-acre tract, being the southwest southeast quarter
7 of Section 14.

8 Q When we talk about the additional 40-acre
9 tract, what interest did Mr. Davidson, or does Mr. Davidson,
10 have in the additional 40-acre tract?

11 A Mr. Davidson has a 38.125 percent working
12 interest in the southwest southeast quarter of Section 14.

13 Q Same percentage for either of the for-
14 ties?

15 A Yes, sir, that's correct.

16 Q What then occurred, Mr. Daniels?

17 A On August 18th, 1987, by Division Order
18 R-8497, the Oil Conservation Division approved temporary
19 pool rules for the North Knowles Devonian Pool and said
20 rules were to be spaced on 80-acre -- wells were to be
21 spaced on 80-acre spacing units.

22 Subsequent to this order, on October --
23 excuse me, September 18th, 1987, by Division Order R-8282-B
24 the Division denied Marathon's application to amend the ori-
25 ginal 40-acre pooling order and required that Marathon at-

1 tempt to work out a voluntary agreement with Mr. Davidson
2 concerning his interest in the southwest southeast quarter
3 of Section 14.

4 Q Have you attempted to negotiate with Mr.
5 Davidson a voluntary agreement subsequent to that last or-
6 der?

7 A Yes, sir, we did, on -- by letter dated
8 October 19th we requested Mr. Davidson -- we had an offer to
9 Mr. Davidson (unclear.)

10 Q Let me direct your attention now to Exhi-
11 bit Number Two and have you identify that.

12 A Okay. Exhibit Number Two is Marathon's
13 application to -- to reopen Division Case No. 9146 and amend
14 Division Order, the previous Division Order R-8282 and R-
15 8282-A. We were wanting this hearing to be scheduled on
16 January 20th, 1988.

17 Q And what is Exhibit Three?

18 A Exhibit Three is our application to the
19 Oil Conservation Division requesting --

20 Q For the case today?

21 A Yes, sir, for this case today.

22 Q And Exhibit Number Four?

23 A Exhibit Number Four is the order of the
24 Division which was issued on September 18th, 1987.

25 Q And this is the order that required Mara-

1 thon to attempt to secure Mr. Davidson's voluntary agreement
2 before pooling his interest in the additional 40-acre tract.

3 A Yes, sir, that's what it is.

4 Q And Exhibit Number Five.

5 A Okay, Exhibit Number Five is a return
6 receipt in which Mr. Davidson was properly notified of
7 today's hearing.

8 Q All right. Before we talk about Exhibit
9 Number Six, describe for the Examiner what Marathon's
10 proposal was to Mr. Davidson for his participation of the
11 additional 40-acre interest in the completed and producing
12 well.

13 A Okay. What we requested to Mr. Davidson
14 was he owns a 38.125 percent interest in the south half
15 southeast quarter of Section 14, being 80 acres. The
16 southeast southeast quarter is force pooled and we were
17 giving him the opportunity to contribute his interest in the
18 southwest southeast of 14 and participate in the Benson No.
19 1 Well, which was a well which was completed and was
20 presently -- is presently producing. This interest would
21 provide Mr. Davidson with approximately a 19.0625 percent
22 working interest in the well.

23 Q All right, let's go through the
24 methodology of determining what Mr. Davidson's contribution
25 in dollars would have been for his interest in the addition-

1 al 40-acre tract.

2 Now, as to the original 40-acre tract,
3 there's no adjustment being made except to divide that
4 interest in half.

5 A That's correct.

6 Q All right, what is your best estimate of
7 the actual well cost for the Benson Well?

8 A Approximately \$1,151,100.

9 Q How did you calculate based upon that
10 well cost what Mr. Davidson's contribution would have been
11 for participation of his interest in the additional 40-acre
12 tract?

13 A I took that, that well cost figure and
14 multiplied it times his interest in the 80-acre proration
15 unit, which would have been 19.0625 percent.

16 Q All right. In my own simple way, let me
17 show you how I did it and you see if I've done it --

18 A Okay.

19 Q -- another way that's equally correct.
20 Can you simply take the \$1,151,000, divide that in half and
21 then take that number and multiply it by 38.125 percent?

22 A Yes, sir, that would be -- would give you
23 the same figure of 219,400.

24 Q And that is -- that represents in your
25 opinion the contribution Mr. Davidson should make for his

1 interest in the additional 40-acre tract.

2 A Yes, sir.

3 Q And these were based upon the actual
4 costs of the Benson No. 1 Well?

5 A Yes, sir, they were.

6 Q And have you sought to escalate those
7 costs or adjust them?

8 A No, sir, we have not.

9 Q Had you detailed to Mr. Davidson the pro-
10 posal that we have just discussed?

11 A Yes, sir, I did.

12 Q And you submitted that to him as a let-
13 ter?

14 A Yes, sir. On October 19th, 1987, which
15 is, I believe, Exhibit Number Six, we requested, we made
16 this offer to Mr. Davidson and we also would, in order to
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3 son does not intend to enter an appearance on the captioned
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24 miner as to the overhead charges that ought to be assessed
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5 penalty.

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7 Daniels?

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9 that we -- Marathon took all the risk in drilling the well
10 and I don't feel that those -- the risk involved in the
11 drilling of that well has decreased any to this point.

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18 Davidson was afforded this opportunity after the de novo
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22 A That was on the original 40-acre, yes,
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24 Davidson in an effort to get him to participate in the well,
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2 needed; however, we would certainly have no objection should
3 the Examiner request it.

4 Q Do you have any comments or observations
5 about the possibility of the absence of a penalty factor on
6 Mr. Davidson's additional interest in the 40-acre tract and
7 whether or not that would be fair and equitable to Marathon?

8 A I feel that if we were to lessen the
9 penalty it would be an injustice to Marathon.

10 Q Do you have an opinion as to whether or
11 not the lack of a penalty on that interest would constitute
12 a windfall to Mr. Davidson?

13 A Yes, sir, it would.

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16 well without any -- any penalty.

17 Q Marathon then would recover his interest
18 out of production?

19 A Yes.

20 Q And then upon recovery, you're also seek-
21 ing to recover an additional 200 percent penalty?

22 A Yes, sir, that is correct.

23 Q And that is to compensate Marathon for
24 carrying Mr. Davidson's interest?

25 A Yes, sir.

1 Q And he would have an opportunity to avoid
2 that penalty by contributing the \$219,000.

3 A That's right.

4 Q Do you have anything else, Mr. Daniels?

5 A No, sir, not at this time.

6 MR. KELLAHIN: That concludes
7 my examination of Mr. Daniels, Mr. Catanach.

8 We would move the introduction
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17 a type of offer that Marathon would normally refuse?

18 A Yes, sir. We review this. This would
19 be, certainly be an offer which we would review.

20 MR. KELLAHIN: No, he said re-
21 fuse.

22 A Refuse, oh. In looking at the leasehold
23 price in this area, his -- the bonus consideration which he
24 was requesting is slightly higher than what we'd pay for in
25 this area, and we felt that our original offer was fair and

1 reasonable and that that was the best offer which Marathon
2 would make.

3 Q So you don't think that Mr. Davidson's
4 offer was fair and reasonable?

5 A Not in this particular situation, no,
6 sir.

7 MR. CATANACH: Mr. Kellahin,
8 was Mr. Dickerson aware that the hearing was today? In his
9 letter he says February 20th. It's not just a mistake, or
10 do you know?

11 MR. KELLAHIN: It's a typo, Mr.
12 Examiner. You'll note on Exhibit Number Two that Mr.
13 Dickerson was sent a copy of the original application of the
14 hearing. His copy was mailed to him on December 22nd and I
15 think he simply misspoke.

16 I talked to him on the phone
17 last Friday and he was aware of the hearing today.

18 MR. CATANACH: Okay, that's all
19 the questions I have of the witness. He may be excused.

20 Is there anything further in
21 Case 9146?

22 MR. KELLAHIN: No, sir.

23 MR. CATANACH: If not, it will
24 be taken under advisement.

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(Hearing concluded.)

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY CERTIFY that the foregoing Transcript of Hearing before the Oil Conservation Division (Commission) was reported by me; that the said transcript is a full, true, and correct record of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is a complete copy of the proceedings in the Examiner hearing of Case No. 9146 heard by me on Jan 20 1968.

David R. Catanach, Examiner
Oil Conservation Division