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A P P E A R A N C E S

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

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Freya Tschantz, Law Clerk - Oil Conservation
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Sophia Guerra, Witness (by videoconference)
Joshua Payne, Witness (by videoconference)
Ron Solt, Witness (by videoconference)

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I N D E X

WITNESSES:	DX	CX	RDX	RCX
SHANE KELLY				
By Mr. Parrot	224			
By Mr. Savage		251		
DAVID RHODES				
By Mr. Savage	277			

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
Prima Rebuttal:		
Exhibit 1	Rebuttal to Avant Rebuttal Exhibits G-10, G-12, G-13, and G-16	216/281
Exhibit 2	Rebuttal to Avant Rebuttal Exhibit G-12	216/286
Exhibit 3	Rebuttal to Avant Rebuttal Exhibit G-14	216/290
Exhibit 4	Rebuttal to Avant Rebuttal Exhibit G-15	216/293
Exhibit 5	Rebuttal to Avant Rebuttal Exhibit G-16	216/294
Exhibit 6	Rebuttal to Avant Rebuttal Exhibit G-17	216/297
Exhibit 7	Rebuttal to Avant Rebuttal Exhibits G-18 and G-19	216/298
Exhibit 8	Rebuttal to Avant Rebuttal Exhibit G-20	216/301
Exhibit 9	Summary Points	299/**

(**Exhibit rejected.)

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P R O C E E D I N G S

THE HEARING EXAMINER: It's 10:59 a.m. on August 21, 2024. This is the continuation of a special docket for a contested hearing in Case No. -- I think it's 254 -- hold on a second. It is 24544.

Yesterday, where we left off, we had admitted rebuttal exhibits for Avant; and we had instructed Avant to file a notice of first amended exhibit package, which they did.

And it's perfect: it's got the right cover letter; it has all of the exhibits from yesterday properly labeled, including the rebuttal exhibits that were admitted yesterday. And there's no change that I can see from the table of contents at least from what I directed. So thank you Mr. Parrot and Ms. Graham.

Mr. Savage, I also received some rebuttal exhibits from you. They are Prima Rebuttal Exhibit 1, 2, 3, 3 continued, 4, 4 continued, 5, 6, 6 continued, 7, and it looks like followed by 8, so Prima Rebuttal Exhibit 8. So we have 1 through 8.

(Prima Rebuttal Exhibits 1 through 8 were marked for identification.)

Now, Mr. Parrot and Ms. Graham -- and I guess I'll just say "Avant" from now on since you're

1 both here -- have you had a chance to review
2 Mr. Savage's rebuttal exhibits?

3 MR. PARROT: We have. Thank you.

4 THE HEARING EXAMINER: All right.
5 Thank you.

6 And Mr. Savage, I assume Prima will
7 have a rebuttal case?

8 MR. SAVAGE: We will have a rebuttal
9 case, and I will put those in the proper notice
10 format, you know, subsequently.

11 THE HEARING EXAMINER: Yes. And we'll
12 talk about that in just a moment. But yes, that's
13 what I was going to get to. But first, let's deal
14 with any stipulations that we might achieve at this
15 time.

16 Avant, are there any objections to
17 these eight exhibits?

18 MR. PARROT: The rebuttal exhibits,
19 you're specifically discussing?

20 THE HEARING EXAMINER: Yes, Mr. Parrot.

21 MR. PARROT: Yes. Avant believes that
22 they should not be admitted because they do not
23 contain new data or analysis. They are primarily
24 opinion about Avant's rebuttal exhibits.

25 THE HEARING EXAMINER: Okay.

1 Mr. Savage, why don't you respond.

2 MR. SAVAGE: So these exhibits list
3 Avant's rebuttal exhibits accurately, and then they
4 provide very specific statements in which these,
5 Avant's exhibits, do not have credibility and
6 contradict themselves in various places; are not
7 applicable.

8 Specifically, there's a lot of
9 contradiction between G-20, G-18, G-19, G-17, and
10 their earlier rebuttal exhibits, which address some of
11 the vintage horizontal wells and then versus the
12 modern.

13 For example, they show that there's a
14 small spacing -- they're claiming that the vintage
15 horizontal spacing -- that our exhibits don't reflect
16 the 1320 spacing because they show that there's
17 smaller spacing in those exhibits, and therefore
18 there's interference, and therefore there's a need for
19 the 1320 in the four wells per section.

20 But then they go to the batman and the
21 modern examples that they provide, and those actually
22 are tighter. Those are actually eight wells and six
23 wells per section. So there's a contradiction there.

24 I think that we addressed it very
25 clearly, and I think it would be informative to the

1 Division to review these the same way that the
2 Division is reviewing Avant's rebuttal exhibits.

3 THE HEARING EXAMINER: All right,
4 Mr. Savage, thank you.

5 So Mr. Parrot, I'm inclined to let them
6 in unless you can specifically show me exhibit by
7 exhibit why I should not. So let's start with -- I'm
8 sorry?

9 MR. VILLESCHAS: Good morning, sir.
10 Dylan Villescascas of Hinkle Shanor LLP, appearing on
11 behalf of BTA oil producers. Apologies for the
12 tardiness.

13 THE HEARING EXAMINER: Okay. Sir,
14 we're having this part of the hearing virtually, so
15 you're more than welcome to go back to the office.
16 We're not holding it downstairs or holding a
17 rulemaking downstairs.

18 So you're more than welcome to go back
19 to the office and join us. And if you don't want to
20 miss any of it, you can use your phone to log in and
21 listen as you go back. But the Pecos Hall is not open
22 to us today.

23 MR. VILLESCHAS: Yes, sir. Understood.
24 Thank you. I appreciate it.

25 THE HEARING EXAMINER: Okay. I'm sorry

1 that you were inconvenienced.

2 MR. VILLESAS: No problem at all.

3 Thank you.

4 THE HEARING EXAMINER: All right.

5 Thank you.

6 Okay. Back to you, Mr. Parrot and
7 Ms. Graham. So I'm inclined to let in rebuttal
8 exhibits based on the explanation from Mr. Savage
9 based on the title in each of these rebuttal exhibits.
10 So for example --

11 MR. VILLESAS: I have from the
12 spreadsheet or the document you sent --

13 THE HEARING EXAMINER: I'm not sure
14 who's even talking at this point.

15 MR. PARROT: I think that's Freya's
16 computer, and that's the gentlemen who just introduced
17 himself from BTA.

18 THE HEARING EXAMINER: Thank you,
19 Mr. Parrot.

20 MR. PARROT: Sure.

21 THE HEARING EXAMINER: Freya, would
22 you -- oh. You got it off now. Okay.

23 So Mr. Parrot and Ms. Graham, either
24 one of you, but only one of you, please explain to me
25 why I should not let in Prima Rebuttal Exhibit 1.

1 MR. PARROT: Okay. Thank you,
2 Mr. Examiner. Respectfully, Avant believes that the
3 burden should be on Prima to identify for each and
4 every of its exhibits why it meets the criteria for a
5 rebuttal exhibit.

6 That is exactly how we did it yesterday
7 for Avant's rebuttal exhibits. I had to go through
8 each single slide and identify what new data it
9 contained, and what new analysis it contained, and how
10 it specifically rebutted an engineering exhibit that
11 was submitted by Prima.

12 So I think that the point that I made
13 earlier that these slides do not contain any new data.
14 They don't contain analysis of any new data. They
15 just contain opinion about Avant's rebuttal slides as
16 stands.

17 And let's just talk about this
18 Exhibit 1. So Exhibit 1 is simply a repeat of several
19 of Avant's slides. There's no new data on here.
20 There's no analysis of any new data because, of
21 course, there's no new data. And the bullet points at
22 the bottom are simply opinion. These opinions could
23 just as easily be rendered by Prima having an expert
24 testify about Avant's exhibits.

25 So if Prima has new data or analysis

1 that it would like to introduce, then we welcome that.
2 But to the extent that it doesn't, I think the same
3 standards should apply to Prima that apply to Avant;
4 and that if they're not introducing new data or
5 analysis, the exhibits should be excluded. Thank you.

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

8 So Mr. Savage, we have an objection, so
9 we can't admit these through stipulation. So what
10 we'll do is when you put on your rebuttal case, these
11 will be used as demonstrative purposes until your
12 witness explains what is new in each of these
13 exhibits.

14 Now, when I say "new," the criteria
15 that I use for a rebuttal case is something that you
16 could not have prepared for in advance. And, of
17 course, you list that these are in rebuttal to Avant's
18 rebuttal exhibits; so, in fact, you know, you're
19 giving me something here to go on that this is in
20 response to rebuttal exhibits.

21 However, Mr. Parrot makes a good point
22 in that if there's no new analysis here or if there's
23 no new data for the analysis, then there's nothing new
24 here. So we'll wait until your witness explains how
25 he put together this exhibit and what he did and how

1 he used Avant's rebuttal exhibits.

2 Because I'm assuming there was new data
3 in Avant's rebuttal exhibits because that's why we let
4 it in yesterday. So we'll deal with these one at a
5 time; all right, Mr. Savage?

6 MR. SAVAGE: Yes. If I could just have
7 one question for clarification?

8 THE HEARING EXAMINER: Sure.

9 MR. SAVAGE: So if my expert witness
10 explains that on the record and you should decide that
11 the exhibit should not be included, would the
12 explanation be something that could be referenced?

13 THE HEARING EXAMINER: The sworn
14 testimony is evidence. Just the way an exhibit in
15 evidence, sworn testimony is evidence. You can use it
16 in your closing argument, which we'll get to. You can
17 use it in your proposed findings of fact, your
18 proposed conclusions of law. Sworn testimony is
19 evidence.

20 MR. SAVAGE: Thank you.

21 THE HEARING EXAMINER: Okay.

22 So Mr. Parrot, Ms. Graham, we're now
23 open to your rebuttal case.

24 MR. PARROT: Thank you. May we call
25 our rebuttal witness?

1 THE HEARING EXAMINER: And he's still
2 under oath.

3 WHEREUPON,

4 SHANE KELLY,
5 called as a witness and having been previously sworn
6 to tell the truth, the whole truth, and nothing but
7 the truth, was examined and testified as follows:

8 MR. PARROT: Thank you. We'd like to
9 call Shane Kelly back.

10 DIRECT EXAMINATION

11 BY MR. PARROT:

12 Q And Mr. Kelly --

13 THE HEARING EXAMINER: Mr. Kelly,
14 you're muted.

15 THE WITNESS: Yeah. I have a
16 conference room setup. Can you guys hear me okay?

17 THE HEARING EXAMINER: Yes. Thank you.

18 THE WITNESS: Perfect.

19 BY MR. PARROT:

20 Q Mr. Kelly, we're going to go ahead and ask
21 you to work through the rebuttal exhibits that were
22 admitted, starting with G-10.

23 MR. PARROT: And Mr. Examiner, is it
24 appropriate if I share my screen at this time to put
25 those exhibits up?

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1 THE HEARING EXAMINER: Yes. And let me
2 just caution you: we don't need Mr. Kelly to read the
3 exhibits to us. Just hit the high points. Thank you.

4 MR. PARROT: Understood. Copy that.
5 Thank you.

6 BY MR. PARROT:

7 Q Okay. If you don't mind just confirming
8 that you are looking at Avant Exhibit G-10.

9 A [No audible response.]

10 Q Thank you. Mr. Kelly, please explain as
11 briefly as you possibly can why you're presenting this
12 exhibit and the analysis in the exhibit.

13 A Sure thing. So this is just a slide to kind
14 of show a broad area and some of the examples that
15 we're going to be talking about here in the next
16 couple slides of different spacing patterns that have
17 been used throughout the basin, especially in this
18 immediate area.

19 You know, most of the operators are
20 operating at four wells or greater per section, which
21 is shown in this map, which is what we're planning to
22 do.

23 And I just want to say upfront: we
24 understand that these four-well-per-section and maybe
25 even three-well-per-section patterns do come with

1 interferences with these wells. We're expecting it.
2 That's our goal.

3 We're trying to -- you know, we're trying to
4 get as much oil out of the ground as possible. And in
5 that case, you do have to have some interference
6 between the wells or else you are leaving reserves
7 behind and -- and creating waste.

8 So our goal here is to show that in no case
9 will three wells ever produce more oil out of a
10 section than the four-well-per-section case that we
11 are arguing for in this -- in this exhibit.

12 Q And Mr. Kelly, the zoomed-in graphic right
13 here shows a number of proximate spacing units where
14 the well spacing is approximately four wells per mile;
15 correct?

16 A That is correct, yes.

17 Q Okay. Is there anything further that you
18 need to say about this exhibit before we move on?

19 A No. I think we can talk about the next
20 slide here.

21 Q Okay. So please present Exhibit G-12.

22 A Sure. Going through some of these -- these
23 exhibits, the same point kind of applies to a lot of
24 them. I mean, we're looking at 2013/2014 vintage
25 fracks. You can see I've put in some of the frack

1 metrics on some of these slides so that you really get
2 an idea of just how -- this is.

3 This was back in the -- some of the first
4 wells we drilled in this basin horizontally using gel
5 fracks that we no longer use, we no longer apply any
6 of the technology that we did back ten years ago. I
7 would never hold any company to the same standard as
8 what they produced in 2013. It's just irrelevant and
9 unapplicable to anything that we do today.

10 These gel fracks, you know, they -- they can
11 reach out farther than what we're doing now. They did
12 not create a lot of complexity, so you saw really big
13 declines. Whether all these declines are due to
14 spacing, or mechanical issues, or frack issues, or
15 drilling issues, we don't know.

16 As Prima stated themselves, they did not
17 drill these wells. I did not drill these wells.
18 That's why I rely on over 450 wells of experience of
19 wells that I've actually drilled in this basin. So I
20 know exactly how these things communicate with each
21 other.

22 So I can't look at any of these slides and
23 say with 100-percent certainty that these step changes
24 that they call are 100 percent to do with spacing.
25 What I do know is that Avant has drilled a lot of

1 wells at tighter spacing, and we have produced a lot
2 more oil than what we would have if we had only done
3 what the defendant is recommending at 2.16 wells per
4 section.

5 So based on personal experience, my
6 experience in this basin, you just can't look at this
7 data with these kinds of frack jobs. What we're doing
8 today, 2024, is a lot different than what I was doing
9 five years ago. We are creating a lot more
10 near-wellbore complexity with our fracks, which allows
11 us to tighten up all these groups.

12 So showing these slides and this data from
13 2013 should honestly just be thrown out and not used
14 in this case.

15 Q And Mr. Kelly, let's just talk very briefly
16 about the step change that is shown on this slide, or
17 at least the step-change label that Prima is showing
18 on its slide.

19 A Sure.

20 Q In your opinion, was the 1H well, the one
21 that came on first in time, was that already declining
22 in production before the 2H well came on production
23 and IP'd?

24 A I mean, yeah, it looks quite considerably;
25 right? And then the step change happened. Whether

1 that's spacing, whether it's mechanical -- like I
2 said, we didn't drill the well -- we don't know. But
3 I do know the well came back up to quite a bit of
4 production in 2020 when it looks like they did fix
5 something in the well.

6 And how that happens if the wells were too
7 tight, the well would not magically come back up over
8 time. That's counterproductive to their argument. So
9 like I said, don't know what happened. It could've
10 been a lot of different factors. But this isn't
11 really showing spacing being the only factor here.

12 As well as on -- on the spacing, I mean,
13 these are quite tight to the well to the west. I
14 mean, 700-foot spacing at some points is -- is quite
15 aggressive, and quite a bit more than four wells per
16 section.

17 I understand the well to the east might be a
18 little bit more than four wells per section. But
19 combined, this is not -- not a simple case of just
20 four wells per section across as that western well
21 will affect your 1H quite a bit more than that 2H, so
22 it's just not a great example here --

23 Q Mr. Kelly, do you recall --

24 A Sorry. Go ahead.

25 Q I apologize. I didn't mean to interrupt you

1 there.

2 Do you recall Mr. Rhodes answering during
3 cross-examination that there could be various other
4 explanations for the decline in 2014 on the 1H well
5 other than just the spacing?

6 A I do.

7 Q Yeah. Do you recall him characterizing
8 those other explanations as unlikely or improbable or
9 something to that effect?

10 A I do.

11 Q And would you fully agree with that
12 characterization?

13 A No. He has no knowledge of what happened
14 with these wells. He did not drill these or -- or
15 produce them --

16 MR. SAVAGE: I'm going to object to
17 that question, Mr. Examiner. I object to that
18 question, and the reason -- the basis is that it's
19 highly vague, it references claims that Mr. Rhodes
20 said things were improbable without any clear identity
21 of what those things might be, and so it creates a
22 bias.

23 THE HEARING EXAMINER: Well,
24 Mr. Savage, if you make an objection, you have to make
25 the objection, like I told Mr. Parrot yesterday,

1 before the witness answers the question. At this
2 point, he's given his opinion. I could strike it,
3 but, you know, these are just opinions.

4 You know, the Division is going to look
5 over this data and is going to consider the opinions
6 of the experts, but only to the point that they're
7 helpful to the Division make their ultimate decision.
8 So I'm going to overrule the objection. But if you
9 make an objection, just make it a lot faster so I can
10 actually deal with it.

11 MR. SAVAGE: Understood. Yes. Thank
12 you.

13 THE HEARING EXAMINER: Mr. Parrot, are
14 we still on your Rebuttal Exhibit -- which one are we
15 dealing with now?

16 MR. PARROT: We're currently on G-12.
17 I think we're done with it. I was just about to ask
18 Mr. Kelly if he had any further points that he needed
19 to make about G-12.

20 MR. KELLY: No. I think we're going to
21 move on.

22 BY MR. PARROT:

23 Q Okay. And Mr. Kelly, can you please only --
24 when discussing the slides, only highlight new
25 analysis that's different from the analysis that you

1 just gave us for slide G-12?

2 A Sure. I mean, besides the frack metric
3 table that is new to this slide and again the same
4 kind of vintage gel frack, you know, that -- what he's
5 calling "reactionary production" in -- in these
6 forecasts that are on these wells are -- are pretty
7 opinionated. I mean, these wells were already
8 declining extremely hard before new wells came online.

9 And like I said before, with -- with gel
10 fracks, you don't get a ton of complexity, so you're
11 not really having the flat declines that we're seeing
12 in -- in 2024 wells, 2023 wells where we've -- we've
13 kind of -- virtual connectivity interruption -- over
14 the last few years and really upped -- upped our game
15 on how we produce these wells and -- and try to create
16 near-wellbore complexity versus, you know, older
17 fracks that we're trying reach out a little bit
18 further.

19 So I think that's the only new point on this
20 slide.

21 Q Okay. So it would be fair to say that the
22 same problems that existed with the analysis as you
23 showed on slide G-12 also apply Prima's exhibit shown
24 here on slide G-13?

25 A Yeah, correct. It's just kind of irrelevant

1 information on these slides for -- from their
2 argument.

3 Q Okay. And you mentioned that the decline
4 curve shown is not something that is necessarily
5 accurate. Would you agree that this decline curve
6 that's shown here and the dashed green line is
7 accurate, or should that be adjusted in your opinion
8 given the rapid initial decline of the well shown in
9 green?

10 A Yeah. With -- in my opinion, I'd have to
11 see some of the data behind his -- his type curve, his
12 parameters, his -- his decline metrics. But in my
13 professional opinion, I don't think that's a fair
14 assessment of what -- what that well would've done
15 with that kind of vintage frack.

16 Like I said, these older fracks declined
17 very hard. It's not out of the norm what I'm seeing
18 on this chart.

19 Q The first part of your answer, I'd like you
20 to unpack that a little bit for us. Are there
21 multiple different approaches to building the decline
22 curve?

23 A Yes, yeah, there are multiple approaches by
24 each engineer. And I think -- I think the most
25 accurate approach comes with a lot of experience in a

1 basin. Wells react very differently based on things
2 that are happening at that time, how they produce
3 them, how the frack them, things like that.

4 And -- and it is hard to get accurate
5 declines on -- on wells in a new basin. You know,
6 it'd be tough for me to go up to Bakken and -- and put
7 more accurate declines than -- than Mr. Rhodes. But
8 here we are in the Permian where I have had a lot of
9 that experience.

10 So in my professional opinion, I think -- I
11 don't think this is a fair representation of what
12 these wells would've done over time.

13 Q Can you give us just one example of a
14 parameter that would go into building a decline curve
15 and how it might vary from the Bakken to the Permian
16 Basin?

17 A I mean, there's just too many factors to
18 get -- get into here. But, you know --

19 Q Give me just one example.

20 A -- that happens with frack designs. I would
21 not use the same D factor on a 2024 fracked well
22 versus a 2013 fracked well, so I don't -- I don't see
23 the information behind here, so I can't really refute
24 what exactly he was doing on -- on each of these
25 curves.

1 Q Understood. Thank you.

2 Did you have any other information you
3 needed to present about Exhibit G-13?

4 A No, thanks.

5 Q Okay. We're going to move on to
6 Exhibit G-14, and this shows two I think -- well, it
7 shows one slide that was presented by Prima in the top
8 left. And would you say that some of the problems --
9 or all of the problems that you described for Prima's
10 two previous slides that you talked about also apply
11 to the slide presented on this Exhibit G-14?

12 A Yeah, that's correct. These are still
13 extremely old fracks. It's not really relevant. I
14 think I did see in Prima's rebuttal slides they didn't
15 make that six on the -- the actual well placement and
16 the wells that they were using in their production
17 plot.

18 You know, the 5H, the -- the actual Second
19 Bone Well, is stacked on that -- on that 1H. Whether
20 it is affecting production or not, we're not sure.
21 But it -- it wasn't a like-for-like comparison when we
22 were looking at this data set initially, and that's
23 why this slide was -- was put in.

24 Q And I think -- is it correct Prima was
25 trying to make the point that the 1H well, this green

1 well, had had a negative, adverse effect from the
2 other wells that were brought on subsequent in time?
3 Does that sound accurate as to what Prima was trying
4 to say?

5 A Yeah, I -- I believe that was the testimony
6 that was given.

7 Q And that 1H well is in fact in the Third
8 Bone Spring, and not the First Bone Spring; correct?

9 A That is correct, yeah.

10 Q So is it possible that that 1H well is
11 performing right on expected curve for a Third Bone
12 Spring Well?

13 A It is possible. There's not a lot of Third
14 Bones in this area. One of the first wells drilled in
15 the formation, again, was with a very vintage frack,
16 so we don't really know exactly how a lot of wells in
17 that formation would've acted at this time, but --
18 yeah.

19 Q Understood. Is there any other information
20 or analysis that you need to present about G-14?

21 A Yeah, just the step change. Again, I mean,
22 these wells were already declining incredibly hard
23 before any kind of interference from new wells, so
24 it's hard to say that it was necessarily a spacing
25 issue.

1 Again, gel fracks, with the way they were
2 designed, would create these higher IPs upfront; and
3 then a lot steeper declines than anything we're used
4 to in 2024 just because of the issues with complexity
5 that you're creating with those frack jobs.

6 Like I said, what we do today is just
7 completely different and it's way better. This is
8 when we were learning as an industry, and we've come a
9 long way since these wells; so --

10 Q Understood. And just to make sure we
11 understand correctly. Were the Kingfisher wells
12 drilled -- or the Iron House wells on this slide
13 drilled by either Prima or Avant?

14 A No, they were not.

15 Q Okay. Anything final about slide G-14?

16 A No -- no, thank you.

17 Q All right. Let's move on to slide G-15, and
18 the slide in the upper left, this is Prima's slide
19 about the EK Group of wells; correct?

20 A Yes, that's correct.

21 Q And would you say the same problems with
22 analysis that you've described in the previous several
23 slides apply to Prima's analysis on this particular
24 slide?

25 A Yeah, I would. I mean, this was probably

1 some of the first, you know, newer-ish fracks. At the
2 time, people started moving to slick-water fracks for
3 the cluster spacing. A lot of -- of the whole design
4 was a lot different than what we do today.

5 Obviously, I put in there, you know, the
6 amount of fluid they're pumping, the amount of sand
7 they're pumping is -- is completely different. Today,
8 we're pumping a lot more water. We're creating a lot
9 more complexity near wellbore, which is allowing us to
10 get tighter.

11 But even so, on these wells, you know, we
12 did make a mistake on the initial slide, so we updated
13 that. They left out the two edge wells in this
14 scenario.

15 You know, the best well of this group is one
16 of their inner wells, and if you were to tell me you
17 wouldn't go drill that well again, that -- I'd be
18 hard-pressed to believe you because it does look like
19 these four wells per section are 100 percent making
20 more oil than if they would've just done three wells
21 per section just based on how the edge wells are
22 performing.

23 And as, you know, Mr. Rhodes said, I agree
24 with his testimony that edge wells do usually act
25 better when -- when in these spacing patterns. So the

1 fact that you have your inner wells performing just as
2 well as edge wells means some of these step changes
3 that he's pointing out, if they really are even step
4 changes -- in my opinion, I mean, these more look like
5 frack hits, which are pretty normal with slickwater
6 fracks like this.

7 There could be a lot of other factors going
8 into some -- some weaker production out of these
9 wells. But as a group, I'd -- I'd be hard-pressed not
10 to drill every single one of these wells to get the
11 most oil out of the ground and prevent waste in these
12 sections.

13 Q And do you mind just quickly explaining the
14 graphic on the upper right of this slide?

15 A Yeah. The cum. oil plot on the upper right
16 is just I pulled public data down from -- from all six
17 of these wells and plotted them against each other and
18 labeled which wells were actually inner wells in the
19 packages down on that bottom-right chart, so those
20 well -- well numbers should match, you know, the well
21 numbers you see above.

22 Q Understood. And what you're showing is this
23 dark blue line. That is the 3H well, and that is the
24 highest cum. production of the group; is that right?

25 A That is correct.

1 Q Okay. And that corresponds to, Prima's
2 exhibit, the dark green line, the 3H well; is that
3 correct?

4 A Yeah -- yeah, that is correct.

5 Q So just to make sure that the graphs are
6 corresponding, the best performing well in the bunch
7 is the well that Prima indicates was harmed or damaged
8 by the infill wells or the child wells that were
9 drilled; is that right?

10 A That is correct.

11 Q Okay. And if we were just to try to compare
12 apples to apples, the X-axis is months of production;
13 is that right?

14 A Yes, on the top-right chart, yes.

15 Q And then the Y-axis is barrels of oil?

16 A Correct.

17 Q So at approximately 70 months where all the
18 wells had been on for 70 months, even though they came
19 on at different times, the 3H well had cum.'d
20 somewhere around 225,000 barrels of oil. Are we
21 understanding this correctly?

22 A Yeah, that's correct.

23 Q Okay --

24 THE HEARING EXAMINER: Mr. Parrot?

25 MR. PARROT: Yes.

1 THE HEARING EXAMINER: Excuse me for
2 interrupting you. I apologize. I don't mean to break
3 your flow here. But I feel like you're testifying,
4 and the witness is just agreeing with you.

5 MR. PARROT: Understood.

6 THE HEARING EXAMINER: In direct
7 testimony, I would appreciate it if I would hear more
8 from the witness and less from the attorney.

9 MR. PARROT: Understood. And I will
10 comply with that. Thank you.

11 THE HEARING EXAMINER: Thank you.

12 BY MR. PARROT:

13 Q So Mr. Kelly, can you just give us a rough
14 idea at 70 months of production some of the other
15 cumulative production from the wells in this grouping?

16 A It might be kind of hard to see on this
17 chart. And yeah, you've got the top two probably
18 around 220, you've got another couple of inner wells
19 down in the 175 -- or one in the -- the 175 range, and
20 the other one's down close to the 150 range. Those
21 are the three.

22 So it does look like, you know, the well was
23 fracked. You can see that on the green chart you get
24 a little bit of down production, but then it does come
25 back. So in my opinion, what I probably would've

1 drawn the client curve on in the top-left chart, he
2 chose to take his decline completely flat, which, you
3 know, very generally, especially, again, for the
4 vintage of the frack.

5 So to argue that this is purely because of
6 spacing is -- is just not a -- a very clear argument
7 in this case; so --

8 Q Is there any other information -- sorry.

9 THE HEARING EXAMINER: Sorry. I'm
10 going to interrupt again.

11 Let me remind the parties that in
12 rebuttal, I'm expecting that we're not going to
13 relitigate everything that we heard in the case in
14 chief, that we're going to only deal with the
15 information that was new and first seen after the
16 exhibits were filed timely on the 15th of August.

17 I'm expecting that whoever created
18 these exhibits has an understanding of why they
19 created these exhibits, to be able to explain that
20 succinctly to the Division and stand for
21 cross-examination. We have the data here. You've
22 provided it. We don't need to review and re-hash
23 everything that we dealt with yesterday.

24 And Mr. Kelly, did you create these
25 exhibits?

1 MR. KELLY: I did, yes.

2 THE HEARING EXAMINER: Okay. Very
3 good. All right. That's what I wanted to know. And
4 that goes for both parties.

5 So Mr. Parrot, would you adjust your
6 presentation to that, please.

7 MR. PARROT: Absolutely. Thank you,
8 Mr. Examiner.

9 THE HEARING EXAMINER: Thank you, sir.

10 BY MR. PARROT:

11 Q Mr. Kelly, was there any other analysis or
12 information you needed to point out with regard to
13 G-15?

14 A No. That's it.

15 Q Okay. We're going to move on to slide G-16.
16 Other than the fact that this is a different group of
17 wells, is there any new analysis or information that
18 you would like to present with regard to this
19 particular slide?

20 A No. This is the same thing: old, vintage
21 gel fracks that are irrelevant today. I don't we need
22 to discuss this.

23 Q Okay. And just to confirm. You would agree
24 that the analysis that you offered for the previous
25 Prima slides would apply to this particular Prima

1 slide; correct?

2 A Correct.

3 Q Okay.

4 MR. PARROT: Mr. Hearing Examiner, I
5 hope you don't mind that question. I just want to
6 make sure that we are on the record as refuting that
7 particular slide, but please tell me if I've
8 over-stepped.

9 THE HEARING EXAMINER: I'm presuming,
10 Mr. Parrot, that your expert witness prepared these
11 slides and in the summary box on each slide has stated
12 what his position is, so I feel like we're just
13 relitigating what we heard yesterday.

14 So that's why I would appreciate moving
15 through the rebuttal presentation in an abbreviated
16 manner because I know we're going to have
17 cross-examination, I know we're going to have
18 redirect. So let's try to keep this as concise as we
19 can.

20 MR. PARROT: Understood. I'll do my
21 best to be more efficient. Thank you.

22 THE HEARING EXAMINER: Thank you.

23 BY MR. PARROT:

24 Q So let's move on to Exhibit G-17. And
25 Mr. Kelly, can you please -- to the extent there's

1 anything different about this particular analysis,
2 please go ahead and discuss that.

3 A Sure. I think one of the main points
4 we'll -- we'll just touch on is that they did leave
5 out, you know, the Mescalero wells on the right side
6 of that upper-right chart. They left out that there
7 were two wells directly stacked on top of each other,
8 which could be affecting production. I don't know
9 with 100-percent certainty. I'd have to dig into
10 their specific data.

11 But nonetheless, we ran the numbers on these
12 wells, and -- and all wells in this package, all five
13 of the Buffalo and Mescalero, are well over, you know,
14 200 percent rate of return at fair pricing, and -- and
15 we would drill these wells any day of the week with
16 those kinds of returns.

17 So if there is interference, whether it's
18 vertical or horizontal, it's -- it's a good amount of
19 interference -- or it's not enough interference to
20 detriment the wells economically. So I think any
21 operator in this position would -- would do the same
22 thing and go drill these wells, again, at -- at the
23 four-well-spacing pattern.

24 Q Understood. Are you ready to move on to
25 Exhibit G-18?

1 A Sure.

2 Q Okay. So we have a different analysis than
3 what you've presented in the past few slides here;
4 correct?

5 A Correct.

6 Q Okay. Why don't you go ahead and summarize
7 your analysis, please.

8 A Yeah. This is just one of the most recent,
9 modern frack design packages as close to Royal Oak as
10 we could get. It's a Batman unit drilled by PR, and
11 this is just one example of them drilling in much
12 tighter density spacing patterns due to those modern
13 frack designs and able to get these wells close.

14 And you can see just how closely these are
15 acting and -- and how good each of these wells look on
16 a -- on the first-year basis. Again, highly economic
17 to the operator as well as the operating partners.
18 And -- and any day of the week, I think any working
19 interest partner would be happy to have a set of wells
20 like these.

21 That's really it on that slide.

22 Q Understood. Thank you. Are we prepared to
23 move on to G-19?

24 A Yeah, we are.

25 Q Okay. Please explain this slide.

1 A Sure. It's another tighter spacing pattern,
2 but this time this is Avant-drilled wells. These are
3 our closest wells to date to Royal Oak. We're just
4 southwest, I think you can see on the locator map on
5 the first exhibit. But in all three benches, we've
6 drilled at a higher spacing density than what we're
7 proposing at Royal Oak or the same.

8 And all wells in this group of cutbows are
9 extremely economic to our company, have produced a lot
10 more oil, and prevented waste. And if we were to only
11 drill three wells per section, like Prima is
12 proposing, we would've lost not only a lot of value to
13 the company, its shareholders, its partners, but we
14 would've also left a lot of oil in the ground that
15 would've been very hard to recover if not impossible
16 going forward.

17 So, you know, this is drilled by us. We
18 have the inside data. We know exactly what happened
19 with every step of the process, and this is just one
20 reason it gives us confidence in our development plan
21 at the Royal Oak.

22 Q And just to help us understand the scale of
23 the top-left slide, how many wells are you showing in
24 how wide of an area?

25 A Sure. This is just a 1-mile unit. They're

1 not exact on this gun barrel. There's a bit of
2 stagger between each vertical bench that's kind of
3 hard to see. We don't like to stack wells at Avant.
4 We do stagger everything just a little bit.

5 But we're running five wells per section up
6 in the First Bone, but we did do a little bit tighter
7 spacing on the east half: it has six wells per
8 section in that zone. And the Second Bone is down
9 below in the middle there, and then we did six wells
10 per section in the Third Bone as well.

11 And there's quite a bit more vertical
12 separation in -- in the cutbow unit than -- than there
13 is in Royal Oak, so we have that benefit as well when
14 we're coming in and doing the three benches.

15 Q And has there been any evidence that five
16 wells per mile in the First Bone Spring will
17 ultimately produce less total oil than three wells per
18 mile?

19 A No. In my professional opinion, that's not
20 even possible.

21 Q Okay. Will the five wells' cumulative
22 production be more than what you would get from three
23 wells?

24 A Yes. Every time.

25 Q And same question for the Third Bone Spring

1 where you have six wells.

2 A Yeah, again, we would produce a lot more oil
3 than just three wells per section.

4 Q Okay. Any final information you need to
5 present about slide G-19?

6 A No. I think that's it.

7 Q Thank you. Okay. Let's move on to your
8 last exhibit, which is G-20, and please present your
9 analysis for this slide.

10 A Yeah, it's just one more modern example
11 from -- from a third operator here. So you've got
12 Matador, you've got PR, you've got Avant: three
13 different examples, three modern designs, all at four
14 wells or greater per section spacing.

15 And we threw -- threw an overall type curve
16 on each of these wells, and -- and grabbed the average
17 for the -- for the four wells, and ran these economics
18 to make sure, you know, they were still making a lot
19 of money and preventing waste.

20 And in every case that we've looked at, we
21 are getting more oil out of four wells, we are
22 preventing waste, we are creating a better situation
23 for our partners by -- by spacing these wells at four
24 or greater per section.

25 You know, Avant is set to spend over -- over

1 \$50 million on these Royal Oak wells alone, and we're
2 not -- we're not here to lose money. We're not doing
3 that for the fun of it. So we firmly believe that our
4 development plan is correct and is going to prevent
5 waste for the Commission and our working interest
6 partners.

7 Q Thank you. And you stated that you'll get
8 more oil out of four wells. Do you mind clarifying?
9 You'll get more oil out of four wells per mile than
10 what?

11 A Than a three mile -- or a
12 three-well-per-section development plan.

13 Q Okay. Thank you.

14 MR. PARROT: Mr. Examiner, no more
15 questions on direct rebuttal for this witness.

16 THE HEARING EXAMINER: Okay.
17 Mr. Savage?

18 MR. SAVAGE: Yes. Let me pull up --
19 share the document here.

20 MR. PARROT: Mr. Savage, just in case
21 it's helpful, the rebuttal exhibits start on page 240
22 of the 249 --

23 MR. SAVAGE: Yes. Thank you,
24 Mr. Parrot.

25 MR. PARROT: You're welcome.

1 MR. SAVAGE: Definitely at the bottom.

2 CROSS-EXAMINATION

3 BY MR. SAVAGE:

4 Q Mr. Kelly, thank you for your appearance
5 this morning.

6 Looking at Exhibit G-10, it looks like
7 you're advocating for a trend that's more than four
8 wells per section in this area; is that correct?

9 A I'm not advocating for that trend, no.

10 Q Do you not state that operators have not
11 downspaced from four to three, but they actually are
12 increasing?

13 A Yes, some operators are in certain areas.

14 Q So just to clarify. You're not -- four
15 wells is what you are wanting and not more than four
16 wells?

17 A Our development plan is four wells per
18 section in the Bone Spring. Your development plan is
19 three wells per section.

20 Q And yet you have a number of exhibits that
21 show production with more than four wells; is that
22 correct?

23 A Yeah, that's correct.

24 Q And one of those exhibits would be, for
25 example, G-18. So it looks like in this one you have

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1 actually six wells per mile?

2 A No, it'd actually be eight wells per mile.

3 Q Eight wells per mile. And that's quite a
4 bit higher, and yet you're showing this exhibit to
5 justify four wells; that's correct?

6 A I'm showing this exhibit because the modern
7 frack design is more relevant than a 2013 vintage
8 frack design for spacing purposes. Down south of
9 Royal Oak, PR has accomplished eight wells per section
10 with their modern frack design.

11 We believe at Royal Oak four wells per
12 section is a better development plan than three wells
13 due to our modern frack design that we're going to be
14 using.

15 Q But did you not previously say that six or
16 eight wells will actually produce a reservoir to a
17 greater extent than four wells in general?

18 A It most likely will. If it's economic like
19 it seems to be down on the Batman wells, that's why
20 they did that. At Royal Oak, we believe four will
21 accomplish that goal.

22 Q So what is the main factor for you not to do
23 six wells and do four wells? How would you describe
24 that main factor?

25 A The main factor would be the rock and how we

1 feel it's going to produce.

2 Q And it would not be the economic cost of
3 doing additional wells?

4 A No. If wells are going to make money,
5 Avant's going to drill them to prevent waste.

6 Q I'll direct your attention to G-12. Looking
7 at G-12, can you look at Prima's production graph and
8 confirm that the wells in the graph are the Iron Horse
9 1H and 2H wells?

10 A It's hard to see that chart.

11 Q Do I need to --

12 A I got it -- I got it on paper in front of
13 me. I saw it -- I see it.

14 Q Okay. And can you confirm that the Condor
15 State 2H production is not shown on this graph?

16 A That's correct.

17 Q Can you tell me the spacing between the
18 wells Prima's actually representing? The Iron Horse
19 1H and the Iron Horse 2H, what that spacing is?

20 A Well, it's not on that graph. I believe
21 it's about 1,500 feet.

22 Q And would you agree that this reflects
23 closely Avant's spacing rather than the spacing you
24 point out as being 785 feet between the 1H and the 2H
25 in the middle?

1 A No. Not even close. We're not going to be
2 700 feet away from our wells.

3 Q Let me rephrase. Does the spacing on the
4 right between the Iron Horse 1H and the Iron Horse 2H,
5 does that more closely reflect Avant's proposed
6 spacing?

7 A No. There's a well on the west side. You
8 can't just ignore a well in the ground.
9 Unfortunately, that's just not how it works.

10 Q When were those two wells in the middle
11 drilled?

12 A Looks like, if these dates are correct,
13 2013.

14 Q So approximately around the same time?

15 A It looks like it. Two months apart.

16 Q So wouldn't that mask the interference of
17 those wells and would approximate the spacing of the
18 two Iron Horses on the right?

19 A No. Not to my knowledge. They're still
20 700 feet apart. They're going to interfere with each
21 other.

22 Q But the spacing of the Iron Horse 1H and the
23 Iron Horse 2H, that is closer to the 1320 spacing; is
24 that correct?

25 A That statement is correct.

1 Q Okay. Let's look at Exhibit G-14. In G-14,
2 you say that the stacked wells -- and I believe you
3 talked about this a little bit -- stacked wells in the
4 Bone Spring is not representative of Avant's
5 development?

6 A Correct.

7 Q And let me -- have you reviewed Prima's
8 rebuttal exhibits?

9 A As much as I could in the hour I saw them.

10 Q Did you note that Prima acknowledged the
11 mistake in the labeling of those wells and that --

12 MR. PARROT: Objection, those exhibits
13 are not in the record, not part of the hearing at this
14 point.

15 THE HEARING EXAMINER: Mr. Savage,
16 please don't ask that question and move on. I'm going
17 to sustain that objection.

18 MR. SAVAGE: Okay. Thank you.

19 BY MR. SAVAGE:

20 Q If you were aware that that was actually a
21 mistake and that Prima intended the 5H to be the well
22 addressed in this, would that make a difference in
23 your analysis?

24 MR. PARROT: Objection, the witness
25 can't possibly speculate about Prima's motives and

1 intentions.

2 MR. SAVAGE: I believe I can ask --

3 THE HEARING EXAMINER: Mr. Savage, I
4 sustain that objection. Please ask a different
5 question. Mr. Savage, there's ways to deal with that
6 in your rebuttal case. I don't think it's a proper
7 question for this witness.

8 MR. SAVAGE: Yes, sir.

9 BY MR. SAVAGE:

10 Q Why don't you stack wells? Is that a
11 problem?

12 A It depends on a lot of factors. In this
13 case where there's not a lot of footage between those
14 wells, it can become a problem. We have other units
15 where there's a lot more vertical separation.
16 There's -- there's multiple factors.

17 Q Okay. Does stacking wells lead to
18 communication and interference between zones?

19 A It can; it cannot. It depends.

20 Q Okay. I'd like to direct your attention to
21 G-17. And looking at G-17, you state that the
22 Mescalero wells are stacked over here; is that
23 correct?

24 A Yep, it does appear so, yes.

25 Q And you point out that this can impact well

1 results. Would you agree with that?

2 A Again, when I testified, I said it could or
3 it could not have affected these wells.

4 Q Can you confirm that you do not want to
5 stack wells in different benches?

6 A It's not that simple. We change our method.
7 It could be a mile difference, a unit that we see more
8 frack barriers, more vertical separation where we will
9 stack wells. We've done it in the past, and we have
10 some of the biggest wells in the basin in that area,
11 so it's not a simple yes-or-no answer.

12 Q Well, let's look at G-18 then. This is the
13 Batman. The gun barrel for the Batman appears to show
14 numerous stacked wells. Do you agree with that?

15 A I'm not sure if they're directly stacked in
16 this instance. It does look like maybe a couple of
17 the wells could be directly stacked, yes.

18 Q So given that these wells are, you know,
19 approximately stacked, you had previously tried to
20 dismiss Prima's Kingfisher and Buffalo exhibits due to
21 the stacked wells. Do you agree with that?

22 A Not just due to the stacked wells. No, I
23 don't agree with that.

24 Q The diminishment of performance that you
25 point out in those wells, you did not point out that

1 the stacked wells played a factor in that?

2 A I did say it was one factor, but I did not
3 say it was the factor or the only factor.

4 Q So it could be a large factor?

5 A Not in my opinion. I think the largest
6 factor would be the vintage and the frack design of
7 those wells as I pointed out multiple times.

8 Q So why are you presenting this exhibit with
9 the stacked wells in G-18?

10 A Again, this is showing tighter spacing than
11 what Prima is recommending of three, showing much more
12 aggressive spacing and these wells all being extremely
13 productive. Not to mention there's a lot more
14 vertical separation here in this unit than there is up
15 at Royal Oak, so your stacking targets become less of
16 a factor.

17 Q Let's move to G-15. On Exhibit G-15, you
18 claim multiple times, it looks like, that Prima does
19 not include the EK 29-2H well in the spacing
20 arrangement; is that correct?

21 A This is one of the slides that I pointed out
22 that we made a mistake and highlighted the wrong
23 wells. EK-30 and 29, I think we just looked at them
24 and got them wrong. But the two edge wells are --
25 well, were not brought in, which I believe is the 32H

1 and the 29-1H.

2 Q But on the bottom right, you pointed out
3 that Prima left out the 1 and 2 on this; is that
4 accurate?

5 A Yeah, it looks like we have a slight mistake
6 in the commentation of those two highlighted wells.
7 One should say 30.

8 Q Okay. Well, and wouldn't you agree that 2H
9 is represented in this exhibit -- in Prima's exhibit?

10 A Which 2H? Again, I just agreed with you. I
11 said there's a commentation error.

12 Q Yeah. The EK 29 BS2 Federal Com 2H. The
13 29-2H.

14 A Yeah -- yeah, that is in there.

15 Q And can you confirm that the production
16 history is labeled as this well 29-2H?

17 A Again, for the third time, we had a
18 commentation error. I agree with you the 30-2H was
19 left out. We can fix that comment for you.

20 Q Okay. And then you pointed out -- you made
21 a claim on this exhibit, in looking at your graph, you
22 said that the inner wells were outperforming the edge
23 wells; is that correct?

24 A Yeah, that's correct.

25 Q And you agree that the -- if I remember

1 right, you agreed that the edge wells that are
2 unbounded would typically outperform the inner well?

3 A Typically, yes, that's what you would
4 expect.

5 Q When you look at Prima's exhibit on the left
6 of the graph, does it show that the inner well that
7 was drilled actually produced for a year unbounded?

8 A Yes -- I'm not sure what you're asking
9 actually.

10 Q Yeah. You agree that it was drilled without
11 any other wells being drilled, and it produced for
12 that year unbounded?

13 A I'm looking at the dates real quick. Yes,
14 it did drill -- or it produced for one year, yes.

15 Q So for that full year, it actually acted as
16 a edge well; is that correct?

17 A That's correct.

18 Q So would you agree that had a significant
19 impact on the fact that this curve is actually higher
20 in terms of cumulative production than the others?

21 A Well, I see six years of it being an inner
22 well, and it still looks on a similar decline to what
23 the edge wells are on. As you can see, the shape of
24 the curve is quite identical on the right side. I
25 don't believe that well was affecting it that much.

1 Q Okay. But do you agree that the first year
2 often sees significant production of a horizontal
3 well?

4 A I'm sorry. Would you repeat that question.

5 Q Yeah. Do you agree that for a horizontal
6 well that typically the first year you see
7 substantial, significant amounts of production versus
8 later?

9 A Sometimes. It depends. We've had wells be
10 stronger in the second year.

11 Q All right. Let's look at Exhibit G-16.
12 What is the spacing between the KSI 22 1H and the
13 KSI 22 2H?

14 A It appears -- I don't know what the average
15 is, but around 11,000.

16 Q So would you agree that this spacing
17 approximates what Avant proposes?

18 A It's a little tighter than what we're
19 proposing of 1320.

20 Q And what does the space between the
21 Scooter 1H and the Scooter 2H?

22 A I do not have that data right in front of
23 me.

24 Q But in looking at it, would you say it
25 approximates 11,000, 13,000, somewhere in there?

1 A I'd say it approximates around 11,000, yeah,
2 just by looking at it with my eyes.

3 Q And you would agree that even though it's
4 slightly maybe a little tighter, but it approximates
5 what Avant proposes?

6 A No. It's -- it's a little tighter like you
7 said yourself. But again, completely old, vintage
8 fracks. It's not relevant.

9 Q So a vintage frack, as I understand, would
10 not produce as much as a modern -- would not drain the
11 reservoir to the extent of a modern frack; is that
12 correct?

13 A That is correct.

14 Q But its rate of production, would that be
15 similar?

16 A Sorry. "Its rate of production"? Is that
17 what you said? I misheard you.

18 Q I'll withdraw the question.

19 Let's look at G-17. In G-17, you say that
20 interference among offset wells is indicative of
21 sufficient well density and completion size; is that
22 correct?

23 A Yes, that's what I said.

24 Q At the bottom. Is immediate interference
25 preferable to interference that occurs later in the

1 life of the well?

2 A "Is it preferable?" Is that what you asked?

3 Q That's what I asked, yes.

4 A It's more common in the early time part of
5 the life, especially with modern frack designs we are
6 fracking --

7 Q Okay. Does immediate interference indicate
8 near-wellbore drainage overlap?

9 A Not necessarily, no.

10 Q When a wellbore produces fluids, does it
11 produce fluids close to the wellbore first or fluids
12 further away from the wellbore?

13 MR. PARROT: Objection, this is far
14 outside the scope of the witness's rebuttal testimony.

15 THE HEARING EXAMINER: Mr. Savage?

16 MR. SAVAGE: This goes to the question
17 of the nature of the interference that they're
18 claiming -- it says it's indicative of sufficient well
19 density and completion size. And the question is --
20 what we would be getting to is: does interference
21 address that question?

22 MR. PARROT: So to clarify, I didn't
23 object based on relevance. I objected based on the
24 fact that the witness did not testify at all about the
25 drainage properties of any of the wells that he

1 discussed.

2 MR. SAVAGE: But the witness did make
3 assertion about interference among offset wells and
4 said it was indicative of sufficient well density, so
5 I am asking a question directly about the nature of
6 interference to lead to information that the OCD would
7 find relevant.

8 THE HEARING EXAMINER: Okay. All
9 right. I've heard enough. Thank you. So the
10 objection is overruled. But Mr. Savage, if you're
11 going somewhere with this, please just get there.

12 MR. SAVAGE: Okay.

13 THE HEARING EXAMINER: But Witness,
14 please answer the question.

15 THE WITNESS: Can you please repeat the
16 question.

17 BY MR. SAVAGE:

18 Q So the first question was: does
19 intermediate interference indicate near-wellbore
20 drainage overlap?

21 A And I said not necessarily. And then the
22 follow-up?

23 Q And then the follow-up was: if you have a
24 wellbore that produces fluids, is it going to produce
25 the fluids near to the wellbore first or further away

1 at the edge first?

2 A I mean, we're getting into fluid properties
3 here, and I can give you a reservoir engineering
4 lesson. But they're going to produce the fluid near
5 the wellbore, and as you decrease the pressure in
6 those pore spaces, fluid from further out starts to
7 move into that lower-pressure environment.

8 So it's not as simple as you're producing
9 100 percent of your fluid from whatever's right next
10 to you immediately. I mean, it's a -- it's a complex
11 world underground to put it lightly.

12 Q Okay. Well, then let's look at that in
13 terms of the Exhibits G-12, G-13, and G-16. G-12, as
14 you recall, is the Iron Horse; Exhibit G-13 is the
15 Condor; and G-16 is the COG Group.

16 So in those exhibits, the well spacing that
17 you show of the two wells close together, you know,
18 for example, that were drilled around the same time,
19 you show well spacings that are denser than four wells
20 per section; is that correct?

21 A Yes.

22 Q Right. The spacing that you point out would
23 be denser than four wells per section.

24 And is it correct that they show
25 interference?

1 A I'm not 100-percent sure they're showing
2 interference. No, it's not correct. I've stated this
3 in my testimony.

4 Q Okay. Then let's move to --

5 A Irrelevant frack design.

6 Q Well, for the -- okay. They could show
7 interference; is that correct?

8 A They could; they could not.

9 Q Okay. And again in Exhibits C-12, C-16,
10 which is the COG Group, and the G-17, which is the
11 Buffalo, there are well spacings that are less dense
12 than the four wells per section. Do you agree with
13 that?

14 A I'm sorry. You're going to have to repeat
15 that. Which exhibits?

16 Q Yeah. So you have G-12, which is the
17 Iron Horse; G-16, which is the COG Group; and then
18 especially the G-17, which is the Buffalo well
19 exhibit. Do you agree that there are well spacings
20 that are less dense than four wells per section?

21 A No, I do not agree with that. I'm not sure
22 what you're referring to.

23 Q Okay. So these wells on G-17, is that --
24 okay. I'm going to withdraw that question.

25 Let's move to G-18. In G-18, you state that

1 up to eight Second Bone Spring wells per section is
2 highly economic and prevents waste; is that correct?

3 A In this section, it would appear so, yes.

4 Q Okay. And you pointed out that you are not
5 doing a higher density such as this because in your
6 particular subject lands, you're evaluating that four
7 wells per section is the correct number of wells;
8 correct?

9 A That is correct. If it's working at eight
10 wells per section, I don't see why it won't work at
11 four.

12 Q And then you said that three wells per
13 section would not develop the reservoir the same as
14 four wells per section?

15 A That is correct.

16 Q And do you have production data that shows
17 that?

18 A Do you?

19 Q Well, I'm wondering what you're basing that
20 assertion on that three wells would not produce the
21 reservoir the same as four wells per section.

22 A Individual well results in these
23 high-density packages tells me that. They're highly
24 economic producing a lot of oil. And with the
25 400-well experience I have, I understand how

1 aggregation works when you move to these tighter
2 spacing patterns.

3 No one has done three wells per section
4 because it's not logical in this part of the world --

5 Q Isn't it -- go ahead.

6 A Four is normal here. I'm finished.

7 Q Wouldn't three wells produce the reservoir,
8 it would just take a longer time to produce the
9 reservoir versus four wells or versus eight wells?

10 A No. Not even close to how that works, no.

11 Q Okay. So as I understand what you're
12 saying, so eight wells fully produces the reservoir,
13 and it does it at accelerated rate; correct? In this
14 area?

15 A I'm not sure what you're asking.

16 Q I'm asking if in our subject area eight
17 wells per section would produce the reservoir; is that
18 correct? Fully produce the reservoir?

19 A We will never fully produce a reservoir. We
20 hope to get 100 percent of the reservoir, but that's
21 not how horizontal fracking works.

22 Q It would optimize production of the
23 reservoir, eight wells per section. Would you agree
24 with that?

25 A We don't know yet if eight wells per section

1 looks like a good -- good test down in this section,
2 but we're still pushing the limits everywhere in this
3 basin.

4 Q Okay. So you say that four wells per
5 section optimizes the reservoir; correct?

6 A In our expert opinion, at Royal Oak, yes, we
7 believe four wells is the optimal development pattern
8 and will produce more oil than three wells in
9 Royal Oak.

10 Q Okay. Would it produce more oil than eight
11 wells?

12 A That's not the question. It produces more
13 oil than three wells. Are you --

14 Q Well, that's the question I'm asking.
15 Mr. Kelly, that's the question I'm asking. In your
16 expert opinion, would eight wells per section in
17 Royal Oak optimally develop the reservoirs either the
18 same as or better than four wells per section?

19 MR. PARROT: Objection, calls for
20 speculation; and it's not relevant because there's no
21 proposal currently for eight wells per section in
22 Royal Oak.

23 THE HEARING EXAMINER: Well,
24 Mr. Parrot, your witness is an expert. He's been
25 qualified as such. He has an opinion. He can state

1 his opinion. Whatever that opinion may be, it's
2 relevant because I think Mr. Savage is trying to show
3 whatever he's trying to show. So I'm going to
4 overrule it and instruct the witness to answer the
5 question.

6 MR. PARROT: Okay. Thank you.

7 BY MR. SAVAGE:

8 Q Mr. Kelly, did you want me to repeat the
9 question?

10 A Can you hear me? I'm sorry.

11 Q Yeah. You cut out just a minute. Did you
12 want me to repeat the question?

13 A Yes, please.

14 Q Okay. So in Royal Oak, in your expert
15 opinion, would drilling eight wells per section
16 optimally -- I understand you didn't say
17 100 percent -- but optimally produce the reservoir in
18 the same manner that four wells per section as you
19 claim optimally would produce the reservoir?

20 A No one has done eight wells per section this
21 far north in Royal Oak. They have pushed the limits
22 at Batman, and that's the farthest north we've done so
23 far as an industry. So this example could indicate
24 support for that, but we don't know right now.

25 The rock changes quite significantly as

1 we -- not significantly, but the rock does change as
2 we move north, so that's why we think four is the best
3 for this example.

4 Q Okay. How far north is this? How much
5 further north than Batman? Do you have an estimation?

6 A I think around 6 miles -- 8 miles. There it
7 is.

8 Q Okay. In general, have you ever seen a
9 situation where, if you drill eight wells instead of
10 four wells, a reservoir -- or more wells than four
11 wells, those additional wells would result in less
12 production than four wells, let's say?

13 A No, I have not. You would get more, but it
14 would not be economic.

15 Q So you get more oil; is that correct? You
16 get more oil with more wells as a general principle
17 rule; is that correct?

18 THE HEARING EXAMINER: Mr. Savage, I
19 think you've made your point. Would you please move
20 on.

21 MR. SAVAGE: Okay. Yes.

22 BY MR. SAVAGE:

23 Q So just one last question. And the factor
24 that you have to consider is the economics; is that
25 correct?

1 MR. PARROT: Objection, vague. Perhaps
2 there can be a restatement of the question to be more
3 specific.

4 THE HEARING EXAMINER: Sustained.

5 Mr. Savage, please rephrase.

6 MR. SAVAGE: Yes.

7 BY MR. SAVAGE:

8 Q So the main factor of drilling -- if more
9 wells than four would not produce less, but actually
10 would produce more, as stated -- the main factor of an
11 operator is that they would not want to spend more on
12 those wells because they could do it with four, and
13 that would be less expensive; is that correct?

14 A Sorry. I didn't quite understand your
15 question fully.

16 Q Okay. You stated that six or eight wells
17 would never produce less than four wells in a section,
18 but would generally produce more; correct?

19 A Total package section, yeah, not in each
20 individual well.

21 Q Right. So the operator would receive more
22 production from six or eight wells; correct?

23 A I'm not sure what you're asking.

24 Q From the reservoir, if an operator drilled
25 six or eight wells because more wells results in more

1 production, as you state, the operator would receive
2 more production?

3 MR. PARROT: Objection, this has been
4 asked and answered. We've been over this territory
5 multiple times. I believe Mr. Savage was asking a
6 different question and trying to rephrase it and has
7 now rephrased it as a question that he's already asked
8 multiple times.

9 THE HEARING EXAMINER: Mr. Savage, I
10 sustain that objection.

11 MR. SAVAGE: Yes.

12 THE HEARING EXAMINER: What you're
13 asking is a very simple question about economics, and
14 I don't know why you're not able to get there. Try
15 asking one simple question based on the economics of
16 drilling multiple --

17 MR. SAVAGE: Okay. Yes. Thank you.

18 BY MR. SAVAGE:

19 Q If an operator faced -- if an operator knew
20 that -- had a choice between drilling six wells and
21 four wells and both would produce -- or the six wells
22 would produce more, but the economic cost would be
23 exorbitant, would that operator possibly choose to
24 drill four wells instead of six based on economic
25 factors?

1 MR. PARROT: Objection, this is a very
2 hypothetical question. It's not a proper question.

3 THE HEARING EXAMINER: If the
4 witness --

5 MR. SAVAGE: I'm --

6 THE HEARING EXAMINER: Hold on,
7 Mr. Savage.

8 Mr. Parrot, if the witness can answer
9 this within his expertise, I'm going to let him answer
10 it.

11 But we can't keep rephrasing the
12 question endlessly.

13 So can the witness answer this
14 question?

15 THE WITNESS: I'll try as best I
16 understood it.

17 An operator is going to drill more
18 wells if it makes them more money. There is
19 diminishing returns as you get tighter and tighter.
20 Even though you're going to produce more oil out of a
21 section, it becomes economic to the operator. And at
22 that point, no, we would not continue to downspace if
23 it's not going to be economic to the operator.

24 And there's lot of different factors:
25 midstream, oil price, land situations. I mean,

1 there's a lot of variables in this question, so
2 there's not an easy way to answer it.

3 MR. SAVAGE: Well, I appreciate that,
4 Mr. Kelly. And that will conclude my questioning
5 today.

6 THE HEARING EXAMINER: Thank you,
7 Mr. Savage.

8 Mr. McClure?

9 THE TECHNICAL EXAMINER: I have no
10 questions, Mr. Hearing Examiner.

11 THE HEARING EXAMINER: Okay.

12 Now, Mr. Parrot, I'm going to ask you
13 if you have any redirect, but I don't want to go over
14 the same territory again.

15 MR. PARROT: No. I understand. I
16 actually do not have any redirect. Thank you.

17 THE HEARING EXAMINER: Okay. Very
18 good. Does that conclude your rebuttal case?

19 MR. PARROT: It does.

20 THE HEARING EXAMINER: All right.

21 Mr. Savage, do you have a rebuttal
22 case?

23 MR. SAVAGE: We do. Let me --

24 THE HEARING EXAMINER: All right. So
25 as you know, your rebuttal exhibits are not entered.

1 MR. SAVAGE: Right.

2 THE HEARING EXAMINER: You'll need to
3 see if you can -- if your witness -- well, first of
4 all, Mr. Savage, did your witness, Mr. Rhodes, produce
5 the rebuttal exhibits?

6 MR. SAVAGE: He did.

7 THE HEARING EXAMINER: Okay. Very
8 good. So let's start out with one by one you call an
9 exhibit. It's going to be demonstrative only --

10 MR. SAVAGE: Okay. And I can show it,
11 Mr. Hearing Examiner.

12 THE HEARING EXAMINER: Okay.
13 Mr. Savage, I wasn't finished talking. If you would
14 stop talking over me and the witnesses, it would be
15 helpful to the court reporter to gather all of the
16 data.

17 MR. SAVAGE: Excuse me. Yes, sir.

18 THE HEARING EXAMINER: Mr. Savage, I'm
19 going to ask you to be very brief. This is not a case
20 in chief. This is just a rebuttal case. Have your
21 witness explain why he created the exhibit he created
22 and what he wants the Division to know, and we'll see
23 if we can get it in or not.

24 MR. SAVAGE: Yes, sir.

25 THE HEARING EXAMINER: Go ahead.

1 MR. SAVAGE: Let me pull this up.

2 THE HEARING EXAMINER: Mr. Rhodes, I
3 remind you you're under oath.

4 WHEREUPON,

5 DAVID RHODES,
6 called as a witness and having been previously sworn
7 to tell the truth, the whole truth, and nothing but
8 the truth, was examined and testified as follows:

9 THE WITNESS: Yes, sir.

10 THE HEARING EXAMINER: Thank you.

11 DIRECT EXAMINATION

12 BY MR. SAVAGE:

13 Q Mr. Rhodes, do you see the Exhibit 1,
14 rebuttal to Avant's rebuttal Exhibits G-10, G-12,
15 G-13, and G-16?

16 A I do.

17 Q And according to the guidance of
18 the Division, why did you create this exhibit?

19 A So this exhibit was created because
20 Exhibit G-10 talks about something new. It implies
21 that Avant, with the statements under the "Summary"
22 line there, is going to produce and present higher
23 density than is being proposed in this subject, with
24 the implication that more wells could be better.

25 It also, with these three specific examples

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1 that they gave, does show that they are presenting
2 more wells than what they want to, and they are
3 focusing on more wells than the four wells that
4 they're proposing.

5 So it's relevant because they seem to have
6 changed what they're talking about here. They're not
7 just talking about the four wells that they're
8 proposing, but they're seeming to imply that -- with
9 additional exhibits that they sprung on us two hours
10 before the hearing yesterday that they can show that
11 not only is four wells better than three, but even
12 more than four wells is better than three.

13 Q And in this exhibit, is there new data, new
14 perspective?

15 A Yeah. The new data and perspective is they
16 tried to rebuttal our exhibits showing
17 four-wells-per-section density like in section 20
18 there on the left and in sections 22 and 23 on the
19 right by focusing on wells that are not and ignoring
20 our -- our testimony.

21 And then as stated before, they seem to be
22 implying that they actually want to go and have seen
23 and have been encouraged by tighter densities like
24 they are presenting in these exhibits.

25 Q And is there anything else you would like to

1 inform the OCD about this particular exhibit?

2 A Just that's it's kind of a direct
3 contradiction to their summary exhibits. These three
4 specific spacings here that they're talking about is a
5 direct contradiction to what they're talking about in
6 regard to wanting four wells.

7 It seems like they can't make up their
8 minds, if they want four or five; or if they're
9 proposing that we should drill four, or five, or six,
10 or eight depending on the unit. There seems to be a
11 lot of ambiguity and inconsistency with that.

12 MR. SAVAGE: Mr. Hearing Examiner, I
13 offer that as explanations -- as justifications to
14 admit this.

15 THE HEARING EXAMINER: Okay.

16 Mr. Parrot?

17 MR. PARROT: Certainly appreciate that
18 the witness has a difference of opinion about the
19 analysis that is presented in Avant's slides. This
20 slide presents only opinion. It's only a difference
21 of opinion, and certainly Prima is entitled to have a
22 difference of opinion about Avant's analysis. But
23 there's no new data here. There's no technical
24 analysis here.

25 Basically, the same standard that

1 applied to Avant should be applied to Prima: if
2 there's no new information here in the form of actual,
3 technical data or analysis, then it should not be
4 admitted. The witness is -- I'm sorry.

5 THE HEARING EXAMINER: Mr. Parrot, I
6 understood the argument that you made an hour or two
7 ago, and you don't have to repeat that argument.

8 But I think the witness is explaining
9 here that he created this exhibit based on your
10 rebuttal exhibits and to illustrate what he feels is
11 unrealistic, or unreliable, or whatever he's trying to
12 say in this exhibit about your rebuttal exhibits.
13 Now, if you have an argument about that, I'd like to
14 hear it.

15 MR. PARROT: Okay. Certainly. Yeah.
16 I think the witness is welcome to present Avant's
17 exhibits and then present his opinions about those
18 exhibits. But this rebuttal exhibit is unnecessary,
19 and it's nothing but opinion. That opinion can be
20 offered by the witness as to Avant's exhibit by
21 showing Avant's exhibit and then offering that
22 opinion.

23 But we were not allowed to introduce
24 exhibits that were simply just opinions about Prima's
25 exhibits. And likewise, those purely opinion exhibits

1 should be excluded, and the witness can just present
2 Avant's exhibit and offer his opinions.

3 THE HEARING EXAMINER: I think we
4 differ here, Mr. Parrot, in that opinions are not
5 evidence. I mean, this witness is called as an expert
6 in this field, and his opinion can be regarded by
7 the Division, or it can be put whatever weight
8 the Division wants to put it in.

9 He is testifying that he has created
10 this exhibit in response to your rebuttal
11 exhibits -- which I let in, the ones that are here on
12 the top of this in red letters -- and his expert
13 opinion is evidence, and it's relevant. I don't know
14 how reliable it is, but that's up to the Division to
15 decide.

16 But I'm going to let in this
17 Prima Exhibit 1 Rebuttal to your Rebuttal Exhibits
18 G-10, G-12, 13, and 16.

19 (Prima Rebuttal Exhibit 1 was received
20 into evidence.)

21 Mr. Savage, your next rebuttal exhibit.

22 MR. SAVAGE: Yes, Mr. Hearing Examiner,
23 this is Prima Rebuttal Exhibit 2, and it rebuts
24 directly Avant Rebuttal Exhibit G-12.

25 THE HEARING EXAMINER: Go ahead.

1 MR. SAVAGE: Yes.

2 BY MR. SAVAGE:

3 Q Mr. Rhodes, again, why did you create this
4 exhibit, and what is it that is new in either data, or
5 perspective, or viewpoint?

6 A So the reason I created this exhibit is
7 because it contradicts or rebuts Avant's Rebuttal
8 Exhibit G-12. This was in relation to the Iron House
9 wells that I have this curve overlay of. And in
10 Avant's rebuttal exhibit, the -- in their summary, the
11 very first sentence they said is they said that this
12 does not actually show four wells per spacing.

13 And how they demonstrated that in this chart
14 on the left, which I've annotated in red, they took a
15 well that I wasn't even showing, which is the Condor
16 2H, which is the western well of the two in the middle
17 there, and they appear to have claimed that I was
18 comparing those two wells, which are clearly a much
19 denser spacing at 743 feet between laterals, than the
20 two wells that I actually am comparing, which is Iron
21 House -- or Iron -- yeah, Iron House 1H and 2H, which,
22 as you can see, have actually close to 1,600 feet
23 average spacing between the laterals, which is far
24 greater spacing than Avant is proposing.

25 So when they're basically in the very first

1 sentence of their summary saying that I'm not
2 demonstrating something that I clearly am, then that's
3 relevant data. They're showing -- they're trying to
4 highlight that what I'm showing is two different wells
5 than I'm actually showing.

6 And they're trying to use that to show that
7 I'm demonstrating half the spacing that I actually am
8 to support their argument that four wells per section
9 does not interfere, whereas in this case, these two
10 wells, which are over four wells per section, are
11 actually 3.3 wells per section, which is considerably
12 wider than what Avant is proposing, do in fact appear
13 to show significant interference and therefore is very
14 relevant to answer that claim by Avant.

15 Q And in your original exhibit, you did show
16 those two middle wells as being in close proximity;
17 did you not?

18 A Correct.

19 THE HEARING EXAMINER: Mr. Savage, I'm
20 going to caution you not to lead your witness. We
21 already have that testimony anyway. So I think he's
22 made his point here. Are you trying to admit
23 Exhibit 2?

24 MR. SAVAGE: I am. I just wanted to
25 point out that Avant's exhibit didn't really add

1 anything new to this and what they pointed out as a
2 new perspective on this that we're rebutting. But
3 yes, I would like to offer this to be considered for
4 admission.

5 THE HEARING EXAMINER: Mr. Parrot?

6 MR. PARROT: Okay. Thank you. So
7 there were inset maps included in Prima's exhibits
8 showing the various wells that were being compared,
9 and those inset maps did not have the footages in
10 between the wells that were being compared. Those
11 footages should have been included in Prima's exhibits
12 for its case in chief.

13 That's information that clearly should
14 have been anticipated as the entire point of Prima's
15 case in chief was to compare the performance of
16 proximate wells once new wells were brought online.
17 So this addition of information as far as well
18 distances, that's something that should've been
19 anticipated and should now be excluded because it's
20 not rebuttal.

21 And then regarding the bullet points at
22 the bottom, I did want to be clear -- and I apologize
23 if I gave the impression that I don't think that
24 Prima's expert opinion testimony is admissible
25 testimony. I'm not saying that.

1 But it's -- I believe that something
2 that is nothing more than opinions about Avant's
3 rebuttal exhibits don't belong in surrebuttal
4 exhibits. The opinions can certainly be offered into
5 evidence by means of the expert opining about Avant's
6 exhibits, so certainly not an objection to the opinion
7 testimony being offered into the record by the expert
8 putting up Avant's exhibit and then offering opinions
9 about Avant's exhibit.

10 But we would make the same objection to
11 this exhibit because this is nothing more than just
12 Avant's exhibit with some additional information that
13 should've been anticipated and included in Prima's
14 case in chief and then some inappropriate opinion
15 bullet points at the bottom.

16 THE HEARING EXAMINER: Okay. Thank
17 you. Let me make something abundantly clear to all
18 the parties, and that is: in administrative hearings,
19 as I understand the rules of evidence, it's my task to
20 admit relevant and reliable evidence. Those are the
21 rules that I have to abide by. All the other rules
22 are maybe just suggestive.

23 However, I don't even know of a rule
24 that would keep this exhibit out. And Mr. Parrot, I
25 understand your point in that this could have been

1 included in Prima's case in chief. However, it was
2 omitted as you said.

3 But it's now being brought because you
4 entered Exhibit G-12, and it was admitted over their
5 objection, and I allow you to bring in a rebuttal
6 Exhibit G-12. That opens the door to this discussion
7 of density. And that being said, I mean, that's part
8 of the drawback to bringing a rebuttal case: you open
9 the door to other issues. And you've done that with
10 your rebuttal Exhibit G-12.

11 And I don't know a rule, Mr. Parrot,
12 that says that an expert can only opine verbally and
13 not opine in writing. I mean, here he's doing the
14 same thing by telling us something here in writing
15 where he could say it on sworn testimony. I don't
16 know if Mr. Savage is going to have him adopt these
17 under oath, but he's already told me that he drafted
18 these, so he's under oath anyway.

19 For all those reasons, I am admitting
20 Exhibit 2, Prima Rebuttal.

21 (Prima Rebuttal Exhibit 2 was received
22 into evidence.)

23 And Mr. Savage, would you continue to
24 No. 3. And let's try to keep this as concise as we
25 can because we don't need to rehash all the old

1 points. Just what's new. Only --

2 MR. PARROT: Mr. Examiner -- I'm so
3 sorry for interrupting. We may be able to speed this
4 process up a little bit.

5 So it was our understanding that there
6 were some standards elucidated yesterday for admission
7 of Avant's rebuttal exhibits, and essentially we
8 were -- Avant's objections to these surrebuttal
9 exhibits were based on the standards that we had
10 understood to have been elucidated yesterday.

11 Primarily that you wanted to exclude
12 one of our exhibits because it should have been
13 anticipated and submitted in our case in chief
14 exhibits and that there was certain information
15 offered on some of the exhibits that was nothing more
16 than just the opinion of a witness, and that could be
17 offered in testimony.

18 And based on your statements that
19 you're going to go ahead and let these exhibits,
20 notwithstanding the fact that the information could
21 have been submitted in the case in chief and
22 notwithstanding the fact that it is simply expert
23 opinion testimony in the form of writing rather than
24 verbal testimony, I don't think we need to go through
25 every single exhibit.

1 We're not going to have any other
2 objections. I think we can just state that we object
3 to the admission of each exhibit based on those two
4 points and understand that you're going to overrule
5 those objections. And, you know, we can probably
6 short circuit the slide-by-slide process if that
7 pleases the Division.

8 THE HEARING EXAMINER: Okay. Thank
9 you, Mr. Parrot.

10 Mr. Savage, I want your witness to go
11 through each rebuttal exhibit and briefly state what
12 he is rebutting, why he's rebutting it, and what his
13 expert opinion is; and let's move on.

14 MR. SAVAGE: Yes, sir.

15 BY MR. SAVAGE:

16 Q Mr. Rhodes, this is Prima Rebuttal
17 Exhibit 3. In this exhibit, what are you rebutting?

18 A So this is a rebuttal to Avant's Rebuttal
19 Exhibit G-14. This is the example that Prima gave for
20 the Kingfisher wells. We did have that error in the
21 well that we clicked: we included the 1H well instead
22 of the 5H. So this in part is to show that
23 correction.

24 The other reason -- well, there's two other
25 reasons that this is important and needs to be

1 included. One of those is there's an error in Avant's
2 well spacing that they show and their placement as
3 highlighted with the red lines. It looks like they
4 graphed just the very end of the wells.

5 As you can see, these wells are kind of
6 trending towards each other at an angle. And they
7 took the closest point of 1,004 feet and said that was
8 the distance for the entire lateral, which would of
9 course be much denser than the 1,320 feet density that
10 is being proposed.

11 In reality, when you take the average over
12 the entire laterals for these specific wells that they
13 are cherry picking, it's 1,307 feet, which is
14 basically well within your standard drilling windows
15 that you give directional drillers to say, "Hey, stay
16 within X number of feet from our planned azimuth
17 here." So it's important to correct that they are
18 erroneously stating something that is applicable to
19 the density question at hand.

20 Additionally, this is the first time in all
21 of their exhibits that they bring up the stacked-well
22 concept. And as we -- as you cross-referenced Avant
23 earlier, it seems that they are very inconsistent in
24 how they present stacked-wells. In this case and in
25 other Prima-presented cases that they are rebutting,

1 they imply that stacked-wells are a reason for these
2 changes in performance with the offset wells, and they
3 seem to seek to use that to dismiss our exhibits.

4 But then they added multiple exhibits on the
5 end of their own that have different wells that aren't
6 even included in our exhibits, so they're not -- they
7 weren't really a rebuttal to our exhibits at all, but
8 they are included. And in those cases, despite
9 numerous stacked wells, they ignore those and say that
10 yes, stacked wells are fine.

11 So it's the second big inconsistency that we
12 see with Avant's rebuttal exhibits, so it's important
13 that it's included in our surrebuttal.

14 THE HEARING EXAMINER: Mr. Savage, have
15 we admitted this exhibit yet?

16 MR. SAVAGE: We have not.

17 THE HEARING EXAMINER: Okay. Prima
18 Rebuttal Exhibit 3 is entered into evidence.

19 (Prima Rebuttal Exhibit 3 was received
20 into evidence.)

21 What's your next one?

22 MR. SAVAGE: Rebuttal 4 -- that's
23 rebuttal 3 continued, so that's been admitted. So we
24 have Prima Rebuttal Exhibit 4, rebuttal to Avant
25 Rebuttal Exhibit G-15.

1 BY MR. SAVAGE:

2 Q Mr. Rhodes, what are you rebutting, and why
3 are you rebutting this?

4 A So yeah, this is actually confusing to me
5 because as you can see in the top right, this is --
6 these are taken from Avant's rebuttal exhibits that we
7 were provided with yesterday, and they do not match
8 the exhibits that were presented today. So I'm not
9 sure how that happened.

10 But the reason for this exhibit -- well, the
11 first reason for this exhibit is that in their exhibit
12 as presented to us yesterday, as you can see, they
13 highlight the EK 29 Bone Spring 2H well both in the
14 chart on upper right and also in their summary. In
15 the first sentence of their summary, they state
16 multiple times that we did not include that well,
17 which, pointing out, I show it on the map, I show it
18 on the curve, I show it on the key.

19 It's a very key well to our argument that
20 offsetting initial wells impacts their performance,
21 demonstrating interference, and so for them to have
22 such an -- an error -- apparent error stated multiple
23 times, it needed to be corrected.

24 And then additionally, the -- oh. That's
25 for this. I think there's a part 2 to this exhibit.

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1 Yeah, so they -- they included this cumulative plot,
2 and they implied that because an inner well --
3 specifically the EK 29-3H, which is the top, green
4 well -- has produced the most oil through time, but it
5 doesn't match with the initial edge well argument.

6 However, as you explained -- or as you
7 cross-referenced earlier, the -- it's important to
8 note that the -- this is a unique situation because
9 the EK 29-3H, though it is an inner well now, unlike
10 the other examples that we show where there's
11 progressive development from east to west or west to
12 east, this one actually was the initial well that
13 became the inner well because it was offset on both
14 sides going forward.

15 So the argument that they're making that
16 "Hey, it's made the most oil," well, as we show on
17 this curve, it had a year of production basically
18 unbounded. And if you've had any experience with
19 horizontal wells and hydraulic fracturing, you have
20 steep hyperbolic declines in most cases, and you're
21 going to accumulate by the most wells per year early
22 on -- or most oil per year early on in the life.

23 So this pointing out on this chart of theirs
24 that that EK 29-3H well in the first year made 114,000
25 barrels. In the seven years since then, it's only

1 made 120,000 more, and that's indicative of the impact
2 that happened when it was offset.

3 Now, that doesn't take away from the fact
4 that it was the initial well in this entire area and
5 has since been -- so it had no significant
6 interference for that year. So yeah, it could have
7 and does have more oil than the other wells, but that
8 also highlights how much drainage that well had on the
9 offset wells that they're performing so poorly now.

10 MR. SAVAGE: Mr. Hearing Examiner, I
11 offer that explanation for consideration of admission
12 of this exhibit.

13 THE HEARING EXAMINER: Okay. This
14 exhibit is entered. That's Exhibit Rebuttal 4, Prima.
15 (Prima Rebuttal Exhibit 4 was received
16 into evidence.)

17 MR. SAVAGE: Correct. Thank you.

18 BY MR. SAVAGE:

19 Q Prima Rebuttal Exhibit 5, rebuttal to Avant
20 Rebuttal Exhibit G-16. Mr. Rhodes, what are you
21 rebutting, and why are you rebutting this?

22 A So this is similar to an earlier rebuttal
23 exhibit where Avant in their summary is erroneously
24 claiming that we are not representing the 1,320-foot
25 spacing. And again, they do this by selecting just

1 two of the four wells that were presented and showing
2 that they were at 1,104 feet.

3 But then they ignore the wells to the west,
4 which had basically right at 1,320-foot spacing on
5 average, and the wells to the east, which were at
6 1,267 per foot average, which, again, gets close to
7 that window of tolerance that you have when drilling
8 laterally.

9 So it's important to include this to point
10 out that Avant is intentionally ignoring the data that
11 is present and claiming that we're presenting
12 something else, which just is not true.

13 THE HEARING EXAMINER: Okay. Prima
14 Rebuttal Exhibit 5 is entered into evidence.

15 (Prima Rebuttal Exhibit 5 was received
16 into evidence.)

17 Number 6?

18 BY MR. SAVAGE:

19 Q This rebuts Exhibit G-17. Mr. Rhodes, what
20 are you rebutting and why?

21 A So this is the -- one of the biggest
22 inconsistencies that came to light with Avant's case
23 when they submitted these rebuttal exhibits. The
24 statement that's listed there from Exhibit G-17 where
25 it says, "Interference among offset wells is

1 indicative of sufficient well density and completion
2 size."

3 So this basically to me, even though they
4 spent all these other exhibits trying to contradict
5 ours by saying, "Well, these wells are tighter space
6 than we'd actually drill," or "Future wells from
7 this," or "We like the tighter space wells," or all
8 these different opinions where they contradict
9 themselves on density, this statement here basically
10 states that if you have any interference, then you --
11 you've done a good job: you've sufficiently drained
12 the reservoir. And so that's pretty wide open.

13 This -- and I think -- well, I don't know
14 for sure, but it seems that the reason that they
15 present this statement rather than going into a
16 lateral offset map like I've put in the top right here
17 is because the Buffalo 1H is 1,671 feet offset from
18 the Buffalo 4H, so it's the most offset of all the
19 wells in the examples.

20 It's also very relevant because these are
21 the only 2-mile wells that were presented, and they're
22 also directly offsetting the subject spacing unit to
23 the south; and they're also modern wells, so they have
24 very similar completion techniques to what Avant is
25 saying is all the difference in recovering reserves.

1 So there's a bunch to be taken from this
2 statement. And the lack of other rebuttals that they
3 have here, mainly that it shows that by their
4 statement, we could drill 20 wells 'cause 20 wells are
5 going to interfere with each other. I mean, sure
6 264 feet, by their statement of interference being
7 indicative of sufficient well density and completion
8 size, yeah, those will interfere.

9 We show here that three wells with this
10 Buffalo well has that same interference. And not only
11 is it interference that could happen late in the life
12 of a well, but this is all immediate interference. So
13 there seems to be significant overlap of the fracture
14 networks and of the drainage radius.

15 So it really gets to the crux of the
16 argument here where we're saying that three wells is
17 what is required to drain it. And they're agreeing
18 with us with this statement where they're saying,
19 "Hey, if you've got interference, then you've
20 sufficiently developed the reservoir."

21 And so all their arguments about four is the
22 appropriate density here or eight is there, well, if
23 they have interference from their own words, then it's
24 appropriate. And we've shown in the most applicable
25 of all exhibits presented by both parties -- because

1 this is modern, 2-mile wells directly offsetting the
2 subject lands -- that three wells per mile does
3 interfere and therefore, per their definition, is
4 sufficient.

5 MR. SAVAGE: Mr. Hearing Examiner,
6 based on that explanation, I ask that this be
7 considered for admission.

8 THE HEARING EXAMINER: Okay. This is
9 admitted.

10 (Prima Rebuttal Exhibit 6 was received
11 into evidence.)

12 Let's go on to number 7.

13 BY MR. SAVAGE:

14 Q This is a rebuttal to Avant Rebuttal
15 Exhibits G-18 and G-19. Mr. Rhodes, again, why are
16 you rebutting -- what are you rebutting and why?

17 A So this goes back to the Engineering
18 Exhibit 1 where it seems like they became very
19 inconsistent about how many wells per section they
20 were actually proposing and why.

21 They bring in multiple further-south units.
22 Shown here, there's the Batman development and the
23 Cutbow development. Both of these admittedly from
24 them have spacings in the benches from six to eight
25 wells per bench, which far exceeds what they're

1 proposing, but they present it in a way that suggests
2 that they like that and they want to do that. So it
3 leads to some confusion on our end about why they're
4 only proposing four in the subject at issue.

5 Additionally, both of these show stacked
6 benches, which, as I stated earlier, is a direct
7 contradiction to how they -- how they presented the
8 stacked benches in the couple examples that Prima
9 presented. There, they tried to use those to dismiss
10 our exhibits; here, they're -- they're just presenting
11 them and saying, "Hey, look how great this is."

12 So it's another big -- it's going back to
13 that first major inconsistency that they have with
14 these exhibits.

15 MR. SAVAGE: Mr. Hearing Examiner, I
16 ask that this exhibit be considered for admission.

17 THE HEARING EXAMINER: Okay. This is
18 admitted into evidence.

19 (Prima Rebuttal Exhibit 7 was received
20 into evidence.)

21 Do we have a number 8, and is that your
22 last one?

23 MR. SAVAGE: We have a No. 8, and then
24 we have some summary points as Exhibit 9.

25 //

1 (Prima Rebuttal Exhibit 9 was marked
2 for identification.)

3 BY MR. SAVAGE:

4 Q So Mr. Rhodes, in Exhibit 8, what are you
5 rebutting and why?

6 A So Exhibit 8 is a rebuttal to Avant's
7 Exhibit G-20. In that, they showed -- they -- they
8 made a new argument that they hadn't made yet where
9 they focused on the recovery per well, and they talked
10 about the completion technique and how important that
11 is and how new completions recover more oil.

12 They presented this in a way that made it
13 seem like we contend that. We have never contended
14 that modern completion techniques improve the
15 recoverability of the reservoir.

16 What we have shown over, and over, and over
17 again is that regardless of the completion
18 technique -- as we've shown 2013 vintage wells that
19 are short laterals, we've shown the Buffalo and
20 Mescalero wells, which are 2-mile laterals, most
21 recent wells drilled last year with modern completion
22 techniques.

23 No matter what completion technique it is,
24 consistently four wells per mile drastically
25 interferes and overdevelops the reservoir. So this

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1 basically points that out; highlights what they're
2 saying with that exhibit.

3 I also added pertinent data in the top right
4 in that table that they did not include. This is the
5 completion of the two wells that they're talking
6 about.

7 So the Merit 32DM well was a 2013 vintage
8 well. It was only 4,057 feet; it was fracked with an
9 average of 14 barrels of fluid per foot and 764 pounds
10 of proppant per foot.

11 Whereas the Airstrip 134H well is in line
12 with modern completions; it came online in 2019, over
13 six years after the -- the Merit well; it's a longer
14 lateral, 4,652 feet; it's got 51 barrels per foot of
15 fluid and 2,573 pounds per foot, which is
16 substantially more than the initial completion.

17 So that's presented to show that, yeah,
18 the -- the Airstrip well should produce more. It's
19 got a much more modern technique. And on top of that,
20 it's being developed at the same time as undrained
21 acreage to the west of it.

22 So it will -- I mean, you can go -- and
23 Avant's engineer made a lot of references to this --
24 of course modern completions make a big difference.
25 We're not contesting that at all. But what we are

1 contesting is that regardless of the vintage of
2 completion, you are getting this wide drainage radius.

3 MR. SAVAGE: Mr. Hearing Examiner, I
4 ask that the Division consider admission of this
5 exhibit.

6 THE HEARING EXAMINER: Rebuttal
7 Exhibit 8 is admitted.

8 (Prima Rebuttal Exhibit 8 was received
9 into evidence.)

10 I'm not convinced why No. 9 should be
11 admitted. Mr. Savage, explain to me why you want
12 No. 9 to be admitted.

13 MR. SAVAGE: Can I have Mr. Rhodes
14 explain that?

15 THE WITNESS: Mr. Examiner, from your
16 explanations, I'm fine with -- this was more just I
17 was working on this early this morning and was just
18 more of something to get my thoughts in line. I've
19 touched on all these points in these exhibits, so I
20 don't think it's necessary.

21 THE HEARING EXAMINER: Okay. Yes. I
22 felt it was redundant.

23 So Mr. Savage, Rebuttal 9 is not
24 admitted into evidence. Are you tendering this
25 witness now for cross-examination?

1 BY MR. SAVAGE:

2 Q Mr. Rhodes, you gave thorough explanations
3 it sounds like on each of the exhibits. Is there
4 anything briefly that you would need to touch upon or
5 point out to the Division?

6 A I think we skipped, like, part 2 to a couple
7 of those exhibits that would be pertinent, so if you
8 want to scroll -- I think right there, that Buffalo,
9 if you keep going up a little bit.

10 MR. SAVAGE: Mr. Hearing Examiner,
11 would that be appropriate?

12 THE HEARING EXAMINER: If it's here in
13 writing, I don't know that we need to have Mr. Rhodes
14 just tell it to us again verbally. They've all been
15 admitted based on the foundation that Mr. Rhodes has
16 provided and over the objection of Avant, so I prefer
17 not to have him say what's already here in writing.

18 MR. SAVAGE: Okay. Can I ask
19 Mr. Rhodes if it would be appropriate to adopt
20 statements on the exhibits?

21 THE HEARING EXAMINER: Sure.

22 BY MR. SAVAGE:

23 Q Mr. Rhodes, you have reviewed these
24 statements that have been placed on the exhibits?

25 A I have.

1 Q Do you adopt them as true and accurate to
2 the best of your knowledge?

3 A I do.

4 MR. SAVAGE: Mr. Hearing Examiner, I
5 tender Mr. Rhodes, the witness, for cross.

6 THE HEARING EXAMINER: Thank you.

7 Is it Ms. Graham or Mr. Parrot is going
8 to cross examine Mr. Rhodes?

9 MR. PARROT: Thank you,
10 Mr. Hearing Examiner. It will be me. Do you mind if
11 I request a short recess before we get to
12 cross-examination?

13 THE HEARING EXAMINER: I think that's
14 fair --

15 MR. PARROT: Fifteen minutes?

16 THE HEARING EXAMINER: I think that's
17 fair. What I would like to do is it's one o'clock
18 now. No one's had lunch. We started at 11 a.m. Why
19 don't we take a few hours for lunch? That way, you
20 can thoroughly review this with your expert,
21 Mr. Parrot and Ms. Graham. That way, your questions
22 can be concise and well-crafted.

23 Let's come back on the record at -- do
24 you prefer 3 or 3:30, Mr. Parrot?

25 MR. PARROT: I think we could probably

1 go earlier than that. I think we need probably an
2 hour. I don't think that we would need more than
3 that. So if you'd like to take a recess until 2 or
4 2:30, that's appropriate for us. Thank you. And if
5 you want to push it out till 3, that'd be totally fine
6 as well.

7 THE HEARING EXAMINER: Okay.

8 Mr. Savage, I'm thinking about coming
9 back around 3/3:15. Does that work for you?

10 MR. SAVAGE: At OCD's discretion.
11 We're fine with whatever you decide on that.

12 THE HEARING EXAMINER: All right.

13 Mr. Parrot, does that unfairly
14 prejudice you if we come back on the record at 3:15?

15 MR. PARROT: It does not. Thank you.

16 THE HEARING EXAMINER: Okay.

17 And Mr. Technical Examiner, are you
18 okay with 3:15 to come back on the record?

19 THE TECHNICAL EXAMINER: Yeah. Our
20 time -- whatever you want to do, Mr. Hearing Examiner,
21 we're good.

22 THE HEARING EXAMINER: Okay. I want to
23 make sure that you're available and that I'm not
24 conflicting with your schedule.

25 THE TECHNICAL EXAMINER: No. You

1 are -- I have nothing scheduled for this afternoon
2 other than this case.

3 THE HEARING EXAMINER: I know how busy
4 you are. That's why I'm asking.

5 And Mr. Cogswell, what about you?

6 Okay. Well, everyone's been very
7 accommodating. So we are in recess. It is 1:01 p.m.
8 on August 21st. We're coming back on the record at
9 3:15 for cross-examination in the rebuttal case of
10 Prima. We're off the record.

11 (Off the record.)

12 THE HEARING EXAMINER: All right. So
13 we left off with re-direct; is that right, Mr. Parrot?

14 MR. PARROT: I think it was just cross
15 for the rebuttal -- the surrebuttal, rather.

16 THE HEARING EXAMINER: Perfect. Very
17 good. Thank you for reminding me. So we left off
18 with your cross-examination of Mr. Rhodes?

19 MR. PARROT: Yes.

20 THE HEARING EXAMINER: Specifically on
21 his rebuttal exhibits and his testimony?

22 MR. PARROT: Yes.

23 THE HEARING EXAMINER: Okay. Very
24 good.

25 Mr. Rhodes, I remind you that you

1 remain under oath.

2 Mr. Savage, are you ready to begin?

3 MR. SAVAGE: I am. Thank you.

4 THE HEARING EXAMINER: All right.

5 Mr. Parrot, please proceed.

6 MR. PARROT: Okay. Well, thank you
7 very much for the recess there and giving us some
8 time. And we've conferred, and given the lack of any
9 additional data or analysis, and then it just appears
10 to be kind of a difference of opinion between two
11 experts, we're going to go ahead and forego any
12 cross-examination.

13 THE HEARING EXAMINER: Okay. Very
14 good. Let me go to Mr. McClure.

15 Mr. McClure, are there any questions
16 for Mr. Rhodes on his rebuttal testimony or exhibits?

17 THE TECHNICAL EXAMINER: I have no
18 questions at this point, Mr. Hearing Examiner.

19 THE HEARING EXAMINER: Very good.

20 Mr. Savage, does that conclude your
21 rebuttal case?

22 MR. SAVAGE: That would.

23 THE HEARING EXAMINER: Okay. Very
24 good. Is there anything further before we deal with
25 post-hearing issues?

1 MR. SAVAGE: There's --

2 MR. PARROT: Sorry. Go ahead,
3 Mr. Savage.

4 MR. SAVAGE: I was just going to say
5 there was that one matter of the special provision for
6 the pooling order.

7 THE HEARING EXAMINER: Yes. I'm glad
8 you brought it up. Excellent. Okay. So that's part
9 of the application; is it not? Or the statement of --
10 sorry -- that's the statement of the pre-hearing
11 statement?

12 MR. SAVAGE: That's correct. Exhibit
13 to the pre-hearing statement.

14 THE HEARING EXAMINER: Okay. Can you
15 give me an argument why it needs to be admitted as
16 evidence? It seems to be part of the administrative
17 record now.

18 MR. SAVAGE: I agree with that. It's
19 available for the Division's review and consideration.
20 You know, Mr. Rhodes has given explanation about why
21 it's needed. It has been supported by COG, as I
22 remember. So I think everything's on record that
23 would allow for that.

24 THE HEARING EXAMINER: Mr. Parrot?

25 MR. PARROT: Well, so Avant does not

1 agree with having that provision included in the
2 pooling order. First of all, we note that COG has
3 signed a JOA, and that would take precedence over that
4 provision anyway as would the JOAs that all the other
5 parties that have signed. And so it really is pretty
6 much inapplicable to most of the unit and would not be
7 appropriate for a unit-wide order.

8 I believe we said in the beginning that
9 we don't believe that the Commission should involve
10 itself in what is basically just a private negotiation
11 between two parties, so we think it's inappropriate to
12 include that provision. Avant and Prima can continue
13 to negotiate and come up with some kind of election
14 that works for Prima.

15 But I'd also note that the standard
16 pooling order provisions will have not dissimilar
17 functions in them, wherein the non-operator has a
18 period of time to actually pay; right?

19 So I think it would do a disservice to
20 the Commission to disrupt what is a tried and proven
21 set of provisions in normal pooling orders and adopt
22 something that is really only advocated for by a
23 single party on an entire-unit basis.

24 But we don't have an objection to it
25 being included in the record, if that's what you were

1 asking.

2 THE HEARING EXAMINER: That is what I
3 was asking.

4 MR. PARROT: Sorry for the long-winded
5 answer then.

6 THE HEARING EXAMINER: No, it's fine.
7 I'm just trying to understand what you said and make
8 some sense out of it as to the hearing record and the
9 administrative record because that's my job is to pass
10 on an administrative and a hearing record that helps
11 the Division make an educated decision.

12 And Mr. Savage, I don't have that
13 provision in front of me right now. Is there a way
14 for you to put it on our screen?

15 MR. SAVAGE: Yes. Of course.

16 THE HEARING EXAMINER: Please do.

17 MR. SAVAGE: Yes.

18 THE HEARING EXAMINER: Thank you.

19 Now, Mr. Parrot, the pre-hearing
20 statement is part of the administrative record, and so
21 you have no objection to this being part of the
22 administrative record. So let me ask Mr. McClure.

23 Mr. McClure, how would the Division use
24 something like this?

25 THE TECHNICAL EXAMINER: Usually in the

1 past we include it as if both parties agree to include
2 it in there. In this particular instance, I guess
3 it'd be at our discretion. Well, I guess regardless
4 it's at our discretion if we include it. But at this
5 point, I guess it's just a suggestion that we might
6 want to impose.

7 But normal procedure for them
8 suggesting something like this is because both parties
9 have come to an agreement to include that in there,
10 usually in exchange for dropping their protest.

11 THE HEARING EXAMINER: I see. Now I
12 understand. Okay.

13 Mr. Savage, what is your -- in your
14 mind, what is the benefit of the Division --

15 And Mr. Parrot, you said "Commission"
16 several times, but I think you meant at this point
17 the Division. Maybe you mean the Commission
18 ultimately, but right now you mean the Division.

19 MR. PARROT: I'm sorry.

20 THE HEARING EXAMINER: Mr. Savage, what
21 is the purpose in your mind of adding this to the
22 compulsory pooling order?

23 MR. SAVAGE: I'll gladly explain the
24 purpose. I also wonder -- we do have the landman from
25 Prima who was involved in drafting this. I don't know

1 if it'd be helpful for the OCD have his input as well.
2 He is online if that's something the OCD would want to
3 consider.

4 But let me -- so I'll explain to answer
5 your question. So under a standard pooling order,
6 there really is -- the working interest owners who are
7 pooled are vulnerable to having a cash call up front
8 on all the wells. In this case, there's 12 of them
9 that have been proposed.

10 Now, you know, to what extent that cash
11 call is made, some operators do on a regular basis a
12 full cash call; some do not. But it's uncertain what
13 would be done in this case. But there's definitely
14 precedent for this kind of protection because the
15 standard order does not address it.

16 So what this does is it notifies the
17 working interest owner that a well will be drilled,
18 and there's -- in this case sooner than 60 days before
19 the commencement the well will be drilled. In this
20 case, AFE would be provided. And then the pooled
21 working interest owner would have 30 days upon receipt
22 of the AFE to make an election to participate or not
23 participate.

24 At that point, they would, you know, go
25 through the process of making payment and, you know,

1 everything that the order provides for. So it would
2 be on a well-by-well basis. It would be regulated and
3 staggered so that it is manageable for a company like
4 Prima.

5 I also note that, as I recall,
6 25 percent of the working interest is being pooled.
7 Those are small owners, you know, not big, large
8 companies that can put up that kind of money upfront.
9 So it does provide a nice protection for the remaining
10 owners that are being pooled. But it certainly is
11 something that Prima is interested in having.

12 THE HEARING EXAMINER: Okay.

13 And Mr. Parrot, let me hear from your
14 perspective on why you would prefer this not to be
15 added to the compulsory pooling order.

16 MR. PARROT: Okay. Thank you. Well,
17 as I mentioned, your standard pooling orders require
18 an operator to submit well cost to non-operators and
19 then -- just estimated well cost and then subsequently
20 to submit actual well costs.

21 There's a whole series of provisions in
22 a standard pooling order that basically deal with the
23 issue of the operator submitting bills or invoices and
24 then the non-operators paying those invoices.

25 And essentially, Prima is arguing for

1 this one provision to replace the normal provisions
2 that appear in pooling orders, and Avant respectfully
3 submits that there's been no evidence submitted at
4 this hearing in favor of that drastic step and
5 departure from a normal pooling order.

6 And furthermore, this sort of
7 provision, we refer to this as a "30/30 provision."
8 So basically, the non-operator has 30 days to elect
9 and then Avant would have 30 days to drill -- or
10 commence drilling.

11 Your standard industry JOA is written
12 with a 30/90 provision, so 30 to days to election and
13 then 90 days to commence drilling. That's an industry
14 standard provision, and to reduce it to 30/30 would be
15 extremely prejudicial to Avant.

16 These sorts of things are generally
17 negotiated between parties where there's a reason for
18 a special exception. And Avant has on two separate
19 occasions offered to enter into a JOA and try to
20 negotiate a JOA with Prima, and Prima turned down that
21 option.

22 Both of those JOAs have the standard
23 30/90 provision in it. And Prima did not return to
24 Avant and say, you know, "The JOA is acceptable, but
25 we want a 30/30 or a 30/60" or something like that.

1 So really there's just no basis for
2 this. In fact, there's reasons to not include it
3 because it's such a drastic departure from the normal
4 pooling order and from standard industry practice and
5 because Prima has disregarded the attempts that Avant
6 made to arrive at something that would be kind of
7 along these lines but more in line with common
8 industry practice.

9 THE HEARING EXAMINER: Okay. I
10 understand. And as Mr. McClure said, it's there for
11 the Division to exercise its discretion to include, I
12 guess, some of it, all of it, none of it. We
13 understand that it's objected to by Avant. It's not
14 evidence. It just an Exhibit in a pre-hearing
15 statement that is part of the administrative record.

16 Mr. McClure, is there any further
17 clarification that the Division would like about this,
18 or is that enough?

19 THE TECHNICAL EXAMINER: No. I do not
20 believe that we'll need anything in addition to this,
21 Mr. Hearing Examiner.

22 THE HEARING EXAMINER: Okay. Now,
23 Mr. McClure, let's talk a little bit about -- well,
24 first of all, let's talk about Prima's exhibits
25 because they're all over the place, and it's not

1 acceptable the way they are currently submitted.

2 So Mr. Savage, you've had certain
3 exhibits admitted, and you've had certain exhibits
4 excluded from the evidentiary record in the same way
5 that Avant has.

6 Now, Avant filed this morning a very
7 good example of what I want you to file. You can see
8 that it is -- let me find it; I have it downloaded
9 here -- 240 pages.

10 The only thing -- and you don't need to
11 resubmit this. But for some reason, you did not call
12 Exhibit G-10 a rebuttal exhibit on the document itself
13 or in the table of contents. Was there a reason why?

14 MR. SAVAGE: That's Avant's --

15 THE HEARING EXAMINER: I'm asking
16 Mr. Parrot.

17 MR. SAVAGE: Yes.

18 MR. PARROT: I'm sorry, Mr. Examiner.
19 I thought that question was directed toward
20 Mr. Savage.

21 THE HEARING EXAMINER: Sorry. I was
22 using your submission as an example for Mr. Savage,
23 and then I thought of a question based on your
24 submission.

25 MR. PARROT: Okay.

1 THE HEARING EXAMINER: Your G-10, why
2 is it not labeled -- it's under the "Rebuttal
3 Exhibits," but it's not labeled as "Rebuttal" and it's
4 not on the document itself. The other rebuttal
5 exhibits say that they are Rebuttal Exhibit 12 or
6 whatever, but 10 doesn't say that. Is there a reason?

7 MR. PARROT: I mean, there's a reason,
8 but there's no material reason. We'd be happy to add
9 the word "Rebuttal" to that slide and resubmit the
10 whole packet.

11 THE HEARING EXAMINER: No, it's fine.
12 Like I said, you don't need to do anything further. I
13 think this is an excellent package here.

14 So Mr. Savage, if you're looking at
15 this document, you'll see that it has, number 1, a
16 cover letter. It's titled properly, "Notice of First
17 Amended Exhibit Packet," and that's what I want yours
18 to say as well.

19 MR. SAVAGE: Okay.

20 THE HEARING EXAMINER: It also has in
21 the body of the cover letter it explains to anyone
22 looking at it why this was filed, so I'm expecting
23 yours to do the same.

24 MR. SAVAGE: Okay.

25 THE HEARING EXAMINER: And then it has

1 a nice table of contents, which is laid out very well.
2 Every exhibit is properly marked, and the rebuttal
3 exhibits are clearly shown to be rebuttal exhibits.
4 There's nothing here that shouldn't be, and everything
5 that should be is here.

6 So that's what I want you to submit for
7 Prima so that we can take out all of the other
8 documents that we have that you have submitted
9 previously.

10 MR. SAVAGE: We'll do that. And just
11 to clarify, all our exhibits for case in chief were
12 admitted of record -- our case in chief -- and then
13 all our rebuttal exhibits were admitted except for
14 No. 9 -- Exhibit 9, which was the summary page.

15 THE HEARING EXAMINER: That's what I
16 remember.

17 James, were you taking -- do you have
18 any information to say that that's not the case?

19 THE REPORTER: I can confirm that. So
20 Prima Rebuttal Exhibits 1 through 8 were admitted, not
21 9.

22 THE HEARING EXAMINER: And what about
23 the original exhibits that were submitted?

24 THE REPORTER: Yesterday?

25 THE HEARING EXAMINER: Yes, yesterday.

1 THE REPORTER: Yes. I've got Prima
2 Exhibits A, Amended Exhibit A-1, Prima Exhibit B
3 submitted yesterday along with the Avant Exhibits and
4 Rebuttal Exhibits.

5 THE HEARING EXAMINER: Okay.

6 So Mr. Savage, you heard that yesterday
7 we admitted three exhibits of yours: A, Amended A-1,
8 and B.

9 MR. SAVAGE: Okay. I will get those
10 into a single packet and have it presentable.

11 THE HEARING EXAMINER: Okay. Thank
12 you.

13 And then Mr. Parrot, do you have any
14 questions about your exhibits, or did I review it
15 enough that you are confident that we have admitted
16 all the ones that you thought we did?

17 MR. PARROT: Thank you. No questions
18 about Avant's exhibits.

19 THE HEARING EXAMINER: Okay. Very
20 good. Okay. Let's talk a little bit about the
21 post-hearing procedure that we're going to use in this
22 case.

23 Let me first go to Mr. McClure and ask
24 you a question I've asked you before. Would you find
25 it helpful to have a post-hearing submission made up

1 of closing argument and proposed findings and
2 conclusions?

3 THE TECHNICAL EXAMINER: It could be
4 helpful if it ties all of our -- all of our testimony
5 up in a nice, tight ball, I suppose, as long as it
6 doesn't keep going on, and on, and on with rebuttals
7 to the -- to the closing argument and extend it out
8 for two months from now.

9 THE HEARING EXAMINER: That sounds
10 good.

11 So let me start with you, Mr. Parrot.
12 Once the verbatim transcript comes in, and it usually
13 takes two weeks from the last day of the hearing --

14 And that's the same; isn't it,
15 Mr. Cogswell?

16 THE REPORTER: That's correct.

17 THE HEARING EXAMINER: So Mr. Parrot
18 and Mr. Savage, two weeks from today looks like about
19 the 4th of September, so let's say that the verbatim
20 transcript is received on the 4th of September.

21 Mr. Parrot, how much time do you want
22 to submit closing argument and proposed findings and
23 conclusions?

24 MR. PARROT: Mr. Examiner, a week
25 should be sufficient, so the 11th.

1 THE HEARING EXAMINER: Okay.

2 Mr. Savage?

3 MR. SAVAGE: Can we extend it to a week
4 and a half since I don't quite have the support staff
5 that Mr. Parrot does? So let me -- September 4th --
6 if I can have that weekend, the 16th?

7 THE HEARING EXAMINER: Monday,
8 the 16th?

9 MR. SAVAGE: Yes. Thank you.

10 THE HEARING EXAMINER: Okay.

11 Mr. Parrot, do you have any reason to
12 argue that Avant would be unfairly prejudiced if the
13 closing date is the 16th of September?

14 MR. PARROT: No reason. Just wanted to
15 clarify if for some reason the transcript is delayed,
16 you know, perhaps by the holiday weekend, would that
17 necessarily change the due date?

18 THE HEARING EXAMINER: No, it would
19 not, because I would think -- and I'll ask
20 Mr. Cogswell.

21 Mr. Cogswell, do you feel as though it
22 would be delayed by more than a day?

23 THE REPORTER: I don't think so. I
24 would like to check with my office and confirm that,
25 but I -- I don't think so. So I'll confirm and let

1 Freya know.

2 THE HEARING EXAMINER: Perfect. Okay.

3 By giving Mr. Savage that extra --

4 well, by giving both parties -- it's not just Mr.

5 Savage -- that extra few days, I think would make up

6 for the fact if the verbatim transcript is delayed by

7 a day. If it's going to be more than that, what I'll

8 do is I'll ask the parties to provide proposed dates,

9 and I'll pick one.

10 But as it stands now, even if we do

11 have a delay of a day because of the holiday, and

12 maybe the transcript comes in on the 5th, do the

13 parties agree that the 16th of September is enough

14 time for post-hearing submissions?

15 MR. PARROT: Agreed.

16 MR. SAVAGE: Agreed. Thank you.

17 THE HEARING EXAMINER: Okay. Good. So

18 we have a date, and Freya will set up a calendar

19 reminder to make sure that we get those in the record.

20 So I didn't ask you, Mr. Savage, what

21 day are you submitting an exhibit packet?

22 MR. SAVAGE: One question I do have on

23 the exhibit packet. We do have some typos in there,

24 as you noticed, and we would want to correct all the

25 typos, and that would be appropriate, I believe.

1 THE HEARING EXAMINER: As long as
2 Mr. Parrot reviews it and okays it, then I'll accept
3 it with corrections. As it is now, I'm only accepting
4 the exact documents that have been admitted into the
5 evidentiary record.

6 But Mr. Parrot, are you okay to review
7 for typos?

8 MR. PARROT: I guess I'm a little
9 concerned about that just because time is of the
10 essence for Avant in getting this order approved to
11 get things like contracts in place, et cetera, and I
12 just wouldn't want a back-and-forth on typos to
13 somehow, you know, delay our process a lot.

14 I think we went through really clerical
15 errors that were in Prima's exhibits, and Prima
16 accepted those and pointed out, you know, how to
17 correct them. And I think that's part of the record
18 at this point, and I don't think that was really a
19 material part of the hearing.

20 So I don't really see the need to
21 correct typos at this point. You know, we certainly
22 acknowledge that Prima had a short amount of time to
23 prepare surrebuttal exhibits, and both parties had a
24 relatively short amount of time to prepare and submit
25 rebuttal exhibits.

1 So, you know, I think there's going to
2 be some inevitable typos in there, and Avant had a few
3 of its own, acknowledged those, and moved passed them.
4 So I think we could probably just dispense with that.

5 THE HEARING EXAMINER: Mr. Savage?

6 MR. SAVAGE: So when I referred to
7 "typos," I meant to include the clerical errors as
8 well. I would point out that Avant took the liberty
9 to edit and update its final submissions from the
10 original rebuttal exhibits that they submitted
11 previously yesterday.

12 And their updates -- their packet had
13 revisions to those. We were tolerant of that. They
14 obviously did it for clarification. We're just asking
15 that to have it clean, some exhibits we'd like to
16 address the clerical errors.

17 THE HEARING EXAMINER: Okay. Well,
18 knowing that Mr. Parrot is concerned with time, if I
19 give you a short leash, is that okay?

20 MR. SAVAGE: Yeah, let's -- I will try
21 my best to try to get it in in a timely manner; so --

22 THE HEARING EXAMINER: How about
23 Friday, close of business?

24 MR. SAVAGE: This Friday?

25 THE HEARING EXAMINER: Yes, this

1 Friday, close of business.

2 MR. SAVAGE: Could I do it Friday
3 evening? Like, have the whole day Friday if I needed
4 it?

5 THE HEARING EXAMINER: Okay. Friday
6 evening.

7 MR. SAVAGE: Okay. Then Friday
8 evening.

9 THE HEARING EXAMINER: And then we're
10 going to wait to hear from Mr. Parrot.

11 So Mr. Parrot, you'll get this
12 document. And I can't imagine it's going to be very
13 long. I think Mr. Savage's document may be 30 pages
14 in total.

15 Is that not right, Mr. Savage?

16 MR. SAVAGE: Yeah, that's about a good
17 estimate.

18 THE HEARING EXAMINER: That's what I
19 remember.

20 So Mr. Parrot, you'll have 30 pages of
21 review, but I'm not going to admit it into the
22 evidentiary record until I hear from you that it's
23 okay to admit.

24 MR. PARROT: Okay. And just so I
25 understand correctly. As Avant noted each and every

1 change in its exhibit package on a cover page, is
2 Prima also required to do that?

3 THE HEARING EXAMINER: Yes.

4 MR. PARROT: Okay. Understood. Thank
5 you.

6 THE HEARING EXAMINER: Mr. Savage,
7 you don't have a problem with that; do you?

8 MR. SAVAGE: No. That sounds very
9 fair.

10 THE HEARING EXAMINER: That gives
11 Mr. Parrot a nice roadmap to review your document.
12 And so Mr. Savage, by midnight on Friday, you will
13 submit an amended hearing packet to Mr. Parrot and
14 also to the Division, Freya, and we will wait to file
15 it until we hear from Mr. Parrot.

16 Mr. Parrot, how long will it take for
17 you to review that? A day or two?

18 MR. PARROT: I don't imagine, you know,
19 even that long if the revisions are as minor as
20 Mr. Savage is indicating. Certainly we are motivated
21 to turn around our review as quickly as we possibly
22 can, so I anticipate we'd get you something probably
23 Monday morning.

24 THE HEARING EXAMINER: That'd be great.
25 Thank you very much.

1 And then we will file that, we'll
2 remove your other exhibits, Mr. Savage, and then we
3 will wait for the verbatim transcript. As long as we
4 get it by the 5th of September, then the due date of
5 post-hearing submissions remains the 16th of
6 September. And that will be close of business, not
7 midnight, Mr. Savage.

8 MR. SAVAGE: Thank you.

9 THE HEARING EXAMINER: Okay. Well, I
10 thank Counsel. I thank the witnesses for hanging in
11 there on this multi-day hearing. I thank Mr. McClure,
12 Mr. Cogswell, and of course my law clerk who made this
13 possible.

14 Is there anything more before we go off
15 the record?

16 MR. PARROT: Nothing here,
17 Mr. Examiner, but I do likewise extend sincere
18 gratitude and appreciation to you and all of your
19 staff.

20 THE HEARING EXAMINER: Thank you. It's
21 appreciated.

22 Mr. Savage, anything further?

23 MR. SAVAGE: Yes. That's my same
24 sentiment, and I appreciate it very much. Thank you.

25 THE HEARING EXAMINER: Thank you, both

1 of you. I appreciate that it was a fair fight, and I
2 think you both made good points throughout the hearing
3 at different points, and so thank you for an
4 intellectually stimulating day and a half.

5 All right. We're off the record.

6 Thank you.


7 (Whereupon, at 3:41 p.m., the
8 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. September 5, 2024



JAMES COGSWELL
Notary Public in and for the
State of New Mexico

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CERTIFICATE OF TRANSCRIBER

I, JACOB MYERS, 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.

September 5, 2024



JACOB MYERS

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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