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

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

APPLICATION OF FASKEN OIL & Case No.
RANCH, LTD TO EXTEND THE 24396
DRILLING DEADLINE UNDER ORDER
R-22121, LEA COUNTY, NEW MEXICO.

APPLICATION OF FASKEN OIL & Case No.
RANCH, LTD TO EXTEND THE 24397
DRILLING DEADLINE UNDER ORDER
R-22122, LEA COUNTY, NEW MEXICO.

APPLICATION OF MARATHON OIL Case No.
PERMIAN LLC FOR COMPULSORY 24771
POOLING, LEA COUNTY, NEW MEXICO.

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HEARING

DATE: Tuesday, September 17, 2024
TIME: 8:30 a.m.
BEFORE: Gregory A. Chakalian
LOCATION: Pecos Hall, Wendell Chino Building
1220 South Saint Francis Drive
Santa Fe, NM 87505
REPORTED BY: James Cogswell
JOB NO.: 6832857

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A P P E A R A N C E S

ON BEHALF OF FASKEN OIL AND RANCH, LTD:

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

ALSO PRESENT:

Freya Tschantz, Law Clerk

Dean McClure, Technical Examiner (by
videoconference)

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I N D E X

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WITNESS:	DX	CX	RDX	RCX
DAVID WALLACE				
By Mr. Feldewert	16			
By Ms. Bennett		34		
By Ms. Hardy		50		
By Mr. McClure		51		

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
Fasken:		
Exhibit A	Self-Affirmed Statement of Mike Wallace, Landman	23/24
Exhibit B	Self-Affirmed Statement of Notice	23/24
Exhibit C	Affidavit of Publication	23/24

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P R O C E E D I N G S

THE HEARING OFFICER: Let's go on the record in a special docket for September 17, 2024. My name is Gregory Chakalian. I'm the hearing examiner for the OCD, and I'm going to call these cases as soon as my computer allows me to see the cases. We have case numbers 24396, 24397, and 24771.

Entries of appearance, please.

MR. FELDEWERT: May it please the examiner, Michael Feldewert, the office of Holland & Hart appearing on behalf of Fasken Oil and Ranch.

MS. BENNETT: Good morning, Mr. Examiner. Deana Bennett from Modrall Sperling appearing on behalf of Marathon Oil Permian LLC.

THE HEARING OFFICER: Good morning.

MS. HARDY: Good morning, Mr. Examiner. Dana Hardy with Hinkle Shanor on behalf of Read & Stevens and Earthstone Operating.

THE HEARING OFFICER: Good morning. Ms. Hardy, what is Read & Stevens' interest in this land?

MS. HARDY: Read & Stevens and Earthstone own working interests in these spacing units.

THE HEARING OFFICER: What percentage?

1 MS. HARDY: I do not have that in front
2 of me right now.

3 THE HEARING OFFICER: Could you guess?

4 MS. HARDY: I would need to look at
5 Fasken's exhibits, probably, which I can do here.

6 THE HEARING OFFICER: I see. Okay. If
7 you would do that and let me know what they are.

8 MS. HARDY: Sure.

9 MR. FELDEWERT: Mr. Examiner, Michael
10 Wallace is going to be appearing today. He may or may
11 not remember.

12 THE HEARING OFFICER: Okay. And is
13 that one of your witnesses?

14 MR. FELDEWERT: Yes. Yes. He is the
15 only witness.

16 THE HEARING OFFICER: Okay. Oh, he's
17 your only witness?

18 MR. FELDEWERT: Yeah. He's the landman
19 who submitted his self-affirmed statement.

20 THE HEARING OFFICER: Thank you.

21 And Ms. Hardy, for the record, what is
22 your position here today?

23 MS. HARDY: Earthstone and Read &
24 Stevens are monitoring this case and aren't taking a
25 position on the --

1 THE HEARING OFFICER: No position?

2 MS. HARDY: Correct.

3 THE HEARING OFFICER: Okay. And you've
4 reviewed the exhibits?

5 MS. HARDY: Yes, I have.

6 THE HEARING OFFICER: Okay. And
7 Mr. Feldewert, your exhibits you said were filed on
8 April 30th?

9 MR. FELDEWERT: Yes, and it was limited
10 to the application, the self-affirmed statement of
11 Michael Wallace as our Exhibit A, and then the notice
12 information.

13 THE HEARING OFFICER: Okay. And,
14 Ms. Bennett, for the record did you file any exhibits?

15 MS. BENNETT: No, sir. I did not.

16 THE HEARING OFFICER: Thank you. And
17 what is your position, Ms. Bennett?

18 MS. BENNETT: Thank you, Mr. Hearing
19 Examiner. Would you like me to make a brief opening
20 statement or just briefly state my position?

21 THE HEARING OFFICER: Just briefly
22 state your position at this point.

23 MS. BENNETT: Marathon objects to
24 Fasken's second extension requests in these two cases.

25 THE HEARING OFFICER: Okay. Thank you.

1 And I did call a case, and I know it is your case that
2 you filed. Let me pull that case up as well, 24771.
3 Looks like it was filed August the 6th.

4 MS. BENNETT: I don't have any reason
5 to doubt that. That sounds about right. And that
6 case has been stayed pending the outcome of the
7 Division's decision on Fasken's second extension
8 request.

9 THE HEARING OFFICER: That's correct.
10 And Mr. Feldewert, you objected to that
11 case. Didn't you?

12 MR. FELDEWERT: Yes.

13 THE HEARING OFFICER: Okay. And
14 Ms. Hardy, did you take a position upon the case I
15 just called?

16 MS. HARDY: I have not taken a
17 position, but I would like to enter my appearance in
18 that case as well on behalf of Read & Stevens and
19 Earthstone.

20 THE HEARING OFFICER: So noted. And
21 are you taking a position in that case?

22 MS. HARDY: I don't believe so.

23 THE HEARING OFFICER: Okay. Perfect.
24 All right. And the Division stayed case 24771 based
25 on the outcome of the good cause hearing that we are

1 conducting today. I believe it's a competing pooling
2 case in the same lands that Fasken is requesting an
3 extension.

4 Is that correct, Ms. Bennett?

5 MS. BENNETT: It's partially
6 overlapping with the lands that Fasken is seeking a
7 second extension request for. Fasken's second
8 extension request is for sections 15 and 22, the west
9 half of sections 15 and 22, and Marathon's competing
10 application is for the west half of sections 10, 15,
11 and 22.

12 THE HEARING OFFICER: So when you say
13 it partially overlaps, is it more accurate to say that
14 it completely overlaps the west half of 15 and 22?

15 MS. BENNETT: Yes. It completely
16 overlaps the acreage that Fasken is seeking a second
17 extension request for, but it includes additional
18 acreage.

19 THE HEARING OFFICER: Perfect. Thank
20 you very much. Okay. And as you know, the division
21 doesn't have a status of stayed, and so we put it on
22 today's docket because it's related to today's cases,
23 but it's not being heard today. So I just want to
24 make that clear for the record and for the technical
25 examiner.

1 Okay. Mr. Feldewert, these are your
2 cases, and when did you file them?

3 MR. FELDEWERT: May of 2024.

4 THE HEARING OFFICER: I have -- I
5 believe they're even older than that. I believe that
6 your applications came in on April 1st. Is that
7 wrong?

8 MR. FELDEWERT: Sorry. I misread it.
9 You're correct. April 1, 2021.

10 THE HEARING OFFICER: Okay. April 1st.

11 MR. FELDEWERT: It's so long ago I
12 don't remember.

13 THE HEARING OFFICER: Okay. Why don't
14 you give myself and the technical examiner an opening
15 statement?

16 MR. FELDEWERT: Sure. This is not all
17 that complicated. Fasken obtained its pooling orders
18 initially from the Division, timely and immediately
19 filed their applications to drill with the BLM, and
20 the BLM has yet to act on those applications to drill,
21 which was the reason that we sought the first
22 extension.

23 We then have been working with the BLM.
24 The applications to drill still have not been issued
25 by the BLM, which is why we filed our second

1 extension.

2 Mr. Wallace is going to testify that
3 the good news is that Intrepid Potash, which is the
4 entity that protested the applications to drill back
5 in 2022, has recently withdrawn their protest and that
6 the company is now engaged with the BLM in doing an
7 environmental assessment -- or I should say the BLM is
8 doing an environmental assessment with assistance from
9 Fasken getting that completed.

10 And then if the company's understanding
11 that once that is completed, that the BLM will be
12 issuing the applications to drill.

13 THE HEARING OFFICER: Does that
14 complete your opening statement?

15 MR. FELDEWERT: Yes.

16 THE HEARING OFFICER: Okay. And when
17 you said the potash company filed a protest, did they
18 file it with the Division or just with the BLM?

19 MR. FELDEWERT: Sorry. This entire
20 process is all federal acreage. They filed it with
21 the BLM. So the APDs were filed by Fasken, the BLM
22 sends out notice of the filing of the applications to
23 drill, Intrepid Potash protested the applications to
24 drill which has now been withdrawn.

25 THE HEARING OFFICER: And what was the

1 basis of their objection?

2 MR. FELDEWERT: You'd have to ask the
3 potash company. I think there's a long history there.
4 I think they -- well, I can give you my opinion: I
5 think they would routinely protest. And then you have
6 to work things out with them, and BLM acts as kind of
7 an intermediary for that process.

8 And sometimes it takes a while, as you
9 know from hearing a lot of applications for an
10 extension filed with the Division.

11 THE HEARING OFFICER: Okay. Do we have
12 your witness available to get them sworn in?

13 MR. FELDEWERT: Yes.

14 THE HEARING OFFICER: And has your
15 witness been qualified as an expert before this
16 Division?

17 MR. FELDEWERT: Yes.

18 THE HEARING OFFICER: Okay. In what
19 field?

20 MR. FELDEWERT: He's a landman.

21 THE HEARING OFFICER: Landman. Okay.
22 Is it Mr. Mitchel?

23 MR. FELDEWERT: Mike -- sorry. Michael
24 Wallace.

25 THE HEARING OFFICER: Wallace. Thank

1 you.

2 MR. FELDEWERT: And he just appeared on
3 the screen.

4 THE HEARING OFFICER: I see.

5 Mr. Wallace, Good morning. Would you
6 state and spell your name for the record?

7 MR. WALLACE: Yes. It's David M.
8 Wallace, D-A-V-I-D M. W-A-L-L-A-C-E. I go by "Mike."

9 THE HEARING OFFICER: Would you raise
10 you -- thank you, sir. Would you raise your right
11 hand?

12 WHEREUPON,

13 DAVID WALLACE,
14 called as a witness and having been first duly sworn
15 to tell the truth, the whole truth, and nothing but
16 the truth, was examined and testified as follows:

17 THE HEARING OFFICER: All right. And
18 what is your position now with Fasken?

19 THE WITNESS: I'm a landman. I'm a New
20 Mexico landman.

21 THE HEARING OFFICER: How long have you
22 been a landman with Fasken?

23 THE WITNESS: Three and a half years.

24 THE HEARING OFFICER: Three and a half
25 years. Okay.

1 Okay. Ms. Bennett, do you want to voir
2 dire the witness or do you accept his qualifications?

3 MS. BENNETT: I accept his
4 qualifications.

5 THE HEARING OFFICER: Thank you.
6 And Ms. Hardy?

7 MS. HARDY: I accept as well. No
8 objection.

9 THE HEARING OFFICER: All right. Very
10 good. Thank you.

11 All right. Mr. Feldewert, why don't
12 you put on your case in chief?

13 MR. FELDEWERT: Sure.

14 DIRECT EXAMINATION

15 BY MR. FELDEWERT:

16 Q Mr. Wallace, are you the same individual
17 that signed the self-affirmed statement that has been
18 filed in each of the two cases before the Division
19 today?

20 A Yes.

21 Q Okay. And in that self-affirmed statement,
22 you note that the BLM has yet to issue the
23 applications to drill?

24 A Yes.

25 Q When were those applications to drill

1 initially filed with the BLM?

2 A June of 2022.

3 Q Okay. And then am I correct that the BLM
4 sends out notice of those applications?

5 A Yes.

6 Q And what happened when the BLM sent out
7 notice of the applications to drill?

8 A Not too long after that, Intrepid Potash
9 Company filed a protest.

10 Q Okay. And did you visit with the BLM about
11 the Intrepid protest?

12 A Yes. We've had meetings, e-mail
13 correspondence, phone conversations to try to resolve
14 that protest.

15 Q And did you have an understanding early on
16 about whether that protest would be able to be
17 resolved because of where you were drilling?

18 A It was our understanding that since it was
19 an existing drill island there, the Bluebird drill
20 island, that it would get resolved and we would get
21 our APDs approved.

22 Q Okay. And then at some point in time when
23 that didn't happen, did the BLM suggest another course
24 of action for the company to take to try to resolve
25 the protest filed by Intrepid?

1 A Yes. In February of '24, they recommended
2 filing a DA to our development area notice or DA to
3 send out to the parties affected to try to initiate an
4 environmental assessment to resolve any issues with
5 the Intrepid Potash Company.

6 Q And when you say a DA, what is that?

7 A That's a development area notice.

8 Q Okay. All right. And did the BLM then work
9 with you to determine in March and April of this year
10 who should receive notice of the proposed development
11 area?

12 A Yes. That's correct.

13 Q Okay. And did that notice area include more
14 than the acreage that you pooled through the Oil
15 Conservation Division?

16 A Yes. It included all of section 22, all of
17 section 15, and section 10.

18 Q Okay. All right. And when that was filed,
19 okay, in May of 2024, was there a protest then of the
20 development area?

21 A Yes. In June there it was protested by
22 Civitas.

23 Q Civitas. Okay. And is the company and the
24 BLM working now to resolve the protest of the
25 development area filed by Civitas?

1 A Well, we contacted them to see if they were
2 going to drop their protest. They are not dropping
3 the protest, but we're going to work with them to see
4 if they can resolve it.

5 Q Okay. All right. Now I want to circle back
6 to the development area because when I looked at
7 Marathon's pre-hearing statement, there's an
8 allegation that Fasken did not timely seek approval of
9 a development area. Okay? I want to address that
10 real quick.

11 When you first filed your applications to
12 drill, did you visit with the BLM about whether you
13 had to have a development area?

14 A Yes. It was our understanding talking to
15 the BLM that they did not think that the -- a
16 development area or development area notice would be
17 needed over, you know, most that portion of time
18 because of the existing drill island, existing
19 infrastructure and whatnot.

20 Q Okay. So let me stop you right there. You
21 entered an existing drilling island. What's that
22 drilling island called?

23 A The Bluebird drill island.

24 Q Are there other companies that are using
25 that drilling island?

1 A Yes. XTO and R360 are using the drill
2 island.

3 Q And as a result of that you mentioned that
4 there's infrastructure available there on that
5 drilling island for development by horizontal wells?

6 A Yes. That's correct. There is existing --
7 I'm sorry.

8 Q What does that mean? Does that mean right
9 of ways, flow lines?

10 A There's existing right of ways for
11 electricity, flow lines, et cetera, yes.

12 Q Okay. So once the applications to drill are
13 issued by the BLM, you'll be able to move forward with
14 drilling the wells?

15 A Yes. That's correct.

16 Q Okay. And just to be clear then, after
17 telling you that a development area was not necessary,
18 the BLM then gave you different instructions, you
19 said, in February of 2024?

20 A Yes. They said to go ahead and do a
21 development area notice hoping that that would resolve
22 Intrepid's protest.

23 Q And that would be their protest of the
24 applications to drill?

25 A Yes.

1 Q Okay. And did they tell you that in the
2 beginning of February, middle of February, or at the
3 end of February?

4 A That was the end of February.

5 Q Okay. All right. And I think you mentioned
6 that at least maybe in part because of that, Intrepid
7 has now withdrawn its protest of your applications to
8 drill?

9 A Partially, yes.

10 Q Partially withdrawn or partially the reason?

11 A Partially the reason. Yes.

12 Q Okay. They have fully withdrawn their
13 protest; right?

14 A It's my understanding. Yes.

15 Q Okay. And once the environmental assessment
16 is completed by the BLM, you are hopeful that they
17 will issue the applications to drill?

18 A Yes.

19 Q And once they issue the applications to
20 drill, is the company in position to move forward
21 getting the wells drilled?

22 A Yes.

23 Q Okay. One last question, Mr. Wallace. Does
24 the company have an incentive beyond the pooling order
25 to get these wells drilled as soon as possible?

1 A Yes, we do.

2 Q What is that?

3 A We've got a lease in the west half of 15
4 that's in suspension with the BLM, and we would like
5 to drill these wells as soon as we can to perpetuate
6 that lease hold.

7 Q Okay. And so that lease is in suspense
8 until you're in position to drill these wells?

9 A Yes. That's correct.

10 Q All right. And in your opinion,
11 Mr. Wallace, has the company engaged in efforts to
12 resolve the protests that have been filed in the
13 federal process?

14 A Yes.

15 Q Okay. And in your opinion is there good
16 cause for the Division to extend the drilling
17 obligation under the existing pooling orders?

18 A Yes.

19 MR. FELDEWERT: Okay. Mr. Examiner,
20 that's all the questions I have.

21 THE HEARING OFFICER: All right. Did
22 you want to admit any exhibits?

23 MR. FELDEWERT: We'll go ahead and
24 admit our Exhibit A, which is the self-affirmed
25 statement of Mike Wallace; and then our Exhibit B --

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1 these were filed in each case -- which is the
2 Statement of Notice to the affected parties; and then
3 finally Exhibit C, which is an affidavit of
4 publication for each case.

5 (Exhibit A, Exhibit B, and Exhibit C
6 were marked for identification.)

7 And having gone through that, if I may
8 ask one more question of my witness?

9 THE HEARING OFFICER: Okay.

10 BY MR. FELDEWERT:

11 Q Mr. Wallace, having gone through the list of
12 affected parties here that received notice, has the
13 company asked any of those parties to make an election
14 under the pooling order?

15 A No.

16 Q So as a result, they have not been asked to
17 pay their share of drilling costs?

18 A No.

19 Q And is the company intending to wait until
20 the application to drill are issued before asking any
21 of those companies to make an election and then pay
22 their share of the well costs?

23 A Yes.

24 MR. FELDEWERT: Okay. That's all I
25 have. Thank you.

1 THE HEARING OFFICER: Mr. Wallace, I
2 have a couple of questions for you before I admit your
3 self-affirmed statement. It's dated here April 29 of
4 2024. Have there been any changes to this statement
5 since that time?

6 THE WITNESS: Not that I'm aware of.

7 THE HEARING OFFICER: And is this the
8 same statement for both cases, Mr. Feldewert?

9 MR. FELDEWERT: Yes, sir.

10 THE HEARING OFFICER: It is. All
11 right. Are there any objections to Exhibit A, B, or
12 C, Ms. Bennett?

13 MS. BENNETT: No.

14 THE HEARING OFFICER: No. Ms. Hardy?

15 MS. HARDY: No objection.

16 THE HEARING OFFICER: Okay. Exhibits
17 A, B, and C are admitted in both 24396 and 97.

18 (Exhibit A, Exhibit B, and Exhibit C
19 were received into evidence.)

20 I have a couple questions before I turn
21 it over to you, Ms. Bennett.

22 Not understanding some of the
23 terminology that you testified to, Mr. Wallace, I'm
24 going to ask you for a little bit more context and
25 background to these statements. First of all, what is

1 Fasken's interest in these lands?

2 THE WITNESS: We own approximately 45
3 percent of sections 22 and 15.

4 THE HEARING OFFICER: When you say
5 sections 15 and 22, do you mean the west half of those
6 sections?

7 THE WITNESS: Yes. Yes. I apologize.
8 Yes.

9 THE HEARING OFFICER: Okay. So not the
10 whole section; just the west half?

11 THE WITNESS: That's correct.

12 THE HEARING OFFICER: All right. Very
13 good. So you own a 45 percent working interest? Is
14 that the idea?

15 THE WITNESS: Yes. That's correct.
16 Approximately.

17 THE HEARING OFFICER: All right. Okay.
18 You mentioned the term "drilling island." I can
19 imagine what that is, but I'd rather hear it from you.
20 What is a drilling island or a drill island and when
21 is it required?

22 THE WITNESS: It is basically an -- an
23 island or essentially an island where we have got
24 approval from the BLM and the potash company to drill
25 wells within the potash area.

1 THE HEARING OFFICER: Okay. That was
2 the first part of my question. When is it applicable?
3 When do you need a drilling island?

4 THE WITNESS: When it is inside the
5 potash area to avoid any potash mine works.

6 THE HEARING OFFICER: A drilling island
7 is only when you're within potash mining areas? It's
8 not for anything else?

9 THE WITNESS: Well, that's my
10 understanding. It's also normally in a designated
11 area around a potash-mined area.

12 THE HEARING OFFICER: Okay. Okay. And
13 what is a development area and when is that necessary?

14 THE WITNESS: Normally a development
15 area is a mechanism that the BLM requires to notice
16 the parties in the area of your drill island or your
17 potential drill island is my understanding to notify
18 any parties, to coordinate with them on their
19 operations, or to see if they have any issues with the
20 company who sends it out using that drill island for
21 their operations.

22 THE HEARING OFFICER: In this case when
23 was the drilling island established?

24 THE WITNESS: In -- prior to 2015 or
25 around 2015. I'm -- I'm not sure, but I think it's

1 around that timeframe.

2 THE HEARING OFFICER: So if you knew
3 that you had to use the drilling island to develop
4 this interest, why did it take an extra two years
5 before you issued a development area proposal? I
6 don't know what the proper term is here, so I'll just
7 say the word "proposal."

8 But why not go to Intrepid Potash when
9 you first proposed the wells, your APDs, back in 2022?
10 Why not deal with the development area at that time?

11 THE WITNESS: Well, talking to the BLM
12 this entire time, we've been told that we didn't need
13 one or we didn't think that we'd need one because of
14 the existing drill island that had already been
15 approved as well as the -- as well as the existing
16 infrastructure. That's what we were told by the BLM.

17 THE HEARING OFFICER: Okay. And then
18 what changed?

19 THE WITNESS: The process of getting
20 drill island approved has been transitioning over the
21 past several years. We did not think we would need a
22 development area notice to get our approvals. We
23 thought that we could resolve the Potash protest.

24 And then in February, the BLM told us
25 to go ahead and send out the development area notice

1 to try to fix that protest or try to resolve that
2 protest.

3 I think the process has been evolving
4 over the past -- evolving over the past couple of
5 years and in late '23, the process evolved enough to
6 where we could get around Intrepid protest or resolve
7 Intrepid protest by the DA process. That's what I was
8 told.

9 THE HEARING OFFICER: And
10 Mr. Feldewert, your exhibit packet doesn't include the
11 development area notice. Any particular reason why?

12 MR. FELDEWERT: Well, it's a federal
13 process. The notice itself is controlled by the BLM.
14 It extends beyond the pooled spacing units that is at
15 issue here.

16 It has been an evolving process, so --
17 and I don't think there was any debate as to when the
18 development area notice went out. I think the issue
19 and what was unknown is the why.

20 And I think that's what he's here today
21 and has explained that it was the BLM that said,
22 "Don't do it," then the BLM said, "Yeah, let's try it
23 and see if that will help resolve." And the protest
24 has been withdrawn, so ...

25 THE HEARING OFFICER: I believe

1 Mr. Wallace said it had been largely withdrawn. Did I
2 get that right?

3 MR. FELDEWERT: No, I think he -- I
4 asked him to clarify that.

5 THE HEARING OFFICER: Oh, okay.

6 MR. FELDEWERT: I think what he --
7 well, I'll let Mr. Wallace testify, but my
8 understanding is that the process that the BLM asked
9 them to go through in February of this year was one
10 component that finally got Intrepid to withdraw its
11 protest of this development from this existing
12 drilling island.

13 THE HEARING OFFICER: Let me ask the
14 witness, then.

15 Mr. Wallace, let me make sure I
16 understand your answer to the question. Has Intrepid
17 Potash, has that protest been withdrawn completely?

18 THE WITNESS: I was told by the BLM
19 that that protest has been withdrawn completely.

20 THE HEARING OFFICER: Okay. Thank you.
21 And my last question to you before I turn over to
22 Ms. Bennett is, this protest that Intrepid Potash
23 lodged with Fasken, what was it based on?

24 THE WITNESS: It was based on a --
25 it's -- well, based on a number of things. Their

1 protest included a lot of technical reasons and
2 background, which is common practice for Intrepid to
3 do with all applications they don't -- that go through
4 the BLM, is my understanding.

5 THE HEARING OFFICER: Okay. I'm not
6 sure that answers my question, at least to my
7 satisfaction. So I understand that it's a lot of
8 technical reasons, but being an expert in this field,
9 can you help me understand in layman's terms, what
10 were they objecting to?

11 THE WITNESS: From memory looking at
12 the protest, they had technical justification to --
13 because of the proximity of us to the mine workings,
14 they did not want us to use the drill island to drill
15 our wells and with the technical justification to
16 support that.

17 THE HEARING OFFICER: But a drilling
18 island had been approved in 2015, so what basis do
19 they have to object?

20 THE WITNESS: That is correct. I would
21 have to pull up the Intrepid Potash protest or look at
22 it again because it's been some time since I've looked
23 at it.

24 THE HEARING OFFICER: Were you involved
25 with the negotiations to clarify and abrogate the

1 protest?

2 THE WITNESS: No. I -- well, I was
3 involved to the extent that I dealt with the BLM and
4 they worked as a liaison through to the potash mine
5 company, and we would go to the BLM to try to resolve
6 it how we could.

7 THE HEARING OFFICER: Okay. Thank you.
8 Ms. Bennett?

9 MS. BENNETT: Thank you, Mr. Examiner.
10 Just as a very brief opening statement,
11 I'm somewhat flummoxed by this turn of events today
12 and the fact that Fasken did not submit any exhibits
13 to support any of the testimony that we're hearing
14 today.

15 I'm not calling into question the
16 reliability or credibility of the testimony, but this
17 is all material and discussions that Fasken had with
18 BLM and others prior to the deadline for filing
19 exhibits for today's hearing.

20 And the hearing examiner, the Division,
21 and myself, Marathon, would have benefited from seeing
22 exhibits that supported Fasken's position today to
23 prepare for the hearing and in order to ask questions
24 or even investigate the issues that the examiner is
25 asking questions about today.

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1 THE HEARING OFFICER: Well,
2 Ms. Bennett, if you want to make an argument that you
3 need additional time to review documents and that they
4 be received from Fasken, then we can hear that
5 argument.

6 I'll hear counter argument, and if I
7 decide that you were prejudiced by not having those
8 documents to review, then we will continue this
9 hearing to another day while you have a chance to
10 review the documents.

11 If I'm not mistaken, Mr. Feldewert, you
12 have a noon cutoff today. Don't you?

13 MR. FELDEWERT: Yes.

14 THE HEARING OFFICER: That's what I
15 thought. I remembered that.

16 MR. FELDEWERT: Thank you.

17 THE HEARING OFFICER: Yes. That still
18 exists; right?

19 MR. FELDEWERT: Yes.

20 THE HEARING OFFICER: Okay. I thought
21 so. And then we said we were going to come back on
22 the record tomorrow. Didn't we?

23 MR. FELDEWERT: As needed.

24 THE HEARING OFFICER: As needed, yes.
25 I understand.

1 So, Ms. Bennett, it seems that we could
2 possibly entertain that, but I'd need a good reason to
3 do it. So you were in the middle of your opening
4 statement.

5 MS. BENNETT: Yes.

6 THE HEARING OFFICER: Were you finished
7 with your opening statement?

8 MS. BENNETT: Well, I would like to ask
9 the witness a few questions about the timeline for
10 when he received these various communications with
11 BLM.

12 And then I would like to use that as an
13 argument to request that the Division continue the
14 case at least until tomorrow to allow the parties --
15 well, to allow myself and the Division time to reflect
16 or review the materials.

17 But the main reason I would ask -- that
18 I'm thinking about asking for this is that Fasken
19 bears the burden of demonstrating the second extension
20 is warranted, and until today there was no evidence in
21 the record other than the bare statement that Fasken's
22 APDs have not been granted to support that second
23 extension request.

24 We've been before the Division in two
25 status conferences, we've had multiple rounds of

1 briefing, and Fasken and Fasken's counsel have not in
2 any of those status conferences, in any of that
3 briefing put forth this evidence that exists at least
4 until February -- back to February of 2024 and earlier
5 than February of 2024.

6 That is inherently prejudicial. We
7 could have -- you know, there's plenty of time and
8 resources that could have been saved had Fasken and
9 Fasken's counsel simply identified this relevant
10 information that Fasken's own counsel admitted in a
11 brief and at a hearing is relevant to the Division's
12 analysis.

13 And yet Fasken did not submit that
14 evidence and has only orally done so today at a
15 contested hearing.

16 So I'd like to take the opportunity to
17 follow up with a few questions to Mr. Wallace. This
18 won't be my entire cross-examination, but just a few
19 initial questions to get some dates.

20 CROSS-EXAMINATION

21 BY MS. BENNETT:

22 Q Good morning, Mr. Wallace. How are you
23 doing today?

24 A Good.

25 Q Fasken realized before today that it was

1 Fasken's obligation to demonstrate that good cause
2 existed for the second extension request; right?

3 A Yes.

4 Q And you didn't file any exhibits other than
5 your initial exhibit packet that Mr. Feldewert just
6 went through with you describing any of the
7 communications you had with BLM. Did you?

8 A That's correct.

9 Q You didn't file any exhibits showing your
10 communications with BLM about the status of the APDs?

11 MR. FELDEWERT: Objection. Assumes
12 there are communications with the BLM about the status
13 of the objection, number one.

14 Number two, they indicated as they did
15 the first time around and as all companies do when
16 seeking these extensions that the APDs had not been
17 issued by the BLM. And that has been a basis for good
18 cause.

19 THE HEARING OFFICER: So what is the
20 basis of your objection?

21 MR. FELDEWERT: My objection is that it
22 assumes facts that are not in the evidence and makes
23 the assumption that there's some relevancy or
24 requirement that you are to produce any and all
25 correspondence with the BLM related to the topic.

1 THE HEARING OFFICER: Ms. Bennett?

2 MS. BENNETT: Thank you, Mr. Examiner.
3 Mr. Feldewert in his opening remarks said that Fasken
4 has visited with the BLM regarding the protest of the
5 APDs, has had meetings and e-mail correspondence, and
6 Mr. Wallace also testified to that. It's clearly in
7 the record that Fasken has had communications with BLM
8 about the APDs. That addresses that.

9 Number two, with respect to
10 Mr. Feldewert's second prong of the objection,
11 Marathon doesn't dispute that in a normal second
12 extension request or first extension request that an
13 applicant is not required to submit communications
14 with BLM.

15 That's not what's happening here,
16 though. And in fact, Mr. Feldewert himself
17 acknowledged that communications with the BLM is an
18 appropriate area of inquiry for the Division in his
19 brief and in a hearing. So I think that this is a
20 proper line of inquiry.

21 THE HEARING OFFICER: Okay. So you've
22 addressed the assuming facts not in evidence. I agree
23 these facts are in evidence.

24 But Mr. Feldewert also objected on the
25 base of assuming relevancy. I didn't hear that part

1 of your argument.

2 MS. BENNETT: Thank you. And I was
3 rather inarticulate when I explained relevancy. So
4 the Division -- Fasken bears the burden of proof that
5 this second extension request is justified.

6 And so whether Fasken has been
7 diligently prosecuting its case with BLM to get the
8 APDs approved, to get the development area approved,
9 to get third-party contracts for takeaway are relevant
10 factors that the Division can consider when assessing
11 whether Fasken has demonstrated good cause.

12 And Mr. Feldewert himself has
13 acknowledged that that's relevant in briefing and in a
14 hearing before the Division.

15 THE HEARING OFFICER: Okay. Thank you.
16 So objection is overruled. So please repeat the
17 question.

18 And answer the question, Mr. Wallace.

19 MS. BENNETT: Thank you.

20 BY MS. BENNETT:

21 Q Mr. Wallace, Fasken didn't file any exhibits
22 showing Fasken's communication with BLM about the
23 status of the APDs. Did Fasken?

24 A I would have to go back and look at the
25 exhibit. I'm sorry. Without --

1 THE HEARING OFFICER: Okay. Do you
2 have the exhibit, Mr. Wallace?

3 THE WITNESS: I will have to pull it
4 up.

5 MR. FELDEWERT: Mr. Examiner, I can
6 move things along. We simply -- we filed the
7 affidavit with his statement in there that the BLM had
8 not issued the APDs. There was nothing else that was
9 filed.

10 THE HEARING OFFICER: Perfect.

11 MS. BENNETT: Thank you.

12 MR. FELDEWERT: Our request.

13 MS. BENNETT: Thank you.

14 THE HEARING OFFICER: So Mr. Wallace,
15 hearing that clarification, would you answer the
16 question, please?

17 THE WITNESS: Could you repeat again?
18 I'm sorry.

19 BY MS. BENNETT:

20 Q Mr. Wallace, Fasken didn't file any exhibits
21 showing Fasken's communications with BLM about the
22 status of the APDs. Is that right?

23 A Yes. That's correct.

24 Q In addition, Fasken didn't file any exhibits
25 showing Fasken's communications with the BLM about the

1 status of the development area. Did it?

2 A I don't know that it referenced it in there.

3 Q Okay. When did you first -- when was your
4 first communication with BLM about Intrepid's protest
5 of the APD?

6 A I would say some time after they filed the
7 protest. We've had ongoing communications over the --
8 this course of time.

9 Q When you say your first communication was
10 after Intrepid filed the protest, when did Intrepid
11 file the protest of your APD?

12 A I would say not too long after the APD was
13 filed in June of '22. Maybe possibly a couple of
14 months.

15 Q So there's nothing in the record that you
16 can point to right now that shows when Intrepid filed
17 its protest?

18 A I don't know that we'd -- there is something
19 I could point to.

20 Q And so you testified just a moment ago that
21 you contacted -- did you contact BLM after learning of
22 Intrepid's protest or did BLM contact you?

23 A We contacted BLM. There's been back and
24 forth communications including myself and our drilling
25 engineer at the time. He had communications with the

1 BLM.

2 Q How many communications would you say you
3 had with BLM about the APD protest?

4 A That's hard to say. We've had
5 communications over the past couple of years between
6 the drilling engineer and myself a number of times
7 including -- we've had meetings in person, we've had
8 Zoom meetings, had multiple phone calls, and multiple
9 e-mail communications.

10 Q Is Intrepid the only entity that's
11 protesting the APDs?

12 A That I'm aware of, yes.

13 MS. BENNETT: Mr. Hearing Examiner, I
14 am not going to make an argument to request additional
15 time because it's -- I don't want to drag this on any
16 further. It's already been going on multiple months,
17 and it just doesn't make sense to drag this on any
18 further, but I would like to continue my cross-
19 examination of Mr. Wallace.

20 THE HEARING OFFICER: Yes. Of course.

21 BY MS. BENNETT:

22 Q Mr. Wallace, you said that BLM suggested the
23 course of action to file the development area request
24 in February of 2024. Is that right?

25 A Yes. That is -- they suggested, yes.

1 Q Did Fasken undertake any independent
2 investigation before February of 2024 about whether a
3 DA is required in the potash area?

4 A Yes. We had multiple conversations with the
5 BLM asking if we should. We were told that it's
6 probably not necessary because of the existing drill
7 island and existing approved infrastructure.

8 Q And you had multiple conversations with BLM,
9 yet none of those are in the record, is that right,
10 about the DA?

11 A Correct.

12 Q When BLM suggested and you said that the
13 landscape -- and I'm paraphrasing here, so feel free
14 to correct me if I'm misconstruing what you've
15 testified to.

16 But you said the landscape about what BLM's
17 requiring has been changing over the past couple of
18 years, and in December of 2023 to February of 2024 is
19 where this idea of needing a development area kind of
20 crystalized. Is that a fair kind of assessment of
21 what you testified to?

22 A Not necessarily. The development area
23 notice process has been in place for a while. I
24 think -- I think -- in my opinion -- this is my
25 opinion -- that the process has been evolving.

1 I think the BLM has been trying to find a
2 way to appease the protest by Intrepid since it's such
3 a common thing.

4 And I think it did develop towards the end
5 of '23 to allow the development area notice to fix
6 some of the Intrepid protests so that we could do an
7 environmental assessment in order to appease some of
8 the technical concerns that Intrepid would have.

9 But that's my interpretation of the process,
10 and that's what I've been told by the BLM.

11 Q A moment ago, though, you testified that a
12 DA process has been in place for some time, though,
13 right, in general?

14 A Yeah. And I'm not exactly sure how long it
15 has been in place, but there has been a DA process for
16 I don't know how long. It hasn't -- it's been I would
17 say a year or two. I don't know. This is -- this DA
18 process is something that is new to me, but --

19 Q Mr. -- sorry. I'm sorry.

20 A What I was told by the BLM is that this is
21 an evolving process.

22 Q Mr. Wallace, is this Fasken's first time to
23 propose and drill wells in the potash area?

24 A No, it's not.

25 Q So were you involved in the prior efforts to

1 drill wells and develop in the potash area?

2 A I was not. They were drilled prior to me
3 being here at Fasken.

4 Q Are you familiar with the secretary's 2012
5 Potash Area Order?

6 A I'm aware of it.

7 Q Is it your understanding that the
8 secretary's 2012 Potash Area Order is the order that
9 set up the requirement for development areas in the
10 potash area?

11 A I was not aware of it.

12 Q You were not?

13 A I was not aware of that. I'm sorry.

14 Q Sorry. I don't mean to speak over you. I'm
15 sorry about that, but I think you said you were
16 unaware of that?

17 A I mean, I'm -- I'm aware of the secretary's
18 order. I'm aware of development areas. I just wasn't
19 aware of what it actually was implemented.

20 Q When was the last time where you reviewed
21 this secretary's 2012 order?

22 A It's been some time. It's been several
23 years at least.

24 THE HEARING OFFICER: Ms. Bennett,
25 Secretary of Interior?

1 MS. BENNETT: Yes.

2 THE HEARING OFFICER: Okay. Thank you.

3 BY MS. BENNETT:

4 Q So BLM suggested in 2024 that you submit the
5 development area request. Is that accurate?

6 A In February of '24, yes.

7 Q And yet you didn't actually submit it to BLM
8 until May of 2024. Is that right?

9 A Yes. They -- they asked us to do one and I
10 think it was February 29th of '24. I worked with the
11 BLM to put one together. It took me some time to do
12 it as well as get some of the ownership up to date,
13 and there was some delay there. Yes. Yes.

14 Q And so you submitted the DA request on May
15 10, 2024. Is that right?

16 A That is correct.

17 Q And that's a day after your order expired,
18 the day after these Baetz extension orders expired or
19 would have expired by their own terms. Is that
20 correct?

21 A That could be correct. Yes.

22 Q Let me back up. Do you know what --

23 A I'd -- I'd have to -- I'd have to look.

24 Q Okay. So you don't know when the Baetz
25 orders were set to expire?

1 A I did at the time. Yes.

2 Q Let me see. I'll try to pull up your
3 application real fast and share my screen.
4 Mr. Wallace, are you seeing my screen?

5 A Yes, I see it.

6 Q Okay. And this is the exhibits that were
7 filed in Case Number 24396 by Fasken Oil and Ranch?

8 A That is correct.

9 Q Okay. And Exhibit A is your self-affirmed
10 statement?

11 A Yes.

12 Q And I'm turning, scrolling quickly to get to
13 Exhibit A. And it says in paragraph 4, "The drilling
14 deadline for each of these wells was extended until
15 May 9, 2024." Do you see that?

16 A I do.

17 Q And so with that, I'm going to re-ask my
18 question, which is that Fasken submitted the DA
19 request to BLM the day after your Baetz orders expired
20 or would have expired by their own terms but for a
21 second extension request. Is that accurate?

22 A Looks like that's accurate.

23 Q Earlier today Mr. Feldewert asked you that
24 once you received the APDs that you'll be able to
25 commence drilling the wells or commence developing

1 this area.

2 I'm interested in hearing a little bit more
3 about that. In particular, is it your understanding
4 that the protests to the development area need to be
5 resolved before Fasken can commence developing this
6 area?

7 A I -- I'm sorry. Can -- before I answer the
8 question, do you need the affidavit still up?

9 Q No. I'm going to put it down. I'm moving
10 to put it down right now. There we go.

11 A I've -- thank you. I -- I plan on working
12 with Civitas if we can to -- and, well, the BLM also
13 to try to resolve their protest. I don't know if the
14 protest is -- or the DA is still needed or relevant.
15 I'd have to get back to BLM considering that Intrepid
16 dropped their protest.

17 Q Earlier today you testified that Civitas has
18 also protested your DA. Is Civitas the only other
19 entity that's protested your DA?

20 MR. FELDEWERT: Let me object to the
21 question. You said only other entity that protests
22 the DA. I believe testimony has been that Civitas is
23 the only entity that protests the DA, unless Marathon
24 objected. Did Marathon object?

25 MS. BENNETT: I'm -- Mr. Hearing

1 Examiner, if I could finish my question or ask the
2 witness to?

3 THE HEARING OFFICER: Well, hold on.
4 We have an objection. We have to deal with it.

5 MR. FELDEWERT: So --

6 THE HEARING OFFICER: Okay. So the
7 testimony earlier was what Mr. Feldewert said, that
8 once the DA notice was filed, Civitas objected. Are
9 you trying to clarify if there are any other
10 objectors?

11 MS. BENNETT: Yes, I am.

12 MR. FELDEWERT: Okay.

13 THE HEARING OFFICER: What is the
14 objection?

15 MR. FELDEWERT: That's not how I heard
16 the question.

17 THE HEARING OFFICER: Oh, but that is
18 what she asked. That's what I heard, at least.

19 MR. FELDEWERT: Okay.

20 THE HEARING OFFICER: Was that the
21 intent of the question?

22 MS. BENNETT: Yes, it is.

23 THE HEARING OFFICER: Okay.

24 Witness, please answer.

25 THE WITNESS: Can you repeat the

1 question, please?

2 BY MS. BENNETT:

3 Q Certainly. Are there any other operators or
4 other entities that have protested the DA to your
5 knowledge?

6 A According to the BLM, Civitas is the only
7 one who can protested the DA.

8 Q So you're not aware of Marathon's protest to
9 the DA, then?

10 A I'm not aware of the protest of the DA. I
11 didn't see a physical protest on -- filed with BLM.

12 Q Does --

13 A If I have, I don't remember.

14 Q Okay. Thank you.

15 A I'm sorry.

16 Q That's okay. How about who operates the Big
17 Eddy unit to the east I think it is of Fasken's
18 proposed Baetz wells?

19 A That would be XTO or Exxon.

20 Q Do you know if XTO has protested the DA?

21 A I don't --

22 Q And by "the DA," I mean your DA.

23 A So I don't recall if they protested early
24 on. I don't know that there's a protest from them
25 now.

1 Q Okay. Earlier today you testified that the
2 BLM -- or maybe Mr. Feldewert testified to this; I'm
3 not sure -- that the BLM is now undertaking an
4 environmental assessment. Are you familiar with the
5 BLM's decision -- or do you know that the BLM is
6 undertaking an environmental assessment?

7 A The BLM has told us that they are performing
8 an environmental assessment, and we are providing what
9 we can to help them with that.

10 Q Have you engaged with BLM on the timing for
11 that environmental assessment?

12 A I do not know when it will be complete. We
13 have actually tried to provide technical surveys to
14 them to help expedite where we can.

15 Q And so you don't know if the BLM
16 environmental assessment will be completed the time --
17 by May 2025 when you've requested your extension to be
18 through. Is that correct?

19 A I do not know if it will be, but our goal is
20 to get it done as soon as possible.

21 Q Earlier today you testified that Civitas has
22 protested the DA and that they are not dropping their
23 protest. Was that your testimony earlier today?

24 A It is.

25 Q And it's -- again, is it your understanding

1 that you do not need to resolve that protest before
2 you can drill in this area?

3 A I'm not sure if we need to. I am at work
4 with the BLM to find out.

5 MS. BENNETT: Mr. Hearing Examiner,
6 those are the only questions I have for Mr. Wallace.
7 I would reserve the right to ask for some limited
8 relief at the end of the hearing.

9 THE HEARING OFFICER: Okay. Thank you.
10 Ms. Hardy, do you have any questions
11 before I turn to the technical examiner?

12 MS. HARDY: I just have one or two
13 questions.

14 THE HEARING OFFICER: Go ahead.

15 CROSS-EXAMINATION

16 BY MS. HARDY:

17 Q Mr. Wallace, I represent Earthstone and
18 Read & Stevens, both of which are subsidiaries of
19 Permian Resources. And do you happen to know the
20 percentage of interest owned by those entities? I
21 don't see in your exhibits. I was just wondering if
22 you knew.

23 A I'm not sure. I'd have to research that
24 because Earthstone has acquired several entities'
25 interest in there in the spacing units. I would have

1 to -- I would have to research that.

2 MS. HARDY: Okay. Thank you.

3 THE HEARING OFFICER: Ms. Hardy?

4 MS. HARDY: Those are my questions.

5 Thank you. Sorry.

6 THE HEARING OFFICER: Okay.

7 Mr. McClure?

8 MR. MCCLURE: Thank you, Mr. Hearing
9 Examiner. I do have only a few questions, though.

10 CROSS-EXAMINATION

11 BY MR. MCCLURE:

12 Q Mr. Wallace, I think you may have already
13 answered this. Do you know if the developmental area
14 is required prior to your APD being approved?

15 A According to the BLM, they said that they --
16 we did not need one or they think that we would not
17 need one, but we're trying to move forward to get our
18 APDs approved without it. That was their
19 recommendation.

20 Q Now, this is from your communication with
21 the BLM back in 2022. Is that correct?

22 A Well, over the course of the past two
23 years -- or yes, approximately two years.

24 Q Okay. So would it be accurate to say that
25 you do not believe that the DA needs to be approved?

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1 A Since Intrepid has dropped their protest, I
2 don't know that a DA is needed. I would have to find
3 out with the BLM.

4 Q Okay. So would it be more accurate to say
5 that you don't know at this time, then?

6 A That is correct.

7 Q Okay. I thought that's what you said
8 earlier. I was just confirming.

9 A Can I clarify?

10 THE HEARING OFFICER: Please.

11 BY MR. MCCLURE:

12 Q Sorry. What was that?

13 A I'm sorry. Can I clarify?

14 THE HEARING OFFICER: Yes. Go ahead.

15 THE WITNESS: Okay. I apologize.

16 Technically speaking, I guess we are still pursuing a
17 DA in order to -- I'm sorry. We are still pursuing
18 EA, and I'll have to get with the BLM to see that the
19 DA is still even needed or relevant.

20 BY MR. MCCLURE:

21 Q Mr. Wallace, did you just say EA or did you
22 say --

23 A An environmental -- yes, environmental
24 assessment.

25 Q Okay. So your current understanding is that

1 you do need an environmental assessment but you do not
2 know if you know the developmental area. Is that
3 correct?

4 A Correct.

5 Q Mr. Wallace, when were you first made aware
6 that you were going to need an environmental
7 assessment?

8 A Probably -- I'm pretty sure it was
9 whenever -- in February of 2024 when the BLM asked us
10 to do the development area.

11 Q Is Civitas pooled under R22121 and R22122,
12 those being the area orders that you're asking for an
13 extension for?

14 A Civitas does not own our spacing units that
15 I'm aware of.

16 Q So Civitas does not have any working
17 interest in the west half of sections 15 and 22? Is
18 that correct?

19 A Unless they've recently acquired an interest
20 in there, no. They own -- they own to -- in section
21 10 to the north of our spacing units.

22 Q Are you aware of any -- I don't know what
23 terminology I guess the BLM would use, but are you
24 aware of any I guess overlapping developmental areas
25 being proposed by Civitas?

1 A They initially proposed a triple stamp
2 development area of wells but since have withdrawn
3 those is my understanding, which includes sections 10
4 or the west half of 10, 15, and 22.

5 Q And by triple stamp, I'm sorry, what do you
6 mean by that?

7 A That's the name of their wells in their
8 development area.

9 Q Oh, okay. Okay. So to your -- so you have
10 an understanding that at one point at least they have
11 proposed a developmental area for the west half of
12 sections 10, 15, and 22. Is that correct?

13 A That is correct. That's after they
14 initially protested the DA or during that same
15 timeframe.

16 Q Okay. Now, correct me if I'm wrong, but
17 didn't Civitas originally protest this case or these
18 two cases?

19 A Correct.

20 Q And then they since withdrew?

21 A Yes.

22 Q But to your understanding you don't know if
23 they withdrew their development area or their protest
24 of Fasken's developmental area. Is that correct?

25 A I spoke to them yesterday, and they said

1 that they're going to keep their protest open and --
2 or basically keep their I guess options open.

3 Q Okay. Just a clarification. When was
4 the -- what month of 2022 were the APDs submitted?

5 A June of '22.

6 Q June. June of 2022?

7 A Yes.

8 Q Okay. I just thought earlier -- I thought I
9 originally heard January but then later you were
10 talking to Ms. Bennett, it was June. Okay. So June
11 of 2022.

12 Are you directly aware of the communications
13 between Fasken and the BLM?

14 A Yes. Well --

15 Q Is that --

16 A Go ahead.

17 Q Is that Mr. Rutley at the BLM that Fasken is
18 talking to?

19 A Yes. I've had direct communication with Jim
20 Rutley the entire time along with our drilling
21 engineer early on, and he's -- he's the person has
22 been directing us as to how to move forward to resolve
23 protests and -- and whatnot.

24 Q So even in your communications back in 2022,
25 that was with Mr. Rutley. Is that correct?

1 A Yes. Our communication -- our
2 communications were with Jim Rutley, initially more
3 our drilling engineer and then more so with me ongoing
4 throughout the process.

5 MR. MCCLURE: Okay. Thank you,
6 Mr. Wallace.

7 I have no more questions, Mr. Hearing
8 Examiner.

9 THE HEARING OFFICER: Thank you.
10 Mr. Feldewert, redirect?

11 MR. FELDEWERT: No. I have nothing.
12 Thank you.

13 THE HEARING OFFICER: Does that
14 conclude your case in chief?

15 MR. FELDEWERT: Yes, sir.

16 THE HEARING OFFICER: Okay. Very good.

17 MS. BENNETT: Mr. Examiner, could I ask
18 a quick question on redirect from one of Mr. McClure's
19 questions -- or recross?

20 THE HEARING OFFICER: No. That
21 wouldn't be permissible. You've had your opportunity
22 to cross. Everyone's had opportunity to cross.
23 There's no redirect, so there's nothing further to
24 ask, so I'll deny that.

25 I would like to hear from Mr. Feldewert

1 now that your case is finished and you don't have a
2 rebuttal case because there's nothing to rebut; right?

3 MR. FELDEWERT: Correct.

4 THE HEARING OFFICER: Okay. Good. Is
5 "good cause" defined anywhere in the rules?

6 MR. FELDEWERT: No. No.

7 THE HEARING OFFICER: I didn't think
8 so. Based on your experience as an attorney in the
9 oil and gas field, how do you define "good cause" when
10 it comes to granting a extension?

11 MR. FELDEWERT: Well, I think it's been
12 defined in this context already. Okay? As you found
13 here today, whenever you're drilling in a potash area,
14 there is a BLM process that is driven by the BLM that
15 the BLM controls and the BLM directs the parties to
16 deal with. Okay?

17 It's undisputed that because of that
18 process that there is extensive delays in obtaining
19 BLM permits and that both Fasken and Marathon and
20 other parties have recognized that there is good
21 cause, and Marathon admits there's good cause when
22 you're dealing in a potash area and the BLM APDs have
23 not been approved by the BLM because there's various
24 processes that are involved and various opportunities
25 for companies to try to seek delay of those APDs, some

1 justified, some not.

2 So good cause is to me in the potash
3 area when the BLM has not issued the drilling permits
4 and you have been steadily working with the BLM to get
5 through that federal process. And that's what we've
6 demonstrated today.

7 THE HEARING OFFICER: Okay. Is
8 there -- do you have any further closing argument?

9 MR. FELDEWERT: Sure. There's no doubt
10 the APDs have not been granted. Marathon agrees that
11 that's a good reason to extend a drilling deadline.

12 Their new allegation in their pre-
13 hearing statement was that Fasken did not timely seek
14 approval of the development area.

15 So Mr. Wallace addressed that today.
16 Testimony is evidence. He addressed the reason why
17 they did not seek a development area until they were
18 told to by the BLM on February 29, 2024, so right at
19 the end of February. And then he explained what they
20 did to get the development area put together and get
21 notice out.

22 Up to that point, the BLM, he
23 testified, told them they didn't need a development
24 area because they were using an existing drilling
25 island. Intrepid should not have protested. They're

1 using an existing drilling island.

2 But Intrepid does what Intrepid does,
3 and the BLM is always the intermediary. They're
4 always working with the potash companies to resolve
5 those protests. So as Mr. Wallace noted, you follow
6 and do what the BLM tells you to do, and that's
7 exactly what they did.

8 But now we find out that not only has
9 Civitas, who doesn't own an interest in the spacing
10 unit, protested the development area, but apparently
11 now Marathon has too. So clearly they are doing
12 everything they can to throw a monkey wrench in this
13 federal process and prevent Fasken from getting the
14 APDs that they need to move forward.

15 Fasken is working with BLM. Fasken has
16 demonstrated that they're timely working with the BLM.
17 Fasken has demonstrated that they have incentive
18 beyond the pooling order to drill these wells because
19 they got a lease that's in suspense. They're trying
20 to move this thing forward, and Marathon and others
21 are throwing monkey wrenches every step and turn here.
22 Okay?

23 So there is good causes here, clearly,
24 and we've demonstrated that, and hopefully the BLM
25 will conclude that these protests of the development

1 area were not appropriate, that a development area is
2 no longer needed, that once the BLM finishes their
3 environmental assessment they will issue the APDs and
4 Fasken can get these wells drilled.

5 But my last point is it makes no sense
6 to me -- zero sense -- to deny this and everybody
7 start all over again and go through this federal
8 process again because we know how long it's going to
9 take.

10 And restarting that process from step
11 one is not in the best interest of the prevention of
12 waste nor the protection of correlative rights, the
13 opportunity to produce your just and equitable share
14 of the reserve. That's what correlative rights are.

15 It makes no sense not to grant this
16 extension when the company has shown that they're
17 working with the BLM to get through this rather
18 cumbersome and ever-changing federal process.

19 THE HEARING OFFICER: One point you
20 made during your closing argument I just want to
21 clarify for the technical examiner.

22 I don't believe there's evidence in the
23 record to show that Marathon has objected. There was
24 a question that was asked. Your witness said he
25 didn't know. What the witness says is evidence, but

1 what Ms. Bennett -- her question is not evidence.

2 MR. FELDEWERT: Good point. I mean, I
3 guess what I should say is their counsel has alluded
4 to the fact that apparently they have filed a protest.
5 We're not aware of it. BLM hasn't told us that
6 there's a protest. I guess it wouldn't surprise me if
7 they want to continue to try to ball this thing up.

8 THE HEARING OFFICER: Okay. Thank you.
9 I wanted to clarify that for Mr. McClure.

10 Before I turn to you, Ms. Bennett --
11 Ms. Hardy, is there anything that you
12 want to say at this point?

13 MS. HARDY: No, thank you.

14 THE HEARING OFFICER: Thank you.
15 Okay. Ms. Bennett, your closing
16 argument?

17 MS. BENNETT: Thank you, Mr. Examiner.
18 My first point in my closing argument
19 is much of this could have been avoided. Much of
20 today's discussion and much of the contention about
21 the allegations that I raised in Marathon's pre-
22 hearing statement could have been avoided.

23 Marathon until today did not know the
24 justification for why Fasken didn't submit the DA
25 until late 2024, and that's been known to Fasken since

1 at least February if not earlier during its
2 discussions with the BLM.

3 So it's inapt to fault Marathon for
4 putting in a statement in a pre-hearing statement
5 about which Marathon had no information because Fasken
6 has withheld that information from the Division and
7 from Marathon since at least -- since we've been
8 having the dispute about these cases.

9 In addition, the fact that Fasken
10 didn't seek to submit its DA approval until May 2024
11 after the Baetz orders would have expired by their
12 terms but for the extension request is not -- reliance
13 on the BLM for 2 1/2 years is not justification for
14 filing it the day after the Baetz orders would have
15 expired.

16 Beyond that, there are still several
17 processes that have to occur. As Mr. Wallace
18 testified, the DA has been protested by Civitas.
19 Civitas is not withdrawing its protest according to
20 Mr. Wallace.

21 An environmental assessment done with
22 the National Environmental Policy Act will have to
23 take place to support the DA. It's my understanding
24 that a similar environmental assessment or other NEPA
25 compliance will have to be done to support the APDs.

1 This isn't as if Fasken is on the
2 starting line ready to go. Mr. Feldewert's suggestion
3 that we're going to be starting at ground zero --
4 Fasken is at ground zero. Fasken is at step one.
5 It's not as if there's all this work that Fasken's
6 done other than learning today that there's been
7 communications with BLM.

8 If Intrepid dropped its protest of
9 Fasken's APDs, there's no reason to think that
10 Intrepid would protest anyone else's APDs or that that
11 protest couldn't be resolved. Fasken is not at step
12 one ready to go out.

13 Fasken also -- oh, I wanted to just --
14 well, I'm not going to take the Division's time with
15 this, but Fasken -- before today neither the Division
16 nor Marathon had the understanding of why Fasken --
17 of the communications with the BLM.

18 And I find that to be somewhat
19 inexcusable given the amount of time that the Division
20 has spent on these cases and the amount of time that
21 the parties have spent preparing for these cases.

22 So Marathon's first request would be
23 that the Division deny Fasken's request for a second
24 extension request.

25 But if the Division is inclined to

1 grant Fasken's second extension request, Marathon
2 would request that the Division hold a status
3 conference in six months to evaluate where Fasken is
4 in the process or alternatively issue an extension of
5 time for only six months to allow Fasken the
6 opportunity to conclude its process with the BLM.

7 And then in six months if Fasken hasn't
8 concluded that, let this acreage be freed up. Let
9 other parties who are willing to step into the breach
10 and develop sections 15, 22, 15, and 10 be heard by
11 the Division because as it currently stands the drill
12 island that Fasken intends to use if Fasken's
13 applications are granted, that drill island can only
14 be used to access 15 and 22. It would leave section
15 10 stranded, the west half of section 10 stranded.

16 And so Marathon would respectfully
17 request that the Division, if it's inclined to grant
18 the application, grant it for a six-month time period
19 to allow Fasken the time it needs to conclude its
20 discussions with BLM.

21 And if it hasn't been able to within
22 the next six months, free that acreage up so that
23 other parties can come in and propose and have their
24 cases heard by the Division. Thank you.

25 THE HEARING OFFICER: Thank you.

1 MR. FELDEWERT: Mr. Examiner?

2 THE HEARING OFFICER: Yes?

3 MR. FELDEWERT: Two quick points, if I
4 may.

5 THE HEARING OFFICER: Is this a
6 rebuttal argument?

7 MR. FELDEWERT: No. No evidence. I
8 don't know where this stranded acreage comes from.
9 Absolutely no evidence of that whatsoever. But as you
10 pointed out, that's not at issue here.

11 Secondly, we filed this back in April.
12 Okay? And because of Marathon, it's been balled up
13 ever since. Essentially, if you grant it, it's only
14 going to be for about another six or seven months
15 anyway.

16 THE HEARING OFFICER: Thank you.

17 MS. BENNETT: Mr. Hearing Examiner?

18 THE HEARING OFFICER: Yes?

19 MS. BENNETT: May I just respond to
20 Mr. Feldewert's content in that there's no evidence in
21 the record that section 10 will be stranded?

22 THE HEARING OFFICER: Go ahead.

23 MS. BENNETT: I'd like to share my
24 screen and show Fasken's development area request to
25 the BLM.

1 THE HEARING OFFICER: Is this a
2 document in evidence?

3 MS. BENNETT: It's not a document in
4 evidence, but it's a Fasken document.

5 THE HEARING OFFICER: Okay. I'm just
6 clarifying.

7 MR. FELDEWERT: Whoa. Hold on a
8 second. It's not a document that we have utilized.

9 THE HEARING OFFICER: Sorry?

10 MR. FELDEWERT: This is not a document
11 that we have utilized.

12 MS. BENNETT: It's a document that --
13 okay. Then I have a document that was attached to my
14 motion.

15 I mean, I don't know why Mr. Feldewert
16 would dispute using their development area request
17 that Fasken submitted to the BLM. I'm unclear what
18 the objection would be to relying on a document that
19 Fasken prepared.

20 THE HEARING OFFICER: You're using this
21 document to support your assertion that section 10
22 would be orphaned if the --

23 MS. BENNETT: Yes.

24 THE HEARING OFFICER: -- if the
25 extension were granted?

1 MS. BENNETT: Yes.

2 THE HEARING OFFICER: Okay. And
3 Mr. Feldewert, your objection to that?

4 MR. FELDEWERT: So my objection is
5 that, number one, this allegation of stranded acreage
6 is not at issue here today. Okay? Number one.

7 And number two, it's nothing more than
8 allegations. They presented no evidence. They
9 haven't identified the presentation of any evidence in
10 their pre-hearing statements, so I object to the
11 attempt now to suggest that there's going to be
12 stranded acreage.

13 THE HEARING OFFICER: Okay. Well,
14 closing argument is not evidence. It's just argument.
15 And I'm going to sustain the objection because I agree
16 it's not relevant to the good cause, which is -- part
17 of my order of today's hearing is that that's all
18 we're going to deal with today is good cause.

19 So I believe that the parties -- now
20 that we've heard closing argument from the parties,
21 does the technical examiner feel that any type of
22 post-hearing submission such as proposed findings of
23 fact or conclusions of law would be helpful in this
24 case?

25 MR. MCCLURE: I mean, post findings of

1 fact, perhaps unnecessary. I mean, it's never -- it
2 would never hurt to have them, I guess.

3 THE HEARING OFFICER: Okay. So then is
4 that a request for them, then?

5 MR. FELDEWERT: Just say "no," Dean.

6 THE HEARING OFFICER: Hold on.
7 Mr. McClure, since you seem to be on the fence on
8 this --

9 MR. MCCLURE: I am.

10 THE HEARING OFFICER: -- do the
11 parties -- I think it's clear how you feel about it,
12 Mr. Feldewert.

13 MR. FELDEWERT: I see no reason for
14 these conclusions. It's pretty straightforward.

15 THE HEARING OFFICER: Ms. Bennett, do
16 you feel proposed findings are in order here or do you
17 find that they wouldn't be helpful?

18 MS. BENNETT: Mr. Examiner, I don't
19 intend to submit proposed findings of fact.

20 THE HEARING OFFICER: Okay. Thank you.

21 MS. BENNETT: If Mr. Feldewert or
22 Mr. McClure orders them, I will gladly weigh in on
23 Mr. Feldewert's proposed findings of fact, but I don't
24 intend to submit any of my own.

25 THE HEARING OFFICER: Okay. So

1 unless -- Mr. McClure, unless you particularly feel
2 that they would be helpful, it sounds like the parties
3 would prefer not to do proposed findings of fact.

4 MR. MCCLURE: That's fine by me,
5 Mr. Hearing Examiner.

6 THE HEARING OFFICER: Okay. Perfect.
7 All right. Good. Then I believe we're finished
8 today?

9 MR. FELDEWERT: Yes.

10 THE HEARING OFFICER: Ms. Hardy?

11 MS. HARDY: Yes.

12 THE HEARING OFFICER: Yes? Okay.

13 MS. BENNETT: Thank you very much,
14 Mr. Hearing Examiner.

15 THE HEARING OFFICER: Thank you very
16 much. We're off --

17 MS. BENNETT: Thank you very much,
18 Mr. Technical Examiner.

19 MR. FELDEWERT: Thank you for your
20 time.

21 THE HEARING OFFICER: We're off the
22 record. Thank you.


23 (Whereupon, at 9:50 a.m., the
24 proceeding was concluded.)

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CERTIFICATE

I, JAMES COGSWELL, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



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

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CERTIFICATE OF TRANSCRIBER

I, JENNA STERN, 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.



JENNA STERN

[& - admit]

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[assessment - briefing]

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