

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

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

Application of Apache Corporation	Case No. 21727
for Compulsory Pooling in	Case No. 21728
Eddy County, New Mexico	Case No. 21729
	Case No. 21730

Application of Cimarex Energy, LLC,	
for Compulsory Pooling,	Case No. 21827
Eddy County, New Mexico	Case No. 21878

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS

FRIDAY, NOVEMBER 5, 2021

EXAMINER HEARING

This matter came on for hearing before the New Mexico Oil Conservation Division, William Brancard, Esq. Hearing Examiner, John Garcia, Technical Examiner, on Friday, November 5, 2021, via Webex Virtual Conferencing Platform hosted by the New Mexico Department of Energy, Minerals and Natural Resources

Reported by: Mary Therese Macfarlane
New Mexico CCR #122
PAUL BACA PROFESSIONAL COURT REPORTERS
500 Fourth Street NW, Suite 105
Albuquerque, New Mexico 87102
(505) 843-9241

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FOR APACHE CORPORATION:

Michael Feldewert, Esq.
Holland & Hart
110 North Guadalupe, Suite 1
Santa Fe, New Mexico 87501
(505) 988-4421
mfeldewert@hollandandhart.com.

FOR COLGATE OPERATING, LLC:

Ernest L. Padilla, Esq.
P.O. Box 2523
Santa Fe, NM 87504
(505) 988-7577
padillalawnm@outlook.com

FOR EOG:

Jobediah Rittenhouse, Esq.
Beatty & Wozniak, PC
216 16th Street, Suite 1100
Denver, CO 80202
(303)407-4499
jrrittenhouse@bwenergyllaw.com.

FOR CIMAREX ENERGY

Paula M. Vance, Esq.
Abadie & Schill, PC
214 McKenzie Street
Santa Fe, NM 87501
(970) 385-4401
paula@abadieschill.com

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1 (Time noted 8:38 a.m.)

2 EXAMINER BRANCARD: With that I will call Cases
3 21727, 21728, 21729, 21730, Apache; and 21827 21878,
4 Colgate.

5 So appearances for Apache.

6 MR. FELDEWERT: May it please the Examiner,
7 Michael Feldewert would with the Santa Fe office of
8 Holland and Hart.

9 EXAMINER BRANCARD: Appearances for Colgate.

10 MR. PADILLA: Mr. Examiner, Ernest L. Padilla
11 for Colgate Operating, LLC.

12 EXAMINER BRANCARD: So I'm going to try to go
13 through what I think are the other parties that have
14 entered appearances and see who we have.

15 I have EOG.

16 MR. RITTENHOUSE: Yes, sir, that is Joby
17 Rittenhouse appearing on behalf of EOG and in support of
18 Apache.

19 EXAMINER BRANCARD: By being in support do you
20 mean you signed a JOA?

21 MR. RITTENHOUSE: Correct. That's my
22 understanding.

23 EXAMINER BRANCARD: Cimarex.

24 MS. VANCE: Good morning, Mr. Hearing Examiner.
25 Paula Vance with Abadie & Schill appearing on behalf of

1 Cimarex Energy Company.

2 EXAMINER BRANCARD: All right. And is Cimarex
3 committed to either party?

4 MS. VANCE: Cimarex has no objection at this
5 time and is appearing in order to hear the proceedings and
6 preserve any of their rights.

7 EXAMINER BRANCARD: Okay. I'll take that as a
8 no. XTO.

9 MR. CLOUTIER: Good morning, Mr. Examiner.
10 Andrew Cloutier, Hinkle Shanor, on behalf of XTO Holding,
11 LLC, in Cases 21727, -728, and 21878 only.

12 XTO is not taking a position on any of the
13 applications and is participating in order to preserve its
14 rights to participate in whichever wells are approved, and
15 to monitor these proceedings.

16 EXAMINER BRANCARD: Thank you, Mr. Cloutier. I
17 believe you set that out in a Prehearing Statement, which
18 was very helpful.

19 Are there any other interested parties in
20 these cases today, 21727, -28, -29, -30, 21827, 21878,
21 Sections 29 and 30. (Note: Pause.)

22 Thank you. Hearing none, I guess we will
23 start with the oldest case, then, 21727.

24 Is Apache prepared to go today?

25 MR. FELDEWERT: Yes, Mr. Examiner.

1 EXAMINER BRANCARD: Summarize who you have as
2 witnesses and what do you plan to do today.

3 MR. FELDEWERT: Certainly. We've submitted
4 testimony from four different witnesses in advance of the
5 hearing. In addition, we provided to counsel in the
6 Division, filed yesterday with the Division, some
7 additional exhibits that we will discuss with these
8 witnesses briefly here today. Those are Exhibits J, K, L,
9 M, N and O on behalf of Apache.

10 I do have kind of an opening statement, Mr.
11 Examiner, if we can proceed with that, although -- unless
12 you want to hear from other counsel before I start.

13 EXAMINER BRANCARD: I will turn to Mr. Padilla,
14 but first I'm curious. We had a Prehearing Order that had
15 a deadline for when exhibits were to be filed, so why were
16 exhibits filed yesterday?

17 MR. FELDEWERT: They were filed, Mr. Examiner,
18 as rebuttal exhibits.

19 EXAMINER BRANCARD: All right. Mr. Padilla?

20 MR. PADILLA: Mr. Examiner, I'm prepared to file
21 or to argue that those supplemental exhibits should not be
22 allowed. They are not supplemental exhibits or rebuttal
23 exhibits, they are additional ammunition, part of the Case
24 in Chief, as far as we can tell. They are untimely, they
25 should not be allowed. We had some other exhibits

1 ourselves and decided not to file those because they would
2 be untimely.

3 We have -- the reason OCD has rules is in
4 contested cases to have a fair chance to look at the
5 exhibits and object as necessary. In this case
6 supplemental exhibits are totally a surprise.

7 EXAMINER BRANCARD: And so what is your plan for
8 today in terms of witnesses, et cetera?

9 MR. PADILLA: Well, we have three witnesses. We
10 have submitted their affidavits as testimony; they are
11 open for cross-examination. And so we will present those,
12 and perhaps have redirect examination after they have been
13 crossed.

14 EXAMINER BRANCARD: All right. So do you have
15 any objection to Apache going first?

16 MR. PADILLA: No.

17 EXAMINER BRANCARD: Okay.

18 All right. Back to you, Mr. Feldewert.

19 I don't think we can use these exhibits in
20 your witnesses' Direct Testimony, because you say they
21 are, if anything, rebuttal witnesses at best; at worst
22 they are late filed in violation of the Hearing Statement
23 direct exhibits.

24 So I think you need to pursue your
25 witnesses with the original exhibits that were filed when

1 they present their testimony, and then we can deal with
2 how you might want to try and introduce those other
3 exhibits later.

4 MR. FELDEWERT: Thank you, Mr. Examiner. We can
5 go in that order. I mean, as you know, and as has been
6 done for a long time, you can't anticipate rebuttal
7 exhibits until you see their Case in Chief, so these
8 exhibits that we have submitted are in direct response to
9 some positions, and quite frankly, surprise positions and
10 evidence that they presented in their Case in Chief.

11 So we can address them initially or we can
12 go through the case as filed and then circle back around
13 and address the rebuttal exhibits at that time. It's
14 entirely up to you.

15 But I can substantiate the need for these
16 rebuttal exhibits and exactly what they address with
17 respect to the Direct Testimony that was filed by Colgate.

18 EXAMINER BRANCARD: All right. Well, when you
19 get to your scintillating cross of the Colgate witnesses,
20 perhaps we could bring these exhibits in, if they are
21 truly rebuttal exhibits.

22 MR. FELDEWERT: Some of them, Mr. Examiner, will
23 be introduced as rebuttal exhibits through our witnesses,
24 since they prepared them.

25 EXAMINER BRANCARD: They are sounding more like

1 direct testimony exhibits, then.

2 MR. PADILLA: I agree with that, Mr. Examiner.
3 Just if you are going to -- they are not rebuttal
4 exhibits, they are additional exhibits.

5 Now, I don't have any problem continuing
6 this case to the time and give us both a chance to rework
7 exhibits, but we didn't file what we would have called
8 rebuttal exhibits simply because they would have been
9 untimely.

10 MR. FELDEWERT: I don't know how rebuttal
11 exhibits can be untimely. Rebuttal exhibits cannot be
12 filed until after the Direct Testimony is obtained and
13 received. These were filed after their Direct Testimony
14 in direct response to their Direct Testimony.

15 MR. PADILLA: The way we see --

16 MR. FELDEWERT: We filed them yesterday.

17 MR. PADILLA: I get it. But you submit them as
18 supplemental exhibits. We look at -- we see them as
19 purely supplemental, not rebuttal exhibits.

20 MR. FELDEWERT: Well, we can walk through them
21 and I can explain how they're rebuttal exhibits. If you
22 would like, we can do that with the witnesses.

23 EXAMINER BRANCARD: Well, you know, we've -- we
24 issued a Prehearing Order in this case and required all
25 exhibits to be submitted seven calendar days before. We

1 gave the parties some extra time in this particular case,
2 delayed the filing of those exhibits.

3 So I -- I don't see anything in the
4 Prehearing Order about rebuttal exhibits.

5 MR. FELDEWERT: That's right. We are under the
6 general rule, Mr. Brancard. How can you file rebuttal
7 exhibits until you see the Case in Chief?

8 EXAMINER BRANCARD: I looked at these exhibits.
9 They looked more like replacement exhibits for your
10 original exhibits.

11 MR. FELDEWERT: I would disagree, and I'm happy
12 to explain how they're not replacement exhibits and how
13 they are rebuttal exhibits.

14 EXAMINER BRANCARD: Okay. Well you're going to
15 have to go through your Direct Testimony of your witnesses
16 with the original exhibits you filed, and that will be the
17 route when the Colgate witnesses come up, whether you can
18 use these exhibits.

19 MR. FELDEWERT: Sure. I understand.

20 EXAMINER BRANCARD: Mr. Feldewert, you were
21 wanting to have a brief summary of your client's position
22 today? That would be helpful.

23 MR. FELDEWERT: Yes. Since the Case in Chief
24 had been filed by each party I can do a brief review and
25 opening statement, and move fairly quickly then through

1 our four witnesses that we call.

2 Can I share? I'm assuming I can.

3 Mr. Examiner, I'm hoping you can see --
4 there we go. I have put in front of you the factors that
5 the Division has identified in Orders.

6 For example, this is -- appears like it's
7 an Order, Order No. R-21834 which were competing cases,
8 and these are the factors that the Division has identified
9 in this and other cases as being under consideration when
10 you have these types of disputes over who should be the
11 operator of certain acreage.

12 You'll see that the first factor is a
13 comparison of the geology, geologic area, so I called it
14 the geologic factor. And you will see from the testimony
15 that has been filed that the well lengths are essentially
16 the same, the proposed target zones that they have, that
17 Colgate confirmed with their Case in Chief and which
18 Apache identified with its Case in Chief, that being the
19 Second Bone Spring Sand and the Third Bone Spring Sand,
20 are essentially the same. But we are prepared to show you
21 with our rebuttal exhibits today that the total vertical
22 depths that Colgate confirm in their Case in Chief with
23 their affidavits, that they do not properly target these
24 Second Bone Spring Sand and Third Bone Spring Sand
25 intervals, and they will not be in the proper zones, as

1 identified in their land affidavit with Mr. Hajdik. You
2 can take his total vertical depths.

3 The other big issue with the geology factor
4 is that Apache has access to seismic, which we show in our
5 Exhibit C, Slide 11, that I have up on the screen. It's
6 very important in this area because we have, I'll call
7 them structural nuances, I think that's the right term,
8 that exist in these targeted intervals that you will not
9 detect just using structure maps. You need seismic to be
10 able to detect these structural nuances, these noses that
11 exist in the geologic setting in this area, and therefore
12 you need to access the seismic data to properly plan, and
13 more importantly, geosteer your wells to remain in the
14 target zone that you are developing.

15 The risk factor, subparagraph B of what you
16 identified here, is essentially the same. I didn't see
17 any major differences in the information provided by the
18 parties as part of their Case in Chief.

19 I also didn't see any indications in the
20 Case in Chief with respect to the negotiations between the
21 parties, the good-faith factor. There don't seem to be
22 any disputes or differences there so I don't see them as
23 being much of, or any factor in this case.

24 The Division has identified here in
25 subparagraph D of the Order that I quoted that they also

1 look at the ability of each party to prudently operate the
2 property and thereby prevent waste. That to me is a
3 highly determinative factor that clearly favors Apache.

4 When you look at slide 9 of our Exhibit C
5 it demonstrates that Apache has drilled 36 Bone Spring
6 wells in this Township and Range, the subject area. That
7 is over three times the number of wells that Colgate has
8 drilled in the Bone Spring in this sub acreage.

9 Apache clearly has more drilling experience
10 and completion experience in this area, three times what
11 Colgate has, and when you take into account the geologic
12 setting and the nuances that exist out of here, you need
13 that experience along with the seismic data.

14 Slide 6 also demonstrates that there are
15 working interest owners in this acreage, a substantial
16 number of working interest owners that favor Apache
17 because of Apache's experience. And we submitted some of
18 their letters and they have sent some independently to the
19 Division, because they recognize it's important to have
20 experience in this area in developing these zones, and
21 Apache has that. And that includes companies like EOG who
22 pointed out that they are supporting Apache today. We
23 also understood from discussions between companies that
24 Cimarex was also supporting Apache and believed Apache was
25 the appropriate operator in this area.

1 The other important point here on this
2 ability to operate is that Apache has reported production,
3 a history of reported production in this area because of
4 their extensive drilling experience.

5 When you look at slide 17, which we
6 submitted on Exhibit C, it compares Apache's experience in
7 developing the Second Bone Spring Interval on the
8 left-hand side and Apache's results and experience in
9 developing the Third Bone Spring Interval on the
10 right-hand side. Apache's production records are shown in
11 gold.

12 So, if you take a look, Apache has clearly
13 the best results in the Second Bone Spring segment in this
14 area, in part because they have got seismic, Mr. Examiner,
15 which is important. And you see that the results in the
16 Third Bone Spring side are favorable and very similar and
17 on track with other operators in this area.

18 What we identified in our Case in Chief is
19 that Colgate has no recorded completions in this Township
20 and Range. They have no reported production in this
21 Township and Range. They have presented and provided no
22 data to the Division or the general public, or even in
23 this case to determine the success of their limited
24 drilling experience.

25 We have no ability to compare their results

1 with other operators, Colgate has no track record, which
2 gets to my rebuttal exhibits, because Colgate surprisingly
3 in their Case in Chief presented what looks like a graph
4 that is rather rudimentary that they contend is based on
5 the completions and production that they have done in this
6 Township and in this Range. And before this case Apache
7 went and looked at the Division's records, and Colgate has
8 no reported completions and no reported production. And
9 we said that in our affidavit.

10 When they filed their case, they said,
11 "Hey, we've completed all these wells and we've got all
12 this production data." So we go to the Division website
13 on Tuesday, and there is no reported completion and there
14 is no reported production data. And that's part of our
15 rebuttal exhibit, Mr. Examiner. Something we didn't
16 expect. We didn't expect them to come out and say, well,
17 we've completed in this area and we've got production
18 records when they didn't report anything.

19 And so we went back and checked the
20 Division's records on Tuesday, and we have that as an
21 exhibit, printed those out, and you will see they haven't
22 reported completion data and they haven't reported any
23 production.

24 So they have no track record in this area,
25 and Apache clearly has the experience and the track record

1 to prudently operate this acreage.

2 When you look at the AFE costs they're
3 essentially the same, there's is no big differences there.
4 Colgate, I would say, is all over the board in terms of
5 the number of drilling days, which is another portion of
6 our rebuttal exhibits, given what they've said in their
7 Case in Chief. They've been all over the board in terms
8 of drilling days. They seem to be fluctuating around back
9 and forth as to how long it's going to take them, but
10 beyond that there's not much difference in these AFEs.

11 When you look at the valuation of the
12 mineral ownership held by each party, that favors Apache.

13 If you look at our Exhibit C, slide 2,
14 Apache controls or has the support of over 58 percent of
15 the working interest in this area, and currently has twice
16 the working interest that Colgate has in these sections.
17 And Apache has reached agreement with Marathon where it
18 acquired Marathon's interest, a very large working
19 interest owner.

20 So when you take this all into account
21 Apache has the largest mineral ownership in this area, and
22 that carries over into our slide 3 of Exhibit C which
23 shows the Apache ownership, control, and support for each
24 spacing unit, again with Apache having the greatest
25 control and support in terms of working interest,

1 especially after they closed their deal with Marathon.
2 And essentially Apache will be footing, after they close
3 the deal with Marathon, the largest chunk of the bill to
4 develop this Second and Third Bone Spring, so that's why
5 they want to be operator. They have the experience,
6 people support them, and they will be footing the biggest
7 chunk of the bill.

8 The last factor that the Division
9 identifies here is a comparison of the ability of the
10 Applicants to timely locate well sites and operate on the
11 surface, the surface (inaudible) pad. And we do look at
12 the drilling plans that have been presented by the
13 parties, and we go to Exhibit C, Apache Exhibit C, and we
14 go to slide 18. Apache intends to utilize only three
15 drilling pads to develop Sections 29 and 30, and use those
16 same drilling locations to develop adjacent Sections 25
17 and 26 to the west in a different Township. They're going
18 to have their central tank battery there.

19 Apache is the only one who is consolidating
20 well pads and facilities to limit the necessary surface
21 disturbance. When you look at Colgate's plans, they are
22 going to use four pads in each and every section. Four
23 pads in each and every section, no consolidation
24 whatsoever.

25 So when you look at these factors that the

1 Division has identified as important, they clearly favor
2 Apache and demonstrate why Apache should be the operator,
3 Mr. Examiner, of these four spacing units that are at
4 issue.

5 With that, when you're ready I can go to
6 our witnesses fairly quickly, I believe, and save the
7 discussion, as you desire, of the rebuttal exhibits
8 brought on by Colgate's positions for after the
9 presentation of the Cases in Chief.

10 EXAMINER BRANCARD: Thank you.

11 Mr. Padilla, I'll offer you either a chance
12 to make an opening statement now or you can do it at the
13 beginning of your case.

14 MR. PADILLA: I'll make it now. I'm not going
15 to go through every exhibit as we go along in my opening.

16 I do want to tell the Examiner that this
17 whole notion that Colgate does not have any experience in
18 the area is not correct. You will see from the evidence
19 that we present that Colgate has drilled two Second Bone
20 2-mile laterals. Apache does not have any -- in 19 South,
21 28 East does not have any 2-mile laterals; they have a
22 whole bunch of 1-mile laterals.

23 The geology in this area, you will see, is
24 a little tricky. This whole notion that Colgate does not
25 have seismic is also not correct. You will hear that

1 Colgate has licensed 3D seismic for this area.

2 They are a proven operator. And of course
3 especially where you have your -- in this area of Eddy
4 County, you need seismic. We agree with Apache there. So
5 they did get, Colgate got seismic information. They rely
6 on seismic to drill these 2-mile laterals. There's a big
7 difference between drilling a 1-mile lateral and 2-mile
8 laterals in this area.

9 Evidence will show that Apache does not
10 have any 2-mile laterals, in 19 South, 28 East. In fact,
11 Colgate has drilled immediately south, I mean adjoining
12 sections to the south, its Dakota wells which are Second
13 and Third Bone Spring wells.

14 So in terms of experience and in terms of
15 have whether or not they are a better operator or not, I
16 don't think that there's a difference.

17 Mr. Feldewert has gone through the AFEs.
18 They are the same, essentially. There's an argument about
19 whether or not one of the operators, Colgate or Apache,
20 can drill the wells in three days faster. I don't think
21 that's much of an argument because of the actual
22 experiences encountered when you're drilling wells. They
23 happen.

24 There's something also in the, uh -- that
25 I've got to touch on. They're saying again with

1 experience that Colgate relied on Apache's experience in
2 drilling a well out there. And the answer to that is: If
3 you see somebody losing control around a bend in the road,
4 which happened in this case, then you exercise caution and
5 you learn from that. That's being a prudent operator.
6 But to say that Apache has more experience in this area,
7 that's not true. So the evidence will show that.

8 And there will be a difference in drilling
9 2-mile laterals versus 1-mile laterals. We would agree
10 that Apache has more 1-mile laterals in the area, not
11 really in 19 South, 28 East. Whether or not Apache was
12 formed in 1954 and has drilled all over the world is not
13 relevant to this case. We have to confine ourselves to 19
14 South, 28 East.

15 You will also hear that they have two rigs
16 drilling in this area, and Apache hasn't been active in
17 this area, despite what they claim. So that's going to
18 come out.

19 Now, let me address this issue of reported
20 production. That is true. Colgate did not report
21 production until yesterday. They became aware that they
22 had failed in that. Part of that has to do with Covid,
23 but that's an oversight. The fact that they do have
24 internal production data is, of course, on which they base
25 the reservoir estimates and their ability to drill wells

1 in this area.

2 I have no doubt that Apache has drilled way
3 more wells than Colgate, you know since 1954 in other
4 parts of the United States, and the world for that matter,
5 but when you come down to this case you have to look at
6 the geology and 19 South, 28 East, and the drilling
7 characteristics that may be encountered in drilling wells
8 in this area.

9 So, uh, that we can go forward to say that
10 this experience factor is really not relevant in this
11 case, and the evidence will show that.

12 Thank you.

13 EXAMINER BRANCARD: Thank you, Mr. Padilla. Is
14 that -- that's your opening statement?

15 MR. PADILLA: Yes.

16 EXAMINER BRANCARD: So I have one question for
17 you, a very general question, Mr. Padilla, and I'll throw
18 it back at Mr. Feldewert, if necessary, also.

19 It appeared from what I read in your
20 statements that have been submitted that Colgate would be
21 okay with splitting the baby and getting the south half of
22 these two sections and giving the north half to Apache.

23 MR. PADILLA: That is correct.

24 EXAMINER BRANCARD: So you would see that as a
25 possible outcome from this hearing?

1 MR. PADILLA: Yes. And I think that they do
2 have more ownership interest or committed ownership
3 interest in the north half.

4 Mr. Feldewert in his opening statement just
5 generally took it over the entire two sections, but...

6 And in my discussions with Mr. Feldewert,
7 we don't see why these parties didn't agree to something
8 along those lines to begin with. But here we are, and
9 that's the way it is.

10 EXAMINER BRANCARD: So I guess we will throw
11 that back to you, Mr. Feldewert. What's Apache's position
12 on splitting the baby?

13 MR. FELDEWERT: The companies, my understanding,
14 have had discussions about other methods of resolving this
15 matter, not splitting the baby.

16 Apache has made it clear that they don't
17 want to quote/unquote "split the baby" in part because of
18 what you see up here on the screen. I mean we want to
19 develop this area efficiently and effectively, having the
20 minimal surface impact necessary, and that's going to be
21 difficult to do if you agree to split the baby, No. 1.

22 No. 2, Apache's got the largest support,
23 it's going to be footing the bill no matter what spacing
24 unit you're in, so they want to be the operator. Makes a
25 lot of sense to me. They've got the experience to do

1 that, including 2-mile wells, which our witness will
2 address, now that they suggest we haven't drilled any
3 2-mile wells in this area.

4 EXAMINER BRANCARD: Thank you. I just wanted to
5 get that issue out on the table here.

6 MR. FELDEWERT: Thank you.

7 EXAMINER BRANCARD: Mr. Feldewert, you may go
8 ahead with Apache's case.

9 MR. FELDEWERT: Thank you, Mr. Examiner. We
10 will call, then, Mr. Blake Johnson.

11 EXAMINER BRANCARD: Do you have all your
12 witnesses available at this point?

13 MR. FELDEWERT: We do. You're right, we may as
14 well swear them all in at the same time if that would be
15 your preference.

16 EXAMINER BRANCARD: Could you please name them
17 and tell them to show up.

18 MR. FELDEWERT: Yes. Blake Johnson just
19 appeared on the screen. We got Drew Chenoweth, he just
20 appeared on the screen. We got Shelby Johnson, she just
21 appeared, and we have Mr. Taylor -- where is Taylor
22 Thetford?

23 And, Mary, their names and spellings are
24 all in what we've submitted with our exhibits.

25 EXAMINER BRANCARD: So are all four witnesses

1 ready? If you are, please raise your right hand.

2 (Whereupon the aforementioned witnesses were
3 duly sworn by Examiner Brancard.)

4 EXAMINER BRANCARD: All right. I heard four
5 yeses there, so I think we are officially sworn in. You
6 may proceed, Mr. Feldewert.

7 MR. FELDEWERT: Mr. Examiner, just a quick note
8 before we take off and move to the witnesses. I think it
9 would be prudent to at least introduce, at least at this
10 point, a couple of exhibits before I forget, which I don't
11 think have any consternation associated with them.

12 One is our Exhibit A is essentially -- is
13 each of the Applications filed in these cases.

14 Exhibit B, as in boy, Apache Exhibit B is
15 the Compulsory Pooling Checklist, which are a favorite of
16 all attorneys who practice before the Division.

17 Exhibit H, as in Henry, is my Notice
18 Affidavit for this hearing, along with the letters and the
19 evidence of the status of the delivery.

20 And then Exhibit I, as in Ivan, is Notices
21 of Publication providing public Notice in the local
22 newspaper for each of these cases.

23 So I would move the admission of Exhibits
24 A, B, H and I.

25 EXAMINER BRANCARD: Mr. Padilla, any objections?

1 MR. PADILLA: No.

2 EXAMINER BRANCARD: Mr. Garcia?

3 EXAMINER GARCIA: Mr. Feldewert, I believe on
4 your checklist you guys have the incorrect pool for this
5 area. I believe it's the Winchester Bone Springs West, I
6 believe.

7 MR. FELDEWERT: Mr. Garcia, as you know, those
8 pools are under control of the district office. It was
9 our understanding that these are in the Palmillo Bone
10 Spring Pool, but if it is a different pool that has been
11 assigned by the district office, then certainly that's
12 what is going to go.

13 EXAMINER GARCIA: Yeah, it's Pool Code 97569.

14 Just so we get accurate Checklists for all
15 these cases.

16 MR. FELDEWERT: Thank you. Those are always a
17 mystery.

18 EXAMINER GARCIA: I understand.

19 MR. FELDEWERT: With that, Mr. Examiner, we will
20 call Mr. Blake Johnson.

21 EXAMINER BRANCARD: Please proceed.

22 BLAKE JOHNSON,
23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. FELDEWERT:

1 Q. Would you please state your full name, identify
2 By whom you're employed and in what capacity.

3 A. Blake Johnson. I work for Apache Corporation as
4 a landman.

5 Q. And Mr. Johnson, did you submit what has been
6 marked as Apache Exhibit D, as in David, that I have up
7 here on the screen? This is your affidavit?

8 A. Yes, sir, I did.

9 Q. Now, am I correct that you were unable to find a
10 notary to get it notarized at the time that we filed it?
11 Right?

12 A. Yes, sir, that's correct.

13 Q. You were able to get it notarized the next day?

14 A. That's right.

15 Q. But for purposes, then, of this hearing, just to
16 make the record clear, you adopt today what's been marked
17 as Apache Exhibit D as your testimony under oath?

18 A. Yes, sir.

19 MR. FELDEWERT: And with that, Mr. Examiner, I
20 would admit, move to admit Exhibit D along with the
21 referenced attachments, which are Attachment D-1 one
22 through D-4, and then Slides 1 through 7 seven of Apache
23 Exhibit C, all of which are referenced and discussed in
24 Mr. Johnson's Affidavit.

25 EXAMINER BRANCARD: Okay. So were you going to

1 submit a notarized page at some point?

2 MR. FELDEWERT: If you want us to. I mean, he
3 has adopted his testimony under oath today. I'm not sure
4 it's necessary, but we can.

5 EXAMINER BRANCARD: Yeah, I'm not sure it's
6 necessary either. Okay.

7 All right. Let's get this straight here.

8 So you have Exhibit D, which is the Direct
9 Testimony, and then there are attachments to Exhibit D.

10 MR. FELDEWERT: D-1 through D-4 that he
11 references and discusses in the affidavit.

12 EXAMINER BRANCARD: Okay. So the C-102s.

13 MR. FELDEWERT: So if you permit me D-1 is the
14 C-102s for each of the proposed wells.

15 EXAMINER BRANCARD: Yeah, please. I'm not
16 seeing labels on the ones I have. There's a lot of pages.

17 MR. FELDEWERT: So I'm on page 54 right now of
18 the .pdf, which is page 4 of his affidavit.

19 You're correct. D-1 is the C-102s, D-2, a
20 sample of the Well Proposal Letters and AFE that were sent
21 to the working interest owners.

22 D-3 is the Chronology of Contact.

23 And D-4 contains letters of support from
24 various working interest owners in the subject acreage.

25 In addition to all that, Mr. Johnson notes

1 that the company put together a slide deck, which is
2 Exhibit C, part of which I presented in my opening, and
3 Mr. Johnson discusses and authenticates slides 1 through 7
4 of Exhibit C.

5 EXAMINER BRANCARD: Okay. So I think that takes
6 us up to page 94 of your .pdf.

7 MR. FELDEWERT: Give me a minute here.

8 You're correct.

9 EXAMINER BRANCARD: And then let me check -- how
10 many slides did you have total?

11 MR. FELDEWERT: We had 25.

12 EXAMINER BRANCARD: All right. Okay. Thank
13 you.

14 I guess I'll first turn then to Mr. Padilla
15 for questions.

16 CROSS EXAMINATION

17 BY MR. PADILLA:

18 Q. Mr. Johnson, you finalized your verbal agreement
19 that's in one of your slides? You indicated that you have
20 verbal agreement with Marathon. Have you finalized that?

21 A. Have I finalized it? Yes. We've got a verbal
22 agreement with them. Management on both sides have agreed
23 to this at this point.

24 Q. That's what you say in your affidavit. But you
25 have no writing at all?

1 A. That's correct.

2 Q. Not even a letter confirming your verbal
3 agreement?

4 A. Not a letter. I've had multiple conversations
5 with them.

6 Q. How much of an interest is that?

7 A. The interest is broken out on one of the slides.
8 If you go to slide -- that one right there.
9 Let's see here.

10 MR. FELDEWERT: Slide 3 of Exhibit C.

11 THE WITNESS: Slide 3 of Exhibit C. Yeah. So
12 that interest is 6.132 percent of the north half/north
13 half; 6.132 percent in the south half of the north half;
14 9.2 percent in the north half of the south half; and then
15 23 percent in the south half/south half of the
16 development.

17 Q. You would agree with me that that's a
18 substantial interest, right?

19 A. Yes, sir.

20 Q. When did you make the application for Compulsory
21 Pooling?

22 A. I don't recall off the top of my head.

23 Q. So a few months back. Would you agree with
24 that?

25 A. That's correct.

1 Q. And in that amount of time you haven't finalized
2 anything with Marathon?

3 A. We have not.

4 Q. Has the interest of EOG been committed to a JOA?

5 A. No, it has not.

6 Q. (Note: Pause.) What do you have from EOG to
7 say that they are going to -- other than Mr. Rittenhouse's
8 announcement here today.

9 A. I'm not sure I understand the question.

10 Q. Well, Mr. Rittenhouse in his statement this
11 morning said that EOG favored Apache. Do you have any
12 writing from EOG saying that?

13 A. I do.

14 Q. Okay.

15 A. They are actually committed under an Exchange
16 Agreement.

17 Q. Under what?

18 A. Under an Exchange Agreement.

19 Q. Okay. And you have that in writing?

20 A. I do.

21 Q. But their interest is substantially less than
22 Marathon's, correct?

23 A. Per se, yes.

24 Q. Where did you get the idea that Colgate was
25 going to use four pads to drill its wells?

1 A. That's based on an assumption that their Well
2 Proposals don't explain where each one of the pads is
3 going to be located, it just says a generic information or
4 a generic spot. So based on the fact that they have done
5 or proposed four well pads in the past, we made the
6 assumption that they're doing four well pads at this
7 point.

8 **Q. In fact you don't know where they're going to**
9 **place their well pads, right?**

10 A. No, because they didn't tell us.

11 **Q. Did you ask?**

12 A. I did not ask.

13 **Q. How many wells have you drilled in 19 South, 28**
14 **East that are 2-mile laterals?**

15 A. That would be a question for our technical
16 group, maybe our drilling engineer or completion engineer.

17 **Q. You don't know that at all, whether you have**
18 **drilled two wells or no wells?**

19 A. I believe that it's four wells, if I'm correct,
20 four 2-mile wells.

21 **Q. In 19 South, 28 East?**

22 A. They were two miles.

23 **Q. How many -- would you agree with me that most of**
24 **your wells in this area are 1-mile laterals?**

25 A. Again I would defer to the technical team, but

1 it seems to be that case.

2 Q. (Note: Pause.) I'm not sure if it's one of
3 your exhibits that, uh -- or maybe it's the geologist
4 exhibit relating to inexperienced operator in the area,
5 and it looks like it's a C-103.

6 Is that one of your exhibits? Mine are not
7 numbered.

8 A. I don't believe it's one of mine, no.

9 Q. That one. I just had it up. Whose exhibit is
10 that?

11 A. That would be our geologist's exhibit.

12 Q. Are you aware that Colgate has a substantial
13 infrastructure in this area in Sections 29 and 30?

14 A. Not particularly, no.

15 Q. Do you know whether they have roads into that
16 area?

17 A. I'm sorry, what was the question?

18 Q. Do they have roads into that area, are you
19 aware?

20 A. Roads?

21 Q. Yes.

22 A. Not particularly, no.

23 Q. Do you know whether they have water pipelines
24 going into that area?

25 A. No.

1 Q. You don't know?

2 A. I don't know.

3 Q. Do you know whether they have electrical
4 facilities going in that area?

5 A. No.

6 Q. Are you familiar with the Dakota wells in the
7 Second Bone Spring and Third Bone Spring that Colgate has
8 drilled in the two sections here --

9 A. I've heard of it, yes.

10 Q. -- in the south?

11 A. Yes. Was there a question there?

12 Q. Are you aware that Colgate has drilled a Second
13 Bone Spring and a Third Bone Spring, and they called it
14 their Dakota wells.

15 A. Yes.

16 Q. Two-mile laterals.

17 A. Yes.

18 Q. Okay. Do you have any 2-mile laterals anywhere
19 near there?

20 A. I'm sorry, Mr. Padilla, you may have cut out.

21 Q. Do you have any 2-mile laterals anywhere near
22 Sections 29 and 30 of 19 South, 28 East?

23 A. To my knowledge, in the Township yes.

24 Q. You do or you don't?

25 A. Yes, we do have 2-mile laterals.

1 Q. And are they Third Bone or Second Bone?

2 A. I believe that they're Third Bone. It would be
3 a better question for the technical team, but I believe
4 they are Third Bone.

5 Q. But you're not aware whether you have any wells
6 near Sections 29 and 30.

7 A. No, we do in Sections 14 and 15. I would call
8 that near.

9 Q. And it's a 2-mile lateral?

10 A. Yes, sir.

11 Q. Okay. Are you aware that -- well, I'll leave
12 that for the geologist.

13 Mr. Examiner, that's all I have.

14 EXAMINER BRANCARD: Thank you.

15 Mr. Rittenhouse, were you going to ask any
16 questions of the witnesses today?

17 MR. RITTENHOUSE: No, sir, I was not. Thank you
18 for asking.

19 EXAMINER BRANCARD: All right. Ms. Vance, were
20 you going to ask any questions today?

21 MS. VANCE: No, Mr. Examiner, not today. Thank
22 you.

23 EXAMINER BRANCARD: Thank you. Mr. Cloutier,
24 questions?

25 MR. CLOUTIER: No questions, Mr. Examiner.

1 Thank you.

2 EXAMINER BRANCARD: Thank you. All right.
3 Let's get to the important person then, Mr. Garcia.

4 EXAMINER GARCIA: Good morning, Mr. Johnson.

5 THE WITNESS: Good morning.

6 CROSS EXAMINATION

7 BY EXAMINER GARCIA:

8 Q. So we went through a lot of exhibits real quick,
9 so Mr. Feldewert please tell me if I'm asking wrong
10 exhibit questions. Maybe another witness.

11 MR. FELDEWERT: You let me know if you want to
12 go to a particular exhibit. I'll try to get there.

13 EXAMINER GARCIA: On Page 4 under (inaudible),
14 page 29 of 134 on my .pdf.

15 MR. FELDEWERT: Page 4 of the slide.

16 EXAMINER GARCIA: Yes.

17 Q. So Mr. Johnson, I have this question: If you
18 and Marathon are in agreement that their interest verbally
19 will be coming to you, to Apache, why are they listed as
20 being pooled on this exhibit?

21 A. We just haven't signed a JOA with them.

22 Q. So in the event that you didn't complete the
23 transaction, you would pool the interest.

24 Okay. And Mr. Padilla gave a lot of my
25 questions about that. So it's not finalized and it hasn't

1 BY EXAMINER BRANCARD:

2 Q. So I'm looking at Exhibit 7, page 32.

3 A. So it would be slide 7?

4 Q. Slide 7, yes.

5 A. Of Exhibit C.

6 Q. Yes.

7 MR. FELDEWERT: There we go.

8 Q. This is your exhibit, Mr. Johnson, correct?

9 A. That's correct, yes, sir.

10 Q. So talk me through, then, the next-to-last
11 bullet point: Temporary water line is pending until water
12 sourcing agreement is completed.

13 I assume this is for removal of produced
14 water.

15 A. That's correct.

16 Q. So you have no -- you're not planning any
17 produced water (inaudible) in this area?

18 A. I can't speak to that, the surface group kind of
19 puts that stuff together. But we could certainly follow
20 up with any necessary information we need at this point.

21 Q. Okay. And there's no one else testifying today
22 who would know about the arrangements for produced water?

23 A. Not to my knowledge.

24 Q. And I would assume, then, you wouldn't know
25 whether Apache is using produced water in its completions.

1 A. A technical expert would have to testify on that
2 matter.

3 **Q. Okay.**

4 MR. FELDEWERT: Mr. Examiner, we do have a
5 drilling engineer that might be able to answer that for
6 you.

7 EXAMINER BRANCARD: Okay. Thank you.

8 MR. FELDEWERT: I don't know for sure, because I
9 didn't anticipate that line of questioning.

10 EXAMINER BRANCARD: Well, it's part of the
11 surface facilities factor here.

12 MR. FELDEWERT: I understand.

13 EXAMINER BRANCARD: And of course when we talk
14 about waste, waste has two meanings in the Oil & Gas Act.

15 **Q. And then the last bullet point says Secure Gas**
16 **Takeaway. Is that your methane capture you're referring**
17 **to here?**

18 A. I believe it would be the pipeline associated
19 with it.

20 **Q. Do you have any more details about what that is?**

21 A. I don't at this point. It would have to be a
22 follow-up conversation.

23 EXAMINER BRANCARD: Okay. Thank you. Those are
24 my questions.

25 Mr. Feldewert, do you have any redirect?

1 MR. FELDEWERT: Sure.

2 REDIRECT EXAMINATION

3 BY MR. FELDEWERT:

4 Q. Mr. Johnson, you have, though, secured gas
5 takeaway to avoid unnecessary venting and flaring,
6 correct?

7 A. That's correct. That's my understanding of the
8 bullet point.

9 Q. Okay. Secondly, you mentioned -- you got a
10 question about well pads and why were we suggesting they
11 were going to use four well pads, and you referenced the
12 Well Proposal Letters. Do you recall that?

13 A. Yes, sir.

14 Q. And you mentioned the fact that when Colgate
15 proposed its wells to companies like XTO, EOG, yourselves,
16 if I go to what's been marked as Mr. Hajdik's Exhibit
17 A-12, for example, which is the -- and I apologize for
18 moing around here; I don't know any other way to do it --
19 which is the December 4th Well Proposal Letter that went
20 out to the working interest owners, did they identify the
21 quarter/quarter section where they were going to have
22 their surface hole location?

23 If I look at this exhibit, they put I/P.

24 A. Yes, sir.

25 Q. Did they do that consistently in other Well

1 **Proposal Letters? Did they actually identify the**
2 **quarter/quarter section where the surface hole was going**
3 **to be located?**

4 A. No. It was generic.

5 **Q. Did Mr. Hajdik in his affidavit identify where**
6 **the surface hole was going to be located?**

7 A. I'd have to read through his affidavit, I don't
8 know at this point, but I don't think so.

9 **Q. If I look at his affidavit, Exhibit A, page 2,**
10 **Black Jack 123H (Reading) This proposed well is a**
11 **horizontal well with a legal surface location in Unit I/P.**

12 **Do you see that?**

13 A. Yes, sir.

14 **Q. Doesn't identify a quarter/quarter section.**

15 A. No, sir.

16 **Q. If you go down to Mr. Hajdik's part 2 that he**
17 **submits with his affidavit, this is what they provided**
18 **you, right, as part of their Case in Chief?**

19 A. That is correct.

20 **Q. Does he give any indication, other than that**
21 **they are going to use four different well pads and four**
22 **different surface locations?**

23 A. It appears that way, yes, sir.

24 **Q. We see it in here on what has been marked as**
25 **Exhibit A-15, right?**

1 A. That's correct.

2 Q. Uhm, so my point, Mr. Johnson, is that Colgate
3 has not provided with their evidence any indication that
4 they are going to consolidate well pads, nor have they
5 provided any indication for working interest owners that
6 they are requesting to consolidate well pads. Isn't that
7 true?

8 A. That's true.

9 MR. FELDEWERT: That's all the questions I have.
10 Thank you, Mr. Taylor (sic.)

11 EXAMINER BRANCARD: Thank you. Your next
12 witness, please, Mr. Feldewert.

13 MR. FELDEWERT: We will call Mr. Chenoweth.

14 DREW CHENOWETH,
15 having been duly sworn, testified as follows:

16 THE WITNESS: Good morning

17 MR. FELDEWERT: Good morning.

18 DIRECT EXAMINATION

19 BY MR. FELDEWERT:

20 Q. Mr. Chenoweth, while I move around here on our
21 exhibit package, would you please state your name,
22 identify by whom you're employed, and in what capacity.

23 A. I'm Drew Chenoweth. I am employed by Apache
24 Corporation as a geologist.

25 Q. And Mr. Chenoweth, what's been marked as Apache

1 Exhibit E, I have it up here on the screen, is this your
2 affidavit containing your testimony?

3 A. Yes, sir.

4 Q. And you were able to get this notarized before
5 we submitted it, correct?

6 A. Yes, sir.

7 Q. Do you adopt this testimony today, this written
8 testimony today under oath?

9 A. Yes, sir.

10 Q. Okay. Now, this affidavit contains also
11 Attachment E-1 which is your resume; is that correct?

12 A. That is correct.

13 Q. And throughout this Affidavit do you also
14 identify, review and discuss slides 8 through 15 of Apache
15 Exhibit C?

16 A. Yes, sir.

17 MR. FELDEWERT: Mr. Examiner, I would move to
18 admit Apache Exhibit E along with the reference to Exhibit
19 E-1, and slides 8 through 15 of Apache Exhibit C.

20 EXAMINER BRANCARD: Any objections, Mr?
21 Padilla.

22 MR. PADILLA: No, no objection.

23 EXAMINER BRANCARD: So admitted.

24 MR. FELDEWERT: And I will save the discussion,
25 then, of the rebuttal exhibits that Mr. Chenoweth put

1 together until the appropriate time.

2 With that I will pass the witness.

3 EXAMINER BRANCARD: Thank you.

4 Mr. Padilla, questions?

5 CROSS EXAMINATION

6 BY MR. PADILLA:

7 Q. Yes, I have a couple of questions.

8 A. Yes, sir.

9 Q. Let me direct your attention to your affidavit,
10 which in my package is sort of towards the back. I can't
11 refer you to a page number.

12 A. Okay.

13 Q. In paragraph 5 of your affidavit --

14 A. Yes, sir.

15 Q. -- the first sentence says: (Reading) In
16 contrast, Colgate has not completed a single horizontal
17 well in the Bonespring Formation in the subject area, and
18 did not commence drilling a horizontal well in this area
19 until March, 2020.

20 A. Yes, sir.

21 Q. Is this a relatively new area of exploration in
22 the Bone Spring, Second Bone and Third Bone?

23 A. This area was first drilled by Apache.

24 Q. Am I --

25 A. If I understand the question.

1 **Q. When you say in this, you're saying Colgate has**
2 **not completed a single horizontal well in the Bone Spring**
3 **Formation in the subject area, that is not true, is it?**

4 A. That is correct. I went with the publicly
5 available data at the time, and I did the best that I
6 could to analyze offset activity, and that's what was
7 reflected in the public data.

8 **Q. But you knew they had drilled a Second Bone**
9 **Spring well there, right?**

10 A. Yes, sir, I did.

11 MR. FELDEWERT: Mr. Padilla, you asked him if
12 they had drilled a single horizontal well?

13 MR. PADILLA: That's what I asked.

14 MR. FELDEWERT: Okay.

15 A. Okay. I didn't want to talk over him. I was
16 going to say yes, I was aware they drilled. According to
17 the public data available at the time it appeared they had
18 left the well stuck.

19 **Q. Did you have any communications with Colgate**
20 **about whether or not they had completed their wells?**

21 A. No, sir.

22 **Q. Were you aware that they had surface facilities**
23 **out there and that they had water supply pipelines and**
24 **roads and infrastructure in there?**

25 A. I did not research satellite imagery but I can

1 assume when wells are drilled the company will have that
2 infrastructure in place.

3 **Q. How many Bone Spring wells 2-mile laterals have**
4 **you drilled in 19 South, 28 East?**

5 A. We've drilled four (inaudible) Bone Spring wells
6 in Sections 14 and 15.

7 **Q. Those are Second and Third Bone Spring?**

8 A. No, sir, those are Third Bone Spring.

9 **Q. And have you drilled any Second Bone Spring**
10 **wells in 19 South, 28 East?**

11 A. Yes, sir.

12 **Q. You have?**

13 A. Yes, sir. We've drilled plenty of Second Bone
14 Spring wells.

15 **Q. My question was whether you have drilled any in**
16 **19 South, 28 East.**

17 A. Did you mean --

18 **Q. In that Township.**

19 A. Yes.

20 **Q. Have you drilled any Second Bone Spring wells?**

21 A. Yes, we have drilled Second Bone Spring wells in
22 that Township.

23 **Q. How many?**

24 A. I would have to look on my slide. I think it's
25 either 16 or 20.

1 **Q. 2-mile lateral wells?**

2 A. So that's -- I didn't understand that that's
3 what you were asking.

4 We have not drilled any Second Bone Spring
5 2-mile laterals.

6 **Q. So in this area you don't have any experience on**
7 **drilling Second Bone Spring wells.**

8 MR. FELDEWERT: Object to the form.

9 A. I would say that's incorrect.

10 **Q. Let me refine my question.**

11 You haven't drilled any Second Bone Spring
12 wells in 19 South, 28 East.

13 A. That's also incorrect. We have drilled Second
14 Bone Spring wells; however, they are not 2-mile laterals.
15 But we have drilled plenty Second Bone Spring wells in 19
16 South, 28 East.

17 **Q. Would you agree with me that there's a**
18 **difference between drilling Second Bone Spring wells that**
19 **are 2-mile laterals and Second Bone Spring wells that are**
20 **1-mile laterals?**

21 A. Yes, sir.

22 **Q. And that's because of geological conditions in**
23 **the area, correct?**

24 A. That is correct.

25 **Q. Are you aware that Colgate has licensed 3D**

1 seismic for this area?

2 A. No, sir, I was not aware of that. It was not
3 mentioned anywhere in the exhibits provided by the
4 geologist.

5 Q. Well, in paragraph 7 of your affidavit, the last
6 sentence of -- well, yeah, second-to-the-last sentence
7 starting with the word "realizing"...

8 You say: (Reading) Realizing that staying
9 within the Second Bone Spring target zone is especially
10 crucial in the subject area, Apache acquired licensed
11 seismic data over the subject area, including Sections 29
12 and 30.

13 You're not aware that Colgate has licensed
14 3D seismic, correct?

15 A. That is correct.

16 Q. So are you aware that perhaps you bought
17 Colgate's 3D seismic information that it has licensed?

18 A. No, sir.

19 Q. So you didn't develop the 3D seismic for this
20 area; is that right?

21 A. Can you please clarify the question?

22 Q. Did Apache license 3D seismic for this area?

23 A. Yes, we did.

24 Q. Well, the way I understand your statement here
25 is that you purchased it.

1 **Did you purchase it or did you develop it?**

2 A. It's my understanding that we licensed the 3D.
3 We did not actually go out and have a company shoot it and
4 then acquire it from that company. It's my understanding
5 that we licensed that seismic over the area.

6 **Q. But you don't have any personal knowledge of**
7 **whether you did or you didn't?**

8 A. My personal knowledge is usually relegated to
9 interpreting the seismic data. I don't manage acquiring
10 the actual data itself.

11 **Q. Have you yourself been involved in the -- I**
12 **believe the term "guiding the wellbore" through Second**
13 **Bone Spring?**

14 A. Geosteering, sir?

15 **Q. Yes, steering.**

16 A. No, I have not. There is a separate team that
17 handles that entirely.

18 **Q. Okay. So I think we are in agreement that you**
19 **need 3D seismic for this area. Right?**

20 A. 100 percent.

21 **Q. To steer the well.**

22 A. Yes, sir.

23 **Q. You realize now that Colgate has licensed 3D**
24 **seismic?**

25 MR. FELDEWERT: I will object to the form of the

1 question. There's been no evidence presented that Colgate
2 has licensed 3D seismic, and Mr. Padilla has made that
3 statement but I don't think he's testifying.

4 EXAMINER BRANCARD: Well, I think the witness
5 already answered this question.

6 MR. PADILLA: Well, I think you're right.

7 Q. So the last sentence of paragraph 7 is saying
8 Apache has utilized that proprietary data to successfully
9 plan and steer its wells.

10 A. Yes, sir.

11 Q. But you haven't drilled any Second Bone Spring
12 2-mile laterals, right?

13 A. That is correct.

14 Q. In paragraph 18 of your affidavit you say that
15 Apache's drilling and completion experience in this area
16 is superior to Colgate.

17 A. Yes, sir, I said that.

18 Q. That may be limited to the 1-mile laterals,
19 correct?

20 A. I guess my answer would be with the data that we
21 had available we were superior.

22 Q. As far as 1-mile laterals were concerned, right?

23 A. I can't comment on how our 2-mile laterals stack
24 up to Colgate's because we don't have the production, it's
25 not publicly available.

1 **Q. Did you see the graph prepared by Colgate's**
2 **reservoir engineer?**

3 A. Yes, sir.

4 **Q. Does that give you any information as to whether**
5 **their wells are productive or not?**

6 A. The graph gave us a general idea. It was pretty
7 blurry. We had to try and get data out of it the best we
8 could, but there was no actual numbers included with it.
9 It was just lines. We didn't have numbers of production
10 so that we could run numbers.

11 And that's actually probably more on the
12 reservoir engineer's side than me, the analysis portion of
13 that.

14 **Q. In paragraph 18 you refer to structural nuances.**

15 A. Yes, sir.

16 **Q. Is there something in the geology, your geology**
17 **that's different from anything that Colgate presented in**
18 **its geologic presentation?**

19 A. The Colgate geology presented is what appeared
20 to be based on well control, based on the contours on
21 their structural maps and their isopach map, and when you
22 add more granularity you could see differences where
23 channel bodies pinch out. You can't see with just well
24 control. That's why you have to integrate with seismic.

25 **Q. And assuming that Colgate is using 3D seismic,**

1 you would be okay with that, right? Then the structural
2 nuances are not a problem. Correct?

3 A. I would assume that they are using it if they
4 have it, but they didn't present that, so I'm not sure how
5 their interpretation would differ from ours. And it is
6 very interpretational. We have a record of developing
7 these channels correctly.

8 Q. Then you also referred to Second and Third Bone
9 Spring Sand underlying the proposed spacing unit. I may
10 agree with you as to the Third Bone Spring Sand but you
11 haven't drilled any Second Bone Spring wells to determine
12 whether or not that application as to Second Bone Spring
13 wells is correct. Correct?

14 A. Can you clarify your question, please.

15 Q. Well, you don't have experience in the Second
16 Bone Spring to say that you can avoid structural nuances
17 or you can deal with structural nuances, unless you have
18 the seismic information

19 A. We do have seismic information for this area,
20 and we performed a full workup over this area.

21 Q. Okay. But my point is you haven't drilled any
22 Second Bone Spring in the area.

23 A. That is correct. Do you mean in Section 29
24 and 30 or did you mean in the whole Township?

25 Q. The whole Township.

1 A. And do you mean Second Bone 2-mile laterals or
2 1-mile laterals?

3 **Q. Second Bone 2-mile laterals.**

4 A. Yes, we have not drilled 2-mile Second Bone
5 laterals; however, if you look at Sections 14 and 15 the
6 wells are directly opposing one another. It's essentially
7 a 2-mile lateral. It's not steering a 2-mile lateral but
8 they were steered using seismic, and we would follow the
9 same methodology and we expect to see the same success.

10 MR. PADILLA: Mr. Examiner, I don't have any
11 more questions.

12 EXAMINER BRANCARD: Thank you.

13 MR. PADILLA: Thank you, sir.

14 EXAMINER BRANCARD: Mr. Garcia. (Note: Pause.)

15 Mr. Garcia, are you there?

16 EXAMINER GARCIA: Sorry. I was still muted.

17 I have no questions at this time of the
18 geologist.

19 EXAMINER BRANCARD: Thank you.

20 Unless one of the other parties want to
21 jump in right now, I think we will move to the next
22 witness.

23 Mr. Feldewert?

24 MR. FELDEWERT: Can I ask a couple of questions?

25 EXAMINER BRANCARD: Yes, please. Redirect.

1 MR. FELDEWERT: Thank you.

2 REDIRECT EXAMINATION

3 BY MR. FELDEWERT:

4 Q. Mr. Padilla seemed to chastise you, Mr.
5 Chenoweth, for saying that Colgate had not completed any
6 wells in this Township and Range. Do you remember that?

7 A. I didn't remember it as chastising, but yes.

8 Q. Okay. He brought it up.

9 A. Yes.

10 Q. In fact when we look at Exhibit C, slide 9, we
11 state that all Bone Spring wells drilled by Colgate have
12 been left as ducks, apparently no results?

13 What are ducks?

14 A. Drilled Uncompleted.

15 Q. Drilled Uncompleted. Currently no well results.

16 We then received their exhibits in their
17 Case in Chief, right, Mr. Chenoweth?

18 A. Yes, sir.

19 Q. Okay. And we looked at their engineering
20 exhibit testimony, and Ms. Cox had presented something --
21 had presented what I have got up here on the screen as her
22 Exhibit C-2. Do you see that?

23 A. Yes, sir.

24 Q. Those are the squiggly lines you were talking
25 about?

1 A. Yes, sir.

2 Q. Appear to represent that they actually had some
3 production information as late as 15 to 16 months. Do you
4 see that?

5 A. Yes, sir.

6 Q. Did that surprise you?

7 A. Yes.

8 Q. As a result did you task yourself and others to
9 go take a look at the production records with the Oil
10 Conservation Division for the wells that -- they say
11 eleven wells that they suggest that they have completed.

12 A. I had already done that work before the exhibits
13 were submitted. I had already looked at all the wells in
14 the area. There was no production.

15 Q. No production.

16 A. No.

17 Q. After receiving their suggestion, did you go
18 back and double check or triple check?

19 A. Yes, sir, we triple checked.

20 Q. And if I go to what has been marked as Apache
21 Exhibit K, are these the division records that you and
22 others examined?

23 A. Yes, sir.

24 Q. Okay. And when does it reflects that you
25 printed out those Division records?

1 A. Tuesday morning.

2 Q. Tuesday morning, November 2nd?

3 A. Yes, sir.

4 Q. And did you do that for each of the 11 wells
5 that Colgate had identified?

6 A. I did that for every single well that had been
7 permitted, even, in the Township.

8 Q. And when you looked at these records, did they
9 indicate that Colgate filed any completion records with
10 the Division?

11 A. No. And --

12 Q. Did you -- did you also then double check the
13 well files to see if there were any completion records in
14 the well files that were filed with the Division?

15 A. Yes, sir.

16 Q. Did you find any when you looked on November
17 2nd, on just Tuesday of this week?

18 A. No, sir.

19 Q. Did you -- when you looked at these records did
20 you find any monthly production reports for these --

21 A. No, I did not.

22 MR. PADILLA: Mr. Examiner, we have already
23 admitted that there have been no production reports until
24 yesterday, I believe; that it was an oversight. So I
25 don't know what the relevance of these are at this point.

1 I think you have already ruled that they were not timely.

2 MR. FELDEWERT: I think that's -- Mr. Examiner,
3 No. 1, I would think that the Division would be very
4 interested by someone who wants to be an operator for a
5 section who can't seem to file the required completion
6 reports on time, and the monthly production reports on
7 time.

8 No. 2, this is rebuttal, a rebuttal exhibit
9 that we are entitled to go into and substantiate. We have
10 Mr. Padilla's word that they filed, he says they did, but
11 the records show otherwise.

12 So I think this, No. 1, is true rebuttal.
13 He brought it up on direct examination, and I'm closing
14 the loop on this.

15 EXAMINER BRANCARD: I don't have a problem with
16 this document. I mean, I certainly look forward to
17 hearing Colgate's witnesses discuss this, and you can
18 certainly cross-examine them when they do testify, Mr.
19 Feldewert.

20 I have no problem with this exhibit. Are
21 you offering to admit it at this point?

22 MR. FELDEWERT: In just a minute, Mr. Brancard.

23 **Q. Mr. Chenoweth, just so we are clear for the**
24 **record, okay, let's just look at this Lady Franklin**
25 **No. 121H that I have on the screen, which is Exhibit K,**

1 Apache Exhibit K. Okay?

2 A. Yes, sir.

3 Q. Looking at the first page, in the
4 upper-left-hand corner it shows the date that you printed
5 it out, on 11-2-21, 8:21 a.m.; is that right?

6 A. Yes, sir.

7 Q. And just for the record, you think that relates
8 to the 11 wells.

9 A. Yes, sir.

10 Q. Now, I personally don't review these records
11 very much, okay. Can you, using this first example of
12 the Lady Franklin 121H, can you tell us where it would be
13 identified on the Division's printout here if Colgate had
14 filed any type of completion report?

15 A. You'll have to scroll down. I believe it's
16 page 2 of this document.

17 Q. Page 2.

18 A. No, it's going to be page -- well, right there.

19 No. Sorry. Right there.

20 Q. Page 3?

21 A. Yeah. It's on the right-hand column there:
22 Completion Report Received.

23 Q. I just highlighted it.

24 A. Typically when I look at, you know, offset
25 competitor analysis I don't just rely on this first page,

1 I go to the well file itself. That's a good first check,
2 but it's not there.

3 Q. And you didn't find anything in the well files
4 when you went and checked?

5 A. No.

6 Q. Where would the monthly production information
7 be found on this particular printout?

8 A. It's on the last page, right at the bottom right
9 there. I spoke with the NM OCD and they said if it's zero
10 they either didn't file their C-115 or they are filing
11 zero barrels.

12 Q. And this shows that for 2020 and for 2021 they
13 did not file any C-115 monthly reports.

14 A. That's correct. There was one weird thing. It
15 says "Days Producing or Injecting - 30," but there is just
16 no actual fluid totals. So...

17 Q. If we went through the process of looking at all
18 the pages for the remaining 10 wells, does it show the
19 same lack of information?

20 A. Yes, sir.

21 MR. FELDEWERT: Mr. Examiner, I would then move
22 to admit Apache Exhibit K. (Note: Pause.)

23 You might be muted.

24 EXAMINER BRANCARD: Sorry. Thank you.

25 Because you have introduced this exhibit

1 here on redirect, if Mr. Padilla wants to recross the
2 witness on this exhibit, he can go ahead.

3 RE CROSS EXAMINATION

4 BY MR. PADILLA:

5 Q. Mr. Chenoweth, why didn't you research this
6 information last week?

7 A. I did research it, sir.

8 Q. Why didn't you pull this exhibit last week?

9 A. I didn't pull it because we didn't think that
10 Colgate would file production the day before or the day
11 after the exhibits were filed. We thought they had left
12 them as ducks, and we assumed wrong. For the next time
13 I'll pull everything.

14 Q. You're saying ducks, d-u-c-k-s?

15 A. Yes, sir.

16 Q. Okay. So you would have seen 11 ducks out
17 there? Is that what you're telling us?

18 A. We assumed that due to the Covid shutdown that
19 Colgate had left these wells as ducks, which was the
20 excuse for not filing the completions and for the
21 production. We just assumed that.

22 Q. And you -- had anybody been out there to see
23 whether or not these wells were completed or not?

24 A. That's not my wheelhouse, sir.

25 Q. Well, you're testifying about this -- these --

1 the production in these wells, but you could have made
2 this argument last week, right, when you submitted your
3 main exhibits.

4 MR. FELDEWERT: Object to the form of the
5 question. We did not anticipate that Colgate was going to
6 suggest that they had 16 months of production from these
7 wells.

8 MR. PADILLA: Oh, you're arguing that Colgate
9 is somehow not a good operator, and you could have had
10 this information as part of your Case in Chief, right?

11 MR. FELDEWERT: It would not be relevant,
12 Mr. Padilla, unless Colgate represented they actually had
13 production from the wells, even though they had violated
14 the Division's rules in not filing these records.

15 MR. PADILLA: It's covered last week. That's
16 all I'm saying.

17 Q. Is that correct, Mr. Chenoweth?

18 A. Sorry. Could you repeat the question?

19 Q. It could have been covered last week or much
20 earlier as to what -- you know, to your argument of what a
21 safe, experienced operator. You make a pretty good case
22 in your Affidavit about how experienced Apache is compared
23 to Colgate, and you didn't research this last week or
24 earlier.

25 A. That's incorrect. I did research it, but it was

1 unfathomable that an operator wouldn't file these for 16
2 months.

3 **Q. Well, I get it.**

4 A. 15 months before they deem it inactive and they
5 start raising bonds on companies for P&A.

6 **Q. You could have made this research much earlier,**
7 **and apparently you did, but you chose to print this and**
8 **present it as the rebuttal affidavit or supplemental**
9 **exhibit now.**

10 A. Yes. We gave Colgate the benefit of the doubt
11 that they were shut down due to Covid, instead of assuming
12 the worst that they were not a responsible operator and
13 hadn't filed these.

14 That was the reasoning.

15 **Q. And you could have made that argument in your**
16 **Case in Chief, correct?**

17 MR. FELDEWERT: What? Objection to the form of
18 the question.

19 MR. PADILLA: The lack of reports.

20 A. I think I made it in my exhibits in that there
21 was no production seen.

22 A. Okay. Well, what -- I'm beating a horse to
23 death here, Mr. Examiner.

24 I still object to the introduction of these
25 exhibits after the fact. They are just not timely and

1 could have been made as part of their Case in Chief. So
2 it's not a rebuttal exhibit.

3 EXAMINER BRANCARD: I'm going to rule to admit
4 these exhibits. I think the reasoning for the exhibit is
5 that Colgate claimed it had production when there was no
6 record of production shown before.

7 And so we can discuss this with Colgate's
8 exhibits as to why this happened.

9 MR. FELDEWERT: Mr. Examiner, I just want to
10 move on to a different topic.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. FELDEWERT:

13 Q. Mr. Chenoweth, there was some discussion
14 discussion about Apache's experience in this area, and in
15 particular, although it got somewhat confusing, the
16 experience with 2-mile wells in this area?

17 Do you recall that?

18 A. Yes, sir.

19 Q. Okay. First off, when I looked at the slide 9,
20 Exhibit C, it reflects that Apache has drilled 20 Bone
21 Spring Sand wells, correct?

22 A. That's correct.

23 Q. And 16 Third Bone Spring Sand wells in this
24 area.

25 A. That's correct.

1 Q. And of that 36 horizontal -- these are all
2 horizontal wells, right, Mr. Chenoweth?

3 A. That's correct.

4 Q. And of the 36, how many of those Bone Spring
5 wells are actually 2-mile wells?

6 A. Four of them.

7 Q. Four. Okay.

8 Records reflect that with respect to --
9 just focusing on the Second Bone Spring. Apache, you
10 said, has drilled 20, Colgate has drilled a grand total of
11 four Second Bone Spring wells?

12 A. As of the time that I prepared these exhibits
13 that was what was publicly available.

14 Q. Okay. And based on that publicly available
15 data, that means that Apache would have drilled five times
16 the number of Second Bone Spring wells, when you look at
17 Colgate's numbers.

18 A. Sure.

19 Q. Okay. Let me ask you something, Mr. Chenoweth,
20 as a geologist.

21 A. Yes, sir.

22 Q. When you're in an environment like this where
23 you need to use structure maps and, as everybody seems to
24 acknowledge, you need to be able to have access to seismic
25 to deal with these nuances, okay, would you rather have

1 the experience of 20 1-mile wells or just two 2-mile?

2 A. Well, 1, personally. But I'm kind of biased.

3 MR. FELDEWERT: That's all the --

4 Q. In your opinion -- I know you're biased.

5 In your opinion are you better off with
6 experience of 20 one-mile wells rather than just two,
7 2-mile wells in this particular geologic setting?

8 A. Yes, sir. And I'll make the point that every
9 single one of our wells has production data, completion
10 data publicly available to see and analyze our
11 performance.

12 Q. And you've done that, correct?

13 A. Yes.

14 Q. And you keep track of that.

15 A. Yes.

16 Q. And in this experience that Apache has,
17 particularly in the Second Bone Spring Sand, does it
18 surprise you at all to see how Apache compares to other
19 operators in that zone? If you look at slide 17.

20 A. No. I think we did a good job on targeting.

21 Q. Has Apache been able to very successfully
22 utilize its drilling experience in this area and its
23 access to seismic data to properly locate and geosteer
24 wells in the Second Bone Spring Sand?

25 A. Yes, sir.

1 Q. And is that the same conclusion with respect to
2 the Third Bone Spring Sand?

3 A. Yes, sir.

4 MR. FELDEWERT: That's all the questions I have,
5 Mr. Examiner.

6 EXAMINER BRANCARD: Thank you.

7 Let me just clarify something. Could you
8 go back that slide 9, Mr. Feldewert.

9 CROSS EXAMINATION

10 BY EXAMINER BRANCARD:

11 Q. Mr. Chenoweth, I think you said that Apache has
12 completed four 2-mile wells.

13 A. Yes, sir.

14 Q. Where are they?

15 A. If you look at the yellow star it's the sections
16 surrounding that, 14 and 15. They are yellow wells and
17 they are Third Bone Spring wells.

18 Q. So they are only Third Bone Springs wells,
19 right? Those are Third Bone Spring wells. There are no
20 2-mile Second Bone Spring wells.

21 A. That's correct.

22 Q. Okay. I just wanted to pull together the
23 testimony here so that it's clear what the big picture is.

24 A. Yes, sir.

25 Q. Okay. Thank you. When we are talking about

1 **2-mile Colgate wells, is that the ones here at the bottom?**

2 A. Yes, sir.

3 **Q. What are the section numbers?**

4 A. They have the blue -- you see the blue at the
5 bottom?

6 **Q. Yes.**

7 A. They've also got one due west. (Pause.) Right
8 there. I don't have that included on my map because as of
9 the time of preparing the exhibits it looked like it was
10 being drilled according to the public data, so I didn't
11 include it.

12 **Q. Due west. So the section below 29 and 30?**

13 A. Yes, sir.

14 EXAMINER BRANCARD: Okay. Excellent. Thank
15 you. That helps.

16 FURTHER EXAMINATION

17 BY MR. FELDEWERT:

18 **Q. Mr. Chenoweth, that would in the the south half
19 of the south half of --**

20 A. Yes, sir.

21 **Q. -- 31 and 32?**

22 A. Yes, sir.

23 EXAMINER GARCIA: Mr. Brancard, I have a
24 question, too.

25 EXAMINER BRANCARD: Sure.

1 EXAMINER GARCIA: Mr. Feldewert, you showed
2 slide 17. Can this witness be asked questions about slide
3 17? I believe you asked him a question off it.

4 MR. FELDEWERT: What, now? Mr. Garcia, you're
5 getting all legal on me here.

6 EXAMINER GARCIA: I try not to get in trouble.

7 MR. FELDEWERT: I am not going to dissuade you
8 from asking a question. I can tell you we have another
9 witness who put this together, but feel free to ask a
10 question. If Mr. Chenoweth can answer it, he will.

11 EXAMINER GARCIA: What's the other witness' job
12 title, I guess.

13 MR. FELDEWERT: The witness who will be
14 discussing this?

15 EXAMINER GARCIA: Yes.

16 MR. FELDEWERT: Our next witness, Ms. Johnson.

17 EXAMINER GARCIA: Okay. Essentially my question
18 on the slide is, you know, there's Apache -- for the
19 Second Bone Spring you guys have a well above the curve,
20 as I'll call it. Third Bone Springs I'm assuming is the
21 right graph, even though it's no labeled there Bone
22 Springs.

23 MR. FELDEWERT: Yes, sir

24 CROSS EXAMINATION

25 BY EXAMINER GARCIA:

1 **Q. What's Is the reason you guys go from above the**
2 **pach (phonetic) to mid pach for the Third Bone Spring**
3 **versus Second Bone Spring?**

4 A. Geologically it's just a different-quality
5 reservoir.

6 EXAMINER GARCIA: Okay. That was my only
7 follow-up question.

8 THE WITNESS: Thank you.

9 EXAMINER BRANCARD: Thank you. I believe we can
10 move forward, Mr. Feldewert, but first I'm going to ask
11 Ms. Macfarlane, how are you doing?

12 (Note: Discussion off the record.)

13 (Note: In recess from 10:20 a.m. to 10:31 a.m.)

14 EXAMINER BRANCARD: Mr. Feldewert, are you with
15 us?

16 MR. FELDEWERT: Yes, sir.

17 EXAMINER BRANCARD: Do you have some more
18 entertainment for us?

19 MR. FELDEWERT: I have more witnesses, yes, sir.
20 I don't know how entertaining it is, but I do have more
21 witnesses.

22 EXAMINER BRANCARD: All right.

23 Please proceed, Mr. Feldewert.

24 EXAMINER BRANCARD: It seems I may have lost my
25 sharing.

1 EXAMINER BRANCARD: That was intentional.

2 MR. FELDEWERT: Okay. Okay. Let me move this.

3 Can you all see the slides now?

4 EXAMINER BRANCARD: Yes.

5 MR. FELDEWERT: Okay. Great. In that case,
6 then we would like to call Ms. Johnson.

7 SHELBY JOHNSON,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FELDEWERT:

11 Q. Ms. Johnson, you have been sworn, correct?

12 A. Yes.

13 Q. Would you please state your name, identify by
14 whom you are employed, and in what capacity.

15 A. Yes. My name is Shelby Johnson. I am employed
16 by Apache as a reservoir engineer.

17 Q. And did you submit, Ms. Johnson, the affidavit
18 that has been marked as Apache Exhibit F?

19 A. Yes.

20 Q. And that has been notarized, correct?

21 A. Correct.

22 Q. And do you adopt that written testimony today
23 under oath?

24 A. Yes.

25 Q. And you have discussed within your affidavit

1 your resume, which has been marked as Exhibit F-1.

2 A. Yes.

3 Q. And you also discuss in your Affidavit,
4 introduce and discuss slides 16, 17 and 18 of Exhibit C;
5 is that correct?

6 A. Correct.

7 Q. And you're testifying as an expert witness in
8 petroleum reservoir engineering; is that right?

9 A. Correct.

10 MR. FELDEWERT: Mr. Examiner, I would admit into
11 evidence Apache Exhibit F along with F-1 , and then slides
12 16 through 18 of Apache Exhibit C.

13 EXAMINER BRANCARD: Mr. Padilla, do you have any
14 objections.

15 MR. PADILLA: No.

16 EXAMINER BRANCARD: So admitted.

17 MR. FELDEWERT: And Mr. Examiner, Ms. Shelby's
18 testimony and her affidavit. So I will pass the witness.

19 EXAMINER BRANCARD: Mr. Padilla.

20 MR. PADILLA: Just a moment (Note: Pause.)

21 CROSS EXAMINATION

22 BY MR. PADILLA:

23 Q. Paragraph 4 of your affidavit, Ms. Johnson, you
24 say that the geology in the area is heterogeneous. Can
25 you explain that?

1 A. Yes. So the geology being heterogeneous means
2 that it is quickly to change, I believe Drew summarized
3 this, but structurally section to section, even within a
4 single section, which is why it is important to have a
5 thorough geologic understanding.

6 **Q. How many wells have you been involved drilling**
7 **in Township 19 South, 28 East?**

8 A. I have not been involved in drilling.

9 **Q. So you haven't designed any frack -- haven't**
10 **made any frac designs in the area at all; is that right?**

11 A. Uhm, can you clarify?

12 **Q. Well, you say -- the last sentence of paragraph**
13 **4 of your affidavit, you state: (Reading) Our spacing**
14 **strategy coupled with our optimized frac design**
15 **effectively captures the desired drainage area in an**
16 **efficient and effective manner.**

17 And my question was whether you had made
18 **any frac designs in the area.**

19 A. Yes, I have been involved in frac modeling and
20 designing in this area.

21 **Q. Which wells have you been involved in?**

22 A. I have frac modeled for all of our recent
23 completions.

24 **Q. Are they 1-mile laterals or 2-mile laterals?**

25 A. Our most recent completions are the 1-mile

1 laterals in Sections 3 and 10.

2 Q. Have you designed frac designs for 2-mile
3 laterals?

4 A. No. Not personally. Our company does.

5 Q. In the fifth paragraph of your affidavit the
6 last sentence states: (Reading) This production data
7 demonstrates Apache has consistently outperformed
8 operators of wells completed in the Second Bone Spring
9 Sand and is on par with operators of wells completed in
10 the Third Bone Spring Sand.

11 What operators have you outperformed?

12 A. I'm sorry, can you say the question again?

13 Q. Which operators have you outperformed that
14 you're talking about in paragraph 5?

15 A. Right. So that is illustrated by the slides in
16 our Exhibit C, slide 17, when we compare our goal plans to
17 all of the other operators in the surrounding areas based
18 on publicly available data.

19 Q. Where are these wells?

20 A. These are in the surrounding Townships,
21 including the Township in question.

22 Q. Do you have an identification of which of these
23 wells in the two blocks are in 19 South, 28 East?

24 A. The majority of the wells that have publicly
25 available production data are Apache's wells in 19 South,

1 28 East.

2 **Q. And they're 1-mile laterals, correct?**

3 A. In the Second Bone Spring, yes. On the Third
4 Bone Spring, which is the plot on the right, we do have
5 2-mile laterals in the Third Bone Spring.

6 **Q. In Township 19 South, 28 East?**

7 A. Yes.

8 **Q. How many of those wells are Second Bone Spring**
9 **wells in 19 South, 28 East?**

10 A. In 19 South, 28 East we have 20 Second Bone
11 Spring wells.

12 **Q. Two-mile laterals? I'm asking about 2-mile -**
13 **laterals.**

14 A. None of them are 2-mile laterals in the Second
15 Bone Spring.

16 **Q. Would you say that drilling Second Bone Spring**
17 **wells in 19 South, 28 East is sort of a tricky operation**
18 **in terms of the nuances that Mr. Chenoweth testified**
19 **about?**

20 A. Yes. I would say it's even trickier in the
21 Third Bone Spring based on these nuances, and our drilling
22 engineer is probably the better expert witness for that.

23 **Q. Is that why -- well, is it your understanding**
24 **that's why Apache hasn't drilled 2-mile laterals in the**
25 **area?**

1 A. No, that is not my understanding. We prefer to
2 drill 2-mile laterals when we can, from a land position,
3 and we have the expertise to do so.

4 Q. Well, I don't doubt your expertise, but you
5 only -- you basically only drill 1-mile laterals, correct?

6 A. Historically. Correct.

7 Q. Is your modeling for frac design pretty much
8 confined to 1-mile laterals?

9 A. Personally, yes. Within our company, no.
10 Uhm...

11 Q. So have you been involved in any frac designs in
12 19 South, 28 East?

13 A. Yes.

14 Q. For how many?

15 A. I've been involved in proposed frac designs on
16 2-mile laterals for the wells in question today, if that
17 is your question.

18 Q. (Note: Pause.) Paragraph 8 of your affidavit,
19 you state that -- you talk about well pads. Is that
20 within your realm of expertise for locating wells or...

21 Q. Can you ask the question again?

22 A. Well, paragraph 8 you're talking about using the
23 same surface locations for the two, the proposed 2-mile
24 Palmillo wells in Sections 29 and 30. And what my
25 question is, is whether or not you're typically involved

1 in locating wells and that sort of thing.

2 A. Yes. I am involved in planning, and running
3 economics based on cost-saving efficiencies of where we
4 locate our wells.

5 **Q. So what you're saying is that you're at the**
6 **wheel in terms of saying how you're going to surface**
7 **locate these wells?**

8 A. From a planning perspective, yes. I do not
9 execute.

10 MR. PADILLA: I don't have any further questions
11 of Ms. Johnson.

12 EXAMINER BRANCARD: Thank you.

13 Mr. Garcia?

14 EXAMINER GARCIA: I have a few.

15 Uhm, Mr. Feldewert, can I go back one
16 slide?

17 MR. FELDEWERT: Yes, sir.

18 EXAMINATION

19 BY EXAMINER GARCIA:

20 **Q. Probably similar questions.**

21 **The surrounding area is kind of vague.**

22 **What was the Area of Review? Is this like one mile, two**
23 **miles?**

24 A. It's the surrounding Townships, uhm, adjacent to
25 this one.

1 Q. North, south, east and west?

2 A. Yes.

3 A. Okay. And then I think the graph has been
4 normalized to 10,000 total lateral length.

5 A. Yes.

6 Q. I guess I'll ask the same question I asked your
7 geologist: Is there really any difference why you go from
8 top of pach to mid pach? Is there a different completion
9 design for the (inaudible) I think you're running? I
10 guess everything is perf'd to frac kind of -- is it
11 different designs?

12 A. So yes, we do have a different frac design based
13 on differing reservoir quality in the Third Bone Spring,
14 more of -- more unconventional characteristics there, so
15 we have pumped effectively larger completions in the Third
16 Bone Spring.

17 And then since we've been out here active
18 for several years, we started with a different spacing
19 strategy at six wells per section, and have learned from
20 that and have moved to a wider well spacing coupled with
21 our larger completions.

22 So we have seen positive result from that
23 set change in our recent developments.

24 And our performance is on track here, and I
25 will say that the Third Bone reservoir quality does

1 improve in the surrounding Townships from where we are,
2 and we feel that that our geologic model ties very well to
3 the publically available production results in the
4 surrounding Townships for the wells that are shown as
5 outperforming ours.

6 Q. I believe the Second Bone Spring wells are
7 1-mile and you're planning to drill 2-mile wells. Will t
8 he completion designs just be scaled to two miles? Same
9 design just that extra mile?

10 A. Correct. On a per-foot basis it would be the
11 same design that we've gotten optimized.

12 EXAMINER GARCIA: Thank you. I believe that's
13 all my questions.

14 EXAMINER BRANCARD: Thank you.

15 CROSS EXAMINATION

16 BY EXAMINER BRANCARD:

17 Q. I guess looking at the same slide, I'm baffled
18 by this. It just looks like like a kid's drawing there on
19 the left.

20 Why didn't you put an average line on the
21 left-hand drawing like you did on the right line.

22 A. Yes, good question. I should do that. The
23 average line is hidden within the lower performers there.
24 And I'll clarify that my average line is an average of all
25 the data on the plot, not just the Apache average.

1 Q. Right. So I mean a simpler drawing would be
2 average of all wells versus average of Apache wells, but
3 we don't have any of that information on either chart. We
4 just have to guess where these yellows fit in with
5 everything else.

6 A. We can certainly provide a map if that would be
7 useful.

8 One of the points I hope to make here is
9 that the heterogenous geology that we've spoken about
10 really does impact the range of well performance, and we
11 are able to tie our range of production results with our
12 model.

13 Q. Okay. I mean, if you are going to make that
14 statement that you consistently outperform other
15 operators, you know we will just have to guess from the
16 colors that that's true.

17 A. Uhm, the colors are other operators and gold
18 lines are our wells.

19 Q. Right. But we have no idea how many gold lines
20 are buried in that whole bottom clump either.

21 A. Right. So there are 20 gold lines on that plot
22 in total, and, you know, I think there's at least 10 that
23 outperform the -- the --

24 Q. The average which we don't see.

25 A. Right.

1 EXAMINER BRANCARD: The next slide, Mr.
2 Feldewert.

3 MR. FELDEWERT: Are you going to criticize the
4 next slide, too, Mr. Brancard?

5 Q. I'm just going to ask, Ms. Johnson, whether
6 you're the witness who understands surface locations,
7 since my prior questions were set to go to another
8 witness.

9 Since you have this slide here about
10 surface locations, do you understand produced water flow
11 patterns, gas capture flow patterns, the facilities for
12 those?

13 A. From a high-level standing perspective, yes.

14 Yes, from a standing perspective.

15 Q. So these well pads, there are three well pads,
16 it appears, and one of them has a tank battery, I assume.
17 One of these pads, right? That middle one?

18 A. Yes. I can't say for certain which one it is,
19 but yes, there is one facility planned for this
20 development.

21 Q. Okay. Do any of these pads have produced water
22 (inaudible?

23 A. I am not certain.

24 Q. Or is all the produced water put in pipelines
25 and sent off somewhere?

1 A. We have agreements to pipe our water to
2 disposal, yes, with Solaris.

3 **Q. Okay. Thank you.**

4 **And do you know whether your produced water**
5 **is -- or any produced water is used in your fracturing**
6 **fluids?**

7 A. Yes. In our recent development about 25 percent
8 of the water was produced water, recycled.

9 **Q. Thank you. And so I would assume that you would**
10 **also have within these facilities gas-capture pipelines.**

11 A. Correct.

12 **Q. And that would be sending the gas to some larger**
13 **pipeline, --**

14 A. Yes, we have --

15 **Q. -- or do you have capture reinjection?**

16 A. We have agreements in this area to sell our gas
17 via pipeline in place.

18 EXAMINER BRANCARD: Okay. Thank you. Those are
19 my questions.

20 Mr. Feldewert, any redirect?

21 MR. FELDEWERT: Yes, sir.

22 REDIRECT EXAMINATION

23 BY MR. FELDEWERT:

24 **Q. Ms. Johnson, you referenced your drilling and**
25 **completion capability in your affidavit Mr. Padilla went**

1 over about your spacing strategy coupled with your frac
2 design effectively captures the entire drainage area in an
3 efficient and effective manner.

4 Now, I'm a lawyer, others are lawyers,
5 you're an engineer. You put these slides together. Do
6 you believe these slides demonstrate that Apache, when
7 compared to the production data that we've been afforded
8 by other operators, is at or near the top of the list?

9 EXAMINER BRANCARD: Mr. Feldewert, I think we
10 lost you there.

11 MR. FELDEWERT: Can you hear me?

12 EXAMINER BRANCARD: Now we can, yes.

13 MR. FELDEWERT: Okay.

14 Ms. Johnson. I --

15 (Note: The pending question was read.)

16 A. Yes. In the Second Bone Spring, that is my
17 professional opinion.

18 Q. Okay. And when it comes to the Third Bone
19 Spring you may note, as Mr. Padilla did, that that is a
20 trickier environment. Correct?

21 A. Correct.

22 Q. And that you had gained experience in that zone
23 that has caused you to change your spacing?

24 A. Correct. In our recent development we executed
25 that new strategy.

1 Q. Okay. And that experience that you have gained,
2 includes, Ms. Johnson, 2-mile wells in this trickier
3 geologic section, correct?

4 A. Correct.

5 Q. And you're the one that is designing the frac
6 design for these 2-mile wells in the Second Bone Spring
7 Sand?

8 A. I am involved in the frac designing, yes.

9 Q. Were you involved in the spacing, as well?

10 A. Yes.

11 Q. And did you rely on that experience, 2-mile
12 experience in the Third Bone Spring environment, to inform
13 your plans on the 2-mile wells in the Second Bone Spring
14 Sand?

15 A. Yes. We are able to use our Third Bone data for
16 analogous learning for the second well.

17 Q. And in addition to that, is it not true that
18 Apache has drilled, I'll call them back-to-back, 1-mile
19 wells that match up with each other? Is that right?

20 A. Correct.

21 Q. And create a geologic picture of a 2-mile
22 lateral?

23 A. Correct.

24 Q. And you have experienced the production and frac
25 designs for those back-to-back 1-mile wells?

1 A. Correct.

2 **Q. In this Township and Range.**

3 A. Yes.

4 **Q. And did you utilize that experience in designing**
5 **and spacing your proposed 2-mile wells in the Second Bone**
6 **Spring in Sections 29 and 30?**

7 A. Yes, sir.

8 MR. FELDEWERT: That's all the questions I have.

9 EXAMINER BRANCARD: Thank you. Did you have any
10 follow up, Mr. Garcia?

11 EXAMINER GARCIA: You must know me, Bill.

12 I just had one question on that next slide.

13 RE CROSS EXAMINATION

14 BY EXAMINER GARCIA:

15 **Q. The wells to the east of Section 19 South, 27**
16 **East, are these proposed wells in the future, too, or are**
17 **these already drilled.**

18 A. These are proposed for codevelopment with this
19 section would be our plan.

20 **Q. So say your plan didn't get approved, would**
21 **those wells still be drilled or no?**

22 A. We would re-evaluate the plans economically but
23 they would still -- this area contends for our proposed
24 rig schedule in the area.

25 **Q. So those wells aren't in a contested compulsory**

1 **pooling tied up somewhere?**

2 A. It is my understanding that no, that's not
3 contested.

4 EXAMINER GARCIA: I have no other questions.
5 Thank you.

6 RECROSS EXAMINATION

7 BY EXAMINER BRANCARD:

8 **Q. Have those wells been submitted for approval, do**
9 **you know? 25 and 26.**

10 A. It is my understanding, yes. Our landman Blake
11 Johnson would be the expert on that. It is my
12 understanding that those Orders have been issued.

13 EXAMINER BRANCARD: Do you know, Mr. Feldewert,
14 are those compulsory pooling cases?

15 MR. FELDEWERT: Off the top of my head I do not
16 know. We can certainly ask Mr. Johnson. He might be able
17 to get you that information at a break.

18 MR. JOHNSON: I can answer now, if you want me
19 to.

20 EXAMINER BRANCARD: Mr. Garcia, would you like
21 Mr. Johnson to answer that?

22 EXAMINER GARCIA: Yes, please.

23 MR. JOHNSON: Yeah, those are compulsory pooling
24 cases. They've been issued as of October 25th of 2021,
25 and we plan to move forward drilling those wells.

1 EXAMINER BRANCARD: By "issued" you mean an
2 Order issued?

3 MR. JOHNSON: The orders have issued, yes, sir.
4 It was uncontested.

5 EXAMINER BRANCARD: Thank you.

6 MR. JOHNSON: Yes, sir.

7 MR. FELDEWERT: All right.

8 EXAMINER BRANCARD: Mr. Feldewert, I believe
9 you're in charge here.

10 MR. FELDEWERT: Okay. Then we will call our
11 next witness, Mr. Thetford.

12 TAYLOR THETFORD,
13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. FELDEWERT:

16 Q. Would you please state your full name, identify
17 by whom you're employed, and in what capacity.

18 A. Taylor Thetford from Apache Corporation as a
19 drilling engineer.

20 Q. And Mr. Thetford, I keep putting an "r" in your
21 name. I apologize. And its T-h-e-t-f-o-r-d, correct?

22 A. Yes, sir.

23 Q. Did you submit the affidavit that has been
24 marked as Apache Exhibit G?

25 A. Yes.

1 Q. And given our great work environments that we
2 and their challenges today, were you able to get this
3 notarized before we submitted it?

4 A. No, sir.

5 Q. And today under oath do you adopt this Written
6 Testimony as your testimony in this case?

7 A. Yes.

8 Q. And in this affidavit you reference Exhibit G-1,
9 which is your resume?

10 A. Yes.

11 Q. Which you believe qualifies you to testify as an
12 expert witness in petroleum drilling and engineering
13 matters?

14 A. Yes.

15 Q. Do you also reference in this affidavit,
16 discussed and referenced in slides 18 through 25 of Apache
17 Exhibit C?

18 A. Yes.

19 MR. FELDEWERT: Mr. Examiner, I would move to
20 admit Exhibit G, the attached Exhibit G-1, and remaining
21 slides in Exhibit C which would be 18 through 25.

22 EXAMINER BRANCARD: Thank you.

23 Mr. Padilla, any objections?

24 MR. PADILLA: No.

25 EXAMINER BRANCARD: So they're admitted.

1 Q. Mr. Thetford, before I pass you as a witness,
2 you were here for the testimony about the Third Bone
3 Spring in this area being a more complex environment?

4 A. Yes, sir.

5 Q. And has Apache successfully drilled four 2-mile
6 wells in this more complex environment?

7 A. Yes, sir. In Section 14, 15 in this Township
8 and Range.

9 Q. When we say more complex Third Bone Spring, as I
10 understand it is a more complex environment than drilling
11 in the Second Bone Spring.

12 A. Yes, that is correct. The Second Bone Spring
13 has proven to be easier from a drilling perspective, the
14 Third Bone Spring has been more difficult, and I think our
15 numbers would reflect that.

16 Q. And you agree you would be able to utilize the
17 experience you've gained in the Third Bone Spring Sand
18 with your 2-mile wells and bring that to your drilling of
19 the 2-mile wells in the Second Bone Spring Sand?

20 A. Yes, sir.

21 Q. As well as being able to utilize, Mr. Thetford,
22 the experience from your back-to-back 1-mile wells --

23 A. Yes, sir.

24 Q. -- in the Second Bone Spring Sand, correct?

25 A. That is correct.

1 MR. FELDEWERT: I will pass the witness.

2 EXAMINER BRANCARD: Thank you.

3 Mr. Padilla.

4 CROSS EXAMINATION

5 BY MR. PADILLA:

6 Q. Mr. Thetford -- did I pronounce that correctly?

7 A. That is correct, Thetford.

8 Q. Okay. Has your experience been limited to
9 1-mile laterals in 19 South, 28 East?

10 A. My experience is not limited to 1-mile laterals.
11 I was the Engineer of Record that drilled the most recent
12 Third Bone 2-mile wells in Sections 14 and 15 of this
13 Township and Range.

14 Q. Okay. And geologically is the Third Bone Spring
15 thicker than the Second Bone Spring?

16 A. I can't comment on the thickness because we do
17 geosteering, I get the same window per landing zone, but I
18 can comment on the challengingness (sic) from a drilling
19 perspective.

20 Q. I understand that you have, when you're steering
21 wells, that you have -- you have to be careful. Let me
22 put it that way.

23 A. Yes, sir.

24 Q. It's been your experience in the Second Bone
25 Spring wells?

1 A. Second Bone Springs wells in my experience from
2 a drilling perspective has been a lot more homogeneous
3 from a drilling perspective.

4 The issue with the Third Bone is the
5 carbonate section below, so the steering where they placed
6 the well, we have to do quite a bit more steering with the
7 Third Bone wells.

8 Second Bone well is drilled faster and
9 aren't as difficult or detrimental to our drilling
10 environment.

11 **Q. You make a case in your Affidavit that you're**
12 **going to save money by -- if Apache drills.**

13 **Doesn't that vary depending on what you**
14 **encounter in the wellbore?**

15 A. Can you repeat your question? Sorry, I think I
16 lost you in the middle.

17 **Q. Well, you seem to be making a hard, fast**
18 **analysis saying that you're going to save money in the**
19 **actual drilling time of four Second Bone Spring. In your**
20 **proposed wells.**

21 A. Are you referencing the -- because we're doing
22 from the same pad, or are you referencing that based on
23 our experience we are going to drill them faster?

24 **Q. Well, let me direct your attention to**
25 **paragraph 7 of your affidavit that -- and you say these --**

1 the last two lines of that second page states: (Reading)
2 This result in an anticipated three days to move the rig
3 to location of the spud to TMD, and three days for casing
4 and cement.

5 And I think you conclude that you're going
6 to save money if you drill the wells, as opposed to
7 Colgate drilling the wells. Is that what you're saying in
8 here?

9 A. I don't think that's the -- no, sir, I'm not
10 saying that. I'm just saying based on the number of days
11 they are on the well, our experience backs that up that
12 the days would match. The costs are arguably identical,
13 just the drilling days are off. That's the only thing I'm
14 stating there.

15 Q. How soon can you get on location, assuming that
16 you're successful in this hearing?

17 A. If we are successful with this Order, we will
18 add that to the rig line that would be coming out next
19 year, along with the Camacho 25-26 wells in the adjacent
20 Township range and some other wells that we have in New
21 Mexico that are currently approved.

22 Q. When you say next year, what are you talking
23 about in terms of time?

24 A. I can't comment on the exact time. That rig
25 line is still being finalized currently.

1 **Q. Are you aware that Colgate has two rigs on**
2 **pretty close to this area?**

3 A. Yes, sir.

4 **Q. You're aware?**

5 A. Yes. Yes, sir, I am aware.

6 MR. PADILLA: Mr. Examiner, I believe that's all
7 I have for Mr. Thetford.

8 EXAMINER BRANCARD: Thank you.

9 Mr. Garcia.

10 EXAMINER GARCIA: I have a few questions. I'm
11 trying to get my slides correct.

12 Can we go to slide 19, Mr. Feldewert.

13 MR. FELDEWERT: Yes.

14 EXAMINER GARCIA: I'm sorry, maybe -- yeah.

15 CROSS EXAMINATION

16 BY EXAMINER GARCIA:

17 **Q. Reduction in drilling speed essentially, what is**
18 **the main contribution to that? Is it just walking the rig**
19 **more often now, or...**

20 A. The reduction in speed has a lot to do with our
21 (inaudible) optimization and bench selection. With the
22 experience of drilling 20 wells we've gotten better over
23 time with the iterations, so our most recent wells were
24 our fastest wells. Those are in Section 3 and 10. Those
25 have been our fastest wells, so that's where we're

1 attributing that, that's essentially from the start.

2 Q. Average well 8.3 Days Average TVD -- what is
3 that roughly? TVD.

4 Do you know what the --

5 A. Yeah, the average time we have is eight days.

6 Q. What's the average depth that corresponds to
7 that?

8 A. Approximately 7200 feet.

9 Q. Okay.

10 A. TVD at about 12,500 feet.

11 EXAMINER GARCIA: Next slide, please.

12 Okay. Can we zoom slightly, Mr. Feldewert?

13 MR. FELDEWERT: Yes, sir.

14 Q. So I believe you talked about the AFEs and how
15 costs have been reduced.

16 Looking at this, it's been reduced roughly
17 since Quarter One, 2019, which is about the same time
18 Covid hit and oil prices started getting heavily reduced,
19 which typically reflects service companies being cheaper,
20 chemicals, bits; everything just gets cheaper as the price
21 drops, typically.

22 Now that price is -- I think it's around
23 \$80, I haven't checked today. Do you expect these costs
24 to start going up again? Because typically service
25 companies also go up as the price of oil goes up.

1 A. So based on my experience that the data in
2 question was all pre-Covid, so a lot of cost savings we
3 saw in 2019, 2020, -21, were still in the higher priced
4 environment. Since then, yes, we do expect them to go up
5 some, based on what he submitted, but that's largely due
6 to casing costs and rig rates that are going up. Those
7 are the two biggest items that we see currently.

8 EXAMINER GARCIA: Yeah, yeah. Everyone likes
9 high prices.

10 I believe that was all my questions. Thank
11 you.

12 EXAMINER BRANCARD: Thank you. I don't have any
13 questions. Mr. Feldewert, redirect?

14 MR. FELDEWERT: Thank you.

15 REDIRECT EXAMINATION

16 BY MR. FELDEWERT:

17 **Q. Mr. Thetford, you were here for the testimony of**
18 **Mr. Johnson about the Pooling Orders for the Camacho**
19 **wells; is that right?**

20 A. Yes, sir.

21 **Q. And are you aware that the company has a**
22 **drilling obligation and deadline under those Pooling**
23 **Orders?**

24 A. Yes, sir.

25 **Q. And am I correct, then, that if you are able to**

1 prevail here and be able to add these Palmillo wells to
2 the drilling obligations under the Camacho development,
3 that you will be in a good position to request that the
4 company gets these on a rig schedule for drilling as soon
5 as possible?

6 A. Yes, sir. Based on my experience, as soon as we
7 get both of these, we would put them on the rig schedule
8 at the same time to drill in sequence, because we have
9 costs savings and efficiencies between the two areas, and
10 that would make them more attractive to the rig line,
11 would move them up.

12 MR. FELDEWERT: Okay. That's all the questions
13 I have, Mr. Brancard.

14 EXAMINER BRANCARD: Thank you.

15 Any other questions, or any other
16 interested parties at this point? (Note: Pause.)

17 I'll take that as a no.

18 I believe we are done with your case, Mr.
19 Feldewert.

20 MR. FELDEWERT: Yes. Certainly our Case in
21 Chief, yes.

22 EXAMINER BRANCARD: Okay.

23 Mr. Padilla, are you prepared to move
24 forward at this point.

25 MR. PADILLA: Yes, I am. The only problem I

1 have is I'll try to go load up my exhibits here so that I
2 can be as efficient as Mr. Feldewert.

3 And I think if I go to View I can share my
4 exhibits. I'm not sure if I'm doing that correctly or
5 not.

6 EXAMINER BRANCARD: So far we just see your
7 smiling face, so...

8 (Note: Discussion off the record.)

9 MR. PADILLA: Mr. Examiner, we will call Mark
10 Hajdik, who is Colgate's landman.

11 EXAMINER BRANCARD: Okay.

12 You have three witnesses, I believe.

13 MR. PADILLA: Three witnesses.

14 EXAMINER BRANCARD: We can have them all sworn
15 in at first here, get that over with?

16 Mr. Hajdik, and who are the other
17 witnesses?

18 MR. PADILLA: Yeah.

19 EXAMINER GARCIA: Jordan Cox?

20 MR. PADILLA: Jordan Cox.

21 MR. BRANCARD: I see all three of you so, please
22 raise your right hand.

23 MR. DAGIAN: And David Dagian, geologist.

24 EXAMINER BRANCARD: Okay.

25 (Whereupon, the aforementioned witnesses were

1 duly sworn by Examiner Brancard.)

2 So you can proceed, Mr. Padilla.

3 MARK HAJDIK,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. PADILLA:

7 Q. Mr. Hajdik, please state your name.

8 A. Mark Hajdik, landman for Colgate Energy.

9 Q. Did you prepare Exhibit A that we've submitted,
10 which is the land affidavit?

11 A. I did.

12 Q. Have you previously testified before the Oil
13 Conservation Division and had your credentials accepted as
14 a petroleum landman?

15 A. I have.

16 Q. Okay. The information contained in your
17 affidavit, did you prepare that or have it prepared under
18 your supervision?

19 A. Yes.

20 Q. Okay. Do you today incorporate that as part of
21 your testimony and affirm that it contains your land
22 testimony here today?

23 A. Yes.

24 MR. PADILLA: Mr. Examiner, we offer Exhibit A
25 into evidence.

1 EXAMINER BRANCARD: Thank you.

2 Mr. Feldewert, any objections?

3 MR. FELDEWERT: No objection.

4 Q. The first question I want to ask you is with
5 regard to the Application and proposals that you made in
6 terms of two sections for the surface location for your
7 wells and where you're going to bottom out.

8 And you have two, uh, unit numbers or two
9 unit letters. Would you explain that to the examiner,
10 what the difference is between that (indicating) and, say,
11 your C-102s?

12 A. The reason for the two unit or lot numbers is we
13 utilize one pad per half section; i.e., north half. So
14 typically the surface pad, in an ideal situation,
15 straddles the quarter/quarter line. And you can see that
16 on the C-102s that we utilize two pads for development,
17 per 1280 development.

18 And the reason for notating both of those
19 on there is, as many of you know, this is a very old
20 development region, the surface constraints can be
21 challenging, and given the duration and extended duration,
22 these are set in advance, we don't know if the surface
23 hole is going to specifically sit on one or the other but
24 we know the pad is going to typically straddle that
25 quarter/quarter line, if possible.

1 But it doesn't indicate -- the intention is
2 not to indicate we are putting one pad on each one of
3 those quarters. The C-102s will reflect that we are only
4 utilizing two drilling pads for the 1280, uhm, eight
5 wells.

6 **Q. So what does that do to the total costs of --**
7 **there's been some testimony from Apache that says that**
8 **they use a lot of the same -- well, there was an**
9 **assumption that you were using four pads to drill your**
10 **wells, but in fact you're only using two. Right?**

11 A. Correct. Uhm, that's based on --

12 **Q. What does that do to the efficiency of drilling**
13 **your wells, your proposed wells?**

14 A. I mean, I think it inserted (inaudible) the AFE
15 costs that we've presented, and that will -- you know,
16 that will -- I mean, doing it in the most efficiently and
17 impactful manner, and, you know, in a manner that's going
18 to be -- you know, effectively, you know, create the least
19 amount of impact to the surface environment and, you know,
20 utilize the surface efficiencies of reduced number of pads
21 tell us about -- tell us now about the title. Does that
22 change? Are there any changes to what you have in your
23 tract maps and the people who you are going to pool.

24 And that would be on Exhibits 8, 9 and 10.

25 A. I'm looking for --

1 **Q. Involves Case 21827. Are there any changes to**
2 **what your numbers are?**

3 A. Not at this -- no, I don't have any changes to
4 those.

5 **Q. And how about in the other case, 21878?**

6 A. No, I didn't have any changes there.

7 **Q. Okay. Tell us generally, without going into --**
8 **just give us a summary of what the numbers are for both**
9 **cases in terms of, uh, your -- the acreage that you -- or**
10 **the interest that you control and what controls in this,**
11 **in both of the cases.**

12 A. I think it's -- you know, Apache touched on it.
13 I mean, we understood here, that you know somewhat
14 checkerboarded and hot spots, and, you know, excluding
15 Apache's verbal statements, Colgate intends to lean -- you
16 know, tends to be more western/southern in this unit and
17 Apache tends to be more northern and eastern. And as the
18 examiner bought up earlier, we proposed with Apache the
19 solution of splitting the ownership due to the way that
20 it's distributed. It still lends to providing prospective
21 parties their argued efficiencies, and allows them to, you
22 know, untangle this kind of mess of ownership that we are
23 dealing with her.

24 **Q. Is that --**

25 A. As a whole -- let me finish. It tends to be in

1 majority in the south, and of these --

2 (Note: Reporter interruption.)

3 EXAMINER GARCIA: Mr. Padilla, real quick
4 request: If everyone not speaking could turn off their
5 camera it might help her see him.

6 THE REPORTER: Much better. Thank you.

7 Q. So to sum up you have a majority in the southern
8 spacing unit?

9 A. In the two southern spacing units, correct.

10 Q. All right. What percentage do you have there?

11 A. It varies slightly between the two, but north
12 of -- around 40-and-up percent.

13 Q. And in the northern spacing unit?

14 A. We are more, you know, upper teens percentage.

15 Q. So you have Proposal Letters where you explain
16 the acreage, the deal there. And you -- and in the
17 Prehearing Statement you also had the same -- uh, we
18 inserted the same information in terms of the unit
19 letters. Correct?

20 A. If I understand your question correctly, yes.

21 Q. Okay. You have in your exhibits a support
22 letter from -- I can't read that. Who is that support
23 letter from?

24 A. That's from Jetta Production Company.

25 Q. What's their interest?

1 A. Uhm, about 2 1/2 percent, uhm, across the south
2 half of the DSU (inaudible) spacing units.

3 **Q. Why don't you summarize now the Colgate Energy**
4 **overview that is Exhibit 15 of your affidavit.**

5 **And I want you to tell me or tell the**
6 **examiner about the overall drilling program that you have**
7 **in that area.**

8 EXAMINER BRANCARD: Mr. Feldewert, can you go to
9 Exhibit 15, page 132?

10 MR. FELDEWERT: Sorry, Mr. Examiner. I was
11 distracted.

12 Are we going to Exhibit 15?

13 EXAMINER BRANCARD: Yes. I think that is page
14 132, all the way down to the end.

15 You're close.

16 THE WITNESS: Go up a few.

17 MR. FELDEWERT: Is this it here? I'm sorry.

18 This one, Mr. Padilla?

19 MR. PADILLA: Yeah.

20 THE WITNESS: Okay. Keep going up.

21 EXAMINER BRANCARD: 132. You're at 135.

22 THE WITNESS: Down.

23 EXAMINER BRANCARD: Okay. Start from here.

24 Which one do you want, Mr. Hajdik?

25 MR. FELDEWERT: I'll go right here. These two?

1 THE WITNESS: Thank you.

2 A. The, uh, the slide is -- you know, intended to
3 show we've been active in New Mexico since 2016. Uhm, we
4 also have a (inaudible). We've been -- we operate five
5 rigs right now, two of them right in the Eddy County area,
6 two of them within 10 miles of this Township.

7 We've continuously been running operations
8 that -- uh, we've got three in Texas and we've got a
9 number of frac (inaudible) train.

10 We've drilled nearly 100 wells. This is
11 our first time live with the Commission so we wanted to
12 just give an introduction and show you kind of who we are.
13 I know we've talked through the affidavit a number of
14 times, but just to show this on -- giving you an overview
15 of our activity levels and where we're at in the world.

16 **Q. Where else have you drilled in the area in 19**
17 **South, 28 East?**

18 A. We've -- I have (inaudible). We have 11 in the
19 immediate Township and then we have five or six in the
20 adjacent Township. We're drilling --

21 **Q. Can you tell us about the 2-mile laterals that**
22 **you have drilled in 19 South, 28 East.**

23 A. We drilled four immediately in 19/28 and we've
24 drilled an additional four within 10 miles of here.

25 **Q. Are they --**

1 A. We've got a number of the linked laterals.

2 **Q. And 19/28, 19 South, 28 East, have you drilled**
3 **Second Bone Spring wells?**

4 A. I believe, uhm, our geologist here can go into
5 more detail but we have drilled two Second Bone Spring
6 wells in the Township, 2-mile Second Bone Spring wells.

7 MR. PADILLA: Mr. Feldewert, can you scroll down
8 to the next page? Okay.

9 **Q. What's shown on this? This is the two proration**
10 **units or spacing units, correct?**

11 A. Correct.

12 **Q. Tell the examiner what surface improvements or**
13 **infrastructure you have right where the two spacing units**
14 **are located.**

15 A. So outside of the ownership distribution that
16 triggered the discussion point of splitting the north
17 half/south half versus -- you know, as an amicable sort of
18 resolution with Apache, we have existing road
19 infrastructure that bisects Section 29. Uhm, we have
20 power infrastructure dropped literally within a quarter
21 mile of these proposed pads. We also have oil/gas/water
22 takeaway, piped takeaway within a quarter mile or half a
23 mile or so of these -- up to -- within a mile of these,
24 uhm, locations, in addition to fresh water takeaway -- or,
25 sorry, frac water contract that covers this area, as well.

1 So -- and this is an efficient solution to
2 re-use -- to maximize our efficiencies, as well as allow
3 Apache to utilize their efficiencies to the west, given
4 the existing infrastructure and investment in this area,
5 especially in the southern portions.

6 **Q. In that immediate area do you have other 2-mile**
7 **laterals that you have drilled?**

8 A. Yes, we have them drilled and they are currently
9 on flow back. The two wells at the far southern end of
10 this (inaudible) acres at this (inaudible) codevelopment,
11 and drilled one 2-mile and -- uh, Third Bone, and one
12 2-mile Second Bone, and we have our 2022 drill schedule
13 where we're slated to come back here and finish developing
14 the acreage immediately to the south, and would add these
15 on if given the operatorship.

16 **Q. Okay. Mr. Feldewert, would you scroll down.**

17 **You're saying that you have immediate plans**
18 **to methodically develop the company's acreage position.**
19 **That's pretty much what you've already said, right?**

20 A. Correct. I would like to clarify a statement by
21 Apache earlier that these dots are not indicative of pad
22 locations, these are simply the take points. You know,
23 sticks. But yes, the red wells are on our 2022 drill
24 schedule and you can see where we've actively got rigs in
25 the area, and we will be continuing to move them west and

1 eventually, for lack of a better word, (inaudible) move
2 the acreage down, you know in a methodical way that
3 minimizes parent/child relationship and, you know,
4 maximizes efficiencies and resource recovery.

5 **Q. Okay. Next slide, please.**

6 **This is -- what's shown here? Just the**
7 **well locations that you propose?**

8 A. Yeah, this is -- I think this is largely just a
9 recap of what I largely covered through previous
10 discussions. I mean, one thing I'd like to point out is
11 that in the south half of Section 30, being the southwest
12 portion of these -- of this 1280 acres, Apache currently
13 doesn't have any acreage other than verbal discussion.

14 **Q. Are you talking with Marathon yourselves?**

15 A. We have had discussions with Marathon, as well.

16 **Q. And then -- so as far as you're concerned you're**
17 **still talking to Marathon? Or no.**

18 A. Our business development contact would handle
19 that, mostly. I don't know really know where it sits at
20 this point. It would be verbal, if any sort of
21 discussions are going on.

22 But I wouldn't -- we don't have anything in
23 writing, but we have not purported to claim their interest
24 either, based on verbal discussions.

25 **Q. Okay. Do you have anything further to add to**

1 **your testimony?**

2 A. No, I don't believe so.

3 MR. PADILLA: Mr. Examiner, we pass the witness.

4 EXAMINER BRANCARD: Thank you.

5 Mr. Feldewert, any questions?

6 MR. FELDEWERT. Yes. Let me...

7 CROSS EXAMINATION

8 BY MR. FELDEWERT:

9 **Q. Mr. Hajdik I want to go to what you have marked**
10 **as your Exhibit A-9. Do you see that, Mr. Hajdik?**

11 A. Yes.

12 **Q. Did you put this together?**

13 A. Correct.

14 **Q. I see that each time you did this purported**
15 **ownership breakdown you put a caveat in there that says,**
16 **"Parties subject to contractual rights issues that have**
17 **not been resolved to assign a final working interest."**

18 **Do you see that?**

19 A. Yes, sir.

20 **Q. Is it your -- are you trying to communicate that**
21 **these working interest percentages that you have**
22 **represented may very well be different?**

23 A. They could fluctuate depending on how you
24 interpret title. There's a JOA, for example, in the east
25 half of Section 29 that was not fully executed.

1 These would be -- these numbers would be
2 based on legal title, as I represented them; however, you
3 know, given the old nature of these JOAs out here, you
4 have to give some sort of deference to parties'
5 contractual rights. But given the fact that the agreement
6 is incomplete as to the Bone Spring depth, there is going
7 to have to be some sort of resolution as to how to fully
8 give these parties credit for their interest.

9 **Q. I see this notation on every single ownership**
10 **breakdown that you have provided to the Division.**
11 **Correct?**

12 A. Correct, because the JOA covers the east half of
13 Section 29, which would cover all spacing units.

14 **Q. Would it impact -- would that impact the Colgate**
15 **interest that you represent?**

16 A. No. It's most likely to affect the -- it would
17 affect it very slightly. Mostly going to impact the
18 Apache interest.

19 **Q. This information that you have provided here,**
20 **which is somewhat hard to read, did you -- what's it based**
21 **on? Do you have title opinion?**

22 A. We have extensive title research and title
23 memorandums from our title attorneys.

24 **Q. Do you have a title opinion?**

25 A. Those are in the works.

1 Q. Those are in the works?

2 A. Correct.

3 Q. So you don't have a title opinion.

4 A. No. I did not purport to have one, either.

5 Q. Okay. The information that you're relying upon,
6 how old is that information?

7 A. Oh, within several months.

8 Q. And what type of information is it?

9 A. Broker research, title memorandum, landman
10 research, abstracts. Federal -- sorry, not federal lands.

11 Q. So draft ownership reports?

12 A. Yes.

13 Q. But no title opinion confirming who owns what.

14 A. I already answered that question for you, sir.

15 Q. The answer to that was no, is that right?

16 A. I already answered that question.

17 Q. I want to talk about your Well Proposals. Okay?

18 Mr. Hajdik?

19 A. Okay.

20 Q. If I look at what you provided with your
21 affidavit, you see your Well Proposal Letters that went
22 out to the working interest owners, correct?

23 A. Yes.

24 Q. One went out in December. I think that was for
25 the south half. Another went out in March for the north

1 half? March of 2021.

2 A. Correct.

3 Q. You mentioned or you acknowledged in this
4 information that went out to the working interest owners
5 that you did not identify where the surface holes for the
6 wells were going to be located. Is that correct?

7 A. I think that the -- has reference that indicates
8 where they will be.

9 Q. Well, you said either you put I/P for the south
10 half wells.

11 A. Correct. As I said, we typically put our pads
12 on the quarter/quarter line so it's going to straddle both
13 lot and unit.

14 Q. Did you identify that for the working interest
15 owners anywhere in this Well Proposal?

16 A. It says right there I/P. I mean, I'm not sure I
17 understand your question.

18 Q. Let me step back. Let me go one step back.

19 Mr. Hajdik, have you proposed wells before?

20 A. Yes.

21 Q. Are you aware of the Division's requirements
22 that they imposed when you were submitting Well Proposals?

23 A. There is a lot of requirements. You're going to
24 have to specify.

25 Q. Were you aware of the Division's requirements

1 that's placed in various Orders that an operator is
2 supposed to identify the surface hole location by
3 quarter/quarter section?

4 A. Sure.

5 Q. But you didn't do that here.

6 A. I'm not sure how I can specify if it's going to
7 straddle both.

8 Q. But, for example, there's nothing here in your
9 letter that tells the working interest owners that you're
10 going to use a single pad that straddles both
11 quarter/quarter sections.

12 A. Correct.

13 Q. Okay. And in fact there's nothing in your Well
14 Proposal Letters that inform the working interest owners
15 that you -- how many pads you intend to utilize. Correct?

16 A. Correct.

17 Q. It's not in your letter, it's not in your AFEs
18 that you submitted, unless I'm missing something.

19 Is that correct, Mr. Hajdik?

20 A. Correct.

21 Q. When I look at the exhibits, or I look at your
22 affidavit that you submitted to the Division here as part
23 of your evidence, is there anything in your affidavit that
24 identifies the surface hole location or this idea that you
25 were going to utilize one well pad for each half section?

1 A. The C-102s.

2 Q. The C-102s. (Note: Pause.)

3 This is what you're referencing?

4 A. Correct.

5 Q. Okay. But you don't say anything about your
6 well pad locations in your affidavit.

7 A. No, but I don't (inaudible).

8 Q. And when I go down to your diagrams, Mr. Hajdik,
9 that you submitted to the Division here today, they,
10 likewise don't give any indication about your well pads,
11 do they?

12 A. No, we don't have any drawn-in surface
13 development picture here.

14 Q. No. Correct. Thank you.

15 Do you have, uhm, any of these surface hole
16 locations staked?

17 A. We do.

18 Q. You do?

19 A. Yes. We wouldn't be able to have the C-102
20 without that.

21 Q. Okay. And is it true, Mr. Hajdik, though, that
22 just two weeks ago you submitted to Apache and, I don't
23 know, perhaps other working interest owners, a proposal to
24 drill a 1-mile Bone Spring well in the north half of
25 Section 30?

1 A. Correct.

2 Q. In fact if I go to Apache Exhibit M, is that a
3 letter you sent out, Mr. Hajdik?

4 A. Yes, sir.

5 Q. On October 21st?

6 A. Correct.

7 Q. A proposal to drill the Bowie well in the north
8 half of Section 30? (Note: Pause.)

9 Is that right?

10 A. Yes.

11 Q. And you proposed to drill a well -- let's see.
12 Four wells that has the Second and Third Bone Spring
13 Formation. Do you see that?

14 A. Yes.

15 Q. Are you intending to develop this acreage using
16 1-mile wells?

17 A. We inherited that JOA in a transaction, and
18 Apache had not yet disclosed that they had voted to remove
19 Colgate as an operator, so we did not -- you know, this is
20 just part of normal discussions with Apache. This is
21 not --

22 Q. Are you proposing, Mr. Hajdik, to develop this
23 area using 1-mile wells?

24 A. No. This is irrelevant at this point, because
25 Apache disclosed that they had voted us out as operator.

1 Q. Are you retracting this proposal?

2 A. Yes.

3 Q. Now, if you'd -- when you sent this out, did you
4 anticipate that you were going to use (inaudible)
5 different surface locations, since this is --

6 EXAMINER BRANCARD: Mr. Feldewert, I think we're
7 back into your supplemental exhibits here, and I don't
8 really see how this is anything related to what even this
9 case is about, frankly. So...

10 MR. FELDEWERT: This is a proposal for the north
11 half of Section 30, the very acreage that's at issue here.

12 MR. BRANCARD: Well, I mean are we going to have
13 a whole discussion about the discussions between the
14 parties?

15 MR. FELDEWERT: No. I'm trying to figure out
16 what they're proposing to do out here.

17 EXAMINER BRANCARD: I think their proposal is
18 what their application is.

19 MR. FELDEWERT: Okay.

20 EXAMINER BRANCARD: I mean, if they are having
21 separate discussions to try to resolve this with Apache or
22 Apache is having discussions with them to resolve it,
23 great, we don't have to have these hearings.

24 So, you know, the parties can discuss
25 whatever they want, but at this point we have applications

1 in front of us. That's what's in front of the Division.

2 MR. FELDEWERT: Okay.

3 EXAMINER BRANCARD: Plus, this is dated prior to
4 when your original exhibits were due, so this is not like
5 something new information here.

6 MR. FELDEWERT: Well, Mr. Examiner, they've made
7 some representations about their intent out here, which is
8 contrary to what this shows.

9 EXAMINER BRANCARD: You know, Apache and Colgate
10 today could get on a phone and develop an entirely
11 different proposal for what's going on out here, and they
12 are not in any way bound by what they've applied to here.
13 Is that not true? They can work out whatever deal they
14 want behind the scenes, but in front of the Division are
15 the Applications, period. What is in front of the
16 Division are the Applications of the parties, period.

17 **Q. Mr. Hajdik, let's take a look at the Well**
18 **Proposal Letter that you sent out.**

19 **(Note: The reporter requested a recess.)**

20 **(Note: In recess from 11:55 a.m. to 12:01 p.m.)**

21 EXAMINER BRANCARD: Okay. We are on Mr.
22 Feldewert's questioning of Mr. Hajdik.

23 MR. FELDEWERT: Yes.

24 **Q. Mr. Hajdik, I'm looking at your Exhibit A-12,**
25 **which, again, is your December Well Proposal Letter.**

1 **Okay?**

2 A. Okay.

3 **Q. That's dated December 4, 2020.**

4 **If I then go down to the AFE that you**
5 **submitted with this exhibit, surprisingly, Mr. Hajdik, it**
6 **contains a different date. Do you see that?**

7 A. The intention was to submit a supplement.

8 **Q. Is that --**

9 A. Go ahead.

10 **Q. The intention was what, Mr. Hajdik?**

11 A. Those were supposed to be a supplemental AFE.
12 There may have been something crossed up in submitting the
13 exhibit. Those are not the -- those were supposed to be
14 supplemental AFEs, revised AFEs from us for our current
15 costs. They were supposed to be submitted as part of
16 this. They are not originally the AFEs submitted with the
17 proposal.

18 MR. FELDEWERT: So then I'd like now, then, Mr.
19 Examiner, to go to the actual AFEs that were submitted
20 with the proposal, which I have had included as now Apache
21 Exhibit N, if I have may, Mr. Examiner. N as in Nancy.

22 **Q. Mr. Hajdik, so this is the same letter, and now**
23 **I'll go to the AFE and the example of the AFE that you**
24 **have sent with this letter. This would be the actual AFE**
25 **that was sent with your December Well Proposal, correct?**

1 A. I believe so.

2 Q. It has the date of 12-3-2020.

3 A. Okay.

4 Q. When you -- who did you consult with prior to
5 sending out these well proposals and obtaining the AFEs?

6 A. Typically our Drilling & Completion Department.

7 Q. And you do that to make sure that you have
8 the -- that the data that you're going to show in your
9 Well Proposals and your AFEs is as accurate as possible?

10 A. That's the intention.

11 Q. Contains the best available data?

12 A. Correct.

13 Q. Including any experience that your company has
14 had to date in the area?

15 A. 100 percent, I'm not -- I don't create these, so
16 I...

17 Q. Well, you sent these out, right, Mr. Hajdik?

18 A. Maybe I'm not understanding your question.

19 Q. Okay. You sent the letter with the AFEs.

20 A. Correct.

21 Q. And am I incorrect in that you consulted with
22 the individuals that you need to before you send them out
23 to make sure that they're accurate?

24 A. Yes.

25 Q. And contain the best available data.

1 A. Correct.

2 Q. Okay. When I see on your AFE that you sent out
3 that you're going to have drilling days of 20.6 for your
4 proposed 2-mile wells in the Second Bone Spring, what do
5 you mean by drilling days?

6 A. (Note: Pause.) I'm going to have to defer to
7 our engineer. I mean, I don't -- I'm the land guy, so our
8 engineer can speak to that.

9 Q. And who is that?

10 A. We would have to call Stephen.

11 Q. You don't have someone that can speak to what
12 you mean by drilling days in these affidavits?

13 A. (Note: No response.)

14 Q. You have to answer out loud, Mr. Hajdik.

15 A. We would have to call a rebuttal witness, and
16 that isn't certainly customary to have drilling engineers
17 on (inaudible).

18 Q. What do you understand drilling days to mean?

19 A. I can't speak to that. I don't know. I'm not a
20 drilling engineer.

21 Q. So can you -- can you explain why in December of
22 2020 Colgate estimated 20.6 drilling days for these 2-mile
23 Bone Springs wells, but in the affidavit, the information
24 that you submitted that -- you submitted, did you not, Mr.
25 Hajdik?

1 A. Right.

2 **Q. That's true. Exhibit A-12. This is something**
3 **you put together, right?**

4 A. Yes.

5 **Q. Can you explain why the drilling days suddenly**
6 **drop to 13.0?**

7 EXAMINER BRANCARD: Are you sure you're talking
8 about the same well here, Mr. Feldewert?

9 MR. FELDEWERT: I'm looking at the Second Bone
10 Spring Sand. That's what SBSG would mean, right, Mr.
11 Hajdik?

12 A. Yeah.

13 **Q. Okay.**

14 A. We've been very active in this region this year,
15 and I would attribute that to learning from the year. I
16 obviously can't go -- my expertise does not lend to
17 specifics on these, but that would, you know, be my, uh --
18 you know, best opinion on that. Which is in the intention
19 of providing a revised AFE to revise the cost and drilling
20 information based on, you know...

21 **Q. Pretty big change, though, right, 20.6 to 13?**

22 A. Sure.

23 **Q. Can you explain to me why in just two weeks -- I**
24 **want you to keep that 13 days in mind for me, would you,**
25 **please?**

1 A. Okay.

2 Q. Thirteen days. Do you see that?

3 A. Yes.

4 Q. Can you please explain to me why two weeks
5 earlier -- Mr. Examiner, I'm going to refer to this again.
6 Two weeks earlier on October 21st, 2021, as reflected in
7 Apache Exhibit M -- this is your signature at the bottom,
8 right, Mr. Hajdik?

9 A. Correct.

10 Q. This is for the Bowie wells in the north half of
11 Section 30. Okay?

12 A. I think we covered that these were posturing
13 negotiation discussions and those have been retracted.

14 Q. That would be a one-mile well. The one that you
15 proposed was a 1-mile well?

16 Mr. Hajdik.

17 A. Yes.

18 Q. Okay. When I go to the AFE that you sent for
19 that, with that I see Second Bone Spring Sand, right
20 there, north half of 30, and your drilling days are 17.07
21 for a 1-mile well in the Second Bone Spring Sand.

22 A. I'll repeat myself, but it feels like beating a
23 dead horse. I'll defer to the engineer on exact
24 specifics, but these were posturing discussions, they are
25 not -- they've been retracted and they are not concrete

1 evidence of anything.

2 Q. Well, I mean do you send out AFEs, Mr. Hajdik,
3 that are not accurate and don't contain accurate
4 information to the working interest owners to evaluate?
5 Is that what you guys do?

6 A. No, sir. I told you this is a posturing
7 discussion, and Apache had not fully disclosed of the
8 situation.

9 EXAMINER BRANCARD: Where are we going with
10 this, Mr. Feldewert?

11 MR. FELDEWERT: The fact that they're all over
12 the board, Mr. Examiner, on the drilling dates, despite
13 their claim they have all kinds of experience.

14 EXAMINER BRANCARD: And where has the Division
15 indicated that drilling days are a factor in determining
16 competing compulsory pooling applications?

17 MR. FELDEWERT: It goes to the experience of the
18 operator, and ultimately is going to go to the cost of the
19 well.

20 EXAMINER BRANCARD: Well, yeah, I would assume
21 that really what any operator cares about is that dollar
22 number at the bottom.

23 MR. FELDEWERT: Neither you nor I are operat- --

24 EXAMINER BRANCARD: Not the drilling days up
25 there in the top corner.

1 MR. FELDEWERT: Neither you nor I are operators;
2 and No. 2, it does seem to me, Mr. Examiner, that if you
3 are going to go out and propose a new well, and if you are
4 going to submit AFEs to working interest owners that they
5 are supposed to rely upon, you would hope that the
6 operator would submit accurate information about how many
7 drilling days they expect, how many completion days they
8 expect, the depth that they are going to target, and the
9 costs that they believe are going to be incurred to do
10 that, because all of that has to be taken into account in
11 evaluating the proposal. And to the extent that Colgate
12 is out here just throwing numbers on the paper and sending
13 it out to working interest owners and the numbers are
14 entirely inconsistent tells me, at least, and should tell
15 anyone looking at this, that they don't have a lot of
16 experience and they don't know what they're doing.

17 A. Well, I think that those same documents that we
18 received from Apache historically have also been flagged,
19 if that's what you're implying.

20 **Q. Well, I don't have that in front of me, Mr.**
21 **Hajdik. I only have what you sent out to the working**
22 **interest owners for them to evaluate.**

23 A. It's a part of --

24 **Q. And my --**

25 **(Note: Reporter interruption.)**

1 A. At the end of the day we are here for 2-mile
2 development as proposed in front of the Commission. I
3 have already told you that those were retracted.

4 **Q. And your 2-mile development that you're involved**
5 **in and that you sent out to the working interest owners**
6 **indicated to them, in both December and in March, that it**
7 **was going to be 20.6 drilling days.**

8 A. That's what we had at the time.

9 **Q. Okay.**

10 A. That has since been revised, and I think you
11 will notice the costs are pretty comparable between Apache
12 and --

13 **Q. Yes, I notice you revised your costs and your**
14 **drilling dates to more closely match Apache. So if that**
15 **was your intent, I understand.**

16 A. We've been active in the area for the last year,
17 unlike Apache, and we have actuals that we can utilize to
18 revise our AFEs.

19 **Q. When I go to your --**

20 A. And we -- we can use real drilling days, real
21 costs, real completion timing. And that's what we did, do
22 that as a favor to submit to the parties. They should be
23 aware of where we are at in real time.

24 **Q. So two weeks ago you sent out a proposal for a**
25 **1-mile well in the Second Bone Spring that says 17.7 days.**

1 A. I'm not going to speak about negotiations with
2 Apache that are not relevant to this.

3 Q. And then you send out your revised AFEs to the
4 Division that they're supposed to accept now as more
5 accurate, and you're saying it's 13 drilling days for
6 2-mile wells.

7 Is that what you're suggesting?

8 A. If you would like to go into the specifics of
9 drilling days you can talk to our drilling engineer.

10 Q. Well, he is not a witness, and you're the one
11 that submitted this information, Mr. Hajdik.

12 Let me ask you about your other information
13 that you provided to the Division. Okay?

14 I'm on your Exhibit A, slide 113 -- or
15 Exhibit A-15, I guess it's page 138. Is that how we read
16 this?

17 Mr. Hajdik, you provided this?

18 A. Yes.

19 Q. Did you choose this language?

20 A. It was collaborated from our team.

21 Q. Did you assist in putting this language in this
22 slide that you provided to the Division?

23 A. Yes.

24 Q. Okay. Your first bullet point on this slide
25 Exhibit A-15, 138, suggests that you are a leading

1 Delaware Basin operator. Do you see that?

2 A. Yes.

3 Q. What do you mean by Delaware Basin operator?

4 What are you referencing there?

5 A. We are here in the Delaware Basin. The Delaware
6 Basin encompasses Eddy, Lea, Reeves, Ward, Loving.

7 Q. So you're suggesting that in the entire Delaware
8 Basin of New Mexico and Texas you're a leading operator?

9 A. Yes, sir.

10 Q. You say "across critical performance
11 indicators".

12 What do you mean by critical performance
13 indicators?

14 A. Cost, growth, production, any of the factors
15 that you would utilize to compare operators.

16 Q. And have you provided the Division any of those
17 critical performance indicators when you compared yourself
18 with other operators in this Delaware Basin in New Mexico
19 and Texas?

20 A. No, we have not put any specific charts
21 together --

22 Q. No data?

23 A. -- prior to submission.

24 Q. No data. But you --

25 A. We have it.

1 **Q. But you haven't provided it.**

2 A. We have not submitted the data as part of the
3 presentation.

4 **Q. Your second bullet point, you say, we imminently**
5 **prepared to move forward with development. Do you see**
6 **that?**

7 A. Yes.

8 **Q. But I think you mention that if you were**
9 **approved as operator it would be on your 2022 rig**
10 **schedule.**

11 A. Well, it's November, so I don't anticipate any
12 order before 2022 or December of 2021. As we all know,
13 you don't just instantly rig up. So 2022 was, we
14 calculate, 55 days away.

15 **Q. Do you have it on your rig schedule for 2022?**

16 A. We have availability to put it on there in the
17 event that we were to obtain Operator. We are going to be
18 developing directly south of here in a very short period
19 of time.

20 **Q. But not currently on the rig schedule?**

21 A. I don't believe on Apache's either.

22 **Q. My question of you is: Is it on your rig**
23 **schedule, Mr. Hajdik?**

24 **The answer is no; is that right?**

25 A. We don't put hypotheticals on the drill

1 schedule, yeah.

2 Q. Now with this development that you see here in
3 Sections 29 and 30, have you done your ARC surveys?

4 A. I just checked on the regulatory. I can't
5 recall if I have.

6 Q. Do you -- if you have? You --

7 A. We have ARC surveys of this region. I don't
8 know how far they extend.

9 Q. Well, region is one thing, but in this area have
10 you done ARC surveys?

11 A. I have done ARC surveys within a quarter mile
12 here. I don't know where they extend into the section.
13 We have our surveys for this area.

14 Q. Do you have gas takeaway?

15 A. Let me backtrack a second. ARC Survey is pretty
16 simple, straightforward. They're saying you can order
17 within a week. Not any earth-shattering, long, drawn-out
18 deal, to the extent we may not have it yet.

19 Q. Do you have gas takeaway?

20 A. Yes, sir. We have a gas line, active gas line
21 in the ground within a mile of these locations.

22 Q. And who is that with?

23 A. LM Midstream.

24 Q. Have you checked with LM Midstream? Are they
25 able -- do they have the capacity to take your gas, to

1 **develop this 2.930?**

2 A. Yes, they have built to this location, this area
3 for us, and they are contractually obligated to take it.

4 **Q. You have --**

5 A. And gas capacity.

6 **Q. Have you checked with them to see if they have**
7 **the capacity?**

8 A. They are aware of our development plan and have
9 the capacity to take it, as needed.

10 **Q. What about water takeaway?**

11 A. We have a water line within a mile of here that
12 also has capacity to be taken, and it's under large
13 regional contract.

14 **Q. You said within a mile; is that right?**

15 A. Correct. In-place, built infrastructure.

16 **Q. Do you have the right-of-ways available, or**
17 **right-of-ways at hand to be able to tie into your proposed**
18 **surface locations there in the east half/east half of 29?**

19 A. We have rights-of-way to get us here. We have
20 an ongoing relationship and agreement with the surface
21 rancher that would allow us to obtain the necessary
22 rights-of-way as needed, to the extent that we don't
23 already have them. I (inaudible).

24 **Q. Your third bullet point, you talk about**
25 **prolonged completion. Do you see that?**

1 A. Yes.

2 Q. You suggest that Colgate has averaged, between
3 rig release and completion date, 79 days.

4 A. Correct.

5 Q. Based on what data?

6 A. Internal data.

7 Q. Internal data. Uhm, internal data for what
8 area?

9 A. This region.

10 Q. When you say "this region," what do you mean by
11 this region?

12 A. Where the wells are in this area, the Township
13 and Range.

14 Q. Your statement today is that in this Township
15 and Range -- that would be 19 South, 28 East --

16 A. Yeah.

17 Q. -- between your -- with the wells that you have
18 drilled that you had an average completion between rig
19 release and completion date of 79 days? Is that what
20 you're representing?

21 A. Yes.

22 Q. And that's based on the internal data that you
23 didn't file with the Division.

24 A. I can't -- that's based on our internal data.

25 Q. You say how -- you say Apache has 264 days. Do

1 **you see that?**

2 A. Yes.

3 **Q. Is that for this Township and Range?**

4 A. Correct.

5 **Q. You have an asterisk by it. What does that**
6 **asterisk mean?**

7 A. That was accidentally cut off in the scanning.
8 That was based on --

9 **Q. I'm sorry?**

10 A. -- intervent (phonetic) data.

11 **Q. I'm sorry?**

12 A. I said that was based on intervent data. The
13 asterisk got cut off. There was supposed to be a
14 footnote. It got cut off when it was scanned.

15 **Q. Intervest data?**

16 A. Innervent.

17 **Q. Innervest. What do you mean by innervest data?**

18 A. Wait. I'm sorry. Infrared.

19 **Q. Infrared.**

20 A. Drilling info. The new name for Drilling Info.

21 **Q. Where do you find that?**

22 A. The Internet.

23 **Q. Okay. Did you look at Apache's filings with the**
24 **Oil Conservation Division for the 30-plus wells that they**
25 **have drilled in this area, 36 wells?**

1 A. No, I didn't. I --

2 (Note: Reporter inquiry.)

3 **Q. So you don't know what the actual data is when**
4 **you look at what's being filed with the Division in the**
5 **Rig Release and Completion report by Apache? You didn't**
6 **look at that?**

7 A. The drilling info data I presume comes from the
8 OCD'S data.

9 **Q. You didn't look at the OCD data, you just**
10 **assumed that?**

11 A. It's a -- Drilling Info is a data aggregator as
12 of the -- it's pretty customary in the business as a data
13 source.

14 **Q. The fourth bullet point, you suggest here that**
15 **your proposed plan is going to allow for optimal spacing**
16 **and development sequencing. Do you see that?**

17 A. Yes.

18 **Q. Is there any difference in spacing between what**
19 **Apache has proposed in their Palmillo wells and what you**
20 **have proposed with your Buckhorn and Black Jack wells?**

21 A. It's not in the sense of challenging their
22 spacing or anything. The intent of that comment was the
23 codevelopment with our wells to the south that we are
24 imminently planning to develop.

25 **Q. But in terms of optimal spacing strategy?**

1 A. That would be spacing off of existing
2 development, because that would alter your spacing if
3 there was existing development.

4 **Q. Let me ask you this: In terms of spacing, is**
5 **Apache's spacing in Section 29 and 30 the same as what**
6 **Colgate has proposed?**

7 A. You're taking it out of context. It's supposed
8 to right in context with spacing and development
9 sequencing.

10 **Q. I'm going to get to that, Mr. Hajdik.**

11 **Is there any difference in phasing in**
12 **Sections 29 and 30 between the wells --**

13 A. I'd have to refer --

14 **Q. -- that Colgate proposed?**

15 A. Both have proposed four wells per bench.

16 **Q. Is there any difference in the spacing between**
17 **the wells?**

18 A. I don't know.

19 **Q. Okay. And assuming that they are the same**
20 **spacing in Sections 29 and 30, then it won't matter who is**
21 **going to be approved as operator in terms of your offset**
22 **development to the south. Right, Mr. Hajdik?**

23 A. Uh, in both timing -- and I think our reservoir
24 can speak more to that, but timing of the development
25 sequencing is important in those developments.

1 Q. So with this development that you're suggesting
2 down here in the south in Sections 31 and 32, is that what
3 you're referencing?

4 A. Correct.

5 Q. And is -- do you have an actual drilling
6 schedule for that development that you're suggesting in 31
7 and 32?

8 A. We do. I don't have the drill schedule in front
9 of me but it is on the drill schedule.

10 Q. Do you have your spacing units already
11 established?

12 A. We do.

13 Q. And do you have your wells already planned and
14 staked?

15 A. We do. Those are the federal acreage in there
16 so we have federal APDs in place.

17 Q. So your spacing unit and the surface and
18 bottomhole of your wells are already set?

19 A. Correct.

20 Q. Okay. And your first and last take points are
21 already established?

22 A. Yes.

23 Q. Okay. Independent, then, of what happens with
24 this Application.

25 A. Uhm, I wouldn't say that, necessarily, because,

1 as we all know, you can -- as things change there's a
2 sundry mechanism with the both the BLM and the OCD as far
3 as you need to make adjustments.

4 Q. My point being, Mr. Hajdik, you already planned
5 an extension well for 31 and 32 without any reliance on
6 what happens in Sections 29 and 30.

7 A. We planned this entire region based on this
8 entire plot, this 2-mile plot. We did not plan it in a
9 vacuum.

10 Q. Now, this slide I see here, Exhibit A-15, 136,
11 did you put these sticks in here, Mr. Hajdik, or have
12 somebody do it?

13 A. I believe either one of our engineers or GIS
14 guys put them in.

15 Q. And how many do you represent as being drilled
16 here in Exhibit A-15 on page 136, in 19 South, 28 East?

17 A. I'm not sure I follow your question.

18 Q. I'm looking at your stakes here in 19 South, 26
19 (sic) East. I'll try to blow it up for you here.

20 Do you see that? (Note: Pause.)

21 Mr. Hajdik?

22 A. There's two maps on the page. I'm not really
23 sure what you're pointing at.

24 Q. You're right. Good point.

25 Let's go to the left side. You say:

1 (Reading) Colgate Energy wells spud in the last 18
2 months, Eddy County.

3 Do you see that slide?

4 A. Yes.

5 Q. Now I want you to focus on 19 South, 28 East.

6 A. Okay.

7 Q. And I see you have identified the spacing units
8 at issue, and I also see that you have identified some
9 black lines. I'm assuming that represents wellbores.

10 A. Yes.

11 Q. How many wellbores are you representing in 19
12 South, 28 East?

13 A. Fifteen.

14 Q. Have they all been drilled?

15 A. The black lines have all been drilled.

16 Q. So you're saying that you have drilled 15 wells
17 in 19 South, 28 East?

18 A. Yes.

19 Q. Because that's in reference to 11. I'm
20 confused.

21 A. Well, we just finished the pad on the north.

22 Q. And, Mr. Hajdik, in that reference, what section
23 are you referencing in 19 South, 28 East?

24 A. Are you talking about your orange highlight or
25 are talking about generally?

1 Q. I'm talking about the pad to the north that you
2 **just discussed.**

3 A. That straddles Section 13 and 19/29, and 18 and
4 19/28.

5 Q. **And when did you finish drilling those wells?**

6 A. Very recently. I don't have the exact
7 re-release date.

8 Q. **And how many wells are there?**

9 A. Four.

10 Q. **Four. Okay. So putting those aside, the**
11 **remaining representations on here would relate to the 11**
12 **wells that I saw on some of the other slides referenced;**
13 **is that right?**

14 A. Yes.

15 Q. **Okay. When was the first of those 11 wells**
16 **drilled?**

17 A. Uhm, I believe sometime in 2020.

18 Q. **2020. Do you remember when the first well was**
19 **completed?**

20 A. Mid 2020, I believe. I don't have the schedule
21 in front of me, but these are best guesses.

22 Q. **Mid 2020?**

23 A. Correct.

24 Q. **Okay. Who is responsible for filing the**
25 **company's completion reports?**

1 A. That would be our regulatory individual.

2 Q. Do you oversee that at all?

3 A. No.

4 Q. Does that same group file your production
5 reports?

6 A. I would assume so.

7 Q. At any point in time, Mr. Hajdik, as landman and
8 as the company is developing this area, did you or anyone
9 in Colgate ascertain whether you were timely filing your
10 completion reports?

11 A. I don't know. It's not something I would
12 normally delve into, because we can see the production
13 internally so it's not something I normally keep track of,
14 apart from an internal basis.

15 Q. So you're not aware that completion reports are
16 to be filed within 45 days following completion
17 operations?

18 A. As far as my landman role, I don't do anything
19 with completion reports, no.

20 Q. Do you know what the requirement is for
21 production reports?

22 A. I do not.

23 Q. Does anybody within the company know what the
24 requirement is for production reports?

25 A. I would presume regulatory, but I can't speak

1 for them.

2 MR. FELDEWERT: Okay. That's all the questions
3 I have.

4 EXAMINER BRANCARD: Mr. Garcia.

5 EXAMINER GARCIA: I have a few questions.

6 CROSS EXAMINATION

7 BY EXAMINER GARCIA:

8 Q. Looking at your applications they are for two
9 640-acre spacing units north path/south path; however, I'm
10 curious. None of your wells appear to be a proximity well
11 which I believe this would require.

12 Do you have any comments or thoughts on
13 that?

14 A. I think the (inaudible), but I believe the
15 certain spacing unit will be 320 for the actual well, just
16 two spacing units under the same case number.

17 Q. Okay. Don't know how that would work, but the
18 CP Order, I guess, because that establishes --

19 A. There's been a number of those done over time
20 that way, from various attorneys.

21 Q. I guess I'd be interested in seeing some of
22 those if you have them at hand.

23 Next question is really just the same thing
24 I asked Apache. Your Exhibit A-10-16, can we just get a
25 cleaner copy? When I zoom in everything blurs on my

1 screen. The first page is fine, the second page is the
2 issue.

3 A. We will get you a nonscanned .pdf.

4 Q. It's just easier when we review.

5 MR. PADILLA: Mr. Garcia, what exhibit do you
6 need?

7 EXAMINER GARCIA: A-10-16. It's the north half
8 interest breakdown.

9 MR. PADILLA: Thank you.

10 EXAMINER GARCIA: The south half appears to be
11 fine.

12 Q. Similar question I asked Apache, also: Your
13 south half development if your cases don't end up winning,
14 would you still -- you said it's already in the works, you
15 have APDs, so it sounds like you would continue that
16 process. Is that correct?

17 A. Yes. We would not -- we would not not drill our
18 southern acreage. We would optimally co-develop all of it
19 but it would not remove our, or alter our existing plans,
20 other than potentially adding on to the drill schedule.

21 Q. Just out of curiosity, was that acreage in those
22 wells compulsory pooled or was it a JOA or contested CP?

23 A. It was compulsory pooling.

24 EXAMINER GARCIA: Okay. I believe that's all my
25 questions.

1 Thank you.

2 THE WITNESS: Thanks.

3 EXAMINER BRANCARD: Mr. Hajdik, again I think
4 Mr. Garcia referred to 8A, 9, 15 and 16, or 8, 10, 16 --
5 these are pages 18... (Note: Pause.)

6 MR. FELDEWERT: Mr. Examiner --

7 EXAMINER BRANCARD: You're getting there. You
8 may need to blow it up because these numbers are really
9 small.

10 MR. FELDEWERT: Which one do you want to blow
11 up?

12 EXAMINER BRANCARD: Both. But I'll go through
13 both here.

14 CROSS EXAMINATION

15 BY EXAMINER BRANCARD:

16 Q. So first of all, you have these Jetta and
17 Northern that you say support Colgate. All I saw was -- I
18 think I saw one letter from Jetta and it says: We support
19 Colgate. It's not a JOA or anything, just a "We support
20 Colgate." Like a fan letter.

21 A. Uhm, yeah, this is just a letter of support from
22 these operators. That's why Jetta is concerned.

23 With Northern, the interest, Colgate sold
24 an interest to that (inaudible) and then part of that PSA
25 is a requirement to support our force pooling.

1 We can provide better documentation on
2 that, if necessary.

3 **Q. Okay. But they have not signed a JOA, have**
4 **they?**

5 A. They're obligated to either support or sign a
6 JOA. I can't recall if there's a JOA here for
7 (inaudible).

8 **Q. Okay. So you give numbers for each, I guess,**
9 **320s, right, north half/south half, south half/south half.**
10 **So one looks like 42.8 percent and 48.09 percent, and it**
11 **looks like, if we scroll down to the next page -- which**
12 **you really have to blow up -- it looks like 19.5 percent**
13 **and 19.5 percent are your bottom numbers. Is that**
14 **correct?**

15 A. Yes.

16 **Q. Okay. But you haven't given a number of your**
17 **total for the entire proposal today, have you.**

18 A. What do you mean number for the entire proposal?

19 **Q. Well, I mean for the 1280 acres.**

20 A. No, we did it on the individualized spacing unit
21 due to the way that the ownership -- I mean, we're not
22 going to actually pool the whole 1280. Is that what
23 you're saying, asking?

24 **Q. I thought we were here to pool the 1280.**

25 A. Well, I mean, we are, but in an individual

1 spacing unit, and...

2 Q. Well, the point is that working interest control
3 is a key issue in this whole hearing, so that number is
4 extremely important.

5 So, you know, I did the numbers in my head,
6 which is really dangerous to have a lawyer do that, but I
7 added those four numbers up divided by 4 and I got about
8 32 percent and change of being Colgate controlled.

9 Am I in the right ballpark here?

10 A. Uhm, you know you got to ask -- -it's just as
11 dangerous for me to do that in the next five seconds in my
12 head, but -- I hate to (inaudible) numbers, but -- the
13 reason for the -- for Colgate proposing these two
14 different units is because of the way the ownership is
15 aligned.

16 Q. So my concern is that Apache in their slide
17 No. 2 says your working interest is 17.16 percent. That's
18 a pretty big difference. And so why are the numbers so
19 different from what Colgate has come up with and Apache
20 has come up with?

21 I should have asked Apache this question,
22 too, but...

23 This is a big issue for the agency, working
24 interest control, and so we need to get these numbers
25 right here. So why are these numbers -- do you have any

1 **idea why the numbers are so different between what Apache**
2 **estimated and what Colgate estimated here?**

3 A. I believe it's probably a source from, uhm,
4 Tract 4 on being the south half -- the easier one to read.
5 South half of Section 30, uhm, our title, and then
6 including support from the title attorney that indicates
7 we would show more of Tract 4 than Apache is giving us
8 credit for, and that's due to some contractual
9 interpretations there. That's why we are showing a larger
10 working interest in the south half than Apache is
11 currently crediting us with.

12 Q. But you're crediting yourself with 19 1/2
13 percent on both -- of the whole north, which is more than
14 what Apache credits you for the whole entire percentage
15 you get for the whole area. So I mean I'm trying to get a
16 grip on why the discrepancies in the numbers, because if
17 we have to rely on numbers, we've got bad numbers here
18 from one or both parties. I'm guessing both.

19 A. I mean, I can't speak to Apache's title. I
20 mean, this is what our title represents, and, you know,
21 the interpretation we've received from legal counsel.

22 I acknowledge that the title here is very
23 challenging and very cut up.

24 EXAMINER BRANCARD: Okay.

25 Mr. Garcia.

1 EXAMINER BRANCARD: Mr. Brancard, I would like
2 to piggyback on you.

3 FURTHER CROSS EXAMINATION

4 BY EXAMINER GARCIA:

5 Q. The tracts look different, too, for these two
6 sections for the Applications. I mean, the south half of
7 Colgate's is four tracts. They are nowhere near the same
8 shape and size as Apache's exhibits. Just, you know...

9 MR. FELDEWERT: Can I interject here?

10 We saw the same thing when they filed their
11 exhibits. We were surprised, and we have a rebuttal
12 exhibit for the witness to address that.

13 Just to preview it, we have to point out
14 they recently received a title opinion and it differs
15 substantially from what Colgate has shown, and that's one
16 of our rebuttal exhibits.

17 EXAMINER BRANCARD: With a rebuttal witness,
18 you're saying?

19 MR. FELDEWERT: Yes, sir.

20 EXAMINER BRANCARD: A land-type person?

21 MR. FELDEWERT: Mr. Johnson himself.

22 EXAMINER BRANCARD: All right. So let me just
23 totally shift gears here and touch on something that I
24 think Mr. Garcia tried to get.

25 CONTINUED CROSS EXAMINATION

1 BY EXAMINER BRANCARD:

2 Q. What is your understanding of when production
3 started for any Colgate well in Township 19/28?

4 A. I believe it was mid to late summer for the
5 initial -- of 2020 for the initial well or wells.

6 Q. Mid to late summer of 2020. Okay.

7 And Colgate filed its first C-115 in the
8 last day or two?

9 A. I'd have to check with regulatory, but, you
10 know, to the extent -- I mean, actual production data
11 discussion, I would probably have to defer to our
12 engineer.

13 Q. Is there any witness today who has a little more
14 information about this?

15 A. Uh, Jordan Cox could probably speak a little
16 more to it.

17 Q. Okay. And I don't know -- this may be a
18 question for Mr. Padilla, who is not a witness, but land
19 folks often get themselves caught in discussions about
20 Notice here, and maybe Mr. Padilla can help out.

21 Mr. Feldewert, if you can scroll all the
22 way to the end.

23 MR. FELDEWERT: Of what I have up?

24 EXAMINER BRANCARD: Yes. I have 140.

25 MR. PADILLA: Are you talking to my exhibit,

1 which would be Exhibit D, the Notice exhibit?

2 EXAMINER BRANCARD: Yes, Mr. Padilla.

3 MR. PADILLA: It would be Exhibit D?

4 EXAMINER BRANCARD: Yes. (Note: Pause.)

5 MR. PADILLA: I'm looking.

6 EXAMINER BRANCARD: I was specifically looking

7 at -- well, these are not...

8 Exhibit D, page 210 of your .pdfs. (Note:
9 Pause.)

10 MR. PADILLA: You're saying before -010?

11 EXAMINER BRANCARD: I'm saying D-9-42.

12 MR. PADILLA: Okay. The last page.

13 EXAMINER BRANCARD: The last page. This is the
14 newspaper publication.

15 MR. PADILLA: Right.

16 EXAMINER BRANCARD: According to esteemed
17 Current Argus, they are claiming this was published last
18 Friday, October 29th.

19 MR. PADILLA: Mr. Examiner, that's correct.

20 EXAMINER BRANCARD: Well, that's not quite 10
21 business days.

22 And it's also the content of the Notice,
23 which says in the second sentence: A hearing conference
24 was conducted on November 4th, 2021, at which time the
25 Division took the cases under advisement. (Note: Pause.)

1 MR. PADILLA: No, that's also incorrect.

2 It's -- I think we're looking at -- I mean
3 my assistant just simply picked up the last Notice that we
4 did, because I remember one case we had to refile that we
5 did have everybody, and that was just picking up -- and we
6 had already had a hearing.

7 My assistant simply picked up the wrong
8 date. We hadn't had a hearing. So...

9 EXAMINER BRANCARD: So do you think that was
10 another newspaper Notice of this application?

11 MR. PADILLA: No, I don't think so. I think
12 this was just something that we did wrong. We didn't do
13 it timely.

14 EXAMINER BRANCARD: Which is a concern, because
15 as you scroll back from that page there's a lot of Return
16 to Senders here.

17 MR. PADILLA: That's why I think we have a lot
18 of returns from -- and we included everybody that we did
19 not have returns on -- or that we had returns on. I'm
20 sorry. No returns. In other words, we had the entire
21 document sent back because it was undeliverable.

22 EXAMINER BRANCARD: Okay. So you think this is
23 your newspaper notification?

24 MR. PADILLA: Yes.

25 EXAMINER BRANCARD: Okay. Well, you may need to

1 end up continuing this case so at least we accomplish
2 something here.

3 But anyway, I think it's time for lunch.

4 You have two more witnesses, Mr. Padilla?

5 MR. PADILLA: Yes. And I don't think, unless
6 Mr. Feldewert cross examines a long time, I don't think it
7 will take that long.

8 MR. FELDEWERT: The witnesses I'm looking at
9 don't, uh -- other than Mr. Hajdik, might be Ms. Cox to
10 address the likely reporting, and I don't have any notes
11 here.

12 EXAMINER BRANCARD: Okay. Well, I'm hoping to
13 get this done by 3:00, which is when the annual Public
14 Lawyer Award ceremony begins.

15 So how much time do we need for a lunch
16 break?

17 (Note: Discussion held off the record.)

18 MR. PADILLA: Half an hour is fine.

19 EXAMINER BRANCARD: Half an hour is fine, Mr.
20 Feldewert?

21 MR. FELDEWERT: I can make that work.

22 EXAMINER BRANCARD: Impressive. All right.
23 Well, why don't we shoot to get back here by 1:20.

24 Thank you all.

25 (Note: In recess from 12:50 p.m. to 1:22 p.m.)

1 EXAMINER BRANCARD: Okay. Good afternoon. We
2 are back on the record. This is a Special Docket,
3 November 5, 2021, Cases 21727, -28, -29 -30. And then
4 21827, 21828.

5 Mr. Padilla, your witness.

6 MR. PADILLA: I'm going to call Mr. David
7 Dagian.

8 Mr. Dagian, are you up?

9 THE WITNESS: Yes, sir.

10 DAVID DAGIAN,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. PADILLA:

14 Q. Mr. Dagian, please state your name.

15 A. David Dagian

16 Q. You're a geologist for Colgate, correct?

17 A. That's correct.

18 Q. And can you tell the examiner a little bit of
19 you educational background and work experience in the oil
20 and gas industry.

21 A. Sure. I have a geology degree from the
22 University of Texas at Austin. I've worked for a number
23 of different operators in the Anadarko Basin after
24 graduating college, starting in January, 2010, and then
25 worked there until 2012 when I went to work for Concho,

1 working in the Delaware Basin. And worked there until
2 2017 and went to work for Prime Rock Resources, continuing
3 to work in the Delaware Basin. And then have started with
4 Colgate here in August of this year.

5 Q. Have you appeared before the Oil Conservation
6 Division and had your credentials accepted as a matter of
7 record as a petroleum geologist?

8 A. Yes, sir, I have.

9 Q. Okay. Did you prepare certain exhibits as
10 Exhibit B for introduction at this hearing today?

11 A. Yes, sir, I did.

12 Q. Tell us briefly what you prepared in Exhibit B.

13 A. Uhm, do you mind, could we get the exhibits up
14 on the screen? That may be helpful, as well.

15 MR. PADILLA: Mr. Feldewert, if you would
16 please.

17 MR. FELDEWERT: Sorry. Give me a minute. I
18 wasn't...

19 MR. PADILLA: I was trying to figure out how to
20 load.

21 MR. FELDEWERT: Is that the right (inaudible)?

22 THE WITNESS: Yes, sir.

23 A. So I prepared a number of exhibits in here that
24 I detailed in my affidavit for this project area in 19/28.

25 Going through them quickly, you know,

1 Exhibit B-9 is a Regional Locator Map of the project area.
2 Exhibit B-10 and -- and all these are in much higher,
3 greater detail in the affidavit -- is a Cross Sectional
4 Locator Map showing the Second Bone and Third Bone
5 proposed wells in the Buckhorn and Black Jack, with the
6 cross section line highlighted in black, three-well cross
7 section with the wells to be drilled from east to west
8 across 29/30 at a spacing of four wells in the Second Bone
9 and four wells in the Third Bone, and 2-mile lateral
10 length.

11 Exhibit 11 is a gun barrel showing that
12 spacing design, with a type log off to the left showing
13 the general target interval in the Second Bone Spring
14 about 7200 feet, and a general target zone of 8450 TVD in
15 the Third Bone Spring, and then indicating in Sections 29
16 and 30, the four wells in the Second Bone 2 and the
17 Buckhorn 2 and the Black Jack for Second Bone, and two in
18 the Buckhorn and two in the Black Jack for the Third Bone.

19 So the remaining exhibits are a series of
20 Structure Maps.

21 Exhibit 12 is a Second Bone Spring
22 structure map showing the dipping east to southeast at
23 approximately 250 to 300 feet across the 2-mile DSU.

24 This was made on the base of the Second
25 Bone Spring Target Sand Interval.

1 Exhibit 13 is an Isopach Map across the
2 2-mile DSU for the Second Bone Spring Target Sand, with
3 the target interval Isopach thickness of 75 to 125 feet of
4 similar pay across the entire DSU.

5 Exhibit 14 is a Third Bone Spring structure
6 map made on the top of the Third Bone Spring Sand. Again
7 our development well is highlighted drilling east to west,
8 with the structure here similar to what we see in the
9 Second Bone Spring Sand at 200 to 250 feet dipping east to
10 southeast across the 2-mile development project area.

11 Exhibit 15 is a Third Bone Spring Isopach
12 Map for the entire Third Bone Spring Interval that shows
13 375 feet to 425 feet the total gross thickness across the
14 2-mile DSU.

15 Then the remaining four exhibits are a
16 series of structural and stratigraphic cross sections.

17 So Exhibit 16 is a structural cross
18 section, meaning it is not datum, or hung or flattened on
19 any particular zone, it just shows the structure
20 encountered west to east. And again, as we mentioned on
21 the structural map, the structure is dipping here to the
22 east to southeast. On the structural cross section we've
23 indicated in dashed lines in orange for the Second Bone
24 Spring proposed wellbore, and in red for the Third Bone
25 Spring proposed wellbore, and then I have called out on

1 the left side of this cross section the four wells for
2 which we will target, and each target zone intervals.

3 Section 17 is this same Cross Section,
4 except it is in a stratigraphic view so that it's
5 flattened on the top of the Wolfcamp. That is indicated
6 at the bottom of the cross section as the purple line
7 here. And similar to the previous cross sections, we're
8 showing stratigraphically how the sands are continuous
9 across this 2-mile DSU, and the planned and proposed
10 Second Bone and Third Bone Spring target intervals with
11 the wells called out on the left-hand side.

12 Exhibit 18 is a zoom-in of the exact same
13 cross section, and it is flattened on the base of the
14 Second Bone Spring, which is the same top used in a
15 structural mapping. So it's flattened on the base of
16 lower target sand, the package and the green line, with
17 our proposed wellbore plan and orange line dashed coming
18 through, with the wells called out on the left-hand side
19 with the wells to be drilled east to west.

20 And Exhibit 19 is a stratigraphic cross
21 section, again west to east, the same three wells, with a
22 zoom-in in the Third Bone Spring. This is flattened on
23 the top of the Wolfcamp that's indicated at the bottom of
24 the Cross Section as the purple line.

25 (Note: Internet drop.)

1 (Note: Delay. Reconnection. Discussion held
2 off the record.)

3 CONTINUED DIRECT EXAMINATION

4 **Q. (BY MR. PADILLA) Mr. Dagian, for the reporter, I**
5 **did not ask you to spell your name.**

6 A. My name is spelled D-a-g-i-a-n.

7 **Q. De-jon (phonetic)?**

8 A. De-jon (phonetic). Just like the mustard but
9 spelled differently.

10 **Q. Okay. And the testimony you gave in your**
11 **affidavit is tendered for the record?**

12 A. Yes.

13 MR. PADILLA: Mr. Examiner, we offer Exhibit B-1
14 into evidence.

15 EXAMINER BRANCARD: Mr. Feldewert?

16 MR. FELDEWERT: No objection.

17 EXAMINER BRANCARD: The exhibits are admitted.

18 **Q. Mr. Dagian, let me ask you some general**
19 **questions.**

20 **This morning I discussed with one of the**
21 **Apache witnesses about the nature of the Second Bone**
22 **Spring here and even the Third Bone Spring. Are they**
23 **tricky in this area in terms of geology?**

24 A. There can be some structural review nuances,
25 which is why our company has licensed 3D seismic across

1 this project area, which has been very important for our
2 regional mapping and planning purposes, especially when
3 drilling wells, yes.

4 **Q. Okay. Do do know, how do you go about licensing**
5 **3D seismic?**

6 A. Can you repeat that?

7 **Q. How did you go about licensing that 3D seismic?**

8 A. We reached out to the company that owns the 3D
9 seismic and we carved out an AOI of seismic covering our
10 acreage here, and created a licensing agreement with that
11 company for the proprietary use of the data internally.

12 **Q. And how do you use this data to drill wells?**

13 A. So seismic data is in time. We bring it into
14 depth and then we make a time/depth relationship, and we
15 tie that to well logs in the area and create a geologic
16 model for all the structural components of the zones that
17 we will be drilling, such as the target zone, base, top,
18 and the zones that we will be drilling down to get to the
19 target interval. So it is very helpful for variability
20 for the heterogenous nature of the rock across different
21 project areas.

22 **Q. Have you used 3D seismic in any of the wells**
23 **that you have drilled already?**

24 A. That's correct

25 **Q. You have used it?**

1 A. Yes sir. We have used it to target both of
2 these zones along the length of two miles in both the
3 Second Bone and Third Bone.

4 **Q. Now, I think in the Apache exhibit there was**
5 **affidavits or there was something about structural**
6 **nuances. Do you agree there's structural nuances in this**
7 **area as you go into drilling 2-mile laterals?**

8 A. I would agree that the comment that they made
9 about the data, that when taking the seismic data you get
10 a greater resolution of the subsurface using 3D seismic,
11 yes.

12 **Q. Okay. Have you been involved in drilling any of**
13 **the 2-mile laterals that Colgate has drilled in the Second**
14 **and Third Bone Spring?**

15 A. We are currently running two rigs in the area
16 targeting exactly those intervals, and I am involved in
17 the planning processes since joining the company for
18 ongoing operations and utilization of the 3D seismic to do
19 that.

20 **Q. Have you used 3D seismic in your other**
21 **employment?**

22 A. Yes, I have.

23 **Q. Okay. What has been the result of the drilling**
24 **of 2-mile laterals in Section 19 -- or Township 19 South,**
25 **28 East?**

1 A. Through utilization of 3D seismic we've been
2 able to stay in zone, specifically the wells that strike
3 to the south of this unit, the Dakota well and then one
4 2-mile DSU zone, Dawson. We've drilled both 2-mile Second
5 Bone and 2-mile Third Bone, so we have experience drilling
6 both zones at that time.

7 **Q. The 2-mile lateral length, what would you say**
8 **would be the difference between drilling 1-mile laterals**
9 **and the 2-mile laterals in the Second Bone Spring?**

10 A. It would be, you know, the farther you get
11 outside of the highest resolution, and I think there was
12 an Apache exhibit showing a well that, you know, did drill
13 out of zone. I'm not aware of whether that well was
14 utilizing 3D seismic or not, but having 3D seismic, like
15 we do across, and coverage of the entire project area
16 would help us in the target interval, because you can plan
17 with 3D.

18 **Q. One of the Apache exhibits indicates that you**
19 **have learned something from their drilling of a well. I**
20 **can't remember what well that was, but you pulled back is**
21 **my understanding. Tell us about that.**

22 A. That question is probably better suited for our
23 drilling engineer Stephen, or our other engineer.

24 **Q. Okay.**

25 A. But we do utilize offset data as best we can

1 when making operational plans.

2 **Q. It just makes sense, doesn't it.**

3 A. Yes, sir.

4 MR. PADILLA: That's all I have, Mr. Examiner.

5 I'll pass the witness.

6 EXAMINER BRANCARD: Thank you.

7 Any questions, Mr. Feldewert?

8 MR. FELDEWERT: Yes.

9 CROSS EXAMINATION

10 BY MR. FELDEWERT:

11 **Q. Mr. Dagian, I'm looking east-west, also.**

12 EXAMINER BRANCARD: Mr. Feldewert, you're really
13 quiet. (Note: Pause.)

14 MR. FELDEWERT: Can you hear me?

15 EXAMINER BRANCARD: Yes.

16 **Q. Mr. Dagian, I believe your structure map is**
17 **Exhibit B-D-12. Do you see that?**

18 A. Yes, sir.

19 **Q. I'm trying to understand what do these black**
20 **rectangles represent?**

21 A. The left-hand side is acreage not filled in with
22 color so that you can see the map better across the area.

23 **Q. So why do I see rectangles standing up directly**
24 **to the south? Do you see that? Do you see what I'm**
25 **pointing at here? In this area in here.**

1 A. Yeah, I think that represents leasehold
2 configurations that our GIS team put together these
3 leasehold maps that we utilize.

4 **Q. Okay. All right. So you think that represents**
5 **your ownership, the nature of your ownership?**

6 A. Yeah, I think -- that's generally made to
7 highlight, by our GIS team, the lease tract boundaries.

8 **Q. Okay. Okay.**

9 A. And it is not intended to be an actual
10 representation of exact ownership. It is more of a lease
11 tract boundary.

12 **Q. Okay. If I look at Mr. Hajdik's exhibits he**
13 **references in his affidavit the Well Proposals that went**
14 **out, one in December and one in March**

15 **You're aware of those, Mr. Dagian?**

16 A. Yes, sir.

17 **Q. And I believe Mr. Hajdik references the fact**
18 **that in the south half acreage the company has listed the**
19 **targeted total vertical depth for the Black Jack wells as**
20 **7455. Do you see that?**

21 A. Yes, sir.

22 **Q. And then for the Black Jack, I guess Third Bone**
23 **Spring wells, they identify to the working interest owners**
24 **a targeted depth of 8630. Is that right?**

25 A. Yes, sir.

1 Q. Okay. Then if I go down to Exhibit A-12, page
2 58, again we were just looking at A-12, page 58, this well
3 now, the proposal, that went out in March of 2021, Mr.
4 Dagian.

5 A. Yes, sir.

6 Q. And you can see this is for the north half
7 acreage.

8 Can you see the Buckhorn Second Bone Spring
9 they, target 7,000 and then for the Third Bone Spring we
10 have two different depths. We have 8,200 and 8,000. Do
11 you see that?

12 A. Yes, sir.

13 Q. Were you consulted before these went out?

14 A. I was not employed by the company at that time.

15 Q. So you didn't have any input to any depths that
16 were represented to the working interest owners?

17 A. On those well proposals, no, sir.

18 Q. As a general premise, Mr. Dagian, do you agree
19 that when you send out Well Proposal Letters that they
20 should be as accurate as possible with respect to the
21 vertical depth so that the working interest owners can
22 make an informed decision?

23 A. Yes.

24 Q. Do you agree that a difference of a few feet,
25 put whatever number there, the difference of a few feet

1 **can impact success?**

2 A. I think the TVDs that are presented on well
3 proposals, one being in the north half and the others
4 slightly different on the south half, are probably and
5 most likely a reflection of the regional land data base
6 pooling from different well logs, so they are approximate
7 in this case as being Well Proposals versus permitted
8 TVDs.

9 **Q. Well, what's the difference between what you do**
10 **in terms of analysis for the Well Proposal and your**
11 **analysis for what you call what are permitted TVDs?**

12 A. Uhm, well, we will -- in the proposal process it
13 is preplanning, and once we have the -- we send out the
14 Well Proposal Letter and we get it back, and then we will
15 spend detailed time going in and refining the TVDs to
16 exactly, and make directional survey plans, and refine the
17 target to exactly what we want to target in each well.

18 **Q. You are asking working interest owners to make**
19 **an election based on your total vertical depth. Why**
20 **wouldn't you spend more time to make it as accurate as**
21 **possible based on the information you have available?**

22 A. Correct. These are approximation TVDs.

23 **Q. Let me ask you this, Mr. Dagian: Is this still**
24 **the total vertical depth that the company is proposing for**
25 **its project?**

1 A. Uhm, I have them in the cross section where you
2 can see the targeted interval.

3 Q. Hold on. Hold on. I'm talking about the total
4 vertical depths that we see here, sir, in these letters.

5 A. Okay.

6 Q. What we see for the north half and then what we
7 see for the south half, are these still the total vertical
8 depths that you're going to target?

9 A. The TVDs that we will end up drilling will be
10 refined from those depths.

11 Q. And have you done that refinement?

12 A. We are actively planning these wells.

13 Q. So as you sit here today with the Division, the
14 Division trying to make a decision and working interest
15 owners make a decision, are the total vertical depths
16 represented on these Well Proposal Letters the most
17 accurate total vertical depth information that you have
18 for your development?

19 A. Those will not be the exact TVDs, but those TVDs
20 are approximates to what will be drilled and reflected by
21 each targeted interval in the Well Proposal.

22 Q. How much deviation would you expect? Like, for
23 example you're telling us that in the north half of
24 Section 29 and 30, so drilling from the east half/east
25 half of 29 to the west half of the west half of 30, you're

1 **saying that for your Second Bone Spring well your vertical**
2 **depth is going to be 7,000. Is that still the case?**

3 A. It will deviate from there but it will remain in
4 the same target interval for Second to Third Bone, for
5 instance.

6 **Q. When you say it's going to deviate from that,**
7 **how much is it going to deviate? In other words, what is**
8 **your target --**

9 A. For the Second Bone Spring we are looking at our
10 end of curve TVD around 7,270 to 7,280, and for Third Bone
11 Spring approximately 8,440, which are very similar to the
12 target zone intervals of the Apache proposal for Second
13 Bone Sand, which is the targeted region in this area. And
14 for the Third Bone Spring and Middle Bone Spring Sand
15 similar to Apache's proposed intervals.

16 **Q. Why did you come up with 7,277 for the Second**
17 **Bone Spring and 8,440 for the Third?**

18 A. We are actively working refining our process for
19 predrilling purposes.

20 **Q. And so but that information in terms of depth,**
21 **the Second Bone Spring is a difference here of 270 feet**
22 **between what you proposed, right?**

23 A. Yeah. If I point you to Exhibit 16 you'll
24 notice that the depth structurally going across the 2-mile
25 section, depending, on which log you pull, the logs on the

1 left that would be on the western side, would have a
2 shallower depth for the Second Bone Spring. The logs on
3 the east side off on the right of that exhibit would have
4 a deeper TVD. And it's noted in the Well Proposals. It
5 just says TVD. It doesn't say end of curve TVD, end of
6 lateral TVD. It's approximate TVD target zone interval.

7 So if we plan to land a well at 7,278 in
8 the Second Bone Spring and we have 252 of dip at the end
9 of the lateral, we would target 7,026 TVD depth, which is
10 similar to that.

11 Q. I'm glad you bought that up, because it seemed
12 to us to us when we received your cross section which you
13 have labeled as B-1-16, that it didn't match up very well
14 with your Well Proposal Letter, the depths.

15 A. That's --

16 Q. Let me finish. As you point out, the depth at
17 Second Bone Spring now changed by 270 feet, the depth of
18 the Third Bone Spring has changed or goes up to 8,440
19 feet. Right?

20 A. The depths are different and deviate from the
21 Well Proposal Letters that were sent long in advance of
22 our current planning, correct.

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

25 Q. EXAMINER BRANCARD: Thank you.

1 **Mr. Garcia, any questions?**

2 EXAMINER GARCIA: Just one or two.

3 CROSS EXAMINATION

4 BY EXAMINER GARCIA:

5 **Q. On page 11 of or your exhibit --**

6 MR. FELDEWERT: Let me catch up.

7 THE WITNESS: Page 11, I believe is one page up.

8 MR. FELDEWERT: Yep.

9 **Q. (Continued) I guess out of curiosity, we haven't**
10 **talked about it today, who owns those south half sections**
11 **20 and 19 wells, and have you guys looked at those?**
12 **Because basically it seems pretty close, compared to**
13 **everyone else's**

14 **Jut north of the popcorn.**

15 **Were you able to hear me?**

16 A. Sorry, I was on mute.

17 Off the top of my head I believe the wells
18 in the south half of 20 and 19 are Apache and Concho
19 wells, but I'd need to double check that.

20 **Q. Ownership is really less important to me. Did**
21 **you guys look at their spacing versus your spacing in**
22 **designing these, and how those two orange wells -- there's**
23 **no legend on here, but, I don't know, 200 feet apart**
24 **compared to production?**

25 A. We have looked at different spacing in the area,

1 tighter spacing and further out, and we believe that the
2 four wells per section is the right spacing here. But our
3 engineer can probably speak to that a little bit better,
4 our reservoir engineer Jordan.

5 **Q. I was just curious as to those wells, because we**
6 **haven't talked about any data north of this unit.**

7 A. Yes.

8 EXAMINER BRANCARD: All right. I have no
9 questions. Any redirect, Mr. Padilla?

10 MR. PADILLA: No.

11 EXAMINER BRANCARD: All right. Then Mr.
12 Padilla, your next witness.

13 MR. PADILLA: We will call Jordan Cox.

14 JORDAN COX,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 **Q. Mr. Cox, please state your name for the record.**

18 A. Jordan Cox.

19 **Q. You work for Colgate Operating, LLC?**

20 A. Yes, sir.

21 **Q. How long have you worked there?**

22 A. I've worked their right at five years this
23 month.

24 **Q. Tell us a little bit about your educational**
25 **background as a reservoir engineer.**

1 **You're a reservoir engineer, right?**

2 A. Yes, sir. That's my capacity here at Colgate.

3 **Q. Okay. So what other capacity have you --**

4 A. I graduated from Texas -- I'm sorry. I'll let
5 you finish.

6 **Q. What are your duties as a petroleum engineer,
7 other than reservoir engineer?**

8 A. Most of my career has actually been in reservoir
9 or evaluation work, just for various different companies.

10 **Q. When you say evaluation work, what do you mean
11 by that?**

12 A. Evaluating properties, doing decline analysis,
13 projecting cash flows, managing reserves and reporting
14 reserves, that kind of thing.

15 **Q. Okay. Did you prepare this affidavit that has
16 been submitted by us in these cases?**

17 A. Yes, sir.

18 **Q. And your resume is attached to that as Exhibit
19 1-004, right? Or page number.**

20 A. That's correct.

21 **Q. And you prepared some kind of chart, correct?**

22 A. That's correct.

23 **Q. Do you stand by your affidavit and affirm what
24 you have written here --**

25 A. Yes, sir.

1 Q. -- in your affidavit?

2 A. Yes.

3 MR. PADILLA: Yes. Mr. Examiner, we -- well,
4 let me ask:

5 Q. Have you previously testified before the Oil
6 Conservation Division and had your credentials accepted as
7 a matter of record?

8 A. I have not testified before.

9 Q. But, given your resume, you have considerable
10 experience as an expert petroleum engineer; is that right?

11 A. Yes, sir.

12 MR. PADILLA: Mr. Examiner, we tender Mr. Cox as
13 an expert petroleum engineer and tender Exhibit C into
14 evidence.

15 EXAMINER BRANCARD: Mr. Feldewert, any
16 objections to either?

17 MR. FELDEWERT: I do not object to Cox being
18 tendered. I don't object to the affidavit or his resume.
19 I do -- well let me step back.

20 I do object to the resume. I do believe I
21 have objection to Exhibit C-2 and the portions of his
22 affidavit referencing Exhibit C-2, which we can address
23 now or we can address after his testimony.

24 EXAMINER BRANCARD: You can ask some questions
25 about that exhibit.

1 **Q. (BY MR. PADILLA) Mr. Cox, let's turn to the**
2 **well performance and tell us what information you have**
3 **there.**

4 A. Sure. So on the page on the left side, on the
5 top left there is a normalized cumulative oil production
6 plot that's explained cumulative oil normalized to 10,000
7 complete lateral feed versus number of months on
8 production. So the wells that Colgate has built in this
9 Township.

10 And then the map to the right is showing
11 kind of where the units lie in relation to the Colgate
12 wells that have been drilled, completed, and brought on
13 line that are reflected in that plot.

14 **Q. Now, this morning there was considerable**
15 **discussion on reporting production. Where did you get the**
16 **information for your graphs?**

17 A. So we used the internal data system for most of
18 what I do that ties to various of our projects, and that
19 is what generated the maps that applies to our daily
20 production data through our internal data system.

21 **Q. When did you become aware that Colgate had no**
22 **production reporting for these wells?**

23 A. It was brought to our attention within this last
24 week.

25 **Q. And what was done about that?**

1 A. It was my understanding that this week, within
2 the last few days, we have tried to get all those wells
3 current and up to date. That may not have happened on
4 reported production.

5 **Q. And who was responsible for doing that at**
6 **Colgate?**

7 A. The Production & Regulatory department.

8 **Q. But in terms of your graph, tell us about your**
9 **internal. How do you keep internal production data?**

10 A. Yes. We've got a production system that daily
11 production goes into from our meter out in the field, and
12 then it ties to some data systems here that we can then
13 access through Spotfire for visualization purposes.

14 **Q. Okay. And what does the graph tell us in terms**
15 **of what we're trying to show here at this hearing?**

16 A. Sure. It shows us that we have -- Colgate has
17 been active in the area within the last 16 months and that
18 we've brought on line 11 wells in this Township.

19 **Q. Where is the -- well, let me turn your attention**
20 **to the right side of this exhibit.**

21 **Tell us what the blue lines show.**

22 A. So the blue lines show where the wells have been
23 drilled. And some of that is a little hard to see with
24 Second and Third Bone Spring wells that are kind of
25 stacked on top of each other. This is the deeper

1 formations, but those are the wells that have bottom lined
2 in showing their production in the plot on the left.

3 **Q. Are they 2-mile laterals?**

4 A. We have two units where we've drilled 2-mile
5 laterals and then two units, I guess that we drilled
6 1-mile laterals. But one section is 1-mile and then two
7 different sections where we drilled 2-mile wells.

8 **Q. Have you relied on Apache's recorded production
9 for anything that you have drawn here on this exhibit?**

10 A. Have I relied on any Apache production?

11 **Q. Yeah.**

12 A. No. Not for this. This is Colgate internal
13 data.

14 **Q. When I see the -- look like you have a couple of
15 very good wells.**

16 A. Right. Yes, sir, we believe so.

17 **Q. Now, they just show cumulative oil production --
18 or what do they tend to show? Let's take --**

19 A. That's correct.

20 **Q. The blue line that's at the top, is that the
21 best well you have out there?**

22 A. Yes, on normalized basis, that's correct.
23 That's the best well Colgate has drilled to date.

24 **Q. Is that a Second Bone Spring or Third Bone
25 Spring?**

1 A. That one in particular is a Second Bone Spring
2 well.

3 **Q. How about the other one that's somewhere towards**
4 **the top center of the graph?**

5 A. With the longer history to it?

6 **Q. Yes.**

7 A. That one is the Third Bone Spring, developed
8 with that initial Second Bone Spring well.

9 **Q. How many of these wells are Second Bone Spring**
10 **wells?**

11 A. We've drilled five of those are Second Bone and
12 six are Third Bone Spring.

13 **Q. Okay. How many were 1-mile laterals?**

14 A. We've begun three Second Bone 1-mile, and four
15 Third Bone Spring 1-mile.

16 **Q. How active is Colgate in this area?**

17 A. Within the last couple of years we've been very
18 active, obviously; these eleven wells are on line. We
19 talked about four more wells up to the north that are
20 getting ready to get completed, and we have two active
21 rigs in that Township, or two on the east here that are
22 very active at the moment.

23 **Q. In terms of reservoir engineering, how do you**
24 **plan or are you involved in planning the drilling of these**
25 **wells?**

1 A. Sure. So I've been here for five years and kind
2 of helped evaluate acreage opportunities up in this area,
3 and evaluated acreage trade opportunities, and then have
4 been a part of the initial permitting and planning for the
5 wells in this area, and am kind of now overseeing some of
6 the reservoir team here at Colgate, ongoing activity and
7 decisions that are getting made up in this part of the
8 world.

9 **Q. Who else besides Apache and Colgate are on this**
10 **19 South, 28 East?**

11 A. Sorry, I didn't quite catch what the question
12 was.

13 **Q. Who else, what other operators are in Section**
14 **19, 28 East? I mean not section.**

15 A. To my knowledge, it's us two and then Mewbourne
16 have drilled wells here.

17 **Q. Is this sort of on the edge of something, some**
18 **geologic feature? Is that fair to say?**

19 A. I think that this is a west extension from the
20 Township to the east where other legacy Second Bone and
21 Third Bone Spring wells have been drilled, and it's kind
22 of pushing close to the shelf in this slope environment
23 here.

24 **Q. Now, Mr. Feldewert is going to ask you a lot**
25 **about stuff like production data, but do you know what may**

1 **have influenced the lack of reporting?**

2 A. I don't exactly know what may have happened
3 there. It could be a number of factors over the last
4 couple of years, but it's -- don't know what may be the
5 one reason for -- you know, if there was a reason that
6 that occurred. You know, we have been operators out here
7 since 2016 and we've historically sought production on an
8 ongoing basis. For these wells in particular, I don't
9 know.

10 **Q. What were the -- let me -- what are the plans in**
11 **your influence -- what are the plans of Colgate in this**
12 **area?**

13 A. I think we touched on previously with one of the
14 other exhibits showing the kind of near-term development
15 plans. Again, we're running two rigs actively right now
16 and will be, once those rigs are done drilling the current
17 units, will move back into this Township is the plan.

18 **Q. Now, there's been some discussion this morning**
19 **about Colgate's inexperience or lack of expertise,**
20 **whatever you may want to call it. Can you comment on your**
21 **expertise in drilling wells in this area?**

22 A. Sure. Obviously we're a larger company, been
23 around four, five, going on six years, and up in this area
24 in the last couple of years we've drilled 19 wells and
25 spud a couple more. So we've drilled or are actively

1 drilling 21 wells in this area with, again, ongoing plans
2 to continue ramping up that well count number.

3 Otherwise we have acquired through
4 acquisition six vertical wells and horizontal wells, you
5 know, that we've operated since 2016 through those
6 acquisitions and our active drilling program.

7 **Q. Are you involved at all with the planning of**
8 **drilling and that sort of thing in terms of well design in**
9 **order to maximize production?**

10 A. I'm not involved in the well design, drilling,
11 or completion aspects. I'm in more of the development
12 planning, spacing aspects, and then looking at economics
13 for different lateral lengths, and what makes sense to our
14 company. But not in actual well design parameters.

15 MR. PADILLA: Mr. Examiner, I believe that's all
16 I have. I will pass the witness.

17 EXAMINER BRANCARD: Thank you.

18 Mr. Feldewert.

19 MR. FELDEWERT: Yes. Can you hear me okay?

20 THE WITNESS: Yes, sir.

21 CROSS EXAMINATION

22 BY MR. FELDEWERT:

23 **Q. Mr. Cox, I want to go to what your company**
24 **submitted as Exhibit A, Mr. Hajdik's affidavit evidence.**
25 **I'm going to go to page 5 of that affidavit --**

1 A. Okay.

2 Q. -- where he refers -- there's statements here in
3 paragraph 14 towards the end. It says: Our engineer will
4 show that Colgate's ultimate recovery from its wells is
5 industry leading.

6 Do you see that?

7 A. I can see that.

8 Q. Now, in terms of "our engineers" he's talking
9 about you?

10 A. I guess that would be the assumption. I don't
11 know.

12 Q. Assuming it's you -- I think that is a safe
13 assumption, you're the only engineer here -- you show that
14 your wells are industry leading.

15 You just provided your affidavit that we
16 just saw in that one chart, correct?

17 A. Yes.

18 Q. Okay. And when I look at your affidavit it
19 references -- oops.

20 I'll get there. Sorry.

21 It references this on paragraph 4 of your
22 affidavit, Mr. Cox. Okay?

23 A. Okay.

24 Q. And you say on paragraph 4, "I have prepared
25 certain exhibits in support of Colgate Operating, LLC."

1 They are -- do you see that?

2 A. Yes.

3 Q. But then you also mentioned one exhibit.

4 Did you prepare something else in
5 anticipation of this hearing when this affidavit was
6 drafted?

7 A. No. I think it was in reference to multiple
8 things getting shown on Colgate's work performance with
9 the production plot and the map.

10 Q. Okay. So when you say I prepared certain
11 exhibits, the only thing you're referencing is Exhibit 2?

12 A. Five? Page No. 5?

13 Q. Well, you identified --

14 A. Exhibit 3?

15 Q. Sorry. You identified Exhibit 2, Colgate Well
16 Performance in your affidavit.

17 Is that the only thing you prepared?

18 A. Yes.

19 Q. You didn't prepare anything else in anticipation
20 of this hearing that you intended to include in here?

21 A. I did not.

22 Q. All right. If I go to the exhibit, then, that
23 Mr. Hajdik said was going to show that you (inaudible) and
24 I look at this exhibit, did you at all in this exhibit,
25 compare your results with any other operator?

1 A. No.

2 Q. And do you show the results of anyone else in
3 quote/unquote "the industry"?

4 A. No.

5 Q. You reference 11 wells in that first bullet
6 point. Do you see that?

7 A. Yes.

8 Q. And I think you mentioned six Second Bone Spring
9 and five Third Bone Spring. Did I get that right?

10 A. Reverse. It's five Second Bone Spring and six
11 Third Bone Spring.

12 Q. Can you explain to me why there's only eight
13 lines on here?

14 A. As I have described previously, some of the
15 wells are stacked, so they would be the same location but
16 different formations.

17 Q. Let me step back. I'm not talking about your
18 right-hand side, I'm talking about the left-hand side.
19 When I look at your graph I see data, purports to be data,
20 and I see it only for eight wells.

21 A. Okay.

22 Q. Is that right?

23 A. No. There may be some wells that are kind of
24 overlaid with one another, and then we have two brand-new
25 wells that are less than a month old, and so they're --

1 there's only one month of production on them. So they
2 just get covered up with some of the other lines, is my
3 guess.

4 **Q. That's your guess.**

5 **Now, how do you know which line relates to**
6 **which well?**

7 A. With this plot it's hard to tell. With our
8 internal data systems we can color them differently and we
9 have the ability to show those.

10 **Q. What wells are represented by the two bottom**
11 **lines?**

12 A. I don't know off the top of my head.

13 **Q. You don't know?**

14 A. Not off the top of my head, no.

15 **Q. You knew the top two lines, the other lines Mr.**
16 **Padilla took you to, but you don't know these bottom two**
17 **lines?**

18 A. Well, I know the first two wells that we
19 drilled, but no, I don't have that off the top of my head.

20 **Q. Can you tell us which lines would represent your**
21 **production history for your 2-mile wells?**

22 A. Yes. So I think there's the two there that are
23 about eight months on line. That would be our Thompson
24 (phonetic) Unit wells, and then again the latest ones are
25 the Dakota wells that have been online about a month.

1 Q. So (inaudible) at least internally that you have
2 apparently indicate -- you're looking at the two lines
3 that kind of stretch out to eight, is that right, eight
4 months?

5 A. Correct.

6 Q. That would be less than 250,000 cumulative oil
7 per -- whatever your --

8 What would those numbers be?

9 A. Cumulative to date through that number of
10 months, they have right around 250,000 barrels mark
11 normalized to 10,000 feet.

12 Q. That would be for your 2-mile wells?

13 A. That's correct.

14 Q. Second Bone Spring or Third Bone Spring?

15 A. Which one are you referring to?

16 Q. The two that you just referenced.

17 A. Yeah, so there's one of each.

18 Q. One of each? So one in the Second, one in the
19 Third. Do you know which one of those two has only
20 150,000?

21 A. Yeah. So the Third Bone Spring is that one.

22 Q. And the second one we see trying to approach
23 250,000 after eight months is the Second Bone Spring.

24 A. That's correct.

25 Q. What's the longest production period that you

1 **have for each of these wells?**

2 A. Based on the plot it's the 16 months of
3 production for the initial two wells in this Township.

4 **Q. Now, you mentioned that someone brought to your**
5 **attention that you had failed to file either completion**
6 **reports in a timely fashion or monthly production.**

7 **How was that brought to your attention?**

8 A. Through the process of preparing for the hearing
9 today.

10 **Q. So that was brought to your attention yesterday**
11 **or day before? When was it brought to your attention?**

12 A. It was brought to my attention sometime last
13 week.

14 **Q. So we know the data has not been reported to the**
15 **Division, correct?**

16 A. To produce this plot, I think that's correct. I
17 believe the production has not been reported to the State.

18 **Q. - And you believe but you don't know that. You**
19 **haven't checked?**

20 A. Say that again.

21 **Q. You don't know whether it's finally been**
22 **reported?**

23 A. I was told it has been reported.

24 **Q. So we didn't have the data report with the**
25 **State, and you chose not to provide at the hearing today**

1 **this internal data that's utilized to create this slide.**

2 A. I have provide it in the plot.

3 **Q. I'm talking about data. Well monthly production**
4 **data that you have been provided.**

5 A. It's a data production from our internal data
6 system that has been rolled up to a monthly plot.

7 **Q. Okay. But you haven't provided anything other**
8 **than what we see here on Exhibit C-2.**

9 A. That's correct.

10 MR. FELDEWERT: Okay. Mr. Examiner, I would
11 move to strike Exhibit C-2 for a number of reasons. One,
12 it's based on data that is not available to either the
13 Division or the general public, and based on data that has
14 not been provided. It's using data that I believe under
15 the Division's rules for wells that would be considered
16 shut-in under the Division's rules, and there's no
17 opportunity for either the Division or Apache to ascertain
18 the veracity of this information. So at this point I
19 would ask that this Exhibit C-2 and the affidavit
20 referenced in the testimony associated with it be
21 stricken.

22 EXAMINER BRANCARD: Mr. Padilla.

23 MR. PADILLA: Mr. Examiner, I think these --
24 we've acknowledged that production was not reported. I
25 think this exhibit goes to the weight of the evidence. It

1 doesn't, uh -- but it shouldn't be excluded.

2 Mr. Feldewert hasn't challenged the
3 veracity of Mr. Cox's testimony, and there's no reason to
4 doubt that this information is accurate, when it could
5 be -- what we could do is simply submit that well data and
6 produce that production. But to throw out wouldn't be the
7 right thing to do. It's just simply whether or not the
8 weight of the evidence, the testimony has been that goes
9 to experience in the area, and expertise. This shows that
10 the, uh -- Colgate's wells are productive.

11 We can verify the production and establish
12 for all of the 11 wells what they have produced and when
13 they have produced on a monthly basis. But to throw it
14 out is not proper.

15 EXAMINER BRANCARD: Well, you know, I criticized
16 Apache's graphs for a lack of usefulness because there
17 were too many spaghetti strings on there and there was no
18 data attached to them either.

19 MR. FELDEWERT: Well, based on data.

20 EXAMINER BRANCARD: Maybe. I have no idea. Who
21 knows what those -- who can attach any of those strings to
22 any particular well, Mr. Feldewert? There's nothing on
23 that graph that you could follow that would get you to a
24 piece of data in a data base. Okay?

25 So this exhibit is fine, but, you know, its

1 usefulness is extremely limited, because you can't say, as
2 the witness says here, it's a strong production
3 performance when we're not comparing it to anything. So
4 once again thanks but no thanks.

5 Any more questions, Mr. Feldewert?

6 MR. FELDEWERT: Uh, your thanks but no thanks is
7 directed to me?

8 EXAMINER BRANCARD: No. It's directed to the
9 graph.

10 MR. FELDEWERT: Okay. Thank you.

11 EXAMINER BRANCARD: So the graph, the exhibits
12 will be admitted. Exhibit C will be admitted here.

13 MR. FELDEWERT: I have no further questions.
14 Thank you.

15 EXAMINER BRANCARD: Thank you.

16 Mr. Garcia.

17 EXAMINER GARCIA: I do. Roughly.

18 And so this exhibit is part of the record?

19 EXAMINER BRANCARD: Yes.

20 EXAMINER GARCIA: I agree with Mr. Brancard.
21 Both companies graphs are disappointing to look at. I
22 couldn't reproduce either graph in a month if I tried.

23 I will address it, though.

24 CROSS EXAMINATION

25 BY EXAMINER GARCIA:

1 Q. In comparing your graph to Apache's, how do you
2 feel Colgate is doing, I guess compared to Apache's graph
3 as compared to production?

4 It's hard for me to interpret Second Bone
5 Spring and Third Bone Spring because it's all one graph
6 for you, so it would be nice if you could provide an
7 exhibit after this hearing that separates them, along the
8 with production to those, which I'll get to in a little
9 bit.

10 But I guess my question is: Compared to
11 Apache's graph, how do you feel you're fitting in compared
12 to the average lines?

13 A. Well, I think on an average basis, normalized to
14 10,000 feet with the well data we have, Apache has drilled
15 more wells to date in this Township than we have, but
16 we -- during like a 12-month cum basis, Colgate, through
17 all wells and benches is outperforming Apache's wells on
18 an average basis.

19 Q. Yeah, your -- your (inaudible) spike seems to be
20 on the higher end as compared to Apache's graph, with a
21 weird secondary bump at eleven months.

22 I guess I'll move to the topic that's
23 driving me into debt, the C-115 production report.

24 For my clarity, how many wells are missing
25 these right now for Colgate?

1 A. I think everything is up to date, to my
2 knowledge, as of today. So I don't know that any are
3 missing production now.

4 **Q. Prior to today. Let's say last week how many**
5 **wells were missing production reports?**

6 A. For what we were talking about, uhm from this
7 plot would be these 11 wells.

8 **Q. It's certainly --**

9 A. The -- sorry. Sorry. Go ahead.

10 EXAMINER GARCIA: It's just concerning we are
11 not getting production reports, but other agencies aren't
12 getting production reports. We are not the only ones that
13 haven't received these reports. And so...

14 I believe that's all the questions I have,
15 Mr. Brancard.

16 EXAMINER BRANCARD: Thank you. The follow up to
17 Mr. Garcia's question is:

18 CROSS EXAMINATION

19 BY EXAMINER BRANCARD:

20 **Q. Are you aware whether Colgate has been paying**
21 **severance tax on the production from these wells?**

22 A. It's my assumption that we have been doing what
23 we need to be doing there. I'm not the person to answer
24 that. And, again that's not -- that falls into our
25 accounting department at that point.

1 **Q. So you wouldn't be aware whether you were paying**
2 **royalties to state, federal lessors.**

3 A. Yes, I think we are.

4 EXAMINER BRANCARD: Okay. I'm not sure where to
5 go with this, Mr. Padilla.

6 MR. PADILLA: I don't have anything further from
7 Mr. Cox.

8 I think we can argue all day long. I could
9 call a witness, a drilling witness, but I don't think it
10 really makes any difference in this case because the AFEs
11 are pretty much equal, and arguments about which wells
12 cost more and can perform quicker, it's really not the
13 issue. The issue is who's going to operate these wells.

14 And I don't -- I think that from the
15 standpoint of drilling wells there's no question that
16 Colgate can operate the drilled wells.

17 There are deficiencies, and we would be the
18 first to acknowledge that the production reports of,
19 course, should have been made. But that's being
20 corrected.

21 So we will close.

22 EXAMINER BRANCARD: Okay. Do you have more
23 witnesses?

24 MR. PADILLA: I don't have any more witnesses.

25 EXAMINER BRANCARD: All right. Mr. Feldewert,

1 you're chomping at the bit to have rebuttal witnesses, I'm
2 sure.

3 MR. FELDEWERT: They would be very short, Mr.
4 Brancard.

5 EXAMINER BRANCARD: All right. But, you know --
6 and Mr. Garcia please chime in, but I'm really concerned
7 about several items here in our ability to evaluate the
8 testimony of this hearing.

9 No. 1, obviously we have a Notice problem,
10 so that's going to have to be cured in some way, shape or
11 form. And can you offer suggestions on that?

12 MR. FELDEWERT: I can offer suggestions, Mr.
13 Brancard. You know, we certainly can -- first of all,
14 it's their burden, and I would think that they can publish
15 Notice, and the matter could be called and it would just
16 be called for the limited purpose of showing that Public
17 Notice was provided.

18 EXAMINER BRANCARD: So some date in the future
19 to finish up the record at minimum here.

20 You know, the reports are troublesome, the
21 production reports. I have sort of a gut reaction about,
22 you know, the State rewarding people for not being in
23 compliance with its rules. That's not a factor here we
24 would normally consider, but...

25 The bigger issue, I think, is how do we

1 deal with this working interest data. I mean, it's a mess
2 as far as I'm concerned. There's a lot of interest owners
3 here and the numbers between the two parties are -- we
4 expect them often to be different, but these are pretty
5 wildly different.

6 And I'm not sure we've good data on which
7 to make a decision here.

8 I don't know what your thoughts are, Mr.
9 Garcia.

10 EXAMINER GARCIA: I heavily agree. The tracts
11 don't match the interests, not even close. Normally it's
12 a difference, like, of 1 or 2 percent that companies say,
13 but, as you mentioned, they are not even close. Right now
14 making a decision on it would just be -- I don't know how
15 you old get away with it.

16 EXAMINER BRANCARD: Mr. Feldewert, you claimed
17 you had more title information to provide?

18 MR. FELDEWERT: Yes. A couple of things.

19 One, when we saw Colgate's title
20 information we were just as surprised as you guys are. So
21 they went back and re-examined it, and also received a
22 title opinion; that's some kind of abstract, a title
23 opinion for Section 30 this week, which led us to file the
24 exhibits.

25 You will see we've provided as Apache

1 Exhibit K, uh, because it reflects the input from the
2 actual title opinion in Section 30.

3 Now, I can have our land person testify to
4 that, that this is -- reflects that most recent title
5 opinion that is the information Apache has, since we have
6 title opinions from attorneys. That's a reliable as you
7 can get. So this would appear to be the best information
8 available.

9 Now, you know, Colgate is going to differ
10 for whatever reason, but that doesn't mean that you
11 shouldn't look at the best legal basis.

12 EXAMINER GARCIA: Mr. Feldewert, is that from
13 the exhibit packet submitted yesterday?

14 MR. FELDEWERT: Yes, sir. We were just --

15 EXAMINER GARCIA: Yeah, I --

16 MR. GARCIA: I know. We will come back to it.

17 Mr. Brancard, from your notes was that
18 exhibit packet accepted for the record?

19 EXAMINER BRANCARD: You know, we accepted one
20 exhibit, rejected one other one, and there is still more
21 to go through the title stuff.

22 EXAMINER GARCIA: Okay. All right. I didn't
23 have it in my notes. I was checking.

24 MR. FELDEWERT: Mr. Examiner, I can tell you the
25 only additional exhibit that I was going to offer was this

1 update of the title since the title page came in recently.

2 EXAMINER BRANCARD: I'm going to throw out a
3 suggestion here to try to massacre a whole bunch of birds
4 at the same time.

5 I would suggest, I would propose, I guess
6 we'll decide, that we continue this hearing till January
7 6th. That will give Colgate enough time to properly
8 publish Notice. Okay?

9 At that continued hearing the parties can
10 present whatever improved and new and more accurate
11 information they have about title. And I want to see
12 documentation, Mr. Padilla, that your client is compliant
13 with all reporting requirements, production reporting
14 requirements.

15 MR. PADILLA: Okay. That makes sense. And we
16 can refine the engineering exhibit in terms of identifying
17 the wells that we hadn't the lines, so it won't just be a
18 drawing, what looks like a drawing.

19 EXAMINER BRANCARD: Mr. Garcia, do you want to
20 see that? That's up to you.

21 EXAMINER GARCIA: I would like to see Colgate's
22 exhibit broken up into the Second and Third Bone Springs,
23 two separate graphs. Just, for both companies, your
24 updated tracts, make sure we can read them. Both of them
25 have clarity issues.

1 EXAMINER BRANCARD: And use percentages not
2 decimals.

3 MR. FELDEWERT: Mr. Garcia --

4 EXAMINER GARCIA: Mr. Brancard?

5 EXAMINER BRANCARD: Yeah.

6 EXAMINER GARCIA: Can I comment on Mr. Padilla's
7 path going forward on the production reports?

8 EXAMINER BRANCARD: Absolutely.

9 EXAMINER GARCIA: Mr. Padilla, I would contact
10 Brandon Powell, the Engineering Bureau Chief to discuss
11 this matter. He will be your best contact on getting
12 things done by January 6th, essentially.

13 MR. PADILLA: Mr. Examiner, did we continue the
14 other cases this morning or set the cases to January,
15 also? I think we did.

16 EXAMINER BRANCARD: That was a long time ago,
17 Mr. Padilla.

18 MR. PADILLA: I wrote it down.

19 EXAMINER GARCIA: We have a status conference on
20 December 2nd.

21 MR. PADILLA: That's right. That's right.

22 EXAMINER GARCIA: So we will burn that bridge
23 when we get to it.

24 MR. PADILLA: All right.

25 EXAMINER BRANCARD: All right. So just to be

1 fair, then if Mr. Padilla is going to update that graph, I
2 would give Apache the opportunity to try to make their
3 graphs a little clearer. If you are going to show that
4 you're better than average, show us what average is. Show
5 us what your average is.

6 I'm sure we'll end up like Lake Woebegone
7 where all the children are above average.

8 All right. Am I leaving anything out? I'm
9 sure I am.

10 EXAMINER GARCIA: Just with the updated
11 interests, can we get, as Bill had requested earlier,
12 total interest by tract for the 1280 acres.

13 MR. PADILLA: Mr. Garcia, we can provide that.

14 MR. FELDEWERT: I guess I'll just comment. The
15 only thing that bothers me, Mr. Brancard, is, uh, the fact
16 that we are not late because of issues with respect to
17 Colgate with their Notice, with the information they
18 provided or didn't provide. And it does seem a little bit
19 (inaudible) for Apache to, you know, be held up, because,
20 as you know, we have the Camacho Pooling Orders and they
21 want to get these wells on their rig schedule, and now we
22 are out till January 6th, and then I don't know how long
23 it's going to take to get an Order.

24 So it seems a little unfair to Apache, who
25 put their case together, to have Colgate come in, and

1 because of their mess we are out until January 6th. I do
2 have some concerns about that.

3 EXAMINER BRANCARD: I appreciate your concerns.
4 That's why I always assumed you were going to move to
5 dismiss their case right away.

6 MR. FELDEWERT: What's that?

7 EXAMINER GARCIA: I was assuming you were going
8 to move to dismiss their cases earlier, but you didn't.

9 MR. FELDEWERT: Dismiss their case -- you
10 wouldn't even let me dismiss one of their exhibits.

11 But, you know as you point out, as you
12 point out, now they have established clearly that they
13 have not filed their production reports for no apparent
14 reason. They are in violation of the Division's rules,
15 and they're an applicant for a Pooling Order, as an
16 applicant in violation of the Division's rules.

17 And I do not understand, I do not
18 understand why the Division would accept and continue to
19 accept these applications. That's just me.

20 MR. PADILLA: Mr. Examiner, let me respond a
21 little bit to that.

22 The other cases that were continued for a
23 status conference to December, there was absolutely a
24 complete failing there in terms of Notice to the working
25 interest owners. We agreed to a continuance because that

1 kind of stuff happens.

2 So in terms of unfairness or fairness, I
3 suppose we could have filed a Motion to Dismiss and said,
4 "Sorry. You didn't send Notice to anybody," which is
5 worse than our case.

6 I mean, we did mess up the Notice of
7 Publication, but by the same token, you know, we didn't
8 move to dismiss. And I think it's fair to what you are
9 proposing.

10 Now, to say, "Well, there's no
11 insufficiencies," that kind of stuff, I -- we admit that.
12 But in terms of delay, you know, lack of Notice and
13 complete lack of Notice is also egregious,
14 jurisdictionally defective. We didn't try to dismiss the
15 case, because the OCD would allow some time and continue
16 the case to a later time so that they could get their
17 Notices sent out.

18 MR. FELDEWERT: They are absolutely clear. I
19 mean, my biggest concern is that we have an applicant for
20 a Pooling Order without -- it has been established without
21 good cause is in violation of the Commission's rules, and
22 in serious violation of the Division's rules. I don't
23 know how you can issue a Pooling Application. You can't
24 cure that by just suddenly filing your production report
25 18 months later.

1 EXAMINER BRANCARD: Well, let me just say that
2 when we have Notice issues, they are serious issues. But
3 also the cure, and that Mr. Feldewert suggested early on,
4 is you give the party more time to complete the Notice
5 they are required to do, which we are doing in both sets
6 of cases here.

7 I am, as I did say earlier, very troubled
8 by the lack of compliance of Colgate with the Division's
9 rules, and I think we need a full accounting of what
10 happened here and why Colgate is getting itself back into
11 compliance or is already back in compliance, and what's
12 going on.

13 To be honest, Mr. Padilla, from my
14 perspective, you know, a part of me agrees with Mr.
15 Feldewert. This puts you in a bit of a hole here. It's
16 not exactly a factor that we look at. You know, we are
17 not like other environmental laws where we have bad actor
18 provisions that can disqualify people from getting
19 permits, but it concerns me, and I hope Colgate can come
20 clean with everything they've done here and get themselves
21 back into compliance.

22 So with that, these cases will be continued
23 till January 6th.

24 Colgate needs to deal with the Notice
25 issue.

1 Both parties are given the opportunity for
2 them to present information on a working interest control
3 issue.

4 We have the ability to update a few little
5 graphs on production.

6 And then Colgate needs to give us an
7 accounting of where they are in compliance with production
8 information, including completion reports.

9 And with that I think I'm done for today,
10 but if anybody else has anything else for the good of the
11 whole, let me know.

12 Mr. Garcia.

13 EXAMINER GARCIA: I have nothing else.

14 EXAMINER BRANCARD: All right. Thank you all.

15 MR. FELDEWERT: Thank you for your time.

16 MR. PADILLA: Thank you, Mr. Examiner.

17 (Time noted 2:52 p.m.)

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1 STATE OF NEW MEXICO) .

2) SS

3 COUNTY OF TAOS)

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5 REPORTER'S CERTIFICATE

6 I, MARY THERESE MACFARLANE, New Mexico Reporter
7 CCR No. 122, DO HEREBY CERTIFY that on Friday,
8 November 5, 2021, the proceedings in the above-captioned
9 matter were taken before me; that I did report in
10 stenographic shorthand the proceedings set forth herein,
11 and the foregoing pages are a true and correct
12 transcription to the best of my ability and control.

13 I FURTHER CERTIFY that I am neither employed by
14 nor related to nor contracted with (unless excepted by the
15 rules) any of the parties or attorneys in this case, and
16 that I have no interest whatsoever in the final
17 disposition of this case in any court.

18

/s/ Mary MacFarlane

19

MARY THERESE MACFARLANE, CCR
NM Certified Court Reporter No. 122
License Expires: 12/31/2021

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