STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION SANTA FE, NEW MEXICO

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IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:
Case No. 24544

Docket No. 34-24

_____

HEARING - DAY 2

DATE: Wednesday, August 21, 2024

TIME: 10:59 a.m.

BEFORE: Hearing Examiner Gregory A. Chakalian

LOCATION: Remote Proceeding
Pecos Hall
Wendell Chino Building
1220 South Saint Francis Drive
Santa Fe, NM 87505

REPORTED BY: James Cogswell

JOB NO.: 6880567

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

I N D E X

WITNESSES:	DX	CX	RDX	RCX
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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.)	

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

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

MR. PARROT: We have. Thank you.

THE HEARING EXAMINER: All right. Thank you.

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

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

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

Avant, are there any objections to these eight exhibits?

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

THE HEARING EXAMINER: Yes, Mr. Parrot.

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

THE HEARING EXAMINER: Okay.

Mr. Savage, why don't you respond.

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

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

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

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

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

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

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

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

MR. VILLESCAS: Good morning, sir. Dylan Villescas of Hinkle Shanor LLP, appearing on behalf of BTA oil producers. Apologies for the tardiness.

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

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

MR. VILLESCAS: Yes, sir. Understood. Thank you. I appreciate it.

THE HEARING EXAMINER: Okay. I'm sorry

that you were inconvenienced.

MR. VILLESCAS: No problem at all. Thank you.

THE HEARING EXAMINER: All right. Thank you.

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

MR. VILLESCAS: I have from the spreadsheet or the document you sent --

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

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

THE HEARING EXAMINER: Thank you, Mr. Parrot.

MR. PARROT: Sure.

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

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

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

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

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

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

So if Prima has new data or analysis

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

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

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

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

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

he used Avant's rebuttal exhibits.

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

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

THE HEARING EXAMINER: Sure.

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

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

MR. SAVAGE: Thank you.

THE HEARING EXAMINER: Okay.

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

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

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

WHEREUPON,

SHANE KELLY,

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

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

DIRECT EXAMINATION

BY MR. PARROT:

Q And Mr. Kelly --

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

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

THE HEARING EXAMINER: Yes. Thank you.

THE WITNESS: Perfect.

BY MR. PARROT:

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

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

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

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

BY MR. PARROT:

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

A [No audible response.]

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

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

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

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

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

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

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

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

A That is correct, yes.

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

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

Q Okay. So please present Exhibit G-12.

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

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

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

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

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

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

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

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

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

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

A Sure.

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

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

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

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

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

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

Q Mr. Kelly, do you recall --

A Sorry. Go ahead.

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

there.

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

A I do.

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

A I do.

Q And would you fully agree with that characterization?

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

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

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

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

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

MR. SAVAGE: Understood. Yes. Thank you.

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

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

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

BY MR. PARROT:

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

just gave us for slide G-12?

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

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

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

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

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

information on these slides for -- from their argument.

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

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

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

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

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

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

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

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

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

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

Q Give me just one example.

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

Q Understood. Thank you.

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

A No, thanks.

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

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

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

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

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

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

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

A That is correct, yeah.

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

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

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

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

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

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

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

A No, they were not.

Q Okay. Anything final about slide G-14?

A No -- no, thank you.

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

A Yes, that's correct.

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

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

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

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

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

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

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

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

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

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

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

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

A That is correct.

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

A Yeah -- yeah, that is correct.

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

A That is correct.

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

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

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

A Correct.

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

A Yeah, that's correct.

Q Okay --

THE HEARING EXAMINER: Mr. Parrot?

MR. PARROT: Yes.

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

MR. PARROT: Understood.

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

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

THE HEARING EXAMINER: Thank you.

BY MR. PARROT:

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

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

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

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

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

Q Is there any other information -- sorry.

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

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

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

And Mr. Kelly, did you create these exhibits?

MR. KELLY: I did, yes.

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

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

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

THE HEARING EXAMINER: Thank you, sir.

BY MR. PARROT:

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

A No. That's it.

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

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

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

slide; correct?

A Correct.

Q Okay.

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

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

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

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

THE HEARING EXAMINER: Thank you.

BY MR. PARROT:

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

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

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

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

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

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

A Sure.

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

A Correct.

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

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

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

That's really it on that slide.

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

A Yeah, we are.

Q Okay. Please explain this slide.

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

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

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

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

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

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

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

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

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

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

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

A Yes. Every time.

Q And same question for the Third Bone Spring

where you have six wells.

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

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

A No. I think that's it.

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

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

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

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

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

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

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

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

Q Okay. Thank you.

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

THE HEARING EXAMINER: Okay.

Mr. Savage?

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

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

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

MR. PARROT: You're welcome.

MR. SAVAGE: Definitely at the bottom.

CROSS-EXAMINATION

BY MR. SAVAGE:

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

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

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

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

A Yes, some operators are in certain areas.

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

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

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

A Yeah, that's correct.

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

actually six wells per mile?

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

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

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

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

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

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

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

A The main factor would be the rock and how we

feel it's going to produce.

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

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

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

A It's hard to see that chart.

Q Do I need to --

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

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

A That's correct.

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

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

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

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

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

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

Q When were those two wells in the middle drilled?

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

Q So approximately around the same time?

A It looks like it. Two months apart.

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

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

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

A That statement is correct.

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

A Correct.

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

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

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

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

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

MR. SAVAGE: Okay. Thank you.

BY MR. SAVAGE:

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

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

intentions.

MR. SAVAGE: I believe I can ask --

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

MR. SAVAGE: Yes, sir.

BY MR. SAVAGE:

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

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

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

A It can; it cannot. It depends.

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

A Yep, it does appear so, yes.

Q And you point out that this can impact well

results. Would you agree with that?

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

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

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

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

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

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

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

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

the stacked wells played a factor in that?

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

Q So it could be a large factor?

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

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

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

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

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

and the 29-1H.

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

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

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

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

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

A Yeah -- yeah, that is in there.

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

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

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

A Yeah, that's correct.

Q And you agree that the -- if I remember

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

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

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

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

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

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

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

A That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A That is correct.

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

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

Q I'll withdraw the question.

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

A Yes, that's what I said.

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

life of the well?

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

Q That's what I asked, yes.

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

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

A Not necessarily, no.

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

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

THE HEARING EXAMINER: Mr. Savage?

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

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

discussed.

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

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

MR. SAVAGE: Okay.

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

THE WITNESS: Can you please repeat the question.

BY MR. SAVAGE:

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

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

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

at the edge first?

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

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

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

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

A Yes.

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

And is it correct that they show interference?

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

Q Okay. Then let's move to --

A Irrelevant frack design.

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

A They could; they could not.

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

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

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

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

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

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

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

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

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

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

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

A That is correct.

Q And do you have production data that shows that?

A Do you?

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

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

aggregation works when you move to these tighter spacing patterns.

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

Q Isn't it -- go ahead.

A Four is normal here. I'm finished.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. PARROT: Okay. Thank you.

BY MR. SAVAGE:

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

A Can you hear me? I'm sorry.

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

A Yes, please.

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

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

The rock changes quite significantly as

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

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

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

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

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

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

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

MR. SAVAGE: Okay. Yes.

BY MR. SAVAGE:

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

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

THE HEARING EXAMINER: Sustained.

Mr. Savage, please rephrase.

MR. SAVAGE: Yes.

BY MR. SAVAGE:

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

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

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

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

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

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

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

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

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

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

MR. SAVAGE: Yes.

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

MR. SAVAGE: Okay. Yes. Thank you.

BY MR. SAVAGE:

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

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

THE HEARING EXAMINER: If the witness --

MR. SAVAGE: I'm --

THE HEARING EXAMINER: Hold on, Mr. Savage.

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

But we can't keep rephrasing the question endlessly.

So can the witness answer this question?

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

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

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

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

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

THE HEARING EXAMINER: Thank you, Mr. Savage.

Mr. McClure?

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

THE HEARING EXAMINER: Okay.

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

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

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

MR. PARROT: It does.

THE HEARING EXAMINER: All right.

Mr. Savage, do you have a rebuttal case?

MR. SAVAGE: We do. Let me --

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

MR. SAVAGE: Right.

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

MR. SAVAGE: He did.

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

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

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

MR. SAVAGE: Excuse me. Yes, sir.

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

MR. SAVAGE: Yes, sir.

THE HEARING EXAMINER: Go ahead.

MR. SAVAGE: Let me pull this up.

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

WHEREUPON,

DAVID RHODES,

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

THE WITNESS: Yes, sir.

THE HEARING EXAMINER: Thank you.

DIRECT EXAMINATION

BY MR. SAVAGE:

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

A I do.

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

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

It also, with these three specific examples

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

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

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

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

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

Q And is there anything else you would like to

inform the OCD about this particular exhibit?

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

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

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

THE HEARING EXAMINER: Okay.

Mr. Parrot?

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

Basically, the same standard that

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

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

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

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

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

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

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

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

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

(Prima Rebuttal Exhibit 1 was received into evidence.)

Mr. Savage, your next rebuttal exhibit.

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

THE HEARING EXAMINER: Go ahead.

MR. SAVAGE: Yes.

BY MR. SAVAGE:

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

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

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

So when they're basically in the very first

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

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

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

A Correct.

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

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

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

THE HEARING EXAMINER: Mr. Parrot?

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

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

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

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

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

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

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

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

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

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

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

(Prima Rebuttal Exhibit 2 was received into evidence.)

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

points. Just what's new. Only --

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

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

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

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

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

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

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

MR. SAVAGE: Yes, sir.

BY MR. SAVAGE:

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

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

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

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

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

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

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

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

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

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

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

MR. SAVAGE: We have not.

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

(Prima Rebuttal Exhibit 3 was received into evidence.)

What's your next one?

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

BY MR. SAVAGE:

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

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

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

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

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

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

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

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

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

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

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

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

THE HEARING EXAMINER: Okay. This exhibit is entered. That's Exhibit Rebuttal 4, Prima.

(Prima Rebuttal Exhibit 4 was received into evidence.)

MR. SAVAGE: Correct. Thank you.

BY MR. SAVAGE:

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

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

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

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

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

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

(Prima Rebuttal Exhibit 5 was received into evidence.)

Number 6?

BY MR. SAVAGE:

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

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

indicative of sufficient well density and completion size."

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

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

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

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

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

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

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

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

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

THE HEARING EXAMINER: Okay. This is admitted.

(Prima Rebuttal Exhibit 6 was received into evidence.)

Let's go on to number 7.

BY MR. SAVAGE:

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

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

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

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

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

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

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

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

(Prima Rebuttal Exhibit 7 was received into evidence.)

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

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

//

(Prima Rebuttal Exhibit 9 was marked for identification.)

BY MR. SAVAGE:

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

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

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

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

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

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

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

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

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

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

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

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

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

THE HEARING EXAMINER: Rebuttal Exhibit 8 is admitted.

(Prima Rebuttal Exhibit 8 was received into evidence.)

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

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

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

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

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

BY MR. SAVAGE:

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

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

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

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

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

THE HEARING EXAMINER: Sure.

BY MR. SAVAGE:

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

A I have.

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

A I do.

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

THE HEARING EXAMINER: Thank you.

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

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

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

MR. PARROT: Fifteen minutes?

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

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

MR. PARROT: I think we could probably

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

THE HEARING EXAMINER: Okay.

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

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

THE HEARING EXAMINER: All right.

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

MR. PARROT: It does not. Thank you.

THE HEARING EXAMINER: Okay.

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

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

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

THE TECHNICAL EXAMINER: No. You

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

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

And Mr. Cogswell, what about you?

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

(Off the record.)

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

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

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

MR. PARROT: Yes.

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

MR. PARROT: Yes.

THE HEARING EXAMINER: Okay. Very good.

Mr. Rhodes, I remind you that you

remain under oath.

Mr. Savage, are you ready to begin?

MR. SAVAGE: I am. Thank you.

THE HEARING EXAMINER: All right.

Mr. Parrot, please proceed.

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

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

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

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

THE HEARING EXAMINER: Very good.

Mr. Savage, does that conclude your rebuttal case?

MR. SAVAGE: That would.

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

MR. SAVAGE: There's --

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

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

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

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

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

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

THE HEARING EXAMINER: Mr. Parrot?

MR. PARROT: Well, so Avant does not

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

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

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

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

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

asking.

THE HEARING EXAMINER: That is what I was asking.

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

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

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

MR. SAVAGE: Yes. Of course.

THE HEARING EXAMINER: Please do.

MR. SAVAGE: Yes.

THE HEARING EXAMINER: Thank you.

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

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

THE TECHNICAL EXAMINER: Usually in the

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

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

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

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

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

MR. PARROT: I'm sorry.

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

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

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

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

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

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

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

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

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

THE HEARING EXAMINER: Okay.

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

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

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

And essentially, Prima is arguing for

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

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

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

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

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

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

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

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

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

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

acceptable the way they are currently submitted.

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

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

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

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

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

MR. SAVAGE: Yes.

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

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

MR. PARROT: Okay.

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

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

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

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

MR. SAVAGE: Okay.

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

MR. SAVAGE: Okay.

THE HEARING EXAMINER: And then it has

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

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

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

THE HEARING EXAMINER: That's what I remember.

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

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

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

THE REPORTER: Yesterday?

THE HEARING EXAMINER: Yes, yesterday.

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

THE HEARING EXAMINER: Okay.

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

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

THE HEARING EXAMINER: Okay. Thank you.

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

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

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

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

of closing argument and proposed findings and conclusions?

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

THE HEARING EXAMINER: That sounds good.

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

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

THE REPORTER: That's correct.

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

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

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

THE HEARING EXAMINER: Okay.

Mr. Savage?

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

THE HEARING EXAMINER: Monday, the 16th?

MR. SAVAGE: Yes. Thank you.

THE HEARING EXAMINER: Okay.

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

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

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

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

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

Freya know.

THE HEARING EXAMINER: Perfect. Okay.

By giving Mr. Savage that extra -- well, by giving both parties -- it's not just Mr. Savage -- that extra few days, I think would make up for the fact if the verbatim transcript is delayed by a day. If it's going to be more than that, what I'll do is I'll ask the parties to provide proposed dates, and I'll pick one.

But as it stands now, even if we do have a delay of a day because of the holiday, and maybe the transcript comes in on the 5th, do the parties agree that the 16th of September is enough time for post-hearing submissions?

MR. PARROT: Agreed.

MR. SAVAGE: Agreed. Thank you.

THE HEARING EXAMINER: Okay. Good. So we have a date, and Freya will set up a calendar reminder to make sure that we get those in the record.

So I didn't ask you, Mr. Savage, what day are you submitting an exhibit packet?

MR. SAVAGE: One question I do have on the exhibit packet. We do have some typos in there, as you noticed, and we would want to correct all the typos, and that would be appropriate, I believe.

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

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

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

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

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

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

THE HEARING EXAMINER: Mr. Savage?

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

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

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

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

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

MR. SAVAGE: This Friday?

THE HEARING EXAMINER: Yes, this

Friday, close of business.

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

THE HEARING EXAMINER: Okay. Friday evening.

MR. SAVAGE: Okay. Then Friday evening.

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

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

Is that not right, Mr. Savage?

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

THE HEARING EXAMINER: That's what I remember.

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

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

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

THE HEARING EXAMINER: Yes.

MR. PARROT: Okay. Understood. Thank you.

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

MR. SAVAGE: No. That sounds very fair.

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

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

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

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

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

MR. SAVAGE: Thank you.

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

Is there anything more before we go off the record?

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

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

Mr. Savage, anything further?

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

THE HEARING EXAMINER: Thank you, both

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

All right. We're off the record. Thank you.

(Whereupon, at 3:41 p.m., the proceeding was concluded.)

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

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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