

EXHIBIT D

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

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

ORIGINAL

CASE 15433

7 APPLICATION OF MATADOR PRODUCTION COMPANY
 8 FOR A NONSTANDARD SPACING AND PRORATION
 9 UNIT AND COMPULSORY POOLING,
 10 LEA COUNTY, NEW MEXICO.

11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 EXAMINER HEARING

13 January 21, 2016

14 Santa Fe, New Mexico

15 BEFORE: MICHAEL McMILLAN, CHIEF EXAMINER
 16 SCOTT DAWSON, EXAMINER
 17 DAVID BROOKS, LEGAL COUNSEL

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18 This matter came on for hearing before the
 19 New Mexico Oil Conservation Division, MICHAEL McMILLAN,
 20 Chief Examiner, SCOTT DAWSON, Examiner, and DAVID
 21 BROOKS, Legal Counsel, on January 21, 2016, at the New
 22 Mexico Energy, Minerals, and Natural Resources
 23 Department, Wendell Chino Building, 1220 South St.
 24 Francis Drive, Porter Hall, Room 102, Santa Fe, New
 25 Mexico.

26 REPORTED BY: ELLEN H. ALLANIC
 27 NEW MEXICO CCR 100
 28 CALIFORNIA CSR 8670
 29 PAUL BACA COURT REPORTERS
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 32 Albuquerque, New Mexico 87102

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4	CASE-IN-CHIEF			
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7		Direct	Redirect	Further
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1 NEARBURG EXPLORATION COMPANY, LLC,
 2 AND NEARBURG PRODUCING COMPANY
 3 CASE-IN-CHIEF

3 WITNESS WILLIAM RANDALL HOWARD

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1 (Time noted 2:20 p.m.)

2 EXAMINER McMILLAN: Okay. I would like to
3 call case 15433, Application of Matador Production
4 Company for a Nonstandard Spacing and Proration Unit and
5 Compulsory Pooling, Lea County, New Mexico.

6 Call for appearances.

7 MS. KESSLER: Mr. Examiners, Jordan Kessler
8 and Michael Feldewert from the Santa Fe Office of
9 Holland and Hart on behalf of the applicant.

10 EXAMINER McMILLAN: Any other appearances?

11 MR. HALL: Mr. Examiner, Scott Hall,
12 Montgomery and Andrews, Santa Fe, on behalf of Nearburg
13 Exploration Company, LLC, and Nearburg Producing
14 Company, with two witnesses this afternoon.

15 EXAMINER McMILLAN: Please proceed.

16 MS. KESSLER: Mr. Examiners, I believe that
17 there's a motion that should be heard before this case
18 proceeds.

19 MR. HALL: It is up to you.

20 EXAMINER McMILLAN: Yeah. Let's hear it.

21 MR. BROOKS: Are you going to present any
22 evidence in support of your motion or simply legal
23 argument?

24 MR. HALL: No new evidence. There's an
25 affidavit and exhibits appended to the motion.

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1 MR. BROOKS: I read your motion and
2 attachments, so I am okay with that.

3 MR. HALL: Some brief argument,
4 Mr. Examiner.

5 MR. BROOKS: Go ahead.

6 MR. HALL: So on behalf of Nearburg
7 Exploration Company and Nearburg Producing Company,
8 together Nearburg, we filed a motion to dismiss
9 Matador's application on the basis that the lands were
10 never hesitant or subject to a preexisting joint
11 operating agreement and pursuant to Division precedent
12 and the statutes, we don't think that the Division can
13 make the finding as it does typically in its compulsory
14 pooling orders, that the parties have not agreed on a
15 voluntary plan for development. That situation does not
16 exist in this case.

17 There is a voluntary plan for development.
18 And for that reason, Matador cannot come to you and ask
19 that you pool into lands that are already under a
20 voluntary agreement.

21 In connection with a motion, we have cited
22 to you I think -- a number of orders, but one that I
23 think is squarely on point. And that's order
24 No. R-9841, a copy of that is attached to our motion.

25 MR. BROOKS: And I do not have a copy of

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1 your motion in front of me. I have looked at it. I
2 looked at it yesterday.

3 But, Mr. Chairman, can I look at a copy of
4 their motion?

5 (Handing.)

6 MR. BROOKS: Okay. Which one is this?

7 MR. HALL: This is order R-9841. It's the
8 Mewborne Oil Company Case, Case No. 10658.

9 And to briefly summarize that to you, there
10 was a situation where Mewborne sought to form a 320-acre
11 gas spacing and proration unit, a fairly large unit.
12 And within that 320-acre unit, there was some acreage
13 owned by another party that objected to the pooling. It
14 was Devon for the very reason that its lands in that
15 spacing unit were already subject to a joint operating
16 agreement and development agreement.

17 So I refer you to that order, and if you
18 look at it --

19 MR. BROOKS: Unfortunately, the Division's
20 procedures with regard to scanning everything that is
21 filed has created a situation where everything that's
22 filed has been separated by a page -- by individual
23 pages, and there's no way you could page through
24 something this thick and find anything. So at this
25 point --

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1 MR. HALL: I would start at the bottom.

2 MR. BROOKS: Oh, it's at the bottom.

3 MR. HALL: Close to the bottom.

4 MR. BROOKS: Close to the bottom. So it is

5 R-9841?

6 MR. HALL: That's right.

7 MR. BROOKS: Fortunately, it's short. But
8 go ahead.

9 MR. HALL: The same situation here, Devon
10 objected to the pooling of its interests because they
11 were already subject to a preexisting operating
12 agreement. The Division Examiner agreed and dismissed
13 the pooling application.

14 I would also ask you, if you have the time
15 and the inclination, to go back and look at the
16 transcript in that case and the discussion by Division
17 counsel, at the time, Mr. Stovall, about the Division's
18 procedures for acting in situations just like this.

19 MR. BROOKS: Okay. Thank you. Are you
20 through? I will let you go ahead and finish your
21 argument.

22 MR. HALL: One more brief point, and that
23 point would be, Mr. Examiner, I think you've heard the
24 old maxim that if the precedent fits, you must dismiss.
25 So we would repeat that to you.

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1 One additional point, there is -- if you
2 look at the scope of Matador's application here, it is
3 nothing more than a generic compulsory pooling
4 application under -- I believe it can be fairly read to
5 be limited to section 70-2-17(C) under compulsory
6 pooling statute, which is the way most of them come to
7 you.

8 Matador, in fact, is asking that you undo a
9 voluntary agreement between the parties. They have not
10 pleaded that to you, but, in effect, that's what they're
11 asking you to do. Had they wanted you to modify a
12 development agreement, they would have been obliged to
13 file an application that, one, specifically mentioned
14 the development agreement. And they haven't done that;
15 although, I don't believe there is any dispute that
16 there is one on the lands. They haven't mentioned that.
17 They haven't asked you to modify that.

18 And then I think they would have had to have
19 cited to you the Division's authority to modify
20 voluntary plans of development under section 70-2-17(E).
21 That's a subpart of the pooling statute. They haven't
22 done that either.

23 And we don't think you can fairly read into
24 their application by implication or otherwise asking you
25 to do that, and we certainly would not consent to any

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1 amendment of the pleadings that would allow for the
2 Division to do that in this case.

3 MR. BROOKS: Let me get the facts straight
4 just to clarify the situation. The operating agreement
5 applies to the south half of section 31 --

6 MR. HALL: There's -- the operating
7 agreement under which Nearburg owns its interest covers
8 the south half. There is also an operating agreement
9 that covers the north half that Nearburg is not a party
10 to.

11 MR. BROOKS: It is a separate operating
12 agreement, not between the signed parties?

13 MR. HALL: Yes. Both, I understand, cover
14 the target interval here of the Bone Spring Formation.

15 MR. BROOKS: So your legal position is that
16 if any part of the proposed unit is covered by an
17 operating agreement, by an existing operating
18 agreement -- now let me clarify further.

19 For the south half of section 31 --

20 MR. HALL: 32.

21 MR. BROOKS: I thought -- maybe I'm reading
22 this wrong. But I thought -- well, the well was
23 proposed in 31, the operating agreement covered the
24 south half of 31 and all of 32, and I thought --

25 MR. HALL: Backwards. The well is in 32.

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1 MR. BROOKS: The well is in 32.

2 MR. HALL: 31 is covered by the operating
3 agreement near Burgess in also the south half of --

4 MR. BROOKS: So the south half of 32, and it
5 doesn't really matter -- I can't see how it would really
6 matter that it covers 31, the wells in 31 when they have
7 not asked to pool anything in 31 -- right?

8 MR. HALL: Right. But to be clear, there is
9 a separate JOA that applies to the north half of 32 to
10 which Nearburg is not a party.

11 MR. BROOKS: Okay. So your legal position
12 is if any part of a proposed compulsory pooling unit is
13 covered by an operating agreement, that the Division
14 does not have the authority to pool that -- to
15 compulsory pool that unit?

16 MR. HALL: I think that's been the
17 consistent holding of the Division over the years when
18 these situations arise.

19 MR. BROOKS: Now, in the portion of section
20 32 -- that's the south half -- and we are dealing with
21 the west half of the east half for the proposed unit,
22 right?

23 MR. HALL: That's right.

24 MS. KESSLER: That's right.

25 MR. BROOKS: And the particular segment of

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1 that section that would be included in the unit -- which
2 would be the west half of the east half of the south
3 half -- all of the owner -- all of the working interest
4 owners in that particular tract of land are included in
5 the pool unit -- are included in the operating
6 agreement?

7 MR. HALL: Yes.

8 MR. BROOKS: Now, are there any royalty
9 interests or overriding royalty interests that are not
10 subject to the pooling authority in the leases?

11 MR. HALL: I am not aware of any overrides.
12 It's a state lease.

13 MR. BROOKS: Okay. Thank you.

14 So I think we have the facts clarified.

15 Do you want to respond?

16 MS. KESSLER: I would like to, yes.

17 MR. BROOKS: Please go ahead.

18 MS. KESSLER: Mr. Examiners, the issue here
19 is what agreement authorizes the combination of lands
20 between the west half of the southeast quarter and the
21 west half of the northeast quarter of section 32.

22 Matador does not dispute, as Mr. Hall
23 mentioned, that there's a voluntary agreement between
24 Nearburg and Matador which covers the south half of
25 section 32.

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1 Nearburg has not pointed to any agreement
2 that authorizes the combination of these two separate
3 tracts of land for the development -- for the common
4 development of the proposed nonstandard spacing unit.
5 So as of now there's no agreement that covers the entire
6 spacing unit.

7 To that end, I would just say there are
8 three issues here that preclude dismissal. The first is
9 this application cannot be dismissed because there are
10 other parties who require pooling. Nearburg cannot seek
11 to dismiss the entire pooling application for the simple
12 reason that Matador seeks to pool other parties by way
13 of this application. And the relief being sought by
14 Matador is more broad than seeking to just pool
15 Nearburg.

16 Secondly, I would say that the pooling
17 statute allows pooling where no voluntary agreement
18 covers the entire spacing unit. The express language of
19 the statute reads: "Where such owners have not agreed
20 to pool their interests, the Division shall pool all or
21 any part of such lands or interests or both in the
22 spacing or proration unit as a unit."

23 Here, as I mentioned, Nearburg's voluntary
24 agreement only covers the south half of the proposed
25 spacing unit, so nothing in the agreement authorizes the

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1 combination of two separate tracts of land.

2 Nearburg has not agreed to pool their
3 interests as to the entire spacing unit, so the
4 Division, according to the language of the statute,
5 shall pool.

6 And then I just wanted to respond briefly to
7 the Mewborne case, which Mr. Hall cites both in his
8 motion and discussed today.

9 MS. KESSLER: And I have copies of that
10 transcript which I think are instructive. There are a
11 few factors that are different in that case than we have
12 in front of us here today.

13 It was a vertical well. There were only two
14 parties that were involved in both the JOA and the
15 entire tract of land. But, more importantly, if you
16 look at the transcript, Devon, who is the party that was
17 both being pooled and also partner to the Joint
18 Operating Agreement, stipulated to participate in the
19 well. That was one of the critical findings of that
20 case. That was one of the critical factors resulting in
21 the finding that Mr. Hall discussed.

22 We have no such stipulation from Nearburg;
23 and, in fact, they are not, it appears, willing to
24 participate in the well.

25 So based on those differences, we would say

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1 that, absent such a stipulation, Mewborne is really not
2 on all fours here.

3 So with that, I would say that the motion to
4 dismiss should be denied.

5 MR. BROOKS: Mr. Hall, would you like to
6 make a reply?

7 MR. HALL: Very briefly. Please do look at
8 the Mewborne order, and you will note what transpired in
9 that case.

10 Devon had said, Yes, we'll participate in
11 the well. Mewborne wouldn't stop there. They said, We
12 are not going to do it under the existing operating
13 agreement. It doesn't work any longer. We want it to
14 be superseded.

15 And the Division said, No. You do have a
16 voluntary agreement in place before we are going to
17 dismiss as to Devon the compulsory pooling application.

18 You could very well do the same thing in
19 this case. I think it's a point well raised, that
20 you have parties in the north half, they have to defend
21 themselves. We can't do that. That may be a solution
22 for you to hear as to dismiss the application as to
23 Nearburg's interest in the south half.

24 MR. BROOKS: Okay. I think in the interest
25 of the responsible administration of this case and of

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1 efficiency, my advice would be that we proceed with the
2 hearing -- to take the testimony, since everybody is
3 here and ready to offer their testimony, or, if for no
4 other reason, because the proposed unit does not now
5 exist; it's a part of the application that's before the
6 Division, to create this unit; and the applicant has the
7 first burden of proof to persuade the Division that the
8 creation of this unit is appropriate, and then the issue
9 would be different from what it is now.

10 So I'm going to recommend to the Examiner
11 that he take the motion to dismiss under advisement to
12 be ruled on prior to a ruling in the case. But based
13 on -- and I will then attempt to advise the Examiner
14 further after I've had a chance to study everything that
15 has been submitted; and then that we proceed to take the
16 testimony in this case and make a record upon which if
17 the motion to dismiss is denied, the case will be
18 decided on its merits.

19 EXAMINER McMILLAN: So the motion to dismiss
20 will be taken under advisement, and we will proceed with
21 testimony.

22 MS. KESSLER: Mr. Examiner, I have two
23 witnesses today.

24 EXAMINER McMILLAN: May the witnesses please
25 stand to be sworn in.

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1 (WHEREUPON, the presenting witnesses
2 were administered the oath.)

3 MR. HALL: Didn't we just have a ruling in
4 the previous case that an applicant can't have more than
5 one attorney? Just kidding.

6 MR. BROOKS: Well, an applicant can
7 certainly have more than one attorney sitting at the
8 table. The rule in district court is that an applicant
9 cannot have more than two attorneys anticipating the
10 presentation to the case and cannot have more than one
11 attorney who addresses a particular witness.

12 And I think that that's a good rule. I was
13 a little bit inclined to create some slack in the
14 previous case, not so much because of the technical
15 distinction that was raised between the Division's
16 various hats, but primarily because, as a practical
17 matter, nobody representing the state of New Mexico,
18 that I know of, except Jim Jacobsen, knows anything
19 about bankruptcy, so I thought with bankruptcy being an
20 issue, we ought to allow him a full opportunity to
21 participate.

22 MR. FELDEWERT: Mr. Examiner, you won't need
23 that slack here because the attorney sitting to my right
24 will fully be able to handle this case.

25 MR. BROOKS: Well, I believe that both

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1 attorneys are fully competent, if for no other reason,
2 because I don't think Holland and Hart would hire
3 anybody who isn't.

4 So you may proceed.

5 MS. KESSLER: Thank you.

6 JEFF LIERLY

7 having been first duly sworn, was examined and testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MS. KESSLER:

11 Q. Can you please state your name for the record and
12 tell the Examiner by whom you are employed and in what
13 capacity.

14 A. Jeff Lierly. I am a senior landman for MRC
15 Energy Company, and I work the Delaware Basin, mainly
16 Lea and Eddy Counties, New Mexico.

17 Q. Have you previously testified before the
18 Division?

19 A. Yes, I have.

20 Q. Can you please review your educational
21 background?

22 A. I received a bachelor's in business
23 administration from the University of Oklahoma, where I
24 studied economics and finance in 2006. And I just
25 recently obtained an MBA in energy from the University

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1 of Oklahoma in 2015.

2 Q. And what is your work history?

3 A. I have been employed by MRC Energy Company since
4 September of 2015. And prior to that, I was a landman
5 at COG Operating, LLC.

6 From August of 2012 to September of 2015, I was
7 primarily working at the Delaware Basin, mainly Lea
8 County, New Mexico.

9 And prior to that, I was a landman working in the
10 Marcellus shale for approximately four years, two of
11 which were brokerage work and two were in-house with a
12 small operator.

13 Q. Do your responsibilities at Matador include the
14 Permian Basin?

15 A. Exclusively.

16 Q. Are you familiar with the application that has
17 been filed in this case?

18 A. Yes.

19 Q. Are you familiar with the status of the lands of
20 the subject area?

21 A. Yes.

22 MS. KESSLER: Mr. Examiners, I would tender
23 Mr. Lierly as an expert in petroleum land matters.

24 MR. HALL: We do not object.

25 EXAMINER McMILLAN: So qualified.

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1 MS. KESSLER: I am going to take this
2 opportunity to hand out exhibits.

3 Q. Mr. Lierly, can you please turn to Exhibit 1 and
4 identify this exhibit for the Examiners.

5 A. It is the C-102 for Eland 123H Well. And it
6 depicts the proposed 160-acre nonstandard spacing unit
7 that we are seeking to establish, comprised of the west
8 half, east half of Section 32, Township 18 South, Range
9 32 East, Lea County, New Mexico.

10 And we are also seeking to pool uncommitted
11 working interest owners as to the Bone Spring
12 Formation.

13 Q. Has an APD been approved for this well?

14 A. Yes, it has.

15 Q. Is the API number 30-025-42977?

16 A. Yes, it is.

17 Q. And has the Division designated a pool for this
18 area?

19 A. Yes. This is located in the Corbin Bone Spring
20 South Pool.

21 Q. And what is the pool code for that pool?

22 A. 13160.

23 Q. And would statewide rules apply for oil wells in
24 this pool?

25 A. Yes, ma'am, they would.

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1 Q. Is that 330-foot setbacks in the area?

2 A. That's correct.

3 Q. What is Exhibit 2?

4 A. This is a Midland map plat of the proposed
5 section that our Eland 123 well would be located. And
6 as you can see, there is a north half state lease, and
7 then there's a south half state lease, both of which
8 have diverse ownership.

9 Q. So the west half, east half is all state land?

10 A. Correct. Two state leases.

11 Q. Please turn to Exhibit 3. Does this exhibit
12 identify the interest owners in the proposed 160-acre
13 spacing unit?

14 A. Yes, it does. This breaks down ownership on a
15 tract basis, which is actually the same thing as the
16 lease basis; and, then, also, on the project area basis.

17 And you will see the uncommitted working interest
18 owners are highlighted in yellow and bolded.

19 Q. And those are working interest owners?

20 A. That's correct.

21 Q. Is Matador Exhibit 4 a sample of the well
22 proposal letter sent with an AFE to the uncommitted
23 interest owners?

24 A. Yes. This particular letter was sent on November
25 16th, 2015. And this is actually a subsequent mailing

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1 that was sent to this particular owner. But this is, in
2 fact, essentially, the form that was sent.

3 Q. So a similar letter was sent to each of the
4 working interest owners?

5 A. Yes, that's correct.

6 Q. And you mentioned that this letter contained an
7 AFE. It will be on the fourth page of this exhibit,
8 correct?

9 A. That's correct, yes.

10 Q. Are the costs reflected on this AFE consistent
11 with what other operators have incurred for drilling
12 similar horizontal wells in this area?

13 A. In my opinion, yes.

14 Q. And has Matador made an estimate of overhead and
15 administrative costs while drilling this well and also
16 while producing it if it is successful?

17 A. Yes. We proposed \$7,000 per month while drilling
18 and \$700 per month while producing overhead rate.

19 Q. Are those costs similar to what other operators
20 in the area charge for similar wells?

21 A. Yes.

22 Q. Do you ask that those administrative and overhead
23 costs be incorporated into any order resulting from this
24 hearing?

25 A. Yes, we do.

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1 Q. Do you ask, as well, that it be adjusted in
2 accordance with appropriate accounting procedures?

3 A. Yes, we do.

4 Q. With respect to any uncommitted interest owners,
5 do you request that the Division impose a 200 percent
6 risk penalty?

7 A. Yes, we do.

8 Q. In addition to sending the well proposal letter,
9 what additional efforts did you undertake to reach
10 voluntary agreement with the remaining interest
11 owners?

12 A. We relied on both public and subscription-based
13 search services to locate addresses, phone numbers,
14 where we could; and, in some instances, we were able to
15 obtain e-mails where we had -- we followed up numerous
16 phone calls, left voice messages, e-mails and, again,
17 physical mailing.

18 Q. Is Exhibit 5 a summary of the communications that
19 you've had with each of the interest owners whom you
20 seek to pool?

21 A. Yes, it is.

22 Q. Did you attempt to reach an agreement with
23 Nearburg?

24 A. Extensively.

25 Q. And were you able to reach an agreement?

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1 A. Not as of today.

2 Q. Was it necessary to publish notice for this
3 hearing?

4 A. For two parties -- for one party, I think it was,
5 yes.

6 Q. And is Exhibit 6 a copy of the notice that was
7 published regarding this hearing?

8 A. Yes.

9 Q. I'm sorry --

10 A. Yes, it is.

11 Q. Did you also identify the 40-acre tracts
12 surrounding the proposed nonstandard unit?

13 A. Yes, we did.

14 Q. And were they included along with parties whom
15 you seek to pool with notice of this hearing?

16 A. Yes, that's correct.

17 Q. Is Exhibit 7 an affidavit prepared by my office
18 with attached letters to working interest owners and
19 offset operators or lessees of record with -- providing
20 notice of this hearing?

21 A. Yes, it is.

22 Q. Was one of the letters to an interest owner
23 returned?

24 A. Yes. We had, I think, one to Robert and Bernice
25 Cahan that was returned. And we made attempts to send

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1 to other addresses that were of record that we
2 obtained from the public and subscription-based
3 searches.

4 Q. And were Exhibits 1 through 7 prepared by you or
5 compiled under your direction and supervision?

6 A. Yes, they were.

7 MS. KESSLER: Mr. Examiner, I move into
8 evidence Matador Exhibits 1 through 8, which includes my
9 affidavit.

10 MR. HALL: I have no objection.

11 EXAMINER McMILLAN: Okay. Exhibits 1
12 through 8 may now be accepted as part of the record.

13 (MATADOR PRODUCTION COMPANY EXHIBITS 1
14 THROUGH 8 WERE OFFERED AND ADMITTED.)

15 CROSS-EXAMINATION

16 BY MR. HALL:

17 Q. Mr. Lierly, can you tell us, was Nearburg
18 Producing Company notified for purposes of your
19 application of a nonstandard unit?

20 A. I believe they were.

21 Q. Can you point to us in your Exhibit 4 where that
22 would be?

23 A. In Exhibit 4?

24 Q. I believe there's a list appended to that to
25 everyone to whom you sent notice?

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1 A. Not in ours.

2 In Exhibit 4, this was just a template letter
3 that was sent to all working interest owners that had an
4 interest in the west half of the east half of our
5 proposed nonstandard spacing unit.

6 Q. I beg your pardon. Exhibit 7, the fourth page in
7 on that one.

8 A. What was the last thing you said?

9 Q. Exhibit 7.

10 A. Okay.

11 Q. I misdirected you earlier.

12 So if you look at Exhibit 7, it is an affidavit.

13 A. Uh-huh.

14 Q. And then attached to that are parties notified.
15 Does it appear that Nearburg Producing Company was
16 notified?

17 A. Well, Nearburg Producing Company has no working
18 interest. Nearburg Exploration Company, LLC, actually
19 has the working interest in our proposal well.

20 Q. Do you know under the Division's practices, would
21 it have been necessary to notify the next proximate
22 operator of your application for a nonstandard unit, if
23 you know?

24 A. Off the top of my head, I don't.

25 Q. Okay. Mr. Lierly, do we have any dispute that

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1 the state oil and gas lease covering the south half of
2 section 32 is in good standing?

3 A. I guess it's a matter of who you ask.

4 Q. Did you look into that?

5 A. Yes. It is held by a Morrow well, but every
6 single well that's drilled in section 32 is dwindling
7 and --

8 Q. I'm sorry?

9 A. Every single well that is producing in
10 section 32 is marginal and the volumes are dwindling by
11 the day.

12 Q. But you're seeking to pool lease interests and
13 you've undertaken some investigation to make sure that
14 the lease interest, the working interests in the south
15 half of section 32 are in good standing?

16 A. Yes. And, again, one of the objectives of this
17 well is also to perpetuate these leases because the
18 wells that are producing are again very marginal.

19 Q. All right. And do you also agree that because
20 the lease in the south half of section 32 is in good
21 standing and the wells do continue to produce that the
22 joint operating agreement covering the south half of
23 section 32 is maintained as well?

24 A. For that particular well, yes.

25 Q. For that acreage in the south half?

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1 A. Yes.

2 Q. So does Matador have any lease expiration issue
3 elsewhere within your proposed proration unit?

4 A. The leases have been perpetuated. But, again,
5 like we said, we want to reiterate that we are drilling
6 this well as an effort to establish new production to
7 ensure that they remain such.

8 Q. And you have not asked the Division to issue an
9 expedited order in this case for any reason, have you?

10 A. No, we have not.

11 Q. You have no need for that?

12 A. This is actually in lessor prairie chicken area,
13 so we would be precluded from actually drilling and
14 completing this from March to June 15th. So I don't
15 know if that necessarily would be needed.

16 Q. Does Matador plan to start this well before the
17 prairie chicken season?

18 A. We do not. At first, when we proposed this well,
19 we were thinking that we were going to drill it at the
20 end of 2015. Again, we delayed that because we
21 continued to try to make good faith efforts to negotiate
22 agreements with all uncommitted working interest owners.

23 We will likely drill this well, provided how
24 everything turns out, in October of this year.

25 Q. You continue to negotiate with Nearburg; is that

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1 correct?

2 A. Yes. As of this week, I have been in constant
3 communication with Mr. Howard.

4 Q. Okay. What is the justification for drilling
5 this well in the current pricing environment?

6 A. You know, I think that's relative to every
7 working interest owner.

8 Q. What is Matador's justification?

9 A. You know, one, to perpetuate both these leases
10 because of the marketable production, two, to delineate
11 acreage and, 3, because we think it will be a productive
12 well.

13 Q. Do you have another witness that will discuss
14 your AFE costs for the well?

15 A. I don't know if we do today. You know, I'm a
16 landman so I don't know if we are going in that
17 direction or not.

18 Q. Do you know what the current -- the most recent
19 AFE costs were?

20 A. I know the one that we proposed this well is the
21 one that's depicted in Exhibit 4.

22 Q. If you look at Exhibit 4, there is an AFE at the
23 last page of that dated October 27th, 2015, correct?

24 A. Yes, sir.

25 Q. Has Matador issued subsequent AFEs for this

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1 well?

2 A. We have -- after we initially spoke to Nearburg,
3 we had a technical conference call to try to answer any
4 questions that they had. One of the things that
5 surfaced was that this was an environmentally sensitive
6 area with dunes and lizards and also prairie chickens.

7 And so one of the things that was contemplated in
8 that technical conference was kind of a full section
9 development plan; at which point we discussed the
10 potential to have one larger facility rather than
11 multiple to reduce the surface disturbance;

12 At which point, after that technical conference
13 call, Nearburg requested that we furnish an additional
14 AFE to show what that may look like; at this point we
15 did. But that was just one avenue that we were
16 contemplating. That's not necessarily the direction we
17 are going in for this proposal.

18 Q. So you agree, Matador submitted an AFE in
19 December of last year for this well?

20 A. For informational purposes, we sent that to
21 Nearburg; you know, we did not propose that to all
22 working interest owners.

23 Q. What was the amount of completed well cost on
24 that AFE?

25 A. I don't have it in front of me.

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1 Q. Does \$8-and-one-half million sound right?

2 A. I think so.

3 Q. Can you explain to us how we got from 6.1 million
4 to 8-1/2 million?

5 A. I have nothing to do with AFEs, so that is
6 something that's outside of my expertise.

7 Q. Okay. No one inhouse told you why?

8 A. I handle the land matters, sir.

9 Q. So no one inhouse told you?

10 A. I handle the land matters, sir.

11 Q. And the answer to my question is?

12 MS. KESSLER: That's already been answered,
13 Mr. Examiners.

14 MR. BROOKS: I think it is actually
15 irrelevant because he wouldn't be allowed to testify
16 what someone else told him. He has no actual knowledge.

17 So I would recommend that the objection be
18 sustained.

19 EXAMINER McMILLAN: Objection sustained.

20 Q. What is the operative AFE for purposes of the
21 well proposal to Nearburg today?

22 A. The one that is reflected in Exhibit 4.

23 Q. And there was yet a third AFE submitted, was
24 there not?

25 A. I don't know. There may have been. I'm not sure

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1 off the top of my head. I don't have one. If you've
2 got one that you can furnish -- I mean, I don't know off
3 the top of my head.

4 Q. Does Matador have any obligations to third
5 parties to drill the well this year?

6 A. There is no obligation, no.

7 Q. Would Matador be drilling this well if it didn't
8 have its production hedged?

9 EXAMINER McMILLAN: I don't see where this
10 is going.

11 MS. KESSLER: Objection. Beyond the scope
12 of Mr. Lierly's expertise.

13 MR. BROOKS: I'm sorry. I couldn't hear
14 exactly what was said.

15 MS. KESSLER: I believe that that question
16 is beyond Mr. Lierly's scope of expertise and not
17 relevant.

18 MR. BROOKS: Okay. I would recommend the
19 objection be sustained because it calls for an opinion
20 and he does not (inaudible).

21 EXAMINER McMILLAN: The objection is
22 sustained.

23 MR. HALL: May I just briefly respond? Not
24 calling for an opinion.

25 MR. BROOKS: Okay, you may.

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1 MR. HALL: I appreciate that.

2 MR. BROOKS: You say it's not calling for an
3 opinion.

4 MR. HALL: No.

5 MR. BROOKS: What was the question exactly?

6 MR. HALL: Would Matador drill this well
7 if its production was not hedged; that is a fact
8 question.

9 MR. BROOKS: I don't really think what
10 somebody would do is subject to a question of fact,
11 unless you are talking about somebody who has actual
12 knowledge of existing plans.

13 So there again, we are getting back into
14 hearsay. I'll sustain the objection -- I'll recommend
15 the objection be sustained.

16 EXAMINER McMILLAN: Objection sustained.

17 MR. HALL: Let's get at it another way.

18 BY MR. HALL (cont'd):

19 Q. Does Matador hedge its production?

20 A. I believe we use --

21 MS. KESSLER: I believe this is beyond a
22 land matter which Mr. Lierly has been qualified to speak
23 to.

24 MR. BROOKS: If he has knowledge, he may
25 answer the question. If he doesn't know, he can say he

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1 doesn't know.

2 A. I believe we use derivatives, but I am in no way
3 involved with any of the derivatives.

4 Q. Would the pooled parties in this case receive
5 any benefit from the derivatives that Matador has in
6 place?

7 MS. KESSLER: Mr. Examiner, I believe this
8 is knowledge that would not be within Mr. Lierly's
9 scope of expertise or that he would have actual
10 knowledge of.

11 MR. BROOKS: Well, if he doesn't know the
12 answer, he can say so.

13 A. I do not know the answer to that question.

14 MR. HALL: Can I explain, Mr. Examiner?

15 MR. BROOKS: You may.

16 MR. HALL: The important consideration for
17 the Examiners is whether or not there is an issue of
18 waste here, economic waste. We are going to talk
19 further on into the proceeding about whether this well
20 can actually pay out based on projections, some of
21 Matador's own projections, Nearburg's own projections,
22 and how we can justify drilling the well in this type of
23 pricing environment and force pool other unwilling
24 parties into a well when we know there's different
25 economic considerations in place for the operator than

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1 there are for the pool parties.

2 I think that is an issue the Division is not
3 prevented from taking up; but I think it is an issue
4 that the Division should take up, because it is part
5 and parcel of the waste consideration. And that is
6 why --

7 MS. KESSLER: Mr. Examiner, if I could just
8 briefly respond to that.

9 MR. BROOKS: Go ahead.

10 MS. KESSLER: That may be the case; that may
11 be something that Nearburg is looking for within this
12 hearing. But Mr. Lierly is not the person who should be
13 the person responding to that given that he is a
14 landman.

15 MR. BROOKS: Whether it is relevant to a
16 waste issue or not, it is relevant to the issue of
17 whether the terms and conditions would be fair and
18 reasonable, which is something that the Division has to
19 address.

20 But I agree that if this witness does not
21 have knowledge of these matters, then we're wasting time
22 to examine him concerning them. So I would ask you -- I
23 don't know if you remember what question --

24 THE WITNESS: I got lost in that question.

25 MR. BROOKS: Let's restate the question and

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1 you can tell us whether you have the knowledge
2 sufficient to answer that.

3 MR. HALL: Please read the question back so
4 we can make sure --

5 MR. BROOKS: Okay.

6 (Pause.)

7 THE WITNESS: Maybe we could --

8 Q. (By Mr. Hall) My question is do the parties who
9 would be pooled under Matador's application receive any
10 benefit from the derivatives that Matador has in place
11 on its production?

12 MS. KESSLER: Objection. That is not
13 relevant.

14 MR. HALL: I am just repeating the question.

15 MS. KESSLER: I am just renewing my
16 objection.

17 MR. BROOKS: I believe it is relevant, but I
18 don't know if --

19 THE WITNESS: It is beyond my knowledge.

20 MR. BROOKS: That is what I wanted to find
21 out. And if you do not know the answer to that
22 question, then I think the Examiner should sustain the
23 objection to it.

24 EXAMINER McMILLAN: And the objection is
25 sustained.

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1 Q. Did you have any exposure to any economic
2 analysis for the projected returns from this drilling
3 project?

4 A. No, sir, I did not.

5 MR. HALL: I don't have any more questions.

6 EXAMINATION BY EXAMINER McMILLAN

7 EXAMINER McMILLAN: Okay. The question I
8 have -- I am looking at Exhibit No. 5, and, in essence,
9 I am looking at essentially 6, too.

10 It says for Dr. Robert Cahan and Bernice
11 Cahan, it says here that they are basically a loss
12 because they are not paying the JIVs; and you ran a
13 notice. Did you run a notice for the Carneys?

14 THE WITNESS: We actually had delivered a
15 confirmation that was sent with our initial well
16 proposal to Sybil Carney, and so we have something that
17 was delivered --

18 EXAMINER McMILLAN: So you did not need the
19 notice updates for --

20 THE WITNESS: That's correct -- as well as
21 we had a phone number and we left numerous voicemails
22 with Ms. Carney or at least on the voice message service
23 that we had for that number.

24 (Discussion off the record.)

25 MR. BROOKS: I have some questions.

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1 EXAMINER McMILLAN: Go ahead.

2 EXAMINATION BY MR. BROOKS

3 MR. BROOKS: Okay. You being a landman on
4 this case, you have studied the title to this proposed
5 unit, right?

6 THE WITNESS: Yes, sir.

7 MR. BROOKS: And are all -- do you disagree
8 with the representation that I believe was made earlier
9 that all of the working interest owners in the south
10 half of the proposed unit are also parties to existing
11 joint operating agreement covering that land --
12 covering the south half of this proposed unit, among
13 other lands?

14 THE WITNESS: Are you asking if I am
15 acknowledging that there is an existing south half JOA
16 or --

17 MR. BROOKS: Well, the one that has been --
18 is there any question about what JOA we are talking
19 about?

20 THE WITNESS: When we proposed this well, we
21 proposed a superseding JOA that would blend the
22 contractual interest to allow for horizontal development
23 in our preferred orientation, being north to south.

24 MR. BROOKS: But that has not been signed by
25 all parties, right?

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1 THE WITNESS: Not by Nearburg or any of the
2 other parties that are considered uncommitted.

3 MR. BROOKS: Okay. But there is a
4 preexisting joint operating agreement -- you disagree
5 with the proposition that there is a preexisting joint
6 operating agreement covering the south half of the
7 proposed unit only?

8 THE WITNESS: I do not disagree with that.

9 MR. BROOKS: You do not disagree with that.
10 And does that joint operating agreement
11 include all working interest owners who own interests in
12 the south half of the proposed unit?

13 THE WITNESS: It does.

14 MR. BROOKS: Now, my understanding is that
15 that joint operating agreement does not cover the north
16 half, right?

17 THE WITNESS: That's correct. There is a
18 separate one for the north half and the ownership is
19 diverse between the two.

20 MR. BROOKS: Okay. And no owner of a
21 working interest in the north half is here complaining
22 about any rights under the joint operating -- under
23 their joint operating agreement, right?

24 THE WITNESS: Yes, I think that is fair to
25 say.

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1 MR. BROOKS: And Nearburg is not a --
2 Nearburg is the only party that is opposed to this
3 application, and my understanding is they are not an
4 owner of a working interest in the north half of the
5 proposed unit; is that correct?

6 THE WITNESS: That's correct, sir.

7 MR. BROOKS: Okay. And there are other
8 working interest owners within the north half of the
9 unit, other than either Nearburg or --

10 THE WITNESS: Correct.

11 MR. BROOKS: I think that's all my
12 questions.

13 THE WITNESS: We do have another working
14 interest owner that has ownership in the north and south
15 who has executed our proposed superseding JOA that would
16 allow us to drill north and south.

17 MR. BROOKS: Okay. But does Nearburg own a
18 -- sorry -- does Matador own an interest in the south
19 half of the proposed unit?

20 THE WITNESS: MRCW Delaware Resources, LLC,
21 which is a subsidiary of -- it's a Matador entity, it
22 owns 30 percent of our -- of the proposed west half
23 southeast tract.

24 MR. BROOKS: Of the entire unit?

25 THE WITNESS: For that particular tract. It

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1 is --

2 MR. BROOKS: What tract?

3 THE WITNESS: If you go to our Exhibit 3, it
4 is tract 2.

5 MR. BROOKS: It is the same as what I have
6 been calling the south half of the proposed unit, that
7 is to say, the southwest quarter of the --

8 THE WITNESS: It is west half, southeast,
9 sir.

10 MR. BROOKS: Yeah, okay. The south half of
11 the west half of the east half?

12 THE WITNESS: I think so. I think we are
13 getting to the same place.

14 MR. BROOKS: I think we are. Of Section 32,
15 Township 19 South, Range 33 East.

16 THE WITNESS: Yes, sir.

17 MR. BROOKS: Okay. No further questions.

18 EXAMINER McMILLAN: I do have a followup.
19 The existing JOA lacks a pooling clause?

20 THE WITNESS: It doesn't lack a pooling
21 clause. It just doesn't cover our entire proposed
22 project area, 160-acre proposed nonstandard spacing.
23 Did that answer the question?

24 EXAMINER McMILLAN: Yes.

25 EXAMINATION BY EXAMINER DAWSON

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1 EXAMINER DAWSON: Have you had any more
2 communication with Patti Brew of Rowville?

3 THE WITNESS: We have. We've probably had a
4 dozen e-mail exchanges and probably almost as many phone
5 calls. She called as we were traveling to Santa Fe
6 yesterday. And we have ongoing negotiations.

7 And it should be noted that any party that
8 we have listed as an uncommitted working interest owner,
9 if we reach an agreement, we will gladly remove them
10 from the parties that were requested to be pooled.

11 EXAMINER DAWSON: So you have a total of
12 five existing owners within the unit that are not --
13 have not agreed to it yet?

14 THE WITNESS: Four, if you include
15 Robert and Bernice Cahan.

16 EXAMINER DAWSON: Sorry. Four.

17 THE WITNESS: Yes, sir.

18 EXAMINER DAWSON: I have no further
19 questions.

20 EXAMINER McMILLAN: By the way, what is the
21 status of the well?

22 THE WITNESS: It's undrilled, but we do have
23 an APD.

24 EXAMINER DAWSON: When is your lease
25 expiring? Is it held by production?

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1 THE WITNESS: Yes, they are held by
2 production, like we said marginal production.

3 EXAMINER DAWSON: I have no further
4 questions.

5 MR. BROOKS: I guess there was one nail that
6 I didn't make sure was driven in.

7 Is there any dispute that the operating
8 agreement which is the basis of Nearburg's motion to
9 dismiss as to the land that it covers -- and we've
10 already established what land it covers --

11 THE WITNESS: Uh-huh.

12 MR. BROOKS: Is there any dispute that it
13 extends to and includes the Bone Spring Formation?

14 THE WITNESS: It does include the Bone
15 Spring Formation.

16 MR. BROOKS: Thank you. Nothing further.

17 MR. HALL: One brief follow-up based on
18 questions Mr. Brooks had.

19 MR. BROOKS: I think that is appropriate.

20 EXAMINER McMILLAN: Yes.

21 RECROSS-EXAMINATION

22 BY MR. HALL:

23 Q. If you turn to your Exhibit 3, it shows the
24 committed interests and the noncommitted interests. And
25 the noncommitted interests are highlighted in yellow,

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1 correct?

2 A. Yes, sir.

3 Q. The other interest owners who have committed, are
4 they all MRC affiliates?

5 A. For the well?

6 Q. Yes.

7 A. They are but we have reached agreements with
8 parties that were originally sent well proposals, so we
9 have reached a number of voluntary joinder agreements.
10 And so those, for this particular well, have been rolled
11 into MRC Delaware Resources.

12 MR. HALL: Thank you.

13 EXAMINER DAWSON: I have one more question.

14 THE WITNESS: Yes, sir.

15 EXAMINER DAWSON: Are there owners in the
16 well that are committed to the well besides MRC?

17 THE WITNESS: As I just tried to answer, we
18 have acquired a number of people's interests. There is
19 a party that we have acquired their interest for this
20 particular well. But they have executed the JOA as to
21 the rest of the section to allow for horizontal
22 development. But outside of that entity, others have
23 divested their interest to MRC with the balance being
24 MRC-related entities.

25

REDIRECT EXAMINATION

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1 BY MS. KESSLER:

2 Q. So just to clarify, one more time, Mr. Lierly,
3 there are a number of other interest owners who owned in
4 either tract 1 -- tract 1 or tract 2 or both who have
5 been rolled up into MRC's interest as reflected in
6 Exhibit 3; is that correct?

7 A. That is correct.

8 EXAMINER McMILLAN: No further questions.

9 MR. BROOKS: None for me.

10 MR. HALL: Thank you. Let's come back at
11 3:20 p.m.

12 (Brief recess.)

13 EXAMINER McMILLAN: Mr. Lierly's testimony
14 was complete. Case 15433 is back on record.

15 MS. KESSLER: I would like to call my second
16 witness.

17 EXAMINER McMILLAN: Please proceed.

18 JAMES ANDREW JUETT
19 having been first duly sworn, was examined and testified
20 as follows:

21 DIRECT EXAMINATION

22 BY MS. KESSLER:

23 Q. Can you please state your name for the record?

24 A. James Andrew Juett.

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

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1 A. I'm employed by MRC Energy, an affiliate of
2 Matador Production Company as a senior geologist.

3 Q. What are your responsibilities as a geologist for
4 Matador?

5 A. To recommend and evaluate new drill locations,
6 workovers, and re-completions, evaluate potential
7 acreage acquisitions, and then also explore for new
8 exploration ideas.

9 Q. And can you please describe your educational
10 background and work history.

11 A. Yes. I received a bachelor of science degree in
12 geology with a minor in mathematics from West Texas
13 State University in Canyon, Texas.

14 I started working in the oil and gas industry
15 with Mesa Petroleum. And it was eventually merged into
16 Pioneer Natural Resources. When I left Pioneer, I went
17 to Prize Energy, who was bought by Magnum Hunter
18 Resources.

19 And then in 2003, I left Magnum Hunter and went
20 to Matador Resources, where my duties were mainly
21 working in unconventional reservoirs, such as the Cotton
22 Valley Tide sands, Eagle Ford shale, Haynesville shale,
23 Foss Forty shale, and then also the Bone Spring and
24 Wolfcamp shales in the Delaware Basin.

25 I left Matador in -- I spent 2013 at Comstock

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1 Resources; 2015, at Laredo Petroleum. And then I
2 returned in February of 2015 to Matador, where I picked
3 work in the Northern Delaware Basin.

4 Q. Are you a member of any professional
5 associations?

6 A. Yes. I am a member of the American Association
7 of Petroleum Geologists, also the Dallas Geological
8 Society, and the West Texas Geological Society.

9 Q. And do your responsibilities at Matador include
10 the Permian Basin?

11 A. Yes.

12 Q. Have you previously testified before the
13 Division?

14 A. Yes, I have.

15 Q. And are you familiar with the application filed
16 by Matador in this case?

17 A. Yes, I am.

18 Q. And you are familiar with the APD for the Eland
19 State 123H Well?

20 A. Yes, ma'am.

21 Q. Have you conducted a geologic study of this
22 land?

23 A. Yes, I have.

24 MS. KESSLER: I would tender this witness as
25 an expert in petroleum geology.

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1 MR. HALL: No objection.

2 EXAMINER McMILLAN: So qualified.

3 Q. Please turn to Exhibit 8 and tell the Examiner
4 what this document represents.

5 A. This is just a simple locator map to show where
6 the Eland unit will be in Lea County, New Mexico. And
7 it is also the unit that is outlined in red with the
8 green filled box.

9 Q. If you could turn to Exhibit 9 and explain this
10 exhibit.

11 A. Yes. Exhibit 9 is a structure map, a subC
12 structure map on the top of the 2nd Bone Spring Sand
13 package that we have.

14 This map shows that there's a relative gentle --
15 the formation dips pretty gently to the southeast. And
16 it also shows the surface and proposed bottomhole
17 locations of this well.

18 And the unit again is outlined in -- the red
19 polygon with the green fill. And it shows the line of
20 section that -- the cross section for another exhibit.

21 And then it also shows that -- with the structure
22 being gentle, that there doesn't appear to be any major
23 faults or impediments to drilling in this well.

24 Q. So did you prepare a cross section to determine
25 the relative thickness and porosity of the 2nd Bone

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1 Spring Formation in this area?

2 A. Yes, I did.

3 Q. And do you consider the wells on the line of the
4 section labeled A to A Prime to be representative wells
5 in this area?

6 A. Yes, I do.

7 Q. Please turn to Exhibit 10 and tell us what this
8 exhibit is.

9 A. This is a structural cross section that goes --
10 it's a -- with north is A on the left side of the cross
11 section and south is A Prime on the south -- on the --
12 okay. A is on the right side, is north. And A Prime is
13 south, is on the left -- is on the right side of the
14 cross section. I am getting my lefts and rights mixed
15 up here.

16 What this shows is the way -- is the 2nd -- the
17 top of what we consider the 2nd Bone Spring Sand
18 package. And it also shows the base of the package is
19 the 3rd Bone Spring carbonate, and that they are
20 relatively uniform throughout the section as we go
21 across the section. And we also show the proposed well
22 lateral on this map in the bold red line.

23 Q. Based on your geologic study of this area, have
24 you identified any impediments to a horizontal well?

25 A. No, I have not.

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1 Q. Do you believe that each quarter, quarter section
2 is productive in the 2nd Bone Spring Formation and will
3 contribute to the well?

4 A. Yes, I do.

5 Q. And in your opinion, is horizontal drilling the
6 most efficient method and will prevent the drilling of
7 unnecessary wells for this area?

8 A. Yes, I do believe so.

9 Q. Could you please turn back to Exhibit 1, which is
10 the C-102 for this well.

11 Does this have the 330-foot setbacks labeled and
12 the first and last perf depicted as no closer than
13 330 feet from the exterior boundary of this proposed
14 spacing unit?

15 A. Yes, it does.

16 Q. So this demonstrates compliance with the
17 Division's statewide setback rules?

18 A. Yes, it does.

19 Q. In your opinion, would the granting of Matador's
20 application be in the best interest of conservation for
21 the prevention of waste and the protection of
22 correlative rights?

23 A. I believe it would be, yes.

24 Q. And were Exhibits 8 through 10 prepared by you
25 and compiled under your direction and supervision?

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1 A. Yes, they were.

2 MS. KESSLER: Mr. Examiners, I move the
3 admission of Exhibits 8 through 10.

4 MR. HALL: No objection.

5 EXAMINER McMILLAN: Exhibits 8 through 10
6 may now be accepted as part of the record.

7 (MATADOR PRODUCTION COMPANY EXHIBITS 8
8 THROUGH 10 WERE OFFERED AND ADMITTED.)

9 CROSS-EXAMINATION

10 BY MR. HALL:

11 Q. Mr. Juett, in connection with your geologic
12 analysis for this particular project, did you
13 participate in estimating the ultimate recoveries?

14 A. Not directly, no, I did not.

15 Q. But an estimate was made?

16 A. Yes.

17 Q. Do you know what that was?

18 A. They're going to be probably between 300,000 and
19 400,000 barrels of oil.

20 Q. And in analyzing the development of section 32,
21 did you give consideration to establishing a 160-acre
22 lay-down unit in the north half of section 32? Are you
23 talking about an east, west lateral --

24 Q. Yes.

25 A. In our experience, the north, south wells seem to

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1 perform better than east, west wells do. So,
2 geologically, a lot of times the sands are deposited
3 north to south. And it is easier to stay in the sands
4 that way.

5 So in our experience the north, south wells
6 appear to give us a better opportunity to make better
7 wells.

8 Q. And when you are talking about experience, can
9 we -- are you referring to any of the 2nd Bone Spring
10 wells shown on your Exhibit 9?

11 A. Yes. There is an east, west well and a north,
12 south well on Exhibit 9, a 2nd Bone Spring test --
13 there's actually three.

14 One is a short lateral that is in section 20.
15 And that is currently shut in. But the two longer
16 lateral wells, one in section 27 that goes from 27 to 28
17 is inactive at this point. And it has cummed
18 89,000 barrels of oil.

19 And the one that is still active is the north,
20 south well that's made 127 barrels of oil and is still
21 active.

22 So that gives me evidence that the north, south
23 orientation is better.

24 Q. Anything else you can point to in your exhibits
25 that would support that point?

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1 A. No, sir.

2 MR. HALL: I have nothing further of the
3 witness.

4 EXAMINER DAWSON: Mr. Juett, good afternoon.
5 There's three 2nd Bone Spring producers within maybe a
6 three-mile area there?

7 THE WITNESS: Yes, sir.

8 EXAMINER DAWSON: And that one in 22 is the
9 one that's made 127,000 barrels, right?

10 THE WITNESS: Yes, sir.

11 EXAMINER DAWSON: There's no other 2nd Bone
12 Spring producing wells within like a nine-mile area
13 around the well -- I mean a mile radius, say, around the
14 well?

15 THE WITNESS: Around the proposed well,
16 there's not -- to my knowledge, there's not any
17 horizontal 2nd Bone Spring well.

18 EXAMINER DAWSON: All right. I have no
19 further questions. Thank you.

20 THE WITNESS: Okay.

21 EXAMINATION BY EXAMINER McMILLAN

22 EXAMINER McMILLAN: I am trying to figure
23 out your map. The west half of 29, what are those?

24 THE WITNESS: On the map the attributes, the
25 purple attributes on the map -- I should have covered

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1 this when we did the exhibit -- these are data points
2 that we've used to make this map.

3 And those are wells --

4 EXAMINER McMILLAN: Those two horizontals,
5 what are they produced from?

6 THE WITNESS: The one horizontal -- are we
7 talking section 32?

8 EXAMINER McMILLAN: Section 29.

9 THE WITNESS: Section 29.

10 EXAMINER McMILLAN: Horizontal wells on the
11 west half.

12 THE WITNESS: Those are proposed locations.
13 They have not actually been drilled yet. We don't show
14 those as being drilled out of our public database at
15 this point. Oh, 29. Excuse me. I was looking at the
16 ones just to the north.

17 Those are another formation. I do not
18 know -- they're not 2nd Bone Spring wells, so...

19 EXAMINER McMILLAN: Okay.

20 EXAMINATION BY EXAMINER DAWSON

21 EXAMINER DAWSON: The well in the east half
22 of the east half of section 32, 18 south, 33 east, is
23 that also a proposed well?

24 THE WITNESS: That is a well that -- I don't
25 know if that's actually been proposed to the state. But

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1 in our database, that was a well that we would
2 potentially drill.

3 MR. BROOKS: No questions.

4 EXAMINER DAWSON: No further questions.

5 EXAMINER McMILLAN: Okay.

6 And my question is -- I guess there was a
7 question -- there was an October AFE for 6 million.
8 Have you seen any revised since, AFEs?

9 THE WITNESS: As a geologist, I don't get
10 into much of the AFE work at all. That stuff is done
11 with land.

12 We propose the wells, and that goes to
13 engineering. I actually have not been privy to any of
14 the AFEs. I give the work over to our engineers. And
15 the reservoir guys take over and do the AFEs and the
16 drilling engineers do that.

17 EXAMINER McMILLAN: Go ahead.

18 EXAMINER DAWSON: Would Mr. Lierly know
19 that?

20 MR. LIERLY: The only other AFE that I was
21 aware of was the one that Nearburg's attorney referred
22 to, and, again, that was for kind of informational
23 purposes, if we looked at one facility. But I am not
24 aware of anything outside of what we sent in our well
25 proposal. That was in Exhibit 4.

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1 EXAMINER DAWSON: So you've had two AFEs
2 that went from 8-and-1/2 million to 6.185 million?

3 THE WITNESS: Yes, but we did not circulate
4 the 8.5 million as what we're proposing on this well.
5 That was more just for Nearburg's informational purposes
6 only, if we did decide to use one large battery because
7 of the surface issue out there.

8 EXAMINER DAWSON: Would you anticipate, if
9 you had another AFE proposal from a drilling company,
10 that it would be less than 6.185 million?

11 MR. LIERLY: I have no idea. I do not put
12 together the AFEs, and I don't deal with the contractors
13 to know.

14 EXAMINER DAWSON: Okay. No further
15 questions.

16 EXAMINER McMILLAN: No further questions.
17 Thank you.

18 THE WITNESS: You're welcome.

19 MS. KESSLER: That concludes our
20 presentation.

21 EXAMINER McMILLAN: Please proceed.

22 NEARBURG PRODUCING COMPANY

23 CASE-IN-CHIEF

24 MR. HALL: I have two witnesses that have
25 yet to be sworn. I ask them to stand and be sworn in.

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1 (WHEREUPON, the presenting witnesses
2 were administered the oath.)

3 WILLIAM RANDALL HOWARD
4 having been first duly sworn, was examined and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. HALL:

8 Q. For the record, please state your name.

9 A. William Randall Howard.

10 Q. Mr. Howard, where do you live and by whom are you
11 employed?

12 A. I live in Midland, Texas, and I am employed by
13 Nearburg Producing, Nearburg Exploration.

14 Q. In what capacity?

15 A. I am the land manager in the Midland office.

16 Q. Mr. Howard, you have not previously testified
17 before the Division and had your credentials established
18 as a matter of record; is that correct?

19 A. That's correct.

20 Q. Could you give the Hearing Examiner a summary of
21 your educational background and work experience, please.

22 A. I graduated from Spring Ridge High School in
23 1973. I started in the oil and gas business in 1977 as
24 a landman, working contract for major oil companies
25 until 1992, when I moved to Midland and became an

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1 in-house landman working the Permian Basin for Southwest
2 Royalties.

3 I stayed with Southwest Royalties until it was
4 acquired by Clayton Williams Energy in 2004. And I was
5 moved up to vice president of land for Southwest
6 Royalties, a subsidiary of Clayton Williams Energy,
7 until 2013 when I went to work for Nearburg, where I
8 started as a senior landman and now I'm the land
9 manager.

10 MR. HALL: Mr. Examiner, I offer Mr. Howard
11 as an expert petroleum landman. Are the witness's
12 credentials acceptable?

13 EXAMINER McMILLAN: Do you have a college
14 degree?

15 THE WITNESS: No, I don't. Just 38 years in
16 the business.

17 MR. BROOKS: Are you a CPL?

18 EXAMINER McMILLAN: I apologize. I didn't
19 hear you clearly. What was the question?

20 MR. BROOKS: I asked was he a CPL.

21 THE WITNESS: And I am not. I have been in
22 the APL since 1980. And I am in the PBLA, but I'm not a
23 certified petroleum landman.

24 MR. BROOKS: Thank you.

25 We are just getting his credentials

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1 established. Is there an objection? I have not yet
2 heard an objection to his qualifications.

3 MS. KESSLER: Mr. Examiners, perhaps we
4 could qualify him as -- rather than an expert as a
5 practical landman.

6 MR. BROOKS: Well, Mark Fesmire was very
7 fond of that distinction, but he's not the director
8 anymore. I would say that experience can qualify a
9 person just as much as education.

10 And I would be inclined, if I were the
11 Examiner, to approve his qualifications. But I am not
12 the Examiner, and it is not a legal question. It's a
13 question of discretion, of the discretion of the
14 Examiner.

15 EXAMINER McMILLAN: Okay. He may be --

16 MS. KESSLER: Mr. Examiner, is he prepared
17 to offer opinions?

18 MR. HALL: Yes.

19 MS. KESSLER: I would say that would be an
20 expert issue.

21 EXAMINER McMILLAN: Then he should be
22 qualified as an expert based strictly on his 38 years of
23 experience.

24 BY MR. HALL (cont'd):

25 Q. So, Mr. Howard, are you familiar with the

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1 application that has been filed in this case?

2 A. Yes, I am.

3 Q. And you are familiar with the lands that are the
4 subject of the application?

5 A. Yes, I am.

6 Q. Would you explain to the Hearing Examiner what
7 exactly is Nearburg's position in this matter?

8 A. Well, we oppose the proposed nonstandard well
9 since we think there's a JOA in place, preexisting JOA
10 in place. And we also think that it is not a good
11 economic decision to drill the well right now with
12 prices the way they are, and the cost of the well that
13 you are talking about.

14 And we also feel like if it does end up going to
15 forced pooling, that we would like to talk about getting
16 the risk reduced from 200 percent to 50 percent.

17 Q. All right. Let's talk about the ownership
18 interests of Nearburg Exploration Company in the south
19 half of section 32. What are those exactly?

20 A. Our interests in the south half of section 32 is
21 approximately 66 percent.

22 Q. And are those interests currently the subject of
23 a voluntary agreement for the development of that
24 acreage?

25 A. Yes, they are.

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1 Q. Let's look at Exhibit 1, if you have that in
2 front of you?

3 A. I do.

4 Q. Would you identify that for the Examiner.

5 A. This is a letter agreement between Harvey Yates
6 and James Yates and Nearburg Exploration Company
7 regarding operations in Sections 31 and 32, Township 18
8 South, 33 East.

9 Q. And what lands does it cover again --

10 A. All of Section 31, south half of Section 32,
11 Township 18 South, Range 33 East.

12 Q. And what are Nearburg's interests in each of
13 those sections?

14 A. Again, in the south half of 32, it's
15 approximately 66 percent, in the north half of 31, it's
16 approximately 50 percent, and in the south half of 31,
17 it's approximately 29 percent. That's -- all those are
18 to the Bone Springs Formation, is what I am talking
19 about.

20 Q. Okay. My next question is let's turn to the last
21 page of the exhibits, marked Exhibit A-1, and does that
22 indicate the depth severances for the interest --

23 A. Yes. For the south half of 32, it is from 4650
24 below the surface to the base of the Morrow Formation,
25 which would include the Bone Spring.

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1 Q. Let's refer back. There are some numbered
2 paragraphs in that letter agreement, Exhibit 1. On the
3 second page refer to numbered paragraph 6; would you
4 read that into the record, please.

5 A. "All operations conducted in the south half of
6 Section 31 and the south half of Section 32, Township 18
7 South, Range 33 East shall be conducted under the terms
8 of the operating agreement attached hereto as
9 Schedule C."

10 Q. Now, let's turn to Exhibit No. 2. Would you
11 identify that, please?

12 A. This is a Schedule C to the letter agreement
13 that's Exhibit 1.

14 Q. Is that a joint operating agreement dated May
15 28th, 1998?

16 A. That is correct.

17 Q. And is this an excerpted copy of the complete
18 joint operating agreement?

19 A. Yes, it is.

20 Q. And is a complete copy of this JOA available to
21 the Examiners should they wish to review that?

22 A. Yes, sir.

23 Q. Let's look inside Exhibit 2, the JOA, at Article
24 13. What does Article 13 address?

25 A. It has to do with how long the term of the

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1 agreement is.

2 Q. All right. And in this case, can you read into
3 the record which option is applicable in this case?

4 A. "Option 1, So long as any of the oil and gas
5 leases subject to this agreement remain or are continued
6 in force as to any part of the contract area, whether by
7 production, extension, renewal, or otherwise.

8 Q. All right. With respect to the lease that covers
9 the south half of 32, is it your understanding that that
10 lease remains in good standing?

11 A. Yes.

12 Q. Let's turn to Exhibit 33. If you would identify
13 that, please.

14 A. Exhibit 3 is a plat that I printed off of
15 drilling info which shows all of section 32, we've been
16 talking about, and the three wells that are currently
17 producing in that section.

18 Q. Can you identify the well that was drilled
19 pursuant to the 1998 JOA?

20 A. Yes. It's the 30-025-35009, the well in the
21 southwest of the southwest. It's the Gazelle 32 State
22 No. 1 Well.

23 Q. Let me ask you about the north half of section
24 32. Does Nearburg own any interest in the north half of
25 section 32?

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1 A. No, we don't.

2 Q. And is Nearburg a party to any contract or
3 development agreement in the north half of section 32?

4 A. No, it is not.

5 Q. Let's turn now to Exhibit No. 4. If you would
6 identify that, please.

7 A. This is a participation proposal sent by MRC
8 Permian to us for the drilling of the Eland State 32-18
9 South, 33 East, RN No. 124H.

10 Q. And if you would refer to the last paragraph on
11 the first page, does that refer to two existing
12 operating agreements?

13 A. Yes.

14 Q. And in that paragraph, would you summarize what
15 Matador -- MRC is proposing to do with those existing
16 operating agreements?

17 A. They are proposing to supersede the two existing
18 operating agreements, the north half operating agreement
19 and the south half operating agreement, with a new
20 operating agreement.

21 Q. Let's look at Exhibit No. 5. Would you identify
22 that, please.

23 A. This is the operating agreement that they were
24 proposing to succeed the other ones, to replace the
25 other ones.

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1 Q. All right. And if we refer to a couple of
2 pages, first go to the next to the last page; there is
3 bold language. Would you read that into the record.

4 A. The next to the last page?

5 Q. The top -- sorry, the top of the page labeled
6 Exhibit A, the third from the bottom, the bold language
7 there, please read it into the record.

8 A. Yes.

9 "This operating agreement shall replace and
10 supersede all existing operating agreements between all
11 or any portion of the parties hereto, but only insofar
12 as to the depth limitations from 4,600 feet to the base
13 of the Bone Spring Formation as defined below within the
14 contract area described in the operating agreement."

15 Q. Then let's turn to the last page. And it is
16 marked at the bottom of the page.

17 The end of Exhibit A, the very last paragraph on
18 that page, does that identify the May 28, 1998, JOA,
19 which is also our Exhibit No. 2 today?

20 A. Yes, it does.

21 Q. And let me ask you. So Exhibit No. 5 was
22 transmitted to you by Mr. Lierly's letter dated October
23 15th, 2015; is that correct?

24 A. I believe that's correct.

25 Q. And that's our Exhibit No. 4?

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1 A. Yes.

2 Q. And is Exhibit No. 5 an excerpted copy of a
3 complete JOA?

4 A. Yes, it is.

5 Q. And do we have available to the Examiners, should
6 they request it, a complete copy of the October 15,
7 2015, superseding operating agreement?

8 A. I don't have it with me, but we should have a
9 full copy. Well, we do have it with us. Yes.

10 Q. Let's look at Exhibit 6. Would you identify
11 that, please.

12 A. This is a participation proposal for the 123H, so
13 this was a replacement for the 124H, is my
14 understanding.

15 Q. Explain what happened there.

16 A. I think that they -- that originally MRC had
17 proposed a well, and they had some issues or some things
18 that changed. And somewhere down the line they decided
19 to replace the original 124H with the 123H.

20 Q. Right. And so if we refer back to Exhibit No. 4.

21 A. Yes.

22 Q. And you look at the "RE" line, that refers to the
23 124H, correct?

24 A. Correct.

25 Q. So is it accurate to say that this is the

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1 replacement well for whatever reason?

2 A. Yes.

3 Q. If you look at the last attachment to Exhibit
4 No. 6, was this an AFE that was transmitted to you by
5 Mr. Lierly?

6 A. Yes.

7 Q. What is the date of that AFE?

8 A. October 27th, 2015, is what it has at the top.

9 Q. All right. And what's the costs for a completed
10 well on that one?

11 A. \$6,185,429.

12 Q. Let's turn to Exhibit 7. Could you identify
13 that, please?

14 A. This is an AFE dated December 1st, 2015.

15 Q. And from whom did you receive this?

16 A. This came also from Matador.

17 Q. What is the completed well cost reflected on that
18 AFE?

19 A. \$8,525,284.

20 Q. And explain to the Hearing Examiner, in Matador's
21 proposed 160-acre unit, what would Nearburg's share of
22 those wells costs be?

23 A. Approximately, 33 percent.

24 Q. All right. Does Nearburg believe that drilling
25 an \$8-1/2 million oil well is warranted at this time?

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1 A. No, sir.

2 Q. Why not?

3 A. The price of oil, where it is under \$30, and
4 especially with an \$8-1/2 million well, it's kind of
5 hard to make the economics fit.

6 Q. Do you know of anything that would prevent
7 Matador from designating a 160-acre lay-down unit
8 located entirely in the north half of section 32?

9 A. No, sir.

10 Q. Will Nearburg send a petroleum engineering
11 witness who will address the technical merits of
12 Matador's development proposal in its request for a 200
13 percent risk penalty?

14 A. Yes.

15 Q. Were Exhibits 1 through 7 prepared by you or at
16 your direction?

17 A. Yes.

18 MR. HALL: That concludes my direct of this
19 witness, and I move the admission of Exhibits 1
20 through 7.

21 MS. KESSLER: No objection.

22 EXAMINER McMILLAN: Exhibits 1 through 7 may
23 now be accepted as part of the record.

24 (NEARBURG PRODUCING COMPANY EXHIBITS 1
25 through 7 WERE OFFERED AND ADMITTED.)

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1 MS. KESSLER: Mr. Examiner, may I proceed?

2 EXAMINER McMILLAN: Yes, please.

3 CROSS-EXAMINATION

4 BY MR. KESSLER:

5 Q. Mr. Howard, I would like you to turn to the joint
6 operating agreement that I believe was marked as your
7 Exhibit 2.

8 A. Okay.

9 Q. On the front page here, this says what boundaries
10 are covered by this JOA; is that correct?

11 A. Yes, ma'am.

12 Q. And we've established that those boundaries only
13 apply for section 32 to the south half of section 32; is
14 that correct?

15 A. Well, the JOA covers two tracts.

16 Q. Correct. As to section 32?

17 A. It only covers the south half of section 32, yes.
18 I'm sorry.

19 Q. Thank you. And you agree that this only applies
20 to the south half, correct?

21 A. The tract 2 only applies to the south half of
22 section 32, yes.

23 Q. What provision in this joint operating agreement
24 authorizes the combination of lands in the south half
25 with the lands in the north half?

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1 A. Well, I am not aware. I haven't looked for that,
2 so...

3 Q. Are you aware of any such provision?

4 A. No, I am not offhand.

5 Q. Would you care to look through and find it?

6 A. Not particularly.

7 MR. HALL: Would Counsel wish to direct us
8 to one?

9 Q. Well, this is the joint operating agreement,
10 which is your exhibit, if you're aware of a provision,
11 you know, I would ask that you show it to us.

12 MR. HALL: That will save time.

13 A. I'm not. I'm not aware of it. Do you want me to
14 read the entire JOA?

15 MR. BROOKS: As I understand it, this is not
16 a complete copy.

17 THE WITNESS: We have one.

18 MR. HALL: Really in the interest of time
19 here, if counsel wants to refer us to what she is
20 talking about in the JOA, she can do that; otherwise,
21 maybe she wants to make the point that it doesn't
22 exist.

23 MS. KESSLER: That's exactly it. Mr. Howard
24 has been qualified as an expert in land. This is his
25 document. This is his exhibit.

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1 Q. Is there a provision which authorizes the
2 combination of the south half lands with the north half
3 lands?

4 A. Not that I am aware of right now.

5 Q. So can we agree that there is no provision?

6 A. No. Not that I am aware of. I answered the
7 question as best I can. Offhand, I don't know.

8 Q. So are you aware of any agreement which applies
9 to the entire spacing unit as it has been designated or
10 applied for by Matador?

11 MR. HALL: Objection. Foundation.

12 MS. KESSLER: Can you explain your
13 objection?

14 MR. HALL: There is no foundation to it.

15 MR. BROOKS: I think the objection is too
16 general, and, therefore, I would recommend it be
17 overruled.

18 EXAMINER McMILLAN: Okay. Objection
19 overruled.

20 THE WITNESS: Can you restate the question,
21 please.

22 Q. Yes. Are you aware of any agreement that applies
23 to both the north half and the south half acreage within
24 the 160-acre spacing unit?

25 A. No, I am not.

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1 Q. Looking at this JOA, what is the risk penalty
2 that is contained within Exhibit 2, the south half JOA?

3 A. I believe it is 500, but I may need to get the
4 entire JOA.

5 MR. HALL: (Mr. Hall handing document.)

6 THE WITNESS: Thank you.

7 A. 500 percent.

8 Q. And when you entered into -- when Nearburg
9 entered into this joint operating agreement back in
10 1998, was this JOA considered fair and reasonable?

11 A. I wasn't a part of it, but I would assume they
12 felt it was.

13 Q. Do you believe that it applies equally to
14 vertical and horizontal development?

15 A. Yes.

16 Q. Do you believe that it is still fair and
17 reasonable?

18 A. It is part of the agreement, I mean...

19 Q. I am talking about the JOA as a whole. Do you
20 believe it is fair and reasonable?

21 A. Yes.

22 Q. And is the risk penalty in it fair and
23 reasonable?

24 A. Yes.

25 Q. If you had proposed the well under it, would that

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1 risk penalty have applied?

2 MR. HALL: That calls for speculation.

3 There's been no well proposed under --

4 MR. BROOKS: Well, the agreement, you have
5 said we could look at the entire agreement if it is
6 relevant. I would think the agreement speaks for
7 itself, so I will recommend that the objection be
8 sustained.

9 EXAMINER McMILLAN: The objection is
10 sustained.

11 Q. So you believe that the risk penalty is fair and
12 reasonable as proposed under this joint operating
13 agreement?

14 A. Yes.

15 MR. HALL: Asked and answered.

16 MR. BROOKS: You are talking about
17 Exhibit 2, right?

18 MS. KESSLER: That's correct.

19 MR. BROOKS: Okay.

20 Q. And, again, the risk penalty, the 500 percent
21 risk penalty, that's contractually agreed as to these
22 particular lands based on perceived risk; is that
23 correct?

24 A. Yes.

25 Q. You have engaged in extensive negotiations with

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1 Matador; is that correct?

2 A. We have been talking for several months.

3 Q. But you have been unable to reach an agreement?

4 A. We are waiting on them.

5 Q. Are there material terms that you disagree over?

6 A. I think we're there. Again, there was a few
7 items that they were going to address with upper
8 management or whoever it was. So I think that we're
9 real close to getting a deal.

10 We are trying to work with them to allow them to
11 drill this well.

12 Q. Do you know what terms you've disagreed over?

13 A. One of the items was operations on the west half
14 of the section.

15 Q. Can you explain that just a little more?

16 A. Part of the agreement was that we would swap
17 acreage for acreage. We would give them 66 percent; 100
18 percent of what we own in the southeast quarter for an
19 equal interest that they own in the northwest quarter.

20 Q. Okay.

21 A. In doing so, we would be the majority interest
22 owner for the entire west half. And we asked that we
23 would be supported with the support of Matador as the
24 operator of Bone Spring wells in the west half.

25 Q. Can you explain what that means? The "support,"

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1 that is the part I didn't understand.

2 A. The support part. Yes, that they would
3 agree that we could be the operator -- the problem they
4 were having confirming is that there were some other
5 small interest owners that they can't speak for. And we
6 understood that.

7 We wanted Matador to agree that we would be the
8 operator of the west half and that they would support
9 us, if needed --

10 Q. Okay.

11 A. -- the other parties. And I think we reached an
12 agreement to that, for the most part.

13 Q. Were you also requesting as part of that
14 agreement that there be no drilling in the west half for
15 three years?

16 A. We originally requested that, yes. But we
17 negotiated that down.

18 Q. What has that been negotiated down to?

19 A. Two years.

20 Q. So there'd be a drilling moratorium for two years
21 on the west half?

22 A. Matador would not be able to propose a well in
23 the west half for that two-year period. Those were the
24 terms that Matador proposed.

25 Q. And that was, as I believe I heard you say

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1 earlier, in response to MRC's -- to Nearburg's request
2 that there be no drilling for three years; is that
3 correct?

4 A. Right. There was more negotiations back and
5 forth. But the final outcome was that we agreed two
6 years would suffice.

7 Q. What is the advantage of a two-year moratorium?

8 MR. HALL: At this point, we are really
9 getting far afield, beyond relevance. I'm objecting at
10 this point.

11 MR. BROOKS: Well, I kind of think the
12 objection has been waived by your allowing this line of
13 questioning. Initially, I would have said that the
14 negotiations between the parties would be just
15 negotiations, but we've had a lengthy questioning
16 concerning them. So I think, at this point, I recommend
17 the Examiner overrule the objection.

18 EXAMINER McMILLAN: It is overruled.

19 Q. So would the state receive royalty or revenue
20 during that two-year drilling moratorium?

21 A. From other wells, yes.

22 Q. But not from any well that couldn't be drilled
23 given this two-year moratorium; so no new wells,
24 correct?

25 A. No new wells proposed by Matador.

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1 Q. So no new revenue?

2 A. No. No new revenue from new wells proposed by
3 Matador.

4 Q. So you believe that such a moratorium would
5 result in waste?

6 A. I believe that producing the oil now at less than
7 \$30 is a waste. And I believe that Nearburg feels that
8 way, too.

9 Q. And do you believe that oil prices are volatile?

10 A. Yes.

11 Q. So a year from now prices could be totally
12 different; is that correct?

13 MR. HALL: Objection. Calls for
14 speculation.

15 MR. BROOKS: Yes. I think that objection
16 should be sustained.

17 EXAMINER McMILLAN: The objection is
18 sustained.

19 Q. Mr. Howard, with respect to the draft AFE that
20 was one of Nearburg's exhibits, do you remember the
21 circumstances that gave rise to this draft AFE being
22 circulated to Nearburg? Exhibit 7.

23 A. I don't show it is a draft. I guess that is
24 confusing me a little bit: This is the \$8-1/2 million
25 AFE?

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1 Q. Yes, the draft AFE, which is Exhibit 7.

2 A. Okay. Again, I am having a problem when you keep
3 calling it a "draft." Is there a reason for that? I'm
4 sorry. I just don't --

5 Q. I think I am the one posing the questions,
6 Mr. Howard.

7 A. Okay. I have in front of me an AFE for \$8-1/2
8 million.

9 Q. And that's Exhibit 7?

10 A. Yes, it is.

11 Q. Do you remember the circumstances that gave rise
12 to the negotiation and discussions between Nearburg and
13 Matador that gave rise to this AFE?

14 A. There was an AFE -- this AFE was sent to us, to
15 my understanding, because they had to do some adjusting
16 of numbers at Matador's offices.

17 There was a conference call the first week or two
18 of December that I'm presuming led to this, and I wasn't
19 a party to that. I was out of town, so I wasn't a party
20 to that.

21 My understanding is this was the replacement AFE
22 for the prior AFE. That's my understanding.

23 Q. Are you aware that this draft AFE was only
24 circulated to Nearburg?

25 A. I just heard that for the first time today.

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1 Q. And did you also hear Mr. Lierly testify earlier
2 that the AFE that would be signed by Nearburg at this
3 point is the AFE that was included in the well proposal
4 letter if Nearburg elected to participate?

5 A. I heard him say that, yes.

6 Q. And, finally, do you remember in any -- in any
7 discussions or technical conversations between Nearburg
8 and Matador, do you recall that this AFE was intended to
9 have one facility for the entire section?

10 A. I wasn't a party to that conversation.

11 Q. Okay.

12 MS. KESSLER: That concludes my examination.
13 I pass the witness.

14 MR. HALL: Redirect, Mr. Examiner.

15 EXAMINER McMILLAN: Please proceed.

16 REDIRECT EXAMINATION

17 BY MR. HALL:

18 Q. We got into negotiations. Let's get back to the
19 focus. Has there been any agreement signed between
20 Matador and Nearburg that supersedes the 1998 joint
21 operating agreement?

22 A. No, there's not.

23 MR. HALL: Nothing further.

24 MR. BROOKS: Did you say that concludes
25 your --

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1 MR. HALL: Yes.

2 EXAMINER McMILLAN: Go ahead.

3 MR. BROOKS: I don't have any questions for
4 this witness.

5 EXAMINATION BY EXAMINER McMILLAN

6 EXAMINER McMILLAN: The 500 percent, is it a
7 200 to 300?

8 THE WITNESS: It is a 500 percent penalty
9 for the nonconsent. It is a nonconsent penalty in the
10 JOA.

11 EXAMINER McMILLAN: How do you get the 500?
12 Is it 200 percent for --

13 THE WITNESS: It is a straight 500 percent
14 return -- there were several JOAs that were done between
15 parties back in the 90s, that Nearburg did. And both
16 parties agreed. So, in other words, you have a JOA with
17 the 500 percent penalty where Nearburg is the operator
18 and the same penalty where then HEYCO was the operator.

19 It was just being fair to each other. I
20 think it was a way of having them participate or you're
21 out basically.

22 EXAMINER McMILLAN: So, basically, then to
23 break it down, it's just 500 percent for all costs
24 incurred with the well; is that a fair statement?

25 THE WITNESS: Yes, sir. And that is a very

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1 high amount. I think it is high in today's standards.
2 But that is the deal that was made in 1998. And I can't
3 undo it.

4 EXAMINER McMILLAN: Okay. Go ahead, Scott.

5 EXAMINATION BY EXAMINER DAWSON

6 EXAMINER DAWSON: I was confused because I
7 thought initially the AFE was 8.5 million, but it went
8 down to 6.185; initially, it was 6.185 and it went to
9 8.5 million?

10 THE WITNESS: Yes, sir.

11 EXAMINER DAWSON: And that's because of the
12 additional frac stages associated, a lot of that's
13 completion costs associated with the well or...

14 THE WITNESS: I can't answer that question
15 because I don't know.

16 EXAMINER DAWSON: Well, you didn't prepare
17 the -- another company prepared the AFE --

18 THE WITNESS: Correct.

19 EXAMINER DAWSON: I don't have any other
20 questions. Thank you.

21 EXAMINER McMILLAN: No further questions.
22 Thank you very much.

23 MR. HALL: May the witness be excused?

24 EXAMINER McMILLAN: Yes.

25 MR. HALL: At this time, we would call

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1 Mr. Tim Speer.

2 EXAMINER McMILLAN: Please proceed.

3 MS. KESSLER: And Mr. Examiners, I would
4 object to the calling of the second witness. Mr. Hall's
5 amended prehearing statement was filed Tuesday, on
6 Tuesday at 4:45 listing a second witness.

7 Based on the regulation 19.15.4.13(B), which
8 sets forth requirements for prehearing statements. It
9 says that the prehearing statements shall be timely
10 filed. It says that it shall include the reasons for
11 opposition.

12 As you are aware, the first prehearing
13 statement only listed Mr. Hall's first arguments
14 regarding the voluntary agreement. His second
15 prehearing statement then added information regarding
16 economics and risk penalty.

17 And so to the extent that this witness,
18 Mr. Speer, will be testifying to those topics, we would
19 submit that that is untimely --

20 MR. HALL: And I will respond.

21 MS. KESSLER: And he cannot testify --

22 MR. BROOKS: Go ahead. You are going to
23 respond?

24 MR. HALL: I was going to respond to that.

25 MR. BROOKS: Please.

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1 MR. HALL: My prehearing statements don't
2 determine the course of the case. And do remember that
3 economics have always been a part of this case since the
4 day the application is filed.

5 You're obliged to consider waste or the
6 economics of waste, technical matters, geology. They
7 put on technical witnesses; we're going to put on
8 technical witnesses. This testimony will go directly to
9 the issue of waste.

10 MR. BROOKS: Well, but we still have to
11 figure out if the rules have been complied with. I
12 don't have my hearing book -- I need to look at the rule
13 book.

14 Something lurks in my mind from my past,
15 from my former life to the effect that there is
16 something, some difference between proceedings before
17 the Division and proceedings before the Commission in
18 terms of the effect of prehearing statements. But I
19 don't remember what it is, and those rules are somewhat
20 complex.

21 MS. KESSLER: The rule that I referenced was
22 19.15.4.13(B).

23 MR. BROOKS: I thought it was somewhere in
24 19.15.4. And when was the prehearing statement -- when
25 was the modified prehearing statement filed?

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1 MS. KESSLER: We received it on Tuesday at
2 4:45.

3 MR. BROOKS: Are you speaking of Tuesday,
4 January --

5 MS. KESSLER: About a day ago -- two days
6 ago. A day ago this morning.

7 MR. BROOKS: All right. Oh, I'm sorry for
8 being so rusty on these issues. There is a specific
9 provision concerning inclusion of testimony somewhere in
10 the rules, I am certain. But I don't remember where it
11 is and it doesn't appear to be in 19.15.4.13, unless I
12 am overlooking it.

13 EXAMINER DAWSON: It looks like it is under
14 19.15.4.13(B-1).

15 MR. BROOKS: Okay. That I was reading
16 before, and that says when the prehearing statement
17 shall be filed.

18 MR. HALL: And I would refer you,
19 Mr. Examiner, to 19.15.4.14, which addresses
20 directly conduct of adjudicatory hearings with
21 testimony --

22 MR. BROOKS: And what part of 19.15.4.14
23 are --

24 MR. HALL: I would look at C. I think
25 that's the provision you are concerned about as parties

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1 appearing untimely and not submitting the hearing
2 testimony --

3 MS. KESSLER: I --

4 MR. HALL: -- and they are precluded from
5 presenting technical witnesses, but they're allowed to
6 present statements. That's not our situation here.

7 MR. BROOKS: Well, I know that.

8 MS. KESSLER: Mr. Examiner. 19.15.4.14(C)
9 states that the Division Examiner shall have the
10 discretion to allow other persons at the hearing to make
11 a relevant statement but not to present evidence or
12 cross-examine witnesses.

13 MR. BROOKS: Which provision is this?

14 MS. KESSLER: 19.15.4.14(C). And since
15 Mr. Speer was not timely disclosed and is not a rebuttal
16 witness --

17 MR. BROOKS: In view of the fact that I am
18 not prepared on this matter and I know that the rules do
19 concern this, I think that efficiency would be served if
20 we allow the witness to testify subject to his testimony
21 being struck if it's determined that that was an
22 improper ruling.

23 And I apologize for not being up to the
24 minute on the rules. Not that the rules have changed
25 since I was here before. I've just forgotten a lot of

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1 things. I don't believe they have changed.

2 MR. HALL: Mr. Examiner, and don't forget
3 standing practice. We've done this beaucoup times.

4 MR. BROOKS: And, of course, you can do
5 it -- I suppose it more or less goes without saying that
6 you can do it in an uncontested hearing, which many of
7 ours are, or you can do it in a contested hearing if no
8 one objects.

9 The question is what does the Examiner have
10 discretion to do in a contested hearing where someone
11 objects. And I know what the rule is for district
12 courts in Texas or was up through 1998, but that's
13 hardly relevant.

14 MS. KESSLER: Mr. Examiner, we would request
15 a brief recess in order to examine these rules.

16 MR. BROOKS: Okay. I think that's fair.
17 But that's an expression of the Examiner.

18 MR. HALL: Let me point out, I have
19 witnesses that need to drive back to Midland.

20 MR. BROOKS: I am concerned about the fact
21 we're getting towards the end of the day. And if we
22 haggle over the rules, rather than take the testimony,
23 we may run into the evening hours -- if we decide to
24 admit the testimony.

25 But I'll let the Examiner make these hard

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1 decisions.

2 EXAMINER McMILLAN: Let's just have a small
3 continuance.

4 MR. BROOKS: You mean a recess?

5 EXAMINER McMILLAN: Yes, a recess.

6 MR. BROOKS: I am okay with that.

7 EXAMINER DAWSON: How long do you think it
8 will take you to find that?

9 MR. FELDEWERT: It's in there.

10 MR. BROOKS: There is some such provision in
11 there. The question is is it mandatory or
12 discretionary, so I can advise --

13 MR. FELDEWERT: We can walk through the
14 rule.

15 MR. BROOKS: Yes, I want you to do that.

16 MR. FELDEWERT: Do you want to read it
17 first?

18 MR. BROOKS: Tell me which rule I need to
19 read, and that will save a lot of time.

20 MR. FELDEWERT: The rule on prehearing
21 statements 19.15.4.13. It's mandatory that you file a
22 prehearing statement --

23 MR. BROOKS: Well, I know that it's
24 mandatory that you file a prehearing statement. And I
25 know it's supposed to include certain things. But that

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1 doesn't say when testimony should be excluded.

2 If you will -- we are going to take a
3 recess, so let's go ahead and take a recess. And I will
4 study the rules. And tell me if there's some other rule
5 you want me to look at specifically, other than
6 19.15.13 -- other than -- 19.15.4.13.

7 MR. FELDEWERT: Okay.

8 MR. BROOKS: I'm going to study the rules
9 and you-all can take a recess.

10 (Brief recess.)

11 MR. BROOKS: We are back on the record. I
12 have been asked to rule on the objection to -- what is
13 the witness's name?

14 MR. HALL: It is Tim Speer.

15 MR. BROOKS: To the objection to the
16 testimony of Tim Speer on the ground that he was not
17 disclosed as a witness in a timely filed prehearing
18 statement, but only in an untimely filed prehearing
19 statement.

20 So far is there any disagreement, Mr. Hall,
21 that he was not disclosed in a timely filed prehearing
22 statement?

23 MR. HALL: It was an amended prehearing
24 statement.

25 MR. BROOKS: Which was not filed four

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1 business days before this hearing?

2 MR. HALL: No dispute about that.

3 MR. BROOKS: Very good. So we have the
4 facts established. Now I believe that under the rule as
5 I have studied it, after conferring with Counsel, that
6 it is in the discretion of the Examiner whether to
7 receive the testimony of this witness or not.

8 So with that said, do the parties wish to
9 present arguments to -- do the attorneys wish to present
10 further argument to the Examiner on the question of the
11 exercise of discretion?

12 MR. HALL: Yes. I think you've heard a lot
13 of Matador's counsel. I'm going to add a couple of
14 points.

15 What is missing from their arguments to you
16 is prejudice. They have not alleged prejudice to them
17 in any shape, form, or fashion. They also overlooked
18 that this testimony could be considered in the nature of
19 rebuttal testimony, in all its aspects, that's provided
20 for under the rules.

21 Also, bear in mind, if you look at rule
22 19.15.4.14(A), that's the basis for discretion as well.
23 It says, These hearings shall be conducted without rigid
24 formality.

25 If you look again at rule 19.15.4.19,

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1 another basis for discretion that you have, you can do
2 anything you want to make sure that we have an efficient
3 and orderly presentation. We can hear it all today, do
4 it in two weeks. That doesn't seem efficient and
5 orderly to me.

6 That is why I think you have the discretion
7 and, ultimately, the testimony would be informative and
8 helpful to your decision-making process.

9 MR. BROOKS: Does counsel for Matador wish
10 to respond to Mr. Hall?

11 MR. FELDEWERT: Yes.

12 MR. BROOKS: Go ahead.

13 MR. FELDEWERT: Mr. Examiner, we've already
14 walked through the rule and demonstrated the mandatory
15 language which requires you to identify by your
16 prehearing statement and identify the witnesses that are
17 going to testify and their area of expertise. What is
18 the reason for that?

19 The reason for that is so that the parties
20 can prepare for the hearing and so that they can, in a
21 timely fashion, prepare whatever rebuttal they think
22 they may need or have their witnesses available here.

23 I don't know. Do you have the pleadings
24 files in front of you?

25 MR. BROOKS: I do not, but the Examiner

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1 does.

2 MR. FELDEWERT: Mr. Examiner, if you got
3 your pleadings file in front of you, let's take a look
4 at the prehearing statement that they timely filed, like
5 everybody else. It was filed on January 14, 2016.

6 EXAMINER McMILLAN: Okay.

7 MR. FELDEWERT: Is that Nearburg's
8 prehearing statement?

9 EXAMINER McMILLAN: Yes, Nearburg
10 Exploration Company, LLC, and Nearburg Producing,
11 together.

12 MR. FELDEWERT: Go to the next page.
13 Opponents Statement, do you see that? It's midway
14 through.

15 EXAMINER McMILLAN: Okay.

16 MR. FELDEWERT: Nearburg opposes the
17 application in this matter for the reason that the
18 interests in the south half of section 32, including
19 lands to be dedicated to the proposed nonstandard
20 spacing and proration unit are subject to a preexisting
21 voluntary pooling agreement and are not available to be
22 forced pooled, period.

23 And then they identify as a witness, Randy
24 Howard, land engineer, to talk on that topic, which he
25 did.

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1 Go to their amended hearing statement --
2 which we didn't get till 4:45 on Tuesday, when everybody
3 is already traveling and they are already coming in.

4 And at 4:45 on Tuesday, they file what he
5 calls an amended prehearing statement, and then add in
6 their statement of the case -- if you have it in front
7 of you --

8 (Pause.)

9 MR. FELDEWERT: May I approach?

10 EXAMINER McMILLAN: Yes, please. That will
11 help.

12 MR. FELDEWERT: (Handing.)

13 The second page, Opponent's Statement, the
14 first paragraph stays the same, no problem there.
15 Nearburg also contends -- well, now they are going to
16 add some stuff at the very last minute -- that the
17 project economics do not warrant the drilling of the
18 subject well, and, therefore, the Division would be
19 unable to issue a pooling order on such terms and
20 conditions that would be just and reasonable.

21 Now they want to enter project economics.
22 Okay? We didn't talk about project economics today. We
23 didn't have a witness talking about project economics
24 today. So it's not rebuttal. And it is not disclosed
25 until 4:45 on Tuesday.

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1 The next sentence, Pursuant to 19.15.13.8(D)
2 and .8(C), Nearburg will propose a lower risk charge
3 than that sort by Matador in its application.

4 Another new subject not disclosed in their
5 prehearing statement. And, again, a subject that we
6 didn't address. It's not rebuttal, it's not rebuttal.

7 They want to make an affirmative offer of
8 another risk penalty. They don't even tell you what the
9 percentage is that they are asking for in this
10 prehearing statement at 4:45 on Tuesday.

11 And then they say, Well, Mr. Tim Speer is
12 now going to come in and talk about that. And we don't
13 find out until 4:45 on Tuesday.

14 So is there prejudice? Yes. More
15 importantly why? Why did they not put that in their
16 initial prehearing statement if they really want to
17 pursue that.

18 And if the game here is that you can wait
19 until two days before the hearing and file your
20 prehearing statement, name additional witnesses, and
21 then come into the hearing and say, "Hey, don't worry
22 about it. We will just continue it for two weeks," let
23 me know that. That's a nice game to play. We can hold
24 everybody up and just keep doing that.

25 And two weeks from now, we'll come here at

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1 the next hearing, and what's going to prevent them from
2 putting another prehearing statement in with new
3 witnesses? I mean how long can this happen?

4 So he says, Don't worry about it. We'll
5 just continue it for two weeks.

6 Well, we've been waiting to get this case to
7 hearing, and they don't file a motion for a continuance.
8 They don't offer any excuse for not disclosing this
9 witness in a timely manner, and they don't offer any
10 reason why they didn't indicate that these would be
11 subject to the hearings until 4:45 on Tuesday.

12 So it seems to me, if these rules mean
13 anything and if we are going to have any kind of
14 procedure in this administrative forum that we can
15 understand and accept and realize and work with, then
16 you got to exclude this, unless they got a good reason.

17 MR. HALL: Can I give a calm response?

18 MR. BROOKS: I believe that's appropriate.
19 We can have an argument and then a counterargument and
20 then another argument. But unless there's a very good
21 reason, let your argument be the closing argument,
22 Mr. Hall.

23 MR. HALL: And that's fine with me.

24 I think we ought to put breaks on this. I
25 think Mr. Brooks is going to recommend to the Examiner

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1 that you go ahead and take the evidence, take the
2 testimony, and you can decide later whether you want to
3 consider it or not.

4 Give it the weight you deem appropriate.
5 Ultimately, it will be helpful to your decision and
6 process, and it will help you decide the case under the
7 merits application itself, not under the prehearing
8 statement.

9 MR. BROOKS: Well, I believe that is one
10 option the Examiner may elect to pursue or you may move
11 on the motion to strike.

12 I adhere to what I said previously, that I
13 believe that the language the Commission "may," assuming
14 that this rule as applied to the Commission applies, by
15 analogy, to Examiners, that the word the Commission
16 "may" is unambiguous, and it makes it discretionary and
17 not mandatory. And, therefore, I believe it is in the
18 discretion of the Examiner to decide whether or not to
19 receive the testimony.

20 And one of the options that he can follow
21 would be to receive the testimony subject to later
22 striking it based on the motion.

23 EXAMINER McMILLAN: Okay. The testimony
24 presented by Nearburg shall be allowed; however, based
25 on the examination, it may be stricken from the record.

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1 MR. BROOKS: Okay. We got a ruling.

2 MS. KESSLER: Mr. Examiner, may I have back
3 the copy of my amended --

4 EXAMINER McMILLAN: Hold on. Here you are.

5 MS. KESSLER: Thank you.

6 MR. HALL: We call Mr. Tim Speer.

7 EXAMINER McMILLAN: We are going to take a
8 five-minute break.

9 (Brief recess.)

10 EXAMINER McMILLAN: Case No. 15433 is back
11 on the record.

12 MR. HALL: At this time, Mr. Examiner, we
13 would call Mr. Tim Speer.

14 TIMOTHY SPEER
15 having been first duly sworn, was examined and testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. HALL:

19 Q. Please state your name for the record.

20 A. It's Timothy Speer.

21 Q. Mr. Speer, where do you live and by whom are you
22 employed?

23 A. I live in Midland, Texas. I am employed by
24 Nearburg Producing Company.

25 Q. What do you do for Nearburg?

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1 A. I am a reservoir engineer.

2 Q. You previously testified before the Division and
3 had your credentials as an expert engineer accepted as a
4 matter of record; is that correct?

5 A. Yes, I have.

6 Q. Are you familiar with the lands that are the
7 subject matter of this application here today?

8 A. Yes, I am.

9 MR. HALL: Mr. Examiner, are the witness's
10 credentials acceptable here?

11 MR. FELDEWERT: What is he being qualified
12 in?

13 MR. HALL: Engineer.

14 MR. FELDEWERT: Expert in what?

15 MR. HALL: Petroleum engineering.

16 MR. FELDEWERT: You're a reservoir engineer?

17 THE WITNESS: Yes.

18 MR. FELDEWERT: I have no objection to his
19 being qualified as an expert reservoir engineer.

20 EXAMINER McMILLAN: So qualified.

21 MR. HALL: Right.

22 EXAMINER McMILLAN: So qualified.

23 BY MR. HALL (cont'd):

24 Q. Have you prepared certain exhibits in conjunction
25 with your testimony here today?

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1 A. Yes, I have.

2 Q. Let's turn to Exhibit A, start with that, and
3 explain what that shows to the Hearing Examiner.

4 A. Okay. That's an isopach that was actually
5 prepared by our geologist, but in conjunction with my
6 supervision.

7 It shows the relatively -- the relative thickness
8 of the 2nd Bone Spring Sand in the area of the proposed
9 well, in the surrounding area. And it shows that
10 relative to some of the other wells, we are in a
11 relative thin area of the sand.

12 Q. Let's turn to Exhibit No. 9.

13 A. Okay.

14 Q. What does that exhibit show? Identify that,
15 please.

16 A. That is a structure map on the Bone Spring again
17 in the project area. Similar to Matador's
18 interpretation, it basically shows monoclinial dip to the
19 south, a fairly gentle dip.

20 Q. All right. So both on Exhibits No. 8 and No. 9,
21 there are numeric values highlighted in magenta; what do
22 those show us?

23 A. In No. 8, those are the isopach values, the
24 thickness of the sand. And in No. 9, those are the subC
25 values.

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1 Q. Let's turn to Exhibit 10 and identify that and
2 explain that to us.

3 A. That is a cross section. And it runs basically
4 from the northeast up in the thicker areas of the sand
5 down through the southwest going through the area of the
6 proposed location.

7 And it shows, you know, there again -- it's
8 highlighted showing that feed of porosity of greater
9 than 8 percent. And, there again, you see the relative
10 greater thickness of the sands up to the northeast.

11 Q. All right. And the Examiner can find the cross
12 section line on Exhibits 8 and 9 referenced in blue; is
13 that correct?

14 A. Correct, correct.

15 Q. Together what do these wells tell us about the
16 distribution of the sand in section 32?

17 A. Basically, that, you know, it is present there,
18 it is continuous through the section, but it is thinner
19 relative to some of the nearby wells, particularly some
20 of the better performing wells up to the northeast; and
21 that it is actually, you know, closer in thickness to
22 some of the poorer performing wells we see -- that can
23 be seen in further exhibits to the south and to the
24 southeast.

25 Q. All right. So let's -- let me ask you about the

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1 cross section briefly here. You've highlighted in
2 yellow productive sands based on an 8 percent porosity
3 cutoff?

4 A. Correct.

5 Q. Let's turn now to Exhibit No. -- we're missing
6 exhibit -- let's go to Exhibit 11. What does this show
7 us?

8 A. That is a map of the surrounding area. It shows
9 the nearby wells. This does show both permitted wells
10 as well as completed wells. It is color-coded. The
11 green wells are horizontal 2nd Bone Spring Sands. The
12 red wells are horizontal 1st Bone Spring Sands.

13 Q. And if you look at this, do you have an opinion
14 whether or not there's an established development
15 pattern in the area of Matador's proposed well for
16 lay-downs as opposed to stand-up units?

17 A. There's been wells drilled in both directions.

18 Q. All right. Let's turn to Exhibit No. 12 now. If
19 you can identify that and explain to us what that
20 shows.

21 A. This is a compilation of -- and there's two
22 pages. The first page is a compilation of all the 2nd
23 Bone Spring wells in the surrounding area, basically the
24 area shown on Exhibit 11.

25 It shows their link, their orientation, and it

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1 shows the EURs, the estimated ultimate recoveries. And
2 it also shows the initial production date.

3 On the second page, to sort that out -- and I
4 would point out that the average EURs for all of those
5 wells is 175,000 barrels of oil and 228 million cubic
6 feet of gas.

7 The second page, to do kind of an
8 apples-to-apples comparison, I took just the one-mile
9 horizontals. There were some mile-and-a-half
10 horizontals in the first page. So I took one-mile
11 horizontals.

12 Also there were some older wells that had smaller
13 fracs and were poor performers, so I took just the
14 post-2012 wells. So the top, we see when we look at the
15 post-2012 wells, the average is a little better. It's
16 196,000 barrels for those wells. 244,000,000 cubic feet
17 of gas.

18 And then comparing orientations, there was about
19 an equal number of east, west, north, south wells. I
20 get slightly higher average EUR for the north, south
21 wells, but there is less than a ten percent difference.
22 Within the numbered sample, that is not a significant
23 difference.

24 Also in looking at these, I looked at the
25 individual wells and where they were relative to other

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1 wells, relative to our isopach. And my conclusion is
2 that the performance was based on reservoir quality and
3 not orientation.

4 Q. Right.

5 A. And, again, statistically, we see very little
6 difference between the orientations.

7 Q. And if you refer back to Exhibits 8 and 9, you
8 show what are called analog wells up at sections 22 and
9 23?

10 A. Correct.

11 Q. And why did you focus on those particular wells?

12 A. Well, those were basically taking a, you know,
13 best case scenario. Those are actually wells that are
14 fairly good performers. They are up in the thick part
15 of the sand. Those three wells average 243,000 barrels
16 of oil and 168 million cubic feet of gas, oil being the
17 most important component with today's pricing.

18 So to be a little optimistic, I use those wells
19 for my economics. So I used -- instead of using the
20 average of post-2012 wells of one-hundred and I think it
21 was ninety-five thousand -- 196,000 barrels, I used
22 243,000 barrels for economics. That was the average of
23 three of the better wells, which are up in the thicker
24 part of the sand.

25 Q. And so taking that data -- those data into

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1 consideration, you did an economic projection of
2 ultimate recoveries from Matador's proposed project?

3 A. Yes.

4 Q. And what did you conclude?

5 A. It shows that it fails to pay out by 3.8 million.
6 And that was using that \$8-1/2 million AFE, which was
7 represented to us as a corrected AFE.

8 Even given that, it shows even if you used -- you
9 know, it's 3.8 million off of 8-1/2; even if you used a
10 6.1 million AFE, the well doesn't pay out. We are only
11 generating a little under 5 million in net revenue, and
12 that's undiscounted.

13 Q. Let's refer to -- let me ask this. You said it
14 was represented to you that it was -- what did you call
15 it? The "operative" --

16 A. A corrected AFE.

17 Q. And who represented that to you?

18 A. That's the way I received it. And in the
19 conference call that we had with Matador's
20 representatives to go over the project, that's the AFE
21 they used during that conference call. And it was not
22 represented to us as anything other than the operating
23 AFE.

24 Q. And that's the AFE dated December 1, 2015, which
25 is our Exhibit 7.

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1 EXAMINER McMILLAN: I would like to say, the
2 AFE that has been presented as of the record is the 6.1.

3 I mean that's what was submitted formally as
4 a part of the record. So I don't believe your 8.5 is
5 relevant. So don't use that anymore.

6 THE WITNESS: That's what I was given.
7 That's what I was given by Matador.

8 EXAMINER McMILLAN: But it was accepted as
9 part of the record as 6.1, and that's what you are going
10 to use.

11 THE WITNESS: Okay. Even at 6.1, it doesn't
12 pay out.

13 Q. (By Mr. Hall) Let's talk a little bit more about
14 the geologic analysis distributions from the sand.

15 Looking back at Exhibits 8, 9 and 10, in your
16 opinion, can the Examiner reasonably conclude that each
17 of the 40-acre tracts that would be dedicated to
18 Matador's stand-up well project contribute equally to
19 production?

20 A. Not necessarily. There's a number of factors
21 that go into, you know, how a well performs. But the
22 isopach shows a relative thick in the northeast quarter.
23 So one would generally suspect that that might
24 contribute more.

25 Q. All right. And, in your opinion, would a

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1 lay-down 160-acre project area and well lateral situated
2 in the south half, north half of section 32 be well
3 situated to adequately recover reserves?

4 A. It would be equally well situated, yes.

5 Q. Do you have a recommendation to the Hearing
6 Examiner of what the risk penalty ought to be for this
7 project?

8 A. Yes. Our recommendation was 50 percent. We
9 believe that the 500 percent talked about back in the
10 original operating agreement, and even the 200 percent
11 normally used in a lot of these, are exploratory wells.

12 The original operating agreement was for a Morrow
13 well, which are extremely risky wells as far as finding
14 the reservoir. We believe this is a resource play. It
15 is a development-type play, based on -- we agree with
16 Matador's testimony that this well is very likely to
17 produce oil. It's almost a given that this well will
18 produce oil and find oil. Our only question is timing
19 on doing that when it can be done economically.

20 But as far as the geological risk, you don't have
21 the geological risk associated with this type of well
22 that you do if you are drilling a Morrow well, if you
23 are drilling a Strawn mound well or, you know, any of
24 the older conventional-type reservoirs.

25 Q. Mr. Speer, in your opinion, would granting

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1 Matador's application and drilling of the 123H well be
2 in the interests of conservation and the prevention of
3 waste and the protection of correlative rights?

4 A. No.

5 Q. And, in your opinion, can this acreage be force
6 pooled in terms that would be just and reasonable?

7 A. Not under current pricing.

8 MR. HALL: That concludes my direct of this
9 witness. I move -- hold on.

10 Q. Were Exhibits 8 through 13 created by you or at
11 your direction?

12 A. Yes.

13 MR. HALL: I move the admission of Exhibits
14 8 through 13. That concludes my direct of this
15 witness.

16 MR. FELDEWERT: No objection.

17 EXAMINER McMILLAN: Exhibits 8 through 13
18 may now be accepted as part of the record.

19 (NEARBURG PRODUCING COMPANY EXHIBITS 8
20 through 13 WERE OFFERED AND ADMITTED.)

21 EXAMINER McMILLAN: Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. FELDEWERT:

24 Q. Mr. Speer, let me ask you, are you aware of any
25 proposal that Nearburg has received where the other

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1 party has suggested a 50 percent risk penalty?

2 A. Not offhand.

3 Q. Are you aware of any circumstance where Nearburg
4 has participated in a well where there was a 50 percent
5 risk penalty?

6 A. Not offhand.

7 Q. Are you aware of any joint operating agreement
8 that Nearburg has entered into where there was a
9 50 percent risk penalty?

10 A. Not offhand.

11 Q. And if I understand your testimony, you do not
12 recommend pooling under today's prices?

13 A. Correct.

14 Q. And that would apply whether it's a stand-up unit
15 or a lay-down unit?

16 A. Correct.

17 Q. In your opinion, a well just should not be
18 drilled?

19 A. Not under today's prices.

20 Q. So that all drilling in New Mexico should just
21 stop?

22 A. Each case is different. And I looked
23 specifically at the economics of this case. And
24 economics vary from case to case.

25 Q. Let's talk about the economics of this particular

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1 case, section 32. Now, Mr. Examiner talked to you about
2 don't use the 8-1/2 million. I thought that was pretty
3 clear. But, anyway, at 6.1 AFE, can you show me in your
4 exhibits where you did your analysis of the economics at
5 a 6.1 million AFE?

6 A. It's not in the exhibits.

7 Q. Do you have your analysis here today?

8 A. I have my analysis here.

9 Q. Why haven't you presented it?

10 A. I was not asked for it.

11 Q. So we don't have anything in the record to
12 indicate how you conducted your analysis -- let me step
13 back.

14 We don't have anything in the record indicating
15 that you had done an analysis using 6.1 --

16 A. I have stated that I did an analysis. I stated
17 that the net revenue received due to the well was less
18 than 5 million.

19 Q. But we don't have any of that analysis here
20 today?

21 A. I have a copy with me.

22 Q. And you haven't presented it to the Examiners?

23 A. No, I have not. I have not been asked for it.

24 Q. Has Nearburg proposed a lay-down well?

25 A. No, they have not. Currently, we do not believe

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1 it would be wise to propose such a well.

2 Q. You mentioned in your -- I'm looking at your
3 isopach map here, Exhibit 8.

4 A. Yes.

5 Q. This is a geologic study that was done by
6 somebody under your direction?

7 A. Yes.

8 Q. They did do a structure map?

9 A. Yes. I believe that's Exhibit No. 9.

10 Q. That's a structure map?

11 A. Yes.

12 Q. Thank you. You don't see any faults or pinchouts
13 or other geologic impediments to developing this acreage
14 using horizontal wells?

15 A. No.

16 Q. And I believe it is your testimony that the
17 reservoir that is targeted by a stand-up well is fairly
18 continuous across the proposed spacing unit?

19 A. Yes.

20 Q. And I believe your testimony is that you didn't
21 see any real difference between whether it was a
22 lay-down or a stand-up well?

23 A. Correct.

24 Q. So you are not here testifying that there is
25 going to be any waste that will occur here in terms of

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1 the production of the reservoir by a stand-up well?

2 A. The waste would be economic.

3 Q. Economic?

4 A. Yes.

5 Q. Okay. And you are aware that there is no
6 definition in the Division's rules talking about
7 economic waste?

8 A. I am not aware of that.

9 Q. And you would agree with me that economics is
10 dependent upon each particular company?

11 A. It could be, yes.

12 Q. And, for example, if I look at Exhibit No. 3 --
13 do you have Exhibit 3?

14 MS. KESSLER: Matador Exhibit 3.

15 Q. Sorry. Matador Exhibit 3; it's right there in
16 front of you.

17 A. Okay.

18 Q. And I am looking here at the parties that own an
19 interest in this particular area who have not yet --
20 obviously, we heard testimony -- that's already been in
21 the record -- that there are parties who agree to
22 develop this acreage -- right? -- you heard that?

23 A. Yes.

24 Q. So their economics must have told them that
25 it's okay to develop this acreage, you would assume,

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1 right?

2 A. Yes.

3 Q. Okay. And do you know anything about World,
4 Inc.'s economics?

5 A. No, I do not.

6 Q. Sybil Blackman, Carney, do you know anything
7 about their economics?

8 A. No, I do not.

9 Q. Dr. Robert Cahan, do you know anything about
10 their economics?

11 A. No, I do not.

12 Q. Is it your opinion that the Division in every
13 single pooling case is supposed to look behind the
14 economics of every single working interest owner in
15 determining whether it makes sense for that particular
16 working interest owner to agree to a participating --

17 A. Well, I am not a legal expert in those matters.

18 Q. So you are not testifying to that?

19 A. No.

20 Q. And you are aware that Nearburg, using its
21 economics, whatever they may be, and Nearburg using
22 whatever projections they want to use, if they believe
23 that this well is not going to be economic, they can opt
24 out; isn't that correct?

25 A. Yes. That relieves our minerals if we do sell --

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1 it relieves the ability to produce our minerals at a
2 time when it might be economic to do so.

3 Q. You're subject to risk penalty.

4 MR. HALL: I don't believe there's a
5 question pending before the witness.

6 MR. FELDEWERT: There is not. I am looking
7 at my notes.

8 MR. BROOKS: That's fine.

9 MR. FELDEWERT: Mr. McMillan wants to get to
10 the train so I have no more questions.

11 EXAMINER McMILLAN: Well, it doesn't matter.
12 Someone would have to give me a ride to the 5:59 and
13 5:40.

14 EXAMINATION BY EXAMINER McMILLAN

15 EXAMINER McMILLAN: Who created -- did you
16 create the structure map?

17 THE WITNESS: Our geologist did.

18 EXAMINER McMILLAN: Was it under your
19 supervision?

20 THE WITNESS: It was at my request, and I
21 looked over and reviewed the structure map.

22 EXAMINER McMILLAN: And the same question
23 for the isopach?

24 THE WITNESS: The same thing.

25 EXAMINER McMILLAN: And the cross section?

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1 THE WITNESS: The same thing. I reviewed
2 them and I found them to be reasonably done.

3 EXAMINER McMILLAN: So clarify for the
4 record, do you have documentation of your economics?

5 THE WITNESS: Yes.

6 EXAMINER McMILLAN: Is it in here?

7 THE WITNESS: Yes. I can provide that for
8 you.

9 MR. HALL: It is not an exhibit.

10 EXAMINER McMILLAN: It's not an exhibit?

11 MR. HALL: He has testified to it.

12 EXAMINER DAWSON: Do you have a --

13 EXAMINER McMILLAN: Go ahead.

14 EXAMINER DAWSON: Go ahead and finish,
15 Michael.

16 EXAMINER McMILLAN: It's going to be -- it
17 is going to be inherently difficult really to cross
18 examine your work without seeing it. To be brutally
19 honest, that's my problem with it.

20 MR. FELDEWERT: Mr. Examiner, may I
21 interject here?

22 EXAMINER McMILLAN: Sure.

23 MR. FELDEWERT: You hit the point. This
24 idea that a party comes in and runs their own economics
25 on the project and contends to the Division that as a

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1 result of their run of the economics, there should not
2 be pooling, to me is inappropriate and not relevant to
3 the situation here today; otherwise, you could have four
4 or five different economic runs by four or five
5 different experts.

6 They had the ability to either propose a
7 well themselves with whatever orientation they want or
8 opt out of the proposal. But, in my opinion, it is not
9 the Division's responsibility nor is it relevant to
10 pooling for everyone to come in and do their own
11 economics on the well; otherwise, these pooling cases
12 are going to run into nothing but a quagmire.

13 The issue before the Division is whether the
14 pooling is fair and reasonable from a perspective of are
15 they going to get their just and equitable share of the
16 reservoir; is there going to be waste of the reservoir
17 as a result of this pooling;

18 Are their correlative rights going to be
19 protected; are they going to get their just and
20 equitable share of this reservoir.

21 The idea of companies coming in and saying,
22 Well, we don't think this is going to be economic,
23 therefore, you shouldn't pool -- well, that's not how
24 pooling works. There is no authority to that effect.
25 There is nothing in the statute to that effect.

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1 So I hear what you are saying. I mean, it's
2 ridiculous they'd come in here and say, Well, we think
3 it's not going to be economic and here's my number, but
4 they don't even show us the work.

5 But I would submit to you that even if they
6 showed you the work, it is not relevant.

7 MR. HALL: Here is my suggestion. Let's do
8 this. So you have pending before you a motion to
9 dismiss, you have to take that on the first order of
10 business I think when we leave here tonight.

11 You can look at that, and then I think you
12 can decide -- continue the case and then you can decide
13 whether you would like to have some more evidence
14 focused on economics and let us know and we will come
15 back and present that to you. And Matador will have the
16 opportunity to present their economics.

17 By virtue of their application, they have
18 put the question of waste and economics on the table.

19 MR. FELDEWERT: Show me where economic waste
20 is in the statute. Show me where the Division looks at
21 each working interest owner's economics in determining
22 whether to pool. That's not what the pooling is about.

23 MR. HALL: -- Examiner orders --

24 MR. FELDEWERT: Each party --

25 MR. HALL: -- to the --

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1 MR. FELDEWERT: -- determines its own
2 economics to decide whether they're going to opt in or
3 opt out. You don't go behind the economics of each
4 working interest owner to see if it makes sense at their
5 economics for them to either participate in the well or
6 be pooled. That's not how this works.

7 We have a party that's willing to drill the
8 well. They think it is going to be economic, and they
9 have a right to go forward and drill. And if Nearburg
10 wants to opt out, they can opt out.

11 MR. BROOKS: I am not aware of any case in
12 which the Division or the Commission has considered the
13 argument that the well would not be an economic well
14 when presented by an opponent of compulsory pooling.

15 Of course that may not say too much, because
16 I'm not aware of all the cases, all the many, many cases
17 the Division has considered with compulsory pooling. I
18 am aware of quite a few of the recent ones, though. I
19 just say that for the Examiner to consider. It's
20 obviously not legally definitive whether I am aware of
21 such cases or not.

22 MR. HALL: If you would like, we can
23 brief it. I am out of things to say today.

24 EXAMINER DAWSON: I have a question of you
25 on your economic scenarios.

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1 THE WITNESS: Yes, sir.

2 EXAMINER DAWSON: What prices did you use
3 for oil and the price for gas?

4 THE WITNESS: I used a current strip pricing
5 that is actually --

6 MR. HALL: Exhibit 13.

7 THE WITNESS: -- as of yesterday, probably a
8 little optimistic. It starts at about \$33 a barrel.

9 EXAMINER DAWSON: All right. We didn't
10 cover 13. I see. Thank you. No further questions.

11 EXAMINER McMILLAN: Any questions?

12 MR. BROOKS: I have no questions of the
13 witness.

14 EXAMINER McMILLAN: Let's hear closing
15 arguments.

16 MR. FELDEWERT: I think you heard mine. I
17 mean -- I think you heard ours.

18 First of all, we came here to present a case
19 for pooling. We showed that the spacing unit that we
20 have proposed is fair and reasonable, because it is
21 going to result in the recovery of oil and that could
22 result in waste and protect everyone's correlative
23 rights.

24 We showed our good faith efforts to reach an
25 agreement with all the working interest owners. But we

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1 have been unable to reach an agreement with Nearburg,
2 not surprisingly, because they don't want anything to be
3 drilled. They are not going to reach any kind of an
4 agreement, unless you agree to a moratorium on drilling
5 for two or three years. They said that.

6 So that's why we are pooling, because the
7 reason we have pooling in New Mexico is because parties
8 are not always going to agree that a well should be
9 drilled or when a well should be drilled.

10 That's why the pooling statute came about,
11 because you can't get everybody to always agree on that.
12 You hope you can, but they are not always going to agree
13 on that.

14 And so the pooling statute makes it very
15 clear, where one party proposes to drill a well -- and
16 that's what we've done -- and they proposed a well to
17 the other working interest owners -- we've done that --
18 and they can't reach a voluntary agreement on the
19 spacing unit, a voluntary agreement that says, We agree
20 to combine our acreage to form a stand-up spacing unit,
21 when that's not done, you shall pool, mandatory. Why?
22 So that we can continue development even if there's one
23 party that says, We don't think you should drill and we
24 don't like this well.

25 That's the pooling statute. And that's all

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1 this case is.

2 MR. HALL: First, you do have to make that
3 threshold determination whether or not, the voluntary
4 agreement in the development of the lands exists.

5 And bear in mind, there is no existing
6 160-acre on standard unit that's been approved. You are
7 back to 40-acre units.

8 So go back, look at existing documents,
9 existing agreements, also look again at Matador's
10 application, see whether it asks the Division to undo,
11 to supersede those existing agreements. It does not.
12 You'll have to decide that in the context of the motion
13 to dismiss.

14 EXAMINER McMILLAN: Okay.

15 MR. HALL: If you overcome that, then I
16 think the next step for you to do is bear in mind your
17 statutory charge under section 70-2-17 which directs
18 you, if you're going to pool the lands, do it on terms
19 that are just and reasonable. If you can't get there,
20 you cannot enter a pooling order. If you can't
21 establish that it would be just and reasonable or
22 provide us with terms that are just and reasonable under
23 these circumstances, you are prohibited from entering an
24 order of pooling --

25 MR. BROOKS: I have nothing further.

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1 EXAMINER McMILLAN: With that in mind, case
 2 No. 15433 will be taken under advisement.

3 MR. FELDEWERT: Thank you.

4 MR. HALL: Thank you.

5

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(Time noted 5:12 p.m.)

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I hereby certify that the foregoing is
 a complete record of the proceedings in
 the Examiner hearing of Case No. _____,
 heard by me on _____.

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_____, Examiner
 Oil Conservation Division

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1 STATE OF NEW MEXICO)
 2) ss.
 3 COUNTY OF BERNALILLO)
 4
 5
 6

REPORTER'S CERTIFICATE

7
 8
 9 I, ELLEN H. ALLANIC, New Mexico Reporter CCR
 10 No. 100, DO HEREBY CERTIFY that on Thursday, January 21,
 11 2016, the proceedings in the above-captioned matter were
 12 taken before me, that I did report in stenographic
 13 shorthand the proceedings set forth herein, and the
 14 foregoing pages are a true and correct transcription to
 15 the best of my ability and control.

16
 17 I FURTHER CERTIFY that I am neither employed by
 18 nor related to nor contracted with (unless excepted by
 19 the rules) any of the parties or attorneys in this case,
 20 and that I have no interest whatsoever in the final
 21 disposition of this case in any court.

22
 23
 24
 25


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