

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 MARATHON OIL PERMIAN, CASE NOS. 20220,
LLC FOR COMPULSORY POOLING, LEA COUNTY, 20221
NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

February 7, 2019

Santa Fe, New Mexico

BEFORE: SCOTT DAWSON, CHIEF EXAMINER
KATHLEEN MURPHY, TECHNICAL EXAMINER
TERRY WARNELL, TECHNICAL EXAMINER
DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the New Mexico Oil Conservation Division, Scott Dawson, Chief Examiner; Kathleen Murphy and Terry Warnell, Technical Examiners; and David K. Brooks, Legal Examiner, on Thursday, February 7, 2019, 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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31	Numbers 1 through 4	(Attached)

1

(1:40 p.m.)

2

EXAMINER DAWSON: So the next cases --

3

which I'm assuming these two are going to be

4

consolidated.

5

MS. BENNETT: Yes, they are.

6

EXAMINER DAWSON: The next cases, the final

7

two cases for the day, are Case Number 20220 and Case

8

Number 20221. They're both applications of Marathon Oil

9

Permian, LLC for compulsory pooling, Lea County, New

10

Mexico, concerning the Will Kane 15 Fee 3H, 4H, 6H, 10H,

11

11H on Case Number 20220, and on Case Number 20221, the

12

Will Kane 15 TB Fee 7H.

13

Call for appearances, please.

14

MS. BENNETT: Good afternoon. My name is

15

Deana Bennett, and I'm here on behalf of the Applicant,

16

Marathon Oil Permian, LLC.

17

EXAMINER DAWSON: Any other appearances?

18

MS. ARNOLD: Dana Arnold on behalf of Tap

19

Rock Resources.

20

MR. McMILLAN: Seth McMillan on behalf of

21

Tap Rock.

22

EXAMINER DAWSON: Okay.

23

MR. BRUCE: Mr. Examiner, Jim Bruce. I'm

24

representing Roy Barton, Trustee of the Barton Trust. I

25

have no witnesses.

1 EXAMINER DAWSON: Okay.

2 MS. BENNETT: And if the examiners would
3 just allow me a moment to get my exhibits together? I'd
4 appreciate it. Just one second.

5 EXAMINER DAWSON: Okay.

6 MS. BENNETT: Thank you.

7 EXAMINER DAWSON: Do you have witnesses?

8 MS. BENNETT: Yes, I do.

9 EXAMINER DAWSON: At this time can we have
10 your witnesses stand, state their names for the record
11 and be sworn in by the court reporter?

12 MR. GYLLENBAND: Ryan Gyllenband.

13 THE WITNESS: Ethan Perry.

14 (Mr. Gyllenband and Mr. Perry sworn.)

15 EXAMINER DAWSON: Whenever you're ready,
16 Ms. Bennett.

17 MS. BENNETT: Thank you.

18 Before we get started, I did want to give a
19 brief introduction about why we are here today. We are
20 here today for these two cases in which Marathon seeks
21 to pool uncommitted mineral interest owners both within
22 a Wolfcamp unit and a Bone Spring unit. And Marathon
23 proposed these wells back in October, October 22nd,
24 2018, and between October 22nd, 2018 until very recently
25 hadn't heard of any concerns from Tap Rock. And when we

1 learned that Tap Rock might seek a continuance for this
2 case, that is when our landman, Mr. Ryan Gyllenband,
3 reached out to Tap Rock and offered to address their
4 concerns. And those conversations have led us to where
5 we are today and to the objection of Tap Rock, which, as
6 I understand it, is limited to and as they have
7 represented in their motion for continuance is limited
8 to whether Marathon negotiated in good faith with Tap
9 Rock.

10 And so that is the issue that brings us to
11 this contested hearing. Apart from that issue, there
12 are no other concerns that have been raised. So what I
13 have planned to do today is walk through the exhibits
14 with Mr. Gyllenband and also with Mr. Perry. And, of
15 course, if Ms. Arnold or Mr. McMillan have questions for
16 the witnesses, we are happy to have them answered, and,
17 of course, if you have any questions as well.

18 So with that, I'd like to start with my
19 questions for Mr. Gyllenband.

20 RYAN GYLLENBAND,
21 after having been previously sworn under oath, was
22 questioned and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. BENNETT:

25 Q. Please state your name for the record.

1 A. Ryan Gyllenband.

2 Q. And who do you work for and in what capacity?

3 A. I work for Marathon Oil as a landman.

4 Q. And what are your responsibilities as a landman
5 for Marathon?

6 A. Preparing wells for drilling, reviewing title,
7 leasing, JOA and contract negotiations.

8 Q. Have you previously testified before the
9 Division?

10 A. Yes.

11 Q. And were your credentials accepted as an
12 expert?

13 A. Yes.

14 Q. How long have you been a landman?

15 A. Just over eight years.

16 Q. And have you worked for companies other than
17 Marathon as a landman?

18 A. Yes. I worked for Matador Resources before
19 working for Marathon.

20 Q. Does your area of responsibility at Marathon
21 include the area of Lea County in New Mexico?

22 A. Yes.

23 Q. And are you familiar with the applications
24 filed by Marathon in these cases?

25 A. Yes.

1 **Q. Are you familiar with the status of the lands**
2 **that are the subject of these applications?**

3 A. Yes.

4 MS. BENNETT: With that, I'd like to tender
5 Mr. Gyllenband as an expert witness in land matters.

6 EXAMINER DAWSON: Any objections?

7 MR. BRUCE: No.

8 MS. ARNOLD: No.

9 EXAMINER DAWSON: Mr. Gyllenband will be
10 admitted to the record as an expert witness in land
11 management at this time.

12 MS. BENNETT: Thank you very much.

13 And so what I've handed to you-all is a
14 packet of exhibits, and it's the exhibits for both
15 cases, 20220 and 20221.

16 **Q. (BY MS. BENNETT) So if we could turn first to**
17 **Tab 1, Exhibit 1, Mr. Gyllenband, would you briefly**
18 **explain to the examiners what Marathon seeks in this**
19 **application for Case Number 20220?**

20 A. Marathon is seeking to pool all the uncommitted
21 interests in the east half of Section 15, Township 24
22 South, Range 34 East as to the Wolfcamp Oil Formation.

23 **Q. Thanks.**

24 And let's turn now to Exhibit Number 2, and
25 this is the application in Case 20221. Could you please

1 **tell the examiners what Marathon seeks in this**
2 **application?**

3 A. Marathon seeks to pool all the uncommitted
4 interests in the east half of Section 15, Township 24
5 South, Range 34 East as to the Bone Spring Formation.

6 **Q. Thank you very much.**

7 **Are there any depth severances in the**
8 **proposed spacing units?**

9 A. No.

10 **Q. Let's turn now to Exhibit Number 3 or Tab 3.**
11 **Could you explain what documents are contained behind**
12 **Tab 3?**

13 A. This is the C-102 -- C-102s for the wells in
14 question. This is just the plat of the wells that we're
15 proposing.

16 **Q. Has the Division identified a pool and pool**
17 **code for these wells?**

18 A. Yes.

19 **Q. And for the Wolfcamp wells, can you tell the**
20 **examiners what the pool and pool code is?**

21 A. It is the Antelope Ridge; Wolfcamp Pool, Pool
22 Code 2220.

23 **Q. And for the Bone Spring -- Bone Spring well,**
24 **can you let the examiners know what the pool and pool**
25 **code is?**

1 A. It's the Red Hills, North; Bone Spring Pool,
2 Pool Code 96434.

3 Q. And will the completed intervals for these
4 wells comply with the Division's rules and setback
5 requirements?

6 A. Yes.

7 Q. Let's turn to what's marked as Exhibit 4. And
8 Exhibit 4 has three pages, so let's start with the first
9 page of Exhibit 4. Could you explain what Exhibit 4 is
10 to the hearing examiners, please?

11 A. This first page is just showing an overview of
12 the tract that we're seeking to pool. It's labeled as
13 fee acreage. This is one tract of undivided interest,
14 so ownership is uniform throughout this tract.

15 Q. And it's uniform throughout the different
16 formations?

17 A. Correct.

18 Q. Let's turn to the next page of Exhibit 4.
19 Could you explain what the next page of Exhibit 4 is?

20 A. This is showing all of the committed working
21 interests and then the uncommitted working interests and
22 the unleased mineral interests that we're seeking to
23 pool with this application.

24 Q. And so Exhibit 4 shows the parties that you're
25 seeking to pool?

1 A. Yes.

2 Q. And I notice that there are a couple of --
3 there are some asterisks next to Marathon and Chevron.
4 Could you explain what the asterisks are for?

5 A. The asterisks are indicating the working
6 interest owners of several leases that are in jeopardy
7 of expiring in the near term. By the near term, I mean
8 before the end of July of 2019.

9 Q. And let's turn to the next page of Exhibit 4,
10 the final page. Can you explain to the examiners what
11 this final page of Exhibit 4 is?

12 A. This is a list of the current lessors under all
13 of the leases that potentially could expire, and we have
14 also given notice to all of these parties of this
15 hearing.

16 Q. And about how many people are on the list whose
17 interests could be in jeopardy?

18 A. I believe it's 26.

19 Q. Thanks.

20 Let's go ahead and turn to Exhibit 5 now,
21 please. Could you please explain to the examiners what
22 is on Exhibit 5?

23 A. This is a list of all the leases that are in
24 jeopardy of expiring. The reason there are less than
25 the number of people listed on the previous page is

1 because some of the interests have been divided up from
2 the initial point that the lease was taken either
3 through heirship or just someone assigning their
4 minerals to someone.

5 Q. And there are about -- I think we talked
6 about -- 15 leases?

7 A. There are about 15 leases. Yes.

8 Q. Let's turn now to Exhibit 6, please. Before we
9 talk about Exhibit 6, I'd like to ask you what steps do
10 you normally take when you propose -- oh, I apologize.
11 I wanted to back up for one question about Exhibit 5.

12 The lease expiration dates that you pointed
13 out on Exhibit 5, what do -- what are the implications
14 of the lease expiration dates in your mind?

15 A. So these are all leases with no built-in
16 extension, so these leases are in jeopardy of expiring
17 if Marathon or someone else doesn't begin operations on
18 the leases by the set dates.

19 Q. Thank you.

20 So turning back to the question I just
21 asked a moment ago, what steps do you normally take when
22 you propose a well?

23 A. Normally we research the ownership, get with
24 our teams, prepare the wells that we intend to drill and
25 send out proposals for drilling the wells, along with

1 the AFEs and the JOA.

2 Q. And was that done here?

3 A. Yes.

4 Q. And are you aware that Tap Rock has asserted
5 that Marathon did not negotiate with Tap Rock in good
6 faith, and that's why we're here today?

7 A. Yes.

8 Q. Did you send -- well, Exhibit 6 is an example
9 of the proposal letter that you sent out for these
10 wells?

11 A. Yes.

12 Q. Did you send a proposal letter like this and a
13 JOA to Tap Rock?

14 A. Yes.

15 MS. BENNETT: And I do have a copy of that
16 exact proposal letter with me. It's in my materials.
17 I'm happy to get it for the Division in a moment, if
18 that's helpful.

19 EXAMINER DAWSON: Yes.

20 Q. (BY MS. BENNETT) So do you know when the
21 proposal letter was sent to Tap Rock?

22 A. It was mailed around October 17, and they
23 received it on October 22nd, 2018.

24 MS. BENNETT: Let me grab the exhibit real
25 quick.

1 EXAMINER DAWSON: Okay.

2 MS. BENNETT: Well, apparently I don't have
3 it.

4 MS. ARNOLD: I have it. I don't have it
5 marked, but --

6 MS. BENNETT: Oh, okay. I'm happy to mark
7 it after.

8 And I'd like to mark it as Exhibit 15 when
9 we're all done with my packet, if you don't mind.

10 Thank you, Dana.

11 MS. ARNOLD: I think I've got enough for
12 everyone.

13 EXAMINER DAWSON: This will be Exhibit 15.

14 MS. BENNETT: Thank you.

15 Q. (BY MS. BENNETT) Does this look like the letter
16 that was sent to Tap Rock with the JOA --

17 A. Yes.

18 Q. -- for these wells?

19 A. Yes.

20 Q. And were the AFEs included, as they are in the
21 exhibit that Ms. Arnold provided?

22 A. Yes.

23 Q. Who sends out -- or who sent out this proposal
24 letter?

25 A. Steven Martinez. He's a land broker that works

1 for Marathon. He prepared these proposals.

2 Q. Does the proposal letter have your contact
3 information on it?

4 A. Yes, it does.

5 Q. What kind of contact information does it have
6 for you?

7 A. It lists my direct office line and my email
8 address.

9 Q. After you sent the -- or after the proposal
10 letter was sent to Tap Rock, did Tap Rock contact you at
11 any time about the JOA?

12 A. No.

13 Q. Did Tap Rock email you or call you with any
14 concerns about the JOA?

15 A. No.

16 Q. Did Tap Rock -- did you call Tap Rock when you
17 learned that they were going to request a continuance?

18 A. Yes.

19 Q. And when was that, approximately?

20 A. January 23rd.

21 Q. And why did you call Tap Rock at that time?

22 A. As mentioned previously, these leases are in
23 jeopardy of expiring in the near term, and so I was
24 concerned about continuing this hearing, which would
25 further put the leases in jeopardy. So I wanted to just

1 reach out and see what their concerns were.

2 Q. Do you remember speaking with anyone at Tap
3 Rock that day?

4 A. Yes. I talked with Erica Hixson.

5 Q. And who is Erica Hixson?

6 A. She's also a landman that works at Tap Rock, my
7 counterpart.

8 Q. Do you recall what you and Ms. Hixson discussed
9 on the phone call?

10 A. I just told her that I had heard that they were
11 asking for a continuance in these cases, and I let her
12 know about the lease expirations and that we wanted to
13 have the hearing as soon as possible. And I just asked
14 her if she had any issues with the proposals or with the
15 JOA, and she said that she really hadn't looked at it
16 and she wasn't totally familiar with these proposals but
17 that she would look into it and get back with me.

18 Q. Did you hear back from Ms. Hixson?

19 A. Yes.

20 Q. And when was that?

21 A. January 29th.

22 Q. So about six days later?

23 A. Yes.

24 Q. Did she send you an email, or did she call you?

25 A. She actually called me and left me a voicemail.

1 I returned her voicemail just a few minutes later. And
2 then she also, in the voicemail, said she would send me
3 an email with some questions, so I waited. I received
4 her email later on the 29th.

5 Q. And did you respond to her email?

6 A. Yes.

7 Q. And did you respond to her email on the 29th?

8 A. Yes.

9 Q. About how long after you received the email
10 would you say that you responded to her email?

11 A. Just under an hour after.

12 Q. And did she have a number of questions for you,
13 or what did she ask for in her email?

14 A. She had seven questions about the proposals
15 that she had sent.

16 Q. And were you able to answer all of her
17 questions?

18 A. I answered five that were -- I was able to
19 answer at the time. There were two questions that we're
20 still looking into that are a little more complicated.
21 It was talking about exactly how the facilities are
22 going to be set up and what marketer we were going to
23 use and, like, which lines we were going to put the
24 wells into. So I've sent an email to our group, and
25 they're still looking at that.

1 Q. So what happened next after you sent the email
2 an hour after you received the email from Ms. Hixson?

3 A. The next day, January 30th, I got an email from
4 Erica, Ms. Hixson, and she said that -- she was just
5 asking where my answers to these questions were, and she
6 had responded. And it was clear to me that the email
7 that I sent to her didn't go through, just from the
8 email chain. So I immediately called her and re-sent
9 the email, and it still didn't go through. So at that
10 time, I sent it to one of her colleagues, Ms. Arnold,
11 and then it did go through, so she received the answers
12 to the questions.

13 Q. Did you get some confirmation from either
14 Ms. Hixson or Ms. Arnold that the email had gone
15 through?

16 A. Yes. She sent me an email confirming that she
17 had received it, and we talked on the phone after that.

18 Q. And by she, you mean Ms. Hixson?

19 A. Yes.

20 Q. And about how long would you say it had been
21 between the time you first received the email from
22 Ms. Hixson on the 29th to the time when you received the
23 confirmation that she had received the email on the
24 30th? How much time had elapsed?

25 A. Just over 24 hours.

1 Q. Have you -- oh. When you sent that email to
2 Ms. Hixson, does she email you back or call you back
3 after that?

4 A. On the 30th, after we had confirmed that she
5 did receive it, yes, she did email and call me back just
6 to confirm that she had received it.

7 Q. Did she address or raise any further clarifying
8 questioning about the material you had provided?

9 A. She said they were going to look into it and
10 review it and get back with us.

11 Q. Did she ever get back to you with follow-up
12 questions based on that email?

13 A. No.

14 Q. Have you had further communications with Tap
15 Rock since that January 30th email communication --

16 A. Yes.

17 Q. -- string?

18 When was that?

19 A. It was on February 4th, so Monday, I believe.
20 I just re-sent the JOA to Ms. Hixson and just said,
21 "Please contact me if you have any suggested comments to
22 the JOA," and followed up with a phone call just to make
23 sure that they didn't have any questions at the time.

24 Q. And she didn't have any questions at the time?

25 A. No. She said that they would review the JOA

1 and get some comments back to us.

2 Q. And have you heard back from her with any
3 comments on the JOA?

4 A. No, not --

5 Q. Okay. What is Tap Rock's working interest in
6 the unit?

7 A. Approximately 3 percent.

8 Q. And about how many acres does that represent?

9 A. Approximately 10 acres.

10 Q. And I think you mentioned earlier that Tap
11 Rock's acres aren't a separate lease; they're an
12 undivided interest?

13 A. They are -- they are a separate lease, but it's
14 not a divided tract. It's all an undivided tract under
15 the same east half of Section 15.

16 Q. Has Tap Rock proposed wells within this unit?

17 A. No.

18 Q. I notice on your Exhibit 4, where you identify
19 the parties who you seek to be pooled, that Chevron is
20 also a party that you're seeking to pool; is that
21 correct?

22 A. Yes.

23 Q. What's Chevron's working interest in the unit?

24 A. Approximately 62 percent.

25 Q. And has Chevron indicated that they oppose this

1 **hearing?**

2 A. No.

3 **Q. Did you have more conversations with Chevron**
4 **than you had with Tap Rock?**

5 A. Yes.

6 **Q. Okay. And why? Why did you have more**
7 **conversation with Chevron?**

8 A. So Marathon operates the west half of Section
9 15. It's our Flowmaster unit. Chevron is also a
10 working interest owner in that unit. Chevron reached
11 out to me on approximately October 12th of 2018 via
12 email and were asking what our plans were for the east
13 half of Section 15 because they had some leases
14 expiring. And I responded that, coincidentally, we were
15 planning to send out some wells -- send out some well
16 proposals there also because of the lease expirations.

17 **Q. So Chevron actually reached out to you before**
18 **you even sent out the proposals?**

19 A. Yes.

20 **Q. Did the amount of Chevron's interest have any**
21 **bearing on how frequently or how often you communicated**
22 **with Chevron?**

23 A. No.

24 **Q. Do you intend to continue to negotiate with Tap**
25 **Rock even if an order is entered or after today's**

1 hearing?

2 A. Yes.

3 Q. And do you intend to negotiate with Chevron
4 even if an order is entered or after today's hearing?

5 A. Yes.

6 Q. In your opinion, has Marathon made a good-faith
7 effort to obtain Tap Rock's voluntary joinder in the
8 wells?

9 A. Yes.

10 Q. And in your opinion, has Marathon made a
11 good-faith effort to obtain voluntary joinder of the
12 other uncommitted mineral interest owners in the wells?

13 A. Yes.

14 Q. Let's turn now to Exhibit 7. Exhibit 7 is the
15 AFEs for each well. And I'm hoping we can just run
16 through these very quickly, and you can tell the
17 examiners the anticipated costs for each well.

18 So the first AFE is for the 3H well.
19 That's marked as Exhibit 7A. Can you -- what are the
20 costs for the 3H wells -- the estimated costs, total?

21 A. \$8,505,903.

22 Q. Thanks.

23 And the next exhibit is 7B, and that's for
24 the 4H well. Could you tell the examiners what the
25 estimated costs for the 4H well is?

1 A. \$8,505,903.

2 Q. The next exhibit is 7C, and that's the 6H well.

3 And how about the estimated costs for the 6H?

4 A. \$7,556,099.

5 Q. And that was on 7C?

6 A. Yes.

7 Q. 7C, I think you might have, yeah, skipped.

8 There we go. So 7C is 8 million --

9 A. Correct. \$8,505,903.

10 Q. Thanks.

11 And 7D is the cost for the 7H well.

12 A. That one is \$7,556,099.

13 Q. 7E are the costs for the 10H well.

14 A. \$8,505,903.

15 Q. And then 7F is the 11H well.

16 A. \$8,505,903.

17 Q. Thank you.

18 In your opinion, are those costs in line
19 with the costs of other horizontal wells drilled to this
20 length and this depth in this area of New Mexico?

21 A. Yes.

22 Q. And who do you think should be appointed
23 operator of the well?

24 A. Marathon Oil Permian, LLC.

25 Q. Do you have a recommendation for the amounts

1 that Marathon should be paid for supervision and
2 administrative expenses?

3 A. Yes. 7,000 per month while drilling and
4 completing, 700 per month while producing.

5 Q. Are these amounts equivalent to those normally
6 charged by Marathon and other operators in this area for
7 horizontal wells of this length and depth?

8 A. Yes.

9 Q. Do you request that these rates be adjusted
10 periodically as provided by the COPAS accounting
11 procedure?

12 A. Yes.

13 Q. Does Marathon request the maximum cost plus 200
14 percent risk charge if any pooled working interest owner
15 fails to pay its share of cost for drilling, completing
16 and equipping the wells?

17 A. Yes.

18 Q. Were the parties you seek to pool notified of
19 this hearing?

20 A. Yes.

21 Q. If you look at Exhibit 14, Exhibit 14 is an
22 affidavit that I prepared, and that shows the names and
23 addresses that you provided to us of the parties you
24 seek to pool. And, in fact, we did a number of mailings
25 for Marathon about this hearing today based on the

1 information that you provided to me; is that correct?

2 A. Yes.

3 Q. And why did we do a couple of mailings for
4 this? Was it because the parties whose leases were
5 maybe impacted by the -- I'm sorry -- the parties whose
6 interest in the leases that may expire needed to be
7 notified or that you decided to notify them?

8 A. Yes.

9 Q. And my affidavit also includes an Affidavit of
10 Publication showing that notice of this hearing was
11 published in the "Hobbs News-Sun" --

12 A. Yes.

13 Q. -- on January 23rd?

14 A. Yes.

15 Q. Does Marathon request that it be allowed a
16 period of one year between when the wells are drilled
17 and when the first wells are completed under the order?

18 A. Yes.

19 Q. Were Exhibits 1 through 7 and 14 prepared by
20 you and Exhibit 15 -- excuse me -- which includes the
21 well-proposal letter that you sent to Tap Rock -- were
22 those prepared by you or under your supervision or
23 compiled from company business records?

24 A. Yes.

25 Q. In your opinion, would the granting of

1 **Marathon's applications be in the best interest of**
2 **conservation, the prevention of waste and the protection**
3 **of correlative rights?**

4 A. Yes.

5 **Q. Thank you.**

6 MS. BENNETT: With that, I'd like to move
7 Exhibits 1 through 7, 14 and 15 be admitted into the
8 record. I'll move the rest of the exhibits after the
9 geologist testifies.

10 EXAMINER DAWSON: Okay. Any objections?

11 MS. ARNOLD: No.

12 MR. BRUCE: No.

13 EXAMINER DAWSON: Okay. Exhibits 1 through
14 7 and Exhibits 14 and 15 will be admitted to the record.
15 And the other exhibits, 8 through 13, will be requested
16 for admission per the attorney.

17 Thank you.

18 (Marathon Oil Permian, LLC Exhibit Numbers
19 1 through 7 and 14 and 15 are offered and
20 admitted into evidence.)

21 EXAMINER DAWSON: Do you have any
22 questions --

23 MS. ARNOLD: I do.

24 EXAMINER DAWSON: -- Ms. Arnold?

25

1 CROSS-EXAMINATION

2 BY MS. ARNOLD:

3 Q. Hi, Mr. Gyllenband.

4 A. Hello.

5 Q. Turning to your Exhibit 1, can you please
6 clarify exactly how many wells today that you're seeking
7 to pool? And by wells, I mean a pure count.

8 A. Under obligation -- that's Exhibit 1 -- five.

9 Q. Is it five or is it six, including the Bone
10 Spring well?

11 A. Six, including the one in Exhibit 2.

12 Q. And then now turning to your Exhibit 6 -- or I
13 think it was Exhibit 15, the copy of the well proposal
14 that was sent to us, how many wells did you propose to
15 us on October 17th?

16 A. Eight.

17 Q. At any point did you communicate the change in
18 the number of wells?

19 A. No.

20 Q. You mentioned earlier that an email, which was
21 on January 29th --

22 MS. ARNOLD: I have a copy of that email
23 here that I would like to provide, and it will be our
24 Exhibit 1. He's (indicating) going to mark them and
25 pass them around to you.

1 Q. (BY MS. ARNOLD) In the email dated January
2 29th, which is at the bottom of this, on page 2 of this
3 exhibit, at question number three, how many wells do you
4 state that you're drilling to Tap Rock?

5 A. I said it was likely that we would only drill
6 four wells.

7 Q. So between October and January 29th, you
8 changed the well number from eight to six to four. And
9 the four wells that you communicated on January 29th are
10 different than the six wells that you're actually here
11 for application today, meaning that you have dropped two
12 currently per your current plans?

13 A. We have dropped two from what was proposed in
14 this application, but they are still the same four
15 wells. And you'll notice at the end of that sentence, I
16 said "at this time." These six wells still are in our
17 full development plan, but just because of shuffling
18 these wells into our drill schedule, we don't know how
19 many we'll be able to get in at this time, because in
20 order to meet these lease expirations, it's been tough
21 scheduling in these wells. And so we're just having to
22 work with our drill schedule and meeting other
23 obligations, and so that's why initially I sent out the
24 six and now it could be four.

25 Q. Right. But the pooling application today is

1 here to pool for an initial set of six wells?

2 A. It's here to pool all six.

3 Q. Okay. You mentioned that you didn't hear
4 anything from Tap Rock after you sent the proposal --
5 or, rather, your broker sent the proposal in October
6 until I think it was after the pooling filing had taken
7 place or you had reached out to them. Can you just
8 clarify that?

9 A. Yes. So after the October 17th, 2018 letter
10 that we sent, that Tap Rock received on October 22nd,
11 the next communication regarding these wells was I heard
12 that Tap Rock was going to ask for a continuance, and I
13 called Ms. Hixson at that time. That was the next
14 communication regarding these wells that I had with Tap
15 Rock.

16 Q. Are you aware that the operator who is filing
17 pooling has the obligation to negotiate in good faith?

18 A. Yes.

19 Q. And do you think that it's Tap Rock's
20 obligation to reach out to Marathon in this case, or
21 would it have been Marathon's obligation to reach out?

22 A. Tap Rock's obligation.

23 Q. Okay. When you did reach out to Ms. Hixson,
24 did she communicate with you that they wanted time to
25 review the proposals?

1 A. On January 23rd, she said she would review the
2 proposals.

3 Q. Flipping to your lease expiration exhibits, I
4 believe, which would be Number 6 -- just Number 6.

5 MS. BENNETT: 5.

6 MS. ARNOLD: 5 and 6.

7 Q. (BY MS. ARNOLD) Are you aware of what's
8 required to hold the leases that are expiring? Is it
9 production? Drilling? Building a pad?

10 A. The leases all vary in the exact language, and
11 I've been discussing exactly what is needed with our
12 attorneys.

13 Q. Okay. So you don't know if any of the leases
14 require production before the expiration date?

15 A. It's my understanding that none of them require
16 production before the expiration date.

17 Q. And what happens if these leases expire?

18 A. Marathon and Chevron stand to lose a
19 significant amount of value to our company.

20 Q. How long have you been aware of these lease
21 expirations?

22 A. Since we acquired the leases.

23 Q. Which is approximately how long?

24 A. In 2017.

25 Q. So you've known about it for several years, but

1 you just sent the proposal in October?

2 A. Yes.

3 Q. And if the leases expire, then will the
4 parties, the lessors, in this case have the opportunity
5 to re-lease with someone else, maybe Marathon, maybe
6 someone else?

7 A. Yes.

8 Q. Turning back to the email, which we marked as
9 our Exhibit 1, I have a few questions related to the
10 question on title opinions, which is number four. Is it
11 Marathon's practice to obtain a drilling title opinion
12 before they drill wells?

13 A. Yes.

14 Q. Do you have a drilling title opinion in this
15 case?

16 A. No.

17 Q. What do you have?

18 A. Ownership reports, and we're in the process of
19 getting a title opinion.

20 Q. Do you expect to have that title opinion before
21 you drill the well?

22 A. Yes.

23 Q. And what -- in your opinion, are there possible
24 discrepancies between mineral ownership reports and
25 title opinions?

1 A. It's possible.

2 **Q. Have you seen that?**

3 MS. BENNETT: Objection. Are you asking if
4 he's seen it in any particular case or just generally?

5 MS. ARNOLD: Just generally. In his
6 experience as a landman, has he seen discrepancies
7 between what's represented in a mineral ownership report
8 and then what comes out in the drilling title opinion?

9 **Q. (BY MS. ARNOLD) Are there differences you've**
10 **seen in your experiences?**

11 A. Yes. There are sometimes differences.

12 **Q. So it's possible that there could be**
13 **differences here and that the parties that you seek to**
14 **pool now might be incomplete because you don't have a**
15 **title opinion?**

16 A. It's possible, and that would even be possible
17 after a title opinion.

18 **Q. Did you represent in this email your**
19 **understanding, based on the mineral ownership report, of**
20 **Tap Rock's interest in this unit?**

21 A. Yes.

22 **Q. And what is that?**

23 A. I listed out the three leases, 1.875, 1.875 and
24 6.67 net acres, just over 3 percent working interest.

25 MS. ARNOLD: I'd like to now hand out what

1 will be Exhibit 2, which was prepared based on that
2 representation and a summary of all of the AFEs that
3 were provided.

4 EXAMINER WARNELL: This is your Exhibit 2?

5 MS. ARNOLD: Yes.

6 Q. (BY MS. ARNOLD) At the top of this page, it
7 reads "Scenario 1," and it's described in the first line
8 that this is based on the well count proposed to Tap
9 Rock on 10/17/18, as described earlier by
10 Mr. Gyllenband. Using the percentage that he had
11 represented as their ownership, the total estimated cost
12 to Tap Rock of all eight of these wells is? Could you
13 read it to us, please?

14 A. \$2,122,463.71.

15 MS. BENNETT: And before we go any further,
16 I don't know if now is the time for me to object to this
17 exhibit or later. But I would just object on the
18 grounds that we haven't had a chance to review it and
19 subject to check that these numbers are accurate -- I
20 don't know that it's appropriate for Mr. Gyllenband to
21 be testifying about numbers that he hasn't run or we
22 haven't been involved in producing, but subject to
23 check -- and by that I mean assuming for the purposes of
24 this hearing that these numbers are accurate, then I
25 think Mr. Gyllenband can testify or read the numbers

1 based on that limited scope of what he's being asked to
2 do.

3 MS. ARNOLD: That's all right.

4 EXAMINER DAWSON: I think that's fair.
5 Yes.

6 Q. (BY MS. ARNOLD) And in Scenario 2, which, as
7 you described earlier, was the well count as filed in
8 applications 20220 and 20221, which are the cases we're
9 here for today, there are -- I'm representing to you
10 that there are six wells, and these six wells are the
11 same numbers above and the same numbers from the AFES
12 that you sent and, again, the same percentage. What
13 would be the total cost outlay to Tap Rock here,
14 approximately?

15 A. \$1.63 million.

16 Q. And then lastly, in Scenario 3, in your email,
17 you represented that it looked like there were going to
18 be four wells. Again, using the same assumptions, what
19 would be the cost that you're asking for from Tap Rock
20 today?

21 A. \$1.076 million.

22 Q. At any point have you made it clear to Tap Rock
23 exactly which set of wells and exactly how much money
24 you're requesting from them based on your Will Kane
25 plans?

1 A. We have indicated what our plans are currently,
2 and we aren't currently asking for the money. We will
3 send out the final AFEs whenever we either have an order
4 or a JOA, but Tap Rock is not bound to pay this money
5 until you actually have a 30-day clock to elect.

6 **Q. But the 30-day clock, assuming that an order is**
7 **granted in this case, would be based on six wells which**
8 **you're here for today?**

9 A. If we revised it down to four, we would only
10 send an AFE for those and request election.

11 **Q. But if you were revising it, would you be**
12 **forced to refile this application and come before us**
13 **with four wells?**

14 MS. BENNETT: I don't think that's within
15 his purview to testify to.

16 EXAMINER BROOKS: Well, I agree it's not.
17 It's up to the Division. However, it's ultimately up to
18 the operator. And Marathon is the operator, right?

19 MS. BENNETT: And it's my understanding
20 that as of right now, the plan is still to drill six
21 wells. There hasn't been --

22 And feel free to correct me if I'm wrong on
23 this.

24 THE WITNESS: Yeah.

25 MS. BENNETT: But there hasn't been any

1 determination to only drill four wells.

2 EXAMINER BROOKS: If the Division
3 determines to grant the application, presumably the
4 Division will name in the order the wells and give the
5 name and location of the wells that it directs to be
6 dedicated to the unit, and then Marathon can propose
7 some but not all. But they can't propose any that are
8 not listed in the unit, except under the infill well
9 provision, which I didn't notice the provision. So I
10 think that's the answer to counsel's question. And now
11 that we have Marathon saying that they want to go to
12 order on six wells, then presumably that's the limit to
13 what they can propose under the order as we will write
14 it, if they stick to that --

15 MS. BENNETT: Yes.

16 EXAMINER BROOKS: -- number for now.

17 MS. BENNETT: Yes.

18 **Q. (BY MS. ARNOLD) Who are the other parties that**
19 **you seek to pool other than Tap Rock?**

20 A. The uncommitted parties listed on Exhibit --
21 the second page of Exhibit 4.

22 **Q. And you mentioned briefly Chevron. Where do**
23 **they stand with the rest of the parties? Meaning, have**
24 **any other parties voluntarily committed to a JOA or some**
25 **other sort of agreement?**

1 A. No one else has signed the JOA.

2 Q. Has anyone signed the JOA?

3 A. No.

4 Q. Did you provide, I think as you testified
5 earlier, a JOA form to Tap Rock and other operators,
6 presumably?

7 A. Yes.

8 MS. ARNOLD: I've got a copy of that JOA,
9 which will be our Exhibit 3.

10 EXAMINER DAWSON: So do you wish to mark
11 this as Exhibit 3?

12 MS. ARNOLD: Yes, sir.

13 Q. (BY MS. ARNOLD) Does this look to be the copy
14 of the JOA that you have provided to Tap Rock and other
15 operators?

16 A. Yes.

17 Q. Turning to what I have hopefully appropriately
18 tabbed in here as the blue tab or the second tab, can
19 you describe the initial well language highlighted and,
20 again, marked with a blue tab? Can you read it to us,
21 please?

22 A. "On or before January 1st, 2021, operator shall
23 commence the drilling of the initial well at the
24 following location, located in the contract area, and
25 shall thereafter continue the drilling of the well with

1 due diligence to test the Wolfcamp Formation."

2 Q. And just to reiterate, your expirations are
3 starting sometime in, I believe -- I don't know -- July
4 of this year, is what you have testified to?

5 A. Yes.

6 MS. BENNETT: April and June of this year.

7 MS. ARNOLD: April and June?

8 THE WITNESS: Yes.

9 Q. (BY MS. ARNOLD) Okay. But the JOA states here
10 that you don't have to drill the well before January 1st
11 of 2021?

12 A. Yes.

13 Q. So if Tap Rock were to sign the JOA, as you've
14 proposed it here, it would be bound by the terms of the
15 JOA, assuming you drilled an initial well before this
16 date?

17 A. Yes. If they didn't request the change of that
18 date, then yes.

19 Q. But this is the date that you sent out to
20 everyone when you knew about your expirations?

21 A. Yes. However, this is our standard form JOA
22 that we have our brokers administratively put together
23 these proposals, and we tell them just to put a date in
24 there two years out from the initial date.

25 Q. And turning now to the first tab, which is the

1 green tab, can you read for us how the other losses
2 provision works in this JOA?

3 A. Would you like me to read the highlighted
4 portion or the entire paragraph?

5 Q. It's up to you, mainly the highlighted portion,
6 but continue, I guess, to the second line, which I
7 inadvertently did not highlight. That is the line that
8 I would like you to most read.

9 A. "Other Losses: All losses of Leases or
10 Interests committed to this agreement, other than the
11 those set forth in Articles IV.B.1 and IV.B.2 above,
12 shall be joint losses and shall be borne by all parties
13 in appropriation to their interests shown on Exhibit
14 'A.'"

15 Q. And can you explain for us what this is
16 commonly known as, or, in your opinion, is this commonly
17 known as a joint loss provision?

18 A. Yes.

19 Q. And do you understand how that works, and can
20 you explain that to us?

21 A. It means that if any of the leases that are
22 listed on the JOA are lost due to expiration, that
23 they're borne jointly by all parties that are subject to
24 the JOA.

25 Q. In proportion to their ownership as it is set

1 forth on Exhibit A?

2 A. Yes.

3 Q. And I believe you testified earlier that the
4 bulk of the leases that are set to expire, at least in
5 the near term, are Chevron and Marathon leases?

6 A. Yes.

7 Q. And it also looks, based on Exhibit 4, that
8 they own the majority of the percentage of the unit that
9 Chevron, with approximately 62 percent, and Marathon,
10 with approximately 15 percent, would own the majority of
11 the ownership of the proposed unit?

12 A. Yes.

13 Q. So if those leases are lost, how would it
14 affect the other interest owners? Would they, according
15 to this provision, also lose out on a percentage of the
16 ownership of those leases?

17 A. Yes.

18 Q. So they would in effect be dragged down by
19 Marathon's failure to drill the wells on time or
20 whatever is required to hold those leases?

21 A. Yes.

22 Q. Even though the JOA itself doesn't require you
23 to drill a well until 2021?

24 MS. BENNETT: Objection. He's already
25 answered that question.

1 EXAMINER BROOKS: Well, I believe he did,
2 unless he wants to modify his answer some way.

3 THE WITNESS: Unless that date was changed.

4 Q. (BY MS. ARNOLD) But it hasn't been changed?

5 A. No one has asked for it to be changed.

6 Q. And you mentioned earlier a string of
7 communications between you and Erica Hixson. We went
8 through one email earlier. And you also mentioned that
9 there were some follow-up phone calls. Were there any
10 other emails between you and Erica Hixson other than the
11 January 29th email?

12 A. Yes.

13 MS. ARNOLD: I have a copy. This will be
14 4.

15 EXAMINER DAWSON: We will mark this as Tap
16 Rock Exhibit 4.

17 Q. (BY MS. ARNOLD) In the second email here dated
18 January 30th, can you please read for us the second line
19 starting with "Let"?

20 A. "Let me know if you have any ideas/trade
21 proposals to get out of each other's hair on this one.
22 I can chew on it, too."

23 Q. And this is an email from Erica Hixson to you
24 on January 30th?

25 A. Yes.

1 Q. Did you receive this email?

2 A. Yes.

3 Q. Did you respond to it?

4 A. No.

5 Q. And what about the email -- the email above
6 that? Can you please read for us what that says?

7 A. "Hey Ryan, Did you ever send a trade proposal?
8 Erica."

9 Q. Did you receive that email?

10 A. No.

11 Q. Do you think that there is something weird
12 going on between the emails of Marathon and Tap Rock?

13 A. Sounds like it. Do you know why it doesn't
14 have a date at the top of that email?

15 Q. I don't.

16 Can you clarify whether you ever sent any
17 other proposals to Tap Rock other than the proposal in
18 your initial well proposal with the eight wells or a
19 copy of the JOA, which is an offer to voluntarily join?

20 A. Did I --

21 Q. Did you send any other proposals to Tap Rock at
22 any point other than the initial well proposal or an
23 offer to voluntarily join in whatever set of wells that
24 would end up being under the JOA?

25 A. No.

1 Q. Despite the fact that she requested that you
2 send her another option?

3 A. I didn't send any other offers.

4 Q. I believe either you or your counsel earlier
5 mentioned that Marathon is seeking one year between the
6 time frame when the well would be required to be drilled
7 and when it could be completed. Is that your
8 understanding?

9 A. Yes.

10 Q. How would Marathon plan to joint interest bill
11 or charge interest owners based on that time frame, or
12 how do you typically do that? Meaning, would you AFE
13 for the cost to drill and complete and produce the wells
14 all at once, or would you wait to AFE for the completion
15 costs at such time as you would actually be completing
16 the wells?

17 A. It's our general practice to JIB as we incur
18 the costs.

19 Q. So approximately 30 days in advance, give or
20 take, of when you would be incurring the cost?

21 A. That would be cash calling under the JOA. It's
22 generally our practice to bill as we receive the
23 invoices for the drilling or the completions.

24 Q. And is that what you would plan to do in this
25 case either under a compulsory pooling order or under

1 **the JOA?**

2 A. That's generally our practice. I can't speak
3 for exactly how the accounting group would handle it in
4 this situation.

5 **Q. Do you believe that that's your practice even**
6 **when you've compulsory pooled a party?**

7 A. It's generally our practice to do it that way.

8 **Q. That's all the questions I have.**

9 MS. BENNETT: Is it appropriate for me now
10 to do redirect, or should I --

11 MR. BRUCE: Mr. Examiner, I'd like to ask a
12 few questions.

13 MS. BENNETT: I'm sorry.

14 EXAMINER DAWSON: Okay.

15 CROSS-EXAMINATION

16 BY MR. BRUCE:

17 **Q. Mr. Gyllenband, you know, your applications**
18 **request that Marathon be allowed a period of one year**
19 **between when the well is drilled and when the well is**
20 **completed, correct?**

21 A. Yes, sir.

22 **Q. And you also stated that you are seeking \$700**
23 **per month for administrative and overhead costs for a**
24 **producing well?**

25 A. Yes, sir.

1 **Q. During that one-year period, do you intend to**
2 **bill your joint interest partner for the overhead costs?**

3 A. I can't accurately answer how our billing
4 department does it.

5 If I was going to speculate, I would say
6 that while an actual rig is on location, we're billing
7 the 7,000, and while the frac crew is actually on
8 location, we're billing the 7,000. But if there was a
9 gap in there, I believe that we would be billing the
10 700, unless there was extra crews that were out there
11 doing some sort of frac.

12 **Q. That you would or would not be billing the 700?**

13 A. We would not be billing the 700.

14 MS. BENNETT: And just for the record --

15 THE WITNESS: That's my understanding. I'm
16 not 100 percent sure how our accountant does that.

17 MS. BENNETT: Mr. Bruce, did you enter an
18 appearance in this case because I don't seem to recall
19 having received one.

20 MR. BRUCE: I didn't get a written one
21 filed, but it's not required.

22 **Q. (BY MR. BRUCE) Because during that one-year**
23 **period, there is no revenue coming in or no chance for**
24 **revenue coming in, correct?**

25 A. Yes, sir. And just to clarify, that is the

1 maximum. It's not generally our practice.

2 Q. Okay. Thank you very much.

3 MS. BENNETT: At this point may I ask some
4 redirect questions, or would you prefer that I wait
5 until after you-all ask your questions? I do have a few
6 follow-up questions of Mr. Gyllenband based on the
7 questions that were asked a moment ago.

8 EXAMINER DAWSON: Go ahead.

9 MS. BENNETT: Thank you.

10 REDIRECT EXAMINATION

11 BY MS. BENNETT:

12 Q. First of all, I'd like to clear up what I think
13 might be some confusion between the proposal letter and
14 the pooling application. You were asked if you proposed
15 eight wells in the proposal letter. Is that correct
16 that you did propose eight wells?

17 A. Yes.

18 Q. And in the pooling -- the two pooling
19 applications, you're seeking -- Marathon is seeking to
20 pool a total of six wells?

21 A. That's correct.

22 Q. And as I believe is accurate but I'd like to
23 get your take on this, Marathon is still on track --
24 those six wells are still within your drilling horizon;
25 they're still within your schedule?

1 A. They're still within our drilling --

2 Q. When you were asked by Ms. Arnold whether it's
3 Tap Rock's obligation or Marathon's obligation to reach
4 out to a party whom you seek to pool, you said it was
5 Tap Rock's obligation. Do you feel that that is -- that
6 reflects your practice when you receive a JOA or a well
7 proposal?

8 A. Yes. Marathon -- whenever another operator
9 sends a JOA or a well proposal to me, if it's in my
10 area, I'll typically follow up if I have any questions
11 regarding the proposal. I don't expect them to reach
12 out to me and ask have I signed the JOA. And so it's in
13 my practice, if I have a question regarding the
14 proposals or my subsurface team or I have a question
15 regarding the JOA, I'll reach out to that landman.

16 Q. Thanks.

17 Earlier Ms. Arnold asked you about the
18 title report and that there might be some discrepancies
19 theoretically between the title report and the interests
20 as you've identified them today. If that were the case,
21 you would use the most accurate information that you
22 had; is that correct?

23 A. Yes.

24 Q. I wanted to quickly look again at Exhibit
25 Number 2 -- Tap Rock Exhibit Number 2. Did Tap Rock

1 **ever present this data to you before today?**

2 A. You're referring to the list of the scenarios
3 with all of the AFE costs that Tap Rock would be
4 responsible for? No, they did not present this to me.

5 Q. So Tap Rock never emailed you and said, "Hey,
6 we have a concern about \$2 million versus 1.6 million
7 versus \$1.1 million"?

8 A. They did not reach out regarding that.

9 Q. If they had, would you have been willing to
10 talk to them about their concerns about these different
11 scenarios?

12 A. Yes.

13 Q. Let's turn now to what Tap Rock marked as
14 Exhibit 3 -- Tap Rock Exhibit 3. And I believe that you
15 answered this question, but I just want to make sure I
16 understand. At the top of where the blue tab is, you
17 were asked about the January 2021 date. Did Tap Rock
18 ever call you or ask you about changing the 2021 date?

19 A. No, they did not.

20 Q. If they had called you and asked you about
21 that, would you have talked to them about that and
22 answered any questions that they might have about that?

23 A. Absolutely. We fully intend to drill the wells
24 in order to meet our expiration, so I would have
25 definitely been open to changing that date.

1 Q. And then turning to Exhibit Number -- Tap Rock
2 Exhibit Number 4, which is the email from Ms. Hixson on
3 January 30th responding -- or sort of -- that gave you
4 the indication that they hadn't received your January
5 29th response, is that what the first -- leaving aside
6 this top email, is that sort of what this email
7 represents to you?

8 A. Yes.

9 Q. Have you ever seen the top part of this email
10 before today?

11 A. The one asking did I ever send the trade
12 proposal?

13 Q. Uh-huh.

14 A. No, I did not see it before today.

15 Q. And according to Tap Rock, were there problems
16 with Tap Rock's email that day?

17 A. Yes.

18 Q. And I believe Ms. Arnold asked you if you ever
19 sent a trade proposal or if you responded to this email,
20 and my understanding from your earlier testimony was
21 that as soon as you received the email dated January
22 30th at 12:23 p.m., you immediately called or shortly
23 thereafter called Ms. Hixson to let her know that you
24 hadn't received -- or that it appeared that she hadn't
25 received your email. Is that true?

1 A. Yes.

2 Q. So you did, in fact, follow up with Ms. Hixson
3 right away when you received the January 30th email?

4 A. Yes.

5 Q. Did she ask you on that phone call about a
6 trade proposal?

7 A. I don't believe that she did.

8 Q. Did Tap Rock ever ask you before January 30th,
9 2019 about a trade professional proposal?

10 A. No. I don't believe they did.

11 Q. So you really didn't even know before January
12 30th that a trade proposal with Tap Rock would even be
13 an option?

14 A. No.

15 Q. Ms. Arnold asked you a question about the
16 timing between when you acquired the leases and when you
17 sent your proposal letters, and I believe she said it
18 was several years between when you acquired your lease
19 and when you sent the proposal letter. But just to
20 clarify that for the record, did you say that you
21 acquired the leases in 2017?

22 A. I did.

23 Q. And you sent the proposal in 2018?

24 A. Yes.

25 Q. So less than several years?

1 A. Yes.

2 MS. BENNETT: Those are all the questions I
3 had to follow up on.

4 EXAMINER DAWSON: Mr. Bruce?

5 MR. BRUCE: No follow-up.

6 EXAMINER DAWSON: Ms. Arnold?

7 MS. ARNOLD: (Indicating.)

8 EXAMINER DAWSON: Mr. McMillan?

9 MR. McMILLAN: (Indicating.)

10 EXAMINER DAWSON: Mr. Brooks?

11 EXAMINER BROOKS: No questions.

12 EXAMINER DAWSON: Mr. Warnell?

13 EXAMINER WARNELL: Yeah. I have some
14 questions, I believe, although I was a little confused,
15 when I was looking at Exhibits 1 and 2, on the well
16 count. And I guess we've hammered that enough. I mean,
17 I'm seeing in Exhibit 1, I believe, five Wolfcamp wells,
18 and on Exhibit 2, one Bone Spring well. I think the
19 total is six wells. And then when we were presented
20 with Marathon's Exhibit 15, something I think maybe
21 clarified that. So that's the one I had issue with.

22 CROSS-EXAMINATION

23 BY EXAMINER WARNELL:

24 **Q. I do have general questions as far as AFEs go.**

25 **If you send someone an AFE for six wells or, in this**

1 case, for five wells in the Wolfcamp and you only end up
2 drilling three of those five wells, what happened with
3 that money that's out there?

4 A. So these AFEs were part of our initial well
5 proposal, which is required under the Commission's order
6 that we send out. The AFE, we're not asking for the
7 money at this time. We generally send out AFEs 60 to 90
8 days before spudding the well.

9 Q. And then the money is due -- did you call it a
10 cash call?

11 A. If they're under the order, we have the ability
12 to cash call, and they could have to pay all of money
13 for the wells up front. If they sign the JOA, it's what
14 the language in the JOA says, which this one allows us
15 to cash call approximately a month before the funds are
16 actually estimated. But it's generally our practice to
17 not cash call on wells, and we bill the working interest
18 owners as the costs are incurred.

19 Q. Okay. And then I had a couple of questions --
20 I believe Ms. Arnold brought up most of these. But as
21 far as the leases go, do you know the terms of the
22 leases? Are these five-year leases?

23 A. I'm just going to turn back to the list of the
24 leases because that will allow me to better tell you
25 that.

1 The Marathon leases that are listed here --
 2 you can see where it says "current lessee, Marathon" --
 3 those leases are all three-year leases. Marathon was
 4 not the original lessee. We acquired these leases, but
 5 they are three-year leases without a built-in extension.

6 EXAMINER DAWSON: What exhibit are you
 7 referring to?

8 THE WITNESS: I'm sorry. It's Exhibit 5,
 9 the last page where it lists the leases in jeopardy of
 10 expiring before July 2019.

11 **Q. (BY EXAMINER WARNELL) And it's your belief that**
 12 **drilling or spudding before the lease termination date,**
 13 **that that would hold the lease?**

14 A. Most of these leases say that we have to
 15 commence operations before the leases are expiring.

16 And then further, continuing on, most of
 17 the Chevron leases were taken -- some of them were taken
 18 back in 2012, 2013, and Chevron subsequently went out
 19 and amended these leases to further extend them.

20 **Q. So are these fee leases? They private leases?**

21 A. Yes, sir. Yes, sir.

22 **Q. No federal or trust?**

23 A. No, sir, no federal or state leases or minerals
 24 in this tract.

25 **Q. All right. Thank you. I don't have any more**

1 **questions.**

2 EXAMINER DAWSON: Do you have any
3 questions?

4 EXAMINER MURPHY: No questions.

5 EXAMINER BROOKS: I'm sorry.

6 EXAMINER DAWSON: Go ahead, Mr. Brooks.

7 CROSS-EXAMINATION

8 BY EXAMINER BROOKS:

9 **Q. Are you aware that there are various and**
10 **sometime conflicting decisions from courts about what**
11 **commencing operations is under a lease expiration**
12 **clause?**

13 A. Yes, sir. I'm in discussions with our inside
14 and outside counsel talking about the exact wording of
15 the leases.

16 **Q. Yes.**

17 **I know that there are conflicting decisions**
18 **on that subject, and I don't know what New Mexico's**
19 **position is except that, having practiced law now for 15**
20 **years in New Mexico, my impression is there is no**
21 **New Mexico authority on most points that come out of oil**
22 **and gas law.**

23 MS. BENNETT: Very true.

24 EXAMINER BROOKS: Okay. Go ahead.

25 EXAMINER DAWSON: That's all?

1 EXAMINER BROOKS: That's all I have.

2 CROSS-EXAMINATION

3 BY EXAMINER DAWSON:

4 Q. Do you happen to know which well you were
5 planning to drill first?

6 A. Most likely the 4 and/or the 6H.

7 Q. And those include the short-term leases that
8 are depicted on your Exhibit 5?

9 A. Yes, sir. Any of these wells --

10 Q. All of them have those leases. You'll be okay?

11 A. Yes, sir.

12 Q. And at this point, you're looking at Tap Rock's
13 Exhibit 2 on -- you're going to drill Scenario 2 on
14 their exhibit? That is what is proposed in your
15 application, correct?

16 A. Yes, sir. That's what's in the application.

17 Q. All right. So you'd have to have a drill rig
18 out there by April, drilling by April 4th, right?

19 A. Depending on the, of course, wording of the
20 leases and commencing operations.

21 Q. Okay. Okay. All right. That's all the
22 questions I have. Thank you.

23 MS. ARNOLD: I have one more question.

24 EXAMINER DAWSON: Go ahead.

25

1 RECROSS EXAMINATION

2 BY MS. ARNOLD:

3 Q. Based on your testimony, if an order is issued
4 in this case, would Marathon agree to only bill the
5 interest owners as they incur the costs?

6 A. Yes. That's probably something we could agree
7 to.

8 MS. ARNOLD: That's all.

9 EXAMINER DAWSON: Okay.

10 MS. BENNETT: Thank you.

11 EXAMINER DAWSON: That's all?

12 Thank you very much.

13 MS. BENNETT: Thanks.

14 EXAMINER DAWSON: You may call your next
15 witness.

16 EXAMINER BROOKS: How about a brief recess?

17 EXAMINER DAWSON: Yeah. Let's take a break
18 until 3:00, and we'll come back at 3:00.

19 (Recess, 2:47 p.m. to 3:02 p.m.)

20 EXAMINER DAWSON: We'll continue with Case
21 Numbers 20221 and 20220.

22 MS. BENNETT: I would like to call my
23 witness, Ethan Perry, who was sworn in earlier today.

24 EXAMINER DAWSON: Okay. When you're ready.

25 MS. BENNETT: Thank you.

1 ETHAN PERRY,

2 after having been previously sworn under oath, was
3 questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. BENNETT:

6 Q. Could you please state your full name for the
7 record?

8 A. Ethan Perry.

9 Q. Who do you work for, Mr. Perry?

10 A. Marathon Oil.

11 Q. What are your responsibilities at Marathon?

12 A. I'm a geologist. I work on a team responsible
13 for well planning and execution in Eddy and Lea
14 Counties, New Mexico.

15 Q. Have you previously testified before the
16 Division?

17 A. Yes.

18 Q. And were your credentials accepted and made
19 part of the record?

20 A. Yes, they were.

21 Q. Are you familiar with the applications Marathon
22 filed in this matter?

23 A. Yes, ma'am.

24 Q. And are you familiar with the status of the
25 lands that are the subject of these applications?

1 A. Yes.

2 Q. Are you familiar with the drilling plans for
3 these wells?

4 A. Yes.

5 Q. And have you conducted a geologic study of the
6 area embracing the proposed spacing unit for these
7 wells?

8 A. Yes, I have.

9 MS. BENNETT: I'd like to tender Mr. Ethan
10 Perry as an expert witness in geology matters.

11 EXAMINER DAWSON: Any objections?

12 MR. BRUCE: No.

13 MS. ARNOLD: None.

14 EXAMINER DAWSON: Mr. Perry will be
15 admitted as an expert in geology matters at this time.

16 Q. (BY MS. BENNETT) Again, the packet in front of
17 you has the exhibits for both cases, 20220 and 20221.
18 I'd like to start with Exhibit 8. And by starting with
19 Exhibit 8, we're actually starting with the Bone Spring
20 well, which is Case Number 20221. And it's a 3rd Bone
21 Spring well, Will Kane 15 Fee TB 7H. Looking at Exhibit
22 8, Mr. Perry, can you please describe to the examiners
23 what this document is?

24 A. This is a structure map made on the top of the
25 Wolfcamp Formation. This is the regional marker that

1 sits below the 3rd Bone Spring Sand that we'll be
2 targeting of the subject well. Marathon's acreage is
3 shown in yellow. The structural contours -- contour
4 intervals are shown on the map, as well as the project
5 area in question for the east half of Section 15, Will
6 Kane. I'm showing a three-well cross section from A to
7 A prime, which I'll explain in subsequent exhibits. And
8 the structural dip in this area is more or less from
9 northwest down to the south, to the southeast. The six
10 subject wells are shown on the -- on the -- within the
11 project area, and some representative offset 3rd Bone
12 Spring-producing wells are flagged with the -- with the
13 black circles. And most of the horizontal wells in the
14 area are Bone Spring wells.

15 **Q. And you noted that the wells -- all six wells**
16 **are identified, numbered one through six, and the well**
17 **that we're particularly talking about here is number**
18 **four; is that correct?**

19 **A. That is correct, the TB Fee 7H.**

20 **Q. Great.**

21 **Is there anything else that you want to**
22 **talk about on Exhibit 8 before we move on to Exhibit 9?**

23 **A. No, ma'am.**

24 **Q. Okay. Let's turn then to Exhibit 9. Did you**
25 **prepare a cross section of logs to determine the**

1 relative thickness and porosity of the Bone Spring
2 Formation in this area?

3 A. Yes, I did.

4 Q. And is that cross section contained in Exhibit
5 9?

6 A. Yes, it is.

7 Q. And are the wells that you selected to include
8 on the -- on this cross section running from A to A
9 prime, that we talked about on the prior slide, are they
10 representative of the Bone Spring Formation in this
11 area?

12 A. Yes, they are.

13 Q. And does Exhibit 9 show the producing zone for
14 the Wolfcamp 15 Fee TB 7H?

15 A. Yes, it does.

16 Q. Is that identified by the sort of bluish-gray
17 shading and the red arrow?

18 A. Yes, ma'am.

19 Q. What does the cross section show you about the
20 acreage that is proposed to be dedicated to the Bone
21 Spring well?

22 A. In this stratigraphic cross section that's hung
23 on the Wolfcamp Formation, you can see that the interval
24 thickness for the 3rd Bone Spring section is relatively
25 consistent from north -- north to south across the

1 project area.

2 For future reference, the log tracks on
3 these cross sections will be gamma ray on the left,
4 depth track in the middle. And then resistivity and
5 porosity --

6 **Q. Yeah.**

7 A. -- the logs are incomplete on the leftmost well
8 to the north due to a casing -- casing point in the 3rd
9 Bone Spring Sand.

10 **Q. Okay. So that is relatively uniform across the**
11 **unit -- across the proposed unit?**

12 A. Yes.

13 **Q. Let's look at Exhibit 10 then. Could you**
14 **please tell the examiners what Exhibit 10 is?**

15 A. The gross isochore for the 3rd Bone Spring Sand
16 package, again showing A to A prime, same three wells
17 shown on the previous exhibit in the cross section. As
18 shown there, the thickness for the 3rd Bone Spring Sand
19 section ranges from 250 to 300 feet across the project
20 area.

21 **Q. Great.**

22 **Let's turn then to talk about the Wolfcamp**
23 **wells now -- the five Wolfcamp wells. Looking at**
24 **Exhibit 11, can you explain what Exhibit 11 is?**

25 A. Exhibit 11 is a structure map on the top of the

1 Wolfcamp Formation again. It's the same structure map
2 as previously shown. And as before, Marathon's acreage
3 is in yellow. The project area is in the dashed box. I
4 do apologize. It looks like the image got shifted a
5 little bit, so the cross section should overlay with the
6 red line. The project area shifted slightly to the
7 east. It's just a formatting issue on my part. And
8 it's showing some of the offset Wolfcamp-producing wells
9 around the subject unit.

10 **Q. When you look at -- before we turn to Exhibit**
11 **12, when you look at Exhibit 11, is there anything shown**
12 **structurally that would interfere with the contribution**
13 **of the acreage of the proposed wells?**

14 A. No, ma'am. There are some larger features to
15 the north of the unit but not across the unit.

16 **Q. And then let's look at Exhibit 12. Is Exhibit**
17 **12 a cross section of the -- a cross section using the**
18 **data from A to A prime again?**

19 A. Yes, it is. These are the same three wells
20 used in the previous cross section with the producing
21 zone highlighted from the Wolfcamp down to the Wolfcamp
22 C marker.

23 **Q. And are the wells that you selected to include**
24 **on this cross section representative of the Wolfcamp**
25 **Formation in the area?**

1 A. Yes, they are.

2 Q. Let's turn to Exhibit 13. Could you explain to
3 the examiners what Exhibit 13 is, please?

4 A. This is a gross interval isochore made from the
5 Wolfcamp Formation down to the Wolfcamp C marker. So as
6 I showed on the cross section, there is a thickening --
7 a slight thickening from north to south, but, in
8 general, we expect the gross interval isochore to be
9 relatively consistent, between 500, 600 feet across the
10 project area.

11 Q. Based on your geologic study of this area, do
12 you feel that there are any impediments to a horizontal
13 well in the Bone Spring Formation?

14 A. No, ma'am.

15 Q. In the Wolfcamp Formation?

16 A. No, ma'am.

17 Q. Is each quarter-quarter section productive --
18 or do you anticipate that each quarter-quarter section
19 will be productive in the Wolfcamp Formation?

20 A. Yes.

21 Q. Do you anticipate that each quarter-quarter
22 section will be productive in the Bone Spring Formation?

23 A. Yes.

24 Q. Do you anticipate that each tract
25 quarter-quarter section will contribute approximately

1 equally to the production from the wells?

2 A. Yes.

3 Q. In your opinion, would the granting of
4 Marathon's applications be in the best interest of
5 conservation, the prevention of waste and the protection
6 of correlative rights?

7 A. Yes, it will.

8 Q. Were Exhibits 8 through 13 compiled by you or
9 your prepared under your direction and supervision?

10 A. Yes, they were.

11 MS. BENNETT: At this time I would move
12 admission of Exhibits 8 through 13.

13 EXAMINER DAWSON: Any objections?

14 MR. BRUCE: No.

15 MS. ARNOLD: No.

16 EXAMINER DAWSON: Okay. At this time
17 Exhibits 8 through 13 will be admitted to the record.

18 (Marathon Oil Permian, LLC Exhibit Numbers
19 8 through 13 are offered and admitted into
20 evidence.)

21 EXAMINER DAWSON: Do you have any
22 questions, Mr. McMillan or Ms. Arnold?

23 MS. ARNOLD: No.

24 MR. McMILLAN: No.

25 EXAMINER DAWSON: Mr. Bruce?

1 CROSS-EXAMINATION

2 BY MR. BRUCE:

3 Q. Just one. Perhaps I wasn't listening. You're
4 drilling Upper Wolfcamp wells and 3rd Bone Spring wells?

5 A. That's correct.

6 Q. And no 2nd Bone Spring wells?

7 A. That's correct.

8 Q. Okay. Thanks.

9 EXAMINER DAWSON: Mr. Brooks, do you have
10 any questions?

11 EXAMINER BROOKS: I have no questions.

12 EXAMINER DAWSON: Mr. Warnell?

13 EXAMINER WARNELL: No questions.

14 EXAMINER DAWSON: Ms. Murphy?

15 EXAMINER MURPHY: No questions.

16 CROSS-EXAMINATION

17 BY EXAMINER DAWSON:

18 Q. I have one question. On your Exhibit Number 9,
19 the cross section depicting the Will Kane 15 TB Fee 7H
20 well, your producing zone is to the 3rd Bone Spring on
21 that well; is that correct?

22 A. Yes, sir.

23 Q. And is there a confining layer between the 3rd
24 Bone Spring and the top of the Wolfcamp that will
25 prevent you from producing any hydrocarbons from the

1 **Wolfcamp?**

2 A. There are carbonate baffles at the top of the
3 Wolfcamp. The increased carbonate content changes the
4 stress profile at that interface, and based on the
5 available data we have on frac models, it's just that
6 most of the frac will grow -- grow upward. We don't
7 expect communication with the Wolfcamp underneath the
8 3rd Bone.

9 **Q. But there's no -- there's no ownership**
10 **difference between the Wolfcamp and the Bone Spring?**
11 **That's not really a question for you.**

12 A. Yeah. I would defer to my landman to confirm
13 that.

14 MS. BENNETT: And just to clarify, the
15 landman did testify that there is no difference in
16 ownership.

17 EXAMINER DAWSON: No severances?

18 MS. BENNETT: No, none.

19 EXAMINER DAWSON: Okay. That's all the
20 questions I have. Thank you.

21 MS. BENNETT: Thank you.

22 At this time, then, I would ask that Case
23 Numbers 20220 and 20221 be taken under advisement.

24 MR. BRUCE: Before it's taken under
25 advisement, Mr. Examiner, my only statement is that the

1 Barton Trust is not here to oppose the pooling, and it
2 doesn't oppose the one-year difference between drilling
3 and completion. But we would request that the order
4 contain a provision that during that period, the
5 overhead and administrative charges not be charged
6 against the working interest partners.

7 And just so you know, I don't think
8 Mr. Barton has signed a JOA -- or signed a lease, but
9 the Trust owns numerous mineral interests and unleased
10 mineral interests in Lea County and Eddy County, too,
11 and the Trust generally participates in these wells as
12 an unleased mineral owner.

13 EXAMINER DAWSON: Okay.

14 MR. McMILLAN: Mr. Examiner, Tap Rock would
15 like to provide a closing statement on the issue brought
16 to the table today. I'm wondering if you would prefer
17 it be done orally here on the record or in writing.

18 EXAMINER BROOKS: Well, I actually would
19 prefer to hear it orally because I had a question I
20 meant to ask you before the case was going to be taken
21 under advisement because I don't -- I'm a little
22 confused as to what -- as an opposing party, I'm
23 assuming you do not want -- necessarily want the
24 compulsory pooling to be denied, but you may want some
25 special provisions in the order, some of the facts that

1 have come into the record. And I'd like to know what
2 your view of that order is. If you want it to be
3 denied, tell us and give us the reasons it should be
4 denied. We very, very, very rarely ever deny a
5 compulsory pooling order. So we need to know that. And
6 if you want special provisions, tell us what they are.

7 MS. ARNOLD: Yes, sir. Happy to do that.

8 CLOSING STATEMENT

9 MS. ARNOLD: So first and foremost
10 initially, I'd like to state that we, at the outset, had
11 asked for a motion to continue, which on Monday was
12 denied. And the reason why we had asked for that motion
13 to continue was to grant Marathon the opportunity to
14 and, frankly, the chance to negotiate in good faith.
15 They denied that -- or you denied that on the basis of
16 the arguments on Monday, so we find ourselves here now,
17 unfortunately.

18 So, you know, second to that, it's our
19 understanding and belief that Marathon has no clear path
20 as to exactly which wells it's going to be drilling and
21 in which order, which I think was made abundantly clear
22 during the testimony and even in an email as late as
23 last week that they might drill an initial four wells,
24 but they're still not sure. So we would actually ask
25 that the case be dismissed and the Applicant have the

1 opportunity to refile and clarify which wells it is
2 seeking to compulsory pool. So that is what we would
3 request of the Division.

4 We are happy to provide -- I can either
5 continue or I am happy to provide post-hearing briefings
6 on the legal merits of that case.

7 EXAMINER BROOKS: I would like to hear what
8 you have to say, but there are several other examiners
9 here, so let's hear what their pleasure is.

10 EXAMINER DAWSON: Mr. Warnell?

11 EXAMINER WARNELL: Let's hear it.

12 MS. ARNOLD: Do you want me to continue?

13 EXAMINER DAWSON: Go ahead, continue.

14 MS. ARNOLD: So based on 19.15.4.12, the
15 notice requirements require the Applicant to provide a
16 copy of the relevant AFE to the parties that it seeks to
17 pool, and in this case, we were actually provided eight
18 AFEs originally, and then we were provided I guess the
19 six that we were provided today, which I guess might be
20 further revised. So based on that provision, we again
21 ask that the case be refiled to clarify which wells.

22 Further to that, I think that we can
23 clearly demonstrate that a good-faith effort was not
24 made. In fact, in some convoluted sense of the law
25 that's applicable here, it's Marathon's belief that it's

1 the interest owner's requirement to proactively
2 negotiate in good faith rather than the Applicant and
3 the operator that's seeking to force pool.

4 Order R-13165, which I ask that the
5 Commission [sic] take notice of judicially, sets forth
6 the basic requirements of what good-faith negotiation
7 is, and at the very least, as specified in that case,
8 providing the wells that are going to be drilled is the
9 most basic requirement. In fact, in that case, they
10 delayed it and made them refile.

11 Again, based on the testimony today,
12 they've provided no options to Tap Rock despite Tap Rock
13 asking for more time to give them the opportunity for
14 more options other than to participate in an unknown
15 quantity of wells with a JOA with unknown dates or get
16 compulsory pooled, which isn't really a valid option as
17 far as Tap Rock's concerned. We'd really like to reach
18 a voluntary agreement, which I think we made clear that
19 Tap Rock would request some sort of trade proposal or
20 other proposal to get out of this unit.

21 We believe that -- we're unclear as to why
22 the hearing was needed this week, particularly since it
23 was all fee acreage and it takes relatively little time
24 to obtain a permit to drill. Particularly, it sounded
25 like it was all undivided interest based on the

1 testimony of the landman.

2 You know, Tap Rock does not understand the
3 rush here. We believe that the interest owners'
4 correlative rights, Tap Rock's and, frankly, all of the
5 lessors whose leases are set to expire, correlative
6 rights are being violated here by Marathon who did
7 nothing with the leases that they had, I guess to
8 clarify, in the one or so years that they had it.

9 In either case, you know, we would like to
10 emphasize that Tap Rock's percentage is not big, but
11 understanding the difference between \$2 million and
12 \$1 million and how you're supposed to set forth your
13 budgets for the year is a pretty important fact that
14 doesn't seem to be asking much to clarify what wells and
15 the cost that you are expected to spend in a year.

16 Anyway, we believe that they're rushing the
17 cases to the obvious detriment of the other interest
18 owners and a clear violation of the protection of
19 correlative rights, and so we ask that the case be
20 dismissed and the Applicant be given the opportunity to
21 refile and clarify which wells they are seeking to pool.

22 EXAMINER BROOKS: Okay. I didn't hone in
23 on the testimony about the -- I'm sorry. Are you
24 through?

25 MS. ARNOLD: Yes.

1 EXAMINER BROOKS: I didn't want to
2 interrupt you.

3 I didn't hone in on the testimony about the
4 lease expirations other than that they were July, and
5 they mostly involve leases -- the leases involve mostly
6 Marathon and Chevron interests. What Ms. Arnold just
7 said indicated to me -- is it correct that the depth
8 lease expirations will -- will limit -- leave Marathon
9 with no interest in this unit?

10 MS. BENNETT: I don't know the answer to
11 that question.

12 Do you know the answer?

13 EXAMINER BROOKS: Does your witness know?
14 Can you answer verbally?

15 MR. GYLLENBAND: I believe there is one
16 lease that is not going to expire. All but one lease
17 will expire by July 31st of 2019.

18 MS. BENNETT: So there are additional
19 leases in which Marathon has interests?

20 MR. GYLLENBAND: I believe there is one
21 lease expires in 2020.

22 EXAMINER BROOKS: Okay. And all the others
23 will expire no later than July 31st, 2019?

24 MR. GYLLENBAND: Yes, sir.

25 EXAMINER BROOKS: Okay. This is another

1 non-legal issue because as I am sure the parties
2 realize, there is really no way of putting this off
3 because we're almost, if not already, beyond the time
4 when a proceeding can go through the Commission stage
5 before the leases expire. We're right at the cusp of
6 that point. So in that case, I would hope that the
7 parties can work something out because I'm not sure the
8 Division can do anything to improve anybody's position.

9 But I will give -- for a second time today,
10 I will request that the examiner allow me to write a
11 draft order in this case because I think the legal
12 issues are of great significance.

13 EXAMINER DAWSON: I'm fine with you writing
14 that order, David, draft order.

15 EXAMINER BROOKS: Yeah. Well, a draft
16 order, because all of us have to approve it, plus the
17 director, obviously, before it becomes a real order.

18 MS. BENNETT: If I may briefly also make a
19 closing statement.

20 EXAMINER BROOKS: Please do.

21 EXAMINER DAWSON: Sure.

22 MS. BENNETT: I'm showing my newness, which
23 is a new word I created.

24 EXAMINER BROOKS: And you being a lawyer,
25 you must always make a statement when you have an

1 opportunity to.

2 MS. BENNETT: Right. How could I leave
3 today without saying 150 more things. But luckily I
4 only have five.

5 EXAMINER WARNELL: Number one.

6 CLOSING STATEMENT

7 MS. BENNETT: Yes, number one.

8 I do take issue with Ms. Arnold's
9 characterization of our application and the
10 communications with Tap Rock. It's clear that Marathon
11 has a path forward. There is no need to dismiss this
12 case. We've asked for six wells to be pooled. That is
13 Marathon's plan. There is -- despite the attempt to
14 create confusion today or to create some uncertainty,
15 there is no uncertainty from the Applicant's point of
16 view, and there is no need to dismiss or refile.

17 In terms of the AFEs, I believe
18 Mr. Gyllenband's testimony on that was persuasive in
19 that he testified that Marathon will be sending out
20 additional AFEs as it gets closer to completing the
21 wells. And so while I understand that there is a
22 difference between the 2 million and the as of yet
23 completely hypothetical 1.1 million, we're not in either
24 of those ball parks anymore. There was a clear proposal
25 in our pooling application. It had six wells. Based on

1 Tap Rock's own exhibit today, they were able to
2 calculate the cost to Tap Rock. If they had questions
3 about those costs, they were able to communicate those
4 questions to Marathon.

5 EXAMINER BROOKS: And what you're proposing
6 for us to do now is the same thing you proposed in the
7 application?

8 MS. BENNETT: Yes, it is. Yes.

9 EXAMINER BROOKS: So the application -- the
10 difference occurred between the original proposal and
11 the application?

12 MS. BENNETT: That's correct.

13 EXAMINER BROOKS: Thank you for
14 clarification.

15 MS. BENNETT: And in terms of a trade or
16 other voluntary agreement, that's certainly not off the
17 table even after today. It's something that -- I don't
18 know that a trade is an option, but whatever
19 communications or whatever concerns that Tap Rock has,
20 this hearing notwithstanding, there is no block to those
21 communications going forward. This hearing, as I
22 understand it, should not -- and as Mr. Gyllenband
23 testified today is not the end of the road for Tap Rock
24 or any other person that Marathon seeks to pool.
25 Marathon intends to continue to have conversations with

1 the uncommitted mineral interest owners, and it
2 anticipates working towards resolution with them.

3 And we're here today because we need to
4 have some certainty, though, going forward. And this
5 isn't a rush to judgment. This isn't a rush to get to
6 the courthouse doors. Rather, this is a real need to
7 ensure that Marathon has the ability to protect not only
8 its rights but the rights of the 26 other lessees -- or
9 lessors -- excuse me -- that are identified on Exhibit
10 4. And so that's why we're here, is to make sure those
11 leases don't expire, to protect those interest owners'
12 rights, as well as the rights of Chevron and ultimately
13 Marathon.

14 And so we would ask that the order be
15 granted and definitely not dismissed.

16 Thank you.

17 EXAMINER BROOKS: And we will undertake --
18 I will volunteer in this case to expedite, so it could
19 get done in time for the Commission to get the real
20 order before the case becomes moot.

21 MS. ARNOLD: Is it also possible to do some
22 post-hearing briefing on the legal arguments?

23 EXAMINER BROOKS: That would be
24 appreciated.

25 MS. ARNOLD: Okay. Would you like to set a

1 time frame for that given the time frame that's
2 requested here?

3 EXAMINER BROOKS: Well, I guess a time
4 frame is necessary. When I say I'm going to expedite it
5 and when --

6 EXAMINER DAWSON: The Applicant asked for
7 an expedited order.

8 EXAMINER BROOKS: Yeah. I believe that's
9 true.

10 So what would you suggest is reasonable?

11 MS. ARNOLD: I would think two weeks.

12 EXAMINER BROOKS: Okay. I'll go with two
13 weeks.

14 MS. ARNOLD: For a post-hearing briefing
15 from us on good-faith arguments.

16 EXAMINER BROOKS: Well, do you want to --
17 you'll need some time to reply.

18 MS. BENNETT: Well, are you contemplating
19 joint -- like a submission at the same time with no
20 option for reply?

21 MS. ARNOLD: That's what I was
22 contemplating, thinking that it was going to legal
23 arguments only.

24 EXAMINER BROOKS: I don't think that's
25 reasonable in any kind of -- no option for reply. I

1 haven't had a judge order simultaneous briefings for an
2 issue, but usually they'll order -- also have another
3 date which may be only a couple of days for simultaneous
4 replies.

5 What I would say -- this is the 7th. I've
6 been confused all day whether it was the 7th or the 8th.
7 Let's say Monday, the 18th for initial briefing and
8 Thursday, the 21st for reply.

9 MS. BENNETT: Is it possible to move that
10 up at all to a week from today for the initial brief
11 and --

12 EXAMINER BROOKS: Oh, that's right. This
13 the 8th?

14 MS. BENNETT: This is the 7th.

15 EXAMINER BROOKS: Oh, you mean move it
16 forward? Move it closer?

17 MS. BENNETT: So a week from today or a
18 week -- so the initial brief would be due on the 14th
19 and replies would be due on Monday -- the following
20 Monday.

21 EXAMINER BROOKS: Do you want to respond to
22 that, Ms. Arnold?

23 MR. McMILLAN: I think we have
24 scheduling issues.

25 MS. ARNOLD: I'm supposed to be traveling

1 to Houston for all of next week, so it's going to be a
2 little bit tricky. Possibly next Friday.

3 EXAMINER BROOKS: Next Friday?

4 MS. BENNETT: With our reply due on Monday
5 or Tuesday?

6 MS. ARNOLD: Tuesday, if possible.

7 MS. BENNETT: Yeah. I mean, I'm not trying
8 to be difficult. I just don't want --

9 EXAMINER BROOKS: Well, I have to have some
10 time to digest what you write.

11 MS. BENNETT: Exactly. And the need for
12 expediency, I think, is clear here, so --

13 EXAMINER BROOKS: I worked yesterday to try
14 to figure out what the deadlines to get this case
15 through the Commission would be, if it goes to the
16 Commission, which seems fairly likely, unless you-all
17 come to an agreement, and I came to the conclusion that
18 I couldn't say anything definite because there are too
19 many variable deadlines. But it's clear that the sooner
20 the Division issues the order and gets the clock
21 started, the better.

22 MS. BENNETT: Well, understanding the
23 travel plans and whatnot, I guess if we want to stick
24 with the original date that you proposed, then if you're
25 comfortable with that date, which I did not write down,

1 so --

2 MS. ARNOLD: 18th and the 21st were the
3 original dates. But I am okay with the 15th and the
4 19th, which would be next Friday and the following
5 Tuesday.

6 EXAMINER BROOKS: Okay. Let's do that if
7 you're comfortable enough, to not be protesting
8 vehemently.

9 MS. ARNOLD: It's just one more weekend for
10 us. What's another one?

11 (Laughter.)

12 EXAMINER BROOKS: Weekends are seldom
13 personal days as an attorney. That's one reason I work
14 for the State.

15 MS. ARNOLD: I heard that's a popular move
16 lately.

17 MS. BENNETT: Just to clarify, we will file
18 our opening, or whatever we want to call it, brief
19 simultaneously on the 15th, say, like at close of
20 business.

21 EXAMINER BROOKS: Okay. That's fine.

22 MS. BENNETT: And then we'll file a
23 reply -- a simultaneous reply on the 19th, and it'll
24 limited to the issue of what constitutes good-faith
25 negotiations?

1 Is that what you're proposing?

2 MS. ARNOLD: Yes.

3 EXAMINER BROOKS: That seems reasonable.

4 MS. BENNETT: Okay.

5 EXAMINER BROOKS: Okay.

6 MS. ARNOLD: And I would just clarify what
7 the requirement is for good faith, not what constitutes.
8 It's the requirement.

9 EXAMINER BROOKS: Yes. Well, the
10 requirement of good faith has been written on several
11 times, but I think it's still somewhat lacking in
12 clarity.

13 MR. McMILLAN: Oh, we'll bring great
14 clarity to it, I assure you.

15 EXAMINER BROOKS: It's been written under
16 the National Labor Relations Act a whole lot more than
17 it has been on anything in New Mexico, and I think it's
18 still lacking in clarity in that context.

19 Okay. That's all I have to say.

20 EXAMINER DAWSON: So are you requesting we
21 take this case under advisement?

22 MS. BENNETT: I am, yes.

23 EXAMINER BROOKS: That's acceptable.

24 MS. BENNETT: And to the extent I didn't --

25 EXAMINER BROOKS: It's acceptable to both

1 parties if nobody wants to offer anything more.

2 EXAMINER DAWSON: All three parties,
3 actually.

4 EXAMINER BROOKS: Yeah. That's right. I
5 forgot about Mr. Bruce.

6 EXAMINER DAWSON: Is that acceptable to
7 you?

8 MR. BRUCE: No problem.

9 MS. BENNETT: And to the extent I didn't
10 make it express in anything I said today -- I'm sure it
11 was implied -- we are asking for an expedited order, but
12 to the extent I need to make that on the record as an
13 actual request.

14 EXAMINER BROOKS: Well, I volunteered it.

15 MS. BENNETT: Yes, I know you did.

16 EXAMINER BROOKS: Perhaps it's
17 inappropriate for an examiner to volunteer that, but I
18 don't think it means -- I don't think it really means
19 either way that -- an expedited order needs to get this
20 thing resolved, unless you can resolve it yourselves.

21 MS. ARNOLD: We have no objection to it
22 being taken under advisement under the proviso that we
23 will reiterate our motion to dismiss in those arguments.

24 EXAMINER BROOKS: Okay. Yes. Well, it
25 will be considered. And I think it's a novel idea that

1 a person should be allowed to brief without a response.

2 I wondered about that sometimes when I was counsel
3 (laughter).

4 Okay. Thank you.

5 EXAMINER DAWSON: So at this point, we'll
6 take Cases 20220 and 20221 under advisement.

7 MS. BENNETT: Thank you very much.

8 EXAMINER DAWSON: Thank you.

9 One other thing that I wanted to quickly go
10 over. You know, Mr. Carr and Mr. Feldewert were talking
11 about this list that we put on the table back here, and
12 from what I hear, they feel that if we put this list on
13 the table without going over the dismissals and
14 continuances before the hearings, then there might be
15 some people that are sitting in the room that have to
16 sit around and wait for maybe a day or two until they
17 find out that their case has been dismissed or
18 continued. So I think it might be in our best interest
19 to go again back over the continuances and dismissals
20 before we get into the hearings.

21 EXAMINER BROOKS: I agree with that
22 completely.

23 EXAMINER DAWSON: Did the other attorneys
24 agree with that, too?

25 MR. BRUCE: I agree.

1 MS. ARNOLD: Yes.

2 EXAMINER BROOKS: I agree with it because I
3 think if it's not on the record, it creates ambiguity as
4 to whether additional notice is required.

5 MS. BENNETT: Right.

6 MR. CARR: And I go back and I check. You
7 know, there are those cases at the beginning of the
8 hearings where I could go back and get a transcript, and
9 it would just go case number continued, and you have
10 right there kind of a guide to what was actually
11 heard --

12 MR. McMILLAN: Yeah.

13 MR. CARR: -- and on the table that day and
14 what was continued or dismissed. And it was really
15 helpful, because if not, you're trying to track these
16 piecemeal back case by case. And that's what I was
17 mentioning this morning.

18 EXAMINER DAWSON: Okay. So we'll try to --
19 I'll relay that information, and we'll try to do that.

20 MR. CARR: I think what you have -- you
21 could even just open the hearing by announcing: These
22 are the cases that are continued, and these are the ones
23 that are dismissed. At least someplace there is a
24 record that you're not having to chase.

25 EXAMINER WARNELL: Right. We'll do that.

1 EXAMINER DAWSON: Would you like to go over
2 the cases now on the record and just jot down what we've
3 done today which ones --

4 MR. CARR: I'm going to get killed by Jim
5 Bruce. No. I don't think we need to do that today. I
6 have pieced it together chasing Jordan and others, and I
7 think I have everything nailed today.

8 EXAMINER DAWSON: Well, if any of you have
9 any questions, give us a call.

10 MR. CARR: We will. We will.

11 EXAMINER DAWSON: We'll look at the status
12 of the cases that we heard today.

13 EXAMINER WARNELL: And we appreciate your
14 input on this and any other things. We're trying to
15 make some improvements.

16 MR. CARR: And I will say it's moving
17 faster, and it seems to be settling down some overall
18 from those horrible mega hearing things we were going
19 through.

20 EXAMINER BROOKS: Well, we've had fewer
21 contested compulsory pooling cases -- or opposing plans
22 of development, which really takes the time to get the
23 witnesses swearing each other down.

24 MR. CARR: And we're also moving the ones
25 by affidavit much more quickly.

1 EXAMINER BROOKS: Yes. That is very good.
2 I congratulate the attorneys on cutting their affidavit
3 presentation because it doesn't help us at all if it's
4 just as long as the witness' testimony.

5 MR. McMILLAN: I think we all took to heart
6 the suggestion of Gary Larson's approach to affidavit
7 presentation.

8 EXAMINER BROOKS: Yes.

9 MR. McMILLAN: Many of us in the room were,
10 "Oh, that's how we do it," and we've been doing it that
11 way ever since.

12 EXAMINER BROOKS: I'm glad. I've seen big
13 improvement.

14 EXAMINER DAWSON: Thank you.

15 That adjourns the meeting today.

16 (Case Numbers 20220 and 20221 conclude,
17 3:38 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 7th of March 2019.

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23 MARY C. HANKINS, CCR, RPR
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