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

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

Case Nos.	Docket No.
22700, 24121, 24195,	15-24
24196, 24197, 24207, 24284, 24286,	
24394, 24395, 24434, 24432, 24435,	
24433, 24436, 24437, 24438, 24439,	
24446, 24457, 24459, 24460, 24462,	
24463, 24479, 24182, 24183, 24200,	
24202, 24322, 24323, 24336, 24398,	
24399, 24400, 24401, 24402, 24403,	
24404, 24405, 24406, 24407, 24408,	
24409, 24410, 24411, 24412, 24413,	
24414, 24415, 24417, 24418, 24419,	
24420, 24421, 24423, 24424, 24425,	
24426, 24427, 24428, 24429, 24430,	
24431, 24443, 24444, 24445, 24447,	
24448, 24449, 24450, 24454, 24456,	
24464, 24465, 24466, 24467, 24468,	
24469, 24470, 24471, 24472, 24473,	

1 24474, 24376, 24124, 24125, 23823,
2 23824.

3 -----

4 HEARING

5 DATE: Thursday, May 16, 2024

6 TIME: 8:27 a.m.

7 BEFORE: Hearing Examiner Gregory A. Chakalian

8 LOCATION: Pecos Hall
9 1220 South St. Francis
10 Santa Fe, NM 87505

11 REPORTED BY: James Cogswell

12 JOB NO.: 6649812

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A P P E A R A N C E S (Cont'd)

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A P P E A R A N C E S (Cont'd)

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A P P E A R A N C E S (Cont'd)

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Leonard Lowe, Technical Examiner, OCD

Dean McClure, Technical Examiner, OCD (via
videoconference)

Samuel Cox, Landman (via videoconference)

Sophia Guerra, Landman (via videoconference)

Josh Payne, Geologist (via videoconference)

Farley Duvall, Landman (via videoconference)

Don Johnson, Landman (via videoconference)

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I N D E X

WITNESSES:	DX	CX	RDX	RCX
SAMUEL COX				
By Mr. Lowe	154			
FARLEY DUVALL				
By Ms. Bennett	180			
DON JOHNSON				
By Mr. Lowe	206			

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
24450:		
Exhibit A	Compulsory Pooling Checklist	148/149
Exhibit B	Affidavit of Don Johnson, Land Professional	148/149
Exhibit C	Affidavit of Ben Kessel, Geologist	148/149
Exhibit D	Declaration of Deana M. Bennett	148/149
24182:		
Exhibit A	Compulsory Pooling Checklist	151/152
Exhibit B	Declaration of Samuel Cox, Land Professional	151/152
Exhibit C	Affidavit of Matt Baker, Geologist	152/152
Exhibit D	Declaration of Deana M. Bennett	152/152
24183:		
Exhibit A	Compulsory Pooling Checklist	161/162

1	E X H I B I T S (Cont'd)		
2	NO.	DESCRIPTION	ID/EVD
3	24183 (Cont'd):		
4	Exhibit B	Declaration of Samuel Cox,	161/162
5		Land Professional	
6	Exhibit C	Affidavit of Matt Baker,	
7		Geologist	162/162
8	Exhibit D	Declaration of Deana M.	
9		Bennett	162/162
10			
11	NO.	DESCRIPTION	ID/EVD
12	24336:		
13	Exhibit A	Compulsory Pooling Checklist	165/165
14	Exhibit B	Declaration of Samuel Cox,	165/165
15		Land Professional	
16	Exhibit C	Affidavit of Matt Baker,	
17		Geologist	165/165
18	Exhibit D	Declaration of Deana M.	
19		Bennett	165/165
20			
21	NO.	DESCRIPTION	ID/EVD
22	24376:		
23	Exhibit A	Compulsory Pooling Checklist	169/174
24	Exhibit B	Filed Application and Proposed	
25		Notice of Hearing	169/174

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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
24376 (Cont'd):		
Exhibit C	Prepared by Sophia Guerra, Senior Landman	169/174
Exhibit D	Prepared by Josh Payne, Senior Geologist	171/174
Exhibit E	Notice Affidavit	173/174
Exhibit F	Affidavit of Publication	174/174

NO.	DESCRIPTION	ID/EVD
24398:		
Exhibit A	Affidavit of Farley Duvall, Land Professional	176/181
Exhibit B	Notice Information	176/181

NO.	DESCRIPTION	ID/EVD
24399:		
Exhibit A	Affidavit of Farley Duvall, Land Professional	176/181
Exhibit B	Notice Information	176/181

E X H I B I T S (Cont'd)		
NO.	DESCRIPTION	ID/EVD
24400:		
Exhibit A	Affidavit of Farley Duvall, Land Professional	176/182
Exhibit B	Notice Information	176/182
NO.	DESCRIPTION	ID/EVD
24401:		
Exhibit A	Affidavit of Farley Duvall, Land Professional	176/182
Exhibit B	Notice Information	176/182
NO.	DESCRIPTION	ID/EVD
24402:		
Exhibit A	Compulsory Pooling Checklist	185/187
Exhibit B	Application for Compulsory Pooling	185/187
Exhibit C	Self-Affirmed Statement of Ariana Rodrigues, Land Professional	185/187
Exhibit D	Self-Affirmed Statement of Charles Crosby, Geologist	186/187
Exhibit E	Self-Affirmed Statement of Notice	186/187
Exhibit F	Affidavit of Publication	186/187

E X H I B I T S (Cont'd)		
NO.	DESCRIPTION	ID/EVD
24403:		
Exhibit A	Compulsory Pooling Checklist	185/187
Exhibit B	Application for Compulsory Pooling	185/187
Exhibit C	Self-Affirmed Statement of Ariana Rodrigues, Land Professional	185/187
Exhibit D	Self-Affirmed Statement of Charles Crosby, Geologist	186/187
Exhibit E	Self-Affirmed Statement of Notice	186/187
Exhibit F	Affidavit of Publication	186/187
24404:		
Exhibit A	Compulsory Pooling Checklist	189/191
Exhibit B	Application of OXY USA Inc. for Compulsory Pooling	189/191
Exhibit C	Self-Affirmed Statement of Courtney Carr, Land Professional	189/191
Exhibit D	Self-Affirmed Statement of Jared Rountree, Geologist	190/191
Exhibit E	Self-Affirmed Statement of Notice	191/191

E X H I B I T S (Cont'd)		
NO.	DESCRIPTION	ID/EVD
24404 (Cont'd):		
Exhibit F	Affidavit of Publication	191/191
24405:		
Exhibit A	Compulsory Pooling Checklist	189/191
Exhibit B	Application of OXY USA Inc. for Compulsory Pooling	189/191
Exhibit C	Self-Affirmed Statement of Courtney Carr, Land Professional	189/191
Exhibit D	Self-Affirmed Statement of Jared Rountree, Geologist	190/191
Exhibit E	Self-Affirmed Statement of Notice	191/191
Exhibit F	Affidavit of Publication	191/191
24406:		
Exhibit A	Compulsory Pooling Checklist	189/191
Exhibit B	Application of OXY USA Inc. for Compulsory Pooling	189/191
Exhibit C	Self-Affirmed Statement of Courtney Carr, Land Professional	189/191

1	E X H I B I T S (Cont'd)		
2	NO.	DESCRIPTION	ID/EVD
3	24406 (Cont'd):		
4	Exhibit D	Self-Affirmed Statement of Jared	
5		Rountree, Geologist	190/191
6	Exhibit E	Self-Affirmed Statement of	
7		Notice	191/191
8	Exhibit F	Affidavit of Publication	191/191
9			
10	NO.	DESCRIPTION	ID/EVD
11	24464:		
12	Exhibit A	Compulsory Pooling Checklist	198/199
13	Exhibit B	Affidavit of Don Johnson,	
14		Land Professional	198/199
15	Exhibit C	Affidavit of Ben Kessel,	
16		Geologist	198/199
17	Exhibit D	Declaration of Deana M.	
18		Bennett	198/199
19			
20	NO.	DESCRIPTION	ID/EVD
21	24465:		
22	Exhibit A	Compulsory Pooling Checklist	198/199
23	Exhibit B	Affidavit of Don Johnson,	
24		Land Professional	198/199
25			

E X H I B I T S (Cont'd)		
NO.	DESCRIPTION	ID/EVD
24465 (Cont'd):		
Exhibit C	Affidavit of Ben Kessel, Geologist	198/199
Exhibit D	Declaration of Deana M. Bennett	198/199
24466:		
Exhibit A	Compulsory Pooling Checklist	198/199
Exhibit B	Affidavit of Don Johnson, Land Professional	198/199
Exhibit C	Affidavit of Ben Kessel, Geologist	198/199
Exhibit D	Declaration of Deana M. Bennett	198/199
24471:		
Exhibit A	Compulsory Pooling Checklist	201/205
Exhibit B	Affidavit of Don Johnson, Land Professional	201/205
Exhibit C	Affidavit of Ben Kessel, Geologist	202/205

E X H I B I T S (Cont'd)		
NO.	DESCRIPTION	ID/EVD
24471 (Cont'd):		
Exhibit D	Declaration of Deana M. Bennett	202/205
NO.	DESCRIPTION	ID/EVD
24472:		
Exhibit A	Compulsory Pooling Checklist	201/205
Exhibit B	Affidavit of Don Johnson, Land Professional	201/205
Exhibit C	Affidavit of Ben Kessel, Geologist	202/205
Exhibit D	Declaration of Deana M. Bennett	202/205
NO.	DESCRIPTION	ID/EVD
24473:		
Exhibit A	Compulsory Pooling Checklist	201/205
Exhibit B	Affidavit of Don Johnson, Land Professional	201/205
Exhibit C	Affidavit of Ben Kessel, Geologist	202/205
Exhibit D	Declaration of Deana M. Bennett	202/205

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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
24474:		
Exhibit A	Compulsory Pooling Checklist	201/205
Exhibit B	Affidavit of Don Johnson, Land Professional	201/205
Exhibit C	Affidavit of Ben Kessel, Geologist	202/205
Exhibit D	Declaration of Deana M. Bennett	202/205

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P R O C E E D I N G S

THE HEARING EXAMINER: All right. Good morning, everyone. It is 8:27 a.m. on May 16. These are the hearings of the Oil Conservation Division. This is the May 16 docket. I'm going to call the cases in the order they appear on the docket.

And then we will hear this expedited request for a status conference in case numbers 24320 and 24321, which are not on the docket. We will hear that at the end of the status conferences and before the hearings by affidavit.

So let's begin by calling case numbers 23823 and 23824. Entries of appearance?

MR. BRUCE: Mr. Examiner, Jim Bruce on behalf of Texas Standard.

MS. HARDY: Good morning. Dana Hardy with Hinkle Shanor on behalf of Armstrong Energy Corporation and Slash Exploration.

THE HEARING EXAMINER: Okay. Now I have received a motion dated the 13th of May requesting that the division vacate the contested hearing for the 16th of May and reset it. In my pre-hearing order, I specifically said I wasn't going to do that.

But based on the facts in this motion,

1 I ended up doing that, and reset these two cases as a
2 status conference. I have a couple questions for the
3 parties before we hear any kind of argument from
4 anyone. And this is an unopposed motion filed by
5 Ms. Hardy on behalf of Slash and Armstrong.

6 And the first question I have,
7 Ms. Hardy, is, in paragraph 5 of your motion, you said
8 that "On April 29, Slash informed TSO that it would
9 carve out an overriding royalty interest if necessary,
10 and you sent Mr. Bruce the proposed assignment."

11 MS. HARDY: I didn't send it to
12 Mr. Bruce. It was communication between our clients
13 directly. So Armstrong and Slash sent it to Texas
14 Standard.

15 THE HEARING EXAMINER: Now my question
16 about this is, is that a unilateral action? Does that
17 not require an agreement?

18 MS. HARDY: That does not require an
19 agreement, Mr. Examiner. Parties who own a working
20 interest can carve up their interest by contract.

21 THE HEARING EXAMINER: And that would
22 prevent it from being pooled?

23 MS. HARDY: Does not prevent it from
24 being pooled. Though, that's Texas Standard's
25 argument, I think. I think Slash designated an eleven

1 point -- I don't have the exact number in front of
2 me -- 11 percent, roughly, overriding royalty interest
3 in this interest.

4 And Texas Standard is seeking to
5 invalidate that for purposes of pooling. Because, I
6 think, their argument is that costs aren't recovered
7 against a royalty interest; right? So they're
8 claiming that that impedes their ability to drill the
9 well. So I think that's what we need, is a hearing on
10 whether that's correct, as well as on good faith
11 negotiation issues.

12 THE HEARING EXAMINER: And so it also
13 says here that "Slash informed TSO that based on this
14 override assignment, it would withdraw its objection
15 to the cases proceeding by affidavit," which you then
16 did.

17 MS. HARDY: That's correct.

18 THE HEARING EXAMINER: So that's why we
19 were set today for a hearing by affidavit.

20 MS. HARDY: That's correct. It was
21 only after that that this overriding royalty interest
22 issue was raised by Texas Standard in their pre-
23 hearing statement.

24 THE HEARING EXAMINER: Okay. And why
25 did you feel as though you could not refile your

1 objection and go to a contested hearing so that you
2 could enter evidence and make argument about that?

3 MS. HARDY: Well, we can do that. But
4 I think we needed more time, because it just came up
5 last Thursday. So we would need to prepare affidavits
6 and exhibits and assemble our information to do that,
7 which would be difficult by -- the exhibit deadline
8 was actually last Thursday; right? And that's when we
9 found out about this issue.

10 THE HEARING EXAMINER: Okay.
11 Mr. Bruce?

12 MR. BRUCE: Well, as I said before you,
13 Mr. Examiner, Ms. Hardy said she needed more time, and
14 I was willing to grant her more time. I have no
15 problem with that. Of course, she's told me that she
16 would be filing a written motion regarding this, what
17 I call the excess override problem. I have not agreed
18 to that motion, obviously.

19 But I think if she was going to file a
20 motion when she said she was, there was no time
21 between when she called me Friday afternoon for her to
22 get the motions filed and for me to respond. I don't
23 think it would take me long to respond, because I've
24 known about these types of issues for a long time,
25 longer than I care to remember.

1 THE HEARING EXAMINER: And Mr. Bruce,
2 why did your client argue in its exhibits that the
3 royalty assignment should be disregarded?

4 MR. BRUCE: Well, there's a couple
5 issues. You know, these cases were filed in last
6 September. And, you know, once you file the
7 applications and the other party receives notice,
8 there's the issue of the other party taking action
9 that's detrimental to the economics of my client. And
10 the other thing is, in the OCD order -- well,
11 actually, it's commission-ordered, that I cited in the
12 pre-hearing statement and in the testimony.

13 The commission more or less said that,
14 you know, once the case is in play, you know, it's
15 almost -- they didn't say it this way, but I think
16 it's like filing a notice of lis pendens, a district
17 court proceeding. And you can't take action that
18 would adversely affect the other party.

19 THE HEARING EXAMINER: Okay. So
20 Ms. Hardy, Mr. Bruce thinks that you're going to file
21 some sort of motion. What are you filing?

22 MS. HARDY: I would file a motion to
23 strike or dismiss Texas Standard's claim on the
24 overriding royalty interest, because the division's
25 precedent, I think, is actually very, very narrow with

1 respect to the circumstances in which that can occur.

2 The cases that exist involve 50, 60
3 percent royalty carve-outs, not 11 percent. So I
4 think it's very narrow. And so I was planning to file
5 a legal motion on that, and then depending on the
6 ruling on that motion, we would proceed to hearing,
7 and we would still present evidence on good faith
8 negotiation.

9 THE HEARING EXAMINER: I'm not clear on
10 how the motion is going to expedite this matter to get
11 to a hearing. You're saying that the division has
12 rules in place regarding these type of override
13 interests. And so why not just conduct the hearing,
14 admit your evidence, and let the division deal with
15 that instead of as a separate motion and as a separate
16 order. Because that's going to take time.

17 MS. HARDY: Sure.

18 THE HEARING EXAMINER: Why not just go
19 to hearing, collect the evidence, and let the division
20 make the decision on whether or not -- I mean, I'm not
21 even sure that the division gets involved in these
22 type of interests. However, if you're concerned about
23 that, your client's concerned about that, why not just
24 go to hearing and submit your evidence?

25 MS. HARDY: That's fine. We could do

1 that if that would be the division's preference.

2 THE HEARING EXAMINER: That's my
3 preference, yes.

4 So Mr. Bruce, when is the soonest that
5 you -- I mean, you were ready for hearing; were you
6 not?

7 MR. BRUCE: Yes, sir.

8 THE HEARING EXAMINER: You were ready.
9 You already submitted your exhibits?

10 MR. BRUCE: Correct.

11 THE HEARING EXAMINER: Okay.
12 Ms. Hardy, when can you submit your exhibits?

13 MS. HARDY: I could submit exhibits, I
14 think, by the end of next week, Friday, the 24th.

15 THE HEARING EXAMINER: Okay. And
16 Mr. Bruce, hearing that, when would your witnesses be
17 available for the hearing?

18 MR. BRUCE: Well, you know, I got the
19 okay from them for the dates that were proposed,
20 which, I guess, were the 18th and 19th of June.

21 THE HEARING EXAMINER: Who proposed
22 those dates?

23 MR. BRUCE: I think it was mentioned in
24 an email from Freya.

25 THE HEARING EXAMINER: Okay. Freya,

1 did you propose the 18th of --

2 Is it June, Mr. Bruce?

3 MR. BRUCE: June.

4 THE HEARING EXAMINER: June. Did you
5 propose the 18th?

6 MS. TSCHANTZ: I did, however, I don't
7 know if Ms. Hardy was available that day.

8 THE HEARING EXAMINER: Okay.

9 MS. HARDY: Right. That's correct.
10 I'm out of state that week for a family medical
11 situation.

12 THE HEARING EXAMINER: Got it. Okay.

13 MS. HARDY: So I am available June
14 25th. And I know my client is also available.

15 THE HEARING EXAMINER: Okay. Would you
16 turn your microphone on if it's not on, because I
17 couldn't hear what you said.

18 MS. HARDY: Sorry. Yes, I have a
19 conflict the prior week, but my client and I are
20 available for a hearing on June 25th if that's
21 acceptable.

22 THE HEARING EXAMINER: Okay.

23 Mr. Bruce?

24 MR. BRUCE: I saw Ms. Hardy's email
25 late last night, and I emailed the client, and I

1 haven't heard back from them on that date. They were
2 okay with the 18th or 19th, but I need at least
3 probably a full day to know whether the 25th is
4 acceptable.

5 THE HEARING EXAMINER: Freya, are we
6 available the 25th?

7 MS. TSCHANTZ: Yes, we are.

8 THE HEARING EXAMINER: Okay. So what
9 I'm going to do, Mr. Bruce, is I'm going to set it for
10 the 25th, which is a Tuesday. If you are for some
11 reason unable -- your clients are unable because your
12 witnesses need to appear virtually. It's just that
13 you need to be hear. But if your witnesses are
14 completely unavailable, we'll have to find another
15 day.

16 So Freya, is it the week of the 25th
17 that we are available, or only certain days?

18 MS. TSCHANTZ: It is the date of the
19 25th.

20 THE HEARING EXAMINER: Yes. Okay. So
21 we have a special hearing on the 26th. Is that still
22 current, Freya? I thought we didn't have a --

23 MS. TSCHANTZ: We don't have it on the
24 26th. However, I think we have a regular docket
25 hearing on the 27th.

1 THE HEARING EXAMINER: We do.

2 So Mr. Bruce and Ms. Hardy, we're
3 available the 25th and 26th for a special hearing.
4 And what I'll do is I'll set it for the 25th. And
5 Mr. Bruce, you'll let me know.

6 MR. BRUCE: I will you know.

7 THE HEARING EXAMINER: Sure. So that's
8 what we will do.

9 So Freya, would you set that?

10 MS. TSCHANTZ: Yes, I will.

11 THE HEARING EXAMINER: June 25th,
12 special hearing. If that date doesn't work, we'll do
13 June 26th.

14 Now is there anything else from the
15 parties on these cases?

16 MR. BRUCE: No, sir.

17 MS. HARDY: Mr. Examiner, just very
18 quick. So if we're having a hearing in June, can I
19 have some additional time to submit my exhibits? I
20 mean, I think I can do it by May 31st?

21 THE HEARING EXAMINER: Yes.

22 MS. HARDY: Okay. Thank you.

23 THE HEARING EXAMINER: Mr. Bruce, since
24 we're not having the hearing until later in June, are
25 your exhibits -- do they need to be changed at all, or

1 are they okay?

2 MR. BRUCE: I will check when Dana's
3 exhibits are filed to see if there's anything else
4 that I prefer to add in.

5 THE HEARING EXAMINER: Well, we're not
6 going to do it that way. We're going to have one day
7 for both parties. So my question to you is, do you
8 need to make any changes to your exhibits?

9 MR. BRUCE: I don't think for -- no. I
10 think the answer is no. What I have is more a legal
11 argument than anything else.

12 THE HEARING EXAMINER: All right. So
13 May 31st is the deadline for --

14 So Freya, would you please put that in
15 the order that May 31st is the deadline for our
16 amended pre-hearing order?

17 MS. TSCHANTZ: Yes, I will.

18 THE HEARING EXAMINER: Okay. So that
19 will apply to both parties. Is there anything else?

20 MS. HARDY: Not from Armstrong and
21 Slash. Thank you.

22 THE HEARING EXAMINER: Mr. Bruce?

23 MR. BRUCE: No, sir.

24 THE HEARING EXAMINER: Okay. We're off
25 the record in those two cases. 24121, entries of

1 appearance?

2 MS. HARDY: Dana Hardy with Hinkle
3 Shanor on behalf of Spur Energy Partners.

4 MR. HOLLIDAY: Hey, guys. Ben Holliday
5 on behalf of Silverback Operating II.

6 THE HEARING EXAMINER: Morning,
7 Mr. Holliday.

8 MR. HOLLIDAY: Good morning.

9 THE HEARING EXAMINER: Mr. Holliday,
10 you filed an objection?

11 MR. HOLLIDAY: We originally had filed
12 an objection to the matter proceeding by affidavit,
13 but the --

14 THE HEARING EXAMINER: Can you speak
15 louder, sir? Louder?

16 MR. HOLLIDAY: Yeah. Make sure I have
17 a -- better? Got a new computer.

18 THE HEARING EXAMINER: Okay. The
19 microphone is very low. I don't know if you can
20 adjust it or not.

21 MR. HOLLIDAY: Okay. Is this volume
22 okay?

23 THE HEARING EXAMINER: It's better.
24 It's not great, but it's better.

25 MR. HOLLIDAY: Okay. I'll speak loud.

1 We initially entered an objection to the matter
2 proceeding by affidavit, but the parties appear to
3 have worked out a deal. And so we're withdrawing our
4 objection to the matter proceeding by affidavit at
5 this time.

6 THE HEARING EXAMINER: Okay. So you're
7 verbally withdrawing it now, and you'll file a notice
8 of withdrawal?

9 MR. HOLLIDAY: Correct. Yes, sir.
10 That authorization came last night, so I'll get that
11 filed today.

12 THE HEARING EXAMINER: Okay. So then
13 it sounds like, Ms. Hardy, you'll proceed by
14 affidavit?

15 MS. HARDY: Well, Mr. Examiner, I
16 wasn't aware that they were withdrawing their
17 objection until today. So I haven't submitted my
18 exhibits. So I was going to ask for a status
19 conference on one of the June dockets or for
20 presentation by affidavit. Now that I know their
21 objection is withdrawn, we can present by affidavit on
22 either June docket would be fine if that's acceptable.

23 THE HEARING EXAMINER: Okay. The
24 second June docket is too full, so why don't we do the
25 June -- I think it's the June 13th docket. Will you

1 be prepared for that?

2 MS. HARDY: Yes, we will. Thank you.

3 THE HEARING EXAMINER: So you'll
4 proceed by affidavit.

5 MS. HARDY: Yes.

6 THE HEARING EXAMINER: Okay. Thank
7 you, Mr. Holliday.

8 MR. HOLLIDAY: Yes, sir. Thank you.

9 THE HEARING EXAMINER: We're off the
10 record in that case. 24195, it is consolidated with
11 96, 97, and 24207. Entries of appearance?

12 MS. BENNETT: Good morning,
13 Mr. Examiner. Dean Bennett on behalf of Franklin
14 Mountain Energy.

15 THE HEARING EXAMINER: Good morning.

16 MR. SUAZO: Good morning, Mr. Hearing
17 Examiner. Miguel Suazo on behalf of Marathon Oil.

18 THE HEARING EXAMINER: Morning.

19 MR. SUAZO: Good morning.

20 THE HEARING EXAMINER: Are those the
21 only two parties?

22 MS. BENNETT: As far as I know.

23 THE HEARING EXAMINER: Mr. Suazo, did
24 you object to these proceeding by affidavit?

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

1 we did.

2 THE HEARING EXAMINER: On what basis.

3 MR. SUAZO: Well, I think that, you
4 know, at the April 18th status conference, we were
5 pretty optimistic that the parties would be able to
6 work out a deal. So we asked for 60 days to make that
7 happen. Now that 60 days have elapsed, I think the
8 reality is that we're a little less optimistic. And
9 so my client would like an opportunity to have another
10 status conference and potentially put together a
11 proposal and application in this matter.

12 THE HEARING EXAMINER: In other words,
13 your client is contemplating filing competing
14 applications?

15 MR. SUAZO: Yes, Mr. Hearing Examiner.

16 THE HEARING EXAMINER: Well,
17 Ms. Bennett?

18 MS. BENNETT: Thank you, Mr. Hearing
19 Examiner. Franklin Mountain Energy -- until this
20 morning, I didn't know that Marathon was considering
21 submitting competing proposals and applications. And
22 Franklin Mountain Energy's position is that it would
23 like to go to hearing on these. Today was set as a
24 final status conference.

25 Obviously, the fact that Marathon is

1 considering submitting competing applications throws
2 that into a bit of a flux. So Franklin Mountain
3 Energy's desired outcome would be to have these cases
4 set for a contested hearing. But if that's not
5 possible, then we would ask that there be a status
6 conference set as soon as possible to ensure that
7 Marathon has submitted its competing proposals, and so
8 that we can have a better understanding of timing.

9 THE HEARING EXAMINER: So in the past,
10 Ms. Bennet -- because in your motion here in case
11 24320, you cite to me past practice of the division.
12 Although, I don't know that I'm bound by past
13 practice. But I'd like to understand it a little
14 better. What has happened in a situation where
15 negotiations break down and one party considers filing
16 competing applications. What happens?

17 MS. BENNETT: Well, in that situation,
18 the division's preference has been to hear the
19 competing cases together. And so in that situation,
20 the division has allowed additional time for the other
21 party to submit its proposals.

22 THE HEARING EXAMINER: Well, how long
23 does the division wait while the other party
24 contemplates filing the applications?

25 MS. BENNETT: Well, under the

1 division's rules, an operator has 30 days to propose,
2 or proposes, then waits 30 days to file the
3 application. So a status conference in 30 days would
4 give us the clarity of whether Marathon has proposed
5 competing proposals. And at that time, the division
6 would have the clarity of understanding whether
7 Marathon has undertaken that step.

8 Which would then necessitate further
9 continuances to allow those proposals to ripen. If
10 Marathon hasn't submitted competing proposals by then,
11 or any hypothetical operator, then that might also be
12 a data point for the division to consider in terms of
13 setting a contested hearing date.

14 THE HEARING EXAMINER: And what is
15 Franklin Mountain Energy trying to achieve by these
16 cases?

17 MS. BENNETT: Franklin Mountain Energy
18 is trying to pool owners into acreage that Franklin
19 Mountain Energy intends to develop. Franklin Mountain
20 Energy submitted these applications on February 6,
21 2024, and has the intention of moving forward and
22 developing this acreage.

23 THE HEARING EXAMINER: Are there any
24 deadlines that Franklin Mountain Energy is up against?

25 MS. BENNETT: I don't know the answer

1 to that question.

2 THE HEARING EXAMINER: You can find
3 out?

4 MS. BENNETT: I can find out. Yes, I
5 can find out and report back to the hearing examiner
6 after a break.

7 THE HEARING EXAMINER: Mr. Suazo, when
8 you say contemplating, what do you mean?

9 MR. SUAZO: Well, I think that, given
10 the nature of the negotiations at this stage, I think
11 that's really the only option my client feels they
12 have unless they can actually work out a trade. And
13 my understanding is they're going to continue to work
14 on a trade, however -- you know, I just learned this
15 yesterday. It seems like they're a little less
16 comfortable that that is actually going to happen. So
17 their next option is to submit their competing
18 application.

19 And so I think, you know, we obviously
20 don't want to, you know, hinder the process any more
21 than anybody else, but, you know, to get that in, we'd
22 need to do that, I believe, by June 7th, you know, to
23 meet the applicable deadlines. So the earliest we
24 could possibly have the contested case hearing, I
25 believe, would be in August.

1 THE HEARING EXAMINER: So explain to me
2 the June 7 deadline.

3 MR. SUAZO: Well, as I was looking on
4 the calendar, I think there's a hearing on August 8th
5 is the first docket. So June 8th, we'd need to get
6 the proposals. June 8th, I think, is a Saturday. So
7 that gives us June 7th to actually get the proposals
8 in and meet the 30 days.

9 THE HEARING EXAMINER: And then you'd
10 file your competing applications by what date?

11 MR. SUAZO: By June 7th.

12 THE HEARING EXAMINER: I thought that
13 was the date of the proposals.

14 MR. SUAZO: Oh, sorry. I would need to
15 confer with my client, but my understanding is they
16 can get those submitted fairly quickly.

17 THE HEARING EXAMINER: Okay. Let me
18 just review this for a moment. So you're saying that
19 by June 7th, your client would send out the competing
20 proposals to Franklin Mountain?

21 MR. SUAZO: Yes.

22 THE HEARING EXAMINER: Then have to
23 wait 30 days to file the applications?

24 MR. SUAZO: Yes.

25 THE HEARING EXAMINER: So that you

1 could get them on the August docket. Is that what
2 you're saying?

3 MR. SUAZO: If we were really pushing
4 for the August date. Correct.

5 THE HEARING EXAMINER: Well, I mean,
6 you are delaying Franklin Mountain --

7 MR. SUAZO: Understood.

8 THE HEARING EXAMINER: And this
9 division -- maybe it hasn't been the practice in the
10 past, but this division is going to be giving priority
11 to applicants to move their applications forward. You
12 know, I don't know what deadlines applicants have and
13 what reasons they file their applications, but that's
14 not for me to decide. But if there's an objection, it
15 would seem to me that you would need to timely move
16 your case forward.

17 So Ms. Bennett, is there any authority
18 for me to enforce a June 7 deadline for a proposal?

19 MS. BENNETT: Not that I'm aware of.

20 THE HEARING EXAMINER: That's what I
21 thought. Well --

22 MS. BENNETT: Mr. Hearing Examiner,
23 there is a potential method by which you could ensure
24 that the June 7th deadline is met, which is by having
25 a status conference on June 13th and evaluating

1 whether that deadline has been met.

2 THE HEARING EXAMINER: Okay. So what
3 I'm going to do is I'm going to set -- so Ms. Bennett,
4 please continue these four cases to the June 13
5 docket. We will have a status conference on that
6 date.

7 And Mr. Suazo, I'm expecting that your
8 client will have at least sent out the proposals if
9 there are going to be competing proposals. And then
10 what we'll do is, at that date on June 13th, we will
11 set a contested hearing for August.

12 Ms. Bennett, you'll be prepared for a
13 contested hearing in August?

14 MS. BENNETT: I think so, yes. I would
15 need to check with my witnesses for their
16 availability. The summer is generally challenging.
17 But I will endeavor to make that happen, definitely.

18 THE HEARING EXAMINER: Okay. So will
19 you be prepared to give me some dates that you can
20 discuss with Mr. Suazo as well so we can set that?

21 MS. BENNETT: Yes.

22 THE HEARING EXAMINER: Because I want
23 to move these cases forward.

24 MS. BENNETT: Yes. And Mr. Examiner,
25 just for the record, if the cases do go to a contested

1 hearing, I may have to withdraw from representing
2 Franklin Mountain Energy. But between now and then, I
3 will evaluate that, and we'll still work to come up
4 with dates to propose to the division for an August
5 hearing date.

6 THE HEARING EXAMINER: Is there
7 anything more on these cases?

8 MS. BENNETT: No. Thank you.

9 THE HEARING EXAMINER: Mr. Suazo?

10 MR. SUAZO: No. Thank you, sir.

11 THE HEARING EXAMINER: I am calling
12 24200 and 24202. Entries of appearance?

13 MR. BRUCE: Mr. Examiner, Jim Bruce on
14 behalf of MRC Permian and Matador Production Company.

15 THE HEARING EXAMINER: Thank you.

16 MS. BRADFUTE: Mr. Examiner, Jennifer
17 Bradfute with Bradfute Consulting and Legal Services
18 here representing EOG Resources.

19 THE HEARING EXAMINER: Good morning.

20 MS. BRADFUTE: Good morning.

21 THE HEARING EXAMINER: Ms. Bradfute,
22 you filed an objection to these cases proceeding by
23 affidavit?

24 MS. BRADFUTE: EOG does object to these
25 cases proceeding by affidavit, Mr. Examiner, however,

1 the procedural posture of this case is a little bit
2 different. There was a conflict of interest. These
3 applications were first filed by Holland and Hart, and
4 Holland and Hart, once it had the conflict of
5 interest, filed the first motion to continue in these
6 cases.

7 Mr. Bruce then came into the cases for
8 Matador or MRC and filed a motion for continuance to
9 get up to speed. And both of the parties actually
10 agreed to a continuance to the June 27th docket. And
11 it would be the third continuance request in the case.
12 And so it was set for a status conference today by
13 Sheila. But there are reasons why the case could not
14 proceed today under the commission's precedents and
15 the division's rules. And I'm happy to walk through
16 that if it would be helpful.

17 THE HEARING EXAMINER: Yes. Can you do
18 that in one or two sentences?

19 MS. BRADFUTE: Yes, I sure can. EOG
20 operates under existing pooling orders and two
21 different 240-acre spacing units, and it has wells
22 currently in operation that are producing. Matador
23 seeks to pool that acreage in both of its cases. And
24 Matador has sent various iterations of well proposal
25 letters to EOG. Most recently in February, they sent

1 the third version of their proposal letters and it was
2 discovered that they had a wrong proposed depth in
3 those well proposal letters.

4 They were supposed to get a new
5 proposal letter out to EOG, but it has not been
6 received yet. And under commission order R-21679-D as
7 in David they are required to send a proposal letter
8 with the correct proposed depth, and EOG should get 30
9 days to evaluate that.

10 THE HEARING EXAMINER: So back to my
11 question, did you file an objection?

12 MS. BRADFUTE: No, but EOG does object
13 to the cases. We did not believe filing an objection
14 was necessary because Sheila said she was setting it
15 for status conference this morning. And the parties
16 had agreed mutually that they wanted to continue the
17 cases.

18 THE HEARING EXAMINER: I see. I'm
19 asking you to file a notice of objection.

20 MS. BRADFUTE: Okay. Absolutely.
21 Thank you.

22 THE HEARING EXAMINER: Thank you,
23 Ms. Bradfute.

24 Mr. Bruce?

25 MR. BRUCE: Yes, Mr. Examiner. MRC and

1 EOG have been in discussions, as indicated, for quite
2 some time. And I got the email from the division, and
3 I discussed that with my client. And they gave me
4 authority to dismiss these two cases, and it'll give
5 more time for the parties to discuss. And then if
6 they need to be refiled, they can do that. So at
7 least we're not cluttering the divisions docket.

8 THE HEARING EXAMINER: Okay.
9 Ms. Bradfute, you don't need to file an objection.
10 Mr. Bruce is dismissing these two cases.

11 MS. BRADFUTE: Thank you.

12 THE HEARING EXAMINER: Thank you.

13 Anything else, Mr. Bruce?

14 MR. BRUCE: I will file written motions
15 today.

16 THE HEARING EXAMINER: Okay. We're off
17 the record in those cases. 24284, entries of
18 appearance, please?

19 MS. HARDY: Mr. Examiner, Dana Hardy on
20 behalf of COG Operating.

21 MR. SUAZO: Mr. Examiner, Miguel Suazo
22 on behalf of XTO.

23 THE HEARING EXAMINER: Are those the
24 only two parties, Ms. Hardy?

25 MS. HARDY: I believe that Ms. Kessler

1 represents EOG.

2 MS. KESSLER: Good morning,
3 Mr. Examiner. Jordan Kessler on behalf of EOG.

4 THE HEARING EXAMINER: Good morning.
5 Ms. Hardy?

6 MS. HARDY: Mr. Examiner, we filed this
7 case in February. The bulk proposals were sent last
8 November, I believe. We had a status conference on
9 April 4th, at which we discussed having one more
10 status conference and then setting a contested hearing
11 in July. And at this point, COG is ready to do that.
12 And we would request a hearing in late July,
13 potentially July 29th through 31st if that's possible.
14 I know that works for COG's witnesses and myself.

15 THE HEARING EXAMINER: All right. So
16 you're asking for a contested hearing to be set in
17 late July. It looks like the last thing in July that
18 we have on our schedules is the regular docket on the
19 25th. So you're suggesting the week after the 25th?

20 MS. HARDY: Correct.

21 THE HEARING EXAMINER: Okay. Let's go
22 now to Mr. Suazo.

23 MR. SUAZO: Yes, Mr. Hearing Examiner.
24 I think my client's position is that they feel they
25 need a little more time to work out a trade. I think

1 it looks promising in this case. So I think their
2 preference is to set one more status conference. But
3 the earliest I think that they could be prepared for a
4 contested case hearing would be August.

5 THE HEARING EXAMINER: Mr. Suazo, I'm
6 going to give preference to the applicant; okay?
7 Negotiations are outside of my control, but our docket
8 is something that we do have control over. I want to
9 see these cases moving forward, and the applicant's
10 asking for a contested hearing in late July. If we
11 made it the first week of August, that might give you
12 a bit more time. Are you going -- what is the issue,
13 first of all?

14 MR. SUAZO: As I understand it -- with
15 respect to the trade or with respect to the schedule?

16 THE HEARING EXAMINER: Neither. What
17 is the issue -- why did you file the objection?

18 MR. SUAZO: Oh, I think because they
19 were trying to resolve this docket and the next
20 docket. And because they were looking at a trade to
21 settle both issues. They filed the objection in both.

22 THE HEARING EXAMINER: When did you
23 file the objection?

24 MS. HARDY: I believe it was March --

25 MR. SUAZO: That sounds right. Yes.

1 THE HEARING EXAMINER: Thank you,
2 Mr. Suazo.

3 So Ms. Hardy, are you aware of ongoing
4 negotiations between the parties?

5 MS. HARDY: I know that there are
6 negotiations that are ongoing. And I think those have
7 been occurring for some time. So I think that a
8 hearing in late July is more than sufficient to give
9 time for those to continue. And I don't believe XTO's
10 filing competing applications.

11 MR. SUAZO: Correct.

12 THE HEARING EXAMINER: So Mr. Suazo,
13 these proposals were sent out in November. The cases
14 were filed in February. And if we have the hearing in
15 late July, are you suggesting that doesn't give the
16 parties enough time to either resolve the issue or to
17 know that the negotiations are futile?

18 MR. SUAZO: I don't think it's an issue
19 of whether that's enough time to resolve, you know,
20 the trade. I think it's more an issue of what the
21 clients -- you know, witnesses and everything else to
22 be available. So I think what they asked for is for
23 an early August contested case hearing.

24 THE HEARING EXAMINER: And the
25 witnesses can appear virtually. You know that?

1 MR. SUAZO: Yes.

2 THE HEARING EXAMINER: Okay.

3 Ms. Kessler?

4 MS. KESSLER: Thank you, Mr. Examiner.
5 In this case, EOG had a title issue with Conoco. The
6 issue has not been resolved. It's not for lack of
7 effort by either parties. So we do not object to the
8 case moving forward.

9 THE HEARING EXAMINER: And at hearing,
10 would you have witnesses or present any evidence?

11 MS. KESSLER: We would not. We would
12 observe.

13 THE HEARING EXAMINER: Oh, you would
14 observe. I see. Okay.

15 Mr. Suazo, at the hearing, will you
16 have evidence and witnesses to present?

17 MR. SUAZO: Yes, I believe we would.

18 THE HEARING EXAMINER: And I don't feel
19 like I got a straight answer on what the issue is. So
20 what would you be submitting evidence -- on what
21 issue?

22 MR. SUAZO: I would need to confer with
23 my client --

24 THE HEARING EXAMINER: Okay. Freya, is
25 this room available the last week of July?

1 MS. TSCHANTZ: It is available July
2 30th.

3 THE HEARING EXAMINER: All right.
4 We'll set that hearing on July 30th. That's close
5 enough to August.

6 Ms. Hardy, is there anything else in
7 the pre-hearing order that you need besides the date?

8 MS. HARDY: No. Thank you,
9 Mr. Examiner.

10 THE HEARING EXAMINER: All right.
11 Mr. Suazo, if you find that your witnesses are
12 completely unavailable for July 30th, please speak to
13 Ms. Hardy and come up with a date either in the last
14 week of July or the first week of August, but not
15 after the 8th of August.

16 MR. SUAZO: I will do that. Thank you,
17 Mr. Hearing Examiner.

18 THE HEARING EXAMINER: You're welcome.
19 Anything else from you, Ms. Hardy?

20 MS. HARDY: No. Thank you.

21 THE HEARING EXAMINER: We're off the
22 record in these cases.

23 Ms. Hardy, when I called 24284, was
24 that consolidated with 24286 or not?

25 MS. HARDY: No, Mr. Examiner, it's not.

1 THE HEARING EXAMINER: Thank you. I'm
2 now calling 24286.

3 MS. HARDY: Dana Hardy on behalf of COG
4 Operating.

5 MR. SUAZO: Miguel Suazo on behalf of
6 XTO.

7 THE HEARING EXAMINER: Okay.
8 Ms. Hardy?

9 MS. HARDY: Mr. Examiner, this is a
10 similar situation, I believe. Although COG is ready
11 to proceed and develop its acreage, we would request a
12 contested hearing in July, potentially earlier in July
13 than in the prior case, July 10th, 12th, 15th.

14 THE HEARING EXAMINER: Well, what is
15 the -- let me ask Mr. Suazo.

16 Mr. Suazo, do you know why you filed an
17 objection in this case?

18 MR. SUAZO: I don't know the specifics
19 on the objection, but I do know that the objection
20 was, you know, because the previous case and this case
21 were related. So I think working out a trade in this
22 matter at the time, you know, hinges upon, you know,
23 resolving both these issues in one swoop.

24 So, you know, I think the client's
25 position is similar to the previous docket, where we

1 prefer an August hearing. But since the other one's
2 set for July 30th, it makes plenty of sense to just
3 have both of them then.

4 THE HEARING EXAMINER: Why are you not
5 consolidating these cases?

6 MS. HARDY: Mr. Examiner, it's my
7 understanding that this acreage may not be involved in
8 the trade. So I think that COG's ready to proceed
9 with its development, and XTO has not proposed
10 competing applications or any real reason for the
11 objection other than as a tool to negotiate, I
12 believe. So we're ready to go and would ask for these
13 to be set earlier in July. Or if that doesn't work,
14 the last week in July would work for this one as well.

15 THE HEARING EXAMINER: What's your
16 argument for not consolidating? I understand that the
17 trade may not involve the same acreage. But what's
18 the argument against consolidating these for the
19 purposes of a hearing on July 30th?

20 MS. HARDY: The acreage is different.
21 The ownership interests are different. And EOG's a
22 party in the prior case, but not in this case, so.

23 THE HEARING EXAMINER: I'm not hearing
24 a good reason not to consolidate.

25 MS. HARDY: I think they could be heard

1 sequentially, if that's the division's preference.
2 But I don't think they should be consolidated for
3 evidentiary purposes. They're not -- the evidence
4 will be different.

5 THE HEARING EXAMINER: Okay.
6 Mr. Suazo, any argument against not hearing them
7 sequentially?

8 MR. SUAZO: No, Mr. Hearing Examiner.
9 I think that makes sense. I agree with Ms. Hardy's
10 position.

11 THE HEARING EXAMINER: Okay. So we'll
12 issue a pre-hearing order in this case as in the other
13 case. We won't put both case numbers in the caption.
14 We'll issue two separate hearing orders, setting them
15 both for July 30th.

16 Which case do you think should go
17 first, Ms. Hardy?

18 MS. HARDY: I think that the
19 Thunderdome -- this case should go first.

20 THE HEARING EXAMINER: Because it's
21 simpler?

22 MS. HARDY: I don't know if it's
23 simpler. Possibly. Simpler with respect to EOG's not
24 a party.

25 THE HEARING EXAMINER: But EOG is just

1 observing.

2 MS. HARDY: Correct.

3 THE HEARING EXAMINER: Okay. All
4 right. So we shall set a July 30th contested hearing
5 for this case. Anything further?

6 MS. HARDY: Not from COG.

7 MR. SUAZO: No, Mr. Hearing Examiner.

8 THE HEARING EXAMINER: Thank you.
9 We're off the record. Let's go to 24394 and 95.
10 Entries of appearance, please?

11 MS. HARDY: Dana Hardy on behalf of
12 Novo Oil and Gas Northern Delaware.

13 THE HEARING EXAMINER: Thank you.

14 MS. BENNETT: Good morning,
15 Mr. Examiner. Deana Bennett on behalf of Marathon Oil
16 Permian, LLC.

17 THE HEARING EXAMINER: Thank you. Are
18 there any other parties?

19 MS. HARDY: I don't believe there are.

20 THE HEARING EXAMINER: Ms. Bennett, you
21 filed an objection?

22 MS. BENNETT: Yes, we did.

23 THE HEARING EXAMINER: Why?

24 MS. BENNETT: The parties are in trade
25 discussions, Mr. Hearing Examiner, and Marathon wanted

1 additional time to engage in those trade discussions.
2 And Marathon has sent out competing proposals, but has
3 not yet determined whether to file competing
4 applications because it is involved in trade
5 negotiations with Novo.

6 And those negotiations appear to be
7 progressing. And so the parties have agreed to set
8 these cases for another status conference on July
9 25th. So that, I think, if I'm hopefully not
10 misstating things, that would be the parties request
11 is that these cases be set for a status conference on
12 July 25th.

13 THE HEARING EXAMINER: Ms. Hardy, when
14 did you file these?

15 MS. HARDY: These applications were
16 filed on April 2nd.

17 THE HEARING EXAMINER: So they're brand
18 new?

19 MS. HARDY: They are new.

20 THE HEARING EXAMINER: Okay. We'll set
21 these for another status conference. Ms. Hardy, how
22 much time do you think the parties need to resolve
23 this trade issue?

24 MS. HARDY: I think that a status
25 conference on July 25th would be sufficient,

1 hopefully.

2 THE HEARING EXAMINER: That's over two
3 months from now.

4 MS. HARDY: Yes.

5 THE HEARING EXAMINER: So at that
6 point, I'll want to set a hearing.

7 MS. HARDY: Understood.

8 THE HEARING EXAMINER: If trade
9 negotiations have not proved fruitful. Okay. So
10 Ms. Hardy, you'll continue the case to the July 25th
11 docket?

12 MS. HARDY: Yes, thank you.

13 THE HEARING EXAMINER: Very good.
14 Thank you. Off the record in those cases. 24407
15 through 24412. Entries of appearance?

16 MR. FELDEWERT: Good morning,
17 Mr. Examiner. Michael Feldewert, Santa Fe office of
18 Holland and Hart, on behalf of the applicant, MRC.

19 THE HEARING EXAMINER: Thank you.

20 MS. HARDY: And Mr. Examiner, Dana
21 Hardy on behalf of Permian Resources. And we did file
22 an objection to these cases proceeding.

23 THE HEARING EXAMINER: Why?

24 MS. HARDY: Because Permian Resources
25 acquired OXY's interest in Section 26 that was

1 previously pooled. It's a significant interest. It
2 ranges from 25 to 35 percent in these spacing units.
3 And Permian Resources has concerns about the extension
4 and the development, and may propose competing
5 applications.

6 THE HEARING EXAMINER: May propose?

7 MS. HARDY: I believe they are working
8 on their well proposals now.

9 THE HEARING EXAMINER: Mr. Feldewert,
10 when did you file these cases?

11 MR. FELDEWERT: So let's step back.
12 These are applications that seek to extend the
13 drilling deadline. Drilling locations have been
14 approved after various consultations with the BLM.
15 This is federal acreage. Federal drilling permits
16 were filed some time ago, but we're waiting on the BLM
17 to approve them. No pooled owner's been asked to make
18 an election.

19 So we have a very similar circumstance
20 like we did last docket, in that we have pooling
21 orders that have been finalized, that have been
22 adjudicated. And the only delay here is the BLM. So
23 I'm glad you asked why they were objecting, because I
24 was confused as well. And we want these extension
25 requests to move forward.

1 But of course, since we're waiting on
2 the BLM, right, I guess it doesn't matter when you
3 have a hearing on this. But we will of course have a
4 real problem if they try to now file competing pooling
5 applications since these have already adjudicated.
6 But we would like the issue -- and the only issues
7 that's before the division.

8 And that is whether there's good cause
9 to extend these to be addressed as -- well, doesn't
10 need to be as soon as possible, but in a, you know,
11 decent timeframe. I mean, we're in a position where
12 we're waiting on the BLM. We are ready to go. So,
13 you know, perhaps we don't want to wait too long to
14 get this moving forward because we would like to get
15 the extensions in place so that when the BLM approves
16 the drilling permits, they can go out there and get
17 going.

18 THE HEARING EXAMINER: SO can you give
19 me some historical background as to the division's
20 practices when a case is up for a good cause extension
21 and another party files a competing application?

22 MR. FELDEWERT: We have never had that
23 circumstance that I'm aware of; okay? Number one.
24 Number two, as I said before, if that happens, then
25 you're going to have a nice round of debate over

1 whether they can years later reopen a matter that was
2 adjudicated some time ago. Our position is that the
3 only issue under these cases is the issue of whether
4 there's good cause to extend the drilling deadline.

5 THE HEARING EXAMINER: Ms. Hardy?

6 MS. HARDY: I agree with Mr. Feldewert
7 that there is not precedent that I'm aware of on this
8 issue. But I think it is possible to reopen a prior
9 pooling order. I think that has been done and is done
10 on occasion. So that's something that Permian
11 Resources would evaluate whether they need to do that.

12 I think at this point, our request
13 would be that the division set a status conference,
14 possibly in late July. Because I know that Matador
15 and Permian Resources are talking. And then I think
16 we could determine how to go from there.

17 THE HEARING EXAMINER: So you're saying
18 that it's possible that Matador and Permian worked out
19 their differences so that Permian would withdraw its
20 objections?

21 MS. HARDY: That's possible.

22 THE HEARING EXAMINER: It's possible.
23 Okay. All right.

24 Mr. Feldewert, they're your
25 applications for amendment, so I'm going to give you

1 the latitude to tell me when you want these set for
2 another status conference.

3 MR. FELDEWERT: June.

4 THE HEARING EXAMINER: June.

5 MR. FELDEWERT: And here's why; okay?
6 We'd like to get the orders in place as soon as
7 possible so that when the BLM approves permits, they
8 can move forward. If they want to somehow reopen
9 these pooling cases years later, they can do that
10 independent of these proceedings and make whatever
11 argument they want to make.

12 THE HEARING EXAMINER: Freya, our June
13 dockets are rather full. Is that correct?

14 MS. TSCHANTZ: They are. But the June
15 13th docket is okay.

16 THE HEARING EXAMINER: That's a month
17 from now. I would hoping for the latter one to give
18 the party a bit of time. How many cases do we have on
19 the latter docket in June?

20 MS. TSCHANTZ: There are currently 46,
21 with probably 30 new additional new applications
22 pending.

23 THE HEARING EXAMINER: Let's put them
24 on the June 27th for a status conference.

25 MS. TSCHANTZ: Okay.

1 THE HEARING EXAMINER: And Ms. Hardy,
2 please advise your client that I want to move these
3 amendments along.

4 MS. HARDY: Understood. Thank you.

5 THE HEARING EXAMINER: Anything else,
6 Mr. Feldewert?

7 MR. FELDEWERT: No. Thank you.

8 THE HEARING EXAMINER: You're welcome.
9 Okay. I am now calling 24413, 14, 15, 17, 18, and 19.
10 Entries of appearance.

11 MS. SHAHEEN: Good morning. Sharon
12 Shaheen, Montgomery and Andrews, on behalf of the
13 applicant, Permian Resources Operating.

14 THE HEARING EXAMINER: Good morning.

15 MS. RYAN: Good morning, Mr. Hearing
16 Examiner. Beth Ryan on behalf of COG Operating.

17 THE HEARING EXAMINER: Good morning.

18 MR. BRUCE: Mr. Examiner, Jim Bruce
19 representing Mewbourne Oil Company.

20 THE HEARING EXAMINER: Thank you.

21 Okay. Ms. Shaheen, are these your
22 applications?

23 MS. SHAHEEN: Yes, Mr. Examiner. They
24 are Permian's applications. And now that we've
25 received an objection to moving forward by affidavit,

1 Permian would like to go ahead and set a contested
2 hearing in August if that's possible.

3 THE HEARING EXAMINER: Okay. When did
4 you file these applications?

5 MS. SHAHEEN: Oh, good question. I
6 should've looked that before. It was not that long
7 ago. I can tell you that. I believe that they must
8 have been filed in time to have them heard on the May
9 2nd docket. So they would've been filed on April 2nd.

10 THE HEARING EXAMINER: Thank you,
11 Ms. Shaheen.

12 And Ms. Ryan, you filed an objection?

13 MS. RYAN: No, we did not file an
14 objection. That was filed by Mewbourne. We are just
15 entering an appearance and monitoring.

16 THE HEARING EXAMINER: Thank you,
17 Ms. Ryan.

18 Mr. Bruce, you filed an objection?

19 MR. BRUCE: Yes, Mr. Examiner. Let me
20 go into that a little bit. These cases are next door
21 to some cases that I believe the attorney is
22 Ms. Hardy, which are set for a status conference, I
23 believe, on June 13th.

24 THE HEARING EXAMINER: What cases are
25 you talking about?

1 MS. HARDY: I believe those are the
2 Mammoth cases.

3 MR. BRUCE: Yes.

4 MS. HARDY: And Mr. Examiner, I do have
5 a conflict. I will be withdrawing as counsel in those
6 cases and Ms. Shaheen will be entering an appearance
7 for Permian Resources.

8 THE HEARING EXAMINER: So Mr. Bruce,
9 why are you talking about other cases that have not
10 been called yet?

11 MR. BRUCE: They were set for a status
12 conference two to four weeks ago on the June 13th
13 docket. And I was under orders to get Mewbourne to
14 file -- these Mewbourne cases I'm talking about
15 conflict with Ms. Hardy's set of cases as well as with
16 these sets of cases.

17 THE HEARING EXAMINER: Okay. So my
18 question is, why did you file an objection?

19 MR. BRUCE: Because we have counter-
20 applications.

21 THE HEARING EXAMINER: Okay. So you
22 have competing applications?

23 MR. BRUCE: I think I have six counter-
24 applications.

25 THE HEARING EXAMINER: Have they been

1 filed?

2 MR. BRUCE: They were filed Tuesday.

3 THE HEARING EXAMINER: All right. You
4 just filed.

5 MR. BRUCE: And, I think, another
6 complication is that I think they were placed on the
7 June 27th docket because of crowding.

8 THE HEARING EXAMINER: Ms. Shaheen, are
9 you aware of the competing applications?

10 MS. SHAHEEN: I was not aware of the
11 competing applications. I did know that there have
12 been discussions between Permian and Mewbourne in an
13 effort to resolve the parties' issues. And I believe
14 Permian is hopeful that they can be resolved by the
15 time of a contested hearing in August.

16 And if not, they would like to go
17 forward at hearing at that time. I was not aware that
18 there were competing applications. But I believe
19 those competing applications could be set in August
20 for a contested hearing as well. Obviously, we can't
21 do that until the June 27th docket.

22 Or we could set the Permian cases
23 for the August docket, and then on June 27th, set both
24 the Mammoth and the competing applications, add them
25 to an existing pre-hearing order. I have no intention

1 of telling the hearing examiner how to proceed, but
2 just a suggestion. I think what I would like to avoid
3 is having it kicked out further than August. So
4 however we can reserve a spot in August.

5 THE HEARING EXAMINER: Mr. Bruce, these
6 competing applications, those proposals would've gone
7 to Permian at least a month before; right?

8 MR. BRUCE: Correct.

9 THE HEARING EXAMINER: So Ms. Shaheen,
10 your client is unaware of these competing proposals?

11 MS. SHAHEEN: Oh, I'm sure my client is
12 aware. I was not aware.

13 THE HEARING EXAMINER: I see. Okay.

14 And Mr. Bruce, do you have case numbers
15 yet?

16 MR. BRUCE: They're on my computer. I
17 haven't looked them up.

18 THE HEARING EXAMINER: Well, they
19 should be consolidated with these cases; right?

20 MR. BRUCE: Correct.

21 THE HEARING EXAMINER: Okay. Freya, is
22 there any way to look those cases up?

23 MR. BRUCE: They're the Buffalo Thunder
24 wells.

25 THE HEARING EXAMINER: Buffalo Thunder

1 wells. And you said they're on the June 27 docket?

2 MR. BRUCE: I believe, yes. I looked
3 at one of the OCD approval emails, and I believe
4 that's --

5 THE HEARING EXAMINER: Okay. And
6 Ms. Shaheen, will you be filing an objection in those
7 cases?

8 MS. SHAHEEN: Yes.

9 THE HEARING EXAMINER: Okay. I thought
10 you would.

11 And Mr. Bruce, you actually filed a
12 formal objection to these cases?

13 MR. BRUCE: Correct.

14 THE HEARING EXAMINER: Okay. All
15 right. So I'm going to wait for Freya --

16 You found them Freya?

17 MS. TSCHANTZ: I did not find them yet.
18 However, I know they're on my desk. So in a break I
19 can go grab them.

20 THE HEARING EXAMINER: Okay. Because
21 I'd like to consolidate those case numbers and set a
22 hearing.

23 Ms. Shaheen, I'm going to consolidate
24 those cases unless there's an argument not to, with
25 the competing new cases.

1 MS. SHAHEEN: I don't see an issue with
2 consolidating the Mudshark cases with the competing
3 cases related to that acreage, and the Mammoth wells
4 with the competing cases related to that. I don't
5 know that we would actually want to have a
6 consolidated hearing on all four sets of applications.
7 But if they're all set for the same hearing date, the
8 parties can determine how they would like to proceed
9 between now and then.

10 THE HEARING EXAMINER: I'm not sure
11 what wells you're talking about. I have Mudshark for
12 all the cases I've called. Are you referring to cases
13 I haven't called yet?

14 MS. SHAHEEN: Well, I was referring to
15 the Mammoth cases that Mr. Bruce was talking about,
16 that I believe are on the first June docket.

17 Is that right, Mr. Bruce?

18 MR. BRUCE: That is correct. Due to an
19 objection I filed on behalf of -- well, at the time,
20 Kaiser-Francis Oil Company on the Mammoth wells. And
21 Mewbourne has taken over their position.

22 THE HEARING EXAMINER: Mr. Bruce, are
23 you suggesting that we consolidate these cases that
24 I've called with other cases that I haven't called
25 yet?

1 MR. BRUCE: Well, they're not on
2 today's docket. They're on the June 13th docket. But
3 yes, they're all the same land or at least parts of
4 the same land.

5 THE HEARING EXAMINER: And whose cases
6 are the -- I don't even have case numbers. So I don't
7 find this discussion helpful. How about you file a
8 motion?

9 MR. BRUCE: Okay.

10 THE HEARING EXAMINER: That way I'll
11 understand the facts here.

12 Ms. Shaheen, I've asked Mr. Bruce to
13 file a motion to consolidate cases, because I'm not
14 looking at another docket. I'm only looking at these
15 cases here today. But I would like to set a contested
16 hearing for you in August. Is there a week you want
17 me to look at?

18 MR. BRUCE: Well, Mr. Examiner, I have
19 a little problem, at least in the second half of
20 August. I don't take many vacations, and --

21 THE HEARING EXAMINER: Okay. You're
22 unavailable the second half of --

23 MR. BRUCE: I'm going back to the upper
24 Midwest to visit family who I haven't seen in a couple
25 years.

1 THE HEARING EXAMINER: Great. Happy
2 trails to you.

3 All right. So Ms. Shaheen, we need
4 some dates in the first half of August.

5 MS. SHAHEEN: I believe any time in the
6 first half of August will work for us. If you prefer,
7 I can confer with my client and Mr. Bruce, and we can
8 include that in the motion that Mr. Bruce will be
9 filing.

10 THE HEARING EXAMINER: Perfect. So
11 we're looking at the weeks -- I don't have my schedule
12 out that far in August yet. Ms. Shaheen, do you know
13 what dates that the division has its regular dockets
14 in August?

15 MS. SHAHEEN: I'll be right back.

16 MR. BRUCE: I think it's the 9th.

17 THE HEARING EXAMINER: No.

18 MS. SHAHEEN: The 8th and the 22nd.

19 THE HEARING EXAMINER: Okay. So then
20 we're talking about the 6th or 7th. I think the
21 commission has its meeting probably on the 15th of
22 August. So we could be talking about the 13th and
23 14th. So those would be the two weeks, Mr. Bruce and
24 Ms. Shaheen. And I don't know what other parties that
25 might be participating in these -- Ms. Ryan. Those

1 are the dates that are up for discussion, the 6th and
2 7th of August and the 13th and 14th of August.

3 Ms. Shaheen, how long will it take for
4 you and Mr. Bruce to work this out?

5 MS. SHAHEEN: Maybe a week at the most.

6 THE HEARING EXAMINER: Okay. All
7 right.

8 Mr. Bruce, anything further on these
9 cases?

10 MR. BRUCE: That's fine. I need to
11 check with my clients on available dates. Yeah.

12 THE HEARING EXAMINER: That goes
13 without saying. Anything else on these cases? And
14 then in the motion, Mr. Bruce and Ms. Shaheen, please
15 explain why you want me to consolidate whatever cases
16 that you do, or why you don't want me to consolidate
17 other related cases. Because I've heard both things
18 today, and I really don't know what to think about it.

19 MR. BRUCE: Yes, sir.

20 THE HEARING EXAMINER: Okay. Anything
21 else, Ms. Shaheen?

22 MS. SHAHEEN: Not on this matter.
23 Thank you.

24 THE HEARING EXAMINER: Okay. Thank
25 you. 24432. Entries of appearance? It looks like 32

1 through 39. Looks like has been consolidated.

2 Entries of appearance?

3 MR. SUAZO: Miguel Suazo at the Santa
4 Fe office of Beatty and Wozniak on behalf of Pilot
5 Water.

6 THE HEARING EXAMINER: Pilot? Thank
7 you.

8 MS. SHAHEEN: Mr. Examiner, Sharon
9 Shaheen, Montgomery and Andrews, on behalf of Empire
10 Petroleum. And I would note at the outset that I
11 believe Ms. Hardy has a conflict with all of the cases
12 except for 24432. So we would ask that those cases
13 not be consolidated with 24432.

14 THE HEARING EXAMINER: Okay. I didn't
15 hear everything you said. Can you repeat what cases
16 you're asking to not be consolidated?

17 MS. SHAHEEN: We're asking that you
18 only hear case number 24432 at this time, and the
19 remaining cases that you called, 33 through --

20 THE HEARING EXAMINER: 39.

21 MS. SHAHEEN: 33 through 39 can be
22 heard together. But if we could keep 24432 separate,
23 that would be very helpful for us.

24 THE HEARING EXAMINER: All right. Are
25 there any other parties in these cases?

1 MR. MOANDER: Yes, Mr. Hearing Officer.
2 Chris Moander on behalf of OCD.

3 THE HEARING EXAMINER: Good morning,
4 Mr. Moander.

5 MR. MOANDER: Good morning. And part
6 of what's going on here is I'm monitoring, as much as
7 anything, these cases. Just because there's quite a
8 bit of business before the commission. And so that's
9 my role here. While I may need to be active, at this
10 point, it's a bit more passive.

11 THE HEARING EXAMINER: Okay. And
12 Mr. Rankin?

13 MR. RANKIN: Good morning,
14 Mr. Examiner. May it please the division. Adam
15 Rankin. I have not yet filed the notice of
16 intervention in these cases. I've been deferring to
17 counsel while I get up to speed. But if it may please
18 the division, I would file a notice, orally, of
19 intervention in these cases. If it would please the
20 division, I can make a statement now or I can
21 subsequently file a notice of intervention. And I
22 haven't conferred with counsel yet for Empire.

23 THE HEARING EXAMINER: Okay. Now --

24 MS. SHAHEEN: May I respond?

25 THE HEARING EXAMINER: Hold on one

1 second. I only called 24432, because Ms. Shaheen has
2 a conflict in 33 through 39. So let's just keep 32
3 separate for a moment.

4 This case was filed by you, Mr. Suazo?

5 MR. SUAZO: No. This was filed by
6 Empire.

7 THE HEARING EXAMINER: Okay. This was
8 filed by Empire.

9 So Ms. Shaheen, this is your case?

10 MS. SHAHEEN: Yes. And I --

11 THE HEARING EXAMINER: But did you file
12 all the cases, and now you have a conflict, you're
13 saying?

14 MS. SHAHEEN: No. I should clarify. I
15 do not have a conflict. Ms. Hardy has a conflict with
16 24433 through 39. I do not have a conflict. And
17 Mr. Padilla also is representing Empire New Mexico in
18 all of the cases. I believe there are nine cases
19 total. Maybe there's eight.

20 THE HEARING EXAMINER: Mr. Padilla, do
21 you want to enter an appearance?

22 MR. PADILLA: Mr. Examiner, Ernest L.
23 Padilla for Empire New Mexico.

24 MS. HARDY: And Dana Hardy --

25 THE HEARING EXAMINER: These cases

1 would be consolidated for the purposes of a hearing.
2 So I'm not worried right now about who has a conflict
3 in which case. We're talking about them as a group.
4 Just trying to get them to a hearing.

5 Ms. Shaheen, do you have a problem with
6 that?

7 MS. SHAHEEN: I would defer to
8 Ms. Hardy.

9 THE HEARING EXAMINER: Okay.
10 Ms. Hardy?

11 MS. HARDY: Mr. Examiner, so the issue
12 is that Ms. Shaheen and Mr. Padilla and I all
13 represent Empire, although I am only representing
14 Empire along with them in case 24432, because I have a
15 conflict in the subsequent cases. So we would ask for
16 that case to be treated separately from the others.
17 Also, they involve different parties, which is why I
18 have conflict in the others and not this one.

19 THE HEARING EXAMINER: But if went to a
20 hearing, are you saying you expect the division to
21 have a hearing on 32 separate from the other cases?

22 MS. HARDY: Correct. We would like to
23 keep the cases separate. I think that's likely to be
24 an issue that requires briefing, but there are
25 different parties and -- yes.

1 THE HEARING EXAMINER: Okay. So
2 Ms. Shaheen, you filed the applications. Is that
3 correct?

4 MS. SHAHEEN: That is correct.

5 THE HEARING EXAMINER: All right.
6 Let's just talk about 32 right now. Which party
7 objected to your application?

8 MS. SHAHEEN: I don't know that anyone
9 formally filed an objection, but we assumed that it
10 would be objected to, because we're seeking to revoke
11 an existing permit under which OWL or Pilot currently
12 operates.

13 THE HEARING EXAMINER: Okay. So
14 Mr. Suazo, you would object?

15 MR. SUAZO: Yes, Mr. Hearing Examiner.
16 We most certainly would. I would note for the
17 division that we, you know, came into this case on May
18 9th. So it's still very early for us. Very
19 complicated set of issues. Very contentious. They
20 are potentially interrelated with the other cases that
21 have been referenced, but for now, I think Pilot's
22 position is that they prefer to keep our case separate
23 while they assess the situation further.

24 THE HEARING EXAMINER: So Mr. Suazo,
25 your client, Pilot, has the approval to do what?

1 MR. SUAZO: To inject into the P15
2 well.

3 THE HEARING EXAMINER: Inject what?

4 MR. SUAZO: Produced water.

5 THE HEARING EXAMINER: Produced water.
6 Okay.

7 And Ms. Shaheen, why are you trying to
8 revoke their permission to do that?

9 MS. SHAHEEN: Their injection of
10 produced water is affecting the minerals and the
11 operation of wells by Empire New Mexico.

12 THE HEARING EXAMINER: And didn't you
13 have an opportunity to present evidence of this nature
14 at the hearing?

15 MS. SHAHEEN: Will we have an
16 opportunity?

17 THE HEARING EXAMINER: No. When they
18 first received their permission, was it not obtained
19 through a hearing? It was. So Ms. Shaheen, did you
20 not know about the hearing in which they received this
21 authority?

22 MS. SHAHEEN: My recollection is, this
23 is a permit that was issued years before Empire New
24 Mexico acquired its interest.

25 THE HEARING EXAMINER: Okay. What does

1 that have to do with the question?

2 MS. SHAHEEN: Well, Empire New Mexico
3 did not have an opportunity to participate at the
4 hearing at which the permit was issued.

5 THE HEARING EXAMINER: But someone held
6 those interests, and wouldn't they have had an
7 opportunity to have contested this authority to do
8 this?

9 MS. SHAHEEN: Assuming they received
10 notice, they may have had an opportunity. But since
11 that time, Mr. Examiner, the amounts of water that
12 have been injected are impacting correlative rights.
13 And we therefore believe it would be appropriate for
14 the division to revoke that permit. Obviously, we'll
15 be offering evidence in support of the merits of our
16 claim. But we believe that we do have a right to seek
17 revocation of a permit that's impairing correlative
18 rights and creating waste.

19 THE HEARING EXAMINER: Okay. And so
20 you have new evidence to show that this is impacting
21 your client's rights?

22 MS. SHAHEEN: I will answer that with a
23 yes.

24 THE HEARING EXAMINER: Great. Thank
25 you.

1 Mr. Rankin?

2 MR. RANKIN: Good morning,
3 Mr. Examiner. At this point, if you would like to
4 hear my basis for intervention, I'm happy to make that
5 statement.

6 THE HEARING EXAMINER: Of course.

7 MR. RANKIN: Mr. Examiner, the case
8 here before us in isolation, 22432, seeks to revoke
9 the permit of OWL for its P15 well. That P15 well is
10 nearly in the middle of the Eunice Monument South
11 Unit, which is the unit that is at the center of the
12 dispute in the cases currently before the commission.
13 The P15 well is among the wells that Goodnight has
14 identified as being similarly situated to its wells
15 within the unit.

16 And as Ms. Shaheen notes, Empire has
17 made allegations and claims that the disposal of
18 produced water within the unit and offsetting the unit
19 are impacting Empire's operations within the unit
20 boundaries. So on that basis, any action the division
21 takes in this case that would affect OWL's opportunity
22 or ability to inject into its well will have a
23 substantial impact, potentially, on Goodnight's
24 similarly situated wells.

25 THE HEARING EXAMINER: All right. So

1 you're going to file a motion to intervene for lack of
2 a better word?

3 MR. RANKIN: Well, Mr. Examiner, I
4 guess if it's required, I will do it. The rules do
5 provide for parties to make an oral notice of
6 intervention. I think it would be hard to make the
7 case that there's no basis for us to intervene, that
8 we have no standing to intervene. The facts are, as
9 Ms. Shaheen just stated, that it's the amount of water
10 that is causing the problem.

11 There are numerous operators of
12 saltwater disposal wells in the unit and offsetting
13 that are now the target of Empire's applications to
14 revoke. And there's no principle basis to distinguish
15 between one operator's injection over another at this
16 point. And so for that reason, Mr. Examiner, we would
17 make this oral notice of intervention and ask that the
18 division recognize us as a party in this case.

19 MS. SHAHEEN: Mr. Examiner, may I
20 respond?

21 THE HEARING EXAMINER: Yes, of course.

22 MS. SHAHEEN: As Mr. Rankin mentioned,
23 he has not conferred with the parties in this regard.
24 And we would request that Mr. Rankin file a written
25 motion so that Empire New Mexico, as well as OWL and

1 Pilot, may respond in writing.

2 THE HEARING EXAMINER: So Mr. Rankin,
3 are you -- and we're only talking about intervention
4 now. And we're looking at 19.15.4.11. And it says,
5 "A person with standing with respect to the case's
6 subject matter may intervene by filing a written
7 notice of intervention with the division clerk at
8 least one day before" blah, blah, blah.

9 And then there's subject matter that
10 needs to be included. Then it says, "The division
11 examiner, at their discretion, may allow late
12 interveners to participate if the intervener files a
13 written notice on or after the date provided in"
14 another subsection, "Or by oral appearance on the
15 record at the hearing," which is what you're doing
16 now."

17 MR. RANKIN: Correct.

18 THE HEARING EXAMINER: Okay. And
19 Ms. Shaheen, basically, are you objecting?

20 MS. SHAHEEN: Yes.

21 THE HEARING EXAMINER: You are
22 objecting.

23 MS. SHAHEEN: We are objecting to --

24 THE HEARING EXAMINER: And your
25 objection is based on what?

1 MS. SHAHEEN: Goodnight is not the
2 subject of the permit of the -- excuse me -- Goodnight
3 does not hold the permit that is being challenged. As
4 you're aware, there are numerous other pending matters
5 that were referred to the commission that refer to
6 Goodnight's wells. But Goodnight is not a party to
7 the case with respect to the OWL and Pilot P15 well.
8 So we would like an opportunity to respond in writing
9 to any motion to intervene.

10 THE HEARING EXAMINER: Ms. Shaheen, the
11 notice of intervention shall include -- and I think it
12 can be verbal as well as in writing -- "The nature of
13 the intervener's interest in the allocation."

14 And Mr. Rankin, in one sentence, what
15 is your nature of your interest?

16 MR. RANKIN: The nature of our
17 interest, Mr. Examiner, is that we are very similarly
18 situated to the P15 well. We have six wells. Four
19 are impactive injecting wells. And five proposed
20 wells that are being challenged by Empire within the
21 same unit on the same basis, the same factual
22 allegations.

23 Ms. Shaheen and Empire counsel have
24 made the argument repeatedly that all the injection
25 within the unit and within 2 miles -- their testimony

1 from their expert witnesses is that all injection
2 within 2 miles of the unit should be precluded and
3 revoked.

4 So we are exactly situated just as the
5 P15 is. And Empire counsel made the argument that all
6 the Goodnight cases should be heard together, both
7 inside and outside the unit. So I don't see any
8 principle basis to make the argument that these cases
9 should --

10 THE HEARING EXAMINER: Your client's
11 position is that this permit to inject should be
12 revoked?

13 MR. RANKIN: No.

14 THE HEARING EXAMINER: Ah, what is your
15 client's position?

16 MR. RANKIN: Our client's position, as
17 required by the notice of intervention, is that
18 Empire's applications should be denied.

19 THE HEARING EXAMINER: In other words,
20 the injection permission should be continued?

21 MR. RANKIN: Correct.

22 THE HEARING EXAMINER: Okay. So
23 Ms. Shaheen, I understand why you're objecting.
24 However, Mr. Rankin has just put on the record the
25 nature of the intervener's interest and the extent to

1 which the intervener opposes the order that you seek.
2 I don't see anything else here as a basis of an
3 objection. I feel like you have enough information to
4 file whatever you would like for me to consider
5 barring the intervention. Do you disagree with what I
6 just said?

7 MS. SHAHEEN: Well, I believe that
8 Goodnight has the obligation to satisfy its burden
9 establishing that it should be allowed to intervene,
10 and that we should be provided an opportunity to
11 respond in writing. One other circumstance that I
12 would note is that I believe that Goodnight's
13 intention is to seek consolidation of all of these
14 cases, the Rice, and the OWL, and the Goodnight
15 applications, all before the commission.

16 Now he hasn't made that statement
17 today. The scope of the Empire and Goodnight
18 applications that are currently before the commission,
19 the scope of that hearing will be discussed and
20 determined by the commission at its June 20 meeting.
21 And so I would suggest that we continue these cases to
22 a status conference until after that decision has been
23 made by the commission as to the scope of the hearing
24 and the Goodnight applications.

25 MR. MOANDER: And Mr. Hearing Officer,

1 I'd like to just address that briefly if I could.

2 THE HEARING EXAMINER: Mr. Moander,
3 what are you addressing? What issue?

4 MR. MOANDER: The issue of the
5 consolidations, which is probably the key reason that
6 OCD entered an appearance in this case. I'm inclined
7 to agree with Ms. Shaheen, that there's a critical
8 mass of cases, some of which are currently before the
9 OCC, and then we have some cases before the division,
10 that ultimately are going to be subjected to motion
11 practice at the commission level.

12 The chair directed the parties to brief
13 up the scope of what would ultimately become a hearing
14 before the OCC. And really, what I suspect is going
15 to happen is the subject matter of either set of cases
16 will be addressed in those motions.

17 And Ms. Shaheen, correct me if I'm
18 wrong, or Mr. Rankin. If memory serves, I think the
19 commission was hopefully going to hear that at the
20 next meeting, if I understood that right, which would
21 be June 20th. So this would not be what, in my
22 experience, I'd call a significant delay.

23 But I think it's appropriate to set
24 these cases for another status conference down the
25 road a ways to let the commission make its

1 determination. Because there is a real possibility
2 here that some or perhaps all of these cases -- and
3 realizing we're just on 24432 -- could be brought up
4 to the commission level for a full hearing.

5 THE HEARING EXAMINER: So Mr. Moander,
6 are you suggesting that we refer these cases to the
7 commission to be consolidated with the commission's
8 business?

9 MR. MOANDER: I would not presume to
10 substitute my judgement for the commission. But what
11 I am suggesting is that there's active motion practice
12 going on to address consolidation as well as bring
13 some of these, if not all the -- and I'm trying to be
14 careful here, Mr. Hearing Officer.

15 Because what I'm really talking about
16 is 32 through 39, but I'm trying to stick just on 32.
17 That I think those will be addressed in full by the
18 commission. So I think that Ms. Shaheen's proposal
19 was probably prudent, because we may ultimately not
20 even need the status conference, you know, in six
21 weeks or what have you.

22 THE HEARING EXAMINER: Mr. Moander, how
23 are these cases that are before the division, how are
24 they related to the cases that were referred to the
25 commission?

1 MR. MOANDER: Well, there's a few
2 reasons. The primary main one being the EMSU, which
3 is a pool that encompasses a group of wells. There's
4 a lot of lingering discussion going on about the issue
5 of secondary recovery versus produced water injection.
6 And there's also, in OCD's opinion, a larger policy
7 question that needs to be resolved by those cases in
8 front of the OCC because -- there's a lot of evidence
9 here concerning, you know, what injection would look
10 like.

11 There's a discussion about Empire's
12 correlative rights through secondary recovery. And
13 this covers a -- I would describe it as a pool. But
14 also, you could even look at it as a geographic or
15 geologic issue in play. And so that's why those cases
16 are before the commission. Because there's a greater
17 policy need in play as well as the correlative rights
18 issue.

19 THE HEARING EXAMINER: But,
20 Mr. Moander, we have here six or so cases in which one
21 party is trying to revoke the permission already
22 granted that another party is injecting into this
23 unit. And are you saying that the division could make
24 a decision based on evidence in these cases that in
25 some way does not conflict with whatever the outcome

1 is with the commission cases?

2 MR. MOANDER: No. You know, I need to
3 be cautious here, Mr. Hearing Officer, because we do
4 have other active litigation, and the division has not
5 come to a final position on the cases currently before
6 the commission, and certainly hasn't come to a final
7 position on these cases before the division.

8 What I am saying, though, is that it's
9 OCD's view that there's probably going to be a benefit
10 to have at least some of these cases transferred up to
11 the commission so they can be addressed in totality
12 concerning a particular pool. And --

13 THE HEARING EXAMINER: When you say
14 some of these cases, you're talking about 32 through
15 39?

16 MR. MOANDER: Yes. And I'm really --
17 understanding the ethical issue in play, which I do
18 think the parties should have time to suss out and make
19 sure everyone's clear on how these cases would need to
20 be handled from an ethical perspective for Empire.
21 What I am saying is it's possible any or all of those
22 cases could very well end up before the commission.
23 And that determination would be made relatively
24 quickly, again, on how the parties have been working
25 today before the commission.

1 THE HEARING EXAMINER: All right.

2 Thank you, Mr. Moander.

3 Is there anything else from any party?

4 Mr. Rankin?

5 MR. RANKIN: Mr. Examiner, thank you.

6 I appreciate the opportunity just to make a couple
7 comments. Ms. Shaheen did note that she expects us to
8 make a motion or an argument that these cases should
9 all be referred to the commission. As we had argued
10 before you previously in the Goodnight cases, our
11 position has been and continues to be, as we expressed
12 to the commission last week, that the only thing the
13 commission should hear initially are those cases that
14 involve disposal within the unit boundaries.

15 That's it. Nevertheless, the division
16 did refer all the cases involving Goodnight, both
17 those in the unit and outside, to the commission for
18 consideration. That issue, the scope, is currently
19 before the commission, whether they should be all the
20 cases or just the cases within the unit boundary. I
21 have deferred to counsel for the operators involved in
22 these eight saltwater disposal wells while these
23 applications were pending to allow them to get up to
24 speed.

25 Therefore, I have not yet intervened in

1 these cases until today. And the reason I'm doing so
2 today is because I think it's imperative that our
3 voice be heard, and you understand the status of the
4 commission cases. Empire's position, as they
5 expressed to the commission, and Ms. Sheehan can
6 clarify -- as she expressed to the commission, that
7 their position is going to be that all these division
8 cases, these eight cases that they recently filed,
9 should be stayed at the division while the commission
10 cases involving Goodnight's applications are heard.

11 I think that would be a terrible
12 mistake. And I think that's not the right approach.
13 So we're here to make sure the division understands
14 that argument and the consequences. So we are eager
15 to make the case that, you know, as to the cases
16 currently now, these eight cases, there's three of
17 them that involve injection directly within the unit
18 boundary. The other five are outside the unit
19 boundary. Some of which now involve another statutory
20 unit to the southeast called the Arrowhead Grayburg
21 Unit.

22 So, you know, our view is not to make
23 this overcomplicated. Rather, to make it more simple,
24 and to simplify the issues by focusing solely within
25 the boundaries of the EMSU. So I think with that,

1 Mr. Examiner, my concern is delay. Goodnight has been
2 accused of seeking to delay the resolution of these
3 cases at the commission and division. That's not our
4 interest.

5 Rather, our interest is to make sure
6 that the parties have all the information necessary to
7 present a fair case in support of our position. And
8 to date, that's been a struggle, but we're working to
9 get there. And also so the division is fully up to
10 speed and the commission has all the information
11 before it necessary to make the broader policy
12 decisions that are being, you know, basically forced
13 upon it at this point.

14 So Mr. Examiner, at this point, I
15 guess, I just want to make -- yeah, I think our
16 position is clear. I am concerned about delay. I am
17 concerned that we have a setting. You know, the
18 commission cases for the end of September. And it's a
19 week-long hearing in which currently all these
20 Goodnight cases will be heard. We'll be taking the
21 position that only those within the unit should be
22 heard.

23 And so at this point, I'll be including
24 in my position, obviously, the argument that these
25 additional three wells within the unit that are

1 currently now before the division should also be
2 included in those cases so that everybody is in the
3 same procedural posture and has an opportunity to
4 present their facts before the division.

5 THE HEARING EXAMINER: Our commission
6 stayed three wells. Which cases are the three wells?

7 MR. RANKIN: Mr. Examiner, three wells
8 are the current one we're talking about, the P15,
9 which is case 24432. Also case 24434, which involves
10 Rice Operating, which has not yet been called. And
11 then case number 24436, which also involves the Rice
12 Operating well, which --

13 THE HEARING EXAMINER: Did you say
14 Bryce or Rice?

15 MR. RANKIN: Rice, R-I-C-E.

16 THE HEARING EXAMINER: Rice. Okay.

17 All right. Anything else from the
18 parties on this single case?

19 MR. SUAZO: Yes, Mr. Hearing Examiner,
20 on behalf of Pilot Water. As I mentioned earlier,
21 it's still pretty early days. We've communicated with
22 Mr. Rankin and Goodnight. We don't yet have enough
23 information to say whether these cases should or
24 should not be consolidated. But we'll explore that
25 issue and confer with the parties, and also let the

1 division know our position at a later date. So we ask
2 for additional time to assess the situation.

3 THE HEARING EXAMINER: Okay. And
4 Mr. Padilla, you don't have anything to add?

5 MR. PADILLA: No, I don't have anything
6 to add. I think Ms. Shaheen has explained our
7 position.

8 THE HEARING EXAMINER: Okay. Yes, and
9 I understand that position as well. So at this time,
10 I'm allowing Mr. Rankin to intervene on behalf of his
11 client.

12 If there's a reason that that's the
13 wrong decision, Ms. Shaheen, I'm sure you'll file a
14 motion and let me know why I'm wrong. And I'll look
15 forward to that.

16 What we'll do is, in this case, we will
17 set this for another status conference after the
18 commission has decided what the scope of the hearing
19 before them will be. They're meeting June 20. Our
20 June 27 docket is full. So this will have to wait
21 until July, it looks like. And that will be July 11.

22 So Ms. Shaheen, please continue this
23 case to the July 11 docket.

24 MS. SHAHEEN: Thank you, Mr. Examiner.

25 THE HEARING EXAMINER: Thank you,

1 Ms. Shaheen.

2 Now I'm calling 24433 through 39.
3 Entries of appearance, please?

4 MS. SHAHEEN: Sharon Shaheen,
5 Montgomery and Andrews, for the applicant, Empire New
6 Mexico.

7 THE HEARING EXAMINER: Thank you.

8 MR. PADILLA: Ernest L. Padilla for
9 Empire New Mexico.

10 THE HEARING EXAMINER: Thank you. Are
11 there any --

12 MR. BECK: Good morning, Mr. Hearing
13 Examiner. Matt Beck on behalf of Rice Operating and
14 Permian Line Service.

15 THE HEARING EXAMINER: Good morning --

16 MR. BECK: We filed our entry of
17 appearance yesterday. It has not been officially
18 filed on the docket. So that might be a surprise for
19 you to hear that.

20 THE HEARING EXAMINER: It was. Who are
21 you representing?

22 MR. BECK: Rice Operating and
23 Permian --

24 THE HEARING EXAMINER: And who was the
25 other?

1 MR. BECK: Permian Line Service.

2 THE HEARING EXAMINER: Line service.

3 MS. BENNETT: Good morning,
4 Mr. Examiner. This is Deana Bennet from Modrall
5 Sperling, and we are noted on the docket as
6 representing Rice Operating and Permian Line Service.
7 But we are withdrawing our entry of appearance, and
8 Mr. Beck and his firm are taking over the
9 representation. So I just wanted to make that clear
10 for the docket.

11 THE HEARING EXAMINER: Thank you.

12 Are there any other parties,
13 Ms. Shaheen, that you know of?

14 MR. MOANDER: Chris Moander on behalf
15 of OCD.

16 THE HEARING EXAMINER: Thank you.

17 Are there any other parties,
18 Ms. Shaheen?

19 MS. SHAHEEN: Not that I'm aware of.

20 THE HEARING EXAMINER: Okay.

21 Ms. Shaheen, what do you want to do with these cases?

22 MS. SHAHEEN: Well, the same situation.
23 I mean, we just had our discussion about case number
24 32. And the same discussion applies here. So I would
25 ask that these cases also be set for a status

1 conference in July.

2 THE HEARING EXAMINER: Okay. Mr. Beck,
3 did you object?

4 MS. SHAHEEN: Mr. Hearing Examiner, if
5 I may. When Modrall Sperling was still representing
6 Rice Operating and Permian Line Services, we did
7 object to the cases proceeding by affidavit.

8 THE HEARING EXAMINER: Okay. Mr. Beck,
9 are you still with us? We may have to recess on these
10 cases until Mr. Beck comes back with us.

11 MS. SHAHEEN: He's here now. He's
12 calling in, apparently.

13 THE HEARING EXAMINER: I see.

14 MR. RANKIN: Mr. Examiner, while
15 Mr. Beck reconnects, as with the prior case -- I'm
16 Adam Rankin with Holland and Hart. We represent
17 Goodnight Midstream Permian. And we would also orally
18 move to intervene in all these cases, 24433 through
19 24439.

20 THE HEARING EXAMINER: Okay. And --

21 MR. RANKIN: On the same bases.

22 THE HEARING EXAMINER: On the same
23 basis?

24 MR. RANKIN: Mm-hmm.

25 MR. BECK: And I'm back, Mr. Hearing

1 Officer. I'm sorry. My microphone went out, but my
2 video's still here, so.

3 THE HEARING EXAMINER: Okay. All
4 right, Mr. Beck. Thanks. Hold on a second.
5 Mr. Rankin has intervened on behalf of Goodnight on
6 the same basis that he intervened in the last case.

7 So Mr. Rankin, please state the nature
8 of your interest in the application.

9 MR. RANKIN: Mr. Examiner, as with the
10 prior case we discussed, several of these cases are
11 seeking to revoke injection authority for wells that
12 are currently disposing produced water either within
13 the unit area and the unit ties interval, just as with
14 Goodnight's cases that Empire's similarly seeking to
15 revoke injection authority for, or are outside the
16 unit boundary in the similar position to Goodnight's
17 cases.

18 Some are closer. Some are farther than
19 Goodnight's cases. And so there's no principle basis
20 to distinguish based on the allegations raised between
21 Goodnight's injection or these other wells. Any
22 decision the division makes that would affect these
23 cases and the injection authority for these wells
24 could potentially be adversely affecting Goodnight's
25 as well.

1 THE HEARING EXAMINER: All right. Hold
2 on, Mr. Rankin. One second.

3 Ms. Shaheen, your application is to
4 revoke injection authority under these orders that are
5 listed in these cases. Is this Goodnight's authority
6 in these cases?

7 MS. SHAHEEN: No. These are Rice
8 Operating's authority. And I believe one of the wells
9 is operated by an affiliate of Rice, Permian Line
10 Service.

11 THE HEARING EXAMINER: So Mr. Rankin,
12 it's not your client's authority that's being revoked
13 or on the table for revocation. So what gives you an
14 interest in these cases?

15 MR. RANKIN: Mr. Examiner, in our cases
16 for which some testimony and exhibits were filed,
17 Empire has taken the position and has presented
18 evidence that no injection should occur anywhere
19 within the unit or within two miles of the unit. So
20 they're making broad claims about the
21 inappropriateness of injection.

22 And these are necessarily all tied
23 together because of that. As Ms. Shaheen stated
24 previously this morning, it's the amount of water
25 that's being injected that is causing impairment under

1 their claims. So for that reason, we think it's
2 imperative that all parties whose water is being
3 injected have a say in whether or not any of these
4 permits should be revoked.

5 THE HEARING EXAMINER: Okay. So now
6 I'm understanding, Mr. Rankin, that your client has an
7 interest in the injection. Even though it's not the
8 party that's doing the injection, it's your produced
9 water that's being injected?

10 MR. RANKIN: Mr. Examiner, we have ten
11 similarly situated wells intermixed with these eight
12 wells that are currently before the division. They
13 are all within the same acreage, intermixed. Some
14 within the unit, some within a mile of the unit
15 boundary. So there's no distinction in terms of
16 distance, in terms of activities that would
17 distinguish between our injection and our wells and
18 the wells that are being challenged here now before
19 the division.

20 THE HEARING EXAMINER: Okay. So you
21 have injection wells. You didn't mention that before.
22 You have injection wells within the unit. And you
23 feel as though any authority that's revoked could
24 impact your client?

25 MR. RANKIN: Correct, Mr. Examiner.

1 THE HEARING EXAMINER: Okay. Thanks
2 for the clarification. And so the other item here is
3 the extent to which the intervener opposes the
4 issuance of the order the applicant seeks.

5 MR. RANKIN: Mr. Examiner, we request
6 the division deny each of Empire's applications.

7 THE HEARING EXAMINER: Okay. All
8 right.

9 Ms. Shaheen, you heard that.

10 Mr. Beck, did your client object to
11 these applications?

12 MR. BECK: Yes.

13 THE HEARING EXAMINER: On what basis?

14 MR. BECK: They are currently operating
15 the disposal -- and I'm probably newer to this than
16 you just heard from Pilot's attorney, since I just got
17 in last night. But they are using these disposal
18 wells currently to inject disposal. And so they're
19 opposed to the permits being revoked.

20 THE HEARING EXAMINER: So it's your
21 client's authority that's the subject matter of this
22 application?

23 MR. BECK: Yes, Mr. Hearing Officer.

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

1 So Ms. Shaheen, they're your
2 applications. You're asking for a status conference,
3 and the soonest one we can give you is July 11. Is
4 that acceptable?

5 MS. SHAHEEN: That is acceptable. And
6 if I might just note for the record our objection to
7 Goodnight's intervention. And we will, after
8 conferring with the client, determine whether we will
9 be filing a motion in that regard.

10 THE HEARING EXAMINER: Of course. By
11 all means.

12 Mr. Rankin, Mr. Beck, are there any --
13 yeah. July 11 is suitable for everyone?

14 MR. RANKIN: Yes, Mr. Examiner.

15 MR. BECK: Yes, Mr. Examiner.

16 THE HEARING EXAMINER: Mr. Moander,
17 thank you.

18 MR. MOANDER: Yes, Mr. Examiner.

19 THE HEARING EXAMINER: Okay. Then
20 Ms. Shaheen, will you continue these cases? I think
21 we have to separate this one case now.

22 So Freya, will you show 24432 as
23 separate from the other cases?

24 MS. TSCHANTZ: Yes, I will.

25 THE HEARING EXAMINER: All right.

1 Thank you. So case numbers 24433 through 39 will all
2 be continued to the July 11 docket for a status
3 conference. Anything further from the parties on
4 these cases?

5 MR. BECK: No, Mr. Hearing Officer.

6 THE HEARING EXAMINER: Thank you.

7 MR. RANKIN: No.

8 MS. SHAHEEN: Thank you.

9 THE HEARING EXAMINER: Thank you.

10 We're calling 24446. Entries of
11 appearance, please?

12 MS. BENNETT: Good morning,
13 Mr. Examiner. Deana Bennett on behalf of Marathon Oil
14 Permian.

15 THE HEARING EXAMINER: Thank you.

16 MR. FELDEWERT: Good morning,
17 Mr. Examiner. Michael Feldewert with Santa Fe office
18 of Holland and Hart on behalf of COG Operating, who
19 has objected to the matters proceeding by affidavit.
20 I believe that this could be consolidated with 24448
21 through 49, which involve the Marathon back tax. So I
22 think they're --

23 THE HEARING EXAMINER: Are they on
24 today's docket?

25 MR. FELDEWERT: Yes.

1 THE HEARING EXAMINER: Oh, down at
2 number 41?

3 MR. FELDEWERT: Mm-hmm.

4 THE HEARING EXAMINER: You said 448 and
5 49?

6 MR. FELDEWERT: Yes, sir. Because COG
7 objected in those as well, and the acreages, they're
8 all in Sections 27 and 34.

9 THE HEARING EXAMINER: Okay.
10 Ms. Bennett, is there any objection to consolidating
11 this one case, 24446, with 24448 and 9?

12 MS. BENNETT: Mr. Hearing Examiner, no
13 objection to consolidating them for purposes of
14 today's discussion. But if we go to a contested
15 hearing, then we may need to revisit that decision.
16 But it's fine to keep them together for purposes of
17 today's discussion.

18 THE HEARING EXAMINER: Okay. So Freya,
19 would you show in the notes that this case is now
20 consolidated with the other two cases? Thank you.

21 And if we need to separate it for a
22 hearing, then we'll hear that. So Ms. Bennett, these
23 are your cases, all three of them?

24 MS. BENNETT: They are.

25 THE HEARING EXAMINER: Okay. Let me

1 call the other two then. 24448 and 24449. And I
2 assume the entries of appearance are the assume?

3 MR. FELDEWERT: Yes, sir.

4 MS. BENNETT: Yes.

5 THE HEARING EXAMINER: Okay.

6 Ms. Bennett, where do you want to go with these cases?

7 MS. BENNETT: As Mr. Feldewert noted,
8 COG Operating objected to these cases proceeding by
9 affidavit. And I'm interested in understanding more
10 about the basis for that objection and what COG's next
11 steps are.

12 THE HEARING EXAMINER: Mr. Feldewert?

13 MR. FELDEWERT: Yes, sir.

14 THE HEARING EXAMINER: Your objection?

15 MR. FELDEWERT: Sure. So these are
16 newly filed cases. They seek to pool COG's interests
17 in this acreage, which is substantial. It's my
18 understanding from the client that COG and Marathon
19 are in discussions, and that we should know within a
20 month whether COG will need to send competing well
21 proposals. So I'm asking for a -- I suggest a status
22 conference in June.

23 THE HEARING EXAMINER: Okay. So going
24 back to the reason for the objection. How would you
25 characterize that?

1 MR. FELDEWERT: The reason for the
2 objection would be that they're seeking to pool our
3 interests. We received the applications. The parties
4 are in discussions. And COG may decide that they
5 should operate this acreage. And that's what they're
6 in discussions with Marathon about.

7 THE HEARING EXAMINER: Is there a limit
8 to the amount of interest you can hold in a pool
9 before you can object?

10 MR. FELDEWERT: There is no such limit
11 or limitation.

12 THE HEARING EXAMINER: Okay. So any
13 party, anyone with standing can object?

14 MR. FELDEWERT: Anyone who has an
15 interest can object. Correct. Anyone who has an
16 interest that is being pooled can object.

17 THE HEARING EXAMINER: And how is that
18 different from standing?

19 MR. FELDEWERT: The same.

20 THE HEARING EXAMINER: Same. Okay. So
21 you may file competing applications. You don't know.
22 Depends on negotiations?

23 MR. FELDEWERT: Correct.

24 THE HEARING EXAMINER: Okay.

25 Ms. Bennett?

1 MS. BENNETT: Thank you. At this
2 point, it seems like a July 11th status conference
3 would work.

4 THE HEARING EXAMINER: Okay. So
5 Ms. Bennett, please continue these three cases to the
6 July 11 docket.

7 Mr. Feldewert, how much time do you
8 think is necessary for your client to determine
9 whether it's going to file competing applications?

10 MR. FELDEWERT: They told me that they
11 should know within the month whether they're going to
12 be filing. So that July 11th status conference makes
13 perfect sense to me.

14 THE HEARING EXAMINER: Perfect. Great.
15 Okay. Anything else on these cases? No.

16 MR. FELDEWERT: Thank you.

17 THE HEARING EXAMINER: We're off the
18 record on these cases. Thank you.

19 24457. It looks like these are
20 consolidated with 59, 60, 62, 63, and 79. Entries of
21 appearance, please.

22 MS. BENNETT: Good morning,
23 Mr. Examiner. Deana Bennett on behalf of Franklin
24 Mountain Energy.

25 THE HEARING EXAMINER: Good morning.

1 MR. FELDEWERT: Good morning,
2 Mr. Examiner. Michael Feldewert with Santa Fe office
3 of Holland and Hart for MRC Permian.

4 THE HEARING EXAMINER: Good morning.

5 And Ms. Bennett, these are your cases?

6 MS. BENNETT: Yes, they are. And again
7 in these cases, Matador has filed an objection to the
8 cases proceeding by affidavit. And I'm interested in
9 hearing the basis for that. But with these cases,
10 Franklin Mountain Energy's desire is to move them
11 forward and to work on setting a contested hearing.

12 THE HEARING EXAMINER: Ms. Bennett,
13 these are all of your cases? You filed all these
14 cases?

15 MS. BENNETT: I did.

16 THE HEARING EXAMINER: Okay. So none
17 of these are competing cases then?

18 MS. BENNETT: No. These are all
19 Franklin Mountain Energy cases.

20 THE HEARING EXAMINER: And they're
21 consolidated why?

22 MS. BENNETT: These are consolidated
23 because they involve the same acreage, and they're all
24 part of Franklin Mountain Energy's rope development
25 area.

1 THE HEARING EXAMINER: Okay. Thank
2 you.

3 Mr. Feldewert?

4 MR. FELDEWERT: Sure. So they do
5 involve Sections 18, 19, and 30. So they're stand-up
6 proposals. MRC Permian is the party that they seek to
7 pool. MRC Permian has examined the proposals. They
8 intend to send out competing well proposals this
9 month. So we will be in a position to file competing
10 pooling applications once those are sent. So my
11 assumption is going to be that once those are sent,
12 there will be some discussions, but we will be in a
13 position to file applications as needed.

14 THE HEARING EXAMINER: Okay.
15 Ms. Bennet, July 11 status conference?

16 MS. BENNETT: Is it possible to have a
17 June 13th status conference in order to understand
18 whether MRC has sent out its proposals and so we can
19 gauge when those proposals will be ripe for hearing?

20 THE HEARING EXAMINER: Okay. Freya, is
21 that possible?

22 MS. TSCHANTZ: Yes, that's fine.

23 THE HEARING EXAMINER: We'll put these
24 on the June 13th docket for a status conference to see
25 if MRC Permian has sent out competing applications.

1 MS. BENNETT: Thank you.

2 THE HEARING EXAMINER: Now Ms. Bennett,
3 your client should receive the proposals rather soon
4 then?

5 MS. BENNETT: Yes.

6 MR. FELDEWERT: So let me -- I think
7 you said, Mr. Examiner, to see if Matador had filed
8 competing applications. We'd be sending out competing
9 well proposals. And they will receive the proposals.

10 THE HEARING EXAMINER: Right. That's
11 what I meant.

12 MR. FELDEWERT: Okay.

13 THE HEARING EXAMINER: Thank you.
14 Anything further on these cases?

15 MS. BENNETT: No. Thank you.

16 MR. FELDEWERT: Thank you.

17 THE HEARING EXAMINER: Yup. Thank you.
18 Skipping over the cases that we've
19 already called. Moving onto 24450. It looks like
20 this case should be consolidated with 24443 and 24445,
21 but I'll wait to hear from the parties. Entries of
22 appearance, please?

23 MS. BENNETT: Thank you, Mr. Examiner.
24 Deana Bennett on behalf of Franklin Mountain Energy in
25 case 24450.

1 THE HEARING EXAMINER: 50. Before we
2 go to another entry, are you also entered on 24443 and
3 45?

4 MS. BENNETT: What number are those on
5 the docket, Mr. Examiner?

6 THE HEARING EXAMINER: Oh, these are on
7 the July 11 docket. This is a note. It's a question.
8 Okay. They're not on today's docket. So I'll ask you
9 that question in a moment. Are there any other
10 entries of appearance?

11 Mr. Rankin?

12 MR. RANKIN: Mr. Examiner, we have not
13 entered in this case. So this is a tract that our
14 clients are not owners in.

15 THE HEARING EXAMINER: I'm sorry. I
16 didn't hear you.

17 MR. RANKIN: This is a tract in which
18 our clients do not own it. So we do not appear.

19 THE HEARING EXAMINER: Okay.

20 MS. BENNETT: Mr. Examiner, I think I
21 can provide some clarity on this. So case number
22 24450 involves the same acreage as 24454, 56, which
23 are 44 and 45 on the docket. And we had filed a
24 consolidated pre-hearing statement for these cases
25 before XTO Energy entered an appearance and objected

1 to 24454 and 56 going by affidavit. So there is
2 currently no objection to case number 24450 proceeding
3 by affidavit. And we would ask that that case be set
4 for an affidavit hearing later after the status
5 conferences.

6 THE HEARING EXAMINER: Perfect. Then
7 that's what we'll do. We'll get this --

8 MS. BENNETT: Thank you.

9 THE HEARING EXAMINER: You're welcome.
10 So there's no other party on this case?

11 MS. BENNETT: No other parties.

12 THE HEARING EXAMINER: All right. So
13 we'll hear this first then as a hearing by affidavit.

14 Now I'm going to call 24454 and 56.
15 Entries of appearance, please?

16 MS. BENNETT: Thank you, Mr. Examiner.
17 Deana Bennett on behalf of Franklin Mountain Energy.

18 THE HEARING EXAMINER: Thank you.

19 MR. RANKIN: Mr. Examiner, Adam Rankin
20 with Holland and Hart Santa Fe office appearing on
21 behalf of XTO Energy in both these cases.

22 THE HEARING EXAMINER: Did you say XTO
23 Energy?

24 MR. RANKIN: XTO Energy.

25 THE HEARING EXAMINER: It's a little

1 hard to hear you, but thank you. On both cases;
2 right?

3 MR. RANKIN: Correct.

4 THE HEARING EXAMINER: And you filed an
5 objection?

6 MR. RANKIN: We did, Mr. Examiner.

7 THE HEARING EXAMINER: Would you let us
8 know why?

9 MR. RANKIN: Mr. Examiner, the parties
10 are currently in commercial discussions. XTO's been
11 discussing with Franklin Mountain for some time prior
12 to today's hearing. In advance of the deadline to
13 file a continuance, XTO, directly and then through
14 counsel, requested a continuance to allow the parties
15 to continue to try to reach commercial resolution.
16 And so because that request was denied, we filed an
17 objection to the cases proceeding by affidavit.

18 THE HEARING EXAMINER: Okay. And what
19 does it mean by commercial discussions?

20 MR. RANKIN: In other words,
21 Mr. Examiner, XTO is seeking to reach an agreement
22 with Franklin Mountain over their interests in these
23 spacing units either by trade or some sort of
24 commercial resolution or potentially through
25 participating in the unit.

1 So to date, they've been discussing
2 commercial resolutions outside of a JOA. But now,
3 recently, Franklin Mountain did provide them with a
4 proposed JOA. And so they're looking at all options
5 to try to make sure everything's on the table so they
6 can evaluate a potential agreement before having to go
7 to forced pooling.

8 THE HEARING EXAMINER: I see. And JOA
9 stands for joint operating agreement?

10 MR. RANKIN: Joint operating agreement.

11 THE HEARING EXAMINER: Just wanted to
12 make sure I understand what you're saying.

13 Ms. Bennett?

14 MS. BENNETT: Thank you. XTO and
15 Franklin Mountain Energy have been in discussions, but
16 those discussions are not proceeding at a pace. And
17 so for that reason, Franklin Mountain Energy would
18 like to set these cases for a contested hearing.

19 This is not a situation where the
20 parties haven't been engaged in discussions and are
21 only now engaged in the discussions. Although those
22 discussions are morphing. But Franklin Mountain
23 Energy would like to set these cases for a contested
24 hearing.

25 THE HEARING EXAMINER: And when were

1 these cases filed?

2 MS. BENNETT: These cases were only
3 recently filed. This is the first time, I believe,
4 that they were on the docket.

5 THE HEARING EXAMINER: Okay. So I'm
6 assuming, Ms. Bennett, that you want me to set a
7 contested hearing so that it gives some impetus to the
8 parties to resolve the issues?

9 MS. BENNETT: That's right.

10 THE HEARING EXAMINER: Mr. Rankin?

11 MR. RANKIN: Mr. Examiner, I certainly
12 understand that position, and can't dispute their
13 interest in proceeding. Nevertheless, Franklin
14 Mountain did file continuances for other related cases
15 back to the July docket. So, you know, we would like
16 a little extra time. You know, our intention is not
17 necessarily to go to a contested hearing.

18 We would like to try to reach
19 resolution, and so just a little extra time would
20 allow the parties to do that. So if it is Franklin
21 Mountain's desire to set a contested hearing, we would
22 ask that it be set in the July date neighborhood as
23 similar to their other cases they continued.

24 THE HEARING EXAMINER: As I have
25 previously mentioned, I am going to give preference to

1 the applicant's wishes, if at all possible.

2 What makes me pause, Ms. Bennett, is
3 that this is the first status conference that we're
4 in. Now you're saying to me that the parties have
5 been negotiating for some time, and it doesn't look
6 like the negotiations are going.

7 So if I set this for a contested
8 hearing in August, which is when I would be looking to
9 set it, I think we should have another status
10 conference between now and August to see what's
11 happening. But I am open to August dates. Do you
12 have August dates already?

13 MS. BENNETT: I don't have August
14 dates. I would appreciate the hearing examiner's
15 stepwise approach to this. And so it sounds like
16 perhaps a July 11th status conference, which I would
17 reserve the right to modify to an affidavit hearing if
18 the parties are able to reach an agreement by then,
19 and with the understanding that between now and July
20 11th, Mr. Rankin and I will work together to propose
21 some August hearing dates.

22 THE HEARING EXAMINER: Perfect.

23 Mr. Rankin?

24 MR. RANKIN: I agree.

25 THE HEARING EXAMINER: Okay. So

1 Ms. Bennett, please continue these cases to the July
2 11 status conference. I will set an August hearing at
3 that time if the parties haven't resolved their
4 issues, or you can go to a hearing by affidavit, as
5 you said, on July 11.

6 MS. BENNETT: Thank you.

7 THE HEARING EXAMINER: Anything
8 further?

9 MS. BENNETT: Nothing from me. Thank
10 you.

11 THE HEARING EXAMINER: Okay. Do we
12 have any more -- yes, we do. 24467. Looks like it's
13 consolidated with 68, 69, and 70. Entries of
14 appearance, please?

15 MS. BENNETT: Good morning,
16 Mr. Examiner. Deana Bennett on behalf of Franklin
17 Mountain Energy.

18 THE HEARING EXAMINER: Good morning.

19 MR. RANKIN: Mr. Examiner, good
20 morning. Adam Rankin with the Santa Fe office of
21 Holland and Hart appearing on behalf of XTO Energy in
22 each of the cases. And in case 24468 on behalf of
23 Apache Corporation.

24 THE HEARING EXAMINER: Thank you, sir.

25 Ms. Bennett?

1 MS. BENNETT: This is the same
2 situation as we just discussed. The parties are in
3 negotiations. And I did want to just make a
4 correction. I said that the negotiations weren't
5 going fast enough. But not that they're not likely to
6 be resolved, just that they're not moving as quickly
7 as Franklin Mountain Energy would like them to move.

8 So I would suggest the same process
9 that we just identified for the Norte State cases.
10 That for these cases that the division just called, we
11 set them for a status conference on July 11th with the
12 option to change that to an affidavit hearing, and in
13 the interim, Mr. Rankin and I will agree upon August
14 hearing dates to the extent necessary.

15 THE HEARING EXAMINER: Okay.
16 Mr. Rankin?

17 MR. RANKIN: A hundred percent agree,
18 Mr. Examiner. I appreciate the timeframe.

19 THE HEARING EXAMINER: Take that and
20 run. All right. So we're off the record in 24467
21 through 70. And Ms. Bennett will continue these cases
22 to the July 11 docket for a status conference.

23 MS. BENNETT: Thank you, Mr. Examiner.

24 THE HEARING EXAMINER: Now I said I was
25 going to call your other case, Ms. Bennett, as the

1 first affidavit hearing, and I believe we're at that
2 point. But I also said that we were going to discuss
3 your motion regarding your June 6 cases. So I'm going
4 to call those cases first, then we'll deal with your
5 hearing by affidavit.

6 We have 24320 and 24321. Entries of
7 appearance, please?

8 MS. HARDY: Dana Hardy on behalf of COG
9 Operating.

10 THE HEARING EXAMINER: Thank you.

11 MS. BENNETT: And good morning,
12 Mr. Examiner. Deana Bennett on behalf of Cimarex
13 Energy Co.

14 THE HEARING EXAMINER: All right. Now
15 I've read this expedited request for a status
16 conference. Now Ms. Hardy has not had an opportunity
17 to respond to it yet. It is objected to, Ms. Bennett.
18 That is here in the motion. I've looked at your
19 affidavits. I've looked at everything you've sent me.

20 Ms. Hardy, your response?

21 MS. HARDY: Mr. Examiner, I don't
22 object to having a status conference today. But I do
23 object to the request that the hearing be continued.
24 We had a status conference on April 4th and agreed to
25 set this for a contested hearing on June 6th. COG is

1 ready to proceed to hearing on that date, which is
2 three months after the applications were filed.

3 Cimarex's motion argues that COG failed
4 to timely respond to their trade proposal. But it
5 does not mention the fact that COG accepted Cimarex's
6 trade proposal on May 2nd. And now Cimarex wants to
7 revise its proposal.

8 So Cimarex can raise its concerns
9 regarding the JOA and any negotiations in its hearing
10 testimony. But at this point, we would like for this
11 case to proceed to hearing on June 6th. We don't
12 think there's a basis for a continuance.

13 THE HEARING EXAMINER: Before you
14 respond, Ms. Bennett, I'm going to direct Ms. Hardy to
15 a few paragraphs in the motion. And you don't need to
16 have it. If you don't, I'll just tell you what it
17 says.

18 Paragraph 13, "It was only after the
19 status conference" -- and we're talking about the
20 status conference -- because, Ms. Bennett, you were
21 referring to two different groups of cases in here.
22 So I had to try to figure out which cases you were
23 referring to. But we are talking about the April 4
24 status conference for the Macho Nacho wells in
25 paragraph 13.

1 MS. BENNETT: Mr. Examiner, we're
2 talking about the May 2nd status conference that was
3 held on the Eata Fajita wells that I discussed in
4 paragraph 9. And I apologize that that wasn't clear
5 in my motion.

6 THE HEARING EXAMINER: I understand
7 that. It wasn't, but, again, I understand. But those
8 cases are not going to hearing. So it was a little
9 bit -- I understand how they're related, but they're
10 not going to hearing on June 6th. If I'm not
11 mistaken, those cases were the subject of the
12 potential motion hearing on June 2nd, which has all
13 been called off now for the reasons you state here.

14 Anyway. Okay. So "It was only after
15 the status conference on May 2nd that COG responded
16 substantively to the Cimarex initial trade concept."
17 But now of course we hear something a little different
18 from Ms. Hardy.

19 MS. BENNETT: No. I think that my
20 statement in the motion is correct. COG responded
21 after the status conference on May 2nd, substantively,
22 to the offer. That's what I was trying to get at
23 here. I mean, it may not have been as artful as I
24 could've been in the timeframe that I had.

25 And I would -- let me take a look at

1 what the affidavit states about that. But that's what
2 I was trying to get to, is that the first time COG
3 substantively responded to the trade offer was after
4 the status conference. I wasn't trying to be --

5 THE HEARING EXAMINER: No, I
6 understand. And I'm not accusing you of being --

7 MS. BENNETT: Whatever it is. Yeah.

8 THE HEARING EXAMINER: Not accusing you
9 of that at all. I'm just trying to understand what
10 your motion is saying. So Ms. Hardy is saying here
11 that COG responded and accepted the initial trade
12 concept, but the terms have been revised.

13 Is that what you're saying, Ms. Hardy?

14 MS. HARDY: That is what I'm saying,
15 Mr. Examiner.

16 THE HEARING EXAMINER: That is what
17 you're saying?

18 MS. HARDY: Yes.

19 THE HEARING EXAMINER: So let me
20 continue. And you'll have a chance to respond to it.
21 Number 14, "Given the passage of time since the
22 original proposal, Cimarex informed COG that Cimarex
23 needed to review the January trade proposal." Oh, so
24 that's what you -- now I understand this as you had
25 been making -- okay.

1 And that's what Ms. Hardy's referring
2 to as well. An extra sentence in there would've been
3 helpful, Ms. Bennett. "Cimarex is preparing a revised
4 trade proposal." Okay. So the parties are
5 negotiating, basically, and because the parties are
6 negotiating, you want to delay the contested hearing.

7 The contested hearing is for June the
8 6th. Today is May 16. That gives the parties still
9 some time to either accept or reject this revised
10 trade proposal. And then your last sentence that I've
11 outlined is that "Negotiations between the parties are
12 successful, a contested hearing would not be
13 necessary." Okay. Understood.

14 Ms. Bennett?

15 MS. BENNETT: Thank you, Mr. Examiner.
16 So yes, Cimarex is prepared to, and is intending to,
17 send a revised trade proposal today or tomorrow. I've
18 spoken with Cimarex. It's drafted. They're just
19 finalizing the details. The trade proposal does cover
20 the acreage that's at issue in both the Macho Nacho
21 and the Eata Fajita cases. And so if acceptable to
22 COG, or if the negotiations are fruitful, would
23 eliminate two full sets of contested hearings, not
24 just one.

25 And could even eliminate the need for

1 pooling cases altogether. Because as I've stated
2 previously, Cimarex owns or controls 960 acres that
3 COG is attempting to pool. This is a substantial
4 interest. And if the negotiations are fruitful and
5 Cimarex is allowed to proceed, it doesn't even need to
6 pool anyone.

7 In terms of your point that the June
8 6th hearing would still allow time for the parties to
9 negotiate, theoretically, that's accurate. But
10 exhibits would be due, I think, on May 30th. And if
11 the negotiations are not successful, there are
12 deficiencies within the Macho Nacho applications that
13 warrant the division's review before going to a
14 hearing.

15 The Macho Nacho applications, which are
16 the subject of the motion that I filed, seek to pool
17 acreage and pool Section 6 and 7. And Section 6 is
18 100 percent controlled by Cimarex. And so I would
19 be -- if the negotiations are not fruitful, I would be
20 filing a motion to dismiss the applications on the
21 basis that the application is invalid.

22 I understand Ms. Hardy's point that the
23 division has allowed in the past parties to, what I'll
24 call, pool over JOA acreage. And so that is a legal
25 issue that the division would need to decide. And so

1 I would be filing a motion to dismiss. I don't
2 necessarily want to engage in unnecessary motion
3 practice.

4 And I don't want to have to take the
5 division's time deciding unnecessary motions. So
6 that's why I'm suggesting this stepwise approach that
7 actually protects -- it's designed to protect
8 Cimarex's real interest here in 960 acres that
9 Ms. Hardy has not identified anything that would
10 suggest a need to go to hearing much sooner on these
11 cases in this expedited fashion.

12 I also wanted to point out one other
13 thing, which is that technically -- and I did raise
14 this at the April 4th status conference. The Macho
15 Nacho applications were prematurely filed. The Macho
16 Nacho applications that we're talking about today were
17 actually not ripe for filing, and should not have been
18 filed and heard until the May 2nd docket.

19 So, you know, kind of projecting back
20 to the April 4th docket is not appropriate, because
21 the division's orders -- and Ms. Bradfute talked about
22 this. Others have talked about it before with the
23 division. The division's orders require 30 days
24 between the time of a proposal and the time of filing
25 an application. That did not occur here. COG

1 prematurely filed these applications.

2 Had they not prematurely filed these
3 applications, we would've had a first status
4 conference on May 2nd. And we would be looking
5 further down the road to allow the parties time to
6 negotiate.

7 THE HEARING EXAMINER: Okay.

8 Ms. Hardy?

9 MS. HARDY: Mr. Examiner, with respect
10 to the 30-day principle, that's not a hard and fast
11 rule. There can be exceptions to that for good cause.
12 And in any event, that's a moot point because at this
13 point it's been several months since the applications
14 were filed. So I believe they may have been filed 28
15 days after the proposals were sent.

16 We're not talking about a situation
17 where they were filed a week after or a couple days
18 after proposals were sent. So the point of that
19 principle is to allow the parties to negotiate. And
20 that has happened here. So I think that's not an
21 issue at this point that should be considered.

22 THE HEARING EXAMINER: Hold on one
23 second. I want to try to understand. These cases,
24 24320 and 24321 involve the Macho Nacho wells?

25 MS. HARDY: Correct.

1 THE HEARING EXAMINER: Very good. Now
2 there was another set of cases, 24372 and 24373, that
3 deal with different wells. Is that correct?

4 MS. HARDY: Correct. The Eata Fajita
5 wells.

6 THE HEARING EXAMINER: Right. Were
7 those the cases in which you withdrew your
8 applications?

9 MS. HARDY: In those cases, we have not
10 withdrawn our pooling applications. We withdrew our
11 applications for permits to drill the APDs. Because
12 you do not need an APD to pool. I mean, most of these
13 cases, I think, that the division considers, APDs have
14 not yet been issued. It's very common.

15 So we agreed to withdraw those APDs
16 because COG did not have an interest in every tract,
17 which is the requirement. So we withdrew those.
18 That's not the case with these Macho Nacho APDs or
19 applications.

20 THE HEARING EXAMINER: And you withdrew
21 your APDs because of the argument Ms. Bennett made May
22 2nd?

23 MS. HARDY: Correct.

24 THE HEARING EXAMINER: If I'm correct
25 about May 2nd.

1 MS. HARDY: Correct.

2 THE HEARING EXAMINER: Okay. All
3 right. So that clears my mind of that issue there.
4 Now we're talking about the 30-day issue that
5 Ms. Bennett brought up. So let's talk about that a
6 little bit more. And you have some actual dates for
7 me. When were the proposals sent out? When were the
8 cases filed?

9 MS. HARDY: The cases were filed on
10 March 6th.

11 THE HEARING EXAMINER: These two cases
12 that we're talking about?

13 MS. HARDY: These two cases. Yes. The
14 proposals were sent --

15 MS. BENNETT: Mr. Hearing Examiner, I
16 have the dates if that's helpful.

17 THE HEARING EXAMINER: Ms. Hardy, does
18 it help you?

19 MS. HARDY: February 8th.

20 THE HEARING EXAMINER: Oh, February
21 8th?

22 MS. HARDY: Yes.

23 THE HEARING EXAMINER: Ms. Bennett, do
24 you agree with those dates?

25 MS. BENNETT: No.

1 THE HEARING EXAMINER: Ah, go ahead.

2 MS. BENNETT: An original proposal was
3 sent on February 8th, but to the wrong address for
4 Cimarex. So that address was corrected and sent on
5 February 12th. And then the March 5th deadline was
6 the deadline to get on the April 4th docket. And I
7 believe these were filed -- I don't have the date they
8 were filed, so I have to defer to Ms. Hardy on that.

9 THE HEARING EXAMINER: Okay. So we
10 have your client received these proposals on the 12th.
11 And less than 30 days later, on March 6th, they were
12 filed. Okay. All right. And where is it in the
13 rule -- I understand that it's a policy, but where is
14 it in the rule that it says that it shall be? Or do
15 you have a citation for that?

16 MS. BENNETT: Mr. Hearing Examiner,
17 it's in a division order, not the rules.

18 THE HEARING EXAMINER: Order?

19 MS. BENNETT: Yes. It is a requirement
20 that has been laid out in division orders, not in the
21 rules.

22 THE HEARING EXAMINER: Do you mean,
23 like, a notice?

24 MS. BENNETT: No.

25 THE HEARING EXAMINER: An order?

1 MS. BENNETT: An order. Yeah. So
2 there were two orders back in the day where the
3 division laid out what's required for good faith
4 negotiations. And those are the orders that parties
5 rely on to understand what constitutes good faith
6 negotiations.

7 THE HEARING EXAMINER: I understand.
8 Okay.

9 MS. BENNETT: And I do have a cite for
10 that.

11 THE HEARING EXAMINER: I don't need it.
12 I take you at your word.

13 MS. BENNETT: Okay. And if I could
14 just clarify, though. Ms. Hardy did say that those
15 orders say that there is a requirement that the
16 proposal letter be sent out 30 days advance before
17 filing an application unless there's exigent
18 circumstances such as lease expiration. And here,
19 there's no exigent circumstances. It's just another
20 example of COG jumping the gun.

21 THE HEARING EXAMINER: My question or
22 my issue here is with that order that you're talking
23 about. And I haven't read it. Does it prescribe a
24 remedy?

25 MS. BENNETT: Let me look.

1 THE HEARING EXAMINER: Okay.

2 MS. HARDY: I can answer that if you
3 would like. The remedy is a continuance, which is
4 what's already happened here. Because in those cases,
5 I believe, a party moved to dismiss, and the dismissal
6 was denied. So the remedy has already occurred here.

7 THE HEARING EXAMINER: I'll wait to
8 hear from Ms. Bennet to back you up on that. Now it
9 says here in Ms. Bennett's motion, it says that "In
10 January of 2024, Cimarex initiated trade discussions
11 with COG by emailing an initial trade concept." And
12 then there's a January 26th exhibit.

13 So Ms. Bennett, it sounds like the
14 parties have been negotiating since January. No?
15 What did you mean by this then?

16 MS. BENNETT: So Cimarex emailed a
17 trade proposal to COG in January. Silence ensued.

18 THE HEARING EXAMINER: Oh, I see.

19 MS. BENNETT: And then only after the
20 May 2nd status conference where I indicated that I was
21 going to file a motion to rescind the APDs for Eata
22 Fajita did COG accept the offer. And I say accept
23 because the offer was contingent -- Cimarex's offer
24 was, as it's called, a trade concept.

25 And it was contingent upon management

1 approval. Well, three months had gone by without any
2 word from COG on whether it was going to engage in any
3 discussions. And so Cimarex had moved on. But
4 Cimarex is interested in negotiations with COG and
5 wants the ability to have that without it being under
6 the gun.

7 THE HEARING EXAMINER: I understand.

8 MS. HARDY: Mr. Examiner, may I make
9 one statement?

10 THE HEARING EXAMINER: Yes. Sure.

11 MS. HARDY: I don't think there was
12 silence from COG. They proposed their wells, right,
13 so.

14 MS. BENNETT: Exactly, Mr. Examiner.
15 If I may respond to that?

16 THE HEARING EXAMINER: Yeah.

17 MS. BENNETT: That is not a good faith
18 response to an offer, to submit proposals and then
19 prematurely file applications.

20 THE HEARING EXAMINER: Right. Here's
21 the problem I'm having, is that I have no control over
22 the parties' negotiations or the way they negotiate.
23 I understand that there's a 30-day rule or order that,
24 unless you tell me differently, prescribes the
25 continuance of the case that is prematurely filed. So

1 it was prematurely filed March 6th. It ended up on
2 the April 4 docket. Is that right?

3 We set this hearing for June 6th to
4 give the parties 60 days to either finish the
5 negotiations or to come to a hearing where we will
6 help the parties resolve the issues by taking evidence
7 and letting the division decide what to do. Here we
8 are now in the middle of May, and, Ms. Bennett, your
9 client wants to delay the hearing. I don't want to
10 delay the hearing.

11 MS. BENNETT: Mr. Examiner, there have
12 not been actual negotiations for that whole time. COG
13 was silent.

14 THE HEARING EXAMINER: I understand.

15 MS. BENNETT: This is only -- excuse
16 me.

17 THE HEARING EXAMINER: And I get your
18 point. You feel that there has not been good faith
19 negotiations. You've made that clear to me. I have
20 no control over that.

21 MS. BENNETT: Mr. Examiner, you do have
22 control over that, though. I think that is within
23 your discretion to control your docket to allow the
24 parties additional time to negotiate. Earlier today,
25 you mentioned that you're going to view these through

1 the lens of the applicant and give preference to the
2 applicant.

3 That is a -- I understand your
4 preference there. Here, that's not exactly the right
5 lens to review these cases through, because Cimarex
6 will never be an applicant. Cimarex does not need to
7 come before the division to pool these wells. They
8 have their designated operator. So they have just as
9 much at stake here, if not more, than COG.

10 So if you're viewing this as the lens
11 of the applicant, Cimarex should be on that same
12 standing, on the same level. The only reason Cimarex
13 is even here today is because COG is attempting to
14 pool over interests that COG is actually committed to.
15 So this is not an applicant versus non-applicant.
16 This is two parties that have similar weight. And
17 Cimarex's interests should be protected.

18 THE HEARING EXAMINER: And you're
19 telling me that that interest can't be protected at
20 the hearing?

21 MS. BENNETT: No.

22 THE HEARING EXAMINER: No, what?

23 MS. BENNETT: No, it cannot be
24 protected at the hearing, because -- it can be
25 protected at the hearing. Let me take that back. The

1 hearing, though, is premature. Earlier today, counsel
2 for COG in another case said COG wants additional time
3 to negotiate, and the cases were pushed out two
4 months. We've heard that all along today. Parties
5 ask for additional time to negotiate, and the cases
6 get pushed out.

7 This is exactly the same thing.
8 Cimarex is asking for additional time from May 2nd.
9 That's the first time COG responded substantively to
10 Cimarex's offer. Cimarex has within two weeks
11 prepared a counter-offer. This is not on a slow track
12 for proposals for offers and trade discussions at this
13 point. So I would just ask that the division consider
14 whether it's premature to go to hearing on June 7th.

15 I know you cannot control our
16 negotiations. But I'm representing to you that the
17 negotiations are about -- they're moving, finally.
18 And it's premature to stifle those by setting a
19 hearing that we would have to expend our time
20 preparing for, instead of having the parties actually
21 work through a voluntary agreement, which is what the
22 division prefers.

23 THE HEARING EXAMINER: Okay.
24 Ms. Hardy? So the allegation is that there has not
25 been good faith negotiation, and that I shouldn't

1 reward COG for dragging its feet and not negotiating
2 by rushing us into a hearing. Your response?

3 MS. HARDY: Mr. Examiner, I think there
4 have been good faith negotiations. I think the
5 parties have been in discussions of and on since
6 January. I think that qualifies as good faith
7 negotiations. But regardless, that is an issue that
8 can be raised at the hearing, because good faith
9 negotiation is an element that the division considers
10 in pooling. So I think Cimarex is free to raise those
11 issues at the contested hearing.

12 THE HEARING EXAMINER: Ms. Bennett, is
13 that an issue to be raised at hearing?

14 MS. BENNETT: That is one of the
15 factors the division considers in competing
16 application cases. This is not a competing
17 application case. But viewing it as a good faith
18 negotiation issue sort of doesn't give justice to what
19 I'm trying to say. And it's perhaps that I'm not
20 being as articulate as I can be.

21 My point is not that we should penalize
22 COG for not having good faith negotiations to date.
23 My point is that negotiations are happening in earnest
24 since May 2nd. That's only two weeks. It's premature
25 to set a June 6th hearing date when negotiations have

1 only begun in earnest as of May 2nd. So that's really
2 my point. It's not to penalize COG.

3 It's rather to exercise the division's
4 discretion to allow the parties additional time to
5 negotiate. One other quick note on an analogy that
6 may be helpful, is the division heard today in
7 multiple cases and in the past that, when an operator
8 wants to submit competing applications, that can take
9 up to two months. Here, as I mentioned, Cimarex does
10 not need to submit competing applications.

11 But Cimarex is preparing proposals
12 under the joint operating agreement for Section 6.
13 And those proposals should be going out, I would hope,
14 in the near future. Well, if you analogize that to
15 proposals that would then prompt a competing
16 application, the division has been granting up to 60
17 days to allow that to happen.

18 Cimarex isn't asking for anything out
19 of the ordinary here. This is consistent with
20 division practice with what we've heard today. And so
21 once Cimarex sends out those proposals under the JOA,
22 then COG would need to evaluate those proposals. You
23 know, this is a very stepwise process that I'm laying
24 out or requesting.

25 THE HEARING EXAMINER: I'm going to go

1 back to the verbatim transcript from April 4, which is
2 when I set this contested hearing for two months
3 later. So that in conformity with my practice on
4 April 4, I heard these cases at a status conference.
5 I called them. Let's see what the parties had to say
6 two months ago.

7 Okay. This is page 52 of the verbatim
8 transcript from April 4. I asked Ms. Hardy how does
9 she want to proceed. Ms. Hardy: "Mr. Examiner, I
10 think that Cimarex is planning to propose a counter-
11 development plan. Although, they wouldn't need to
12 pool it because they are proposing to develop under a
13 JOA. So I think we need a contested hearing date, and
14 I would ask for one in June if possible."

15 Ms. Hardy then goes on, "I don't
16 believe Cimarex is planning on filing a competing
17 application, but perhaps Ms. Bennett can provide a
18 little more information." Ms. Bennet: "Thank you,
19 Mr. Examiner. Yes. In these cases, COG is seeking to
20 pool interest in two Sections, 6 and 7. And Cimarex
21 is the designated operator under a JOA of Section 6,
22 and has a right to drill wells in Section 6 without
23 going to pooling, because it is the designated
24 operator under the JOA.

25 "So what that means is that -- and I

1 would also note that COG is a party to the JOA. So
2 COG sent out proposals on, I believe it was February
3 8th or 12th for these wells and filed its application
4 on March 4. So they did not wait the full 30 days to
5 file its applications before doing so.

6 "And Cimarex responded when it received
7 or shortly thereafter receiving COG's proposals,
8 reminding COG gently that Cimarex has a JOA over
9 Section 6, and that it intends to develop its acreage
10 in Section 6 for which it is the designated operator.
11 So at this point, I do agree with Ms. Hardy, that
12 absent COG dismissing its applications, we will need
13 to go to a contested hearing, and we would like a
14 contested hearing in June."

15 MS. BENNETT: Thank you, Mr. Examiner.
16 That is what I said at the April 4th status
17 conference. At the May 2nd status conference, we
18 talked about these Macho Nacho cases again. And at
19 that hearing, the division or yourself instructed
20 myself and Ms. Hardy to revert back to you by today
21 close of business about whether a June 6th hearing was
22 warranted.

23 And the reason for that was because I
24 indicated at the May 2nd status conference that there
25 are deficiencies in the Macho Nacho applications,

1 which we're talking about today, that would render the
2 June 6th hearing premature. And I also noted that, as
3 of the April 4th status conference, I wasn't aware of
4 all of the details surrounding Eata Fajita, the trade
5 discussions. At that time, it was relatively new to
6 me.

7 And I mentioned that at the May 2nd
8 status conference, that there were deficiencies that I
9 would like to file a motion for if the trade
10 discussions -- you know, based on the applications.
11 Excuse me. So the division did order the parties
12 through today to confer on the June 6th hearing date.
13 We are at loggerheads on that. And so I filed the
14 expedited request to discuss that today and the motion
15 to vacate the June 6th hearing pursuant to that
16 direction from the examiner.

17 THE HEARING EXAMINER: So then I spoke
18 to the parties. You further clarified, just for the
19 record, Ms. Bennett. You said, "To answer the
20 division's questions more specifically, though Cimarex
21 will be proposing wells under the JOA." I don't know
22 if that's exactly what you said, but that's what it
23 says here.

24 "But that is not something that will
25 trigger a compulsory pooling case, because they don't

1 need to pool anyone. But they still have to propose
2 under the JOA, and they're doing that in the near
3 term." And that was on April 4.

4 So I then asked the parties to confer
5 on dates. And I asked, "How long would you need to
6 select one with Ms. Hardy?" And then you said,
7 Ms. Bennett, "I previously conferred with Cimarex
8 about potential dates, and Cimarex is available June 6
9 or June 20."

10 And then I spoke with the law clerk,
11 and we decided on June 6th. And Ms. Hardy says June
12 6th actually works for COG. And then I said we'll
13 issue a pre-hearing order, and that the witnesses can
14 appear virtually.

15 MS. BENNETT: Mr. Hearing Examiner, if
16 I could offer one point of clarification?

17 THE HEARING EXAMINER: Sure.

18 MS. BENNETT: At the April 4th status
19 conference, COG had not yet substantively responded to
20 Cimarex's offer. So at that time, that was the rubric
21 I was working under. No response from COG. Or as
22 Ms. Hardy has pointed out, the only response is filing
23 competing applications prematurely.

24 THE HEARING EXAMINER: And you
25 represented today that your client has sent out or is

1 imminently sending out a new proposal to COG?

2 MS. BENNETT: A trade proposal.

3 THE HEARING EXAMINER: A trade
4 proposal?

5 MS. BENNETT: Yes.

6 THE HEARING EXAMINER: Okay. Now if
7 COG accepts that trade proposal, then there's no need
8 for a hearing. Is that right?

9 MS. BENNETT: That's right.

10 THE HEARING EXAMINER: And you agree
11 with that, right, Ms. Hardy?

12 MS. HARDY: Yes. That's correct.

13 THE HEARING EXAMINER: Okay. If COG
14 rejects that, Ms. Bennett, then what happens?

15 MS. BENNETT: Then I will file a motion
16 to dismiss their Macho Nacho applications.

17 THE HEARING EXAMINER: And your motion
18 to dismiss would be based on what?

19 MS. BENNETT: Based on Cimarex's 100
20 percent ownership of Section 6. I'm sorry. Not
21 ownership, but because Cimarex is the designated
22 operator under the JOA. And in the past, while the
23 division has allowed parties to, like I said, pool
24 over a JOA, there is commission precedent in which
25 both Ms. Hardy and I were involved where the

1 commission denied an application by my client to pool
2 over Ms. Hardy's client's JOA acreage. And that would
3 be the foundation for my motion to dismiss.

4 THE HEARING EXAMINER: And you spoke in
5 May about motions to dismiss. Is it other cases?
6 Totally separate cases that were then withdrawn, and
7 then you didn't have to file a motion?

8 MS. BENNETT: That was the motion to
9 rescind the APDs in the Eata Fajita cases that COG
10 voluntarily -- after hearing that I was going to file
11 a motion to rescind those, COG voluntarily withdrew
12 those.

13 THE HEARING EXAMINER: Withdrew the
14 APDs?

15 MS. BENNETT: The APDs.

16 THE HEARING EXAMINER: And are those
17 APDs part of this June 6 hearing?

18 MS. BENNETT: They are not.

19 THE HEARING EXAMINER: They're not.
20 Okay. So this is a separate issue. So you're now
21 talking for the first time about filing motion to
22 dismiss cases that, since April 4, we have been ready
23 to go to hearing on June 6th. I believe we can hear
24 that as a preliminary matter at the hearing.

25 I believe that you can introduce

1 evidence to show that you're correct. I realize it's
2 not what you want to do. But I'm not going to
3 continue the June 6th hearing. You've made good
4 arguments for your client. But I believe that this
5 gives COG time to either accept or reject your latest
6 trade proposal to them.

7 And I believe that we need to move
8 forward on these two cases. And I am taking
9 Ms. Hardy's objection into consideration, and that it
10 is her application as well. So that issue has been
11 dealt with now. So thank you for your pleading.

12 Okay. Now let's go to the first
13 hearing by affidavit. I promised Ms. Bennett that we
14 would hear her case.

15 MS. BENNETT: Mr. Examiner, can we take
16 a short break before --

17 THE HEARING EXAMINER: By all means.

18 MS. BENNETT: Thank you.

19 MS. HARDY: Thank you.

20 THE HEARING EXAMINER: Let's take a
21 ten-minute break. It's 10:50. Let's come back at
22 eleven o'clock.

23 (Off the record.)

24 THE HEARING EXAMINER: It is 11 a.m. on
25 May 16. We are back on the record. And we are going

1 to hear case 24450, hearing by affidavit. Entries of
2 appearance, please?

3 MS. PENA: Good morning, Mr. Hearing
4 Examiner. Yarithza Pena with Modrall Sperling on
5 behalf of Franklin Mountain Energy 3 LLC.

6 THE HEARING EXAMINER: Okay. Please
7 proceed.

8 MS. PENA: In case 24450, Franklin
9 seeks an order pooling all uncommitted interest in a
10 Wolfcamp standard spacing unit comprise of 320 acres,
11 more or less, in the west half west half of Sections
12 27 and 34, Township 18 South, Range 35 East, in Lea
13 County. The spacing unit will be dedicated to the
14 701H well. We timely filed exhibit packets on Tuesday
15 for this matter, and they include the standard set of
16 exhibits.

17 Exhibit A contains the compulsory
18 pooling checklist. Exhibits in tab B contain the
19 affidavit of Don Johnson, the landman for Franklin who
20 has previously testified before the division. And his
21 credentials have been accepted as a matter of record.
22 Following his affidavit are the standard land
23 exhibits, including the C-102 lease tract map, summary
24 of interests in each tract, a list of parties seeking
25 to pool, the summary of contacts, a well proposal

1 letter, and the AFE.

2 (24450 Exhibit A and Exhibit B were
3 marked for identification.)

4 Exhibits in tab C contain the affidavit
5 of Ben Kessel, the geologist for Franklin, who has
6 also previously testified before the division.
7 Following his affidavit are the standard geology
8 exhibits, including a locator map, wellbore schematic,
9 structure map, cross-section reference map,
10 stratigraphic cross-section, isochore, and a regional
11 stress orientation overview.

12 (24450 Exhibit C was marked for
13 identification.)

14 Exhibits in tab D contain the notice
15 exhibits, including the declaration of Ms. Deana
16 Bennett, including a sample notice letter, the mailing
17 list with the certified tracking list, and out of
18 abundance of caution, the affidavit of publication
19 from the Hobbs News-Sun showing that we timely
20 published on April 26, 2024.

21 (24450 Exhibit D was marked for
22 identification.)

23 At this point, I would ask that the
24 exhibits for 24450 be admitted to the record, and that
25 the cases be taken under advisement. If there are any

1 questions for the division, the landman and the
2 geologist are on the WebEx.

3 THE HEARING EXAMINER: Thank you,
4 Ms. Pena.

5 Are there any objections to these
6 exhibits? Not hearing any, they are admitted into
7 evidence.

8 (24450 Exhibit A through Exhibit D were
9 received into evidence.)

10 Mr. Lowe?

11 MR. LOWE: I have no questions for
12 either of them.

13 MS. PENA: Okay. Thank you.

14 THE HEARING EXAMINER: Thank you. This
15 case is taken under advisement.

16 MS. PENA: Thank you.

17 MS. MCLEAN: Mr. Examiner?

18 THE HEARING EXAMINER: Yes?

19 MS. MCLEAN: Just briefly, we filed a
20 motion to dismiss in a case that's number 64 on the
21 docket today. So I was just hoping we could dispose
22 of that.

23 THE HEARING EXAMINER: Let's dispose of
24 that.

25 MS. MCLEAN: Thank you.

1 THE HEARING EXAMINER: We can go there.
2 Number 64, which is 24421. Entries of appearance,
3 please?

4 MS. MCLEAN: Jaclyn McLean on behalf of
5 EGL Resources.

6 THE HEARING EXAMINER: And what were
7 you saying?

8 MS. MCLEAN: We filed a motion to
9 dismiss, and it was approved by all the other parties
10 who had entered their appearance, which was Cimarex
11 and EOG, and I believe Holland and Hart was in there
12 for COG as well. But we have decided to dismiss this
13 application. So they no longer need to be heard.

14 THE HEARING EXAMINER: Very good. Now
15 you said application?

16 MS. MCLEAN: I'm sorry. Application.
17 One.

18 THE HEARING EXAMINER: So we're off the
19 record in 24421. Thank you.

20 MS. MCLEAN: Thank you.

21 THE HEARING EXAMINER: All right.
22 Let's go back to 24182. This is a hearing by
23 affidavit. Entries of appearance, please?

24 MS. BENNETT: Good morning,
25 Mr. Examiner and technical examiners. Deana Bennett

1 on behalf of Marathon Oil Permian.

2 THE HEARING EXAMINER: Thank you. Are
3 there any other parties?

4 MS. BENNETT: Not that I'm aware of.

5 THE HEARING EXAMINER: Thank you.
6 Please proceed.

7 MS. BENNETT: Thank you. In these
8 cases, Marathon seeks an order pooling uncommitted
9 interests within a standard 960-acre spacing unit
10 underlying the north half of Section 36, Township 22
11 South, Range 27 East, Eddy County, New Mexico, and the
12 north half of Sections 31 and 32.

13 And I've included in the materials our
14 compulsory pooling checklist, an affidavit of Sam Cox,
15 who's previously testified before the division, and
16 his credentials have been accepted as a matter of
17 record. And his affidavit includes the usual suite of
18 exhibits with one additional exhibit, which is the MRC
19 Permian support letter. MRC Permian has indicated in
20 that letter that it supports Marathon's development.

21 (24182 Exhibit A and Exhibit B were
22 marked for identification.)

23 Tab C is the affidavit of Matt Baker.
24 Mr. Baker has previously testified before the
25 division, and his credentials have been accepted as a

1 matter of record. And his affidavit includes the
2 usual suite of geology exhibits.

3 (24182 Exhibit C was marked for
4 identification.)

5 Tab D is my self-affirmed declaration
6 that includes the notice information and notice that
7 the hearing was timely mailed and timely published.
8 So I would point out that this is a proximity tract
9 case. So there is a proximity tract well which allows
10 Marathon to create the larger spacing unit under the
11 division's proximity tract rule. And with that, I
12 would ask that the exhibits in case number 24182 be
13 admitted into the record.

14 (24182 Exhibit D was marked for
15 identification.)

16 THE HEARING EXAMINER: Are there any
17 objections. Not hearing any, your exhibits are all
18 admitted into evidence.

19 (24182 Exhibit A through Exhibit D were
20 received into evidence.)

21 Mr. Lowe?

22 MR. LOWE: Yes. Good morning,
23 Ms. Bennett.

24 MS. BENNETT: Good morning.

25 MR. LOWE: I have a quick question for

1 clarification.

2 THE HEARING EXAMINER: Who do you have
3 the question for?

4 MR. LOWE: The landman. So the C-102.

5 THE HEARING EXAMINER: -- landman?

6 MS. BENNETT: Mr. Cox is available.

7 And I see at least for a moment he appeared. There he
8 is.

9 THE HEARING EXAMINER: I see Mr. Cox.
10 Thank you.

11 Mr. Cox, we're going to swear you in.

12 MR. COX: All right.

13 MR. LOWE: Please raise your right
14 hand.

15 WHEREUPON,

16 SAMUEL COX,

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

20 THE HEARING EXAMINER: Please state and
21 spell your name for the record.

22 THE WITNESS: Samuel Cox. S-A-M-U-E-L
23 C-O-X.

24 THE HEARING EXAMINER: Mr. Lowe?

25 //

EXAMINATION

BY MR. LOWE:

Q Good morning, sir.

A Morning.

Q I've got a quick question on what was just recently stated just now on the proximity tract well. Which well is that going to be in particular? What number well is that?

A I believe the proximity tract there should be -- I believe that's the 302 and the 501 are both proximity tract wells there.

Q 302 and 501?

A I believe so. Let me -- looking at the C-102s, yes.

MS. BENNETT: Mr. Technical Examiner, I have some clarity on that if that would be helpful for you.

THE HEARING EXAMINER: Let's wait until after this witness testifies, and then we'll come to you, Ms. Bennett.

MS. BENNETT: Perhaps I could ask Mr. Cox a redirect question that would help him answer the question for Mr. Lowe?

THE HEARING EXAMINER: Are you finished with your questions?

1 MR. LOWE: No. No.

2 THE HEARING EXAMINER: Then please ask
3 all your questions, then we'll let Ms. Bennett
4 redirect.

5 BY MR. LOWE:

6 Q On the proximity tract well, what is the
7 distance the footage is to create that proximity tract
8 definition for that specific well?

9 A It appears that we have -- looking at the
10 footages right now. I'm just looking at the C-102.
11 But I -- I believe the 501 is going to be 571 feet
12 from the -- or that's the surface hole. Excuse me.
13 It's going to be -- excuse me one second.

14 Let me make sure I've got this right. The
15 501 is going to be 1,650 feet from the north line.
16 And then the 302 is going to be 1,020 feet from the
17 north line.

18 Q And that footages -- I have my calculator,
19 but it's not calculating it out. In reference to
20 the -- I'm assuming you're going to the center spacing
21 unit is what you're doing to create the proximity
22 tract; correct?

23 A That would be the center -- yes, that center
24 spacing unit. I -- yes.

25 Q And what's the distance to the center

1 spacing unit of the perf zone for that particular zone
2 to create that proximity --

3 A I'll have to grab a calculator to do this.
4 Give me one second. So I believe it's from -- it's
5 going to be -- well, I guess, actually, the 501's
6 going to be exactly 330. It's just going to be that
7 302. My apologies. It's going to be less than --
8 it's going to be about 300 feet from that center line
9 of that spacing unit.

10 Q Okay. And this is a Bone Spring pool. Is
11 that correct?

12 A That's correct, sir.

13 Q And that Bone Spring pool requires to be 330
14 feet standard distance. So therefore, the footages
15 you stated is comparable to meet that definition of a
16 defining well, I believe, from what you stated. Okay.
17 Is that correct, pretty much what I stated?

18 A I believe so. Yes, sir.

19 Q Okay. Also in reference to -- I think it
20 was in the application. Numbered page 7 of the
21 exhibits. This is a general reference indicating the
22 verbiage of the following, "The producing area for the
23 wells is expected to be orthodox." In that statement,
24 what does that mean? Orthodox pertaining to what
25 subject matter?

1 A I believe it's supposed to comply with the
2 rules of whether a proximity tract or -- for those
3 spacing areas of 320 -- or, you know, for that 960-
4 acre unit.

5 Q So basically, the unorthodox reference is
6 pertaining to the spacing unit of the horizontal
7 spacing unit that this is requesting?

8 A Yes.

9 MR. LOWE: Okay. Okay. I just needed
10 clarification on what that is pertaining to. And I
11 think that will conclude my questions. Thank you,
12 sir.

13 THE HEARING EXAMINER: Ms. Bennett,
14 redirect?

15 MS. BENNETT: May I just provide a
16 citation to the affidavit of Mr. Cox that will also
17 alleviate some of the questions?

18 THE HEARING EXAMINER: Sure.

19 MS. BENNETT: Yes. It's page -- well,
20 actually, if we're looking at the compulsory pooling
21 checklist, which is page 3 of 70, we identified the
22 proximity tract well in the compulsory pooling
23 checklist, which is the Red Jaguar Federal Com 302H
24 well. And turning to Mr. Cox's affidavit --

25 THE HEARING EXAMINER: Hold on, one

1 moment.

2 MS. BENNETT: Yes, sir.

3 THE HEARING EXAMINER: Just make sure
4 Mr. Lowe is with us here.

5 She's on page 3 of 70. I think that's
6 what she's talking about.

7 MR. LOWE: Yes. Okay.

8 THE HEARING EXAMINER: Does that help?

9 MR. LOWE: It does. But I just wanted
10 to get -- it's said there. And I just want to get the
11 specific -- because a lot people I've seen indicate,
12 "Well, this is a proximity well, and this is creating
13 a larger spacing unit," but when it comes down to
14 actually calculating the distance to be an unorthodox
15 distance, it doesn't meet that protocol.

16 MS. BENNETT: Would you like us to
17 start including that in our compulsory pooling
18 checklists?

19 MR. LOWE: It would be great if there
20 was an attachment to the C-102 where it indicates
21 specific take point distances. I mean, that would --
22 I mean, it's there here in the C-102, but I just got
23 confused between this one and the other case. And I
24 wasn't too sure exactly what -- you know, just to
25 clarify on the record to say, "Yeah, it is proximity

1 well."

2 MS. BENNETT: Thank you.

3 THE HEARING EXAMINER: Is there another
4 page you want to address, too?

5 MS. BENNETT: Yes. Yes. Mr. Cox, in
6 his initial response, said that he thought it was the
7 302 and the 501H well. And we addressed that in his
8 declaration or affidavit.

9 THE HEARING EXAMINER: Page number for
10 us?

11 MS. BENNETT: I'm looking for it right
12 now. Okay. It's page 7 of 70, paragraph 12. And we
13 noted that the application filed in this case
14 incorrectly identified the 501H well as a proximity
15 tract well. And so we're clarifying for the record
16 that, although the application did identify the 501H
17 as a proximity tract well, in reviewing the footages
18 as we were preparing for hearing, we realized that was
19 not a proximity tract well.

20 And so we clarified that in the
21 affidavit. And then, Mr. Lowe, you asked a question
22 about the wells are proposed to be at orthodox
23 locations. And just to clarify on that, what I'm
24 getting at there in the application and in the
25 affidavit is that they are at standard locations, even

1 though 302 is closer than 330, to what would normally
2 be the outer boundary of the spacing unit. It is
3 orthodox or standard by virtue of the proximity tract
4 rule. So that's what I'm getting at there when I say
5 orthodox.

6 MR. LOWE: So the unorthodox reference
7 pertains to the spacing unit in a way, reference --
8 it's not unorthodox --

9 MS. BENNETT: It's not unorthodox.

10 THE HEARING EXAMINER: So everything's
11 good.

12 MS. BENNETT: Yes. Thank you. Thanks
13 for that clarifying conversation.

14 THE HEARING EXAMINER: Are there any
15 other questions based on what she said or her witness?

16 MR. LOWE: No. That concludes my
17 questioning.

18 MS. BENNETT: Thank you.

19 THE HEARING EXAMINER: Okay. Thank
20 you, Ms. Bennett. We'll take this case under
21 advisement.

22 MS. BENNETT: Thank you.

23 THE HEARING EXAMINER: Thank you.

24 I'm calling 24183. Entries of
25 appearance, please?

1 MS. BENNETT: Good morning, everyone.
2 Deana Bennett on behalf of Marathon Oil Permian in
3 case 24183.

4 THE HEARING EXAMINER: Is this
5 consolidated with any other case?

6 MS. BENNETT: No, it is not.

7 THE HEARING EXAMINER: Okay. Please
8 proceed.

9 MS. BENNETT: Thank you. In this case,
10 Marathon seeks an order pooling uncommitted interests
11 in the south half of Section 36, Township 22 South,
12 Range 27 East, Eddy County, and the south half of
13 Sections 31 and 32, Township 22 South, Range 28 East,
14 Eddy County.

15 And as with the prior case, I've
16 submitted timely-submitted exhibits, including the
17 compulsory pooling checklist, the affidavit of
18 Mr. Cox, who's previously testified. And again, we've
19 included with his materials the support letter
20 Marathon received from MRC Permian.

21 (24183 Exhibit A and Exhibit B were
22 marked for identification.)

23 Tab C is the affidavit of Matt Baker,
24 the geologist who's previously testified before the
25 division. And his materials include the standard

1 suite of geology exhibits. And then tab D is my
2 declaration, including the notice information that
3 demonstrates that notice was timely mailed and timely
4 published.

5 (24183 Exhibit C and Exhibit D were
6 marked for identification.)

7 And as with the Red Jaguar cases we
8 just heard, these are the Blue Barracuda wells, and
9 their Bone Spring wells oil pool 40-acre building
10 blocks. But again, here there's a proximity tract
11 well. In this case, there's actually two proximity
12 tract wells that allows marathon to create the larger
13 spacing unit. And that's identified in our compulsory
14 pooling checklist on page 3 of 69. With that, I would
15 ask that the exhibits in case number 24183 be admitted
16 into the record.

17 THE HEARING EXAMINER: Are there any
18 objections? Your exhibits are admitted into evidence.
19 And Mr. Lowe has indicated he has no questions for
20 this case or your witnesses. So this will be taken
21 under advisement.

22 (24183 Exhibit A through Exhibit D were
23 received into evidence.)

24 MS. BENNETT: Thank you very much.

25 THE HEARING EXAMINER: Thank you very

1 much.

2 24336. Entries of appearance, please?

3 MS. BENNETT: Good morning, everyone.
4 Deana Bennett on behalf of Marathon Oil Permian, LLC.

5 THE HEARING EXAMINER: Are there any
6 other parties in this case?

7 MS. BENNETT: Yes, there are.

8 MR. RANKIN: Good morning,
9 Mr. Examiner. Adam Rankin with the Santa Fe office of
10 Holland and Hart appearing in this case on behalf of
11 Matador Production Company.

12 THE HEARING EXAMINER: Thank you.
13 Mr. Rankin, have you had a chance to review the
14 exhibits?

15 MR. RANKIN: Not really, but no
16 objection to the exhibits being entered or filed. And
17 we did initially have an objection to this case
18 proceeding, but we have withdrawn that objection. We
19 are now just observing this case and preserving
20 rights.

21 THE HEARING EXAMINER: Thank you.

22 Ms. Bennett?

23 MS. BENNETT: Mr. Examiner, there was
24 one other party that entered an appearance in this
25 case, Northern Oil and Gas, represented by Johnson and

1 Steptoe, I believe.

2 THE HEARING EXAMINER: Okay. And who
3 did you say was representing Northern?

4 MS. BENNETT: Johnson and Steptoe.

5 THE HEARING EXAMINER: I don't see them
6 here. And they haven't made themselves aware. Did
7 they object to anything?

8 MS. BENNETT: No, they did not.

9 THE HEARING EXAMINER: Why don't you
10 proceed.

11 MS. BENNETT: Thank you. In this case,
12 Marathon seeks an order pooling uncommitted interests
13 in a standard 1,280-acre horizontal spacing unit
14 underlying all of Section 36, Township 22 South, Range
15 27 East, and all of Section 31, Township 22 South,
16 Range 28 East. And this is a Purple Sage Wolfcamp
17 pool, which has special pool rules. And so the
18 building blocks here are 320 acres.

19 I've included in the materials, as
20 Exhibit A, the compulsory pooling checklist. The next
21 exhibit is the affidavit of Sam Cox, who's previously
22 testified before the divisions, and his credentials
23 have been accepted as a matter of record. And again,
24 he includes with his exhibits a letter of support from
25 MRC Permian.

1 (24336 Exhibit A and Exhibit B were
2 marked for identification.)

3 And the next set of exhibits is the
4 geology exhibits submitted by Matt Baker, who's
5 previously testified before the division, and his
6 credentials have been accepted as a matter of record.
7 And he includes the usual suite of exhibits. And the
8 final set of materials are my notice affidavit and
9 proof that notice was timely mailed and that
10 publication was timely.

11 (24336 Exhibit C and Exhibit D were
12 marked for identification.)

13 And with that, I would ask that the
14 exhibits in case number 24336 be admitted into the
15 record.

16 THE HEARING EXAMINER: Any objections?
17 The exhibits are so admitted. Mr. Lowe does have
18 questions.

19 (24336 Exhibit A through Exhibit D were
20 received into evidence.)

21 MS. BENNETT: Thank you.

22 THE HEARING EXAMINER: Which witness
23 would you like to question?

24 MR. LOWE: I think my question would be
25 pertaining to -- I don't know. Would it be the

1 attorney? It's just a clarification question.

2 I just want to reconfirm. What case
3 number we're dealing with here?

4 MS. BENNETT: 24336.

5 MR. LOWE: 24336. The compulsory
6 pooling checklist for this case number. It indicates
7 24183.

8 MS. BENNETT: Yes. That's a relic from
9 me cutting a pasting and using the template. I can
10 update that to revise it to case number 24336.

11 MR. LOWE: Okay.

12 THE HEARING EXAMINER: Ms. Bennett, I'm
13 not sure you need to correct the checklist, since
14 you've corrected it on the record. But from your
15 understanding of past practices, what have we done?

16 MS. BENNETT: Mr. Examiner, I don't
17 know that I have an example from past practice. But
18 what I would say is that Exhibit A becomes part of the
19 division's order. And so I would prefer to submit an
20 amended packet to avoid any confusion if someone's
21 looking at the order.

22 THE HEARING EXAMINER: Sounds good.
23 When can you do that by?

24 MS. BENNETT: I can do that by close of
25 business tomorrow.

1 THE HEARING EXAMINER: Perfect. So we
2 will leave the evidentiary record open to correct the
3 compulsory pooling checklist for the single correction
4 of the case number.

5 MS. BENNETT: Thank you very much.

6 THE HEARING EXAMINER: Thank you very
7 much. So this case will be taken under advisement?

8 MR. LOWE: I believe so. Yes.

9 THE HEARING EXAMINER: Thank you.

10 Okay. Let's move on. 24376. Entries
11 of appearance, please?

12 MR. SUAZO: Good morning, Mr. Examiner.
13 Miguel Suazo with the Santa Fe office of Beatty and
14 Wozniak on behalf of Avant Operating, LLC, case number
15 24376.

16 THE HEARING EXAMINER: Thank you, sir.
17 Are there any other parties that entered an
18 appearance?

19 MR. RANKIN: Good morning,
20 Mr. Examiner. Adam Rankin with Sante Fe office of
21 Holland and Hart appearing on behalf of Permian
22 Resources Operating in this case.

23 THE HEARING EXAMINER: Mr. Rankin, have
24 you had a chance to review the exhibits?

25 MR. RANKIN: Just briefly,

1 Mr. Examiner, but I have no objections to the exhibits
2 being admitted into the record.

3 THE HEARING EXAMINER: Thank you.

4 Mr. Suazo?

5 MR. SUAZO: Yes, Mr. Examiner. This
6 case is an application to approve a non-standard
7 horizontal spacing unit and to pool all uncommitted
8 interests in the Bone Spring formation underlying a
9 1,342-acre non-standard horizontal spacing unit
10 covering all of Section 31, Township 18 South, Range
11 33 East, and all of Section 6, Township 19 South,
12 Range 33 East, in Lee County, New Mexico, covering all
13 of section -- sorry. Let me back up there.

14 The proposed Bone Spring unit will be
15 committed to the following wells: the Emerald Fed Com
16 301H through 306H, the Emerald Com 501H through 514H,
17 the Emerald Com 515H, Emerald Com 516H, Emerald Com
18 601H, Emerald Com 602H, Emerald Fed Com 603H, Emerald
19 Fed Com 604H, Emerald Fed Com 605H, and Emerald Fed
20 Com 606H.

21 The exhibit packet that was filed on
22 Tuesday, May 14th, contains the checklist, the
23 applications, and affidavits. Exhibit A is the
24 compulsory pooling application checklist. Exhibit B
25 is the application, which was filed on March 29th.

1 (24376 Exhibit A and Exhibit B were
2 marked for identification.)

3 Exhibit C is the affidavit of Avant's
4 land witness, Sophia Guerra. Ms. Guerra has not
5 previously testified before the division, and requests
6 that the division accept her qualifications as those
7 of an expert in petroleum land matters. And she notes
8 that she is familiar with the lands in this matter.

9 (24376 Exhibit C was marked for
10 identification.)

11 THE HEARING EXAMINER: Okay. Let's
12 deal with that now. Is she with us?

13 MR. SUAZO: I can't see that far. I
14 don't see if she's with us or not.

15 MS. GUERRA: I'm here. I'm online.

16 THE HEARING EXAMINER: Great. Can you
17 turn your camera on?

18 MS. GUERRA: Yes.

19 THE HEARING EXAMINER: Thank you.

20 MS. GUERRA: Good morning.

21 THE HEARING EXAMINER: Do you have a CV
22 here for me to review?

23 MS. GUERRA: I do. I believe it's in
24 the exhibit.

25 MR. SUAZO: Yes.

1 THE HEARING EXAMINER: Do you have a
2 page number for me?

3 MR. SUAZO: Just a second.

4 MS. GUERRA: I believe page 16.

5 THE HEARING EXAMINER: Thank you. Yes,
6 I see it. Thank you, Ms. Guerra. Give me a minute to
7 review. Okay, Ms. Guerra. Thank you. You're
8 recognized as an exhibit [sic] in petroleum land
9 matters.

10 MS. GUERRA: Thank you.

11 THE HEARING EXAMINER: Mr. Suazo?

12 MR. SUAZO: Thank you, Mr. Examiner.

13 I'd also like to note that C1 to Exhibit C is the
14 general location map. C2 contains the form C-102s.
15 Ms. Guerra notes on Exhibit C that there are no
16 overlapping horizontal spacing units, and that Avant
17 will submit a sundry to change the names of the 505H
18 and the 506H to the 515H and the 516H well once the
19 APDs are approved.

20 The numbers on those are still pending,
21 but we can supplement as needed. C3 depicts the
22 tracts in the spacing units and wells. C4 includes
23 the ownership within the units and identifies the
24 committed parties. C5 is a map of the non-standard
25 horizontal spacing unit in relation to a standard unit

1 and identifies the offset owners.

2 C6 and C7 are the proposal letters and
3 AFEs. And this mainly comports with the OCD
4 requirement to send proposals and AFEs 30 days prior
5 to filing the application. C8 provides a chronology
6 of contacts, summarizing attempts to obtain the
7 participation of the pooled parties.

8 And Exhibit D is the affidavit of
9 Avant's geology witness, Mr. Josh Payne. Mr. Payne
10 has not previously testified before the division, and
11 requests that the division accept his qualifications
12 as those of an expert in petroleum geology. He notes
13 that he is familiar with the lands and geology in this
14 matter.

15 (24376 Exhibit D was marked for
16 identification.)

17 THE HEARING EXAMINER: Do you have a
18 page number for his CV?

19 MR. SUAZO: Yes.

20 THE HEARING EXAMINER: Mr. Payne, while
21 we're waiting for Mr. Suazo, would you turn on your
22 camera?

23 MR. SUAZO: It is page 132.

24 THE HEARING EXAMINER: Okay. And
25 you're seeking to have him admitted as an expert in

Page 171

1 geology?

2 MR. SUAZO: Yes, Mr. Examiner.

3 THE HEARING EXAMINER: Mr. Suazo, how
4 is Guggenheim Partners related to your company, to
5 Avant?

6 MR. SUAZO: I would defer that question
7 to the witness. I'm not sure.

8 THE HEARING EXAMINER: Mr. Payne, on
9 your CV it shows that you are currently employed by
10 Guggenheim Partners. So I'm wondering, are you
11 employed by Avant Operating as well? Sir, turn on
12 your microphone, please.

13 MR. PAYNE: Just testing my microphone.

14 THE HEARING EXAMINER: I can hear you.

15 MR. PAYNE: My apologies on the resume.
16 My employment ended with Guggenheim Partners in
17 December. And I started with Avant Natural Resources
18 or Avant Operating in January.

19 THE HEARING EXAMINER: Okay. What is
20 your title with Avant?

21 MR. PAYNE: Senior geologist.

22 THE HEARING EXAMINER: Okay. Thank
23 you, Mr. Payne. You're qualified as an expert in
24 geology.

25 Mr. Suazo?

1 MR. SUAZO: Thank you, Mr. Examiner.
2 I'd like to further note that D1 is the base map.
3 Exhibit D2 is a structure map of the top of the Bone
4 Spring. Mr. Payne states that the wells are
5 representative of the area geology, and that he
6 observed no faulting, pinching, or other geologic
7 hazards to the development of the horizontal wells.

8 D3 is a cross-section of the upper Bone
9 Spring, showing gamma ray and resistivity logs, which
10 identifies the targeted intervals in the Bone Spring
11 unit. D4 includes stratigraphic cross-sections
12 flattened on the top of the proposed Bone Spring
13 formation, showing details on the targeted interval.

14 Exhibit E is the notice affidavit
15 showing that notice letters were mailed to the
16 addresses of record to the interested parties and the
17 offset owners in the adjacent lands. Immediately
18 after the copy of the notice letter are the certified
19 mailing receipts, showing delivery to numerous
20 interested parties.

21 (24376 Exhibit E was marked for
22 identification.)

23 Exhibit F is the affidavit of
24 publication in the Hobbs daily News-Sun. And with
25 that, I'd request that the exhibits be admitted into

1 the record.

2 (24376 Exhibit F was marked for
3 identification.)

4 THE HEARING EXAMINER: Are there any
5 objections? Hearing none, they are so admitted.

6 (24376 Exhibit A through Exhibit F were
7 received into evidence.)

8 Mr. Lowe, do you have any questions for
9 the witnesses?

10 MR. LOWE: I have no questions. Thank
11 you.

12 THE HEARING EXAMINER: This case will
13 be taken under advisement. Thank you, Mr. Suazo.

14 MR. SUAZO: Thank you, Mr. Examiner.

15 THE HEARING EXAMINER: I'm calling
16 24398.

17 MS. BENNETT: Good morning,
18 Mr. Examiner. Deana Bennett on behalf of Marathon Oil
19 Permian.

20 THE HEARING EXAMINER: Good morning.
21 Are there any other parties entered an appearance in
22 this case?

23 MS. BENNETT: No, there's not.

24 THE HEARING EXAMINER: Thank you.

25 Please proceed.

1 MS. BENNETT: Mr. Examiner, if it
2 pleases the division, cases 24398 to 24401 are related
3 cases, and I would request that they be consolidated
4 for purposes of the hearing for my presentation today.

5 THE HEARING EXAMINER: Perfect. Let me
6 call 24399, 24400, and 24401. Entries of appearance?

7 MS. BENNETT: Thank you. Deana Bennett
8 on behalf of Marathon Oil Permian in all of the called
9 cases.

10 THE HEARING EXAMINER: Thank you. Are
11 there any parties entered on any of these cases that
12 you know of?

13 MS. BENNETT: No, there are not.

14 THE HEARING EXAMINER: Ms. Bennett,
15 when you go through these, you don't have to get too
16 specific, but we would like to hear about the good
17 cause in each one.

18 MS. BENNETT: Yes. Thank you.

19 THE HEARING EXAMINER: Thank you.

20 MS. BENNETT: And the good cause is the
21 same for each one.

22 THE HEARING EXAMINER: Perfect.

23 MS. BENNETT: So just briefly to orient
24 the division to the packet, it includes the affidavit
25 of Farley Duvall, a land professional who's previously

1 testified before the division. Exhibit A1 is the
2 application, and exhibit A2 is the original order in
3 each packet that was issued.

4 (24398 Exhibit A, 24399 Exhibit A,
5 24400 Exhibit A, and 24401 Exhibit A
6 were marked for identification.)

7 And this is Marathon's first request
8 for an extension of time to commence drilling under
9 the orders. And Mr. Duvall and his -- oh, I should
10 also note that the packets include an affidavit from
11 myself demonstrating that notice was timely given, and
12 that these cases were timely published.

13 (24398 Exhibit B, 24399 Exhibit B,
14 24400 Exhibit B, and 24401 Exhibit B
15 were marked for identification.)

16 But under paragraph 12 of Mr. Duvall's
17 affidavit -- and I'm looking in case number 24398 for
18 the moment, but this is the same paragraph in every
19 affidavit. It's on page 4 of 41. In paragraph 12,
20 Mr. Duvall outlines the reasons for requesting the
21 extension of time. Marathon has not yet received all
22 of the BLM approved APDs that it needs for the Goliath
23 wells.

24 These are wells that have federal
25 minerals, and so Marathon needs the APDs, the approval

1 of the permits to drill, before it can begin
2 commencing drilling. The reason why some of the APDs
3 have not been approved or are still pending is
4 outlined in paragraph 13. When Marathon brought these
5 cases before the division, Marathon sought approval of
6 a non-standard unit.

7 And part of the benefit of the non-
8 standard unit is consolidation of surface facilities
9 and eliminating surface disturbance. Well, during the
10 time that Marathon's been in discussions with BLM
11 about the surface facilities, the surface facilities
12 have needed to move. And so that's part of the reason
13 why the APDs are taking a little bit longer for some
14 of the wells, because the surface facilities need to
15 move.

16 And Marathon wants to ensure that those
17 surface facilities are located in such a way that
18 prevents surface disturbance and promotes efficiency.
19 So there has been ongoing discussion between BLM and
20 Marathon about the appropriate location of those
21 surface facilities.

22 And also, Marathon is in the process of
23 preparing a communitization agreement for this
24 acreage. And we'll be sending that out shortly. So
25 paragraphs 12 through 14 of Mr. Duvall's affidavit

1 outline the reasons that Marathon is seeking this
2 first extension of time. With that, I would ask that
3 the exhibits in case number -- shall I move the
4 admission of the exhibits case by case, Mr. Hearing
5 Examiner?

6 THE HEARING EXAMINER: Yes. Do we have
7 your witness available?

8 MS. BENNETT: I emailed Mr. Duvall
9 right before the hearing started to see if he could be
10 available. Unfortunately for everyone, he has a
11 private funeral to attend today, and he was hoping
12 that these cases would be heard before he had to leave
13 for that funeral.

14 We've also asked Mr. Chase Rice, who's
15 previously testified before the division to appear on
16 his behalf if Mr. Duvall had to leave. I don't see
17 either of them immediately jumping up on the camera.
18 So I would ask that -- okay. Great. Here's
19 Mr. Duvall.

20 MR. DUVALL: Deana, I'm here. Thank
21 you.

22 MS. BENNETT: Okay. Thank you, Farley.

23 THE HEARING EXAMINER: I have a
24 question before we go to Mr. Lowe's questions if he
25 has any. I don't know. And maybe Ms. Bennett can

1 answer this question as well. I don't see anywhere
2 here in the affidavit that this testimony is made, you
3 know, with the magic words saying that it is true
4 under penalty of perjury for lack of better words. Is
5 there a reason why it doesn't say that, Ms. Bennett?

6 MS. BENNETT: Well, yes. Typically,
7 the under penalty of perjury is for a self-affirmed
8 declaration. And an affidavit, in the very first line
9 of the affidavit, Mr. Duvall states that he was sworn,
10 deposed, and states as follows, and then it's
11 notarized. And so while I'm not an expert in the
12 formalities of the affidavits or self-affirmed
13 declarations, I believe this satisfies the
14 requirements for an affidavit.

15 THE HEARING EXAMINER: Okay.
16 Mr. Duvall, we're going to swear you in, and we're
17 going to get you to adopt this under oath. So would
18 you raise your right hand.

19 WHEREUPON,

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

24 THE HEARING EXAMINER: Okay.
25 Ms. Bennett, would you ask the questions to establish

1 a bit of foundation for this affidavit, and then ask
2 your witness to adopt it under oath?

3 MS. BENNETT: Certainly.

4 THE HEARING EXAMINER: Thank you.

5 EXAMINATION

6 BY MS. BENNETT:

7 Q Mr. Duvall, did you and I discuss the
8 reasons why Marathon needs to request an extension of
9 time in these cases?

10 A We did.

11 Q And when you and I discussed those reasons,
12 are those reasons substantially laid out in paragraphs
13 12 through 14 of the affidavit?

14 A Yes, they are.

15 Q And having heard my summary of those
16 paragraphs, and having -- do you have the affidavit in
17 front of you?

18 A Yes, I do.

19 Q Do you adopt the affidavit that you signed
20 and prepared in case numbers 24390 [sic] through
21 24401?

22 A Yes, I do.

23 Q And is it your testimony that the
24 information in paragraphs 11 through 14 are true and
25 accurate?

1 A Yes.

2 MS. BENNETT: Thank you.

3 THE HEARING EXAMINER: Are there any
4 objections to any of the exhibits in case number
5 24398? Not hearing any, the exhibits are admitted.
6 And Mr. Lowe does not have questions for 24398. So
7 this case is taken under advisement.

8 (24398 Exhibit A and Exhibit B were
9 received into evidence.)

10 Let's move on to accepting the exhibits
11 in the other cases. You don't have to give another
12 presentation. Okay. I'm looking at the exhibits in
13 24399. Are there any objections to the exhibits in
14 this case? Hearing none, they are admitted into
15 evidence.

16 (24399 Exhibit A and Exhibit B were
17 received into evidence.)

18 Mr. Lowe, do you have questions in this
19 case?

20 MR. LOWE: No, I do not.

21 THE HEARING EXAMINER: All right.

22 Thank you.

23 This case is taken under advisement.
24 Let's move on to the next case. So this would be
25 24400. Is that correct, Ms. Bennett?

1 MS. BENNETT: Yes.

2 THE HEARING EXAMINER: Okay. Let's see
3 what we have. We have exhibits. Are there any
4 objections to the exhibits in this case? Not hearing
5 any, the exhibits are so admitted into evidence.

6 (24400 Exhibit A and Exhibit B were
7 received into evidence.)

8 Mr. Lowe, any questions in this case?

9 MR. LOWE: I have no questions.

10 THE HEARING EXAMINER: Okay. This case
11 is taken under advisement. And finally, I believe,
12 it's 24401.

13 MS. BENNETT: That's correct.

14 THE HEARING EXAMINER: Thank you. And
15 are there any objections to the exhibits in this case?
16 Not hearing any, the exhibits are admitted.

17 (24401 Exhibit A and Exhibit B were
18 received into evidence.)

19 Mr. Lowe?

20 MR. LOWE: I have no questions.

21 THE HEARING EXAMINER: Thank you.
22 This case is taken under advisement.

23 Thank you, Ms. Bennett.

24 MS. BENNETT: Thank you very much.

25 Thanks.

1 THE HEARING EXAMINER: Okay. 24402.
2 Entries of appearance?

3 MR. RANKIN: Mr. Examiner, Adam Rankin
4 with the Santa Fe office of Holland and Hart appearing
5 on behalf of Mewbourne Oil Company in this case.
6 We've requested that this case be heard in conjunction
7 with the following case on the worksheet docket, case
8 number 24403.

9 THE HEARING EXAMINER: Perfect. You're
10 going to present them together?

11 MR. RANKIN: Yes, Mr. Examiner.

12 THE HEARING EXAMINER: Are there any
13 parties that you know of?

14 MR. RANKIN: No.

15 THE HEARING EXAMINER: Okay. Please
16 proceed.

17 MR. SAVAGE: Yes, Mr. Hearing Examiner,
18 there is.

19 MR. RANKIN: Sorry.

20 THE HEARING EXAMINER: Good morning,
21 Mr. Savage.

22 MR. SAVAGE: Yes. We did a late entry
23 of appearance. Good morning, Mr. Examiner. Darin
24 Savage with Abadie and Schill appearing on behalf of
25 Cimarex Energy Company. We're appearing just to

1 monitor and preserve rights. And we have no
2 objections to the cases going forward by affidavit.

3 THE HEARING EXAMINER: And have you had
4 a chance to review any of the exhibits?

5 MR. SAVAGE: Yes. And we have no
6 questions on them.

7 THE HEARING EXAMINER: Okay. Very
8 good.

9 Mr. Rankin?

10 MR. RANKIN: Thank you, Mr. Examiner.

11 Apologies, Darin. Too many emails.

12 Mr. Examiner, in this two cases,
13 Mewbourne is seeking to pool the Wolfcamp formation in
14 the north half of Sections 5 and 6 in Township 20
15 South, Range 29 East, in Eddy County. In the first
16 case, 24402, Mewbourne is proposing a spacing unit
17 that is comprised of the north half north half
18 equivalent within those sections.

19 In the companion case, 24403, they're
20 seeking to create and pool a spacing unit that's
21 comprised of the south half north half equivalent in
22 those sections. We filed on Tuesday exhibit packets
23 for each of these cases with a table of contents.

24 The Exhibit A is a copy of the
25 application that was filed -- or, rather, the

1 compulsory pooling checklist for each case, which
2 contains the information required for the division for
3 pooling. Exhibit B is the application for each of
4 these case.

5 (24402 Exhibit A and Exhibit B and
6 24403 Exhibit A and Exhibit B were
7 marked for identification.)

8 Exhibit C is a self-affirmed statement
9 of Mewbourne's landman, Ms. Ariana Rodrigues. She has
10 previously testified before the division and has had
11 her credentials as an expert in petroleum land matters
12 accepted. Exhibit C1 is a copy of the C-102 for the
13 proposed well. Exhibit C2 is a land tract map
14 identifying the tracts and the uncommitted interest
15 owners. C3 is a sample well proposal with AFEs for
16 the proposed well. C4 is a chronology of contacts.

17 (24402 Exhibit C and 24403 Exhibit C
18 were marked for identification.)

19 Exhibit D is a self-affirmed statement
20 of Mr. Charles Crosby, who's the petroleum geologist.
21 He has previously testified before the division and
22 has had his credentials as an expert in petroleum
23 geology accepted. Exhibit D1 through D3 are the
24 typical geology exhibits for each of these cases, a
25 locator map, subsea structure map, and cross-section

1 map showing the location of the wells identified for
2 creation of the stratigraphic cross-section, which is
3 Exhibit D3. Mr. Crosby testifies that each of the
4 spacing units is appropriate for development by
5 horizontal wells, and there's no pinch-outs or other
6 impediments to horizontal drilling.

7 (24402 Exhibit D and 24403 Exhibit D
8 were marked for identification.)

9 Exhibit E is the self-affirmed
10 statement prepared by our office reflecting that we
11 provided notice to each of the parties of the
12 application of the hearing in the case along with the
13 status of the certified mailings. Exhibit F is the
14 affidavit of publication reflecting that we have
15 provided notice by publication, identifying each of
16 the parties by name who are subject to each of these
17 case.

18 (24402 Exhibit E and Exhibit F and
19 24403 Exhibit E and Exhibit F were
20 marked for identification.)

21 With that, Mr. Examiner, we would move
22 the admission of Exhibits A through F and their
23 attachments in each of these cases and ask that the
24 case be taken under advisement subject to any
25 questions from the division.

1 THE HEARING EXAMINER: Are there any
2 objections to the exhibits in these two cases? Not
3 hearing any, they are both admitted. The exhibits in
4 24402 and 24403 are all admitted into evidence.

5 (24402 Exhibit A through Exhibit F and
6 24403 Exhibit A through Exhibit F were
7 received into evidence.)

8 Mr. Lowe, any questions for the
9 witness?

10 MR. LOWE: No, I have no questions.

11 THE HEARING EXAMINER: Okay. Then
12 these two cases are taken under advisement,
13 Mr. Rankin.

14 MR. RANKIN: Thank you, Mr. Examiner.

15 THE HEARING EXAMINER: Thank you.

16 Moving on to 24404. It looks like it's
17 consolidated with 05 and 06. Entries of appearance?

18 MR. RANKIN: Mr. Examiner, Adam Rankin
19 with the Santa Fe office of Holland and Hart appearing
20 on behalf of the applicant in these consolidated
21 cases.

22 THE HEARING EXAMINER: On behalf of
23 who, sir?

24 MR. RANKIN: I'm sorry. The applicant,
25 OXY USA, Incorporated.

1 THE HEARING EXAMINER: Are there are
2 any other parties, Mr. Rankin?

3 MR. RANKIN: There are none in these
4 cases.

5 THE HEARING EXAMINER: Okay. Please
6 proceed.

7 MR. RANKIN: Thank you. Mr. Examiner,
8 in these three cases, OXY is seeking to pool a Bone
9 Spring formation in all the acreage within Sections 12
10 and 13, Township 22 South, Range 31 East, Eddy County,
11 except for the west half west half tracts. That
12 portion of the sections are not subject to pooling in
13 these cases.

14 In case number 24404, OXY seeks an
15 order approving a standard 320-acre, more or less,
16 spacing unit that would be comprised of the east half
17 of the west half of those sections. We initially
18 asked for approval of an overlapping spacing unit,
19 however, after sending out notice, which is included
20 in the exhibits, no party objected, and so we can drop
21 that request from the hearing.

22 Case number 24405 seeks compulsory
23 pooling in the Bone Spring formation within a 320-acre
24 spacing unit within the Bone Spring formation within
25 the west half east half of those sections. Again,

1 this application requested approval of an overlapping
2 spacing unit, however, following notification, no
3 party objected, so we can drop that request from this
4 application as well.

5 And in the third case and final case,
6 case number 24406, OXY seeks an order approving a 320-
7 acre spacing unit comprised of the east half east half
8 of those sections as well. Again, seeking approval of
9 an overlapping unit, however, again, no party objected
10 to the proposed overlapping spacing unit, so we can
11 drop that from the application.

12 We filed on Tuesday exhibits for each
13 of these cases, including the compulsory pooling
14 checklist as Exhibit A. Exhibit B is the application
15 filed in each case. C is the self-affirmed statement
16 of OXY's land person, Ms. Courtney Carr. She's
17 previously testified. Attached to her affidavit are
18 the Exhibits C1 through C5.

19 (24404 Exhibit A through Exhibit C,
20 24405 Exhibit A through Exhibit C, and
21 24406 Exhibit A through Exhibit C were
22 marked for identification.)

23 Those are the overlap diagram depicting
24 the acreage that would be overlapped with the existing
25 spacing units, the C-102s for the proposed wells that

1 are subject to the -- that would be included within
2 this proposed spacing unit. C3 is the land tract map
3 and ownership breakdown of the parties that we're
4 seeking to pool. C4 is the sample well proposal
5 letters and AFEs with costs. And C5 is the chronology
6 of contacts reflecting OXY's efforts to reach
7 agreement with all the parties subject to pooling.

8 Exhibit D is the self-affirmed
9 statement of Mr. Jared Rountree. He's previously
10 testified before the division as an expert in
11 petroleum geology. Exhibits D1 through D4 review the
12 spacing unit proposed in this acreage and confirms
13 that it's appropriate for horizontal well development,
14 and there's no impediments to drilling in this
15 acreage.

16 (24404 Exhibit D, 24405 Exhibit D, and
17 24406 Exhibit D were marked for
18 identification.)

19 Exhibit E is the self-affirmed
20 statement of notice for each of these cases reflecting
21 that we have provided notice to each of the parties
22 subject to pooling of the application and of this
23 hearing. Exhibit F is the affidavit of publication
24 reflecting that we have given notice constructively
25 and in a newspaper of general circulation identifying

1 each of those parties by name.

2 (24404 Exhibit E and Exhibit F, 24405
3 Exhibit E and Exhibit F, and 24406
4 Exhibit E and Exhibit F were marked for
5 identification.)

6 These exhibits are mirrored for each
7 case. And we ask at this time, Mr. Examiner, unless
8 there are questions by the division, that we be
9 permitted to move the admission of exhibits A through
10 F for each case with their attachments, and that the
11 cases be taken under advisement.

12 THE HEARING EXAMINER: Are there any
13 objections to these exhibits in either of the three
14 cases? Not hearing any, your exhibits are admitted in
15 all three cases. And Mr. Lowe has no questions, so we
16 will take these three under advisement.

17 (24404 Exhibits A through F, 24405
18 Exhibits A through F, and 24406
19 Exhibits A through F were received into
20 evidence.)

21 MR. RANKIN: Thank you, Mr. Examiner.

22 THE HEARING EXAMINER: Thank you,
23 Mr. Rankin.

24 Case 24420.

25 MR. RANKIN: Mr. Examiner, Adam Rankin

1 appearing on behalf of the applicant in this case,
2 Hilcorp Energy, with the Santa Fe office of Holland
3 and Hart.

4 THE HEARING EXAMINER: Thank you. Are
5 there any other parties who have entered an appearance
6 in this case?

7 MR. RANKIN: Mr. Examiner, not to my
8 knowledge. I double-checked the docket this morning.
9 I did not see any other entries of appearance.

10 THE HEARING EXAMINER: Okay.
11 Mr. Rankin, please proceed.

12 MR. RANKIN: Mr. Examiner, before I get
13 too far into this case, we filed this application in
14 response to two protests to administrative application
15 and notice thereto. We were instructed by the
16 division that in order to resolve those protests we
17 needed to file this application for hearing and give
18 notice to those parties. We did so.

19 Those parties have not filed a pre-
20 hearing statement. They have not filed an entry of
21 appearance. In Mr. Rob Carlson's self-affirmed
22 affidavit that was filed on Tuesday, we indicate that
23 we would be willing, and our preference would be, to
24 dismiss this application for hearing and allow the
25 division to proceed to review the administrative

1 application for downhole comingling.

2 I see Mr. McClure, I think, is on the
3 screen. And I want to make sure that that's his
4 preference. I think the division's preference is to
5 file and approve administrative applications instead
6 of hearing orders. So with his confirmation, I will
7 confirm here on the record that we will move to
8 dismiss this case and allow Mr. McClure and the
9 division to approve the application administratively.

10 THE HEARING EXAMINER: Before Mr.
11 McClure chimes in, it was my understanding that one of
12 the protestors planned on appearing here today. Do
13 you know the names of the two protesters?

14 MR. RANKIN: I have them as part of the
15 record, Mr. Examiner. Let me just pull up their names
16 real quick. Monica Senna [ph], and I believe either a
17 sibling or family member, Jose Senna [ph], were the
18 two protestants under the administrative application.

19 THE HEARING EXAMINER: Okay. Do we
20 have Mr. or Mrs. Senna [ph] with us today?

21 Mr. McClure, was it your understanding
22 that one of them was going to appear today?

23 MR. MCCLURE: Mr. Hearing Examiner, it
24 was my understanding that we had received
25 communication in regards to that, and that was what

1 they told us. I didn't see the email myself, though.

2 THE HEARING EXAMINER: Okay. Thank
3 you, Mr. McClure.

4 Again, do we have Mr. or Mrs. Senna
5 [ph] with us today? Because if not, we're going to
6 accept the dismissal of these cases, and it will
7 proceed administratively.

8 Okay. I'm not hearing any protesters
9 that are with us. So Mr. Rankin, you will file the
10 motion to dismiss both cases or one case or --

11 MR. RANKIN: Mr. Examiner, we will. As
12 long as the division doesn't have any questions that
13 we can address here today, we will move the dismissal
14 of these cases without prejudice and ask that the
15 division proceed to review and approve Hilcorp's
16 application for downhole comingling administratively.

17 THE HEARING EXAMINER: Mr. McClure,
18 before we let him go, are there any questions that you
19 have for Mr. Rankin?

20 MR. MCCLURE: Mr. Hearing Examiner,
21 there are no questions that I have that need to be
22 addressed at hearing. Any questions in regard to the
23 application, I'll proceed administratively.

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

1 MR. MCCLURE: Thank you, Mr. Hearing
2 Examiner.

3 THE HEARING EXAMINER: I would say we
4 would take this under advisement, but you're going to
5 dismiss it.

6 MR. RANKIN: Thank you, Mr. Examiner.
7 We'll dismiss.

8 THE HEARING EXAMINER: 24420, does it
9 stand on its own?

10 MR. RANKIN: Mr. Examiner, it does.
11 There are no related cases.

12 THE HEARING EXAMINER: Because I do
13 have 24421, which is the last case. Ms. Pena?

14 MS. PENA: 24421?

15 THE HEARING EXAMINER: That's what I
16 have on my list as number 64. Am I wrong? That's the
17 next one after 24420.

18 MR. RANKIN: Is that the one that was
19 dismissed?

20 THE HEARING EXAMINER: Okay. Thank
21 you. I appreciate it.

22 MS. PENA: No problem.

23 THE HEARING EXAMINER: We'll call
24 24464. It looks like it's consolidated with 65 and
25 66.

1 MS. PENA: That is correct. Yarithza
2 Pena with Modrall Sperling on behalf of Franklin
3 Mountain Energy 3, LLC.

4 THE HEARING EXAMINER: Thank you. And
5 do you know if there's any other parties who have
6 entered on these three cases?

7 MS. PENA: Not that I'm aware of.

8 THE HEARING EXAMINER: I see someone's
9 come on the screen.

10 MS. PENA: That is our landman,
11 Mr. Johnson.

12 THE HEARING EXAMINER: You want to
13 present them as a group?

14 MS. PENA: Yes, that would be great.

15 THE HEARING EXAMINER: Please.

16 MS. PENA: In case 24464, Franklin
17 seeks an order pooling all uncommitted interest in a
18 Wolfcamp standard spacing unit comprised of 639.21,
19 more or less, acres in lots 1 and 2, the east half
20 equivalent of irregular Section 3 and the east half of
21 Section 10 in Township 19 South, Range 35 East, in Lea
22 County. The spacing unit will be dedicated to the
23 Eagle State 704H and 705H with the Eagle State Com
24 704H as the proximity tract well, which is expected to
25 be less than 330 feet from the adjoining tracts.

1 Ini 24465, Franklin seeks an order
2 pooling all uncommitted interest in a Bone Spring
3 standard spacing unit of 319.59 acres, more or less,
4 in the east half east half equivalent of irregular
5 Section 3 and the east half east half of Section 10.
6 And this spacing unit will be dedicated to the Eagle
7 State 304H and 504H wells.

8 In 24466, Franklin seeks an order in a
9 Bone Spring standard spacing unit comprised of 279.64
10 acres, more or less, in the east half west half
11 equivalent of irregular Section 3 and the east half
12 northwest quarter, the northeast quarter southwest
13 quarter of Section 10, Township 19 South, Range 35
14 East, in Lea County. And this spacing unit will be
15 dedicated to the 502H well.

16 We timely filed exhibit packets on
17 Tuesday for all of these three cases. And each
18 exhibit packet is similar. With Exhibits in tab A
19 containing the compulsory pooling checklist. Exhibits
20 in tab B containing the affidavit of Don Johnson, the
21 landman for Franklin, who has previously testified
22 before the division, and his credentials have been
23 accepted as a matter of record. Following his
24 affidavit are the standard land exhibits.

25 //

1 (24464 Exhibit A and Exhibit B, 24465
2 Exhibit A and Exhibit B, and 24466
3 Exhibit A and Exhibit B were marked for
4 identification.)

5 Exhibits in tab C contain the affidavit
6 of Ben Kessel, the geologist for Franklin, who has
7 also previously testified before the division, and his
8 credentials have been accepted as a matter of record.
9 And following his affidavit are the standard geology
10 exhibits for each formation and well.

11 (24464 Exhibit C, 24465 Exhibit C, and
12 24466 Exhibit C were marked for
13 identification.)

14 Exhibits in tab D contain the notice
15 exhibits and declaration of Ms. Deana Bennett,
16 including a sample notice letter, mailing list,
17 certified tracking list, and the affidavit of
18 publication from the Hobbs News-Sun showing that we
19 timely published for all three cases on April 25,
20 2024.

21 (24464 Exhibit D, 24465 Exhibit D, and
22 24466 Exhibit D were marked for
23 identification.)

24 At this point, I would ask that the
25 exhibits for all three cases, 24464 through 24466, be

1 admitted to the record, and that the cases be taken
2 under advisement. If there are any questions, our
3 landman and geologist should be on the line.

4 THE HEARING EXAMINER: Thank you,
5 Ms. Pena.

6 Are there any objections? Not hearing
7 any, the exhibits in all three cases are admitted into
8 evidence.

9 (24464 Exhibit A through Exhibit D,
10 24465 Exhibit A through Exhibit D, and
11 24466 Exhibit A through Exhibit D were
12 received into evidence.)

13 Mr. Lowe?

14 MR. LOWE: I have no questions. Thank
15 you.

16 MS. PENA: Thank you.

17 THE HEARING EXAMINER: Thank you,
18 Ms. Pena. We'll take them under advisement. Now are
19 you presenting the next group of cases as well?

20 MS. PENA: I am as well.

21 THE HEARING EXAMINER: I'm calling
22 24471 through 24474. Ms. Pena?

23 MS. PENA: Yarithza Pena with Modrall
24 Sperling on behalf of Franklin Mountain Energy 3, LLC,
25 in these four matters.

1 THE HEARING EXAMINER: And what is the
2 first name that you're saying? It goes kind of fast.

3 MS. PENA: Franklin Mountain --

4 THE HEARING EXAMINER: No, no. Your
5 name.

6 MS. PENA: I'm sorry. Yarithza.

7 THE HEARING EXAMINER: Say it again.

8 MS. PENA: Yarithza.

9 THE HEARING EXAMINER: Thank you. And
10 please proceed.

11 MS. PENA: No problem. Thank you. In
12 case 24471, Franklin seeks an order pooling all
13 uncommitted interest in a Bone Spring standard spacing
14 unit of 320 acres in the west half east half of
15 Sections 27 and 34, Township 19 South, Range 35 East,
16 in Lea County. This spacing unit will be dedicated to
17 the Treble State 303H, 503H, and 603H wells.

18 In 24472, Franklin seeks an order
19 pooling all uncommitted interest in a Wolfcamp
20 standard spacing unit of 320 acres in the west half
21 east half of Sections 27 and 34, Township 19 South,
22 Range 35 East. And this will be dedicated to the
23 Treble State 703H and 803H wells.

24 In 24473, Franklin seeks an order
25 pooling uncommitted interest in the Bone Spring

1 standard spacing unit of 320 acres in the east half
2 east half of Sections 27 and 34, Township 19 South,
3 Range 35 East, in Lea County. And this will be
4 dedicated to the Treble State 304, 504H, and 604H
5 wells.

6 And finally, in 24474, Franklin seeks
7 an order in a Wolfcamp standard spacing unit comprised
8 of 320 acres in the east half east half of Sections 27
9 and 34. And this will be dedicated to the Treble
10 State 704H and 804H wells.

11 All exhibits were timely filed on
12 Tuesday for all four. And they all mimic the same
13 set. Exhibit A contains the compulsory pooling
14 checklists. Exhibits in tab B contain the affidavit
15 of Mr. Don Johnson, landman for Franklin, who has
16 previously testified before the division. And
17 following his affidavit are the standard land
18 exhibits.

19 (24471 Exhibit A and Exhibit B, 24472
20 Exhibit A and Exhibit B, 24473 Exhibit
21 A and Exhibit B, and 24474 Exhibit A
22 and Exhibit B were marked for
23 identification.)

24 Exhibits in tab C contain the affidavit
25 of Ben Kessel, the geologist for Franklin, who has

1 also previously testified before the division. And
2 following his affidavit are the standard geology
3 exhibits. Exhibits in tab D contain the declaration
4 of Ms. Bennett with the notice exhibits and also the
5 affidavit of publication showing that we timely
6 published on April 25, 2024, for all of these four
7 cases.

8 (24471 Exhibit C and Exhibit D, 24472
9 Exhibit C and Exhibit D, 24473 Exhibit
10 C and Exhibit D, and 24474 Exhibit C
11 and Exhibit D were marked for
12 identification.)

13 An additional item that I would like to
14 point out is, when we were preparing for the hearing,
15 we realized the noticed parties for the overlapping
16 spacing unit for 24472 were not properly notified. So
17 I would ask the division to allow us to continue just
18 this case, the 24472, to June 13th so we may properly
19 notice the overlapping spacing unit parties in that
20 matter.

21 And as of that, I would ask for the
22 exhibits for all of these four cases be admitted into
23 the record and taken under advisement with the
24 exception of 24472 being continued.

25 THE HEARING EXAMINER: So are you

1 asking that I don't accept the exhibits in 24472 at
2 this time and wait?

3 MS. PENA: If we can accept the
4 exhibits that we have filed on Tuesday and then leave
5 the matter open, we will file a new packet with the
6 clarifying noticed parties. Or if the division
7 prefers a separate packet with just a new exhibit tab.

8 THE HEARING EXAMINER: And you were
9 saying that the notice -- which aspect of the notice
10 was not timely filed?

11 MS. PENA: So we need to notify
12 additional parties just in that matter.

13 THE HEARING EXAMINER: So does that
14 mean that you're going to submit -- so what will you
15 be submitting as an amended packet?

16 MS. PENA: We would probably have a new
17 declaration from Ms. Bennett with a new sample letter
18 showing that those parties received that letter
19 following this hearing.

20 THE HEARING EXAMINER: Okay. I'm
21 trying to think of, is there a benefit to admitting
22 exhibits now that you're going to then amend. And
23 since we're coming back on the record June 13 for this
24 case. If we admit the exhibits now, what will you
25 request us to do on June 13?

1 MS. PENA: So on June 13th, I wouldn't
2 need to go through the exhibits once more, because
3 those have already been submitted. And the parties
4 that we would need to notify would not be pooling
5 parties. They would just be overlapping spacing unit
6 parties. And we would be able to just submit that
7 additional part of the exhibits, just that part be
8 admitted on June 13th to the record.

9 THE HEARING EXAMINER: It seems to me
10 that there's no time benefit to accepting the exhibits
11 in that case today. It seems to me that the best
12 thing to do is just come back on the 13th and have you
13 offer -- you've already given us a presentation. We
14 can come back on the record merely for you to offer
15 the amended exhibit packet, which will have everything
16 in one document with a cover letter explaining what
17 you did. We can just admit it at that time, see if
18 there's any questions, and then take it under
19 advisement.

20 MS. PENA: Would it be possible, you
21 know, when we come back on June 13th, that the
22 questions be limited to just the amended parts of the
23 exhibits if we're presenting the exhibits that are
24 filed on Tuesday today in this matter as well?

25 THE HEARING EXAMINER: Okay. Then in

1 other words, we will accept -- are there any
2 objections to accepting the exhibits in any of these
3 cases, 24471, 72, 73, and 74? Not hearing any, I will
4 admit all of the exhibits in all four cases now.

5 (24471 Exhibit A through Exhibit D,
6 24472 Exhibit A through Exhibit D,
7 24473 Exhibit A through Exhibit D, and
8 24474 Exhibit A through Exhibit D were
9 received into evidence.)

10 THE HEARING EXAMINER: Mr. Lowe, are
11 there any questions on any cases?

12 MR. LOWE: I have a question, yes.

13 THE HEARING EXAMINER: On all of the
14 cases or just a specific question?

15 MR. LOWE: Probably a specific
16 question, but it might encompass all of it.
17 Pertaining to what was updated just now.

18 THE HEARING EXAMINER: Fine. Which
19 witness do you want to direct the question to.

20 MR. LOWE: Either it'd be the landman
21 or the attorney.

22 THE HEARING EXAMINER: Let's get the
23 landman under oath.

24 Would you raise your right hand,
25 please?

1 WHEREUPON,

2 DON JOHNSON,

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

6 THE HEARING EXAMINER: Thank you.

7 Mr. Lowe?

8 MR. LOWE: What's his name again?

9 THE HEARING EXAMINER: I don't know.

10 Would you state and spell your name for
11 the record, please?

12 THE WITNESS: Don Johnson, D-O-N
13 J-O-H-N-S-O-N.

14 EXAMINATION

15 BY MR. LOWE:

16 Q Good morning, Mr. Johnson. Leonard Lowe
17 here. I want to find out, in reference to the recent
18 topic that was brought forth, all these wells pertain
19 to the same horizontal spacing unit. Is that correct?

20 A Excuse me. Can you speak up? I -- it's
21 hard to hear.

22 Q I'm sorry. All these four cases, do they
23 all encompass the same horizontal spacing unit?

24 A Two -- two of them -- so there's the east
25 half east half and the west half east half. Then

Page 206

1 there's a Bone Spring and Wolfcamp for each of those
2 quarter quarter.

3 Q Okay. Thank you for that clarification. In
4 reference to the notice topic pertaining to the
5 overlapping spacing unit, where is the overlapping
6 spacing unit located at pertaining to this horizontal
7 spacing unit?

8 A It looks like that is in Unit G of Section
9 27. And that would be the southwest of the northeast
10 of Section 27.

11 THE HEARING EXAMINER: Are you taking
12 that information from an exhibit?

13 THE WITNESS: Yes. I am taking it
14 from --

15 THE HEARING EXAMINER: Could you give
16 us a page number to look at?

17 THE WITNESS: Page 14.

18 THE HEARING EXAMINER: Okay. Our page
19 14 is not lining up with what you just said. Can you
20 give us an exhibit number and letter?

21 BY MR. LOWE:

22 Q Actually, what's the well number?

23 A It's the 40-27-0058.

24 Q Okay.

25 THE HEARING EXAMINER: Ms. Pena, do you

1 know what exhibit he's looking at?

2 MS. PENA: I believe he's looking at
3 the application. But I can also direct you to the
4 affidavit, tab E, and that is page 8 of 67 of the PDF.
5 And that is paragraph 17.

6 THE HEARING EXAMINER: Thank you.

7 MR. LOWE: Okay. Well, I think I got
8 what's going on here. That clears up my question.
9 Thank you.

10 THE HEARING EXAMINER: Thank you.

11 THE WITNESS: Thank you.

12 THE HEARING EXAMINER: Okay. So
13 Ms. Pena, we will take under advisement three of the
14 four cases at this time. Those case numbers are
15 24471, 24473, and 24474. Now we've admitted the
16 exhibits in 72.

17 You will continue that case to the June
18 13th docket. And before that docket, you will file an
19 amended exhibit list with a cover letter. At that
20 time, we will just admit the amended exhibit. Or will
21 there be an additional exhibit?

22 MS. PENA: There will be probably a tab
23 E in that amended exhibit packet.

24 THE HEARING EXAMINER: Okay. Perfect.
25 We'll deal with that tab then.

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MS. PENA: Yes. Thank you.

THE HEARING EXAMINER: Thank you.

That concludes the hearing for the docket on May 16. We're signing off. Off the record.

(Whereupon, at 12:07 p.m., the proceeding was concluded.)

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CERTIFICATE

I, JAMES COGSWELL, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

May 30, 2024



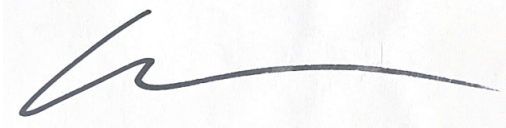
JAMES COGSWELL
Notary Public in and for the
State of New Mexico

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CERTIFICATE OF TRANSCRIBER

I, RONALD MOORE, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

May 30, 2024



RONALD MOORE

[& - 198/199]

&	107 12:12	72:2 73:22	171/174 17:7
& 3:11 4:4,10 5:14 6:14 7:5 8:4,10,21 9:4 9:15 10:4,16 10:22 11:4,14 11:20 12:4 13:4,9	10:50 146:21 10th 55:13 11 27:2 30:3 96:21,23 104:3 104:13 105:2 109:6 111:15 113:7 119:2,5 120:22 146:24 180:24	74:2 111:17,24 202:18 204:1,8 204:12,21 208:18 14 65:9 124:21 177:25 180:13 180:24 207:17 207:19 148/149 15:4,6 15:8,10 14th 73:23 74:2 168:22 15 65:9 15-24 1:10 151/152 15:14 15:15 152/152 15:17 15:20 154 14:4 15th 55:13 73:21 16 2:5 25:3,5 125:8 146:25 170:4 209:4 161/162 15:24 16:4 162/162 16:7,9 165/165 16:13 16:14,17,19 169/174 16:23 16:25 17:5 16th 25:22 17 65:9 208:5	173/174 17:8 174/174 17:9 176/181 17:14 17:15,20,21 176/182 18:5,6 18:11,12 18 65:9 111:5 147:12 168:10 180 14:6 185/187 18:16 18:18,20 19:4 19:6,8 186/187 18:22 18:24,25 19:10 19:12,13 189/191 19:17 19:19,21 20:8 20:10,12,21,23 20:25 18th 31:20 32:1 32:5 33:2 39:4 19 65:9 111:5 168:11 196:21 197:13 200:15 200:21 201:2 19.15.4.11. 84:4 190/191 19:23 20:14 21:5 191/191 19:25 20:4,16,17 21:7,8 198/199 21:12 21:14,16,18,22 21:24 22:5,7
0	110 3:12 5:15 8:5,11 9:5,16 10:5,17 11:5 13:5 11th 109:2,12 118:16,20 120:11 12 159:12 176:16,19 177:25 180:13 188:9 1220 2:9 3:6 125 7:11 12:07 209:5 12th 55:13 131:5,10 141:3 13 45:4 122:18 122:25 177:4 188:10 203:23 203:25 132 171:23 13th 25:20 37:25 44:25 45:10 64:15 66:23 67:12		
05 187:17 06 187:17			
1			
1 3:12 5:15 8:5 8:11 9:5,16 10:5,17 11:5 13:5 196:19 1,020 155:16 1,280 164:13 1,342 168:9 1,650 155:15 10 196:21 197:5,13 100 126:18 144:19 1000 4:16 7:17 7:22 8:17 102 147:23 153:4 155:10 158:20,22 185:12 102s 154:14 170:14 189:25 1056 9:10,21 12:24			

22:11,13,15,17 19th 31:20 33:2	23824 2:2 25:13	24321 25:9 121:6 128:24	180:21 182:12 182:17
2	240 47:21	24322 1:15	24402 1:16
2 85:25 86:2 196:19	24121 1:9 35:25	24323 1:15	18:15 183:1
20 10:23 12:5 87:20 96:19	24124 2:1	24336 1:15 16:12 163:2	184:16 185:5 185:17 186:7
143:9 184:14	24125 2:1	165:1,11,14,19	186:18 187:4,5
201/205 22:21	24182 1:14 15:13 150:22	166:4,5,10	24403 1:16
22:23 23:9,11	151:21 152:3	24372 129:2	19:3 183:8
23:19,21 24:4 24:6	152:12,14,19	24373 129:2	184:19 185:6
202/205 22:25	24183 1:14 15:23 16:3	24376 2:1 16:22 17:3	185:17 186:7 186:19 187:4,6
23:5,13,15,23	160:24 161:3	167:10,15	24404 1:17
23:25 24:8,10	161:21 162:5	169:1,9 171:15	19:16 20:3
2024 2:5 41:21	162:15,22	173:21 174:2,6	187:16 188:14
133:10 148:20	166:7	24390 180:20	189:19 190:16
198:20 202:6	24195 1:9 38:10	24394 1:11 58:9	191:2,17
210:16 211:13	24196 1:10	24395 1:11	24405 1:17
206 14:8	24197 1:10	24398 1:15 17:12 174:16	20:7 188:22
20th 88:21	24200 1:14 46:12	175:2 176:4,13	189:20 190:16
213 7:11	24202 1:15 46:12	176:17 181:5,6	191:2,17
21679 48:6	24207 1:10 38:11	181:8	24406 1:17
218 3:19 5:5,21 6:5 10:11	24284 1:10 49:17 54:23	24399 1:16 17:18 175:6	20:20 21:3
11:10 12:18	24286 1:10 54:24 55:2	176:4,13	189:6,21
22 151:10	24320 25:8 40:11 121:6	181:13,16	190:17 191:3
161:11,13	128:24	24400 1:16 18:3 175:6	191:18
164:14,15		176:5,14	24407 1:17 60:14
188:10		181:25 182:6	24408 1:17
22432 82:8		24401 1:16 18:9 175:2,6	24409 1:18
22700 1:9		176:5,14	24410 1:18
22nd 73:18		176:5,14	24411 1:18
23823 2:1 25:13			24412 1:18 60:15

[24413 - 2nd]

<p>24413 1:18 65:9 24414 1:19 24415 1:19 24417 1:19 24418 1:19 24419 1:19 24420 1:20 191:24 195:8 195:17 24421 1:20 150:2,19 195:13,14 24423 1:20 24424 1:20 24425 1:20 24426 1:21 24427 1:21 24428 1:21 24429 1:21 24430 1:21 24431 1:22 24432 1:11 74:25 75:12,13 75:18,22 77:1 78:14 89:3 95:9 104:22 24433 1:12 77:16 97:2 99:18 105:1 24434 1:11 95:9 24435 1:11 24436 1:12 95:11</p>	<p>24437 1:12 24438 1:12 24439 1:12 99:19 24443 1:22 112:20 113:2 24444 1:22 24445 1:22 112:20 24446 1:13 105:10 106:11 24447 1:22 24448 1:23 105:20 106:11 107:1 24449 1:23 107:1 24450 1:23 15:3 112:19,25 113:22 114:2 147:1,8 148:2 148:12,21,24 149:8 24454 1:23 113:22 114:1 114:14 24456 1:23 24457 1:13 109:19 24459 1:13 24460 1:13 24462 1:13 24463 1:14 24464 1:24 21:11 195:24</p>	<p>196:16 198:1 198:11,21,25 199:9 24465 1:24 21:21 22:3 197:1 198:1,11 198:21 199:10 24466 1:24 22:10 197:8 198:2,12,22,25 199:11 24467 1:24 119:12 120:20 24468 1:24 119:22 24469 1:25 24470 1:25 24471 1:25 22:20 23:3 199:22 200:12 201:19 202:8 205:3,5 208:15 24472 1:25 23:8 200:18 201:19 202:8 202:16,18,24 203:1 205:6 24473 1:25 23:18 200:24 201:20 202:9 205:7 208:15 24474 2:1 24:3 199:22 201:6 201:21 202:10 205:8 208:15</p>	<p>24479 1:14 24th 31:14 25 61:2 198:19 202:6 2523 6:10 25th 32:14,20 33:3,6,10,16,19 34:3,4,11 50:19,19 59:9 59:12,25 60:10 26 60:25 148:20 26th 33:21,24 34:3,13 133:12 27 70:1 96:20 106:8 147:12 151:11 161:12 164:15 200:15 200:21 201:2,8 207:9,10 279.64 197:9 27th 33:25 47:10 64:24 68:7,21,23 28 128:14 161:13 164:16 29 26:8 184:15 29th 50:13 168:25 2nd 59:16 66:9 66:9 122:6 123:2,12,15,21 127:18 128:4 129:22,25 133:20 137:8</p>
--	---	---	---

[2nd - 604h]

138:24 139:1 141:17,24 142:7	310 4:5 8:22 11:21 13:10 319.59 197:3 31st 34:20 35:13,15 50:13 32 74:25 77:2 78:21 79:6 89:16,16 91:14 98:24 151:12 161:13 320 147:10 157:3 164:18 188:15,23 189:6 200:14 200:20 201:1,8 32311 210:16 325 6:15 11:15 33 75:19,21 77:2 168:11,12 330 156:6,13 160:1 196:25 34 106:8 147:12 200:15 200:21 201:2,9 35 61:2 147:12 196:21 197:13 200:15,22 201:3 36 151:10 161:11 164:14 39 75:1,20,21 77:2,16 89:16 91:15 97:2 105:1	4 4 122:23 135:2 140:1,4,8 141:4 143:3 145:22 176:19 40 162:9 40-27-0058 207:23 41 106:2 176:19 44 113:23 448 106:4 45 113:3,23 46 64:20 49 105:21 106:5 4th 4:16 7:17 7:22 8:17 50:9 121:24 127:14 127:20 131:6 141:16 142:3 143:18	504h 197:7 201:4 505h 170:17 506h 170:18 514h 168:16 515h 168:17 170:18 516h 168:17 170:18 52 140:7 555 4:11 56 113:22 114:1,14 571 155:11 59 109:20 5th 131:5
3		5 5 26:7 184:14 50 30:2 113:1 500 4:16 7:17 7:22 8:17 501 154:10,12 155:11,15 501's 156:5 501h 159:7,14 159:16 168:16 502h 197:15 503h 200:17	6 6 41:20 121:3 126:17,17 139:12 140:20 140:21,22 141:9,10 143:8 144:20 145:17 168:11 184:14 60 30:2 39:6,7 109:20 135:4 139:16 600 5:10 601h 168:18 602h 168:18 603h 168:18 200:17 604h 168:19 201:4
3 3 7:14 147:5 157:21 158:5 162:14 196:3 196:20 197:5 197:11 199:24 30 41:1,2,3 43:8,23 48:8 64:21 111:5 127:23 128:10 130:4 131:11 132:16 134:23 141:4 171:4 210:16 211:13 300 156:8 301h 168:16 302 154:10,12 155:16 156:7 159:7 160:1 302h 157:23 303h 200:17 304 201:4 304h 197:7 30626 211:14 306h 168:16 30th 54:2,4,12 56:2,19 57:15 58:4 126:10 31 151:12 161:13 164:15 168:10 188:10			

[605h - acreage]

<p>605h 168:19 606h 168:20 62 109:20 63 109:20 639.21 196:18 64 149:20 150:2 195:16 65 195:24 66 195:25 6649812 2:12 67 208:4 68 119:13 69 119:13 162:14 6th 73:20 74:1 121:25 122:11 123:10 125:8 126:8 130:10 131:11 135:1,3 138:25 141:21 142:2,12,15 143:11,12 145:23 146:3</p>	<p>705h 196:23 72 205:3 208:16 73 205:3 74 205:3 78209 12:13 78738 4:6 8:23 11:22 13:11 79 109:20 79701 5:11 7th 42:22 43:7 43:11,19 44:24 73:20 74:2 137:14</p>	<p>8th 43:4,5,6 54:15 73:18 130:19,21 131:3 141:3</p>	<p>171:11 194:6 203:1,3 205:1 acceptable 32:21 33:4 37:22 104:4,5 125:21 accepted 122:5 124:11 147:21 151:16,25 164:23 165:6 185:12,23 197:23 198:8 accepting 181:10 204:10 205:2 accepts 144:7 accurate 126:9 180:25 210:9 211:5 accused 94:2 accusing 124:6 124:8 achieve 41:15 acquired 60:25 80:24 acre 47:21 151:9 157:4 162:9 164:13 168:9 188:15 188:23 189:7 acreage 41:18 41:22 47:23 55:11 56:7,17 56:20 61:15 71:3 102:13</p>
<p>7</p>	<p>8</p>	<p>9</p>	
<p>7 43:2 44:18 126:17 140:20 156:20 159:12 70 119:13 120:21 157:21 158:5 159:12 701h 147:14 703h 200:23 704h 196:23,24 201:10</p>	<p>8 208:4 803h 200:23 804h 201:10 81301 4:12 87102 4:17 7:18,23 8:18 10:24 12:6 87199 7:7 87501 3:13,20 5:6,16,22 6:6 6:16 7:12 8:6 8:12 9:6,17 10:6,12,18 11:6,11,16 12:19 13:6 87504 6:11 9:11,22 12:25 87505 2:10 3:7 8:27 2:6 25:3</p>	<p>9 106:11 123:4 90233 7:6 95 58:9 96 38:11 960 126:2 127:8 151:9 157:3 97 38:11 9th 73:16 79:18</p>	
	<p>a</p>	<p>a.m. 2:6 25:3 146:24 a1 176:1 a2 176:2 abadie 4:10 183:24 ability 27:8 82:22 134:5 210:10 211:7 able 39:5 118:18 204:6 absent 141:12 absolutely 48:20 abundance 148:18 accept 125:9 133:22,22 146:5 169:6</p>	

[acreage - affidavit]

107:17 108:5 110:23 113:22 125:20 126:17 126:24 141:9 145:2 177:24 188:9 189:24 190:12,15 acreages 106:7 acres 126:2 127:8 147:10 164:18 196:19 197:3,10 200:14,20 201:1,8 action 26:16 29:8,17 82:20 210:12,16 211:8,12 active 76:9 89:11 91:4 activities 102:16 actual 130:6 135:12 actually 28:8 29:11,25 42:12 42:16 43:7 47:9 70:11 71:5 127:7,17 136:14 137:20 143:12 156:5 157:20 158:14 162:11 207:22 adam 3:10 8:3 8:9 9:3,14	10:15 11:3 13:3 76:14 99:16 114:19 119:20 163:9 167:20 183:3 187:18 191:25 add 35:4 68:24 96:4,6 additional 34:19 40:20 59:1 64:21 94:25 96:2 135:24 137:2,5 137:8 139:4 151:18 202:13 203:12 204:7 208:21 address 88:1 89:12 131:3,4 159:4 194:13 addressed 62:9 88:16 89:17 91:11 159:7 194:22 addresses 173:16 addressing 88:3 adjacent 173:17 adjoining 196:25 adjudicated 61:22 62:5 63:2	adjust 36:20 administrative 192:14,25 193:5,18 administrativ... 193:9 194:7,16 194:23 admission 178:4 186:22 191:9 admit 30:14 203:24 204:17 205:4 208:20 admitted 148:24 149:6 152:13,18 162:15,18 165:14,17 168:2 171:25 173:25 174:5 181:5,14 182:5 182:16 187:3,4 191:14 199:1,7 202:22 204:8 208:15 admitting 203:21 adopt 179:17 180:2,19 advance 115:12 132:16 adversely 29:18 100:24 advise 65:2	advisement 148:25 149:15 160:21 162:21 167:7 174:13 181:7,23 182:11,22 186:24 187:12 191:11,16 195:4 199:2,18 202:23 204:19 208:13 afe 148:1 afes 171:3,4 185:15 190:5 affect 29:18 82:21 100:22 affecting 80:10 100:24 affidavit 15:5,7 15:17 16:6,16 17:8,9,13,19 18:4,10,25 19:13 20:4,17 21:8,13,15,23 22:4,12,14,22 22:24 23:10,12 23:20,22 24:5 24:7 25:11 27:15,19 36:12 37:2,4,14,20,21 38:4,24 46:23 46:25 65:25 99:7 105:19 107:9 110:8 114:1,3,4,13
--	---	--	--

[affidavit - appear]

<p>115:17 118:17 119:4 120:12 121:1,5 124:1 146:13 147:1 147:19,22 148:4,7,18 150:23 151:14 151:17,23 152:1 157:16 157:24 159:8 159:21,25 161:17,23 164:21 165:8 169:3 171:8 173:14,23 175:24 176:10 176:17,19 177:25 179:2,8 179:9,14 180:1 180:13,16,19 184:2 186:14 189:17 190:23 192:22 197:20 197:24 198:5,9 198:17 201:14 201:17,24 202:2,5 208:4 affidavits 28:5 121:19 168:23 179:12 affiliate 101:9 affirmed 18:19 18:21,23 19:7 19:9,11,20,22 19:24 20:11,13</p>	<p>20:15,24 21:4 21:6 152:5 179:7,12 185:8 185:19 186:9 189:15 190:8 190:19 192:21 afternoon 28:21 ago 61:16 63:2 66:7 67:12 140:6 agree 57:9 63:6 88:7 118:24 120:13,17 130:24 141:11 144:10 agreed 28:17 47:10 48:16 59:7 121:24 129:15 agreement 26:17,19 115:21 116:6,9 116:10 118:18 137:21 139:12 177:23 190:7 ah 86:14 131:1 ahead 66:1 131:1 albuquerque 4:17 7:7,18,23 8:18 10:24 12:6 allegation 137:24</p>	<p>allegations 82:17 85:22 100:20 alleviate 157:17 allocation 85:13 allow 41:9 84:11 92:23 115:14 117:20 126:8 128:5,19 135:23 139:4 139:17 192:24 193:8 202:17 allowed 40:20 87:9 126:5,23 144:23 allowing 96:10 allows 152:9 162:12 altogether 126:1 amend 203:22 amended 35:16 166:20 203:15 204:15,22 208:19,20,23 amendment 63:25 amendments 65:3 amount 83:9 101:24 108:8 amounts 81:11</p>	<p>analogize 139:14 analogy 139:5 andrews 6:14 11:14 65:12 75:9 97:5 answer 35:10 41:25 53:19 81:22 133:2 142:19 154:22 179:1 antonio 12:13 anybody 42:21 anyway 123:14 apache 3:9 119:23 apd 129:12 apds 129:11,13 129:15,18,21 133:21 145:9 145:14,15,17 170:19 176:22 176:25 177:2 177:13 apologies 156:7 172:15 184:11 apologize 123:4 apparently 99:12 appear 25:6 33:12 37:2 52:25 59:6 113:18 143:14 178:15 193:22</p>
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[appearance - area]

<p>appearance 25:13 36:1 38:11 46:12 49:18 58:10 60:15 65:10 66:15 67:6 74:25 75:2 77:21 84:14 88:6 97:3,17 98:7 105:11 107:2 109:21 112:22 113:10 113:25 114:15 119:14 121:7 147:2 150:2,10 150:23 160:25 163:2,24 167:11,18 174:21 175:6 183:2,23 187:17 192:5,9 192:21 appeared 153:7 appearing 114:20 119:21 163:10 167:21 183:4,24,25 187:19 192:1 193:12 appears 155:9 applicable 42:23 applicant 51:6 60:18 65:13 97:5 103:4</p>	<p>136:1,2,6,11,15 136:15 187:20 187:24 192:1 applicant's 51:9 118:1 applicants 44:11,12 application 16:24 18:17 19:5,18 20:9 20:22 39:11 41:3 42:18 62:21 79:7 100:8 101:3 103:22 126:21 127:25 132:17 138:16,17 139:16 140:17 141:3 145:1 146:10 150:13 150:15,16 156:20 159:13 159:16,24 168:6,24,25 171:5 176:2 184:25 185:3 186:12 189:1,4 189:11,14 190:22 192:13 192:14,17,24 193:1,9,18 194:16,23 208:3 applications 29:7 39:14,21</p>	<p>40:1,16,24 41:20 43:10,23 44:11,13 47:3 52:10 56:10 59:4,15 61:5 61:12 62:5 63:25 64:21 65:22,24 66:4 67:20,22,24 68:9,11,18,19 68:24 69:6 71:6 79:2 83:13 86:18 87:15,18,24 92:23 93:10 103:6,11 104:2 108:3,21 109:9 111:10,13,25 112:8 122:2 126:12,15,20 127:15,16 128:1,3,13 129:8,10,11,19 134:19 139:8 139:10 141:5 141:12,25 142:10 143:23 144:16 168:23 193:5 applies 98:24 apply 35:19 appreciate 92:6 118:14 120:18 195:21</p>	<p>approach 93:12 118:15 127:6 appropriate 81:13 88:23 127:20 177:20 186:4 190:13 approval 70:3 79:25 134:1 176:25 177:5 188:18 189:1,8 approve 61:17 168:6 193:5,9 194:15 approved 61:14 150:9 170:19 176:22 177:3 approves 62:15 64:7 approving 188:15 189:6 april 26:8 39:4 50:9 59:16 66:9 121:24 122:23 127:14 127:20 131:6 135:2 140:1,4 140:8 141:16 142:3 143:3,18 145:22 148:20 198:19 202:6 area 100:13 110:25 156:22 173:5</p>
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[areas - b]

<p>areas 157:3 argue 29:2 argued 92:9 argues 122:3 argument 26:3 26:25 27:6 28:2 35:11 56:16,18 57:6 64:11 70:24 85:24 86:5,8 92:8 93:14 94:24 129:21 arguments 146:4 ariana 18:19 19:7 185:9 armstrong 3:15 25:17 26:5,13 35:20 arrowhead 93:20 artful 123:23 articulate 138:20 ashburn 4:5 8:22 11:21 13:10 asked 39:6 52:22 61:17,23 72:12 140:8 143:4,5 159:21 178:14 188:18 asking 48:19 50:16 51:10 75:16,17 104:2</p>	<p>107:21 137:8 139:18 203:1 aspect 203:9 assemble 28:6 assess 79:23 96:2 assignment 26:10 27:14 29:3 assume 107:2,2 assumed 79:9 assuming 81:9 117:6 155:20 assumption 111:11 attached 189:17 attachment 158:20 attachments 186:23 191:10 attempting 126:3 136:13 attempts 171:6 attend 178:11 attorney 9:9,20 12:23 66:21 103:16 166:1 205:21 210:14 211:10 audio 210:8 211:3 august 42:25 43:4 44:1,4 45:11,13 46:4</p>	<p>51:4,11 52:23 54:5,14,15 56:1 66:2 68:15,19,23 69:3,4 72:16 72:20 73:4,6 73:12,14,22 74:2,2 118:8 118:10,11,12 118:13,21 119:2 120:13 austin 4:6 8:23 11:22 13:11 authority 44:17 49:4 80:21 81:7 100:11,15 100:23 101:4,5 101:8,12 102:23 103:21 authorization 37:10 availability 45:16 available 31:17 32:7,13,14,20 33:6,17 34:3 52:22 53:25 54:1 74:11 143:8 153:6 178:7,10 avant 4:2 167:14 170:16 172:5,11,17,18 172:20</p>	<p>avant's 169:3 171:9 avenue 3:19 5:5 5:10,21 6:5 7:11 10:11 11:10 12:18 avoid 69:2 166:20 aware 37:16 44:19 52:3 62:23 63:7 68:9,10,17 69:12,12 85:4 98:19 142:3 151:4 164:6 196:7</p>
			b
			<p>b 12:9 15:1,5 15:15 16:1,4 16:14,24 17:1 17:15,21 18:1 18:6,12,17 19:1,5,18 20:1 20:9,22 21:1 21:13,23 22:1 22:12,22 23:1 23:10,20 24:1 24:5 147:18 148:2 151:21 161:21 165:1 168:24 169:1 176:13,13,14 176:14 181:8 181:16 182:6 182:17 185:3,5</p>

[b - bennett]

185:6 189:14 197:20 198:1,2 198:3 201:14 201:19,20,21 201:22 b4-180 4:11 back 33:1 42:5 48:10 61:11 72:23 73:15 99:10,25 105:21 107:24 117:15 127:19 132:2 133:8 136:25 140:1 141:20 146:21 146:25 150:22 168:13 203:23 204:12,14,21 background 62:19 baker 10:22 12:4 15:17 16:6,16 151:23 151:24 161:23 165:4 barracuda 162:8 barring 87:5 base 173:2 based 25:25 27:13 84:25 90:24 100:20 142:10 144:18 144:19 160:15	bases 99:21 basically 84:19 94:12 125:5 157:5 basis 39:2 82:4 82:20 83:7,14 85:21 86:8 87:2 99:23 100:6,19 103:13 107:10 110:9 122:12 126:21 beatty 4:4 8:21 11:20 13:9 75:4 167:13 beck 10:21 12:3 97:12,13,16,22 98:1,8 99:2,8 99:10,15,25 100:4 103:10 103:12,14,23 104:12,15 105:5 begun 139:1 behalf 3:2,9,15 4:2,8 5:2,18 6:2 7:2,14 8:2 8:8,14 9:2,13 10:2,8,14,20 11:2,18 12:2,8 12:15,21 13:2 25:15,17 26:5 36:3,5 38:13 38:17 46:14 49:20,22 50:3	55:3,5 58:11 58:15 60:18,21 65:12,16 71:19 75:4,9 76:2 95:20 96:10 97:13 98:14 100:5 105:13 105:18 109:23 112:24 114:17 114:21 119:16 119:21,22 121:8,12 147:5 150:4 151:1 161:2 163:4,10 167:14,21 174:18 175:8 178:16 183:5 183:24 187:20 187:22 192:1 196:2 199:24 believe 42:22 42:25 48:13 49:25 50:8 51:24 52:9 53:17 55:10 56:12 58:19 61:7 66:7,21 66:23 67:1 68:13,18 70:2 70:3 71:16 73:5 75:11 77:18 81:13,16 87:7,12 101:8 105:20 117:3 121:1 128:14	131:7 133:5 140:16 141:2 145:23,25 146:4,7 150:11 154:9,10,13 155:11 156:4 156:16,18 157:1 164:1 167:8 169:23 170:4 179:13 182:11 193:16 208:2 ben 15:7 21:15 22:4,14,24 23:12,22 24:7 36:4 148:5 198:6 201:25 benefit 91:9 177:7 203:21 204:10 benjamin 12:9 bennet 40:10 98:4 111:15 133:8 140:18 bennett 4:14 7:15 8:15 14:6 15:10,20 16:9 16:19 21:18 22:7,17 23:5 23:15,25 24:10 38:12,13,22 39:17,18 40:17 40:25 41:17,25 42:4 44:17,19 44:22 45:3,12
---	--	---	--

[bennett - bruce]

45:14,21,24 46:8 58:14,15 58:20,22,24 98:3 105:12,13 106:10,12,22 106:24 107:4,6 107:7 108:25 109:1,5,22,23 110:5,6,12,15 110:18,22 111:16 112:1,2 112:5,15,23,24 113:4,20 114:8 114:11,16,17 116:13,14 117:2,6,9 118:2,13 119:1 119:6,9,15,16 119:25 120:1 120:21,23,25 121:11,12,17 122:14,20 123:1,19 124:7 125:3,14,15 129:21 130:5 130:15,23,25 131:2,16,19,24 132:1,9,13,25 133:13,16,19 134:14,17 135:8,11,15,21 136:21,23 138:12,14 140:17 141:15 142:19 143:7	143:15,18 144:2,5,9,14,15 144:19 145:8 145:15,18 146:13,15,18 148:16 150:24 150:25 151:4,7 152:23,24 153:6 154:15 154:20,21 155:3 157:13 157:15,19 158:2,16 159:2 159:5,11 160:9 160:12,18,20 160:22 161:1,2 161:6,9 162:24 163:3,4,7,22,23 164:4,8,11 165:21 166:4,8 166:12,16,24 167:5 174:17 174:18,23 175:1,7,7,13,14 175:18,20,23 178:8,22,25 179:5,6,25 180:3,6 181:2 181:25 182:1 182:13,23,24 198:15 202:4 203:17 bennett's 133:9 best 204:11 210:10 211:6	beth 65:16 better 36:17,23 36:24 40:8,14 83:2 179:4 bit 40:2 47:1 51:12 64:18 66:20 76:8,10 123:9 130:6 177:13 180:1 blah 84:8,8,8 blm 61:14,16 61:22 62:2,12 62:15 64:7 176:22 177:10 177:19 blocks 162:10 164:18 blue 162:8 bone 156:10,13 162:9 168:8,14 173:3,8,10,12 188:8,23,24 197:2,9 200:13 200:25 207:1 bound 40:12 boundaries 82:20 92:14 93:25 boundary 92:20 93:18,19 100:16 102:15 160:2 box 6:10 7:6 9:10,21 12:24	bradfute 7:3,5 46:16,17,17,20 46:21,24 47:19 48:12,20,23 49:9,11 127:21 brand 59:17 break 40:15 42:6 70:18 146:16,21 breakdown 190:3 brief 88:12 briefing 78:24 briefly 88:1 149:19 167:25 175:23 bring 89:12 broad 101:20 broader 94:11 brought 89:3 130:5 177:4 206:18 bruce 9:8,9,19 9:20 12:22,23 25:14,14 26:10 26:12 28:11,12 29:1,4,20 31:4 31:7,10,16,18 31:23 32:2,3 32:23,24 33:9 34:2,5,6,16,23 35:2,9,22,23 46:13,13 47:7 48:24,25 49:10 49:13,14 65:18
--	--	--	---

[bruce - case]

<p>65:18 66:18,19 67:3,8,11,19,23 68:2,5 69:5,8 69:14,16,20,23 70:2,11,13 71:15,17,18,22 72:1,9,12,18,23 73:7,8,16,23 74:4,8,10,14,19 bryce 95:14 buffalo 69:23 69:25 building 162:9 164:18 bulk 50:7 burden 87:8 business 76:8 89:8 141:21 166:25</p>	<p>161:23 162:5 165:11 169:3,9 170:13,14,15 185:8,12,17,17 189:15,19,20 189:21,25 198:5,11,11,12 201:24 202:8,9 202:10,10 c1 170:13 185:12 189:18 c2 170:14 185:13 c3 170:21 185:15 190:2 c4 170:22 185:16 190:4 c5 170:24 189:18 190:5 c6 171:2 c7 171:2 c8 171:5 calculating 155:19 158:14 calculator 155:18 156:3 calendar 43:4 call 25:5 28:17 88:22 107:1 114:14 120:25 121:4 126:24 175:6 195:23 called 1:6 28:21 54:23 67:10 71:12,13,24,24</p>	<p>75:19 77:1 93:20 95:10 112:19 120:10 123:13 133:24 140:5 153:17 175:8 179:21 206:3 calling 25:12 46:11 55:2 65:9 97:2 99:12 105:10 160:24 174:15 199:21 camera 169:17 171:22 178:17 caption 57:13 care 28:25 careful 89:14 carlson's 192:21 carr 19:21 20:12,25 189:16 carve 26:9,20 30:3 case 1:9 25:8 25:12 29:14 38:10 40:10 42:24 44:16 47:1,11,13 50:7 51:1,4 52:23 53:5,8 55:13,17,20,20 56:22,22 57:12 57:13,13,16,19</p>	<p>58:5 60:10 62:20 69:14 70:21 72:6 75:18 77:4,9 78:3,14,16 79:17,22 82:7 82:21 83:7,18 85:7 88:6 93:15 94:7 95:9,9,11,18 96:16,23 98:23 99:15 100:6,10 104:21 105:1 106:11,19 112:20,25 113:13,21 114:2,3,10 119:22 120:25 122:11 129:18 134:25 137:2 138:17 142:25 146:14 147:1,8 149:15,20 152:9,12 158:23 159:13 160:20 161:3,5 161:9,15 162:11,15,20 163:6,10,17,19 163:25 164:11 165:14 166:2,6 166:10 167:4,7 167:14,22 168:6 174:12 174:22 176:17</p>
c			
<p>c 3:1 4:1,9 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 15:7,17 16:6,16 17:4 18:19 19:7,20 20:11,24 21:15 22:4,14,24 23:12,22 24:7 25:1 95:15 147:23 148:4 148:12 151:23 152:3 153:4,23 154:13 155:10 158:20,22</p>			

[case - chance]

178:3,4,4 180:20 181:4,7 181:14,19,23 181:24 182:4,8 182:10,15,22 183:5,6,7,7 184:16,19 185:1,4 186:12 186:17,24 188:14,22 189:5,5,6,15 191:7,10,24 192:1,6,13 193:8 194:10 195:13 196:16 200:12 202:18 203:24 204:11 208:14,17 case's 84:5 cases 25:6 26:1 27:15 29:5 30:2 34:15 35:25 40:3,19 41:16 45:4,23 45:25 46:7,22 46:25 47:6,7 47:23 48:13,17 49:4,10,17 51:9 52:13 54:22 56:5 59:8,11 60:14 60:22 61:10 63:3 64:9,18 66:20,21,24 67:2,6,9,14,15	67:16 68:22 69:19,22 70:7 70:12,24,25 71:2,3,4,12,12 71:15,23,24 72:5,13,15 74:9,13,15,17 75:11,12,15,19 75:25 76:7,16 76:19 77:12,18 77:18,25 78:15 78:21,23 79:20 82:12 86:6,8 87:14,21 88:8 88:9,15,24 89:2,6,23,24 90:7,15,20,24 91:1,5,7,10,14 91:19,22 92:8 92:10,13,16,20 92:20 93:1,4,8 93:8,10,15,16 94:3,18,20 95:2,6,23 98:21,25 99:7 99:10,18 100:10,14,17 100:19,23 101:5,6,14,15 104:20,23 105:4 106:20 106:23 107:6,8 107:16 109:5 109:15,18 110:5,7,8,9,13	110:14,17,19 112:14,18 113:24 114:21 115:1,17 116:18,23 117:1,2,14,23 119:1,22 120:9 120:10,21 121:3,4 122:21 122:22 123:8 123:11 125:21 126:1 127:11 128:23 129:2,7 129:9,13 130:8 130:9,11,13 133:4 136:5 137:3,5 138:16 139:7 140:4,19 141:18 145:5,6 145:9,22 146:8 148:25 151:8 162:7 175:2,3 175:9,11 176:12 177:5 178:12 180:9 181:11 184:2 184:12,23 185:24 186:23 187:2,12,21 188:4,8,13 189:13 190:20 191:11,14,15 194:6,10,14 195:11 196:6 197:17 198:19	198:25 199:1,7 199:19 202:7 202:22 205:3,4 205:11,14 206:22 208:14 cause 62:8,20 63:4 128:11 175:17,20 causing 83:10 101:25 caution 148:18 cautious 91:3 center 10:23 12:5 82:11 155:20,23,23 155:25 156:8 certain 33:17 certainly 79:16 91:6 117:11 180:3 certificate 210:1 211:1 certified 148:17 173:18 186:13 198:17 certify 210:4 211:2 chair 88:12 chakalian 2:7 challenged 85:3,20 102:18 challenging 45:16 chance 124:20 163:13 167:24
--	--	---	---

[chance - cog]

<p>184:4 change 120:12 170:17 changed 34:25 changes 35:8 characterize 107:25 charles 18:22 19:10 185:20 chase 178:14 check 35:2 45:15 74:11 checked 192:8 checklist 15:4 15:14,24 16:13 16:23 18:16 19:4,17 20:8 20:21 21:12,22 22:11,21 23:9 23:19 24:4 147:18 151:14 157:21,23 161:17 162:14 164:20 166:6 166:13 167:3 168:22,24 185:1 189:14 197:19 checklists 158:18 201:14 chimes 193:11 chris 76:2 98:14 christopher 3:3</p>	<p>chronology 171:5 185:16 190:5 cimarex 4:8 121:12 122:6,8 123:16 124:22 124:22 125:3 125:16,18 126:2,5,18 131:4 133:10 133:16 134:3,4 136:5,6,11,12 137:8,10 138:10 139:9 139:11,18,21 140:10,16,20 141:6,8 142:20 143:7,8 144:21 150:10 183:25 cimarex's 122:3,5 127:8 133:23 136:17 137:10 143:20 144:19 circulation 190:25 circumstance 61:19 62:23 87:11 circumstances 30:1 132:18,19 citation 131:15 157:16 cite 40:11 132:9</p>	<p>cited 29:11 claim 29:23 81:16 claiming 27:8 claims 82:17 101:20 102:1 clarification 103:2 143:16 153:1 157:10 166:1 207:3 clarified 142:18 159:20 clarify 77:14 93:6 132:14 158:25 159:23 clarifying 159:15 160:13 203:6 clarity 41:4,6 113:21 154:16 clear 30:9 91:19 94:16 98:9 123:4 135:19 clears 130:3 208:8 clerk 13:14 84:7 143:10 client 29:2,9 32:14,19,25 39:9,13 42:11 43:15,19 45:8 49:3 53:23 65:2 69:10,11 73:7 79:25</p>	<p>96:11 102:6,24 103:10 104:8 107:18 109:8 112:3 131:10 135:9 143:25 145:1 146:4 client's 30:23 50:24 55:24 81:21 86:10,15 86:16 101:12 103:21 145:2 clients 26:12 33:11 52:21 74:11 113:14 113:18 close 54:4 141:21 166:24 closer 100:18 160:1 cluttering 49:7 cog 5:2 49:20 50:11 55:3,10 58:6 65:16 105:18 106:6 107:8,18,20 108:4 121:8,25 122:3,5 123:15 123:20 124:2 124:11,22 125:22 126:3 127:25 129:16 132:20 133:11 133:17,22 134:2,4,12 135:12 136:9</p>
--	--	---	--

[cog - concerned]

<p>136:13,14 137:2,2,9 138:1,22 139:2 139:22 140:19 141:1,2,8,12 143:12,19,21 144:1,7,13 145:9,11 146:5 150:12 cog's 50:14 56:8 107:10,16 141:7 cogswell 2:11 210:2,17 collect 30:19 com 157:23 168:15,16,17 168:17,17,18 168:18,19,19 168:20 196:23 come 46:3 54:13 91:5,6 135:5 136:7 146:21 154:19 196:9 204:12 204:14,21 comes 99:10 158:13 comfortable 42:16 coming 203:23 comingling 193:1 194:16 commence 176:8</p>	<p>commencing 177:2 comments 92:7 commercial 115:10,15,19 115:24 116:2 commission 29:11,13 48:6 73:21 76:8 82:12 85:5 87:15,18,20,23 88:11,19,25 89:4,7,10,18,25 90:16 91:1,6 91:11,22,25 92:9,12,13,17 92:19 93:4,5,6 93:9 94:3,10 94:18 95:5 96:18 144:24 145:1 commission's 47:14 89:7 committed 136:14 168:15 170:24 common 129:14 communicated 95:21 communication 26:12 193:25 communitiza... 177:23</p>	<p>companion 184:19 company 4:8 8:8 9:2,13 10:2 12:2 46:14 65:19 71:20 163:11 172:4 183:5,25 comparable 156:15 competing 39:13,21 40:1 40:7,16,19 41:5,10 42:17 43:10,19 45:9 52:10 56:10 59:2,3 61:4 62:4,21 67:22 68:9,11,18,19 68:24 69:6,10 70:25 71:2,4 107:20 108:21 109:9 110:17 111:8,9,25 112:8,8 138:15 138:16 139:8 139:10,15 140:16 143:23 completely 33:14 54:12 complicated 79:19 complication 68:6</p>	<p>comply 157:1 comports 171:3 comprise 147:10 comprised 184:17,21 188:16 189:7 196:18 197:9 201:7 compulsory 15:4,14,24 16:13,23 18:16 18:17 19:4,5 19:17,19 20:8 20:10,21,23 21:12,22 22:11 22:21 23:9,19 24:4 142:25 147:17 151:14 157:20,22 158:17 161:17 162:13 164:20 166:5 167:3 168:24 185:1 188:22 189:13 197:19 201:13 computer 36:17 69:16 concept 123:16 124:12 133:11 133:24 concern 94:1 concerned 30:22,23 94:16 94:17</p>
--	---	---	--

[concerning - contain]

<p>concerning 90:9 91:12</p> <p>concerns 61:3 122:8</p> <p>conclude 157:11</p> <p>concluded 209:6</p> <p>concludes 160:16 209:3</p> <p>conduct 30:13</p> <p>confer 43:15 53:22 73:7 95:25 142:12 143:4</p> <p>conference 25:8 26:2 37:19 39:4,10 39:24 40:6 41:3 44:25 45:5 47:12 48:15 50:8,10 51:2 59:8,11 59:21,25 63:13 64:2,24 66:22 67:12 87:22 88:24 89:20 96:17 99:1 104:2 105:3 107:22 109:2 109:12 111:15 111:17,24 118:3,10,16 119:2 120:11 120:22 121:16</p>	<p>121:22,24 122:19,20,24 123:2,15,21 124:4 127:14 128:4 133:20 140:4 141:17 141:17,24 142:3,8 143:19</p> <p>conferences 25:10 114:5</p> <p>conferred 76:22 83:23 143:7</p> <p>conferring 104:8</p> <p>confirm 193:7</p> <p>confirmation 193:6</p> <p>confirms 190:12</p> <p>conflict 32:19 47:2,4 67:5,15 75:11 77:2,12 77:15,15,16 78:2,15,18 90:25</p> <p>conformity 140:3</p> <p>confused 61:24 158:23</p> <p>confusion 166:20</p> <p>conjunction 183:6</p>	<p>conoco 53:5</p> <p>conocophillips 5:9</p> <p>consequences 93:14</p> <p>conservation 1:3,6 3:2,5 25:4</p> <p>consider 41:12 87:4 137:13</p> <p>consideration 92:18 146:9</p> <p>considered 128:21</p> <p>considering 1:8 39:20 40:1</p> <p>considers 40:15 129:13 138:9 138:15</p> <p>consistent 139:19</p> <p>consolidate 56:24 70:21,23 71:23 72:13 74:15,16</p> <p>consolidated 38:10 54:24 57:2 69:19 71:6 75:1,13 75:16 78:1 89:7 95:24 105:20 106:20 109:20 110:21 110:22 112:20 113:24 119:13</p>	<p>161:5 175:3 187:17,20 195:24</p> <p>consolidating 56:5,16,18 71:2 106:10,13</p> <p>consolidation 87:13 89:12 177:8</p> <p>consolidations 88:5</p> <p>constitutes 132:5</p> <p>constructively 190:24</p> <p>consultations 61:14</p> <p>consulting 7:5 46:17</p> <p>cont'd 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 16:1,3 17:1,3 18:1 19:1 20:1,3 21:1,3 22:1,3 23:1,3 24:1</p> <p>contacts 147:25 171:6 185:16 190:6</p> <p>contain 147:18 148:4,14 198:5 198:14 201:14 201:24 202:3</p>
--	--	--	--

[containing - cox]

<p>containing 197:19,20</p> <p>contains 147:17 168:22 170:14 185:2 201:13</p> <p>contemplates 40:24</p> <p>contemplating 39:13 42:8</p> <p>contentious 79:19</p> <p>contents 184:23</p> <p>contested 25:21 28:1 40:4 41:13 42:24 45:11,13,25 50:10,16 51:4 51:10 52:23 55:12 58:4 66:1 68:15,20 72:15 81:7 106:14 110:11 116:18,23 117:7,17,21 118:7 121:25 125:6,7,12,23 138:11 140:2 140:13 141:13 141:14</p> <p>contingent 133:23,25</p> <p>continuance 47:8,10,11</p>	<p>115:13,14 122:12 133:3 134:25</p> <p>continuances 41:9 117:14</p> <p>continue 42:13 45:4 47:5 48:16 52:9 60:10 87:21 96:22 104:20 109:5 115:15 119:1 120:21 124:20 146:3 202:17 208:17</p> <p>continued 86:20 105:2 117:23 121:23 202:24</p> <p>continues 92:11</p> <p>contract 26:20</p> <p>control 51:7,8 134:21 135:20 135:22,23 137:15</p> <p>controlled 126:18</p> <p>controls 126:2</p> <p>conversation 160:13</p> <p>copy 173:18 184:24 185:12</p> <p>corporation 3:9,15 25:18 119:23</p>	<p>correct 27:10 27:17,20 31:10 32:9 37:9 44:4 48:8 50:20 52:11 58:2 64:13 69:8,20 70:13 71:18 78:22 79:3,4 84:17 86:21 88:17 102:25 108:15,23 115:3 123:20 128:25 129:3,4 129:23,24 130:1 144:12 146:1 155:22 156:11,12,17 166:13 167:2 181:25 182:13 196:1 206:19</p> <p>corrected 131:4 166:14</p> <p>correction 120:4 167:3</p> <p>correlative 81:12,17 90:12 90:17</p> <p>costs 27:6 190:5</p> <p>could've 123:24</p> <p>counsel 67:5 76:17,22 85:23 86:5 92:21 115:14 137:1</p>	<p>210:11,14 211:7,10</p> <p>counter 67:19 67:23 137:11 140:10</p> <p>county 147:13 151:11 161:12 161:14 168:12 184:15 188:10 196:22 197:14 200:16 201:3</p> <p>couple 26:2 29:4 72:24 92:6 128:17</p> <p>course 28:15 62:1,3 82:6 83:21 104:10 123:17</p> <p>court 12:12 29:17</p> <p>courtney 19:20 20:11,24 189:16</p> <p>cove 4:5 8:22 11:21 13:10</p> <p>cover 125:19 204:16 208:19</p> <p>covering 168:10,12</p> <p>covers 90:13</p> <p>cox 13:18 14:3 15:15 16:4,14 151:14 153:6,9 153:11,12,16 153:22 154:22</p>
--	--	--	---

[cox - deana]

<p>157:16 159:5 161:18 164:21 cox's 157:24 create 152:10 155:7,21 156:2 162:12 184:20 creating 81:18 158:12 creation 186:2 credentials 147:21 151:16 151:25 164:22 165:6 185:11 185:22 197:22 198:8 critical 88:7 crosby 18:22 19:10 185:20 186:3 cross 148:9,10 173:8,11 185:25 186:2 crowding 68:7 current 33:22 95:8 currently 47:22 64:20 79:11 82:12 87:18 88:8 91:5 92:18 93:16 94:19 95:1 100:12 102:12 103:14,18 114:2 115:10 172:9</p>	<p>cutting 166:9 cv 169:21 171:18 172:9 cx 14:2</p> <hr/> <p style="text-align: center;">d</p> <hr/> <p>d 14:1 15:9,19 16:8,18 17:6 18:21 19:9,22 20:13 21:4,17 22:6,16 23:4 23:14,24 24:9 25:1 48:6 148:14,21 149:8 152:5,14 152:19 162:1,5 162:22 165:11 165:19 171:8 171:15 185:19 186:7,7 190:8 190:16,16,17 198:14,21,21 198:22 199:9 199:10,11 202:3,8,9,10,11 205:5,6,7,8 206:12 d1 173:2 185:23 190:11 d2 173:3 d3 173:8 185:23 186:3 d4 173:11 190:11 daily 173:24</p>	<p>dana 3:17 5:3 6:3 10:9 11:8 12:16 25:16 36:2 49:19 55:3 58:11 60:20 77:24 121:8 dana's 35:2 darin 4:9 183:23 184:11 data 41:12 date 2:5 33:1 33:18 34:12 41:13 43:10,13 44:4 45:6,10 46:5 54:7,13 71:7 84:13 94:8 96:1 116:1 117:22 122:1 131:7 138:22,25 140:13 142:12 dated 25:20 dates 31:19,22 45:19 46:4 73:4,13 74:1 74:11 118:11 118:12,14,21 120:14 130:6 130:16,24 143:5,8 david 48:7 day 32:7 33:3 33:15 35:6 84:8 128:10</p>	<p>130:4 132:2 134:23 days 33:17 39:6 39:7 41:1,2,3 43:8,23 48:9 95:21 127:23 128:15,17 131:11 132:16 135:4 139:17 141:4 171:4 de 6:15 11:15 deadline 28:7 35:13,15 43:2 44:18,24 45:1 61:13 63:4 115:12 131:5,6 deadlines 41:24 42:23 44:12 deal 30:14 37:3 39:6 121:4 129:3 169:12 208:25 dealing 166:3 dealt 146:11 dean 13:16 38:13 deana 4:14 7:15 8:15 15:9 15:19 16:8,18 21:17 22:6,16 23:4,14,24 24:9 58:15 98:4 105:13 109:23 112:24 114:17 119:16</p>
--	--	---	--

[deana - discovered]

<p>121:12 148:15 150:25 161:2 163:4 174:18 175:7 178:20 198:15 debate 62:25 december 172:17 decent 62:11 decide 44:14 108:4 126:25 135:7 decided 96:18 143:11 150:12 deciding 127:5 decision 30:20 87:22 90:24 96:13 100:22 106:15 decisions 94:12 declaration 15:9,15,19 16:4,8,14,18 21:17 22:6,16 23:4,14,24 24:9 148:15 152:5 159:8 162:2 179:8 198:15 202:3 203:17 declarations 179:13 dedicated 147:13 196:22 197:6,15</p>	<p>200:16,22 201:4,9 defer 78:7 131:8 172:6 deferred 92:21 deferring 76:16 deficiencies 126:12 141:25 142:8 defining 156:16 definitely 45:17 definition 155:8 156:15 delaware 10:8 58:12 delay 61:22 88:22 94:1,2 94:16 125:6 135:9,10 delaying 44:6 delivery 173:19 demonstrates 162:3 demonstrating 176:11 denied 86:18 115:16 133:6 145:1 deny 103:6 department 1:2 depending 30:5 depends 108:22 depicting 189:23</p>	<p>depicts 170:21 deposed 179:10 depth 48:2,8 describe 90:13 description 15:2,12,22 16:2,11,21 17:2,11,17 18:2,8,14 19:2 19:15 20:2,6 20:19 21:2,10 21:20 22:2,9 22:19 23:2,7 23:17 24:2 designated 26:25 136:8 140:21,23 141:10 144:21 designed 127:7 desire 110:10 117:21 desired 40:3 desk 70:18 details 125:19 142:4 173:13 determination 89:1 91:23 determine 63:16 71:8 104:8 109:8 determined 59:3 87:20 detrimental 29:9</p>	<p>develop 41:19 55:11 140:12 141:9 developing 41:22 development 56:9 61:4 110:24 140:11 151:20 173:7 186:4 190:13 diagram 189:23 differences 63:19 different 47:2 47:21 56:20,21 57:4 78:17,25 108:18 122:21 123:17 129:3 differently 134:24 difficult 28:7 digital 210:8 211:3 direct 122:14 205:19 208:3 directed 88:12 direction 142:16 directly 26:13 93:17 115:13 disagree 87:5 discovered 48:2</p>
---	---	--	---

[discretion - docket]

<p>discretion 84:11 135:23 139:4 discuss 45:20 49:5 121:2 142:14 180:7 discussed 49:3 50:9 87:19 100:10 120:2 123:3 180:11 discussing 115:11 116:1 discussion 72:7 74:1 90:4,11 98:23,24 106:14,17 177:19 discussions 49:1 58:25 59:1 68:12 107:19 108:4,6 111:12 115:10 115:19 116:15 116:16,20,21 116:22 133:10 134:3 137:12 138:5 142:5,10 177:10 dismiss 29:23 49:4 126:20 127:1 133:5 144:16,18 145:3,5,22 149:20 150:9 150:12 192:24</p>	<p>193:8 194:10 195:5,7 dismissal 133:5 194:6,13 dismissed 195:19 dismissing 49:10 141:12 disposal 82:17 83:12 92:14,22 103:15,17,18 dispose 149:21 149:23 disposing 100:12 dispute 82:12 117:12 disregarded 29:3 distance 102:16 155:7,25 156:14 158:14 158:15 distances 158:21 distinction 102:15 distinguish 83:14 100:20 102:17 district 29:16 disturbance 177:9,18 division 1:3,7 3:2,5 25:4,21</p>	<p>30:11,14,19,21 40:11,20,23 41:5,12 44:9 44:10 46:4 49:2 62:7 63:13 73:13 76:14,18,20 78:20 79:17 81:14 82:20 83:18 84:7,10 88:9 89:23 90:23 91:4,7 92:15 93:7,9 93:13 94:3,9 95:1,4 96:1 100:22 102:12 102:19 103:6 120:10 126:23 126:25 127:23 129:13 131:17 131:20 132:3 135:7 136:7 137:13,22 138:9,15 139:6 139:16,20 141:19 142:11 144:23 147:20 148:6 149:1 151:15,25 161:25 165:5 169:5,6 171:10 171:11 175:2 175:24 176:1 177:5 178:15 185:2,10,21</p>	<p>186:25 190:10 191:8 192:16 192:25 193:9 194:12,15 197:22 198:7 201:16 202:1 202:17 203:6 division's 29:24 31:1 40:18 41:1 47:15 57:1 62:19 126:13 127:5 127:21,23 139:3 142:20 152:11 166:19 193:4 divisions 49:7 164:22 docket 1:9 25:5 25:6,9 33:24 37:22,24,25 43:5 44:1 45:5 47:10 49:7 50:18 51:7,19 51:20 55:25 60:11 61:20 64:15,19 66:9 67:13 68:7,21 68:23 70:1 71:16 72:2,2 72:14 96:20,23 97:18 98:5,10 105:2,24 109:6 111:24 113:5,7 113:8,23 117:4</p>
---	---	---	---

[docket - emailing]

<p>117:15 120:22 127:18,20 131:6 135:2,23 149:21 183:7 192:8 208:18 208:18 209:4 dockets 37:19 64:13 73:13 document 204:16 doing 26:1 84:15 93:1 102:8 141:5 143:2 155:21 don 13:22 14:7 15:5 21:13,23 22:12,22 23:10 23:20 24:5 147:19 197:20 201:15 206:2 206:12 door 66:20 double 192:8 downhole 193:1 194:16 drafted 125:18 dragging 138:1 drill 27:8 129:11 140:22 177:1 drilling 61:13 61:13,15 62:16 63:4 176:8 177:2 186:6 190:14</p>	<p>drive 3:6 drop 188:20 189:3,11 due 71:18 126:10 duly 153:17 179:21 206:3 210:5 durango 4:12 duvall 13:21 14:5 17:13,19 18:4,10 175:25 176:9,20 178:8 178:16,19,20 179:9,16,20 180:7 duvall's 176:16 177:25 dx 14:2</p>	<p>191:4 208:4,23 eager 93:14 eagle 196:23,23 197:6 earlier 55:12 56:13 95:20 135:24 137:1 earliest 42:23 51:3 early 52:23 79:18 95:21 earnest 138:23 139:1 east 147:12 151:11 161:12 161:13 164:15 164:16 168:11 168:12 184:15 188:10,16,25 189:7,7 196:19 196:20,21 197:4,4,5,5,10 197:11,14 200:14,15,21 200:22 201:1,2 201:3,8,8 206:24,25,25 eata 123:3 125:21 129:4 133:21 142:4 145:9 economics 29:9 eddy 151:11 161:12,14 184:15 188:10</p>	<p>efficiency 177:18 effort 53:7 68:13 efforts 190:6 egl 5:18 150:5 eight 77:19 92:22 93:8,16 102:11 either 37:22 52:16 53:7 54:13 88:15 100:12 115:23 125:9 135:4 146:5 149:12 178:17 191:13 193:16 205:20 elapsed 39:7 election 61:18 element 138:9 eleven 26:25 146:22 eliminate 125:23,25 eliminating 177:9 elizabeth 5:8 email 31:24 32:24 49:2 194:1 emailed 32:25 133:16 178:8 emailing 133:11</p>
	<p>e</p>		
	<p>e 3:1,1 4:1,1 5:1 5:1 6:1,1 7:1,1 8:1,1 9:1,1 10:1,1 11:1,1 12:1,1 13:1,1 14:1 15:1 16:1 17:1,8 18:1,23 19:1,11,24 20:1,15 21:1,6 22:1 23:1 24:1 25:1,1 95:15 153:22 173:14 173:21 186:9 186:18,19 190:19 191:2,3</p>		

[emails - evd]

<p>emails 70:3 184:11 emerald 168:15 168:16,17,17 168:17,18,18 168:18,19,19 empire 6:2 75:9 76:22 77:6,8 77:17,23 78:13 78:14 80:11,23 81:2 82:16 83:25 85:20,23 86:5 87:17 91:20 97:5,9 101:17 empire's 82:19 83:13 86:18 90:11 93:4 100:14 103:6 employed 172:9,11 210:11,14 211:8,11 employee 210:13 211:10 employment 172:16 emsu 90:2 93:25 encompass 205:16 206:23 encompasses 90:3 endeavor 45:17</p>	<p>ended 26:1 135:1 172:16 energy 4:8 energy 1:2 3:15 7:14 8:8 12:11 12:15 13:2 25:17 36:3 38:14 39:19 41:15,17,19,20 41:24 46:2 109:24 110:19 112:24 113:25 114:17,21,23 114:24 116:15 116:17,23 119:17,21 120:7 121:13 147:5 183:25 192:2 196:3 199:24 energy's 39:22 40:3 110:10,24 enforce 44:18 engage 59:1 127:2 134:2 engaged 116:20 116:21 ensued 133:17 ensure 40:6 44:23 177:16 enter 28:2 77:21 entered 37:1 88:6 113:2,13 113:25 150:10</p>	<p>163:16,24 167:17 174:21 175:11 192:5 196:6 entering 66:15 67:6 entries 25:13 35:25 38:11 46:12 49:17 58:10 60:15 65:10 74:25 75:2 97:3 105:10 107:2 109:20 112:21 113:10 114:15 119:13 121:6 147:1 150:2,23 160:24 163:2 167:10 175:6 183:2 187:17 192:9 entry 97:16 98:7 113:2 183:22 192:20 eog 7:2,10 46:18,24 47:19 47:25 48:5,8 48:12 49:1 50:1,3 53:5 57:25 150:11 eog's 56:21 57:23 equivalent 184:18,21 196:20 197:4</p>	<p>197:11 ernest 6:8 77:22 97:8 es 210:4 esquire 3:3,10 3:17 4:3,9,14 5:3,8,13,19 6:3 6:8,13 7:3,9,15 7:20 8:3,9,15 8:20 9:3,8,14 9:19 10:3,9,15 10:21 11:3,8 11:13,19 12:3 12:9,16,22 13:3,8 establish 179:25 establishing 87:9 ethical 91:17 91:20 eunice 82:10 evaluate 46:3 48:9 63:11 116:6 139:22 evaluating 44:25 evd 15:2,12,22 16:2,11,21 17:2,11,17 18:2,8,14 19:2 19:15 20:2,6 20:19 21:2,10 21:20 22:2,9 22:19 23:2,7</p>
---	--	---	---

[evd - examiner]

<p>23:17 24:2 event 128:12 everybody 95:2 everyone's 91:19 everything's 116:5 160:10 evidence 28:2 30:7,14,19,24 53:10,16,20 57:3 80:13 81:15,20 90:8 90:24 101:18 135:6 146:1 149:7,9 152:18 152:20 162:18 162:23 165:20 174:7 181:9,15 181:17 182:5,7 182:18 187:4,7 191:20 199:8 199:12 205:9 evidentiary 57:3 167:2 exact 27:1 exactly 86:4 134:14 136:4 137:7 142:22 156:6 158:24 examination 154:1 180:5 206:14 examined 111:7 153:19 179:23 206:5</p>	<p>examiner 2:7 13:15,16 25:2 25:14,19 26:15 26:19,21 27:12 27:18,24 28:10 28:13 29:1,19 30:9,18 31:2,8 31:11,15,21,25 32:4,8,12,15,22 33:5,8,20 34:1 34:7,11,17,21 34:23 35:5,12 35:18,22,24 36:6,9,14,18,23 37:6,12,15,23 38:3,6,9,13,15 38:17,18,20,23 38:25 39:2,12 39:15,16,19 40:9,22 41:14 41:23 42:2,5,7 43:1,9,12,17,22 43:25 44:5,8 44:20,22 45:2 45:18,22,24 46:6,9,11,13,15 46:16,19,21,25 47:17 48:10,18 48:22,25 49:8 49:12,16,19,21 49:23 50:3,4,6 50:15,21,23 51:5,16,22 52:1,12,24 53:2,4,9,13,18</p>	<p>53:24 54:3,9 54:10,17,18,21 54:25 55:1,7,9 55:14 56:4,6 56:15,23 57:5 57:8,11,20,25 58:3,7,8,13,15 58:17,20,23,25 59:13,17,20 60:2,5,8,13,17 60:19,20,23 61:6,9 62:18 63:5,17,22 64:4,12,16,23 65:1,5,8,14,16 65:17,18,20,23 66:3,10,16,19 66:24 67:4,8 67:17,21,25 68:3,8 69:1,5,9 69:13,18,21,25 70:5,9,14,20 71:10,22 72:5 72:10,18,21 73:1,10,17,19 74:6,12,20,24 75:6,8,14,20,24 76:3,11,14,23 76:25 77:7,11 77:20,22,25 78:9,11,19 79:1,5,13,15,24 80:3,5,12,17,25 81:5,11,19,24 82:3,6,7,25</p>	<p>83:3,16,19,21 84:2,11,18,21 84:24 85:10,17 86:10,14,19,22 88:2 89:5,22 90:19 91:13 92:1,5 94:1,14 95:5,7,13,16,19 96:3,8,24,25 97:7,10,13,15 97:20,24 98:2 98:4,11,16,20 99:2,4,8,13,14 99:20,22 100:3 100:9 101:1,11 101:15 102:5 102:10,20,25 103:1,5,7,13,20 103:24 104:10 104:14,15,16 104:18,19,25 105:6,9,13,15 105:17,23 106:1,4,9,12,18 106:25 107:5 107:12,14,23 108:7,12,17,20 108:24 109:4 109:14,17,23 109:25 110:2,4 110:12,16,20 111:1,14,20,23 112:2,7,10,13 112:17,23 113:1,5,6,12,15</p>
--	---	---	--

[examiner - exhibit]

113:19,20	144:3,6,10,13	175:19,22	examiner's
114:6,9,12,16	144:17 145:4	178:5,6,23	118:14
114:18,19,22	145:13,16,19	179:15,24	examiners
114:25 115:4,6	146:15,17,20	180:4 181:3,21	150:25
115:7,9,18,21	146:24 147:4,6	182:2,10,14,21	example
116:8,11,25	149:3,14,17,18	183:1,3,9,11,12	132:20 166:17
117:5,10,11,24	149:23 150:1,6	183:15,17,20	except 75:12
118:22,25	150:14,18,21	183:23 184:3,7	188:11
119:7,11,16,18	150:25 151:2,5	184:10,12	exception
119:19,24	152:16 153:2,5	186:21 187:1	202:24
120:15,18,19	153:9,20,24	187:11,14,15	exceptions
120:23,24	154:15,18,24	187:18,22	128:11
121:10,12,14	155:2 157:13	188:1,5,7	excess 28:17
121:21 122:13	157:18,25	191:7,12,21,22	excuse 85:2
123:1,6 124:5	158:3,8 159:3	191:25 192:4,7	135:15 142:11
124:8,15,16,19	159:9 160:10	192:10,12	155:12,13
125:15 128:7,9	160:14,19,23	193:10,15,19	206:20
128:22 129:1,6	161:4,7 162:17	193:23 194:2	exercise 139:3
129:20,24	162:25 163:5,9	194:11,17,20	exhibit 15:4,5,7
130:2,11,15,17	163:12,21,23	194:24 195:2,3	15:9,14,15,17
130:20,23	164:2,5,9	195:6,8,10,12	15:19,24 16:4
131:1,9,16,18	165:16,22	195:15,20,23	16:6,8,13,14,16
131:22,25	166:12,16,22	196:4,8,12,15	16:18,23,24
132:7,11,21	167:1,6,9,12,16	199:4,17,21	17:4,6,8,9,13
133:1,7,18	167:20,23	200:1,4,7,9	17:15,19,21
134:7,8,10,14	168:1,3,5	202:25 203:8	18:4,6,10,12,16
134:16,20	169:11,16,19	203:13,20	18:17,19,21,23
135:11,14,17	169:21 170:1,5	204:9,25	18:25 19:4,5,7
135:21 136:18	170:11,12	205:10,13,18	19:9,11,13,17
136:22 137:23	171:17,20,24	205:22 206:6,9	19:18,20,22,24
138:3,12	172:2,3,8,14,19	207:11,15,18	20:4,8,9,11,13
139:25 140:9	172:22 173:1	207:25 208:6	20:15,17,21,22
140:19 141:15	174:4,12,14,15	208:10,12,24	20:24 21:4,6,8
142:16,17	174:18,20,24	209:2	21:12,13,15,17
143:15,17,24	175:1,5,10,14		21:22,23 22:4

[exhibit - extensions]

22:6,11,12,14	187:6,6 189:14	162:1,15,18	expecting 45:7
22:16,21,22,24	189:14,19,19	163:14,16	expects 92:7
23:4,9,10,12,14	189:20,20,21	164:24 165:3,4	expedite 30:10
23:19,20,22,24	189:21 190:8	165:7,14,17	expedited 25:7
24:4,5,7,9 28:7	190:16,16,17	167:24 168:1	121:15 127:11
133:12 147:14	190:19,23	173:25 178:3,4	142:14
147:17 148:2,2	191:2,2,3,3,4,4	181:4,5,10,12	expend 137:19
148:12,21	197:16,18	181:13 182:3,4	experience
149:8,8 151:18	198:1,1,2,2,3,3	182:5,15,16	88:22
151:21,21	198:11,11,12	184:4 185:24	expert 86:1
152:3,14,19,19	198:21,21,22	186:22 187:2,3	169:7 171:12
161:21,21	199:9,9,10,10	188:20 189:12	171:25 172:23
162:5,5,22,22	199:11,11	189:18 190:11	179:11 185:11
164:20,21	201:13,19,19	191:6,9,13,14	185:22 190:10
165:1,1,11,11	201:20,20,20	191:17,18,19	expiration
165:19,19	201:21,21,22	197:18,19,24	132:18
166:18 168:21	202:8,8,9,9,9	198:5,10,14,15	explain 43:1
168:23,24	202:10,10,11	198:25 199:7	74:15
169:1,1,3,9,24	203:7 204:15	201:11,14,18	explained 96:6
170:8,13,15	205:5,5,6,6,7,7	201:24 202:3,3	explaining
171:8,15 173:3	205:8,8 207:12	202:4,22 203:1	204:16
173:14,21,23	207:20 208:1	203:4,22,24	exploration
174:2,6,6	208:19,20,21	204:2,7,10,23	3:16 25:18
176:1,2,4,4,5,5	208:23	204:23 205:2,4	explore 95:24
176:13,13,14	exhibits 28:6	208:16	expressed
176:14 181:8,8	29:2 31:9,12	exigent 132:17	92:11 93:5,6
181:16,16	31:13 34:19,25	132:19	extend 61:12
182:6,6,17,17	35:3,8 37:18	exist 30:2	62:9 63:4
184:22,24	101:16 126:10	existing 47:20	extension 61:3
185:3,5,5,6,6,8	147:16,18,23	68:25 79:11	61:24 62:20
185:12,13,17	148:4,8,14,15	189:24	176:8,21 178:2
185:17,19,23	148:24 149:6	expect 78:20	180:8
186:3,7,7,9,13	151:18 152:2	expected	extensions
186:18,18,19	152:12,17	156:23 196:24	62:15
186:19 187:5,5	156:21 161:16		

[extent - filed]

<p>extent 86:25 103:3 120:14 extra 117:16,19 125:2</p>	<p>familiar 169:8 171:13 family 32:10 72:24 193:17 far 38:22 73:12 169:13 192:13 farley 13:21 14:5 17:13,19 18:4,10 175:25 178:22 179:20 farther 100:18 fashion 127:11 fast 120:5 128:10 200:2 faulting 173:6 fe 2:10 3:7,13 3:20 5:6,16,22 6:6,11,16 7:12 8:6,12 9:6,11 9:17,22 10:6 10:12,18 11:6 11:11,16 12:19 12:25 13:6 60:17 75:4 105:17 110:2 114:20 119:20 163:9 167:13 167:20 183:4 187:19 192:2 february 41:20 47:25 50:7 52:14 130:19 130:20 131:3,5 141:2</p>	<p>fed 168:15,18 168:19,19,19 federal 61:15 61:15 157:23 176:24 feel 27:25 50:24 53:18 87:3 102:23 135:18 feels 42:11 feet 138:1 155:11,15,16 156:8,14 196:25 feldewert 5:13 10:3 60:16,17 61:9,11 62:22 63:6,24 64:3,5 65:6,7 105:16 105:17,25 106:3,6 107:3 107:7,12,13,15 108:1,10,14,19 108:23 109:7 109:10,16 110:1,2 111:3 111:4 112:6,12 112:16 figure 122:22 file 28:19 29:6 29:20,22 30:4 37:7 41:2 43:10,23 44:13 48:11,19 49:9 49:14 51:17,23 59:3,14 60:21</p>	<p>61:10 62:4 66:4,13 67:14 67:18 72:7,13 76:18,21 77:11 83:1,24 87:4 96:13 108:21 109:9 111:9,13 115:13 117:14 133:21 134:19 141:5 142:9 144:15 145:7 145:10 192:17 193:5 194:9 203:5 208:18 filed 16:24 26:4 28:22 29:5 35:3 36:10,11 37:11 46:22 47:3,5,8 50:6 51:21 52:14 55:16 58:21 59:16 61:16 66:8,9,12,14,18 68:1,2,4 70:11 71:19 76:15 77:4,5,8 79:2,9 93:8 97:16,18 101:16 107:16 110:7,13 112:7 113:23 115:4 115:16 117:1,3 122:2 126:16 127:15,18 128:1,2,14,14 128:17 130:8,9</p>
<p>f</p>			
<p>f 17:9 18:25 19:13 20:4,17 21:8 173:23 174:2,6 186:13 186:18,19,22 187:5,6 190:23 191:2,3,4,10,17 191:18,19 facilities 177:8 177:11,11,14 177:17,21 fact 39:25 122:5 factors 138:15 facts 25:25 72:11 83:8 95:4 factual 85:21 failed 122:3 fair 94:7 fairly 43:16 faith 27:10 30:7 132:3,5 134:17 135:18 137:25 138:4,6 138:8,17,22 fajita 123:3 125:21 129:4 133:22 142:4 145:9</p>			

[filed - freya]

<p>131:7,8,12 134:25 135:1 141:3 142:13 147:14 149:19 150:8 159:13 163:16 168:21 168:25 184:22 184:25 189:12 189:15 192:13 192:19,20,22 197:16 201:11 203:4,10 204:24 files 62:21 84:12 filing 28:16 29:16,21 39:13 40:15,24 48:13 52:10 70:6 73:9 84:6 104:9 109:12 126:20 127:1 127:17,24 132:17 140:16 143:22 145:21 171:5 final 39:24 91:5 91:6 165:8 189:5 finalized 61:21 finalizing 125:19 finally 137:17 182:11 201:6</p>	<p>financially 210:15 211:11 find 33:14 42:2 42:4,5 54:11 70:17 72:7 206:17 fine 30:25 37:22 74:10 106:16 111:22 205:18 finish 135:4 finished 154:24 firm 6:9 98:8 first 10:23 12:5 26:6 43:5 47:3 47:5 51:11,13 54:14 57:17,19 71:16 73:4,6 80:18 114:13 117:3 118:3 121:1,4 124:2 128:3 137:9 145:21 146:12 153:17 176:7 178:2 179:8,21 184:15 200:2 206:3 five 85:19 93:18 flattened 173:12 flux 40:2 focusing 93:24 following 147:22 148:7</p>	<p>156:22 168:15 183:7 189:2 197:23 198:9 201:17 202:2 203:19 follows 153:19 179:10,23 206:5 footage 155:7 footages 155:10 155:18 156:14 159:17 forced 94:12 116:7 foregoing 210:3,4 211:4 form 170:14 formal 70:12 formalities 179:12 formally 79:9 formation 168:8 173:13 184:13 188:9 188:23,24 198:10 forth 206:18 forward 41:21 44:11,16 45:23 51:9 53:8 61:25 62:14 64:8 65:25 68:17 96:15 110:11 146:8 184:2</p>	<p>found 28:9 70:16 foundation 145:3 180:1 four 45:4 67:12 71:6 85:18 199:25 201:12 202:6,22 205:4 206:22 208:14 francis 2:9 3:6 71:20 franklin 7:14 38:13 39:19,22 40:2 41:15,17 41:18,19,24 43:20 44:6 46:2 109:23 110:10,19,24 112:24 114:17 115:11,22 116:3,15,17,22 117:13,20 119:16 120:7 147:5,8,19 148:5 196:2,16 197:1,8,21 198:6 199:24 200:3,12,18,24 201:6,15,25 free 138:10 freya 13:14 31:24,25 33:5 33:16,22 34:9 35:14 53:24 64:12 69:21</p>
--	--	---	---

[freya - good]

<p>70:15,16 104:22 106:18 111:20 friday 28:21 31:14 front 27:1 90:8 180:17 fruitful 60:9 125:22 126:4 126:19 full 33:3 37:24 64:13 89:4,17 96:20 125:23 141:4 fully 94:9 funeral 178:11 178:13 further 41:8 58:5 69:3 74:8 79:23 105:3 112:14 119:8 128:5 142:18 173:2 210:13 211:9 futile 52:17 future 139:14</p>	<p>gauge 111:19 general 156:21 170:14 190:25 generally 45:16 gently 141:8 geographic 90:14 geologic 90:15 173:6 geologist 13:20 15:8,18 16:7 16:17 17:7 18:22 19:10,23 20:14 21:5,16 22:5,15,25 23:13,23 24:8 148:5 149:2 161:24 172:21 185:20 198:6 199:3 201:25 geology 148:7 152:2 162:1 165:4 171:9,12 171:13 172:1 172:24 173:5 185:23,24 190:11 198:9 202:2 getting 159:24 160:4 give 41:4 45:19 49:4 51:6,11 52:8,15 62:18 63:25 64:17 104:3 117:25</p>	<p>135:4 136:1 138:18 156:4 170:6 181:11 192:17 207:15 207:20 given 42:9 124:21 176:11 190:24 204:13 gives 43:7 101:13 117:7 125:8 146:5 giving 44:10 glad 61:23 go 28:1 30:18 30:24 39:23 45:25 50:21 56:12 57:16,19 58:9 62:12,16 63:16 66:1,20 68:16 70:19 106:14 107:6 113:2 116:6 117:17 119:4 127:10 131:1 137:14 139:25 141:13 145:23 146:12 150:1 150:22 175:15 178:24 194:18 204:2 goes 74:12 140:15 200:2 going 25:5,23 28:19 29:20 30:10,16 33:9</p>	<p>33:9 35:6,6 37:18 42:13,16 44:10 45:3,3,9 51:6,12 62:17 62:25 63:25 70:15,23 72:23 76:6 83:1 88:10,14,19 89:12 90:4 91:9 93:7 107:23 109:9 109:11 111:11 114:1,14 117:25 118:6 120:5,25 121:2 121:3 122:14 123:8,10 126:13 133:21 134:2 135:25 139:13,25 140:23 145:10 146:2,25 153:11 154:7 155:11,13,15 155:16,20 156:5,6,6,7,8 179:16,17 183:10 184:2 193:22 194:5 195:4 203:14 203:22 208:8 goliath 176:22 good 25:2,16 27:10 30:7 36:8 38:12,15</p>
g			
<p>g 3:10 8:3,9 9:3 9:8,14,19 10:15 11:3 12:22 13:3 25:1 207:8 gamma 173:9 gas 10:8 58:12 163:25</p>			

[good - hardy]

<p>38:16,19 46:19 46:20 50:2,4 56:24 58:14 60:13,16 62:8 62:20 63:4 65:11,14,15,17 66:5 76:3,5,13 82:2 97:12,15 98:3 105:12,16 109:22,25 110:1,4 119:15 119:18,19 121:11 128:11 129:1 132:3,5 134:17 135:18 137:25 138:4,6 138:8,17,22 146:3 147:3 150:14,24 152:22,24 154:3 160:11 161:1 163:3,8 166:22 167:12 167:19 169:20 174:17,20 175:16,20 183:20,23 184:8 206:16</p> <p>goodnight 8:2 82:13 85:1,2,6 86:6 87:8,14 87:17,24 92:10 92:16 94:1,20 95:22 99:17 100:5</p>	<p>goodnight's 82:23 85:6 87:12 93:10 100:14,16,19 100:21,24 101:5 104:7</p> <p>grab 70:19 156:3</p> <p>grant 28:14 granted 90:22 granting 139:16</p> <p>grayburg 93:20 great 36:24 73:1 81:24 109:14 158:19 169:16 178:18 196:14</p> <p>greater 90:16 gregory 2:7 group 12:11 78:3 90:3 196:13 199:19</p> <p>groups 122:21 guadalupe 3:12 5:15 8:5,11 9:5 9:16 10:5,17 11:5 13:5</p> <p>guerra 13:19 17:4 169:4,4 169:15,18,20 169:23 170:4,6 170:7,10,15</p> <p>guess 31:20 62:2 83:4</p>	<p>94:15 156:5 guggenheim 172:4,10,16 gun 132:20 134:6 guys 36:4</p> <p style="text-align: center;">h</p> <p>h 5:13 10:3 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 206:13</p> <p>half 72:19,22 73:4,6 147:11 147:11 151:10 151:12 161:11 161:12 184:14 184:17,17,21 184:21 188:11 188:11,16,17 188:25,25 189:7,7 196:19 196:20 197:4,4 197:5,5,10,10 197:11 200:14 200:14,20,21 201:1,2,8,8 206:25,25,25 206:25</p> <p>hall 2:8 hand 153:14 179:18 205:24 handled 91:20 hanson 10:22 12:4</p>	<p>happen 39:7 42:16 45:17 88:15 139:17</p> <p>happened 40:14 128:20 133:4</p> <p>happening 118:11 138:23</p> <p>happens 40:16 62:24 144:14</p> <p>happy 47:15 73:1 82:4</p> <p>hard 83:6 115:1 128:10 206:21</p> <p>hardy 3:17 5:3 6:3 10:9 11:8 12:16 25:16,16 26:5,7,11,18,23 27:17,20 28:3 28:13 29:20,22 30:17,25 31:12 31:13 32:7,9 32:13,18 34:2 34:17,22 35:20 36:2,2 37:13 37:15 38:2,5 49:19,19,24,25 50:5,6,20 51:24 52:3,5 54:6,8,13,19,20 54:23,25 55:3 55:3,8,9 56:6 56:20,25 57:17 57:18,22 58:2</p>
---	---	---	--

[hardy - hearing]

58:6,11,11,19	60:18 99:16	29:1,12,19	53:13,15,18,24
59:13,15,19,21	105:18 110:3	30:6,9,11,13,18	54:3,4,7,10,17
59:24 60:4,7	114:20 119:21	30:19,24 31:2	54:18,21 55:1
60:10,12,20,21	150:11 163:10	31:5,8,11,15,16	55:7,12,14
60:24 61:7	167:21 183:4	31:17,21,25	56:1,4,15,19,23
63:5,6,21 65:1	187:19 192:3	32:4,8,12,15,20	56:23 57:5,6,8
65:4 66:22	hazards 173:7	32:22 33:5,8	57:11,12,14,20
67:1,4 75:11	hear 25:7,9	33:20,21,25	57:25 58:3,4,7
77:15,24,24	26:3 32:17	34:1,3,7,11,12	58:8,13,17,20
78:8,10,11,22	33:13 40:18	34:18,21,23,24	58:23,25 59:13
121:8,8,16,20	75:15,18 82:4	35:5,12,16,18	59:17,20 60:2
121:21 122:14	88:19 92:13	35:22,24 36:6	60:5,6,8,13,19
123:18 124:10	97:19 106:22	36:9,14,18,23	60:23 61:6,9
124:13,14,18	112:21 113:16	37:6,12,23	62:3,18 63:5
127:9 128:8,9	114:13 115:1	38:3,6,9,15,16	63:17,22 64:4
128:25 129:4,9	123:17 133:8	38:18,20,23,25	64:12,16,23
129:23 130:1,9	145:23 146:14	39:2,12,15,16	65:1,5,8,14,15
130:13,17,19	147:1 172:14	39:18,23 40:4	65:17,20 66:2
130:22 131:8	175:16 206:21	40:9,22 41:13	66:3,10,16,24
132:14 133:2	heard 33:1	41:14,23 42:2	67:8,17,21,25
134:8,11	56:25 66:8	42:5,7,24 43:1	68:3,8,15,17,20
137:24 138:3	74:17 75:22	43:4,9,12,17,22	68:25 69:1,5,9
140:8,9,15	86:6 93:3,10	43:25 44:5,8	69:13,18,21,25
141:11,20	94:20,22 103:9	44:20,22 45:2	70:5,9,14,20,22
143:6,11,22	103:16 127:18	45:11,13,18,22	71:6,7,10,22
144:11,12,25	137:4 139:6,20	46:1,5,6,9,11	72:5,10,16,21
146:19	140:4 150:13	46:15,19,21	73:1,10,17,19
hardy's 32:24	162:8 178:12	47:17 48:10,18	74:6,12,20,24
57:9 67:15	180:15 183:6	48:22 49:8,12	75:6,14,20,24
125:1 126:22	hearing 1:5 2:4	49:16,23 50:4	76:1,3,11,23,25
145:2 146:9	2:7 16:25 25:2	50:10,12,15,16	77:7,11,20,25
hart 3:11 5:14	25:19,22,23	50:21,23 51:4	78:1,4,9,19,20
8:4,10 9:4,15	26:15,21 27:9	51:5,10,16,22	78:21 79:1,5
10:4,16 11:4	27:12,18,19,23	52:1,8,12,14,23	79:13,15,24
13:4 47:3,4	27:24 28:1,10	52:24 53:2,9,9	80:3,5,12,14,17

[hearing - hearing]

80:19,20,25	113:1,6,15,19	136:25 137:1	167:1,6,9,16,23
81:4,5,19,24	113:24 114:4,6	137:14,19,23	168:3 169:11
82:6,25 83:21	114:9,12,13,18	138:2,8,11,12	169:16,19,21
84:2,15,18,21	114:22,25	138:13,25	170:1,5,11
84:24 85:10	115:4,7,12,18	139:25 140:2	171:17,20,24
86:10,14,19,22	116:8,11,18,24	140:13 141:13	172:3,8,14,19
87:19,23,25	116:25 117:5,7	141:14,19,21	172:22 174:4,5
88:2,13 89:4,5	117:10,17,21	142:2,12,15,17	174:12,15,20
89:14,22 90:19	117:24 118:8	143:13,15,17	174:24 175:4,5
91:3,13 92:1	118:14,17,21	143:24 144:3,6	175:10,14,19
94:19 95:5,13	118:22,25	144:8,10,13,17	175:22 178:4,6
95:16,19 96:3	119:2,4,7,11,18	145:4,10,13,16	178:9,23
96:8,18,25	119:24 120:12	145:17,19,23	179:15,24
97:7,10,12,15	120:14,15,19	145:24 146:3	180:4 181:3,5
97:20,24 98:2	120:24 121:1,5	146:13,17,20	181:14,21
98:11,16,20	121:10,14,23	146:24 147:1,3	182:2,4,10,14
99:2,4,8,13,20	121:25 122:1,9	147:6 149:3,6	182:16,21
99:22,25 100:3	122:11,13	149:14,18,23	183:1,9,12,15
101:1,11 102:5	123:6,8,10,12	150:1,6,14,18	183:17,20
102:20 103:1,7	124:5,8,16,19	150:21,22	184:3,7 186:12
103:13,20,23	125:6,7,12	151:2,5 152:7	187:1,3,11,15
103:24 104:10	126:8,14	152:16,17	187:22 188:1,5
104:16,19,25	127:10 128:7	153:2,5,9,20,24	188:21 190:23
105:5,6,9,15,23	128:22 129:1,6	154:18,24	191:12,14,22
106:1,4,9,12,15	129:20,24	155:2 157:13	192:4,10,17,20
106:18,22,25	130:2,11,15,17	157:18,25	192:24 193:6
107:5,12,14,23	130:20,23	158:3,8 159:3	193:10,19,23
108:7,12,17,20	131:1,9,16,18	159:9,18	194:2,8,17,20
108:24 109:4	131:22,25	160:10,14,19	194:22,24
109:14,17,25	132:7,11,21	160:23 161:4,7	195:1,3,8,12,15
110:4,9,11,12	133:1,7,18	162:17,25	195:20,23
110:16,20	134:7,10,16,20	163:5,12,21	196:4,8,12,15
111:1,14,19,20	135:3,5,9,10,14	164:2,5,9	199:4,6,17,21
111:23 112:2	135:17 136:18	165:16,22	200:1,4,7,9
112:10,13,17	136:20,22,24	166:12,22	202:14,25

[hearing - including]

<p>203:8,13,19,20 204:9,25 205:3 205:10,13,18 205:22 206:6,9 207:11,15,18 207:25 208:6 208:10,12,24 209:2,3</p> <p>hearings 25:4 25:11 125:23</p> <p>held 81:5 123:3</p> <p>help 130:18 135:6 154:22 158:8</p> <p>helpful 47:16 72:7 75:23 103:25,25 125:3 130:16 139:6 154:16</p> <p>hereto 210:15 211:11</p> <p>hey 36:4</p> <p>hilcorp 8:8 192:2</p> <p>hilcorp's 194:15</p> <p>hinder 42:20</p> <p>hinges 55:22</p> <p>hinkle 3:18 5:4 5:20 6:4 10:10 11:9 12:17 25:17 36:2</p> <p>historical 62:19</p> <p>hmm 99:24 106:3</p>	<p>hobbs 148:19 173:24 198:18</p> <p>hold 76:25 85:3 100:4 101:1 108:8 128:22 157:25</p> <p>hole 155:12</p> <p>holland 3:11 5:14 8:4,10 9:4 9:15 10:4,16 11:4 13:4 47:3 47:4 60:18 99:16 105:18 110:3 114:20 119:21 150:11 163:10 167:21 183:4 187:19 192:2</p> <p>holliday 12:9 12:11 36:4,4,7 36:8,9,11,16,21 36:25 37:9 38:7,8</p> <p>hope 139:13</p> <p>hopeful 68:14</p> <p>hopefully 59:9 60:1 88:19</p> <p>hoping 64:17 149:21 178:11</p> <p>horizontal 157:6 164:13 168:7,9 170:16 170:25 173:7 186:5,6 190:13 206:19,23</p>	<p>207:6</p> <p>hundred 120:17</p> <p>hypothetical 41:11</p> <hr/> <p style="text-align: center;">i</p> <hr/> <p>identification 148:3,13,22 151:22 152:4 152:15 161:22 162:6 165:2,12 169:2,10 171:16 173:22 174:3 176:6,15 185:7,18 186:8 186:20 189:22 190:18 191:5 198:4,13,23 201:23 202:12</p> <p>identified 82:14 120:9 127:9 157:21 159:14 162:13 186:1</p> <p>identifies 170:23 171:1 173:10</p> <p>identify 159:16</p> <p>identifying 185:14 186:15 190:25</p> <p>ii 12:8 36:5</p> <p>illinois 5:10</p> <p>immediately 173:17 178:17</p>	<p>imminently 144:1</p> <p>impact 82:23 102:24</p> <p>impacting 81:12,20 82:19</p> <p>impactive 85:19</p> <p>impairing 81:17</p> <p>impairment 101:25</p> <p>impedes 27:8</p> <p>impediments 186:6 190:14</p> <p>imperative 93:2 102:2</p> <p>impetus 117:7</p> <p>inappropriate... 101:21</p> <p>inclined 88:6</p> <p>include 73:8 85:11 147:15 161:25 176:10</p> <p>included 84:10 95:2 151:13 161:19 164:19 188:19 190:1</p> <p>includes 151:17 152:1,6 164:24 165:7 170:22 173:11 175:24</p> <p>including 94:23 147:23 148:8 148:15,16</p>
---	--	--	--

[including - irregular]

<p>158:17 161:16 162:2 189:13 198:16 incorporated 187:25 incorrectly 159:14 independent 64:10 indicate 158:11 192:22 indicated 49:1 133:20 141:24 151:19 162:19 indicates 158:20 166:6 indicating 156:21 information 17:15,21 18:6 18:12 28:6 87:3 94:6,10 95:23 140:18 152:6 162:2 180:24 185:2 207:12 informed 26:8 27:13 124:22 ini 197:1 initial 123:16 124:11 133:11 159:6 initially 37:1 92:13 163:17 188:17</p>	<p>initiated 133:10 inject 80:1,3 82:22 86:11 103:18 injected 81:12 101:25 102:3,9 injecting 85:19 90:22 injection 80:9 83:15 85:24 86:1,20 90:5,9 93:17 100:11 100:15,21,23 101:4,18,21 102:7,8,17,21 102:22 inside 86:7 instructed 141:19 192:15 intend 111:8 intending 125:16 intends 41:19 141:9 intention 41:21 68:25 87:13 117:16 interest 26:9,20 26:20 27:2,3,7 27:21 29:24 47:2,5 60:25 61:1 80:24 85:13,15,17 86:25 94:4,5</p>	<p>100:8 101:14 102:7 108:8,15 108:16 117:13 126:4 127:8 129:16 136:19 140:20 147:9 185:14 196:17 197:2 200:13 200:19,25 interested 107:9 110:8 134:4 173:16 173:20 210:15 211:12 interests 30:13 30:22 56:21 81:6 107:16 108:3 115:22 136:14,17 147:24 151:9 161:10 164:12 168:8 interim 120:13 intermixed 102:11,13 interrelated 79:20 interval 100:13 173:13 intervals 173:10 intervene 83:1 83:7,8 84:6 85:9 87:9 96:10 99:18</p>	<p>intervened 92:25 100:5,6 intervener 84:12 87:1 103:3 intervener's 85:13 86:25 interveners 84:12 intervention 76:16,19,21 82:4 83:6,17 84:3,7 85:11 86:17 87:5 104:7 introduce 145:25 invalid 126:21 invalidate 27:5 involve 30:2 56:17 78:17 92:14 93:17,19 105:21 110:23 111:5 128:24 involved 30:21 56:7 59:4 92:21 144:25 involves 95:9 95:11 113:22 involving 92:16 93:10 irregular 196:20 197:4 197:11</p>
--	--	---	---

[isochore - keep]

<p>isochore 148:10</p> <p>isolation 82:8</p> <p>issuance 103:4</p> <p>issue 27:22 28:9 29:8 51:12,17 52:16 52:18,20 53:5 53:6,19,21 57:12,14 59:23 62:6 63:3,3,8 71:1 78:11,24 88:3,4 90:4,15 90:18 91:17 92:18 95:25 125:20 126:25 128:21 130:3,4 132:22 138:7 138:13,18 143:13 145:20 146:10</p> <p>issued 80:23 81:4 129:14 176:3</p> <p>issues 27:11 28:24 29:5 51:21 55:23 62:6 68:13 79:19 93:24 117:8 119:4 135:6 138:11</p> <p>it'd 205:20</p> <p>it'll 49:4</p> <p>item 103:2 202:13</p>	<p>iterations 47:24</p> <p style="text-align: center;">j</p> <p>j 206:13</p> <p>jaclyn 5:19 150:4</p> <p>jaguar 157:23 162:7</p> <p>james 2:11 9:8 9:9,19,20 12:22,23 210:2 210:17</p> <p>january 124:23 133:10,12,14 133:17 138:6 172:18</p> <p>jared 19:22 20:13 21:4 190:9</p> <p>jennifer 7:3 46:16</p> <p>jim 25:14 46:13 65:18</p> <p>joa 116:2,4,8 122:9 126:24 139:21 140:13 140:21,24 141:1,8 142:21 143:2 144:22 144:24 145:2</p> <p>job 2:12</p> <p>johnson 13:22 14:7 15:5 21:13,23 22:12 22:22 23:10,20</p>	<p>24:5 147:19 163:25 164:4 196:11 197:20 201:15 206:2 206:12,16</p> <p>joint 116:9,10 139:12</p> <p>jordan 7:9 50:3</p> <p>jose 193:17</p> <p>josh 13:20 17:6 171:9</p> <p>judgement 89:10</p> <p>july 50:11,12 50:13,17,17 51:10 52:8,15 53:25 54:1,4 54:12,14 55:12 55:12,13 56:2 56:13,14,19 57:15 58:4 59:8,12,25 60:10 63:14 96:21,21,23 99:1 104:3,13 105:2 109:2,6 109:12 111:15 113:7 117:15 117:22 118:16 118:19 119:1,5 120:11,22</p> <p>jumping 132:20 178:17</p> <p>june 31:20 32:2 32:3,4,13,20</p>	<p>34:11,13,18,24 37:19,22,24,25 37:25 42:22 43:2,5,6,7,11 43:19 44:18,24 44:25 45:4,10 47:10 64:3,4 64:12,14,19,24 66:23 67:12 68:7,21,23 70:1 71:16 72:2 87:20 88:21 96:19,20 107:22 111:17 111:24 121:3 121:25 122:11 123:10,12 125:7 126:7 135:3 137:14 138:25 140:14 141:14,21 142:2,12,15 143:8,9,11,11 145:17,23 146:3 202:18 203:23,25 204:1,8,21 208:17</p> <p>justice 138:18</p> <p style="text-align: center;">k</p> <p>kaiser 71:20</p> <p>katherine 12:12</p> <p>keep 75:22 77:2 78:23 79:22</p>
--	---	---	--

[keep - line]

<p>106:16 kessel 15:7 21:15 22:4,14 22:24 23:12,22 24:7 148:5 198:6 201:25 kessler 7:9 49:25 50:2,3 53:3,4,11 key 88:5 kicked 69:3 kind 26:3 127:19 200:2 know 29:5,6,14 29:14 31:18 32:7,14 33:3 34:5,6 36:19 37:20 38:22 39:4,20 40:12 41:25 42:14,19 42:20,21,22 44:12,12 50:14 52:5,17,19,21 52:25 55:16,18 55:19,20,22,22 55:24 57:22 62:10,13 63:14 68:11 70:18 71:5 73:12,24 74:18 79:8,17 80:20 89:20 90:9 91:2 93:15,22 94:12 94:17 96:1,14 98:13 107:19</p>	<p>108:21 109:11 115:8 117:15 117:16 127:19 137:15 139:23 142:10,21 157:3 158:24 165:25 166:17 175:12 178:25 179:3 183:13 193:13 196:5 204:21 206:9 208:1 knowledge 192:8 210:10 211:6 known 28:24</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>I 3:3 6:8 7:3,9 77:22 97:8 153:22 lack 53:6 83:1 179:4 laid 131:20 132:3 180:12 land 15:6,16 16:5,15 17:14 17:20 18:5,11 18:20 19:8,21 20:12,25 21:14 21:24 22:13,23 23:11,21 24:6 72:3,4 147:22 169:4,7 170:8 175:25 185:11 185:13 189:16</p>	<p>190:2 197:24 201:17 landman 13:18 13:19,21,22 17:5 147:19 149:1 153:4,5 185:9 196:10 197:21 199:3 201:15 205:20 205:23 lands 169:8 171:13 173:17 lane 4:11 larger 90:6 152:10 158:13 162:12 late 32:25 50:12,17 51:10 52:8,15 63:14 84:11 183:22 latest 146:5 latitude 64:1 law 6:9 9:9,20 12:11,23 13:14 143:10 laying 139:23 lea 147:12 196:21 197:14 200:16 201:3 learned 42:14 lease 132:18 147:23 leave 167:2 178:12,16 203:4</p>	<p>lee 168:12 legal 7:5 30:5 35:10 46:17 126:24 lens 136:1,5,10 leonard 13:15 206:16 letter 48:5,7 132:16 148:1 148:16 151:19 151:20 161:19 164:24 173:18 198:16 203:17 203:18 204:16 207:20 208:19 letters 47:25 48:1,3 171:2 173:15 190:5 letting 135:7 level 88:11 89:4 136:12 likely 78:23 120:5 limit 108:7,10 limitation 108:11 limited 204:22 lincoln 7:11 line 10:20 97:14 98:1,2,6 99:6 101:9 155:15,17 156:8 179:8 199:3</p>
---	--	--	---

[lingering - make]

<p>lingering 90:4 lining 207:19 lis 29:16 list 147:24 148:17,17 195:16 198:16 198:17 208:19 listed 101:5 litigation 91:4 little 39:8 40:13 42:15 47:1 50:25 66:20 72:19 114:25 117:16,19 123:8,17 130:6 140:18 177:13 llc 4:2 5:2 6:2 7:14 8:14 10:8 11:2 12:15,21 58:16 147:5 163:4 167:14 196:3 199:24 llp 3:11,18 5:4 5:14,20 6:4 8:4 8:10 9:4,15 10:4,10,16 11:4,9 12:17 13:4 located 177:17 207:6 location 2:8 170:14 177:20 186:1 locations 61:13 159:23,25</p>	<p>locator 148:8 185:25 loggerheads 142:13 logs 173:9 long 28:23,24 40:22 62:13 66:6 74:3 94:19 143:5 194:12 longer 28:25 150:13 177:13 look 69:22 72:17 90:9,14 96:14 118:5 123:25 132:25 207:16 looked 66:6 69:17 70:2 121:18,19 looking 43:3 51:20 72:14,14 73:11 84:4 116:4 118:8 128:4 154:13 155:9,10 157:20 159:11 166:21 176:17 181:12 208:1,2 looks 50:17 51:1 74:25 75:1 96:21 109:19 112:19 119:12 187:16 195:24 207:8</p>	<p>lot 90:4,8 158:11 lots 196:19 loud 36:25 louder 36:15,15 low 36:19 lowe 13:15 14:4 14:8 149:10,11 152:21,22,25 153:4,13,24 154:2,23 155:1 155:5 157:9 158:4,7,9,19 159:21 160:6 160:16 162:19 165:17,24 166:5,11 167:8 174:8,10 181:6 181:18,20 182:8,9,19,20 187:8,10 191:15 199:13 199:14 205:10 205:12,15,20 206:7,8,15,16 207:21 208:7 lowe's 178:24</p> <hr/> <p style="text-align: center;">m</p> <hr/> <p>m 4:14 5:19 7:15 8:15 10:21 12:3 15:9,19 16:8 16:18 21:17 22:6,16 23:4 23:14,24 24:9</p>	<p>153:22 macho 122:24 125:20 126:12 126:15 127:14 127:15 128:24 129:18 141:18 141:25 144:16 made 51:11 82:17 85:24 86:5 87:16,23 91:23 129:21 135:19 146:3 164:6 179:2 magic 179:3 mailed 152:7 162:3 165:9 173:15 mailing 148:16 173:19 198:16 mailings 186:13 main 90:2 make 28:2 30:20 35:8 36:16 39:6 45:17 61:17 64:10,11 76:20 82:4 83:5,6,17 86:8 88:25 90:23 91:18 92:6,8 93:13 93:15,22,23 94:5,11,15 98:9 116:5,12 120:3 134:8</p>
---	--	---	---

[make - mexico]

<p>155:14 158:3 193:3 makes 56:2 57:9 100:22 109:12 118:2 making 101:20 124:25 mammoth 67:2 68:24 71:3,15 71:20 management 133:25 map 147:23 148:8,9,9 170:14,24 173:2,3 185:13 185:25,25 186:1 190:2 marathon 8:14 38:17 39:20,25 40:7 41:4,7,10 58:15,25 59:2 105:13,21 107:18 108:6 151:1,8 152:10 161:2,10,20 162:12 163:4 164:12 174:18 175:8 176:21 176:25 177:4,5 177:16,20,22 178:1 180:8 marathon's 151:20 176:7 177:10</p>	<p>march 51:24 130:10 131:5 131:11 135:1 141:4 168:25 marked 148:3 148:12,21 151:22 152:3 152:14 161:22 162:6 165:2,12 169:2,9 171:15 173:21 174:2 176:6,15 185:7 185:18 186:8 186:20 189:22 190:17 191:4 198:3,12,22 201:22 202:11 mass 88:8 matador 9:2 46:14 47:8,22 47:24 63:14,18 110:7 112:7 163:11 materials 151:13 161:19 161:25 164:19 165:8 matt 15:17 16:6 16:16 97:13 151:23 161:23 165:4 matter 1:5 30:10 36:12 37:1,4 39:11 55:22 62:2</p>	<p>63:1 74:22 84:6,9 88:15 103:21 145:24 147:15,21 151:16 152:1 156:25 164:23 165:6 169:8 171:14 197:23 198:8 202:20 203:5,12 204:24 matters 85:4 105:19 169:7 170:9 185:11 199:25 matthew 10:21 12:3 mcclure 13:16 193:2,8,11,21 193:23 194:3 194:17,20 195:1 mclean 5:19 149:17,19,25 150:4,4,8,16,20 mean 30:20 31:5 34:20 42:8 44:5 62:11 98:23 115:19 123:23 129:12 131:22 133:15 156:24 158:21,22 203:14</p>	<p>means 104:11 140:25 146:17 meant 112:11 medical 32:10 meet 42:23 43:8 156:15 158:15 meeting 73:21 87:20 88:20 96:19 member 193:17 memory 88:18 mention 102:21 122:5 mentioned 31:23 83:22 95:20 117:25 135:25 139:9 142:7 merely 204:14 merits 81:15 met 44:24 45:1 method 44:23 mewbourne 9:13 65:19 66:14 67:13,14 68:12 71:21 183:5 184:13 184:16 mewbourne's 185:9 mexico 1:1 6:2 77:17,23 80:11 80:24 81:2 83:25 97:6,9</p>
---	---	---	---

[mexico - mountain]

<p>151:11 168:12 210:19 michael 5:13 10:3 60:17 105:17 110:2 microphone 32:16 36:19 100:1 172:12 172:13 middle 82:10 135:8 midland 5:11 midstream 8:2 99:17 midwest 72:24 miguel 4:3 8:20 11:19 13:8 38:17 49:21 55:5 75:3 167:13 mile 102:14 miles 85:25 86:2 101:19 mimic 201:12 mind 130:3 mineral 1:2 minerals 80:10 176:25 minute 146:21 170:6 mirrored 191:6 misstating 59:10 mistake 93:12</p>	<p>mistaken 123:11 mm 99:24 106:3 moander 3:3 76:1,2,4,5 87:25 88:2,4 89:5,9,22 90:1 90:20 91:2,16 92:2 98:14,14 104:16,18 modify 118:17 modrall 4:15 7:16,21 8:16 98:4 99:5 147:4 196:2 199:23 moment 43:18 77:3 113:9 153:7 158:1 176:18 monica 193:16 monitor 184:1 monitoring 66:15 76:6 montezuma 3:19 5:5,21 6:5 10:11 11:10 12:18 montgomery 6:14 11:14 65:12 75:9 97:5 month 64:16 69:7 107:20</p>	<p>109:11 111:9 months 60:3 122:2 128:13 134:1 137:4 139:9 140:2,6 monument 82:10 moore 211:2,15 moot 128:12 morning 25:3 25:16 36:6,8 38:12,15,16,18 38:19 39:20 46:19,20 48:15 50:2,4 58:14 60:16 65:11,14 65:15,17 76:3 76:5,13 82:2 97:12,15 98:3 101:24 105:12 105:16 109:22 109:25 110:1,4 119:15,18,20 121:11 147:3 150:24 152:22 152:24 154:3,4 161:1 163:3,8 167:12,19 169:20 174:17 174:20 183:20 183:23 192:8 206:16 morphing 116:22</p>	<p>motion 25:20 25:25 26:4,7 28:16,18,20 29:21,22 30:5 30:6,10,15 40:10 47:5,8 72:8,13 73:8 74:14 83:1,25 85:9 88:10 89:11 92:8 96:14 104:9 121:3,18 122:3 122:15 123:5 123:12,20 124:10 126:16 126:20 127:1,2 133:9,21 142:9 142:14 144:15 144:17 145:3,7 145:8,11,21 149:20 150:8 194:10 motions 28:22 49:14 88:16 127:5 145:5 mountain 7:14 38:14 39:19,22 40:2 41:15,17 41:19,19,24 43:20 44:6 46:2 109:24 110:10,19,24 112:24 114:17 115:11,22 116:3,15,17,22</p>
--	--	---	---

[mountain - new]

117:14 119:17 120:7 147:5 196:3 199:24 200:3 mountain's 117:21 move 44:11,15 45:23 61:25 64:8 65:2 99:18 110:10 120:7 146:7 167:10 177:12 177:15 178:3 181:10,24 186:21 191:9 193:7 194:13 moved 133:5 134:3 moving 41:21 51:9 53:8 62:14 65:25 112:19 120:6 137:17 187:16 mrc 10:2 46:14 47:8 48:25 60:18 110:3 111:6,7,18,25 151:18,19 161:20 164:25 mudshark 71:2 71:11 mullins 10:22 12:4 multiple 139:7	mutually 48:16 n n 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 25:1 206:12,13,13 nacho 122:24 125:20 126:12 126:15 127:15 127:16 128:24 129:18 141:18 141:25 144:16 name 153:21 186:16 191:1 200:2,5 206:8 206:10 names 170:17 193:13,15 narrow 29:25 30:4 natural 1:2 172:17 nature 42:10 80:13 85:12,15 85:16 86:25 100:7 near 139:14 143:2 nearly 82:10 necessarily 101:22 117:17 127:2 necessary 26:9 48:14 94:6,11	109:8 120:14 125:13 necessitate 41:8 need 27:9 28:5 33:2,12,13 34:25 35:8 42:22 43:5,14 44:15 45:15 49:6,9 50:25 53:22 54:7 59:22 62:10 63:11 73:3 74:10 76:9 89:20 90:17 91:2,19 106:15 106:21 107:20 122:15 125:25 126:5,25 127:10 129:12 132:11 136:6 139:10,22 140:11,13 141:12 143:1,5 144:7 146:7 150:13 166:13 177:14 194:21 203:11 204:2,4 needed 28:4,13 111:13 124:23 157:9 170:21 177:12 192:17 needs 84:10 90:7 176:22,25 180:8	negotiate 56:11 126:9 128:6,19 134:22 135:24 137:3,5 139:5 negotiating 118:5 125:5,6 133:14 138:1 negotiation 27:11 30:8 137:25 138:9 138:18 negotiations 40:15 42:10 51:7 52:4,6,17 59:5,6 60:9 108:22 118:6 120:3,4 122:9 125:11,22 126:4,11,19 132:4,6 134:4 134:22 135:5 135:12,19 137:16,17 138:4,7,22,23 138:25 neighborhood 117:22 neither 51:16 210:11 211:7 never 62:22 136:6 nevertheless 92:15 117:13 new 1:1 6:2 36:17 48:4
---	---	---	--

[new - object]

<p>59:18,19 64:21 64:21 70:25 77:17,23 80:11 80:23 81:2,20 83:25 97:5,9 142:5 144:1 151:11 168:12 203:5,7,16,17 210:19 newer 103:15 newly 107:16 news 148:19 173:24 198:18 newspaper 190:25 nice 62:25 night 32:25 37:10 103:17 nine 77:18 nm 2:10 3:7,13 3:20 4:17 5:6 5:16,22 6:6,11 6:16 7:7,12,18 7:23 8:6,12,18 9:6,11,17,22 10:6,12,18,24 11:6,11,16 12:6,19,21,25 13:6 non 136:15 168:6,9 170:24 177:6,7 normally 160:1 norte 120:9</p>	<p>north 3:12 5:15 8:5,11 9:5,16 10:5,17 11:5 13:5 151:10,12 155:15,17 184:14,17,17 184:21 northeast 197:12 207:9 northern 10:8 58:12 163:25 164:3 northwest 4:16 7:17,22 8:17 10:23 12:5 197:12 nos 1:9 notarized 179:11 notary 210:18 note 75:10 79:16 87:12 92:7 104:6 113:7 139:5 141:1 170:13 173:2 176:10 noted 98:5 107:7 142:2 159:13 notes 82:16 106:19 169:7 170:15 171:12 notice 16:25 17:8,15,21 18:6,12,24</p>	<p>19:12,25 20:16 21:7 29:7,16 37:7 48:19 76:15,18,21 81:10 83:5,17 84:7,13 85:11 86:17 131:23 148:14,16 152:6,6 162:2 162:3 165:8,9 173:14,15,18 176:11 186:11 186:15 188:19 190:20,21,24 192:15,18 198:14,16 202:4,19 203:9 203:9 207:4 noticed 202:15 203:6 notification 189:2 notified 202:16 notify 203:11 204:4 november 50:8 52:13 novo 10:8 58:12 59:5 number 27:1 62:23,24 75:18 95:11 98:23 106:2 113:4,21 114:2 124:21 149:20 150:2</p>	<p>152:12 154:8 159:9 162:15 165:14 166:3,6 166:10 167:4 167:14 170:2 171:18 176:17 178:3 181:4 183:8 188:14 188:22 189:6 195:16 207:16 207:20,22 numbered 156:20 numbers 25:8 25:12 57:13 69:14 70:21 72:6 105:1 170:20 180:20 208:14 numerous 83:11 85:4 173:19</p>
o			
<p>o 25:1 153:23 206:12,13,13 o'clock 146:22 oath 179:17 180:2 205:23 object 38:24 46:24 48:12 53:7 79:14 99:3,7 103:10 108:9,13,15,16 121:22,23 164:7</p>			

[objected - okay]

<p>objected 79:7 79:10 105:19 106:7 107:8 113:25 121:17 188:20 189:3,9 objecting 61:23 84:19,22,23 86:23 objection 27:14 28:1 36:10,12 37:1,4,17,21 44:14 46:22 48:11,13,19 49:9 51:17,21 51:23 55:17,19 55:19 56:11 58:21 60:22 65:25 66:12,14 66:18 67:18 70:6,12 71:19 79:9 84:25 87:3 104:6 106:10,13 107:10,14,24 108:2 110:7 114:2 115:5,17 146:9 163:16 163:17,18 objections 63:20 149:5 152:17 162:18 165:16 168:1 174:5 181:4,13 182:4,15 184:2 187:2 191:13</p>	<p>199:6 205:2 obligation 87:8 observe 53:12 53:14 observed 173:6 observing 58:1 163:19 obtain 171:6 obtained 80:18 obviously 28:18 39:25 42:19 68:20 81:14 94:24 occ 88:9,14 90:8 occasion 63:10 occur 30:1 101:18 127:25 occurred 133:6 occurring 52:7 ocd 13:14,15,16 29:10 70:3 76:2 88:6 98:15 171:3 ocd's 90:6 91:9 offer 123:22 124:3 133:22 133:23,23 134:18 137:10 137:11 143:16 143:20 204:13 204:14 offering 81:15 offers 137:12</p>	<p>office 60:17 75:4 105:17 110:2 114:20 119:20 163:9 167:13,20 183:4 186:10 187:19 192:2 officer 76:1 87:25 89:14 91:3 100:1 103:23 105:5 210:2 officially 97:17 offset 171:1 173:17 offsetting 82:18 83:12 oh 43:14 51:18 53:13 66:5 69:11 106:1 113:6 124:23 130:20 133:18 176:9 oil 1:3,6 3:2,5 8:14 9:13 10:8 25:4 38:17 58:12,15 65:19 71:20 105:13 151:1 161:2 162:9 163:4,25 174:18 175:8 183:5 okay 25:19 27:24 28:10 29:19 31:11,15</p>	<p>31:19,25 32:8 32:12,15,22 33:2,8,20 34:22 35:1,18 35:24 36:18,21 36:22,25 37:6 37:12,23 38:6 43:17 45:2,18 48:20 49:8,16 50:21 51:6 53:2,14,24 55:7 57:5,11 58:3 59:20 60:9 62:23 63:23 64:5,15 64:25 65:9,21 66:3 67:17,21 69:13,21 70:5 70:9,14,20 72:9,21 73:19 74:6,20,24 75:14 76:11,23 77:7 78:9 79:1 79:13 80:6,25 81:19 84:18 86:22 95:16 96:3,8 98:20 99:2,8,20 100:3 102:5,20 103:1,7,24,25 104:19 106:9 106:18,25 107:5,23 108:12,20,24 109:4,15</p>
---	--	---	--

[okay - outlined]

<p>110:16 111:1 111:14,20 112:12 113:8 113:19 115:18 117:5 118:25 119:11 120:15 123:14 124:25 125:4,13 128:7 130:2 131:9,12 132:8,13 133:1 137:23 140:7 144:6,13 145:20 146:12 147:6 149:13 156:10,16,19 157:9,9 158:7 159:12 160:19 161:7 164:2 166:11 167:10 169:11 170:7 171:24 172:19 172:22 178:18 178:22 179:15 179:24 181:12 182:2,10 183:1 183:15 184:7 187:11 188:5 192:10 193:19 194:2,8 195:20 203:20 204:25 207:3,18,24 208:7,12,24 once 29:6,14 47:4 111:10,11 139:21 170:18</p>	<p>204:2 one's 56:1 ongoing 52:3,6 177:19 online 169:15 open 118:11 167:2 203:5 operate 108:5 operated 101:9 operates 47:20 79:12 operating 4:2 5:2 11:2 12:2,8 12:21 36:5 49:20 55:4 65:13,16 95:10 95:12 97:13,22 98:6 99:6 103:14 105:18 107:8 116:9,10 121:9 139:12 167:14,22 172:11,18 operating's 101:8 operation 47:22 80:11 operations 82:19 operator 41:1 41:11 136:8 139:7 140:21 140:24 141:10 144:22</p>	<p>operator's 83:15 operators 83:11 92:21 opinion 90:6 opportunity 39:9 80:13,16 81:3,7,10 82:21 85:8 87:10 92:6 95:3 121:16 opposed 103:19 opposes 87:1 103:3 optimistic 39:5 39:8 option 42:11,17 120:12 options 116:4 oral 83:5,17 84:14 orally 76:18 99:17 order 25:6,23 29:10 30:16 35:15,16 48:6 54:7 57:12 63:9 68:25 87:1 103:4 111:17 131:17 131:18,25 132:1,22 134:23 142:11 143:13 147:9 151:8 161:10</p>	<p>164:12 166:19 166:21 176:2 188:15 189:6 192:16 196:17 197:1,8 200:12 200:18,24 201:7 ordered 29:11 orders 47:20 57:14 61:21 64:6 67:13 101:4 127:21 127:23 131:20 132:2,4,15 176:9 193:6 ordinary 139:19 orient 175:23 orientation 148:11 original 124:22 131:2 176:2 originally 36:11 orthodox 156:23,24 159:22 160:3,5 outcome 40:3 90:25 210:16 211:12 outer 160:2 outline 178:1 outlined 125:11 177:4</p>
--	---	--	---

[outlines - parties]

<p>outlines 176:20 outs 30:3 186:5 outset 75:10 outside 51:7 86:7 92:17 93:18 100:15 116:2 overcomplica... 93:23 overlap 189:23 overlapped 189:24 overlapping 170:16 188:18 189:1,9,10 202:15,19 204:5 207:5,5 override 27:14 28:17 30:12 overriding 26:9 27:2,21 29:24 overview 148:11 owl 79:11 82:9 83:25 85:7 87:14 owl's 82:21 own 26:19 113:18 195:9 owner's 61:17 owners 41:18 113:14 171:1 173:17 185:15 ownership 56:21 144:20</p>	<p>144:21 170:23 190:3 owns 126:2 oxy 10:14 19:18 20:9,22 187:25 188:8 188:14 189:6 oxy's 60:25 189:16 190:6</p> <hr/> <p style="text-align: center;">p</p> <hr/> <p>p 3:1,1 4:1,1 5:1,1 6:1,1 7:1 7:1 8:1,1 9:1,1 10:1,1 11:1,1 12:1,1 13:1,1 25:1 p.a. 6:9,14 10:22 11:14 12:4 p.c. 4:4,10 8:21 11:20 13:9 p.m. 209:5 p15 80:1 82:9,9 82:13 85:7,18 86:5 95:8 pace 116:16 packet 166:20 168:21 175:24 176:3 197:18 203:5,7,15 204:15 208:23 packets 147:14 176:10 184:22 197:16</p>	<p>padilla 6:8,9 77:17,20,22,23 78:12 96:4,5 97:8,8 page 140:7 156:20 157:19 157:21 158:5 159:4,9,12 162:14 170:2,4 171:18,23 176:19 207:16 207:17,18 208:4 paragraph 26:7 122:18,25 123:4 159:12 176:16,18,19 177:4 208:5 paragraphs 122:15 177:25 180:12,16,24 part 76:5 110:24 145:17 166:18 177:7 177:12 193:14 204:7,7 participate 81:3 84:12 participating 73:25 115:25 participation 171:7 particular 91:12 154:7 156:1</p>	<p>parties 26:3,19 34:15 35:7,19 37:2 38:21 39:5 47:9 48:15 49:5,24 52:4,16 53:7 58:18,24 59:7 59:10,22 68:13 71:8 73:24 75:25 78:17,25 83:5,23 88:12 91:18,24 94:6 95:18,25 98:12 98:17 102:2 105:3 108:3 112:21 114:11 115:9,14 116:20 117:8 117:20 118:4 118:18 119:3 120:2 125:4,5 125:8,11 126:8 126:23 128:5 128:19 132:4 133:14 134:22 135:4,6,24 136:16 137:4 137:20 138:5 139:4 140:5 142:11,18 143:4 144:23 147:24 150:9 151:3 163:6 167:17 170:24 171:7 173:16</p>
--	--	---	--

[parties - pilot]

<p>173:20 174:21 175:11 183:13 186:11,16 188:2 190:3,7 190:21 191:1 192:5,18,19 196:5 202:15 202:19 203:6 203:12,18 204:3,5,6 210:12,14 211:8,11 partners 12:15 36:3 172:4,10 172:16 parts 72:3 204:22 party 29:7,8,18 40:15,21,23 56:22 57:24 62:21 64:18 79:6 83:18 85:6 90:21,22 92:3 102:8 108:13 111:6 114:10 133:5 141:1 163:24 188:20 189:3,9 paseo 6:15 11:15 passage 124:21 passive 76:10 past 40:9,11,12 44:10 126:23 139:7 144:22</p>	<p>166:15,17 pasting 166:9 pause 118:2 payne 13:20 17:6 171:9,9 171:20 172:8 172:13,15,21 172:23 173:4 pc 12:11 pdf 208:4 pecos 2:8 peifer 10:22 12:4 pena 7:20 147:3,4,8 149:4,13,16 195:13,14,22 196:1,2,7,10,14 196:16 199:5 199:16,18,20 199:22,23,23 200:3,6,8,11 203:3,11,16 204:1,20 207:25 208:2 208:13,22 209:1 penalize 138:21 139:2 penalty 179:4,7 pendens 29:16 pending 64:22 85:4 92:23 170:20 177:3</p>	<p>people 158:11 peralta 6:15 11:15 percent 27:2 30:3,3 61:2 120:17 126:18 144:20 perf 156:1 perfect 73:10 109:13,14 114:6 118:22 167:1 175:5,22 183:9 194:24 208:24 perjury 179:4,7 permian 8:2,14 10:2,20 11:2 46:14 58:16 60:21,24 61:3 63:10,15,18,19 65:13 66:1 67:7 68:12,14 68:22 69:7 97:14,23 98:1 98:6 99:6,17 101:9 105:14 110:3 111:6,7 111:25 151:1 151:19,19 161:2,20 163:4 164:25 167:21 174:19 175:8 permian's 65:24</p>	<p>permission 80:8,18 86:20 90:21 permit 79:11 80:23 81:4,14 81:17 82:9 85:2,3 86:11 permits 61:15 62:16 64:7 102:4 103:19 129:11 177:1 permitted 191:9 person 84:5 189:16 perspective 91:20 pertain 206:18 pertaining 156:24 157:6 157:10 165:25 205:17 207:4,6 pertains 160:7 petroleum 75:10 169:7 170:8 171:12 185:11,20,22 190:11 ph 193:16,17 193:20 194:5 pilot 11:18 75:4 75:6 79:11,25 84:1 85:7 95:20</p>
---	---	---	--

[pilot's - potentially]

<p>pilot's 79:21 103:16 pinch 186:5 pinching 173:6 place 30:12 62:15 64:6 placed 68:6 plan 140:11 planned 193:12 planning 30:4 140:10,16 play 29:14 90:15,17 91:17 plaza 10:23 12:5 pleading 146:11 please 35:14 45:4 49:18 54:12 58:10 65:2 74:14 76:14,17,19 96:22 97:3 100:7 105:11 109:5,21 112:22 114:15 119:1,14 121:7 147:2,6 150:3 150:23 151:6 153:13,20 155:2 160:25 161:7 163:2 167:11 172:12 174:25 183:15 188:5 192:11</p>	<p>196:15 200:10 205:25 206:11 pleases 175:2 plenty 56:2 po 6:10 7:6 9:10,21 12:24 point 27:1 41:12 50:11 60:6 63:12 76:10 82:3 83:16 94:13,14 94:23 109:2 121:2 122:10 126:7,22 127:12 128:12 128:13,18,21 135:18 137:13 138:21,23 139:2 141:11 143:16 148:23 152:8 158:21 198:24 202:14 pointed 143:22 policy 90:6,17 94:11 131:13 pool 41:18 47:23 90:3,13 91:12 107:16 108:2,8 111:7 126:3,6,16,17 126:24 129:12 136:7,14 140:12,20 143:1 144:23 145:1 147:25</p>	<p>156:10,13 162:9 164:17 164:17 168:7 184:13,20 188:8 190:4 pooled 26:22 26:24 61:1,17 108:16 171:7 pooling 15:4,14 15:24 16:13,23 18:16,18 19:4 19:6,17,19 20:8,10,21,23 21:12,22 22:11 22:21 23:9,19 24:4 27:5 47:20 61:20 62:4 63:9 64:9 111:10 116:7 126:1 129:10 138:10 140:23 142:25 147:9 147:18 151:8 151:14 157:20 157:22 158:17 161:10,17 162:14 164:12 164:20 166:6 167:3 168:24 185:1,3 188:12 188:23 189:13 190:7,22 196:17 197:2 197:19 200:12 200:19,25</p>	<p>201:13 204:4 portion 188:12 position 39:22 50:24 55:25 57:10 62:11 63:2 71:21 79:22 86:11,15 86:16 91:5,7 92:11 93:4,7 94:7,16,21,24 96:1,7,9 100:16 101:17 111:9,13 117:12 possibility 89:1 possible 40:5,6 50:13 62:10 63:8,18,21,22 64:7 66:2 91:21 111:16 111:21 118:1 140:14 204:20 possibly 42:24 57:23 63:14 posture 47:1 95:3 potential 44:23 116:6 123:12 143:8 potentially 39:10 50:13 55:12 79:20 82:23 100:24 115:24</p>
---	--	---	---

[practice - proceeding]

<p>practice 40:11 40:13 44:9 88:11 89:11 127:3 139:20 140:3 166:17 practices 62:20 166:15 pre 25:22 27:22 29:12 35:16 54:7 57:12 68:25 113:24 143:13 192:19 precedent 29:25 63:7 144:24 precedents 47:14 precluded 86:2 prefer 35:4 56:1 73:6 79:22 166:19 preference 31:1 31:3 40:18 51:2,6 57:1 117:25 136:1,4 192:23 193:4,4 prefers 137:22 203:7 prejudice 194:14 preliminary 145:24 premature 137:1,14,18 138:24 142:2</p>	<p>prematurely 127:15 128:1,2 134:19,25 135:1 143:23 prepare 28:5 prepared 17:4 17:6 38:1 45:12,19 51:3 125:16 137:11 180:20 186:10 211:3 preparing 125:3 137:20 139:11 159:18 177:23 202:14 prescribe 132:23 prescribes 134:24 present 13:13 30:7 37:21 53:10,16 80:13 94:7 95:4 183:10 196:13 presentation 37:20 175:4 181:12 204:13 presented 101:17 presenting 199:19 204:23 preserve 184:1 preserving 163:19</p>	<p>presume 89:9 pretty 39:5 95:21 156:17 prevent 26:22 26:23 prevents 177:18 previous 55:20 55:25 previously 61:1 92:10 101:24 117:25 126:2 143:7 147:20 148:6 151:15 151:24 161:18 161:24 164:21 165:5 169:5 171:10 175:25 178:15 185:10 185:21 189:17 190:9 197:21 198:7 201:16 202:1 primary 90:2 principle 83:14 86:8 100:19 128:10,19 prior 32:19 55:13 56:22 63:8 99:15 100:10 115:11 161:15 171:4 210:5 priority 44:10</p>	<p>private 178:11 probably 33:3 64:21 73:21 88:5 89:19 91:9 103:15 203:16 205:15 208:22 problem 28:15 28:17 62:4 72:19 78:5 83:10 134:21 195:22 200:11 procedural 47:1 95:3 proceed 30:6 37:13 38:4 47:14 55:11 56:8 69:1 71:8 122:1,11 126:5 140:9 147:7 151:6 161:8 164:10 174:25 183:16 188:6 192:11,25 194:7,15,23 200:10 proceeding 27:15 29:17 36:12 37:2,4 38:24 46:22,25 60:22 99:7 105:19 107:8 110:8 114:2 115:17 116:16 117:13 163:18</p>
---	---	---	--

[proceeding - purposes]

<p>209:6 211:4</p> <p>proceedings</p> <p>64:10 210:3,5</p> <p>210:6,9 211:6</p> <p>process 42:20</p> <p>120:8 139:23</p> <p>177:22</p> <p>produced 80:4</p> <p>80:5,10 82:18</p> <p>90:5 100:12</p> <p>102:8</p> <p>producing</p> <p>47:22 156:22</p> <p>production 9:2</p> <p>46:14 163:11</p> <p>professional</p> <p>15:6,16 16:5</p> <p>16:15 17:14,20</p> <p>18:5,11,20</p> <p>19:8,21 20:12</p> <p>20:25 21:14,24</p> <p>22:13,23 23:11</p> <p>23:21 24:6</p> <p>175:25</p> <p>progressing</p> <p>59:7</p> <p>projecting</p> <p>127:19</p> <p>promised</p> <p>146:13</p> <p>promising 51:1</p> <p>promotes</p> <p>177:18</p> <p>prompt 139:15</p>	<p>proof 165:9</p> <p>properly</p> <p>202:16,18</p> <p>proposal 39:11</p> <p>44:18 47:24</p> <p>48:1,3,5,7</p> <p>89:18 122:4,6</p> <p>122:7 124:22</p> <p>124:23 125:4</p> <p>125:10,17,19</p> <p>127:24 131:2</p> <p>132:16 133:17</p> <p>144:1,2,4,7</p> <p>146:6 147:25</p> <p>171:2 185:15</p> <p>190:4</p> <p>proposals</p> <p>39:21 40:7,21</p> <p>41:5,9,10 43:6</p> <p>43:7,13,20</p> <p>45:8,9 50:7</p> <p>52:13 59:2</p> <p>61:8 69:6,10</p> <p>107:21 111:6,7</p> <p>111:8,18,19</p> <p>112:3,9,9</p> <p>128:15,18</p> <p>130:7,14</p> <p>131:10 134:18</p> <p>137:12 139:11</p> <p>139:13,15,21</p> <p>139:22 141:2,7</p> <p>171:4</p> <p>propose 32:1,5</p> <p>41:1 46:4 61:4</p>	<p>61:6 118:20</p> <p>140:10 143:1</p> <p>proposed 16:24</p> <p>26:10 31:19,21</p> <p>41:4 48:2,8</p> <p>56:9 85:19</p> <p>116:4 134:12</p> <p>159:22 168:14</p> <p>173:12 185:13</p> <p>185:16 189:10</p> <p>189:25 190:2</p> <p>190:12</p> <p>proposes 41:2</p> <p>proposing</p> <p>140:12 142:21</p> <p>184:16</p> <p>protect 127:7</p> <p>protected</p> <p>136:17,19,24</p> <p>136:25</p> <p>protects 127:7</p> <p>protestants</p> <p>193:18</p> <p>protesters</p> <p>193:13 194:8</p> <p>protestors</p> <p>193:12</p> <p>protests 192:14</p> <p>192:16</p> <p>protocol</p> <p>158:15</p> <p>proved 60:9</p> <p>provide 83:5</p> <p>113:21 116:3</p> <p>140:17 157:15</p>	<p>provided 84:13</p> <p>87:10 186:11</p> <p>186:15 190:21</p> <p>provides 171:5</p> <p>proximity</p> <p>152:8,9,11</p> <p>154:6,9,11</p> <p>155:6,7,21</p> <p>156:2 157:2,22</p> <p>158:12,25</p> <p>159:14,17,19</p> <p>160:3 162:10</p> <p>162:11 196:24</p> <p>prudent 89:19</p> <p>public 210:18</p> <p>publication</p> <p>17:9 18:25</p> <p>19:13 20:4,17</p> <p>21:8 148:18</p> <p>165:10 173:24</p> <p>186:14,15</p> <p>190:23 198:18</p> <p>202:5</p> <p>published</p> <p>148:20 152:7</p> <p>162:4 176:12</p> <p>198:19 202:6</p> <p>pull 193:15</p> <p>purple 164:16</p> <p>purpose 1:7</p> <p>purposes 27:5</p> <p>56:19 57:3</p> <p>78:1 106:13,16</p> <p>175:4</p>
--	--	--	---

[pursuant - realized]

<p>pursuant 142:15</p> <p>pushed 137:3,6</p> <p>pushing 44:3</p> <p>put 35:14 39:10 57:13 64:23 86:24 111:23</p>	<p>155:3 157:11 157:17 160:15 162:19 165:18 174:8,10 178:24 179:25 181:6,18 182:8 182:9,20 184:6 186:25 187:8 187:10 191:8 191:15 194:12 194:18,21,22 199:2,14 204:18,22 205:11</p> <p>quick 34:18 139:5 152:25 154:5 193:16</p> <p>quickly 43:16 91:24 120:6</p> <p>quite 49:1 76:7</p>	<p>161:13 164:14 164:16 168:10 168:12 184:15 188:10 196:21 197:13 200:15 200:22 201:3</p> <p>ranges 61:2</p> <p>rankin 3:10 8:3 8:9 9:3,14 10:15 11:3 13:3 76:12,13 76:15 82:1,2,7 83:3,22,24 84:2,17 85:14 85:16 86:13,16 86:21,24 88:18 92:4,5 95:7,15 95:22 96:10 99:14,16,21,24 100:5,7,9 101:2,11,15 102:6,10,25 103:5 104:12 104:14 105:7 113:11,12,17 114:19,19,24 115:3,6,9,20 116:10 117:10 117:11 118:20 118:23,24 119:19,20 120:13,16,17 163:8,9,13,15 167:19,20,23 167:25 183:3,3</p>	<p>183:11,14,19 184:9,10 187:13,14,18 187:18,24 188:2,3,7 191:21,23,25 191:25 192:7 192:11,12 193:14 194:9 194:11,19 195:6,10,18</p> <p>rather 64:13 93:23 94:5 112:3 139:3 184:25</p> <p>ray 173:9</p> <p>rcx 14:2</p> <p>rdx 14:2</p> <p>reach 115:15 115:21 117:18 118:18 190:6</p> <p>read 121:15 132:23</p> <p>ready 31:5,8 50:11 55:10 56:8,12 62:12 122:1 145:22</p> <p>real 56:10 62:4 89:1 127:8 193:16</p> <p>reality 39:8</p> <p>realize 146:1</p> <p>realized 159:18 202:15</p>
<p>q</p>	<p>r</p>		
<p>qualifications 169:6 171:11</p> <p>qualified 172:23 210:7</p> <p>qualifies 138:6</p> <p>quarter 197:12 197:12,13 207:2,2</p> <p>question 26:6 26:15 35:7 42:1 48:11 66:5 67:18 81:1 90:7 113:7,9 132:21 152:25 153:3 154:5,22,23 159:21 165:23 165:24 166:1 172:6 178:24 179:1 205:12 205:14,16,19 208:8</p> <p>questioning 160:17</p> <p>questions 26:2 142:20 149:1 149:11 154:25</p>	<p>r 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 25:1 48:6 95:15</p> <p>raise 122:8 127:13 138:10 153:13 179:18 205:24</p> <p>raised 27:22 100:20 138:8 138:13</p> <p>range 147:12 151:11 161:12</p>		

[realizing - remember]

<p>realizing 89:3 really 42:11 44:3 74:18 88:14 89:15 91:16 139:1 163:15 reason 33:11 56:10,24 83:16 88:5 93:1 96:12 102:1 107:24 108:1 116:17 136:12 141:23 177:2 177:12 179:5 reasons 44:13 47:13 90:2 123:13 176:20 178:1 180:8,11 180:12 receipts 173:19 receive 112:3,9 received 25:20 48:6 65:25 80:18,20 81:9 108:3 131:10 141:6 149:9 152:20 161:20 162:23 165:20 174:7 176:21 181:9,17 182:7 182:18 187:7 191:19 193:24 199:12 203:18 205:9</p>	<p>receives 29:7 receiving 141:7 recent 206:17 recently 47:25 93:8 116:3 117:3 154:6 recess 99:9 recognize 83:18 recognized 170:8 recollection 80:22 reconfirm 166:2 reconnects 99:15 record 35:25 38:10 45:25 49:17 54:22 58:9 60:14 84:15 86:24 104:6 109:18 120:20 142:19 146:23,25 147:21 148:24 150:19 151:17 152:1,13 153:21 158:25 159:15 162:16 164:23 165:6 165:15 166:14 167:2 168:2 173:16 174:1 193:7,15</p>	<p>197:23 198:8 199:1 202:23 203:23 204:8 204:14 206:11 209:4 210:9 211:5 recorded 210:6 recording 210:8 211:4 recovered 27:6 recovery 90:5 90:12 red 157:23 162:7 redirect 154:22 155:4 157:14 reduced 210:7 refer 85:5 89:6 92:16 reference 148:9 155:19 156:19 156:21 157:5 160:6,7 206:17 207:4 referenced 79:21 referred 85:5 89:24 92:9 referring 71:12 71:14 122:21 122:23 125:1 refile 27:25 refiled 49:6 reflecting 186:10,14</p>	<p>190:6,20,24 regard 83:23 104:9 194:22 regarding 28:16 30:12 121:3 122:9 regardless 138:7 regards 193:25 regional 148:10 regular 33:24 50:18 73:13 reject 125:9 146:5 rejects 144:14 related 55:21 71:3,4 74:17 89:24 117:14 123:9 172:4 175:2 195:11 210:11 211:7 relation 170:25 relative 210:13 211:10 relatively 91:23 142:5 relic 166:8 rely 132:5 remaining 75:19 remedy 132:24 133:3,6 remember 28:25</p>
--	---	---	--

[reminding - right]

<p>reminding 141:8</p> <p>render 142:1</p> <p>reopen 63:1,8 64:8</p> <p>repeat 75:15</p> <p>repeatedly 85:24</p> <p>report 42:5</p> <p>reported 2:11</p> <p>represent 78:13 99:16</p> <p>representation 98:9</p> <p>representative 173:5</p> <p>represented 143:25 163:25</p> <p>representing 46:1,18 65:19 77:17 78:13 97:21 98:6 99:5 137:16 164:3</p> <p>represents 50:1</p> <p>request 25:8 47:11 50:12 55:11 59:10 63:12 83:24 103:5 115:16 121:15,23 142:14 173:25 175:3 176:7 180:8 188:21 189:3 203:25</p>	<p>requested 115:14 183:6 189:1</p> <p>requesting 25:21 139:24 157:7 176:20</p> <p>requests 61:25 169:5 171:11</p> <p>require 26:17 26:18 127:23</p> <p>required 48:7 83:4 86:17 132:3 185:2</p> <p>requirement 129:17 131:19 132:15 171:4</p> <p>requirements 179:14</p> <p>requires 78:24 156:13</p> <p>rescind 133:21 145:9,11</p> <p>reserve 69:4 118:17</p> <p>reset 25:22 26:1</p> <p>resistivity 173:9</p> <p>resolution 94:2 115:15,24 117:19</p> <p>resolutions 116:2</p> <p>resolve 51:19 52:16,19 59:22</p>	<p>68:13 117:8 135:6 192:16</p> <p>resolved 53:6 68:14 90:7 119:3 120:6</p> <p>resolving 55:23</p> <p>resources 1:2 5:18 7:2,10 11:2 46:18 60:21,24 61:3 63:11,15 65:13 67:7 150:5 167:22 172:17</p> <p>respect 30:1 51:15,15 57:23 84:5 85:7 128:9</p> <p>respond 28:22 28:23 76:24 83:20 84:1 85:8 87:11 121:17 122:4 122:14 124:20 134:15</p> <p>responded 123:15,20 124:3,11 137:9 141:6 143:19</p> <p>response 121:20 134:18 138:2 143:21 143:22 159:6 192:14</p> <p>resume 172:15</p>	<p>revert 141:20</p> <p>review 43:18 124:23 126:13 136:5 163:13 167:24 169:22 170:7 184:4 190:11 192:25 194:15</p> <p>reviewing 159:17</p> <p>revise 122:7 166:10</p> <p>revised 124:12 125:3,9,17</p> <p>revisit 106:15</p> <p>revocation 81:17 101:13</p> <p>revoke 79:10 80:8 81:14 82:8 83:14 90:21 100:11 100:15 101:4</p> <p>revoked 86:3 86:12 101:12 102:4,23 103:19</p> <p>reward 138:1</p> <p>rice 12:2 87:14 95:10,11,14,15 95:16 97:13,22 98:6 99:6 101:7,9 178:14</p> <p>right 25:2 27:7 28:8 32:9 35:12 50:15</p>
--	---	---	---

[right - scope]

<p>51:25 54:3,10 58:4 62:2 63:23 68:3 69:7,19 70:15 71:17 73:3,15 74:7 75:24 78:2 79:5,6 81:16 82:25 88:20 92:1 93:12 95:17 100:4 101:1 103:8 104:25 112:10 114:12 115:2 117:9 118:17 120:20 121:14 129:6 130:3 131:12 134:12,20 135:2 136:4 140:22 144:8,9 144:11 150:21 153:12,13 155:10,14 159:11 178:9 179:18 181:21 205:24 rights 81:12,18 81:21 90:12,17 163:20 184:1 ripe 111:19 127:17 ripen 41:9 rivergate 4:11 road 88:25 128:5</p>	<p>rob 192:21 rodrigues 18:20 19:8 185:9 role 76:9 ronald 211:2 211:15 room 53:25 rope 110:24 roughly 27:2 round 62:25 routree 19:23 20:14 21:5 190:9 royalty 26:9 27:2,7,21 29:3 29:24 30:3 rubric 143:20 rule 128:11 131:13,14 134:23 152:11 160:4 rules 30:12 41:1 47:15 83:4 131:17,21 157:2 164:17 ruling 30:6 run 120:20 rushing 138:2 ryan 5:8 65:15 65:16 66:12,13 66:17 73:25</p>	<p>s s 3:1,17 4:1 5:1 5:3 6:1,3 7:1 8:1 9:1 10:1,9 11:1,8 12:1,16 13:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 153:22 206:13 sage 164:16 saint 3:6 saltwater 83:12 92:22 sam 151:14 164:21 sample 148:16 185:15 190:4 198:16 203:17 samuel 13:18 14:3 15:15 16:4,14 153:16 153:22 san 12:13 santa 2:10 3:7 3:13,20 5:6,16 5:22 6:6,11,16 7:12 8:6,12 9:6 9:11,17,22 10:6,12,18 11:6,11,16 12:19,25 13:6 60:17 75:3 105:17 110:2 114:20 119:20</p>	<p>163:9 167:13 183:4 187:19 192:2 sante 167:20 satisfies 179:13 satisfy 87:8 saturday 43:6 savage 4:9 183:17,21,22 183:24 184:5 saw 32:24 saying 30:11 43:18 44:2 63:17 74:13 77:13 78:20 90:23 91:8,21 116:12 118:4 124:10,10,13 124:14,17 150:7 179:3 200:2 203:9 says 27:13 84:4 84:10 122:17 131:14 133:9,9 142:23 143:11 schedule 51:15 73:11 schedules 50:18 schematic 148:8 schill 4:10 183:24 scope 87:17,19 87:23 88:13</p>
--	---	--	--

[scope - set]

<p>92:18 96:18 screen 193:3 196:9 second 37:24 72:19,22 77:1 100:4 101:2 128:23 155:13 156:4 170:3 secondary 90:5 90:12 section 60:25 126:17,17 139:12 140:21 140:22 141:9 141:10 144:20 148:9,10 151:10 161:11 164:14,15 168:10,11,13 173:8 185:25 186:2 196:20 196:21 197:5,5 197:11,13 207:8,10 sections 106:8 111:5 140:20 147:11 151:12 161:13 173:11 184:14,18,22 188:9,12,17,25 189:8 200:15 200:21 201:2,8 see 35:3 48:18 51:9 53:14 69:13 71:1</p>	<p>86:7 87:2 99:13 111:24 112:7 116:8 118:10 133:18 140:5 153:7,9 164:5 169:13 169:14 170:6 178:9,16 179:1 182:2 192:9 193:2 194:1 196:8 204:17 seek 61:12 81:16 87:1,13 107:16 111:6 126:16 seeking 27:4 79:10 94:2 100:11,14 108:2 115:21 140:19 147:24 171:25 178:1 184:13,20 188:8 189:8 190:4 seeks 47:23 82:8 103:4 147:9 151:8 161:10 164:12 188:14,22 189:6 196:17 197:1,8 200:12 200:18,24 201:6 seem 44:15</p>	<p>seems 42:15 109:2 204:9,11 seen 72:24 158:11 select 143:6 self 18:19,21,23 19:7,9,11,20,22 19:24 20:11,13 20:15,24 21:4 21:6 152:5 179:7,12 185:8 185:19 186:9 189:15 190:8 190:19 192:21 send 26:11 43:19 48:7 107:20 111:8 125:17 171:4 sending 112:8 144:1 177:24 188:19 sends 139:21 senior 17:5,7 172:21 senna 193:16 193:17,20 194:4 sense 56:2 57:9 109:13 sent 26:10,13 45:8 47:24,25 50:7 52:13 59:2 111:10,11 111:18,25 121:19 128:15</p>	<p>128:18 130:7 130:14 131:3,4 132:16 141:2 143:25 sentence 85:14 125:2,10 sentences 47:18 separate 30:15 30:15 57:14 75:22 77:3 78:21,23 79:22 104:21,23 106:21 145:6 145:20 203:7 separately 78:16 september 29:6 94:18 sequentially 57:1,7 serves 88:18 service 10:20 97:14 98:1,2,6 101:10 services 7:5 46:17 99:6 set 27:19 33:9 34:4,9 39:23 40:4,6 45:3,11 45:20 47:12 50:16 51:2 54:4 56:2,13 58:4 59:7,11 59:20 60:6 63:13 64:1</p>
---	---	---	--

[set - soon]

<p>66:1,22 67:11 67:15 68:19,22 68:23 70:21 71:7 72:15 79:19 88:15,23 96:17 98:25 114:3 116:18 116:23 117:6 117:21,22 118:7,9 119:2 120:11 121:25 129:2 135:3 138:25 140:2 147:15 165:3,8 201:13 sets 67:16 71:6 125:23 setting 41:13 48:14 50:10 57:14 94:17 110:11 137:18 settle 51:21 several 100:10 128:13 shaheen 6:13 11:13 65:11,12 65:21,23 66:5 66:11 67:6 68:8,10 69:9 69:11 70:6,8 70:23 71:1,14 72:12 73:3,5 73:12,15,18,24 74:3,5,14,21,22 75:8,9,17,21</p>	<p>76:24 77:1,9 77:10,14 78:5 78:7,12 79:2,4 79:8 80:7,9,15 80:19,22 81:2 81:9,22 82:16 83:9,19,22 84:19,20,23 85:1,10,23 86:23 87:7 88:7,17 92:7 96:6,13,22,24 97:1,4,4 98:13 98:18,19,21,22 99:4,11 101:3 101:7,23 103:9 104:1,5,20 105:8 shaheen's 89:18 shanor 3:18 5:4 5:20 6:4 10:10 11:9 12:17 25:17 36:3 sharon 6:13 11:13 65:11 75:8 97:4 sheehan 93:5 sheila 47:13 48:14 short 146:16 shortly 141:7 177:24 should've 66:6</p>	<p>show 81:20 104:22 106:19 146:1 showing 148:19 173:9,13,15,19 186:1 198:18 202:5 203:18 shows 172:9 sibling 193:17 sic 170:8 180:20 signature 210:16 211:14 signed 180:19 significant 61:1 88:22 signing 209:4 silence 133:17 134:12 silent 135:13 silverback 12:8 36:5 similar 55:10 55:25 61:19 100:16 117:23 136:16 197:18 similarly 82:14 82:24 85:17 100:14 102:11 simple 93:23 simpler 57:21 57:23,23 simplify 93:24 single 95:18 167:3</p>	<p>sir 31:7 34:16 35:23 36:15 37:9 38:8 46:10 74:19 106:6 107:3,13 119:24 154:3 156:12,18 157:12 158:2 167:16 172:11 187:23 194:25 situated 82:14 82:24 85:18 86:4 102:11 situation 32:11 40:14,17,19 55:10 79:23 96:2 98:22 116:19 120:2 128:16 six 67:23 85:18 89:20 90:20 skills 210:10 211:6 skipping 112:18 slash 3:15 25:18 26:5,8 26:13,25 27:13 35:21 slow 137:11 solely 93:24 someone's 166:20 196:8 soon 40:6 62:10 64:6 112:3</p>
---	--	---	---

[sooner - statement]

<p>sooner 127:10 soonest 31:4 104:3 sophia 13:19 17:4 169:4 sorry 32:18 43:14 100:1 113:15 144:20 150:16 168:13 183:19 187:24 200:6 206:22 sort 29:21 115:23 138:18 sought 177:5 sounds 37:13 51:25 118:15 133:13 166:22 south 2:9 3:6 82:10 147:12 151:11 161:11 161:11,12,13 164:14,15 168:10,11 184:15,21 188:10 196:21 197:13 200:15 200:21 201:2 southeast 93:20 southwest 197:12 207:9 spacing 47:21 61:2 115:23 147:10,13 151:9 152:10 155:20,24</p>	<p>156:1,9 157:3 157:6,7 158:13 160:2,7 162:13 164:13 168:7,9 170:16,22,25 184:16,20 186:4 188:16 188:18,24 189:2,7,10,25 190:2,12 196:18,22 197:3,6,9,14 200:13,16,20 201:1,7 202:16 202:19 204:5 206:19,23 207:5,6,7 speak 36:14,25 54:12 206:20 special 33:21 34:3,12 164:17 specific 155:8 158:11,21 175:16 205:14 205:15 specifically 25:23 142:20 specifics 55:18 speed 47:9 76:17 92:24 94:10 spell 153:21 206:10 sperling 4:15 7:16,21 8:16</p>	<p>98:5 99:5 147:4 196:2 199:24 spoke 142:17 143:10 145:4 spoken 125:18 spot 69:4 spring 156:10 156:13 162:9 168:8,14 173:4 173:9,10,12 188:9,23,24 197:2,9 200:13 200:25 207:1 spur 12:15 36:3 st 2:9 stage 42:10 stake 136:9 stand 111:5 195:9 standard 12:21 25:15 26:14 27:4,22 147:10 147:15,22 148:7 151:9 156:14 159:25 160:3 161:25 164:13 168:6,9 170:24,25 177:6,8 188:15 196:18 197:3,9 197:24 198:9 200:13,20 201:1,7,17 202:2</p>	<p>standard's 26:24 29:23 standing 83:8 84:5 108:13,18 136:12 stands 116:9 start 158:17 started 172:17 178:9 state 1:1 32:10 100:7 120:9 123:13 153:20 196:23,23 197:7 200:17 200:23 201:4 201:10 206:10 210:19 stated 83:9 101:23 126:1 154:6 156:15 156:16,17 statement 18:19,21,23 19:7,9,11,20,22 19:24 20:11,13 20:15,24 21:4 21:6 27:23 29:12 76:20 82:5 87:16 113:24 123:20 134:9 156:23 185:8,19 186:10 189:15 190:9,20 192:20</p>
--	---	--	--

[states - suitable]

<p>states 124:1 173:4 179:9,10 status 25:8,10 26:2 37:18 39:4,10,24 40:5 41:3 44:25 45:5 47:12 48:15 50:8,10 51:2 59:8,11,21,24 63:13 64:2,24 66:22 67:11 87:22 88:24 89:20 93:3 96:17 98:25 104:2 105:2 107:21 109:2 109:12 111:15 111:17,24 114:4 118:3,9 118:16 119:2 120:11,22 121:15,22,24 122:19,20,24 123:2,15,21 124:4 127:14 128:3 133:20 140:4 141:16 141:17,24 142:3,8 143:18 186:13 statutory 93:19 stayed 93:9 95:6</p>	<p>step 41:7 61:11 steps 107:11 step toe 164:1,4 stepwise 118:15 127:6 139:23 stick 89:16 stifle 137:18 straight 53:19 stratigraphic 148:10 173:11 186:2 street 3:12 4:16 5:15 7:17,22 8:5,11,17 9:5 9:16 10:5,17 11:5 13:5 stress 148:11 strike 29:23 structure 148:9 173:3 185:25 struggle 94:8 suazo 4:3 8:20 11:19 13:8 38:16,17,19,23 38:25 39:3,15 42:7,9 43:3,11 43:14,21,24 44:3,7 45:7,20 46:9,10 49:21 49:21 50:22,23 51:5,14,18,25 52:2,11,12,18 53:1,15,17,22 54:11,16 55:5</p>	<p>55:5,15,16,18 57:6,8 58:7 75:3,3 77:4,5 79:14,15,24 80:1,4 95:19 167:12,13 168:4,5 169:13 169:25 170:3 170:11,12 171:19,21,23 172:2,3,6,25 173:1 174:13 174:14 subject 84:6,9 85:2 88:15 103:21 123:11 126:16 156:25 186:16,24 188:12 190:1,7 190:22 subjected 88:10 submit 30:24 31:12,13 34:19 40:21 42:17 134:18 139:8 139:10 166:19 170:17 203:14 204:6 submitted 31:9 37:17 40:7 41:10,20 43:16 161:16,16 165:4 204:3</p>	<p>submitting 39:21 40:1 53:20 203:15 subsea 185:25 subsection 84:14 subsequent 78:15 subsequently 76:21 substantial 82:23 107:17 126:3 substantially 180:12 substantively 123:16,21 124:3 137:9 143:19 substitute 89:10 successful 125:12 126:11 sufficient 52:8 59:25 suggest 87:21 107:21 120:8 127:10 suggesting 50:19 52:15 71:23 89:6,11 127:6 suggestion 69:2 suitable 104:13</p>
--	---	---	---

[suite - testifies]

<p>suite 4:11 7:11 151:17 152:2 162:1 165:7 summarizing 171:6 summary 147:23,25 180:15 summer 45:16 sun 148:19 173:24 198:18 sundry 170:17 supplement 170:21 support 81:15 94:7 151:19 161:19 164:24 supports 151:20 supposed 48:4 157:1 sure 30:17,21 34:7 36:16 47:19 69:11 71:10 91:19 93:13 94:5 96:13 107:15 111:4 116:5,12 134:10 143:17 155:14 157:18 158:3,24 166:13 172:7 193:3 surface 155:12 177:8,9,11,11</p>	<p>177:14,17,18 177:21 surprise 97:18 surrounding 142:4 sus 91:18 suspect 88:14 swear 153:11 179:16 swoop 55:23 sworn 153:17 179:9,21 206:3 210:5</p>	<p>136:25 139:8 146:15,20 158:21 160:20 191:16 195:4 199:18 204:18 208:13 taken 71:21 101:17 148:25 149:15 162:20 167:7 174:13 181:7,23 182:11,22 186:24 187:12 191:11 199:1 202:23 210:3 210:12 211:9 takes 82:21 talk 79:6 130:5 talked 127:21 127:22 141:18 talking 63:15 66:25 67:9,14 71:11,15 73:20 73:22 78:3 84:3 89:15 91:14 95:8 122:19,23 123:2 127:16 128:16 130:4 130:12 132:22 142:1 145:21 158:6 target 83:13 targeted 173:10,13</p>	<p>tax 105:21 technical 13:15 13:16 150:25 154:15 technically 127:13 tell 64:1 66:7 122:16 134:24 153:18 179:22 206:4 telling 69:1 136:19 template 166:9 ten 102:10 146:21 term 143:3 terms 41:12 102:15,16 124:12 126:7 terrible 93:11 testified 147:20 148:6 151:15 151:24 153:19 161:18,24 164:22 165:5 169:5 171:10 176:1 178:15 179:23 185:10 185:21 189:17 190:10 197:21 198:7 201:16 202:1 206:5 testifies 154:19 186:3</p>
	t		
	<p>t 6:13 11:13 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 tab 147:18 148:4,14 151:23 152:5 161:23 162:1 197:18,20 198:5,14 201:14,24 202:3 203:7 208:4,22,25 table 101:13 116:5 184:23 take 28:23 29:17 30:16 72:20 74:3 120:19 123:25 127:4 132:12</p>		

[testifying - thunderdome]

testifying 210:5	125:15 140:18	thanks 100:4	94:15 96:6
testimony	141:15 146:11	103:1 160:12	102:1 104:20
29:12 85:25	146:18,19	182:25	105:22 109:8
101:16 122:10	149:3,13,14,16	theoretically	112:6 113:20
179:2 180:23	149:25 150:19	126:9	118:9 122:12
testing 172:13	150:20 151:2,5	thereto 192:15	123:19 126:10
texas 12:21	151:7 153:10	thing 29:10	128:20 129:13
25:15 26:13,24	157:11 159:2	50:17 92:12	134:11 135:22
27:4,22 29:23	160:12,18,19	127:13 137:7	138:3,4,6,10
thank 34:22	160:22,23	204:12	140:10,13
35:21 38:2,6,8	161:9 162:24	things 59:10	156:19 157:11
39:18 46:8,10	162:25 163:12	74:17	158:5 165:24
46:15 48:21,22	163:21 164:11	think 26:25,25	193:2,4 203:21
49:11,12 52:1	165:21 167:5,6	27:6,9 28:4,19	208:7
53:4 54:8,16	167:9,16 168:3	28:23 29:15,25	thinks 29:20
54:20 55:1	169:19 170:5,6	30:4 31:14,23	third 47:11
58:8,13,17	170:7,10,12	33:24 34:20	48:1 189:5
60:12,14,19	172:22 173:1	35:9,10 37:25	thought 33:22
65:4,7,20	174:10,13,14	39:3,7 42:9,10	43:12 44:21
66:10,16 74:23	174:24 175:7	42:19 43:4,6	70:9 159:6
74:24 75:6	175:10,18,19	45:14 50:24,25	three 93:16
81:24 92:2,5	178:20,22	51:1,3,18 52:6	94:25 95:6,6,7
96:24,25 97:7	180:4 181:2,22	52:7,18,20,22	106:23 109:5
97:10 98:11,16	182:14,21,23	55:21,24 56:8	122:2 134:1
104:17 105:1,6	182:24 184:10	56:25 57:2,9	188:8 191:13
105:8,9,15	187:14,15	57:16,18 59:9	191:15,16
106:20 109:1	188:7 191:21	59:22,24 63:8	196:6 197:17
109:16,18	191:22 192:4	63:9,12,15	198:19,25
111:1 112:1,13	194:2,24 195:1	67:23 68:5,6	199:7 208:13
112:15,16,17	195:6,20 196:4	69:2 73:16,20	throws 40:1
112:23 114:8	199:4,14,16,17	74:18 78:23	thunder 69:23
114:16,18	200:9,11 206:6	79:21 83:6	69:25
115:1 116:14	207:3 208:6,9	85:11 88:18,23	thunderdome
119:6,9,24	208:10,11	89:17,18 91:18	57:19
120:23 121:10	209:1,2	93:2,11,12,25	

[thursday - treble]

<p>thursday 2:5 28:5,8 tied 101:22 ties 100:13 time 2:6 28:4 28:13,14,20,24 30:16 34:19 37:5 40:20 41:5 49:2,5 50:25 51:12 52:7,9,16,19 55:22 59:1,22 61:16 63:2 64:18 66:8 68:15,17 71:19 73:5 75:18 81:11 91:18 96:2,9 109:7 115:11 117:3 117:16,19 118:5 119:3 124:2,21 125:9 126:8 127:5,24 127:24 128:5 135:12,24 137:2,5,8,9,19 139:4 142:5 143:20 145:21 146:5 176:8,21 177:10 178:2 180:9 191:7 203:2 204:10 204:17 208:14 208:20</p>	<p>timeframe 62:11 120:18 123:24 timely 44:15 122:4 147:14 148:19 152:7,7 161:16 162:3,3 165:9,10 176:11,12 197:16 198:19 201:11 202:5 203:10 timing 40:8 title 53:5 172:20 today 27:19 37:11,17 39:23 47:12,14 49:15 72:15 74:18 87:17 91:25 93:1,2 121:22 125:8,17 127:16 135:24 136:13 137:1,4 139:6,20 141:20 142:1 142:12,14 143:25 149:21 175:4 178:11 193:12,20,22 194:5,13 204:11,24 today's 72:2 105:24 106:14 106:17 113:8</p>	<p>115:12 together 39:10 40:19 75:22 86:6 101:23 106:16 118:20 183:10 told 28:15 109:10 194:1 tomorrow 125:17 166:25 tool 56:11 top 173:3,12 topic 206:18 207:4 total 77:19 totality 91:11 totally 145:6 township 147:12 151:10 161:11,13 164:14,15 168:10,11 184:14 188:10 196:21 197:13 200:15,21 201:2 track 137:11 tracking 148:17 198:17 tract 113:13,17 129:16 147:23 147:24 152:8,9 152:11 154:6,9 154:11 155:6,7 155:22 157:2</p>	<p>157:22 159:15 159:17,19 160:3 162:10 162:12 185:13 190:2 196:24 tracts 170:22 185:14 188:11 196:25 trade 42:12,14 50:25 51:15,20 52:20 55:21 56:8,17 58:24 59:1,4,23 60:8 115:23 122:4,6 123:16 124:3 124:11,23 125:4,10,17,19 133:10,11,17 133:24 137:12 142:4,9 144:2 144:3,7 146:6 trails 73:2 transcriber 211:1 transcript 140:1,8 211:3 211:5 transcriptionist 210:8 transferred 91:10 treated 78:16 treble 200:17 200:23 201:4,9</p>
---	--	--	--

[trigger - unit]

<p>trigger 142:25 true 179:3 180:24 210:9 211:5 truth 153:18,18 153:19 179:22 179:22,23 206:4,4,5 try 62:4 115:15 116:5 117:18 122:22 128:23 trying 41:15,18 51:19 78:4 80:7 89:13,16 90:21 123:22 124:2,4,9 138:19 203:21 tschantz 13:14 32:6 33:7,18 33:23 34:10 35:17 54:1 64:14,20,25 70:17 104:24 111:22 tso 26:8 27:13 tuesday 33:10 68:2 147:14 168:22 184:22 189:12 192:22 197:17 201:12 203:4 204:24 turn 32:16 169:17 171:21 172:11</p>	<p>turning 157:24 two 26:1 35:25 38:21 47:18,20 49:4,10,24 57:14 60:2 62:24 67:12 73:23 101:19 106:20 107:1 122:21 125:23 130:11,13 132:2 136:16 137:3,10 138:24 139:9 140:2,6,20 146:8 162:11 184:12 187:2 187:12 192:14 193:13,18 206:24,24 tx 4:6 5:11 8:23 11:22 12:13 13:11 type 30:12,22 types 28:24 typewriting 210:7 typical 185:24 typically 179:6</p>	<p>unavailable 33:14 54:12 72:22 unaware 69:10 uncommitted 147:9 151:8 161:10 164:12 168:7 185:14 196:17 197:2 200:13,19,25 under 40:25 47:14,20 48:6 63:3 67:13 79:11 101:4,25 134:5 139:12 139:21 140:12 140:21,24 142:21 143:2 143:21 144:22 148:25 149:15 152:10 160:20 162:21 167:7 174:13 176:8 176:16 179:4,7 179:17 180:2 181:7,23 182:11,22 186:24 187:12 191:11,16 193:18 195:4 199:2,18 202:23 204:18 205:23 208:13 underlying 151:10 164:14</p>	<p>168:8 understand 40:13 51:14 56:16 72:11 86:23 93:3 96:9 111:17 116:12 117:12 123:6,7,9 124:6,9,24 126:22 128:23 131:13 132:5,7 134:7,23 135:14 136:3 understanding 40:8 41:6 42:13 43:15 56:7 91:17 102:6 107:9,18 118:19 166:15 193:11,21,24 understands 93:13 understood 44:7 60:7 65:4 88:20 125:13 undertaken 41:7 unfortunately 178:10 unilateral 26:16 unit 3:12 4:16 5:15 7:17,22 8:5,11,17 9:5 9:16 10:5,17</p>
	<p>u</p>		
	<p>u 153:22 ultimately 88:10,13 89:19 unable 33:11 33:11</p>		

[unit - way]

11:5 13:5 82:11,11,15,18 82:18,19 83:12 85:21,25 86:2 86:7 90:23 92:14,17,20 93:17,18,20,21 94:21,25 100:13,13,16 101:19,19 102:14,14,22 115:25 147:10 147:13 151:9 152:10 155:21 155:24 156:1,9 157:4,6,7 158:13 160:2,7 162:13 164:13 168:7,9,14 170:25,25 173:11 177:6,8 184:16,20 188:16,18,24 189:2,7,9,10 190:2,12 196:18,22 197:3,6,9,14 200:14,16,20 201:1,7 202:16 202:19 204:5 206:19,23 207:5,6,7,8 units 47:21 61:2 115:23 170:16,22,23	186:4 189:25 unnecessary 127:2,5 unopposed 26:4 unorthodox 157:5 158:14 160:6,8,9 update 166:10 updated 205:17 upper 72:23 173:8 usa 10:14 19:18 20:9,22 187:25 using 103:17 166:9 usual 151:17 152:2 165:7	videoconfere... 3:4 4:9 5:8 6:13 7:4 10:21 11:13 12:3,10 13:17,18,19,20 13:21,22 view 91:9 93:22 135:25 viewing 136:10 138:17 virtually 33:12 52:25 143:14 virtue 160:3 visit 72:24 voice 93:3 volume 36:21 voluntarily 145:10,11 voluntary 137:21	64:11 65:2 71:5 72:16 74:15,16 77:21 94:15 98:21 107:6 117:6 120:3 125:6 127:2,4 128:23 135:9 140:9 146:2 158:10 159:4 166:2 193:3 196:12 205:19 206:17 wanted 48:16 58:25 98:9 116:11 127:12 158:9 wants 122:6 134:5 135:9 137:2 139:8 177:16 warrant 126:13 warranted 141:22 waste 81:18 water 11:18 75:5 80:4,5,10 81:11 82:18 83:9 90:5 95:20 100:12 101:24 102:2,9 way 29:15 35:6 69:22 72:10 90:25 134:22 160:7 177:17
	v		
	vacate 25:21 142:15 vacations 72:20 various 47:24 61:14 verbal 85:12 verbally 37:7 verbatim 140:1 140:7 verbiage 156:22 version 48:1 versus 90:5 136:15 video's 100:2	wait 40:23 43:23 62:13 70:15 96:20 112:21 133:7 141:4 154:18 203:2 waiting 61:16 62:1,12 171:21 waits 41:2 walk 47:15 want 42:20 45:22 51:8 60:6 61:24 62:13 64:1,8	
		w	

[ways - x]

<p>ways 88:25 we've 65:24 95:21 112:18 137:4 139:20 161:18 178:14 183:6 208:15 webex 149:2 week 31:14 32:10,19 33:16 50:19 51:11 53:25 54:14,14 56:14 72:16 74:5 92:12 94:19 128:17 weeks 67:12 73:11,23 89:21 137:10 138:24 weight 136:16 welcome 54:18 65:8 114:9 wellbore 148:8 wells 47:21 69:24 70:1 71:3,11,20 80:11 82:13,14 82:24 83:12 85:6,18,19,20 90:3 92:22 94:25 95:6,6,7 100:11,21,23 101:8 102:11 102:12,17,18 102:21,22 103:18 122:24 123:3 128:24</p>	<p>129:3,5 134:12 136:7 140:22 141:3 142:21 154:11 156:23 159:22 162:8,9 162:12 168:15 170:22 173:4,7 176:23,24 177:14 186:1,5 189:25 197:7 200:17,23 201:5,10 206:18 went 78:19 100:1 west 5:10 147:11,11 188:11,11,17 188:25 197:10 200:14,20 206:25 willing 28:14 192:23 wishes 118:1 withdraw 27:14 46:1 63:19 129:15 withdrawal 37:8 withdrawing 37:3,7,16 67:5 98:7 withdrawn 37:21 129:10 145:6 163:18</p>	<p>withdrew 129:7,10,17,20 145:11,13 witness 153:17 153:22 154:19 160:15 165:22 169:4 171:9 172:7 178:7 179:21 180:2 187:9 205:19 206:3,12 207:13,17 208:11 210:4 witnesses 14:2 31:16 33:12,13 45:15 50:14 52:21,25 53:10 53:16 54:11 86:1 143:13 162:20 174:9 wolfcamp 147:10 164:16 184:13 196:18 200:19 201:7 207:1 wondering 172:10 word 83:2 132:12 134:2 words 39:12 86:19 115:20 179:3,4 205:1 work 34:12 39:6 42:12,13 46:3 50:25</p>	<p>56:13,14 73:6 74:4 109:3 110:11 118:20 137:21 worked 37:3 63:18 working 26:19 55:21 61:7 91:24 94:8 143:21 works 50:14 143:12 worksheet 183:7 worried 78:2 would've 66:9 69:6 125:2 128:3 wozniak 4:4 8:21 11:20 13:9 75:4 167:14 writing 84:1 85:8,12 87:11 written 28:16 49:14 83:24 84:6,13 wrong 48:2 88:18 96:13,14 131:3 195:16</p>
x			
<p>x 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1</p>			

[x - zone]

153:23 xto 13:2 49:22 55:6 56:9 113:25 114:21 114:22,24 115:13,21 116:14 119:21 xto's 52:9 115:10
y
yarithza 7:20 147:4 196:1 199:23 200:6,8 yeah 36:16 74:11 94:15 104:13 124:7 132:1 134:16 158:25 years 63:1 64:9 72:25 80:23 yesterday 42:15 97:17 yup 112:17
z
zone 156:1,1