

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:

CASE NOS: 21530, 21630

APPLICATION OF MATADOR PRODUCTION COMPANY  
FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO

CASE NOS: 21560, 21747

APPLICATION OF FLAT CREEK RESOURCES LLC  
FOR A HORIZONTAL SPACING AND PRORATION UNIT  
AND COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS  
EXAMINER HEARING  
MAY 6, 2021  
SANTA FE, NEW MEXICO

This matter came on for virtual hearing before  
the New Mexico Oil Conservation Division, HEARING OFFICER  
WILLIAM BRANCARD and TECHNICAL EXAMINER LEONARD LOWE on  
Thursday, May 6, 2021, through the Webex Platform.

Reported by: Irene Delgado, NMCCR 253  
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1 HEARING EXAMINER BRANCARD: So it appears that  
2 Cases 32, 33, 34, 35 are all connected here. This is our  
3 Case 21543 and 21630, Matador Production; in Case 21560,  
4 21747, Flat Creek Resources.

5 And we have some motions to consider here, and a  
6 possible hearing. Matador Production, can we have an entry  
7 of appearance?

8 MR. RANKIN: Good morning, Mr. Examiner, Adam  
9 Rankin with the law firm of Holland & Hart, Santa Fe office,  
10 appearing on behalf of the applicant in these cases, Matador  
11 Resources Company.

12 HEARING EXAMINER BRANCARD: Thank you. Flat  
13 Creek?

14 MR. SAVAGE: Yes, Mr. Examiner, Darin Savage with  
15 Abadie & Schill, Santa Fe office appearing on behalf of Flat  
16 Creek Resources, and we also have Mr. Bill Zimsky, which he  
17 can introduce himself.

18 MR. ZIMSKY: Yes, William Zimsky on behalf of  
19 Flat Creek from Abadie & Schill.

20 HEARING EXAMINER BRANCARD: Thank you. Do we  
21 have any other entries in these four cases, 21543, 630, 560,  
22 747?

23 (No response.)

24 HEARING EXAMINER BRANCARD: Hearing none, the  
25 record reflects there was a motion for a continuance, but

1 that appears to have been withdrawn. Is that correct, Flat  
2 Creek?

3 MR. ZIMSKY: Yes, Your Honor, William Zimsky  
4 here. Yes, we have withdrawn it. It was an issue about a  
5 communitization agreement. BLM has rescinded the  
6 communitization agreement, they reached an agreement, so  
7 there is no need to continue the case based upon that.

8 HEARING EXAMINER BRANCARD: Okay. And but we do  
9 have, I believe, a motion to dismiss Case 21560 from  
10 Matador. Is that still alive? Matador?

11 MR. RANKIN: Mr. Hearing Examiner, yes, that  
12 motion is still alive, and I'm happy to present argument if  
13 you would like to hear our position on that issue.

14 HEARING EXAMINER BRANCARD: Okay. Do we have any  
15 other preliminary matters in this?

16 (No response.)

17 HEARING EXAMINER BRANCARD: And if we resolve  
18 this motion, are the parties ready to go forward with a  
19 hearing today with witnesses?

20 MR. RANKIN: Matador is.

21 MR. SAVAGE: Flat Creek is as well, thank you.

22 HEARING EXAMINER BRANCARD: Okay, all right. So  
23 why don't we start with the motion. Mr. Rankin, can you  
24 give us, I don't know, five minutes or something to  
25 discuss -- it doesn't seem like a very complicated motion.

1           MR. RANKIN: Sure. Thank you very much, Mr.  
2 Examiner. May it please the Division, Flat Creek's argument  
3 in response to our motion to dismiss are essentially the  
4 following:

5           They inadvertently mislabeled their spacing unit  
6 as a standard spacing unit instead of a non-standard spacing  
7 unit, but Matador knew what they meant, so there is no  
8 prejudice.

9           They contend that the types of spacing units they  
10 are seeking here are just a label, it's not material to the  
11 application for compulsory pooling. It can be fixed by  
12 simply changing a couple of words and subsequently filing an  
13 administrative application to make it right.

14           They contend the nature of the implication here  
15 seeking a 480 acre spacing unit doesn't change, so they have  
16 met the requirements of the Division's rules that require  
17 them to state generally what the order sought, and that they  
18 have met the intent of the Division's notice requirements.

19           Flat Creek even suggests that somehow the  
20 Division can force pool just in the Wolfcamp formation as a  
21 first step before creating and designating a spacing unit  
22 within which to combine the mineral interests they seek to  
23 pool.

24           That's completely at odds and backwards with the  
25 fundamental requirements of the New Mexico Oil & Gas Act,

1 requirements for compulsory pooling and the Division's  
2 regulations and practice for approving non-standard spacing.

3 Fundamentally it's impossible to first pool,  
4 whether compulsorily or voluntarily, mineral interests  
5 without first designating and creating a spacing unit  
6 whether it's standard or not standard.

7 Review of Section 70-2-17, the pooling statute,  
8 makes it abundantly clear that land first must be embraced  
9 within a spacing unit or a proration unit before any  
10 interests may be pooled.

11 And in order to issue a compulsory pooling order,  
12 the Division must have a spacing unit. The order must  
13 describe the land designated to the unit. An operator must  
14 be designated to the unit.

15 The horizontal well rules arise for the same  
16 sequence, the same requirements, if you look at -- pull it  
17 up here -- 19.15.16.15(B)(10), which is titled, Pooling Of  
18 Horizontal Spacing Units, whenever the operator of any  
19 horizontal well shall dedicate lands comprising a standard  
20 or approved non-standard horizontal spacing unit in which  
21 there are two or more separately owned parcels of land.

22 It goes on to say, that have not previously been  
23 pooled for oil and gas production from the horizontal  
24 spacing unit, the operator shall obtain voluntarily  
25 agreements or an order the Division pooling setbacks.

1           So as clearly laid out in both the statutes and  
2 the Division's regulations, in order to compulsory pool, an  
3 operator must first establish a spacing unit. And having  
4 failed to have a proper application to do so here, there is  
5 no -- no ability for the Division to proceed to hear a case  
6 seeking compulsory pooling for Flat Creek's proposed  
7 non-standard unit.

8           So with that, Flat Creek has made proposals, they  
9 can either remedy the situation by filing an administrative  
10 application after the fact, but as I point out, that's just  
11 not possible here because you need to first -- you can't  
12 proceed to pool, you've got to establish an approved  
13 non-standard spacing unit.

14           The other option is to continue the hearing to  
15 allow them to correct their application and fix any notice  
16 issues. In this case they have not provided notice to all  
17 the adjoining tracts surrounding the proposed non-standard  
18 acreage as required by the rules.

19           So there are a couple problems with that, okay?  
20 Simply delaying this hearing is a problem. Matador has as  
21 existing well in an existing S/2 Purple Sage Spacing Unit  
22 that has been producing since September of 2018 without all  
23 the (unclear) combined.

24           Matador has been trying since before Flat Creek  
25 was issued its federal lease in November 2019 to get them to



1 enter into a voluntarily agreement for this acreage, sent  
2 them a JOA within a week of being notified that they were  
3 the winning bidder, and sent them a CA at the same time  
4 within a week after being notified that they were the  
5 winning bidder of the federal lease. They've been working  
6 for two years, more than two years to reach agreement.

7 So by simply delaying this so that Flat Creek can  
8 modify and correct it's application and notice is putting  
9 off a resolution to this matter that has been pending for  
10 some time and requires, requires an order so that these --  
11 this acreage can be properly pooled.

12 Separately, Flat Creek argues that they have  
13 complied with requirements for adjudicatory notice, and they  
14 satisfied the requirements for -- specific requirements for  
15 notifications for non-standard units. But if you look at  
16 the language of the regulations, 19.15.16.15(B)(5), the  
17 notice for non-standard horizontal spacing units clearly  
18 states that the operator shall give notice of any  
19 application for approval of a non-standard horizontal  
20 spacing unit, not simply an administrative application. And  
21 they failed to do that here, and under the Division's  
22 provision's, guidelines, that's a basis for dismissal.

23 Now, lastly, Flat Creek contends it's acceptable  
24 to send out a well proposal for a single well, and then  
25 three weeks later file an application for pooling,

1 identifying not the one well they proposed, but three  
2 initial wells before those additional wells are even  
3 proposed.

4 Now, that's a different circumstance when there  
5 is competing well proposals and the Division has recognized  
6 in certain circumstances it's acceptable for an operator to  
7 send out a well proposal and then file an application less  
8 than 30 days later in order to get those cases set up for  
9 hearing.

10 That's not this case. That's not this situation.  
11 This is a situation where they proposed a well and are  
12 seeking to, to designate additional initial wells in their  
13 pooling order which they haven't yet proposed. So we are  
14 not aware of a situation like that where the Division has  
15 allowed that case to proceed where the initial well that  
16 would be subject to a pooling order hasn't even yet been  
17 proposed at the time the application was filed.

18 That situation, again, is different than what  
19 Flat Creek has pointed out in Matador's case where Matador  
20 has proposed the S/2 of infill well in Section 23. That  
21 proposed infill well is not in Matador's application, it's  
22 not subject to Matador's pooling applications, it was simply  
23 a proposed infill well that was -- you know, was subsequent  
24 to an existing producing well within that S/2 spacing unit,  
25 and it's not a matter of not relying on it in any way for

1 its pooling application.

2 So based on this, you know, we see a third option  
3 here that not, not allowing them to file an application  
4 administratively and not to continue this case, and that  
5 would be simply to proceed because Flat Creek has proposed  
6 in this case an alternative to their 480 non-standard  
7 spacing unit which is the N/2 spacing unit.

8 So we think it's appropriate given the  
9 alternatives to proceed here, dismiss their non-standard  
10 unit application and just hear the competing N/2 spacing  
11 units.

12 HEARING EXAMINER BRANCARD: Thank you. Mr.  
13 Rankin, maybe you can educate me here. I'm a little  
14 confused, not unusual, Matador already has a well in the  
15 S/2?

16 MR. RANKIN: They do, and in this situation there  
17 was an unleased federal tract that comprises a portion of  
18 that Section 23. Matador drilled a well in the S/2 that did  
19 not penetrate that federal tract and got an approved APD  
20 from the Division, and that -- in the meantime that federal  
21 tract was nominated for lease, and in the end Matador was  
22 not the winning bidder, but Flat Creek was.

23 So once Flat Creek won that tract and notified  
24 Matador they were the winning bidder, Matador reached out to  
25 Flat Creek to seek their joinder in the proposed -- in the

1 well that had been producing since late 2018.

2 HEARING EXAMINER BRANCARD: And so the spacing  
3 unit that is dedicated -- that your well is dedicated to is?

4 MR. RANKIN: It's a standard S/2 320 acre spacing  
5 unit in Section 23.

6 HEARING EXAMINER BRANCARD: So you already have  
7 the S/2 as a spacing unit that you are using, it just hasn't  
8 been pooled yet.

9 MR. RANKIN: Correct.

10 HEARING EXAMINER BRANCARD: Okay. Mr. Lowe, any  
11 questions of Mr. Rankin?

12 TECHNICAL EXAMINER LOWE: So, look at my exhibits  
13 here. No, I don't have any questions right now, thank you.

14 HEARING EXAMINER BRANCARD: Thank you. Mr.  
15 Savage, you may proceed.

16 MR. SAVAGE: Yes, Mr. Brancard, thank you. Just  
17 to make a point on the spacing unit, that was approved by a  
18 state APD, and it should be noted that the BLM, which at one  
19 point had the S/2 as a -- within a communitization agreement  
20 has rescinded that communitization agreement based on our  
21 appeal to the BLM, and that was done to free up the  
22 possibilities for the OCD to consider any configuration  
23 within the Section 23.

24 But in Matador's motion to dismiss, they  
25 basically base the sequence and timing of the proposal and

1 applications on this particular Division Order R-13165 to  
2 assert the questions of how much time is needed before the  
3 application, as well as whether or not you have to propose  
4 each well in the application.

5 This order was issued, this particular order was  
6 issued from a dispute in a conventional pooling application  
7 involving one applicant, Cimarex, and the rest of the  
8 parties are respondents. We did not have competing  
9 applications.

10 In Cimarex's scenario, the same policy applies as  
11 well as the test about the well proposal, perhaps the  
12 application itself, as a benchmark for ensuring negotiations  
13 prior to the application. However, in a competing  
14 applications scenario, as with Matador and Flat Creek, once  
15 the first applicant, in this case, Matador, filed a pooling  
16 application as it did on November 3, 2020, it has formally  
17 established it has not and will not reach an agreement with  
18 Flat Creek as an acknowledgement as a precondition for  
19 Matador to be able to file the application under the pooling  
20 statute, 72.17.C.

21 Once a party files an application, they are  
22 establishing they have decided on a development plan at the  
23 exclusion of the competing applicant's development plan, and  
24 therefore the timing and nature of any negotiations or well  
25 proposal after that point changes dramatically.

1           In fact, Order Number R-13165 accounts for this,  
2     stating that the 30 days is required, is required absent any  
3     extenuating circumstances. The competing application  
4     scenario is an extenuating circumstance which does not  
5     require 30 days.

6           After the first applicant filed its application,  
7     the impetus shifts and the important thing is that -- is at  
8     that point is to get all the proposals and applications on  
9     the table for the opposing party and the Division's review.  
10    There is no existing Division order that deals with time  
11    frames and requirements in competing application scenarios.  
12    There is only the pooling statute and the regulations which  
13    are responsive to -- the regulations call only for evidence  
14    of attempts made by the applicant to reach a voluntary  
15    agreement prior to filing an application, which Flat Creek  
16    has provided.

17           Under the pooling statute, once the parties have  
18    not agreed, have not agreed, which is a precondition for  
19    filing, then an applicant who has satisfied one of three  
20    conditions can file an application. The conditions are, the  
21    applicant has the right to drill. The applicant has  
22    drilled, or the applicant proposes to drill a well on the  
23    unit, and this is very clearly stated, and subject to 17C.

24           Flat Creek has satisfied two of those essential  
25    conditions. It had a right to drill at the time that it

1 filed its application, and it had proposed -- it had already  
2 proposed to drill a well on the unit in satisfaction of the  
3 strict language of the statute.

4 Any one of these three conditions under competing  
5 scenario would satisfy the preconditions for Flat Creek's  
6 eligibility to file application for its three wells, 701H,  
7 702H and 703H wells, the 13 Second Wells. Flat Creek  
8 satisfied two of the conditions.

9 Now, all throughout the application process, Flat  
10 Creek, as shown in its Exhibit A-4, continued to negotiate  
11 with Matador in good faith and even updated the original  
12 well proposal to inform Matador of the two additional wells  
13 which was sent to Matador five months ago, possibly a little  
14 over five months ago.

15 Flat Creek has satisfied all requirements of good  
16 faith negotiations and application requirements, the timing,  
17 and sequence of its well proposal in filing with the  
18 division.

19 Flat Creek has also fully addressed carefully in  
20 detail its oversight regarding the mislabeling of its 480  
21 acre unit in the N/2 and N/2 S/2 in response to Matador's  
22 motion to dismiss its case.

23 I would like to point out that the issue is  
24 whether the mislabeling constitutes a fatal flaw that  
25 justifies dismissal under the facts and circumstances of

1 this specific case.

2 Flat Creek believes it has made a good-faith  
3 effort to show the examiners that in spite of the oversight,  
4 the application still meets the minimum requirements of the  
5 rules and regulations to maintain Flat Creek as an applicant  
6 in the hearing for Case 21650.

7 And given the substantive issues directly  
8 centered on serious questions of waste and protection of  
9 correlative rights and the equities of this case justify a  
10 decision in Flat Creek's favor for inclusion.

11 Now, as we all know the Division has broad  
12 authority, very broad authority and jurisdiction over all  
13 matters related to the conservation of oil and gas, and a  
14 specific duty to prevent waste and protect correlative  
15 rights.

16 Section 72.11 states that the Division is  
17 empowered to do, quote, "Whatever may be reasonably  
18 necessary to carry out the purpose of the Oil & Gas Act  
19 whether or not indicated or specified in any section of the  
20 Act."

21 In its response to Matador, Flat Creek has  
22 provided the examiners with a reasonable analysis that under  
23 the facts and circumstances of these cases, Case 21560  
24 should be included and not dismissed. In fact, I would  
25 argue that the inclusion of this case is reasonably



1 necessary to carry out the purpose of the Oil & Gas Act.

2 The oversight does not create an ideal  
3 circumstance, and believe me, I wish it was otherwise, but  
4 nonetheless, the facts and circumstances are sufficient  
5 under the rules and regulations to grant today a hearing for  
6 Case 21560.

7 Now whatever irregularities are involved in this  
8 case, Matador has claimed -- and Matador has claimed to have  
9 identified all of them, they were borne from a set of  
10 irregularities that Flat Creek had to contend with during  
11 the earlier part of these proceedings.

12 Mr. Brancard, if you would bear with me as I  
13 establish some facts, I refer to Matador's time line in its  
14 Exhibit A-4.

15 On November 3, 2020, Matador filed a forced  
16 pooling application for the Norris Thornton 204H well, which  
17 would eventually compete with the unit covering the N/2 the  
18 N/2 S/2 that Flat Creek had been planning, and therefore  
19 Flat Creek proposed a 703H well for that unit on November  
20 12, 2020.

21 On November 23, 2020, Matador proposed two wells  
22 located in the N/2 of Section 23, and as a result of these  
23 events, the parties agreed to a status conference held  
24 December 3, 2020, during which time counsel for Matador and  
25 Flat Creek discussed the potential competing applications.

1           Counsel for Flat Creek in good faith assured  
2 Matador and the Division it would promptly file its  
3 competing application for the N/2 of the S/2 N/2 based on  
4 its existing well proposal.

5           And counsel for Matador assured the Division that  
6 the March 4, 2021, hearing date would provide ample time for  
7 filing Flat Creek's application. The parties agreed to the  
8 terms of the prehearing order issued December 4, 2020. And  
9 that same day, December 4, Flat Creek promptly filed its  
10 application for the N/2 and the N/2 S/2.

11           Flat Creek believes the parties were bound by the  
12 terms of the prehearing order for hearing the two competing  
13 applications, Cases 21543 and 21560. Matador, during a  
14 status conference, did not mention any intention or plans to  
15 file or introduce an additional competing application for  
16 the N/2 based on its November 23, 2020 well proposal.

17           If Flat Creek prevailed in the March 4 hearing,  
18 then development of the N/2 would have been covered by Flat  
19 Creek's development plan. If Matador prevailed, then the  
20 S/2 would be developed excluding Flat Creek's plan, and  
21 furthermore, if Matador prevailed on March 4, Flat Creek  
22 assumed, based on discussion during the status conference  
23 and terms of the prehearing order, that the parties would  
24 decide the fate of the remaining N/2 before the division at  
25 a later date.

1           In fact, Flat Creek prepared for this later  
2 possibility by proposing wells for the N/2 on December 14,  
3 and informing Matador in the proposal that, and I quote,  
4 "The proposed development of the N/2 of Section 23 is  
5 subject to the outcome of competing applications before the  
6 New Mexico Oil Conservation Division involving divisions on  
7 the N/2 and N/2 S/2 of said section."

8           Accordingly, I continue to prepare for the March  
9 4 hearing for the two competing applications involving  
10 Matador's S/2 half unit and Flat Creek's N/2 and N/2 S/2  
11 unit pursuant to the prehearing order.

12           Now, some time passed, and on January 27, 2021, I  
13 began wondering how the parties might address the N/2 of  
14 Section 23 after the March 4 hearing if the N/2 remained to  
15 be developed. And I reached out by e-mail to Ms. Luck,  
16 counsel for Matador, to check and inquire about Matador's  
17 plans down the road for the N/2.

18           In her response e-mail that day Ms. Luck said she  
19 did not know what Matador's plans were and would check. I  
20 followed up with a phone call the next day to ask about the  
21 Wolfcamp in the N/2, and Ms. Luck told me that Matador was  
22 not planning to develop the Wolfcamp in the N/2, but was  
23 only interested in the Bone Spring.

24           I mentioned that I thought their well proposal  
25 for the N/2 mentioned the Wolfcamp, and I would pull the

1 file, double check and get back. Matador's proposal did in  
2 fact reference the Wolfcamp, and when I sent an e-mail to  
3 Ms. Luck informing her of this, she responded seven minutes  
4 later by sending me the application they had already filed,  
5 unbeknownst to me on December 18, 2020 for development of  
6 the Wolfcamp in the N/2.

7 I looked up the application on the NMOCD website  
8 and found it to be Case 21630. Needless to mention the  
9 level of my frustration, I immediately filed an entry of  
10 appearance in this case, explained the circumstances of the  
11 EOA, which the examiners might want to review for a better  
12 understanding of the proceeding. I also have the e-mails  
13 exchanged during this interaction which are relevant to  
14 questions of good faith negotiations.

15 Shortly thereafter, Mr. Feldewert called my  
16 office to discuss -- we had a good conversation, and I  
17 assumed that we had worked out all the irregularities to  
18 proceed with the competing cases. I filed a competing  
19 application for the N/2 of case Number 21747, and the  
20 parties had another status conference to set a new date for  
21 this hearing, May 6, today, for hearing all four cases  
22 pursuant to a new prehearing order issued on May 11, 2021.

23 So here we are today, Mr. Brancard, after the  
24 party discussed these parties and negotiated for more than  
25 five months, and Matador being the only working interest

1 owner in these proceedings, fully aware that the N/2 and the  
2 N/2 S/2 of Section 23 is a non-standard unit, and Flat Creek  
3 never deviating from its request, here we are to hear the  
4 competing applications, including Flat Creek's application  
5 in Case 21560, only now after five months when all parties  
6 involved are fully prepared, including the Division, to hear  
7 the cases did Matador seek to dismiss this case.

8 Flat Creek respectfully submits that under the  
9 circumstances Matador's request is highly irregular and  
10 improper and should be denied. Thank you.

11 HEARING EXAMINER BRANCARD: Thank you. So why  
12 aren't you applying for -- why are you applying for a  
13 non-standard spacing unit? As you heard from the last case,  
14 you know, it's a bit of a concern for us, so why are you  
15 doing this.

16 MR. SAVAGE: We understand, Mr. Brancard, the  
17 reason is that, as we will show in the testimony of, of the  
18 of the cases if we get the opportunity to testify on behalf  
19 of the -- our non-standard unit, we will, you know, show  
20 the production data of that well, the Norris Thornton in the  
21 S/2 S/2, it -- it has significantly underperformed.

22 In fact, we believe it has wasted the potential  
23 of the geology of that S/2 S/2, and it's important for it to  
24 be sequestered, and that the remaining geology primed for  
25 optimal development in the rest of Section 23 be allowed to

1 be developed with that S/2 S/2 excluded so it does not  
2 contaminate the overall production potential and contribute  
3 to waste.

4 HEARING EXAMINER BRANCARD: So you are creating a  
5 stranded S/2 S/2 non-standard unit?

6 MR. SAVAGE: That well, there is a well there,  
7 and because the BLM has rescinded the CA for the S/2, for  
8 that S/2 spacing which Matador had originally entered into,  
9 that Section 23 can be reconfigured so that the unit could  
10 be the S/2 S/2 or that one well to be sequestered and still  
11 produce at the rate it is, but then the geology of the  
12 remaining section would be optimally developed. And you  
13 know, our experts and engineering and geology can speak  
14 directly to that if we're allowed to present the case.

15 HEARING EXAMINER BRANCARD: Well, I don't know  
16 where BLM is headed, and frankly I don't know that it  
17 matters for us here at OCD, but what matters is we have  
18 standard 320 acre spacing here. And creating -- putting  
19 Matador's -- trying to force Matador's well into a  
20 non-standard spacing unit, I don't see -- I don't see what  
21 the benefit is there. They already have a spacing unit.

22 MR. SAVAGE: Well, Mr. Brancard, I believe the  
23 benefit would be that we can increase the EUR for the  
24 remainder of Section 23 and prevent substantial waste. I  
25 mean, that seems to be the main purpose of the Oil & Gas

1 Act, and protect correlative rights, you know. Once you  
2 drill a bad well, you can't go back.

3 I mean, this well has been drilled, if you allow  
4 our experts to testify to the well EUR that's involved and  
5 substantial gain from producing the non-standard unit for  
6 the remainder of the section, I believe those questions  
7 could be addressed and answered to the OCD's satisfaction  
8 and for upholding the purpose of the Oil & Gas Act.

9 HEARING EXAMINER BRANCARD: I do think that  
10 you're characterizing our distinction between a standard and  
11 a non-standard spacing unit as a labeling issue is a bit of  
12 an exaggeration here. I think that's a pretty important  
13 distinction for us, and obviously the Commission meant it  
14 that way by establishing separate processes, separate  
15 notification and when you go non-standard.

16 So, I mean, I guess I'm wondering why you just  
17 didn't stop and restart.

18 MR. SAVAGE: Mr. Brancard, what do you mean by  
19 stop and restart?

20 HEARING EXAMINER BRANCARD: Well, dismiss your  
21 mischaracterized application and file a new non-standard  
22 spacing unit application.

23 MR. SAVAGE: That had been my oversight. Looking  
24 at the nature of the Purple Sage Wolfcamp, I understood that  
25 you could enlarge the standard 320 acre spacing by 160 acre

1 tracts. I misread the parameters of those tracts, and I  
2 assume that the N/2 S/2 constituted a 160 acre tract that  
3 would satisfy the standard criteria, but that is not the  
4 case, and I didn't realize that until it was pointed out in  
5 the testimony.

6 So I'm embarrassed by that, that's, you know, not  
7 something I'm proud of, but I believe that we presented a  
8 pathway for the OCD to address this in a reasonably --  
9 because it's reasonably necessary to be addressed, and I  
10 think the OCD has the authority and option and discretion to  
11 do whatever it needs to do within the parameters of the  
12 regulations and rules which I think we had made a good faith  
13 effort to show a pathway is available should the OCD decide.

14 HEARING EXAMINER BRANCARD: Okay. Thank you, Mr.  
15 Lowe, any questions for Mr. Savage?

16 TECHNICAL EXAMINER LOWE: What's your overall  
17 spacing unit that is being requested?

18 MR. SAVAGE: Mr. Lowe, we have a spacing unit,  
19 our main spacing unit is a 480 acre unit that covers the N/2  
20 and N/2 S/2 of Section 23. And then as an alternative,  
21 should the OCD decide for the S/2 of Section 23, we have an  
22 alternative for the N/2 of Section 23, which is a standard  
23 320 acre unit.

24 TECHNICAL EXAMINER LOWE: Okay. Thank you for  
25 that clarification. That's all I have.



1 HEARING EXAMINER BRANCARD: Okay. I will leave  
2 this for now up to the parties to decide where we go today.  
3 We can -- the Division can either take this motion to  
4 dismiss under advisement and issue an order hopefully  
5 quickly and then schedule a hearing, whatever it looks like  
6 after that order. Or we can go ahead with the hearing  
7 today, knowing that the motion is still undecided? And so  
8 my question is, what is the preference of the parties?

9 Mr. Rankin?

10 MR. RANKIN: Thank you, Mr. Examiner. I haven't  
11 had a chance to confer. It's a good question. Maybe it's  
12 appropriate to take a quick break, given the duration here  
13 of our court reporter's efforts, to take a quick break so I  
14 can confer. I suspect I know the answer, but I would like a  
15 moment to confer with the client and then report back in ten  
16 minutes if that's acceptable.

17 HEARING EXAMINER BRANCARD: Well, I think that's  
18 a good idea anyways, as you pointed out, for our court  
19 reporter to take a break. So why don't we take a ten-minute  
20 break, no later than 10:39, 10:40 and get back to it here,  
21 and then we will hear what the parties would like to do.

22 MR. RANKIN: Thank you.

23 (Recess taken.)

24 HEARING EXAMINER BRANCARD: I am back. I've been  
25 staring at a pop-up box in the middle of my screen telling

1 me my computer is upgrading, so I can't really see your  
2 shining faces very well when you argue.

3 Ms. Salvidrez is going to get kicked out of her  
4 computer in less than an hour. Our great IT system --

5 MS. SALVIDREZ: On that note, I want to let  
6 everyone know that if this -- if this Webex disappears by  
7 chance, I will post a new Webex link on the hearing web  
8 page -- this is for all future meetings, if anything ever  
9 happens, just go to the hearings web page and I will post a  
10 Webex link as soon as possible to get back in.

11 HEARING EXAMINER BRANCARD: Okay. Mr. Rankin,  
12 let's start with you.

13 MR. RANKIN: Thank you, Mr. Hearing Examiner.  
14 I've conferred with the client, and we think it's most  
15 prudent for the parties to proceed with this hearing and for  
16 the Division to take the motion under advisement. So that  
17 would be our preference at this point would be to go forward  
18 with the hearing and for the Division to hear testimony from  
19 both parties.

20 HEARING EXAMINER BRANCARD: Mr. Savage?

21 MR. SAVAGE: Mr. Examiner, yeah, thank you, we  
22 agree with that. One of the issues that's going to be  
23 highlighted in the, in the hearing is a question of good  
24 faith versus bad faith. Order R-13165 is applicable in this  
25 area where it says that issues of good faith negotiation are

1 better examined in cases of compulsory pooling based on the  
2 full evidentiary record rather than a preliminary motion to  
3 dismiss. We think we should proceed and get everything on  
4 the record and then let the OCD decide about the motion.  
5 Thank you.

6 HEARING EXAMINER BRANCARD: Okay, you know, just  
7 as I was thinking about it, if the Division decides, if the  
8 director decides to dismiss Case 21560, it will undoubtedly  
9 be with the option to refile it in some form or another. So  
10 it's not like it's going to end that portion of the case.  
11 So I don't know if that affects anybody's thoughts here,  
12 but --

13 MR. RANKIN: Mr. Examiner, this is Adam Rankin  
14 for Matador. I think that's a fair point, and I think,  
15 given the competing issues here, I think the Division,  
16 director may want to consider whether or not that motion  
17 ultimately becomes moot based on the presentation of the  
18 competing well plans and development.

19 So you know, obviously we would leave that to the  
20 Division's discretion, but it may ultimately become a moot  
21 point based on the competing well factors for development in  
22 competing pooling cases.

23 HEARING EXAMINER BRANCARD: I don't know if you  
24 have anything else to say, Mr. Savage.

25 MR. SAVAGE: Just that we would like to proceed

1 if that's available.

2 HEARING EXAMINER BRANCARD: Okay. So we would go  
3 first with the -- so I think there was a proposal, Mr.  
4 Savage, you made it to hear the S/2 cases first and then the  
5 N/2 cases?

6 MR. SAVAGE: That is correct, Mr. Examiner.  
7 Based on the prehearing order, it was understood that the  
8 Division would hear the N/2 and N/2 S/2 of Flat Creek's  
9 case, and then -- in competition against the S/2 of  
10 Matador's. And then we assume that based on the outcome of  
11 that, then what's remaining -- if the N/2 remains to be  
12 developed, then we would make application for development of  
13 that.

14 So, yes, that is correct, we would like the OCD  
15 to evaluate the 480 acre unit initially and then the 320 as  
16 an alternate. But when we present the cases, we will  
17 present both simultaneously, the testimony and direct and  
18 cross would address both cases for efficiency of these  
19 proceedings.

20 HEARING EXAMINER BRANCARD: So you are not  
21 proposing to bifurcate the cases? In light of what Matador  
22 has presented, it looks like they consolidated their two  
23 cases in terms of their presentation. I mean it is a  
24 question about how best to approach this in an orderly  
25 fashion and most efficiently.

1                   And I will let Bill speak to this, if he would,  
2 Bill Zimsky, because he will be doing a large part of the  
3 hearing. But I believe that we could consolidate, you know,  
4 consolidate each -- each presentation efficiently if that's  
5 what the OCD wants to do.

6                   MR. ZIMSKY: I agree we can present both cases at  
7 the same time. Matador can present their S/2 and their N/2  
8 cases at the same time, crossing on both cases and we would  
9 present our case all at the same time and cover both, both  
10 our applications.

11                   So it would be much more efficient, and I believe  
12 Mr. Savage was talking about the decision-making process,  
13 you know, whether to decide whether to grant our 480 which  
14 would moot the north -- competing N/2, but if the Division  
15 decides not to grant our 480 and grant us the S/2, then they  
16 could decide the N/2, but the presentation of the evidence  
17 would all be consolidated. It would be much more efficient  
18 that way.

19                   HEARING EXAMINER BRANCARD: i would assume so  
20 since your applications overlap. How many, what do you have  
21 for witnesses, and what time frame do you think you can  
22 accomplish your case in?

23                   MR. ZIMSKY: Mr. Examiner, are you addressing  
24 that to us, Flat Creek first.

25                   HEARING EXAMINER BRANCARD: Since you are on the

1 screen I'll address it to you first.

2 MR. ZIMSKY: I believe a little bit over an hour  
3 for our direct, you know, subject to cross, and I anticipate  
4 our cross of their witnesses lasting, you know, maybe half  
5 an hour, 40 minutes. But I've always, you know, been doing  
6 this for years, and I always underestimate the time it takes  
7 to present cross.

8 HEARING EXAMINER BRANCARD: Okay. And how many  
9 witnesses do you have?

10 MR. ZIMSKY: We have three. We have a land,  
11 geology and reservoir engineer.

12 HEARING EXAMINER BRANCARD: Mr. Rankin? Can you  
13 present all your case at once, or --

14 MR. RANKIN: Thank you, Mr. Examiner. Yes, I  
15 think our preference would be, because this is a competing  
16 well development proposal for all of Section 23, and it's  
17 been conceded that way from the start, our preference would  
18 be to present the cases together.

19 And in fact, you know, really the testimony for  
20 all the witnesses both reflect, again, Matador essentially  
21 address the entire section in that manner. As far as  
22 sequencing and time frames and so forth, our preference  
23 would be for Matador to present its case first in light of  
24 the fact it was the first filed and first proposed its wells  
25 long before Flat Creek has.

1           So our preference would be -- and I'm not sure, I  
2 don't understand how the prehearing order indicates any sort  
3 of sequence or preference for order, but our preference  
4 would be to put our case on first.

5           And then as far as sequence and timing, we have  
6 three witnesses and in the past where we have submitted  
7 prefiled, written, direct testimony, depending on the  
8 hearing examiner's, preference we can simply stand on that  
9 testimony, or spend some time providing a summary of the  
10 highlights of the testimony for the examiner's benefit so we  
11 can orient the examiners to what we see as a key issue and  
12 that would take more time, I think probably anywhere from 45  
13 minutes to an hour for us to make sure we have covered the  
14 high points in a summary fashion, maybe less time.

15           But then on cross I do have a fairly extensive  
16 cross for two of their witnesses, so I think that may take  
17 probably an hour, hour and a half to two hours to get  
18 through.

19           HEARING EXAMINER BRANCARD: So you submitted  
20 prefiled written testimony?

21           MR. RANKIN: Both parties have submitted  
22 prefiled, direct testimony for all of their witnesses.

23           HEARING EXAMINER BRANCARD: Okay. Mr. Lowe, I  
24 will defer to you whether you want to hear a summary of the  
25 prefiled testimony or have the parties go directly to

1 questioning.

2 TECHNICAL EXAMINER LOWE: I would say we can go  
3 direct to questioning.

4 HEARING EXAMINER BRANCARD: Okay. So the order  
5 then will be we will try to get Matador's witnesses in here  
6 before lunch, assuming that we don't get shut out of the  
7 Webex proceeding here, as Marlene fears, and try to get that  
8 done in the morning, and then proceed with Flat Creek's  
9 witnesses afterwards.

10 Mr. Ames, I see you are on the screen, and why  
11 don't we simply assume that your case, we'll put it off  
12 until 3 o'clock today.

13 MR. AMES: Thank you, Mr. Brancard, Mr. Hearing  
14 Officer, I appreciate that. It does sound like the pending  
15 cases will take a good part of the rest of the day. I'm not  
16 available later this afternoon, I have conflicts, so I'm  
17 going to move to continue our case and ask for a resetting.

18 HEARING EXAMINER BRANCARD: Okay.

19 MR. AMES: Thank you.

20 HEARING EXAMINER BRANCARD: Thank you. And Mr.  
21 Ames, are you not available -- did we completely lose him.

22 MR. AMES: No, I turned my video off.

23 HEARING EXAMINER BRANCARD: Are you completely  
24 unavailable this afternoon.

25 MR. AMES: Yes, later in the afternoon, yes. It



1 sounds like this case will take at least two or three hours  
2 and proceed after lunch, and I won't be available later in  
3 the day, unfortunately.

4 HEARING EXAMINER BRANCARD: Okay. Thank you.

5 HEARING EXAMINER BRANCARD: Okay. Mr. Rankin,  
6 are you ready to proceed? You can identify your witnesses.  
7 They will need to be sworn in.

8 MR. RANKIN: Mr. Examiner, I think, if it's  
9 helpful, and only if it's helpful, in light of the fact that  
10 we won't be providing any summary on the Division's request  
11 of the testimony, I would be happy to provide a brief  
12 overview. I would ask to be able to provide a brief  
13 overview of the case in opening statement. I think it would  
14 help orient the examiners to the issues in this case before  
15 we proceed.

16 HEARING EXAMINER BRANCARD: That's probably a  
17 good idea for both parties. What we are looking at here,  
18 now that we have dealt with the motion to dismiss and those  
19 issues such as non-standard is competing compulsory pooling  
20 proposals?

21 MR. RANKIN: That's correct.

22 HEARING EXAMINER BRANCARD: We have a commission  
23 order from a number of years ago that laid out a number of  
24 factors focusing on geology development plan, and if all  
25 else failed, who owns most interest in the area or controls

1 most of the interest.

2 We have a Division order that has followed from  
3 that deals with horizontal drilling and applies that to  
4 horizontal drilling and raises a few other issues such as  
5 surface location and stranded acreage. So please keep in  
6 mind those standards as you move forward.

7 With that, Mr. Rankin?

8 (Opening by Mr. Rankin.)

9 MR. RANKIN: Thank you very much, Mr. Examiner,  
10 may it please the Division. Matador's operator of an  
11 existing S/2 320 acre spacing unit with an existing  
12 producing well, the Norris Thornton 204H which has been  
13 producing since the fall of 2018 with an unleased federal  
14 tract in the spacing unit at the time.

15 The tract was eventually leased by Flat Creek.  
16 Matador has been attempting to obtain a voluntarily  
17 agreement with Flat Creek for the development of Section 23,  
18 even before Flat Creek acquired its 25 percent minority  
19 interest in the fall of 2019.

20 For the next year Flat Creek sought to trade out  
21 of Section 23 with Matador and expressed no desire so  
22 development this section with this 25 percent interest,  
23 never indicated any objection to Matador's plans to develop  
24 the acreage or operate it with the exception of its well  
25 proposal that were submitted at the end of 2020.

1           So it was only in the late fall of 2020 when Flat  
2 Creek issued its first well proposal after Matador moved to  
3 file its application for pooling that Flat Creek first  
4 issued its own well proposal and indicated it had plans to  
5 develop the acreage on its own.

6           In looking at the factors that you mentioned, the  
7 Division considers in competing pooling cases, all factors  
8 heavily favor Matador. First geology, and potential to  
9 efficiently recover reserves. Both parties are targeting  
10 the same zone within Wolfcamp Y interval, so there is no  
11 distinction in terms of the target.

12           However, Flat Creek has proposed a spacing  
13 pattern that is out of sync with the existing producing  
14 wells that offset the subject acreage to the north and to  
15 the south that will result in inefficient and ineffective  
16 drainage of the acreage compared to Matador's proposal.

17           So Flat Creek's attachment of their performance  
18 in the area based on a comparison of one of Matador's dozens  
19 of producing wells in the area to a single operator within a  
20 20-mile area of review that has dissimilar reservoir  
21 qualities.

22           But the comparison is flawed for numerous reasons  
23 not the least of which being that Flat Creek ignores  
24 Matador's performance relative to every other operator in  
25 that area. An analysis of Matador's production relative to

1 all the other operators shows that Matador clearly  
2 outperforms the majority of the operators producing from the  
3 Wolfcamp XY in the vicinity of the proposed development. So  
4 that's the first factor.

5           Number two, working interest control. In the  
6 absence of other compelling factors such as differences in  
7 the interval and geology, the working interest control  
8 should be the controlling factor in awarding operations, and  
9 that's because the working interest owner with the greatest  
10 interest is going to have to foot the bill for the majority  
11 of the costs.

12           Here Matador owns 75 percent of the interest in  
13 the section, and it will be responsible therefore for 75  
14 percent of the costs of any development. Matador's  
15 proposals in the N/2, Matador has 62.5 percent working  
16 interest compared to Flat Creek's 37.5 percent.

17           In the S/2 of Matador where it proposes its  
18 wells, Matador has an 87.5 percent working interest compared  
19 to Flat Creek's 12.5 percent. As for Flat Creek's proposal,  
20 it's N/2 N/2 of the S/2 480 acre spacing unit, Matador has  
21 2/3 working interest compared to 1/3 for Flat Creek.

22           And then as to Flat Creek's proposed N/2, Matador  
23 again has a 62.5 working interest compared to a 37.5 for  
24 Flat Creek. So no matter how you slice it, the scales tip  
25 heavily in favor of Matador on this factor under that

1 Commission Order R-10731-B, working interest control weighs  
2 heavily in favor of Matador.

3 The third factor, comparison of the risk, both  
4 parties have assigned a 200 percent risk, and both have  
5 testified its an appropriate risk charge for development of  
6 the acreage and there is no difference there.

7 Good faith negotiations prior to pooling, in our  
8 view this factor weighs heavily in Matador's favor. Within  
9 a week of being advised by Flat Creek that it was the  
10 winning bidder on a federal lease in Section 23, Matador  
11 immediately within six days sent a well proposal to Flat  
12 Creek for its existing producing well in the S/2, along with  
13 a proposed form of JOA for the entire section and proposed  
14 CA from the BLM.

15 That was back in the early part of 2020, '19.  
16 While trying to reach agreement on a JOA and CA for  
17 development of the acreage, addressing every comment that  
18 was made and request by Flat Creek, Matador also tried to  
19 reach agreement on a trade or other resolution with Flat  
20 Creek during that entire time.

21 Flat Creek's own time line, if you look at their  
22 Exhibit A-4, reveals their focus for that entire period up  
23 until the fall of 2020 was to simply trade out of the  
24 acreage for more than a year while deferring any agreement  
25 on a JOA or development within the section.

1           So in our view, all the efforts that were  
2     undertaken by Matador to reach agreement, including  
3     development of the acreage as well as alternative option  
4     weight heavily in Matador's favor.

5           The fifth factor, comparison of each operator's  
6     ability to prudently operate. Again, in this situation,  
7     Matador, the scales tip heavily in Matador's favor. Matador  
8     has an extensive proven track record as a diligent and  
9     prudent operator in the state and in the specific area  
10    that's being targeted for development, as well as in the, as  
11    well as within the Wolfcamp XY zone. In this particular  
12    area, it's the most active operator with the most number of  
13    producing wells in a five-mile area, and as you will see its  
14    wells on average outperform other operators within that area  
15    of review. And its among the top operators in the Wolfcamp  
16    XY within a 20 mile area.

17           By contrast Flat Creek has not drilled, as far as  
18    we're aware of, any wells in New Mexico or in this specific  
19    area. Again, in light of all of the track record,  
20    background history, this factor weighs heavily in Matador's  
21    favor.

22           AFEs and other operational costs, with Matador's  
23    experience in existing facilities, Matador's estimated well  
24    cost reflect a significant cost saving compared to the  
25    development proposed by Flat Creek, which, if they were to

1 prevail, would require additional facilities, additional  
2 surface disturbance and construction that do result in  
3 higher costs, approximately more than \$2 million for the  
4 entire section, and this factor weights heavily in favor of  
5 Matador.

6 And finally the ability to timely locate sites  
7 and approvals and to operate on the surface, again because  
8 of Matador's vast experience in its existing facilities in  
9 the area, this factor weighs in favor of Matador. It's got  
10 surface facilities, take-away capacity in its gathering  
11 lines and locations all ready to go well pads that are  
12 necessary to proceed with a reduced surface disturbance.

13 Flat Creek, on the other hand, would have to  
14 build new pads, doesn't have existing take-away capacity or  
15 any of the other accoutrements necessary to proceed  
16 diligently or expeditiously with its development.

17 In sum every factor laid out by the Commission in  
18 its orders favors Matador in consideration of these  
19 competing well locations. And for that reason, we ask that  
20 the Division, after consideration of the evidence and the  
21 factors approve Matador's applications creating standard 320  
22 acre spacing units in the N/2, and separately in the S/2,  
23 and pooling all uncommitted interests in those spacing units  
24 and designating Matador as the operator and that the  
25 Division denies Flat Creek's competing well development

1 plans.

2 HEARING EXAMINER BRANCARD: Thank you. Can you  
3 identify your witnesses?

4 MR. RANKIN: Thank you, Mr. Examiner. Our  
5 witnesses today, we have three, Ms. Sara Hartsfield,  
6 Mr. Trey Goodwin, and Mr. Andrew Parker.

7 HEARING EXAMINER BRANCARD: Are they all  
8 available right now?

9 MR. RANKIN: I'm going through the list, I  
10 believe they are, yes.

11 HEARING EXAMINER BRANCARD: Can each of those  
12 witnesses signify they are on the call right now.

13 MS. HARTSFIELD: Yes, we are here.

14 HEARING EXAMINER BRANCARD: I see an empty chair.  
15 Are you all in the same room.

16 WITNESSES: Yes.

17 HEARING EXAMINER BRANCARD: Okay. Can you all  
18 raise your right hand and swear that the testimony you are  
19 about to give is the truth and nothing but the truth.

20 COLLECTIVELY: Yes.

21 HEARING EXAMINER BRANCARD: Okay, oh, great.  
22 That would work if I didn't have the box in the middle of my  
23 screen. So, Mr. Savage, are you prepared to cross-examine  
24 one at a time, or do you want all three folks?

25 MR. RANKIN: Mr. Hearing Examiner, I might ask



1 before we to cross-examination that I be permitted to  
2 qualify my witnesses and to enter into the record their  
3 direct testimony and exhibits.

4 HEARING EXAMINER BRANCARD: I'm sorry, certainly,  
5 Mr. Rankin. Please go ahead.

6 MR. RANKIN: So Mr. Examiner, at this time I  
7 would call the first witness, Ms. Sara Hartsfield.

8 SARA HARTSFIELD

9 (Sworn, testified as follows:)

10 DIRECT EXAMINATION

11 BY MR. RANKIN:

12 Q. Would you please state your full name and spell  
13 it for the benefit of the court reporter?

14 A. Sure. My name is Sara Hartsfield spelled S-a-r-a  
15 and then, Hartsfield, H-a-r-t-s-f-i-e-l-d.

16 Q. By whom are you employed and in what capacity?

17 A. I'm employed by Matador Resources Company as a  
18 senior landman.

19 Q. Have you previously testified before the  
20 Division?

21 A. I have.

22 Q. And have you had your credentials as an expert in  
23 petroleum land matters accepted and made a matter of record  
24 before the Division?

25 A. Yes, I have.

1           **Q.     Are you familiar with the applications that were**  
2 **filed by Matador in these competing cases?**

3           A.     I am.

4           **Q.     Are you also familiar with the status of land**  
5 **within Section 23?**

6           A.     Yes.

7           MR. RANKIN: Mr. Examiner at this time I would  
8 move Ms. Hartsfield, we tender her as an expert in petroleum  
9 land matters.

10          HEARING EXAMINER BRANCARD: Any objections from  
11 Flat Creek?

12          MR. ZIMSKY: No objection, Your Honor.

13          HEARING EXAMINER BRANCARD: The witness is so  
14 admitted.

15          MR. RANKIN: Thank you.

16          **Q.     Ms. Hartsfield, did you prepare direct written**  
17 **testimony in preparation for these two cases.**

18          A.     Yes, I did.

19          **Q.     And are they marked as Exhibit A in the exhibit**  
20 **packet that was filed and served in these cases?**

21          A.     Yes.

22          **Q.     Do you at this time adopt your direct testimony**  
23 **that was submitted and filed at that time?**

24          A.     Yes, I do.

25          **Q.     And included with that testimony did you prepare**

1 exhibits?

2 A. Yes.

3 Q. Were those exhibits marked A-1 through A-9?

4 A. Yes, they are.

5 Q. And did you prepare those exhibits or were they  
6 compiled under your direction or supervision or do they  
7 contain company business records?

8 A. Yes. They were compiled under my supervision and  
9 by myself and do contain company business records.

10 MR. ZIMSKY: Mr. Rankin, can you have them turn  
11 up the volume a little bit.

12 MR. RANKIN: Sure.

13 MR. ZIMSKY: I can hear, but not great.

14 MR. RANKIN: Understood. We will see if we can  
15 make that adjustment. If it's a problem hearing, feel free  
16 to interrupt and we will try to make further adjustments to  
17 the microphone and volume.

18 Q. Now, Ms. Hartsfield -- let's see, where was I?

19 MR. RANKIN: I think I'm at the point, Mr.  
20 Examiner, where I was going to move the admission of Exhibit  
21 A and Exhibits A-1 through A-9.

22 HEARING EXAMINER BRANCARD: Thank you. Any  
23 objections.

24 MR. ZIMSKY: No objection.

25 HEARING EXAMINER BRANCARD: Exhibits are

1 admitted. Proceed.

2 (Exhibits A, A-1 through A-9 admitted.)

3 MR. RANKIN: In addition, Mr. Examiner, I would  
4 like to move the attorney affidavit for notice, which is  
5 marked as Exhibit D in the exhibit packet, and that contains  
6 the affidavit of Mr. Feldewert indicating that he provided  
7 notice of the pooling hearing as provided in the exhibit.

8 HEARING EXAMINER BRANCARD: Any objections?

9 MR. ZIMSKY: No objection.

10 HEARING EXAMINER BRANCARD: Exhibits are  
11 admitted.

12 (Exhibit D admitted.)

13 MR. RANKIN: Thank you very much, Mr. Examiner.

14 At this time I have no further questions unless the Division  
15 would like me to summarize or address anything with Ms.  
16 Hartsfield, we would pass her for questioning and  
17 cross-examination.

18 HEARING EXAMINER BRANCARD: No, I think that's  
19 fine. Mr. Lowe, should we let Mr. Zimsky go first and then  
20 you and I can follow.

21 TECHNICAL EXAMINER LOWE: That sounds good to me.

22 HEARING EXAMINER BRANCARD: Fine. So, Mr.  
23 Zimsky, you may proceed.

24 CROSS-EXAMINATION

25 BY MR. ZIMSKY:

1 Q. Good morning, Ms. Hartsfield. My name is William  
2 Zimsky, I'm representing Flat Creek in this proceeding. I  
3 have some questions to you, and it's important that you  
4 understand my questions. If you -- if I ask a confusing  
5 question, or you don't understand what I said, just make  
6 sure that -- ask me to repeat it. This is really important  
7 that we get the -- that you are answering the question that  
8 I'm asking. Is that okay with you?

9 A. Yes, that is.

10 Q. Okay. I want to concentrate on Paragraph Number  
11 11 of your testimony. You have that in front of you;  
12 correct?

13 A. Yes, give me just a minute.

14 Q. Or actually it's Paragraph Number 10.

15 A. Yes. I do have it in front of me.

16 Q. And you, in that paragraph, you opine that Flat  
17 Creek did not engage in good faith negotiations. Is that,  
18 is that your testimony?

19 A. In my opinion they did not engage if good faith  
20 efforts to reach an agreement for development.

21 Q. Okay. And let's go to -- I want to go through  
22 your time line for Section 23, which is Exhibit A-4. Are  
23 you there with me?

24 A. I am.

25 Q. Okay.

1 HEARING EXAMINER BRANCARD: Ms. Hartsfield, is  
2 there any way to make yourself a little louder?

3 THE WITNESS: Yes, I can make myself louder. The  
4 microphone is in the ceiling, so I will try to project that  
5 way.

6 HEARING EXAMINER BRANCARD: I guess you could  
7 jump up, but I wouldn't advise that.

8 Q. Okay. Let's start with the March 12, 2019 entry.  
9 Are you with me?

10 A. Yes, sir.

11 Q. And Flat Creek stated that they -- I'm going to  
12 summarize -- when I summarize these things, please correct  
13 me if I'm mischaracterizing them, I don't want to repeat  
14 word for word. Flat Creek indicated they weren't  
15 comfortable making an election until the lease had been  
16 issued. Do you think that was bad faith on the part of Flat  
17 Creek until the lease was actually issued to start  
18 negotiations?

19 A. I really couldn't say one way or another.

20 Q. Okay. And missing from your time line is an  
21 exchange of e-mails you had with Mr. Gregory in October of  
22 2019 in which he indicated -- I guess it's in response to a  
23 telephone call you guys had earlier about concerns about the  
24 production data and technical issues with the Norris  
25 Thornton 204H well. Do you recall that?

1           A.     I do not recall an e-mail that he had concerns  
2 with the Norris Thornton 204H.

3                   HEARING EXAMINER BRANCARD:   Mr. Hearing Examiner,  
4 I have a copy of that e-mail that I don't know how you want  
5 me to -- I'm not sure how I share that and allow the witness  
6 to look at it.

7           A.     I think I have a copy of it.

8           **Q.     Okay.**

9           A.     Actually, I don't know if I do or not.

10                   HEARING EXAMINER BRANCARD:   Marlene, do we have a  
11 share screen function?

12                   MS. SALVIDREZ:   Yes, we should -- I made you  
13 guys all panelists, so you guys should be able to share your  
14 screen.

15                   MR. RANKIN:   If possible, Mr. Brancard, I know he  
16 is trying to do several things at once, but if Mr. Zimsky or  
17 Mr. Savage would be able to, in addition to sharing the  
18 screen, share by e-mail a copy of the e-mail he is intending  
19 to introduce, I would appreciate that so I can separately  
20 review that exhibit.

21                   MR. ZIMSKY:   It has been sent.

22                   HEARING EXAMINER BRANCARD:   Mr. Zimsky, you  
23 shared with Mr. Rankin and the witness?

24                   MR. ZIMSKY:   Yes, and I sent you a copy as well.

25                   It might be my share function isn't -- I see the

1 icon on the bottom, but it doesn't -- it's not lit up, so  
2 when I click that or move up to the browser under share, it  
3 doesn't allow me to do anything.

4 HEARING EXAMINER BRANCARD: Yeah, I'm in the same  
5 situation here, so I don't know how that's working.

6 MR. ZIMSKY: I have, Ms. Hartsfield -- I guess I  
7 could send an e-mail to Ms. Hartsfield since her e-mail  
8 address is on this correspondence so that she can view it,  
9 or Mr. Rankin, if you could send it to her office.

10 MR. RANKIN: I just did.

11 MR. ZIMSKY: Okay, thank you.

12 HEARING EXAMINER BRANCARD: I'm being told that  
13 my computer will restart in 21 seconds.

14 MS. SALVIDREZ: I can try and give William Zimsky  
15 the host role, and maybe he can share the screen then.

16 HEARING EXAMINER BRANCARD: That might work.

17 MS. SALVIDREZ: But he will have to give it back  
18 to me once he is done because then I won't be able to do  
19 anything on my side.

20 MR. ZIMSKY: Okay. I have that function.

21 It says I'm sharing something, but I'm not sure  
22 what I'm sharing. That's always a dangerous proposition.

23 MS. SALVIDREZ: You are sharing your screen. We  
24 can see an e-mail from Mike Gregory.

25 MR. ZIMSKY: So you can see that?



1 MS. SALVIDREZ: Yes.

2 Q. And, Ms. Hartsfield, can you see that e-mail?

3 THE WITNESS: (No audible response.)

4 TECHNICAL EXAMINER LOWE: Mr. Zimsky, is it  
5 possible to increase the size of this e-mail?

6 A. Yes, this e-mail looks like it's dated July 24,  
7 2019.

8 Q. Correct. Is it really small? It's actually not  
9 letting me -- it's not letting me scroll through this, so  
10 this isn't working out very well because it's a three-page  
11 document and --

12 (Pause.)

13 MR. ZIMSKY: Okay. That didn't work.

14 TECHNICAL EXAMINER LOWE: Is that document a PDF?

15 MR. ZIMSKY: It is a PDF, but it only allowed me  
16 to share the screen shot of it.

17 HEARING EXAMINER BRANCARD: This is Marlene,  
18 sorry to interrupt, but Bill's computer restarted, so I do  
19 not know how long he will be out, so can we come back at  
20 11:30.

21 MR. ZIMSKY: Yes, and Marlene can you hang on  
22 with me so this will go less glitchy.

23 MS. SALVIDREZ: My computer is starting in 21  
24 minutes, and I have to do something really fast for my  
25 director, so I will be -- let me try and restart my computer

1 and come back.

2 MR. ZIMSKY: Okay. I will be here. I will hang  
3 on.

4 MR. RANKIN: I guess we are off the record until  
5 11:30?

6 MS. SALVIDREZ: Yes. Thank you.

7 (Recess taken from 11:18 a.m. to 12:30 p.m.)

8 HEARING EXAMINER BRANCARD: Checking with the  
9 parties to see if they are back on. It's 12:30.

10 MS. SALVIDREZ: Bill Zimsky is on.

11 You want to present; correct?

12 MR. ZIMSKY: Yes.

13 HEARING EXAMINER BRANCARD: So I.

14 MR. ZIMSKY: I did screen share. Can everybody  
15 see my screen?

16 HEARING EXAMINER BRANCARD: Yes, it says  
17 something about Flat Creek Resources.

18 MR. ZIMSKY: Is the witness ready?

19 THE WITNESS: Yes, I'm ready.

20 CONTINUED CROSS-EXAMINATION

21 BY MR. ZIMSKY:

22 Q. Ms. Hartsfield, I'm going to pick up where we  
23 left off, I was talking about the April 12 -- and I sent  
24 the -- just for the record, I sent a copy hard of these,  
25 this set of e-mails, as well as two other chains to the

1 hearing examiner and Mr. Rankin so they should have hard  
2 copies.

3 So you are looking at the screen it's the Tuesday  
4 April 9 e-mail, 2019. And it's Mike Gregory asking to be  
5 put in touch with some technical people because they had  
6 questions about producing wells. This is April of 2019;  
7 correct? Do you recall seeing this e-mail? Is this jogging  
8 your memory.

9 A. Yes.

10 Q. Okay. And then I'm going to -- and then you  
11 responded, you know, send over a list of questions, we will  
12 work on getting an answer. And then on April 12, you  
13 responded by setting forth a list of technical questions.  
14 And what the second bullet point was production lags behind  
15 neighboring wells. Would like to know how Matador's  
16 thoughts on why or if it's just related to how they are  
17 flowing back, and another question he wanted production  
18 data. And that was on April 12 again.

19 And you respond a few days later, and you said,  
20 it was nice chatting, and you said, unfortunately we don't  
21 share the requested data other than what's publicly  
22 available data. Do you recall that exchange, an e-mail?

23 A. Yes.

24 Q. Okay. So they did in fact, they, meaning Flat  
25 Creek, did in fact express some concern over Matador's

1 development of the S/2 of Section 23; correct?

2 A. That's not how I read that e-mail.

3 Q. Okay. But you would agree -- okay, I understand  
4 that's not how you didn't read it, but you would agree this  
5 e-mail, they are raising some technical questions and they  
6 are expressing some concern over the production that's  
7 coming from the North 13 204H well that was drilled in 200  
8 -- and completed in 2018 in the S/2 S/2 of Section 23;  
9 correct?

10 A. Yes, they asked a question about this production  
11 of the Norris Thornton 204H.

12 Q. And the bullet point says production lags behind  
13 neighboring well. I'm not asking you to agree with that  
14 assertion, I'm not making that assertion to establish that  
15 as a fact, but just to show that Flat Creek had some  
16 concerns over how Matador was developing the S/2 of Section  
17 23.

18 You would agree that that is an expression of  
19 concern. You might not agree that the production lags, but  
20 you would agree at this point that Flat Creek is expressing  
21 some concern over Matador's development of the S/2 of  
22 Section 23.

23 A. I agree that they e-mailed they they said it  
24 was -- it appears to lag -- production appears to lag  
25 behind. I, you know, I do recall this e-mail. I recall

1 this e-mail asked for proprietary information that we do not  
2 provide to anyone that had not participated in a well and  
3 joined either under an order or an operating agreement.

4 Q. I'm not faulting Matador with that policy, I'm  
5 sure that's an industry-wide policy, but this is a -- the  
6 purpose of this e-mail was to show that Flat Creek back in  
7 the spring of 2019 was concerned about, in their mind, about  
8 Matador's development in the S/2 of Section 23. Do you  
9 understand the point of that?

10 A. Sure.

11 Q. Okay. So would you consider that bad faith on  
12 the part of Flat Creek if they were concerned -- and I note  
13 you are looked up. Can you tell me who you are looking at  
14 or what you are looking at?

15 A. I'm sorry, no, I was -- what I was looking at?  
16 The other people in the room.

17 Q. Are they saying anything or --

18 A. No.

19 Q. Okay. But would you -- do you think it's bad  
20 faith for them to express some concerns about Matador's  
21 development of this area?

22 A. I didn't read that e-mail as they were expressing  
23 concerns about the development, Matador's development of the  
24 area.

25 Q. Okay. I know you didn't read it like that, I

1 will move on.

2 MR. ZIMSKY: But I would like to introduce that  
3 series of e-mails into evidence, and I'm not sure of the  
4 exhibit marking protocol.

5 HEARING EXAMINER BRANCARD: Do you already have  
6 exhibits numbered?

7 MR. ZIMSKY: I do have exhibit numbered, so I  
8 could do -- this is, I think we're -- I can do a separate  
9 letter, I guess, and call this E-1.

10 HEARING EXAMINER BRANCARD: Mr. Rankin, any  
11 objection to this exhibit?

12 MR. RANKIN: No objection.

13 HEARING EXAMINER BRANCARD: We will admit this  
14 exhibit.

15 (Exhibit E-1 admitted.)

16 HEARING EXAMINER BRANCARD: And you will need to  
17 get it to our portal somehow.

18 MR. ZIMSKY: Yes, I will do that.

19 Q. Now, just going down on your time line, between  
20 February 25 and May 5, 2020, there was a number of e-mails  
21 between you and Mr. Gregory concerning the developments or  
22 getting in touch with each other on trying to reach some  
23 sort of an agreement between the parties; is that correct?

24 A. Yes. We communicated quite a bit via phone tag  
25 and trying to set up a time to discuss what Flat Creek

1 called trade discussions.

2 Q. You have a face-to-face in June of 2017; is that  
3 correct?

4 A. That is correct.

5 Q. Going through your second page of this, you had  
6 another face-to-face meeting in January 12, 2021. Do you  
7 see that?

8 A. I was not in attendance at that meeting but there  
9 was a meeting between Matador and Flat Creek on January 12.

10 Q. Are you aware that Matador after that meeting  
11 sent an e-mail seeking a development plan from Matador and  
12 also offering to purchase Matador's interest in this area?

13 A. Can you repeat that?

14 Q. Are you aware after that lunch that Flat Creek  
15 sent an e-mail to Matador, it might not have been to you,  
16 but to Matador indicating a desire to, to get a development  
17 plan to ensure that there was timely development of Section  
18 23, and also to propose purchasing Matador's interest in  
19 this area. Are you aware of that e-mail?

20 A. I do not believe I was on that e-mail.

21 Q. But had you ever seen that e-mail?

22 A. I have not seen an e-mail where Flat Creek  
23 proposed to purchase Matador's acreage in this section.

24 Q. Okay. And you indicate that -- this is part of  
25 your -- but you have an understanding and your opinion is

1 Flat Creek didn't engage in good faith negotiations;  
2 correct? That's your testimony?

3 A. No. My testimony is that Flat Creek didn't  
4 engage in good faith efforts to develop Section 23.

5 Q. By making an offer to purchase Matador's interest  
6 in Section 23, that would be a good faith effort to develop  
7 the area, wouldn't it?

8 A. I'm not aware of an offer that Flat Creek made to  
9 purchase.

10 Q. But your testimony is that you said they didn't  
11 engage in good faith negotiations, yet you don't know these  
12 key facts. Is that your testimony?

13 A. Where are you pointing to in my testimony.

14 Q. Pardon me?

15 A. Can I look at what part of my testimony you are  
16 talking about?

17 Q. Referring to Paragraph 10.

18 A. So will you repeat your question?

19 Q. Okay. The fact -- if, in fact, Flat Creek sought  
20 to get a development plan, after meeting together  
21 face-to-face on January 12, 2021, in response to that  
22 meeting, if they sent an e-mail to Matador saying, "Can you  
23 send us a development plan? We are really concerned or we  
24 are concerned about timely development of this, of this  
25 section, and would also be, if that doesn't work, we would



1 be interested in purchasing Matador's interest in this  
2 area," if they said that, would that impact your opinion  
3 that Flat Creek did not engage in good faith efforts with  
4 Matador to reach an agreement to continue development of the  
5 Wolfcamp formation underlying Section 23.

6 A. When was the e-mail sent?

7 Q. In January 12, 2021, shortly after the  
8 face-to-face meeting.

9 HEARING EXAMINER BRANCARD: Mr. Zimsky, do you  
10 have a copy of this e-mail, rather than trying to  
11 characterize it?

12 MR. ZIMSKY: Yes, I will get it up here.

13 Q. And I sent this e-mail to you -- I sent you the  
14 e-mail with this as an attachment, so now I'm going to share  
15 my screen.

16 Okay. The first e-mail, this is a 12-page chain  
17 of e-mails, so I'm going to scroll down until I get to the  
18 one I'm talking about. Okay. It's the e-mail dated January  
19 12, 2021, at 4:26 p.m. Do you see that?

20 A. I do see that.

21 Q. And you're copied on it; right?

22 A. Yes.

23 Q. And this coincides with your entry on January 12,  
24 2021, that Matador had lunch with Flat Creek to discuss  
25 options; correct?

1           A.     Yes.

2           Q.     Okay.  And Mr. Gregory says, you are getting  
3 together for lunch today.  As a follow-up would be  
4 interested to see Matador's development plan, permit, timing  
5 et cetera, to see if something can be worked out in advance  
6 of the hearing.

7                     And I'm going off the -- I'm not reading the  
8 e-mail -- I think the hearing at this time had been set for  
9 March 4.  And then back to the e-mail, "I think we need some  
10 type of agreement in place to make sure development happens  
11 timely.  As alternatives we would consider an offer from  
12 Matador to purchase our 160 tracts or an opportunity to  
13 purchase Matador's interest in this block and surrounding  
14 leasehold.  (Unclear) consider acquiring anything from  
15 Matador we would have to (unclear) six plus sections."  Do  
16 you see that?  Did I read that correctly?

17          A.     Yes, I see it.

18          Q.     So my question to you is, in your testimony you  
19 said that they didn't -- there is no good faith effort by  
20 Flat Creek to develop Section 23.  Correct?

21          A.     Correct.

22          Q.     But in this e-mail after the lunch in January,  
23 they want to see a development plan that's not  
24 unreasonable -- that's not an unreasonable request;  
25 correct?

1 A. No, that's not an unreasonable request. I --

2 Q. And they weren't -- excuse me, I apologize for  
3 interrupting. Go on.

4 A. At that point in time in January of 2021, Flat  
5 Creek had seen our development plan for this section.

6 Q. And they said that they needed some type -- and  
7 that's a reasonable request to have a development plan;  
8 correct?

9 A. To have a development plan, yes, that's a  
10 reasonable request.

11 Q. If they are going to participate in Section 23,  
12 because they would want to know when you are going to drill  
13 the well?

14 A. Correct.

15 Q. And having a type of agreement in place to make  
16 sure a development happens timely, that's also -- that's a  
17 reasonable request, isn't it, a reasonable assurance? It  
18 indicates good faith effort to make sure that this area gets  
19 developed; correct?

20 A. Yes, which is why I sent them a JOA in 2019.

21 Q. And they would consider selling to Matador or  
22 purchasing from Matador; right? That's what it says?

23 A. It says something along those lines, yes.

24 Q. Well, along those lines it says, "Or not an  
25 opportunity to purchase Matador's interesting in this lot

1 and surrounding resources."

2 So that was an expression in January of 2021 that  
3 they were interested in purchasing Matador's interest;  
4 correct.

5 A. That is an e-mail from January 2021 that says  
6 that they would consider acquiring from Matador if we would  
7 sell them six plus sections.

8 Q. So that's an expression of interest to develop  
9 this area; correct?

10 A. That sounds like an opinion.

11 Q. What -- what's the opinion? My question was an  
12 opinion, or --

13 A. Yes. I guess I'm unclear what you want me to say  
14 here.

15 Q. I want you to just answer the question, you  
16 know --

17 A. No, I do not --

18 Q. Let me rephrase. Let me rephrase, if you don't  
19 understand from asking it poorly, which might be the case.  
20 In January 12, 2021, Flat Creek expressed an interest in the  
21 opportunity to buy lease lands and other lands from Matador.  
22 That's a correct statement, isn't it?

23 A. I do not see an offer.

24 Q. They would like the opportunity to purchase, it's  
25 not a formal offer, but it's an expression of a desire to

1 explore the possibility of buying land from Matador;  
2 correct?

3 A. Sure.

4 Q. Thank you. And but yet you say, and you were  
5 copied on this e-mail, and yet you say they didn't make a  
6 good faith effort to develop this land when they are seeking  
7 assurances of a timely development, and they are seeking an  
8 opportunity to buy out Matador. So how is that bad faith --  
9 or not maybe not bad faith, but why isn't that an  
10 expression -- a demonstration evidence of good faith  
11 negotiations?

12 A. Honestly, to reiterate what I have in Paragraph  
13 10 of my statement, I have been in talks, and Matador has  
14 been in talks with Flat Creek since the spring of 2019  
15 providing proposed JOAs, and proposals, and many discussions  
16 where I tried to get them to discuss the communitization  
17 agreement and get some action on development of this  
18 acreage, and they have only been interested in discussing  
19 trades up until the fall of 2020, and this e-mail didn't  
20 come until January of 2021. So I do not feel like that is  
21 is good faith efforts.

22 Q. But as of January -- let's focus on this  
23 e-mail -- as of January 2021, you know, they are making --  
24 want to explore the opportunity of buying Matador's  
25 interest, they want assurance of timely development, so

1 isn't that a good faith -- an expression of a good faith  
2 attempt to make sure that this land gets developed?

3 A. Not in my opinion.

4 Q. Okay. And do you have a time -- did you ever  
5 provide -- do you know if Matador ever provided them with a  
6 time line for their development of this area?

7 A. A time line?

8 Q. Yes, like when would they drill, when would they  
9 start drilling wells here?

10 A. So we have provided our normal elections and much  
11 of our conversation had centered around getting things  
12 squared away with the current -- the development that we had  
13 already done, but as far as, are you asking me what our time  
14 line is for drilling these wells?

15 Q. Did you provide them with a time line?

16 A. No, not a specific time line.

17 Q. So isn't -- wouldn't that be a key factor in  
18 deciding whether it -- wouldn't it, as Matador, if you were  
19 going to -- if somebody else was going to develop some land  
20 in which you owned a working interest, wouldn't you want to  
21 know when they were going to drill the wells and how they  
22 were going to develop it before you participate in it?

23 A. So the wells that we proposed, the wells the N/2  
24 of Section 23, and the then the Norris Thornton 203, which  
25 is in the existing Wolfcamp spacing unit of the S/2 of

1 Section 23 all traverse federal acreage, so they require  
2 federal APDs.

3 So I did have conversations with Flat Creek that  
4 said, the permitting process takes longer than usual because  
5 they require federal APDs. They are pretty far behind. As  
6 soon as these APDs go through and we have voluntary joinder  
7 from Flat Creek, or we get a pooling order, then we will be  
8 able to move forward with a more concrete spud date.

9 Q. I understand that. And so what Flat Creek was  
10 asking you was typical in the industry, they wanted to know  
11 what your plans were; correct?

12 A. And what our response was was a typical industry  
13 answer as well.

14 Q. And I understand that. But we are here talking  
15 about, you know, good faith and your accusation that Flat  
16 Creek isn't acting in good faith, and you are telling me  
17 that you guys are following industry standards on how  
18 exchanging information on development; correct? Development  
19 plans.

20 A. Yes.

21 Q. Exchanging offers back and forth or exploring the  
22 possibilities to swap acreage, that happens all the time;  
23 correct?

24 A. That people exchange offers and talk about  
25 trades, yes.

1 Q. Okay. Let's go -- I'm going to share my screen  
2 again. This is the same e-mail chain, and there is an  
3 e-mail that has -- it's from Trey Goodwin now. Who is  
4 Mr. Goodwin?

5 A. He is my area land manager.

6 Q. And cc'd Jonathan Philbert, and who is he?

7 A. He is the vice president of land.

8 Q. Okay. So he is above Mr. Goodwin?

9 A. Yes, sir.

10 Q. Okay. And so here is an e-mail in April of 2021  
11 about discussions I guess they had yesterday, and you are  
12 not copied on this, but so since you -- since you state an  
13 opinion this is good faith efforts, I want to ask you a  
14 question about this exchange of e-mails.

15 And you know, there is an offer to buy out Flat  
16 Creek's 160 -- 160 acres at 7500 an acre. Alternatively,  
17 you know, Flat Creek can sign a JOA. We remain optimistic  
18 we can resolve this by agreement. And then -- and then the  
19 next day Mr. Gregory responds, and he takes issue with some  
20 of the things that, you know, Mr. Goodwin says.

21 But in the last paragraph he says, "We still  
22 believe the best solution is for Matador to operate the S/2  
23 of Section 23 and Flat Creek to operate the N/2. This would  
24 result in the best economic outcome for all involved. Since  
25 we would highly prioritize the interest for the N/2 and



1 Matador would operate within its existing footprint for the  
2 S/2, this is a compromise of our goal of operating the north  
3 480 acres of this section. Let me know if this is of  
4 interest to Matador, and we are happy to work swiftly to get  
5 that done."

6 Okay? Now, despite the fact that your accusation  
7 that Flat Creek did not engage in good faith efforts to  
8 reach an agreement with to continue development of Section  
9 23, how does this e-mail from Mr. Gregory, how does that --  
10 how can your assertion stand up in the face of this e-mail?

11 A. It was just, just my opinion. I wasn't on this  
12 e-mail.

13 Q. Understood. But you filed an affidavit in this  
14 case accusing my cleaned of bad faith. Now you are telling  
15 the hearing examiner that you didn't -- you weren't in on  
16 this, you happened to opine on bad faith negotiations.

17 And in the summary of the testimony Mr. Rankin  
18 presented at the beginning, he really hammered home this  
19 point. He said that bad faith on the part of Flat Creek was  
20 a huge factor for the tribunal to consider, yet you are here  
21 testifying that, oh, that was just your opinion, and you  
22 didn't even read all the e-mail exchanges and the offers.

23 So my question to you is, are you willing to  
24 withdraw your accusation that Flat Creek did not engage in  
25 good faith negotiations, good faith efforts with Matador to

1 reach an agreement for the continued development of the  
2 Wolfcamp formation underlying Section 23 now that you have  
3 been given all of this information?

4 A. No. I do believe that Flat Creek did not engage  
5 in good faith efforts with Matador to reach agreement for  
6 the continued development of the Wolfcamp formation in  
7 Section 23. That is something --

8 Q. -- to develop the N/2 --

9 MR. RANKIN: Mr. Hearing Examiner, please let the  
10 witness finish her response.

11 MR. ZIMSKY: I apologize.

12 A. And the reason that I feel that remains the fact  
13 that since the spring of 2019, Flat Creek has only wanted to  
14 talk about trading out of this section and has not engaged  
15 in conversations of any meaning for the actual development  
16 of Section 23 until the fall of 2020.

17 Q. So shouldn't your Paragraph 10, shouldn't it  
18 really read, "My opinion Flat Creek did not engage in good  
19 faith efforts with Matador to reach agreement for the  
20 continued development of the Wolfcamp formation underlying  
21 Section 23 up and through the fall of 2020." Would that be  
22 a more accurate statement?

23 A. I think that you have to take my statement in  
24 conjunction with the rest of the exhibits that we submitted  
25 along with the time lines.

1 Q. Okay. And that's what we will do. Now, I just  
2 have one or two more questions. If you can go to Paragraph  
3 6C of your testimony on Page 4. Are you there?

4 A. I am. I need just a minute to read 6C.

5 Q. Yes.

6 MR. RANKIN: Mr. Zimsky, I'm wondering if it's 7C  
7 that you are referencing?

8 MR. ZIMSKY: 7C, I'm sorry, you are correct.

9 MR. RANKIN: Make sure we are on the same page.

10 Q. Do you see that?

11 A. I do.

12 Q. I just want to reference -- I mean, in the, in  
13 the parens you say, with an effective date backdated to  
14 August 1, 2019. Do you see that?

15 A. Yes.

16 Q. You're not implying by any means there was  
17 something nefarious about the dating of this assignment? It  
18 wasn't -- because back dating is used generally to accuse  
19 somebody of signing a document on a date different from when  
20 they actually signed it, and to get around some sort of  
21 issue, they backdate the document, "Oh, yeah, I sold that  
22 acre, you know, in 2012," you know and they actually signed  
23 it in 2020.

24 But here it's just -- it's just they signed it,  
25 and then they made it effective earlier; correct? And

1     **that's a normal thing in the industry; correct?**

2           A.     Is backdating it normal -- is the question is  
3 backdating a normal --

4           **Q.     No, no.**

5           A.     Is that your question?

6           **Q.     No.   Are you accusing Flat Creek of backdating a**  
7 **document, i.e., are you saying that they signed a document**  
8 **and put the wrong date down as the date they actually signed**  
9 **it, as opposed to making it effective earlier than the date**  
10 **they signed?**

11          A.     I am stating the fact that their lease was  
12 effective November 1 of 2019, they executed an overriding  
13 royalty assignment in 2019 that I believe -- I don't know  
14 what the exact date was, but -- and it had to be effective  
15 on August 1, 2019, which was before the effective date of  
16 the lease.

17          **Q.     Okay.   But there are other leases that got**  
18 **assigned and applied to; correct?**

19          A.     I'm not fully versed in that assignment of  
20 overriding royalty interests.

21          **Q.     But there is no -- there is nothing -- you are**  
22 **not accusing them of doing anything improper, are you?**

23          A.     I'm not accusing them of anything here.   I'm  
24 simply stating the facts.

25          **Q.     That's fine.   Because you used the word backdated**

1 as kind of a pejorative or a term that I just wanted to make  
2 sure we were on the same page and we understood what you  
3 were talking about. (Inaudible.)

4 I accidentally muted myself.

5 Okay. Now, when, when Flat Creek proposed the  
6 480 acre unit, when they filed the application for pooling,  
7 you were aware at that time that that was a non-standard  
8 unit; correct?

9 A. Yes.

10 Q. Okay.

11 A. Simply because I know the rule of the Purple Sage  
12 development in the State of New Mexico in this area.

13 Q. Okay. And so if they had proposed a unit with a  
14 N/2 of Section 23 and the SW/4 to add 160 acres to the 320,  
15 that would have been a standard unit; correct?

16 A. Are --

17 Q. Let's assume the well wasn't there. So do the  
18 spacing rules provide 320 acre -- you can stack them, but  
19 if you want to add an extra 160 acres, you need to add a  
20 quarter-quarter section as opposed to a half-half section?

21 MR. RANKIN: Mr. Hearing Examiner, I'm not  
22 exactly sure the relevance of this questioning since it's  
23 just a hypothetical that doesn't apply to the case.

24 MR. ZIMSKY: I will withdraw it.

25 MR. RANKIN: Not sure where it's going.

1 Q. So you knew as soon as they filed the 480 spacing  
2 application that it was non-standard; correct?

3 A. Based on my knowledge, yes.

4 Q. Okay. And in his opening, remarks or actually on  
5 arguing the motion to dismiss, your attorney indicated a  
6 desire by his client, you, Matador, for a timely resolution  
7 getting this, this land pooled; correct?

8 A. Could you repeat the question?

9 Q. If Matador wanted to get this land, Section 23,  
10 however it takes to sign it, you wanted a decision to come  
11 out as quickly as possible?

12 A. Yes. We would like a decision.

13 Q. And so by waiting until a few days before the  
14 hearing, realizing that back in December when it was  
15 originally filed as it was non-standard, you could have  
16 filed a motion to dismiss at that point; correct?

17 A. I'm actually not an attorney. I don't know I  
18 don't know how to answer that.

19 Q. Okay. That's fine. That's all, but let me look  
20 at my notes here.

21 A. I will say that back in December we were still  
22 hopeful we would reach a voluntary agreement with Flat Creek  
23 and we won't have to have this hearing.

24 Q. Understood, and whether -- or the e-mail from  
25 Mike Gregory to Trey Goodwin on April 22 offering, hey,

1 we will do the N/2, you guys do the S/2, that's -- that  
2 would have avoided this hearing; correct?

3 A. That option was not agreeable to us.

4 Q. I understand, I know it's not agreeable but that  
5 was an offer to, to resolve this without a hearing; correct?

6 A. Correct. We also offered several other things,  
7 too, to Flat Creek as well, so --

8 Q. Understood.

9 MR. ZIMSKY: That's all the questions I have.

10 HEARING EXAMINER BRANCARD: Thank you.

11 Mr. Zimsky, did you want to offer that e-mail chain?

12 MR. ZIMSKY: I would like to offer this e-mail  
13 chain that begins, it's a 12-page document and the first  
14 e-mail is from Mike Gregory to Trey Goodwin, dated Thursday,  
15 April 22, 2021, and the last e-mail being, in this chain,  
16 being an e-mail December 14, 2020, from Mike Gregory to  
17 Jonathan Philbert, and I would like to offer that in  
18 evidence marked as Exhibit E-2, and I would like to  
19 introduce that into evidence.

20 HEARING EXAMINER BRANCARD: Mr. Rankin, any  
21 objections?

22 MR. RANKIN: Thank you, Mr. Examiner. I'm  
23 looking at the documents now. I think there may be some  
24 pricing terms in some of these e-mails that I would like --  
25 or ask that Mr. Zimsky redact before submitting it for the

1 record. I'm just going to see if I can identify where those  
2 are. Hold on one second.

3 I'm looking at Page 6 of -- I missed how you  
4 were proposing to mark it, but it's an e-mail dated February  
5 10, 2021. There are some paragraphs in there that have  
6 pricing terms, specific terms that I would ask that those  
7 specific pricing terms and evaluations be redacted because  
8 they contain confidential information.

9 MR. ZIMSKY: And I will do that.

10 MR. RANKIN: I would like to make clear, if it's  
11 okay with Mr. Zimsky, to confirm that we agreed to the  
12 redactions so we don't have any issues with that before it's  
13 submitted. Appreciate that.

14 MR. ZIMSKY: Yeah, Mr. Rankin, I will redact in  
15 the e-mail I gave you, the pdf with the redactions and make  
16 sure I got them all.

17 MR. RANKIN: I appreciate that. So aside from  
18 those issues on the redactions and confirming that, we don't  
19 have any objection to the admission of those exhibits.

20 (Exhibit E-2 admitted.)

21 HEARING EXAMINER BRANCARD: Thank you for working  
22 that out. So, Mr. Rankin did you have any redirect?

23 MR. RANKIN: I just have a couple of questions, I  
24 think.

25 REDIRECT EXAMINATION



1 BY MR. RANKIN:

2 Q. Ms. Hartsfield, can you hear me okay?

3 A. Yes, I can.

4 Q. I think, I think what I understood you to be, to  
5 be saying in your direct testimony and I want to make sure  
6 it's clear, part of the problem with the offers that, the  
7 proposals that Flat Creek was making to Matador was that  
8 they were for, generally they were for trades outside of the  
9 targeted development acreage; correct?

10 A. That is correct.

11 Q. And the proposals that they were making to  
12 Matador were for acreage that didn't work for Matador's  
13 interest; is that correct?

14 A. That's correct.

15 Q. And then when they did offer proposals, such as  
16 trades -- such as the April 22, 2021 e-mail, where they were  
17 by Mr. Gregory proposed some sort of trade or some sort of a  
18 switch where Flat Creek would operate the N/2 and Matador  
19 would operate the S/2, there was no specifics in those  
20 proposals, were there?

21 A. No, none that I saw.

22 Q. In fact in the acreage assignments, or the  
23 acreage interests between the Flat Creek and Matador between  
24 the N/2 and S/2 were vastly different, were they not?

25 A. That is correct.

1 Q. So really, it's hard to conceive of a way to make  
2 a straight trade or any kind of a trade between the N/2 and  
3 S/2 acreage as between Flat Creek and Matador. Is that fair  
4 to say?

5 A. That's fair to say.

6 Q. And Mr. Gregory didn't give any idea about how  
7 that was going to be accomplished?

8 A. No, I did not hear any, nor were there any in  
9 that e-mail.

10 MR. RANKIN: No further questions.

11 HEARING EXAMINER BRANCARD: Thank you. Your next  
12 witness, Mr. Rankin.

13 MR. RANKIN: Mr. Examiner, our next witness is  
14 Mr. Trey Goodwin.

15 TREY GOODWIN

16 (Sworn, testified as follows:)

17 DIRECT EXAMINATION

18 BY MR. RANKIN:

19 Q. Mr. Goodwin, you have previously been sworn in.  
20 Will you please state your name for the record and please  
21 spell your name for the court reporter's benefit.

22 A. Trey Goodwin, T-r-e-y G-o-o-d-w-i-n.

23 Q. And by whom are you employed and in what  
24 capacity?

25 A. Matador Resources Company, and I'm the area land

1 manager.

2 Q. And have you previously testified before the  
3 Division?

4 A. Yes.

5 Q. Have you had your credentials as an expert in  
6 petroleum land matters accepted as a matter of record?

7 A. Yes.

8 Q. Are you familiar with the two applications filed  
9 in this case by Matador?

10 A. Yes, sir.

11 Q. And are you also familiar with the applications  
12 filed in the cases by Flat Creek?

13 A. Yes.

14 Q. And are you also familiar with the status of the  
15 land generally in Section 23 that are the subject of these  
16 competing applications?

17 A. Yes.

18 MR. RANKIN: At this time I would tender  
19 Mr. Goodwin as an expert in petroleum land matters.

20 HEARING EXAMINER BRANCARD: Any objections?

21 MR. ZIMSKY: No. No objection.

22 Q. Mr. Goodwin, have you prepared written direct  
23 testimony that was filed and served in this case?

24 A. Yes.

25 Q. Or, rather, these cases? Were those marked --

1 was that testimony marked as -- your affidavit, was it  
2 marked as Exhibit B?

3 A. Yes.

4 Q. And did you also prepare exhibits in support of  
5 your testimony?

6 A. Yes.

7 Q. Were those exhibits marked as Exhibits B-1  
8 through B-4?

9 A. Yes.

10 Q. And did you yourself prepare those exhibits, or  
11 did you supervise the preparation, or do they constitute  
12 Matador business records?

13 A. Yes.

14 MR. RANKIN: At this time, Mr. Examiner, I would  
15 move the admission of Exhibits B and B-1 through B4 into the  
16 record.

17 HEARING EXAMINER BRANCARD: Any objections?

18 MR. ZIMSKY: No objection.

19 HEARING EXAMINER BRANCARD: So admitted. Thank  
20 you.

21 (Exhibit B, B-1 through B-4 admitted.)

22 MR. RANKIN: At this time, Mr. Examiner, I would  
23 pass Mr. Goodwin for questioning by counsel.

24 HEARING EXAMINER BRANCARD: Thank you. Any  
25 questions for this witness?

1 MR. ZIMSKY: Yes.

2 CROSS-EXAMINATION

3 BY MR. ZIMSKY:

4 Q. Mr. Goodwin, my name is Bill Zimsky. I'm  
5 representing Flat Creek in these contested hearings, and I  
6 have some questions for you.

7 You indicate -- let's go to your testimony,  
8 Paragraph 4. Tell me when you're there.

9 A. Yes, sir, I am here.

10 Q. The second sentence says, "In contrast, our  
11 review of the public records indicates Flat Creek Resources  
12 has not drilled any horizontal wells in the Permian Basin of  
13 New Mexico." Do you see where I'm at?

14 A. Yes, sir.

15 Q. Did I read that correctly?

16 A. Yes, sir.

17 Q. Do you know anything about the background of when  
18 Flat Creek was formed as an entity?

19 A. For this, you know, the sentence that we are  
20 reading right here, you know, I just did an NMOCDC search  
21 where we type in Flat Creek as an operator in Eddy and Lea  
22 County and this part of southeast New Mexico, and I did not  
23 come up with any results that showed they had drilled any  
24 wells in southeast New Mexico, but as far as background of  
25 how Flat Creek, you know, came into existence, I'm not sure

1 that I have that.

2 Q. Okay. I'm going to need you to speak up. I  
3 think the court reporter probably agrees. So I know the  
4 microphone is up in the ceiling for some reason but, yeah,  
5 we are -- I'm having trouble, maybe because I'm old.

6 A. Did you hear everything I said okay?

7 Q. I did, I did. I just need you to make an effort  
8 to, you know, speak -- project a little bit up to the  
9 ceiling.

10 Now, you would agree with me that, that although  
11 Flat Creek resources might not have drilled any wells as  
12 a -- or very many wells, as an entity, they -- the  
13 employees, operations managers, drilling engineers,  
14 reservoir engineers, geologists, landman, who have a  
15 substantial amount of experience in this area; correct?

16 A. I would certainly hope that they da do.

17 Q. But you don't know one way or the other; correct?

18 A. That is correct.

19 Q. Okay. So you can't say sitting here your team,  
20 your drilling team, your engineers, geologists, landman,  
21 have more experience than the landman, engineers, geologists  
22 on Flat Creek's team in this area; correct?

23 A. Matador as a company has drilled 282 wells in the  
24 Permian Basin, you know, with specific regard to southeast  
25 New Mexico, and you know, I know this area that we are kind

1 of honed in on right here, this is Rustler Breaks asset,  
2 Matador has drilled 138 wells just in our Rustler Breaks  
3 asset, and when we kind of scale it back even more, Matador  
4 has drilled 27 Upper Wolfcamp wells in the township that we  
5 are talking about.

6 So Matador as a company has very extensive  
7 experience drilling wells in southeast New Mexico. In  
8 contrast, Flat Creek as a company has not drilled any wells  
9 that it looks like.

10 Q. Okay. But could you answer my question, though,  
11 okay? Do you want me to repeat the question so you can  
12 answer it this time.

13 A. Okay, yes, please repeat your question.

14 Q. And pay attention to my question. I know you  
15 have your little talking points, and that's fine, but I'm  
16 asking questions here, and you are answering them. Okay?  
17 Is that okay? Do you understand that?

18 A. Absolutely.

19 Q. Okay. Well, then okay. Listen to my question.  
20 You do not know whether the team that has been assembled by  
21 Flat Creek to explore, develop, drill, operate wells in  
22 southeast New Mexico, in this area, you don't know what  
23 their experience is, those individuals; correct?

24 A. That's absolutely correct, we don't know anything  
25 about how they could develop because we don't see how they

1 have drilled any wells in southeast New Mexico. So you're  
2 right, we don't know anything about how they would develop.

3 Q. So you can't say -- you can say, well, Matador  
4 has drilled a lot of wells and we have experience, but you  
5 can't say that the team of professionals that Flat Creek has  
6 assembled lacks any, lacks similar experience to Matador;  
7 correct?

8 A. Yeah, that's correct. That's not what my  
9 affidavit says.

10 Q. I understand that, that's why I'm asking the  
11 question because I just wanted to -- I just wanted to clear  
12 that up just so -- yes, as an entity, and you agree your  
13 team is very important, the team that you have assembled as  
14 a company, as an entity whether it's an old entity, that's  
15 been going for 50 years or a new one that's just been  
16 assembled in the last handful of years, the most important  
17 factor is your personnel; correct?

18 A. I think there is many contributing factors to the  
19 company, it's not just having the right people on board, but  
20 you have to have the right people at your company that work  
21 well together.

22 Q. That's a good point. That's a good point, but  
23 your personnel is important who you have; correct?

24 A. Absolutely.

25 Q. Okay. And you don't, you sitting here today, you



1 can't say -- you can't make the statement that Matador's  
2 team is superior to Flat Creek's, can you?

3 A. I don't think that I, I certainly believe that we  
4 are, but I have not made that statement.

5 Q. And I appreciate that that's your belief, and you  
6 should believe that, but you don't have the objective  
7 facts -- that's a subjective opinion, and that's -- I have  
8 no -- I'm not picking a bone with you on your subjective  
9 opinion, but you don't have the objective facts to make that  
10 determination; correct?

11 A. Yeah. I guess I'm just starting to get a little  
12 confused with what you are trying to ask me. I can't tell  
13 if you are trying to ask me something with regard to my  
14 affidavit or hypotheticals about individuals that could work  
15 at a company.

16 Q. I think you have answered the question.

17 A. Okay.

18 Q. If you could go to Page 6 D -- or, no, Paragraph  
19 6-D at the bottom of I think the third page. Are you there?

20 A. Yes, sir. 6-B?

21 Q. 6-D, as in Delta.

22 A. Okay, 6-D, okay.

23 Q. You indicate that Matador door has an  
24 affiliate with sufficient capacity to transport all three  
25 steams, oil, gas and water from the existing facility pad.

1     **There is nothing to prevent, if Flat Creek ended up**  
2     **developing all of Section 23, there is nothing to prevent**  
3     **that same mid-stream affiliate from transporting oil and gas**  
4     **and water from Flat Creek's operations; correct?**

5           A.     So you are asking me, if Flat Creek were to  
6     develop this acreage, would they have access to our  
7     facilities that are already in place?

8           Q.     **No, to the affiliates, you know, the gas**  
9     **gathering, transport -- the oil, water disposal, those type**  
10    **of -- the stuff that's -- not talking about surface**  
11    **locations or anything like that, I'm just talking about the**  
12    **mid-stream company.**

13          A.     You know, I don't see any reason why they  
14    wouldn't be able to engage with our, you know, our affiliate  
15    for negotiations. I don't think that in this area you have  
16    a lot of options because we've already poured hundreds of  
17    millions of dollars into the infrastructure that we have in  
18    place. In fact, our pipeline that goes on the east side of  
19    this section is strategically placed to go up the spine of  
20    all of our acreage in this area, and it has all three  
21    streams, oil, water and gas.

22                 So, you know, we have no takeaway options at  
23    all -- issues at all there. So I mean, you know, the way I  
24    see it right now, you know, if Flat Creek came in to  
25    develop, it would probably be one of the only options

1 available other than they are going to have to truck a lot  
2 of water, and you know, truck oil, and you are going to see  
3 more flaring.

4 **Q. But there is nothing to prevent them from using**  
5 **your affiliate; correct?**

6 A. I don't think there is anything that, you know,  
7 should prevent them from engaging into negotiations with the  
8 affiliate, but I can't speak, you know, on behalf of our  
9 affiliate whether they would come to an agreement.

10 **Q. So the bottom line, there is options there if**  
11 **Flat Creek got the -- developed this land for them to**  
12 **transport the oil, gas and water?**

13 A. Yeah, I think that, yeah, I don't see why there  
14 wouldn't be options out there.

15 **Q. Okay. Now going to paragraph Number 9, of your**  
16 **testimony, and in reference to Flat Creek, you said you are**  
17 **proposing rates of 10,000 per month while drilling and 1000**  
18 **per month while producing. That's under November 2020 well**  
19 **proposals. Do you see that?**

20 A. Yes, sir.

21 **Q. And are you aware that they revised that proposed**  
22 **overhead to 8,000 per month while drilling and \$800 per**  
23 **month while producing?**

24 A. I guess I didn't -- I guess I don't remember  
25 seeing that revision.

1 Q. Can you speak up?

2 A. I guess I didn't remember seeing that revision.

3 Q. Do you remember or not?

4 A. No. Like I just said, I don't remember seeing  
5 that revision.

6 Q. Okay. Now let's talk about the AFEs, and you  
7 discussed them in Paragraph Number 8, there is about a \$2  
8 million difference?

9 A. Yes, sir.

10 Q. Okay. I'm going to give you a hypothetical. If  
11 you're proposing AFEs that are less expensive than your  
12 competitor, but your competitor can show that based upon  
13 their operations and completing techniques they will produce  
14 an extra 50 percent on hydrocarbons, although their AFE  
15 might be 10 percent higher than your AFE, the return on the  
16 investment is a lot better if the well is going to produce  
17 more and in the percentage of cost. Do you follow that?

18 A. Yes, I'm following.

19 Q. I'm not -- okay, just do Company A and Company  
20 B. Say Company A, their AFEs are 5 million a well. Company  
21 B are 6 million a well. Company A is going to produce  
22 200,000 MBO, and Company B under their well proposal is  
23 going to produce twice as much, 400. So the better economic  
24 value would be the second, Company B's 20 percent higher AFE  
25 for the well, but 50 percent more production. That would be

1 **the better choice, wouldn't it?**

2 A. I guess if there is underlying factors that -- I  
3 guess I'm trying to think through everything, you know,  
4 surrounding what, you know, when you are talking about the  
5 economics, I'm also thinking about the economical footprint  
6 where Company A, like our example and you know --

7 **Q. I have to interrupt you.**

8 A. We already have all of our pad locations in place  
9 for all four slots and we are in, so the pad locations are  
10 already built, we also already have mid-stream  
11 infrastructure in place, we already have a production  
12 facility you know right there in the section next door  
13 that's capable -- has the capacity to service all of these  
14 wells, and so I guess I am trying to think through, in your  
15 hypothetical, you know, you know, I'm trying to tie that  
16 into the -- if you could kind of explain or throw that in  
17 there, maybe I could answer if that's economical or not.

18 **Q. I just want you to answer the question I asked.**  
19 **I appreciate all the qualifications you just came up with,**  
20 **but in a situation and where Company A has a \$5 million AFE**  
21 **and is going to produce 2000 MBO, and Company B has a**  
22 **6000 -- \$6 million AFE and is going to produce twice as**  
23 **much, 400 MBO, all things being equal, wouldn't you get more**  
24 **return on the investment with Company B than Company A?**  
25 **Just in that scenario, all things being equal otherwise.**

1           A.     Just, yeah, just in that scenario, that question  
2 right there, that logic would make sense.

3           Q.     Okay. And in compiling AFEs, you would agree  
4 that these are estimates based upon current prices and  
5 what's gone in -- you know, what's been going on recently in  
6 the area, demand for vendors, and equipment, and materials,  
7 and they can vary, you know, within six months, the numbers  
8 can change six significantly; correct?

9           A.     That's correct.

10          Q.     Okay. And within -- isn't it also true that  
11 looking at AFEs in this case, let's say this particular  
12 case, you don't really know the completion techniques being  
13 proposed or contemplated. You know your completion  
14 techniques being contemplated, you guys, Matador, you put  
15 your AFEs together, so you know that, but you don't know the  
16 completion techniques being proposed by Flat Creek, do you?

17          A.     No.

18          Q.     So it's sort of an apples and oranges kind of  
19 thing, you are not really, there could be two different  
20 types of proposals, one well could be much more expensive to  
21 complete than another well, and because -- because they're  
22 -- they're contemplating a different type of well than what  
23 you are.

24                         So it's hard to compare one AFE you say is  
25 cumulative over \$2 million, and I think you saved some money

1 on the share -- on the pads, the existing pads, but you  
2 really can't compare those two AFEs because you really don't  
3 know -- you can't compare the contemplated completion  
4 techniques; correct?

5 A. My comparison there is just the AFEs themselves,  
6 so compared the AFEs is \$2 million under what they are  
7 estimating.

8 Q. But you don't know their completion techniques;  
9 correct?

10 A. Yes, you are correct. I don't know their  
11 drilling techniques, completion techniques, production  
12 techniques, I don't know any of that. I'm just looking at  
13 two AFEs, the AFE that we have and the AFE they have, and we  
14 are over \$2 million less than them.

15 Q. And do you know whether your AFEs have  
16 mobilization costs -- cost of moving a rig from well to  
17 well, well pad to well pad?

18 A. You know, if it's a cost that we are going to,  
19 you know, include partners for in that well, then it would  
20 be included in that AFE.

21 Q. But do you know whether for a fact, whether  
22 that's included? You are assuming it's included; correct?

23 A. I would have to -- I would have to talk to our  
24 team lead that generated the AFEs to make sure that, you  
25 know, that was included, but generally, you know, those

1 costs, you know, would be, you know, billable to partners  
2 at, you know, in some form or fashion, it would probably be  
3 a combination. I'd have to talk to our team lead in our  
4 accounting department to see how that's handled.

5 Q. So you really can't testify on -- you can just  
6 testify about the raw numbers, but not how those AFEs were  
7 put together; correct?

8 A. I can make a general comparison of two numbers  
9 and say Company A, Company B, you know, this is what Flat  
10 Cree's AFE amounts to, this is what Matador's AFEs amount  
11 to, and it's, you know, standard to, you know, what we have  
12 seen in the area, and AFEs that we have given proposed to  
13 other companies and and other wells and what we are seeing  
14 from other companies, in fact, you know, I think that, you  
15 know, it's pretty -- Flat Creek's AFEs are not just \$2  
16 million over Matador, but they are a lot higher than most of  
17 the other companies we see in the area.

18 Q. And you were in the room, I believe, when there  
19 was some testimony about the e-mails where, where there was  
20 an exchange of -- or where Flat Creek wanted some sort of  
21 assurance about timely development of this area.

22 Do you recall that? Do you recall those e-mails  
23 at all that there was an expression of concern by  
24 Mr. Gregory that they wanted some assurance that this area  
25 would be timely developed?



1 A. Yes, I was in the room.

2 Q. Okay. And I mean, you -- you had -- you met  
3 with Mr. Gregory before; correct?

4 A. Yes.

5 Q. And has he expressed that desire to have some  
6 sort of assurance on a timely development of this area if  
7 Matador was going to go ahead and proceed?

8 A. You are asking me if he expressed concern over  
9 development?

10 Q. He just wanted to -- he just wanted an idea that  
11 there was going to be a timely development of this area;  
12 correct?

13 A. Yes, he asked me if there was going to be timely  
14 development, and with reference to Matador's operation, yes.

15 Q. Now, assume that the Division grants both your  
16 spacing application, N/2 S/2, you know, what's the priority  
17 of those wells, what would be the priority be on your  
18 drilling schedule?

19 A. Yes. As soon as we receive an order, then we  
20 will put the wells on, you know, the drill schedule in a  
21 place that coincides with when the BLM permits would be  
22 expected to come in.

23 And so that's kind of the timing of things. So,  
24 a, we have to get the order, b, we have to get the BLM  
25 permit, and once we have those two things, then, you know,

1 BLM permits, I think they are only good for a year as well,  
2 but I think our goal would be to, you know, make sure that  
3 we have our wells on the schedule right pretty soon after we  
4 get BLM permits so.

5 Q. And so these, these wells in Section 23 would  
6 be -- would have some sort of priority within Matador;  
7 correct?

8 A. That's correct.

9 Q. And now, these are one-mile wells; correct?

10 A. Yes, sir.

11 Q. Is there any recent company memoranda or, you  
12 know, within the last six months of stressing, prioritizing  
13 two-mile laterals over one-mile laterals?

14 A. Company memorandum?

15 Q. Yeah.

16 A. No, I think that, you know, we have shown, you  
17 know, with being a publicly trading company, I think that  
18 we, you know, have displayed to the market that, you know,  
19 we are drilling two-mile laterals and that, you know, a lot  
20 of our wells are, you know, that we have put together are  
21 two miles have improved economics.

22 Q. And but the question I asked was, are there any  
23 internal memos. You are the land manager for this area. Is  
24 that your title?

25 MR. RANKIN: Mr. Examiner, I'm going to object to

1 this further line of questioning. Neither company in either  
2 of the applications is proposing a two-mile lateral, and I  
3 don't see the relevance of any questioning further beyond  
4 what Mr. Zimsky has already asked regarding Matador's  
5 preference for a two-mile laterals.

6 HEARING EXAMINER BRANCARD: I'm not sure where we  
7 are getting with internal documents. Are you looking for  
8 internal documents, Mr. Zimsky?

9 MR. ZIMSKY: I'm not actually looking for  
10 internal documents. I just -- I don't want to see the  
11 document, I just -- you know, what is at issue is how --  
12 and this is something that was -- a concern expressed by  
13 Flat Creek going into negotiations about timely development,  
14 so I just was asking the witness whether, you know, Matador  
15 is prioritizing two-mile wells over one-mile laterals. I  
16 will -- I will --

17 HEARING EXAMINER BRANCARD: That's a good  
18 question right there. Why don't you ask him that question?

19 MR. ZIMSKY: Okay. I thought I did. I apologize  
20 for not.

21 **Q. Is Matador prioritizing two-mile laterals -- I'm**  
22 **going to strike that question. I want to share something.**  
23 **I'm going to share my screen, and let me first e-mail this**  
24 **out. Okay. And you mentioned that Matador is a publicly**  
25 **traded company. I'm going to again share my screen.**

1                   Mr. Goodwin, can you see that, my screen?

2           A.     Yes.

3           Q.     I'm going to ask you to speak up.

4           A.     Yes, I can see the screen.

5           Q.     Matador's a publicly traded company, this is the  
6 first quarter 2021 earnings release?

7           A.     Yes.

8           Q.     April 2021?

9           A.     Yes, I know that quarter very well.

10          Q.     Okay. Slide E, do you see -- have you seen this  
11 slide before?

12          A.     Can you zoom in a little bit here?

13          Q.     Pardon me?

14          A.     I was asking our tech in this case to zoom in a  
15 little for us. Yes, I have seen this slide.

16          Q.     And on the left, this is -- this is talking about  
17 capital efficiency, it's talking about Cap X divided by feet  
18 of laterals, I guess, on the left-hand side and showing it's  
19 reducing and projected to be minus 14 percent, approximately  
20 \$730 in 2021.

21                   Now, on the right is percentage of two-mile  
22 laterals for 2021, and the little box below says 100 percent  
23 of laterals in 2021 expected to be greater than one mile as  
24 compared to 83 percent in 2020. Do you see that.

25          A.     Yes, sir.

1           Q.     98 percent of laterals in 2021 expect to be two  
2 miles or greater as compared to 74 percent in 2020. So I  
3 asked you about prioritizing the development of these  
4 one-mile laterals in Section 23, and you testified that  
5 Matador was going to prioritize them just as they normally  
6 would, but you told -- the company told investors less than  
7 two weeks ago that 100 percent of the laterals in 2020  
8 expected to be greater than one mile.

9                     Now do you see a discrepancy between your  
10 testimony and what the company is telling investors?

11           A.     No, sir, I -- that's 2021, and we are in 2021  
12 and it is May. So your, you know, what we have told  
13 investors is absolutely correct based on the drill schedule  
14 that we currently have, 100 percent of the laterals in 2021  
15 will be expected to be greater than one mile.

16                     We are not telling them what we are expecting for  
17 2022, but could it be possible that by the time we get this  
18 order, by the time we get the BLM permit and we put wells on  
19 a schedule that we could still be outside of 2021?

20           Q.     But you would agree that, that -- and you make a  
21 point of how many wells that Matador has drilled, you know  
22 how many wells that are contemplated coming out though for  
23 the next couple of years that are going to be two-mile  
24 laterals?

25           A.     I think that that would be, you know, something I

1 would have to sit down with attorneys before I could release  
2 that information, because we are a publicly traded company,  
3 I can't tell you something that the market doesn't already  
4 know. And you know, but I -- yeah, I hope that you helped  
5 us sell some stock today by looking at this slide.

6 **Q. And but you would agree that what the company is**  
7 **telling investors is they are shifting to longer laterals**  
8 **and they are going to prioritize those. Is this, in fact,**  
9 **the gist of this slide?**

10 A. I, I don't see where we are saying that. I think  
11 what it looks like we are telling the market what we are  
12 estimating for the year. We have a lot of things built into  
13 the drill schedule when we prioritize it, and one of the  
14 main factors they are leaving out are critical dates which  
15 are associated with forced pooling and the BLM permits, it's  
16 a whole slew of things. It's not just two mile versus one  
17 mile. There's a lot of leasehold critical dates and that  
18 kind of thing. There is a lot of factors, whether it's  
19 prairie chicken season, and you know, lots of things we have  
20 to take into consideration when we put together a drill  
21 schedule outside of two-mile lateral versus one-mile.

22 **Q. And the Norris Thornton 204H well in the S/2 of**  
23 **the S/2 of Section 23, that's not really producing very**  
24 **well, is it, comparatively?**

25 A. I think that the Norris Thornton 204H has

1 produced, you know, under expectations.

2 **Q. So if you are a publicly traded company and you**  
3 **are emphasizing longer laterals and more production, less**  
4 **CapEx, wouldn't that -- isn't the trend to put the capital**  
5 **in the longer laterals, the two-mile laterals versus this**  
6 **one-mile lateral?**

7 A. I mean, are we still talking about the same case?  
8 It seems like we are kind of really far out and talking  
9 about wells that are not even proposed in our Section 23.  
10 We are talking about we proposed one-mile wells, and we have  
11 the economics on our end that show that those are good wells  
12 in the Upper Wolfcamp target.

13 And so far we have produced AFEs that show we are  
14 going to be \$2 million under Flat Creek. I think our  
15 economics, you know, we like what we see there.

16 **Q. But you don't like what you see from the existing**  
17 **well, do you?**

18 A. You know, we drilled that, you know, well, you  
19 know, several years ago, and you know, the longer a company  
20 is together, you know, you learn things, and you get  
21 stronger, and you get better. And if you look at all of our  
22 investor debt, you know, from 2015 to today, you will see  
23 that Matador has constantly gotten better with improved well  
24 economics, drilling, everything all the way around the  
25 board, we get better every year.

1           So to your point, yeah, the Norris Thornton 204H,  
2     although it seems to be performing under expectations, you  
3     know, the other three slots north of the 204H that we plan  
4     to develop, we like what we see there, we are excited about  
5     it, and you know, I think that they are going to be really  
6     strong wells for us.

7           **Q.     And but as you admit, the 204H is not that great**  
8     **of a well, so --**

9           A.     I didn't say it wasn't that great of a well, I  
10    said it performed under expectations.

11          **Q.     Okay.  So let me can ask my question.  So can you**  
12    **see why Flat Creek would not want to participate in the S/2**  
13    **of Section 23 where one of the wells that's already drilled**  
14    **is performing below expectations, and in good faith,**  
15    **proposed a 480 acre unit that excludes the underperforming**  
16    **204H well?**

17           MR. RANKIN:  Mr. Examiner, I'm going to object to  
18    that.  It calls for speculation asking this witness what he  
19    thinks Flat Creek thinks, and I don't think that's an  
20    appropriate question.

21           HEARING EXAMINER BRANCARD:  Can we focus on what  
22    this witness knows?

23           MR. ZIMSKY:  Understood.

24          **Q.     You would agree, I just want one last question.**  
25    **You would agree the trend for Matador is to drill longer**



1     **laterals; correct?**

2             A.     Absolutely.  Absolutely.

3             Q.     And I think I might have misspoke about Slide E,  
4     100 percent of the laterals in 2021 expected to be greater  
5     than one mile.  I might have misspoke and said 2020.

6             MR. ZIMSKY:  And I would move for the admission  
7     of Matador's first quarter 2021 earnings release, dated  
8     April 28, 2021 as Flat Creek Exhibit E-3.

9             HEARING EXAMINER BRANCARD:  Mr. Rankin, any  
10    objection?

11            MR. RANKIN:  No objection.

12            (Exhibit E-3 admitted.)

13            Q.     Mr. Goodwin, I want to ask you a couple more  
14    questions on the e-mail exchange that you had with Mr. --

15            A.     Gregory.

16            Q.     -- Mr. Gregory.

17            A.     Sure.

18            Q.     And you were in the room when Ms. Hartsfield was  
19    testifying about this particular --

20            A.     I was in the room.

21            Q.     -- this stream of e-mails; correct?

22            A.     I was in the room when she testified.

23            Q.     So I'm going to share the screen, just a real  
24    brief question here.

25            And this is April 22, 2021 e-mail where

1 **Mr. Gregory proposes -- the last paragraph, the best**  
2 **solution to operate the south well for Matador for the S/2**  
3 **and let Flat Creek operate the N/2. Do you see that?**

4 A. Uh-huh, yes, sir.

5 Q. Did you ever respond to him say, "Okay, that's a  
6 possibility. Give us some details. Fill in the blanks,"  
7 or did you make any counter-proposal to this, or was this  
8 sort of the last thing left on the table?

9 A. No. This was the last thing that was left on the  
10 table.

11 Q. Okay.

12 A. Yeah, so I think -- we had also talked on the  
13 phone, and so that's just kind of where we, where we left  
14 it. I think that, you know, as far as a trade is concerned  
15 here, Matador is 75 percent working interest, so you know,  
16 we haven't been, you know, inclined to do a trade here, so  
17 the footprint, the infrastructure, the hundreds of millions  
18 of dollars we already put in, the 75 percent majority  
19 interest, we just don't have a lot of traction on our end  
20 for a trade really, so.

21 Q. Well, did you have any interest in the offer that  
22 Flat Creek would offer to operate the N/2?

23 A. I didn't receive a formal offer from Flat Creek  
24 to operate the N/2.

25 Q. Well, it may not have been a formal offer, it was

1 a -- to quote, he said, "We still believe the best solution  
2 is for Matador to operate the S/2 of Section 23 and for Flat  
3 Creek to operate the N/2." And obviously it's not a firm  
4 offer, but it's an offer, but --

5 A. It sounds like what he believes.

6 Q. Well, yeah, and so he believes that -- I'm not  
7 saying that that's the best -- I'm not saying that is the  
8 best solution, I'm just pointing this out to show that they  
9 that they believed, whether that's true or not, that they  
10 should operate the N/2.

11 And so that's, and this sort of goes to Ms.  
12 Hartsfield's accusation of bad faith that they didn't want  
13 to develop this area, but they did put this out there, but  
14 you didn't respond to it; correct?

15 A. I think it's consistent through all of their  
16 e-mails, including this one, that they just, it seemed like  
17 to me they just keep asking us for, you know, us to find a  
18 solution to their problem. And they never provide us with,  
19 you know, a formal solution themselves. So they throw out  
20 ideas, they tell us their beliefs, but they never, in any  
21 e-mail -- I have never received any written, you know, trade  
22 offer or cash proposal formally, they just continue to throw  
23 out ideas and ask us, and expect us, the person -- the  
24 operator that has the majority interest and all of the  
25 infrastructure in place to send them a formal offer.

1 Q. But you never followed up on the April 22 e-mail,  
2 did you?

3 A. No, not after that e-mail, I haven't followed up,  
4 not yet.

5 Q. Okay. Let me just check my notes here.

6 (Pause.)

7 Q. You both bid on the federal lease; correct?

8 A. You know, I'm trying to think of -- I'm trying to  
9 remember if I was in the room on that one. I know that Flat  
10 Creek was ultimately the winner of the lease, but I'm not  
11 sure that I was privy to the details of if we bid or  
12 anything along those lines.

13 MR. ZIMSKY: Okay, that's all the questions I  
14 have.

15 HEARING EXAMINER BRANCARD: Thank you. Mr.  
16 Rankin, any redirect?

17 MR. RANKIN: Just a couple of questions,  
18 Mr. Hearing Examiner.

19 REDIRECT EXAMINATION

20 BY MR. RANKIN:

21 Q. Mr. Goodwin, can you hear me all right?

22 A. Yes, sir.

23 Q. Mr. Zimsky asked you a hypothetical about two  
24 different well proposals where, all things being equal,  
25 other than the AFE costs, one well would have a higher EUR

1 but a higher AFE cost, and maybe because of the higher EUR  
2 you might want to choose that well as opposed to the lower  
3 AFE costs just based on the EUR. Do you remember him trying  
4 to walk through that hypothetical with you?

5 A. Yes, sir.

6 Q. Now, just -- just generally, would -- would an  
7 operator choose a development plan just based on -- I mean,  
8 EURs are essentially a projection or estimate of what the  
9 recovery would be over time; is that right?

10 A. Yes, sir.

11 Q. And they can be, you know, they can be  
12 manipulated or changed based on what data or assumptions you  
13 make for production of the well; correct?

14 A. Correct.

15 Q. So you wouldn't base a decision on the funding a  
16 well or choosing a well just based on the EURs, you might  
17 also want to look at, if you are choosing between operators,  
18 what the operator's proven track record is, what the overall  
19 well performance is for that operator in a proposed  
20 development area; is that correct?

21 A. Yes, that's correct.

22 Q. Because those are things that are concrete, you  
23 know, you can see what offset well productions are, you can  
24 see other, you know, other factors that go into that  
25 decision; correct?

1 A. Yes, sir.

2 Q. Okay. Now, Mr. Zimsky asked you a lot about  
3 questions about preferences between one-mile and two-mile  
4 laterals, but generally there are going to be circumstances  
5 where laterals longer than one mile aren't always possible  
6 due to land positions and other factors that may limit an  
7 operator's ability to drill more than one mile; correct?

8 A. That's exactly right.

9 Q. Now, Mr. Zimsky brought up that e-mail from  
10 Mr. Gregory dated April 22, 2021, in which he proposed  
11 trading off so that Flat Creek would operate the N/2 and  
12 Matador would operate the S/2. Now, that was just, what,  
13 that e-mail was just about two weeks ago. Is that about  
14 right?

15 A. Yes, sir.

16 Q. And he didn't offer any specifics about how that  
17 arrangement would be made where the parties have vastly  
18 different ownership interests within the same section, did  
19 he?

20 A. There definitely wasn't enough information to  
21 make a decision.

22 MR. RANKIN: No further questions.

23 HEARING EXAMINER BRANCARD: Thank you. Mr. Lowe,  
24 I neglected to ask whether you have any questions for the  
25 witness.

1                   TECHNICAL EXAMINER LOWE: I have a question just  
2 for I guess a general understanding. This was when Sara was  
3 on, I guess, on stage for her, her testimony, there was a --  
4 I'm not too sure who brought this up, it was basically  
5 pertaining to the good-faith negotiation subject that was --  
6 that's been a subject by -- on the table.

7                   I thought I might have heard talk about a trade  
8 of some sort, and then I guess I heard a trade was not  
9 pertaining to the particular section, but it was pertaining  
10 to other realms of negotiation. That's my first question.  
11 Was that correct?

12                   I don't know if this is -- I'm assuming  
13 Mr. Goodwin, I think he's a supervisor or the boss for Sara,  
14 I'm assuming he would know. Is that correct?

15                   THE WITNESS: Yes, sir, so just looking at -- I  
16 will just answer your question, but just looking at the  
17 premise of negotiating in good faith here, you know, we, you  
18 know, constantly, you know, we sent them formal offers, and  
19 we sent them formal proposals. We never received a formal  
20 offer or formal proposal, and that includes trades, from  
21 Flat Creek.

22                   We sent them a JOA, they never sent us a JOA.  
23 They never even gave us feedback on the JOA we sent them.  
24 You know, the trade that is in the e-mail that I think you  
25 are referring to, you know, we gave a formal offer, and it

1 had several options built out in that e-mail and one of them  
2 was a trade, you know, that we would be open to a trade, and  
3 you know, I think that we would have to bring other acreage  
4 that they had in their portfolio -- I think they have one  
5 other tract in New Mexico from what I remember, so we didn't  
6 have a lot to play with, but we wanted to at least consider  
7 it. But, you know, that didn't, you know, it's like he said  
8 in his e-mail back to me, you know, none of those options  
9 were really compelling to Flat Creek.

10 TECHNICAL EXAMINER LOWE: Okay. On that note,  
11 then, were these trade options that were put on the table,  
12 were they compatible -- I guess not compatible, but more  
13 apples to apples kind of deal? I the suspect not, if we're  
14 here now.

15 THE WITNESS: Right. Well, I, you know, we like  
16 to do -- we never know what somebody else might be  
17 thinking, so we like to give a lot of different options that  
18 go in a lot of different directions so that, you know, it's  
19 just they can have more of an understanding of what a  
20 company might need to get a deal done.

21 So I think we gave them a, you know, you know,  
22 obviously our first choice that was listed in the e-mail is  
23 we wanted to reach voluntary joinder and negotiate the JOA  
24 that we had already sent to them.

25 I think we sent second was a formal offer, a



1 formal cash offer to purchase their interest if they wanted  
2 to sell it. I think the third thing that we listed in there  
3 was maybe they don't want to join, maybe they don't want to  
4 sell, you know, maybe they want to do some kind of term  
5 assignment or farm-out, so we gave them a more formal offer  
6 on that end, and lastly is when we threw in the trade.

7 So it's hard to think of anything outside of  
8 those options that we could have pursued. I think we tried  
9 to cover a lot of different spectrums.

10 TECHNICAL EXAMINER LOWE: Okay. Okay. Thank you  
11 for the detailed information about that. So -- let's see.  
12 That's all I have, thank you.

13 THE WITNESS: Thank you.

14 HEARING EXAMINER BRANCARD: I just have two  
15 questions, given that recent press release from Matador, is  
16 it the policy of Matador currently to not develop one-mile  
17 laterals?

18 THE WITNESS: That is not our policy.

19 HEARING EXAMINER BRANCARD: And given that you  
20 have a number of wells out there that you are developing at  
21 the same time in southeast New Mexico, is it the policy of  
22 Matador to put one-mile lateral proposals at the bottom of  
23 your priority list?

24 THE WITNESS: No, sir.

25 HEARING EXAMINER BRANCARD: Okay. Thank you.

1 THE WITNESS: Thank you.

2 HEARING EXAMINER BRANCARD: Mr. Rankin, did you  
3 have another witness?

4 MR. RANKIN: Mr. Examiner, I do have one more  
5 witness, Mr. Andrew Parker.

6 HEARING EXAMINER BRANCARD: Good afternoon,  
7 Mr. Parker you have already been sworn in. Would you state  
8 your full name for the record.

9 THE WITNESS: My name is Andrew Parker.

10 ANDREW PARKER

11 (Sworn, testified as follows:)

12 DIRECT EXAMINATION

13 By MR. RANKIN:

14 Q. Will you please spell your name for the benefit  
15 of the court reporter?

16 A. A-n-d-r-e-w P-a-r-k-e-r.

17 Q. Mr. Parker, what is your current job with  
18 Matador?

19 A. I'm vice president of geology.

20 Q. And have you previously testified before the  
21 Division?

22 A. I have.

23 Q. Have you had your credentials as an expert in  
24 petroleum geology accepted as a matter of record?

25 A. Yes.

1           Q.     Are you familiar with the applications that were  
2     filed by Matador and both Flat Creek in these cases?

3           A.     Yes.

4           Q.     And have you -- are you familiar with the status,  
5     the geology of the lands, have you conducted a geologic  
6     review of the specific area?

7           A.     I have.

8           MR. RANKIN:  At at this time, Mr. Examiner, I  
9     would retender Mr. Parker as an expert in petroleum geology.

10          HEARING EXAMINER BRANCARD:  Any objections?

11          MR. SAVAGE:  No objections.

12          HEARING EXAMINER BRANCARD:  Thank you.  So  
13     tendered -- so accepted.

14          MR. RANKIN:  Thank you.

15          Q.     Mr. Parker, have you prepared an affidavit of  
16     your direct testimony in this case?

17          A.     Yes.

18          Q.     And was that marked as Exhibit C in Matador's  
19     consolidated cases?

20          A.     Yes.

21          Q.     Did you also prepare exhibits in support of your  
22     testimony?

23          A.     Yes.

24          Q.     And were those marked as Exhibit C-1 through C-6?

25          A.     Yes.

1           **Q.     Did you prepare the exhibits yourself or under**  
2 **your direct supervision and/or do those contain Matador**  
3 **business records?**

4           A.     Yes.

5           MR. RANKIN:  At this time, Mr. Examiner, I would  
6 move the admission of Exhibit C, and C1 through C-6 into the  
7 record.

8           HEARING EXAMINER BRANCARD:  Thank you.  Any  
9 objections?

10          MR. SAVAGE:  No objections.

11          HEARING EXAMINER BRANCARD:  Thank you.  So  
12 admitted.

13                   (Exhibits C, C-1 through C-6 admitted.)

14          HEARING EXAMINER BRANCARD:  At this time Mr.  
15 Examiner, I would pass Mr. Parker for questioning by  
16 opposing counsel and the Division.

17          HEARING EXAMINER BRANCARD:  Okay.  Let me take a  
18 moment to check in with the court reporter.

19          REPORTER:  I'm good.

20          HEARING EXAMINER BRANCARD:  Mr. Savage, it's your  
21 witness.

22                                   CROSS-EXAMINATION

23          BY MR. SAVAGE:

24           **Q.     Good afternoon, Mr. Parker.  My name is Darin**  
25 **Savage.  I'm counsel for Flat Creek, and I appreciate your**

1 time and presence here to address some of the questions that  
2 we have regarding the geology on Section 23.

3 I would like to start out, I know you testified  
4 before for the Oil Conservation Division. How long have you  
5 worked for Matador?

6 A. About four and a half years.

7 Q. Four and a half years. And prior to that, when  
8 did you graduate with your finishing degree as a  
9 professional geologist?

10 A. December 2007.

11 Q. Okay. And can you give an estimate on how many  
12 geological projects you have worked on in the Permian Basin  
13 in New Mexico, first with Matador, and then in general since  
14 you began your professional career in 2007? Ballpark  
15 estimate.

16 A. The company I worked with ten years prior to  
17 Matador, dozens.

18 Q. Dozens.

19 A. At Matador I have been involved in every asset  
20 that Matador is operating in the Delaware Basin.

21 Q. I will say just originating out of the new  
22 projects that you -- that were you involved in the  
23 initiation of, not the existing, existing assets. I'm just  
24 curious.

25 A. I don't know if I could put a number on that. I

1 mean, it's a lot. I have been involved with a lot of  
2 projects.

3 Q. Was the reference to the prior projects as  
4 dozens, do you consider that a lot when you say dozens? Is  
5 that considered a lot in the industry?

6 A. I don't know what -- I don't know how that's  
7 relevant to this or --

8 Q. Well, I'm just trying to understand and get a  
9 perspective on your experience as a geologist. You say a  
10 lot, that you worked on a lot with Matador, would you  
11 consider your previous projects of dozens a lot, then we can  
12 look -- you know, get some perspective on what a lot means.  
13 Would that be correct?

14 A. I have been in the industry for, you know, going  
15 on 14 years.

16 Q. Okay.

17 A. And, you know, it would take me a while to  
18 accurately count everything that I have done. It's --

19 Q. I understand that. I was just trying to get a  
20 ballpark perspective on that. When was the first time you  
21 testified for the NMOCD in New Mexico? Can you estimate?

22 A. I guess I started with Matador in November of  
23 2016 and sometime within my first year of working at  
24 Matador, so sometime in 2017. I could go and find an exact  
25 date.

1 Q. No, thank you. That gives us a nice picture of  
2 your career, and I appreciate that. That's fine. I was  
3 looking at your affidavit, in Paragraphs 14 and 15, let's  
4 look at that question, this issue here about drain. You  
5 talk about drainage, you talk about Flat Creek draining the  
6 Kathy Coleman, potentially draining or allegedly draining  
7 the Kathy Coleman 208H as an offsetting well, and I believe  
8 you also mentioned other offsetting wells that might be  
9 threatened.

10 I was looking on Exhibit C-6, there is a graph on  
11 the right-hand side of C-6, and that line goes west to east  
12 in Section 14, that is the Kathy Coleman well or depiction  
13 of; correct?

14 A. Yes, that's the Kathy Coleman 208.

15 Q. And then that looks like the -- looking at the,  
16 comparing that to, and what's below that, I think the 70 --  
17 it's the 13 Second 701, or the what is the red line right  
18 below the Kathy Coleman?

19 A. That's Flat Creek's proposed 701.

20 Q. 701. It looks like the Kathy Coleman is quite a  
21 bit closer to the south line of the section than the 701 is  
22 to the same line, that being the north line of Section 23;  
23 is that correct?

24 A. Yes.

25 Q. Do you have the numbers on that?

1           A.     It's following the Purple Sage Pool rules of 330  
2 foot setback from the lease line.

3           **Q.     So it's actually at the 330 foot setback, right**  
4 **on the line?**

5           A.     Probably a little bit more than that. I would  
6 have to go measure to get actual footage. It's not --

7           **Q.     Do you have it in your affidavit what that, what**  
8 **that distance is? I know you mentioned some --**

9           A.     No, I don't, I don't believe I referenced the  
10 actual footage.

11          **Q.     But it's somewhere around 330, maybe a little bit**  
12 **more than 330. Would that be a fair assessment?**

13          A.     That's my best guess, but I can't confirm that.

14          **Q.     And then the 701, do you know how far that is**  
15 **from the north line of Section 23?**

16          A.     From Flat Creek's proposal, we believe it to be  
17 590 feet.

18          **Q.     So it's actually, you know, quite a percentage**  
19 **further away from the section line than the Kathy Coleman?**

20          A.     Can you repeat that?

21          **Q.     No, that's -- so it's quite a bit further away**  
22 **from the section line than the Kathy -- the Kathy Coleman**  
23 **obviously is closer?**

24          A.     It's further.

25          **Q.     As you -- why do they have that setback? That is**



1 to protect the correlative rights of the adjacent owners; is  
2 that correct?

3 A. I'm not a regulatory person, but I would assume  
4 so.

5 Q. Well, you mentioned drainage and that has to do  
6 with encroaching upon correlative rights.

7 A. Uh-huh.

8 Q. Would you agree with that? And the closer you  
9 make your laterals to the section line or closer to the  
10 setback, would it be fair to say that there is a greater  
11 risk of drainage that another well in the opposite section  
12 produces in an adjacent -- in the adjacent section? Is  
13 there a greater risk the closer you get to that setback? Is  
14 there a greater risk?

15 A. (No response.)

16 Q. So, for example, if the Kathy Coleman were say  
17 let's 600 feet from the south line, there would be less risk  
18 of drainage. The fact it's closer to a 330 setback, is it  
19 fair to say that that is a greater risk or potentially  
20 greater risk?

21 A. Sure, it's a greater risk.

22 Q. Okay. So really the Matador, the risk that you  
23 can talked about the drainage of this particular well, it  
24 was really a risk that Matador created by placing the  
25 Coleman so close to the adjacent unit as opposed to the

1 proposal that Flat Creek has to drill the 701 in its  
2 location. Is that a fair question?

3 A. I don't know if it's a fair question.

4 Q. Is it a valid question? I mean, when you drill a  
5 lateral near the section line, you would have to presume  
6 that it's adjacent to a unit to the south, that an operator  
7 is going to drill and develop that unit to the south; is  
8 that correct? You would presume that?

9 A. (No response.)

10 Q. I mean, both operators are developing in this  
11 area in surrounding sections, in adjacent sections, when you  
12 place a lateral along, along the setback, do you assume that  
13 potentially an operator could come along and develop in that  
14 adjacent section?

15 REPORTER: Can I get the witness to speak louder?

16 A. I haven't said anything because I'm not sure what  
17 he is trying to get me to say. He is trying to get me to  
18 assume things that I'm not --

19 Q. I'm not trying to get you to say anything. I'm  
20 asking questions I'm hoping you can supply an answer to the  
21 question. If you need additional information, or if you  
22 want to ask me to reframe or elaborate, please do. But I'm  
23 really not trying to get to anything. I'm trying to  
24 understand or establish through questioning whether or not  
25 an operator or geologist, when they make a decision to place

1 a lateral, are there risks of drainage involved in that  
2 decision based on the location?

3 A. Yes.

4 Q. Okay. So you take that risk into account knowing  
5 that -- you take that risk into account knowing that  
6 operators will drill in the adjacent unit?

7 A. Yes.

8 Q. Okay. And you know, would it be fair to say that  
9 if an operator has a right to drill in an adjacent unit, and  
10 they, and they pass all regulatory requirements and  
11 statutory requirements, that the OCD should allow them to  
12 develop that unit that they are proposing; correct?

13 A. Yes.

14 Q. Okay. Thank you. I'm -- you mentioned in your  
15 affidavit that Matador proposed Section 23, and let see if I  
16 can find the paragraph. Matador it proposed Section 23 in  
17 these cases to efficiently and effectively develop the  
18 Wolfcamp formation in the entire section?

19 A. Yes.

20 Q. Is the geology in the Wolfcamp, as you assess it,  
21 is it prime for optimal development?

22 A. Yes.

23 Q. I mean, it's good geology; is that correct?

24 A. It's a reservoir that we would want to develop.  
25 It's very broad -- that's a very broad statement.

1 Q. Is the characteristics for development uniform  
2 across the entire section?

3 A. I mean, it can change with, you know, within a  
4 certain area, but --

5 Q. For example, the well that you proposed in the  
6 N/2 S/2 of Section 23, you expect that to produce on par  
7 with a well that you would propose in the N/2 N/2 of Section  
8 23? I mean, they would be comparable in terms of  
9 production, is that correct, if everything went correctly as  
10 planned? Based on the geology.

11 A. I need you to rephrase it.

12 Q. Okay. So looking across the geology of Section  
13 23, you -- it looks like in your testimony you state there  
14 is no pinchouts, there is no structures that are im -- no  
15 geological impediments to horizontal drilling, and we are  
16 talking about the Wolfcamp formation, and these are Upper  
17 Wolfcamp, and these have involved I believe Sands; is that  
18 correct?

19 A. Yes.

20 Q. So are the Sands, are essential production for  
21 the sands optimal across the entire Section 23? Pretty  
22 much?

23 A. We believe so.

24 Q. So a well that can be drilled in the N/2 N/2 of  
25 Section 23, you would expect good production from that well,

1 the same as if you drilled a well in the N/2 S/2 of Section  
2 23, they would be comparable if everything went correctly.  
3 As planned.

4 A. If all things were totally equal, sure.

5 Q. Okay. So you started the development across this  
6 Section 23 which is fairly uniform as you mentioned in the  
7 S/2 S/2; correct?

8 A. Yes.

9 Q. And listening to Mr. Goodwin's testimony, that  
10 well has basically underperformed; is that correct?

11 A. Relative to our expectations, sure.

12 Q. Relative to your expectation -- what about the  
13 industry standards? What about relative to the industry  
14 standards, has it underperformed?

15 A. I don't think that's a fair question. That's  
16 a -- what are industry standards?

17 Q. Can you define industry standards, what you would  
18 expect in that area?

19 A. No, I don't think so.

20 Q. Okay. What were your expectations for that well?

21 A. I mean, I can't speak to what the company EUR  
22 expectation was for the well.

23 Q. Okay. So you said that it underperformed in  
24 relation to your expectations. So it sounded to me like you  
25 had certain objective expectations that you are measuring

1 **that underperformance by. What would those objective**  
2 **expectations be internally within your company?**

3 A. Relative to this general area, within a few miles  
4 of this acreage, Matador over a period of several years has  
5 marched up and down this acreage and drilled a number of  
6 wells, and we achieved a range of results across those  
7 wells. And as we moved from area to area, you know, we  
8 assess, you know, best performers and worst performers and  
9 an average.

10 Q. **That's good, that's a good explanation. So based**  
11 **on that, let's, what is the average, what would be the**  
12 **average EUR and what you would expect as an average EUR for**  
13 **this area?**

14 A. I'm not going to discuss company EURs. As Adam  
15 said earlier, that's a subjective number.

16 Q. **EUR is a subjective number?**

17 A. It's a number that can be -- it's interpreted by  
18 a number of factors.

19 Q. **What factors would an EUR be based on? Can you**  
20 **give me five general factors, five general factors, or three**  
21 **general factors.**

22 A. EUR is a prediction of what a well is going make  
23 at any number of years out into the future far beyond, you  
24 know, far beyond the scope of our time here. And there is  
25 number of, you know, there is a decline rates, there is, you

1 know, various reservoir engineering factors that go into  
2 determining that number, and those numbers change over the  
3 life of the well as production changes through the life of  
4 the well.

5 Q. And but all those factors are measurable; is that  
6 correct?

7 A. No, they are not all measurable. Some of them  
8 are up to the interpretation of the person looking at the  
9 data. That's why, you know, they're -- that's why we are  
10 saying they are interpreted numbers.

11 Q. So the bottom, but the bottom line on this is  
12 that this well, the 204 underperformed, based on your  
13 expectations, it underperformed, and you said that  
14 previously and that would be an accurate statement?

15 A. Yes.

16 Q. So is it -- would you say that it did not, this  
17 well did not take full advantage of the potential geology in  
18 the S/2 S/2?

19 A. No, I wouldn't say that.

20 Q. Why wouldn't you say that?

21 A. Because, I mean, we steered the well and executed  
22 the well, you know, I would say flawlessly. We completed it  
23 like we do other wells, but sometimes -- sometimes the  
24 geology gives you what it gives you.

25 Q. So you think it was just the geology that caused

1 it to be substandard?

2 A. For this one well, yes.

3 Q. And that geology you measured as being the same  
4 across Section 23 in the other, in the other proposed land  
5 descriptions? So you said earlier that it was the same  
6 geology and uniform across the section, and so are you  
7 saying that the geology of the S/2 S/2 is suddenly  
8 different?

9 A. There are -- there are subtle variations in  
10 geology across any given area.

11 Q. Could it have -- you say that it was executed in  
12 terms of operations and engineering flawlessly. Are you an  
13 expert engineer to make that assessment?

14 MR. RANKIN: Objection, I think, Mr. Savage, can  
15 you direct us to where that testimony is?

16 MR. SAVAGE: Well, if the geology is uniform as  
17 generally described in the S/2 S/2 underperformed, you know,  
18 he -- the witness described it as possibly being the  
19 geology, but it may not be the geology, and so I'm trying to  
20 understand what other factors might be involved that could  
21 cause the underperformance. So I will rephrase -- is it,  
22 Mr. Rankin, is it all right if I reframe and ask about the  
23 possibility of the engineering being a factor?

24 MR. RANKIN: Yeah, ask your question. I wasn't  
25 sure -- I thought you were characterizing his prior



1 testimony.

2 MR. SAVAGE: No, I'm sorry, I -- I didn't mean  
3 to come across that way, so --

4 Q. So Mr. Parker you mentioned that geology could  
5 have been a factor, but could also engineering and  
6 operations be a factor in how -- in the underperformance of  
7 that well?

8 A. (No response.)

9 Q. In other words was the -- can you accurately  
10 assess that it was a drill and operated flawlessly?

11 A. There was a well that was drilled, the well was  
12 drilled in our target zone. There were no, you know, there  
13 were no issues with that drilling, you know. There were no  
14 issues getting, you know, getting casing to the bottom of  
15 the well, and the well was fracked in the same manner with  
16 the same outcome as is any number of wells that Matador has  
17 drilled in this area. And then, you know, in terms of  
18 flowback and production and any number of those things,  
19 it's, you know, it's -- it was that kind --

20 Q. How do you know -- I'm sorry, how do you know the  
21 lateral of this well was consistently within the target  
22 zone?

23 A. Because we, we steer our wells using the MWD,  
24 that's measured well drilling gamma ray, and we have our  
25 directional surveys, we steer them to read seismic data, and

1 we monitor these wells 24, 24-7 while we are drilling them.

2 Q. And is it true that the engineer and the  
3 operations engineer and drilling engineer are the ones who  
4 make that assessment and can do the drilling and do the  
5 monitoring?

6 A. Can you repeat?

7 Q. Is it true -- who is responsible for the drilling  
8 of the well to ensure that it's in the, in the zone?

9 A. At Matador it's a large team effort, with a  
10 (unclear) from different, from different disciplines  
11 communicating 24-7 during the drilling of the well.

12 Q. And that would fall into the engineering  
13 expertise?

14 A. No, it would fall into engineering and  
15 geoscience.

16 Q. Who determines exactly where the well will be  
17 drilled? Who determines the accuracy of the drilling  
18 itself?

19 A. The geologist.

20 Q. The geoscientist?

21 A. The geoscientist choose the target and define the  
22 window that we want the wellbore to be in, and then we work  
23 with the drilling engineers on planning that and making sure  
24 that that's executed correctly.

25 Q. So the drilling, it's fair to say the drilling

1 engineers play a very significant role in drilling and  
2 operations of making sure that the drilling and laterals are  
3 accurate and they are targeted where they are supposed to  
4 be, they play a significant role in that?

5 A. From a mechanical standpoint of the rig they do.  
6 From the -- from the interpretation of the geology and the  
7 path of the wellbore, I would say that falls heavily on  
8 geoscience.

9 Q. Do you drill the wells in the N/2 S/2 of Section  
10 23, would you do it exactly like the 204? Or would it be a  
11 different, a different target, a different zone. Would you  
12 remediate your -- I'm sorry, I'll -- the question is, would  
13 you remediate your efforts on that well to try to improve  
14 the expected production -- the expectations of production,  
15 would you change anything based on your experience in the  
16 S/2 S/2?

17 A. In terms of our target and well planning, it will  
18 be the same target and we will -- we will make sure that  
19 that wellbore is in the same Sand target. In terms of, you  
20 know, any changes in completion or pipe design or anything  
21 like that, it's -- I can't speak to that.

22 Q. And why can't you speak to that, Mr. Parker?

23 A. Well, because -- because we are constantly  
24 evolving technologically as a company and Norris Thornton  
25 was drilled over two years ago, and we are always making

1 revisions to, to how we complete our wells and --

2 Q. And is one of the reasons you can't speak to that  
3 is because that falls under engineering expertise?

4 A. Yes, I'm not a completions engineer.

5 Q. And so really for the, the examiners to fully  
6 understand how you might improve the production of a well in  
7 the next well that it drills, or if it had the opportunity  
8 to drill, the next well that it drills in this section,  
9 really for the examiners to understand you would really need  
10 to provide engineering expertise today to, to provide that  
11 explanation and assessment; is that correct?

12 A. I can't speak for the examiners on that.

13 Q. In order for a person to understand fully how  
14 Matador would improve its production in the next well it  
15 drills, because that production relies on engineering  
16 expertise, it would require the explanation from an  
17 engineering perspective or expert. Is that a fair -- is  
18 that a fair statement?

19 A. I really don't know how to answer that.

20 Q. Okay, that's fine. Matador didn't provide  
21 engineering expertise today in this hearing; is that  
22 correct?

23 A. No, we did not.

24 Q. Drilling engineering expertise or reservoir  
25 engineering expertise, do you feel like this is something

1     **that we needed to discuss how Matador would improve the**  
2     **production in the next well?**

3           A.     No, I don't think so. Matador's record in the  
4     area is enough to show that geologically we have a good  
5     handle on this area, and we, I think we execute very well in  
6     this area as a company and continue to do better and better  
7     every day.

8           **Q.     Geologists can't speak to the engineering**  
9     **expertise that's needed to --**

10           MR. RANKIN: Mr. Examiner, I would object. I  
11     think Mr. Savage has asked many questions about the  
12     engineering and geology and I think he has made his point.

13           MR. SAVAGE: I think so, Mr. Rankin, I was trying  
14     to get to some specific information on that, and I felt like  
15     I was not getting the full answer, and I apologize I may  
16     have gotten a little carried away.

17           **Q.     Thank you, Mr. Parker, for your time on this. I**  
18     **have no further questions.**

19           HEARING EXAMINER BRANCARD: Mr. Rankin, any  
20     redirect?

21           MR. RANKIN: Thank you, Mr. Examiner. I just  
22     have one question for Mr. Parker.

23                           REDIRECT EXAMINATION

24     BY MR. RANKIN:

25           **Q.     Mr. Parker, you referred to your Exhibit C-6 on**

1 your exhibit packet. Let me know when you are there?

2 A. I'm there.

3 Q. Mr. Savage was asking you questions about the  
4 location of the Kathy Coleman relative to the proposed  
5 location of the Flat Creek 13 Second 701H well. Do you  
6 recall that?

7 A. Yes.

8 Q. I just want to point out one thing -- one thing,  
9 first of all, Mr. Parker, since these exhibits were filed,  
10 do you have a better understanding now about the depth  
11 target that Flat Creek is targeting in this zone?

12 REPORTER: I'm getting feedback. I think it's  
13 Mr. Savage.

14 Q. Mr. Parker, can you hear me now okay?

15 A. Yes.

16 Q. Mr. Savage was asking you questions about  
17 Exhibit C-6, in particular he was asking about the setback  
18 location of the Kathy Coleman relative to the locations of  
19 the proposed Flat Creek wells and the red dots. Do you  
20 recall that?

21 A. Yes.

22 Q. Now since these exhibits were filed and you  
23 prepared them, do you have a different understanding of the  
24 depth targets that Flat Creek is seeking targeting?

25 A. Do I have a different understanding now?

1 Q. Yeah, than what is presented in this exhibit?

2 A. Yes, I do.

3 Q. What's your understanding of the depth, the  
4 target that Flat Creek is proposing to target in the  
5 Wolfcamp?

6 A. I understand that they are going to target the  
7 same Sand that we are.

8 Q. Okay. So based on, based on your review of Flat  
9 Creek's exhibits, where would you put these red dots now?

10 A. They would -- they would just raise up directly  
11 next to our green dots in the yellow box.

12 Q. In that same yellow highlighting area there?

13 A. Yes.

14 Q. That's my first question. Just for clarification  
15 purposes, now the next question I wanted to ask you is sort  
16 of, you know, isn't the part of your direct testimony really  
17 that the proposed location of the Flat Creek 13 Seconds  
18 701-H well at a location 590 feet off the north line of  
19 Section 23 is going to be in a location at a spacing  
20 interval offsetting the Kathy Coleman that will now allow  
21 for the most effective and efficient drainage of Section 23,  
22 the N/2 of the section in which that well is proposed?

23 A. Yes.

24 Q. And that's because it's going to be too close,  
25 based on a matter of experience of drilling wells in this

1 area, to the offsetting, already-producing well, the Kathy  
2 Coleman 208H; correct?

3 A. That's correct.

4 Q. Okay.

5 MR. RANKIN: No further questions.

6 HEARING EXAMINER BRANCARD: Thank you. Mr. Lowe,  
7 any questions?

8 TECHNICAL EXAMINER LOWE: Yes, I do.

9 In reference to the same Exhibit C-6, those dots,  
10 those dots are indicated that the plan circle, the red dots,  
11 are those dimensions in reference to the surface location or  
12 the take points?

13 THE WITNESS: The footages, you mean?

14 TECHNICAL EXAMINER LOWE: Yes.

15 THE WITNESS: The footages are -- the footages  
16 are, you know, where the lateral position from the lease  
17 line is intended to be. So for instance, like, Colonel  
18 Howard 201, 990 from the north line, that isn't necessarily  
19 the footage of the surface location, but that is the  
20 distance from the north line that the majority of the  
21 lateral will be.

22 TECHNICAL EXAMINER LOWE: The majority of the  
23 lateral?

24 MR. RANKIN: Mr. Lowe, maybe I can help clarify.  
25 Mr. Parker, what Mr. Lowe is asking, correct me if I am



1 wrong, he is asking whether or not the locations on this  
2 exhibit are locations that are going to be open to, to the  
3 reservoir for production. Does that make sense?

4 THE WITNESS: No, I'm not following you.

5 TECHNICAL EXAMINER LOWE: Are these points, are  
6 they the end points of the frac zone?

7 THE WITNESS: This is some -- this is like a  
8 cross sectional view, you know, the -- so you can see that  
9 the north line of Section 23 is a dashed line from the left  
10 center of the page. And then the south line of Section 23  
11 is a dashed line on the right of the page, so it's like you  
12 are looking at a cross sectional view effectively from west  
13 to east, or east to west through that reservoir.

14 So you are looking at a, you know, a two  
15 dimensional point along the survey of the wellbore.

16 TECHNICAL EXAMINER LOWE: Yes, I guess that's all  
17 I'm trying to understand, what the circles actually mean in  
18 reference to what -- I kind of see what you are saying, but  
19 at the same time I'm -- basically those --

20 THE WITNESS: It's like looking at a cross  
21 section through the reservoir and you are looking -- I don't  
22 know if you can see me on the video, but it's like you are  
23 looking directly into the path of the wellbore. So it's,  
24 you know, it's more of a two-dimensional view,  
25 two-dimensional view into the path of the wellbore where we

1 plan on putting these laterals.

2 If you were to take this image and flip it up on  
3 its end in a three-dimensional view, you would see the paths  
4 of the wellbore going lengthwise.

5 TECHNICAL EXAMINER LOWE: I think I understand  
6 what you are saying. Okay. That is the only question I  
7 got. Thank you.

8 HEARING EXAMINER BRANCARD: Mr. Parker, just  
9 briefly, what is, what is the development plan of Matador  
10 for Section 23 based on your applications? How many wells?

11 THE WITNESS: Our plan would be to drill three  
12 more wells in this Wolfcamp XY Sand. So our -- looking at  
13 Exhibit C-6, Bill, we will drill the three, the three green  
14 dots in between the two black dots. The two black dots are  
15 the wells that we have already drilled.

16 HEARING EXAMINER BRANCARD: You've drilled two  
17 wells?

18 THE WITNESS: Well, we have drilled one well in  
19 the section, but I'm showing one additional well in the  
20 section to the north, that's the Kathy Coleman 208, but in,  
21 in this Section 23, we will drill three more Upper Wolfcamp  
22 wells.

23 HEARING EXAMINER BRANCARD: Okay.

24 MR. RANKIN: Mr. Examiner, if I might make one  
25 point of clarification on that response for the benefit of

1 your question. You asked about Matador's proposed  
2 development plan based on the applications, and just so it's  
3 clear, the application for the S/2 of the section has one  
4 initial well proposed, and that's the existing well, the  
5 Norris Thornton Number 204H.

6 The Number 203H in the S/2 is intended to be an  
7 infill well that was proposed for purposes of demonstrating  
8 Matador's plan to develop the whole acreage, but that is not  
9 identified as an initial well in any of the applications.

10 On the N/2 the two wells identified in this  
11 exhibit would be initial wells proposed that are part of the  
12 applications in the N/2 spacing unit, just for  
13 clarification.

14 HEARING EXAMINER BRANCARD: Okay. Thank you.  
15 That helps. And you have looked at Flat Creek's proposals?

16 THE WITNESS: Yes.

17 HEARING EXAMINER BRANCARD: And what is their  
18 proposal in terms of number of wells that you're aware of?

19 THE WITNESS: We're aware of three wells.

20 HEARING EXAMINER BRANCARD: Okay. So I will ask  
21 this question of a Flat Creek witness, too. How do the  
22 development plans of the two entities differ?

23 THE WITNESS: It's just the lateral location of  
24 the horizontal wells. Their wells are -- their wells are  
25 shifted to the north from our wells. For their three wells

1 it looks as though they are maintaining similar spacing to  
2 us, even though they are shifting their wells farther to the  
3 north, closer to our Kathy Coleman, and farther away from  
4 the Norris Thornton.

5 HEARING EXAMINER BRANCARD: Okay. Do you see any  
6 geologic difference between those locations in terms of  
7 overall development of the resource.

8 THE WITNESS: From their three proposed wells to  
9 our three proposed wells?

10 HEARING EXAMINER BRANCARD: Exactly.

11 THE WITNESS: The biggest difference would just  
12 be the tighter spacing to the north and the looser spacing  
13 to the south, but we're going for the same target.

14 The reason that on this exhibit the targets  
15 appear differently is because we had -- I made a guess from  
16 the well proposals that they sent us, they sent well  
17 proposals with a TVD that is about 180 feet deeper than the  
18 actual target here.

19 And it wasn't until we saw their hearing exhibits  
20 that we were able to say, okay, they are going to drill the  
21 same Y Sand as us. So on this exhibit you could shift their  
22 three red dots up so they are going for the same target as  
23 we are, but their spacing, again, is tighter to the north  
24 and looser to the south.

25 HEARING EXAMINER BRANCARD: In your expert

1 opinion, do you see any significant difference in the  
2 development of the resource from these two competing plans?

3 THE WITNESS: I think that our spacing is optimal  
4 to theirs.

5 HEARING EXAMINER BRANCARD: How so?

6 THE WITNESS: We have learned from experience  
7 across this acreage that 1300 feet, which is -- or 1320  
8 which is 160 acre spacing is the appropriate spacing for  
9 this particular target in this area. Wells that are, wells  
10 that are spaced more, you know, closer than 1320 feet apart  
11 have a, have a higher risk of communication. And that, and  
12 that risk of communication is, is, you know, compounded  
13 with, with time as well.

14 If you get too close to a well that has been  
15 producing for a long time, then that interference between  
16 the two wellbores is a higher risk.

17 HEARING EXAMINER BRANCARD: thank you.

18 THE WITNESS: You are welcome.

19 HEARING EXAMINER BRANCARD: Mr. Rankin, anything  
20 further from your side of the aisle?

21 MR. RANKIN: Mr. Brancard, no, we have presented  
22 our three witnesses. We may reserve and present rebuttal at  
23 the end of this, but at this time we have no further  
24 witnesses to present, and we pass -- I guess appropriately  
25 at this time we would ask that the case -- not the case,

1 that the Division take case 21543 and 21630 under  
2 advisement.

3 HEARING EXAMINER BRANCARD: Have you submitted  
4 all your exhibits?

5 MR. RANKIN: Mr. Examiner, we have. I believe we  
6 admitted Exhibits A and A-1 through A-9, B and B-1 through  
7 B-4, C and C-1 through C-6, and also Exhibit D, which is our  
8 notice exhibit. We did that at the outset, but I think  
9 everything has been admitted into the record.

10 HEARING EXAMINER BRANCARD: Okay. Thank you.  
11 Mr. Savage, how many witnesses do you have?

12 MR. SAVAGE: I'm going to let Bill Zimsky,  
13 Mr. Zimsky come forward at this point to give you an  
14 overview of the -- of the cases involved.

15 HEARING EXAMINER BRANCARD: I just need a number  
16 of witnesses.

17 MR. ZIMSKY: We have three.

18 HEARING EXAMINER BRANCARD: Thank you. So let's  
19 take a ten-minute.

20 HEARING EXAMINER BRANCARD: We are going to take  
21 a break until 3:05 and then we will begin with Flat Creek's  
22 case.

23 (Recess taken.)

24 (Cases 21560 and 21747 held as follows:)

25 HEARING EXAMINER BRANCARD: Are your witnesses in

1 one place, or are they scattered across the landscape, or  
2 where are they?

3 MR. ZIMSKY: They are in their Dallas office. I  
4 think everyone is in their separate office, and I think we  
5 are going to call our reservoir engineer first, Mr. Kote.  
6 First he needs to -- he has an appointment for later this  
7 afternoon, so --

8 HEARING EXAMINER BRANCARD: If we have all three  
9 of them ready, we can swear them all in together, if that's  
10 possible. If not, we can do them --

11 MR. ZIMSKY: I think we are going to have to do  
12 it one by one.

13 HEARING EXAMINER BRANCARD: Okay. All right.

14 MR. ZIMSKY: I would like to call Anand Kote.

15 HEARING EXAMINER BRANCARD: Do you solemnly swear  
16 the testimony you are about to give is the truth and nothing  
17 but the truth?

18 THE WITNESS: It is the truth.

19 ANAND KOTE

20 (Sworn, testified as follows:)

21 DIRECT EXAMINATION

22 BY MR. ZIMSKY:

23 Q. Can you introduce yourself and spell your first  
24 and last name?

25 A. My name is Anand Kote, spelled A-n-a-n-d, last

1 name is K-o-t-e.

2 Q. Now, you have never been qualified as an expert  
3 reservoir engineer in front of the New Mexico Oil  
4 Conservation Division; correct?

5 A. That's correct.

6 Q. Let's go over -- and did you attach -- there is  
7 two different hearing packets, one for the -- I'm going to  
8 refer to it as the 480 acre unit, and one for the N/2, and  
9 your testimony there is in Exhibit C in both of those  
10 hearing packets; is that correct?

11 A. That's correct.

12 Q. And you have attached your resume to each of  
13 your -- in each hearing packet; is that correct?

14 A. That is correct.

15 Q. Could we -- I just want to go over your  
16 education, experience in the field of engineering and  
17 reservoir engineering. So could you just briefly describe  
18 your educational background?

19 A. Yes. I have a bachelors of mechanical  
20 engineering from University of Pune in India. I completed  
21 my undergrad in 2013. I also hold a master of science in  
22 industrial engineering from University of Texas Arlington.  
23 I completed my masters in 2016.

24 I have been employed as a reservoir engineer  
25 since then covering different spectrums of engineering, like



1 operations, reservoir engineering and completions.

2 Q. And who did you first work for after you got your  
3 masters?

4 A. I started working for Black Mountain Oil & Gas.

5 Q. And what were your responsibilities when you  
6 first got there? What kind of work were you doing?

7 A. I started with Black Mountain Oil & Gas as a  
8 reservoir engineer. I was assigned with the responsibility  
9 to build type curves for both economic evaluations, economic  
10 models for PDPs, for PDFPs acquisition and (unclear).

11 I was also assigned the responsibility to study  
12 the completion aspect of the operators in the Permian Basin  
13 and figure out what, what is an optimum completion strategy  
14 to in fact complete those.

15 Q. Okay. And if you could slow down a little bit,  
16 that would make it easier for the court reporter to  
17 transcribe your testimony. You said you evaluated PDP  
18 packages. Could you explain what that involved?

19 A. Yes. PDP means approved and producing assets,  
20 basically the ones which are already drilled and producing.  
21 So I have to access their recoveries on the (unclear) and  
22 perform an economic evaluation on those assets.

23 Q. Did you conduct reservoir engineering studies as  
24 part of your work for Black Mountain?

25 A. I did. I did perform a reservoir engineering

1 study of -- I had formal reservoir applied engineering  
2 training. I got certified with (unclear) for applied  
3 reservoir engineering where I studied (unclear) EUR  
4 quantifying those using various approaches like (unclear)  
5 and so on.

6 **Q. And so you, was one of your certifications**  
7 **applied reservoir engineering; correct?**

8 A. Yes, that's correct.

9 **Q. And the certification you got from Haliburton,**  
10 **can you describe what that is?**

11 A. It is a software certification. It is basically  
12 Haliburton economic evaluation software where you forecast  
13 the well (unclear) for economic on the outcome of the well.

14 **Q. And can you briefly describe in your**  
15 **participation in drilling and completion design for Wolfcamp**  
16 **wells in the Northern Delaware Basin?**

17 A. Yes. As a part of the Black Mountain team, we  
18 drilled Wolfcamp XY wells less than three miles from the  
19 (unclear). As a part of the team member, I studied the  
20 completion strategies of different operators back in 2017  
21 and assessed the productivity and the effects of completion  
22 in production.

23 **Q. And in that study, did you come to any**  
24 **conclusions about the effects of completion techniques on**  
25 **well performance?**

1           A.     (Unclear.) Yes, I certainly did. The completion  
2 jobs that are done with the (unclear) water fracs related  
3 productivity to the operator rather than the completion job.

4           **Q.     And did you, during your studies at the time you**  
5 **worked at Black Mountain or during the time at Flat Creek,**  
6 **have you reviewed the placement of laterals in Wolfcamp**  
7 **wells vis-a-vis what part of the sand they are in, if they**  
8 **are in the middle or the bottom?**

9           A.     No, I haven't, that was mostly the responsibility  
10 of the geologist.

11          **Q.     Okay. And then did you, did you have any**  
12 **experience in helping the operation to make sure that the**  
13 **wellbore was where it was supposed to be as you drilled**  
14 **laterally?**

15          A.     Yes. I mean, I worked as a part of the team  
16 where I was involved with operation engineer to design the  
17 lift mechanism out of -- the kind of mechanism required to  
18 lift hydrocarbons from the ground.

19          **Q.     And now, in your resume, November 2019 to**  
20 **present, you have been employed by Flat Creek Resources;**  
21 **correct?**

22          A.     That is correct.

23          **Q.     Are there other people from Black Mountain at**  
24 **Flat Creek?**

25          A.     Yes, there are.

1           **Q.     How many people that you worked with at Black**  
2 **Mountain are now at Flat Creek?**

3           A.     There are two more people I worked with in Black  
4 Mountain are currently part of Flat Creek.

5           **Q.     That you worked with at Black Mountain?**

6           A.     Correct.

7           **Q.     And as you -- developing type curves, evaluation**  
8 **models for new PDP acquisition, complete development models,**  
9 **can you explain that briefly, what that involved?**

10          A.     Yes.  Creating a type curve is basically  
11 estimating your future production from a new well that you  
12 are going to create based on the -- based on the production  
13 drill from an offset operator.  That's what building a type  
14 curve is about.

15                 Second, building a complete (unclear) model means  
16 using that type curve to forecast how you're going to  
17 develop your complete asset in that section with correct  
18 spacing, correct completion technology, and using the same  
19 reasons as your type curve.

20          **Q.     And the second bullet point talks about working**  
21 **with Geo team reservoir and log characteristics and EUR,**  
22 **estimated ultimate recovery.  Can you speak a little bit**  
23 **about that?**

24          A.     Yes, correct.  So I generally work with, closely  
25 with the geologist part of the team to determine if the EUR

1 is clean, how thick it is, if there is presence of black  
2 (unclear) in the reservoir that an operator is going to  
3 target or as a company we are going to target in the future,  
4 and quantify the (unclear) based on those assets along with  
5 the production from offset operators.

6 **Q. And can you speak a little bit about estimated**  
7 **ultimate recovery and the training and experience you have**  
8 **had in making those calculations?**

9 A. Yes, I completed my applied reservoir engineering  
10 certification where I learned to collect estimate ultimate  
11 recovery with using different approaches like (unclear) and  
12 decline curve analysis. On top of that I'm also certified  
13 with petroleum software which is another tool used in  
14 industry accepted to calculate the estimated ultimate  
15 recovery and (unclear).

16 **Q. And what kind of considerations or factors did**  
17 **you use to make EUR calculation?**

18 A. I perform a decline curve analysis to calculate  
19 an EUR. A decline curve analysis is calculated based off  
20 the measure production from an existing well assuming that  
21 water will contour the shape of production curve in the past  
22 is going to do so in the future.

23 **Q. And when you develop type curves for -- can you**  
24 **exchange again what a type curve is?**

25 A. Type curve is basically forecasting a well to

1 assess how much estimated ultimate recovery you are going to  
2 have in future wells.

3 **Q. In your experience at Flat Creek or Black**  
4 **Mountain, you have developed some type curves, have they**  
5 **proved to accurate or close to what you would expect from**  
6 **the well you type curve?**

7 A. Yes. So I had a Wolfcamp XY type curve for  
8 Cyprus 1H which was drilled back in 2017 when I was a part  
9 of Black Mountain. The well produced, on a type curve,  
10 approximately for 24 months before there was some  
11 operational issues with the well which it never recovered  
12 from, but after drilling and completing the well, Black  
13 Mountain never retained the well. It was Black Mountain  
14 (unclear) operations on that well.

15 **Q. So at the time it experienced some difficulties,**  
16 **Marathon was operating the well?**

17 A. Correct.

18 **Q. And of these type curves you estimated, they**  
19 **involve Wolfcamp wells in this area?**

20 A. Yes.

21 **Q. Yes?**

22 A. Yes.

23 **Q. Okay. And currently has Flat Creek Resources**  
24 **drilled wells in the Permian Basin?**

25 A. Flat Creek has drilled three wells in Reeves

1 County in the Permian Basin.

2 Q. And do you have other wells scheduled to, to  
3 develop?

4 A. Yes, we have another well scheduled to develop  
5 starting from next month or middle of this month in Eddy  
6 County, New Mexico.

7 Q. Is that a four-well -- four-lateral cluster?

8 A. Yes, it's a four-well program.

9 Q. And have you had experience in optimizing well  
10 spacing for Wolfcamp wells or Bone Spring wells or other  
11 wells in this area?

12 A. Yes, I do. I have studied the full section  
13 development of and understand the effects on the  
14 productivity of the wells. We have done some studies on the  
15 full section development of Wolfcamp wells, of XY.

16 MR. ZIMSKY: Mr. Hearing Examiner, I tender  
17 Mr. Kote as an expert witness in the field of oil and gas  
18 reservoir engineering with the experience in calculating  
19 estimated ultimate recovery, developing type curves and  
20 analyzing reservoir characteristics.

21 HEARING EXAMINER BRANCARD: Mr. Rankin, any  
22 objections?

23 MR. RANKIN: No objections.

24 HEARING EXAMINER BRANCARD: Thank you. So  
25 accepted.

1 Q. Mr. Kote, I want to talk about your statements.  
2 Let's go to Case Number 21560. Do you have that in front of  
3 you?

4 A. Yes, I do.

5 Q. And is this your -- it's on Page 70 of the  
6 hearing packet PDF, but it's Exhibit C, self-affirmed  
7 statement of Anand Kote, and is that your signature on the  
8 fourth page?

9 A. Yes, it is my signature.

10 Q. And was this testimony prepared by you or at your  
11 direction?

12 A. It was prepared by me.

13 Q. And there are three exhibits attached, there is a  
14 C-1, C-2 -- or C-1, which is two pages, there is a C-2 and a  
15 C-3. Did you prepare those exhibits based upon public  
16 records, company records, and based on your calculations?

17 A. That's correct.

18 MR. ZIMSKY: I would move for admission in Case  
19 Number 21560 for Exhibit C and Exhibits C-1, C-2 and C-3.

20 HEARING EXAMINER BRANCARD: Any objections?

21 MR. RANKIN: No objection.

22 HEARING EXAMINER BRANCARD: So admitted.

23 (Exhibits C, C-1, C-2, C-3 admitted.)

24 Q. Let's go through the next hearing packet, and  
25 that's the hearing packet for the N/2 N/2.



1 A. Yes. I have got it.

2 Q. Do you have that in front of you?

3 A. Yes.

4 Q. And that's Case 21747. And again going to  
5 Exhibit C, and that's your statement, three pages with  
6 the -- is that your testimony?

7 A. Yes, it is.

8 Q. And Exhibit C-1, which is two pages, C-2 and C-3,  
9 those are the same exhibits as in the other case; correct?

10 A. (Nodding.)

11 Q. That's a yes? You have to say yes for the court  
12 reporter.

13 A. Yes. Yes.

14 Q. Okay, thank you. And were these prepared by you  
15 based upon public records or records obtained in the regular  
16 course of business for Matador based upon your expertise as  
17 a reservoir engineer?

18 A. Yes, that is correct.

19 Q. And I went to go back to case number -- Exhibit C  
20 in case Number 21560. Do you have that in front of you?

21 A. I do.

22 Q. Now, Page -- in Paragraph 5, on the sixth line,  
23 it reads Projection of 456 MBO, do you see that?

24 A. Yes, I do.

25 Q. And then down below in Paragraph Number 9, it has

1 the EUR 465 MBO, do you see that?

2 A. Yes.

3 Q. Which one is -- I assume they are talking about  
4 the same thing, so which one is the correct number? It  
5 seems like they have two numbers that are transposed.

6 A. Okay, so I thought so 306 MBO is for the existing  
7 Norris Thornton 204H which is already in the S/2 S/2 of  
8 Section 23, and 463 -- or 465 MBO is for the future drilling  
9 of Wolfcamp XY that Flat Creek will produce if go ahead with  
10 the opportunity to operate.

11 Q. My question is, it 465 or 456?

12 A. 465.

13 Q. Okay. And just for clarification, this is  
14 explained in exhibit, I believe, but that's a, quote, per  
15 stick, closed quotes, calculation, in other words it's not  
16 456 MBO because there is 480 acres versus 160 acres, it's  
17 based -- what is that based upon?

18 A. Okay. So, no, it is not a function of number of  
19 acreage. It is a function of a well, how well one  
20 particular well produces. It is completely different than  
21 how well you drill the well, of how modern frac or how  
22 modern technology you use to complete the well.

23 Q. And in making these calculations, did you review  
24 the Norris Thornton 204H well to make the calculation of the  
25 306 MBO?

1           A.     Yes, I do believe we used Norris Thornton 204H to  
2     make the calculation.

3           **Q.     You have heard the testimony from Matador that**  
4     **that well is producing less than expected. Can you explain**  
5     **why it's producing less than expected?**

6           A.     I think there are a couple of reasons that well  
7     is producing less than expected, plus the first reason is, I  
8     think the wellbore has more (unclear) the well pocket is not  
9     completely in the (unclear). And second, the well was  
10    completed in 2017 with old completion design not putting --  
11    using a hybrid job rather than a slick water job.

12           MR. RANKIN: Mr. Examiner, I'm a little confused  
13    by the testimony that Mr. Zimsky is eliciting because I  
14    think we have submitted our direct testimony already.

15           MR. ZIMSKY: Mr. Rankin, you know, point taken.  
16    The -- you obviously indicated you are going to have some  
17    rebuttal testimony. This might be in the form of responding  
18    to a direct testimony -- it's not his direct -- it's his  
19    direct testimony, and so his testimony responding to the  
20    case presented by Matador. So I thought it would be more  
21    efficient to ask a few questions about that while he is here  
22    so we don't have to recall him as a rebuttal witness, but  
23    obviously the hearing examiner, however you want to do it.

24           HEARING EXAMINER BRANCARD: Yeah, I thought we  
25    were just going to cover the prefiled testimony. Did

1 Mr. Kote have prefiled testimony?

2 MR. ZIMSKY: Yes, and that's what we were  
3 discussing. With that, I will tender the witness for  
4 cross-examination.

5 HEARING EXAMINER BRANCARD: Thank you.  
6 Mr. Rankin, any questions?

7 MR. RANKIN: Thank you.

8 CROSS-EXAMINATION

9 BY MR. RANKIN:

10 Q. Good afternoon, Mr. Kote, how are you?

11 A. I'm good. Thank you.

12 Q. Can you hear me all right?

13 A. I can.

14 Q. Just let me know if my questions are garbled or  
15 if you can't hear me at any point, I will do my best to  
16 speak up to make sure my questions are clear, okay?

17 A. Okay. Can you hear me

18 Q. I can hear you. I think I can hear you. It may  
19 be a bit of a delay, but I appreciate you speaking up.

20 Now, I just want to make sure I understood that  
21 your background here and your experience, you reviewed your  
22 experience in the Permian Basin. What experience do you  
23 have that's specific to New Mexico.

24 A. Specific to New Mexico, I started my career in  
25 2016 with acquisition of almost 30,000 acres in New Mexico,

1 and I was taken to Marathon in 2017. We did acquire 30 --  
2 almost 30-some wells along with the acreage acquisition, and  
3 I was responsible for (unclear) the production,  
4 understanding the lift mechanism on the acquired producing  
5 wells, mitigating production issues and keeping the well  
6 producing as much as it could.

7 **Q. Were those 30 wells operating in New Mexico?**

8 A. They were in the Lea and Eddy County.

9 **Q. Were they horizontal wells?**

10 A. They were vertical wells. Eight of the 30 wells  
11 were horizontal wells.

12 **Q. Where were those eight horizontal wells**  
13 **completed, what zone?**

14 A. They were completed in the Wolfcamp zone.

15 **Q. Which interval of the Wolfcamp?**

16 A. A.

17 **Q. Now, you mentioned that Flat Creek has drilled**  
18 **three wells in Reeves County, Texas; correct?**

19 A. That is correct.

20 **Q. Are those wells currently producing?**

21 A. Those are. Flat Creek drilled those wells but  
22 never completed those wells.

23 **Q. So Flat Creek drilled them, but Flat Creek didn't**  
24 **itself complete them?**

25 A. Flat Creek drilled those and those were sold to

1 or handed over to different operator.

2 Q. Okay. Do you know if those -- if those  
3 production numbers are currently public for those three  
4 wells?

5 A. No. Those are pretty new wells. They were  
6 completed, I believe, in December or January this year. And  
7 I'm not aware if any production data is public yet.

8 Q. Okay. Now, I think I understood a little bit  
9 about what your -- how you described the process of your  
10 analysis that you undertook as you were, you were reciting  
11 your background and experience.

12 But I'm going to have to ask you to explain  
13 specifically in this case what, what you did and how your  
14 analysis was conducted. I'm going to start, as I  
15 understand, you did two things. You looked at, you  
16 calculated an EUR, and you separately determined a type  
17 curve; correct?

18 A. That is correct.

19 Q. And the type curve was used to determine the EUR?

20 A. Actually it was used to determine that EUR if  
21 Flat Creek was to drill a similar well in that area.

22 Q. Okay. And I understood you to say that the type  
23 curve analysis is based on -- is based on the assessment of  
24 production from offsetting wells; correct?

25 A. That is correct.

1 Q. And so if I look at Exhibit C-3, and I think this  
2 is the same exhibit for both cases; correct?

3 A. That is correct.

4 Q. So looking at Exhibit C-3, that green dash line,  
5 that's your type curve that you, you created based on  
6 offsetting production?

7 A. That is correct.

8 Q. But you don't identify which wells offsetting you  
9 used to create that type curve.

10 A. Those are all the wells that are offsetting  
11 Section 23, and I have presented the map of the wells that I  
12 have pulled.

13 Q. So looking at map on C-3 where you have  
14 identified all of those wells with the green sticks, is that  
15 what you are referring to?

16 A. That is correct.

17 Q. Those wells identified in that map are the wells  
18 you used to create that type curve, the green dash in the --

19 A. Correct.

20 Q. So that would include, as I understand based on  
21 the description, that was intended to include only wells,  
22 horizontal wells that were completed in the XY; is that  
23 correct?

24 A. That is correct.

25 Q. So how large an area is that, approximately?

1           A.     That is approximately two townships, three  
2 townships.

3           Q.     In your testimony you describe it as  
4 approximately a 20-mile area of interest?

5           A.     Yes.

6           Q.     Have you analyzed or assessed the characteristics  
7 of the Wolfcamp XY reservoir across that whole area?

8           A.     Our geologist assessed the reservoir  
9 characteristics in that whole area, he provided me with the  
10 area that is -- which we can -- to pull the wells from which  
11 can be used to build a type curve here.

12          Q.     So you had discussions with your geologist about  
13 the suitability of using the XY Wolfcamp across this entire  
14 area for comparison?

15          A.     That is correct.

16          Q.     And it's your understanding that, that the entire  
17 area is suitable for a comparison to the Wolfcamp XY in  
18 Section 23?

19          A.     I would say suitable, yes.

20          Q.     When I say suitable, I guess I mean to say it's  
21 comparable, it's equivalent reservoir?

22          A.     That's what I said. It is suitable. It's not  
23 similar, it's suitable.

24          Q.     Suitable, okay. So it's not similar?

25          A.     It's not similar.



1 Q. How is it different?

2 A. I guess towards the east, my understanding by  
3 having a discussion with geologist, I understand that, as  
4 you start moving towards the east of the wells, too far on  
5 the east, let's say three townships towards the east, the  
6 reservoir starts getting better.

7 Q. So in your assessment have you excluded in your  
8 opinion that portion of the reservoir to the east --

9 A. Yes, I --

10 Q. Let me finish my question. That includes the  
11 better reservoir?

12 A. Yes.

13 Q. Now, I'm a little confused about the numbers, and  
14 I just want to see if I can nail it down, okay? I think I  
15 understood you to correct the MBO that you provided in  
16 Paragraph 5 of your testimony to say it should be 465 MBO;  
17 correct?

18 A. That is correct.

19 Q. Then when I'm looking at your Exhibit C-3, there  
20 is a little inset box in that. Do you see that inset box?

21 A. I do.

22 Q. And there is a different MBO number there, 463.  
23 Do you see that?

24 A. I'm off by 2000 barrels.

25 Q. I just want to make sure I understand. So is it

1 supposed to be 465?

2 A. It is supposed to be 465.

3 Q. I just wanted to be sure I got it right, okay?

4 Now, did you, when you reviewed -- how did you identify  
5 which wells are completed in the XY Wolfcamp when you did  
6 your analysis?

7 A. When I did my analysis I got the well list name  
8 of the wells, APs of the wells from the geologist, and they  
9 have landed each well, so I identify where -- what wells  
10 are, where particular wells are landed.

11 Q. So did you yourself identify which wells are  
12 completed in the Wolfcamp XY, or did somebody else do that  
13 work for you and you relied on that work?

14 A. Geologist landed the wells for me, and I took  
15 those wells to build a type curve.

16 Q. Would you be surprised to know there are a number  
17 of wells completed in the XY in this area that were not  
18 included in your analysis?

19 A. Yes, I know, because technically in my analysis  
20 pulled all the wells drilled after 2017.

21 Q. Okay. And so why did you use only wells drilled  
22 after 2017?

23 A. Primary reason being operators started doing more  
24 modern completions and sharper spacing to complete the wells  
25 after 2017 which yielded their productivity minimally, I

1 would say. And there was still operators that were adapting  
2 to the changing modern technology, just trying to find  
3 operator wells are doing after 2017 with the modern  
4 technology.

5 Q. Okay. Now, would it surprise you to know there  
6 are some wells included in this analysis that were not  
7 completed in the Wolfcamp XY?

8 A. I didn't get your question. Can you please  
9 repeat?

10 Q. So my next question was whether you would be  
11 surprised to know whether there are some wells in this  
12 analysis that we are missing that were also completed in the  
13 XY? And you explained that that's because -- at least  
14 partly because you only included wells that were completed  
15 after 2017; correct?

16 A. That is correct.

17 Q. And my second question was, were you surprised to  
18 learn that there are some wells that were completed in  
19 different zones other than the Wolfcamp XY that were  
20 included in your analysis?

21 A. I would like to know if those wells are completed  
22 in different zones.

23 Q. Okay. But you're not aware that there were some  
24 wells that may have been included in different zones here?

25 A. I'm not aware of that.

1 Q. So how did you decide on this, on a 20-mile area  
2 of interest as opposed to say five miles or ten miles or  
3 even 30 miles, how did you decide that 20 miles was the  
4 appropriate area of interest for your analysis?

5 A. So I decided the 20-mile area based on the well  
6 list and the area provided to me by our geologist.

7 Q. And was it, is it my understanding that your  
8 geologist identified that area based on what he thought was  
9 a, I think, in your words, a suitable area for comparison?

10 A. That is correct.

11 Q. Now, I guess what I want to understand next, we  
12 understand that you created this type curve based off of all  
13 the production -- I'm going to refer to this plot as a  
14 spaghetti plot. Is that okay? Are you familiar with that  
15 term?

16 A. Yes, that is okay.

17 Q. So my understanding is that used all the  
18 production from these wells per thousand foot lateral basis  
19 and you used that to, to create this green dash type curve;  
20 correct?

21 A. Yes.

22 Q. And then what did you, what did you do with that  
23 type curve next? How did you get your EUR?

24 A. So once I create a type curve, type curve is  
25 nothing but cumulative, the green dash is nothing but

1 cumulative production curve which is called a type curve, at  
2 the end, all the production toward the life of the well  
3 gives you EUR.

4 **Q. So say that last part again. I'm sorry, I may**  
5 **have missed it?**

6 A. To create a type curve, but some of the  
7 production for each month gives you an EUR, which is the  
8 rate from that particular well.

9 **Q. So your EUR is simply an aggregation of the**  
10 **production of all of these wells projected out in time. Is**  
11 **that fair to say?**

12 A. No.

13 **Q. Say that again?**

14 A. No.

15 **Q. Can you maybe correct me?**

16 A. So you plot, you plot a spaghetti chart on a cume  
17 time plot. Once you plot a spaghetti, you go and identify  
18 what stick of wells are purple mean and (unclear), so you  
19 identify (unclear) maybe the wells are not in zone, and then  
20 you pick a well which you think would be the suitable or you  
21 would try to replicate or average on the production and plot  
22 a curve on that.

23 **Q. Okay. And what well did you use to plot a curve?**

24 A. I basically averaged all the production from  
25 Mewbourne wells.

1 Q. Okay. Why did you use Mewbourne wells?

2 A. They are completing the wells with pretty modern  
3 completion design. They are using the slick water frac of  
4 some (unclear) and they are offsetting, replicating their  
5 own wells, which means that it's no much greater between  
6 their -- between their wells.

7 Q. So let me just look at this plot. It's hard to  
8 see, Mr. Kote, if you might just bear with me, maybe -- I'm  
9 going to go ahead and pull it up on the screen.

10 MR. RANKIN: Marlene, maybe if you would allow me  
11 to share my screen.

12 MS. SALVIDREZ: Yes, give me a minute.

13 MR. RANKIN: Thank you.

14 MS. SALVIDREZ: You are welcome.

15 Q. Mr. Kote, do you see your spaghetti plot on your  
16 screen here marked as Exhibit C-3.

17 A. I don't see it.

18 Q. What?

19 A. I don't see it.

20 MS. SALVIDREZ: Adam, I don't see anything.

21 MR. RANKIN: I haven't hit share yet. I thought  
22 I did.

23 Q. Do you see that plot now, Mr. Kote? This is the  
24 Exhibit C-3 from your affidavit. Do you see that?

25 A. (Inaudible.)

1 Q. I'm sorry I didn't hear you say something.

2 A. Yes, I see it.

3 Q. Okay. So you chose -- you used a Mewbourne well,  
4 a single well to develop your EUR?

5 A. Not a single well. I averaged all the Mewbourne  
6 wells and plotted an average green curve.

7 Q. So Mewbourne here in this, in this spaghetti  
8 chart, their wells are colored dark blue; correct?

9 A. Correct.

10 Q. And it looks like here you've got -- you  
11 distinguished between Mewbourne Oil Co. and Mewbourne Oil  
12 Company. Did you combine all of those wells?

13 A. Yes.

14 Q. So looking at this chart, there is a couple of  
15 wells that perform, I would say, fairly poorly. Would you  
16 agree?

17 A. Yes.

18 Q. And there is some wells that perform very well;  
19 correct?

20 A. That's correct.

21 Q. And you used all of those wells in your analysis  
22 to come up with the EUR projected for Flat Creek; correct?

23 A. Correct.

24 Q. Okay. But only Mewbourne wells, you didn't use  
25 anybody else's wells?

1           A.     I (unclear) a type curve of other wells.  There  
2     are a bunch of operators in the cume plot, I separate those  
3     on the other type curve of the other operators to understand  
4     we have all from other operators, we are using the range of  
5     other operators.

6           **Q.     Okay.  And what did you find?**

7           A.     I see there are other operators which are  
8     performing along with other type curve, and I think that's a  
9     fair assessment.

10          **Q.     Who are the other operators who are performing**  
11       **along with that type curve?**

12          A.     There are some Oxy wells.

13          **Q.     Okay, there is some Oxy, okay.  Did you do the**  
14       **same analysis for Matador's wells?**

15          A.     I did.

16          **Q.     And you didn't present that information in your**  
17       **analysis?**

18          A.     There is Matador wells in that cume time plot.

19          **Q.     There are in this cume time plot, but as I**  
20       **understood you to say, you calculated your EUR or your**  
21       **projection for Flat Creek's well using only the Mewbourne**  
22       **wells; correct?**

23          A.     Correct.

24          **Q.     And you are telling me you did an analysis using**  
25       **Matador's wells as well; correct?**



1 A. Correct.

2 Q. But you didn't present that data here; correct?

3 A. No, I didn't.

4 Q. Okay. I just wanted to make sure I understood  
5 that. Okay. Have you done a separate analysis to determine  
6 what the average production is for operators in your 20-mile  
7 area of interest?

8 A. Yes, that is my Exhibit C-2.

9 Q. Okay. Let me turn to Exhibit C-2, since I have  
10 it up, let's go to C-2. So this is what, this is a  
11 comparison of Matador to Mewbourne, but did you do an  
12 analysis comparing the average of Matador and Mewbourne to  
13 all the other operators within the 20-mile area?

14 A. No.

15 Q. You did not?

16 A. No.

17 Q. So you don't know where Matador or Mewbourne fall  
18 relative to any of the other operators in this 20 mile area?

19 A. I don't.

20 Q. Okay. So when I look at your affidavits, okay --  
21 and I'm going to pull it up here -- and you go to Paragraph  
22 5 of your affidavit, I'm going to highlight this language so  
23 you see it. See where it says compared to other operators  
24 in the area, Matador's production and recovery consistently  
25 underperform as shown in Exhibit C-2. Do you see that?

1 A. Yes.

2 Q. You were just telling me you have not compared  
3 Matador to anybody else other than Mewbourne; correct?

4 A. Correct.

5 Q. So that's an incorrect statement. You have not  
6 done an analysis to see how Matador compares to any other  
7 operator?

8 A. Couple of reasons for that. First reason being,  
9 no other operators are drilling as much wells as Matador and  
10 Mewbourne drill in the area. Those are the two biggest  
11 operators in the area, so it is fair to compare apples to  
12 apples rather than apples to oranges.

13 Q. So it's just, you phrase it as if you are  
14 comparing it to other operators in a 20-mile area, when in  
15 fact you only compare it to Mewbourne. Correct?

16 A. I didn't catch your question.

17 Q. I said, in your affidavit you said you compared  
18 them and Mewbourne was underperforming relative to other  
19 operators in a 20-mile area when in fact you only compared  
20 them to Mewbourne.

21 A. I -- can you please slow down for me?

22 Q. Sure. In your affidavit, you said that you  
23 compared Matador to other operators, and they were  
24 consistently underperforming, but in fact you only compared  
25 them to Mewbourne; correct?

1           A.     That is correct.

2           Q.     Okay.  So you don't know, as you are sitting here  
3 today, whether -- I'm going to go back to this Exhibit  
4 C-2 -- as you are sitting here today, you don't know whether  
5 any other operators within that 20-mile area of review are  
6 outperforming Matador in terms of well production in the  
7 Wolfcamp XY; correct?

8           A.     I need to explain this plot before we come to  
9 this conclusion.  This is an average production plot.  It is  
10 not a single well production plot.  Matador has -- I pulled  
11 all the wells (unclear) 2017.  Matador has drilled almost 49  
12 wells in Wolfcamp XY well location, and Mewbourne has  
13 drilled 31 wells in Wolfcamp XY.

14                   Those are the only two big operators that drill  
15 that large number of wells in Wolfcamp XY to make their  
16 comparison.  I can't compare Matador or Mewbourne to a  
17 company who has drilled one or two wells in the area.

18           Q.     That's fine.  I understand that, but I just want  
19 to make clear that, as you are sitting here today, you don't  
20 know any other operators who might be -- who might be out  
21 performing on an average basis Matador?

22           A.     I do know, but that's not just on the plots here.

23           Q.     Okay.  Well, how many other operators in that  
24 20-mile area of review are outperforming Matador in terms of  
25 Wolfcamp XY production?

1           A.     In terms of Wolfcamp XY production, I would say  
2 there are few wells drilled by Concho, which are -- I can't  
3 say how many wells they drilled, but I would have to look  
4 back and see how many wells they have drilled to make a  
5 comparison.

6           Q.     Mr. Kote, I'm not talking about individual wells  
7 in your spaghetti plot, I am talking about an average  
8 production basis similar to what you analyzed here in  
9 Exhibit C-2. As you are sitting here today, are there any  
10 other operators within a 20-mile area that you have analyzed  
11 that are outperforming Matador in the Wolfcamp XY?

12          A.     Can you hear me.

13          Q.     Yeah.

14          A.     Yes, I --

15          Q.     I'm sorry, what was that?

16          A.     Yes.

17          Q.     You agree you haven't done that analysis so you  
18 can't say; correct?

19          A.     Correct.

20          Q.     Okay.

21                 MR. RANKIN: I have no further questions.

22                 HEARING EXAMINER BRANCARD: Thank you. Any  
23 redirect?

24                 MR. ZIMSKY: Yes, Your Honor, just a few  
25 questions.

REDIRECT EXAMINATION

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BY MR. ZIMSKY:

Q. Now, when you calculated type curves and EUR calculations that are set forth in your two exhibits, did you use the type of information that a reservoir engineer would rely upon in order to make those calculations?

A. I did use those typical production data to make calculations.

Q. And was that -- were your calculations done consistent with your training and experience?

A. Yes.

Q. And your calculation, the comparison, you decided to do the comparison between Mewbourne and Matador because they had the most wells in the area; correct?

A. (Nodding.)

Q. That's a yes, for the court reporter?

A. Yes, that's a yes.

Q. And then in calculating the Matador's 306 MBO, what did you rely upon to make that calculation?

A. I relied on the production data to the state to make those calculations.

Q. And so you eliminated wells that were completed before 2017 because those wells, the production from those wells is probably generally lower since they used older completion techniques?

1 A. Yes, that is correct.

2 Q. And the Norris Thornton 204H well was drilled and  
3 completed in 2018; correct?

4 A. That is correct.

5 Q. And do you know what the completion technique  
6 that Matador used?

7 A. I don't. I couldn't find any completion reports.

8 MR. RANKIN: Mr. Examiner, I didn't ask any  
9 questions about completion techniques.

10 MR. ZIMSKY: I will withdraw the question.

11 (Pause.)

12 HEARING EXAMINER BRANCARD: Mr. Zimsky, are you  
13 still with us?

14 MR. ZIMSKY: I believe so.

15 Q. One more question. I think I asked this, but  
16 your calculation of the type curves and EUR is consistent  
17 with your training and certifications in making these  
18 calculations?

19 A. That is correct.

20 MR. ZIMSKY: And that's all the questions I have.  
21 I just want to make sure -- I know I introduced or tendered  
22 for introduction Exhibits C, C-1, C-2 and C-3 for case  
23 21560, and I think I also did it for the other case, but in  
24 the event that I didn't, I would like to tender those  
25 exhibits for, for being introduced in the case 21747.

1 HEARING EXAMINER BRANCARD: Thank you. You did  
2 not, so any objections, Mr. Rankin?

3 MR. RANKIN: No objection.

4 HEARING EXAMINER BRANCARD: So admitted.

5 (Exhibits C, C-1, C-2, C-3 admitted 21747.)

6 HEARING EXAMINER BRANCARD: Mr. Lowe, questions  
7 of the witness?

8 TECHNICAL EXAMINER LOWE: No. No questions at  
9 this time. Thank you.

10 HEARING EXAMINER BRANCARD: Okay. Mr. Zimsky,  
11 your next witness.

12 MR. ZIMSKY: Yes, I think we are going to call  
13 Tom Anderson. Is Mr. Anderson here?

14 MR. SAVAGE: Mr. Zimsky, I think Mike Gregory  
15 needs to go next.

16 MR. ZIMSKY: We will call Mike Gregory next.  
17 Mr. Gregory? Sorry, Tom. Can you hear me?

18 MR. GREGORY: I can.

19 MR. ZIMSKY: Can you introduce yourselves to the  
20 court and spell your name, first name and last name?

21 MR. GREGORY: Yes, my name is Michael Gregory,  
22 M-i-c-h-a-e-l G-r-e-g-o-r-y.

23 HEARING EXAMINER BRANCARD: Okay. Can you raise  
24 your right hand, and do you solemnly swear the testimony you  
25 are about give is the truth and nothing but the truth?

1 THE WITNESS: I do.

2 HEARING EXAMINER BRANCARD: Thank you. Proceed.

3 MICHAEL GREGORY

4 (Sworn, testified as follows:)

5 DIRECT EXAMINATION

6 BY MR. ZIMSKY:

7 Q. I'm going to ask you a few questions about your  
8 background. You haven't been -- you haven't testified as an  
9 expert before the Oil and Gas Conservation Division here in  
10 New Mexico; is that correct?

11 A. That is correct.

12 Q. Can you -- and your testimony in both cases is  
13 referred to as Exhibit D, and attached to that testimony is  
14 is your resume; is that correct?

15 A. That's correct.

16 Q. And let's -- I would just like to go over that,  
17 your resume, can you inform the Division about your  
18 educational experience?

19 A. Sure. So I've got 13 years of experience as a  
20 petroleum landman. I graduated from Texas Tech University  
21 with a degree in energy commerce in 2008. I worked, prior  
22 to Flat Creek, I worked at XTO Energy here in Ft. Worth,  
23 oversaw an extensive development program in the Permian  
24 Basin. I was also the project lead for the \$5.5 billion  
25 acquisition of our Bobco deal primarily in Eddy County, New



1 Mexico, and we obtained title coverage on over 150,000 net  
2 acres on which XTO has since drilled over 345 wells on.

3 **Q. And how long did you work at XTO?**

4 A. I worked at XTO from 2008 to 2018, so about ten  
5 and a half years.

6 A. And what's your present position?

7 A. My present position is vice president of land for  
8 Flat Creek Resources.

9 **Q. And how long have you been at that position?**

10 A. Almost three years.

11 **Q. Okay. And are there other people from XTO**  
12 **working with you?**

13 A. There are.

14 **Q. And can you explain just briefly what your**  
15 **responsibilities are with respect to land that is for Flat**  
16 **Creek?**

17 A. Sure. So I manage the land department here, and  
18 we are in charge of acquisitions, divestitures, trades, due  
19 diligence on the A & D front. On the development side we  
20 have executed multiple acreage trades to enhance  
21 development. We did unit trade and drill and work on  
22 surface matters and (unclear) development.

23 **Q. And what certifications do you hold?**

24 A. Let's see, certified professional landman. I'm  
25 on the Energy Commerce Advisory Council at Texas Tech

1 University and I'm on the executive committee for the  
2 Ft. Worth Association of Professional Landmen.

3 MR. ZIMSKY: I would tender Mr. Gregory as an  
4 expert certified professional landman.

5 HEARING EXAMINER BRANCARD: Any objections?

6 MR. RANKIN: No objections.

7 HEARING EXAMINER BRANCARD: So certified.

8 Q. And Mr. Gregory, I want to go over your exhibits  
9 in both cases. Let's start with 21560. Is that your self-  
10 affirmed statement as Exhibit A?

11 A. Yes, it is.

12 Q. Was this prepared by you or at your direction?

13 A. Yes, it was.

14 Q. And the exhibits, there are a number of exhibits.  
15 Were those exhibits prepared by you using public records, or  
16 records, company records, prepared by you or at your  
17 direction compiled from public records?

18 A. Yes.

19 MR. ZIMSKY: And I would tender for admission in  
20 case 21560 Exhibit A, which is the testimony, and Exhibits  
21 A-1 through A-6.

22 HEARING EXAMINER BRANCARD: Can we do both cases  
23 at once?

24 MR. ZIMSKY: Okay.

25 Q. Mr. Gregory, can you go to the hearing packet for

1 Case 21747?

2 A. Yup.

3 Q. And same question, is that exhibit, Exhibit A in  
4 that packet, is that your testimony?

5 A. Yes.

6 Q. Was that prepared by you or at your direction?

7 A. Yes.

8 Q. And the exhibits, were those exhibits prepared by  
9 you or at your direction using company records and/or public  
10 records?

11 A. Yes.

12 MR. ZIMSKY: I would now move for admission of  
13 Exhibits A and A-1 through A-6 in both cases.

14 HEARING EXAMINER BRANCARD: Any objections?

15 MR. RANKIN: No objection.

16 HEARING EXAMINER BRANCARD: Thank you. So  
17 admitted.

18 (Exhibits A, A-1 through A-6 admitted.)

19 MR. ZIMSKY: And I believe, with that, I tender  
20 the witness for cross-examination.

21 HEARING EXAMINER BRANCARD: Thank you.

22 Mr. Rankin?

23 MR. RANKIN: Thank you, Mr. Examiner.

24 CROSS-EXAMINATION

25 BY MR. RANKIN:

1 Q. Mr. Gregory, how are you doing?

2 A. Doing well.

3 Q. Sounds like you can hear me. If there is any  
4 questions or my questions get garbled or cut off, I will do  
5 my best to repeat or speak up so you can hear, okay?

6 A. Okay.

7 Q. I just want to start off with notice. To whom  
8 did Flat Creek provide notice of its application in Case  
9 21560?

10 A. We work with our attorneys on that, to be honest,  
11 another party at the office worked with the attorney and  
12 provided the notice, so I'm not familiar with the exact  
13 people on the list.

14 Q. So you're not sure who pulled the parties for  
15 notice. Did you do that or coordinate with someone to  
16 identify the parties who required notice?

17 A. Yes, coordinated with another landman in our  
18 office who worked with our attorneys to provide notice.

19 Q. So you don't know who it was generally who got  
20 notice. Was it, was it people within the proposed spacing  
21 unit, or who got notice?

22 A. We work with our attorneys who set the parameters  
23 who should get notice and provide them a list of individuals  
24 and companies who need to be provided notice.

25 Q. Okay. So just, I want to go back to your -- I'm

1 not trying to catch you on anything, there is a reason I'm  
2 asking this question, but I'm not trying to be difficult,  
3 but pointing to Paragraph 16 in Case 21560 of your  
4 affidavit, okay? Let me know when you get there or if you  
5 want me to put it up on the screen?

6 A. I am there.

7 Q. First sentence you say that you provided the law  
8 firm of Abadie & Schill a list of names and addresses for  
9 the uncommitted interest owners and override interest owners  
10 shown on Exhibit A; correct?

11 A. Correct.

12 Q. So I'm going to go to Exhibit A, and A-2, rather,  
13 sorry. Are those people with interests within the proposed  
14 spacing unit only?

15 A. That's correct.

16 Q. Okay. So, so notice was provided to the mineral  
17 owners in this tract subject to the proposed pooling, but  
18 nobody else; correct?

19 A. I'm not sure the extent of the boundaries that we  
20 provide the notice.

21 Q. Okay. So you don't know -- did anybody else get  
22 notice aside from the folks in Exhibit A-2, to your  
23 knowledge?

24 A. Not to my knowledge. We work with our attorneys  
25 to -- at their guidance to provide notice to the proper

1 parties.

2 Q. I'm just trying to confirm that Flat Creek did  
3 not provide notice to any of the tracts adjoining your  
4 proposed spacing unit in this case.

5 A. Yeah, we rely on their guidance to again provide  
6 notice to those we were told needed to get notice.

7 Q. Okay. I want to ask you a little bit about this  
8 480 acre spacing unit that you are proposing in the N/2 --  
9 in the N/2 S/2 of Section 23, okay?

10 A. Okay.

11 Q. I'm a little confused about what would happen in  
12 the event the Division were to create that spacing unit as  
13 requested by Flat Creek, what -- how do you see that spacing  
14 unit fit within the existing -- within the section with the  
15 existing production in the S/2? How do those spacing units  
16 work?

17 A. Yes, so, it's a pretty clear development layout  
18 in this area where, you know, us and Matador are planning to  
19 do the same thing, drill four wells within the section. So  
20 if there is a 480 acre spacing unit, that would leave plenty  
21 of room for the Norris Thornton 204H to be legally distanced  
22 from the lines and produce freely and still enable the rest  
23 of the section to develop.

24 Q. Isn't there an existing spacing unit in the S/2  
25 created by the APD that was filed and approved by Matador in

1     **the S/2?**

2           A.     There is an existing spacing unit --  
3                   (Audio interference.)

4           **Q.     Do you want me to repeat that question?**

5           A.     Yes, if you could.

6           **Q.     I'll see if I can. I think what I'm trying to**  
7 **ask, isn't there an existing S/2 spacing unit that was**  
8 **formed by an approved APD?**

9           A.     It was formed, but not pooled, and yes, there is  
10           a unilateral spacing unit without the consent of all  
11           parties.

12           **Q.     I guess my question is, how procedurally does**  
13 **Flat Creek propose in the event its acreage is, its spacing**  
14 **unit is approved, to deal with these overlapping spacing**  
15 **units?**

16           A.     So I am not a regulatory, so I can't answer that  
17           question holistically. What I will say was that was a  
18           unilateral spacing unit by Matador. Whenever we took our  
19           BLM lease in December of 2018, there was no stipulation to a  
20           comm agreement or anything like that for the Norris Thornton  
21           204H. There was a stipulation for the two vertical wells  
22           operated by Matador, so we did join those as well.

23                   Procedurally, I'm not sure, you know, I have been  
24           kind of wondering this whole time how the well is being  
25           produced on 320 acre spacing without the pooling of all

1 parties. I can't answer for Matador how they would have to  
2 redo their paperwork.

3 Q. But you don't have a clear idea about how, how --  
4 from Flat Creek's perspective, how it would operate that  
5 spacing unit that would be for all intents and purposes  
6 overlapping the existing S/2 spacing unit?

7 A. I'm not sure how Matador would on their end. I  
8 think we don't view that as being a properly pooled spacing  
9 unit.

10 Q. I was asking about you guys, actually?

11 A. How we do it?

12 Q. Yes.

13 A. I believe we would just operate the spacing unit  
14 as 480 acres, and do the C-102s properly based off of that.  
15 I presume that Matador would have to amend their C-102.

16 Q. Have you had any discussion with BLM whether they  
17 would even approve an overlapping communitization agreement  
18 for that acreage?

19 A. It wouldn't be an overlapping communitization  
20 agreement because there is not one.

21 Q. Now, let's move on to sort of the well proposals  
22 because I want to make sure I understand the sequence and  
23 timing. Okay?

24 In your affidavit, you identified the three  
25 initial wells that would be dedicated to this 480 acre



1 spacing unit in your case 21560. Okay? Correct?

2 A. Correct.

3 Q. And the 703H was produced on the November 12,  
4 2020; correct?

5 A. I believe that's the well. We proposed a well  
6 then. If I can get to the AFE. Yes, 703 on November 12,  
7 2020.

8 Q. And then Flat Creek filed its application for  
9 pooling on December 4, for the N/2 S/2 of Section 23;  
10 correct?

11 A. I don't recall the exact day it was filed.

12 Q. I'm just going to go ahead and share my screen  
13 just so you can agree with me about the date it was filed  
14 and have that for the record, okay?

15 Are you able to see my screen?

16 A. Yes.

17 Q. Do you see this is identified as the application  
18 for Flat Creek for horizontal spacing unit, compulsory  
19 pooling in Eddy County?

20 A. I do.

21 Q. Do you agree this was the application that was  
22 filed for assigned Case Number 21560?

23 A. I do.

24 Q. Do you see the received by date at the top left  
25 corner indicating it was received by the Division on

1 December 4, 2020?

2 A. I do.

3 Q. Okay. Now at the time that application was  
4 filed, you identified three initial wells to be dedicated to  
5 that unit; correct?

6 A. Correct.

7 Q. So the two other wells that are identified as  
8 initial wells had not yet been proposed to Matador when that  
9 application was filed; correct?

10 A. I believe we admitted our proposals at some point  
11 to get those included.

12 Q. So let's go look -- I think your proposals are  
13 Exhibit A-3; correct?

14 A. Correct.

15 Q. So the first well proposal in Exhibit A-3 was the  
16 one sent to Matador on November 12, 2020?

17 A. Correct.

18 Q. And identifies only the 703H well; correct?

19 A. Correct.

20 Q. And then if I flip through past the AFE for that  
21 well to the next well proposal, it's dated December 14,  
22 2020; correct?

23 A. Correct.

24 Q. That would be ten days after the application was  
25 filed; correct?

1 A. Correct.

2 Q. And it included in it between the two other wells  
3 that were identified in the previously filed application,  
4 the 701H and 702H; correct?

5 A. Correct.

6 Q. One thing I want to make sure I understand, and  
7 this is a little bit nit-picky, but I want to make sure I  
8 get it right. Behind the well proposal that was sent out on  
9 December 14, you've got your AFEs, okay? I'm going to turn,  
10 ask you to turn to the first AFE for the 701H well. Do you  
11 see that?

12 A. I do.

13 Q. See in the top left corner where it has a date?

14 A. I do.

15 Q. Do you see where it says November 11, 2020?

16 A. I do.

17 Q. Do you agree with me that this AFE was not  
18 provided to Matador and until December 14, 2020?

19 A. Yes. It's common for AFEs to be prepared ahead  
20 of the well proposal.

21 Q. Was this AFE actually prepared on 11-11-2020?

22 A. Presumably. I didn't prepare the AFE myself, so  
23 I can't answer that for sure.

24 Q. So you don't know one way or the other?

25 A. No.

1           Q.     Would it be odd if it was prepared on November  
2 11, but it wasn't proposed to Matador until more than a  
3 month later?

4           A.     Not at all.  AFEs are commonly prepared before  
5 well proposals are sent out, and 30 or so days is not an  
6 unreasonable amount of time.

7           Q.     But if I go back to your well proposals for the  
8 November 12 proposal that went out for the 703H well, and I  
9 flip back to that AFE, it has the same date 11-11-2020.  AS  
10 part of that you prepare the same AFE for all the three  
11 wells, in fact, they all have the same dates, but only  
12 proposed the first one.  Did you not --

13          A.     It doesn't matter -- Flat Creek was the first to  
14 propose wells here in this section, Matador filed its  
15 application for pooling, you know, years after the well  
16 started producing, so Matador was first to file for pooling,  
17 but again it was late, in my opinion.  And we became  
18 frustrated at the lack of response and priority we were  
19 being given by Matador --

20          Q.     Hold on, Mr. Gregory, I'm just asking you about  
21 this specific well proposal.  I appreciate, you know,  
22 wanting to cover all that other stuff, but in order for  
23 efficiency and time, I want to get through this quick.  
24 Okay?

25                   I just was asking you, is it odd that all three

1 of these AFEs have the same date, but only the 703H was sent  
2 out on November 12?

3 A. I do not think that. At the time we were still,  
4 I mean we were still working through what we wanted to do,  
5 we wanted to at least get one well proposal out, you know.  
6 We wanted to be the one to propose development first because  
7 we believe we were the one that prioritized the well the  
8 most, so we wanted to get at least one well proposal out.

9 Q. Okay. So you agree with me that even though the  
10 AFEs for 701H and 702H had that 11-11-2020 date, they were  
11 not proposed to Matador until December 14, 2020. Agree?

12 A. Yes.

13 Q. And the last AFE or well proposal under A-3 is  
14 another case, but the only change to the well proposal is  
15 the surface location for those two wells; is that correct?

16 A. You mean the one we sent out recently?

17 Q. Yeah, the last well proposal in your packet here  
18 marked as A-3 is dated April 23, 2021.

19 A. Yes.

20 Q. So the only change to the wells updated in that  
21 well proposal are the surface locations for each of those  
22 wells; correct?

23 A. That's correct.

24 Q. Just want to make sure. Going back to your  
25 affidavit, and this is just cleaning up the record here, if

1 you look at Paragraph 13 of your affidavit, let me know when  
2 you're there.

3 A. I'm there.

4 Q. You see how you have identified the locations and  
5 depths of your proposed development?

6 A. You said 13 or 15?

7 Q. I'm sorry, 15.

8 A. Yes.

9 Q. You see where you have the column titled TVD?

10 A. I do.

11 Q. That standard the stand for total vertical depth;  
12 correct?

13 A. Correct.

14 Q. And that would correspond to what the target  
15 completion zone is for these three wells?

16 A. Correct.

17 Q. Okay. And now, do you -- I know you are not a  
18 geologist, but let me go ahead and ask this question. And  
19 do agree with me those depths do not match the current  
20 target interval in Flat Creek exhibits in these cases?

21 A. I haven't done a comparison.

22 Q. Let me just real quickly share my screen. Let me  
23 know when you are able to see my screen

24 A. Got it.

25 Q. You see what's been marked as Exhibit B-4 and B-5

1 in your -- on your screen?

2 A. Yes.

3 Q. Have you seen these exhibits before?

4 A. I have flipped through the exhibits, yes.

5 Q. Do you recognize these as Flat Creek's geology  
6 exhibits?

7 A. Yes.

8 Q. Do you understand that that yellow highlighting  
9 in the middle of the screen here where my cursor is hovering  
10 is meant to indicate Flat Creek's proposed target interval?

11 A. Yes.

12 Q. Do you see to the right that type log?

13 A. I do.

14 Q. Do you see that the depths at which that target  
15 interval is located?

16 A. I do.

17 Q. Do you agree those depths do not match up with  
18 what was in your affidavit?

19 A. Yes.

20 Q. And those depths in your affidavit, are those  
21 taken from the well proposals that were sent to Matador?

22 A. I believe -- let me check. Yes.

23 Q. So prior to the submission filing of the exhibits  
24 in this hearing, did Flat Creek provide any additional  
25 information on the depths of target intervals that Flat

1 Creek was proposing to develop in this acreage? Did it  
2 update in any way the depths that were proposed in the well  
3 proposals?

4 A. Not formally, no, it was understood between the  
5 parties we are targeting the same area.

6 Q. Okay. Well -- all right. Very good. That's  
7 your understanding it was understood that the parties were  
8 targeting the same interval? Is that right?

9 A. Yes.

10 Q. But Matador, the only information Matador had  
11 from Flat Creek is the well proposals you sent them showing  
12 the total vertical depths that you have included in your  
13 affidavit; correct?

14 A. Yeah, as far as formal proposals are concerned,  
15 yes. The phone calls that was exchanged over time, and you  
16 know, the conversations that I had with Matador, it was  
17 understood we were both targeting the same interval.

18 Q. Those are based on just phone conversation, not  
19 e-mails or anything like that?

20 A. Yes.

21 Q. All right. I want to talk to you a little bit  
22 more now about the good-faith negotiations, the discussions  
23 between the parties. Turning -- I'm going to focus the  
24 questions on your Paragraph 17, and for these purposes I'm  
25 just relying on your affidavit in Case 21560, okay?



1 A. Okay.

2 Q. And I'm going to direct you to the one, two  
3 three, four, fourth line down, the sentence beginning, "Flat  
4 Creek has been more proactive party." Do you see that?

5 A. Yes.

6 Q. I'm going to read what you state. "Flat Creek  
7 has been the more proactive party in its good faith attempts  
8 to find a commercial solution for this unit." And did I  
9 read that correctly?

10 A. Yup.

11 Q. What did you mean by quote, commercial solution?  
12 What was that, what do you mean there?

13 A. What I mean by commercial solution is basically  
14 any proposal for new development, any proposal for trades,  
15 and any proposal, yeah, any proposal to facilitate  
16 development or trades. What I do not mean by that is any  
17 proposal to pool us into the Norris Thornton 204H.

18 Q. I'm sorry, my outlook sent an alarm just as you  
19 were saying the last of your sentence. What you did not  
20 mean was what?

21 A. What it did not mean was any proposal to pool us  
22 into the 204H, that was in excess of what we believe was  
23 reasonable at the time.

24 Q. Okay. So when I look at your Exhibit A-4, and I  
25 will go ahead and, just so everyone can kind of see what

1 we're talking about here, if I can get to it -- have to  
2 rotate my screen. Huh-oh. That was a step I wasn't  
3 thinking about having to do, but I did it. Mr. Gregory, do  
4 you see my screen now on your screen?

5 A. I do.

6 Q. Do you recognize that as your Exhibit A-4, your  
7 time line?

8 A. I do.

9 Q. As I go through your entries here, I don't see  
10 any -- any, up until, up until at the very least in February  
11 of this year, anything other than discussions about trade  
12 ideas.

13 A. Yeah. So we approached Matador, since you asked  
14 about good faith negotiations and trade ideas, think it's  
15 relevant to elaborate on it, we approached after we won the  
16 lease, and we basically said, We want to development this.  
17 We are open to trades, we are open to Matador development,  
18 we are open to Flat Creek development. We are a business  
19 trying to establish a growing presence in the State of New  
20 Mexico, that's very important to us right now. We've got  
21 2000 acres in the State of New Mexico we hope to grow. We  
22 plan to spud wells in about ten days here in Eddy County.

23 And so we came to Matador and we said, "We need  
24 something to happen. What do you want to do?"

25 Matador informed us, "Well, we want to trade, we

1 went to trade you out of this section."

2 So we said, "Okay, we will go look at ideas to  
3 trade out of the section so we can develop another section  
4 within the Delaware Basin."

5 And so I prepared probably half a dozen specific  
6 trade ideas to Matador, specific sections, specific wells,  
7 and with the understanding that Flat Creek is working with  
8 public information. We don't have all the data we need to  
9 provide a trade proposal to Matador.

10 So it was -- it was told to me numerous times  
11 that upon giving specific ideas to Matador, they would give  
12 us the information we needed to give a formal proposal to  
13 Matador. That never happened, not one time.

14 And you know, I personally believe that the  
15 reason we are here today at this hearing is because we never  
16 got the follow-up from Matador that we were promised, even  
17 though we proposed specific ideas to Matador. And that's  
18 why we took the approach that we did early on was to look  
19 for a potential trade was because that was the -- we were  
20 told that was the preference by Matador and we complied with  
21 that, and we did not get feedback from Matador.

22 **Q. Okay. I guess I'm -- I appreciate your take on**  
23 **the, on the, on the negotiations, but I guess what I was**  
24 **trying to understand that your definition of commercial**  
25 **solutions and commercial discussions. So when I look at**

1 your Exhibit A-4 and I go down to the notes, okay, where you  
2 have got your -- and I see that you acknowledge that you  
3 have excluded some e-mails or correspondence from your time  
4 line; correct?

5 A. Correct.

6 Q. And the next sentence of your note goes on to say  
7 that you filtered it down to those involving commercial  
8 discussions; correct?

9 A. Correct.

10 Q. And the way I read your time line, that to me  
11 means that you've only excluded discussions or  
12 correspondence that don't relate to trades, because that's  
13 the focus of your time line is on trade ideas, trades,  
14 proposed trades between the companies; correct?

15 A. Up until the fall of 2020, that's correct.

16 Q. That's all. I just wanted to make sure I  
17 understood your definition and meaning of that term.

18 Now, on this time frame you start your time line  
19 in September 2019. Why did you start there and not when  
20 Flat Creek first notified Matador that it was the winning  
21 bidder of the federal lease?

22 A. Because we were the winning bidder, but the lease  
23 hand't been issued yet, and there is still risk to the lease  
24 being issued even once you are the winning bidder. So we  
25 didn't want to go too far down the road on discussion and

1 changing up everyone's plan if the lease wasn't going to be  
2 issued.

3 Starting in September it became evident we  
4 started being notified by BLM that the lease was likely  
5 going to be issued, so we had greater confidence in that, so  
6 we started undertaking more serious conversations.

7 Q. But by excluding those earlier discussions, you  
8 left off the fact that Matador proposed the well within six  
9 days of you reaching out to them, you left out the fact that  
10 Matador sent you a JOA, and you left out the fact that they  
11 sent you a communitization agreement within a week of you  
12 first contacting Matador?

13 A. We were more focused in development and less  
14 focused on helping to share the economic burden of the 204H,  
15 so we were more focused on new development, new trades and  
16 new activity. We were not focused in sharing on the  
17 economic waste we believe was created by the 204H.

18 Q. So let me ask you that. You didn't want to share  
19 in the economic burden. Is that what I just heard you say?

20 A. Correct.

21 Q. So let's look at this time line, okay? Now,  
22 what's left off the time line is, and I understand when,  
23 when Flat Creek made an assignment of an overriding royalty  
24 interest to an affiliate; correct?

25 A. Correct.

1 Q. When was that assignment made?

2 A. It was made effective August 2019.

3 Q. When was the assignment executed?

4 A. I don't recall.

5 Q. Okay. Would you agree that that assignment was  
6 executed on January 9, 2020?

7 A. I don't recall, but that sounds in the ballpark.

8 Q. Okay. So let me just go through the time line  
9 again and just think about this. So when was the -- when  
10 was the BLM lease officially issued to Flat Creek?

11 A. November 2019.

12 Q. And in the ballpark, around the first of the year  
13 2020, flat Creek assigned an overriding royalty interest in  
14 the lease to its affiliate; correct?

15 A. Correct.

16 Q. And did that align with its interest in not  
17 undertaking an economic burden in this acreage?

18 A. No. We overriding royalty interest does not  
19 share in the cost of the well, so we could dedicate  
20 (unclear) or we could pool Matador and get paid all the  
21 override, but we ran some numbers, and it's a lot more  
22 valuable if we drill newer wells under Flat Creek's design  
23 with a more concentrated interest in the northern 480 acres.

24 Q. Let me just -- I want to step back and talk real  
25 quick about this override because it's a little interesting

1 to me, I want to make sure I understand it.

2 How was it -- how was it decided -- why did Flat  
3 Creek create that overriding royalty interest?

4 A. Flat Creek, like it's an industry standard, most  
5 companies do the same thing where, if you have that interest  
6 of a particular lease greater than 75 percent, to basically  
7 carve that down to a separate vehicle specifically so you  
8 could have flexibility in who owns part of the (unclear).  
9 It's very common in the industry.

10 Q. So what would you say was the purpose of creating  
11 that override?

12 A. Just revenue streams for production.

13 Q. But that override costs interest; right?

14 A. Correct.

15 Q. And at the time, you know, based on the time  
16 line, Flat Creek already knew that Matador had a producing  
17 well in the south half. Agreed?

18 A. Agreed.

19 Q. Okay. And Flat Creek had -- I'm sorry -- Flat  
20 Creek had already received Matador's well proposal letter,  
21 JOA and proposed communitization agreement back in march of  
22 2019. Agreed?

23 A. Agreed.

24 Q. Any time prior to the assignment, did Flat Creek  
25 advise Matador it was going to create this override?

1           A.     I don't recall.

2           Q.     Was part of the purpose of creating the override  
3 to reduce Flat Creek's working interest liability for the  
4 existing 204H well?

5           A.     No, because it's not a working interest, it's an  
6 override.

7           Q.     I guess my point is, you are going to get -- you  
8 are going to be able to obtain -- you are going to be able  
9 to obtain payments on that override without having to  
10 participate in the well; correct?

11          A.     That's correct.

12          Q.     Okay. So in other words, you know, by creating  
13 an override, you are looking at creating a revenue stream  
14 without having to participate in an already existing well.  
15 Is that fair to say?

16          A.     That's correct. However, I mean it's just what  
17 we do everywhere, and our preference is not to be in the  
18 well at all. So the intent of carving the override down was  
19 not specifically to get paid on the 204H if we go  
20 non-consent, it was we would prefer to not be in that well  
21 at all, and that's why we are here today.

22          Q.     Okay. Along the same lines here -- I'm going to  
23 stick with good faith negotiations since there was a topic  
24 about negotiations, okay? In Paragraph 22 of your  
25 affidavit, you state that -- let me find the sentence



1 here -- I'm sorry, Paragraph 23, it's on Page 7 of your  
2 affidavit, second sentence, beginning, "However Flat Creek  
3 has been in ongoing discussions with Matador to voluntarily  
4 enter into a joint operating agreement."

5 Do you see that sentence?

6 A. Yes.

7 Q. Did Flat Creek send its own form of proposed JOA  
8 to Matador?

9 A. No, we did not. We proposed entering into an  
10 industry standard pooling operating agreement.

11 Q. Okay. But you didn't send them a specific form  
12 that you were proposing to them, you indicate in your well  
13 proposal a form of JOA?

14 A. I think it's the well proposal. We said modified  
15 1989 APO form of operating agreement with horizontal  
16 modifications. So that's a specific form of operating  
17 agreement, and so we did say specific operating agreement,  
18 yes, but we did not provide a redline copy to Matador.

19 Q. So other than that reference to a JOA in your  
20 well proposal, what other discussions did Flat Creek have  
21 about that form of proposed JOA? Did you initiate any  
22 discussions with Matador on that form of proposed JOA?

23 A. So that's the November 12 proposal? We also sent  
24 out a November 14 proposal, and that should give them enough  
25 information they need to know what form of operating

1 agreement we plan to use.

2 **Q. I'm trying to understand, what were the ongoing**  
3 **discussions that were occurring related to a JOA? Because**  
4 **you sent them a proposal --**

5 A. To participate in -- to participate in Flat  
6 Creek's development.

7 **Q. Okay.**

8 A. And there were multiple conversations about the  
9 JOA.

10 **Q. Are those in the time lines?**

11 A. Not conversations. There are multiple references  
12 to a JOA in the well proposal, and then in our discussions  
13 we had ongoing comments about how Flat Creek would like to  
14 operate the section.

15 **Q. Are those discussions noted in your time line**  
16 **anywhere?**

17 A. Yes, they are.

18 **Q. Okay. Where are they, just so I know?**

19 A. About the JOA specifically?

20 **Q. Yeah.**

21 A. Well, first, in my opinion, the JOA is  
22 supplementary to actually (unclear) to develop, we mention a  
23 specific operating agreement form in our well proposals.  
24 You know, if someone is going to talk about space and who is  
25 going to develop, the deciding factor is not what form of

1 operating agreement you are going to use.

2 Q. But I guess my specific question, I guess, was,  
3 based on your sentence in your affidavit was about  
4 discussions about the JOA. I just wanted to make sure I  
5 understood.

6 A. Yeah, we mentioned a JOA in multiple well  
7 proposals.

8 Q. In your discussions on the phone?

9 A. We had not talked holistically about all changes  
10 to the JOA that Matador requested. We spent more time  
11 talking about the actual structure and what we may want to  
12 do.

13 Q. Let me switch gears and ask you about Matador's  
14 proposed JOA. Did Flat Creek offer any comments on  
15 Matador's proposed JOA?

16 A. We did on the contract area because the initial  
17 contract area would have created unnecessary burden given it  
18 was the whole section. They would have given us a larger  
19 interest in the 204H presumably for Flat Creek to share more  
20 of that cost. That was our understanding.

21 Q. Just so I --

22 A. -- we were going to have changes to your JOA  
23 should we work something out. We did not provide specific  
24 changes to the JOA.

25 Q. Okay. I may have interrupted you, and I didn't

1 mean to, but I think you were saying that you requested  
2 essentially a N/2 JOA and S/2 JOA?

3 A. Yes.

4 Q. But then -- but you didn't discuss specific  
5 proposed wording changes at that, at any time; is that  
6 right?

7 A. We hadn't gotten to that yet. It's industry  
8 standard to work out the deal first and then redline the  
9 JOA.

10 Q. Okay. But -- okay. Got it. Now, on your -- on  
11 the company's track record and experience, issue, you state  
12 that Flat Creek has a -- let me find exactly where that is.  
13 Maybe you can help me out if you know where it is. I think  
14 there is some comment in here about the -- here it is, it's  
15 in Paragraph 22.

16 Flat Creek has an established track record for  
17 diligence and timeliness in our drilling operations. Can  
18 you tell me what, what track record that is and what, what  
19 drilling operations you are referring to?

20 A. Yeah. So we drill, I guess, you know, one of our  
21 big, you know, thoughts and beliefs here is that people  
22 drill wells, not just entity names, even at bigger companies  
23 people switch departments all the time, you've got someone  
24 coming from -- and this isn't the case with Matador -- and  
25 we have someone come from Devonian and come from the

1 Permian, but it's the same company.

2 We have selected our key employees, all of our  
3 employees here at Flat Creek from successful Permian Basin  
4 operators and they were key contributors at the companies,  
5 and each individual has experienced track records. This  
6 includes XTO Energy, Black Mountain Oil & Gas, Pioneer Gas,  
7 and others, and so each individual that we hand picked has  
8 established track records for diligence and timeliness in  
9 drilling operations.

10 Flat Creek has drilled three horizontal wells  
11 just across the state line in Reeves County in Texas, and we  
12 drilled those under AFE. We beat the time estimate, and we  
13 geo steered them in the zone as well as anybody can. In  
14 addition, we managed portfolios of 10 producing wells in  
15 Reeves County, Texas, and that involved workovers and those  
16 types of things.

17 Q. Okay. I appreciate the clarification. Now  
18 talking about the experience as a team, I think your next  
19 sentence addresses that in your affidavit, you talk about  
20 the team selected represents 98 years of cumulative  
21 experience in drilling operations between four key personnel  
22 and land geology and engineering. Correct?

23 A. Correct.

24 Q. How many of those key personnel are witnesses  
25 testifying in this case?

1           A.     Three. All but one.

2           Q.     So three witnesses, okay, so all but one. Who is  
3 the other personnel who is not --

4           A.     Littleton, he was the VP of drilling and  
5 completions at Pioneer Natural Resources who was the largest  
6 Midland Basin operator, and he has about 40 years of  
7 experience.

8           Q.     Okay. Thank you. I just wanted to make sure I  
9 understood who you were referring to. Now, on your well  
10 costs and overhead, I think we have come to understand that,  
11 looking at your first AFE that was sent out, well proposal  
12 that was sent out on November 12, 2020, in your Exhibit A-3  
13 you quoted a, an overhead administrative cost of \$10,000 for  
14 drilling and \$1000 while producing; correct?

15          A.     Correct.

16          Q.     But then your update about a month later, you  
17 modify those overhead rates to 8,000 and 800?

18          A.     Correct.

19          Q.     Why did you make that change within the one month  
20 period. What was the reason for the sudden drop in the  
21 overhead rates?

22          A.     To comply more with the industry standards in the  
23 area.

24          Q.     And you agree -- does Flat Creek agree that 200  
25 percent risk charge is appropriate for drilling in this

1 area?

2 A. Yes.

3 Q. And you understand that the 200 percent risk  
4 charge is the maximum allowable under the statute?

5 A. Yes.

6 Q. You would agree then that where there is risk,  
7 and you have identified a maximum risk allowable, that  
8 drilling wells in Section 23, there is going to be some  
9 risk. Agreed?

10 A. Agreed.

11 Q. And would you also agree that because of that  
12 risk, having experience actually drilling wells in the same  
13 area within the same zone might be an important factor in  
14 deciding who should operate in this section?

15 A. That's correct. I will note that Black Mountain  
16 drilled a well within three miles of here, and that well has  
17 produced about 75,000 barrels more of oil in the same time  
18 frame that the Norris Thornton has been producing for.

19 So again, it's a small sample size if we are  
20 comparing one well to another, but Anand and two other key  
21 members of our team were key members of the drilling and  
22 completion of that well which has significantly outperformed  
23 the Norris Thornton.

24 Q. Just so I know, what was the name for that well?

25 A. It's the Cyprus 1H.

1 Q. Okay. Thank you.

2 A. It may have been renamed after Matador acquired  
3 it, I'm not sure, but when Black Mountain drilled it it was  
4 the Cyprus 1H.

5 Q. Where was that well located again?

6 A. It's about three miles -- it's within three miles  
7 of here.

8 Q. Which direction?

9 A. I would have to defer back to our geologist and  
10 engineer.

11 Q. I wanted to make sure, did you say east?

12 A. No, I didn't say east. I said within a  
13 three-mile radius.

14 MR. RANKIN: Okay, very good. No further  
15 questions.

16 HEARING EXAMINER BRANCARD: Thank you. Any  
17 redirect?

18 MR. ZIMSKY: Yes, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. ZIMSKY:

21 Q. I want to, since you were talking about this  
22 well, I want to share my screen. And if I could be enabled  
23 to do that.

24 HEARING EXAMINER BRANCARD: Marlene, are you  
25 there?



1 MS. SALVIDREZ: Yeah, just give me a couple of  
2 seconds, please.

3 A. Okay, I see them.

4 Q. Mr. Gregory, can you see my screen?

5 A. Yes.

6 Q. And is this the Cyprus 1H well you were just  
7 talking about?

8 A. Yes.

9 Q. And did Flat Creek prepare this slide here?

10 A. Yes. Yes.

11 Q. And do you know what it shows.

12 A. It shows -- it's a cume plot from the Marathon  
13 and Black Mountain Cyprus 1H well versus Matador's Norris  
14 Thornton 204H well.

15 Q. And on the top it indicates John -- I'm going to  
16 butcher this even though I'm -- Wierzowiecki.

17 A. Wierzowiecki.

18 Q. It might be Czech, I don't know. He was the  
19 operations manager, does he work for Flat Creek?

20 A. He does.

21 MR. ZIMSKY: Okay. So he was, he was the  
22 operations manager of Black Mountain, and I think the public  
23 records will show that he signed a completions report, and I  
24 would offer this into evidence as Exhibit E-4.

25 MR. RANKIN: No objection.

1 HEARING EXAMINER BRANCARD: Okay, you're okay  
2 with this? So just to be clear, it's marked private and  
3 confidential, but I would prefer we not treat it as such.

4 MR. SAVAGE: Yeah, I'm okay with that.

5 HEARING EXAMINER BRANCARD: So admitted.

6 (Exhibit E-4 admitted.)

7 Q. Now I want to go back to -- let's talk about that  
8 overriding royalty interest. Now, if the Division grants  
9 your request to -- for 480 acre spacing unit, that override  
10 will not burden -- would not be entitled to any revenue  
11 from the 204H well; correct?

12 A. That's correct.

13 Q. And that's, as you said, you don't want to  
14 participate in that well, you said that, testified about  
15 that a number of times on cross.

16 A. That's correct.

17 Q. So now, if, if Matador is granted your  
18 application to pool the S/2, that, that override is going to  
19 burden your, your -- Flat Creek's working interest; right?  
20 Correct?

21 A. That's correct.

22 Q. It's not going to affect Matador's net revenue  
23 interest -- there is still -- well, I'm not sure what their  
24 net revenue interest is, I assume 87.5. But in any event,  
25 when Flat Creek places the burden on its leasehold interest,

1 it's responsible for paying that burden; correct?

2 A. Well, I mean, if you elect to participate in a  
3 well, yes, we would pay a burden. If you elect not to  
4 participate in a well, then the operator would pay the  
5 burden out of our share of our interest.

6 Q. And that would take, it would -- that would mean  
7 it would take longer for your working interest, as a  
8 non-consent, to reach the 300 percent or 200 percent risk;  
9 correct?

10 A. That's correct.

11 Q. Mr. Rankin asked you some questions, and he was  
12 wondering how you would operate the 480 acre unit in light  
13 of the fact that the 204H well was there in the S/2 S/2.  
14 Would you plan to go to the BLM to obtain a communitization  
15 agreement if the 480 acre unit is approved?

16 A. Yes, we would.

17 Q. And does the BLM have a preference to -- for it  
18 to have as large of a leasehold interest in a communitized  
19 area?

20 A. I'm not sure.

21 Q. Well, assume that the United States would prefer  
22 having a larger mineral interest in the communitized area,  
23 would your proposed 480 acre spacing and pooling unit, would  
24 that satisfy -- would that meet the desire of the United  
25 States?

1           A.       They would have the larger interest in the 480  
2 acre unit as opposed to being spread out over the 640 acre  
3 section.

4           Q.       You bid on the -- the lease sale was in I believe  
5 December of 2018. Is that correct?

6           A.       Yes.

7           Q.       And Matador also bid on that lease; correct.

8           A.       Correct.

9           Q.       But you were the prevailing bidder; correct?

10          A.       Correct.

11          Q.       And soon thereafter they wanted to -- you  
12 testified that they wanted to purchase that interest and  
13 trade you other interests?

14          A.       It varied. Their goal was to trade us out of  
15 that section, however they never engaged in conversations to  
16 do so.

17          Q.       There were conversations but they never --

18          A.       Yes, there were conversations, there were  
19 meetings, there were things, but there was never any  
20 follow-up or never any actually constructive feedback to  
21 Flat Creek on any of the proposals.

22          Q.       And Mr. Rankin asked you some questions about  
23 personnel from Flat Creek who have experience in this area,  
24 and I think -- and who did you mention that worked at  
25 Pioneer?

1           A.     Rodney Littleton. He was the VP of drilling and  
2 completions at Pioneer.

3           Q.     And we just talked about Mr. John W., the  
4 operations manager?

5           A.     Yes.

6           Q.     And he was also there?

7           A.     He was at -- he was at Black Mountain.

8           Q.     Black Mountain. He was at Black Mountain, but  
9 now he is at Flat Creek; correct?

10          A.     Correct.

11          Q.     And in addition to those people, you have over  
12 geologists, engineers, land people that have experience in  
13 the area?

14          A.     That's correct.

15          Q.     And Mr. Rankin asked you about the risk of  
16 drilling in this area. There is risk in every well;  
17 correct?

18          A.     Correct.

19          Q.     And if you were a third party and someone had  
20 drilled a well that they admitted didn't meet expectations,  
21 would you want to have them drill the next three wells, or  
22 would you rather have somebody who, although they might be a  
23 new entity, have a lot of people with experience in other  
24 companies drill that well?

25          A.     Generally speaking, I'd pick quality over

1 quantity. But you would have to, you know, I'm not a  
2 reservoir engineer, you would have to assess the whole  
3 sample size, but generally speaking if somebody drilled that  
4 well, then you ought to have somebody else have a shot at  
5 the other well.

6 MR. ZIMSKY: That's all the questions I have,  
7 thank you.

8 HEARING EXAMINER BRANCARD: Thank you. Mr. Lowe?

9 TECHNICAL EXAMINER LOWE: Good afternoon, I just  
10 want to get a clarification on my end. To verify what your  
11 exhibits -- I'm assuming exhibits pertaining to Mr. Mike  
12 Gregory are exhibits, all of Exhibits A and B, or just A?

13 THE WITNESS: Let me check really quick.

14 THE WITNESS: A-1 through 6.

15 TECHNICAL EXAMINER LOWE: A-1 through 6.

16 THE WITNESS: No. Exhibit B starts with the  
17 statement of Thomas Anderson who is our geologist.

18 TECHNICAL EXAMINER LOWE: Okay. Okay, that was a  
19 misunderstanding up front then. Okay. And basically you  
20 indicated just recently just now that there was no anything  
21 that Matador would offer Flat Creek in reference to I guess  
22 accommodate all the needs that needed to be done, is what  
23 you are -- what was stated?

24 THE WITNESS: That's correct. They did come with  
25 two proposals recently. I think it's worth noting that

1 Matador and Flat Creek offered the exact same amount on our  
2 lease back in 2018. I know Trey Goodwin said he wasn't  
3 familiar with it, but he is. We have had multiple  
4 conversations about that. And their first offer was 27  
5 percent of our purchase price, and that was similar price  
6 environment to where we were then, and their revised offer  
7 was about 40 percent of our purchase price, so in my opinion  
8 they weren't very serious offers. And you know, they are  
9 not offers that we would consider to be consistent with our  
10 discussions.

11 TECHNICAL EXAMINER LOWE: Oh, okay. As far as  
12 your exhibits go that you indicated with all the e-mail  
13 conversations that were displayed, was that noted in there  
14 as well, too?

15 THE WITNESS: Well, Matador's offers, or what are  
16 you asking?

17 TECHNICAL EXAMINER LOWE: Yeah, that you stated  
18 just now.

19 THE WITNESS: Yeah, so March -- well, let's see.  
20 Okay. February 10 was the first one. And then they are --  
21 basically we had countered immediately on the same day, and  
22 basically -- not a cash counter but just countered.

23 And then we followed up for about the next month  
24 because Trey advised a counter was going to be coming and it  
25 never showed up. So basically they weren't able to send

1 another counter for two months even though one was promised  
2 by Trey shortly thereafter. So we you can see all the  
3 follow-ups we had on it and how many times that Trey said he  
4 was going to follow-up. There was about a month we couldn't  
5 get ahold of him.

6 And then on April 21, he sent the revised offer  
7 to purchase to Flat Creek, and you know we even tried to  
8 accommodate Matador and let them be the operator, but as you  
9 can imagine, they are telling their investors that they are  
10 not drilling one-mile laterals, they are telling Flat Creek  
11 they are not prioritizing one-mile laterals.

12 So we wanted to make sure that if Matador was  
13 going to operate, that they were going to do so in a timely  
14 manner. So we tried to give them that opportunity to tell  
15 us what -- give us -- let us know what you are going to  
16 drill. Are you going to drill anything other than Wolfcamp  
17 wells, what zones are you going to drill, when are you going  
18 to drill them. We understand that the BLM permitting  
19 process takes time, and they said they would provide the  
20 information to us and they never did.

21 TECHNICAL EXAMINER LOWE: Okay. that's all I  
22 have. Thank you.

23 HEARING EXAMINER BRANCARD: Mr. Gregory, you  
24 indicated you were involved the notice that was given to the  
25 parties with your application. Is that correct?



1 THE WITNESS: Yes, I supervised the individual  
2 who worked with our attorneys to give the notice.

3 HEARING EXAMINER BRANCARD: Okay. And you also  
4 discussed with Mr. Rankin that your proposal -- I'm sorry --  
5 Flat Creek's proposal to put a well in the N/2 of the S/2  
6 would result in what we referred to in our rules as a  
7 subsequent well in existing spacing unit because there is  
8 already a spacing unit; correct?

9 THE WITNESS: Yeah, I'm not aware of all the ins  
10 and outs, but yes.

11 HEARING EXAMINER BRANCARD: Okay. Were you ever  
12 directed to comply with the notice requirements for  
13 subsequent wells in existing spacing units?

14 THE WITNESS: I haven't heard anything about  
15 that. Again, I supervise the individual that worked with  
16 the attorneys, but I'm not aware of such conversations  
17 happening.

18 HEARING EXAMINER BRANCARD: Okay, thank you. And  
19 for the attorneys I'm referring to Rule  
20 19.15.16.15(B)(9)(b).

21 Thank you, Irene did you want to a break or  
22 should we keep going.

23 REPORTER: Five minutes would be great.

24 (Recess taken.)

25 HEARING EXAMINER BRANCARD: I believe we have one

1 more witness. I'm going to shoot for cut-off time at 6  
2 o'clock here tonight. So be precise. We are doing a lot of  
3 wondering around on questions that aren't going to decide  
4 this case one way or another.

5 MR. SAVAGE: Mr. Brancard, I will be presenting  
6 this witness.

7 HEARING EXAMINER BRANCARD: Great, Mr. Savage.  
8 Mr. Anderson, are you available. Mr. Anderson?

9 (No response.)

10 HEARING EXAMINER BRANCARD: Maybe he had a time  
11 cut-off.

12 MR. SAVAGE: Let me give him a call.

13 HEARING EXAMINER BRANCARD: I see him.

14 MR. SAVAGE: Great. Mr. Anderson? I don't see  
15 him.

16 HEARING EXAMINER BRANCARD: I see him and his  
17 lips are moving. He must have another mute -- does he have  
18 a head device like I have here?

19 MS. SALVIDREZ: He is unmuted so he should be  
20 able to talk and --

21 MR. RANKIN: Sometimes I have this issue where I  
22 have to correct the device on my laptop to the correct  
23 microphone so that it picks up the sound by going to the  
24 audio tab, and I wonder if that's what his issue is.

25 HEARING EXAMINER BRANCARD: Look like he is

1 trying. Mr. Anderson, can you hear us, give us a wave.

2 (Waving.)

3 HEARING EXAMINER BRANCARD: We made it that far.

4 MR. SAVAGE: Yes, he can hear.

5 HEARING EXAMINER BRANCARD: He's calling in the  
6 IT staff. If all else fails, he can possibly use his phone.

7 MR. SAVAGE: Can we hear him, or is it still  
8 silent?

9 MS. SALVIDREZ: He is unmuted.

10 HEARING EXAMINER BRANCARD: He is unmuted, but I  
11 don't hear anything.

12 MR. SAVAGE: Mr. Examiner, I have been in contact  
13 with him, and he should be getting here in a minute.

14 HEARING EXAMINER BRANCARD: Thank you.

15 MR. SAVAGE: Mr. Hearing Examiner, while we are  
16 waiting, could I move to admit Exhibit D on the two cases,  
17 which is the hearing notice?

18 HEARING EXAMINER BRANCARD: Absolutely.

19 MR. SAVAGE: I move to admit D-1 through D-3 and  
20 this is for both cases, 21560 and 21747, and that includes  
21 the affidavit -- notice affidavit, mailing list, notice  
22 letters, and publication.

23 HEARING EXAMINER BRANCARD: Thank you. Any  
24 objections, Mr. Rankin?

25 MR. RANKIN: No objections.

1 (Exhibits D, D-1 through D-3 admitted.)

2 THE WITNESS: I dialed in. Can you hear me now?

3 HEARING EXAMINER BRANCARD: Yes, we can.

4 MR. SAVAGE: Could you introduce yourself and  
5 spell your name?

6 THE WITNESS: I'm Thomas Anderson. T-h-o-m-a-s  
7 A-n-d-e-r-s-o-n. I'm a geologist for Flat Creek Resources,  
8 recently retired from Exxon Mobile.

9 HEARING EXAMINER BRANCARD: Thank you.  
10 Mr. Anderson, could you raise your right hand. Do you  
11 solemnly swear your testimony will be the truth and nothing  
12 but the truth.

13 THE WITNESS: Yes, I do.

14 HEARING EXAMINER BRANCARD: Thank you. Proceed.

15 THOMAS ANDERSON

16 (Sworn, testified as follows:)

17 DIRECT EXAMINATION

18 BY MR. SAVAGE:

19 Q. Mr. Anderson, are you familiar with the geology  
20 of Section 23?

21 A. Yes, I am.

22 Q. Are you familiar with Matador's testimony of the  
23 geology exhibits?

24 A. Yes, I am.

25 Q. Were you the one who prepared your testimony and

1 **exhibits or under your supervision?**

2 A. Yes, we did.

3 MR. SAVAGE: I move at this time to introduce  
4 into the record the geology exhibits, B, B-1 through B-5 for  
5 Case 21560 and 21747.

6 HEARING EXAMINER BRANCARD: Any objections?

7 MR. RANKIN: No objections.

8 HEARING EXAMINER BRANCARD: So admitted.

9 (Exhibits B, B-1 through B-5 admitted.)

10 **Q. Attached to your testimony is your resume. It**  
11 **looks like you have in excess of 37 years of experience, and**  
12 **is that correct? And you have quite a bit of experience in**  
13 **the Permian Basin; is that correct?**

14 A. That's correct. I will reach 40 years in the  
15 industry in July. And I been working the Permian  
16 exclusively since 2011, in New Mexico since 2013.

17 **Q. Okay. And you testified before the New Mexico**  
18 **Oil Conservation Division?**

19 A. Yes, I have, in 2014.

20 MR. SAVAGE: I tender Mr. Anderson as an expert  
21 witness in petroleum geology.

22 HEARING EXAMINER BRANCARD: any objection?

23 MR. RANKIN: None.

24 HEARING EXAMINER BRANCARD: So admitted.

25 **Q. I'm not going to go through your written**

1 testimony, it stands for itself, but there is three  
2 questions I would like to ask before turning you over for  
3 cross-examination.

4 In the previous testimony with Mr. Gregory,  
5 Mr. Rankin pointed out a discrepancy in the land exhibit  
6 between the listed TVD on the land testimony, and  
7 Exhibit B-4 in the geology exhibits. Is there an accounting  
8 or reason for that discrepancy?

9 A. The TVD on the AFE is true vertical depth, but it  
10 includes an elevation, a ground-level elevation because the  
11 pads that we were proposing these wells come from were at  
12 higher elevations, so that the adds to the TVD.

13 The wells that were proposed for Wolfcamp Y,  
14 there has been no change in that. We have exhibit is just a  
15 well that's in the section, and I'm not actually honoring  
16 the TVD, I'm just lining it up to the (inaudible).

17 Q. That fully accounts for the discrepancy that  
18 Mr. Rankin pointed out?

19 A. Yes.

20 Q. Okay. Second question is about the 320 spacing.  
21 Matador is pointing out that 320 spacing they are using is  
22 the best way to drain and produce from the section. They  
23 are claiming that your spacing is shifted to the north and  
24 it varies from the 320. How do you respond to that?

25 A. Our spacing is approximately 1320 from well to

1 well, standard spacing for four wells per section. We are  
2 not concerned with the lease to the north. We are concerned  
3 with the protecting the rights of our investors and  
4 adequately and completely draining the acreage that these  
5 wells will develop.

6 So our, if you consider (unclear) one is laydown  
7 and from north to south and we are drilling to the center of  
8 each of those in order to adequately drain that particular  
9 acreage.

10 Whether or not we impact Matador's well to the  
11 north which is on a separate lease, if we do impact it, it's  
12 because there (unclear) so we are going to correct that. We  
13 are going to drain the acreage we have under lease.

14 **Q. And you feel that the spacing proposed by Matador**  
15 **insufficiently drains the section and causes**  
16 **underperformance?**

17 A. I believe that it inadequately drains  
18 particularly the N/2 of the N/2.

19 **Q. Okay. And the geology in the S/2 S/2 is as prime**  
20 **and would be as productive as the geology across the**  
21 **section; is that correct?**

22 A. That's correct. I don't believe the  
23 underperformance of Matador's well on the S/2 S/2 has  
24 anything to do with geology, it's all mechanical.

25 **Q. Okay. And therefore Matador it looks like**

1 **basically wasted very good geology that's irreparable at**  
2 **this point in the S/2 S/2?**

3 A. I believe so, yes. And I guess my -- I would  
4 like to concrete example of why I make make that claim.

5 The -- within the lateral portion of the well,  
6 the (unclear) which vary between 86.3 degrees and 94 -- 97.4  
7 degrees, their dog leg severity is as high as 90 degrees,  
8 there is all kinds of --

9 REPORTER: I'm getting really bad audio. Can the  
10 people who are not participating in this conversation please  
11 mute.

12 **Q. Mr. Anderson, please continue.**

13 A. And the average dip in there is information based  
14 is 91.7, they were in and out the sand along the (unclear)  
15 plus they have severe hydraulic depletion in the (unclear).

16 **Q. And because of the -- go ahead, please. Because**  
17 **Matador did not provide any expert engineering or**  
18 **operational testimony for the, for the examiners, there is**  
19 **no way in this hearing that you -- that we can assess**  
20 **whether they could improve or remediate or address that**  
21 **issue; is that correct? Would you agree with that?**

22 A. No, they. They can't correct that issue, it's  
23 mechanical. You have to pay more attention to your gee  
24 steering.

25 MR. SAVAGE: That's all the questions I have. I



1 make Mr. Anderson available for cross-examination,  
2 Mr. Rankin.

3 HEARING EXAMINER BRANCARD: Thank you. Mr.  
4 Rankin.

5 CROSS-EXAMINATION

6 BY MR. RANKIN:

7 Q. Mr. Anderson, how are you?

8 A. I'm fine. Thank you.

9 Q. Good. I know you are on the phone, and if there  
10 is any difficulty hearing me or my questions, just let me  
11 know, and I will try to restate, speak more clearly and more  
12 loudly. Okay?

13 A. Okay.

14 Q. Looking at your Exhibit B, marked B-4 or B-5 in  
15 which you show the proposed spacing intervals between Flat  
16 Creek's three wells in the N/2 and N/2 of the S/2 of Section  
17 23, what is Flat Creek's preferred spacing between  
18 horizontal wells in the Wolfcamp XY?

19 A. Within the sand it is 1320. 1320 feet.

20 Q. Okay. And the sand is the target interval that  
21 both Matador and Flat Creek are proposing to develop;  
22 correct?

23 A. Correct.

24 Q. You have had a long career with XTO as well;  
25 correct?

1 A. Yes.

2 Q. And you had some period of time operating with  
3 XTO within New Mexico?

4 A. Yes.

5 Q. Did you have oversight or were you involved in  
6 any development of wells within the Wolfcamp XY in New  
7 Mexico for XTO?

8 A. Yes.

9 Q. What was the well, preferred well spacing for XTO  
10 in the XY in New Mexico?

11 A. 1320, four per section.

12 Q. I think I understood you to say that Flat Creek  
13 was not concerned with the wells -- existing wells that were  
14 producing to the north of Section 23 or in the S/2 S/2 of  
15 Section 23. Flat Creek was interested in making -- ensuring  
16 that the -- that the N/2 N/2 of the S/2 of Section 23 is  
17 drained. Is that a fair characterization of your testimony?

18 A. That's fair. What we want is to drain the  
19 acreage that the wells are on.

20 Q. So if the preferred spacing is 1320, why are  
21 you -- let me just back up one second. Is the proposed  
22 701H being only 590, 590 feet from the north line is going  
23 to be less than 1000 feet from the offsetting Matador well  
24 to the north. Agree?

25 A. Agree.

1           Q.     Why is it if the preferred distance between wells  
2 is 1320 have you located that well less than 1000 feet from  
3 a producing well that's producing for several years.

4           A.     Because that well is producing on a different  
5 lease. It's what we would call a lease protection well. If  
6 that was XTO's lease to the south, we would have lined up  
7 our well 330 from the north line and hammered them. That,  
8 you know, that's basically operators that don't play well  
9 together.

10                     There is no reason to drill a lease protection  
11 well when you have both the acreage to the north and the  
12 acreage to the south. If you look in the section  
13 development area that Matador has up there, what we are  
14 proposing to do is they did three out of five times, kind of  
15 the same spacing. It's only two out of three times that  
16 they adopted this revised spacing.

17           Q.     Okay. So I think I understand what you are  
18 trying to say, and I think you you answered my question,  
19 which is very good, so I think I will leave it there.

20                     Now, so it was a conscious decision to locate  
21 your wells at this -- with this spacing offsetting the, the  
22 existing producing wells to the north and to the south;  
23 correct?

24           A.     Correct.

25           Q.     Okay. No further questions.

1 HEARING EXAMINER BRANCARD: Thank you. Any  
2 redirect, Mr. Savage?

3 MR. SAVAGE: Mr. Brancard, no, we are going to  
4 finish up today and let everybody go.

5 HEARING EXAMINER BRANCARD: Mr. Lowe?

6 TECHNICAL EXAMINER LOWE: I have no questions.  
7 Thank you.

8 HEARING EXAMINER BRANCARD: Excellent. Are  
9 there -- do we have all your exhibits, Mr. Savage?

10 MR. SAVAGE: I introduced the geology exhibits in  
11 both cases. We have the notice in both cases, and Bill has  
12 done the land and the engineering, so, yes. Are we going to  
13 have the opportunity to do a closing brief for these cases?

14 HEARING EXAMINER BRANCARD: That's what I was  
15 going to discuss next. Since you are on the phone, the line  
16 here, what's your preference?

17 MR. RANKIN: Mr. Examiner, before we get into  
18 that, we do have a rebuttal witness that we would very much  
19 like to present. We can do it very quickly. It's a series  
20 of three or four exhibits. I think we can get it done in  
21 about 15 or 20 minutes.

22 HEARING EXAMINER BRANCARD: Okay. Is this a  
23 witness that you listed in your -- is this a new witness or  
24 are you bringing back an old witness?

25 MR. RANKIN: We are bringing back an old witness.

1 HEARING EXAMINER BRANCARD: For the purpose of  
2 introducing some exhibits?

3 MR. RANKIN: Yes.

4 HEARING EXAMINER BRANCARD: So not really  
5 testimony, just exhibits.

6 MR. RANKIN: Well, actually, Mr. Examiner, there  
7 will be testimony necessary to explain the exhibits. And I  
8 don't think it would -- I don't think it will take very  
9 long. It's in direct response to Flat Creek's engineer  
10 witness.

11 HEARING EXAMINER BRANCARD: Okay. Mr. Savage?

12 MR. SAVAGE: Since Mr. Zimsky was the one who  
13 handled the engineers, I would prefer for him to be involved  
14 in this. But I don't understand how a previous witness  
15 could address engineering questions when there is no  
16 engineering expert witness. I would object to that on those  
17 grounds.

18 MR. RANKIN: Well, it's not engineering  
19 testimony. How about that?

20 MR. SAVAGE: I don't understand how a  
21 non-engineering, non-engineering testimony could be relevant  
22 to engineering testimony.

23 HEARING EXAMINER BRANCARD: How about we work  
24 through the exhibits, and if there is specific objections,  
25 then you can raise them at that time.

1 MR. RANKIN: Yeah, I think that's a plan.

2 HEARING EXAMINER BRANCARD: That's fine. I'm  
3 going to let Mr. Zimsky take over at this point.

4 HEARING EXAMINER BRANCARD: Okay. Mr. Rankin,  
5 who do we have?

6 MR. RANKIN: Thank you very much, Mr. Examiner.  
7 I would like to call Mr. Andrew Parker back to the stand.

8 ANDREW PARKER

9 (Previously sworn, testified as follows:)

10 DIRECT REBUTTAL EXAMINATION

11 BY MR. RANKIN:

12 Q. Mr. Parker, let me know when you're seated. I  
13 can't see you.

14 HEARING EXAMINER BRANCARD: I'm staring at him,  
15 so he must be ready to go.

16 Q. All right, good. Mr. Parker, can you hear me?

17 A. I can. Can you hear me?

18 Q. I can. Mr. Parker, just a reminder, you are  
19 still sworn in.

20 A. Uh-huh.

21 Q. I'm going to go ahead and ask you to -- whether  
22 or not you have prepared some slides in response to  
23 Mr. Kote's presentation on his analysis?

24 A. I have.

25 Q. You reviewed his testimony and his exhibits, C-1

1 through C-3, in both cases?

2 A. Yes.

3 Q. And you prepared slides that address his analysis  
4 showing, showing his -- showing the production within the  
5 area that he identified?

6 A. Yes.

7 Q. Are those marked as -- and I have marked them as  
8 **Matador** --

9 MR. RANKIN: And Mr. Zimsky, I'm going to show  
10 you the courtesy that you showed me, and I'm going to attach  
11 and send these exhibits real quickly so you have them before  
12 I get into it.

13 MR. ZIMSKY: Thank you, sir.

14 HEARING EXAMINER BRANCARD: Could you send them  
15 to Mr. Lowe, also.

16 MR. RANKIN: Why not. It's been a long time  
17 since I e-mailed Mr. Lowe because he is not coming up on  
18 my auto fill.

19 HEARING EXAMINER BRANCARD: L-o-w-e.

20 MR. RANKIN: There you go.

21 THE WITNESS: Mr. Rankin, would you mind sending  
22 a copy to me as well?

23 MR. RANKIN: Of course, see if you are on there.  
24 Yeah, you are. Marlene, I would appreciate if you allow me  
25 to share my screen so while folks are waiting for the inbox

1 to fill, I can put it up on the screen. Thank you.

2 Q. Mr. Parker, do you see the front page of your  
3 Exhibit Matador Rebuttal 6?

4 A. I do.

5 Q. Thank you. Now, did you -- when you looked at  
6 Mr. Kote's Exhibit Number C-3, you see where said he was  
7 comparing cumulative oil production for per 1000 foot of  
8 lateral over time for the Wolfcamp XY wells drilled and  
9 completed by all neighboring operators?

10 A. Yes.

11 Q. And this exhibit shows spaghetti plat for each  
12 well, and then a plat showing the wells that were completed  
13 in the Wolfcamp XY that presumably were included in the  
14 analysis?

15 A. Yes.

16 Q. Now, did you -- did you review the wells that he  
17 included in that 20-mile area of review?

18 A. Yes, I did.

19 Q. And what did you find?

20 A. We found that dataset was -- was, I guess,  
21 misleading or incomplete. It also incorporated data points  
22 that are not relevant to the points that he was trying it  
23 address.

24 Q. So looking at the what's been marked as Page  
25 Number 2 of your Rebuttal Number 6, review for the examiner



1 **what it was that you found in your review of Mr. Kote's**  
2 **database.**

3 A. So the inset map on this slide is directly from  
4 Mr. Kote's exhibits, and it shows the wells that they  
5 identified in the Wolfcamp XY for Matador and Mewbourne. I  
6 will clarify that it was news to us today that he only used  
7 wells from 2017 and on. And that's not entirely true, some  
8 of these wells that were left out are post 2017.

9 But the blue wells on this, on this slide are  
10 wells that were included in this study that are not in the  
11 XY target, they are in another Wolfcamp A, a lower bench  
12 that Matador and Mewbourne have both drilled in this area.  
13 So it's unfair to say that those wells are relevant to the  
14 study as well.

15 Q. Now, using your complete dataset of wells that  
16 are completed within the Wolfcamp XY, did you do a similar  
17 analysis in terms of putting together a spaghetti plot of  
18 wells within the 20-mile area?

19 A. Yes.

20 Q. Is that the next page, Page Number 3.

21 A. It is. So this is a spaghetti plot of the same  
22 20-mile area used by the Flat Creek staff. We believe this  
23 would be a more complete dataset. It still shows a similar,  
24 a similar range of results that Flat Creek established in  
25 their study that this is more complete. It shows that there

1 are, you know, 14 operators within this area.

2           Technically it could be a little more than that  
3 when you count operator that's have drilled wells and sold  
4 to one of these operators listed here. I would like to  
5 point out that Norris Thornton is, you know, a little lower  
6 on this stack of wells, it's not the very bottom, but you  
7 can see that, you know, throughout the middle to the upper  
8 part of this plot, there is a large amount of Matador wells  
9 that, that exceed, you know, the type curve provided by Flat  
10 Creek. And I would also like to point out that the best  
11 well by far on this graph is a Matador well identified as  
12 Keho 208.

13           **Q.       Where is that Matador 208 Keho?**

14           A.       It's about eight miles southeast of Section 23  
15 that we have been discussing today.

16           MR. SAVAGE: Mr. Hearing Examiner, I'm going to  
17 have to object to this testimony and exhibits. I will be  
18 glad to give you my reasons for this.

19           HEARING EXAMINER BRANCARD: Why don't we keep  
20 going, and then you can object to the offering of the  
21 exhibits.

22           MR. SAVAGE: What about the testimony that's  
23 being put into the record at this point?

24           HEARING EXAMINER BRANCARD: You can object to it  
25 also.

1 MR. SAVAGE: Okay, will do. Thank you.

2 MR. RANKIN: I would like to be able to respond,  
3 but we will do that later.

4 Q. Mr. Parker, did you also do a further analysis on  
5 this area you have identified in this 20-mile area?

6 A. We did.

7 Q. Did you take a -- take an average for each  
8 operator within that 20-mile area?

9 A. Yes. This was primarily in response to Flat  
10 Creek's Exhibit C-2 where they are, we believe, unfairly  
11 comparing us to Mewbourne and Mewbourne alone. We believe  
12 that they cherry-picked the operator to paint Matador in a  
13 bad light.

14 So we looked at every operator in the same area  
15 of interest, and of all of those wells from the previous  
16 exhibits, when you look at the average, the average  
17 production of each well for each operator, you can see how  
18 each operator performs here.

19 So you can see on the very top of grouping of  
20 well results here, you can see that Matador and Mewbourne  
21 are the most experienced. They have the most production,  
22 but they are also the two, you know, the two top performers  
23 in this group.

24 There are a couple of other operators, you know,  
25 right at or above Matador on this, but that's, you know,

1 largely like for Cimarex, for example, is the top curve on  
2 this map, but they only have two wells. One of those wells  
3 is quite good, and one is quite bad, but the average is  
4 slightly above.

5 But when you look at the wells of the operators  
6 that have the most wells, which, you know, Flat Creek only  
7 chose Matador and Mewbourne for that, I would say that a  
8 company that has drilled 10 to 20 wells should qualify as  
9 having a lot of wells here, so this includes the other  
10 operators on the right here, you can see that Matador and  
11 Mewbourne both outperform the majority of the operators in  
12 this area.

13 **Q. Now, do you agree with Mr. Kote's analysis using**  
14 **a 20-mile area of review?**

15 A. Well, I agree with Mr. Kote's comments that the  
16 rock gets better to the east. He said that earlier in his  
17 testimony, so we decided to do an analysis of a smaller area  
18 of interest where we believe the reservoir comparisons  
19 within that area are more apples to apples, as he would say.

20 **Q. So you conducted a similar analysis on a more**  
21 **localized area; is that right?**

22 A. Yes, that's correct.

23 **Q. And review for us what that analysis shows in the**  
24 **next slide.**

25 A. So this is the same spaghetti plot of all wells

1 within, within about a five-mile area of interest around  
2 Section 23, so an area where we believe the reservoir  
3 thickness, you know, saturations, all the other factors that  
4 make these things more comparable, versus if you go too far  
5 to the east as Mr. Kote said earlier, the reservoir quality  
6 improves such it is not a fair comparison, but within this  
7 area it's a much more fair comparison.

8           So you see there is a similar range of, of  
9 results across this area but again, it highlights that  
10 within that five-mile area Matador wells being in blue, we  
11 have, you know, a large number of very high-performing wells  
12 within this five-mile, within this five-mile area. And then  
13 for the following gets more --

14           **Q. Let me ask right here. There's a very, at the**  
15 **top over here there is a Matador Joe Coleman 208H, that's**  
16 **the top producing well in this five-mile area; correct**

17           A. That's by far the best well within a few miles of  
18 Section 23. And it's actually catty-corner to Section 23,  
19 it's the southern-most well in, in the section to the  
20 northeast.

21           **Q. Is that Section 13?**

22           A. Yes.

23           **Q. So can you see my cursor? Is that -- am I**  
24 **hovering over approximately the location of that Joe Coleman**  
25 **208H well?**

1 A. Yes.

2 Q. That's within a mile of Matador's proposed  
3 development?

4 A. That's correct.

5 Q. Okay. Now, did you also compare -- break this  
6 down into averages as well as you did the other analysis?

7 A. We did.

8 Q. Okay. Is that this slide here?

9 A. Yes. So we broke it down the same way, averaging  
10 the well performance for the four operators in this area,  
11 and you know, based on this number of wells and the same  
12 exercise here, Matador is the top performer in the area.

13 Q. Okay. Now, referring to Mr. Kote's affidavit,  
14 Exhibit C in both cases, do you recall that he states that  
15 he compared Matador to other operators in the area and that  
16 Matador's production and recovery consistently  
17 underperformed? Do you recall that testimony?

18 A. I do. I do.

19 Q. Based on your analysis within comparable geologic  
20 area and even within this 20-mile area, which includes some  
21 dissimilar reservoir characteristics, is it your opinion  
22 there is any reasonable basis to support his statement that  
23 Matador's production and recovery consistently  
24 underperformed compared to other operators in the area?

25 A. No, his claims are not substantiated.

1           **Q.**     In fact, when you look at -- let's go back on the  
2 averages. When you look at the 20-mile area that Mr. Kote  
3 did in his analysis, approximately how many operators is  
4 Matador outperforming here?

5           A.     We -- we are solidly outperforming nine of these  
6 operators. There is one operator who's right on top of us,  
7 so I mean, nine to ten operators that we are doing better  
8 than. I would like to mention, too, as I mentioned earlier,  
9 there are, you know, we got the number of mergers and  
10 acquisitions over the last few years, there are other  
11 operators who are rolled into, you know, their current owner  
12 now.

13                     So historically the Conoco wells, which are one  
14 of the gray curves below Matador, those are the Concho wells  
15 that Mr. Kote referred to earlier. So when he said Concho  
16 outperforms us in this area, that is unsubstantiated by  
17 looking at the wells that are now owned by Conoco.

18                     And I would say the same is true for the Marathon  
19 subset of wells here. That Marathon curve is including the  
20 Black Mountain wells that were drilled in 2017, 2018, which  
21 the Flat Creek team referred to earlier as outperforming  
22 Matador.

23           **Q.**     Thank you. In your five-mile area, of course,  
24 there is no other operator outperforming Matador in the XY;  
25 is that correct?

1           A.       That's correct.

2                   MR. RANKIN: Mr. Examiner, at this time I would  
3 move the admission of exhibits Matador Rebuttal Exhibit  
4 Number 6 into the record.

5                   HEARING EXAMINER BRANCARD: Mr. Savage?

6                   MR. SAVAGE: Yes, sir, I would object to that and  
7 I would object to the testimony. If I may ask a few  
8 questions of the witness.

9                   HEARING EXAMINER BRANCARD: You don't want to  
10 tell us why you object, you want to ask questions first?

11                   MR. SAVAGE: I would just like to ask a couple  
12 questions, and then I will explain why I object, if that's  
13 appropriate, considering the surprise of this rebuttal.

14                   HEARING EXAMINER BRANCARD: Yes, absolutely. So  
15 please ask questions.

16   CROSS-EXAMINATION

17 BY MR. SAVAGE:

18           **Q.       Two short questions, or one question.**

19 **Mr. Parker, how many engineers, reservoir engineers and**  
20 **drilling engineers do you have on your team?**

21           A.       I would say we probably have six to eight  
22 drilling engineers, off the top of my head, and maybe a  
23 dozen reservoir engineers.

24           **Q.       Twelve reservoir engineers?**

25           A.       I'm guessing. I can come up with a more accurate



1 number if you want to give me time.

2 Q. Twelve reservoirs engineers would have expertise  
3 and be able to provide commentary on this Section 23 and  
4 this scenario?

5 A. I believe that when you are analyzing just  
6 production data, this is public production --

7 Q. Can you answer that question, please?

8 A. Can you repeat the question?

9 Q. Those reservoir engineers, the dozen, the 12,  
10 they would have expertise to be able to address all the  
11 questions on the production and operations involved in the  
12 wells in Section 23?

13 A. Yeah. Any of our reservoir engineers would be  
14 able to.

15 Q. And Matador failed to provide to the Division  
16 opportunity to hear any of that testimony that would be  
17 appropriate to address those questions; is that correct?

18 MR. RANKIN: Mr. Examiner, I'm not sure exactly  
19 where this question is going. I'm trying to understand. Is  
20 it voir dire of Mr. Parker's expertise or ability to conduct  
21 a simple calculation of production similar to what Mr. Kote  
22 did for -- I want to understand where this is going because  
23 I think Mr. Savage is indicating he would like to have been  
24 able to ask engineers questions, but this is a simple review  
25 of the production data in the area, and I don't see what

1 point of his question is.

2 MR. SAVAGE: Mr. Brancard, I don't believe this a  
3 simple calculation or review of the production data. You  
4 heard Mr. Kote's testimony as well as I did, and it was very  
5 detailed, and it was very complex. He mentioned criteria  
6 such as modern completion techniques. He specifically  
7 selected wells based on very narrow criteria. In fact, he  
8 talked about the dataset from 2017, but he actually  
9 qualified that, and he said that he didn't select everything  
10 within like, you know, in a gross manner from, you know, all  
11 of these wide swaths of category. He actually looked at  
12 individual wells, made evaluations based on his engineering  
13 background and accumulated this complicated dataset based on  
14 that kind of selective kind of discrimination.

15 And I do not believe Mr. Parker had any kind of  
16 expert background to be able to address or provide counter  
17 information to what Mr. Kote provided. And it's clear that  
18 Matador had 12 reservoir engineers, 12 reservoir engineers  
19 they could have selected from, and they neglected to do it  
20 or they failed to do it. I just don't consider this  
21 appropriate rebuttal in any way.

22 MR. RANKIN: Mr. Examiner, Mr. Savage is  
23 referring to the EUR and the type curve analysis that  
24 Mr. Kote did. We did not do an EUR or type curve analysis,  
25 we are simply looking at production.

1           MR. SAVAGE: I believe Mr. Rankin and the witness  
2 talked about the datasets from 2017 in terms of being  
3 included in the production, and I believe that, as I  
4 remember and recall, that Mr. Kote made very specific  
5 selections for the wells in the production datasets based on  
6 engineering criteria.

7           MR. RANKIN: Mr. Examiner, Mr. Kote's testimony  
8 was that their geologist identified the wells within the XY  
9 target.

10           HEARING EXAMINER BRANCARD: You know, frankly, I  
11 think is much ado about nothing. I mean, really, the point  
12 of this whole hearing is to deal with competing proposals  
13 for one section. Looking at a lot of data over a ten-mile  
14 peak area doesn't really indicate a lot for this analysis.

15           I mean, to me, all this data proves a few facts  
16 that may end up in the order. One, Matador has drilled a  
17 lot of wells in this area, Flat Creek has not.

18           Two, Matador's well in this section  
19 underperformed other wells in this area. That is true on  
20 the spaghetti charts of both parties.

21           Other than that, I don't know where we go with  
22 that. I mean, if the point that Flat Creek is trying to  
23 show is that somehow Matador is not a prudent operator,  
24 that's a big hill to climb given their track record in  
25 southeast New Mexico.

1                   So, you know, I will admit those exhibits into  
2 the record, but the weight that they are going to get is  
3 probably not much. Mr. Rankin, are you through with this  
4 witness?

5                   (Exhibit Rebuttal 6 admitted.)

6                   MR. RANKIN: I am through, Mr. Examiner. Pass  
7 him any further questions.

8                   HEARING EXAMINER BRANCARD: Mr. Lowe, did you  
9 have any questions about these charts?

10                  TECHNICAL EXAMINER LOWE: No, I do not. No, I do  
11 not.

12                  HEARING EXAMINER BRANCARD: Mr. Savage, anything  
13 further?

14                  MR. SAVAGE: Objection maintained, I have nothing  
15 further.

16                  HEARING EXAMINER BRANCARD: Okay. So where we  
17 were before this little interlude was about to discuss  
18 whether there should be a post hearing submittal by the  
19 parties. That would be sort of summarizing your argument,  
20 could possibly have proposed findings and conclusions.  
21 Don't know if we want to go that far, but what's the  
22 pleasure of the parties? I will start with Mr. Rankin?

23                  MR. RANKIN: Thank you, Mr. Examiner. Only if  
24 the Division finds it helpful or necessary, I think the --  
25 the affidavits speak for themselves and exhibits, but I'm

1 happy to put together a short closing if the Division  
2 requests findings and conclusions.

3 I would suggest maybe we keep it to a certain  
4 page limit so it's 20 pages or less.

5 HEARING EXAMINER BRANCARD: Not a bad idea. Mr.  
6 Savage?

7 MR. SAVAGE: I would agree with that. I do have  
8 one question. So obviously there are some irregularities in  
9 how we handled the application. If there is still a  
10 question whether or not those irregularities are fatal, you  
11 mentioned one particular regulation on this issue of notice  
12 for a subsequent well in an established unit, is -- is there  
13 opportunity for us, for Flat Creek to address some of those  
14 issues in a productive manner that would be useful for the  
15 Division as part of their closing statement?

16 HEARING EXAMINER BRANCARD: You could. I mean,  
17 that is possible. I don't know the burdens of that notice  
18 is that great, but it's there.

19 MR. SAVAGE: Is there any way that you could  
20 provide some kind of brief feedback on the thread of that  
21 irregularity? I don't know if that's appropriate to ask or  
22 not.

23 HEARING EXAMINER BRANCARD: I don't know if there  
24 is anything irregular at all, it's simply, for that approval  
25 you need to have notice of certain numbers of parties, and I

1 don't -- I just don't know whether you did that or not.

2 You may check your records and find out.

3 I mean, in some ways this is not that complicated  
4 in terms of interest owners, these properties. We obviously  
5 have two working interest owners here. So I don't know, you  
6 may have already covered the notice that's required there.

7 MR. SAVAGE: Thank you. I won't continue with  
8 that. I appreciate the feedback, and it's been a long day.

9 HEARING EXAMINER BRANCARD: Yeah, and as I said,  
10 you know, if we decide to go ahead with dismissing any part  
11 of your application, you would just be given an opportunity  
12 to refile and correct if that was the way to deal with the  
13 situation. But I think we may simply try to take on the  
14 competing proposals head on as the primary issue here.

15 MR. SAVAGE: If we were to refile, would we have  
16 to go through another contested scenario or would it be  
17 retroactively in terms of the testimony?

18 HEARING EXAMINER BRANCARD: I don't know. We  
19 certainly have all the testimony, so --

20 MR. SAVAGE: Yes. All right.

21 HEARING EXAMINER BRANCARD: So it could be  
22 incorporated, taken notice of.

23 MR. SAVAGE: Yes, thank you. All right. Have a  
24 good evening.

25 HEARING EXAMINER BRANCARD: But really, so I

1 would like then a no greater than ten pages, a submittal  
2 from the parties, and really what I would like to see is  
3 focus on the issue of competing compulsory pooling  
4 applications, how the evidence that's been submitted focuses  
5 on those.

6 And really, there is two orders to focus on.  
7 There is the Commission order R-10731B, which is the primary  
8 order to focus on. There is a bit of clarification in  
9 R-14518, but in my opinion R-14518 tries to do too much to  
10 turn this into sort of a series of six check-off-the-box  
11 issues.

12 There is sort of more generalization language in  
13 10731 that talks about competing development plans. It  
14 talks about working interest ownership as being the primary  
15 factors. There is in 14518 other factors that are raised  
16 for horizontal development, and there is a surface factor  
17 and there is a stranded acreage factor. I don't know if  
18 either of those have any relevance to this, but just be  
19 aware of that.

20 So look at those two orders and develop an  
21 argument based on the facts that have been presented so far  
22 in the hearing. That would be my request.

23 MR. SAVAGE: That's great. Thank you. Sounds  
24 good.

25 HEARING EXAMINER BRANCARD: Any problems,

1 Mr. Rankin? Any issues? Any concerns?

2 MR. RANKIN: None from my position. Thank you  
3 very much, Mr. Brancard, appreciate it.

4 HEARING EXAMINER BRANCARD: And so when would it  
5 be possible for the parties to submit that. Two weeks?

6 MR. RANKIN: Sure, two weeks sounds good.

7 MR. SAVAGE: Sounds good.

8 HEARING EXAMINER BRANCARD: So May 20 -- let's  
9 make it May 21, that's a Friday, is the deadline for the  
10 submittal.

11 MR. SAVAGE: Thank you. Sounds great.

12 HEARING EXAMINER BRANCARD: So the record is  
13 closed in these matters with the exception of the post  
14 hearings submittals, and these four cases are taken under  
15 advisement. Thank you.

16 MR. RANKIN: have a good evening, everybody.

17 MR. SAVAGE: See you.

18 HEARING EXAMINER BRANCARD: And just for the  
19 record, the final case on today's agenda, I believe, is a  
20 motion to continue already filed, and we will deal with that  
21 case at a later date. Anything else for the record?

22 (No response.)

23 HEARING EXAMINER BRANCARD: Hearing none, today's  
24 hearings are closed. Thank you all.

25 (Concluded.)



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STATE OF NEW MEXICO  
COUNTY OF BERNALILLO

REPORTER'S CERTIFICATE

I, IRENE DELGADO, New Mexico Certified Court Reporter, CCR 253, do hereby certify that I reported the foregoing virtual proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.

I FURTHER CERTIFY that the Virtual Proceeding was of poor to good quality.

Dated this 6th day of May 2021.

/s/ Irene Delgado  
\_\_\_\_\_  
Irene Delgado, NMCCR 253  
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