

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

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

CASE NOS: 21273, 21274

IN THE MATTER OF THE APPLICATION OF MARATHON OIL  
PERMIAN LLC FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS  
COMMISSIONER HEARING, VOLUME 2  
August 14, 2020  
Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN  
JORDAN KESSLER, COMMISSIONER  
DR. THOMAS ENGLER, COMMISSIONER  
MIGUEL LOZANO, ESQ.

This matter came on for virtual hearing before  
the New Mexico Oil Conservation Commission on Thursday,  
August 14, 2020 through the New Mexico Energy, Minerals, and  
Natural Resources Department, Webex Platform, Santa Fe, New  
Mexico.

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EXHIBITS (Admitted)

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1 CHAIRWOMAN SANDOVAL: Good morning, everybody.  
2 Just bear in mind that we may on occasion ask you to repeat  
3 something. Just so that you can do that, then we ask that.  
4 All right. It is 9:09 on Friday, August 14, and it's the  
5 second day of -- of the Oil Conservation Commission  
6 meeting.

7 And, Mr. Bruce, are you on the line with us?

8 MR. BRUCE: Yes. Can you hear me?

9 CHAIRWOMAN SANDOVAL: Yes.

10 MR. BRUCE: Okay, yes, I am.

11 CHAIRWOMAN SANDOVAL: Okay. Before continuing  
12 with the party's witness, I do want to kind of establish  
13 what the process is going to be going forward.

14 MR. BRUCE: Yes, Madam Chair, I was going to ask  
15 about that because, depending on the questioning, it looks  
16 like Marathon's cases could go through all or most of the  
17 morning. And although I would love for Novo and BTA to be  
18 able to present their cases in a total of four hours, I  
19 don't see that happening. So I was wondering what the  
20 Commission's desires were with respect to the Novo's cases.

21 CHAIRWOMAN SANDOVAL: So we are trying to  
22 establish that.

23 Dr. Engler, we are looking to see, if we did not  
24 finish today, what alternative, maybe. What is your  
25 availability on Thursday of next week?

1                   MR. BRUCE: Thursday next week would be fine,  
2 although I have to sit in on a couple of minor things at the  
3 Division, but if I could probably talk with counsel and get  
4 my stuff up first and be ready to go at 9.

5                   COMMISSIONER ENGLER: This is Tom Engler.  
6 Thursday would be fine for me.

7                   CHAIRWOMAN SANDOVAL: Okay. We're thinking, you  
8 know, maybe we plan to finish this up starting kind of mid  
9 to late morning. That would give anybody who's on the  
10 Division hearings that day opportunity to (unclear) as well  
11 as the Commission has a couple of conflicts in the morning.

12                   MR. BRUCE: And, Madam Chair, you know, the  
13 Division hearings have been generally lasting, you know,  
14 from 8:15 to about 9:30 for all the the cases that are being  
15 presented by affidavit or for status conferences. So that  
16 would be a reasonable time frame.

17                   And I think, in the Marathon BTA cases, you are  
18 getting a lot of the background that is applicable to the  
19 Novo BTA cases also, so maybe there wouldn't be quite as  
20 much detail on certain things.

21                   MS. HARDY: Madam Chair, this is Dana Hardy. I  
22 also have matters scheduled before the Division next  
23 Thursday.

24                   CHAIRWOMAN SANDOVAL: You do or you don't?

25                   MS. HARDY: I do.

1                   CHAIRWOMAN SANDOVAL:  What if we started 10:30 or  
2  11 that day?

3                   MR. BRUCE:  That would be fine with Novo.

4                   CHAIRWOMAN SANDOVAL:  And I can talk with  
5  Division counsel as well as the Hearing Examiner for the  
6  Division and make sure that your stuff is first.  Unless you  
7  think whatever matter you have with the Division is going to  
8  take an extended period of time.

9                   COMMISSIONER ENGLER:  Are there any hearings  
10 before the Division?

11                  MR. BRUCE:  The Division is not hearing any  
12 contested matters.  It's all either affidavit cases or there  
13 might be every now and then a live witness, but the  
14 affidavit cases or scheduling conferences.  And like last  
15 week there were 30 plus cases on the docket, and it was done  
16 by 9:45.  And so a lot of these cases go, they go really  
17 quickly.

18                  MS. HARDY:  I know the Division has legal  
19 arguments scheduled on motions next Thursday.  So it may  
20 take a little longer than normal, but I wouldn't expect it  
21 to take an inordinate amount of time.

22                  CHAIRWOMAN SANDOVAL:  okay.  Two seconds.  We are  
23 going to -- bear with us for two seconds.  We are going to  
24 try to (unclear).

25                  MS. HARDY:  We lost volume.

1 (Audio difficulties.

2 COMMISSIONER ENGLER: Can you hear us right now?

3 MR. BRUCE: Yes.

4 CHAIRWOMAN SANDOVAL: Okay. Thank you guys,  
5 sorry. Okay, so let's go back to the plan. (unclear)  
6 Thursday -- Ms. Hardy, you were cutting out a little bit.  
7 You said you have a (unclear) with the Division on Thursday.

8 MS. HARDY: I do, there were a couple of motions  
9 that I'm arguing on legal issues.

10 MR. BRUCE: If it would aid the Commission, I  
11 would contact the other attorneys on the Division docket and  
12 see if Ms. Hardy's cases and mine could be moved up since  
13 they are either legal arguments or affidavit hearings, and  
14 we could get up and out of there relatively quickly.

15 MS. HARDY: That would be fine with me.

16 CHAIRWOMAN SANDOVAL: Are the witnesses available  
17 on Thursday?

18 MR. BRUCE: Novo has informed me that they are  
19 available.

20 MS. HARDY: It's my understanding that BTA's  
21 witnesses are available.

22 CHAIRWOMAN SANDOVAL: The plan will be, we will  
23 finish or we will go ahead and proceed with as much as  
24 November BTA case today as we can and get through as much of  
25 that as possible today and make it a full day. And then we

1 will continue with whatever is left from the November BTA  
2 case on Thursday beginning at 11.

3           And we will deliberate on both cases following  
4 Thursday's completion of testimony, which means that we need  
5 at least a couple of hours left in that day. So please keep  
6 that in mind during your testimony, you know, if things are  
7 already presented to us in a written fashion, we do not need  
8 to go through those things line by line, so please keep that  
9 in mind.

10           MS. BENNETT: Madam Chair, this is Deana Bennett  
11 on behalf of Marathon. I have a question about the  
12 deliberation process. Yesterday we agreed to submit some  
13 supplemental exhibits, and Ms. Hardy asked for the  
14 opportunity to review and ask questions on those exhibits.

15           Is that something that we would be able to  
16 accomplish also on Thursday or how would that work? I mean,  
17 one of the things that I proposed to Ms. Hardy was getting  
18 as far along in the cases as we can as you suggested through  
19 the end of Thursday, and then continuing at least the  
20 Marathon BTA cases through the next Commission hearing date  
21 so that on that date we can have the question and answer  
22 period that Ms. Hardy has requested and I think she has the  
23 right to.

24           MS. HARDY: Madam Chair, I would propose that  
25 those issues could be addressed next Thursday. If Marathon

1 could get their supplemental exhibits filed or submitted by  
2 Tuesday at noon, BTA could decide whether they have any  
3 issues or questions on them.

4           And it's my understanding that those exhibits  
5 will only include the information that was specifically  
6 requested by Dr. Engler, there wouldn't be other additional  
7 new rebuttal exhibits or other exhibits. So if we could  
8 follow that process, that would seem more efficient than  
9 delaying the cases further, and that's what BTA would  
10 request.

11           MS. BENNETT: Madam Chair, this is Deana Bennett  
12 again. That's fine with Marathon. I would just remind  
13 everyone that Commissioner Kessler also had a request for a  
14 supplemental exhibit that we will be providing as well, so  
15 it's in response to a request from Commissioner Engler and  
16 Commissioner Kessler, and we will endeavor to get those done  
17 by Tuesday so that if that's the Commission's preference, so  
18 that we can work together to get these cases finalized on  
19 Thursday.

20           CHAIRWOMAN SANDOVAL: So basically -- I mean,  
21 yes, if we could have those in by Tuesday so we can do  
22 testimony on Thursday, but the testimony is only -- is  
23 going to be limited to anything regarding those. We are not  
24 going out side of that -- those new exhibits.

25           And basically, everybody is to understand at this

1 point that we either finish up on Thursday or we finish up,  
2 I don't know, November. So those are the options. So keep  
3 that in mind, please, with your testimony. You need to give  
4 the complete story, that's understood, but again, if things  
5 are, you know, written down, I don't know if we need to go  
6 through them line by line.

7 Technical testimony is different, but those are  
8 basically the options, we finish up on Thursday or we finish  
9 up in November or December. So I don't know what you guys'  
10 level of urgency is, but that may drive today and Thursday.

11 COMMISSIONER ENGLER: This is Tom Engler. On  
12 Thursday I will be up there in person, so just for your  
13 information for the deliberating part, that should make it a  
14 little bit easier.

15 CHAIRWOMAN SANDOVAL: Great. That will be really  
16 helpful, Dr. Engler. Is everybody on the same page that we  
17 are going to conclude the testimony with Marathon and  
18 Novo -- I'm sorry -- with Marathon and BTA today, get as  
19 far into the BTA and Novo today as we can, and then we will  
20 restart on Thursday at 11 and get as far through the Novo  
21 BTA case as possible to essentially deliberating on  
22 Thursday, also going through any new exhibits for Marathon.  
23 And if we are not completed with deliberations on Thursday,  
24 we will complete them sometime in November.

25 MS. HARDY: So just to confirm, we would start

1 with the Marathon new exhibits Thursday at 11 a.m.?

2 CHAIRWOMAN SANDOVAL: Yes. Make sure it will be  
3 set aside at the beginning of Thursday to go through those,  
4 and that will be the limitation.

5 MS. HARDY: Thank you.

6 MS. BENNETT: Thank you.

7 CHAIRWOMAN SANDOVAL: All right. Ms. Hardy, I  
8 believe yesterday we finished your questions for your  
9 witness, and we will continue with cross-examination by Ms.  
10 Bennett.

11 MS. BENNETT: Thank you. Good morning, Mr.  
12 McQuien, nice to see you again after the Division hearing in  
13 November. Thanks for being here today.

14 CHAIRWOMAN SANDOVAL: Mr. McQuien just a reminder  
15 you were sworn in yesterday, and you are still bound by  
16 that.

17 THE WITNESS: Understood. Can you all hear me  
18 okay?

19 CHAIRWOMAN SANDOVAL: yes.

20 THE WITNESS: Great.

21 BRITTON MCQUIEN

22 (Previously sworn, testified as follows:)

23 CROSS-EXAMINATION

24 BY MS. BENNETT:

25 Q. Good morning, again, Mr. McQuien. Nice to see

1 you again.

2 I want to go back over a few things that you  
3 testified about yesterday, and I will try to be quick.  
4 Yesterday you testified about the differences between  
5 Marathon's proposal for the Lower Wolfcamp which you call  
6 the Lower Wolfcamp B and BTA's proposals; right?

7 A. I did.

8 Q. And my takeaway from your testimony and exhibits  
9 that you prepared is that BTA's plan has two Lower Wolfcamp  
10 A's -- I'm sorry -- Lower Wolfcamp B wells in the N/2 N/2,  
11 whereas Marathon's plan has one Lower Wolfcamp B in the N/2  
12 N/2.

13 A. Yes.

14 Q. And I also got the impression from your testimony  
15 yesterday that two wells in that Lower Wolfcamp B is very  
16 important to BTA; is that right?

17 A. Yes.

18 Q. And you spent a good bit of time yesterday  
19 explaining the differences between the proposals and why you  
20 think BTA's proposal to have two wells in the Lower Wolfcamp  
21 B is preferable.

22 A. Yes.

23 Q. Given how important this issue is to you, I would  
24 have thought you would have testified about it back at the  
25 November hearing. But I looked back at your testimony, and

1    **you didn't testify about this at all before the Division,**  
2    **did you?**

3                   MS. HARDY: I object to the form of the question.

4                   MS. BENNETT: I will rephrase.

5           **Q.    Mr. McQuien, did you testify about the**  
6    **differences between Marathon's proposals and BTA's proposal**  
7    **for the Lower Wolfcamp wells at the Division hearing in**  
8    **November?**

9                   MS. HARDY: I object to the relevance because  
10    this is a de novo hearing, and what BTA testified to at the  
11    initial hearing doesn't control this case.

12                   CHAIRWOMAN SANDOVAL: I would agree. Ms.  
13    Bennett, this is a de novo case.

14                   MS. BENNETT: If I may just briefly respond to  
15    Ms. Hardy's objection. I understand this is a de novo case,  
16    but also Marathon has the right to know what BTA's concerns  
17    are and objections are, and it shouldn't be caught off guard  
18    like this a year after the fact.

19                   So I'm not trying to rehash what happened at the  
20    November hearing, just simply trying to show it has never  
21    been discussed before today.

22                   CHAIRWOMAN SANDOVAL: Again, I don't think that's  
23    relevant.

24                   MS. BENNETT: Okay. Thank you.

25           **Q.    Mr. McQuien, were you here yesterday or were you**

1 listening when Mr. Price went through the time line that BTA  
2 prepared?

3 A. For some of it.

4 Q. I don't see anything on the time line about  
5 discussions with Marathon regarding your -- regarding BTA's  
6 concerns with well spacing for the Lower Wolfcamp wells, or  
7 the Upper Wolfcamp wells, for that matter. Is there  
8 anything on the time line about those discussions?

9 A. I don't know. If it's not on Mr. Price's  
10 exhibit, then I don't -- I have not had any discussion with  
11 Marathon on the -- how the (unclear) is about the plan.

12 Q. So you are part of BTA's technical team?

13 A. Yes.

14 Q. And if you were to have a discussion or if  
15 someone from BTA was to have a technical discussion with  
16 Marathon, with Marathon's technical team, would that be you?

17 A. Most likely.

18 Q. And you have not had any conversations with  
19 Marathon regarding Marathon's well spacing for the Lower  
20 Wolfcamp wells; is that accurate?

21 A. That's correct.

22 Q. How about, have you had any conversations with  
23 Marathon regarding BTA's concerns for the well spacing for  
24 the Upper Wolfcamp wells?

25 A. I have not.

1           Q.     Has -- has -- have you, as sort of the technical  
2     lead, as I will call it, and feel free to correct me if I'm  
3     wrong about that, on these wells, have you ever raised with  
4     Marathon the reasons for Marathon's spacing?

5           A.     I just want to point out, I put a development  
6     plan together to take advantage of our JOA which Marathon is  
7     not a party to, so, you know, there wasn't any need for me  
8     to have a technical discussion with Marathon. I feel there  
9     was no reason for me to have a technical discussion with  
10    them.

11          Q.     And I understand your position about the JOA, but  
12    your -- you -- BTA is asserting that Marathon hasn't  
13    engaged in good-faith negotiations with BTA; is that right?

14          A.     If that was what was asserted. I have not  
15    asserted it.

16          Q.     Were you listening when Mr. Price testified that  
17    he thought that BTA hadn't entered into -- I'm sorry -- that  
18    Marathon hadn't engaged in good-faith negotiations with BTA?

19          A.     I don't, I don't specifically remember that. He  
20    may have. I don't remember that.

21          Q.     Okay. Well, my line of questioning isn't really  
22    designed to talk to you about what your proposals are under  
23    the JOA, but rather what discussions BTA has had with  
24    Marathon to help break this log jam that has arisen between  
25    BTA and Marathon.

1           And as the technical person for BTA, it seems to  
2 me that the technical discussions would happen between you  
3 and Marathon, and so that's why I'm asking you about these  
4 questions. Not about the JOA proposal, per se, but what  
5 attempts have you, BTA, and you in particular as the  
6 technical person, have had to break this log jam between you  
7 and Marathon.

8           A.     Well, I have not had any technical discussions  
9 about this area. Once again, we are trying to -- we have  
10 not been trying to put together a development plan with  
11 Marathon. They are not a party to anything we want to do  
12 until the compulsory pooling application is approved.

13          Q.     Do you think that your concerns about Marathon's  
14 spacing unit would be relevant to Marathon to help them have  
15 good-faith negotiations with you, with BTA?

16          A.     It would have, I suppose.

17          Q.     Do you think that it would be relevant to  
18 Marathon to understand that you, as I understand -- let me  
19 take a step back. As I understood from your testimony  
20 yesterday, you feel that Marathon's Lower Wolfcamp B wells,  
21 as you call them, treat BTA differently than the S/2 wells.  
22 Is that an accurate representation of what you testified  
23 about yesterday?

24          A.     Yes.

25          Q.     Do you think that -- have you had a conversation

1 with Marathon about whether Marathon intended to treat BTA  
2 differently?

3 A. No.

4 Q. Okay. So yesterday was really the first time, at  
5 the hearing yesterday was the first time you publicly voiced  
6 your concerns to Marathon through the hearing process about  
7 Marathon's Wolfcamp spacing; is that right?

8 MS. HARDY: I object to the question because BTA  
9 submitted its prehearing statement and exhibits in  
10 accordance with the Division's rules.

11 Q. Was yesterday --

12 MS. BENNETT: I understand your objection, Ms.  
13 Hardy, and what I'm asking is if yesterday was the first  
14 time that Mr. McQuien publicly voiced his concerns.

15 Q. And I understand that BTA did supply exhibits and  
16 a prehearing, but yesterday was the first time there was an  
17 interaction, albeit in this hearing process between BTA and  
18 Marathon, where BTA first publicly voiced its concerns to  
19 Marathon about Marathon's spacing unit -- well spacing.

20 A. Yes, that would be correct.

21 Q. Okay. And that's about a year after you each  
22 proposed the Lower Wolfcamp wells?

23 A. Yes.

24 Q. Were you listening yesterday when Mr. Rice  
25 testified?

1 A. For most of it, I think.

2 Q. Did you hear him testify that Marathon has third-  
3 party contracts in place for gas, water and oil?

4 A. Yes.

5 Q. Does BTA have those same third-party contracts in  
6 place?

7 A. I would -- the witness after me is a lot -- is  
8 more involved with the operations and marketing side than I  
9 am, so I think he would be able to answer those questions  
10 more (unclear).

11 Q. Do you -- I'm sorry, go ahead.

12 A. That was it.

13 Q. Okay. I thought someone else was chiming in.  
14 Okay, thanks for that information. You testified yesterday  
15 that, in your opinion, the BTA plan is superior to develop  
16 the BTA Ochoa acreage; is that right?

17 A. Yes.

18 Q. What about the other 2.5 miles that Marathon and  
19 Novo intend to develop and that they have pooling orders  
20 for? Does the BTA JOA -- does the BTA plan for the JOA  
21 acreage, is that superior in terms of that 2.5 miles?

22 A. I'm not sure that it -- are you -- what context  
23 are you talking about the BTA plan? Are you talking about  
24 well spacing, landing targets, what's your question?

25 Q. Okay, let me back up. So I think we have

1 established that yesterday you testified that the BTA plan  
2 is a superior plan for the Ochoa acreage; is that right?

3 A. Yes.

4 Q. But what that statement doesn't take into account  
5 is the other 2.5 miles that are covered by the Novo and  
6 Marathon proposals and pooling orders; is that right?

7 A. Yes.

8 Q. Okay. What about the S/2 of Section 7 and  
9 Section 8, does the BTA plan to develop the BTA JOA acreage,  
10 is that superior in terms of the S/2 of Section 7 and  
11 Section 8?

12 A. I have never been -- it's never been my  
13 responsibility to come up with a development plan for  
14 acreage that BTA has no interest in. That's Marathon's. If  
15 we don't have any interest in it, you know, I'm not going to  
16 put forth any kind of recommendation on it.

17 Q. So is it fair to say that BTA is only worried  
18 about BTA's JOA acreage?

19 A. Yes. I'm only trying to put together a  
20 development plan for areas that we have an ownership  
21 interest in.

22 Q. Okay. And you are focused only on impact to the  
23 BTA JOA acreage; is that accurate?

24 A. Yes.

25 Q. And so your BTA JOA proposal, in terms of

1 spacing, landing, that doesn't take into account the bigger  
2 picture, does it, of the other half of the development plan  
3 that both Marathon and Novo are proposing; is that right?

4 A. No, I don't -- I don't put together a development  
5 plan thinking about it's going to impact offset operators.  
6 I look for -- I try to put together what's in the best  
7 interest of the company I work for.

8 Q. And just to be clear, I'm not asking about the  
9 best interest of the offset operators, I'm asking about the  
10 best interest of the oil and gas reserves, developing the  
11 acreage, preventing waste, protecting correlative rights.  
12 That's what I'm actually talking about, not the myopic focus  
13 on ownership, but rather the whole bundle of sticks.

14 MS. HARDY: I object to the form of the question.  
15 It's confusing, compound and includes Ms. Bennett's, really,  
16 testimony.

17 CHAIRWOMAN SANDOVAL: Ms. Bennett, can you  
18 rephrase that, please?

19 MS. BENNETT: Yeah, sure.

20 Q. So a moment ago you testified that you are not  
21 interested or you're not concerned with impacts to other  
22 offset operators; is that right?

23 A. I am not.

24 Q. Okay. And does BTA -- are you concerned at all  
25 with the impacts to offsetting acreage? And I'm not talking

1 about operators there, I'm talking about the impacts to  
2 offsetting acreage.

3 A. No, I'm not.

4 Q. Okay, thanks. With respect to setbacks,  
5 yesterday you testified that you think eventually the BTA  
6 wells would sort of -- I don't have the same technical lingo  
7 that you do, but you testified that the BTA wells would sort  
8 of reach back across that 330 foot setback to incidentally  
9 drain the hydrocarbons that might be in that 330 foot  
10 setback. Is that -- barring the fact that I don't use the  
11 same words you do -- is that more or less an accurate  
12 statement?

13 A. Yes. I believe we would be capable of draining,  
14 you know, across the setback limits for the well.

15 Q. And that would happen on the other side because  
16 we are talking about 660 total feet here?

17 A. Correct.

18 Q. But wouldn't -- wouldn't a stimulated wellbore  
19 that traversed that same 660 feet in fact more efficiently  
20 and effectively drain those hydrocarbons? You would agree  
21 with that; right?

22 A. I would use a binding (unclear) efficiently.

23 Q. Yesterday I thought you testified that over 20  
24 years or something, or over 30 years, maybe over the life of  
25 the well, it would reach back and get that 330 feet or 660

1 feet. So what I mean by efficiently and effectively is in a  
2 more timely intentional fashion.

3 A. I wouldn't concede, and I believe I said that 20  
4 years (unclear) a wellbore that crosses that and has  
5 fracture points across that portion would more quickly  
6 recover those well reserves.

7 Q. Okay. Thank you for that. A moment ago you  
8 testified that you're not worried about offset operators. I  
9 think we've covered that. Does that mean that you are not  
10 willing to work with Marathon and Novo on their development  
11 plans?

12 A. If we get to a point where BTA is a party to  
13 their development plan, certainly, I will meet with all  
14 those -- every other party and, you know, make, you know, as  
15 good a technical case for what we believe is the best  
16 development plan out there. But until we're a party to  
17 their -- those, you know, pooled units, I'm not going to --  
18 I'm not going to try to run somebody else's business.

19 Q. And I understand that you're not going to try to  
20 run somebody else's business, but when Marathon reached out  
21 to you -- to BTA, or when Mr. McQuien went to visit with  
22 Marathon in Houston --

23 A. Price.

24 Q. -- I'm sorry, Mr. Price, thank you -- when Mr.  
25 Price went to visit with Marathon in Houston, presumably

1 that was to try to reach some agreement on how to work out  
2 developing the -- each other's -- or each party's respective  
3 goals; right?

4 A. I assume so.

5 Q. Okay. So if BTA felt strongly that its Lower  
6 Wolfcamp B and XY spacing was the technically superior  
7 approach, would that have been something that Mr. Price  
8 would have discussed with Marathon if BTA wanted Marathon to  
9 consider BTA's more technically appropriate approach?

10 A. Mr. Price is our land manager, you know, if we  
11 wanted to make a technical case at that point, you know, I  
12 probably should have been at that meeting. I think the  
13 focus at that time was to, you know, trade or, you know,  
14 some other, you know, vehicle where we could lock up our  
15 individual (unclear).

16 Q. And just to reiterate, you've never had those  
17 kind of technical discussions with Marathon?

18 A. I have not.

19 Q. How about with Novo?

20 A. I have not with Novo, either.

21 Q. Okay. Yesterday I think you testified that you  
22 were ready, willing and able to go as soon as this case is  
23 decided. Is that what you testified yesterday?

24 A. I believe Mr. Price testified.

25 Q. Okay.

1 A. I agree with that characterization.

2 Q. Okay. That would only be for the four Lower  
3 Wolfcamp wells though; right?

4 A. That would be the first phase of our development.

5 Q. And a moment ago -- oh, that's right, the next  
6 witness will be able to answer the question about whether  
7 you have the necessary third-party marketing contracts to  
8 actually be ready to go.

9 A. Yeah.

10 CHAIRWOMAN SANDOVAL: (unclear) snarky with the  
11 comment.

12 MS. BENNETT: I wasn't trying to be snarky at  
13 all. I was literally trying to remember if it was the next  
14 person who was going to be testifying about it. I apologize  
15 if I came across as snarky. It was not my intention.

16 BY MS. BENNETT:

17 Q. Thank you. Thank you very much. Those are all  
18 the questions I have, Mr. McQuien. I appreciate you being  
19 here.

20 A. All right. Thank you.

21 CHAIRWOMAN SANDOVAL: Commissioners, do you have  
22 any questions for the witness?

23 COMMISSIONER KESSLER: I don't. Thank you.

24 CHAIRWOMAN SANDOVAL: Dr. Engler?

25 COMMISSIONER ENGLER: Yes, I do. Good morning,

1 Mr. McQuien.

2 THE WITNESS: Good morning.

3 COMMISSIONER ENGLER: I found -- I'm going to  
4 start with your Exhibit Number 11, BTA'S Exhibit 11.

5 THE WITNESS: Okay.

6 COMMISSIONER ENGLER: And I think these figures  
7 are very good, and I appreciate all the effort you put into  
8 a lot of this because this really describes quite well for  
9 me what's going on.

10 THE WITNESS: Okay.

11 COMMISSIONER ENGLER: My first statement is I  
12 want to compliment on all these figures. I do have some  
13 questions, technical questions.

14 THE WITNESS: Yes, sir.

15 COMMISSIONER ENGLER: And on Exhibit 11, I'm kind  
16 of curious, BTA lumps the, what we call the Upper Wolfcamp  
17 resource, the Upper Wolfcamp, the XY and the Third Bone  
18 Spring Sand, and I'm curious, why does BTA believe that the  
19 Third Bone Spring Sand is combined with the two Wolfcamps?

20 THE WITNESS: Well, you know, going through the  
21 study actually, you know, looking at these, you know, the  
22 results from that (unclear) lease I mentioned and some of  
23 the subsequent figures, when I saw their, you know,  
24 recovery, even if the Third Bone Springs, you know, were  
25 drilled or co-developed with the Wolfcamp intervals, and the

1 recovery was the same amount, you know, on a gross per  
2 (unclear) section basis.

3 So that, you know, that really led me to start  
4 thinking, I think, you know, the -- you know, the fractures  
5 must be going across the -- this entire section and draining  
6 the entire section.

7 COMMISSIONER ENGLER: So when you say resource,  
8 are you suggesting like this is a common reservoir then?

9 THE WITNESS: So in the context of horizontal  
10 drilling in multi-stage fracking, I believe the fractures  
11 appear to be traversing the entire section vertically or a  
12 significant portion of it.

13 Now, in this section, no, there are discrete  
14 reservoirs with, you know -- you know, barriers and seals in  
15 between each one, but, you know, as the fracs traverse  
16 across all of it, then it starts to tie all together and it  
17 kind of starts to act as the same one.

18 COMMISSIONER ENGLER: So it would be safe to say  
19 that if BTA combines those, how you develop those in terms  
20 of lower wells and spacing, it is critical because of the  
21 fact that all three are kind of acting together in some  
22 cases. Is that true?

23 THE WITNESS: That's true.

24 COMMISSIONER ENGLER: On the Exhibit 12.

25 THE WITNESS: Okay.

1                   COMMISSIONER ENGLER:  Again, just to state again,  
2  I do like the figures.

3                   THE WITNESS:  Thank you.

4                   COMMISSIONER ENGLER:  Figure 12 is your Lower  
5  Wolfcamp (unclear) and then you have only Lower Wolfcamp  
6  completions, and I'm kind of curious again.  You said on the  
7  Fiddle Fee lease, which I know you guys have a lot of  
8  information on, but is there a reason why -- or maybe you  
9  did -- where 20, 30 how many -- identified Lower Wolfcamp  
10 wells, some of them are much closer to the acreage in  
11 question, have you looked at their production or analyzed  
12 all of these wells in terms of production?

13                  THE WITNESS:  Right.  I have looked at most of  
14 these wells in this area that I would call like the Lower  
15 Wolfcamp B is the primary target here.  You've got, most of  
16 the wells on this exhibit would be Lower Wolfcamp B wells.

17                  The ones I want to talk about, the Fiddle Fee  
18 lease specifically because it was a, you know, simultaneous  
19 development as part of the Wolfcamp A and B in a wine rack  
20 style, and, you know, in this matter, and I have, I think, a  
21 year and a half of history on this.  And in this map area,  
22 this is the only example I have of that specifically of that  
23 wine rack style development between the A and B and C with a  
24 decent amount of production.

25                  COMMISSIONER ENGLER:  So really, with the wells

1 you have, it's because of that development binding and  
2 pattern, the wine rack, is why you focused on that Fiddle  
3 Fee; is that correct?

4 THE WITNESS: That's correct. And to make the  
5 comparison between the A and B landing zone.

6 COMMISSIONER ENGLER: I guess, from my technical  
7 standpoint, I would be curious about those wells that were  
8 developed in the Lower Wolfcamp that are closer to your  
9 lease and how they were performing. Would they not have  
10 somewhat of a barrier on your development plan?

11 THE WITNESS: Certainly, yeah. BTA actually, you  
12 see three wells there in 2017, those are three Lower  
13 Wolfcamp B wells, 2-milers that BTA operates and drilled and  
14 completed. You know, those wells predated the -- this  
15 Fiddle Fee development, you know -- you know, considering  
16 potentially coming back in there, you know (unclear) we come  
17 in that the Lower Wolfcamp A is similar to what the, you  
18 know, Fiddle Fee lease is that is leased in the Ochoa unit,  
19 you know, I have the opportunity to, you know, start from  
20 scratch here.

21 COMMISSIONER ENGLER: If I go to Exhibit 13,  
22 that's your cumulative production curve for the Fee wells --

23 THE WITNESS: Right.

24 COMMISSIONER ENGLER: -- where you are  
25 demonstrating the higher recovery for the B zone versus the

1 A. And I'm curious, your thought is all (unclear) and there  
2 has been testimony about how gaseous some of these zones  
3 are.

4 THE WITNESS: Yes.

5 COMMISSIONER ENGLER: Do you have this graph in  
6 barrels of oil only?

7 THE WITNESS: I do not prepare it in barrels of  
8 oil.

9 COMMISSIONER ENGLER: So is the Lower Wolfcamp B  
10 more gassy?

11 THE WITNESS: The B does tend to be a little  
12 gassier than the A.

13 COMMISSIONER ENGLER: So the inference in  
14 recovery, can I say that is because of the extra gas and gas  
15 equivalent, or barrels of oil equivalent is because of the  
16 gas?

17 THE WITNESS: I don't think that's correct, but I  
18 don't know -- I don't remember specifically. The Lower  
19 Wolfcamp B, I believe, are over -- to the best of my  
20 recollection, I believe, are better overall oil and gas than  
21 they do to be gas wells.

22 COMMISSIONER ENGLER: I guess I don't have an  
23 answer, either, but I think, if you are comparing everything  
24 in terms of barrels of oil, which is what the other graphs  
25 are, I would have expected this to stay the same just so I

1 could compare and see if that was true or not.

2 THE WITNESS: The Lower Wolfcamp B predominantly  
3 a gas reservoir I did want to include the equivalent  
4 portion.

5 COMMISSIONER ENGLER: Yeah, I understand. And  
6 Exhibit 14, again, I really like -- I like these -- I could  
7 ask questions for hours on this, but I will keep it simple.  
8 Again, there's been much discussion about certain Marathon  
9 developments and certain BTA developments. I've found -- I  
10 guess my question is, again, you have a number of wells  
11 identified, the Third Sand, Upper Wolfcamp and some of them  
12 are 2-mile long, again, Section 30, 31 of 23 South, 29 East,  
13 did you by chance look at those production performance?

14 THE WITNESS: Yes, you know, the 30 and 31,  
15 that's Devon's Spud Muffin development, they -- those  
16 wells, I think it's three months of production just through  
17 publicly available data. It's not something that's usable  
18 at this point.

19 COMMISSIONER ENGLER: Yeah, but it would be safe  
20 to say that -- so a lot of these -- so what I have seen, a  
21 lot of these wells that you have identified, the production  
22 history is fairly short, and it would be more difficult to  
23 come up with a good performance number?

24 THE WITNESS: Now, I just want to reiterate, I  
25 chose these Wolfcamp and these Marathon units because they

1 made this nice side-by-side comparison in different  
2 development strategy, got everything done within a year of  
3 each other, so --

4 COMMISSIONER ENGLER: I agree and understand  
5 that, but I think there is some other possible side-by-side  
6 to this also. On your -- on your Exhibit 18 --

7 THE WITNESS: Yes.

8 COMMISSIONER ENGLER: -- we're looking at two  
9 barrels of oil per foot versus (unclear), and you have it as  
10 an XY Sand. So first you have the BTA curve, and then you  
11 have a Marathon curve, and I think, if I recall right, you  
12 are making the point about development and the number of  
13 wells that would be more efficient to drain, in this case,  
14 the XY. Is that correct?

15 THE WITNESS: Are you asking basically what was  
16 the purpose of this exhibit?

17 COMMISSIONER ENGLER: Yeah, because -- yeah, let  
18 me rephrase. You have a tremendously better response or  
19 better production -- in your odds which is the BTA versus  
20 the Marathon, and if I recall right, I think you were making  
21 the -- the conclusion that it's because of the development.

22 THE WITNESS: Yes, sir. That -- you know, what  
23 I want to try and show with this graph, you know, and  
24 another instance that is recommended, hey, why don't you  
25 just go non-consent in some of the wells that you don't

1 like. And what I was trying to show here is that, you know,  
2 when you are doing this co-development, you know, even our  
3 preferred landing target is going to take a hit when it's  
4 co-developed with those other targets.

5 So just comparing the Marathon Y, which had the  
6 co-development with the Wolfcamp, Upper Wolfcamp Shale to  
7 our Wolfcamp XY, they weren't co-developed with the Upper  
8 Wolfcamp Shale.

9 COMMISSIONER ENGLER: But didn't you -- wasn't  
10 part of this discussion yesterday again about this  
11 parent-daughter effect, and that the because of the spacing  
12 that Marathon had, you thought there was some of that  
13 occurring?

14 THE WITNESS: I believe -- are you referring  
15 back to maybe what was on Marathon's rebuttal exhibits?

16 COMMISSIONER ENGLER: Well, that could also be  
17 true. It's the same graph, they just added the Grinder to  
18 it.

19 THE WITNESS: They pulled out the, you know, the  
20 BTA, the last -- the last two BTA wells on our Ogden lease  
21 that they called child wells and said that these, you know,  
22 the half section recovery of these wells is, you know, one,  
23 you know, is the (unclear) they thought the well, it was the  
24 last one, I think we are seeing some drainage, you know,  
25 from outside that, you know, from the surrounding

1 developments.

2 COMMISSIONER ENGLER: Have you or anybody on your  
3 team plotted the production rate versus time for, say, wells  
4 in a half section to see if they actually save some type of  
5 interference?

6 THE WITNESS: Just looking at it on a, like on a  
7 rate time, we think we are seeing interference there? I  
8 mean, yes, I look at rate time plots every day, you know, to  
9 see, or we seeing interference, you know. I would say  
10 typically our, you know, the wells are, you know, that, you  
11 know, in the early time, you know, the wells are able to  
12 make pretty significant weight like, you know, not just our  
13 tubing which we can handle even if we're, you know, one or,  
14 you know -- you know, during the (unclear).

15 So I'm seeing that on a rate time, you know,  
16 with, you know, a year of data putting a decline for a well  
17 like that, you know -- you know that can be interpreted --  
18 the time can be interpreted, so I would -- I think I would  
19 struggle to say, yeah, we are seeing interference just based  
20 on the rate time plot.

21 COMMISSIONER ENGLER: I agree with your concern  
22 about the time of how much data you've got, but if the  
23 argument is about spacing a number of wells, and if the  
24 argument is that you are seeing interference, your  
25 production plots will show that over time. And then the

1 rate time is much more sensitive than the cume time, that's  
2 why I was asking. I bet you look at rate time curves every  
3 day.

4 THE WITNESS: I do.

5 COMMISSIONER ENGLER: So you have a good handle  
6 on that.

7 THE WITNESS: Yeah, the -- I -- I feel that  
8 seeing depletion at this point based on the rate time plot,  
9 you know, without having something right in front of me to  
10 look at --

11 COMMISSIONER ENGLER: One more question. In  
12 terms of, again, this is also relative to spacing  
13 development and depletion, you know, these wells, obviously  
14 they are long laterals, multi-staged, multi-staged fracking,  
15 would you agree that it's possible that some of the stages,  
16 their drainage or SRV as some people like to call it, will  
17 be significantly greater and have a chance to, to interfere  
18 while most of the horizontal wells may not?

19 THE WITNESS: Yeah. Or some (unclear) extending  
20 out longer than others, yeah, certainly it's a pretty  
21 heterogenous system that we are trying to (unclear) see your  
22 point.

23 COMMISSIONER ENGLER: Yeah, I agree. I guess  
24 what I'm asking is, it's possible because of that, that you  
25 could have interference or what is called a parent-daughter

1 effect only on a fraction of a horizontal well and not the  
2 the entire horizontal length; is that correct?

3 THE WITNESS: That's correct.

4 COMMISSIONER ENGLER: I have no further  
5 questions, Madam Chair. Thank you very much, Mr. McQuien.

6 CHAIRWOMAN SANDOVAL: Thank you, Mr. McQuien. I  
7 just have one or two questions. So it's correct to say that  
8 you -- your planned development is in the Lower Wolfcamp;  
9 right?

10 THE WITNESS: Yes, the initial well proposal we  
11 made were for the Lower Wolfcamp.

12 CHAIRWOMAN SANDOVAL: Okay. So ask you a similar  
13 question what I asked Marathon first. And you testified  
14 yesterday, I believe, that if this was approved, then you  
15 would be able to go ahead and begin drilling that well  
16 shortly; correct?

17 THE WITNESS: Right. The normal, you know, once  
18 this is set, if we can get our development area signed off  
19 by the BLM, and then the permits would have been approved,  
20 we would move very aggressively.

21 CHAIRWOMAN SANDOVAL: Okay. So if you could  
22 potentially move aggressively, have you gotten a contract in  
23 place with a company to take away the gas since the Lower  
24 Wolfcamp is gassier and more, potentially have a lot more  
25 associated gas with it?

1 THE WITNESS: You might pose that question to our  
2 next witness. He is much more involved in the marketing  
3 side.

4 CHAIRWOMAN SANDOVAL: I will be happy to ask him.

5 THE WITNESS: Okay.

6 CHAIRWOMAN SANDOVAL: Okay, thank you. I have no  
7 further questions. Ms. Hardy, do you want to redirect?

8 REDIRECT EXAMINATION

9 BY MS. HARDY:

10 Q. Yes, just a couple of questions. Thank you. Mr.  
11 McQuien, Ms. Bennett asked you a number questions about  
12 whether BTA's development plan was superior only for the  
13 Ochoa acreage and whether BTA was considering the entirety  
14 of Marathon's plan. Do you recall those questions?

15 A. Yes.

16 Q. Does BTA have correlative rights in its Ochoa  
17 acreage?

18 A. Yes.

19 Q. And is it your understanding that those rights  
20 include the ability to have BTA's mineral rights efficiently  
21 and effectively produced to the extent best possible?

22 A. Yes.

23 Q. And are correlative rights, in your experience,  
24 important in an evaluation of competing proposals?

25 A. Yes.

1 Q. And whether an application for pooling should be  
2 approved?

3 A. Yes.

4 Q. And is it your understanding that waste is also a  
5 consideration in evaluating competing proposals and whether  
6 a pooling application should be approved?

7 A. Yes.

8 Q. Will Marathon's application, if granted, strand  
9 80 acres of BTA's acreage in the NW/4 Section 8?

10 A. Yes.

11 Q. Do you believe that if Marathon and Novo followed  
12 BTA's development plan for their respective land, it would  
13 be superior to theirs?

14 A. Yes.

15 Q. Would it be more efficient and prevent waste?

16 A. Yes.

17 Q. Ms. Bennett also asked you questions about  
18 whether BTA was willing to to work with Marathon and Novo.  
19 Do you remember those questions?

20 A. Yes.

21 Q. Yesterday did you hear the testimony of  
22 Marathon's witness that Marathon and Novo have been working  
23 together and discussing their development plans?

24 A. Yes.

25 Q. Was it your understanding that Marathon and Novo

1 had discussed a potential for other wells in their proposed  
2 acreage or in Novo's proposed acreage?

3 A. Yes.

4 Q. Have Novo or Marathon shared any of those plans  
5 with BTA?

6 A. No. All we have gotten are the well proposals  
7 that are --

8 Q. So are Marathon and Novo apparently discussing  
9 plans that impact BTA's acreage without involving BTA at  
10 all?

11 A. I don't know what discussions they have had  
12 between them, you know, that's their --

13 Q. But BTA has no knowledge of those proposals or  
14 discussions?

15 A. We were not a party to those discussions.

16 Q. Thank you.

17 MS. HARDY: Those are all of my questions.

18 CHAIRWOMAN SANDOVAL: Thank you. Ms. Hardy, I  
19 believe you have another witness.

20 MS. HARDY: Yes, I do. BTA next calls Nick  
21 Eaton, and he is coming up. He is available and will be on  
22 the screen in just a second.

23 CHAIRWOMAN SANDOVAL: When he is here, would the  
24 court reporter swear him in?

25 NICK EATON

1 (Sworn, testified as follows:)

2 DIRECT EXAMINATION

3 BY MS. HARDY:

4 Q. Good morning, Mr. Eaton.

5 A. Good morning.

6 Q. Could you please state your full name?

7 A. Nick Eaton.

8 Q. Where do you reside?

9 A. Midland, Texas.

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

11 A. I'm employed by BTA as a drilling manager.

12 Q. Do your responsibilities include BTA's drilling  
13 activities in southeast New Mexico?

14 A. Yes, they do.

15 Q. Are you personally involved in the development of  
16 BTA's Ochoa acreage?

17 A. Yes, I am.

18 Q. Are you familiar with Marathon's applications for  
19 the proposed Valkyrie wells?

20 A. Yes, I am.

21 Q. Have you previously testified at a Division  
22 hearing?

23 A. Yes, I have.

24 Q. Did the hearing examiner accept your  
25 qualifications for engineering?

1 A. Yes.

2 Q. Have you previously testified at a Commission  
3 hearing?

4 (Audio interference.)

5 Q. Can you hear me?

6 A. Yes, now I can.

7 Q. Okay. Have you previously testified at a  
8 Commission hearing?

9 A. No, I have not.

10 Q. Given that, would you please briefly summarize  
11 your education and experience?

12 A. I'm a petroleum engineering graduate 2009 Texas  
13 Tech University. I went to work for Chevron out of school  
14 as a drilling and completions engineer. For the past nine  
15 years I worked at BTA as drilling manager. I also manage  
16 the regulatory department and the marketing department.

17 Q. Thank you.

18 MS. HARDY: Madam Chair, I tender Mr. Eaton as an  
19 expert in petroleum engineering.

20 CHAIRWOMAN SANDOVAL: Ms. Bennett, do you have  
21 any objection?

22 MS. BENNETT: No objection. Thank you.

23 CHAIRWOMAN SANDOVAL: Commissioners, do you have  
24 any objections?

25 COMMISSIONER KESSLER: No objection.

1 COMMISSIONER ENGLER: No objection.

2 CHAIRWOMAN SANDOVAL: All right. Mr. Eaton is an  
3 expert for the purposes of this hearing.

4 MS. HARDY: Thank you.

5 BY MS. HARDY:

6 Q. Mr. Eaton, do you have in front of you a document  
7 that's marked as Exhibit 20?

8 A. Yes, I do.

9 Q. And I put that up on the screen. Can you see it?

10 A. Yes.

11 Q. Okay. Can you please identify that exhibit?

12 A. This shows the drilling performance comparison  
13 between BTA and Marathon in Eddy County.

14 Q. And was the exhibit prepared under your direction  
15 and supervision?

16 A. Yes, it was.

17 Q. How did you obtain the information contained in  
18 the exhibit?

19 A. This was actual accounting data recorded by BTA's  
20 accounting department, as well as the drilling base shown  
21 here are from the actual daily drilling reports from BTA and  
22 Marathon wells. As Mr. McQuien testified earlier, we, BTA,  
23 voluntarily participated in the Fiddle Fee lease, the 3H, 4H  
24 7H and 8H, we went there because of the detailed  
25 information.

1           **Q.     And can you describe what the charts show?**

2           A.     On the left side is the BTA operator is a  
3     four-well pad, our Wolfcamp target for mile wells. They are  
4     batch drilled sequentially and completed in that fashion.  
5     There is a 1H, 2H, 3H and 4H on the drill pads in the next  
6     column. The spud month follows and the drilling days.  
7     Towards the bottom there is the average and total. Across  
8     that four-well project we have -- we totaled just over \$22  
9     million.

10                   On the right-hand side is the comparison of the  
11     Marathon operated pad, very same situation, four-well pad,  
12     Wolfcamp, batch drilled and sequentially completed. The  
13     average cost was 10.2, and completed total cost was just  
14     under \$29 million. This just shows that BTA averaged 1.2  
15     days faster in drilling and we saved \$7.1 million in a  
16     four-well pad.

17           **Q.     Based on your analysis here, is BTA a more cost**  
18     **effective driller than Marathon?**

19           A.     Yes.

20           **Q.     Is this part of the reason that BTA values its**  
21     **operating rights?**

22           A.     Yes.

23           **Q.     Let's look next at your Exhibit 21, please. Can**  
24     **you please identify that exhibit.**

25           A.     This is just a statement from Marathon's CEO in

1 the first quarter results in May of 2020 regarding their  
2 plans for the Northern Delaware Basin.

3 Q. Okay. And did you obtain this information from  
4 Marathon's statement?

5 A. Yes, it came from their web site, the link is on  
6 the bottom of the page.

7 Q. We have also provided as an exhibit for BTA that  
8 actual report. Is that your understanding?

9 A. Yes, that is true.

10 Q. Has Marathon made any changes to the statement  
11 that you know of?

12 A. Not to my knowledge, no.

13 Q. So as far as you know, this is still Marathon's  
14 plan?

15 A. Correct.

16 Q. Okay. Can you please look next at BTA Exhibit  
17 22?

18 A. Yes.

19 Q. Was this exhibit prepared under your direction  
20 and supervision?

21 A. Yes, it was.

22 Q. Where did you obtain the information provided in  
23 the exhibit?

24 A. This came from IHS (unclear) and also from the  
25 OCD web site.

1 Q. What does this exhibit show?

2 A. This shows Marathon followed through with the  
3 plan that the CEO set forth in May to cease all drilling  
4 operations in the Northern Delaware Basin.

5 Q. And what does the exhibit show with respect to  
6 BTA's drilling activities?

7 A. It shows that we have spud 28 wells in New Mexico  
8 in 2020, and it also shows that we continue pad drilling  
9 with two horizontal rigs in New Mexico. The bottom left is  
10 just a breakdown by month about wells spud according to the  
11 public data. It does show that, due to the Covid time  
12 frame, that we, as well, we slowed down in activity, but we  
13 do plan on continuing with our two drilling rigs and our  
14 current frac plan.

15 Q. So does BTA have two rigs available in New Mexico  
16 currently?

17 A. Yes.

18 Q. Okay. Is it your understanding that Marathon has  
19 released its rigs?

20 A. Yes.

21 Q. Is BTA planning to commence drilling in the Ochoa  
22 acreage if Marathon's applications are denied?

23 A. Yes.

24 Q. Mr. Eaton, can you please look next at BTA  
25 Exhibit 23. You have that in front of you?

1 A. Yes.

2 Q. Was this exhibit prepared under your direction  
3 and supervision?

4 A. Yes.

5 Q. What does it show?

6 A. This shows that since January of 2019, that  
7 Marathon regularly drilled both 1 and 1.5-mile wells in the  
8 surrounding area. Including directly adjacent to the Ochoa  
9 Valkyrie acreage after the initial Division hearing, they  
10 went ahead and drilled the Haydes wells, which are Bone  
11 Spring wells, mile long completions. I believe that this  
12 shows Marathon is more than willing to drill lateral wells.

13 Q. And why is that information relevant here?

14 A. The arguments they have made that 2 mile is  
15 what's preferred by the industry, and I think it's been  
16 insinuated that's the only way to proceed with this.

17 Q. And if Marathon's applications are denied, could  
18 Marathon develop its acreage by drilling 1-mile wells?

19 A. Yes. There would be nothing stopping them.

20 Q. As far as you know, has BTA proposed that  
21 solution to Marathon?

22 A. I believe that's what Mr. Price did.

23 Q. And that proposal wasn't accepted?

24 A. To my knowledge, yes, it was rejected.

25 Q. Mr. Eaton, there have been several questions

1 regarding contracts and whether BTA has them in place for  
2 off-takers of produced water, gas and oil. Have you heard  
3 those questions?

4 A. Yes, I have.

5 Q. Are you able to answer them?

6 A. Yes. So I believe the time line showed February  
7 of last year when we staked these wells, my group is the  
8 group that is responsible for that. And when we go out and  
9 stake wells, that is also when I direct the marketing reps  
10 to go ahead, and we get out the acreage, we begin with gas  
11 because that's what takes the longest.

12 The good thing with the Ochoa pad, it is directly  
13 adjacent to EJ Operating (unclear) so we do already have  
14 takeaway capacity for that well. Many of our partners were  
15 very excited to hear that we have plans to drill. We take  
16 it various places where there is no marketing, and we drill  
17 the wells, some very good wells and been able to market  
18 that.

19 In February we engaged, we did also the gas work  
20 as well as the oil work, and then about a month later, I'd  
21 say, we finalized on all bids, we chose our preferred  
22 providers in the area, actually purchased the Ogden and  
23 Maroon. They sent a contract over, we began redlining the  
24 contract, and we are in the final stages nearly ready to  
25 execute and it's actually going to be the same contract that

1 we executed on the Pardue lease, which is one mile west of  
2 this acreage.

3 This is one of our preferred gas purchasers.  
4 They performed many times as far as getting wells hooked up  
5 prior to production in this area, you know, and we have  
6 never seen any oil takeaway issues.

7 Water, we actually have -- we have engaged with  
8 two different parties out here, one that has eight inch  
9 pipeline that runs directly off of our pad, and they are  
10 more than willing and ready to contract the acreage once the  
11 proceedings are finalized.

12 **Q. Based on that information, is it fair to say that**  
13 **BTA's ready to go in terms of drilling and the takeaway**  
14 **contracts?**

15 A. Yes.

16 **Q. Let's talk about surface issues a little bit.**  
17 **Does BTA have the ability to timely locate wellsites and**  
18 **operate on the surface?**

19 A. Yes, we do. We met with the BLM -- we met with  
20 the natural resource specialist archeologist. They not only  
21 liked our initial staking, they changed it a little bit.  
22 They preferred us being at the very eastern edge of Section  
23 12, and so to this point we have been cleared. The regional  
24 specialist and archeologist both cleared us at the same  
25 time.

1           **Q.**     There has been some question and testimony in  
2     this proceeding regarding the surface disturbance that would  
3     result from Marathon's plans versus BTA's plans. Have you  
4     heard those questions and testimony?

5           A.     Yes, I have.

6           **Q.**     Will there be less surface disturbance if  
7     Marathon's and Novo's applications are approved?

8           A.     No, there will not.

9           **Q.**     Why not?

10          A.     If we end up with three different places to  
11     develop, in theory, everybody could do it off of a single  
12     pad as BTA planned. So the Valkyrie wells involve one plan,  
13     and all the Novo wells from a single pad, BTA still needs to  
14     come in and drill the N/2 N/2 of our Ochoa acreage, but we  
15     would still have to come in, drill a pad, build a central  
16     tank battery, and cause the same surface disturbance.

17          **Q.**     The surface disturbance is the same either way,  
18     roughly?

19          A.     Yes.

20          **Q.**     Mr. Eaton, in your opinion, will the granting of  
21     Marathon's application result in impairment of BTA's  
22     correlative rights?

23          A.     Yes.

24          **Q.**     Can you summarize the reasons?

25          A.     Coming from Mr. McQuien's testimony, we're

1 experienced operators in the area. We believe to have a  
2 superior development plan for the Wolfcamp and Second Bone  
3 Spring Sand, and that's why we believe our correlative  
4 rights would be infringed.

5 **Q. From BTA's perspective, is it a problem that**  
6 **Marathon has suspended its drilling activities and released**  
7 **its rigs?**

8 A. Absolutely. Off the north edge of the Ochoa  
9 acreage, Novo was drilling a Lower Wolfcamp well, so our  
10 acreage is currently being affected by that. This is one of  
11 the many reasons we started back in February of last year  
12 trying to develop this acreage.

13 **Q. And would the suspension of drilling and release**  
14 **of the rigs, does that negatively impact BTA's correlative**  
15 **rights?**

16 A. Yes, it does. It appears that development of  
17 this acreage would be -- it wouldn't happen in a timely  
18 fashion.

19 **Q. Thank you.**

20 MS. HARDY: Those are all my questions. Madam  
21 Chair, I would move admission of BTA's Exhibits 20 through  
22 23.

23 CHAIRWOMAN SANDOVAL: Do you have any objection?

24 MS. BENNETT: No objection. Thank you.

25 CHAIRWOMAN SANDOVAL: Commissioners, any

1 objection?

2 COMMISSIONER KESSLER: No objection.

3 COMMISSIONER ENGLER: No objection.

4 CHAIRWOMAN SANDOVAL: Exhibits for BTA 20 through  
5 23 will be admitted into the record.

6 (Exhibits BTA 20 - 23 admitted.)

7 MS. HARDY: Thank you.

8 CHAIRWOMAN SANDOVAL: Ms. Bennett, would you like  
9 to cross-examine the witness?

10 MS. BENNETT: Thank you. I just have a couple of  
11 questions.

12 CROSS-EXAMINATION

13 BY MS. BENNETT:

14 Q. Good morning, Mr. Eaton. Thank you for being  
15 here today.

16 A. Good morning.

17 Q. I wanted to ask you just a couple of questions.  
18 The first one is about your Exhibit 20, which is the  
19 comparison between the BTA operated wells and the Marathon  
20 operated wells.

21 A. Okay. I have it in front of me.

22 Q. Great. The BTA Marathon -- I'm sorry -- the BTA  
23 operated wells, XY wells, and Lower Wolfcamp wells?

24 A. Correct, there are two XY wells and two Lower  
25 Wolfcamp wells.

1 Q. And are the Fiddle Fee all Lower Wolfcamp wells?

2 A. Yes, they are.

3 Q. So there is a difference in depth between your  
4 two charts; is that right?

5 A. There's a slight difference in depth, but I  
6 believe you can look at the drill cost average, and despite  
7 the difference in depth, the averages will fall --  
8 Marathon's full average will pay, and then BTA, you know,  
9 they are really not a large difference between the XY and  
10 Lower Wolfcamp wells.

11 Q. And have you had a chance to review the AFEs for  
12 the four Lower Wolfcamp wells that BTA is proposing for the  
13 Ochoa acreage?

14 A. Yes, I have. I think I have them in front of me.

15 Q. Those are part of BTA's exhibits?

16 A. Exhibit Number 7?

17 Q. Yes, it's Exhibit Number 7. And just taking --  
18 just to kind of orient us, if you look at Exhibit 7, the  
19 first page that's got the mark on it, Exhibit 7.

20 A. Okay.

21 Q. And then the third page of that is the AFE.

22 A. Okay.

23 Q. What's the proposed AFE for -- I'm not sure what  
24 -- well, this other one -- what's the proposed cost for this  
25 well?

1           A.     So this was written in June of 2019.  It's a  
2 little dated, but our \$7.6 million.

3           Q.     Okay, great.  Thanks.  Let's see, what was my  
4 next question.  Oh, a moment ago you mentioned that Novo is  
5 drilling something to the north of the Ochoa acreage; is  
6 that right?

7           A.     Have drilled and completed the (unclear) 234H.

8           Q.     And I -- did you testify that Novo's development  
9 of that Rana Salado to the north is impacting BTA's  
10 development of its Ochoa acreage?

11          A.     Yes.

12          Q.     And how, how is that happening?

13          A.     They drilled the well as close to the lease line  
14 as rules would allow, which according to the other experts,  
15 that impacts acreage, our acreage.

16          Q.     Would that be an example of the parent-child  
17 effect that we have been talking about today?

18          A.     I believe that would be a question for  
19 Mr. McQuien.

20          Q.     Okay.  Thanks.  When BTA plans its drilling for  
21 horizontal wells -- first let me take it a step back and ask  
22 another question.  Are you involved in BTA planning its  
23 drilling planning for horizontal wells?

24          A.     Once the units are established, that's generally  
25 when I get involved.

1           **Q.     Okay.  So when BTA is planning its drilling for**  
2 **horizontal wells, does BTA try to avoid large kick-outs and**  
3 **tangents?**

4           MS. HARDY:  I object to the relevance of these  
5 questions.  I think these questions may relate to Novo's  
6 hearing, but I don't think they relate to this hearing.

7           MS. BENNETT:  Well, which  --

8           CHAIRWOMAN SANDOVAL:  Continue, Ms. Bennett.  I  
9 think it's relevant.

10          MS. BENNETT:  Thank you.

11          **Q.     Mr. Eaton, do you want me to repeat the question?**

12          A.     Yes, please.

13          **Q.     When BTA plans its drilling for horizontal wells,**  
14 **does BTA seek to avoid large kick-outs and tangents?**

15          A.     Can you define a large kick-out or tangent?

16          **Q.     I personally cannot.  My landman could, and I'm**  
17 **happy to recall him to testify about what a large kick-out**  
18 **is and a tangent, but again, I'm not familiar with the**  
19 **lingo, so I apologize.  Do you have a sense of what large**  
20 **kick-out means to you?**

21          A.     I would hate to define large kick-out for you.  I  
22 would say (unclear) an operator would drill multiple pads,  
23 multiple wells will be placed on a pad, and, you know,  
24 without that amount in front of me, every single pad with  
25 multiple wells that's developed in the Delaware Basin has a

1 tangent.

2 Q. Thank you. Let's see. The other exhibit you  
3 testified about was Exhibit 22, the wells that have been  
4 spud for months, five months.

5 A. Yes.

6 Q. I actually didn't have any questions about that.  
7 Thank you very much. I appreciate you being here.

8 A. Yes.

9 CHAIRWOMAN SANDOVAL: Commissioners, do you have  
10 any questions? Dr. Engler?

11 COMMISSIONER ENGLER: Yes, I do. Good morning,  
12 Mr. Eaton.

13 THE WITNESS: Good morning, Professor.

14 COMMISSIONER ENGLER: Can you go to Exhibit 20.

15 THE WITNESS: Yes, sir.

16 COMMISSIONER ENGLER: The first question for  
17 clarification, is this drilling costs or drilling and  
18 completion?

19 THE WITNESS: This is drilling costs all the way  
20 through including (unclear).

21 COMMISSIONER ENGLER: So it includes all your  
22 completion?

23 THE WITNESS: Yes, it does. This would be from  
24 staking the well all the way through sales.

25 COMMISSIONER ENGLER: Right, okay. So in your

1 analysis with you showing the difference in costs, is there  
2 particular items that stand out as more expensive for  
3 Marathon than BTA?

4 THE WITNESS: Not having the itemized cost in  
5 front of me, I couldn't say any one line item specifically  
6 at this point.

7 COMMISSIONER ENGLER: But you -- you are the  
8 drilling manager, so you have seen those in the past and  
9 you're aware of those; correct?

10 THE WITNESS: Yes, and I did have that  
11 information when I prepared the slides.

12 COMMISSIONER ENGLER: Okay. Do you know if there  
13 is much difference in pricing between July of '18 and July  
14 of '19.

15 THE WITNESS: You know, I don't have that  
16 directly in front of me. Yesterday what I did do was I  
17 looked at drilling activity in the region for New Mexico.  
18 So in July of 2018 there was 101 rigs running in New Mexico.  
19 In July of 2019 there was 105 rigs running in New Mexico.

20 So, to me, that's a very similar activity level,  
21 so I would have expected service costs to be very much in  
22 line.

23 COMMISSIONER ENGLER: One other quick question to  
24 point out, there is reference to your AFEs for your Ochoa  
25 wells. I think it was Exhibit 7; correct?

1 THE WITNESS: Yes.

2 COMMISSIONER ENGLER: And there is reference to  
3 the costs from your Ochoa wells, but how long are the Ochoa  
4 wells?

5 THE WITNESS: These are -- the completion is 1.5  
6 miles.

7 COMMISSIONER ENGLER: All right. So your  
8 analysis on your Exhibit 20 is for 1-mile wells; correct?

9 THE WITNESS: That's correct. We chose those  
10 wells because they were so similar in construction and  
11 completion.

12 COMMISSIONER ENGLER: Would you agree your 1.5  
13 mile Ochoa wells, since they are half mile longer, they :  
14 should cost more?

15 THE WITNESS: Yes.

16 COMMISSIONER ENGLER: Thank you very much.

17 CHAIRWOMAN SANDOVAL: Thanks, Dr. Engler. I just  
18 have a couple of clarifying questions. So on Exhibit 22, am  
19 I correct in thinking that this only represents drilling and  
20 does not represent completions activity?

21 THE WITNESS: You are correct. This is pure spud  
22 data.

23 CHAIRWOMAN SANDOVAL: Do you know how many wells  
24 of BTA's have been drilled and completed?

25 THE WITNESS: I don't have that spread with me.

1 But we have an active frac -- when we have four rigs  
2 running, we do (unclear) frac rig to keep up. Since we  
3 dropped down to two over the last couple of months, one has  
4 been sufficient to keep up with us, but we are actively  
5 completing.

6 CHAIRWOMAN SANDOVAL: Are you thinking that if  
7 you were able to move forward, you would be able to both  
8 drill and complete the wells in a timely fashion?

9 THE WITNESS: Yes.

10 CHAIRWOMAN SANDOVAL: Okay. Do you know if  
11 Marathon has been completing wells? It shows they are not  
12 drilling, but are they completing any wells?

13 THE WITNESS: I'm not aware.

14 CHAIRWOMAN SANDOVAL: Okay. So you talked about  
15 earlier in the time line where in February you started  
16 working with other operators for takeaway gas, oil, produced  
17 water, et cetera. If you were to drill and complete these  
18 wells, would you have somebody in line to take away the gas  
19 from well?

20 THE WITNESS: Yes, yes. We have a policy of very  
21 little flaring, and I believe we would easily have these  
22 wells connected to gas sales, sufficient gas sales to handle  
23 the entire screen before the wells were brought online.

24 CHAIRWOMAN SANDOVAL: Okay. I have no further  
25 questions. Ms. Hardy, do you want to redirect?

1 MS. HARDY: I do not have any redirect. Thank  
2 you.

3 CHAIRWOMAN SANDOVAL: Thank you. Ms. Bennett, do  
4 you have any rebuttal witnesses?

5 MS. BENNETT: No, I don't. Thank you.

6 CHAIRWOMAN SANDOVAL: Ms. Hardy?

7 MS. HARDY: I have no further witnesses. Thank  
8 you.

9 CHAIRWOMAN SANDOVAL: Why don't we take a  
10 ten-minute break and come back at 10:45, and then we'll  
11 proceed with closings.

12 MS. HARDY: Thank you.

13 MS. BENNETT: Thank you.

14 (Recess taken.)

15 CHAIRWOMAN SANDOVAL: It's 10:47, and we'll get  
16 going again. I just want to line out the process for the  
17 rest of the day. So we will finish closing arguments, or we  
18 will do closing arguments, recognizing we will keep the  
19 record open for exhibits on Thursday, and then we will go  
20 ahead and start with the Novo case.

21 We are going to take a long lunch from noon to  
22 1:30 due to some scheduling things. And then proceed, you  
23 know, pick back up where we left off and then come back  
24 again on Thursday and finish up as need be.

25 We will go ahead and continue. Ms. Bennett, do

1 you wish to make a closing statement?

2 MS. BENNETT: Yes, thank you. I would like to  
3 make a brief closing statement, I appreciate the  
4 opportunity.

5 Thank you very much for the opportunity to  
6 present our case. The nub of this case really is whether  
7 the Division and the OCC are precluded from issuing pooling  
8 orders when some but not all of the acreage sought to be  
9 pooled is subject to a JOA. And the answer to that question  
10 is no based on the Oil & Gas Act, which requires that the  
11 Division pool under these circumstances when the parties  
12 have not reached a voluntary agreement.

13 That is -- the answer to that question is also  
14 no under Division precedent including Division R-1410, which  
15 I discussed in my opening statement. And like here, in that  
16 case the Division granted a pooling application  
17 notwithstanding the presence of a JOA. And in that case,  
18 like here, the JOA covered some, but not all of the acreage  
19 that the applicant sought to pool in that case.

20 Finally, the Oil & Gas Act, as we have discussed,  
21 the paramount concern under the Oil & Gas Act is the  
22 prevention of waste and protection of correlative rights.  
23 And as we have discussed today, the Marathon -- the  
24 Marathon cases -- the Marathon pooling applications take a  
25 broader view of the -- sorry, I just realize I didn't start

1 my video -- the Marathon pooling applications take a broader  
2 view of the acreage at issue here, and combined with the  
3 Novo applications, cover an entire 4-mile stretch; whereas  
4 the BTA JOA acreage covers only 1.5 miles.

5 So Marathon's plans and Novo's plan don't focus  
6 solely on ownership. And as we heard today and yesterday  
7 from BTA, BTA's plans are focusing solely on ownership and  
8 control. Marathon's plans, however, are focused on the most  
9 efficient and economic way to develop the entire area.

10 Marathon, as we have discussed, is proposing  
11 2-mile laterals which will reduce the numbers of wells  
12 across the 4 miles and will eliminate the setbacks that  
13 would otherwise exist and be at issue if there were multiple  
14 wells across the units.

15 And the 2-mile, 2-mile laterals will be more  
16 efficient than 1.5 mile laterals. Or if Marathon were to  
17 accept BTA's suggestion, the 2-mile laterals would be more  
18 efficient than the 1-mile lateral.

19 I also wanted to just point out that the Division  
20 has applied the -- the Case Number or Order Number R-14140  
21 in cases subsequent to the Marathon and Novo cases in recent  
22 decisions involving EOG and COG, and the Division in those  
23 cases also confirmed that it has the authority to issue  
24 pooling orders, notwithstanding JOAs covering similar  
25 acreage.

1           So the Division's authority here is established,  
2   and it's clear that the Division does not lack the authority  
3   to issue a pooling order notwithstanding the -- the  
4   existence of a JOA.

5           Finally, I just wanted to briefly discuss the  
6   cases that Ms. Hardy included in the -- or that BTA included  
7   in its prehearing statement, and those cases involved  
8   motions to stay drilling. And it was essentially on the eve  
9   of drilling, in each case the operator that was about to  
10  commence drilling had fully-developed -- fully-mature  
11  development plans ready to implement. They had approved  
12  APDs, and they had rigs out in the field.

13           BTA has not and cannot make that same showing  
14  here, and in any event the Division was never called on in  
15  those cases to make a final ruling on the merits. Oxy moved  
16  for the emergency stay in case Number 20410 and dismissed  
17  its application when its emergency stay was denied.

18           And Mewbourne's case, as I understand it,  
19  Mewbourne agreed to not drill until a hearing could be held  
20  and then wound up dismissing its cases.

21           And it's my understanding that Mr. Bruce was  
22  involved in both of those cases, so he may have more flavor,  
23  more nuance to shed in those cases, but they do not  
24  contravene the clear Division precedence in Order R-14140,  
25  and in the subsequent orders that the Division has issued

1 following Order R-14140 where the Division has concluded  
2 correctly that the Division has the authority to issue  
3 pooling orders notwithstanding the existence of a JOA that  
4 covers some, but not all the acreage sought to be pooled  
5 which is the case here.

6 In conclusion, the Division was accurate and  
7 correct in its rationale, and the Commission should grant  
8 Marathon's applications. Thank you very much.

9 CHAIRWOMAN SANDOVAL: Thank you. Ms. Hardy,  
10 would you like to make your closing statement?

11 MS. HARDY: Yes. Thank you, and thank you  
12 Commissioners for being here and for listening to our  
13 presentations. We appreciate it.

14 First off, I disagree with Marathon's argument  
15 that the JOA is the primary or controlling issue here.  
16 Throughout this hearing BTA has presented a number of  
17 arguments and issues and evidence regarding other concerns  
18 of Marathon's application.

19 BTA has demonstrated that Marathon's proposed  
20 development will impair BTA's correlative rights by failing  
21 to fully produce the reserves underlying the Ochoa acreage.  
22 Mr. McQuien has explained, and BTA's showing in exhibits,  
23 including Exhibit 10, Marathon is treating the N/2 and S/2  
24 of its development differently and its well locations in the  
25 N/2 where BTA's interest is situated harms BTA's correlative

1 rights.

2 Marathon proposes only one well in the more  
3 productive Wolfcamp, while BTA plans to complete two. And  
4 Marathon only proposes one Bone Spring well in the N/2,  
5 while BTA plans to complete two. So the different treatment  
6 between the N/2 and S/2 of the unit impairs BTA's  
7 correlative rights in the N/2 of the unit.

8 And although Marathon focused on its 2-mile  
9 laterals, there are many other factors to consider in  
10 evaluating competing proposals, including, of course,  
11 correlative rights and waste, such as stranding acreage and  
12 drilling unnecessary wells. Both of those are issues that  
13 BTA has raised.

14 Mr. McQuien explained that Marathon is proposing  
15 to complete unnecessary wells which will reduce production  
16 and harm BTA in its correlative rights. If granted, BTA has  
17 established Marathon's applications will result in waste by  
18 completely stranding 40 acres in the NW/4 of Section 8.  
19 This acreage will not be developed if Marathon's and Novo's  
20 applications are granted.

21 BTA's development plan will more fully and  
22 efficiently recover the reserves underlying the Ochoa  
23 acreage. And as BTA's witnesses have explained, the  
24 proposed development is not an inchoate plan. BTA's  
25 management has approved the wells, the additional Wolfcamp

1 and Bone Spring wells, and BTA is ready to commence drilling  
2 and complete the wells that it has proposed. And it has  
3 takeaway contracts ready in place to go and is ready set to  
4 drill once these cases are resolved.

5 And Mr. McQuien explained that due to the  
6 election period provided to Oxy under the JOA, an expiration  
7 of that period of drilling does not commence within 90 days,  
8 it would not make sense for BTA to propose its additional  
9 wells at this point. It needs to be able to ready -- it  
10 needs to be ready to go on the Phase 1 wells it proposed.

11 Mr. McQuien has explained that BTA's development  
12 will recover more reserves with fewer wells. He provided  
13 graphs comparing the results of BTA's Ogden development with  
14 the results of other Marathon developments in the vicinity  
15 and they confirm his conclusion, BTA has achieved better  
16 results by drilling fewer wells.

17 BTA's plan, in contrast to Marathon's, will not  
18 result in waste surface or otherwise. Marathon's counsel  
19 and witnesses talk a lot about setbacks, but as Mr. McQuien  
20 explained, reserves within a setback can still be drained by  
21 a well. Wells don't stop draining an area because a setback  
22 is recognized by the Division's rules. And the 40 acres  
23 that Marathon's plan strands far outweighs the impact of any  
24 setbacks.

25 Marathon's counsel also argued there will be more

1 surface setbacks with BTA's plan, but Mr. McQuien and  
2 Mr. Eaton both confirmed that is not true. There is no  
3 difference because BTA will end up having to drill an  
4 additional Bone Spring well in the N/2 of the N/2 of Section  
5 7 and the N/2 NW/4 of Section 8.

6 Marathon's application should also be denied  
7 because BTA's JOA should be honored and enforced. The issue  
8 with the JOA is not whether the Commission has authority to  
9 pool acreage under a JOA, it's whether it should do so under  
10 the circumstances presented here.

11 As Mr. Price explained, BTA acquired its interest  
12 and operating rights under the JOA specifically for the  
13 purpose of operating the Ochoa acreage. He also explained  
14 that operating rights have benefits and value and allow the  
15 operator to control costs and choose the most efficient and  
16 productive development plan.

17 Marathon's land witness, Mr. Rice, admitted that  
18 Marathon also prefers that as an operator and that operating  
19 rights are valuable. Mr. Price also explained that joint  
20 operating agreements facilitate development and conserve  
21 resources by allowing operators to develop acreage without  
22 pooling, which is what BTA seeks to do here with these  
23 wells.

24 Under the Oil & Gas Act, the Commission's  
25 obligated to protect correlative rights and conserve

1 resources. Under New Mexico law, the Act's definition of  
2 correlative rights must be construed in light of the purpose  
3 of the entire Act, which is conservation and prevention of  
4 waste. Invalidating a JOA and rendering it meaningless is  
5 inconsistent with the purpose of the Act because doing so  
6 will discourage operators from entering into JOAs to  
7 facilitate development. And Like New Mexico law in general,  
8 the Act establishes a preference for voluntary agreements.

9 We haven't located any Commission decisions  
10 regarding the impact of a JOA and pooling. I don't believe  
11 that Marathon has cited any, either. The cases that BTA  
12 cited in our prehearing statement that were just discussed  
13 by Ms. Bennett are relevant here because they set forth the  
14 principle that an operator with 100 percent control of the  
15 acreage should be permitted to proceed with its development.  
16 It's the general principle those cases recognize.

17 In Order R-21308, which Ms. Bennett just  
18 mentioned regarding COG pooling EOG's acreage, it's  
19 inapplicable because in that case EOG only had a JOA for  
20 part of its acreage.

21 This is a quote from Paragraph 14 of that order,  
22 which stated, "EOG has not consummated a JOA with all  
23 mineral interest owners within the area covered by its  
24 development plan." Here BTA does have a JOA that covers the  
25 entire area of its development plan, so that case has no

1 bearing at all here.

2 It's inconsistent with the Oil & Gas Act and New  
3 Mexico law and public policy to render a JOA meaningless,  
4 and the Commission should not do so here. The parties'  
5 respective ownership interests also warrant denial of  
6 Marathon's application. BTA holds 82 percent of the working  
7 interest in the Ochoa acreage and does not need to pool the  
8 acreage to develop because it controls 100 percent of the  
9 operating rights under the JOA.

10 In contrast, Marathon only holds approximately 38  
11 percent of the interest in the Bone Spring and 19 percent of  
12 the interest in the Wolfcamp unit. Marathon's letters of  
13 support from Chevron and Oxy were issued almost one year ago  
14 and those transactions still have not closed. We all know  
15 transactions may or may not close. In any event Oxy's  
16 interest, 100 percent of that interest is subject to the  
17 JOA. So the ownership interest is relevant in ways to favor  
18 BTA here.

19 Further, Marathon's application should be denied  
20 because Marathon acquired its interest after BTA acquired  
21 its interest under the JOA, and BTA acted to develop its  
22 acreage before Marathon. As Mr. Price explained and showed  
23 in his time line, which is BTA Exhibit 3, BTA acquired its  
24 interest under the JOA six months before Marathon acquired  
25 its interest. BTA had its onsite meeting with BLM,

1 submitted APDs and well proposals prior to the date Marathon  
2 sent its proposals.

3 BTA is ready to drill and complete its wells, and  
4 the timing is relevant in the analysis for competing  
5 proposals and it weighs in favor of BTA here. BTA has the  
6 ability to timely locate wells and operate on the surface.  
7 This wellsite has already been approved.

8 BTA's landman also testified that Marathon did  
9 not negotiate with BTA in good faith prior to pooling, which  
10 is also a relevant factor for the Commission.

11 Finally, granting Marathon's would impair BTA's  
12 correlative rights because Marathon suspended drilling  
13 operations in the Northern Delaware while BTA is ready to  
14 drill to complete its wells. This has been confirmed by  
15 Marathon's first quarter 2020 report and by Marathon's  
16 witnesses.

17 Marathon's witnesses were unable to state when  
18 they would spud these wells. As BTA has explained, it has  
19 spud 28 wells in 2020, has active rigs available, and is  
20 ready and able to drill and complete its wells. Precluding  
21 BTA from proceeding when Marathon's public statement confirm  
22 it will not develop the wells in the near future would  
23 impair BTA's correlative rights.

24 In conclusion, Marathon's application should be  
25 denied, and BTA should be permitted to proceed with its

1 development of the Ochoa acreage. BTA's JOA should be  
2 honored and enforced and BTA should be permitted to proceed.  
3 This development will recover more reserves with fewer  
4 wells, while Marathon's development includes unnecessary  
5 wells, will result in waste and impair BTA's correlative  
6 rights. For those reasons Marathon's application be should  
7 be denied. Thank you.

8 CHAIRWOMAN SANDOVAL: Thank you. Ms. Bennett, do  
9 you have any rebuttal?

10 MS. BENNETT: No, I don't. Thank you very much.

11 CHAIRWOMAN SANDOVAL: Thank you. Well, it is  
12 11:03, and we will conclude the hearing today on Marathon  
13 and BTA and recess until Thursday the -- August 21 at 11  
14 a.m. -- the 20th -- or August 20 at 11 a.m. Mr. Bruce, are  
15 you with us?

16 MR. BRUCE: Can you hear me?

17 CHAIRWOMAN SANDOVAL: Yeah.

18 MR. BRUCE: Yeah, yeah, I'm here.

19 CHAIRWOMAN SANDOVAL: Are your witnesses with us?

20 MR. BRUCE: Yes, my witnesses are here.

21 (Recessed.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

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REPORTER'S CERTIFICATE

I, IRENE DELGADO, New Mexico Certified Court Reporter, CCR 253, do hereby certify that I reported the foregoing virtual proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings that were reduced to printed form by me to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties of attorneys in this case and that I have no interest in the final disposition of this case.

I FURTHER CERTIFY that the Virtual Proceeding was of poor to good quality.

Dated this 14th day of August 2020.

/s/ Irene Delgado  
\_\_\_\_\_  
Irene Delgado, NMCCR 253  
License Expires: 12-31-20