

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

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

APPLICATION OF DELAWARE ENERGY, LLC CASE NO. 16258
FOR AUTHORIZATION TO INJECT SALT WATER
FOR PURPOSES OF DISPOSAL THROUGH ITS
PROPOSED BEAR TRAP SWD #1 WELL, EDDY
COUNTY, NEW MEXICO.

Consolidated with

APPLICATION OF DELAWARE ENERGY, LLC CASE NO. 16259
FOR AUTHORIZATION TO INJECT SALT WATER
FOR PURPOSES OF DISPOSAL THROUGH ITS
PROPOSED GIANT PANDA SWD #1 WELL, EDDY
COUNTY, NEW MEXICO.

Consolidate with

APPLICATION OF DELAWARE ENERGY, LLC CASE NO. 16260
FOR AUTHORIZATION TO INJECT SALT WATER
FOR PURPOSES OF DISPOSAL THROUGH ITS
PROPOSED GRIZZLY SWD #1 WELL, EDDY
COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING
November 13, 2018
Santa Fe, New Mexico

BEFORE: PHILLIP GOETZE, CHIEF EXAMINER
DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the
New Mexico Oil Conservation Division, Phillip Goetze,
Chief Examiner, and David K. Brooks, Legal Examiner, on
Tuesday, November 13, 2018, at the New Mexico Energy,
Minerals and Natural Resources Department, Wendell Chino
Building, 1220 South St. Francis Drive, Porter Hall,
Room 102, Santa Fe, New Mexico.

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1	INDEX	
2		PAGE
3	Case Numbers 16258, 16259 and 16260 Called	6
4	Motion for Continuance of Case Number 16261	6
5	Motion to Dismiss Case Number 16261	12
6	Motion for Dismissal of 3Bear Energy, LLC	21
7		
8	Delaware Energy, LLC's Case-in-Chief:	
9	Witnesses:	
10	Sarah Presley:	
11	Direct Examination by Mr. Rankin	32
12	Cross-Examination by Mr. McMillan	62, 71
13	Cross-Examination by Mr. Craig	69
14	Redirect Examination by Mr. Rankin	78
15	Jason S. Goss:	
16	Direct Examination by Mr. Rankin	80
17	Cross-Examination by Mr. Craig	110
18	Cross-Examination by Mr. McMillan	135
19	Cross-Examination by Examiner Goetze	138
20	Redirect Examination by Mr. Rankin	145
21	Kevin J. Schepel:	
22	Direct Examination by Mr. Rankin	147
23	Cross-Examination by Mr. Craig	161
24	Cross-Examination by Examiner Goetze	165
25	James "Jim" Davis' and Alisa Ogden's Case-in-Chief:	
26	Witnesses:	
27	Matthew Ramey:	
28	Direct Examination by Mr. Craig	169
29	Cross-Examination by Mr. Rankin	184
30	Redirect Examination by Mr. Craig	190

1	INDEX (Cont'd)	
2		PAGE
3	James Davis' and Alisa Ogden's Case-in-Chief (Cont'd):	
4	Witnesses (Cont'd):	
5	James "Jim" Davis:	
6	Direct Examination by Mr. Craig	194
	Cross-Examination by Mr. Rankin	216
7	Cross-Examination by Examiner Brooks	223
	Cross-Examination by Examiner Goetze	224
8	Alisa Ogden:	
9	Direct Examination by Mr. Craig	226
10	Cross-Examination by Mr. Rankin	236
11		
12	Foundation Minerals, LLC; Mavros Minerals, LLC; and Oak	
	Valley Mineral and Land, LP's Case-in-Chief:	
13	Witnesses:	
14	Brian Arnold, Jr.:	
15	Direct Examination by Mr. McMillan	238
16	Cross-Examination by Mr. Rankin	244
17	Oral Motions to Intervene	252
18	Delaware Energy, LLC's Rebuttal Case:	
19	Witnesses:	
20	Jason S. Goss (Re-called):	
21	Direct Examination by Mr. Rankin	254
	Voir Dire Examination by Mr. Craig	265
22	Cross-Examination by Mr. Craig	268
	Cross-Examination by Mr. McMillan	271
23		
24	Proceedings Conclude	280
25	Certificate of Court Reporter	281

1	EXHIBITS OFFERED AND ADMITTED	
2		PAGE
3	Delaware Energy, LLC Exhibit Numbers 2 and 3	60
4	Delaware Energy, LLC Exhibit Numbers 1A through 1E	108
5	Delaware Energy, LLC Exhibit Number 1F	160
6	Delaware Energy, LLC Exhibit Number 4	168
7	Delaware Energy, LLC Exhibit Numbers 5, 6 and 7	267
8		
9	Davis Exhibit Numbers 1 through 7	215/216
10	Ramey Exhibit Number 1	175
11	Ramey Exhibit Number 2	196
12		
13	Featherstone Exhibit Number 9	247
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 (9:17 a.m.)

2 EXAMINER GOETZE: Good morning, ladies and
3 gentlemen. This is Docket Number 46-18, special
4 examiner hearing, Tuesday, November 13th, 2018, in
5 Porter Hall. Today we are here to consider four cases,
6 Cases 16258, Case 16259, Case 16260, Case 16261.

7 I am your examiner for today. My name is
8 Philip Goetze, and legal counsel is Mr. David Brooks.

9 With that, this was set up as a special
10 hearing to accommodate all parties concerned, but on
11 Friday, I believe we had a series of motions filed at
12 4:45. So let's see, first of all, what motions have
13 been filed and what we'll discuss right now before we go
14 any further.

15 MR. RANKIN: Mr. Goetze, would you like to
16 call for appearances first or --

17 EXAMINER GOETZE: Well, let's get to the --
18 let's get to the legal ramifications and then we'll get
19 to who is going to show up.

20 MR. RANKIN: Very well.

21 Good morning, Mr. Goetze and Mr. Brooks.

22 Adam Rankin appearing on behalf of Delaware
23 Energy, LLC. We did file two motions on Friday
24 afternoon. One was a motion for continuance, and the
25 other was a motion to dismiss 3Bear from the

1 proceedings. Taking up the first, I think, that makes
2 sense logically would be the motion for continuance. We
3 filed that motion on Friday after we had confirmed with
4 my client, with Delaware, after conferring with the
5 other parties -- rather, not parties but other objectors
6 and protestants about the subject of the continuance.
7 When I received word they were opposed to continuing one
8 of the cases, I filed a motion.

9 The genesis of the request for continuance
10 was that on -- I believe it was on Tuesday, I got a call
11 from the State Land Office indicating that they were --
12 that the Commissioner had questions or concerns about
13 the proposed location for the Kodiak well in Case Number
14 16261, which had received tentative approval for
15 staking -- or, actually, received approval for staking
16 from the State Land Office, and we had understood that
17 to be an approved location. So at that point, then I
18 had to confer with my client how to proceed on that
19 case, and we decided that it made sense, since the
20 location was no longer approved by the Land Commission,
21 that we would need to continue it to rework the
22 location. So at that point, I approached the other
23 parties.

24 And then I was out of town in Los Angeles
25 for depositions on Wednesday and Thursday, and when I --

1 on Thursday, when I confirmed with my client that they
2 were going to continue the case, I reached out to other
3 counsel and asked for their approval as well.

4 Now, in response, they've raised -- the
5 protestants have raised concerns about the timing of the
6 request for continuance suggesting that it's late. In
7 fact, the rules expressly provide that motions for
8 continuance shall be filed 48 hours in advance of the
9 time of the hearing, and my motion was filed on Friday,
10 which was, you know, well in advance of the 48-hour
11 requirement, at least by the close of business on
12 Friday. So it wasn't by any stretch late. It was close
13 to being the end of the time frame reasonably because it
14 was the start of the weekend, but it was not late.

15 So with that -- another couple points I'd
16 like to make real quick about the request for
17 continuance. Basically, it should be approved. We
18 don't have an approval location. The State Land Office
19 is not protesting any other aspect of that case but for
20 the location. They have identified an alternative
21 proposed location which Delaware is reviewing at this
22 time. We believe that we can, you know, potentially
23 come to agreement on the location and hear that case in
24 January. So without a location, there is really no
25 point in going forward with that case. We can review

1 the technical aspects, the well design and so forth, but
2 we haven't provided notice to any party that is due
3 notice, may want to object, and so it makes no sense to
4 us to proceed with that case today.

5 Second, each of these cases is a separate
6 case. They were filed separately. They have a separate
7 case number. They are not consolidated by any stretch.
8 They are subject to different facts, different factors
9 that relate to their approval, different distances from
10 the protestants, and so there is no basis or
11 justification for requiring them to be heard all
12 together. We ask that they be consolidated for hearing
13 purposes simply so that we can present them -- it made
14 sense to present them together since they were
15 relatively close together, but they are all subject to,
16 you know, different facts and location issues.

17 So with that -- and thirdly, based on the
18 potentially new location for the Kodiak, it's very
19 likely and maybe even probable that the location may
20 resolve any objections that the protestants may have.
21 The State Land Office has identified a location a mile
22 and a half or so north from the existing updated
23 location, and that distance may end up, you know,
24 resolving the protests -- if that's the final location,
25 may end up resolving the objections that the parties

1 have about the locations. And so for the protestants
2 now to be objecting to a continuance, ultimately that
3 may resolve their objections. So it doesn't make any
4 sense.

5 Their concern about coming back up here
6 ought to be considered in the same light. You know,
7 they're the parties protesting, and if they want to
8 maintain the protest, then that's just something they'll
9 have to do. It's a separate case, and if they want to
10 maintain their protest, that's a burden they'll have to
11 bear. However, whether they have to come back, you
12 know, again is dependent upon whether the new location
13 is going to, you know, resolve their objections. Seems
14 to me we ought to have the opportunity to try to resolve
15 and identify an updated location and see if that will
16 resolve the protestants' concerns.

17 So with that, Mr. Examiner, we ask that
18 this motion for continuance in Case 16261 for the Kodiak
19 well be granted and that we identify a date in January
20 that works for the parties so that we can hear that case
21 in its entirety and that the parties who are entitled to
22 notice within the one-mile area of review are given the
23 opportunity to appear.

24 EXAMINER GOETZE: Okay. So I have just two
25 motions at this point, the motion for dismissal and the

1 motion for continuance; is that correct?

2 MR. RANKIN: That's correct.

3 EXAMINER GOETZE: Okay. With that, we will
4 ask for appearances. Who is appearing?

5 MR. CRAIG: Yes, sir. I'm Jimmy Craig,
6 Mr. Goetze. I represent two of the protestants,
7 Mr. Davis and Ms. Ogden. And appreciate it, but we'll
8 talk when we're ready.

9 MR. McMILLAN: Mr. Examiner, Seth McMillan,
10 Montgomery & Andrews, here on behalf of Foundation
11 Minerals, LLC, Marvos Minerals, LLC and Oak Valley
12 Mineral and Land, LP. That's a lot of words, so I'll
13 refer to my clients collectively as the Mineral
14 Companies. Thanks.

15 EXAMINER BROOKS: Does either of you
16 wish to present any argument in response to --

17 EXAMINER GOETZE: We've still got one more.

18 EXAMINER BROOKS: Another one?

19 EXAMINER GOETZE: We've still got more.
20 We've got a fourth and fifth.

21 EXAMINER BROOKS: Oh, there are lawyers all
22 over the place.

23 But anyone who wants to argue in response
24 to Mr. Rankin.

25 MS. MOSS: In the event -- I have to say

1 something, Kathryn Moss representing the New Mexico
2 State Land Office.

3 EXAMINER GOETZE: Ms. Callahan, please.

4 MS. CALLAHAN: Thank you.

5 Mr. Examiner, Candace Callahan appearing on
6 behalf of 3Bear Delaware Operating NM, LLC.

7 EXAMINER GOETZE: Okay. Let's do this one
8 motion at a time. Motion for continuance: We have one
9 well that has been proposed to be pushed onto the
10 January schedule. Any of those making appearances wish
11 to counter that or oppose it or have a statement?

12 MR. CRAIG: Well, based upon what was said,
13 I mean, it appears to me that from that one, there is
14 no -- we don't even have a proposed location at this
15 point. And rather than continue, it just seems like --
16 rather than keep continuing this case and continuing
17 moving it around -- this will be the second, I think,
18 time this one's been moved. And my understanding is
19 it's not going to be even in the same section -- that
20 probably the best course of action would be to dismiss
21 this particular application and let them refile it as a
22 new application at the new location once they've figured
23 out where that is.

24 EXAMINER GOETZE: Very good.

25 Mr. McMillan.

1 MR. McMILLAN: The Mineral Companies would
2 concur with that approach. This location has moved
3 multiple occasions already, and without a confirmed
4 location, it seems like what's really happening here is
5 Delaware is playing hop-scotch with their original
6 application and that there has to be -- this can't just
7 continue bouncing around from location to location and
8 continuing under the original filed application date,
9 particularly where the changes are not -- these aren't
10 minor changes to surface location. This is a mile and a
11 half north. It might implicate additional parties in
12 the area of review. It could be a very different
13 situation. We just don't know because we don't have a
14 location yet. It seems to me that that should be
15 packaged together in a new application and that this
16 application should be dismissed for the time being.

17 EXAMINER GOETZE: Ms. Callahan?

18 MS. CALLAHAN: 3Bear would concur with what
19 the other two gentlemen have just said.

20 MR. McMILLAN: And I would also add -- I'm
21 sorry -- with respect to the 48-hour rule that
22 Mr. Rankin cited, you know, in the district courts when
23 we look at Rule 6, where there is a tight, tight
24 timeline like less than ten days -- here we're talking
25 about 48 hours -- we're not talking about weekends and

1 holidays. This is 48 hours that the clock began ticking
2 at the end of a Friday, knowing that Veterans Day was
3 coming up on a Monday, there is no way this motion was
4 in any way timely. That's not a reasonable reading of
5 the 48-hour rule.

6 EXAMINER GOETZE: Ms. Moss?

7 MS. MOSS: I think it would be unfortunate
8 if you dismiss the case because in all other respects,
9 these wells have been considered together. I don't
10 think a second or even a third change in location
11 warrants the dismissal. But in any case, the State Land
12 Office will not approve the current location, and so
13 hearing it here now wouldn't make any sense. So either
14 the continuance or the dismissal would achieve the same
15 thing as far as the State Land Office is concerned.

16 Thank you.

17 EXAMINER GOETZE: Thank you.

18 MR. RANKIN: If I may just make a brief
19 response to these arguments. Delaware is greatly
20 concerned about timing issues and delay and have worked
21 diligently to identify approval locations with the State
22 Land Office, and we thought we had that. And so the
23 change in location is not at Delaware's request or
24 preference. It's due solely to the, you know, request
25 from the State Land Office. And so, you know, if it

1 were up to us, we would prefer to proceed with all four
2 cases today at the locations we've identified. However,
3 we can't do that in light of the State Land Office's
4 concerns on the one.

5 Our concerns are that were the case to be
6 dismissed, the protestants, who have known about our
7 applications for six months, have indicated they would
8 like to file a competing disposal well. So by
9 dismissing our case, they are seeking to hop-scotch in
10 front of us where we have done so much work in advance.
11 So it would be prejudicial and grossly unfair to dismiss
12 a case due to no -- no fault of our own.

13 So with that, Mr. Goetze, Mr. Brooks, we
14 ask that Case Number 16261, you know, be continued, not
15 be dismissed so that we can identify an approved
16 location from the State Land Office.

17 EXAMINER GOETZE: Well?

18 EXAMINER BROOKS: Well, my view is that if
19 it relates to a different location, it's a different
20 application, so it should be -- the present application
21 should be dismissed. I don't know whether the
22 connection between these cases is so intimate that we
23 can't proceed to hear the other three without this one,
24 but nobody's really suggested that that's the situation.

25 EXAMINER GOETZE: And then with regards to

1 the 48 hours, that seems to be a legal --

2 EXAMINER BROOKS: Well, it is. And I don't
3 have the statute in front of me, and it's not good to --

4 You don't happen to have the statute with
5 you?

6 MR. RANKIN: The statute? I have the rule
7 that cites the continuance.

8 EXAMINER BROOKS: Well, isn't there a
9 statute on the subject on how you count time? If the
10 statute says any period of time less than ten days -- or
11 ten days or less, excludes weekends and holidays, then
12 it's absolutely right that this was filed late. Now, we
13 often grant continuances that were filed late, so that
14 wouldn't be a shock to anybody if we did that. But that
15 would give us -- we would know what the situation is.
16 If it says any period of days, ten or less, excludes
17 weekends and holidays, then it doesn't necessarily mean
18 the same thing.

19 MR. McMILLAN: And to be clear,
20 Mr. Examiner, my reference was to the Rules of Civil
21 Procedure 6. I wasn't trying to put my finger on the
22 statutory provision, but I know that in the district
23 courts, when you look at a time period that's less than
24 11 days, we're counting real days, court days.

25 EXAMINER BROOKS: Yes. You're in

1 accordance with the statute which does cover that
2 matter.

3 Well --

4 MR. RANKIN: Even if we were to follow
5 that, the event that gave rise to the request for
6 continuance would have fallen after the deadline. I
7 mean --

8 EXAMINER BROOKS: Well, I think that this
9 Case Number 16261 that relates to the well that you're
10 not going to proceed with because the State Land Office
11 will not grant the location, I think that case should be
12 dismissed. And I think that would be my advice to the
13 examiner because it seems to me like it's a different
14 case. If it's -- a right to drill a well at one
15 location is not a right to drill at some other location.
16 So I don't see how that the issue can be resolved in
17 this present case. You've got to get a location and
18 give notice to the appropriate parties before you can
19 proceed on that one.

20 So the question then is: Do you want to go
21 ahead with -- are we going to go ahead with the other
22 three, or are we going to dismiss all four?

23 MR. RANKIN: Mr. Examiner, we intend to
24 proceed with all three other cases because there is
25 no --

1 EXAMINER BROOKS: Are you requesting to
2 continue the other three?

3 MR. RANKIN: No. No, sir.

4 EXAMINER GOETZE: Is anybody else
5 requesting to continue?

6 Mr. Craig?

7 MR. CRAIG: We would have liked to continue
8 it last week so we didn't have to drive up here, but
9 since we're up here, we'd just as soon go ahead.

10 EXAMINER GOETZE: Very good.

11 EXAMINER BROOKS: Well, that seems to me as
12 the appropriate course of action. If indeed the motion
13 for continuance is filed late, that just reinforces that
14 view.

15 But the motion is actually only in 16261,
16 and I think that has to be dismissed because we can't
17 hold a hearing when we have not had notice to the
18 parties, and we don't even know who the parties should
19 be because we don't know what the location is going to
20 be.

21 MR. McMILLAN: I would also note,
22 Mr. Examiner, that in Delaware's pre-hearing statements,
23 they are asking that these be heard -- that Cases 16258
24 through 16261 be presented together for purposes of
25 hearing.

1 EXAMINER BROOKS: Yeah.

2 Are you requesting a continuance as to
3 other three cases?

4 MR. McMILLAN: I'm not sure I have a strong
5 opinion. My witness is here. He drove out here from
6 Midland.

7 However, there is an issue with respect to
8 the motion to dismiss that may impact this
9 determination, but I think that's for Ms. Callahan to
10 address.

11 EXAMINER BROOKS: Ms. Callahan.

12 MS. CALLAHAN: We have requested time to
13 respond to the motion to dismiss, and if that wanted to
14 be in conjunction with a continuance, then that would be
15 fine as well.

16 EXAMINER BROOKS: Well, I'm going to
17 recommend that we go ahead with the three cases that we
18 have.

19 And we have a motion for continuance in
20 this case, and if at any time that you're prepared to
21 respond to it during the course of this hearing, we'll
22 be glad to hear your response, but, otherwise, it's
23 going to be granted at the conclusion of this hearing.

24 MS. CALLAHAN: The motion to dismiss will
25 be granted?

1 EXAMINER BROOKS: The motion to dismiss.

2 MS. CALLAHAN: Okay. Well, I guess if I'm
3 being required to, at the last minute, respond to a
4 motion to dismiss that was untimely filed, in my
5 opinion, we can certainly do that.

6 EXAMINER BROOKS: Well, are you saying the
7 Applicant can't dismiss their own case?

8 MS. CALLAHAN: No. I'm speaking -- no.
9 I'm speaking to the three other cases.

10 MR. CRAIG: I think what she's confused
11 about is there are two -- well, we've kind of made an
12 oral motion to dismiss the application, but then there
13 is a motion to dismiss 3Bear, which is a separate
14 motion --

15 EXAMINER GOETZE: Yeah. There is a
16 motion --

17 MR. CRAIG: -- from all four matters.

18 EXAMINER BROOKS: I was just addressing --
19 I was just addressing --

20 MR. CRAIG: I think that was the confusion.

21 MS. CALLAHAN: Yes.

22 EXAMINER BROOKS: -- Delaware's application
23 to dismiss as to the -- as to the one well where the
24 land office has disapproved. I'm not saying anything
25 about the other motion because I haven't really in mind

1 what it's about.

2 EXAMINER GOETZE: So in the case -- the
3 single case of 16261, at this point I will make
4 recommendations for it to be dismissed, that the
5 Applicant re-apply once we have an agreed location.
6 This application has lingered on for some time, and with
7 the way things are happening down there, us carrying
8 over has become quite a burden. We have over 50
9 protests. And if there is no resolution, if you don't
10 have a stake in the ground, then we don't really want
11 you to be here to discuss it because it doesn't help us.

12 With that, we have three remaining cases,
13 and there was a motion filed by the Applicant, Delaware
14 Energy, with regards to the standing of 3Bear, in these
15 three cases for which they are appearing in opposition;
16 is that correct?

17 MS. CALLAHAN: Yes, that's correct.

18 EXAMINER BROOKS: Okay. And you're moving
19 to continue the case so you can respond to that motion?

20 MS. CALLAHAN: Well, I don't -- I don't
21 believe that it's necessary to continue the three cases.
22 I think the hearing on the motion to dismiss could be
23 heard after you go through the hearing of these cases.
24 I think it could be addressed afterwards.

25 EXAMINER BROOKS: Well, the question is:

1 Then what would be economy of time to dismiss -- and
2 that depends on -- well, it creates a confusing
3 situation.

4 My belief is that these cases have been
5 around for a long time and we ought to go ahead and get
6 a hearing on them even if we end up, on some standing
7 issues, dismissing them because that might -- that
8 would -- it could kick to the Commission, and the
9 Commission could decide the standing issue first, which
10 would be the more efficient way to do it than deciding
11 it on this record, if I understand what you're proposing
12 correctly.

13 MS. CALLAHAN: I guess that's an accurate
14 description.

15 EXAMINER BROOKS: What you have proposed is
16 that we hear the motion to dismiss, along with the
17 merits in this case?

18 MS. CALLAHAN: I can speak to that today.
19 I feel kind of blindsided because it was a late-filed
20 motion. I did request that it be not granted on the
21 basis of having been late filed. And as Delaware
22 pointed out, these cases have been going on for months,
23 and they just wait for the last minute to file a motion
24 to dismiss a party who has entered an appearance in
25 July. They're well aware of the agreement between 3Bear

1 and the Foundation Group that creates the interest that
2 3Bear has in these cases, and they've been aware of that
3 for months. So it really seems an ill-timed motion, and
4 I don't think it should be considered, frankly.

5 EXAMINER BROOKS: Well, I will recommend
6 that we continue -- we proceed with the hearing and that
7 we take -- we hear evidence on that matter, along with
8 the other matters that are in the record -- that may be
9 developed in the record without -- reserving judgment on
10 it until the conclusion of the case.

11 MS. CALLAHAN: All right.

12 MR. RANKIN: No objection to that,
13 Mr. Brooks.

14 However, if I might just take a moment to
15 respond to the timing issue --

16 EXAMINER BROOKS: Yes.

17 MR. RANKIN: -- on the motion to dismiss
18 because I think it would help clarify.

19 I think with respect to how this all came
20 out -- and I just want to point out that Delaware has
21 been eager to proceed with these cases in the hearing.
22 And while we did have to move the wells once due to,
23 again, the State Land Office's request to change
24 locations, after we thought we had approved locations,
25 we have been eager to proceed to hearing. And as

1 Mr. Goetze may remember, we had a difficult time
2 identifying dates for all the parties to appear.

3 EXAMINER BROOKS: Yeah.

4 MR. RANKIN: So it was really not due to
5 our delay that these cases have been on the docket for
6 so long. It's really because we've been getting change
7 locations from the State Land Office, and we've been
8 trying to identify dates that work for all the
9 protestants in this case.

10 Now, on the motion to dismiss, you know, I
11 had been reviewing the applications for C-108s to
12 identify what had been represented to be 3Bear's pending
13 application for a C-108, a competing disposal well. In
14 their pre-hearing statement, which they filed in July,
15 they identified the Carlsbad 960 SWD well in the -- as
16 the injection well that was in offsetting acreage that
17 they said was being -- was the competing location and
18 the basis for their objection. And when I looked to try
19 to identify the location of that well, it was in a
20 separate township, at least a township or two over. And
21 so when we filed pre-hearing statements last week, I
22 was -- let me back up. I had asked finally for 3Bear to
23 provide a copy of their C-108, and when I heard back
24 that they had not yet filed one in the offsetting
25 acreage, I assumed by the time the pre-hearing

1 statements were due, they were going to file a C-108 and
2 update and amend their pre-hearing statement to reflect
3 they had filed a C-108 in the offsetting acreage to
4 substantiate the basis for their objections.

5 When last Tuesday came and went and they
6 hadn't done so and then so there was still no offsetting
7 C-108 of record filed with the Division, I then
8 determined that they had no -- they shouldn't be
9 permitted to proceed in the case because they had no --
10 no competing application, they were not a notice party,
11 and they had no other basis to object to the well.

12 And so at that time, I -- that was --
13 Tuesday, the pre-hearing statements were due. They
14 should have filed a notice to intervene the day before
15 and they didn't. I was in Los Angeles in depositions
16 until Friday morning. So I filed a motion to dismiss at
17 the earliest time I could based on the sequence of
18 events, that they had not filed a pre-hearing statement
19 to amend or update their -- what their location was for
20 their competing well. And so it shouldn't have been a
21 surprise at all that I filed a motion to dismiss based
22 on the fact that I brought to their attention that they
23 had no competing C-108 and, you know -- so really it
24 shouldn't have been a surprise because they had no basis
25 to object. They may have had an agreement with the

1 interest owners, but there was nothing pending
2 reflecting that they actually had an intention to drill
3 or were likely to be harmed in any way adversely, the
4 fact that 3Bear long filed applications which were filed
5 back in May of this year.

6 So with that, Mr. Examiner, you know, I am
7 comfortable proceeding with the presentation of the
8 case. However, I would urge the examiners to dismiss
9 3Bear from being able to participate. They have known
10 about these applications for six months and they've
11 known that we had these applications to drill, and yet
12 all this time, they have not filed a C-108 to establish
13 any basis to object.

14 EXAMINER BROOKS: Well, I think we'll
15 understand the landscape a lot better after we hear the
16 evidence, and I don't think we're going to get out of
17 hearing the evidence. So I would prefer to go ahead and
18 hear it now because appointments for special settings
19 for Division examiner hearings are becoming scarce. The
20 scarcity has value, as any economist will tell you.

21 EXAMINER GOETZE: And on that note, you
22 (indicating) had a witness, Mr. Burns?

23 EXAMINER BROOKS: Well, let's call the
24 cases for the record and then have you go through the
25 swearing of the witnesses.

1 EXAMINER GOETZE: Right.

2 Is he available?

3 MS. CALLAHAN: He is not available today.

4 EXAMINER GOETZE: All right. And with the
5 result of that discussion, we will proceed with Case
6 16258, application of Delaware Energy, LLC for
7 authorization to inject salt water for purposes of
8 disposal through its proposed Bear Trap SWD #1 well,
9 Eddy County, New Mexico.

10 Call for appearances.

11 MR. RANKIN: Mr. Examiner, Adam Rankin on
12 behalf of the Applicant, Delaware Energy, LLC. I have
13 asked that Case Number 16258 be presented together with
14 cases 16259 and 16260. In all three cases, I have three
15 witnesses to present.

16 EXAMINER GOETZE: Any other appearances?
17 We'll go back through this process again.

18 MR. CRAIG: I don't think we protested that
19 one. After it moved, we did away with ours.

20 EXAMINER GOETZE: Okay. Mr. McMillan?

21 MR. McMILLAN: Sorry. I was commiserating
22 with co-counsel. Which well --

23 EXAMINER GOETZE: 16258, which is the Bear
24 Trap.

25 MR. McMILLAN: Okay. Well, sure. Seth

1 McMillan on behalf of the Mineral Companies.

2 EXAMINER GOETZE: And do you have any
3 witnesses?

4 MR. McMILLAN: Yeah. I have one witness
5 who I may call, Mr. Brian Arnold, Jr.

6 EXAMINER GOETZE: Ms. Callahan?

7 MS. CALLAHAN: Are we hearing these
8 separately?

9 EXAMINER GOETZE: Yes, ma'am.

10 MS. CALLAHAN: Candace Callahan for 3Bear
11 Delaware, LLC.

12 EXAMINER GOETZE: And the witnesses?

13 MS. CALLAHAN: No witnesses today.

14 EXAMINER GOETZE: Thank you.

15 Would the witnesses who are going to appear
16 in this case please stand and be sworn in by the court
17 reporter?

18 (Ms. Presley, Mr. Goss, Mr. Schepel and
19 Mr. Arnold sworn.)

20 EXAMINER GOETZE: We'll let you start with
21 opening statements, if you wish, or proceed into
22 hearing.

23 MR. RANKIN: Mr. Examiner, we'll just go
24 right into the hearing with witnesses, if that's okay
25 with you.

1 EXAMINER BROOKS: And no party wants to
2 consolidate these cases for the purposes of hearing?

3 MR. RANKIN: Mr. Examiner, I did make that
4 request. And when I say consolidated for hearing
5 purposes, to be clear, I'm not asking that they be
6 issued a single order because we don't want any one case
7 to be hung up if there is an issue with any one of them,
8 but for purposes of economy and presentation of these
9 cases, we think it makes sense to allow us to present
10 them all together. That way, with one witness, we can
11 run through all the exhibits in an efficient manner.

12 EXAMINER BROOKS: And do the other parties
13 object?

14 MR. CRAIG: We don't.

15 MR. McMILLAN: No, no objection.

16 MS. CALLAHAN: No objection.

17 (Ms. Moss exits the room, 9:49 a.m.)

18 EXAMINER BROOKS: Same counsel appearing
19 for same parties in all cases?

20 MR. RANKIN: I believe, with the sole
21 exception that -- and Mr. Craig can correct me if I'm
22 wrong. But Ms. Ogden and the Davises have not entered
23 an appearance and are no longer objecting to the Bear
24 Trap case in Case Number 16258.

25 EXAMINER BROOKS: Okay. Let's call all the

1 cases and consolidate them for purposes of hearing
2 only -- for purposes of hearing evidence only, and then
3 that way we'll know -- the record will be clear as to
4 what we're doing.

5 Now, in Case Number 16261, the motion to
6 dismiss was granted, so that case will be dismissed when
7 we get an order prepared.

8 EXAMINER GOETZE: With that, Case 16259,
9 application of Delaware Energy, LLC for authorization to
10 inject salt water for purposes of disposal through its
11 proposed Giant Panda SWD #1 well, Eddy County, New
12 Mexico, along with Case 16260, application of Delaware
13 Energy, LLC for authorization to inject salt water for
14 purposes of disposal through its Grizzly SWD #1 well,
15 Eddy County, New Mexico will be consolidated for the
16 purpose of testimony.

17 MR. RANKIN: Thank you, Mr. Examiner.

18 I'd like to call my first witness,
19 Ms. Sarah Presley.

20 MR. CRAIG: Did you want to get our
21 witnesses for those other cases, do them all at once?

22 EXAMINER BROOKS: Do you have additional
23 witnesses?

24 MR. CRAIG: Since we're protesting 59 and
25 60 --

1 EXAMINER BROOKS: We should get them all
2 sworn.

3 EXAMINER GOETZE: Would those folks
4 appearing in the two other cases, 16259 and 16260,
5 please stand and also identify yourself to the court
6 reporter and be sworn in, please?

7 MR. CRAIG: This is Jim Davis, Matthew
8 Ramey and Alisa Ogden.

9 (Ms. Ogden, Mr. Davis and Mr. Ramey sworn.)

10 MR. McMILLAN: I'm sorry. Just a
11 clarification. To be clear, although we have
12 consolidated for purposes of hearing, we'll march
13 through these one case at a time --

14 EXAMINER GOETZE: At a time.

15 MR. McMILLAN: -- with a separate -- okay.
16 Great. Thank you.

17 MR. RANKIN: Well, just to be clear, I
18 think what I'm going to be doing is I'll be referencing
19 different exhibits for different cases, but with
20 each witness, I'll be --

21 EXAMINER GOETZE: Now, I mean, we have
22 three unique applications here.

23 MR. RANKIN: They are unique.

24 EXAMINER GOETZE: And they are three UIC
25 permits.

1 MR. RANKIN: They are.

2 EXAMINER GOETZE: So we may reference a
3 cross with the same geology, hydrology approach, but
4 each of them will have the ability for and opportunity
5 for those wishing to depose. So we may reference back
6 similarities and generalities which are common to all
7 three, but still one at a time, please.

8 SARAH PRESLEY,
9 after having been previously sworn under oath, was
10 questioned and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. RANKIN:

13 Q. Ms. Presley, will you please state your name
14 for the record?

15 A. Sarah Presley.

16 Q. By whom are you employed?

17 A. Delaware Energy.

18 Q. And in what capacity?

19 A. Operations manager.

20 Q. And what do your duties as operations manager
21 entail?

22 A. I do all the administrative and regulatory
23 work. I do the -- I oversee land and title, and I
24 prepare and submit C-108 applications and interface with
25 state and regulatory bodies.

1 Q. Okay. So you oversaw the coordination putting
2 together each of these C-108 applications on behalf of
3 Delaware, correct?

4 A. Yes.

5 Q. And have you previously testified before the
6 Division?

7 A. No, I have not.

8 Q. Will you please briefly review for the
9 examiners your educational background first?

10 A. I graduated from the University of Texas at the
11 Permian Basin in May 2018 with a Bachelor's of Business
12 Administration with a major in management.

13 Q. And prior to -- at the same time, you also have
14 been working for some time?

15 A. Yes.

16 Q. Just review for the examiners what your work
17 experience has been in the oil and gas industry?

18 A. Yes. I worked with Nadel and Gussman Permian
19 for three years as a regulatory analyst, filing and
20 preparing regulatory paperwork for drilling permits and
21 any filings that needed to be done for the wells. I
22 worked at BC Operating for two years as a regulatory
23 analyst and a land coordinator. I did all the
24 regulatory filings for New Mexico, Lea and Eddy
25 Counties, and I helped prepare any saltwater disposal

1 applications that they had there. And I'm currently
2 working at Delaware Energy.

3 Q. Now, you're familiar with the applications
4 filed in each of these cases; is that correct?

5 A. Yes.

6 Q. And have you prepared exhibits to help review
7 with the examiners what Delaware is requesting in these
8 cases?

9 A. Yes.

10 Q. Let's go ahead to proceed to review those now.
11 First, you have three exhibit packets before you; is
12 that correct?

13 A. Yes.

14 Q. All right. So each one is marked with a
15 different case number. Ms. Presley, I'm going to be
16 reviewing each of these cases with you today and the
17 exhibits that are contained inside. You're familiar
18 with each of the exhibits that are contained in these
19 packets; is that right?

20 A. Yes.

21 Q. So let's first turn to what's been marked as
22 Exhibit Number 2 in Case Number 16258. Let me know when
23 you get there.

24 A. Okay.

25 MR. McMILLAN: Mr. Examiner, as much as it

1 pains me to assist Mr. Rankin, I'm not sure the witness
2 was qualified.

3 EXAMINER GOETZE: No, she wasn't.

4 MR. RANKIN: Mr. Examiner, I'm actually
5 just proceeding at this time to elicit testimony from
6 Ms. Presley as a fact witness.

7 EXAMINER GOETZE: Okay. So you're just
8 presenting the C-108 through her so she can --

9 MR. RANKIN: Ms. Presley will be giving an
10 overview, as well as a factual account of notice and the
11 steps that Delaware has taken to prepare the
12 application. So at this time, I'm not qualifying her as
13 an expert in anything at this time.

14 EXAMINER BROOKS: Well, you say "at this
15 time." Are you calling her only as a fact witness?

16 MR. RANKIN: That's correct.

17 EXAMINER BROOKS: Okay. Well, I just say
18 that because you put her credentials on the record, and
19 it just seems -- if you're going to use her as an expert
20 later, then go ahead and qualify her. If you're not or
21 if you don't know, we can proceed as you wish.

22 MR. RANKIN: Well, Mr. Examiner, I guess in
23 light of that question, I mean, I would tender
24 Ms. Presley as an expert in regulatory matters, given
25 her experience dealing with regulatory agencies

1 including the Oil Conservation Division, and the filing
2 of saltwater disposal. Well, with that, I may ask one
3 additional question.

4 Q. (BY MR. RANKIN) Ms. Presley, how many disposal
5 wells have you been involved with in permitting?

6 A. Upwards of 30.

7 Q. Those are applications that have been approved
8 or are pending?

9 A. Probably about half have been approved and the
10 other half, I'm working getting prepared.

11 MR. RANKIN: With that, Mr. Examiner, I
12 would tender Ms. Presley as an expert witness in
13 regulatory matters.

14 EXAMINER GOETZE: Mr. McMillan?

15 MR. McMILLAN: No objection.

16 EXAMINER GOETZE: Ms. Callahan?

17 MS. CALLAHAN: No objection.

18 EXAMINER GOETZE: Very good. She is so
19 qualified.

20 MR. RANKIN: And just to be clear, I'm
21 asking that she be qualified in that capacity for each
22 of the three cases now pending before the Division, so
23 if Mr. Craig has an objection.

24 MR. CRAIG: We have no objection.

25 EXAMINER GOETZE: Okay. Very good.

1 Q. (BY MR. RANKIN) So, Ms. Presley, with that,
2 turning to Exhibit 2 in your exhibit packet for Case
3 Number 16258, first of all I'll ask you: Is this the
4 same Exhibit 2 that appears in each of these exhibit
5 packets for each of the cases?

6 A. Yes.

7 Q. And just briefly for the examiners, is this an
8 overview map just identifying the location of each of
9 the four wells that are the subject -- let me see. I'll
10 scrap four wells and just talk about the three wells,
11 each of the three wells that are now pending before the
12 Division, being the Bear Trap, the Grizzly and the Giant
13 Panda?

14 A. Yes.

15 Q. Will you just review for the examiners what
16 this map shows and then we'll talk about what it is that
17 Delaware is asking for in each of these three
18 applications?

19 A. Yes. The map is showing the GPS locations for
20 the Bear Trap SWD #1, the Grizzly SWD #1 and the Giant
21 Panda SWD #1 in relation to the Black River and the
22 Texas hornshell mussel CCAA boundaries.

23 Q. Ms. Presley, you mentioned the CCAA boundaries.
24 What is the CCAA, to your knowledge, to the best of your
25 understanding?

1 A. It's a conservancy.

2 **Q. Is it a conservation agreement of some kind?**

3 A. Yeah, a conservation agreement for the Texas
4 hornshell mussel. And the red line on the map shows
5 Zone A, which is actually the river, the habitat, for
6 the Texas hornshell mussel, and the orange plume around
7 it is Zone B for the Texas hornshell mussel.

8 **Q. And those -- those colored areas, the orange**
9 **and red that you've indicated, are those the areas**
10 **essentially where the different regulatory agencies and**
11 **parties involved have agreed not to locate facilities**
12 **for oil and gas development? Is that correct?**

13 A. Yes, sir.

14 **Q. And so now let's talk about what it is that**
15 **Delaware is asking for in each of these three cases.**
16 **Starting with Case Number 16258 for the Bear Trap SWD #1**
17 **well, what is it that Delaware is asking for with this**
18 **application?**

19 A. Delaware Energy is seeking authority to drill
20 and operate the Bear Trap SWD #1 well with injection
21 into the Devonian Formation, with a surface location at
22 326 feet from the south line and 2,564 feet from the
23 east line in Section 34, Township 23 South, Range 27
24 East in Eddy County, New Mexico.

25 **Q. And with respect to Case Number 16259, for the**

1 **Giant Panda SWD #1 well, what is it that Delaware is**
2 **asking for in that case?**

3 A. We are seeking authority to drill and operate
4 the Giant Panda SWD #1 well with injection into the
5 Devonian Formation, with a surface location at 1,440
6 feet from the south line and 560 feet from the west line
7 in Section 16, Township 24 South, Range 27 East in Eddy
8 County, New Mexico.

9 Q. And finally, in Case Number 16260, with respect
10 to the Grizzly SWD #1 well, will you please relate for
11 the examiners in summary what it is that Delaware is
12 seeking in that case?

13 A. We are seeking authority to drill and operate
14 the Grizzly SWD #1 well with injection into the Devonian
15 Formation, with a surface location at 205 feet from the
16 south line and 765 feet from the east line in Section
17 11, Township 24 South, Range 27 East in Eddy County, New
18 Mexico.

19 Q. Since it's appearing on this map, Ms. Presley,
20 I'll just ask you to recount with respect to the Kodiak
21 well, the case that's been dismissed. What does this
22 map show? It shows two locations for the Kodiak. Will
23 you just explain for the examiner what those two
24 locations represent?

25 A. Yes.

1 MR. McMILLAN: Object to the -- the
2 question. The testimony is unrelated to these -- the
3 matters currently before the Division.

4 EXAMINER BROOKS: I'm going to overrule the
5 objection.

6 **Q. (BY MR. RANKIN) Go ahead, Ms. Presley.**

7 A. In Section 5, the Kodiak SWD #1, the pin there
8 is the original location that the -- well, not the
9 original -- the updated location from the State Land
10 Office that they approved. Last week they sent me the
11 KMZ for the location in Section 33 up near the road --
12 off-bounds road that they are proposing we have under
13 review.

14 **Q. You mentioned the acronym, KMZ. What is that?**
15 **Is that a type of file?**

16 A. It's a file from Google Earth. It'll just send
17 you the pin of the GPS coordinates of the location.

18 **Q. So this is the current -- the current location**
19 **that the land office has proposed that Delaware is**
20 **currently evaluating from the State Land Office? Is**
21 **that correct?**

22 A. Correct. Yes.

23 **Q. Thank you for just reflecting what that**
24 **indicates on the map.**

25 **Now, are these applications now pending**

1 before the Division -- these three, are they expansions
2 of existing projects, or are they new applications for
3 new disposal wells?

4 A. New applications.

5 Q. And are each of these three wells -- are they
6 intended to be operated as commercial disposal wells?

7 A. Yes.

8 Q. And will you have a witness -- will there be a
9 witness who will testify on the expected source of
10 produced water for each of these injection wells?

11 A. Yes.

12 Q. So now let's talk about the land here that is
13 underlying each of these proposed wells. What's the
14 status of the surface ownership with respect to each of
15 these three wells?

16 A. The surface owner for each of the three wells
17 is the New Mexico State Land Trust.

18 Q. So those are being operated and governed by the
19 State Land Office; is that correct?

20 A. Correct.

21 Q. Now, can you explain why -- just so it's clear
22 for the record, why it is that Delaware has asked that
23 these three cases be brought to hearing today?

24 A. We were -- all three wells were protested.

25 Q. Do you understand which -- which protestants

1 are protesting which wells and applications in these
2 cases?

3 A. Yes. Jim Davis and Alisa Ogden are protesting
4 the Giant Panda, Grizzly and Kodiak. Well, the Kodiak
5 is no longer there. Giant Panda and Grizzly SWDs.

6 Q. Okay. And those are Case Numbers 6259 and
7 6260; is that correct?

8 A. Yes.

9 Q. Okay. How about the protestants, Foundation
10 Minerals, LLC, Marvos Minerals, LLC and Oak Valley
11 Mineral and Land, LP; do you understand what cases
12 they're protesting?

13 A. Yes. The Mineral Group is protesting all three
14 cases.

15 Q. 6258, 6259 and 16260, correct?

16 A. Correct.

17 Q. How about 3Bear Delaware Operating and then
18 LLC? What cases are they protesting?

19 A. 3Bear is also protesting all three wells.

20 Q. Now, did of any of these entities that we've
21 just gone through, did they receive notice from Delaware
22 of its applications in these three cases?

23 A. No.

24 Q. And why is that?

25 A. There were not an affected party that we needed

1 to send notice to.

2 Q. Okay. Now, what's your understanding of what
3 the rules require for notice for injection wells?

4 A. You notify the surface owner of the location --
5 the surface owner of where your saltwater disposal well
6 is located, and you notify the offset -- the operators
7 of record within the mile area of review. If there is
8 no operator for any part of the section-mile radius, you
9 modify the lessee of record. And if there is no lessee,
10 you notify the mineral owner.

11 Q. Now, the rules -- do you understand that the
12 rules require notice out to a half-mile-area radius? Is
13 that your understanding?

14 A. Yes.

15 Q. And in this case, did do you a half mile?

16 A. We extended the area of review to a mile.

17 Q. And that was based on what?

18 A. Just past work with the OCD and how close these
19 injectors are.

20 Q. So your understanding is based on the volume of
21 the injection wells and the proximity and so forth, the
22 Division has been asking the operators to notice out to
23 a full mile for each of these cases?

24 A. Yes.

25 Q. So that's what you did here; is that right?

1 A. That's correct.

2 Q. Now, are any of the protestants surface owners
3 on land where Delaware's applications are proposed?

4 A. No.

5 Q. Are any of them leasehold operators within a
6 one-mile radius of any of these three wells at the time
7 of Delaware's applications?

8 A. No.

9 Q. Are any of them affected persons under the
10 Division's rules within one mile of these applications?

11 A. No.

12 Q. So in this circumstance, is it fair to say that
13 for each of Delaware's applications, mineral interest
14 owners were not required to receive notice under the
15 rules?

16 A. That's correct.

17 Q. That's your understanding?

18 So who -- just to be clear, who did
19 Delaware provide notice to?

20 A. We provided notice to the surface owner, the
21 State Land Office and the operators within the mile area
22 of review.

23 Q. When you say operators, do you mean the
24 leasehold operators?

25 A. Yes.

1 Q. And you identified the leasehold operator for
2 each tract of land that was wholly or partially within
3 the one-mile area of review for each of these three
4 applications?

5 A. That's correct.

6 Q. Now, are those entities that we just discussed,
7 the leasehold operators and the surface owners of these
8 tracts, are they identified in the updated C-108 that
9 has been marked as Exhibit Number 1 for each of these
10 cases before you? And I would direct you to Tab A, two
11 pages in. Let's start with Case Number 16258. Looking
12 at Tab A, Exhibit Number 1, let's start there, okay, the
13 first tab of that page. What does that map reflect?

14 A. The map is showing the two black circles, one
15 showing the mile radius and the two-mile radius, with
16 the star in the middle being the Bear Trap SWD #1. And
17 the dots on the map are what I pulled off of the
18 New Mexico OCD GIS. The blue wells are permits. The
19 grays are canceled permits. The black are active wells,
20 and the red are plugged and abandoned.

21 Q. So this includes other injectors, as well as
22 producing wells; is that right?

23 A. Yes.

24 Q. And canceled APDs as well?

25 A. Correct.

1 Q. Now, flipping to the next page, what does this
2 map reflect?

3 A. This is the -- the black circle is the one-mile
4 radius around the blue dot, which is the Grizzly SWD --
5 I'm sorry -- yeah, the Bear Trap SWD #1 and the state
6 and federal leases that are encompassed within the area
7 of review. There is one piece that is showing fee
8 ownership, which I identified using Midland Map.

9 Q. So you identified the leaseholder for each of
10 these tracts -- rather, the lease operator for each of
11 these tracts?

12 A. Correct.

13 Q. And there is an identified lease operator for
14 each of these tracts?

15 A. Correct.

16 Q. And are those the notice parties that are
17 identified on the next page?

18 A. Yes.

19 Q. And you've identified them on that sheet by
20 section?

21 A. Yes, I did.

22 Q. Now, let's look at the same tab and the same
23 exhibit for Case Number 16259. Just walk through the
24 same sequence. So turning to Tab A, Ms. Presley, is
25 this the same map that you just -- not the same map but

1 the same kind of map that you just reviewed for me in
2 Case Number 16258?

3 A. Yes. This is the two circles, one being the
4 mile radius, one being the two-mile radius. But this is
5 around the Giant Panda SWD #1, which is the red star in
6 the middle, showing the same dots being the active
7 wells, permitted -- permits pending, canceled APDs and
8 plugged-and-abandoned wells.

9 Q. And, again, these are all the updated locations
10 that were approved by the State Land Office?

11 A. That's correct.

12 Q. So the next page, what does that show?

13 A. This is the one-mile radius around the Giant
14 Panda SWD #1, which is the blue dot in the center,
15 showing the federal and state leases and fee land where
16 I identified the lessees on a different map.

17 Q. And so for each of the tracts that are wholly
18 or partially contained in this one-mile radius, have you
19 identified the leasehold operator?

20 A. I have.

21 Q. Are these leasehold operators identified on the
22 next page?

23 A. They are.

24 Q. And you have identified them by section?

25 A. That's correct.

1 Q. Now, let's move to the next case, Case Number
2 16260, the Grizzly well, and we'll review the same
3 sequence of exhibits starting with Exhibit 1, Tab A.
4 Does this also reflect the same one-mile and two -- this
5 first map reflect the same one-mile and two-mile radius
6 using the same symbols?

7 A. That is correct.

8 Q. And the star here represents the location of
9 the proposed Grizzly SWD well?

10 A. Yes.

11 Q. Does your next page show the lease tract area?

12 A. No, it does not.

13 Q. Okay. It's behind Tab E. Unfortunately, I
14 think when we were making these exhibits, some of the
15 pages got disheveled.

16 MR. RANKIN: So if you -- Mr. Examiner and
17 Counsel, if you turn to Tab E in your exhibit packet,
18 you will see first a wellbore schematic diagram,
19 hopefully, and the next page should reflect the tract
20 acreage. Do you see that?

21 EXAMINER BROOKS: That's not the case in my
22 book. My book, the -- oh, this is 16259. You're in
23 16260.

24 MR. RANKIN: Correct.

25 EXAMINER BROOKS: Let's see if that's

1 correct.

2 You're right. Go ahead.

3 MR. RANKIN: Is everybody on the lease
4 tract map?

5 Thank you.

6 Q. (BY MR. RANKIN) Ms. Presley, will you proceed
7 through what this exhibit shows?

8 A. This is the one-mile radius around the Grizzly
9 SWD #1 showing the state, federal and fee leases.

10 Q. Okay. Just to be clear, this reflects that
11 you've identified each lease tract within the one-mile
12 area of review; is that right?

13 A. That's correct.

14 Q. And does the next page reflect the leasehold
15 operators for each of those tracts that you identify?

16 A. Yes.

17 Q. Thank you.

18 Now, with respect to each of those exhibits
19 that we've just reviewed, how did Delaware identify each
20 of these leasehold operators?

21 A. I used the New Mexico OCD GIS maps and the
22 different layers.

23 Q. And that enabled you to determine who the
24 leasehold operators are for each of those tracts of
25 land; is that correct?

1 A. That's correct.

2 Q. And in your opinion, did Delaware undertake a
3 good-faith effort to identify and locate the correct
4 parties required for notice within the one-mile area of
5 review?

6 A. Yes.

7 Q. And were there any unlocatable interests or
8 notice parties that were required to have notice in
9 these cases?

10 A. No.

11 Q. Were all the addresses valid and correct?

12 A. Yes.

13 Q. Now, let's turn to -- so based on your land
14 work and your evaluation of the leasehold operators, was
15 there any need under the Division rules to provide
16 notice to the mineral interest owners where there was a
17 leasehold operator in the tracts of land within the
18 one-mile area of review?

19 A. No.

20 Q. So for every case, Delaware was not required to
21 give notice to mineral interest owners; is that right?

22 A. That's correct.

23 Q. Now, let's review what notice you gave of the
24 updated C-108. Starting on the page -- let's see.
25 Starting with Case Number 16258, the page following the

1 list of leasehold operators, is there a copy of an
2 Affidavit of Publication indicating that Delaware has
3 provided notice of the updated location in the "Carlsbad
4 Current-Argus," which is a newspaper of general
5 circulation in the county where the well is proposed?

6 A. Yes.

7 EXAMINER BROOKS: Excuse me. I think I
8 missed something that I'm sure you covered way back.
9 Did you give notice throughout the one-mile area of
10 review or two-mile area of review?

11 MR. RANKIN: One-mile. Yeah, one-mile.

12 EXAMINER BROOKS: Okay. Thank you. Go
13 ahead.

14 Q. (BY MR. RANKIN) Ms. Presley, turning to the
15 corresponding page following the listing of leasehold
16 operators, Case Number 16259, Exhibit 1, behind Tab A,
17 is there also a notice of -- an Affidavit of Publication
18 to the "Carlsbad Current-Argus" indicating that Delaware
19 gave notice by publication of the updated location in
20 the newspaper of that county?

21 A. Yes.

22 Q. And in Case Number 16260, following the listing
23 of leasehold operators, there is an intervening letter
24 of notice, but is there a follow-up letter of notice,
25 also an Affidavit of Publication, that Delaware gave

1 notice by publication of the updated location in the
2 "Carlsbad Current-Argus"?

3 A. Yes.

4 Q. And did Delaware also provide notice letters to
5 each of the identified notice parties for each of these
6 cases?

7 A. Yes.

8 Q. And is a copy of that letter that was sent out
9 for each of the cases also included within the same
10 series of pages behind Tab A for each case?

11 A. Yes.

12 Q. And behind that notice letter, is there a list
13 of all the parties, leasehold operators, that Delaware
14 noticed, including the surface owner, State Land Office,
15 for each of these cases?

16 A. Yes.

17 Q. Okay. Now, we're going to move out of Exhibit
18 1 and we're going to review the notice that was given
19 for today's hearing. So starting with Case Number
20 16258, please flip to what's been marked as Exhibit
21 Number 3 in your notice packet. And I'll ask for you to
22 go ahead and flip to that same exhibit number in each of
23 case exhibit packets so we're able to review them
24 quickly.

25 In Case 16258, the first page of Exhibit

1 Number 3, is that an affidavit prepared by my office, by
2 myself, indicating that Holland & Hart has provided
3 notice to the parties pursuant to the Division rules, to
4 the parties that Delaware has identified for us?

5 A. The first page --

6 Q. Is an affidavit prepared by me indicating that
7 we provided notice of the application; is that correct?

8 A. It's saying "Hilcorp," so no.

9 Q. Ah. I see. All right.

10 MR. RANKIN: Mr. Examiner, I notice that
11 there was an error in each of those affidavits.

12 (Laughter.)

13 EXAMINER BROOKS: You represent Hilcorp so
14 much that you forgot you have other clients.

15 MR. RANKIN: I will supplement the record,
16 if there is no objection from the protestants in the
17 case, with an updated affidavit reflecting that we did
18 do what we said we did later today. In fact, we can do
19 it after lunch. So I apologize for that error.

20 EXAMINER GOETZE: So kudos to Ms. Presley
21 in seeing what the attorneys couldn't.

22 MR. RANKIN: That's right.

23 EXAMINER GOETZE: I see that your other
24 affidavits also have the same --

25 MR. RANKIN: That is correct.

1 EXAMINER GOETZE: Okay.

2 MR. RANKIN: Mr. Examiner, since I can't
3 testify, I will ask the patience of the examiners and
4 protestants to provide an updated affidavit after lunch.
5 I'll be happy to bring Ms. Presley back up, although I
6 don't think that's necessary just to submit an
7 affidavit.

8 Q. (BY MR. RANKIN) Ms. Presley, on the next page,
9 is that a copy of the letter that was sent out by my
10 office for each of the proposed wells in each case?

11 A. Yes.

12 Q. And behind that letter in each exhibit, is
13 there a copy of the United States Postal Service
14 tracking sheet reflecting the parties that were sent
15 certified mail, return receipt requested?

16 A. Yes.

17 Q. And behind that tracking sheet, is there an
18 update list reflecting that each of those notice parties
19 signed for and received the notice letters that were
20 sent?

21 A. Yes.

22 Q. So in each case, the tracking sheet reflects
23 that those parties actually did sign and receive the
24 notice letter that was sent out, correct?

25 A. Correct.

1 Q. And just as a bootstrap measure, is there also,
2 behind the last page of the exhibit, a copy of the
3 Affidavit of Publication from the "Carlsbad
4 Current-Argus" reflecting that we published notice
5 identifying the case, the updated well location and each
6 party by name?

7 A. Yes.

8 Q. And that's true for each of these exhibit
9 packets for each case, right?

10 A. That's correct.

11 Q. Now, let's shift gears again and talk about the
12 State Land Office and their role in these cases. Has
13 the Commissioner approved the location -- the updated
14 location for each of these cases?

15 A. Yes.

16 Q. And is that reflected in Exhibit Number 4 for
17 each of these cases in the exhibit packets before you?

18 A. Yes.

19 Q. Will you review for the examiners what Exhibit
20 4 reflects for each of these cases?

21 A. The first page is the staking notification that
22 I sent out to each of the grazing lessees on the
23 location where we're putting the well, and the second
24 page is the approval for the staking from the State Land
25 Office.

1 Q. And that's -- that's true for each Exhibit
2 Number 4 for each of these wells?

3 A. Yes.

4 Q. Now, in each of these cases of these leases
5 identified are not the original locations that Delaware
6 had picked out; is that correct?

7 A. That's correct.

8 Q. And why were these locations changed to the
9 best of your understanding?

10 A. The State Land Office requested that we move
11 them outside of Zone B and any drainage that could lead
12 into the river for the Texas hornshell mussel.

13 Q. So, Ms. Presley, if you would turn to Exhibit 2
14 in any one of your exhibit packets, since the exhibit is
15 identical for each case. Now, you mentioned that the
16 State Land Office had asked that Delaware move its
17 proposed locations for these disposal wells outside of
18 Zone B. On this map, what is identified as Zone B?

19 A. It's the orange larger plume around the red
20 line showing the Black River.

21 Q. So based on the State Land Office's request,
22 Delaware has moved each of these three wells, the Bear
23 Trap, the Grizzly and the Giant Panda, to be at a
24 location that's no longer encroaching or near that Zone
25 B that's reflected in orange; is that correct?

1 A. That's correct.

2 Q. And in addition to that, I think I heard you
3 say that the State Land Office also identified locations
4 that are not -- will not provide a conduit or are not in
5 a drainage area that will drain into the Black River; is
6 that correct?

7 A. That's correct.

8 Q. And that was the basis for the State Land
9 Office's approval for each of these cases, was that it
10 was not going to impact or impair in any way the
11 potential habitat for the Texas hornshell mussel; is
12 that right?

13 A. That's right.

14 Q. So your understanding is these new locations
15 were approved by the State Land Office because they were
16 no longer going to be impacting in any way any drainage
17 or runoff or any potential environmental or habitat
18 concerns relating to the Black River or the Texas
19 hornshell mussel?

20 A. That's correct.

21 MR. CRAIG: I'd like to object. I think
22 this is all hearsay that's coming in from what the State
23 Land Office told her that she's telling us. I think
24 it's objectionable as hearsay.

25 EXAMINER GOETZE: Well, at this point she's

1 presenting what is in the C-108, and the basis of
2 what -- the merits of the C-108 can be challenged, and
3 it's brought forth for acceptance. Again, she is just
4 providing us the information of what she has done as far
5 as putting together this package. So we'll enter it
6 into record. We can debate the merits of it later.

7 Okay?

8 MR. CRAIG: Okay.

9 EXAMINER BROOKS: To summarize, it's not
10 offered for the truth of the matter stated.

11 EXAMINER GOETZE: Thank you.

12 EXAMINER BROOKS: That's what my law
13 professors would have said.

14 EXAMINER GOETZE: Right.

15 MR. RANKIN: Just to respond, I'm just
16 asking Ms. Presley to recount her understanding for the
17 basis for the approved locations.

18 Q. (BY MR. RANKIN) Now, your understanding,
19 Ms. Presley, just to summarize, is that these locations
20 that have been approved by the State Land Office for
21 each of these three cases no longer pose a risk to the
22 Black River or to the Texas hornshell mussel habitat
23 based on --

24 EXAMINER GOETZE: Well, that, I would --
25 that is an opinion from her based on hydrology, and I

1 think we can take the fact that she was requested to
2 move these in accord to what the State Land Office
3 requested. I think you're getting a little farther off
4 of her expertise.

5 MR. RANKIN: Okay. That's fine. I mean, I
6 was just asking because she was the one who dealt with
7 the State Land Office, she had the conversations with
8 them, and she understands the basis for the new
9 locations.

10 EXAMINER GOETZE: Very good.

11 MR. RANKIN: With that, I will ask at this
12 time that Exhibit Numbers 2 and 3 in each case be
13 entered into the record with the caveat that I will be
14 supplementing Exhibit Number 3 to reflect a correct
15 affidavit for each case.

16 EXAMINER GOETZE: Okay. So what we're
17 looking at in all three cases, the same section being
18 entered into --

19 MR. RANKIN: Correct. At this time I'll
20 reserve admitting Exhibit Number 1, the C-108, until I
21 have a technical witness to provide testimony on that.

22 EXAMINER GOETZE: I was trying to avoid
23 this overlapping. The court reporter has a hard enough
24 time keeping track of us.

25 MR. RANKIN: So if I can restate,

1 Mr. Examiner, I would ask that at this time Exhibits 2
2 and 3 in Case Number 16258, Case Number 16259 and Case
3 Number 16260 be admitted into the record. Is that
4 helpful?

5 EXAMINER GOETZE: It is, but at the same
6 time, we're drifting.

7 Since you have protested the two cases, you
8 now are involved. Are there any objections from you,
9 Mr. Craig?

10 MR. CRAIG: As to Exhibits 2 and 3 with the
11 supplemental affidavit, we have no objection.

12 EXAMINER GOETZE: Mr. McMillan?

13 MR. McMILLAN: No objection.

14 EXAMINER GOETZE: Ms. Callahan?

15 MS. CALLAHAN: No objection.

16 EXAMINER GOETZE: Well, in light of the
17 presentation, we will go ahead and enter into the record
18 for Case 16258, Exhibits 2 and 3; Case 16259, Exhibits 2
19 and 3; and Case 16260, Exhibits 2 and 3, with the
20 notation that we'll be provided with a corrected
21 affidavit, at least the cover letter, for the --
22 affidavit for the package at this point.

23 (Delaware Energy, LLC Exhibit Numbers 2 and
24 3 for each case, Case Numbers 16258, 16259
25 and 16260, are offered and admitted into

1 evidence.)

2 MR. RANKIN: Nothing further from me,
3 Mr. Examiner. I'll pass the witness, reserving the
4 opportunity to redirect.

5 EXAMINER BROOKS: Mr. Examiner, I'm going
6 to request a recess at this point. I'd like to take
7 about 15 minutes so I can arrange what needs to be done
8 with regard to the lunch break.

9 EXAMINER GOETZE: Okay. Well, then, let's
10 go ahead and do cross following and understanding we're
11 just going to talk about 16258 first, and then we'll
12 move on to the other cases. All right?

13 MR. RANKIN: That's fine.

14 EXAMINER GOETZE: Let's take a 15-minute
15 break and come on back.

16 EXAMINER BROOKS: Thank you.

17 (Recess, 10:28 a.m. to 10:50 a.m.)

18 EXAMINER GOETZE: Let's go back on the
19 record.

20 Ms. Presley, at this point, the witness,
21 has been passed to Mr. McMillan.

22 Proceed.

23 MR. McMILLAN: And just to be clear,
24 Mr. Examiner, am I authorized at this point -- given
25 that Ms. Presley testified across the three applications

1 with some kind of generalities and commonalities, I
2 suppose, can I ask some questions that go to, again, all
3 three of the pending applications?

4 EXAMINER GOETZE: It is so noted. Since we
5 have entered the notice portion from all three cases,
6 please proceed on that assumption.

7 EXAMINER BROOKS: And before you start your
8 examination, let me state that I may be walking out
9 during the proceedings, before Mr. Goetze takes the
10 lunch break, and there is no note to be observed of
11 that. He has permission to proceed in my absence.

12 EXAMINER GOETZE: And to make his own
13 mistakes (laughter).

14 Proceed, Mr. McMillan.

15 MR. McMILLAN: Okay.

16 CROSS-EXAMINATION

17 BY MR. McMILLAN:

18 Q. Good morning, Ms. Presley. I'm Seth McMillan,
19 counsel for the Mineral Companies.

20 We are initially -- from the most broad
21 perspective, we're curious as to how Delaware went about
22 choosing the initial locations for the Bear Trap, Giant
23 Panda and the Grizzly SWD wells.

24 A. We picked state locations to put our wells on.

25 Q. I'm sorry?

1 A. We picked state surface locations to put our
2 wells on --

3 Q. Okay.

4 A. -- along Black River Village Road.

5 Q. You wanted it to be along the Black River
6 Village Road.

7 Are you familiar with the Black River Ranch
8 property that runs through the area?

9 A. The Foundation Minerals property, yes.

10 Q. Yes. Yes.

11 Did you not previously work with the
12 Mineral Companies?

13 A. I did, yes.

14 Q. And during what time period?

15 A. 2016 to 2018.

16 Q. So that was prior to working for Delaware?

17 A. That's correct.

18 Q. Is that where you gained your familiarity with
19 the Black River Ranch property?

20 A. I did not work on it. No.

21 Q. Were you aware of the Black River Ranch while
22 you were working with the Mineral Companies?

23 A. Not that I can recall.

24 Q. No?

25 Were you -- while with the Mineral

1 Companies, were you involved in any negotiations -- or
2 any conversations, rather, with 3Bear concerning putting
3 saltwater disposal wells on the Black River Ranch
4 property?

5 A. I was not.

6 Q. Were you involved in any negotiations with
7 Delaware?

8 A. I was not.

9 Q. And do you have any awareness of how the names
10 of these wells, the Bear Trap, the Grizzly and the Giant
11 Panda, where those names came from?

12 A. I do not. They're just the names we picked.

13 Q. Just the names you picked?

14 A. Yeah, that I know of.

15 Q. And you'd agree with me that they're all
16 bear-related names?

17 A. Yes.

18 Q. Was there any -- were the names chosen at all
19 because of the presence of 3Bear in the -- in the
20 region?

21 A. Not that I know of.

22 Q. Okay. Let's take a look at -- under 16258.
23 That's your Bear Trap proposal. I'm going to ask you
24 about your -- your land work. First of all, how did you
25 go about determining the ownership of the fee lands

1 **here?**

2 A. I used Midland Map to see who the current
3 lessee was on the map.

4 **Q. So you relied entirely on Midland Map?**

5 A. That's correct.

6 **Q. What is Midland Map?**

7 A. It's a map company in Midland that goes out and
8 does the title, and they'll put the lessee and the lease
9 date on the map.

10 **Q. Okay. So you yourself did not do any work in**
11 **the county records; is that correct?**

12 A. That's correct.

13 **Q. Same with any BLM records?**

14 A. That's correct.

15 **Q. Let's turn now to 16258 -- ay-yi-yi -- 1A, and**
16 **if you turn with me to the second page there, you'd**
17 **agree with me that this image shows leases within a**
18 **one-mile radius of your proposed location for the Bear**
19 **Trap well?**

20 A. Yes.

21 **Q. Let's look down in the south half of the**
22 **southwest quarter of Section 3.**

23 A. Yes.

24 **Q. Do you see that? That's within an area -- or a**
25 **portion of that acreage is within your area of review,**

1 correct?

2 A. Correct.

3 Q. What do you know about the lease in place on
4 that -- on that acreage?

5 A. I showed it to the Featherstone Development
6 Corporation.

7 Q. And did you do any work to determine whether
8 that lease has subsequently been assigned to any party?

9 A. I did not.

10 Q. Would it surprise you to learn that that lease
11 has subsequently been assigned to MRC Permian?

12 A. Yes.

13 Q. It would surprise you?

14 A. Yes.

15 Q. And does MRC Permian appear on your notice list
16 on the following page?

17 A. They do not.

18 Q. As such, assuming that that lease has been
19 assigned to MRC Permian and is no longer with
20 Featherstone, on that assumption, would this notice list
21 be true, correct and appropriate under the Division's
22 rules?

23 A. With the assumption, no.

24 Q. Right. Okay.

25 MR. McMILLAN: In that case, Mr. Examiner,

1 we would raise a serious issue as to notice on this
2 matter and move for its dismissal.

3 EXAMINER BROOKS: We will so note and
4 overrule the motion for dismissal at this time subject
5 to matter being re-opened.

6 MR. RANKIN: Mr. Examiner, just to respond
7 to the motion to dismiss, if it's simply a notice issue,
8 it's not a basis for dismissal. It's simply a matter of
9 noticing a party. We have no evidence on the record
10 whether or not the assignment occurred before or after
11 the application was filed, so that remains an open
12 question.

13 EXAMINER BROOKS: At this point that's
14 entirely true. There is no evidence because -- "would
15 you" -- "would you be surprised if there" is a question
16 that does not bring into evidence the -- subject to the
17 "if," contrary to the opinion of many lawyers.

18 Proceed.

19 MR. RANKIN: Mr. Examiner, I would also
20 make -- well, I'll reserve an objection at the end of
21 the cases to address some of these dismissal issues.

22 EXAMINER BROOKS: Very good.

23 MR. McMILLAN: I think that's about it for
24 this witness with respect to this matter, meaning the
25 Bear Trap well.

1 Thank you.

2 EXAMINER GOETZE: Ms. Callahan?

3 MS. CALLAHAN: No questions.

4 EXAMINER GOETZE: And you are not
5 protesting --

6 MR. CRAIG: We're not protesting.

7 EXAMINER GOETZE: Just want to make sure,
8 since we're wandering.

9 I have no questions for this witness.

10 Mr. Brooks?

11 CROSS-EXAMINATION

12 BY EXAMINER BROOKS:

13 Q. Well, the one question I have is just out of
14 curiosity. When you were at UTPB, were you at all
15 acquainted with Dean Ladd in the business school there?

16 A. Yes.

17 Q. Ah, yes. Well, Jack was a friend -- very close
18 friend of mine many years ago, and I really regretted
19 his premature demise.

20 A. Yeah.

21 Q. And I think he was also the funniest man I've
22 ever met.

23 EXAMINER BROOKS: Continue.

24 EXAMINER GOETZE: And, Mr. Rankin, do you
25 have comments?

1 MR. RANKIN: Not at this time. No further
2 questions.

3 EXAMINER GOETZE: Okay. No other
4 questions. We're done with you. Thank you very much
5 for your testimony.

6 And your two other witnesses are technical?

7 MR. RANKIN: That is correct.

8 Mr. Examiner, if there are no other
9 questions related to the other cases --

10 EXAMINER GOETZE: I mean, we're going to go
11 through the other cases.

12 MR. RANKIN: I mean for Ms. Presley.

13 MR. CRAIG: For her, I have one other.

14 EXAMINER GOETZE: This is why I hate
15 doing -- this overlapping is really a pain.

16 Mr. Craig, proceed on Case 16259 and Case
17 16260. Please continue.

18 MR. CRAIG: Yes, sir. I'm sorry. It gets
19 kind of confusing.

20 CROSS-EXAMINATION

21 BY MR. CRAIG:

22 Q. On Exhibit 2, which is that map that's got the
23 river and the brown, it's the same in all three?

24 A. Yes, sir.

25 Q. You did not prepare this, correct? You put

1 maybe the -- where the Bear Trap and the Grizzly are,
2 but you didn't prepare the rest of the map?

3 A. That's correct.

4 Q. And the red is the river? Is that your
5 understanding?

6 A. Yes.

7 Q. Now, the brown is -- I think they call it Zone
8 B; is that right?

9 A. Yes.

10 Q. Now, is it your understanding that the brown,
11 which is Zone B, is the 100-year flood area?

12 A. I know nothing of that.

13 Q. Okay. You just got the map?

14 A. Correct.

15 MR. CRAIG: That's all I have.

16 EXAMINER BROOKS: In the interest of
17 clarity, I would say it's more accurately characterized
18 as gold rather than brown.

19 MR. CRAIG: Well, but --

20 EXAMINER BROOKS: My idea is that
21 everything on there is brown except the red line.

22 MR. CRAIG: I'm not sure what color it is.
23 It's kind of a brownish-gold. What is that? It's a
24 fall color.

25 EXAMINER BROOKS: Good point.

1 EXAMINER GOETZE: Very well.

2 MR. McMILLAN: Before we excuse the
3 witness, can we just clarify? Am I going to have an
4 opportunity to ask this witness about the Giant Panda
5 and the Grizzly wells?

6 MR. RANKIN: I don't know why you want to
7 call her back.

8 EXAMINER GOETZE: We can call her back.

9 EXAMINER BROOKS: Well, I'm reluctant to be
10 having people going back and forth all the time. I
11 think -- go ahead.

12 EXAMINER GOETZE: Okay. Well, if we're
13 going to go down that road, if you have questions about
14 Cases 16259 and 16260 regarding the exhibits that were
15 employed, your opportunity -- let's go ahead and have
16 your questions now.

17 MR. McMILLAN: Okay.

18 CROSS-EXAMINATION

19 BY MR. McMILLAN:

20 Q. All right. Turning to Case 16259, the Giant
21 Panda well --

22 EXAMINER GOETZE: 259?

23 MR. McMILLAN: 259.

24 Q. (BY MR. McMILLAN) -- I'd like to begin by
25 discussing -- are you familiar with the initial proposed

1 **location that Delaware did the C-108 on?**

2 A. Yes.

3 **Q. That's the location in Unit P that's on there?**

4 **This, again, was the initial location.**

5 MR. RANKIN: Mr. Examiner, I would object
6 to further line of questioning, unless Mr. McMillan can
7 explain the relevance of it. But he's going to ask
8 questions about the original location of the wells,
9 which are no longer relevant to these applications. So
10 I suggest it's not necessary to pursue that questioning,
11 or we'll probably make a full day out of this.

12 EXAMINER GOETZE: Where you going with
13 this, Mr. McMillan?

14 MR. McMILLAN: We're curious about the --
15 what was done with respect to that location, whether it
16 was staked and, more importantly, what notice was given
17 with respect to that location. Given that Delaware's
18 treating these applications as continuing on and on and
19 on, it seems to me that's really the same case, same
20 series of events and that questions about the initial
21 location are perfectly appropriate.

22 EXAMINER BROOKS: Well, I'm usually very
23 reluctant to sustain relevance objections, but in this
24 case, I think we're running down a rabbit trail, so I'll
25 sustain the objection.

1 MR. McMILLAN: I can't hear.

2 EXAMINER GOETZE: And in addition to that,
3 we're looking at the application as it currently is. If
4 you wish to refer back to it, fine, but the application
5 is for the surface location put in the notice. And,
6 again, qualified as business relationships and things
7 like that have no variance on what a C-108 is. We're
8 looking at the Safe Drinking Water Act, not about
9 business models and whatnot.

10 MR. McMILLAN: Okay.

11 EXAMINER GOETZE: On that note, please
12 proceed with your questions.

13 Q. (BY MR. McMILLAN) Well, we can turn then to the
14 relocated surface location, and that's now in Unit L; is
15 that correct?

16 A. For the Grizzly?

17 Q. For the Grizzly -- no. For the Giant Panda.

18 A. Oh, for the Giant Panda.

19 MR. CRAIG: What section?

20 MR. McMILLAN: We're in Section 16.

21 THE WITNESS: Yes. It is in L.

22 Q. (BY MR. McMILLAN) All right. Well, in any
23 event, the revised location, has that location been
24 staked by Delaware?

25 A. Yes.

1 Q. Did you have permission from the State Land
2 Office to stake that location?

3 A. Yes.

4 Q. Who did that staking for you? Was it Delaware,
5 or did you have an entity conduct the staking?

6 A. Basin Survey.

7 Q. I'm sorry? What was the name?

8 A. Basin Survey.

9 Q. Did you work directly with Basin Survey?

10 A. Yes.

11 Q. Well, let's take a look at -- do you happen to
12 have a copy of the -- see, this is how -- this is --

13 EXAMINER GOETZE: Yes?

14 MR. McMILLAN: Doing limited
15 cross-examination based on the exhibits that were
16 already entered is not going to work here. This is --
17 this is -- okay.

18 Q. (BY MR. McMILLAN) How did Delaware access the
19 surface to stake the revised location of the Giant Panda
20 well?

21 MR. RANKIN: Mr. Examiner, I would object
22 to this line of questioning. I don't see the relevance
23 relating to the application before the Division as to
24 the C-108 seeking authority to inject.

25 EXAMINER BROOKS: Well, I'm going to

1 overrule the objection because we've had questions
2 before about what was done to establish who needed to be
3 noticed, and who needs to be noticed is a question that
4 is relevant to this case, so as long as we're pursuing
5 that trail and I don't think we're on a rabbit trail.
6 If we get off into who would be noticed, if it were
7 somewhere else, that's the rabbit trail. So you may
8 continue.

9 **Q. (BY MR. McMILLAN) Do you know how Basin Survey**
10 **and/or Delaware accessed the surface location in order**
11 **to stake it?**

12 A. I do not know the 100 percent way they went in.
13 No.

14 MR. RANKIN: Mr. Examiner, I'm not sure we
15 have an answer from counsel whether or not this line of
16 question is relating to the notice issue or not, and I
17 would object on the further line of questioning if it's
18 not related to notice.

19 EXAMINER BROOKS: Well, I agree. Who
20 the -- there is no issue under the Surface Owners
21 Protection Act here, but if it is related to notice, you
22 may pursue it. If you're not -- if you're not going to
23 raise an objection to have they received notice in this
24 case, then I think it's irrelevant.

25 MR. McMILLAN: Okay.

1 Q. (BY MR. McMILLAN) In any event, was -- were the
2 Mineral Companies provided notice as to the Giant Panda
3 well?

4 A. No.

5 Q. And it's your opinion that's not required under
6 the rules?

7 A. Yes.

8 Q. Did you do any work to investigate the Mineral
9 Companies' ownership either surface or otherwise?

10 A. I saw there were surface owners in the area.
11 Yes.

12 Q. Okay. In examining their surface ownership,
13 did you note that they own Section 9?

14 A. I can't say with 100 percent certainty.

15 Q. Do you have the map in front of you? Do you
16 see Section 9 there?

17 A. Yes. I turned to it.

18 Q. And that map is Exhibit 2, correct?

19 A. Yes.

20 Q. Are you familiar with the roads in the
21 vicinity?

22 A. Black River Village Road, yes.

23 Q. Do you have any idea if there is any way to
24 access the Giant Panda surface location without crossing
25 through Section 9?

1 A. No.

2 Q. You don't know if there is any way to do it?

3 A. I do not know if there is.

4 Q. Okay.

5 MR. McMILLAN: That's all I have for this
6 witness at this time on the Giant Panda.

7 And am I similarly confined with respect to
8 the Grizzly concerning questions of notice?

9 EXAMINER BROOKS: Yes, sir, unless you can
10 demonstrate something else is relevant.

11 MR. McMILLAN: All right.

12 Q. (BY MR. McMILLAN) Looking at your map, Exhibit
13 2, with respect to the Grizzly, it looks like that's
14 staked just to the south of Section 11, correct?

15 A. Correct.

16 Q. Do you know who owns in Section 11?

17 A. The State Land Office.

18 Q. You believe the State Land Office owns 11?

19 A. Part of it, yes.

20 Q. Is there any way to stake that Grizzly SWD well
21 without crossing through Section 11, to your knowledge?

22 A. No.

23 Q. No, there is no other way to get there, or no,
24 you don't know?

25 A. It's in Section 11.

1 MR. RANKIN: Mr. Examiner, I would just --

2 MR. McMILLAN: I'll end the questions.

3 EXAMINER GOETZE: Okay.

4 MR. RANKIN: Mr. Goetze, do you have
5 questions of the witness, because I have one more?

6 EXAMINER GOETZE: No. I had already said
7 that I have no questions of the witness.

8 Mr. Craig, since we're covering both 16259
9 and 16260, do you have any questions about --

10 MR. CRAIG: We have none. I just had the
11 one of the map.

12 EXAMINER GOETZE: Just on the -- okay.

13 In light of that, back to you (indicating).

14 REDIRECT EXAMINATION

15 BY MR. RANKIN:

16 Q. Ms. Presley, Mr. Craig, counsel for the Davises
17 and Ms. Ogden, asked you a couple of questions about the
18 map, Exhibit Number 2, that is in your exhibit packet.
19 With respect to that map, just so the record is clear,
20 how was this map created with respect to the
21 identification and locations of your proposed wells?
22 Did you get GPS coordinates for those well locations?

23 A. Yes.

24 Q. And you entered those into this map to identify
25 the locations as depicted in the map, correct?

1 A. Correct.

2 Q. Now, with respect to the orange coloring
3 depicting Zone B for the mussel habitat and then the red
4 coloration depicting the Zone A habitat, where did that
5 information come from; do you know?

6 A. I received the KMZ file from the State Land
7 Office.

8 Q. So the depiction of all of that territory, Zone
9 B and Zone A, was received to you from the State Land
10 Office?

11 A. That's correct.

12 Q. And did they provide it to you upon your
13 request, or how did it come that they sent it to you?

14 A. They just sent it to me.

15 Q. In order so that you could understand what the
16 locations were -- why did they send it to you? So you
17 could understand the locations of the different zones?

18 A. Just for me to see the map, where it was in
19 relation to the wells that we're talking about putting
20 on state land.

21 Q. Okay. So that's the information that you used
22 from the State Land Office to create this map, correct?

23 A. That's correct.

24 MR. RANKIN: Okay. No further questions.

25 EXAMINER GOETZE: Mr. Brooks?

1 EXAMINER BROOKS: No questions.

2 EXAMINER GOETZE: I have no more questions
3 of this witness.

4 Thank you.

5 MR. RANKIN: Thank you, Mr. Examiner.

6 I call my second witness, Mr. Jason Goss.

7 JASON S. GOSS,

8 after having been previously sworn under oath, was
9 questioned and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. RANKIN:

12 Q. Mr. Goss, will you please state your full name
13 for the record?

14 A. Jason Sterling Goss.

15 Q. By whom are you employed?

16 A. Delaware Energy.

17 Q. And in what capacity?

18 A. I am VP of drilling.

19 Q. Would you please recite for the examiners what
20 your duties entail as the VP?

21 A. I oversee all aspects relating to drilling from
22 the initial planning of the wellbore at the surface
23 through the regulatory process for approval of the
24 C-108, as well as the C-101, getting it staked, building
25 the location, and then to all the downhole, the wellbore

1 design, the tubular design, the drilling mud design, the
2 entire drilling program, and then as well as the
3 completion of the well because we complete the wells
4 with the drilling rig. And so I oversee the entire
5 process of drilling for Delaware.

6 (Cell phone ringing.)

7 (Examiner Brooks exits the room.)

8 **Q. (BY MR. RANKIN) Have you previously had the**
9 **opportunity to testify before the Division?**

10 A. I have not.

11 **Q. Will you please review for the examiner what**
12 **your educational background is first?**

13 A. I have a Bachelor in Science from the
14 University of Texas at Austin. I graduated in December
15 of 2008.

16 **Q. And with respect to your relevant work history,**
17 **will you review for the examiners what your past work**
18 **history is and your different duties and your experience**
19 **drilling wells and working with saltwater disposal**
20 **wells?**

21 A. I have about ten years of experience total in
22 the oil and gas industry. I started in the Northern
23 Delaware Basin drilling, completing and overseeing a
24 Levelland, San Andres and Clearfork water flood. We did
25 pressure maintenance. I oversaw the injection wells

1 that were involved with the water flood.

2 I then moved on to Midland and started
3 working for Nadel and Gussman Permian. My
4 responsibilities there were drilling engineer, then
5 following that, drilling manager for Nadel and Gussman
6 Permian. I drilled all of Nadel and Gussman's Lea and
7 Eddy Counties wells, as well other entities we were
8 involved with such as Nadel and Gussman Heyco.

9 Following that, we merged in early '16 with
10 BC Operating. I was the drilling manager for BC
11 Operating. I was completely responsible for all aspects
12 of drilling at BC. We drilled a handful of wells in the
13 two years I was there. I also drilled a few disposal
14 wells for BC. I drilled a handful of disposal wells for
15 Nadel and Gussman Heyco and Nadel and Gussman Permian.

16 **Q. Now, you're familiar with the C-108**
17 **applications that were filed in each of these cases?**

18 A. I am.

19 **Q. And you contributed substantially to the**
20 **preparation of each of those C-108 applications for each**
21 **of these cases?**

22 A. That's correct.

23 **Q. And you prepared exhibits to support your**
24 **testimony today; is that right?**

25 A. That's correct.

1 MR. RANKIN: Mr. Examiner, I would tender
2 Mr. Jason Goss as an expert in petroleum engineering.

3 EXAMINER GOETZE: And we're going to be
4 discussing all three, or we're just going to discussing
5 one?

6 MR. RANKIN: My preference, Mr. Examiner,
7 is I think it would be most efficient to discuss all
8 three, but --

9 EXAMINER GOETZE: Well, efficiency has
10 created a degree of confusion.

11 Okay. We'll proceed on that.

12 Do you have any objections, Mr. Craig?

13 MR. CRAIG: No objection.

14 EXAMINER GOETZE: Mr. McMillan?

15 MR. McMILLAN: No objection to the witness'
16 qualifications.

17 EXAMINER GOETZE: Ms. Callahan?

18 MS. CALLAHAN: No objection.

19 EXAMINER GOETZE: Very well. He's so
20 qualified.

21 Proceed.

22 Q. (BY MR. RANKIN) Mr. Goss, you've got before you
23 three exhibit packets for Case Numbers 16258, 16259 and
24 16260.

25 A. Correct.

1 Q. Will you flip to what's been marked as Exhibit
2 Number 1 in each of those exhibit packets? Is this a
3 copy of the cover letter and the C-108 -- updated C-108
4 that was filed in each of these cases?

5 A. That's correct.

6 Q. Now, were you responsible for preparing -- and
7 just to be clear, Exhibit 1 has got intervening tabs, A,
8 B, C, D, E and F, correct?

9 A. That is correct.

10 Q. And with respect to Exhibit 1 and the C-108,
11 were you responsible for creating -- for generating and
12 overseeing the preparation of all aspects of that C-108
13 except for the material that's behind Tab letter F?

14 A. That is correct.

15 Q. And that's true for each of the cases before
16 the Division today?

17 A. Correct.

18 Q. And on some of materials that were filed with
19 the Division in that C-108, the name Mike McCurdy
20 appears. Did you work with Mr. McCurdy to develop the
21 C-108 in each of the cases?

22 A. I did.

23 Q. Now, turning to the C-108 itself, do the C-108
24 applications in each case contain all the geologic
25 information and analyses that are required by the

1 **Division for approval?**

2 A. They do.

3 Q. If you look at -- turn to Tab B on each of your
4 **exhibit packets in Exhibit 1, are these Delaware's**
5 **responses to the questions that are required under the**
6 **Division's C-108?**

7 A. That is correct.

8 Q. And looking at item number eight, Roman numeral
9 **VIII, is this an outline of the geologic information**
10 **that's required by the Division for approval?**

11 A. It is.

12 Q. And that's been provided for each C-108 now
13 **pending before the Division, correct?**

14 A. Correct.

15 Q. Will you review for the examiner the geologic
16 **framework here in these areas for all three of these**
17 **wells and just explain what the stratigraphy is and the**
18 **different formation tops and the surface to the**
19 **injection interval?**

20 A. Yes. The surface in this -- for this general
21 area, the surface has some early age -- or late-age
22 quaternary alluvium. For the most part, the Rustler is
23 at surface or near surface in outcrops. Following that,
24 the Salado begins at around 700 feet, in my experience.
25 It ends at the Lamar limestone at around 22 to 25,

1 followed by the Delaware Mountain Group, which will be
2 from 2,500 to 5,500, where the top of the Bone lime is.
3 The Bone lime will carry down to about 9,000 to the top
4 of the Wolfcamp in this area. Wolfcamp intervals A, B
5 and C are normally a depth to about 11 or 10,8 [sic].
6 Following that, you have the gas intervals, the Strawn,
7 Atoka, Morrow, followed by the Mississippian-age rock,
8 the Barnett shale, the Mississippian lime, and then down
9 to the Woodford, which is the top of the Devonian-age
10 rock. Then followed by that, after the Woodford, you
11 have the Devonian carbonate and the Silurian, which is
12 the injection intervals.

13 Q. So just to be absolutely clear, in each of
14 these three cases, Delaware is proposing to inject into
15 the Devonian Formation -- what is known as the Devonian
16 Formation; is that correct?

17 A. That's correct.

18 Q. So let's go ahead and talk about what the
19 footages are and the depths for the proposed injection
20 in each case.

21 Let's turn first to Case Number 16258,
22 which relates to the Bear Trap SWD #1 well. Can you
23 relate to the examiner what the proposed injection
24 interval is for that well?

25 A. I can. The top of the Devonian carbonate is

1 13,280 feet, and the base over injection interval is
2 14,280.

3 Q. And how about in Case Number 16259 with respect
4 to the Giant Panda SWD #1, what are the proposed
5 injection intervals -- what is the proposed injection
6 interval for that well?

7 A. That well has a top of Devonian carbonate at
8 13,255 feet down to the end of the Silurian at 14,255.

9 Q. And then turning to Case 16260, which relates
10 to the Grizzly SWD #1 well, what are the proposed
11 injection -- what's the proposed injection for that
12 well?

13 A. 13,420 to 14,420.

14 Q. Now, sticking with the geologic issues, have
15 you evaluated whether the Devonian in these areas is
16 capable of fully containing the injection fluids that
17 you propose to inject into these wells?

18 A. I have.

19 Q. And what have you determined based on your
20 assessment?

21 A. I have determined that there are many, multiple
22 impervious intervals from the Devonian injection
23 interval to the surface and to the groundwater in that
24 13,000 feet, number one being the Woodford, a very
25 organic shale. It virtually has no impermeability.

1 Following that, as you go up, there are uncounted
2 impervious shale intervals that would be a barrier to
3 channeling upwards.

4 Q. So starting with the formation immediately
5 overlying the Devonian, the Woodford shale, right?

6 A. That's correct.

7 Q. And the Woodford shale is an impermeable
8 barrier that would contain the injected fluid?

9 A. That's correct.

10 Q. What's the approximate thickness of the
11 Woodford shale in these locations?

12 A. In this part of Eddy County, it's around 150
13 feet.

14 Q. Now, we're talking generally about the geology
15 and the stratigraphy in this area, and is that
16 stratigraphy the same in each -- for each case?

17 A. That's correct. In this area there is not
18 much -- there is not much change.

19 Q. Okay. There may be some slight variation in
20 the depths, but other than that, the stratigraphy is the
21 same across -- across the area here that we're talking
22 about in each of these cases?

23 A. That's correct.

24 Q. Now, have you evaluated the injection capacity
25 of the Devonian in this area?

1 A. I have.

2 Q. And is that based on -- based on prior
3 experience, or what have you determined -- what is your
4 opinion based on the injection capacity in this area?

5 A. We've determined that this interval can easily
6 take 20- to 25,000. In our active wells -- we have six
7 current wells in Eddy County, and they all have the
8 capacity for that and probably more.

9 Q. What is your -- what is the expected life
10 capacity of each of these three wells?

11 A. We're expecting for the lifetime of these wells
12 to be 10 to 15 years.

13 Q. And over the course of that lifetime, is it
14 your opinion that the Devonian will have the capacity to
15 receive the injection fluids from all three of these
16 wells?

17 A. That's correct.

18 Q. Now, is there any production of hydrocarbons
19 from the Devonian within this area, within the one-mile
20 area of review, for each of these three wells?

21 A. There is none.

22 Q. You've not identified any potential hydrocarbon
23 production or actual hydrocarbon production within this
24 area?

25 A. I've reviewed every deep test that has any kind

1 of data, and throughout this area, in most of Eddy
2 County, I've never seen any evidence of hydrocarbon
3 production in the Devonian.

4 **Q. So it's your opinion that the Devonian in these**
5 **areas for these three wells is not prospective for**
6 **hydrocarbons?**

7 A. That's correct.

8 **Q. Now let's talk about -- move up to the**
9 **stratigraphy a little bit and talk about freshwater**
10 **zones. Have you evaluated these areas for potential**
11 **freshwater zones?**

12 A. I have. I reviewed the State Engineer's data
13 for all these locations.

14 **Q. Okay. And what have you identified as**
15 **productive freshwater zones?**

16 A. So in general there's, you know, handfulls of
17 wells in each section, but generally speaking, the
18 usable water in this area is 0 to 100 feet. Most wells
19 are 80 feet, 75 feet deep, somewhere in there.

20 **Q. There are some that may be a little deeper than**
21 **that?**

22 A. That's correct. The deepest I've seen on the
23 State Engineer's website for this area is a well that is
24 200 feet, but the usable water is higher than that.

25 **Q. So relatively speaking generally here, the**

1 **depth to fresh water is in the range of what?**

2 A. 0 to 100 feet, somewhere in there.

3 **Q. Okay. Now, are these freshwater zones**
4 **geologically isolated from your injection interval?**

5 A. They are.

6 **Q. And what do you mean by geologically isolated?**
7 **How are they geologically isolated?**

8 A. Well, one, with the rock that's impermeable,
9 and then, two, the casing program that we have when we
10 drill the wells.

11 **Q. Okay. When you say the rock that's**
12 **impermeable, what zones underlying this freshwater zone**
13 **can you identify is impermeable to -- to water?**

14 A. Sure. For one, the Bone lime is impermeable,
15 and there are others from -- the hydrocarbon production
16 would begin nearly around 2,500 feet. And between there
17 and the freshwater table, there are impervious lines,
18 like, for example, the Lamar limestone.

19 **Q. So those function -- they effectively function**
20 **as a barrier to separate and contain the fresh water,**
21 **keeping -- the hydrocarbon-producing zones, and then**
22 **below that, your injection interval into the Devonian;**
23 **is that correct?**

24 A. That's correct.

25 **Q. Is that a fair statement?**

1 A. That's fair.

2 Q. Now, have you sampled -- actually had an
3 opportunity to sample fresh water from wells in the
4 sections in which you are proposing to inject?

5 A. That's correct. We pulled samples from, I
6 believe, the Bear Trap and the Giant Panda that have
7 active water wells in their section. The Grizzly did
8 not. We pulled an offset well for that one.

9 Q. Okay. So let's turn to what's been marked as
10 Tab C in Exhibit 1 for each of these cases, 16258, 16259
11 and 16260. Will you review for the examiners what this
12 exhibit depicts?

13 A. Yes. These are freshwater samples from nearby
14 the surface location of the proposed wells.

15 Q. And these freshwater samples will serve as --
16 what's their purpose? Will they serve as a baseline for
17 water-quality standards going forward?

18 A. That's correct.

19 Q. So were there to be any potential impacts from
20 your injection, these samples reflect that impact?

21 A. That's correct.

22 Q. Okay. So these are now of record with the
23 Division. And were there to be any concerns about the
24 effect of your injections on fresh water, these would
25 serve as a check; would they not?

1 A. That's correct.

2 Q. Now, have you identified in your geologic
3 review any vertical faulting or fractures or any other
4 kind of geologic conduits that could potentially serve
5 as a pathway for contamination between your injection
6 interval and the shallower freshwater zones?

7 A. I have not identified any in this area.

8 Q. And there is hydrocarbon production going on in
9 this area; is that right?

10 A. A bunch, yes, a great deal.

11 Q. So if there were fractures or any kind of
12 vertical faulting or geologic conduits, would you not
13 expect to see some leakage from the underlying
14 hydrocarbon zones in the freshwater area?

15 A. Yeah. You would expect it to be known.

16 Q. Yeah.

17 Okay. Now, in your opinion, based on your
18 analysis and assessment of the geology and the
19 impermeable barriers that you've just reviewed, do you
20 expect your injection in these three wells -- through
21 these three wells to pose a risk to contamination of
22 fresh water in this area?

23 A. Absolutely not.

24 Q. Now, we were just talking about the geology.
25 We'll move on to the casing program shortly. But as to

1 the geology, you don't see any issues or concerns?

2 A. That's correct.

3 Q. Now, let's go ahead and talk about the well
4 design and casing --

5 A. Great.

6 Q. -- and walk through for the examiner what it is
7 Delaware is proposing here. Let's start at -- well,
8 before we move on to the casing, let's just talk about
9 the area of review first, and then we'll move on to the
10 casing program.

11 So first I'll ask you to flip to Tab D --
12 I'm sorry -- Tab A for each of cases before you.
13 Ms. Presley already discussed these maps, but with
14 respect to your analysis relating to the area of review,
15 will you just review for the examiners what this first
16 map shows?

17 A. The first map is a two -- the larger circle is
18 a two-mile radius. The second smaller circle is a
19 one-mile radius that we are now using from a
20 recommendation of the Division.

21 Q. Okay. And the area of review, what I refer to
22 here, is the one-mile radius area; is that correct?

23 A. That's correct.

24 Q. Did you look at the wells -- producing wells
25 and the wells that are in the Division records within

1 **the area of review?**

2 A. I do. I -- either through the GIS or land
3 maps, I review every wellbore that is located within the
4 area of review. I review how deep it was drilled. If
5 it doesn't penetrate the Devonian, then we move on.

6 Q. Okay. So in this case, for each of these three
7 wells, did you identify any wells that actually
8 penetrate the injection interval within the Devonian
9 within the one-mile area of review?

10 A. I did not, for either of them, for either --

11 Q. For --

12 A. That's correct.

13 Q. Yeah.

14 So for Cases 16258, 16259 and 16260, there
15 is no well that penetrates the Devonian and injection
16 interval; is that correct?

17 A. That's correct.

18 Q. So have you reviewed, therefore, the data
19 available through the OCD's website and database to
20 determine and satisfy yourself that there is no remedial
21 work required on any of the wells within the one-mile
22 area of review to enable Delaware to safely inject into
23 the Devonian here?

24 A. That's correct.

25 Q. Now, let's talk about the injection and the

1 source of the produced water that Delaware will be
2 producing now. Ms. Presley tested that these wells are
3 going to be commercial disposal wells; is that right?

4 A. That's correct.

5 Q. So what -- do you know what operators or what
6 area of development you'll be servicing?

7 A. As far as the operators?

8 Q. Yeah.

9 A. All the major operators in the area.

10 Q. Okay. So the source of produced water is going
11 to be basically generated locally within the area of the
12 region?

13 A. That's correct. It'll be within some economic,
14 feasible distance that we can run a pipeline.

15 Q. Okay. Now, as to the specific formations that
16 you'll be receiving water from, do you have an idea
17 based on the active production in the area what those
18 formations will be?

19 A. I do. Based on my review of all the horizontal
20 activity, the majority -- the vast majority will be
21 Wolfcamp, primarily Wolfcamp A, the Wolfcamp A sands,
22 followed by some Bone Spring, Bone Spring 2nd Sand and
23 3rd Sand, and then some Lower Brushy Canyon, Delaware
24 production.

25 Q. Okay. So knowing that or anticipating that,

1 have you been able to evaluate potential compatibility
2 issues -- scaling issues with respect to the anticipated
3 produced water sources for each of these wells?

4 A. We have.

5 Q. And with that, Mr. Goss, will you turn to
6 what's been marked as Exhibit 1D, Tab D, in each of the
7 cases before you?

8 Are you there?

9 A. I am.

10 Q. Give you time to --

11 Now, will you review for the examiners what
12 this exhibit shows, each page one at a time?

13 A. These are water analysis of offset water
14 production from the Bone Spring, first, the Brushy
15 Can- -- Wolfcamp, second, followed by a Lower Brushy
16 Canyon Sand well.

17 Q. And the source of the produced water -- the
18 formation source is identified in that handwriting at
19 the top of each analysis; is that right?

20 A. Correct.

21 Q. And the exhibits that you just referenced is
22 the same for each case; is that right?

23 A. That's correct.

24 Q. So you used the same samples for each of the
25 three cases to demonstrate that there are no

1 compatibility issues or scaling anticipated with this
2 produced water?

3 A. Correct.

4 Q. And that's not just based on these samples but
5 from experience; is that correct?

6 A. That's correct, industry experience and then
7 with our current wellbores.

8 Q. So you've got active injectors that are
9 receiving water from these sources and injecting into
10 the Devonian?

11 A. That's correct.

12 Q. And you're not seeing any scaling or
13 compatibility issues with that injection?

14 A. We are not.

15 Q. Now -- now -- now we can talk about well
16 design. Let's turn to Tab E in your exhibit packets for
17 each of the cases before you, Cases 16258, 259 and
18 16260.

19 A. I am there.

20 Q. Looking at the exhibit behind Tab E, is this a
21 representation of the wellbore schematic for each of the
22 proposed wells in these cases?

23 A. It is.

24 Q. And is the wellbore schematic -- do they vary?
25 Does your well-casing design vary between wells?

1 A. Only in slight differences in the tops of the
2 formations, very slightly. The most important top is
3 the top of the Devonian, and that's where they will
4 change some and then the top of the Wolfcamp. But for
5 the most part, in this general area, they're all very
6 similar.

7 **Q. Okay. So let's just start with the first one,**
8 **Case 16258, which is the Bear Trap well -- SWD well.**
9 **Will you review for the examiners what your proposed**
10 **casing program and well design looks like?**

11 A. Yes, sir.

12 The first string would be a 20-inch
13 conductor set to at least 80 feet. It will be cemented
14 with Ready-mix -- if we can get farther, we will
15 usually -- followed by the surface casing. With the
16 conductor casing set, we usually, in this area, don't
17 have any issues with getting a continuous slurry
18 circulated on the first -- on the primary job in one
19 slurry. And the surface casing is set to a few hundred
20 feet below the deepest known water-well depth, which in
21 this case is 500 feet.

22 The next casing string is to top of the
23 Wolfcamp, which for this general area is around 9,000
24 feet. That is cemented in two stages and circulated to
25 surface and circulated to the top of the stage tool so

1 that we have a continuous slurry and the entire pipe is
2 covered in cement. And that gives you three barriers of
3 cement and pipe that protect the fresh water.

4 The final casing string is a liner that has
5 200 foot of overlap, as the Commission requires, and
6 then that setting depth is determined on the rig with
7 the mud log and a backed-up gamma log on the bit. We
8 drill 10 foot past the Woodford into the Devonian
9 carbonate and we set pipe there, and then we circulate
10 that to the liner top.

11 **Q. Before proceeding to the other cases, Mr. Goss,**
12 **would you just explain what the purpose of the conductor**
13 **pipe is at the surface and the surface casing? What**
14 **does that do, and why is it that you're setting it so**
15 **deep below the last known water well?**

16 A. Sure. Are you talking about the surface
17 casing?

18 **Q. Yeah.**

19 A. So the surface casing protects the freshwater
20 interval, and we drill it with fresh water so we don't
21 contaminate anything.

22 **Q. And how does it protect the surface water?**

23 A. It protects it because we have the pipe and --
24 the pipe is isolated with cement, and no drilling
25 fluids, once it's set, can interact with the surface

1 water interval.

2 Q. Basically, it creates a barrier between the
3 wellbore and the freshwater zones adjacent to the well?

4 A. That's correct.

5 Q. And you said that you're using freshwater
6 drilling fluids while you're drilling and setting that
7 surface casing; is that right?

8 A. Correct.

9 Q. And that's so that there is no chance of
10 contamination between your wellbore and the adjoining
11 freshwater zones?

12 A. Correct.

13 Q. Now, moving on to Case 16259, this is a very
14 similar well design. Will you just recount the
15 differences between this and the one you just reviewed?

16 A. The only difference would be the top of the
17 Wolfcamp. We may have a different top of Wolfcamp
18 there. I like to get that casing point into the
19 Wolfcamp shale. It's another good impermeable -- and we
20 get the Wolfcamp A under pipe -- that's where I like to
21 set pipe in this area -- and then followed by the liner
22 top, which we set 10 foot into the Devonian carbonate.
23 So that's why there is some change there.

24 Q. But otherwise -- looks like my copy at the top
25 might have been cut off. But otherwise you're using the

1 same format of conductor pipe down 80 feet and doing the
2 same cement program in between each stage of drilling;
3 is that right?

4 A. That's correct.

5 Q. Okay. And the last case in front of you is
6 16260. And again, it's a familiar well design. Is it
7 the same process you're going to follow to drill this
8 well?

9 A. It is.

10 Q. So you're going to be using freshwater drilling
11 fluids at the surface and using a conductor pipe to
12 isolate the first 80 feet and then surface casing down
13 below the deepest freshwater well, right?

14 A. That's correct.

15 Q. Okay. And the only difference may be the depth
16 of the injection interval that you're hitting, right?

17 A. That's correct.

18 Q. Okay. Do you have -- does Delaware have a
19 proposal or intention for a stimulation program for
20 these wells once you complete drilling?

21 A. We do. For our Eddy County wells, we have been
22 pumping 60 gallons of 20 percent HCl.

23 Q. And as to the operations now, once this well is
24 drilled -- these wells are drilled and completed, do you
25 have a proposed maximum surface injection pressure for

1 each of these wells that you've identified?

2 A. We do. This is set by the state guidelines of
3 .2 psi per foot to the top of the injection interval.

4 Q. And will you review for the examiners what
5 you've calculated that maximum injection pressure to be
6 for each of the wells?

7 A. Yes.

8 Q. You can take your time to get to it.

9 A. Yeah.

10 Q. And if you would, Jason, just make sure you
11 tell us which case number you're referencing --

12 A. Will do.

13 Q. -- injection pressures.

14 A. So I'll start with the Grizzly, 16260. We have
15 a max allowable surface-injection pressure of 2,684 psi.

16 For Case Number 16259, Giant Panda, we have
17 a maximum surface injection pressure of 2,651 psi.

18 And for Case 16258, the Bear Trap, we have
19 a maximum pressure of 2,656 psi.

20 Q. Would those surface injection pressures be
21 adequate to receive the volumes of rates of water that
22 you're proposing to inject into these three wells?

23 A. Absolutely. We typically inject well below
24 this.

25 Q. Well below these pressures?

1 A. That's correct.

2 Q. Okay. And that's because of the nature of the
3 Devonian in this area?

4 A. Correct.

5 Q. And would you just briefly explain why -- why
6 you can achieve injection at those rates without
7 approaching those surface pressures here in the
8 Devonian?

9 A. I'm sorry. You said explain it?

10 Q. Yeah. Just how it is that the Devonian is able
11 to receive those volumes without approaching those
12 injection pressure limitations.

13 A. Due to two factors: The hydrostatic column
14 that you have. Gravity is your friend while injecting.
15 And then two, the porosity development of the dolomite.
16 The intercrystalline porosity lends itself to some
17 permeability, and then with the surface pressure that we
18 add to it and the weight of the fluid, the Devonian can
19 take these rates.

20 Q. Okay. And basically, as I understand, the
21 Devonian has a lower -- lower formation pressure, and
22 it's able to essentially take these fluids on relatively
23 easy, correct?

24 A. That is correct. In this area it's about a .89
25 to .9 equivalent mud density gradient.

1 Q. And that simply means, translated to lay
2 terms --

3 A. We're -- we're -- we're translating the
4 bottom-hole pressure of the Devonian to an equivalent
5 mud weight given the distance that it -- the depth.

6 Q. And that mud weight is relatively low given how
7 deep it is?

8 A. Much lower than the rock above it, the
9 Atoka-Strawn-Morrow.

10 Q. And that suggests that the Devonian is under --
11 is under pressure and will receive fluids relatively
12 easy?

13 A. Exactly.

14 Q. Okay. Now, if a higher pressure is needed,
15 will Delaware approach the Division and request the OCD
16 witness a step-rate test to confirm higher pressures?

17 A. We would.

18 Q. Now, with respect to monitoring your operations
19 and injection, how is it that Delaware proposes to
20 ensure the wellbore integrity during the time of
21 injection?

22 A. So for injection, we run the injection string.
23 It is set with a packer within 50 to 100 feet of the
24 open-hole interval, as per the OCD guidelines. We will
25 then conduct an MIT test where the entire annulus is

1 liquid filled and then it is tested and witnessed by the
2 Commission, as per the rules. Following that, for
3 continuous operations, that liquid-filled annulus will
4 be monitored with a pressure gauge at all times.

5 Q. So if there were to be any -- any mechanical
6 issues or annulus issues, integrity of your annulus or
7 injection tubing, would that be recorded by a change in
8 the annulus pressure of your liquid between -- that
9 you've injected or that you've included in your program?

10 A. Absolutely.

11 Q. Okay. And how is that -- how is that being
12 monitored?

13 A. It's monitored by a liquid-filled gauge, which
14 is also electronically monitored through our electronic
15 system that can be monitored at the computer station at
16 the site and then on the Internet from anywhere in the
17 world.

18 Q. Okay. So in other words, Delaware is real-time
19 reviewing and evaluating the constant integrity of each
20 of these wells?

21 A. That's correct.

22 Q. Now, in your opinion, Mr. Goss, would approval
23 of these three applications be in the best interest of
24 conservation?

25 A. Absolutely, it would.

1 Q. And in your opinion, would the approval of
2 these three applications be in the interest of
3 protecting against waste?

4 A. That is correct.

5 Q. And in your opinion, will -- are these three
6 proposed applications protective of the environment and
7 human health?

8 A. Absolutely.

9 Q. Just to confirm, you oversaw or contributed
10 substantively to the preparation of the C-108 every part
11 except for the part that's reflected behind Tab F; is
12 that true?

13 A. That is correct.

14 Q. And that's true for Case 16258, Case 16259 and
15 Case 16260, correct?

16 A. All true and correct.

17 MR. RANKIN: With that, Mr. Examiner, I
18 would move the admission of Exhibit Number 1, but for
19 the exhibit behind Tab F, which our next witness will
20 address in each of these cases.

21 EXAMINER GOETZE: So let me understand.
22 For Case 16258, 1A through 1E; Case 16260, 1A through
23 1E; and 16259, 1A through 1E is what you wish to enter?

24 MR. RANKIN: I would, Mr. Examiner.

25 EXAMINER GOETZE: At this point we get to

1 go around and ask your input, Mr. Craig, at this point.

2 MR. CRAIG: No objection.

3 EXAMINER GOETZE: Mr. McMillan?

4 MR. McMILLAN: No objection.

5 EXAMINER GOETZE: Ms. Callahan?

6 MS. CALLAHAN: No objection.

7 EXAMINER GOETZE: Very well. Then in Cases
8 16258, 12659 and 16260, Exhibits 1A through 1E are so
9 entered.

10 (Delaware Energy, LLC Exhibit Numbers 1A
11 through 1E are offered and admitted into
12 evidence for each case, Case Numbers 16258,
13 16259 and 16260.)

14 EXAMINER GOETZE: And seeing how it's ten
15 of 12:00, do you have a lot, if you're going to do
16 cross, or would you like to reserve until after lunch?

17 MR. CRAIG: It might be good to do it after
18 lunch. I have no idea how long it's going to take.

19 EXAMINER GOETZE: Well, if counsel --

20 MR. RANKIN: I hate to give them more time
21 to come up with more questions, Mr. Examiner.

22 EXAMINER GOETZE: We love more time.

23 Let's go ahead and do this. Let's break
24 for lunch and try to be back here about 1:30, and then
25 we'll carry on.

1 (Recess, 11:49 a.m. to 1:31 p.m.; Examiner
2 Brooks not present.)

3 EXAMINER GOETZE: We're back on the record.
4 Thank you.

5 MR. RANKIN: Mr. Examiner, I think where we
6 left off is that Mr. Goss was on the stand. I had just
7 passed the witness for questioning.

8 EXAMINER GOETZE: That's correct.

9 MR. RANKIN: Mr. Examiner, would you like
10 Mr. Goss to approach the witness stand?

11 EXAMINER GOETZE: He may get back on the
12 witness stand, and he knows he's been sworn in.

13 So, Mr. Craig.

14 MR. CRAIG: Yes, sir.

15 MR. RANKIN: Mr. Examiner, before we
16 commence, I just want to make a statement real quick
17 about the -- our position on the objectors' status in
18 this case. I reserve a standing objection as to all
19 three protestors in the case, which I believe further
20 evidence and testimony are necessary for me to establish
21 a basis for dismissal of all parties. It's our position
22 that the parties have -- not parties, the objectors --
23 sorry -- that the objectors have not properly filed a
24 notice of intervention to participate in the case nor
25 are they subject to -- or required to receive notice

1 under the Division's rules. Having failed to do so, you
2 know, our position is that they should be precluded from
3 asking questions or participating. But I anticipate
4 being able to establish that through the course of the
5 rest of the testimony in today's proceeding.

6 EXAMINER GOETZE: Well, you can go make
7 that part of the record, but at this point, we've gone
8 this far down the road. We'll let them have their day
9 at this hearing.

10 MR. RANKIN: I understand.

11 EXAMINER GOETZE: I would also ask you to
12 take a look at your edits for this exhibit. I believe
13 that for Case 16259 and 16260, you've put the same well
14 in the title block.

15 MR. RANKIN: Did we? For the affidavits?

16 EXAMINER GOETZE: Yup.

17 MR. RANKIN: All right. I'll have to --

18 EXAMINER GOETZE: You'll have to go back to
19 the drawing board on that one.

20 All right, Mr. Craig.

21 MR. CRAIG: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. CRAIG:

24 Q. Mr. Goss, you said you were the last present
25 drilling; is that right?

1 A. That's correct.

2 Q. Now, in the -- when you looked at the
3 geologic -- I mean, you went through all the zones going
4 down the hole, right, earlier, down to wherever you're
5 injecting the water?

6 A. I did.

7 Q. Yeah.

8 Did you do any kind of hydrologic or
9 hydrology on the water zones up in the 100-foot range?

10 A. A hydrology study?

11 Q. Right.

12 A. No.

13 Q. Did you do any testing, for example, the
14 permeability of the -- of the water-bearing areas, the
15 water zones?

16 A. Did not.

17 Q. Now, would these things be -- I guess the Giant
18 Panda and the Grizzly, would they be considered in a
19 karst area?

20 A. That area, yes. It's considered moderate
21 karsting.

22 Q. Okay. And could you explain to us what
23 karsting is, in your opinion?

24 A. Karsting is the dissolution of limestone due to
25 fresh water near the surface.

1 Q. And from -- you probably went through a bunch
2 of geology, I'm sure, when you were in college.

3 A. I did.

4 Q. Have you found that in these karsting areas,
5 the permeability of the -- of the rock, we'll call it,
6 is really high? I mean, the water will flow through it
7 in a fairly rapid rate, correct?

8 A. You know, rapid rate compared to other areas.
9 I'd say it's normal for that area for New Mexico.

10 Q. Well, I mean, if you're going through something
11 that was not -- that didn't have -- what would you say,
12 though? Permeability is high in a karsting area?

13 A. It would be, yes, if it's present.

14 Q. What?

15 A. If the karsting is present. A lot of time we
16 don't see it in most wells.

17 Q. Right. But in this area we're talking about
18 down there around Carlsbad, especially along like at
19 Black River, that's -- that's recognized as a karsting
20 area?

21 A. Yeah, moderately. We see it in about one out
22 of 15 to 10 wells.

23 Q. And have you looked at the areas where you have
24 proposed drilling to see if it's a karsted area or not?

25 A. I have. I don't think the BLM actually

1 requires a karst review for that area, so I wouldn't say
2 it's -- that's kind of what I use as a general rule.

3 Q. Okay. So you didn't examine that for these two
4 wells we're talking about -- I'm talking about?

5 A. We didn't have a karst survey done. No.

6 Q. Now, we looked at that map earlier, the one
7 that shows the -- Exhibits 2 and 3 in all these --
8 Exhibit 2. Now, you understand that to be the
9 floodplain in the -- we'll call it the golden brown
10 area. That's really the 100-year floodplain, and that
11 is what you --

12 A. I don't know -- I know that that KMZ survey --
13 these shake files are given to us from the State Land
14 Office. I do not know -- they came up with these shake
15 files. I know they represent the B zone of the
16 hornshell mussel, but as far as flood zone, I can't
17 comment to that.

18 Q. Did you do anything about -- I mean, are you
19 acquainted with the Texas hornshell?

20 A. I am.

21 Q. You understand it's an endangered species
22 protected by all kinds of laws?

23 A. I'm aware of it.

24 Q. And do you understand that it's very
25 susceptible to high -- well, parts per -- water that's

1 **brackish or has got a high chlorine content -- chloride**
2 **content?**

3 A. Yes. I've been advised by Matt Ramey and the
4 other people at the Conservation -- CEHMM about what
5 they see as the issue.

6 Q. **And Mr. Ramey is here?**

7 A. That's correct.

8 Q. **And did you understand that he had something to**
9 **do with putting together this map?**

10 A. No. I've never talked to him about this map
11 explicitly. I didn't know that was him.

12 Q. **And you testified that the freshwater zones**
13 **were basically 0 to 100 feet in this area?**

14 A. Correct.

15 Q. **Now, wouldn't those zones typically drain**
16 **toward the river?**

17 MR. RANKIN: Objection. I think -- I'm not
18 sure if Mr. Goss is qualified as a hydrologist or is
19 familiar with the hydrology.

20 MR. CRAIG: If he doesn't know -- yeah.

21 EXAMINER GOETZE: I'm sure he can state.
22 But at the same time, he's put forth a drilling plan and
23 a casing design which is specifically put forward as
24 being protective of underground sources of drinking
25 water, and our contention is and recognized by the State

1 Engineer that the beta zone is a protected source of
2 drinking water.

3 MR. RANKIN: I understand.

4 THE WITNESS: Would you repeat your
5 question again?

6 Q. (BY MR. CRAIG) Yes. That 100-foot zone -- to
7 100 feet, that one is going to be naturally draining
8 toward the Black River, along the river areas?

9 A. So you're saying that the water table is going
10 to drain towards the river? That's what you're saying?

11 Q. (Indicating.)

12 A. I guess you could -- you could make that case.

13 Q. And you realize that that -- if we get
14 pollutants like in the produced water into that water
15 zone, it could have an adverse effect not only on the
16 drinking water, but it could have an adverse effect on
17 the Texas hornshell mussel?

18 A. Produced water from an oil and gas well?

19 Q. Right. Or injected produced water.

20 A. Yeah. That would be adverse.

21 Q. Because produced water is worse than just salt
22 water. It's got all kinds of hydrocarbons and things
23 like that in it besides just salts, correct?

24 A. It has some hydrocarbon carry-over, it does.

25 Q. Well, if we look at those things you put in

1 this morning where we were talking about the -- where
2 you looked at the water that you're going to be putting
3 down the well -- is that exhibit -- it's D in all of
4 these, the water analysis.

5 A. Yes.

6 Q. I mean, that -- I mean, we're talking, the very
7 first one, Bone Spring, you've got chlorides of 109,018,
8 looks like, something like that. Is that right?

9 A. That's correct. I would say that's typical for
10 Bone Spring produced water.

11 Q. Now, this particular one -- this analysis I
12 think was done in 2011; is that right? If you look at
13 the next page at the top, it says "Scale Predictions
14 from Baker Petrolite."

15 A. I think so.

16 Q. Okay. And the next one is maybe 2011, the
17 Baker Hughes one on the Wolfcamp.

18 A. That's correct.

19 Q. Now, in here it's showing total dissolved
20 solids, but it's not showing any of the hydrocarbon-type
21 things that come back out of oil wells. Do you agree
22 with me? This is basically chlorides, calcium, that
23 kind of thing?

24 A. That's correct.

25 Q. And so what you'll be injecting in this

1 produced water will have other things in it besides
2 this, won't it, from out of the wells?

3 A. Sure. Yes.

4 Q. And all of those things that are getting
5 injected out there, those other things would also be
6 considered harmful for animals, mussels, people,
7 correct?

8 A. They have the potential to be, yes.

9 Q. Like benzenes and that kind of thing. I mean,
10 like, benzene is a carcinogen, correct?

11 A. Yes.

12 Q. And the next one, this next testing, it was in
13 2008. Did you do any more recent ones than the ones
14 that are in here?

15 A. No. Just the ones we provided here are what
16 are required by the C-108.

17 Q. Did you do any of them from the particular
18 wells that you're going to be injecting produced water
19 from?

20 A. No. A lot of them haven't been drilled yet.

21 Q. But there are a lot of wells that are -- you're
22 basically going to be doing these for these horizontal
23 wells?

24 A. That's exactly right.

25 Q. And they produce quite a bit of water?

1 A. A lot.

2 Q. And they're full of a lot of these chlorides
3 and also other hydrocarbons, correct?

4 A. Correct.

5 Q. And in your analysis of a casing design -- now,
6 I mean, you've been doing this what, 10, 12 years?

7 A. That's right.

8 Q. In that period of time, you ever had a casing
9 fail?

10 A. I have not -- not a well that I was overseeing.
11 I have not.

12 Q. Have you ever seen one fail?

13 A. I have.

14 Q. And when you have a casing failure at 2,500
15 psi, basically -- that's kind of a round number, kind of
16 close to where you're at. I think your-all's high
17 number was 2,651 or something like that.

18 A. Correct.

19 Q. When you've got the produced water going in at
20 2,500 psi, if you had a casing failure, what would that
21 do?

22 A. If you had a casing failure -- so you're not
23 talking about the injected --

24 MR. RANKIN: Objection. Calls for
25 speculation. Mr. Goss can answer it, but it calls for

1 speculation about what might happen under unknown
2 circumstances.

3 EXAMINER GOETZE: Well, let's just get a
4 general opinion of what he would think. Objection --

5 MR. RANKIN: Overruled.

6 Q. (BY MR. CRAIG) I mean, if you had a casing
7 failure up at the top part of the well, up there at the
8 top, at 2,500 psi, what would you expect to happen?

9 A. So which casing are you referring to?
10 There's -- when completely conducted, there are four
11 strings of pipe and the injection string, and we use
12 casing as injection string. So you're referring to
13 which string would fail?

14 Q. I guess it would be the one -- you've got four
15 at the top.

16 A. Right. Yes. So which one are you referring to
17 failing?

18 Q. Well, if you had a failure up in the top 100
19 feet where the -- where the pressurized produced water
20 could escape --

21 A. Okay.

22 Q. -- what would you be looking at?

23 A. So in that case, the casing that would be
24 subjected to that, assuming there is a failure, we would
25 see it immediately on the annulus, and we would see it

1 immediately on that annulus pressure gauge. And we
2 would do something and shut the well in, and we would
3 investigate what we have to do to fix the well.

4 **Q. Now, with -- is -- I noticed when you were**
5 **testifying, there was -- that you were going to be**
6 **watching this all the time. How does that work, this**
7 **annulus pressure? What do you gauge? What do you see?**

8 A. So after we fill the annulus with inhibited
9 fluid, corrosion inhibitor, we load the back side and
10 test it, the annulus, make sure that it -- then we pass
11 the state inspection. They witness that. We draw a
12 chart. We turn it in to them, to Mr. Goetze. And then
13 we hook a liquid-filled gauge onto the 2-inch casing
14 valve, and then we also have that electronically
15 monitored by the third-party site probe which monitors a
16 host of -- everything on the site, all the cameras, all
17 the tank levels and everything else. That's being
18 watched by our 24-hour supervision at the well, the
19 pumpers, as well as alarms online, and we can view it
20 from anywhere.

21 **Q. So how long when the -- when the thing -- if**
22 **you had a failure, how long would it take before**
23 **everything was shut down?**

24 A. Well, we would -- so assuming you had a failure
25 on the -- so I'm assuming here you're talking about a

1 9-5/8 casing failure here because that's what would be
2 exposed. So if you had a casing failure there, that's
3 extremely rare. Once the casing is in the ground and
4 you've cemented to surface, that would be almost unheard
5 of. It only occurs usually when -- you know, when
6 you're running the pipe is when casing failures usually
7 occur, if it gets stuck.

8 However, if you had a failure in there, if
9 it was overpressured, you'd see the pressure. If it was
10 underpressure, you would see a drop in fluid on the
11 annulus.

12 **Q. And at some point, you said, though, that would**
13 **cause you to shut down the operation?**

14 A. If we had an indication of -- in our annulus
15 that we have a pressure anomaly, yes, we would shut the
16 well in and halt operations, and we would do some
17 testing to see what was going on.

18 **Q. And during the period of time from when you**
19 **have the failure until you've got it shut down and I**
20 **guess the pressure off of -- off the well --**

21 A. Uh-huh.

22 **Q. -- how long would that take?**

23 A. It would be instantaneous. If you're talking
24 about something that would cause a hole, it's probably
25 pressured up, so that means it would be causing the

1 annulus to increase pressure. We would see that
2 immediately on the gauge and the transducer that we
3 have.

4 **Q. Would you get any escape -- any fluid that**
5 **could escape that would --**

6 A. No. The injection zone is isolated from the
7 injection tubing and the packer.

8 **Q. And those don't fail?**

9 A. Packers can fail, but that's another thing --
10 that's why we're monitoring it, and that's why the
11 Commission has rules about how we operate.

12 **Q. Well, in the rules, I think they require every**
13 **five years you do some kind of pressure testing on**
14 **the --**

15 A. The Bradenhead testing is -- yeah. I have to
16 look at the rules. I don't have them in front of me.
17 But the initial one is very important. We have to turn
18 that chart in, and it's witnessed. Following that, it's
19 up to us to be a prudent operator and make sure
20 everything is good.

21 **Q. So how often are you going to be pressure**
22 **testing these wells?**

23 A. As much as -- as much as the OCD requires. I
24 don't have the rule book in front of me, so I can't
25 testify to that.

1 Q. Well, I think -- I think the actual rule says
2 every five years.

3 A. That's -- then that's what we would be doing.

4 Q. In an area that's like a karst area like this
5 is --

6 A. Uh-huh.

7 Q. -- where if you have an escape of fluid, it
8 could be really disastrous?

9 A. The karst interval that you're referring to is
10 isolated by the conductor pipe and the surface casing.
11 There is no karsting below -- I've only had lost
12 circulation very near surface. And then so you
13 eliminate -- you isolate that with the conductor pipe
14 immediately when you pour Ready-mix down it and get that
15 isolated, and then your surface casing primary job goes
16 fine with the cementing.

17 Q. Well, I mean, after doing this for years, I've
18 seen concrete that's failed, you know, where the
19 concrete was poured in by Halliburton or whoever --

20 A. On a surface casing job?

21 Q. -- and it's -- and it's failed. If that
22 happens, it would cause produced water to escape into
23 our water formation.

24 A. Well, the failure that you're talking about is
25 extremely rare. I mean, we have very strict rules on

1 how it's cemented, and it has to be done exactly the way
2 the Commission says. And it's usually -- the primary
3 job goes very well, and then you have very thick wall
4 pipe that's isolated from everything so it doesn't get
5 corroded from everything.

6 So if you're saying -- well, you can pose a
7 question, but if you're saying that water -- produced
8 water would get into a karsting zone through the
9 intermediate casing, through the surface casing, I would
10 say that it could happen. It would be extremely rare,
11 and I have not seen it happen yet.

12 Q. And -- well, it would be a rare -- I mean, I
13 think I could agree with you on that. It would be a
14 rare occurrence.

15 A. Very, very rare.

16 Q. The problem is if you have such an occurrence,
17 it could have disastrous effects on the -- on the -- on
18 the mussel -- I mean, it's an endangered species -- or
19 the water -- fresh water from that zone; could it not?

20 A. If you have produced water going into the
21 freshwater interval?

22 Q. Yes.

23 A. That would not be good. Yes.

24 Q. Now, you said something about pipelines. Are
25 you planning to use pipelines to transport the produced

1 water to these wells?

2 A. Yes.

3 Q. What about trucking?

4 A. Trucking as well.

5 Q. And have y'all done any testing to see -- for
6 example, let's say you have a truck load of produced
7 water that spill -- had a large spillage at the
8 disposal.

9 A. Uh-huh.

10 Q. Have you done any testing to see how long it
11 would take for that water to get down 30 feet or
12 whatever is the freshwater zone?

13 A. No, I haven't.

14 Q. One thing -- let's see. Which one is it? I
15 think it's the Giant Panda. If you'll look with me on
16 the Giant Panda to Exhibit -- it's the one that's got
17 the picture of where everything is going to be. I had
18 it out a while ago.

19 MR. RANKIN: The area of review maps?

20 MR. CRAIG: No.

21 EXAMINER GOETZE: Well construction?

22 MR. CRAIG: It's a survey, like a little
23 site. It shows how you're going to get to the road, all
24 that stuff.

25 MR. RANKIN: It's behind Exhibit B, I

1 believe, behind the C-102 plat.

2 MR. CRAIG: Yeah. That looks like it.

3 Q. (BY MR. CRAIG) So Exhibit 1B. It's about
4 halfway there. It's this picture (indicating).

5 A. Yes.

6 Q. Have you been out to the location where -- this
7 new location in Section 16 for the Giant Panda?

8 A. I have put eyes on the original site. I can't
9 say that I've actually looked at the stake.

10 Q. But have you been out there? It shows there is
11 an existing lease road. Have you actually seen that
12 existing lease road?

13 A. I've probably seen it. I don't recall at the
14 moment.

15 Q. Is it on the state land, or is it on federal
16 land?

17 A. I don't know, judging from this at the moment.

18 Q. Well, this one, this little map, shows an
19 existing lease road all the way up running in about --
20 it says "plus or minus two miles," to the Black River
21 Road, which would be the Black River Village Road.

22 A. Uh-huh.

23 Q. Would that -- and that's running startup. And
24 that well location is kind of down in the -- in the
25 corner -- in the southwest corner, I think, as I

1 remember right from the map.

2 A. Oh, the section?

3 Q. Yes.

4 A. Okay.

5 Q. And there is a BLM section across from it, and
6 then there is that state section. If you go up the
7 section above Section 16 -- I think it's Section 9; I
8 think that's right -- which is -- that's y'all's,
9 Foundation Minerals' property. Do you understand that?

10 A. I'm aware of where some of their surface is,
11 correct.

12 Q. Do you have an easement from the -- of the BLM
13 to be going down that road?

14 A. No. We would start working that as we got
15 closer to -- to drilling.

16 Q. Do you have an easement from Foundation
17 Minerals to go across their property?

18 A. Not at this time.

19 Q. And it shows "Proposed Lease Road." So you're
20 going to -- the trucks -- I guess if they're trucks,
21 they would turn off Black River Village Road, and they
22 would go down this existing lease road and then cut over
23 to the location about two miles?

24 A. Well, this is all preliminary, so that's
25 possible. We don't know if we would have truck

1 off-loads at this station as well. That's yet to be
2 determined, depending on the operator needs in the area.

3 Q. Well, if you had a truck, you'd have to put in
4 an all-weather road, wouldn't you, caliche and all that
5 stuff? I mean, you don't want those big, heavy trucks
6 bogged down there in the pasture.

7 A. No. We'd probably have to work on the road.
8 Correct.

9 Q. Yeah. Because the only one that we know that
10 exists -- there's a two-track road that goes down
11 through there that's pipeline -- for a pipeline through
12 there. Does that sounds right?

13 A. I can't recall what you're referring to right
14 now.

15 MR. RANKIN: Mr. Examiner, at this point it
16 sounds like the questions are going to continue down
17 this, quote, unquote, "road" of questioning about an
18 access for this location. While I understand that the
19 Division requires approval -- demonstration of approval
20 for the location well itself, the exact access and
21 easements that are necessary to get there are outside
22 the scope of the application, I understand. So I would
23 ask that Mr. Craig not continue this questioning. I
24 think it's irrelevant to the approval authority related
25 to the C-108, and I just don't want to have to spend too

1 much time on something that's not going to be relevant
2 to the Division's decision.

3 EXAMINER GOETZE: Where are you going with
4 this, Mr. Craig?

5 MR. CRAIG: Well, I think you were talking
6 earlier that one of the issues that we look into is
7 public safety and health on these disposal wells. And
8 these trucks full of saltwater -- produced water turning
9 off of Black River Road and proceeding south through
10 various country, it seems to me, create a situation
11 where you could have a danger of produced water spillage
12 or other issues that we'll get into with some of our
13 witnesses up on Black River Village Road with these
14 truckloads of produced water. And it seems to me that
15 goes to the public safety of the -- of the project.

16 MR. RANKIN: Mr. Examiner, it sounds like
17 Mr. Craig has his own witnesses to address their
18 concerns about safety and environmental health and
19 spills.

20 EXAMINER GOETZE: Well, we'll go with this:
21 How far along are you in accessing this line
22 of questioning?

23 MR. CRAIG: Pretty well done.

24 EXAMINER GOETZE: That's good.

25 Q. (BY MR. CRAIG) Now, when you're going down

1 through there, if we look through this map -- I don't
2 know if it shows it very well -- on number two, it shows
3 where the Giant Panda saltwater disposal well is down
4 there at the bottom in Section 16. See that?

5 A. Yes, sir. Correct.

6 Q. And then right next to it is the section line,
7 and I'm assuming that this road that you're talking
8 about is that one that looks like on the other side of
9 the section. It goes straight up.

10 A. I would agree with that.

11 Q. Okay. Now, if you go straight up, first thing
12 you do is you cross all of this golden brown area, and
13 then you cross the river. Is there a bridge there?

14 A. I'm not sure. I don't believe so. It looks
15 like the other oil companies are accessing from the
16 lease road that goes to the east in Section 9 up to
17 Black River Road. That's what it looks like to me. So
18 you wouldn't cross the river there.

19 Q. Well, I mean, you're going to -- oh, you mean
20 cutting down just before you get to the river?

21 A. Right. Like that new location in the southwest
22 quarter of 9, it's most likely that the pumpers, the
23 water trucks, the oil-hauling trucks are accessing that
24 location from the roads at 9 and not crossing the river.

25 Q. In order to do that, you'd have to get access

1 across that particular property, correct?

2 A. You would, yeah.

3 Q. And otherwise you're going to be in a situation
4 that you're very well going to have to cross the river
5 some way to get down to the Giant Panda saltwater
6 disposal #1, right?

7 A. Yeah. If you couldn't find access to the east
8 or to the west, yeah, you may. Like you said, I don't
9 know if there is a bridge there or not. But --

10 Q. Okay. And that is -- in the red area of the
11 Black River -- of the Black River, that's that Zone A
12 which basically doesn't -- can't do anything in it.
13 That's where the mussel lives, right?

14 A. Correct.

15 Q. Now, when you get over to -- well, did you
16 ever -- have you done any kind of site -- looking at
17 the -- at where this -- looking where the Giant Panda
18 is, it's my understanding -- and I don't know; I haven't
19 been out there -- that there is a natural drainage from
20 that point to the north. Do you have any knowledge of
21 that?

22 A. I mean, I can't recall sitting here which way
23 it drains right now.

24 Q. How about at the Grizzly saltwater disposal
25 well? What would the surface -- you were talking about

1 surface. There is surface drainage, and then there is
 2 the subsurface, I guess, water flow that we -- we were
 3 talking about earlier. But there is -- on the surface,
 4 how would the water flow from the Grizzly saltwater
 5 disposal well if it came from a big rain or anything
 6 like that?

7 A. Well, just looking at this -- I don't have the
 8 topo map complete in front of me. I'm not sure how the
 9 water would drain on that specific site.

10 Q. Well, you'd have to -- would you agree with me,
 11 though, that the way the water would drain off of one of
 12 these locations for a saltwater disposal well could be
 13 very important, especially if you have a big rain come
 14 through and wash the pad down and wash the accumulated
 15 salt or whatever else that's out there on the pad down,
 16 that you need to know which way that's going to go?

17 A. It would be a good idea to know.

18 Q. I mean, you don't want it draining into the
 19 river, do you?

20 A. No.

21 Q. And if it drained into this area which is the
 22 floodplain, if it floods, then you're going to pick that
 23 stuff up, and it'll end up getting in the river that
 24 way, too, correct?

25 A. Possibly.

1 Q. Have you seen pictures of the fact when they
2 had that flood down there a few years ago?

3 A. Which -- I remember a lot of rains in '13.
4 Which one are you talking about?

5 Q. '14, where the Black River was maybe half a
6 mile across.

7 A. I haven't seen pictures, no.

8 Q. I think that's where this was generated. This
9 area that you're talking about here in the golden
10 brown --

11 A. Uh-huh.

12 Q. -- is basically what was filled up with water.
13 Because you wouldn't want your saltwater disposal wells
14 to drain into that area, would you?

15 A. You wouldn't want any well or any -- anything
16 to drain into there.

17 Q. Now, if you do pipelines, would they come --
18 how would you get the pipelines into this area?

19 A. Are you -- are you -- are talking about a
20 specific well?

21 Q. Either the Panda or the Grizzly. Those are the
22 only two I'm talking about.

23 A. Well, a lot of times the operators run the
24 lines to us, so that would be up to them.

25 Q. You contract with those -- those operators?

1 A. We do.

2 Q. If they have a failure in their pipe, who is
3 responsible for that?

4 A. It depends on where -- where we take custody.

5 Q. And those -- you're talking about like laying a
6 fast line across there?

7 A. Well, not for produced water, not a fast line.
8 No, sir.

9 Q. What kind of -- what kind of line do they put
10 in?

11 A. Well, this is outside of my expertise, but we
12 run poly. It's usually SDR 8, 6 inch, 8 inch. It just
13 depends on the application, the amount of water, the
14 elevation, who's tying -- how many operators are tying
15 in, how many valves there will be. There is a lot of
16 engineering that goes into that.

17 Q. And you have to keep that line pressured all
18 the time, too, don't you? Keep the water moving to
19 where you want it? I mean, it could be moving several
20 miles.

21 A. It could.

22 MR. CRAIG: I think that's all I have.

23 EXAMINER GOETZE: Thank you.

24 Mr. McMillan.

25

1 CROSS-EXAMINATION

2 BY MR. McMILLAN:

3 Q. Just a couple of questions. Looking at the
4 Giant Panda packet, back to that map behind Exhibit Tab
5 2 --

6 A. Yes, sir.

7 Q. -- looking at that section -- looking at
8 Section 9 that you discussed with Mr. Craig, I just have
9 a couple of brief follow-up questions.

10 Mr. Craig represented that Section 9 is
11 owned by Foundation Minerals. Does that sound right to
12 you?

13 A. I believe that's correct. Yeah. They own in
14 8, 9, 10, 3 and 4.

15 Q. Okay. And I believe you testified that you
16 don't yet have an easement from Foundation Minerals to
17 cross through Section 9; is that correct?

18 A. We don't at this point. No.

19 Q. Did you either seek or receive permission from
20 Foundation Minerals to cross Section 9 in the staking of
21 the Giant Panda SWD #1?

22 MR. RANKIN: Mr. Examiner, I object to the
23 questions -- questioning. It's outside the scope of
24 what is relevant to the Division's review for approval
25 for the C-108, which is restricted to the location, the

1 casing design and other aspects --

2 EXAMINER GOETZE: I would agree with the
3 Applicant in the sense that these type of agreements are
4 not relevant to this application. As far as agreement
5 and access points, that's business outside of our
6 application.

7 MR. McMILLAN: Okay.

8 EXAMINER GOETZE: So if it's something
9 relevant to notification and/or this application, let's
10 keep it in bounds.

11 MR. McMILLAN: Okay. So does the examiner
12 suggest a different route for finding out whether
13 Delaware crossed Foundation Minerals' land in staking
14 the well?

15 EXAMINER GOETZE: Well, you know, we're not
16 the police out there holding people off property. If it
17 was relevant to, again, the application, the staking of
18 a well -- we get these papers all the time with no stake
19 on them. So it's about what's in the application. So
20 let's stay relevant to that. Okay?

21 MR. McMILLAN: Does the application not
22 reflect that the well was staked in this instance,
23 though?

24 EXAMINER GOETZE: No. It doesn't ask that,
25 just whether you were notified, because I have numerous

1 of these with no APD approved for it. And I have a
 2 C-102 that's applied and given in the application, which
 3 doesn't have a surveyor stamp on it. So in many cases,
 4 it may be a proposed surface location. So based upon
 5 that, whether you jump a fence to put a stake in is
 6 something between you and the landowner. But usually we
 7 assume that some prior work has been done to gain access
 8 or at least get an indication that it will be performed.

9 MR. McMILLAN: Okay. Does the -- and I
 10 don't mean to push my luck here --

11 EXAMINER GOETZE: (Laughter.)

12 MR. McMILLAN: -- but I'll ask one more
 13 question of the examiner (laughter). Perhaps I am
 14 pushing my luck.

15 Is the exhibit shown by the Applicant
 16 showing -- this is an SLO letter regarding the notice of
 17 intent to conduct a land survey dated September 10th,
 18 2018. It's Exhibit 4 in the package. And that letter
 19 specifically states that the SLO is not granting access
 20 on private land. My concern is that this authorization
 21 was essentially breached by the Applicant in staking the
 22 well. I'll leave it at that.

23 MR. RANKIN: Mr. Examiner, I just would
 24 point out that it seems to me that counsel for
 25 Foundation Minerals Group is seeking to establish a

1 claim that has nothing to do with the administrative
2 application that is before the Division, and I think
3 it's inappropriate to pursue that line of questioning.

4 EXAMINER GOETZE: Again, the notice of
5 intent to conduct a land survey is out of this scope.
6 If permission was granted or not is not relevant to this
7 application.

8 MR. McMILLAN: Thank you. That's helpful.
9 I will hereby cease pushing my luck.

10 EXAMINER GOETZE: Thank you.

11 Ms. Callahan?

12 MS. CALLAHAN: I have no questions.

13 EXAMINER GOETZE: Okay. Then it's back to
14 me.

15 CROSS-EXAMINATION

16 BY EXAMINER GOETZE:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. Okay. On the C-108 application, let's start
20 off with in reference to all three cases. We have a
21 proposed maximum of 25,000 barrels of water per day.
22 Considering the casing design and the tubing diameters,
23 isn't this somewhat of a low number expected for this
24 type of casing and tubing design?

25 A. That would be correct. Our surface facilities

1 for most of these wells, once you get past 25,000, the
2 electrical costs triple; the pump costs triple. We're
3 currently sizing these wells for what we have on the
4 application, 25, with the surface facilities. So
5 although -- lowering our injection pressure does reduce
6 our operating costs. That's the idea behind that.

7 Q. Okay. And 10 to 15 years, isn't that somewhat
8 light considering what others have proposed?

9 A. Yes, sir. I would say that I know Matador has
10 proposed higher. They have their own wells. So they
11 intend to operate those wells for as long as -- you
12 know, to plugging probably, so that may be behind those
13 answers.

14 Q. I just want to make sure because what we're
15 looking at here is something that you may not own
16 through the course of this well. It may be sold to a
17 new operator, and this is permissible under the rule, so
18 we have to look down the road.

19 A. Yes, sir.

20 Q. Let's see. In each of these cases of well
21 construction, we're looking at an intermediate casing.
22 We notice, at least in listening, that there are stage
23 tools that are going to be used?

24 A. Yes, sir, in that part of Eddy County on the
25 six wells we've drilled. I do it a little bit

1 differently in Lea for the few wells we have over there.
2 But I usually stick that stage tool right above the base
3 of the Cherry Can- -- you know, somewhere around 4-,
4 5,000 feet usually has done really well for us. We
5 circulate on both stages with it there.

6 **Q. And you realize that we do have injection in**
7 **the Cherry in this area --**

8 A. I do, yes, sir.

9 **Q. -- Marathon's well and a few others?**

10 A. Yes, sir. I believe that they both have -- the
11 Black River SWD, which I drilled as a member of BC, has
12 been plugged, from what I understand.

13 **Q. We're working on that.**

14 A. Yes, sir. I knew it was in the works.

15 **Q. So with regards to a program to log these**
16 **wells, we've given the top -- it says "circulate to**
17 **surface with the liner" --**

18 A. That's an error. Yes, sir.

19 **Q. So how are we going to --**

20 A. Well, top to the liner top.

21 **Q. Yeah, I know. But when we say circulate, it**
22 **usually means to surface.**

23 **Would there be some sort of program to show**
24 **placement of cement for both intermediate and liner?**

25 A. Yes, sir, CBLs.

1 Q. For both -- in all wells?

2 A. Yes, sir.

3 MR. RANKIN: Mr. Goss, just for the record,
4 would you clarify what a CBL is?

5 THE WITNESS: Cement bond log.

6 EXAMINER GOETZE: Thank you, Counselor.

7 Q. (BY EXAMINER GOETZE) In Case -- just for the
8 record, Case 16259, the Giant Panda, the well diagram
9 shows a lack of conductor casing. Are we planning to
10 put one on?

11 A. That's an error, sir. Yes, sir, we will.
12 We've got to have something to start the rig on, so yes,
13 sir.

14 Q. And it will be cemented?

15 A. It will be, with Ready-mix.

16 Q. Let's get to particulars. Are you aware of
17 your Ruehle SWD #1?

18 A. Yes, sir, I am aware of it. I can't recall the
19 exact section survey.

20 Q. Well, it's located in Unit Letter P, Section
21 28, Township 23 South, Range 27 East. The reason why I
22 bring this up is that your Bear Trap, in Case 16258, in
23 doing the geometry, we have a quarter-mile overlap with
24 what the Division has been using as a template to space
25 out these wells.

1 A. Okay.

2 Q. At least a quarter-mile of overlap. And,
3 again, going back to pressures and who owns this and
4 where it goes, there is concern by the Division with
5 regards to the placement of this well.

6 A. So if I may, Mr. Goetze, that well is also
7 proposed at this time, so -- but --

8 Q. It is an approved SWD order.

9 A. Correct.

10 Q. And, therefore, it holds the injection
11 authority. Therefore, I have to take into account --

12 A. Understood.

13 Q. -- that the balancing out of these wells has to
14 go along with the possibility that it will be drilled or
15 sold to someone else. So as long as it has a valid
16 injection authority, it is considered a real well.
17 Until such time that it either fails through it not
18 being drilled or rescinded or actually gets put in, it's
19 still alive.

20 And let's see. The Grizzly. The Grizzly,
21 Case 16260, we have wells in this area that are
22 completed to 80 feet. As a matter of fact, the State
23 Engineer has provided 3260 -- Carlsbad C3260, which
24 shows a water zone at 80 feet. How do we plan to
25 overcome -- have we done anything to make sure that that

1 conduit -- the connector casing with the addition of the
2 surface casing is adequately protecting?

3 A. So we can run the conductor to 120. That's no
4 problem. And then at that point, if we don't have any
5 issues, then the primary cement job on the surface
6 casing should go well.

7 Q. I would ask you to revisit and actually take a
8 look at some of the wells in the area.

9 A. Okay.

10 Q. The tendency is that a depth to water is not
11 the aquifer. A depth to water is what the hydrostatic
12 head comes to.

13 A. Okay.

14 Q. So I would look at again in the case of the
15 Grizzly with additional information provided to all,
16 including an updated well construction for the Giant
17 Panda so we can have that on record.

18 A. For adding the conductor?

19 Q. Yes.

20 A. And as far as the Grizzly, you want to relook
21 at the --

22 Q. At how you're planning to do that surface
23 vadose zone.

24 A. Okay. Will do.

25 MR. RANKIN: Mr. Goetze, just so I'm also

1 clear, I think as I understood, you're asking him to
2 look at what the true depth to water is, excluding the
3 hydrostatic pressure effect? Is that right? So you
4 understand what depth the conductor casing should be --

5 EXAMINER GOETZE: Where is the bottom of
6 the vadose zone? Where is the first confining layer?
7 That's a rule of hydrology no matter what you do.

8 MR. RANKIN: Okay. I just want to make
9 sure I understand what it is you're asking for.

10 EXAMINER GOETZE: That's what we're looking
11 for. You're in a drainage that's both gaining and
12 losing as a result of precipitation. It has to be taken
13 into account. It's not being taken into account at this
14 point.

15 THE WITNESS: Yes, sir.

16 Q. (BY EXAMINER GOETZE) Other than that, I would
17 also ask that you include for each of these applications
18 where is the well you got the water from. The water
19 sample for the freshwater wells is given as just a
20 reference. If we're going to monitor them, we have to
21 know where that water is coming from.

22 MR. RANKIN: I see. In other words, the --

23 EXAMINER GOETZE: If it's a legal
24 description, if it's a State Engineer-designated number.
25 A water sample has no value to me without a location.

1 So with that, if you wish to have any
2 redirect.

3 MR. RANKIN: Just a couple of questions.

4 REDIRECT EXAMINATION

5 BY MR. RANKIN:

6 Q. Mr. Goss, Mr. Craig was asking you about
7 concerns with runoff from the well pad sites for each of
8 these facilities and the effect that could have on the
9 100-year flood zone, Zone B that's marked in Exhibit 2
10 of each of these cases, with the orange or golden color.
11 What facility plans are in place or will be implemented
12 by Delaware for each of these sites to contain any
13 incidental spills or storm water runoff should that
14 occur?

15 A. Sure. So on top of what we've talked about
16 with the annulus monitoring, we have a sump at the
17 off-load lines if there is trucking. We also have a
18 2-foot steel wall lined with poly for containment around
19 the tank battery. In this area -- after speaking with
20 Matt Ramey, he has talked to us about, in this area, to
21 put a berm around the location. We'll do that as well.
22 We have 24-hour monitoring with a pumper on-site, 24/7.
23 All of our sites -- all of the -- we have six or seven
24 active sites right now. They all have about half a
25 dozen cameras each that are always monitored. There is

1 always someone at the well, and they're always
2 monitoring electronically, and the data is always
3 recorded. And so any kind of issue with the tanks or
4 tank alarms are also sent via text message. So we have
5 24-hour monitoring, and the pad itself -- the tank
6 battery is contained, and the pad will be contained as
7 well with the berm.

8 MR. RANKIN: No further questions.

9 EXAMINER GOETZE: No more exhibits to be
10 entered, and, therefore, we need the next witness?

11 MR. RANKIN: That's correct, Mr. Examiner.

12 EXAMINER GOETZE: Thank you.

13 THE WITNESS: Thank you, sir.

14 MR. RANKIN: With that, I'd like to call
15 our third and final witness, Mr. Kevin Schepel.

16 And while Mr. Schepel is approaching the
17 stand, I have an updated -- an updated --

18 EXAMINER GOETZE: You're going to try
19 again?

20 MR. RANKIN: Well, no.

21 This is an updated analysis for the Grizzly
22 that would go behind F in Exhibit 1 in Case Number
23 16260.

24 EXAMINER GOETZE: So 16260. What you've
25 just handed out is to replace Tab F?

1 MR. RANKIN: Correct.

2 EXAMINER GOETZE: Okay. But we'll wait
3 until you decide to enter it.

4 MR. RANKIN: That's right. That's right.

5 KEVIN J. SCHEPEL,

6 after having been previously sworn under oath, was
7 questioned and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. RANKIN:

10 Q. Mr. Schepel, will you please state your full
11 name, and go ahead and spell it for the record?

12 A. It's Kevin John Schepel. The last name is
13 S-C-H-E-P-E-L.

14 Q. And by whom are you employed?

15 A. I'm currently a technical consultant for
16 applied petrophysics for Delaware Energy.

17 Q. And how long have you been working for Delaware
18 in that capacity?

19 A. About a year now.

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

22 A. No, sir.

23 Q. Will you review for the examiners your -- first
24 your educational background?

25 A. I'm a graduate of Michigan State University in

1 1980, which is probably a little on the high side here
2 because of age. But I came down from there -- just the
3 education or the experience?

4 **Q. Yeah, just education first, and then we'll move**
5 **to the experience.**

6 A. Okay. So I graduated in geology -- with a
7 Bachelor's in Geology from Michigan State University.

8 **Q. And what is your relevant industry experience**
9 **in oil and gas?**

10 A. After graduating from Michigan State, I
11 actually started with Exxon in Midland, Texas and had
12 several positions with them. I started out in
13 operations and drilling, which I drilled a lot of the
14 Delaware wells in -- in -- in New Mexico. I drilled
15 also the deep Morrow wells and Atoka wells in the
16 project. And later on, I was an exploration geologist
17 for Exxon in Midland, and I spent 15 years there. I
18 ended up at Exxon Production Research in Houston where I
19 was a formation valuation specialist, and I did research
20 applications all over the world for Exxon.

21 When I left Exxon, I actually started with
22 Pioneer Natural Resources, when they started. It
23 actually went public in 1998, and I spent ten years as
24 their vice president of development. And since then,
25 I've been involved in a number of companies, but right

1 now I'm consulting and semi-retired.

2 **Q. So in your consulting capacity for Delaware,**
3 **what do you do for them in that capacity?**

4 A. I was asked to provide the initial material for
5 the required seismicity report on the well and any other
6 location -- specific information, technical material for
7 the location.

8 **Q. Okay. And is that something that you've done**
9 **in your other -- in the past in your other prior work**
10 **experience?**

11 A. Well, it's always something you do with
12 drilling. I've drilled a number of wells in my career.
13 But the seismicity thing is something that's relatively
14 new, and it's certainly something that's a good thing to
15 have.

16 **Q. Now, are you familiar with the -- you're**
17 **familiar with the work that was included along with the**
18 **C-108 in each of these cases, Case 16258, 16259, 16260,**
19 **behind Exhibit 1, Tab F? You prepared that report?**

20 A. I did.

21 **Q. And that's the same -- same analysis with**
22 **respect to each of those three cases?**

23 A. Yes.

24 MR. RANKIN: Mr. Examiner, I would tender
25 Mr. Kevin Schepel as an expert witness in petroleum,

1 geoscience and petrophysics.

2 EXAMINER GOETZE: Mr. Craig?

3 MR. CRAIG: No objection.

4 EXAMINER GOETZE: Mr. McMillan?

5 MR. McMILLAN: No objection.

6 EXAMINER GOETZE: Ms. Callahan?

7 MS. CALLAHAN: No objection.

8 EXAMINER GOETZE: Thank you.

9 Please proceed.

10 MR. RANKIN: I take it that he's qualified
11 then to give --

12 EXAMINER GOETZE: Yeah. He's good. He's
13 so qualified.

14 MR. RANKIN: Thank you.

15 Q. (BY MR. RANKIN) Mr. Schepel, will you review
16 for the examiner what it is that you did to prepare this
17 report? Essentially, what did you look at, how did you
18 do it, and what were your conclusions when you undertook
19 this work?

20 A. I can give you kind of a summary of the things
21 I do, and then we can talk about the specific case.

22 Q. That sounds good. Yes. Give us a summary, and
23 let's use the first case, 16258.

24 A. Right.

25 My role is to document the well, the well's

1 proximity to the publicly available data in terms of
2 seismic events, earthquakes, things that have occurred,
3 what the distance is from known seismic events. I also
4 look at the major bounding faults around the location.
5 I look at the orientation of those wells to look at
6 whether they're set up in relationships that would
7 result in shear which could cause earthquakes or
8 movements versus just down to the basin faults, which
9 are the normal things that occur when you have basin
10 loading in the Delaware. So I look at the faulting in
11 reference to each one of the wells.

12 I also review the overlying geological
13 horizons from the available log data. Most of the data
14 here, of course, only goes down to maybe the top of the
15 Atoka or the top of the Miss. I look at the continuity
16 of those beds. I look at the potential disruption in
17 those beds that could be due to faulting or tectonic
18 events that are occurring below the logged interval
19 essentially in the area where we may be injecting. So I
20 evaluate that.

21 I use public available data of gravity
22 magnetics. I look at disruptions in the subsurface
23 gravity magnetics, which is basically the base of an
24 area, to see if there is any major faulting or
25 disruption -- tectonic-type disruption that could affect

1 the possible placement of the well.

2 I also review the surface image data, the
3 land set data, and I look for any obstacles in the
4 wells. I look for, you know, any type of potential
5 surface fault expressions. Maybe some of these -- I
6 haven't seen anything in these cases, but, you know, due
7 to -- are there any cases where the faults might come to
8 surface. And typically you can see results of movement,
9 and that's available in the land set.

10 And then finally, I look at basically all
11 the activity, the oil and gas development drilling in
12 the area, the proximity to other active injectors, not
13 necessarily permitted injectors, but at least active
14 injectors in either other formations of the Delaware or
15 certainly the ones that are in the Devonian.

16 So that's kind of in a nutshell the scope
17 of it, but I can explain each one of the exhibits if
18 you'd like.

19 **Q. Let's do that. Let's turn to Exhibit 1F in**
20 **Case 16258. If you would just review what your report**
21 **says and what your conclusions are with respect to that**
22 **case, and then we'll just get to the other cases, too.**

23 A. Okay. Sure.

24 This is -- this is the preliminary report
25 that goes, essentially, with the permit. And in this I

1 look at the source of the data. Most of the data that I
2 use is publicly available data that's available through
3 the USGS and their database on faulting. I also look at
4 the original study by -- that was done by Stanford.
5 There is a group there that did some software
6 development for injecting -- or looking at injection
7 versus orientation of faults, Snee and Zoback and
8 Steinberg [phonetic]. They have an actual report where
9 they have faults referenced, so I use those faults, as
10 well as public document and data.

11 I also then provide a statement. Basically
12 the statement is the distances of those activities. So
13 I'll look at the distance to the nearest and most recent
14 seismic activity or earthquake that may have occurred.
15 And, of course, in this case, most of them are well over
16 four, five, you know, miles away, so there is a lot of
17 distance away from them. But I also look at the
18 distance to any of the major bounding faults. And if
19 you look at the illustration here, the plot at the
20 bottom basically has a lot of information. But the well
21 is the -- the well is in the middle. The dotted line
22 around it is the one-mile area, which is kind of the
23 area that we look at in terms of other injection or
24 other activity. The faults are seen in both orange --
25 and it's kind of hard to see. That's actually a green

1 line going in the lower left corner. But you can see I
2 look at the distance to those faults.

3 Of importance here is the orientation of
4 those faults. What you look for in this basin is where
5 you've had what's called shear movement. So you look at
6 the maximum shear max or the point which is going to
7 cause any type of movement in this direction. Movement
8 down to the basin due to loading is just high-angle
9 faults, which usually doesn't cause any problems. But
10 where there has been issues -- and there have not been
11 issues in this area, but Oklahoma and things like that
12 where they've looked at it, that movement of those
13 faults in this direction is where you need to be
14 worried. So proximity to that fault is important. And
15 in these cases, obviously, we're four to five miles from
16 any potential shear fault.

17 Then on the next page, this is more of a
18 step back. This may encompass about 40 square miles,
19 but it -- it notes the actual events, the seismic
20 events, where it says "seismicity," the date they
21 occurred and the magnitude. And what you would be
22 looking at here is is there anything that's related --
23 any seismic event that may have been related to some
24 pre-existing injection that's been occurring for ten, 20
25 years, and those are the things you would look at as

1 flags.

2 So I do that on each one of the wells, and,
3 of course, each one is different. Each one may be a
4 little different from the activity, but it's a good
5 starting point for the evaluation of a -- of a location.

6 **Q. And based on your analysis and assessment of**
7 **the publicly available data and the information you**
8 **reviewed, have you identified any concerns that would**
9 **result in an elevated or unreasonably elevated risk of a**
10 **seismic event as a result of the injection proposed**
11 **through this well?**

12 A. No, not on these wells.

13 **Q. And in your opinion, would the injection into**
14 **this well -- does it cause you any concern at all**
15 **related to any of the issues that you reviewed relating**
16 **to the potential seismic events?**

17 A. No.

18 **Q. And why is that?**

19 A. It's just mainly from the distance to the
20 closest possible fault is, in most cases, four to five
21 miles, so it's quite a distance. Normally, if anything
22 is within a mile, it's a little bit more of a concern.

23 **Q. Okay. So just based on --**

24 A. It's a long way to inject.

25 **Q. Yeah. It's a long way away.**

1 A. Yeah.

2 Q. Now, you conducted the same analysis of review
3 for each of the other two cases, correct?

4 A. Yes, sir.

5 Q. All right. So let's go ahead and look at the
6 next one, 16259, and turn to Exhibit 1F for the Giant
7 Panda well. It sounds like you can just give a review
8 of the differences of what you found, with respect to
9 what your conclusions are with respect to this proposed
10 injection.

11 A. Just on a relative basis because this is kind
12 of a high-level, distant-type evaluation, these wells
13 are pretty close together, so all of them are going to
14 have very similar results. The same faults are going to
15 be impacted or referenced. So that's the key here.
16 And, of course, the other thing is minor changes in
17 location or anything like that in terms of, you know,
18 actually where it's at is not going to significantly
19 impact the assessment.

20 So you can see that that's the same map as
21 we had before. Those are the same faults; just the one
22 in the upper left side is, you know, just a little
23 further away. But, again, that is the fault that has
24 the shear. That's the more potential. The green fault
25 is just a normal fault that occurs out there, and it's

1 really not -- it doesn't have any shear.

2 Q. Will you explain just so we understand, what is
3 it about the shear fault versus a normal fault that
4 creates a greater concern for the shear faults in this
5 area?

6 A. Well, it's just the fact that it's shear.
7 Faults move in this direction (indicating), where you
8 have down -- you know, actual movement, or you have
9 strike slip. Strike slips are what cause earthquakes.
10 So in order to have that strike slip, you have to have,
11 basically, a force that's coming in this direction
12 (indicating) that causes that slip. That's the shear
13 max. And in this area, it's north 35 degrees east, and
14 anything that's paralleling that shear is a fault that's
15 at risk. And there are, you know, several faults in
16 here, but the proximity to these wells, there's minor
17 problems.

18 Q. So the faults that are in line with that shear
19 force are far removed?

20 A. Yeah. And I would reference the next page
21 there, the big outline. If you look at the red well
22 there -- or the red fault or the orange fault that's 4.3
23 miles from the location, it's kind of in that
24 orientation. But that's also the fault that sets up the
25 entire Capitan Reef Complex that you have rotation.

1 It's multiple directions.

2 Q. Now, just to be clear, behind Exhibit 1F, there
3 are actually two sets of maps and statements. Is the
4 first one relating to the original location?

5 A. Yeah. When we actually filed the permit was
6 the first one. The second one is the updated location.
7 And, of course, I update this data regularly in terms of
8 new wells that are staked, new wells that are permitted,
9 and I try to keep them basically evergreen as we go. So
10 I went ahead and provided that as well.

11 Q. Okay. So because the location was updated
12 based on the State Land Office's change of location, you
13 went ahead and did an updated analysis for that new
14 election?

15 A. Absolutely.

16 Q. And with respect to the updated location, do
17 you have any concerns about an elevated, unreasonable
18 risk of a seismic activity as a result of the proposed
19 injection through this well?

20 A. No.

21 Q. And that's again based on the distance and the
22 location relative to the --

23 A. Orange fault. Yeah, the orange fault. They
24 were actually further away. I don't know exactly
25 what, but yeah.

1 Q. Now, you conducted the same analysis on Case --
2 in Case 16260?

3 A. Yup.

4 Q. So turning to Tab 1F, I'll ask the examiners
5 and protestants to reference the supplemental page that
6 I distributed which reflects the -- your analysis for
7 the updated location; is that correct?

8 A. That's correct. And there are only minor
9 changes, but I did want to reflect them and make sure we
10 had them. It could be helpful information.

11 Q. Okay. So with respect to the first page of
12 your updated supplemental statement in the exhibit, will
13 you please review for the examiners what your ultimate
14 conclusion is regarding the location and proposed
15 injection of this well relative to potential concerns
16 over seismic activity?

17 A. Yeah. The Grizzly is actually the furthest
18 away from any activity, so it's certainly no problem
19 there. Everything is fine.

20 Q. Just to be clear, you conducted the same
21 analysis and assessment and identified no concerns with
22 respect to its location or its proposed injection rates?

23 A. Yeah.

24 Q. And in your opinion, Mr. Schepel, will the
25 granting of the Case Number -- approving the application

1 in Case Numbers 16258, 16259 and 16260 will be in the
2 interest of conservation and the prevention of waste?

3 A. Yes.

4 Q. And in your opinion, is there a -- will it
5 protect against human health -- protect human health and
6 protect the environment, in your opinion?

7 A. Yes. Yes.

8 MR. RANKIN: Mr. Examiner, I would move the
9 admission of Exhibit 1, Tab F in Case Numbers 16258,
10 16259 and 16260 into the record, with the notation that
11 the supplemental exhibit that I circulated with the
12 updated Grizzly assessment should replace the existing
13 exhibit behind Tab 1F.

14 EXAMINER GOETZE: Very well.

15 Mr. Craig?

16 MR. CRAIG: No objection.

17 MR. McMILLAN: To the exhibit, no
18 objection.

19 MS. CALLAHAN: No objection.

20 EXAMINER GOETZE: Okay. Thank you.

21 So in Cases 16258, 16259, 16260, 1F is
22 entered into the record, along with the additional
23 supplement that was provided today.

24 (Delaware Energy, LLC Exhibit Number 1F is
25 offered and admitted into evidence.)

1 MR. RANKIN: No further questions of this
2 witness, Mr. Examiner. I pass Mr. Schepel for
3 questioning.

4 EXAMINER GOETZE: Mr. Craig?

5 MR. CRAIG: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. CRAIG:

8 **Q. Did you look at any of the water issues**
9 **involved in this -- these applications?**

10 A. Are you talking about the surface waters?

11 **Q. Surface water.**

12 A. I did not look -- I was not asked specifically
13 to look at that, but I was very interested in your
14 discussion because I am -- I am a -- I've done a lot of
15 work in hydrology and potential metric surface mapping.

16 **Q. So then you understand about karst-type**
17 **formations?**

18 A. Yeah. Yeah. There were a few -- few things
19 that -- that came up in there. One, the surface
20 drainage is not necessarily with the aquifer's flow.
21 The flow is within really -- it's determined by
22 basically the pressure of the aquifer, and the potential
23 metric pressure of the aquifer determines the flow. And
24 it doesn't necessarily have to be toward the river. It
25 can be in other directions, too. And you would have to

1 assess that with a true potential metric, and that means
2 you would have to have pressures in the aquifer, and
3 that's a difficult thing to get sometimes. So that was
4 just one of the comments as you were speaking that I
5 thought was relevant.

6 **Q. But in assessing like public health and public**
7 **safety, like you were saying, that these would be**
8 **positive for that, would that be something you would**
9 **want to look at, the way the water flows because we've**
10 **got this river with endangered species living in it?**

11 A. Sure. No, no. Definitely it would be
12 required. And certainly the topographic maps are good
13 indications of actual drainage on the locations. But,
14 again, we have -- I'm assuming containment issues are --
15 are worked very hard in terms of runoff to the -- any
16 surface runoff, if that's what you're referring to.

17 Now, contamination, that's something that's
18 a little bit harder to determine where that water would
19 end up.

20 **Q. Right. And that would be something that would**
21 **be important --**

22 A. Absolutely. It's always important. Yes.

23 MR. RANKIN: Mr. Examiner, I think
24 Mr. Schepel was testifying that the -- as to any seismic
25 issues, and his testimony was constrained to that. So

1 his opinion about public health and safety was
2 reflecting on his testimony in that area.

3 THE WITNESS: Yes.

4 MR. RANKIN: So the scope of his testimony
5 and the questioning by Mr. Craig is outside the area
6 of -- and I'd ask that it be curtailed.

7 EXAMINER GOETZE: He's your witness.

8 MR. RANKIN: Yeah.

9 EXAMINER GOETZE: Mr. Craig?

10 MR. CRAIG: Well, I was just interested.
11 He did say that about public safety and health, and
12 water is kind of an important issue, especially here.

13 THE WITNESS: Always. Always.

14 Q. (BY MR. CRAIG) I mean, I represent some folks
15 down there that live along the river. You can see why
16 they would be concerned about the water quality of the
17 Black River. If you lived down there, you would be,
18 wouldn't you?

19 A. There is a lot of drilling activity in that
20 area. Yes.

21 Q. And produced water can be somewhat -- have an
22 adverse effect on potable water.

23 MR. RANKIN: Mr. Examiner, I think that
24 Mr. Schepel was clear in his testimony about the scope
25 of it. It's related to the seismic issues, and this

1 question is way outside the scope of what Mr. Schepel is
2 testifying about.

3 EXAMINER GOETZE: I think this witness'
4 opinion is about the seismic, and that's what the
5 Division has asked for.

6 Q. (BY MR. CRAIG) As to the seismic, were you
7 privy to any seismic data that was generated by any of
8 these oil companies down there when you were putting
9 together your report?

10 A. Not for the report. Previously, I worked a lot
11 of the data. Matter of fact, I shot a lot of the
12 original data with Exxon, but not for the report. For
13 the record, Delaware Energy does not own 3D seismic or
14 seismic in this area.

15 Q. And the new 3D seismic is pretty -- I mean,
16 it'll pick up some of this that the older information
17 doesn't show, correct?

18 A. Yes, it will.

19 Q. In order to be for sure that there is no
20 faulting in this general area of this well, would it be
21 better to have the 3D seismic?

22 A. If the seismic -- the 3D -- the way we actually
23 evaluate these is we look at the major bounding faults
24 that are documented and have been documented either
25 through 2D or publicly available data. If there is a

1 fault that looks like it's within a concerning proximity
2 of the well, it would be good to actually probably look
3 back and see if there is any additional data available.
4 But in these cases, we did not have to do that. But
5 it's not to say we have not done that. We've looked at
6 other seismic data on some other -- so --

7 **Q. They've done a lot of 3D seismic shoots?**

8 A. Yeah. Fairfield is mainly the -- most
9 companies have that data. I'm familiar with the data.
10 I've seen the data. I do not have the data. I can't
11 afford the data, but I have seen the data.

12 **Q. But you didn't use any of that data in arriving**
13 **at any of these opinions?**

14 A. No.

15 MR. CRAIG: That's all I have.

16 EXAMINER GOETZE: Mr. McMillan?

17 MR. McMILLAN: I have no questions of this
18 witness.

19 EXAMINER GOETZE: Ms. Callahan?

20 MS. CALLAHAN: No questions.

21 CROSS-EXAMINATION

22 BY EXAMINER GOETZE:

23 **Q. Well, thank you for the presentation. Just out**
24 **of curiosity, did you run the Stanford model?**

25 A. Okay. On these wells, I did not. I do have

1 the Stanford Monte Carlo analysis that I can run, and
2 like I say, if it comes up that it's required, we
3 certainly -- on anything, we'll do it.

4 Q. Okay. But you have it available, too?

5 A. Yes. Yup. Luckily, it's publicly available.
6 It's not something that's -- that you have to pay for.

7 Q. It may not be for long, but who knows?

8 A. Yeah. You're probably right. You're probably
9 right.

10 Q. With regard to this magnitude 3.9 event --

11 A. Yes.

12 Q. -- what depth was that at, just out of
13 curiosity?

14 A. Well, it's often hard to -- I mean, I don't
15 know if they actually -- the reports I see, I never
16 really see a documented depth point. But I'm assuming
17 that most of the activity here is -- because of the
18 continuity of the overlying horizons, there's not a lot
19 of disruption. It's probably fairly deep.

20 Q. Okay.

21 EXAMINER GOETZE: I have no further
22 questions for this witness.

23 Do you have any redirect?

24 MR. RANKIN: No questions, Mr. Examiner.

25 EXAMINER GOETZE: At this point you are

1 excused. Thank you.

2 MR. RANKIN: With that, Mr. Examiner, we
3 have no further witnesses. We ask that Case Numbers
4 16258, 16259 and 16260 -- I understand that the
5 protestants may have some witnesses. I will hold my
6 objections to their testimony until the close of the
7 testimony of the case.

8 EXAMINER GOETZE: We appreciate that.

9 And noting also the affidavit, what are we
10 going to do about that?

11 MR. RANKIN: I will call and get one with
12 the correct well caption prepared as quickly as
13 possible. I may not be able to deliver it today, but if
14 I can't do it today, I will circulate one by email to
15 everybody by tomorrow after I double-check it.

16 EXAMINER GOETZE: Okay. And we have an
17 Exhibit 4. Has that been entered into record? Do you
18 want to use it?

19 MR. RANKIN: Mr. Examiner, if I didn't say
20 so, that was introduced by my first witness,
21 Ms. Presley.

22 EXAMINER GOETZE: I just want to make sure
23 we covered it all.

24 MR. RANKIN: And if I didn't request that
25 be admitted into the record, because I can't recall if I

1 offered it off the top of my head, I'd ask that Exhibit
2 4 in Case Numbers 16258, 16259 and 16260 be entered into
3 the record. It's just for the other counsels' benefit.
4 It's the letters that were sent out by Delaware
5 reflecting the State Land Office's approval for the
6 staked location, to stake locations for each of the
7 wells.

8 EXAMINER GOETZE: Mr. Craig?

9 MR. CRAIG: I think he put it in.

10 EXAMINER GOETZE: Let's make sure.

11 MR. CRAIG: Yeah. I don't have any
12 objection.

13 EXAMINER GOETZE: Okay. Fine.

14 MR. McMILLAN: No objection.

15 MS. CALLAHAN: No objection.

16 EXAMINER GOETZE: Okay. Just to make sure,
17 Exhibit 4 in Cases 16258, 16259 and 16206 has been
18 entered.

19 (Delaware Energy, LLC Exhibit Number 4 is
20 offered and admitted into evidence.)

21 MR. RANKIN: Take a short break?

22 EXAMINER GOETZE: Yes.

23 Then we'll have Mr. Craig and your
24 witnesses. All right?

25 Let's go up till 3:00 and come back.

1 (Recess, 2:48 p.m. to 3:06 p.m.; Examiner
2 Brooks present.)

3 EXAMINER GOETZE: Let's go back on the
4 record.

5 Mr. Craig, you have the floor, sir.

6 MR. CRAIG: Thank you.

7 We would call Matt Ramey, Matthew.

8 MATTHEW RAMEY,

9 after having been previously sworn under oath, was
10 questioned and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. CRAIG:

13 Q. Would you state your name for the examiner?

14 A. My name is Matthew Ramey.

15 Q. And what do you do?

16 A. I'm the project manager for the Texas hornshell
17 mussel at the Center of Excellence.

18 Q. And that's headquartered in Carlsbad?

19 A. Yes, sir. That's the District 1 office.

20 Q. Could you give the examiner some background on
21 the mussel -- the Texas hornshell mussel? I mean, it's
22 an endangered species and all that kind of stuff.

23 A. Yes, sir, definitely.

24 EXAMINER GOETZE: Is our witness here just
25 stating the facts or an opinion, or where are we going

1 with this?

2 MR. CRAIG: This is fact.

3 EXAMINER GOETZE: Okay.

4 EXAMINER BROOKS: Yeah. If he's going to
5 be giving opinions, we'll need to get him qualified of
6 his expertise.

7 EXAMINER GOETZE: Very good.

8 EXAMINER BROOKS: If it's just facts, no.

9 EXAMINER GOETZE: Please continue.

10 Q. (BY MR. CRAIG) The factual background on the
11 mussel.

12 A. So the background on the mussel is the mussel
13 was actually listed as federally endangered as of March
14 of this year. It's been in the process of -- been in
15 that process for about two years now. But it just
16 recently was listed as federally endangered under Fish
17 and Wildlife Service.

18 The mussel itself is a bivalve mussel that
19 is a filter feeder. It needs flowing water and water
20 quality. The mussel overall is an indicator species of
21 stream habitats such as the Black River. Indicator
22 species are species that directly reflect better water
23 quality as an ecosystem, so there is not as much
24 salinity or pH. They have a very narrow range of
25 tolerance for salinity, chlorides, dissolved oxygen

1 levels, things of that nature.

2 They have a very unique reproductive system
3 where the males and females do not actually meet as a
4 system, but males will release sperm into the water
5 column, and females will filter that through their gill
6 apparatus, and that basically starts the process. And
7 then the female mussels will shoot glochidia onto host
8 fish species, and they remain on that fish species for
9 about a month and then fall off. And then they make,
10 oftentimes, very short-distance trips to ideal habitat,
11 which is shelves or crevices or underneath large
12 boulders, rocks, that they can be protected from large
13 flood events, and also the substrate that allows them to
14 attach their foot, which is their way of means of
15 holding onto the substrate into softer sediment material
16 without being actually covered with additional sediment
17 into the river. That's kind of the biology of it.

18 **Q. And you've studied the hornshell for a while,**
19 **it sounds like?**

20 A. I've been into this for about a year now.

21 **Q. What was your undergraduate degree?**

22 A. I have a Bachelor's in Fishery Sciences from
23 Eastern New Mexico University.

24 **Q. And how long have you worked for the Center of**
25 **Excellence?**

1 A. The Center of Excellence as a whole, three
2 years, one year as a mussel project manager. Before
3 that, I was working with the chicken and lizard species,
4 doing grazing monitoring and range con work in the
5 District II area, which is the Milnesand area.

6 **Q. And a habitat in New Mexico for the Texas**
7 **hornshell mussel, where does that exist?**

8 A. So right now if you were to directly focus on
9 New Mexico, the Black River, it's a nine-mile reach of
10 the river which starts at the Black River Village and
11 goes to the CID Dam. Below that, we have water quality
12 issues, so right now, the Black River sustains a
13 nine-mile stretch or a ten-mile stretch. Then we have a
14 small relocated population that lives on the Delaware.
15 In the United States, there are only two populations
16 total or three locations total. One is on the Devil's
17 River, the Delaware and the Black, total.

18 **Q. That's in the whole world or in the United**
19 **States, isn't it?**

20 A. That's the U.S. only. Yes, sir. If you were
21 to account for Mexico's hornshell population, that does
22 throw a difference into the population estimates and
23 location, but we don't get to work there, so --

24 **Q. Well, if you'll look at Exhibit 2 in that book**
25 **there -- I've got it open --**

1 A. Yes, sir.

2 **Q. -- is that red that's shown there, is that**
3 **basically where the mussel lives?**

4 A. Yes, sir. So in this diagram --

5 EXAMINER GOETZE: May I interrupt for a
6 moment? This is Exhibit 2 of the Applicant?

7 MR. CRAIG: Applicant's Exhibit 2. And
8 it's Exhibit 2 in all of them.

9 EXAMINER GOETZE: In all cases, it's the
10 same exhibit. Thank you.

11 THE WITNESS: Yes, sir.

12 So this exhibit is showing the red line
13 indicating the potential occupied habitat of the
14 hornshell, and then referring back to the gold, that is
15 a 100-year floodplain.

16 **Q. (BY MR. CRAIG) and I put in front of you -- I**
17 **called it, I think, Ramey Number 1. Can you tell the**
18 **hearing examiner what that is?**

19 A. So the Ramey Number 1 exhibit that you gave is
20 a harder map to read, but this is something that I go
21 off of for the Texas hornshell itself. This is the
22 zones that are in our agreements, the voluntary
23 agreements that we have, the CCA/A, which is the
24 Candidate Conservation Agreement and the Candidate
25 Conservation Agreement with Assurances.

1 **Q. And there is an agreement like that with the**
2 **State Land Office, too, isn't there?**

3 A. Yes, sir. The State Land Office administers
4 the State Land Office portion of their own CCA/A.

5 **Q. And Exhibit 1 that's Ramey 1, it looks like**
6 **Exhibit 2 is basically taken from that?**

7 A. Yes. This is -- that is correct. This will be
8 the exact same shake file or KMZ layer that CEHMM, the
9 Center of Excellence, would have and the State Land
10 Office would have. This particular document was created
11 through multiple agencies such as Fish and Wildlife
12 Service, BLM, CEHMM, State Land office. They were all
13 in accordance when this began as a program, and this
14 program began well over two years ago.

15 **Q. And you directly worked on putting together**
16 **this map?**

17 A. I have directly been working on the ephemeral
18 drainage aspect, which is Zone C. These are the larger
19 head cuts that rain events allow water to get to the
20 Black or Delaware Rivers.

21 **Q. And you recognize and participated in Ramey 1;**
22 **did you not?**

23 A. Yes, sir.

24 MR. CRAIG: We'd move admission of 1 --
25 Ramey 1.

1 EXAMINER GOETZE: Mr. McMillan?

2 MR. McMILLAN: No objection.

3 EXAMINER GOETZE: Ms. Callahan?

4 MS. CALLAHAN: No objection.

5 EXAMINER GOETZE: Mr. Rankin?

6 MR. RANKIN: No objection.

7 EXAMINER GOETZE: The Ramey 1 exhibit is so
8 entered.

9 (Ramey Exhibit Number 1 is offered and
10 admitted into evidence.)

11 Q. (BY MR. CRAIG) Now, if you'll look at Exhibit 2
12 in the book which is basically the bigger one --

13 A. Yes, sir.

14 Q. -- you said the golden brown or the golden part
15 is the floodplain?

16 A. Yes, sir.

17 Q. That's not to say that areas outside the
18 floodplain would not drain into the floodplain?

19 A. Say that again.

20 Q. Right. The floodplain is what you've got
21 marked?

22 A. Yes.

23 Q. That's where the top of the 100-year floodplain
24 would be?

25 A. Yes.

1 Q. And like where these wells are, the Giant Panda
2 and the Grizzly, they're shown on there. Just because
3 they're outside of the gold floodplain would not be an
4 indication that the water from those areas would not
5 drain into that area?

6 A. That is correct. There is potential that
7 additional water could drain into those.

8 Q. And, in fact, if you look at the Giant Panda,
9 it's pretty well adjacent to the top part of the
10 floodplain. And the floodplain opening up wide like
11 that, what does that tell you?

12 A. So that particular area is just showing me that
13 it is a low spot in the distribution of the topography.
14 Without a topography map, I couldn't exactly tell you
15 the way it truly flows, but it is a larger flat area
16 that potentially has the susceptibility to flood in that
17 nature.

18 Q. And when you were looking at Ramey Number 1,
19 there were some areas on there that basically showed
20 where draws would flow into the --

21 A. Yes, sir. So if you were looking at the Ramey
22 1 exhibit, there is -- it's very hard to see on my map
23 because it is so zoomed out, but there is a yellow
24 portion of line that comes out of the -- out of this
25 bottom part of the floodplain, and there is an ephemeral

1 drainage that does connect to that particular area.

2 Q. And that ephemeral drainage runs close to where
3 we're talking about the Giant Panda saltwater disposal
4 1?

5 A. It has some proximity to it. Yes, sir.

6 Q. And if you'll assume with me that that area
7 where the Giant Panda saltwater disposal 1 is is higher
8 in elevation, would it tend to run into those
9 ephemeral -- what did you call them?

10 A. Ephemeral drainages.

11 Q. -- ephemeral drainages and then run into the
12 floodplain?

13 A. If there was connectivity, that could be a
14 concern.

15 Q. And the same thing with the Grizzly saltwater
16 disposal. It's fairly close to the floodplain. Would
17 that -- does that show you that it doesn't spread out as
18 wide or what?

19 A. That means the river is more channelized in
20 that area so it does not have a large -- a vast area of
21 floodplain. That's just years of -- thousands of years
22 of erosion in that area.

23 Q. That's why it narrows like that?

24 A. And then river systems aren't meant to be
25 channelized. They are meant to meander and wind and

1 turn and alter as nature decides. Intervention has a
2 great way of making them channelized and creating rivers
3 to be a large cup that move water faster at higher
4 volumes.

5 Q. And in looking around where that Grizzly
6 saltwater disposal is, since it's in proximity to the
7 floodplain, it could likewise drain into that same area?

8 A. It could, based off of connectivity.

9 Q. And, again, you'd look at those things like the
10 elevations and those little ephemeral deals, right?

11 A. Yes. There are many, many parts to that. Yes,
12 sir.

13 Q. Now, the -- the -- talking about the hornshell,
14 you talked about water quality.

15 A. Yes, sir.

16 Q. And does the hornshell require a high water
17 quality to be able to survive?

18 A. Water quality could vary and tolerance can vary
19 in species. Basically, if we're talking directly for
20 the hornshell, they have a tendency to not function well
21 with salinity or chlorides in dissolved oxygen issues.

22 Particularly at the Black River right now,
23 it usually runs .9 part per thousand on salinity in some
24 areas. It just depends if you're up by the spring or if
25 you're in the middle or if you're by CID. The CID

1 diversion dam runs about 2.7 parts per thousand. Below
2 Malaga, you're talking -- where the Pecos confluence
3 meets -- or the Black meets the Pecos, then you're
4 looking at 6 to 7 parts per thousand. And what studies
5 have showed us is that the hornshell can tolerate up to
6 7,000 parts per thousand, but even lower concentrations
7 will give them -- basically will make them stressed and
8 result in the death of that species.

9 **Q. Well, you said earlier that from the CID Dam**
10 **down to the Pecos really didn't have any mussels?**

11 A. No. It currently does not have mussels at this
12 time, but that is because of the CID diversion dam.

13 **Q. And when you move up the Black River toward,**
14 **for example, Mr. Davis' place, you have higher and**
15 **higher populations as the chlorides go down, correct?**

16 A. There are stable populations within Mr. Davis'
17 property.

18 **Q. I think that's one of the main places. You've**
19 **been out there a bunch, haven't you?**

20 A. Yes, sir. I have been out there quite a bit.
21 But I would never state that one area is more important
22 than the other. Foundation Minerals has a very good
23 population as well, along with Mr. Davis. There's
24 definitely areas that are higher-quality management from
25 the landowners's side of what they're doing with the

1 landscape.

2 Q. And theirs, Foundation Minerals, is right next
3 door to Mr. Davis?

4 A. Yes. He's actually below Mr. Davis, even
5 closer to the CID Dam.

6 Q. And those have -- the quality of the water in
7 those areas at least helps the mussel in its habitat?

8 A. Yes.

9 Q. It thrives, I guess you would say, in this area
10 as opposed to when you get farther down and the
11 chlorides come up, they don't thrive as well.

12 A. Yes, that is correct.

13 Q. And are you acquainted with the karsting around
14 the Black River?

15 A. No, sir. I am not very familiar with the karst
16 features in that area.

17 Q. Now, if you'll look with me at Davis Number
18 1 -- yeah, the little packet there -- can you identify
19 that?

20 A. This particular picture is showing John D.
21 Forehand Crossing, which is right next to Mr. Davis'
22 property, and that is a truck in the river.

23 Q. And it was a water truck?

24 A. It was a truck hauling produced water. Yes.

25 Q. And were you called out to -- on that?

1 A. I was called out. Based off of timeline
2 aspects, I did not actually see the truck in the river.

3 Q. But you were called out to check to see if
4 there had been any spills?

5 A. Yes, sir. I did go out and perform a ground
6 check to see if I had seen any automotive spill or
7 produced water.

8 Q. And you were particularly interested in
9 produced water spills?

10 A. Yes, sir.

11 Q. You lucked out. There wasn't any, was there?

12 A. No, sir.

13 Q. From your dealing with the hornshell, had that
14 water -- produced water out of that -- I don't know how
15 many gallons that is.

16 A. I'm not sure.

17 Q. A big tank?

18 A. Yes, sir.

19 Q. If it had leaked into the river, would that
20 have been adverse to the hornshell?

21 A. Yes, sir. That could have caused potential
22 issues with the hornshell with that being a direct
23 location for live hornshell mussels.

24 Q. I think there are all kinds of federal
25 regulations about endangered species, and I'm not even

1 **sure what they all are. Who enforces those?**

2 A. If something were to happen outside of the
3 agreements, I believe that would fall upon Fish and
4 Wildlife Service. They carry the Endangered Species
5 Act.

6 **Q. That's the federal government?**

7 A. Yes, sir.

8 **Q. Since you work with CEHMM, is CEHMM at least**
9 **somewhat concerned by the increased saltwater disposal**
10 **activity that is going on down there, not just the**
11 **Applicant, but all in this area?**

12 A. This amount of movement is something of
13 concern, but good practice managements would be our
14 biggest concern. So this is something that is going to
15 happen, but if someone is doing everything right, then
16 that's what we want.

17 **Q. And from hauling the water in trucks through**
18 **there -- I think there are several low-water crossings**
19 **that cross the Black River.**

20 A. Yes, sir. There are many.

21 **Q. Just like the one where this truck went off,**
22 **right?**

23 A. Yes, sir.

24 **Q. And does CEHMM have a concern with these water**
25 **trucks crossing low-water crossings?**

1 A. Yes, sir. The truck traffic is definitely a
2 concern with the hornshell population.

3 Q. And you drive those roads on a fairly regular
4 basis, don't you, Black River Village Road?

5 A. Yes, sir.

6 Q. Would you characterize that as a good piece of
7 highway?

8 A. I would say that the road needs to be worked on
9 thoroughly to promote safer trucking conditions.

10 Q. Yeah. There's a lot of truck traffic and
11 potholes and all kind of bad, right?

12 A. Yes, sir.

13 Q. Now, in that area, are you acquainted with the
14 subsurface water, how it moves around -- around the
15 river?

16 A. In particular, if you're talking about the
17 Davis 1 exhibit, no, sir. More the Blue Springs area,
18 that's where we focus our concentration on, keeping our
19 eye on.

20 Q. I'm talking about, for example, the pollutants
21 getting into the first 30 to 60 feet or whatever of the
22 underground water. In your observations of the Black
23 River, does any of that feed into the river?

24 A. I do not know.

25 MR. CRAIG: We'll pass the witness.

1 EXAMINER GOETZE: Mr. McMillan?

2 MR. McMILLAN: No questions.

3 EXAMINER GOETZE: Ms. Callahan?

4 MS. CALLAHAN: No questions.

5 EXAMINER GOETZE: Mr. Rankin?

6 CROSS-EXAMINATION

7 BY MR. RANKIN:

8 Q. I just have a couple of questions, Mr. Ramey.
9 Appreciate you coming down to testify.

10 A. Yes, sir.

11 Q. I just want to make sure I understood what you
12 were saying about your involvement in the hornshell
13 mussel and also your understanding -- your testimony
14 about the particular locations for these wells that are
15 the subject of this application.

16 A. Yes, sir.

17 Q. Now, looking at what's been marked as Exhibit
18 Ramey Number 1 -- and I just want to make sure I
19 understand because it's a little bit hard to see, but I
20 think I understand what you're saying.

21 A. Yes, sir.

22 Q. So looking at this map where I see depicted the
23 Black River, the sort of sinuous red line, that flows
24 approximately from the lower, left-hand part of the
25 exhibit sinuously going up east -- going from left to

1 **right; is that right?**

2 A. Yes, sir. The red is the occupied habitat.

3 Q. Okay. Which direction does the river flow
4 **across that map?**

5 A. So from the southwest to the northeast.

6 Q. So it flows -- and do you have an understanding
7 **of where the Davis' property is on this map?**

8 A. Yes, sir. So if you're looking at the first
9 green mark downriver, the first green mark is Old Cavern
10 Highway. That particular green plus symbol is the exact
11 location of Davis Exhibit 1.

12 Q. Okay. So that -- that green plus sign, the
13 **first one -- if I'm looking from left to right, the**
14 **first one I come across is the location of that**
15 **photograph that we see, Exhibit Davis 1?**

16 A. Yes, sir.

17 Q. Is that on the Davis' fee property? Is that
18 **your understanding?**

19 A. No, sir. That is -- I actually wouldn't know.

20 Q. You don't know where the Davis property is?

21 A. I do know where that is in relation to that.
22 Yes, sir.

23 Q. Where is it at in relation to that?

24 A. You would have to go probably a quarter mile
25 downriver. But it's on -- but that particular spot

1 would be Alisa Ogden's.

2 Q. Okay. So that first green plus sign is Alisa
3 Ogden's property -- fee property?

4 A. Yes. And the section line just to the right of
5 that plus symbol is Jim Davis'.

6 Q. Okay. And then from -- but the river flows
7 away, downstream from both the Ogdens and the Davises
8 from west to east, generally?

9 A. So that first green plus sign, going to the
10 right, that goes across Jim Davis'.

11 Q. Okay. But the river flows from the left-hand
12 side of the exhibit to the right-hand side of the
13 exhibit?

14 A. Yes, sir.

15 Q. So the location for all the wells proposed by
16 the Applicant in this case are downstream of the
17 protestants, Mr. Davis and Ms. Ogden; is that correct?

18 A. That's correct.

19 Q. Then I want to understand what you have
20 reviewed in relation to the specific well locations for
21 each of these three applications that are currently
22 pending. Are you familiar with the topography for the
23 staked locations for each of these wells?

24 A. Up to today, the new location sites -- I was
25 aware of the old original sites. So the new sites, I

1 have not actually got to look at specifically.

2 Q. Okay. So you don't know the topography of
3 those sites and whether or not there is connectivity
4 between them and any ephemeral drainage that would lead
5 to any of the zones of concern identified on the map?

6 A. No, sir, not without looking farther into what
7 these sites have. I would not be able to accurately
8 speculate or even say what I think the connectivity is,
9 but proximity is always a concern.

10 Q. Okay. And did you work with the State Land
11 Office to help -- consult with them on the location of
12 these wells, by chance?

13 A. No, sir. So the part of the State Land CCA/A
14 is that they handle all of their own particular -- I
15 guess I can't call them, like, well deductions but
16 on-sites and things of this nature. That is the State
17 Land Office's -- part of their agreement, and that's
18 what they wanted. So outside of this -- all of these
19 are state lands -- I actually don't even look at these,
20 and they don't have to update me on this information.
21 This is all State Land's call.

22 Q. Okay. So State Land, because they're part of
23 this agreement, they have to comply -- they're supposed
24 to comply with the requirements of the CCA/A; is that
25 right?

1 A. Yes, sir. There are stipulations that would
2 have to fall into the agreement if the company was
3 enrolled.

4 Q. And if the locations were not compliant, based
5 on what the -- on the State Land Office's own
6 evaluation, is it your experience that the State Land
7 Office would -- would -- would approve one, a location
8 that doesn't comply with their commitment to the
9 agreement?

10 A. I honestly couldn't say.

11 Q. You don't know --

12 A. No, sir.

13 Q. -- one way or the other?

14 A. Yeah. I wouldn't know if that would be
15 something they would do or wouldn't do.

16 Q. In your opinion, do these locations comply or
17 have any issues with the CCA/A that the State Land
18 Office is required to comply with?

19 A. From -- without looking more in-depth based off
20 location and topography, I couldn't accurately say that.
21 There is two loca- -- distance -- the Grizzly could be a
22 potential and Giant Panda if you were looking at
23 topography. I don't know that topography, so I can't
24 speculate. But the Bear Trap and, like, Kodiak, those
25 are areas that we would push to that site idealistic.

1 Q. **Explain that again. The Kodiak or the Bear**
2 **Trap, you said are what now?**

3 A. Just based off of sheer proximity --

4 Q. **You like those locations because they're**
5 **farther away?**

6 A. Yes. And the amount of grade and ephemeral
7 drainages that would be closer to the river is more
8 abundant throughout.

9 Q. **Where?**

10 A. It's not depicted in either one of these maps
11 without --

12 Q. **I just want to be sure because I'm not quite**
13 **clear what your testimony is. Are you saying that the**
14 **Bear Trap and the Kodiak well proposed locations are in**
15 **a better location relative to the concerns over the**
16 **CCA/A and the hornshell mussel?**

17 MR. McMILLAN: Object to questions about
18 the Kodiak location. It's not on the table today.

19 MR. RANKIN: The witness testified about
20 it. I just want to make sure I understand what he's
21 saying about his preference for location. I just want
22 to make sure I'm clear on it, as his testimony is
23 unclear.

24 EXAMINER BROOKS: Okay. Go ahead.

25 THE WITNESS: So just looking at the map,

1 if I was looking at topography, based off of like what I
2 can visually see, like the Kodiak and the Bear Trap,
3 there is no agreement. There is no ephemeral-
4 drainage-looking features, and those are -- would be
5 more appropriate for a CCA/A standard.

6 Q. (BY MR. RANKIN) Okay. Then as to the Grizzly
7 and the Giant Panda, your testimony is that you haven't
8 looked at the topography, so you don't know -- you can't
9 say one way or the other if there is any connectivity
10 between those locations and the ephemeral drainages that
11 you've identified?

12 A. That is correct. Yes, sir.

13 Q. Okay. Now, one thing I just wanted to make
14 sure I also understood. I think I heard you say that
15 the Foundation Minerals Ranch, the Black River Ranch
16 have good locations or good populations for hornshell
17 mussels; is that right?

18 A. Yes, sir.

19 Q. Okay. No further questions.

20 EXAMINER GOETZE: Redirect?

21 MR. CRAIG: Just very briefly.

22 EXAMINER GOETZE: Okay.

23 REDIRECT EXAMINATION

24 BY MR. CRAIG:

25 Q. On Exhibit 2, where you were talking about the

1 Kodiak, that's the -- that's the proposed location
2 you're talking about, the one that's way up on the top
3 side, right?

4 A. Yes, sir.

5 Q. All right. Now, the -- I was going to talk to
6 Mr. Davis about this one, but I only have -- I didn't
7 bring enough of these (indicating). I've only got two.

8 So this is from the USDA-Natural Resources
9 Conservation Service. Have you seen one of these maps
10 before?

11 A. That particular map, possibly. Yes, sir.

12 Q. But the topography --

13 MR. RANKIN: I guess, Mr. Examiner, I'm
14 going to ask if counsel's going to be questioning
15 Mr. Ramey on hydrology and topography relating to
16 drainage patterns, he's not been qualified as an expert
17 on hydrology or drainage. I question, you know, the
18 scope of the questioning where he's not been qualified
19 as a witness in that area.

20 EXAMINER BROOKS: Okay. Well, I don't know
21 what he's going to say, so I will give you a running
22 objection to that, and we will consider it if he's not
23 shown to have an expertise to give the opinions he
24 gives.

25 Go ahead.

1 MR. CRAIG: Yes, sir. If I might approach
2 the witness and hand him this. This is what we would
3 mark as Ramey 2, and it's just a topographic mark. And
4 I want to note for the record that I'm not asking him
5 about hydrology --

6 EXAMINER BROOKS: Okay.

7 MR. CRAIG: -- underground stuff. I just
8 don't have a lot of copies.

9 MR. RANKIN: That's all right. If you can
10 get me one later, that'll be fine.

11 MR. CRAIG: Okay. Yeah. I can get you
12 one. Okay. USDA.

13 **Q. (BY MR. CRAIG) This has got the lines for the**
14 **topography?**

15 A. Yes, sir.

16 **Q. Okay. The -- I think this is Section -- what**
17 **is that? Section 16, which is where we're talking**
18 **about. I don't think that we get far enough down on**
19 **this one to --**

20 MR. CRAIG: I think this is 16
21 (indicating). That's 17 (indicating).

22 MR. RANKIN: I would just note for the
23 record that the map doesn't identify the sections, so
24 it's hard to tell where it is.

25 MR. CRAIG: Let's see. I think it does.

1 EXAMINER GOETZE: We -- we just can't keep
2 bringing in things. We do have to draw a point, if we
3 don't have an exhibit for everybody.

4 THE WITNESS: It does have sections on it,
5 and it is gridded. It's just very faint. But that's
6 16, that's 17, that's 18 (indicating).

7 MR. RANKIN: Gotcha that.

8 Q. (BY MR. CRAIG) Okay. If you could look at
9 Section 16 down there in the southwest corner, would
10 that give you an idea of the surface drainage, not the
11 subsurface?

12 A. It does give me some idea. Yes, sir.

13 Q. And the "some idea" that it gives you is what?

14 A. That it drops approximately 50 feet in
15 elevation from the southwest corner to the middle of the
16 section. It drops 56 feet.

17 Q. And the middle of that section is part of the
18 floodplain, correct?

19 A. No, not quite at that point.

20 Q. Where that little hangy-down part of that
21 picture? That's what I was trying to remember.

22 A. It would be close. Yes, sir. I mean,
23 relatively close. Yes, sir.

24 Q. So that would generally show that it would
25 drain toward the -- toward the floodplain?

1 A. Yes, sir.

2 MR. CRAIG: That's all I have.

3 EXAMINER GOETZE: That's all?

4 Do you have any questions?

5 EXAMINER BROOKS: No questions.

6 EXAMINER GOETZE: I have no questions

7 either.

8 Thank you for your presentation.

9 Your next witness?

10 MR. CRAIG: Yes, sir. We call Jim Davis.

11 THE WITNESS: You want me to leave all
12 these up here, Mr. Craig, just like that?

13 MR. CRAIG: Probably.

14 EXAMINER BROOKS: Make sure the court
15 reporter has copies if they've been admitted in
16 evidence.

17 MR. CRAIG: We've introduced 1. 2, I can
18 put in with Mr. Davis.

19 EXAMINER BROOKS: Okay.

20 JAMES DAVIS,
21 after having been first duly sworn under oath, was
22 questioned and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. CRAIG:

25 **Q. Would you state your name for the examiner,**

1 **please?**

2 A. Jim Davis.

3 **Q. And you're one of the protestants?**

4 A. Yes.

5 **Q. Where do you live?**

6 A. I live at 889 Black River Village Road.

7 **Q. And let's look first -- get a little**
8 **housekeeping done -- on the Ramey Exhibit 1.**

9 A. This one here (indicating)?

10 **Q. I mean 2. I'm sorry. The big map.**

11 A. Oh, the big map.

12 **Q. Where did you get that?**

13 A. USDA.

14 **Q. And was that given to you by the United States**
15 **Department of Agriculture?**

16 A. I went and visited with them, and we were
17 looking at some various programs that they have to offer
18 for conservation. And they brought this map up and give
19 me several copies of it. And this is the best map I've
20 ever had showing my property.

21 **Q. And that's the map that the government gave**
22 **you?**

23 A. Yes.

24 **Q. And you've been out there where that proposed**
25 **well in Section 16 is?**

1 A. Yes. I visited it.

2 **Q. Is it higher?**

3 A. Yes.

4 **Q. Which would comport with what's on the map?**

5 A. Yeah. I've got an X here marked on it. Would
6 you like to see it, sir?

7 **Q. I was going to --**

8 MR. CRAIG: Anyway, we'd move introduction
9 of Ramey 2.

10 EXAMINER GOETZE: Mr. Rankin?

11 MR. RANKIN: I'm sorry, Mr. Examiner. What
12 was the question?

13 EXAMINER GOETZE: He wants to enter in this
14 map as Ramey Number 2.

15 MR. RANKIN: No objection.

16 EXAMINER GOETZE: Mr. McMillan?

17 MR. McMILLAN: No objection.

18 EXAMINER GOETZE: Ms. Callahan?

19 MS. CALLAHAN: No objection.

20 EXAMINER GOETZE: So entered. Ramey 2 is
21 in the record.

22 (Ramey Exhibit Number 2 is offered and
23 admitted into evidence.)

24 THE WITNESS: Okay. Thank you.

25 **Q. (BY MR. CRAIG) Now, if we could look at your**

1 **little packet there, Davis Number 1, did you take that**
2 **picture?**

3 A. Yes, sir.

4 **Q. And can you describe to the hearing examiner**
5 **what was happening out there, what you found?**

6 A. My load station is just to the north of this
7 crossing, and I was opening my crossing at 6:00 in the
8 morning. And there were red lights flashing on both
9 sides of the river, and I knew there was some kind of
10 problem. So I opened the station, and I ran down there.
11 And what I had done is I went on the high side of the
12 bank, because you can see the front of my bumper of my
13 four-wheeler. It was still dark, and I couldn't take a
14 good picture. But the truck had run off in the river,
15 and there was not a skid mark or nothing. He just drove
16 it right straight into the river.

17 The second truck that you see up there,
18 they backed it down at the crossing and pumped off the
19 trailer, which was hauling produced water, and that's
20 120 to 130 barrels. A barrel is 42 gallons a barrel.

21 Finally the wrecker got down there and had
22 both sides of the road blocked nearly to daylight. So
23 we're looking at -- you know, we're looking at 6:30 to
24 7:00. And the truck -- the wrecker backed up to it and
25 started -- and he had timbers underneath his rear wheels

1 trying to hold -- so his truck wouldn't skid, and he was
2 having a hard time moving it. So this other truck
3 pulled around and got on the back of the -- or the front
4 of the wrecker to give him more holding power, and they
5 moved the truck. I don't have the picture showing it,
6 but they got the truck up on the -- on the runway there
7 or the road. And the only damage to the truck was the
8 front bumper, and it had a lot of debris in the front of
9 it. And they actually drove the truck to the top of the
10 hill.

11 **Q. Now, in looking at Exhibit Number 1, would that**
12 **be considered a low-water crossing there?**

13 A. Oh, absolutely. That's the John D. Forehand
14 crossing. It's been there many years, which is Alisa's
15 family. They actually put the actual original crossing
16 in the '30s.

17 **Q. Now, that -- and you heard Mr. Ramey testify**
18 **that there wasn't any leakage there?**

19 A. That's correct.

20 **Q. Were you concerned about that when you went**
21 **down there?**

22 A. Yes. I -- I -- I first drove down to the --
23 the sheriff's department was there, and I drove down and
24 I asked the sheriff's officer, "What are they hauling?"
25 And he said, "It's not hazardous waste." I said,

1 "That's not my question." I said, "What are you
2 hauling?" And he said, "Produced water." I said,
3 "That's hazardous." So that's pretty disturbing right
4 there because they don't even know what hazardous is in
5 relation to contaminating the river.

6 Q. So now in looking at that -- and you were there
7 when this flood happened in 2014?

8 A. Oh, absolutely.

9 Q. Could you -- in looking at Davis 1, could you
10 give the hearing examiner an idea where the water was on
11 the back side there where those trucks are?

12 A. Yes. This truck that's facing -- which would
13 be facing to the west, there is a draw that dumps in
14 there called Flume Draw. There were three trucks parked
15 right there bumper to bumper, and about the tail end of
16 that truck that's to the -- to the west -- it was over
17 more to the south -- the water got plumb up into the
18 door of the cab of the truck, and he couldn't even get
19 out of the truck. And he was getting it from both
20 directions. He was getting it from the river flowing
21 down and also the runoff from Flume Draw. It's a wonder
22 he didn't drown.

23 Q. And that would be about where the second truck
24 is?

25 A. Yes, about the tail end of the second truck.

1 And then, of course, going to the north
2 side, it was plumb past the picture, as far as, you
3 know, the width and the height.

4 **Q. So essentially during that flood, that river**
5 **was almost from those telephone poles all the way --**

6 A. Oh, that telephone pole right there was wiped
7 out. It was laid over. It was way past that. There
8 was a big ol' tree right against it.

9 **Q. Now, if you'll look at Number 2, Exhibit 2,**
10 **which is the next one, what is that?**

11 A. Okay. That's on the north side of the river.
12 In other words, you have crossed the crossing now. And
13 you'll see these signs and so forth, and you'll see a
14 gate there, and the trucks have run over that. When
15 they redone the crossing, the idea was that when the
16 river flood, they would close the gates to warn "do not
17 cross the river." They haven't even gotten a chance to
18 exercise that because the trucks have already run over
19 it without the river flooding.

20 **Q. Now, when the river flooded, were those**
21 **trucks -- had they driven off into the flooded river?**

22 A. Yes. Oh, absolutely. Yeah. This truck right
23 here (indicating) would have been in a hell of a bind.
24 I mean, this thing would have come floating right down
25 in front of my house. And it's not a question of if;

1 it's a question of when.

2 **Q. And if you'll look at the next page, Davis 3,**
3 **what's that?**

4 A. That's a sign coming across the river. So in
5 other words, you're going north. And when you come down
6 the road, it makes sort of like an S turn, and they're
7 coming too fast or not paying attention, and they just
8 run over the signs on both sides of the river.

9 **Q. And this purports to be a sign that was knocked**
10 **down?**

11 A. Right.

12 **Q. Did you take that picture?**

13 A. Yes.

14 **Q. That accurately shows what you saw?**

15 A. Yes.

16 **Q. Okay. Look at Number 4, what's that, Exhibit**
17 **Number 4?**

18 A. That's the well log of my last well that was
19 drilled, which is just recently. This is on the north
20 side of the river.

21 **Q. And if you'll -- let's see. On the second**
22 **page, I think it gives you the various sands and where**
23 **the water is?**

24 A. Yeah. What's unusual about this well -- we've
25 drilled a lot of wells over the years, over 25 wells on

1 our property, and this was done with ground imaging, to
2 drill this well. And normally we'll have -- the first
3 surface water will be 25, 30 feet. The next will be
4 around 50 to 60 feet. In this case, this one here was
5 more bearing at 80 feet, and we drilled to 220 feet.
6 And it would fill in with sand, and we drilled it again,
7 and it filled in with sand. And so we cased it to -- I
8 think it's 160-some-odd feet. And this is my best well.
9 And there there's been -- so that's a total of three
10 wells within probably 250, 300 feet, and each well is
11 different. The formation is unpredictable.

12 **Q. Now, in one of those wells, did you actually**
13 **look down into the well?**

14 A. Yes. That well was on the south side of the
15 river, and we drilled -- there is a sand barrier. So
16 when you go through the surface, you go into a sand
17 barrier. It's about 20 feet deep. And we drilled
18 through it, and when we pulled out and we run our tape
19 in, it caved in. So we drilled it out again, and it
20 caved in. So then we stepped off. Anyway, we done that
21 three times and was getting nervous. We had a lot of
22 sand on the ground and was trying to figure out what in
23 the world is going on, and that's when we got a mirror
24 and shined down into the well. And that's when we could
25 see the water running. And this is strange. The water

1 was running from -- Section 9 and 16 comes across into
2 there. So in other words, I'm saying the water comes
3 from the east to the river. And that's one strata.
4 That ain't all the stratas. And so how we solved that
5 problem is we got a rathole rig and we went with steel
6 casing through the sand barrier and then we drilled our
7 well.

8 **Q. But you actually saw the water running?**

9 A. Running, yeah. That's what shocked us.

10 **Q. And it was running from Section 9, which is**
11 **the --**

12 A. And the other -- and 16.

13 **Q. And 16.**

14 A. Yeah. And the reason I know that is that
15 Section 9 and Section 16, in 2000- -- I don't know the
16 exact year, but it was -- it's on Foundation Minerals'
17 property. There is a pad there that has not been put
18 into production. It's got the cellar and the pad and
19 the rathole. And I walked -- went over there and
20 watched it while they were drilling it, and he hit water
21 at 70 feet for the rathole.

22 In Section 16 -- and this is just -- I mean
23 just over the fence, you might say -- in the '50s, a
24 seismograph crew come across there and said there's
25 water there because it washed off their bit.

1 And then in the '80s, Thompson drilled with
2 a cable tool rig to hold lease, and he said the same
3 thing. And there is casing sitting there to this day
4 right there in that corner.

5 And then we came down right there in our
6 corner of the -- between the BLM and where it's deeded.
7 And this is in the '50s. We drilled a well with several
8 wells around it, and we acidized it and we sanded. The
9 same problem that we've had later on in that area, and
10 then, of course, like I'm telling you about where we
11 seen the water running. I don't know how wide that
12 strata is and I don't know how long that strata is, but
13 I do know it's in those two sections and it comes down
14 and sort of ends on me at the river. And the water on
15 the river that -- those three zones, they sort of run
16 with the river, going towards the Pecos River. I don't
17 know if my area is -- is -- is the same further down,
18 but you'll find in the village area that they've got
19 shallow wells up there, 30, 40, 50, 60 foot. Some of
20 them are a little bit deeper. But the main water around
21 me is the bottom strata. But that one well is the
22 80-foot strata. That's what's strange. And on each
23 side of the river it's different.

24 **Q. And you cased down to 165?**

25 A. I think it's 160 on that one. We tried to case

1 to 200. And the reason for that is we use the wellbore
2 as a reservoir, if I can do it.

3 Q. Now, if you'll look at Davis Number 5, I mean,
4 this is something that you saw, and I think you just
5 wanted to present it to the -- to the examiner. What is
6 this?

7 A. Right. Okay. This is on the -- this is on the
8 south side of the river from John D. Forehand, which is
9 not very far from John D. Forehand going south.

10 Q. That's crossing where the truck was?

11 A. Yes.

12 Q. Okay.

13 A. And this is Mewbourne's lease. And we had a
14 real hard rain, one of our first rains starting the
15 latter part of the season, and a lot of water came
16 down -- how the road was built, the water goes straight
17 to the river, and the culvert was completely enclosed
18 in. And actually it wasn't able to handle the volume of
19 water that even was coming down that. And it jumped
20 into this lease and broke this dike there, and this ran
21 into the river. And there was salt on the ground and
22 that kind of thing. And, of course, where the wellhead
23 was and even to get to the tank batteries, it was
24 impossible because it was so muddy, and it was that way
25 for quite -- quite a few weeks.

1 Q. Now, this is -- you said this was Mewbourne's?

2 A. Mewbourne, right.

3 Q. And this is a well location and a -- and a
4 disposal facility?

5 A. Yes. Yes.

6 MS. OGDEN: No. It's not a disposal.

7 THE WITNESS: Well, where is that pipeline
8 coming to?

9 MS. OGDEN: I can -- I can answer all
10 those.

11 THE WITNESS: Okay.

12 MS. OGDEN: That's on our federal lease.

13 THE WITNESS: Yeah. This is on her
14 property.

15 Q. (BY MR. CRAIG) Okay. But that's one of the
16 issues that you worry about with these wells in
17 proximity to the lease?

18 A. Right. We need the pad to be in such a manner
19 that nothing can get on the pad from the outside and
20 nothing can get out of the pad from the inside and
21 nothing can penetrate the pad if -- you know, if it --
22 you have a spill in the pad.

23 Q. Now, what's Davis Number 6?

24 A. Okay. That's -- that's the -- the old lease
25 that was in Section 9.

1 **Q. Was that the --**

2 A. That's the Giant Panda, isn't it?

3 **Q. Giant Panda, before they moved it?**

4 A. Yeah. So this is where it was, I think, the
5 second round, and this is where it is for the last
6 round, which is in Section 16.

7 **Q. And that's Davis Number 7?**

8 A. Correct.

9 **Q. And you've actually been to these locations?**

10 A. Yes. I took those pictures.

11 **Q. And the Davis 7, in 16, you were up there. Is**
12 **that higher? You said, I think, it is a higher --**

13 A. Yes. Absolutely. You start going up the hill.
14 And in this place where it's at, it's got a high spot,
15 and it can run off in two different directions. And one
16 of them comes into my pasture, which will go to the
17 river. And then the other one stays in Section 16, and
18 it will run towards the river.

19 **Q. And it'll get into that -- as Mr. Ramey was**
20 **talking about?**

21 A. Right. Yeah. And all that has to do with how
22 much rain. You know, our rains are so unpredictable. I
23 mean, I could swear up and down sometimes it can rain
24 just a few feet wide to somebody's fence line, and we
25 just got a ton of water going down one area. That's

1 just Black River. It's unpredictable. And so we're
2 famous for getting hard rains and spotty rains. Like in
3 this past one right here was on Alisa, where it run off
4 the end there, Alisa got more rain than I did and we
5 adjoin each other. And we're just talking, you know,
6 half a mile between each other of the rain.

7 Q. And it was enough to just wash out that lease?

8 A. Oh, yeah.

9 And, you know, you're talking about -- can
10 I speak to this, about runoff?

11 Q. Yeah. That's, I think, one of the rain
12 concerns we have, is the runoff from the disposal
13 facilities. So what is your concern, if you can tell
14 the examiner?

15 A. Well, okay. Several.

16 Like I was saying about our rains, our
17 rains is -- is unpredictable, and everything runs to the
18 river, whether it's on the south side or the north side.
19 And the one that you've got on the Hood Number 1, 3-Mile
20 Draw, in the '60s, destroyed the scout camp that's on my
21 property. My mother had a scout camp. She was in the
22 Girl Scouts. It wiped the buildings plumb off, pump
23 house, everything. In 2014, the water got there again.
24 And that comes right around the edge of Hood 1, and it
25 dumps in the Black River.

1 The runoff in the Black River watershed
2 goes plumb into Texas, west, and it's very broad north
3 and south, and so you never know where the water is
4 going to come. The river can come up and not -- and not
5 be a cloud in the sky on our property, and it comes from
6 the mountains, from the Guadalupe. And it's clear; the
7 water's clear. If the water's muddy, that tells me that
8 it's from the village area south, working towards me.
9 And just like the other day, just recently, one of our
10 last rains, they got -- the river came up at Higby Hole,
11 which is right down below the CID Dam. We didn't -- the
12 river never came up at my place. And they got -- well,
13 at Alisa's place, they got, I think, over three
14 inches in a --

15 MS. OGDEN: In 45 minutes.

16 THE WITNESS: -- in a short time frame.

17 So we have a lot of area that dumps to the
18 river and it's spotty, and so I say that the river
19 should be the dividing line, from Black River Village to
20 the CID Dam. We need to think about what is the
21 smallest footprint and the least risk, and that's going
22 to put more money in your pocket and all the others
23 involved. So keep everything on the south side on the
24 south side of the river and everything on the north side
25 on the north side of the river, build your pads where it

1 cannot get to the river, and I think you'll solve a lot
2 of problems.

3 And then another thing about the truck
4 traffic, each well that you're proposing, when you say
5 25,000 more barrels, that's 190 truckloads every 24
6 hours per pad. Our roads will not handle it, and we do
7 not have the financial ability of Eddy County to get the
8 money from -- and the road they're redoing right now
9 from close to the Delaware -- no, from Roadrunner Road
10 to Old Cavern Highway, a \$6 million job. That is the
11 worst road in the state of New Mexico 'cause of truck
12 traffic.

13 Q. (BY MR. CRAIG) Now, did you -- do you have one
14 of these books (indicating)?

15 A. I don't have one, but here is one on the table.

16 Q. Is there one for the Giant Panda?

17 A. This is the Grizzly.

18 Q. Let me show you this one. I've got it. The
19 Giant Panda, that's Exhibit 1B. It's that same plat we
20 were looking at earlier, this one (indicating).

21 A. Okay.

22 EXAMINER GOETZE: So you're looking at a
23 Delaware exhibit.

24 MR. CRAIG: Delaware Exhibit 1B, and it's
25 about halfway in there, the plat that shows the road.

1 **Q. (BY MR. CRAIG) Now, you've been down there?**

2 A. Yes.

3 **Q. Is there an existing lease road there?**

4 A. No.

5 **Q. What is there?**

6 A. This is a two-tracker going to our back
7 pasture, plus a pipeline for Devon for the Habanera. So
8 that's been used just to go to the back pasture. If you
9 look at it today, it's been bladed. And the reason it
10 was bladed is when the crossing was taken out in 2014,
11 they needed a way to get in there to pour the concrete
12 on the south side of the crossing.

13 **Q. And you're talking about that crossing where**
14 **the truck ran off?**

15 A. Yeah, the John D. Forehand crossing.

16 **Q. Okay.**

17 A. So they came through me and made that circle
18 around to that side. That's the reason it looks like a
19 road. And, of course, there's not much traffic. You
20 know, we go to the back pasture and that's it.

21 **Q. That area is BLM property, correct?**

22 A. Yes.

23 **Q. And you had that leased?**

24 A. Yes.

25 **Q. And then that's Section 17? Section 16 is**

1 **where the well is going to be?**

2 A. 16. So we have it right to the --

3 What is that section, Alisa, on the map?

4 **Q. 17.**

5 A. 17, yeah. And then we've got down below that
6 probably.

7 **Q. Right. But that one is BLM?**

8 A. All that is BLM. Yes.

9 **Q. And that's where this road exists, is on the**
10 **BLM?**

11 A. Yes.

12 **Q. And to get back down there, how do you have to**
13 **go? I mean, if you wanted to get down to where that's**
14 **marked on Section 16 for the Giant Panda, how do you**
15 **have to get there?**

16 A. Well -- okay. If you're going to come in -- if
17 you're going to come in from Black River Village Road on
18 the east side, you're going to have to go through
19 Foundation Minerals to get in there.

20 **Q. And then what do you do?**

21 A. And then you go through the gate of BLM, and
22 then you go south down BLM land all the way to that. If
23 you wanted to go out of there to the west, you'd have to
24 go south to the pipeline road, which is Main Pipeline,
25 to go west, and you're going to come out on Alisa Ogden.

1 Q. So that road that's shown on here, there really
2 isn't an existing lease road?

3 A. No.

4 Q. So if you could summarize your concerns to the
5 examiner, what would they be on these saltwater disposal
6 wells, the ones we're still talking about, which is the
7 Giant Panda and the Grizzly?

8 A. Well, okay. I'm going to start with the
9 Grizzly. My main objection and in our discussions and
10 the meetings that we've been having over the years, it
11 would be wise to start at a mile distance from the
12 river, on either side of the river, and start working
13 from that base what is best that you can work out your
14 lease. And then wherever you arrive at what you're
15 going to do, you're going to build your pad in a manner
16 that's not going to be able to contaminate, period. And
17 that means anything coming from the outside in and
18 inside out or penetrating the ground. That means the
19 whole pad.

20 Where your trucks unload and your trucks
21 park, if you have a contamination there, you're not
22 protected. The whole pad needs to be protected. And if
23 you do that, yes, it costs you more money, but it's
24 going to save you in the end.

25 And then the last thing to do is reduce the

1 truck traffic by pipeline. The cheapest way to move
2 material is pipeline. You know that. I know that from
3 experience.

4 Q. And this increased truck traffic, with that
5 many gallons, how many trucks did you say that would be
6 a day?

7 A. 109 [sic], plus.

8 Q. And the truck traffic is pretty heavy --

9 A. Very heavy, very heavy, running around the
10 clock.

11 And another thing about that is I went to
12 the County and I said, "What is your" -- "What is
13 your" -- "How do you determine to block the river when
14 the river floods?" They said, "We don't have a plan."
15 So then you ask the producer, "What is your procedure
16 when the river's flooding? Where are you going to go?"
17 There is no plan. And we know -- me and Alisa sit there
18 and watched it happened. God dang, they're going to
19 cross that river; it's flooding. And they cross it.
20 And that's the way it is.

21 Q. And you've seen those flooded trucks. If those
22 had produced water in them, what would that have done?

23 A. Yes. And, you know, there are other trucks
24 hauling other stuff. But, you know, the people hauling
25 oil and stuff are a little bit more reliable than the

1 ones with solid. There are some trucks -- I sell water.
2 There are some trucks that are hauling water that can't
3 even pay a \$50 water bill. And if they have -- if they
4 have a contamination, they're out of business. And
5 guess who is going to inherit the problem? Not you
6 (indicating) because you didn't haul it. You're
7 responsible when you receive it. But you created the
8 demand. And we need some help there. We need some
9 serious help.

10 Q. Now, the exhibits that we talked about, you
11 personally took those pictures?

12 A. Yes.

13 Q. And they accurately depict what is shown?

14 A. Yes.

15 MR. CRAIG: We'd move introduction of Davis
16 1 through 7 -- 7.

17 EXAMINER GOETZE: Mr. McMillan?

18 MR. McMILLAN: No objection.

19 EXAMINER GOETZE: Ms. Callahan?

20 MS. CALLAHAN: No objection.

21 EXAMINER GOETZE: Mr. Rankin?

22 MR. RANKIN: No objection.

23 EXAMINER GOETZE: Exhibits Davis 1 through
24 7 are so entered into the record.

25 (Davis Exhibit Numbers 1 through 7 are

1 offered and admitted into evidence.)

2 MR. CRAIG: That's all we have. Pass the
3 witness.

4 EXAMINER GOETZE: Mr. McMillan?

5 MR. McMILLAN: No questions.

6 MS. CALLAHAN: No questions.

7 EXAMINER GOETZE: Mr. Rankin?

8 MR. RANKIN: I have -- yeah.

9 THE WITNESS: One other I think that you
10 asked a question about about the river, how it narrows
11 down and the flow, can I talk about that?

12 EXAMINER BROOKS: Well, he passed the
13 witness. It's up to -- now you need to answer
14 Mr. Rankin's questions.

15 THE WITNESS: All right. Not a problem. I
16 just like to get the facts out.

17 CROSS-EXAMINATION

18 BY MR. RANKIN:

19 Q. Mr. Davis, it's nice to meet you. I just have
20 a couple of questions for you.

21 A. Sure.

22 Q. You said that you have a load station and that
23 you sell water and that you've drilled 25 water wells?

24 A. Yes, sir, since the '50s.

25 Q. Since the '50s -- or since the '50s, you've

1 drilled 25 water wells.

2 A. Yes.

3 Q. What -- what's the load station for?

4 A. To sell water commercially.

5 Q. Okay. And where is that located?

6 A. John D. Forehand Road.

7 Q. Would you mind referencing that? Why don't we
8 look at Exhibit 2 in one of those exhibit packets, if
9 you would. I heard a lot of names used and points of
10 reference, so I'm trying to --

11 A. Let me get to Exhibit 2 that you're talking
12 about.

13 Q. It would be the Applicant's exhibits.

14 MR. CRAIG: One of the books.

15 THE WITNESS: Oh, in the book. Either
16 book?

17 Q. (BY MR. RANKIN) Either one.

18 MR. CRAIG: It's this one right here
19 (indicating).

20 THE WITNESS: Okay.

21 Q. (BY MR. RANKIN) So correct me if I'm wrong -- I
22 don't know you stated this for the record, but where is
23 your fee property that you own?

24 A. Okay. I'm in Section 8.

25 Q. Section 8. Okay. Is that the south half of 8;

1 **is that right?**

2 A. I go in 40-acre blocks about a mile along
3 there, all this square right here (indicating).

4 **Q. Okay. So it looks like it's the -- the --**

5 A. So I go from the west to the east nearly all
6 the way across Section 8.

7 **Q. The south half of Section 8; is that correct?**
8 **Is that correct, Mr. Davis, the south half?**

9 A. Yeah.

10 I'm trying to find your -- the one you're
11 talking about here.

12 **Q. Exhibit 2.**

13 MR. CRAIG: Probably that one (indicating).

14 **Q. (BY MR. RANKIN) That one that's folded over**
15 **right there.**

16 A. This one right here (indicating)?

17 **Q. No. If I might approach to give you a hand.**
18 **This one here (indicating).**

19 **So your property was identified as Section**
20 **8 in that township and range; is that right?**

21 A. Yes, sir.

22 **Q. So it's just below where that Kodiak location**
23 **is identified in Section 5; is that right?**

24 A. Yes, sir.

25 **Q. Okay. And then where is your load station for**

1 **your water well?**

2 A. Okay. You go to the west, and it's right there
3 on John D. Forehand.

4 Q. Okay. And where are your 25 wells that you've
5 drilled over time?

6 A. On both sides of the river, up and down the
7 river.

8 Q. Okay. So you've got wells on one side -- on
9 the north side of the river, and you've got wells on the
10 south side of the river?

11 A. That's correct.

12 Q. And your load station is on the north side of
13 the river?

14 A. Yes, sir.

15 Q. So do you pipe water to that load station?

16 A. No. I pipe it to the tank battery, and then
17 out of the tank battery, I pipe it to the load station.

18 Q. So there are two separate pipeline systems --

19 A. Yes. That's correct.

20 Q. -- that pipe it to the load station?

21 A. Yeah. I've got an 8-inch line going to the
22 load station, and then the various individual wells have
23 got 4-inch lines going to the tank battery.

24 Q. Okay. And what's the greatest distance your
25 freshwater wells are from the river?

1 A. Well, all of them are up and down the river.
2 They're -- they're probably 150 to 200 feet.

3 **Q. So they're right up against the river; is that**
4 **right?**

5 A. You know, on the high part -- on the north
6 side, on the high part of the bank, and on the south
7 side, they're -- you know, the bank is lower, but
8 it's -- so it's like this (demonstrating) when you look
9 at it.

10 **Q. Okay. And how much water are you producing**
11 **total from your 25 wells, approximately?**

12 A. Well, I'm not pumping 25 wells.

13 **Q. Okay.**

14 A. Okay? I've only got five wells I use to pump
15 to sell water. So all my wells are small-volume wells.
16 And our water -- I've only got two wells that I can run
17 continuous, around the clock. The others are pump,
18 rest, pump, rest, pump, rest. That's the reason I got
19 the tank battery. So you're looking at a total of five
20 wells, and they go by tank level and that kind of thing,
21 kick on and off, probably 550 gallons a minute.

22 **Q. 550 gallons a minute?**

23 A. Uh-huh.

24 **Q. And can you sell that water approximately at**
25 **that same rate? In other words, you're selling all the**

1 **water that you're producing?**

2 A. I can sell all I can produce.

3 **Q. Okay. And people that buy the water from you,**
4 **how are they taking it away?**

5 A. Well, they come into the load station, and I
6 can do a top load or a bottom load.

7 **Q. What does that mean?**

8 A. Well, a bottom load is they -- they go into the
9 bottom of the tank. And the oil field likes the bottom
10 load more than -- the construction likes the top load.

11 **Q. I'm still not following you.**

12 A. But the top load is in the top of the tank.

13 MS. OGDEN: In trucks, Jim. In trucks.

14 **Q. (BY MR. RANKIN) I guess my question is: How**
15 **are they taking the water away? What kind of mechanism**
16 **are they taking the water away? Are they pipelining it**
17 **away? Are they trucking it away?**

18 A. No. Well, I do sell in the pipeline, but
19 mainly from the truck side, they're hauling it.

20 **Q. How many trucks are coming to your load station**
21 **on a daily basis?**

22 A. Well, right now probably 2- to 3,000 barrels a
23 day, and all those trucks vary in size. Some of them --
24 some of them are getting, you know, like 500 gallons.
25 Some of them are getting 40 barrels. Some of them are

1 getting 60 barrels, some of them 80 barrels, some of
2 them 90 barrels.

3 Q. How many truckloads are you seeing at your load
4 station?

5 A. It varies. We probably have anywhere from 20
6 to 40 tickets a day.

7 Q. Okay. And those trucks are running on Black
8 River Road?

9 A. That's correct.

10 But my water is used mainly for drilling,
11 well testing, pipeline well testing, showering at the
12 drill rigs, drilling underneath the river and cementing
13 because of the quality of water, and you've been using
14 it also.

15 Q. Now, you testified -- I believe I understood
16 you to say that as long as you have an operator using
17 best management practices for the construction of their
18 well pads, you don't have a problem with their -- with
19 their operations? Is that fair summary of your
20 testimony?

21 A. Now, clear that -- I'm not sure I understand
22 that.

23 Q. I think I understood you to say -- and correct
24 me if I'm wrong -- that you don't have a problem with
25 operators who are using best management practices for

1 the construction of their well pads?

2 A. That is correct.

3 Q. As long as an operator is complying with those
4 best management practices for this area, you don't have
5 a problem with the way they operate?

6 A. That's correct.

7 MR. RANKIN: No further questions.

8 EXAMINER GOETZE: Mr. Brooks?

9 CROSS-EXAMINATION

10 BY EXAMINER BROOKS:

11 Q. If I understand what you've said, it's all
12 about surface flows of water. You're not talking about
13 flows within deep formations?

14 A. Now, let me see if I understand the question.
15 You're saying about the surface.

16 Q. If you do an injection well -- if you drill an
17 injection well, the purpose of the well is to inject
18 water and pump it down the hole --

19 A. Correct.

20 Q. -- to a formation several thousand feet down --

21 A. Correct.

22 Q. -- where it will be pumped out into a formation
23 for storage, correct?

24 A. Correct.

25 Q. You're not talking about what happens to the

1 **water after it's injected?**

2 A. No, sir.

3 **Q. You're talking about what happens to it if it's**
4 **spilled at the surface?**

5 A. That's correct.

6 **Q. That's what I thought. Thank you.**

7 A. Yes, sir.

8 CROSS-EXAMINATION

9 BY EXAMINER GOETZE:

10 **Q. I just have two questions, Mr. Davis. This**
11 **well record that you have, is this well now on line?**
12 **Have you seen any production out of it?**

13 A. I basically have run it for testing purposes
14 right now, and I'm waiting for my permit to come back on
15 it. So I don't have -- all I know is when we tested it,
16 we ran it four hours pumping, and it didn't pull down
17 very far. Most of them pull down. So that's where we
18 are at right now.

19 **Q. Okay.**

20 EXAMINER GOETZE: And then for the record,
21 Lisa [sic] is?

22 MS. OGDEN: Me.

23 EXAMINER GOETZE: Your last name?

24 MS. OGDEN: Alisa. I'm sorry. Alisa
25 Ogden.

1 MR. CRAIG: She's next.

2 EXAMINER GOETZE: We just wanted to make
3 sure, when we have references to Lisa, that it's the
4 right Lisa.

5 EXAMINER BROOKS: We don't normally
6 encourage members of the audience to coach the
7 witnesses.

8 (Laughter.)

9 MS. OGDEN: He has trouble hearing
10 accurately.

11 EXAMINER GOETZE: Would you like to take a
12 few minutes' break or press on?

13 EXAMINER BROOKS: That sounds like a decent
14 idea.

15 EXAMINER GOETZE: Let's take about ten off,
16 and let's come back and we'll do our next witness.

17 MR. CRAIG: She'll be our last, and then I
18 think --

19 EXAMINER GOETZE: You've got one?

20 MR. McMILLAN: Yeah, hours of testimony.
21 You guys can order pizza.

22 EXAMINER GOETZE: We don't get to eat on
23 the job.

24 (Recess, 4:23 p.m. to 4:37 p.m.)

25 EXAMINER GOETZE: All right. Let's go back

1 on the record.

2 And, Mr. Craig, I believe you have another
3 witness.

4 MR. CRAIG: Yes. We'd call Alisa Ogden.

5 ALISA OGDEN,

6 after having been previously sworn under oath, was
7 questioned and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. CRAIG:

10 Q. Could you state your name for the record?

11 A. Alisa Ogden.

12 Q. And where do you live?

13 A. I live on the north end of the ranch, so I live
14 north of the river about six miles, in Section 15,
15 23-27. And we own the property on Black River. It's
16 our private land. We have private land in Section 15.
17 And then the private land is in Sections 17 and 18 of
18 24-27. And then we have private land on the south end
19 in Sections 25, 25, 26. And so in between all of those,
20 the private lands in Section 15 and Section 25, is state
21 and federal land that my family has had since 1890 when
22 they homesteaded on Black River. Where Jim Davis lives
23 now, my great, great grandfather homesteaded in 1890,
24 that area, and then he and his family homesteaded along
25 the river.

1 Q. So you and your family have land pretty much
2 along this whole stretch that we've been talking about?

3 A. Exactly. And that was my mother's side of the
4 family. And my father's side of the family has -- we
5 farm downriver from there and own private land on Black
6 River just west of what they call Higby Hole Road, south
7 of Loving three miles.

8 Q. Now, the -- and your primary objection was
9 to -- on the one on Section 5?

10 A. It was dismissed. Yes.

11 Q. And that was dismissed?

12 A. Yes.

13 Q. But on the other, you're still concerned about
14 the river?

15 A. Right. And I always think it's interesting, on
16 affected properties -- or affected persons, what they
17 call it because the quality of water in Black River has
18 a direct effect on me and on our livestock. Our usage
19 of Black River is totally for watering of our livestock
20 whenever we have cattle in those pastures, and then when
21 we're downriver on the farm, we still water livestock
22 out of that river. And so we're very dependent upon the
23 river for the viability of our livestock and our
24 operation as ranchers.

25 Q. And when you look at the maps of this, you'll

1 see that most -- along the river there is a lot of
2 private land, and I guess that's because that's where
3 people homesteaded.

4 A. Correct.

5 And most of the homesteading that was done
6 in this area was done prior to the 1914 Homestead Act
7 where you got the 160 acres of surface and 160 acres of
8 private in there. So -- and, you know, it was
9 advantageous. You needed the water, and you wanted the
10 mineral rights that went along with those private lands.

11 Q. Now, you're acquainted with these two locations
12 that we're still talking about, the Grizzly and the --

13 A. Giant Panda.

14 Q. -- Giant Panda?

15 A. Yes, I am.

16 Our -- we are Jim's west neighbor as far as
17 his -- in Section 17. And, again, we do own private
18 land in Section 17. And so when we had the flood in
19 2014, our access to our south end of the ranch, since it
20 washed out the low-water crossing called Forehand
21 Crossing, was through his pasture, through the BLM land,
22 along the fence line, looking over into Section 16, and
23 then we took the DCP pipeline right-of-way through his
24 pasture a mile into our pasture, and then we were able
25 to access John D. Forehand Road from there to go into

1 the south end of our pasture. And we go -- from Black
2 River south, it's about nine miles.

3 **Q. And that's that road that we've talked about --**

4 A. Correct.

5 **Q. -- that was the lease road? It used to be a**
6 **two-track.**

7 A. It's never been a lease road. It's always been
8 a two-track. And it's only been a rancher-used road
9 until the flood, and then that was how most people
10 utilized that area to access, mostly pumpers and then
11 the -- and us, our ranch people. The others further
12 south went in other ways. But it was pumpers. A few
13 water trucks tried to get through there, but they had to
14 be pulled out because the terrain is not conducive for
15 anything larger than a pickup to go through.

16 **Q. So being down there, you've seen, basically,**
17 **where the location of the Giant Panda well is?**

18 A. Yes, and also the Grizzly, because prior to
19 Black River Village Road becoming the pothole road of
20 hell, that's how I would access from the farm to the
21 ranch, is going down Black River Village Road. Now we
22 currently access it going down Bounds Road to get in
23 because the road -- well, they're in the process of
24 resurfacing it, but prior to that, we had to go Bounds
25 Road so we wouldn't tear up -- you know, take chances of

1 tearing up tire rods or anything else like that on the
2 vehicles.

3 **Q. Black River Village Road was in somewhat bad**
4 **shape?**

5 A. That's an understatement. Yes. It was in
6 somewhat bad shape.

7 **Q. You could lose a car in a pothole?**

8 A. Probably.

9 The location of the Grizzly and the access
10 for that specific one is on a current lease road in
11 which they access locations that are in -- on that state
12 land, and the state grazing lessee for that is ClaraMai
13 Hayhurst. And so that's going through part of her
14 ranch, state lease, and so I have seen that.

15 But in my traversing for nine months over
16 that road through Jim's to access our ranch, I went by
17 on almost a daily basis the road that the Giant Panda is
18 proposed to be located.

19 **Q. Now, how does the -- from your observations,**
20 **over all these years -- because you grew up down there.**

21 A. Exactly.

22 **Q. From your observations, how does the water**
23 **drain?**

24 A. So there are a variety of ridges in the area,
25 and I'm not going to go into it too much. But north of

1 Black River, everything from Bounds Road south drains
2 into Black River. Bounds Road used to be called the
3 Ridge Road. And south of Black River, if you'll go
4 about 3-and-a-half miles or so, there's another ridge,
5 and everything from that ridge to the north, everything
6 drains into Black River. And then beyond that ridge,
7 then all those drainages go into the Pecos River. So it
8 just funnels into Black River. Black River is a
9 spring-fed river, primarily, other than having rain
10 events.

11 **Q. And your concern about the saltwater disposal**
12 **wells on Black River Village Road is what?**

13 A. Well, my number one concern on the locations
14 themselves are what type of measure would be taken to
15 prevent spillage from the location in rain events
16 draining in -- you know, because of the flooding,
17 draining into the river and having the water quality
18 affected by the produced water.

19 On our ranch, I have had several
20 produced-water spills. I won't go into the details of
21 what all is entailed in that, how deep you have to go.
22 Sometimes I've seen them have to go down 30, 40, 50 feet
23 in order to get to clean dirt from produced-water
24 spills. I personally have had cattle drink produced
25 water. They like the taste of it once they've drank it,

1 and they starve to death because all of the good
2 bacteria in their stomachs is killed by the
3 hydrocarbons. So they starve to death and die. So I've
4 had cattle die from drinking produced water.

5 And so I do have concerns about the
6 produced water and how it will affect -- once it's on
7 the ground, it sterilizes the soil, and so the grass
8 doesn't grow anywhere it is. That's why you have to
9 come in and dig it out or else it's gone forever.
10 Anytime it gets into a water system, any kind of
11 produced water, then you have your water quality going
12 down. If your cattle drink it, you have the chance of
13 those cattle dying. And so my concern is the measures
14 that might be taken to help alleviate mitigate,
15 whatever.

16 You know, nowhere in any of the plans I've
17 seen -- and I currently have on our state lease land one
18 of Delaware Energy's saltwater disposals, the Iceman,
19 and it's in Section 17 of 23-27. So I see it on a daily
20 basis when I go in that area.

21 But anyway, my concern, in the close
22 proximity to Black River, is what the plan will be in
23 order to help prevent any type of spillage going into
24 the river and contaminating not only the river but the
25 soil between the location and the river, number one.

1 Number two, talking, once again, about the
2 number of trucks that are required to bring the produced
3 water to that location, I do know how many trucks are in
4 on that one location that is in my pasture. In fact,
5 they added to the size of the location so that once the
6 trucks unload, if they need to pull off and sleep, then
7 they have that.

8 Also, I had taken out of production for
9 grass, and it was in one of the prime grass-growing
10 areas on our -- in that one pasture, you know, their
11 take out of production that grass that you've been
12 paying for for 102 years, and you no longer get that
13 back. And it's the same with locations for oil wells,
14 so we won't start on all of those. But my main concern
15 on this is the effect that it will have on the ground,
16 on the water and on the livestock.

17 **Q. And you were talking about it getting on the**
18 **ground and killing everything. Then when the rain**
19 **comes, it washes it somewhere?**

20 A. Further on down and does more damage.

21 **Q. And washes it down into the river, is one of**
22 **your concerns?**

23 A. Yes. Yes. That's a concern.

24 **Q. You've heard the discussions about Black River**
25 **from Mr. Ramey, that this is like one of the**

1 **high-quality waters?**

2 A. Exactly. And that's one of the things, being a
3 farmer, as well as a rancher, the water that is in Black
4 River, you can always tell -- there are farmers who farm
5 down from --

6 (Cell phone ringing.)

7 THE WITNESS: I know I turned my phone off.

8 -- who farm downriver, and the water --
9 they have the ability to farm with Black River water.
10 They have X number of water rights, and I think --

11 Jim, I think that's your phone.

12 And so if anything contaminates that water,
13 then it will affect their ability to farm their farms.
14 And we had an instance where herbicide was put out on
15 ranch land above water. We had a big flood event. They
16 farmed with the flood water that came down, and their
17 crops were killed. So I've seen the effect of what
18 contaminants in Black River will do for the farmers
19 downstream from that area.

20 So affected parties aren't just the oil
21 companies who have mineral rights in that area and the
22 surface owner on that. So there are a lot of affected
23 people when you get the river involved.

24 Q. **(BY MR. CRAIG) Now, the -- did anybody approach**
25 **you for an easement across your property to Number 16 --**

1 **Section 16?**

2 A. Well, my property, they would have to come off
3 of John D. Forehand Road, and no, it is not. The river
4 crossing is on our private land, and the county has a
5 prescriptive easement. So where that truck went in the
6 water, that was on our private land right there. So --
7 and it went right over the top of the waterline that has
8 the water for our livestock. I don't sell any water to
9 the oil companies at all. All of our -- our one well
10 that we have on the north side of Black River is a
11 60-foot well, and it's only for livestock water. And so
12 no, no requests for easement across any of our private
13 land that might be going through if they utilize John D.
14 Forehand and went through the BLM land from west to east
15 for an easement.

16 **Q. Would you be favorably disposed to give people**
17 **easements across it?**

18 A. No. I don't do that very often. I'm not well
19 liked.

20 (Laughter.)

21 THE WITNESS: I'm not. You can ask. I
22 state my opinion succinctly.

23 (Laughter.)

24 EXAMINER GOETZE: Are you done?

25 MR. CRAIG: I'm done.

1 EXAMINER GOETZE: Okay. Thank you.

2 Mr. McMillan?

3 MR. McMILLAN: No questions.

4 EXAMINER GOETZE: Ms. Callahan?

5 MS. CALLAHAN: No questions.

6 EXAMINER GOETZE: Mr. Rankin?

7 CROSS-EXAMINATION

8 BY MR. RANKIN:

9 Q. I just want to make sure I understand real
10 quick, Ms. Ogden. I have a couple of questions for you.

11 A. Sure.

12 Q. Do you own surface land under -- around a
13 location where one of Delaware's wells is being
14 proposed?

15 A. No, not currently, not now. The Kodiak was the
16 one that was -- is which had the most personal effect on
17 me because it was located on my state lease land, and
18 then they access through my private land to survey the
19 state lease land.

20 Q. Okay. So you didn't have -- none of the wells
21 you own fee surface; is that correct?

22 A. No, none of these.

23 Q. And you're not a leasehold operator, correct,
24 for any leases within the area of these wells?

25 A. State lease, you mean?

1 Q. Any lease, an oil and gas lease. You're not a
2 leasehold operator for an oil and gas lease within --

3 A. No, I'm not. Not in this area, no.

4 MR. RANKIN: No further questions.

5 EXAMINER GOETZE: Mr. Brooks?

6 EXAMINER BROOKS: No questions.

7 EXAMINER GOETZE: I don't have any
8 questions, but you're still a nice person here.

9 (Laughter.)

10 EXAMINER GOETZE: So you have concluded?

11 MR. CRAIG: I am done.

12 EXAMINER GOETZE: Okay. Mr. McMillan, your
13 turn.

14 MR. McMILLAN: Yes. I have just the one
15 witness and a single exhibit. Mr. Arnold, Jr. has been
16 sworn in previously.

17 EXAMINER GOETZE: Seems like a long time
18 ago.

19 MR. McMILLAN: Sorry. I have more paper
20 than I know what to do with.

21 EXAMINER GOETZE: As an attorney, you're
22 supposed to manage your paper and your witnesses.

23 MR. McMILLAN: I have my witness under
24 control; it's my paper.

25

1 BRIAN ARNOLD, JR.,

2 after having been previously sworn under oath, was
3 questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. McMILLAN:

6 Q. Sir, would you kindly state your full name for
7 the record?

8 A. Brian Arnold, Jr.

9 Q. And who are you here on behalf of?

10 A. Foundation Minerals, LLC, Mavros Minerals, LLC
11 and Oak Valley Mineral and Land, LP.

12 Q. And what is your role in each of those three
13 entities?

14 A. For Foundation Minerals, LLC, I am the vice
15 president of land. For Mavros Minerals, LLC, I am the
16 manager. For Oak Valley Mineral and Land, LP, I am the
17 secretary.

18 Q. Are you authorized today to testify on behalf
19 of all three of these entities?

20 A. Yes.

21 Q. Great.

22 Have you previously had your credentials
23 heard by an examiner and made a matter of record here at
24 the Division?

25 A. No.

1 **Q. Please then briefly describe your educational**
2 **background.**

3 A. I have a bachelor's degree from Texas Tech
4 University. I've been in the oil and gas business for
5 13 years, two years on the drilling side and 13 -- or 11
6 years on the land side. I'm a current member of the
7 American Association of Professional Landmen, and I have
8 a registered professional landman designation from that
9 association, as well the New Mexico Landmen's
10 Association.

11 **Q. Are you familiar with the application that's**
12 **filed in these cases?**

13 A. Yes.

14 **Q. Are you familiar with the subject land?**

15 A. Yes.

16 MR. McMILLAN: Mr. Examiner, I tender
17 Mr. Brian Arnold, Jr. as an expert petroleum landman.

18 EXAMINER GOETZE: Ms. Callahan?

19 MS. CALLAHAN: I have no objection.

20 EXAMINER GOETZE: Mr. Craig?

21 MR. CRAIG: No objection.

22 EXAMINER GOETZE: Mr. Rankin?

23 MR. RANKIN: No objections.

24 EXAMINER GOETZE: He is so qualified.

25 MR. McMILLAN: Excellent.

1 Q. (BY MR. McMILLAN) Mr. Arnold, do you recall
2 Delaware's land witness testifying to the use of Midland
3 Maps to do -- to do land work?

4 A. Yes. I think it was operations manager.

5 Q. Operations manager. Is that related to Midland
6 Maps, to your knowledge?

7 A. Yes.

8 Q. Are you familiar with this system?

9 A. Yes.

10 Q. Do you use it to do your land work?

11 A. I reference Midland Maps.

12 Q. Do you use it as your be-all, end-all tool for
13 doing your land work?

14 A. Absolutely not.

15 Q. And why not?

16 A. Because Midland Maps is, a lot of times,
17 incorrect and only gets updated a few times a year.

18 Q. Do you recall testimony from Delaware's land
19 witness concerning the Featherstone Development
20 Corporation lease?

21 A. Yes.

22 Q. And that's the lease covering the south half of
23 the southwest corner -- southwest quarter, rather, of
24 Section 3, which is part of the Bear Trap area of
25 review; is that correct?

1 A. Yes, sir.

2 Q. And did you -- or do you recall Delaware's land
3 witness not being able to -- or she wasn't aware if the
4 Featherstone lease had subsequently been assigned. Do
5 you recall that testimony?

6 A. I do recall that testimony.

7 Q. Now, can you please turn to what is labeled as
8 Exhibit 9 and tell us what we're looking at here?

9 A. You're looking at an assignment and bill of
10 sale from Featherstone Development Corporation to MRC
11 Permian Company, recorded in Eddy County, New Mexico,
12 Book 935, page 923, and it was so filed with Darlene
13 Rosprim, who is the county clerk, May 22nd of 2013 at
14 4:08 p.m.

15 Q. So you acquired this from the public records?

16 A. Yes, sir.

17 Q. And, again, this is a 2013 assignment, correct?

18 A. That is correct.

19 Q. And to your understanding, does this assignment
20 and bill of sale assign the Featherstone lease to MRC
21 Permian?

22 A. Yes, sir, it does.

23 Q. Was it your understanding that in noticing up
24 the Bear Trap well, that Delaware noticed Featherstone?

25 A. That is correct.

1 Q. Do you recall, with respect to the Bear Trap
2 lease, that Delaware had noticed up MRC Permian?

3 A. I noticed that they had not noticed MRC
4 Permian.

5 Q. In your opinion as an expert landman, should
6 they have noticed MRC Permian?

7 A. That is correct.

8 Q. In your opinion as an expert landman, as of
9 today, do they still owe MRC Permian notice as to the
10 Bear Trap application?

11 A. They do still owe notice.

12 Q. And is the Featherstone -- is Featherstone also
13 listed in the notice list of materials provided today by
14 Delaware with respect to the Giant Panda well?

15 A. I don't believe that Featherstone was listed --

16 Q. Let's see.

17 A. -- but let me double-check.

18 Q. I'm sorry. I must have been mistaken.

19 Let's do the same exercise with the third
20 and final well here today, the Grizzly well. Is
21 Featherstone listed on the Grizzly well?

22 MR. RANKIN: Just to assist the witness
23 here, you'll have to turn to E, actually, to get that
24 list.

25 MR. McMILLAN: Appreciate that.

1 THE WITNESS: Featherstone is listed.

2 Q. (BY MR. McMILLAN) Okay. In your opinion,
3 should Delaware be double-checking its work with respect
4 to their Grizzly notice as well?

5 A. Yes.

6 Q. In your overall opinion, is Midland Maps and
7 the related product that you already referred to, is it
8 a reliable tool for land work?

9 A. It's a reliable reference tool. However, it's
10 always wise to go to the county records and make sure
11 that Midland Map is correct whenever sending out notice
12 to parties.

13 Q. Is that your preferred process, actually
14 checking the county records?

15 A. Yes.

16 Q. Let's see. Have you been approached about an
17 easement across your property, the ranch property, for
18 purposes of these saltwater disposal wells?

19 A. No, I have not.

20 Q. To borrow a phrase from Mr. Craig, would you be
21 favorably disposed to granting an easement with respect
22 to the wells that are subject to applications here
23 today?

24 A. Not at this time.

25 MR. McMILLAN: That's all I have for this

1 witness. Thank you.

2 EXAMINER GOETZE: Ms. Callahan?

3 MS. CALLAHAN: I have no questions.

4 EXAMINER GOETZE: Mr. Craig, any questions?

5 MR. CRAIG: No questions.

6 EXAMINER GOETZE: Mr. Rankin, any

7 questions?

8 MR. RANKIN: A couple of questions.

9 CROSS-EXAMINATION

10 BY MR. RANKIN:

11 Q. Mr. Arnold, with respect to the two fee leases
12 that you identified in your testimony just now where
13 Featherstone was listed as the notice party, is it your
14 testimony that MRC is the correct leasehold operator for
15 those tracts?

16 A. Yes. However, it may be a little bit, you
17 know, ambiguous because that lease may have expired.

18 Q. Okay.

19 A. It is no longer in the primary term.

20 Q. Gotcha.

21 So which lease -- when you say "that
22 lease," you're talking about which one? Is it the same
23 lease for both?

24 A. There are actually three different leases, and
25 they were granted by the predecessors and titled to

1 Foundation Minerals, LLC, Mavros Minerals, LLC and Oak
2 Valley Mineral and Land, LP; Mineral Companies, short
3 for saying it every time. They were granted by Susan
4 Lorraine Smith Patterson Trust, Tom Moore, and the Wayne
5 and Jo Ann Moore Charitable Foundation.

6 Q. And I'm going to just shorten the entities you
7 are representing here today, and I'm just going to call
8 them the Foundation Group. Is that okay with you?

9 A. Yes, sir.

10 Q. With respect to the Foundation Group, does the
11 Foundation Group own the surface interest on any of the
12 well locations proposed by Delaware before the Division
13 today?

14 A. No, sir.

15 Q. Is the Foundation Group a leasehold operator in
16 the area -- one-mile area of any of the wells that
17 Delaware is proposing today?

18 A. If the minerals are unleased, then we would be
19 a leasehold operator.

20 Q. I guess what I'm asking is: Sitting here
21 today, can you testify one way or the other whether or
22 not Foundation Group is a leasehold operator within the
23 one-mile area of review for any of these wells?

24 A. We're not a leaseholder operator, but we have
25 correlative mineral rights in the area.

1 Q. Okay. So are you a lessee of record of an oil
2 and gas interest in any of the one-mile areas of review
3 surrounding the wells proposed by Delaware today?

4 A. Can you repeat the question?

5 Q. Are you a lessee of record of an oil and gas
6 lease --

7 A. And when you say lessee of record, what record
8 are you referring to?

9 Q. County record, record title.

10 A. Just the county record?

11 Q. Record title. Are you a record title owner of
12 a mineral lease?

13 A. No.

14 MR. RANKIN: No further questions.

15 EXAMINER GOETZE: And before we go on, your
16 Exhibit 9 --

17 MR. McMILLAN: Yes.

18 EXAMINER GOETZE: -- would you like to
19 enter it into the record?

20 MR. McMILLAN: Sure. That's a good idea.

21 At this time I would endeavor to move the
22 admission of Exhibit 9.

23 EXAMINER GOETZE: Okay. Featherstone
24 Exhibit 9, Ms. Callahan?

25 MS. CALLAHAN: No objection.

1 EXAMINER GOETZE: Mr. Craig?

2 MR. CRAIG: No objection.

3 EXAMINER GOETZE: Mr. Rankin?

4 MR. RANKIN: No objections.

5 EXAMINER GOETZE: Okay. We've entered

6 Featherstone Exhibit Number 9 into the record.

7 (Featherstone Exhibit Number 9 is offered
8 and admitted into evidence.)

9 EXAMINER GOETZE: Mr. Brooks?

10 EXAMINER BROOKS: As I recall,
11 Mr. McMillan's announcement at the beginning of the case
12 is that he was appearing for Foundation Minerals; is
13 that correct?

14 MR. McMILLAN: Yes.

15 EXAMINER BROOKS: Okay. Well, of course,
16 for yourself, you can't really complain of not having
17 notice in a proceeding in which you appear, but the
18 question of other people's rights to notice still
19 exists.

20 MR. RANKIN: Mr. Examiner, my intention is
21 to raise an objection to the participation and testimony
22 of each of the parties in this case on the basis that
23 none of them are -- well, first of all, they're not the
24 Applicant. Number two, they are not a leasehold
25 operator in the area of review. And number three,

1 they're not a lessee of record that's in the area of
2 review. And number four, they are not a -- they did not
3 file a notice of intervention to appear in the case to
4 plead their -- to plead their complaints.

5 And so on that basis, under the Division
6 rules, not only after apprising them of the fact that
7 they haven't filed a notice of intervention with my
8 motion last week, they still have not sought to do so
9 sitting here today. And so, you know, my -- the point
10 of all that is to say that their objections on behalf of
11 other entities I think are misplaced. I'm not sure that
12 they have standing to make those complaints. Be that as
13 it may, you know, if the Division is concerned about
14 notice to those parties, Delaware works a lot with MRC
15 Permian and the Matador entity, and I would ask that
16 they would look to see if they can get a notice waiver
17 from that company with respect to those two leases --
18 fee leases that intersect with their areas of review of
19 the two cases, the Bear Trap and the Grizzly.

20 Now, I understand that both Mr. McMillan
21 and Ms. Callahan are interested in responding to my
22 motion to dismiss on those grounds, and I have no
23 problem with them having some reasonable time to
24 write -- prepare a written motion in response.

25 With respect to Mr. Craig, I have the

1 same -- I'd like to make the same motion orally, and
2 with respect to Mr. McMillan's clients as well, I would
3 make that same motion orally, to dismiss them from the
4 proceeding on the basis that they didn't have standing
5 and didn't file a notice of intervention, and they
6 weren't a party entitled -- they weren't a party under
7 the Division's rules.

8 So with that, you know, I just want to make
9 that clear, that we intend to make that motion to the
10 Division.

11 EXAMINER BROOKS: Okay.

12 MR. McMILLAN: If may I respond just
13 briefly?

14 EXAMINER BROOKS: You want to respond now,
15 or you can respond later.

16 MR. McMILLAN: I'm sorry. I'm not hearing
17 you well.

18 EXAMINER BROOKS: You can respond later,
19 and there is no ruling before either of the examiners
20 that's going to be made immediately, so perhaps --

21 MR. McMILLAN: Sure. Sure. May I,
22 however, make another motion that's not going to be
23 ruled upon immediately?

24 (Laughter.)

25 EXAMINER BROOKS: You bet.

1 MR. McMILLAN: As long as we're making
2 speaking motions here, to the extent that it would cure
3 Delaware's concerns about -- at least my clients'
4 participation here, I would move for intervention
5 retroactive back to earlier today.

6 EXAMINER BROOKS: Okay. I understand his
7 point is that you did not file a notice of intervention.

8 MR. McMILLAN: That is true.

9 EXAMINER BROOKS: So, of course, you can
10 file an untimely motion for intervention --

11 MR. McMILLAN: We're doing that in this
12 case.

13 EXAMINER BROOKS: -- at any time. And if
14 you file such a motion, Mr. Rankin will probably move to
15 strike it, and then we'll have issue joined.

16 MR. RANKIN: Yeah. I think there will be
17 some paper back and forth. And I don't begrudge
18 Mr. McMillan requesting the time to respond at all. And
19 we would like a reasonable time to supply a reply.

20 EXAMINER BROOKS: Well, you might also want
21 to consider the situation that the Applicant is in in
22 applying for a permit if the record affirmatively shows
23 that Applicant has not given notice to every person
24 required to be noticed by the Division's rules.

25 MR. RANKIN: I understand, Mr. Examiner.

1 Of course, the Division -- and we are concerned about
2 missing a notice party, so we will ask that this case be
3 kept open so that we can confirm with the other -- with
4 the potential notice party whether or not they actually
5 are the leasehold operator for that tract -- those two
6 tracts and, if so, endeavor to obtain a waiver from them
7 for the notice issue.

8 EXAMINER BROOKS: Okay.

9 MR. RANKIN: So that's my intent to deal
10 with the notice concerns.

11 But as to the right of these parties to
12 appear and raise these issues and present this
13 testimony, you know, our position remains, our
14 objections remain that they have not filed a timely
15 notice of intervention. They have not established a
16 basis for standing, and they have not done any of the
17 other procedural requirements to enter an appearance and
18 make their objections to our application.

19 So Mr. McMillan and Ms. Callahan and
20 Mr. Craig, I think -- I'm sure will file a response, and
21 we just would like the opportunity to reply with a
22 written brief.

23 EXAMINER BROOKS: Well, I think given the
24 hour, that that would be -- written submissions would be
25 entirely appropriate.

1 EXAMINER GOETZE: Oh, yeah, I agree.

2 (Laughter.)

3 EXAMINER GOETZE: But where do we draw the
4 line as to a time period?

5 EXAMINER BROOKS: We're going to have to do
6 that, but I'm not sure we finished -- that was my only
7 question, so --

8 MS. CALLAHAN: Before we kind of conclude
9 this aspect of the hearing, I would also like to submit
10 an oral motion to intervene in all of these cases on
11 behalf of 3Bear.

12 MR. CRAIG: I guess I will, too, since
13 nobody filed a motion to dismiss me except orally, so I
14 will orally respond and say I want to intervene.

15 EXAMINER BROOKS: Well, the rules require
16 that if you are not a party entitled to notice, you must
17 file a motion to intervene. Now, if you're a party
18 entitled to notice, then you're a party and you don't
19 have to file a notice of intervention. Notice of
20 intervention is due one day before the pre-hearing
21 statement. And I don't know if there are any cases in
22 which that rule has been enforced, but the only two
23 cases in which I was representing the Division before
24 the Commission and I filed a notice of intervention, I
25 was given permission to intervene late. So that's the

1 precedent that I'm aware of (laughter).

2 MR. McMILLAN: Great.

3 EXAMINER GOETZE: At this point, before we
4 go any further, I have no questions for this witness.
5 And so --

6 MR. RANKIN: Yeah. I've asked my
7 questions.

8 EXAMINER GOETZE: Okay. Very good.
9 You're done for the day. Thank you.

10 THE WITNESS: Thank you.

11 EXAMINER GOETZE: Now it's lawyer talk.

12 MR. RANKIN: I could bring up a witness to
13 rebut a few points, but I don't know that it's
14 necessary. I'm happy to address those issues in
15 closing. If you would be willing to accept a short
16 closing statement from each of the counsel to address
17 any concerns just to wrap up or summarize, I'm happy to
18 handle it that way.

19 EXAMINER GOETZE: I've got all night.

20 MR. RANKIN: Well, in that case, I will
21 just call, you know, Mr. Goss as a rebuttal witness to
22 cover a couple of topics, if that's okay with
23 Mr. Examiner, since it's after 5:00.

24 EXAMINER GOETZE: Well, if it's small talk,
25 let's go ahead. If we're going to get extravagant,

1 then -- I'd like to avoid the paper and keep, basically,
2 items regarding the cases and the C-108 done, and then
3 we can get into these motions about standing and
4 intervention as a separate item.

5 JASON S. GOSS,

6 after having been previously sworn under oath, was
7 re-called and questioned and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. RANKIN:

10 Q. Mr. Goss, you were previously sworn and you're
11 still under the obligation to tell the truth. Do you
12 understand that?

13 A. I understand.

14 Q. Now, there were a few items that came up from
15 the testimony from the witnesses from the objectors.
16 Were you the present for all their testimony today?

17 A. I was.

18 Q. I just want to review your -- first, your
19 understanding of what Delaware's plans are for designing
20 and constructing its well pads and how will you approach
21 that in light of Mr. Davis' and Ms. Ogden's concerns
22 regarding the potential impacts to the Black River and
23 the mussel?

24 A. From what we understand with our agreements
25 with the State Land Office, we will conduct ourselves

1 under the best practices guidelines that they have now
2 set up with Mr. Ramey. And I've spoken to Mr. Ramey and
3 met with him and looked at all the sites of where the
4 mussel habitat is. And we've even asked Mr. Ramey to
5 review our sites once we are complete.

6 Q. So he's going to be evaluating the design and
7 construction of your proposed sites to determine whether
8 or not they meet best practice guidelines for the
9 hornshell issue --

10 A. That's correct.

11 Q. -- hornshell mussel issue?

12 Is Delaware going to be operating any
13 trucks to haul water either to or from your wells that
14 you're proposing here?

15 A. We will not.

16 Q. I'm just going to circulate a map that was
17 prepared by Delaware. As soon as I get back, I'll ask
18 you a couple of questions about it.

19 Mr. Goss, are you familiar with this
20 exhibit that I've just passed out? And I'd ask that it
21 be marked as Delaware Exhibit Number 5.

22 A. I'm aware of it.

23 Q. Will you review for the examiners what this
24 shows?

25 A. It is a distance in miles between where we

1 believe the proposed Foundation Minerals #1 is and the
2 proposed Delaware Energy wells.

3 Q. What is your understanding of the location of
4 the proposed Foundation Minerals SWD #1 well?

5 A. From what we understand, even though we don't
6 have a C-108, I believe it's near the center of Section
7 4 of 24-27.

8 Q. Is that based on the C-101, C-102 that was
9 provided to your counsel from 3Bear's counsel that I
10 forwarded to you?

11 A. That is correct.

12 Q. Okay. Now, that distance between -- what's the
13 distance approximately between Foundation Minerals SWD
14 #1 proposed well and the Bear Trap SWD #1 well?

15 A. 1.2 miles.

16 Q. And how about between the Foundation Minerals
17 well and the Grizzly SWD #1 well?

18 A. 2.7 miles.

19 Q. And how about between the Foundation Minerals
20 SWD #1 well and the Giant Panda SWD #1 well?

21 A. 2.4 miles.

22 Q. And those are -- and these locations for
23 Delaware's wells are the updated locations that are the
24 current existing proposal locations under the C-108s
25 that we just presented today?

1 A. That's correct.

2 MR. RANKIN: I'm going to pass around one
3 more map just to review with you. I've marked this as
4 Delaware Exhibit Number 6.

5 Q. (BY MR. RANKIN) Mr. Goss, have you seen this
6 map before?

7 A. I have.

8 Q. And what does it show?

9 A. It shows the distances between the three
10 proposed wells and Mr. Davis' surface in Section 8 and
11 Mrs. Ogden's fee surface in Section 8 as well.

12 Q. Okay. And it also actually shows the Kodiak
13 well which was dismissed from these proceedings; is that
14 right?

15 A. That's correct.

16 Q. So just looking at the three wells that are
17 currently pending, starting at the Bear Trap, towards
18 the top of that well, what are the distances from the
19 Bear Trap to Ms. Ogden's fee and to the Davis' fee?

20 A. To Ms. Ogden's 80-acre tract, it's 1.91 miles.
21 To Mr. Davis' fee surface, it's 2.22 miles.

22 Q. And based on your understanding from the
23 testimony you heard today, is the Bear Trap SWD #1
24 well -- is it essentially downgradient or downstream
25 from the properties that are owned by the Ogdens and the

1 **Davises?**

2 A. It is.

3 **Q. And tell me about the Grizzly SWD well.**

4 A. The Grizzly is 2.91 miles from Mrs. Ogden's fee
5 surface in 8 and 2.82 miles from Mr. Davis' fee surface
6 in Section 8.

7 **Q. And that location is -- again, it's**
8 **downgradient or downstream on the Black River relative**
9 **to the Ogdens' and Davises' fee property; is that**
10 **correct?**

11 A. That's correct.

12 **Q. And how about the -- I guess the name of that**
13 **other well on the bottom of the map is cut off.**

14 A. That's the Giant Panda.

15 **Q. That's the Giant Panda well?**

16 A. Yeah. Yeah. The Giant Panda is 1.48 miles
17 from Mrs. Ogden's surface and .81 miles from Mr. Davis'
18 surface.

19 **Q. And now real quickly, I think I heard -- did**
20 **you hear Mr. Davis' testimony on his estimate for how**
21 **many trucks Delaware would be running to its locations?**

22 A. I did.

23 **Q. What was your understanding of what his**
24 **testimony was?**

25 A. That was too high.

1 Q. Do you understand -- do you remember what
2 number it was that he was saying?

3 A. I think he testified to 190.

4 Q. Okay. And you're saying that's too high. In
5 your operational experience, how many trucks -- if you
6 were just operating on trucks --

7 A. Right.

8 Q. -- how many trucks would you be seeing?

9 A. Just trucks, we're averaging just over 100.

10 Q. Okay. And now are you intending to operate
11 with trucks at these sites?

12 A. No. My guess would be trucks would be very
13 limited. In the next -- in the next six months, we
14 should have virtually -- only trucks would be for
15 flowbacks that we have contacted to take, so very
16 minimal trucks.

17 Q. And why is it that you say you expect to use
18 fewer trucks than even what Mr. Davis was suggesting?

19 A. Because the majority of the water will then
20 become -- will be sourced from operator pipelines.

21 Q. So you're working with operators to -- under
22 contract to construct pipelines to deliver produced
23 water to your wells for disposal?

24 A. Almost all of the major operators out there,
25 yes.

1 Q. Now, just real quick --

2 MR. RANKIN: These visuals are worth a
3 thousand words, Mr. Brooks.

4 Q. (BY MR. RANKIN) I'm presenting you with what's
5 been marked as Delaware Exhibit Number 7. Are you
6 familiar with what this map shows?

7 A. I am.

8 Q. Did you prepare this map?

9 A. I created it. Yes, sir.

10 Q. What does it show?

11 A. It shows Delaware Energy's current active wells
12 in 24-28 and 24-26. There is another well that's just
13 off the map that's not on here, the Iceman, that
14 Mrs. Ogden referred to, but it also shows the three
15 proposed wells and the Kodiak well also.

16 Q. Which are the proposed wells and which are the
17 wells that you currently operate?

18 A. The wells we currently operate are in red
19 stars, and the proposed wells that we're here today
20 about are the yellow wells.

21 Q. So Delaware has a significant presence in this
22 corridor along the Black River. Is that fair to say?

23 A. We do.

24 Q. And you've planned to -- have you planned to
25 develop this whole area for some time with injection

1 wells?

2 A. Absolutely.

3 Q. Now, I'll note that your wells are not the
4 closest wells to the Black River. Is that a fair
5 statement?

6 A. No. There are literally hundreds of producing
7 wells closer than ours.

8 Q. Those producing wells are producing the types
9 of hydrocarbons that potentially leak into the river,
10 and they're closer to the river than your proposed
11 produced injection well. Is that fair to say?

12 A. That is correct.

13 Q. And are you familiar with the well pad
14 construction for these producing wells that are closer
15 to the river than your proposed wells?

16 A. I am. I've drilled many wells in these
17 townships.

18 Q. Tell me about how your well pad designs are
19 going to be different -- are they going to be different
20 from those producing wells?

21 A. They will. The wells that we've talked with
22 the State Land Office about will have a berm around the
23 entire well pad, along with everything else that we
24 talked about today as far as security and environmental
25 containment.

1 **Q. Having the sump at the off-load area?**

2 A. That's right.

3 **Q. Tell me again what that was.**

4 A. So we have a sump at the off-load where the
5 trucks off-load. We also have a sump inside the
6 containment. The containment around the tank battery is
7 a 2-foot steel wall. The entire inside of the steel
8 wall is polylined. And then we have 24-hour
9 surveillance with our pumpers and our supervision, along
10 with all the cameras, usually -- at least six to eight
11 cameras at every site that are operating 24/7, and we
12 can move them around remotely. Also, every bit -- every
13 single aspect of the tank battery has an alarm and
14 call-out for the alarm. But we have 24-hour supervision
15 as well, so that really shouldn't matter.

16 **Q. So Ms. Ogden's -- do you remember Ms. Ogden's**
17 **testimony about the Iceman well that's on her -- I think**
18 **it's a -- is it a federal grazing lease or state?**

19 A. It's state.

20 **Q. State grazing lease.**

21 A. Uh-huh.

22 **Q. Is the well pad design that you're proposing**
23 **for these wells today, are they going to be -- is it**
24 **going to be similar, or how are they going to be**
25 **different than the well pad for the Iceman?**

1 A. So what I just talked about. Our standard
2 environmental safety features will also be present at
3 these sites, but the Iceman does not have a berm around
4 the entire site.

5 Q. So in addition to the berm, you're also working
6 with Mr. Ramey to identify any other stipulations
7 regarding the construction of the well pad that might be
8 suggested based on the CCA/A; is that correct?

9 A. That's correct. That's what came out of our
10 meeting with the State Land Commissioner and his staff.

11 Q. Okay. So those will be implemented, and those
12 will make -- your proposed wells will be considered
13 different than the Iceman on Ms. Ogden's state grazing
14 lease?

15 A. That is correct.

16 Q. Mr. Goss, Mr. Arnold raised an issue regarding
17 notice -- sufficiency of notice to the fee lease in two
18 of these cases, the Giant Panda and the Grizzly. How is
19 Delaware going to address that concern?

20 A. Well, we work a lot with Matador Resources and
21 their midstream company, San Mateo. We had a long
22 meeting with them last week. I don't foresee it being a
23 problem with the waiver.

24 Q. So you'll approach them and discuss this
25 issue --

1 A. That's correct.

2 Q. -- and let them know that you filed these
3 applications and let them know that you had a hearing,
4 and if they have any issues, they can address them with
5 the Division?

6 A. That's correct.

7 MR. RANKIN: No further questions,
8 Mr. Examiner. I'll pass the witness.

9 First, I would like to enter for the
10 record --

11 Q. (BY MR. RANKIN) Mr. Goss, were the exhibits, 5,
12 6 and 7, generated or created using existing -- using
13 Delaware's business records, and did you oversee their
14 preparations?

15 A. That's correct.

16 MR. RANKIN: Mr. Examiner, I would move to
17 admit Exhibits 5, 6 and 7 into the record.

18 EXAMINER GOETZE: Mr. Craig?

19 MR. CRAIG: I don't have any objection to 5
20 and 6. I'm not sure about 7. I might need to voir dire
21 the witness just a little on that one.

22 EXAMINER GOETZE: Mr. McMillan?

23 MR. McMILLAN: No objection to 5, 6 and 7.
24 I'd object only to the extent that they show the Kodiak
25 locations that aren't relevant to today's proceedings,

1 but otherwise, fine.

2 EXAMINER GOETZE: We could have him draw a
3 line through the Kodiak.

4 MR. McMILLAN: Yeah, please do. Could we
5 get some Wite-Out?

6 EXAMINER GOETZE: Ms. Callahan?

7 MS. CALLAHAN: Same objection that
8 Mr. McMillan made, but I have no objection to these
9 exhibits.

10 EXAMINER GOETZE: Mr. Craig --

11 MR. CRAIG: Yes, sir.

12 EXAMINER GOETZE: -- on Number 7?

13 MR. CRAIG: I'm not sure exactly what this
14 is purporting to show, all these dots.

15 THE WITNESS: This is a map from the
16 OCD-generated GIS. So the red dots are plugged wells.
17 The black dots are active. The blue are drilled, not
18 completed, and the gray are canceled APDs that have not
19 been drilled yet or could be still in limbo.

20 VOIR DIRE EXAMINATION

21 BY MR. CRAIG:

22 Q. And all the information was from the OCD
23 website?

24 A. That's correct. This is a screenshot.

25 Q. It's a screenshot.

1 **Okay. You don't have any personal**
2 **knowledge of most of these wells, do you?**

3 A. A lot of them in this area. I drilled many of
4 them. We were working with a lot of the operators on
5 all these wells. I have a lot of knowledge about all
6 the wells around. I'm in this area a lot.

7 **Q. Could you pick out -- if I went through every**
8 **well on here, could you tell me about every well on**
9 **here?**

10 A. I could not.

11 EXAMINER BROOKS: We would prefer that you
12 didn't do that.

13 (Laughter.)

14 MR. CRAIG: We would object to Number 7.
15 And, further, I don't see how it's relevant.

16 MR. RANKIN: Well, Mr. Examiner,
17 Mr. Craig's witnesses testified that they had concerns
18 about the proximity of these produced water wells to the
19 Black River and to the mussel habitat. This exhibit
20 demonstrates, using the OCD's own database, with its own
21 location for wells, existing or proposed or canceled,
22 that there are numerous wells that are operating much
23 closer to the habitat, within the habitat and to the
24 Black River producing, you know, hydrocarbons than any
25 of the proposed injection wells by Delaware. So the

1 point is just to make that these are further removed
2 from their concerns than even active producing wells.

3 EXAMINER BROOKS: Okay. I'm going to
4 overrule the objection except as to the Kodiak, and
5 subject to the correction of the Kodiak, the exhibits
6 will all be admitted.

7 MR. RANKIN: So how do we -- do you want to
8 note for the record that the Kodiak is --

9 EXAMINER BROOKS: I think that's
10 sufficient.

11 EXAMINER GOETZE: We'll disregard its
12 location. I think we've pretty much established that.

13 So we're going to enter Exhibits 5, 6 and 7
14 into the record.

15 MR. RANKIN: For all three cases.

16 EXAMINER GOETZE: For each case.

17 MR. RANKIN: Thank you, Mr. Examiner.

18 (Delaware Energy, LLC Exhibit Numbers 5, 6
19 and 7 are offered and admitted into
20 evidence.)

21 EXAMINER GOETZE: So now, Mr. Craig --

22 MR. CRAIG: Yes, sir.

23 EXAMINER GOETZE: -- you have the
24 opportunity to --

25

1 CROSS-EXAMINATION

2 BY MR. CRAIG:

3 Q. Okay. On Number 7, how many of these wells
4 were drilled before the mussel was declared as an
5 endangered species?

6 A. That, I can't tell you.

7 Q. So how many of these produced -- what's the
8 volume of produced water from each one of these wells?

9 A. Well, it depends on if it's a horizontal or a
10 vertical. A horizontal well, total volume of fluid --
11 and it depends on the length of the lateral. A two-mile
12 well could be upwards, initially, of 5- to 6,000. A
13 mile well, 3- or 4,000 barrels of total fluid.

14 Q. How many of these are horizontal wells?

15 A. You cannot tell by the picture unless you zoom
16 in farther, but I would say -- just an estimate would be
17 half.

18 Q. And how many -- and -- so you can't tell us
19 which wells are horizontal for sure?

20 A. No. This just depicts the surface location of
21 the wellbores.

22 Q. Okay. And you can't tell us the amount of
23 water produced from each well?

24 A. Not from the map. We could if we researched it
25 through the OCD database. It would take about 30

1 seconds a well.

2 Q. And how many of these wells were drilled before
3 the mussel was an endangered species?

4 A. I'd say a vast majority. This came up within
5 the last -- I can't testify to when the CCA was enacted,
6 but it was in the last 18 months, I would say. So I
7 would say a vast majority of these wells were drilled
8 before that.

9 Q. And the quality or the amount of produced water
10 would be substantially different from just a straight
11 ol' up-and-down well as opposed to a horizontal well,
12 right?

13 A. Yeah. They're not really being drilled either.

14 Q. Well, they used to be.

15 A. Yeah. No one is drilling gas wells, so it's
16 almost all horizontals and disposals now.

17 Q. Right. But that's a fairly recent development,
18 within the last three or four years?

19 A. Well, the Bone Spring play was big until the
20 downturn of '14, and then within the last 24 months, the
21 Wolfcamp is what you see here.

22 Q. Now, the Iceman that you were talking about, it
23 doesn't have berms, correct?

24 A. It does not.

25 Q. It doesn't have protection from leaks down like

1 on the ground? Like if a truck had a spill, there is
2 nothing --

3 A. Yes, it does. It has a sump on the off-load.
4 There is a concrete pad that extends about 8 feet in
5 each direction where the off-load is, and if there is
6 any splashing from when they hook up, it goes in the
7 sump -- it goes into the sump, and then the sump pumps
8 it back into the system.

9 Q. Do you have that annulus deal on that one?

10 A. Oh, absolutely. Yeah, every well -- that's the
11 most regulated part of the well.

12 Q. And then you have TV cameras?

13 A. Absolutely.

14 Q. So basically the only thing you don't have is
15 berms?

16 A. That's correct.

17 Q. And have you had any problems with that well?

18 A. Absolutely none. It's been in operation for
19 about six months.

20 Q. Just normal problems about people not picking
21 up what they're supposed to out there?

22 A. Yeah. I don't say that -- that can't be
23 attributed to us. I mean, Old Cavern Highway is a very
24 busy road and stuff comes out of the back of trucks all
25 the time. We have two trash trailers there at all

1 times, and we dump them every week. So it stays very
2 clean. And our superintendent works very closely with
3 Ms. Ogden. If she has any concerns, she raises them,
4 and we fix it. So --

5 MR. CRAIG: That's all I have.

6 EXAMINER GOETZE: Mr. McMillan?

7 MR. McMILLAN: Yes. Just a couple of quick
8 questions.

9 CROSS-EXAMINATION

10 BY MR. McMILLAN:

11 Q. You testified, sir, to contracting with
12 operators for their water. Do you currently have
13 contracts in place with any operators?

14 A. We do.

15 Q. With whom?

16 MR. RANKIN: Are you free to say?

17 MR. McMILLAN: If you're not --

18 THE WITNESS: I would rather not disclose.
19 We are binded by those nondisclosures. We can't give
20 out the terms.

21 Q. (BY MR. McMILLAN) That's fine. That's fine.

22 A. Okay.

23 Q. But you do represent that you do have contracts
24 in place?

25 A. Absolutely.

1 Q. And are those intended to be -- is that water
2 trucked to the locations or via pipeline?

3 A. Both. We're taking -- we're working on -- we
4 have pipelines in place from operators. We have
5 pipelines in work. We have right-of-ways in work. And
6 then where they have flowbacks that they don't want to
7 go back into their facilities, we'll take it by truck.
8 But I'd say both.

9 Q. And on Exhibit 7, which of the many lines
10 represents the actual river that is supposed to be the
11 reference point here?

12 A. So since Black River Village Road traverses
13 mostly the river in 24-27, you can see the line that is
14 the road. That gives you a general idea of where the
15 river is. In 24-28, it follows the river and then turns
16 north a little bit and goes just north of Malaga.

17 Q. But in any event, none of these existing lines
18 on this map show the actual river course, correct?

19 A. They don't.

20 Q. Okay.

21 MR. McMILLAN: That's all I have.

22 EXAMINER GOETZE: Ms. Callahan?

23 MS. CALLAHAN: I have no questions.

24 EXAMINER GOETZE: I have no questions of
25 this witness.

1 EXAMINER BROOKS: Nor do I.

2 EXAMINER GOETZE: Are we done?

3 MR. RANKIN: I think so, Mr. Examiner.

4 We ask that -- that counsel be given an
5 opportunity to submit closing statements just to
6 summarize. If it's helpful to you, I'm happy to do
7 that.

8 And I guess we should set time frames for
9 responses to the motions to dismiss, and I'm happy to
10 work with counsel on whatever time they think is
11 reasonable to get those responses in.

12 EXAMINER GOETZE: Well, let's set up a
13 temporary date.

14 MR. McMILLAN: Sometime in June?

15 (Laughter.)

16 EXAMINER GOETZE: I'd like that, but that's
17 not our choice.

18 MR. McMILLAN: Me, too.

19 EXAMINER GOETZE: We do see that we have a
20 holiday next week and the week after. We'd like to have
21 things submitted by December 7th, Pearl Harbor Day.

22 EXAMINER BROOKS: Yes. It's a day that
23 will live in infamy, but it works.

24 EXAMINER GOETZE: So let's go with both
25 documents, your closing statements and a motion to

1 intervene and motion to dismiss. Let's have your
2 statements on that. Let's aim for Friday, December 7th.

3 MR. CRAIG: Or sooner.

4 EXAMINER GOETZE: Yes, you can. We don't
5 grade you down if you bring it in sooner, but we also
6 want to give you the option, considering the lengthy
7 document provided to us for dismissal. We'll have time
8 to reconsider and look at and delve into it. So let's
9 go ahead with that.

10 MR. McMILLAN: Can I -- I'm sorry. Can I
11 ask for one adjustment?

12 EXAMINER GOETZE: What do you want?

13 MR. McMILLAN: If I don't get some CLE
14 credits, I'm going to get disbarred. I'll be at the
15 Rocky Mountain Mineral Law Foundation on the 6th and
16 7th. Can we maybe push it to Monday, the 9th?

17 EXAMINER GOETZE: How about Monday, the
18 10th.

19 MR. McMILLAN: Yeah. That's even better.
20 Thank you.

21 (Laughter.)

22 EXAMINER GOETZE: Let us go to December
23 10th.

24 And how do you we handle this as far as
25 taking it under advisement? Do we continue?

1 EXAMINER BROOKS: Well, I believe there was
2 some statement made that we could keep this matter open
3 to see if they could get waivers as to specifically MRC
4 Permian, but if they found other people they haven't
5 noticed, maybe that might be relevant. For that reason,
6 we should probably not take it under advisement, but
7 reset it for notice purposes to a certain date. And
8 then if they don't find anybody else they want to
9 notice, then we can take it under advisement.

10 It's really more important, I think, for
11 the Applicant to make sure everybody's noticed than
12 anybody else because the Uhden case says that an order
13 of the OCD is invalid or void as to anybody who was
14 entitled to notice and did not receive it. Of course,
15 that doesn't include somebody who appeared, so it
16 wouldn't include Foundation, even it were shown that
17 they were entitled to notice, which I'm not taking a
18 position, obviously. But we want to give Mr. Rankin a
19 chance to get his notices in order if he needs that.

20 EXAMINER GOETZE: Well, we still have one
21 more -- do we have one more hearing? I've lost track.

22 EXAMINER BROOKS: I'm sure we do have one
23 more hearing this year. We have two more, because we
24 have one day after tomorrow.

25 EXAMINER GOETZE: Let me check.

1 EXAMINER BROOKS: I'm sure we're not going
2 to go a whole month without a hearing.

3 MR. RANKIN: On the regular docket, I
4 think --

5 EXAMINER GOETZE: We're taking bets, so --
6 We have several things going on at the same
7 time, so yeah. So based upon our original notice in
8 2017, we still have a date of December the 6th and
9 December the 20th.

10 Shall we say December the 20th? Let's
11 continue it there? And that way we can take it under
12 advisement once everything's in and you've had proper
13 notice, plus the additional information I requested.

14 MS. CALLAHAN: Mr. Examiner, I will not be
15 available on the 20th.

16 EXAMINER GOETZE: We're just holding it.

17 MS. CALLAHAN: We're not going to argue?
18 We're just going to submit our responses, and you're
19 going to decide on the --

20 EXAMINER BROOKS: The only event in which
21 we would have a hearing is if they notice some
22 additional people and those people actually appear and
23 want to be heard, and that doesn't happen very often.

24 MS. CALLAHAN: Okay.

25 EXAMINER GOETZE: We still want to be able

1 to offer that opportunity.

2 So with no further outbursts --

3 (Laughter.)

4 EXAMINER GOETZE: -- we have decided we
5 have closing statements and response to dismissal and
6 additional notice and the information I requested.

7 With that, we will go with continuing Cases
8 16258, 16259, 16260, and we will take those three cases
9 to the December 20th docket to hold them in place.

10 And I will go ahead and move forward with
11 16261, which is our Kodiak, which we are not going to --

12 EXAMINER BROOKS: Right. That'll be
13 dismissed.

14 MR. RANKIN: I have a question, I guess, on
15 that just to be clear. I understand that the Division
16 ruled on that matter based on a motion from one of the
17 objectors. And I guess my question is whether or not
18 they had --

19 EXAMINER BROOKS: I thought you moved to
20 dismiss it.

21 MR. RANKIN: No. No. I asked to continue
22 it. I didn't want to dismiss it at all. Matter of
23 fact, I think it's highly prejudicial and unfair for it
24 to be dismissed in light of what happened at the State
25 Land Office. So I'm going to ask the Division to

1 reconsider. If that's, you know, the position, to
2 reconsider.

3 EXAMINER BROOKS: You can always refile.

4 MR. RANKIN: Well, we can, and there are
5 other factors.

6 EXAMINER BROOKS: There is a rumor around
7 that there's a first in time, first in right principle
8 that applies to SWD permits. That is not in the rule,
9 and equitable considerations are by any means ruled out.

10 MR. RANKIN: I understand. I appreciate
11 that, Mr. Brooks. So we definitely have that in mind.

12 But with that, I just want to raise that
13 issue with you because that is a factor. So if the
14 parties -- or the objectors are deemed to be not
15 permitted to participate, my question is whether or not
16 that motion to dismiss that case should be, you know --

17 EXAMINER GOETZE: We can get into a heavy
18 argument. I mean, we're moving it a mile and a half,
19 and so --

20 MR. RANKIN: Yeah. Yeah.

21 EXAMINER GOETZE: Even under the
22 administrative process, the moving of the well has been
23 considered based upon some sort of circumstances with
24 regards to a surface location. But the tendency is when
25 we receive that application -- we move it 500 feet, we

1 move it 100 feet -- in most cases, the notice
 2 requirements are minimal. You are moving it outside of
 3 the area of review. And so what do you have from this
 4 application that you can carry over other than the
 5 actual well design maybe? And that might not even be
 6 accurate, too, based on how close you're coming to the
 7 reef. So we understand the effort that went into it,
 8 but we also have to draw a line at some point and say,
 9 "Let's go through the administrative process again."

10 EXAMINER BROOKS: I think it's a different
 11 case.

12 MR. RANKIN: I understand. So I guess I'll
 13 take that as a sua sponte dismissal.

14 EXAMINER GOETZE: That is what you'll see.
 15 And it will probably be signed by this director, so look
 16 on the bright side.

17 MR. RANKIN: Yup. Thank you very much.

18 EXAMINER GOETZE: Other than that, this is
 19 the end of this hearing, and we've continued it on to
 20 the December 20th for any consideration. You-all have
 21 your deadlines. Give us a call if you have anything.
 22 And for each party, circulate copies of whatever you
 23 filed. All right?

24 MR. McMILLAN: (Indicating.)

25 MR. RANKIN: Yes, sir.

1 EXAMINER GOETZE: All right. Let's go
2 home.

3 MR. McMILLAN: Thank you.

4 MS. CALLAHAN: Thank you.

5 EXAMINER GOETZE: Thank you for coming.

6 (Case Numbers 16258, 16259 and 16260

7 conclude, 5:46 p.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither
17 employed by nor related to any of the parties or
18 attorneys in this case and that I have no interest in
19 the final disposition of this case.

20 DATED THIS 2nd day of December 2018.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2018
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