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

APPLICATIONS OF MRC PERMIAN COMPANY
FOR APPROVAL OF AN OVERLAPPING
HORIZONTAL WELL SPACING UNIT AND
COMPULSORY POOLING, LEA COUNTY, CASE NOS.
NEW MEXICO. 24778-24783

APPLICATIONS OF MRC PERMIAN COMPANY
FOR COMPULSORY POOLING, LEA COUNTY, CASE NOS.
NEW MEXICO. 24784-24786

APPLICATIONS OF FRANKLIN MOUNTAIN
ENERGY 3, LLC FOR COMPULSORY POOLING,
AND, TO THE EXTENT NECESSARY, CASE NOS.
APPROVAL OF AN OVERLAPPING SPACING 24457, 24459,
UNIT, LEA COUNTY, NEW MEXICO. 24479

APPLICATIONS OF FRANKLIN MOUNTAIN
ENERGY 3, LLC FOR COMPULSORY POOLING, CASE NOS.
LEA COUNTY, NEW MEXICO. 24898-24901

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CONTESTED HEARING

DATE: Wednesday, November 20, 2024
TIME: 8:53 a.m.
BEFORE: Honorable Gregory A. Chakalian
LOCATION: Pecos Hall, Wendell Chino Building
1220 South Saint Francis Drive
Santa Fe, NM 87505
REPORTED BY: James Cogswell
JOB NO.: 6859531

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A P P E A R A N C E S

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ALSO PRESENT:

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videoconference)
Madai Corral, Law Clerk
Sheila Apodaca, Law Clerk

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E X H I B I T S (Cont'd)

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FME 3 (cont'd):

Exhibit C	Self-Affirmed Declaration of Ben Kessel, Director of Geology (sub-exhibits C-1 thru C-5)	41/41
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Exhibit D	Declaration of Deana M. Bennett (sub-exhibits D-1 thru D-4)	41/41
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NO.	DESCRIPTION	ID/EVD
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FME 3 Rebuttal:

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NO.	DESCRIPTION	ID/EVD
FME 3 Supplemental:		
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P R O C E E D I N G S

THE HEARING EXAMINER: Good morning, everyone. It is 8:53 a.m. on November the 20th. We are starting a few minutes early today since all the parties are here and the witnesses are here, and I'm sure some of the witnesses want to come and testify before they have to return home. And so let's get this ball rolling. Can I get entries of appearance, please?

MS. BENNETT: Good morning, Mr. Examiner. Deana Bennett on behalf of Franklin Mountain Energy 3 in all of the cases that are before the Division today.

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

MS. BENNETT: Yes, Ms. Yari Pena.

THE HEARING EXAMINER: Okay. Very good.

MS. BENNETT: Thank you.

THE HEARING EXAMINER: Good morning to both of you.

MS. PENA: Good morning.

MR. FELDEWERT: Good morning, Mr. Examiner. Michael Feldewert -- the Office of Holland & Hart hear on behalf of MRC Permian in this

1 case. They have me outnumbered 2 to 1.

2 THE HEARING EXAMINER: I see that, but
3 I'm not worried. I trust you'll be fine.

4 Ms. Bennett, let's start with you.
5 What I'd like to know is how many witnesses do you
6 have today?

7 MS. BENNETT: Thank you, Mr. Examiner.
8 We have three witnesses today.

9 THE HEARING EXAMINER: Three witnesses.
10 Are they all here?

11 MS. BENNETT: They are all here, and
12 they've all been previously qualified in their fields.

13 THE HEARING EXAMINER: Perfect.
14 Excellent. Before this Division?

15 MS. BENNETT: Yes.

16 THE HEARING EXAMINER: Okay. Great.
17 Do you plan on having each one of them testify?

18 MS. BENNETT: I do.

19 THE HEARING EXAMINER: Great. Can I
20 get all three of those witnesses up to the witness
21 stand? Let's get you sworn in.

22 And I see Mr. McClure is our technical
23 examiner today. Good morning, Mr. McClure.

24 MR. MCCLURE: Good morning, Mr. Hearing
25 Examiner.

1 THE HEARING EXAMINER: Would you please
2 all raise your right hands? Do you swear or affirm
3 under penalty of perjury that the testimony you're
4 about to give today is the truth, the whole truth, and
5 nothing but the truth?

6 MR. JOHNSON: I do.

7 MR. MCCOY: I do.

8 MR. KESSEL: I do.

9 THE HEARING EXAMINER: Great. Would
10 you each one of you state and spell your name before
11 you return to your seat?

12 MR. JOHNSON: Don Johnson. D-O-N
13 J-O-H-N-S-O-N.

14 THE HEARING EXAMINER: Thank you.

15 MR. MCCOY: Cory McCoy. C-O-R-Y
16 M-C-C-O-Y.

17 THE HEARING EXAMINER: Thank you.

18 MR. KESSEL: Ben Kessel. B-E-N
19 K-E-S-S-E-L.

20 THE HEARING EXAMINER: Okay. Thank
21 you, sir.

22 Mr. Feldewert, do you have your
23 witnesses here?

24 MR. FELDEWERT: Yes, sir.

25 THE HEARING EXAMINER: And how many do

1 you have?

2 MR. FELDEWERT: We have three
3 witnesses. And likewise, they have previously
4 testified before this Division --

5 THE HEARING EXAMINER: As experts?

6 MR. FELDEWERT: -- last week? Yeah.

7 THE HEARING EXAMINER: Oh, okay. Very
8 good. Would you please all come up to the witness
9 stand? We're going to do the same thing. Get you
10 sworn in. I recognize two of them. I don't recognize
11 the one in the middle -- virtually -- no, you didn't
12 appear at all. Sounds good.

13 Would you raise your right hand please?
14 Do you swear or affirm under penalty of perjury that
15 the testimony you're about to give is the truth, the
16 whole truth, and nothing but the truth?

17 MR. PARKER: Yes.

18 MR. EVANS: I do.

19 MR. SCHULZ: Yes.

20 THE HEARING EXAMINER: Would you please
21 state and spell your names individually?

22 MR. SCHULZ: Andrew Parker. A-N-D-R-E-
23 W P-A-R-K-E-R.

24 THE HEARING EXAMINER: Thank you.

25 MR. EVANS: Isaac Evans. I-S-A-A-C

1 E-V-A-N-S.

2 THE HEARING EXAMINER: And Mr. Evans,
3 before you return to your seat, what field are you
4 qualified as an expert before this Division
5 previously?

6 MR. EVANS: In Land.

7 THE HEARING EXAMINER: Landman.

8 MR. EVANS: In Land. Yes, sir.

9 THE HEARING EXAMINER: Thank you, sir.

10 MR. SCHULZ: Tanner Schulz. T-A-N-N-E-
11 R S-C-H-U-L-Z.

12 THE HEARING EXAMINER: Thank you, sir.

13 Has anyone seen that new Landman series
14 on -- it was awful. I just -- I turned it off after
15 about half an hour. I thought, this has nothing to do
16 with oil and gas. So anyway, I just thought I'd bring
17 that up.

18 Anyway, Mr. Feldewert, have you thought
19 of who is going to present their case in chief first?

20 MR. FELDEWERT: I've thought about it.
21 Yeah, I think it's Ms. Bennett has the lowest filed
22 case number.

23 THE HEARING EXAMINER: Perfect.

24 MR. FELDEWERT: So it seems like, I
25 think, following what you usually do --

1 THE HEARING EXAMINER: Perfect.

2 MR. FELDEWERT: -- they would go first.
3 That's what I anticipated.

4 THE HEARING EXAMINER: Okay. And
5 there's no objection to that?

6 MR. FELDEWERT: No objection to that at
7 all.

8 THE HEARING EXAMINER: No objection.
9 Okay.

10 Ms. Bennett, before we start with your
11 case in chief, would you give me a brief outline of
12 why we're here today? What are the issues that were
13 not able to be negotiated between the parties?

14 MS. BENNETT: Thank you, Mr. Examiner.
15 And I'm happy to give that brief overview, and I'm
16 going to share my screen too because I think it might
17 be helpful to just set the table for what we're
18 talking about today.

19 THE HEARING EXAMINER: Perfect.

20 MS. BENNETT: And if you'll give me
21 just a second, I'll be able to not just share my
22 pretty rock-climbing picture. Okay. So what I've got
23 on the screen here is an overview of what brings us
24 before the Division today. And this is an exhibit
25 from the Franklin Mountain Energy cases.

1 And what this -- so essentially,
2 Franklin Mountain Energy is seeking to pool committed
3 working interest owners in the Bone Spring and the
4 Wolfcamp, and Franklin Mountain Energy's proposals
5 cover Sections for the Bone Spring -- our three-mile
6 proposals, and their Wolfcamp proposals cover Sections
7 19 and 30. And MRC has proposed applications, Bone
8 Spring, and Wolfcamp as well, that cover 30 and 31.

9 So as you can see on this Exhibit 4,
10 which I'm using for demonstrative purposes for the
11 moment, the overlap is in Section 30. And the
12 parties -- Franklin Mountain Energy, feel strongly
13 about its development plan for Section 30, 19, and 18.
14 And so while there have been discussions between the
15 parties, those discussions have not been -- I don't
16 want to say they haven't been fruitful, but they
17 haven't led to a resolution because the parties are at
18 an impasse.

19 Franklin Mountain Energy wants to
20 develop -- move forward with its development plan, and
21 it sounds like MRC wants to move forward with its
22 development plan. And so the parties are at an
23 impasse and that's what compulsory pooling is for. It
24 doesn't mean that there's any bad faith. It doesn't
25 mean that Franklin's proceeded in bad faith. It just

1 means that we're here to ask the Division to break
2 this stalemate.

3 THE HEARING EXAMINER: What is Franklin
4 Mountain Energy's working interest in Section 30?

5 MS. BENNETT: In Section 30, Franklin
6 Mountain Energy's interest is -- well, first of all,
7 it's an undivided interest in the whole, so it's not
8 as easily divisible as in some cases that we've had
9 before the Division.

10 But in Section 30, Franklin Mountain
11 Energy's ownership is 38.75, approximately, and MRC's
12 is 58.75. So Franklin Mountain Energy does have a
13 lower interest in Section 30, but that's not
14 dispositive here. And that's for -- I'm sorry. Go
15 ahead.

16 THE HEARING EXAMINER: Does that 38 and
17 odd percent -- does that include agreements with other
18 working interest owners?

19 MS. BENNETT: In Section 30, it does
20 not.

21 THE HEARING EXAMINER: Okay.

22 MS. BENNETT: It's Franklin Mount
23 Energy's own working interest.

24 THE HEARING EXAMINER: And when you
25 qualify it by saying it's an undivided interest in the

1 whole, why do you clarify it in that way?

2 MS. BENNETT: A lot of times when we're
3 before the Division, a tract, let's say Section 30, is
4 divided into multiple leases. And so MRC might hold
5 one 40-acre lease or might even hold four 40-acre
6 leases, and Franklin Mountain Energy over here in the
7 southeast quarter owns a 40-acre lease.

8 That's pretty easy to divide up, and
9 that's pretty easy to see ownership differences. But
10 here, there's two leases, and Franklin Mountain Energy
11 and MRC each own an undivided interest in each lease.
12 And thinking back to property law at the UNM School of
13 Law, I seem to recall that when you own an undivided
14 interest in a lease, you each have the right to
15 develop it.

16 THE HEARING EXAMINER: So you mean it's
17 like a co-tenancy?

18 MS. BENNETT: It's like a co-tenancy.

19 THE HEARING EXAMINER: Okay. I
20 understand. Thank you very much. That's very
21 helpful.

22 MS. BENNETT: Yeah. And so --

23 THE HEARING EXAMINER: So I interrupted
24 you.

25 MS. BENNETT: Yes.

1 THE HEARING EXAMINER: So please keep
2 going.

3 MS. BENNETT: Yes. The other reason
4 that -- so Section 30, as we just talked about, that
5 there is a difference in the ownership, but I think
6 it's a difference without a distinction when you zoom
7 out because as this overview shows, what MRC is
8 proposing is that Franklin Mountain Energy develops
9 Sections 18 and 19, and that MRC developed Section 30.

10 And the Division in the past has
11 expressed a preference for each party developing its
12 own acreage. But here, 30 is shared in common. So
13 that preference is inapt here.

14 But beyond that, Section 18, which is
15 the northernmost section, has an existing -- and
16 that's this right here that I am hovering over -- has
17 an existing saltwater disposal well, and that
18 saltwater disposal well is injecting into the Wolfcamp
19 formation.

20 So if Franklin Mountain Energy was
21 limited to Sections 18 and 19, it could not develop
22 the Wolfcamp in the Section -- in Section 18, excuse
23 me. So even if we were looking at each operator
24 operate its own acreage, that doesn't work here.
25 Franklin Mountain Energy would definitely be getting

1 the short end of the stick.

2 And that would lead to -- it could lead
3 to stranded reserves as well, because as our witnesses
4 will explain, there's some serious surface constraints
5 out here. And so if Franklin Mountain Energy were
6 left with only developing 18 and 19, it would have to
7 develop them from the south half/south half of 19
8 because of the Wolfcamp situation.

9 And there's existing infrastructure.
10 It's very tight there. And so it would be very
11 difficult to develop from Section 19. And on top of
12 all of that, I think you might recall from prior
13 hearings that we've had before you, Franklin Mountain
14 Energy has expended a lot of capital developing this
15 area and -- and building out the infrastructure.

16 And that infrastructure is at the south
17 half/south half of 30, which is where Franklin
18 Mountain Energy is proposing its surface locations to
19 drill up through 18 in the Bone Spring and up through
20 19 in the Wolfcamp.

21 So they've thought about it, they've
22 got a plan for their surface facilities, and MRC's
23 divided in half doesn't actually -- doesn't actually
24 divide anything in half. And it has the potential of
25 stranding reserves that would -- could otherwise be

1 recovered under Franklin Mountain Energy's plans.

2 The other thing I just -- I wanted to
3 point out is this slide, Exhibit A-13. And Franklin
4 Mountain Energy has been very active in this area, as
5 the Division is well aware. And this slide shows all
6 of Franklin Mountain Energy's approved orders within
7 the Rope development area, I'll call it.

8 And so you can see the Rope area here
9 in 30, 19, and 18. And so all around that, Franklin
10 Mountain Energy's been developing spacing units and
11 developing wells. And I counted up the number of
12 orders that Franklin Mountain Energy has on this
13 slide, and I think it's 52 or 54. And MRC hasn't
14 developed a well in this area since 2019.

15 So Franklin Mountain area -- excuse
16 me -- Franklin Mountain Energy is out there on the
17 ground getting it done, and this Rope development is
18 part and parcel of that wholistic plan. And one of
19 the things that I realized last night -- so again,
20 Franklin -- or excuse me -- MRC is proposing wells
21 down here in 31, and MRC has existing wells in 31.
22 MRC has existing First Bone Spring, Third Bone Spring,
23 and a Wolfcamp D well in 31.

24 And the -- the -- that's from the
25 top -- or Wolfcamp A, excuse me. We call it Wolfcamp

1 A. They call it Wolfcamp B. We'll get into that a
2 little bit more. But they have existing wells in
3 Section 31. And so really, MRC could develop the
4 first, second, and Third Bone Spring in Section 31.
5 Under -- has them and wouldn't even need to darken the
6 Division's door for the Bone Spring and could develop
7 those presumably from its existing infrastructure in
8 Section 31.

9 Wolfcamp is a little different. They
10 only have one existing Wolfcamp well. But again, they
11 could drill that well -- drill a second well as an
12 infill well. And that would mean at the end of the
13 day, MRC would only need to propose three wells, only
14 need to see the -- seek the Division's pooling
15 authority for three wells in the Wolfcamp. And that
16 would allow Franklin Mountain Energy to have this
17 thoughtful, straightforward development through 18,
18 19, and 30.

19 And so for those reasons, we think it's
20 clear that FME 3's application should be granted. MRC
21 has attempted to cast FME 3 in a negative light in its
22 exhibits. And the -- what we took away from those
23 exhibits though is that FME 3's experience in this
24 area is its strength. It has faced some challenging
25 issues in this area, and it's moving through onto the

1 other side, and that's its strength here.

2 MRC, on the other hand, hasn't been
3 here since 2019. So we think it's FME 3's position
4 that FME 3's application should be granted, and MRC's
5 applications be denied.

6 THE HEARING EXAMINER: Okay. Thank
7 you, Ms. Bennett.

8 Before we go to the issue of exhibits,
9 let's hear from Mr. Feldewert. Do you want to make
10 the same type of opening now or do you want to do it
11 before your case in chief?

12 MR. FELDEWERT: No. I'd like to do it
13 now.

14 THE HEARING EXAMINER: I thought so.

15 MR. FELDEWERT: Yeah.

16 THE HEARING EXAMINER: Go ahead.

17 MR. FELDEWERT: If I could share? So I
18 like -- I ended up using this exhibit a lot when I was
19 preparing for this case. It's MRC Exhibit B-6.
20 Somewhat similar to what Ms. Bennett showed, but it
21 gives you a little bit more detail here about what's
22 involved. As she pointed out, the -- the overlap is
23 in Section 30. Okay?

24 And here, you see the both current and
25 proposed development for the sections that are at

1 issue here. And as we get into this, I think it's
2 important to keep in mind that in my opinion, this
3 case falls easily and straightforward into the
4 Division's prior precedents, which states that in the
5 absence of other compelling factors, working interest
6 control should be the factor in awarding operations.

7 And it's cited in our pre-hearing
8 statement. It's cited in a lot of pre-hearing
9 statements before the Division. And that's applied
10 whether you're co-tenants in a lease that covers a
11 section or if you're in a circumstance where maybe one
12 owner owns the north half of the section or the
13 other -- and the other owner owns the south half of
14 the section and they want to develop the entire
15 section, you got the same circumstance.

16 So there's no distinction whether
17 you're a co-tenant in leases or whether you own half
18 the spacing unit or not. The precedent still applies.
19 And when you look at this, just to orient you, you see
20 that Franklin Mountain's proposed three-mile wells in
21 the Bone Spring are shown in red, and in their
22 proposed two-mile wells in 18 and 30 are shown in red.

23 MRC seeks to put together Section 30
24 and 31. Those are the blue lines. What you'll see,
25 as it came out somewhat here, is that Franklin -- or

1 it sounds like there's not a dispute, so that's good.
2 MRC controls 61.25 percent of Section 30 because the
3 only other working interest owner in Section 30 is
4 Axis Energy.

5 And you'll see in the record that they
6 filed a letter in support of MRC. They filed -- they
7 signed that MRC's JOA. So they support MRC's
8 development plan to continue to develop is because you
9 see the dark lines with blue shading around them in
10 Sections 30 and 31.

11 Those are existing wells that MRC is
12 currently operating. They've drilled them. They were
13 operating them. So what we're trying to do is
14 continue with our development plan into two sections
15 where we own a vast majority of the working interest
16 owners and where we already have existing development.

17 On the flip side, you'll see a dark
18 line of the red shading around it in Section 19,
19 particularly in the Second Bone Spring. That -- those
20 are Franklin Mountain wells. Okay? They are
21 developing and have started to -- or have been
22 developing Section 19 in one-mile patterns from pads
23 that are located in the south half of the south half
24 of Section 19.

25 So I'm a little surprised we're here

1 because it seems to be that an easy solution here is
2 Franklin Mountain continues to develop Sections 19,
3 and if they want to bring in 18 with that, that's
4 their prerogative. And MRC continues to develop
5 Sections 30 and 31 as they have done. What you're
6 going to see here is there's really no compelling
7 differences in the plans.

8 Both companies are targeting the First
9 Bone Spring, the Third Bone Spring, and the Wolfcamp D
10 or the Lower Wolfcamp as part of their initial
11 development plan. Now, I'm going to call that the
12 Lower Wolfcamp, because they call the Wolfcamp D,
13 which you see is Wolfcamp D -- let me lower this here.
14 I'm sorry. On here, they call it a Wolfcamp B. What
15 we call the Wolfcamp B, they call the Wolfcamp A. So,
16 well, I'm going to say Upper Wolfcamp and Lower
17 Wolfcamp. Okay?

18 The only real difference is that MRC
19 seeks to continue to develop the Second Bone Spring
20 with two-mile wells. So if you look at the second
21 rectangle from the left, they want to continue to
22 develop the Second Bone Spring. You know, they
23 started there with one-mile wells, both in the Section
24 30 and 31. They want to continue to develop that with
25 their two-mile wells.

1 Franklin Mountain does not have that as
2 part of their initial development plan, and maybe
3 that's because they've already got one-mile wells in
4 Section 19. The other difference is you'll see that
5 Franklin Mountain initially seeks to target with two-
6 mile wells their upper -- the Upper Wolfcamp zone.
7 Well, MRC does not.

8 Now, MRC believes that you need to have
9 some additional data about that particular zone before
10 you drill into it. And that's why they're going to
11 drill into the Lower Wolfcamp D as part of their
12 initial plan, log the Upper Wolfcamp, and then they
13 have that information available to both evaluate that
14 zone and to help them drill within that zone, because
15 what you're going to see from their exhibits and our
16 exhibits, they've had trouble drilling in that Upper
17 Wolfcamp.

18 The only real -- there's no difference
19 in orientation of the wells. So we don't have a
20 debate with the Zoback report or anything like that.
21 And there's really no differences in the spacing for
22 the proposed wells. The one difference they suggest
23 is they're concerned that they have a suggestion that
24 perhaps you shouldn't stack the Second Bone Spring
25 above the Third Bone Spring, that it should be

1 wineracked.

2 But they haven't prevented -- presented
3 any study to support that. They haven't presented any
4 data to support that. They didn't have any
5 discussions with MRC about that. And the nice thing
6 here is an MRC -- you'll see in the cube -- second
7 rectangle from the left and the third rectangle from
8 the left -- that MRC has already drilled the Second
9 Bone Spring and the Third Bone Spring in this area in
10 a stacked pattern. They have data. They have
11 production data, and they have a long period of
12 production data.

13 And that indicates no communication
14 between the zones, and that there's a frack barrier.
15 So they're not concerned about a need to winerack
16 here. The only other difference is the well length;
17 right? But that only applies to the Bone Spring.
18 They want to do three miles into Bone Spring, but then
19 two miles into Wolfcamp.

20 We want to continue to develop our
21 acres with two-mile wells. So -- and part of that is
22 to accommodate existing development that exist there,
23 and you'll see some U-turn wells there, which is --
24 are always interesting. But that's MRC's plan to
25 accommodate existing development. A couple things

1 about their three-mile wells. To our knowledge,
2 they've never drilled three-mile wells here, and we
3 really don't want them to experiment on our majority
4 working interest in Section 30 where we currently
5 operate.

6 So those are not -- the well may, and
7 whether there should be a winerack or not is not
8 compelling factors to overcome the ownership, which I
9 get back to them. I'm a little surprised we're here.
10 The other factor maybe that could come into play is
11 the surface disturbance. You know, when you look at
12 that, here's a nice map, it's MRC Exhibit A-13. Let
13 me bring it down a little bit.

14 What you see here is that -- just to
15 orient you, the square at the top middle of this is
16 Section 30, and the square at the bottom middle of
17 this is Section 31. You'll see that the partial
18 section above Section 30 there at the top where you
19 see 1, 2, 3, 4 well pads, those are their existing
20 well pads for Section 19.

21 MRC, of course, wants to use, its
22 existing well pads in the south half and south half of
23 31. Franklin Mountain wants to come in here between
24 the two sections that's currently undisturbed, and
25 that's where they want to put in their new pads, even

1 though they got well pads up there at Section 19. So
2 we think the surface factor favors us as well. So
3 surprised it didn't get resolved. What the evidence
4 shows you is that we tried. Okay?

5 But Franklin Mountain refused to engage
6 in negotiations. That's why I was surprised she said
7 the parties tried to negotiate. There was no
8 negotiations. MRC would make offers. They'd make
9 trade offers. They'd make JOA offers. And Franklin
10 Mountain would sit silent without any counteroffers
11 whatsoever. So -- and maybe that's because they're
12 selling their acreage, as we understand it, to
13 Coterra.

14 MS. BENNETT: Mr. Hearing Examiner, I
15 have to object to that. I know this is an opening
16 statement and it's not evidence, but his speculation
17 about Coterra is completely irrelevant.

18 THE HEARING EXAMINER: Okay. I'm going
19 to give you a chance to respond. That was my plan
20 about this idea about the good faith negotiations, et
21 cetera. But this is no evidentiary, and you know, I
22 didn't say anything when you said things, and I
23 don't -- I try not to interrupt opening argument. So
24 overruled.

25 Please continue. But I do have a

1 question about the ownership.

2 MR. FELDEWERT: Yeah.

3 THE HEARING EXAMINER: But I don't want
4 to interrupt your full --

5 MR. FELDEWERT: I'm almost finished.
6 Yeah.

7 THE HEARING EXAMINER: Go -- so please
8 finish.

9 MR. FELDEWERT: So she's right, I'm
10 speculating. I don't know why they didn't respond to
11 our efforts and make counteroffers, I guess we'll find
12 out. Okay? But I do know, as you see from the
13 evidence in their disclosure, they're transferring
14 acreage to Coterra. I don't know if it includes this
15 acreage or not. I guess we'll find out. Okay?

16 So we ask the Division follow its
17 precedent and award operations to MRC, where MRC owns
18 the majority of the working interest by far in Section
19 30. The only other working interest owner in that
20 section supports MRC. We already have and started and
21 been developing Sections 30 and 31. They continue to
22 develop that acreage, and we want to continue to
23 develop that acreage with a prudent plan for that
24 particular acreage.

25 THE HEARING EXAMINER: My question

1 about the ownership interest in 30 -- and I should
2 have clarified this with Ms. Bennett, but I'll start
3 with you. Is there any debt severance --

4 MR. FELDEWERT: No.

5 THE HEARING EXAMINER: -- to the
6 ownership -- no?

7 MR. FELDEWERT: No.

8 THE HEARING EXAMINER: So it's Bone
9 Spring, and Wolfcamp, the whole nine yards, 61 percent
10 to MRC, 38 or 39 percent to Franklin Mountain?

11 MR. FELDEWERT: Roughly, yeah.
12 Percentages. Yeah.

13 THE HEARING EXAMINER: Okay.

14 MR. FELDEWERT: Yep.

15 THE HEARING EXAMINER: That's what I
16 wanted to know. Thank you.

17 MR. FELDEWERT: And when I say -- when
18 you say 61, that -- let's see -- MRC has a big chunk
19 of that. I think Axis has 2.5 percent or something
20 like that. Yeah.

21 THE HEARING EXAMINER: I was including
22 that.

23 MR. FELDEWERT: So it's under their --
24 MRC's control. Yeah.

25 THE HEARING EXAMINER: That's how you

1 gave it to me, so that's how I was giving it back
2 to --

3 MR. FELDEWERT: Yes. You're correct.

4 THE HEARING EXAMINER: Okay.

5 Ms. Bennett, just on the issue of good faith
6 negotiations?

7 MS. BENNETT: Thank you. Thank you,
8 Mr. Examiner. The MRC and FME 3 have traded multiple
9 emails, text messages, calls. The fact that FME 3
10 believes strongly in its development plan and wants to
11 move forward is not a sign of bad faith negotiations.
12 It's a sign of belief in its development plan.

13 And if at every time we came to a
14 hearing before the Division we had to say that the
15 parties negotiated and reached an agreement, then the
16 pooling process would be irrelevant. So that's why we
17 come here. The parties exchanged emails, they
18 exchanged texts, they exchanged phone calls, and they
19 didn't reach an agreement.

20 That's why we're here. It's not bad
21 faith for Franklin Mountain Energy to believe in its
22 development plan, just like it's not bad faith for MRC
23 to believe in its development plan. And we are here
24 before the Division to break that stalemate.

25 And the reason I objected to the

1 Coterra reference is because that -- A, it's
2 irrelevant -- just plainly irrelevant. But B, that
3 announcement came out on -- last week sometime. That
4 is inapt in terms of the negotiations, and the
5 suggestion that that has something to do with Franklin
6 Mountain Energy's decisions on moving forward with
7 this matter is irrelevant.

8 And I would just point out that MRC has
9 moved forward to the very last minute with this
10 Division and with Franklin Mountain Energy, dismissing
11 cases at the last minute, at the 11th hour. We've
12 been, before the Division I don't know how many times,
13 and MRC has not shown up. And MRC has had lower
14 working interest and has still threatened, at least,
15 to move forward with its development plans.

16 And in my opinion, that is a sign of
17 bad faith more than Franklin Mountain Energy saying,
18 we want to move forward with our development plans,
19 and we're prepared to do so.

20 THE HEARING EXAMINER: So we'll get to
21 you, Mr. Feldewert.

22 So let's talk about good faith briefly.
23 It's a factor that the Division looks at, is it not?

24 MS. BENNETT: It is.

25 THE HEARING EXAMINER: Okay. I thought

1 so. Can you give me any sort of, I don't know, policy
2 or I don't know if it's -- I don't think it's defined
3 in the rule, is it?

4 MS. BENNETT: It's not defined in the
5 rule, but it came out of an order. And I don't have
6 the order number right in front of me, but I can get
7 it for the Division. And what happened in that case
8 was -- and this was back in the day, my recollection
9 is that the parties in that case, there was a dispute
10 about whether there was good faith negotiations
11 because the party that had sent out the pooling -- or
12 had filed the pooling applications did not have a 30-
13 day window of negotiations prior to filing the
14 application.

15 And from that line -- there are two
16 cases, actually. And from that line of cases came the
17 idea that you can't just haul off and file an
18 application, which by the way, MRC apparently did here
19 because they didn't notify two working interest owners
20 of their applications, even though those working
21 interest owners are in MRC's own wells and have been
22 since 2015.

23 Putting that aside for the moment, the
24 orders I'm referring to suggests that in the absence
25 of extenuating circumstances, you should -- operators

1 should send out a proposal letter, wait 30 days to
2 allow for the parties to have discussions, and then
3 file an application. It's -- there's no quantum of
4 good faith. There's no measurement by which good
5 faith is measured.

6 THE HEARING EXAMINER: Okay. I
7 understand. Thank you.

8 Mr. Feldewert, did you have something
9 to say about that?

10 MR. FELDEWERT: Sure. Certain, number
11 one, it's a good -- her point about no quantum of good
12 faith, the fact is they have zero. If you'll see, we
13 filed our Exhibit

14 A-12. We identified where we made
15 offers on JOAs. We had offers on trades. No
16 counteroffers whatsoever. So there was no back and
17 forth. There was no efforts to even try to reach a
18 voluntary agreement. And it is a factor. It's always
19 been a factor for the Division. Okay? And parties
20 are required to engage in good faith efforts to reach
21 a voluntary agreement. And they did not.

22 Okay? And they provided no evidence
23 that -- of what they did in response to these offers.
24 We also dismissed our Wolfcamp cases recently -- it's
25 in our prehearing statement -- again, in an effort to

1 reach a voluntary agreement to allow the parties to
2 continue to operate where they had started to operate.

3 We had thought about pooling the
4 Wolfcamp in 18 and 19. We sent offers in JOAs. We
5 sent trade acreage offers. They refused to engage.
6 We thought, okay, we'll dismiss those two. Maybe we
7 can get to an agreement. Okay? Nothing. So we've
8 undertaken efforts here. They've stonewalled us.

9 MS. BENNETT: Mr. Hearing Examiner, can
10 I clarify one --

11 THE HEARING EXAMINER: Okay. This will
12 be the -- but this is the last point on this because
13 ultimately, we'll have evidence before the Division
14 about the negotiations if Mr. McClure feels it's worth
15 asking questions about, if he will, to the witnesses.
16 So your last point?

17 MS. BENNETT: Thank you. The email
18 chain that MRC included in its exhibits is incomplete.
19 There is, in fact, a response that MRC must have --
20 giving them the benefit of the doubt --
21 unintentionally omitted.

22 And we didn't -- yeah. Franklin
23 Mountain Energy did not put that email chain in its
24 exhibits because we had no reason to believe that MRC
25 would omit a response from Franklin Mountain Energy.

1 THE HEARING EXAMINER: Well, you can
2 supplement your exhibits. You can use the -- a
3 rebuttal case if you want to include an -- I'm not
4 going to tell you I do your case, but you know, you
5 represent your client well. So let's move on to
6 exhibits at this point.

7 Let's start with you, Ms. Bennett,
8 because it is you who is going first. What
9 exhibits -- first of all, have you filed one single
10 exhibit packet?

11 MS. BENNETT: No, sir.

12 THE HEARING EXAMINER: Oh, okay.

13 MS. BENNETT: So we filed an exhibit
14 packet that included 99 percent of our exhibits, but
15 we did not have the Wolfcamp C-102s yet. So we filed
16 those as a supplement. So I'll briefly go through the
17 exhibits that we filed, if that's what you're asking
18 me to do.

19 THE HEARING EXAMINER: Very briefly --
20 just what do you want to admit into evidence?

21 MS. BENNETT: Yes.

22 THE HEARING EXAMINER: Let's just hit
23 the high points.

24 MS. BENNETT: Yes. So we filed the
25 compulsory pooling checklists, which are Tab A.

1 MR. FELDEWERT: I might be able to
2 shorten this. We don't have any objection to their
3 exhibits -- their initial -- I have one concern about
4 one of their rebuttal exhibits, but that's it.

5 THE HEARING EXAMINER: Okay. Let's --
6 so you have rebuttal exhibits as well?

7 MS. BENNETT: We do. We do.

8 THE HEARING EXAMINER: Okay. Great.
9 Let's just go through what do you want me to admit?

10 MS. BENNETT: Thank you, Mr. Examiner.
11 I would ask that the Division admit -- let me get to
12 the table of contents here real fast.

13 THE HEARING EXAMINER: Thank you.

14 MS. BENNETT: The exhibits -- sorry.

15 THE HEARING EXAMINER: Mr. Feldewert,
16 are you clicking on your table of contents or hers?

17 MR. FELDEWERT: I'm sorry. I just
18 stopped sharing because I was going to go to my table
19 of contents.

20 THE HEARING EXAMINER: Can you put your
21 table of contents on the screen, please?

22 MR. FELDEWERT: Sorry about that.

23 THE HEARING EXAMINER: That's fine.

24 Thank you.

25 MS. BENNETT: Okay. So I have the

1 table of contents, and this is the first packet that
2 we submitted.

3 THE HEARING EXAMINER: What's the date?

4 MS. BENNETT: The date is November 13,
5 2024.

6 THE HEARING EXAMINER: November 13th.
7 Okay. So we have November 13th, and do we have a
8 table of contents? Yes.

9 MS. BENNETT: Yes.

10 THE HEARING EXAMINER: So we have --
11 and let me just look at it. We have Exhibits A -- oh,
12 you're going a little fast for me. I can't read it
13 that fast.

14 MS. BENNETT: Oh, I'm sorry. I'm
15 sorry.

16 THE HEARING EXAMINER: Just -- thank
17 you. So for Don, Johnson -- okay. So checklist. All
18 right. Does your next exhibit modify any of these?

19 MS. BENNETT: Yes, it does.

20 THE HEARING EXAMINER: Okay. So thank
21 you. And let me just keep reading this. And then we
22 have B. Can we go down to B? Wow. Okay. Mr.
23 McCoy -- Ben Kessel. All right. So we have John.
24 Okay. And then we have yours.

25 MS. BENNETT: Yes.

1 THE HEARING EXAMINER: Okay. And
2 that's D is yours. Quick question. Your notice
3 letters and your affidavit of publication are all
4 timely?

5 MS. BENNETT: They are.

6 THE HEARING EXAMINER: Okay. Great.
7 Okay. And so we've already heard from Mr. Feldewert
8 that he does not object to any of these exhibits.

9 These are not -- none of these are the
10 rebuttal exhibits you have a concern about,
11 Mr. Feldewert?

12 MR. FELDEWERT: Correct.

13 THE HEARING EXAMINER: All right.
14 Fine.

15 So, Ms. Bennett, your exhibits in this
16 packet that was filed on November 13 with the Division
17 that includes exhibits under tabs A, B, C, D, and E --
18 sorry, no E -- are admitted into evidence.

19 (FME 3 Exhibits A-1 through D were
20 marked for identification and received
21 into evidence.)

22 MS. BENNETT: Thank you.

23 THE HEARING EXAMINER: What's the next
24 thing you filed?

25 MS. BENNETT: The next thing I filed is

1 a supplemental exhibit packet of the C-102s for the
2 Wolfcamp only wells.

3 THE HEARING EXAMINER: Hold on.

4 MS. BENNETT: And --

5 THE HEARING EXAMINER: I have to write.

6 MS. BENNETT: Sorry.

7 THE HEARING EXAMINER: Wolfcamp. Okay.

8 And when did you file this?

9 MS. BENNETT: I filed that on November
10 15th.

11 THE HEARING EXAMINER: November 15th.

12 And Mr. Feldewert, did you see that?

13 MR. FELDEWERT: I did.

14 THE HEARING EXAMINER: And you have no
15 objection to that one?

16 MR. FELDEWERT: No.

17 THE HEARING EXAMINER: No objection to
18 the C-102s. Okay.

19 MR. FELDEWERT: Just remember, even
20 though I'm not objecting, even though they filed them
21 late.

22 THE HEARING EXAMINER: I understand.

23 So Ms. Bennett, may I see that? Do you
24 have a -- is that something you can put up here?

25 MS. BENNETT: I don't have that handy.

1 THE HEARING EXAMINER: You don't have
2 it in handy? Okay.

3 MS. BENNETT: I can -- there's no table
4 of content -- oh, well, we did provide a table of
5 contents, didn't we?

6 MS. PENA: Uh-huh.

7 MS. BENNETT: I'll pull it up.

8 THE HEARING EXAMINER: Yes. Thank you.

9 MS. BENNETT: Okay. I think in just a
10 second here, I'll have it on the screen.

11 THE HEARING EXAMINER: Okay.

12 MS. BENNETT: So this is the
13 supplemental exhibit notice that we filed.

14 THE HEARING EXAMINER: Okay.

15 MS. BENNETT: And as we stated on this
16 exhibit, it includes the C-102s for the Rope State
17 Common Wolfcamp wells.

18 THE HEARING EXAMINER: Okay.

19 MS. BENNETT: And we identified which
20 exhibit number we were adding. So these are truly
21 supplemental exhibits. They're not replacement
22 exhibits.

23 THE HEARING EXAMINER: So those
24 numbers -- can you go back up?

25 MS. BENNETT: Yes.

1 THE HEARING EXAMINER: So those numbers
2 20 through 23, those are not numbers you used in your
3 original packet?

4 MS. BENNETT: We did use 21 through 23
5 in our original packet, but we have sub exhibits. So
6 21 -- so we have Exhibit A-20-a, Exhibit A-20-b,
7 Exhibit A-20-c. So Exhibit A-20-a does not appear in
8 our original packet.

9 THE HEARING EXAMINER: Right. But A-20
10 does?

11 MS. BENNETT: A-20 does.

12 THE HEARING EXAMINER: Oh, so these are
13 really correcting the initial A-20 through 23?

14 MS. BENNETT: No, sir.

15 THE HEARING EXAMINER: No?

16 MS. BENNETT: They're an addition
17 because for each individual case -- let me just go
18 back here to the exhibit packet that we filed in the
19 overall packet. For each individual case, we have
20 four or five sub exhibits. So the individual case
21 application number, for example, is A-20. That's the
22 application.

23 THE HEARING EXAMINER: I see.

24 MS. BENNETT: A-20-a is the C102s.
25 A-20-b is the lease tract map. A-20-c is the proposal

1 letter. A-20-e is the AFES, and A-20-f --

2 THE HEARING EXAMINER: Will you just
3 show me what A-20 was in your initial application?

4 MS. BENNETT: So here's our initial --

5 THE HEARING EXAMINER: Yes.

6 MS. BENNETT: -- cover or table of
7 contents. And you can see that there --

8 THE HEARING EXAMINER: I see now. Now,
9 I understand. So then you did have an A-20-a in your
10 original, and now, you are having a new A-20-a?

11 MS. BENNETT: We did not have the
12 A-20-a in our original, so -- we had a placeholder for
13 it in the table of contents, but we did not have the
14 actual document

15 THE HEARING EXAMINER: That takes care
16 of the confusion. Very good. I understand. So over
17 no objection, under stipulation, your supplemental
18 four exhibits are admitted into evidence.

19 (FME 3 Supplemental Exhibits A-20-a
20 through A-23-a were marked for
21 identification and received into
22 evidence.)

23 THE HEARING EXAMINER: And now, did you
24 say you have rebuttal exhibits?

25 MS. BENNETT: Yes.

1 THE HEARING EXAMINER: Yeah. Don't
2 close those tabs. Keep -- no. No. Because then
3 you'll have to reopen them. Just open a new tab and
4 show me your rebuttal exhibits. Perfect.

5 MS. BENNETT: So this is the table of
6 contents for our rebuttal exhibits, and I'm just going
7 to see if I can make this a little bit larger for you
8 to read.

9 THE HEARING EXAMINER: Thank you.

10 MS. BENNETT: And so --

11 THE HEARING EXAMINER: So how many
12 rebuttal exhibits are there in total?

13 MS. BENNETT: There are 10 total
14 rebuttal exhibits.

15 THE HEARING EXAMINER: All right. Let
16 me write this down. One through ten.

17 And, Mr. Feldewert, which of these
18 rebuttal exhibits do you have an objection to?

19 MR. FELDEWERT: Just Rebuttal Exhibit
20 3.

21 THE HEARING EXAMINER: Three. Okay.
22 And let me hear -- first of all, Ms. Bennett, what is
23 Rebuttal Exhibit 3?

24 MS. BENNETT: Rebuttal Exhibit 3 is an
25 economic analysis of the reserves that could be

1 captured from Section 30.

2 THE HEARING EXAMINER: Okay.

3 MS. BENNETT: And this is a rebuttal
4 slide to a very similar slide that MRC prepared, which
5 is their slide -- I believe it's C-2. And so when we
6 saw the MRC slide that -- it's either C-2 or C-4,
7 Franklin Mountain Energy prepared this slide as a
8 rebuttal slide.

9 THE HEARING EXAMINER: And which of
10 your witnesses prepared this?

11 MS. BENNETT: Mr. McCoy, the reservoir
12 engineer.

13 THE HEARING EXAMINER: Reservoir
14 engineer. Okay. Very good.

15 Now, let's hear about the objection.

16 MR. FELDEWERT: Sure.

17 THE HEARING EXAMINER: Can you leave
18 that where it was?

19 MS. BENNETT: Yes. I just wanted to
20 see if I was correct about the rebuttal slide that I
21 was --

22 THE HEARING EXAMINER: I don't care.
23 Can you just go back to number 3?

24 MS. BENNETT: Yes.

25 THE HEARING EXAMINER: Mr. Feldewert?

1 MR. FELDEWERT: Sure. So when you
2 look, they quote the paragraph at the bottom right-
3 hand corner.

4 THE HEARING EXAMINER: Number 11? The
5 paragraph number 11. I see it.

6 MR. FELDEWERT: Mr. Schulz's statement.
7 And you'll see what he's talking about in there is the
8 reserves under the Second Bone Spring interval, okay,
9 and how much reserves are there to be recovered.
10 Okay? So it's the Second Bone Spring interval.

11 When you look at this exhibit, it
12 does -- the only thing that has to do with the Second
13 Bone Spring interval is the second one where they seem
14 to acknowledge the reserves that are remaining. The
15 rest of this has nothing to do with the Second Bone
16 Spring interval. It has to do with the other
17 intervals that everybody's seeking to develop.

18 So this is a slide that they could have
19 easily presented as part of the initial package.
20 It's -- other than that line, Second Bone Spring, none
21 of the rest of it is a rebuttal to what Mr. Tanner's
22 talking about either in C-2, which is an economic
23 analysis of the Second Bone Spring, or in his
24 paragraph 11, which is a discussion of that exhibit.
25 So I don't see how this is a rebuttal.

1 THE HEARING EXAMINER: So let me
2 understand the -- what you're saying about the data
3 here because I might have missed what you were talking
4 about. Are you saying that this data in this table
5 here does not apply to the Second Bone Spring? It
6 applies to the overall project?

7 MR. FELDEWERT: The only thing that
8 applies to the Second Bone Spring is the third line,
9 2-BS.

10 THE HEARING EXAMINER: Oh, in the
11 table.

12 MR. FELDEWERT: Yeah, in the table.

13 THE HEARING EXAMINER: I see. The row.

14 MR. FELDEWERT: Right.

15 THE HEARING EXAMINER: Now, I
16 understand. The row here is the only thing that's
17 different.

18 MR. FELDEWERT: That's the only thing
19 that respond -- that addresses the Second Bone Spring.

20 THE HEARING EXAMINER: Makes it a
21 rebuttal.

22 MR. FELDEWERT: Yeah. Okay? The rest
23 of it, including the text, is -- goes beyond the
24 Second Bone Spring and involves the other intervals
25 that the parties discussed in their exhibits. Okay?

1 And so -- previously filed exhibits. So I don't see
2 how this is, other than that line, the rest of this is
3 not a rebuttal to what Mr. Tanner was talking about in
4 C-2 or in paragraph 11.

5 THE HEARING EXAMINER: Okay. Let's
6 hear from Ms. Bennett.

7 MS. BENNETT: Thank you. Mr. Tanner's
8 Exhibit C-2 is limited to the Second Bone Spring, and
9 that's precisely what Franklin Mount Energy is
10 rebutting. That when you look more globally at the
11 development in this area, that Franklin Mount Energy's
12 plan is better for both MRC and Franklin Mount Energy.

13 So the reason we select or put this in
14 is because MRC is taking a really myopic view of
15 Section 30 development. And in Franklin Mount
16 Energy's view, that really narrow view on Second Bone
17 Spring needed to be balanced by the overall economics
18 of this area. So Mr. Tanner's focus on the Second
19 Bone Spring is precisely why Franklin Mount Energy
20 felt compelled to put in a rebuttal exhibit that
21 addressed more than just the Second Bone Spring.

22 THE HEARING EXAMINER: So I'm confused
23 about -- so rebuttal cases are presented based on the
24 issue of being surprised by information that you could
25 not have prepared for until you saw MRC's exhibit

1 packet. So I'm not quite sure the -- I don't
2 understand yet enough about number 3 to either grant
3 or deny the objection.

4 So at this point, we're going to let in
5 Rebuttals 1 through 2 and 4 through 10.

6 (FME 3 Rebuttal Exhibits 1 through 10
7 were marked for identification, and
8 Exhibit 1 and Exhibit 2, and Exhibit 4
9 through 10 were received into
10 evidence.)

11 THE HEARING EXAMINER: But we will not
12 let in the number 3 until you, in your rebuttal case,
13 make it very clear because I don't quite understand
14 exactly. I understand the objection. It's really
15 not -- this is not based on surprise. But you will
16 lay a foundation, and if you make your case, then
17 we'll let it in. Simple as that. Okay. So we have
18 all of your exhibits, and that's all your exhibits;
19 right?

20 MS. BENNETT: Yes, it is.

21 THE HEARING EXAMINER: Okay. Very
22 good. All of your exhibits are admitted into evidence
23 with the exception of Rebuttal Number 3. And at the
24 end of this hearing, I'm going to ask both parties to
25 redo their exhibits so that they are -- one packet has

1 everything in it, and we are not going to have three
2 packets for each party or more for the technical
3 reviewers to review.

4 Now, Mr. Feldewert, your exhibits,
5 let's get them admitted.

6 MR. FELDEWERT: So our exhibits are
7 identified in our table of contents in our hearing
8 package.

9 THE HEARING EXAMINER: Is it on the
10 screen?

11 MR. FELDEWERT: No. But I --

12 THE HEARING EXAMINER: Can you put it
13 there?

14 MR. FELDEWERT: Certainly.

15 THE HEARING EXAMINER: All right.

16 MR. FELDEWERT: And you'll see that
17 Matador's exhibit -- we have our checklist and our
18 applications --

19 THE HEARING EXAMINER: When was this
20 packet filed?

21 MR. FELDEWERT: It was filed whatever
22 day we were supposed to file.

23 THE HEARING EXAMINER: And I don't know
24 what it is. That's why I'm asking you.

25 MR. FELDEWERT: Now, you're going to

1 make me go into -- all right. Hold on. It would
2 be -- this might be quicker. It was a week ago.

3 MS. BENNETT: November 13th.

4 MR. FELDEWERT: So November 13th.

5 THE HEARING EXAMINER: Okay. So these
6 are also November 13th. Okay.

7 MR. FELDEWERT: Yes.

8 THE HEARING EXAMINER: All right,

9 MR. FELDEWERT: We filed Exhibit A and
10 Sub Exhibits A-1 through A-14. We filed Exhibit B.

11 THE HEARING EXAMINER: So hold on.
12 Hold on. Slow down for me.

13 MR. FELDEWERT: Sure.

14 THE HEARING EXAMINER: Can you go back
15 up a little bit? So this is in typical -- so here,
16 your checklist and your applications are not as
17 exhibits. That's fine. They're just there in the
18 table of contents. They're not evidentiary. Then we
19 have Mr. Evans' landman and his exhibits here. Okay.
20 We have Mr. Parker, his exhibits here. And then we
21 have C -- okay. Mr. Schulz, engineer. And then do we
22 have the noticed ones from you?

23 MR. FELDEWERT: Yes, sir.

24 THE HEARING EXAMINER: Yeah. And then
25 we have the affidavit. Okay. Were your letters and

1 your publication, were they timely?

2 MR. FELDEWERT: Yes.

3 THE HEARING EXAMINER: They were
4 timely. Okay. Very good.

5 Ms. Bennett, is there any objection to
6 any of these exhibits coming into evidence?

7 MS. BENNETT: I don't object to the
8 exhibits coming into evidence, but I will be asking
9 questions that go to the weight or the credibility or
10 reliability of the exhibits.

11 THE HEARING EXAMINER: I expect you
12 will. Okay. So we have A, B, C, D, and E are --
13 these exhibits are all admitted into evidence.

14 (Matador Exhibits A through E were
15 marked for identification and received
16 into evidence.)

17 THE HEARING EXAMINER: Did you have
18 rebuttal exhibits?

19 MR. FELDEWERT: No.

20 THE HEARING EXAMINER: Okay. Did you
21 have any supplemental exhibits?

22 MR. FELDEWERT: Not at this time.

23 THE HEARING EXAMINER: Okay. Very
24 good. All right. And obviously, you know, it's up to
25 you to have a rebuttal case if you see the need for

1 it. So --

2 MR. FELDEWERT: We'll see how the
3 testimony goes.

4 THE HEARING EXAMINER: We will. Okay.
5 Very good. So these are all admitted into evidence.
6 And we know that Ms. Bennett is going first.

7 Mr. McClure, do you have any questions
8 or anything to say before we begin?

9 MR. MCCLURE: I do not, Mr. Hearing
10 Examiner.

11 THE HEARING EXAMINER: Okay.

12 MR. FELDEWERT: I --

13 THE HEARING EXAMINER: Mr. Feldewert?

14 MR. FELDEWERT: Yeah. I do have one
15 other point, and I didn't get to talk to Ms. Bennett
16 about this.

17 THE HEARING EXAMINER: Thank you, Mr.
18 McClure.

19 MR. FELDEWERT: I think your general
20 practice is to wait and talk about rebuttal exhibits
21 at the end.

22 THE HEARING EXAMINER: Of course.

23 MR. FELDEWERT: Since we've admitted
24 most of them, I would not mind if we can talk about
25 them when the witness is on the stand and save a

1 little time.

2 THE HEARING EXAMINER: I think it's a
3 very good idea.

4 Ms. Bennett?

5 MS. BENNETT: Yes. I was going to
6 suggest the same thing.

7 THE HEARING EXAMINER: Excellent.

8 MS. BENNETT: Especially with respect
9 to being able to discuss each other's exhibits during
10 our direct, because I think that will save some time.

11 THE HEARING EXAMINER: Agreed. So when
12 we do call witnesses, the parties will be able to do
13 direct examination on the exhibits, supplemental
14 exhibits, rebuttal exhibits, et cetera, all at one
15 time. So it's a very good idea. Thank you both.

16 Okay. Ms. Bennett, your first witness.

17 MS. BENNETT: Thank you. At this time,
18 I'd like to call Mr. Don Johnson.

19 THE HEARING EXAMINER: Mr. Johnson.
20 Welcome back, Mr. Johnson. You're under oath. Please
21 speak clearly and into the microphone.

22 Ms. Bennett?

23 MS. BENNETT: Thank you very much.

24 //

25 //

1 DIRECT EXAMINATION

2 BY MS. BENNETT:

3 Q Mr. Johnson, for whom do you work and in
4 what capacity?

5 A I'm a landman at Franklin Mountain Energy.

6 Q And we already confirmed that you previously
7 testified before the Division, and your credentials
8 have been accepted as a matter of record?

9 A Yes.

10 Q Did you prepare exhibits and testimony for
11 this hearing?

12 A Yes.

13 Q Did you review that -- those exhibits and
14 testimony in preparation for the hearing today?

15 A Yes, I did.

16 Q Are there any changes that you want to make
17 to your testimony?

18 A I would like to make a change.

19 Q And what is that change?

20 A So in our original slides, we included Axis
21 Energy as a supporting interest because they signed
22 elections -- on our initial elections. We found
23 through Matador's slides and an email communication
24 yesterday that Axis is supporting MRC.

25 Q Thank you. And so you would want to revise

1 your exhibits to reflect that?

2 A Yes.

3 Q When you submitted your exhibits, were you
4 under the impression that Axis supported or --
5 supported Franklin Mountain Energy?

6 A Yes. We had not heard otherwise. They had
7 signed elections, and we just hadn't heard from them
8 after that. So --

9 Q And now, that you've heard from them though,
10 your goal is to remove them from -- I think what
11 you've done is an asterisk saying supporting parties?

12 A Yes.

13 Q Okay. Thank you. With those changes, do
14 you adopt your testimony?

15 A Yes.

16 Q Thank you. Before we get too far into your
17 direct testimony or a summary of your direct
18 testimony, I should say, I wanted to just go back to
19 the Exhibit A-4 that I shared a moment ago when I was
20 doing the -- my opening statement. Do you remember
21 that exhibit? It's this contested pooling overview.

22 A Yes.

23 Q And if you could summarize this exhibit and
24 the context for these competing applications?

25 A So Franklin Mountain Energy proposed to

1 drill three-mile Bone Spring wells and two-mile
2 Wolfcamp wells. And we received MRC's proposals to
3 drill in Section 30 and 31. There's a mixture between
4 U-turn wells and straight wells.

5 Q And is Franklin Mountain Energy proposing to
6 devote this area to its Rope State Com wells?

7 A Yes. This area would be part of the -- the
8 Rope wells, the Section 30.

9 Q And let's turn now to Exhibit A-5. And
10 Exhibit A-5 is a comparison of your plans versus MRC's
11 plans. Is that right?

12 A Yes.

13 Q And earlier today, Mr. Feldewert, counsel
14 for MRC, mentioned that majority interest is a
15 controlling factor in the absence of any other
16 compelling circumstances. Were you here for that?

17 A Yes.

18 Q Do you think that it should be controlling
19 here?

20 A No, I do not.

21 Q And why is that?

22 A If you take a look at the two units -- our
23 Section 30, 19, and 18, we own roughly about 70 to 80
24 percent, depending on the formation. And if you take
25 a look at theirs, they own around 70 percent in theirs

1 as well.

2 So they're -- they're pretty even. Section
3 31 -- and under my understanding -- is fairly depleted
4 and has been producing since 2016. And so Franklin
5 Mountain Energy values that those -- that section less
6 because of that.

7 Q Does Franklin Mountain Energy have an
8 interest across all of its proposed Rope wellbores?

9 A Yes. In Section 18, 19, and 30 in the Bone
10 Spring, we have 100 percent across the wellbore. And
11 in Sections 19 and 18 where we proposed the Wolfcamp,
12 we own 100 percent of the wellbore interest.

13 Q Do you own 100 percent of the wellbore
14 interest, or you have the rights across 100 percent of
15 the interests?

16 A We have the rights, so we own a portion of
17 100 percent of the wellbore. Yeah.

18 Q Thank you. And earlier today or in Mr. --
19 counsel for MRC and myself discussed a bit about the
20 Division's preference recently to what I call "split
21 the baby" or divide in half, and it's MRC's position
22 that that should be the way this falls out. But
23 Franklin Mountain Energy has a different perspective
24 on that; right?

25 A Yes, we do.

1 Q And why is that?

2 A So Section 18 has a saltwater disposal well
3 in the Wolfcamp that has injected around a million
4 barrels of water. And so we -- we devalue that in the
5 Wolfcamp area.

6 But also the Section 19, the south
7 half/south half, where -- where we would have to be
8 putting our pads, there's already four pads in Section
9 19, and we would not be able to put any surface, and
10 we'd also have to move our existing infrastructure to
11 meet all of our takeaway needs.

12 Q So the usual sort of divide in half or split
13 the baby would not be workable for Franklin Mountain
14 Energy here?

15 A No. And also, the -- the interest that
16 Franklin Mountain would lose if MRC operates Section
17 30 is we would be losing the undivided roughly 40
18 percent of the 640 acres. If we were to operate
19 Sections 18 and 19, MRC only owns roughly 38 acres in
20 the Bone Spring only.

21 Q And is that -- I'm going to turn to your
22 Exhibit A-6. I think this might help with that point.
23 So you just said that MRC owns approximately 38 acres
24 in Section 19?

25 A Yes.

1 Q And is my cursor kind of hovering over that
2 40 acres?

3 A Yes. Yes. That's the only interest they
4 own in the Bone Spring.

5 Q And it's only in the Bone Spring?

6 A Yep.

7 Q And so -- but here in Tract 30 or in Section
8 30, Franklin Mount Energy owns an undivided interest
9 in each of the two tracts, 6 and 7?

10 A Yes.

11 Q And so under the -- under MRC's proposal,
12 you would be foregoing an undivided interest in 640
13 acres. Is that what you were saying?

14 A Correct.

15 Q Okay. I want to turn back to Exhibit A-4
16 again -- I'm sorry -- A-5. On the surface factor, do
17 you consider the surface factor to be a factor that
18 weighs in Franklin Mountain Energy's favor
19 notwithstanding the difference in the interest in
20 Section 30?

21 A Yes. The ability to put surface in the
22 south half of 19, it -- it's just not doable for us.
23 In the south half of Section 30, there's already
24 existing pipeline. We have a corridor from the units
25 to the east or to the west, and we have plans on

1 having that infrastructure go across the entire
2 section over to the next few units to the east as
3 well.

4 Q Thanks. And --

5 THE HEARING EXAMINER: Ms. Bennett?

6 MS. BENNETT: Yes.

7 THE HEARING EXAMINER: Ms. Bennett, I
8 have a question about this Exhibit A-5. When you say
9 that FME 3 -- I'm assuming that you -- I'm just going
10 to ask you instead of your witness for the moment.
11 When you say FME 3 has the highest working interest in
12 the proposed Rope units, this is for the Sections 18,
13 19, and 30; is that correct?

14 MS. BENNETT: That's correct.

15 THE HEARING EXAMINER: So it's treating
16 it as a group --

17 MS. BENNETT: Yes.

18 THE HEARING EXAMINER: -- as a whole?
19 Okay. That's the clarification because it doesn't say
20 which acreage that this slide is referring to. That's
21 why I wasn't sure. Or maybe it does, but it's cut
22 off. I can't see it.

23 MS. BENNETT: No, it doesn't, but it is
24 the units in 18, 19, and 30.

25 THE HEARING EXAMINER: That's all I

1 wanted to know. Thank you.

2 BY MS. BENNETT:

3 Q A moment ago, you were testifying about the
4 surface restrictions in Section 19, and I'm showing on
5 the slide here Exhibit A-15. Do you see that?

6 A Yes. Yes, I do.

7 Q Is that -- if you could just run through
8 what you were saying again about Section 19 having
9 surface constraints with this slide up so that we can
10 follow along with what you were saying?

11 A So what you're looking at here is the south
12 half of Section 19. You see the four pads, and also
13 there's playa which has setback restrictions. And so
14 these pads that are currently here are one-well pads,
15 and there's not enough room for us to fit in multiple
16 well pad development that we would like to do.

17 Q And earlier, you also testified that you
18 have existing infrastructure in this area. Is that in
19 the -- that's in -- not shown on this slide; right?
20 That's shown on another slide?

21 A Correct. That's not on this slide,

22 Q But this slide does show the limitations on
23 your ability to develop Sections 19 and 18 from
24 Sections 19?

25 A Correct.

1 Q And again, those pads there that are shown
2 at south half/south half of 19 are one-well pads?

3 A Yes.

4 Q Does Franklin Mountain Energy 3 have a term
5 assignment that it's working through here?

6 A Yes. We do have a term assignment in
7 Section 30.

8 Q And what are your concerns about or the
9 issues arising from the term assignment?

10 A The original term assignment expired January
11 1st of 2025, and we were able to get an extension for
12 six months to July 1, 2025. So in order to hold that
13 term assignment, we need to have a well producing by
14 June 30th.

15 Q And is it your intention to meet that
16 deadline?

17 A Yes. And we've been trying to develop this
18 area since February of 2024.

19 Q And do you have permits and third-party
20 takeaway and things like that in place to allow you to
21 execute this development plan in time to make the
22 deadline in the term assignment?

23 A Yes. In Mr. McCoy's slides, he goes over
24 all the takeaway. It's my understanding we have gas
25 takeaway, water takeaway, oil takeaway, and we have

1 power infrastructure that no one else in the basin
2 has. And we also have permits for, I think it's 9 out
3 of 17 of the wells.

4 Q And you prepared Exhibit A-13, I think it
5 is. Let me just go there. A-13. Does this show the
6 Franklin Mountain Energy 3's approved pooling orders
7 in this area?

8 A Yes. For the immediate area, these are all
9 the orders that we've received.

10 Q And is Franklin Mountain Energy drilling
11 wells or have wells in this area on its development
12 schedule?

13 A Yes. We've drilled wells in this area, and
14 we are currently drilling directly to the west.

15 Q And is part of the reason that you -- that
16 Franklin Mountain Energy 3 has expended capital on
17 infrastructure in this area is to support this
18 contiguous buildout?

19 A Yes. It's to support this area, and our --
20 our footprint's larger than this as well.

21 Q And this slide doesn't show where MRC has
22 been operating in this area, does it?

23 A No, it does not.

24 Q But is that in Sections 30 and 31?

25 A Section 30 -- they acquired wells in Section

1 30 recently.

2 Q And do you know who they acquired those
3 wells from?

4 A From COG Operating

5 Q And then they operate wells in Section 31?

6 A Yes. Yes.

7 Q And do you know when they first drilled
8 those wells in Section 31?

9 A I do not. Oh, in Section 31, they drilled
10 some starting in 2016, and the last one that they
11 drilled was 2019.

12 Q And earlier today, you heard some back and
13 forth about good faith negotiations. Do you think
14 that Franklin Mountain Energy undertook good faith
15 negotiations?

16 A Yes, I do.

17 Q And can you provide a little more context on
18 that, please?

19 A Well, originally, when we saw the testimony
20 with the email, we originally found an email with
21 another reply onto it. And -- and we have been
22 dealing with MRC over the last year or so, and
23 we've -- we've worked multiple deals, and we've been
24 to plenty of contested hearings as well.

25 So there's been a lot of communication, and

1 we have been trying to make -- make deals. But if
2 it's not a good deal for us, it doesn't mean it's bad
3 faith. It's just not -- not a good deal.

4 Q Thanks. And in reviewing the MRC -- have
5 you had a chance to review the MRC exhibits?

6 A I have looked over them. Yes.

7 Q And do you recall seeing in the landman --
8 Mr. Isaac Evans testimony -- some testimony about the
9 Coterra acquisition?

10 A Yes, I do.

11 Q And do you recall he's calling into question
12 whether Franklin Mountain Energy will develop these
13 tracts?

14 A Yes.

15 Q And do you have an opinion on the testimony
16 that Mr. Evans gave about the Coterra acquisition?

17 A Yes. So the -- the deal has not closed. It
18 is on our rig schedule, and we do plan on drilling it,
19 and we do have that term assignment that we are trying
20 to produce by. So the -- the acquisition doesn't
21 affect our operating procedures. So --

22 Q And when you say it is on our drilling
23 schedule, you mean the Rope development area?

24 A Yes. The -- the Rope is on our rig
25 schedule, the Rope development area.

1 Q And Franklin Mountain Energy 3 intends to
2 and desires to satisfy the term assignment
3 obligations?

4 A Yes. We would like to hold the term
5 assignment and develop the Rope unit.

6 Q And the acquisition by Coterra does not
7 impact that desire?

8 A No, it does not.

9 THE HEARING EXAMINER: Ms. Bennett?

10 MS. BENNETT: Yes.

11 THE HEARING EXAMINER: I'm confused
12 about this Coterra issue. What lands are we talking
13 about?

14 MS. BENNETT: I actually don't know
15 what lands are at issue and what lands that Coterra is
16 acquiring from Franklin Mountain Energy.

17 THE HEARING EXAMINER: Okay. Well, let
18 me ask the witness then.

19 Are you -- do you -- are the lands --
20 are the Coterra -- are the land -- let's -- I don't
21 have enough information to even ask the question, but
22 I'm trying to understand how this is relevant to these
23 three parcels or these three sections. 18, 19, and
24 30. Are you saying that you are transferring interest
25 in these sections to Coterra?

1 MR. JOHNSON: So the transaction, if it
2 goes through and if it closes, is an entity
3 transaction. And -- and so it would be Franklin
4 Mountain Energy 3 still operating those wells. And
5 I -- I think that's all I can probably say. So --

6 THE HEARING EXAMINER: Okay. Yeah.
7 I'm not asking you to divulge anything that you're not
8 supposed to, but is it in all three sections or just
9 one section? What are we talking about?

10 MR. JOHNSON: It would include the Rope
11 interest in all three sections.

12 THE HEARING EXAMINER: Oh, all three
13 sections. And what do you mean an entity -- what do
14 you mean, the entity deal? What do you mean?

15 MR. JOHNSON: So it's -- it's not a
16 transfer of assets. It's a transfer of the company.
17 And so --

18 THE HEARING EXAMINER: I don't
19 understand.

20 MR. JOHNSON: -- so the assets would
21 remain in Franklin Mountain Energy's name.

22 THE HEARING EXAMINER: Ms. Bennett, can
23 you clarify?

24 MS. BENNETT: Yes. So my
25 understanding -- and again, this is based on very

1 recent knowledge. But my understanding is that
2 Coterra, which is also before the Division, known as
3 Cimarex or Magnum Hunter, is acquiring the company of
4 Franklin Mountain Energy 3.

5 And so Franklin Mountain Energy 3 will
6 continue to be the operator, continue to be the
7 leaseholder. The name of the company may change at
8 some point down the road, but they're acquiring the
9 company itself, not the assets.

10 So in other words, as -- and again,
11 I've read a press release or two. I haven't spoken
12 with Coterra. I haven't spoken with Franklin Mountain
13 Energy about the deal transaction, but that's my
14 understanding.

15 THE HEARING EXAMINER: But if the deal
16 goes through, it'll be Coterra who owns the working
17 interest here. But you'll -- but Franklin Mountain
18 Energy will still be the operator?

19 MR. JOHNSON: That's my understanding.

20 THE HEARING EXAMINER: Okay. That's
21 all I wanted to know. I was confused.

22 MS. BENNETT: And may I ask a follow-up
23 question?

24 THE HEARING EXAMINER: Yes, of course.

25 //

1 BY MS. BENNETT:

2 Q Is it your understanding that Franklin
3 Mountain Energy would continue to hold the working
4 interest on as the entity would hold the working
5 interest?

6 A Yes. The Franklin Mountain Energy entity
7 would still hold the interest.

8 THE HEARING EXAMINER: Thank you. And
9 I have more information now. Thank you.

10 MS. BENNETT: Okay.

11 THE HEARING EXAMINER: That's helpful.
12 Are you still going with this witness?

13 MS. BENNETT: Yes. Yes. Just a few
14 more minutes.

15 THE HEARING EXAMINER: Sure.

16 BY MS. BENNETT:

17 Q Earlier today, I thought I heard Mr.
18 Feldewert saying that MRC intends to have its surface
19 locations for its airstrip development in the south
20 half/south half of 31. Did you hear that today?

21 A I -- I -- yeah, I heard that.

22 Q Is that your understanding of where MRC has
23 proposed its surface hole locations?

24 A The proposals for the -- that we received,
25 the surface would be in Section 19. I do know they

1 have existing pads in Section 31, but the proposals
2 have the surface hole in Section 19.

3 Q Did the proposals have the surface holes in
4 section --

5 A Or Section 30. Sorry.

6 Q Yes.

7 A My apologies.

8 Q Was that the north half/north half of
9 Section 30?

10 A Yes.

11 Q And is this slide Exhibit A-15 that you
12 prepared a -- show some of the surface constraints in
13 the north half/north half of Section 30?

14 A Yes, it does.

15 Q And what are some of those surface
16 constraints that we can see on this?

17 A There -- there's -- it looks like roads,
18 there's pipelines, there's playas, there's just all
19 the existing pads and setbacks.

20 Q In fact, I'm going to pull up MRC'S
21 testimony. Do you recall in MRC's testimony that MRC
22 was comparing and contrasting your surface disturbance
23 in Section 30 with their surface disturbance in
24 Section 30?

25 A Yes.

1 Q And was MRC making the point, if you
2 recall -- and I'm trying to pull up their testimony
3 right now. But was MRC making the point that their
4 surface disturbance in Section 30 would be less than
5 yours because they would be using surface locations in
6 the north half/north half of 30?

7 A Correct.

8 Q So were you surprised today to hear that
9 they were proposing to have their surface hole
10 locations in Section 31?

11 MR. FELDEWERT: I -- that was a mistake
12 on my part. It is north half/north half of 30.

13 THE HEARING EXAMINER: Okay.

14 MR. FELDEWERT: Sorry about that.

15 THE HEARING EXAMINER: Let's stop for a
16 moment. So, Ms. Bennett, with that clarification, do
17 you want withdraw the question?

18 MS. BENNETT: No.

19 THE HEARING EXAMINER: No. Okay. So
20 what -- so with that information, do you want to
21 rephrase the question?

22 MS. BENNETT: Yes. Yes.

23 THE HEARING EXAMINER: Okay. Please.

24 We're going to -- so, James, are you
25 able to strike the question? I'd like to keep what

1 Mr. Feldewert said as clarification, but I don't want
2 that question to confuse anyone.

3 So would you please re-offer the
4 question, Ms. Bennett?

5 BY MS. BENNETT:

6 Q So with that understanding that MRC's
7 surface facilities are, in fact, intended to be in the
8 north half/north half of 30, does your slide Exhibit
9 A-15 identify the surface constraints in the north
10 half/north half of 30?

11 A Yes. It still identifies those constraints.

12 Q And let me just see if I can pull up the MRC
13 exhibits while I transition to asking questions about
14 those. So if -- I'm looking here at MRC Exhibit A-8.
15 Do you see that on the screen?

16 A Yes.

17 Q And is it your understanding that MRC has
18 drilled certain Bone Spring wells in Section 31?

19 A Yes.

20 Q Is it your understanding that they have
21 drilled those wells from surface hole locations in the
22 south half/south half of Section 31?

23 A Yes.

24 Q And let's see. MRC's exhibits discuss the
25 ownership interest in Section 30; right?

1 A Yes.

2 Q And this is an exhibit from MRC's testimony?

3 A Yes.

4 Q And this is Exhibit A-10. And is this
5 Section 30 that's shown in red and green?

6 A Yes.

7 Q And MRC's point in some of its testimony --
8 and I'm looking in particular at paragraph 41 -- is
9 that MRC should be allowed to develop Sections 30 and
10 31, and Franklin Mountain Energy should be allowed to
11 develop Sections 18 and 19. MRC noted in section --
12 in paragraph 41 that proposal. I know we've talked
13 about that before, but do you feel that that is a
14 workable proposal for Franklin Mountain Energy 3?

15 A No, I don't believe it is. I mentioned the
16 surface disturbance earlier, how we could not fit pads
17 there. And if they were to put their well or their
18 pads in Section 30 where they want to, we would -- we
19 wouldn't be able to drill there at all.

20 We'd have to drill from Section 18, which we
21 would not do because the Wolfcamp is not viable there.
22 And we'd also have to move our infrastructure three
23 miles to the north, and we'd also have to put new pads
24 there. So the surface disturbances would be much
25 greater if that was the case.

1 Q I'm just looking for one more MRC exhibit.
2 I'll look for it during the cross-examination, and if
3 I can, I'll try to do some redirect on that exhibit.
4 That's all I have for the moment.

5 THE HEARING EXAMINER: It was an
6 exhibit that that discussed what evidentiary facts?

7 MS. BENNETT: It's an exhibit that
8 shows the MRC surface hole proposed locations. And
9 although I cannot find it at this very moment, I want
10 to say that I think it also shows Section 31. And so
11 I just wanted to show the Division and the witness --
12 okay. A-13.

13 THE HEARING EXAMINER: You found it.
14 Excellent.

15 MS. BENNETT: Yes.

16 BY MS. BENNETT:

17 Q So I have up Slide A-13. Do you see that?

18 A Yes.

19 Q And so you can see in the north half/north
20 half of 30, is that where you understand that MRC is
21 proposing its surface hole locations?

22 A Yes.

23 Q And does this show existing infrastructure
24 in the south half/south half of Section 31?

25 A Yes, it does.

1 Q Do you know if MRC has pooling orders or
2 JOAs that cover the Section 31?

3 A I believe they do.

4 Q This is the email exchange that MRC was
5 relying on, right, that ends on September 25th?

6 A Yes.

7 Q Do you know if Franklin Mountain Energy had
8 subsequent discussions with MRC after September 25th?

9 A Yes.

10 MS. BENNETT: Thank you. That's all I
11 have for direct.

12 THE HEARING EXAMINER: Thank you, Ms.
13 Bennett.

14 Mr. Feldewert?

15 MR. FELDEWERT: Thank you. I will
16 share.

17 CROSS-EXAMINATION

18 BY MR. FELDEWERT:

19 Q Mr. Johnson, if I look at what's been marked
20 as MRC B-6, it shows some existing vertical wells up
21 in Section 18. Do you see that?

22 A Yes.

23 Q You're aware of those wells?

24 A Yes.

25 Q Who owns a majority of the working interest

1 in Section 18?

2 A The majority of the working interest in Bone
3 Spring and Wolfcamp -- it varies. MRC has the
4 Wolfcamp interest, and Franklin Mountain and some
5 partners have energy -- or has the interest in the
6 Bone Spring.

7 Q Okay. Okay. So Franklin Mountain has an
8 interest up there in Section 18?

9 A Yes.

10 Q Okay. Who operates those existing vertical
11 wells?

12 A I don't know that.

13 Q Is it Mack Energy?

14 A I know they -- they operate some of them.

15 Q Okay. Didn't you testify that Mack Energy
16 operates those vertical wells?

17 A I do know they operate some of those wells.
18 Yes.

19 Q Okay. All right. So your proposed spacing
20 units in the Bone Spring then would overlap those 40-
21 acre spacing units for the existing wells; right?

22 A They would, yes.

23 Q Okay. I didn't see Mack Energy on your
24 notice list. Why is that?

25 A I -- I have contacted them, and I have a

1 signed waiver of notice.

2 Q You do?

3 A I do.

4 Q Okay. Did you look at who -- are the other
5 working interest owners in the 40-acre tracts
6 associated with those standup vertical wells? Are
7 those existing vertical wells?

8 A I searched on public record for wellbore
9 assignments, and we did not find any.

10 Q But who owns the working interest in the 40-
11 acre tracts?

12 A I don't -- I don't have exact title in front
13 of me. It -- it could be the companies that drilled
14 it still. They may have kept that interest when they
15 assigned it over to MRC or to us. I -- I don't have
16 that title.

17 Q So did you -- do you recognize that to have
18 an overlapping spacing unit, you have to receive
19 either a waiver or get approval from not only the
20 operator, but any working interest owners in the
21 existing spacing unit?

22 A Yes. And we searched public record for
23 that.

24 Q Okay. And did you identify the working
25 interest owners in the existing spacing unit?

1 A We -- we tried to. Yeah.

2 Q Do you have a list of who those working
3 interest owners are?

4 A No, I don't.

5 Q So do you know if they've been notified of
6 your application for an overlapping spacing unit if
7 you don't know who they are?

8 A We -- we searched public record for any
9 assignments out of those current working interest
10 owners, and we were unable to find any of those
11 assignments. So based on rough title on public
12 record, we -- we notified who we thought we should
13 notify, and that was Mack Energy.

14 Q So you just notified Mack Energy. You
15 didn't notify any other potential working interest
16 owner because you don't know who they are --

17 A No.

18 Q -- in those 40-acre tracts?

19 A No. Other than the working interest in the
20 entire section that we had title ran on, so --

21 Q Okay. Just so we're clear, I think Ms.
22 Bennett brought this up, but do you agree that MRC
23 Exhibit A-10 identifies the ownership in Section 30,
24 which is the section at issue?

25 A It -- it does have the correct working

1 interest partners. We have a different number for
2 Axis Energy, so our interests are slightly off, but
3 it's still very minor.

4 Q So Franklin Mountain then only has ownership
5 or control of 38.75 percent?

6 A So in the north half, we have 40 percent.
7 In the south half, we have 37.5.

8 Q Good point. If you blend it together, is
9 this correct?

10 A Yes.

11 Q Okay. Which may -- and then you mentioned
12 Axis Energy you. I guess you made a representation
13 about them as being sided with you, but that turned
14 out to be incorrect; right?

15 A They signed elections for us originally.
16 Correct. Yeah.

17 Q Okay. But you recognize now that they have
18 -- they're supporting MRC and actually signed their
19 JOA?

20 A I haven't seen the JOA, but we have a --
21 they have a supporting letter from MRC, and I received
22 an email yesterday from -- from Axis Energy.

23 Q Okay. When you put in your series of
24 exhibits that Axis supports FME working interest,
25 that's what's not correct; right?

1 A Correct. And that would be changed.

2 Q Okay. Did you visit with Axis Energy before
3 making that representation?

4 A No. We've -- we sent elections, and they
5 sent them back.

6 Q But you didn't have any conversation with
7 them about whether they supported your working
8 interest?

9 A No. We -- we were going off of our signed
10 elections, and --

11 Q Okay. Who owns the record title in Section
12 30?

13 A The north half, COG Operating owns the
14 working interest. In the south half, MRC Permian.

15 Q Okay. And are you aware that MRC has
16 filed -- or filed the assignments with the State Land
17 Office to become record title owner?

18 A According to this slide, yes.

19 Q Okay. When you're a record title owner in a
20 state lease, what responsibilities exist?

21 A You have to sign the -- the CAs. You have
22 to -- you have to sign all of the state documents.

23 Q Okay. What about responsibilities to the
24 state with respect to the surface?

25 MS. BENNETT: Objection. If

1 Mr. Feldewert could ask a more direct question? This
2 is a very open-ended, broad question.

3 MR. FELDEWERT: I thought it was very
4 direct.

5 THE HEARING EXAMINER: Mr. Feldewert,
6 what is your response?

7 MR. FELDEWERT: I thought my question
8 was --

9 BY MR. FELDEWERT:

10 Q Do you understand my question?

11 A Can you rephrase it?

12 Q I can rephrase it.

13 THE HEARING EXAMINER: Sustained.

14 BY MR. FELDEWERT:

15 Q All right. When it comes to a record title
16 owner of a state lease, are you aware of any surface
17 responsibilities that a record title owner has for a
18 state lease?

19 A They're responsible for assigning rights to
20 pooling and -- and probably the bonds. I -- I don't
21 want to speculate on -- on --

22 Q Well, you said -- you're aware the bonds;
23 right?

24 A Yes. You can -- you need -- you need state
25 or a record title owner signature to put surface on

1 there as well, a waiver, if you don't have lease
2 rights in there.

3 Q And what are the bonds for?

4 A The bonds for -- are for if -- if companies
5 go belly up, it's -- it's kind of an insurance on the
6 working interest owners.

7 Q Surface remediation, surface cleanup, things
8 like that?

9 A Yep.

10 Q Is that correct?

11 A Yes.

12 Q Okay. When I look at MRC Exhibit A-13 -- I
13 think Ms. Bennett reviewed this with you, and I
14 apologize for the misstatement I made earlier. You're
15 aware that MRC's continued development of 30 and 31
16 would involve adding additional pads in the north half
17 of the north half of Section 30 where there's already
18 existing roads and pads; right?

19 A Correct.

20 Q Okay. And that your proposed plan would put
21 infrastructure in the south half of the south half of
22 Section 30; is that right?

23 A Correct.

24 Q Okay. That would mean, I think you said --
25 well, I think your testimony indicates three new well

1 pads?

2 A Correct. There'll be a central battery pad
3 as well.

4 Q So that's four pads, and then there'd be
5 some new --

6 A No. No. Sorry. It's three total.

7 Q Three total.

8 A One of them is a central tank battery.

9 Q Okay. And then you'd have new roads down
10 there?

11 A I believe there'd be new roads as well.

12 Q And you'd have to lay pipelines?

13 A We have existing pipeline in the north
14 half/north half of Section 31. It's already existing.

15 Q Would you have to lay pipelines in the south
16 half of the south half of 30?

17 A From each pad to the -- to the main line.

18 Q So surface disturbance there; right?

19 A Yes.

20 Q Okay. And would you agree with me that when
21 you look at the south half of the south half of 30,
22 this area is largely undisturbed; right?

23 A Yes.

24 Q State acreage?

25 A Yes.

1 Q Correct?

2 A Yes.

3 Q Okay. When it comes to overhead rates, what
4 overhead rates have you all proposed?

5 A I believe it was 9,000.

6 Q And what has MRC proposed?

7 A 8,000.

8 Q Okay. Now, when I looked at your
9 existing -- or your Exhibit A-13 -- I think you
10 discussed this with Ms. Bennett. I think at --
11 correct me to count what you -- but I believe there
12 are 54 pooling orders on this list?

13 A I believe that's the number. Yeah.

14 Q And you've obtained these, what, in the last
15 year?

16 A Some of them have been longer than a year,
17 and we have developed some of them. But last --

18 Q Last two years?

19 A -- in the last -- yeah, last half a year or
20 so.

21 Q Okay. All right. Do you know how many
22 wells Franklin Mountain is obligated to drill under
23 these 54 orders?

24 A I don't have a specific number.

25 Q You got an idea?

1 A Probably at least 50, 54.

2 Q So you got 54 pooling orders. You think
3 those 54 pooling orders just have one well associated
4 with them?

5 A No, they do not.

6 Q It'd be multiple wells; right?

7 MS. BENNETT: Objection. He already --
8 Mr. Johnson testified that he doesn't know how many
9 wells there are.

10 THE HEARING EXAMINER: Sustained.

11 BY MR. FELDEWERT:

12 Q Okay. And not -- those obligations would
13 have to take place and be satisfied within the next
14 year. Right?

15 A [No audible response.]

16 MS. BENNETT: Objection. That
17 mischaracterizes Mr. Johnson's testimony.

18 MR. FELDEWERT: He just shook his head,
19 yes.

20 THE HEARING EXAMINER: Well, she still
21 objected.

22 MR. FELDEWERT: Okay.

23 THE HEARING EXAMINER: So what's your
24 response? Do you want to rephrase it so that you can
25 use the data that he actually gave you instead of what

1 you're assuming?

2 BY MR. FELDEWERT:

3 Q Okay. So we have 54 pooling orders; right?

4 A Correct.

5 Q And would you agree with me that there's a
6 pretty good chance that each of those pooling orders
7 have more than one obligation well?

8 MS. BENNETT: Objection.

9 THE HEARING EXAMINER: Sustained. He
10 answered the question already before.

11 BY MR. FELDEWERT:

12 Q Okay. And would you agree with me then that
13 those obligation wells are required to be satisfied
14 within the next year?

15 MS. BENNETT: Objection.

16 THE HEARING EXAMINER: What's the basis
17 of that objection?

18 MS. BENNETT: Mr. Johnson testified
19 that not all of these orders have been issued this
20 year. Some of them -- I believe his testimony was
21 that they were issued earlier. So Mr. Feldewert's
22 question that all of the obligations have to be
23 satisfied within this year is not an accurate
24 statement.

25 THE HEARING EXAMINER: Mr. Feldewert,

1 did you say this year?

2 MR. FELDEWERT: I did.

3 THE HEARING EXAMINER: You did? You
4 said what? So you mean calendar year 2024?

5 MR. FELDEWERT: 2025. Sorry. But
6 then -- I'm sorry --

7 THE HEARING EXAMINER: That's why I'm
8 confused because this is not making sense. Okay. So
9 please --

10 MR. FELDEWERT: Sure.

11 THE HEARING EXAMINER: -- rephrase the
12 question so it accurately gives the witness something
13 to answer. And so I'm sustaining the last two
14 objections by Ms. Bennett.

15 MR. FELDEWERT: Okay.

16 MS. BENNETT: Thank you.

17 BY MR. FELDEWERT:

18 Q How many of the drilling obligations under
19 these 54 pooling orders have been satisfied?

20 MS. BENNETT: Objection. I don't know
21 that Mr. Johnson is prepared to answer that question
22 right now. It requires an understanding exactly which
23 wells have been drilled, and he already indicated that
24 he's not aware of that.

25 THE HEARING EXAMINER: Mr. Feldewert?

1 I know where you're trying to go with this,
2 Mr. Feldewert --

3 MR. FELDEWERT: I don't know if he
4 knows the answer or not.

5 THE HEARING EXAMINER: Mr. Feldewert,
6 why don't you just get to the chase?

7 MR. FELDEWERT: There's nothing wrong
8 with the question.

9 THE HEARING EXAMINER: What?

10 MR. FELDEWERT: What's wrong with the
11 question? She didn't articulate the reason what the
12 question --

13 THE HEARING EXAMINER: Do you want to
14 rephrase your objection so that it's maybe one word so
15 that I can sustain it? Because I'm going to sustain
16 it, but give me a word.

17 MS. BENNETT: Overly broad.

18 THE HEARING EXAMINER: Fine.
19 Sustained. Can you please rephrase the question?

20 BY MR. FELDEWERT:

21 Q Mr. Johnson, do you know how many of these
22 pooling orders have been satisfied? Not the drilling
23 obligations.

24 A The exact number, no. But they're -- they
25 have -- we have drilled a significant amount of wells

1 based on these orders already.

2 Q Okay. And when you say it's significant,
3 have you satisfied the obligations for the gold
4 pooling orders?

5 A To this date, no. But it is on our rig
6 schedule currently.

7 Q Have you satisfied all the drilling
8 obligations for the satellite pooling orders?

9 A Yes.

10 Q Have you -- what about the Parallel pooling
11 orders?

12 A It's on our rig schedule.

13 Q So they haven't been satisfied yet?

14 A No.

15 Q What about the cross-unit pooling orders?

16 A Those have not been satisfied.

17 Q What about the ball pooling orders?

18 A It's not been satisfied. We just got those.

19 Q What about the Foxtail pooling orders?

20 A Those are currently being satisfied.

21 Q Have you satisfied any of them?

22 A It is in the process of being fracked right
23 now.

24 Q What about the Alpha pooling orders?

25 A Those are also being satisfied right now.

1 Q But they haven't been accomplished yet?

2 A It's in the process.

3 Q Have they been drilled?

4 A Yes.

5 Q Okay. What about the Norte pooling orders?

6 A Some of those have been drilled.

7 Q Okay. You mentioned the pending company
8 acquisition by Coterra?

9 A Yep. I'm aware of it.

10 Q All right. And that deal, as I understand
11 it, is supposed to close within the first quarter of
12 next year?

13 A I -- I'm not a part of that. I -- I don't
14 know when it'll close.

15 Q Did you look at the press release?

16 A That's what it says, but --

17 Q That's what it says; right?

18 A Yeah.

19 Q Okay. You don't have any reason to discount
20 that?

21 A Not necessarily, but things happen, I guess.
22 It's -- it's not closed until it's closed, so --

23 Q Got it. Okay. But if we go by the press
24 release, it's supposed to be status closed by the
25 first quarter of next year?

1 A Correct.

2 Q Which would be what, March of 2025?

3 A Correct.

4 Q All right. At that point in time, who will
5 control the drilling of wells and the drilling
6 schedule? Is it going to be Franklin Mountain or is
7 it going to be Coterra?

8 A It'll be Franklin Mountain.

9 Q It'll be Franklin Mountain? Okay. Coterra
10 will not be -- will not address the allocation of
11 drilling ridge -- rigs and costs?

12 MS. BENNETT: Objection. Lacks
13 foundation.

14 THE HEARING EXAMINER: Mr. Feldewert?
15 BY MR. FELDEWERT:

16 Q He mentioned that Coterra's taking over. My
17 question to him was whether Coterra would be the
18 entity responsible for the allocation of drilling rigs
19 and costs?

20 THE HEARING EXAMINER: Right. And the
21 objection is lack of foundation.

22 So, Ms. Bennett, what do you mean by
23 lack of foundation?

24 MS. BENNETT: It assumes that Mr.
25 Johnson knows the details of the deal, which he has

1 already said he does not.

2 THE HEARING EXAMINER: Mr. Feldewert?

3 MR. FELDEWERT: Are you aware --

4 well --

5 THE HEARING EXAMINER: Okay.

6 MR. FELDEWERT: -- I think he's aware
7 of the press release. He's aware of the transaction.

8 Okay?

9 THE HEARING EXAMINER: Would you
10 explain how this is relevant?

11 MR. FELDEWERT: Yes, I will.

12 THE HEARING EXAMINER: Please.

13 MR. FELDEWERT: And that is Franklin
14 Mountain is -- we don't know the nature of the
15 transaction apparently, but we do know it's going to
16 be a company acquisition, which means they're going to
17 be absorbed by Coterra, which means that Coterra is
18 the entity that is going to determine how drilling
19 goes forward.

20 THE HEARING EXAMINER: I think the
21 witness said before -- and this is not arguing with
22 you, Mr. Feldewert, but I'm just clarifying what I
23 heard was that if Coterra, if this deal goes through,
24 that Franklin Mountain will still exist in some form
25 and still be the working interest owner and the

1 operator. So I that's what I heard. Are you saying
2 you heard something else?

3 MR. FELDEWERT: No. That's what I
4 heard as well.

5 THE HEARING EXAMINER: Okay.

6 MR. FELDEWERT: Okay? My question to
7 him is, does that mean that -- will Coterra be
8 determining the drill schedule and the allocation of
9 cost necessary to satisfy the drill schedule?

10 THE HEARING EXAMINER: I think it's a
11 question you can ask -- answer yes or no to, if you
12 know, so I'll override the objection based on the
13 discussion we've just had.

14 BY MR. FELDEWERT:

15 Q Go ahead.

16 A There's -- there's no way to know that.
17 It's -- you can't read the future, I guess. It's --
18 it's what the two companies come to an agreement and
19 do. I'm not a part of that.

20 Q Okay. And with your applications here
21 today, you seek to add another seven pooling orders to
22 this list?

23 A Correct.

24 Q And another 15 wells to be drilled within a
25 year?

1 A Correct.

2 Q Okay. Now, you discussed the --a term
3 assignment that the company has --

4 A Yes.

5 Q -- for -- now, that only involves Section
6 30, the acreage that's in dispute?

7 A Correct.

8 Q Okay. When I go and look at -- pardon me.
9 Give me a minute. When I go look at A-10, and I look
10 at Franklin Mountain's 38.75 percent interest in
11 Section 30, how much of that interest is subject to
12 the term assignment?

13 A All of it.

14 Q All of it. Okay. And a term assignment is
15 a contract to then earn a working interest; is that
16 right?

17 A Yes.

18 Q So right now, it's just a contingent
19 interest?

20 A Yes. We need to produce by January 30 -- or
21 June 30th, 2025.

22 Q So it's a little different from a lease;
23 right? You don't currently have the working interest.
24 It's a contingent working interest?

25 A Correct.

1 Q All right. Did you -- have you reviewed
2 that term assignment?

3 A I have not personally reviewed the entire
4 assignment.

5 Q Have you reviewed any of it?

6 A The -- the terms of the -- the extension, I
7 have.

8 Q Okay. Would you -- were you aware that -- I
9 guess this term assignment was initially assigned from
10 Marathon to Catena in January of 2022?

11 A Correct.

12 Q Okay. And that Catena then assigned that
13 term assignment to Franklin Mountain in December of
14 2022?

15 A Correct.

16 Q So that was almost two years ago?

17 A Correct.

18 Q All right. Do you know how long before the
19 assignment was assigned to Franklin Mountain in
20 December that Franklin Mountain would've been aware of
21 the requirements under the term assignment?

22 A I -- I was not here during the deal, but the
23 expiration dates were probably part of the initial due
24 diligence between Catena and Franklin Mountain.

25 Q So -- and normally, when you do a due

1 diligence, how far ahead of that of the actual
2 transaction date does the due diligence occur?

3 MS. BENNETT: Objection. Mr. Johnson
4 testified that he was not part of this due diligence,
5 and general hypothetical questions about due diligence
6 are irrelevant to this.

7 THE HEARING EXAMINER: Mr. Feldewert?

8 MR. FELDEWERT: He's qualified as an
9 expert in land matters. He's aware of due diligence.
10 So I think he has experienced a draw upon.

11 MS. BENNETT: And just to be clear, my
12 objection is not about experience, per se. It's about
13 the relevance to this particular matter and how it
14 advances the Division's decision in this case.

15 THE HEARING EXAMINER: Okay.

16 Mr. Feldewert, the objection has changed now to be one
17 of relevance. Explain how this is relevant, please.

18 MR. FELDEWERT: They have had this term
19 assignment since December of 2022. They were likely
20 aware of this -- the obligations under this long
21 before December of 2022. Okay? And they didn't --
22 they waited until February of 2024 to even propose
23 development.

24 THE HEARING EXAMINER: And it's
25 relevant to this competing compulsory pooling because

1 you're trying to show some sort of a lack of
2 initiative?

3 MR. FELDEWERT: Yeah. And you know, if
4 they want to -- and so that part of the problem or
5 part of the issue that they face today is their own
6 creation.

7 THE HEARING EXAMINER: And, Ms.
8 Bennett, I'll give you one last response to what he
9 just said.

10 MS. BENNETT: Thank you. Mr. Johnson
11 testified that he was not involved in the due
12 diligence for this term assignment. So he already
13 testified that he's not aware of whether Franklin
14 Mountain Energy knew about this term assignment before
15 December 2022. And he has testified that Franklin
16 Mountain Energy was aware of it from December 2022
17 forward. That's what's in the record, and that's what
18 Mr. Johnson has testified to.

19 THE HEARING EXAMINER: Mr. Feldewert,
20 I'm going to sustain the objection because I think
21 that -- well I think that Ms. Bennett is correct. But
22 I think you can make your point using more general
23 questions about what you're trying to get at. And I'm
24 hoping you're going to move this along. I think
25 that --

1 MR. FELDEWERT: Certainly.

2 THE HEARING EXAMINER: -- it's clear
3 where you're going with this.

4 BY MR. FELDEWERT:

5 Q Okay. So you would agree with me that
6 Franklin Mountain knew about the obligations of the
7 term assignment before they closed in December of
8 2022?

9 MS. BENNETT: Objection. He testified
10 that he does not know that.

11 THE HEARING EXAMINER: Okay.
12 Sustained.

13 BY MR. FELDEWERT:

14 Q You would agree with me that if any company
15 engaging in a due diligence, which Franklin Mountain
16 did here, right, before entering into the term
17 assignment?

18 MS. BENNETT: Objection.

19 MR. FELDEWERT: He testified they did,

20 THE HEARING EXAMINER: Mr. Feldewert,
21 I'm going to sustain the objection because I think
22 that you can get to the point a lot quicker and ask
23 your question to this landman expert. So if you would
24 just rephrase your question, I'd appreciate it.

25 MS. BENNETT: Yeah.

1 BY MR. FELDEWERT:

2 Q You've been involved in due diligence
3 efforts?

4 A More specific -- in -- in general or --

5 Q Yes.

6 A Yes.

7 Q Okay. And in your experience, how -- what
8 period of time is usually involved with a due
9 diligence effort?

10 A A few months.

11 Q When you say a few months, two months, six
12 months?

13 A Depends on the size of the companies and --

14 Q What range have you seen?

15 A Three to six months, depending on --

16 Q Three to six months. Okay. And you've
17 testified that Franklin Mountain engaged in due
18 diligence here?

19 A I was not at the company at that point, but
20 any -- any company that makes a deal should do due
21 diligence.

22 Q Okay. All right. And the company, I
23 believe, then waited until February of 2024, which was
24 14 months after they acquired it, to even propose
25 development; correct?

1 A Correct.

2 Q When I looked at your Exhibit A -- give me a
3 minute -- your Exhibit A-16, which is the well
4 proposal letter that you placed into the record for
5 these wells, it has a date on there of February 14,
6 2023. That's not correct, is it?

7 A That -- It's correct.

8 Q It is correct?

9 A That -- that's not when we sent it out
10 though. That is a typo. The AFE has a date of
11 January 4th on there. The date was a typo.

12 Q Date on the letter?

13 A Yes.

14 Q So should the date on the letter be February
15 14, 2024?

16 A Correct.

17 Q Okay. I'm sorry. Thank you. That's what I
18 meant to get. And then the company did not even file
19 pooling applications until 16 months after it closed
20 on a term assignment; right?

21 A Franklin Mountain Energy acquired the term
22 assignment. We did not close on the term assignment,
23 but yes, we developed other areas of our footprint
24 before getting to this area.

25 Q So you did not file your pooling

1 applications until 16 months after you acquired the
2 term assignment?

3 A We had plenty of other expirations that we
4 had to meet in our entire development before this
5 expiration. So yes, it was not the top priority. It
6 was a planned development to drill in 2024.

7 Q And then we had a hearing set in September.
8 Remember that?

9 A We've had a lot of hearings for this case.
10 I -- I don't know the exact dates of all of them.

11 Q Okay. I believe then the company then noted
12 in August that it was going to file new pooling
13 applications for this acreage? Do you remember that?

14 A I believe so.

15 Q Okay. And that resulted in that September
16 hearing being vacated?

17 A Yes.

18 Q And then you filed your new pooling
19 applications in October?

20 MS. BENNETT: Objection. Mr. Hearing
21 Examiner, if Mr. Feldewert could be more specific
22 about which new pooling applications he's referring
23 to, because there is a difference between the Bone
24 Spring and the Wolfcamp applications.

25 THE HEARING EXAMINER: Sustained.

1 Mr. Feldewert?

2 BY MR. FELDEWERT:

3 Q You filed new pooling applications in
4 October; right?

5 MS. BENNETT: Objection. It's an easy
6 question to rephrase, to just ask which formation
7 Mr. Feldewert is asking about.

8 THE HEARING EXAMINER: Well, I'm not
9 going to tell an attorney how to ask a question, to do
10 his job. So I've sustained your objection. If you
11 want to make another objection, please just give me
12 the basis for it.

13 MS. BENNETT: Too broad.

14 THE HEARING EXAMINER: What's the word?

15 MS. BENNETT: Overly broad.

16 THE HEARING EXAMINER: Overly broad.

17 Okay.

18 Mr. Feldewert, would you please
19 rephrase your question to be specific?

20 BY MR. FELDEWERT:

21 Q Let me ask this. Are you aware that the
22 company filed new pooling applications in October?

23 A For the Wolfcamp wells, we did.

24 Q Okay. Thank you. And that then would've
25 been two months before the term assignment expired?

1 A Correct.

2 Q All right. Now, you said you recently
3 obtained an extension of the term assignment.

4 A Correct.

5 Q So it no longer expires in January of 2025?

6 A Correct.

7 Q Who did you obtain the extension from?

8 A Marathon.

9 Q Do you have a copy of that extension?

10 A Not on me, no.

11 Q Do you have it here today?

12 A No.

13 Q Okay. What did Franklin Mountain have to
14 offer to get the extension from Marathon?

15 A I was not a part of that.

16 Q Are you familiar with the terms of the
17 extension?

18 A The extension is to July 1, 2025. We need
19 to have a well producing by that date. So June 30th,
20 we have to turn a well on.

21 Q Does the extension address or have a
22 paragraph that discusses the obligation, or does it
23 extend the obligation under the existing term
24 assignment?

25 A It extended under the existing term

1 assignment.

2 Q Okay. And does that extension of the term
3 assignment -- does it prohibit additional extensions
4 of time, if needed?

5 A There's a continuous drilling paragraph in
6 there. So once we drill a well, we have -- I'm not
7 sure of the exact details. We have extended time to
8 drill the next one.

9 Q Okay. You're talking about the extension
10 document or the original term assignment?

11 A The original term assignment.

12 Q Okay. The extension document, the document
13 that extended the timeframe, does that prohibit you
14 from seeking an additional extension, if needed?

15 A Yes. I -- I believe it does, yes.

16 Q Okay. In what fashion?

17 A I -- I believe they're just not going to
18 extend it to us any further.

19 Q And what forms the basis for that belief?

20 A That -- that's what I've been told from Lee
21 Zink, who did the deal. So --

22 Q Who did?

23 A Lee Zink, the Director of Land at Franklin
24 Mountain Energy.

25 Q He's not here?

1 A He's not here.

2 Q Okay. Under the new timeframe, I think then
3 you got an additional six months?

4 A Correct.

5 Q All right. Now, you mentioned the term
6 assignment requiring, I said -- you think you said a
7 well on production by June 30, 2025?

8 A Correct.

9 Q Okay. Where is that requirement in the term
10 assignment? Do you know?

11 A It's -- it's the term of -- of the
12 assignment. It's -- it's the -- it -- it gives a
13 specific date in that term assignment.

14 Q Would it be helpful to look at it?

15 THE HEARING EXAMINER: Mr. Feldewert,
16 what are we looking at?

17 MR. FELDEWERT: The term assignment.

18 THE HEARING EXAMINER: I know that, but
19 is there an exhibit number?

20 MR. FELDEWERT: Not yet.

21 THE HEARING EXAMINER: Okay. So where
22 did this come from?

23 MR. FELDEWERT: We had it. Once we
24 saw -- once we found -- once they referenced the term
25 assignment.

1 THE HEARING EXAMINER: Do you want to
2 mark this as a rebuttal exhibit?

3 MR. FELDEWERT: I may need to, yeah.

4 THE HEARING EXAMINER: Well, before we
5 show the witness anything else, I'd like to get this
6 admitted as a rebuttal exhibit. So --

7 MR. FELDEWERT: Okay.

8 MS. BENNETT: Mr. Examiner, will I have
9 the opportunity to object?

10 THE HEARING EXAMINER: Obviously.

11 MS. BENNETT: Okay.

12 THE HEARING EXAMINER: So this is
13 Rebuttal Exhibit Number 1 for MRC.

14 (MRC Rebuttal Exhibit 1 was marked for
15 identification and received into
16 evidence.)

17 THE HEARING EXAMINER: And,
18 Mr. Feldewert, would you explain what this is and how
19 it's relevant? And then we'll hear an objection from
20 Ms. Bennett.

21 MR. FELDEWERT: There's been a
22 characterization about what this term assignment
23 requires in his statement. When we looked at it, we
24 see something different.

25 THE HEARING EXAMINER: Okay. Okay.

1 And -- okay. That doesn't tell me what this is. So
2 what is this?

3 MR. FELDEWERT: I'm sorry. This is the
4 term assignment from Marathon as the assignor to
5 Catena as the assignee that Mr. Johnson testified to
6 already, not only in his statement, but here today.

7 THE HEARING EXAMINER: Okay. And this
8 goes to the interest that you were talking about that
9 was obtained two years ago that then was acted upon in
10 February of this year?

11 MR. FELDEWERT: Yes.

12 THE HEARING EXAMINER: Okay. That's
13 what I thought you were talking about. Okay.

14 Ms. Bennett, why is this objectionable?

15 MS. BENNETT: Well, first of all, it's
16 my understanding that MRC was aware of the term
17 assignment issue before the -- before we filed our
18 exhibits, and so would've had the opportunity to
19 introduce this as an exhibit in their case in chief.
20 So that's my first --

21 THE HEARING EXAMINER: Okay. Let me
22 deal with that one thing at a time. I think where I
23 think this is going is to correct or to maybe even
24 impeach a witness's credibility with this document.

25 There is broad discretion given the

1 parties when it comes to the, you know, showing the
2 credibility of a witness. So whether or not we even
3 mark this as a rebuttal -- I prefer it to be marked.
4 But whether it's even admitted as a rebuttal exhibit,
5 it wouldn't prevent Mr. Feldewert from using this to
6 do that. Is there another objection?

7 MS. BENNETT: Yes.

8 THE HEARING EXAMINER: Go ahead.

9 MS. BENNETT: And I appreciate your
10 background in evidentiary rulings on this.
11 Mr. Johnson -- I believe it was his testimony that
12 he's only generally familiar with the terms of the
13 term assignment.

14 And so I don't know what the benefit of
15 impeaching him is with a document that he has said
16 he's only generally familiar with. So I think it's an
17 irrelevant impeachment document, for lack of a better
18 word.

19 THE HEARING EXAMINER: Okay. Without
20 going to Mr. Feldewert -- because I'm, I'm going to
21 overrule the objection, but I want you to know why. I
22 understand the importance of the Division
23 understanding whether or not Franklin Mountain Energy
24 3 has been diligent in its development of the land is
25 a factor for the Division to consider.

1 I understand why Mr. Feldewert's going
2 down this route. The witness can easily look at this
3 and answer the questions to -- so I'm going to give
4 Mr. Feldewert the latitude, but I'm also going to ask
5 Mr. Feldewert to please not spend a lot of time on
6 this.

7 It's understood where you're going with
8 it, but I think a few questions could answer to get
9 where you need to go. So please try to be brief with
10 this, but I am going to allow it. It is going to be
11 Rebuttal Exhibit 1. Whether or not it qualifies as a
12 rebuttal exhibit perfectly, that's not the point.

13 MS. BENNETT: Thank you.

14 THE HEARING EXAMINER: So thank you.

15 Mr. -- so do you want to direct the
16 witness to a particular paragraph?

17 MR. FELDEWERT: Sure.

18 BY MR. FELDEWERT:

19 Q So, Mr. Johnson, if I look at what's been
20 marked as MRC Rebuttal Exhibit Number 1, if I go down
21 to paragraph 38 -- I'm sorry -- not paragraph 38.
22 Paragraph 3.

23 THE HEARING EXAMINER: You said 3?

24 MR. FELDEWERT: Three, on page 2 of
25 this 13-page PDF.

1 BY MR. FELDEWERT:

2 Q Mr. Johnson, is this the clause you were
3 talking about that contains the requirement under
4 the -- your extension for this term assignment?

5 A Can I read it all the way first?

6 Q Sure.

7 THE HEARING EXAMINER: Why don't we
8 take a five-minute break? Why don't you take your
9 time reading it? We'll come back on the record at
10 10:50 a.m. this morning. Thank you.

11 MS. BENNETT: Thank you.

12 (Off the record.)

13 THE HEARING EXAMINER: Okay. It is
14 10:58 a.m. We are back on the record.

15 Mr. Feldewert?

16 BY MR. FELDEWERT:

17 Q So, Mr. Johnson, I'm looking at paragraph 3
18 of what's been marked as MRC Rebuttal Exhibit 1. Have
19 you had a chance to read that?

20 A Correct. Yes, I have.

21 Q Okay. And this is what you were referring
22 to when you testified that you had to have production
23 occurring by June 30th?

24 A No.

25 Q No?

1 A No.

2 Q Were you referring to something else?

3 A We have a new extension that was agreed upon
4 and signed by both parties. This extension is if and
5 only if you have a well capable of producing, then
6 you're granted the two-year extension based on the
7 first sentence of paragraph 3. We have an additional
8 six-month extension that we were -- have signed with
9 Marathon.

10 Q So let me step back. Is there -- you said a
11 couple things. Is there a paragraph in the extension
12 that defines the obligation under the term assignment?

13 A On the term assignment extension
14 agreement -- that's not this one -- that we signed
15 with Marathon, there's specific dates.

16 Q Specific dates for complying with this
17 provision?

18 A Of having a well capable -- or a well
19 capable of production. Yes.

20 Q Okay. So -- and I don't have the extension
21 in front of me, and you guys didn't bring it. Does
22 the extension -- other than changing the timeframe,
23 does it change the requirements for meeting the term
24 assignment?

25 A It does not affect the requirements.

1 Q So this requirement we see in paragraph 3
2 applies to the extension?

3 A Correct.

4 Q Okay. So that first sentence you referenced
5 there was -- deals with when you can get a two-year
6 extension; right?

7 A I -- I believe it can be agreed upon.

8 Q Okay. And the second sentence, the one I've
9 highlighted in yellow, you've read that?

10 A Yes.

11 Q Okay. And it says that the assignee is at
12 the expiration of the initial term or the expiration
13 of the two-year extension engaged in actual drilling
14 operations; right?

15 A Correct.

16 Q Okay. You don't think this can be read as
17 indicating that by the end of June, you only need to
18 have a drilling rig on location capable of drilling to
19 the total depth defined on the drilling permit?

20 A It needs to be capable of production.

21 Q You don't think that this could be read as
22 indicating that at the -- on June 30th, that you need
23 to have a drilling rig on location capable of drilling
24 to the total depth?

25 A It has to be capable of production, meaning

1 completed and oil coming out.

2 Q That's how you interpret this?

3 A That's what it says.

4 Q Okay. All right. Has the company examined
5 the force majeure clause in this agreement?

6 MS. BENNETT: Objection.

7 BY MR. FELDEWERT:

8 Q Or have you examined it?

9 THE HEARING EXAMINER: Wait. What is
10 the objection?

11 MS. BENNETT: Mr. Johnson previously
12 testified that he has not reviewed this document, and
13 asking Mr. Johnson if the company has reviewed this
14 document is overly broad.

15 THE HEARING EXAMINER: Agreed.
16 Sustained.

17 BY MR. FELDEWERT:

18 Q Mr. Johnson, before you made the statement
19 in your affidavit filed in this case about the
20 obligations under this term assignment, okay, did you
21 look at this term assignment?

22 A I reviewed this term assignment. Yeah.

23 Q Okay.

24 A I -- yes.

25 Q Did you review the force majeure clause?

1 A I glanced over it.

2 Q You glanced over it?

3 A Yeah.

4 Q Okay. If I go to that clause, it's
5 paragraph 12; is that right? It's up on the screen?

6 A Yep. Yes.

7 Q Okay. And it seems to total the time period
8 if there's a circumstance beyond the assignee's
9 reasonable control; right? I got it highlighted for
10 you.

11 A It -- it does say that. Yeah.

12 Q Okay. And it talks about, as a result of
13 any law, order, rule, or regulation of a federal or
14 state as part of that?

15 MS. BENNETT: Mr. Examiner, I hate to
16 keep objecting about this, but --

17 THE HEARING EXAMINER: It's your right
18 to object to any question you want to. What's the
19 objection?

20 MS. BENNETT: The document says what it
21 says. I don't see this as impeaching Mr. Johnson.
22 And that was the reason that the hearing examiner
23 allowed it in. We've gone beyond that, if that even
24 occurred, and the document speaks for itself.

25 If Mr. Feldewert or MRC decides to

1 make an argument based on this in its closing
2 arguments or briefing, it has the document, and it can
3 do so.

4 THE HEARING EXAMINER: Okay.
5 Mr. Feldewert?

6 MR. FELDEWERT: I'm just -- well, my
7 question was, and he agreed that if it's a matter
8 beyond their reasonable control due to any law, order,
9 rule, or regulation of the federal or state. That was
10 my question.

11 BY MR. FELDEWERT:

12 Q Do you agree with that?

13 THE HEARING EXAMINER: Well, hold on a
14 second.

15 MR. FELDEWERT: Okay.

16 THE HEARING EXAMINER: Mr. Feldewert, I
17 sustained the objection. You haven't really answered
18 the objection, but -- and you try to ask the witness
19 the question anyway. I don't know what you're doing,
20 but I'm -- are you done with this document, with this
21 exhibit?

22 MR. FELDEWERT: Well, I wasn't, but --

23 THE HEARING EXAMINER: I wasn't. What
24 else did you want to do with this document?

25 MR. FELDEWERT: I want to ask him a

1 question about this document.

2 THE HEARING EXAMINER: Well, you have.

3 MR. FELDEWERT: He read it. He looked
4 at it.

5 THE HEARING EXAMINER: Yes.

6 MR. FELDEWERT: I want to ask what his
7 thoughts are on this.

8 THE HEARING EXAMINER: My
9 responsibility to this Division is to only admit
10 relevant and reliable evidence. So are you going -- I
11 admitted it because -- for the purposes I've already
12 explained. Where are you going now with this
13 document?

14 MR. FELDEWERT: I have another question
15 about this document.

16 THE HEARING EXAMINER: Yes. But how
17 is -- I'm asking you very specifically, what line of
18 questions are you going down now?

19 MR. FELDEWERT: Well, if you look at
20 this provision, it's very broad. Okay? It provides
21 for circumstances beyond a reasonable control. It
22 addresses federal, state, and regulatory requirements.

23 And it seems to me that a pooling
24 proceeding falls within this because it's beyond their
25 reasonable control. The point being that it would

1 appear that this time period has already been told
2 because of the timeframe necessary to obtain the
3 pooling orders.

4 THE HEARING EXAMINER: I totally
5 understand where you're going with this. I don't see
6 how this witness is going to help you. You have this
7 document. I've even let it in.

8 MR. FELDEWERT: Okay.

9 THE HEARING EXAMINER: You can make
10 whatever legal argument you want about that because
11 what you're doing is you're making a legal argument.
12 This is a fact witness, you know, so do you have any
13 other questions based on the scope of his direct or
14 rebuttal testimony?

15 MR. FELDEWERT: No.

16 THE HEARING EXAMINER: No. Okay. So
17 you're done with your questions? Very good.

18 MR. FELDEWERT: On this document.

19 THE HEARING EXAMINER: Oh, on this
20 document -- because you said no. Okay.

21 MR. FELDEWERT: Yeah.

22 THE HEARING EXAMINER: Please proceed
23 then.

24 BY MR. FELDEWERT:

25 Q I want to take a look at your Rebuttal

1 Exhibit Number 1. Did you prepare this, Mr. Johnson,
2 or were you involved in the preparation of this?

3 A No, I was not.

4 Q You were not. Who do I talk about -- who do
5 I talk to about this?

6 A Either Mr. McCoy or Ben Kessel.

7 Q Either one of them?

8 A I'm not sure which one prepared that
9 particular sign.

10 Q Okay.

11 THE HEARING EXAMINER: Ms. Bennett, can
12 you help us who prepared Rebuttal Exhibit 1?

13 MS. BENNETT: Yes. It's Mr. McCoy.

14 THE HEARING EXAMINER: Thank you.

15 BY MR. FELDEWERT:

16 Q Got it. Okay. Then I want to go to MRC
17 Exhibit A-12. You have looked at this exhibit,
18 Mr. Johnson?

19 A Yes, I have.

20 Q Okay. And it reflects that MRC made some
21 various -- offered some various options to try to
22 resolve this conflict over Section 30; right?

23 A Correct.

24 Q Okay. And I think you testified that
25 Franklin Mountain was engaged with MRC in trying to

1 make deals? Is that what you said?

2 A To resolve the -- to resolve all of our
3 pooling battles that we've had over the last year.
4 Yes.

5 Q Okay. Did you engage in MRC in trying to
6 make a deal to resolve this pooling battle?

7 A There has been efforts between Lee and
8 Isaac. They have had communications. This is not the
9 only communications. This email has an extension on
10 it. They've had multiple other emails and phone
11 calls.

12 Q Okay. And my question is then, is it your
13 testimony that Franklin Mountain was engaged in
14 efforts with MRC to try to make deals to resolve this
15 pooling issue?

16 A Correct. Yeah.

17 Q Okay. And you've looked at those?

18 A I -- I have.

19 Q Okay.

20 A I'm aware of them.

21 Q What's that?

22 A I'm aware of them.

23 Q All right. Now, when you look at this,
24 didn't Franklin Mount -- or didn't MRC Permian offer
25 some trade proposals?

1 A They did.

2 Q Okay. And in looking at the emails that you
3 examined, did Franklin Mountain ever -- did they
4 accept those trade proposals?

5 A We did not accept those.

6 Q Did Franklin Mountain make any kind of
7 counter trade proposal?

8 A I believe after this email, Lee suggested
9 that they can talk about Section 18. I -- I don't
10 have that in front of me.

11 Q Did they make any offer for trade with MRC?

12 A We offered to discuss it.

13 Q To discuss it. But you didn't make any
14 offer?

15 A Not that I know of, but discussing deals is
16 how offers are made and determined.

17 Q Okay. You agree that MRC made specific
18 trade offers?

19 A They made trade offers that we did not find
20 valuable.

21 Q All right. So that was your -- you said you
22 didn't find valuable. I think your testimony was that
23 it didn't provide anything of value?

24 A Correct.

25 Q Okay. Now, when I look at -- sorry about

1 that. Hold on. When I look at the email chain, one
2 of the trade offers that MRC made is in the first box.
3 You see the box there at the bottom of this page,
4 which is page 172 of 279?

5 A Yes.

6 Q Okay. They offered to make a trade
7 involving acreage in the west half of Section 20, 18
8 South 35 East?

9 A Correct.

10 Q Correct? Okay. And that is your ball state
11 project; right?

12 A Correct.

13 Q So that'd be acreage within your ball state
14 project?

15 A Correct.

16 Q And you don't believe that acreage has any
17 value?

18 A It has value. Yes.

19 Q Okay. The next lines down that indicate --
20 the next two lines indicate that they offered to make
21 acreage trades in Sections 18 and 19. Do you see
22 that?

23 A Yep.

24 Q Of 18 South 35 East?

25 A Yep.

1 Q Okay. And that would be the acreage at
2 issue here, 18 and 19?

3 A Correct.

4 Q Okay. You don't think that that has any
5 value?

6 A The Wolfcamp in Section 18 has had a million
7 barrels injected into it and also, we have surface
8 constraints which would make it uneconomical to build
9 surface up there to produce it.

10 Q So you don't think that Bone Spring has any
11 value there in 18 and 19?

12 A The Bone Spring does, but they're not
13 offering Bone Spring Section 18.

14 Q They're all -- where do you see that?

15 A It says "all," but they only own in the
16 Wolfcamp.

17 Q Don't they own 19?

18 A In 19 Lot 2, they do own in the Bone Spring.

19 Q Okay.

20 A But not in the Wolfcamp.

21 Q You don't think that has any value?

22 A It has a little bit of value. We own a
23 small percentage in that tract, so we do own part of
24 that tract as well.

25 Q Okay. And did you send any other --

1 anything -- any response back -- did the company send
2 any response back to MRC proposing a specific acreage
3 that would be discussed for trade?

4 A I do not believe we did.

5 Q Okay. Now, if I go to MRC B-6, in addition
6 to offering JOAs where you would operate 18 and 19,
7 and MRC would offer sections -- operate 30 and 31,
8 last week, didn't MRC offer to enter into JOAs, but
9 that the JOA for Section 30 and 31 would provide an
10 opportunity for Franklin Mountain to drill a well in
11 Section 30?

12 A They did.

13 Q Okay. And that would allow the company then
14 to satisfy its term assignment?

15 A It would -- it would interfere with the rest
16 of our development. It would allow us to hold the
17 term assignment but not produce the rest of our
18 development, which is what we are trying to do.

19 Q In fact, wouldn't you be able to -- if I
20 look at this exhibit, didn't they offer to allow you
21 to drill a well in the east half -- of the east half
22 of Section 30 in the Third Bone Spring?

23 A They did, yeah.

24 Q And that would allow you to keep your term
25 assignment?

1 A That would, yes.

2 Q Okay. And don't you have existing pads in
3 the south half of the south half of 19?

4 A We do, yes.

5 Q Okay. Which would then allow you to drill a
6 one-mile well in Section 30 and hold your term
7 assignment?

8 A I'm not sure if that pad is large enough to
9 handle new horizontal wells. Those are all older
10 technology wells. I -- I don't know if we could put a
11 Well there.

12 Q You don't know?

13 A I don't know.

14 Q So it's possible then you could, you just
15 haven't looked at it?

16 A It -- it's possible.

17 Q Okay. And you guys chose to just reject
18 that offer?

19 A If we take that, we lose value in Section 18
20 and 19 and the rest of 30. It -- it just doesn't make
21 sense.

22 MR. FELDEWERT: Okay. That's all the
23 questions I have. Thank you.

24 THE HEARING EXAMINER: Let me go to Mr.
25 McClure before redirect.

1 Mr. McClure, do you have questions for
2 this witness?

3 MR. MCCLURE: Thank you, Mr. Hearing
4 Examiner. I do have some questions.

5 THE HEARING EXAMINER: Please.

6 MR. MCCLURE: Mr. Johnson, just to
7 confirm the legal descriptions -- let me backtrack.
8 If I can direct your attention to page 63 of 285?

9 MR. FELDEWERT: Which set of exhibits,
10 Mr. McClure?

11 MR. MCCLURE: It should be the landman
12 statement. Oh, excuse me. For Franklin.

13 MS. BENNETT: And I believe I have that
14 up, if this is what you're referring to, Mr. McClure?
15 63 of 285?

16 THE HEARING EXAMINER: That's 57, if I
17 read that correctly.

18 MR. FELDEWERT: So I'm going -- I'm
19 still sharing. Right?

20 MS. BENNETT: Oh.

21 THE HEARING EXAMINER: Excellent.

22 MR. FELDEWERT: 63; right?

23 MR. MCCLURE: I apologize. Actually,
24 it's page 36. It is paragraph 63 on page 36.

25 MR. FELDEWERT: We're getting there.

1 Give me a minute. Okay.

2 MR. MCCLURE: Mr. Johnson, referenced
3 here in -- well, in five different paragraphs within
4 your statement, there's different legal descriptions
5 here that are diverse from what is included in the
6 compulsory pooling checklist. Do you believe that
7 your legal descriptions here is correct or is it like
8 what the rest of the application seems to imply?

9 MR. JOHNSON: On -- on Case 24479?

10 MR. MCCLURE: Yeah. If you've noticed,
11 in paragraph 63, for instance, you referenced the east
12 half of those three sections. Is this a typo?

13 MR. JOHNSON: Yes. Those wells should
14 be in the east half of the west half.

15 MR. MCCLURE: Okay. Then in paragraph
16 71, you referenced these wells of being in the west
17 half of the east half of Sections 18 and 19.

18 MR. JOHNSON: That should be Sections
19 19 and 30.

20 MR. MCCLURE: Okay. And just trying to
21 speed it up, I guess, where you referenced Section 18
22 and 19 for three additional cases here, do you believe
23 that you actually meant to say Sections 19 and 30?

24 MR. JOHNSON: Yes. It's -- all of the
25 Wolfcamp cases are supposed to be 19 and 30.

1 MR. MCCLURE: Okay. Thank you. Now,
2 Mr. Johnson, if I can direct your attention to page
3 117 of 285. This should be your Exhibit A-18D, a list
4 of working interest owners to be pooled. That list of
5 five working interest owners, is it correct that
6 Franklin's asking to force pool those into those
7 persons?

8 MR. JOHNSON: Yes.

9 MR. MCCLURE: And for your similar
10 exhibits that are in this format, but for the rest of
11 the cases, is it also correct that what's in these
12 different tables is the persons that Franklin's asking
13 the force pool?

14 MR. JOHNSON: Yes.

15 MR. MCCLURE: Mr. Johnson, if I can
16 redirect your attention, I guess, to page 113 of the
17 285, this is your unit summary, a list of the
18 different working interest owners.

19 Now, here, you have persons listed as
20 supporting Franklin's working -- or I guess, if you'll
21 notice on the second list on that table to the right,
22 there's a listing that's added, supporting Franklin
23 Mountain's working interest owners. Do you see what
24 I'm referring to?

25 MR. JOHNSON: Yes, I do.

1 MR. MCCLURE: Now, was these working
2 interest owners used in your computation of the amount
3 of working interest that Franklin controls in these
4 units?

5 MR. JOHNSON: We do have signed letter
6 agreements with Cavalry and DSD, and then the Axis
7 interest is going to be supporting MRC. But in some
8 of those earlier slides where it does reference 70
9 percent ownership, those ones, we are accounting for
10 that supporting interest.

11 MR. MCCLURE: Now, as of the point of
12 this hearing, do any of these interest owners have a
13 signed JOA with Franklin?

14 MR. JOHNSON: The only signed JOA we
15 have is in the west half/west half Bone Spring. MCM
16 Energy signed a JOA with us.

17 MR. MCCLURE: Now, is it your belief
18 that these persons on this list will sign a JOA with
19 Franklin?

20 MR. JOHNSON: Yes. We -- we work with
21 Cavalry, Loma Hombre, and DSD often to acquire
22 acreage, and they've signed JOAs in the past, and they
23 have signed letters of support.

24 MR. MCCLURE: And is that the reason
25 that you're including them in your computation of

1 interest that Franklin controls?

2 MR. JOHNSON: Yes.

3 MR. MCCLURE: If you believe they're
4 going to sign a JOA, and you're already including them
5 in the interest that Franklin controls as a part of
6 this case, why is Franklin asking to force pool as a
7 part of this case?

8 MR. JOHNSON: Just until we have a
9 signature -- we like to not cross our T's and dot our
10 I's before they actually happen. So until we get a
11 signature, we -- we would like to include them because
12 they have supported us and shown support, but we don't
13 have a signature on the JOA yet.

14 MR. MCCLURE: Okay. Thank you, sir.

15 Mr. Herring Examiner, I have no further
16 questions for this expert.

17 Thank you, Mr. Johnson.

18 THE HEARING EXAMINER: Thank you.

19 Redirect?

20 MS. BENNETT: Yes, just a few. Thank
21 you.

22 REDIRECT EXAMINATION

23 BY MS. BENNETT:

24 Q Mr. Johnson, do you recall when
25 Mr. Feldewert was asking you some questions about the

1 notice that was provided for the existing vertical
2 wells in Section 18?

3 A Yes.

4 Q Did Franklin Mountain Energy provide me with
5 a list of all the working interest owners in Section
6 18?

7 A Yes.

8 Q And you said you ran the basin title or
9 basin review to see if there were any wellbore
10 assignments?

11 A Yes.

12 Q And you ran title on the entire tract of
13 Section 18?

14 A Yes.

15 Q And you provided that information to me?

16 A Yes.

17 Q In discussions with Mr. Feldewert or with
18 MRC's counsel, he mentioned a couple of times the
19 section at issue or the disputed acreage as Section
20 30. Do you recall that testimony?

21 A Yes.

22 Q In your opinion, is Section 30 the only
23 disputed acreage in this area?

24 A No.

25 Q And why is that?

1 A Sections 18 and 19 are part of a much larger
2 development plan, and those are very important to our
3 development for the entire area. And so that affects
4 the entire -- the entire development.

5 If you look at Exhibit A-13, it shows all of
6 our orders on there, and there's one spot in the
7 middle that ties it all together. And so part of our
8 plan was to have the Rope unit be part of that, and
9 that's really what's at stake.

10 Q So -- and is this the A-13 that you were --
11 sorry. Let me start sharing. For some reason --
12 okay. There we go. Okay. So is this A-13 that
13 you're talking about?

14 A Yes. And so with this, our infrastructure
15 is already existing in there, and it -- it ties our
16 whole development together.

17 Q And without Section 30, is Franklin Mountain
18 Energy able to -- well, actually, let me rephrase
19 that.

20 Mr. Feldewert or MRC's counsel was asking
21 you about whether Franklin Mountain Energy saw value
22 in a couple of trades offered by MRC. Do you recall
23 that?

24 A Yes.

25 Q When you said in your testimony that

1 Franklin Mountain Energy didn't see value in those
2 trades, did you mean that Franklin Mountain Energy
3 didn't see value in those particular parcels or that
4 those trades in and of themselves did not advance
5 Franklin Mountain Energy's goals?

6 A Correct. Yeah. They did not advance our
7 goals, and they did not align with our development
8 plan.

9 Q I believe in response to a question about
10 that, you indicated that MRC has an interest in
11 Section 19; is that right?

12 A In the Bone Spring.

13 Q In the Bone Spring. And how, what's their
14 net acres in Section 19?

15 A It's a roughly 38 acres.

16 Q And if you were to trade out of Section 30,
17 what would you be trading out of?

18 A It's 40 -- roughly 40 percent of 640 acres,
19 which is about 256. If it's -- and that's for both
20 formations, Wolfcamp and Bone Spring, whereas their 38
21 acres is only Bone Spring.

22 Q Mr. -- or MRC's counsel asked you several
23 questions about the term assignment, and I'm going to
24 try to not belabor those points. But on MRC's
25 exhibits where they're identifying Franklin Mountain

1 Energy -- well, do you know if MRC is seeking to pool
2 Franklin Mountain Energy in this -- in its airstrip
3 cases?

4 A I do -- I do not recall.

5 Q MRC's counsel asked you a number of
6 questions about the time period between acquiring the
7 term assignment and filing the competing -- or the
8 compulsory pooling applications. And I think he may
9 have said that there was a lack of initiative on FME
10 3's part. Do you agree with that?

11 A No.

12 Q Why did it take FME 3 -- or why was there
13 time between when you -- when FME 3 acquired the term
14 assignment and when FME 3 applied for pooling?

15 A Franklin Mountain Energy acquired this asset
16 at the end of 2022. Since then, we've drilled 40
17 wells. We've obtained more than 50 pooling orders.
18 We have infrastructure throughout the entire
19 footprint. Our initial plan was to test the four
20 corners, if you will, of the area.

21 Rope happens to be in the middle, so we have
22 tested everything on the outside. We've had to also
23 meet other -- or expirations for leases. And so we've
24 been doing that. And Rope is part of the plan, but it
25 was just a later part of the plan, and we have been

1 trying to pool this since February, and so we're
2 trying to get it done. So --

3 Q You testified that you had some other
4 expiration issues. Were those expiration issues
5 that -- where leases or something might have expired
6 prior to this one?

7 A Correct. Yeah.

8 Q So you had to do some prioritization about
9 how you were developing to meet other lease expiration
10 issues?

11 A Yes.

12 Q Does Franklin Mountain Energy have surface
13 use agreements covering acreage in this area? Do you
14 know?

15 A I know we have a lot of acres under SUA, but
16 I'm not sure of specifics.

17 Q But is that part of the -- of your work that
18 you've been doing once -- after acquiring this asset
19 in 2022?

20 A Yes. I believe we have 70,000 plus acres
21 under SUA in this area.

22 Q MRC's counsel asked you a question about a
23 trade proposal that would've allowed, as I understand
24 it, Franklin Mountain Energy to drill, I guess, a one-
25 mile well, in the east half/east half of Section 30.

1 Do you recall that testimony?

2 A Yes.

3 Q And the question he asked was that would
4 allow you to keep the term assignment; is that right?

5 A Correct.

6 Q Would that allow you to keep the term
7 assignment or would that effectuate the term
8 assignment across all of Section 30 for Franklin
9 Mountain Energy?

10 A Yes. Yes.

11 Q But under the trade that was offered by MRC,
12 would you be able to drill additional wells in Section
13 30?

14 A No, we would not.

15 Q And you wouldn't be able to drill any
16 additional Bone Spring wells then in Section 30?

17 A Uneconomically, but I'm pretty sure their
18 deal was Third Bone only.

19 Q And no Wolfcamp wells then, either?

20 A No.

21 Q In your opinion -- or when you filed the
22 pooling applications or sent out the proposal letters
23 in February 2024, at that time, what was the deadline
24 that you were facing for the term assignment?

25 A It was January 1, 2025.

1 Q And in your opinion, did that year give you
2 enough time to work through the pooling process and be
3 able to meet the term assignment requirements?

4 A It should, if there wasn't multiple delays
5 in the pooling process.

6 Q And would you -- what are some of the delays
7 that you're referring to?

8 A Before MRC acquired this interest, they --
9 it was Conoco. So those were -- they were proposed
10 to. With all of these hearings, because they were
11 transferring ownership, it kept getting pushed back,
12 and then MRC proposed, and then there was a lot of re
13 proposals. But yeah. It ended up being roughly 11 --
14 10-month delay.

15 Q And Mr. -- or MRC's counsel mentioned that
16 MRC dismissed its shopner applications. Do you recall
17 that?

18 A Yes.

19 Q And looking at this slide that I have up,
20 was shopner proposed to be an 18 and 19?

21 A Yes.

22 Q And did shopner include Wolfcamp wells in
23 Section 18?

24 A Yes.

25 Q And so -- and I believe that MRC's counsel

1 said that that was a trade that was offered that would
2 allow you to develop 18 and 19?

3 A Correct.

4 Q But would you be able to develop the
5 Wolfcamp in Section 18?

6 A No.

7 Q Given the term assignment expiration, are
8 you requesting or would you be requesting that the
9 Division issue an expedited order in this matter?

10 A Yes.

11 Q And that's to allow you to meet the term
12 assignment obligations?

13 A Yes.

14 MS. BENNETT: Thank you. No further
15 questions,

16 THE HEARING EXAMINER: Mr. Feldewert,
17 are there any recross on those specific questions?

18 MR. FELDEWERT: Just one.

19 RECCROSS-EXAMINATION

20 BY MR. FELDEWERT:

21 Q Mr. Johnson, are you suggesting that the
22 Wolfcamp in Section 18 has no value?

23 A The Wolfcamp in Section 18 has had over a
24 million barrels injected into it, devaluing Section 18
25 Wolfcamp.

1 Q Is it your testimony that it has no value?

2 A It's my understanding that it's not
3 economical to drill.

4 Q In any portion of Section 18, that's your
5 testimony?

6 A It --

7 MS. BENNETT: Objection. Asked and
8 answered.

9 THE HEARING EXAMINER: Mr. Feldewert?

10 MR. FELDEWERT: No. That's -- he
11 didn't answer that question yet.

12 THE HEARING EXAMINER: I didn't hear an
13 answer, Ms. Bennett. Can you --

14 MS. BENNETT: He had answered it prior.
15 Mr. Feldewert had asked if he sees no value in Section
16 18, and Mr. Johnson testified that it's been --
17 there's the injection of fluids, and so it's devalued.

18 THE HEARING EXAMINER: I remember him
19 asking -- I remember him saying this. You're correct
20 about that.

21 But I think -- but was there -- Mr.
22 Feldewert, is there new information that you learned
23 on redirect that makes this question -- that you
24 expect a different answer this time?

25 //

1 BY MR. FELDEWERT:

2 Q No. It didn't -- that -- well, it elicited
3 my question that he hasn't answered yet. My question
4 was, or is, what -- is he testifying that you are not
5 going to be able to develop any of the Wolfcamp
6 acreage in Section 18? That's my question.

7 THE HEARING EXAMINER: That's a
8 different question, Ms. Bennett. So I overrule the
9 objection.

10 Can you answer that question?

11 MR. JOHNSON: I don't feel like I'm
12 qualified to answer that. It's probably a reservoir
13 or geology question.

14 MR. FELDEWERT: Okay. That's all.
15 Thank you.

16 THE HEARING EXAMINER: Thank you,
17 Mr. Feldewert.

18 Mr. McClure, are there any recross on
19 the redirect?

20 MR. MCCLURE: I do not have any. Thank
21 you, Mr. Hearing Examiner.

22 THE HEARING EXAMINER: Okay. You may
23 be excused.

24 MR. JOHNSON: Thank you.

25 THE HEARING EXAMINER: Do you want to

1 call your second witness?

2 MS. BENNETT: Yes. Thank you. I'd
3 like to call Mr. Cory McCoy.

4 THE HEARING EXAMINER: Mr. McCoy, you
5 are under oath. Please speak clearly and as close to
6 the microphone as you can. Thank you.

7 DIRECT EXAMINATION

8 BY MS. BENNETT:

9 Q Good morning, and thank you for being here.

10 A Good morning.

11 Q If you could please let us know who you work
12 for and in what capacity?

13 A Cory McCoy. Work for Franklin Mountain as a
14 reservoir engineer.

15 Q And did you prepare exhibits and testimony
16 for this hearing?

17 A I did.

18 Q And did you have a chance to review the
19 exhibits and testimony before this morning?

20 A I did.

21 Q And are there any changes you want to make
22 to your testimony?

23 A Yes. On B-12, there's a misspelling. Or B-
24 10. Sorry.

25 Q Okay.

1 A Yeah.

2 Q Is this B-10 that you're referring to?

3 A Correct.

4 Q And is the misspelling in this black
5 outlying text box that I'm highlighting or having my
6 mouse float over?

7 A Yes. Yep. And it's -- the word "lease"
8 should be "leave."

9 Q And so would you read it the way it should
10 be with the correction?

11 A Yes.

12 Q No. Will you go ahead and read it with it?

13 A Oh, man. MRC did not propose Wolfcamp A and
14 will leave reserves behind.

15 Q Okay. And with that change, do you adopt
16 your testimony?

17 A Yes.

18 Q Let's turn to Exhibit A-5. And this is in a
19 comparison of your Franklin Mountain Energy's plans
20 versus MRC's plans; is that right?

21 A That is correct.

22 Q And some of these factors involve reservoir
23 engineering evaluations; is that correct?

24 A Yes.

25 Q Okay. And so if we look at the existing

1 infrastructure, the infrastructure column, which is
2 the third from the bottom, that you testified in your
3 testimony about existing infrastructure and how you
4 feel that supports Franklin Mountain Energy's
5 development plan?

6 A Yes.

7 Q Would you mind summarizing that for the
8 Division?

9 A Yeah. So when we acquired this acreage in
10 2022, it became really apparent that the Northern Lea
11 County area doesn't have the infrastructure that maybe
12 other parts in the basin do.

13 So -- and then working with third parties to
14 try to get there and get that support, we really found
15 that it was a struggle, and we had to go and invest, I
16 think we're year to date almost \$40 million, and to be
17 able to have flow assurance between gas takeaway,
18 water takeaway, and -- and oil takeaway. And not only
19 flow assurance, but we needed flow assurance for
20 multi-well, 10, 15 well developments.

21 You know, your one-off or two-off wells here
22 and there that can -- can handle smaller pipes. But I
23 mean, we put in 16- and 20-inch pipes, that can really
24 take the volumes that we need for a full-scale
25 development.

1 Q Thank you. And in terms of the surface
2 factor, is there -- in your testimony, did you speak
3 about the surface factor and how you feel that
4 supports Franklin Mountain Energy 3's plans?

5 A Yeah. In the south half of 30, it really
6 tees up nicely and fits into puzzle piece where we've
7 got multiple pipeline right-of-aways. And if -- we
8 are going to go to A-13 probably -- or this one will
9 work too. So we've got our green here or going to be
10 our proposed pads. But the -- in the north half of
11 30, 31. Yep.

12 So that's our existing pipeline; right? We
13 call it the main vein, but it's got all our gas,
14 water, and the little takeaway through there. And
15 we're just a short little, almost, I don't know,
16 three, 400 feet up away to connect into that -- that
17 main vein. So it -- it fits really well in -- in
18 putting our surface at Section 30.

19 Q Thank you. And so this slide in the orange
20 down here is existing infrastructure?

21 A Yes.

22 Q And is that infrastructure that Franklin
23 Mountain Energy helped capitalize or was that
24 infrastructure that was in place before you arrived
25 here?

1 A That's all Franklin Mountain Energy capital
2 dollars in infrastructure.

3 Q And you said that these green pads are your
4 proposed Rope development pads; is that right?

5 A Correct.

6 Q And so those are positioned -- are those
7 positioned at the south half/south half of 30?

8 A Yes.

9 Q And are the yellow line or the orange lines
10 here that I am hovering over -- are those the tie-ins
11 from those pads to what you call the main vein?

12 A Yes.

13 Q So these pads are really close to being tied
14 into your existing infrastructure?

15 A Yeah. Which would reduce in surface
16 disturbance.

17 Q If you had to put pads or extend or drill --
18 excuse me -- construct pads in Section 19, how
19 would -- what would the impact of that be?

20 A Section 19, which is one mile north of 30 --
21 so we have to reroute and find new pipeline right of
22 ways to get our water takeaway back down to the north
23 half/north half of 31, which would add additional
24 surface disturbance.

25 So -- and then -- yeah. Just looking at

1 this picture between the playas and that ravine,
2 it's -- I think it's a challenge to put additional
3 pads there. And then ultimately, with Section 19, I
4 mean, we can't do our Wolfcamp development, which is
5 another big driver.

6 Q A minute ago, you mentioned section or
7 Exhibit A-13, and A-13 shows the approved pooling
8 orders that Franklin Mountain Energy has received?

9 A Yes.

10 Q Does this slide support or does the
11 existence of these pooling orders and the contiguous
12 development that we're seeing here support your
13 opinion that Franklin Mountain Energy should be
14 designated operator of the Rope development area?

15 A I do. I mean, if -- looking at this with
16 the -- the green and then our Rope there in the
17 middle, I mean, it really tees up nicely to go in
18 and -- and mow the grass. I mean, we've got
19 development, and we're just turning on our satellite
20 wells. We've got three frack fleets on the Foxtail
21 Alpha. So we're really out there, and we're
22 developing this acreage. So I mean, I think the Rope
23 is a no brainer.

24 Q Turning back to the comparison slide,
25 there's a bullet second from the bottom that says

1 "geologic reservoir evidence." Do you see that?

2 A Yes.

3 Q And is there -- we provided a summary there
4 of your testimony, but if you could briefly describe
5 why you think from a reservoir perspective that
6 Franklin Mountain Energy's plans are superior to
7 MRC's, that would be helpful.

8 A Yeah. So the main differences have been
9 discussed. We -- we proposed our Wolfcamp A, which
10 MRC calls the Wolfcamp B, so a four-well development
11 there, two-mile. And then we've got our three-mile
12 Bone Spring development with surface holes at -- all
13 surface holes at south half of 30 drilling north.

14 Q And did you prepare slides -- Slide B-9, for
15 example, which I'm pulling up now, that identifies the
16 planned well count as between the Franklin Mountain
17 Energy Development and the MRC airstrip development?

18 A Yes, I did.

19 Q And does that exhibit -- this is Exhibit B-
20 9 -- does it show the difference in well counts
21 between Franklin Mountain Energy and MRC?

22 A Yes. In our phase one -- and we've got a
23 total of 15 in their airstrip. Mixed between Section
24 30 and 31, it would be a 10-well count development.

25 Q And so is Franklin Mountain Energy proposing

1 more wells and in different targets than MRC?

2 A Yes. The -- we are, and I think it plays to
3 our advantage that we're drilling from south to north,
4 where MRC's has to utilize their U-turn oil because
5 they've got current development and then Section 31,
6 so they're not able to drill as many straight wells.

7 Q And in Exhibit B-9, you put the Second Bone
8 Spring wells as a phase two. Can you explain a little
9 bit more about why you included those as phase two and
10 how confident you are in those wells?

11 A Yeah. The subsurface team has been -- been
12 working on this. As -- as we've seen from MRC's
13 counsel, we've -- they show in Section 19 we've got
14 some Second Bone -- Lower Second, Bone in Section 19.

15 But we've really have taken a deeper look at
16 it, and we are confident and excited that there is an
17 Upper Second Bone target in the area, and we're
18 currently developing that in our tag. So we think we
19 can get in there and develop an Upper Second Bone.

20 Q And when you were saying the -- looking
21 at -- is this the exhibit you were talking about?

22 A Yes, that is correct.

23 Q And this is a Matador Exhibit B-6?

24 A Yes. And the Second Bone -- the four
25 Section 19 wells there.

1 Q And so in Franklin Mountain Energy's
2 opinion, or in your opinion, these four Second Bone
3 Spring wells in Section 19 do not preclude Franklin
4 Mountain Energy from developing this -- the upper
5 bench of the Second Bone Spring?

6 A Correct.

7 Q And so in your phase two, you would be
8 proposing three-mile laterals or you would be drilling
9 three-mile laterals in the Second Bone Spring?

10 A Yes.

11 Q And you've already undertaken that analysis
12 and you're comfortable with your analysis of the
13 ability to target that bench of the Second Bone
14 Spring?

15 A Yeah. We're -- we're excited about it. So
16 it's -- it's -- we're confident.

17 Q And you mentioned that you're already doing
18 that in Tag?

19 A Correct.

20 Q And is Tag offsetting to the Rope acreage?

21 A Tag is to the southeast of Rope.

22 Q And did you -- were you -- have you had a
23 chance to look through MRC's testimony?

24 A Yes.

25 Q And did you see in MRC's testimony where MRC

1 had concerns about Franklin Mountain Energy's ability
2 to develop the Second Bone Spring?

3 A Yes, they -- they did.

4 Q And does your analysis of this upper bench
5 of the Second Bone Spring address that concern of --
6 in your opinion, that Franklin Mountain Energy will be
7 able to develop the Second Bone Spring?

8 A Yeah. I definitely think they are economic
9 reserves in the Second Bone -- Upper Second Bone.

10 Q And those are reserves that Franklin
11 Mountain Energy can develop notwithstanding the
12 existing Second Bone Spring wells in Section 19?

13 A Yes.

14 Q Did you have a chance to look at the
15 testimony of Mr. Shulz, the reservoir engineer?

16 A Yes, I read it.

17 Q And when -- just I'm skipping forward to a
18 few of his exhibits. Okay. I'm looking at Exhibit C-
19 7, for example. Do you see that?

20 A Yes.

21 Q And when you looked at Exhibit C-7 and you
22 looked at the Franklin Mountain Energy wells that were
23 identified on Exhibit C-7 and subsequent exhibits,
24 what did you -- what struck you?

25 A They left out downtime or shut-in days in

1 their analysis, and a lot -- a lot of that came from
2 our -- the -- the problems of developing the Northern
3 Lea County is it was just infrastructure constraints,
4 both water and gas.

5 So we had to -- had to shut in to -- to
6 manage those -- those constraints. So we went in
7 and -- and normalized on taking out down days. We're
8 confident that our -- our wells are -- are up to par.

9 Q And we can talk about that more when we look
10 at your rebuttal exhibits. But when you looked at
11 their exhibits, you noticed -- or what do you mean by
12 they didn't account for down days? What does that
13 mean?

14 A It looks like it's just a -- the OCD first
15 month of production. So if we go in and -- and in
16 your first six months, two months of -- of it is zero
17 days, it really skews the performance of -- of the --
18 the numbers.

19 Q And so is it that they were looking at sort
20 of a consecutive six month of -- on production,
21 whereas when you looked at this, you looked at 180
22 days of production?

23 A Yeah. The 180 days of online production.

24 Q And you -- and then -- and is Matador a
25 partner in your gold wells?

1 A Yes.

2 Q And so do you know if they get information
3 about production, or they have access to information
4 about production?

5 A Yes.

6 Q So in this series of slides -- and this
7 series of slides I'm talking about is Exhibit C-6
8 through C-17, I think, where Matador is purporting to
9 show that Franklin Mountain Energy's results are
10 underperforming from Matador's results. Do you agree
11 with those conclusions?

12 A No. I don't agree with -- with all the --
13 the conclusions in here.

14 Q And is part of that based on the fact that
15 the data is -- the MRC data, didn't take into account
16 the shut-ins?

17 A Correct. And I believe those are on the OCD
18 website. You either have producing or injecting days
19 reported by -- by month.

20 Q One other -- I have a couple of other
21 questions, but one is about the AFEs. Did you do an
22 analysis of Franklin Mountain Energy's costs versus
23 MRC's costs?

24 A Yes. I did a lateral footage cost because
25 we're drilling three miles in the Bone Springs versus

1 two-mile proposed by MRC.

2 Q And what did you conclude?

3 A We concluded our -- FME's estimated costs
4 are cheaper on a per lateral footage.

5 Q And that's even including the revision that
6 that MRC made just days before the hearing?

7 A Yes.

8 MS. BENNETT: Mr. Examiner, I'd like to
9 take a moment and pull up our rebuttal exhibits, if
10 that's workable.

11 THE HEARING EXAMINER: Sure.

12 MS. BENNETT: And we can maybe work
13 through those real fast. But it'll take me just a
14 second because I don't have that tab open.

15 THE HEARING EXAMINER: It's ten of noon
16 and I wonder --

17 MS. BENNETT: Dang.

18 THE HEARING EXAMINER: -- whether you
19 think we can finish with this witness in the next half
20 hour or so, or if you'd like to take a break now for
21 lunch and then come back.

22 MS. BENNETT: I think I can finish
23 within the next half hour or so, but I'm not sure
24 about Mr. Feldewert.

25 THE HEARING EXAMINER: So you have at

1 least half an hour?

2 MS. BENNETT: I don't think -- I think
3 I have probably five or ten minutes maximum. Maybe
4 five.

5 THE HEARING EXAMINER: Okay. And, Mr.
6 Feldewert, how do you feel?

7 MR. FELDEWERT: Well, I think it makes
8 sense to have her finish up with her questions, we
9 break for lunch, and then we'll come back. Okay?

10 MS. BENNETT: That's fine.

11 MR. FELDEWERT: Go right ahead.

12 MS. BENNETT: Okay. Well, just give me
13 the second I need to pull up those. Thank you. Oh,
14 great. Thanks.

15 BY MS. BENNETT:

16 Q So, Mr. McCoy, did you prepare rebuttal
17 exhibits based on the MRC exhibits?

18 A I did.

19 Q And did you prepare Rebuttal Exhibit FME 3
20 Rebuttal 1 that I'm showing on the screen?

21 A Yes.

22 Q And did you prepare FME 3 Rebuttal Number 2?

23 A Yes.

24 Q And FME 3 Rebuttal Number 3?

25 A Yes.

1 Q And FME Rebuttal Number 4?

2 A Yes.

3 Q And just briefly, FME Rebuttal Number 1, is
4 that a synopsis of the reasons in your opinion about
5 why the Section 30 is important for Franklin Mountain
6 Energy's development?

7 A Correct.

8 Q And does this address the issues with
9 surface issues as well as the Wolfcamp SWD?

10 A Yes.

11 Q In your opinion, is an option where Franklin
12 Mountain Energy is limited to developing Section 18
13 and 19 a workable option?

14 A It is not a workable option.

15 Q Looking at FME 3 Rebuttal 2, a moment ago,
16 we were talking about the fact that MRC's exhibits did
17 not take into account or do not appear to take into
18 account the shutdown days. Is this an exhibit that
19 you prepared to reflect what the normalized barrels of
20 oil per thousand lateral foot would look like with
21 those shut-in days accounted for?

22 A Yes.

23 Q And does this reflect that Franklin Mountain
24 Energy 3's production is not as low as MRC purported
25 to show?

1 A That is correct. In the chart we have from
2 what MRC stated and then our normalized 180 days, and
3 then shut-in days of -- of what was normalized over.

4 Q And this is just an example of the wells
5 that you looked at. This -- you didn't have an
6 opportunity to go through and look at every single
7 well; right?

8 A No. This is just a snapshot of what stuck
9 out.

10 Q And so by identifying these four wells,
11 you're not admitting that the other wells were
12 correctly calculated?

13 A That's correct.

14 Q And just looking at the Gold 601, for
15 example, your normalized calculation is 15,000, and
16 theirs is 10,000?

17 A Yes.

18 Q Is that a significant difference?

19 A Yes.

20 Q Gold 301, you have a note there under the
21 MRC column that it was left out of the analysis. What
22 does that mean?

23 A It wasn't in the -- in the chart for their
24 First Bone Springs analysis.

25 Q So they have -- in addition to not including

1 the shut-in days, they also left out other -- left out
2 wells?

3 A Yes, it appears so.

4 Q And then I'm going to skip to FME Rebuttal 4
5 real fast. On FME Rebuttal 4, is that the revised
6 comparison of AFE costs that you prepared?

7 A That is correct.

8 Q And even based on the November 7th AFEs,
9 your costs are still lower?

10 A Yes.

11 Q And now, I want to talk about Rebuttal
12 Exhibit 3. This is the rebuttal exhibit that Mr.
13 Feldewert objected to, and this is a rebuttal exhibit
14 that you prepared to show that FME's development plan
15 overall would capture more reserves in Section 30. Is
16 that right?

17 A That is correct.

18 Q And when you prepared this exhibit, was it
19 to rebut the misperception in MRC's exhibits that
20 their development plan would actually capture more
21 reserves?

22 MR. FELDEWERT: Objection. It is
23 reflected on their own exhibit. What they're
24 attempting to rebut only addressed the Second Bone
25 Spring and the reserves that's available in the Second

1 Bone Spring.

2 THE HEARING EXAMINER: So what is the
3 objection?

4 MR. FELDEWERT: So the objection is
5 that this does not have -- this is not a true rebuttal
6 exhibit --

7 THE HEARING EXAMINER: Can you --

8 MR. FELDEWERT: -- there's no -- it's
9 not responding to any surprise.

10 THE HEARING EXAMINER: Would you show
11 me -- you're looking at some document and I don't have
12 it in front of me. Can you show me what your -- I see
13 this. This is --

14 MR. FELDEWERT: That's what I'm looking
15 at. I have my copy of what's up on the screen.

16 THE HEARING EXAMINER: Oh, I thought
17 you had their original exhibit and you were showing me
18 that it's not -- that the new -- the rebuttal exhibit
19 is not truly a rebuttal exhibit because they were
20 already dealing with this somehow

21 MR. FELDEWERT: I have -- so two
22 things.

23 THE HEARING EXAMINER: Yes.

24 MR. FELDEWERT: Apparently, it's
25 rebutting Exhibit C-2, which she now has up on the

1 screen. Thank you.

2 THE HEARING EXAMINER: Okay. So --

3 MR. FELDEWERT: And you'll see --

4 THE HEARING EXAMINER: Is that correct,
5 Ms. Bennett?

6 MS. BENNETT: Yes.

7 THE HEARING EXAMINER: Your rebuttal
8 exhibit is rebutting this exhibit by MRC?

9 MS. BENNETT: That's right.

10 THE HEARING EXAMINER: Okay. And what
11 exhibit number is this? This is C-2. Okay.

12 Please go ahead

13 MR. FELDEWERT: And you'll see that it
14 addresses the reserved loss if the Second Bone Spring
15 is not developed in Section 30.

16 THE HEARING EXAMINER: I don't see
17 that. So can you show me where I should look for this?

18 MR. FELDEWERT: In the upper right-hand
19 corner. Third column.

20 THE HEARING EXAMINER: Associated
21 reserves lost if Second Bone Spring is not developed.
22 So this was your exhibit that basically was saying
23 there -- okay. All right. That reserves are lost if
24 the Second Bone Spring is not developed in Section 30.
25 Okay. Keep going. I'm with you now.

1 MR. FELDEWERT: So you'll see that the
2 subject here is the Second Bone Spring and the
3 reserves that can be recovered in Second Bone Spring
4 in Section 30.

5 THE HEARING EXAMINER: I see that now.

6 MR. FELDEWERT: Okay. Nothing else.

7 THE HEARING EXAMINER: I see.

8 MR. FELDEWERT: That's what it
9 addresses.

10 THE HEARING EXAMINER: Yes.

11 MR. FELDEWERT: Their Rebuttal Exhibit
12 3 goes well beyond the Second Bone Spring. In fact,
13 there's only one --

14 THE HEARING EXAMINER: Column?

15 MR. FELDEWERT: -- column --

16 THE HEARING EXAMINER: Yes.

17 MR. FELDEWERT: -- that deals with the
18 Second Bone Spring. So I don't see how it's a
19 rebuttal, number one.

20 THE HEARING EXAMINER: Okay. Well,
21 let's deal with one at a time instead of -- let's deal
22 with --

23 Ms. Bennett, basically, the objection
24 is that this exhibit is overbroad, that you are
25 putting a lot more information before the Division in

1 this exhibit than necessary to actually rebut their
2 Exhibit C-2.

3 MS. BENNETT: And I understand the
4 objection, but that's precisely why we put this in as
5 a rebuttal exhibit because their Exhibit C-2 is
6 limited in scope to only the Second Bone Spring, and
7 Franklin Mount Energy's position in this case and in
8 this slide is that it is not that narrow of a focus.
9 That over -- when you look at the development plans
10 globally, Franklin Mountain Energy's plan would
11 capture more reserves in Section 30. So --

12 THE HEARING EXAMINER: Okay. But, Ms.
13 Bennett, I would assume that you are making that
14 argument in all of your exhibits that you filed on
15 November 13th. Why do you feel like you need to
16 reaffirm that? It almost seems repetitive to me to
17 say that yet again in a rebuttal exhibit when you're
18 ostensibly dealing with that issue that MRC raised as
19 a surprise.

20 MS. BENNETT: Yes. In this -- in MRC's
21 Exhibit C-2 --

22 THE HEARING EXAMINER: Can we go back
23 to it, please?

24 MS. BENNETT: Yes.

25 THE HEARING EXAMINER: Oh, are you

1 driving? I don't know who's driving anymore. Okay.
2 Very good. So this is the -- yes.

3 MS. BENNETT: Yes.

4 THE HEARING EXAMINER: So you saw this
5 exhibit for the first time on the 13th of November?

6 MS. BENNETT: Yes, we did.

7 THE HEARING EXAMINER: And what did you
8 think

9 MS. BENNETT: We thought to ourselves,
10 this does not tell the whole picture because it does
11 not address the additional reserves lost if the
12 second -- if the other -- if the Wolfcamp A is not
13 developed. And so this is only a half of the story
14 because it's MRC's position that there will be
15 additional reserves lost if the Second Bone Spring is
16 not developed.

17 It's Franklin Mountain Energy's
18 position that there will be reserves lost if the
19 Wolfcamp A is not developed. And so what we were
20 doing in our rebuttal slide is saying not only do you
21 not show the full story here, but when you look at the
22 economics of it, the economics actually work out
23 better in MRC's favor under MRC -- excuse me -- too
24 many acronyms.

25 The economics actually work out better

1 under Franklin Mountain Energy's plan than they do
2 under MRC's plan for MRC. So we were trying to say --
3 trying to show that Slide C-2 is overly narrow and
4 doesn't address the overall beneficial impact to MRC.

5 THE HEARING EXAMINER: Can we go back
6 to C-2? Thank you. Now, I understand your concern
7 about this is that you feel it doesn't fairly portray
8 what will be left in the ground?

9 MS. BENNETT: Right.

10 THE HEARING EXAMINER: Okay. Now,
11 they're talking about the Second Bone Spring, but
12 you're talking about the Wolfcamp A, and I don't
13 understand how we get from one to the other.

14 MS. BENNETT: The way we get from one
15 to the other is MRC's proposals as they are today
16 proposed Second Bone Spring wells. And Franklin
17 Mountain Energy does not propose Second Bone Spring
18 wells. And so -- but conversely, Franklin Mountain
19 Energy is proposing Wolfcamp A wells, which MRC is
20 not. So to say that MRC's plan leaves or --

21 THE HEARING EXAMINER: Franklin. I get
22 it.

23 MS. BENNETT: Yeah. Yeah. To say that
24 Franklin Mountain Energy's plans would leave Second
25 Bone Spring reserves in the ground is only one half of

1 the story.

2 THE HEARING EXAMINER: I get it. Stop
3 for just a second.

4 MS. BENNETT: I am. Yeah.

5 THE HEARING EXAMINER: But in fact, is
6 that -- forget about that you are developing the bones
7 or the Wolfcamp for just a moment. Okay? And I
8 assume that your exhibits very aptly demonstrate that
9 you are developing the Wolfcamp for the reasons that
10 you are developing it and why it makes sense to do it
11 your way. Why is everything changing while we're
12 talking?

13 MS. BENNETT: I'm sorry?

14 THE HEARING EXAMINER: Why have we left
15 that C-2? I don't even know why this is changing.
16 Please don't change it while I'm looking at it.

17 MS. BENNETT: Sorry.

18 THE HEARING EXAMINER: So I'm assuming
19 that you've made your case on why your development
20 plan is better, even though you're not developing the
21 Bone Spring 2 sands; right?

22 MS. BENNETT: Well, they will be
23 developing the Second Bone Spring sand. But you're on
24 the right track there. Yes. I agree with you.

25 THE HEARING EXAMINER: Okay. Thank

1 you. I'm assuming that you've made your case in your
2 exhibits filed on the 13th and then filed on the 15th
3 to demonstrate that your plan is better. But their
4 exhibit here is saying, hey, by not developing the
5 Bone Spring 2, they're leaving this in the ground.

6 And you're saying, oh, but wait a
7 second, we have a better plan and they're not
8 developing the Wolfcamp the way we are. And so in
9 total, we're going to do better. That's really what
10 you're saying, is it not?

11 MS. BENNETT: Yes. And I think if I
12 could explain why I was scrolling through?

13 THE HEARING EXAMINER: Yes. Yes.

14 MS. BENNETT: At the outset of the
15 rebuttal discussion, I said I wasn't sure if it was C-
16 2 or C-4. And looking at C-4, I do see that C-4 is
17 focused on the Franklin Mountain Wolfcamp B economics.
18 And it is doing an economic analysis of the Wolfcamp
19 B, which is what Franklin Mountain Energy calls
20 Wolfcamp A.

21 And so I may have misspoken, and we may
22 have inadvertently put in the paragraph 11 a
23 reference. But I think -- and Mr. McCoy can correct
24 me if I'm wrong. But I think this slide is more the
25 slide that we were trying to rebut than the Slide C-2.

1 THE HEARING EXAMINER: Oh, this is --

2 MS. BENNETT: Yeah.

3 THE HEARING EXAMINER: Okay.

4 MS. BENNETT: I'm sorry about that.

5 THE HEARING EXAMINER: Then you'll have
6 to fix your rebuttal exhibit --

7 MS. BENNETT: Yes, of course.

8 THE HEARING EXAMINER: -- and resubmit
9 it to see whether there's an objection to it at that
10 time once it's corrected. So we're still not letting
11 in the Rebuttal Exhibit 3 as it sits? Was there
12 anything else that you were trying that -- were you
13 finished with your questions?

14 MR. FELDEWERT: I have -- I had --
15 well, I haven't finished -- this is a new -- right
16 now. I'm trying to suggest now, well, even though
17 they list C-2 as the rebuttal exhibit they're trying
18 to address, are they saying now they're -- you mean to
19 say they're trying to rebut C-4?

20 THE HEARING EXAMINER: Yes. That's
21 what they're saying.

22 MR. FELDEWERT: Because C-4 deals only
23 with the Wolfcamp B, the Upper Wolfcamp.

24 THE HEARING EXAMINER: Your B or their
25 B?

1 MR. FELDEWERT: The Upper Wolfcamp.

2 THE HEARING EXAMINER: Oh, all right.

3 MR. FELDEWERT: Yeah. No. I'm sorry.

4 The lower -- I got to think about it. The Lower
5 Wolfcamp,

6 THE HEARING EXAMINER: Which you don't
7 call B; right? Ms. Bennett, you're not calling the
8 lower B? You're calling it D; is that right?

9 MS. BENNETT: That's right.

10 THE HEARING EXAMINER: Someone's
11 calling something D.

12 MS. BENNETT: Yeah. We call --

13 THE HEARING EXAMINER: And someone else
14 is calling it B.

15 MS. BENNETT: We call the Lower
16 Wolfcamp D.

17 THE HEARING EXAMINER: Right. So Mr.
18 Feldewert?

19 MR. FELDEWERT: So this is -- all
20 right. So now, we got -- it's the Upper Wolfcamp,

21 MS. BENNETT: Right.

22 MR. FELDEWERT: That's what this
23 addresses, what we call the Wolfcamp B?

24 THE HEARING EXAMINER: Thank you.

25 MR. FELDEWERT: Thank you.

1 THE HEARING EXAMINER: Let's just use
2 upper and lower for the rest of this --

3 MR. FELDEWERT: Okay. Good. Thank
4 you.

5 THE HEARING EXAMINER: -- instead of A
6 and B, please?

7 MR. FELDEWERT: So we kind of get to
8 the same point; right? This is just dealing with the
9 economics associated with the Upper Wolfcamp -- and we
10 just lost it now.

11 MS. BENNETT: Oh.

12 MR. FELDEWERT: B.

13 MS. BENNETT: Sorry.

14 THE HEARING EXAMINER: This is the
15 Rebuttal 3 that we haven't let in.

16 MS. BENNETT: Yeah. I'm sorry. I
17 was --

18 THE HEARING EXAMINER: That's fine.

19 MS. BENNETT: -- trying to think about
20 my --

21 THE HEARING EXAMINER: Can you enlarge
22 it? Can you enlarge it? Oh wait. That's as large as
23 it will we go; right? That's what I meant. Thank
24 you. That's great. I see it now. So now, are you
25 still objecting to their Rebuttal Exhibit 3?

1 MR. FELDEWERT: Yes.

2 THE HEARING EXAMINER: That's what
3 we're dealing with right now.

4 MR. FELDEWERT: Yes.

5 THE HEARING EXAMINER: Okay. You are.
6 But on what basis now?

7 MR. FELDEWERT: On the same basis.

8 THE HEARING EXAMINER: The same basis.

9 MR. FELDEWERT: Same basis because C-2
10 dealt just with the reserves and the economics in the
11 Second Bone Spring.

12 THE HEARING EXAMINER: Bone Spring.
13 Right.

14 MR. FELDEWERT: Okay? This just deals
15 with the economics associated with the Upper Wolfcamp.

16 THE HEARING EXAMINER: Yep. Okay.

17 MR. FELDEWERT: So they don't seem to
18 challenge the economics associated with the Upper
19 Wolfcamp with this exhibit. Instead, it seems to
20 serve a broader purpose of trying to demonstrate how
21 their overall plan is going to be better based on a
22 number of assumptions.

23 And if you look at his testimony
24 initially filed, they discussed why their overall plan
25 was going to be better and how they were going to

1 develop this zone and that zone and this zone and that
2 zone and recover X amount of oil. So I don't see
3 where the surprise is that would warrant Rebuttal
4 Exhibit 3.

5 THE HEARING EXAMINER: Ms. Bennett?

6 MS. BENNETT: Thank you. So when I
7 looked at their -- okay. So their Exhibit C-4 does
8 focus on the Upper Wolfcamp. And here, in our Exhibit
9 B -- Rebuttal 3, we have the Wolfcamp A, which is the
10 Upper Wolfcamp italicized. And that is the focus of
11 this slide is demonstrating that the Wolfcamp A is not
12 being developed by MRC, does have revenue with FME 3
13 operating it, and does not have revenue with MRC
14 operating. And so --

15 THE HEARING EXAMINER: Okay. But Ms.
16 Bennett, you knew before you put your exhibits
17 together that they weren't developing the Upper
18 Wolfcamp; right?

19 MS. BENNETT: Yes.

20 THE HEARING EXAMINER: Okay. So then
21 how is this -- even if you corrected this slide, how
22 would this rebut a surprise?

23 BY MS. BENNETT:

24 Q It's -- well because there -- let me just
25 go -- do you mind if I switch back to C-4?

1 THE HEARING EXAMINER: I don't mind.
2 Yes. Just tell me what you're doing so I don't get
3 whiplash.

4 MS. BENNETT: So on C-4, they have --

5 THE HEARING EXAMINER: Whose C-4?
6 Their C-4?

7 MS. BENNETT: MRC's. Right.

8 THE HEARING EXAMINER: Let's just be
9 clear about it because it is a record.

10 MS. BENNETT: Yes. So on MRC's C-4,
11 they are -- they've done a cashflow analysis and
12 projected rate of return. And that's based on a
13 certain pricing scenario and a certain recovery rate.

14 And I think that the 20 FME area
15 average is one recovery rate, and the 32 is one
16 recovery rate. And so in this exhibit, they tried to
17 quantify -- they did a quantify analysis of what they
18 think the Wolfcamp A would do under their 20 and 32
19 average. And so what our rebuttal exhibit does --

20 THE HEARING EXAMINER: Wait. Wait.
21 Under their?

22 MS. BENNETT: This is --

23 THE HEARING EXAMINER: You mean under
24 your. They're trying to show that your development.

25 MS. BENNETT: This is their slide where

1 they --

2 THE HEARING EXAMINER: Yes. But about
3 you.

4 MS. BENNETT: Yes.

5 THE HEARING EXAMINER: But it's an
6 expert's opinion. That's all this is. Right?

7 MS. BENNETT: Right. But if they -- if
8 MRC is able to say, here's what we can predict at 20
9 for their production, and here's what we can predict
10 at 32 for production, we wouldn't have known that they
11 were predicting 20 and 32 for production until we saw
12 their exhibits.

13 THE HEARING EXAMINER: Why does that
14 matter though?

15 MS. BENNETT: Because we then are
16 rebutting to show that even at the 20 or even at -- or
17 at 32 or what our rates of return are -- and I'm using
18 lawyer language here because I'm not sure exactly what
19 the words are -- that we have a better -- that what we
20 calculate is better than what they calculated -- what
21 MRC calculated, and we couldn't have known that they
22 were going to use a 20 or 32 until we saw this
23 exhibit.

24 THE HEARING EXAMINER: I have a
25 resolution to this. I'm sustaining the objection to

1 the way your exhibit was because it's a bit of a mess.
2 But if you would like to fix it, having your expert --
3 would that be this gentleman here?

4 MS. BENNETT: Yes.

5 THE HEARING EXAMINER: Okay. Very
6 good. If he wants to put together an exhibit that is
7 his opinion about this, then that's fine with me. Of
8 course, I'll entertain objections, but it'll be his
9 expert opinion about the development of the Upper
10 Wolfcamp versus their expert's opinion about your
11 development of thUpper Wolfcampmp. Does that seem
12 fair to you?

13 MS. BENNETT: Definitely.

14 THE HEARING EXAMINER: Okay. Good.
15 And you're giving me a look now. What's the look
16 about?

17 MR. FELDEWERT: So are you admitting
18 this Rebuttal 3?

19 THE HEARING EXAMINER: If you were
20 listening, you would've have heard that I didn't admit
21 it.

22 MR. FELDEWERT: Okay. All right.
23 That's fine. Because my point was that nothing in
24 this Rebuttal 3 attempts to rebut that

25 THE HEARING EXAMINER: It's not coming

1 in. It's a moot point.

2 MR. FELDEWERT: Okay. Thank you.

3 THE HEARING EXAMINER: I've just
4 instructed counsel and her expert witness to revise --
5 to basically not revise, but come up with a whole new
6 Rebuttal Exhibit 3. And I've already stated how, you
7 know, what I want to see, what I think would be fair,
8 and you can look at it and you can make objections if
9 you don't think it's fair.

10 MR. FELDEWERT: Yeah. My only concern
11 is that they had an opportunity to actually rebut this
12 exhibit before this hearing and they chose not to.

13 THE HEARING EXAMINER: That's a
14 different objection. And we'll deal with that
15 objection once they come up with a new exhibit.

16 MR. FELDEWERT: Okay.

17 THE HEARING EXAMINER: Okay? If you
18 want to argue that it's untimely in some way, but you
19 know, rebuttal cases are pretty -- when it comes to
20 timing, I mean, parties can be surprised. So I'm not
21 going to put -- I'm not going to predetermine this.
22 I'm going to hear --

23 MR. FELDEWERT: I understand.

24 THE HEARING EXAMINER: -- what you have
25 to say.

1 Okay. Now, it is 12:14. I know
2 parties like to have an hour, so we will return at
3 1:15 unless someone has an argument against that.

4 MR. FELDEWERT: Thank you.

5 THE HEARING EXAMINER: All right.
6 Sounds good. We're back on the record at 1:15.

7 (Off the record.)

8 THE HEARING EXAMINER: We are back on
9 the record. It is 1:12 p.m. on November the 20th. We
10 still have the second witness for Franklin Mountain 3
11 Energy -- Energy 3 on the witness stand and we had
12 finished the direct?

13 MS. BENNETT: Mr. Examiner, if I can
14 make one clarification about the rebuttal exhibit that
15 we left off talking about and ask one final question
16 of the witness?

17 THE HEARING EXAMINER: Yes. By all
18 means. What's a clarification?

19 MS. BENNETT: The clarification is that
20 we will be removing that exhibit. Well, it wasn't
21 admitted, and we will not be replacing it with another
22 exhibit.

23 THE HEARING EXAMINER: Perfect.

24 MS. BENNETT: And so any of my comments
25 or those very ill-formed comments about trying to

1 explain that are no longer relevant.

2 THE HEARING EXAMINER: True.

3 MS. BENNETT: Okay.

4 THE HEARING EXAMINER: Okay.

5 MS. BENNETT: And then I did just want
6 to ask Mr. McCoy one quick question before I pass.

7 THE HEARING EXAMINER: Please. Go
8 right ahead.

9 BY MS. BENNETT:

10 Q Mr. McCoy, in your opinion, is Franklin
11 Mountain Energy able to drill additional wells in
12 Section 30 that MRC is not able to do?

13 A Yes. Due to the Section 31 development,
14 they're -- they're hamstrunged on their well
15 development where there's no additional wells in
16 Section 19. So --

17 MS. BENNETT: Thank you.

18 THE HEARING EXAMINER: Mr. Feldewert?

19 MR. FELDEWERT: Sure. If I may share?

20 CROSS-EXAMINATION

21 BY MR. FELDEWERT:

22 Q So I'm a little confused there, Mr. Mitchell
23 [sic]. You said there are wells in Section 19, right,
24 that you all have drilled on a one-mile basis?

25 A We don't have any proposed one-mile basis

1 wells.

2 Q That's not my question. There's our wells
3 in Section 19 that Franklin Mountain has drilled on a
4 one-mile basis --

5 A That is correct.

6 Q -- from pads in the south half of the south
7 half of Section 19?

8 A Yes.

9 Q Okay. Now, I think you mentioned that in
10 terms of development of the Second Bone Spring in
11 Section 30 -- and I'm looking at Exhibit B-6 -- that
12 it would, I think you testified, potentially be part
13 of a phase two development?

14 A Correct.

15 Q Do you have any idea in the timing of that?

16 A Timing would be -- no. I do not have timing
17 at this time.

18 Q And you mentioned that if you did it, you
19 would only target the Upper Bone Spring?

20 A Yes. Due to potential depletion in Section
21 19 of the Lower Bone Spring.

22 Q So I wanted to ask you about that. Are
23 you -- you don't have any concerns that the Upper Bone
24 Spring is going to be impacted by the wells in the
25 Lower Bone Spring?

1 A We believe -- and our geologist, Kessel,
2 will be able to expand more on this. But there's a
3 separation carbon in -- in that upper northwest corner
4 that separates the sandstones.

5 Q Okay. What about the Lower Bone Spring that
6 you developed in Section 19? How would you develop
7 that in Section 30?

8 A We would be an upper three-mile -- three-
9 miler.

10 Q How would you develop the Lower Bone Spring?

11 A I think the lower would -- we could lower
12 our target a little bit and -- and flutter on the top
13 of that carb. But the lower would be -- be untapped
14 but for the greater good of a three-mile development
15 from south and north.

16 Q So I want to make sure I understand. Are
17 you saying that there's no communication concerns
18 between the sUpper Second Bone Spring and the Lower
19 Second Bone Spring?

20 A I'm just saying there -- there is a
21 carbonate that we believe that could act as a barrier.

22 Q Okay. Which means that an Upper Second Bone
23 Spring well would not drain from Lower Second Bone
24 Spring; correct?

25 A And it's hard to tell. I mean, it's a lot

1 of frack energy. So I mean, I know you want black or
2 white answers but it's -- it's hard to tell where the
3 frack energy's going to go.

4 Q Okay. So it'd be hard to tell whether you
5 would have interference between a Upper Second Bone
6 Spring and a Lower Second Bone Spring?

7 A Correct.

8 Q Okay. So it'd be hard to tell to what
9 extent there would be depletion from your existing
10 wells in Section 19?

11 A Yeah. Well, I mean, the Section 19 are
12 older, completed wells, didn't have the -- a great
13 frack back in -- when they were completed. So I think
14 we can -- it's de-risked a little bit that Section 19
15 is not fully depleted.

16 Q Okay. Now, if Franklin Mountain is awarded
17 operations in Section 30, that means that MRC's
18 acreage in Section 31 would be developed with one-mile
19 wells?

20 A No. There's opportunity for U-turn wells in
21 Section 31.

22 Q Okay. But you wouldn't be able to produce
23 the 200-foot setback between the south half of the
24 south half of Section 30 and the north half of the
25 north half of 31? You'd have that setback; correct?

1 A I'm not following. Can you help me again?

2 Q Are you familiar with the horizontal well
3 rules?

4 A Yes.

5 Q And that there -- your first take point and
6 your last take point have to be 100 feet off the -- in
7 this case, because there's standup wells, these be
8 offset the spacing unit?

9 A Correct.

10 Q Okay. So if you developed Section 30
11 instead of MRC, the setback, which would be 100 feet
12 on the Section 30 side and 100 feet on the Section 31
13 side, would not be developed?

14 A I mean, that's in -- I mean, I think the --
15 the U-turn wells got -- has the same setback.

16 Q Yeah. They said the same setback; right?

17 A Yeah.

18 Q So they wouldn't be developed -- that 200
19 foot would not be developed?

20 A Yeah, in both cases.

21 Q Okay. Where if MRC's allowed to continue
22 developing Sections 30 and 31, they could drill the
23 two-mile wells in the Second Bone Spring; right?

24 A And we could drill the three-miler in 30,
25 19, and 18.

1 Q The three-mile wells?

2 A Yeah.

3 Q So that's kind of --

4 A To -- to avoid the setback. Yeah.

5 Q That's the tradeoff. I understand. Has
6 Franklin Mountain drilled any three-mile wells in Lea
7 County?

8 A We've drilled a two and a half mile.

9 Q Have you drilled any three-mile wells?

10 A I -- talking with our driller team, they're
11 topnotch out there and their very full of confidence
12 they can execute on the three-mile.

13 Q My question's very simple. Have you drilled
14 any three-mile wells in Lea County?

15 A No.

16 Q Okay. Have you drilled any three-mile wells
17 in Eddy County?

18 A We have no ops in Eddy County.

19 Q Have you drilled any three-mile wells in New
20 Mexico?

21 A No.

22 Q Have you drilled any three-mile wells
23 anywhere in the -- basin?

24 A No.

25 Q Okay. You said you drilled a two and a half

1 mile well? How many of those wells have you drilled?

2 A We've got one two-and-a-half-mile about four
3 miles to the east.

4 Q Which one's that? What's the name of that
5 well?

6 A The Blue Box.

7 Q What's that?

8 A Blue Box.

9 Q And what's -- where's that located?

10 A It's about three, four miles east of Rope.

11 Q Do you know a section in township?

12 A If you pull a map I can show you.

13 Q Well, let's get -- you said called the Blue
14 Box?

15 A Yes.

16 Q Okay. And that's -- it's drilled by
17 Franklin Mountain?

18 A Correct.

19 Q Okay. That'll probably give us enough
20 information. All right. So first time then, you
21 would bill -- attempt to drill three-mile wells would
22 be on the acreage in Section 30 where MRC owns and
23 controls over 61 percent?

24 A Just in Section 30. But, I mean, that's the
25 most de-risked section of the three-mile lateral.

1 It's where our surface is. It would be the mile --
2 first mile.

3 Q What are the risks associated with --
4 drilling risks when you drill three-mile wells?

5 A I think you've got risk as drilling any
6 well. I mean, you can lose BHA. You can lose
7 circulation. You've got torque and drag models. I
8 mean --

9 Q Are you finished?

10 A Yes.

11 Q Okay. And does that risk become greater as
12 you extend further out drilling?

13 A Potentially.

14 Q Okay. What are the completion risks
15 associated with three-mile wells?

16 A Your completion risks are going to be we
17 probably pump down and drill out with torque and drag.

18 Q Okay. What else?

19 A That's it. To me, that's -- yeah. That's
20 all.

21 Q That's all the risks you're aware of?

22 A That I can think of right now, yeah.

23 Q Are there completion risks? I mean, in
24 other words -- let me step back. Are the risks
25 associated with the effectiveness of the completion as

1 you extend further down a three-mile wellbore?

2 A Yeah. You fight friction and you have
3 limited surface limitations on -- on your pumps.
4 But --

5 Q Okay. So I think you mentioned that the
6 least area of risk is in that first mile of a three-
7 mile well?

8 A Yes.

9 Q And therefore, that would be -- more
10 extensive risk would occur, I guess, in the final
11 third of that three-mile well?

12 A Yes.

13 Q Okay. So looking at that here, you
14 intend -- your intention would be to drill from the
15 south half to the south half of 30 north into Section
16 18?

17 A That's correct.

18 Q Okay. So the least drilling and completion
19 risk would be in Section 30 and the greatest drilling
20 and completion risk would be in Section 18?

21 A Correct.

22 Q And you're aware that wells share on a
23 straight acreage basis when you pool?

24 MS. BENNETT: Mr. Examiner, I object
25 that Mr. McCoy is not a land expert. And if he does

1 understand about the straight acreage, he's happy
2 to -- I mean, I'm happy to let him try. But that's
3 outside the scope of his direct and outside the scope
4 of his expertise.

5 THE HEARING EXAMINER: Mr. Feldewert?

6 MR. FELDEWERT: I don't know if he
7 knows the answer or not. He's a completion -- he's an
8 engineer.

9 THE HEARING EXAMINER: But is it within
10 or is this question you're asking now, is it within
11 the scope of his direct or his rebuttal testimony?

12 MR. FELDEWERT: It's part of my cross-
13 examination of him and within the scope of the
14 development of a three-mile well.

15 THE HEARING EXAMINER: Ms. Bennett, do
16 you have anything to say about that?

17 MS. BENNETT: Yes. Mr. McCoy is
18 testifying as a petroleum or reservoir engineer and
19 that is what his direct was limited to. Asking
20 questions outside the scope of his direct is not only
21 inappropriate, but also beyond his -- what he's been
22 subject to for questioning before the Division.

23 THE HEARING EXAMINER: So, Mr.
24 Feldewert, you didn't answer my question when I said,
25 is it within the scope of his direct or his rebuttal?

1 You gave me a different answer. So I'm going to
2 sustain the objection. Would you move on, please?

3 MR. FELDEWERT: Sure.

4 BY MR. FELDEWERT:

5 Q You're an -- you've been qualified as an
6 expert?

7 A Yes.

8 Q Okay. I want you to assume as an expert
9 that the rules in New Mexico require horizontal well
10 spacing units and the production there -- produced
11 there from to be shared on a straight acreage basis.
12 Okay? So assume that?

13 A Can you define that?

14 Q In other words that --

15 A Straight acreage?

16 Q -- the acreage in Section 18, the owners
17 there would get one-third of the production from the
18 well, the owners in Section 19 would get a third of
19 the production from the well, and the owners in
20 Section 30 would get a third of the production from
21 the well.

22 A Got it.

23 Q Okay? All right.

24 A Thank you.

25 Q And I think you said this, but if I'm

1 understanding it then, you seek in your applications
2 to pool an area of greatest risk -- that would be
3 Section 18 -- with an area of least risk, which is
4 Section 30?

5 A I think there's a risk in all oil and gas
6 operations, but if you want to define it that way, I
7 don't --

8 Q Do you agree Section 18 has the greatest
9 risk when it comes to drilling and completion? You've
10 testified to that; right?

11 A Yes.

12 Q Okay. All right. Now, you did an
13 estimate -- I believe you did it in Exhibit B-11 -- of
14 the reserves in what we'll call the Upper Wolfcamp.

15 A Correct.

16 Q Okay. Which is one of your initial targets?

17 A Yes.

18 Q Okay. And does this show the area that you
19 examined to identify the -- what you indicated in your
20 statement as the recoverable reserves in the Upper
21 Wolfcamp?

22 A Yes. We've got the airstrip or Beefalo
23 directly south and the Norte to the east.

24 Q Okay. And that went into your calculation
25 of what you believe is recoverable?

1 A Yep, based off offset data.

2 Q Okay. Offset data. Where is Franklin
3 Mountain's Eagle State Project?

4 A It is -- I don't -- I don't have a laser
5 pointer but --

6 Q Help me out. I'll try to blow it up for
7 you. Does this help?

8 A So it's right behind the -- the Norte.

9 Q Where's that?

10 A Right -- it's right behind the FME 3's Norte
11 project.

12 Q Right behind that. Okay.

13 A Yeah.

14 Q Why didn't you -- now, did you -- didn't you
15 drill Upper Wolfcamp wells in that project?

16 A Yes.

17 Q Why didn't you include that in your
18 determination since it's right below the Franklin
19 Mountain's Norte project?

20 A We've -- it was not included because it was
21 impacted by an SWD, which is why we've taken -- caught
22 reserves on Section 18, kind of just learning through
23 the drill bit. So --

24 Q Okay. Where's your -- what about the
25 Franklin Mountain Treble State Project? I think we've

1 heard about that. Where's that located?

2 A It is not on this map.

3 Q It's not on the map?

4 A But it's directly south of -- which is the
5 corner -- where is that? Southeast corner of the map.

6 Q Okay. All right. Did you drill Upper
7 Wolfcamp wells there?

8 A Yes.

9 Q 701 and 801?

10 A Just the 701.

11 Q Just the 701. Okay. Why didn't you include
12 that in your analysis?

13 A We -- it was a little far from our Rope
14 development. And as Ben will talk about kind of how
15 the geology changes from the east side and -- and our
16 north side to compare -- try to get apples to apples.

17 Q All right. Then what about the Gold State
18 project? Did you drill an Upper Wolfcamp well there?

19 A We did

20 Q The 701?

21 A That is correct.

22 Q Okay. And that's located within your area;
23 right? Just next door or almost next door?

24 A Yes.

25 Q Next to the Satellite. Is that right?

1 A Yes.

2 Q Okay. Why didn't you include that in your
3 analysis?

4 A We -- Ben'll talk about it, but we had some
5 -- some complications on -- on that well from a -- a
6 geological side as you -- as we drilled into the
7 northern section.

8 Q Okay. Did you try -- do you have wells that
9 you intend to drill in a Satellite unit in the Upper
10 Wolfcamp?

11 A Yes. We've got pooling orders for the
12 Satellite.

13 Q Okay. Have you drilled those yet?

14 A We have not drilled those.

15 Q Okay. All right. You mentioned the
16 difficulty you had over in -- with the Gold State. Is
17 the Upper Wolfcamp in this area -- can that be
18 difficult to drill?

19 A The -- the Upper Wolfcamp is a challenging
20 formation. I think we've discovered this as -- as
21 we've taken over this asset, we've hit the south
22 corner, the north corner, the northwest corner, and
23 really delineated what makes this asset tick. And
24 we've learned the Wolfcamp is -- is challenging, and
25 we've taken these learnings and our -- we're actively

1 developing our Foxtail and Alpha with Wolfcamp. And
2 so --

3 Q Okay. At least you and I can agree it's
4 challenging; right?

5 A Yes.

6 Q All right.

7 A I think we can agree on more.

8 Q Okay. Well, let's see. Would you agree
9 that there's no harm in initially drilling first into
10 the Wolfcamp D, the Lower Wolfcamp, as we see here
11 with MRC's plan on Exhibit B-6 to obtain logging data
12 on the Upper Wolfcamp before drilling?

13 A No. It's -- we do that practice as well.
14 We try -- we drill our deepest target so we can gain
15 an understanding of formation tops. It's great
16 practice.

17 Q Okay. So it is a prudent plan then to first
18 drill into the Lower Wolfcamp, obtain logging data on
19 the Upper Wolfcamp and then come back and perhaps
20 develop that on an infill basis based on what you
21 find?

22 A I think you can say that for any formation
23 that's deeper.

24 Q Okay.

25 A We could say that for the second as well

1 because we'll drill through the second.

2 Q Now, the existing wells up in Section 18 --
3 you see those vertical wells?

4 A Yes.

5 Q Okay. Have you -- this shows there's what,
6 five or six of them; is that right?

7 A Correct.

8 Q Okay. Are you familiar with those wells?

9 A Not as familiar as our geologist.

10 Q Okay. Have you examined the drainage from
11 those existing wells?

12 A Yes. There's probably about 200,000 barrels
13 pooled -- in -- in slot 4.

14 Q From what?

15 A In slot 4 in Section 18.

16 Q What zone? What interval?

17 A Third.

18 Q The third? Okay. What about the -- in the
19 third, were you planning to drill a three-mile well?

20 A Yes, we were.

21 Q Okay. So we at least have some depletion up
22 there in Section 18 with -- from the existing vertical
23 wells?

24 A Yes.

25 Q Okay. And you seek to combine that depleted

1 acreage in the east half of the east half of Section
2 18 with MRC's undepleted acreage in the east half of
3 the east half of 30?

4 A In the Bone -- Third Bone?

5 Q Yeah.

6 A Oh, I'm sorry.

7 Q I'm looking at the map up here. This
8 correctly identifies what you hope to do; right?

9 A Yeah. I -- but the Albatross well is -- has
10 also got a depletion risk for the MRC's U-turn well.

11 Q Well, I'm talking about the east half of the
12 east half of 30.

13 A Okay. I'm there.

14 Q All right? You seek to pool the -- what you
15 admitted was depleted acreage in the east half of the
16 east half of Section 18 with undepleted acreage in
17 east half of the east half of 30.

18 MS. BENNETT: Objection, Mr. Hearing
19 Examiner. I think that Mr. McCoy testified that Mr.
20 Kessel would be able to speak more to these vertical
21 wells, and the amount of depletion at this point is --
22 we haven't -- no one's quantified it.

23 MR. FELDEWERT: Objection. He did
24 quantify it.

25 MS. BENNETT: He quantified it

1 generally from the wells in Section 18, not
2 necessarily the wells in the east half/east half of
3 Section 18. If Mr. Feldewert wants to ask specific
4 questions, he's free to do that. But he asked a very
5 general question about Section 18.

6 THE HEARING EXAMINER: Mr. Feldewert?

7 MR. FELDEWERT: What's the objection?

8 THE HEARING EXAMINER: Mr. Feldewert, I
9 heard what she said, and you heard what she said.
10 What is your response to the objection?

11 MR. FELDEWERT: I don't -- this is a
12 follow-up to what he testified to about depletion in
13 Section 18 from these wells that are located in the
14 east half of Section 18.

15 THE HEARING EXAMINER: But Ms. Bennett
16 is objecting to this witness being asked this question
17 because she feels it's the wrong witness to ask this
18 question to.

19 MR. FELDEWERT: But this is the witness
20 that testified as to the amount of the depletion in
21 Section 18 from the existing vertical wells in the
22 east half of Section 18.

23 THE HEARING EXAMINER: Okay. And what
24 is your question? Repeat your question.

25 BY MR. FELDEWERT:

1 Q So my question is, am I understanding that
2 for your Third Bone Spring development, your three-
3 mile well seeks to pool the depleted acreage in the
4 east half of the east half of 18 with undepleted
5 acreage in the east half of the east half of 30?

6 THE HEARING EXAMINER: Don't answer the
7 question yet. I'm still trying to figure out if I'm
8 going to sustain or deny the objection.

9 So that's your question?

10 MR. FELDEWERT: That's my question.

11 THE HEARING EXAMINER: And why do you
12 feel this witness is not qualified to answer this
13 question?

14 MS. BENNETT: Well, he said that Mr.
15 Kessel would have -- has more information on these
16 wells, number one. And number two, Mr. Feldewert's
17 question -- so I -- it's a two-part objection. And
18 the second part is Mr. Feldewert asked the witness,
19 are you familiar with the vertical wells in Section 18
20 and how much depletion there's been?

21 And there are more vertical wells in
22 Section 18 than just in the east half/east half. And
23 so if the question is about the east half/east half
24 wells, then I think there needs to be some narrowing
25 of the prior question, the question that was one

1 question or two questions before, which I didn't have
2 an objection to because I didn't know where it was
3 leading.

4 THE HEARING EXAMINER: Would you ask
5 your question again and try to be more specific in
6 which wells and the depletion based on those wells in
7 the east half of the east half of 18 that you are
8 referring to?

9 MR. FELDEWERT: Okay.

10 BY MR. FELDEWERT:

11 Q You've testified that there is depletion
12 from the wells in Section 18; correct?

13 A Yes.

14 Q Okay. And when you look at the map here,
15 Exhibit B-6, where are those wells?

16 A Section 18.

17 Q Where in Section 18 to be specific?

18 A Don't have grid lines on here, but it looks
19 like it's on the east half.

20 Q Okay.

21 THE HEARING EXAMINER: Excuse me. I
22 have to ask a question. Which of these 1, 2, 3, 4, 5
23 layers are you answering that question based on? The
24 second one? The third one? Which one?

25 MR. MCCOY: That's a great question. I

1 must have been confused as well. I --

2 MR. FELDEWERT: You want me to start --

3 MR. MCCOY: I believe it was the Third
4 Bone.

5 Are you talking about the Third Bone?

6 MR. FELDEWERT: There you go.

7 MR. MCCOY: Okay.

8 THE HEARING EXAMINER: Okay. So at
9 least we can try to be specific now.

10 BY MR. FELDEWERT:

11 Q Okay. If I look at the Third Bone, you have
12 your three-mile wellbore from Section 30 up to Section
13 18. Do you see that?

14 A Yep.

15 Q Okay. And you'll see that there are
16 existing vertical wells in that same spacing unit?

17 A Correct.

18 Q And you've testified that there is depletion
19 from those existing vertical wells?

20 A Correct.

21 Q Okay. So am I correct then in saying that
22 the company seeks to pool depleted acreage in the east
23 half of the east half of Section 18 with MRC's
24 undepleted acreage in the east half of the east half
25 of Section 30 for a Third Bone Spring well?

1 A I think an argument can be made that the
2 Albatross in Section 30 has depleted that zone as
3 well.

4 Q And when you say the Albatross well, which
5 well are you talking about?

6 A Section 30, the dark blue.

7 Q Which would be in a different space --

8 A Dark blue and black.

9 Q I'm sorry. In a different spacing unit?

10 A It would be, yeah, to the left of the -- the
11 well we're talking about.

12 Q And that would be the west half of the east
13 half?

14 A Yes.

15 Q Okay. All right. Which that well's at a
16 standard location; right? It complies with all the
17 setbacks?

18 MS. BENNETT: Objection. Lacks
19 foundation.

20 THE HEARING EXAMINER: I'm going to
21 overrule it. I know where he's going with this, and I
22 could answer that question myself, so I'm going to
23 overrule that question. I think he's qualified to
24 answer it.

25 Please answer it.

1 MR. MCCOY: Yes.

2 BY MR. FELDEWERT:

3 Q Okay. I want to go to your rebuttal
4 exhibits. You said you prepared this particular
5 exhibit?

6 A That's correct.

7 Q Okay. Now, you say in the fourth bullet
8 point that Wolfcamp development in your opinion is not
9 possible in Section 18 due to existing saltwater
10 disposal; right?

11 A Correct.

12 Q Okay. That's your words?

13 A Yep.

14 Q Okay. It's -- first off, there's no
15 restrictions on the development of Bone Spring in
16 Section 18 from the disposal well?

17 A From the disposal well alone, no.

18 Q Okay. Who operates that existing disposal
19 well?

20 A I'd have to double check. It's called the
21 Shetland.

22 Q The Shetland. Okay. And where is it
23 located in Section 18?

24 A Right there. Oh, you can't see my finger.

25 Q Hold on. Let me try to blow it up.

1 A It's middle of Section 18. There was --
2 there was probably some existing disturbance there.

3 Q So you see where there's some roads that
4 intersect in 18 in the top portion of the exhibit?

5 A Yeah. It's in -- in that area -- we've got
6 an exhibit that highlights it in our --

7 Q Would it be that --

8 A -- original packet?

9 Q Would it be that well pad where those roads
10 intersect there?

11 A Yeah. It could be one of those, but for a
12 more precise location, we've got it identified and --

13 MS. BENNETT: Mr. Examiner, I might be
14 able to help with this. It's Exhibit A-4.

15 THE HEARING EXAMINER: Thank you.

16 MR. MCCOY: Sorry about that.

17 MR. FELDEWERT: It's all right.

18 MS. BENNETT: Franklin Mountain
19 Energy's Exhibit A-4.

20 MR. FELDEWERT: Oh, sorry. A-4?

21 MS. BENNETT: Yes.

22 BY MR. FELDEWERT:

23 Q Okay. So it's identified in Exhibit A-4 as
24 the blue triangle?

25 A Yes.

1 Q Okay. All right. Looks like it's maybe in
2 the northeast of the southwest quarter?

3 A Around -- around there. Yeah.

4 Q Okay. All right. When I go back to your
5 Rebuttal Exhibit Number 1, has anybody done a study of
6 the radius of influence from that disposal well?

7 A It's tough to quantify a plume on an SWD. I
8 mean, we've got -- Ben's done -- done studies on
9 wellbore pressure as we fall off into the basin. It
10 would be -- it could be harder to overcome that bottom
11 hole, but it is difficult to identify the plume.

12 Q So have you -- you have not conducted a
13 study?

14 A We have general ideas.

15 Q Okay. And without conducting a study,
16 you're suggesting that no Wolfcamp development is
17 possible in Section 18 due to that existing SWD?

18 A We would like to frame away for it. As I
19 talked about with the Eagle, you know, we've -- we're
20 learning through the drill bit and we're understanding
21 things. So yes.. We -- at the Eagle, we've
22 identified there was an SWD there, and, I mean, good
23 business practice as we apply these learnings would be
24 to avoid.

25 Q So I'm trying to figure out where we are

1 sitting here today. Is it your testimony sitting here
2 today that no Wolfcamp development is possible in
3 Section 18 because of this existing SWD?

4 A Well, what Wolfcamp bench?

5 Q Any Wolfcamp development?

6 A We would -- yes. I would -- I would stray
7 away from Section 18 due to past learnings we've
8 applied.

9 Q So in other words, if you have Wolfcamp
10 ownership in Section 18, in your opinion, it's not
11 worth anything?

12 A I mean, I don't -- I don't think that. I
13 mean I think there's a time and point where oil price,
14 economic sway where, you know, it could be a
15 marketable recoverables reserve.

16 Q Okay. That's fair. And wouldn't that also
17 be impacted by maybe perhaps adjusting your spacing to
18 stay away from whatever plume you determine exists
19 from that existing disposal?

20 A Yes. You --

21 Q That's fair?

22 A Yeah. You would want to create -- create as
23 far as -- as possible from the SWD?

24 Q Have you examined what Wolfcamp intervals
25 that well is ejecting into?

1 A Mr. Kessel has.

2 Q Okay. Now, I also looked at this slide and
3 I believe your testimony was that it would be
4 challenging to place additional surface facilities in
5 the south half of the south half of Section 19. Did I
6 state that correctly?

7 A Yes.

8 Q And the existing facilities that we see in
9 the south half of the south half of Section 19, those
10 are Franklin Mountain's?

11 A Acquired.

12 Q Acquired. Okay. And you operate those well
13 those now?

14 A Yes.

15 Q All right. Is it your testimony that there
16 is no availability for additional surface development
17 for drilling in the south half the south half of 19?

18 A I mean, it -- I mean, are we all looking at
19 the same picture? Like, we've got a huge cut, and
20 this ravine applies. I mean, it's going to be -- I
21 mean, we're all creative in oil and gas and -- and I'm
22 sure there's a solution. But I mean, it's not a cut
23 and -- cut and dry solution, so --

24 Q Okay. I understand it's going to be
25 challenging. Have you -- what about in the north half

1 of the north half of Section 30?

2 A For pads?

3 Q Uh-huh.

4 A There -- there's less for our pads or for
5 MRC's pads?

6 Q Well, would it be available for any pads you
7 might need? There's room there; right?

8 A Well, we would want to drill from the south
9 half of 30.

10 Q I understand. But if you were going to
11 develop Section 19, wouldn't one option be to put --
12 look at putting some additional surface facilities in
13 the north half of the north half of 30 where there's
14 already existing infrastructure?

15 A I -- I think there'd be more -- there'd be
16 more complications because we -- we wouldn't be on --
17 on lease, I think Don said. If MRC gets -- gets 30, I
18 think it would have to be a --it would be an off-lease
19 pop. And I think it'd be more complicated than just
20 saying, throw a pad here.

21 Q You may have to work something out with MRC;
22 right?

23 A Yes. It'd be more complicated.

24 Q So it'd be possible?

25 A More complicated.

1 Q Okay. All right. Your Rebuttal Exhibit
2 Number 2. You were concerned that MRC did not account
3 for the shut-in days?

4 A Correct.

5 Q Okay. Were you aware that on the flip side,
6 if MRC had shut-in days, they didn't account for those
7 either?

8 A I was not aware.

9 Q Okay. All right. If they -- if that was
10 the case, then it would be apples to apples; right?

11 A Absolutely.

12 Q Okay.

13 A Another thing we agree on.

14 Q All right. Can you -- when I see the gold -
15 - now, all these wells here listed in the upper right-
16 hand side, 601, 301, 801, and Eagle301, those were all
17 -- came online within what, this past year?

18 A Yes.

19 Q Okay.

20 A Eagle came on a little in '23, I believe.
21 I'd have to double check.

22 Q Why was the Gold State -- why was the Gold
23 801 shut-in for 113 days?

24 A We had takeaway constraints, and we couldn't
25 get product moving. So that was our -- I mean, that's

1 kind of a general theme of Northern Lea County right
2 now. And it's -- but we -- we are confident we've got
3 it solved now. But during this time, I mean, it
4 really -- it really showed -- showed the impact.

5 Q Okay. So at least past experience has been
6 it's been difficult with takeaway?

7 A Correct.

8 Q Okay. And your proposal is to add an
9 additional 15 wells to this constrained area?

10 A We've got all -- all acreage dedications,
11 pipe sizing in service as of now.

12 Q Okay. If I go to Rebuttal Exhibit 4, this
13 is where you compared the cost per lateral length?

14 A Correct.

15 Q Okay. Isn't it true that three-mile wells
16 will always be less per lateral length than two-mile
17 wells?

18 A Yes.

19 Q Okay. And your description here, does it
20 account for that change difference, that point?

21 A We -- we normalized on a well count because
22 we had, I think, seven Bone Springs wells. But on a
23 per footage basis, we used 15,000 feet and MRC used
24 10.

25 Q Okay. So -- but the cost that you

1 applied -- you applied cost, and you took the cost and
2 applied it to a three-mile length, and then took the
3 cost and applied it to a two-mile length?

4 A We took the AFE from both parties and then
5 divided it by their equivalent length as AFE.

6 Q So for yours, it'd be a three-mile length?

7 A Yep.

8 Q And for theirs it'd be a two-mile length?

9 A Yep.

10 Q Okay. And now, these would not have been --
11 your AFE would not have been based on any actual
12 experience in drilling three-mile wells, right,
13 because you don't have any?

14 A I -- I think we've -- when we've created
15 these AFEs, we -- we've executed on a two-mile, then
16 just probably extended to a three-mile.

17 Q So in other words, you don't have any AFE
18 for any three-mile wells that you have drilled in
19 order to extract the expected costs?

20 A We have not drilled a three-miler.

21 Q Okay. And then this also assumes these
22 costs -- this assumes you can execute the three-mile
23 well without any drilling issues; right?

24 A Absolutely. We -- I'm confident in our
25 drillers.

1 Q Okay. Did you develop -- I don't think you
2 did, but you didn't develop this Rebuttal Exhibit 9;
3 right?

4 A No, sir.

5 Q This relates to the problems you had with
6 the Gold 701 --

7 A Yes, sir.

8 Q -- that you tried to drill in the Upper
9 Wolfcamp?

10 A Yes. We --

11 Q Okay. Now, I won't ask you about that.

12 MR. FELDEWERT: I think that's it.
13 Thank you.

14 MR. MCCOY: Thank you.

15 THE HEARING EXAMINER: Mr. McClure?

16 MR. MCCLURE: I have no questions for
17 this next expert, Mr. Hearing Examiner.

18 MR. MCCOY: Ms. Bennett, any redirect?

19 MS. BENNETT: Just a few. Thank you.

20 REDIRECT EXAMINATION

21 BY MS. BENNETT:

22 Q Mr. McCoy, Mr. Feldewert asked you some
23 questions about the Second Bone Spring and your
24 ability -- and Franklin Mountain Energy's ability to
25 develop the Second Bone Spring. Do you remember those

1 questions?

2 A Yes.

3 MS. BENNETT: And if I could use the --

4 MR. FELDEWERT: Oh, sure.

5 MS. BENNETT: Thanks.

6 BY MS. BENNETT:

7 Q So let's see. Let me get to the same slide
8 that he was using, Exhibit B-6. Do you remember
9 talking about that?

10 A Yes.

11 Q And in Section 19, the second set of
12 dominoes, I'll call them, it says "Second Bone
13 Spring." Do you see that?

14 A Yes.

15 Q And in Section 19, there are black sticks
16 outlined in red. Do you see those?

17 A Yes.

18 Q And are those wells that Franklin Mountain
19 Energy drilled or are those wells that Franklin
20 Mountain Energy operates?

21 A They were acquired.

22 Q They're acquired. And when you were
23 answering questions from Mr. Feldewert, you mentioned
24 that in -- that Franklin Mountain Energy has assessed
25 whether Franklin Mountain Energy can drill three-mile

1 laterals in the upper part of the Second Bone Spring.
2 Is that right?

3 A Yes.

4 Q Has -- and Mr. Feldewert asked you about
5 whether Franklin Mountain Energy would be able to
6 develop the lower portion of the Second Bone Spring in
7 Section 30. Do you remember that?

8 A Yes.

9 Q Is MRC -- do you know if MRC is targeting up
10 the Lower Second Bone Spring or the Upper Second Bone
11 Spring? Do you know?

12 A I'd have to double check the gun-barrell,
13 but I believe it's the lower.

14 Q So at this point, MRC is not planning on
15 targeting the upper part of the Second Bone Spring?

16 MR. FELDEWERT: Objection. Calls for
17 speculation.

18 THE HEARING EXAMINER: Ms. Bennett?

19 MS. BENNETT: I'm happy to show the
20 gun-barrell if that's helpful to Mr. -- I can show the
21 gun-barrell to show that -- and Mr. McCoy can look at
22 the gun-barrell and see if that resolves his
23 recollection about where MRC is targeting.

24 THE HEARING EXAMINER: So
25 Mr. Feldewert, your objection was to the speculative

1 nature of the question. What part of the question was
2 speculative?

3 MR. FELDEWERT: So it talks about
4 initial development. In other words, it wasn't
5 specific. Are we talking about initial development or
6 are we talking about development over time?

7 THE HEARING EXAMINER: I see.

8 Ms. Bennett, I'm going to sustain the
9 objection. Would you re-ask your question and be
10 specific about what part of the development you're
11 talking about?

12 MS. BENNETT: Definitely. Thank you.

13 BY MS. BENNETT:

14 Q Mr. McCoy, are you familiar with MRC's
15 initial proposals?

16 A Yes.

17 Q And in MRC's initial proposals, have they
18 proposed to target what we're calling right now the
19 Lower Second Bone Spring?

20 A Yes.

21 Q In terms of the Upper Second Bone Spring,
22 Mr. Feldewert asked you about your -- about Franklin
23 Mountain Energy's timing on that. Do you recall that?

24 A Yes.

25 Q Has Franklin Mountain Energy already

1 evaluated the ability to execute in the Upper Second
2 Bone Spring?

3 A We have. We're drilling it currently in
4 Tag, and we've also are working through it in our
5 cross development.

6 Q So it's a prospect you're actively pursuing
7 right now in other areas?

8 A Yes.

9 Q And those in proximate areas? In close by
10 areas?

11 A Yes.

12 Q Mr. Feldewert asked you some questions about
13 drilling down through the Upper Wolfcamp to get to the
14 Lower Wolfcamp. Do you recall those questions?

15 A Yes.

16 Q And you and he had a conversation, and I'm
17 paraphrasing here, that it's prudent to drill through,
18 in this case, the Upper Wolfcamp to -- or to drill the
19 Lower Wolfcamp to understand the characteristics of
20 the Upper Wolfcamp?

21 A Yes.

22 Q And haven't you already done that though? I
23 mean, I know that's your plan here for the Rope wells,
24 but aren't you already -- isn't Franklin Mountain
25 Energy already learning those lessons through the

1 drill bit, like you say?

2 A Yes. Every development that we go into, we
3 drill our deepest horizon first.

4 Q And even though you drilled the deepest
5 horizon first, that doesn't prevent you from proposing
6 the more shallow horizon?

7 A No. I mean, it's great practice. You can
8 see shows across the shakers. You can get gas --
9 connection gas. So yeah. It's good -- good practice
10 to identify zones.

11 Q And you don't have -- in drilling through
12 the Upper Wolfcamp to get to the Lower Wolfcamp, you
13 feel confident in your Upper Wolfcamp development
14 plan?

15 A Yes. We've -- we're taking these learnings
16 and actively applying them to our Alpha and Foxtail
17 development, and -- and we're confident in our Upper
18 Wolfcamp development.

19 Q And I'm looking now still at Exhibit B-6,
20 and I'm looking at the set of dominoes that's labeled
21 Wolfcamp B. Do you see that?

22 A Yes.

23 Q And there's a black stick with blue shading
24 around it. Do you see that?

25 A Yes.

1 Q And that's based on this legend, an MRC
2 existing horizontal?

3 A Correct.

4 Q Do you know -- and it says it's in the
5 Wolfcamp B -- is that the Upper Wolfcamp that we've
6 been talking about?

7 A That's the Upper Wolfcamp.

8 Q So does this mean that MRC has already
9 drilled through the Upper Wolfcamp and has logs they
10 could rely on?

11 MR. FELDEWERT: Objection. Calls for
12 speculation.

13 THE HEARING EXAMINER: Ms. Bennett?

14 MS. BENNETT: Mr. Examiner, there's --
15 this is not speculation. If they have drilled into
16 the Wolfcamp B, they would have logs that they would
17 be able to rely on.

18 THE HEARING EXAMINER: And do we know
19 whether they have drilled into it?

20 MS. BENNETT: Yes. They represented
21 that on this slide.

22 THE HEARING EXAMINER: Mr. Feldewert?

23 MR. FELDEWERT: So she assumes that MRC
24 drilled it, number one. Secondly, it assumes that
25 they had the logs that they would do if they were

1 going to evaluate the Upper Wolfcamp zone as they're
2 drilling through it into the Lower Wolfcamp zone.

3 There are different logs that you run,
4 and it depends on what you're looking for at the time.
5 And you're going to run a different log if you're
6 drilling through the upper zone if you know that's --
7 you're trying to evaluate it,

8 THE HEARING EXAMINER: That's helpful
9 to understand why you believe it's speculative.

10 Ms. Bennett, I sustain the objection,
11 but I believe you can ask some foundation questions so
12 that your witness can answer the question and that it
13 wouldn't be speculation.

14 MS. BENNETT: Thank you. Thank you.

15 BY MS. BENNETT:

16 Q Mr. McCoy, in your experience, when you
17 drill a well, do you generate logs?

18 A You typically have a gamma log.

19 Q And so in your experience, would drilling
20 into an Upper Wolfcamp well create a gamma log?

21 A It would create a gamma log.

22 Q And so that's all I'm going to ask. I mean,
23 I -- never mind.

24 THE HEARING EXAMINER: Are you
25 abandoning your line of questioning?

1 MS. BENNETT: Yes. I'm abandoning this
2 line of questioning.

3 THE HEARING EXAMINER: I thought you
4 were.

5 MS. BENNETT: And I'll reserve my
6 questions for the MRC witnesses on this point.

7 THE HEARING EXAMINER: Sure.

8 BY MS. BENNETT:

9 Q The -- Mr. -- I'm going to go to another
10 exhibit. This isn't the exact exhibit that I was
11 looking for, but I -- and the -- for time purposes,
12 I'll go ahead and use this one. On this exhibit,
13 which I've zoomed into, it shows the Section 19 and
14 30.

15 A Yes.

16 Q Do you see that?

17 A Yes.

18 Q And when -- Mr. Feldewert was asking you
19 some questions about whether you could fit some pads
20 in here in Section 19. Do you remember that?

21 A I do.

22 Q And then he asked you if you could fit some
23 pads in the north half/north half of 30. Do you
24 remember that?

25 A Yes.

1 Q And these red squares on here in the north
2 half/north half of 30, what do those represent? Why
3 did -- why are those on this slide? Do you recall?

4 A It represents the MRC's proposed surface
5 disturbance.

6 Q And so if you were -- if MRC was granted
7 operatorship, it's your understanding that they would
8 put their surface locations in the north half/north
9 half of 30?

10 A Yes.

11 Q And would that leave space for Franklin
12 Mountain Energy to put surface locations in the north
13 half/north half of 30?

14 MR. FELDEWERT: Objection. Already
15 asked and answered. He said it would be possible.
16 You'd have to work with MRC.

17 THE HEARING EXAMINER: Ms. Bennett?

18 MR. MCCOY: Challenging.

19 MS. BENNETT: He --

20 MR. FELDEWERT: Challenging --
21 challenging. Good point.

22 MS. BENNETT: Yes. And I understand
23 that he answered the question. I'm trying to ask some
24 follow-up questions because --

25 THE HEARING EXAMINER: Okay. Why don't

1 you do it in an artful way that doesn't repeat the
2 same information? Because it is two o'clock, and we
3 haven't even gotten to MRC's case yet, and I think we
4 have another witness of yours coming. So I have a
5 feeling this is going to take another day to deal with
6 the rest of this, and it won't be tomorrow, and it
7 won't be Friday. So I hope the parties are thinking
8 about what day next week they want to come back and
9 continue this hearing.

10 But please proceed.

11 BY MS. BENNETT:

12 Q So Mr. McCoy, when -- in response to a
13 question from Mr. Feldewert, you mentioned that
14 building surface facilities in the north half/north
15 half of Section 30 would be challenging?

16 A Correct.

17 Q And would you have to do a back build -- in
18 other words, would you have to build over their
19 facilities to access the reserves in Section 19?

20 A Yes. We'd -- we'd have to put our own
21 locations more to the south than where MRC's locations
22 are.

23 Q And would that end up having some --

24 MR. FELDEWERT: Objection. It sounds
25 like it's called for leading. Leading.

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1 THE HEARING EXAMINER: I'm not going to
2 sanction any party for leading questions because
3 everyone's been doing it all day today. I'm not going
4 to go there.

5 So please continue.

6 BY MS. BENNETT:

7 Q Would that result in any -- and I don't know
8 the right word for this, but, like, empty pipe or dead
9 pipe where you would have a pipe in the ground that
10 wouldn't be productive?

11 A It's possible.

12 MS. BENNETT: Those are all the
13 redirect questions I have.

14 THE HEARING EXAMINER: Okay. Thank
15 you. Is there any recross on the redirect?

16 MR. FELDEWERT: No.

17 THE HEARING EXAMINER: Thank you.

18 Mr. McClure, did that bring up anything
19 that you would like to ask a question about?

20 MR. MCCLURE: Nothing from me,
21 Mr. Hearing Examiner.

22 THE HEARING EXAMINER: Wonderful.

23 You may be excused, Mr. McCoy.

24 Would you like to call your third and
25 final witness?

1 MS. BENNETT: Yes. Thank you. I'd
2 like to call Mr. Ben Kessel.

3 MR. KESSEL: Hello.

4 THE HEARING EXAMINER: Good afternoon,
5 Mr. Kessel. Please speak loudly and remember you're
6 under oath.

7 MR. KESSEL: Okay.

8 MS. BENNETT: Thank you.

9 DIRECT EXAMINATION

10 BY MS. BENNETT:

11 Q Mr. Kessel, for whom do you work and in what
12 capacity?

13 A Franklin Mountain Energy, and I'm the
14 Director of Geology.

15 Q And did you prepare exhibits and testimony
16 for this hearing?

17 A Yes, I did.

18 Q And have you had a chance to review the
19 direct testimony and exhibits that you prepared?

20 A Yes.

21 Q Are there any changes you want to make?

22 A Yeah. I believe it's page 199, C-1 is the
23 exhibit. I made a mistake and called that the Ball
24 development at the top. That should say Rope.
25 Everything else is correct.

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1 Q Great. Thank you. And with that, do you
2 adopt your testimony?

3 A Yes, I do.

4 Q Did you prepare a geologic study for the
5 Bone Spring?

6 A Yes, I did.

7 Q And did you observe any faulting, pinch-
8 outs, et cetera that would preclude horizontal
9 development in the Bone Spring?

10 A No, I did not.

11 Q Did you prepare a geologic study for the
12 Wolfcamp?

13 A Yes, I did.

14 Q Did you observe any faulting, pinch-outs, et
15 cetera, in the Wolfcamp?

16 A No, I did not.

17 Q So in your opinion, the geology in this area
18 is appropriate for horizontal development?

19 A Yes, it is.

20 Q In your opinion, should FME 3 be awarded
21 operatorship of the Rope development area?

22 A Yes, I believe we should.

23 Q And turning back to Exhibit A-5, which is
24 the comparison slide, was there -- in your opinion, do
25 any of these factors weigh in favor of Franklin

1 Mountain Energy from a geology perspective?

2 A Yes. You know, we have a team of
3 geoscientists in the office. We have third-party
4 contract geosteers, and we have 3D seismic. We also
5 have geophysicists that we employ, and you know, we've
6 done careful review of all the data from our 3D
7 seismic survey plus well logs and plus our experience
8 in the area.

9 Q Thank you. And let's -- I'm going to turn
10 to Exhibit C-5. And Exhibit C-5 is an exhibit that
11 you prepared; right?

12 A Yes, it is.

13 Q And can you explain to the Division what the
14 takeaway is from Exhibit C-5 and how that supports
15 your opinion from a geologic perspective that Franklin
16 Mountain Energy should be awarded operatorship?

17 A Yeah. So our Rope development will maximize
18 contact with undepleted, untapped reservoir.

19 Q And that's in comparison to the MRC
20 development plan?

21 A That's correct.

22 Q Have you had a chance to review MRC's
23 testimony?

24 A Yes, I have.

25 Q And in particular, did you review MRC'S

1 Exhibits 6 through 17?

2 A Yes.

3 Q And I'm going to pull those up right now.

4 A Okay.

5 Q And I meant C-6 through C-17. So this is
6 Exhibit C-6. Is this one of the exhibits you've had a
7 chance to review?

8 A Yes, I have.

9 Q C-7?

10 A Yes.

11 Q And so -- and then C-8 involves the First
12 Bone Spring?

13 A Yes.

14 Q C-10 involves the Second Bone Spring?

15 A Correct. Yes, I have.

16 Q And did you review C-12 about the Third Bone
17 Spring?

18 A Yes.

19 Q And were -- did you prepare rebuttal slides
20 for these?

21 A Yes, I did.

22 Q And without looking -- let's not refer to
23 your rebuttal slides just yet. But when you reviewed
24 the Franklin -- I'm sorry -- the MRC slides that we
25 just went through, what jumped out at you in these

1 slides?

2 A Yeah. So a couple of different things. You
3 know, the -- there were some wells that were kind of
4 curiously omitted and some that I think were
5 mischaracterized by the MRC slides. And also, there
6 were some wells that were included that kind of
7 covered different geologic -- geologic boundaries
8 than, you know -- that are included in -- in different
9 geologic boundaries than applicable for our area.

10 Q And I just went to the Exhibit C-12 just as
11 an example of what you were just talking about. So
12 could you identify on Exhibit C-12 what you thought
13 was either omitted, mischaracterized, or maybe not an
14 appropriate analog?

15 A Yeah. So the -- this slide in particular
16 kind of includes Cimarron and Mallon, which are, you
17 know, where -- and we will -- we'll look at this in
18 the rebuttal, but where the channel for the Third Bone
19 Spring kind of fully develops. It's more deeper in
20 the basin.

21 It's deeper by about 800 feet or so, and
22 with greater depth you get an increase typically in --
23 in bottom hole pressure, flowing pressure from some of
24 these -- reservoir pressure, I should say. And so
25 it's not quite a fair comparison to wells that are

1 farther to the north.

2 Q And does MRC operate the Cimarron and Mallon
3 wells?

4 A I believe they do, yes.

5 Q And so it's your opinion that those wells
6 are not representative of the Third Bone Spring in the
7 airstrip area?

8 A Yeah. That's correct. I -- I also thought
9 of another point on this one. The Jim Rolfe well,
10 which is to the -- I guess to the -- the west of our
11 Gold State, was not included.

12 Q And so this isn't -- this is also an example
13 of a well that you think, in your opinion, is relevant
14 to the analysis but was omitted?

15 A Correct.

16 Q And that just in terms of, you know, keeping
17 track of timing here, you had similar observations for
18 C-6 through C-12?

19 A Yes.

20 Q The other item that I wanted to talk to you
21 about is the Gold 701H well.

22 A Yes.

23 Q Did you review the MRC's geologist and MRC's
24 reservoir engineer -- both have testimony and slides
25 about the 701H well. Did you review those?

1 A Yes, I did.

2 Q And what is -- do you agree with the
3 conclusions in the -- well, let's start with the
4 geology 701H slide. That's this Exhibit B-8. Do you
5 see that?

6 A Yes, I do.

7 Q And what is -- when you look at this slide,
8 do you agree with it or what do you take away from
9 this slide and want to clarify for the Division?

10 A First of all, as we've kind of talked
11 through what their interpretation of the Wolfcamp B is
12 equivalent to our Wolfcamp A. So I think calling it
13 Upper Wolfcamp is probably more appropriate.
14 Regardless, don't agree with the interpretation as
15 it's shown.

16 You know, we've drilled -- during drilling
17 of this well, we looked at multiple type logs around
18 both the heel and the toe and placed the well in the
19 Upper Wolfcamp for a majority of the well. And then
20 we also observed a lateral face change in that
21 Wolfcamp carbonate that we would place in the actual
22 target zone, which is quite a bit deeper than where
23 they're showing the -- the bulk of the well.

24 Q And do you recall in the testimony of
25 Mr. Parker, which I'll try to find now, where he

1 testified that -- and when he looked at the Gold 701H
2 well, it was his conclusion that 4,500 approximately
3 feet was out of target and 4,500 feet was in target?
4 Do you remember that while I look for it? Here it is.

5 A Yes.

6 Q Paragraph 32? Do you agree with that?

7 A I would say that the bulk of the well was --
8 is within the target, but the target changed --

9 Q And is that something that you have that
10 Franklin Mountain Energy -- earlier, Mr. McCoy
11 testified that the Wolfcamp A in this area can be
12 challenging. Is this part of that challenge that you
13 faced?

14 A Yes, it is.

15 Q And what's your takeaway from your
16 experience with the 701H well?

17 A We've used it to pull it into all of our
18 models. I mean, typically, you know, a lot of
19 geoscience and -- and geologic models are iterative,
20 meaning that the more data that we -- that we get, the
21 more we plug back into the model. We rerun our
22 models, and that's both on the seismic side, and then
23 also on our kind of like straight well log structural
24 correlations.

25 But the more data we get, the more robust

1 our models become. And so we'll tie that back into
2 our seismic depth control and -- and also our -- our
3 just kind of area geologic models.

4 Q And then this -- Exhibit C-5 is an exhibit
5 that was in Mr. Schulz's testimony, and it deals with
6 the 701H well as well. Do you see that?

7 A Yeah.

8 Q And did you have a chance to review this
9 slide?

10 A Yes, I did.

11 Q And do you have anything you'd like to say
12 about this particular slide?

13 A It's not really my area of expertise, but --

14 Q Okay.

15 MR. FELDEWERT: I guess I better object
16 then to the question.

17 MS. BENNETT: Sounds good. And then --
18 so I withdraw the question.

19 BY MS. BENNETT:

20 Q So now, I'd like to -- well, actually, I
21 wanted to ask you a question about, you know, the MRC
22 slides. They show -- you know, these -- at Matador
23 Resources up here and Franklin Mountain Energy down
24 here, and it's, you know, designed, I think, to
25 purport to show that Franklin Mountain Energy is

1 having a lower success rate than Matador Resources.
2 Is that accurate in your opinion?

3 A I -- I think that is a mischaracterization
4 of -- of our -- most of our wells.

5 Q And why do you think that?

6 A Well, again, I think when we -- as we talked
7 about with the previous witness about some of the
8 downtime in some of the wells, I also think that there
9 are some wells that were omitted that -- that, you
10 know, make -- kind of, I guess, close the gap between
11 MRC and -- and Franklin Mountain as it's shown here.

12 Q And were you -- earlier, I think you said in
13 your testimony, that some of your concerns with these
14 slides are that it's more complicated than what has
15 been presented?

16 A Yeah. Yeah. So I can expand upon that too.
17 You know, one -- one of the things that, you know,
18 we -- we've been doing at -- at Franklin Mountain
19 Energy is trying to develop the -- and kind of
20 delineate our position.

21 That was the bulk of 2022, 2023, was to try
22 and understand the major drivers, the major geologic
23 boundaries across our position, and then kind of use
24 those learnings in order to assess where we infill and
25 kind of go full development because, you know, the

1 full development makes more -- is a -- is a better
2 approach. You know, that's where we want to get to.

3 And so we used the data from our initial
4 kind of phase one and put that into our models. And
5 one of the things that we notice, especially with
6 certain horizons, that there are geologic complexities
7 that this part of the world just -- it's just part of
8 it because there are, you know, multiple geologic
9 provinces. We're a bit farther north and east than
10 where MRC is developing. And so things change
11 relatively quickly and you got to kind of adapt to it.

12 Q And in your -- when you were reviewing -- or
13 wells to include in the rebuttal slides or just in
14 reviewing these -- the MRC slides, when was the last
15 time that MRC developed a well in the Rope airstrip
16 area?

17 A I believe it was five years ago in 2019.

18 Q And is Franklin Mountain Energy out there
19 developing wells in this area right now?

20 A We've got a rig on our Tag unit right now.

21 Q And is it -- would you say that some of the
22 distinctions or the differences that are reflected in
23 Exhibit C-6 through C-17 are really a reflection of
24 the geology or the rock, not necessarily a reflection
25 on the operator?

1 A Definitely, yeah. The -- the rock and the
2 geologic changes definitely play a -- a large role in
3 that.

4 Q Now, one thing I -- you didn't prepare a
5 Second Bone Spring geology study, did you?

6 A No, I did not.

7 Q And why is that?

8 A We didn't propose the Second Bone in our
9 initial proposals.

10 Q And do you plan to drill Second Bone Spring
11 wells?

12 A Yeah. So we do -- and we've -- we spent a
13 lot of time this past summer in particular just going
14 through all the data from both our own wells. So
15 we've drilled two -- actually, that -- I think that --
16 scratch that.

17 I think that's three Second Bone Spring
18 wells, the -- across our position we've taken those
19 data, data from our offset operators, and then
20 geologic data from our mapping and our seismic and
21 tried to make a, I guess, a careful assessment of how
22 many landing zones and how many wells. So the kind of
23 spacing that we can put in -- in our wells and -- and
24 density of wells since it's a rather thick interval.

25 We wanted to kind of approach that with

1 caution. We know that in some of our acreage we do
2 have some existing wells. So we're again trying to
3 kind of be cognizant of -- of the production that's
4 already there. And then I mentioned our Tag unit.
5 We're actively drilling in upper and a lower zone
6 in -- in the Second Bone Spring in Tag. We -- we're
7 on well 2 of 2 in the Second Bone Spring, currently
8 drilling the upper zone.

9 Q Great. Thank you for that. And I would --
10 I'm going to go ahead and share my screen again and
11 show the rebuttal slides, and we can walk through
12 those quickly.

13 A Okay.

14 Q So turning first to Rebuttal Slide 5, do you
15 see that on the screen?

16 A Yes, I do.

17 Q Did you prepare this slide?

18 A I did.

19 Q And what was the impetus for you preparing
20 this slide?

21 A I feel in some of the testimony provided by
22 us -- MRC that there was kind of a question of us as
23 an operator and drilling out of zone and found a very
24 real example close by in airstrip from their last
25 wells that they drilled in the area where they're also

1 out of zone.

2 Q And then this -- the next slide is Rebuttal
3 6. And this is a rebuttal exhibit to MRC Exhibits C-8
4 and C-9?

5 A Yes.

6 Q And what is the takeaway from this slide?

7 A The well list presented by MRC curiously
8 left out the Gold 301, which is a very strong well,
9 and they're also partners in that well.

10 Q I noticed on here you also put a bullet that
11 says the Satellite -- about the Satellite wells. Is
12 that something you wanted to talk about?

13 A Yeah. So in the last year, and actually
14 more recently, we've just brought on our Satellite 300
15 series wells. So there's four -- 300 First Bone
16 Spring wells, I should say. They're flowing back
17 currently and exceeding our expectations.

18 Q Then turning to Rebuttal Slide 7, this is a
19 rebuttal slide that you prepared to rebut Exhibit C-10
20 and C 11; right?

21 A Yeah.

22 Q And it's about the Second Bone Spring sand.
23 Is that what SB SG stands for?

24 A Yes. Second Bone Spring.

25 Q And I know we've talked a lot about the

1 Second Bone Spring and FME 3's plans for the Second
2 Bone Spring, but what else did you want to say about
3 this slide?

4 A Again, there's -- there's two wells that
5 we're -- we're missing, the MRC wells that were not
6 included and also included where the location of Tag
7 State is. So that's again, where our -- we're
8 currently drilling.

9 Q And why did you think it was important to
10 identify the two MRC wells that were not included in
11 the MRC Exhibit C-10 and C 11?

12 A Because it -- it would lower the average
13 for -- for MRC.

14 Q And then this FME Rebuttal 8, did you
15 prepare this slide?

16 A Yes, I did.

17 Q And can you briefly describe the purpose of
18 this slide?

19 A Yeah. We -- we kind of talked about it
20 previously, but it's showing the distance both in
21 structural TVD of the Cimarron and Mallon wells
22 included in the analysis, and then some wells that are
23 missing, including the Jim Rolfe well, we've got our
24 Satellite wells shown on there, and then there's also
25 some encouragement from the Sky Dweller well, which

1 Lario originally drilled -- or I'm sorry -- Givan
2 originally drilled and Lario is currently operating.

3 Q And just to make sure we're all following,
4 the red box here is the Rope development area?

5 A That's correct.

6 Q And then Cimarron and Mallon, the wells that
7 MRC used are down here?

8 A Yes.

9 Q Okay. And is this your notation, 600 feet
10 of structural relief?

11 A Yeah. And that's between Gold. It's even
12 further -- if you kind of go center to center on Rope.
13 So it's more like 800 feet if you go from Rope to kind
14 of the center of Mallon. So that's a little more
15 extreme.

16 Q And what's the implication of having 6 to
17 800 feet of difference in structural release?

18 A Should be higher reservoir pressure. And
19 then the basin changes slightly too as you move away
20 from the shelf and kind of into the more basinal
21 province. And you can kind of see that change on the
22 map on the right where there's, you know, kind of a
23 comparison between Gold and the Mallon where there's a
24 thicker Third Bone Spring reservoir as the -- as
25 the -- the kind of sand body develops further up the

1 basin.

2 Q And so you would expect Cimarron and Mallon
3 to produce at a higher rate than Third Bone Spring
4 sand wells in the Satellite airstrip gold area?

5 A Correct. It's in a very different geologic
6 province.

7 Q And then Rebuttal Exhibit 9 is a rebuttal
8 exhibit that you prepared in relation to the Gold 701H
9 State well?

10 A Yeah.

11 Q And is there anything that you would like to
12 highlight on this slide?

13 A Yeah. I -- I think, you know, it's --
14 looking -- the -- the interpretation at the bottom is
15 our interpretation and kind of a look at some of the
16 type wells in the area. The -- the big problem with
17 having high inclinations at the toe half of the
18 well -- interpreted, I guess. structural elevation at
19 the toe half of the well is it just doesn't really
20 match the -- the regional picture, both from seismic
21 and from structure.

22 And I pulled their structure map from MRC's
23 Exhibit Number B-4. I tried to kind of look at the --
24 the implied structural dip from that map. It's
25 difficult with the 200-foot contour interval on that,

1 but you know, just -- it looks like it changes about
2 400 feet in about 5,000 in about a mile, which if you
3 do the math on that, is a structural dip between about
4 4 and 5 degrees, meaning about a 94-to-95-degree dip.

5 And then their interpretation is 97, I
6 think, on average. And -- and upwards of 100 -- 100
7 plus degrees inclination on the structural -- or
8 structural grids, it doesn't match.

9 Q And then the last rebuttal exhibit is
10 Rebuttal Exhibit 10. And what is the takeaway from
11 this rebuttal exhibit that you'd like to leave with
12 the Division?

13 A Well, so the -- the Wolfcamp B or D -- so
14 we've kind of all lumped that into the B, but I mean,
15 I think we're speaking the same language between the
16 Treble Satellite -- the Treble 801, the Satellite 804,
17 Gold 801, and Pickard. I think that's the 2H. In
18 terms of where we're generally targeting, so our
19 Treble and our Gold wells are a little bit shallower
20 than the Pickard well in terms of where they were
21 landed.

22 In the Satellite 804, we've landed, I'd say,
23 more equivalent to the Pickard in the Wolfcamp D or
24 the -- whatever you want to call it. And we've done
25 that in order to kind of improve upon those results

1 that we've got from our initial Treble and Gold 800
2 series wells. There's also a pretty strong east-west
3 change in the -- both structure and the -- the
4 thickness of the -- this whole -- this entire package.

5 So wells in the west potentially should be
6 better than wells in the east just based on some of
7 those -- those factors, you know, and there's a
8 comparison with a well that was drilled 10 years ago
9 and that, you know, it -- it is definitely one of the
10 westernmost wells.

11 And I've also included a press release in
12 here from October of 2014 when MRC was pretty excited
13 about the -- the -- this interval and I guess the, you
14 know, they haven't been back here in 10 years or so.
15 So I mean, we're out here kind of testing this zone
16 and now -- now, they're interested in it. So --

17 Q Thank you.

18 A Yeah.

19 MS. BENNETT: Those are all the direct
20 questions I have. Thank you.

21 THE HEARING EXAMINER: Mr. Feldewert,
22 before you begin your cross-examination, let's take a
23 five-minute break. It's 11:20. Let's -- I'm sorry.
24 It's 2:30, let's come back at 2:36. Thank you.

25 (Off the record.)

1 THE HEARING EXAMINER: We're back on
2 the record. It is 2:37 p.m.

3 Mr. Kessel, are you ready?

4 MR. KESSEL: I'm ready.

5 THE HEARING EXAMINER: Okay. Mr.
6 Feldewert?

7 MR. FELDEWERT: I'm going to share --
8 let me get to the right -- give me one minute. There
9 we go.

10 CROSS-EXAMINATION

11 BY MR. FELDEWERT:

12 Q So Mr. Kessel, I'm going to try to work kind
13 of backwards here. You were talking about this
14 Rebuttal Exhibit 7?

15 A Yeah.

16 Q Okay. And if I understand it, one of your
17 concerns was that MRC had omitted like the Hibiscus
18 well and the Conine well. It's in that fourth bullet
19 point?

20 A Yes.

21 Q And then you did an analysis of those wells
22 in the bottom portion?

23 A Yes.

24 Q Okay. And you said that that would've
25 lowered MRC's average to 84/32 barrels?

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1 A Correct.

2 Q Okay. And I think you mentioned that that
3 closed the gap, so to speak?

4 A Yes.

5 Q Is that right? But if I go to MRC Exhibit
6 C-10, which you were rebutting, you would close the
7 gap -- if I'm looking the left-hand side, MRC
8 resources, you said it would close the gap -- it would
9 be above between 8,000 and 9,000?

10 A Yes.

11 Q So we'd still have a gap?

12 A We'd still have a gap.

13 Q Okay. Then if I go to exhibit -- give me a
14 minute. Rebuttal Exhibit 8. And if I understand your
15 Rebuttal Exhibit 8, one of your concerns was a couple
16 here that the -- we included the Mallon and the
17 Cimarron wells?

18 A Yes.

19 Q Okay. And they omitted the Jim Rolfe well?

20 A Yes.

21 Q So then you did an analysis, right, to
22 follow up on that?

23 A Yes.

24 Q On the next page; is that right?

25 A That's correct.

1 Q Okay. And if they did -- if they corrected
2 that as you did here, you said it would -- there would
3 be 12,478?

4 A That's what it says.

5 Q And you see your arrow going down. So
6 roughly about the bottom of your arrow is where it
7 would be?

8 A Yeah.

9 Q So there would still be a gap?

10 A Well, and our previous witness testified
11 that the down -- with the downtime, we would even --
12 get that gap even closer.

13 Q But we still have a gap?

14 A Potentially.

15 Q Okay. You all didn't do any kind of an
16 analysis where you excluded the wells that you thought
17 should be included or included the wells you thought
18 should be included or taken into account the shut-in
19 days?

20 MS. BENNETT: Objection. Compound
21 question.

22 MR. FELDEWERT: I'm trying to move
23 things along.

24 THE HEARING EXAMINER: I have to
25 sustain that, but easily cured.

1 BY MR. FELDEWERT:

2 Q Okay. You didn't do an analysis that took
3 into account the faults that you said MRC has with
4 their analysis?

5 A We used their data that was presented.

6 Q Okay. But you didn't present any kind of a
7 rebuttal analysis showing what the gaps that still
8 remains?

9 A We have not.

10 Q Okay. Then I want to go to your Rebuttal
11 Exhibit 9. I'm hoping you can help me out here.

12 A I'll try.

13 Q Now, you mentioned here that you employ
14 internal geosteering experts?

15 A Yes.

16 Q I'm at the top bullet point. Consultants in
17 geo steering and geophysics.

18 A Correct.

19 Q 3D seismic and careful geologic
20 interpretation to ensure two 24/7 operations on active
21 rigs?

22 A Yep.

23 Q How long have you been doing that?

24 A Me personally?

25 Q How long has the company been doing that?

1 A We've been a company since 2019.

2 Q So what you had described here in the first
3 bullet point you're saying has been in place since
4 2019?

5 A I should correct that. We started drilling
6 in 2020, so the last four years.

7 Q So in 2020?

8 A Yep.

9 Q Okay. So you've had four years of this,
10 what you described here in the first bullet point in
11 the input of various factors over that four-year
12 period of time to help improve your drilling?

13 A We have, and we should also maybe clarify
14 that this acreage was closed on by Franklin Mountain 3
15 in 2022.

16 Q I understand.

17 A But yes. Yes.

18 Q That's not my question.

19 A So in general, we -- we do employ that kind
20 of model in all of our acreage.

21 Q Okay. In all of your acreage. And so you
22 had this information available to you when you drilled
23 this 701H in September of last year; right?

24 A We had the -- all the well logs that were
25 available. Yes.

1 Q And you had the geosteering experts, the
2 consultants, and everything else you show there in the
3 first bullet point?

4 A The -- there is a little bit of nuance in
5 the 3D seismic is that the survey ended at Section 23
6 in the north. We expanded that after drilling this
7 well.

8 Q Other than that, you had all the other
9 information?

10 A Yes.

11 Q Okay. Help me understand this. Is this the
12 -- you created this graph here at the bottom of
13 Rebuttal Exhibit 9 -- B-8?

14 A Yes.

15 Q What is the -- come on now. What's this --
16 you see this -- these green lines here, and at the
17 end it says WCA_TGT. What does that stand for?

18 A Yeah. That was our original target.

19 Q That was your original target?

20 A Correct.

21 Q So when you set off the drill as well with
22 all these things that you had there in the first
23 bullet point, you were targeting the Wolfcamp A?

24 A Yes.

25 Q Okay. And the black line represents what?

1 A Our well path.

2 Q Your well path. So it looks like your well
3 path didn't hit your target until towards the end; is
4 that right?

5 A Yes.

6 Q Okay. This is in the Upper Wolfcamp?

7 A Yes, that's correct.

8 Q And difficult area to drill?

9 A Yes, sir.

10 Q Okay. Area what -- I think you said you
11 guys were studying trying to get better at it?

12 A I did say that.

13 Q Okay. All right. And this drilling in this
14 Upper Wolfcamp B is something you want to try again on
15 MRC's acreage in Section 30?

16 A Yes. We are proposing Upper Wolfcamp.

17 Q Okay. All right. Now, one of the things
18 you testified to in your -- or let me ask you this. I
19 want to go to your exhibits. All right. One of the
20 things you testified to as a geologist; right?

21 And this is your statement, paragraph 15,
22 and I'm looking at C. "I conclude from the Bone
23 Spring geology study that" -- and I'm at C -- it says
24 "Each quarter section in the proposed units will
25 contribute more or less equally to production." You

1 see that?

2 A I do.

3 Q Is that your statement?

4 A It is.

5 Q Okay. Now, when I go to -- this is your
6 structure map that you created for the Bone Spring, at
7 least the First Bone Spring?

8 A Yes, it is.

9 Q Okay. Why did you only use well logs in --
10 that cut through Section 30?

11 A That's typically what we do to show the
12 landing point of the reservoir of the wells.

13 Q But you don't have any -- you didn't show
14 any logs from -- to show the reservoir from -- or the
15 structure from 30 into 19 into 18?

16 A You're right. I did not.

17 Q Okay. Didn't you have data points?

18 A Yes, we do.

19 Q But you just chose to use logs from the
20 southernmost end of your proposed spacing unit?

21 A Again, we look at that from the perspective
22 of where we're landing in the zones -- or landing our
23 wells. Excuse me.

24 Q Okay. So you don't have a cross-section
25 that covers your entire proposed spacing unit?

1 A We haven't included it, but I do have one.
2 But it's not part of our exhibits.

3 Q You chose not to include that one?

4 A I did not include it.

5 Q Okay. All right. Now, the one thing you
6 did provide is some Isopach maps; right?

7 A Yeah.

8 Q Okay. If I go to the Exhibit C-4C, we see
9 that same line of cross-section, but now you've
10 provided an Isopach?

11 A For the Wolfcamp. Yep.

12 Q For the Wolfcamp. Now, if I understand
13 this, the red colors would be a certain thickness and
14 then the green would be less thickness?

15 A Yeah.

16 Q And then the blue would be even less
17 thickness than the red?

18 A You're reading that correctly.

19 Q All right. Good. And would you agree with
20 me then that the blue quality reservoir or the blue
21 areas would have less reservoir quality than the red?

22 A I don't think that's an accurate statement.
23 It's just thinner.

24 Q What's better?

25 A It's thinner.

1 Q It's thinner?

2 A Yeah.

3 Q Doesn't the quality of the reservoir depend
4 upon thickness?

5 A Not always.

6 Q Does it here?

7 A No.

8 Q No. You don't think the thickness of the
9 reservoir has anything to do with the ability of the
10 quarter sections to contribute to the production from
11 the wellbore over time?

12 A I don't believe that.

13 Q Okay. Then if I go to -- well, one thing we
14 can agree upon though is that the thickness here goes
15 from -- if I'm reading this correct -- and let me --
16 correct me if I'm wrong -- about 450 feet in the
17 southern part of Section 30 and extend that down into
18 31, down to about 75 feet when you get into the
19 northeast quarter of Section 19. Is that right?

20 A Yeah. It looks like you're maybe about 500
21 feet at the -- at the base of the unit or at the south
22 half of the unit.

23 Q So if I'm down here in section -- south half
24 of 30 and into Section 31, you said that's about 500?

25 A Yeah. That's correct.

1 Q Okay. So then if you just look at Section
2 30 and then your proposed spacing unit, it'd be --
3 start with about 500 in Section 30 down to about, am I
4 correct, 75 feet Section 19?

5 A That's what the map says.

6 Q Okay. Now, do we -- if I go to the Bone
7 Spring, just to be fair -- this is a similar Isopach
8 map for the First Bone Spring?

9 A Yep.

10 Q Okay. And the same colors mean basically
11 the same thing?

12 A Yeah. Cooler colors are thinner.

13 Q Okay. It appears to me when you look at
14 this that the thickness in Sections 30 and 31 are
15 generally uniform; right?

16 A Yes.

17 Q And then we see a change as you move into
18 Section 19?

19 A It gets thicker.

20 Q I'm sorry?

21 A It gets -- yes. It changes and it gets
22 thicker in -- in Section -- I'm sorry. I was looking
23 at 18. In Section 19, it gets a little thinner and
24 then thickens in 19.

25 Q I think you testified that the gross

1 reservoir thins as it moves into Section 19?

2 A Yes.

3 Q Okay. Now, most of Franklin Mountain's
4 interest is in Section 19?

5 A I believe so.

6 Q And then MRC is the entity that has a
7 majority of the working interest in Section 30?

8 A Yes.

9 Q Okay. I mean, maybe you don't agree, but
10 can you understand why MRC and Axis Energy would have
11 some concerns about pairing their acreage in Section
12 30 and 31 with acreage in Section 19 for purposes of
13 drilling wells?

14 A If we were only drilling two miles, but
15 we're proposing three miles where it gets thicker in
16 Section 18.

17 Q Okay.

18 A If the thickness is the only consideration

19 Q And that's not the case when we get to the
20 Wolfcamp; right?

21 A That's correct.

22 MR. FELDEWERT: Okay. All right.
23 That's all the questions I have.

24 THE HEARING EXAMINER: Thank you.

25 Mr. McClure?

1 MR. MCCLURE: Mr. Hearing Examiner, I
2 have a real fast question of Mr. Ben Kessel.

3 If I can draw your attention to page
4 204 out of 285 of the Franklin exhibits?

5 MR. KESSEL: Okay.

6 MR. MCCLURE: Of the wells that we used
7 in this cross-section, have you provided us with API
8 numbers for those wells anywhere in the exhibit packet
9 here?

10 MR. KESSEL: I have not, but I'm happy
11 to.

12 MR. MCCLURE: Okay. Thank you. Yeah.
13 We'll make that request. I'll just ask if it was
14 anywhere already, but if not, we will want to grab
15 those from you.

16 No other questions for this witness.
17 Thank you.

18 THE HEARING EXAMINER: Thank you.

19 Ms. Bennett, do you have any redirect?

20 MS. BENNETT: One or two quick
21 questions.

22 THE HEARING EXAMINER: Go ahead.

23 MR. FELDEWERT: You want me to drive,
24 or you want to drive?

25 MS. BENNETT: I'd like to, if possible.

1 MR. FELDEWERT: Okay.

2 REDIRECT EXAMINATION

3 BY MS. BENNETT:

4 Q Mr. Kessel, do you recall a question from
5 MRC's counsel about how Franklin Mountain Energy is
6 proposing Upper Wolfcamp wells on MRC's acreage at
7 their expense?

8 A Yes.

9 Q Didn't -- when I look at this Exhibit B-6
10 that Matador prepared, is this Wolfcamp B well here in
11 this fourth domino an Upper Wolfcamp well?

12 A By our definition, yes.

13 Q And so MRC itself has drilled an Upper
14 Wolfcamp well in this area?

15 A Yes, they have.

16 Q A moment ago, you were asked a series of
17 questions about your Isopachs from the Bone Spring and
18 Wolfcamp study that you prepared. Do you recall that?

19 A I do.

20 Q And Mr. Feldewert was asking you questions
21 about the thickness in Sections 18 and 19. Is that
22 fair?

23 A That's the way I remember it.

24 Q Do you know if MRC was proposing wells in
25 Section 18 and 19?

1 A Yes. And originally, the -- the shopner
2 wells that they've since removed.

3 Q But they originally did propose wells in
4 those thinner zones?

5 A Yes.

6 MS. BENNETT: Those are all the
7 questions I have. Thank you.

8 MR. FELDEWERT: Nothing further.

9 THE HEARING EXAMINER: Okay. This
10 witness may be excused.

11 Does that conclude your case in chief?

12 MS. BENNETT: Yes, it does.

13 THE HEARING EXAMINER: Okay. Thank
14 you.

15 Mr. Feldewert?

16 MR. FELDEWERT: I think -- yeah. We're
17 prepared to call our witnesses. I'd like to take a
18 little bit out of order. I mean, maybe we can get
19 done tonight, but I'd like to at least call the
20 witness first that I know cannot be here next week.

21 THE HEARING EXAMINER: Perfect.

22 MR. FELDEWERT: Okay.

23 MS. BENNETT: Mr. Examiner, could we
24 just briefly off the record, perhaps, discuss the
25 schedule for the next couple of days?

1 MR. FELDEWERT: Okay. But why would it
2 be off the record?

3 MS. BENNETT: Just to save the record.

4 THE HEARING EXAMINER: No. It's okay.

5 MS. BENNETT: Okay.

6 THE HEARING EXAMINER: We'll discuss it
7 on the record.

8 MS. BENNETT: So we -- the Franklin
9 Mountain Energy witnesses are available tomorrow, and
10 we did plan on if we had to go through into tomorrow,
11 that we would be available for after the general
12 docket, and that would certainly be Franklin Mountain
13 Energy's preference.

14 I understand the Division has -- was in
15 an unfortunate circumstance because of the snowstorm,
16 but also, I think tomorrow's docket is primarily the
17 status conferences plus a handful of affidavit cases.
18 And so it would be Franklin Mountain Energy's strong
19 preference to -- if we have to continue, which I'm
20 hopeful we don't -- to continue tomorrow after the
21 regular docket.

22 THE HEARING EXAMINER: Okay. Thank you
23 Mr. Feldewert?

24 MR. FELDEWERT: My concern is I'm
25 supposed to fly to a wedding tomorrow. And if we go

1 into the afternoon tomorrow, I'm not going to be able
2 to make a flight to the East Coast to get to a
3 wedding.

4 THE HEARING EXAMINER: Right. And
5 thank you.

6 And my concern, Ms. Bennett, is that we
7 have 40 something status conferences tomorrow, but
8 then we also have 25 or 30 hearing by affidavit, which
9 the technical reviewer -- and I don't know if it's Mr.
10 McClure.

11 Mr. McClure, are you the technical
12 reviewer tomorrow?

13 MR. MCCLURE: Yes, I am, Mr. Hearing
14 Examiner, with the exception of this UIC case, also, I
15 believe.

16 THE HEARING EXAMINER: Sounds good.
17 Thank you, Mr. McClure.

18 So the earliest we could pick up this
19 would be tomorrow afternoon, and I'm not sure that I
20 have the capacity to handle tomorrow. So I appreciate
21 your strong preference. I didn't want to rush you
22 through your case. I believe that it's important to
23 let each attorney handle their own case in chief
24 without prodding from me. But there are ramifications
25 for when hearings go on. So that being the case, did

1 you want to discuss a date next week?

2 MS. BENNETT: As early as possible.

3 MR. FELDEWERT: My only suggestion is I
4 don't know what your schedule is and whether you'd be
5 willing -- we can go later this evening if that helps.

6 THE HEARING EXAMINER: Thank you.

7 MR. FELDEWERT: Maybe we see where
8 we're at about five o'clock and kind of go from there.

9 THE HEARING EXAMINER: Yeah. We won't
10 be here at five o'clock. Okay? This will be over by
11 five o'clock.

12 MR. FELDEWERT: Oh, okay. All right.

13 THE HEARING EXAMINER: So --

14 MR. FELDEWERT: Well, then that answers
15 that question.

16 THE HEARING EXAMINER: Right. So yeah.
17 So anyway, is there a day next week that you'd prefer?

18 MR. FELDEWERT: Myself?

19 THE HEARING EXAMINER: Yes. And your
20 witnesses, obviously.

21 MR. FELDEWERT: I'm sorry. Yeah.

22 THE HEARING EXAMINER: And they don't
23 have to be here. You don't need to be here in person.
24 I appreciate that you are here. Thank you for being
25 here and taking your time to travel here, all of you.

1 But you can be virtual.

2 MR. FELDEWERT: We -- I could do Monday
3 or Tuesday.

4 THE HEARING EXAMINER: Okay. Tuesday
5 works for me. Monday does not.

6 Ms. Bennett, does Tuesday work for you?

7 MS. BENNETT: Tuesday works for me.

8 THE HEARING EXAMINER: Okay. And your
9 witnesses?

10 MR. FELDEWERT: Okay. Yeah. Other
11 than the one witness I'm going to put on, everybody
12 else is okay.

13 THE HEARING EXAMINER: You may have
14 time to put on two witnesses.

15 MR. FELDEWERT: I agree. I agree.

16 THE HEARING EXAMINER: So depends on
17 how things go.

18 MR. FELDEWERT: Yeah.

19 THE HEARING EXAMINER: Or maybe you'll
20 have all your witnesses. I don't know. But it is
21 almost three o'clock now.

22 Okay. Who do you want to call first?

23 MR. FELDEWERT: We're going to call Mr.
24 Tanner Schulz.

25 THE HEARING EXAMINER: Mr. Schulz. And

1 if we do start next week on Tuesday, it will be at
2 nine o'clock, just so everyone knows.

3 MR. FELDEWERT: Okay.

4 THE HEARING EXAMINER: Okay? And
5 Madai, will we have to issue a new Teams link for next
6 week? Or can we use the same?

7 MS. CORRAL: I would have to check with
8 Sheila.

9 THE HEARING EXAMINER: Okay.

10 MS. CORRAL: -- Hearing Examiner. But
11 I will let the parties know.

12 THE HEARING EXAMINER: Will you let me
13 know?

14 MS. CORRAL: Yes, I will.

15 THE HEARING EXAMINER: Thank you.

16 Mr. Schulz, you're under oath and
17 please speak clearly into the microphone. Thank you.

18 MR. SCHULZ: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. FELDEWERT:

21 Q Would you please state your name, identify
22 by whom you're employed, and in what capacity?

23 A Yes. My name is Tanner Schulz, employed by
24 Matador Resources. My title is Vice President of
25 Reservoir Engineering and the Reserves Team.

1 Q And you've been qualified as an expert in
2 petroleum engineering?

3 A That's correct.

4 Q Okay. You are the one that submitted the
5 statement that's been marked as MRC Exhibit C and then
6 the related exhibits. Is that right?

7 A Yes, that's correct.

8 Q Okay. Is there anything you need to change
9 with respect to what's been submitted?

10 A No, sir.

11 Q Okay. You did an analysis about the Second
12 Bone Spring that's not initially being developed by
13 Franklin Mountain in Section 30; right?

14 A Yes.

15 Q Okay. Now, MRC intends to develop the
16 Second Bone Spring with two-mile wells?

17 A I'm sorry. Can you repeat that?

18 Q MRC intends to develop the Second Bone
19 Spring with two-mile wells?

20 A Yes, that's correct.

21 Q Okay. Why -- you raised some concerns about
22 Franklin Mountain's ability or desire to develop the
23 Second Bone Spring. You heard that they might be
24 wanting to develop what they call the upper interval
25 of the Second Bone Spring. Do you have some concerns

1 about this? Well, first off, have they ever mentioned
2 this to the MRC?

3 A Not to my knowledge.

4 Q Okay. Despite all the time we've had to get
5 ready for this hearing?

6 A That's correct.

7 Q Okay. Do you have concerns with their
8 proposal to do three-mile wells in the Upper Bone
9 Spring given what's existing -- given the existing
10 development in this area?

11 A Yes, I do.

12 Q Would you just briefly explain those?

13 A Yes. Do you mind pulling the exhibit up on
14 the screen?

15 Q So -- oh, shoot. I'm sorry. I thought I
16 was sharing this. Is this B-6?

17 A Yep.

18 Q Okay. Can you see all right? Just briefly,
19 what's your concerns?

20 A Yeah. So Section 19 has certainly been
21 developed in the Second Bone Spring -- the Lower
22 Second Bone Spring. I think both companies agree on
23 that. I think we probably disagree and could have a
24 healthy debate on whether or not the upper part of the
25 Second Bone Spring is a separate and discreet

1 reservoir and whether or not that would be kind of an
2 overlapping drainage area just given the height of
3 separation between those two zones.

4 Q Okay. And as a result, are you concerned
5 about drainage?

6 A Yes.

7 Q Communication between the wells?

8 A That's correct.

9 Q And whether the wells would contribute as
10 Mr. Kissel said more or less equally from Section 30
11 to Section 18 given what's already been developed in
12 Section 19?

13 A That's correct. Specifically with Section
14 19.

15 Q Okay. All right. Now, Franklin Mountain
16 did raise surprising, I guess, some concerns about
17 stacking the Second Bone Spring and the Third Bone
18 Spring wells on top of each, you know, in the same
19 line. Are you aware of that?

20 A Yes.

21 Q They suggest that it's going to present a
22 risk that less reservoir will be accessed. Did
23 Franklin Mountain raise those issues to MRC any time
24 before this hearing?

25 A Not to my knowledge.

1 Q Okay. What's your expert opinion about
2 that? First off, did they to provide any data to
3 support that concern?

4 A No, sir.

5 Q Just opinions?

6 A Just opinions.

7 Q All right. What's your expert opinion about
8 that concern?

9 A I think generally, the industry's kind of
10 adopted to where you do have that risk of overlapping
11 depletion with stacked laterals. That wineracking --
12 a wineracking pattern is kind of the best practice.
13 MRC obviously operates the wells in Section 31 that
14 we're talking about. It's the Airstrip 124 and the
15 Airstrip 134.

16 Both those wells were drilled by MRC. So
17 whenever we look at that, we have the daily production
18 rates on them. You know, if you look at the EURs over
19 time, neither one of those wells is an outlier in the
20 EUR distributions for this area, as well as we don't
21 see, you know, minimal or no kind of interference in
22 daily production rates, generally speaking, with
23 between those two wells. So there's plenty of
24 separation.

25 Q Okay. And so fortunate thing is you had

1 actual data to look at to address this concern?

2 A That's correct.

3 Q Okay. And your conclusion is it's not a
4 concern here?

5 A Minimal concern for us.

6 Q Okay. I want to -- I don't need to hit
7 that. There's been a lot of talk about the Upper
8 Wolfcamp, right --

9 A Correct.

10 Q -- today and were -- in their desire to
11 pursue that, I guess, as initial wells in Section 30,
12 did you do an economic analysis of the 701H that's
13 been discussed here today where they had drilling
14 problems?

15 A Yes, I did.

16 Q Is that in Exhibit C -- MRCC 4?

17 A Yes.

18 Q Okay. And at a high -- basically, what are
19 you showing here about that particular well?

20 A C-4. So I think -- can we flip over to C-5,
21 I think it is?

22 Q Oh, maybe I have the wrong one here. Yeah.

23 A Yes.

24 Q Okay. Thank you.

25 A Yes. Yep. So --

1 Q Now, MRC was a participant in this well?

2 A That's correct.

3 Q Okay. Go ahead.

4 A So we -- we participated in this -- well,
5 Franklin Mountain drilled it. It is a Upper Wolfcamp
6 well. The AFE for this well was a little over \$11
7 million from our accounting data, what we showed the
8 actual build CapEx -- the -- what Franklin Mountain
9 spent to develop this well was about 13 million and a
10 half dollars. So about a \$2 million over expenditure
11 relative to the AFE.

12 This well was drilled out of zone, which I
13 think we -- we kind of all agree with the testimony
14 that we heard earlier. Mr. Parker has some testimony
15 on that later that he'll talk about. But as this well
16 has been drilled out of zone, Franklin Mountain's kind
17 of tapped into, you know, additional water, if you
18 will, that's kind of driving the production in this
19 well.

20 Not exactly sure, you know, what they've
21 done in the meantime to try to remediate anything,
22 if -- if anything, but the well certainly has a water-
23 oil ratio greater than 100, which means for every
24 barrel of oil, that's producing more than 100 barrels
25 of water.

1 And so it's -- we don't show this well to be
2 economic to produce, nor do we show the reserves or
3 the, you know, the EUR if this well was produced on
4 economically for its life to, you know, produce any
5 more than 20,000 barrels of oil.

6 Q So in the Upper Wolfcamp effort that
7 Franklin Mountain undertook care where you
8 participated, the AFE costs were higher than they
9 anticipated?

10 A Yes, that's correct.

11 Q And you don't think the well's going to meet
12 any kind of rate of return?

13 A That's correct. In fact, I think, you know,
14 our numbers show we lose about \$6 million on this
15 well.

16 Q Okay. Now, they -- in addition to that, you
17 did your analysis beginning on C-6 where you tried to
18 just do a quick comparison of the results from both
19 companies at various zones; right?

20 A That's correct.

21 Q Okay. And why did you choose this area of
22 review?

23 A Just trying to zoom in kind of on this
24 general area, really. We chose the four township
25 ranges that are around the airstrip or the Rope

1 development unit. So it'd be township 18 south. 34
2 east; 18 south, 35 east; 19 south, 34 east; and 19
3 south, 35 east. So it'd be those four townships that
4 we -- we kind of just zoomed in on to show both
5 Matador and Franklin Mountain's developments in the
6 area.

7 Q Okay. And the results of your analysis are
8 reflected on here?

9 A That's correct.

10 Q All right. So let's go to their rebuttal
11 exhibits that they filed, some of which I've addressed
12 with their witness. But let's take a look at -- I
13 think the first one is the Rebuttal Exhibit 6. You've
14 seen this; right?

15 A Yes.

16 Q Okay. Can you explain why MRC did not
17 include the Gold State 301H?

18 A Yes. So our analysis, and we based it off
19 of publicly available data, which we specifically
20 pulled down from Enverus. At the time of the
21 analysis, which would've been, you know, a couple
22 weeks ago, for whatever reason, the Gold State 301 did
23 not show six months of production on it.

24 I believe it was turned in line with some of
25 the other Gold State wells that did show six months of

1 production on it. So can't really speak to the, you
2 know, the intricacies of Enverus and how they pull
3 data and how they get shown. But because we were just
4 using that data set, filtering it to any wells that
5 had six months or more of production data on it, the
6 Gold State 301 inadvertently got omitted.

7 Q Okay. And you were here for the testimony
8 that even if you now include it, your performance is
9 still better?

10 A That's correct.

11 Q Okay. If I go to Rebuttal Exhibit 7, did
12 you -- can you explain why you omitted the Hibiscus
13 and Conine?

14 A So the Conine is a -- that well is
15 certainly -- it's out of our area of review with the
16 four township ranges that we selected. That well is
17 in the township just south of -- it was 1935, and it's
18 in that first Section, which kind of shows up on our
19 map, but we did not include that section, actually, in
20 our area of review.

21 And then for the Hibiscus -- and this will
22 go again for the -- the Jim Rolfe well that they
23 mentioned as well. At the time, my team had a
24 filtering on the data, which was showing data of first
25 production post 2016. And so I didn't fully

1 understand that until yesterday when I saw the
2 rebuttal exhibits. So had we -- to do it over again
3 and if the commission -- the Division would like us to
4 do that, we certainly are willing to do that. But we
5 would've included both of those wells.

6 Q Of course, they kind of did it for you;
7 right?

8 A Yes, sir.

9 Q To some extent. And they gave the number
10 that would result, and it was still better than
11 Franklin Mountain?

12 A That's correct.

13 Q Okay. Same thing about then exhibit -- I
14 think you touched on it -- Rebuttal Exhibit 8. They
15 seem to chastise you for not having the Jim Rolfe
16 wells and then including these other two wells.
17 Again, even if you include that or exclude and include
18 the information, you still, based on your analysis,
19 just what you had would show a better performance;
20 right?

21 A That's correct.

22 MR. FELDEWERT: Okay. That's all I
23 have. Thank you.

24 THE HEARING EXAMINER: Mr. McClure?

25 MR. FELDEWERT: Well --

1 THE HEARING EXAMINER: Oh, excuse me.
2 Ms. Bennett?

3 MS. BENNETT: Thank you.

4 THE HEARING EXAMINER: Thank you.

5 MR. FELDEWERT: You want to drive?

6 MS. BENNETT: Yeah. That'd be great.

7 CROSS-EXAMINATION

8 BY MS. BENNETT:

9 Q Mr. Schulz, thank you for being here.

10 A Yes, ma'am.

11 Q Nice to see you in person. How long have
12 you worked at MRC?

13 A I was hired with MRC in August of 2017.

14 Q And how long have you worked on the airstrip
15 Rope project, I'll call it?

16 A Can you rephrase that?

17 Q Sure. How long have you been an active
18 member of a team that's been evaluating the airstrip
19 area for development for MRC?

20 A Not directly on that team.

21 Q So when did you start reviewing materials
22 for this hearing?

23 A Specifically for this hearing, probably -- I
24 think I was made aware of it in August -- late July,
25 August, somewhere in there, if I'm not mistaken.

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1 Maybe late August.

2 Q But you weren't on the team that was
3 evaluating this prospect before August?

4 A I -- I am trying to figure out how to say
5 that. I -- I kind of help out with a lot of our
6 reservoir engineers; right? So I kind of know what
7 they're doing. Generally, it's not my team, per se.
8 I have my own team, but I do mentor them. Right?

9 And so I am helping them look at acreage,
10 evaluating acreage, evaluating deals, things of that
11 nature. And so I do from time to time help them out.
12 Right? But specifically on proposals and how we're
13 going to -- or the interconnections. right, of
14 proposing wells and getting the development set up,
15 I'm usually a little more disconnected from that.

16 Q Who is the reservoir engineer that would've
17 been a little more connected to this?

18 A So there's two of them, right, that we have
19 in-house. Ryan Givan, who's -- he's -- he's not here
20 today, and then Brady Borak, who's with us today.

21 Q Great. Thank you. I wanted to look at your
22 Exhibit B-6, and I'll start sharing here in a
23 second -- well, this is actually your exhibit, and
24 it's C-1.

25 A Yes.

1 Q Earlier, Mr. Feldewert asked you about some
2 concerns you had about Franklin Mountain Energy's
3 ability to develop the Second Bone Spring?

4 A Yes.

5 Q Is that included in your direct testimony
6 anywhere?

7 A I think my testimony -- we can pull it up,
8 but I think my testimony just says that we're
9 concerned that they're not going to develop the Second
10 Bone Spring.

11 Q That's what I recall, that you didn't
12 testify in your testimony about concerns with their
13 proposed Second Bone Spring wells, or the phase two,
14 I'll call it?

15 A Yes. I wasn't aware of phase two.

16 Q So you didn't testify about that?

17 A I guess I'm confused.

18 Q I'm looking at your testimony.

19 A In my -- sorry -- in my affidavit -- no --

20 Q Oh, sorry. Yes. In your affidavit.

21 A -- I do not -- have anything in there. Yes.

22 Q Yeah. Thanks. In your affidavit, you
23 testify -- and this is in on page 201 of 279 in
24 paragraph 6 -- you testified that -- let me just get
25 there. With the exception of the Upper Wolfcamp --

1 inserting our new nomenclature there -- MRC's initial
2 development plans fully develop the remaining
3 undeveloped acreage in the overlapping Section 30. Do
4 you see that?

5 A Yes.

6 Q Okay. So then turning to your exhibit --
7 sorry -- C-1.

8 A Okay.

9 Q On this first domino, the First Bone Spring,
10 your current proposals do not propose to develop the
11 First Bone Spring at all, do they, in Section 31?

12 A In Section 31, that's correct.

13 Q So you are not -- be fully developing the
14 remaining undeveloped acreage with the exception of
15 the Wolfcamp B, are you, in the First Bone Spring?

16 A I think you could make that argument. I
17 think there's also an argument to be made that the two
18 wells -- the two First Bone wells in Section 31 have a
19 large drainage radius where they have, you know,
20 drained where there's depletion risk; right?

21 With the slots two and three, if we will, or
22 the -- the east half of the west half and the west
23 half of the east half, if I'm saying that correctly,
24 it's the middle of the undeveloped acreage in Section
25 31.

1 Q Would that same analysis apply to the Second
2 Bone Spring so that you wouldn't need those additional
3 sticks in the Second Bone Spring slot?

4 A I think that the first two slots, if we
5 could, so slot one being on the left or the Western
6 most slot slot two being adjacent to it on its right,
7 those I would feel comfortable with slot three.
8 There's certainly some depletion risk associated with
9 it.

10 Q And so earlier today Mr. Feldewert was
11 asking the Franklin Mountain Energy witnesses about
12 depletion from existing wells. Were you here for
13 that?

14 A Yes.

15 Q And so your Second Bone Spring development
16 is subject to that same concern, is it not?

17 A Yes, there's concern.

18 Q And then in the Third Bone Spring, which is
19 the third set of sticks, or I'm sorry, the third
20 domino, you are in your current proposal, you're only
21 proposing a single U-turn well in the Third Bone
22 Spring; is that right?

23 A That's correct.

24 Q Why is that?

25 A I think if we had to do it over again, we'd

1 probably go ahead and propose the -- the First Bone or
2 the -- excuse me -- the third looking at three sticks,
3 the easternmost slot, that additional one-mile Third
4 Bone well. I think that's something that our team is
5 debating about whether or not we want to go drill with
6 the depletion risk.

7 And so, you know, if it's a, you know, kind
8 of -- if I had to put my thumb on it where I'd say
9 let's drill the U-turn well where we feel comfortable
10 that there's probably minimal or less depletion risk
11 and let's observe that and see what that looks like
12 and then we would come back and drill the -- the one-
13 mile well, so we felt comfortable with it.

14 Q And so my takeaway from what you just said
15 is that there is some depletion risk in Section 30 and
16 31 well in Section 30 for the Third Bone Spring. Is
17 that an accurate assessment of your testimony?

18 A Yes.

19 Q And that there is some depletion risk in
20 Section 30 and 31?

21 A Yes.

22 Q So your development plan is also susceptible
23 to depletion risk?

24 A Yes.

25 Q And you just testified that in Section 30

1 that there is the opportunity upon further study to
2 potentially put a stick in the east half/east half; is
3 that right?

4 A I'm sorry, can you repeat that?

5 Q Sure.

6 A I'm trying to follow along.

7 Q Yeah, I know. So in the Third Bone Spring
8 domino set --

9 A Yep.

10 Q -- I think your testimony was that upon
11 further review, MRC is considering putting a one-mile
12 lateral in the east half/east half of Section 30?

13 A That's correct. We -- we looked at it as an
14 opportunity. Yeah.

15 Q But your current development plan that you
16 proposed is not proposing to develop that remaining
17 undeveloped acreage?

18 A The initial development plan did not include
19 it. That's right.

20 Q That's right. And you see there that
21 Franklin Mountain Energy's three-mile Wolf Bone Spring
22 -- excuse me -- three-mile Third Bone Spring well is
23 planning to capture those reserves?

24 A Yes, I do see that.

25 Q Then if I look at the fourth domino, the

1 Upper Wolfcamp domino --

2 A Yes.

3 Q -- do you agree that the well that is in
4 Section 31 is an Upper Wolfcamp well?

5 A Yes, from -- from our, you know, geology
6 team landing it and, you know, Matador drilling it.
7 Yes, I -- I do believe that.

8 Q And did you use that well in some of your
9 exhibits to compare and contrast production with
10 Franklin Mountain Energy's Upper Wolfcamp wells?

11 A Yes.

12 Q And so do you have faith in the production
13 from that well?

14 A I -- yeah. I would generally say so. Yes.

15 Q And you've already tested in Section 31 --
16 at least, you've already tested the Upper Wolfcamp?

17 A Yes.

18 Q And you're not proposing to develop the
19 Upper Wolfcamp at all now, even though you already
20 have a well there?

21 A That's correct.

22 Q Okay. When you were -- so you started at
23 Matador in 2017 you said?

24 A Yes, ma'am.

25 Q And that was after Matador had already

1 drilled the Upper Wolfcamp well?

2 A I believe so, yes.

3 Q Were you -- so you weren't involved at all
4 in the hearing that led to the creation of the Upper
5 Wolfcamp spacing unit, were you?

6 A No, I was not.

7 Q Have you looked back at any of the materials
8 from that hearing?

9 A No, I have not.

10 Q So you don't recall that that hearing --
11 that Upper Wolfcamp well of yours was contested?

12 A No, I was not -- frankly, not even aware of
13 these.

14 MS. BENNETT: And for the Division's
15 benefit, what I'm looking at is an order of the
16 commission in case number 15363, which is from the
17 commission files and relates to Matador's airstrip
18 development of the 201H well, and I'm looking at that
19 in paragraph 3.

20 BY MS. BENNETT:

21 Q And when I reviewed this in preparation for
22 the hearing today, and it was the -- your application
23 was opposed by Jalapeno, and Jalapeno testified that
24 one of the reasons it did not want to participate in
25 the well is that it would receive no benefit, and the

1 commission disagreed and said the drilling of the
2 proposed well will provide data to Matador regarding
3 the drilling of Wolfcamp wells in the general area of
4 the proposed well. Do you see that?

5 A Uh-huh.

6 Q So the idea of gathering data for the
7 Wolfcamp A or Upper Wolfcamp was already something
8 that Matador was -- or was an issue back in 2015,
9 2016.

10 A Okay.

11 Q But you haven't gone back in to develop any
12 wells in this area since 2019?

13 A That sounds right. Yes. That Northern --
14 Northern Lea area, yes.

15 Q So a moment ago, I think I heard you agree
16 that your exhibits that you submitted are inaccurate
17 in some respects in terms of --

18 A Regarding the -- the wells that were left
19 off. Yes, that's correct.

20 Q Yes. And let me see. Let me go back to
21 your exhibit on this exhibit. A moment ago or
22 probably several moments ago now, you mentioned that
23 you -- MRC is considering a one-mile lateral here in
24 Section 30 in the east half/east half of Section 30 in
25 the Third Bone Spring?

1 A Yes.

2 Q There's no impediment to MRC developing one-
3 mile laterals in this area, is there?

4 A Other than just the cost effectiveness of
5 it. It's a corporate kind of goal for us, if you
6 will, to be drilling two-mile laterals or longer
7 laterals to capture the efficiency gains.

8 Q When did that goal start being a goal of
9 MRC?

10 A I would say looking back on it, that
11 probably changed around the 2019, 2020 timeframe. I
12 think we -- we have an investor deck presentation
13 somewhere. It kind of shows the shift that the
14 company made sometime around, you know, that -- that
15 timeframe.

16 Q And so as early as 2019 or 2020, MRC could
17 have come back into this area and drilled two-mile
18 wells, say, in the Second Bone Spring from 30 to 31?

19 A Before 2019 --

20 Q Yeah.

21 A -- you said?

22 Q No. After 2019.

23 A After? Yes, we certainly could have.

24 Q And you didn't?

25 A In Section 31, no, we did not.

1 Q And the same thing is true in the First Bone
2 Spring. There's opportunity for MRC to have come back
3 in the past five years since the policy changed to
4 drill two-mile laterals in 30 and 31?

5 A Yes.

6 Q And the same is true for the Wolfcamp D?

7 A That's correct.

8 Q You testified that you didn't want to be
9 forced to choose to participate in FME 3's three-mile
10 wells. Do you remember that in your testimony?

11 A Yes.

12 Q Do you know what it means to go non-consent?

13 A Yes, I do.

14 Q What does that mean to go non-consent?

15 A It means we would not participate in the
16 well; right? So then Franklin Mountain would continue
17 drilling it. Our interest would be either consumed by
18 Franklin Mountain or on a pro rata share by the
19 parties that are participating in the well. We would
20 generally then be under some kind of penalty, usually
21 300 percent payout before being allowed back into the
22 well as a working interest party.

23 Q And just so I'm clear, that mean -- you
24 wouldn't have to have any capital outlay to benefit
25 from the well?

1 A In what way?

2 Q Well, you wouldn't have -- your working
3 interest doesn't go away just because you don't
4 consent into the well?

5 A Correct.

6 Q And you don't have to -- if you go non-
7 consent, do you have to pay the amount to pay well
8 costs?

9 A If we go non-consent, no, we don't have to
10 pay the well costs.

11 Q So that's always an option if you think a
12 well is too risky?

13 A Yes.

14 Q And the same is true -- you testified that
15 you've already been negatively impacted by FME'S
16 development of the Wolfcamp A in this area. Do you
17 recall that testimony?

18 A Yes.

19 Q But that was actually COG who electeded into
20 those wells, wasn't it?

21 A We, we did acquire that interest from COG in
22 February of this year, I believe it was. I'd have to
23 go back and look at the records. I think Matador is
24 the one that actually -- I think COG electeded. Matador
25 was the one that fronted the check due to the timing

1 of everything. I might have that a little backwards,
2 but that's my recollection.

3 Q And so if --and I agree that it is COG that
4 elected into the wells. So it was COG'S decision to
5 elect into the wells, and your beef then or your
6 dispute about whether that should have occurred is
7 really with COG, isn't it, not Franklin Mountain
8 Energy because you could have gone non-consent?

9 A I don't know the inner workings of how we
10 would've been able to go non-consent if we're buying
11 that order, if you will, from COG through the
12 transaction.

13 Q And I guess I asked that question rather
14 inartfully. It was COG'S decision to consent to elect
15 into the 701H well, as far as you recall?

16 A As far as I'm aware, yes.

17 Q And it's your decision now to elect into
18 Franklin Mountain Energy's Wolfcamp A wells?

19 A Yes. Assuming they got the pooling order.
20 That's correct.

21 Q And you could go non-consent?

22 A That is an option, yes.

23 Q Do you know about your surface facilities in
24 Section 31?

25 A No.

1 Q Okay. One of the things you mentioned
2 earlier is that you took the publicly available data
3 from Enverus or --

4 A Enverus.

5 Q Enverus? Yeah.

6 A Yes.

7 Q But aren't you in the Gold State 301H well?

8 A Yes, we are.

9 Q So do you have other avenues to acquire more
10 reliable data?

11 A For the Gold State well, specifically, yes.
12 We are partners. So we do receive that daily
13 production from Franklin Mountain.

14 Q So the fact that the Gold State 301 was
15 omitted is really a fact of looking at Enverus --
16 Evernus --

17 A Enverus.

18 Q -- Enverus, and not the fact that you didn't
19 have the data because you did have the data?

20 A That's correct. Yeah. I'm not making a
21 claim that Franklin Mountain didn't provide the data.
22 We -- we just -- we're using the publicly available
23 data via that analysis or for that analysis.

24 MS. BENNETT: Thank you. Those are the
25 only questions I have. I appreciate it.

1 THE HEARING EXAMINER: Now,
2 Mr. McClure?

3 MR. MCCLURE: No questions for me,
4 Mr. Hearing Examiner.

5 THE HEARING EXAMINER: Is there any
6 redirect for this witness?

7 MR. FELDEWERT: Briefly.

8 REDIRECT EXAMINATION

9 BY MR. FELDEWERT:

10 Q Mr. Schulz, Ms. Bennett noted that --
11 Franklin Mountain's counsel noted that you were able
12 to obtain data on the Upper Wolfcamp and drilling that
13 well in the west half of the west half of -- as shown
14 on Exhibit B-6?

15 A Yes.

16 Q Okay. And the pooling order issued by the
17 Division recognized that that would be a benefit to be
18 able to obtain that data?

19 A Yes.

20 Q Okay. You've heard a testimony it's a
21 difficult area to drill in when you get into the Upper
22 Wolfcamp interval?

23 A Yes. I've heard that.

24 Q As you painfully found out from COG's
25 election?

1 A That's correct.

2 Q Okay. Your plan would allow you to obtain
3 even more data about that upper interval by drilling
4 first into the lower zone; right?

5 A That's correct.

6 Q And you agree that there's no reason not to
7 do that here?

8 A I agree. I think it'd be more data -- more
9 data generally speaking, right, is always more
10 beneficial.

11 Q And what you'll have then is the data
12 available from your existing well plus your data
13 available from the wells, you know, drilling in the
14 Lower Bone Spring interval before trying to drill any
15 Upper Wolfcamp on acreage where you own a majority of
16 the --

17 A Correct.

18 Q Okay. Ms. Bennett noted that MRC could just
19 drill one-mile wells in Section 31; right?

20 A Correct.

21 Q Okay. Same can be true about Franklin
22 Mountain Section 19?

23 A Correct.

24 Q In fact, they have any drilled one-mile
25 wells in Section 19 in the Second Bone Spring?

1 A Correct. I think they acquired those wells,
2 but yes. Yeah.

3 Q I see. Okay. But at least that operator
4 drilled one-mile wells in Section 19?

5 A That's correct.

6 Q All right. Or Franklin Mountain could drill
7 two-mile wells at least in the Bone Spring in 19 and
8 18; right?

9 A That's correct.

10 Q And then they can make whatever decision
11 they want to make on the Wolfcamp?

12 A That's correct.

13 Q Now, she seemed to chastise MRC for not
14 going out there and immediately drilling or drilling
15 two-mile wells in this acreage over the last few
16 years. Is all of this acreage that you have in
17 Section 30 and 31, is it held by production?

18 A Yes, it is.

19 Q Okay. Where has been -- what's been the
20 company's focus over the last five years?

21 A Over the last five years, we've been more in
22 a mode of developing acreage, kind of full-scale
23 development, if you will. You know, prior to that, we
24 were certainly a younger company, and not unlike other
25 companies, kind of in that state of mind where we're

1 acquiring acreage.

2 And so we're in the mode of HPPing our
3 acreage, which may, you know, acquire, you know,
4 bouncing bridges around the basin to -- to go and
5 satisfy those things. And so we're really -- I feel
6 like up until more recently, probably sometime around
7 2020, 2022, in that timeframe, we've been able to kind
8 of exercise more full-scale development on our assets
9 as we have HPPed a lot of our acreage. And so we're
10 not having to chase rigs around for that purpose.

11 Q Okay. And how many rigs currently is the
12 company running in New Mexico?

13 A I believe we're running in eight, nine right
14 now.

15 Q Okay. All right. And that would be in the
16 Lea County area?

17 A Lea County, Eddy County.

18 MR. FELDEWERT: Right. Okay. Got it.
19 That's all the questions. Thank you.

20 THE HEARING EXAMINER: Thank you.

21 Okay. Are there any recross on those
22 questions?

23 MS. BENNETT: Just one quick recross.

24 THE HEARING EXAMINER: Please.

25 RECROSS-EXAMINATION

1 BY MS. BENNETT:

2 Q Mr. Feldewert asked you or said that I was
3 chastising you for not going back immediately.
4 Setting aside the word choice, it's been five years,
5 right, since you've been back in this area?

6 A Yes, that's -- that's correct. In the
7 northern -- northern area; right?

8 Q Yeah. And so it's not so much that I was
9 saying that it was not immediate, it's just that it
10 hasn't happened since 2019?

11 A Correct.

12 MS. BENNETT: Thank you.

13 THE HEARING EXAMINER: Okay. This
14 witness may be excused. Would you like to call your
15 second witness?

16 MR. FELDEWERT: Certainly. We'll call
17 Mr. Isaac Evans.

18 THE HEARING EXAMINER: I remind you
19 you're under oath. Please speak loudly into the
20 microphone.

21 DIRECT EXAMINATION

22 BY MR. FELDEWERT:

23 Q Please state your name, identify by whom
24 you're employed, and at what capacity?

25 A My name's Isaac Evans. I'm employed by MRC

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1 as a Vice President of Land.

2 Q And Mr. Evans, you're the one that submitted
3 what's been marked as MRC Exhibit A and then the sub
4 exhibits referenced therein?

5 A That's correct.

6 Q Okay. And after hearing -- since that
7 statement has been signed, are there any changes that
8 you would need to make or that you need to make?

9 A I do not.

10 Q Okay. Has there been an update on MRC or
11 Franklin Mountain's response to your JOA proposals?

12 A There has.

13 Q And what was that?

14 A We received a response yesterday that they
15 were turning us down. They were not interested in our
16 proposal.

17 Q Okay. All right. Now, there's -- you
18 marked as Exhibit A-11 a letter of support from Axis
19 Energy for your development plan in Section 30 and 31?

20 A Correct.

21 Q Okay. There are other working interest
22 owners in Section 31; correct?

23 A Correct.

24 Q All right. And what's the status with all
25 of those working interest owners in Section 31?

1 A We have received letters of support from a
2 number of working interest owners in Section 31 and
3 have also received signed participation proposals.

4 Q Okay. And so with your letters of support,
5 are you expecting JOAs from those other working
6 interest owners?

7 A Correct.

8 Q Okay. You identified in Exhibit A-12 some
9 emails that you were involved in with Lee Zink?

10 A Correct.

11 Q And Lee Zink is the head of land over at
12 Franklin Mountain?

13 A Director of Land.

14 Q Correct.

15 A Yes, sir.

16 Q Okay. Thank you. Now, it reflects -- in
17 fact, it includes an actual email from Mr. Zink on the
18 second page of Exhibit 12; right?

19 A Correct.

20 Q Where he says we'll review and report back
21 with any questions or concerns?

22 A Correct.

23 Q Okay. Now, this reflects that you offered
24 to enter into JOAs where they would operate 18 and 19
25 and you would operate 30 and 31?

1 A That's correct.

2 Q And their response to that was eventually
3 no, or did they ever respond?

4 A The response we received yesterday was no.

5 Q Okay. And that response they received
6 yesterday, did that include a no to your suggestion
7 that you would operate 30 and 31 but they would have
8 the ability to drop -- to drill a well that they need
9 to meet their term assignment?

10 A Can you rephrase the question?

11 Q Sure. When you -- what was the JOA
12 adjustment that you made in an attempt to reach an
13 agreement and deal with their term assignment that
14 they raised for the first time in their exhibits?

15 A Sure. We offered them the ability to drill
16 a well in that east half/east have slot of Section 30
17 in order to satisfy their turn assignment obligation.

18 Q And they said no?

19 A Correct. Yesterday they said no.

20 Q All right. Now, you offered some acreage up
21 for trade -- identified some interest that you would
22 be willing to trade?

23 A Correct. Previously, I did.

24 Q Okay.

25 A In August.

1 Q Did they ever submit any counterproposal --
2 any acreage that they would be willing to trade or
3 accept?

4 A We never received a formal counterproposal
5 for a trade with hard acreage numbers.

6 Q Okay. All right. What's the status of
7 implementing your development plan? Are you currently
8 staking the wells?

9 A That's correct.

10 Q Okay. Permits are going to be filed fairly
11 soon?

12 A Correct. Once we receive -- receive the
13 survey information back to create our finalized C-
14 102s, we will -- we will be submitting permits for
15 approval to the state.

16 Q Okay. And you heard and do you agree with
17 the testimony that you're currently running nine rigs
18 in this area?

19 A We are running nine rigs companywide.

20 Q Okay. All right. Will you be in a
21 position, do you think, to yourself satisfy their term
22 assignment if you were ordered operatorship here?

23 A I think there's a lot of uncertainty about
24 when a pooling order would actually be issued at this
25 point in time. However, given that we have nine rigs

1 running company-wide, we feel like we do have the
2 flexibility and have shown that in the past to -- to
3 meet hard deadlines and tight deadlines.

4 MR. FELDEWERT: Okay. All right.
5 Okay. That's all the questions. Thank you.

6 THE HEARING EXAMINER: Thank you.
7 Ms. Bennett?

8 MS. BENNETT: Thank you.

9 CROSS-EXAMINATION

10 BY MS. BENNETT:

11 Q Just got to clear something up real fast.
12 Mr. Feldewert said that I mentioned the term
13 assignment for the first time or that Franklin
14 Mountain Energy mentioned the term assignment for the
15 first time in its exhibits. Were you aware of the
16 term assignment before the exhibits were filed?

17 A I was aware that it existed.

18 Q A moment ago, you testified that you had had
19 back-and-forth emails with Mr. Zink, but you had never
20 received an offer of a hard acreage number. Is that
21 accurate?

22 A Correct. We never received a formal
23 counteroffer to what we previously proposed.

24 Q But you did, in fact, receive a response to
25 your September 25th email that Mr. Feldewert is

1 showing on the screen?

2 A There were additional conversations with Mr.
3 Zink following up on specifics about the lands and
4 whatnot, but we still did not receive a formal
5 counteroffer to what we proposed in the trade.

6 Q But you and Mr. Zink were having ongoing
7 discussions about potential solutions?

8 A Correct. We continued to talk

9 Q When you said you have nine wells -- I'm
10 sorry -- nine rigs company-wide, what does that mean,
11 company-wide?

12 A It means in all the asset areas that Matador
13 operates in.

14 Q Okay. And where -- what are all the asset
15 areas within which Matador operates?

16 A Specifically in New Mexico, that would be
17 Eddy County and Lea County.

18 Q And are -- does the rig count also include
19 Texas?

20 A It does.

21 Q And how many rigs are in New Mexico right
22 now?

23 A Currently, all nine are in New Mexico.

24 Q And how many are in the county?

25 A I don't know the answer to that.

1 Q You mentioned that you are staking the -- or
2 MRC is staking the wells now, and the permits will be
3 filed soon. Is that right?

4 A Correct.

5 Q But you haven't -- the surveys aren't done
6 yet?

7 A They're ongoing right now. Correct.

8 Q And are you aware that Franklin Mountain
9 Energy has already undertaken surveys?

10 A I'm not aware of that.

11 Q Are you aware that Franklin Mountain Energy
12 has submitted APDs?

13 A I'm aware of that.

14 Q And MRC has not yet?

15 A Correct. We have not submitted our permits
16 yet because these surveys are ongoing right now.

17 Q If -- you could stop. Do you mind to stop
18 sharing?

19 MR. FELDEWERT: You want to drive? You
20 want --

21 MS. BENNETT: Yeah. Yeah.

22 MR. FELDEWERT: Okay.

23 BY MS. BENNETT:

24 Q I'm looking at Exhibit A-10, which is your
25 exhibit; right?

1 A Correct.

2 Q Can you show me or can you point to or
3 describe with any kind of certainty where MRC's 58.75
4 percent is in this orange tract?

5 A So the 58.75 percent is blended across the
6 entire section.

7 Q And how about Franklin Mountain Energy 3's
8 approximately 38.75 percent? Where's that on this --
9 in this orange tract?

10 A Also blended across the north half and south
11 half.

12 Q So Franklin Mountain Energy and MRC have a
13 blended interest in these two tracts?

14 A No. The interest is different between the
15 north half and south half, but blending them together
16 on a section-wide basis, those are the numbers.

17 Q But there's no way to point to a specific
18 MRC set of acreage holding in the orange tract, is
19 there?

20 A The -- yes. So MRC owns 60 percent in the
21 north half.

22 Q Of an undivided interest?

23 A Undivided across the north half. Correct.

24 Q Has MRC ever sought operatorship when it
25 owns less than a majority?

1 A Yes.

2 Q Does that mean that MRC was acting in bad
3 faith?

4 A It does not.

5 Q Does that mean that MRC should not have been
6 granted operatorship?

7 A I don't understand the question.

8 Q If in a situation where MRC is sought to be
9 operator when it owned less than majority consent, do
10 you feel that that means that the owner that has the
11 majority consent should necessarily be granted
12 operatorship?

13 A I think parties make compelling cases, you
14 know, and I think working interest control is
15 certainly important. But does not say that we have
16 not sought, you know, operatorship with less than
17 majority working interest in the past.

18 Q Are you familiar with the MRC Bobby Pickard
19 wells?

20 A I'm not familiar with the specifics, but I'm
21 aware of the proposals, you know, that we have sent
22 out in the past -- that we've proposed to put together
23 a unit there. Excuse me.

24 Q Were you involved in any of the discussions
25 in terms of preparing for the hearing that occurred a

1 couple of weeks ago?

2 A I was not involved in the hearing.

3 Q So were you involved in any of the
4 participation or -- sorry -- preparation for the
5 hearing?

6 A No, I was not involved in any preparing of
7 the exhibits or anything of that nature of the
8 hearing.

9 Q So are you aware of MRC's ownership in the
10 Bobby Pickard units?

11 A I'm not familiar with our ownership.

12 Q Okay. But you agree with me that MRC has
13 sought operatorship when it owns less than a majority?

14 A I'm aware -- or yes, I do. We have in the
15 past, you know, sought that out whenever we acquire an
16 interest somewhere and want to send out well proposals
17 to, you know, get the conversation started about
18 development.

19 Q I want to look at your Slide B-6, which I'm
20 sharing right now. Do you have pooling orders for the
21 two First Bone Spring wells in Section 31?

22 A Yes.

23 Q Did those pooling orders pool the two
24 working interest owners that you said you only
25 recently discovered?

1 A They did.

2 Q So how is it that you only recently
3 discovered that those two working interest owners
4 existed?

5 A So those two working interest owners
6 previously went non-consent in the development in
7 Section 31. And so they were not initially identified
8 as owners in 31. Upon further review, we found out
9 that they were owners in Section 31.

10 Q So have you not been paying them since those
11 wells have been in production?

12 A They went non-consent, and at this point in
13 time, those wells have not paid out. So they're not
14 currently in the wells.

15 Q So you had pooled -- sorry -- there were
16 parties that you had pooled in the First Bone Spring
17 that you were not aware of for this case?

18 A Once we found out upon further title review,
19 we took steps to rectify that by sending out well
20 proposals and attempting to reach voluntary joinder
21 with those parties.

22 Q And I guess what I don't understand is why
23 did you need to do additional title review if they're
24 already in your wells?

25 A They're not in the wells because they went

1 non-consent, and those wells have not paid out yet.
2 So they're not in the wells.

3 Q I think that it's my lack of landman speak
4 here that's happening. But they do own interest in
5 31?

6 A Correct. They do own a leasehold interest.

7 Q And you previously pooled -- Matador
8 previously pooled them?

9 A Correct. Whenever the development for 31 is
10 being put together.

11 Q Okay. Do you have pooling orders for the
12 Third Bone Spring wells in Section 31?

13 A Yes.

14 Q I wasn't able to find pooling orders for all
15 of those wells. Do you know for sure that you have
16 pooling orders for all of those wells? Have you
17 looked back at them?

18 A I have not, but I do know we have pooling
19 orders for the Bone Spring in 31.

20 Q And with the pooling order for the Bone
21 Spring in 31, would you be able to propose infill
22 wells under those pooling orders?

23 A I'm not familiar with those specifically. I
24 just know that they exist about three orders.

25 Q Are you familiar with orders that you've

1 received from the Division in recent times? Have you
2 ever reviewed an order from the Division?

3 A Yes, I have.

4 Q Are you familiar with the concept of infill
5 wells, generally?

6 A Yes.

7 Q Is it your understanding that you can
8 propose infill wells under pooling orders generally?

9 MR. FELDEWERT: Objection on the
10 grounds I think it mischaracterizes what the pooling
11 orders required. When she says you can propose infill
12 wells, there's restrictions on when you can propose
13 infill wells under pooling orders.

14 THE HEARING EXAMINER: Ms. Bennett?

15 MS. BENNETT: There are restrictions
16 and it's -- and I'm not trying to be hyper-technical
17 about what the pooling orders require or don't
18 require. I'm merely trying to figure out if he
19 understands generally that an operator can propose an
20 infill well under the order, which would include any
21 of the provisions in the order.

22 THE HEARING EXAMINER: I understand.
23 And why does that matter?

24 MS. BENNETT: Because MRC could develop
25 Section 31 in the Bone Spring under its current

1 pooling orders. At least that's what I'm trying to
2 elicit without, like I said at the beginning, even
3 darkening the Divisions doors because the pooling
4 orders authorize infill wells and MRC could develop
5 the First Bone Spring, Second Bone Spring, and
6 portions of Wolfcamp B under its existing orders.

7 THE HEARING EXAMINER: And I'm not at
8 all debating with you whether that's correct or not.
9 You know a lot more about oil and gas law than I ever
10 will. But what I am wondering about is this is a fact
11 witness and why we're asking him questions that we
12 already know the answer to, to make a legal argument
13 that you're going to make in a closing argument, let's
14 say.

15 It seems like we have a very short time
16 left, and I wonder if we're using that time
17 efficiently. And I know you want to move this along.
18 So I'm not sure what facts you're going to get from
19 him that's going to advance your position.

20 MS. BENNETT: Well, Mr. Examiner, I was
21 not able to find the pooling orders when I looked for
22 them. And so that is one fact that I need from the
23 witness is whether they have pooling orders or not.

24 THE HEARING EXAMINER: Okay. Would you
25 then -- so I'm going to sustain the objection. Would

1 you then deal with that?

2 MS. BENNETT: He answered that question
3 already.

4 THE HEARING EXAMINER: Oh, he did?

5 MS. BENNETT: Yes.

6 THE HEARING EXAMINER: So do you have
7 the orders you need?

8 MS. BENNETT: I don't.

9 THE HEARING EXAMINER: Oh.

10 MS. BENNETT: So I'd say it's an
11 unanswered question about whether they have pooling
12 orders.

13 THE HEARING EXAMINER: Okay.

14 MS. BENNETT: But I'm moving on.

15 THE HEARING EXAMINER: Thank you.

16 MS. BENNETT: So --

17 THE HEARING EXAMINER: Is there a way
18 for you to find them? Don't we have a database --

19 MS. BENNETT: Yes.

20 THE HEARING EXAMINER: -- where you
21 could look for them?

22 MS. BENNETT: Yes. And I did search
23 for them myself, and I was not able to find them. So
24 I was hoping that Mr. Evans would be able to confirm
25 for me that they do have pooling orders.

1 THE HEARING EXAMINER: And, Mr.
2 Feldewert, is there a better witness for Ms. Bennett
3 to ask that question?

4 MR. FELDEWERT: Not here today, but I'm
5 wondering why it's even relevant to this case because
6 the wells have been drilled. Okay? Just like they --
7 there's wells that have been drilled in Section 19
8 either under an agreement or under a pooling order.
9 So what is the relevance of that here today?

10 THE HEARING EXAMINER: Ms. Bennett?

11 MS. BENNETT: Thank you. The relevance
12 is twofold. First, MRC's position is that Franklin
13 Mountain Energy should be limited to developing
14 Sections 18 and 19, and that they can drill one-mile
15 wells in Section 18 and 19 and so --

16 MR. FELDEWERT: Or two-mile wells.

17 MS. BENNETT: One-mile wells in Section
18 19 and two-mile wells in Section 18 and 19. And I am
19 simply trying to elicit the same information from MRC
20 that they have the ability to -- and in fact, the
21 authority from the Division to drill one-mile wells in
22 Section 31.

23 It's the same exact line of questioning
24 that are the same facts that has been elicited earlier
25 today. So that's number one. Number two, if, in

1 fact, Matador doesn't have pooling orders, then it's
2 unclear to me how they're -- what authority they are
3 operating in Section 31.

4 THE HEARING EXAMINER: Okay. All
5 right. I understand why it's relevant.

6 So Mr. Feldewert, that argument
7 convinces me why the question is relevant. However,
8 you didn't get the answer you were seeking.

9 MS. BENNETT: I'll ask again because
10 maybe I misunderstood his answer.

11 THE HEARING EXAMINER: Let's see.

12 BY MS. BENNETT:

13 Q Mr. Evans, are you confident that MRC has
14 pooling orders for the Third Bone Spring?

15 A MRC has a combination of pooling orders
16 and/or separate pooling agreements to drill those, or
17 you know, previously drill those one-mile wells in
18 Section 31.

19 Q Thank you. Now, in your testimony, you said
20 that you expressed, I guess, some puzzlement about why
21 Franklin Mountain Energy hasn't been interested in
22 discussing operating sections in Section 18 and 19.
23 Were you aware of the Shelton SWD in Section 18 when
24 you were proposing the shopner wells?

25 A I'm not.

1 Q Now, that you've heard about the SWD in
2 Section 18, does that help answer your question about
3 why FME was not interested in discussing operating
4 Section 18 and 19?

5 A I don't know the answer to that.

6 Q I wanted to ask you some questions about
7 your applications and what you're seeking to do in
8 these cases. So using the diagram that you prepared,
9 it's my understanding from your applications that you
10 have an application for -- and I'm looking at the
11 first domino here.

12 You have an application that is a First and Third
13 Bone Spring application for the U-turn well in the
14 west half of the First Bone Spring and a U-turn well
15 in the west half of the Third Bone Spring. Is that
16 accurate?

17 A That's correct. For the west half of each
18 of those.

19 Q So your application for the First Bone
20 Spring well and the Third Bone Spring well in the west
21 half does not anticipate any development of the Second
22 Bone Spring in that unit?

23 A Not in the u-turn orientation.

24 Q In what orientation would you anticipate
25 Second Bone Spring development in the unit that covers

1 the west half of Section 30?

2 A The two-mile going into 31.

3 Q Are you aware that your two-mile going into
4 Section 31 is in a different unit and different
5 application?

6 A I don't know the answer to that.

7 Q Did you review the applications before they
8 were filed?

9 A I was aware of, yeah, the First Bone Third
10 Bone, and Second Bone proposals that we sent out. But
11 yeah, it's my understanding that they are in the same
12 Bone Spring applications or would cover the same
13 acreage.

14 Q In a minute I'll open up one of the
15 applications and we can talk about it a little bit
16 more, but so it's your understanding that you have an
17 application for a two-mile unit that covers Section 30
18 and 31 that includes the First, Second, and Third Bone
19 Spring?

20 MR. FELDEWERT: Objection. That's not
21 what he testified.

22 THE HEARING EXAMINER: I didn't
23 understand the objection.

24 MR. FELDEWERT: That's not what he
25 testified to. If she wants to pull up the

1 applications, that's fine. But he didn't testify to
2 that. He said there's multiple applications that have
3 been filed based on the spacing units.

4 THE HEARING EXAMINER: Okay.

5 Ms. Bennett?

6 MS. BENNETT: I will rephrase my
7 question.

8 THE HEARING EXAMINER: Thank you. So
9 it's sustained.

10 MS. BENNETT: So --

11 THE HEARING EXAMINER: Do you want to
12 pull up the application now?

13 MS. BENNETT: Yes.

14 THE HEARING EXAMINER: Okay.

15 MS. BENNETT: This -- I've pulled up
16 what is application 24779. Do you see that on the
17 screen?

18 THE HEARING EXAMINER: Yes. And Ms.
19 Bennett, is this MRC's exhibit -- I know it may not be
20 marked because they didn't mark their application, but
21 is this MRC's?

22 MS. BENNETT: It is.

23 THE HEARING EXAMINER: It is. Okay.

24 MS. BENNETT: And it's --

25 THE HEARING EXAMINER: What page number

1 are we on?

2 MS. BENNETT: Page 35 of 279.

3 THE HEARING EXAMINER: That's what I
4 wanted referenced. Thank you.

5 MS. BENNETT: And I just -- this is the
6 one that came up. Sorry. That's not a good example
7 because that's not the one I was just talking about.
8 24778. And this is on page 31 of 279.

9 BY MS. BENNETT:

10 Q So do you see this application?

11 A Yes.

12 Q And do you see in this application that it
13 says that you're seeking to initially dedicate this
14 unit to the 110 and 130 U-turn wells?

15 A Yes.

16 Q And are the 110 and 130 U-turn wells the
17 west half U-turn wells?

18 A Can we scroll down a little bit?

19 Q Let me know what you --

20 A Yes. The -- the west half, correct, for
21 both of those.

22 Q Okay. And is the 110 a First Bone Spring?

23 A Correct.

24 Q And is the 130 a Third Bone Spring?

25 A That's correct.

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1 Q And this paragraph 3 to me looks like it's
2 the only paragraph that describes which wells you
3 intend to include in this spacing unit. Would you --
4 I know you haven't had a chance to look at it, but
5 would you agree that it goes from paragraph 3 to
6 paragraph 4 and doesn't include any other wells?

7 A I would agree it does not include any other
8 wells in paragraph 3.

9 Q So this application 24778 is an application
10 only for the west half of Section 30?

11 A That's what it appears to be.

12 Q And it's only for the First and Third Bone
13 Spring?

14 A In the west half of 30.

15 MR. FELDEWERT: I object. It says in
16 the Bone Spring formation.

17 MS. BENNETT: And that's my follow-up
18 question.

19 THE HEARING EXAMINER: Well, the
20 objection came a little late because the witness
21 already answered the question.

22 MR. FELDEWERT: Well, she's -- I mean,
23 I've tried to -- okay. So I object to the -- this
24 line of questioning. I mean, are we going to go
25 through each of these applications --

1 THE HEARING EXAMINER: I don't know.

2 MR. FELDEWERT: -- and walk through
3 them for the wells? And what's the purpose? The
4 document itself makes it very clear that it's in the
5 Bone Spring formation for a U-turn First Bone Spring
6 and a U-turn Third Bone Spring well.

7 THE HEARING EXAMINER: So I understand
8 the objection.

9 Ms. Bennett?

10 MS. BENNETT: Thank you. What I -- my
11 follow-up question is directly to that point that the
12 applications are overly broad and that they refer to
13 the Bone Spring in general when they should have been
14 limited to the First and Third and the Second Bone
15 Spring applications that have -- should have been
16 limited to the Second Bone Spring because based on
17 MRC's own exhibit, there isn't any way to have a
18 spacing unit in the west half of Section 30 that
19 includes the Second Bone Spring.

20 And so their applications are
21 overbroad, and the compulsory pooling checklists, in
22 my opinion, also need to be revised to reflect the
23 actual extent of the formation that they're -- that
24 are included in space and unit.

25 THE HEARING EXAMINER: Okay. So that

1 being a legal argument is fine, but the objection was,
2 you know, we're asking this fact witness about a
3 document that has been filed. It stands for itself.
4 My -- I believe there are rules of evidence that --
5 maybe it's called the best evidence rule, if I'm not
6 mistaken -- that the writing sort of stands for
7 itself. And is that the right rule?

8 MS. BENNETT: That is it.

9 THE HEARING EXAMINER: That is a rule.
10 Okay. I just -- I hadn't used that one very often, so
11 that's why I don't know it by heart. But anyway, so
12 what is your answer to the objection, which is to have
13 him review these applications or this application -- I
14 don't know if you're going to do this for others. But
15 what's the benefit of having this -- instead of just
16 asking the question that you just asked, why are we
17 going to have him review applications that stand for
18 themselves in writing form?

19 MS. BENNETT: In Mr. Evans' testimony,
20 he testified that there are -- well, it's twofold,
21 really. The Division does need to be aware of the
22 fact that the applications are overbroad. And my
23 point is that FME 3 and the other working interest
24 owners are being pooled into units that are
25 incorrectly identified and that are overbroad, and --

1 THE HEARING EXAMINER: Well, I get it.
2 Okay.

3 MS. BENNETT: And I --

4 THE HEARING EXAMINER: And so is there
5 more?

6 MS. BENNETT: Yes, I do have a -- I was
7 also interested in Mr. Evans' testimony where he's
8 testified that there are no depth severances in this
9 area, which is accurate. I don't disagree with that.
10 But these existing wells act as de facto severances in
11 terms of the way to divide and define a spacing unit.
12 And so I wanted to explore that with him.

13 THE HEARING EXAMINER: Okay. I will --
14 those are all valid things that you want to do, and I
15 think you'll do them. I sustain the objection though
16 in having him run through questions about the
17 document. Why not just get to your points? It seems
18 like you have good points, but it feels like we're not
19 getting there.

20 MS. BENNETT: Thank you. I appreciate
21 that. I was worried about getting a question about
22 foundation and so I wanted to make sure I understood.

23 THE HEARING EXAMINER: If you get an
24 objection on foundation, then I'll sustain it, and you
25 can lay a foundation. But these writings are in

1 evidence. They were not objected to. You stipulated
2 to them. Why not just get to your point?

3 MS. BENNETT: Thank you. I think in
4 the interest of time though, with that discussion, I
5 am going to move on to some other questions.

6 THE HEARING EXAMINER: Okay. Please.
7 Yeah.

8 BY MS. BENNETT:

9 Q MRC hasn't been active in this area
10 surrounding the MRC airstrip well since 2019; right?

11 A In the airstrip, yeah, section. Correct.

12 Q Has MRC spent any money on infrastructure in
13 Section 30 and 31?

14 A I don't know the answer to that question.

15 Q In your testimony, you said that you are
16 confident you will have sufficient gas takeaway. Does
17 that mean you don't have it yet?

18 A We are confident in sufficient gas takeaway
19 based on the conversations I've had with our marketing
20 team.

21 Q Do you have contracts in place?

22 A They have assured me that they would have
23 contracts in place once these wells are -- if we were
24 to receive a pooling order and drill these wells.

25 Q But you don't have contracts in place right

1 now?

2 A I don't know the answer to that.

3 Q In your testimony, you said with respect to
4 the two working interest owners that you hadn't
5 identified that you will send them proposals. That
6 was in your testimony that you filed on November 13th.
7 Have you sent them proposals?

8 A Yes.

9 Q When did you do that?

10 A Last week.

11 Q So in preparing for this hearing was the
12 only time that you identified the missing working
13 interest owners?

14 A In our review of the titles when we
15 identified them prior to the hearing.

16 Q Do you know what going non-consent means?

17 A I do not.

18 Q Didn't you earlier say that -- okay. Do you
19 know what it means to not elect into a well?

20 A I do.

21 Q And for example, you were mentioning with
22 the other two working interest owners, they didn't
23 elect into the well and so they didn't have to pay
24 their well costs?

25 A I -- can you rephrase the question? I don't

1 understand.

2 Q Let me ask you this directly. If you don't
3 want to participate in FME 3's wells, you can elect to
4 not participate in those wells; right?

5 A That's correct.

6 MS. BENNETT: Those are all the
7 questions I have.

8 THE HEARING EXAMINER: Thank you.

9 Mr. McClure?

10 MR. MCCLURE: Thank you, Mr. Hearing
11 Examiner. I just have a few clarifying questions for
12 Mr. Evans.

13 Mr. Evans, if I can direct your
14 attention to page 123 of 279 of the Matador exhibits?

15 MS. BENNETT: And I stopped sharing.
16 Mike, if you want to take over.

17 MR. FELDEWERT: What's that?

18 MS. BENNETT: I stopped sharing if you
19 want to take over.

20 MR. FELDEWERT: Sorry, Mr. --

21 MR. MCCLURE: That was --

22 MR. FELDEWERT: -- McClure. I'm going
23 to have to share here. Hold on. Looks like --

24 MR. MCCLURE: Yeah. That was page 123,
25 by the way, Mr. Feldewert.

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1 MR. FELDEWERT: All right. Got it. I
2 think.

3 MR. MCCLURE: Or -- yeah, there you go.
4 And Mr. Evans, just as a clarifying question, the
5 persons in green Matador is not requesting a force
6 pool; correct?

7 MR. EVANS: That's correct.

8 MR. MCCLURE: And so for all these
9 cases that have very similar format in these tables,
10 it is only the persons in orange, I guess, that is
11 being -- that Matador is asking to -- correct?

12 MR. EVANS: That's correct.

13 MR. MCCLURE: Okay. And in all these
14 cases, of the persons that's included in Matador's
15 patrolling interest, is Jalapeno the one that has not
16 signed an agreement at this point but is being
17 included in that list of green persons?

18 MR. EVANS: That's correct. They have
19 not signed a JOA yet, but have indicated to us that
20 they plan to sign JOA. We have worked with them in
21 the past on many other units and we have a JOA form
22 that they like to use. And so they've indicated
23 they'll sign JOA with us.

24 MR. MCCLURE: But at the point of this
25 hearing, they have not; correct?

1 MR. EVANS: Correct. They have not at
2 this point.

3 MR. MCCLURE: Now, Axis Energy, they
4 have signed the JOA with you; is that correct?

5 MR. EVANS: That's correct.

6 MR. MCCLURE: Okay. One more quick --
7 page 70 -- the bottom of page 70 and top of page 71.
8 This is paragraph 12. I'm looking at -- it references
9 the working interest owners that were later
10 identified?

11 MR. EVANS: Correct.

12 MR. MCCLURE: Mr. Evans, so to confirm,
13 these persons are not being requested to be force
14 pooled yet at the -- in any of these cases currently.
15 Is that correct?

16 MR. EVANS: That's correct. Not at
17 this time.

18 MR. MCCLURE: Now, these persons are
19 also not committed to any of these units that are
20 referenced in these cases either. Is that also
21 correct?

22 MR. EVANS: That's correct. Not at
23 this time.

24 MR. MCCLURE: Okay. Thank you,
25 Mr. Evans.

1 I have no further questions,
2 Mr. Hearing Examiner?

3 THE HEARING EXAMINER: Thank you.

4 Mr. Feldewert, any redirect?

5 MR. FELDEWERT: No, sir.

6 THE HEARING EXAMINER: All right.

7 Thank you.

8 You may be excused.

9 Do you want to call your last witness?

10 MR. FELDEWERT: Yeah. We have one more
11 witness.

12 THE HEARING EXAMINER: I remind you're
13 under oath.

14 MR. PARKER: Yes, sir.

15 DIRECT EXAMINATION

16 BY MR. FELDEWERT:

17 Q Would you please state your name, identify
18 by whom you're employed, and in what capacity?

19 A My name's Andrew Parker. I work for MRC as
20 a Senior Vice President of Geoscience.

21 Q And Mr. Parker, you're the one that signed
22 what was marked as MRC Exhibit B and then referenced
23 on all the sub exhibits?

24 A Yes, sir.

25 Q And is there any change to your testimony?

1 A No.

2 Q Okay. I think one of the things that's come
3 up here today was they raised a concern about an
4 existing SWD in this area?

5 A Yes.

6 Q Okay. And it apparently had not done a
7 study on its area of influence. Did you take a look
8 at the records on that SWD?

9 A Yes.

10 Q Up there in Section 18?

11 A Yes.

12 Q Okay. Where is it injecting?

13 A It's injecting into several carbonate zones
14 in the -- in the gross Wolfcamp venerable.

15 Q The carbonate zones?

16 A Yes, sir.

17 Q That would not be the producing zones?

18 A No.

19 Q Okay. And did you look at the volumes?

20 A It -- according to the OCD, it's -- since
21 2013, it has injected a total of approximately 1.1
22 million barrels of water.

23 Q And what's the -- when you look at the
24 carbonates in the intervals subjecting into, is that
25 going to have a substantial impact in your opinion on

1 the development of the Wolfcamp?

2 A I -- I don't think it's substantial. It's a
3 million barrels over, you know, a little over 900 feet
4 of -- of total formation. I believe there's about 400
5 perforations in that pipe. It's currently injecting,
6 I think, an average of, like, 2 to 3000 barrels a
7 month.

8 So, you know, by -- by other SWD standards,
9 it's, you know, relatively low volumes. When you look
10 at the total water already in place in the Wolfcamp
11 across the section, it's a pretty small amount of --
12 amount of water.

13 Q Okay. But MRC doesn't have an interest in
14 Section 18, right, from the Wolfcamp, or do you?

15 A I believe we have Wolfcamp ownership in 18.

16 Q You do have Wolfcamp ownership --

17 A Yes, sir.

18 Q Okay. All right. And you initially
19 proposed some wells in 18 and 19 to develop the
20 Wolfcamp?

21 A We did. They were the shopner cases.

22 Q Okay. And why did the company dismiss those
23 prior to this hearing?

24 A I don't -- I don't think I can speak to the
25 details of that.

1 Q Okay. I think it's in our pre-hearing
2 statement. Was that to try to reach an agreement with
3 Franklin Mountain?

4 MS. BENNETT: Objection. The witness
5 just testified that he can't answer that question.

6 THE HEARING EXAMINER: Sustained.

7 MR. FELDEWERT: Okay. That's all the
8 questions I have.

9 THE HEARING EXAMINER: Thank you.

10 Ms. Bennett?

11 MS. BENNETT: Thank you. If I could
12 take control of the wheel again?

13 CROSS-EXAMINATION

14 BY MS. BENNETT:

15 Q Thanks for being here. It's nice to meet
16 you in person.

17 A You too. Thank you.

18 Q How long have you worked at MRC?

19 A I started at the end of 2016.

20 Q Were you involved in the permitting of the
21 201H well?

22 A Not the permitting specifically.

23 Q Were you involved with anything to do with
24 the 201H well?

25 A I -- I was involved with the geoscience team

1 when we were drilling these early airstrip wells.

2 Q When the 201H well was proposed to your
3 partners and when the 201 -- and just as a reminder,
4 that's the Upper Wolfcamp well -- wouldn't the MRC
5 geologist have to have had to testify along the lines
6 of what's been testified to today that each quarter
7 section would contribute more or less equally to the
8 production of the well?

9 A I -- I would assume so. Yes.

10 Q And the geologist would've had to have
11 demonstrated to the Division that drilling the 201H
12 well was in the best interest of protecting
13 correlative rights and preventing waste?

14 A Yes.

15 Q Are there any geologic impediments that
16 would prevent MRC from drilling U-turn wells in
17 Section 31?

18 A There aren't -- there aren't structural
19 impediments or pinch-outs.

20 Q Thank you. Are you familiar with MRC's
21 surface facilities in Section 31?

22 A No.

23 Q Is there anyone here who's familiar with
24 MRC's surface facilities in Section 31?

25 A I believe Mr. Schulz or Mr. Evans would've

1 been more familiar with the service issues than
2 myself.

3 Q Thanks. I did ask Mr. Schulz and he said he
4 wasn't familiar, and I guess I should have asked Mr.
5 Evans, but I didn't. So you're not familiar with the
6 service facilities in 31?

7 A No.

8 Q You testified that your primary concerns
9 with FME 3's development plan are the exclusion of the
10 Second Bone Spring and inclusion of the Wolfcamp A.
11 Is that a fair summary of a portion of your testimony?

12 A Yes.

13 Q And talking about the Second Bone Spring
14 first, were you here earlier today when FME's witness
15 testified that the Second Bone Springs are part of --
16 or developing the Second Bone Spring is part of FME
17 3's phase two plan?

18 A Yes.

19 Q Does that address the Second Bone Spring
20 concern of yours?

21 A It tells me that they might drill it
22 someday. That doesn't -- that doesn't address our
23 concerns about their ability to do so or whether or
24 not it's going to be done appropriately.

25 Q And when you say whether or not it's going

1 to be done appropriately, you have the opportunity to
2 opt out of well, don't you?

3 A We can, yes.

4 Q And turning to your next concern, which was
5 about the Upper Wolfcamp, MRC hasn't proposed any
6 Upper Wolfcamp wells, have you?

7 A No.

8 Q And nowhere in your testimony, at least that
9 I read, did you express a firm intention to do so, did
10 you?

11 A No.

12 Q So the -- instead, in your paragraph -- in
13 your testimony, you said it's more prudent to drill
14 through the Lower Wolfcamp D to gain more knowledge
15 about the Upper Wolfcamp?

16 A Yes.

17 Q And isn't your existing airstrip 201 well an
18 Upper Wolfcamp well?

19 A Yes.

20 Q And haven't you had the ability to come back
21 in and get this additional knowledge since 2016?

22 A The 201 doesn't provide a full picture of
23 the -- of the Upper Wolfcamp for all of 31. By
24 drilling to the Lower Wolfcamp, you would get, you
25 know, a full gamma-ray and mud log through the entire

1 section. When we drilled the 201, you know, most of
2 that -- most of that gamma-ray that you develop, you
3 know, looking through the -- to provide a vertical
4 picture of that is really in the, you know, the Bone
5 Spring in the very uppermost Wolfcamp. It doesn't
6 give us a full look at the Wolfcamp -- Upper Wolfcamp
7 reservoir.

8 Q And were you here earlier today when FME 3
9 witnesses testified that they are in the process of
10 drilling Wolfcamp D wells?

11 A Yes.

12 Q And so they're in the process of gathering
13 that information that you think is critical?

14 A In other areas, they are.

15 Q In areas adjacent to Rope?

16 A Yes.

17 Q And MRC isn't actively drilling in the
18 airstrip area, is it?

19 A Not -- not on airstrip today, no.

20 Q Let me just take a quick look at my notes
21 here and see if I might be done.

22 A Sure.

23 MS. BENNETT: That's all the -- those
24 are all the questions I had.

25 THE HEARING EXAMINER: Mr. McClure?

1 MR. PARKER: No questions. Mr. Hearing
2 Examiner.

3 THE HEARING EXAMINER: Thank you.
4 Mr. Feldewert, any redirect?

5 MR. FELDEWERT: Just briefly.

6 REDIRECT EXAMINATION

7 BY MR. FELDEWERT:

8 Q Mr. Parker, as a geologist and familiar with
9 obtaining data for purposes of future drilling, is --
10 are you better off with data from properties that are
11 close by or are you better off having data for the
12 actual section and spacing unit that you seek to
13 develop?

14 A The -- the data from this pad is always
15 going to be the most representative of this area. I
16 mean, things -- as other people have testified to,
17 things can change rapidly in this area depending on
18 the complexity of the geology.

19 Q Okay. And your drilling plan in the acreage
20 where Matador owns majority of the working interest
21 will allow you to opportunity to obtain actual data
22 about the Upper Wolfcamp interval from Section 30 and
23 31?

24 A Yes.

25 Q Okay. To add to the data that you already

1 had?

2 A Yes.

3 Q And to add to the data from offset sections?

4 A Yes.

5 Q Okay. Is there any reason not to wait to
6 drill the Upper Wolfcamp until you drill through it
7 and log through it by developing the Lower Wolfcamp?

8 A No.

9 MR. FELDEWERT: Okay. That's all.

10 THE HEARING EXAMINER: Thank you.

11 Ms. Bennett, any recross?

12 MS. BENNETT: Yes. Thank you. So let
13 me just share my screen. This is Exhibit A-13 that
14 we've shown earlier today.

15 RE-CROSS-EXAMINATION

16 BY MS. BENNETT:

17 Q Does this, have you seen this exhibit?

18 A Today, yes.

19 Q Today? So you didn't look at this exhibit
20 before you prepared for the hearing today?

21 A Well, I mean, I -- I saw it. I don't spend
22 a lot of time focusing on -- on land exhibits.

23 Q On this exhibit, it shows all of Franklin
24 Mountain Energy's development in this area. Is --
25 would you say that that's what this exhibit is

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1 attempting to show, whether you agree with it or not?

2 A Sure.

3 Q Okay. And a moment ago, Mr. Feldewert asked
4 you if logs from an area from the exact spot you're
5 drilling are the best logs, and you said yes. Is that
6 right?

7 A Yes.

8 Q But would logs from Satellite, which is
9 right here, be useful for determining what's happening
10 in Section 30?

11 A They -- they might help a little bit with
12 the picture, but they don't tell us exactly what it
13 looks like on Section 30.

14 Q How about when you add -- and I think you
15 said that aggregating -- and I'm definitely
16 paraphrasing here, so please correct me.

17 A Sure.

18 Q But I think your testimony was that there's
19 a number of -- you can put in a bunch of data and that
20 helps you create a picture of what's around, but then
21 the data from the pad is going to be the most useful?

22 A Yes.

23 Q And here, Franklin Mountain Energy is
24 developing data all around Section 30, 19, and 18. Is
25 that right?

1 A Yes.

2 Q And were you here today or do you -- let me
3 just ask you this. Do you know if Franklin Mountain
4 Energy has drilled Wolfcamp D wells in this area?

5 A Wolfcamp D?

6 Q Yes.

7 A Like our Wolfcamp D?

8 Q Your Wolfcamp D. Yeah. Lower Wolfcamp.

9 A I'm not familiar with all their wells. I
10 know that they -- I believe they've drilled one at
11 Gold -- Gold State. I'm not sure how many others
12 they've drilled.

13 Q Okay. But by virtue of drilling those
14 Wolfcamp D wells, they would be getting the type of
15 data that you would be looking for in the Rope or in
16 your airstrip development?

17 A If they are -- if they're, you know, getting
18 an MWD gamma-ray, if they have mud loggers on
19 location. I believe the reservoir engineer referenced
20 the importance of, you know, the -- the cut and
21 fluorescence and what you're seeing across the shakers
22 and -- and those various items that we get through
23 that drilling. I -- I imagine that was collected at
24 Gold.

25 MS. BENNETT: And that's the last

1 question I have. Thank you.

2 THE HEARING EXAMINER: Thank you.

3 Mr. Feldewert, any redirect on that
4 recross?

5 MR. FELDEWERT: No, sir.

6 THE HEARING EXAMINER: All right.
7 Thank you.

8 Mr. McClure, is there anything further
9 for this witness?

10 MR. MCCLURE: I have nothing further
11 for this witness, although I do have a quick request
12 before we actually take it under advisement -- the
13 cases.

14 THE HEARING EXAMINER: By all means.
15 You may be excused. Thank you.

16 Okay. That concludes the evidentiary
17 part of the hearing today. Let's deal with post-
18 hearing matters. We have a court reporter here live.
19 Generally, it takes two weeks to get a verbatim
20 transcript. That's still the case, isn't it?

21 THE REPORTER: Correct.

22 THE HEARING EXAMINER: All right.
23 Thank you. So would you look at a calendar and just
24 give us a general within a couple of days date?

25 THE REPORTER: Sixth December.

1 THE HEARING EXAMINER: Perfect. Now, I
2 know that we have at least one party here, and I think
3 it's Mr. Feldewert. who was involved in November 5th
4 and 6th hearings.

5 Were you involved? I don't --

6 MS. BENNETT: I am.

7 THE HEARING EXAMINER: You are also
8 involved in that one?

9 MS. BENNETT: Yes. On behalf of
10 Franklin Mountain Energy.

11 MR. FELDEWERT: You know -- filings
12 though. Do you?

13 THE HEARING EXAMINER: That's what I
14 didn't remember. Yes. That's why I didn't think you
15 were involved because you didn't have filings. Right.
16 Okay. But I know Mr. Feldewert does.

17 And just to clarify on what's going on
18 in that case, Mr. Feldewert, the deadline for the
19 amended exhibits are still due on the 25th of
20 November. I thought it was 21st, but I was corrected
21 by someone else. They said it was the 25th. So let's
22 just say it's the 25th.

23 But we are submitting the recorded
24 testimony today to verbatim. There was a delay in the
25 second day's testimony, which means we won't have that

1 until about the 6th or so of December. But that still
2 gives the parties over two weeks. So unless I get a
3 motion to extend deadlines, it's still the 23rd of
4 December.

5 I bring that up, Ms. Bennett, because
6 Mr. Feldewert already has deadlines in another
7 contested case that he's dealing with. So I want to
8 be somewhat cognizant of that. So I'm going to start
9 with Mr. Feldewert for post-hearing submissions. We
10 need to deal with the amended exhibit packets and then
11 we need to deal with the post-hearing submissions.

12 So first of all, Mr. McClure, do you
13 feel like you would benefit from written closing
14 arguments and proposed findings and conclusions?

15 MR. MCCLURE: I would say my feelings
16 tend to be somewhat mixed, but I think here lately we
17 have been asking for those, Mr. Herring Examiner.

18 THE HEARING EXAMINER: We've been
19 asking for them when you feel -- when the technical
20 team feels like they would be beneficial. I only have
21 you to ask here. Do you feel that they would be
22 beneficial? Because it's a lot of work to generate
23 those. And when we had -- what did we have -- three
24 competing applications last time in November?

25 MR. FELDEWERT: Correct.

1 THE HEARING EXAMINER: Yeah. And there
2 were lots of legal issues there.

3 Mr. McClure, would you feel like maybe
4 written closing arguments may be helpful and not
5 necessarily proposed findings and conclusions?
6 Because I think the parties, I'm gathering, would
7 benefit -- would appreciate that, if you don't think
8 it's harmful to you.

9 MR. MCCLURE: Mr. Hearing Examiner, I
10 think that might be the most appropriate as to go the
11 closing arguments, but not findings of fact and
12 ordering.

13 THE HEARING EXAMINER: Okay. Mr.
14 Feldewert, do you agree with that?

15 MR. FELDEWERT: I'm not going to
16 disagree with Mr. McClure.

17 THE HEARING EXAMINER: Right. Of
18 course not.

19 MR. FELDEWERT: If he feels like he
20 needs written closing arguments, we can certainly do
21 that. I don't think it's needed, but we can do it.

22 THE HEARING EXAMINER: Okay. Well,
23 I've heard some legal arguments during today's
24 hearing, which I think could be better fleshed out in
25 written filings. So I do feel that would be helpful

1 for the Division, but I don't want to burden the
2 parties with unnecessary proposed findings and
3 conclusions when they're not going to be helpful to
4 the Division, and I gathered they would not be. So
5 that being said, do you need the transcript to do
6 written closing for this case?

7 MR. FELDEWERT: If we're not doing
8 findings and conclusions, no, I don't think so.

9 THE HEARING EXAMINER: I didn't think
10 you would.

11 Ms. Bennett?

12 MS. BENNETT: Yeah. I think I agree.
13 And Franklin Mountain Energy's goal is to get this
14 done as quickly as possible. And so hearing a date of
15 beyond December 23rd is just not workable. So we
16 would rather go without the transcript or even pay for
17 an expedited transcript rather than waiting on the
18 transcript so that we can get things done.

19 THE HEARING EXAMINER: If you want a
20 transcript, that's up to you. And I haven't heard
21 that you -- I know that Mr. Feldewert doesn't feel
22 necessary to have a transcript for the written closing
23 arguments. Do you want a written transcript?

24 MS. BENNETT: I don't think that we
25 need a written transcript. I mean, I'd like to

1 reflect on it a little bit. And if I do feel after
2 reflecting, then we can work with the court reporter
3 on how to order an expedited transcript.

4 THE HEARING EXAMINER: Just for the
5 parties' illumination, how does that work?

6 THE REPORTER: I mean, if the Division
7 advises me that --

8 THE HEARING EXAMINER: It has to come
9 from the Division?

10 THE REPORTER: Not -- well, no. You
11 can contact me directly. I can provide my details.

12 THE HEARING EXAMINER: Perfect.

13 THE REPORTER: And then put the parties
14 in touch with Veritext to receive a quote and
15 estimated delivery, which can be turned around in four
16 or five days.

17 THE HEARING EXAMINER: Okay. Perfect.
18 So do you want to give the contact information now to
19 the parties in case they decide they want a transcript
20 sooner?

21 THE REPORTER: Yeah. Sure.

22 THE HEARING EXAMINER: Okay. And with
23 that in mind, Ms. Bennett, when -- what is a good
24 deadline for you?

25 MS. BENNETT: I was thinking December

1 9th.

2 THE HEARING EXAMINER: December 9th.
3 Now, let's go to Mr. Feldewert.

4 MR. FELDEWERT: All right. So next
5 week is Thanksgiving week. Right now, there's a
6 contested hearing set on the 10th, which means that we
7 would be preparing for that. So the 9th is going to
8 be difficult.

9 THE HEARING EXAMINER: Ms. Bennett, are
10 you in involved in that contested hearing on the 10th?

11 MS. BENNETT: Can you remind me what
12 the contested hearing is on?

13 MR. FELDEWERT: It involve Civitas
14 [ph].

15 MS. BENNETT: And do you remember the
16 weldings or do you have the weldings?

17 MR. FELDEWERT: It's MRC Tony Larussa
18 [ph] and Civitas [ph].

19 THE HEARING EXAMINER: No. You're not
20 involved?

21 MS. BENNETT: No.

22 THE HEARING EXAMINER: Okay. All
23 right. MR. FELDEWERT: I don't think so. No.

24 THE HEARING EXAMINER: All right. So
25 you'll be preparing for the contested hearing --

1 MR. FELDEWERT: Yes.

2 THE HEARING EXAMINER: -- on the 10th.

3 MR. FELDEWERT: Don't know how long
4 that'll go. So December 30th would now work?

5 THE HEARING EXAMINER: I think that Ms.
6 Bennett would find that difficult. So I would ask you
7 if there's any way to get -- to agree on an earlier
8 date, unless you want me to impose a date?

9 MR. FELDEWERT: If we -- so I got that
10 hearing then the 23rd. So if we could do Wednesday,
11 December 18th?

12 THE HEARING EXAMINER: Ms. Bennett?

13 MS. BENNETT: I prefer Wednesday,
14 December 11th.

15 MR. FELDEWERT: Day after a contested
16 hearing?

17 THE HEARING EXAMINER: Yeah. I would
18 impose that date. But I have to be cognizant that
19 he's involved in a contested hearing on the 10th. I
20 don't even know whether it will run to the 11th or
21 not. So let's try to compromise between these dates.
22 Let me get my calendar up here.

23 MS. BENNETT: How about December 16th?
24 That's a compromise.

25 THE HEARING EXAMINER: Mr. Feldewert,

1 could you agree to December 16th?

2 MR. FELDEWERT: I can do that.

3 THE HEARING EXAMINER: Excellent. I
4 knew we'd find something. All right. So close of
5 business, which is 5:00 p.m., on December 16, closing
6 arguments only. Issues not raised are waived. I'm
7 saying that on the record for both parties' benefit.
8 Is there any -- oh, exhibits.

9 So let me start with you, Ms. Bennett.
10 How long would it take for you to submit one amended
11 exhibit packet with cover letter and without your
12 Rebuttal Exhibit Number 3?

13 MS. BENNETT: Just again, given the
14 holiday week next week, I would say December 2nd, if
15 that's not too late

16 THE HEARING EXAMINER: You know, it
17 could be up until December 16. You know, I mean, I
18 don't see that -- I don't think the Division's going
19 to --

20 Mr. McClure, are you going to do
21 anything with this case before December 16?

22 MR. MCCLURE: It seems unlikely.

23 THE HEARING EXAMINER: It seems
24 unlikely. See? There we are. So why don't we make
25 it the same date?

1 MS. BENNETT: Would it be possible to
2 make it December 9th just so we can each say that
3 there -- see that there's not been any changes.

4 THE HEARING EXAMINER: Fine. Fine.

5 MR. FELDEWERT: Well, that's easy for
6 us. The only one we're adding is the term assignment.
7 So there's not going to be any other changes. So
8 December 16th should be fine because you're not
9 changing any of your exhibits.

10 MS. BENNETT: We have quite a few --

11 MR. FELDEWERT: Cleanup.

12 MS. BENNETT: I mean, we have cleanup,
13 but we're not making any modifications to our
14 exhibits.

15 MR. FELDEWERT: That's fine.

16 THE HEARING EXAMINER: So Mr.
17 Feldewert, do you have a problem with December 9 for
18 the amended exhibit packet? It sounds like yours is
19 very simple. MR. FELDEWERT: You're right. It is. I
20 guess I don't have a problem. That's fine.

21 THE HEARING EXAMINER: Very good.
22 Okay. So we have two dates, Madai, for calendaring.
23 Two dates. December 9 at 5:00 p.m. for amended
24 exhibit packets with cover letter. And, you know,
25 Madai, Freya [ph] who's not going to be around for

1 about six weeks, just so everyone knows. So if you
2 need anything, please email Madai and not Freya [ph].

3 I'm not sure how the out-of-office
4 works or whatever. She will be removing the
5 duplicates once we hear from the parties that they
6 approve -- that there's no objection to the amended
7 exhibit packets. Okay. So we have December 9, 5:00
8 p.m. for the amended exhibits. We have December 16,
9 5:00 p.m. for closing written arguments. Is there
10 anything else before we go off the record?

11 MR. FELDEWERT: Just one other thing.
12 Ms. Bennett was kind of touching around some concerns
13 we had with her filed applications about them being,
14 as she said, overbroad.

15 THE HEARING EXAMINER: I remember that.
16 Yes.

17 MR. FELDEWERT: There was nothing in
18 their pre-hearing statement about that. It has not
19 been articulated, so I don't know what she's talking
20 about there. So it's going to be difficult for me
21 to -- so to the extent that she wants to brief
22 something on that, I'd like to have an opportunity to
23 look at it and then file a response. So I may need
24 to -- all depends. I'm just saying I may need leave
25 to file a short response after December 16th.

1 THE HEARING EXAMINER: Okay. Ms.
2 Bennett, do you want to file something before December
3 16th? Because I know for you, time is of the essence.
4 That's why I'm saying this on that legal issue alone.
5 Do you want to file something before December 16th so
6 that Mr. Feldewert can include in his closing argument
7 on the 16th some sort of response to that?

8 MS. BENNETT: That sounds workable to
9 me.

10 THE HEARING EXAMINER: Perfect.

11 MS. BENNETT: As long as it's clear
12 that the earlier filing is only to address that issue
13 and that I have the full opportunity for the closing
14 argument.

15 THE HEARING EXAMINER: I'm making it
16 clear on the record.

17 MS. BENNETT: Thank you.

18 THE HEARING EXAMINER: So what date do
19 you want to submit just that issue?

20 MS. BENNETT: How about December 9th?

21 THE HEARING EXAMINER: Perfect.
22 December 9th.

23 Are you okay with that, Mr. Feldewertl?

24 MR. FELDEWERT: Yes, that's fine.

25 THE HEARING EXAMINER: All right. So

1 Madai, we have an additional deadline of December 9
2 for closing argument from Franklin Mountain Energy
3 only on that one issue of overbroad -- and I'm just
4 calling them overbroad applications. Okay? All
5 right. So we have three deadlines.

6 MS. BENNETT: Yes. And just to be
7 clear, I mean I understand that we're shorthanding
8 what my argument was on that. But I'll be expounding
9 on that or explaining it. And it is not necessarily
10 just that the applications are overbroad.

11 THE HEARING EXAMINER: Okay.

12 MS. BENNETT: Thank you.

13 MR. MCCLURE: Mr. Hearing Examiner?

14 THE HEARING EXAMINER: Yes, Mr.
15 McClure?

16 MR. MCCLURE: One further request for
17 Franklin.

18 THE HEARING EXAMINER: Yes.

19 MR. MCCLURE: On their cross-sections,
20 I'd like for them to amend that to include the API
21 numbers for each of those wells.

22 THE HEARING EXAMINER: Okay. Perfect.

23 MR. MCCLURE: Do you know which ones
24 I'm referring to, Ms. Bennett?

25 MS. BENNETT: I do, yes. Thank you.

1 THE HEARING EXAMINER: And Ms. Bennett,
2 that's not going to change your page numbers on
3 anything, will it? You're just adding data to a map;
4 right?

5 MS. BENNETT: That's right.

6 THE HEARING EXAMINER: Okay. Great.
7 So that won't change anything. And I know Mr.
8 Feldewert gets concerned when page numbers change, as
9 I would, so I can understand. Okay. Anything else?

10 MR. FELDEWERT: No.

11 THE HEARING EXAMINER: Excellent.
12 Thanks for wrapping this up before five o'clock, and
13 I'm glad we could get this done. Thank you.

14 (Whereupon, at 4:37 p.m., the
15 proceeding was concluded.)

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CERTIFICATE

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

December 23, 2024



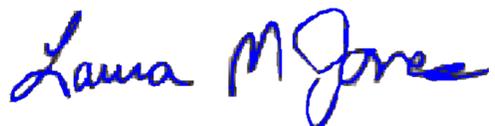
JAMES COGSWELL
Notary Public in and for the
State of New Mexico

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December 23, 2024



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