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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING: Case Nos.: 25480,
25250 (joined cases 25254),
25254 (joined cases 25250),
25550, 25551, 25552, 25553,
25554, 25555, 25556, 25557,
25558, 25559, 25560, 25561,
25572, 25573, 25574 (joined
cases 25575), 25575 (joined
cases 25574), 25541 (joined
cases 25462, 25463, 25464,
25465, 25466, 25542), 25542
(joined cases 25462, 25463,
25464, 25465, 25466, 25541),
25462, 25463, 25464, 25465,
25466.

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HEARING - DAY 2

DATE: Wednesday, September 17, 2025
TIME: 8:02 a.m.
BEFORE: Hearing Examiner Gregory Chakalian
LOCATION: Wendell Chino Building, Pecos Hall
1220 South Saint Francis Drive
Santa Fe, NM 87505
REPORTED BY: Gerald Aragon
JOB NO.: 7614964

A P P E A R A N C E S

List of Attendees:

Gregory Chakalian, Hearing Examiner, New Mexico Oil
Conservation Division

Freya Tschantz, Law Clerk, New Mexico Oil Conservation
Division

Dana Hardy, Attorney, Hardy McLean LLC, on behalf of
Frontier Field Services, LLC; and Marathon Oil
Permian, LLC

Paula Vance, Attorney, Holland & Hart, LLC, on behalf
of Matador Resources Company

Jaclyn McLean (Jackie McLean), Attorney, Hardy McLean
LLC, on behalf of Permian Resources

Dean McClure, Technical Examiner, Energy, Minerals,
and Natural Resources Department

Sharon Shaheen, Attorney, Spencer Fane, LLP, on behalf
of Longfellow Energy, LP and Tumbler Operating
Partners LLC

Matthias Sayer, Attorney, Bradfute Sayer, on behalf of
EOG Resources

Nicholas Weeks, Vice President, Tumbler Operating
Partners; Senior Vice President of Legal, Title, and
Regulatory at Stronghold Investment Management

Dylan Collins, Chief Executive Officer, Stronghold
Investment Management

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

Walt Baker, Vice President of Operations, Yukon
Partners and Tumbler Operating Partners
Chris Villarreal, Vice President of Investments and
Operations, Stronghold Investment Management
Stuart Gaston, Senior Landman, Longfellow Energy, LP
Jacob DeHamer, Senior Geologist, Longfellow Energy, LP
Sean Miller, Land Supervisor, ConocoPhillips
Tyler Patrick, Staff Geologist, ConocoPhillips

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I N D E X

PAGE

OPENING STATEMENT By Ms. Hardy 476

WITNESSES: DX CX RDX RCX

Chris Villarreal

By Ms. Shaheen 372 467

By Ms. Hardy 422 471

Sean Miller

By Ms. Hardy 481 579

By Ms. Shaheen 515

TYLER PATRICK

By Ms. Hardy 581 633

By Ms. Shaheen 602

1	E X H I B I T S		
2	NO.	DESCRIPTION	ID/EVD
3	Cases 25462-25466:		
4	Tumbler:		
5	Exhibit A	Document	649/649
6	Exhibit A-1	C-102	649/649
7	Exhibit A-2	Plats of Tract and Tract	
8		Ownership	649/649
9	Exhibit A-3	Unit Recap, Pooled Parties	
10		Highlighted and Applicable	
11		Leases	496/649
12	Exhibit A-4	Sample Well Proposal Letter	649/649
13	Exhibit A-5	Detailed Summary of	
14		Chronology of Contacts	649/649
15	Exhibit A-6	NSP Notice Map	638/649
16	Exhibit A-7	Rebuttal to MRO Ex. A #39,40	649/649
17	Exhibit A-8	Rebuttal to MRO Ex. A #44	649/**
18	Exhibit B	Self-Affirmed Statement of	
19		Geologist Dylan Collins	651/651
20	Exhibit B-1	Location Map	651/651
21	Exhibit B-2	Structure Map	651/651
22	Exhibit B-3	Stratigraphic Cross-Section	651/651
23	Exhibit B-4	Gun Barrel Diagram	651/651
24	Exhibit B-5	Gross Isochore Map	651/651
25	Exhibit B-6	Rebuttal to MRO Ex. B-5	652/**

1	E X H I B I T S (Cont'd)		
2	NO.	DESCRIPTION	ID/EVD
3	Cases 25462-25466:		
4	Tumbler:		
5	Exhibit B-7	Rebuttal to MRO Ex. B-6	652/**
6	Exhibit B-8	Rebuttal to MRO Ex. B-7	652/**
7	Exhibit C	Self-Affirmed Statement of	
8		Engineer Walt Baker	652/652
9	Exhibit C-1	Facilities Development	652/652
10	Exhibit C-2	Water Infrastructure	652/652
11	Exhibit C-3	Proposed Surface Commingling	
12		Area - Bone Spring	652/652
13	Exhibit C-4	Proposed Surface Commingling	
14		Area - Wolfcamp	652/652
15	Exhibit C-5	Rebuttal to MRO Ex. A #41	652/**
16	Exhibit D	Self-Affirmed Statement of	
17		Engineer Chris Villarreal	368/385
18	Exhibit D-1	Tumbler-Stronghold	
19		Relationship	368/368
20	Exhibit D-2	Recoverable Reserves	368/368
21	Exhibit D-3	Implications of Marathon's	
22		Ownership Percentage	369/**
23	Exhibit D-4	Marathon's Corporate	
24		Priorities	369/**
25			

1	E X H I B I T S (Cont'd)		
2	NO.	DESCRIPTION	ID/EVD
3	Cases 25462-25466:		
4	Tumbler:		
5	Exhibit D-5	Marathon's Lack of Good	
6		Faith Efforts	369/386
7	Exhibit D-6	Marathon's AFE Revisions	370/370
8	Exhibit D-7	Tumbler's AFEs	370/370
9	Exhibit D-8	Unreliability of Marathon's	
10		Pricing	370/370
11	Exhibit D-9	Implications of COP's	
12		Corporate Priorities	370/**
13	Exhibit D-10	Tumbler's Development Plan	
14		Prevents Waste	371/371
15	Exhibit D-11	Tumbler's Type Curves	371/371
16	Exhibit D-12	EUR vs. Spacing	371/371
17	Exhibit D-13	3BS Sand - WCA	
18		WCB Flow Unit Activity	371/371
19	Exhibit D-14	3BS Sand - WCA - WCB Flow	
20		Unit EUR Vs. Spacing	371/371
21	Exhibit D-15	Rebuttal to MRO Ex. A #12	371/418
22	Exhibit E	Self-Affirmed Statement of	
23		Lawyer Sharon T. Shaheen	653/653
24			
25			

1
2
3
4
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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
Cases 25462-25466:		
Tumbler:		
Exhibit E-1	Sample Notice Letter to All Interested Parties Mailed June 20, 2025	653/653
Exhibit E-2	Chart of Notice to All Interested Parties	653/653
Exhibit E-3	Copies of Certified Mail Receipts and Returns	653/653
Exhibit E-4	Affidavit of Publication Published June 25, 2025	653/653
(**Exhibit rejected.)		

NO.	DESCRIPTION	ID/EVD
Cases 25462-25466:		
Marathon Cross:		
Exhibit 1	April 9 Email from Sean Miller to Chris Villarreal	392/647
Exhibit 2	March 19, 2025 Email	648/648

1	E X H I B I T S (Cont'd)		
2	NO.	DESCRIPTION	ID/EVD
3	Cases 25462-25466:		
4	Marathon:		
5	Exhibit A	Self-Affirmed Statement	
6		Of Sean Miller	405/405
7	Exhibit A-5	Marathon and Tumbler Proposal	
8		Development Comparison Map	487/
9	Exhibit A-6	Plat of Tracts, Tract	
10		Ownership, Applicable Lease	
11		Number, Unit Recapitulation,	
12		Pooled Parties	566/
13	Exhibit A-7	Letter of Support	574/
14	Exhibit A-9	Marathon Goliath Development	
15		Unit Timeline	504/
16	Exhibit A-10	Goliath Sample Well Proposal	
17		Letter and AFEs	439/
18	Exhibit A-11	Chronology of Contact	510/
19	Exhibit A-12	Planned Surface Facility	
20		Diagram	485/494
21	Exhibit B	Self-Affirmed Statement of	
22		Tyler Patrick	583/
23	Exhibit B-1	Location Map	583/
24	Exhibit B-2	Subsea Structure Map	583/
25	Exhibit B-3	Structural Cross-Section	583/

1
2
3
4
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25

E X H I B I T S (Cont'd)		
NO.	DESCRIPTION	ID/EVD
Cases 25462-25466:		
Marathon:		
Exhibit B-4	Stratigraphic Cross-Section	583/
Exhibit B-5	Goliath 24 Fed Com Upper	
	Avalon Production Data	583/
Exhibit B-6	Goliath 24 Fed Com Third	
	Bone Spring Carbonate	
	Production Data Points	583/
Exhibit B-7	Goliath 24 Fed Com	
	Mid-Third Bone Spring Sand	
	Production Data Points	583/
Exhibit C-2	Postal Delivery Report	643/
D O C U M E N T S R E Q U E S T E D		
NO.	DESCRIPTION	PAGE
Mr. Miller:		
1	Marathon to reevaluate	
	their AFEs	560
2	Amended Schedule	565
3	Amended Exhibit to Separate	
	Owners	569
4	Revised Notice	571
5	Correction to CPAC	572

1
2
3
4
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D O C U M E N T S R E Q U E S T E D (Cont'd)

NO.	DESCRIPTION	PAGE
-----	-------------	------

Mr. Patrick:

1	Supplemental Exhibits	629
2	Gun Barrel Diagram	633

NO.	DESCRIPTION	PAGE
-----	-------------	------

Ms. Shaheen:

1	Revised Statement with Full	
	Affidavit of Publication	637
2	NSP Notice Map	638
3	Emails Between Tumbler	
	and Marathon	638

1
2
3
4
5
6
7
8
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P R O C E E D I N G S

THE HEARING EXAMINER: Good morning.
It is 8:02 a.m. on the 17th of September. We continue
the contested hearing between Marathon and Tumbler.

Before we do that, Ms. Hardy, I want to
talk about the notice issues with 25441 and 25442.
Ms. Tschantz located the email from you guys. Let me
pull it up here. The updated abstract for the
Wolfcamp case, I'm not sure if that's 41 or 42,
included the Range 24 East language. So we have to
re-notice at least one of the cases. Okay? I don't
know if you need to as well. I'll leave that to you
to do whatever you need to do, but we do need to. So
we'll have to set another date in October to bring
those cases back around.

MS. HARDY: And that's just for the
Wolfcamp case. Right? We have one Wolfcamp case.
Yeah.

THE HEARING EXAMINER: Freya, is that
correct?

MS. TSCHANTZ: Yes, there's one Bone
Spring, one Wolfcamp. We had talked about re-noticing
both of them just to be safe though.

MS. HARDY: Okay.

THE TECHNICAL EXAMINER: So it looks

1 like the first docket we can do that is October 14.

2 MS. HARDY: Okay.

3 THE TECHNICAL EXAMINER: Which I think
4 is appropriate because if this case ends today, which
5 I'm hoping it will, it'll give the parties almost 30
6 days to deal with amended exhibits and maybe possibly
7 closing arguments of the transcript usually takes two
8 weeks.

9 Is that correct?

10 THE REPORTER: Yes.

11 THE TECHNICAL EXAMINER: Okay. So
12 we'll get the transcript in there as well and that
13 way, we can kind of wrap up everything on the 14th of
14 October. So unless we discuss differently, we will
15 re-notice these for October 14 and you will move your
16 cases, continue them to that date. I don't know if
17 Ms. Shaheen -- I think she'll have to as well since
18 they're sort of tied together.

19 MS. SHAHEEN: Continue the cases to the
20 14th, but no need for additional notice for ours.
21 Right? Okay. Thank you.

22 THE TECHNICAL EXAMINER: No, yours are
23 properly noticed.

24 And anything further on that,
25 Ms. Hardy?

1 MS. HARDY: No, that's fine. Thank
2 you.

3 THE TECHNICAL EXAMINER: Okay, okay.
4 Wonderful.

5 All right. So let me just review. My
6 screen, let's see. If I can get it to start.

7 I see Mr. --

8 Good morning, Mr. McClure. I see you
9 there on that screen. Are you ready to begin?

10 THE TECHNICAL EXAMINER: I am,
11 Mr. Hearing Examiner.

12 THE HEARING EXAMINER: All right.
13 Thank you.

14 We had dealt with some voir dire
15 yesterday of some exhibits from Mr. Villarreal. And I
16 believe I received something from Ms. Shaheen this
17 morning. It was a edited or redlined PDF.

18 Ms. Shaheen, would you describe what
19 you did?

20 MS. SHAHEEN: Yes, we took the Word
21 version of the Exhibit D that was previously filed, we
22 redlined it in accordance with your instructions
23 yesterday and then I put it into PDF and circulated it
24 so you could both see exactly what we were proposing
25 to change.

1 (Tumbler Exhibit D was marked for
2 identification.)

3 THE HEARING EXAMINER: All right.
4 Perfect.

5 Ms. Hardy, have you had a chance to
6 look at the PDF?

7 MS. HARDY: Yes. I did quickly look at
8 it. I just received it on my way here.

9 THE HEARING EXAMINER: Okay. Well, why
10 don't you take some time as we go through the
11 testimony here. I'm not going to ask you to make any
12 decisions until you've thoroughly reviewed it.

13 So it's pending admission, Ms. Shaheen.
14 All right? All right.

15 MS. SHAHEEN: Thank you.

16 THE HEARING EXAMINER: So with that
17 being said, when it comes to Mr. Villarreal's
18 exhibits, D is pending admission, as you know. D-1
19 and 2 are admitted.

20 (Tumbler Exhibit D-1 and Exhibit D-2
21 were marked for identification and
22 received into evidence.)

23 THE HEARING EXAMINER: D-3 and 4 are
24 excluded.

25 //

1 (Tumbler Exhibit D-3 and Exhibit D-4
2 were marked for identification.)

3 THE HEARING EXAMINER: D-5 is still up
4 in the air. I have question marks for D-5.

5 (Tumbler Exhibit D-5 was marked for
6 identification.)

7 MS. SHAHEEN: And that, we did revise
8 that one in accordance with your instructions and that
9 I think was circulated this morning as well.

10 THE HEARING EXAMINER: All right. I
11 didn't get that one.

12 MS. SHAHEEN: Oh, okay.

13 THE HEARING EXAMINER: But I'm not
14 saying that's your fault. I'm just saying I didn't
15 see that one. So let me -- okay. I do have a -- I
16 wasn't able to open it. I think it was a PowerPoint.

17 MS. SHAHEEN: Yes.

18 THE HEARING EXAMINER: Okay.

19 MS. SHAHEEN: You want me to convert
20 that one to PDF as well?

21 THE HEARING EXAMINER: Not necessarily.
22 I'll let Ms. Hardy review D-5 and then we'll deal with
23 it at that time. So anyway, so bottom line is D-5 is
24 not yet admitted. We're still revising it. D-9 is
25 excluded.

1 (Tumbler Exhibit D-9 was marked for
2 identification.)

3 THE HEARING EXAMINER: So D-6, D-7, D-8
4 are all admitted.

5 (Tumbler Exhibit D-6 and Exhibit D-7
6 and Exhibit D-8 were marked for
7 identification and received into
8 evidence.)

9 THE HEARING EXAMINER: Is there a D-10,
10 11, 12, 13, and 14?

11 MS. SHAHEEN: New ones?

12 THE HEARING EXAMINER: No.

13 MS. SHAHEEN: Oh, I'm sorry.

14 THE HEARING EXAMINER: Existing ones,
15 if you have Exhibits D-10 through 14.

16 MS. SHAHEEN: I believe they're part of
17 the package.

18 THE HEARING EXAMINER: Good. I don't
19 show them to be excluded so I'm assuming that they're
20 admitted into evidence.

21 Ms. Hardy, do you remember if you've
22 objected to D-10 through 14?

23 MS. HARDY: I don't believe I have
24 objected to those.

25 //

1 (Tumbler Exhibit D-10 through Exhibit
2 D-14 were marked for identification and
3 received into evidence.)

4 THE HEARING EXAMINER: All right.
5 Thank you. But D-15 is still up in the air as well.
6 And I think that was a rebuttal exhibit.

7 MS. SHAHEEN: I'm sorry, D-15?

8 THE HEARING EXAMINER: D-15 I think is
9 a rebuttal exhibit. That has not been admitted or
10 excluded at this point.

11 MS. SHAHEEN: Okay. That, I'm not sure
12 about.

13 THE HEARING EXAMINER: Okay.

14 MS. SHAHEEN: I think you are correct.
15 We haven't addressed D-15.

16 THE HEARING EXAMINER: Okay. All
17 right. Do you want to -- I mean, we have three
18 exhibits that are excluded. Do you want to deal with
19 D-15 now or do you want to go into the direct
20 testimony of your witness and then maybe handle D-15
21 as a rebuttal?

22 MS. SHAHEEN: That is acceptable.

23 THE HEARING EXAMINER: Go right ahead.
24 (Tumbler Exhibit D-15 was marked for
25 identification.)

1 MS. SHAHEEN: May I have him summarize
2 the revised Exhibit D?

3 THE HEARING EXAMINER: Yes. Yes,
4 please.

5 MS. SHAHEEN: Okay.

6 THE HEARING EXAMINER: Yes.

7 MS. SHAHEEN: Just make sure I have
8 that in here.

9 DIRECT EXAMINATION

10 BY MS. SHAHEEN:

11 Ms. Shaheen: Mr. Villarreal, I don't
12 believe you have a hard copy of your revised
13 statement. Do you?

14 MR. VILLARREAL: I do not.

15 MS. SHAHEEN: Do you see it on your
16 screen there?

17 MR. VILLARREAL: I do see that.

18 MS. SHAHEEN: You don't see it right in
19 front of you? It's not on your screen in front of
20 you?

21 MR. VILLARREAL: I see what's on the
22 screen. Like this is -- oh, this is the statement.

23 MS. SHAHEEN: Yeah.

24 MR. VILLARREAL: Yeah, yeah, yeah,
25 okay.

1 MS. SHAHEEN: Okay, yeah.

2 MR. VILLARREAL: I see it.

3 MS. SHAHEEN: All right. And this is a
4 statement that you've revised in light of our --

5 MR. VILLARREAL: Yes.

6 MS. SHAHEEN: -- testimony yesterday
7 and the instructions from The Hearing Examiner. Is
8 that correct?

9 MR. VILLARREAL: Yes.

10 MS. SHAHEEN: In your paragraph 5, you
11 summarize the reasons that you believe Tumbler's
12 development plan is superior to Marathon's. Can we
13 walk through those one at a time?

14 MR. VILLARREAL: Yes.

15 MS. SHAHEEN: And this relates to
16 Exhibit D-10. Is that correct?

17 MR. VILLARREAL: Yes.

18 Okay. So in this paragraph
19 highlighting why Tumbler's David development is
20 superior to Marathon's Goliath development. First
21 highlighting the wasted recovery in the Wolfcamp A
22 driven by their spacing decisions. They're ignoring
23 co-development of the Third Bone Spring, which is
24 diminishing future potential and under developing
25 their Second Bone Spring Sand, given their spacing

1 decisions, and the abandoning the proven reserves in
2 the Third Bone Spring Carbonate and the Avalon.

3 MS. SHAHEEN: Let's turn to Exhibit
4 D-10 just to make sure.

5 MR. VILLARREAL: Okay.

6 MS. SHAHEEN: Anything else here that
7 you would like to highlight for The Hearing Examiners?

8 MR. VILLARREAL: No. I think -- well,
9 this is just highlighting overall, you know, tops or
10 Tumbler's David 31 wells approximately 53 million BOE
11 recovery compared to Goliath's 17 wells, 29.6 MMBOE
12 expected recovery, but nothing further.

13 MS. SHAHEEN: And then turning to your
14 type curves, I believe they have about seven, A
15 through G. Is that correct? What do these type
16 curves illustrate in terms of the favorability of
17 Tumbler's proposals over Marathon's?

18 MR. VILLARREAL: Yeah, so these type
19 curves, one, it's just giving an overview of, you
20 know, the production for the wells that were selected
21 in -- or to develop the type curves, showing that we
22 are being fair with our overall EUR that is going --
23 going towards it where you can see, you know, where it
24 falls on the P distribution that's on the -- the
25 tables on the right-hand side. You know, we're

1 describing how many wells went into it so if we're
2 looking at -- you know, we're looking at the Avalon,
3 you know, this is saying, hey, there's 15 offset wells
4 within 15 miles, you know, describing the completions
5 of the wells that went into it as well as the spacing
6 and then highlighting that it was normalized for
7 10,000 foot laterals.

8 MS. SHAHEEN: And then your table here
9 to the bottom left, again, just remind us, EUR as in
10 --

11 MR. VILLARREAL: Estimated Ultimate
12 Recovery.

13 MS. SHAHEEN: And so each of your type
14 curves you have this summary of the statistics.

15 MR. VILLARREAL: Yes.

16 MS. SHAHEEN: The results and here, you
17 have estimating -- when you say 681 million barrels of
18 oil --

19 MR. VILLARREAL: 600 MBOE so 1,000
20 barrels of oil.

21 MS. SHAHEEN: Oh, okay. 681,000
22 barrels of oil.

23 MR. VILLARREAL: Yes.

24 MS. SHAHEEN: From the Avalon only. Is
25 that --

1 MR. VILLARREAL: For a 10,000 foot type
2 -- the type curve for -- for a 10,000 foot Avalon well
3 is 681,000 barrels of oil.

4 MS. SHAHEEN: This is per well.

5 MR. VILLARREAL: Per well. Yes, ma'am.
6 Yes.

7 MS. SHAHEEN: Per well, okay. Good.
8 And you have similar statistics for each of your type
9 curves, for each formation. Is that --

10 MR. VILLARREAL: Correct. And the same
11 background information that went into developing
12 these.

13 MS. SHAHEEN: Okay. Anything else
14 you'd like to highlight in your type curve slides?

15 MR. VILLARREAL: No, ma'am.

16 MS. SHAHEEN: Going back to your
17 reviewed statement, Part B here, you're talking about
18 the Third Bone Spring, Spring Sand co-development.
19 Can you talk a little bit about that for us? Or is
20 this all the type curve? This is all relates to the
21 type curve?

22 MR. VILLARREAL: That all relates to
23 the type curve. I think we're also referencing Third
24 Bone Spring Carbonate. Let's see. That was on the
25 exhibit. Yeah. So what we're saying is that Tumbler

1 plans to develop the Third Bone Spring Carbonate or
2 excuse me. This Third Bone Spring Carbonate, this is
3 the -- part of the -- the Harkey sand that we
4 discussed yesterday with Dylan in our belief that
5 there is potential there.

6 MS. SHAHEEN: And Marathon doesn't seek
7 to develop that Third Bone Spring Sand or Carbonate?

8 MR. VILLARREAL: Oh, I'm sorry. We're
9 talking about Third Bone Spring Sand. Okay. I
10 thought you said Carbonate. Yeah, so the Third Bone
11 Spring Sand, what we're highlighting here is that
12 you're not co-developing this. So the Third Bone
13 Spring Sand, and -- and when I say co-develop, that is
14 drilling the wells and completing them at the same
15 time, which is what Tumbler plans to do. Excuse me.
16 Marathon and Goliath, they're excluding the Third Bone
17 Spring Sand and not developing that at all -- that at
18 all. Given their -- their development plans, which
19 they highlight as kind of their -- their full
20 developing I think is -- is how they phrased it.

21 Let's see. Was it -- yeah, their
22 proposal to fully develop it, they're -- or not
23 drilling the Third Bone Spring sand, which we estimate
24 like a 15 to 40 percent productivity loss if they ever
25 decided to come back to it at some point down the road

1 and develop a Third Bone Spring Sand.

2 MS. SHAHEEN: And with respect to the
3 Second Bone Spring Sand, are there any differences
4 between Marathon and Tumbler's proposals?

5 MR. VILLARREAL: Yeah. So the Second
6 Bone Spring sand, Marathon is proposing that they
7 drill three wells across the Third Bone Spring sand.
8 Our analysis shows that that's going to lead to
9 ultimately 25 percent lower recovery with no, you
10 know, meaningful uplift to a single well recovery.

11 MS. SHAHEEN: And then here, you talk
12 about abandoned reserves. Can you provide a little
13 more detail about that?

14 MR. VILLARREAL: Yes. So this is
15 highlighting that Tumbler plans to drill the Avalon
16 and the Third Bone Spring Carbonate, you know, which,
17 you know, Marathon, Goliath, is not drilling. So
18 highlighting that we believe that's leaving behind
19 about 10 million BOE reserves.

20 MS. SHAHEEN: And again, this is shown
21 in your type curves. Is that correct? In Exhibit
22 D-10? Sorry. D-11.

23 MR. VILLARREAL: These -- well, the
24 recovery from the Avalon and the Third Bone Spring
25 Carbonate, the data to back that up is show in the

1 type curves.

2 MS. SHAHEEN: And then here, you're
3 talking about the First Bone Spring Sand and the
4 difference between Marathon and Tumbler's proposals?

5 MR. VILLARREAL: Yes. And I'm
6 referencing Exhibit D-12A here.

7 MS. SHAHEEN: Okay. Go there. Is this
8 the right one?

9 MR. VILLARREAL: Yes. It is.

10 MS. SHAHEEN: I'll make it a little
11 smaller. And can you explain this to The Hearing
12 Examiners, please?

13 MR. VILLARREAL: Yeah, so what we're
14 looking at here is, you know, as noted in the -- the
15 note section at the very bottom, this is a Bone Spring
16 for offset wells, 15-mile radius around the David
17 unit. And what we've done is we've plotted the
18 estimated ultimate recovery, normalized to 10,000 feet
19 and we've plotted the spacing along the X axis, EURs
20 on the Y axis. We've drawn lines that, you know,
21 highlight the four WPEs, wells per section 5, 6, and
22 8. Then we've plotted where the -- our six well per
23 section type curve and our four well per section type
24 curve.

25 And what you can see is that the --

1 there's a 25 percent degradation single well EURs at a
2 six wells per section. That is what is being
3 highlighted, the difference, that gap with the arrow
4 so the difference along the Y axis. Now, 25 percent
5 degradation happens when you're going from a six wells
6 to a four well per section. So essentially what that
7 means is in the Marathon Goliath, you know, a 25
8 percent degradation, they're going to be drilling six
9 wells and getting, you know, four and a half wells of
10 production whereas we'll be drilling four and getting
11 the four wells worth of production. So it is an
12 inefficient way to develop the Second Bone Spring
13 Sand.

14 MS. SHAHEEN: And is that causing
15 waste?

16 MR. VILLARREAL: Yes.

17 MS. SHAHEEN: And just for me, for my
18 sake, it says "Four WPS, five WPS." What is WPS?

19 MR. VILLARREAL: Wells per section.

20 MS. SHAHEEN: Wells per section. Okay.
21 Thank you. And there's a number again, there's a
22 number of these slides. Is that correct? Would it be
23 helpful for us to walk through all those slides now,
24 12B, C.

25 MR. VILLARREAL: Sure.

1 MS. SHAHEEN: And this is the same
2 representation for the Second Bone Spring Sand?

3 MR. VILLARREAL: Yeah. So same layout
4 of the graph for the Second Bone Spring Sand, you
5 know, what we're plotting here or what -- what this
6 graph is highlighting is that there is not a
7 meaningful uplift in the proposed spacing, which is,
8 you know, I believe greater than 1500 feet for the
9 Marathon Goliath development plan. So essentially,
10 you know, you're drilling three wells but, you know,
11 generally you'd expect the less wells that you would
12 drill in a certain section, incrementally you would
13 think you would have more recovery per well. That's
14 not apparent in the Second Bone Spring. So they're
15 leaving behind reserves by not drilling at least four
16 wells per section here.

17 MS. SHAHEEN: Here, we're talking about
18 the Wolfcamp A?

19 MR. VILLARREAL: Mm-hmm.

20 MS. SHAHEEN: Explain what the
21 differences are between Marathon and Tumbler's
22 developments in the Wolfcamp A.

23 MR. VILLARREAL: Yeah. So this is
24 highlighting how Marathon, they plan to drill four
25 wells per section compared to the Tumbler six wells

1 per section. So what we do see here is if you drill a
2 four wells per section, you'd expect about a 10
3 percent uplift in EURs per well, but that is not
4 enough. You would still get more reserves and more
5 optimal production profile if you were to drill the
6 Wolfcamp A at six wells per section. So what this is
7 saying is they're leaving behind 1700 MBOE 20 of
8 reserves. Clarifying, MBOE 20, that is, you know,
9 dividing the gas typically, you know, when you say
10 BOE, you'll divide out the gas by six. BOE 20, you're
11 dividing your gas MCF by 20 instead. It's just
12 reducing the impact of -- of gas as it's not -- it's
13 -- we feel it's a better representation for kind of
14 the productivity of the well and the economics of the
15 well.

16 MS. SHAHEEN: Turning back to your
17 revised exhibit.

18 MR. VILLARREAL: Okay.

19 MS. SHAHEEN: Subsection F, overall
20 resource recovery and economics. You're comparing
21 Marathon's development to Tumbler's share as well?

22 MR. VILLARREAL: Mm-hmm. Yes. Read
23 through this. One second. So I think this is where
24 we are referencing Exhibit D-2. So here, we are just
25 pointing out recoverable BOE, this has been adjusted

1 for gas shrink of 48,000 MBOE in the Tumbler plan,
2 26.8000 BOE or MBOE in the Marathon plan. Also,
3 highlighting, you know, what is the cumulative
4 discounted cash flow at 10 percent between the Tumbler
5 and the Marathon plan, you know, that is 854 million
6 for Tumbler, 461 for Marathon, highlighting the
7 revenues that would be expected to state, federal and
8 then, you know, others were labeled as private.

9 And then what would the cash flow
10 profiles look like for total revenues for the first
11 three years for the Tumbler versus the Marathon
12 development and highlighting that the Tumbler
13 development, that'd be 575 million more of revenues
14 flowing through the U.S. economy. So that's the total
15 revenues to be clear.

16 MS. SHAHEEN: And what is the
17 approximate difference between the total revenues of
18 Marathon's proposal and Tumbler's proposal?

19 MS. HARDY: Mr. Examiner, I want to
20 object because this information has been admitted I
21 think.

22 THE HEARING EXAMINER: What information
23 has been admitted?

24 MS. HARDY: Well, the information that
25 Ms. Shaheen's talking through with the witness and I

1 thought we were admitting our direct testimony into
2 the record. We weren't going through all of our
3 witness's directs on the stand.

4 THE HEARING EXAMINER: Okay. So
5 basically -- okay.

6 So Ms. Shaheen, I think what Ms. Hardy
7 is saying, correct me if I'm wrong, is are you dealing
8 with D-2 right now?

9 MS. SHAHEEN: Yes.

10 THE HEARING EXAMINER: I thought so.

11 MS. SHAHEEN: I thought we were
12 summarizing and maybe we're going into a little more
13 detail than you anticipated, but for me, it's helpful
14 to go through it.

15 THE HEARING EXAMINER: Okay.

16 MS. SHAHEEN: And I don't know if it's
17 helpful for you and for Mr. McClure. If it isn't,
18 then I'll step back and we won't go into as much
19 detail as we have.

20 THE HEARING EXAMINER: Okay. That is
21 the objection. Isn't it?

22 MS. HARDY: That is.

23 THE HEARING EXAMINER: That is the
24 objection. Yeah.

25 If you could just hit the high points.

1 MS. SHAHEEN: Okay.

2 THE HEARING EXAMINER: I think that's
3 the objection and I agree with Ms. Hardy that we did
4 say that we don't want to, you know, rehash everything
5 that's been admitted. And D-2 has been admitted in
6 its entirety. So if you'll just hit the high points.
7 I realize that you're going through Exhibit D as well
8 and let me stop you there for a moment without
9 breaking your chain of thought.

10 Ms. Hardy, have you had a chance to
11 look at D?

12 MS. HARDY: I have.

13 THE HEARING EXAMINER: Excellent. Do
14 you still maintain an objection to D?

15 MS. HARDY: I do not as it's been
16 revised.

17 THE HEARING EXAMINER: Excellent.

18 We're going to admit revised Exhibit D.
19 When can we get a proper copy of it without the red
20 line in PDF format?

21 (Tumbler Exhibit D was received into
22 evidence.)

23 MS. SHAHEEN: Sometime this evening I
24 would imagine.

25 THE HEARING EXAMINER: Okay. Fine.

1 Fine.

2 MS. SHAHEEN: Well, we'll see what time
3 we get done today.

4 THE HEARING EXAMINER: Fine. And then
5 D-5. You also submitted D-5 PowerPoint.

6 Ms. Hardy, have you had a chance to
7 look at D-5?

8 MS. HARDY: I have.

9 THE HEARING EXAMINER: Excellent. And
10 how do you feel about D-5?

11 MS. HARDY: Understanding that I can
12 conduct cross on it, I mean, I do think it's
13 duplicative of his testimony, but I won't object.

14 THE HEARING EXAMINER: Thank you.
15 So D-5 is now admitted into evidence as
16 well.

17 (Tumbler Exhibit D-5 was received into
18 evidence.)

19 THE HEARING EXAMINER: So let me make a
20 few notes.

21 And then if you would proceed,
22 Ms. Shaheen, based on what we've just discussed,
23 that'd be great.

24 MS. SHAHEEN: Thank you.

25 //

1 BY MS. SHAHEEN:

2 MS. SHAHEEN: Turning now,
3 Mr. Villarreal, can you summarize your opinions on the
4 AFEs and the well cost?

5 MR. VILLARREAL: Yep.

6 MS. SHAHEEN: And this is on -- it's on
7 your screen, should be on your screen.

8 MR. VILLARREAL: Mm-hmm.

9 Yeah, so this is referencing D-7 so
10 what we're saying is Tumbler's well costs you'll
11 average about \$1,062 per completed lateral foot which
12 we believe is consistent with -- with industry AFEs
13 within, you know, that state line area around the
14 David unit. Marathon's AFEs come in at \$882 per
15 lateral foot, which we believe is unreliable and, you
16 know, there are some -- there is evidence based on
17 surrounding AFEs that have been submitted, you know,
18 before the Commission by industry peers as well as
19 themselves in the recent history that indicate that
20 those numbers may not be as reliable as we would hope
21 and also that it is a significant reduction from AFEs
22 that they sent with -- for the same unit about nine
23 months prior.

24 MS. SHAHEEN: And then briefly turning
25 -- in those, your analysis there is reflected in

1 Exhibit D-7 and I won't take us to D-7 but that is
2 correct. Right?

3 MR. VILLARREAL: Okay. Yes.

4 MS. SHAHEEN: And I would just note for
5 the record that's the emoji slide.

6 MR. VILLARREAL: Okay.

7 MS. SHAHEEN: Marathon's lack of
8 commitment here. Can you speak to that briefly? Can
9 you summarize that quickly?

10 MR. VILLARREAL: Yeah. So I think the
11 -- the main point here is, you know, as they've voiced
12 over, these well are happening far into the future.
13 There's a significant amount of volatility within the
14 market, you know, with inflation and also, you know,
15 political tariff volatility among many other things
16 where the prices that you would expect to drill a well
17 in two years, good luck finding that or getting that
18 to be a reliable estimate for what the costs are going
19 to be in two years.

20 MS. SHAHEEN: In paragraph 6, you talk
21 about Marathon's COPAS rates and here you reference
22 \$19,134 per month for drilling and \$1913 per month for
23 producing. Where do those numbers come from?

24 MR. VILLARREAL: That comes from their
25 initial well proposals.

1 MS. SHAHEEN: And what was the day of
2 those initial well proposals?

3 MR. VILLARREAL: That was -- let's see.
4 I believe that was June. Get the exact one.

5 MS. SHAHEEN: Do you know whether those
6 initial well proposals are in the record?

7 MR. VILLARREAL: I was looking for the
8 initial well proposals. I can't find it anywhere in
9 their exhibits so --

10 MS. SHAHEEN: So Marathon didn't
11 provide its initial well proposals in its package. Is
12 that right?

13 MR. VILLARREAL: If -- if you can point
14 them to me, I can reference them, but I can't find the
15 well proposals in their exhibits.

16 MS. SHAHEEN: Moving on, in here in
17 paragraph 7, you talk about Tumbler's ability to
18 execute here. Can you just briefly summarize what you
19 have in this page?

20 MR. VILLARREAL: Yeah. So this is just
21 highlighting, you know, the operational experience of
22 portions of the team that will be overseeing these
23 operations. Without rehashing the entire background
24 of myself, Dylan Collins, Walt Baker, Nick Weeks, you
25 know, and that's among many others, we're

1 petrotechnical professions that we have on staff at
2 Stronghold Investment Management.

3 MS. SHAHEEN: Here, you're talking
4 about Marathon's lack of commitment. Does this --
5 what is the basis for your opinion that Marathon has a
6 lack of commitment?

7 MR. VILLARREAL: You know, I think part
8 of this -- there was commitment from the -- the prior
9 -- or from Marathon team in 2024 to get these
10 developed. In 2025, you know, we saw that as they
11 presented the AFEs. We signed the AFEs. That was
12 back in November of '24 and they've voiced over that
13 these should be drilled March/April of '25. That
14 since fell through and this is, you know, highlighting
15 that, you know, I call it a relatively flippant
16 acknowledgement of they're not going to be drilling
17 these, we're just going to have to repool them and
18 then continuing to push back the dates of when these
19 could be drilled, not providing any clarity of when
20 these will be drilled. You know, continuing to not
21 commit to developing this unit.

22 MS. SHAHEEN: And those communications
23 between Marathon and Tumbler that you're relying on,
24 are those reflected in the chronology of contacts in
25 A-5?

1 MR. VILLARREAL: In -- in A-5?

2 MS. SHAHEEN: Yes, it was attached --
3 weeks.

4 MR. VILLARREAL: I believe so, yes.

5 MS. SHAHEEN: And about how many
6 communications are reflected in A-5?

7 MR. VILLARREAL: I believe it was about
8 70. Let me jump to it real quick.

9 MS. SHAHEEN: Three pages single
10 spaced. Would you agree? I can pull it up.

11 MR. VILLARREAL: Yes.

12 MS. SHAHEEN: Do you recall who at
13 Marathon you were conferring with back in 2024?

14 MR. VILLARREAL: Yeah. That was Farley
15 Duvall, you know, Chase Rice, Sam Cox.

16 MS. SHAHEEN: And were they still at
17 Marathon after the Conoco-Marathon merger?

18 MR. VILLARREAL: Yeah, following the
19 merger, they did stay on. You know, Sam Cox was
20 primarily -- he was over this -- this area in New
21 Mexico, continued to stay on through the transition
22 team. I believe he left at the end of April. Same
23 with Sam Cox. I believe Farley Duvall is still there.

24 MS. SHAHEEN: So is it your opinion
25 that the -- what is your opinion on the effect of the

1 merger between Conoco and Marathon on this
2 development?

3 MR. VILLARREAL: I believe that there
4 was clear knowledge of understanding of when the force
5 pooling orders would expire. They knew that there
6 were permits that were ready to go. You know, we've
7 voiced that over in emails I believe that are on
8 record, that there was lack of willingness to act,
9 acknowledgement that they are going to let this expire
10 and they're going to kick the can and maybe develop it
11 down the road.

12 MS. SHAHEEN: And you were actually on
13 a number of these emails when you proposed specific
14 trades. Do you recall that email chain?

15 MR. VILLARREAL: Yes.

16 MS. SHAHEEN: With Mr. Miller?

17 MR. VILLARREAL: Yes.

18 MS. SHAHEEN: Let's take a look at
19 that. I believe this is cross- exhibit -- Marathon's
20 Cross Exhibit 1. Let me find that. Is this the email
21 chain that you called?

22 (Marathon Cross Exhibit 1 was marked
23 for identification.)

24 MR. VILLARREAL: Yes.

25 MS. SHAHEEN: And here, I think this is

1 Ms. Hardy's highlighting. Can you read that or at
2 least explain your understanding of what Mr. Miller is
3 saying here?

4 MR. VILLARREAL: Mr. Miller is saying
5 that, let's see, I believe the quote is "I don't have
6 time to go through our various portfolio to put a
7 trade schedule together for your consideration." Then
8 he says "If Stronghold wants to pitch a trade deal,
9 please sign in or please send in an offer with
10 specifics of interest," which we did. "In all candor,
11 our non-op budget is considerable and we value our
12 near-term non-oppositions with good operators such as
13 the ones you listed which is to say a trade would have
14 to be rather attractive to consider, but you never
15 know until you propose."

16 MS. SHAHEEN: And isn't it true that in
17 the previous email from you to Mr. Miller you had
18 actually made a specific proposal? And here, you
19 followed up on that specific proposal because you
20 received no response. Correct?

21 MR. VILLARREAL: Yeah. I mean, it --
22 it starts on April 3rd.

23 MS. HARDY: I object. Well, wait,
24 wait, I object.

25 THE HEARING EXAMINER: There's an

1 objection so you have to wait.

2 MS. HARDY: Well, I object to the
3 characterization of his email as a specific proposal,
4 but --

5 THE HEARING EXAMINER: You object to
6 what now? I didn't hear you.

7 MS. HARDY: The characterization of
8 Mr. Villarreal's email to Mr. Miller as a specific
9 trade proposal.

10 THE HEARING EXAMINER: Okay.

11 Ms. Shaheen?

12 MS. SHAHEEN: Should we look at the
13 email?

14 THE HEARING EXAMINER: You can go any
15 direction you want.

16 MS. SHAHEEN: I mean, basically she's
17 criticizing my --

18 THE HEARING EXAMINER: Right. Correct.

19 MS. SHAHEEN: -- characterization of --
20 and I'm not sure if she's objecting to my
21 characterization. I'm not sure how to respond.

22 THE HEARING EXAMINER: Well --

23 MS. SHAHEEN: I'm just --

24 THE HEARING EXAMINER: I mean, it's an
25 objection to how you're framing the question so it's a

1 form of question objection.

2 MS. SHAHEEN: I'm happy to rephrase the
3 question.

4 THE HEARING EXAMINER: Perfect.

5 MS. SHAHEEN: Okay.

6 THE HEARING EXAMINER: So sustained and
7 rephrase. Thank you.

8 BY MS. SHAHEEN:

9 MS. SHAHEEN: Okay. Moving onto the
10 email that Mr. Miller is responding to, how would you
11 characterize your email to Mr. Miller?

12 MR. VILLARREAL: Well, this is -- this
13 is responding to his direct ask, if we go down two
14 more. So, yeah, this is on April 3rd. Let's see. "I
15 understand and --" this is from me to Sean. "I
16 understand and appreciate that you do not have clear
17 line of sight on development timing. Our goal," this
18 is Tumbler, "have always been to, one, ensure the
19 lease remains intact, which we have done by proposing
20 operations to Marathon and highlighting Madera
21 production to your team. We are grateful to you and
22 Juan for keeping an eye on the well.

23 And two, get development started in the
24 unit. Along these lines, we are interested in talking
25 trades as we work through the path forward. I know

1 that the COP or MRO working interest in our right
2 position and Goliath is not ideal. Our lease hold and
3 override position would make this a more attractive
4 location on the COP/MRO drill schedule. If this is
5 something you are interested in, let us know what days
6 next week work and I can come by the office."

7 MS. SHAHEEN: And just above that is
8 Mr. Miller's response. Correct?

9 MR. VILLARREAL: "Does Stronghold or
10 Tumbler have any tracts in mind for trade
11 possibilities?"

12 MS. SHAHEEN: And that led to your
13 April 3rd email? And what did you propose in your
14 April 3rd email?

15 MR. VILLARREAL: Yeah, so what I'm
16 saying here is I'm telling them this is what we would
17 like, this is what we would be interested in trading
18 in, you know. Before we had already said, "Sean,
19 we're interested in just trading out of the Goliath
20 unit, not David. Like here -- and here's what we
21 would like in exchange for it. We'd be interested in
22 COP non-oppositions that are heavy in PDP, DUCs and
23 permits," so naming the res cats [ph] "in the state
24 line area," giving a geographic location.

25 "Our preference would be to Mewbourne,

1 Matador, Oxy as the operators." Trying to make this
2 very easy, see what you have in your portfolio, this
3 is what we would like. "Without knowing the full
4 breadth of the COP non-opposition, we're initially
5 thinking of Paduca, Big Sink, and Fuller." So --

6 MS. SHAHEEN: When you say Paduca, Big
7 Sink, and Fuller, what are you referring to?

8 MR. VILLARREAL: Those are individual
9 units by some of the operators that I named above and
10 just highlighting we don't necessarily -- you don't
11 know all of the non-op positions of Conoco, like their
12 name's not on the well. It's an Oxy well. It's a
13 Matador well. You know, they have a minority
14 non-working or non-operated interest in it. So unless
15 you're running title across everything and know all of
16 their interests, it takes two to tango and do the
17 trade. And then I ask, "Do you have other options
18 that you would like considered?"

19 MS. SHAHEEN: And did Mr. Miller
20 respond to that question?

21 MR. VILLARREAL: That's when he said he
22 doesn't have time to review his trade portfolio.

23 MS. SHAHEEN: So in your opinion, when
24 you're talking about a specific set of wells like the
25 Paduca wells and you're suggesting that there may be a

1 trade that you could consummate with Marathon with
2 respect to the Paduca wells, in your opinion, is that
3 a specific proposal?

4 MR. VILLARREAL: I don't know how much
5 more specific I can get than that.

6 MS. SHAHEEN: Same thing with the Big
7 Sink. You specifically proposed to trade
8 non-oppositions, Conoco's or Marathon's
9 non-oppositions in the Big Sink wells. Is that right?

10 MR. VILLARREAL: Correct.

11 MS. SHAHEEN: And same thing with the
12 Fuller. Right?

13 MR. VILLARREAL: Correct. And if he
14 didn't like those, I give him options of these would
15 be other things that we would like to try and get
16 these discussions going.

17 MS. SHAHEEN: And for the record, what
18 is PDP?

19 MR. VILLARREAL: Proved developed and
20 producing. Those are wells that are currently online
21 and making oil and gas.

22 MS. SHAHEEN: And the DUCs?

23 MR. VILLARREAL: Drilled uncompleted.
24 So they have -- in some, they're work in progress
25 wells.

1 MS. SHAHEEN: And when you're referring
2 to the state line area, what area is that?

3 MR. VILLARREAL: That is Southern Eddy
4 and Lea Counties, you know, generally around the Texas
5 and New Mexico state line.

6 MS. SHAHEEN: And then of course you've
7 identified specific operators that are acceptable. Is
8 that right?

9 MR. VILLARREAL: Yes.

10 MS. SHAHEEN: Going back to your
11 revised statement, your Exhibit D-6 relates to what we
12 were just talking about, is that correct, in a little
13 more detail?

14 MR. VILLARREAL: One second. I get
15 back there.

16 MS. SHAHEEN: Here, I can take us to
17 D-6.

18 THE HEARING EXAMINER: Ms. Shaheen,
19 excuse me for interrupting you, but I'm going to give
20 you ten more minutes maximum to summarize with this
21 witness.

22 MS. SHAHEEN: Okay. Thank you.

23 THE HEARING EXAMINER: Thank you.

24 BY MS. SHAHEEN:

25 MS. SHAHEEN: Oh, this actually goes to

1 the AFEs. Can we turn to Exhibit D-6 and just take a
2 half a minute to describe what we have here?

3 MR. VILLARREAL: Yeah. This has been
4 the process over about two months. This is, you know,
5 again, this is for the Goliath unit that Marathon has
6 had for about seven years to put together and plan.
7 And then, you know, in -- in response to the Tumbler
8 David proposals sent -- initially began sending their
9 proposals on July -- yeah, July 9th. The initial one,
10 it's highlighting that this was the wrong elections
11 that they sent. You know, it was different wells that
12 were on the election that were initially sent out. So
13 a fairly, you know, was not a great look.

14 Then a version 3 going, you know, new
15 well proposals that were sent out, then renaming other
16 wells previously that had been sent out, you know,
17 about two weeks prior. Then version 4, going through
18 more well renaming, changing TBDs, changing spacings,
19 and then highlighting, you know, what is ultimately in
20 the pooling order. You know, I think what's -- what's
21 not reflected -- we'd expect probably another one to
22 come down the pipe soon. I think is it the 602 and
23 603. It's -- it's based at like 120 feet lateral
24 distance apart which, you know, we -- we believe is
25 just a mistake.

1 MS. SHAHEEN: So in short, there were a
2 number of changes over the course of one month just
3 prior to this hearing. Is that right?

4 MR. VILLARREAL: Yes.

5 MS. SHAHEEN: Turning back to your
6 revised exhibit, scrolling down, one thing we did
7 change, we put additional letters for some of the
8 paragraphs to hopefully make it easier to read. And I
9 think that brings us to the end of your revised
10 affidavit.

11 MR. VILLARREAL: I don't know if we
12 talked about --

13 MS. SHAHEEN: We can go back to some
14 other exhibits with our remaining time.

15 MR. VILLARREAL: Okay.

16 MS. SHAHEEN: So, here, we're talking
17 about D-6, scrolling down. Is there anything
18 important about D-7? We didn't talk about this
19 earlier. This is the emoji slide that illustrates the
20 differences between Marathon's earlier AFEs and their
21 current AFEs. Anything to add here?

22 MR. VILLARREAL: Yeah, so one -- one
23 thing we, you know, we haven't talked on, so methods
24 for -- for pulling these. These are looking at prior
25 orders that are on the NM OC website and pulling AFEs

1 down from there. So it's all publicly available.
2 Looking at perforated lateral lengths. You know,
3 we're looking at what is -- what does Matador cost?
4 What were their cost per foot? Conoco, interesting,
5 you know, this was their Gunner 8 Fed Com well, that's
6 \$1203 per foot. Devon, their Boll Weevil \$1340 per
7 foot. Marathon, you know, interesting, you know, as
8 we discussed, their -- their October 24 AFE same unit,
9 1251. Then now we're down to 882. You know, I don't
10 -- I don't know where that's coming from. You know,
11 interesting they -- they did not price any casing.
12 They didn't price any cement, any drill bits. So
13 could be coming from not including those in the AFEs.
14 Yeah, I don't believe it's -- it couldn't be from, you
15 know, greater efficiency.

16 They're not running a meaningful amount
17 of new rigs since the merger between Marathon and
18 Conoco so that's not a likely source. So basically,
19 it's -- it's highlighting the unreliability of the --
20 Marathon's current AFEs and, you know, what we believe
21 is a reliable number for the Tumbler.

22 MS. SHAHEEN: Turning to D-8, we have
23 about five minutes left here, you want to quickly
24 summarize here D-8, what's important?

25 MR. VILLARREAL: This is just

1 highlighting, you know, if we're two years out
2 significant inflation, policy swings from tariffs that
3 would make an 882 number priced at today unreliable
4 for two years from now.

5 MS. SHAHEEN: D-9?

6 UNIDENTIFIED SPEAKER: This was
7 excluded.

8 MR. VILLARREAL: Yep.

9 MS. SHAHEEN: Okay. Thank you.

10 THE HEARING EXAMINER: Correct.

11 BY MS. SHAHEEN:

12 MS. SHAHEEN: D-10.

13 MR. VILLARREAL: Discussed.

14 MS. SHAHEEN: Discussed, okay.

15 MR. VILLARREAL: Yeah.

16 MS. SHAHEEN: D-11. Those were
17 discussed. D-12 we discussed. D-13, anything here
18 you would like to summarize that's important for The
19 Hearing Examiners?

20 MR. VILLARREAL: Yes. So here, you
21 know, as we discussed yesterday, you know, treating
22 the Third Bone Springs Sand, the Wolfcamp A and the
23 Wolfcamp B as a single flow unit and then looking at
24 the density of, you know, wells within that single
25 flow unit across nearby -- nearby units. And one

1 thing to highlight, you know, you know, one you say
2 Devon Fighting Okra is at the highest where they're
3 putting ten wells in the Wolfcamp A, nine in the
4 Wolfcamp B, you know, the major takeaway here is, you
5 know, the wells are developed with the Third Bone
6 Spring Sand in Wolfcamp A. When the Third Bone Spring
7 Sand is not developed, they're going to be in a much
8 higher density across the Wolfcamp A.

9 MS. SHAHEEN: Turning to Exhibit D-14.
10 Can you briefly summarize the highlights here?

11 MR. VILLARREAL: Yeah, so this is just
12 providing a little bit greater detail, adding EURs to
13 the chart prior. So the bubbles are sized by the
14 average EUR per well within the flow unit, the flow
15 unit being Third Bone Spring Sand, Wolfcamp A,
16 Wolfcamp B. X axis is the total wells per section and
17 then the Y axis would be the total flow unit MBOE 20
18 as discussed.

19 MS. SHAHEEN: Thank you, Mr. V.

20 Mr. Hearing Examiner, I think that
21 brings us to the rebuttal Exhibit D-15.

22 THE HEARING EXAMINER: Okay.

23 MS. SHAHEEN: Would you like me to
24 proceed?

25 THE HEARING EXAMINER: Yes.

1 MS. SHAHEEN: This relates to paragraph
2 12 and just for the record, so far I've been referring
3 to Marathon's exhibits in Case No. 25541 and if
4 there's any difference, I might need to clear that up
5 with Mr. Miller or Mr. Patrick. Is it Patrick? But
6 in paragraph 12 of Mr. Miller's statement in 25541, he
7 states that "Marathon proposes to fully develop the
8 Bone Spring and Wolfcamp formations underlying three
9 sections of land, 1579 and change acres by drilling
10 two and a half mile laterals and Exhibit D-15 is in
11 response, in rebuttal to that statement. Let me see
12 if I can find it here. And I apologize for not having
13 this pulled up.

14 THE HEARING EXAMINER: Ms. Hardy, the
15 paragraph that Ms. Shaheen is referring to, has that
16 been admitted into evidence?

17 MS. HARDY: Of Mr. Miller's affidavit?
18 Yes.

19 THE HEARING EXAMINER: Great. Is there
20 an exhibit number you can give me?

21 MS. HARDY: Mr. Miller's affidavit is
22 Exhibit A.

23 (Marathon Exhibit A was marked for
24 identification and received into
25 evidence.)

1 THE HEARING EXAMINER: A. Thank you.

2 So Ms. Shaheen, you're trying to pull
3 up Exhibit A. Is that right?

4 MS. SHAHEEN: I'm trying to pull up the
5 rebuttal exhibit.

6 THE HEARING EXAMINER: Oh, D-15?

7 MS. SHAHEEN: Here, yes, I found it.
8 Yes. D-15. And I don't have the labeled ones here,
9 but I understand this is D-15.

10 MR. VILLARREAL: Could you zoom out
11 just a little bit of this one?

12 MS. SHAHEEN: I'm sorry?

13 MR. VILLARREAL: Could you zoom out
14 this slide just a little bit?

15 MS. SHAHEEN: Zoom out? And I --

16 MR. VILLARREAL: Can you scroll down
17 just a little? Yeah. Thank you.

18 MS. SHAHEEN: Yeah. And I'm not sure
19 what Ms. Hardy's objection is here.

20 THE HEARING EXAMINER: Well, we'll find
21 out in just a moment. So are you seeking to introduce
22 this into evidence now?

23 MS. SHAHEEN: Unless you would prefer
24 that we wait until after Mr. Miller's testimony, but
25 it's --

1 THE HEARING EXAMINER: No. You have
2 the witness here.

3 MS. SHAHEEN: Okay.

4 THE HEARING EXAMINER: Okay. So
5 Ms. Hardy, have you looked at D-15?

6 MS. HARDY: Yes. I have.

7 THE HEARING EXAMINER: Okay. And I
8 think this was handed to me yesterday. I don't know
9 if this is a new D-15 or not. How many pages is D-15?

10 MS. SHAHEEN: I believe it's just one
11 page. It's a gun barrel.

12 THE HEARING EXAMINER: Okay. And
13 yesterday, I was handed a stack of pages that begin
14 with EOG Resources. Does this belong with a
15 particular exhibit? 'Cause they're not marked, that's
16 why I'm asking.

17 MS. SHAHEEN: Oh, you mean they're not
18 marked in the package that you have?

19 THE HEARING EXAMINER: Well, it's
20 these.

21 MS. SHAHEEN: Oh, that's a separate --

22 THE HEARING EXAMINER: What is it?

23 MS. SHAHEEN: That, I don't know. I'll
24 have to confer with my client as to what that is.

25 THE HEARING EXAMINER: Okay.

1 MS. HARDY: It looked to me, well, like
2 that was part of this exhibit.

3 THE HEARING EXAMINER: I thought so
4 too, but I wasn't sure.

5 MS. SHAHEEN: Oh, is it? My apologies
6 for not being informed.

7 Is the EOG well proposals, is that part
8 of Exhibit D-15?

9 MR. VILLARREAL: Yes.

10 MS. SHAHEEN: Oh, okay. My bad.

11 THE HEARING EXAMINER: How many pages
12 is Exhibit D-15?

13 MR. VILLARREAL: Forty-one.

14 THE HEARING EXAMINER: Okay.

15 MR. VILLARREAL: Approximately 41.

16 THE HEARING EXAMINER: Okay. All
17 right. So that's all of this here. Okay.

18 So, Ms. Hardy, did you understand that
19 this is part of D-15?

20 MS. HARDY: Yes.

21 THE HEARING EXAMINER: Oh, you did
22 understand? Okay.

23 MS. HARDY: Well, that was my yes
24 impression.

25 THE HEARING EXAMINER: Well, I didn't

1 have that impression.

2 MS. HARDY: Suspicion.

3 THE HEARING EXAMINER: Well, that's
4 great. Excellent. Okay.

5 So, Ms. Shaheen, well, what is D-15
6 meant to rebut? Is it that paragraph 12?

7 MS. SHAHEEN: Yes.

8 THE HEARING EXAMINER: Okay.

9 And Ms. Hardy, your position on D-15?

10 MS. HARDY: I object to D-15 because
11 these are EOG's well proposals that have been
12 withdrawn and were not pursued by EOG. And the gun
13 barrel that you're seeing here on the screen is based
14 on EOG's well proposals and my understanding of the
15 exhibit is that Tumbler is trying to show that EOG
16 proposed development of these benches that Conoco is
17 not proposing.

18 THE HEARING EXAMINER: I see.

19 MS. HARDY: And so I think that using
20 withdrawn well proposals of another party, who is also
21 represented by counsel in this case and has not signed
22 on to Tumbler's development plan, is not relevant.

23 THE HEARING EXAMINER: Okay. All
24 right.

25 I'll come back to you, Ms. Shaheen, in

1 just a moment.

2 So Mr. Sayer, can you turn your
3 microphone on? All right.

4 MR. SAYER: The rebuttal exhibit?

5 THE HEARING EXAMINER: Yes. And have
6 you reviewed all 41 pages of this with the EOG
7 Resource AFEs?

8 MR. SAYER: Not in detail, no.

9 THE HEARING EXAMINER: Okay. But what
10 have you reviewed when it comes to D-15?

11 MR. SAYER: I've looked through the
12 exhibit and I know that, you know, the team at EOG has
13 examined that, but I don't have, you know, their
14 position on the content included there, other than
15 what I communicated yesterday that they remain neutral
16 as to operatorship.

17 THE HEARING EXAMINER: Okay, okay.

18 So, Ms. Shaheen --

19 Thank you, Mr. Sayer.

20 So, Ms. Shaheen, the logic of -- I'm
21 not even understanding, why are these relevant, EOG
22 Resources?

23 MS. SHAHEEN: I think these are
24 relevant because EOG has examined this anchorage and
25 determined that it should be developed in a certain

1 way. And we're just illustrating another example of
2 an operator who has examined the potential for
3 development here and we're offering their opinion,
4 well, not their opinion, but their proposal, their
5 actual proposal to develop, as a comparison to what
6 Conoco or what Marathon and Tumbler have proposed.

7 THE HEARING EXAMINER: I see. So
8 you're using this as a comparison. You're
9 triangulating off this basically. This says July 11,
10 2025, on this document.

11 Mr. Villarreal, is this entire 41 pages
12 minus the cover I guess so it's 40 pages here and 1
13 page here?

14 MR. VILLARREAL: I don't know if it's
15 exactly 40 but approximately.

16 THE HEARING EXAMINER: Fine. So this
17 July 11 date, does that apply to this entire document?

18 MR. VILLARREAL: Yeah, to -- well, to
19 which document? Just the --

20 THE HEARING EXAMINER: Well, the one
21 you submitted to me. I'm not the one -- I didn't come
22 up with this.

23 MR. VILLARREAL: Okay, but --

24 THE HEARING EXAMINER: You presented
25 this.

1 MR. VILLARREAL: We didn't make this
2 July 11th, the slide that's --

3 THE HEARING EXAMINER: No, I'm not
4 saying that. I'm talking about this cover letter here
5 from EOG Resources to Tumbler, dated July 11. Does
6 this entire 40 pages approximately of AFEs --

7 MR. VILLARREAL: Yes.

8 THE HEARING EXAMINER: -- is that from
9 the July 11? This is all -- there's nothing older
10 here?

11 MR. VILLARREAL: Yes. Correct,
12 correct. There's nothing older there. That's all
13 July 11th.

14 THE HEARING EXAMINER: Okay. And why
15 did EOG withdraw this?

16 MR. VILLARREAL: We -- there's
17 discussion of that in their statement of com in
18 Marathon's --

19 MS. SHAHEEN: Chronology of contacts.

20 MR. VILLARREAL: -- chronology of
21 contacts.

22 THE HEARING EXAMINER: I'm not looking
23 at that. So I'm asking you.

24 MR. VILLARREAL: Okay.

25 THE HEARING EXAMINER: Why did they

1 withdraw this?

2 MR. VILLARREAL: They did not want to
3 be adverse to Conoco in this.

4 THE HEARING EXAMINER: Okay. Okay. So
5 when they submitted this to you in July 11, there was
6 the potential of conflict with ConocoPhillips?

7 MR. VILLARREAL: Well, then it would
8 have been a three-way contested hearing.

9 THE HEARING EXAMINER: Oh.

10 Mr. Sayer, would you shed some light on
11 this for me?

12 MR. SAYER: Yeah, the only thing I'll
13 add is -- Mr. Hearing Examiner, the one thing that I
14 will add is that the material included in the rebuttal
15 exhibit, it was an initial well proposal. It was not
16 a final well proposal.

17 THE HEARING EXAMINER: I see.

18 MR. SAYER: So I -- I -- I do think
19 that my client would -- would probably be opposed to
20 the content of a proposal being relied on as a final
21 well proposal because it was not.

22 THE HEARING EXAMINER: Okay. I see, so
23 at one time it was possible that we would have had a
24 three-party contested hearing.

25 MR. SAYER: That's correct.

1 THE HEARING EXAMINER: I see. And at
2 this point, you said your client is not opposed to
3 either development. It's neutral to both.

4 MR. SAYER: Correct.

5 THE HEARING EXAMINER: All right.

6 Now, the objection, I understand the
7 objection, but what's the grounds for the objection?

8 MS. HARDY: Relevance.

9 THE HEARING EXAMINER: Okay. All
10 right. So you're saying it's not relevant and you're
11 saying this is not relevant. So what I understand the
12 argument is it's relevant because it's a -- it's a --
13 a -- it's a -- it's a development plan in the same
14 acreage by a different but competent operator. So why
15 is that not relevant?

16 MS. HARDY: Because it was withdrawn
17 and also, as Mr. Sayer has stated, it was not a final
18 proposal that can be relied upon.

19 THE HEARING EXAMINER: Okay. All
20 right.

21 Ms. Shaheen, what do you have to say
22 about the fact that this was withdrawn and it's not a
23 final proposal?

24 MS. SHAHEEN: Well, I don't believe it
25 was withdrawn because it wasn't a good development

1 plan.

2 THE HEARING EXAMINER: Okay.

3 MS. SHAHEEN: It was simply withdrawn,
4 as Mr. Villarreal notes, it's in Conoco's chronology
5 of contacts. It was withdrawn because they didn't
6 want to be in a contested hearing with Conoco. So
7 that doesn't reflect on whether the plan is viable or
8 feasible or what is preferable, but it definitely
9 represents, as of July 2025, what EOG believed was a
10 -- the best way to develop the acreage at that time.
11 And I think it serves as a good comparison for both
12 the Tumbler and the Marathon proposals in this
13 hearing.

14 THE HEARING EXAMINER: And it serves as
15 a comparison for what end purpose?

16 MS. SHAHEEN: To demonstrate that
17 Marathon has not fully -- does not propose to fully
18 develop the acreage at issue. As we've already
19 discussed, we were just saying here's another
20 competent operator who basically agrees that there
21 should be fuller development than is proposed by
22 Marathon.

23 THE HEARING EXAMINER: Okay. And I
24 need to talk to Mr. McClure before we continue. I
25 want to find out from him whether he thinks this is at

1 all helpful for him. That's really my goal here, but
2 I wanted to get as much from the parties as I could.

3 Now, Mr. Villarreal, you were
4 communicating with EOG Resources at the time?

5 MR. VILLARREAL: Yes.

6 THE HEARING EXAMINER: Why?

7 MR. VILLARREAL: They are 32 percent
8 working interest owners in this.

9 THE HEARING EXAMINER: In this exact
10 acreage?

11 MR. VILLARREAL: Yes.

12 THE HEARING EXAMINER: I see.

13 MR. VILLARREAL: So then it's -- it's
14 Marathon 43, EOG 32, us 9.

15 THE HEARING EXAMINER: Got it.

16 All right. I need five minutes. I'm
17 going to go talk with the technical examiner. We'll
18 be back on the record when I come back. Thank you.

19 (Off the record.)

20 THE HEARING EXAMINER: All right.
21 Let's get back on the record. It is 9:18 a.m. That
22 took a little longer than I wanted it to, but we've
23 come to a decision.

24 Ms. Hardy? Ms. Hardy, is your
25 objection to both the -- and I'm holding up what's

1 been marked as D-15, this diagram, this gun barrel
2 diagram and the 40 odd pages of the July 11, 2025, EOG
3 proposal?

4 MS. HARDY: Yes.

5 THE HEARING EXAMINER: It is, okay. So
6 then I'm --

7 MR. SAYER: Mr. Examiner.

8 THE HEARING EXAMINER: Excuse me?

9 MR. SAYER: I apologize for
10 interrupting. I had a chance to consult with my
11 client and while of course we maintain our position
12 that our, you know, we're neutral as to operatorship
13 and we're just monitoring, but we object to the
14 introduction of this exhibit. Just to reemphasize
15 that this was an initial well proposal and the fact
16 that there are not EOG experts here to explain what's
17 in there, we're very uncomfortable with an EOG work
18 product that was an initial work product be relied
19 upon for the manners and purposes that have been
20 asserted by Tumbler.

21 THE HEARING EXAMINER: Okay. So again,
22 the question goes to you. Are you objecting to the
23 EOG document dated July 11, which looks like about 40
24 pages and/or are you objecting to the gun barrel
25 diagram that was developed and designed by this

1 witness and marked as Exhibit D-15?

2 MR. SAYER: Our objection is limited to
3 the EOG materials.

4 THE HEARING EXAMINER: Okay. That's
5 what I am going to uphold is the way Mr. Sayer has
6 phrased it. I also have a problem with an EOG witness
7 not being here who created this document. Yes,
8 hearsay is admissible in an administrative hearing,
9 but I just don't find enough reliability in this. I
10 think it's relevant, I just don't think it's reliable
11 enough to admit in this format. However, I am going
12 to -- so I sustain that objection. I am going to
13 overrule the objection though as to what has been
14 marked as D-15.

15 So I will give you five minutes. So I
16 am admitting D-15, but only in part. I'm only
17 admitting the part that was created by your witness,
18 Mr. Villarreal.

19 (Tumbler Exhibit D-15 was received into
20 evidence.)

21 THE HEARING EXAMINER: So I'm going to
22 give you five minutes to have him summarize D-15 and
23 then I believe at that point we'll pass him for
24 cross-examination.

25 MS. SHAHEEN: Yes.

1 THE HEARING EXAMINER: Go right ahead.

2 MS. SHAHEEN: Thank you, Mr. Examiner.

3 I have Exhibit D-15. Here, let me share that. I
4 apologize, I got kicked off the Teams so it's going to
5 take me a minute to get back on it.

6 THE HEARING EXAMINER: Oh, well, maybe
7 we could have Ms. Hardy pull it up. Is that possible?

8 MS. HARDY: Yes.

9 THE HEARING EXAMINER: All right.

10 So, Ms. Shaheen, Ms. Hardy will pull it
11 up so you can focus on your -- because I'm giving you
12 five minutes starting now. It's 9:21 now.

13 MS. SHAHEEN: Okay. Thank you.

14 BY MS. SHAHEEN:

15 MS. SHAHEEN: Mr. Villarreal, is this
16 one of your exhibits here offered as Rebuttal Exhibit
17 D-15?

18 MR. VILLARREAL: Could we maybe zoom
19 out just a little bit? To see the full slide.

20 MS. SHAHEEN: Dana, do you mind zooming
21 out?

22 MS. HARDY: Oh, I'm sorry. So far I am
23 not seeing my zoom capability. If I scroll down, is
24 that sufficient?

25 MR. VILLARREAL: Yeah, yeah, that's

1 fine. That's fine.

2 MS. HARDY: Okay.

3 BY MS. SHAHEEN:

4 MS. SHAHEEN: Can you summarize what
5 you are portraying here in Exhibit D-15?

6 MR. VILLARREAL: Yes. So this is just
7 summarize -- or this is a gun barrel view of the wells
8 that EOG proposed in the same unit, the David Goliath
9 unit. Their unit name was going to be Ringo. As you
10 can see, they are proposing 41 wells. Some key
11 differences there, you know, they're going to be
12 targeting the lower Avalon as opposed to what we have
13 as the upper Avalon. They are doing eight wells
14 across the Third Bone Spring Carbonate and they're
15 going to be doing a higher density across the Third
16 Bone Spring Sand, Wolfcamp A, Wolfcamp B flow unit.
17 You know, it is notable there is some targeting
18 differences obviously with 31 versus 41 with the
19 higher density in the Third Bone Spring Carbonate.
20 And, you know, stands out that they are targeting the
21 lower Avalon, which is fine.

22 You know, as we discussed, they are 32
23 percent working interest owners. We are 9 percent.
24 You know, I think if you go back and look at the full
25 email history between myself with Tumbler and Marathon

1 and Conoco, you know, from day 1 said multiple,
2 multiple, multiple times, "We aim to be trusted
3 partners." And we're not going to profess that, you
4 know, we fully acknowledge that EOG has different data
5 that they're looking at. And if they are 30 percent
6 or 32 percent working interest parties, we would
7 certainly confer with them and say, "What data are you
8 seeing that makes you think the lower Avalon is a more
9 viable target than the upper Avalon? Let's be trusted
10 partners and let's figure out what you're seeing here
11 and, you know, doing to look at maybe targeting
12 something else." You know, we feel confident in the
13 upper Avalon, but we'd be interested to see what they
14 are seeing for the lower Avalon.

15 MS. SHAHEEN: And just to summarize in
16 conclusion, the bottom right-hand corner of this
17 slide, it has a comparison with the number of wells
18 that were proposed by each interest owner. Is that
19 correct?

20 MR. VILLARREAL: That is correct.

21 MS. SHAHEEN: And that was Marathon who
22 proposed 17 wells, Tumbler proposes 31, and EOG
23 proposed 41. Is that correct?

24 MR. VILLARREAL: Yeah, EOG proposing
25 two and a half times more wells than what Marathon

1 professes as full development.

2 MS. SHAHEEN: Thank you,
3 Mr. Villarreal.

4 I pass the witness.

5 THE HEARING EXAMINER: Ms. Hardy?

6 MS. HARDY: Thank you.

7 CROSS-EXAMINATION

8 BY MS. HARDY:

9 MS. HARDY: Good morning. Let me pull
10 up your testimony. Actually, before I do that, I have
11 a couple of general questions for you. Let me just
12 get to the right place. Let me ask you,
13 Mr. Villarreal, you're employed by Stronghold
14 Investment Management. Correct?

15 MR. VILLARREAL: That's correct.

16 MS. HARDY: Okay. And I was going to
17 actually pull up your resume, if I can get to it here
18 real quick. Okay. Can you see my screen?

19 MR. VILLARREAL: I can.

20 MS. HARDY: Okay. And you state here
21 at the top "Stronghold is a private equity firm
22 focused on trading real assets, primarily oil and gas
23 interests using proprietary, non-commercial software
24 to value interest and chain title." Did I read that
25 correctly?

1 MR. VILLARREAL: You did.

2 MS. HARDY: Okay. And Tumbler doesn't
3 operate any wells in New Mexico. Correct?

4 MR. VILLARREAL: Tumbler does not
5 operate wells in New Mexico.

6 MS. HARDY: And it doesn't operate any
7 wells in Texas. Does it?

8 MR. VILLARREAL: The Tumbler entity
9 does not operate wells in Texas.

10 MS. HARDY: Okay. With respect to your
11 reservoir engineering discussion, this is really a
12 general question, geology can vary significantly over
13 15 miles. Can't it?

14 MR. VILLARREAL: Geology can vary over
15 15 miles. Yes.

16 MS. HARDY: Okay. And your testimony
17 states that Tumbler's plan will produce more reserves
18 than Marathon's plan. Correct?

19 MR. VILLARREAL: That's correct.

20 MS. HARDY: And that testimony, as I
21 understand it, is relying on or incorporating really
22 your type curves. Right?

23 MR. VILLARREAL: That is correct.

24 MS. HARDY: Okay. Let me just get to
25 those and pull them up. Okay. Okay. And the first

1 one in your exhibits is D-11A. Correct?

2 MR. VILLARREAL: That is correct.

3 MS. HARDY: Okay. And these are for
4 the Avalon. Right?

5 MR. VILLARREAL: Yes.

6 MS. HARDY: Okay. And you base your
7 type curves on selected wells within a 15-mile radius.
8 Correct?

9 MR. VILLARREAL: That is correct.

10 MS. HARDY: Okay. And how many Avalon
11 wells did you look at with respect to this type curve?

12 MR. VILLARREAL: I don't have like the
13 full exact amount. There's dozens, you know, but --

14 MS. HARDY: And I notice here on some
15 of your other exhibits, which I will get to, you list
16 the number of wells, the offsets that you looked at,
17 but you didn't list that here for the Avalon. Did
18 you?

19 MR. VILLARREAL: Type curves are
20 generated using 15 offset wells that are within
21 15-mile radius.

22 MS. HARDY: Oh, 15, okay. You do have
23 it there. So you identified -- or you looked at, for
24 purposes of this analysis, 15 Avalon wells within 15
25 miles of this unit. Right?

1 MR. VILLARREAL: That is correct.

2 MS. HARDY: Okay. And how far away
3 were those 15 wells from this proposed development?

4 MR. VILLARREAL: That's going to be --
5 it's going to be within 15 miles.

6 MS. HARDY: Okay, but you can't say how
7 many were 1 mile, 2, 3, 4?

8 MR. VILLARREAL: The specific -- I
9 would have to go pull -- I -- we could provide a well
10 list.

11 MS. HARDY: But you don't have that
12 here.

13 MR. VILLARREAL: I -- we don't have the
14 well list in this. Correct.

15 MS. HARDY: Okay. And you note on each
16 of these type curves at the bottom, in very small
17 print, "Offset wells are operated by prudent operators
18 such as EOG and Permian Resources." Correct?

19 MR. VILLARREAL: That's correct.

20 MS. HARDY: Okay. So you excluded
21 certain wells within 15 miles from your analysis. Is
22 that accurate?

23 MR. VILLARREAL: Some wells are
24 excluded, yes.

25 MS. HARDY: Okay. And that same

1 footnote appears on each of your type curves. Right?

2 MR. VILLARREAL: I believe so.

3 MS. HARDY: Okay. Let me go to the
4 next one, which is D-11B. And this is your type curve
5 for the First Bone Spring Sand. Correct?

6 MR. VILLARREAL: That is correct.

7 MS. HARDY: And again, you looked at
8 wells within a 15-mile radius of this development.
9 Right?

10 MR. VILLARREAL: Yes.

11 MS. HARDY: Okay. And then if we look
12 at the next one, D-11C, this is for the Second Bone
13 Spring Sand. Right?

14 MR. VILLARREAL: Yes.

15 MS. HARDY: Okay. And here, you looked
16 at 12 offset wells within 15 miles. Right?

17 MR. VILLARREAL: That is correct.

18 MS. HARDY: And is this similar to the
19 Avalon in that you don't know or you can't tell from
20 this slide how far within those 15 miles those wells
21 were located?

22 MR. VILLARREAL: The exact location
23 within the -- the radius of investigation is not on
24 this slide.

25 MS. HARDY: Okay. And then here on

1 this slide I see, and maybe on the prior slide as
2 well, you've listed the offset wells operators that
3 you were looking at. Right? EOG, Matador, Civitas,
4 Permian Resources and Devon.

5 MR. VILLARREAL: Correct.

6 MS. HARDY: Okay. And do you know how
7 many wells you excluded from the analysis?

8 MR. VILLARREAL: Wells that are
9 excluded, I don't have that exact number, but various
10 reasons for excluding wells.

11 MS. HARDY: Okay. And then let's look
12 at your type curve D-11.D and this is your curve
13 regarding the Third Bone Spring Carbonate. Right?

14 MR. VILLARREAL: Mm-hmm.

15 MS. HARDY: Okay. And here, you used,
16 as analogs, you looked at 6 offset wells within a
17 15-mile radius. Right?

18 MR. VILLARREAL: Mm-hmm.

19 MS. HARDY: And here, you've got
20 basically a kind of footnote again listing the
21 operators that you were looking at. Right?

22 MR. VILLARREAL: Correct.

23 MS. HARDY: Okay. Okay. And then on
24 the D-11.E here, it looks like you looked at 20 offset
25 wells, again, within a 15-mile radius. Right?

1 MR. VILLARREAL: Correct.

2 MS. HARDY: And again, you can't tell
3 here where within that radius these wells are located.
4 Right?

5 MR. VILLARREAL: You cannot tell. It
6 is not annotated on the graph where these wells that
7 were selected for the type curve are located within
8 the stated radius.

9 MS. HARDY: Okay. And then on D-11.F
10 and G, D-11.G, both of these are for the Wolfcamp.
11 Right?

12 MR. VILLARREAL: Correct.

13 MS. HARDY: And D-11.F is for the
14 Wolfcamp A. Right?

15 MR. VILLARREAL: That is for the
16 Wolfcamp A. Correct.

17 MS. HARDY: Okay. And so, again, you
18 looked at wells, offset wells, within 15 miles.
19 Correct?

20 MR. VILLARREAL: Correct.

21 MS. HARDY: Okay. And you can't say,
22 based on the slide, where within the 15 miles those
23 wells were located?

24 MR. VILLARREAL: That's correct.

25 MS. HARDY: Okay. And that's also true

1 on D-11G. Right? Wolfcamp B?

2 MR. VILLARREAL: What's also true?

3 MS. HARDY: So you looked at wells
4 within a 15-mile radius.

5 MR. VILLARREAL: Correct.

6 MS. HARDY: And you can't say, from
7 this exhibit, how close those wells were to this
8 development?

9 MR. VILLARREAL: The exact distance is
10 not listed for every well that is included in the type
11 curve.

12 MS. HARDY: Okay. Now, I want to go to
13 your D-13. So to make sure I have an accurate
14 understanding, there's a lot on this map, this map is
15 looking at development in all of these zones on the
16 acreage that you're showing. Right?

17 MR. VILLARREAL: Correct.

18 MS. HARDY: Okay. And so this covers,
19 based on my looking at the numbers, developments in
20 about 12 different townships. Right?

21 MR. VILLARREAL: That's fair. Yeah.
22 Well, townships. Twelve different units.

23 MS. HARDY: Okay. Well, here we've got
24 24 South 33 East.

25 MR. VILLARREAL: Oh, you're talking

1 about just on the map?

2 MS. HARDY: Yes.

3 MR. VILLARREAL: Okay. That
4 approximately. Yeah, sure.

5 MS. HARDY: Right. And so the
6 developments that you're showing on this map, quite a
7 few of them are -- well, I mean, this is -- I guess my
8 -- what I'm getting at here is this is covering a
9 large area. Right?

10 MR. VILLARREAL: That is correct.

11 MS. HARDY: Okay. Is this black box
12 here the acreage we're talking about in this case?

13 MR. VILLARREAL: I believe so.

14 MS. HARDY: Okay. So you're looking at
15 developments here that are many miles away from this
16 development. Right?

17 MR. VILLARREAL: That's correct.

18 MS. HARDY: Okay. And then looking at
19 your Exhibit D-14, you didn't adjust for distance from
20 this specific development. Did you?

21 MR. VILLARREAL: This is not adjusted
22 for a specific distance from the David unit.

23 MS. HARDY: Okay. So you didn't give,
24 for example, more weight to wells that were within 1
25 mile versus less weight to wells that were 14 miles

1 away?

2 MR. VILLARREAL: Or wells that were 2
3 miles away.

4 MS. HARDY: Right.

5 MR. VILLARREAL: You know, it -- it is
6 -- there is a lot of miles in the basin and you need
7 to look at, you know, where the formations are
8 relatively homogenous across, you know, this flow
9 unit. So doing that in conjunction with Dylan who
10 testified yesterday and it is our belief that the
11 15-mile radius provides a fair representation of
12 homogenous formations for -- and that justifies using
13 that radius.

14 MS. HARDY: Okay. With respect to the
15 well cost in AFEs, there's been a lot of discussion of
16 that during the hearing. Marathon's AFEs are lower
17 than Tumbler's. Correct?

18 MR. VILLARREAL: Correct.

19 MS. HARDY: And we've heard testimony
20 about the fact that Tumbler plans to use four well
21 pads. Correct?

22 MR. VILLARREAL: Correct.

23 MS. HARDY: And Marathon will use two?

24 MR. VILLARREAL: Correct.

25 MS. HARDY: Okay. And Marathon and

1 ConocoPhillips currently operate over 9,000 wells,
2 give or take, in New Mexico. Does that sound correct?

3 MR. VILLARREAL: I don't know.

4 MS. HARDY: Okay. Do you have any
5 reason to dispute that it's over 9,000 wells?

6 MR. VILLARREAL: Dispute it? Operate.
7 I don't have that number so I'm not going to comment.

8 MS. HARDY: Okay. And again, Tumbler
9 doesn't operate any wells in New Mexico or Texas.

10 MR. VILLARREAL: Tumbler does not.

11 MS. HARDY: Okay. And Marathon and
12 ConocoPhillips have other developments in this part of
13 Lea County. Correct?

14 MR. VILLARREAL: Correct.

15 MS. HARDY: Okay. And ConocoPhillips
16 has submitted many, many more AFEs for wells in Lea
17 County than Tumbler. Correct?

18 MR. VILLARREAL: Say that one more
19 time.

20 MS. HARDY: Sure. ConocoPhillips has
21 submitted far more AFEs for wells in Lea County than
22 Tumbler. Correct?

23 MR. VILLARREAL: I would assume so. I
24 -- I don't know.

25 MS. HARDY: Okay. Well, presumably if

1 they operate over 9,000 wells --

2 MR. VILLARREAL: I don't want to assume
3 so --

4 MS. HARDY: Okay. Well, Tumbler
5 doesn't operate any. Correct?

6 MR. VILLARREAL: That's correct.

7 MS. HARDY: Okay.

8 THE HEARING EXAMINER: Ms. Hardy,
9 that's the third time you've asked that question.

10 MS. HARDY: Okay.

11 BY MS. HARDY:

12 MS. HARDY: Generally speaking,
13 economies of scale can result in reduced cost. Right?

14 MR. VILLARREAL: Generally.

15 MS. HARDY: Let me pull up one of your
16 exhibits. Okay. And this is your Exhibit D-7.
17 Right?

18 MR. VILLARREAL: That is correct.

19 MS. HARDY: Okay. And it's the emoji
20 slide as we've been calling it.

21 MR. VILLARREAL: The -- the emoji
22 worked. It drew attention.

23 MS. HARDY: Okay. So here, this slide
24 doesn't indicate whether these other AFEs were for
25 wells that were the same lateral lengths. Does it?

1 MR. VILLARREAL: No, no. You can tell
2 by the unit that's -- that's highlighted. That John
3 Stewart's a U-turn well so this is measuring
4 perforated lateral length is how the cost per foot's
5 based.

6 MS. HARDY: Okay. Okay. And I wanted
7 to look at your testimony on the well proposals.

8 MR. VILLARREAL: Okay.

9 MS. HARDY: And I think you've actually
10 talked about this so I can just refer to your oral
11 testimony. You've testified that Marathon circulated
12 four versions of well proposals. Right?

13 MR. VILLARREAL: That is correct.

14 MS. HARDY: Okay. And if I can get to
15 the page of your -- I only have your original
16 affidavit here so --

17 MS. SHAHEEN: Do you want me to show
18 the other one?

19 MS. HARDY: I think -- let me pull up
20 the other one. I will just do that.

21 BY MS. HARDY:

22 MS. HARDY: Okay. So I'm pulling up
23 the revised exhibit that we've received this morning.
24 So my page numbers in my questions are off so I need
25 to look. It might take me just a couple minutes. But

1 my understanding of your testimony has been that
2 regarding the well proposals that Marathon is not
3 focused on the Goliath development because it
4 submitted multiple well proposals. Right?

5 MR. VILLARREAL: That's correct.

6 MS. HARDY: Okay.

7 MR. VILLARREAL: With meaningful
8 changes.

9 MS. HARDY: Okay. Okay, and here, and
10 this is in your what's now marked as paragraph J. I
11 think it's probably 7-J. Let me just scroll up to
12 find that. You state here that Marathon issued new
13 well proposals nearly every other week. Right?

14 MR. VILLARREAL: That is correct.

15 MS. HARDY: Okay. And let me go back
16 to your exhibits, get to D-6. Okay. And I pulled up
17 here your Exhibit D-6 regarding the well proposals and
18 AFEs. So this first column actually states that the
19 election was incorrect, right, so you received a few
20 election.

21 MR. VILLARREAL: Yeah. It was a -- the
22 different versions, you -- you couldn't elect into any
23 of the -- or some of the Goliath wells, the ones that
24 are annotated, because it wasn't for Goliath wells.
25 It was for some other Marathon well or Conoco well.

1 MS. HARDY: Okay. So it's just the
2 correct -- the election that was corrected, which is
3 where you signed.

4 MR. VILLARREAL: Correct.

5 MS. HARDY: Right? Okay. Okay. And
6 then there was a proposal, an updated proposal on July
7 24th of 2025. Right?

8 MR. VILLARREAL: That's correct.

9 MS. HARDY: Okay. And quite a few of
10 these were renaming the wells. Right?

11 MR. VILLARREAL: Some are renaming.

12 MS. HARDY: Okay. And then there was
13 another update on August 25th of 2025. Right?

14 MR. VILLARREAL: Changing -- yeah,
15 that's correct. Changing depths, changing spacings,
16 some renaming.

17 MS. HARDY: Okay. And the AFEs didn't
18 actually change, did they, in terms of the well cost?

19 MR. VILLARREAL: The well costs did not
20 change just by spacing and TBD changes.

21 MS. HARDY: Okay. And then let me go
22 look. I'm going to pull up Tumbler's well proposals.
23 And I think we heard testimony from Mr. Weeks on this
24 yesterday. So let me summarize back from your prior
25 exhibit. Other than the corrected elections, Marathon

1 submitted two updated proposals. Right?

2 MR. VILLARREAL: That's correct.

3 MS. HARDY: Okay. And when you look at
4 Tumbler's exhibits, they also had submitted two
5 updated or corrected well proposals. Right?

6 MR. VILLARREAL: I believe so.

7 MS. HARDY: Okay. And one of those was
8 correcting the location of the bottom hole. Is that
9 correct?

10 MR. VILLARREAL: I can't remember what
11 the exact reason for that was.

12 MS. HARDY: Okay. Okay, so here's the
13 first update, September 8th of 2025. Right? And
14 actually you did a second update. Okay. The first
15 update I'm showing here is May 14, 2025. Correct?

16 MR. VILLARREAL: Correct.

17 MS. HARDY: Okay. And that's where
18 Tumbler corrected the well bottom hole location of one
19 of its wells. Right?

20 MR. VILLARREAL: Let's see. Clarify
21 that the last -- point was actually located at 100
22 feet from the north line, 660 feet from the south line
23 or from the east line. Yes.

24 MS. HARDY: Okay. And then the second
25 correction from Tumbler is September 8th of 2025. Do

1 you see that here on the screen?

2 MR. VILLARREAL: September 8, 2025.

3 MS. HARDY: Okay. And in that
4 correction, Tumbler was correcting the township and
5 range numbers. Right?

6 MR. VILLARREAL: Yeah. Correcting a
7 typo.

8 MS. HARDY: Okay. Okay. And then I
9 wanted to go to your testimony the overhead rates.
10 Just get to the correct page before I pull it up.
11 Okay. And I've got pulled up paragraph 6 of your
12 revised affidavit. Do you see that here on the
13 screen?

14 MR. VILLARREAL: This is from the
15 initial well proposal?

16 MS. HARDY: So the -- that was my
17 question. The overhead rates you're identifying here
18 are from the initial well proposal. Correct?

19 MR. VILLARREAL: Yeah. Yeah.

20 MS. HARDY: Okay.

21 MR. VILLARREAL: Well, can I reference
22 that?

23 MS. HARDY: Oh, can you reference it?

24 MR. VILLARREAL: Yeah --

25 MS. HARDY: Sure.

1 MR. VILLARREAL: Where -- is it --
2 where do I find it?

3 MS. HARDY: It would be in our
4 exhibits.

5 MR. VILLARREAL: Okay.

6 MS. HARDY: Let's see. It would be in
7 Exhibit A. Should be 4 probably. It's actually A-10.
8 (Marathon Exhibit A-10 was marked for
9 identification.)

10 MR. VILLARREAL: Okay. A-10.

11 MS. SHAHEEN: Could I ask Ms. Hardy to
12 share the exhibit? Thank you.

13 MS. HARDY: Yes.

14 MR. VILLARREAL: Is this the initial?
15 BY MS. HARDY:

16 MS. HARDY: So that's my question.
17 This is the initial well proposal from ConocoPhillips.

18 MS. SHAHEEN: I'll object to that
19 characterization. I don't believe it is the initial
20 well proposal.

21 THE HEARING EXAMINER: Ms. Hardy? Do
22 you know if it's the --

23 MS. HARDY: Actually, looking at it, it
24 says July 9th was the initial proposal. So --

25 THE HEARING EXAMINER: So just trying

1 to --

2 MS. HARDY: Well, I'm trying to figure
3 out where he's -- I guess, let me ask this. I mean,
4 he's in --

5 THE HEARING EXAMINER: Well, hold on
6 now, I have to deal with this first.

7 Ms. Shaheen, is this your exhibit or is
8 this Ms. Hardy's exhibit?

9 MS. SHAHEEN: This is Ms. Hardy's
10 exhibit.

11 THE HEARING EXAMINER: Okay. So,
12 Ms. Hardy, this is your exhibit. Through which
13 witness does this come in?

14 MS. HARDY: Mr. Miller.

15 THE HEARING EXAMINER: Mr. Miller,
16 okay, who we haven't heard from yet.

17 MS. HARDY: Yes.

18 THE HEARING EXAMINER: Do you need to
19 confer with Mr. Miller to find out if this is the
20 initial proposal or no?

21 MS. HARDY: I don't think I do right
22 now.

23 THE HEARING EXAMINER: Okay.

24 MS. HARDY: I was asking Mr. Villarreal
25 the question because he has testimony the overhead

1 rates.

2 THE HEARING EXAMINER: Okay. So then
3 -- but we need to figure out whether you characterized
4 this correctly or not. Are you saying you did or
5 you're saying you need to rethink it?

6 MS. HARDY: Well, so it looks to me
7 like the July 24, 2025, proposal is not the initial
8 proposal.

9 THE HEARING EXAMINER: Okay.

10 MS. HARDY: But my question for
11 Mr. Villarreal is, did the rates that he is quoting in
12 his testimony come from the initial proposal.

13 THE HEARING EXAMINER: Okay. Hold on
14 one second.

15 So I'm going to sustain the objection
16 because we don't really know if this is the initial
17 proposal or not.

18 But I think the question you're asking,
19 you can ask and just ask it.

20 MS. HARDY: Right.

21 MR. VILLARREAL: Yes.

22 MS. HARDY: Okay. Okay.

23 THE HEARING EXAMINER: Wait, yes, what?
24 I don't understand.

25 MR. VILLARREAL: Well, you -- you asked

1 me did it come from the initial proposal. Is that --
2 is that the --

3 MS. HARDY: That's my question. Yes.

4 MR. VILLARREAL: Those rates came from
5 the initial proposals. I can't reference those right
6 now. I can't find them in the Marathon documents.

7 BY MS. HARDY:

8 MS. HARDY: Okay. And regardless
9 though, in this case, Marathon's requested over rates
10 under the pooling order are 12,000 a month while
11 drilling in 1200 month while producing. Correct?

12 MR. VILLARREAL: I would have to verify
13 that.

14 MS. HARDY: Okay. You haven't seen
15 that in Mr. Miller's testimony?

16 MR. VILLARREAL: I need to go back and
17 reference that, but --

18 MS. HARDY: Okay. And it's common,
19 isn't it, that overhead rates proposed under a pooling
20 order may differ from overhead rates under a JOA that
21 are subject to contractual terms?

22 MR. VILLARREAL: The JOAs can always be
23 negotiated.

24 MS. HARDY: All right. Thank you. I
25 want to talk about your lack of commitment argument

1 regarding Marathon. You're aware, aren't you, that
2 ConocoPhillips acquired Marathon in November of 2024?

3 MR. VILLARREAL: I believe the
4 ConocoPhillips' website classifies it as a merger.

5 MS. HARDY: And I'm not asking whether
6 it was a merger or an acquisition. I mean, I guess --

7 MR. VILLARREAL: But you did.

8 MS. HARDY: There was a transaction in
9 which ConocoPhillips -- I'll put it this way. That
10 Marathon was incorporated under ConocoPhillips.
11 Correct?

12 MR. VILLARREAL: I believe that
13 ConocoPhillips is under the merger agreement on the
14 announcement.

15 MS. HARDY: Okay. And it's Tumbler's
16 position, isn't it, that -- this is my understanding
17 of your testimony. That Marathon doesn't actually
18 intend to drill the Goliath wells. Is my
19 understanding correct?

20 MR. VILLARREAL: Can you say it one
21 more time?

22 MS. HARDY: Sure. And I should
23 probably rephrase that question. Isn't it Tumbler's
24 position in this case that Marathon does not actually
25 intend to drill the Goliath wells?

1 MR. VILLARREAL: Based on their
2 comments and the behavior, we believe that Marathon
3 does not intend to drill these wells in a reasonable
4 any sort of short order amount of time that would
5 prevent waste.

6 MS. HARDY: Okay.

7 MR. VILLARREAL: That it could happen
8 in the future.

9 MS. HARDY: And Marathon obviously has
10 applied for pooling in this case. Right?

11 MR. VILLARREAL: That is correct.

12 MS. HARDY: And Marathon has obtained
13 permits for its wells. Correct?

14 MR. VILLARREAL: Correct.

15 MS. HARDY: And Marathon's witnesses
16 are here in person to testify in support of its
17 pooling application. Right?

18 MR. VILLARREAL: Witnesses to geology
19 and land. They didn't provide any engineering
20 support.

21 MS. HARDY: And here, let me just look
22 at your amended statement. I apologize. I'm looking
23 at -- my questions were drafted based on your original
24 statement.

25 MR. VILLARREAL: All good, all good.

1 MS. HARDY: So I'm sorting out some of
2 the questions that I don't need based on the amended
3 statement. Regarding your Exhibit D-15, which is your
4 rebuttal exhibit, which I will pull up here. Get to
5 it. Okay. And I pulled it up there on my screen.
6 Okay. So I think you mentioned, in response to
7 Ms. Shaheen's questions, that Tumbler's targets are
8 not identical to EOG's proposed targets. Correct?

9 MR. VILLARREAL: Yeah. They are
10 proposing 41 and we are proposing 31 so --

11 MS. HARDY: Right. And Tumbler has
12 proposed wells in the upper Avalon. Correct?

13 MR. VILLARREAL: That's correct.

14 MS. HARDY: And EOG had proposed wells
15 in the lower Avalon. Right?

16 MR. VILLARREAL: That's correct.

17 MS. HARDY: Okay. And there are
18 differences in the other targets included in this gun
19 barrel as compared to Tumbler's gun barrel. Right?

20 MR. VILLARREAL: That's correct.

21 MS. HARDY: Okay. And EOG didn't
22 pursue its proposal. Did it?

23 MR. VILLARREAL: EOG is not here as
24 part of the forced pooling or excuse me. No, he is
25 here. Yeah. They -- correct.

1 MS. HARDY: Okay. And EOG has not
2 signed on to Tumbler's proposed development plan. Has
3 it?

4 MR. VILLARREAL: EOG has not signed on
5 to Marathon or -- or EOG has not signed on to Marathon
6 or Tumbler's.

7 MS. HARDY: Right. And they have a 32
8 percent working interest. Right?

9 MR. VILLARREAL: That is correct.

10 MS. HARDY: Okay. And so at this
11 point, EOG with its 32 percent working interest hasn't
12 said -- they haven't signed Tumbler's JOA. Right?

13 MR. VILLARREAL: Neither Marathon nor
14 Tumbler.

15 MS. HARDY: I appreciate that, but my
16 question was specific to Tumbler's plan because you
17 are comparing Tumbler's plan to EOG's plan. So EOG
18 has not signed on.

19 MR. VILLARREAL: And Marathon's.

20 MS. HARDY: But this slide relates to
21 EOG's plan and you are discussing it in relation to
22 Tumbler's. Correct?

23 MR. VILLARREAL: And Marathon's.
24 That's highlighted at the bottom.

25 MS. HARDY: Okay. So I think you've

1 answered my question.

2 MR. VILLARREAL: Okay.

3 MS. HARDY: And someone is talking
4 online.

5 UNIDENTIFIED SPEAKER: Right. It's
6 getting that.

7 BY MS. HARDY:

8 MS. HARDY: Let's talk about good faith
9 negotiations.

10 MR. VILLARREAL: Okay.

11 MS. HARDY: Okay. Marathon and Tumbler
12 have had many back and forth interactions. Right?

13 MR. VILLARREAL: Correct.

14 MS. HARDY: Okay. And, in fact, I
15 think we've looked at the communication summary and
16 have estimated that it includes somewhere in the range
17 of 70 entries. Right?

18 MR. VILLARREAL: That's correct.

19 MS. HARDY: Okay. And you met with
20 Mr. Miller in Midland. Right?

21 MR. VILLARREAL: That's correct.

22 MS. HARDY: Okay. And the parties had
23 numerous email exchanges. Right?

24 MR. VILLARREAL: Correct.

25 MS. HARDY: And representatives of

1 Tumbler also had phone conversations with
2 ConocoPhillips' representative. Right?

3 MR. VILLARREAL: That's correct.

4 MS. HARDY: Okay. And I want to pull
5 up one of the emails that has been discussed and I
6 think you discussed it with Ms. Shaheen earlier.
7 Okay. And this Marathon's cross Exhibit 1. Okay.
8 And do you recall the questions that you've discussed
9 with Ms. Shaheen earlier about this email?

10 MR. VILLARREAL: I don't recall the
11 specific questions, but I know we just discussed this
12 email.

13 MS. HARDY: Okay. And here, is it your
14 testimony that you made a specific trade proposal to
15 ConocoPhillips?

16 MR. VILLARREAL: Yeah, I believe I
17 said, you know, we're interested in your non-op
18 positions, heavy on PDP, DUCs and permits in the state
19 line area, preference to Mewbourne, Matador, and Oxy
20 as operators. Without knowing the full breadth of the
21 ConocoPhillips non-op position, we were initially
22 thinking of Paduca, Big Sink, and Fuller.

23 MS. HARDY: Okay. And to be clear,
24 those are not units operated by ConocoPhillips.
25 Right?

1 MR. VILLARREAL: Correct.

2 MS. HARDY: Okay. And do you know, as
3 you sit here today, the approximate acreage of those
4 units?

5 MR. VILLARREAL: I do not.

6 MS. HARDY: Okay. Is it fair to say
7 that they are large units?

8 MR. VILLARREAL: That's probably a fair
9 assessment.

10 MS. HARDY: Okay. And are these -- I
11 want to just make sure it's clear because I want to
12 understand. You're not talking here about specific
13 spacing units. Correct?

14 MR. VILLARREAL: These are, yeah,
15 development units is -- so I think what I -- what I
16 said is these are the type of we call them reserve
17 categories. These are what we'd be interested in.
18 You know, I set the precedent by saying we are
19 interested in talking trades. We are interested in
20 trading out of the Goliath. Have our interest. We
21 think it would help you guys out because you have a
22 low working interest and a low NRI. We're
23 substantial, especially with the overrides. He said,
24 "What tracts?" I followed up after he didn't -- or I
25 said, you know, "Here is -- broadly set the stage for

1 a trade.

2 Here's what we would be interested in.
3 Non-op positions, like some of your non-op positions.
4 These are reserve categories. Heavy PDP, DUCs,
5 permits, state line area, general geographic area,"
6 and then dialed in more, saying like, "From these
7 non-oppositions, we really like these operators:
8 Mewbourne, Matador, Oxy. And we don't know what your
9 non-op position is. You know, I -- 'cause -- 'cause
10 the well say Mewbourne or Matador or Oxy. Like we
11 don't know how much interest they have in those wells.
12 But we -- we would guess you might be in Paduca, Big
13 Sink, and Fuller. So this is what we would like to
14 start trade discussions with and if you don't like
15 Paduca, Big Sink, and Fuller, you've -- we've given
16 you options of what else we might be interested in."

17 So naming Paduca, Big Sink, Fuller, you
18 -- that is pretty specific. And the following up to
19 say, "Hey, no response," you know, five days later,
20 you know, "Following up here. See if there's
21 interest."

22 MS. HARDY: Is it fair to say that
23 Paduca, Big Sink, and Fuller are thousands of acres?

24 MR. VILLARREAL: Combined, yeah,
25 thousands.

1 MS. HARDY: Okay. And Paduca, Big
2 Sink, and Fuller are not tracts. Are they?

3 MR. VILLARREAL: Are not tracts. No,
4 they're development units. Yeah.

5 MS. HARDY: Okay. And you didn't
6 provide any legal descriptions. Did you?

7 MR. VILLARREAL: Not really needed.

8 MS. HARDY: Okay. So, well, whether
9 you think they were needed I think is a difference of
10 opinion, but you didn't provide township, range,
11 section for any of those. Right?

12 MR. VILLARREAL: It's not needed.

13 MS. HARDY: That wasn't my question,
14 Mr. Villarreal.

15 MR. VILLARREAL: I did not give the
16 specific township and range.

17 MS. HARDY: And you didn't send any
18 proposed acreage that you were interested in trading
19 out of. Did you?

20 MR. VILLARREAL: We can go back to my
21 original email.

22 MS. HARDY: Well, I don't see township
23 and ranges in any of these notes.

24 MR. VILLARREAL: They never said -- you
25 were asking if I was interested in trading out of.

1 MS. HARDY: Have you provided the
2 acreage that you were interested in trading out of?

3 MR. VILLARREAL: Could you go back to
4 my April 3rd email?

5 MS. HARDY: Sure.

6 MR. VILLARREAL: Let's see. We are
7 grateful to you and Juan for keeping an eye on the
8 well." Okay. Yeah. "Old girl has always been --
9 ensure the lease remains intact, which we are -- which
10 we've done by proposing operations to Marathon and
11 highlighting Madera production to your team. We are
12 grateful to you and Juan for keeping an eye on the
13 well." And No. 2, "Get development started in the
14 unit. Along this line, we are interested in talking
15 trade as we work through the path forward. I know the
16 COP working interest and NRI position in Goliath is
17 not ideal. Our lease hold in override position would
18 make this a more attractive location to COP on more a
19 -- this --" excuse me.

20 "Our lease hold and override position
21 would make this a more attractive location on the COP
22 drill schedule. If this is something you're
23 interested in, let us know what days next week work
24 and I can come by the office." I said, "We will trade
25 out of the Goliath position."

1 MS. HARDY: Okay. So you were wanting
2 -- you were proposing to trade out of Goliath into
3 some other ConocoPhillips non-operative acreage.

4 MR. VILLARREAL: Correct.

5 MS. HARDY: Okay. And you never
6 provided to ConocoPhillips legal descriptions for the
7 acreage you were interested in.

8 MR. VILLARREAL: Exact legal
9 descriptions, we did not provide. We provided unit
10 names, but again, we don't know the COP non-operated
11 positions. COP has to provide that.

12 MS. HARDY: And so is it fair to say
13 that in your email, you were asking ConocoPhillips to
14 research its interest in these thousands of acres of
15 units and propose a trade to you?

16 MR. VILLARREAL: No. That's not fair.

17 MS. HARDY: No? Tumbler has landmen
18 who work for it. Doesn't it?

19 MR. VILLARREAL: Tumbler has one land
20 representative, but Stronghold overall has many land
21 representatives. Landmen.

22 MS. HARDY: And they conduct title
23 research. Don't they?

24 MR. VILLARREAL: Correct.

25 MS. HARDY: Okay. I think those are

1 all my questions, but if I could just take a minute to
2 look through my notes and make sure.

3 THE HEARING EXAMINER: Sure. Go ahead.

4 MS. HARDY: Could we take a five-minute
5 break?

6 THE HEARING EXAMINER: Two minutes.

7 MS. HARDY: Two minutes, okay. I'm
8 actually ready if you are ready. I do have one more
9 question.

10 THE HEARING EXAMINER: Okay.

11 BY MS. HARDY:

12 MS. HARDY: Going back to this email,
13 your email regarding Paduca, Big Sink, and Fuller, was
14 there anything in your email that ConocoPhillips could
15 have said, "Yes, we agree," to?

16 MR. VILLARREAL: Can you like say it
17 one more time?

18 MS. HARDY: Could ConocoPhillips --
19 were there terms in your email that they could have
20 said yes to?

21 MR. VILLARREAL: Are there terms in my
22 email that they could have said -- sorry. Sorry. My
23 microphone wasn't on. Are there terms in my email
24 that they could have said yes to? I mean, I say, "Do
25 you have other options you would like considered?"

1 They could have said, "Hey, we actually don't own
2 Paduca, Big Sink, or Fuller. We have interest in
3 these units we'd be interested in trading out of.
4 Hey, you know, we are not interested in trading a
5 non-op. Would you be interested in trading out of our
6 operated positions? Would you be interested in this?
7 You know, we -- we don't have state line that we'd be
8 interested in trading out of, but we could do a trade,
9 you know, in Texas, in Loving County. We could trade
10 in Midline -- like in Midland Basin."

11 They really could have given any
12 options and we would have considered it. Really,
13 you're just trying to get the values to equal, but
14 they provided nothing. They said, "No." And they
15 said, "Throw a dart on the wall, maybe you hit some
16 wells that we might own in, do -- and then try and
17 make an offer on it. We -- you don't know if we own
18 it or not, but maybe."

19 MS. HARDY: So you -- the litany of
20 options that you just mentioned, they could have
21 offered different acreages, different areas. You're
22 saying really that they could have proposed a trade to
23 you. Right?

24 MR. VILLARREAL: We told them what we'd
25 be interested in and we made the -- well, Sean asked

1 for what tracts so we provided Paduca, Big Sink, and
2 Fuller. "We think you might own in this, like let's
3 start trade discussions here," and said, "If you don't
4 like these options that we provided," trying to be
5 broad and say, "Hey, these are the reserve categories
6 we like. We like this area. We like these operators
7 and, you know, Paduca, Big Sink, and Fuller, specific
8 like development units, like we like these. We don't
9 know what your interest is in it. You know, if -- if
10 you own in these and you would be interested in
11 trading out of them, let's certainly have those
12 discussions." They really could have said anything
13 and we would have tried to get to a trade.

14 MS. HARDY: Okay. Thank you. Those
15 are all my questions.

16 THE HEARING EXAMINER: Mr. McClure?

17 THE TECHNICAL EXAMINER: Thank you,
18 Mr. Hearing Examiner.

19 Mr. Villarreal -- or real, excuse me,
20 how do you say your last name? I apologize.

21 MR. VILLARREAL: Shooter's choice,
22 whatever you think. I -- Villarreal, V, I -- I really
23 don't mind any way.

24 THE TECHNICAL EXAMINER: Okay. I'll
25 probably mispronounce. I apologize for that.

1 MR. VILLARREAL: All good. All good.

2 THE TECHNICAL EXAMINER: I think --

3 MR. VILLARREAL: I'm -- I'm seeing
4 someone's email on the screen.

5 MS. HARDY: I'm sorry. Let me stop my
6 sharing.

7 THE TECHNICAL EXAMINER: Yeah, I think
8 you're still sharing --

9 MS. HARDY: There we go.

10 THE TECHNICAL EXAMINER: -- Ms. Hardy
11 maybe or Ms. Shaheen.

12 In regards to good faith negotiation
13 between Tumbler and Marathon, what are you basing --
14 if you could provide me very brief bullet points, what
15 are you basing your contention that Marathon was
16 negotiating with Tumbler in bad faith on?

17 MR. VILLARREAL: I think there was the
18 ask that provide -- you know, does Tumbler Stronghold
19 have any tracts in mind for trade possibilities. You
20 know, trying to open that up and again, kind of don't
21 want to rehash the full conversation we just had and
22 then saying that, "We don't have time to do this."

23 You know, I think on the 11th, you
24 know, even after the forced pooling was filed, still
25 trying to get a deal done. After the meeting with

1 Sean in Midland at 7 a.m. that we flew out for, you
2 know, me telling him, "Let us know what COP values in
3 a deal structure and we'll work to get this done," you
4 know. On the 12th, you know, "Regardless of the
5 outcome, we are committed being a trusted partner. If
6 conditions change and COP would like to explore a
7 deal, I am always available to talk. You know,
8 Stronghold owns entities across the Basin. I'm
9 certain there's enough overlap that there will be
10 additional opportunities in the future to create value
11 together." No response.

12 THE TECHNICAL EXAMINER: Okay. To
13 maybe shorten it a little bit, would it be accurate to
14 say that it's due to a general non-responsiveness to
15 Tumbler's trade offer -- Marathon.

16 MR. VILLARREAL: To trade offers or
17 yeah. Marathon, the trade offers. You know, you
18 could go back in as early as March, you know, emailing
19 Carolina Frederick [ph], saying, "Hey," you know,
20 "we're interested in talking trades." No response.
21 You know, "Hey, if this is a -- a -- a working
22 interest problem or, you know, this -- we will -- we
23 are willing to pick up a rig and fly it under the
24 Tumbler banner so you don't have to divert, you know,
25 rigs from higher working interest wells. You guys

1 have operational control of it. We can work that out.
2 Let us know to get development."

3 And then, you know, being denied there.
4 You know, you can go back as far as, you know, in
5 March, you know, "We'll sell you overrides at cost.
6 We'll allocate you interest, you know, for free for
7 development," and still not getting any traction.
8 Still no development.

9 THE TECHNICAL EXAMINER: Okay. So
10 would it be accurate to say that your determination of
11 bad faith negotiations is based upon Marathon not
12 accepting your offer to bring in drilling rigs, not
13 making -- not agreeing to a trade regarding overrides
14 and in addition, not responding to a swap request. Is
15 that correct?

16 MR. VILLARREAL: I wouldn't classify it
17 as a not responding to the trade request. It was a
18 very clear slam the door in our face trying to get a
19 deal done.

20 THE TECHNICAL EXAMINER: Okay. In your
21 experience negotiating with other operators, how often
22 do you manage to obtain trades versus not I guess?

23 MR. VILLARREAL: How often do we manage
24 to obtain trades? Very frequently we are doing deals
25 to buy and sell acreage. Trades are not as common.

1 You know, it's usually acquisitions and straight
2 divestitures, something that we also offered to Conoco
3 in the past. But very rarely do we get told we don't
4 have time to -- we don't have time to go through our
5 portfolio, put a trade schedule together when we're
6 both working towards a mutual goal.

7 THE TECHNICAL EXAMINER: Changing
8 topics to the type logs that you provided in your
9 exhibit.

10 MR. VILLARREAL: Yes, sir.

11 THE TECHNICAL EXAMINER: Specifically
12 to the type log for the Third Bone Spring Sand --

13 MR. VILLARREAL: Okay.

14 THE TECHNICAL EXAMINER: -- was there
15 any consideration to -- when selecting data and you
16 create that type log, was there any consideration as
17 to whether there was existing Wolfcamp A wells in that
18 same unit?

19 MR. VILLARREAL: Yeah, these -- these
20 were all with co-developed.

21 THE TECHNICAL EXAMINER: And I'm
22 specifically referring to the slide that was
23 originally page 243, it's D-11.E in the original
24 exhibit packet.

25 MR. VILLARREAL: Yeah, the Third Bone

1 Springs Sand wells here, the ones that are -- that
2 have been selected were all co-developed with the
3 Wolfcamp A.

4 THE TECHNICAL EXAMINER: The graph that
5 is providing the difference in spacing versus
6 production, like specifically I'm looking at Exhibit
7 D-12.C, is it Wolfcamp A EUR versus spacing? You see
8 what I'm looking at?

9 MR. VILLARREAL: Yes.

10 THE TECHNICAL EXAMINER: What filtering
11 was used in determining which wells to use here?

12 MR. VILLARREAL: So this is 15-mile
13 radius of the David unit. So within the Wolfcamp A.

14 THE TECHNICAL EXAMINER: Now, I know in
15 an earlier slide on the type log I believe there was
16 some like completion after like 2017, 2019, that sort
17 of thing. Was there any consideration to completion
18 considered here for these graphs?

19 MR. VILLARREAL: I don't believe so.

20 THE TECHNICAL EXAMINER: Do you know
21 what the R value was for that -- the curve that's
22 plotted on these different graphs?

23 MR. VILLARREAL: I don't remember it
24 off the top of my head.

25 THE TECHNICAL EXAMINER: And do you

1 know the reason for I guess the volume of discrepancy
2 between the different data points? Do you have any
3 speculation as to why that's the case?

4 MR. VILLARREAL: Do I have the --

5 THE TECHNICAL EXAMINER: Oh, let me
6 reask my question.

7 MR. VILLARREAL: Okay.

8 THE TECHNICAL EXAMINER: Looking at the
9 one that is being shared at the screen, for instance,
10 we have a bunch of them that's down there towards the
11 bottom, around like the 600 per spacing and only
12 seeing like 500,000 barrel oil equivalent? You see
13 where I'm referring to?

14 MR. VILLARREAL: Yes, yeah. Likewise,
15 there is a spread in the bottom right-hand corner.

16 THE TECHNICAL EXAMINER: Yeah, exactly.
17 Do you have a speculation as to why there's -- why we
18 see the number outliers that we do in this graph?

19 MR. VILLARREAL: I mean, it -- it could
20 be a number of reasons. You know, it could be some
21 completion styles, you know, could be really -- really
22 anything so --

23 THE TECHNICAL EXAMINER: Now, I'm
24 looking at your slide that is Exhibit D-13, it's just
25 talking about the Wolfcamp A, Wolfcamp B, and Third

1 Bone Spring Sand flow unit activity.

2 MR. VILLARREAL: Yes, sir.

3 THE TECHNICAL EXAMINER: Now, while
4 you're reviewing this -- well, the area you reviewed,
5 does it include kind of the entirety that's shown here
6 in this depiction on the right?

7 MR. VILLARREAL: Area that we reviewed
8 here include the entirety -- are you saying in -- in
9 the graph?

10 THE TECHNICAL EXAMINER: Yeah, the plat
11 I guess maybe you call it. I'm not sure. The map I
12 guess.

13 MR. VILLARREAL: Okay. Yeah, the --

14 THE TECHNICAL EXAMINER: Do --

15 MR. VILLARREAL: Does the map include
16 the -- everything? The -- so -- so does the table
17 include everything on the map?

18 THE TECHNICAL EXAMINER: I guess my
19 question is, for most of these other graphs, it
20 appears that Tumbler reviewed an area and a radius of
21 15 miles. Is that accurate to say?

22 MR. VILLARREAL: That is accurate.
23 Yeah.

24 THE TECHNICAL EXAMINER: Is that also
25 the case here or is this map a better depiction of all

1 the wells that were reviewed?

2 MR. VILLARREAL: I think this -- this
3 map was created just for this specific analysis and
4 just trying to look at, you know, how is the flow unit
5 across the Third Bone Spring, Wolfcamp A and Wolfcamp
6 B being developed. So --

7 THE TECHNICAL EXAMINER: Okay. So --

8 MR. VILLARREAL: Well, I was going to
9 say, you know, obviously stretching some -- it --
10 yeah. Maybe -- I'm getting lost here. I'm sorry.

11 THE TECHNICAL EXAMINER: Just let me
12 ask another question I guess. The analysis that was
13 conducted here, which I believe you're looking at
14 wells to see how many were co-developed. Is that
15 accurate to say?

16 MR. VILLARREAL: Yeah. What is -- what
17 is the development across Third Bone Spring Sand,
18 Wolfcamp A, Wolfcamp B, just in the -- the area around
19 David/Goliath.

20 THE TECHNICAL EXAMINER: Okay. Is it
21 accurate to say that that analysis was conducted on
22 all the wells laterals that's depicted in this map?

23 MR. VILLARREAL: There might some that
24 are left out. I can't say for a 100 percent
25 certainty, but I think what we're looking for is

1 representations of where, you know, development where
2 operators in the past have treated the Third Bone
3 Spring Sand, Wolfcamp A, and Wolfcamp B as a single
4 flow unit. You know, obviously, like the -- the
5 numbers shut off or we only run that out to -- through
6 12 units. Assuming there's much more than 12 on the
7 map.

8 THE TECHNICAL EXAMINER: And these 12
9 units that's depicted on the map, these are units in
10 which, well, I mean, I guess they're depicted up there
11 in that table on the left and some of them have Third
12 Bone Spring Sand and some of them have just the
13 Wolfcamp A, Wolfcamp B. Is that accurate to say?

14 MR. VILLARREAL: That -- that is
15 accurate. And the ones with the Third Bone Spring
16 Sand, those were developed at the same time as the
17 Wolfcamp A.

18 THE TECHNICAL EXAMINER: So then is it
19 accurate to say that they're technically several units
20 typically as depicted here in which the Third Bone
21 Spring Sand was never drilled or completed?

22 MR. VILLARREAL: Yeah, but you can also
23 see that, you know, looking at the first two, that was
24 ten Wolfcamp As so if you're not doing the Third Bone
25 Spring Sand, it's a much higher development of -- of

1 the Wolfcamp A. You know, and then below you see five
2 Third Sand, you know, five Wolfcamp A. And -- like 8
3 and then seven-three, three-six.

4 THE TECHNICAL EXAMINER: In your
5 discussions with EOG, have you ever talked to any of
6 their technical staff in regards to their proposed
7 wells before they withdrew them?

8 MR. VILLARREAL: Did not talk with
9 their technical staff, you know. That was submitted
10 July 11th I believe in -- in the run up to the forced
11 pool hearing. Yeah. I think, again, as -- as I said
12 before, you know, as they're 30 percent -- 32 percent
13 working interest owners, there would certainly be
14 discussions with them to get their input on
15 development. Obviously, if they're carrying 30
16 percent of the interest, then let's see what data that
17 they are seeing that helps them make those decisions.
18 So, again, we aim to be the trusted good partner.

19 THE TECHNICAL EXAMINER: Now, looking
20 at the same -- well, the units that listed in this
21 table here, we see two different, well, three
22 different EOG units. Correct?

23 MR. VILLARREAL: Correct.

24 THE TECHNICAL EXAMINER: Is it accurate
25 to say that they did not wish to develop a Third Bone

1 Spring Sand in those three units?

2 MR. VILLARREAL: That's correct.

3 THE TECHNICAL EXAMINER: Are there any
4 EOG units that's closer to this David/Goliath opposed
5 units and what's depicted here on this map?

6 MR. VILLARREAL: I don't believe so.
7 I'd have to verify on the map to confirm though.
8 Well, on a different map.

9 THE TECHNICAL EXAMINER: Do you believe
10 it's possible that there is -- let me backtrack that
11 one. Yeah, I have no more questions. Thank you,
12 Mr. Villarreal.

13 Thank you, Mr. Hearing Examiner.

14 MR. VILLARREAL: For sure. Thank you.

15 THE HEARING EXAMINER: Redirect,
16 Ms. Shaheen.

17 MS. SHAHEEN: Thank you.

18 REDIRECT EXAMINATION

19 BY MS. SHAHEEN:

20 MS. SHAHEEN: Mr. V, do you recall your
21 discussion with Ms. Hardy about the fact that Tumbler
22 doesn't operate any wells in Texas?

23 MR. VILLARREAL: I do recall.

24 MS. SHAHEEN: And Tumbler does not
25 operate wells in Texas. Correct?

1 MR. VILLARREAL: Tumbler does not.

2 MS. SHAHEEN: Do other Stronghold
3 entities operate wells in Texas?

4 MR. VILLARREAL: Yes.

5 MS. SHAHEEN: And are there any Tumbler
6 employees and Stronghold employees who have experience
7 operating wells in Texas?

8 MR. VILLARREAL: Many.

9 MS. SHAHEEN: And are there Tumbler
10 employees, Stronghold employees who have experience
11 operating wells in New Mexico?

12 MR. VILLARREAL: Many. Operating and
13 drilling.

14 MS. SHAHEEN: I'm going to go back to
15 the D-11 series of exhibits just for a minute.
16 Ms. Hardy asked you about offset wells that were not
17 included with these type curves. Do you remember that
18 discussion?

19 MR. VILLARREAL: Yes.

20 MS. SHAHEEN: What are some of the
21 categories that you used to decide which offset wells
22 would be used for your type curves?

23 MR. VILLARREAL: So I think part of
24 that is shown second bullet. So all type curve offset
25 wells are completed using 2,250, 2,750 pounds per foot

1 and 40 to 60 barrels per foot spaced at greater --
2 greater than 1,000 feet in zone spacing, targeting the
3 upper Avalon. So focused on the specific target
4 within the Avalon that -- sorry. Long day. That we
5 are -- we, Tumbler, David, are targeting.

6 MS. SHAHEEN: Now, I'm going to go back
7 to the D-13. Ms. Hardy asked you some questions about
8 the number of miles that are depicted here in this
9 map. Do you recall that line of questioning?

10 MR. VILLARREAL: Sure.

11 MS. SHAHEEN: And she characterized it
12 as many miles. Do you remember that?

13 MR. VILLARREAL: I -- I'll -- I'll
14 believe it. Yes.

15 MS. SHAHEEN: So I just really wanted
16 to focus on how many miles we're talking about here
17 because maybe my definition of many is a little bit
18 different from Ms. Hardy's. But to get us situated,
19 can you show us where on this map the proposed
20 David/Goliath development is?

21 MR. VILLARREAL: That is the blue box
22 next to -- between No. 11 and No. 9.

23 MS. SHAHEEN: So right here where my
24 hand is?

25 MR. VILLARREAL: That's correct.

1 MS. SHAHEEN: And so these are township
2 ranges, right, with 36 sections in each one. Is that
3 correct?

4 MR. VILLARREAL: Yes.

5 MS. SHAHEEN: And each section is going
6 to be 1 mile. Right?

7 MR. VILLARREAL: Generally, yeah.

8 MS. SHAHEEN: So we could actually
9 figure out how many miles. And what I'd like for you
10 to do is tell me about how many miles are north-south
11 and contained the boxes that are in green and
12 east-west that contain the boxes in green. In other
13 words, I want you to give me a mile by mile
14 description of what area contains those 12 boxes that
15 are highlighted up here in the left-hand top corner.

16 MR. VILLARREAL: All right. Just about
17 4 miles north until you get to No. 8. About 5 miles
18 west until you get to No. 1 and call that about two
19 and a half miles 'til you get south to No. 6. And
20 then, yep, No. 9 is adjacent. Farthest No. 3 one.

21 MS. SHAHEEN: So then the developments
22 that you've called out here are within 4 to 5 miles of
23 the proposed development. Is that right?

24 MR. VILLARREAL: Yes.

25 MS. SHAHEEN: Ms. Hardy also spent some

1 time with you on the Marathon proposals and the
2 Tumbler proposals and the differences between each of
3 them. With respect to the Tumbler proposals, those
4 additional proposals were really corrections to typos.
5 Is that right?

6 MR. VILLARREAL: That's correct.

7 MS. SHAHEEN: There were two typos and
8 Tumbler corrected those two typos.

9 MR. VILLARREAL: Correct.

10 MS. SHAHEEN: Tumbler didn't submit
11 multiple well proposals. Did they?

12 MR. VILLARREAL: No.

13 MS. SHAHEEN: I have no further
14 questions. Thank you.

15 THE HEARING EXAMINER: Thank you.
16 Is there any re-cross on those
17 questions?

18 MS. HARDY: Well, I had one question
19 based on Mr. McClure's questions.

20 THE HEARING EXAMINER: Go ahead.

21 MS. HARDY: Okay.

22 RECROSS-EXAMINATION

23 BY MS. HARDY:

24 MS. HARDY: So Mr. McClure had asked
25 you some questions about good faith negotiations and

1 Tumbler's negotiations and ability to reach agreements
2 in other deals. That was my understanding of the
3 question. Do you recall that?

4 MR. VILLARREAL: No. What -- other
5 deals or --

6 MS. HARDY: Well, in circumstances
7 other than this specific negotiation with Marathon.

8 MR. VILLARREAL: You want me to talk
9 about other deals that Stronghold is doing? Like --
10 no.

11 MS. HARDY: No. My understanding of
12 Mr. McClure's question was that he asked you about
13 Tumbler's negotiations regarding trades and other
14 contexts. Do you recall that question?

15 MR. VILLARREAL: Other contexts.

16 MS. HARDY: You said, here, Marathon
17 had -- my understanding was, you know, slammed the
18 door and Mr. McClure had asked you about Tumbler's
19 trade discussions more generally. Do you recall the
20 question?

21 MR. VILLARREAL: I know we discussed
22 it, other trades.

23 MS. HARDY: Okay. And my question is
24 this: here, with these David wells that Tumbler has
25 proposed, it's only reached agreements with 3 percent

1 of the working interest. Correct?

2 MR. VILLARREAL: Approximately.

3 MS. HARDY: Okay. Thank you.

4 That was it.

5 THE HEARING EXAMINER: Okay. May this
6 witness be excused?

7 MS. SHAHEEN: Yes.

8 THE HEARING EXAMINER: Thank you.

9 Thank you, Mr. Villarreal.

10 Okay, does that conclude your case in
11 chief?

12 MS. SHAHEEN: Yes. It does.

13 THE HEARING EXAMINER: Okay. Very
14 good.

15 Ms. Hardy, it's eleven. It's eleven.
16 It's 10:40 a.m. Now, we can begin your case with a
17 brief opening if you'd like. What I propose today is
18 that we take a little bit longer lunch than we did
19 yesterday. But I want you to be able to present your
20 case as cohesively as you want to. We could either
21 break now for a period of time and then come back and
22 you present your case or we can have some of your case
23 now, then have -- is that what you'd like to do?

24 MS. HARDY: I would prefer to start
25 now.

1 THE HEARING EXAMINER: Good.

2 MS. HARDY: Although, I would like to
3 take a quick five-minute break just to run outside if
4 that's possible.

5 THE HEARING EXAMINER: Okay. Yeah,
6 yeah. Yeah. And then a short opening.

7 MS. HARDY: Yes.

8 THE HEARING EXAMINER: Okay. And then
9 which witness are you going to call, Mr. Patrick or
10 the other one?

11 MS. HARDY: Mr. Miller.

12 THE HEARING EXAMINER: Mr. Miller,
13 okay. Very good.

14 MS. HARDY: Yes.

15 THE HEARING EXAMINER: Okay. Let's
16 take a five-minute break. We're off the record.

17 (Off the record.)

18 THE HEARING EXAMINER: All right. It
19 is 10:40 a.m. on September 17th. We're going to begin
20 with Marathon's case in chief. There are two
21 witnesses here. I'm going to get them sworn in.

22 Would you please raise your right
23 hands? Thank you.

24 //

25 //

1 WHEREUPON,
2 SEAN MILLER,
3 called as a witness and having been first duly sworn
4 to tell the truth, the whole truth, and nothing but
5 the truth, was examined and testified as follows:

6 WHEREUPON,
7 TYLER PATRICK,
8 called as a witness and having been first duly sworn
9 to tell the truth, the whole truth, and nothing but
10 the truth, was examined and testified as follows:

11 THE HEARING EXAMINER: Thank you.
12 Would you, one at a time, state and spell your name
13 and tell me what field of expertise has this Division
14 previously recognized you in.

15 MR. MILLER: Sean Miller, S-E-A-N
16 M-I-L-L-E-R and land.

17 THE HEARING EXAMINER: Thank you.

18 MR. PATRICK: Tyler Patrick, T-Y-L-E-R
19 P-A-T-R-I-C-K and geology.

20 THE HEARING EXAMINER: Thank you.

21 Ms. Hardy, are you going to call
22 Mr. Miller first? I thought so.

23 MS. HARDY: Yes.

24 THE HEARING EXAMINER: So, Mr. Miller,
25 would you stay at the witness podium? Do you need

1 anything from your -- great. And just tell the --
2 just for the record, what do you have in front of you?

3 MR. MILLER: The Goliath exhibits.

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

6 Do you need to see them, Ms. Shaheen,
7 or are you okay with those?

8 MS. SHAHEEN: As long as they're what I
9 have in front of me in my notebook, I'm good with
10 that.

11 THE HEARING EXAMINER: And I'll remind
12 Ms. Hardy that we have accepted into evidence all of
13 your direct exhibits but none of your rebuttal
14 exhibits as of now.

15 Okay, so, Mr. Miller, please don't use
16 any of the rebuttal exhibits to answer any questions
17 until they're admitted.

18 All right. So, Ms. Hardy, a brief
19 opening.

20 MS. HARDY: Yes. Thank you.

21 Marathon seeks to pull the Bone Spring
22 and Wolfcamp formations underlying Sections 24, 25,
23 and Irregular Section 36, Township 26 South, Range 34
24 East in Lea County. Tumbler proposes to develop the
25 same acreage but includes additional wells and as our

1 witnesses will explain, those are risky intervals and
2 that Tumbler relies on a flawed production analysis.
3 All of the wells that the Division considers in
4 evaluating competing plans weigh heavily in favor of
5 Marathon. Working interest control is the most
6 important factor considered by the Division,
7 particularly when there's a significant disparity and
8 here, there is a very, very large disparity with
9 Marathon owning 44.4 percent and Tumbler owning less
10 than 9 percent in these proposed units. And there is
11 no factual dispute about those ownership percentages.

12 Marathon has also provided a letter of
13 support from Walsh & Watts which holds about a 5
14 percent interest. The Division considers letters of
15 support in evaluating working interest control,
16 bringing Marathon's working interest control here to
17 over 49 percent. And as our witnesses will explain,
18 working interest control is extremely important
19 because the party with the greater working interest
20 bears more of the cost and that ensures that it has
21 more skin in the game and will engage in cost-
22 effective, prudent economic development rather than
23 speculation.

24 And as our witnesses will explain,
25 simply stated, it's easier to take risks when you are

1 spending someone else's money. Based on the
2 undisputed majority here, the majority working
3 interest, Marathon's applications should be granted.
4 All of the other factors considered by the Division
5 cannot outweigh this massive disparity, but those
6 factors weigh in favor of Marathon as well. With
7 respect to prudent operatorship, Marathon,
8 ConocoPhillips, is clearly a prudent operator and they
9 have drilled 920 horizontal wells in Lea County alone
10 and operate over 9,000 wells in New Mexico. Of those,
11 about 430 have been greater than 2 miles in length and
12 as we've heard throughout the testimony, Tumbler has
13 not previously drilled and does not operate any wells
14 in New Mexico.

15 When you look at the surface factor,
16 which is also one of the factors considered by the
17 Division in evaluating competing proposals, Marathon
18 has surveyed its well and had its onsite evaluation
19 with BLM while Tumbler has not. Marathon proposes two
20 well pads while Tumbler proposes four. As a result,
21 Marathon's development involves significantly less
22 surface impacts, which reduce the surface
23 environmental and economic waste. With respect to
24 cost, Marathon's AFEs are significantly less than
25 Tumbler's and there are various reasons for this,

1 including reduced surface facilities. We've got
2 economies of scale because ConocoPhillips has leverage
3 to negotiate due to its large operations in New
4 Mexico.

5 Tumbler complains that Marathon's AFEs
6 are too low, but Marathon has far more experience
7 preparing AFEs in Lea County than Tumbler. And in any
8 event, if the actual cost were to end up being higher
9 than the AFEs, a pool party could object. With
10 respect to risk, which is an important factor
11 considered by the Division, Marathon has federal APDs
12 and surveys while Tumbler does not. Marathon's far
13 more experienced. Marathon's development plan is
14 based on its extensive experience in the area and
15 considers factors like H2S in the Avalon as well as
16 water in other formations.

17 Tumbler proposes more wells, but it's
18 production analysis is severely flawed because it
19 relies on a limited number of data points within a 15-
20 mile radius and it has not adjusted its estimates to
21 account for risk due to variations in geology over
22 that 15-mile span. So Tumbler proposes to develop
23 risky intervals, including the Avalon and Third Bone
24 Spring. And those are unproven and if they were
25 proven later, we will explain that they could be

1 developed later. But at this point, they're unproven
2 and risky. Tumbler makes claims of delay but ignores
3 that ConocoPhillips acquired Marathon in November of
4 2024 and essentially revetted Goliath as a new
5 development and that is a prudent action by an
6 operator.

7 With respect to geology, Marathon's
8 units and space units comport with its extensive
9 experience and practice in this area. And as I
10 mentioned, Tumbler seeks to develop risky intervals
11 that are unproven. With respect to negotiations,
12 Marathon and Tumbler have engaged in extensive
13 discussions for months. We've all heard there's 75 at
14 least interactions and the Division's requirements on
15 pooling and good faith negotiation require a well
16 proposal 30 days prior to filing for pooling and some
17 back and forth communication.

18 The Division does not typically get
19 into the details of, well, this offer is reasonable,
20 this offer's not, this trade was rejected, this person
21 went to breakfast but not dinner. That's not what the
22 Division does and it's not what it should do. It
23 shouldn't get into those detail types of evaluations.
24 Here, our witnesses will explain there has absolutely
25 been good faith negotiation. ConocoPhillips told

1 Tumbler to propose a specific trade if it wished to do
2 so and it never did.

3 So in conclusion, based on all of the
4 factors, including the undisputed massive disparity in
5 working interest, Marathon's application should be
6 granted. Marathon is ready, willing, and able to
7 proceed with this development and should be permitted
8 to do so because its plan best prevents waste and
9 protects correlative rights. Thank you.

10 THE HEARING EXAMINER: Thank you,
11 Ms. Hardy. Do you want to proceed with your first
12 witness?

13 MS. HARDY: I do.

14 DIRECT EXAMINATION

15 BY MS. HARDY:

16 MS. HARDY: Hello, Mr. Miller.

17 MR. MILLER: Good morning.

18 MS. HARDY: And I think you've already
19 stated your full name for the record so I don't think
20 we need to do that. By whom are you employed and in
21 what position?

22 MR. MILLER: ConocoPhillips Company.
23 I'm the land supervisor for our Lea County assets.

24 MS. HARDY: Okay. Can you provide a
25 very brief summary of your education and experience in

1 petroleum land matters?

2 MR. MILLER: Yes. Graduated from Texas
3 A&M with a bachelor's in business management in 2012,
4 graduated from Western Colorado University in 2014
5 with a petroleum land and resource management degree.
6 I've worked about ten years as a landman, both in
7 contract and in-house and I spent the last seven years
8 with Concho, now ConocoPhillips.

9 MS. HARDY: Okay. And have you
10 prepared direct testimony and exhibits in these cases?

11 MR. MILLER: Yes.

12 MS. HARDY: And do those documents
13 include Exhibit A and Exhibits A-1 through A-11?

14 MR. MILLER: Yes.

15 MS. HARDY: Okay. I'm going to pull
16 those up here. Do you have any corrections or changes
17 to your exhibits?

18 MR. MILLER: Yes. I would like to
19 correct, as I flip to it, bear with me, paragraph 14.
20 Tumbler rightly pointed out that their OGRID [ph]
21 Number was issued in 2019, not 2025. I'd like to
22 correct that.

23 MS. HARDY: So Tumbler has an OGRID
24 [ph] Number since 2019, but it's correct that it
25 hasn't drilled and operated any wells in New Mexico.

1 Right?

2 MR. MILLER: Correct.

3 MS. HARDY: Okay. Anything else that
4 you would like to clarify or correct on your direct
5 testimony?

6 MR. MILLER: Yes. Paragraph 30.
7 Excuse me, before that, paragraph 28. "ConocoPhillips
8 and Marathon currently have production in the area
9 surrounding the Goliath development." That is
10 correct. We will be using the existing Marathon
11 planed surface facilities. There is no surface
12 facilities currently on the ground there.

13 MS. HARDY: Okay. The location for
14 this unit. Correct?

15 MR. MILLER: Correct. And then
16 paragraph 30, I'd like to clarify. "Other wells in
17 this area, they have oil, gas, and water takeaway
18 dedications," rather than facilities.

19 MS. HARDY: Okay. Thank you. And do
20 you adopt your testimony exhibits as your direct
21 testimony in this case?

22 MR. MILLER: I do.

23 MS. HARDY: Okay. Thank you. And with
24 respect -- I was going to ask you about the rebuttal
25 exhibits or his rebuttal exhibit.

1 THE HEARING EXAMINER: Okay.

2 MS. HARDY: Okay. And I know there's
3 an objection to it.

4 THE HEARING EXAMINER: Where are the
5 rebuttal exhibits? Are they in this package you gave
6 me?

7 MS. HARDY: They are not.

8 THE HEARING EXAMINER: So where would I
9 see them?

10 MS. HARDY: I can pull them up.

11 THE HEARING EXAMINER: How many are
12 there?

13 MS. HARDY: He only has one.

14 THE HEARING EXAMINER: Has it been
15 labeled?

16 MS. HARDY: Yes. It's labeled. We
17 filed it.

18 THE HEARING EXAMINER: Oh, separately.

19 MS. HARDY: Yes.

20 THE HEARING EXAMINER: I do remember
21 that. Yes. I've seen that. Okay.

22 MS. HARDY: Yeah.

23 THE HEARING EXAMINER: You don't have
24 to pull it up. Let's not show it yet.

25 MS. HARDY: Okay.

1 BY MS. HARDY:

2 MS. HARDY: And Mr. Miller, did you
3 prepare a rebuttal exhibit in this case?

4 MR. MILLER: I have.

5 MS. HARDY: Okay. And what is that
6 rebuttal exhibit?

7 (Marathon Exhibit A-12 was marked for
8 identification.)

9 MR. MILLER: It's a diagram of the
10 surface facilities by both Marathon and Tumbler.

11 MS. HARDY: Okay. And why did you
12 prepare that rebuttal exhibit?

13 MR. MILLER: Just to illustrate the
14 differences between our planned facilities and the
15 footprints of the -- upon the acreage.

16 MS. HARDY: Okay. And prior to
17 receiving Tumbler's testimony and exhibits, did you
18 have information regarding the surface facilities that
19 they were going to use?

20 MR. MILLER: Not until I reviewed their
21 exhibits.

22 MS. HARDY: Okay. And so did you
23 prepare your surface facility diagram in response to
24 what you saw in their testimony and exhibits?

25 MR. MILLER: For the Tumbler portion,

1 yes.

2 MS. SHAHEEN: And I object on the basis
3 that there should have been a plat of their planned
4 surface facilities in their direct case. That was not
5 provided and they've provided no engineer to support
6 their plat of surface facilities and for those
7 reasons, I don't believe it to be reliable and should
8 not be admitted into evidence.

9 THE HEARING EXAMINER: Ms. Hardy?

10 MS. HARDY: Mr. Miller is a land man
11 and he's testifying about the locations of the surface
12 facilities. He is familiar with them. I don't think
13 an engineer is necessary to testify about surface
14 facilities and I think that we did have information in
15 our direct case on Marathon's surface facilities.
16 There's a plat included with our exhibits. We did not
17 have information on Tumbler's surface facilities and
18 so the rebuttal exhibit compares what we saw in
19 Tumbler's exhibits to Marathon's.

20 THE HEARING EXAMINER: We saw, okay.
21 So you said -- which is the exhibit that you just said
22 that you did include in your direct regarding the
23 facilities, the surface facilities?

24 MS. HARDY: Let me find it.

25 THE HEARING EXAMINER: Would it be

1 under Mr. Miller's testimony?

2 MS. HARDY: Yes.

3 THE HEARING EXAMINER: Mr. Miller, do
4 you know what exhibit you prepared that shows surface
5 facilities?

6 MR. MILLER: I don't know the exhibit
7 number.

8 THE HEARING EXAMINER: You don't?
9 Okay.

10 MR. MILLER: But I'm sure it's in this
11 packet though.

12 MS. HARDY: It's Exhibit A-5.

13 (Marathon Exhibit A-5 was marked for
14 identification.)

15 THE HEARING EXAMINER: Thank you. And
16 what page is it on? Since I don't have any tabs here.

17 MS. HARDY: It is page -- I pulled it
18 up on the screen and it's page 243 of our -- 83 of our
19 243 PDF

20 THE HEARING EXAMINER: Eighty-three?

21 MS. HARDY: Yes.

22 MR. MILLER: This is not my rebuttal
23 slide.

24 MS. HARDY: No, I'm showing your
25 original slide that shows our surface facilities.

1 THE HEARING EXAMINER: My package seems
2 to skip a little. It goes -- my package goes from
3 page 72 of 241 and then it skips to page 89 of 241
4 which is Exhibit A-7. Then it goes to 90 so that was
5 just A-8. And you said this is A-5 you said?

6 MS. HARDY: It is.

7 THE HEARING EXAMINER: I'm missing the
8 pages. For some reason they're gone.

9 MS. HARDY: I don't know why that would
10 be.

11 THE HEARING EXAMINER: Well, here, you
12 can -- does his have it?

13 MS. HARDY: That's what I'm checking.

14 THE HEARING EXAMINER: I'll have to
15 rely on the screen. It's okay. It's okay, Ms. Hardy.

16 MS. HARDY: Yes, it was -- it may have
17 been -- I'm not sure. It looks like a copying problem
18 --

19 MS. HARDY: Okay. All right. No
20 problem. So here we have on the screen Exhibit A-5.

21 MS. HARDY: Sorry about that. Right.

22 THE HEARING EXAMINER: And how does
23 this speak to surface facilities?

24 MS. HARDY: It is showing our central
25 tank battery location.

1 THE HEARING EXAMINER: I see. Okay.
2 And that's on the left side and on the right side is
3 your depiction of Tumbler.

4 MS. HARDY: Right. But this was our
5 direct case and we didn't have their surface facility
6 information when we filed this.

7 THE HEARING EXAMINER: Right. No, I'm
8 understanding. I'm just trying to understand the two
9 diagrams here.

10 MS. HARDY: Yes. That's right.

11 THE HEARING EXAMINER: Okay. And then
12 do you have a copy of this -- now I'd like to see the
13 rebuttal exhibit that he prepared.

14 MS. HARDY: Sure.

15 THE HEARING EXAMINER: Is this it?

16 MS. HARDY: This is it.

17 THE HEARING EXAMINER: This is it.
18 Okay. And what information on here -- let me know
19 when you've got it so I can just look at it. You got
20 it now?

21 MS. HARDY: Yeah. This is it.

22 THE HEARING EXAMINER: Is there a way
23 to -- is this the whole page or is this just part of
24 the page?

25 MS. HARDY: It's the whole page.

1 THE HEARING EXAMINER: Okay. All
2 right. It's the whole page.

3 So, Mr. Miller, what did you do in this
4 diagram or this exhibit that is reactive to Tumbler's
5 exhibits?

6 MR. MILLER: On the right-hand side you
7 can see a plat of Tumbler's or representative's TOPS,
8 well pads, CTB location.

9 THE HEARING EXAMINER: Is that the red
10 and blue boxes?

11 MR. MILLER: Correct.

12 THE HEARING EXAMINER: Okay.

13 MR. MILLER: And in the kind of snipped
14 insert, looks like an aerial photograph.

15 THE HEARING EXAMINER: Okay.

16 MR. MILLER: That is taken from their
17 exhibits. So that is how I depicted it on the more
18 map view.

19 THE HEARING EXAMINER: I see. Okay.
20 And what are you trying to say with this exhibit?

21 MR. MILLER: You can see that they have
22 four well pads and I've put the equivalent acres that
23 they will -- that we'll take up and I've taken this
24 all from their testimony. And the two CTBs and
25 equivalent acres and then on the left side it's just a

1 comparison to our facility plan with the equivalent
2 metrics.

3 THE HEARING EXAMINER: And you're
4 drilling from north to south and they're drilling from
5 south to north?

6 MR. MILLER: That is their proposal.

7 THE HEARING EXAMINER: And it's your
8 proposal too?

9 MR. MILLER: And in our proposal as
10 well. Yeah.

11 THE HEARING EXAMINER: Ms. Shaheen,
12 what do you have to say about that?

13 MS. SHAHEEN: What I have to say about
14 it is that Mr. --

15 THE HEARING EXAMINER: Miller?

16 MS. SHAHEEN: -- Miller, thank you.

17 THE HEARING EXAMINER: Sure.

18 MS. SHAHEEN: Mr. Miller's exhibit,
19 original exhibit, A-5, the only thing it contains is
20 one depiction of their proposed central tank battery
21 location. It doesn't show their well pads. That
22 would easily have been available to them and could
23 have been submitted with their original packet and
24 this plat, I'm not sure where that information came
25 from, but that as well would have been properly

1 submitted with the direct exhibits.

2 THE HEARING EXAMINER: And the plat
3 you're talking about, is that in the middle on top?
4 Well, I'm not sure what you're talking -- or was that
5 the bottom part?

6 MS. SHAHEEN: Yes, yes. The middle
7 kind of shifted off to the left a little bit at the
8 top.

9 THE HEARING EXAMINER: Oh, that.

10 MS. SHAHEEN: That map there, that
11 could have -- that should have been submitted with
12 their direct case and it was not.

13 THE HEARING EXAMINER: Ms. Hardy?

14 MS. HARDY: It's submitted in rebuttal
15 to Tumbler's information on their well proposals. I
16 mean on their surface facilities locations that we
17 learned of from their exhibits.

18 THE HEARING EXAMINER: But what do you
19 say to Ms. Shaheen's --

20 MS. HARDY: I mean, we -- yeah.

21 THE HEARING EXAMINER: What do you say
22 to Ms. Shaheen's point that Mr. Miller could have
23 exhibited most of this information. I realize that
24 the information on the right side is new. There's no
25 question that that's new, but what do you say about

1 the rest of it?

2 MS. HARDY: Well, the point of the
3 exhibit is to compare the surface facilities and we
4 couldn't provide a comparison until we have theirs.

5 THE HEARING EXAMINER: Ms. Shaheen?

6 MS. SHAHEEN: They're including
7 information that should have been provided in their
8 direct case. That is the location of their well pads
9 and all this information that is really kind of hard
10 to read here at the top, that should have been
11 provided in their previous case. And if they had done
12 that, then they could have made this comparison if it
13 was necessary. There's no information on here that's
14 not already in Marathon's exhibits and Tumbler's
15 exhibits. There's nothing in here that's different
16 except for the location of their well pads and their
17 plat that they're trying to get admitted into the
18 record.

19 This is similar to yesterday's
20 exclusion of Tumbler's exhibit. I can't remember
21 which one it is now, but one of them was excluded
22 because Ms. Hardy argued that we should have provided
23 that with our direct case. Same thing here. They
24 should have provided the -- this plat, the location of
25 their well pads in the direct case.

1 THE HEARING EXAMINER: Ms. Shaheen,
2 while I understand the argument that they could have
3 provided some of this information in their direct, I
4 also understand the argument that it wasn't until they
5 understood the locations of the pads, et cetera, that
6 they decided to show a comparison between the two. So
7 even though one purpose would be fine, the second
8 purpose is also fine in light of the fact that now
9 they have information that says, hey, here's where
10 Tumbler is going to put their pads and their CTBs and
11 now we want to show the comparison between the two.
12 So I don't see them as mutually exclusive so I'm
13 allowing this exhibit in over your objection. So this
14 A-12 is admitted into evidence. I'll keep a record of
15 this.

16 (Marathon Exhibit A-12 was received
17 into evidence.)

18 THE HEARING EXAMINER: So is this
19 witness going to summarize his direct and his rebuttal
20 testimony now?

21 MS. HARDY: Yes.

22 THE HEARING EXAMINER: Okay.

23 MS. HARDY: Yes.

24 THE HEARING EXAMINER: So I'll give you
25 15 minutes to summarize starting now.

1 MS. HARDY: Okay. And I think really
2 what I'm going to focus on is have Mr. Miller talk
3 about his response to Tumbler's exhibits and
4 testimony. Okay. And as well as his rebuttal
5 exhibit.

6 BY MS. HARDY:

7 MS. HARDY: So, Mr. Miller, we've
8 talked about it a little bit. Can you show or explain
9 what this slide shows generally? Exhibit A-12.

10 MR. MILLER: Yes. It shows Marathon's
11 planned surface facilities consisting of two well pads
12 and one central tank battery, the acres associated
13 with the sides of the -- is depicted there compared to
14 Tumbler's well pad and central tank battery facility
15 design.

16 MS. HARDY: And in terms of acreage,
17 how do they compare?

18 MR. MILLER: The well pads for Marathon
19 is significantly less acreage disturbance than
20 Tumbler's as well as the CTB.

21 MS. HARDY: And Mr. Miller, I'm going
22 to show you Tumbler's exhibits. And let's talk about
23 working interest percentage. Okay. And I'm showing
24 her Tumbler's exhibits starting at A-3 where they have
25 unit recapitulations. Have you looked at these

1 slides?

2 (Tumbler Exhibit A-3 was marked for
3 identification.)

4 MR. MILLER: I have.

5 MS. HARDY: Okay. And what do they
6 show in terms of the ownership interest of Marathon
7 versus Tumbler?

8 MR. MILLER: Marathon has 43, a little
9 over 43 percent working interest and Tumbler has a
10 little under 9 percent working interest.

11 MS. HARDY: And have any of the parties
12 that are listed as uncommitted expressed support for
13 Marathon's development?

14 MR. MILLER: Yes, we have received a
15 letter of support from Walsh & Watts.

16 MS. HARDY: And is that letter provided
17 with your hearing exhibits that have been admitted
18 into evidence?

19 MR. MILLER: It has.

20 MS. HARDY: Okay. And let me just pull
21 it up. Is that Exhibit A-7 in your exhibits?

22 MR. MILLER: Yes, ma'am.

23 MS. HARDY: Okay. And what percentage
24 interest approximately does Walsh & Watts hold?

25 MR. MILLER: I believe a little under 5

1 percent.

2 MS. HARDY: Okay. And so that interest
3 is dedicated to Marathon's unit. Correct?

4 MR. MILLER: They have not signed a
5 JOA. They have just given us a letter of support.

6 MS. HARDY: Okay. And in your opinion,
7 why is working interest percentage important in
8 considering competing development plans?

9 MR. MILLER: My opinion, the owner of
10 the greater working interest bears the greater share
11 of the cost and thereby the risks. And so they have
12 to engage in a prudent operator fashion for their
13 development.

14 MS. HARDY: And since Tumbler holds
15 less than 9 percent of the working interest, will it
16 bear less than 9 percent of the development cost?

17 MR. MILLER: Yes.

18 MS. HARDY: Okay. And since
19 ConocoPhillips at this point owns around 44 percent of
20 the working interest, will it bear around 44 percent
21 of the development cost?

22 MR. MILLER: Yes.

23 MS. HARDY: Okay. And why is that
24 important?

25 MR. MILLER: If any minority owner has

1 operatorship control, I would say that they could
2 engage in more risky behavior because most of the
3 other parties are picking up the cost.

4 MS. HARDY: And I'm going to pull up
5 one of Mr. Villarreal's exhibits. And let me ask you
6 this. Have you reviewed Tumbler's exhibits?

7 MR. MILLER: Yes.

8 MS. HARDY: And do you have comments on
9 some of those exhibits?

10 MR. MILLER: I do.

11 MS. HARDY: Okay. And that's what I'd
12 like to talk through with you. Okay. Mr. Villarreal
13 provides an exhibit where he talks about well proposal
14 corrections. And let me just pull it up. And do you
15 recall seeing this exhibit?

16 MR. MILLER: Yes.

17 MS. HARDY: Okay. And did Marathon
18 send out updated well proposals?

19 MR. MILLER: We did.

20 MS. HARDY: Why?

21 MR. MILLER: We had to change the well
22 names to match the existing APDs and we had to change
23 our bottom hole locations.

24 MS. HARDY: And how many times did
25 Marathon send updated proposals?

1 MR. MILLER: Two updated proposals.

2 MS. HARDY: On the updated proposals,
3 was there any change in the well cost?

4 MR. MILLER: None.

5 MS. HARDY: And on the updated
6 proposals, was there any change to the number of
7 wells?

8 MR. MILLER: None.

9 MS. HARDY: Did Tumbler also send
10 corrected proposals?

11 MR. MILLER: Yes.

12 MS. HARDY: Did Tumbler's corrected
13 proposals amend or correct the township and range of
14 its well locations?

15 MR. MILLER: Yes.

16 MS. HARDY: Let's look at Tumbler
17 Exhibit D-7, the emoji exhibit. Have you seen this
18 exhibit before?

19 MR. MILLER: I have.

20 MS. HARDY: Okay. And what is your
21 understanding of Tumbler's claim regarding Marathon's
22 AFEs?

23 MR. MILLER: I believe they're making
24 the assertion that Marathon's AFEs are artificially
25 low for the Goliath project.

1 MS. HARDY: Okay. And in your opinion,
2 does this exhibit provide accurate AFE cost
3 comparisons?

4 MR. MILLER: In my opinion, no.

5 MS. HARDY: Why not?

6 MR. MILLER: Several factors. Timing.
7 Some of these wells were drilled several years ago.
8 Differences in lateral length, no speaking to geology.
9 Mention a U-turn well which is not exactly apples to
10 apples with the Goliath project. So I wouldn't
11 characterize it as absolute fair comparison.

12 MS. HARDY: And have you --

13 MR. MILLER: Also, the Goliath Fed COM
14 proposal from 2024 was made by what I'm going to term
15 legacy Marathon and we had no control over those costs
16 when they were proposed.

17 MS. HARDY: Okay. And based on your
18 review of the AFEs, why are Marathon's AFEs lower?

19 MR. MILLER: Just on initial review, it
20 appears that their drilling costs are much higher and
21 their facility costs are much higher.

22 MS. HARDY: Okay. And Marathon's
23 drilling two less drill pads. Is that correct?

24 MR. MILLER: Yes.

25 MS. HARDY: Is ConocoPhillips able to

1 benefit from economies of scale with respect to its
2 well cost?

3 MR. MILLER: To my knowledge, yes.

4 MS. HARDY: To your knowledge, does
5 Marathon have a lot more experience preparing AFEs in
6 Lea County, New Mexico than Tumbler?

7 MR. MILLER: To my knowledge, yes.

8 MS. HARDY: Does ConocoPhillips update
9 its AFEs on a regular basis?

10 MR. MILLER: Yes, we -- we update our
11 AFEs quarterly.

12 MS. HARDY: Okay. If cost were
13 ultimately higher than the AFEs, is it your
14 understanding that pooled parties would have an
15 opportunity to object to increased costs?

16 MR. MILLER: That's how every pooling
17 worked.

18 MS. HARDY: Okay. And let's look at
19 Mr. Villarreal's Exhibit D-8. Have you seen this
20 before?

21 MR. MILLER: Yes.

22 MS. HARDY: Okay. And this exhibit
23 states that Marathon cannot accurately price drilling
24 and completion costs for hypothetical wells two plus
25 years out. Right?

1 MR. MILLER: That's what it says.

2 MS. HARDY: Okay. And would tariff --
3 to your understanding, would tariff and pricing
4 changes also impact Tumbler's well cost?

5 MR. MILLER: To my understanding, yes.

6 MS. HARDY: And has Tumbler applied for
7 federal APDs at this point?

8 MR. MILLER: They have not.

9 MS. HARDY: How long do federal ADPs
10 take?

11 MR. MILLER: In my experience, a
12 minimum of six months.

13 MS. HARDY: To your knowledge, can
14 Tumbler apply for APDs for its proposed well prior to
15 issuance of a pooling order?

16 MR. MILLER: They cannot.

17 MS. HARDY: And is that because they
18 don't own an interest in every tract?

19 MR. MILLER: Correct.

20 MS. HARDY: So Tumbler would most -- is
21 it correct that Tumbler would most likely not be able
22 to spud its wells for at least six months after the
23 Division issues a final pooling order?

24 MR. MILLER: I would agree.

25 MS. HARDY: Okay. And in general would

1 concerns about pricing changes over time applied to
2 Tumbler's development as well as Marathon's?

3 MR. MILLER: I would assume so.

4 MS. HARDY: Okay. And let's look at
5 Mr. Villarreal's affidavit. I'll actually pull out
6 his amended affidavit hopefully. Okay. And he talks
7 about Marathon's overhead rates. Do you recall seeing
8 that?

9 MR. MILLER: Yes.

10 MS. HARDY: Okay. There it is. It's
11 in paragraph 6 of his revised affidavit. Are those
12 the rates that Marathon -- the overhead rates Marathon
13 is seeking under the pooling order?

14 MR. MILLER: Those are not the rates
15 we're seeking under the pooling order.

16 MS. HARDY: And what are the rates
17 you're seeking under the pooling order?

18 MR. MILLER: Twelve thousand for
19 drilling and 1200 for while producing.

20 MS. HARDY: And in your experience, is
21 it common that overhead rates proposed under a JOA
22 differ from rates requested under a pooling order?

23 MR. MILLER: In my experience, yes.

24 MS. HARDY: And are the rates that
25 Marathon is seeking under the pooling order consistent

1 with industry standards in your experience?

2 MR. MILLER: In my experience, yes.

3 MS. HARDY: Okay. There has been a lot
4 of discussion of alleged delay by Marathon. Have you
5 heard that testimony?

6 MR. MILLER: Yes.

7 MS. HARDY: Okay. And have you
8 provided a timeline regarding Marathon's development
9 of the Goliath units?

10 MR. MILLER: We have.

11 MS. HARDY: Okay. And let me just pull
12 that up. And that's in your hearing exhibits.
13 Correct?

14 MR. MILLER: It is.

15 MS. HARDY: Do you happen -- okay, I
16 see it. It's part of Exhibit -- it's Exhibit A-9.
17 Right? I'll pull it up.

18 (Marathon Exhibit A-9 was marked for
19 identification.)

20 MR. MILLER: I don't have it listed as
21 that. I have it listed as page 95 of 243.

22 MS. HARDY: Okay.

23 MR. MILLER: For Bone Spring pages.

24 MS. HARDY: Okay. Is this your Exhibit
25 A-9 that I pulled up on the screen?

1 MR. MILLER: That is the APD timeline,
2 but I believe that is the timeline you're referring
3 to.

4 MS. HARDY: Okay. Can you please walk
5 us through this timeline?

6 MR. MILLER: Okay. I'll try to
7 nutshell this. Marathon acquired -- was acquired by
8 ConocoPhillips in November of 2024. Integration
9 started happening earlier this year after the
10 holidays. At that time, trying to gather all the
11 assets from an acquired company and integrate it into
12 our company is a challenge. It takes a long time,
13 especially when it comes to projects that are planned.
14 And so for a lot of the projects that were planned for
15 Marathon, they were -- basically had to be worked from
16 the beginning to comply with the ConocoPhillips way of
17 how we wanted to drill them. And so that takes a lot
18 of time to vet and to evaluate and redo potentially.
19 And it mentions permit expirations. We were aware of
20 permit expirations for these Goliath wells that were
21 to expire in 2027 has been land and inform the asset
22 team. That -- that was the case. We asked to be put
23 on the drill schedule and they were put on the drill
24 schedule for 2027. We have received, based on this
25 contested hearing, we have received authorization from

1 our vice president of the Delaware Basin to accelerate
2 these wells on our drill schedule.

3 MS. HARDY: And can you explain why
4 Marathon's original pooling orders prior to the
5 acquisition were allowed to expire?

6 MR. MILLER: So like I said, we were --
7 we were starting to do the integration earlier this
8 year. It does take some time to even identify the
9 projects that were planned. We were made known that
10 there were pooling orders that Heritage, Marathon, or
11 Legacy Marathon had that were expiring in May. But
12 due to the fact that the project had to be worked from
13 new basically to comply with how ConocoPhillips would
14 want to drill this project, there was simply no time
15 to budget and to plan and to put a rig on the schedule
16 in a couple months to hit that pooling order timeframe
17 so, unfortunately, we had to let them expire with the
18 intention to repool.

19 MS. HARDY: Okay. 'Cause the
20 acquisition occurred in November of 2024 around the
21 holidays. Correct?

22 MR. MILLER: Correct.

23 MS. HARDY: Okay. And then did the
24 pooling orders that were originally obtained expire in
25 May of 2025?

1 MR. MILLER: Correct.

2 MS. HARDY: Okay. And there's been
3 testimony and discussion of Marathon stating the
4 Goliath project is discretionary. Have you heard that
5 testimony?

6 MR. MILLER: I have.

7 MS. HARDY: Can you explain what that
8 means in terms of ConocoPhillips?

9 MR. MILLER: Discretionary is --
10 discretionary is simply a ConocoPhillips term that is
11 used to describe any project that doesn't have an
12 impending lease expiration through its primary term.

13 MS. HARDY: Does stating that these
14 projects are discretionary mean that Marathon does not
15 plan to develop them?

16 MR. MILLER: Absolutely not.

17 MS. HARDY: It just means they don't
18 have an imminent lease expiration.

19 MR. MILLER: Correct.

20 MS. HARDY: Okay. Is proceeding with
21 the Goliath development a priority for Marathon?

22 MR. MILLER: It is.

23 MS. HARDY: Okay. And this is sort of
24 a related topic, but Tumbler argues that Marathon --
25 or my understanding of their argument is that Marathon

1 does not intend to develop Goliath. Is that argument
2 correct in your opinion?

3 MR. MILLER: It is not.

4 MS. HARDY: Okay. And there's been
5 discussion and testimony about Marathon not having a
6 sufficient working interest in the Goliath wells to
7 drill them. How would you respond to those
8 statements?

9 MR. MILLER: I would respond that
10 Marathon is very comfortable with our working interest
11 percentage that we have in this project and that we
12 are fully committed to developing it with that working
13 interest percentage.

14 MS. HARDY: Okay. And does Marathon
15 have permits for its wells?

16 MR. MILLER: Yes.

17 MS. HARDY: What is the cost
18 approximately of a BLM permit?

19 MR. MILLER: Currently around \$12,000
20 per well.

21 MS. HARDY: And has Marathon surveyed
22 its well locations?

23 MR. MILLER: Yes.

24 MS. HARDY: Has Marathon had its onsite
25 with BLM?

1 MR. MILLER: Yes.

2 MS. HARDY: Does Tumbler have permits?

3 MR. MILLER: No.

4 MS. HARDY: Has it presented any

5 surveys that you've seen for its well locations?

6 MR. MILLER: Not survey or assigned

7 surveys.

8 MS. HARDY: Is ConocoPhillips running

9 rigs in southeastern New Mexico currently?

10 MR. MILLER: We are.

11 MS. HARDY: How many?

12 MR. MILLER: Four currently.

13 MS. HARDY: And do you know how many

14 there are in Lea County?

15 MR. MILLER: I'm sorry. Four was the

16 Lea County number.

17 MS. HARDY: Okay.

18 MR. MILLER: Seven I believe is all of

19 New Mexico.

20 MS. HARDY: And is Tumbler running any

21 rigs in New Mexico?

22 MR. MILLER: Not that I'm aware of.

23 MS. HARDY: There's been a lot of

24 testimony about negotiations between ConocoPhillips

25 and Tumbler. Have you heard that testimony?

1 MR. MILLER: Yes.

2 MS. HARDY: Okay. And have there been
3 extensive discussions between Marathon and Tumbler?

4 MR. MILLER: There have.

5 MS. HARDY: And are those summarized on
6 your chronology of contacts that I believe is Exhibit
7 A-9 [sic]? I've actually pulled it up there on the
8 screen.

9 (Marathon Exhibit A-11 was marked for
10 identification.)

11 MR. MILLER: Perfect. Yes.

12 MS. HARDY: Okay. And you've heard a
13 lot of testimony about trades. Correct? Or did you
14 hear that testimony?

15 MR. MILLER: Yes, ma'am.

16 MS. HARDY: Okay. Did Tumbler ever
17 propose a specific trade?

18 MR. MILLER: Not as I would define a
19 specific trade.

20 MS. HARDY: Okay. How would you define
21 a specific trade?

22 MR. MILLER: When a specific trade
23 usually comes in, it includes legal description, acres
24 to be traded in, acres to be traded out, working
25 interest associated NRI, usually in a table form, that

1 can be actionable. It can be evaluated. It can be
2 subject to management approval.

3 MS. HARDY: Okay. And I'm going to
4 pull up the email that's been discussed pretty
5 extensively here. And this has been identified as
6 Marathon Cross Exhibit 2. And this email from
7 Mr. Villarreal to you dated April 3, 2025, at 2:38
8 p.m., can you summarize your understanding of what
9 this email says?

10 MS. SHAHEEN: Excuse me. I have an
11 objection because I thought this was Cross Exhibit 1.

12 MS. HARDY: That that could be Cross
13 Exhibit 1.

14 MS. SHAHEEN: And I just don't want the
15 record to be confusing.

16 MS. HARDY: Okay. Thank you. Thank
17 you. There were two email cross exhibits so --

18 MS. SHAHEEN: Yes.

19 MS. HARDY: Okay. So Cross Exhibit 1.

20 THE HEARING EXAMINER: And Ms. Hardy,
21 before you go on, how much more time do you need?

22 MS. HARDY: Probably five minutes.

23 THE HEARING EXAMINER: Okay. Five
24 minutes from now.

25 MS. HARDY: Okay. Thank you.

1 MR. MILLER: I know this has been
2 parsed a lot so in my opinion, Mr. Villarreal's email
3 was a preference list or a wish list, but it didn't
4 contain a specific trade proposal that could be
5 evaluated. So I responded to him that this is a --
6 this is a -- and I'm summarizing. This is a lot of
7 metrics to look at and from what I could see it's
8 incumbent -- it would be incumbent on me and my team
9 to go and find something to put into that said tabular
10 form that could be an actionable trade proposal. And
11 so that's why I encouraged, you know, if you have a --
12 if you have a deal specific to the interest, please
13 send it in and I mentioned here that it would have to
14 be rather attractive to consider, but you never know
15 until it's proposed because we do evaluate all
16 specific trade proposals. But I just did not see a
17 specific trade proposal.

18 BY MS. HARDY:

19 MS. HARDY: And would a specific trade
20 proposal include legal descriptions of acreage?

21 MR. MILLER: Typically yes.

22 MS. HARDY: Okay. And here, you were
23 provided only with the names of some large units. Is
24 that correct?

25 MR. MILLER: Correct.

1 MS. HARDY: And Tumbler didn't provide
2 -- did they provide a map?

3 MR. MILLER: No.

4 MS. HARDY: And did they give you any
5 of the information that you needed to evaluate a trade
6 proposal?

7 MR. MILLER: Not based on this email.

8 MS. HARDY: And Tumbler has testified
9 that they don't know ConocoPhillips' working interest
10 in the areas that they were interested in. Could they
11 make that determination?

12 MR. MILLER: They could through land
13 work so to speak.

14 MS. HARDY: Okay. I sit your
15 understanding of these email communications that
16 Tumbler was really asking you to come up with a trade
17 to propose to them?

18 MR. MILLER: That is how I interpreted
19 it.

20 MS. HARDY: And did you meet with
21 Mr. Villarreal in Midland?

22 MR. MILLER: I did.

23 MS. HARDY: And you talked with
24 Mr. Weeks on the phone?

25 MR. MILLER: I have.

1 MS. HARDY: Okay. In your opinion, has
2 Marathon negotiated with Tumbler in good faith?

3 MR. MILLER: In my opinion, yes.

4 MS. HARDY: And in your opinion, will
5 Marathon's development plan best prevent waste and
6 protect correlative rights?

7 MR. MILLER: Yes.

8 MS. HARDY: And do those correlative
9 rights include ConocoPhillips' approximately 44
10 percent working interest in this acreage?

11 MR. MILLER: Yes.

12 MS. HARDY: Those are all of my
13 questions. Thank you.

14 THE HEARING EXAMINER: All right.
15 Thank you.

16 Ms. Shaheen, I propose that we break
17 now. That way, you can think about your
18 cross-examination as well.

19 And we can come back -- it's 11:30 now.
20 We can come back at 1:30 to continue today's hearing.

21 Is there anything further?

22 MS. SHAHEEN: Not from me. Thank you.

23 THE HEARING EXAMINER: All right.

24 From Ms. Hardy?

25 MS. HARDY: No. Thank you.

1 THE HEARING EXAMINER: No.

2 Mr. McClure, anything before we break
3 for two hours?

4 THE TECHNICAL EXAMINER: Not from me,
5 Mr. Hearing Examiner.

6 THE HEARING EXAMINER: All right.
7 Thank you.

8 We're off the record.

9 (Off the record.)

10 THE HEARING EXAMINER: Good afternoon.
11 It's 1:24 on the 17th of September. We are continuing
12 our contested hearing. We have Mr. Miller with us.
13 He has been testifying on direct. He has concluded
14 his direct and rebuttal testimony and now we have
15 Ms. Shaheen for cross-examine.

16 MS. SHAHEEN: And I'm still jumping on
17 the Teams meeting here.

18 Good afternoon, Mr. Miller.

19 THE HEARING EXAMINER: Your microphone
20 is off.

21 CROSS-EXAMINATION

22 BY MS. SHAHEEN:

23 MS. SHAHEEN: Good afternoon,
24 Mr. Miller.

25 MR. MILLER: Good afternoon.

1 MS. SHAHEEN: Let's turn to your
2 self-affirmed statement, your Exhibit A, and I will
3 share my screen. And it looks like we're looking at
4 25542 and frankly, I haven't compared 25541 to 25542.
5 Are your statements the same in both packages except
6 with respect to the fact that one relates to the
7 Wolfcamp and one relates to the Bone Spring?

8 MR. MILLER: That is correct.

9 MS. SHAHEEN: Okay. And do you know
10 whether there are more paragraph numbers in one than
11 there are in the other?

12 MR. MILLER: I don't believe so.

13 MS. SHAHEEN: Okay. Turning to
14 paragraph 41. And drawing your opinion that
15 Marathon's costs are fair and reasonable, did you
16 review the AFEs that the company -- the well proposals
17 that Marathon sent out to the parties on July 9, 2025?

18 MR. MILLER: Since the AFEs did not
19 change from the well proposals that were sent out, the
20 AFE that I did review I believe was the same as that
21 one.

22 MS. SHAHEEN: Okay. And if you turn to
23 Exhibit A-10 of your exhibits. And what does the RE:
24 line say here?

25 MR. MILLER: "Updated Spacing

1 Notification - Goliath Federal Com."

2 MS. SHAHEEN: Okay. So this is not
3 actually the well proposal. Is it?

4 MR. MILLER: No. This is an update to
5 the well proposal.

6 MS. SHAHEEN: And turning to the second
7 document in the same exhibit, this is a letter that
8 appears to be dated August 25th of 2025 to you. Do
9 you agree?

10 MR. MILLER: That seems the correct
11 date.

12 MS. SHAHEEN: And again, what does the
13 RE: line say here?

14 MR. MILLER: "Updated Spacing
15 Notification - Goliath Federal Com."

16 MS. SHAHEEN: So neither of these are
17 the actual well proposals. Are they?

18 MS. HARDY: I object to the question as
19 assuming facts not in evidence.

20 THE HEARING EXAMINER: On what basis?
21 I'm sorry. What?

22 MS. HARDY: I think it's an incorrect
23 characterization, but I think he can explain.

24 THE HEARING EXAMINER: Okay.

25 MS. HARDY: I mean, these aren't the

1 actual well proposal. I don't know that's --

2 THE HEARING EXAMINER: I think the --
3 overruled.

4 MS. HARDY: Okay.

5 THE HEARING EXAMINER: Just ask the
6 question. And when you refer to an exhibit, some of
7 us don't have tabs or anything. Give us a page number
8 of the 243 so we can just get there.

9 MS. SHAHEEN: Yeah. So this is page
10 103 of this report.

11 THE HEARING EXAMINER: I'm there. And
12 I'm there.

13 MS. SHAHEEN: Okay.

14 THE HEARING EXAMINER: So what's the
15 question again?

16 MS. SHAHEEN: The question is: what
17 does the RE: line say here?

18 BY MS. SHAHEEN:

19 MS. SHAHEEN: And I think you may have
20 already answered that. But if you could just answer
21 it again because I got a little distracted.

22 MR. MILLER: Same here. Can you ask --
23 could you ask the question again, please?

24 MS. SHAHEEN: Yes. We're looking at
25 the letter dated August 25, 2025, what does the RE:

1 line say here?

2 MR. MILLER: "Updated Spacing
3 Notification - Goliath Federal Com."

4 MS. SHAHEEN: Okay. And does this or
5 the previous document that we looked at in A-10, do
6 either of these have the elections attached?

7 MR. MILLER: It appears not.

8 MS. SHAHEEN: Okay. So we don't have
9 the initial well proposal here. Is that correct?

10 MR. MILLER: Not in this exhibit.

11 MS. SHAHEEN: And we don't have the
12 elections to participate in this exhibit either. Do
13 we?

14 MR. MILLER: I don't believe so.

15 MS. SHAHEEN: But if I understand
16 correctly, there are AFEs attached to the second
17 letter. Is that correct? Here? These are your AFEs.
18 Is that right?

19 MR. MILLER: They are.

20 MS. SHAHEEN: And is it your testimony
21 today that these same AFEs were attached to the actual
22 well proposal that was issued on July 9th?

23 MR. MILLER: I did not personally send
24 out those well proposals so I am not sure. I can tell
25 you they are typically attached to the initial well

1 proposals.

2 MS. SHAHEEN: So you don't know one way
3 or another whether these were the AFEs that were
4 attached to the -- well, you don't know one way or
5 another whether they -- any AFEs were attached to the
6 first well proposal. Is that correct?

7 MR. MILLER: I did not personally send
8 those out.

9 MS. SHAHEEN: So the answer is no. You
10 have to say --

11 MR. MILLER: No. I -- I -- I am not
12 completely sure. I am not sure.

13 MS. SHAHEEN: Let me ask my question
14 again 'cause I would like to get a straight answer.
15 you don't know whether AFEs were attached to the July
16 9th letter. Do you?

17 MR. MILLER: No.

18 MS. SHAHEEN: And if they were
19 attached, you can't say today whether these are the
20 same AFEs that were attached to the July 9th letter.
21 Is that right?

22 MR. MILLER: That is correct.

23 MS. SHAHEEN: Looking at the AFE here,
24 and actually, I feel like -- I apologize, but I'm
25 going to have to -- my questions are based on -- under

1 applications so I'm going to have to find the other
2 application here. In Case No. 25541, it's the Bone
3 Spring application. Is that correct?

4 MR. MILLER: Could you repeat the case
5 number?

6 MS. SHAHEEN: 25541.

7 MR. MILLER: I here -- I have 25462 as
8 the case of the Bone Spring.

9 MS. SHAHEEN: I believe that's the
10 Tumbler case number.

11 MR. MILLER: Oh, excuse me, 25542 is
12 the case with the Bone Spring.

13 MS. SHAHEEN: The 25542 is the case
14 with the Bone Spring.

15 MR. MILLER: Yes.

16 MS. SHAHEEN: Okay. Is there an
17 indication on the cover page of 25542 or -- oh, okay.
18 This is 25542. I'm sorry. I apologize. It's not
19 doing what I need it to do. Okay. We'll just go
20 forward with 25542.

21 THE HEARING EXAMINER: So before you
22 ask a question, please reference an Exhibit number and
23 a page number.

24 MS. SHAHEEN: Yes.

25 THE HEARING EXAMINER: Thank you.

1 MS. SHAHEEN: So I'm looking at page
2 106 of 243.

3 THE HEARING EXAMINER: Okay.

4 BY MS. SHAHEEN:

5 MS. SHAHEEN: This is the AFE for the
6 Goliath 24 Federal Com 303H. Is that correct?

7 MR. MILLER: That's correct.

8 MS. SHAHEEN: In the middle of the AFE,
9 do you see the table with the column titled "Cost
10 Feature Group"?

11 MR. MILLER: I do.

12 MS. SHAHEEN: Is this table the
13 breakdown of cost estimated to be incurred in the
14 drilling, completion, equipping, and facilities for
15 the 303H?

16 MR. MILLER: It appears so.

17 MS. SHAHEEN: The column "Cost Feature
18 Group" is the list of various tangible and intangible
19 cost categories that an operator may use in the
20 development of the well? Is that correct?

21 MR. MILLER: It doesn't describe it as
22 such on the -- on the AFE, but I do know that the cost
23 feature group typically includes tangible and
24 intangible costs.

25 MS. SHAHEEN: And across the table

1 there are other header columns that read "Drilling,
2 Completions, Pumping Equipment, and Facilities."
3 Correct?

4 MR. MILLER: Correct.

5 MS. SHAHEEN: So if you're looking at
6 the dollar figures that populate the table, those are
7 the costs that are associated with the cost feature
8 group as it applies to drilling, completions, pumping
9 equipment, and facilities. Right?

10 MR. MILLER: Correct.

11 MS. SHAHEEN: What are the fair and
12 reasonable cost casing and tubing that Marathon
13 expects to incur in the drilling of this well?

14 MR. MILLER: As I did not craft this
15 AFE, I do not know what cost feature group that is
16 combined with or included in.

17 MS. SHAHEEN: Well, you would agree
18 that you read the table from left to right. Is that
19 correct?

20 MR. MILLER: Yes.

21 MS. SHAHEEN: And if you're looking at
22 the first entry, "A000: Casing and Tubing," you see
23 that?

24 MR. MILLER: Oh, yes.

25 MS. SHAHEEN: And you look across to

1 the right under the drilling column. Do you see that?

2 MR. MILLER: Yes.

3 MS. SHAHEEN: Is there an amount there
4 for casing and tubing for drilling?

5 MR. MILLER: This is none.

6 MS. SHAHEEN: Does Marathon intend to
7 use any casing and tubing when it drills its wells?

8 MR. MILLER: Presumably so.

9 MS. SHAHEEN: And why isn't there a
10 cost estimate there?

11 MR. MILLER: Might be included
12 somewhere else, but I don't know why there's not a
13 cost there. Again, I did not craft this AFE.

14 MS. SHAHEEN: And who did craft the
15 AFE?

16 MR. MILLER: The drilling, completions,
17 pumping equipment, and facilities groups.

18 MS. SHAHEEN: And you don't have a
19 witness here to testify to the AFE. Is that correct?

20 MS. HARDY: I'll object to that
21 question.

22 THE HEARING EXAMINER: On what basis?

23 MS. HARDY: That the question is we
24 don't have witness here to testify about the AFEs. I
25 think that we don't have a drilling and completions

1 witness to testify about the AFEs. But Mr. Miller is
2 testifying about the AFEs to the extent they were sent
3 out by the land department as part of the --

4 THE HEARING EXAMINER: So his testimony
5 you're saying is going to be limited to, yes, I sent
6 them out, but I don't know what's -- the data that's
7 in it?

8 MS. HARDY: I think he does have some
9 knowledge about the data that's in it and I think he
10 can address that. I don't know that he has all of the
11 data about all of the information that is in the AFEs.

12 THE HEARING EXAMINER: Okay. I'm not
13 going to sustain the objection. It's overruled.

14 Just please answer the question.

15 MR. MILLER: Would you mind repeating
16 the question?

17 BY MS. SHAHEEN:

18 MS. SHAHEEN: I don't know that I'll
19 repeat it exactly the way it was, but my question is:
20 why isn't there any cost estimate for casing and
21 tubing under the drilling column?

22 THE HEARING EXAMINER: That wasn't the
23 question. You already asked that question. And he
24 answered the question. He doesn't know. And then you
25 asked, "Well, isn't there a witness missing here?"

1 And that's when there came an objection.

2 BY MS. SHAHEEN:

3 MS. SHAHEEN: Okay. So is there a
4 witness here who can testify as to why there are no
5 costs under the column for drilling, for casing and
6 tubing?

7 MR. MILLER: There's not.

8 MS. SHAHEEN: And when you said it
9 could be included in another column or another subject
10 area, do you know if it was included in another column
11 or another subject area?

12 MR. MILLER: Not for sure.

13 MS. SHAHEEN: So that answer is no.
14 You don't know.

15 MR. MILLER: The answer is no, I don't
16 know.

17 MS. SHAHEEN: So to your knowledge, the
18 cost that would be necessary for casing and tubing for
19 drilling are not included in this AFE. Isn't that
20 right?

21 MS. HARDY: Objection. That misstates
22 his testimony. He said he didn't know.

23 THE HEARING EXAMINER: So I think you
24 have to stand by the answer you already have,
25 Ms. Shaheen, so I'm going to sustain the objection.

1 Can we move on?

2 BY MS. SHAHEEN:

3 MS. SHAHEEN: Just like to confirm. Do
4 you know whether any of the other AFEs contain this
5 information? I don't want to have to spend a lot of
6 time going through each one of them, but if I
7 represent to you that none of them have information
8 relating to casing and tubing and drilling, you don't
9 have any information to the contrary. Do you?

10 MR. MILLER: I have no information to
11 the contrary at this moment.

12 MS. SHAHEEN: Do you know what are the
13 fair and reasonable cost for casing and tubing that
14 Marathon expects to incur drilling the 303H?

15 MR. MILLER: To those specific items,
16 no.

17 MS. SHAHEEN: What are the comparable
18 casing cost for drilling a well similar to the 303H in
19 this area?

20 MR. MILLER: Again, to that granular
21 level of specific costs, I do not know.

22 MS. SHAHEEN: What are the fair and
23 reasonable cost for drilling rig day rate that
24 Marathon expects to incur in drilling the 303H?

25 MR. MILLER: I do not know.

1 MS. SHAHEEN: Marathon intends to use a
2 drilling rig when it drills the 303H. Correct?

3 MR. MILLER: That I do know.

4 MS. SHAHEEN: And the answer is?

5 MR. MILLER: Yes, ma'am.

6 MS. SHAHEEN: What are the comparable
7 drilling rig cost for drilling a well similar to the
8 303H in this area?

9 MR. MILLER: If it's in the category of
10 drilling, am I understanding you right that the
11 category of drilling?

12 MS. SHAHEEN: I'm asking you what are
13 the comparable drilling rig cost.

14 MR. MILLER: The rig specifically?

15 MS. SHAHEEN: Yes, drilling rig cost
16 for drilling a well similar to the 303H. Sorry, it's
17 the 301H.

18 MR. MILLER: I'm on the 303H just for
19 clarification.

20 MS. SHAHEEN: Oh, yes. Okay. The
21 first one is the 303 and then we go backwards to 301,
22 okay.

23 THE HEARING EXAMINER: So the question
24 is: what are the comparable costs?

25 MR. MILLER: For that specific cost, I

1 don't know. I do not know.

2 THE HEARING EXAMINER: Mm-hmm. Mm-hmm.

3 BY MS. SHAHEEN:

4 MS. SHAHEEN: Actually, the question
5 is: what are the comparable drilling rig costs? Not
6 necessarily related to that column.

7 MR. MILLER: Yeah. I -- I referenced
8 just that specific cost, that drilling rate I believe
9 you called it.

10 MS. SHAHEEN: Drilling rig cost.

11 MR. MILLER: Drilling rig cost.

12 MS. SHAHEEN: For drilling a well
13 similar to the 303H.

14 MR. MILLER: That's a specific cost and
15 I do not know.

16 MS. SHAHEEN: What are the fair and
17 reasonable costs for directional drilling/MWD/LWD that
18 Marathon expects to incur in drilling the 303H?

19 MR. MILLER: I do not know.

20 MS. SHAHEEN: Marathon intends to
21 directional drill using MWD and/or LWD and the
22 drilling of the Goliath 303H. Is that right?

23 MR. MILLER: Being as it's a horizontal
24 well, I would agree.

25 MS. SHAHEEN: What are the comparable

1 directional drilling MWD/LWD for drilling a well
2 similar to the 303H in this area?

3 MR. MILLER: I do not know.

4 MS. SHAHEEN: What are the fair and
5 reasonable cost for bits and mills that Marathon
6 expects to incur in drilling the 303H?

7 MR. MILLER: It does not list any cost
8 so I do not know.

9 MS. SHAHEEN: The AFE doesn't include
10 the cost for bits and mills?

11 MR. MILLER: It does not on this 303H.

12 MS. SHAHEEN: But Marathon intends to
13 use bits and mills in drilling with 303H. Correct?

14 MR. MILLER: Presumably so.

15 MS. SHAHEEN: What are the comparable
16 bits and mills cost per drilling a well similar to the
17 303H in this area?

18 MR. MILLER: I do not know.

19 MS. SHAHEEN: And if I ask the same
20 questions for the remainder of the AFEs that are
21 produced in cases 25541 and 25542, would your answers
22 be the same?

23 MR. MILLER: If they were asked in the
24 -- in the exact same manner, I would stipulate yes, it
25 will be the same.

1 MS. SHAHEEN: In your initial
2 statement, you mentioned Marathon planned to reduce
3 surface disturbance using existing facilities and then
4 today you corrected that to say that these shared
5 facilities don't exactly exist today. Is that right?

6 MR. MILLER: That is correct. I
7 corrected that statement.

8 MS. SHAHEEN: What facilities are you
9 referencing?

10 MR. MILLER: I corrected the statement
11 to say that there were no existing surface facilities
12 but that we would be using Marathon's planned
13 facilities in their APD.

14 MS. SHAHEEN: Okay. And what are those
15 planned facilities?

16 MR. MILLER: It'd be two wells pads and
17 one CTB.

18 MS. SHAHEEN: Turning now to your
19 Exhibit A-10.

20 THE HEARING EXAMINER: Page number?

21 MS. SHAHEEN: Page 98 of 243.

22 BY MS. SHAHEEN:

23 MS. SHAHEEN: Oh, actually, we've
24 already talked about this. This is your July 24th
25 updated spacing notification. Correct?

1 MR. MILLER: Correct.

2 MS. SHAHEEN: And I can share again if
3 you give me a sec here. That's not correct. Did
4 Marathon send the July 24th -- 25th letter to notify
5 interest owners of updates to Goliath well names?

6 MR. MILLER: That is correct.

7 MS. SHAHEEN: Did Marathon also send
8 this letter to update AFEs reflecting the correct
9 names of the wells on the AFEs?

10 MR. MILLER: It says "Attached to this
11 letter are AFEs updated to reflect the correct well
12 names." So yes.

13 MS. SHAHEEN: And did Marathon send
14 this letter to notify the interest owners of an update
15 to the spacing of certain Goliath wells?

16 MR. MILLER: That's correct.

17 MS. SHAHEEN: Did you include the
18 updated AFEs that were attached to the July 24th
19 letter in your exhibits in either case?

20 MR. MILLER: I'm sorry. Could you
21 repeat that?

22 MS. SHAHEEN: Did you include the
23 updated AFEs that were attached to the July 24th
24 letter? Were those included in your exhibits in these
25 two cases?

1 MR. MILLER: You'll have to bear with
2 me, I did not -- I did not personally send out these
3 updated notifications. So you're asking if the
4 updated AFEs with the correct well names were attached
5 to this correspondence?

6 MS. SHAHEEN: No, I'm asking whether
7 they're included in the exhibits in this matter.

8 MR. MILLER: I would have to -- I would
9 have to review, but I do believe that all the AFEs
10 that have been attached are with the correct well
11 names so I would agree, yes.

12 MS. SHAHEEN: Let me just make sure I'm
13 clear that you're answering the question. And so this
14 is the August 25th letter and I'm just scrolling
15 down.

16 MR. MILLER: I'm sorry. I'm at the
17 July 24th letter, page 98, 241.

18 MS. SHAHEEN: Oh, I'm sorry. Right. I
19 don't have that in front of me. So in Case No. 25442,
20 which is what we have here on the screen --

21 MR. MILLER: I don't show anything on
22 the screen.

23 MS. SHAHEEN: Oh, sorry. This being
24 25542, page 99 of 243, the July 24th letter, updated
25 spacing notification, which was sent out to update the

1 well names on the AFEs. Correct?

2 MR. MILLER: Correct.

3 MS. SHAHEEN: And so my question is:
4 does this exhibit include those updated AFEs?

5 MR. MILLER: Well, I am seeing an AFE
6 for the Goliath 24 Federal Com 303H.

7 MS. SHAHEEN: Do you see it attached to
8 the August 24th letter?

9 MR. MILLER: Again, I'm on the July 24,
10 2025, page 99, 243. Oh.

11 MS. SHAHEEN: Sorry, the July, do you
12 see it attached to the July 24th letter?

13 MR. MILLER: Yes. I see it attached.

14 MS. SHAHEEN: You do?

15 MR. MILLER: Well, the 303H is behind
16 the -- the letter. Page 106.

17 MS. SHAHEEN: We're not looking at the
18 same packet. So on page 99 of 243 --

19 MR. MILLER: Yes, ma'am.

20 MS. SHAHEEN: -- and this is Case No.
21 25542. And I'm just scrolling down here. I'll page
22 down. That might be a little quicker. Page 101, page
23 102, page 103. There is no AFE. There's the August
24 25th letter.

25 MR. MILLER: I see it now. Yes.

1 MS. SHAHEEN: So I'll ask the question
2 just to make sure we're all on the same page.

3 MR. MILLER: Yes.

4 MS. SHAHEEN: Were the updated AFEs
5 that were attached to the July 24th letter, are those
6 included in your exhibits?

7 MR. MILLER: I did not personally send
8 out these notifications so I cannot verify -- I -- I
9 -- I see AFEs attached beyond the August 25th letter.
10 I cannot state that those were attached to the July
11 24th letter.

12 MS. SHAHEEN: Okay. So I'll ask the
13 question one more time 'cause I think it's a yes or no
14 question. Are the AFEs that were attached to the July
15 24th letter when it went out, are those AFEs attached
16 to the July 24th letter in this exhibit?

17 MR. MILLER: That is an I don't know
18 because I -- I don't.

19 MS. SHAHEEN: You don't know whether
20 this exhibit that you're looking at has the AFEs
21 attached to it?

22 MR. MILLER: Maybe we're just
23 misunderstanding each other. I have a list of AFEs
24 behind the August 25th letter.

25 MS. SHAHEEN: Right. Do you have a

1 list of AFEs behind the July 24th letter?

2 MR. MILLER: I -- we do not.

3 MS. SHAHEEN: Thank you. After the
4 August 25th letter, did Marathon send out any
5 additional updates to interest owners regarding
6 changes to Goliath well names, spacing, or provide
7 additional AFEs reflecting updates?

8 MR. MILLER: Not to my knowledge.

9 MS. SHAHEEN: In this letter, Marathon
10 updated the spacing for a number of wells. Is that
11 correct?

12 THE HEARING EXAMINER: Which letter?

13 MS. SHAHEEN: The one that -- am I'm
14 sharing now? August 25, 2025.

15 MR. MILLER: On page 103?

16 MS. SHAHEEN: Page 103.

17 THE HEARING EXAMINER: Ms. Shaheen, I'm
18 asking because the record can't pick up what you're
19 showing on the screen.

20 MS. SHAHEEN: I understand.

21 BY MS. SHAHEEN:

22 MS. SHAHEEN: In this letter, did
23 Marathon update the spacing for its wells?

24 MR. MILLER: Yes.

25 MS. SHAHEEN: As to the Goliath 603H,

1 is it fair to say that Marathon has spaced the first
2 take point, last take point, and bottom hole location
3 for this well to be approximately 1,271 and here
4 again, I think I'm in the wrong set of application --
5 the wrong application. All right, here we go.

6 Turning to page 104 of 243, looking at the 603H here.
7 Is it fair to say that Marathon has spaced the first
8 take point, last take point, and bottom hole location
9 for this well to be approximately 1,271 feet from the
10 east line of Sections 24, 25, and 36 and Township 26,
11 South Range 34 East?

12 MR. MILLER: 1,271 feet from the east
13 line. Correct.

14 MS. SHAHEEN: And the 603H has a
15 proposed total vertical depth of 13,100 feet. Is that
16 right?

17 MR. MILLER: That's what it states.

18 MS. SHAHEEN: On the same page as to
19 the 604H, is it fair to say that Marathon has spaced
20 the first take point, last take point, and bottom hole
21 location for this well, meaning the 604H to be
22 approximately 1410 feet from the east line of Sections
23 24, 25, and 36 in the Township 26 South, Range 34
24 East?

25 MR. MILLER: That is correct.

1 MS. SHAHEEN: And the 604H also has a
2 proposed total vertical depth of 13,100 feet. Is that
3 right?

4 MR. MILLER: That's what it states.

5 MS. SHAHEEN: And the difference
6 between 1410 feet from the east line of those sections
7 and 1271 feet from the east line of the same sections
8 is less than 100 feet. Is that right?

9 MR. MILLER: I would say that'd be
10 greater than 100 feet.

11 MS. SHAHEEN: Let me ask that again.
12 The difference between the two is less than 150 feet.
13 Is that right?

14 MR. MILLER: Doing some math in my
15 head, but yes, that sounds correct.

16 MS. SHAHEEN: Does Marathon intend to
17 have them producing laterals of the 603H and the 604H
18 spaced 139 feet from one another?

19 MR. MILLER: I can't imagine so. I
20 will leave that to Mr. Patrick in his testimony
21 though.

22 MS. SHAHEEN: The geologist will
23 testify about the spacing of the wells?

24 MR. MILLER: If it's in his testimony.

25 MS. SHAHEEN: Going back now to the

1 July 24th letter one more time. This letter
2 references that Marathon proposed to drill -- this is
3 a July 9th -- it references the letter that Marathon
4 sent out proposing to drill the Goliath wells on July
5 9, 2025. Is that right?

6 MR. MILLER: That is correct.

7 MS. SHAHEEN: And subject to the
8 changes to well names and spaces that are referenced
9 in the July 24th and August 25th letters, the wells
10 from the July 9th proposal are the same Goliath wells
11 that are the subject of these two cases that we have
12 today, 25541 and 25542. Is that right?

13 MR. MILLER: It's my understanding that
14 all the permitted Goliath wells had their names
15 changed so I would agree.

16 MS. SHAHEEN: So the answer is yes?

17 MR. MILLER: Yes.

18 MS. SHAHEEN: Turning to page 13 of
19 243, this is part of your self-affirmed statement in
20 each of these cases. Is that correct?

21 MR. MILLER: Yes, ma'am.

22 MS. SHAHEEN: Will you please read
23 paragraph 36 of your Exhibit A into the record?

24 MR. MILLER: "Marathon re-proposed the
25 Goliath wells to Tumbler on July 9, 2025. A copy of

1 the well proposal letter and AFEs are attached as
2 Exhibit A-10."

3 MS. SHAHEEN: And that's not true. Is
4 it?

5 MR. MILLER: Can we look at Exhibit
6 A-10, please?

7 MS. SHAHEEN: Sure.

8 MR. MILLER: So what is on the screen
9 is the updated spacing notification, not the proposal
10 letter.

11 MS. SHAHEEN: Turning now to page 12 of
12 243. Paragraph 32. You state that "Marathon has
13 approved permits to drill all 17 Goliath wells."
14 Correct?

15 MR. MILLER: To my knowledge, that is
16 correct.

17 MS. SHAHEEN: Are you familiar with the
18 C102s for the Goliath wells that appear as Exhibit A-3
19 in both of your cases?

20 MR. MILLER: Would we mind flipping
21 over to them?

22 MS. SHAHEEN: No. We can certainly do
23 that.

24 THE HEARING EXAMINER: Ms. Hardy.
25 Hold on, Ms. Shaheen. It takes too

1 much time to flip this way and that way and put it on
2 the screen.

3 Ms. Hardy, does your witness have a
4 copy of these exhibits?

5 MR. MILLER: I do.

6 THE HEARING EXAMINER: Okay. Great.

7 Did you give a page number, please, so
8 he can just turn to it in his book?

9 MS. SHAHEEN: Twenty-eight of 243.

10 THE HEARING EXAMINER: Thank you.

11 Let us know when you get to that page.

12 MR. MILLER: I'm there.

13 BY MS. SHAHEEN:

14 MS. SHAHEEN: Are you familiar with
15 these C102s?

16 MR. MILLER: I did not fill them out,
17 but I am familiar with the C102.

18 MS. SHAHEEN: Have you compared these
19 C102s that appear as exhibits in these cases with the
20 APDs that you referenced in paragraph 32 of your
21 Exhibit A?

22 MR. MILLER: I have not made a
23 comparison.

24 MS. SHAHEEN: Are you aware of any
25 differences between the C102s and the APDs?

1 MR. MILLER: From my knowledge, due to
2 respacing the wells, a sundry must be made so a new
3 C102 is given.

4 MS. SHAHEEN: And how many sundries
5 will need to be submitted?

6 MR. MILLER: I would have to go back
7 and count the number of wells that were updated for
8 their spacing.

9 MS. SHAHEEN: Are you aware whether
10 Marathon will be submitting sundries for any other
11 aspect of the 17 APDs that it currently has approved?

12 MR. MILLER: That, I cannot give an
13 answer.

14 MS. SHAHEEN: Do you know whether there
15 are any outstanding sundries that they approve
16 permits?

17 MR. MILLER: I believe there are some
18 outstanding sundries.

19 MS. SHAHEEN: How many?

20 MR. MILLER: I -- that, I cannot give
21 an answer.

22 MS. SHAHEEN: Do you know what they
23 relate to?

24 MR. MILLER: I believe bottom hole
25 locations.

1 MS. SHAHEEN: Turning to page 84. Is
2 this a plat of the tracts that I identify the
3 ownership interest of each tract?

4 MR. MILLER: This is Tract 1 ownership.
5 Yes.

6 MS. SHAHEEN: You've identified capital
7 T Tract 1 as being all of sections 24 and 25 and
8 Township 26 South, Range 34 East. Is that correct?

9 MR. MILLER: That is correct.

10 MS. SHAHEEN: And you've identified
11 each owner of Tract 1 on this plat. Is that correct?

12 MR. MILLER: That's correct.

13 MS. SHAHEEN: Is the ownership interest
14 in Sections 24 and 25 the same in every quarter
15 portion of the two sections?

16 MR. MILLER: No. They are not uniform
17 between certain half sections.

18 MS. SHAHEEN: Do you have another
19 exhibit that depicts the difference in ownership
20 interest?

21 MR. MILLER: No, we do not.

22 MS. SHAHEEN: Can you please point me
23 to the paragraph in your Exhibit A testimony where you
24 discuss the level of diligence used by Marathon in
25 examining title to the acreage?

1 MR. MILLER: Paragraph B 19 is the plat
2 of the tracks identified ownerships in each tract as
3 well as the parties Marathon seeks to pool.

4 MS. SHAHEEN: And does that speak to
5 the level of diligence that was used by Marathon in
6 preparing those tracts?

7 MR. MILLER: It is our identification
8 of the ownership so it speaks to our identification of
9 the ownership.

10 MS. SHAHEEN: How much working interest
11 does Puma Mineral Partners own in the north half
12 Section 25?

13 MR. MILLER: We did our tracts based on
14 leases so they are proportionally spread between the
15 two sections so if you're asking the specific interest
16 in the north half of 25, I cannot give the answer of
17 .11 percent.

18 MS. SHAHEEN: So you don't know.

19 MR. MILLER: No, ma'am.

20 MS. SHAHEEN: Same for the south half.
21 Can you say how much working interest Puma Mineral
22 Partners owners in the south half of Section 25?

23 MR. MILLER: No, ma'am.

24 MS. SHAHEEN: Does this exhibit reflect
25 that Puma only owns a working interest in the south

1 half of Section 25?

2 MR. MILLER: This exhibit shows that
3 Puma owns a working interest in cumulatively Section
4 24 and 25.

5 MS. SHAHEEN: And only a working
6 interest. Is that right? I can ask --

7 MR. MILLER: Would you mind scrolling
8 down? Just a little bit more, please. I'll make it
9 easy on you --

10 MS. SHAHEEN: I'm sorry. Should I
11 continue scrolling?

12 MR. MILLER: No. I'll -- I'll just --
13 there is ownership depicted as various for overrides
14 and production payment. There's a possibility that
15 Puma is one of those. I would have to check our
16 title.

17 MS. HARDY: Ms. Shaheen, if you could
18 just scroll up. Oh, sorry, other way.

19 MR. MILLER: Oh, on page 87, Puma is
20 listed as an override owner.

21 BY MS. SHAHEEN:

22 MS. SHAHEEN: In which section?

23 MR. MILLER: It's on a unit-wide basis.

24 MS. SHAHEEN: Turning to page 13. I
25 call your attention to paragraph 39. Can you please

1 read the first sentence of paragraph 39 into the
2 record?

3 MR. MILLER: "Marathon has made
4 multiple attempts to engage in trade discussions with
5 Tumbler."

6 MS. SHAHEEN: Turning now to Exhibit
7 A-11, which is 116 of 243. Trying to make this big
8 enough for us to read. And here, in this row here
9 where my hand is, this is the record of communications
10 with Tumbler. Is that correct?

11 MR. MILLER: Yes. That is correct.

12 MS. SHAHEEN: So I'm going to scroll
13 over to the right so that we could see what
14 communications there are here. And your chronology of
15 contacts with Tumbler, the first time Marathon
16 mentions the idea of trade negotiation appears to be
17 April 3, 2025. Do you see that?

18 MR. MILLER: I do.

19 MS. SHAHEEN: I'm going to show what's
20 previously been looked at as Cross Exhibit 1. Is this
21 familiar to you?

22 MR. MILLER: Yes, ma'am.

23 MS. SHAHEEN: It's a series of emails
24 between Tumbler and Marathon. Is that right?

25 MR. MILLER: That is correct.

1 MS. SHAHEEN: So scrolling down to the
2 email from Mr. V, April 3, 2025, he informs you that
3 Tumbler is thinking about the possibility of a trade
4 for Conoco non-op interest in Paduca, Big Sink, and
5 Fuller. Did you make any effort to determine whether
6 Conoco owns any interest in the Big Sink?

7 MR. MILLER: I did not.

8 MS. SHAHEEN: Did you make any effort
9 to determine whether Conoco owns any interest in the
10 Paduca?

11 MR. MILLER: I did not.

12 MS. SHAHEEN: What about the Fuller?

13 MR. MILLER: I did ask about the Fuller
14 to our OBO group, which is operated by others.

15 MS. SHAHEEN: And did you inform --
16 what did you learn when you asked about it?

17 MR. MILLER: That we were -- that our
18 interest was held up in a -- in another matter with
19 the operator.

20 MS. SHAHEEN: And did you provide that
21 information to Mr. V in response to his inquiry?

22 MR. MILLER: I did not.

23 MS. SHAHEEN: Did Marathon ask Tumbler
24 to clarify the sections, townships, or ranges it was
25 proposing for a trade?

1 MR. MILLER: I asked for a specific
2 proposal to the interest which I think would qualify.

3 MS. SHAHEEN: But you didn't ask
4 Tumbler to identify sections, townships, or ranges.
5 Did you?

6 MR. MILLER: I asked for a specific
7 proposal to the interest.

8 MS. SHAHEEN: I'm going to ask it one
9 more time. Did you ask them to provide you with
10 sections, townships, and ranges?

11 MR. MILLER: No. I did not.

12 MS. SHAHEEN: Sitting here today, can
13 you point to any other trade discussions that you had
14 with Tumbler regarding Goliath?

15 MR. MILLER: Only my request that they
16 would -- I would characterize my first was, "Do you
17 have any tracts in mind?" I would characterize my
18 second as, "Please submit --" and you please have to
19 scroll up so I don't misquote myself. The second
20 request was to send in an offer with specifics to the
21 interest.

22 MS. SHAHEEN: Would it be fair to say
23 that your attempts to engage Tumbler in trade
24 discussions consisted of two emails?

25 MR. MILLER: Yes.

1 MS. SHAHEEN: You testified earlier
2 that you expected -- that you felt the onus of
3 identifying specific Conoco interests that might be
4 available for a trade in exchange for Tumbler's
5 interest in these Goliath wells and the David wells,
6 you testified that it was -- the onus of doing that
7 work was on Tumbler. Do you recall that testimony
8 earlier?

9 MR. MILLER: I do recall.

10 MS. SHAHEEN: Can you define what you
11 mean by "land work"?

12 MR. MILLER: The identification of a
13 particular area and the research of the title to
14 determine the ownership interest of the person or the
15 entity you're trying to trade with.

16 MS. SHAHEEN: So in other words, you
17 mean title work. Is that right?

18 MR. MILLER: Correct.

19 MS. SHAHEEN: Are you familiar with how
20 to do title work or do you commission title work?

21 MR. MILLER: I'm familiar with title
22 work and I commission title work.

23 MS. SHAHEEN: What's the average time,
24 in your experience, what's the average time and cost
25 it takes to complete title work for one section or 640

1 acres?

2 MR. MILLER: A considerable amount of
3 time.

4 MS. SHAHEEN: Would it be a month?

5 MR. MILLER: It could be.

6 MS. SHAHEEN: Could it be more than a
7 month?

8 MR. MILLER: Yes. It could be more
9 than a month.

10 MS. SHAHEEN: Where does someone go to
11 get title records to do the title work that you
12 believe Tumbler should have done to identify Conoco's
13 interests?

14 MR. MILLER: There is the courthouse
15 and online courthouse records.

16 MS. SHAHEEN: And when you say the
17 courthouse, do you mean Lea County Courthouse. Is
18 that right?

19 MR. MILLER: They identified a number
20 of general areas so Eddy County could also be.

21 MS. SHAHEEN: So Eddy County or -- I'm
22 sorry. Go ahead.

23 MR. MILLER: So Eddy County or Lea
24 County Courthouse.

25 MS. SHAHEEN: Are you familiar with how

1 many acres there are in Lea County?

2 MR. MILLER: I don't think anyone's
3 ever asked me that. No, I'm not familiar with the
4 total number of acres.

5 MS. SHAHEEN: Could you estimate
6 whether it's more or less than 2 million acres?

7 MR. MILLER: I could not.

8 MS. SHAHEEN: Would you disagree with
9 me if I told you it was more than 2 million acres?

10 MS. HARDY: Well, I'm going to object
11 to this line of questions. I don't --

12 MS. SHAHEEN: There's a point to it and
13 we're going to get to it shortly.

14 THE HEARING EXAMINER: Okay. He's
15 already said he doesn't know how many acres there are
16 in Lea County so this is just another way of asking
17 that and it's sustained. So let's get to your point.

18 MS. SHAHEEN: Okay.

19 BY MS. SHAHEEN:

20 MS. SHAHEEN: Would you agree if I told
21 you it was 2 million acres?

22 THE HEARING EXAMINER: That was the
23 question that was objected to and sustained so please
24 move on.

25 //

1 BY MS. SHAHEEN:

2 MS. SHAHEEN: Let's make it a
3 hypothetical. Let's hypothetically say, as an expert,
4 you're obligated to respond to my hypotheticals.
5 Let's say Lea County has 2 million acres, how many
6 weeks or months do you think it would take to complete
7 the title work for 2 million acres in Lea County?

8 MS. HARDY: I'm going to object to
9 speculation and to relevance. No one's talking about
10 doing title work on all of Lea County.

11 THE HEARING EXAMINER: Ms. Shaheen, how
12 is it relevant?

13 MS. SHAHEEN: It's relevant because the
14 only way that Tumbler could know what Conoco's
15 ownership is in Lea County is to research the entire
16 county. They don't know where Conoco's ownership is.
17 So if, as Mr. Miller testifies, it's our obligation to
18 go out and figure out what Conoco owns in Lea County,
19 for example, then we would have to search title for
20 all 2 million acres in Lea County. That's the point
21 and I just want Mr. Miller to recognize that it's
22 unreasonable for him to say that Tumbler -- and I'll
23 ask this as a question.

24 BY MS. SHAHEEN:

25 MS. SHAHEEN: Wouldn't you agree --

1 well, let me go back to the last question I asked
2 which was, how much time --

3 THE HEARING EXAMINER: Well, we haven't
4 ruled on the objection. This is taking longer than it
5 really needs to. You know, I understand the point
6 you're trying to make. But I think there's another
7 way of getting to this point without going through
8 these hypotheticals about how long it will take to
9 research all 2 million acres in New Mexico. So I
10 sustain the objection. Why don't you rephrase your
11 question to get to your point?

12 BY MS. SHAHEEN:

13 MS. SHAHEEN: How much time do you
14 think it would take Tumbler to research title to
15 determine what Conoco owns in Lea County?

16 MS. HARDY: I think that's the same
17 question.

18 THE HEARING EXAMINER: Was that an
19 objection?

20 MS. HARDY: Yeah, I do object for the
21 same reason.

22 THE HEARING EXAMINER: Okay.
23 Sustained.

24 Please move on Ms. Shaheen.

25 //

1 BY MS. SHAHEEN:

2 MS. SHAHEEN: Is it Conoco's
3 expectation that Tumbler spends that amount of time
4 and resource to identify the specific legal
5 description of Conoco's acreage prior to making a
6 trade proposal?

7 MR. MILLER: I'm not here to put any
8 expectations on Tumbler other than submitting a trade
9 proposal that can be evaluated.

10 MS. SHAHEEN: I don't think that
11 answered my question. I said, is it Conoco's
12 expectation that Tumbler spend the time that would be
13 necessary to identify Conoco's interest in Lea County
14 prior to making a trade proposal?

15 MR. MILLER: To the extent that they
16 want to trade, yes. There are other ways of going
17 about it thought than running title on all of Lea
18 County.

19 MS. SHAHEEN: Yes. And wouldn't you
20 agree that the most reasonable thing to do would be to
21 ask Conoco what interests they have that they would be
22 willing to negotiate over?

23 MR. MILLER: I'm not going to deny
24 that's reasonable, but --

25 MS. SHAHEEN: Okay. You've answered my

1 question. Thank you. You also talked earlier about
2 authorization that you've received to accelerate
3 development on the drill schedule. Do you recall that
4 testimony earlier today?

5 MR. MILLER: I do.

6 MS. SHAHEEN: When did you get this
7 authorization?

8 MR. MILLER: I'm trying to recall the
9 specific day, but I believe it was -- I believe it was
10 last Tuesday.

11 MS. SHAHEEN: This past Tuesday you
12 received an authorization. And who did you receive
13 that from?

14 MR. MILLER: I received it from my land
15 manager who --

16 MS. SHAHEEN: And what was the specific
17 authorization that you received?

18 MR. MILLER: That we can accelerate
19 these wells on the drill schedule.

20 MS. SHAHEEN: And what do you mean by
21 accelerate?

22 MR. MILLER: Move them further up in
23 time.

24 MS. SHAHEEN: And have you done that?

25 MR. MILLER: I have not checked the

1 drill schedule since that time. It only comes out so
2 often, but I assume it's at the same place it was. We
3 probably won't accelerate unless we prevail at this
4 contested hearing.

5 MS. SHAHEEN: Where are they currently
6 on the drill schedule?

7 MR. MILLER: They're in the first
8 quarter of 2027.

9 MS. SHAHEEN: And is it your testimony
10 today that if your applications are approved, you're
11 going to accelerate the drilling schedule for these
12 wells?

13 MR. MILLER: That is our intention.

14 MS. SHAHEEN: When were the APDs that
15 are set to expire 2026 first issued?

16 MR. MILLER: There were several
17 issuance dates.

18 MS. SHAHEEN: Do you know what those
19 dates are?

20 MR. MILLER: I just flipped to it.

21 MS. SHAHEEN: Are you referring to an
22 exhibit in your --

23 MR. MILLER: Yes, ma'am. Page 94 of
24 243, I'm sorry, Exhibit A-9.

25 MS. SHAHEEN: So the APDs that expire

1 in January of 2026 were issued when?

2 MR. MILLER: February of 2023.

3 MS. SHAHEEN: And those that expired in
4 February of -- that expired February 2026, when were
5 those issued?

6 MR. MILLER: I show February 2023.

7 MS. SHAHEEN: They were issued then or
8 submitted then?

9 MR. MILLER: Excuse me. I'm so sorry.
10 February 2024.

11 MS. SHAHEEN: So these were approvals
12 for two years?

13 MR. MILLER: Yes, the BLM has kind of
14 changed their ways of their timing on their APDs, but
15 this would probably be in the two-year plus the
16 extension range.

17 MS. SHAHEEN: Have you applied for
18 extensions for those permits?

19 MR. MILLER: I show we're applying for
20 those extensions next month and the month following.

21 MS. SHAHEEN: Paragraph 26 on your
22 Exhibit A, and that is page 12 of 241. Your plan is
23 to construct a new tank battery. Correct?

24 MR. MILLER: Yes. Just one central
25 tank battery.

1 MS. SHAHEEN: And you've already
2 testified that Marathon has no existing service
3 facilities. Correct?

4 MR. MILLER: That's correct.

5 THE HEARING EXAMINER: How much more
6 cross-examine do you have, Ms. Shaheen?

7 MS. SHAHEEN: I don't have much, but I
8 would like to just take 30 seconds to confer with my
9 client.

10 THE HEARING EXAMINER: Go right ahead.
11 Oh. Okay, while you're taking time to confer, I'm
12 going to discuss an issue. It's about court reporters
13 so --

14 MS. SHAHEEN: Okay.

15 THE HEARING EXAMINER: If we're going
16 to need a court reporter for tomorrow, we have to
17 attempt to schedule one now. We will have until four
18 o'clock to cancel to not be charged for that court
19 reporter for tomorrow. I have no idea how long this
20 is going to go. It's taken longer than the typical
21 hearing takes.

22 Ms. Hardy, it sounds like we're getting
23 close to the end of cross-exam for this witness. Will
24 your geologist take about the same amount of time as
25 this witness did?

1 MS. HARDY: From my perspective for my
2 direct and rebuttal, I think probably. It might be
3 less.

4 THE HEARING EXAMINER: Okay, but it
5 could be the same.

6 Ms. Shaheen, a question. When it comes
7 to the geologist, I need some estimate on your
8 cross-exam needs for the geologist. Have you planned
9 that out in advance?

10 MS. SHAHEEN: Yes.

11 THE HEARING EXAMINER: Okay.

12 MS. SHAHEEN: And I anticipate that we
13 would finish today. I don't have any more questions
14 for Mr. Miller.

15 THE HEARING EXAMINER: Okay.

16 MS. SHAHEEN: So unless you or
17 Mr. McClure have a lot of questions for him, I think
18 we can finish up with Mr. Patrick today.

19 THE HEARING EXAMINER: That's my hope.

20 MS. SHAHEEN: Okay.

21 THE HEARING EXAMINER: So, Freya, let's
22 not schedule one for tomorrow. Okay? Let's just keep
23 our fingers crossed.

24 And I would like to spend less time
25 scrolling through exhibits. Everyone has a copy of

1 them, just open to the page and look at them, please.
2 It's taking time out of our day.

3 Mr. McClure, questions for Mr. Miller?

4 THE TECHNICAL EXAMINER: Thank you, Mr.
5 Hearing Examiner. I do have questions for Mr. Miller.

6 THE HEARING EXAMINER: Shoot.

7 THE TECHNICAL EXAMINER: Mr. Miller, if
8 we were to ask Marathon to reevaluate their AFEs
9 that's included in this exhibit packet for purposes of
10 checking for accuracy, do you understand what I'm
11 asking for?

12 MR. MILLER: I do. I do.

13 THE TECHNICAL EXAMINER: Okay. When
14 Marathon is negotiating with different working
15 interest owners, is it common for the discussion to
16 involve different trade options?

17 MR. MILLER: Certainly.

18 THE TECHNICAL EXAMINER: Would it be
19 normal for Marathon to provide a list of its different
20 interests?

21 MR. MILLER: That would not be typical.

22 THE TECHNICAL EXAMINER: And how does
23 negotiations typically take place then?

24 MR. MILLER: Typically, the interests
25 are determined in a particular area and a party will

1 subject a trade proposal or any kind of consideration
2 proposal with the information listed out.

3 THE TECHNICAL EXAMINER: Do you feel
4 that Marathon negotiated in good faith with Tumbler?

5 MR. MILLER: I do believe we negotiated
6 in good faith.

7 THE TECHNICAL EXAMINER: Are you
8 familiar with the initial hearing orders that was
9 issued by the Division at forced pool interest back in
10 2023 for Marathon within this area?

11 MR. MILLER: I'm aware of them.

12 THE TECHNICAL EXAMINER: Why did
13 Marathon not drill the wells per those awards?

14 MR. MILLER: I cannot speak to Heritage
15 or Legacy Marathon's action before the acquisition
16 because I did not work for that company. And as I
17 said in my testimony, we're charged with integrating
18 these projects earlier this year, reevaluating them
19 and working them from the ground up basically.
20 Knowing that the pooling orders were to expire in May
21 of this year, we just could not feasibly budget and
22 apportion a drill schedule, apply a line to a rig to
23 come out there and perpetuate the orders.

24 THE TECHNICAL EXAMINER: Does the
25 current proposed project -- let me restart that

1 question. Is the currently proposed project different
2 than the project that was proposed initially by
3 Marathon?

4 MR. MILLER: Yes. I believe so.

5 THE TECHNICAL EXAMINER: How is it
6 different technically is it different?

7 MR. MILLER: We changed spacing and
8 bottom hole locations on a number of wells.

9 THE TECHNICAL EXAMINER: Is any of the
10 formations that's being targeted different?

11 MR. MILLER: It's still the Bone Spring
12 and the Wolfcamp.

13 THE TECHNICAL EXAMINER: Are there
14 different horizons within the Bone Spring and Wolfcamp
15 being targeted?

16 MR. MILLER: My knowledge as to the
17 original plan of Legacy Marathon is I'm just not as
18 familiar with the original plan of Legacy Marathon to
19 answer that question accurately.

20 THE TECHNICAL EXAMINER: When Conoco
21 acquired or whatever went on with the Conoco-Marathon
22 deal that we've been talking about, did Conoco slash
23 the new Marathon? Are they still beholden on the
24 original obligations that Marathon held?

25 MR. MILLER: Could you clarify the

1 obligations?

2 THE TECHNICAL EXAMINER: In as Marathon
3 had made a commitment to the Division that it was
4 going to drill those wells within a year and then
5 later within the second year when it got extended.

6 MR. MILLER: I'm unaware of that
7 commitment. We had to let the pooling orders expire
8 just for the inability to go and -- and drill it since
9 we only had the --

10 THE TECHNICAL EXAMINER: Is --

11 MR. MILLER: Go ahead.

12 THE TECHNICAL EXAMINER: Is Marathon
13 making a commitment to drill these wells as a part of
14 this application that we're hearing today?

15 MR. MILLER: Yes.

16 THE TECHNICAL EXAMINER: Do you believe
17 Marathon made a similar commitment back in 2023 when
18 they came to -- and with an application?

19 MR. MILLER: I can only speculate. I
20 wasn't working for that company.

21 THE TECHNICAL EXAMINER: Would you
22 agree that all operators in all compulsory pooling
23 cases is making a commitment to drill out the wells
24 when they ask the Division to use its state powers to
25 enforce working interest owners to commit to those

1 units?

2 MR. MILLER: I would agree with that.

3 THE TECHNICAL EXAMINER: Is Marathon
4 asking to drill these wells beyond the typical
5 one-year window from issuance of the order?

6 MR. MILLER: No, I believe with the
7 commitment of acceleration that we will be able to
8 start developing this project within the one year of
9 issuance subject to executive approval.

10 THE TECHNICAL EXAMINER: Is that
11 included in the current exhibit packet anywhere?

12 MR. MILLER: No. It is not. That
13 particular commitment you mean? Apart from the
14 standard commitment?

15 THE TECHNICAL EXAMINER: I guess let me
16 ask the question again. Does the schedule that's
17 currently included in the exhibit packet, does it
18 reference drilling the wells in the year 2027?

19 MR. MILLER: Yes. The timeline that I
20 believe you're referring to has the well scheduled to
21 spud in 2027. That was prior -- that -- that's where
22 they're on the schedule right now just due to where
23 the permit expirations are, but due to this matter, I
24 have received assurances from management that the
25 wells will be accelerated to comply with the terms of

1 the pooling order.

2 THE TECHNICAL EXAMINER: I guess I'm
3 just debating if I should provide additional context
4 or not. And when they do do an announcement back in
5 2024, we do allow for continuing cases for operators
6 to pull the schedule beyond the first year. Having
7 said that, based on, well, is it correct that Marathon
8 now intends to drill the wells within one year of
9 issuance of the order? Do you need a moment to
10 consult with your attorney or --

11 MR. MILLER: No, I'm sorry. I -- I --
12 I didn't hear a question mark.

13 THE TECHNICAL EXAMINER: Oh -- oh, I
14 apologize. I started off with context and then I kind
15 of moved straight into -- I guess with the
16 acceleration that the order may allow for drilling
17 outside of the first year, is it Marathon's intent to
18 still drill these wells within the first year?

19 MR. MILLER: That is our intent.

20 THE TECHNICAL EXAMINER: Okay. And if
21 I were to ask for the exhibits, especially where I
22 have the schedule there to be amended to include that
23 new intent, do you understand what I'm asking for?

24 MR. MILLER: I do.

25 THE TECHNICAL EXAMINER: I've got too

1 many windows open here. If I can draw your attention
2 to essentially your tract map, Exhibit A-6. Could be
3 A-3. Do you have that in front of you, Mr. Miller?

4 (Marathon Exhibit A-6 was marked for
5 identification.)

6 MR. MILLER: Yes, sir.

7 THE TECHNICAL EXAMINER: Okay. On
8 these tables on the right with kind of a breakdown of
9 interest, you see where I'm referring to that right
10 most one, the Tract 1 ownership?

11 MR. MILLER: One second. I was over on
12 the Bone Spring side of things. I'm going to flip on
13 the -- I mean, the Wolfcamp side of this.

14 THE TECHNICAL EXAMINER: Okay. To be
15 fair, I think the exhibits are essentially the same.

16 MR. MILLER: Yeah, they're essentially
17 the same, but if you're going to ask something
18 specific about Bone Spring and Wolfcamp, I just want
19 to make sure I was on the right page.

20 THE TECHNICAL EXAMINER: All right,
21 sir.

22 MR. MILLER: I'm here.

23 THE TECHNICAL EXAMINER: Okay. Do you
24 see where it references operating rights kind of in
25 bold face, next to Marathon at the top of the table

1 there?

2 MR. MILLER: Yes.

3 THE TECHNICAL EXAMINER: When it says
4 operating rights, do you typically mean working
5 interest?

6 MR. MILLER: Yes. That's just working
7 interest. As Tract 1 is a BLM lease and the rights
8 are split between record title and operating rights
9 typically, record title is also synonymous with
10 leasee. We denoted the working interest owner is
11 operating rights owner.

12 THE TECHNICAL EXAMINER: Okay. So then
13 it is accurate to say that when I see operating rights
14 here, that's equivalent to where I normally see
15 working interest. Is that correct then?

16 MR. MILLER: You would be correct.

17 THE TECHNICAL EXAMINER: Okay. And
18 then where it says leasee on the one on the left, is
19 that equivalent to mineral interest or what are we
20 looking at there?

21 MR. MILLER: That's equivalent --
22 that's equivalent to record title interest which can
23 be severed from the working interest, can be -- or it
24 can hold both, but they can also be severed. So a
25 leasee or a record title owner --

1 THE TECHNICAL EXAMINER: Okay.

2 MR. MILLER: -- doesn't own any
3 interest in the cost-bearing part of the development
4 or the revenue of the development, but they own a
5 interest in the lease, just being a record title
6 owner.

7 THE TECHNICAL EXAMINER: So then it's
8 only mineral interest owner and what you're calling
9 Tract 1 is the federal government?

10 MR. MILLER: Correct.

11 THE TECHNICAL EXAMINER: Okay. Now,
12 where you reference overriding royalty interest owners
13 and you just have it broadly spoken as various, is
14 that referring to this prior table or what is that
15 referring to?

16 MR. MILLER: I believe that was done
17 just to fit that table on -- on a single page. In the
18 unit recapitulation, fun word, it'll list out the
19 override owners.

20 THE TECHNICAL EXAMINER: For the
21 entirety of the unit.

22 MR. MILLER: For the entirety of the
23 unit. Correct.

24 THE TECHNICAL EXAMINER: Do you agree
25 that what you're considering Tract 1 here is made up

1 of three different sets of ownership?

2 MR. MILLER: Yes. We just did our
3 tract space on leases.

4 THE TECHNICAL EXAMINER: If I were to
5 ask you to amend this exhibit to list out the three
6 different sets of common ownership and to break out
7 the interest in each one of those sets, do you
8 understand what I'm looking for?

9 MR. MILLER: Absolutely.

10 THE TECHNICAL EXAMINER: Okay. Is it
11 accurate that Cimarex and Walsh & Watts have some sort
12 of joinder with Marathon in its proposed unit?

13 MR. MILLER: Walsh & Watts has given us
14 a letter of support. They have not signed onto our
15 JOA. We've received communication from Cimarex that
16 they intend to negotiate and sign our JOA.

17 THE TECHNICAL EXAMINER: Okay. But at
18 the time of this hearing, neither one of those persons
19 has signed a JOA with Marathon. Is that correct?

20 MR. MILLER: That's correct.

21 THE TECHNICAL EXAMINER: Okay. In
22 regards to your list of communications with Tumbler,
23 what is the reason that you started at January of 2025
24 rather than prior to that?

25 MR. MILLER: We acquired Marathon.

1 ConocoPhillips acquired Marathon in November of 2024,
2 it became effective. But the transition of their
3 assets into our company did not happen until early of
4 this year due to the holidays for the most part but
5 also the length of time it takes for data and files
6 and contracts and everything that comes with an asset
7 to be integrated into our company.

8 THE TECHNICAL EXAMINER: Have you
9 reviewed the exhibits provided by Tumbler in this
10 case, specifically their timeline communications?

11 MR. MILLER: It's rather lengthy and I
12 focused on the communications that they had with me
13 and my team. I can't speak to the other
14 communications in great detail.

15 THE TECHNICAL EXAMINER: Do you believe
16 those communications occurred at least --

17 MR. MILLER: I have no reason to doubt
18 that.

19 THE TECHNICAL EXAMINER: Okay. I guess
20 I skipped a little bit on you before we -- you're the
21 one sharing, but if we can look at your NSP [ph] map I
22 guess might be the best way to say it, page 90.

23 MR. MILLER: I call it a hassle halo if
24 you want a nickname for it.

25 THE TECHNICAL EXAMINER: A hassle halo.

1 On here, you reference at the top on a header of that
2 table on the right where it says "Operator (if
3 existing well) or operator rights owner." Do you see
4 where I'm referring to, Mr. Miller?

5 MR. MILLER: Yes.

6 THE TECHNICAL EXAMINER: By operating
7 rights owner, here is an instance where I should read
8 that the same as working interest owner. Correct?

9 MR. MILLER: Correct.

10 THE TECHNICAL EXAMINER: Okay. Thanks,
11 sir. The well locations included in the CPAC and Form
12 C102s, that's included in this exhibit packet, do you
13 believe all those locations are accurate, Mr. Miller?

14 MR. MILLER: I have no reason to doubt
15 their accuracy.

16 THE TECHNICAL EXAMINER: Now,
17 Ms. Hardy, can we show the CPAC for one of the cases?

18 And, Mr. Miller, if I can draw your
19 attention to specifically the legal description that's
20 on the first page of the CPAC? Kind of the middle of
21 the page there, Mr. Miller.

22 MR. MILLER: Yeah, I see it.

23 THE TECHNICAL EXAMINER: But you're in
24 agreement that this should say Range 36 East -- or
25 excuse me, Range 34 East rather 24 East?

1 MR. MILLER: I am in agreement that we
2 will be sending out revised notices.

3 THE TECHNICAL EXAMINER: In addition to
4 that, if we can make a correction to this CPAC to
5 correct that. You understand what I'm asking for by
6 that?

7 MR. MILLER: Yes, sir.

8 THE TECHNICAL EXAMINER: Okay. And I
9 believe that this error is duplicated across both
10 cases I believe.

11 MR. MILLER: I'm sorry, sir, was that a
12 question?

13 THE TECHNICAL EXAMINER: No. No, sir,
14 I was just referencing that, that CPAC correction will
15 be made to both cases and then I'm just reviewing my
16 notes to make sure I don't have any other questions
17 before I pass you on. Now, Mr. Miller, I guess it's
18 that cue of my habit of walking back and forth, I'm
19 looking again at kind of the bottom of your unit
20 recapitulation table on page 87. It's near the
21 bottom, at the bottom.

22 MR. MILLER: I'm there.

23 THE TECHNICAL EXAMINER: Okay. It
24 looks different from what's being shared.

25 What page, if you would, Ms. Hardy. I

1 guess I'm not seeing it on there. What I'm looking at
2 is page 87 of 241.

3 MR. MILLER: Oh, that's --

4 THE TECHNICAL EXAMINER: I believe it's
5 for the Wolfcamp, which is why it's not matching what
6 Ms. Hardy has there. Do you have it in front of you,
7 Mr. Miller?

8 MR. MILLER: Page 87?

9 THE TECHNICAL EXAMINER: Yes, 87 of
10 241.

11 MR. MILLER: I have it in front of me.

12 THE TECHNICAL EXAMINER: Okay. You
13 have four persons listed down here. I guess one of
14 them includes Marathon for production payment. What
15 is that meant? What's the nature of this ownership?

16 MR. MILLER: A production payment is a
17 -- it's a contractual agreement between parties,
18 especially during a exchange, similar to an override,
19 but it is -- and it can be negotiated however the
20 parties want to negotiate it. But it's typically a
21 set amount of production needs to be paid to a party
22 until a certain time is reached or a certain volume or
23 a certain dollar amount, whatever is negotiated. But
24 it is very similar to an override.

25 THE TECHNICAL EXAMINER: Okay. And it

1 looks like Marathon is asking the Division to force
2 pool three different persons that has these production
3 payments in their various agreements. Is that
4 correct?

5 MR. MILLER: That is correct.

6 THE TECHNICAL EXAMINER: Okay, thank
7 you, Mr. Miller.

8 Thank you, Mr. Hearing Examiner. I
9 have no more questions for this witness.

10 THE HEARING EXAMINER: I have a
11 question, Mr. Miller.

12 MR. MILLER: Yes, sir.

13 THE HEARING EXAMINER: I'm looking at
14 Marathon's Exhibit A-7, the letter of support from
15 Walsh & Watts. It's on page 90 of 243. And this is a
16 working interest owner of 6 percent in the Bone Spring
17 Wolfcamp formations who says that you believe you have
18 the superior plan because it best protects correlative
19 rights, prevents waste of reserves, and prevents
20 stranding of acreage.

21 (Marathon Exhibit A-7 was marked for
22 identification.)

23 THE HEARING EXAMINER: I then go to
24 -- and that letter is dated September 9 so I'm
25 assuming that that entity received the August 25th

1 letter sent out?

2 MR. MILLER: Yes, sir.

3 THE HEARING EXAMINER: Okay. Very
4 good. And that August 25th letter included the AFEs
5 that you have here, starting on page 106 of 243?

6 MR. MILLER: I didn't send it out
7 personally, but I don't think the veracity of the AFEs
8 were included with like every other interest owner.

9 THE HEARING EXAMINER: Okay. All
10 right.

11 MR. MILLER: Working interest owner.

12 THE HEARING EXAMINER: I think I was
13 going off your prior testimony to say that. So if
14 that's correct, what are the categories that
15 Ms. Shaheen pointed out that were missing from this
16 AFE?

17 MR. MILLER: Ms. Shaheen probably can
18 give it to you better than me, but casing and tubing,
19 directional drilling/MWD/LWD, bits and mills, and I'm
20 -- I -- I believe we kind of stipulated to a few -- a
21 few cost categories.

22 THE HEARING EXAMINER: Okay. And some
23 of those costs could be substantial?

24 MR. MILLER: To my knowledge, yes.

25 THE HEARING EXAMINER: Okay. How does

1 underestimating the costs in an AFE impact working
2 interest owners?

3 MR. MILLER: I wouldn't agree that this
4 is underestimating. Are you speaking as a
5 hypothetical?

6 THE HEARING EXAMINER: What word would
7 you prefer I use when categories that can be
8 substantial are left out of an AFE? Maybe
9 underestimating is not the right word, maybe it's
10 negligently omitting. I don't know what word you want
11 me to use, but you understand the point. Don't you?

12 MR. MILLER: I -- I do.

13 THE HEARING EXAMINER: Okay.

14 MR. MILLER: I'm -- I'm -- I'm
15 wondering if the costs are included in some other
16 categories and not apparent right now. It's just on
17 the -- on the face of it. We can provide a detailed
18 AFE with the specific costs to clear up any of this
19 confusion.

20 THE HEARING EXAMINER: That's what
21 Mr. McClure requires for this case to move forward.
22 But I'm asking you because you don't know that those
23 costs are included here.

24 MR. MILLER: Correct.

25 THE HEARING EXAMINER: So it looks like

1 they were omitted, whether it's negligently or some
2 other reason. No one knows and I'm not assigning any
3 kind of blame to it. I'm asking you, how does that
4 lower cost estimate affect working interest owners?

5 MR. MILLER: If I was a working
6 interest owner, I would want to sign up with a lower
7 cost operator.

8 THE HEARING EXAMINER: You said that
9 kind of fast and I didn't catch all the words.

10 MR. MILLER: If I was an uncommitted
11 working interest owner, I would want to sign up with
12 the operator that is purporting lower costs.

13 THE HEARING EXAMINER: And what happens
14 if someone signs up for this project, let's say they
15 execute the document that you asked them to based on
16 this representation here and later it turns out that
17 those costs were overlooked and now they need to be
18 addressed somehow. How does that impact the working
19 interest owner?

20 MR. MILLER: I believe in the pooling
21 order there is a challenge to cost that are overrun.
22 It's with a certain threshold or I would have to read
23 the specific paragraph, but -- and the gist of it, it
24 speaks to being able to challenge the cost. Prior to
25 a pooling order being issued, I would assume a -- a

1 refiling would maybe be in order, but I would have to
2 consult with my attorneys, my regulatory attorneys.

3 THE HEARING EXAMINER: Is there
4 something called a surprise cash call?

5 MR. MILLER: There is a cash call
6 provision in the pooling order.

7 THE HEARING EXAMINER: Okay.

8 MR. MILLER: I doubt it's a surprise
9 it's written in there.

10 THE HEARING EXAMINER: Okay. And what
11 is that? What does that mean to a working interest
12 owner?

13 MR. MILLER: So when you're -- when
14 you're pooled, they operator has the ability to ask
15 for your proportional share of the cost upfront and to
16 be delivered in a certain timeframe.

17 THE HEARING EXAMINER: Including costs
18 that were overlooked?

19 MR. MILLER: Subject to that challenge
20 I'm sure. But you're -- I haven't had a whole lot of
21 experience in that kind of -- that kind of situation.
22 That has -- that has not occurred in -- in my career
23 to this point.

24 THE HEARING EXAMINER: Ms. Hardy, this
25 is your opportunity for a brief redirect so please

1 keep it to important points.

2 MS. HARDY: Sure.

3 REDIRECT EXAMINATION

4 BY MS. HARDY:

5 MS. HARDY: I just have a couple of
6 questions. I think one was going to be that we don't
7 know, do we, whether these specific categories that
8 are listed here are rolled up into the other
9 categories that are listed. Right?

10 MR. MILLER: That is -- saying it, yes.
11 I don't know.

12 MS. HARDY: Okay. Okay. And if a
13 party signs a JOA with the operator based on AFEs, the
14 JOA would govern the treatment and handling of the
15 well cost. Right?

16 MR. MILLER: They would.

17 MS. HARDY: And regarding the email
18 that we've all heard so much about, and I hate to go
19 back to it, but Ms. Shaheen asked you if you had
20 requested township and range information from Tumbler.
21 Do you recall that question?

22 MR. MILLER: Yes. I do.

23 MS. HARDY: And is that what you meant
24 when you asked for a specific proposal? I've actually
25 got it right here. With an offer with the specifics

1 to the interest.

2 MR. MILLER: Yeah. That among other
3 specifics, yes.

4 MS. HARDY: Okay. Those are all of my
5 -- oh, I have one more. I'm sorry. Almost. Are the
6 well proposals provided in your exhibits, along with
7 the AFEs that we are looking at here and specifically
8 this is the August 25, 2025, letter, which is the
9 proposal update, along with the AFEs, is that the
10 operative set of AFEs and well information that
11 applies to this case?

12 MR. MILLER: To my knowledge, yes.

13 MS. HARDY: And that's the most updated
14 information?

15 MR. MILLER: To my knowledge, yes.

16 MS. HARDY: Okay. Thank you. Those
17 are all of my questions.

18 THE HEARING EXAMINER: Thank you.

19 Ms. Shaheen, is there any recross on
20 those few questions?

21 MS. SHAHEEN: Not related to
22 Ms. Hardy's questions. No.

23 THE HEARING EXAMINER: Thank you. What
24 do you mean?

25 MS. SHAHEEN: Well, there are always

1 questions that I think, oh, maybe I should have asked.

2 THE HEARING EXAMINER: Oh, oh, that's
3 different. Okay. Well, thank you for being honest
4 about it. Okay.

5 May this witness be excused, Ms. Hardy?

6 MS. HARDY: Yes. Thank you.

7 THE HEARING EXAMINER: Thank you.

8 Mr. Patrick? You've been very patient,
9 Mr. Patrick. You've sat through two days of
10 testimony. I hope you learned what to do and what not
11 to do. I remind you that you're under oath.

12 MR. PATRICK: Yes, sir.

13 MS. HARDY: It's his birthday so this
14 is what he gets to do.

15 THE HEARING EXAMINER: Oh, gosh. Happy
16 birthday, Mr. Patrick.

17 MR. PATRICK: No place I'd rather be.

18 DIRECT EXAMINATION

19 BY MS. HARDY:

20 MS. HARDY: Good afternoon,
21 Mr. Patrick.

22 MR. PATRICK: Thank you.

23 MS. HARDY: By whom are you employed
24 and in what position?

25 MR. PATRICK: I'm employed by

1 ConocoPhillips as a staff geologist for Lea County, Ne
2 Mexico. Southern half.

3 MS. HARDY: Okay. And can you provide
4 a brief summary of your education and experience?

5 MR. PATRICK: Yes. I obtained my
6 bachelor's degree in geology in 2009 from Western
7 State College of Colorado, subsequently went to work
8 for the mining industry in Lea County. And then I
9 moved over to the oil and gas companies, Apache, where
10 I got my master's degree while working full-time in
11 2015 and have since been working as a full-time
12 geologist.

13 MS. HARDY: And what do you do in your
14 duties as a geologist at ConocoPhillips? Can you give
15 me sort of a range?

16 MR. PATRICK: Yeah, I'm an asset
17 geologist so I evaluate reservoirs and then I put
18 together programs working directly with the reservoir
19 engineering group to make proposals for developing oil
20 and gas operations.

21 MS. HARDY: And have you prepared
22 direct testimony and exhibits in these cases?

23 MR. PATRICK: I have.

24 MS. HARDY: Okay. And those are
25 Exhibits B and B-1 through B-4?

1 (Marathon Exhibit B through Exhibit B-4
2 were marked for identification.)

3 MR. PATRICK: Yes, ma'am.

4 MS. HARDY: Do you have any changes or
5 corrections to those?

6 MR. PATRICK: No, ma'am.

7 MS. HARDY: And do you adopt them as
8 your testimony?

9 MR. PATRICK: I do.

10 MS. HARDY: Okay. And have you also
11 prepared rebuttal exhibits?

12 MR. PATRICK: I have.

13 MS. HARDY: And can you tell me --
14 well, I believe there's an objection to the rebuttal
15 exhibits so I would like to go through with him, why
16 he prepared them and what they --

17 THE HEARING EXAMINER: Let's see if
18 there's still an objection. And first of all, what
19 are the rebuttal exhibits labeled?

20 MS. HARDY: They are labeled B-5, B-6,
21 and B-7.

22 (Marathon Exhibit B-5 and Exhibit B-6
23 and Exhibit B-7 were marked for
24 identification.)

25 THE HEARING EXAMINER: Right. And I

1 didn't allow Tumbler to admit rebuttal exhibits to
2 those exhibits because they had not been admitted into
3 evidence. So there may be additional rebuttal
4 exhibits if you still want those to be admitted. So I
5 think you should think about it for a moment. Do you
6 still want B-5 through 6 or 7 to be admitted?

7 MS. HARDY: Well, I need to go back and
8 look at Tumbler's proposed exhibits, but I think --

9 THE HEARING EXAMINER: Why don't you --

10 MS. HARDY: Can I ask my witness
11 briefly?

12 THE HEARING EXAMINER: Yes, yes, and
13 exactly why he -- and maybe his testimony alone will
14 be sufficient and we don't need the exhibits and
15 therefore, we can avoid other rebuttal exhibits. So
16 why don't you --

17 MS. HARDY: Exactly.

18 THE HEARING EXAMINER: I'll give you 15
19 minutes to do your direct and if you need more time,
20 ask for it.

21 MS. HARDY: Okay.

22 BY MS. HARDY:

23 MS. HARDY: Mr. Patrick, did you review
24 Tumbler's exhibits?

25 MR. PATRICK: I have. Yes.

1 MS. HARDY: Okay. And I wanted to go
2 through some of those with you. Well, let me ask you
3 this first. Can you identify the intervals Tumbler's
4 proposing to develop that ConocoPhillips is not
5 developing?

6 MR. PATRICK: Yes, ma'am. That would
7 be the upper Avalon target. That would be the Bone
8 Spring Third Carb target and that would be the Bone
9 Spring Third Sand target.

10 MS. HARDY: Okay. And let's talk about
11 the Avalon and actually, I can go to Tumbler's
12 exhibits.

13 MS. SHAHEEN: I'm sorry. Can I just
14 clarify? Are we still talking about the rebuttal
15 exhibits or are we moving on and Mr. --

16 THE HEARING EXAMINER: We're just doing
17 a general direct examination under --

18 MS. SHAHEEN: Oh, okay.

19 THE HEARING EXAMINER: By my
20 understanding.

21 Is that correct, Ms. Hardy?

22 MS. HARDY: That's correct.

23 THE HEARING EXAMINER: And then we'll
24 get to the rebuttal I guess at the end of this.

25 MS. HARDY: Yes.

1 THE HEARING EXAMINER: Is there a page
2 number that you're going to here? 'Cause I was trying
3 to avoid the delay of going from page to page.

4 Do you have the Tumbler exhibits there?

5 MR. PATRICK: Not in front of me, no,
6 sir.

7 THE HEARING EXAMINER: Do you want my
8 copy?

9 MR. PATRICK: Sure. Thank you.

10 THE HEARING EXAMINER: Can you just
11 give a page number, Ms. Hardy?

12 MS. HARDY: Let me get to it.

13 BY MS. HARDY:

14 MS. HARDY: And I'm looking at
15 Tumbler's type curves starting at D-11.A. And this
16 deals with the Avalon. It's on page 239 of Tumbler's
17 exhibits. Do you see that?

18 MR. PATRICK: I -- I see it on the
19 screen, yes, ma'am.

20 MS. HARDY: Okay. So this is one of
21 the intervals that Tumbler's proposing to develop that
22 ConocoPhillips is not. Right?

23 MR. PATRICK: That's correct.

24 MS. HARDY: Okay. And why isn't
25 ConocoPhillips proposing to develop this interval?

1 MR. PATRICK: Through our evaluation,
2 we believe that we pool type curve component wells
3 very specifically landed wells for our components.

4 MS. SHAHEEN: I'm sorry. I'm going to
5 object because these are engineering exhibits and
6 Mr. Patrick is not an engineer, he's a geologist.

7 THE HEARING EXAMINER: So outside the
8 scope?

9 MS. SHAHEEN: Outside the scope of his
10 expertise and his testimony.

11 THE HEARING EXAMINER: Ms. Hardy.

12 MS. HARDY: Mr. Patrick works with the
13 reservoir engineers and he helped select the intervals
14 that ConocoPhillips was developing based on his
15 geological inputs and I think he can speak to
16 geologically how and why wells were selected and are
17 being proposed.

18 THE HEARING EXAMINER: Okay. So I'll
19 --

20 Thank you, Ms. Shaheen.

21 I'll allow the question as long as you
22 phrase it from a geological perspective.

23 MS. HARDY: Sure. Sure. Okay.

24 THE HEARING EXAMINER: Go right ahead.
25 I mean, go right ahead, Ms. Hardy.

1 MS. HARDY: Okay.

2 BY MS. HARDY:

3 MS. HARDY: So from a geological
4 perspective, and I understand that's what you're
5 testifying about today. Right?

6 MR. PATRICK: Yes, ma'am.

7 MS. HARDY: Okay. Why didn't
8 ConocoPhillips choose to develop the Avalon?

9 MR. PATRICK: We believe that a 15-mile
10 radius, which is just under 700 square miles, is a
11 broad overbrush of pulling type component wells for
12 the type curves. So we are much more specifically
13 targeting closer and more relevant and what we think
14 is a better geologic representation of what the
15 Goliath project will produce.

16 MS. HARDY: And I can look at your
17 exhibits. How did you select the wells that
18 ConocoPhillips was going to drill here?

19 MR. PATRICK: Yeah, we specifically
20 select wells that are targeted in the upper Avalon and
21 then I submit those to the reservoir engineering group
22 and they conduct their evaluation based on spacing and
23 completion size.

24 MS. HARDY: And what was it about the
25 Avalon that caused ConocoPhillips not to want to

1 develop it?

2 MR. PATRICK: We found very few
3 component wells to make up a type curve that looked
4 geologically similar to the --

5 MS. SHAHEEN: Again, I'm going to
6 object. I don't believe that Mr. Patrick is qualified
7 to testify about type curves. He's not an engineer.
8 He didn't provide any type curves from Marathon.

9 THE HEARING EXAMINER: Okay.

10 Ms. Hardy?

11 MS. HARDY: He is testifying from a
12 geological perspective about the wells that you select
13 that you put into a type curve because ConocoPhillips
14 did its evaluation based on geology in conjunction
15 with engineering so he's absolutely qualified to
16 testify about how those wells were selected.

17 THE HEARING EXAMINER: So, Ms. Shaheen,
18 as a geologist, are you saying that there's no basis
19 to testify on the selection of the wells?

20 MS. SHAHEEN: I'm saying that
21 Mr. Patrick doesn't have the expertise to talk about
22 type curves and EUR as a representative.
23 Mr. Villarreal's type curve Exhibits D-11 and through
24 D-11G I believe.

25 THE HEARING EXAMINER: Okay.

1 Ms. Hardy, in trying to keep this to
2 this gentleman's expertise, is there a way you can ask
3 the question without referencing the type curves?

4 MS. HARDY: Yes. I think so.

5 THE HEARING EXAMINER: Okay. Because
6 the type curves were created by the reservoir
7 engineer. And I understand that you're saying that
8 part of that is geology, I get that, but could you
9 just stick to the geology part?

10 MS. HARDY: Yes.

11 THE HEARING EXAMINER: Okay.

12 BY MS. HARDY:

13 MS. HARDY: So from a geological
14 perspective, is there a significant over 15 miles?

15 MR. PATRICK: Absolutely.

16 MS. HARDY: Okay. And is that true
17 particularly in this area of Lea County?

18 MR. PATRICK: This is a very
19 structurally complex area in the county, especially
20 15-mile radius.

21 MS. HARDY: So our wells that are
22 located within a 15-mile radius of this development,
23 an accurate representative of what you would expect to
24 see within this project area.

25 MR. PATRICK: I do not believe so.

1 MS. HARDY: Okay. And are there other
2 concerns that you have, as a geologist, regarding
3 development of the Avalon?

4 MR. PATRICK: There is significant H₂S
5 that we expect to see during the production of the
6 Avalon wells.

7 MS. HARDY: Okay. And is the Avalon a
8 proven reservoir in this location?

9 MR. PATRICK: We would not prove it.
10 We would not consider it a proven reservoir in this
11 area.

12 MS. HARDY: And if the reservoir
13 becomes proven, would it be possible to come back and
14 develop it at a later time?

15 MR. PATRICK: Our proposed development
16 in the Goliath would have significant distance from
17 the First Bone Spring, which is the shallowest
18 interval we're proposing in to the upper Avalon that
19 there would be very, very little chance for depletion.

20 MS. HARDY: Okay. So could
21 ConocoPhillips come back and develop the Avalon once
22 it's proven?

23 MR. PATRICK: That's correct.

24 MS. HARDY: And what about the Third
25 Bone Spring Carbonate interval? Which is also an

1 interval that -- well, tell me if I'm correct that
2 Tumbler proposes to develop that ConocoPhillips does
3 not?

4 MR. PATRICK: That is correct.

5 MS. HARDY: Okay. And I'm looking for
6 the -- just so I can use it as a reference for myself.
7 And why isn't Marathon developing in this location the
8 Third Bone Spring Carbonate?

9 MR. PATRICK: We also believe it is an
10 unproven reservoir in this area.

11 MS. HARDY: And why is that?

12 MR. PATRICK: We could not find very
13 many component wells that were geologically similar.

14 MS. HARDY: Okay. And again, our wells
15 within 15 miles in the Third Bone Spring Carbonate, a
16 good analog of what you would expect to see at this
17 location?

18 MR. PATRICK: No, we would never use
19 radius that large.

20 MS. HARDY: And did you determine that
21 there's geological risk to developing the Third Bone
22 Spring Carbonate?

23 MR. PATRICK: We believe so, but the
24 lack of analog wells in the area, we think there's
25 significant geologic risk to this current reservoir at

1 this time.

2 MS. HARDY: Okay. And is this a proven
3 reservoir?

4 MR. PATRICK: We would not -- we would
5 not consider it a proven reservoir.

6 MS. HARDY: And --

7 MR. PATRICK: Here in this general
8 area.

9 MS. HARDY: And if the reservoir
10 becomes proven, can ConocoPhillips come back and
11 develop it at a later time?

12 MR. PATRICK: We believe so. We
13 believe, as was mentioned earlier, that the carbonate
14 is between the Third Bone Spring Carbonate and the
15 Second Bone Spring Sand is a prominent frac barrier so
16 we think that the depletion risk would be very
17 limited.

18 MS. HARDY: And with respect to the
19 Third Bone Spring Sand, again, our wells within 15
20 miles, a good analog of what you would expect to see
21 at this location.

22 MS. SHAHEEN: Objection. Asked and
23 answered like three or four times.

24 THE HEARING EXAMINER: Ms. Hardy?

25 MS. HARDY: I'm asking about the Third

1 Bone Spring Sand which I haven't asked about
2 previously.

3 THE HEARING EXAMINER: Ms. Shaheen, I
4 think she's asking about a different formation at this
5 point.

6 Please answer the question.

7 MR. PATRICK: We also believe that the
8 radius is too large for the Third Bone Spring Sand to
9 be a correct representation of what we think that the
10 reservoir would produce in the Goliath area.

11 BY MS. HARDY:

12 MS. HARDY: And is this another -- this
13 an interval where Tumbler's proposing to develop that
14 Marathon is not. Is that correct?

15 MR. PATRICK: That is correct.

16 MS. HARDY: Okay. And why isn't
17 Marathon proposing to develop the Third Bone Spring
18 Sand at this location?

19 MR. PATRICK: We think it is also an
20 unproven reservoir in this area and from the direct
21 offsets we saw underperformance and so we think that
22 the risk is pretty high here so we don't want it to
23 propose high risk intervals in this development
24 program.

25 MS. HARDY: Are all of the zones in

1 which Tumbler has proposed wells that ConocoPhillips
2 has not high risk in your geological opinion?

3 MR. PATRICK: Yes.

4 MS. HARDY: And what does high risk
5 mean from your perspective?

6 MR. PATRICK: It means the chance of
7 economic success is pretty low.

8 MS. HARDY: At Marathon,
9 ConocoPhillips, do you incorporate geological risk
10 into your projected recovery estimates?

11 MR. PATRICK: Yes, ma'am.

12 MS. HARDY: And can you explain how
13 that works?

14 MR. PATRICK: If we have a low subset
15 of wells that we think are geologically similar, we
16 think that the risk is increased and we actually
17 reduce the EUR for those wells to compensate for that
18 risk and therefore, we think that the cost could
19 outweigh the benefit of the production.

20 MS. SHAHEEN: Again, I object to Mr. --

21 THE HEARING EXAMINER: Patrick?

22 MS. SHAHEEN: -- Patrick testifying
23 about EUR. He's not an engineer and I don't believe
24 geologists are qualified to calculate EUR.

25 THE HEARING EXAMINER: Mr. Patrick,

1 what is EUR?

2 MR. PATRICK: Estimated Ultimate
3 Recovery.

4 THE HEARING EXAMINER: Okay. And tell
5 me why a geologist can opine about EUR.

6 MR. PATRICK: So I don't create the EUR
7 or determine it, I just get the geologic risk
8 associated with that production and then the reservoir
9 engineer gives the EUR a haircut per se so that we are
10 putting an economic risk on the portfolio.

11 THE HEARING EXAMINER: And the
12 objection is that the testimony is outside his scope.
13 And the question was what, Ms. Hardy?

14 MS. HARDY: The question was how
15 ConocoPhillips, to his knowledge, incorporates
16 geologic risk into its estimated recoveries.

17 THE HEARING EXAMINER: Okay. So it
18 sounds like you answered the question and then you
19 went a little further.

20 MS. HARDY: Well, I think I asked him
21 to explain how it works.

22 THE HEARING EXAMINER: Oh, okay. Okay.
23 But you're the one who got him in trouble.

24 MS. HARDY: Probably.

25 THE HEARING EXAMINER: I sustain the

1 objection so please ask the question again so we can
2 get the answer into the record but do it in a way that
3 doesn't go beyond his scope.

4 MS. HARDY: Okay.

5 BY MS. HARDY:

6 MS. HARDY: From your perspective as a
7 geologist at ConocoPhillips, can you explain how
8 geological risk is incorporated into production
9 estimates?

10 MS. SHAHEEN: I'm going to object
11 because I don't believe that geologists do production
12 estimates.

13 THE HEARING EXAMINER: That's not the
14 question. The question is not how do you do a
15 production estimate, it's how does geology factor into
16 it. So he's just getting his component of it. So I'm
17 going to allow that part of it.

18 Please answer the question.

19 MR. PATRICK: We incorporated the
20 geologic uncertainty into the expected production
21 results.

22 BY MS. HARDY:

23 MS. HARDY: And was that done for the
24 Goliath development?

25 MR. PATRICK: It was.

1 MS. HARDY: Okay. And in your
2 experience or in your opinion, do you believe it's
3 prudent to incorporate risk, geological risk, into
4 expected production exhibits?

5 MR. PATRICK: I believe it is prudent
6 to incorporate the geologic risk into your
7 expectations for the project.

8 MS. HARDY: Okay. Did you see any
9 indication in Tumbler's exhibits that it incorporated
10 geologic uncertainty into its production estimates?

11 MR. PATRICK: Nothing specific.

12 MS. HARDY: And you've heard Tumbler's
13 testimony that Marathon is leaving behind recoverable
14 reserves. Correct?

15 MR. PATRICK: Yes. I have heard that.

16 MS. HARDY: And from a geologic
17 perspective, in your opinion, are those high risk
18 reserves?

19 MR. PATRICK: Yes.

20 MS. SHAHEEN: Again, I don't believe
21 he's competent to testify about reserves.

22 THE HEARING EXAMINER: Why not?

23 MS. SHAHEEN: Because he's not a
24 reservoir engineer.

25 THE HEARING EXAMINER: Isn't geology --

1 from what I understand, you need to incorporate
2 geology into reservoir engineering. Isn't that a
3 component of it?

4 MS. SHAHEEN: Perhaps so and the
5 reservoir engineer should be here to testify about
6 that.

7 THE HEARING EXAMINER: I'm not arguing
8 that point. The question is, is that question outside
9 of his scope of expertise?

10 Would you rephrase the question to be
11 very careful not to go into reservoir engineering and
12 just stick with geology?

13 MS. HARDY: Sure.

14 BY MS. HARDY:

15 MS. HARDY: Well, I think -- as a
16 geologist, are you working to determine whether there
17 are reserves that are recoverable? Is that part of
18 your analysis?

19 MR. PATRICK: My analysis is to come up
20 with component wells to hand over to the reservoir
21 engineering group to put numbers to it.

22 MS. HARDY: Okay. And are the
23 reservoir that Marathon is not developing here or the
24 intervals high risk from a geological perspective?

25 MR. PATRICK: I would say there would

1 be a high variability in the production results from a
2 geologic standpoint.

3 MS. HARDY: Okay. And so the intervals
4 we've spoken about, the Avalon, the Third Bone Spring
5 Carbonate, the Third Bone Spring Sand and that Tumbler
6 proposes to develop, are high risk geological areas
7 from your perspective. Is that fair? At this point.

8 MR. PATRICK: Yeah, considered high
9 risk at this point. Yes.

10 MS. HARDY: And we've heard a lot of
11 testimony about delay, the timing of this development.
12 Have you listened to that testimony?

13 MR. PATRICK: I have.

14 MS. HARDY: And are you familiar with
15 the subsurface team's work to integrate this project
16 from Marathon into ConocoPhillips' portfolio?

17 MR. PATRICK: Yes.

18 MS. HARDY: Okay. And were you
19 involved in that process?

20 MR. PATRICK: Yes.

21 MS. HARDY: And did you look at this
22 project as a brand new project for ConocoPhillips?

23 MR. PATRICK: Yes, when Marathon was
24 acquired, merged, whatever word we're going with, into
25 ConocoPhillips, they only currently had First and

1 Second Bone Spring proposals in their handover
2 documentation. And so it was only for the west half
3 of this project so we have gone and fully developed --
4 or fully proposed the entire project and the First,
5 Second Bone, as well as the Wolfcamp A.

6 MS. HARDY: And how did you -- did that
7 take time? Did it take time for the subsurface team,
8 including you, to evaluate this project and determine
9 how you go forward?

10 MR. PATRICK: Yes.

11 MS. HARDY: And what type of work did
12 you do with that evaluation?

13 MR. PATRICK: We did a geological
14 overview of the different formations and then we had
15 to put together component wells that I could give to
16 the reservoir engineering group to build type curves
17 and then we had to risk them and we had to make sure
18 that the spacing was proper for the risking.

19 MS. HARDY: And all of that occurred
20 subsequent to the transaction.

21 MR. PATRICK: That's correct.

22 MS. HARDY: Okay. In your opinion --
23 well, let me ask this. Did it take time for you to
24 receive project-specific data from Marathon?

25 MR. PATRICK: The integration was

1 pretty lengthy, yes.

2 MS. HARDY: Okay. And in your opinion,
3 will Marathon's development plan best prevent ways to
4 protect correlative rights?

5 MR. PATRICK: I believe so.

6 MS. HARDY: Thank you. Those are all
7 of my questions.

8 THE HEARING EXAMINER: Okay.
9 Ms. Shaheen.

10 MS. SHAHEEN: Thank you.

11 CROSS-EXAMINATION

12 BY MS. SHAHEEN:

13 MS. SHAHEEN: Good afternoon,
14 Mr. Patrick.

15 MR. PATRICK: Thank you.

16 MS. SHAHEEN: I might be jumping around
17 so bear with me. You haven't performed any studies to
18 determine whether a particular formation is high risk.
19 Have you?

20 MS. HARDY: I object to the form. That
21 misstates his testimony.

22 MS. SHAHEEN: I believe Mr. Patrick --

23 THE HEARING EXAMINER: All right. Hold
24 on. Hold on.

25 MS. SHAHEEN: Okay. Oh, sorry, sorry.

1 THE HEARING EXAMINER: Nobody's asking
2 for your input at the moment.

3 MS. SHAHEEN: My bad.

4 THE HEARING EXAMINER: Now, I'm going
5 to overrule that. It seems like a pretty
6 straightforward question and I think the witness
7 understands it so I'm going to allow it so say it
8 again.

9 BY MS. SHAHEEN:

10 MS. SHAHEEN: You didn't perform any
11 study to determine that the intervals at issue here
12 are at high risk. Did you?

13 MR. PATRICK: I looked at the amount of
14 development in the area in these formations that were
15 in geologically similar areas in my opinion and there
16 was not very much proven production in the area so
17 that's how we risk it on a geologic basis.

18 MS. SHAHEEN: Is that testimony in your
19 direct testimony?

20 MR. PATRICK: I do not believe so.

21 MS. SHAHEEN: Do you have any data to
22 support your -- that resulted from your study?

23 MR. PATRICK: Not in these exhibits,
24 no.

25 MS. SHAHEEN: So there's nothing in the

1 record that supports your opinion that these intervals
2 are high risk?

3 MS. HARDY: Well, I object. His
4 testimony is in the record.

5 THE HEARING EXAMINER: Right. I agree.

6 MS. SHAHEEN: There's no supporting --
7 let me --

8 THE HEARING EXAMINER: Ms. Shaheen, the
9 testimony's in the record now. You asked the
10 question, he answered it. If we want, if Mr. McClure,
11 wants, he can ask this gentleman for whatever data he
12 might have to support his conclusion, but at this
13 point, you opened the door, you asked the question.

14 MS. SHAHEEN: Right. But my question
15 was: is there any data from his study? And he's
16 provided no data in his direct testimony and he's
17 provided no data in his testimony today. He's just
18 given his opinion.

19 THE HEARING EXAMINER: Well, he just
20 gave you the basis of his opinion a moment ago when
21 you asked the question.

22 MS. SHAHEEN: Right. But there's no
23 data that support that opinion. He just said, "Oh, I
24 looked something."

25 THE HEARING EXAMINER: Right. Okay.

1 MS. SHAHEEN: So --

2 THE HEARING EXAMINER: No one's arguing
3 with you. Yes, you're right. So go ahead.

4 MS. SHAHEEN: And my point is I don't
5 think his opinion is reliable because we don't know
6 what data he's relied on, what wells he's looked at,
7 what production he's reviewed.

8 THE HEARING EXAMINER: Well, when it
9 comes to reliability, Mr. McClure and I will judge the
10 reliability of his testimony, whether we believe him
11 or not and for subsequent questions maybe there'll be
12 some redirect, I don't know. But at this point, you
13 haven't elicited any testimony to make me not believe
14 what he just said.

15 MS. SHAHEEN: Okay. Well, I'll
16 continue then.

17 THE HEARING EXAMINER: Okay.

18 BY MS. SHAHEEN:

19 MS. SHAHEEN: Did you perform any
20 studies that resulted in data supporting your opinion
21 that these are unproven reservoirs?

22 MR. PATRICK: From compiling the
23 component wells that we thought were geologically
24 similar to the Goliath area and providing those to the
25 reservoir engineering team, we think there's a high

1 risk to make economic wells under our parameters.

2 MS. SHAHEEN: And which component wells
3 did you examine?

4 MR. PATRICK: I don't have them off the
5 top of my head.

6 MS. SHAHEEN: And what are your
7 parameters?

8 MR. PATRICK: Geologically similar
9 areas within a constrained geologically similar. So
10 we -- we're not going to go 15 miles out of the
11 radius. We're going to keep it much closer to
12 whatever the proposed projects are.

13 MS. SHAHEEN: And when you talk about a
14 15-mile radius, why are you talking about a 15-mile
15 radius?

16 MR. PATRICK: 'Cause I think there's
17 risk whenever you expand your component well selection
18 list out that far.

19 MS. SHAHEEN: And how far did you
20 expand your study of component wells?

21 MR. PATRICK: I don't have that number
22 in front of me. Sorry.

23 MS. SHAHEEN: You don't know what wells
24 you looked at?

25 MR. PATRICK: Not off the top of my

1 head, no, ma'am.

2 MS. SHAHEEN: And you don't know where
3 they're located?

4 MR. PATRICK: Not specifically.

5 MS. SHAHEEN: You don't know how far
6 away they are.

7 MR. PATRICK: Specifically, no.

8 MS. SHAHEEN: And you're aware that EOG
9 proposed wells in those intervals. Right?

10 MS. HARDY: Objection. I think that
11 misstates evidence, testimony today.

12 THE HEARING EXAMINER: What evidence do
13 we have of EOG anyway?

14 MS. SHAHEEN: We have the rebuttal
15 Exhibit D-15, the gun barrel.

16 THE HEARING EXAMINER: Okay. And
17 that's --

18 MS. SHAHEEN: Of EOG's.

19 THE HEARING EXAMINER: Have you asked
20 this witness has he reviewed that exhibit?

21 BY MS. SHAHEEN:

22 MS. SHAHEEN: Have you reviewed
23 Tumbler's rebuttal Exhibit D-15?

24 MR. PATRICK: I have looked at it.
25 Yes, ma'am.

1 MS. SHAHEEN: And you heard the
2 testimony earlier today in that regard. Correct?

3 MR. PATRICK: I'm not sure what
4 specific testimony you're referring to, but I know
5 we've discussed it.

6 MS. SHAHEEN: The testimony with
7 respect to rebuttal Exhibit D-15. Correct? You were
8 here for that?

9 MR. PATRICK: I was here in the
10 courtroom, yes, ma'am.

11 MS. SHAHEEN: And have you reviewed
12 that exhibit?

13 MR. PATRICK: If you don't mind blowing
14 it up, that would be helpful.

15 MS. HARDY: I've got it.

16 MR. PATRICK: Is it one of these?

17 THE HEARING EXAMINER: You have it,
18 Ms. Hardy?

19 MS. HARDY: Yes. I'll pull it up.

20 THE HEARING EXAMINER: All right. But
21 I have a copy I can give to him if you don't have it.

22 MR. PATRICK: What was your question?
23 I'm sorry.

24 BY MS. SHAHEEN:

25 MS. SHAHEEN: So you understand that

1 EOG previously proposed development of the Avalon and
2 the Third Bone Spring Sand and Carb. Correct?

3 MR. PATRICK: What I'm looking at here,
4 EOG proposed lower Avalon wells and it does not look
5 like they proposed any Third Bone Spring Sand wells
6 from this gun barrel. They did propose Third Bone
7 Spring Carb wells which with that frac barrier I
8 believe is going to be protected from the Second Bone
9 and the Wolfcamp A proposals that we've put out.

10 MS. SHAHEEN: So you agree that both
11 Tumbler and EOG proposed wells in the Avalon, Third
12 Bone Spring Sand, and the Third Bone Spring Carb.
13 Correct?

14 MR. PATRICK: No.

15 MS. SHAHEEN: Turning to your
16 statement, Exhibit B.

17 THE HEARING EXAMINER: Page 119?

18 MS. SHAHEEN: Am I sharing? I don't
19 mean to be sharing.

20 MS. HARDY: I can share it. I'm
21 sharing.

22 THE HEARING EXAMINER: But it's page
23 119 is the first page. What page do you want us to
24 look at?

25 MS. SHAHEEN: That's what I'm looking

1 for.

2 Hearing 119.

3 MS. SHAHEEN: 119.

4 THE HEARING EXAMINER: Mm-hmm.

5 BY MS. SHAHEEN:

6 MS. SHAHEEN: In paragraph 8, you state
7 that there's a lack of preferred fracture orientation
8 here. Do you see that testimony?

9 MR. PATRICK: Yes, ma'am.

10 MS. SHAHEEN: Are you familiar with the
11 report cited by Mr. Collins in his statement? With
12 respect to preferred fracture orientation?

13 MR. PATRICK: Yes, ma'am.

14 MS. SHAHEEN: And are you familiar --
15 that would be the Lund Snee report. Correct?

16 MR. PATRICK: What report?

17 MS. SHAHEEN: There's a report cited in
18 Mr. Collins' statement. The Lund Snee report, which
19 relates to preferred fracture orientation.

20 MR. PATRICK: I'm not familiar with
21 that exact report, but --

22 MS. SHAHEEN: Let's turn to it now.

23 MR. PATRICK: Okay. I see it
24 referenced on page 184.

25 MS. SHAHEEN: Yes. Thank you.

1 THE HEARING EXAMINER: What is the
2 exhibit number?

3 MS. SHAHEEN: Exhibit B. Page 184 of
4 328 in Tumbler's exhibits.

5 THE HEARING EXAMINER: It's just B, not
6 B something?

7 MS. SHAHEEN: This is just B, his
8 statement.

9 THE HEARING EXAMINER: Okay. Is there
10 a paragraph number?

11 MS. SHAHEEN: Yes. Well, it's a little
12 I so I believe it's 13 little I.

13 THE HEARING EXAMINER: Thank you.

14 BY MS. SHAHEEN:

15 MS. SHAHEEN: Could you read that into
16 the record, please, Mr. Patrick?

17 MR. PATRICK: "A south-to-north
18 drilling orientation is appropriate to align the
19 production wellbore perpendicular to the maximum
20 horizontal stress."

21 MS. SHAHEEN: And are you familiar with
22 the report that he cites in support of that statement?

23 MR. PATRICK: I have not read that.
24 No.

25 MS. SHAHEEN: Are you aware that

1 there's a need to align the perpendicular wellbore to
2 maximum horizontal stress?

3 MR. PATRICK: Yes, ma'am. I am.

4 MS. SHAHEEN: Do you agree with
5 Mr. Dylan's statement, excuse me, with Mr. Collins'
6 statement in this regard?

7 MR. PATRICK: Yes. And I would also
8 say that north to south is the same as south to north
9 when it comes to orientation.

10 MS. SHAHEEN: Do you still stand by
11 your statement that there is no preferred fracture
12 orientation in this portion of the trend?

13 MR. PATRICK: Well, as Mr. Collins
14 said, there is a primary source orientation and we are
15 following the same guidelines in our proposal so --

16 MS. SHAHEEN: Why did Marathon fail to
17 provide gun barrel diagram in support of its
18 applications?

19 MR. PATRICK: Is that a mandatory
20 exhibit? I'm sorry. Failure seems to be an
21 inappropriate word for that.

22 MS. SHAHEEN: Well, I'll rephrase it.
23 Why didn't Matador -- excuse me -- Marathon support
24 its applications with a gun barrel diagram?

25 MR. PATRICK: We've got all our well

1 proposals out there.

2 MS. SHAHEEN: Are you aware that the
3 Division usually requires a gun barrel diagram in
4 support of its compulsory pooling applications?

5 MS. HARDY: I object to the form of
6 that question. It's calling for a legal conclusion.
7 And I also --

8 MS. SHAHEEN: I'm just asking him what
9 he knows.

10 MS. HARDY: I'll still think it's
11 accurate.

12 THE HEARING EXAMINER: Okay.
13 Ms. Shaheen?

14 MS. SHAHEEN: Yes, I was asking him if
15 he's aware.

16 THE HEARING EXAMINER: But you said,
17 "Usually requires." I mean, do you know that to be a
18 fact?

19 MS. SHAHEEN: It is included in the
20 exhibit index that's requested in which OCD request
21 that operators include it in the package, yes.

22 THE HEARING EXAMINER: Ms. Hardy? Is
23 it requested in the exhibit list?

24 MS. HARDY: It's listed in the
25 compulsory pooling checklist, but it's not always

1 provided.

2 THE HEARING EXAMINER: Okay.

3 So is there a way for you to frame the
4 question now that we know that it's something we like
5 but we don't I guess require it? I don't know the
6 answer to that. I'm not in technical team. Okay, I
7 just got the answer from Mr. McClure.

8 Thank you, Mr. McClure.

9 Is there a way for you to rephrase the
10 question without making it seem like it's mandatory?

11 BY MS. SHAHEEN:

12 MS. SHAHEEN: Why didn't Marathon
13 include a gun barrel diagram in its exhibits?

14 MR. PATRICK: Because it's not
15 mandatory.

16 MS. SHAHEEN: Are you aware of existing
17 an imminent offset well that are potentially draining
18 the acreage at issue here?

19 MR. PATRICK: Yes. I am aware there
20 are existing wells in the area.

21 MS. SHAHEEN: Did you consider the
22 drainage in developing -- and when I say you, I mean
23 Marathon. Did Marathon consider the drainage in
24 developing its timeline for drilling these wells?

25 MR. PATRICK: There was a depletion

1 risk put on this project in Marathon's evaluation.

2 MS. SHAHEEN: Turning to page 123 of
3 241.

4 THE HEARING EXAMINER: What page
5 number, please?

6 MS. SHAHEEN: 123.

7 THE HEARING EXAMINER: Thank you.

8 BY MS. SHAHEEN:

9 MS. SHAHEEN: Are you ready?

10 MR. PATRICK: Yes.

11 MS. SHAHEEN: What depth is your
12 Wolfcamp B target on this log, the TBD?

13 MR. PATRICK: We must be looking at
14 something different. I'm looking at the First Bone
15 Spring Sand.

16 MS. SHAHEEN: This is page 123 of 241
17 in Case 25541.

18 MS. HARDY: It's probably in your
19 notebook.

20 MR. PATRICK: Yeah, the Wolfcamp B
21 would be right at 13,000 feet TBD from the log. That
22 is ATI No. 300253666600.

23 MS. SHAHEEN: And what Goliath wells
24 are targeting its depth?

25 MR. PATRICK: There are no proposals to

1 target 13,000 foot TBD in the Goliath proposal.

2 MS. SHAHEEN: Turning to page 103 of
3 241. And this is in the same case. I believe. What
4 is the target depth of the 601H?

5 MR. PATRICK: 13,100 feet TBD.

6 MS. SHAHEEN: And the 602H?

7 MR. PATRICK: Also 13,100 foot TBD.

8 MS. SHAHEEN: And the 603H?

9 MR. PATRICK: The same.

10 MS. SHAHEEN: And the 604H.

11 MR. PATRICK: Also the same.

12 MS. SHAHEEN: So which is the correct
13 target depth for these wells? Is it 13,100 feet or is
14 it 13,200 feet?

15 MR. PATRICK: I don't understand the
16 question.

17 MS. SHAHEEN: Well, if I understand
18 correctly, when I asked you about Goliath wells that
19 are targeting the Wolfcamp B target on the log on page
20 123, you said there were none targeting the 13,100
21 foot TBD. Did I misunderstand your testimony there?

22 MR. PATRICK: I must have misunderstood
23 the question. I thought you were asking where the
24 Wolfcamp B top was.

25 MS. SHAHEEN: Well, we asked what depth

1 is your Wolfcamp B target on the log on page 123 of
2 241.

3 MR. PATRICK: Oh, sorry. I
4 misunderstood you. I thought you asked for the top.
5 The range is roughly 13,150 to 13,225. I put a range
6 in there from my brackets.

7 MS. SHAHEEN: Okay. So then what
8 Goliath wells are targeting this depth?

9 MR. PATRICK: That would be the 700
10 from this diagram, the 700 series.

11 MS. SHAHEEN: Turning to page 118 of
12 241, paragraph 8, would you please read that into the
13 record? Oh, actually, you know what, I think we
14 already covered this. Page 123 of 241. Do you show a
15 log here in your cross section? If we refer to the
16 logs in your cross section, it's --

17 MR. PATRICK: Oh, I -- I see them, yes,
18 ma'am.

19 MS. SHAHEEN: It is clear that the
20 amount of oil in place is very different from the
21 northern log to the southern log on the unit.
22 Assuming that this difference is not real and
23 therefore conflicting with your statement about equal
24 contribution in the unit, which log is correct?

25 MS. HARDY: I object to the question.

1 It's very confusing.

2 THE HEARING EXAMINER: Does the witness
3 understand the question?

4 MS. HARDY: But if the witness
5 understand it.

6 MR. PATRICK: No. I don't.

7 THE HEARING EXAMINER: What are you
8 trying to ask? Just put it in plain language.

9 MS. SHAHEEN: Okay. Let me try to do
10 that.

11 BY MS. SHAHEEN:

12 MS. SHAHEEN: If you look at the two
13 logs on page 123 of 241, it appears that the amount of
14 oil in place is different from the northern log to the
15 southern log on the unit. Does that make sense?

16 MR. PATRICK: These logs will not show
17 oil in place.

18 MS. SHAHEEN: Okay. I'll withdraw that
19 question. And I think the -- do your maps of offset
20 wells show all nearby offset wells in the formation
21 that your slides reference?

22 MR. PATRICK: In the targeting
23 formations, to my knowledge it does.

24 MS. SHAHEEN: What number of offset
25 wells would be needed to no longer be in "exploration

1 play" in your view?

2 MR. PATRICK: I would say at least 20.

3 MS. SHAHEEN: Is that an industry
4 standard?

5 MR. PATRICK: No, that's just my
6 opinion.

7 MS. SHAHEEN: How do you define the
8 term exploration play?

9 MR. PATRICK: I would base it on a risk
10 or an uncertainty for the performance that you'd
11 expect from the reservoir in that geographical area.

12 MS. SHAHEEN: And what are the
13 parameters of the uncertainty that you would use to
14 define exploration play?

15 MR. PATRICK: The amount of proven
16 offset production in that specific reservoir and
17 target.

18 MS. SHAHEEN: What amount would be your
19 target or would be your cutoff?

20 MR. PATRICK: There is no specific
21 cutoff.

22 MS. SHAHEEN: So at what point do you
23 define something at an exploration play?

24 MR. PATRICK: It would be associated
25 with the risk and the uncertainty that you would

1 expect.

2 MS. SHAHEEN: I guess I'm asking for
3 some specific numbers that you use to place a certain
4 development proposal into the exploration play.
5 You're giving me some general terms that you think
6 about or some general factors that you think about,
7 but you're not telling me at what point it becomes an
8 exploration play or it becomes a proven reserve.
9 What's the cutoff?

10 MR. PATRICK: I would say that an
11 exploration play would have no production in it.

12 MS. SHAHEEN: And so are you saying
13 that your review of offset wells indicated there was
14 no production in those intervals?

15 MR. PATRICK: No. I don't believe I've
16 ever referred to any of these targets as exploration
17 plays.

18 MS. SHAHEEN: I think the other
19 questions I have relate to the rebuttal slides that we
20 have not yet resolved I don't believe. Have we
21 resolved that?

22 THE HEARING EXAMINER: No, we haven't
23 resolved it.

24 Have we, Ms. Hardy?

25 MS. HARDY: Well, I think I was able to

1 have my witness address those issues without
2 introducing the slides.

3 THE HEARING EXAMINER: The slides.
4 That's what I thought.

5 MS. SHAHEEN: Okay, so --

6 THE HEARING EXAMINER: So the slide's
7 not admitted. And I think there were three of them,
8 weren't there?

9 MS. HARDY: There were three.

10 THE HEARING EXAMINER: Yeah.

11 MS. SHAHEEN: Okay. I think based on
12 his testimony I can ask these questions.

13 THE HEARING EXAMINER: Great. Go
14 ahead.

15 BY MS. SHAHEEN:

16 MS. SHAHEEN: What PPM concentration
17 constitutes high H₂S?

18 MR. PATRICK: Well, 5PPM can be deadly
19 to a human being.

20 MS. SHAHEEN: And is that what you're
21 using to define high H₂S here with respect to the
22 Avalon?

23 MR. PATRICK: No, ma'am. I provide
24 what we think the PPMs are going to be for the H₂S.
25 And then I give that to the reservoir engineer so that

1 they can adjust their op ex model for producing those
2 wells.

3 MS. SHAHEEN: Okay. So if I understand
4 correctly, one of your criticisms about the Avalon is
5 that it's high H2S. is that correct?

6 MR. PATRICK: That is correct.

7 MS. SHAHEEN: And what do you mean by
8 high H2S with respect to the Avalon in this instance?

9 MR. PATRICK: That we would incur
10 higher op ex so that it would also hurt the economics
11 of that project so -- which would increase the
12 economic risk for producing that reservoir.

13 MS. SHAHEEN: And what PPM concentrate
14 leads you to conclude that it's going to result in
15 higher costs?

16 MR. PATRICK: I cannot give you a
17 specific number.

18 MS. SHAHEEN: You don't know?

19 MR. PATRICK: I do not know.

20 MS. SHAHEEN: What is the nearest data
21 point you use to suggest the potential for high H2S?

22 MR. PATRICK: I do not know.

23 MS. SHAHEEN: Do you know what the
24 water cut is in the Wolfcamp B?

25 MR. PATRICK: I'm sure it varies.

1 MS. SHAHEEN: I'll direct you to
2 Tumbler's Exhibit D-11, page 2 -- oh, there's more
3 than one. This is the A through G to page -- sorry.
4 239 of 328. In each of these exhibits, 11-A through
5 11-G, the bottom left-hand corner, it indicates a
6 water cut. Do you see that?

7 MR. PATRICK: Yes, ma'am.

8 MS. SHAHEEN: Have you considered the
9 water cut in any of these formations?

10 MR. PATRICK: These are Tumbler's
11 estimates so I do not feel comfortable speaking to
12 that.

13 MS. SHAHEEN: Yes. This is not
14 something you've considered. Is that correct?

15 MR. PATRICK: This is not our analysis.

16 MS. SHAHEEN: Have you performed an
17 analysis about the water cut in the Wolfcamp B?

18 MR. PATRICK: I'm sure at Marathon they
19 have. I provide the component wells and the reservoir
20 engineering team puts the analysis together.

21 MS. SHAHEEN: Okay. So you have not
22 done any kind of study or analysis of the water cut
23 for any of these formations. Is that correct?

24 MR. PATRICK: I have not.

25 MS. SHAHEEN: Thank you.

1 If I could just have a minute or two to
2 confer with my client, I might be done.

3 THE HEARING EXAMINER: Okay. Ready?

4 Mr. Patrick? Thank you.

5 MR. PATRICK: Yes, sir. My apologies.

6 THE HEARING EXAMINER: Not at all.

7 Ms. Hardy, you ready?

8 Okay. Ms. Shaheen, go ahead.

9 BY MS. SHAHEEN:

10 MS. SHAHEEN: I think I only have one
11 more question and it's actually one I already asked
12 but I wasn't clear about it and now I understand.
13 Turning to page 123 of 241. This is the cross
14 section, Marathon's cross section.

15 MS. HARDY: On the Wolfcamp or the Bone
16 Spring?

17 MS. SHAHEEN: It's Exhibit B-4 in
18 25541.

19 BY MS. SHAHEEN:

20 MS. SHAHEEN: So I understand now that
21 the green here that's marked is actually oil in place.
22 I believe your testimony previously was this doesn't
23 indicate oil in place, but I understand, and let me
24 know if you disagree, that the green is oil in place.

25 MR. PATRICK: This is a saturation

1 curve so it's how much oil we think is still in the
2 core space, but it's not a barrel calculation of oil.

3 MS. SHAHEEN: Right. But the legend
4 indicates OIP. Correct? In the legend for green,
5 OIP?

6 MR. PATRICK: It does. Yes.

7 MS. SHAHEEN: Okay. So with that in
8 mind, it is clear that the amount of what's identified
9 here is oil in place is very different from the
10 northern log than it is in the southern log. Would
11 you agree?

12 MR. PATRICK: I do agree. Yes.

13 MS. SHAHEEN: Okay. Assuming that this
14 difference is not real and therefore, conflicts with
15 your statement about equal contribution in the unit,
16 which log here is correct? Which one are you relying
17 on to make your statement?

18 MR. PATRICK: I believe they're both
19 correct. If you look at the southern log, you have a
20 much higher porosity and so we have to fill those
21 pores with fluid. And so we think that there is more
22 oil and water with a higher porosity. So that just
23 goes to show that the variability is over a very small
24 distance and that you do see pretty tremendous
25 porosity swings over only I think it's just over 5,000

1 feet.

2 MS. SHAHEEN: How do you know whether
3 you're filling that porosity with oil and water?

4 MR. PATRICK: The petrophysicist do
5 that calculation based on multiple parameters and logs
6 that we calculate that hole.

7 MS. SHAHEEN: So you're relying on the
8 petrophysicist to opine that the contribution with
9 each tract in the unit is equal?

10 MR. PATRICK: I rely on them being an
11 expertise in their field. Yes, ma'am.

12 MS. SHAHEEN: And that is what you base
13 your statement on with respect to equal contribution.
14 Am I understanding correctly?

15 MR. PATRICK: I'm not sure what the
16 question is.

17 MS. SHAHEEN: You're basing your
18 statement about equal contribution on the unit despite
19 the variance in oil in place indicated on your cross
20 section. You're relying on the petrophysicist's
21 determination that the higher porosity on the southern
22 log -- sorry, the northern log I believe -- I can't --
23 which one is northern and which one is southern?

24 MR. PATRICK: The northern one is going
25 to be on the left.

1 MS. SHAHEEN: Okay. Notwithstanding
2 the low oil in place lower, much lower, oil in place
3 numbers and the northern log, you're opining that
4 there's equal contribution from each tract in the
5 unit. Correct?

6 MR. PATRICK: Let me refer to my
7 testimony real quick. Make sure I fully understand.

8 MS. SHAHEEN: This is page 118 of 241
9 paragraph 9.

10 MR. PATRICK: Can you just repeat the
11 question again?

12 MS. SHAHEEN: You opined in paragraph 9
13 that the tracts comprising the unit will contribute
14 more or less equally to the production of the wells.
15 Correct?

16 MR. PATRICK: Yes. I also state that
17 it'll more or less equally to the production of the
18 wells.

19 MS. SHAHEEN: And you made that
20 statement notwithstanding the differences in the two
21 logs with respect to oil in place saturations that are
22 evident in your Exhibit B-4. Is that right?

23 MR. PATRICK: Yes.

24 MS. SHAHEEN: Okay. No more questions.
25 Thank you.

1 THE HEARING EXAMINER: Mr. McClure?

2 THE TECHNICAL EXAMINER: Now,
3 Mr. Hearing Examiner, I do have some questions for the
4 witness, but I was wondering if we could take a
5 five-minute break before we get to him?

6 THE HEARING EXAMINER: Five-minute
7 break. Four o'clock. We'll come back on the record
8 at 4:05. Thank you.

9 (Off the record.)

10 THE TECHNICAL EXAMINER: Thank you,
11 Mr. Hearing Examiner.

12 Mr. Patrick?

13 MR. PATRICK: Yes, sir.

14 THE TECHNICAL EXAMINER: Do you agree
15 that there's no frac barrier between the Third Bone
16 Spring Sand and the Wolfcamp A?

17 MR. PATRICK: I do not believe there is
18 a prominent frac barrier between the Wolfcamp A and
19 the Third Bone Spring Sand, no, sir.

20 THE TECHNICAL EXAMINER: If it was to
21 be discovered later that there is recoverable oil,
22 economically recover oil within the Third Bone Spring
23 Sand, would Marathon be able to then drill a complete
24 well into that target? If there's existing well
25 within Wolfcamp A?

1 MR. PATRICK: They would be able to
2 drill wells into that target if it were determined to
3 be economic quantities of oil in that reservoir.

4 THE TECHNICAL EXAMINER: Would they be
5 able to do so without causing negative impacts upon
6 the existing Wolfcamp A wells?

7 MR. PATRICK: There is a chance for
8 communication with development after previous
9 development.

10 THE TECHNICAL EXAMINER: In regards to
11 your determination that these other target intervals,
12 that being the Avalon, the Third Bone Spring
13 Carbonate, the Third Bone Spring Sand, being
14 determined as high risk targets, now you were
15 testifying earlier today, are you on the same page of
16 what I'm referring to, Mr. Patrick?

17 MR. PATRICK: That I believe they are
18 high risk?

19 THE TECHNICAL EXAMINER: Yes. Is that
20 correct?

21 MR. PATRICK: Yes, sir.

22 THE TECHNICAL EXAMINER: Okay. Well,
23 that was a follow-up question, but I guess if I would
24 ask you for additional supplemental exhibits which
25 provides us with the parameters and screening that

1 went into making that determination, you understand
2 what I'm asking for?

3 MR. PATRICK: Yes, sir. It would also
4 entail a conversation with my reservoir engineer.

5 THE TECHNICAL EXAMINER: Mr. Hearing
6 Examiner, would we be able to take on an exhibit from
7 a different expert or not?

8 THE HEARING EXAMINER: Before I make a
9 determination on that, let me ask Ms. Shaheen.

10 What's your position?

11 MS. SHAHEEN: I would object. They
12 should have provided that information in their direct
13 case. They made no effort whatsoever to do so and it
14 would be prejudicial to Tumbler to allow additional
15 testimony when Marathon failed to support its
16 applications the way it should have.

17 THE HEARING EXAMINER: Let me
18 understand this. Mr. McClure is asking for the
19 criteria used to either analyze or exclude different
20 wells in determining that these formations were risky.
21 Is that correct? Is that what you understand?

22 MS. SHAHEEN: Yeah.

23 THE HEARING EXAMINER: That's what you
24 understand?

25 MS. SHAHEEN: That's what I understand.

1 THE HEARING EXAMINER: But you
2 testified to it.

3 MS. SHAHEEN: He testified to it from a
4 geological perspective.

5 THE HEARING EXAMINER: Right. Right.

6 MS. SHAHEEN: And for Marathon to be
7 able to supplement the record with reservoir
8 engineering at this point is unfair surprise and
9 prejudicial to Tumbler.

10 THE HEARING EXAMINER: Okay.

11 I agree with what you are saying so
12 what I am clarifying is the following. You said that
13 you did an analysis based on certain wells. Why does
14 that require reservoir engineer? Why can't you just
15 submit your own analysis outside of a reservoir
16 engineer's input?

17 MR. PATRICK: So I can, but the way
18 that we risk it from a geologic standpoint is to the
19 EUR. And I'm not a reservoir engineer so I don't
20 create type curves and so when we're risking them is
21 economic risking basis based on geologic concern.

22 THE HEARING EXAMINER: I don't think
23 that's what Mr. McClure's asking for, that final
24 product. You've already testified to that final
25 product. I think what he's asking for is what

1 analysis did you do and what parameters did you use to
2 come up with whatever you came up with in your expert
3 opinion. That's what he's asking for.

4 MR. PATRICK: I can 100 percent provide
5 an ATI list with component wells that we used for this
6 analysis.

7 THE HEARING EXAMINER: And Mr. McClure,
8 I don't think that's all you asked for. Would you
9 clarify what you asked for?

10 THE TECHNICAL EXAMINER: Yeah. I was
11 interested in parameters as you were saying earlier,
12 Mr. Hearing Examiner, like how they created that list,
13 which one's screened for what to include versus
14 exclude.

15 MR. PATRICK: I could provide
16 something, the details I have.

17 THE HEARING EXAMINER: Thank you.
18 Any objection, Ms. Hardy to that ask?

19 MS. HARDY: No.

20 THE HEARING EXAMINER: Thank you.

21 And Ms. Shaheen, that avoids a
22 reservoir engineer testimony. So thank you for your
23 input.

24 Anything else, Mr. McClure?

25 THE TECHNICAL EXAMINER: Yes,

1 Mr. Hearing Examiner.

2 Mr. Patrick, if I were to ask Marathon
3 to provide us with a gun barrel, you understand what
4 I'm asking for?

5 MR. PATRICK: Yes, sir.

6 THE TECHNICAL EXAMINER: No further
7 questions. Thank you, Mr. Patrick.

8 Thank you, Mr. Hearing Examiner.

9 THE HEARING EXAMINER: All right.
10 Thank you.

11 Ms. Hardy, I don't have any questions
12 for the witness. I genuinely don't. Do you have any
13 redirects?

14 MS. HARDY: Really only one or two.

15 THE HEARING EXAMINER: Go ahead.

16 MS. HARDY: Okay.

17 THE HEARING EXAMINER: Would you
18 reference the question that you are referring to,
19 orient the witness and myself.

20 MS. HARDY: Yes. I will.

21 REDIRECT EXAMINATION

22 BY MS. HARDY:

23 MS. HARDY: Ms. Shaheen asked you a
24 number of questions about the statement in your
25 affidavit that the tracts in the unit would contribute

1 more or less equally to production. Do you recall
2 those questions?

3 MR. PATRICK: Yes, ma'am.

4 MS. HARDY: Okay. And she was asking
5 you about that testimony in relation to your well log.
6 Do you recall those questions?

7 MR. PATRICK: I do.

8 MS. HARDY: Okay. And have you
9 reviewed Tumbler's geology testimony by Mr. Dylan
10 Collins?

11 MR. PATRICK: I didn't look through it.

12 MS. HARDY: I'm going to pull that up.

13 At least hopefully I am. And if you look here --

14 THE HEARING EXAMINER: Where is here?

15 MS. HARDY: I'm getting there. It's in
16 paragraph 13.

17 THE HEARING EXAMINER: Of what page
18 number?

19 MS. HARDY: Page 183.

20 THE HEARING EXAMINER: Thank you. Is
21 this an Exhibit B or something like that?

22 MS. HARDY: It is in Tumbler's Exhibit
23 B.

24 THE HEARING EXAMINER: Thank you.

25 MS. HARDY: Yes.

1 BY MS. HARDY:

2 MS. HARDY: And can you read what the
3 affidavit states there in paragraph 13-G?

4 MR. PATRICK: "Each quarter-quarter
5 section in the Bone Spring HSUs will contribute more
6 or less equally to production."

7 MS. HARDY: And can you also read the
8 paragraph that is 13-H?

9 MR. PATRICK: "Each quarter section in
10 the Wolfcamp HSU will contribute more or less equally
11 to production."

12 MS. HARDY: Those are all my questions.
13 Thank you.

14 THE HEARING EXAMINER: Perfect.

15 Mr. McClure, did you have anything
16 further on that one question?

17 THE TECHNICAL EXAMINER: I have nothing
18 further, Mr. Hearing Examiner.

19 THE HEARING EXAMINER: All right.
20 Wonderful.

21 All right. May this witness be
22 excused?

23 MS. HARDY: Yes. Thank you.

24 THE HEARING EXAMINER: All right. Do
25 you rest your case?

1 MS. HARDY: I do.

2 THE HEARING EXAMINER: All right.

3 Sounds good.

4 Ms. Shaheen, you rest your case?

5 MS. SHAHEEN: Yes, I do.

6 THE HEARING EXAMINER: All right.

7 Wonderful.

8 All right. Let's talk about
9 post-hearing matters at this point.

10 Mr. McClure, I know that you've asked
11 different witnesses for things. Do you happen to have
12 a list of asks for both parties that you can just go
13 through at this point?

14 THE TECHNICAL EXAMINER: I do.
15 Although there was a few things I wanted to walk
16 through the attorneys on their assorted exhibits.

17 THE HEARING EXAMINER: Fine. Do you
18 want to start with that?

19 THE TECHNICAL EXAMINER: Yes. I mean,
20 I think it might be easier -- what I'm referring to in
21 regards to the notice. I believe we already talked
22 about the legal description at the beginning. Right?

23 THE HEARING EXAMINER: We did. We said
24 that the Division was going to re-notice Ms. Hardy's
25 cases for October 14. We'll put them at the front of

1 the docket and that way, that should cure the notice.
2 And I don't know whether Ms. Hardy has other notice
3 issues with that legal description, but that's up to
4 her to cure.

5 THE TECHNICAL EXAMINER: Sounds good.

6 Ms. Shaheen, if I can direct your
7 attorney to -- get the right packet open. Essentially
8 your notice of publication is what I'm looking at. If
9 you'll notice, there's only three cases included here
10 and at the bottom of the third case is cut off. Do
11 you see where I'm referring to, Ms. Shaheen?

12 MS. SHAHEEN: Are you on page 252 of
13 328?

14 THE TECHNICAL EXAMINER: I'm looking at
15 page 328 of 328.

16 MS. SHAHEEN: 328 of 328. Oh, the
17 bottom of the affidavit of publication, it's cut off.

18 THE TECHNICAL EXAMINER: Yes. And it
19 looks like we had two full cases listed, we have most
20 of the third case, but I believe you have five cases
21 in total.

22 MS. SHAHEEN: We will submit a revised
23 statement with the full affidavit of publication.

24 THE TECHNICAL EXAMINER: Very good.
25 That's it. I think that was all the extra notice that

1 we talked about for Tumbler. Okay, Ms. Shaheen,
2 assuming that I haven't missed anything, 'cause I know
3 there was a lot of discussion over the last two days,
4 what I currently have on my list is I would like for
5 you to include the exhibit that we kicked out
6 yesterday, that being the NSP Notice Map. I believe
7 that's your Exhibit A-6.

8 MS. SHAHEEN: We will submit that.

9 THE TECHNICAL EXAMINER: I want to see
10 a full or submission of all emails between Tumbler and
11 Marathon.

12 (Tumbler Exhibit A-6 was marked for
13 identification.)

14 MS. SHAHEEN: Okay.

15 THE TECHNICAL EXAMINER: Also, I have a
16 note about ATIs on your -- on the geology cross
17 section. Let me get back in just to make sure. Do
18 you remember what page that's on Ms. Shaheen?

19 MS. SHAHEEN: 198 of 328.

20 THE TECHNICAL EXAMINER: Yes. Okay.
21 That's right. I think I did ask for that and like I
22 said, have an ATI number, include it for each of those
23 logs that's listed there in the cross section. And
24 then I believe I also have a note about correcting the
25 typo in the landman statement that I believe you are

1 already planning on.

2 MS. SHAHEEN: And if you don't mind
3 just reminding me which typo?

4 THE TECHNICAL EXAMINER: Yeah, I
5 believe it's currently something along like March of
6 '24 and it should have been March of '25.

7 MS. SHAHEEN: Okay.

8 THE TECHNICAL EXAMINER: It was in the
9 paragraph. Like 27 maybe.

10 MS. SHAHEEN: We will find it.

11 THE TECHNICAL EXAMINER: Okay. I
12 believe it was a year difference on a letter that was
13 sent out if I recall correctly.

14 MS. SHAHEEN: Okay.

15 THE TECHNICAL EXAMINER: And then of
16 course what you guys had going on with your redlining.
17 We'll just need a final submission that takes all that
18 into account, the following exhibits that need to be
19 left off, left on and such corrected.

20 MS. SHAHEEN: Absolutely.

21 THE TECHNICAL EXAMINER: Ms. Hardy, on
22 one of your cases, Case 25542, page 129, this should
23 be the notice spreadsheet for the NSP notice I
24 believe. Are you with me, Ms. Hardy?

25 MS. HARDY: Did you say 145?

1 THE TECHNICAL EXAMINER: 129.

2 MS. HARDY: 129.

3 THE TECHNICAL EXAMINER: Or case 542.

4 MS. HARDY: The other one.

5 THE TECHNICAL EXAMINER: You may be --

6 I thought -- probably I'm not sure what you're asking.

7 MS. HARDY: Okay.

8 THE TECHNICAL EXAMINER: Okay. You're
9 looking at the top page in your NSP notes spreadsheet?

10 MS. HARDY: Looks like this is a notice
11 spreadsheet. I think this is the --

12 THE TECHNICAL EXAMINER: Well, let me
13 provide a little bit of context. What I meant to say
14 is this is where that first page is supposed to be,
15 but it looks like here was some sort of swap and you
16 accidentally included the last page or this may be the
17 NSP for -- oh, excuse me. This is the notice
18 spreadsheet for the compulsory pooling case I believe
19 and you accidentally included the last page of the NSP
20 notice spreadsheet there instead of the page that's
21 supposed to be here.

22 MS. HARDY: Okay. I see that. I can
23 see what happened on that.

24 THE TECHNICAL EXAMINER: Okay.

25 MS. HARDY: It looks like the pages out

1 of -- maybe out of order.

2 THE TECHNICAL EXAMINER: Yeah, I'm not
3 quite sure. It looked to me like we just accidentally
4 stuck that in there 'cause I didn't see the page
5 anywhere that was supposed to be here, but that's not
6 to say it isn't somewhere else I guess.

7 MS. HARDY: Okay.

8 THE TECHNICAL EXAMINER: You also
9 notice on your public notice that the incorrect legal
10 description made it into one of the cases.

11 MS. HARDY: That's what we were -- yes.
12 With the application.

13 THE TECHNICAL EXAMINER: Okay. And -

14 MS. HARDY: Or the --

15 THE TECHNICAL EXAMINER: Well, if you
16 go down to your page 243 of 243 for your NLP.

17 MS. HARDY: The publication notice?

18 THE TECHNICAL EXAMINER: Yes, ma'am.
19 And then for Case 25541, the incorrect range made it
20 into that notification.

21 MS. HARDY: Okay. We'll fix that.

22 THE TECHNICAL EXAMINER: Okay. Then on
23 page -- let's see if I gave you the page indication.
24 I'm looking for the BLM notice for the NSP in the
25 notice spreadsheet. 195 maybe. For Case 25542, I'm

1 looking at page 197 of 243.

2 MS. HARDY: Okay.

3 THE TECHNICAL EXAMINER: You see where
4 the BLM date says 9/9/2025 there?

5 MS. HARDY: Oh, yes. That notice --

6 THE TECHNICAL EXAMINER: Is it
7 accurate?

8 MS. HARDY: That notice was sent so
9 I'll include a copy. I think that probably is the --
10 that may be the date that it was sent. It looks like
11 it is.

12 THE TECHNICAL EXAMINER: Okay. And --

13 MS. HARDY: And it was sent. Yeah.

14 THE TECHNICAL EXAMINER: But when we
15 come back on -- when you're coming back, we continue
16 these cases, it would be your position that notice
17 will now adhere to the BLM. Is that correct?

18 MS. HARDY: Correct.

19 THE TECHNICAL EXAMINER: I think the
20 only question I have before we get into a list is the
21 amended application. You guys might have covered this
22 yesterday. I'm not sure. Of the amended application,
23 is that the application that got provided to all the
24 interest owners?

25 MS. HARDY: Yes.

1 THE TECHNICAL EXAMINER: Or is it your
2 original application that got provided?

3 MS. HARDY: I actually think we
4 provided -- no, it was the amended application.

5 THE TECHNICAL EXAMINER: Okay. So you
6 know the spreadsheet that is in this exhibit
7 currently, that's mailing for the amended exhibit or
8 amended application.

9 MS. HARDY: That's correct.

10 THE TECHNICAL EXAMINER: Okay. Okay,
11 then my list I guess of what I had. If we can get or
12 be provided a gun barrel diagram, the amended drilling
13 schedule that indicates that Marathon intends to drill
14 the wells within one year issuance of the order. Of
15 course the Exhibit C-2 that I was just referencing for
16 Case 25542 which is your notice spreadsheet. Has the
17 wrong page there.

18 (Marathon Exhibit C-2 was marked for
19 identification.)

20 THE TECHNICAL EXAMINER: We'll need to
21 correct both CPACS to have the legal description
22 correct. We'll need to have Marathon conduct a review
23 of the AFEs that are referenced within this exhibit
24 packet and then provide a supplement exhibit with
25 those corrected AFEs, assuming corrections are needed.

1 If not, if you can provide a statement saying that
2 amendment is not required to them.

3 MS. HARDY: Okay.

4 THE TECHNICAL EXAMINER: And then the
5 parameters and this ATIs that was used by Marathon's
6 geologists to make a high risk determination of those
7 three different target horizons. And then I believe
8 that is the correct accounting from everything I could
9 remember anyway or recall.

10 MS. HARDY: And Mr. McClure, I believe
11 you had also asked Mr. Miller to provide the tract
12 maps to break out the ownership interest that are now
13 by lease.

14 THE TECHNICAL EXAMINER: Oh. Thank
15 you, Ms. Hardy. Yeah, that's an important one that I
16 want. I apologize for missing that on my list.

17 MS. HARDY: That's okay.

18 THE TECHNICAL EXAMINER: We most
19 definitely do need that. We need that tract breakdown
20 and the summary of ownership broke out. And as long
21 as I didn't miss anything else, I guess that's a
22 completion of my list at least.

23 MS. HARDY: That was all that I had,
24 Mr. McClure.

25 THE HEARING EXAMINER: Are you waiting

1 for me, Mr. McClure?

2 THE TECHNICAL EXAMINER: Yes. I was.
3 I'm tired.

4 THE HEARING EXAMINER: I wasn't sure if
5 you had all this for Ms. Shaheen or if you'd already
6 done that.

7 THE TECHNICAL EXAMINER: Oh, I
8 apologizes. Yes, I had touched with Ms. Shaheen prior
9 to this morning.

10 THE HEARING EXAMINER: All right.
11 Let's talk about post-hearing proceedings. We're
12 coming back in a little less than a month. When do
13 the parties anticipate being able to submit the
14 amended exhibit packet?

15 I'll start with you, Ms. Hardy. It
16 sounds like you have more to submit than Ms. Shaheen
17 does.

18 MS. HARDY: I do and I'm not sure -- I
19 think the main thing is for me to find out how long it
20 would take to provide the geologic information that
21 Mr. McClure has requested. So if I could confer.

22 THE HEARING EXAMINER: All right.

23 MS. HARDY: I think we could provide
24 all of this information -- well, we'll republish the
25 notice so that would be provided once that process is

1 complete. But I think we could provide all of the
2 other information by the end of next week.

3 THE HEARING EXAMINER: Okay. All
4 right. And then the notice evidence, when would that
5 be ready to be provided?

6 MS. HARDY: As soon as we can get it in
7 with the newspaper we would do it. I mean, we can
8 send it in tomorrow.

9 THE HEARING EXAMINER: Is it just
10 published notice that you need or do you also need
11 some sort of mail notice?

12 MS. HARDY: It's just a published
13 notice. Yeah.

14 THE HEARING EXAMINER: Okay. All
15 right. Why don't we say -- I mean, so you only have
16 -- I'd rather you only submit one amended packet.

17 MS. HARDY: That's what I was thinking.

18 THE HEARING EXAMINER: So do you have a
19 date when you think you could submit one packet?

20 MS. HARDY: So I would think by October
21 -- two weeks from this Friday would be October 3rd.

22 THE HEARING EXAMINER: Two weeks from
23 this Friday will be October 3rd. Okay. That seems
24 fair to me, especially it gives Mr. McClure plenty of
25 time for the 14th to review the evidence.

1 Ms. Shaheen, is October 3rd a date that
2 you can comply with?

3 MS. SHAHEEN: Yes.

4 THE HEARING EXAMINER: Okay. All
5 right. And Ms. Shaheen, you're clear about what
6 Mr. McClure wants and what you need to do for the
7 revised exhibits?

8 MS. SHAHEEN: Yes. And I appreciate
9 him keeping a list.

10 THE HEARING EXAMINER: I'm going to go
11 over my list of exhibits that have been admitted and
12 excluded just so that everyone is on the same page
13 with me. And I'm going to start with Marathon's.
14 Marathon had all of their original exhibits admitted
15 into evidence via stipulation by Ms. Shaheen.
16 Ms. Shaheen had objected to all of the rebuttal
17 exhibits. Then during the hearing Marathon introduced
18 two exhibits that I admitted. One is a
19 Cross-Examination 1, a five-page document with emails
20 I think, Ms. Hardy?

21 (Marathon Cross Exhibit 1 was received
22 into evidence.)

23 MS. HARDY: That's correct.

24 THE HEARING EXAMINER: And then
25 Cross-Examination No. 2. I don't know how many pages

1 that was, but whatever it was, that was admitted as
2 well. So that should be part of your packet and
3 labeled as your rebuttal. I think you called them
4 rebuttal exhibits. Didn't you?

5 (Marathon Cross Exhibit 2 was marked
6 for identification and received into
7 evidence.)

8 MS. HARDY: Cross Exhibits.

9 THE HEARING EXAMINER: Cross Exhibits.

10 MS. HARDY: Yes.

11 THE HEARING EXAMINER: Not rebuttal,
12 okay. Just Cross. All right. Then from my notes, I
13 show that Exhibit A-12 was admitted.

14 MS. HARDY: Correct.

15 THE HEARING EXAMINER: And that's a
16 rebuttal exhibit?

17 MS. HARDY: It is.

18 THE HEARING EXAMINER: Okay. So that's
19 the only rebuttal exhibit that I show was admitted.

20 MS. HARDY: Right. That's correct.

21 THE HEARING EXAMINER: Okay. Very
22 good. All right. And that's everything I have for
23 Marathon. Now for Tumbler. It was a little bit more
24 difficult and confusing so I'm going to go through it
25 line by line here. For Tumbler, Exhibit A was

1 admitted after it was amended.

2 You show that, Ms. Shaheen?

3 MS. SHAHEEN: Yes.

4 (Tumbler Exhibit A was marked for
5 identification and received into
6 evidence.)

7 THE HEARING EXAMINER: All right. Very
8 good. Exhibit A-1 was admitted. Exhibit A-2, 3, 4,
9 5, 6 were all admitted through stipulation.

10 (Tumbler Exhibit A-1 and Exhibit A-2
11 and Exhibit A-4 and Exhibit A-5 were
12 marked for identification and received
13 into evidence.)

14 (Tumbler Exhibit A-3 and Exhibit A-6
15 were received into evidence.)

16 THE HEARING EXAMINER: A-7 was
17 admitted.

18 (Tumbler Exhibit A-7 was marked for
19 identification and received into
20 evidence.)

21 THE HEARING EXAMINER: A-8 was
22 excluded.

23 (Tumbler Exhibit A-8 was marked for
24 identification.)

25 THE HEARING EXAMINER: And those are

1 all the exhibits I have for A. Is there something I'm
2 missing here?

3 MS. SHAHEEN: I'm just not sure about
4 the Exhibit numbers for the sub exhibits so let me
5 just double check.

6 THE HEARING EXAMINER: Sure.

7 MS. SHAHEEN: A-8 was a rebuttal
8 exhibit. Is that --

9 THE HEARING EXAMINER: Yes. And it was
10 excluded. I had that written several places.

11 MS. SHAHEEN: Okay.

12 THE HEARING EXAMINER: A-7 was a
13 rebuttal exhibit, but that was admitted.

14 MS. SHAHEEN: Okay.

15 THE HEARING EXAMINER: And then A-1 was
16 objected to as was A, but I admitted them both after
17 you revised A. And then I just admitted A-1 as it
18 was.

19 MS. SHAHEEN: Okay. Let me -- say that
20 again.

21 THE HEARING EXAMINER: Sure.

22 MS. SHAHEEN: Was it different from
23 what you said before?

24 THE HEARING EXAMINER: Let's start with
25 A. Originally -- let me get you a table of contents.

1 Hold on. Now I have your original book. Let's go
2 through your original table of contents and your
3 rebuttals. Okay?

4 MS. SHAHEEN: Okay.

5 THE HEARING EXAMINER: A is admitted.
6 A-1 admitted. A-2 admitted. A-3 admitted. A-4
7 admitted. A-5 admitted. A-6 admitted. Then we get
8 to your rebuttal exhibits. A-7 admitted. A-8
9 excluded. That's all the A's. Those were all -- came
10 in under Mr. Weeks. Exhibit B was admitted.

11 (Tumbler Exhibit B was marked for
12 identification and received into
13 evidence.)

14 THE HEARING EXAMINER: All of the
15 original Bs were admitted. B-1, B-2, B-3, B-4, B-5,
16 all admitted.

17 (Tumbler Exhibit B-1 through Exhibit
18 B-5 were marked for identification and
19 received into evidence.)

20 THE HEARING EXAMINER: Now, the
21 rebuttal Bs were not admitted. They were not admitted
22 because they were rebuttal exhibits to Marathon's
23 rebuttal exhibits that was never admitted. Okay? So
24 B-5 -- excuse me. B-6, B-7 and B-8 were not admitted.
25 And that finishes the Bs, Mr. Collins' exhibits.

1 (Tumbler Exhibit B-6 and B-7 and B-8
2 were marked for identification.)

3 THE HEARING EXAMINER: Now, we move on
4 to the Cs, Mr. Baker's. C was admitted. C-1 was
5 admitted. C-2 was admitted. C-3 admitted. C-4
6 admitted.

7 (Tumbler Exhibit C through C-4 were
8 marked for identification and received
9 into evidence.)

10 THE HEARING EXAMINER: C-5 excluded.
11 (Tumbler Exhibit C-5 was marked for
12 identification.)

13 MS. SHAHEEN: And what's C-5, a
14 rebuttal exhibit?

15 THE HEARING EXAMINER: Yes. It was.

16 MS. SHAHEEN: Okay.

17 THE HEARING EXAMINER: That leaves D
18 and I think E. And of course your exhibits all came
19 in. All of your Es came in. Okay? So there was
20 nothing --

21 MS. SHAHEEN: Notice was fine.

22 THE HEARING EXAMINER: There was no
23 objection to them. They came in through stipulation,
24 your Es.

25 //

1 (Tumbler Exhibit E through Exhibit E-4
2 were marked for identification and
3 received into evidence.)

4 MS. SHAHEEN: Right.

5 THE HEARING EXAMINER: Right,
6 Ms. Hardy? The notices.

7 MS. HARDY: Correct.

8 THE HEARING EXAMINER: Right. That's
9 what I thought. Okay. Let's deal with the Ds. We
10 had a lot of problems with Ds. Mr. Villarreal. All
11 right. So originally, there were lots of objections
12 to Ds. I think was it all? Did you just basically
13 object to all the Ds?

14 MS. HARDY: Well, no, I think
15 ultimately I did not.

16 THE HEARING EXAMINER: Oh, okay. All
17 right. I wasn't sure if you changed along the way,
18 but there were a lot of problems with D anyway. D,
19 you have revised. You sent over redline edit,
20 Ms. Hardy accepted it so please just accept all those
21 changes and include that revised Exhibit D.

22 MS. SHAHEEN: Okay. I would note that
23 I believe we excluded the references to the exhibits
24 that were excluded.

25 THE HEARING EXAMINER: You did.

1 MS. SHAHEEN: So I'm not going to
2 change the exhibit numbers unless you want me to
3 because it's going to go D-1, D-2, D-3, and then it's
4 going to skip to D-6.

5 THE HEARING EXAMINER: That's fine. I
6 don't want you to change it.

7 MS. SHAHEEN: Okay.

8 THE HEARING EXAMINER: Because it would
9 be mass confusion if you did that.

10 MS. SHAHEEN: That's what I thought.

11 THE HEARING EXAMINER: So D was
12 admitted. Now, you're going to have to help me with
13 D-1 because I have a line -- oh, yes, because
14 originally you did object to D-1 through 15. That's
15 why I have a line. That's why I had that there. Then
16 you withdrew that. And we go through individually.

17 MS. HARDY: Right.

18 THE HEARING EXAMINER: So D-1 and D-2
19 were admitted.

20 MS. SHAHEEN: Yeah, I think it actually
21 corresponds to Marathon's objections for the most
22 part.

23 THE HEARING EXAMINER: Well, you're
24 going to confuse me if you -- let me just go through
25 my list.

1 MS. SHAHEEN: Okay. Okay.

2 THE HEARING EXAMINER: So if you'll
3 note this down.

4 MS. SHAHEEN: All right.

5 THE HEARING EXAMINER: Revised D is
6 admitted. D-1 is admitted. D-2 is admitted. D-3 was
7 excluded. D-4 was excluded. I want to make sure
8 you're keeping up.

9 MS. SHAHEEN: Yes.

10 THE HEARING EXAMINER: Okay.

11 MS. SHAHEEN: D-4 was excluded.

12 THE HEARING EXAMINER: D-4 was
13 excluded. D-5 was admitted.

14 MS. SHAHEEN: As revised.

15 MS. HARDY: Yes. As revised.

16 THE HEARING EXAMINER: Yes. Yes.

17 Right, 'cause you sent the new PowerPoint revised.

18 Yes. D-6 was admitted. D-7 admitted. D-8 admitted.

19 D-9 excluded. D-10 admitted. D-11 admitted. D-12

20 admitted. D-13 admitted. D-14 admitted. D-15

21 admitted in part. Do you understand what I mean by in
22 part?

23 MS. SHAHEEN: Mm-hmm.

24 THE HEARING EXAMINER: You do? Okay.

25 MS. SHAHEEN: The first page was

1 admitted.

2 THE HEARING EXAMINER: That's exactly
3 right. Exactly. And the other 40 pages, yes. The
4 EOG stuff is out. Okay. Now, with that being said,
5 we've agreed that October 3rd is the deadline, close
6 of business, 5 p.m. to submit or revise exhibit
7 packets reflected by Mr. McClure's request and my
8 rulings on evidentiary. All right.

9 Now, Mr. Court Reporter, today's the
10 last day of the hearing. What day do you anticipate
11 that the transcript will be available?

12 THE REPORTER: Typical turnaround is
13 ten days. Ten business days. So two weeks.

14 THE HEARING EXAMINER: All right. So
15 two weeks. So all right. So wouldn't that be the
16 same, basically October 3rd date that they're talking
17 about. Maybe a few days before that.

18 THE REPORTER: Yes.

19 THE HEARING EXAMINER: Good.

20 THE REPORTER: Yeah.

21 THE HEARING EXAMINER: I would like to
22 make a request now, since we're paying for it, I don't
23 want Q and A, Q and A, Q and A throughout the
24 transcript. I want names. I want to know who's
25 speaking. Okay? All right. And I know you can

1 request that so I'm asking you to request it.

2 THE REPORTER: You've got it.

3 THE HEARING EXAMINER: Freya, is there
4 anything else I should be requesting on the transcript
5 to make it easier for the parties to use? Oh, do we
6 care about the word index?

7 MS. TSCHANTZ: We haven't had that
8 discussion with Veritext yet.

9 THE HEARING EXAMINER: Oh, you have
10 not. All right, then we won't have that discussion
11 now. We won't deal with that. We're not going to
12 make your life harder. Okay, is there anything else I
13 need to request?

14 MS. TSCHANTZ: Nothing comes to mind.

15 THE HEARING EXAMINER: Okay.
16 Wonderful. Okay. As soon as we get the email with
17 the transcript, we will notify the parties. We will
18 put it in the imaging system and you can download it
19 from there.

20 Now, Mr. McClure, what would be helpful
21 from your perspective when it comes to post-hearing
22 submissions besides the revised exhibits? Do you want
23 -- would a limited closing argument be helpful? Would
24 it be helpful to have proposed findings and
25 conclusions? What would be helpful?

1 THE TECHNICAL EXAMINER: I'm not
2 typically a big person on closing arguments. There
3 are a couple of tidbits that maybe it would be good to
4 have in this specific instance, but I would definitely
5 have it extremely limited.

6 THE HEARING EXAMINER: Okay. All
7 right. Do you want to --

8 THE TECHNICAL EXAMINER: No finding of
9 facts and no conclusions -- just a closing argument
10 would be fine.

11 THE HEARING EXAMINER: Okay. Are there
12 topics that you want the parties to focus since they
13 have limited space to do so?

14 THE TECHNICAL EXAMINER: I want bullet
15 points on the good faith negotiation argument from
16 Tumblers, perspective typically. Other than that, I
17 guess I give them free rein as long as they're within
18 a page limit.

19 THE HEARING EXAMINER: Okay. You set
20 the page limit. What do you want?

21 THE TECHNICAL EXAMINER: I mean, what
22 would you put? I know we've been getting like ten
23 page --

24 THE HEARING EXAMINER: That's the upper
25 -- no. Let me ask counsel, maybe they have some

1 input.

2 Ms. Shaheen?

3 MS. SHAHEEN: I think ten pages double
4 spaced would be good since we have -- I'd like to
5 brief all seven factors so --

6 THE HEARING EXAMINER: Fine. Okay.
7 And you feel like you can do that in ten pages?

8 MS. SHAHEEN: What do you think, Dana?

9 MS. HARDY: I think ten pages is fine.

10 THE HEARING EXAMINER: Perfect. So we
11 won't count the certification page as part of the
12 limit. We won't count the front page which has the
13 caption. So besides those two pages, it's ten pages
14 of double spaced text. Okay? All right.

15 So ten pages, Mr. McClure, we've agreed
16 on it. Two weeks. Would two weeks be fair? After
17 the October 3rd transcript?

18 Does that seem fair to you,
19 Ms. Shaheen?

20 MS. HARDY: Yes.

21 MS. SHAHEEN: I was just wondering if
22 it would be helpful for us to have it done by the
23 October 14th.

24 THE HEARING EXAMINER: I don't know
25 that 3 and 14 is 17. So what would that mean? That

1 would mean -- was the 3rd a Friday, Ms. Hardy? You
2 proposed the 3rd.

3 MS. HARDY: It is. The 3rd's a Friday.

4 THE HEARING EXAMINER: So that would be
5 the Monday then after. Would you like to make it the
6 Friday?

7 MS. SHAHEEN: If it would be helpful
8 for the hearing, I think we could.

9 THE HEARING EXAMINER: I don't think it
10 would be helpful for the hearing. I don't think
11 Mr. McClure is going to start really digging into the
12 cases until after the 3rd anyway.

13 MS. SHAHEEN: Okay.

14 THE HEARING EXAMINER: So I don't see
15 any reason to rush it for that reason.

16 Right, Mr. McClure?

17 THE TECHNICAL EXAMINER: Yeah. I agree
18 with that restriction.

19 THE HEARING EXAMINER: All right.
20 Mr. McClure has -- you have other things to do, right,
21 Mr. McClure?

22 THE TECHNICAL EXAMINER: I do have a
23 few other things to do. Correct.

24 THE HEARING EXAMINER: I figured you
25 did, sir.

1 All right. So we'll say the 17th,
2 close of business. If the parties need more, just
3 send an email and if it's not opposed, I don't see any
4 reason to rush you if you need more time to make your
5 argument, but, you know, you've got ten pages to do it
6 in. Okay. All right.

7 Am I missing anything, Ms. Hardy?

8 MS. HARDY: I don't think so.

9 THE HEARING EXAMINER: Oh, good.

10 All right, Ms. Shaheen?

11 MS. SHAHEEN: Just double checking. I
12 thought, okay, two weeks after the 3rd is the 17th.

13 THE HEARING EXAMINER: Correct.

14 MS. SHAHEEN: Okay.

15 THE HEARING EXAMINER: And that's a
16 Monday, close of business.

17 MS. SHAHEEN: That works for me.

18 THE HEARING EXAMINER: Wonderful.

19 MS. SHAHEEN: Does that mean by five
20 o'clock?

21 THE HEARING EXAMINER: Yes. By five
22 o'clock, yes.

23 MS. SHAHEEN: Okay.

24 THE HEARING EXAMINER: Oh, I did want
25 to say one other thing. It just occurred to me.

1 Before you submit your revised exhibit packet to the
2 Division, please send it to the other party for their
3 review and do so with at least enough time to be
4 respectful to give the other party some time to look
5 through it to make sure that we're getting what we're
6 supposed to and not more and not less. And if there
7 are objections, please let me know what the objection
8 is and we'll give you more time to work it out. We're
9 not here to rush you. I'm glad I thought of that.
10 Well, let me say thank you to the witnesses that
11 appeared in person. It really -- it's a sign of
12 respect to the Division and that's how we take it. It
13 really allows for a much more -- a better flow for the
14 give and take so thank you again. Okay. Anything
15 else? No?

16 MS. SHAHEEN: Not from me.

17 THE HEARING EXAMINER: No?

18 MS. HARDY: No.

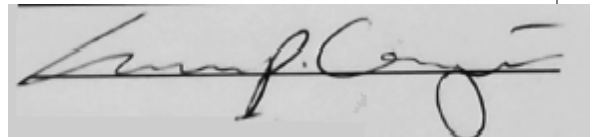
19 THE HEARING EXAMINER: No. All right.
20 Well, we're off the record. Thank you.

21 (Whereupon, at 4:46 p.m., the
22 proceeding was concluded.)
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CERTIFICATE

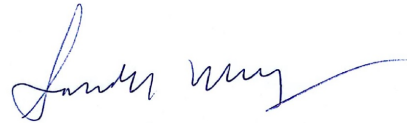
I, GERALD ARAGON, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that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



GERALD ARAGON
Notary Public in and for the
State of New Mexico

CERTIFICATE OF TRANSCRIBER

I, SANDRA HUANG, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

A handwritten signature in blue ink, appearing to read 'Sandra Huang', with a long horizontal flourish extending to the right.

SANDRA HUANG

&	370:15,22	623:5 655:19	1200 442:11
& 355:10	371:1 373:16	11.a. 586:15	503:19
477:13 496:15	374:4 378:19	11.d 427:12	1203 402:6
496:24 569:11	378:22 382:2	11.e 427:24	1220 354:6
569:13 574:15	383:4 403:12	460:23	123 615:2,6,16
1	439:7,8,10	11.f 428:9,13	616:20 617:1
1 358:6,20	516:23 519:5	11.g 428:10	617:14 618:13
359:9,18 361:5	531:19 540:2,6	116 546:7	624:13
361:19 362:23	655:19	118 617:11	1251 402:9
363:19 364:4,9	10,000 375:7	627:8	1271 538:7
368:18,20	376:1,2 379:18	119 609:17,23	129 639:22
392:20,22	100 437:21	610:2,3	640:1,2
411:12 421:1	464:24 538:8	11:30 514:19	12a 379:6
425:7 430:24	538:10 632:4	11a 424:1	12b 380:24
448:7 470:6,18	101 534:22	11b 426:4	12th 458:4
482:13 511:11	102 358:6	11c 426:12	13 360:17
511:13,19	534:23	11g 429:1	370:10 403:17
543:4,7,11	103 518:10	589:24	429:13 462:24
546:20 566:10	534:23 536:15	11th 412:2,13	469:7 539:18
567:7 568:9,25	536:16 616:2	457:23 466:10	545:24 611:12
582:25 647:19	104 537:6	12 360:16,21	634:16 635:3,8
647:21 649:8	106 522:2	362:19 370:10	655:20
649:10 650:15	534:16 575:5	403:17 405:2,6	13,000 615:21
650:17 651:6	10:40 473:16	409:6 426:16	616:1
651:15,17	474:19	429:20 465:6,6	13,100 537:15
652:4 654:3,13	11 360:15	465:8 470:14	538:2 616:5,7
654:14,18	362:18 370:10	485:7 494:14	616:13,20
655:6	378:22 403:16	494:16 495:9	13,150 617:5
1,000 375:19	411:9,17 412:5	540:11 557:22	13,200 616:14
469:2	412:9 413:5	648:13 655:19	13,225 617:5
1,062 387:11	417:2,23	12,000 442:10	1340 402:6
1,271 537:3,9	468:15 469:22	508:19	139 538:18
537:12	482:13 510:9	12.c 461:7	14 360:19
10 360:13	544:17 546:7	120 400:23	366:1,15
362:16 370:9	589:23 623:2,4		370:10,15,22

371:2 404:9 430:19,25 437:15 482:19 636:25 655:20 659:25 1410 537:22 538:6 145 639:25 14th 366:13,20 646:25 659:23 15 360:21 371:5,7,8,15,19 371:20,24 375:3,4 377:24 379:16 404:21 405:10 406:6,8 406:9 407:5,9 407:9 408:8,12 408:19 409:5,9 409:10 410:10 417:1 418:1,14 418:16,19,22 419:3,17 420:5 423:13,15 424:7,20,21,22 424:24,24 425:3,5,21 426:8,16,20 427:17,25 428:18,22 429:4 431:11 445:3 461:12 463:21 479:19 479:22 494:25 584:18 588:9	590:14,20,22 592:15 593:19 606:10,14,14 607:15,23 608:7 654:14 655:20 150 538:12 1500 381:8 1579 405:9 17 354:2 374:11 421:22 540:13 542:11 659:25 1700 382:7 17th 365:3 474:19 515:11 661:1,12 183 634:19 184 610:24 611:3 19 361:21 544:1 19,134 388:22 1913 388:22 195 641:25 197 642:1 198 638:19 1:24 515:11 1:30 514:20 2 2 354:1 358:7 358:21 359:10 359:20 361:8 361:21 362:24 363:14,21	364:5,11 368:19,20 382:24 384:8 385:5 425:7 431:2 452:13 478:11 511:6 551:6,9,21 552:5,7,20 553:9 623:2 643:15,18 647:25 648:5 649:8,10 651:6 651:15 652:5 654:3,18 655:6 2,250 468:25 2,750 468:25 20 361:7 382:7 382:8,10,11 404:17 427:24 619:2 2009 582:6 2012 482:3 2014 482:4 2015 582:11 2017 461:16 2019 461:16 482:21,24 2023 557:2,6 561:10 563:17 2024 390:9 391:13 443:2 480:4 500:14 505:8 506:20 557:10 565:5 570:1	2025 354:2 361:7,13,21 390:10 411:10 415:9 417:2 436:7,13 437:13,15,25 438:2 441:7 482:21 506:25 511:7 516:17 517:8 518:25 534:10 536:14 539:5,25 546:17 547:2 569:23 580:8 2026 556:15 557:1,4 2027 505:21,24 556:8 564:18 564:21 239 586:16 623:4 24 363:6,8,11 365:10 390:12 402:8 429:24 441:7 476:22 522:6 534:6,9 537:10,23 543:7,14 545:4 571:25 639:6 241 488:3,3 533:17 557:22 573:2,10 615:3 615:16 616:3 617:2,12,14 618:13 624:13
--	--	--	---

627:8 243 460:23 487:18,19 504:21 518:8 522:2 531:21 533:24 534:10 534:18 537:6 539:19 540:12 541:9 546:7 556:24 574:15 575:5 641:16 641:16 642:1 24th 436:7 531:24 532:4 532:18,23 533:17,24 534:8,12 535:5 535:11,15,16 536:1 539:1,9 25 361:13 378:9 380:1,4 380:7 390:13 476:22 518:25 536:14 537:10 537:23 543:7 543:14 544:12 544:16,22 545:1,4 580:8 639:6 252 637:12 25250 353:9,10 25254 353:9,10 25441 365:6 25442 365:6 533:19	25462 353:17 353:19,21 521:7 25462-25466 358:3 359:3 360:3 361:3,17 362:3 363:3 25463 353:17 353:19,21 25464 353:17 353:20,21 25465 353:18 353:20,21 25466 353:18 353:20,22 25480 353:8 25541 353:16 353:20 405:3,6 516:4 521:2,6 530:21 539:12 615:17 624:18 641:19 25542 353:18 353:18 516:4,4 521:11,13,17 521:18,20 530:21 533:24 534:21 539:12 639:22 641:25 643:16 25550 353:11 25551 353:11 25552 353:11 25553 353:11	25554 353:12 25555 353:12 25556 353:12 25557 353:12 25558 353:13 25559 353:13 25560 353:13 25561 353:13 25572 353:14 25573 353:14 25574 353:14 353:16 25575 353:15 353:15 25th 436:13 517:8 532:4 533:14 534:24 535:9,24 536:4 539:9 574:25 575:4 26 476:23 537:10,23 543:8 557:21 26.8000 383:2 27 639:9 28 483:7 28221 664:14 29.6 374:11 3 3 358:9,22 359:11,21 361:10 362:25 363:22 364:12 368:23 369:1 400:14 425:7	470:20 472:25 495:24 496:2 511:7 540:18 546:17 547:2 566:3 649:8,14 651:6,15 652:5 654:3 655:6 659:25 30 366:5 421:5 466:12,15 480:16 483:6 483:16 558:8 300253666600 615:22 301 528:21 301h 528:17 303 528:21 303h 522:6,15 527:14,18,24 528:2,8,16,18 529:13,18,22 530:2,6,11,13 530:17 534:6 534:15 31 374:10 420:18 421:22 445:10 32 416:7,14 420:22 421:6 446:7,11 466:12 540:12 541:20 328 611:4 623:4 637:13 637:15,15,16
---	--	---	---

637:16 638:19	3rd's 660:3	44.4 477:9	510 362:18
33 429:24	4	461 383:6	515 357:11
34 476:23	4 358:12,23	467 357:7	53 374:10
537:11,23	359:13,23	471 357:8	542 640:3
543:8 571:25	361:12 363:5	476 357:3	560 363:20
34945 663:17	363:24 368:23	48,000 383:1	565 363:21
36 470:2	369:1 400:17	481 357:10	566 362:12
476:23 537:10	425:7 439:7	485/494 362:20	569 363:23
537:23 539:23	470:17,22	487 362:8	571 363:24
571:24	582:25 583:1	49 477:17	572 363:25
368/368 359:19	624:17 627:22	496/649 358:11	574 362:13
359:20	649:8,11 651:6	4:05 628:8	575 383:13
368/385 359:17	651:15 652:5,7	4:46 662:21	579 357:10
369 359:22,24	653:1 655:7,11	5	581 357:13
369/386 360:6	655:12	5 358:13,24,25	583 362:22,23
370 360:12	40 377:24	359:15 360:5	362:24,25
370/370 360:7	411:12,15	362:7 363:6,25	363:5,7,10,13
360:8,10	412:6 417:2,23	369:3,4,5,22,23	5ppm 621:18
371/371 360:14	469:1 656:3	373:10 379:21	6
360:15,16,18	405/405 362:6	386:5,5,7,10,15	6 358:15,25
360:20	41 359:15	386:17 390:25	359:5 360:7
371/418 360:21	365:9 408:15	391:1,6 470:17	362:9 363:8
372 357:7	410:6 411:11	470:22 477:13	370:3,5 379:21
39 545:25	420:10,18	487:12,13	388:20 399:11
546:1	421:23 445:10	488:5,20	399:17 400:1
39,40 358:16	516:14	491:19 496:25	401:17 427:16
392/647 361:20	42 365:9	583:20,22	435:16,17
3bs 360:17,19	422 357:8	584:6 649:9,11	438:11 470:19
3rd 393:22	43 416:14	651:7,15,18,24	503:11 566:2,4
395:14 396:13	496:8,9	652:10,11,13	574:16 583:20
396:14 452:4	430 478:11	655:13 656:6	583:22 584:6
646:21,23	439 362:17	5,000 625:25	638:7,12 649:9
647:1 656:5,16	44 358:17	500,000 462:12	649:14 651:7
659:17 660:1,2	497:19,20	504 362:15	651:24 652:1
660:12 661:12	514:9		654:4 655:18

60 469:1 600 375:19 462:11 601h 616:4 602 357:14 400:22 602h 616:6 603 400:23 603h 536:25 537:6,14 538:17 616:8 604h 537:19,21 538:1,17 616:10 629 364:4 633 357:13 364:5 637 364:10 638 364:11,13 638/649 358:15 640 549:25 643 363:14 648/648 361:21 649 358:17 649/649 358:5 358:6,8,12,14 358:16 651/651 358:19 358:20,21,22 358:23,24 652 358:25 359:5,6,15 652/652 359:8 359:9,10,12,14	653/653 360:23 361:7,9,11,13 660 437:22 681 375:17 681,000 375:21 376:3	438:2 466:2 470:17 488:5 501:19 610:6 617:12 649:21 649:23 650:7 651:8,24 652:1 655:18 83 487:18 84 543:1 854 383:5 87 545:19 572:20 573:2,8 573:9 87505 354:7 882 387:14 402:9 403:3 89 488:3 8:02 354:3 365:3 8th 437:13,25	9,000 432:1,5 433:1 478:10 9/9/2025 642:4 90 488:4 570:22 574:15 920 478:9 94 556:23 95 504:21 98 531:21 533:17 99 533:24 534:10,18 9:18 416:21 9:21 419:12 9th 400:9 439:24 519:22 520:16,20 539:3,10
	7		a
	7 358:16 359:5 359:6 360:8 362:13 363:11 370:3,5 387:9 388:1,1 389:17 401:18 433:16 435:11 458:1 488:4 496:21 499:17 574:14 574:21 583:21 583:23 584:6 649:16,18 650:12 651:8 651:24 652:1 655:18 70 391:8 447:17 700 588:10 617:9,10 72 488:3 75 480:13 7614964 354:9	9	a&m 482:3 a.m. 354:3 365:3 416:21 458:1 473:16 474:19 a000 523:22 abandoned 378:12 abandoning 374:1 ability 389:17 472:1 578:14 663:10 664:7 able 369:16 473:19 481:6 500:25 502:21
	8	9 360:11 361:19 362:14 369:24 370:1 403:5 416:14 420:23 469:22 470:20 477:10 496:10 497:15 497:16 504:16 504:18,25 510:7 516:17 539:5,25 556:24 574:24 627:9,12 655:19	
	8 358:17 359:6 360:9 370:3,6 379:22 402:5 402:22,24		

[able - administrative]

564:7 577:24 620:25 628:23 629:1,5 630:6 631:7 645:13 above 396:7 397:9 absolute 500:11 absolutely 480:24 507:16 569:9 589:15 590:15 639:20 abstract 365:8 accelerate 506:1 555:2,18 555:21 556:3 556:11 accelerated 564:25 acceleration 564:7 565:16 accept 653:20 acceptable 371:22 399:7 accepted 476:12 653:20 accepting 459:12 accidentally 640:16,19 641:3 accordance 367:22 369:8 account 479:21 639:18	accounting 644:8 accuracy 560:10 571:15 accurate 425:22 429:13 458:13 459:10 463:21,22 464:15,21 465:13,15,19 466:24 500:2 567:13 569:11 571:13 590:23 613:11 642:7 663:9 664:5 accurately 501:23 562:19 acknowledge 421:4 acknowledge... 390:16 392:9 acquired 443:2 480:3 505:7,7 505:11 562:21 569:25 570:1 600:24 acquisition 443:6 506:5,20 561:15 acquisitions 460:1 acreage 414:14 415:10,18 416:10 429:16 430:12 449:3	451:18 452:2 453:3,7 459:25 476:25 485:15 495:16,19 512:20 514:10 543:25 554:5 574:20 614:18 acreages 455:21 acres 405:9 450:23 453:14 490:22,25 495:12 510:23 510:24 550:1 551:1,4,6,9,15 551:21 552:5,7 552:20 553:9 act 392:8 action 480:5 561:15 663:12 663:16 664:8 664:12 actionable 511:1 512:10 activity 360:18 463:1 actual 411:5 479:8 517:17 518:1 519:21 actually 392:12 393:18 399:25 422:10,17 434:9 435:18 436:18 437:14 437:21 439:7	439:23 443:17 443:24 454:8 455:1 470:8 503:5 510:7 517:3 520:24 529:4 531:23 579:24 585:11 595:16 617:13 624:11,21 643:3 654:20 add 401:21 413:13,14 adding 404:12 addition 459:14 572:3 additional 366:20 401:7 458:10 471:4 476:25 536:5,7 565:3 584:3 629:24 630:14 address 525:10 621:1 addressed 371:15 577:18 adhere 642:17 adjacent 470:20 adjust 430:19 622:1 adjusted 382:25 430:21 479:20 administrative 418:8
--	--	--	---

[admissible - allow]

admissible 418:8 admission 368:13,18 admit 385:18 418:11 584:1 admitted 368:19 369:24 370:4,20 371:9 383:20,23 385:5,5 386:15 405:16 476:17 486:8 493:17 494:14 496:17 584:2,4,6 621:7 647:11 647:14,18 648:1,13,19 649:1,8,9,17 650:13,16,17 651:5,6,6,6,7,7 651:7,8,10,15 651:16,21,21 651:23,24 652:4,5,5,5,6 654:12,19 655:6,6,6,13,18 655:18,18,19 655:19,20,20 655:20,21 656:1 admitting 384:1 418:16 418:17	adopt 483:20 583:7 adps 502:9 advance 559:9 adverse 413:3 aerial 490:14 afe 360:7 402:8 500:2 516:20 520:23 522:5,8 522:22 523:15 524:13,15,19 526:19 530:9 534:5,23 575:16 576:1,8 576:18 afes 360:8 362:17 363:20 387:4,12,14,17 387:21 390:11 390:11 400:1 401:20,21,25 402:13,20 410:7 412:6 431:15,16 432:16,21 433:24 435:18 436:17 478:24 479:5,7,9 499:22,24 500:18,18 501:5,9,11,13 516:16,18 519:16,17,21 520:3,5,15,20 524:24 525:1,2	525:11 527:4 530:20 532:8,9 532:11,18,23 533:4,9 534:1 534:4 535:4,9 535:14,15,20 535:23 536:1,7 540:1 560:8 575:4,7 579:13 580:7,9,10 643:23,25 affect 577:4 affidavit 361:12 364:10 401:10 405:17 405:21 434:16 438:12 503:5,6 503:11 633:25 635:3 637:17 637:23 affirmed 358:18 359:7 359:16 360:22 362:5,21 516:2 539:19 afternoon 515:10,18,23 515:25 581:20 602:13 ago 500:7 604:20 agree 385:3 391:10 454:15 502:24 517:9 523:17 529:24	533:11 539:15 551:20 552:25 554:20 563:22 564:2 568:24 576:3 604:5 609:10 612:4 625:11,12 628:14 631:11 660:17 agreed 656:5 659:15 agreeing 459:13 agreement 443:13 571:24 572:1 573:17 agreements 472:1,25 574:3 agrees 415:20 ahead 371:23 419:1 454:3 471:20 550:22 558:10 563:11 587:24,25 605:3 621:14 624:8 633:15 aim 421:2 466:18 air 369:4 371:5 align 611:18 612:1 alleged 504:4 allocate 459:6 allow 565:5,16 584:1 587:21
--	---	--	---

[allow - approval]

<p>597:17 603:7 630:14 allowed 506:5 allowing 494:13 allows 662:13 amend 499:13 569:5 amended 363:21,22 366:6 444:22 445:2 503:6 565:22 642:21 642:22 643:4,7 643:8,12 645:14 646:16 649:1 amendment 644:2 amount 388:13 402:16 424:13 444:4 524:3 550:2 554:3 558:24 573:21 573:23 603:13 617:20 618:13 619:15,18 625:8 analog 592:16 592:24 593:20 analogs 427:16 analysis 378:8 387:25 424:24 425:21 427:7 464:3,12,21</p>	<p>477:2 479:18 599:18,19 623:15,17,20 623:22 631:13 631:15 632:1,6 analyze 630:19 anchorage 410:24 annotated 428:6 435:24 announcement 443:14 565:4 answer 476:16 518:20 520:9 520:14 525:14 526:13,15,24 528:4 539:16 542:13,21 544:16 562:19 594:6 597:2,18 614:6,7 answered 447:1 518:20 525:24 554:11 554:25 593:23 596:18 604:10 answering 533:13 answers 530:21 anticipate 559:12 645:13 656:10 anticipated 384:13</p>	<p>anyone's 551:2 anyway 369:23 607:13 644:9 653:18 660:12 apache 582:9 apart 400:24 564:13 apd 505:1 531:13 apds 479:11 498:22 502:7 502:14 541:20 541:25 542:11 556:14,25 557:14 apologies 408:5 624:5 apologize 405:12 417:9 419:4 444:22 456:20,25 520:24 521:18 565:14 644:16 apologizes 645:8 apparent 381:14 576:16 appear 540:18 541:19 appeared 662:11 appears 426:1 463:20 500:20 517:8 519:7 522:16 546:16</p>	<p>618:13 apples 500:9,10 applicable 358:10 362:10 application 444:17 481:5 521:2,3 537:4 537:5 563:14 563:18 641:12 642:21,22,23 643:2,4,8 applications 478:3 521:1 556:10 612:18 612:24 613:4 630:16 applied 444:10 502:6 503:1 557:17 applies 523:8 580:11 apply 411:17 502:14 561:22 applying 557:19 apportion 561:22 appreciate 395:16 446:15 647:8 appropriate 366:4 611:18 approval 511:2 564:9</p>
---	---	--	--

[approvals - attached]

approvals 557:11 approve 542:15 approved 540:13 542:11 556:10 approximate 383:17 449:3 approximately 374:10 408:15 411:15 412:6 430:4 473:2 496:24 508:18 514:9 537:3,9 537:22 april 361:19 390:13 391:22 393:22 395:14 396:13,14 452:4 511:7 546:17 547:2 aragon 354:8 663:2,18 area 359:12,14 387:13 391:20 396:24 399:2,2 430:9 448:19 450:5,5 456:6 463:4,7,20 464:18 470:14 479:14 480:9 483:8,17 526:10,11 527:19 528:8 530:2,17	549:13 560:25 561:10 590:17 590:19,24 591:11 592:10 592:24 593:8 594:10,20 603:14,16 605:24 614:20 619:11 areas 455:21 513:10 550:20 600:6 603:15 606:9 argued 493:22 argues 507:24 arguing 599:7 605:2 argument 414:12 442:25 494:2,4 507:25 508:1 657:23 658:9,15 661:5 arguments 366:7 658:2 arrow 380:3 artificially 499:24 asked 433:9 441:25 455:25 468:16 469:7 471:24 472:12 472:18 505:22 525:23,25 530:23 547:16 548:1,6 551:3	553:1 577:15 579:19,24 581:1 593:22 594:1 596:20 604:9,13,21 607:19 616:18 616:25 617:4 624:11 632:8,9 633:23 636:10 644:11 asking 407:16 412:23 440:24 441:18 443:5 451:25 453:13 513:16 528:12 533:3,6 536:18 544:15 551:16 560:11 564:4 565:23 572:5 574:1 576:22 577:3 593:25 594:4 603:1 613:8,14 616:23 620:2 630:2,18 631:23,25 632:3 633:4 634:4 640:6 657:1 asks 636:12 aspect 542:11 asserted 417:20 assertion 499:24	assessment 449:9 asset 505:21 570:6 582:16 assets 422:22 481:23 505:11 570:3 assigned 509:6 assigning 577:2 associated 495:12 510:25 523:7 596:8 619:24 assorted 636:16 assume 432:23 433:2 503:3 556:2 577:25 assuming 370:19 465:6 517:19 574:25 617:22 625:13 638:2 643:25 assurances 564:24 ati 615:22 632:5 638:22 atis 638:16 644:5 attached 391:2 519:6,16,21,25 520:4,5,15,19 520:20 532:10 532:18,23 533:4,10 534:7
--	---	---	---

<p>534:12,13 535:5,9,10,14 535:15,21 540:1 attempt 558:17 attempts 546:4 548:23 attendees 355:2 attention 433:22 545:25 566:1 571:19 attorney 355:7 355:10,12,16 355:19 565:10 637:7 663:14 664:10 attorneys 578:2 578:2 636:16 attractive 393:14 396:3 452:18,21 512:14 audio 663:8 664:3 august 436:13 517:8 518:25 533:14 534:8 534:23 535:9 535:24 536:4 536:14 539:9 574:25 575:4 580:8 authorization 505:25 555:2,7 555:12,17</p>	<p>available 402:1 458:7 491:22 549:4 656:11 avalon 363:7 374:2 375:2,24 376:2 378:15 378:24 420:12 420:13,21 421:8,9,13,14 424:4,10,17,24 426:19 445:12 445:15 469:3,4 479:15,23 585:7,11 586:16 588:8 588:20,25 591:3,6,7,18,21 600:4 609:1,4 609:11 621:22 622:4,8 629:12 average 387:11 404:14 549:23 549:24 avoid 584:15 586:3 avoids 632:21 awards 561:13 aware 443:1 505:19 509:22 541:24 542:9 561:11 607:8 611:25 613:2 613:15 614:16 614:19</p>	<p>axis 379:19,20 380:4 404:16 404:17 b b 358:1,18,20 358:21,22,23 358:24,25,25 359:1,5,5,6,6 360:1 361:1 362:1,21,23,24 362:25 363:1,5 363:6,8,11 376:17 403:23 404:4,16 420:16 429:1 462:25 464:6 464:18 465:3 465:13 544:1 582:25,25,25 583:1,1,20,20 583:21,22,22 583:23 584:6 609:16 611:3,5 611:6,7 615:12 615:20 616:19 616:24 617:1 622:24 623:17 624:17 627:22 634:21,23 651:10,11,15 651:15,15,15 651:15,17,18 651:24,24,24 651:24 652:1,1 652:1</p>	<p>bachelor's 482:3 582:6 back 365:15 376:16 377:25 378:25 382:16 384:18 390:12 390:18 391:13 399:10,15 401:5,13 409:25 416:18 416:18,21 419:5 420:24 435:15 436:24 442:16 447:12 451:20 452:3 454:12 458:18 459:4 468:14 469:6 473:21 480:17 514:19 514:20 538:25 542:6 553:1 561:9 563:17 565:4 572:18 579:19 584:7 591:13,21 593:10 628:7 638:17 642:15 642:15 645:12 background 376:11 389:23 backtrack 467:10 backwards 528:21</p>
---	--	---	--

[bad - best]

bad 408:10 457:16 459:11 603:3 baker 356:2 359:8 389:24 baker's 652:4 banner 458:24 barrel 358:23 364:5 407:11 409:13 417:1 417:24 420:7 445:19,19 462:12 607:15 609:6 612:17 612:24 613:3 614:13 625:2 633:3 643:12 barrels 375:17 375:20,22 376:3 469:1 barrier 593:15 609:7 628:15 628:18 base 424:6 619:9 626:12 based 386:22 387:16 400:23 409:13 428:22 429:19 434:5 444:1,23 445:2 459:11 471:19 478:1 479:14 481:3 500:17 505:24 513:7 520:25 544:13	565:7 577:15 579:13 587:14 588:22 589:14 621:11 626:5 631:13,21 basically 384:5 394:16 402:18 411:9 415:20 427:20 505:15 506:13 561:19 653:12 656:16 basin 431:6 455:10 458:8 506:1 basing 457:13 457:15 626:17 basis 390:5 486:2 501:9 517:20 524:22 545:23 589:18 603:17 604:20 631:21 battery 488:25 491:20 495:12 495:14 557:23 557:25 bear 482:19 497:16,20 533:1 602:17 bearing 568:3 bears 477:20 497:10 began 400:8 beginning 505:16 636:22	behalf 355:7,10 355:13,16,19 behavior 444:2 498:2 beholden 562:23 belief 377:4 431:10 believe 367:16 370:16,23 372:12 373:11 374:14 378:18 381:8 387:12 387:15 389:4 391:4,7,22,23 392:3,7,19 393:5 400:24 402:14,20 407:10 414:24 418:23 426:2 430:13 437:6 439:19 443:3 443:12 444:2 448:16 461:15 461:19 464:13 466:10 467:6,9 469:14 486:7 496:25 499:23 505:2 509:18 510:6 516:12 516:20 519:14 521:9 529:8 533:9 542:17 542:24 550:12 555:9,9 561:5	562:4 563:16 564:6,20 568:16 570:15 571:13 572:9 572:10 573:4 574:17 575:20 577:20 583:14 587:2 588:9 589:6,24 590:25 592:9 592:23 593:12 593:13 594:7 595:23 597:11 598:2,5,20 602:5,22 603:20 605:10 605:13 609:8 611:12 616:3 620:15,20 624:22 625:18 626:22 628:17 629:17 636:21 637:20 638:6 638:24,25 639:5,12,24 640:18 644:7 644:10 653:23 believed 415:9 belong 407:14 benches 409:16 benefit 501:1 595:19 best 415:10 481:8 514:5 570:22 574:18
---	---	--	--

[best - bubbles]

602:3 663:10 664:6 better 382:13 463:25 575:18 588:14 662:13 beyond 535:9 564:4 565:6 597:3 big 397:5,6 398:6,9 448:22 450:12,15,17 450:23 451:1 454:13 455:2 456:1,7 546:7 547:4,6 658:2 birthday 581:13,16 bit 376:19 404:12 406:11 406:14 419:19 458:13 469:17 473:18 492:7 495:8 545:8 570:20 640:13 648:23 bits 402:12 530:5,10,13,16 575:19 black 430:11 blame 577:3 blm 478:19 508:18,25 557:13 567:7 641:24 642:4 642:17	blowing 608:13 blue 469:21 490:10 boe 374:10 378:19 382:10 382:10,25 383:2 bold 566:25 boll 402:6 bond 378:3 bone 359:12 363:9,12 365:21 373:23 373:25 374:2 376:18,24 377:1,2,7,9,10 377:12,16,23 378:1,6,7,16,24 379:3,15 380:12 381:2,4 381:14 403:22 404:5,6,15 405:8 420:14 420:16,19 426:5,12 427:13 460:12 460:25 463:1 464:5,17 465:2 465:12,15,20 465:24 466:25 476:21 479:23 504:23 516:7 521:2,8,12,14 562:11,14 566:12,18	574:16 585:7,8 591:17,25 592:8,15,21 593:14,15,19 594:1,8,17 600:4,5 601:1 601:5 609:2,5 609:6,8,12,12 615:14 624:15 628:15,19,22 629:12,13 635:5 book 541:8 651:1 bottom 369:23 375:9 379:15 421:16 425:16 437:8,18 446:24 462:11 462:15 492:5 498:23 537:2,8 537:20 542:24 562:8 572:19 572:21,21 623:5 637:10 637:17 box 430:11 469:21 boxes 470:11 470:12,14 490:10 brackets 617:6 bradfute 355:19	brand 600:22 breadth 397:4 448:20 break 454:5 473:21 474:3 474:16 514:16 515:2 569:6 628:5,7 644:12 breakdown 522:13 566:8 644:19 breakfast 480:21 breaking 385:9 brief 457:14 473:17 476:18 481:25 578:25 582:4 659:5 briefly 387:24 388:8 389:18 404:10 584:11 bring 365:14 459:12 bringing 477:16 brings 401:9 404:21 broad 456:5 588:11 broadly 449:25 568:13 broke 644:20 bs 651:15,21,25 bubbles 404:13
---	--	---	--

[budget - central]

budget 393:11 506:15 561:21 build 601:16 building 354:5 bullet 457:14 468:24 658:14 bunch 462:10 business 482:3 656:6,13 661:2 661:16 buy 459:25	570:23 578:4,5 called 353:6 392:21 470:22 475:3,8 529:9 578:4 648:3 calling 433:20 568:8 613:6 cancel 558:18 candor 393:10 capability 419:23 capital 543:6 caption 659:13 carb 585:8 609:2,7,12 carbonate 363:9 374:2 376:24 377:1,2 377:7,10 378:16,25 420:14,19 427:13 591:25 592:8,15,22 593:13,14 600:5 629:13 care 657:6 career 578:22 careful 599:11 carolina 458:19 carrying 466:15 case 353:8 365:9,17,17 366:4 405:3 409:21 430:12	442:9 443:24 444:10 462:3 463:25 473:10 473:16,20,22 473:22 474:20 483:21 485:3 486:4,15 489:5 492:12 493:8 493:11,23,25 505:22 521:2,4 521:8,10,12,13 532:19 533:19 534:20 570:10 576:21 580:11 615:17 616:3 630:13 635:25 636:4 637:10 637:20 639:22 640:3,18 641:19,25 643:16 cases 353:9,10 353:15,16,17 353:19 358:3 359:3 360:3 361:3,17 362:3 363:3 365:11 365:15 366:16 366:19 482:10 530:21 532:25 539:11,20 540:19 541:19 563:23 565:5 571:17 572:10 572:15 582:22	636:25 637:9 637:19,20 639:22 641:10 642:16 660:12 cash 383:4,9 578:4,5 casing 402:11 523:12,22 524:4,7 525:20 526:5,18 527:8 527:13,18 575:18 catch 577:9 categories 449:17 450:4 456:5 468:21 522:19 575:14 575:21 576:7 576:16 579:7,9 category 528:9 528:11 cats 396:23 cause 407:15 450:9,9 506:19 520:14 535:13 586:2 606:16 638:2 641:4 655:17 caused 588:25 causing 380:14 629:5 cement 402:12 central 488:24 491:20 495:12 495:14 557:24
c			
c 355:1 356:1 358:6 359:7,9 359:10,11,13 359:15 363:14 363:16 364:1 365:1 380:24 475:19 643:15 643:18 652:4,4 652:5,5,5,7,7 652:10,11,13 c102 541:17 542:3 c102s 540:18 541:15,19,25 571:12 calculate 595:24 626:6 calculation 625:2 626:5 call 390:15 449:16 463:11 470:18 474:9 475:21 545:25			

certain 381:12 410:25 425:21 458:9 532:15 543:17 573:22 573:22,23 577:22 578:16 620:3 631:13 certainly 421:7 456:11 466:13 540:22 560:17 certainty 464:25 certificate 663:1 664:1 certification 659:11 certified 361:10 certify 663:4 664:2 cetera 494:5 chain 385:9 392:14,21 422:24 chakalian 354:4 355:3 challenge 505:12 577:21 577:24 578:19 chance 368:5 385:10 386:6 417:10 591:19 595:6 629:7 change 367:25 401:7 405:9	436:18,20 458:6 498:21 498:22 499:3,6 516:19 654:2,6 changed 539:15 557:14 562:7 653:17 changes 401:2 435:8 436:20 482:16 502:4 503:1 536:6 539:8 583:4 653:21 changing 400:18,18 436:14,15,15 460:7 characterizati... 394:3,7,19,21 439:19 517:23 characterize 395:11 500:11 548:16,17 characterized 441:3 469:11 charged 558:18 561:17 chart 361:8 404:13 chase 391:15 check 545:15 650:5 checked 555:25 checking 488:13 560:10	661:11 checklist 613:25 chief 355:24 473:11 474:20 chino 354:5 choice 456:21 choose 588:8 chris 356:4 357:6 359:17 361:20 chronology 358:14 362:18 390:24 412:19 412:20 415:4 510:6 546:14 cimarex 569:11 569:15 circulated 367:23 369:9 434:11 circumstances 472:6 cited 610:11,17 cites 611:22 civitas 427:3 claim 499:21 claims 480:2 clarification 528:19 clarify 437:20 483:4,16 547:24 562:25 585:14 632:9	clarifying 382:8 631:12 clarity 390:19 classifies 443:4 classify 459:16 clear 383:15 392:4 395:16 405:4 448:23 449:11 459:18 533:13 576:18 617:19 624:12 625:8 647:5 clearly 478:8 clerk 355:5 client 407:24 413:19 414:2 417:11 558:9 624:2 close 429:7 558:23 656:5 661:2,16 closer 467:4 588:13 606:11 closing 366:7 657:23 658:2,9 cohesively 473:20 college 582:7 collins 355:24 358:19 389:24 610:11,18 612:5,13 634:10 651:25 colorado 482:4 582:7
--	---	--	--

[column - complex]

column 435:18 522:9,17 524:1 525:21 526:5,9 526:10 529:6 columns 523:1 com 363:6,8,11 402:5 412:17 500:13 517:1 517:15 519:3 522:6 534:6 combined 450:24 523:16 come 377:25 387:14 388:23 396:6 400:22 409:25 411:21 416:18,23 440:13 441:12 442:1 452:24 473:21 513:16 514:19,20 561:23 591:13 591:21 593:10 599:19 628:7 632:2 642:15 comes 368:17 388:24 410:10 505:13 510:23 556:1 559:6 570:6 605:9 612:9 657:14 657:21 comfortable 508:10 623:11	coming 402:10 402:13 642:15 645:12 comment 432:7 comments 444:2 498:8 commercial 422:23 commingling 359:11,13 commission 387:18 549:20 549:22 commit 390:21 563:25 commitment 388:8 390:4,6 390:8 442:25 563:3,7,13,17 563:23 564:7 564:13,14 committed 458:5 508:12 common 442:18 459:25 503:21 560:15 569:6 communicated 410:15 communicating 416:4 communication 447:15 480:17 569:15 629:8	communicati... 390:22 391:6 513:15 546:9 546:14 569:22 570:10,12,14 570:16 companies 582:9 company 355:11 481:22 505:11,12 516:16 561:16 563:20 570:3,7 comparable 527:17 528:6 528:13,24 529:5,25 530:15 compare 493:3 495:17 compared 374:11 381:25 445:19 495:13 516:4 541:18 compares 486:18 comparing 382:20 446:17 comparison 362:8 411:5,8 415:11,15 421:17 491:1 493:4,12 494:6 494:11 500:11 541:23	comparisons 500:3 compensate 595:17 competent 414:14 415:20 598:21 competing 477:4 478:17 497:8 compiling 605:22 complains 479:5 complete 549:25 552:6 628:23 646:1 completed 387:11 465:21 468:25 completely 520:12 completing 377:14 completion 461:16,17 462:21 501:24 522:14 588:23 644:22 completions 375:4 523:2,8 524:16,25 complex 590:19
--	--	---	---

[comply - consisting]

comply 505:16 506:13 564:25 647:2 component 587:2 588:11 589:3 592:13 597:16 599:3 599:20 601:15 605:23 606:2 606:17,20 623:19 632:5 components 587:3 comport 480:8 comprising 627:13 compulsory 563:22 613:4 613:25 640:18 concentrate 622:13 concentration 621:16 concern 631:21 concerns 503:1 591:2 concho 482:8 conclude 473:10 622:14 concluded 515:13 662:22 conclusion 421:16 481:3 604:12 613:6	conclusions 657:25 658:9 conditions 458:6 conduct 386:12 453:22 588:22 643:22 conducted 464:13,21 confer 407:24 421:7 440:19 558:8,11 624:2 645:21 conferring 391:13 confident 421:12 confirm 467:7 527:3 conflict 413:6 conflicting 617:23 conflicts 625:14 confuse 654:24 confusing 511:15 618:1 648:24 confusion 576:19 654:9 conjunction 431:9 589:14 conoco 391:17 392:1 397:11 402:4,18	409:16 411:6 413:3 415:6 421:1 435:25 460:2 547:4,6 547:9 549:3 552:18 553:15 554:21 562:20 562:21,22 conoco's 398:8 415:4 550:12 552:14,16 554:2,5,11,13 conocophillips 356:8,9 413:6 432:1,12,15,20 439:17 443:2,4 443:9,10,13 448:2,15,21,24 453:3,6,13 454:14,18 478:8 479:2 480:3,25 481:22 482:8 483:7 497:19 500:25 501:8 505:8,16 506:13 507:8 507:10 509:8 509:24 513:9 514:9 570:1 582:1,14 585:4 586:22,25 587:14 588:8 588:18,25 589:13 591:21	592:2 593:10 595:1,9 596:15 597:7 600:16 600:22,25 conservation 353:3,6 355:4 355:5 consider 393:14 512:14 591:10 593:5 614:21,23 considerable 393:11 550:2 consideration 393:7 460:15 460:16 461:17 561:1 considered 397:18 454:25 455:12 461:18 477:6 478:4,16 479:11 600:8 623:8,14 considering 353:8 497:8 568:25 considers 477:3 477:14 479:15 consisted 548:24 consistent 387:12 503:25 consisting 495:11
---	---	--	--

[constitutes - correct]

constitutes 621:17	context 565:3 565:14 640:13	convert 369:19	423:3,18,19,23
constrained 606:9	contexts 472:14 472:15	cop 396:1,4,22 397:4 452:16	424:1,2,8,9
construct 557:23	continue 365:3 366:16,19	452:18,21	425:1,14,18,19
consult 417:10 565:10 578:2	415:24 514:20	453:10,11	426:5,6,17
consummate 398:1	545:11 605:16	458:2,6	427:5,22 428:1
cont'd 356:1 359:1 360:1	642:15	cop's 360:11	428:12,16,19
361:1 362:1	continued 391:21	copas 388:21	428:20,24
363:1 364:1	continuing 390:18,20	copies 361:10	429:5,17
contact 362:18	515:11 565:5	copy 372:12 385:19 489:12	430:10,17
contacts 358:14 390:24 412:19	contract 482:7	539:25 541:4	431:17,18,21
412:21 415:5	contracts 570:6	559:25 586:8	431:22,24
510:6 546:15	contractual 442:21 573:17	608:21 642:9	432:2,13,14,17
contain 470:12 512:4 527:4	contrary 527:9 527:11	copying 488:17	432:22 433:5,6
contained 470:11	contribute 627:13 633:25	core 625:2	433:18 434:13
contains 470:14 491:19	635:5,10	corner 421:16 462:15 470:15	435:5,14 436:2
content 410:14 413:20	contribution 617:24 625:15	623:5	436:4,8,15
contention 457:15	626:8,13,18	corporate 359:23 360:12	437:2,9,15,16
contents 650:25 651:2	627:4	correct 365:20 366:9 371:14	438:10,18
contested 365:4 413:8,24 415:6	control 459:1 477:5,15,16,18	373:8,16	442:11 443:11
505:25 515:12	498:1 500:15	374:15 376:10	443:19 444:11
556:4	conversation 457:21 630:4	378:21 380:22	444:13,14
	conversations 448:1	384:7 388:2	445:8,12,13,16
		393:20 394:18	445:20,25
		396:8 398:10	446:9,22
		398:13 399:12	447:13,18,21
		403:10 412:11	447:24 448:3
		412:12 413:25	449:1,13 453:4
		414:4 421:19	453:24 459:15
		421:20,23	466:22,23
		422:14,15	467:2,25
			469:25 470:3
			471:6,9 473:1
			482:19,22,24
			483:2,4,10,14
			483:15 490:11

[correct - course]

497:3 499:13	598:14 601:21	639:13	501:15,24
500:23 502:19	608:2,7 609:2	correlative	516:15 522:24
502:21 504:13	609:13 610:15	481:9 514:6,8	523:7 526:5
506:21,22	616:12 617:24	574:18 602:4	527:21 528:24
507:1,19 508:2	622:5,6 623:14	corresponden...	529:5,17
510:13 512:24	623:23 625:4	533:5	575:23 576:1
512:25 516:8	625:16,19	corresponds	576:15,18,23
517:10 519:9	627:5,15	654:21	577:12,17
519:17 520:6	629:20 630:21	cost 387:4	578:17 622:15
520:22 521:3	642:17,18	402:3,4 431:15	counsel 409:21
522:6,7,20	643:9,21,22	433:13 434:4	658:25 663:11
523:3,4,10,19	644:8 647:23	436:18 459:5	663:14 664:7
524:19 528:2	648:14,20	477:20,21	664:10
530:13 531:6	653:7 660:23	478:24 479:8	count 542:7
531:25 532:1,3	661:13	497:11,16,21	659:11,12
532:6,8,11,16	corrected 436:2	498:3 499:3	counties 399:4
533:4,10 534:1	436:25 437:5	500:2 501:2,12	county 432:13
534:2 536:11	437:18 471:8	502:4 508:17	432:17,21
537:13,25	499:10,12	522:9,13,17,19	455:9 476:24
538:15 539:6	531:4,7,10	522:22 523:7	478:9 479:7
539:20 540:14	639:19 643:25	523:12,15	481:23 501:6
540:16 543:8,9	correcting	524:10,13	509:14,16
543:11,12	437:8 438:4,6	525:20 526:18	550:17,20,21
546:10,11,25	638:24	527:13,18,23	550:23,24
549:18 557:23	correction	528:7,13,15,25	551:1,16 552:5
558:3,4 565:7	363:25 437:25	529:8,10,11,14	552:7,10,15,16
567:15,16	438:4 572:4,14	530:5,7,10,16	552:18,20
568:10,23	corrections	549:24 568:3	553:15 554:13
569:19,20	471:4 482:16	575:21 577:4,7	554:18 582:1,8
571:8,9 572:5	498:14 583:5	577:21,24	590:17,19
574:4,5 575:14	643:25	578:15 579:15	couple 422:11
576:24 585:21	correctly	595:18	434:25 506:16
585:22 586:23	422:25 441:4	costs 387:10	579:5 658:3
591:23 592:1,4	519:16 616:18	388:18 436:19	course 399:6
594:9,14,15	622:4 626:14	500:15,20,21	401:2 417:11

[course - d]

639:16 643:15 652:18 court 558:12,16 558:18 656:9 courthouse 550:14,15,17 550:17,24 courtroom 608:10 cover 411:12 412:4 521:17 covered 617:14 642:21 covering 430:8 covers 429:18 cox 391:15,19 391:23 cpac 363:25 571:11,17,20 572:4,14 cpacs 643:21 craft 523:14 524:13,14 create 458:10 460:16 596:6 631:20 created 418:7 418:17 464:3 590:6 632:12 criteria 630:19 criticisms 622:4 criticizing 394:17	cross 358:22 361:18 362:25 363:5 386:12 392:19,20,22 418:24 422:7 448:7 471:16 511:6,11,12,17 511:19 514:18 515:15,21 546:20 558:6 558:23 559:8 602:11 617:15 617:16 624:13 624:14 626:19 638:16,23 647:19,21,25 648:5,8,9,12 crossed 559:23 cs 652:4 ctb 490:8 495:20 531:17 ctbs 490:24 494:10 cue 572:18 cumulative 383:3 cumulatively 545:3 cure 637:1,4 current 401:21 402:20 561:25 564:11 592:25 currently 398:20 432:1 483:8,12	508:19 509:9 509:12 542:11 556:5 562:1 564:17 600:25 638:4 639:5 643:7 curve 376:2,14 376:20,21,23 379:23,24 424:11 426:4 427:12,12 428:7 429:11 461:21 468:24 587:2 589:3,13 589:23 625:1 curves 360:15 374:14,16,19 374:21 375:14 376:9 378:21 379:1 423:22 424:7,19 425:16 426:1 468:17,22 586:15 588:12 589:7,8,22 590:3,6 601:16 631:20 cut 622:24 623:6,9,17,22 637:10,17 cutoff 619:19 619:21 620:9 cx 357:5	d d 357:1 359:16 359:18,20,21 359:23 360:5,7 360:8,9,11,13 360:15,16,17 360:19,21 363:16,16 364:1,1 365:1 367:21 368:1 368:18,18,20 368:20,23 369:1,1,3,4,5 369:22,23,24 370:1,3,3,3,5,5 370:6,9,15,22 371:1,2,5,7,8 371:15,19,20 371:24 372:2 373:16 374:4 378:22,22 379:6 382:24 384:8 385:5,7 385:11,14,18 385:21 386:5,5 386:7,10,15,17 387:9 388:1,1 399:11,17 400:1 401:17 401:18 402:22 402:24 403:5 403:12,16,17 403:17 404:9 404:21 405:10 406:6,8,9
---	--	--	---

[d - depicted]

407:5,9,9 408:8,12,19 409:5,9,10 410:10 417:1 418:1,14,16,19 418:22 419:3 419:17 420:5 424:1 426:4,12 427:12,24 428:9,10,13 429:1,13 430:19 433:16 435:16,17 445:3 460:23 461:7 462:24 468:15 469:7 499:17 501:19 586:15 589:23 589:24 607:15 607:23 608:7 623:2 652:17 653:18,18,21 654:3,3,3,4,11 654:13,14,18 654:18 655:5,6 655:6,6,7,11,12 655:13,18,18 655:18,19,19 655:19,19,20 655:20,20 dana 355:7 419:20 659:8 dart 455:15 data 363:7,10 363:13 378:25	421:4,7 460:15 462:2 466:16 479:19 525:6,9 525:11 570:5 601:24 603:21 604:11,15,16 604:17,23 605:6,20 622:20 date 354:2 365:14 366:16 411:17 517:11 642:4,10 646:19 647:1 656:16 dated 412:5 417:23 511:7 517:8 518:25 574:24 dates 390:18 556:17,19 david 373:19 374:10 379:16 387:14 396:20 400:8 420:8 430:22 461:13 464:19 467:4 469:5,20 472:24 549:5 day 354:1 389:1 421:1 469:4 527:23 555:9 560:2 656:10,10	days 366:6 396:5 450:19 452:23 480:16 581:9 638:3 656:13,13,17 deadline 656:5 deadly 621:18 deal 366:6 369:22 371:18 393:8 440:6 457:25 458:3,7 459:19 512:12 562:22 653:9 657:11 dealing 384:7 deals 459:24 472:2,5,9 586:16 dealt 367:14 dean 355:14 debating 565:3 decide 468:21 decided 377:25 494:6 decision 416:23 decisions 368:12 373:22 374:1 466:17 dedicated 497:3 dedications 483:18 define 510:18 510:20 549:10 619:7,14,23	621:21 definitely 415:8 644:19 658:4 definition 469:17 degradation 380:1,5,8 degree 482:5 582:6,10 dehamer 356:7 delaware 506:1 delay 480:2 504:4 586:3 600:11 delivered 578:16 delivery 363:14 demonstrate 415:16 denied 459:3 denoted 567:10 density 403:24 404:8 420:15 420:19 deny 554:23 department 353:2 355:15 525:3 depicted 464:22 465:9 465:10,20 467:5 469:8 490:17 495:13 545:13
---	---	--	---

[depiction - diagram]

depiction 463:6 463:25 489:3 491:20 depicts 543:19 depletion 591:19 593:16 614:25 depth 537:15 538:2 615:11 615:24 616:4 616:13,25 617:8 depths 436:15 describe 367:18 400:2 507:11 522:21 describing 375:1,4 description 358:2 359:2 360:2 361:2,16 362:2 363:2,17 364:2,7 470:14 510:23 554:5 571:19 636:22 637:3 641:10 643:21 descriptions 451:6 453:6,9 512:20 design 495:15 designed 417:25 despite 626:18	detail 378:13 384:13,19 399:13 404:12 410:8 480:23 570:14 detailed 358:13 576:17 details 480:19 632:16 determination 459:10 513:11 626:21 629:11 630:1,9 644:6 determine 547:5,9 549:14 553:15 592:20 596:7 599:16 601:8 602:18 603:11 determined 410:25 560:25 629:2,14 determining 461:11 630:20 develop 374:21 377:1,7,13,22 378:1 380:12 392:10 405:7 411:5 415:10 415:18 466:25 476:24 479:22 480:10 507:15 508:1 585:4 586:21,25 588:8 589:1	591:14,21 592:2 593:11 594:13,17 600:6 developed 390:10 398:19 404:5,7 410:25 417:25 460:20 461:2 464:6,14 465:16 480:1 601:3 developing 373:24 376:11 377:12,17,20 390:21 508:12 564:8 582:19 585:5 587:14 592:7,21 599:23 614:22 614:24 development 359:9 360:13 362:8,14 373:12,19,20 373:23 376:18 377:18 381:9 382:21 383:12 383:13 392:2 395:17,23 409:16,22 411:3 414:3,13 414:25 415:21 422:1 425:3 426:8 429:8,15 430:16,20	435:3 446:2 449:15 451:4 452:13 456:8 459:2,7,8 464:17 465:1 465:25 466:15 469:20 470:23 477:22 478:21 479:13 480:5 481:7 483:9 496:13 497:8 497:13,16,21 503:2 504:8 507:21 514:5 522:20 555:3 568:3,4 590:22 591:3,15 594:23 597:24 600:11 602:3 603:14 609:1 620:4 629:8,9 developments 381:22 429:19 430:6,15 432:12 470:21 devon 402:6 404:2 427:4 diagram 358:23 362:20 364:5 417:1,2 417:25 485:9 485:23 490:4 612:17,24 613:3 614:13 617:10 643:12
---	--	---	---

[diagrams - division]

<p>diagrams 489:9</p> <p>dialed 450:6</p> <p>differ 442:20 503:22</p> <p>difference 379:4 380:3,4 383:17 405:4 451:9 461:5 538:5,12 543:19 617:22 625:14 639:12</p> <p>differences 378:3 381:21 401:20 420:11 420:18 445:18 471:2 485:14 500:8 541:25 627:20</p> <p>different 400:11 414:14 421:4 429:20 429:22 435:22 455:21,21 461:22 462:2 466:21,22 467:8 469:18 493:15 560:14 560:16,19 562:1,6,6,10,14 569:1,6 572:24 574:2 581:3 594:4 601:14 615:14 617:20 618:14 625:9 630:7,19</p>	<p>636:11 644:7 650:22</p> <p>differently 366:14</p> <p>difficult 648:24</p> <p>digging 660:11</p> <p>digital 663:8 664:3</p> <p>diligence 543:24 544:5</p> <p>diminishing 373:24</p> <p>dinner 480:21</p> <p>dire 367:14</p> <p>direct 371:19 372:9 384:1 395:13 476:13 481:14 482:10 483:4,20 486:4 486:15,22 489:5 492:1,12 493:8,23,25 494:3,19 515:13,14 559:2 581:18 582:22 584:19 585:17 594:20 603:19 604:16 623:1 630:12 637:6</p> <p>direction 394:15</p> <p>directional 529:17,21 530:1 575:19</p>	<p>directly 582:18</p> <p>directs 384:3</p> <p>disagree 551:8 624:24</p> <p>discounted 383:4</p> <p>discovered 628:21</p> <p>discrepancy 462:1</p> <p>discretionary 507:4,9,10,14</p> <p>discuss 366:14 543:24 558:12</p> <p>discussed 377:4 386:22 402:8 403:13,14,17 403:17,21 404:18 415:19 420:22 448:5,6 448:8,11 472:21 511:4 608:5</p> <p>discussing 446:21</p> <p>discussion 412:17 423:11 431:15 467:21 468:18 504:4 507:3 508:5 560:15 638:3 657:8,10</p> <p>discussions 398:16 450:14 456:3,12 466:5</p>	<p>466:14 472:19 480:13 510:3 546:4 548:13 548:24</p> <p>disparity 477:7 477:8 478:5 481:4</p> <p>dispute 432:5,6 477:11</p> <p>distance 400:24 429:9 430:19 430:22 591:16 625:24</p> <p>distracted 518:21</p> <p>distribution 374:24</p> <p>disturbance 495:19 531:3</p> <p>divert 458:24</p> <p>divestitures 460:2</p> <p>divide 382:10</p> <p>dividing 382:9 382:11</p> <p>division 353:3 353:7 355:4,6 475:13 477:3,6 477:14 478:4 478:17 479:11 480:18,22 502:23 561:9 563:3,24 574:1 613:3 636:24 662:2,12</p>
--	--	---	---

[division's - earlier]

division's 480:14 docket 366:1 637:1 document 358:5 411:10 411:17,19 417:23 418:7 517:7 519:5 577:15 647:19 documentation 601:2 documents 442:6 482:12 doing 420:13 420:15 421:11 431:9 459:24 465:24 472:9 521:19 538:14 549:6 552:10 585:16 dollar 523:6 573:23 door 459:18 472:18 604:13 double 650:5 659:3,14 661:11 doubt 570:17 571:14 578:8 download 657:18 dozens 424:13 drafted 444:23	drainage 614:22,23 draining 614:17 draw 566:1 571:18 drawing 516:14 drawn 379:20 drew 433:22 drill 378:7,15 381:12,24 382:1,5 388:16 396:4 402:12 443:18,25 444:3 452:22 500:23 505:17 505:23,23 506:2,14 508:7 529:21 539:2,4 540:13 555:3 555:19 556:1,6 561:13,22 563:4,8,13,23 564:4 565:8,18 588:18 628:23 629:2 643:13 drilled 390:13 390:19,20 398:23 465:21 478:9,13 482:25 500:7 drilling 377:14 377:23 378:17 380:8,10	381:10,15 388:22 390:16 405:9 442:11 459:12 468:13 491:4,4 500:20 500:23 501:23 503:19 522:14 523:1,8,13 524:1,4,16,25 525:21 526:5 526:19 527:8 527:14,18,23 527:24 528:2,7 528:7,10,11,13 528:15,16 529:5,8,10,11 529:12,17,18 529:22 530:1,1 530:6,13,16 556:11 564:18 565:16 575:19 611:18 614:24 643:12 drills 524:7 528:2 drive 354:6 driven 373:22 ds 653:9,10,12 653:13 ducs 396:22 398:22 448:18 450:4 due 458:14 479:3,21 506:12 542:1	564:22,23 570:4 duly 475:3,8 663:5 uplicated 572:9 uplicative 386:13 duties 582:14 duvall 391:15 391:23 dx 357:5 dylan 355:24 358:19 377:4 389:24 431:9 634:9 dylan's 612:5
			e
			e 355:1,1 356:1 356:1 357:1 358:1 359:1 360:1,22 361:1 361:5,8,10,12 362:1 363:1,16 363:16,16,16 364:1,1,1,1 365:1,1 475:15 475:16,18 652:18 653:1,1 earlier 401:19 401:20 448:6,9 461:15 505:9 506:7 549:1,8 555:1,4 561:18 593:13 608:2

<p>629:15 632:11</p> <p>early 458:18 570:3</p> <p>easier 401:8 477:25 636:20 657:5</p> <p>easily 491:22</p> <p>east 365:10 429:24 437:23 470:12 476:24 537:10,11,12 537:22,24 538:6,7 543:8 571:24,25,25</p> <p>easy 397:2 545:9</p> <p>economic 477:22 478:23 595:7 596:10 606:1 622:12 629:3 631:21</p> <p>economically 628:22</p> <p>economics 382:14,20 622:10</p> <p>economies 433:13 479:2 501:1</p> <p>economy 383:14</p> <p>eddy 399:3 550:20,21,23</p> <p>edit 653:19</p>	<p>edited 367:17</p> <p>education 481:25 582:4</p> <p>effect 391:25</p> <p>effective 477:22 570:2</p> <p>efficiency 402:15</p> <p>effort 547:5,8 630:13</p> <p>efforts 360:6</p> <p>eight 420:13 541:9</p> <p>eighty 487:20</p> <p>either 414:3 473:20 519:6 519:12 532:19 630:19</p> <p>elect 435:22</p> <p>election 400:12 435:19,20 436:2</p> <p>elections 400:10 436:25 519:6,12</p> <p>eleven 473:15 473:15</p> <p>elicited 605:13</p> <p>else's 478:1</p> <p>email 361:19 361:21 365:7 392:14,20 393:17 394:3,8 394:13 395:10 395:11 396:13</p>	<p>396:14 420:25 447:23 448:9 448:12 451:21 452:4 453:13 454:12,13,14 454:19,22,23 457:4 511:4,6 511:9,17 512:2 513:7,15 547:2 579:17 657:16 661:3</p> <p>emailing 458:18</p> <p>emails 364:12 392:7,13 448:5 546:23 548:24 638:10 647:19</p> <p>emoji 388:5 401:19 433:19 433:21 499:17</p> <p>employed 422:13 481:20 581:23,25 663:11,14 664:8,11</p> <p>employee 663:13 664:10</p> <p>employees 468:6,6,10,10</p> <p>encouraged 512:11</p> <p>ends 366:4</p> <p>energy 353:2 355:14,17 356:6,7</p>	<p>enforce 563:25</p> <p>engage 477:21 497:12 498:2 546:4 548:23</p> <p>engaged 480:12</p> <p>engineer 359:8 359:17 486:5 486:13 587:6 589:7 590:7 595:23 596:9 598:24 599:5 621:25 630:4 631:14,19 632:22</p> <p>engineer's 631:16</p> <p>engineering 423:11 444:19 582:19 587:5 588:21 589:15 599:2,11,21 601:16 605:25 623:20 631:8</p> <p>engineers 587:13</p> <p>ensure 395:18 452:9</p> <p>ensures 477:20</p> <p>entail 630:4</p> <p>entire 389:23 411:11,17 412:6 552:15 601:4</p> <p>entirety 385:6 463:5,8 568:21</p>
--	--	--	--

<p>568:22</p> <p>entities 458:8</p> <p>468:3</p> <p>entity 423:8</p> <p>549:15 574:25</p> <p>entries 447:17</p> <p>entry 523:22</p> <p>environmental</p> <p>478:23</p> <p>eog 355:20</p> <p>407:14 408:7</p> <p>409:12,15</p> <p>410:6,12,21,24</p> <p>412:5,15 415:9</p> <p>416:4,14 417:2</p> <p>417:16,17,23</p> <p>418:3,6 420:8</p> <p>421:4,22,24</p> <p>425:18 427:3</p> <p>445:14,21,23</p> <p>446:1,4,5,11,17</p> <p>466:5,22 467:4</p> <p>607:8,13 609:1</p> <p>609:4,11 656:4</p> <p>eog's 409:11,14</p> <p>445:8 446:17</p> <p>446:21 607:18</p> <p>equal 455:13</p> <p>617:23 625:15</p> <p>626:9,13,18</p> <p>627:4</p> <p>equally 627:14</p> <p>627:17 634:1</p> <p>635:6,10</p>	<p>equipment</p> <p>523:2,9 524:17</p> <p>equipping</p> <p>522:14</p> <p>equity 422:21</p> <p>equivalent</p> <p>462:12 490:22</p> <p>490:25 491:1</p> <p>567:14,19,21</p> <p>567:22</p> <p>error 572:9</p> <p>es 652:19,24</p> <p>663:4</p> <p>especially</p> <p>449:23 505:13</p> <p>565:21 573:18</p> <p>590:19 646:24</p> <p>essentially</p> <p>380:6 381:9</p> <p>480:4 566:2,15</p> <p>566:16 637:7</p> <p>estimate</p> <p>377:23 388:18</p> <p>524:10 525:20</p> <p>551:5 559:7</p> <p>577:4 597:15</p> <p>estimated</p> <p>375:11 379:18</p> <p>447:16 522:13</p> <p>596:2,16</p> <p>estimates</p> <p>479:20 595:10</p> <p>597:9,12</p> <p>598:10 623:11</p>	<p>estimating</p> <p>375:17</p> <p>et 494:5</p> <p>eur 360:16,20</p> <p>374:22 375:9</p> <p>404:14 461:7</p> <p>589:22 595:17</p> <p>595:23,24</p> <p>596:1,5,6,9</p> <p>631:19</p> <p>eurs 379:19</p> <p>380:1 382:3</p> <p>404:12</p> <p>evaluate</p> <p>505:18 512:15</p> <p>513:5 582:17</p> <p>601:8</p> <p>evaluated</p> <p>511:1 512:5</p> <p>554:9</p> <p>evaluating</p> <p>477:4,15</p> <p>478:17</p> <p>evaluation</p> <p>478:18 587:1</p> <p>588:22 589:14</p> <p>601:12 615:1</p> <p>evaluations</p> <p>480:23</p> <p>evd 358:2</p> <p>359:2 360:2</p> <p>361:2,16 362:2</p> <p>363:2</p> <p>evening 385:23</p>	<p>event 479:8</p> <p>evidence</p> <p>368:22 370:8</p> <p>370:20 371:3</p> <p>385:22 386:15</p> <p>386:18 387:16</p> <p>405:16,25</p> <p>406:22 418:20</p> <p>476:12 486:8</p> <p>494:14,17</p> <p>496:18 517:19</p> <p>584:3 607:11</p> <p>607:12 646:4</p> <p>646:25 647:15</p> <p>647:22 648:7</p> <p>649:6,13,15,20</p> <p>651:13,19</p> <p>652:9 653:3</p> <p>evident 627:22</p> <p>evidentiary</p> <p>656:8</p> <p>ex 358:16,17,25</p> <p>359:5,6,15</p> <p>360:21 622:1</p> <p>622:10</p> <p>exact 389:4</p> <p>416:9 424:13</p> <p>426:22 427:9</p> <p>429:9 437:11</p> <p>453:8 530:24</p> <p>610:21</p> <p>exactly 367:24</p> <p>411:15 462:16</p> <p>500:9 525:19</p> <p>531:5 584:13</p>
--	--	--	---

[exactly - examiner]

584:17 656:2,3 exam 558:23 559:8 examination 372:9 418:24 422:7 467:18 471:22 481:14 514:18 515:21 579:3 581:18 585:17 602:11 633:21 647:19 647:25 examine 515:15 558:6 606:3 examined 410:13,24 411:2 475:5,10 examiner 354:4 355:3,14 365:2 365:19,25 366:3,11,22 367:3,10,11,12 368:3,9,16,23 369:3,10,13,18 369:21 370:3,9 370:12,14,18 371:4,8,13,16 371:23 372:3,6 373:7 383:19 383:22 384:4 384:10,15,20 384:23 385:2 385:13,17,25 386:4,9,14,19	393:25 394:5 394:10,14,18 394:22,24 395:4,6 399:18 399:23 403:10 404:20,22,25 405:14,19 406:1,6,20 407:1,4,7,12,19 407:22,25 408:3,11,14,16 408:21,25 409:3,8,18,23 410:5,9,17 411:7,16,20,24 412:3,8,14,22 412:25 413:4,9 413:13,17,22 414:1,5,9,19 415:2,14,23 416:6,9,12,15 416:17,20 417:5,7,8,21 418:4,21 419:1 419:2,6,9 422:5 433:8 439:21,25 440:5,11,15,18 440:23 441:2,9 441:13,23 454:3,6,10 456:16,17,18 456:24 457:2,7 457:10 458:12 459:9,20 460:7	460:11,14,21 461:4,10,14,20 461:25 462:5,8 462:16,23 463:3,10,14,18 463:24 464:7 464:11,20 465:8,18 466:4 466:19,24 467:3,9,13,15 471:15,20 473:5,8,13 474:1,5,8,12,15 474:18 475:11 475:17,20,24 476:4,11 481:10 484:1,4 484:8,11,14,18 484:20,23 486:9,20,25 487:3,8,15,20 488:1,7,11,14 488:22 489:1,7 489:11,15,17 489:22 490:1,9 490:12,15,19 491:3,7,11,15 491:17 492:2,9 492:13,18,21 493:5 494:1,18 494:22,24 511:20,23 514:14,23 515:1,4,5,6,10 515:19 517:20	517:24 518:2,5 518:11,14 521:21,25 522:3 524:22 525:4,12,22 526:23 528:23 529:2 531:20 536:12,17 540:24 541:6 541:10 551:14 551:22 552:11 553:3,18,22 558:5,10,15 559:4,11,15,19 559:21 560:4,5 560:6,7,13,18 560:22 561:3,7 561:12,24 562:5,9,13,20 563:2,10,12,16 563:21 564:3 564:10,15 565:2,13,20,25 566:7,14,20,23 567:3,12,17 568:1,7,11,20 568:24 569:4 569:10,17,21 570:8,15,19,25 571:6,10,16,23 572:3,8,13,23 573:4,9,12,25 574:6,8,10,13 574:23 575:3,9 575:12,22,25
--	--	--	--

[examiner - exhibit]

576:6,13,20,25	631:1,5,10,22	654:23 655:2,5	371:18 403:7
577:8,13 578:3	632:7,10,12,17	655:10,12,16	425:20,24
578:7,10,17,24	632:20,25	655:24 656:2	427:7,9 493:21
580:18,23	633:1,6,8,9,15	656:14,19,21	647:12 649:22
581:2,7,15	633:17 634:14	657:3,9,15	650:10 651:9
583:17,25	634:17,20,24	658:1,6,8,11,14	652:10 653:23
584:9,12,18	635:14,17,18	658:19,21,24	653:24 655:7,7
585:16,19,23	635:19,24	659:6,10,24	655:11,13,19
586:1,7,10	636:2,6,14,17	660:4,9,14,17	excluding
587:7,11,18,24	636:19,23	660:19,22,24	377:16 427:10
589:9,17,25	637:5,14,18,24	661:9,13,15,18	exclusion
590:5,11	638:9,15,20	661:21,24	493:20
593:24 594:3	639:4,8,11,15	662:17,19	exclusive
595:21,25	639:21 640:1,3	examiners	494:12
596:4,11,17,22	640:5,8,12,24	374:7 379:12	excuse 377:2,15
596:25 597:13	641:2,8,13,15	403:19	399:19 417:8
598:22,25	641:18,22	examining	445:24 452:19
599:7 602:8,23	642:3,6,12,14	543:25	456:19 483:7
603:1,4 604:5	642:19 643:1,5	example 411:1	511:10 521:11
604:8,19,25	643:10,20	430:24 552:19	557:9 571:25
605:2,8,17	644:4,14,18,25	excellent	612:5,23
607:12,16,19	645:2,4,7,10,22	385:13,17	640:17 651:24
608:17,20	646:3,9,14,18	386:9 409:4	excused 473:6
609:17,22	646:22 647:4	except 493:16	581:5 635:22
610:4 611:1,5	647:10,24	516:5	execute 389:18
611:9,13	648:9,11,15,18	exchange	577:15
613:12,16,22	648:21 649:7	396:21 549:4	executive
614:2 615:4,7	649:16,21,25	573:18	355:24 564:9
618:2,7 620:22	650:6,9,12,15	exchanges	exhibit 358:5,6
621:3,6,10,13	650:21,24	447:23	358:7,9,12,13
624:3,6 628:1	651:5,14,20	exclude 630:19	358:15,16,17
628:2,3,6,10,11	652:3,10,15,17	632:14	358:18,20,21
628:14,20	652:22 653:5,8	excluded	358:22,23,24
629:4,10,19,22	653:16,25	368:24 369:25	358:25 359:5,6
630:5,6,8,17,23	654:5,8,11,18	370:19 371:10	359:7,9,10,11

[exhibit - exhibits]

359:13,15,16	429:7 430:19	546:6,20	exhibits 364:4
359:18,20,21	433:16 434:23	556:22,24	366:6 367:15
359:23 360:5,7	435:17 436:25	557:22 560:9	368:18 370:15
360:8,9,11,13	439:7,8,12	564:11,17	371:18 389:9
360:15,16,17	440:7,8,10,12	566:2,4 569:5	389:15 401:14
360:19,21,22	445:3,4 448:7	571:12 574:14	405:3 419:16
361:5,8,10,12	460:9,24 461:6	574:21 583:1,1	424:1,15
361:14,19,21	462:24 482:13	583:22,22,23	433:16 435:16
362:5,7,9,13,14	483:25 485:3,6	607:15,20,23	437:4 439:4
362:16,18,19	485:7,12	608:7,12	468:15 476:3,4
362:21,23,24	486:18,21	609:16 611:2,3	476:13,14,16
362:25 363:5,6	487:4,6,12,13	612:20 613:20	482:10,13,17
363:8,11,14,22	488:4,20	613:23 623:2	483:20,25
367:21 368:1	489:13 490:4	624:17 627:22	484:5 485:17
368:20,20	490:20 491:18	630:6 634:21	485:21,24
369:1,1,5	491:19 493:3	634:22 638:5,7	486:16,19
370:1,5,5,6	493:20 494:13	638:12 643:6,7	490:5,17 492:1
371:1,1,6,9,24	494:16 495:5,9	643:15,18,23	492:17 493:14
372:2 373:16	496:2,21	643:24 645:14	493:15 495:3
374:3 376:25	498:13,15	647:21 648:5	495:22,24
378:21 379:6	499:17,17,18	648:13,16,19	496:17,21
382:17,24	500:2 501:19	648:25 649:4,8	498:5,6,9
385:7,18,21	501:22 504:16	649:8,10,10,11	504:12 511:17
386:17 388:1	504:16,18,24	649:11,14,14	516:23 532:19
392:19,20,22	510:6,9 511:6	649:18,23	532:24 533:7
399:11 400:1	511:11,13,19	650:4,8,13	535:6 541:4,19
401:6 404:9,21	516:2,23 517:7	651:10,11,17	559:25 565:21
405:10,20,22	518:6 519:10	651:17 652:1,7	566:15 570:9
405:23 406:3,5	519:12 521:22	652:11,14	580:6 582:22
407:15 408:2,8	531:19 534:4	653:1,1,21	582:25 583:11
408:12 409:15	535:16,20	654:2 656:6	583:15,19
410:4,12	539:23 540:2,5	662:1	584:1,2,4,8,14
413:15 417:14	540:18 541:21	exhibited	584:15,24
418:1,19 419:3	543:19,23	492:23	585:12,15
419:16 420:5	544:24 545:2		586:4,17 587:5

[exhibits - facts]

<p>588:17 589:23 598:4,9 603:23 611:4 614:13 623:4 629:24 636:16 639:18 647:7,11,14,17 647:18 648:4,8 648:9 650:1,4 651:8,22,23,25 652:18 653:23 657:22 exist 531:5 existing 370:14 460:17 483:10 498:22 531:3 531:11 558:2 571:3 614:16 614:20 628:24 629:6 expand 606:17 606:20 expect 381:11 382:2 388:16 400:21 590:23 591:5 592:16 593:20 619:11 620:1 expectation 554:3,12 expectations 554:8 598:7 expected 374:12 383:7 549:2 597:20 598:4</p>	<p>expects 523:13 527:14,24 529:18 530:6 experience 389:21 459:21 468:6,10 479:6 479:14 480:9 481:25 501:5 502:11 503:20 503:23 504:1,2 549:24 578:21 582:4 598:2 experienced 479:13 expert 552:3 630:7 632:2 expertise 475:13 587:10 589:21 590:2 599:9 626:11 experts 417:16 expiration 507:12,18 expirations 505:19,20 564:23 expire 392:5,9 505:21 506:5 506:17,24 556:15,25 561:20 563:7 expired 557:3,4 expiring 506:11</p>	<p>explain 379:11 381:20 393:2 417:16 477:1 477:17,24 479:25 480:24 495:8 506:3 507:7 517:23 595:12 596:21 597:7 exploration 618:25 619:8 619:14,23 620:4,8,11,16 explore 458:6 expressed 496:12 extended 563:5 extension 557:16 extensions 557:18,20 extensive 479:14 480:8 480:12 510:3 extensively 511:5 extent 525:2 554:15 extra 637:25 extremely 477:18 658:5 eye 395:22 452:7,12</p>	<p>f f 382:19 face 459:18 566:25 576:17 facilities 359:9 479:1 483:11 483:12,18 485:10,14,18 486:4,6,12,14 486:15,17,23 486:23 487:5 487:25 488:23 492:16 493:3 495:11 522:14 523:2,9 524:17 531:3,5,8,11,13 531:15 558:3 facility 362:19 485:23 489:5 491:1 495:14 500:21 fact 414:22 417:15 431:20 447:14 467:21 494:8 506:12 516:6 613:18 factor 477:6 478:15 479:10 597:15 factors 478:4,6 478:16 479:15 481:4 500:6 620:6 659:5 facts 517:19 658:9</p>
---	---	--	--

[factual - first]

factual 477:11 fail 612:16 failed 630:15 failure 612:20 fair 374:22 429:21 431:11 449:6,8 450:22 453:12,16 500:11 516:15 523:11 527:13 527:22 529:16 530:4 537:1,7 537:19 548:22 566:15 600:7 646:24 659:16 659:18 fairly 400:13 faith 360:6 447:8 457:12 457:16 459:11 471:25 480:15 480:25 514:2 561:4,6 658:15 falls 374:24 familiar 486:12 540:17 541:14 541:17 546:21 549:19,21 550:25 551:3 561:8 562:18 600:14 610:10 610:14,20 611:21 fane 355:16	far 388:12 405:2 419:22 425:2 426:20 432:21 459:4 479:6,12 606:18,19 607:5 farley 391:14 391:23 farthest 470:20 fashion 497:12 fast 577:9 fault 369:14 favor 477:4 478:6 favorability 374:16 fe 354:7 feasible 415:8 feasibly 561:21 feature 522:10 522:17,23 523:7,15 february 557:2 557:4,4,6,10 fed 363:6,8,11 402:5 500:13 federal 383:7 479:11 502:7,9 517:1,15 519:3 522:6 534:6 568:9 feel 382:13 386:10 421:12 520:24 561:3	623:11 659:7 feet 379:18 381:8 400:23 437:22,22 469:2 537:9,12 537:15,22 538:2,6,7,8,10 538:12,18 615:21 616:5 616:13,14 626:1 fell 390:14 felt 549:2 field 355:8 475:13 626:11 fighting 404:2 figure 421:10 440:2 441:3 470:9 552:18 figured 660:24 figures 523:6 filed 367:21 457:24 484:17 489:6 files 570:5 filing 480:16 fill 541:16 625:20 filling 626:3 filtering 461:10 final 413:16,20 414:17,23 502:23 631:23 631:24 639:17	financially 663:15 664:11 find 389:8,14 392:20 405:12 406:20 415:25 418:9 435:12 439:2 440:19 442:6 486:24 512:9 521:1 592:12 639:10 645:19 finding 388:17 658:8 findings 657:24 fine 367:1 385:25 386:1,4 411:16 420:1,1 420:21 494:7,8 636:17 652:21 654:5 658:10 659:6,9 fingers 559:23 finish 559:13 559:18 finishes 651:25 firm 422:21 first 366:1 373:20 379:3 383:10 423:25 426:5 435:18 437:13,14 440:6 465:23 475:3,8,22 481:11 520:6 523:22 528:21
--	---	---	--

[first - full]

537:1,7,20 546:1,15 548:16 556:7 556:15 565:6 565:17,18 571:20 583:18 585:3 591:17 600:25 601:4 609:23 615:14 640:14 655:25 fit 568:17 five 380:18 402:23 416:16 418:15,22 419:12 450:19 454:4 466:1,2 474:3,16 511:22,23 628:5,6 637:20 647:19 661:19 661:21 fix 641:21 flawed 477:2 479:18 flew 458:1 flip 482:19 541:1 566:12 flippant 390:15 flipped 556:20 flipping 540:20 flow 360:18,19 383:4,9 403:23 403:25 404:14 404:14,17 420:16 431:8	463:1 464:4 465:4 662:13 flowing 383:14 fluid 625:21 fly 458:23 focus 419:11 469:16 495:2 658:12 focused 422:22 435:3 469:3 570:12 follow 629:23 followed 393:19 449:24 following 391:18 450:18 450:20 557:20 612:15 631:12 639:18 follows 475:5 475:10 foot 375:7 376:1,2 387:11 387:15 402:4,6 402:7 468:25 469:1 616:1,7 616:21 foot's 434:4 footnote 426:1 427:20 footprints 485:15 force 392:4 574:1	forced 445:24 457:24 466:10 561:9 foregoing 663:3,4 664:4 form 395:1 510:25 512:10 571:11 602:20 613:5 format 385:20 418:11 formation 376:9 594:4 602:18 618:20 formations 405:8 431:7,12 476:22 479:16 562:10 574:17 601:14 603:14 618:23 623:9 623:23 630:20 forth 447:12 480:17 572:18 forty 408:13 forward 395:25 452:15 521:20 576:21 601:9 found 406:7 589:2 four 379:21,23 380:6,9,10,11 380:18 381:15 381:24 382:2 431:20 434:12 478:20 490:22	509:12,15 558:17 573:13 593:23 628:7 frac 593:15 609:7 628:15 628:18 fracture 610:7 610:12,19 612:11 frame 614:3 framing 394:25 francis 354:6 frankly 516:4 frederick 458:19 free 459:6 658:17 frequently 459:24 freya 355:5 365:19 559:21 657:3 friday 646:21 646:23 660:1,3 660:6 front 372:19,19 476:2,9 533:19 566:3 573:6,11 586:5 606:22 636:25 659:12 frontier 355:8 full 364:9 377:19 397:3 419:19 420:24 422:1 424:13
--	--	---	--

448:20 457:21 481:19 582:10 582:11 637:19 637:23 638:10 fuller 397:5,7 398:12 415:21 448:22 450:13 450:15,17,23 451:2 454:13 455:2 456:2,7 547:5,12,13 fully 377:22 405:7 415:17 415:17 421:4 508:12 601:3,4 627:7 fun 568:18 further 366:24 374:12 471:13 514:21 555:22 596:19 633:6 635:16,18 663:13 664:9 future 373:24 388:12 444:8 458:10	483:17 582:9 582:20 gaston 356:6 gather 505:10 general 422:11 423:12 450:5 458:14 502:25 550:20 585:17 593:7 620:5,6 generally 381:11 399:4 433:12,14 470:7 472:19 495:9 generated 424:20 gentleman 604:11 gentleman's 590:2 genuinely 633:12 geographic 396:24 450:5 geographical 619:11 geologic 588:14 592:25 596:7 596:16 597:20 598:6,10,16 600:2 603:17 631:18,21 645:20 geological 587:15,22	588:3 589:12 590:13 592:21 595:2,9 597:8 598:3 599:24 600:6 601:13 631:4 geologically 587:16 589:4 592:13 595:15 603:15 605:23 606:8,9 geologist 356:7 356:9 358:19 538:22 558:24 559:7,8 582:1 582:12,14,17 587:6 589:18 591:2 596:5 597:7 599:16 geologists 595:24 597:11 644:6 geology 423:12 423:14 444:18 475:19 479:21 480:7 500:8 582:6 589:14 590:8,9 597:15 598:25 599:2 599:12 634:9 638:16 gerald 354:8 663:2,18 getting 380:9 380:10 388:17	430:8 447:6 459:7 464:10 553:7 558:22 597:16 634:15 658:22 662:5 girl 452:8 gist 577:23 give 366:5 398:14 399:19 405:20 418:15 418:22 430:23 432:2 451:15 470:13 494:24 513:4 518:7 532:3 541:7 542:12,20 544:16 575:18 582:14 584:18 586:11 601:15 608:21 621:25 622:16 658:17 662:4,8,14 given 373:25 377:18 450:15 455:11 497:5 542:3 569:13 604:18 gives 596:9 646:24 giving 374:19 396:24 419:11 620:5 glad 662:9 go 368:10 371:19,23
g			
g 365:1 374:15 428:10 623:3,5 635:3 game 477:21 gap 380:3 gas 382:9,10,11 382:12 383:1 398:21 422:22			

[go - good]

379:7 384:14 384:18 392:6 393:6 394:14 395:13 401:13 416:17 419:1 420:24 425:9 426:3 429:12 435:15 436:21 438:9 442:16 451:20 452:3 454:3 457:9 458:18 459:4 460:4 468:14 469:6 471:20 511:21 512:9 521:19 528:21 537:5 542:6 550:10,22 552:18 553:1 558:10,20 563:8,11 574:23 579:18 583:15 584:7 585:1,11 587:24,25 597:3 599:11 601:9 605:3 606:10 621:13 624:8 633:15 636:12 641:16 647:10 648:24 651:1 654:3,16 654:24 goal 395:17 416:1 460:6	goes 399:25 417:22 488:2,2 488:4 625:23 going 368:11 374:22,23 376:16 378:8 380:5,8 384:2 384:12 385:7 385:18 388:18 390:16,17 392:9,10 398:16 399:10 399:19 400:14 400:17 404:7 416:17 418:5 418:11,12,21 419:4 420:9,11 420:15 421:3 422:16 425:4,5 432:7 436:22 441:15 454:12 464:8 468:14 469:6 470:5 474:9,19,21 475:21 482:15 483:24 485:19 494:10,19 495:2,21 498:4 500:14 511:3 520:25 521:1 525:5,13 526:25 527:6 538:25 546:12 546:19 548:8 551:10,13	552:8 553:7 554:16,23 556:11 558:12 558:15,20 563:4 566:12 566:17 575:13 579:6 586:2,3 587:4 588:18 589:5 597:10 597:17 600:24 603:4,7 606:10 606:11 609:8 621:24 622:14 626:24 634:12 636:24 639:16 647:10,13 648:24 654:1,3 654:4,12,24 657:11 660:11 goliath 362:14 362:16 363:6,8 363:11 373:20 377:16 378:17 380:7 381:9 396:2,19 400:5 420:8 435:3,23 435:24 443:18 443:25 449:20 452:16,25 453:2 464:19 467:4 469:20 476:3 480:4 483:9 499:25 500:10,13 504:9 505:20	507:4,21 508:1 508:6 517:1,15 519:3 522:6 529:22 532:5 532:15 534:6 536:6,25 539:4 539:10,14,25 540:13,18 548:14 549:5 588:15 591:16 594:10 597:24 605:24 615:23 616:1,18 617:8 goliath's 374:11 good 360:5 365:2 367:8 370:18 376:7 388:17 393:12 414:25 415:11 422:9 444:25 444:25 447:8 457:1,1,12 466:18 471:25 473:14 474:1 474:13 476:9 480:15,25 481:17 514:2 515:10,18,23 515:25 561:4,6 575:4 581:20 592:16 593:20 602:13 636:3 637:5,24 648:22 649:8
--	---	--	--

[good - hardy]

656:19 658:3 658:15 659:4 661:9 gosh 581:15 govern 579:14 government 568:9 graduated 482:2,4 granted 478:3 481:6 granular 527:20 graph 381:4,6 428:6 461:4 462:18 463:9 graphs 461:18 461:22 463:19 grateful 395:21 452:7,12 great 386:23 400:13 405:19 409:4 476:1 541:6 570:14 621:13 greater 381:8 402:15 404:12 469:1,2 477:19 478:11 497:10 497:10 538:10 green 470:11 470:12 624:21 624:24 625:4 gregory 354:4 355:3	gross 358:24 ground 483:12 561:19 grounds 414:7 group 522:10 522:18,23 523:8,15 547:14 582:19 588:21 599:21 601:16 groups 524:17 guess 411:12 430:7 440:3 443:6 450:12 459:22 462:1 463:11,12,18 464:12 465:10 564:15 565:2 565:15 570:19 570:22 572:17 573:1,13 585:24 614:5 620:2 629:23 641:6 643:11 644:21 658:17 guidelines 612:15 gun 358:23 364:5 407:11 409:12 417:1 417:24 420:7 445:18,19 607:15 609:6 612:17,24 613:3 614:13	633:3 643:12 gunner 402:5 guys 365:7 449:21 458:25 639:16 642:21 h h 358:1 359:1 360:1 361:1 362:1 363:1 635:8 h2s 479:15 591:4 621:17 621:21,24 622:5,8,21 habit 572:18 haircut 596:9 half 380:9 400:2 405:10 421:25 470:19 543:17 544:11 544:16,20,22 545:1 582:2 601:2 hall 354:5 halo 570:23,25 hand 374:25 421:16 462:15 469:24 470:15 490:6 546:9 599:20 623:5 handed 407:8 407:13 handle 371:20 handling 579:14	handover 601:1 hands 474:23 happen 444:7 504:15 570:3 636:11 happened 640:23 happening 388:12 505:9 happens 380:5 577:13 happy 395:2 581:15 hard 372:12 493:9 harder 657:12 hardy 355:7,7 355:12 357:3,8 357:10,13 365:5,16,24 366:2,25 367:1 368:5,7 369:22 370:21,23 383:19,24 384:6,22 385:3 385:10,12,15 386:6,8,11 393:23 394:2,7 405:14,17,21 407:5,6 408:1 408:18,20,23 409:2,9,10,19 414:8,16 416:24,24
---	---	--	---

handover
601:1
hands 474:23
happen 444:7
504:15 570:3
636:11
happened
640:23
happening
388:12 505:9
happens 380:5
577:13
happy 395:2
581:15
hard 372:12
493:9
harder 657:12
hardy 355:7,7
355:12 357:3,8
357:10,13
365:5,16,24
366:2,25 367:1
368:5,7 369:22
370:21,23
383:19,24
384:6,22 385:3
385:10,12,15
386:6,8,11
393:23 394:2,7
405:14,17,21
407:5,6 408:1
408:18,20,23
409:2,9,10,19
414:8,16
416:24,24

[hardy - hardy]

417:4 419:7,8 419:10,22 420:2 422:5,6 422:8,9,16,20 423:2,6,10,16 423:20,24 424:3,6,10,14 424:22 425:2,6 425:11,15,20 425:25 426:3,7 426:11,15,18 426:25 427:6 427:11,15,19 427:23 428:2,9 428:13,17,21 428:25 429:3,6 429:12,18,23 430:2,5,11,14 430:18,23 431:4,14,19,23 431:25 432:4,8 432:11,15,20 432:25 433:4,7 433:8,10,11,12 433:15,19,23 434:6,9,14,19 434:21,22 435:6,9,15 436:1,5,9,12,17 436:21 437:3,7 437:12,17,24 438:3,8,16,20 438:23,25 439:3,6,11,13 439:15,16,21	439:23 440:2 440:12,14,17 440:21,24 441:6,10,20,22 442:3,7,8,14,18 442:24 443:5,8 443:15,22 444:6,9,12,15 444:21 445:1 445:11,14,17 445:21 446:1,7 446:10,15,20 446:25 447:3,7 447:8,11,14,19 447:22,25 448:4,13,23 449:2,6,10 450:22 451:1,5 451:8,13,17,22 452:1,5 453:1 453:5,12,17,22 453:25 454:4,7 454:11,12,18 455:19 456:14 457:5,9,10 467:21 468:16 469:7 470:25 471:18,21,23 471:24 472:6 472:11,16,23 473:3,15,24 474:2,7,11,14 475:21,23 476:12,18,20 481:11,13,15	481:16,18,24 482:9,12,15,23 483:3,13,19,23 484:2,7,10,13 484:16,19,22 484:25 485:1,2 485:5,11,16,22 486:9,10,24 487:2,12,17,21 487:24 488:6,9 488:13,15,16 488:19,21,24 489:4,10,14,16 489:21,25 492:13,14,20 493:2,22 494:21,23 495:1,6,7,16,21 496:5,11,16,20 496:23 497:2,6 497:14,18,23 498:4,8,11,17 498:20,24 499:2,5,9,12,16 499:20 500:1,5 500:12,17,22 500:25 501:4,8 501:12,18,22 502:2,6,9,13,17 502:20,25 503:4,10,16,20 503:24 504:3,7 504:11,15,22 504:24 505:4 506:3,19,23	507:2,7,13,17 507:20,23 508:4,14,17,21 508:24 509:2,4 509:8,11,13,17 509:20,23 510:2,5,12,16 510:20 511:3 511:12,16,19 511:20,22,25 512:18,19,22 513:1,4,8,14,20 513:23 514:1,4 514:8,12,24,25 517:18,22,25 518:4 524:20 524:23 525:8 526:21 540:24 541:3 545:17 551:10 552:8 553:16,20 558:22 559:1 571:17 572:25 573:6 578:24 579:2,4,5,12,17 579:23 580:4 580:13,16 581:5,6,13,19 581:20,23 582:3,13,21,24 583:4,7,10,13 583:20 584:7 584:10,17,21 584:22,23 585:1,10,21,22
---	--	---	--

[hardy - hearing]

585:25 586:11 586:12,13,14 586:20,24 587:11,12,23 587:25 588:1,2 588:3,7,16,24 589:10,11 590:1,4,10,12 590:13,16,21 591:1,7,12,20 591:24 592:5 592:11,14,20 593:2,6,9,18,24 593:25 594:11 594:12,16,25 595:4,8,12 596:13,14,20 596:24 597:4,5 597:6,22,23 598:1,8,12,16 599:13,14,15 599:22 600:3 600:10,14,18 600:21 601:6 601:11,19,22 602:2,6,20 604:3 607:10 608:15,18,19 609:20 613:5 613:10,22,24 615:18 617:25 618:4 620:24 620:25 621:9 624:7,15 632:18,19	633:11,14,16 633:20,22,23 634:4,8,12,15 634:19,22,25 635:1,2,7,12,23 636:1 637:2 639:21,24,25 640:2,4,7,10,22 640:25 641:7 641:11,14,17 641:21 642:2,5 642:8,13,18,25 643:3,9 644:3 644:10,15,17 644:23 645:15 645:18,23 646:6,12,17,20 647:20,23 648:8,10,14,17 648:20 653:6,7 653:14,20 654:17 655:15 659:9,20 660:1 660:3 661:7,8 662:18 hardy's 393:1 406:19 440:8,9 469:18 580:22 636:24 harkey 377:3 hart 355:10 hassle 570:23 570:25 hate 579:18	head 461:24 538:15 606:5 607:1 header 523:1 571:1 hear 394:6 510:14 565:12 heard 431:19 436:23 440:16 478:12 480:13 504:5 507:4 509:25 510:12 579:18 598:12 598:15 600:10 608:1 hearing 353:5 354:1,4 355:3 365:2,4,19 367:11,12 368:3,9,16,23 369:3,10,13,18 369:21 370:3,9 370:12,14,18 371:4,8,13,16 371:23 372:3,6 373:7 374:7 379:11 383:22 384:4,10,15,20 384:23 385:2 385:13,17,25 386:4,9,14,19 393:25 394:5 394:10,14,18 394:22,24 395:4,6 399:18	399:23 401:3 403:10,19 404:20,22,25 405:14,19 406:1,6,20 407:1,4,7,12,19 407:22,25 408:3,11,14,16 408:21,25 409:3,8,18,23 410:5,9,17 411:7,16,20,24 412:3,8,14,22 412:25 413:4,8 413:9,13,17,22 413:24 414:1,5 414:9,19 415:2 415:6,13,14,23 416:6,9,12,15 416:20 417:5,8 417:21 418:4,8 418:21 419:1,6 419:9 422:5 431:16 433:8 439:21,25 440:5,11,15,18 440:23 441:2,9 441:13,23 454:3,6,10 456:16,18 466:11 467:13 467:15 471:15 471:20 473:5,8 473:13 474:1,5 474:8,12,15,18
--	---	---	--

[hearing - high]

475:11,17,20	556:4 558:5,10	613:12,16,22	658:6,11,19,24
475:24 476:4	558:15,21	614:2 615:4,7	659:6,10,24
476:11 481:10	559:4,11,15,19	618:2,7 620:22	660:4,8,9,10,14
484:1,4,8,11,14	559:21 560:5,6	621:3,6,10,13	660:19,24
484:18,20,23	561:8 563:14	624:3,6 628:1	661:9,13,15,18
486:9,20,25	569:18 574:8	628:3,6,11	661:21,24
487:3,8,15,20	574:10,13,23	630:5,8,17,23	662:17,19
488:1,7,11,14	575:3,9,12,22	631:1,5,10,22	hearsay 418:8
488:22 489:1,7	575:25 576:6	632:7,12,17,20	heavily 477:4
489:11,15,17	576:13,20,25	633:1,8,9,15,17	heavy 396:22
489:22 490:1,9	577:8,13 578:3	634:14,17,20	448:18 450:4
490:12,15,19	578:7,10,17,24	634:24 635:14	held 547:18
491:3,7,11,15	580:18,23	635:18,19,24	562:24
491:17 492:2,9	581:2,7,15	636:2,6,9,17,23	hello 481:16
492:13,18,21	583:17,25	644:25 645:4	help 449:21
493:5 494:1,18	584:9,12,18	645:10,11,22	654:12
494:22,24	585:16,19,23	646:3,9,14,18	helped 587:13
496:17 504:12	586:1,7,10	646:22 647:4	helpful 380:23
505:25 511:20	587:7,11,18,24	647:10,17,24	384:13,17
511:23 514:14	589:9,17,25	648:9,11,15,18	416:1 608:14
514:20,23	590:5,11	648:21 649:7	657:20,23,24
515:1,5,6,10,12	593:24 594:3	649:16,21,25	657:25 659:22
515:19 517:20	595:21,25	650:6,9,12,15	660:7,10
517:24 518:2,5	596:4,11,17,22	650:21,24	helps 466:17
518:11,14	596:25 597:13	651:5,14,20	hereto 663:15
521:21,25	598:22,25	652:3,10,15,17	664:11
522:3 524:22	599:7 602:8,23	652:22 653:5,8	heritage 506:10
525:4,12,22	603:1,4 604:5	653:16,25	561:14
526:23 528:23	604:8,19,25	654:5,8,11,18	hey 375:3
529:2 531:20	605:2,8,17	654:23 655:2,5	450:19 455:1,4
536:12,17	607:12,16,19	655:10,12,16	456:5 458:19
540:24 541:6	608:17,20	655:24 656:2	458:21 494:9
541:10 551:14	609:17,22	656:10,14,19	high 384:25
551:22 552:11	610:2,4 611:1	656:21 657:3,9	385:6 594:22
553:3,18,22	611:5,9,13	657:15,21	594:23 595:2,4

[high - imminent]

598:17 599:24 600:1,6,8 602:18 603:12 604:2 605:25 621:17,21 622:5,8,21 629:14,18 644:6 higher 404:8 420:15,19 458:25 465:25 479:8 500:20 500:21 501:13 622:10,15 625:20,22 626:21 highest 404:2 highlight 374:7 376:14 377:19 379:21 404:1 highlighted 358:10 380:3 434:2 446:24 470:15 highlighting 373:19,21 374:9 375:6 377:11 378:15 378:18 381:6 381:24 383:3,6 383:12 389:21 390:14 393:1 395:20 397:10 400:10,19 402:19 403:1	452:11 highlights 404:10 history 387:19 420:25 hit 384:25 385:6 455:15 506:16 hmm 381:19 382:22 387:8 427:14,18 529:2,2 610:4 655:23 hold 396:2 440:5 441:13 452:17,20 496:24 540:25 567:24 602:23 602:24 651:1 holding 416:25 holds 477:13 497:14 hole 437:8,18 498:23 537:2,8 537:20 542:24 562:8 626:6 holidays 505:10 506:21 570:4 holland 355:10 homogenous 431:8,12 honest 581:3 hope 387:20 559:19 581:10	hopefully 401:8 503:6 634:13 hoping 366:5 horizons 562:14 644:7 horizontal 478:9 529:23 611:20 612:2 hours 515:3 house 482:7 hsu 635:10 hsus 635:5 huang 664:2,15 human 621:19 hurt 622:10 hypothetical 501:24 552:3 576:5 hypothetically 552:3 hypotheticals 552:4 553:8 i idea 546:16 558:19 ideal 396:2 452:17 identical 445:8 identification 368:2,21 369:2 369:6 370:2,7 371:2,25 392:23 405:24 439:9 485:8 487:14 496:3	504:19 510:10 544:7,8 549:12 566:5 574:22 583:2,24 638:13 643:19 648:6 649:5,12 649:19,24 651:12,18 652:2,8,12 653:2 identified 399:7 424:23 511:5 543:6,10 544:2 550:19 625:8 identify 506:8 543:2 548:4 550:12 554:4 554:13 585:3 identifying 438:17 549:3 ignores 480:2 ignoring 373:22 illustrate 374:16 485:13 illustrates 401:19 illustrating 411:1 imagine 385:24 538:19 imaging 657:18 imminent 507:18 614:17
--	---	--	--

[impact - initially]

<p>impact 382:12 502:4 576:1 577:18 impacts 478:22 629:5 impending 507:12 implications 359:21 360:11 important 401:18 402:24 403:18 477:6 477:18 479:10 497:7,24 579:1 644:15 impression 408:24 409:1 inability 563:8 inappropriate 612:21 include 463:5,8 463:15,17 482:13 486:22 512:20 514:9 530:9 532:17 532:22 534:4 565:22 613:21 614:13 632:13 638:5,22 642:9 653:21 included 365:10 410:14 413:14 429:10 445:18 468:17 486:16 523:16</p>	<p>524:11 526:9 526:10,19 532:24 533:7 535:6 560:9 564:11,17 571:11,12 575:4,8 576:15 576:23 613:19 637:9 640:16 640:19 includes 447:16 476:25 510:23 522:23 573:14 including 402:13 479:1 479:23 481:4 493:6 578:17 601:8 incorporate 595:9 598:3,6 599:1 incorporated 443:10 597:8 597:19 598:9 incorporates 596:15 incorporating 423:21 incorrect 435:19 517:22 641:9,19 increase 622:11 increased 501:15 595:16</p>	<p>incrementally 381:12 incumbent 512:8,8 incur 523:13 527:14,24 529:18 530:6 622:9 incurred 522:13 index 613:20 657:6 indicate 387:19 433:24 624:23 indicated 620:13 626:19 indicates 623:5 625:4 643:13 indication 521:17 598:9 641:23 individual 397:8 individually 654:16 industry 387:12,18 504:1 582:8 619:3 inefficient 380:12 inflation 388:14 403:2 inform 505:21 547:15</p>	<p>information 376:11 383:20 383:22,24 485:18 486:14 486:17 489:6 489:18 491:24 492:15,23,24 493:7,9,13 494:3,9 513:5 525:11 527:5,7 527:9,10 547:21 561:2 579:20 580:10 580:14 630:12 645:20,24 646:2 informed 408:6 informs 547:2 infrastructure 359:10 initial 388:25 389:2,6,8,11 400:9 413:15 417:15,18 438:15,18 439:14,17,19 439:24 440:20 441:7,12,16 442:1,5 500:19 519:9,25 531:1 561:8 initially 397:4 400:8,12 448:21 562:2</p>
--	--	--	---

input 466:14 603:2 631:16 632:23 659:1 inputs 587:15 inquiry 547:21 insert 490:14 instance 462:9 571:7 622:8 658:4 instructions 367:22 369:8 373:7 intact 395:19 452:9 intangible 522:18,24 integrate 505:11 600:15 integrated 570:7 integrating 561:17 integration 505:8 506:7 601:25 intend 443:18 443:25 444:3 508:1 524:6 538:16 569:16 intends 528:1 529:20 530:12 565:8 643:13 intent 565:17 565:19,23	intention 506:18 556:13 interactions 447:12 480:14 interest 393:10 396:1 397:14 416:8 420:23 421:6,18 422:24 446:8 446:11 449:20 449:22 450:11 450:21 452:16 453:14 455:2 456:9 458:22 458:25 459:6 466:13,16 473:1 477:5,14 477:15,16,18 477:19 478:3 481:5 495:23 496:6,9,10,24 497:2,7,10,15 497:20 502:18 508:6,10,13 510:25 512:12 513:9 514:10 532:5,14 536:5 543:3,13,20 544:10,15,21 544:25 545:3,6 547:4,6,9,18 548:2,7,21 549:5,14 554:13 560:15 561:9 563:25	566:9 567:5,7 567:10,15,19 567:22,23 568:3,5,8,12 569:7 571:8 574:16 575:8 575:11 576:2 577:4,6,11,19 578:11 580:1 642:24 644:12 interested 361:6,9 395:24 396:5,17,19,21 421:13 448:17 449:17,19,19 450:2,16 451:18,25 452:2,14,23 453:7 455:3,4 455:5,6,8,25 456:10 458:20 513:10 632:11 663:15 664:12 interesting 402:4,7,11 interests 397:16 422:23 549:3 550:13 554:21 560:20 560:24 interpreted 513:18 interrupting 399:19 417:10	interval 586:25 591:18,25 592:1 594:13 intervals 477:1 479:23 480:10 585:3 586:21 587:13 594:23 599:24 600:3 603:11 604:1 607:9 620:14 629:11 introduce 406:21 introduced 647:17 introducing 621:2 introduction 417:14 investigation 426:23 investment 355:23,25 356:5 390:2 422:14 investments 356:4 involve 560:16 involved 600:19 involves 478:21 irregular 476:23 isochore 358:24
--	--	---	---

issuance 502:15 556:17 564:5,9 565:9 643:14 issue 415:18 558:12 603:11 614:18 issued 435:12 482:21 519:22 556:15 557:1,5 557:7 561:9 577:25 issues 365:6 502:23 621:1 637:3 it'd 531:16 it'll 366:5 568:18 627:17 items 527:15	joinder 569:12 joined 353:9,10 353:14,15,16 353:19 juan 395:22 452:7,12 judge 605:9 july 400:9,9 411:9,17 412:2 412:5,9,13 413:5 415:9 417:2,23 436:6 439:24 441:7 466:10 516:17 519:22 520:15 520:20 531:24 532:4,18,23 533:17,24 534:9,11,12 535:5,10,14,16 536:1 539:1,3 539:4,9,10,25 jump 391:8 jumping 515:16 602:16 june 361:7,13 389:4 justifies 431:12	655:8 key 420:10 kick 392:10 kicked 419:4 638:5 kind 366:13 377:19 382:13 427:20 457:20 463:5 490:13 492:7 493:9 557:13 561:1 565:14 566:8 566:24 571:20 572:19 575:20 577:3,9 578:21 578:21 623:22 knew 392:5 know 365:12 366:16 368:18 374:9,20,23,25 375:2,3,4 378:10,16,17 379:14,20 380:7,9 381:5 381:8,10,10 382:8,9 383:3 383:5,8 384:16 385:4 387:13 387:16,17 388:11,14,14 389:5,21,25 390:7,10,14,15 390:20 391:15 391:19 392:6 393:15 395:25	396:5,18 397:11,13,15 398:4 399:4 400:4,7,11,13 400:14,16,19 400:20,24 401:11,23 402:2,5,7,7,9 402:10,10,15 402:20 403:1 403:21,21,24 404:1,1,4,5 407:8,23 410:12,12,13 411:14 417:12 420:11,17,20 420:22,24 421:1,4,11,12 424:13 426:19 427:6 431:5,7 431:8 432:3,24 439:22 441:16 448:11,17 449:2,18,25 450:8,9,11,19 450:20 452:15 452:23 453:10 455:4,7,9,17 456:7,9,9 457:18,20,23 457:24 458:2,2 458:4,4,7,17,18 458:19,21,22 458:24 459:2,3 459:4,4,5,6
j	jump 391:8 jumping 515:16 602:16 june 361:7,13 389:4 justifies 431:12		
j 435:10,11 jackie 355:12 jaclyn 355:12 jacob 356:7 january 557:1 569:23 joa 442:20 446:12 497:5 503:21 569:15 569:16,19 579:13,14 joas 442:22 job 354:9 john 434:2	k		
	k 475:19 keep 494:14 559:22 579:1 590:1 606:11 keeping 395:22 452:7,12 647:9		

[know - left]

460:1 461:14 461:20 462:1 462:20,21 464:4,9 465:1 465:4,23 466:1 466:2,9,12 472:17,21 484:2 487:4,6 488:9 489:18 509:13 512:1 512:11,14 513:9 516:9 518:1 520:2,4 520:15 522:22 523:15 524:12 525:6,10,18,24 526:10,14,16 526:22 527:4 527:12,21,25 528:3 529:1,1 529:15,19 530:3,8,18 535:17,19 541:11 542:14 542:22 544:18 551:15 552:14 552:16 553:5 556:18 576:10 576:22 579:7 579:11 605:5 605:12 606:23 607:2,5 608:4 613:17 614:4,5 617:13 622:18 622:19,22,23	624:24 626:2 636:10 637:2 638:2 643:6 647:25 656:24 656:25 658:22 659:24 661:5 662:7 knowing 397:3 448:20 561:20 knowledge 392:4 501:3,4 501:7 502:13 525:9 526:17 536:8 540:15 542:1 562:16 575:24 580:12 580:15 596:15 618:23 663:10 664:6 known 506:9 knows 577:2 613:9	475:16 481:23 482:1,5 486:10 505:21 513:12 525:3 549:11 555:14 landed 587:3 landman 356:6 482:6 638:25 landmen 453:17,21 language 365:10 618:8 large 430:9 449:7 477:8 479:3 512:23 592:19 594:8 lateral 387:11 387:15 400:23 402:2 433:25 434:4 500:8 laterals 375:7 405:10 464:22 538:17 law 355:5 lawyer 360:23 layout 381:3 lea 399:4 432:13,16,21 476:24 478:9 479:7 481:23 501:6 509:14 509:16 550:17 550:23 551:1 551:16 552:5,7 552:10,15,18	552:20 553:15 554:13,17 582:1,8 590:17 lead 378:8 leads 622:14 learn 547:16 learned 492:17 581:10 lease 362:10 395:19 396:2 452:9,17,20 507:12,18 567:7 568:5 644:13 leasee 567:10 567:18,25 leases 358:11 544:14 569:3 leave 365:12 538:20 leaves 652:17 leaving 378:18 381:15 382:7 598:13 led 396:12 left 375:9 391:22 402:23 464:24 465:11 470:15 489:2 490:25 492:7 523:18 567:18 576:8 623:5 626:25 639:19 639:19
	I		
	I 475:16,16,18 labeled 383:8 406:8 484:15 484:16 583:19 583:20 648:3 lack 360:5 388:7 390:4,6 392:8 442:25 592:24 610:7 land 356:8 405:9 444:19 453:19,20		

[legacy - locations]

legacy 500:15 506:11 561:15 562:17,18 legal 355:22 451:6 453:6,8 510:23 512:20 554:4 571:19 613:6 636:22 637:3 641:9 643:21 legend 625:3,4 length 434:4 478:11 500:8 570:5 lengths 402:2 433:25 lengthy 570:11 602:1 letter 358:12 361:5 362:13 362:17 412:4 477:12 496:15 496:16 497:5 517:7 518:25 519:17 520:16 520:20 532:4,8 532:11,14,19 532:24 533:14 533:17,24 534:8,12,16,24 535:5,9,11,15 535:16,24 536:1,4,9,12,22 539:1,1,3 540:1,10	569:14 574:14 574:24 575:1,4 580:8 639:12 letters 401:7 477:14 539:9 level 527:21 543:24 544:5 leverage 479:2 life 657:12 light 373:4 413:10 494:8 likely 402:18 502:21 likewise 462:14 limit 658:18,20 659:12 limited 418:2 479:19 525:5 593:17 657:23 658:5,13 line 369:23 385:20 387:13 395:17 396:24 399:2,5 437:22 437:22,23 448:19 450:5 452:14 455:7 469:9 516:24 517:13 518:17 519:1 537:10 537:13,22 538:6,7 551:11 561:22 648:25 648:25 654:13 654:15	lines 379:20 395:24 list 355:2 424:15,17 425:10,14 512:3,3 522:18 530:7 535:23 536:1 560:19 568:18 569:5 569:22 606:18 613:23 632:5 632:12 636:12 638:4 642:20 643:11 644:16 644:22 647:9 647:11 654:25 listed 393:13 427:2 429:10 466:20 496:12 504:20,21 545:20 561:2 573:13 579:8,9 613:24 637:19 638:23 listened 600:12 listing 427:20 litany 455:19 little 376:19 378:12 379:10 384:12 399:12 404:12 406:11 406:14,17 416:22 419:19 458:13 469:17 473:18 488:2	492:7 495:8 496:8,10,25 518:21 534:22 545:8 570:20 591:19 596:19 611:11,12 640:13 645:12 648:23 llc 355:7,8,9,10 355:13,18 llp 355:16 located 365:7 426:21 428:3,7 428:23 437:21 590:22 607:3 location 354:5 358:20 362:23 396:4,24 426:22 437:8 437:18 452:18 452:21 483:13 488:25 490:8 491:21 493:8 493:16,24 537:2,8,21 591:8 592:7,17 593:21 594:18 locations 486:11 492:16 494:5 498:23 499:14 508:22 509:5 542:25 562:8 571:11 571:13
---	---	--	--

log 460:12,16 461:15 615:12 615:21 616:19 617:1,15,21,21 617:24 618:14 618:15 625:10 625:10,16,19 626:22,22 627:3 634:5 logic 410:20 logs 460:8 617:16 618:13 618:16 626:5 627:21 638:23 long 469:4 476:8 502:9 505:12 553:8 558:19 587:21 644:20 645:19 658:17 longer 416:22 473:18 553:4 558:20 618:25 longfellow 355:17 356:6,7 look 368:6,7 383:10 385:11 386:7 392:18 394:12 400:13 420:24 421:11 424:11 426:11 427:11 431:7 434:7,25 436:22 437:3 444:21 454:2	464:4 478:15 489:19 499:16 501:18 503:4 512:7 523:25 540:5 560:1 570:21 584:8 588:16 600:21 609:4,24 618:12 625:19 634:11,13 662:4 looked 407:5 408:1 410:11 424:16,23 426:7,15 427:16,24 428:18 429:3 447:15 495:25 519:5 546:20 589:3 603:13 604:24 605:6 606:24 607:24 641:3 looking 375:2,2 379:14 389:7 401:24 402:2,3 403:23 412:22 421:5 427:3,21 429:15,19 430:14,18 439:23 444:22 461:6,8 462:8 462:24 464:13 464:25 465:23 466:19 516:3	518:24 520:23 522:1 523:5,21 534:17 535:20 537:6 567:20 569:8 572:19 573:1 574:13 580:7 586:14 592:5 609:3,25 615:13,14 637:8,14 640:9 641:24 642:1 looks 365:25 417:23 427:24 441:6 488:17 490:14 516:3 572:24 574:1 576:25 637:19 640:10,15,25 642:10 loss 377:24 lost 464:10 lot 429:14 431:6,15 501:5 504:3 505:14 505:17 509:23 510:13 512:2,6 527:5 559:17 578:20 600:10 638:3 653:10 653:18 lots 653:11 loving 455:9 low 449:22,22 479:6 499:25 595:7,14 627:2	lower 378:9 420:12,21 421:8,14 431:16 445:15 500:18 577:4,6 577:12 609:4 627:2,2 lp 355:17 356:6 356:7 luck 388:17 lunch 473:18 lund 610:15,18 lwd 529:17,21 530:1 575:19
m			
m 363:16 364:1 475:16 ma'am 376:5 376:15 496:22 510:15 528:5 534:19 539:21 544:19,23 546:22 556:23 583:3,6 585:6 586:19 588:6 595:11 607:1 607:25 608:10 610:9,13 612:3 617:18 621:23 623:7 626:11 634:3 641:18 made 393:18 448:14 455:25 493:12 500:14 506:9 541:22			

[made - marathon]

542:2 546:3 563:3,17 568:25 572:15 627:19 630:13 641:10,19 madera 395:20 452:11 mail 361:10 646:11 mailed 361:7 mailing 643:7 main 388:11 645:19 maintain 385:14 417:11 major 404:4 majority 478:2 478:2 make 368:11 372:7 374:4 379:10 386:19 396:3 397:1 401:8 403:3 412:1 429:13 449:11 452:18 452:21 454:2 455:17 466:17 513:11 533:12 535:2 545:8 546:7 547:5,8 552:2 553:6 566:19 572:4 572:16 582:19 589:3 601:17 605:13 606:1	618:15 625:17 627:7 630:8 638:17 644:6 655:7 656:22 657:5,12 660:5 661:4 662:5 makes 421:8 480:2 making 398:21 459:13 499:23 554:5,14 563:13,23 614:10 630:1 man 486:10 manage 459:22 459:23 management 355:23,25 356:5 390:2 422:14 482:3,5 511:2 564:24 manager 555:15 mandatory 612:19 614:10 614:15 manner 530:24 manners 417:19 map 358:15,20 358:21,24 362:8,23,24 364:11 429:14 429:14 430:1,6 463:11,15,17	463:25 464:3 464:22 465:7,9 467:5,7,8 469:9,19 490:18 492:10 513:2 566:2 570:21 638:6 maps 618:19 644:12 marathon 355:8 361:18 362:4,7,14 363:4,19 364:13 365:4 377:6,16 378:4 378:6,17 379:4 380:7 381:9,21 381:24 383:2,5 383:6,11 389:10 390:5,9 390:23 391:13 391:17,17 392:1,22 395:20 398:1 400:5 402:7,17 405:7,23 411:6 415:12,17,22 416:14 420:25 421:21,25 431:23,25 432:11 434:11 435:2,12,25 436:25 439:8 442:6 443:1,2 443:10,17,24	444:2,9,12 446:5,5,13 447:11 452:10 457:13,15 458:15,17 459:11 471:1 472:7,16 476:21 477:5,9 477:12 478:6,7 478:17,19 479:6,11 480:3 480:12 481:6 483:8,10 485:7 485:10 487:13 494:16 495:18 496:6,8 498:17 498:25 500:15 501:5,23 503:12,12,25 504:4,18 505:7 505:15 506:10 506:11 507:3 507:14,21,24 507:25 508:5 508:10,14,21 508:24 510:3,9 511:6 514:2 516:17 523:12 524:6 527:14 527:24 528:1 529:18,20 530:5,12 531:2 532:4,7,13 536:4,9,23 537:1,7,19
--	--	--	---

[marathon - mean]

538:16 539:2,3 539:24 540:12 542:10 543:24 544:3,5 546:3 546:15,24 547:23 558:2 560:8,14,19 561:4,10,13 562:3,17,18,21 562:23,24 563:2,12,17 564:3 565:7 566:4,25 569:12,19,25 570:1 573:14 574:1,21 583:1 583:22 589:8 592:7 594:14 594:17 595:8 598:13 599:23 600:16,23 601:24 612:16 612:23 614:12 614:23,23 623:18 628:23 630:15 631:6 633:2 638:11 643:13,18,22 647:14,17,21 648:5,23 marathon's 359:21,23 360:5,7,9 373:12,20 374:17 382:21	383:18 387:14 388:7,21 390:4 392:19 398:8 401:20 402:20 405:3 412:18 423:18 431:16 442:9 444:15 446:19,23 448:7 474:20 477:16 478:3 478:21,24 479:5,12,13 480:7 481:5 486:15,19 493:14 495:10 496:13 497:3 499:21,24 500:18,22 503:2,7 504:8 506:4 514:5 516:15 531:12 561:15 565:17 574:14 602:3 615:1 624:14 644:5 647:13 651:22 654:21 march 361:21 390:13 458:18 459:5 639:5,6 mark 565:12 marked 368:1 368:21 369:2,5 370:1,6 371:2 371:24 392:22 405:23 407:15	407:18 417:1 418:1,14 435:10 439:8 485:7 487:13 496:2 504:18 510:9 566:4 574:21 583:2 583:23 624:21 638:12 643:18 648:5 649:4,12 649:18,23 651:11,18 652:2,8,11 653:2 market 388:14 marks 369:4 mass 654:9 massive 478:5 481:4 master's 582:10 matador 355:11 397:1 397:13 402:3 427:3 448:19 450:8,10 612:23 match 498:22 matching 573:5 material 413:14 materials 418:3 math 538:14 matter 353:5 533:7 547:18	564:23 matters 482:1 636:9 matthias 355:19 maximum 399:20 611:19 612:2 mboe 375:19 382:7,8 383:1 383:2 404:17 mcclure 355:14 367:8 384:17 415:24 456:16 471:24 472:18 515:2 559:17 560:3 576:21 604:10 605:9 614:7,8 628:1 630:18 632:7 632:24 635:15 636:10 644:10 644:24 645:1 645:21 646:24 647:6 657:20 659:15 660:11 660:16,20,21 mcclure's 471:19 472:12 631:23 656:7 mcf 382:11 mclean 355:7 355:12,12,12 mean 371:17 386:12 393:21
--	---	---	---

394:16,24 407:17 430:7 440:3 443:6 454:24 462:19 465:10 492:16 492:20 507:14 517:25 549:11 549:17 550:17 555:20 564:13 566:13 567:4 578:11 580:24 587:25 595:5 609:19 613:17 614:22 622:7 636:19 646:7 646:15 655:21 658:21 659:25 660:1 661:19 meaning 537:21 meaningful 378:10 381:7 402:16 435:7 means 380:7 507:8,17 595:6 meant 409:6 573:15 579:23 640:13 measuring 434:3 meet 513:20 meeting 457:25 515:17 mention 500:9	mentioned 445:6 455:20 480:10 512:13 531:2 593:13 mentions 505:19 546:16 merged 600:24 merger 391:17 391:19 392:1 402:17 443:4,6 443:13 met 447:19 methods 401:23 metrics 491:2 512:7 mewbourne 396:25 448:19 450:8,10 mexico 353:1 355:3,5 391:21 399:5 423:3,5 432:2,9 468:11 478:10,14 479:4 482:25 501:6 509:9,19 509:21 553:9 582:2 663:20 microphone 410:3 454:23 515:19 mid 363:12 middle 492:3,6 522:8 571:20	midland 447:20 455:10 458:1 513:21 midline 455:10 mile 379:16 405:10 424:7 424:21 425:7 426:8 427:17 427:25 429:4 430:25 431:11 461:12 470:6 470:13,13 479:20,22 588:9 590:20 590:22 606:14 606:14 miles 375:4 423:13,15 424:25 425:5 425:21 426:16 426:20 428:18 428:22 430:15 430:25 431:3,6 463:21 469:8 469:12,16 470:9,10,17,17 470:19,22 478:11 588:10 590:14 592:15 593:20 606:10 miller 356:8 357:9 361:20 362:6 363:18 392:16 393:2,4 393:17 394:8	395:10,11 397:19 405:5 440:14,15,19 447:20 474:11 474:12 475:2 475:15,15,22 475:24 476:3 476:15 481:16 481:17,22 482:2,11,14,18 483:2,6,15,22 485:2,4,9,13,20 485:25 486:10 487:3,6,10,22 490:3,6,11,13 490:16,21 491:6,9,15,16 492:22 495:2,7 495:10,18,21 496:4,8,14,19 496:22,25 497:4,9,17,22 497:25 498:7 498:10,16,19 498:21 499:1,4 499:8,11,15,19 499:23 500:4,6 500:13,19,24 501:3,7,10,16 501:21 502:1,5 502:8,11,16,19 502:24 503:3,9 503:14,18,23 504:2,6,10,14 504:20,23
--	--	--	---

[miller - minutes]

505:1,6 506:6	531:10,16	556:23 557:2,6	487:1 491:18
506:22 507:1,6	532:1,6,10,16	557:9,13,19,24	million 374:10
507:9,16,19,22	532:20 533:1,8	558:4 559:14	375:17 378:19
508:3,9,16,19	533:16,21	560:3,5,7,12,17	383:5,13 551:6
508:23 509:1,3	534:2,5,9,13,15	560:21,24	551:9,21 552:5
509:6,10,12,15	534:19,25	561:5,11,14	552:7,20 553:9
509:18,22	535:3,7,17,22	562:4,7,11,16	mills 530:5,10
510:1,4,11,15	536:2,8,15,24	562:25 563:6	530:13,16
510:18,22	537:12,17,25	563:11,15,19	575:19
512:1,21,25	538:4,9,14,19	564:2,6,12,19	mind 396:10
513:3,7,12,18	538:24 539:6	565:11,19,24	419:20 456:23
513:22,25	539:13,17,21	566:3,6,11,16	457:19 525:15
514:3,7,11	539:24 540:5,8	566:22 567:2,6	540:20 545:7
515:12,18,24	540:15,20	567:16,21	548:17 608:13
515:25 516:8	541:5,12,16,22	568:2,10,16,22	625:8 639:2
516:12,18,25	542:1,6,12,17	569:2,9,13,20	657:14
517:4,10,14	542:20,24	569:25 570:11	mineral 544:11
518:22 519:2,7	543:4,9,12,16	570:17,23	544:21 567:19
519:10,14,19	543:21 544:1,7	571:4,5,9,13,14	568:8
519:23 520:7	544:13,19,23	571:18,21,22	minerals 353:2
520:11,17,22	545:2,7,12,19	572:1,7,11,17	355:14
521:4,7,11,15	545:23 546:3	572:22 573:3,7	minimum
522:7,11,16,21	546:11,18,22	573:8,11,16	502:12
523:4,10,14,20	546:25 547:7	574:5,7,11,12	mining 582:8
523:24 524:2,5	547:11,13,17	575:2,6,11,17	minority
524:8,11,16	547:22 548:1,6	575:24 576:3	397:13 497:25
525:1,15 526:7	548:11,15,25	576:12,14,24	minus 411:12
526:12,15	549:9,12,18,21	577:5,10,20	minute 400:2
527:10,15,20	550:2,5,8,14,19	578:5,8,13,19	419:5 454:1,4
527:25 528:3,5	550:23 551:2,7	579:10,16,22	468:15 474:3
528:9,14,18,25	552:17,21	580:2,12,15	474:16 624:1
529:7,11,14,19	554:7,15,23	644:11	628:5,6
529:23 530:3,7	555:5,8,14,18	miller's 396:8	minutes 399:20
530:11,14,18	555:22,25	405:6,17,21	402:23 416:16
530:23 531:6	556:7,13,16,20	406:24 442:15	418:15,22

[minutes - negotiate]

419:12 434:25 454:6,7 494:25 511:22,24 584:19 mispronounce 456:25 misquote 548:19 missed 638:2 missing 488:7 525:25 575:15 644:16 650:2 661:7 misstates 526:21 602:21 607:11 mistake 400:25 misunderstand 616:21 misunderstan... 535:23 misunderstood 616:22 617:4 mm 381:19 382:22 387:8 427:14,18 529:2,2 610:4 655:23 mmboe 374:11 model 622:1 moment 385:8 406:21 410:1 527:11 565:9 584:5 603:2 604:20	monday 660:5 661:16 money 478:1 monitoring 417:13 month 388:22 388:22 401:2 442:10,11 550:4,7,9 557:20,20 645:12 months 387:23 400:4 480:13 502:12,22 506:16 552:6 morning 365:2 367:8,17 369:9 422:9 434:23 481:17 645:9 move 366:15 527:1 551:24 553:24 555:22 576:21 652:3 moved 565:15 582:9 moving 389:16 395:9 585:15 mro 358:16,17 358:25 359:5,6 359:15 360:21 396:1,4 multiple 421:1 421:2,2 435:4 471:11 546:4 626:5	mutual 460:6 mutually 494:12 mwd 529:17,21 530:1 575:19 n n 355:1 356:1 357:1 363:16 364:1 365:1 475:15 name 420:9 456:20 475:12 481:19 name's 397:12 named 397:9 names 453:10 498:22 512:23 532:5,9,12 533:4,11 534:1 536:6 539:8,14 656:24 naming 396:23 450:17 natural 353:2 355:15 nature 573:15 ne 582:1 near 393:12 572:20 nearby 403:25 403:25 618:20 nearest 622:20 nearly 435:13 necessarily 369:21 397:10	529:6 necessary 486:13 493:13 526:18 554:13 need 365:12,13 365:13 366:20 405:4 415:24 416:16 431:6 434:24 440:18 441:3,5 442:16 445:2 475:25 476:6 481:20 511:21 521:19 542:5 558:16 559:7 565:9 577:17 584:7 584:14,19 599:1 612:1 639:17,18 643:20,22 644:19,19 646:10,10 647:6 657:13 661:2,4 needed 451:7,9 451:12 513:5 618:25 643:25 needs 553:5 559:8 573:21 negative 629:5 negligently 576:10 577:1 negotiate 479:3 554:22 569:16 573:20
--	---	---	---

[negotiated - number]

negotiated 442:23 514:2 561:4,5 573:19 573:23	492:24,25 501:6 506:13 509:9,19,21 542:2 553:9 557:23 562:23 565:23 600:22 655:17 663:20	544:16 611:17 612:8,8 northern 617:21 618:14 625:10 626:22 626:23,24 627:3	646:10,11,13 652:21 noticed 366:23 notices 572:2 653:6 noticing 365:22 notification 517:1,15 519:3 531:25 533:25 540:9 641:20
negotiating 457:16 459:21 560:14	newspaper 646:7	nos 353:8 notable 420:17 notary 663:19 note 379:15 388:4 425:15 638:16,24 653:22 655:3	notifications 533:3 535:8 notify 532:4,14 657:17
negotiation 457:12 472:7 480:15,25 546:16 658:15	nickname 570:24	notebook 476:9 615:19	notwithstandi... 627:1,20
negotiations 447:9 459:11 471:25 472:1 472:13 480:11 509:24 560:23	nm 354:7 401:25	noted 379:14 notes 386:20 415:4 451:23 454:2 572:16 640:9 648:12	november 390:12 443:2 480:3 505:8 506:20 570:1
neither 446:13 517:16 569:18 663:11 664:7	nobody's 603:1	notice 358:15 361:5,8 363:24 364:11 365:6 365:11 366:15 366:20 424:14 636:21,24 637:1,2,8,9,25 638:6 639:23 639:23 640:10 640:17,20 641:9,9,17,24 641:25 642:5,8 642:16 643:16 645:25 646:4	nri 449:22 452:16 510:25
neutral 410:15 414:3 417:12	non 393:11,12 396:22 397:4 397:11,14,14 398:8,9 422:23 448:17,21 450:3,3,7,9 453:3,10 455:5 458:14 547:4		nsp 358:15 364:11 570:21 638:6 639:23 640:9,17,19 641:24
never 393:14 451:24 453:5 465:21 481:2 512:14 592:18 651:23	normal 560:19 normalized 375:6 379:18 normally 567:14		number 362:11 380:21,22 392:13 401:2 402:21 403:3 405:20 421:17 424:16 427:9 432:7 462:18 462:20 469:8
new 353:1 355:3,5 370:11 391:20 399:5 400:14 402:17 407:9 423:3,5 432:2,9 435:12 468:11 478:10 478:14 479:3 480:4 482:25	north 437:22 470:10,17 491:4,5 544:11		

[number - oh]

479:19 482:21 482:24 487:7 499:6 509:16 518:7 521:5,10 521:22,23 531:20 536:10 541:7 542:7 550:19 551:4 562:8 586:2,11 606:21 611:2 611:10 615:5 618:24 622:17 633:24 634:18 638:22 numbers 387:20 388:23 429:19 434:24 438:5 465:5 516:10 599:21 620:3 627:3 650:4 654:2 numerous 447:23 nutshell 505:7	439:18 479:9 486:2 501:15 517:18 524:20 551:10 552:8 553:20 587:5 589:6 595:20 597:10 602:20 604:3 613:5 617:25 630:11 653:13 654:14 objected 370:22,24 551:23 647:16 650:16 objecting 394:20 417:22 417:24 objection 384:21,24 385:3,14 394:1 394:25 395:1 406:19 414:6,7 414:7 416:25 418:2,12,13 441:15 484:3 494:13 511:11 525:13 526:1 526:21,25 553:4,10,19 583:14,18 593:22 596:12 597:1 607:10 632:18 652:23 662:7	objections 653:11 654:21 662:7 obligated 552:4 obligation 552:17 obligations 562:24 563:1 obo 547:14 obtain 459:22 459:24 obtained 444:12 506:24 582:5 obviously 420:18 444:9 464:9 465:4 466:15 oc 401:25 occurred 506:20 570:16 578:22 601:19 661:25 ocd 613:20 october 365:14 366:1,14,15 402:8 636:25 646:20,21,23 647:1 656:5,16 659:17,23 odd 417:2 offer 393:9 455:17 458:15 459:12 480:19 548:20 579:25	offer's 480:20 offered 419:16 455:21 460:2 offering 411:3 offers 458:16 458:17 office 396:6 452:24 officer 355:24 663:2 offset 375:3 379:16 424:20 425:17 426:16 427:2,16,24 428:18 468:16 468:21,24 614:17 618:19 618:20,24 619:16 620:13 offsets 424:16 594:21 ogrid 482:20 482:23 oh 369:12 370:13 372:22 375:21 377:8 399:25 406:6 407:17,21 408:5,10,21 413:9 419:6,22 424:22 429:25 438:23 462:5 484:18 492:9 521:11,17 523:24 528:20
o			
o 363:16 364:1 365:1 o'clock 558:18 628:7 661:20 661:22 oath 581:11 object 383:20 386:13 393:23 393:24 394:2,5 409:10 417:13			

[oh - okay]

531:23 533:18	371:11,13,16	429:12,18,23	472:23 473:3,5
533:23 534:10	372:5,25 373:1	430:3,11,14,18	473:10,13
545:18,19	373:18 374:5	430:23 431:14	474:5,8,13,15
558:11 565:13	375:21 376:7	431:25 432:4,8	476:7,15
565:13 573:3	376:13 377:9	432:11,15,25	481:24 482:9
580:5 581:1,2	379:7 380:20	433:4,7,10,16	482:15 483:3
581:2,15	382:18 384:4,5	433:19,23	483:13,19,23
585:18 596:22	384:15,20	434:6,6,8,14,22	484:1,2,21,25
602:25 604:23	385:1,25 388:3	435:6,9,9,15,16	485:5,11,16,22
617:3,13,17	388:6 394:10	436:1,5,5,9,12	486:20 487:9
623:2 637:16	395:5,9 399:22	436:17,21	488:15,15,19
640:17 642:5	401:15 403:9	437:3,7,12,12	489:1,11,18
644:14 645:7	403:14 404:22	437:14,17,24	490:1,12,15,19
653:16 654:13	407:3,4,7,12,25	438:3,8,8,11,20	494:22 495:1,4
657:5,9 661:9	408:10,14,16	439:5,10	495:23 496:5
661:24	408:17,22	440:11,16,23	496:20,23
oil 353:3,6	409:4,8,23	441:2,9,13,22	497:2,6,18,23
355:3,5,8	410:9,17,17	441:22 442:8	498:11,12,17
375:18,20,22	411:23 412:14	442:14,18	499:20 500:1
376:3 398:21	412:24 413:4,4	443:15 444:6	500:17,22
422:22 462:12	413:22 414:9	445:5,6,17,21	501:12,18,22
483:17 582:9	414:19 415:2	446:1,10,25	502:2,25 503:4
582:19 617:20	415:23 417:5	447:2,10,11,14	503:6,10 504:3
618:14,17	417:21 418:4	447:19,22	504:7,11,15,22
624:21,23,24	419:13 420:2	448:4,7,7,13,23	504:24 505:4,6
625:1,2,9,22	422:16,18,20	449:2,6,10	506:19,23
626:3,19 627:2	423:2,10,16,24	451:1,5,8	507:2,20,23
627:2,21	423:25,25	452:8 453:1,5	508:4,14
628:21,22	424:3,6,10,22	453:25 454:7	509:17 510:2
629:3	425:2,6,15,20	454:10 456:14	510:12,16,20
oip 625:4,5	425:25 426:3	456:24 458:12	511:3,16,19,23
okay 365:11,24	426:11,15,25	459:9,20	511:25 512:22
366:2,11,21	427:6,11,15,23	460:13 462:7	513:14 514:1
367:3,3 368:9	427:23 428:9	463:13 464:7	516:9,13,22
369:12,15,18	428:17,21,25	464:20 471:21	517:2,24 518:4

[okay - operators]

518:13 519:4,8 521:16,17,19 522:3 525:12 526:3 528:20 528:22 531:14 535:12 541:6 551:14,18 553:22 554:25 558:11,14 559:4,11,15,20 559:22 560:13 565:20 566:7 566:14,23 567:12,17 568:1,11 569:10,17,21 570:19 571:10 572:8,23 573:12,25 574:6 575:3,9 575:22,25 576:13 578:7 578:10 579:12 579:12 580:4 580:16 581:3,4 582:3,24 583:10 584:21 585:1,10,18 586:20,24 587:18,23 588:1,7 589:9 589:25 590:5 590:11,16 591:1,7,20 592:5,14 593:2	594:16 596:4 596:17,22,22 597:4 598:1,8 599:22 600:3 600:18 601:22 602:2,8,25 604:25 605:15 605:17 607:16 610:23 611:9 613:12 614:2,6 617:7 618:9,18 621:5,11 622:3 623:21 624:3,8 625:7,13 627:1 627:24 629:22 631:10 633:16 634:4,8 638:1 638:14,20 639:7,11,14 640:7,8,22,24 641:7,13,21,22 642:2,12 643:5 643:10,10 644:3,17 646:3 646:14,23 647:4 648:12 648:18,21 650:11,14,19 651:3,4,23 652:16,19 653:9,16,22 654:7 655:1,1 655:10,24 656:4,25 657:12,15,16	658:6,11,19 659:6,14 660:13 661:6 661:12,14,23 662:14 okra 404:2 old 452:8 older 412:9,12 omitted 577:1 omitting 576:10 once 591:21 645:25 one's 552:9 605:2 632:13 ones 370:11,14 393:13 406:8 435:23 461:1 465:15 online 398:20 447:4 550:15 onsite 478:18 508:24 onus 549:2,6 op 393:11 397:11 448:17 448:21 450:3,3 450:9 455:5 547:4 622:1,10 open 369:16 457:20 560:1 566:1 637:7 opened 604:13 opening 357:3 473:17 474:6	476:19 operate 423:3,5 423:6,9 432:1 432:6,9 433:1 433:5 467:22 467:25 468:3 478:10,13 operated 397:14 425:17 448:24 453:10 455:6 482:25 547:14 operating 355:17,21 356:3 468:7,11 468:12 566:24 567:4,8,11,13 571:6 operational 389:21 459:1 operations 356:2,5 389:23 395:20 452:10 479:3 582:20 operative 453:3 580:10 operator 411:2 414:14 415:20 478:8 480:6 497:12 522:19 547:19 571:2,3 577:7,12 578:14 579:13 operators 393:12 397:1,9
--	---	---	---

[operators - owners]

399:7 425:17 427:2,21 448:20 450:7 456:6 459:21 465:2 563:22 565:5 613:21 operatorship 410:16 417:12 478:7 498:1 opine 596:5 626:8 opined 627:12 opining 627:3 opinion 390:5 391:24,25 397:23 398:2 411:3,4 451:10 497:6,9 500:1 500:4 508:2 512:2 514:1,3 514:4 516:14 595:2 598:2,17 601:22 602:2 603:15 604:1 604:18,20,23 605:5,20 619:6 632:3 opinions 387:3 opportunities 458:10 opportunity 501:15 578:25 opposed 413:19 414:2 420:12 467:4 661:3	opposition 397:4 oppositions 393:12 396:22 398:8,9 450:7 optimal 382:5 options 397:17 398:14 450:16 454:25 455:12 455:20 456:4 560:16 oral 434:10 order 400:20 442:10,20 444:4 502:15 502:23 503:13 503:15,17,22 503:25 506:16 564:5 565:1,9 565:16 577:21 577:25 578:1,6 641:1 643:14 orders 392:5 401:25 506:4 506:10,24 561:8,20,23 563:7 orient 633:19 orientation 610:7,12,19 611:18 612:9 612:12,14 original 434:15 444:23 451:21 460:23 487:25	491:19,23 506:4 562:17 562:18,24 643:2 647:14 651:1,2,15 originally 460:23 506:24 650:25 653:11 654:14 outcome 458:5 663:16 664:12 outliers 462:18 outside 474:3 565:17 587:7,9 596:12 599:8 631:15 outstanding 542:15,18 outweigh 478:5 595:19 overall 374:9 374:22 382:19 453:20 overbrush 588:11 overhead 438:9 438:17 440:25 442:19,20 503:7,12,21 overlap 458:9 overlooked 577:17 578:18 override 396:3 452:17,20 545:20 568:19	573:18,24 overrides 449:23 459:5 459:13 545:13 overriding 568:12 overrule 418:13 603:5 overruled 518:3 525:13 overrun 577:21 overseeing 389:22 overview 374:19 601:14 own 455:1,16 455:17 456:2 456:10 502:18 544:11 568:2,4 631:15 owner 421:18 497:9,25 543:11 545:20 567:10,11,25 568:6,8 571:3 571:7,8 574:16 575:8,11 577:6 577:11,19 578:12 owners 363:23 416:8 420:23 466:13 532:5 532:14 536:5 544:22 560:15 563:25 568:12
---	---	--	--

[owners - parameters]

568:19 576:2 577:4 642:24 ownership 358:8 359:22 362:10 477:11 496:6 543:3,4 543:13,19 544:8,9 545:13 549:14 552:15 552:16 566:10 569:1,6 573:15 644:12,20 ownerships 544:2 owning 477:9,9 owns 458:8 497:19 544:25 545:3 547:6,9 552:18 553:15 oxy 397:1,12 448:19 450:8 450:10	534:18 560:9 564:11,17 571:12 637:7 643:24 645:14 646:16,19 648:2 662:1 packets 656:7 pad 495:14 pads 431:21 478:20 490:8 490:22 491:21 493:8,16,25 494:5,10 495:11,18 500:23 531:16 paduca 397:5,6 397:25 398:2 448:22 450:12 450:15,17,23 451:1 454:13 455:2 456:1,7 547:4,10 page 357:2 363:17 364:2,7 389:19 407:11 411:13 434:15 434:24 438:10 460:23 487:16 487:17,18 488:3,3 489:23 489:24,25 490:2 504:21 518:7,9 521:17 521:23 522:1 531:20,21	533:17,24 534:10,16,18 534:21,22,22 534:23 535:2 536:15,16 537:6,18 539:18 540:11 541:7,11 543:1 545:19,24 556:23 557:22 560:1 566:19 568:17 570:22 571:20,21 572:20,25 573:2,8 574:15 575:5 586:1,3 586:3,11,16 609:17,22,23 609:23 610:24 611:3 615:2,4 615:16 616:2 616:19 617:1 617:11,14 618:13 623:2,3 624:13 627:8 629:15 634:17 634:19 637:12 637:15 638:18 639:22 640:9 640:14,16,19 640:20 641:4 641:16,23,23 642:1 643:17 647:12,19 655:25 658:18	658:20,23 659:11,12 pages 391:9 407:9,13 408:11 410:6 411:11,12 412:6 417:2,24 488:8 504:23 640:25 647:25 656:3 659:3,7 659:9,13,13,15 661:5 paid 573:21 paragraph 373:10,18 388:20 389:17 405:1,6,15 409:6 435:10 438:11 482:19 483:6,7,16 503:11 516:10 516:14 539:23 540:12 541:20 543:23 544:1 545:25 546:1 557:21 577:23 610:6 611:10 617:12 627:9 627:12 634:16 635:3,8 639:9 paragraphs 401:8 parameters 606:1,7 619:13 626:5 629:25
<p>p</p>			
<p>p 355:1,1 356:1 356:1 365:1 374:24 475:19 p.m. 511:8 656:6 662:21 package 370:17 389:11 407:18 484:5 488:1,2 613:21 packages 516:5 packet 460:24 487:11 491:23</p>			

[parameters - pecos]

632:1,11 644:5 parsed 512:2 part 370:16 376:17 377:3 390:7 408:2,7 408:19 418:16 418:17 432:12 445:24 468:23 489:23 492:5 504:16 525:3 539:19 563:13 568:3 570:4 590:8,9 597:17 599:17 648:2 654:22 655:21 655:22 659:11 participate 519:12 particular 407:15 549:13 560:25 564:13 602:18 particularly 477:7 590:17 parties 358:9 361:6,9 362:12 366:5 416:2 421:6 447:22 496:11 498:3 501:14 516:17 544:3 573:17 573:20 636:12 645:13 657:5 657:17 658:12 661:2 663:12	663:14 664:8 664:11 partner 458:5 466:18 partners 355:18,22 356:3,3 421:3 421:10 544:11 544:22 party 409:20 413:24 477:19 479:9 560:25 573:21 579:13 662:2,4 pass 418:23 422:4 572:17 past 460:3 465:2 555:11 path 395:25 452:15 patient 581:8 patrick 356:9 357:12 362:22 364:3 405:5,5 474:9 475:7,18 475:18 538:20 559:18 581:8,9 581:12,16,17 581:21,22,25 582:5,16,23 583:3,6,9,12 584:23,25 585:6 586:5,9 586:18,23 587:1,6,12	588:6,9,19 589:2,6,21 590:15,18,25 591:4,9,15,23 592:4,9,12,18 592:23 593:4,7 593:12 594:7 594:15,19 595:3,6,11,14 595:21,22,25 596:2,6 597:19 597:25 598:5 598:11,15,19 599:19,25 600:8,13,17,20 600:23 601:10 601:13,21,25 602:5,14,15,22 603:13,20,23 605:22 606:4,8 606:16,21,25 607:4,7,24 608:3,9,13,16 608:22 609:3 609:14 610:9 610:13,16,20 610:23 611:16 611:17,23 612:3,7,13,19 612:25 614:14 614:19,25 615:10,13,20 615:25 616:5,7 616:9,11,15,22 617:3,9,17	618:6,16,22 619:2,5,9,15,20 619:24 620:10 620:15 621:18 621:23 622:6,9 622:16,19,22 622:25 623:7 623:10,15,18 623:24 624:4,5 624:25 625:6 625:12,18 626:4,10,15,24 627:6,10,16,23 628:12,13,17 629:1,7,16,17 629:21 630:3 631:17 632:4 632:15 633:2,5 633:7 634:3,7 634:11 635:4,9 paula 355:10 paying 656:22 payment 545:14 573:14 573:16 payments 574:3 pdf 367:17,23 368:6 369:20 385:20 487:19 pdp 396:22 398:18 448:18 450:4 pecos 354:5
---	--	--	---

[peers - play]

peers 387:18 pending 368:13 368:18 percent 377:24 378:9 380:1,4 380:8 382:3 383:4 416:7 420:23,23 421:5,6 446:8 446:11 464:24 466:12,12,16 472:25 477:9 477:10,14,17 496:9,10 497:1 497:15,16,19 497:20 514:10 544:17 574:16 632:4 percentage 359:22 495:23 496:23 497:7 508:11,13 percentages 477:11 perfect 368:4 395:4 510:11 635:14 659:10 perforated 402:2 434:4 perform 603:10 605:19 performance 619:10 performed 602:17 623:16	period 473:21 permian 355:9 355:13 425:18 427:4 permit 505:19 505:20 508:18 564:23 permits 392:6 396:23 444:13 448:18 450:5 508:15 509:2 540:13 542:16 557:18 permitted 481:7 539:14 perpendicular 611:19 612:1 perpetuate 561:23 person 444:16 480:20 549:14 658:2 662:11 personally 519:23 520:7 533:2 535:7 575:7 persons 569:18 573:13 574:2 perspective 559:1 587:22 588:4 589:12 590:14 595:5 597:6 598:17 599:24 600:7 631:4 657:21	658:16 petroleum 482:1,5 petrophysicist 626:4,8 petrophysicist's 626:20 petrotechnical 390:1 ph 396:23 458:19 482:20 482:24 570:21 phone 448:1 513:24 photograph 490:14 phrase 587:22 phrased 377:20 418:6 pick 458:23 536:18 picking 498:3 pipe 400:22 pitch 393:8 place 422:12 556:2 560:23 581:17 617:20 618:14,17 620:3 624:21 624:23,24 625:9 626:19 627:2,2,21 places 650:10 plain 618:8	plan 360:13 373:12 381:9 381:24 383:1,2 383:5 400:6 409:22 414:13 415:1,7 423:17 423:18 446:2 446:16,17,17 446:21 479:13 481:8 491:1 506:15 507:15 514:5 557:22 562:17,18 574:18 602:3 planed 483:11 planned 362:19 485:14 486:3 495:11 505:13 505:14 506:9 531:2,12,15 559:8 planning 639:1 plans 377:1,15 377:18 378:15 431:20 477:4 497:8 plat 362:9 463:10 486:3,6 486:16 490:7 491:24 492:2 493:17,24 543:2,11 544:1 plats 358:7 play 619:1,8,14 619:23 620:4,8
--	---	---	--

[play - preference]

620:11 plays 620:17 please 372:4 379:12 393:9,9 474:22 476:15 505:4 512:12 518:23 521:22 525:14 539:22 540:6 541:7 543:22 545:8 545:25 548:18 548:18 551:23 553:24 560:1 578:25 594:6 597:1,18 611:16 615:5 617:12 653:20 662:2,7 plenty 646:24 plotted 379:17 379:19,22 461:22 plotting 381:5 plus 501:24 557:15 podium 475:25 point 371:10 377:25 388:11 389:13 414:2 418:23 437:21 446:11 480:1 492:22 493:2 497:19 502:7 537:2,2,8,8,20 537:20 543:22	548:13 551:12 551:17 552:20 553:5,7,11 576:11 578:23 594:5 599:8 600:7,9 604:13 605:4,12 619:22 620:7 622:21 631:8 636:9,13 pointed 482:20 575:15 pointing 382:25 points 363:10 363:13 384:25 385:6 457:14 462:2 479:19 579:1 658:15 policy 403:2 political 388:15 pool 466:11 479:9 544:3 561:9 574:2 587:2 pooled 358:9 362:12 501:14 578:14 pooling 392:5 400:20 442:10 442:19 444:10 444:17 445:24 457:24 480:15 480:16 501:16 502:15,23	503:13,15,17 503:22,25 506:4,10,16,24 561:20 563:7 563:22 565:1 577:20,25 578:6 613:4,25 640:18 populate 523:6 pores 625:21 porosity 625:20 625:22,25 626:3,21 portfolio 393:6 397:2,22 460:5 596:10 600:16 portion 485:25 543:15 612:12 portions 389:22 portraying 420:5 position 396:2 396:3 409:9 410:14 417:11 443:16,24 448:21 450:9 452:16,17,20 452:25 481:21 581:24 630:10 642:16 positions 397:11 448:18 450:3,3 453:11 455:6	possibilities 396:11 457:19 possibility 545:14 547:3 possible 413:23 419:7 467:10 474:4 591:13 possibly 366:6 post 636:9 645:11 657:21 postal 363:14 potential 373:24 377:5 411:2 413:6 622:21 potentially 505:18 614:17 pounds 468:25 powerpoint 369:16 386:5 655:17 powers 563:24 ppm 621:16 622:13 ppms 621:24 practice 480:9 precedent 449:18 prefer 406:23 473:24 576:7 preferable 415:8 preference 396:25 448:19 512:3
---	--	---	--

[preferred - programs]

preferred 610:7,12,19 612:11 prejudicial 630:14 631:9 prepare 485:3 485:12,23 prepared 482:10 487:4 489:13 582:21 583:11,16 664:3 preparing 479:7 501:5 544:6 present 473:19 473:22 presented 390:11 411:24 509:4 president 355:21,22 356:2,4 506:1 presumably 432:25 524:8 530:14 pretty 450:18 511:4 594:22 595:7 602:1 603:5 625:24 prevail 556:3 prevent 444:5 514:5 602:3 prevents 360:14 481:8	574:19,19 previous 393:17 493:11 519:5 629:8 previously 367:21 400:16 475:14 478:13 546:20 594:2 609:1 624:22 price 402:11,12 501:23 priced 403:3 prices 388:16 pricing 360:10 502:3 503:1 primarily 391:20 422:22 primary 507:12 612:14 print 425:17 prior 387:23 390:8 400:17 401:3,24 404:13 427:1 436:24 480:16 485:16 502:14 506:4 554:5,14 564:21 568:14 569:24 575:13 577:24 645:8 663:5 priorities 359:24 360:12 priority 507:21	private 383:8 422:21 probably 400:21 413:19 435:11 439:7 443:23 449:8 456:25 511:22 556:3 557:15 559:2 575:17 596:24 615:18 640:6 642:9 problem 418:6 458:22 488:17 488:20 problems 653:10,18 proceed 386:21 404:24 481:7 481:11 proceeding 507:20 662:22 664:4 proceedings 645:11 663:3,5 663:6,9 664:6 process 400:4 600:19 645:25 produce 423:17 588:15 594:10 produced 530:21 producing 388:23 398:20 442:11 503:19 538:17 622:1	622:12 product 417:18 417:18 631:24 631:25 production 363:7,10,13 374:20 380:10 380:11 382:5 395:21 452:11 461:6 477:2 479:18 483:8 545:14 573:14 573:16,21 574:2 591:5 595:19 596:8 597:8,11,15,20 598:4,10 600:1 603:16 605:7 611:19 619:16 620:11,14 627:14,17 634:1 635:6,11 productivity 377:24 382:14 profess 421:3 professes 422:1 professions 390:1 profile 382:5 profiles 383:10 program 594:24 programs 582:18
---	---	---	---

[progress - proven]

progress 398:24	411:4,5 413:15 413:16,20,21	471:3,4,11 478:17 492:15	587:17 591:15 595:1 601:4
project 499:25 500:10 506:12 506:14 507:4 507:11 508:11 561:25 562:1,2 564:8 577:14 588:15 590:24 598:7 600:15 600:22,22 601:3,4,8,24 615:1 622:11	414:18,23 417:3,15 436:6 436:6 438:15 438:18 439:17 439:20,24 440:20 441:7,8 441:12,17 442:1 445:22 448:14 480:16 491:6,8,9 498:13 500:14 512:4,10,17,20 513:6 517:3,5 518:1 519:9,22 520:6 539:10 540:1,9 548:2 548:7 554:6,9 554:14 561:1,2 579:24 580:9 612:15 616:1 620:4	498:18,25 499:1,2,6,10,13 512:16 516:16 516:19 517:17 519:24 520:1 580:6 582:19 601:1 609:9 613:1 615:25 propose 393:15 396:13 415:17 453:15 473:17 481:1 510:17 513:17 514:16 594:23 609:6 proposed 359:11,13 381:7 392:13 398:7 409:16 411:6 415:21 420:8 421:18 421:22,23 425:3 442:19 445:8,12,14 446:2 451:18 455:22 466:6 469:19 470:23 472:25 477:10 491:20 500:16 502:14 503:21 512:15 537:15 538:2 539:2,24 561:25 562:1,2 569:12 584:8	606:12 607:9 609:1,4,5,11 657:24 660:2 proposes 405:7 421:22 476:24 478:19,20 479:17,22 592:2 600:6 proposing 367:24 378:6 395:19 409:17 420:10 421:24 445:10,10 452:10 453:2 539:4 547:25 585:4 586:21 586:25 591:18 594:13,17 proprietary 422:23 protect 514:6 602:4 protected 609:8 protects 481:9 574:18 prove 591:9 proved 398:19 proven 374:1 479:25 591:8 591:10,13,22 593:2,5,10 603:16 619:15
projected 595:10			
projects 505:13 505:14 506:9 507:14 561:18 606:12			
prominent 593:15 628:18			
proper 385:19 601:18			
properly 366:23 491:25	proposals 374:17 378:4 379:4 388:25 389:2,6,8,11,15 400:8,9,15 408:7 409:11 409:14,20 415:12 434:7 434:12 435:2,4 435:13,17 436:22 437:1,5 442:5 471:1,2		
proportional 578:15			
proportionally 544:14			
proposal 358:12 362:7 362:16 377:22 383:18,18 393:18,19 394:3,9 398:3			

[proven - question]

<p>620:8</p> <p>provide 378:12</p> <p>389:11 425:9</p> <p>444:19 451:6</p> <p>451:10 453:9</p> <p>453:11 457:14</p> <p>457:18 481:24</p> <p>493:4 500:2</p> <p>513:1,2 536:6</p> <p>547:20 548:9</p> <p>560:19 565:3</p> <p>576:17 582:3</p> <p>589:8 612:17</p> <p>621:23 623:19</p> <p>632:4,15 633:3</p> <p>640:13 643:24</p> <p>644:1,11</p> <p>645:20,23</p> <p>646:1</p> <p>provided 452:1</p> <p>453:6,9 455:14</p> <p>456:1,4 460:8</p> <p>477:12 486:5,5</p> <p>493:7,11,22,24</p> <p>494:3 496:16</p> <p>504:8 512:23</p> <p>570:9 580:6</p> <p>604:16,17</p> <p>614:1 630:12</p> <p>642:23 643:2,4</p> <p>643:12 645:25</p> <p>646:5</p> <p>provides</p> <p>431:11 498:13</p> <p>629:25</p>	<p>providing</p> <p>390:19 404:12</p> <p>461:5 605:24</p> <p>provision 578:6</p> <p>prudent 425:17</p> <p>477:22 478:7,8</p> <p>480:5 497:12</p> <p>598:3,5</p> <p>public 641:9</p> <p>663:19</p> <p>publication</p> <p>361:12 364:10</p> <p>637:8,17,23</p> <p>641:17</p> <p>publicly 402:1</p> <p>published</p> <p>361:13 646:10</p> <p>646:12</p> <p>pull 365:8</p> <p>391:10 406:2,4</p> <p>419:7,10 422:9</p> <p>422:17 423:25</p> <p>425:9 433:15</p> <p>434:19 436:22</p> <p>438:10 445:4</p> <p>448:4 476:21</p> <p>482:15 484:10</p> <p>484:24 496:20</p> <p>498:4,14 503:5</p> <p>504:11,17</p> <p>511:4 565:6</p> <p>608:19 634:12</p> <p>pulled 405:13</p> <p>435:16 438:11</p> <p>445:5 487:17</p>	<p>504:25 510:7</p> <p>pulling 401:24</p> <p>401:25 434:22</p> <p>588:11</p> <p>puma 544:11</p> <p>544:21,25</p> <p>545:3,15,19</p> <p>pumping 523:2</p> <p>523:8 524:17</p> <p>purporting</p> <p>577:12</p> <p>purpose 353:7</p> <p>415:15 494:7,8</p> <p>purposes</p> <p>417:19 424:24</p> <p>560:9</p> <p>pursue 445:22</p> <p>pursued 409:12</p> <p>push 390:18</p> <p>put 367:23</p> <p>393:6 400:6</p> <p>401:7 443:9</p> <p>460:5 490:22</p> <p>494:10 505:22</p> <p>505:23 506:15</p> <p>512:9 541:1</p> <p>554:7 582:17</p> <p>589:13 599:21</p> <p>601:15 609:9</p> <p>615:1 617:5</p> <p>618:8 636:25</p> <p>657:18 658:22</p> <p>puts 623:20</p> <p>putting 404:3</p> <p>596:10</p>	<p>q</p> <p>qualified 589:6</p> <p>589:15 595:24</p> <p>663:7</p> <p>qualify 548:2</p> <p>quantities</p> <p>629:3</p> <p>quarter 543:14</p> <p>556:8 635:4,4</p> <p>635:9</p> <p>quarterly</p> <p>501:11</p> <p>question 369:4</p> <p>394:25 395:1,3</p> <p>397:20 417:22</p> <p>423:12 433:9</p> <p>438:17 439:16</p> <p>440:25 441:10</p> <p>441:18 442:3</p> <p>443:23 446:16</p> <p>447:1 451:13</p> <p>454:9 462:6</p> <p>463:19 464:12</p> <p>471:18 472:3</p> <p>472:12,14,20</p> <p>472:23 492:25</p> <p>517:18 518:6</p> <p>518:15,16,23</p> <p>520:13 521:22</p> <p>524:21,23</p> <p>525:14,16,19</p> <p>525:23,23,24</p> <p>528:23 529:4</p> <p>533:13 534:3</p> <p>535:1,13,14</p>
---	--	---	---

[question - reason]

551:23 552:23 553:1,11,17 554:11 555:1 559:6 562:1,19 564:16 565:12 572:12 574:11 579:21 587:21 590:3 594:6 596:13,14,18 597:1,14,14,18 599:8,8,10 603:6 604:10 604:13,14,21 608:22 613:6 614:4,10 616:16,23 617:25 618:3 618:19 624:11 626:16 627:11 629:23 633:18 635:16 642:20 questioning 469:9 questions 422:11 434:24 444:23 445:2,7 448:8,11 454:1 456:15 467:11 469:7 471:14 471:17,19,25 476:16 514:13 520:25 530:20 551:11 559:13 559:17 560:3,5 572:16 574:9	579:6 580:17 580:20,22 581:1 602:7 605:11 620:19 621:12 627:24 628:3 633:7,11 633:24 634:2,6 635:12 quick 391:8 422:18 474:3 627:7 quicker 534:22 quickly 368:7 388:9 402:23 quite 430:6 436:9 641:3 quote 393:5 quoting 441:11 r r 355:1 356:1 363:16 364:1 365:1 461:21 475:16,18,19 radius 379:16 424:7,21 426:8 426:23 427:17 427:25 428:3,8 429:4 431:11 431:13 461:13 463:20 479:20 588:10 590:20 590:22 592:19 594:8 606:11 606:14,15	raise 474:22 range 365:10 438:5 447:16 451:10,16 476:23 499:13 537:11,23 543:8 557:16 571:24,25 579:20 582:15 617:5,5 641:19 ranges 451:23 470:2 547:24 548:4,10 rarely 460:3 rate 527:23 529:8 rates 388:21 438:9,17 441:1 441:11 442:4,9 442:19,20 503:7,12,12,14 503:16,21,22 503:24 rather 393:14 477:22 483:18 512:14 569:24 570:11 571:25 581:17 646:16 rcx 357:5 rdx 357:5 reach 472:1 reached 472:25 573:22 reactive 490:4	read 382:22 393:1 401:8 422:24 493:10 523:1,18 539:22 546:1,8 571:7 577:22 611:15,23 617:12 635:2,7 ready 367:9 392:6 454:8,8 481:6 615:9 624:3,7 646:5 real 391:8 422:18,22 456:19 617:22 625:14 627:7 realize 385:7 492:23 really 416:1 423:11,21 441:16 450:7 451:7 455:11 455:12,22 456:12,22 462:21,21 469:15 471:4 493:9 495:1 513:16 553:5 633:14 660:11 662:11,13 reask 462:6 reason 432:5 437:11 462:1 488:8 553:21 569:23 570:17
---	--	---	---

[reason - reduced]

571:14 577:2 660:15,15 661:4 reasonable 444:3 480:19 516:15 523:12 527:13,23 529:17 530:5 554:20,24 reasons 373:11 427:10 462:20 478:25 486:7 rebut 409:6 rebuttal 358:16 358:17,25 359:5,6,15 360:21 371:6,9 371:21 404:21 405:11 406:5 410:4 413:14 419:16 445:4 476:13,16 483:24,25 484:5 485:3,6 485:12 486:18 487:22 489:13 492:14 494:19 495:4 515:14 559:2 583:11 583:14,19 584:1,3,15 585:14,24 607:14,23 608:7 620:19 647:16 648:3,4	648:11,16,19 650:7,13 651:8 651:21,22,23 652:14 rebuttals 651:3 recall 391:12 392:14 448:8 448:10 467:20 467:23 469:9 472:3,14,19 498:15 503:7 549:7,9 555:3 555:8 579:21 634:1,6 639:13 644:9 recap 358:9 recapitulation 362:11 568:18 572:20 recapitulations 495:25 receipts 361:11 receive 555:12 601:24 received 367:16 368:8 368:22 370:7 371:3 385:21 386:17 393:20 405:24 418:19 434:23 435:19 494:16 496:14 505:24,25 555:2,12,14,17 564:24 569:15	574:25 647:21 648:6 649:5,12 649:15,19 651:12,19 652:8 653:3 receiving 485:17 recent 387:19 recognize 552:21 recognized 475:14 record 384:2 388:5 389:6 392:8 398:17 405:2 416:18 416:19,21 474:16,17 476:2 481:19 493:18 494:14 511:15 515:8,9 536:18 539:23 546:2,9 567:8 567:9,22,25 568:5 597:2 604:1,4,9 611:16 617:13 628:7,9 631:7 662:20 663:9 664:5 recorded 663:6 recording 663:8 664:4 records 550:11 550:15	recover 628:22 recoverable 359:20 382:25 598:13 599:17 628:21 recoveries 596:16 recovery 373:21 374:11 374:12 375:12 378:9,10,24 379:18 381:13 382:20 595:10 596:3 recross 471:22 580:19 red 385:19 490:9 redirect 467:15 467:18 578:25 579:3 605:12 633:21 redirects 633:13 redline 653:19 redlined 367:17,22 redlining 639:16 redo 505:18 reduce 478:22 531:2 595:17 reduced 433:13 479:1 663:7
---	--	---	--

[reducing - reminding]

reducing 382:12 reduction 387:21 reemphasize 417:14 reevaluate 363:19 560:8 reevaluating 561:18 refer 434:10 518:6 617:15 627:6 reference 388:21 389:14 438:21,23 442:5,17 521:22 564:18 568:12 571:1 592:6 618:21 633:18 referenced 529:7 539:8 541:20 610:24 643:23 references 539:2,3 566:24 653:23 referencing 376:23 379:6 382:24 387:9 531:9 572:14 590:3 643:15 referred 620:16	referring 397:7 399:1 405:2,15 460:22 462:13 505:2 556:21 564:20 566:9 568:14,15 571:4 608:4 629:16 633:18 636:20 637:11 refiling 578:1 reflect 415:7 532:11 544:24 reflected 387:25 390:24 391:6 400:21 656:7 reflecting 532:8 536:7 regard 608:2 612:6 regarding 427:13 435:2 435:17 443:1 445:3 454:13 459:13 472:13 485:18 486:22 499:21 504:8 536:5 548:14 579:17 591:2 regardless 442:8 458:4 regards 457:12 466:6 569:22 629:10 636:21	regular 501:9 regulatory 355:23 578:2 rehash 385:4 457:21 rehashing 389:23 rein 658:17 rejected 361:14 480:20 relate 542:23 620:19 related 507:24 529:6 580:21 663:11 664:7 relates 373:15 376:20,22 399:11 405:1 446:20 516:6,7 610:19 relating 527:8 relation 446:21 634:5 relationship 359:19 relative 663:13 664:10 relatively 390:15 431:8 relevance 414:8 552:9 relevant 409:22 410:21,24 414:10,11,12 414:15 418:10	552:12,13 588:13 reliability 418:9 605:9,10 reliable 387:20 388:18 402:21 418:10 486:7 605:5 relied 413:20 414:18 417:18 605:6 relies 477:2 479:19 rely 488:15 626:10 relying 390:23 423:21 625:16 626:7,20 remain 410:15 remainder 530:20 remaining 401:14 remains 395:19 452:9 remember 370:21 437:10 461:23 468:17 469:12 484:20 493:20 638:18 644:9 remind 375:9 476:11 581:11 reminding 639:3
--	---	--	---

[renaming - response]

renaming 400:15,18 436:10,11,16 repeat 521:4 525:19 532:21 627:10 repeating 525:15 rephrase 395:2 395:7 443:23 553:10 599:10 612:22 614:9 repool 390:17 506:18 report 363:14 518:10 610:11 610:15,16,17 610:18,21 611:22 reported 354:8 reporter 366:10 558:16 558:19 656:9 656:12,18,20 657:2 reporters 558:12 represent 527:7 representation 381:2 382:13 431:11 577:16 588:14 594:9 representations 465:1	representative 448:2 453:20 589:22 590:23 representative's 490:7 representatives 447:25 453:21 represented 409:21 represents 415:9 republish 645:24 request 459:14 459:17 548:15 548:20 613:20 656:7,22 657:1 657:1,13 requested 442:9 503:22 579:20 613:20 613:23 645:21 requesting 657:4 require 480:15 614:5 631:14 required 644:2 requirements 480:14 requires 576:21 613:3 613:17 res 396:23 research 453:14,23	549:13 552:15 553:9,14 reserve 449:16 450:4 456:5 620:8 reserves 359:20 374:1 378:12 378:19 381:15 382:4,8 423:17 574:19 598:14 598:18,21 599:17 reservoir 423:11 582:18 587:13 588:21 590:6 591:8,10 591:12 592:10 592:25 593:3,5 593:9 594:10 594:20 596:8 598:24 599:2,5 599:11,20,23 601:16 605:25 619:11,16 621:25 622:12 623:19 629:3 630:4 631:7,14 631:15,19 632:22 reservoirs 582:17 605:21 resolved 620:20,21,23 resource 382:20 410:7	482:5 554:4 resources 353:2 355:11 355:13,15,20 407:14 410:22 412:5 416:4 425:18 427:4 respacing 542:2 respect 378:2 398:2 423:10 424:11 431:14 471:3 478:7,23 479:10 480:7 480:11 483:24 501:1 516:6 593:18 608:7 610:12 621:21 622:8 626:13 627:21 662:12 respectful 662:4 respond 394:21 397:20 508:7,9 552:4 responded 512:5 responding 395:10,13 459:14,17 response 393:20 396:8 400:7 405:11 445:6 450:19 458:11,20
--	---	--	---

[response - right]

485:23 495:3 547:21 responsiveness 458:14 rest 493:1 635:25 636:4 restart 561:25 restriction 660:18 result 433:13 478:20 622:14 resulted 603:22 605:20 results 375:16 597:21 600:1 resume 422:17 rethink 441:5 returns 361:11 revenue 568:4 revenues 383:7 383:10,13,15 383:17 revetted 480:4 review 367:5 369:22 397:22 500:18,19 516:16,20 533:9 584:23 620:13 643:22 646:25 662:3 reviewed 368:12 376:17 410:6,10 463:4 463:7,20 464:1 485:20 498:6	570:9 605:7 607:20,22 608:11 634:9 reviewing 463:4 572:15 revise 369:7 656:6 revised 363:24 364:9 372:2,12 373:4 382:17 385:16,18 399:11 401:6,9 434:23 438:12 503:11 572:2 637:22 647:7 650:17 653:19 653:21 655:5 655:14,15,17 657:22 662:1 revising 369:24 revisions 360:7 rice 391:15 rig 458:23 506:15 527:23 528:2,7,13,14 528:15 529:5 529:10,11 561:22 right 365:17 366:21 367:5 367:12 368:3 368:14,14 369:10 371:4 371:17,23 372:18 373:3	374:25 379:8 384:8 388:2 389:12 394:18 396:1 398:9,12 399:8 401:3 406:3 408:17 409:24 410:3 414:5,10,20 416:16,20 419:1,9 421:16 422:12 423:22 424:4,25 426:1 426:9,13,16 427:3,13,17,21 427:25 428:4 428:11,14 429:1,16,20 430:5,9,16 431:4 433:13 433:17 434:12 435:4,13,19 436:5,7,10,13 437:1,5,13,19 438:5 440:21 441:20 442:5 442:24 444:10 444:17 445:11 445:15,19 446:7,8,12 447:5,12,17,20 447:23 448:2 448:25 451:11 455:23 462:15 463:6 469:23 470:2,6,16,23	471:5 474:18 474:22 476:5 476:18 483:1 488:19,21 489:2,4,7,10 490:2,6 492:24 501:25 504:17 514:14,23 515:6 519:18 520:21 523:9 523:18 524:1 526:20 528:10 529:22 531:5 533:18 535:25 537:5,16 538:3 538:8,13 539:5 539:12 545:6 546:13,24 549:17 550:18 558:10 564:22 566:8,9,19,20 571:2 575:10 576:9,16 579:9 579:15,25 583:25 586:22 587:24,25 588:5 602:23 604:5,14,22,25 605:3 607:9 608:20 615:21 625:3 627:22 631:5,5 633:9 635:19,21,24 636:2,6,8,22 637:7 638:21
---	---	---	---

[right - scale]

645:10,22 646:4,15 647:5 648:12,20,22 649:7 653:4,5 653:8,11,17 654:17 655:4 655:17 656:3,8 656:14,15,25 657:10 658:7 659:14 660:16 660:19,20 661:1,6,10 662:19 rightly 482:20 rights 481:9 514:6,9 566:24 567:4,7,8,11,13 571:3,7 574:19 602:4 rigs 402:17 458:25 459:12 509:9,21 ringo 420:9 risk 479:10,21 592:21,25 593:16 594:22 594:23 595:2,4 595:9,16,18 596:7,10,16 597:8 598:3,3 598:6,17 599:24 600:6,9 601:17 602:18 603:12,17 604:2 606:1,17	615:1 619:9,25 622:12 629:14 629:18 631:18 644:6 risking 601:18 631:20,21 risks 477:25 497:11 risky 477:1 479:23 480:2 480:10 498:2 630:20 road 377:25 392:11 rolled 579:8 roughly 617:5 row 546:8 royalty 568:12 ruled 553:4 rulings 656:8 run 465:5 466:10 474:3 running 397:15 402:16 509:8 509:20 554:17 rush 660:15 661:4 662:9	safe 365:23 saint 354:6 sake 380:18 sam 391:15,19 391:23 sample 358:12 361:5 362:16 sand 360:17,19 363:12 373:25 376:18 377:3,7 377:9,11,13,17 377:23 378:1,3 378:6,7 379:3 380:13 381:2,4 403:22 404:6,7 404:15 420:16 426:5,13 460:12 461:1 463:1 464:17 465:3,12,16,21 465:25 466:2 467:1 585:9 593:15,19 594:1,8,18 600:5 609:2,5 609:12 615:15 628:16,19,23 629:13 sandra 664:2 664:15 santa 354:7 sat 581:9 saturation 624:25	saturation 627:21 saw 390:10 485:24 486:18 486:20 594:21 sayer 355:19,19 410:2,4,8,11,19 413:10,12,18 413:25 414:4 414:17 417:7,9 418:2,5 saying 369:14 369:14 375:3 376:25 382:7 384:7 387:10 393:3,4 396:16 412:4 414:10 414:11 415:19 441:4,5 449:18 450:6 455:22 457:22 458:19 463:8 525:5 579:10 589:18 589:20 590:7 620:12 631:11 632:11 644:1 says 380:18 393:8 411:9 439:24 494:9 502:1 511:9 532:10 567:3 567:18 571:2 574:17 642:4 scale 433:13 479:2 501:1
	s		
	s 355:1 356:1 358:1 359:1 360:1 361:1 362:1 363:1,16 363:16 364:1,1 365:1 475:15		

[schedule - seeking]

schedule 363:21 393:7 396:4 452:22 460:5 505:23 505:24 506:2 506:15 555:3 555:19 556:1,6 556:11 558:17 559:22 561:22 564:16,22 565:6,22 643:13 scheduled 564:20 scope 587:8,9 596:12 597:3 599:9 screen 367:6,9 372:16,19,22 387:7,7 409:13 422:18 438:1 438:13 445:5 457:4 462:9 487:18 488:15 488:20 504:25 510:8 516:3 533:20,22 536:19 540:8 541:2 586:19 screened 632:13 screening 629:25 scroll 406:16 419:23 435:11	545:18 546:12 548:19 scrolling 401:6 401:17 533:14 534:21 545:7 545:11 547:1 559:25 se 596:9 sean 356:8 357:9 361:19 362:6 395:15 396:18 455:25 458:1 475:2,15 search 552:19 sec 532:3 second 373:25 378:3,5 380:12 381:2,4,14 382:23 399:14 426:12 437:14 437:24 441:14 468:24 494:7 517:6 519:16 548:18,19 563:5 566:11 593:15 601:1,5 609:8 seconds 558:8 section 358:22 362:25 363:5 379:15,21,23 379:23 380:2,6 380:19,20 381:12,16,25 382:1,2,6	404:16 451:11 470:5 476:23 544:12,22 545:1,3,22 549:25 617:15 617:16 624:14 624:14 626:20 635:5,9 638:17 638:23 sections 405:9 470:2 476:22 537:10,22 538:6,7 543:7 543:14,15,17 544:15 547:24 548:4,10 see 367:6,7,8,24 369:15 372:15 372:17,18,21 373:2 374:23 376:24 377:21 379:25 382:1 386:2 389:3 393:5 395:14 397:2 405:11 409:18 411:7 413:17,22 414:1 416:12 419:19 420:10 421:13 422:18 427:1 437:20 438:1,12 439:6 450:20 451:22 452:6 461:7 462:12,18	464:14 465:23 466:1,16,21 476:6 484:9 489:1,12 490:7 490:19,21 494:12 504:16 512:7,16 522:9 523:22 524:1 534:7,12,13,25 535:9 546:13 546:17 566:9 566:24 567:13 567:14 571:3 571:22 583:17 586:17,18 590:24 591:5 592:16 593:20 598:8 610:8,23 617:17 623:6 625:24 637:11 638:9 640:22 640:23 641:4 641:23 642:3 660:14 661:3 seeing 409:13 419:23 421:8 421:10,14 457:3 462:12 466:17 498:15 503:7 534:5 573:1 seek 377:6 seeking 406:21 503:13,15,17 503:25
---	---	---	--

[seeks - shaheen]

seeks 476:21 480:10 544:3 seem 614:10 659:18 seems 488:1 517:10 603:5 612:20 646:23 seen 442:14 484:21 499:17 501:19 509:5 select 587:13 588:17,20 589:12 selected 374:20 424:7 428:7 461:2 587:16 589:16 selecting 460:15 selection 589:19 606:17 self 358:18 359:7,16 360:22 362:5 362:21 516:2 539:19 sell 459:5,25 send 393:9 451:17 498:18 498:25 499:9 512:13 519:23 520:7 532:4,7 532:13 533:2 535:7 536:4 548:20 575:6	646:8 661:3 662:2 sending 400:8 572:2 senior 355:22 356:6,7 sense 618:15 sent 387:22 400:8,11,12,15 400:16 516:17 516:19 525:2,5 533:25 539:4 575:1 639:13 642:8,10,13 653:19 655:17 sentence 546:1 separate 363:22 407:21 separately 484:18 september 354:2 365:3 437:13,25 438:2 474:19 515:11 574:24 series 468:15 546:23 617:10 serves 415:11 415:14 service 558:2 services 355:8 set 365:14 397:24 449:18 449:25 537:4 556:15 573:21	580:10 658:19 sets 569:1,6,7 seven 374:14 400:6 466:3 482:7 509:18 659:5 several 465:19 500:6,7 556:16 650:10 severed 567:23 567:24 severely 479:18 shaheen 355:16 357:7,11,14 360:23 364:8 366:17,19 367:16,18,20 368:13,15 369:7,12,17,19 370:11,13,16 371:7,11,14,22 372:1,5,7,10,11 372:15,18,23 373:1,3,6,10,15 374:3,6,13 375:8,13,16,21 375:24 376:4,7 376:13,16 377:6 378:2,11 378:20 379:2,7 379:10 380:14 380:17,20 381:1,17,20 382:16,19 383:16 384:6,9	384:11,16 385:1,23 386:2 386:22,24 387:1,2,6,24 388:4,7,20 389:1,5,10,16 390:3,22 391:2 391:5,9,12,16 391:24 392:12 392:16,18,25 393:16 394:11 394:12,16,19 394:23 395:2,5 395:8,9 396:7 396:12 397:6 397:19,23 398:6,11,17,22 399:1,6,10,16 399:18,22,24 399:25 401:1,5 401:13,16 402:22 403:5,9 403:11,12,14 403:16 404:9 404:19,23 405:1,15 406:2 406:4,7,12,15 406:18,23 407:3,10,17,21 407:23 408:5 408:10 409:5,7 409:25 410:18 410:20,23 412:19 414:21 414:24 415:3
---	--	--	--

[shaheen - shaheen]

415:16 418:25	523:11,17,21	543:18,22	597:10 598:20
419:2,10,13,14	523:25 524:3,6	544:4,10,18,20	598:23 599:4
419:15,20	524:9,14,18	544:24 545:5	602:9,10,12,13
420:3,4 421:15	525:17,18	545:10,17,21	602:16,22,25
421:21 422:2	526:2,3,8,13,17	545:22,24	603:3,9,10,18
434:17 439:11	526:25 527:2,3	546:6,12,19,23	603:21,25
439:18 440:7,9	527:12,17,22	547:1,8,12,15	604:6,8,14,22
448:6,9 457:11	528:1,4,6,12,15	547:20,23	605:1,4,15,18
467:16,17,19	528:20 529:3,4	548:3,8,12,22	605:19 606:2,6
467:20,24	529:10,12,16	549:1,10,16,19	606:13,19,23
468:2,5,9,14,20	529:20,25	549:23 550:4,6	607:2,5,8,14,18
469:6,11,15,23	530:4,9,12,15	550:10,16,21	607:21,22
470:1,5,8,21,25	530:19 531:1,8	550:25 551:5,8	608:1,6,11,24
471:7,10,13	531:14,18,21	551:12,18,19	608:25 609:10
473:7,12 476:6	531:22,23	551:20 552:1,2	609:15,18,25
476:8 486:2	532:2,7,13,17	552:11,13,24	610:3,5,6,10,14
491:11,13,16	532:22 533:6	552:25 553:12	610:17,22,25
491:18 492:6	533:12,18,23	553:13,24	611:3,7,11,14
492:10 493:5,6	534:3,7,11,14	554:1,2,10,19	611:15,21,25
494:1 511:10	534:17,20	554:25 555:6	612:4,10,16,22
511:14,18	535:1,4,12,19	555:11,16,20	613:2,8,13,14
514:16,22	535:25 536:3,9	555:24 556:5,9	613:19 614:11
515:15,16,22	536:13,16,17	556:14,18,21	614:12,16,21
515:23 516:1,9	536:20,21,22	556:25 557:3,7	615:2,6,8,9,11
516:13,22	536:25 537:14	557:11,17,21	615:16,23
517:2,6,12,16	537:18 538:1,5	558:1,6,7,14	616:2,6,8,10,12
518:9,13,16,18	538:11,16,22	559:6,10,12,16	616:17,25
518:19,24	538:25 539:7	559:20 575:15	617:7,11,19
519:4,8,11,15	539:16,18,22	575:17 579:19	618:9,11,12,18
519:20 520:2,9	540:3,7,11,17	580:19,21,25	618:24 619:3,7
520:13,18,23	540:22,25	585:13,18	619:12,18,22
521:6,9,13,16	541:9,13,14,18	587:4,9,20	620:2,12,18
521:24 522:1,4	541:24 542:4,9	589:5,17,20	621:5,11,15,16
522:5,8,12,17	542:14,19,22	593:22 594:3	621:20 622:3,7
522:25 523:5	543:1,6,10,13	595:20,22	622:13,18,20

[shaheen - sir]

622:23 623:1,8 623:13,16,21 623:25 624:8,9 624:10,17,19 624:20 625:3,7 625:13 626:2,7 626:12,17 627:1,8,12,19 627:24 630:9 630:11,22,25 631:3,6 632:21 633:23 636:4,5 637:6,11,12,16 637:22 638:1,8 638:14,18,19 639:2,7,10,14 639:20 645:5,8 645:16 647:1,3 647:5,8,15,16 649:2,3 650:3 650:7,11,14,19 650:22 651:4 652:13,16,21 653:4,22 654:1 654:7,10,20 655:1,4,9,11,14 655:23,25 659:2,3,8,19,21 660:7,13 661:10,11,14 661:17,19,23 662:16 shaheen's 383:25 445:7 492:19,22	shallowest 591:17 share 382:21 419:3 439:12 497:10 516:3 532:2 578:15 609:20 shared 462:9 531:4 572:24 sharing 457:6,8 536:14 570:21 609:18,19,21 sharon 355:16 360:23 she'll 366:17 shed 413:10 shifted 492:7 shoot 560:6 shooter's 456:21 short 401:1 444:4 474:6 shorten 458:13 shortly 551:13 show 370:19 378:25 409:15 434:17 469:19 484:24 491:21 494:6,11 495:8 495:22 496:6 533:21 546:19 557:6,19 571:17 617:14 618:16,20 625:23 648:13	648:19 649:2 showing 374:21 429:16 430:6 437:15 487:24 488:24 495:23 536:19 shown 378:20 463:5 468:24 shows 378:8 487:4,25 495:9 495:10 545:2 shrink 383:1 shut 465:5 sic 510:7 side 374:25 489:2,2 490:6 490:25 492:24 566:12,13 sides 495:13 sight 395:17 sign 393:9 569:16 577:6 577:11 662:11 signature 663:17 664:14 signed 390:11 409:21 436:3 446:2,4,5,12,18 497:4 569:14 569:19 significant 387:21 388:13 403:2 477:7 590:14 591:4 591:16 592:25	significantly 423:12 478:21 478:24 495:19 signs 577:14 579:13 similar 376:8 426:18 493:19 527:18 528:7 528:16 529:13 530:2,16 563:17 573:18 573:24 589:4 592:13 595:15 603:15 605:24 606:8,9 simply 415:3 477:25 506:14 507:10 single 378:10 380:1 391:9 403:23,24 465:3 568:17 sink 397:5,7 398:7,9 448:22 450:13,15,17 450:23 451:2 454:13 455:2 456:1,7 547:4 547:6 sir 460:10 463:2 566:6,21 571:11 572:7 572:11,13 574:12 575:2 581:12 586:6
--	--	--	--

[sir - speaks]

624:5 628:13 628:19 629:21 630:3 633:5 660:25 sit 449:3 513:14 sitting 548:12 situated 469:18 situation 578:21 six 379:22 380:2,5,8 381:25 382:6 382:10 466:3 502:12,22 size 588:23 sized 404:13 skills 663:10 664:6 skin 477:21 skip 488:2 654:4 skipped 570:20 skips 488:3 slam 459:18 slammed 472:17 slash 562:22 slide 388:5 401:19 406:14 412:2 419:19 421:17 426:20 426:24 427:1,1 428:22 433:20 433:23 446:20	460:22 461:15 462:24 487:23 487:25 495:9 slide's 621:6 slides 376:14 380:22,23 496:1 618:21 620:19 621:2,3 small 425:16 625:23 smaller 379:11 snee 610:15,18 snipped 490:13 software 422:23 someone's 457:4 soon 400:22 646:6 657:16 sorry 370:13 371:7 377:8 378:22 406:12 419:22 454:22 454:22 457:5 464:10 469:4 488:21 509:15 517:21 521:18 528:16 532:20 533:16,18,23 534:11 545:10 545:18 550:22 556:24 557:9 565:11 572:11 580:5 585:13 587:4 602:25	602:25 606:22 608:23 612:20 617:3 623:3 626:22 sort 366:18 444:4 461:16 507:23 569:11 582:15 640:15 646:11 sorting 445:1 sound 432:2 sounds 538:15 558:22 596:18 636:3 637:5 645:16 source 402:18 612:14 south 354:6 429:24 437:22 470:10,19 476:23 491:4,5 537:11,23 543:8 544:20 544:22,25 611:17 612:8,8 southeastern 509:9 southern 399:3 582:2 617:21 618:15 625:10 625:19 626:21 626:23 space 480:8 569:3 625:2 658:13	spaced 391:10 469:1 537:1,7 537:19 538:18 659:4,14 spaces 539:8 spacing 360:16 360:20 373:22 373:25 375:5 379:19 381:7 436:20 449:13 461:5,7 462:11 469:2 516:25 517:14 519:2 531:25 532:15 533:25 536:6 536:10,23 538:23 540:9 542:8 562:7 588:22 601:18 spacings 400:18 436:15 span 479:22 speak 388:8 488:23 513:13 544:4 561:14 570:13 587:15 speaker 403:6 447:5 speaking 433:12 500:8 576:4 623:11 656:25 speaks 544:8 577:24
--	---	---	---

[specific - state]

<p>specific 392:13 393:18,19 394:3,8 397:24 398:3,5 399:7 425:8 430:20 430:22 446:16 448:11,14 449:12 450:18 451:16 456:7 464:3 469:3 472:7 481:1 510:17,19,21 510:22 512:4 512:12,16,17 512:19 527:15 527:21 528:25 529:8,14 544:15 548:1,6 549:3 554:4 555:9,16 566:18 576:18 577:23 579:7 579:24 598:11 601:24 608:4 619:16,20 620:3 622:17 658:4 specifically 398:7 460:11 460:22 461:6 528:14 570:10 571:19 580:7 587:3 588:12 588:19 607:4,7</p>	<p>specifics 393:10 548:20 579:25 580:3 speculate 563:19 speculation 462:3,17 477:23 552:9 spell 475:12 spencer 355:16 spend 527:5 554:12 559:24 spending 478:1 spends 554:3 spent 470:25 482:7 split 567:8 spoken 568:13 600:4 spread 462:15 544:14 spreadsheet 639:23 640:9 640:11,18,20 641:25 643:6 643:16 spring 359:12 363:9,12 365:22 373:23 373:25 374:2 376:18,18,24 377:1,2,7,9,11 377:13,17,23 378:1,3,6,7,16 378:24 379:3</p>	<p>379:15 380:12 381:2,4,14 404:6,6,15 405:8 420:14 420:16,19 426:5,13 427:13 460:12 463:1 464:5,17 465:3,12,15,21 465:25 467:1 476:21 479:24 504:23 516:7 521:3,8,12,14 562:11,14 566:12,18 574:16 585:8,9 591:17,25 592:8,15,22 593:14,15,19 594:1,8,17 600:4,5 601:1 609:2,5,7,12,12 615:15 624:16 628:16,19,22 629:12,13 635:5 springs 403:22 461:1 spud 502:22 564:21 square 588:10 stack 407:13 staff 356:9 390:1 466:6,9 582:1</p>	<p>stage 449:25 stand 384:3 526:24 612:10 standard 564:14 619:4 standards 504:1 standpoint 600:2 631:18 stands 420:20 start 367:6 450:14 456:3 473:24 564:8 636:18 645:15 647:13 650:24 660:11 started 395:23 452:13 505:9 565:14 569:23 starting 419:12 494:25 495:24 506:7 575:5 586:15 starts 393:22 state 353:1 383:7 387:13 396:23 399:2,5 422:20 435:12 448:18 450:5 455:7 475:12 535:10 540:12 563:24 582:7 610:6 627:16 663:20</p>
---	---	--	--

[stated - summarize]

<p>stated 414:17 428:8 477:25 481:19 statement 357:3 358:18 359:7,16 360:22 362:5 362:21 364:9 372:13,22 373:4 376:17 399:11 405:6 405:11 412:17 444:22,24 445:3 516:2 531:2,7,10 539:19 609:16 610:11,18 611:8,22 612:5 612:6,11 617:23 625:15 625:17 626:13 626:18 627:20 633:24 637:23 638:25 644:1 statements 508:8 516:5 states 405:7 423:17 435:18 501:23 537:17 538:4 635:3 stating 507:3 507:13 statistics 375:14 376:8</p>	<p>stay 391:19,21 475:25 step 384:18 stewart's 434:3 stick 590:9 599:12 stipulate 530:24 stipulated 575:20 stipulation 647:15 649:9 652:23 stop 385:8 457:5 straight 460:1 520:14 565:15 straightforward 603:6 stranding 574:20 stratigraphic 358:22 363:5 stress 611:20 612:2 stretching 464:9 stronghold 355:23,24 356:5 359:18 390:2 393:8 396:9 422:13 422:21 453:20 457:18 458:8 468:2,6,10</p>	<p>472:9 structural 362:25 structurally 590:19 structure 358:21 362:24 458:3 stuart 356:6 stuck 641:4 studies 602:17 605:20 study 603:11 603:22 604:15 606:20 623:22 stuff 656:4 styles 462:21 sub 650:4 subject 442:21 511:2 526:9,11 539:7,11 561:1 564:9 578:19 submission 638:10 639:17 submissions 657:22 submit 471:10 548:18 588:21 631:15 637:22 638:8 645:13 645:16 646:16 646:19 656:6 662:1 submitted 386:5 387:17</p>	<p>411:21 413:5 432:16,21 435:4 437:1,4 466:9 491:23 492:1,11,14 542:5 557:8 submitting 542:10 554:8 subsea 362:24 subsection 382:19 subsequent 601:20 605:11 subsequently 582:7 subset 595:14 substantial 449:23 575:23 576:8 subsurface 600:15 601:7 success 595:7 sufficient 419:24 508:6 584:14 suggest 622:21 suggesting 397:25 summarize 372:1 373:11 387:3 388:9 389:18 399:20 402:24 403:18 404:10 418:22 420:4,7 421:15</p>
---	---	--	---

[summarize - take]

436:24 494:19 494:25 511:8 summarized 510:5 summarizing 384:12 512:6 summary 358:13 375:14 447:15 481:25 582:4 644:20 sundries 542:4 542:10,15,18 sundry 542:2 superior 373:12,20 574:18 supervisor 356:8 481:23 supplement 631:7 643:24 supplemental 364:4 629:24 support 362:13 444:16,20 477:13,15 486:5 496:12 496:15 497:5 569:14 574:14 603:22 604:12 604:23 611:22 612:17,23 613:4 630:15 supporting 604:6 605:20	supports 604:1 supposed 640:14,21 641:5 662:6 sure 365:9 371:11 372:7 374:4 380:25 394:20,21 406:18 408:4 429:13 430:4 432:20 438:25 443:22 449:11 452:5 454:2,3 463:11 467:14 469:10 487:10 488:17 489:14 491:17,24 492:4 519:24 520:12,12 526:12 533:12 535:2 540:7 566:19 572:16 578:20 579:2 586:9 587:23 587:23 599:13 601:17 608:3 622:25 623:18 626:15 627:7 638:17 640:6 641:3 642:22 645:4,18 650:3 650:6,21 653:17 655:7 662:5	surface 359:11 359:13 362:19 478:15,22,22 479:1 483:11 483:11 485:10 485:18,23 486:4,6,11,13 486:15,17,23 487:4,25 488:23 489:5 492:16 493:3 495:11 531:3 531:11 surprise 578:4 578:8 631:8 surrounding 387:17 483:9 survey 509:6 surveyed 478:18 508:21 surveys 479:12 509:5,7 suspicion 409:2 sustain 418:12 441:15 525:13 526:25 553:10 596:25 sustained 395:6 551:17,23 553:23 swap 459:14 640:15 swings 403:2 625:25	sworn 474:21 475:3,8 663:5 synonymous 567:9 system 657:18 t t 358:1 359:1 360:1,23 361:1 362:1 363:1,16 363:16 364:1,1 475:18,19 543:7 table 375:8 463:16 465:11 466:21 510:25 522:9,12,25 523:6,18 566:25 568:14 568:17 571:2 572:20 650:25 651:2 tables 374:25 566:8 tabs 487:16 518:7 tabular 512:9 take 368:10 388:1 392:18 399:16 400:1 419:5 432:2 434:25 454:1,4 473:18 474:3 474:16 477:25 490:23 502:10 506:8 537:2,2
--	--	---	--

[take - technical]

537:8,8,20,20 552:6 553:8,14 558:8,24 560:23 601:7,7 601:23 628:4 630:6 645:20 662:12,14 takeaway 404:4 483:17 taken 490:16 490:23 558:20 663:3,12 664:9 takes 366:7 397:16 505:12 505:17 540:25 549:25 558:21 570:5 639:17 talk 365:6 376:19 378:11 388:20 389:17 401:18 415:24 416:17 442:25 447:8 458:7 466:8 472:8 495:2,22 498:12 585:10 589:21 606:13 636:8 645:11 talked 365:22 401:12,23 434:10 466:5 495:8 513:23 531:24 555:1 636:21 638:1	talking 376:17 377:9 379:3 381:17 383:25 390:3 395:24 397:24 399:12 401:16 412:4 429:25 430:12 447:3 449:12 449:19 452:14 458:20 462:25 469:16 492:3,4 552:9 562:22 585:14 606:14 656:16 talks 498:13 503:6 tangible 522:18 522:23 tango 397:16 tank 488:25 491:20 495:12 495:14 557:23 557:25 target 421:9 469:3 585:7,8 585:9 615:12 616:1,4,13,19 617:1 619:17 619:19 628:24 629:2,11 644:7 targeted 562:10,15 588:20 targeting 420:12,17,20	421:11 469:2,5 588:13 615:24 616:19,20 617:8 618:22 targets 445:7,8 445:18 620:16 629:14 tariff 388:15 502:2,3 tariffs 403:2 tbd 436:20 615:12,21 616:1,5,7,21 tbds 400:18 team 389:22 390:9 391:22 395:21 410:12 452:11 505:22 512:8 570:13 601:7 605:25 614:6 623:20 team's 600:15 teams 419:4 515:17 technical 355:14 365:25 366:3,11,22 367:3,10 416:17 456:17 456:24 457:2,7 457:10 458:12 459:9,20 460:7 460:11,14,21 461:4,10,14,20 461:25 462:5,8	462:16,23 463:3,10,14,18 463:24 464:7 464:11,20 465:8,18 466:4 466:6,9,19,24 467:3,9 515:4 560:4,7,13,18 560:22 561:3,7 561:12,24 562:5,9,13,20 563:2,10,12,16 563:21 564:3 564:10,15 565:2,13,20,25 566:7,14,20,23 567:3,12,17 568:1,7,11,20 568:24 569:4 569:10,17,21 570:8,15,19,25 571:6,10,16,23 572:3,8,13,23 573:4,9,12,25 574:6 614:6 628:2,10,14,20 629:4,10,19,22 630:5 632:10 632:25 633:6 635:17 636:14 636:19 637:5 637:14,18,24 638:9,15,20 639:4,8,11,15 639:21 640:1,3
--	---	--	--

[technical - thank]

640:5,8,12,24 641:2,8,13,15 641:18,22 642:3,6,12,14 642:19 643:1,5 643:10,20 644:4,14,18 645:2,7 658:1 658:8,14,21 660:17,22 technically 465:19 562:6 tell 426:19 428:2,5 434:1 470:10 475:4,9 475:13 476:1 519:24 583:13 592:1 596:4 telling 396:16 458:2 620:7 ten 399:20 404:3 465:24 482:6 656:13 656:13 658:22 659:3,7,9,13,15 661:5 term 393:12 500:14 507:10 507:12 619:8 terms 374:16 436:18 442:21 454:19,21,23 495:16 496:6 507:8 564:25 620:5	testified 431:10 434:11 475:5 475:10 513:8 549:1,6 558:2 631:2,3,24 testifies 552:17 testify 444:16 486:13 524:19 524:24 525:1 526:4 538:23 589:7,16,19 598:21 599:5 testifying 486:11 515:13 525:2 588:5 589:11 595:22 629:15 663:5 testimony 368:11 371:20 373:6 384:1 386:13 406:24 422:10 423:16 423:20 431:19 434:7,11 435:1 436:23 438:9 440:25 441:12 442:15 443:17 448:14 478:12 482:10 483:5 483:20,21 485:17,24 487:1 490:24 494:20 495:4 504:5 507:3,5 508:5 509:24	509:25 510:13 510:14 515:14 519:20 525:4 526:22 538:20 538:24 543:23 549:7 555:4 556:9 561:17 575:13 581:10 582:22 583:8 584:13 587:10 596:12 598:13 600:11,12 602:21 603:18 603:19 604:4 604:16,17 605:10,13 607:11 608:2,4 608:6 610:8 616:21 621:12 624:22 627:7 630:15 632:22 634:5,9 testimony's 604:9 texas 399:4 423:7,9 432:9 455:9 467:22 467:25 468:3,7 482:2 text 659:14 thank 366:21 367:1,13 368:15 371:5 380:21 386:14 386:24 395:7	399:22,23 403:9 404:19 406:1,17 410:19 416:18 419:2,13 422:2 422:6 439:12 442:24 456:14 456:17 467:11 467:13,14,17 471:14,15 473:3,8,9 474:23 475:11 475:17,20 476:5,20 481:9 481:10 483:19 483:23 487:15 491:16 511:16 511:16,25 514:13,15,22 514:25 515:7 521:25 536:3 541:10 555:1 560:4 574:6,8 580:16,18,23 581:3,6,7,22 586:9 587:20 602:6,10,15 610:25 611:13 614:8 615:7 623:25 624:4 627:25 628:8 628:10 632:17 632:20,22 633:7,8,10 634:20,24
--	---	---	---

[thank - threshold]

635:13,23 644:14 662:10 662:14,20 thanks 571:10 that'd 383:13 386:23 538:9 theirs 493:4 thing 398:6,11 401:6,23 404:1 413:12,13 461:17 491:19 493:23 554:20 645:19 661:25 things 388:15 398:15 566:12 636:11,15 660:20,23 think 366:3,17 369:9,16 371:6 371:8,14 374:8 376:23 377:20 381:13 382:23 383:21 384:6 385:2 386:12 388:10 390:7 392:25 400:20 400:22 401:9 404:20 407:8 409:19 410:23 413:18 415:11 418:10,10 420:24 421:8 434:9,19 435:11 436:23 440:21 441:18	445:6 446:25 447:15 448:6 449:15,21 451:9,9 453:25 456:2,22 457:2 457:7,17,23 464:2,25 466:11 468:23 481:18,19 486:12,14 495:1 514:17 517:22,23 518:2,19 524:25 525:8,9 526:23 535:13 537:4 548:2 551:2 552:6 553:6,14,16 554:10 559:2 559:17 566:15 575:7,12 579:6 581:1 584:5,5 584:8 587:15 588:13 590:4 592:24 593:16 594:4,9,19,21 595:15,16,18 596:20 599:15 603:6 605:5,25 606:16 607:10 613:10 617:13 618:19 620:5,6 620:18,25 621:7,11,24 624:10 625:1	625:21,25 631:22,25 632:8 636:20 637:25 638:21 640:11 642:9 642:19 643:3 645:19,23 646:1,19,20 647:20 648:3 652:18 653:12 653:14 654:20 659:3,8,9 660:8,9,10 661:8 thinking 397:5 448:22 547:3 646:17 thinks 415:25 third 363:8,12 373:23 374:2 376:18,23 377:1,2,7,9,10 377:12,16,23 378:1,7,16,24 403:22 404:5,6 404:15 420:14 420:15,19 427:13 433:9 460:12,25 462:25 464:5 464:17 465:2 465:11,15,20 465:24 466:2 466:25 479:23 585:8,9 591:24	592:8,15,21 593:14,19,25 594:8,17 600:4 600:5 609:2,5 609:6,11,12 628:15,19,22 629:12,13 637:10,20 thoroughly 368:12 thought 377:10 384:1,10,11 385:9 408:3 475:22 511:11 554:17 605:23 616:23 617:4 621:4 640:6 653:9 654:10 661:12 662:9 thousand 503:18 thousands 450:23,25 453:14 three 371:17 378:7 381:10 383:11 391:9 405:8 413:8,24 466:3,3,21 467:1 487:20 569:1,5 574:2 593:23 621:7,9 637:9 644:7 threshold 577:22
---	---	---	---

[throw - trade]

throw 455:15 tidbits 658:3 tied 366:18 time 354:3 368:10 369:23 373:13 377:15 386:2 393:6 397:22 401:14 413:23 415:10 416:4 432:19 433:9 443:21 444:4 454:17 457:22 460:4,4 465:16 471:1 473:21 475:12 503:1 505:10 505:12,18 506:8,14 511:21 527:6 535:13 539:1 541:1 546:15 548:9 549:23 549:24 550:3 553:2,13 554:3 554:12 555:23 556:1 558:11 558:24 559:24 560:2 569:18 570:5 573:22 582:10,11 584:19 591:14 593:1,11 601:7 601:7,23 646:25 661:4 662:3,4,8	timeframe 506:16 578:16 timeline 362:15 504:8 505:1,2 505:5 564:19 570:10 614:24 times 421:2,25 498:24 593:23 timing 395:17 500:6 557:14 600:11 tired 645:3 title 355:22 397:15 422:24 453:22 543:25 545:16 549:13 549:17,20,20 549:21,22,25 550:11,11 552:7,10,19 553:14 554:17 567:8,9,22,25 568:5 titled 522:9 today 366:4 386:3 403:3 449:3 473:17 519:21 520:19 531:4,5 539:12 548:12 555:4 556:10 559:13 559:18 563:14 588:5 604:17 607:11 608:2 629:15	today's 514:20 656:9 together 366:18 393:7 400:6 458:11 460:5 582:18 601:15 623:20 told 455:24 460:3 480:25 551:9,20 tomorrow 558:16,19 559:22 646:8 took 367:20 416:22 top 422:21 461:24 470:15 492:3,8 493:10 566:25 571:1 606:5,25 616:24 617:4 640:9 topic 507:24 topics 460:8 658:12 tops 374:9 490:7 total 383:10,14 383:17 404:16 404:17 537:15 538:2 551:4 637:21 touched 645:8 towards 374:23 460:6 462:10	township 438:4 451:10,16,22 470:1 476:23 499:13 537:10 537:23 543:8 579:20 townships 429:20,22 547:24 548:4 548:10 tracks 544:2 tract 358:7,7 362:9 502:18 543:3,4,7,11 544:2 566:2,10 567:7 568:9,25 569:3 626:9 627:4 644:11 644:19 traction 459:7 tracts 362:9 396:10 449:24 451:2,3 456:1 457:19 543:2 544:6,13 548:17 627:13 633:25 trade 393:7,8 393:13 394:9 396:10 397:17 397:22 398:1,7 448:14 450:1 450:14 452:15 452:24 453:2 453:15 455:8,9
--	---	---	--

455:22 456:3 456:13 457:19 458:15,16,17 459:13,17 460:5 472:19 480:20 481:1 510:17,19,21 510:22 512:4 512:10,16,17 512:19 513:5 513:16 546:4 546:16 547:3 547:25 548:13 548:23 549:4 549:15 554:6,8 554:14,16 560:16 561:1 traded 510:24 510:24 trades 392:14 395:25 449:19 458:20 459:22 459:24,25 472:13,22 510:13 trading 396:17 396:19 422:22 449:20 451:18 451:25 452:2 455:3,4,5,8 456:11 transaction 443:8 601:20 transcriber 664:1	transcript 366:7,12 656:11,24 657:4,17 659:17 664:3,5 transcriptionist 663:8 transition 391:21 570:2 treated 465:2 treating 403:21 treatment 579:14 tremendous 625:24 trend 612:12 triangulating 411:9 tried 456:13 trouble 596:23 true 393:16 428:25 429:2 540:3 590:16 663:9 664:5 trusted 421:2,9 458:5 466:18 truth 475:4,4,5 475:9,9,10 try 398:15 455:16 505:6 618:9 trying 397:1 406:2,4 409:15 439:25 440:2 455:13 456:4	457:20,25 459:18 464:4 489:8 490:20 493:17 505:10 546:7 549:15 553:6 555:8 586:2 590:1 618:8 tschantz 355:5 365:7,21 657:7 657:14 tubing 523:12 523:22 524:4,7 525:21 526:6 526:18 527:8 527:13 575:18 tuesday 555:10 555:11 tumbler 355:17 355:21 356:3 358:4 359:4,18 360:4 361:4 362:7 364:12 365:4 368:1,20 369:1,5 370:1 370:5 371:1,24 376:25 377:15 378:15 381:25 383:1,4,6,11,12 385:21 386:17 390:23 395:18 396:10 400:7 402:21 409:15 411:6 412:5 415:12 417:20	418:19 420:25 421:22 423:2,4 423:8 431:20 432:8,10,17,22 433:4 437:18 437:25 438:4 445:11 446:14 447:11 448:1 453:17,19 457:13,16,18 458:24 463:20 467:21,24 468:1,5,9 469:5 471:2,3 471:8,10 472:24 476:24 477:2,9 478:12 478:19,20 479:5,7,12,17 479:22 480:2 480:10,12 481:1 482:20 482:23 485:10 485:25 489:3 494:10 496:2,7 496:9 497:14 499:9,16 501:6 502:6,14,20,21 507:24 509:2 509:20,25 510:3,16 513:1 513:8,16 514:2 521:10 539:25 546:5,10,15,24 547:3,23 548:4
---	--	---	--

[tumbler - typos]

548:14,23 549:7 550:12 552:14,22 553:14 554:3,8 554:12 561:4 569:22 570:9 579:20 584:1 586:4 592:2 595:1 600:5 609:11 630:14 631:9 638:1,10 638:12 648:23 648:25 649:4 649:10,14,18 649:23 651:11 651:17 652:1,7 652:11 653:1 tumbler's 360:8,13,15 373:11,19 374:10,17 378:4 379:4 381:21 382:21 383:18 387:10 389:17 409:22 423:17 431:17 436:22 437:4 443:15,23 445:7,19 446:2 446:6,12,16,17 446:22 458:15 472:1,13,18 478:25 485:17 486:17,19 490:4,7 492:15	493:14,20 495:3,14,20,22 495:24 498:6 499:12,21 502:4 503:2 549:4 584:8,24 585:3,11 586:15,16,21 594:13 598:9 598:12 607:23 611:4 623:2,10 634:9,22 tumblers 658:16 turn 374:3 400:1 410:2 434:3 500:9 516:1,22 541:8 610:22 turnaround 656:12 turning 374:13 382:16 387:2 387:24 401:5 402:22 404:9 516:13 517:6 531:18 537:6 539:18 540:11 543:1 545:24 546:6 609:15 615:2 616:2 617:11 624:13 turns 577:16 twelve 429:22 503:18	twenty 541:9 two 366:7 388:17,19 395:13,23 397:16 400:4 400:17 403:1,4 405:10 421:25 431:23 437:1,4 454:6,7 465:23 466:21 470:18 471:7,8 474:20 478:19 489:8 490:24 494:6 494:11 495:11 499:1 500:23 501:24 511:17 515:3 531:16 532:25 538:12 539:11 543:15 544:15 548:24 557:12,15 581:9 618:12 624:1 627:20 633:14 637:19 638:3 646:21 646:22 647:18 656:13,15 659:13,16,16 661:12 tyler 356:9 357:12 362:22 475:7,18 type 360:15 374:14,15,18 374:21 375:13	376:1,2,8,14,20 376:21,23 378:21 379:1 379:23,23 423:22 424:7 424:11,19 425:16 426:1,4 427:12 428:7 429:10 449:16 460:8,12,16 461:15 468:17 468:22,24 586:15 587:2 588:11,12 589:3,7,8,13,22 589:23 590:3,6 601:11,16 631:20 types 480:23 typewriting 663:7 typical 558:20 560:21 564:4 656:12 typically 382:9 465:20 480:18 512:21 519:25 522:23 560:23 560:24 567:4,9 573:20 658:2 658:16 typo 438:7 638:25 639:3 typos 471:4,7,8
--	--	--	--

[u - updated]

u	underlying	626:14	626:9,18 627:5
u 363:16,16	405:8 476:22	understands	627:13 633:25
364:1,1 434:3	underperfor...	603:7	units 397:9
500:9	594:21	understood	403:25 429:22
u.s. 383:14	understand	494:5	448:24 449:4,7
ultimate	395:15,16	undisputed	449:13,15
375:11 379:18	406:9 408:18	478:2 481:4	451:4 453:15
596:2	408:22 414:6	unfair 631:8	455:3 456:8
ultimately	414:11 423:21	unfortunately	465:6,9,9,19
378:9 400:19	441:24 449:12	506:17	466:20,22
501:13 653:15	489:8 494:2,4	unidentified	467:1,4,5
unaware 563:6	519:15 536:20	403:6 447:5	477:10 480:8,8
uncertainty	553:5 560:10	uniform 543:16	504:9 512:23
597:20 598:10	565:23 569:8	unit 358:9	564:1
619:10,13,25	572:5 576:11	360:18,20	university
uncomfortable	588:4 590:7	362:11,15	482:4
417:17	599:1 608:25	379:17 387:14	unproven
uncommitted	616:15,17	387:22 390:21	479:24 480:1
496:12 577:10	618:3,5 622:3	395:24 396:20	480:11 592:10
uncompleted	624:12,20,23	400:5 402:8	594:20 605:21
398:23	627:7 630:1,18	403:23,25	unreasonable
under 373:24	630:21,24,25	404:14,15,17	552:22
442:10,19,20	633:3 655:21	420:8,9,9,16	unreliability
443:10,13	understanding	424:25 430:22	360:9 402:19
458:23 487:1	386:11 392:4	431:9 434:2	unreliable
496:10,25	393:2 409:14	452:14 453:9	387:15 403:3
503:13,15,17	410:21 429:14	460:18 461:13	update 436:13
503:21,22,25	435:1 443:16	463:1 464:4	437:13,14,15
520:25 524:1	443:19 472:2	465:4 483:14	501:8,10 517:4
525:21 526:5	472:11,17	495:25 497:3	532:8,14
581:11 585:17	489:8 499:21	545:23 568:18	533:25 536:23
588:10 606:1	501:14 502:3,5	568:21,23	580:9
651:10	507:25 511:8	569:12 572:19	updated 365:8
underestimates...	513:15 528:10	617:21,24	436:6 437:1,5
576:1,4,9	539:13 585:20	618:15 625:15	498:18,25

499:1,2,5 516:25 517:14 519:2 531:25 532:11,18,23 533:3,4,24 534:4 535:4 536:10 540:9 542:7 580:13 updates 532:5 536:5,7 upfront 578:15 uphold 418:5 uplift 378:10 381:7 382:3 upper 363:6 420:13 421:9 421:13 445:12 469:3 585:7 588:20 591:18 658:24 use 431:20,23 461:11 476:15 485:19 522:19 524:7 528:1 530:13 563:24 576:7,11 592:6 592:18 619:13 620:3 622:21 632:1 657:5 used 427:15 461:11 468:21 468:22 507:11 543:24 544:5 630:19 632:5 644:5	using 409:19 411:8 422:23 424:20 431:12 468:25 483:10 529:21 531:3 531:12 621:21 usually 366:7 460:1 510:23 510:25 613:3 613:17	veritext 657:8 version 367:21 400:14,17 versions 434:12 435:22 versus 383:11 420:18 430:25 459:22 461:5,7 496:7 632:13 vertical 537:15 538:2 vet 505:18 viable 415:7 421:9 vice 355:21,22 356:2,4 506:1 view 420:7 490:18 619:1 villarreal 356:4 357:6 359:17 361:20 367:15 372:11,14,17 372:21,24 373:2,5,9,14,17 374:5,8,18 375:11,15,19 375:23 376:1,5 376:10,15,22 377:8 378:5,14 378:23 379:5,9 379:13 380:16 380:19,25 381:3,19,23 382:18,22 387:3,5,8	388:3,6,10,24 389:3,7,13,20 390:7 391:1,4 391:7,11,14,18 392:3,15,17,24 393:4,21 395:12 396:9 396:15 397:8 397:21 398:4 398:10,13,19 398:23 399:3,9 399:14 400:3 401:4,11,15,22 402:25 403:8 403:13,15,20 404:11 406:10 406:13,16 408:9,13,15 411:11,14,18 411:23 412:1,7 412:11,16,20 412:24 413:2,7 415:4 416:3,5 416:7,11,13 418:18 419:15 419:18,25 420:6 421:20 421:24 422:3 422:13,15,19 423:1,4,8,14,19 423:23 424:2,5 424:9,12,19 425:1,4,8,13,19 425:23 426:2,6 426:10,14,17
	v		
	v 404:19 456:22 467:20 547:2,21 value 393:11 422:24 458:10 461:21 values 455:13 458:2 vance 355:10 variability 600:1 625:23 variance 626:19 variations 479:21 varies 622:25 various 393:6 427:9 478:25 522:18 545:13 568:13 574:3 vary 423:12,14 veracity 575:7 verify 442:12 467:7 535:8		

[villarreal - watts]

426:22 427:5,8 427:14,18,22 428:1,5,12,15 428:20,24 429:2,5,9,17,21 429:25 430:3 430:10,13,17 430:21 431:2,5 431:18,22,24 432:3,6,10,14 432:18,23 433:2,6,14,18 433:21 434:1,8 434:13 435:5,7 435:14,21 436:4,8,11,14 436:19 437:2,6 437:10,16,20 438:2,6,14,19 438:21,24 439:1,5,10,14 440:24 441:11 441:21,25 442:4,12,16,22 443:3,7,12,20 444:1,7,11,14 444:18,25 445:9,13,16,20 445:23 446:4,9 446:13,19,23 447:2,10,13,18 447:21,24 448:3,10,16 449:1,5,8,14 450:24 451:3,7	451:12,14,15 451:20,24 452:3,6 453:4 453:8,16,19,24 454:16,21 455:24 456:19 456:21,22 457:1,3,17 458:16 459:16 459:23 460:10 460:13,19,25 461:9,12,19,23 462:4,7,14,19 463:2,7,13,15 463:22 464:2,8 464:16,23 465:14,22 466:8,23 467:2 467:6,12,14,23 468:1,4,8,12,19 468:23 469:10 469:13,21,25 470:4,7,16,24 471:6,9,12 472:4,8,15,21 473:2,9 498:12 511:7 513:21 653:10 villarreal's 368:17 394:8 498:5 501:19 503:5 512:2 589:23 voiced 388:11 390:12 392:7	voir 367:14 volatility 388:13,15 volume 462:1 573:22 vs 360:16,20	506:14 511:14 527:5 552:21 554:16 566:18 570:24 573:20 576:10 577:6 577:11 584:4,6 586:7 588:25 594:22 604:10 609:23 636:18 638:9 644:16 654:2,6 655:7 656:23,24,24 657:22 658:7 658:12,14,20 661:24 wanted 416:2 416:22 434:6 438:9 469:15 505:17 585:1 636:15 wanting 453:1 wants 393:8 604:11 647:6 waste 360:14 380:15 444:5 478:23 481:8 514:5 574:19 wasted 373:21 water 359:10 479:16 483:17 622:24 623:6,9 623:17,22 625:22 626:3 watts 477:13 496:15,24
		w	
		wait 393:23,24 394:1 406:24 441:23 waiting 644:25 walk 373:13 380:23 505:4 636:15 walking 572:18 wall 455:15 walsh 477:13 496:15,24 569:11,13 574:15 walt 356:2 359:8 389:24 want 365:5 369:19 371:17 371:18,19 383:19 385:4 394:15 402:23 413:2 415:6,25 429:12 433:2 434:17 442:25 448:4 449:11 449:11 457:21 470:13 472:8 473:19,20 481:11 494:11	

[watts - wells]

569:11,13	659:15	400:11,16	502:22 505:20
574:15	website 401:25	403:24 404:3,5	506:2 508:6,15
way 366:13	443:4	404:16 420:7	524:7 531:16
368:8 380:12	wednesday	420:10,13	532:9,15
411:1 413:8	354:2	421:17,22,25	536:10,23
415:10 418:5	week 396:6	423:3,5,7,9	538:23 539:4,9
443:9 456:23	435:13 452:23	424:7,11,16,20	539:10,14,25
489:22 505:16	646:2	424:24 425:3	540:13,18
514:17 520:2,4	weeks 355:21	425:17,21,23	542:2,7 549:5
525:19 541:1,1	366:8 389:24	426:8,16,20	549:5 555:19
545:18 551:16	391:3 400:17	427:2,7,8,10,16	556:12 561:13
552:14 553:7	436:23 513:24	427:25 428:3,6	562:8 563:4,13
570:22 590:2	552:6 646:21	428:18,18,23	563:23 564:4
597:2 614:3,9	646:22 651:10	429:3,7 430:24	564:18,25
630:16 631:17	656:13,15	430:25 431:2	565:8,18 587:2
637:1 653:17	659:16,16	432:1,5,9,16,21	587:3,16
ways 554:16	661:12	433:1,25	588:11,17,20
557:14 602:3	weevil 402:6	435:23,24	589:3,12,16,19
wca 360:17,19	weigh 477:4	436:10 437:19	590:21 591:6
wcb 360:18,19	478:6	443:18,25	592:13,14,24
we've 379:17	weight 430:24	444:3,13	593:19 595:1
379:17,19,20	430:25	445:12,14	595:15,17
379:22 386:22	wellbore	450:11 455:16	599:20 601:15
392:6 415:18	611:19 612:1	458:25 460:17	605:6,23 606:1
416:22 429:23	wells 374:10,11	461:1,11 464:1	606:2,20,23
431:19 433:20	374:20 375:1,3	464:14,22	607:9 609:4,5
434:23 447:15	375:5 377:14	466:7 467:22	609:7,11
450:15 452:10	378:7 379:16	467:25 468:3,7	614:20,24
478:12 479:1	379:21 380:2,5	468:11,16,21	615:23 616:13
480:13 495:7	380:9,9,11,19	468:25 472:24	616:18 617:8
531:23 562:22	380:20 381:10	476:25 477:3	618:20,20,25
569:15 579:18	381:11,16,25	478:9,10,13	620:13 622:2
600:4,10 608:5	381:25 382:2,6	479:17 482:25	623:19 627:14
609:9 612:25	397:24,25	483:16 499:7	627:18 629:2,6
656:5 658:22	398:2,9,20,25	500:7 501:24	630:20 631:13

[wells - working]

632:5 643:14 wendell 354:5 went 375:1,5 376:11 480:21 535:15 562:21 582:7 596:19 630:1 west 470:12,18 601:2 western 482:4 582:6 whatsoever 630:13 wide 545:23 willing 458:23 481:6 554:22 willingness 392:8 window 564:5 windows 566:1 wish 466:25 512:3 wished 481:1 withdraw 412:15 413:1 618:18 withdrawn 409:12,20 414:16,22,25 415:3,5 withdrew 466:7 654:16 witness 371:20 383:25 399:21 407:2 418:1,6	418:17 422:4 440:13 473:6 474:9 475:3,8 475:25 481:12 494:19 524:19 524:24 525:1 525:25 526:4 541:3 558:23 558:25 574:9 581:5 584:10 603:6 607:20 618:2,4 621:1 628:4 633:12 633:19 635:21 663:4 witness's 384:3 witnesses 357:5 444:15,18 474:21 477:1 477:17,24 480:24 636:11 662:10 wolfcamp 359:14 365:9 365:17,17,22 373:21 381:18 381:22 382:6 403:22,23 404:3,4,6,8,15 404:16 405:8 420:16,16 428:10,14,16 429:1 460:17 461:3,7,13 462:25,25	464:5,5,18,18 465:3,3,13,13 465:17,24 466:1,2 476:22 516:7 562:12 562:14 566:13 566:18 573:5 574:17 601:5 609:9 615:12 615:20 616:19 616:24 617:1 622:24 623:17 624:15 628:16 628:18,25 629:6 635:10 wonderful 367:4 635:20 636:7 657:16 661:18 wondering 576:15 628:4 659:21 word 367:20 568:18 576:6,9 576:10 600:24 612:21 657:6 words 470:13 549:16 577:9 work 395:25 396:6 398:24 417:17,18 452:15,23 453:18 458:3 459:1 513:13 549:7,11,17,20	549:20,22,22 549:25 550:11 552:7,10 561:16 582:7 600:15 601:11 662:8 worked 433:22 482:6 501:17 505:15 506:12 working 396:1 397:14 416:8 420:23 421:6 446:8,11 449:22 452:16 458:21,25 460:6 466:13 473:1 477:5,15 477:16,18,19 478:2 481:5 495:23 496:9 496:10 497:7 497:10,15,20 508:6,10,12 510:24 513:9 514:10 544:10 544:21,25 545:3,5 560:14 561:19 563:20 563:25 567:4,6 567:10,15,23 571:8 574:16 575:11 576:1 577:4,5,11,18 578:11 582:10 582:11,18
--	--	--	--

[working - zooming]

599:16 works 587:12 595:13 596:21 661:17 worth 380:11 wpes 379:21 wps 380:18,18 380:18 wrap 366:13 written 578:9 650:10 wrong 384:7 400:10 537:4,5 643:17	396:15 400:3,9 401:22 402:14 403:15 404:11 406:17,18 411:18 413:12 419:25,25 421:24 429:21 430:4 435:21 436:14 438:6 438:19,19,24 445:9,25 448:16 449:14 450:24 451:4 452:8 457:7 458:17 460:19 460:25 462:14 462:16 463:10 463:13,23 464:10,16 465:22 466:11 467:11 470:7 474:5,6,6 484:22 489:21 491:10 492:20 518:9 529:7 553:20 566:16 571:22 580:2 582:16 588:19 600:8 615:20 621:10 630:22 632:10 639:4 641:2 642:13 644:15 646:13 654:20 656:20 660:17	year 505:9 506:8 557:15 561:18,21 563:4,5 564:5 564:8,18 565:6 565:8,17,18 570:4 639:12 643:14 years 383:11 388:17,19 400:6 403:1,4 482:6,7 500:7 501:25 557:12 yep 387:5 403:8 470:20 yesterday 367:15,23 373:6 377:4 403:21 407:8 407:13 410:15 431:10 436:24 473:19 638:6 642:22 yesterday's 493:19 yukon 356:2	
x			
x 357:1 358:1 359:1 360:1 361:1 362:1 363:1 379:19 404:16			
y			
y 379:20 380:4 404:17 475:18 yeah 365:18 372:23,24,24 372:24 373:1 374:18 376:25 377:10,21 378:5 379:13 381:3,23 384:24 387:9 388:10 389:20 391:14,18 393:21 395:14		zone 469:2 zones 429:15 594:25 zoom 406:10,13 406:15 419:18 419:23 zooming 419:20	