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

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

CASE NOS. 25878 and 25610,  
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HEARING

DATE: Tuesday, March 10, 2026  
TIME: 12:55 p.m.  
BEFORE: Gregory Chakalian, Hearing  
Examiner  
LOCATION: Remote Proceeding  
Santa Fe, NM 87505  
REPORTED BY: Gerald Aragon  
JOB NO.: 7810784

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ALSO PRESENT:

Gregory Chakalian, Hearing Examiner, State of New Mexico Oil Conservation Division

Freya Tschantz, Law Clerk, State of New Mexico Oil Conservation Division

Shelley Klingler, Director of Engineering, Powderhorn Operating

Leonard Wood, Petroleum Geologist, Powderhorn Operating

Preston Dupree, Geologist, Powderhorn Operating

Brennan Tippen, Petroleum Engineer, Powderhorn Operating

Travis Macha, Vice President of Land, Powderhorn Operating

Maduabuchi Pascal Umekwe, Petroleum Engineer, Marathon Oil Permian (by videoconference)

Andrew Fordyce, Technical Examiner, State of New Mexico Oil Conservation Division (by videoconference)

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1 P R O C E E D I N G S

2 THE HEARING EXAMINER: Let's get on the  
3 record. I'm calling case number 25610. Entries of  
4 appearance, please.

5 MR. HOLLIDAY: Good morning,  
6 Mr. Examiner Ben Holliday for the applicant,  
7 Powderhorn.

8 THE HEARING EXAMINER: Good morning.  
9 Good afternoon, and welcome.

10 MR. HOLLIDAY: Yeah. Just --

11 MR. RANKIN: Adam Rankin and my  
12 colleague Paula Vance with the Santa Fe Office of  
13 Holland & Hart appearing on behalf of Marathon Oil  
14 Permian.

15 THE HEARING EXAMINER: Thank you.  
16 Ms. Vance, were you pointing to  
17 someone?

18 MS. VANCE: The case prior --

19 THE HEARING EXAMINER: Are you before?

20 MR. RANKIN: Yeah.

21 THE HEARING EXAMINER: Okay. Okay.  
22 Then I -- we will be in recess. Well, you guys were  
23 sitting back there, and I didn't know you want --  
24 okay. That makes sense. So let's go into recess on  
25 25610. I don't have the case number.

1 Ms. Hardy, what is the case number I'm  
2 calling? It's the Chevron case. What is it?

3 MS. HARDY: It's the Chevron case.

4 MR. DEBRINE: 25878.

5 THE HEARING EXAMINER: 25878?

6 MR. DEBRINE: Yes.

7 THE HEARING EXAMINER: Thank you.

8 Entries of appearance, please.

9 MR. DEBRINE: Good morning,  
10 Mr. Hearing Examiner. Earl DeBrine with the Modrall  
11 Sperling firm on behalf of the applicant, Chevron USA,  
12 Inc.

13 THE HEARING EXAMINER: Thank you.

14 MS. HARDY: And Dana Hardy with Hardy  
15 McLean on behalf of PBEX and EGL Resources.

16 THE HEARING EXAMINER: Thank you.

17 We are here basically to understand  
18 what are the issues going to the hearing because at  
19 the last time we got together, I had ruled that  
20 Chevron had standing to proceed in its case. There  
21 were -- I think we were virtual. It must've been the  
22 February 26th docket.

23 And there were some claims of  
24 additional discovery needed. And at that point, I  
25 asked, "What are the issues that are going to a

1 hearing?" And I don't know that the parties had a  
2 chance to stipulate to the issues moving forward.  
3 Have you done that?

4 MR. DEBRINE: Mr. Hearing Examiner, we  
5 have conferred, but I don't know that we have  
6 unanimity with regard to the issues to be presented.  
7 But I think -- if I may just briefly, I think the  
8 Division's order with regard to the motion to dismiss  
9 pretty much defined the issue in its order.

10 And that is, you know, it is recited  
11 that the statement that -- of well costs that Chevron  
12 received is legally deficient because it was issued by  
13 unauthorized entity, contained inconsistent well data,  
14 and omitted material information regarding the  
15 rescission of phase 2 wells for other parties.

16 So that is the main issue in the case  
17 is the efficiency of the well -- statement of well  
18 costs. And there's a variety of sub-issues with  
19 regard to that. The other is with regard to the  
20 operator's obligation of good faith in order to comply  
21 with the Division's compulsory pooling orders.

22 Ms. Hardy has also identified a key  
23 defense that they're raising as the waiver. So that's  
24 another issue. But I think beyond those three issues,  
25 I think those are the main ones for the Division to



1 decide at the evidentiary hearing.

2 THE HEARING EXAMINER: Before I hear  
3 from you, Ms. Hardy, it was my understanding,  
4 Mr. DeBrine, that you were really focused on two  
5 conditions of the compulsory pooling order. And those  
6 two conditions -- I forgot if it's 25 or 26, 26 or 27.  
7 What were those two?

8 MR. DEBRINE: Well, the statement of  
9 well costs with regard to one, what it needs to  
10 include.

11 THE HEARING EXAMINER: What condition  
12 was that? What number was that in the --

13 MR. DEBRINE: It's paragraph 24 of the  
14 order.

15 THE HEARING EXAMINER: That's 20 --

16 MR. DEBRINE: It's the one that  
17 obligates the operator to submit a statement of well  
18 costs. And then paragraph 25 then deals with the  
19 election and payment of well costs by the pool's  
20 working interest owner.

21 THE HEARING EXAMINER: And Chevron's  
22 contention was since PBEX did not comply with 24,  
23 their argument that you weigh -- that you violated  
24 your obligation to timely notify them of your  
25 consent/non-consent is -- it should not disqualify you

1 from in the future consenting and devalue -- and  
2 potentially devaluing your mineral estate.

3 So really we're focused on conditions  
4 24 and 25. Is there anything outside those conditions  
5 that you feel is important that we hear at the  
6 contested hearing?

7 MR. DEBRINE: No. Mr. Hearing  
8 Examiner, other than what I already identified.

9 THE HEARING EXAMINER: Okay. Fine.

10 MR. DEBRINE: Those sub-issues within  
11 that.

12 THE HEARING EXAMINER: That's fine.  
13 I'm just trying to get the broader picture here so we  
14 understand about discovery and how we're going to  
15 proceed. How many witnesses do you anticipate?

16 MR. DEBRINE: I believe we will have  
17 probably two and possibly three.

18 THE HEARING EXAMINER: Okay. And what  
19 fields of expertise will they be?

20 MR. DEBRINE: With regard to land  
21 matters and with regard to business practices.

22 THE HEARING EXAMINER: Okay. All  
23 right. Okay.

24 Ms. Harvey?

25 MS. HARDY: Yes. Thank you,

1 Mr. Examiner. So I think there are -- I don't  
2 disagree that those are the issues that Chevron is  
3 raising. But here there are two major issues that I  
4 think are potentially dispositive of the need for a  
5 hearing at all.

6 And one is waiver because all of  
7 Chevron's arguments relate to the post order well  
8 proposal election letter, which includes the estimated  
9 statement of well cost that it signed. Chevron signed  
10 the election letter and returned it. And they -- so  
11 they elected to participate, and then they just didn't  
12 pay their share of the well costs when they were due.

13 So I think by signing the election  
14 letter and agreeing to participate, they can't come  
15 back now and argue the wrong party sent the letter.  
16 The letter didn't include our share of the working  
17 interest. The estimated well costs were insufficient.  
18 They signed the actual AFE for every well.

19 So there -- it's a very clear case of  
20 waiver. And we would plan to file a motion for  
21 summary judgment on that. And if it's granted -- and  
22 I think it's a very strong case of waiver. I just  
23 think they waive their arguments. There's no need to  
24 have a hearing or conduct discovery. So I would  
25 request that that issue be addressed first.

1           And the other issue that I think  
2 they're raising is whether there is a good faith  
3 negotiation obligation after a pooling order is  
4 issued. That's what they're raising, and that's never  
5 been held by the Division. And it's not in accordance  
6 with the compulsory pooling statute, which says you  
7 have to reach a voluntary agreement or try to before  
8 you pool.

9           Once the parties are pooled, they are  
10 pooled under the pooling order, and that's what it  
11 says. Then you comply with the requirements of the  
12 pooling order, which are sending out that statement of  
13 estimated well cost.

14           There's not -- so it's a novel issue.  
15 It's never been adopted. And so I think that's  
16 another issue that's potentially dispositive. But I  
17 think they waived that issue as well by agreeing to  
18 participate in the wells and signing the election  
19 letter.

20           THE HEARING EXAMINER: Okay. So you  
21 would like to brief the issue on waiver and possibly  
22 the good faith dealing that Condition 24 might or  
23 might not impose on PBEX?

24           MS. HARDY: Correct.

25           THE HEARING EXAMINER: Okay.

1                   And Mr. DeBrine?

2                   MR. DEBRINE:    Yes,  
3                   Mr. Hearing Examiner.  The question is how many bites  
4                   at the apple are you going to allow EGL and PBEX?  
5                   They already filed a motion to dismiss raising what  
6                   they said was the threshold issue.  Now they've  
7                   identified two other ones.  Both of those are fact  
8                   intensive.

9                   We could cite to you a half dozen cases  
10                  that say waiver's a question of fact that precludes  
11                  summary judgment.  The same is true of good faith.  
12                  We -- the Division's rules don't provide for motions  
13                  for summary judgment.  You're going to open up a box  
14                  of Pandora's.

15                  As our former governor once said, if  
16                  you are going to allow seriatim motions practice with  
17                  regard to issues that a party identifies in a  
18                  compulsory pooling case or any other case and the  
19                  Division's rule don't provide for it, it provides that  
20                  you file an application.  Division sets an evidentiary  
21                  hearing, and then you decide the merits.  And all  
22                  these matters are fact intensive and should be  
23                  addressed at a merits hearing based on the party's  
24                  mutual availability to appear and the Division's.

25                  THE HEARING EXAMINER:  Ms. Hardy,

1 specifically to the point that the defense of waiver  
2 is fact based, what is your answer?

3 MS. HARDY: Here, there are no issues  
4 of disputed fact on that. I think it's very clear.  
5 They've signed the election letter. Now they're  
6 raising claims about the election letter. I don't  
7 think there are any facts in dispute. I think it can  
8 be a factual issue if there are facts in dispute. But  
9 here, I don't think there are that are material.

10 THE HEARING EXAMINER: So your  
11 contention is once you sign the letter, that's the  
12 fact that matters?

13 MS. HARDY: Right.

14 THE HEARING EXAMINER: Is you've signed  
15 this. And I am not familiar at all with these  
16 letters. I don't know what they say. But of course,  
17 a good attorney could always find some loophole  
18 somewhere in these letters to say, "Well, this, or  
19 well, that." So I'm not -- you know, my  
20 interpretation of the letter is I don't think it has  
21 any weight here. But you're saying there's no other  
22 fact that matters?

23 MS. HARDY: With respect to waiver?  
24 Yes. Claims regarding the --

25 THE HEARING EXAMINER: And your

1 argument -- of course, you haven't made it yet. But  
2 simply you -- obviously, you've thought about this  
3 argument. Your argument is once they sign the letter  
4 consenting -- because it's a letter of consent; is  
5 that right?

6 MS. HARDY: Correct.

7 THE HEARING EXAMINER: Okay. They're  
8 now committed. And you better pay because if you  
9 don't pay, you are now non-consenting?

10 MS. HARDY: Under the pooling order.  
11 Correct.

12 THE HEARING EXAMINER: Right.

13 And Mr. DeBrine, your argument?

14 MR. DEBRINE: Well, there's a variety  
15 of factual issues with regard to that particular  
16 question. One, the letter -- you're consenting with  
17 whom? Who are you entering into an agreement with?  
18 The Division designated an operator, gave rights to an  
19 operator, which are extraordinary powers to compulsory  
20 pool and develop somebody else's property.

21 That's not who the letter was sent by  
22 or on behalf of. That's an issue that we raised with  
23 regard to the motion for standing. You have the  
24 reshuffling of the deck. The Division authorized  
25 specific wells, considered them in a evidentiary

1 hearing, considered the well costs, and approved the  
2 plan.

3 Then they reshuffle the deck. Is there  
4 any authority whatsoever for the additional wells that  
5 were never proposed or considered by the Division in  
6 the original hearing date? And then you have this  
7 issue of constructive fraud where they don't even tell  
8 the pool parties that they're suspending the second  
9 phase of the drawing plan so that you don't even need  
10 to make an election with regard to the phase 2 wells,  
11 that they're towing other operators.

12 They were towing other operators before  
13 the date that the time and the order is for the  
14 payment of well costs. So there are a host of factual  
15 issues that need to be considered in an evidentiary  
16 hearing. And waiver, you can say it's -- there are no  
17 facts, but there are numerous facts underlying the  
18 issue of waiver in addition to the ongoing dialogue  
19 and negotiations that was going on between the parties  
20 that led Chevron to believe that there was no  
21 obligation to pay any well costs whatsoever.

22 THE HEARING EXAMINER: What I'm trying  
23 to understand here is the argument that Chevron signed  
24 this letter consenting to whatever was in the letter  
25 and didn't do their due diligence before signing it.



1 So I can understand if -- once you sign a letter and  
2 then you have to make these other determinations after  
3 you sign the letter, then I could see those facts  
4 being material.

5 But if -- and Chevron is not a -- it's  
6 not a mom and pop store. I mean it's a sophisticated  
7 operator in the oil field. So when that -- when -- I  
8 mean, I could even understand the argument of, hey,  
9 the person who signed the letter had no authority to  
10 sign the letter.

11 But if someone at Chevron signs a  
12 letter and there's agency between the employee and the  
13 company, how is it that Chevron is not bound by that  
14 consent? I understand you're saying -- and that's why  
15 I found that you had standing because I agreed that  
16 potentially these matters should have a hearing.

17 But when it comes to waiver -- and I  
18 don't even know that waiver applies in this  
19 circumstance. So I'm -- I don't know yet. That  
20 hasn't been briefed. And so I'm just taking Ms. Hardy  
21 at her word. But I mean, I know waiver is a defense  
22 in many civil forums, and so maybe it applies. Maybe  
23 it doesn't.

24 But how do you argue what you just  
25 argued as post-signing instead of due diligence before

1 you sign?

2 MR. DEBRINE: Well, there's two issues.  
3 One, just in a normal garden variety contract case,  
4 people sign contracts all the time. And they raise  
5 various issues as to why they're not bound by that  
6 contract, fraud, constructive fraud, authority to  
7 enter into contracts.

8 All those issues are present in this  
9 case. We've got constructive fraud with regard to the  
10 failure to disclose the suspension and rescission of  
11 the second phase drilling plan. That was never  
12 disclosed. We have ultra vires authority.

13 THE HEARING EXAMINER: You said that  
14 already. I heard you the first time. But I think  
15 what you're saying is waiver -- even if Ms. Hardy is  
16 claiming that there's a waiver, it doesn't necessarily  
17 mean that there was waiver if you have this other  
18 stuff going on. That -- I think that's what you're  
19 saying; right?

20 MR. DEBRINE: Correct. All those  
21 issues vitiate any consent that may have --

22 THE HEARING EXAMINER: Yes. I --

23 MR. DEBRINE: Existed just by signing  
24 the letter.

25 THE HEARING EXAMINER: Okay. Okay. I

1 hear you. And I don't know the facts and all of that.  
2 But I can understand how you're saying waiver doesn't  
3 apply, and Ms. Hardy is saying waiver does apply. And  
4 that's really what you're both saying here. Okay.

5 Now, Ms. Hardy, I still would like some  
6 confirm -- the whole point of today's status  
7 conference was to confirm the issues that may go  
8 forward if I don't find waiver as a bar to moving  
9 forward or your other issue of good faith dealing  
10 under the order. Okay?

11 MS. HARDY: Uh-huh.

12 THE HEARING EXAMINER: Do you agree  
13 that it's Clause 24 and 25 in the ordering -- in the  
14 order that will be controlling the evidentiary scope  
15 of this contested hearing?

16 MS. HARDY: Yes. I believe that that  
17 is correct.

18 THE HEARING EXAMINER: Okay. Now, was  
19 it you or Mr. DeBrine who said, "Oh, we need more  
20 discovery"?

21 MS. HARDY: Well, I had said that. And  
22 Ms. Bennett had said that we don't need more  
23 discovery. But then I received a subsequent email  
24 from Ms. Bennett yesterday listing a whole bunch of  
25 discovery that they want.

1 THE HEARING EXAMINER: Okay.

2 MS. HARDY: So I think that both  
3 parties want more discovery.

4 THE HEARING EXAMINER: Okay. Okay.  
5 Fine.

6 MS. HARDY: Significant, really, I  
7 would say, a full sense.

8 THE HEARING EXAMINER: Okay. So that  
9 being said, Mr. DeBrine and Ms. Hardy, can you get  
10 together? Now that we know what the issues will be if  
11 we get to a hearing, if we get past the waiver  
12 defense, if that is a defense, in light of your  
13 allegations of, you know, bad faith dealing and bait  
14 and switch, et cetera -- when did the parties want to  
15 have this hearing?

16 I mean, I know, Ms. Hardy, you don't  
17 want to have a hearing at all.

18 But let's start with you, Mr. DeBrine.  
19 When do you want to have a hearing?

20 MR. DEBRINE: Well, I believe at the  
21 last hearing, the Division proposed two dates, one in  
22 March and one in April.

23 THE HEARING EXAMINER: Uh-huh.

24 MR. DEBRINE: The March date does not  
25 work for Chevron, but I believe the April 21st date

1 will work for us.

2 THE HEARING EXAMINER: Fine. April  
3 21st.

4 Does that give you enough time,  
5 Ms. Hardy, to file your brief on waiver? And I'm not  
6 telling you it has to be on waiver. You can file  
7 whatever you want to, but that -- does that give you  
8 time to file your pre-hearing brief that -- you know,  
9 or summary judgment, let's call it. Let's call it a  
10 summary judgment motion.

11 MS. HARDY: It does, but I think that  
12 the ruling on that motion is going to have a big  
13 impact on what the parties do in discovery at the  
14 hearing. So I just really feel like it would be more  
15 efficient to have a ruling on that motion before we  
16 have a hearing setting. So allow for enough time --

17 THE HEARING EXAMINER: So are you  
18 saying that you can't conduct discovery at the same  
19 time?

20 MS. HARDY: We can, but I think it  
21 would -- I think there are going to be discovery  
22 disputes probably based on the lists that I've seen.  
23 And so I think that more time would be preferable to  
24 do that.

25 THE HEARING EXAMINER: Well, I -- as

1 you know, Ms. Hardy, I like to move cases along when  
2 practical. And I can understand Chevron's perspective  
3 that they're now stuck in this -- what do you call  
4 that? Between -- that's a term. Yes. I was thinking  
5 of purgatory really. I don't know why I was thinking  
6 of a religious context, but there it is.

7 MR. DEBRINE: I think we're probably in  
8 the 5th Circle of Hell right now, Mr. Hearing  
9 Examiner.

10 MS. HARDY: Yeah. I was going to  
11 agree. It's not purgatory.

12 THE HEARING EXAMINER: So I'd like to  
13 find a way to move this along to an April 21st  
14 hearing. So we have an agreement on the issues. We  
15 have an agreement that there's going to be some pre-  
16 hearing briefing -- yes -- briefing, pleadings, and  
17 that there's going to be some discovery issues here  
18 going on.

19 How soon, Mr. DeBrine, can you confer  
20 with Ms. Hardy and come up with a list of agreed upon  
21 or not discovery items that both parties want?

22 MR. DEBRINE: We could submit something  
23 to you tomorrow. We've already conferred, but I don't  
24 think there is any agreement with regard to pre-  
25 hearing motion practice. And I would caution the

1 Division to not open that up for every case for  
2 parties to file motions for summary judgment.

3 The issues are very discreet. We might  
4 have five or six witnesses, three on each side, a  
5 half-day hearing. You know, let's just have the  
6 hearing. And the Division might be educated by a pre-  
7 hearing brief from both sides because it'll help guide  
8 the hearing examiner's and technical examiner's  
9 questions they may have.

10 But we don't need motion practice with  
11 regard to dispositive issues, particularly when we've  
12 already added and the -- we don't need to have  
13 seriatim motions to dismiss in cases -- if they --  
14 these were issues present when the first motion was  
15 filed and could have been raised in that motion, we  
16 could have already had a hearing to address them.  
17 We're just wasting the parties' and the Division's  
18 time through the proposed motion practice.

19 MS. HARDY: Can I respond?

20 THE HEARING EXAMINER: Of course.  
21 Definitely. But I was just thinking.

22 MS. HARDY: Yeah. Yes.

23 THE HEARING EXAMINER: Before I asked  
24 for your response, I was just thinking about what  
25 Mr. DeBrine just said.

1           You know, Mr. DeBrine, the Division's  
2 here to give the parties a meaningful opportunity to  
3 address their concerns, issues, et cetera. So it's  
4 not wasting our time to hear this thing, first of all.

5           Second of all, based on what Ms. Hardy  
6 was saying, their defensive waiver is based on a  
7 single fact, which is not in contention. I mean, I  
8 know what you said, but it's not in contention that  
9 someone at Chevron signed something that said  
10 something. Okay.

11           Now, you, I know, have a position, a  
12 different position to take, but that seems like a  
13 legal position. And I don't think we need to have a  
14 hearing with five witnesses to flesh out the summary  
15 judgment if we heard a summary judgment motion. So I  
16 don't see that as a problem for the Division. Now,  
17 maybe it is for Chevron, but I don't see it as a  
18 problem for the Division.

19           So are you saying that -- are you  
20 saying, Mr. DeBrine, that you would not respond to a  
21 motion for summary judgment if it filed by PBEX?

22           MR. DEBRINE: Well, we would obviously  
23 comply with any ruling the Division were to make, but  
24 we -- but then we would file motions for summary  
25 judgment because we think the facts are undisputed on



1 all the issues that we raised. It's just interpreting  
2 documents.

3 So let's file four motions for summary  
4 judgment on the issues that we raised in response to  
5 the motion to dismiss for lack of standing. It's the  
6 same thing. We're going to have all these motions for  
7 what when all we have to do is come here for a half  
8 day and consider the evidence? And the Division can  
9 make the ruling that it feels appropriate based on the  
10 evidence and any hearing briefs that gets submitted.

11 THE HEARING EXAMINER: So, Ms. Hardy,  
12 you have two things to respond to, the original  
13 thing -- hopefully, you can remember -- and now this  
14 over here. Go ahead.

15 MS. HARDY: Well, I was just going to  
16 say that there's certainly no prohibition on filing  
17 motions -- dispositive motions before a hearing. And  
18 I think it's respectful of the Division's time for us  
19 to do that in the event that it can narrow the issues  
20 at hearing.

21 And our initial motion actually to  
22 dismiss was filed in response to the Division's  
23 inquiry about standing. So we certainly weren't  
24 waiving other defenses by filing that motion. And I  
25 think it will be very helpful for us to file a motion

1 on waiver.

2 With respect to the hearing, given the  
3 issues that Chevron is raising, which seek to really  
4 create new requirements on operators, particularly  
5 with respect to post-order negotiations, I think this  
6 is going to be not a half-day hearing. I think it --  
7 I'm not sure how many witnesses we will have. They've  
8 raised issues on industry standards.

9 Not -- it's not just between these  
10 parties. They're raising industry standards, which is  
11 part of the reason we're going to ask for broad  
12 discovery on well proposals they've received, well  
13 proposals they've sent because they have injected that  
14 issue into the case. And so I don't think it's a  
15 short and quick hearing. I think it's potentially a  
16 couple of days. So --

17 THE HEARING EXAMINER: Okay. All  
18 right. Okay. So first of all, unless I hear a really  
19 good argument not to set this for April 21st, I'm  
20 going to set it for April 21st.

21 Freya do we have anything else on the  
22 April 21st docket?

23 MS. TSCHANTZ: We do.

24 THE HEARING EXAMINER: Oh, we do.  
25 Okay. Well, we had five things on today's docket, and

1 there's only one left. So we'll set it on a trailing  
2 docket. This will be the last case on the trailing  
3 docket as it sits now. How many do we have ahead of  
4 this?

5 MS. TSCHANTZ: I'm pulling up the list  
6 now, but I believe there's four.

7 THE HEARING EXAMINER: Oh, another one  
8 of those. All right.

9 Ms. Hardy, how long do you need to file  
10 a motion for summary judgment based on your waiver  
11 argument?

12 MS. HARDY: I'm just looking at the  
13 calendar. I think I could do that in two weeks.

14 THE HEARING EXAMINER: Okay.

15 And, Mr. DeBrine, your response?

16 MR. DEBRINE: My response is I don't  
17 know what procedure I'm to follow when I see that  
18 motion. The Division has no rules on motions for  
19 summary judgment. If we're going to follow the New  
20 Mexico Rules for Civil Procedure, the -- a party, in  
21 receiving the motion, you know, they get 15 days.

22 They can file a Rule 56(F) affidavit  
23 saying they need additional discovery in order to  
24 respond to the motion. We're just opening things up,  
25 which I think unnecessarily. And so if we're going to

1 follow those rules, then I think the Division needs to  
2 have a rulemaking proceeding and adopt those rules  
3 rather than ad hoc in connection with a single case,  
4 impose litigation-style rules for this case. It's  
5 unnecessary.

6 And it might be a full-day hearing. I  
7 agree with Ms. Hardy. Now that she's indicated that  
8 there might be additional witnesses -- but we don't  
9 need any pre-hearing motions practice. But if we do,  
10 then Chevron would want the opportunity to file its  
11 own motion for summary judgment.

12 And I think all of the issues that we  
13 identified in response to the motion to dismiss for  
14 lack of standing, which concern the deficiencies and  
15 the well statement and the rescission and changing the  
16 drilling plan, those will all be raised in a  
17 dispositive motion as well.

18 THE HEARING EXAMINER: So, Mr. DeBrine,  
19 I understood you to say a minute ago that you had  
20 certain defenses to the argument of waiver. And I  
21 assume those are legal defenses; right?

22 MR. DEBRINE: Well, it's the  
23 application of law to facts. They're -- there're  
24 factual issues underlying them.

25 THE HEARING EXAMINER: But the -- but

1 Ms. --

2 MR. DEBRINE: As there is in any case.

3 THE HEARING EXAMINER: Okay. But  
4 Ms. Hardy's summary judgment motion would be based on  
5 the single issue, the single legal issue of waiver  
6 based on the single fact that someone at Chevron  
7 signed this piece of paper and therefore has no right  
8 to complain about it after that. So if we have this  
9 one fact that is not being contested, the fact that  
10 there was a signature, are you saying your defense to  
11 waiver would go beyond that?

12 MR. DEBRINE: Well, she's calling it a  
13 waiver, but the issue is whether there was a binding  
14 agreement between the parties based on the statement  
15 of well costs. And that depends on was the party who  
16 sent it authorized by the Division to do it? Was the  
17 wells that were listed in it authorized the Division  
18 to do it?

19 And was there good faith in actually  
20 providing for it when they knew they weren't even  
21 going to drill the wells? They were in the proposal  
22 letter, and they're essentially trying to steal  
23 property from Chevron and committing constructive  
24 fraud by disclosing their drilling plans, not just to  
25 Chevron but to the Division.

1           It's not just a fraud upon Chevron.  
2           It's a fraud upon the Division when a operator does  
3           what PBEX and EGL did in this case.

4           THE HEARING EXAMINER: Okay. So  
5           haven't you just made the argument now? Didn't you  
6           just make the argument that there was no waiver, even  
7           if they -- someone signed this thing, that there was  
8           no waiver? Isn't that what you're saying?

9           MR. DEBRINE: Yes. There was no  
10          waiver. There was --

11          THE HEARING EXAMINER: Okay. Ms.  
12          Hardy, what do you have to say about that?

13          MS. HARDY: Okay. There's no fraud.  
14          There's no constructive fraud. There was absolutely  
15          waiver. Well proposals, changing the names of wells  
16          happens all the time due to BLM and APD requirements.

17          The order authorized the wells that  
18          have been proposed and that were drilled. The  
19          proposal was not rescinded. There were adjustments  
20          made for one other operator due to their specific  
21          situation. There's certainly no fraud on the Division  
22          or anyone else.

23          THE HEARING EXAMINER: Okay. Okay. I  
24          hear you.

25          MS. HARDY: So it's very clear case of

1 waiver.

2 THE HEARING EXAMINER: So now it sounds  
3 like we're getting to the underlying facts of the  
4 merits of the case. Really, that's what it sounds  
5 like here. So I think what we should do is this.  
6 This is -- I've changed my mind about how I want to  
7 proceed here.

8 We'll deal with the discovery issues  
9 right away. We'll go to a hearing. At the end of the  
10 evidentiary hearing, you can make your argument for  
11 waiver at that point. Okay?

12 MS. HARDY: So --

13 THE HEARING EXAMINER: That -- we don't  
14 need to have this briefing to try to save us time and  
15 effort because your waiver argument and his defense  
16 relies upon the underlying merits of the case.

17 MS. HARDY: I don't think it relies on  
18 the impact of their signature on the well postal  
19 letter.

20 THE HEARING EXAMINER: I think it does  
21 at this point. From what you've said and what he  
22 said, I think it does. So I'm inclined to agree with  
23 Mr. DeBrine here in that having pre-hearing briefings  
24 and summary judgment and all this back and forth --  
25 really, let's hear the case.

1           And then you may hear -- and then you  
2           make your legal argument at that point on why, once we  
3           have the facts, their signature prevents them from now  
4           arguing this was double dealing and we shouldn't allow  
5           that.

6           MS. HARDY:   Okay.

7           THE HEARING EXAMINER:   That's how I see  
8           it now based on what your argument was.   And I heard  
9           your argument.   And based on what his argument is and  
10          the idea of how waiver works in this context, I agree  
11          we need to understand the facts.   We need to hear both  
12          sides before we can even make a decision.

13          And to do that before the hearing  
14          doesn't make sense because then we're going to have  
15          two hearings.   Let's just have one hearing and get it  
16          done.

17          So now we're back to the issue of  
18          discovery.   And I understand that you haven't agreed  
19          between you on discovery.   But there must be some  
20          points that you do agree on.   There has to be some  
21          points, some points that both parties agree, "Yes.  
22          This would be relevant to Clause 24 and 25."

23          And then maybe parties have arguments,  
24          you know, "We want this extra, we want that extra."  
25          So let's set something where the parties submit



1 something to me saying, "Here are the issues that we  
2 agree" -- sorry -- "here are the discovery areas that  
3 we agree on. Here are the ones that we don't agree  
4 on, and here's why we don't agree on them."

5 And a simple short sentence from each  
6 party about, you know, ee don't agree, we agree.  
7 Sorry. We don't -- we find this to be relevant. We  
8 don't find this to be relevant. So can you do that so  
9 I can sign some sort of subpoena so that you all can  
10 exchange information and we can hear this on the 21st?

11 MS. HARDY: Yes.

12 MR. DEBRINE: Yes. We can do that.  
13 And we can submit a draft subpoena going both ways.  
14 That way you can right amend it as necessary based on  
15 the rulings. So the --

16 THE HEARING EXAMINER: Based on your  
17 arguments --

18 MR. DEBRINE: Based on the argument and  
19 the rulings.

20 THE HEARING EXAMINER: About discovery,  
21 relevancy?

22 MR. DEBRINE: Yes.

23 THE HEARING EXAMINER: And materiality.

24 MR. DEBRINE: That'll make it for --  
25 easier to you when you just hear the subpoena.

1 THE HEARING EXAMINER: Yeah. Now, do  
2 both of you agree, while I have you here, that when it  
3 comes to discovery, my recollection -- and it's hazy  
4 because I didn't do a lot of this in civil  
5 procedure -- that something has to be calculated to  
6 lead to something that is --

7 MS. HARDY: Right. See, reasonably  
8 calculated --

9 THE HEARING EXAMINER: That's a thing.  
10 That's it. That's the reason --

11 MS. HARDY: To lead to the discovery of  
12 admissible evidence.

13 THE HEARING EXAMINER: That's the one.  
14 Okay. So we agree on the standard?

15 MR. DEBRINE: Yes.

16 MS. HARDY: Yes.

17 MR. DEBRINE: We will apply the same  
18 standards as --

19 THE HEARING EXAMINER: So yes?

20 MS. HARDY: Yes.

21 THE HEARING EXAMINER: Thank you.

22 MR. DEBRINE: Proceeding --

23 THE HEARING EXAMINER: Thanks for  
24 helping me. I appreciate it. All right.

25 Is there anything further on this case?

1 MS. HARDY: I just do want to make sure  
2 that my witnesses are available on April 21st.

3 THE HEARING EXAMINER: Of course. Do  
4 let us know.

5 MS. HARDY: So I will let you know if  
6 not.

7 THE HEARING EXAMINER: Yeah. We can't  
8 force you to a hearing if your witnesses aren't  
9 available. We know that.

10 MS. HARDY: But I haven't checked with  
11 them, so I have to do that.

12 THE HEARING EXAMINER: And of course,  
13 they can appear virtually like --

14 MS. HARDY: Yes.

15 THE HEARING EXAMINER: Looks like Mr.  
16 Holliday's witnesses -- are they here?

17 MR. HOLLIDAY: Two are here.

18 THE HEARING EXAMINER: Okay. Great.  
19 All right. Perfect.

20 So as you see, we're lenient that way?

21 MS. HARDY: Yes. Understood.

22 THE HEARING EXAMINER: Okay. Anything  
23 further?

24 MR. DEBRINE: No. We appreciate your  
25 time.

1 MS. HARDY: Yes. Thank you.

2 THE HEARING EXAMINER: Thank you for  
3 hashing it out. It was helpful. Appreciate it.

4 MS. HARDY: Thank you.

5 MR. DEBRINE: Thank you.

6 THE HEARING EXAMINER: Thank you.

7 All right. Now, going back to case  
8 25610, before the parties begin and before we talk  
9 about preliminary, because we do have a preliminary  
10 matter in this case. There was a motion filed.

11 Ms. Vance, are you arguing it, or is  
12 Mr. -- excellent. And I saw you --

13 MR. RANKIN: Mr. Hearing Examiner, I  
14 think there's some other entries of appearance.

15 THE HEARING EXAMINER: There are. I  
16 didn't know that. Excellent. Let's hear.

17 MS. LUCK: Good afternoon,  
18 Mr. Hearing Examiner. It's Kaitlyn Luck appearing for  
19 Avant.

20 THE HEARING EXAMINER: Good afternoon,  
21 Ms. Luck.

22 MR. EVERHART: Mr. Hearing Examiner,  
23 Jacob Everhart with Beatty & Wozniak New Mexico,  
24 appearing on behalf of Coterra Energy Operating,  
25 Magnum Hunter Production, Inc. and Cimarex Energy

1 Company of Colorado, collectively as Coterra for  
2 monitoring purposes only.

3 THE HEARING EXAMINER: Perfect. Thank  
4 you, Mr. Everhart.

5 And, Ms. Luck, you're monitoring only?

6 MS. LUCK: Yes, Mr. Herring Examiner.  
7 Thank you.

8 THE HEARING EXAMINER: Thank you.

9 MR. BRUCE: Mr. Examiner, Jim Bruce  
10 representing Kaiser-Francis only. I'm just  
11 monitoring.

12 THE HEARING EXAMINER: Yes. I saw you  
13 withdrew your objection. Thank you.

14 MS. PENA: Good afternoon,  
15 Mr. Hearing Examiner. Yarithza Pena with Hardy McLean  
16 on behalf of Permian Resources Operating. And we are  
17 also just monitoring.

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

20 Are there any others? I saw Ms. Hatley  
21 earlier.

22 Was she involved in this case, Mr.  
23 Holliday?

24 There she is. Is she?

25 MS. HATLEY: Good morning or good

1 afternoon, Mr. Examiner. I'm so used to saying good  
2 morning.

3 THE HEARING EXAMINER: Yes.

4 MS. HATLEY: Yes. I am present. And  
5 Holland & Hart is representing Marathon in this case.

6 THE HEARING EXAMINER: Thank you very  
7 much.

8 We have a preliminary matter to deal  
9 with. So I think let's deal with the preliminary  
10 matter. I did have a chance to read the motion to  
11 exclude certain evidence as immaterial because the  
12 allegation is that it was not -- the issue was not in  
13 your pre-hearing statement. And the rules require you  
14 to have the non-standard location in -- request in  
15 your pre-hearing statement.

16 I also read your first response. I was  
17 in a commission meeting this morning starting at nine  
18 when Freya sent your updated -- what is your up --  
19 what did you change?

20 MR. HOLLIDAY: I'm a stickler for  
21 grammar. So I fixed a few things.

22 THE HEARING EXAMINER: Oh, okay.

23 MR. HOLLIDAY: Nothing.

24 THE HEARING EXAMINER: All right.

25 Good. So meaningfully, it didn't change your

1 response.

2 All right. Okay. So let me tell  
3 you -- hold on one second. I did an analysis of that.

4 So, Ms. Vance, I'm going to sum up your  
5 argument, and then I'm going to sum up Mr. Holliday's  
6 argument because I didn't have a lot of time to do  
7 this. This was all done this morning. So I want to  
8 make sure I basically understood your position before  
9 I make a ruling.

10 So your motion to exclude Powderhorn  
11 Exhibits A-9, A-18, and A-19 as well as paragraph 30  
12 of Travis Macha's statement are based on three main  
13 legal arguments. Number 1, "Procedural violation."  
14 You argue that "Powderhorn must include all requested  
15 relief in their application under 19.15.4.8a NMAC.  
16 Powderhorn's application did not seek a non-standard  
17 location approval and explicitly stated it would seek  
18 such approval administratively instead."

19 MS. LUCK: Correct.

20 THE HEARING EXAMINER: Good. Number 2,  
21 "Irrelevance. Since the NSL approval is not part of  
22 the requested relief, Marathon contends that any  
23 related testimony or exhibits are irrelevant and  
24 material under 19.15.4.17a." You don't have to agree  
25 with each statement I make. I'll ask you at the end.

1                   Number 3, that "Powderhorn's  
2 administrative NSL applications were protested by  
3 Marathon in October of 2025 and subsequently canceled  
4 on November 29, 2025, because Powderhorn failed to  
5 resolve the objections within 30 days." Okay.

6                   And number 4, basically, you're saying  
7 it's improper bootstrapping. Marathon is asserting  
8 here that "When an administrative application is  
9 rejected due to an objection, the proper procedure is  
10 to file a new application for a hearing, not to  
11 bootstrap it into an existing pooling case without  
12 proper notice."

13                   MS. LUCK: Correct.

14                   THE HEARING EXAMINER: Good. Now, the  
15 response in opposition from Powderhorn, Powderhorn  
16 argues that I should deny the motion because the  
17 evidence is essential for the Division to evaluate the  
18 proposed development plan.

19                   Number 1, "Necessity for evaluation.  
20 Powderhorn contends that the Division cannot  
21 meaningfully assess a compulsory pooling application  
22 without understanding the engineering rationale and  
23 specific locations of the proposed wells. Broad  
24 admissibility. Under 19.15.4.17a NMAC, examiners have  
25 broad discretion to admit relevant evidence.



1           Lack of prejudice. Marathon has known  
2 about the proposed NSL since August of 2025.  
3 Powderhorn notes that of the 17 noticed parties,  
4 Marathon is the sole remaining objector suggesting the  
5 motion is a delay tactic."

6           Two more issues. "Administrative  
7 efficiency. Powderhorn requested the Division  
8 adjudicate the NSL within the current proceeding to  
9 avoid duplicative, costly, inefficient second hearing  
10 involving the same parties and evidence." And the  
11 last one, "Even if the" decision -- "Division decides  
12 the NSLs must be pursued separately, Powderhorn argues  
13 the evidence remains relevant to show the  
14 completeness, reasonableness, and good faith of the  
15 development plan."

16           Did I capture that?

17           MR. HOLLIDAY: Yes, sir.

18           THE HEARING EXAMINER: Oh, good. All  
19 right.

20           You know, the way I look at  
21 administrative hearings is that they're due process  
22 hearings. And due process is flexible so that it  
23 gives me some way to craft some sort of middle ground  
24 here. I understand the argument. I understand the  
25 argument in opposition.

1           It seems like I have several paths  
2 forward. Number 1, I could conditionally admit the  
3 evidence for the limited purpose of evaluating the  
4 reasonableness and good faith of the development plan.  
5 The exhibits would be part of the record for the  
6 pooling case, but the Division would not grant the  
7 actual NSL approval in this proceeding.

8           That way Powderhorn gets to explain  
9 their engineering logic to the examiner now while  
10 Marathon preserves its right to a separate formal  
11 hearing on the specific NSL technicalities later.

12           Two -- this is sort of a de facto  
13 consolidation. The compromise. The Division could  
14 allow Powderhorn to verbally amend its application to  
15 include the NSL relief, provided it can prove that all  
16 17 affected parties received notice that was  
17 substantially equivalent to the hearing notice. If I  
18 find that this previous notice was sufficient to  
19 satisfy due process, we could hear both matters and  
20 avoid a duplicative proceeding.

21           Finally, since Marathon relied on the  
22 XTO Apache precedent, which suggests a rejected  
23 administrative application requires a brand new filing  
24 for a hearing, I could hear the pooling evidence now  
25 but stay the final order until Powderhorn formally

1 refiles its NSL application. This at least keeps the  
2 case moving forward without violating the technical  
3 requirement that this specific NSL relief must be  
4 included in the application.

5 Finally, the parties could reach a  
6 middle ground by agreeing on certain technical facts  
7 while disagreeing on the procedural law. Marathon  
8 could withdraw its objection to the admissibility of  
9 the evidence if Powderhorn stipulates that the  
10 evidence cannot be used as the legal basis for an  
11 immediate NSL order.

12 So let me ask you a question,  
13 Mr. Holliday. And then it comes to giving me the  
14 evidence I need to show that all 17 affected parties  
15 received notice that was substantially equivalent to  
16 the hearing notice about the NSL, what do you say?

17 MR. HOLLIDAY: If I were to rank our  
18 priorities on this, the first would be to allow the  
19 evidence in so that we can assess the development plan  
20 because seeking these offsets in the Purple Sage  
21 Wolfcamp is a common course business. Every operator  
22 does it. It's fully expected that Powderhorn would in  
23 its development plan.

24 THE HEARING EXAMINER: By your saying  
25 "offset," you mean non-standard location?

1 MR. HOLLIDAY: Yes. The non-standard  
2 locations. Yes, sir. Shrinking the heel toe from 330  
3 to a hundred feet. So that would be priority number  
4 1. We would prefer, rather than have a duplicative  
5 hearing, that we could hear it all at one time. We  
6 have the same parties, same evidence, same notices,  
7 same counsel probably. And we're already here. So --

8 THE HEARING EXAMINER: So is that an  
9 answer to the question I just asked?

10 MR. HOLLIDAY: Yes, sir.

11 THE HEARING EXAMINER: I wasn't sure.

12 MR. HOLLIDAY: Okay. So yes, sir. Our  
13 main priority would be to get the evidence in. And we  
14 would --

15 THE HEARING EXAMINER: That's not what  
16 I asked you, though.

17 MR. HOLLIDAY: Okay.

18 THE HEARING EXAMINER: I don't want you  
19 to rank the options right now. What I'm asking you is  
20 for number 2 to be even an option, I need to hear from  
21 you on how all 17 parties were given notice about this  
22 NSL.

23 MR. HOLLIDAY: Okay. I would -- I  
24 believe they are because they're the same parties in  
25 the case. I would need to compare the NSL notice to

1 the hearing notice to ensure that there weren't maybe  
2 some offset operators to the NSL locations.

3 THE HEARING EXAMINER: Yeah. I -- that  
4 answer doesn't really say that you know. So -- and I  
5 need to make a decision now.

6 MR. HOLLIDAY: Sure.

7 THE HEARING EXAMINER: Okay. So  
8 without knowing that, I'm going to take option 2 off  
9 the table. I do find the evidence relevant and  
10 material, so I'm going to let the evidence in. But  
11 I'm not going to -- the Division will not make a  
12 ruling on the NSL as part of today's contested  
13 hearing.

14 Did you have something to say,  
15 Ms. Vance?

16 MS. VANCE: Yes. I want to make a  
17 couple of points.

18 THE HEARING EXAMINER: Go ahead.

19 MS. VANCE: Number 1, so Powderhorn  
20 confuses the issue here. Merit -- the Marathon is not  
21 arguing at all that Powderhorn is not entitled to  
22 present its proposed and complete plan.

23 THE HEARING EXAMINER: Okay.

24 MS. VANCE: It can do that. And if  
25 they want to discuss longer lateral links, they can do

1 that. They can do that because they have their C-102s  
2 included in their hearing packet, which includes their  
3 first and last take points, which are at a non-  
4 standard location.

5 They're two separate issues. The  
6 longer lateral links, they can discuss that through  
7 their C-102s. The NSL, the canceled administrative  
8 applications for non-standard well location, that is  
9 not relevant and material because it's not a part of  
10 their application for hearing.

11 THE HEARING EXAMINER: Which exhibit is  
12 that?

13 MS. VANCE: It was the -- which one?  
14 The C-102s or the canceled administrative application?

15 THE HEARING EXAMINER: That. That's  
16 the exact --

17 MS. VANCE: So that's the A-18 and I  
18 think A-19. What I included or outlined in my  
19 objection. So you give me what --

20 THE HEARING EXAMINER: So hold on.  
21 Hold on, Ms. Vance.

22 Mr. Holliday, would you please tell me  
23 what are -- the exhibits that I just listed a minute  
24 ago, what is Exhibit A-9?

25 MS. VANCE: A-19. Sorry. And A-18.

1 THE HEARING EXAMINER: Okay. Well, I'm  
2 not asking you about A-19, Ms. Vance, so please hold  
3 on.

4 MS. VANCE: Sure.

5 THE HEARING EXAMINER: Mr. Holliday,  
6 what is Exhibit A-9?

7 MR. HOLLIDAY: A-9 is our Pooled Party  
8 List & Commitment Status. There's a reference to the  
9 NSL, like, a -- not even a complete sentence in there.

10 THE HEARING EXAMINER: Okay. So based  
11 on my ruling, you can remove that reference to the  
12 NSL; right?

13 MR. HOLLIDAY: We could remove the  
14 reference to the NSL from A-9. Yes.

15 THE HEARING EXAMINER: That's what I'm  
16 asking you. Okay. So that cures that A-9 based on my  
17 ruling that I still find some of this evidence to be  
18 relevant and material. So let me continue with  
19 Mr. Holliday first.

20 MS. VANCE: And --

21 THE HEARING EXAMINER: And what is A-  
22 18, Mr. Holliday?

23 MR. HOLLIDAY: A-18 is a summary of the  
24 non-standard location rationale that Powderhorn would  
25 like to present. And A-19 -- I'll skip ahead -- is

1 our sample notice letter that was sent out on October  
2 22nd.

3 THE HEARING EXAMINER: So, Mr.  
4 Holliday, if I have ruled that since your pre-hearing  
5 statement did not -- I'm accepting the argument made  
6 by Ms. Vance that because the pre-hearing statement  
7 did not contain a request for an NSL and that you need  
8 to proceed on that separately. Do you still need A-  
9 18?

10 MR. HOLLIDAY: I think we do need A-18.

11 THE HEARING EXAMINER: Why?

12 MR. HOLLIDAY: To tell the complete  
13 story of the development plan.

14 THE HEARING EXAMINER: Okay.  
15 And Ms. Vance?

16 MS. VANCE: It's included with their C-  
17 102s. It has their first and last take point. If  
18 they want to discuss that through their direct  
19 testimony, they can. And further, I do want to point  
20 out that this is prejudicial to Marathon. This was  
21 not included in their original application.

22 As you pointed out, there was a period  
23 of time that they were through the administrative  
24 process to resolve this issue with Marathon that ended  
25 at the -- in -- it was November 29, 2025. And so



1 they've had three months if they wanted to file a new  
2 application or an amended application and do a new  
3 notice and include this as a part of their affirmative  
4 case and requested relief.

5 They have not done that. We got no  
6 heads up from their counsel that they were going to  
7 include this as a part of their affirmative case and  
8 also request that they have -- that they include the  
9 approval for this as a part of their affirmative case.  
10 And so -- and not -- and it wasn't included in their  
11 pre-hearing statement.

12 So then Marathon is prejudiced. We are  
13 not allowed to -- we're not in a position where we  
14 were able to make that a part of our affirmative case.  
15 So I would request that this is removed from their --  
16 that this -- the testimony and exhibits be removed.

17 And if they want to file -- I know  
18 you've got some other suggestions about how to keep  
19 the case moving forward. But at least for us here  
20 today, this should not be a part of the case at all.

21 THE HEARING EXAMINER: I've already  
22 ruled on Exhibit A-9 and that they're going to remove  
23 the reference to an NSL in A-9. So I can't see how  
24 that would prejudice you with Exhibit A-9.

25 MS. HARDY: I'm talking about the A-18,

1 A-19, and then the testimony of -- Mr. Macha's  
2 testimony.

3 THE HEARING EXAMINER: Okay. So what  
4 I'm going to do with A-18, A-19, and paragraph 30 of  
5 Mr. Macha's statement is let's wait until you're  
6 presenting your case because I'm not going to tell you  
7 how to present your case. And I don't think it's  
8 right for an opposing party to say what you need and  
9 what you don't need. I understand their objection. I  
10 found in favor to an extent in their favor.

11 But I still feel like you need to be  
12 able to make a full and fair case and give us the  
13 information that shows what I said before, that -- I'm  
14 going to go back to what I said before, that I'm going  
15 to admit the evidence for the limited purpose of  
16 evaluating the reasonableness and good faith of your  
17 development plan as long as it doesn't prejudice the  
18 other party because I do understand Ms. Vance's  
19 argument as well that, you know, you had all this time  
20 to do this.

21 And all of a sudden, they're seeing  
22 this. That's understandable. There's no way around  
23 that. So you'll make your individual what -- when we  
24 get these exhibits, you'll make your argument as to  
25 each exhibit, not A-9 because I've already ruled about

1 A-9 -- but A-18 and A-19 and then that paragraph of  
2 Mr. Macha's.

3 You'll make your argument at that time  
4 when we can see it because I have to figure out what  
5 part of those exhibits, if any, goes to the bigger  
6 picture and what part is prejudicial and unfair  
7 because I agree with that part of the argument. So  
8 that will be my ruling that I'm going to admit.

9 So we're not proceeding on the NSL  
10 today. So in that respect, I'm granting the motion.  
11 However, Mr. Holliday needs to be able to make a full  
12 and fair case. And if part of that evidence goes  
13 toward the reasonableness and the good faith of the  
14 development plan, then I want to hear it and the  
15 Division wants to hear it. So that's how I want to  
16 proceed on that preliminary matter.

17 Now, what I want to do next is I want  
18 to discuss my reading of the pre-hearing statements  
19 and the issues in contention. This is for both  
20 myself, the parties, anyone who's listening, and for  
21 Mr. Fordyce, who I've already discussed this with.

22 So I see that there are really four --  
23 I really see four issues here between Marathon and  
24 Powderhorn that we need to take evidence and make a  
25 decision based on. Number 1, control of overlapping

1 acreage. And of course, this is the central conflict.

2 It involves the north half of irregular  
3 section 2, which both companies include in their  
4 proposed spacing units. I'm going to say Marathon's  
5 position first.

6 Marathon claims that it owns or  
7 controls 100 percent of the working interest in this  
8 specific acreage through a 1976 JOA. They argue that  
9 under our precedent, the operator with the majority  
10 interest in the overlapping area should prevail.

11 Powderhorn, on the other hand, seeks to  
12 pool all uncommitted interests within a larger 959.6  
13 acre unit. That includes section 2. They argue that  
14 the OCD precedent, orders R14140, R23869, allow the  
15 Division to pool acreage already subject to a JOA into  
16 a larger spacing unit.

17 Mr. Holliday, did I outline in the bare  
18 bones way issue of controlling overlapping acreage?

19 MR. HOLLIDAY: Yes, sir. As to the  
20 issues.

21 THE HEARING EXAMINER: Of course.

22 Ms. Vance?

23 MR. RANKIN: I'll take it. I think  
24 it's a fair overview of the representative arguments.  
25 Yeah.

1 THE HEARING EXAMINER: And that's all  
2 I'm doing here.

3 MR. RANKIN: Yeah.

4 THE HEARING EXAMINER: Just trying to  
5 give a very broad three -- 30,000 feet perspective so  
6 that everyone feels like they're oriented here, at  
7 least I do.

8 Number 2, risk of stranded acreage  
9 versus efficient development. The parties disagree on  
10 which plan better protects correlative rights and  
11 prevents waste.

12 First, I'll give Powderhorn's concern.  
13 Powderhorn alleges that Marathon's plan, which is  
14 limited to the north half of section 2, will strand  
15 the or -- the northeast quarter of section 3. They  
16 argue that their one and a half mile laterals provide  
17 a more comprehensive development of the Wolfcamp  
18 formation.

19 Marathon. Marathon argues that  
20 Powderhorn's asynchronous drilling plan will cause  
21 parent/child degradation and that Powderhorn's  
22 approach forfeits economies of scale that Marathon's  
23 co-development of Wolfcamp benches would capture.

24 Mr. Holliday?

25 MR. HOLLIDAY: That's sufficient. Yes,

1 sir.

2 THE HEARING EXAMINER: Mr. Rankin?

3 MR. RANKIN: I think that's an accurate  
4 capture of the arguments.

5 THE HEARING EXAMINER: We're halfway  
6 there.

7 Third -- three, operator qualifications  
8 and readiness. Marathon raises several challenges  
9 regarding Powderhorn's capability to execute its  
10 proposed plan. They raise the following issues.

11 Operational track record. Marathon points out that  
12 Powderhorn's a new operator in New Mexico with no  
13 history of drilling horizontal wells in the state.

14 Marathon conversely notes it already  
15 operates existing wells in the area. And  
16 infrastructure and permitting. Marathon claims it has  
17 approved applications for permit to drill, firm  
18 commitments for takeaway, water, gas, and oil, and a  
19 pre-approved state communitization agreement.

20 Marathon asserts Powderhorn lacks APDs and has not  
21 secured takeaway for oil and gas.

22 Mr. Rankin?

23 MR. RANKIN: That's a fair summary of  
24 the readiness arguments that we presented.

25 THE HEARING EXAMINER: And last, good

1 faith negotiations. Again, Marathon contends that  
2 Powderhorn did not engage in good faith negotiations  
3 before seeking compulsory pooling. This is a standard  
4 requirement for the Division to grant a pooling order.  
5 You don't have to agree with that. It's pretty  
6 simple.

7 MR. HOLLIDAY: Mr. Examiner, if I may  
8 circle back to point number 1?

9 THE HEARING EXAMINER: Yes.

10 MR. HOLLIDAY: We only actually have  
11 one proposed development plan from -- in front of the  
12 Division today.

13 THE HEARING EXAMINER: Okay.

14 MR. HOLLIDAY: That's the Powderhorn  
15 plan that's seeking to pool the acreage within the  
16 Super Hornet Unit. Marathon's objecting on the  
17 rationale that they will self-develop, but there's no  
18 plan before the Division for that.

19 THE HEARING EXAMINER: I thought that  
20 was because Marathon's plan -- I thought they had a  
21 320 acre -- 0.32 acre spacing unit plan that they  
22 didn't need because they have voluntary commitment.

23 MR. RANKIN: Okay. That's correct.  
24 We're that -- tracking on that issue. Yes, sir. No.  
25 I would strenuously disagree that -- actually, there

1 are two development plans firmly in front of them.  
2 Yeah. There are two plans.

3 We did -- however, only one pooling  
4 application is before the Division. We do have a  
5 contradictory pooling -- a contradictory development  
6 plan that involves fully developing the north half of  
7 section 2 Wolfcamp acreage.

8 So that's what Mr. Holliday's referring  
9 to. Yes. It's a plan to self-develop. It is a  
10 development plan. There are APDs that have been  
11 issued. And the -- Marathon is ready and willing and  
12 able to go forward with this drilling plan.

13 THE HEARING EXAMINER: Oh, thank you.

14 So I think next let's deal with  
15 exhibits. Let's try to get as many admitted through  
16 stipulation as we can.

17 So, Mr. Holliday, have you -- what  
18 exhibits have you submitted for this hearing?

19 MR. HOLLIDAY: We have submitted two  
20 packets of exhibits, our original exhibits and a much  
21 smaller rebuttal packet.

22 THE HEARING EXAMINER: Perfect. How  
23 have you labeled your exhibits?

24 MR. HOLLIDAY: We've labeled A as our  
25 land exhibits. And then that's A-1 through 19. And



1 this is on page 2 of our original exhibit package. We  
2 have a numbered -- a page numbered index.

3 THE HEARING EXAMINER: Okay.

4 MR. HOLLIDAY: B, we have our geology.  
5 So we have seven original exhibits in our geology.  
6 And then for C, we have reservoir where there are six  
7 exhibits. And for D, it's legal. Those are my  
8 exhibits, and that -- there are four there.

9 THE HEARING EXAMINER: Okay. I didn't  
10 catch how many reservoir exhibits you have?

11 MR. HOLLIDAY: Six.

12 THE HEARING EXAMINER: Six. All right.  
13 So let me just repeat this because this will be very  
14 important. You have your land exhibits marked as  
15 Exhibits A and then A-1 through 19?

16 MR. HOLLIDAY: Correct.

17 THE HEARING EXAMINER: Okay. Good.  
18 Your geology exhibits are marked as B and then B-1  
19 through B-7?

20 MR. HOLLIDAY: Correct.

21 THE HEARING EXAMINER: Your reservoir  
22 engineering exhibits are C and then C-1 through C-6?

23 MR. HOLLIDAY: Correct.

24 THE HEARING EXAMINER: All right. Your  
25 legal exhibits are D and D-1 through D-4?

1 MR. HOLLIDAY: Yes, sir.

2 THE HEARING EXAMINER: And then you  
3 have rebuttal exhibits. But let's wait for just a  
4 moment on the rebuttals. I want to ask you a few  
5 questions. Let's see. I wrote this down somewhere.  
6 Hold on a second. One moment. I show your -- here we  
7 go. Okay. I show Travis Macha is your landman?

8 MR. HOLLIDAY: Yes.

9 THE HEARING EXAMINER: Leonard Wood is  
10 your geologist?

11 MR. HOLLIDAY: Correct.

12 THE HEARING EXAMINER: Brendan Tippen,  
13 reservoir engineer?

14 MR. HOLLIDAY: Yes, sir.

15 THE HEARING EXAMINER: All right. And  
16 then obviously you. Okay. Now, I recognize some of  
17 these names. Have all three of your expert witnesses  
18 been admitted before this Division as experts in their  
19 fields?

20 MR. HOLLIDAY: Yes. They have.

21 THE HEARING EXAMINER: Okay. Very  
22 good. All right. So that's excellent. Now, your  
23 rebuttal exhibits, how have you marked those?

24 MR. HOLLIDAY: So we've marked those in  
25 a similar fashion. On page 2 of the rebuttal packet,

1 we've just continued the numbering.

2 THE HEARING EXAMINER: Yeah.

3 MR. HOLLIDAY: So A is still land, and  
4 then we seek to exhibit -- admit exhibits A-20 through  
5 25.

6 THE HEARING EXAMINER: Okay. Fine.

7 MR. HOLLIDAY: For B, our geology, we  
8 have one additional Exhibit B-8.

9 THE HEARING EXAMINER: Okay.

10 MR. HOLLIDAY: And for reservoir,  
11 Exhibit C, we have two additional. That would be C-7  
12 and C-8.

13 THE HEARING EXAMINER: All right. Now,  
14 I don't know who the -- Mr. Rankin? Okay. Good. All  
15 right. So from now on, I'm just calling on you? All  
16 right. Fine. You'll let me know when you want --  
17 when you get tired and you want Ms. Vance to take  
18 over? All right. So, Mr. Rankin, have you had a  
19 chance to review all these exhibits?

20 MR. RANKIN: I have.

21 THE HEARING EXAMINER: Okay. Great.  
22 Are you willing to admit any of them through a  
23 stipulation?

24 MR. RANKIN: I'm happy to admit all the  
25 exhibits, including A-18, with the caveat that we have

1 an outstanding objection to it being admitted on the  
2 grounds for the motion. And so I won't further make  
3 any arguments on that -- but just with the caveat that  
4 A-18 is subject -- remain subject to our motion to  
5 exclude.

6 THE HEARING EXAMINER: What about A-19?

7 MR. RANKIN: It doesn't really serve  
8 any purpose because it -- since the Division's already  
9 ruled that it's not going to rule on the NSL  
10 application and grant that relief, it doesn't really  
11 serve any purpose. So I -- it's extraneous I think.

12 THE HEARING EXAMINER: Okay. Okay.  
13 Fine. I have it here. So basically then, what I'm  
14 understanding from you is you have no objection to  
15 admitting all of the exhibits that we just talked  
16 about, including the rebuttal exhibits with the  
17 exception of A-18?

18 MR. RANKIN: Correct.

19 THE HEARING EXAMINER: Okay. And I  
20 think there's also a paragraph in A-2. Wasn't there  
21 A-3?

22 MR. RANKIN: That's correct. And I  
23 think, you know, again, it's almost irrelevant because  
24 the Division is not going to rule to grant that  
25 relief.

1 THE HEARING EXAMINER: Right. Okay.  
2 All right. Well, I just -- I'm just being proactive  
3 here. Okay. Fine.

4 So, Mr. Holliday, your exhibits are all  
5 admitted into evidence with the exceptions that we  
6 just spoke about.

7 (Powderhorn Exhibits A through C-8 were  
8 marked for identification and received  
9 into evidence.)

10 MR. HOLLIDAY: Thank you.

11 THE HEARING EXAMINER: Yeah. Okay.  
12 Now, let's go to Marathon. Can you walk me through  
13 what I just asked Mr. Holliday?

14 MR. RANKIN: Sure. Thank you,  
15 Mr. Hearing Examiner. Marathon has submitted a set of  
16 direct testimony exhibits marked A, B, and C. A is  
17 the self-affirmed statement of Ms. Shelley Klingler,  
18 landman. She's previously been qualified already in  
19 land matters. Attached are her Exhibits A-1 through  
20 A-8.

21 THE HEARING EXAMINER: Mr. Rankin, does  
22 that include a self-affirmed statement that's  
23 generally marked as Exhibit A? So is it --

24 MR. RANKIN: Correct. So A is a  
25 separate exhibit and then A-1 through A-8.

1 THE HEARING EXAMINER: Okay. Got it.  
2 What's next?

3 MR. RANKIN: Same process for  
4 Mr. Preston Dupree. He's a geologist. He has not  
5 previously testified. His exhibits are B, which is a  
6 self-affirmed statement, and then B-1 through B-5,  
7 which include his resume. Okay.

8 And then finally, Exhibit C, which is  
9 the self-affirmed statement of Dr. Umekwe, who's a  
10 engineer, reservoir engineer. And he has not  
11 previously testified before the Division. And  
12 attached is his sole exhibit for -- on direct is his  
13 resume, C-1.

14 THE HEARING EXAMINER: Thank you. No  
15 rebuttal exhibits?

16 MR. RANKIN: We filed rebuttal  
17 exhibits. Wouldn't miss the opportunity. And those  
18 are exhibits numbered Marathon Rebuttal Exhibits 1  
19 through 9.

20 THE HEARING EXAMINER: All right. So  
21 they don't necessarily track the original witnesses.  
22 They're just 1 through 9?

23 MR. RANKIN: Correct.

24 THE HEARING EXAMINER: Okay. That's  
25 fine. Okay.

1 Mr. Holliday, now it's your turn. Any  
2 reason?

3 MR. HOLLIDAY: We have no objection to  
4 the exhibits or the rebuttal exhibits.

5 THE HEARING EXAMINER: Great. Thank  
6 you, sir.

7 (Marathon Exhibits A through Rebuttal 9  
8 were marked for identification and  
9 received into evidence.)

10 THE HEARING EXAMINER: So I want to  
11 mention, Mr. Aragon, all the exhibits from both  
12 parties have been admitted except A-18 -- that's  
13 Powderhorn -- and paragraph 30 of Powderhorn's Exhibit  
14 A. Do you copy?

15 THE REPORTER: Noted. Thank you.

16 THE HEARING EXAMINER: Thank you.

17 All right. So we have now to decide  
18 who's going first.

19 I would think it would be you,  
20 Mr. Holliday. Are you good with that?

21 MR. HOLLIDAY: Yes, sir.

22 THE HEARING EXAMINER: You are good  
23 with that. Okay.

24 And is there any objection, Mr. Rankin?

25 MR. RANKIN: No. Mr. Hearing Office,

1 in fact, we have conferred on that exact issue. And  
2 if it's okay with you, I might -- and with Mr.  
3 Holliday represent to you what we discussed and agreed  
4 if that's okay, if you agree.

5 THE HEARING EXAMINER: Yeah. Great.

6 MR. RANKIN: So in the past, I think  
7 we've taken different approaches with contested  
8 hearings. And here, I do think it's most efficient if  
9 the presenting party were to present each of their  
10 witnesses, go from direct right into rebuttal.

11 THE HEARING EXAMINER: Agreed.

12 MR. RANKIN: Go into cross and then  
13 available for Division examination.

14 THE HEARING EXAMINER: Agreed.

15 MR. RANKIN: Now, the only other twist  
16 is that one of our witnesses who's remote is not  
17 available tomorrow. So we've asked --

18 THE HEARING EXAMINER: I remember you  
19 mentioned it.

20 MR. RANKIN: Yeah. We've asked that he  
21 be permitted to go out of order so that --

22 THE HEARING EXAMINER: By all means--  
23 today before we close.

24 MR. RANKIN: Thank you very much.

25 THE HEARING EXAMINER: Yeah. And what



1 is the name of that witness?

2 MR. RANKIN: Dr. Umekwe the reservoir  
3 engineer.

4 THE HEARING EXAMINER: What country is  
5 he from?

6 DR. UMEKWE: Nigeria.

7 MR. RANKIN: Nigeria.

8 THE HEARING EXAMINER: Yes. Perfect.  
9 Okay. We will get you in today, sir. Okay.

10 Mr. Holliday, I don't know if you feel  
11 it necessary, but if you do, one or two-minute opening  
12 statement?

13 MR. HOLLIDAY: Yes, sir. I'll get --  
14 excuse me. I'll get through this as briefly as I can.  
15 All right.

16 So my name's Ben Holliday. I represent  
17 the applicant in this case, Powderhorn Operating. And  
18 this case concerns whether the Division should approve  
19 a 960 acre horizontal spacing unit covering section 2  
20 and the east half of Section 3 and Township 24 South  
21 Range 26 East for Wolfcamp development.

22 Powderhorn's evidence is going to show  
23 that Powderhorn's proposed development plan is a real  
24 engineered and executable plan that will efficiently  
25 develop the entire 960 acres. It will prevent waste

1 and protect the correlative of rights of all owners in  
2 the spacing unit that include the State of New Mexico.

3 By contrast, Marathon asked the  
4 Division to divide -- to deny Powderhorn's application  
5 based on a 50-year-old joint operating agreement that  
6 was written for vertical wells, that has never been  
7 used to develop the Wolfcamp formation, and contains  
8 no provisions for horizontal development across  
9 multiple sections.

10 So the Division has already addressed  
11 this precise situation as we've discussed in the Fiero  
12 case order number R23869 last year, where the Division  
13 confirmed that it has the authority to prove pooling  
14 over the objection of an operator who's relying on a  
15 legacy era -- I mean, excuse me -- legacy vertical era  
16 JOA when the Division finds that it's necessary to  
17 ensure the efficient development and to protect  
18 correlative rights.

19 So we believe the facts in this case  
20 track those in Fiero and are at least as compelling,  
21 if not more so. Powderhorn started with its  
22 development plan in July of 2025 and proposed it --  
23 acquired it in July of '25 and proposed development  
24 within seven days.

25 In that time period, Powderhorn has

1 secured over 78 percent of the working interest  
2 commitment to its development plan. It has obtained,  
3 like Marathon, pre-approval for the required state  
4 communization agreement. We've -- Powderhorn has  
5 staked its drilling location.

6 They have secured water contracts.  
7 They have prepared a fully engineered development plan  
8 that targets the Wolfcamp A in which has provisions  
9 for later infill development of the Wolfcamp B. If  
10 granted an order, Powderhorn intends to spud as well  
11 in September of 2026.

12 Okay. So again, to sum up Marathon's  
13 argument, Marathon objects primarily on the argument  
14 that a 76 Joint Operating Agreement covering the north  
15 half of section 2 only gives it exclusive control over  
16 development, at least as to the north half, and as  
17 affects this case, the entire proposed Super Hornet  
18 spacing unit.

19 But our evidence is going to show three  
20 things. One, as I mentioned, that JOA has never been  
21 used to develop Wolfcamp formation in the nearly 50  
22 years that it's existed. Second, the largest interest  
23 owner is subject to that agreement -- non-operated  
24 working interest owner subject to that joint operating  
25 agreement, Kaiser-Francis, has already signed a

1 superseding JOA, horizontal JOA, with Powderhorn,  
2 agreeing to participate in Powderhorn's development of  
3 the full 960.

4 And finally, Marathon's own proposed  
5 alternative does not develop all of the acreage that  
6 Powderhorn seeks to pool, particularly state minerals  
7 in Section 3. So if Powderhorn's application is  
8 denied, those acres risk being stranded with no  
9 division in post timeline requiring development of the  
10 north half of section 2.

11 So we're going to present three  
12 witnesses as we mentioned earlier. First, you're  
13 going to hear from Mr. Macha. That's Powderhorn's  
14 land representative.

15 And so Mr. Macha's going to go through  
16 the company's efforts to negotiate with Marathon over  
17 the past seven months, the commitments that Powderhorn  
18 has obtained from other working interest owners in the  
19 unit, proposed unit, and the concrete steps that  
20 Powderhorn has taken to prepare for development in  
21 this area.

22 We're next going to hear from Mr.  
23 Wood -- or next in Powderhorn's order anyway.  
24 Mr. Hood -- Mr. Wood will explain the geological  
25 continuity of the Wolfcamp across the proposed unit.

1 And we will discuss the regional -- everyone's  
2 favorite topic, regional stress orientation that  
3 supports Powderhorn's east/west well design.

4 And then finally, we're going to hear  
5 from Mr. Tippen, Powderhorn's reservoir engineer.  
6 Mr. Tippen will explain why Powderhorn's mile and a  
7 half development plan is more efficient and better  
8 suited to develop the full unit than the one mile  
9 alternative proposed by Marathon and why Marathon's  
10 claims about mandatory co-development of the Wolfcamp  
11 A and B are not supported by the data.

12 So at the end of the hearing, our  
13 evidence will show three things. One, Powderhorn has  
14 presented the Division with real plans to drill wells  
15 and has taken concrete steps to execute on those  
16 plans. This plan is going to efficiently develop the  
17 entire 960 acres, including state minerals that would  
18 otherwise at least, at a minimum, be at risk of going  
19 undeveloped.

20 And finally, that approving  
21 Powderhorn's application will prevent ways to protect  
22 the correlative rights of all parties as is required.  
23 So for those reasons, Powderhorn requests the Division  
24 approve the requested pooling order. Thank you.

25 THE HEARING EXAMINER: Thank you.

1 Mr. Rankin, would you like to make your  
2 opening statement now?

3 MR. RANKIN: I'd like to reserve my  
4 opening to see how things shake out until we present  
5 our case in chief.

6 THE HEARING EXAMINER: Very good.

7 MR. RANKIN: I would, though, if I --  
8 if you don't mind, Mr. Examiner, I might just raise a  
9 potentially brewing evidentiary dispute that was  
10 brought to my attention from the opening. I will just  
11 point out that in their case in chief, Powderhorn has  
12 made the argument that the northeast corridor of  
13 section 3 will be stranded by Marathon's development.

14 And I just heard from the opening  
15 statement that they intend to present testimony on  
16 well orientation. That argument is integral to the  
17 stranding argument -- okay -- whether the  
18 orientation -- what the orientation of the well is --  
19 should be or if there's a preferred orientation.

20 That should have been part of their  
21 case in chief. Okay. Because if they're going to  
22 argue it's stranded in northeast quarter, it was  
23 required to be made in their case in chief that there  
24 was a preferred well orientation. And they didn't  
25 make it in their case in chief, nor do they make it in

1 the rebuttal.

2 So I -- at this point, I'm going to  
3 say, if it comes up, that I want to just apprise the  
4 Division that that's going to be an objection because  
5 number one, it was necessary to be made in their case  
6 in chief. They made the affirmative argument that the  
7 Northeast quarter was going to be stranded.

8 The only way for it to be stranded is  
9 if they could argue that there was a laydown-only  
10 preferred orientation. And they didn't make it in  
11 their case in chief. And they haven't made it in the  
12 rebuttal. And so it's now far delayed to make that  
13 argument at this late date.

14 THE HEARING EXAMINER: You can make  
15 your objection at the time.

16 MR. RANKIN: Thank you.

17 THE HEARING EXAMINER: That's your  
18 right. Okay. So you're reserving your opening.  
19 That's fine.

20 How many -- I'd like to get all the  
21 witnesses sworn in at the same time. I see -- would  
22 all the witnesses besides Ms. Hatley come on up to the  
23 witness stand over here?

24 You're not a witness. Are you,  
25 Ms. Hatley?

1 MS. HATLEY: Maybe someday.

2 THE HEARING EXAMINER: That'll be the  
3 day. Huh, Ms. Hatley? Okay. One, two, three -- how  
4 many are you are from Powderhorn? Two. Perfect.

5 And you are from Marathon? Very good.

6 And my understanding is that there's  
7 one more each that must be virtual. Okay. Can we get  
8 those witnesses? Oh, I see. I see Mr. Umekwe. All  
9 right. And then there should be one more virtual. I  
10 see now. Thank you. Okay. Very good.

11 I see you, Mr. Wood.

12 Mr. Pascal, would you please say your  
13 name properly?

14 DR. UMEKWE: Yeah. My name is  
15 Maduabuchi Pascal Umekwe.

16 THE HEARING EXAMINER: Gee whiz. I  
17 didn't even hear. Would you mind if I call you  
18 Mr. Pascal? Does that bother you?

19 DR. UMEKWE: Not at all.

20 THE HEARING EXAMINER: Okay. Good.

21 DR. UMEKWE: That's fine.

22 THE HEARING EXAMINER: Because I was  
23 hoping you would clarify how you say your last name,  
24 but I didn't even hear you say it, which is not good  
25 for me. All right.



1           So would everyone please raise their  
2 right hands? Very good.

3           Do you swear or affirm under penalty of  
4 perjury the testimony you're about to give is the  
5 truth, the whole truth and nothing but the truth do?

6           DR. UMEKWE: Yes.

7           THE HEARING EXAMINER: Okay. Perfect.  
8 I heard from everyone. Okay. You can lower your  
9 hands. Thank you.

10           Now, for the people here in the room,  
11 will you turn on that microphone? There's a button on  
12 the right. It'll turn green. Would you state and  
13 spell your name for the record and tell me -- if you  
14 have been admitted as an expert before this Division,  
15 tell me what expertise that's in. If you haven't,  
16 please tell me and stay there.

17           MR. DUPREE: Preston Dupree. I have  
18 not been admitted as an expert witness.

19           THE HEARING EXAMINER: But you seek to  
20 be admitted as an expert witness in what field?

21           MR. DUPREE: Petroleum geology.

22           THE HEARING EXAMINER: Petroleum  
23 geology. And are you with Marathon?

24           MR. DUPREE: Yes. I am.

25           THE HEARING EXAMINER: I thought so.

1 Okay. Mr. Dupree. Okay. We'll get to your  
2 qualifications in a moment, so don't go back to your  
3 seat yet.

4 Go right ahead, ma'am.

5 MS. KLINGLER: Good morning, Mr.  
6 Examiner. Shelley Klingler, S-H-E-L-L-E-Y K-L-I-N-G-  
7 L-E-R. And I have been admitted for petroleum land  
8 matters.

9 THE HEARING EXAMINER: And I recognize  
10 you just from recently in the last -- yes. I thought  
11 so. And are you with Marathon?

12 MS. KLINGLER: Yes, sir.

13 THE HEARING EXAMINER: You are? Okay.  
14 And you said land matters, Ms. Klingler.

15 MS. KLINGLER: Yes.

16 THE HEARING EXAMINER: Thank you.  
17 Okay. Go ahead.

18 MR. TIPPEN: My name is Brendan Tippen.  
19 I have not been admitted before the commission before,  
20 but I'm seeking to be an expert in reservoir  
21 engineering.

22 THE HEARING EXAMINER: And you're with  
23 Powderhorn?

24 MR. TIPPEN: Correct.

25 THE HEARING EXAMINER: I thought so.

1 MR. TIPPEN: Miss --

2 THE HEARING EXAMINER: Okay. That's  
3 okay. So you won't be going anywhere quick soon.

4 And then, Mr. Macha, I recognize you.

5 MR. MACHA: Yes. Travis Macha, T-R-A-  
6 V-I-S M-A-C-H-A. And I've been admitted in land.

7 THE HEARING EXAMINER: I know you have.  
8 So, Mr. Macha and Ms. Klingler, please have a seat.  
9 Let's deal with your -- one at a time, please have a  
10 seat. Okay.

11 Now, are you Mr. Tippen?

12 MR. DUPREE: Dupree.

13 THE HEARING EXAMINER: Dupree.

14 You're Mr. Tippen?

15 MR. TIPPEN: Yes.

16 WHEREUPON,

17 PRESTON DUPREE,

18 called as a witness and having been previously duly  
19 sworn to tell the truth, the whole truth, and nothing  
20 but the truth, was examined and testified as follows:

21 EXAMINATION

22 BY THE HEARING EXAMINER:

23 THE HEARING EXAMINER: Mr. Dupree, tell  
24 me about your education toward the field of the  
25 geology.

1 MR. DUPREE: Yes, sir. I did my  
2 bachelor's of science degree in geology at Texas --  
3 Texas A&M University.

4 THE HEARING EXAMINER: What year?

5 MR. DUPREE: Graduated in 2019. And  
6 then I did my Masters of Science in geology at TCU.  
7 Graduated in 2023.

8 THE HEARING EXAMINER: What's TCU?

9 MR. DUPREE: Texas Christian  
10 University? Yes, sir.

11 THE HEARING EXAMINER: Okay. Thank  
12 you. And then what work have you done? What  
13 experience do you have toward petroleum geology?

14 MR. DUPREE: Yes, sir. After my  
15 graduation at A&M, I was a mud logger, so I worked in  
16 various areas across New Mexico and Texas, working for  
17 various operators, collecting mud samples, doing logs  
18 per client request.

19 During my time at Texas Christian  
20 University, I was working also full time at Finley  
21 Resources. They are now called Uinta Wax working out  
22 of the Uinta -- Uinta Basin.

23 Following that, I was working at U.S.  
24 Energy Development Corporation, doing well bore deals  
25 and ballot evaluations across the Permian Basin. And

1 then in 2023, I came over to ConocoPhillips, and I've  
2 been here ever since.

3 THE HEARING EXAMINER: Oh, you're with  
4 ConocoPhillips?

5 MR. DUPREE: And Marathon subsidiary.

6 THE HEARING EXAMINER: It's the same  
7 company or under the same umbrella?

8 MR. DUPREE: Yes.

9 THE HEARING EXAMINER: Oh, okay. I  
10 didn't know that.

11 You never told me that, Ms. Hatley.

12 MR. DUPREE: Subsidiary.

13 THE HEARING EXAMINER: I didn't know  
14 that. Thank you. What is your title at  
15 ConocoPhillips?

16 MR. DUPREE: Currently, just geologist.

17 THE HEARING EXAMINER: Geologist?

18 MR. DUPREE: Yes, sir.

19 THE HEARING EXAMINER: And what are  
20 your current duties now?

21 MR. DUPREE: I am currently the  
22 development geologist across portions of Eddy County.  
23 I'm responsible for development projects from  
24 conception to spud, also in charge of leading third-  
25 party contractors by geosteering. That pretty much

1 sums up what I do.

2 THE HEARING EXAMINER: What part of  
3 your job requires that you interpret the geology  
4 underground?

5 MR. DUPREE: On a daily basis, based  
6 off the development projects that we have, such as the  
7 project we're referring to today. Just different  
8 development projects that we have. Don't want to  
9 speak too specifically about that, but I -- across  
10 Eddy County, I'm evaluating different projects that we  
11 are doing internally.

12 THE HEARING EXAMINER: Okay. And you  
13 said something about Uinta. Is that in Utah?

14 MR. DUPREE: Yes. Green River  
15 Formation.

16 THE HEARING EXAMINER: Yeah. I thought  
17 so. Okay. Okay. So from here on in, you're  
18 qualified before this Division as an expert in  
19 petroleum geology.

20 WHEREUPON,

21 BRENDAN TIPPEN,  
22 called as a witness and having been previously duly  
23 sworn to tell the truth, the whole truth, and nothing  
24 but the truth, was examined and testified as follows:

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EXAMINATION

BY THE HEARING EXAMINER:

THE HEARING EXAMINER: Mr. Tippen, would you do the same thing, education first and experience, throw in some dates. Tell me how your education and your experience lend toward reservoir engineering?

MR. TIPPEN: Yes, sir. So my name is Brendan Tippen. I went to the University of Texas and studied petroleum engineering and have a bachelor's degree in petroleum engineering. After Texas, I --

THE HEARING EXAMINER: When did you earn it?

MR. TIPPEN: 2012 to 2016.

THE HEARING EXAMINER: Thank you.

MR. TIPPEN: In 2016, I started with Piedra Resources, a Permian-based oil and gas operator. I've worked with Permian -- or with Piedra Resources for eight years until 2024. I was -- I started as a reservoir engineer, ended as their lead reservoir engineer, and oversaw acquisitions, planning, and development of our oil and gas resources.

THE HEARING EXAMINER: What does a reservoir engineer do?

1 MR. TIPPEN: We evaluate deals on the  
2 front end, evaluate acreage, and block together  
3 positions. Once we have a position, we -- we do  
4 detailed planning of how we responsibly develop that  
5 position. And then we work with our operations teams  
6 to -- to responsibly develop the position.

7 THE HEARING EXAMINER: Okay. All  
8 right. And so you're with who now?

9 MR. TIPPEN: I'm with Powderhorn  
10 engineer -- or Powderhorn Energy. I'm their director  
11 of engineering. I've been there since 2024, and I  
12 currently oversee all of the A&D engineering work  
13 related to acquiring leasehold. I oversee trades and  
14 in work blocking up as it relates to engineering. And  
15 then I'm also looking forward in the development and  
16 planning of -- of our assets.

17 THE HEARING EXAMINER: Okay. All  
18 right. Thank you. From here on in, you're recognized  
19 as an expert in reservoir engineering.

20 Now, let me go to Mr. Wood because your  
21 picture is nice and large at the bottom of my screen.

22 You've been -- would you state and  
23 spell your name and tell me what expertise you've been  
24 admitted before this Division?

25 MR. WOOD: Yes, Mr. Hearing Examiner.



1 Leonard Wood, L-E-O-N-A-R-D, last name, Wood, W-O-O-D.  
2 I have been admitted as a witness in the field of  
3 geology before

4 THE HEARING EXAMINER: In geology.  
5 Okay. And you're with Marathon?

6 MR. WOOD: I am with Powderhorn Energy  
7 Partners.

8 THE HEARING EXAMINER: You're with  
9 Powderhorn. Thank you. All right. Thank you.

10 WHEREUPON,

11 MADUABUCHI PASCAL UMEKWE,  
12 called as a witness and having been previously duly  
13 sworn to tell the truth, the whole truth, and nothing  
14 but the truth, was examined and testified as follows:

15 EXAMINATION

16 BY THE HEARING EXAMINER:

17 THE HEARING EXAMINER: And finally,  
18 Mr. Pascal?

19 DR. UMEKWE: Yes. I've not -- again,  
20 I'm Pascal Umekwe. I've not been admitted as an  
21 expert witness here before. My background is -- like,  
22 was mentioned earlier, I was raised in West Africa.  
23 And my bachelor's degree was in petroleum engineering.  
24 I completed that in 2009, and I moved to the US for my  
25 graduate studies still in petroleum engineering.

1           So I got my master's degree in  
2     petroleum engineering in the University of Alaska in  
3     Fairbanks. After that, I worked in the backend in the  
4     field with Baker Hughes doing NWD/LWD, so logging wire  
5     drilling stuff. Then after that, I joined  
6     Conoco/Phillips as a development petroleum engineer  
7     doing development works, essentially assessing the  
8     subsurface and drilling opportunities in the field.

9           So I did that for a little while, then  
10    later on, I went off to work for the State of Alaska  
11    where I worked as a petroleum economist. At the same  
12    time, I was doing my graduate studies in economics as  
13    well. So I worked with the State of Alaska for about  
14    six to seven years, where I held roles in petroleum  
15    economics. I worked as a commercial analyst.

16           And in 2022, I joined ConocoPhillips  
17    here in Midland working the -- the Eddy County  
18    development, so doing essentially sub-surface  
19    evaluations leading up to the drilling of wells,  
20    building an economic case for wells, as well as  
21    trades, you know, helping us to call up acreage as  
22    well as divest or acquire new areas to develop.

23           THE HEARING EXAMINER: So Mr. Umekwe,  
24    would you spell your name for the record please?

25           DR. UMEKWE: So Umekwe -- the last --

1 my last name is U-M-E-K-W-E. And I go by Pascal,  
2 which is my middle name.

3 THE HEARING EXAMINER: Would you spell  
4 it, please?

5 DR. UMEKWE: P-A-S-C-A-L.

6 THE HEARING EXAMINER: Okay. Mr.  
7 Umekwe, what does a petroleum engineer do?

8 DR. UMEKWE: A petroleum engineer works  
9 alongside, you know, geologists and other functions to  
10 allow us -- assess the viability of projects,  
11 subsurface projects, leading up to the production of  
12 hydrocarbons.

13 And in -- in this specific case, a  
14 petroleum engineer would be evaluating the -- the  
15 viability of different scenarios for development,  
16 looking at existing data on similar developments, and  
17 trying to assess, you know, what -- what development  
18 style might be best, you know, to ensure that the  
19 right returns are -- are generated for projects.

20 THE HEARING EXAMINER: How is that  
21 different from a reservoir engineer?

22 DR. UMEKWE: So a petroleum engineer  
23 is -- is a -- is a broad discipline. But what I  
24 described earlier maybe speaks more to kind of a  
25 reservoir engineer and what the reservoir engineer

1 does. But the petroleum engineer interfaces with,  
2 again, production engineering, drilling engineering,  
3 and different forms of engineering.

4 But at the end of the day, the goal for  
5 the petroleum engineer or the reservoir engineers is  
6 to premise projects that allow developers of that  
7 project to -- to get adequate returns.

8 THE HEARING EXAMINER: Okay. Perfect.  
9 Thank you, sir. So from here on in, you're recognized  
10 as an expert in petroleum engineering by this  
11 Division. And what time do you need to testify by?

12 DR. UMEKWE: Anytime today I think is  
13 great.

14 THE HEARING EXAMINER: Okay. And what  
15 time zone are you in?

16 DR. UMEKWE: I'm in the Midland office.  
17 Yes. CST, so central time.

18 THE HEARING EXAMINER: Okay. Very  
19 good. You're an hour ahead of us. Okay. That's what  
20 I wanted to know. Thank you very much. Okay.

21 Mr. Holliday, would you like to -- oh,  
22 one thing for both parties. Please understand, as you  
23 can tell, both Mr. Fordyce and I have spent  
24 considerable time reviewing your exhibits, reading  
25 your testimony. You do not need to repeat the same

1 things verbatim as in the exhibits.

2 Please have your witnesses summarize  
3 their testimony. In plain language would be nice for  
4 those of us who are not, you know, petroleum  
5 engineers. And also, present your rebuttal case at  
6 the same time that you're presenting your case in  
7 chief for each witness.

8 So would you like to call Mr. Macha  
9 first?

10 MR. HOLLIDAY: Yes. Powderhorn first  
11 calls Travis Macha.

12 THE HEARING EXAMINER: And,  
13 Mr. Holliday, are you going to be -- these are your  
14 exhibits. So are you going to be showing them on the  
15 screen? You don't have to. You certainly don't have  
16 to, but if you want to, you have -- you can screen  
17 share. I'm not telling you how to present.

18 MR. HOLLIDAY: No. I know.

19 I don't know that -- Adam, would you  
20 mind driving the exhibits?

21 MR. RANKIN: Yours?

22 MR. HOLLIDAY: Yeah. I'm not sure if  
23 I'm set up for --

24 MR. RANKIN: I've got all kinds of --

25 MR. HOLLIDAY: Oh, do you? Okay.

1                   Would you give us a second to confer  
2 while we try to get the exhibits up?

3                   THE HEARING EXAMINER: I don't need the  
4 exhibits.

5                   MR. HOLLIDAY: Okay.

6                   THE HEARING EXAMINER: I'm only saying  
7 if you feel the need for -- to put an exhibit on the  
8 screen, I'm just saying you have the capability of  
9 screen sharing. That's all I'm saying.

10                  MR. HOLLIDAY: Do you need -- I think  
11 we're okay with to proceed without them. And if we do  
12 need one, we'll address it at that point.

13                  THE HEARING EXAMINER: And we'll deal  
14 with it then?

15                  MR. HOLLIDAY: Yes, sir. Okay.

16                  WHEREUPON,

17                                   TRAVIS MACHA,  
18 called as a witness and having been previously duly  
19 sworn to tell the truth, the whole truth, and nothing  
20 but the truth, was examined and testified as follows:

21                                   DIRECT EXAMINATION

22                  BY MR. HOLLIDAY:

23                                   MR. HOLLIDAY: Just a few matters for  
24 the record, Mr. Macha, could you please state your  
25 name and position with Powderhorn?

1 MR. MACHA: Travis Macha. I'm the Vice  
2 President of land.

3 MR. HOLLIDAY: And so to refresh the  
4 Division's memory, how long have you been a petroleum  
5 landman?

6 MR. MACHA: It's probably about eight  
7 to nine years at this point.

8 MR. HOLLIDAY: Okay. And before this,  
9 you were the land manager for New Mexico at Permian  
10 Resources; right?

11 MR. MACHA: That is correct.

12 MR. HOLLIDAY: In that role, you're  
13 responsible for all the New Mexico land operations for  
14 Permian Resources, which is a publicly traded company?

15 MR. MACHA: That is correct.

16 MR. HOLLIDAY: All right. And you  
17 prepared the self-affirmed statement and the exhibits  
18 are at least at your direction?

19 MR. MACHA: That is correct.

20 MR. HOLLIDAY: Let's sort of start from  
21 the top. When did Powderhorn first acquire its  
22 interest in the Super Hornet development area?

23 MR. MACHA: That would've been -- we  
24 closed on July 23, 2025.

25 MR. HOLLIDAY: And what did you do

1 immediately after acquiring that acreage?

2 MR. MACHA: The next day, obviously, at  
3 that point, we were -- we're a-- we're a young  
4 operator. So we started looking around. We wanted to  
5 acquire more acreage. We wanted to work with whoever  
6 was in the prospective development -- development  
7 area. So we did go ahead and reach out to  
8 ConocoPhillips the next day on July 24th.

9 We sent them an email kind of giving  
10 them notice that we will be proposing wells. We will  
11 be giving them carry offers, and we'll be looking to  
12 engage them on -- on negotiations going forward.

13 MR. HOLLIDAY: Okay. And when did you  
14 first propose wells to the various work and interest  
15 owners?

16 MR. MACHA: They're date -- dated July  
17 30th. I believe they got put in the mail on July  
18 31st.

19 MR. HOLLIDAY: Okay. And those well  
20 proposals included AFEs and the normal --

21 MR. MACHA: That's correct.

22 MR. HOLLIDAY: Okay. So after you sent  
23 the well proposals, did you attempt to negotiate  
24 voluntary agreement with Maraton?

25 MR. MACHA: The -- yeah. On July 31st,



1 we did go ahead and send an email with our first carry  
2 offer to Conoco Phillips. They did acknowledge  
3 receipt of that carry offer. And over the course of  
4 August, Conoco reached out one time and asked about  
5 our lateral length -- length confirmation. I believe  
6 that was August 13th.

7 They asked of why we were not including  
8 the west half of section 3 in our plan development,  
9 which why we're not doing that is because there's an  
10 existing Wolfcamp well in west half 3 operated by  
11 Permian Resources. We sat around, waited for them to  
12 kind of respond and digest our carry offer. And then  
13 we did not reengage until September 5th.

14 MR. HOLLIDAY: Okay. You mentioned  
15 waiting on responses. What -- these first initial  
16 emails that you reached out to ConocoPhillips to try  
17 to get a meeting, something like that, did you ever  
18 receive any response whatsoever from Conoco?

19 MR. MACHA: Yeah. So on the July 24th  
20 email, we did not receive a response. In --  
21 subsequent to that, in July, I did send another email  
22 to the non-op supervisor at the time, and I did not  
23 receive a response. I was requesting a meeting.

24 MR. HOLLIDAY: Okay.. And you  
25 mentioned in your testimony that Powderhorn initially

1 had applied for the October docket for the Super  
2 Hornet case, but you held it to November. Why did you  
3 do that?

4 MR. MACHA: So we -- we had the  
5 capability of applying for the October -- October  
6 docket. We did not apply for the October docket.  
7 We -- when we reached out -- back out on September  
8 5th, we inquired of the -- of another meeting. We  
9 kind of gave a status update. That email was also not  
10 responded to.

11 At that point, I -- on September 11th,  
12 I reached out to another Conoco landman and asked what  
13 was going on, like, why were we not receiving  
14 responses. But I did tell him that we are looking  
15 forward to negotiating with them because we do want to  
16 broaden our footprint.

17 So we did go ahead and say, "Hey, in  
18 order to -- to have some good faith negotiations, we  
19 did go ahead and kick this to the November 13th docket  
20 rather than the October docket." At that point,  
21 Conoco did start engaging a little bit more.

22 MR. HOLLIDAY: And so that was to give  
23 Conoco more time to engage with this; correct?

24 MR. MACHA: That and every other party.  
25 Right, right.

1 MR. HOLLIDAY: Okay. So let's talk  
2 about -- there was a proposed trade, and that broke  
3 down. And I think we're going to have to talk a lot  
4 about it today. But Ms. Klingler's testimony alleges  
5 that Powderhorn broadly did not engage in -- or  
6 engaged in bad faith negotiations by offering acreage  
7 that it did not own. Can you describe that from your  
8 perspective?

9 MR. MACHA: Yeah. So just in reference  
10 to the trade, obviously we've -- throughout 2025, we  
11 did kind of give multiple offers, including a letter  
12 of intent, with our -- with our letterhead and kind of  
13 detailed the offer structure and everything.

14 But the trade itself, the first, how  
15 that was -- how that started was on December 19th, we  
16 received an inbound from a third-party group that  
17 said -- that told us, "Hey, we have some acreage  
18 offset Conoco. We just leased it. Would you guys be  
19 interested in acquiring it, doing a deal, whatever you  
20 guys want to do."

21 And we didn't reach back out  
22 immediately. We told them we would look at it  
23 candidly. There wasn't a big interest internally  
24 originally, but they reached back out again in  
25 January. And on January 12th, we did poke Conoco.

1 And we said, "Hey, we got -- we have this acreage."

2 And upon verbal agreement with third  
3 party, they allowed us to negotiate with their acreage  
4 with ConocoPhillips specifically. So we did say,  
5 "Hey, Conoco, would you like to acquire this acreage?"  
6 We'd need some quick feedback, obviously knowing that  
7 we didn't know what other parties that they were  
8 shopping to or anything like that.

9 So at that point, we asked for quick  
10 feedback. We got a response and a formal trade offer  
11 from Conoco on February 2nd.

12 MR. HOLLIDAY: And it was Conoco that  
13 first proposed structure in the transaction as a  
14 trade; correct?

15 MR. MACHA: I would say -- I would  
16 characterize that that they -- they were the ones that  
17 formally proposed the trade first we -- everything we  
18 said was subject to evaluation.

19 MR. HOLLIDAY: And in your experience  
20 as a landman, are these sorts of third-party  
21 transactions a common course of business?

22 MR. MACHA: Yes. We did many  
23 transactions like this at Permian Resources with me  
24 specifically.

25 MR. HOLLIDAY: And how long was this

1 third-party acreage under discussion with Marathon  
2 before the deal fell through?

3 MR. MACHA: So they reached back out on  
4 February 2nd. Immediately upon learning they were  
5 interested, we reached back out to the third party to  
6 see if they were interested. I think, at the time,  
7 they were on vacation, so we did not receive an  
8 immediate response.

9 And then on February 6th, they  
10 responded that there was an alternative route that  
11 they had to pursue. And at that point in time, our  
12 CEO did inform Conoco that the trade was no longer  
13 viable.

14 MR. HOLLIDAY: So a period of about  
15 four or five days?

16 MR. MACHA: Four days.

17 MR. HOLLIDAY: Four days. Okay. So  
18 after this, did Conoco -- or excuse me -- Marathon,  
19 did they terminate negotiations with Powderhorn? Did  
20 they end at that point?

21 MR. MACHA: No. We continued to  
22 discuss carry options.

23 MR. HOLLIDAY: And how long was it  
24 before Conoco finally informed you that it wasn't  
25 seeking any sort of mutual agreement or deal?

1 MR. MACHA: So we just started  
2 discussing carry options, if I remember correct, on  
3 February 10th. That -- that was the next Tuesday and  
4 then multiple phone calls since then. Between then  
5 and February 20th is when they formally terminated  
6 negotiations.

7 MR. HOLLIDAY: So during that time  
8 period and before they terminated negotiations with  
9 you, Conoco had already sent its one-mile proposals to  
10 Kaiser-Francis; is that correct?

11 MR. MACHA: That is correct.

12 MR. HOLLIDAY: Okay. Did Conoco or  
13 Marathon -- did they send those same well proposals to  
14 Powderhorn at that time?

15 MR. MACHA: No.

16 MR. HOLLIDAY: And Powderhorn is a  
17 party also to the JOA through another working  
18 interest; is that correct?

19 MR. MACHA: That is correct.

20 MR. HOLLIDAY: Okay. So at any point  
21 during this seven months from July all the way to  
22 February, did Powderhorn ever take this deal off the  
23 table or any sort of termination of negotiations?

24 MR. MACHA: No. We -- we remain --  
25 remained before we proposed the wells to February 20th

1 that we wanted to do a deal.

2 MR. HOLLIDAY: All right. I want to  
3 turn to the steps you guys have taken to prepare for  
4 development. Can you just summarize what Powderhorn  
5 has done to get ready to drill these Super Hornet  
6 wells?

7 MR. MACHA: So on the land side, as  
8 mentioned, you know, one of my primary jobs is to not  
9 only acquire acreage, but it is to put units together.  
10 So from July of last year, we started acquiring  
11 acreage. We started the compulsory pooling process.

12 We started the -- we started working  
13 with surveying groups. We did do the pre-approval for  
14 the New Mexico Communitization Agreement and we did  
15 get our water contract in place. We have kicked off  
16 active negotiations for oil and gas takeaway. And we  
17 have staked the wells.

18 MR. HOLLIDAY: Okay. Do you think that  
19 acquiring APDs would be a time constraint in this  
20 project?

21 MR. MACHA: No. I don't.

22 MR. HOLLIDAY: And what's your  
23 anticipated spud date?

24 MR. MACHA: As of right now, we're  
25 looking around September 2026, but anywhere in Q3, Q4.

1 MR. HOLLIDAY: Okay. And that is at  
2 least partially because you have a term assignment  
3 with an expiration date; is that correct?

4 MR. MACHA: That is correct.

5 MR. HOLLIDAY: So if Powderhorn cannot  
6 commence operations before that date, what happens to  
7 your interest?

8 MR. MACHA: We stand at risk of  
9 expiring and losing it.

10 MR. HOLLIDAY: All right. So let's  
11 talk about the working interest in the unit. What is  
12 Powderhorn's working interest in the proposed 960?

13 MR. MACHA: Across the entire 960?  
14 About 34 percent work interest.

15 MR. HOLLIDAY: And if we were to lump  
16 in the total working interest that's committed to your  
17 plan, what number does that come to?

18 MR. MACHA: It's about 78 percent.

19 MR. HOLLIDAY: Okay. So do you have an  
20 interest in every track either owned or committed?

21 MR. MACHA: Yes.

22 MR. HOLLIDAY: All right. And if we  
23 look just to the north half of section 2, that's the  
24 main subject of this debate today. What is  
25 Powderhorn's committed net acreage in the north half



1 of section 2 that is subject to the 1976 JOA?

2 MR. MACHA: I'm -- I think our title  
3 versus Conoco's title was a little bit, like,  
4 different between a couple percent, but we are looking  
5 at around 160 acres, so roughly 50 percent. I think  
6 they're probably pegging it closer to 45 percent.

7 MR. HOLLIDAY: Okay. So fair to say 45  
8 to 50 percent?

9 MR. MACHA: Yes.

10 MR. HOLLIDAY: Okay. And then that's  
11 Kaiser-Francis. So the Kaiser-Francis, who's the  
12 largest non-operated working interest owner under that  
13 JOA -- let's just call it 47 percent, split the  
14 baby -- they did sign a superseding JOA with  
15 Powderhorn; is that correct?

16 MR. MACHA: That is correct.

17 MR. HOLLIDAY: And at this time, is  
18 ConocoPhillips the sole party objecting to your  
19 application?

20 MR. MACHA: That's correct.

21 MR. HOLLIDAY: So let's go -- let's  
22 look at that JOA for a second, or at least, let's just  
23 talk about it. Marathon's objection to your  
24 application, it's based on this JOA from 1976. Are  
25 you familiar with that JOA?

1 MR. MACHA: Yes. I've reviewed it.

2 MR. HOLLIDAY: And that's a Form 610,  
3 which at that time, was designed for vertical well  
4 operations; right?

5 MR. MACHA: Yeah. It's a 1956 form.

6 MR. HOLLIDAY: 1956. So to your  
7 knowledge, does that JOA even contemplate horizontal  
8 development?

9 MR. MACHA: No.

10 MR. HOLLIDAY: And then to your  
11 knowledge, in 1976, was horizontal development  
12 occurring in the Northern Delaware Basin in the  
13 approximate area of this project?

14 MR. MACHA: Given my land background, I  
15 can't give you definitive, but I do not believe so.

16 MR. HOLLIDAY: Okay. And how many  
17 wells have been drilled under that JOA in its 50 year  
18 history?

19 MR. MACHA: One.

20 MR. HOLLIDAY: One well. Is that the  
21 initial well?

22 MR. MACHA: That was the initial well.

23 MR. HOLLIDAY: And that's a vertical  
24 well?

25 MR. MACHA: It's a vertical well

1 drilled I believe in 1976. The OCD record says spud  
2 in 1974, but I assume that's incorrect.

3 MR. HOLLIDAY: Okay. So nothing in 50  
4 years. And so that means no Wolfcamp's ever been  
5 drilled under that JOA?

6 MR. MACHA: That's correct.

7 MR. HOLLIDAY: No horizontal well of  
8 any kind?

9 MR. MACHA: Correct.

10 MR. HOLLIDAY: Now, despite this JOA,  
11 Conoco or Marathon originally proposed a one and a  
12 half mile development plan; is that correct?

13 MR. MACHA: Yes.

14 MR. HOLLIDAY: But then they rescinded  
15 it and replaced it with the one mile plan we're  
16 talking about today; is that right?

17 MR. MACHA: That is correct.

18 MR. HOLLIDAY: Okay. All right. Mr.  
19 Macha, are you familiar with the Fiero case in order  
20 number 23869?

21 MR. MACHA: Yes, I am.

22 MR. HOLLIDAY: And in that case, the  
23 Division approved compulsory pooling over the  
24 objection of an operator that claimed a hundred  
25 percent working interest control under a legacy JOA.

1 Is that a fair summary?

2 MR. MACHA: That is correct.

3 MR. HOLLIDAY: All right. Do you think  
4 the facts in this case are substantially similar to  
5 those in the Fiero case?

6 MR. MACHA: I would agree with that.  
7 Yes.

8 MR. HOLLIDAY: And you're also familiar  
9 with order number R14140, the Matador case number 15?

10 MR. MACHA: Not as intimate with that  
11 one, but yes.

12 MR. HOLLIDAY: Okay. And that's the  
13 case that the Fiero order cites as precedent for his  
14 decision; is that correct?

15 MR. MACHA: Correct.

16 MR. HOLLIDAY: Okay. Let's talk about  
17 some of that overlapping acreage. The JOA, as we  
18 discussed, covers north half section 2. And that's  
19 about one-third of the acreage within the proposed  
20 Super Hornet spacing; is that correct?

21 MR. MACHA: That is correct.

22 MR. HOLLIDAY: Is that similar in size  
23 to the JOA overlap that was at consideration -- under  
24 consideration in Fiero?

25 MR. MACHA: Yes. Minor -- yeah. A

1 minority share.

2 MR. HOLLIDAY: Now, one of the -- one  
3 of the issues that we've brought up or that's been  
4 brought up in this case -- we certainly didn't bring  
5 it up -- is operator experience, your experience,  
6 Powderhorn's experience as a team. You guys haven't  
7 drilled a well yet. So they argued that you haven't  
8 previously drilled a horizontal well in New Mexico; is  
9 that correct?

10 MR. MACHA: That is correct.

11 MR. HOLLIDAY: Okay. But you guys have  
12 been part of horizontal development each in your own  
13 respective backgrounds; is that correct?

14 MR. MACHA: That's correct.

15 MR. HOLLIDAY: How many wells do you  
16 think you assisted with in your time at Permian  
17 Resources?

18 MR. MACHA: So I -- the -- on the  
19 operator experience exhibit that we cite, we did kind  
20 of label about a thousand plus between our group. And  
21 that came -- did come from an exact kind of tenure of  
22 time between us and New Mexico. So between all of us,  
23 about a thousand. I don't remember me specifically,  
24 but it was considerable.

25 MR. HOLLIDAY: Can you -- do you recall

1 approximately how many rigs were under your direction  
2 from a land perspective?

3 MR. MACHA: Upwards of seven.

4 MR. HOLLIDAY: Upwards of seven. You  
5 talk about a couple units in your testimony, the Bat  
6 Bomb and the War Pigeon units. In terms of operator  
7 experience, why are those units relevant to our  
8 hearing today?

9 MR. MACHA: So those two units are one  
10 mile directly to the east. I'm not going to speak to  
11 geology or reservoir engineering, but "closeology,"  
12 they're very similar. So Conoco and those units had  
13 the vast majority of the working interest.

14 And they did entrust an operator that  
15 had never drilled a well in the state of New Mexico to  
16 take over operations of those units. So -- and so  
17 characterizing us as inexperienced and to to be  
18 disqualified for that same reason seems wrong.

19 MR. HOLLIDAY: Okay. So there's recent  
20 precedent from Marathon for entrusting its acreage to  
21 an operator who has not drilled a well in New Mexico.  
22 Is that a fair summary?

23 MR. MACHA: That's fair.

24 MR. HOLLIDAY: Okay. And you guys  
25 actually -- you mentioned you tried to have a meeting.

1 There was a meeting scheduled on the 4th. It got  
2 canceled. And that was going to be a technical  
3 meeting so that you guys could present your experience  
4 and plans to Conoco; is that correct?

5 MR. MACHA: Yeah. We were going to  
6 bring our entire technical team as well as kind of  
7 the -- our kind of development strategy and everything  
8 to that February 4th meeting.

9 MR. HOLLIDAY: So as a -- you know, if  
10 we get into technical a little bit, you know, as a  
11 landman, is there anything you wanted to -- response  
12 you wanted to give to Marathon's parent/child well  
13 degradation arguments?

14 MR. MACHA: No. I -- I'm your -- part  
15 of that for -- reservoir.

16 MR. HOLLIDAY: You're not a reservoir  
17 engineer; correct?

18 MR. MACHA: No.

19 MR. HOLLIDAY: All right. So Mr.  
20 Rankin raised a couple things. Well, first, let's  
21 back up and talk about NSL permits. Does Powderhorn  
22 intend to seek NSL permits allowing it to amend the  
23 330 offset rule?

24 MR. MACHA: We intend to.

25 MR. HOLLIDAY: Okay. And then is that,

1 in your experience, a normal administrative procedure  
2 pursued by most operators developing the Wolfcamp?

3 MR. MACHA: Yes.

4 MR. HOLLIDAY: Okay. All right. I  
5 want to turn to the northeast quarter of section 3 and  
6 the stranding -- potential stranding issue.

7 Mr. Rankin raised an issue with potential stranding of  
8 the northeast quarter, or we raised it. But he had  
9 some concerns about it. Do you think you could  
10 clarify Powderhorn's argument with regard to the  
11 northeast quarter section 3?

12 MR. MACHA: Yeah. I'm not going to  
13 make a orientation argument there. But what I will  
14 say is that in the east half of section 3 and the  
15 south half of -- of section 2, there are owners that  
16 exclude Marathon. They do not own in those -- those  
17 areas.

18 And prior to the one mile well  
19 proposal, Powderhorn and Avant agreed via letter  
20 agreement on how to develop that mile and a half. And  
21 at this point, it's an agreement that's been signed.  
22 So that northeast quarter of section 3 would be  
23 excluded from that development.

24 MR. HOLLIDAY: So fair to say, if your  
25 application's denied, you're going to be contractually



1 prohibited from developing the northeast quarter?

2 A As it sits. Correct.

3 MR. HOLLIDAY: As it stands now. And  
4 if -- okay. Think of that. And who owns the mineral  
5 interest under section 3?

6 MR. MACHA: State of New Mexico owns a  
7 hundred percent of east half of three and all of 2.

8 MR. HOLLIDAY: And Marathon, they  
9 dismiss their competing pooling applications. We  
10 covered that; correct?

11 MR. MACHA: That's correct.

12 MR. HOLLIDAY: So they're not asking  
13 the Division to approve any alternative development  
14 plan. What they're asking the Division to do is deny  
15 yours and leave the north half of section 2 entirely  
16 subject to their private JOA; is that correct? With  
17 no Division oversight as to the timing of development?

18 MR. MACHA: That's correct.

19 MR. HOLLIDAY: Okay. And there's no  
20 party under that mechanism outside of the contractual  
21 rights under the JOA. There's no division-enforceable  
22 mechanism to compel development of that acreage?

23 MR. MACHA: Correct.

24 MR. HOLLIDAY: Okay. So in your  
25 opinion -- or is it your opinion that Powderhorn's

1 application, if approved, will prevent waste to  
2 protect correlative rights of all interest owners  
3 including the State of New Mexico?

4 MR. MACHA: Yes.

5 MR. HOLLIDAY: Just a couple more  
6 questions, then I'll pass the witness. So based on  
7 your experience and just to sum up, your familiarity  
8 with this acreage, the steps you've taken for the past  
9 seven, eight months, do you have an opinion as to  
10 whether the Division should approve your application  
11 in case 25610?

12 MR. MACHA: Yeah. Like I say, I think  
13 that we've made a pretty legally complete argument  
14 here. Everything's being developed in a prudent  
15 manner. The NSL application's obviously -- or we're  
16 not going to be discussing it today, but they will  
17 become -- we'll come back for those. Yeah. I -- I'm  
18 very confident in -- in this pooling strategy.

19 MR. HOLLIDAY: Okay. Is there anything  
20 else in your testimony or your exhibits that you would  
21 like to cover that we haven't covered yet?

22 MR. MACHA: I don't think so.

23 MR. HOLLIDAY: Okay. Thanks.

24 I pass the witness.

25 THE HEARING EXAMINER: Cross-

1 examination?

2 MR. RANKIN: Thank you,  
3 Mr. Hearing Officer.

4 CROSS-EXAMINATION

5 BY MR. RANKIN:

6 MR. RANKIN: Good afternoon, Mr. Macha.  
7 How are you today?

8 MR. MACHA: Good. How are you?

9 MR. RANKIN: It's unusual for us to be  
10 on the other side of this procedure, but nevertheless  
11 here we are. Atarting off, I'm going to ask you about  
12 well proposals.

13 So you mentioned in your operating  
14 summary that Powderhorn sent out well proposals back  
15 in July, at the very end of July 2025. And I'm going  
16 to go ahead and share my screen because it's just  
17 easier to walk through the exhibits when I'm -- we can  
18 talk through them directly. So I think this Exhibit  
19 A-16 is your well proposal that went out; correct --  
20 for these wells that issued today?

21 MR. MACHA: That's correct.

22 MR. RANKIN: Okay. And they were  
23 issued there -- it was signed by -- Mason Maxwell was  
24 a landman; correct?

25 MR. MACHA: That is correct.

1 MR. RANKIN: And what's his role with  
2 the company?

3 MR. MACHA: He's the landman.

4 MR. RANKIN: And so what was his role  
5 in the proposal of this -- these wells?

6 MR. MACHA: Me and Mason collaborate on  
7 this stuff together. We built the well proposals side  
8 by side.

9 MR. RANKIN: Okay. So was he  
10 involved -- he was also involved in the negotiations  
11 over this proposal?

12 MR. MACHA: That is correct.

13 MR. RANKIN: Okay. And the well  
14 proposal includes eight wells; correct?

15 MR. MACHA: That is correct.

16 MR. RANKIN: And four wells in the  
17 upper -- I'm going to call it the upper Wolfcamp, the  
18 Wolfcamp XY Sand; is that correct?

19 MR. MACHA: That's I think generally  
20 correct. Yeah.

21 MR. RANKIN: And then there's four  
22 additional wells for the Wolfcamp -- Powderhorn's  
23 calling it the Wolfcamp B. Is that correct as well?

24 MR. MACHA: Yes. That's correct.

25 MR. RANKIN: And -- but in the

1 application for pooling, Powderhorn has only  
2 identified for initial wells as part of its  
3 application; correct?

4 MR. MACHA: That is correct.

5 MR. RANKIN: And that's the -- those  
6 are the Wolfcamp XY Wells; correct?

7 MR. MACHA: That is correct.

8 MR. RANKIN: And because of -- because  
9 those are the only four wells in the pooling  
10 application, Powderhorn would be limited to drilling  
11 those four wells initially and completing those wells  
12 before it could drill any additional wells as part of  
13 the unit; correct?

14 MR. MACHA: We would be following OCD  
15 standard. Yes.

16 MR. RANKIN: Okay. So each of those  
17 four -- all four wells would have to be drilled and  
18 completed before you could come back and complete or  
19 even drill or propose any subsequent well; correct?

20 MR. MACHA: Yeah. I believe that we  
21 would be technically allowed to drill them but not  
22 propose them until after completion of the first  
23 initial wells. Not that we would do that, but just  
24 nuance. Yeah.

25 MR. RANKIN: Okay. Now, is Powderhorn

1 committed to drilling all four if its proposed  
2 Wolfcamp B wells, the subsequent wells?

3 MR. MACHA: I'm going to defer to our  
4 technical guys, but yes. That's -- that is current  
5 plan.

6 MR. RANKIN: Okay. Now, in your --  
7 just for purposes of clarification, in your  
8 statement -- I'll go paragraph 10 of your statement.  
9 I've got it highlighted here in 10 -- in purple. You  
10 state that "Powderhorn proposes to fully develop the  
11 Wolfcamp with its four one and a half mile wells." Is  
12 that a correct understanding of your statement there?

13 MR. MACHA: I guess that that could be  
14 construed as Wolfcamp A. I think the intent of that  
15 statement would be to fully develop as per the order  
16 received.

17 MR. RANKIN: But you're not saying that  
18 those four wells will fully develop the entire  
19 Wolfcamp; correct?

20 MR. MACHA: No.

21 MR. RANKIN: You're saying that it's  
22 going to fully develop that bench. Is that fair?

23 MR. MACHA: That is a fair statement.

24 MR. RANKIN: Okay. And that's why you  
25 need to come back and drill the Wolfcamp B; right?

1 MR. MACHA: At least. Yeah.

2 MR. RANKIN: Okay. Now, on the -- just  
3 a couple smaller issues I'm going to walk through with  
4 you. In your -- one of your land charts where you  
5 show the working interests and you show the working  
6 interest breakdown, this is one where I think is the  
7 overview for the whole spacing unit. You identify a  
8 company, PBX LLC as owning approximately 35 percent in  
9 a tract in the south half of the proposed spacing  
10 unit; correct?

11 MR. MACHA: That is correct.

12 MR. RANKIN: Okay. And you state here  
13 that they -- you identify them on a -- on title but  
14 that they're not -- and they're listed as an  
15 uncommitted interest; correct?

16 MR. MACHA: Yes.

17 MR. RANKIN: But they have not been  
18 provided notice of the hearing; is that correct?

19 MR. MACHA: I believe they were  
20 provided notice. I'm not sure. But I've corresponded  
21 with the director over there greatly on this exact  
22 issue of the title. I think it's probably just  
23 weird -- a weird title issue that -- where we need to  
24 clean up.

25 MR. RANKIN: So whether or not they

1 were provided notice, it would be of record in the  
2 exhibits provided by Powderhorn to the Division;  
3 correct?

4 MR. MACHA: That should be the case.

5 MR. RANKIN: Okay. And so rather than  
6 spending time to do that, I mean, the record speaks  
7 for itself. Agree?

8 MR. MACHA: Agreed.

9 MR. RANKIN: Okay. But nevertheless,  
10 they're an uncommitted party as we sit here today;  
11 correct?

12 MR. MACHA: Correct. And we are not  
13 seeking to pool them.

14 MR. RANKIN: Okay. So but you sit --  
15 as you sit here today, you can't tell me whether or  
16 not they were given notice of the application or the  
17 pooling; correct?

18 MR. MACHA: I'm -- like I say, I'm  
19 not -- I'm not sure, but they were -- they were  
20 receipt recipients of the initial well proposals and  
21 the initial application. I'm pretty certain of that.

22 MR. RANKIN: So just to be clear,  
23 they -- you did send them well proposals back in July  
24 of 2025?

25 MR. MACHA: That's correct.



1 MR. RANKIN: Okay. Did you have any  
2 follow-up discussions with them about their position?

3 MR. MACHA: Yes. So they -- they were  
4 one with -- we are in negotiations with. We  
5 originally just were hoping to just get them committed  
6 to a JOA because they're historically not sellers.  
7 They kind -- I think that they're pretty active, kind  
8 of similar to us and to -- they just want to put  
9 dollars to work.

10 And so we negotiated with them for a  
11 brief time. They did indicate they were going to  
12 transact and sell. They did sell to Avant. So when  
13 I -- so the intent in all of the communications that  
14 I've had with PBX is that they've sold 100 percent of  
15 their interest in the Super Hornet Unit to Avant.

16 Our title, like I say, per the  
17 asterisk, still showed them with the 14 acres in that  
18 southwest of the southeast corner of section 2 that is  
19 not included in a Marathon's unit. So that's why I  
20 wanted to be open and transparent, include it on this  
21 exhibit.

22 MR. RANKIN: When did they sell their  
23 interest to Avant?

24 MR. MACHA: Oh, I don't think they  
25 closed until maybe January, but I think that that

1 negotiation was more complete around October.

2 MR. RANKIN: Okay. So if there was any  
3 record title conveyed or filed with the county, it  
4 wouldn't have happened until after they closed; right?

5 MR. MACHA: That would be correct.

6 MR. RANKIN: Okay. And basically, as  
7 you sit here today, you think it was more -- most  
8 likely in the timeframe of January 2026?

9 MR. MACHA: I believe so, but I don't  
10 have perfect recollection of that.

11 MR. RANKIN: But as of the time that  
12 Powderhorn filed this pooling application, PBX was the  
13 owner of that interest?

14 MR. MACHA: When we filed originally in  
15 September, I believe, for the November docket? Yes.

16 MR. RANKIN: Okay. I'm going to move  
17 over to the topic of Powderhorn as a -- and its  
18 experience as an entity. Just to clarify again,  
19 Powderhorn does not currently operate any wells in New  
20 Mexico. Agree?

21 MR. MACHA: That is correct.

22 MR. RANKIN: And Powderhorn has not  
23 drilled any vertical wells in New Mexico? Agree?

24 MR. MACHA: That is correct.

25 MR. RANKIN: And Powderhorn has not

1 drilled any horizontal wells in New Mexico? Agree?

2 MR. MACHA: That is correct.

3 MR. RANKIN: And Powderhorn doesn't  
4 have an in-house drilling team currently. Agree?

5 MR. MACHA: That -- we have in-house  
6 petroleum engineers. We do not have an in-house  
7 drilling team if that is defined.

8 MR. RANKIN: Okay. So you agree with  
9 me, based on your own understanding, that Powderhorn  
10 does not itself have an in-house drilling team?  
11 Agree?

12 MR. MACHA: Agreed.

13 MR. RANKIN: Okay. And do you have an  
14 in-house drilling engineer who over -- who would  
15 oversee any drilling?

16 MR. MACHA: I'll defer to our -- my  
17 engineer, but I don't believe there's a degree for  
18 it -- for drilling engineering. Petroleum engineering  
19 degree does cover drilling.

20 MR. RANKIN: Say that again. I'm  
21 sorry. I missed it.

22 MR. MACHA: Petroleum engineering  
23 degree would cover drilling.

24 MR. RANKIN: But I mean, I guess my  
25 question is does Powderhorn have someone assigned who

1 is in charge of -- responsible for overseeing its  
2 drilling operations?

3 MR. MACHA: We're all responsible of  
4 numerous things, so I would say yes.

5 MR. RANKIN: Okay. So there is one  
6 individual at Powderhorn who is assigned the  
7 obligation to coordinate and oversee when drilling  
8 occurs?

9 MR. MACHA: I would say they -- we will  
10 have to be coordinating with our contractors. But  
11 yes. They will be overseeing the drilling activities.

12 MR. RANKIN: Who is that?

13 MR. MACHA: I would -- I would point to  
14 Brendan Tippen.

15 MR. RANKIN: To answer that question or  
16 to tell me who the --

17 MR. MACHA: To answer that question.

18 MR. RANKIN: Okay. So turning to  
19 Brendan's -- Mr. Tippen's rebuttal testimony,  
20 paragraph 7 -- I've hidid the language here in his  
21 rebuttal. He says that Powderhorn has -- we -- he's  
22 responding to Marathon's objection or concerns that  
23 Powderhorn had not yet identified a reliable tested  
24 outside drilling contractor.

25 And then he goes on to say "They're

1 uncertain about the basis for the assertion." And he  
2 goes -- then he states that "We've been talking and  
3 exploring options with drilling contractors since May  
4 of 2025."

5 He goes on to say "As it relates to  
6 this unit, we have been working with a contractor that  
7 has drilled wells in the last year within two miles of  
8 the unit." Are you familiar with this testimony of  
9 his on rebuttal?

10 MR. MACHA: Yes.

11 MR. RANKIN: Do you -- okay. So just  
12 to be clear, are you aware, as of this time -- and  
13 again, you can tell me to talk to Mr. Tippen -- but  
14 whether Powderhorn has identified an outside drilling  
15 contractor to drill these wells?

16 MR. MACHA: So as per his testimony,  
17 there is a company that we've been consulting with  
18 that drilled the Bat Bomb and War Pigeon units that --  
19 that Conoco farmed out to another operator.

20 MR. RANKIN: Okay. And when you say  
21 "working with," are they under -- you have entered  
22 a -- like, some sort of contract or agreement? Are  
23 they designated to drill these wells if and when?

24 MR. MACHA: I'll defer to Brendan on  
25 the specifics of any agreement because I'm not in the

1 technical conversations right there, but --

2 MR. RANKIN: Okay. And are you aware  
3 whether, during the discussions or negotiations with  
4 Marathon, Powderhorn has ever disclosed who it was  
5 working with to do this work?

6 MR. MACHA: We had that fully prepared  
7 and laid out for the February 4th meeting.

8 MR. RANKIN: Okay. But during the  
9 informal discussions, when these things were  
10 discussed, are you aware of any time at which  
11 Powderhorn informed Marathon --

12 MR. MACHA: They never asked.

13 MR. RANKIN: Of who the drilling  
14 contractor was going to be or who you were you working  
15 with?

16 MR. MACHA: No.

17 MR. RANKIN: Sorry. Sorry.

18 MR. MACHA: No. They didn't -- never  
19 asked.

20 THE REPORTER: Gentlemen, this is the  
21 reporter. I apologize for interrupting, but if you  
22 could wait to respond to questions until the question  
23 is done.

24 MR. RANKIN: Sometimes I throw a pause  
25 in there. And I -- and this Travis knows, so I

1 apologize. I try to get it all out. Okay.

2 BY MR. RANKIN:

3 MR. RANKIN: On the drilling contractor  
4 issue, during the informal discussions, to your  
5 knowledge, you're not aware of Marathon asking that  
6 question of anybody at Powderhorn; is that correct?

7 MR. MACHA: I'm not aware.

8 MR. RANKIN: Okay. Now, during your  
9 summary of your case, Mr. Holliday asked you about,  
10 you know, your team's experience drilling and  
11 operating. And I think the way he phrased the  
12 question was that each in -- under their own  
13 respective backgrounds have had experience drilling  
14 well separately; correct?

15 MR. MACHA: That's correct.

16 MR. RANKIN: But in terms of a team,  
17 has Powderhorn -- because it's never drilled a  
18 horizontal well as an entity, has it ever drilled a  
19 well as a team?

20 MR. MACHA: As an entity? No.

21 MR. RANKIN: Okay. And has Powderhorn  
22 ever worked with this drilling contractor that you  
23 referenced that you're working with currently? Has it  
24 ever worked with that drilling contractor as a team?

25 MR. MACHA: I would defer to the

1 definition of "working with." We've never drilled a  
2 well with them.

3 MR. RANKIN: Okay. So Powderhorn as an  
4 entity and as a team has never drilled a well with  
5 this outside contractor; correct?

6 MR. MACHA: Correct.

7 MR. RANKIN: So you mentioned a  
8 contractor that ConocoPhillips engaged with that has  
9 no drilling experience in New Mexico. Do you recall  
10 that testimony?

11 MR. MACHA: Sorry. Can repeat?

12 MR. RANKIN: Yeah. That ConocoPhillips  
13 had engaged with a drilling company to -- that has  
14 never drilled a well in New Mexico. Do you recall  
15 that testimony of yours?

16 MR. MACHA: It wasn't a drilling  
17 company. It was a separate operator.

18 MR. RANKIN: Separate operator?

19 MR. MACHA: Similar to Powderhorn.

20 MR. RANKIN: Do you know yourself  
21 whether people at Marathon and ConocoPhillips have had  
22 experience working with that operator as a team in  
23 Texas?

24 MR. MACHA: I'm not aware.

25 MR. RANKIN: So you don't know whether



1 they've drilled multiple wells or what the extent of  
2 their experience drilling wells with this operator in  
3 Texas has been; correct?

4 MR. MACHA: I don't have direct  
5 knowledge.

6 MR. RANKIN: Does Powderhorn have any  
7 experience with this outside contractor drilling any  
8 wells in Texas?

9 MR. MACHA: No.

10 MR. RANKIN: In any other place?

11 MR. MACHA: No.

12 MR. RANKIN: Okay. I think I  
13 understand you to basically defer all discussions  
14 about parent/child testimony to Mr. Tippen; correct?

15 MR. MACHA: Yeah.

16 MR. RANKIN: Okay. On your direct  
17 testimony, you testified about ConocoPhillips's  
18 activity in the area. And again, just to be clear,  
19 the operator here that's contesting Powderhorn's case  
20 is Marathon; correct?

21 MR. MACHA: Correct. I -- I do define  
22 Conoco COP in my original testimony as being Marathon  
23 Oil.

24 MR. RANKIN: Okay. And that's because  
25 Marathon is now a wholly owned subsidiary of

1 ConocoPhillips; correct?

2 MR. MACHA: Correct.

3 MR. RANKIN: And are you aware when  
4 that transaction took place?

5 MR. MACHA: I don't remember.

6 MR. RANKIN: Five years ago, eight  
7 years ago, more recently than that?

8 MR. MACHA: More recently than that.

9 MR. RANKIN: Okay. So I'm going to --  
10 let's look at your testimony in paragraph 12 -- I'm  
11 sorry -- in paragraph 18. Sorry. You talk here  
12 about -- and I've highlighted a, a provision or a  
13 statement here that ConocoPhillips has been primarily  
14 inactive in terms of operations in the area for the  
15 last eight years.

16 So you're not aware when -- did prior  
17 to ConocoPhillips's acquisition of Marathon in this  
18 acreage, did ConocoPhillips own any acreage in this  
19 area?

20 MR. MACHA: I'm not aware.

21 MR. RANKIN: Okay. And so you don't  
22 have in your mind exactly how recently it was that  
23 ConocoPhillips actually acquired Marathon interest?

24 MR. MACHA: No. Yeah.

25 MR. RANKIN: Okay. And so you can't --

1 you're not sitting here today telling me that  
2 ConocoPhillips owned this acreage and then me -- this  
3 contested acreage or the offsetting acreage prior to  
4 its acquisition of Marathon; correct?

5 MR. MACHA: No. I'm not testifying to  
6 that.

7 MR. RANKIN: Okay. Now, I'm going to  
8 go to one of your exhibits on the same topic here.  
9 And again, you're talking about ConocoPhillips's  
10 activity in this acreage. And I think the point of  
11 this slide is to make the point that in your view,  
12 rather than developing this acreage, ConocoPhillips is  
13 instead divesting it. Is that the point of this  
14 slide?

15 MR. MACHA: Yeah. I would say that's  
16 fair.

17 MR. RANKIN: And you give three  
18 examples. And you've labeled them A, B, and C. And  
19 my question to you is, what are you -- what does  
20 divesting or divestment mean to you?

21 MR. MACHA: It means bequeathing  
22 operatorship in this scenario.

23 MR. RANKIN: Okay. In this scenario.  
24 So it's not -- you're not talking about selling or  
25 trading out or leaving the property; correct?

1 MR. MACHA: No. And just for -- just  
2 for clarification, A was a term assignment for  
3 Marathon. B and C were development agreements, which  
4 seemed to be characterized as farmout agreements.

5 MR. RANKIN: And your knowledge of  
6 those or the terms of those agreements or how involved  
7 ConocoPhillips or Marathon was in those agreements is  
8 solely based on public records; correct?

9 MR. MACHA: That is correct.

10 MR. RANKIN: So you have no idea how  
11 involved ConocoPhillips was in the development of that  
12 acreage in terms of planning, assessing, evaluating,  
13 targeting, any of that?

14 MR. MACHA: No. I'm looking at public  
15 record.

16 MR. RANKIN: Okay. So all you -- and  
17 all you know is what's in the public record and  
18 nothing that went behind the scenes or how actually  
19 involved ConocoPhillips or Marathon was in those  
20 acres; correct?

21 MR. MACHA: Correct.

22 MR. RANKIN: Okay. And based on your  
23 definition of divestment, meaning, like, you would get  
24 another operator to drill for you, isn't that what  
25 Powderhorn is considering to do here in its proposed

1 acreage?

2 MR. MACHA: No. We -- we would be the  
3 cost-bearing interest owner being the operator.  
4 That's what I mean, bearing the cost, not a drilling  
5 contractor.

6 MR. RANKIN: And again, you don't know  
7 exactly what the relationship is behind the scenes  
8 between ConocoPhillips and the operator drilling  
9 the -- this acreage other than what's reported in  
10 public record; correct?

11 MR. MACHA: Correct.

12 MR. RANKIN: Okay. But you agree with  
13 me that as to the A, B, and C on your slide here,  
14 ConocoPhillips did not sell out its interest? Agree?

15 MR. MACHA: No. Not a hundred percent.

16 MR. RANKIN: Did it trade out its  
17 interest?

18 MR. MACHA: Not that I can see, no.

19 MR. RANKIN: I'm going to ask you about  
20 this question of stranding the acres in the northeast  
21 quarter of section 3. In paragraph 11 and then  
22 throughout your exhibits, you make the assertion that  
23 the acreage will be stranded if Marathon's development  
24 goes forward; correct?

25 MR. MACHA: Correct.

1 MR. RANKIN: And we learned today for  
2 the first time, because you don't say it in your  
3 direct testimony and you don't say it in your rebuttal  
4 testimony, that the -- so the reason for that  
5 potential stranding is because Powderhorn made a  
6 contractual agreement with another entity; correct?

7 MR. MACHA: That is correct.

8 MR. RANKIN: So it has nothing to do  
9 with geology. It has nothing to do with engineering.  
10 It has everything to do with Powderhorn's business  
11 decision with a third party; correct?

12 MR. MACHA: I will defer to geology on  
13 orientation and anything like that. But yes. That  
14 agreement was negotiated predominantly prior to  
15 Marathon's one mile proposal.

16 MR. RANKIN: Okay. And okay. So  
17 that -- now, you're aware -- you're familiar with the  
18 direct testimony that was filed by Powderhorn in this  
19 case; correct?

20 MR. MACHA: Yes.

21 MR. RANKIN: And you reviewed the  
22 testimony of your geologist?

23 MR. MACHA: For the most part? Yeah.

24 MR. RANKIN: Okay. Are you aware of  
25 your geologist making any statements about the

1 preferred orientation in this acreage in his direct  
2 testimony?

3 MR. MACHA: I'm not. I can't speak  
4 directly. I'm not that intimate with it.

5 MR. RANKIN: Okay. But to your  
6 knowledge, did he make a statement affirmatively one  
7 way or the other about a preferred orientation?

8 MR. MACHA: Not to my knowledge. No.

9 MR. RANKIN: But for the agreement with  
10 Avant that you announced to us today, is there  
11 anything to your knowledge preventing Powderhorn from  
12 developing a standup well in east half of section 3?

13 MR. MACHA: I mean, at that -- that  
14 point, it would be a contested hearing with Avant and  
15 contractual issues and I think lawsuit. I don't know.  
16 I -- that -- that's an issue.

17 MR. RANKIN: So there's outside  
18 contractual issues that complicate Powderhorn's  
19 ability to do that. And then my question to you is,  
20 but for that agreement, to your knowledge, is there  
21 anything preventing Powderhorn from doing a standup  
22 well in the east half of section 3?

23 MR. MACHA: If we are talking about a  
24 hypothetical scenario where that agreement never  
25 existed, I would be comfortable with my ability to

1 form that unit north south.

2 MR. RANKIN: You would be what?

3 MR. MACHA: I would -- I would be  
4 comfortable being able to form that unit north, south.

5 MR. RANKIN: Right. Because when you  
6 look around, including in your Exhibit A-8, there's a  
7 variety of well orientations immediately offsetting,  
8 stand up, lay down. And in fact, in your testimony,  
9 you identify Mewbourne as an offsetting operator. And  
10 in your exhibit, you show that they have future  
11 planned laydown and standup wells that they plan to  
12 develop simultaneously. Agree?

13 MR. MACHA: That is correct.

14 MR. RANKIN: Okay. And in your  
15 rebuttal statement, Mr. Macha, you don't raise the  
16 stranding argument again. Do you?

17 MR. MACHA: I'm not sure. I don't  
18 remember.

19 MR. RANKIN: In your rebuttal?

20 MR. MACHA: I don't think that there  
21 was anything to rebut at that point.

22 MR. RANKIN: Okay. So you didn't raise  
23 it in your rebuttal statement that we filed. But you  
24 did raise it in your summary today, bringing forth new  
25 information about the contractor agreement that



1 Powderhorn had made with Avant; correct? What is --  
2 when was that agreement made with Avant?

3 MR. MACHA: It was negotiated. Oh, I  
4 don't -- I have to look at the timeline. Feel like  
5 the last week has been long. We signed it -- I think  
6 the day the the 2nd of March. So we negotiated the  
7 week -- the week before.

8 MR. RANKIN: Got it. So that was part  
9 of the deal that resolved your conflict with Avant,  
10 especially as to the south half; correct?

11 MR. MACHA: Yes.

12 MR. RANKIN: Okay. Now, is that an  
13 agreement that was involving land title? Was it filed  
14 of record, or will it be filed of record?

15 MR. MACHA: There will be things filed  
16 of record later potentially, but it does contain  
17 confidentiality language.

18 MR. RANKIN: Well, that was my next  
19 question. So it got -- it has confidential  
20 provisions? Okay.

21 MR. MACHA: Correct.

22 MR. RANKIN: Now, I may come back to  
23 the NSL issue later, but I'm going to skip it from  
24 now. I'm going to move into the ownership control  
25 topic. I'm going to go back to your working interest

1 breakdown. This is the first one. I think you've got  
2 two different breakdowns. I'm going to address this  
3 first one.

4 Mr. Hearing Officer?

5 THE HEARING EXAMINER: Yes.

6 MR. RANKIN: It just occurred to me  
7 that I didn't actually keep track of when I started,  
8 but I think probably now might be a good time to take  
9 a short break if we were to take --

10 THE HEARING EXAMINER: I think it's a  
11 great idea. Five minutes?

12 MR. RANKIN: Five minutes will do.

13 THE HEARING EXAMINER: Okay. We're off  
14 the record.

15 (Off the record.)

16 THE HEARING EXAMINER: It is 3:19 p.m.  
17 We're back on the record.

18 And, Mr. Rankin, go right ahead.

19 BY MR. RANKIN:

20 MR. RANKIN: Okay, Mr. Macha. I'm  
21 going to ask you a couple questions now about the  
22 working interests that you reflect in your exhibits  
23 and testimony. I'm going to start off at your Exhibit  
24 A-10 as part of your direct case. And I'm going to  
25 ask you just to confirm that the ownership breakdown

1 that you reflect here on a tract and unit basis in  
2 this exhibit is for Powderhorn's entire proposed  
3 spacing unit. Agree?

4 MR. MACHA: Yes.

5 MR. RANKIN: Okay. And it's based on  
6 record title ownership, not contractual interest.  
7 Agree?

8 MR. MACHA: That is correct. We --

9 MR. RANKIN: In other words, it was  
10 what was filed in the county records; right?

11 MR. MACHA: Correct.

12 MR. RANKIN: Now, you're showing that  
13 Powderhorn owns 5.01 net acres in one of the tracts;  
14 correct?

15 MR. MACHA: That is correct.

16 MR. RANKIN: And that's tract 2 on your  
17 ownership tract on the next page; correct? Which is  
18 green?

19 MR. MACHA: Yep. Correct.

20 MR. RANKIN: Okay. And that's  
21 Powderhorn's only working interest ownership in the  
22 north half of section 2; correct?

23 MR. MACHA: Correct.

24 MR. RANKIN: Correct?

25 MR. MACHA: That is our -- that is our

1 own working interest. Correct.

2 MR. RANKIN: Okay. And that was  
3 acquired in September of 2025 from VATEX; correct?

4 MR. MACHA: VATEX, I believe. But yes.

5 MR. RANKIN: VATEX is how -- okay.  
6 VATEX -- and that interest originally derived from the  
7 Price family; is that correct?

8 MR. MACHA: That is correct.

9 MR. RANKIN: Okay. And that Price  
10 interest is committed to Marathon's JOA in the north  
11 half of section 2? Agree?

12 MR. MACHA: When we acquired it? Yes.  
13 They didn't have a copy. But after receiving a copy  
14 of the JOA, I agree that it was committed.

15 MR. RANKIN: And it's -- it remains  
16 committed; correct?

17 MR. MACHA: Correct.

18 MR. RANKIN: Okay. Now, you said that  
19 you didn't have a copy of the JOA at the time you  
20 acquired that interest; is that correct?

21 MR. MACHA: That is correct.

22 MR. RANKIN: And when I say "you," I  
23 mean Powderhorn?

24 MR. MACHA: Correct.

25 MR. RANKIN: Okay. Were you aware at

1 the time that you acquired the interest that it was  
2 subject to a JOA?

3 MR. MACHA: There was a JOA as  
4 referenced in -- in assignments. It didn't say how  
5 big it was or what it -- where -- what it covered.  
6 But yes. There was a JOA.

7 MR. RANKIN: So you knew at the time of  
8 the purchase that it was subject to a JOA. You just  
9 didn't have the JOA document in front of you; correct?

10 MR. MACHA: Correct.

11 MR. RANKIN: Okay. So you were aware  
12 at the time of you acquired it that it was going to be  
13 a committed interest, it was going to be already  
14 subject to a JOA. Agree?

15 MR. MACHA: Some sort. Yes.

16 MR. RANKIN: Okay. But -- and you  
17 didn't know at the time that it was Marathon's JOA.  
18 Is that what you're telling me?

19 MR. MACHA: Not really. No. I didn't.  
20 I knew in -- Marathon operated the well. I mean, the  
21 automatic assumption is that yes. It was a Marathon  
22 JOA, but I didn't know what lands it covered, if it  
23 was different spacing, or what it was.

24 MR. RANKIN: Okay. So at the time you  
25 acquired it, though, you agree that you knew it was a

1 Marathon JOA? You just didn't know what acreage was  
2 being covered?

3 MR. MACHA: I think I would agree with  
4 that. Yeah.

5 MR. RANKIN: Okay. And again, that was  
6 acquired back in September 2025. Agree?

7 MR. MACHA: Yes.

8 MR. RANKIN: Okay. Now, you have  
9 another breakout of ownership interests on your  
10 Exhibit A-11. And this is a little bit different.  
11 And I think it has a title apples to apples. But it's  
12 not quite apples to apples because you're including  
13 still portions of section 3 in your breakout; correct?

14 MR. MACHA: Yes.

15 MR. RANKIN: And when I think of apples  
16 to apples, if I were comparing Marathon's development  
17 plan to Powderhorn's development plan, I would've  
18 excluded section 3. Would -- do you understand why  
19 I'm saying that?

20 MR. MACHA: Yeah. I think my logic was  
21 I just didn't see the option of stranding the  
22 northeast of 3.

23 MR. RANKIN: Okay. Because at the time  
24 you filed these exhibits, you would've already made  
25 that contractual agreement with a lot where you were

1 bound to include that section 3 as part of any  
2 horizontal development; correct?

3 MR. MACHA: Correct.

4 MR. RANKIN: Okay. All right. Now,  
5 I'm going to talk to you a little bit more about this  
6 VATEX. I'm going to call it VATEX. I'm going to have  
7 a hard time. Is it VATEX? Is that what you said?

8 MR. MACHA: I'm not sure. But yeah.

9 MR. RANKIN: VATEX. Okay. I'm going  
10 to ask you a little more about the VATEX term  
11 assignment. I think you've got an exhibit that  
12 outlines much of the sort of publicly available  
13 details of that term assignment. Is that fair to say?

14 MR. MACHA: Yes.

15 MR. RANKIN: So Exhibit A-12 is a  
16 summary of this term assignment deal that Powderhorn  
17 made with VATEX; correct?

18 MR. MACHA: That is correct.

19 MR. RANKIN: And just for purposes of  
20 everyone's edification, tell me if you agree that  
21 generally a term assignment requires the assignee to  
22 perfect some obligation to earn the interest in the  
23 term assignment. Is that a fair representation?

24 MR. MACHA: That's fair.

25 MR. RANKIN: So as it stands right now,

1 VATEX still owns the working interest, but Powderhorn  
2 has the right to perfect some action to earn whatever  
3 interest has been agreed to. Agree?

4 MR. MACHA: Agreed.

5 MR. RANKIN: Okay. And there's a  
6 deadline on that; right?

7 MR. MACHA: Yes.

8 MR. RANKIN: And the deadline is March  
9 1, 2027. Agree?

10 MR. MACHA: Agreed.

11 MR. RANKIN: Okay. Now, you've  
12 outlined on this exhibit the territory or acreage  
13 that's included within that term assignment; correct?

14 MR. MACHA: Correct.

15 MR. RANKIN: And that's the blue dash  
16 line; is that correct?

17 MR. MACHA: Correct.

18 MR. RANKIN: Okay. So as I understand  
19 it, based on the public records, that Powderhorn would  
20 need to drill one well and -- for it to be completed  
21 anywhere within the dash blue acreage; is that  
22 correct?

23 MR. MACHA: I would say subject to the  
24 Pugh clauses in that -- in that term assignment, I  
25 don't recall off the top of my head. But I -- I'm not



1 sure if we have to drill off -- I mean, we have to  
2 drill our entire Super Hornet's facing unit as  
3 proposed to perfect the full-term assignment.

4 MR. RANKIN: Okay. So just -- and just  
5 to be clear, it could be anybody that drills the well;  
6 correct?

7 MR. MACHA: Correct.

8 MR. RANKIN: It doesn't have to be  
9 Powderhorn that drills a well?

10 MR. MACHA: Correct.

11 MR. RANKIN: But you're telling me that  
12 you believe that there are Pugh clauses in the term  
13 assignment that would essentially, if you don't drill  
14 acreage, that acreage gets excluded. You don't earn  
15 it; correct?

16 MR. MACHA: I believe that's the case.

17 MR. RANKIN: Okay. But you're not sure  
18 as you sit here?

19 MR. MACHA: We did it six months ago.  
20 I haven't reviewed it in depth since.

21 MR. RANKIN: And as far as the public  
22 record is concerned, do you know if the publicly  
23 available documents include any reference to a Pugh  
24 clause or if that would just be in the --

25 MR. MACHA: Should just be a

1 memorandum.

2 MR. RANKIN: Okay. And do you know if  
3 the memorandum includes any reference to a Pugh  
4 clause?

5 MR. MACHA: I don't believe so.

6 MR. RANKIN: Okay. So looking at the  
7 public records, nobody would know whether or not  
8 there's an obligation to drill up the whole acreage or  
9 if there's any Pugh clauses that govern; correct?

10 MR. MACHA: That's correct. Speaking  
11 for -- from land, I would say that it's fairly implied  
12 with modern term assignments.

13 MR. RANKIN: Okay. Is there any  
14 requirement for a certain length of well to be drilled  
15 under this agreement?

16 MR. MACHA: That I know for sure, which  
17 is a no.

18 MR. RANKIN: Okay. So a one-mile well  
19 would satisfy the term assignment. Agree?

20 MR. MACHA: In theory? Yes.

21 MR. RANKIN: Well, I don't mean in  
22 theory, but based on your understanding of the  
23 agreement, would a one-mile well satisfy the term  
24 assignment?

25 MR. MACHA: From my -- my recollection,

1 yes.

2 MR. RANKIN: Okay. So would a single  
3 well drilled in the south half earn Powderhorn all the  
4 acreage in the south half of section 2?

5 MR. MACHA: I believe the spacing unit  
6 would have to encompass the entire south half if it  
7 was just one well. But yes.

8 MR. RANKIN: Okay. And then a single  
9 well drilled in the north half would earn Powderhorn  
10 the entire north half; correct?

11 MR. MACHA: I believe that's the case.

12 MR. RANKIN: And it could be a one well  
13 in north half as -- one-mile well in the north half as  
14 well; correct?

15 MR. MACHA: I believe that's the case.  
16 Yes.

17 MR. RANKIN: And so Marathon could  
18 drill a one mile well in the north half. And that  
19 would earn Powderhorn the north half acreage. And  
20 Powderhorn could drill a one mile well in the south  
21 half. And that would earn Powderhorn the south half  
22 acreage. Agree?

23 MR. MACHA: Agreed in concept.

24 MR. RANKIN: Okay. Well, not just in  
25 concept. I'm asking based on your understanding of

1 the language, is there anything in the terms that  
2 would prevent that from coming to pass, if that -- if  
3 those wells were drilled as I described?

4 MR. MACHA: As described? No. You  
5 would be correct.

6 MR. RANKIN: Now, I want to go back to  
7 the acquisition of this VATEX interest. And at the  
8 time you acquired the interest, "you" being  
9 Powderhorn, in September 2025, you testified that you  
10 knew that it was committed to a JOA operated by  
11 Marathon. You just didn't know the extent of the  
12 acreage; correct?

13 MR. MACHA: Correct.

14 MR. RANKIN: So having acquired that  
15 acreage, you agree with me that those interests are  
16 subject to the terms of the JOA that Marathon  
17 operates; correct?

18 MR. MACHA: I would agree with that.

19 MR. RANKIN: And that's that 1976  
20 ancient document that didn't contemplate vertical --  
21 horizontal wells; right?

22 MR. MACHA: That'd be correct.

23 MR. RANKIN: Okay. And you told me  
24 that you did review that JOA; correct?

25 MR. MACHA: Yes. In brief.

1 MR. RANKIN: Okay. Now, during the  
2 time that you -- and I understand from your earlier  
3 testimony that you worked with Mr. Maxwell to  
4 negotiate with Marathon during the course of  
5 negotiations; correct?

6 MR. MACHA: Correct.

7 MR. RANKIN: During the course of those  
8 negotiations, did Powderhorn, either yourself or  
9 Mr. Maxwell, ever disclose to Marathon that you had  
10 acquired that VATEX interest in the north half of  
11 section 2?

12 MR. MACHA: Well, we told Conoco we  
13 were subject to a term assignment. I don't believe  
14 that we explicitly let them know.

15 MR. RANKIN: Okay. So despite  
16 negotiating with them starting in September 2025, you  
17 never informed them that you had acquired a term  
18 assignment that was committed to their north half JOA;  
19 right?

20 MR. MACHA: That's correct. We didn't  
21 find it relevant.

22 MR. RANKIN: Okay. Now, I understand  
23 you just recently reviewed the -- or obtained the JOA.  
24 But as part of its conditions or requirements that --  
25 you agree with me that VATEX and now Powderhorn are

1 subject to -- I'm going to read this provision, which  
2 is on page -- oh, I got -- the page number got caught  
3 off. Let me see.

4 Must be page 13 of the JOA. It's  
5 Provision 31-E. And I'm going to read it out loud.  
6 "No assignment transfer or change of ownership in any  
7 form of any interest in any of the lands submitted to  
8 the performance of this agreement shall be binding  
9 upon operator until he has furnished a certified copy  
10 thereof and operator has agreed in writing to such  
11 assignment." Did I read that correctly?

12 MR. MACHA: Appears to be case.

13 MR. RANKIN: Yeah. And at any time up  
14 until this hearing, did Powderhorn or VATEX disclose  
15 to Marathon that they had -- that this transaction had  
16 occurred?

17 MR. MACHA: No. I -- I mean, do you  
18 mind if I read this real fast?

19 MR. RANKIN: Not at all. Take your  
20 time. So just kind of backing up here -- and you can  
21 tell me if I'm wrong. But I believe as of middle of  
22 the summer, the Price interest was still held by the  
23 Prices. Is that fair to say?

24 MR. MACHA: That's fair.

25 MR. RANKIN: And sometime subsequent to

1 that date, it was then conveyed to VATEX, maybe July,  
2 August, or so of 2025. Is that your understanding?

3 MR. MACHA: Yes.

4 MR. RANKIN: And then shortly  
5 thereafter, between August and September, it was then  
6 conveyed to Powderhorn; correct?

7 MR. MACHA: Correct.

8 MR. RANKIN: And to your knowledge, at  
9 any point during any of those transfers or  
10 transactions between Price and Powderhorn, did any  
11 party ever notify Marathon of the -- that those  
12 transactions occurred?

13 MR. MACHA: Not that I'm aware of.

14 MR. RANKIN: Do you know if Marathon  
15 has agreed in writing to any of those assignments or  
16 transfers?

17 MR. MACHA: Not that I'm aware of.

18 MR. RANKIN: Okay. Now, one of the  
19 things I understand from your rebuttal testimony is  
20 that, you know, you make the point that Marathon did  
21 not provide its one mile well proposal under its JOA  
22 to Powderhorn until March 2nd; correct?

23 MR. MACHA: Correct.

24 MR. RANKIN: And it had provided the  
25 other parties to the JOA that well proposal a few

1 weeks earlier; correct?

2 MR. MACHA: Correct.

3 MR. RANKIN: Okay. And do you know how  
4 it came about that Marathon then sent the well  
5 proposal on March 2nd to Powderhorn?

6 MR. MACHA: My assumption was that they  
7 were doing updated title.

8 MR. RANKIN: Okay. Are you aware that  
9 the Friday before that Powderhorn's co-CEO notified  
10 Marathon for the first time that they acquired an  
11 interest in the north half of section 2 and that  
12 caused them to look up the interest?

13 MR. MACHA: I'm not aware of that  
14 explicit conversation. I didn't feel that the  
15 negotiations over the seven months gave the impression  
16 that we didn't own an interest. But --

17 MR. RANKIN: So once they -- but you  
18 agree with me that once they learned that Powderhorn  
19 owned a committed interest under their JOA, that they  
20 immediately provided Powderhorn with a proposal for  
21 the one mile well; correct?

22 MR. MACHA: I would agree with that.

23 MR. RANKIN: Okay. I'm going to talk a  
24 little bit about the relationship with Kaiser-Francis.  
25 Oops, I did not mean to stop sharing. All right.



1 Sorry. It's control bars in my way. I got there.

2 Oh, I'm in the wrong exhibit packet. All right.

3 So here on this page, this is again the  
4 apples to apples view, which is your Exhibit A-11.

5 This working interest breakdown shows that Kaiser-  
6 Francis is a working interest owner in the north half  
7 of section 2; correct?

8 MR. MACHA: Correct.

9 MR. RANKIN: And I think if you were to  
10 compare your working interest representations of  
11 Kaiser-Francis with what Marathon shows, I think they  
12 pretty much line up. Would you agree?

13 MR. MACHA: Yep.

14 MR. RANKIN: Okay. And just in  
15 general -- I think Mr. Holliday even said this during  
16 his questioning of you -- it's about 140 net acres in  
17 the north half of 2; right?

18 MR. MACHA: Yes.

19 MR. RANKIN: And now, you show them  
20 being committed to your -- Powderhorn's JOA. Agree?

21 MR. MACHA: Agree.

22 MR. RANKIN: And that's based on the  
23 fact that Kaiser-Francis signed a JOA proposal  
24 proposed by Powderhorn; correct?

25 MR. MACHA: Correct.

1 MR. RANKIN: But Kaiser-Francis never  
2 rescinded, nor did it revoke its commitment to  
3 Marathon's JOA. Did it?

4 MR. MACHA: Not that I'm aware of. I  
5 don't think that's an industry norm.

6 MR. RANKIN: Okay. But you agree that  
7 their interest also remains committed therefore to  
8 Marathon's JOA. Agree?

9 MR. MACHA: It's kind of a weird  
10 nuance, but I agree.

11 MR. RANKIN: Okay. Now, you show --  
12 you still show Kaiser-Francis as being the owner of  
13 that working interest in the north half of section 2.  
14 Agree?

15 MR. MACHA: Agree.

16 MR. RANKIN: Okay. But Kaiser-Francis  
17 made an agreement to trade its acreage reflected on  
18 this chart, or at least some of it, to Powderhorn in  
19 the event that Powderhorn prevails in this contested  
20 hearing; correct?

21 MR. MACHA: There's some other  
22 stipulations. They -- they could retain their  
23 interest, but agree.

24 MR. RANKIN: Okay. Now, that was a  
25 written agreement; correct?

1 MR. MACHA: Agree.

2 MR. RANKIN: And was that also an  
3 agreement that was subject to a confidentiality  
4 provision?

5 MR. MACHA: Yes. I believe so.

6 MR. RANKIN: Okay. So it wasn't filed  
7 of record; correct?

8 MR. MACHA: Correct.

9 MR. RANKIN: Now, you show that Kaiser-  
10 Francis is still owning in the north half because that  
11 deal is contingent on Powderhorn retaining or winning  
12 in this case; correct?

13 MR. MACHA: I still show them as this  
14 is because it's not filed of record.

15 MR. RANKIN: Okay. So the deal's been  
16 signed. It's been executed; correct?

17 MR. MACHA: There's no assignment  
18 that's been filed or signed. That -- it's just a  
19 letter agreement that's signed.

20 MR. RANKIN: The letter agreement.  
21 Okay. But the terms of the letter agreement in  
22 general -- correct me if I'm wrong -- is that Kaiser-  
23 Francis would trade all of its acreage in the north  
24 half of section 2 to Powderhorn in the event  
25 Powderhorn prevails in this contested hearing?

1 MR. MACHA: I -- at -- at a certain  
2 point, I am going to have to step in on the  
3 confidentiality language. I'm not sure how much I  
4 should be discussing, but the basic terms, what you're  
5 describing, are correct.

6 MR. RANKIN: Okay. So if Powderhorn  
7 prevails in this contested hearing and Kaiser-Francis,  
8 under the terms of the agreement, transfers its  
9 ownership to Powderhorn, then Kaiser-Francis will no  
10 longer own that interest in the north half of section  
11 2. Agree?

12 MR. MACHA: Agree.

13 MR. RANKIN: Okay. And so its  
14 commitment to Powderhorn's JOA through which it  
15 committed its acreage to participate in the proposed  
16 development will no longer be of substance because it  
17 will no longer have any acreage in the north half of  
18 section 2. Agree?

19 MR. MACHA: Agree.

20 MR. RANKIN: So in that potential  
21 hypothetical future, Powderhorn prevails in this case  
22 and Powderhorn becomes operator of this acreage under  
23 its JOA, then Kaiser-Francis will never actually be,  
24 you know, a partner in that JOA because it will --  
25 would have traded out its acreage; correct?

1 MR. MACHA: And like I say, there's  
2 other options for Kaiser. They can retain their  
3 interest and Super Hornet.

4 MR. RANKIN: Okay. Did you -- have you  
5 had discussions directly with Kaiser-Francis on this  
6 areement?

7 MR. MACHA: Yes.

8 MR. RANKIN: Do you know if they want  
9 to be -- do they want to retain their interests if  
10 Powderhorn is the operator?

11 MR. MACHA: That has been a big  
12 conversation. Yes.

13 MR. RANKIN: Okay. Now, one thing I  
14 wanted to clear up a little bit because it -- again,  
15 it's nice to have a timeline, and I don't have a  
16 timeline. But one thing that caught my ear that I  
17 wanted to ask you about was, I understand that you  
18 made that -- Powderhorn made a deal with Avant that  
19 essentially requires Powderhorn to drill horizontal  
20 well -- laydown horizontal wells across the northeast  
21 quarter of section 3; right? And that agreement, as I  
22 understand it, was in the timeframe of the beginning  
23 of March; correct? Of this year?

24 MR. MACHA: Beginning of March. End of  
25 February.

1 MR. RANKIN: Okay. And around the same  
2 time, March 2nd or March 3rd, is when you received  
3 Marathon's well proposal for its one mile proposal;  
4 correct?

5 MR. MACHA: Correct.

6 MR. RANKIN: But prior to that, in your  
7 discussions with Kaiser-Francis, did you learn that  
8 Marathon -- because Kaiser-Francis is a partner under  
9 Marathon's JOA, did you learn from Kaiser-Francis at  
10 any time prior to the deal with Avant that Marathon  
11 was proposing to drill a one mile well under its JOA?

12 MR. MACHA: Yes. And those that -- we  
13 learned that while they were still contemplating our  
14 carry, and that was being postured as being  
15 potentially accepted. So we weren't sure of the  
16 intent of any proposal to Kaiser without us. So we  
17 didn't -- we thought that that might have been just a  
18 strange negotiation tactic for them or for us. We  
19 weren't sure.

20 MR. RANKIN: Okay. So despite learning  
21 that fact from Kaiser-Francis, in advance of making  
22 that deal with Avant, Powderhorn nevertheless made  
23 that deal that locked in Powderhorn to a commitment to  
24 drill only lay down wells across the northeast quarter  
25 of section 3? Agree?

1 MR. MACHA: Yes. Because we did not  
2 view the one mile as an actual viable plan for the  
3 area.

4 MR. RANKIN: Okay. I want to get into  
5 the communications with Marathon in more detail. In  
6 paragraph 14 of your land statement -- oops, I'm  
7 sorry. Paragraph 27 of your land statement, you talk  
8 about the negotiations, and you refer to your  
9 communications log. Okay. And when I go to your  
10 communications log, which I believe is Exhibit A-15;  
11 right? That's your communications log?

12 MR. MACHA: Correct.

13 MR. RANKIN: Okay. It indicates here  
14 that on February 20th is when ConocoPhillips informed  
15 Powderhorn that I was no longer pursuing a deal;  
16 correct?

17 MR. MACHA: Correct.

18 MR. RANKIN: But you don't anywhere in  
19 your testimony or your exhibit here explain why;  
20 correct?

21 MR. MACHA: Correct.

22 MR. RANKIN: Okay. Now, obviously  
23 based on your communications log, there was -- there  
24 were extensive discussions going back months; correct?

25 MR. MACHA: Correct.

1 MR. RANKIN: And I think you made the  
2 point that, you know, most of the discuss -- many of  
3 the discussions range from carry options to trade  
4 deals. And so it was a variety of different options  
5 that were put on the table; correct?

6 MR. MACHA: Correct.

7 MR. RANKIN: Okay. In fact, you know,  
8 Powderhorn and Marathon had nearly come to an  
9 agreement in early February that had been negotiated  
10 between your team and Marathon's team; correct?

11 MR. MACHA: We never told them we  
12 approved the deal. We told them it was pending  
13 evaluation.

14 MR. RANKIN: Understood. And so it was  
15 always -- I think in fact in the emails you say there  
16 were some caveats that we needed a final approval;  
17 correct?

18 MR. MACHA: Correct.

19 MR. RANKIN: And the caveats were about  
20 whether or not it was okay for a one-to-one trade;  
21 correct?

22 MR. MACHA: Just in general, trade  
23 evaluations.

24 MR. RANKIN: Okay. So in the only -- I  
25 mean, I'm just going to say I could pull up the



1 emails, but in the emails, the only caveat that you  
2 provided the Marathon was whether or not your  
3 management was going to agree to one-to-one trade. Do  
4 you recall that?

5 MR. MACHA: That was on January 12th,  
6 and I said it's pending eval.

7 MR. RANKIN: Okay. So there were some  
8 discussions about evaluation. Okay. But there never  
9 up until the time that -- on February 6th, prior to  
10 February 6th, there was never a disclosure from  
11 Powderhorn that Powderhorn didn't actually own the  
12 acreage it was proposing to trade. Agree?

13 MR. MACHA: Agree.

14 MR. RANKIN: And in fact, you know,  
15 based on the discussions with Marathon, Powderhorn put  
16 together a proposed letter of intent that included the  
17 acreage that was being discussed as a potential trade;  
18 correct?

19 MR. MACHA: Correct.

20 MR. RANKIN: Okay. And based on the  
21 email exchanges with Marathon, would you agree with me  
22 that it was a very -- it was a potentially very  
23 attractive offer to Marathon because it proposed to  
24 allow them to extend some laterals in different  
25 acreage; correct?

1 MR. MACHA: And that is why we engaged  
2 with the third party.

3 MR. RANKIN: Okay. Because you knew it  
4 would be attractive to Marathon; right?

5 MR. MACHA: Potentially.

6 MR. RANKIN: Potentially attractive;  
7 right? Based on their public statements about wanting  
8 to extend laterals when possible; correct?

9 MR. MACHA: It was just logic that  
10 bolts on.

11 MR. RANKIN: Okay. And so -- and you  
12 agree with me that Marathon expressed its interest in  
13 this trade; correct?

14 MR. MACHA: Not we -- so we asked for  
15 quick feedback, citing about a week, and I think it  
16 took about two weeks for a response.

17 MR. RANKIN: Now, in the interim, were  
18 you getting notifications that Marathon was elevating  
19 this, accelerating the evaluation, asking for asking a  
20 rushed review?

21 MR. MACHA: I don't recall rushed, but  
22 there was I think emails back and forth including a  
23 meeting on January 15th. I think the carries were  
24 discussed at the -- in those as well.

25 MR. RANKIN: Okay. But you're aware

1 that Marathon was engaging its asset evaluation team  
2 and management to evaluate this proposed trade; right?

3 MR. MACHA: Which we would -- we  
4 were -- wanted them to be doing.

5 MR. RANKIN: Yeah. You expected that;  
6 right?

7 MR. MACHA: Correct.

8 MR. RANKIN: Okay. So after you sent  
9 the letter of intent -- and I don't have the exact  
10 date on it. But you agree with me that Marathon's  
11 landman told you that they were "scrambling to  
12 evaluate for leadership" and that the Marathon asset  
13 team was "pushing to move this forward" and "working  
14 to overcome management hurdles." Do you agree? Do  
15 you recall those general phrases in the emails back  
16 and forth?

17 MR. MACHA: General phrases.

18 MR. RANKIN: Yeah. And that was based  
19 on the representation of the acreage proposed for the  
20 trade? Agree?

21 MR. MACHA: Agree.

22 MR. RANKIN: Okay. In fact, as part of  
23 those discussions, Marathon told you that they were  
24 looking at their contracts for water, gas, and oil as  
25 part of the potential agreement with Powderhorn?

1 Agree?

2 MR. MACHA: Agreed.

3 MR. RANKIN: Okay. And that way  
4 Powderhorn could make -- could utilize the gas and oil  
5 commitments from a Marathon as part of Powderhorn's  
6 development? Agree?

7 MR. MACHA: Yes. In which we responded  
8 we would take a look.

9 MR. RANKIN: Okay. Now, again, at no  
10 time during any of these discussions did you disclose  
11 to Marathon that power didn't actually own or have  
12 control or authority to make -- to offer this acreage  
13 actually for a trade; correct?

14 MR. MACHA: So we did have verbal  
15 agreement with the third party to negotiate with this  
16 tract, and Conoco is a -- Marathon is a competitor.  
17 We were not going to disclose our deal conversations  
18 with Conoco at that point in time.

19 MR. RANKIN: Okay. And prior to the  
20 February 6th date on your date -- communications log,  
21 prior to that day, Marathon affirmatively asked to  
22 confirm whether Powderhorn actually owned the acreage.  
23 Do you recall that communication; correct?

24 MR. MACHA: Yes.

25 MR. RANKIN: And as I understand your

1 testimony, that was in the midst of trying to confirm  
2 whether you would be able to own that acreage;  
3 correct?

4 MR. MACHA: Yeah. If you allowed me to  
5 open-end respond. So on February 2nd, like I say,  
6 they sent the trade proposal and informality. We  
7 likewise scrambled. We engaged the third party to  
8 make sure that they were okay with the terms in which  
9 were proposed.

10 We prepared a letter of intent that  
11 explicitly called out the leases owned by the said  
12 third party, provided to -- provided that to Conoco,  
13 and we rushed the third party to get us an answer as  
14 soon as possible. On that same day, February 6th,  
15 they told us that they were going to have to pursue  
16 another option, and then a phone call was given to the  
17 COP landman stating such.

18 MR. RANKIN: Okay. And that phone call  
19 came from Powderhorn's co-CEO Mr. Jack Yates; correct?

20 MR. MACHA: Correct.

21 MR. RANKIN: Okay. And that was on --  
22 a follow on to Ms. Klingler's repeated request to  
23 confirm whether or not Powderhorn actually owned that  
24 acreage as part of the trade? Agree?

25 MR. MACHA: Correct. I -- like I say,

1 I recall several emails being sent that day. I'm  
2 pretty sure I was out of the office at that point in  
3 time because I remember seeing a lot of them coming  
4 in, so I deferred to Jack at that point in time.  
5 That's why he made the phone call.

6 MR. RANKIN: Yeah. Okay. And now,  
7 would you agree with me that Powderhorn didn't  
8 initially disclose the fact that it didn't own that  
9 acreage to Marathon at any time prior to that date  
10 because it would've altered Marathon's willingness to  
11 negotiate on that trade? Would you agree?

12 MR. MACHA: I don't think that that's  
13 the case. We viewed it as irrelevant. It's acreage  
14 that we intended on delivering, whether it was coming  
15 from us or another party,

16 MR. RANKIN: But having not disclosed  
17 that fact to Marathon, Marathon was unable in its  
18 calculations to discount the possibility of that deal  
19 not coming to fruition because there's a third party  
20 involved. Agree?

21 MR. MACHA: That's a fair statement.

22 MR. RANKIN: Okay. And because they  
23 weren't able to discount that risk, it took them by  
24 surprise when they learned that in fact you Powderhorn  
25 didn't own that. Would you agree based on the

1 response?

2 MR. MACHA: Based on the response.

3 MR. RANKIN: Yeah.

4 Mr. Hearing Officer, I'll just take two minutes to  
5 make sure I may be complete with my question.

6 THE HEARING EXAMINER: That's fine.  
7 Okay. Let's take two minutes.

8 MR. RANKIN: Thank you.

9 THE HEARING EXAMINER: Off the record.  
10 (Off the record.)

11 THE HEARING EXAMINER: All right. It  
12 is 3:57. We're back on the record.

13 And, Mr. Rankin, we're going to finish  
14 with Mr. Macha before we take your witness. And so I  
15 urge you to be brief because I don't know how many  
16 questions Mr. Fordyce has. And I don't know how long  
17 the redirect is going to take, so please go ahead.

18 MR. RANKIN: Yeah. Appreciate it.  
19 Thank you.

20 BY MR. RANKIN:

21 MR. RANKIN: Mr. Macha, just one line  
22 of questions here. You testified -- we talked during  
23 our dialogue about the deal that Powderhorn made with  
24 Kaiser-Francis. Do you recall that discussion with  
25 me?

1 MR. MACHA: Yes.

2 MR. RANKIN: And you mentioned that  
3 there are some options for Kaiser-Francis based on  
4 the -- based on that deal; correct?

5 MR. MACHA: Yes.

6 MR. RANKIN: And is one of those  
7 options for Powderhorn to carry all or a portion of  
8 Kaiser-Francis?

9 MR. MACHA: I can't get into the  
10 confidentiality at this point much.

11 MR. RANKIN: Let me ask you this then.  
12 In terms of the offers to Marathon, can you tell me  
13 whether or not Marathons -- you made an offer to carry  
14 Marathon; correct?

15 MR. MACHA: Yes.

16 MR. RANKIN: Can you tell me that the  
17 offer that you made to Marathon did not match the  
18 offer that you made to Kaiser-Francis in terms of a  
19 carry?

20 MR. MACHA: I can't disclose that at  
21 this point.

22 MR. RANKIN: So you can't tell me one  
23 way or the other whether Marathon -- the offer you  
24 made to Marathon matched -- at least matched the offer  
25 you made to to Kaiser-Francis?



1 MR. MACHA: The offer to made the  
2 Marathon was extremely equitable is what I can say is  
3 within a very small degree, plus or minus, of Kaiser.

4 MR. RANKIN: Okay. But it didn't  
5 match. Agree?

6 MR. MACHA: It became within extremely  
7 small margin of.

8 MR. RANKIN: Very good. No further  
9 questions, Mr. Haron?

10 THE HEARING EXAMINER: Mr. Fordyce?

11 MR. FORDYCE: Yeah. I have a -- just a  
12 couple of qualifying or clarifying questions for  
13 Mr. Macha. I have a question about Exhibit A-10 on  
14 page 54. And actually, Mr. Rankin already touched on  
15 this a little bit. There was a question about PBX LLC  
16 transferring their interest to Avant.

17 CROSS-EXAMINATION

18 BY MR. FORDYCE:

19 MR. FORDYCE: Mr. Macha, I guess it's  
20 your understanding that that was supposed to take  
21 place, but we're not a hundred percent sure whether  
22 that's taken place or not, I guess?

23 MR. MACHA: Yes. So I think yes. That  
24 is correct. So the PBX interest that is shown on  
25 here, I think, in all likelihood, is just some title

1 cleanup that needs to be done. PBX did explicitly  
2 state that they intended 100 percent of their interest  
3 in section 2 to be transferred to Avant.

4 I've showed it here in good faith out  
5 of just transparency of -- of title and what we are  
6 showing. That is -- that is the purpose of that.

7 MR. FORDYCE: So if you consider PBX  
8 uncommitted, why wouldn't you seek to pull them at  
9 this time until that transfer has taken place?

10 MR. MACHA: We have a -- I have a very  
11 good relationship with the people over there, and I'm  
12 not worried about that title cleanup. And if there is  
13 any necessity to either pull them or do a joinder via  
14 JOA, they've explicitly stated that they would work  
15 with us. So I don't -- I didn't see the -- the  
16 purpose.

17 MR. FORDYCE: Okay, thank you for that.  
18 I have a question about your Exhibit A-9 on page 51.  
19 So as a follow-up to, you know, basically who's being  
20 pulled, you have all of these overriding royalty  
21 interests and some record -- a couple of record title  
22 owners that you're again, not seeking to pool?

23 MR. MACHA: Yes. Yeah. So for --

24 MR. FORDYCE: Because you anticipate  
25 this com agreement ratification is going to happen in

1 the future?

2 MR. MACHA: Yes. So the record title  
3 for the State of New Mexico, they require the -- the  
4 actual signature. So we've had dialogue with VATEX.  
5 Faulconer I've worked with in the past on --  
6 especially on record title signatures. They're very  
7 easy to deal with.

8 And the general stance that we took and  
9 I usually generally take with Permian Resources and my  
10 landman experience in the past is I do like to just  
11 engage and get override royalty ratifications as we --  
12 as we work through the process. If there's any need  
13 for additional pooling or if no one -- or someone  
14 doesn't sign, we would come back and seek joinder via  
15 pooling at that point.

16 MR. FORDYCE: So one of the parties  
17 listed as a overriding royalty interest is VATEX,  
18 which we've already discussed some today as being the  
19 party that Powderhorn has a term assignment from;  
20 correct?

21 MR. MACHA: That is correct.

22 MR. FORDYCE: I wonder if we could turn  
23 to page 167 for just a moment? On this notice list,  
24 I'm just wondering if you've had dealings with VATEX?  
25 And you have a term assignment and so on and so forth.

1 I'm wondering how it is that they didn't receive  
2 notice due to an incorrect address?

3 MR. MACHA: Yeah. It seems odd. That  
4 address from my recollection is correct. If it wasn't  
5 received, that would've been of no consequence or at  
6 least of -- of something that I would not have been  
7 aware of. But VATEX, they're -- they're a group that  
8 we're close with on a personal level that we're --  
9 we're not concerned with.

10 MR. FORDYCE: Would you be able to  
11 provide an amended exhibit, I guess, or supplemental  
12 exhibit, let's say, unit recapitulation for th  
13 proposed unit, the unit that you're proposing, not any  
14 other theoretical units, but the unit that  
15 Powderhorn's proposing with a -- with all the summary  
16 of all the interest and again indicate that the  
17 parties that Powderhorn is seeking to pool in this  
18 case?

19 MR. MACHA: Yes. Yes. I can.

20 MR. FORDYCE: I have a question about  
21 exhibit A-8 on page 49. So my question is obviously  
22 the pooling case that we're discussing for the wolf  
23 bone wells -- or excuse me -- the Wolfcamp wells. And  
24 this exhibit notes that -- and you mentioned working  
25 with Avant to work a deal to drill Bone Springs wells

1 in the planned unit depicted here in the south half of  
2 the proposed unit; correct?

3 MR. MACHA: That is correct.

4 MR. FORDYCE: During your  
5 negotiations -- I'm curious looking at this -- does  
6 Powderhorn or Avant or another party propose to drill  
7 Bone Springs wells in the north half of this proposed  
8 unit?

9 MR. MACHA: Originally, Conoco did send  
10 proposals on a mile and a half basis to drill bone  
11 spring in their superseding JOA. Those were  
12 rescinded. We did send them counterproposals for the  
13 Bone Springs formation as well to achieve standing.

14 But both Conoco and Powderhorn viewed  
15 it as a secondary target that neither one of us wanted  
16 to pursue currently. Avant is more interested than --  
17 in it than we are.

18 MR. FORDYCE: Okay. I think maybe then  
19 to summarize, the parties that are involved, that  
20 would be a discussion for future -- to sort out the  
21 future, I guess?

22 MR. MACHA: Yes. So the parties to  
23 sort out in the future for the north half, for that  
24 northeast quarter of the Bone Springs. And the north  
25 half of the Bone Springs would again probably just be

1 be Powderhorn and Conoco.

2 MR. FORDYCE: Okay. Thank you for  
3 that. I don't have any further questions for this  
4 witness.

5 THE HEARING EXAMINER: Mr. Holliday?

6 REDIRECT EXAMINATION

7 BY MR. HOLLIDAY:

8 MR. HOLLIDAY: Okay. I'd like to start  
9 out -- we talked a lot about drilling contractors,  
10 Powderhorn's experience, those sorts of things. And  
11 the question was raised, who inside of Powderhorn  
12 would be responsible for drilling? Would that person  
13 be Patrick Walter, CEO of Powderhorn?

14 MR. MACHA: I think that he would be  
15 playing a heavy hand -- heavy hand. Yes.

16 MR. HOLLIDAY: And what is his  
17 background and qualification for planning, drilling  
18 operations?

19 MR. MACHA: He worked most recently  
20 before Powderhorn as the development manager for Tap  
21 Rock serving in a very similar role.

22 MR. HOLLIDAY: So in that role, he  
23 would've worked with drilling contractors to  
24 accomplish the same sort of projects you're looking to  
25 do with the Super Hornet; correct?

1 MR. MACHA: I believe that is the case.  
2 Yes.

3 MR. HOLLIDAY: Okay. So I'm going to  
4 try and share my screen. Yeah. Danger. Oh, let's  
5 see. Nope. That's my email. There we go. Now we're  
6 good. Okay. We're good.

7 So I want to go to paragraph 10 of your  
8 self-affirmed statement for the original rebuttal -- I  
9 mean, excuse me -- the original exhibit packet. I'm  
10 sorry. Paragraph 12 -- hang on. I may be confusing  
11 rebuttals now.

12 Anyway, you -- there was a question  
13 raised in your testimony where you said to the effect  
14 your plan will fully develop a Wolfcamp formation;  
15 correct?

16 MR. MACHA: Correct.

17 MR. HOLLIDAY: Would you like to amend  
18 that testimony or clarify in any way?

19 MR. MACHA: Yes. That would be the  
20 four initial Wolfcamp wells would be fully developing  
21 the Wolfcamp A bench within the Wolfcamp formation.

22 MR. HOLLIDAY: Okay. And, you know,  
23 much has been made at the drilling contractors you  
24 guys plan to use or may plan to use. As it stands  
25 today, is it fair to say that the plan is to use the

1 same drilling contractor that was used for the Bat  
2 Bomb and War Pigeon units?

3 MR. MACHA: That is the plan. Correct.

4 MR. HOLLIDAY: Okay. And that's a  
5 common thing to do for teams of your size is to  
6 outsource that with internal oversight; is that  
7 correct?

8 MR. MACHA: Yes. Many private equities  
9 do the same thing.

10 MR. HOLLIDAY: Well, and publics as  
11 well; right?

12 MR. MACHA: Correct. That's correct.

13 MR. HOLLIDAY: I think we heard from  
14 Mr. Dupree in his qualification testimony he  
15 referenced some geo steering contractors; is that  
16 correct?

17 MR. MACHA: That is correct.

18 MR. HOLLIDAY: And so if we go to  
19 rebuttal Exhibit A-24 -- teams -- okay. So if we go  
20 to Exhibit A-24, what is this exhibit?

21 MR. MACHA: These are just Conoco's.  
22 AFEs for their one mile wells they did propose.

23 MR. HOLLIDAY: And what does this  
24 exhibit tell us about Marathon's intended use of  
25 contractors?



1 MR. MACHA: The purpose is to show that  
2 large publics, including Marathon, do as well use  
3 contractors to drill wells.

4 MR. HOLLIDAY: So it's common private,  
5 public companies -- everyone uses contractors;  
6 correct?

7 MR. MACHA: Correct.

8 MR. HOLLIDAY: Okay. Let's go back to  
9 this notice issue and PBX and EGL and that sort of  
10 discussion. So I've -- I pulled up here -- this is  
11 exhibit -- I believe it's D-2 -- D-1. And this is the  
12 list of noticed parties. You see here, EGL, Finwing,  
13 and some other parties. Do you have -- would you like  
14 to summarize who those parties are and why that's  
15 relevant?

16 MR. MACHA: Yes. So when Mr. Rankin  
17 did make note of the PBX interest maybe -- may or may  
18 not be receiving notice, prior to our applications  
19 being filed, the of record owners of the PBX interest  
20 were W Wesley Perry, EGL, S.E.S., Lerwick, Finwing.  
21 And I think that is it. All of those companies  
22 assigned into PBX before assigning into Avant. So  
23 that is where the reference to PBX comes from

24 MR. HOLLIDAY: And EGL and PBX are  
25 related companies. Is that fair to say?

1 MR. MACHA: Yes. I don't know if they  
2 still are, but EGL used to just be the operator  
3 operating entity for PBX.

4 MR. HOLLIDAY: And Avant was noticed in  
5 this case; correct?

6 MR. MACHA: That is correct.

7 MR. HOLLIDAY: And is it your  
8 understanding that Marathon would have standing to  
9 raise a notice argument on behalf of a third party?

10 MR. MACHA: That is not my  
11 understanding.

12 MR. HOLLIDAY: Okay. And has have any  
13 of these parties raised a notice argument other than  
14 Marathon?

15 MR. MACHA: No.

16 MR. HOLLIDAY: Okay. Real quick,  
17 because I know you're a landman and not a petroleum  
18 engineer, if we look at Marathon's Rebuttal Exhibit 6  
19 we -- is that it? Yeah, 6. Okay. If we look down in  
20 the bottom left corner with the green chart, what does  
21 that discuss?

22 MR. MACHA: The bottom left corner, the  
23 max stress orient -- orientation.

24 MR. HOLLIDAY: Right. So Marathon  
25 raised the issue of maximum stress orientation in this

1 case; correct?

2 MR. MACHA: That's correct.

3 MR. HOLLIDAY: Okay. But land doesn't  
4 have anything to do with that; right?

5 MR. MACHA: Correct.

6 MR. HOLLIDAY: Okay. Mr. Rankin asked  
7 about a meeting that occurred or your qualifications  
8 and whether you informed Conoco or Marathon of your  
9 qualifications. Other than that plan meeting, did  
10 Conoco ever ask specifically for your qualifications  
11 and experience in regard to drilling these wells?

12 MR. MACHA: No.

13 MR. HOLLIDAY: Okay. Real brief, we're  
14 almost done. If we look at A-10, Exhibit A-10 and A-  
15 11, those are the ownership exhibits. Get there as  
16 fast as I can. Okay. So a -- well, let's just focus  
17 on A-11. This is the apples to apples. What were you  
18 trying to represent with this chart?

19 MR. MACHA: This was just, I mean,  
20 trying to represent the northern portion of the Super  
21 Hornet Unit where Conoco/Marathon own all of their  
22 interest as well as me trying to make very, very wide  
23 note that I don't view that the northeast quarter of  
24 section 3 is a viable option of being stranded.

25 So I did want to show that regardless,

1 if you wanted to view it as a north -- north half  
2 development or a south half development, that  
3 Powderhorn did have the majority interest committed.

4 MR. HOLLIDAY: In either case?

5 MR. MACHA: Yes.

6 MR. HOLLIDAY: Okay. So the last thing  
7 I want to talk about, this JOA that Kaiser-Francis  
8 signed with Powderhorn. In your experience as a  
9 landman New Mexico, is it common for parties to sign  
10 what is commonly referred to as superseding JOAs?

11 MR. MACHA: Yes.

12 MR. HOLLIDAY: And why would a party  
13 sign a superseding JOA?

14 MR. MACHA: Because they're viewing  
15 another development as a preferred option.

16 MR. HOLLIDAY: And do you know why  
17 Kaiser-Francis signed the JOA with Powderhorn in this  
18 case?

19 MR. MACHA: Because they were worried  
20 that -- number one, that their interest would be --  
21 would be stranded because they own on the -- both the  
22 north side and the south side of the Super Hornet  
23 Unit. They also wanted to see an actual full, full  
24 development of the Wolfcamp A formation across the  
25 full sections.

1 MR. HOLLIDAY: So fair to --

2 MR. MACHA: As a longer lateral  
3 development.

4 MR. HOLLIDAY: Apologies. It's fair to  
5 say they preferred your plan?

6 MR. MACHA: Yes.

7 MR. HOLLIDAY: Okay. Does -- when  
8 you're acquiring an interest, whether you have  
9 knowledge of an existing JOA in the chain of title,  
10 would that knowledge or not knowledge of a JOA have  
11 any ability on a party's ability to sign a superseding  
12 JOA?

13 MR. MACHA: Sorry. Can you repeat?

14 MR. HOLLIDAY: Yeah. No that was  
15 really -- I tripped on that. Would a party's  
16 knowledge of a prior JOA in the chain of title prevent  
17 them from signing a superseding JOA?

18 MR. MACHA: No. It would not.

19 MR. HOLLIDAY: Okay. And so if  
20 Powderhorn acquires Kaiser outright and Kaiser signed  
21 this superseding JOA, you would take that interest  
22 subject to all the agreements that Powderhorn -- I  
23 mean, excuse me -- that Kaiser-Francis has signed;  
24 right?

25 MR. MACHA: That's correct.

1 MR. HOLLIDAY: Okay. Just one quick  
2 thing. This trade -- just to clarify for the record,  
3 you were authorized by the owner of -- by the third-  
4 party owner of acreage subject to the trade to Conoco  
5 that we've discussed in length. You were authorized  
6 to present that to them; correct?

7 MR. MACHA: That is correct.

8 MR. HOLLIDAY: And when that deal fell  
9 through, you immediately notified Marathon; correct?

10 MR. MACHA: You, as in Powderhorn,  
11 because Jack made that call, but yes.

12 MR. HOLLIDAY: Right. And so since we  
13 discussed some hypotheticals earlier in your cross-  
14 examination, as a hypothetical, you offer the deal on  
15 February 2nd. Let's imagine a world in which Conoco  
16 accepts on the 4th. Would that trade have then been  
17 consummated?

18 MR. MACHA: No. If -- sorry. Go  
19 ahead. Sorry. Can you say --

20 MR. HOLLIDAY: Right. So before the  
21 third party pooled the deal, you would have had the  
22 ability in that span of, like, three, four days to do  
23 the trade with Conoco if they had accepted; correct?

24 MR. MACHA: So we still wanted to run  
25 an evaluation. Like, regardless of the third party,

1 we -- we wanted to run an independent evaluation.  
2 Conoco gave us some caveats that it -- we weren't sure  
3 if it was approved on their end -- their end either,  
4 so --

5 MR. HOLLIDAY: Okay. But if you had  
6 come to agreement, just from a title perspective?

7 MR. MACHA: Yes.

8 MR. HOLLIDAY: That trade could have  
9 occurred?

10 MR. MACHA: Absolutely.

11 MR. HOLLIDAY: Okay. So last question  
12 about that. Why did you search out this acreage?  
13 Remind me why you search out this acreage?

14 MR. MACHA: So before -- so well, it  
15 came to us in December -- on the December 19th, but in  
16 the preceding six months, we hadn't -- received  
17 minimal engagement on any real conversations from  
18 Conoco. So we had to find something else. We've  
19 offered them acreage that we owned under them already.

20 It didn't seem like that was of -- of  
21 interest, so we had to find something else. And this  
22 kind of came up. And we treated it as delicately as  
23 we -- we thought we could. None of that was intended  
24 to offend anyone. We've worked many deals like this  
25 in the past.

1 I've worked on -- on these -- between  
2 Concho and Permian Resources and Colgate, deals just  
3 like that, where we've kind of acted as a pass through  
4 entity, and I've never had an issue. And I've never  
5 been claimed to bad faith but -- for it. So --

6 MR. HOLLIDAY: And you don't feel like  
7 the -- your efforts in this regard were in bad faith;  
8 correct?

9 MR. MACHA: No. And in fact, like I  
10 say, if you look at the communication log between the  
11 five parties that -- that Powderhorn has done deals  
12 with or reached voluntary joinder with, we have  
13 communicated with Conoco the -- the most.

14 MR. HOLLIDAY: Okay. I believe that's  
15 all my questions.

16 THE HEARING EXAMINER: Mr. Rankin, I  
17 trust nothing new came up during that?

18 MR. RANKIN: Nothing new.

19 THE HEARING EXAMINER: Good. All right  
20 Mr. Fordyce, did you have anything  
21 else?

22 MR. FORDYCE: I have nothing further,  
23 Mr. Hearing Examiner.

24 THE HEARING EXAMINER: Thank you.  
25 This witness may be excused.



1 Thank you Mr. Macha.

2 Okay. Now we're going to take a break  
3 from the regular course of events, and we're going to  
4 have Mr. Rankin provide testimony from his petroleum  
5 engineer.

6 MR. RANKIN: Thank you,  
7 Mr. Hearing Officer.

8 Dr. Umekwe, are you available on the  
9 platform?

10 DR. UMEKWE: Yes, I am.

11 MR. RANKIN: Thank you very much. let  
12 me know if you have problems hearing me, and we'll let  
13 you know the same. Since you've already been accepted  
14 as an expert, I'm going to skip through the  
15 preliminaries and just jump in to some of the meat.

16 DIRECT EXAMINATION

17 BY MR. RANKIN:

18 MR. RANKIN: Dr. Umekwe, have you  
19 conducted an engineering study of the lands at issue  
20 in this contested case?

21 DR. UMEKWE: Yes, I have.

22 MR. RANKIN: And have you prepared  
23 written testimony and exhibits that are marked as  
24 Exhibit C and Exhibit C-1 as part of your direct  
25 testimony?

1 DR. UMEKWE: Yes, I have.

2 MR. RANKIN: Did you also prepare  
3 rebuttal exhibits that were filed and served in this  
4 case and marked as Exhibits 5 and 7? And I can share  
5 the screen so you can see it so you know what I'm  
6 talking about because I don't think you probably knew  
7 the numbering. But that would be Exhibit Number 5.  
8 This one here?

9 DR. UMEKWE: Yes.

10 MR. RANKIN: And then Exhibit Number 7,  
11 this one here, did you prepare those as rebuttal  
12 exhibits?

13 DR. UMEKWE: Yes.

14 MR. RANKIN: Were these exhibits  
15 prepared by you or compiled under your supervision?

16 DR. UMEKWE: Yes.

17 MR. RANKIN: And no corrections or  
18 changes to the testimony or exhibits that were filed;  
19 correct?

20 DR. UMEKWE: Correct.

21 MR. RANKIN: And you adopt the  
22 testimony that you filed in your self-affirmed  
23 statement as Exhibit C as your sworn testimony today?

24 DR. UMEKWE: That's correct.

25 MR. RANKIN: Dr. Umekwe, I'm going to

1 ask you about your testimony addressing vertical  
2 degradation. You've reviewed Powderhorn's  
3 application?

4 DR. UMEKWE: Yes, I have.

5 MR. RANKIN: And you've reviewed their  
6 land, geology, and engineering statements that were  
7 filed in this case?

8 DR. UMEKWE: Yes, I have.

9 MR. RANKIN: What's your understanding  
10 of what Powderhorn proposes for the development plan  
11 based on that review?

12 DR. UMEKWE: Powderhorn proposes to  
13 drill the Wolfcamp XY Sand first and potentially come  
14 back and drill the Wolfcamp B or Wolfcamp C at a later  
15 date.

16 MR. RANKIN: And just -- I know you're  
17 not a geologist, but just for purposes of  
18 clarification, is there a difference in nomenclature  
19 between the parties, what they're calling Wolfcamp B  
20 and Wolfcamp C?

21 DR. UMEKWE: Yes. That's my  
22 understanding. And my colleague, the geologist who  
23 speak to it -- Mr. Dupree will speak to it later  
24 tomorrow. But what Powderhorn refers to as Wolfcamp  
25 B, we typically refer to it as Wolfcamp C.

1 MR. RANKIN: Okay. Now, based on your  
2 review and your discussion just now that they proposed  
3 a first drill, the upper Wolfcamp Sand and then come  
4 back later to drill the lower target, what is the  
5 problem with that development approach based on your  
6 review and analysis?

7 DR. UMEKWE: Powderhorn's development  
8 approach is going to lead to parent/child -- top-down  
9 parent/child degradation. And at some point, I'll  
10 maybe look -- talk -- talk through the exhibit that  
11 you have before me, you know, to kind of describe --  
12 describe that in more detail.

13 MR. RANKIN: And when you talk about  
14 parent/child effect, you're talking about a vertical  
15 parent/child effect between the upper target and the  
16 lower target; correct?

17 DR. UMEKWE: That's correct.

18 MR. RANKIN: Because in their  
19 testimony, Powderhorn is referring to a similar -- a  
20 different kind of parent/child effect, a horizontal  
21 offset parent/child effect; correct?

22 DR. UMEKWE: That's correct.

23 MR. RANKIN: Okay. But you're here  
24 talking about the vertical impacts; correct?

25 DR. UMEKWE: That's correct.

1 MR. RANKIN: And you prepared an  
2 analysis to show how you know this is going to be an  
3 impact on the vertical side; correct?

4 DR. UMEKWE: Yes. Yes, I did.

5 MR. RANKIN: Okay, so I've got your  
6 slide, Rebuttal Exhibit Number 5, up. If you would  
7 just review for the examiner what this shows. I know  
8 explain -- I think you'd prepared the slide with your  
9 geologist, and he'll address the geology aspects of  
10 this. And you're going to address the engineering  
11 aspects; correct?

12 DR. UMEKWE: That's correct.

13 MR. RANKIN: Okay. So go ahead and  
14 give us an overview what the slide shows, and then  
15 give us your assessment on the engineering side.

16 DR. UMEKWE: Okay. So the slide before  
17 shows a few things. I'll kind of walk us through it.  
18 So the top left portion of the slide shows a locator  
19 map, which shows the -- the relative locations of the  
20 Super Hornet project on the top right -- on the top  
21 left with the A shown -- shown on it and the  
22 ConocoPhillips pilot project that tested this specific  
23 phenomenon that we'll be describing today.

24 And I believe the Keg Shell project's  
25 shown on the -- the southeast of the -- of that

1 particular image as shown there. Then below that  
2 image, we show the -- the differences between the  
3 Super Hornet project, the vertical separation of that  
4 project, as proposed by Powderhorn versus the vertical  
5 separation of the -- the pilot project executed within  
6 ConocoPhillips or Marthon.

7 And what you see there is you see is --  
8 is a very -- separation difference of somewhere  
9 around, you know, a hundred plus feet, so 610 or so  
10 feet for the Super Hornet project versus 720 plus feet  
11 for the -- the ConocoPhillips project.

12 Then on the very center of the slide,  
13 you see Powderhorn's exhibit and it's gun barrel  
14 showing its Wolfcamp XY wells shown in red and its  
15 Wolfcamp B wells or Wolfcamp C, you know, shown in  
16 green. And those are the wells that it plans to  
17 potentially come back to to drill after drilling the  
18 aAfirst or the XYs first.

19 On the right, we show the gun barrel  
20 for the ConocoPhillips project that tested this  
21 specific phenomenon. So on the left side, you have  
22 the -- the Potato Baby project. And on the right, you  
23 have the Keg Shell project.

24 And the Potato Baby project is  
25 essentially set up, you know, just like the -- the

1 sequential development that is contemplated by -- by  
2 Powderhorn, whereas the Keg Shell side of the project  
3 shows the co-developed project that is proposed in  
4 ConocoPhillips's Campana project.

5 And below that, we show the difference  
6 in performance of the Wolfcamp C or Wolfcamp B in both  
7 scenarios. So the blue line shows us the performance  
8 of the Wolfcamp C in a co-development scenario,  
9 whereas the orange line shows us the -- the  
10 performance of the -- the Wolfcamp C or Wolfcamp B in  
11 a sequential development scenario.

12 So the sequential development scenario  
13 maps clearly with the plan that Powderhorn has put  
14 forward for the Super Hornet project, whereas the --  
15 the blue line shows the plan mapped out in the Campana  
16 project.

17 MR. RANKIN: Sorry. Explain briefly,  
18 Dr. Umekwe, the engineering principles that govern  
19 your analysis and apply in this instance as between  
20 ConocoPhillips pilot test project and then the Super  
21 Hornet proposal by Powderhorn.

22 DR. UMEKWE: So in -- in general, we're  
23 dealing with a few factors, the vertical separation of  
24 the two zones that have been developed as well as the  
25 pressure differential between those two zones. In

1 general, pressure increases with depth. So the  
2 Wolfcamp C will be more pressurized than the Wolfcamp  
3 A or the X -- the Wolfcamp XY Sand as Powderhorn  
4 proposes here.

5 And because of that, when you go to  
6 stimulate the -- the Wolfcamp C, the fluids that  
7 you're injecting into the Wolfcamp C will  
8 preferentially move towards lower pressured areas. So  
9 it's a natural phenomenon. That phenomenon is  
10 exacerbated by the depletion that would've occurred in  
11 the A if you drew that first or in the XY if you drew  
12 that first.

13 So that -- so the key issues here would  
14 be the vertical separation as well as the pressure  
15 differential. In -- in our -- in this specific case,  
16 you see that we observe parent/child -- top-down  
17 parent/child degradation in the Potato Baby Keg Shell  
18 project, which is over 720 feet separated.

19 So in the case of the Super Hornet  
20 project that has a shorter vertical separation, you  
21 would expect, you know, even much higher degradation.  
22 And one thing to note also is we observed this  
23 degradation for the Potato Baby Keg Shell project  
24 while implementing several steps to kind of mitigate  
25 that.



1           So for a less practiced operator as  
2 well as for a shorter vertical separation, you would  
3 expect worse performance for the Wolfcamp B or C as --  
4 as in this case.

5           MR. RANKIN: And just to be clear, the  
6 results that you identified here in your analysis  
7 suggest that the same sort of vertical degradation  
8 will -- you expect to be observed in the Super Hornet;  
9 correct?

10          DR. UMEKWE: That's correct.

11          MR. RANKIN: And even perhaps  
12 exacerbated because the vertical separation in the  
13 Super Hornet is less than what was experienced in your  
14 pilot test project; correct?

15          DR. UMEKWE: That's correct.

16          MR. RANKIN: Okay. And I know we  
17 didn't have that Marathon's geologist testify in  
18 advance of your testimony, but based on your review,  
19 is -- do you believe that the pilot test project is  
20 analogous to the project proposed by Powderhorn for  
21 its Super Hornet?

22          DR. UMEKWE: Yes.

23          MR. RANKIN: And just for  
24 clarification, the data that you used for purposes of  
25 making this analysis was all publicly available data;

1 is that correct?

2 DR. UMEKWE: That's correct.

3 MR. RANKIN: And does that track with  
4 the internal data that ConocoPhillips has as well?

5 DR. UMEKWE: That's correct.

6 MR. RANKIN: Now in your opinion,  
7 Dr. Umekwe, is it always appropriate to co-develop a  
8 Wolfcamp formation as Marathon is proposing here?

9 DR. UMEKWE: Not in every instance, but  
10 in this specific instance, giving the vertical  
11 separation at play, it's -- it's the preferred option  
12 for development here.

13 MR. RANKIN: Okay. Now, would you  
14 agree Dr. Umekwe, that sometimes other factors like  
15 drilling deadlines, prior plans, agreements with  
16 different partners all could influence whether an  
17 operator is able to carry out its preferred  
18 development plan for a given project?

19 DR. UMEKWE: That's correct. I agree  
20 to that.

21 MR. RANKIN: Now, in reviewing Exhibit  
22 C-4, which is Powderhorn's engineer exhibit here  
23 showing a chart, explain why, in particular  
24 referencing the green box, in your opinion, it would  
25 be prudent to co-develop the Wolfcamp in this acreage

1 to avoid the potential top-down parent/child  
2 degradation that you're seeing in the offsite pilot  
3 test?

4 DR. UMEKWE: Yeah. So further on,  
5 based on this slide from what I understand, shows that  
6 the Wolfcamp C is a highly gassy target, so high GOR  
7 like it stated right there. And they also mentioned  
8 that the economics for this will be marginal and made  
9 more marginal if parent/child effects are taken into  
10 consideration.

11 And I -- I agree with that statement.  
12 And I -- I think with top-down degradation, you would  
13 be experiencing exactly that and even worse. And that  
14 top-down degradation is the -- the plan that has been  
15 put forward by Powderhorn in its Super Hornet  
16 development.

17 So essentially, the Wolfcamp B or  
18 Wolfcamp C project, when Powderhorn gets around to  
19 doing it, would be degraded, and the economics for  
20 that would be so much, you know, that Powderhorn may  
21 or may not, you know, choose to -- to continue with  
22 that.

23 MR. RANKIN: So the point here is that  
24 the concern -- the marginal economics potentially with  
25 the Wolfcamp B is exactly why Marathon is proposing to

1 co-develop these benches partly; correct?

2 DR. UMEKWE: That's correct.

3 MR. RANKIN: In your opinion, in this  
4 acreage, with the vertical offsets that Powderhorn is  
5 proposing will failure to co-develop the Wolfcamp Sand  
6 and the upper bench with the Wolfcamp B or C in the  
7 lower bench result in waste?

8 DR. UMEKWE: Yes, it will.

9 MR. RANKIN: In will -- in your  
10 opinion, will failure to co-develop Marathon -- co-  
11 develop those benches and Marathon's acreage impair  
12 Marathon's correlative rights?

13 DR. UMEKWE: Yes, it will.

14 MR. RANKIN: And is that -- and that --  
15 is that because you believe that it will not access as  
16 many reserves if you were to separately sequentially  
17 develop the lower Wolfcamp bench?

18 DR. UMEKWE: Yes. It -- it will not  
19 access the resources that exist in the Wolfcamp C  
20 bench adequately.

21 MR. RANKIN: The next topic that I  
22 think you set out for rebuttal is Powderhorn's claims  
23 for capital efficiency for longer laterals. And I'll  
24 turn back to your Rebuttal Exhibit Number 7. And  
25 you've included in here an image of Powderhorn's

1 Exhibit C-6, titled Short Laterals, Capital, and  
2 Operational Inefficiencies.

3 What is the purpose of this Powderhorn  
4 slide, as you understand it, from Powderhorn's  
5 engineer. What is it intended to say?

6 DR. UMEKWE: Well, Powderhorn's slide  
7 intends to show a comparison between Conoco's cost AFE  
8 versus their cost AFE and also to show that the one  
9 and a half mile well has a comparatively better use of  
10 capital, essentially better capital efficiency.

11 And based on the numbers shown on the  
12 slide, you see that Powderhorn's per foot cost would  
13 be somewhere around, say, 20 percent lower than, you  
14 know, Conoco's AFE cost would -- would show. And what  
15 I state here is a claim such as that could be made by  
16 more practiced operators, teams with longstanding  
17 relationships working together as well as we --  
18 trusted and tested contractors, but not with a team  
19 that hasn't drill the well.

20 And what I show here as well is just,  
21 again, it's common knowledge that we get better by  
22 doing what we do. So in -- in general, that's --  
23 that's acceptable. That's accepted. So for  
24 Powderhorn to claim that it gets this level of  
25 efficiencies on its first well appears to me to be --

1 to be a stretch.

2 What I cite there is a study conducted  
3 within the Colorado School of Mines that shows  
4 drilling teams that -- that improve on -- on the  
5 ability to drill wells much faster and at lower cost,  
6 you know, year on year. And those improvements could  
7 be, you know, somewhere around 11 percent or, you  
8 know, depending on -- on the -- the situation.

9 So the 20 percent capital efficiency  
10 that Powderhorn speaks to, it is -- for me, it's --  
11 it's not justified by the -- the experience or lack  
12 thereof developing within -- within the basin.

13 MR. RANKIN: Now, in addition to the  
14 drilling efficiencies, Dr. Umekwe, are there  
15 additional efficiencies that can be realized through  
16 operations?

17 DR. UMEKWE: Yes, there are. Again,  
18 efficiencies don't just end with capital and also the  
19 execution of the well or the drilling of the well, but  
20 also with the operation of that well.

21 Without experience operating wells  
22 within the basin, it -- it's hard to -- to believe  
23 that Powderhorn's plan and its operational  
24 capabilities would allow it to -- to manage, what I  
25 would say, kind of precious reservoir energy, which is

1 kind of the main driver for title development -- to  
2 manage that energy as well as to keep the wells in  
3 line when -- when needed, that would -- that would  
4 require well intervention program and processes that  
5 allow for those wells to -- to essentially have the  
6 uptime that you premise in your -- in your economics  
7 in the first place.

8 So an operator without the -- that --  
9 that experience and those processes might not capture  
10 those benefits and as such might have wells that don't  
11 maximize the production of -- of resources, you know,  
12 within -- within the zones that they are drilled.

13 MR. RANKIN: I'm going to turn back to  
14 Powderhorn exhibits, in particular C-2. And this is  
15 a -- an overview or -- of a comparison between the  
16 competing development plans and Powderhorn's  
17 assessment of the advantages of their proposed  
18 approach over Marathon's. Have you had a chance to  
19 review this chart on Exhibit C-2 of Powderhorn's?

20 DR. UMEKWE: Yes, I have.

21 MR. RANKIN: Will you give us an  
22 overview of your response to each of the advantages  
23 that Powderhorn represents and your response to those?

24 DR. UMEKWE: Yes. So Powderhorn puts  
25 forward the five or so criteria, you know, under which

1 it judges the Super Hornet development versus the  
2 Campana development or the one mile development. And  
3 the first point there talks about capital efficiency.

4 And like I mentioned earlier, the --  
5 the capital efficiencies don't come naturally. Those  
6 are efficiencies that are -- that are gained through  
7 longstanding working relationships across teams and as  
8 well as across working with tested and trusted  
9 operators or contractors.

10 So in the case of, you know, the 20  
11 percent efficiencies that -- that Powderhorn speaks  
12 of, there's no evidence that those efficiencies --  
13 efficiencies will be -- will be gained. Talking about  
14 correlative rights and the potential of stranding,  
15 the -- the zone right at the very toe of the Campana  
16 project, like was discussed earlier, Powderhorn has  
17 the option of drilling north/south wells, which some  
18 of the exhibits shown -- shown moments ago show that,  
19 you know, the development around this area includes  
20 both standup and -- and laydown wells.

21 So in that case, the -- the argument  
22 on -- on correlative rights and stranding acreage  
23 doesn't -- I am -- I don't see evidence for that as  
24 well. On the parent/child effects, like I described  
25 earlier, top-down sequential development will lead to



1 a loss of resources within the Wolfcamp B or Wolfcamp  
2 C bench. And Powderhorn's statement here kind of  
3 attests to that.

4 It says standard timing causes  
5 interference. While that may have been put forward  
6 maybe in the -- in the -- in terms of -- in bench  
7 interference or degradation, that -- that holds true  
8 still for top-down degradation.

9 Powderhorn also speaks to production  
10 efficiencies on stating that, you know, the -- the 960  
11 acres spacing unit would produce or -- produce more,  
12 you know, per lateral than -- than the -- the one  
13 mile -- one mile well. Like I mentioned earlier,  
14 production efficiency depends on a lot of -- a lot of  
15 factors, your ability to manage reservable energy  
16 effectively, your ability to keep the wells online,  
17 your ability to have essentially a program that allows  
18 you to manage the wells as effectively as -- as you  
19 would -- you would -- you -- you had in your plan  
20 essentially.

21 Talking about development coordination  
22 and the need for a single operator to develop the --  
23 the acreage, I think I agree with that. It's -- it's  
24 fair to think that the more experienced operator be --  
25 be let or allowed to develop its own, you know, lease.

1 And if there is one operator that needs to do -- say  
2 develop the entire acreage, it's also fair to think  
3 that that -- that should be the more -- the more  
4 experienced the operator.

5 MR. RANKIN: On the production  
6 efficiency issue, is it your position that you -- I  
7 mean, you're not challenging Powderhorn's individual  
8 personnel's experience. You're challenging -- you're  
9 saying that they don't have the team experience proven  
10 to drill a well at these efficiencies; correct?

11 DR. UMEKWE: That's correct.

12 MR. RANKIN: And nor have they worked  
13 with the proposed operator as a team; correct?

14 DR. UMEKWE: That's correct.

15 MR. RANKIN: And because they haven't  
16 drilled a well yet, they haven't executed on an AFE  
17 that this team has proposed; correct?

18 DR. UMEKWE: That's correct.

19 MR. RANKIN: And because of that, they  
20 haven't demonstrated that they can come within the --  
21 or meet the estimated economics for a project;  
22 correct?

23 DR. UMEKWE: That's correct.

24 MR. RANKIN: Nor have they demonstrated  
25 that they can meet the anticipated performance metrics

1 for any well that they proposed to drill; correct?

2 DR. UMEKWE: That's correct.

3 MR. RANKIN: In your opinion,  
4 Dr. Umekwe, what is the best way for the Division to  
5 prevent waste and protect correlative rights in this  
6 contested case?

7 DR. UMEKWE: It is to allow MRO or  
8 ConocoPhillips to develop its -- its acreage in a  
9 manner that we know would maximize recovery of  
10 resources, you know, within that acreage.

11 MR. RANKIN: Is Marathon asking for the  
12 Division to deny Powderhorn's application?

13 DR. UMEKWE: That's correct.

14 MR. RANKIN: At this time,  
15 Mr. Hearing Officer, I have no further questions of  
16 Dr. Umekwe and make him available for cross-  
17 examination.

18 THE HEARING EXAMINER: Mr. Holliday?

19 CROSS-EXAMINATION

20 BY MR. HOLLIDAY:

21 MR. HOLLIDAY: Good afternoon, Doctor.  
22 I'm not going to try to say your name on the record.

23 DR. UMEKWE: Good afternoon.

24 MR. HOLLIDAY: Good afternoon. But I  
25 do have a few questions. If we look at your self-

1 affirmed statement in paragraph 5, it's your testimony  
2 that Marathon's planned co-development of all four  
3 Wolfcamp wells and the XY and Wolfcamp B -- it's  
4 necessary to avoid parent/child degradation. Am I  
5 summarizing that correctly?

6 DR. UMEKWE: Could you restate that  
7 please?

8 MR. HOLLIDAY: In paragraph 5, you  
9 testified that Marathon's planned co-development of  
10 all four Wolfcamp wells, the A and the B or C,  
11 whatever we're calling that -- co-development of those  
12 formations at the same time -- you claim that's  
13 necessary to avoid parent/child degradation; is that  
14 correct?

15 DR. UMEKWE: That is necessary to avoid  
16 top-down parent child degradation? Yes.

17 MR. HOLLIDAY: Okay. So do you believe  
18 that if you were to drill multiple wells at different  
19 times in the same landing, would that result in  
20 parent/child interference?

21 DR. UMEKWE: In the same landing, the  
22 setback, the setback rules would apply. So if you  
23 develop -- if you drill wells within a landing and  
24 subsequent wells are drilled within that same landing,  
25 it'll depend on the -- the offsets of those wells.

1 MR. HOLLIDAY: Okay. And there is  
2 offset production to this; correct?

3 DR. UMEKWE: In what direction?

4 MR. HOLLIDAY: To the north?

5 DR. UMEKWE: I'll have to take a look  
6 at the -- the layout again to be able to make -- to  
7 answer the affirmative or not.

8 MR. HOLLIDAY: Okay. So do you believe  
9 there -- you know, if you drill all four Wolfcamp  
10 well -- A wells at the same time, would that result in  
11 less parent/child degradation than drilling two wells  
12 and then drilling two more separately?

13 DR. UMEKWE: So each drilling event, I  
14 think you have to explain it so I understand. Are you  
15 talking about drilling events in the shallow and  
16 deeper zones or drilling events in the same landing?  
17 Or could you clarify that?

18 MR. HOLLIDAY: Yeah. So just talking  
19 strictly to the Wolfcamp A for this question, if you  
20 were to drill all four Wolfcamp A wells at the same  
21 time, would that result in less parent/child  
22 degradation than drilling two wells in the Wolfcamp A  
23 and then coming back later and drilling two more  
24 Wolfcamp A wells?

25 DR. UMEKWE: And like I mentioned

1 earlier, that -- all those who -- those -- the  
2 scenario described would depend on the offset  
3 distances.

4 MR. HOLLIDAY: Okay. Let's assume in a  
5 hypothetical that there is offsetting production.  
6 Would that result in greater degradation for the two  
7 wells and two wells versus four wells at the same  
8 time?

9 DR. UMEKWE: Offset production but also  
10 offset distance.

11 MR. HOLLIDAY: Okay. We can move on  
12 from that. So in paragraph 10 and 13 of your self-  
13 affirmed statement, this is where we start talking  
14 about the inexperience for Powderhorn. And you've  
15 mentioned that. Is it fair to say their inexperience  
16 is one of the primary objections you have to their  
17 development plan, their inability to execute, as  
18 you've described it?

19 DR. UMEKWE: I spoke to the slide that  
20 Powderhorn provided that spoke to the capital  
21 efficiencies that they would gain. So that's --  
22 that's kind of the reference I'm making, that those  
23 capital efficiencies would be gained based on the  
24 experience of the -- the person or the entity that is  
25 executing that.

1 MR. HOLLIDAY: Okay. And so we've  
2 talked about today how the Powderhorn team, prior to  
3 forming Powderhorn, which is a new entity -- each of  
4 those individual team members do have experience. You  
5 know, so if we look at your resume, which is  
6 incredible -- but we can see that you've held a number  
7 of positions. Is that fair to say?

8 DR. UMEKWE: That's correct.

9 MR. HOLLIDAY: Right. So the first one  
10 represented here -- let's just start with that one.  
11 Baker Hughes, North Dakota, you were an engineer doing  
12 drilling and logging; is that correct?

13 DR. UMEKWE: That's correct.

14 MR. HOLLIDAY: So fair to say you  
15 gained quite a bit of knowledge in petroleum  
16 engineering during that time; correct?

17 DR. UMEKWE: That's correct.

18 MR. HOLLIDAY: And then you moved on to  
19 ConocoPhillips, Alaska, and -- from 2013 to 2015. Do  
20 I have that correct?

21 DR. UMEKWE: That's correct.

22 MR. HOLLIDAY: Was the ConocoPhillips  
23 team that you migrated to in Alaska different than the  
24 team you were working on with Baker Hughes in North  
25 Dakota?

1 DR. UMEKWE: That's correct.

2 MR. HOLLIDAY: Do you feel that your  
3 knowledge gained in North Dakota transferred and made  
4 you qualified for the position at ConocoPhillips in  
5 Alaska?

6 DR. UMEKWE: Yes. I believe that my  
7 knowledge was a contributing factor to working in that  
8 capacity as a -- as a development petroleum engineer.  
9 Yes.

10 MR. HOLLIDAY: Okay. So then you went  
11 to work for the State of Alaska from 2016 to 2019.  
12 And again, that's another new team. Fair to say?

13 DR. UMEKWE: That's correct.

14 MR. HOLLIDAY: But the prior experience  
15 you gained from Baker Hughes and ConocoPhillips, it  
16 would've transferred and qualified you for the  
17 position at the State of Alaska. Is that fair to say?

18 DR. UMEKWE: That's correct.

19 MR. HOLLIDAY: Okay. So last one, then  
20 you moved onto ConocoPhillips in 2019 to 2022. It  
21 looks like that was still State of Alaska. New team  
22 again?

23 DR. UMEKWE: That's correct. Yes.

24 MR. HOLLIDAY: Okay. And then last --  
25 okay. This is actually the last one. So then you



1 moved to the Midland team. Different drilling team at  
2 the Midland Basin than you had in Alaska?

3 DR. UMEKWE: That's correct.

4 MR. HOLLIDAY: Did you feel like you  
5 were unqualified to participate in the drilling  
6 activities for the Midland Basin team because you were  
7 a new team member and you guys had not worked together  
8 before?

9 DR. UMEKWE: No.

10 MR. HOLLIDAY: No. So that knowledge  
11 was transferrable in your case; correct?

12 DR. UMEKWE: That's correct.

13 MR. HOLLIDAY: So then it's at least  
14 possible that the knowledge for the Powderhorn team  
15 members that they bring from prior experience would be  
16 transfer -- transferable in their case too. Is that  
17 fair to say?

18 DR. UMEKWE: That's fair to say. I'll  
19 add one more thing to that. My -- just like was  
20 stated earlier for the Powderhorn team, I don't  
21 dispute the experience that they have. The point I  
22 made was in relation to the team working together and  
23 the knowledge and the institutional capabilities that  
24 are built working together as a team as well as  
25 working together across -- with contractors; right --

1 testing and trusting the contractors that they work  
2 with.

3 So that is what my statement was meant  
4 to address, not the individual experiences of the --  
5 the members of the Powderhorn team.

6 MR. HOLLIDAY: Sure. That's fine. We  
7 can just leave it there. So we've -- you've heard  
8 testimony previously about the Bat Bomb and War Pigeon  
9 units. Are you familiar with those units?

10 DR. UMEKWE: I would let my landman  
11 address specifics on that. But yeah. I'm kind of  
12 generally familiar with it. But I'll let -- I'll let  
13 any more detailed conversations around that to be  
14 handled by the person most appropriate to do so.

15 MR. HOLLIDAY: Sure. Well, what I  
16 wanted to talk to you about in relation to those two  
17 units were whether you were aware when Marathon or  
18 Conoco entered into an agreement with Admiral Permian,  
19 which is approximately one mile east of the Super  
20 Hornet wells, were you aware that they had not yet  
21 drilled a well in New Mexico?

22 DR. UMEKWE: I'm not aware of that.

23 MR. HOLLIDAY: Okay. And then so you  
24 probably wouldn't be, but I'll ask anyway. Are you  
25 aware that in those units only the Wolfcamp A is being

1 developed? And it's being developed independently and  
2 separately from the Wolfcamp B?

3 DR. UMEKWE: I'm not aware of that.

4 MR. HOLLIDAY: Okay. So then you  
5 wouldn't be aware if Conoco or Marathon would've  
6 stipulated that you had to co-develop the A and the B  
7 when it executed those deals with Admiral Permian?  
8 From an engineering perspective?

9 DR. UMEKWE: Yeah. No. I'm not -- not  
10 aware of that. But in -- in general, like I stated  
11 earlier, a few factors drive, you know, whether you  
12 choose to do so or not. And in this case, the  
13 vertical separation and the sequence that the -- that  
14 Powderhorn has put forward, you know, based on our  
15 experience, you know, would lead to degradation of the  
16 the Wolfcamp B or Wolfcamp C.

17 MR. HOLLIDAY: Okay. So then I'm  
18 guessing it's fair to say you were not involved in the  
19 decision to approve those development agreements?

20 DR. UMEKWE: That's correct.

21 MR. HOLLIDAY: Okay. Well, that  
22 removes a bunch of questions. Okay. Did you provide  
23 any sort of reservoir simulation or modeling or data  
24 of any kind showing the magnitude of the degradation  
25 you claim will occur? Was that the 19 percent delta,

1 or am I thinking of something else?

2 DR. UMEKWE: That's the 19 percent data  
3 based on public -- public data on those projects.

4 Yes.

5 MR. HOLLIDAY: Okay. That's what I  
6 thought. So if we look at the analog projects that  
7 you used -- and I want to say the name on the record  
8 because I think it's funny -- the Potato Baby and the  
9 Keg Shell. But you referred these as the pilot test  
10 project. It looks to me like these are 19 miles to  
11 the southeast. Is that fair?

12 DR. UMEKWE: That's fair.

13 MR. HOLLIDAY: In your experience as a  
14 petroleum engineer, would that be standard practice to  
15 use an analog that's -- let's call it 19 miles away  
16 when there are other analog wells closer to the  
17 project under consideration?

18 DR. UMEKWE: The effort to pick an  
19 analog depends on developments that you consider truly  
20 analogous to the one that you plan to develop. In  
21 this case, the -- the distance is not as much a factor  
22 as the vertical separation and OCP stacking.

23 My geologist colleague is going to  
24 speak better to this. Those are the -- the drivers  
25 for the analogy between the Campana, the Super Hornet

1 development, and -- and the the pilot that we speak  
2 of.

3 MR. HOLLIDAY: Okay. But there are  
4 numerous pads closer to this proposed Super hornet  
5 that have either A and B or A or B development; is  
6 that correct?

7 DR. UMEKWE: That's correct.

8 MR. HOLLIDAY: And if we look at the  
9 development plan for the Super Hornet and compare it  
10 to the Keg Shell or the top-down, is it fair to say  
11 the development plan for the Super Hornet is similar  
12 to the -- let's just call it Keg Shell development?

13 DR. UMEKWE: The development for the  
14 Super hornet, which is a sequential Wolfcamp B  
15 development is more analogous to the Potato Baby  
16 development. Yes. Like I mentioned earlier, the  
17 vertical separations are -- are different. So in the  
18 Super Hornet case, you have a smaller vertical  
19 separation and -- compared to the Potato Baby project.

20 MR. HOLLIDAY: Right. Yeah. That's  
21 what I was going to ask. So if we consider all eight  
22 wells, so the eventual A and B wells that Powderhorn  
23 has listed, versus the 14 or 15 in the full stack  
24 Wolfcamp and the Keg Shell, that's a pretty material  
25 difference in number of wells, at least in density;

1 correct?

2 DR. UMEKWE: That's correct.

3 MR. HOLLIDAY: Why -- or would you say  
4 this difference -- would it be due to changes in the  
5 rock?

6 DR. UMEKWE: Yes. Probably so.

7 MR. HOLLIDAY: Okay. So changes in the  
8 rock -- in your opinion, where the rock changes, it  
9 changes how it reacts to spacing and parent/child and  
10 all those sorts of things; correct?

11 DR. UMEKWE: That's correct.

12 MR. HOLLIDAY: In your opinion, does  
13 the timing between completions matter for the  
14 parent/child degradation we've been talking about?

15 DR. UMEKWE: Yes. Timing is a factor.

16 MR. HOLLIDAY: So if we go then back to  
17 the Potato Baby, how long did Marathon or Conoco or  
18 the operator in that case -- how long did they wait  
19 between completing the wells and the A and the C?

20 DR. UMEKWE: The timing difference in  
21 that instance was about three years.

22 MR. HOLLIDAY: Okay. If we look at the  
23 differences, I believe it's in your exhibit slide,  
24 maybe it's 5 that shows the 19 percent delta, you're  
25 aware of that graph? Is it fair to say that the

1 parent/child -- I'm trying to think of the best way to  
2 ask this because I'm not an engineer.

3 The parent/child degradation, it  
4 doesn't show overall that there's lower production.  
5 It's just that some wells produced less and maybe some  
6 wells produced more. Is that a fair assessment?

7 DR. UMEKWE: What that graph shows is  
8 that the typical well or the average well drilled  
9 sequentially similar to the Super Hornet proposal  
10 would underperform the average well drilled in the  
11 Wolfcamp C or Wolfcamp B in a co-developed scenario.

12 MR. HOLLIDAY: Okay. I might -- I may  
13 come back to that. But for now, here's a general  
14 question. Would you consider, in your opinion, that  
15 depletion -- is it a function of well density and  
16 time? Is that a fair statement?

17 DR. UMEKWE: It's a function of  
18 vertical separation time as well as -- yeah -- the  
19 confinement status of well. Yes.

20 MR. HOLLIDAY: Okay. If we go to your  
21 self-affirmed statement, paragraph 12, you acknowledge  
22 that one and a half mile laterals are -- as in your  
23 words, "generally recognized as" a favorable -- or  
24 excuse me -- as "favorable compared to one mile  
25 wells." Do you still stand by that testimony?

1 DR. UMEKWE: I think it's common  
2 knowledge that most companies would prefer, you know,  
3 longer wells where possible.

4 MR. HOLLIDAY: Okay. And I just want  
5 to -- just so I'm clear on the nature of your  
6 objection, so despite that recognition, you still  
7 recommend Marathon's one mile plan.

8 And in doing so, you call Powderhorn's  
9 plans, in your words, riskier. Is your basis for that  
10 recommendation and concern -- is that primarily  
11 Powderhorn's lack of operating history as a team? And  
12 it's also the parent/child concerns? Do I have that  
13 right?

14 DR. UMEKWE: Yeah. Those two factors  
15 come into play.

16 MR. HOLLIDAY: And we've talked a  
17 little bit about drilling contractors. And you state  
18 that "Powderhorn has not identified a drilling  
19 contractor." What is your basis for that statement?

20 DR. UMEKWE: I think statements made  
21 just moments ago also attest to that.

22 MR. HOLLIDAY: But you haven't had  
23 conversations or spoken with anyone prior to this  
24 hearing about Powderhorn's drilling contractors;  
25 correct?



1 DR. UMEKWE: Personally? No. Not  
2 anyone in Powderhorn's shop.

3 MR. HOLLIDAY: So if we were to look at  
4 some of the ConocoPhillips activity in the, you know,  
5 near area -- so use the Magellan Pad. That's a pretty  
6 good analog. You can see the Nabors Industries is  
7 doing some work out there. Are they owned by  
8 ConocoPhillips, or are they a contractor?

9 DR. UMEKWE: ConocoPhillips uses  
10 contractors to drill -- drill wells. Yes. If that's  
11 what you're asking.

12 MR. HOLLIDAY: Does Marathon generally  
13 prefer to drill -- and this may be more of a land  
14 question, but I'll ask you anyway. Does Marathon  
15 generally prefer to drill in units where they can  
16 achieve longer laterals and a higher working interest?

17 DR. UMEKWE: Would you please restate  
18 the question?

19 MR. HOLLIDAY: Yeah. Does Marathon  
20 typically prefer to drill in units where they can  
21 achieve longer laterals and where they have a higher  
22 working interest?

23 DR. UMEKWE: Yes. That's generally the  
24 case based on my understanding.

25 MR. HOLLIDAY: Okay. And were you

1 aware that for Conoco's Q4 earnings call, Q4 2025, the  
2 guidance provided was that 90 percent of its 2026  
3 program is going to be two mile laterals or greater?  
4 Is that accurate?

5 DR. UMEKWE: I think that statement was  
6 made describing the program, not setting a goal as to  
7 future development or something to that effect. Yeah.  
8 So that's my understanding of that statement.

9 MR. HOLLIDAY: And you're aware of the  
10 statements from Conoco's executives that going from  
11 one to two-mile laterals, it generally improves the  
12 cost of what's called -- they refer to as cost of  
13 supply by 25 percent. Is that accurate?

14 DR. UMEKWE: I recall seeing that  
15 statement. Yes.

16 MR. HOLLIDAY: Okay. So if we look --  
17 if we compare the perforated lateral length between  
18 Conoco's plan and Powderhorn's plan, how much more  
19 perforated lateral length will Powderhorn's plan have  
20 than Conoco's? I'm sorry. The initial plan. I'm  
21 sorry. Excuse me. I left out a very important word.

22 How much more perforated lateral length  
23 will Conoco's -- the initial plan that Conoco  
24 advanced -- how much more -- you know what? Let's  
25 just skip that question. It's a double negative.

1 It's too hard.

2 Okay. If we go back to Marathon's  
3 plan -- so in a world in which the north half is  
4 developed under the JOA by Marathon, under that plan,  
5 the northeast quarter has no clear development path;  
6 correct? We have -- I mean, we have a hypothetical.  
7 There could be a standup U-turn well by Powderhorn,  
8 but there's no clear path to developing that northeast  
9 quarter; is that correct?

10 DR. UMEKWE: I'm not aware of the --  
11 could you put up the exhibit you talk about so I see  
12 what -- what you're saying?

13 MR. HOLLIDAY: Yeah, I believe it's  
14 your exhibit -- your Rebuttal Exhibits 1 through 2,  
15 where they showed -- it's the no acre left behind  
16 slide. Outside of your hypothetical one mile -- or  
17 excuse me -- two-mile U-turn, if Powderhorn's  
18 development plan is denied today or this week or at  
19 the end of this hearing, the northeast quarter of  
20 section 3, there's no clear development path for that  
21 acreage; is that correct?

22 DR. UMEKWE: I cannot speak to that at  
23 this time.

24 MR. HOLLIDAY: Okay. So we talked  
25 about -- let me just -- yeah. We talked about the

1 JOA, the 76 JOA, are you familiar with that document?

2 DR. UMEKWE: No. I'm not.

3 MR. HOLLIDAY: You're not. So then you  
4 wouldn't be aware that under that document, these  
5 wells that were recently proposed under the JOA by  
6 Marathon -- that there would be a contractual  
7 obligation to spud those wells, the Campana wells, on  
8 or before April 13th. Are you aware of that?

9 DR. UMEKWE: No.

10 MR. HOLLIDAY: Okay. So then for the  
11 Campana wells, there's been no pad built; is that  
12 correct?

13 DR. UMEKWE: I'm not aware of that.

14 MR. HOLLIDAY: Are you aware of any  
15 pipelines or midstream that's been run to the proposed  
16 location?

17 MR. RANKIN: Mr. Hearing Officer, I  
18 just say this is a little outside of the scope of both  
19 his direct and rebuttal testimony. He didn't testify  
20 onto pipelines or anything along those lines.

21 THE HEARING EXAMINER: Mr. Holliday?

22 MR. HOLLIDAY: Marathon made an issue  
23 of Powderhorn's takeaway capacity. And we're just  
24 proving -- the line of questioning is intended to  
25 prove that Marathon has not taken these concrete steps

1 to drill the well on or before April 13th as required  
2 under the JOA.

3 MR. RANKIN: Just not within this  
4 witness's scope.

5 THE HEARING EXAMINER: Mr. Holliday, I  
6 think the issue is that Mr. Rankin is saying this is  
7 not the right witness to ask that question to.

8 MR. HOLLIDAY: Okay. That's fair. We  
9 can ask it to a different witness.

10 THE HEARING EXAMINER: So I just have a  
11 question since we're talking about things. It's 5:06  
12 now. How long -- and I'm not rushing you. But how  
13 long do you think your cross-examination will  
14 continue?

15 MR. HOLLIDAY: I have about 10 more  
16 questions.

17 THE HEARING EXAMINER: About 10 more  
18 questions. Okay. Please.

19 MR. HOLLIDAY: So it'll last as long as  
20 it takes me to ask clear questions, I guess.

21 BY MR. HOLLIDAY:

22 MR. HOLLIDAY: Are you aware as to  
23 whether or not these Campana wells -- have they been  
24 allocated a rig -- a drilling rig in Conoco's 2026  
25 program?

1 MR. RANKIN: Again, this is not within  
2 the scope of his direct or rebuttal. So I would just  
3 point that this is not the witness who raised any of  
4 these issues.

5 THE HEARING EXAMINER: Mr. Holliday?

6 MR. HOLLIDAY: Well, then I would ask  
7 who is the appropriate witness I should ask these  
8 because Conoco proposed under a JOA under which they  
9 have obligations to drill? And we can't tell whether  
10 there's any concrete evidence taken to actually  
11 physically execute whether money's been allocated.

12 I mean, they're the ones that sent --  
13 included in the exhibits their well proposals under  
14 the JOA. So I think that makes all of this relevant.  
15 And I'm happy to ask that to whomever is the  
16 appropriate witness, but I think someone at Conoco  
17 needs to answer those questions.

18 THE HEARING EXAMINER: Okay. The  
19 objection is that it's outside the scope of this  
20 witness's testimony. So I think your best option  
21 would be to ask every witness. And you might not get  
22 an objection at some point, or I might have to  
23 overrule the objection at some point. But we'll get  
24 you an answer at some point during this hearing.

25 MR. HOLLIDAY: Or maybe I'll catch Adam

1 sleeping.

2 THE HEARING EXAMINER: There we go.

3 MR. HOLLIDAY: Doubt it. Okay.

4 Well, so you don't have any information  
5 about capital budget, not the right witness. You  
6 might have knowledge of this as an engineer.

7 BY MR. HOLLIDAY:

8 MR. HOLLIDAY: We can say that those  
9 wells have not been spud today; right?

10 THE HEARING EXAMINER: Mr. Holliday, it  
11 just has to be within the scope of his direct and his  
12 rebuttal. So if it's outside that, then you're going  
13 to get the same objection. I might as well tell you  
14 now. So I would stick to what this witness test --  
15 the subject matter this witness testified to.

16 MR. HOLLIDAY: Okay. All right. Fine.  
17 Okay. Then I'll just -- I'll have three more  
18 questions.

19 BY MR. HOLLIDAY:

20 MR. HOLLIDAY: If the Division were to  
21 deny Powderhorn's application, then you would not be  
22 aware of any Division order or mechanism that would  
23 require Marathon to drill within any specific  
24 timeframe? Is that accurate?

25 DR. UMEKWE: Yeah. I would not be

1 aware. Okay.

2 MR. HOLLIDAY: So fair to say, it could  
3 be this year, it could be two years, it could be five  
4 years, and then that would be within Marathon's  
5 discretion under the JOA; is that correct?

6 MR. RANKIN: I'm going to object to the  
7 question. And again, Mr. Umekwe is a petroleum  
8 engineer. He's not familiar with the JOA. It's not  
9 directed to the correct witness. It's not within the  
10 scope of his testimony, direct or rebuttal.

11 THE HEARING EXAMINER: Mr. Holliday?

12 MR. HOLLIDAY: That's fair. I'll  
13 reserve that question for Ms. Klingler. I think she's  
14 familiar with it. That is all of my questions.

15 THE HEARING EXAMINER: Thank you.  
16 Mr. Fordyce?

17 MR. FORDYCE: Yes.

18 CROSS-EXAMINATION

19 BY MR. FORDYCE:

20 MR. FORDYCE: Mr. Umekwe, I'm looking  
21 at Rebuttal Exhibit 5. And I believe you've stated  
22 that in the Potato Baby spacing unit, there are parent  
23 wells that were drilled in the Wolfcamp A. And then  
24 three years later approximately, there were these  
25 other project wells drilled in that same Potato Baby



1 unit in the C and then co-development in the  
2 neighboring spacing unit, the Keg Shell. That  
3 timeframe, you think, is about three years between  
4 these drilling and completion events?

5 DR. UMEKWE: Yes. About three years  
6 between the drilling event in the Wolfcamp A compared  
7 to the drilling event in the Wolfcamp C and the Potato  
8 Baby unit, so the left side of the image of the gun  
9 barrell.

10 MR. FORDYCE: Is it possible or are you  
11 aware of any other completion design changes or  
12 production factors, or could there be some discrepancy  
13 because of improvements in takeaway that would cause  
14 some performance discrepancies or changes?

15 DR. UMEKWE: Are you asking if there  
16 are factors beyond --

17 MR. FORDYCE: Are you aware over that  
18 course of three years, could there have been possibly  
19 changes to, you know, completion designs or  
20 efficiencies, improvements in, you know, production  
21 performance due to some improvements or efficiencies  
22 at surface?

23 Was there -- is there a possibility  
24 there was improvements in takeaway capacity? Are  
25 the -- are any of those things that I mentioned

1 potential factors to affect this data?

2 DR. UMEKWE: Not -- not to my  
3 knowledge. That those -- those factors you mentioned  
4 would be drivers for this -- this observation.

5 MR. FORDYCE: Are these two spacing  
6 units -- do they have developments around them, or are  
7 they, like, on an island? And the reason I ask is I  
8 can't tell, you know, from your locator map what  
9 development is around these two spacing units. And  
10 again, the reason I ask is -- let me rephrase my  
11 question.

12 Is it possible that there is some  
13 activity around these spacing units that it could have  
14 potentially caused some depletion over the course of  
15 three years?

16 DR. UMEKWE: There are activities  
17 around these spacing units. The -- based on the --  
18 the pilot study, the design, and the execution and the  
19 analysis, those are not the drivers for the  
20 performance difference that we see here.

21 MR. FORDYCE: Okay. If we could just  
22 turn our attention maybe to Rebuttal Exhibit 6, on the  
23 left, we're looking at maximum and/or how you  
24 interpret the graphic minimum or horizontal stress  
25 direction. Some might call up preferred frack plane.

1           Just based on this, if it was my well I  
2 was planning, it looks like I would be planning to  
3 drill east and west. On this slide, you're showing  
4 basically wells that were drilled before 2017 and  
5 wells that were drilled from 2017 onward, obviously  
6 showing some developments east and west, some  
7 developments north and south.

8           Is it possible that operators are  
9 drilling one direction versus another just because of  
10 where their acreage interest is so they form a spacing  
11 unit and drill, whether it's east and west or north  
12 and south. Is that possible?

13           DR. UMEKWE: Yes. That is possible.

14           MR. FORDYCE: But there's no data that  
15 has been compiled or presented showing a comparison of  
16 production or performance from wells either drilled  
17 east/west or north/south. That comparison on  
18 orientation is -- has not been made. There's no data  
19 for that; correct?

20           DR. UMEKWE: That's correct.

21           MR. FORDYCE: I have one last question  
22 on Rebuttal Exhibit 7. It looks like there's a quote  
23 that you've taken from a paper maybe written in 2015  
24 about rig efficiency of 11 percent that's been  
25 realized over the course of working with a rig for a

1 year; correct?

2 DR. UMEKWE: That's correct.

3 MR. FORDYCE: So Marathon and  
4 ConocoPhillips are large organizations that track a  
5 lot of metrics. Can Marathon or Conoco present some  
6 actual metrics and data showing how a field  
7 improvement team or working with a specific rig or  
8 contractor resulted in an 11 percent increase from the  
9 date they picked up a rig and until a year later?

10 DR. UMEKWE: Could you please restate  
11 that question?

12 MR. FORDYCE: Well, my question is, I  
13 know that -- I'm sure that Marathon and Conoco track a  
14 lot of metrics. You've supplied a quote from a paper.  
15 Does -- is there metrics that can be presented,  
16 because I'm sure that there -- that metrics are being  
17 tracked, to back this statement up?

18 DR. UMEKWE: I don't have those numbers  
19 to -- from ConocoPhillips operations to be able to --  
20 to provide. But -- but I agree with the statement  
21 that metrics are generally being -- being tracked.

22 MR. FORDYCE: All right. Thank you,  
23 Mr. Umekwe. I have no further questions.

24 THE HEARING EXAMINER: I have two. I  
25 hope that they're not redundant with yours,

1 Mr. Fordyce.

2 Mr. Umekwe, can you provide specific  
3 data showing that Powderhorn's one and a half mile  
4 laterals will result in less total resource recovery  
5 than Marathon's one-mile laterals?

6 DR. UMEKWE: Mr. Examiner, you -- you  
7 are asking for data to show that Powderhorn's one and  
8 a half mile -- or what performance Powderhorn's one  
9 and a half mile might -- might provide compared to  
10 Conoco's one mile?

11 THE HEARING EXAMINER: I'll ask it  
12 again because I'm not sure I understood you. So I'll  
13 say it again. Can you provide specific data showing  
14 that Powderhorn's one and a half mile laterals will  
15 result in less total resource recovery than Marathon  
16 one-mile laterals?

17 DR. UMEKWE: Yeah. Mr. Examiner, I  
18 have not compiled that, but that is -- that is data  
19 that -- that could be -- that could be compiled.

20 THE HEARING EXAMINER: Okay. But it's  
21 not something you have looked at?

22 DR. UMEKWE: No. I've not -- I've not  
23 compiled that information.

24 THE HEARING EXAMINER: Okay. And I  
25 have a second question. You talked about parent/child

1 degradation. Is it a certainty, or can it be  
2 mitigated through simultaneous completion techniques?

3 DR. UMEKWE: Mr. Examiner, the -- the  
4 plan that ConocoPhillips has put forward or MRO put  
5 forward that develops these two benches simultaneously  
6 is a plan that mitigates that parent/child degradation  
7 that we -- we're speaking of.

8 THE HEARING EXAMINER: So I'm trying to  
9 understand your answer. Are you saying that it's your  
10 plan that mitigates or Powderhorn could mitigate?

11 DR. UMEKWE: I'm saying that the co-  
12 development of both benches mitigates parent/child  
13 degradation that would occur in a -- in a sequential  
14 development of the Wolfcamp C. So if -- if the  
15 Wolfcamp A is viewed first and later on the Wolfcamp  
16 C, there will be that degradation. But if drew  
17 together, you mitigate that.

18 THE HEARING EXAMINER: Okay. So then  
19 are saying that the parent/child degradation in --  
20 attributed to Powderhorn's plan is a certainty?

21 DR. UMEKWE: Based on the analysis that  
22 we've done and the project that I cited, that would  
23 occur if the Wolfcamp C is developed sequentially.  
24 Yes.

25 THE HEARING EXAMINER: Okay. That

1 answers my two questions. Thank you.

2 Mr. Rankin, where are we now?

3 MR. RANKIN: I just have three follow-  
4 up on redirect.

5 THE HEARING EXAMINER: Go right ahead.

6 REDIRECT EXAMINATION

7 BY MR. RANKIN:

8 MR. RANKIN: Dr. Umekwe, you were asked  
9 about the public statements made by ConocoPhillips  
10 during its fourth quarterly report saying that they  
11 would -- to the effect that they intended to try to do  
12 90 percent or more of their wells two miles or  
13 greater. Do you recall that testimony?

14 DR. UMEKWE: Yes. I do.

15 MR. RANKIN: Now that means there's  
16 going to be 10 percent of the wells that are less than  
17 two miles; correct?

18 DR. UMEKWE: That's correct.

19 MR. RANKIN: And these could be among  
20 those 10 percent; correct?

21 DR. UMEKWE: That's correct.

22 MR. RANKIN: Mr. Holliday asked you  
23 some questions about whether or not they're -- you see  
24 a potential for a clear development plan that would  
25 include the northeast quarter of section 3. Did you

1 review the rebuttal exhibits that Ms. Klingler  
2 prepared in preparation for today?

3 DR. UMEKWE: Yes, I did.

4 MR. RANKIN: And I'm going to show you  
5 Rebuttal Exhibit Number 1 and Rebuttal Exhibit Number  
6 3 that she prepared. Do you agree that what's  
7 represented on those two rebuttal exhibits is a  
8 potential clear development plan that would include  
9 the Northeast quarter of section 3?

10 DR. UMEKWE: Yes, I do.

11 MR. RANKIN: So here's Rebuttal Exhibit  
12 1 and then Rebuttal Exhibit 3. In both instances  
13 would show a clear development plan for the Northeast  
14 quarter of section 3. Agree?

15 DR. UMEKWE: I agree.

16 MR. RANKIN: And then the hearing  
17 examiner asked you a question about whether you had  
18 any data that allowed you to compare -- prove whether  
19 Powderhorn's one half miles will result in less  
20 recovery than Marathon's proposed one-mile wells. Do  
21 you recall that question?

22 DR. UMEKWE: Yes. I recall that  
23 question.

24 MR. RANKIN: And the problem is that  
25 Powderhorn doesn't have a track record and hasn't



1 drilled any wells, whether they're one mile or one and  
2 a half mile. So there's no data against which to  
3 compare. Agree?

4 DR. UMEKWE: Yes.

5 MR. RANKIN: No further questions,  
6 Mr. Examiner.

7 THE HEARING EXAMINER: May this witness  
8 be excused?

9 MR. RANKIN: Please?

10 THE HEARING EXAMINER: Thank you,  
11 Mr. Umekwe.

12 DR. UMEKWE: Thank you.

13 THE HEARING EXAMINER: Okay. Let's  
14 talk about how we're going to proceed tomorrow. I  
15 know that sometimes witnesses come from other places  
16 and they need to get home. Is there anyone who has a  
17 flight tomorrow that I need to be aware of?

18 UNIDENTIFIED SPEAKER: [Unintelligible  
19 response.]

20 THE HEARING EXAMINER: It's hard to  
21 hear you. Oh, got it. Okay. I heard that part.  
22 Yes.

23 UNIDENTIFIED SPEAKER: [Unintelligible  
24 response.]

25 THE HEARING EXAMINER: You're riding

1 together in a car? Oh, you're driving. Okay. Back  
2 to Midland or someplace?

3 UNIDENTIFIED SPEAKER: [Unintelligible  
4 response.]

5 THE HEARING EXAMINER: Tonight? Okay.  
6 Well, you can appear tomorrow virtually by all means.  
7 Okay. Yeah. Thanks for coming.

8 But is there anyone who has a flight or  
9 something that I should be aware of?

10 MS. KLINGLER: We moved ours to  
11 tomorrow afternoon --

12 THE HEARING EXAMINER: Okay. Perfect.  
13 Yeah. We should be done by then, but it's not really  
14 under my control as you can see.

15 So I'd like to start early tomorrow so  
16 that we -- hopefully, we'll be done before I have a  
17 doctor's appointment at one o'clock. It's a doctor's  
18 appointment I've waited for for months, and you know  
19 how it is with doctors in New Mexico. They're not  
20 easy to get to.

21 So we can either finish before that, or  
22 we can take a long lunch break and come back after  
23 that. It's really up to you guys how you want to  
24 proceed? But what is the earliest you want to start  
25 tomorrow?

1 MR. RANKIN: I can go early.

2 MR. HOLLIDAY: Early as you would like.

3 THE HEARING EXAMINER: Okay. 8:30?

4 That works for you?

5 MR. RANKIN: Yes.

6 MR. HOLLIDAY: That works for -- that's  
7 fine.

8 THE HEARING EXAMINER: Ms. Vance? All  
9 right.

10 MS. VANCE: Yes.

11 THE HEARING EXAMINER: 8:30. And for  
12 the witnesses?

13 MS. VANCE: Yes, sir.

14 THE HEARING EXAMINER: Okay. All  
15 right. Great.

16 You'll be calling your next two. So  
17 which -- will you be starting with this gentleman  
18 sitting there?

19 MR. HOLLIDAY: We'll be starting with  
20 Mr. Wood, the geologist and then the -- Tippen, the  
21 reservoir -- with the caveat that I don't know. I  
22 don't expect those to go as long because we did today.

23 THE HEARING EXAMINER: Right. Okay.  
24 Yeah. You never know. All right.

25 So if we start at 8:30 -- so

1 Mr. Aragon, you're available? I think you're virtual,  
2 but you're available tomorrow at 8:30?

3 THE REPORTER: Yes, sir. I am.

4 THE HEARING EXAMINER: You are? Okay,  
5 wonderful.

6 Okay. Then we will start at 8:30, and  
7 we'll know by noon if we need to take a long lunch or  
8 if we are done, obviously, before that. And then we  
9 can talk about post-hearing submissions and  
10 transcripts and all that good stuff then.

11 Is there anything else we need to deal  
12 with today? Everyone says no. Then we're off the  
13 record. Have a good evening. Thank you.

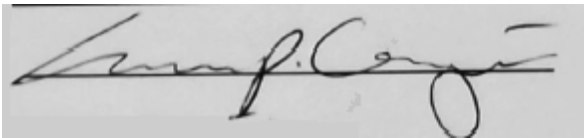
14 (Whereupon, at 5:26 p.m., the  
15 proceeding was concluded.)

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CERTIFICATE

I, GERALD ARAGON, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

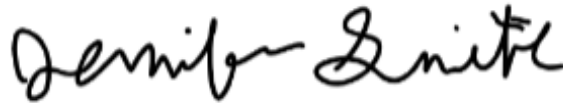


GERALD ARAGON  
Notary Public in and for the  
State of New Mexico

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CERTIFICATE OF TRANSCRIBER

I, JENNIFER SMITH, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



JENNIFER SMITH

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[clarifying - compelling]

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[competing - conocophillips]

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[conocophillips - coordinate]

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**[macha - marathon]**

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[marathon - merits]

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[metrics - multiple]

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[must've - norm]

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[obtained - okay]

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[okay - operatorship]

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[opinion - ownership]

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[patrick - plan]

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[plan - potato]

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[revoke - says]

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[specifically - stipulations]

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[supplemental - tell]

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