

1 STATE OF NEW MEXICO

2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

3 OIL CONSERVATION DIVISION SANTA FE, NEW MEXICO

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5 -----  
6 IN THE MATTER OF THE HEARING

Docket No.

7 CALLED BY THE OIL CONSERVATION

34-24

8 DIVISION FOR THE PURPOSE OF

9 CONSIDERING:

10 Case No. 24544

11 -----  
12 HEARING

13 DATE: Tuesday, August 20, 2024

14 TIME: 12:57 p.m.

15 BEFORE: Hearing Examiner Gregory A. Chakalian

16 LOCATION: Pecos Hall

17 Wendell Chino Building

18 1220 South Saint Francis Drive

19 Santa Fe, NM 87505

20 REPORTED BY: James Cogswell

21 JOB NO.: 6781993  
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A P P E A R A N C E S (Cont'd)

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

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Dean McClure, Technical Examiner - Oil  
Conservation Division  
Freya Tschantz, Law Clerk -- Oil Conservation  
Division

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E X H I B I T S

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P R O C E E D I N G S

THE REPORTER: Alrighty. It is 12:57 p.m. on August 20, 2024. We are here at the Oil Conservation Division in Pecos Hall, conducting a special hearing today. Parties, state your name and case numbers, please.

MR. PARROT: This is James. Do I need -- sorry.

THE HEARING EXAMINER: Press the button to the right where it's green.

MR. PARROT: This is James Parrot with Beatty & Wozniak representing Avant and our case number's 24544.

THE HEARING EXAMINER: Thank you.

MR. SAVAGE: I'm Darin Savage with Abadie & Schill, appearing on behalf of Prima Exploration, Incorporated in opposition to Avant's application and it was also case 24544.

THE HEARING EXAMINER: Thank you. And Mr. Savage, you have co-counsel?

MR. SAVAGE: I have Mr. Zimsky is appearing, making an appearance, but he is not at the table so we can --

THE HEARING EXAMINER: But he's with you virtually.



1 MR. SAVAGE: He is with me with  
2 co-counsel. That'll be correct.

3 THE HEARING EXAMINER: And you said  
4 Zimsky?

5 MR. SAVAGE: Bill -- William Zimsky.  
6 Bill Zimsky.

7 THE HEARING EXAMINER: Okay. Thank  
8 you.

9 And do we have another party?

10 MS. KESSLER: Good afternoon, Jordan  
11 Kessler on behalf of EOG Resources. We're appearing  
12 as an interested party but not taking a position in  
13 this case.

14 THE HEARING EXAMINER: Ms. Kessler, are  
15 you going to have any cross-examination questions?

16 MS. KESSLER: I don't anticipate  
17 cross-examination. Just we are here because we're  
18 interested in the motion and order that were filed.

19 THE HEARING EXAMINER: All right. Do  
20 you want to handle that first?

21 MS. KESSLER: We're not taking a  
22 position. I was just interested in the outcome and  
23 testimony and evidence that may be related to that.

24 THE HEARING EXAMINER: Okay. So do you  
25 want to be specific about which motion you're talking

1 about?

2 MS. KESSLER: The motion to dismiss and  
3 the order denying that motion.

4 THE HEARING EXAMINER: Okay. Very  
5 good.

6 MS. KESSLER: So there was additional  
7 testimony and evidence that was going to be presented,  
8 that's what we're interested in listening to today.  
9 That's why I'm here.

10 THE HEARING EXAMINER: Okay.

11 Now, Mr. Savage representing Prima, it  
12 was your motion to dismiss. Correct?

13 MR. SAVAGE: That is correct. Do you  
14 want me to comment on that?

15 THE HEARING EXAMINER: I mean, there  
16 was an order filed.

17 MR. SAVAGE: There was an order filed.  
18 That's correct.

19 THE HEARING EXAMINER: I'm not aware of  
20 any additional evidence that we would be --

21 MR. SAVAGE: We did not. In fact, our  
22 chief -- case-in-chief focuses on overdevelopment as  
23 an engineering issue. We will have our landman  
24 available for any questions, but the primary objection  
25 focuses on the engineer.

1 THE HEARING EXAMINER: Perfect.

2 Is that what you were talking about,  
3 Ms. Kessler?

4 MS. KESSLER: I thought I saw an order  
5 come through denying the motion to dismiss.

6 THE HEARING EXAMINER: It is and that's  
7 why we're here today.

8 MS. KESSLER: Okay.

9 THE HEARING EXAMINER: It was -- give  
10 me one moment. Now that I can access the database, I  
11 can pull it up the order.

12 And who had the question? While I'm  
13 looking for the order about the rebuttal exhibits.

14 MR. SAVAGE: Mr. Examiner, I didn't  
15 pose a question, but I have a question about the  
16 rebuttal exhibits.

17 THE HEARING EXAMINER: Well, hold on  
18 one second.

19 Who had the question that was relayed  
20 by email to Freya Tschantz?

21 MS. GRAHAM: Good morning,  
22 Mr. Examiner.

23 THE HEARING EXAMINER: Morning.

24 MS. GRAHAM: Sophia Graham with Beatty  
25 & Wozniak as co-counsel for Avant Operating. We had

1 emailed the Division asking about submitting rebuttal  
2 exhibits at the hearing.

3 THE HEARING EXAMINER: Great. And did  
4 you get your answer?

5 MS. GRAHAM: Yes. We did.

6 THE HEARING EXAMINER: Okay. Good.

7 MS. GRAHAM: And I appreciate your time  
8 on that.

9 THE HEARING EXAMINER: Definitely. And  
10 the answer is always going to be the same when it  
11 comes to rebuttal exhibits. A rebuttal case is a very  
12 narrow case. It's a case where you can demonstrate  
13 that you were surprised by something that the other  
14 side that you would not have been able to prepare for  
15 that sort of -- that fact. And this rebuttal is going  
16 to, in some way, balance that fact out. And then  
17 those exhibits are available to submit at any time  
18 before the record closes as long as you have a witness  
19 that can be cross-examined so that it can be given the  
20 weight that it deserves. Does that answer your  
21 question?

22 MS. GRAHAM: Yes, Mr. Examiner.

23 THE HEARING EXAMINER: All right.

24 Sounds good.

25 Mr. Savage, your question.

1                   MR. SAVAGE: Yes. My question is: in  
2 my experience and based on your description, the  
3 rebuttal exhibits have been at most a few, a handful,  
4 somebody would be surprised and they would submit one  
5 or two and to be addressed. This was a large package.  
6 It was delivered two hours before a hearing that has  
7 already been truncated to 1 p.m., 27 rebuttal  
8 exhibits. That's more like a -- part of the original  
9 direct package of exhibits. So, you know, we have a  
10 bit of an objection to those. Because of the  
11 truncated nature of the hearing, we would ask,  
12 respectfully request, that maybe the rebuttal exhibits  
13 could be addressed tomorrow at some time, maybe 10:30  
14 or 11 just to address that and do it in the format of  
15 presentation of the rebuttal exhibits and then  
16 surrebuttal if that would be appropriate.

17                   THE HEARING EXAMINER: Okay.

18                   Mr. Parrot, I'll come to you in just a  
19 moment, but I feel like I can answer Mr. Savage's  
20 objection.

21                   These rebuttal exhibits are not in  
22 evidence. They have not been admitted into evidence.  
23 Avant will have to show that the criteria is met from  
24 what I just said. You can make an argument at that  
25 time if they choose to offer rebuttal exhibits. And

1 if I do allow them in, I'm certainly going to give you  
2 an opportunity to present evidence, whether it be  
3 sworn testimony or whether it be your own rebuttal  
4 exhibits, because the purpose of an administrative  
5 hearing is to gather as much relevant reliable  
6 evidence on the issue as possible. So every party  
7 will have an opportunity to present to me relevant,  
8 reliable evidence that does not surprise the other  
9 side.

10 And so I'm looking at the order denying  
11 the motion to dismiss, and it's a very short order and  
12 it's based on the rule and the clarification of the  
13 compulsory pooling process that our acting director  
14 issued on July 12.

15 So, Ms. Kessler, is that clear from the  
16 order?

17 MS. KESSLER: It is clear,  
18 Mr. Examiner. I believe what I was looking to was  
19 paragraph 4 of the order.

20 THE HEARING EXAMINER: Very good.

21 MS. KESSLER: And so that --

22 THE HEARING EXAMINER: Evidence shall  
23 be relevant and admissible at the August 20 contested  
24 hearing on the applicability of a development plan  
25 option. Exactly. Because I wanted to try to leave as

1 much room with the understanding of this clarification  
2 that was issued. I want to try to leave as much room  
3 for the opposition to show how that development plan  
4 was in some way not appropriate. And that's really  
5 why -- what that sentence meant.

6 MS. KESSLER: Thank you, Mr. Examiner.  
7 EOG agrees with the way that the order was entered and  
8 agrees with the concept of the order. We're just here  
9 to listen to that evidence.

10 THE HEARING EXAMINER: Thank you.

11 Okay, now, Mr. Parrot --

12 MR. FELDEWERT: Mr. Examiner.

13 MS. MCLEAN: Mr. Examiner.

14 THE HEARING EXAMINER: Yes.

15 MS. MCLEAN: Wait, I still --

16 THE HEARING EXAMINER: Entrance of  
17 appearance?

18 MS. MCLEAN: Yes.

19 THE HEARING EXAMINER: Okay.

20 Yes, Mr. Feldewert.

21 MR. FELDEWERT: Good afternoon, Michael  
22 Feldewert, the office of Holland & Hart appearing on  
23 behalf of COG Operating LLC.

24 THE HEARING EXAMINER: And what  
25 position are you taking?

1 MR. FELDEWERT: We don't have a  
2 position in the case except when I looked at the  
3 flurry of filings at the end, there was a second  
4 amended pre-hearing statement that was filed by Prima  
5 Exploration, which had attached to it, as Exhibit 1,  
6 what they titled as "Special Provision to the Pooling  
7 Order." It's drafted to apply to all of the pooled  
8 working interest owners. COG does not object to that  
9 and in fact, believe it's appropriate given the number  
10 of wells that are under consideration. So we are in  
11 favor of having the Exhibit 1, "Special Provision to  
12 the Pooling Order," adopted for any pooling order that  
13 is issued in this matter.

14 THE HEARING EXAMINER: Thank you. Is  
15 there anything else?

16 MR. FELDEWERT: That's it and that's  
17 going to be the extent of my participation.

18 THE HEARING EXAMINER: Okay.

19 MR. FELDEWERT: So I'm going to listen  
20 for a while, but after a while I may drop off, if  
21 that's okay.

22 THE HEARING EXAMINER: All right.  
23 Thank you. It's understandable.

24 Mr. Savage, in which filing is the  
25 second amended document that he's talking about?



1 MR. SAVAGE: That would be the  
2 pre-hearing statement. That would be the pre-hearing  
3 statement that we filed a week ago and it -- it was  
4 filed as second amended pre-hearing statement. That  
5 would be in the record.

6 THE HEARING EXAMINER: Let me look.

7 MR. SAVAGE: Okay. Our imaging system  
8 does not provide titles of documents so it -- you have  
9 to look through many to find what you're --

10 THE TECHNICAL EXAMINER: Mr. Hearing  
11 Examiner, it's the one that was submitted 8/15 in our  
12 system. Should be the last image.

13 THE HEARING EXAMINER: Perfect. Thank  
14 you very much.

15 THE TECHNICAL EXAMINER: Sure.

16 THE HEARING EXAMINER: When you don't  
17 have the help of a technical examiner directing you to  
18 the proper document, titles would be helpful in our  
19 imaging system.

20 Okay. So we have a second amended  
21 pre-hearing statement filed on 8/15. So, Mr. Parrot,  
22 any objections?

23 MR. PARROT: I'm sorry. Any objections  
24 to?

25 THE HEARING EXAMINER: The second

1 amended pre-hearing statement.

2 MR. PARROT: I'm not entirely sure --  
3 sorry. I'm not entirely sure what the question is.  
4 Do I have --

5 THE HEARING EXAMINER: That's okay.  
6 Then the answer must be no then if you're not sure.  
7 That's fine.

8 MR. PARROT: Are you asking if I have  
9 objections to the contents of the pre-hearing  
10 statement or to --

11 THE HEARING EXAMINER: No.

12 MR. PARROT: Okay.

13 THE HEARING EXAMINER: No.

14 MR. PARROT: Or to the fact that it was  
15 submitted on Thursday?

16 THE HEARING EXAMINER: Yes.

17 MR. PARROT: Okay. I do not have  
18 objections to the fact that it was submitted on  
19 Thursday, August 15th --

20 THE HEARING EXAMINER: Thank you.

21 MR. PARROT: -- at approximately noon.

22 THE HEARING EXAMINER: That's what I'm  
23 asking.

24 MR. PARROT: Okay. Thank you.

25 THE HEARING EXAMINER: Thank you very

1 much.

2 MR. PARROT: Yeah.

3 THE HEARING EXAMINER: Okay, now,  
4 Mr. Savage, in this second amended pre-hearing  
5 statement, Mr. Feldewert discussed another document.  
6 I have only a seven-page document here. Where am I  
7 looking for that?

8 MR. SAVAGE: Mr. Hearing Examiner, it's  
9 attached as Exhibit 1 to the pre-hearing statement and  
10 it should be at the last page. And that special  
11 provision, it was also attached to the original  
12 pre-hearing statement.

13 THE HEARING EXAMINER: Got it. Thank  
14 you. I see it now. Exhibit 1. I see it.

15 And Mr. Feldewert and COG are in favor  
16 of that.

17 And EOG and Ms. Kessler, have you  
18 reviewed that?

19 MS. KESSLER: I'm trying to pull the  
20 document up right now. It's some technical issues so  
21 --

22 THE HEARING EXAMINER: Okay. All  
23 right.

24 Well, I'm sure will get to it at some  
25 point, Mr. Savage.

1 I'm going to go to Mr. Parrot.

2 Mr. Parrot, since this is your case,  
3 your application that you've filed, do you want to  
4 give me sort of a brief synopsis of what Avant is  
5 looking for here?

6 MS. MCLEAN: Mr. Examiner, may I enter  
7 my appearance before Mr. Parrot?

8 THE HEARING EXAMINER: Yes, please. I  
9 didn't know you hadn't.

10 MS. MCLEAN: Jackie McLean from Hinkle  
11 Shanor on behalf of BTA Oil Producers.

12 THE HEARING EXAMINER: BTA?

13 MS. MCLEAN: Correct. And we are just  
14 working interest owner and will be observing and not  
15 offering testimony or exhibits.

16 THE HEARING EXAMINER: So in other  
17 words, you take no position and you don't favor the  
18 opposition or the application?

19 MS. MCLEAN: Correct.

20 THE HEARING EXAMINER: Okay. Thank  
21 you.

22 So, Mr. Parrot, do you want to give me  
23 a very brief synopsis of what Avant is asking the  
24 Division to approve?

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

1 Do I need to give time to anybody else  
2 to enter an appearance?

3 THE HEARING EXAMINER: I don't know. I  
4 don't think so, but they seem to be coming out of  
5 nowhere.

6 MR. PARROT: Yeah.

7 If it'd please the Division, my  
8 colleague, Ms. Graham will give a brief opening  
9 statement.

10 THE HEARING EXAMINER: Thank you.

11 MS. GRAHAM: Mr. Examiner, if it may  
12 please the Division, in this case, Avant seeks an  
13 order to approve a non-standard 1280 acre unit,  
14 horizontal space unit, composed of all of sections 25  
15 and 36, township 18 south, range 33 east Lea County,  
16 New Mexico, and to pool all the uncommitted mineral  
17 interest owners in the Bone Spring formation. Avant  
18 seeks to dedicate to the unit 12 Royal Oak Fed Com  
19 wells with 4 of the wells being drilled in the first  
20 bench, 4 of the wells being drilled in the second  
21 bench and 4 of the wells to be drilled in the third  
22 bench.

23 Avant is proposing a desirable  
24 development plan that is entirely consistent and in  
25 line with other development plans in the area for the

1 Bone Spring formation. Not only has Avant proposed a  
2 clean, very typical development plan, but it has  
3 brought in 75 percent of the working interest owners  
4 as committed parties. Yet Avant's plan is being  
5 protested by Prima, a working interest owner with a  
6 miniscule interest in the unit. Prima has proposed a  
7 change to Avant's development plan to reduce the  
8 number of wells and in doing so, is dictating Avant's  
9 development plan. Avant can operate its own acreage  
10 and Prima is thwarting an otherwise optimal plan.

11 This protest is different than a normal  
12 operator dispute. This is not a protest with two  
13 operators and two competing development plans. And  
14 the seven factors which are used by the Division to  
15 weigh each operator's competing interest do not apply  
16 here where there is no competing development plan.  
17 This not a case where no deference is given to either  
18 operator. In fact, deference must be given to Avant  
19 for two reasons: one, Prima does not have a competing  
20 development plan and, two, where there's a  
21 supermajority interest owner being protested by 2.75  
22 working interest owner, there's a compelling  
23 presumption in favor of Avant's development plan.

24 Thus, the Division needs to accord a  
25 higher degree of deference to Avant. Unless Prima can

1 show clear error or abuse in the development area, the  
2 Division should defer to Avant's proposed development  
3 plan. Avant will provide land exhibits, which will  
4 show that the proposed plan is a normal, typical  
5 horizontal spacing unit, that Avant has a super  
6 majority working interest and that Avant has fulfilled  
7 its obligation to engage in good faith negotiations.  
8 Avant will also provide geology exhibits which will  
9 show that geology conforms with the geological  
10 development in the area.

11 And lastly, Avant will provide a  
12 reservoir engineering and operational exhibits which  
13 will show that Avant's development plan is squarely  
14 within well-established developmental norms for the  
15 area and will prevent waste and will protect  
16 correlative rights.

17 This case boils down to a difference of  
18 opinions, a difference of opinion between a highly  
19 experienced operator with active operations in the  
20 region and a minority working interest owner. Where  
21 difference of opinion exists, the very minor working  
22 interest owner cannot be allowed to dictate the well-  
23 founded plans of the operator and allowing Prima to  
24 request the change of the number of proposed wells  
25 enables Prima to force Avant's hand in its own

1 development on its own acreage. In conclusion, the  
2 Division should defer to Avant in this matter,  
3 especially given how standard the development plan is.  
4 We would, therefore, assert Avant be afforded a high  
5 degree of deference to its proposed development plan.

6 THE HEARING EXAMINER: Thank you,  
7 Ms. Graham.

8 Mr. Savage, that was basically an  
9 opening statement. Would you give a brief opening  
10 statement on why a working interest owner should, as  
11 Ms. Graham stated, the tail wag the dog?

12 MR. SAVAGE: Thank you, Mr. Hearing  
13 Examiner.

14 To paraphrase a great poet, "When you  
15 come to a fork in the road, take the road less  
16 traveled." Unfortunately for the present case, Prima  
17 Exploration Incorporated does not have and did not  
18 have the luxury to take only one road when it  
19 encountered the pooling application filed by Avant.  
20 As a non-operator with about 2.75 percent working  
21 interest in the proposed unit, which gives us standing  
22 and the right to make an objection and a case for an  
23 objection, it had no choice when it encountered the  
24 pooling application filed by Avant.

25 Prima found that it had to travel two



1 roads concurrently. On one road, Prima had its  
2 interest on the market and was working with bidders.  
3 And is working with bidders. On the other road, Prima  
4 still owned the interest and still owns the interest  
5 today at the time of this hearing and therefore,  
6 responsible and liable for its ownership. And Prima  
7 is facing having its interest forced pooled and  
8 subjected to a development plan that Prima has  
9 determined to be flawed in its conception and its  
10 presentation. It is the second road that brings the  
11 parties here today before the Division.

12 In this case-in-chief, Prima will  
13 demonstrate to the Division that Avant's proposed plan  
14 with its well count of 12 wells, 4 wells in each bench  
15 of the Bone Spring will overdevelop the unit,  
16 resulting in the drilling of unnecessary wells, harm  
17 to the reservoir, substantial financial harm and  
18 detriment to Prima as a working interest owner as well  
19 as a burden on other working interest owners in the  
20 unit. Today, Prima's objection and its case-in-chief  
21 focuses on the engineering and the technical  
22 characteristics of Avant's development plan.

23 Prima will show that Avant's plan is  
24 flawed and therefore, ask the Division after review  
25 and consider of the evidence presented to deny Avant's

1 pooling application as presented. Now, Avant has said  
2 that Prima can -- because it only has a 2.75 percent  
3 working interest cannot dictate the terms of its  
4 development plan. But Prima would like to note that  
5 it is the Oil and Gas Act that dictates the terms of a  
6 development plan. And if the plan proposes drilling  
7 unnecessary wells, if it proposes waste, if it  
8 proposes a plan that violates correlative rights, then  
9 Prima, with its working interest, has standing to  
10 object to that. Thank you.

11 THE HEARING EXAMINER: You're welcome.

12 Okay. Avant, when you put on your  
13 case-in-chief, I'd like you to focus on what the  
14 issues are here today. If we don't have an issue, if  
15 there's not a issue in contention, then, you know,  
16 your testimony will be filed through your exhibits.  
17 We don't have to rehash what's already been filed.

18 Okay. How many witnesses do you plan  
19 on calling?

20 MS. GRAHAM: Avant has three witnesses  
21 today.

22 THE HEARING EXAMINER: Three witnesses.  
23 Oh, a landman, a geologist --

24 MS. GRAHAM: And a reservoir engineer  
25 expert.

1 THE HEARING EXAMINER: And a reservoir  
2 engineer. Okay. Have all three been previously  
3 qualified before the Division?

4 MS. GRAHAM: Yes. Mr. Examiner.

5 THE HEARING EXAMINER: Good.  
6 Excellent.

7 Mr. Savage, how many witnesses do you  
8 have?

9 MR. SAVAGE: For our case-in-chief we  
10 have the one witness who's a reservoir engineer and  
11 drilling engineer. And then we have the landman  
12 available to address the questions.

13 THE HEARING EXAMINER: Okay. And are  
14 any of your witnesses here or are they all virtual?

15 MR. SAVAGE: They are virtual.

16 THE HEARING EXAMINER: Okay. That's  
17 fine.

18 MR. SAVAGE: And they have not  
19 testified previously.

20 THE HEARING EXAMINER: Neither one.

21 MR. SAVAGE: Neither one.

22 THE HEARING EXAMINER: All right. So  
23 we'll need to get them qualified then when we get to  
24 your case in chief.

25 Let's deal with exhibits as a

1 preliminary matter. Let's see how many of these  
2 exhibits we can get admitted through stipulation. I  
3 want to look first at Avant's exhibits, then I'll look  
4 at Prima's exhibits.

5 Now, Avant, when you filed your  
6 exhibits, what did you call your document?

7 MR. PARROT: We filed a pre-hearing  
8 statement.

9 THE HEARING EXAMINER: Fine. And then  
10 you attached all the exhibits to the pre-hearing  
11 statement?

12 MR. PARROT: Correct.

13 THE HEARING EXAMINER: is there one  
14 pre-hearing statement?

15 MR. PARROT: So we filed the exhibits  
16 separately and then we filed rebuttal exhibits. So we  
17 actually have two sets of exhibits that were filed.

18 THE HEARING EXAMINER: Okay.

19 MR. PARROT: Our case-in-chief exhibits  
20 and then our rebuttal exhibits.

21 THE HEARING EXAMINER: How will I  
22 identify those documents? Tell me what they're called  
23 so I can find them.

24 MS. GRAHAM: Mr. Hearing Examiner, the  
25 exhibits were filed on August 14th.

1 THE HEARING EXAMINER: Okay.

2 MS. GRAHAM: And there's a cover page  
3 titled "Notice of Supplemental Exhibits."

4 THE HEARING EXAMINER: You know, the  
5 way this looks, you can't see that so I don't know  
6 where it is.

7 MS. GRAHAM: Okay.

8 THE HEARING EXAMINER: I have to open  
9 each one. So you said you have two filings. Is that  
10 correct?

11 MS. GRAHAM: There were the  
12 supplemental exhibits are filed last week and the  
13 rebuttal exhibits filed today.

14 THE HEARING EXAMINER: Okay.

15 MS. GRAHAM: Back when the case was  
16 originally set for the June hearing, there were an  
17 initial packet set then or filed then, which is why  
18 the exhibits packet filed last week is titled "Notice  
19 of --"

20 THE HEARING EXAMINER: Supplemental.

21 MS. GRAHAM: Yes.

22 THE HEARING EXAMINER: So then would I  
23 look at all three -- well, I'm not going to look at  
24 your rebuttal ones yet. So am I looking at two  
25 documents, one filed a while ago. Oh, supplemental is

1 everything?

2 MS. GRAHAM: Yes, Mr. Hearing --

3 THE HEARING EXAMINER: So, Freya, would  
4 you delete the exhibit package that was filed?

5 When was the first time the exhibit  
6 package was filed?

7 MS. GRAHAM: It was filed on June 24th.

8 THE HEARING EXAMINER: June 24th.  
9 Freya, will you delete the June 24th filing to avoid  
10 confusion with the supplemental packet?

11 THE CLERK: Yes.

12 THE HEARING EXAMINER: All right.

13 I have a "Notice of Supplemental  
14 Exhibits." It's a 238-page document. Does that  
15 contain all of your exhibits except rebuttal exhibits?

16 MS. GRAHAM: Yes.

17 THE HEARING EXAMINER: That's what  
18 you're seeking to admit now.

19 MS. GRAHAM: Correct.

20 THE HEARING EXAMINER: Very good.

21 Mr. Savage, do you have the document  
22 that was filed at 9:12 a.m. on August 14, the title of  
23 it is "Notice of Supplemental Exhibits"?

24 MR. SAVAGE: That was filed by Avant or  
25 --

1 THE HEARING EXAMINER: Yes.

2 MR. SAVAGE: Yes. I have Avant's  
3 amended exhibit packet that they sent to us.

4 THE HEARING EXAMINER: Well, that's not  
5 what it's called here. It's called "Notice of  
6 Supplemental Exhibits" and it doesn't say anything  
7 about amended exhibits.

8 MS. GRAHAM: If I may, if Mr. Savage  
9 were to click into the email, the title of the actual  
10 document is "Notice of Supplemental Exhibits." I  
11 believe when we emailed the version around to the  
12 parties we just had put in the word amended there, but  
13 it's not necessarily reflective of the document.

14 MR. SAVAGE: Okay. I believe I have  
15 the same.

16 THE HEARING EXAMINER: You have. Okay.  
17 Is it a 238-page document, Mr. Savage?

18 MR. SAVAGE: Two-hundred and  
19 thirty-eight page is correct.

20 THE HEARING EXAMINER: Perfect.

21 MR. SAVAGE: Thank you.

22 THE HEARING EXAMINER: Okay. So I'm  
23 looking to you to either object or stipulate to the  
24 exhibits in this 238-page packet. There's a table of  
25 contents on page 3. There's a volume Exhibit A, B, C

1 and subparts D and subparts E and subparts and an  
2 affidavit of publication letter number F.

3 MR. SAVAGE: Okay. So these exhibits  
4 are, for the most part, your standard exhibits about  
5 pooling, okay, so they need to present their pooling  
6 case and we would object to it. So I don't object to  
7 the land exhibits, but I would like to cross-examine  
8 the witness based on those exhibits at the appropriate  
9 time. The geology, we do not object to those  
10 exhibits. And the engineering exhibits in here,  
11 senior geologist. Hold on just a minute.

12 THE HEARING EXAMINER: I don't see a  
13 reservoir engineer affidavit in exhibits.

14 MR. SAVAGE: Yeah, they're --

15 MS. GRAHAM: They're at the very  
16 bottom, beginning on --

17 MR. SAVAGE: Right. They're not in the  
18 table of contents.

19 THE HEARING EXAMINER: That's what I  
20 mean.

21 MS. GRAHAM: Well, and that's because  
22 it was an amended supplemental --

23 THE HEARING EXAMINER: What page number  
24 do you want me to go to?

25 MS. GRAHAM: The affidavit begins on



1 page 223 and the reservoir engineering exhibit slides  
2 follow that.

3 THE HEARING EXAMINER: I see. So  
4 affidavit of Shane Kelly, it's on page 223, Mr.  
5 Savage. It's not in the table of contents.

6 So did you mark these? They're not  
7 marked?

8 MS. GRAHAM: At the beginning of the  
9 exhibit packet where we identify the notice of  
10 supplemental exhibits, we identified that there's an  
11 additional Exhibit G.

12 THE HEARING EXAMINER: Oh, G.

13 MS. GRAHAM: Just because this was a  
14 supplement to that initially filed one back in June.

15 THE HEARING EXAMINER: But nowhere is  
16 it marked as Exhibit G?

17 MS. GRAHAM: It is marked as Exhibit G  
18 once you get to page like 229 where the slides begin.  
19 The header is labeled Exhibit G-1.

20 THE HEARING EXAMINER: Okay. But the  
21 affidavit is not marked as Exhibit G. Because I don't  
22 see it on here. If it's here, I'm not seeing it.

23 MR. PARROT: Mr. Examiner, you're  
24 correct. The affidavit itself is not given an exhibit  
25 number.

1 THE HEARING EXAMINER: Okay.

2 MR. PARROT: Avant did number every  
3 single page --

4 THE HEARING EXAMINER: I see that.

5 MR. PARROT: -- in the exhibit packet  
6 for hopefully ease of reference. So this would be  
7 page AVO0223.

8 THE HEARING EXAMINER: I do see that.  
9 What does AVO stand for?

10 MR. PARROT: Avant Operating.

11 THE HEARING EXAMINER: I see. And zero  
12 -- oh, 223. I see. Okay.

13 MR. SAVAGE, you have no objection --  
14 from what I understand so far -- and let me go back up  
15 to the top, the table of contents here. I'm going  
16 back up to page 3. So we have the checklist. Is  
17 there a objection to Exhibit A, the pooling checklist?

18 MR. SAVAGE: No objection to that one.

19 THE HEARING EXAMINER: Thank you.

20 Exhibit A is admitted into evidence.

21 (Avant Exhibit A was received into  
22 evidence.)

23 THE HEARING EXAMINER: Is there  
24 objection to Exhibit B, the file applications and  
25 proposed notices of hearing?

1 MR. SAVAGE: No. No objection to the  
2 application.

3 THE HEARING EXAMINER: Exhibit B is  
4 admitted into evidence.

5 (Avant Exhibit B was received into  
6 evidence.)

7 THE HEARING EXAMINER: Now, you mention  
8 that the landman exhibits, of course you want to ask  
9 questions to the landman when they are testifying, but  
10 the exhibits, there's no objection to C and its  
11 subparts?

12 MR. SAVAGE: That's correct.

13 THE HEARING EXAMINER: They're admitted  
14 into evidence.

15 (Avant Exhibit C was received into  
16 evidence.)

17 THE HEARING EXAMINER: Exhibit D and  
18 its subparts, the geology.

19 MR. SAVAGE: Geology is fine. Thank  
20 you.

21 MR. PARROT: Mr. Examiner, I apologize  
22 for interrupting. Exhibit D, Avant is withdrawing and  
23 not seeking to admit into evidence so we can dispense  
24 with Exhibit D from this packet.

25 THE HEARING EXAMINER: Okay. So what

1 I'm going to want is I'm going to want a new exhibit  
2 packet.

3 MR. PARROT: Understood.

4 THE HEARING EXAMINER: You can call it  
5 whatever you want to call it, but we're going to be  
6 removing this one because it'll be just way too  
7 confusing to have Exhibit G not labeled, not on the  
8 table of contents and yet you're relying on it and you  
9 don't want D in here and it's in here. So when the  
10 hearing is over, you'll tell me how much time you need  
11 to revise this exhibit packet so it'll be the only  
12 one, besides whatever rebuttals that may come in,  
13 it'll be the only one here. All right. So we're not  
14 admitting D and its subparts.

15 MR. SAVAGE: Mr. Hearing Examiner, I  
16 may have an objection to that.

17 THE HEARING EXAMINER: Okay. What's  
18 the objection?

19 MR. SAVAGE: So I would like to know  
20 why they're not admitting or using Exhibit D as  
21 submitted with the original hearing packet. And I  
22 think I understand that they're going to substitute  
23 those exhibits with some new exhibits that they filed  
24 as rebuttal exhibits. They filed geology rebuttal  
25 exhibits. I think that's inappropriate. And if

1 that's the case, then I would object to that. We  
2 don't object to Exhibit D --

3 THE HEARING EXAMINER: Okay.

4 MR. SAVAGE: -- and we would -- thank  
5 you.

6 THE HEARING EXAMINER: I understand,  
7 Mr. Savage.

8 Mr. Parrot or Ms. Graham, who's going  
9 to be answering that?

10 MR. PARROT: So I will be answering  
11 that.

12 THE HEARING EXAMINER: Please.

13 MR. PARROT: And if I am correct in  
14 understanding Mr. Savage's objection, the objection is  
15 not as to the removal of Exhibit D but as to the  
16 potential introduction of certain rebuttal exhibits.  
17 So if I understand correctly, it sounds like the  
18 objection should be overruled as premature and not  
19 relevant.

20 THE HEARING EXAMINER: So, Mr. Savage,  
21 I understand your concern. I agree with Mr. Parrot  
22 that they're going to present their case-in-chief. It  
23 is made up of whatever they want to make it up. I  
24 have no control over how they present their evidence.  
25 They will only be allowed to submit rebuttal exhibits

1 if they can show what I said earlier. And you can  
2 object to those in any way that you want to and you  
3 can offer your own rebuttal exhibits. But they're not  
4 offering D so really there's nothing for me to do  
5 except to make it known to the court reporter that D  
6 and its subparts are not admitted. They won't even be  
7 on their exhibit packet and it's not part of their  
8 case in chief.

9 MR. SAVAGE: Understood. We just have  
10 not had time to look at the rebuttal exhibits and  
11 there may be discrepancies between the two that could  
12 highlight an issue.

13 THE HEARING EXAMINER: Maybe. Sure.

14 MR. SAVAGE: But, you know, based on  
15 your explanation and it's understood.

16 THE HEARING EXAMINER: Okay. All  
17 right.

18 So the objection is overruled.

19 So we're not asking about D. D is not  
20 admitted. E, notice of affidavit. Are there any  
21 objections to Exhibit E?

22 MR. SAVAGE: This regards the notice  
23 sent to the owners and we have no objection.

24 THE HEARING EXAMINER: I'm sorry. I  
25 didn't understand. Is there an objection or is there

1 not an objection?

2 MR. SAVAGE: No objection.

3 THE HEARING EXAMINER: No objection.

4 Thank you.

5 Exhibit E is admitted into evidence.

6 (Avant Exhibit E was received into  
7 evidence.)

8 THE HEARING EXAMINER: Exhibit F, the  
9 affidavit of publication.

10 MR. SAVAGE: No objection.

11 THE HEARING EXAMINER: Very good.

12 (Avant Exhibit F was received into  
13 evidence.)

14 THE HEARING EXAMINER: And now you  
15 understand that Exhibit G begins on page 223. Is  
16 there any objection to Exhibit G and its subparts, the  
17 reservoir?

18 MR. SAVAGE: We don't have an objection  
19 to that.

20 (Avant Exhibit G was received into  
21 evidence.)

22 THE HEARING EXAMINER: Okay. So what  
23 will be marked as Exhibit G, it's not yet, the  
24 affidavit of the reservoir geologist and G-1 through,  
25 what is it --

1 MS. GRAHAM: G-8.

2 THE HEARING EXAMINER: G-1 through G-8  
3 are the reservoir exhibits? Perfect. And they're all  
4 marked?

5 MS. GRAHAM: Yes.

6 THE HEARING EXAMINER: And of course  
7 the affidavit will be marked as G when you submit this  
8 in the future. Okay. Okay. We've dealt with Avant's  
9 exhibits. Now, let's deal with Ms. Savage's exhibits.

10 Now, Mr. Savage, how many different  
11 documents am I going to be looking at for your exhibit  
12 packet?

13 MR. SAVAGE: I'm pulling this up. We  
14 have a smaller hearing packet.

15 THE HEARING EXAMINER: Sure.

16 MR. SAVAGE: And it looks like it's 19  
17 --

18 THE HEARING EXAMINER: Pages.

19 MR. SAVAGE: -- pages.

20 THE HEARING EXAMINER: Pages. I'll  
21 find it. Thank you.

22 MR. SAVAGE: And it's "Notice of  
23 Amended Hearing Packet."

24 THE HEARING EXAMINER: I just have to  
25 look to one document after the other so it's just the



1 way it works here. I have a 19-page document filed  
2 August 14th, 12:28 p.m., "Notice of Filing Amended  
3 Hearing Packet." Is that what we're looking at now?

4 MR. SAVAGE: That's correct.

5 THE HEARING EXAMINER: Very good.

6 Mr. Parrot, did you look through this  
7 document and the exhibits?

8 MR. PARROT: Yes, Mr. Examiner.

9 THE HEARING EXAMINER: Very good. It  
10 looks like the table of contents says page 3, Exhibit  
11 A "Self-affirmed statement of David Rhodes." I  
12 suspect you have a CV for Mr. Rhodes somewhere.

13 MR. SAVAGE: I do.

14 THE HEARING EXAMINER: Okay. Very  
15 good.

16 Is there any objection to Exhibit A on  
17 page 3?

18 MR. PARROT: Sorry. One moment.

19 THE HEARING EXAMINER: Mm-hmm. Yeah.

20 MR. PARROT: No objection to the  
21 exhibit subject to Avant's right to cross-examine  
22 Mr. Rhodes regarding his qualifications.

23 THE HEARING EXAMINER: What did you  
24 just say?

25 MR. PARROT: No objection --

1 THE HEARING EXAMINER: Yes. I heard  
2 that part.

3 MR. PARROT: -- from Avant to Exhibit  
4 3, but Avant is reserving its right to cross-examine  
5 Mr. Rhodes about his qualifications.

6 THE HEARING EXAMINER: Of course.

7 MR. PARROT: Which are discussed in  
8 Exhibit 3.

9 THE HEARING EXAMINER: I understand.

10 MR. PARROT: Okay. Thank you.

11 THE HEARING EXAMINER: I understand.  
12 And the parties don't need to reserve the right to  
13 cross-examine each other's witnesses. That's why  
14 we're here so --

15 MR. PARROT: Understood.

16 THE HEARING EXAMINER: -- we don't need  
17 to deal with that any longer. And then we have  
18 Amended Exhibit A-1 which is titled "Interference and  
19 Waste" on page 7. Any objection to that document?

20 MR. PARROT: No objection.

21 THE HEARING EXAMINER: No objection.  
22 Thank you.

23 And we'll admit them in a moment,  
24 Mr. Savage.

25 And page 18, "Resume of Ron Solt."

1 MR. PARROT: No objection.

2 THE HEARING EXAMINER: No objection.

3 Okay.

4 Mr. Savage, all of your exhibits, A,  
5 A-1 and B are admitted into evidence.

6 (Prima Exhibit A and Exhibit A-1 and  
7 Exhibit B were received into evidence.)

8 THE HEARING EXAMINER: And that's all  
9 there are. Is that correct?

10 MR. SAVAGE: That's correct.

11 THE HEARING EXAMINER: All right. Very  
12 good.

13 MR. SAVAGE: At the very end of the  
14 case-in-chief --

15 THE HEARING EXAMINER: Who's  
16 case-in-chief? Yours?

17 MR. SAVAGE: Prima's case-in-chief, we  
18 would like to address the special provision.

19 THE HEARING EXAMINER: Okay.

20 MR. SAVAGE: And I don't know if that  
21 needs to be admitted as an exhibit or if it stands on  
22 its own to be discussed as part of the pre-hearing  
23 statement.

24 THE HEARING EXAMINER: It's just part  
25 of the pre-hearing statement so it doesn't need to be

1 admitted into evidence.

2 MR. SAVAGE: Okay.

3 THE HEARING EXAMINER: It's part of the  
4 administrative record.

5 MR. SAVAGE: Thank you.

6 THE HEARING EXAMINER: Okay. Let's get  
7 your three witnesses sworn in now. Will you have all  
8 three witnesses come up to that microphone at the  
9 witness stand, press the green button on the right.  
10 It's the right button on the -- yeah, it'll turn  
11 green. You'll see it.

12 MS. GRAHAM: There you go.

13 THE HEARING EXAMINER: Would you state  
14 and spell your names one at a time and then we'll get  
15 you sworn in?

16 MS. GUERRA: My name is Sopha Guerra,  
17 first named spelled S-O-P-H-I-A, last name  
18 G-U-E-R-R-A.

19 MR. PAYNE: Joshua Payne, J-O-S-H-U-A,  
20 last name P-A-Y-N-E.

21 MR. KELLY: And Shane Kelly, S-H-A-N-E  
22 and then K-E-L-L-Y.

23 THE HEARING EXAMINER: Okay. And would  
24 you all stand close to the microphone again?

25 Do you swear or affirm under penalty of

1 perjury that the statements you are about to give is  
2 the truth, the whole truth, and nothing but the truth?

3 MULTIPLE SPEAKERS: Yes.

4 THE HEARING EXAMINER: Then let the  
5 record reflect all three witnesses affirmed.

6 Okay. Please be seated.

7 Mr. Parrot, are you putting on the case  
8 or is Ms. Graham putting on the case?

9 MR. PARROT: We will literally be  
10 working together to put on the case.

11 THE HEARING EXAMINER: Okay. Together.  
12 Okay. Very good.

13 MR. PARROT: Correct.

14 THE HEARING EXAMINER: You've made an  
15 opening statement. We have your exhibits admitted  
16 into evidence. Which witness are you calling first?

17 MS. GRAHAM: Mr. Examiner, if I may  
18 call Avant's first witness, Ms. Guerra, the --

19 THE HEARING EXAMINER: Please.

20 Can you turn on the microphone and  
21 please sit close to the microphone and speak loudly so  
22 it picks you up?

23 THE WITNESS: Oh, can I bring you  
24 exhibits?

25 THE HEARING EXAMINER: Yeah, when you

1 get over here, tell me what you have in front of you  
2 --

3 THE WITNESS: Okay.

4 THE HEARING EXAMINER: -- so it's on  
5 the record what you have.

6 THE WITNESS: Yes. This is just our  
7 exhibit packet, which has been submitted, just for me  
8 to view in case there are specific questions that when  
9 you would like to just reference.

10 THE HEARING EXAMINER: And the way we  
11 deal with that here is two ways. Number 1, Counsel  
12 will put a page that they're referring to on the  
13 screen so that everyone can see what's being referred  
14 to. And if you do need to look at your book, please  
15 ease say that, "I am looking at Exhibit so and so on  
16 page so and so," so there's a record of what you're  
17 looking at to refresh your memory.

18 THE WITNESS: Okay. Will do.

19 THE HEARING EXAMINER: All right.

20 Ms. Graham?

21 WHEREUPON,

22 SOPHIA GUERRA,  
23 called as a witness and having been previously sworn  
24 to tell the truth, the whole truth, and nothing but  
25 the truth, was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MS. GRAHAM:

3 Q Good morning, Ms. Guerra.

4 A Good morning.

5 Q Will you please state your full name for the  
6 record?

7 A Yes. My name is Sophia Guerra.

8 Q And by whom are you employed and in what  
9 capacity?

10 A I'm a professional landman employed by Avant  
11 Operating.

12 Q And have you previously testified before the  
13 Division and had your qualifications accepted as an  
14 expert in petroleum land matters?

15 A Yes. I have.

16 Q Are you familiar with the application filed  
17 in this case?

18 A I am.

19 Q And are you familiar with the lands within  
20 this proposed spacing unit?

21 A Yes. I am.

22 Q Ms. Guerra, have you prepared written  
23 testimony in advance of today's hearing?

24 A I have. Yes.

25 Q And was that testimony marked as Exhibit C

1 in the exhibit packet that was filed with the  
2 Division?

3 A Correct. Yes.

4 Q Did you also prepare some exhibits in  
5 connection with your testimony?

6 A I did. Yes.

7 Q And is it correct to say that those were  
8 marked and attached to your affidavit?

9 A Correct. Yes.

10 Q Ms. Guerra, we have for you Exhibit C 1  
11 through 9, but for efficiency, if I could have you  
12 jump straight to Exhibit C-4 on page 45. If you could  
13 please discuss with the Division this exhibit.

14 A Yes. So Exhibit C-4, shown on page 45, is  
15 our summary of interest in the proposed Royal Oak 25  
16 Fed Com Bone Spring unit. This shows all of the  
17 working interest parties within the lands compromised  
18 into the Royal Oak unit, Avant and its fully owned  
19 subsidiaries, which are Legion Production Partners and  
20 Double Cabin Minerals. Those three parties own a  
21 collective 41.8 percent working interest in the  
22 proposed unit. In addition to the owned interest,  
23 there are a handful of parties who have entered into a  
24 joint operating agreement with Avant and, therefore,  
25 the total committed parties, as well as Avant-owned is



1 -- sorry, you just moved the -- if we could just come  
2 back up to page 45.

3 UNIDENTIFIED SPEAKER: Oh, James, can  
4 we go back?

5 THE REPORTER: Oh, I'm sorry.

6 THE WITNESS: That's okay. Don't have  
7 all the numbers summarized.

8 So Avant and committed parties equals a  
9 total of 74.87 percent working interest. Also listed  
10 on this first page of the exhibit is the working  
11 interest owned by Prima Exploration which totals 2.75  
12 percent working interest.

13 BY MS. GRAHAM:

14 Q Thank you, Ms. Guerra. And could you please  
15 provide a brief description of Exhibits C-6, C-7, and  
16 C-8?

17 A Yes. So Exhibit C-6, which I believe begins  
18 on page 56, is an example of the well proposal letter  
19 that we sent to all working interest parties within  
20 the unit. This particular letter shows the legal  
21 description of each well, as well as our target  
22 formation. It also shows the general terms of our  
23 proposed joint operating agreement. On page 59 of the  
24 exhibit, this is our ballot sheet that essentially  
25 allows each working interest party to pick and choose

1 which wells they'd like to participate and it's not a  
2 requirement to participate in every single well.

3 THE WITNESS: The next exhibit, which,  
4 is it C-7? Thank you.

5 So C-7 shows the authority for  
6 expenditures for each proposed Royal Oak well. As Ms.  
7 Graham mentioned earlier, we are proposing 12 Bone  
8 Spring wells total for this unit. And that shows the  
9 estimated cost for each well. And I believe you  
10 wanted me to touch on C-8 as well.

11 BY MS. GRAHAM:

12 Q Just a brief introduction as to what that  
13 exhibit is.

14 A Okay. Was perhaps C-8 the authority? I can  
15 look at my book if we need to clarify.

16 Q Oh, that's correct, the proposal letters for  
17 C-7 and the AFEs for C-8.

18 A Okay. Great.

19 Q Ms. Guerra, if I could next direct your  
20 attention to Exhibit C-9. If we may jump to page 110  
21 in the exhibit packet. Could you please provide an  
22 overview of Exhibit C-9 with a special emphasis on the  
23 slides beginning at page 110?

24 A Yes.

25 THE WITNESS: If we wouldn't mind just

1 popping to page 110. I think we're one page early.  
2 Great.

3 So Exhibit C-9 is the summary of  
4 contacts that Avant Operating had with Prima  
5 Exploration who has filed an objection to our proposed  
6 unit. I won't go through every date 'cause there's  
7 been quite a bit of communication, but this does show  
8 that Avant has made good faith effort to work with  
9 Prima to, in the beginning, enter into a voluntary  
10 joinder agreement and more recently Avant has been  
11 working with Prima to purchase their interest in this  
12 unit.

13 So in early March, we sent well  
14 proposals to Prima and then for the next several  
15 months we worked through any questions that the Prima  
16 landman had as well as sent to JOA for their review.  
17 June 11th, on or around this date, we, Avant, was  
18 alerted that Prima was marketing their interest  
19 included in the Royal Oak unit. At that point Avant  
20 immediately signed a confidentiality agreement with  
21 Prima and we submitted a bid to purchase their  
22 interest on June 21st. June 24th is when Prima filed  
23 their first objection to the Royal Oak case.

24 On July 3rd Prima then accepted Avant's  
25 offer and a purchase and sale agreement began to be

1 negotiated. And there's several different dates there  
2 that show all of the back and forth regarding that  
3 purchase and sale agreement negotiations. Prima did  
4 indicate that they would consider dropping the  
5 objection if the PSA was coming along nicely.

6 If we could jump to page 111, there's a  
7 couple more points I'd like to hit.

8 On July 17th, Prima emailed Avant a  
9 letter agreement proposing Avant to pay an exclusivity  
10 deal fee in order for the objection to be dropped.  
11 Avant did not take this offer and we declined to pay  
12 the fee and Prima maintained their objection to our  
13 hearing. Throughout July, there were more  
14 negotiations regarding the purchase and sale  
15 agreement, but on the other hand, Prima then also  
16 filed a motion to dismiss this case. And I'm sure  
17 we've all seen the different filings and replies that  
18 have been submitted. But the basis of their motion  
19 was that Avant was unable to meet the drilling  
20 requirements in our application.

21 And most recently, it is not noted on  
22 here since exhibits were submitted prior to this date,  
23 but last week I believe it was August 16th Avant again  
24 sent a joint operating agreement to Prima to try and  
25 get a voluntary joinder agreed upon.

1 BY MS. GRAHAM:

2 Q Thank you for that summary, Ms. Guerra.  
3 Sitting here today, do you adopt the testimony that  
4 you pre-filed under Exhibit C and as Exhibit C 1  
5 through 9 as your testimony today?

6 A I do. Yes.

7 Q Ms. Guerra, having submitted this testimony,  
8 do you have any corrections or modifications or  
9 changes in the testimony that was submitted as part of  
10 Exhibit C?

11 A No.

12 Q And can you affirm the veracity of the  
13 exhibits and slides that you attached?

14 A Yes.

15 MS. GRAHAM: And with that,  
16 Mr. Examiner, I offer Ms. Guerra as a witness.

17 THE HEARING EXAMINER: Mr. Savage.

18 MR. SAVAGE: Is it possible to remove  
19 that screen right there just a little bit?

20 THE HEARING EXAMINER: Yeah. Would you  
21 lower that screen?

22 THE WITNESS: There we go. Now, I can  
23 see it.

24 THE HEARING EXAMINER: Thank you.

25 MR. SAVAGE: All right.

1 CROSS-EXAMINATION

2 BY MR. SAVAGE:

3 Q Thank you, Ms. Guerra. Thank you for your  
4 participation in today's hearing. I just have a  
5 handful of questions I would like to ask. If you  
6 don't hear a question or a part of question, please do  
7 not hesitate to ask me to repeat it. And if you do  
8 not understand a question, let me know and I will be  
9 glad to repeat it or rephrase it. Just some questions  
10 to confirm a few things that were stated in the  
11 opening statement and also in your testimony. It's  
12 correct that Prima is -- I mean I'm Prima. Avant is  
13 drilling 12 wells in the unit and it is correct that  
14 they are drilling it 4 wells per bench? And that  
15 would be the first bench, the second bench, and the  
16 third bench. Correct?

17 A Correct.

18 MR. PARROT: Mr. Examiner, objection.  
19 Outside the scope of the direct. I believe Ms. Guerra  
20 did not testify as to the benching of the development  
21 proposal.

22 THE HEARING EXAMINER: Mr. Savage?

23 MR. SAVAGE: I believe that the  
24 exhibits that were exhibited, that she attested to  
25 address how the wells were proposed, the depths, the

1 depth variations, the number of wells, the AFEs,  
2 described the wells. I just wanted to confirm.  
3 They've already admitted to it in the opening  
4 statement so I was just confirming that.

5 THE HEARING EXAMINER: And again, I'm  
6 sorry. But the opening statement was not part of  
7 Ms. Guerra's testimony. We do have, however, an  
8 engineer who will be happy to answer questions about  
9 benching.

10 MR. SAVAGE: I'll rephrase the  
11 question.

12 THE HEARING EXAMINER: Okay. Why don't  
13 you wait until I make a decision about the objection  
14 before you --

15 MR. SAVAGE: Okay. My apologies.

16 THE HEARING EXAMINER: The objection is  
17 sustained.

18 MR. SAVAGE: Okay.

19 THE HEARING EXAMINER: Move on.

20 BY MR. SAVAGE:

21 Q Ms. Guerra, your AFEs indicate you're  
22 drilling 12 wells --

23 A Correct.

24 Q -- in the unit. Okay. And your well  
25 proposals show variations of depths for those 12

1 wells. Is that correct?

2 MR. PARROT: I'm going to re-raise the  
3 objection. It's the same question in a different  
4 form. Ms. Guerra did not testify about well depth.  
5 She simply testified that there were AFEs sent and  
6 that these are the AFEs that were sent.

7 THE HEARING EXAMINER: Mr. Savage, I'm  
8 going to sustain the objection again. If you would  
9 confine your questions to the affidavit or any of the  
10 exhibits that this witness has attested to, that would  
11 be proper. Outside of that, you might have to wait  
12 for another witness.

13 MR. SAVAGE: Okay.

14 THE HEARING EXAMINER: Thank you.

15 MR. SAVAGE: Just to point out that she  
16 did submit the well proposals and the well proposals  
17 do list the depths.

18 THE HEARING EXAMINER: Can you point to  
19 an exhibit, please? Because if that's the case, then  
20 -- give me a page number of the 238 when you get to  
21 it.

22 MR. SAVAGE: Yeah. I'm going to. The  
23 well proposals are I believe -- here we go. Page, for  
24 example, 56.

25 THE HEARING EXAMINER: Fifty-six, hold



1 on.

2 MR. SAVAGE: This is a --

3 THE HEARING EXAMINER: Okay. I have a  
4 -- is this labeled as an exhibit? This is Avant's  
5 page 56. Oh, Exhibit C-7. So are you questioning her  
6 based on this?

7 MR. SAVAGE: Mr. Hearing Examiner, I  
8 was just trying to get a confirmation on the number of  
9 -- the depths of the wells. The well proposal lists  
10 some wells at 18,800 feet, other wells at 19,973 feet,  
11 20,000 so obviously there are different benches being  
12 addressed in this well proposal. I'm not asking any  
13 technical questions, just that the nature of the  
14 development, as proposed by land, is that it'd be 12  
15 wells and that they are different benches.

16 MR. PARROT: Mr. Examiner, I'm going to  
17 object to the testimony of counsel. This is testimony  
18 from counsel. He is testifying as to Avant's  
19 exhibits, the exhibits speak for themselves. The  
20 witness testified that these were the exhibits that  
21 were sent and that was the limit of her testimony.  
22 Counsel is welcome to ask questions of our engineering  
23 witness that pertain to the benching and depths of the  
24 wells. We will have a witness who can address those  
25 sorts of technical issues, but I'd ask that counsel's

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1 testimony be struck. The exhibits do speak for  
2 themselves.

3 THE HEARING EXAMINER: Okay. Well, I'm  
4 still dealing with the first objection so before we  
5 move to the second objection, I'm looking at this  
6 letter that is labeled Exhibit C-7.

7 And, Mr. Savage, you're saying that  
8 this exhibit shows that there are 12 wells?

9 MR. SAVAGE: That is correct.

10 THE HEARING EXAMINER: Okay. And this  
11 letter is coming in under your witness, Mr. Parrot, so  
12 a question such as, "Are there 12 wells," it's obvious  
13 from this document that she can testify to that. If  
14 we get into engineering details about the wells, then  
15 I think it's outside the scope of this exhibit.

16 MR. SAVAGE: Would it be appropriate to  
17 ask if the wells are benched at various depths based  
18 on that?

19 THE HEARING EXAMINER: If that  
20 information is in this witness's exhibits, then you're  
21 able to. So yes. And you ask whatever question you  
22 want. If there's an objection, then I'll field it.  
23 So that objection is overruled. You can ask that  
24 question.

25 Now to the second objection Mr. Parrot

1 raised, which was striking a question that was asked  
2 and then some discussion, that's not evidence.  
3 There's nothing to strike here. We're just having a  
4 discussion about the objection. He's responding to  
5 your objection. So none of this is evidence. What's  
6 evidence is sworn testimony, it's the exhibits. And  
7 so that objection's overruled. So I've overruled both  
8 objections. But, Mr. Savage, please keep your  
9 questions to the scope of the direct testimony that  
10 you can glean from the exhibits and from the sworn  
11 testimony. Please --

12 MR. SAVAGE: Yep. Thank you.

13 THE HEARING EXAMINER: -- ask your  
14 question.

15 MR. SAVAGE: Okay.

16 BY MR. SAVAGE:

17 Q So, Ms. Guerra, is it correct that there are  
18 12 wells per unit?

19 A In the proposed we're looking at -- that  
20 we're discussing today, yes, 12 wells.

21 Q And in the well proposal that you submitted  
22 as an exhibit, those wells are positioned based on the  
23 description of the well proposal at different depths.

24 A Correct.

25 Q Ms. Guerra, looking at your Exhibit C-8

1 AFEs, are these are your AFEs for the wells?

2 A Yes.

3 Q Okay. And in looking at these, is it  
4 correct to say that each well in the Bone Spring costs  
5 approximately \$11.6 million?

6 A I'd have to look through each one, but the  
7 one that's displayed here for the 301H, that is  
8 correct.

9 Q Okay. Thank you. Isn't it true that the  
10 deeper wells, as you drill deeper wells in the Bone  
11 Springs, the ones drilled into the third Bone Spring  
12 would be more expensive than the shallower ones?

13 MR. PARROT: I apologize. I have to  
14 object. This is outside the scope of land testimony.

15 THE HEARING EXAMINER: Don't apologize,  
16 Mr. Parrot. Just say, "Objection," and state the  
17 basis for it.

18 MR. PARROT: Yes, sir.

19 Objection. Outside the scope of direct  
20 --

21 THE HEARING EXAMINER: Sustained,  
22 Mr. Savage.

23 MR. PARROT: Thank you.

24 BY MR. SAVAGE:

25 Q Could you confirm that all the AFEs are

1 \$11.6 million?

2 A I cannot confirm, but I could check and  
3 confirm in a moment.

4 Q Would you agree if I -- that I've looked  
5 through and I see that they are \$11.6 million per  
6 well?

7 MR. PARROT: I'm going to object.  
8 Asked and answered. The witness said she can look --

9 THE HEARING EXAMINER: Mr. Savage, if  
10 you want her to answer your question, why don't you  
11 give her a minute to look through her document?

12 Just tell us what you're looking at and  
13 what page you're looking at, please.

14 THE WITNESS: Yeah. I'm going to be  
15 looking at Exhibit C-8 I believe, which is the AFEs.  
16 Just a moment.

17 MR. PARROT: Mr. Examiner, while the  
18 witness is looking through our exhibits, just a  
19 logistical question. Given that it is currently  
20 Mr. Savage's cross, should I stop sharing my screen  
21 and let him share his screen?

22 THE HEARING EXAMINER: Would you prefer  
23 to share your screen?

24 MR. SAVAGE: At certain points, I  
25 would, yes.

1 THE HEARING EXAMINER: You would. At  
2 certain points.

3 MR. SAVAGE: Yes.

4 THE HEARING EXAMINER: If you're going  
5 to share your screen at some point, then just take  
6 over the screensharing for now so you can kind of  
7 steer.

8 MR. SAVAGE: Yes.

9 THE HEARING EXAMINER: I don't know how  
10 that's done.

11 Freya, do you have to tell the system  
12 that it's now Mr. Savage or does he just take over?

13 THE CLERK: He just takes over.

14 THE HEARING EXAMINER: Okay. Perfect.  
15 Thank you. Thank you.

16 THE WITNESS: Okay. I've reviewed the  
17 AFEs, but I'd like you to repeat the question, please.

18 BY MR. SAVAGE:

19 Q Of the 12 wells, every well is listed -- is  
20 it correct that every well is listed as about \$11.6  
21 million?

22 A No.

23 Q Okay. Please explain.

24 A The 301H through 304H are approximately  
25 \$11.6 million each. The 501H to 504H are \$11.69

1 million each as estimated cost. And then the 601H  
2 through 604H are approximately \$11.7 million each.

3 Q Okay. Thank you for that clarification. So  
4 they're in that range. In that range. Do you agree?

5 A Yes.

6 Q Yeah. Thank you. I'm going to ask you to  
7 look at your exhibit where you have the interactions  
8 with Prima.

9 THE HEARING EXAMINER: Mr. Savage, are  
10 you going to take us there?

11 MR. SAVAGE: I am. Just as soon as I  
12 find it.

13 THE WITNESS: It's Exhibit C-9, further  
14 up. I believe page 110.

15 BY MR. SAVAGE:

16 Q So in your testimony, did you say that the  
17 motion to dismiss addressed only the objection of not  
18 being able to meet the drilling requirements?

19 A If you wouldn't mind moving to page 11, I  
20 think that's where that point is. And I don't believe  
21 I said the only objection was that.

22 Q Okay. Then did Prima make another objection  
23 within that motion as a reinforcement of not being  
24 able to meet the drilling requirements?

25 A I don't recall.

1 Q It seems that one of your -- is it correct  
2 that one of your objections or one of your comments in  
3 the summary of contacts with Prima is that Prima has  
4 the -- their interest or 2.75 percent working interest  
5 on the market?

6 A Can you repeat the question?

7 Q In your summary of contacts you point out --  
8 is it correct that you point out that one of your  
9 statements is that Prima has their interest on the  
10 market?

11 A Yes. I believe that Avant believed that  
12 Prima had placed their interest within the Royal Oak  
13 unit on the market.

14 Q And is there a concern or an issue there  
15 with placing an interest on the market?

16 A No concern. The reason it was added to this  
17 summary is to show that Avant made a good faith effort  
18 to contact Prima immediately.

19 Q And has Avant sent back the -- you stated  
20 that Avant received the purchase sale agreement. Is  
21 that correct?

22 A I believe yes. I believe Avant sent the  
23 first copy to Prima though.

24 Q Did Prima redline and send back a copy?

25 A I believe so to my knowledge.



1 Q Has Avant, in their good faith exchange as  
2 you point out, have they reciprocated and sent that  
3 copy back?

4 A Please, can you scroll down a little  
5 further? Sorry. Yes.

6 Q And where does the negotiation stand at this  
7 point?

8 A You know, I'd have to ask our land manager,  
9 or sorry, our VP of land who has been working with  
10 Prima's land manager primarily. I do know there has  
11 been some discussion this week regarding the PSA.

12 Q But nobody has agreed to anything at this  
13 point.

14 A A contract has not been signed.

15 Q Contract has not been signed. Do you  
16 consider it bad faith on Prima's part to market their  
17 interest?

18 A No.

19 Q It is correct that you pointed out that one  
20 of the objections that as part of the motion was Avant  
21 not being able to complete its drilling requirements?

22 A Can you repeat the question?

23 Q You pointed out -- is it correct that you  
24 pointed out that one of the objections Prima had in  
25 this motion was not being able -- was Avant not being

1 able to complete its drilling requirements?

2 A Yes.

3 Q Avant is an asset management company. Is  
4 that correct?

5 A We're an operator.

6 Q And what's the -- is the scope of -- so the  
7 scope of your activities include drilling and  
8 developing assets?

9 MR. PARROT: Objection. Outside the  
10 scope of direct. There is no testimony as to the  
11 scope of the company's activities.

12 MR. SAVAGE: Withdrawn. Withdrawn.  
13 I'll withdraw the question.

14 THE HEARING EXAMINER: Sustained.

15 BY MR. SAVAGE:

16 Q Is there a possibility that Avant would not  
17 drill the initial wells or the wells proposed in the  
18 Royal Oak development plan that's being pooled? Is it  
19 possible that Avant would not drill those?

20 MR. PARROT: Objection. Calls for  
21 speculation.

22 THE HEARING EXAMINER: Mr. Savage?

23 MR. SAVAGE: Yes.

24 THE HEARING EXAMINER: What's your  
25 answer? You're calling for speculation as the

1 objection.

2 MR. SAVAGE: Correct.

3 THE HEARING EXAMINER: What's the  
4 question again?

5 MR. SAVAGE: The question is: is there  
6 a possibility that Avant would not drill the Royal Oak  
7 wells as proposed?

8 THE HEARING EXAMINER: And the way I'm  
9 going to look at this objection is is this within the  
10 scope of this expert's qualification as a landman.  
11 Are you arguing that it is?

12 MR. SAVAGE: No. I'll withdraw that  
13 question. Let me try to rephrase that.

14 THE HEARING EXAMINER: Thank you.  
15 So sustained.

16 BY MR. SAVAGE:

17 Q Has Avant ever submitted an application, a  
18 pooling application, in which they propose a  
19 development plan of a number of wells and then not  
20 developed them? Did not drill them.

21 MR. PARROT: Objection. Not relevant.  
22 Outside the scope of direct.

23 THE HEARING EXAMINER: Mr. Savage.

24 MR. PARROT: We are talking about a  
25 specific unit with specific wells and we are not

1 talking about the entire history of the company. That  
2 is irrelevant and it's also not in any way --

3 THE HEARING EXAMINER: I understand,  
4 Mr. Parrot. I understand.

5 MR. PARROT: Thank you. Sorry.

6 THE HEARING EXAMINER: We can keep it  
7 simple. I get it.

8 MR. PARROT: Understood.

9 THE HEARING EXAMINER: Mr. Savage, your  
10 comment.

11 MR. SAVAGE: So the witness brought up  
12 the motion in which we objected. One of our  
13 objections was that Avant will not be able to drill  
14 the wells as proposed. They -- they -- they presented  
15 the plan which they have stated is a standard plan and  
16 the expectation and anticipation is that they would  
17 easily be able to drill all these wells. Okay? So it  
18 would be relevant and material if in the past, and it  
19 can be limited to the recent past, in fact, it could  
20 be limited to this particular prospect that they're  
21 developing, that to show that if they have not  
22 completed drilling wells that they had proposed, that  
23 would be very relevant.

24 THE HEARING EXAMINER: Okay. So why  
25 don't you ask your question with those parameters and

1 I'll overrule the objection?

2 MR. SAVAGE: Okay.

3 BY MR. SAVAGE:

4 Q Ms. Guerra, based on the particular prospect  
5 being developed within 2023, 2024, has Avant submitted  
6 pooling applications within this development area in  
7 which it has not proposed wells in a unit but did not  
8 complete -- a drilling complete the wells?

9 MR. PARROT: Objection. This is in no  
10 way shape or form relevant to any of the testimony  
11 that Ms. Guerra offered in her direct. Additionally,  
12 we are not talking about units outside the scope of  
13 the unit proposed in Docket No. 24544. If Mr. Savage  
14 desires to show a pattern of some kind of  
15 non-development with his own witnesses, he can  
16 certainly do that, but this is not relevant to this  
17 witness's testimony and it's also not relevant to this  
18 hearing. It's also dangerously close to violating the  
19 commission's order on the motion in which it was made  
20 clear that an objection based on an inability to  
21 submit a development plan is not relevant and will not  
22 be the basis for dismissing an application.

23 THE HEARING EXAMINER: Mr. Savage.

24 MR. SAVAGE: I would ask the Hearing  
25 Examiner to go to Exhibit G-5, page 233. That gives

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1 the scope of their development area. The applications  
2 that I would like to ask about fall within -- the  
3 legal description falls within that development area  
4 and they are offset to the current units under  
5 evaluation. They brought up the issue that one of the  
6 objections of Prima is that they would not -- that  
7 Avant would not be able to meet the drilling  
8 requirements. This is directly relevant to that  
9 question and that issue. I don't understand the other  
10 part of the objection that we are outside the scope of  
11 the order. The order, you know, allows us to present  
12 our case-in-chief and our case-in-chief is the  
13 overdevelopment issue.

14 THE HEARING EXAMINER: So, Mr. Savage,  
15 you referred to Exhibit G-5. Right?

16 MR. SAVAGE: Correct.

17 THE HEARING EXAMINER: And that comes  
18 in under a different witness. Don't you think it  
19 would be better to ask that question to that witness  
20 and not this witness?

21 MR. SAVAGE: It would, but it's part of  
22 the package and it shows the scope of their prospect.

23 THE HEARING EXAMINER: How does her  
24 expertise as a landman go to your question? How is  
25 your question within her expertise?

1 MR. SAVAGE: So as I understand, the  
2 landman -- Avant proposes a pooling application. Most  
3 of that is drafted and executed with the counsel's  
4 assistance. Counsel submits it, but it is initiated  
5 within the purview of the land expertise and they  
6 decide -- land decides on the initial wells and the  
7 number of wells. That's all part of the development  
8 plan. That's presented upfront. If there's an  
9 application and then they are arguing that, as I  
10 understand, that Prima has objected to Avant's ability  
11 to drill the proposed wells, required wells, they are  
12 claiming that they can and they will. If there's an  
13 example where they have not, I think that's relevant  
14 and material.

15 MR. PARROT: Mr. Examiner, may I  
16 respond?

17 THE HEARING EXAMINER: I have your  
18 objection. I've now understood the response and now  
19 I'm trying to decide whether this is the proper  
20 witness for this question. And the question  
21 succinctly is what again?

22 MR. SAVAGE: The question is: given  
23 that Avant has said that it -- has presented itself as  
24 being able to drill all the initial wells or will  
25 drill all the position of wells, is there an example

1 where they have proposed in an application where they  
2 proposed a number of initial wells and then have not  
3 completed that and have not drilled them, have not  
4 completed the development plan?

5 MR. PARROT: Mr. Examiner, I may be  
6 able to assist you in figuring out which witness is  
7 best suited to answer this line of questioning. I can  
8 give you a little preview of what our other witnesses  
9 are going to talk about.

10 THE HEARING EXAMINER: Yeah, thank you,  
11 Mr. Parrot, I don't need any help right now. Thank  
12 you.

13 MR. PARROT: Understood. Thank you.

14 THE HEARING EXAMINER: Mr. Savage, the  
15 question is not appropriate for this witness. I think  
16 your question is appropriate for the petroleum  
17 reservoir engineer, but I don't think it's appropriate  
18 for the landman. I also think that the question is in  
19 itself irrelevant because the circumstances that  
20 another development plan is not executed is really  
21 outside the scope of today's hearing. If you have  
22 evidence that you want the Division to consider on why  
23 this development plan is not appropriate to be  
24 approved, it's your right. But I think asking a vague  
25 question like that, because we don't know -- we're



1 going to go down some rabbit hole on why didn't that  
2 happen and is it similar to this here and is it not  
3 similar.

4 So thank you, Mr. Parrot, but the  
5 objection is sustained. Let's move on.

6 MR. SAVAGE: Okay. Thank you,  
7 Mr. Examiner. I think that would conclude then my  
8 questioning.

9 THE HEARING EXAMINER: Thank you, sir.  
10 Let me go to our technical examiner.  
11 Mr. McClure.

12 MR. FELDEWERT: Mr. Examiner.

13 THE HEARING EXAMINER: Hi, do you have  
14 a question, Mr. Feldewert?

15 MR. FELDEWERT: I do. And I apologize.  
16 I didn't expect to have any and I had to put on back  
17 my tie. But I do -- something that came up, I do need  
18 to ask Ms. Guerra about if I may.

19 THE HEARING EXAMINER: Yes. Please  
20 proceed. I didn't expect you to have a question.

21 MR. FELDEWERT: I didn't either.  
22 Perhaps it'd be quicker if I can share my screen.

23 THE HEARING EXAMINER: Yes, please.

24 MR. FELDEWERT: Thank you. I should be  
25 sharing now.

CROSS-EXAMINATION

BY MR. FELDEWERT:

Q Ms. Guerra, I'm looking at your exhibit package and on page 45 of your 238-page exhibit, Exhibit C-4.

A Correct.

Q And what caught my attention is when I go about halfway down, I see that you have an entry there that's COG Operating has signed a JOA.

A Yes.

Q And then when I go to page 52, it seems to indicate that COG is being compulsory pooled. Okay?

A Yes.

Q And then if I go to your remaining exhibit dealing with your discussions with pooled parties, there's an entry in there for COG. So here's my ultimate question. Is COG being pooled here or have you reached an agreement with COG for this case?

A We have reached an agreement with COG for this case. If I could clarify, if you go back up to the, what was it, page 45, the beginning of Exhibit C-4 --

Q Yes.

A -- so -- yes. So on the top left, this is the summary of interest for the Royal Oak 25 Fed Com

1 Bone Spring wells. And we did enter into a JOA with  
2 COG for this case, which is the case we're discussing  
3 today, number 24544. The second page that you showed,  
4 I believe like 52 or -- or so --

5 Q Yeah. Let me get there.

6 A So this is a separate exhibit, Exhibit C-5.  
7 And at the top left, this shows that this is for our  
8 Wolfcamp unit which was already taken under  
9 advisement. We are not discussing this case. The  
10 case number is actually a different case number. And  
11 for what it's worth, we do have a JOA in place today  
12 with COG for this unit. So we do not consider COG a  
13 pooled party in either case.

14 Q In either case, 24544 nor 24543.

15 A Correct.

16 Q Okay. Well, that's very helpful. And  
17 that's news to me so I appreciate that clarification.

18 A Okay.

19 MR. FELDEWERT: That's all the  
20 questions I have. Thank you.

21 THE HEARING EXAMINER: Okay. Thank  
22 you.

23 Are there any other parties with  
24 questions before I turn to our technical examiner?  
25 Thank you.

1 Mr. McClure.

2 THE TECHNICAL EXAMINER: Thank you,  
3 Mr. Hearing Examiner. I do have a quick question for  
4 Ms. Guerra.

5 THE HEARING EXAMINER: Mr. McClure, we  
6 can't hear you. You're muted.

7 THE TECHNICAL EXAMINER: Oh, I  
8 apologize. Hopefully you heard that I guess I do have  
9 questions so Mr. Hearing Examiner, thank you.

10 THE HEARING EXAMINER: I heard that.  
11 Yes.

12 THE TECHNICAL EXAMINER: And then I  
13 guess I must have muted myself. Okay.

14 Ms. Guerra, if I can direct your  
15 attention to page 56 of 238.

16 MR. PARROT: Mr. Examiner, would you  
17 like us to put the exhibit on the screen?

18 THE HEARING EXAMINER: Would you?

19 Mr. McClure, we're getting counsel to  
20 put the page up on the screen.

21 THE TECHNICAL EXAMINER: Oh, very good.  
22 And actually let me just ask so I mean  
23 back to page 58, not page 56.

24 MR. PARROT: Is that the page you're  
25 looking for, Mr. McClure?

1 THE TECHNICAL EXAMINER: Yes, sir.  
2 That is.

3 MR. PARROT: Thank you.

4 THE TECHNICAL EXAMINER: That is  
5 correct, Mr. Parrot.

6 Ms. Guerra, what is the overhead rates  
7 that Avant is asking for here?

8 THE WITNESS: The overhead rates are  
9 stated under the JOA general provisions, 10,000 for  
10 drilling and 1,000 for producing I believe.

11 THE TECHNICAL EXAMINER: Okay, now, in  
12 this case, let's see if I can pull your attention back  
13 up. I believe in your affidavit, it may have it. Let  
14 me -- my own tab as the other page here. I think page  
15 22. Yeah, your paragraph 16, what does this reference  
16 for the overheard rates that Avant is requesting?

17 THE WITNESS: It would be my  
18 understanding that this is referenced to the rates  
19 that would be included in the order granted by the  
20 Division.

21 THE TECHNICAL EXAMINER: Okay. So from  
22 the Division and it calls for a pooling order or  
23 application, excuse me, Avant is requesting this 8,000  
24 per month while drilling and 800 per month during  
25 operations. Is that correct?

1 THE WITNESS: That is correct.

2 THE TECHNICAL EXAMINER: Okay. Thank  
3 you. No more questions, Mr. Examiner.

4 THE HEARING EXAMINER: Thank you.

5 Mr. Parrot, any redirect?

6 MR. PARROT: Very brief.

7 REDIRECT EXAMINATION

8 BY MR. PARROT:

9 Q Ms. Guerra, do you recall Prima's statements  
10 that the AFEs for all 12 wells were coming in at  
11 approximately 11.6 million?

12 A I do recall that statement. Yes.

13 Q And do you recall clarifying that there were  
14 three at 11.6, three more at a higher number than  
15 that, three more at a higher number than that?

16 A If I did say three, then I was mistaken. I  
17 should have said four.

18 Q Okay.

19 A 'Cause there are four wells at the 11.6 and  
20 then so on and so forth so --

21 Q Okay. Can we just direct your attention to  
22 the AFE for Royal Oak 25 Fed Com 006H well, page 97 of  
23 238 of the exhibit packet? And can you tell me what  
24 the AFE shows for this particular well?

25 A It shows 12.9 million, however, I -- if I

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1 could clarify.

2 Q Please.

3 A The AFEs for 006H, 007H, 008H, and 009H are  
4 for the Wolfcamp wells which again are a part of case  
5 24543 I believe and therefore not prevalent to the  
6 case we're discussing today.

7 Q Perfect. Thank you for making that  
8 clarification. So with regard to the AFEs that were  
9 sent for just the Bone Spring wells, is it fair to say  
10 that there's a variation in the well cost as shown on  
11 the AFEs that were submitted as part of your exhibits?

12 A Yes.

13 MR. PARROT: Thank you. No more  
14 questions.

15 THE HEARING EXAMINER: Mr. Savage, is  
16 there a recross on that question?

17 MR. SAVAGE: No. There's no recross on  
18 that. Thank you.

19 THE HEARING EXAMINER: Okay.

20 And Mr. McClure, is there anything  
21 further for this witness?

22 THE TECHNICAL EXAMINER: Nothing here,  
23 Mr. Hearing Examiner.

24 THE HEARING EXAMINER: This witness is  
25 excused. Thank you.

1 THE WITNESS: Thank you.

2 THE HEARING EXAMINER: Thank you.

3 Who do you want to call for your second  
4 witness?

5 MS. GRAHAM: Mr. Examiner, at this time  
6 we'd like to call Mr. Shane Kelly.

7 THE HEARING EXAMINER: Kelly, please  
8 turn the microphone on and stay close to it and speak  
9 loudly.

10 THE WITNESS: Alrighty.

11 WHEREUPON,

12 SHANE KELLY,  
13 called as a witness and having been previously sworn  
14 to tell the truth, the whole truth, and nothing but  
15 the truth, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. GRAHAM:

18 Q Good afternoon, Mr. Kelly. Can you please  
19 state your full name for the record?

20 A Shane Kelly.

21 Q And by whom are you employed and in what  
22 capacity?

23 A I'm employed from -- by Avant Natural  
24 Resources as the VP Of engineering.

25 Q And have you previously testified before the



1 Division and had your qualifications accepted as those  
2 in matters of reservoir engineering?

3 A Yes. I have.

4 Q Are you familiar with the application in  
5 this case?

6 A Yes.

7 Q Have you conducted a study of reservoir  
8 engineering?

9 A Yes.

10 Q Mr. Kelly, have you prepared written  
11 testimony in advance of today's hearing?

12 A I have.

13 Q And was that marked Exhibit G in the exhibit  
14 packet that was filed with the Division?

15 A I believe it will be. Yes.

16 Q Did you also prepare some exhibits in  
17 connection with your testimony?

18 A I did.

19 Q And is it correct to say those were marked  
20 and attached to your affidavit?

21 A Yes. They are.

22 Q And, Mr. Kelly, may I have you please walk  
23 through your exhibits?

24 A Sure.

25 Q With Exhibit G-1.

1           A       Yeah. Starting with G-1 I think page 229,  
2 this is our current rough development timeline for the  
3 Royal Oak unit. Obviously, depending on pooling  
4 approval and such dates, but we do plan to start with  
5 four wells, three Bone Spring wells. Right now our  
6 estimate by date is February 4th, but obviously that  
7 -- that is up to change depending on pooling approval.  
8 After those three wells, we do plan on coming back in  
9 and trying to -- to drill the rest of the section to  
10 mitigate waste and any kind of depletion effects from  
11 the first three wells. So we currently have those  
12 scheduled in about six months after, which is pretty  
13 standard for what Avant likes to do in these types of  
14 development packages to prevent any kind of waste and  
15 -- and get the best well as possible.

16           Q       Thank you, Mr. Kelly. Can we please move to  
17 Exhibit G-2?

18           A       Yes, so G-2 is just the current pad layout.  
19 We do have two pads laid out currently. Pad 2 is  
20 already built and ready to go for when approvals come  
21 in. We can move a rig there as soon as possible. We  
22 have set these pads up so that we can put multiple  
23 rigs on the pad if need be. We do have two rigs  
24 running in New Mexico currently with plans to go up in  
25 rigs beginning of next year so having more wells to

1 drill is a good thing as we, you know, up our rig  
2 count.

3 Q And, Mr. Kelly, if you may, just feel free  
4 to proceed presenting Exhibits G-3 through G-9.

5 A Sure. G-3 is our current gas takeaway  
6 solution. If -- you may not be aware, but up in this  
7 area, it is quite tough to get gas on pipe which is  
8 pretty essential to having large development package  
9 come online. We are -- we have an exclusive deal with  
10 Northwind where they have agreed to come up to Royal  
11 Oak by February with pipe capable of producing upwards  
12 of 12 wells at a time. So this plan has been in place  
13 for a long time. We've known we want to develop this  
14 unit in this matter and so we put the necessary steps  
15 in place to get a pipe in the ground. The next page I  
16 think covers our water system. Again, water is a very  
17 tight up in this area so we as a company took it upon  
18 ourselves to go out and build two separate facilities.

19 These are recycle facilities with 1.5  
20 million barrel ponds at each facility. We currently  
21 have one recycle facility up and running. The second  
22 recycle facility will be up and running late this  
23 year, but the pond's already in place and are  
24 currently taking water in preparation to reuse that  
25 water for frack purposes at Royal Oak so that's our

1 water system. And then I think the next page we'll go  
2 through this is Plains Oryx Pipeline. They're also  
3 under contract with a dedication to Avant and they --  
4 we give them seven months' notice and they have to put  
5 pipe in the ground to each unit and they have already  
6 acquired right away or currently in progress of  
7 building line to Royal Oak for development early next  
8 year.

9 The next slide, it's just about Avant  
10 together, you know, we've got over 100 years of  
11 experience. We've all been working together for a  
12 long time. We've had two rigs running in the Basin  
13 for -- for more than half a year and one rig running  
14 full-time for about a year and a half now. We've  
15 drilled over 650 wells in the Permian Basin alone as a  
16 company. We have a lot of experience in this area and  
17 we understand a lot of pitfalls that come with  
18 producing up in Northern Lea County. Exhibit G-7,  
19 slide 235 is just our annual drilling activity.

20 As I kind of mentioned briefly before, we  
21 started with our drilling program in 2021 to drill our  
22 first wells at Golden Tee. We then took a little time  
23 off, drilled the second package there as we acquired  
24 acreage and now to this day we've drilled over 60  
25 horizontal wells. And like I said, we picked up that

1 second rig here late in April and we've had that  
2 running for -- since then. And then the next slide,  
3 just kind of our recent drilling performance on our  
4 days, you know, we have ten wells at two miles and the  
5 Bone Spring with that 4-string design, this comes in  
6 the potash areas of the Basin where you do have to add  
7 an extra stream of casing. Royal Oak falls outside  
8 that. We're -- we'll be a -- casing design for most  
9 of our wells and you can see our -- our current  
10 results at a mile and a half and -- and a mile.  
11 Drilling under ten days for -- for those mile wells so  
12 more than easy enough to -- to drill on big packages  
13 like this at two mile laterals and in short timeframes  
14 with the way our rigs are running right now.

15 There's a pad that we are currently working  
16 on, the Sandra Jean. We're actually there drilling 16  
17 wells at one time. Again, this is to prevent any kind  
18 of waste out of the section. We don't want to deal  
19 with any kind of depletion effects that could happen  
20 with our spacing patterns. And you can see our  
21 average days per well on these are right over 11 days,  
22 close to 12 days on -- on the first pad that we did  
23 there.

24 And the Cutbow is our last two mile wells  
25 that we drilled in the Basin and this is under that 4-

1 stream design so you can add a little bit of time  
2 there when you have to add in that extra stream of  
3 casing, but still averaging around the 13 to 14 day  
4 mark per well so -- next exhibit, G-8, is just again  
5 showing what I mentioned previously on the Sandra Jean  
6 package. We came in, we drilled five wells in three  
7 different benches, testing the production in those  
8 three benches and how we want to move forward and then  
9 came back in and we're drilling the rest of those  
10 three benches, much like we're -- we're going to do at  
11 Royal Oak. In this case it's 16 wells that we'd have  
12 to come in and -- and offset.

13 At Royal Oak, we're going to come in with  
14 nine after the initial three so more than capable  
15 doing this type of design that we proposed and well  
16 within the year pooling order that we received. I  
17 believe that is the last slide. Yes.

18 Q Thank you, Mr. Kelly. And sitting here  
19 today, do you adopt the testimony that you pre-filed  
20 as Exhibits G -- G-1, G through 9 as your testimony  
21 today?

22 A Yes.

23 Q Mr. Kelly, having submitted this testimony,  
24 do you have any corrections, modifications or changes  
25 to the testimony?

1           A     No.  I do not.

2           Q     And can you affirm the veracity of the  
3 exhibits and the slides that you've attached as  
4 Exhibit G?

5           A     Yes.

6                     MS. GRAHAM:  And with that,  
7 Mr. Examiner, I tender Mr. Kelly as a witness and make  
8 him available for cross.

9                     THE HEARING EXAMINER:  Mr. Savage.

10                    MR. SAVAGE:  Thank you, Mr. Hearing  
11 Examiner.

12                                     CROSS-EXAMINATION

13 BY MR. SAVAGE:

14           Q     Mr. Kelly, thank you for your time and  
15 participation today in this hearing.  As with  
16 Ms. Guerra, I just have a handful of questions.  And  
17 if you don't hear a question or part of a question,  
18 please do not hesitate to ask me to repeat it.  And if  
19 you do not understand, please do not -- let me know  
20 and I'll be glad to repeat or rephrase it.  So,  
21 Mr. Kelly, I'm looking through your engineering  
22 exhibits and you have exhibits that show -- is it  
23 correct you have exhibits that show Avant can drill  
24 high density benches in high density units?

25           A     Correct.

1 Q Correct. And is it fair to say that  
2 drilling higher density benches and high density unit  
3 costs substantially -- costs substantially more than  
4 drilling lower density benches and units?

5 A Costs, just pure cost?

6 Q Pure cost.

7 A Yep. More wells equals more money.

8 Q In your Exhibits G-3, G-4, and G-5, you  
9 focused on infrastructure requirements for the  
10 development of this area. Is it fair to conclude from  
11 these that fewer surface locations and fewer wellbores  
12 would lead to reduced infrastructure costs?

13 A No.

14 Q No? Okay. Can you explain that?

15 A The pipe still needs to be there whether you  
16 drill one well or nine wells. We do not flare in New  
17 Mexico so --

18 Q So would it be fair to say that fewer wells  
19 for bench and wider spacing between the wells could be  
20 achieved from one central service location rather than  
21 multiple locations required for additional wells or  
22 denser drilling?

23 A Are you saying instead of the two pad  
24 scenario that we have right now?

25 Q If you had a wider space between the wells



1 and less density with -- could that be achieved from  
2 one central surface locations to have the two, that's  
3 correct.

4 A Not in every instance. No.

5 Q I would like to direct you to your  
6 statement. And that is page 225. Affidavit. Is it  
7 correct you just finished that you don't have any  
8 changes to this statement and you confirm its  
9 veracity. Is that correct?

10 A Yeah. It's correct.

11 Q Okay. Could you read paragraph 13-E?

12 A Oh, 13, yeah.

13 Q And that's on page 225.

14 A Yeah. "Avant's development plan which  
15 entails drilling three in the first, second, third  
16 bench will efficiently and effectively develop the  
17 subject acreage." And, yeah, that's a mistake.  
18 Should be a four and then -- yeah.

19 Q That's four, okay. So --

20 A So I do have one to change. I didn't notice  
21 that.

22 Q But in your plan, in your original plan, as  
23 you described, as I understand this, you will be  
24 drilling three per bench and then coming back around  
25 to drill the fourth?

1           A     No.  We're going to start with one in each  
2 bench and then come back and drill three more in each  
3 bench.

4           Q     Do you have any exhibits in the exhibits  
5 that you presented that show the amount of production  
6 that would come from Avant's Royal Oak wells when they  
7 are drilled at a higher density within the proposed  
8 unit?

9           A     No.  I do not.

10          Q     Okay.  So would it be fair to say that you  
11 have not shown the Division as of yet Avant's tighter  
12 spacing of four wells per bench would provide greater  
13 amount of product than a looser three wells per bench?

14          A     No.  I have not yet.

15                   MR. SAVAGE:  That's all the questions I  
16 have.  Thank you.

17                   THE HEARING EXAMINER:  Any other  
18 counsel questions before I turn to the technical  
19 examiner?

20                   Mr. McClure?

21                   THE TECHNICAL EXAMINER:  Mr. Hearing  
22 Examiner, I do not have any questions although I do  
23 have a quick question if I may.

24                   THE HEARING EXAMINER:  For who?

25                   THE TECHNICAL EXAMINER:  For yourself I

1 guess.

2 THE HEARING EXAMINER: Oh, okay. Go  
3 ahead.

4 THE TECHNICAL EXAMINER: Do you think  
5 we should have them, Avant, amend this paragraph 13-E  
6 where they -- that Mr. Savage had just pointed out  
7 they referenced three wells instead of four or do you  
8 think testimony here is adequate?

9 THE HEARING EXAMINER: I think that  
10 they should amend it. They're going to amend the  
11 packet anyway for a variety of reasons so this should  
12 be one more reason.

13 So do you have a page number and a  
14 paragraph number to refer to, Ms. Graham?

15 MS. GRAHAM: Yes, Mr. Examiner. We do.

16 THE HEARING EXAMINER: Great. All  
17 right. And, Ms. Graham, so --

18 Okay, Mr. McClure, the answer is, yes,  
19 they're going to amend the exhibit packet. Thank you  
20 for that.

21 Is there any redirect based on the  
22 questions you heard, Mr. Parrot?

23 MR. PARROT: I just have one question.

24 THE HEARING EXAMINER: Go ahead.

25 REDIRECT EXAMINATION

1 BY MR. PARROT:

2 Q Mr. Kelly, in your professional opinion, as  
3 a qualified reservoir engineer, having drilled, as you  
4 mentioned, hundreds of wells in the Permian, is it  
5 your opinion that drilling the proposed unit,  
6 according to the development plan that you have  
7 proposed will protect correlative rights and prevent  
8 waste?

9 A Yes. I do 100 percent. And there are some  
10 slides in the rebuttal exhibits that do help explain  
11 that situation.

12 MR. PARROT: Thank you. No more  
13 questions.

14 THE HEARING EXAMINER: All right.  
15 This witness may be excused.  
16 Thank you.

17 Now, we swore in a third witness, but  
18 you're not going to have the witness testify or you  
19 are?

20 MR. PARROT: So I think there might be  
21 a bit of a question about the exhibits that will be  
22 provided by that witness. If I may speak frankly for  
23 a moment to explain, so as you covered in the  
24 beginning of the hearing, there was a second amended  
25 pre-hearing statement submitted by Prima at

1 approximately noon on August 15th, which was last  
2 Thursday. So essentially two and a half business days  
3 before the hearing. As a result of that pre-hearing  
4 statement and the pre-hearing statement that was  
5 submitted a day and a half earlier, our geologist had  
6 cause to add some additional information to his  
7 original slides. So what we have for geology slides  
8 are essentially rebuttal to the pre-hearing statements  
9 that were submitted by Prima last week and middle and  
10 late last week as well as sort of our case-in-chief.  
11 So what we would like to do is just have those geology  
12 exhibits admitted and present our geology witness for  
13 cross-examination on those exhibits. But we don't  
14 need to have him provide testimony about each  
15 individual exhibit.

16 THE HEARING EXAMINER: Let me make sure  
17 I understand before I turn to Mr. Savage. What you're  
18 saying is that Exhibit D and subparts, while submitted  
19 timely, do not present your case in the best light  
20 based on the last minute -- I won't say last minute --  
21 last Thursday's filings by Prima.

22 MR. PARROT: We believe it does not  
23 present the entire case. So I believe there was --

24 THE HEARING EXAMINER: Well, right now  
25 without Exhibits D in your exhibit packet, you're

1 hoping that I will admit the rebuttal exhibits. Are  
2 you sure that's the way you want to go?

3 MR. PARROT: Mr. Examiner, I'm sorry,  
4 would you give me just one moment to confer with my  
5 co-counsel?

6 THE HEARING EXAMINER: Let's take a  
7 five minute break.

8 MR. PARROT: Certainly.

9 THE HEARING EXAMINER: We're off the  
10 record for five minutes.

11 (Off the record.)

12 THE HEARING EXAMINER: All right. It's  
13 2:41 p.m., August 20th. We're back on the record  
14 after a five-minute break.

15 Mr. Parrot?

16 MR. PARROT: Thank you, Mr. Examiner.  
17 After having conferred with my client, we think that  
18 in the best interest of expediency and to address  
19 hopefully some of previous concerns about continuing  
20 the hearing until tomorrow, we're going to forego the  
21 prior request to admit our rebuttal exhibits as  
22 basically our case-in-chief. So at this time we'd  
23 like to go ahead and have Exhibits D-1 through 5 that  
24 were submitted as part of the 238-page packet on the  
25 14th admitted into the record. Thank you.

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1 THE HEARING EXAMINER: Okay.

2 Mr. Savage?

3 MR. SAVAGE: That's fine. No  
4 objection.

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

7 So Exhibits D and its subparts are now  
8 admitted into evidence.

9 (Avant Exhibit D was received into  
10 evidence.)

11 THE HEARING EXAMINER: Are you calling  
12 that witness?

13 MR. PARROT: So we don't feel the need  
14 to have that witness provide direct testimony other  
15 than just to authenticate the exhibits.

16 THE HEARING EXAMINER: Right.

17 MR. PARROT: So we'll go ahead and ask  
18 him to do that, but --

19 THE HEARING EXAMINER: They're  
20 admitted.

21 MR. PARROT: Okay. So we don't need  
22 him to authenticate then.

23 THE HEARING EXAMINER: You don't even  
24 need to do that.

25 MR. PARROT: Okay.

1 THE HEARING EXAMINER: They're  
2 admitted. But if anyone has cross-examination  
3 questions for the petroleum geologist, and I assume  
4 Mr. Savage does, let's get him on the witness stand.

5 MR. PARROT: Thank you.

6 THE HEARING EXAMINER: So would you  
7 call him, please?

8 MR. PARROT: Yes.

9 MR. SAVAGE: Excuse me, this is the  
10 geologist that's coming on.

11 THE HEARING EXAMINER: This is the  
12 person who submitted the affidavit in Exhibits D.  
13 Should I go back and see his --

14 MR. SAVAGE: So Prima doesn't have any  
15 questions for the geology.

16 THE HEARING EXAMINER: Ah, okay.

17 MR. SAVAGE: But --

18 THE HEARING EXAMINER: Or any of the D  
19 exhibits?

20 MR. SAVAGE: Well, no, we don't have  
21 any cross-examination questions for the geology. Our  
22 focus is on the overdevelopment and the engineering.

23 THE HEARING EXAMINER: Right.

24 MR. SAVAGE: But we have not looked at  
25 the geology rebuttal exhibits.



1 THE HEARING EXAMINER: We haven't dealt  
2 with those yet. They're not in evidence.

3 MR. SAVAGE: Right, I understand that.  
4 So as it stands, for those particular exhibits that  
5 were admitted, we don't have any questions.

6 THE HEARING EXAMINER: So let's just be  
7 clear, Mr. Harper --

8 And do we have Mr. Harper here?

9 MR. PARROT: I'm sorry, our geology  
10 witness will be Mr. Josh Payne.

11 THE HEARING EXAMINER: Who is already  
12 sworn in.

13 MR. PARROT: Yes.

14 THE HEARING EXAMINER: Oh, so it's not  
15 John Harper. It's Mr. Payne, Joshua Payne.

16 MS. GRAHAM: And again, Mr. Hearing  
17 Examiner, because this was an amended supplement  
18 packet from back in originally June, in those interim  
19 couple months they switched the geologist to Mr. Josh  
20 Payne and the notice of supplemental affidavit  
21 accurately describes that we replaced the geologist  
22 and the affidavit in accordance with that change.

23 THE HEARING EXAMINER: I'm just  
24 wondering why this document that was filed on the 14th  
25 of August still has the name of John Harper and not

1 Mr. Payne.

2 MS. GRAHAM: That's because that was  
3 the table of contents from the original amended  
4 packet. And so we identified the change in the  
5 notice, in the cover letter at the beginning and then  
6 made the change appropriately in the exhibit packet.

7 THE HEARING EXAMINER: I understand  
8 now. Let me look at -- okay. So this is the cover  
9 letter here. I see. "Upon his replacing Exhibit D,  
10 the affidavit of this expert in geology to properly  
11 reflect the geologist who will testify --" but it  
12 doesn't have his name here so it's just sort of --  
13 that's why there's confusion because Mr. Payne's name  
14 is not on the cover letter. To say that you're  
15 changing Mr. Harper to Mr. Payne would have been  
16 helpful here. And then we still have the table of  
17 contents which is wrong, which is why I didn't  
18 understand that. What page do we have Mr. Payne's  
19 affidavit on?

20 MS. GRAHAM: If I may take a moment to  
21 find that.

22 THE HEARING EXAMINER: Yes. Of course.

23 MS. GRAHAM: Page 122.

24 THE HEARING EXAMINER: I didn't hear  
25 you.

1 MS. GRAHAM: Page 122.

2 THE HEARING EXAMINER: One what?

3 MS. GRAHAM: 122.

4 THE HEARING EXAMINER: One-two-two,  
5 thank you. All right. Here we have Mr. Josh Payne.  
6 And the D exhibits -- so let me just -- would you call  
7 Mr. Payne to the witness stand, please?

8 MS. GRAHAM: Mr. Examiner, at this time  
9 I will call Avant's first witness, Mr. Josh Payne.

10 THE HEARING EXAMINER: Thank you.

11 WHEREUPON,

12 JOSHUA PAYNE,  
13 called as a witness and having been previously sworn  
14 to tell the truth, the whole truth, and nothing but  
15 the truth, was examined and testified as follows:

16 THE HEARING EXAMINER: Mr. Payne, I  
17 have a couple of questions for you. This statement  
18 here that is marked -- this affidavit that is marked  
19 as -- do you have an exhibit number on it or it's just  
20 D? 'Cause I don't see it marked as D either.

21 MR. PARROT: The affidavit itself is  
22 not marked as Exhibit D. We will correct that in the  
23 resubmission.

24 THE HEARING EXAMINER: But it will be  
25 D.

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1 MR. PARROT: Correct.

2 THE HEARING EXAMINER: But it will be.

3 MR. PARROT: Yes.

4 THE HEARING EXAMINER: And Mr. Payne,  
5 this affidavit that starts on page 122 and goes until  
6 your signature on page 125, did you draft this  
7 yourself?

8 THE WITNESS: I have some help from my  
9 team drafting it.

10 THE HEARING EXAMINER: Okay.

11 THE REPORTER: Just need to turn your  
12 mic on.

13 THE WITNESS: Sorry.

14 THE HEARING EXAMINER: Perfect. Would  
15 you repeat the answer?

16 THE WITNESS: I had some help from my  
17 team drafting it, but I was a part of the process.

18 THE HEARING EXAMINER: Great. And  
19 you're attesting to its truth here?

20 THE WITNESS: Yes.

21 THE HEARING EXAMINER: Whether or not  
22 you actually drafted the whole affidavit, you're  
23 telling us that it's all true based on your personal  
24 knowledge.

25 THE WITNESS: Yes.

1 THE HEARING EXAMINER: Okay. All  
2 right. And you have been admitted as an expert in  
3 what before the Division?

4 THE WITNESS: Petroleum geology.

5 THE HEARING EXAMINER: Okay. Very  
6 good. And then all of these exhibits, I know that  
7 you're not Mr. Harper, but did you prepare these  
8 exhibits or did you just review these exhibits after  
9 you were assigned to this case?

10 THE WITNESS: I was -- I did help  
11 prepare these exhibits. Yeah. A big part of them.  
12 Yes, sir.

13 THE HEARING EXAMINER: Okay. All  
14 right. So you were involved in creating all of these  
15 D exhibits.

16 THE WITNESS: Yes, sir.

17 THE HEARING EXAMINER: Okay. Very  
18 good. Okay. I have no further questions for this  
19 witness.

20 And Mr. Savage, did you say that you  
21 had any questions to this witness or these D exhibits?

22 MR. SAVAGE: As I said, our  
23 case-in-chief focuses on the engineering so we don't  
24 have questions for geology. But if I may raise a  
25 question about something that Mr. Parrot had

1 mentioned, I don't know if this is the appropriate  
2 time to do this. If we --

3 THE HEARING EXAMINER: Let's let this  
4 witness go. If you don't have any questions --

5 MR. SAVAGE: Yep. No questions.

6 THE HEARING EXAMINER: -- I'm going to  
7 go to Mr. McClure in just a moment.

8 MR. SAVAGE: Thank you.

9 THE HEARING EXAMINER: But do we have  
10 any questions from any counsel before we go to our  
11 technical examiner for this witness?

12 Okay. Mr. McClure, do you have any  
13 questions for this expert in geology?

14 THE TECHNICAL EXAMINER: Mr. Hearing  
15 Examiner, I do not have any questions for the  
16 geologist. I do have a couple requests for Mr. Parrot  
17 just before we move on, but from the geologist I think  
18 we're good there.

19 THE HEARING EXAMINER: Okay. Thank  
20 you, Mr. McClure.

21 All right. Mr. Payne, you may be  
22 excused. Thank you very much.

23 All right, Mr. Savage, what did you  
24 want to discuss?

25 MR. SAVAGE: So -- Mr. Parrot that's

1 saying that there was something referenced in the  
2 amended pre-hearing statement.

3 THE HEARING EXAMINER: Your document  
4 that you filed on the 15th.

5 MR. SAVAGE: The 15th.

6 THE HEARING EXAMINER: Yes.

7 MR. SAVAGE: First of all, there was a  
8 series of amended exhibits in this after Monday,  
9 after, you know. The pre-hearing order said that  
10 exhibits were to be filed prior to four business days.  
11 We looked at that literally and looked at it as being  
12 Monday. Tuesday, Wednesday, Thursday.

13 MS. MCLEAN: Do you think this is  
14 something that needs a bit of clarification 'cause in  
15 some of our other cases, this has come up and with it  
16 being -- with since four business days, it's been --  
17 or, you know, some -- they say four business days,  
18 it's getting to be a little confusing. Like is it by  
19 8 a.m., the morning of that fourth business day? It  
20 is by 5 p.m. that day? And people are taking  
21 different approaches to what that means.

22 THE HEARING EXAMINER: Okay. I'm  
23 trying to find --

24 MS. GRAHAM: And Mr. Hearing Examiner,  
25 we did reach out to --

1 THE HEARING EXAMINER: Freya.

2 MS. GRAHAM: -- seek additional  
3 guidance on the deadline.

4 THE HEARING EXAMINER: Let me find the  
5 pre-hearing order since you brought it up, Mr. Savage.  
6 Give me a minute here. It says here "The pre-hearing  
7 statement should be filed no later than four business  
8 days prior to the hearing." So whenever we count in  
9 the world of civil procedure, we don't count the day  
10 of the hearing. So today doesn't count. So then that  
11 would be Monday, Friday, Thursday, and that would be  
12 Wednesday so that would be Wednesday morning at 8:30  
13 a.m. the exhibits would be due.

14 MR. SAVAGE: Okay. That is correct.  
15 Yeah. I agree with that.

16 THE HEARING EXAMINER: I mean, I don't  
17 see the confusion there.

18 Ms. Mclean, I mean, you brought up --  
19 you sort of brought it up to -- from my clarification  
20 just now, you don't count today so Monday, Friday,  
21 Thursday, Wednesday so at Wednesday at -- I mean, 4  
22 days is 4 24-hour periods. I don't know what's  
23 echoing. So then, wouldn't it be 8:30 a.m. on  
24 Wednesday? I think it might be someone's microphone  
25 on their computer. If they could turn that -- do you



1 have your microphone on? On the computer. It's  
2 better now. So the way I would look at it, if I was  
3 counting in court, it would be Wednesday morning at  
4 8:30. So it that clear? Did that help?

5 MS. MCLEAN: Yes. That does.

6 THE HEARING EXAMINER: Okay. Yes.

7 MS. MCLEAN: 'Cause there's just --  
8 between everyone and it's typically in front of you,  
9 there's just been some debate, but that makes it very  
10 clear. Thank you.

11 THE HEARING EXAMINER: Good, good. And  
12 maybe Freya will send out a email to the parties that  
13 four business days before a hearing would be 8:30 four  
14 business days, not counting the hearing date before  
15 the hearing. And we could use an example, Freya,  
16 which always helped me. Having examples are always  
17 very helpful.

18 So back to you, Mr. Savage. What were  
19 you saying?

20 MR. SAVAGE: So I agree with that.

21 THE HEARING EXAMINER: Okay. Good.  
22 Thank you.

23 MR. SAVAGE: But then after both  
24 parties met that deadline, then there was a series of  
25 amended filings by both sides. The reason we filed

1 that one on Thursday is because we realized -- we  
2 filed the special provision, the pre-hearing statement  
3 with the special provision, in a timely manner. Then  
4 we realized -- then we did an amended pre-hearing  
5 statement. Then we realized that did not have the  
6 special provision. So we did the Thursday.

7 THE HEARING EXAMINER: I don't think  
8 anyone's objecting to it so I'm not sure why we're  
9 talking about it.

10 MR. SAVAGE: Right. But so it sounds  
11 to me like Mr. Parrot is justifying the inclusion of  
12 these rebuttal geology exhibits based on something  
13 that was stated in the pre-hearing statement and I  
14 don't understand what that means.

15 THE HEARING EXAMINER: Well, let's get  
16 some clarification then.

17 So, Mr. Parrot, what document -- you  
18 have rebuttal exhibits. Right? And why do you have  
19 rebuttal exhibits?

20 MR. PARROT: Okay, so we have geology  
21 rebuttal exhibits that we filed today. And there was  
22 a comment made very early on in this process that that  
23 was somewhat I guess last minute. And so I was  
24 explaining why those were last minute. However, given  
25 the discussion that we just had about admitting D-1

1 through D-5, we are not going to be asking that those  
2 rebuttal geology exhibits be submitted into the  
3 record. So that is a moot point at this juncture. We  
4 have no objection to Prima having filed an amended  
5 pre-hearing statement after the deadline. Just wanted  
6 to be clear as to why we didn't get the rebuttal  
7 exhibits filed until earlier today.

8 THE HEARING EXAMINER: So let me  
9 address both parties' concerns about rebuttal  
10 exhibits. The deadline to file exhibits was, as we  
11 both all know now, 8:30 a.m. on Wednesday of last  
12 week. Now, if there is something in those exhibits  
13 that one party sees that another party has filed, it  
14 has a right to file a rebuttal exhibit because they  
15 could not have anticipated what the other side was  
16 going to say. So that would be acceptable from either  
17 party.

18 And so, Mr. Parrot, you're not saying  
19 that that's what's happening here.

20 MR. PARROT: My sincere apologies,  
21 Mr. Examiner, I'm not quite sure I understood the  
22 double negative.

23 THE HEARING EXAMINER: I'll say it  
24 again.

25 MR. PARROT: Okay.

1 THE HEARING EXAMINER: The parties  
2 filed their exhibits timely by Wednesday morning at  
3 8:30 because today's hearing started -- well,  
4 actually, it was one o'clock, but I'm not sure anyone  
5 knew it was one o'clock at that time, but whatever.  
6 Let's say we were still on the same time of 8:30 a.m.  
7 on today, 8:30 on Wednesday would have been proper  
8 time to file documents. If an exhibit that the other  
9 party filed was a surprise to you in some way and you  
10 had more evidence to rebut that, it's proper rebuttal  
11 testimony and evidence. So now that D and all its  
12 subparts are admitted into evidence, are you saying  
13 that you do not have rebuttal exhibits?

14 MR. PARROT: Not for geology. We do  
15 have rebuttal exhibits for -- that we anticipate that  
16 we will probably be presenting for engineering, but we  
17 have yet to see Prima's case-in-chief.

18 THE HEARING EXAMINER: I understand  
19 perfectly. Okay. So are you now resting your  
20 case-in-chief?

21 MR. PARROT: I suppose we're done with  
22 our geology witness so yes. Thank you.

23 THE HEARING EXAMINER: Yes, your  
24 geology witness was excused. Okay.

25 So, Mr. Savage, do you have a

1 case-in-chief?

2 MR. SAVAGE: I do.

3 THE HEARING EXAMINER: Very good.

4 MR. SAVAGE: And I appreciate the  
5 clarification on that.

6 THE HEARING EXAMINER: Sure.

7 MR. SAVAGE: So as I understand it,  
8 there are no rebuttal geology exhibits. It's only the  
9 engineering and it's only those eight.

10 THE HEARING EXAMINER: There isn't  
11 anything yet. They may have rebuttal exhibits for  
12 engineering and we'll get to that when I ask them if  
13 they have a rebuttal case. But for now I'm asking you  
14 if you have a case-in-chief.

15 MR. SAVAGE: Yes. I have a  
16 case-in-chief.

17 THE HEARING EXAMINER: I thought you  
18 would.

19 MR. SAVAGE: Thank you, Mr. Yep.  
20 Thank you.

21 THE HEARING EXAMINER: How many  
22 witnesses are you calling in your case-in-chief?

23 MR. SAVAGE: We will call the  
24 engineering witness and that is David Rhodes.

25 THE HEARING EXAMINER: How do you spell

1 the last name?

2 MR. SAVAGE: R-H-O-D-E-S.

3 THE HEARING EXAMINER: Oh, Rhodes,  
4 okay. And do you have another witness or just the  
5 one?

6 MR. SAVAGE: The other one is just a  
7 landman. He's available for any questions, but he is  
8 not part of our case-in-chief. But if there's any  
9 issue of clarification, he is available.

10 THE HEARING EXAMINER: But do we have  
11 an exhibit? Do we not have a landman exhibit? We  
12 don't have a landman exhibit. Oh, wait, then we have  
13 no -- I understand. So let's get Mr. Rhodes on the  
14 camera.

15 MR. SAVAGE: All right. There he is.

16 THE HEARING EXAMINER: Are you  
17 standing, Mr. Rhodes?

18 MR. RHODES: I am.

19 THE HEARING EXAMINER: Okay. Very  
20 good. Can you get a little closer? Are you not able  
21 to sit by the microphone and the camera?

22 MR. RHODES: I sure can.

23 THE HEARING EXAMINER: Oh, excellent.  
24 Excellent. If you'll just raise your right -- it's a  
25 little dark. Maybe it's the lighting in the room.

1 It's all the lighting is behind you.

2 MR. RHODES: Yeah.

3 THE HEARING EXAMINER: I think that  
4 must be what it is. But so be it. Would you raise  
5 your right hand, please? Do you swear or affirm under  
6 penalty of perjury that the testimony you are about to  
7 give is the truth, the whole truth, and nothing but  
8 the truth?

9 MR. RHODES: I do.

10 THE HEARING EXAMINER: Okay. Thank  
11 you. Would you state and spell your name for the  
12 record?

13 THE WITNESS: It's David Rhodes,  
14 D-A-V-I-D R-H-O-D-E-S.

15 THE HEARING EXAMINER: Yes. And the  
16 lighting is better in the room now. Thank you.

17 Okay, Mr. Savage.

18 EXAMINATION

19 BY MR. SAVAGE:

20 Q Yes. Mr. Rhodes, you just stated your  
21 complete name. That's correct?

22 A Correct.

23 Q In what capacity are you currently employed?

24 A I'm the vice president of exploration for  
25 Prima Exploration.

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1 Q And how long have you worked for Prima?

2 A Fifteen years.

3 Q And have you testified previously before the  
4 Division?

5 A I have not.

6 Q Have you provided a resume for the  
7 Division's review?

8 A I have.

9 MR. SAVAGE: Mr. Hearing Examiner, do  
10 you want me to ask some questions about his  
11 educational background or do you want to?

12 THE HEARING EXAMINER: I'll ask him.

13 MR. SAVAGE: Okay.

14 THE HEARING EXAMINER: Let me get to  
15 it. It's on here on page 4 for his statement. Let me  
16 find the CV. I found it. It's starting on page 7 of  
17 19.

18 Mr. Rhodes, give me a minute to review  
19 your -- actually, it may be easier -- what education  
20 do you have -- first of all, what expertise are you  
21 trying to be qualified for?

22 THE WITNESS: Engineering, some  
23 geology. I have been acting as our geologist for  
24 several years since we don't employ a full-time  
25 geologist and I took several geology classes in

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1 college.

2 THE HEARING EXAMINER: Okay. Hold on  
3 one second.

4 Mr. Savage, what field of expertise are  
5 you seeking to have him admitted under?

6 MR. SAVAGE: Well, certainly petroleum  
7 engineering. That would include reservoir engineering  
8 and drilling. He does both.

9 THE HEARING EXAMINER: Okay.

10 MR. SAVAGE: If he is -- you know,  
11 Prima Exploration is a smaller company and he,  
12 Mr. Rhodes, does the engineering, he does the geology.  
13 He graduated from the Colorado School of Mines, has a  
14 strong educational --

15 THE HEARING EXAMINER: I'll look into  
16 these in a moment, but are you trying to get him  
17 qualified in more than one expertise?

18 MR. SAVAGE: Okay, so -- well, when  
19 Avant had submitted those geology rebuttals, yes, I  
20 would want him to be considered an expert in geology  
21 to address. But if they're not submitting those and  
22 we're just looking at engineering, then I would  
23 request, you know, petroleum engineering.

24 THE HEARING EXAMINER: Okay. We'll go  
25 with petroleum engineering.

1 MR. SAVAGE: Okay.

2 THE HEARING EXAMINER: So, Mr. Rhodes,  
3 what schooling and education do you have toward that  
4 field?

5 THE WITNESS: I have a bachelor's of  
6 science from the Colorado School of Mines in petroleum  
7 engineering with a minor in economics.

8 THE HEARING EXAMINER: Okay. And then  
9 is there any graduate study work or did you go on to  
10 work experience?

11 THE WITNESS: I went right into the  
12 industry.

13 THE HEARING EXAMINER: Okay. All  
14 right. And so what expertise in work do you have  
15 toward petroleum engineering?

16 THE WITNESS: So I've worked for 15  
17 years post-graduation, plus two years while in school  
18 specifically as a petroleum engineer running the  
19 entire gambit from production engineering to drilling  
20 completions and reservoir. My main focus has been  
21 reservoir engineering, handling the economic  
22 valuations acquisition, investor evaluations and for  
23 the last five years I've been managing our drilling  
24 and completion programs in the Rockies.

25 THE HEARING EXAMINER: Thank you,

1 Mr. Rhodes. You know, based on your CV and your  
2 testimony, you're qualified as a petroleum engineer  
3 before this Division. We have not dealt with geology.  
4 We're only dealing with petroleum engineering, dealing  
5 with reservoirs and drilling.

6 So, Mr. Savage, please proceed.

7 MR. SAVAGE: Thank you.

8 MR. PARROT: Sorry, Mr. Examiner, just  
9 point of clarification. It sounds like Prima is  
10 asking for Mr. Rhodes to be qualified in two separate  
11 engineering disciplines. The first is reservoir  
12 engineering and the second is as a drilling engineer.  
13 Am I understanding that correctly?

14 THE HEARING EXAMINER: Mr. Savage?

15 MR. SAVAGE: Yes, certainly a reservoir  
16 engineer and secondly, yes, drilling engineer spans  
17 the gamut.

18 THE HEARING EXAMINER: Okay. Thank  
19 you.

20 Yes?

21 MR. PARROT: Would it be possible to  
22 voir dire Mr. Rhodes about --

23 THE HEARING EXAMINER: Yes. Go right  
24 ahead, Mr. Parrot. Go right ahead.

25 MR. PARROT: Okay.

1 EXAMINATION

2 BY MR. PARROT:

3 Q Mr. Rhodes, good afternoon. How are you  
4 today?

5 A Good. How are you doing?

6 Q Good. Thank you. Do you mind expanding on  
7 your qualifications just as far as the work history is  
8 concerned to opine expert opinions regarding drilling  
9 engineering?

10 A Sure.

11 Q And you don't have to talk about reservoir  
12 engineering. Thank you.

13 A Sure. So a small shop. I've been handling  
14 a lot of our petroleum engineering. This area in  
15 particular, we farmed-in with a company called  
16 McElvain. So I was our company representative.  
17 McElvain did the drilling, but I worked directly in  
18 deciding what or going -- giving Prima's consent and  
19 approval to the drilling plans for these Bone Spring  
20 wells in this area. Since 2019, I have been managing  
21 our drilling operations in the Bakken Shale in North  
22 Dakota and Montana and in a couple different  
23 formations in the Powder River Basin Wyoming. My role  
24 is primarily to supervise drilling consultants and to  
25 kind of direct the macro level of our projects after

1 working to prepare drilling progs and permits in all  
2 of those spaces.

3 Q Okay. So just to make sure I understand  
4 correctly, Prima has not actually drilled any  
5 horizontal wells in the Permian Basin. Correct?

6 A We have been the main financial investor  
7 working hand-in-hand with a partner as we farm into  
8 them.

9 Q And if you could just go ahead and answer  
10 the question. Has Prima been the operator and drilled  
11 any horizontal wells in the Permian?

12 A Not as the operator, no.

13 Q Okay. And you mentioned that you farmed-in  
14 with a company called McElvain. Correct?

15 A Correct.

16 Q And McElvain designed the drill prog,  
17 designed the completions and it was your job to review  
18 those and consult with McElvain. Is that correct?

19 A Working hand-in-hand with them to tweak  
20 those as necessary. Correct.

21 Q Okay. Can you tell me the last well where  
22 you designed the drill prog or the completion design  
23 and where it was?

24 A In New Mexico?

25 Q Anywhere.

1           A       Yeah.  The wells that we're currently  
2  drilling in Montana, the Bullion 1H and 2H wells,  
3  Bakken wells, 3 mile laterals.

4                   MR. PARROT:  Okay.  I think that  
5  concludes my questions for Mr. Rhodes.  I would  
6  express some pretty strong concerns about him being  
7  offered as an expert witness for drilling engineering  
8  purposes.  Certainly no objections to his extensive  
9  background and excellent education as a reservoir  
10  engineer.  But not having had any experience drilling  
11  wells in this Basin would raise some concerns for  
12  Avant.  I suppose it's up to the Division to determine  
13  what weight to accord his testimony on those issues.

14                   THE HEARING EXAMINER:  Let's take a  
15  look at the Rule of Evidence.  It doesn't control here  
16  and I don't believe that the qualification of expert  
17  witnesses is outlined in our procedural rules under  
18  19.15.4.  So let's take a look at Rule 11-702.  Okay.  
19  That was the right rule.  "A witness who is qualified  
20  as an expert by knowledge, skill, experience,  
21  training, or education may testify in the form of an  
22  opinion or otherwise if the expert's scientific,  
23  technical, or other specialized knowledge will help  
24  the trier of fact to understand the evidence or to  
25  determine a fact in issue."  So there are five bases

1 upon which we can qualify this gentleman as an expert  
2 witness. This is an administrative hearing. The  
3 Rules of Evidence do not apply here, but I look and  
4 know the rules of evidence quite well as a former  
5 prosecutor. I am admitting this witness as an expert  
6 in petroleum engineering, both for reservoir purposes  
7 and for drilling purposes.

8 Mr. Savage?

9 MR. SAVAGE: No objection to that.

10 THE HEARING EXAMINER: Yes, sir. Would  
11 you like to ask him questions?

12 MR. SAVAGE: You've already admitted  
13 him?

14 THE HEARING EXAMINER: I have.

15 MR. SAVAGE: Okay. So I will move on  
16 to the case-in-chief.

17 DIRECT EXAMINATION

18 BY MR. SAVAGE:

19 Q Mr. Rhodes, your Exhibit A in Prima's  
20 hearing packet, is that your written statement for  
21 Prima's case-in-chief?

22 A Can I get the exhibits up on the screen or  
23 am I allowed to have them -- me or how does this work?

24 Q Yes. I'm sorry.

25 A Sorry.

1 MR. PARROT: Mr. Examiner, I have a  
2 point of order. I'm not sure that I was --

3 THE HEARING EXAMINER: Do you want to  
4 turn your camera -- your microphone?

5 MR. PARROT: I apologize. I have a  
6 point of order. Avant would like to register an  
7 objection to the admission of the witness as an expert  
8 for petroleum drilling purposes for the record. We  
9 understand that basically you've already overruled  
10 that objection, but we were -- we'd -- sorry. We  
11 would like to preserve that objection for possible  
12 basis of appeal. Thank you.

13 THE HEARING EXAMINER: It's so noted.  
14 Thank you.

15 MR. PARROT: Thank you.

16 BY MR. SAVAGE:

17 Q Mr. Rhodes, do you see that exhibit?

18 A I do.

19 Q Okay. And is this your written statement  
20 for Prima's case-in-chief?

21 A It is.

22 Q And do you find that to be true and accurate  
23 to the best of your knowledge and understanding?

24 A I do.

25 Q And have you reviewed Avant's exhibits,



1 including the engineering exhibits?

2 A I have.

3 Q Mr. Rhodes, did you provide an affidavit to  
4 Prima's motion to dismiss?

5 A Yes.

6 Q What objections did you state in that motion  
7 to dismiss?

8 A You're talking about the number of wells  
9 motion?

10 Q That is correct. Was there just one  
11 objection or was there two? How many objections did  
12 Prima make?

13 A As to the number of wells, it was based on  
14 the fact that they had so many wells in the permit  
15 queue and the pace of drilling that they've been  
16 established with the two rigs that they have that they  
17 would not be able to get to these wells within a  
18 timely manner.

19 Q And did you also address the overdevelopment  
20 question that this unit would be overdeveloped with  
21 the number of wells?

22 A Yes.

23 Q Okay. So today's -- Prima's primary  
24 objection to Avant's proposed wells in these  
25 proceedings, how would you describe that?

1           A       Primary objection is that the proposal to  
2 have four wells within each bench of the Bone Springs  
3 formation over drills the unit by a significant amount  
4 and leads to economic damage and waste to working  
5 interest owners.

6           Q       And I'm looking at your map and this is on  
7 page 8 of 18. And then the PDF, it's page 9, but we  
8 have it labeled as 8 of 18. Can you just describe the  
9 significance of this map?

10          A       Yes. So this is the subject area. Can you  
11 scroll back down to it, please?

12          Q       Yes.

13          A       The subject area with the subject drilling  
14 and space unit highlighted in yellow, this shows Bone  
15 Spring's completions in that area offsetting this and  
16 it highlights in red several drilldown groups that  
17 display areas where an initial well or multiple  
18 initial wells were drilled and then at a later point  
19 in time offset wells were drilled. And those offset  
20 wells have material impact on the initial wells which  
21 could clearly demonstrate that the density that  
22 they're drilled on is too great and a wider density is  
23 merited in order to prevent economic waste.

24          Q       Okay. And these wells, we're looking at  
25 this Iron Horse [sic], Condor, Kingfisher, EK, Buffalo

1 and the COG Group, are these well groups all the  
2 offset development projects in the subject area?

3 A No. As you can see, there's more. These  
4 are, in the interest of time, just some examples. I  
5 did grab the direct offsets as well. Some of these  
6 wells that are on here, you can't distinguish this  
7 effect because they were drilled or brought online at  
8 the same time so that the impact of those isn't as  
9 readily seen as the groups that I chose which have  
10 periodic development through time.

11 Q And are these the development projects that  
12 you will discuss in the next set of slides?

13 A Yes.

14 Q So let's look at the Iron Horse Group and  
15 this is titled "Iron Horse [sic] Group" and it  
16 references the Condor State wells. What is this slide  
17 showing?

18 A So it's the Iron House Group and it's  
19 highlighting the two blue wells which there's actually  
20 a correction needed on that in the upper right. I  
21 labeled the 1H and the 2H backwards. So the 1H is  
22 actually the western well and the 2H is the eastern  
23 well. But this is an overlay of the monthly oil  
24 production for these wells through time. The Condor  
25 State 2H well, which is not on this, was drilled at

1 the exact same time as the Ironhorse [sic] 20 State 1H  
2 well. Again, that's the well to the west. So it's  
3 irrelevant to this example because being online at the  
4 same time, it doesn't show the impact with the  
5 Ironhouse 20 State 1H well. But as you can see when  
6 the Ironhouse State 2H well was drilled about just  
7 under a year after the number 1H well, there was  
8 within a few months of a non-production a dramatic  
9 step change in production from the Ironhouse State 1H.  
10 And that's --

11 Q You have the step change demarcated on the  
12 --

13 A Correct.

14 Q And can you explain what that means, a step  
15 change?

16 A So before that step change, the red  
17 production, solid production, was just under 3,000  
18 barrels per month. And then within a month that  
19 dropped down to 1,000 barrels a month. So it lost  
20 two-thirds of its production in a month. And as you  
21 can see, it never really recovered until several years  
22 later when it looks like there was some work done on  
23 the wells. But the -- the dash line there shows the  
24 forecast for the well before that step change. And as  
25 you can see, over those years you've lost all that

1 production and then after that brief period of  
2 recovery, the well is crater even further. So it  
3 basically shows that the drilling of this offset well,  
4 which is actually over 1320 feet away, so even wider  
5 space than Avant is proposing for our DSU, the impact  
6 was substantial and long-lasting to the reserves of  
7 that well.

8 Q And is that a permanent loss that you  
9 identify here?

10 A Yes. As you can see, there's no indication  
11 that it will ever recover the area between the two  
12 curves, the forecast line and the actual production  
13 over the years.

14 Q And can you describe how this applies to the  
15 Royal Oak, Avant's Royal Oak wells?

16 A Certainly so Royal -- or Avant is proposing  
17 spacing Bone Spring's wells at 1,320 feet between  
18 wellbores. This shows that wells that are slightly  
19 wider spaced than that have a near immediate and very  
20 substantial long-term impact on the reserves of the  
21 wells at that density.

22 Q And if I could direct your attention to the  
23 next slide, that's the Condor State Group. And what  
24 is this showing?

25 A So this is just the western side of the last

1 one, those green wells in section 20, those are the  
2 Condor State 2H and the Ironhouse State 20-1H that we  
3 just discussed. But these over on the west side  
4 there, the Condor State 1H was drilled, and this is  
5 over to the west of those original wells there as  
6 well, drilled around the same time as those wells we  
7 just discussed. But it didn't have an offset to the  
8 west. As you can see, it was drilled in early 2013.  
9 Then several months later, the Ironhouse 19 State 2H  
10 well was drilled offsetting it to the west. And  
11 again, as we just saw within just a few months of  
12 being online, there was a dramatic reduction step  
13 change in production for the initial well. This one  
14 dropped from two, three, four, over 5,000 barrels for  
15 the month prior to within a few months it's down to  
16 1,500 barrels per month.

17 So that's a dramatic reduction. As you see  
18 through time, the -- the offset well, which is the  
19 newer well, has a smaller initial production rate and  
20 it declines rapidly until they both are pretty much  
21 what I call reactionary production. If you look  
22 towards the end of that dash line in 2022-ish, when  
23 the red well goes down almost to 100 barrels a day,  
24 the green well pops up. And then you can see that  
25 kind of reactionary trend going on. So not only is it

1 an immediate interference and reaction with these  
2 drainage radiuses overlapping each other, but through  
3 time it gets to the point where one well goes down,  
4 the other well goes up, which shows just how close  
5 these wells are drilled together and how much overlap  
6 there is.

7 Q And again, is this a permanent loss to the  
8 reserve?

9 A Yes. As you can see, there's no indication  
10 that either of these wells will recover.

11 Q Moving to the next slide, that's the  
12 Kingfisher Group. It looks more active than the other  
13 ones, but what is its significance?

14 A So this is to the west of those a few miles,  
15 so still in the same area but to the west of them a  
16 few miles further. There is a error with the labeling  
17 of the Kingfisher wells. Again, the 1H and 2H are  
18 backwards so please flip those. But this shows that  
19 initially the Kingfisher State 1H, which is actually  
20 in the middle there, and the Ironhouse 24 State 4H  
21 were both drilled in 2014. Those are the green and  
22 the red lines on the graph.

23 And then a year later, the Kingfisher 1H and  
24 actually also the Kingfisher 5H, which is underlaying  
25 there but it's not on here, those wells were drilled

1 at the same time. And as you can see, the blue line,  
2 that's the Kingfisher 2H, which is actually to the  
3 left there, it had immediate impact on the Kingfisher  
4 1H. Do you see that dramatic step change? And the  
5 step change from on the Kingfisher 24 State 4H, that  
6 also was significantly impacted. That 5H well which  
7 isn't on here is also Bone Spring horizontal. So that  
8 impacted these as well. But you can see that there's  
9 a significant drop in both wells. They've both  
10 maintained significantly lower production than their  
11 forecast prior to the additional wells being drilled.

12 Q And what is the spacing on these particular  
13 wells?

14 A These will be similar to what Avant is  
15 proposing at four wells per mile.

16 Q Okay. Just looking at the step change, it  
17 looks significantly bigger than the previous one. Is  
18 there a reason for that larger step change?

19 A I think probably the fact that they drilled  
20 another Bone Springs bench there and it appears that  
21 the fractures from those travel within the Bone  
22 Springs into the different benches so you're actually  
23 not only draining east to west within a bench, you're  
24 also draining above and below you and additional  
25 benches. So this puts further emphasis on the need to



1 make sure that your well spacing and number of wells  
2 per bench is correct because you've got that  
3 interchange.

4 Q And does this reflect the three benches of  
5 the Bone Spring?

6 A In this specific case there's two -- two of  
7 the three --

8 Q Moving to the EK Group, is that also a  
9 similar pattern?

10 A Correct. And these are actually the wells  
11 that we farmed-in and finance most of the drilling.  
12 These directly offset the subject DSU to the east and  
13 the north. So we originally drilled the 29 3H and the  
14 29 4H at the same time. The 29 4H has lower  
15 production. That's because we had to skip a  
16 substantial number of stages during completion,  
17 otherwise they have similar decline trends. They were  
18 on production for over a year before we infilled on  
19 both sides of these with EK 29 2H and EK 30-1H,  
20 directly offsetting these on both sides. And so you  
21 can see those in the gray and the blue on the graph.  
22 And when that happens, you can see the 29 4H or I'm  
23 sorry, the 29 3H in green had a massive step change  
24 down that it's never recovered from. Similar with the  
25 EK 29 4H in red. It also had a massive step change

1 down and has never recovered. And as you can see,  
2 those -- those are not showing any signs of being able  
3 to recover those significant loss reserves from  
4 infalling at a density of four wells per mile.

5 Q And is it correct I'm seeing two massive  
6 downturns on that green?

7 A There's the -- the main one in two thousand  
8 -- late 2017 and then the rest of that is when you  
9 drill too densely your decline is steepened. So the  
10 rest of that, you see all that production, it's kind  
11 of all declining in sync because you've got all these  
12 straws pulling from the same pool at a -- basically  
13 competing with each other to pull the oil out and if  
14 they're all producing by the same method, which  
15 they're all on rod lifts, then they're all going to  
16 produce similar volumes and the decline is going to be  
17 increased.

18 Q And do you have any estimates of what kind  
19 of loss we're looking here with these downturns?

20 A You're looking at a loss of around 50  
21 percent of your reserves.

22 Q Moving to the COG Group graph, what does  
23 this graph show?

24 A So this is offsetting the subject DSU to the  
25 northwest about a mile away. This is unique compared

1 to the other ones in that development happened from a  
2 west-east pattern through time with about a year in  
3 between each one. So it really highlights how over  
4 and over and over repeated when you've drilled wells  
5 at this proposed four wells per mile spacing, you  
6 continue to negatively impact the existing well,  
7 displaying that you've got significant overlap of  
8 drainage radius. So the initial well on the west, the  
9 KSI 22 to 1H was drilled in 2012 I guess there. And  
10 it produced for close to a year and a half before the  
11 KSI 22 2H, which was drilled right at around a quarter  
12 mile away, which is what Avant is proposing, was  
13 completed. And as you can see, there's a significant  
14 step change there. And the KSI 22 1H was online with  
15 the other well until about a year later, the Scooter  
16 1H was brought online. And that's the well in blue.  
17 And you can see there that the KSI 22 2H in red  
18 actually was shut down during the frack of that well.

19 That's why it's got that different  
20 production. And while it was shut in, you've got that  
21 reactionary production with the KSI 22 1H where it all  
22 of a sudden it gained back to where it was before the  
23 offset was drilled 'cause now it doesn't have that  
24 interference impacting it. When the Scooter 1H came  
25 online, then the KSI 22 2H was brought back online and

1 you can see there's another smaller step change in the  
2 KSI 22 1H now that the KSI 22 2H is back online. It  
3 dropped from 3,000 down to 2,000 in the span of a  
4 month. And you can see the KSI 22 2H never came  
5 anywhere close to where it was before it was shut in  
6 for the offset frack. And then a year later, the  
7 Scooter 2H was drilled and you can see the impact that  
8 had on the Scooter 1H, the blue well. It step changed  
9 down from 4,000 a month prior to coming online to  
10 2,000 after and steadily dropped from there.

11 So what you see repeated and repeated as you  
12 go infilling this way, and these aren't really  
13 infalls, they're offsets because they're not drilling  
14 in between existing wells. Even with the offsets at  
15 this proposed density, you continue to see this pretty  
16 much immediate and significant impact on the  
17 production and lifelong reserves of the wells, which  
18 again, demonstrates that the drainage radius is  
19 overlapping severely and there's too many wells being  
20 drilled here.

21 Q Can you give a little bit more explanation  
22 on offset versus the infill and how the offset  
23 applies?

24 A Yeah. So in this case, every well was  
25 offset. If say the KSI 22 1H and the Scooter 1H had

1 been drilled at the same time and then later the KSI  
2 22 2H was drilled, then I would consider that an  
3 infill, you're filling in between existing wellbores.  
4 Whereas offsetting is what happened here. You've got  
5 an initial well, then you offset it to one side. Then  
6 the next well you offset that and then you offset that  
7 on and on. So it's just a slightly different  
8 development plan, but both of them are common in the  
9 industry.

10 Q And Avant's plan, is it analogous? This is  
11 analogous?

12 A It sounds like from their testimony today  
13 that they plan on drilling a few initial wells and  
14 then shortly thereafter coming in and offsetting those  
15 with additional wells.

16 Q And then you have a graph for the Buffalo  
17 and Mescalero Group. And what does this show?

18 A So this is directly to the south of the  
19 subject DSU. These are much newer wells, modern  
20 completion techniques, two mile laterals. This is  
21 also an offset scenario where they started on the west  
22 and worked their way east. So the initial well is the  
23 western most well, the Buffalo 1H that was completed  
24 in 2019. It produced for a year and a half and then  
25 just over a quarter mile away, the Buffalo 4H and

1 within a quarter mile, the Buffalo 5H were both  
2 brought online. You can see those. It's the blue and  
3 the red on the chart.

4 And as we've seen before, you can see the  
5 significant step change. The Buffalo 1H lost about 30  
6 percent of its production when those wells were  
7 brought online. You can see that not only that, but  
8 the newer wells had significantly lower initial  
9 production rates despite being similar completion  
10 techniques and had much steeper declines than the  
11 original well, indicating that in that year and a half  
12 that Buffalo 1H had significantly dropped or  
13 significantly impacted with its drainage radius the  
14 lands that the Buffalo 4H and 5H were drilled on. And  
15 then as you see in 2023, the Mescalero 3H and  
16 Mescalero 4H were brought online.

17 And as you can see, the Mescalero 3H,  
18 meaning the quarter mile offset to the Buffalo 5H  
19 impacted the 5H such that it dropped significantly  
20 when that gray well came online and also steepened its  
21 decline. So all of these are direct offset modern  
22 completion two mile lateral examples of the same thing  
23 that's been shown time and time again in this area,  
24 that four wells per mile significantly over drills the  
25 area and impacts the long-term reserves of each well.

1 Q Okay. And again, this is a permanent loss?

2 A Correct. As you can see, if you look at the  
3 Buffalo 1H, through time it just keeps having these  
4 step changes down as more and more pools are coming  
5 and there's nothing to suggest with any of these  
6 wells, whether they're the older ones that have over a  
7 decade of history or these ones that have just several  
8 years, there's nothing to suggest that any recovery  
9 back to where they were before they were impacted by  
10 offsets will -- will occur.

11 Q And all these well groups that we've looked  
12 at, the Ironhouse, Condor, Kingfisher, EK, COG, and  
13 Buffalo, what conclusions can you -- do they  
14 demonstrate with respect to Avant's Royal Oak wells?

15 A They clearly demonstrate that the proposal  
16 of four wells per bench in the second -- or in the  
17 Bone Springs formation is too many with immediate  
18 interference. That's showing that you've got  
19 significant overlap of drainage radius. You're  
20 drilling unnecessary wells and causing economic harm.

21 Q And then on page 15 of 18, and this is on  
22 the PDF's page 16, you have a graph. What does it  
23 show?

24 A So this is back to that same space unit we  
25 just covered, the Buffalo and Mescalero or its two

1 different space units offsetting each other. This is  
2 a cume [ph] oil through time plot for the wells with  
3 the green being the Buffalo 1H well and the other  
4 wells as -- that were offset through time, showing  
5 that the infill wells -- even the best of the infill  
6 wells, the blue well, the Buffalo 4H, the Buffalo 1H,  
7 which was not bound up until that point through 1,000  
8 days, it's accumulated 68 percent more oil than its  
9 offsets, which just shows -- so those cume [ph] plots  
10 through time, you can forecast those forward and you  
11 can see that there's no chance that those wells are  
12 going to catch up to where the Buffalo 1H is going to  
13 be, even with the interference that it's seeing. The  
14 other thing to note here is the Mescalero 4H well,  
15 which is the yellow curve there, after some mechanical  
16 work that they did there, it's pending to become the  
17 second best well in this area and that's because --  
18 likely because it's unbound to the east at this time.  
19 So it's only got interference at this density on one  
20 side so it will do better than the three -- the blue,  
21 the red, and the purple wells which all have  
22 interference on both sides.

23 Q And how is this relevant to Avant's Royal  
24 Oak wells?

25 A It demonstrates that when you have unbound



1 wells, such as the green well, they significantly  
2 outperform bound wells where you have four miles per  
3 or four wells per miles as Avant is proposing in the  
4 subject DSU.

5 Q And then the next graph, and this is 16 of  
6 18, what is it signifying?

7 A So this is using that same spacing unit, the  
8 Buffalo and Mescalero. It takes the Buffalo 1H prior  
9 to the interference and forecast that forward to get a  
10 cumulative basically equation, which is displayed on  
11 the cart -- on the chart there. And then it takes the  
12 average of the three inner wells, so the Buffalo 4H  
13 and 5H and the Mescalero 3H and does the same thing  
14 with those. So you basically get a forecast for  
15 comparing unbound wells and bound as proposed four  
16 wells per mile wells.

17 And so with these equations, we can plug in  
18 any time length as X in these equations and we can get  
19 the cumulative oil at that point in time. So through  
20 14 months, the -- as proposed four wells per mile  
21 spacing has only produced 51 percent as much oil as  
22 the unbound well through that time. Through ten years  
23 that improves to 54 percent and through a 30-year  
24 lifespan, it's still basically at 54 percent. So  
25 which this -- what this shows is that four wells per

1 mile, you're going to recover 54 percent as much as  
2 you would with unbound wells. So if we multiple that  
3 four wells times 54.1 percent, we can get how many  
4 wells are required to efficiently drain the reservoir.  
5 So four times 54.1 percent is 2.16 wells. So in order  
6 to avoid the interference that we've seen through all  
7 these slides, we would need to drill 2.16 wells per  
8 mile to fully drain the reservoir.

9 Well, we can't drill fractional wells so if  
10 we want to fully drain the reservoir, then we would  
11 need to round that up to three wells. So this  
12 basically shows that in order to efficiently and fully  
13 drain the reservoir, the proper number of wells would  
14 be three and four wells per mile would be nearly two  
15 wells too many to properly and efficiently drain the  
16 reservoir. And --

17 Q And that is the three wells per bench that  
18 you are saying the development plan should be  
19 modified?

20 A Correct. Well, we're saying that four wells  
21 per mile is too many as is evidenced by all of these  
22 slides and in particular by this demonstration of  
23 long-term reserves.

24 Q And the three wells, as an alternative,  
25 those would be the unbound wells that you would

1 describe? Can you describe unbound wells, the wider  
2 spacing?

3 A Correct. And for them to be completely  
4 unbound, it would have to be two wells per mile, but  
5 to fully drain everything, you'd have to drill a third  
6 so you would have some interference still at three  
7 wells, but that -- you trade that off to recover all  
8 of the reserves.

9 Q Okay. And then you have a slide, I believe  
10 this is your last slide, that describes the economic  
11 impact of having a tighter spacing of four wells per  
12 bench versus the wider spreading of three wells. Is  
13 that correct?

14 A Correct. So what this shows the proposed  
15 list four wells per bench. If that's one well too  
16 many per bench as we've demonstrated here, the AFE for  
17 each of the benches, so the first Bone Spring AFE is  
18 11.6 million, second Bone Spring is 11.7, third is  
19 11.75. So those three excess wells, just for the  
20 drilling and completion add up to \$35 million in  
21 unnecessary expenditures. And then on top of that,  
22 you drill an extra well, you've got to produce it and  
23 operate it so at \$15,000 per well per month, lifetime  
24 average in operating cost of 30 years, that's an  
25 additional 16 million in excess cost that aren't

1 necessary to drain the reservoir. So combined, that's  
2 \$51 million in excessive and unnecessary cost to the  
3 owners of these reserves to develop and produce the  
4 reserves.

5 Q And Prima has 2.75 percent working interest.  
6 Can you explain what the differential would be between  
7 those two development plans with respect to that  
8 particular working interest?

9 A Yeah. So our -- our total exposure as  
10 proposed by Avant is just under \$4 million. So if we  
11 take 25 percent of that away, then it's going to save  
12 us basically a million dollars in unnecessary costs.  
13 And Avant has stated that 25 percent of the owners in  
14 this unit have not committed to the unit so that's an  
15 additional almost ten times that much. So we're  
16 talking \$10 million net to people that haven't  
17 committed to this for one reason or another just  
18 exposed by proposing more wells than is necessary.

19 Q And that's the burden on the working  
20 interest owners.

21 A Correct. And it's a burden on Avant too,  
22 but I mean it's -- all of this holds true to all  
23 working interest owners, whether they're drilling it  
24 willingly or having to tag along for the ride.

25 Q Mr. Rhodes, if upon review of your exhibits

1 the Division agrees with your conclusions, then what  
2 is Prima asking the Division to do?

3 A We ask that the Division request that Avant  
4 change their development plan from four wells per  
5 bench to three wells per bench to properly develop  
6 reserves and protect from economic waste.

7 Q And should the Division, if it does not  
8 grant your request of relief and decides to go forward  
9 with the pooling, does Prima request anything from the  
10 Division to mitigate Prima's burden in this situation?

11 A Yeah. It's in the pre-hearing, the special  
12 provision.

13 Q That is the special provision.

14 MR. SAVAGE: And Mr. Hearing Examiner,  
15 would you like to look at that or you have it and --

16 THE HEARING EXAMINER: We can do that  
17 after the witness is excused.

18 MR. SAVAGE: Okay. Thank you.

19 THE HEARING EXAMINER: We will do that  
20 at the end.

21 MR. SAVAGE: Mr. Rhodes, that's all the  
22 questions I have. Thank you.

23 THE HEARING EXAMINER: Mr. Parrot.

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

25 Would it be okay if I shared my screen? Thank you.

1           Not sure, but I think Mr. Savage needs  
2 to stop sharing. Okay. Thank you.

3           Okay. I think I might have actually  
4 done that successfully. Go back to the beginning.  
5 Okay.

6                           CROSS-EXAMINATION

7 BY Mr. Parrot

8           Q     Mr. Rhodes, thank you again for your time  
9 this afternoon. I have a few questions for you. If  
10 we could please just start off with page 9 of your  
11 presentation. I'm not sure if you had an exhibit  
12 number for this. Is it okay for me to refer to this  
13 as just page 9?

14          A     Sure.

15          Q     Okay. Would you prefer that I refer to it  
16 in some other manner?

17          A     Nope. That's fine.

18          Q     Okay. So I'm having a little trouble kind  
19 of noting the timeframes on this graph, but it looks  
20 to me like the 1H well, it IP'd in maybe March of  
21 2013. Does that sound correct?

22          A     Correct.

23          Q     And then the 2H well IP'd in perhaps  
24 February of 2014. Is that correct?

25          A     Correct.

1 Q And so it looks to me like you note a step  
2 change in perhaps August or September of 2014 for the  
3 1H well. Correct?

4 A No. It's only two or three months after  
5 that. So if it was -- it was February, then it was  
6 it'd be around May or June.

7 Q Can you be specific in the number of months  
8 that the 2H was producing before you observed what you  
9 characterized as a step change in the 1H?

10 A Looks like it's about eight or nine months.

11 Q Okay. So we had a period of production  
12 before that step change occurred from -- period of  
13 production from the offset well before that step  
14 change in the parent well occurred. Correct?

15 A Correct.

16 Q And then it looks like in perhaps the spring  
17 of 2019, the 2H well returned to type curve. Correct?

18 A Very briefly, yes.

19 Q It looks like it lasted from perhaps March  
20 of 2019 until perhaps about March of 2021. Is that  
21 pretty accurate?

22 A A little longer than actual, but yes.

23 Q Okay. So I estimated it at 24 months. You  
24 might say 22 months?

25 A Something like that. Yeah.

1 Q Okay. So this 2H well returned to type  
2 curve for 22 months of production.

3 A Yup.

4 Q And what was the cume [ph] production from  
5 those 22 months?

6 A Looks like it would be about 1,500 barrels a  
7 month so it'd be 30,000-ish barrels cume [ph] for that  
8 timeframe.

9 Q And why did it return to that type curve?

10 A That I can't answer. Typically it's  
11 something -- from the looks of it, it would be a  
12 mechanical change that could have lowered the pump  
13 down to increase the flow. They could have fixed a  
14 rod or not a -- a pump, a worn pump or changed an  
15 artificial lift method. I mean, those are all common  
16 occurrences.

17 Q Okay. But you don't know?

18 A No. We don't operate these wells.

19 Q Do you have data from participating in these  
20 wells?

21 A No. We do not.

22 Q So you don't participate in these wells?

23 A No.

24 Q So you're not sure why that step changed up  
25 I guess happened in 2019 to 2021.



1           A       I am not.

2           Q       And there are various reasons that the  
3 production from the well might have gone up for an  
4 almost two-year period of time.

5           A       Correct.

6           Q       Okay. Can we talk about the red dashed line  
7 on this exhibit and can you tell me what that red  
8 dashed line represents, please?

9           A       Sure. That's the forecast of the red well  
10 prior to its impact from the green well.

11          Q       So that would be a way of predicting the  
12 estimated ultimate recovery for the 1H well or the  
13 EUR?

14          A       Correct.

15          Q       And what would the EUR have been for the 1H  
16 well if the well stayed on that type curve?

17          A       I don't have the exact numbers here. I  
18 didn't work an exact reserve. It's pretty apparent  
19 from the chart that it's about two times as much just  
20 looking at the step change there. Just the period  
21 from when they did, whatever happened in 2019, you're  
22 looking at a loss of 50 percent of your production.  
23 And then after that brief two-year period, you're back  
24 down and substantially lower than that going forward.  
25 So it looks like it's at least a two time -- or a 50

1 percent reduction in ultimate reserves.

2 Q Okay. Can you just answer the question and  
3 tell me what the EUR would have been from that well if  
4 it stayed on type curve, please?

5 A I don't have those numbers.

6 Q Okay. Did you do a type curve for the 2H  
7 well, the green well?

8 A I did not.

9 Q Do you have any idea what the EUR would have  
10 been for that 2H well?

11 A I do not.

12 Q Or would be for that 2H well?

13 A I do not.

14 Q Okay. So fair to say that you do not know  
15 what the combined EUR for the two wells together would  
16 be.

17 A No. I did not do the same analysis as I did  
18 for the Buffalo and Mescalero unit. This is more of  
19 the -- to demonstrate the immediate impacts of  
20 drilling at this density. I could certainly do the  
21 same analysis and it would show similar results, but I  
22 did not do that for any of the units except for the  
23 direct offset and most relevant two mile unit, the  
24 Buffalo and Mescalero.

25 Q Understood. Would it be fair to say that

1 the EUR for the two wells combined is higher than the  
2 EUR based on the red dash line?

3 A It's possible, but with the latest -- the  
4 last couple years of productions, the red well has  
5 been hit pretty hard so it's hard to know through time  
6 what those two wells will do.

7 Q And just like the red well having returned  
8 to type curve for a couple years based on something  
9 like a pump or artificial lift technique, it's also  
10 possible that it might have declined in production for  
11 that same reason.

12 A It is possible, although typically you would  
13 see that addressed quickly. And as you can see with  
14 the reactionary production after that timeframe when  
15 the red well dropped, the green well goes up, and vice  
16 versa.

17 Q So you're saying if there was a problem with  
18 artificial lift and the well needed a workover or  
19 cleanout, you would expect to see that in the first  
20 couple months of production as opposed to after the  
21 well has been on production for ten years and pumps  
22 are wearing out?

23 A No, I -- if there's a -- if there's an issue  
24 --

25 Q Okay. I just want to make sure that I --

1 sorry.

2 A Yeah.

3 Q Sorry. I just want to make sure I  
4 understood your answer.

5 A -- well --

6 Q It sounded to me like you were saying that  
7 an artificial lift piece of equipment would be more  
8 likely to fail or wear out on the first few months of  
9 production than after ten years and that's not what  
10 you're saying. Correct?

11 A No. Not at all.

12 Q Okay. Okay. Understood. Thank you for  
13 clarifying that. Let's talk about when these wells  
14 were drilled and completed. It looks like the 1H well  
15 was drilled again early -- maybe even in 2012 but  
16 completed and IP'd in early 2013. Correct?

17 A Correct.

18 Q And the 2H well would have been drilled in  
19 2013 or '14 and IP'd in 2014. Correct?

20 A Correct.

21 Q So these wells were drilled and completed  
22 over ten years ago. Correct?

23 A Correct.

24 Q And would you say it's a fair assessment  
25 that not only drilling but also completion techniques

1 have dramatically changed in the Permian since then?

2 A I would.

3 Q And were you involved in the drilling and  
4 completion of any wells in the Permian ten years ago?

5 A No.

6 Q Is there a possibility that the step change  
7 that you characterized in 2014 could be attributable  
8 to anything other than interference of the offset  
9 well? For example, a failure to properly protect the  
10 parent well?

11 A If it wasn't properly protected, that would  
12 have shown up earlier in this case, but that is a  
13 possibility.

14 Q What about natural fractures in the  
15 reservoir that were not observed in 2013? Perhaps not  
16 expected. Would that be another possible explanation  
17 for the step change?

18 A That would be -- so your -- to make sure I  
19 understand the question, like there's -- you're  
20 producing at natural fractures and you said you got a  
21 limited reservoir and all of a sudden you've drained  
22 that fracture and that's why the step change occurred?  
23 Is that what you're asking?

24 Q I'm asking if there's a possibility that  
25 natural fractures in the reservoir could help explain

1 the step change that you characterize in your page 9.

2 A It's a possibility, but highly unlikely.

3 Q Are there any other stratigraphic conditions  
4 that might help explain that, like sand channels?

5 A It's, again, possible but unlikely. I mean,  
6 you're talking about -- that would have to be a severe  
7 boundary effect scenario there that would cause that.

8 Q And have you looked into any of those other  
9 possible explanations in this particular paired  
10 development scenario?

11 A I have not, but when all of the evidence  
12 over a large area shows the same thing then that would  
13 be something to discuss about Avant's plans, then they  
14 want to watch out for these hypothetical natural  
15 fractures too.

16 Q So you're saying that the cases that you  
17 observed were basically very, very close together so  
18 you didn't look for other possible explanations.

19 A Correct. It's pretty -- pretty obviously  
20 repeatable across this area.

21 Q So let's turn to your page 10. Can you tell  
22 me how many years ago this pair of wells were drilled  
23 and completed?

24 A Eleven, ten years ago.

25 Q And how about page 11?

1           A     Eight or nine and ten or going back to nine  
2 and ten years ago.

3           Q     And can you answer the same question for me  
4 for page 13?

5           A     Can you show me page 13, please?

6           Q     Yeah. Sorry.

7           A     First well was drilled in 2012, second well  
8 on 2013. Third well on two thousand four -- third and  
9 fourth wells at -- booking at -- bookending 2015 it  
10 looks like.

11          Q     So these are 4 wells that were drilled and  
12 completed going back approximately 8 to 12 years ago?

13          A     Correct.

14          Q     And these four wells were drilled and  
15 completed approximately one year apart?

16          A     A year through a year and a half, depending  
17 on the well.

18          Q     And are you aware of, based on your review,  
19 of Avant's proposals of the distance apart in time in  
20 which Avant proposes to drill its four wells per  
21 bench?

22          A     Yes.

23          Q     And what is that distance in time?

24          A     They proposed drilling four wells per mile  
25 per bench and from the testimony today, it sounds like

1 they intend to do it within six months.

2 Q Would you say it's a fair characterization  
3 that wells -- parent-child wells drilled six months  
4 apart may have different communication effects than  
5 wells drilled a year to a year and a half apart?

6 A No.

7 Q And then how far back in time were the wells  
8 drilled and completed in page 12?

9 A Those were drilled eight to nine years ago.

10 Q Okay. And last question, same -- or last of  
11 this same line of question, page 14. How long ago,  
12 please?

13 A One to five years ago.

14 Q Okay. So you have six pages of exhibits  
15 showing parent-child well interactions. Is that  
16 correct?

17 A Yes.

18 Q And 4 of them, the wells are drilled and  
19 completed about 10, 12 years ago?

20 A Correct.

21 Q And one of them was eight years ago?

22 A Three were ten to twelve years ago. One was  
23 eight years ago. One was -- I guess two would -- two  
24 would be around eight years ago.

25 Q Okay. And you've only got one that



1 presented any data from wells that were drilled and  
2 completed after 2020. Correct?

3 A Correct. The direct offset, two mile  
4 laterals that are most applicable to the subject  
5 proposal.

6 Q And do you recall testifying earlier that  
7 drilling and completion techniques have changed  
8 dramatically in the past 10 to 12 years?

9 A Yep.

10 Q So why didn't you present more case studies  
11 of wells that have more apples to apples comparison  
12 for drilling and completion techniques?

13 A There aren't as many in this area that show  
14 that. There were initial waves of drilling with the  
15 shore lateral spread out through this area that  
16 targeted multiple benches as discussed in my testimony  
17 beginning with the map. I didn't highlight a lot of  
18 these because of that, because when you're trying to  
19 show a parent-child relationship, you have to have a  
20 parent-child relationship to look at.

21 So if wells had been drilled at the same  
22 time, then they're not as easily to distinguish. And  
23 if wells are drilled multiple benches on top of each  
24 other at later dates, that makes it even muddier. So  
25 I tried to hit direct offset units, which I did with

1 the last three and then a couple more examples in the  
2 area from early on development to show that basically  
3 throughout time short laterals, long laterals, whether  
4 you're doing it infalls or offsets, whether you're  
5 doing old completion techniques or modern completion  
6 techniques with these two mile laterals, the same  
7 thing is shown over and over and over again, which is  
8 that your drainage radius significantly overlaps at  
9 the proposed four wells.

10 Q Okay. And what is the percentage of the  
11 drainage radius at the edge of the drainage radius as  
12 opposed to within the first 25 percent of the distance  
13 of the well?

14 A Can you rephrase that question?

15 Q Sure. I will use a different term. What is  
16 the effective drainage percentage in the reservoir of  
17 the well at the furthest distance of the drainage  
18 radius as opposed to 25 percent of the distance from  
19 the well?

20 A Theoretically, you have a higher drainage  
21 near wellbore. That's where you're going to have the  
22 highest concentration and the highest connectivity and  
23 permeability that you've created there. As you go  
24 further out, so long as you have permeability, you  
25 should still recover it. It's just a matter of how

1 long it takes to do it.

2 Q So the recovery factor decreases in  
3 proportion to the distance away from the wellbore  
4 perpendicular to the wellbore?

5 A Potentially. I would say more that the rate  
6 of recover decreases the further you go away.

7 Q Okay. Let's talk about your Exhibit 13.  
8 Can you tell me what the total EUR is for these four  
9 wells?

10 A Again, I did not look at the total EURs for  
11 any of the ones except for the direct offset two mile  
12 lateral.

13 Q So would it be fair to say that the total  
14 EUR from these four wells is greater than what the EUR  
15 would have been from just the green and pink wells if  
16 the blue and gray wells had not been drilled?

17 A Certainly in this case where the modern -- I  
18 mean, you can see from the initial production rates  
19 they've employed those modern techniques. But the  
20 decline is much more rapid so you're getting an  
21 initial production, but then it drops rapidly. And  
22 within a few years you're down producing the same  
23 volumes that the other wells are.

24 So it's -- I don't think it's apples to  
25 apples to say that, especially when you're starting

1 from a point where you've got two wells that are  
2 spaced at that same density. I think if you were to  
3 say that the KSI 22 1H well and the Scooter 2H well  
4 had been drilled, that the recoveries from those two  
5 wells would end up being very similar to the  
6 recoveries of drilling all four of these wells.

7 Q You think it's very similar, but you don't  
8 know?

9 A Based off what I've looked at, comparing the  
10 EURs of the Buffalo and the Mescalero wells, then it  
11 is very similar because space that two wells per mile  
12 you're going to get almost all of the reserves as you  
13 would drilling four wells. So if those two wells are  
14 basically a mile apart and they're two wells, then,  
15 yes, I think what I've shown is that you need a third  
16 well to drain it all. So you drill a well right on  
17 the section line there, halfway between the KSI 22 2H  
18 and the Scooter 1H, but in terms of excess reserves,  
19 you'd only be getting 16 percent more reserves than  
20 had you just drilled the two outer wells.

21 Q So just to make sure I understand correctly,  
22 you're not contending that the four wells together  
23 produce less cumulatively than the two wells would  
24 have produced by themselves.

25 A No.

1 Q Okay.

2 A I -- I am --

3 Q So you're not actually losing total recovery  
4 from the reservoir by drilling the four wells versus  
5 just the two wells.

6 A No. You're not.

7 Q Okay. And let's just go to your page 17,  
8 please. Let me zoom in on that a little bit,  
9 hopefully make it easier to read. So essentially  
10 you're saying that Avant's development plan will cost  
11 the working interest owners an extra \$51 million  
12 because it's four wells instead of three. Is that  
13 correct?

14 A Correct.

15 Q And you testified that 25 percent of the  
16 working interest owners have not yet committed to the  
17 12 well development plan. Correct?

18 A I've just taken that from Avant's testimony  
19 today.

20 Q Do you have any reason to believe that's not  
21 accurate?

22 A I trust that what they've presented and  
23 sworn to is accurate.

24 Q So that would mean that 75 percent of the  
25 working interest owners have, for whatever reason,

1 decided that they are willing to bear what you  
2 characterize as an extra \$51 million in cost.  
3 Correct?

4 A It would, yes. It would appear so.

5 Q And has Prima or have you rather on Prima's  
6 behalf reviewed the well proposal letter sent to Prima  
7 by Avant?

8 A I have.

9 Q Did that give you the opportunity to elect  
10 into each well individually or did you have to elect  
11 into all 12 wells or none?

12 A It's my understanding that per the JOA  
13 that's proposed that all of them are initial wells and  
14 so that you would have to elect into all of them.

15 Q Do you recall Ms. Guerra's testimony that  
16 the election is basically a well by well election and  
17 working interest owners have the option to participate  
18 in any one or more of the 12 wells that they would  
19 like?

20 A I do, but that appears to conflict with the  
21 proposed JOA.

22 Q Are you required to sign a JOA?

23 A You're not.

24 Q Okay. So you could participate in let's say  
25 9 of the 12 wells and not the other 3. Correct?

1           A       I could. I wouldn't want to because you'd  
2 be --

3           Q       That's okay. I understand that you do not  
4 --

5                   THE HEARING EXAMINER: Mr. Parrot, if  
6 he's answering a question --

7                   MR. PARROT: Understood.

8                   THE HEARING EXAMINER: -- please don't  
9 speak over him.

10                  THE WITNESS: So as proposed, it  
11 wouldn't do us any good to consent to individual wells  
12 because of the proposed development, you're going to  
13 be getting that interference from the offsets that you  
14 don't consent to. So whether you consent to 1 well or  
15 4 wells or 8 wells or 12 wells, you're going to have  
16 that damage to the individual well that you  
17 participate in, that economic damage in whatever  
18 sliver of this 51 million that ends up being.

19 BY MR. PARROT:

20           Q       I appreciate that. Thank you for clarifying  
21 your position then. You do not agree with the 12-well  
22 development plan. So I'm going to ask you a couple  
23 questions that don't necessarily correspond to a  
24 specific exhibit but just sort of your overall  
25 testimony and some of the comments that you made prior

1 to presenting a specific exhibit. So you stated that  
2 there will be economic damage to working interest  
3 owners from Avant's development plan. Correct?

4 A Correct.

5 Q And can you help me understand or refresh my  
6 memory as to where in the Division's criteria for  
7 approving a spacing unit economic damage is a primary  
8 consideration?

9 MR. SAVAGE: Objection on that.

10 He's not an attorney. And he does not  
11 address legal matters.

12 THE HEARING EXAMINER: Sustained.

13 MR. PARROT: -- I'll rephrase the  
14 question.

15 BY MR. PARROT:

16 Q So, Mr. Rhodes, being an expert in petrol  
17 reservoir engineering, would you say that you  
18 understand the concept of waste as applies to spacing  
19 and well spacing?

20 MR. SAVAGE: I'm going to object to  
21 that. There's a difference between a legal definition  
22 of waste and a industry understanding of waste and I  
23 believe Mr. Parrot is trying to get at a legal  
24 definition of waste.

25 THE HEARING EXAMINER: Mr. Parrot,



1 would you please couch your question in the non-legal  
2 understanding of the word waste?

3 MR. PARROT: I'm not sure that I'm able  
4 to do that because the statute states that waste is  
5 defined as those words are generally understood in the  
6 oil and gas business. So I don't think it's so much  
7 of a legal definition, but it is, I believe, a  
8 definition that should be well understood by anybody  
9 holding themselves out as an expert in petroleum  
10 reservoir engineering. So let me ask this.

11 THE HEARING EXAMINER: Well, hold on.

12 MR. PARROT: I'm sorry. Go ahead.

13 THE HEARING EXAMINER: I'm not  
14 finished.

15 MR. PARROT: Go ahead, please.

16 THE HEARING EXAMINER: So, Mr. Savage,  
17 I sustain your objection if the question is understood  
18 by the witness to ask a legal definition of the word  
19 waste. If the witness understands the word waste in  
20 as a term used throughout the industry and not as a  
21 legal definition, then he should answer the question.

22 So what is the question, Mr. Parrot?

23 BY MR. PARROT:

24 Q So, Mr. Rhodes, as an expert in petroleum  
25 reservoir engineering, do you understand the concept

1 of waste as applies to petroleum reservoir  
2 engineering?

3 A Yes.

4 Q And would you say it's fair to say that that  
5 concept is -- that the total quantity of oil or gas is  
6 less and that would be waste, the total quantity of  
7 oil and gas recovered is less, that means waste?

8 A That is one form of waste. Correct.

9 Q Okay. Do you content that economic waste is  
10 waste as defined by New Mexico?

11 MR. SAVAGE: Objection.

12 THE HEARING EXAMINER: Sustained.

13 You're asking him as defined by New  
14 Mexico, that's not an industry standard so please  
15 rephrase the question.

16 MR. PARROT: Okay.

17 BY MR. PARROT:

18 Q Mr. Rhodes, do you contend that economic  
19 damage is a form of waste as that term is generally  
20 understood in the oil and gas business?

21 A I -- I'm not familiar with all of the  
22 statewide definitions. I know those vary from state  
23 to state. Certainly from the industry standard, which  
24 is to have an economic return. If I spend \$11.75  
25 million more than I need to to recover the same

1 reserves, then that is absolutely a very big waste.

2 MR. PARROT: Okay. Well, thank you. I  
3 appreciate that answer and I have no more questions.

4 THE HEARING EXAMINER: Let's ask any  
5 other counsel for any other party, are there any  
6 questions for this witness?

7 Mr. McClure, are there any questions  
8 for this witness?

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

11 THE HEARING EXAMINER: Okay.

12 Mr. Savage, do you have any redirect  
13 based on the cross-examination?

14 MR. SAVAGE: I do.

15 THE HEARING EXAMINER: Go ahead.

16 REDIRECT EXAMINATION

17 BY MR. SAVAGE:

18 Q Mr. Rhodes, Mr. Parrot asked you a number of  
19 questions regarding variations in those graphs, for  
20 example, trending upwards slightly. How would you  
21 characterize those questions?

22 A I think they were trying to imply that  
23 somehow --

24 MR. PARROT: I'm sorry. Objection.

25 THE HEARING EXAMINER: It's a little

1 late, Mr. Parrot.

2 MR. PARROT: I'm sorry.

3 THE HEARING EXAMINER: He already  
4 started answering the question so let's be a little  
5 bit more on the ball, please, in the future.

6 But, Mr. Savage, there was an  
7 objection.

8 What is the objection based on?

9 MR. PARROT: Vagueness, argumentative.

10 THE HEARING EXAMINER: Mr. Savage,  
11 you're asking this witness to qualify questions asked  
12 to him?

13 MR. SAVAGE: Well, I'll ask it more  
14 specifically then.

15 THE HEARING EXAMINER: Please. So the  
16 objection is sustained.

17 MR. SAVAGE: Okay.

18 BY MR. SAVAGE:

19 Q Mr. Rhodes.

20 THE HEARING EXAMINER: And would you  
21 strike --

22 Hold on, Mr. Savage.

23 MR. SAVAGE: Excuse me.

24 THE HEARING EXAMINER: Would you strike  
25 that answer and the question from the record, please?

1                   Now, ask a question, a better question,  
2 please.

3 BY MR. SAVAGE:

4           Q     Mr. Rhodes, were those questions very  
5 speculative?

6           A     Yes. I mean, without having any interest in  
7 these wells, there's no way of knowing what caused  
8 those changes in production.

9           Q     And what you were looking at with those  
10 various graphs, were you looking at broader, more  
11 clear trends?

12          A     Yes.

13          Q     And can you describe those trends?

14          A     Yes. So those are the entire history of the  
15 wells with distinct overlays of offset wells that show  
16 a very clear near term or immediate impact from  
17 development, offsetting them and then the long-term  
18 impact of those new developments to the original  
19 wells.

20          Q     And there was questions regarding mechanical  
21 issues and you described them, answered to respond to  
22 that. Could you describe what would result if there  
23 were mechanical issues?

24          A     Sure. So different pumps, they wear out so  
25 your production volume drops. Sometimes it's

1 significant enough that it's very apparent  
2 immediately. Sometimes it's a slow wear down. So  
3 you'll see or maybe it's a hole in tubing that starts  
4 as just a pin leak and then through time gets bigger  
5 and bigger so the flow is lost to a bigger and bigger  
6 hole through time. So when that happens, the solution  
7 is you repair the pump or replace the pump or change  
8 lift method depending on where you are in the life of  
9 the well and in general you should see a return to  
10 where you were on your decline curve before you  
11 started seeing those issues with some flush production  
12 to make up for that loss initially, but then it  
13 rapidly goes back down to the long-term decline.

14 Q So those issues that's mechanical would not  
15 show up in the larger dips that you pointed out.

16 A They certainly can in that long timeframe.  
17 I think the example that they gave with those two  
18 wells that for a period did recover, that could  
19 potentially be an example. You see there, that's --  
20 could very likely be some of that sustained flush  
21 production that I'm talking about. And then as it  
22 recovers that flush production, it goes back down to  
23 the trend that it was on before, which is  
24 substantially lower than the trend that it was on  
25 before the infill and offset wells were drilled.

1 Q Would it show up in the aggregate of the  
2 graphs?

3 A What do you mean by the aggregate?

4 Q Well, you would see -- these are all kind of  
5 unique data points. Is that correct?

6 A Yeah. It's unique to every well. There's  
7 wells that have really long problem-free run time with  
8 pumps and there's wells that have very short, lots of  
9 problem run times. So each well is different. Each  
10 well is individual. That's one of the reasons why  
11 when you see this repeated early time offset well  
12 comes online, big step change in production and it's  
13 every single time over and over and over again, the  
14 smoking gun there is the offset well.

15 Q And then Mr. Parrot also speculatively  
16 referred to the possibility of sand channels, natural  
17 fractures. What is your response to those?

18 A Those are certainly something that can  
19 exist, but in terms of this large scale field  
20 development, I mean, we've got hundreds of wells in  
21 this short area. You would see more than just an  
22 impact when a new well comes online. That would be  
23 something that would happen randomly through the life  
24 of a well. It wouldn't just happen to coincide with  
25 the exact timeframe of a new well coming online

1 offside it -- offsetting it. And it's just -- so it's  
2 certainly possible, but it's not something that  
3 appears to be prevalent or common at all.

4 Q And I believe that you used the word  
5 unlikely in your response.

6 A Correct.

7 Q And then Mr. Parrot talked -- you talked  
8 about the parent-child effect. And I believe this --  
9 is this on the wells where there was a difference  
10 between six months and one year? And I believe your  
11 response was that did not make a difference. Can you  
12 discuss that --

13 MR. PARROT: Objection.

14 The question that I asked was 1 year to  
15 18 months, not just 1 year.

16 THE HEARING EXAMINER: Mr. Savage, did  
17 you hear the clarification on the question?

18 MR. SAVAGE: Yes.

19 THE HEARING EXAMINER: All right.

20 So I sustain that.

21 So please ask the question -- if you're  
22 going to repeat the question, repeat it, you know,  
23 accurately.

24 //

25 BY MR. SAVAGE:



1 Q Mr. Rhodes, you mentioned that four wells  
2 per bench looked like that they were drilled within  
3 distance of time within six months. Is that correct?

4 A Which wells?

5 Q I'm going to move onto the next -- I'll  
6 withdraw that question. Now, Mr. Rhodes, you  
7 mentioned that when you get close to the wellbore that  
8 the drainage is at a larger rate and when you -- has a  
9 larger weight rate. When you talked about the  
10 difference between drainage versus -- closer to the  
11 wellbore versus further away from the wellbore, can  
12 you describe that difference?

13 A Sure. So your wellbore is the point that  
14 you withdraw fluids from the reservoir so you're going  
15 to drain the closer rock to the wellbore faster and  
16 first before you drain the rock that's further away  
17 from the wellbore.

18 Q And that does not -- that's distinguished  
19 from the amount of production. Is that correct?

20 A You mean the ultimate recovery?

21 Q Ultimate recovery.

22 A Yeah. That's more rate of recovery than  
23 ultimate recovery. So long as you have a permeable  
24 channel, which these formations do have their own  
25 inherent permeability and you can contact those and

1 get them within your radius of influence, then through  
2 time you should drain the reserves, whether it's at  
3 the extent of the drainage radius or right next to the  
4 wellbore, you will eventually drain those reserves.

5 Q So as I understand this, the three bench --  
6 the three wells per bench would drain the reserves,  
7 full reserves. Correct?

8 A More -- yeah. From what I've looked at, it  
9 would more than drain it. You'd be barely getting any  
10 excess oil from drilling a third well, let alone a  
11 fourth well. Would be a big waste.

12 Q Okay.

13 A No excess oil.

14 Q And that would be done without the  
15 interference of four wells per bench.

16 A It would be done without that level of  
17 interference, but as shown with your forecast  
18 comparing unbound versus bound wells, you will have  
19 significant interference still with three wells, let  
20 alone with four wells.

21 Q And you're saying that the drilling the four  
22 wells per bench, that results in the drilling of  
23 unnecessary wells?

24 A Correct.

25 Q And you're clearly stating, it looks to me,

1 that unnecessary expenditure of money and funds to  
2 drill extra wells, that is also, in your view,  
3 economic waste.

4 A Yes.

5 MR. SAVAGE: I have no further  
6 questions.

7 THE HEARING EXAMINER: Mr. Parrot, is  
8 there any re-cross on the redirect?

9 MR. PARROT: No, thank you,  
10 Mr. Examiner.

11 THE HEARING EXAMINER: All right.

12 MR. SAVAGE: Mr. Examiner, I'd like to  
13 reserve the witness as far as the rebuttal witness  
14 before --

15 THE HEARING EXAMINER: You don't have  
16 to. He automatically --

17 MR. SAVAGE: Oh. Thank you.

18 THE HEARING EXAMINER: Mr. McClure, are  
19 there any questions that arose while you listened to  
20 the redirect?

21 THE TECHNICAL EXAMINER: None here,  
22 Mr. Hearing Examiner.

23 THE HEARING EXAMINER: Excellent.

24 Okay. Mr. Savage, do you have another  
25 witness?

1 MR. SAVAGE: No. That concludes our  
2 case-in-chief.

3 THE HEARING EXAMINER: All right.

4 MR. SAVAGE: But we do have Mr. Solt,  
5 our landman available if the OCD wants any  
6 clarification on any matter that regards land.

7 THE HEARING EXAMINER: Okay. Well, the  
8 land wasn't part of your case-in-chief. Right?

9 MR. SAVAGE: That's correct.

10 THE HEARING EXAMINER: Okay. So I  
11 don't think it's proper even to open that witness up  
12 for questions as this point. Maybe as a rebuttal. I  
13 don't know.

14 MR. SAVAGE: Okay.

15 THE HEARING EXAMINER: So let's go --  
16 first of all, let's check the time. Time is 4:22. My  
17 computer is out of power so if we don't need power  
18 from my computer, then we can keep going until five  
19 o'clock. If we do, I'll have to take a break and go  
20 get a power cord.

21 Mr. Parrot, this is your application.  
22 Do you have a rebuttal case?

23 MR. PARROT: We have a brief rebuttal  
24 case.

25 THE HEARING EXAMINER: Fine. What does

1 it entail?

2 MR. PARROT: A few engineering exhibits  
3 that directly analyze Mr. Rhodes' engineering  
4 analysis.

5 THE HEARING EXAMINER: NOI means what?

6 MR. PARROT: I'm sorry, what?

7 THE HEARING EXAMINER: You said NOIs?  
8 What is NOIs?

9 MR. PARROT: I'm sorry. I don't  
10 remember saying NOI.

11 THE HEARING EXAMINER: Let's start  
12 over. Do you have a rebuttal case?

13 MR. PARROT: Yes.

14 THE HEARING EXAMINER: Great. What  
15 comprises your rebuttal case?

16 MR. PARROT: We have approximately ten  
17 engineering exhibits that are in direct rebuttal to  
18 the analysis presented just now by Mr. Rhodes.

19 THE HEARING EXAMINER: Okay. And which  
20 witness will you depend on to bring those in?

21 MR. PARROT: That would be Mr. Kelly,  
22 our engineering witness.

23 THE HEARING EXAMINER: Thank you. I  
24 see him now. And can you point to where in the 19  
25 pages that we have admitted as Prima's exhibit packet

1 where in that packet your rebuttal case arises from?

2 MR. PARROT: I can do that, if you'll  
3 give me just one moment.

4 THE HEARING EXAMINER: Sure. And will  
5 you share your screen with us?

6 MR. PARROT: I will.

7 THE HEARING EXAMINER: Thank you.  
8 'Cause I can't see it. And I think while you do this,  
9 I'm going to take a five-minute break, go get a power  
10 cord and we'll come back on the record in five  
11 minutes.

12 (Off the record.)

13 THE HEARING EXAMINER: It is 4:31.  
14 We're back on the record.

15 Mr. Parrot, where would I find these  
16 ten exhibits?

17 MR. SAVAGE: Mr. Hearing Examiner, I  
18 would like to object to the rebuttal exhibits.

19 THE HEARING EXAMINER: In just a  
20 moment.

21 MR. SAVAGE: Okay.

22 THE HEARING EXAMINER: I first need to  
23 identify them before you object to them.

24 MR. SAVAGE: Okay. Yes, sir.

25 THE HEARING EXAMINER: So hold on one

1 second.

2 Can you answer that question?

3 MR. PARROT: Yes, Mr. Examiner. They  
4 are in the rebuttal exhibit packet that Avant filed  
5 this morning, beginning at page 22 of that PDF  
6 document. The first exhibit is labeled Exhibit G-10  
7 and they go through --

8 THE HEARING EXAMINER: Okay, hold -- I  
9 got to catch up with you now. Hold on one second.

10 MR. PARROT: I apologize.

11 THE HEARING EXAMINER: It's fine. No  
12 point in going on if I'm not with you. So hold on one  
13 second.

14 MR. PARROT: And I'm sorry, did you  
15 want me to share my screen?

16 THE HEARING EXAMINER: Not yet.

17 MR. PARROT: Okay.

18 THE HEARING EXAMINER: Not yet. I just  
19 want to get where I need to go and then we can go on.  
20 Okay. Let's see.

21 And, Mr. Savage, as a preview, what is  
22 the basis of your objection? Just in one word.

23 MR. SAVAGE: Well, there's several  
24 bases.

25 THE HEARING EXAMINER: Give me one

1 word.

2 MR. SAVAGE: Well, the -- one word.

3 THE HEARING EXAMINER: You can't boil  
4 it down to one word?

5 MR. SAVAGE: No, I don't think I can do  
6 that, but I can try to make it as efficient as  
7 possible. So you said the criteria was surprise for  
8 the admittance of the -- so I believe there is no  
9 surprise here. Yeah.

10 THE HEARING EXAMINER: Okay. All  
11 right. Let me mull that over.

12 Okay, so "Avant Operating Rebutting  
13 Exhibit Index D." I have D and then I have -- I don't  
14 have any G. Is that what you said?

15 MR. PARROT: So yes, there is on the  
16 second page of the exhibit index, there are G  
17 exhibits.

18 THE HEARING EXAMINER: Okay. Yes, I  
19 see it. So G-9 through 20?

20 MR. PARROT: We actually don't need  
21 G-9, just G-10 through 20.

22 THE HEARING EXAMINER: G-10 through 20.  
23 All right. Let me write this down. G-10 through 20.  
24 So you are seeking to admit G-10 through 20. And I  
25 asked you to point to where in Mr. Savage's exhibit



1 packet you found the information that results in these  
2 rebuttal exhibits. So now, would you share your  
3 screen?

4 MR. PARROT: Yes.

5 THE HEARING EXAMINER: Thank you.

6 MR. PARROT: So I'm going to do this  
7 slightly out of order because it makes more sense to  
8 answer your question that way.

9 THE HEARING EXAMINER: I see.

10 MR. PARROT: Starting with G-12, this  
11 is an analysis of Prima's exhibits that it just  
12 presented.

13 THE HEARING EXAMINER: Okay.

14 MR. PARROT: You can see on the left  
15 that is Prima's exhibit.

16 THE HEARING EXAMINER: I see it.

17 MR. PARROT: Thirteen, same. Fourteen,  
18 same. Fifteen, 16, 17, 18, these are all Prima's  
19 exhibits. So --

20 THE HEARING EXAMINER: I didn't -- you  
21 went a little fast for me.

22 MR. PARROT: I'm sorry.

23 THE HEARING EXAMINER: So can you start  
24 back at ten again?

25 MR. PARROT: Yes, sir.

1 THE HEARING EXAMINER: And Mr. Savage,  
2 would you identify in each one of these rebuttal  
3 exhibits and they're marked here, now we're at 12.

4 I would like to start at 10 if you  
5 don't mind.

6 MR. PARROT: Sure.

7 THE HEARING EXAMINER: Okay.

8 MR. PARROT: So G-10 and G-11 are not  
9 direct analyses --

10 THE HEARING EXAMINER: Oh.

11 MR. PARROT: -- of the exhibits that I  
12 was just showing you.

13 THE HEARING EXAMINER: What are they?

14 MR. PARROT: Of G-12 through 20. They  
15 are essentially just a preface to explain the analysis  
16 in G-12 through G-20. So they're just a frame of  
17 reference to explain the analysis that Avant did in  
18 response to Prima's exhibits that were just presented.

19 THE HEARING EXAMINER: All right. Then  
20 let's start with 12.

21 MR. PARROT: Okay.

22 THE HEARING EXAMINER: Now, Mr. Savage,  
23 let's look at their rebuttal Exhibit G-12. Do you see  
24 your exhibit on this page?

25 MR. SAVAGE: I do.

1 THE HEARING EXAMINER: Okay, good. You  
2 see your exhibit. Now, how could they have  
3 anticipated your exhibit?

4 MR. SAVAGE: Mr. Examiner, before you  
5 invest substantial funds and time and energy and  
6 resources in drilling a well in the subject lands that  
7 they propose, they would have done an analysis of all  
8 the offset wells that are relevant. So we provided  
9 the production exhibits over a week ago. This would  
10 be territory that they would have already have covered  
11 in their own preparations for drilling and developing  
12 these wells. So there is no inherent surprise in  
13 this. And what they did instead, they -- you know, we  
14 believe it was a litigation strategy. They proposed  
15 27, 27, 2 hours before, 27 rebuttal exhibits for us to  
16 filter through. And that basically is not feasible.  
17 That is impossible to prepare for, you know, a  
18 rebuttal.

19 THE HEARING EXAMINER: Okay. Hold on a  
20 second, Mr. Savage. You're making two different  
21 arguments here. And so I want to deal with one  
22 argument at a time.

23 MR. SAVAGE: Okay.

24 THE HEARING EXAMINER: I realize that  
25 these have come in at the last minute. And I did

1 advise both parties that rebuttal exhibits can come in  
2 at any time during a hearing. That doesn't mean I  
3 won't give you the time necessary to analyze their  
4 rebuttal exhibit if it's admitted. But it's not even  
5 admitted yet.

6 MR. SAVAGE: Yes, sir.

7 THE HEARING EXAMINER: So would you  
8 please just -- okay. So this exhibit on the left-hand  
9 side of this page of G-12 is your graph.

10 MR. SAVAGE: Correct.

11 THE HEARING EXAMINER: Okay. And it  
12 was submitted on the 15th in a timely manner.

13 MR. SAVAGE: That's correct.

14 THE HEARING EXAMINER: Okay. Very  
15 good.

16 Now, Mr. Parrot, what about this graph  
17 are you rebutting? Very simply, what are you  
18 rebutting?

19 MR. PARROT: The credibility of the  
20 analysis.

21 THE HEARING EXAMINER: Okay.

22 Well, Mr. Savage, credibility is always  
23 at issue. In any trial or hearing, credibility is  
24 always at issue.

25 So this exhibit I will admit, G-12.

1 (Avant Rebuttal Exhibit G-12 was  
2 received into evidence.)

3 THE HEARING EXAMINER: And, Mr. Savage,  
4 are you saying you need some more time to deal with G-  
5 12?

6 MR. SAVAGE: We do.

7 THE HEARING EXAMINER: Fine. How much  
8 time do you need?

9 MR. SAVAGE: We would like to be able  
10 to review the exhibits and provide a surrebuttal if  
11 necessary.

12 THE HEARING EXAMINER: Okay.

13 MR. SAVAGE: A surrebuttal if  
14 necessary. That would parallel --

15 THE HEARING EXAMINER: I understand.

16 MR. SAVAGE: Okay.

17 THE HEARING EXAMINER: I got it.

18 MR. SAVAGE: So --

19 THE HEARING EXAMINER: When do you need  
20 it?

21 MR. SAVAGE: So we would like to have  
22 'til 11 a.m. tomorrow.

23 THE HEARING EXAMINER: Perfect. Eleven  
24 a.m. tomorrow.

25 Mr. Parrot. Excuse me. Are you asking

1 your witnesses about their availability?

2 MR. PARROT: Yes.

3 THE HEARING EXAMINER: Yeah. You know,  
4 they can testify virtually. They don't have to stay  
5 in New Mexico if they want to leave. I could  
6 understand that. So we're going to reconvene tomorrow  
7 at 11 a.m. to give Mr. Savage time to review and his  
8 expert time to review whatever exhibits we admit. But  
9 we're going to go through them now. We'll figure out  
10 which ones we're going to admit based on whatever the  
11 rationale is and we'll see what objections there are.  
12 But if your witnesses want to testify tomorrow, it's  
13 fine with me. We'll pick this hearing up again at 11  
14 a.m. Tomorrow. I expect counsel to be here, but  
15 witnesses can testify virtually. You've all been  
16 sworn in. Which witness would you want to testify  
17 tomorrow?

18 MR. PARROT: Mr. Kelly.

19 THE HEARING EXAMINER: Mr. Kelly, okay.  
20 Is that the only of the witnesses that you believe you  
21 want to call tomorrow in your rebuttal case?

22 MR. PARROT: Correct.

23 THE HEARING EXAMINER: Okay. Fine.

24 Mr. Savage, are you going to have a  
25 rebuttal case tomorrow?

1 MR. SAVAGE: We would look at this and  
2 we would like to have the opportunity to submit  
3 surrebuttal exhibits as applicable.

4 THE HEARING EXAMINER: Well, this can  
5 go on forever. This literally could go on forever  
6 with parties rebutting each other's rebuttals. So  
7 I'll give you an opportunity, just like they have an  
8 opportunity for rebuttal, I'll give you an  
9 opportunity. But you're going to have make good  
10 argument. It can't just be, well, it's a surrebuttal  
11 and that's how we're going to get it in.

12 MR. SAVAGE: Understood. Yes.

13 THE HEARING EXAMINER: Okay. So G-12  
14 is admitted into evidence. What's your next exhibit?

15 MR. PARROT: It would be G-13 and --

16 THE HEARING EXAMINER: Okay. Great.  
17 Will you pull it up?

18 MR. PARROT: Sure.

19 THE HEARING EXAMINER: And this is  
20 G-13. Ah. Well, not yet.

21 Okay. Now, Mr. Savage, do you see your  
22 exhibit here on this document?

23 MR. SAVAGE: I do.

24 THE HEARING EXAMINER: Okay. Good.

25 Mr. Parrot, what are you rebutting in

1 this slide?

2 MR. PARROT: So I would say both the  
3 credibility and the relevance of this slide. Of the  
4 engineering analysis that was presented in Prima's  
5 slide that's shown on the left.

6 THE HEARING EXAMINER: Right. Well,  
7 that sounds a lot like the same rationale for the one  
8 before. What's different in this exhibit than the  
9 exhibit before, G-12?

10 MR. PARROT: The wells that were  
11 analyzed by Prima are different and there are errors  
12 in Prima's analysis. And maybe to save us a little  
13 time, it's pretty much that way throughout the rest of  
14 our exhibits.

15 THE HEARING EXAMINER: Okay. Can you  
16 go back one? Can you go back to 12?

17 MR. PARROT: Sure.

18 THE HEARING EXAMINER: All right. So  
19 you're saying that the Iron House Group development  
20 map view here -- now would you go to 13? I see. So  
21 they're different. Okay. So in each one of these is  
22 a different analysis based on the data given to you by  
23 Prima's Mr. Rhodes. You're now going to take that  
24 apart and show why that's not to be trusted let's say?

25 MR. PARROT: Yes.



1 THE HEARING EXAMINER: For lack of a  
2 better word, Mr. Rhodes.

3 MR. PARROT: We believe that each of  
4 Prima's slides lacks credibility, accuracy, and  
5 relevance. And we'll explain why. With that being  
6 said, there are a lot of similarities in why we  
7 believe that to be the case. So we will not be  
8 explaining in great detail.

9 THE HEARING EXAMINER: I see.

10 MR. PARROT: We'll be, you know, saying  
11 things like there are similar errors made on this  
12 slide as a prior slide.

13 THE HEARING EXAMINER: Okay. Can we go  
14 to 14 now?

15 I'm admitting Exhibit G-13 now.  
16 (Avant Rebuttal Exhibit G-13 was  
17 received into evidence.)

18 THE HEARING EXAMINER: Where is Mr.  
19 Savage's exhibit here in G-14?

20 MR. PARROT: So you'll see the  
21 Kingfisher Group plot over on the right-hand side and  
22 the plot over on the left-hand side. Those are  
23 Prima's exhibits.

24 THE HEARING EXAMINER: So, Mr. Savage,  
25 your two exhibits are here on this page?

1 MR. SAVAGE: They are, but I believe  
2 they're being taken out of context if I can explain.

3 THE HEARING EXAMINER: You'll have time  
4 to deal with all of that through cross-examination and  
5 your own rebuttal because obviously now this is a  
6 surprise to you. You know, these exhibits that I'm  
7 admitting, including G-14, now this is the first time  
8 you're seeing this.

9 (Avant Rebuttal Exhibit G-14 was  
10 received into evidence.)

11 MR. SAVAGE: Yes, sir.

12 THE HEARING EXAMINER: So obviously you  
13 can bring your own exhibits to rebut this --

14 MR. SAVAGE: Okay. Thank you.

15 THE HEARING EXAMINER: -- in your  
16 rebuttal case and your witness can testify. I don't  
17 have to tell you how to do your job.

18 Okay. So G-12, G-13, G-14 are all  
19 admitted. How about G-15?

20 Does this look --

21 MR. PARROT: It's basically the same  
22 thing.

23 THE HEARING EXAMINER: Same thing?

24 MR. PARROT: You can see Prima's  
25 exhibits on the top left and top right.

1 THE HEARING EXAMINER: Right. Oh, top  
2 right and top left. Okay. Fine.

3 This is G-15 is admitted into evidence.  
4 Let's keep going.

5 (Avant Rebuttal Exhibit G-15 was  
6 received into evidence.)

7 MR. PARROT: You can see Prima's  
8 exhibit on the left side.

9 THE HEARING EXAMINER: Okay. G-16 is  
10 admitted.

11 (Avant Rebuttal Exhibit G-16 was  
12 received into evidence.)

13 MR. PARROT: You can see here Prima's  
14 exhibit on the top left.

15 THE HEARING EXAMINER: Top left only?  
16 Top left.

17 MR. PARROT: Yes.

18 THE HEARING EXAMINER: Okay. Do you  
19 need to make a change to this?

20 MR. PARROT: I apologize. What?

21 THE HEARING EXAMINER: Do you need to  
22 make a change to G-17? Is it accurate?

23 MR. PARROT: No. Yes. Sorry. Okay.  
24 So there is an error on the bottom right graph and  
25 we'll explain that during testimony. It's something

1 that is not material to our rebuttal case.

2 THE HEARING EXAMINER: Okay. All  
3 right. All right. I just wanted to make sure.

4 Okay. G-17 is admitted into evidence.  
5 (Avant Rebuttal Exhibit G-17 was  
6 received into evidence.)

7 THE HEARING EXAMINER: Let's see 18.  
8 Which one of these is Prima's graph? Right, I'm  
9 gathering that. What are you trying to show here?

10 MR. PARROT: So this does not have one  
11 of Prima's exhibit on it. This is a rebuttal to  
12 Prima's set of exhibits asserting that three wells per  
13 unit is the optimal -- actually, 2.17 wells per unit  
14 is the optimal spacing.

15 THE HEARING EXAMINER: And where in  
16 Prima's exhibit do you get the 2.71 data? Is that in  
17 the affidavit or where is that?

18 MR. PARROT: I can give you the page  
19 number from their exhibit if you don't mind.

20 THE HEARING EXAMINER: Sure. That's  
21 what I want. Yeah.

22 MR. PARROT: So that would be page 16  
23 out of 18.

24 THE HEARING EXAMINER: Okay.

25 MR. PARROT: There's the 54.1 percent

1 results in 2.16 wells required.

2 THE HEARING EXAMINER: Okay.

3 MR. PARROT: Yeah.

4 THE HEARING EXAMINER: And this page or  
5 this exhibit rebuts that testimony that that's the  
6 optimal number of wells to drain the reservoir.

7 MR. PARROT: That's correct.

8 THE HEARING EXAMINER: Okay. And what  
9 is this saying? This is saying the optimal is four?  
10 Is that what this is saying?

11 MR. PARROT: You know, I think I'd  
12 probably better leave it up to our engineering exhibit  
13 to explain the exhibit in -- our engineering witness  
14 to explain the exhibit in detail, but it basically is  
15 arguing that entire spacing leads to prevention of  
16 waste and the wells are still economic.

17 THE HEARING EXAMINER: Okay. All  
18 right. I understand. And that's really the crux of  
19 your case.

20 MR. PARROT: Correct. Well, the crux  
21 of our case is that the plan prevents waste. The  
22 economic argument we believe is not relevant.

23 THE HEARING EXAMINER: Okay. Okay.  
24 So this G-18 is admitted.

25 (Avant Rebuttal Exhibit G-18 was

1 received into evidence.)

2 THE HEARING EXAMINER: What's G-19  
3 based on?

4 MR. PARROT: Basically, it's additional  
5 data similar to G-18. So just like Prima presented  
6 six slides that are all very similar to show a trend,  
7 Avant is presenting more than one slide showing that  
8 they've looked at more than one situation. So in  
9 Exhibit G-18, you can see this is the Batman unit.  
10 And you can see that this is the Cutbow unit.

11 THE HEARING EXAMINER: Yes. I see.

12 MR. PARROT: And you can see in the  
13 summary of the slide in the last sentence that this  
14 development plan prevents waste.

15 THE HEARING EXAMINER: That's not the  
16 issue for me because that should have been in your  
17 case-in-chief. I mean, that's the whole basis of your  
18 case is that what you're doing prevents waste and  
19 protects correlative rights. But I'm looking  
20 specifically at exhibits that rebut testimony that you  
21 would not have anticipated. I would have thought you  
22 would have anticipated the waste argument. But --

23 MR. PARROT: May I address that  
24 concern?

25 THE HEARING EXAMINER: No. No. Thank

1 you. We don't have enough time to address everything.

2 But so I'm admitting G-19.

3 (Avant Rebuttal Exhibit G-19 was  
4 received into evidence.)

5 THE HEARING EXAMINER: And G-20?

6 MR. PARROT: So again, we've shown  
7 Batman, the Cutbow. This is showing yet another unit,  
8 Airstrip showing type curves and in this case, we're  
9 showing cumulative production. You may recall that I  
10 was asking some cross-examination questions about  
11 cumulative production and that analysis was not  
12 performed so Avant's engineer has taken it on himself  
13 to perform that analysis.

14 THE HEARING EXAMINER: And what does  
15 this exhibit rebut in Prima's evidence?

16 MR. PARROT: So we received the order  
17 denying the motion to dismiss on the 13th. The next  
18 day Avant filed a pre-hearing statement stating that  
19 in recognition of that order it was shifting to focus  
20 more on the overdrainage being caused by four wells in  
21 a unit rather than Avant not being able to perform a  
22 12 well in 1 year development plan. So leading up to  
23 the hearing, all of the filings that Prima had filed  
24 were basically objecting to Avant's ability to drill  
25 12 wells according to its development plan and Avant

1 having an improper timeline. The day after that order  
2 came out, which was the 14th, Prima signified a  
3 significant shift in its strategy for the hearing. In  
4 response to that shift, Avant undertook an analysis of  
5 whether overdrainage would be caused by four wells in  
6 a mile. And that's what this exhibit addresses. And  
7 we were not privy to that change in strategy until the  
8 14th.

9 MR. SAVAGE: Mr. Hearing Examiner, can  
10 I object to that explanation?

11 THE HEARING EXAMINER: Go ahead.

12 MR. SAVAGE: Thank you.

13 THE HEARING EXAMINER: What's your  
14 objection?

15 MR. SAVAGE: The objection is that he  
16 is conflating the motion to dismiss and  
17 recharacterizing it as the case-in-chief. It is not.  
18 Let's say we never did that motion.

19 THE HEARING EXAMINER: I already  
20 understand.

21 MR. SAVAGE: Okay. Okay.

22 THE HEARING EXAMINER: I get the point.  
23 And I agree with that.

24 So, Mr. Parrot, unless you can show me  
25 that Exhibit G-20 rebuts some evidence that was filed



1 on the 15th, then I'm going to let G-20 in. And we  
2 haven't even talked about 10 or 11 yet.

3 MR. PARROT: Okay. So it's a second  
4 amended pre-hearing statement that was filed on the  
5 14th. Prima stated "Prima interprets the order  
6 denying the motion to dismiss to mean that the issue  
7 of whether Avant needs a development plan option,  
8 given the number of initial wells proposed remains in  
9 the proceeding subject to examination during the  
10 questioning. For the hearing, Prima's main objection  
11 is to Avant's pooling application on the basis that  
12 Avant's proposed development plan of drilling 12 wells  
13 will overproduce the Bone Spring formation in the  
14 subject plans." It's that specific statement that is  
15 the rebuttal -- the purpose of these rebuttal  
16 exhibits. So prior to that statement being filed on  
17 the 14th, Avant was never on notice that Prima's  
18 primary objection was that 12 wells will overproduce  
19 the Bone Spring formation. That was new information  
20 that we received five calendar days before the  
21 hearing.

22 THE HEARING EXAMINER: Well,  
23 Mr. Parrot, I'm still leaving the door open for you to  
24 show me the evidence that Prima filed that this  
25 rebuts, but that argument is not working for me

1 because of several reasons. No. 1, the fact that  
2 Prima was challenging your development plan should  
3 have been obvious from when they filed the motion to  
4 dismiss the applications. Which of course I denied  
5 because there was no grounds at that point to dismiss  
6 your applications. But you knew that they were  
7 objecting to your, you know, "overproduction" from  
8 this formation. So I'm not buying that. I'm also not  
9 understanding why this would not be in your  
10 case-in-chief. If you were trying to show that the  
11 way you're developing this formation is prudent, this  
12 should easily be part of that case. And I'm not going  
13 to allow information to come in in a rebuttal case  
14 that should have been in a case-in-chief. So I'm  
15 going to reserve judgment on G-20. What about 10 and  
16 11?

17 MR. PARROT: Okay. Do you mind if I  
18 make a comment?

19 THE HEARING EXAMINER: Yes. Go ahead.

20 MR. PARROT: Okay, so what I was  
21 explaining about the pre-hearing statement submitted  
22 on the 14th basically was to characterize Avant's  
23 expectation of the evidence that Prima would be  
24 submitting in this hearing.

25 THE HEARING EXAMINER: Okay.

1 MR. PARROT: So as of the 14th, Prima  
2 -- sorry. Prima filed its engineering exhibits that  
3 were just presented. And this exhibit is intended to  
4 rebut Prima's engineering exhibits that were just  
5 present an hour ago.

6 THE HEARING EXAMINER: In what way?

7 MR. PARROT: So you'll see the summary  
8 on the slide that this is an analysis of a unit that  
9 was developed with four wells per mile and talks about  
10 the average recovery for each of those wells and the  
11 existence of parent-child well communication between  
12 those wells in a four well per mile unit that was  
13 drilled with relatively modern drilling and completion  
14 techniques.

15 THE HEARING EXAMINER: And where do I  
16 see that in this exhibit?

17 MR. PARROT: Okay. So the first  
18 paragraph in the summary, in the lower left-hand  
19 corner summarizes this. The data in the -- I'm sort  
20 of getting dangerously into the testimony that would  
21 be presented by an engineer.

22 THE HEARING EXAMINER: This is just  
23 argument so it's not a problem.

24 MR. PARROT: Okay. So --

25 THE HEARING EXAMINER: But I'm still

1 reading this paragraph here that you said said one  
2 thing and I want to see that it says that.

3 MR. PARROT: So Matador's Airstrip unit  
4 was developed with four wells per section spacing in  
5 2017, '18, and '19 and the average well produced over  
6 200,000 barrels of oil per 10,000 feet of lateral  
7 despite multiple parent-child well interference  
8 events. And the graphs and pictorials show where  
9 those wells are, the EUR curve that was used to  
10 determine the EUR and showing the average cume [ph]  
11 oil production per well. So the graphs or the data  
12 that support the summary, the summary is that  
13 notwithstanding the analysis and contention that you  
14 just heard from Mr. Rhodes that parent-child well  
15 interference causes economic damage is actually  
16 appropriate to drill four wells per mile and those  
17 wells are not only going to be economic but that they  
18 are going to cumulatively produce more oil per section  
19 than two or three wells would.

20 THE HEARING EXAMINER: So, Mr. Savage,  
21 in the first paragraph of the summary that the phrase  
22 "parent-child well interference" is mentioned, and  
23 that was a contention of your expert witness that the  
24 parent-child relationship would degrade the production  
25 of these wells, making this overproduction basically

1 that was part of the argument that your witness  
2 advanced. Do you disagree with me?

3 MR. SAVAGE: Can we go back to the G-20  
4 so I can look at it?

5 THE HEARING EXAMINER: Yes. Of course  
6 you can.

7 MR. SAVAGE: Thank you.

8 THE HEARING EXAMINER: Somehow we --  
9 yeah. Thank you. So did you hear what I said?

10 MR. SAVAGE: Okay. Yes, I did.

11 THE HEARING EXAMINER: So how is this  
12 not a rebuttal exhibit?

13 MR. SAVAGE: Can I give a full  
14 explanation on that?

15 THE HEARING EXAMINER: Please.

16 MR. SAVAGE: Okay. So the first  
17 justification Mr. Parrot used was based on the PHS.  
18 And then he switched that and now we're looking at  
19 he's saying it rebuts a specific exhibit in  
20 production.

21 THE HEARING EXAMINER: Yes. He's a  
22 clever lawyer, Mr. Savage.

23 MR. SAVAGE: Yes.

24 THE HEARING EXAMINER: And I'm sure so  
25 are you so okay.

1 MR. SAVAGE: So I don't believe those  
2 justifications are valid, but it looks to me like it  
3 appears Mr. Parrot did. He asked some cross-examining  
4 questions that expanded the scope of the discussion  
5 and introduced a discussion of the parent-child that,  
6 if you remember that Mr. Rhodes did not initially  
7 bring up the parent-child. That was something that  
8 was introduced through cross-examination. So he  
9 responded to that. So in a way, Mr. Parrot's creating  
10 his own strawman.

11 THE HEARING EXAMINER: All right.  
12 Let's hold on for a second.

13 Mr. Parrot, can you show me where in  
14 Prima's exhibits the term parent-child is mentioned?

15 MR. PARROT: I'm not sure that the  
16 exhibits use the exact phrase parent-child. There are  
17 multiple discussions in here of what are effectively  
18 parent-child well relationships. The terminology is  
19 not material. You can call it proximate well, you can  
20 call it parent-child. There are all kinds of industry  
21 terms that are used for this relationship.

22 THE HEARING EXAMINER: Are any of those  
23 terms or that concept in his exhibits?

24 MR. PARROT: Yes.

25 THE HEARING EXAMINER: Can you show me

1 where?

2 MR. PARROT: So I will -- yes.

3 THE HEARING EXAMINER: Thank you.

4 MR. PARROT: Do you want me to do the  
5 share screen?

6 THE HEARING EXAMINER: I do. Thank  
7 you.

8 MR. PARROT: Okay.

9 THE HEARING EXAMINER: Weren't you  
10 already doing -- isn't that how you are showing me  
11 this?

12 MR. PARROT: Yeah, actually, I think I  
13 can do it through the rebuttal exhibits. So you'll  
14 see in Avant's Exhibit G-12 there is a reproduction of  
15 one of Prima's exhibits. And in this reproduction,  
16 I'm going to zoom in so that you can actually read  
17 this. So this shows a well initially drilled in early  
18 2013. That's the Ironhouse 1H well. That would be  
19 considered a parent well in that unit or an initial  
20 well or however you want to phrase it. And then the  
21 green line is the well that was drilled approximately  
22 a year later and that well was brought on, you know, a  
23 significant amount of time after the initial well was  
24 brought on so that --

25 THE HEARING EXAMINER: Is that

1 considered an infill?

2 MR. PARROT: That could be considered  
3 infill or a child well.

4 THE HEARING EXAMINER: I see.

5 MR. PARROT: I mean, there's different  
6 terminologies and it's not material. It's just  
7 semantics.

8 THE HEARING EXAMINER: Okay.

9 MR. PARROT: So this concept is  
10 embodied in this slide. And the same concept is  
11 embodied in most of Prima's slides. It's showing a  
12 comparison of a well that was brought on and then a  
13 later point in time a second well was brought on and a  
14 third and a fourth.

15 THE HEARING EXAMINER: Okay.

16 So, Mr. Savage, even though the term  
17 parent-child was not in your exhibits, I can  
18 understand how this idea of the initial well and then  
19 infill wells that can affect the production of the  
20 initial well, I understand why --

21 Can you go to 20 again?

22 THE HEARING EXAMINER: I can understand  
23 -- still not seeing G-20. I see 19.

24 MR. PARROT: I'm sorry. That was G-19.  
25 This is G-20.



1 THE HEARING EXAMINER: You know,  
2 Mr. Savage, I'm going to admit G-20, but I'm going to  
3 give you wide latitude to admit your own rebuttal  
4 exhibits to prove your point, to cross-examine, I'll  
5 get it, Kelly tomorrow and be prepared. So we that  
6 said, we have 12 through 20 admitted as rebuttal  
7 exhibits.

8 (Avant Rebuttal Exhibit G-20 was  
9 received into evidence.)

10 THE HEARING EXAMINER: What about 10  
11 and 11?

12 MR. PARROT: Okay. So G-10 is -- it's  
13 doing two things. First of all, it's just providing a  
14 frame of reference for Exhibits G-12 through G-20 so  
15 that the Division can see the proximity of those  
16 analyses to the subject unit.

17 THE HEARING EXAMINER: I see.

18 MR. PARROT: Secondly, it is directly  
19 rebutting Prima's exhibit that was show on page 8 of  
20 its exhibits and that's not actually included in  
21 Avant's rebuttal exhibits, but I can put it up on the  
22 screen if that would be helpful.

23 THE HEARING EXAMINER: Go ahead.

24 MR. PARROT: Okay.

25 THE HEARING EXAMINER: Let's see 8.

1 MR. PARROT: So as you can see here,  
2 Prima presented an analysis of proximate development  
3 with fewer than four wells per section. And I'm going  
4 to stop sharing and go back to Avant's rebuttal  
5 exhibits. And as you can see from Avant's rebuttal  
6 exhibits, this is an analysis showing proximate  
7 development of four wells per section.

8 THE HEARING EXAMINER: Okay. That's  
9 G-10. G-10 is admitted. What about 11?

10 (Avant Rebuttal Exhibit G-10 was  
11 received into evidence.)

12 MR. PARROT: Sorry. So G-11 is, again,  
13 framing the analysis that is presented in G-12 through  
14 20 and it's somewhat demonstrative to show the -- for  
15 well per section development that is analyzed in G-12  
16 through G-20. So it's not --

17 THE HEARING EXAMINER: Okay. I  
18 understand. I'm not letting in G-11. It's the one  
19 exhibit I'm not going to admit because this should  
20 have been part of your case-in-chief. It would have  
21 been a good exhibit for your case in chief, but it's  
22 not there so okay. So we've dealt with your rebuttal  
23 exhibits.

24 Mr. Savage, when will you have your  
25 rebuttal witnesses? 'Cause you do have to share them

1 with Mr. Parrot and giving him enough time and his  
2 expert witnesses to review them as well. So if we're  
3 reconvening at 11 a.m. tomorrow, when will you have  
4 your rebuttal? If you have any, when will you have  
5 them?

6 MR. SAVAGE: Nine o'clock.

7 THE HEARING EXAMINER: Is that fair?

8 MR. PARROT: Yes.

9 THE HEARING EXAMINER: Two hours?

10 MR. SAVAGE: Okay.

11 THE HEARING EXAMINER: Okay. All  
12 right.

13 James, you feel like you have a grasp  
14 of the exhibits that were admitted and not?

15 THE REPORTER: Yes.

16 THE HEARING EXAMINER: Okay.

17 Okay. Your amended packet or your  
18 exhibit packet with the corrections to the  
19 supplemental, although I'd prefer it not be called a  
20 supplement exhibit packet. Why not just call it the  
21 -- why don't you just call it your first amended  
22 exhibit packet? Do you have the edits that you were  
23 going to make that we talked about earlier today?

24 MR. PARROT: We know what we are  
25 supposed to do.

1 THE HEARING EXAMINER: Okay. You do.  
2 Okay.

3 MR. PARROT: Yes.

4 THE HEARING EXAMINER: Now, is there  
5 enough time for you to put G-10, 12 through 20 in with  
6 the other exhibits so that we have one document filed?

7 MR. PARROT: By nine o'clock tomorrow  
8 morning?

9 THE HEARING EXAMINER: By eleven  
10 o'clock tomorrow morning.

11 MR. PARROT: The only challenge that we  
12 would have is the correction of the affidavit which  
13 requires a notary. So other than that, yes, we can  
14 reorganize the pages.

15 THE HEARING EXAMINER: Okay. And mark  
16 Exhibit G and Exhibit D and the other ones that  
17 weren't marked and et cetera.

18 MR. PARROT: Okay.

19 MR. SAVAGE: Mr. Hearing Examiner, you  
20 could do a self-affirm statement and not have to have  
21 the affidavit.

22 THE HEARING EXAMINER: Thank you.

23 Did you --

24 MR. PARROT: I did. If that's going to  
25 be acceptable as opposed to an actual affidavit.

1 THE HEARING EXAMINER: It works.

2 MR. PARROT: And if there's no  
3 objection from Prima that we're submitting a  
4 self-affirmed statement.

5 THE HEARING EXAMINER: Obviously not.

6 MR. PARROT: Yep.

7 THE HEARING EXAMINER: He's being  
8 gracious.

9 Okay. Let's see. The time now is 5:06  
10 p.m. We are --

11 THE TECHNICAL EXAMINER: Mr. Hearing  
12 Examiner, if I could make one request --

13 THE HEARING EXAMINER: Yes. Go right  
14 ahead.

15 THE TECHNICAL EXAMINER: -- for the  
16 meeting or the reconvening tomorrow.

17 THE HEARING EXAMINER: Go right ahead.

18 THE TECHNICAL EXAMINER: If Avant could  
19 provide the complete affidavit of publication for this  
20 case rather than only partial, that way we can prevent  
21 the possibility of a continuance while they provide  
22 that to us.

23 THE HEARING EXAMINER: Ms. Graham.

24 MS. GRAHAM: Yes. I'll have to have a  
25 look at what Mr. McClure's referring to.

1 THE HEARING EXAMINER: What page number  
2 are you on, Mr. McClure?

3 THE TECHNICAL EXAMINER: Ooh. It's  
4 towards the end. It's page number -- try to find it  
5 in my notes here.

6 THE HEARING EXAMINER: Try 222. I  
7 think 223 was the beginning of G. Try 222.

8 THE TECHNICAL EXAMINER: Yeah, 221.  
9 All right.

10 THE HEARING EXAMINER: Close enough.

11 THE TECHNICAL EXAMINER: 221 I believe  
12 is what I have. It might be 222. If you'll notice --

13 MS. GRAHAM: Oh, I --

14 THE TECHNICAL EXAMINER: -- it's  
15 missing half of the affidavit which we will need that.

16 THE HEARING EXAMINER: They're not  
17 seeing it, Mr. McClure. Hold on.

18 MR. PARROT: Sorry. We're seeing an  
19 affidavit of publication on page 221 and 222.

20 But, Mr. McClure, are you saying that  
21 what you're looking at is cut off or something?

22 THE TECHNICAL EXAMINER: That is  
23 correct, sir. If you'll notice on the one that starts  
24 on page 221, it's missing the details to the case. It  
25 has, you know, all your interested parties, but I'm

1 not seeing where in the case itself is referenced and  
2 it talks about the spacing and such and such and such.  
3 It looks like the later half of the newspaper clipping  
4 what's cut off is what appears.

5 MR. PARROT: Okay. I think there's a  
6 possibility that this is our error and it's a  
7 possibility that we didn't receive the full image from  
8 the newspaper. If it's our error, then we can easily  
9 correct it by tomorrow. If it's because we did not  
10 get the full version from the newspaper, then it might  
11 take a little time to get that full version.

12 THE HEARING EXAMINER: And that's fine.  
13 We wouldn't take the case under advisement until we  
14 have that document. But that, you could submit  
15 separately. I just want the corrected exhibit packet  
16 to be filed tomorrow by the time the hearing starts so  
17 I have one document to look at for everything that  
18 we're talking about. But I'm not imposing that on  
19 Prima because I don't even know if Prima will have  
20 rebuttal exhibits. And if it does, I'll give you a  
21 chance after the hearing tomorrow to compile it into  
22 one document for the Division to review. So again, we  
23 are in recess until 11 a.m. tomorrow morning and thank  
24 you. Good night.

25 (Whereupon, at 5:08 p.m., the

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CERTIFICATE

I, JAMES COGSWELL, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

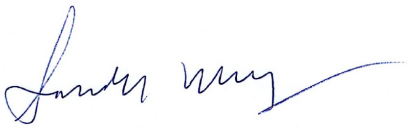


JAMES COGSWELL  
Notary Public in and for the  
State of New Mexico

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CERTIFICATE OF TRANSCRIBER

I, SANDRA HUANG, 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.



SANDRA HUANG

[& - 17th]

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[definitions - different]

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[mm - net]

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[objection - okay]

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[overall - paragraph]

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[parallel - parties]

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[partner - plans]

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[recross - requires]

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[right - savage]

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[savage - seeing]

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[spacing - step]

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[surprise - testified]

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[testify - thursday]

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[thursday - true]

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[unfortunately - waste]

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[watch - wells]

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