

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

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

Applicaton of Cimarex	Case No. 22313
Energy Company for Compulsory	Case No. 22314
Pooling, Lea County, New Mexico	Case No. 22315
	Case No. 22316
Application of Devon Energy	
Production Company, LP	Case No. 22179
for Compulsory Pooling,	Case No. 22180
Lea County, New Mexico	Case No. 22382

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, MARCH 25, 2022

EXAMINER HEARING

DAY 2 PAGES 256-337

This matter came on for hearing before the New Mexico Oil Conservation Division, William Brancard, Esq. Hearing Examiner, John Garcia Technical Examiner, on Thursday, March 24, 2022, via Webex Virtual Conferencing Platform hosted by the New Mexico Energy, Minerals and Natural Resources Department.

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1 (Time noted 8:30 a.m.)

2 EXAMINER BRANCARD: All right. Do we have Ms.
3 Macfarlane in?

4 (Note: The reporter responded.)

5 MS. BENNETT: Goodmorning, Mr. Brancard. Deana
6 Bennett, Earl DeBrine and Bryce Smith on behalf of Cimarex

7 EXAMINER BRANCARD: And I see Devon,
8 Mr. Feldewert, so I guess we can get going.

9 All right. Good morning. It is March 25,
10 2022. This is the Oil Conservation Division hearing for
11 this morning. It is a Special Docket. It is a
12 continuation from yesterday, March 24th. The cases are
13 22313, 22314, 22315, 22316, 22179, 22180 and 22382.

14 Let's start with entries of appearance.
15 Cimarex?

16 MR. DeBRINE: Good morning, Mr. Examiner. Earl
17 DeBrine, Deana Bennett and Bryce Smith on behalf of
18 Cimarex.

19 EXAMINER BRANCARD: Good morning.

20 MS. BENNETT: Good morning.

21 EXAMINER BRANCARD: Devon Energy.

22 MR. FELDEWERT: Good morning, Mr. Brancard, Mr.
23 Garcia.

24 Michael Feldewert of the Santa Fe office of
25 Holland and Hart appearing on behalf of Devon Energy

1 Production Company.

2 EXAMINER BRANCARD: And then ConocoPhillips/
3 EOG?

4 MR. RITTENHOUSE: Mr. Examiner, this is Joby
5 Rittenhouse and I am appearing on behalf of
6 ConocoPhillips.

7 EXAMINER BRANCARD: Any other entries in these
8 cases today? (Note: Pause.) Okay. I guess it's just us
9 chickens.

10 All right. Where we left off yesterday was
11 I believe Devon has one more -- or is it Cimarex had one
12 more witness to go.

13 MS. BENNETT: That's right, Mr. Hearing
14 Examiner. Cimarex has one more witness.

15 EXAMINER BRANCARD: And I believe he was sworn
16 in.

17 MS. BENNETT: That's correct. And that swearing
18 in from yesterday can carry over to today.

19 EXAMINER BRANCARD: Thank you. So if the
20 witness can give his name and then you can begin
21 questioning.

22 Spell your name, please, sir.

23 THE WITNESS: My name is Eddie Behm, E-d-d-i-e,
24 B-e-h-m.

25 EXAMINER BRANCARD: You're a little soft. I

1 don't know if you can get a little closer or something, or
2 raise your audio. I just want to make sure the court
3 reporter captures everything, since she is not seeing you.

4 THE WITNESS: Is this better?

5 EXAMINER BRANCARD: Yes.

6 THE WITNESS: It's not too loud, is it?

7 EXAMINER BRANCARD: No.

8 THE WITNESS: Okay. Thank you, sir.

9 EXAMINER BRANCARD: All right.

10 MS. BENNETT: Thank you.

11 EXAMINER BRANCARD: Please proceed.

12 MS. BENNETT: Thank you.

13 EDDIE BEHM,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. BENNETT:

17 Q. Good morning, Mr. Behm. Thanks for being here
18 today. Mr. Behm, have you testified before the Division
19 before?

20 A. No.

21 Q. Did you include a resume as an exhibit to your
22 testimony?

23 A. Yes, I did.

24 Q. Can you please summarize your education and
25 experience.

1 A. I graduated from the University of Tulsa, and
2 then I started with OXY in 2010 as an intern and then
3 worked full time for them after that in California on the
4 water flood, heavy oil, as a production/completions
5 engineer, and then as a reservoir engineer later.

6 Then I moved to Cimarex in 2017 as a
7 productions engineer, and then I moved to reservoir in
8 2019, and have been in Lea County in this area the whole
9 time.

10 **Q. Thank you. With that I would like to tender Mr.**
11 **Behm as an expert in reservoir engineering.**

12 EXAMINER BRANCARD: Any objections?

13 MR. FELDEWERT: No objection.

14 EXAMINER BRANCARD: So recognized as an expert.

15 MS. BENNETT: Thank you.

16 **Q. Mr. Behm, did you prepare your Direct Testimony**
17 **and exhibits?**

18 A. Yes, I did.

19 **Q. Do you have any corrections to your testimony**
20 **and exhibits?**

21 A. Yes, I do.

22 **Q. And what prompted your changes?**

23 A. When I reviewed Devon's exhibits I realized I
24 had left out the Boundary Raider 712H. That is a
25 three-mile well, it's a Wolfcamp well, and I want to

1 include that.

2 Q. And did Devon -- you've reviewed Devon's
3 exhibits, right?

4 A. Yes, ma'am.

5 Q. Did Devon include the Boundary Raider 712H well
6 as an analog well in any of its materials?

7 A. No, ma'am.

8 Q. But you decided to update your exhibit anyway to
9 be comprehensive; is that right?

10 A. Yes. I want to include all the wells that we
11 have to evaluate the well performance. And I include
12 wells that aren't good for Cimarex in addition to that. I
13 include our Hallertaus and our Vaca Draw spacing pilots.
14 And these were earlier developments by Cimarex to lock in
15 spacing, and they're drilled much denser than today, so
16 the individual well performance would be lower. The goal
17 sets have all the wells in there.

18 Q. Okay. So rather than updating your existing
19 slides you prepared new slides to supplement the slides
20 that you prepared the first time; is that right?

21 A. Yes.

22 Q. And are these 17 -- well, did we submit -- is it
23 your understanding that we filed these exhibits with the
24 Division on the 7th?

25 A. Yes. On Wednesday, I think.

1 **Q. So let's just quickly run through the updated**
2 **slides that you prepared.**

3 **Are these 17 one of the updated slides?**

4 A. Yes, ma'am.

5 **Q. Can you see that on the screen?**

6 A. Yes, I can.

7 **Q. What is the change that you made on RD-17?**

8 A. RD-17 I've updated the well count with my
9 callouts, so I've got more long lateral wells that should
10 be looked at. So I've got six three-mile and 12
11 two-and-a-half-mile wells in the area I reviewed for this.

12 **Q. Is the additional three-mile well that Boundary**
13 **Raider well?**

14 A. Yes. And then I also have more production data
15 on the Right Meows. So those are two-and-a-half-mile
16 wells that are also included.

17 **Q. Thank you. Is that the only change you made to**
18 **the slide?**

19 A. Yes.

20 **Q. Okay. And did you make a change to the slide**
21 **that's labeled RD-18?**

22 A. Yes. The changes here are I updated to include
23 the same wells I added to the prior slide. The other
24 update here is that production data is a live stain
25 (phonetic). So if I have additional production data it

1 gives me additional time on the graphs.

2 **Q. Is that reflected in the callout boxes, that**
3 **additional time?**

4 A. Yes. So well counts that are produced a given
5 day will go up every month we go full data.

6 **Q. Thank you. Can you explain the change to RD-19.**

7 A. This is similar. This is just updated to
8 include the additional wells, so the Boundary Raider 712H.
9 And my conclusions are kind of unchanged for this slide.
10 The new well is in there.

11 **Q. And how about RD-20?**

12 A. On this well, or on this slide, my spaghetti
13 graph, I am calling out the Boundary Raider 712H. So this
14 is an important well and it should be added.

15 **Q. And on this slide RD-20, and we will talk about**
16 **this a little bit more in a minute, you heard yesterday**
17 **that the Thistle wells are actually 180, 181 and 182. Is**
18 **that right?**

19 A. Yes, ma'am, that is correct. I have a typo on
20 the 179H. That should be the 182.

21 **Q. Okay.**

22 A. I apologize for that.

23 **Q. And then what is Exhibit RD-21?**

24 A. This is the guide list to the well names that I
25 used to make the prior plot.

1 Q. Thank you.

2 A. This includes all our wells for Cimarex in this
3 area, and then it includes all wells past two miles
4 drilled by Devon in this area.

5 Q. Thank you.

6 A. In the Wolfcamp specifically.

7 Q. And now I'm going to open our original hearing
8 exhibits, because it's my understanding that you need to
9 correct some of your testimony in the original exhibits,
10 as well. Is that right?

11 A. Yes.

12 EXAMINER BRANCARD: So just can I jump to the
13 chase here?

14 MS. BENNETT: Yes, please.

15 EXAMINER BRANCARD: Do these rebuttal exhibits
16 replace your exhibits, the Cimarex exhibits in your
17 Prefiled Testimony?

18 MS. BENNETT: That would be our intention,
19 Mr. Brancard.

20 EXAMINER BRANCARD: Okay.

21 Q. Okay. Let me just get here to your affidavit,
22 Mr. Behm. Are you seeing your affidavit, Mr. Behm?

23 A. Yes, I can see it.

24 Q. And what paragraphs need to be changed in your
25 testimony?

1 A. It is 35.

2 Q. Okay. Give me just a second to catch up there.

3 And here I am on page (sic)35. Can you see
4 that?

5 A. Yes.

6 Q. And what needs to be changed in paragraph 35?

7 A. In the first sentence where it says 15, that
8 should be an 18.

9 Q. Are you here?

10 A. Yes, ma'am.

11 Q. Okay. And then is there another change that
12 needs to be made to your testimony?

13 A. The next change is in 36. It's a well name
14 typo. In Section C where I wrote 179H that needs to be
15 the 182H.

16 Q. Okay.

17 A. And then -- but in addition, in that same
18 Section C, the first five months need to say six.

19 Q. Okay.

20 A. And then well performance has improved. Where I
21 say only three of the 15 wells are meeting early time
22 expectations, that should be 4 of 18.

23 Q. Thank you. And Mr. Behm, we can modify this
24 affidavit testimony, right, and submit it to the Division
25 to reflect those changes?

1 A. I'm happy to modify to have it correct.

2 MS. BENNETT: Okay. Great. Thank you.

3 And Mr. Brancard, I did misspeak a moment
4 ago about the rebuttal exhibits entirely replacing our
5 original exhibits. Mr. Behm does have conclusions on his
6 original exhibits that are still relevant that we did not
7 cut and paste onto the supplemental exhibits, and so if
8 it's the Division's preference when we are all done
9 sorting this all out, we are happy to create a full single
10 set of exhibits to provide to the Division to reduce any
11 confusion, or eliminate, hopefully, confusion.

12 EXAMINER BRANCARD: Okay. I'll just see if Mr.
13 Garcia has anything that would be helpful, too, because,
14 you know, we get easily confused here at the Division.

15 What I noticed is that your RD-17 relates
16 to your D-12.

17 MS. BENNETT: Let me just do a one-to-one
18 comparison here. (Note: Pause.) That's correct.

19 EXAMINER BRANCARD: It looks like your
20 conclusions are still in there, so I don't know if you
21 want to replace that.

22 MS. BENNETT: So the primary two that we would
23 need to meld the conclusions from are D-14, which
24 corresponds to --

25 EXAMINER BRANCARD: RD-19.

1 MS. BENNETT: RD-19.

2 B-15-A.

3 EXAMINER BRANCARD: That's RD-20?

4 MS. BENNETT: Which is RD-20.

5 So those are the two that we would need to
6 sort of meld into a single exhibit.

7 EXAMINER BRANCARD: Okay. But RD-17 can replace
8 D-12 and RD-18 replace D-13.

9 MS. BENNETT: Yes.

10 With that, Mr. Examiner, I would move the
11 admission of Mr. Behm's testimony and his Exhibits C-1
12 through RD-21 to be melded together as we just discussed.

13 EXAMINER BRANCARD: All right. Are there
14 objections?

15 MR. FELDEWERT: I think I have figured it out,
16 Mr. Examiner. It looks like it's just primarily replacing
17 other exhibits that were previously filed. No, I don't
18 have any objection.

19 EXAMINER BRANCARD: All right.

20 I have deep concerns over these exhibits
21 but I don't think it's anything that would prevent them
22 from being admitted into the record. But I will give you
23 my concerns later.

24 MR. FELDEWERT: On that point, Mr. Brancard, I
25 will note that I think the exhibits that they are

1 replacing were the exhibits that we did move to strike.

2 So I certainly don't mean to waive that, but I understand
3 you have already ruled on that.

4 So with that understanding I guess we don't
5 have any objection.

6 EXAMINER BRANCARD: All right. So you are
7 moving Mr. Behm's testimony, Exhibit D, is that correct,
8 plus all the attachments D-1 through what number, and then
9 the Rebuttal Exhibits RD-17 through RD-20.

10 MS. BENNETT: RD-21.

11 EXAMINER BRANCARD: All right. Those exhibits
12 will be admitted into the record. Thank you.

13 MS. BENNETT: Thank you very much.

14 Q. Mr. Behm, did you provide me, or Modrall, with
15 production data from the three Dos Equis wells that you
16 provided in your exhibits?

17 A. Yes, ma'am.

18 Q. And is it your understanding that I provided
19 that information to the Division as 7?

20 A. Yes, ma'am.

21 Q. And when you were preparing for your testimony
22 today were you prepared to discuss the wells that you used
23 to create your exhibits?

24 A. Yes.

25 Q. And did you -- when I asked you for a list of

1 the wells that you used to create your exhibits, you
2 provided that list to me?

3 A. Yes, ma'am.

4 Q. Is it your understanding that I provided that
5 list of wells to the Division and to Devon?

6 A. Yes.

7 Q. Have you had a chance to review Devon's rebuttal
8 exhibits?

9 A. Yes, I have.

10 Q. And, I'm sorry, let me go ahead and pull those
11 up real fast.

12 Can you see those? Am I sharing those?

13 A. Not yet.

14 Q. Okay. Did that -- give me just a second here.
15 I literally practiced this before I got on, and it still
16 confounds me. And I know that you have tried to show me,
17 Eddie, how to do it better.

18 EXAMINER BRANCARD: You're up now.

19 MS. BENNETT: Okay. All right.

20 Q. So, Mr. Behm, you have had a chance to review
21 Devon's rebuttal exhibits, right?

22 A. Yes, ma'am.

23 Q. Do any of the rebuttal exhibits change your
24 conclusions?

25 A. No, they do not.

1 Q. Let's look at Rebuttal Slide I, which I'm
2 turning to right now. This is their Rebuttal Slide I
3 which discusses the First Bone Spring wells.

4 A. Yes.

5 Q. How long has Cimarex been planning on drilling
6 First Bone Spring wells.

7 A. Approximately February of 2021, and I believe we
8 proposed those wells in March of 2021.

9 Q. Does Rebuttal Slide I reinforce your opinion
10 about the validity or productivity of the First Bone
11 Spring Sand?

12 A. Yes, we would target First Bone Spring. That's
13 been our plan.

14 Q. Does that confirm your conclusion that Cimarex
15 has the better plan to begin with than Devon because
16 Cimarex was initially targeting the First Bone Spring?

17 A. Yes, ma'am.

18 Q. Did you have a discussion with Mr. Sprague about
19 that First Bone Spring Sand?

20 A. Yes, I did. We were trying to come to an
21 agreement on a trade to get out of each other's way, and I
22 had shared my valuation for how I was valuing my area,
23 because we had a disconnect somewhere.

24 And so I was trying to resolve that, and I
25 brought up -- I have a -- you don't necessarily know how

1 the other person sees their acreage or is valuing it, so I
2 brought up, you know, what I would be drilling and my
3 evaluation. And I was -- I asked if he had value on the
4 First Sand or not, because I had two cases determining on
5 whatever the answer was, and I was told that Devon was not
6 carrying First Sand value at the time.

7 **Q. And when was that conversation, approximately,**
8 **with Mr. Sprague?**

9 A. December of 2021.

10 **Q. Were you surprised to see this exhibit, then,**
11 **that Devon is now targeting the First Bone Spring when**
12 **Devon indicated to you that they didn't place any value on**
13 **First Bone Spring?**

14 A. Yes.

15 **Q. Okay. Let's turn to Exhibit J. Does Exhibit J**
16 **change any of your conclusions in your slides?**

17 A. No. To me Exhibit J highlights the strong
18 performance of the Avogato Third Sand lane.

19 **Q. And why is that important to Cimarex?**

20 A. Because we are targeting the Third Sand with our
21 upper landing. The importance here is we all agree on
22 what the flow unit is, it's Third Sand and Upper Wolfcamp.
23 And it's where's the best place to have your upper landing
24 to capture those barrels. So the performance of a Third
25 Sand development when there's no Lower Wolfcamp wells, in

1 our opinion that if it performs like a Wolfcamp it makes
2 us believe that there is a large percentage of the oil
3 higher up in this flow unit than has been typical for the
4 rest of the area.

5 **Q. And when you said a moment ago that you all**
6 **agree that there's a Third Bone/Upper Wolfcamp flow unit,**
7 **are you talking about you and Devon both have the same --**
8 **both agree that there's a flow unit there?**

9 A. Some of the papers that have been referenced
10 earlier, like the Hydraulic Fracturing Test Site 2 or
11 HFTS II, literally show with gauges and microseismic and
12 the fiber that this -- maybe a better way to say this is
13 if we call something the X and the Y or the Third, once
14 that was fracked, the fracture sees those reservoirs. And
15 then what's unique and confirms it the most is pressure
16 gauging, which you don't normally get to see away from
17 your wellbore, to confirm where you have pressure drop to
18 tell you where production is coming from.

19 **Q. Thanks for that. I guess what I was trying to**
20 **confirm is that there's no disagreement between Cimarex**
21 **and Devon as to the flow unit.**

22 A. I don't believe so, no. It's just how best to
23 land within it.

24 **Q. And Cimarex is planning eight wells per section**
25 **for the flow unit; is that right?**

1 A. Yes. With the --

2 Q. Okay.

3 A. -- spacing proposed.

4 Q. Okay. Turning to Devon -- this is the second
5 page of Devon Exhibit J, and does this change your
6 conclusions at all?

7 A. No. The Avogato performance versus what's more
8 typical to the south is very good.

9 Q. And is Cimarex -- from my understanding, and
10 correct me if I'm wrong, Cimarex is sort of following the
11 model, not the spacing but the target for Avogato -- I'm
12 sorry, Rodney Robinson and Wild Salsa; is that right?

13 A. Yes. Similar. Yeah.

14 Q. Okay. So this is Devon Exhibit K, and does --
15 when you looked at this exhibit, what jumped out at you
16 from this exhibit?

17 A. From this exhibit, I see some of our Red wells
18 are, you know -- we stay in that distribution, and when I
19 look at it, our newer wells, which I say is the last year,
20 year and a half, everybody has kind of learned, and you
21 see performance rising up to those plots, rising up on
22 that plot. And then the well at the very top up there,
23 that is a parent well. That's our Redhill 17H.

24 Q. Does this slide include your most recent wells?

25 A. It doesn't include all of them.

1 Q. Which ones doesn't it include?

2 A. I don't believe it includes the Dos Equis, the
3 production data that we sent on Wednesday, and I don't
4 believe it includes our Vaca Draw 57, 58, 59. Those are
5 very new.

6 Q. And even without those, your newer production,
7 the slide still shows that Devon and Cimarex are either in
8 parity or Cimarex wells outperform the Devon wells. Is
9 that your understanding of the slide?

10 A. Yes.

11 Q. Let's see. I think this is D-15, which is
12 numbered page 6 here.

13 Did you have a reaction to D-15 when you
14 saw it?

15 A. Yes. Uhm, one of the things that I see when I
16 look at this is this doesn't include our Dos Equis wells,
17 and it doesn't include our Vaca Draw wells. So this plot,
18 the majority of our wells are 12, 14 and 9 wells per
19 section. So when I look at this, this is on the Y axis,
20 she's got your Cum oil, and then on the X access she's got
21 time in months.

22 So when I look at this, the Devon
23 three-mile wells are drilled at four and six wells per
24 section, and the average of my wells in this plot from the
25 API list, we're almost 12 wells per section. We are 11.8.

1 So if I were to take a plot like this and
2 turn it into sections recovery, what I would do is I would
3 take the Cum times the wells that would be drilled in the
4 section. So I would take the Cimarex Energy, excluding
5 parent finds (phonetic) in addition to our new wells, and
6 I would multiply that by 11.8 for a section EUR number.
7 And then I would take the Devon Energy three-mile laterals
8 and I would multiply them by our 5.3, some blend of the 6
9 and the 4 for section recovery numbers.

10 And since the curves are about the same, if
11 I multiply ours by a bigger number you would get a larger
12 section recovery.

13 **Q. Thanks. So from a lay person's perspective, I**
14 **guess what you're saying is it's not really comparing**
15 **apples to apples because of the well-per-section**
16 **differences.**

17 A. Yes, that is correct. And that is a challenge
18 here, because we don't have many long laterals to analyze,
19 and other than my Dos Equis wells, most of my development
20 is further away from the AOR.

21 **Q. And I may have missed this, but was there a**
22 **question you had about the history for the three-mile**
23 **wells?**

24 A. Oh, I missed it yesterday, but I noticed that
25 the normalized on the X axis is time and month, and I

1 wasn't sure if -- this shows 31 months of production.

2 Q. Is that right here?

3 A. Yeah.

4 Q. So I'm just going down to the axis and reading
5 it and it shows 31 months of production, but at least for
6 Thistle -- I'll get that out here. I've got 430 days, and
7 then I've got, what, 186 months (sic) for the more recent
8 one.

9 And they might have some in-house data
10 that's ahead of what's reported, but I wasn't sure how to
11 get to 31 months with the data I had.

12 Q. And just to be clear, a second ago I think, and
13 I may have misheard that, you might have said 186 months.
14 But you meant 186 days, right?

15 A. Yes. Six months.

16 Q. Six months. Okay.

17 You were in the hearing yesterday, right,
18 and listening.

19 A. Yes, ma'am.

20 Q. Did you hear the discussion about the perceived
21 risk of the parent/child effect arising from the Wild
22 Salsa wells?

23 A. Yes.

24 Q. And would -- if Devon were to develop Section
25 12, would that present the same risk -- I'm sorry, if

1 Devon were to develop that west half of Section 12, would
2 that present the same perceived parent/child risk for your
3 wells in the east half of Section 12?

4 A. Yes.

5 Q. And if the Division were to approve Cimarex's
6 plan of two-mile laterals, would that have the effect of
7 minimizing or eliminating that risk of parent/child?

8 A. Yes. The plan would be to develop on a 1280
9 spacing moving across the section.

10 Q. Thanks for addressing all those questions I just
11 had about the rebuttal from yesterday.

12 Before I turn you over for
13 cross-examination, though, can you briefly summarize the
14 takeaways from your testimony, the main takeaways of your
15 testimony.

16 A. Yes. My main takeaways from my testimony are
17 that two-miles are proven in this area. There's been
18 significant two-mile development, specifically in the
19 Wolfcamp, and that -- and that -- sorry, I lost my train
20 of thought.

21 Q. It's early.

22 A. Well, I've got the benefit of the time change.
23 I should be further ahead here. I've got some notes here.

24 Yes. Okay. Sorry about that.

25 Okay. Cimarex's proposal will allow both

1 operators to develop at two miles, and I model that at
2 least as a 10 percent increase in recovered reserves,
3 which would prevent waste and protect correlative rights.

4 In my opinion the increase is driven by
5 Cimarex's plan to develop with two-miles, as well as
6 targeting the First Sand. Devon's three-mile Wolfcamp
7 wells, in my opinion have a higher chance of leaving
8 reserves in the ground because the depth and the pressure
9 in the Wolfcamp would make this a very challenging well to
10 complete. The risk in the toe section in Section 12 by
11 not landing up in the Third Sand -- and again we think a
12 significant portion of the barrels are located higher up
13 in the flow unit -- we think that could potentially strand
14 additional barrels in the future.

15 And just to be very clear here, I'm not
16 saying that three-mile wells are impossible to do, it's
17 just in this specific area of the basin where pressures
18 are very high and you're very deep, to me they would have
19 a higher-risk profile than two-mile laterals.

20 Then my last one would be that we've been
21 planning development up here for a long time. We have
22 surface facilities in place for oil, gas and water
23 takeaway, and I believe Devon does not yet.

24 MS. BENNETT: Thank you. Thank you very much,
25 Mr. Behm.

1 With that I turn Mr. Behm over for
2 cross-examination.

3 EXAMINER BRANCARD: Thank you. We will start
4 with Devon. Mr. Feldewert.

5 MR. FELDEWERT: Yes.

6 CROSS EXAMINATION

7 BY MR. FELDEWERT:

8 Q. Good morning, Mr. Behm.

9 If I could have sharing capabilities.

10 While we are waiting on that, Mr. Behm, let
11 me ask you some -- you mentioned that the -- let's turn to
12 your exhibit. Do you have your exhibits in front of you,
13 Mr. Behm?

14 A. I have all of them, so if you let me know, give
15 me a little time and I'll find it.

16 Q. Let's go to your Exhibit D-1. Do you have that
17 in front of you?

18 A. I've got D-2 in front of me. Give me just a
19 second. I'm sorry, sir.

20 Q. I'm pulling it up here. I'm looks at your
21 Exhibit D-1.

22 MS. BENNETT: And just for clarification that's
23 the existing surface facilities, Mr. Behm.

24 THE WITNESS: Okay. Thank you.

25 Q. Okay. Can you see it? I've got it up on the

1 screen.

2 A. Yes, sir. Thank you so much.

3 Q. All right. So you have facilities, proposed
4 facilities in the north half of the north half of
5 Section 1, right?

6 A. I have two facilities. The Thyme, the H
7 existing battery is what I'm pointing at with the arrow
8 there, and that would be the battery we would be using for
9 these wells.

10 Q. Okay. But they are located in the north
11 half/north half of Section 1?

12 A. Yes, sir.

13 Q. Okay. And which you, from those facilities, at
14 least in the east half, you were drilling south. Correct?

15 A. Right.

16 Q. Plan to drill south.

17 And when I see Pad 4 over there, that's the
18 pad from which you, the company initially drilled south
19 with your two-mile Coriander wells?

20 A. Correct.

21 Q. And then you subsequently at some point in time
22 drilled you're one-mile Thyme Federal 9H well. Correct?

23 A. Yes, sir. The Thyme 9H and the Coriander 1H
24 were done at the same time.

25 Q. And one was done two miles, and the 9H was done

1 as a one-mile.

2 A. Correct.

3 Q. And that's the well that in 2018 Cimarex
4 publicly reported and touted the results. Right?

5 A. Yes.

6 Q. Okay. Now, I see that with your -- you-all
7 discussed plans for the west half of the acreage. Whether
8 it's, I'm assuming Section 1 or Section 12, both together,
9 you mentioned that -- you suggest that you're going to be
10 drilling in the Avalon in the west half acreage. Are
11 these wells planned in the Avalon?

12 A. Yes.

13 Q. Okay. When does the company intend to
14 commence -- let me ask this: What wells do you have on
15 your drilling schedule?

16 A. Right now the plan would be to start with
17 Wolfcamp and our Third Sands development first, but it
18 would be phased similar to Devon's, I guess would be the
19 answer.

20 Q. Okay. All right. So basically the phasing and
21 the timeline is roughly the same?

22 A. For two-mile wells, yes, sir.

23 Q. All right. Now I want to turn to, I believe,
24 one of your supplemental exhibits which is RD-17.

25 A. Yes.

1 Q. Do you have that in front of you?

2 A. Yes, sir.

3 Q. I think you mentioned that this is a replacement
4 for RD-12. Is that right?

5 A. Yes, sir.

6 Q. With respect to the study that you did, is there
7 a reason why you didn't provide the well names, and at
8 least some information on the wells when you initially
9 presented this?

10 A. No, sir. Uhm, I did send my API list.

11 This is my first time doing this, so it
12 would not happen in the future.

13 Q. So you can understand how it would be difficult,
14 looking at this, to ascertain what wells you were actually
15 studying?

16 A. Yes, I suppose. It's helpful to have the list,
17 but my intent here was to look at a broad area to just how
18 does this smaller sample set compare relative to that.

19 So if I were to query this, I would query
20 it all Upper Wolfcamp wells and in South Lea County.

21 Q. Okay. Your AOI, the box says AOI, that is Area
22 of Interest?

23 A. That represents our competing proposal area.

24 Q. Okay. All right. When I look at that AOI area
25 and I start moving to the southeast, there's a green

1 **rectangle that looks like a half section. Is that Cimarex**
2 **acreage?**

3 A. If you're -- yeah, about -- if you are asking,
4 just so I'm clear, it's about five miles east, five
5 sections east and five sections down?

6 Q. Well, I'm looking -- let's go -- let's do this.
7 **If we go to the bottom of your Area of Interest, the black**
8 **line, black rectangle.**

9 A. Yes, sir.

10 Q. We go 1, 2, 3, 4, I think you're right, 5
11 **sections over.**

12 A. Yes, sir.

13 Q. There's a green rectangle right below that.

14 A. Correct.

15 Q. And is that the West Bell Lake area?

16 A. Yes, sir.

17 Q. And that's Cimarex acreage. It looks like it's
18 **320 acres.**

19 A. Correct.

20 Q. And if I'm reading your colors correctly, it
21 **looks like it's surrounded by Devon acreage. Is that**
22 **right?**

23 A. Yes, sir.

24 Q. With the exception of EOG, I guess, to the
25 **south. Is that EOG acreage to the south?**

1 A. Yes. EOG is the large continuous block. They
2 have it come up just southwest of us there.

3 **Q. Now, this West Bell Lake area, did you have some**
4 **trade discussions with Devon --**

5 A. Yes, sir.

6 **Q. -- in connection to this case?**

7 A. Yes, we did.

8 **Q. Okay. And did those trade discussions occur**
9 **around sometime in December/January time frame?**

10 A. Yes, sir.

11 MS. BENNETT: Mr. Examiner, I am going to object
12 to this line of questions, that trade discussions
13 regarding West Bell Lake are irrelevant to this case.

14 EXAMINER BRANCARD: Where are we going with
15 this?

16 MR. FELDEWERT: I'm about ready to get there.

17 **Q. Mr. Behm, with respect to those, when Devon**
18 **approached you about trades in that acreage in the West**
19 **Bell Lake area, didn't you inform Mr. Sprague that that**
20 **was -- that the company was not interested in trading that**
21 **acreage?**

22 MS. BENNETT: Mr. Hearing Examiner, this is --
23 again I object to this line of questioning. It's also
24 beyond the scope of Mr. Behm's direct, and so I renew my
25 objection to this line of questioning.

1 MR. FELDEWERT: This is in his Area of Review,
2 said he had discussions in connection with this case.

3 MS. BENNETT: About this case, yes, but not West
4 Bell Lake.

5 If Mr. Behm is inclined to answer -- which
6 is fine with me because I think he has a very good answer
7 to this, but I would like to lodge my objection for the
8 record.

9 EXAMINER BRANCARD: All right. Let's go ahead,
10 but you better connect that, Mr. Feldewert.

11 **Q. Mr. Behm, did you indicate to Devon that that**
12 **acreage was not available for a trade to try to resolve**
13 **this or any other case?**

14 A. No. We actively tried to trade that acreage in
15 order for this one, to resolve this case, because that
16 would block up acreage for Devon, and that would give us a
17 1280 that we could develop.

18 **Q. But didn't you inform Mr. Sprague in December**
19 **that you intended to develop that acreage with 1-mile**
20 **wells to fill your rig schedule?**

21 A. There's some context behind that.

22 We run lots of sensitivities, because the
23 future is very hard to predict, and I have permits that
24 expire there. So one of the sensitivities we were running
25 is what would happen if our New Mexico rig count needed to

1 double -- uhm, and I can get permits at a given speed.
2 It's reasonable for me to develop with two rigs per year
3 in Lea County. Uh --

4 **Q. So my question, though, is: Didn't you tell Mr.**
5 **Sprague that Devon intended to develop that acreage with**
6 **one-mile wells to fill its rig schedule?**

7 MS. BENNETT: Mr. Examiner, again this is
8 outside the scope of Mr. Behm's direct, and he did just
9 answer the question. And I have provided Mr. Behm
10 latitude to answer the question because his answer
11 provides the context that is missing entirely from Mr.
12 Sprague's testimony, but I think this should be the end of
13 this line of questioning, and I renew my objections.

14 MR. FELDEWERT: I understand why you don't want
15 me to ask about this, but --

16 MS. BENNETT: It has nothing to do --

17 MR. FELDEWERT: It (inaudible).

18 MS. BENNETT: It has nothing to do -- Mr.
19 Feldewert, it has nothing to do with me not wanting you to
20 ask that question, in fact I allowed our witness to
21 answer, but he does not need to answer the same question
22 multiple times.

23 MR. FELDEWERT: And it sounds like he's prepared
24 to answer. He answered the questions before --

25 EXAMINER BRANCARD: I think he already answered

1 your question.

2 MR. FELDEWERT: Well, I didn't quite hear.

3 Okay.

4 Q. My question, Mr. Behm, is: Didn't you inform
5 Mr. Sprague that Devon intended to develop this acreage
6 with one-mile wells to fill its rig schedule?

7 MS. BENNETT: Mr. Hearing Examiner, that is the
8 exact same question that Mr. Behm answered.

9 EXAMINER BRANCARD: Sure sounds like to me. And
10 I think he explained why, too.

11 MS. BENNETT: Yes.

12 Q. So the answer is yes, Mr. Behm?

13 MS. BENNETT: Mr. Feldewert -- Mr. Hearing
14 Examiner -- I don't need to address Mr. Feldewert
15 directly, I apologize for that, but I do believe you have
16 ruled on this, and he has asked and answered questions.

17 EXAMINER BRANCARD: Yes, I believe it's been
18 asked and answered. Can we try a different question, Mr.
19 Feldewert?

20 MR. FELDEWERT: Yes.

21 Q. Mr. Behm, would you turn to what is marked
22 Cimarex Exhibit D-3.

23 A. Yes, sir. (Note: Pause)

24 Q. Now, when I look at the orange box, you contend
25 that allowing Devon to develop its acreage with three-mile

1 wells would push Cimarex's first spud of one-mile wells
2 out to 2029 in the west half of Section 1. Is that what
3 you're saying?

4 A. Yes.

5 Q. Okay. Why did you pick 2029?

6 A. At the time we carry an inventory list for
7 programs, and kind of the way it works is I compete for
8 rigs and resources and capital with Culberson and Reeves,
9 two other counties that we develop. So what happens is we
10 allocate capital and rigs to the most profitable projects
11 with the best returns.

12 So there's lot of two-mile wells I have to
13 compete with, and it is tough to win with one-miles.

14 Q. And you've characterized that decision by
15 Cimarex as stranded reserves in the orange box.

16 A. It's potentially stranded reserves, because
17 seven years out is a long time. Okay?

18 Q. But --

19 A. So me personally, if the last two years have
20 shown us anything it's that things can move around quite a
21 bit.

22 Q. I agree with that.

23 So it's based on the proposition that Cimarex may not
24 drill one-mile wells till 2029.

25 A. And I can't predict the regulatory environment

1 in 2029 or the oil price, or -- the further out
2 completions happen, the more risk there is to getting the
3 barrels out of the ground.

4 **Q. So when you say -- that's what you're talking**
5 **about here when you say what you call "stranded" reserves.**

6 A. I believe we say de facto stranded, because I
7 understand it might be a little different than the
8 definition. And I did include the yellow box, because
9 that is the other outcome that could happen.

10 **Q. Uh-huh.**

11 A. These are sensitivities.

12 **Q. With respect to this decision by -- are you**
13 **saying, then, that Cimarex has made a decision not to**
14 **drill one-mile wells in the immediate future?**

15 A. On my rig schedule, approved rig schedule,
16 excluding sensitivities we are targeting largely 2-mile
17 wells. We would still drill a one-mile well to hold
18 acreage, similar to the Thyme 9H, or maybe as a test well,
19 and to hold acreage, like a Red Paint 314H, but full
20 one-mile development it's tough to compete with the
21 two-mile wells for how we rank inventory.

22 **Q. Are you aware to -- give me one second here.**

23 **Now, Mr. Behm, are you -- is the same**
24 **analysis being done by Cimarex in Eddy County in terms of**
25 **its desire or intent to drill one-mile wells?**

1 MS. BENNETT: Mr. Hearing Examiner, this case is
2 about Lea County not Eddy County, and so I would object to
3 Mr. Feldewert's questions as irrelevant and outside the
4 scope.

5 Q. There's --

6 EXAMINER BRANCARD: Mr. Feldewert, go ahead.

7 Q. Same analysis, Mr. Behm, apply to Eddy County?

8 A. Yes. Capital is allocated to the best projects
9 possible. Obligations and holding leases will cause other
10 things to happen that's best projects possible to maintain
11 acreage.

12 Q. So does the company intend to comply with the
13 Pooling Order it received in October for a one-mile well?

14 MS. BENNETT: Objection, Mr. Examiner. This
15 Pooling Order was excluded yesterday and this is another
16 attempt by -- to enter in that exclusion from yesterday.

17 EXAMINER BRANCARD: Mr. Feldewert, I don't -- I
18 don't know it's going to be helpful to go through every
19 case, every drilling opportunity that Cimarex has here, so
20 I think he's answered the question generally, and that
21 helps us.

22 Q. Now, getting back to Exhibit D-3, you mentioned
23 the yellow graph, Mr. Behm. Do you see that?

24 A. Yes, sir.

25 Q. You suggest that the First Bone Spring Sand if

1 **Devon's plan is going to be developed, that there's going**
2 **to be 801 MBOs of stranded reserves in the First Bone**
3 **Spring.**

4 A. That's the delta between a two-mile and a
5 one-mile. The assumption here at the time is Devon was
6 not targeting the First Sand.

7 **Q. Okay.**

8 A. But now based on its recent success in the
9 Danger Noodle, you're aware that they are now looking at
10 targeting the First Bone Spring Sand, right?

11 MS. BENNETT: Objection, Mr. Hearing Examiner.
12 Devon has not provided any information other than
13 unsupported contentions that it intends to drill in the
14 First Bone Spring Sand, and as a result based on the
15 materials that we have, that we prepared for today's
16 hearing, Mr. Behm's exhibit is complete and accurate, and
17 Mr. Behm should not be called upon to hypothesize about
18 what Devon's speculative First Bone Spring Sands
19 development would look like.

20 EXAMINER BRANCARD: Yes. On the other hand --
21 you're correct all this is in the record right now, so I'm
22 not sure what we're adding to the record at this point.

23 MR. FELDEWERT: Good point, Mr. Examiner, except
24 one additional point here.

25 Mr. Behm mentioned the drilling sequence

1 and its phases.

2 Q. Cimarex does not have the First Bone Spring Sand
3 on its drilling schedule, it is not in its first drilling
4 phase?

5 A. It would not be in its first drilling phase.

6 Q. When I see the number down there in the
7 Wolfcamp/Third -- you talk about the Upper Wolfcamp and
8 Third Bone Spring Sand?

9 A. Yes, sir.

10 Q. What is the 932 that you suggest will be
11 stranded if Devon's pooling application is approved? What
12 are you talking about there?

13 A. That is my estimate in the Delta in performance
14 between three-mile one-mile wells.

15 Q. So that's based on the -- that's based solely on
16 what you consider to be a delta in performance of the
17 wells?

18 A. Yes, sir.

19 Q. Okay. All right.

20 A. Real quick, one thing I want to point out on
21 this exhibit is I've got the degradation per foot listed
22 on the bottom of the chart. So I have got 16 and 1/2
23 degradation. That's the delta I ran these numbers at.

24 Q. Uhm, now, when I go to your -- start going to
25 your study, if I go to what has been marked as Cimarex

1 Exhibit D-9, that's part of your study, is that right?

2 A. Yes, sir.

3 Q. Okay. This has the same error that we saw in
4 the geologist's exhibit with respect to the Danger Noodle,
5 does it not?

6 A. Correct.

7 Q. The Devon Danger Noodle wells in subsequent
8 performance do not result from wells in the Third Bone
9 Spring Sand.

10 A. Is there a question there?

11 Q. That's how you understand that, Mr. Behm, right?

12 A. I do rely on geologic interpretation from our
13 geologist. I know that came up yesterday. I'm not sure
14 how to answer.

15 Q. That's fair. That's fair.

16 And you're aware that having said in
17 testimony that there's also debate as to where the Matador
18 Upper Bone Spring wells are located.

19 A. Yes, I heard some different interpretations.

20 Q. Same way with the Wild Salsa?

21 A. Yes.

22 Q. Okay. Now, when I then go to D-10, this is the
23 analysis you did on the wells that you called out in D-9?

24 A. Yes. I was focusing on wells proximal to our
25 proposed area of development. And what I'm doing here

1 is there's not a lot of First Sand data yet with
2 significant history. What's interesting here, to me, and
3 why this is included --

4 Q. Hold on, Mr. Behm. I want to ask you my
5 questions about this exhibit.

6 A. Okay. I'm sorry.

7 Q. Thank you. My question about this exhibit is
8 this is -- you chose not to include the results from
9 Devon's Danger Noodle wells even though you point them out
10 on the prior slide.

11 A. Uh, I'm not sure how much data I had at the
12 time. It's -- they are not on there.

13 Q. Okay. And your timeline started not in any
14 particular time aspect to it, it started from the day of
15 first production, right?

16 A. Yes.

17 Q. In fact you put the Red Tank on there when you
18 had, what, 150 days production, maybe?

19 A. Maybe 180. It's very early. That's fair.

20 Q. Now, you refer -- you seem to be focusing here
21 on the success of the OXY Avogato wells.

22 A. The intent of this slide is a typical Third Sand
23 performance.

24 Q. Okay. The OXY Avogato wells are wells that we
25 all agree are only located in the Third Bone Spring Sand.

1 A. That's our interpretation, yes, sir.

2 **Q. As a result, then, the production that we see**
3 **there would not be from the Upper Wolfcamp reservoirs.**

4 A. Well, I don't necessarily know how to allocate
5 the production between flow units. What's important here
6 is that the Wolfcamp production, we can all agree, is
7 good. And what's interesting here is the Third Sand
8 production is atypically good, it looks a lot like the
9 Wolfcamp. No doubt about it.

10 **Q. I-- again, my point is the OXY Avogato wells,**
11 **would you agree with me since they're located in the Third**
12 **Bone Spring Sand they would not be drawing from the Upper**
13 **Wolfcamp.**

14 A. I don't know how to verify that.

15 **Q. It would be difficult, right?**

16 A. It would be difficult. And the main reason --

17 **Q. Mr. Behm, the reason I asked you that is because**
18 **you suggested that it may be a common flow unit with the**
19 **Upper Wolfcamp. Is that what you were suggesting?**

20 A. Correct. When Wolfcamp is fracked, based off
21 some of the exhibits or the papers referenced in the past
22 and the gauges, you see contributions from, uh, Third
23 Sand. So if I land in the Wolfcamp, some percentage of
24 that fluid is coming from that Third Sand.

25 **Q. But we can agree, then, you are not just**

1 focusing on the Avogato wells. The converse would be true
2 here (inaudible) since the wells are in the Avogato Sand
3 (Sic) you wouldn't be drawing from the Upper Wolfcamp.

4 A. I'm not sure.

5 Q. Okay.

6 A. It's gathering Upper Wolfcamp-like results at
7 denser than you would land in the upper bench, which to me
8 is very supportive of the development plan we proposed.

9 Q. So let me -- all right.

10 So do you think that -- you know, fractures
11 flow up, Mr. Behm, they can flow up?

12 A. That is the safest assumption, generally, yes.

13 Q. All right. And so if we look at just the
14 Avogato wells completed in the Third Bone Spring Sand, do
15 you agree with me that it would be difficult to suggest
16 that the results that OXY seeks there is associated with a
17 draw from the Upper Wolfcamp, because fractures only go
18 down.

19 A. Well, I don't necessarily know that. To me with
20 where they are landed in the top, it either means that the
21 oil that we target in that flow unit might be a little bit
22 higher in this regional area we are calling out on the map
23 than it is typically further south where we don't target
24 the Third Sand.

25 Q. But what we do know, then, Mr. Behm, is that the

1 **Third Bone Spring Sand seems to be a viable independent**
2 **target.**

3 A. Independent, I don't know that. All I know is
4 that I'm getting Wolfcamp-like results in an upper
5 landing.

6 Q. Now, you mentioned that when you look at this
7 it's a complicated environment out there where we don't
8 know a lot. There's disagreement over how to best develop
9 the Upper Wolfcamp and how to best develop the Third Bone
10 Spring Sand.

11 A. (Note: Pause.) Was there a question there?

12 Q. There is disagreement, isn't there, Mr. Behm?

13 A. People execute different things.

14 Q. And when we look at Devon Exhibit J, you're
15 looking at the same area in the same grouping of wells,
16 right, Mr. Behm? Exhibit J.

17 A. Excluding our Red Tank test delineation well,
18 that Third Sand well is not on there. But the Avogatos
19 are on there.

20 Q. That Red Tank well is the one you said was
21 fairly new production?

22 A. Yes.

23 Q. Okay. All right. So granted, excluding that,
24 when you look at this study on Exhibit J it's the same
25 well sets except it adds the Danger Noodle, right?

1 A. Correct.

2 Q. And we know that -- you heard testimony that the
3 Danger Noodle is not completed in the Third Bone Spring
4 Sands, they are, you know, wine rack pattern in the Upper
5 Wolfcamp.

6 A. They are not landed in the Third Bone Spring,
7 that's correct.

8 Q. And you would agree with me that the performance
9 of the Danger Noodle wells are on par with the wells
10 landed by OXY, the Avogato wells, in just the Third Bone
11 Spring Sand.

12 A. Yes, the performance is similar.

13 Q. If we look, then, at your -- I guess maybe I'll
14 go to...

15 Direct me. So I want to look at your
16 Exhibit -- also, I'm sorry, I -- if I go to your Exhibit
17 D-20, I guess it is. Is that the replacement? I'm sorry,
18 I'm trying to keep all this straight.

19 D-20, yeah. Let's go to that, since that's
20 the replacement exhibit, right, for D-15-A.

21 A. Correct.

22 Q. Did I get that right?

23 All right. The -- the magenta well,
24 whatever color that is -- what color is that, Mr. Behm?

25 A. I'm not real good at colors. The non-green one.

1 Q. I like that. I like that better. Okay. The
2 non-green wells are the -- you plot as the Devon?

3 A. Correct.

4 Q. Okay. And I think you indicated that includes
5 18 wells that are longer than two miles.

6 A. Correct.

7 Q. But if I am understanding this correctly now,
8 six of the 18 you have on here are the more recent
9 three-mile wells.

10 A. The annotated wells on here are three-mile
11 wells.

12 Q. And I think you said there was six of them,
13 right?

14 A. Yes.

15 Q. Okay. The other wells would be
16 two-and-a-half-mile wells?

17 A. Correct.

18 Q. And is that --

19 A. But -- Go ahead. I'm sorry.

20 Q. And does that include, then -- that includes
21 wells that would have been curtailed by the pipeline
22 constraints that Devon identified yesterday.

23 A. I had public data available to me, and I can't
24 speak to constraints, but that was brought up yesterday.

25 Q. When you -- is there a reason why you didn't

1 **just look at the three-mile wells, which is what Devon is**
2 **proposing with its spacing unit in this cas?**

3 A. Yes.

4 **Q. Why did you choose not to examine the three-mile**
5 **wells?**

6 A. I chose to look at all of them, because it is a
7 very small data set. The Thistle wells that I have the
8 most production on are called out on this plot as the 121H
9 and the 108H.

10 As Karsan, or Mr. Sprague, brought up
11 yesterday, I don't have a lot of development up in this
12 area. I do have the Dos Equis 12-13 86H, 73H and the 55H.
13 Those are three wells that are very close to the Thistle.

14 So when I look at this plot, if I were to
15 limit it to analog, and it's too few for me to be very
16 confident, what jumps out on me is the delta between the
17 Dos Equis performance and the Thistle performance.

18 **Q. So now your Boundary Raiders you have on here,**
19 **correct?**

20 A. Yes, sir.

21 **Q. Which is the most recent three-mile well.**

22 A. Yes, sir. It is similar to the Thistle for
23 timing, I think.

24 **Q. And that's a three-mile well in the Upper**
25 **Wolfcamp?**

1 A. Yes.

2 Q. And I think you agree that that performance
3 looks good based on the information that we have?

4 A. Yes. The concern is the Thistle wells aren't up
5 with the Boundary Raider.

6 Q. So now you mentioned -- and you're aware,
7 though, that Mr. Carson did pull the numbers, he did an
8 analysis of the three-mile wells in this area and compared
9 it with Cimarex's wells. Correct?

10 A. Correct.

11 Q. But you pointed out that he didn't include the
12 Dos Equis wells.

13 A. Yes, sir.

14 Q. Now, first off, Mr. Behm, when I looked at the
15 Division's well file for the Dos Equis 5H, the Division's
16 well file indicates that that 5H, which is the Triste draw
17 in Bone Spring, that is not a Wolfcamp.

18 A. Incorrect. It is landed in the Wolfcamp.

19 Q. Have you looked at the well in the Division
20 file?

21 A. I did go to the NMOCD, and I know our regulatory
22 group is working to get everything squared away there with
23 the OCD.

24 Q. All right. So you're aware, then, that the 5H
25 well, at least according to the Division's public Division

1 records and the public reports, is not identified as an
2 Upper Wolfcamp well, it's identified as a Bone Spring
3 well.

4 A. I'm not aware of that.

5 Q. Mr. Behm, I put up here a C-102 plat from the
6 Division's file. It looks like it was an Operator
7 Certification of December, 2018. Do you see that?

8 A. Yes, sir.

9 Q. And is this the C-102 for the 5H well that you
10 have identified on the chart?

11 A. I don't know. It --

12 Q. It -- I'm sorry.

13 A. It appears to be.

14 Q. Okay. Okay. You said you looked at the
15 Division's file. Did you see this?

16 A. I went to the NMOCD when I was informed that the
17 production data was not available.

18 Q. Okay.

19 A. And I notified our regulatory department, and I
20 know they are working with the OCD to get it corrected so
21 our data is where it needs to be.

22 Q. Do you have -- I didn't catch that. I guess you
23 hadn't observed that the 5H is identified as being in the
24 wrong pool.

25 A. No, I hadn't observed that. I'm not a

1 regulatory expert so I am kind of leaning on our
2 regulatory division.

3 Q. Now, you get my next up, Mr. Behm, and that is
4 you mentioned that Devon had failed to, uhm, include in
5 its analysis the Dos Equis wells that you have identified
6 on here, and you stated, I believe, in your affidavit in
7 developing this that you used publicly available data.

8 A. No. I pulled from our data base. What I have
9 for me is our data and then for nonoperated wells is
10 public data.

11 Q. Okay. But have you since confirmed that the
12 production records for these three wells that you called
13 out have not been filed with the Division?

14 A. I don't know the answer to that, I didn't see
15 production on the NM CD, and I know our regulatory group
16 is working with the OCD to fix it.

17 Q. I'm sorry. What did you say? There's no
18 production on the OCD website?

19 A. When I went to look I didn't see any.

20 Q. So, for example when Mr. Sprague, when he went
21 look, he didn't -- wouldn't have seen any, either,
22 correct.

23 A. Correct. That's why I took our production and
24 provided it.

25 Q. That would be the day before the hearing.

1 A. Correct.

2 **Q. Okay. But can you -- you said your regulatory**
3 **people are working with the Division. What are they**
4 **addressing?**

5 MS. BENNETT: Mr. Examiner, I am going to object
6 to this line of questioning. I believe Mr. Behm has
7 testified to what he knows, and he has answered Mr.
8 Feldewert's question with what he knows.

9 MR. FELDEWERT: I don't think he answered with
10 what he knows yet about this.

11 MS. BENNETT: Mr. Behm testified that he's not a
12 regulatory expert but that Cimarex's regulatory folks are
13 working with the Division.

14 **Q. What are they working on, Mr. Behm?**

15 A. On correcting -- I'm not an expert, so excuse
16 me, but working on getting the public data where it needs
17 to be.

18 **Q. So isn't it true, Mr. Behm, that Cimarex has not**
19 **filed monthly production reports for these Dos Equis wells**
20 **even though they have been producing for almost a year?**

21 MS. BENNETT: Mr. Examiner, that question has already
22 been asked and answered.

23 EXAMINER BRANCARD: I don't think it was.

24 MR. FELDEWERT: I don't think it was, either.

25 A. I don't know.

1 Q. Would you agree with me, Mr. Behm, that since
2 neither you could find it on the public records nor could
3 Mr. Sprague that it would appear that for whatever reason
4 Cimarex has not filed its monthly C-115 production reports
5 for these Dos Equis wells that have been producing for
6 almost a year?

7 MS. BENNETT: Mr. Examiner, Mr. Behm has been
8 forthright with what he knows and what he doesn't know,
9 and he has stated that he looked at the OCD website and it
10 wasn't there. I don't think that point is in dispute.

11 EXAMINER BRANCARD: Okay. I don't know it's
12 useful to have the witness speculate.

13 MR. FELDEWERT: Mr. Examiner, I would retender
14 my objection to this exhibit, because I believe you can
15 tell from looking at the Division's website that Cimarex
16 has failed to file their monthly production reports, their
17 C-115s for wells that have been producing for almost a
18 year that are on this exhibit. That's a violation of the
19 Division's rule and is a serious matter for the Director,
20 and I would submit to you that that is major -- should be
21 a major consideration to take into account when
22 considering these matters.

23 So with that said, I have no further
24 questions for this witness.

25 EXAMINER BRANCARD: Okay. Let me get this

1 straight.

2 Are you renewing your motion to strike, Mr.
3 Feldewert? Is that what you're doing?

4 MR. FELDEWERT: Yes, sir.

5 MR. BRANCARD: On the basis that there may be
6 underlying violations indicated by this exhibit?

7 MR. FELDEWERT: On the basis that the
8 information on this exhibit with respect to the Dos Equis
9 wells, and perhaps to other wells, is not publicly
10 available, it's not accessed -- could not be accessed by
11 any party or the Division in examining this information,
12 and it seems to me that when you have a company that's in
13 violation of their monthly reporting requirement for wells
14 that they should not be allowed to use that information on
15 exhibits.

16 MS. BENNETT: Mr. Examiner, may I briefly
17 respond?

18 EXAMINER BRANCARD: Yes, you may.

19 MS. BENNETT: First, there's no indication that
20 there has been a violation of the NMOCD rules, so the
21 foundation for Mr. Feldewert's motion to exclude is
22 lacking a foundation here.

23 And secondly, we did provide the Dos Equis
24 well data on Wednesday, as soon as we realized that it was
25 not on the OCD's website, for both the Division and Devon.

1 And it's not unusual for companies like
2 Devon and Cimarex to have more internal data than
3 externally available data.

4 And then, you know, yesterday we went
5 through a series of exhibits where Devon was relying on
6 information that was not publicly available or only
7 publicly available through subscription.

8 So this is not the type of evidence that
9 should be stricken.

10 EXAMINER BRANCARD: Okay. Two things.

11 No. 1, the witness' testimony has revealed
12 that the data being used for D-15-A is not necessarily
13 comparable in the sense that one set of data is internal
14 and the other set of data is external public data. I
15 think we are aware of that, and we will take that to learn
16 how much we can rely on this exhibit.

17 So I'm going to admit the exhibit.

18 Now, second thing. Ms. Bennett, Mr.
19 DeBrine, this issue has come up before in a competing
20 compulsory pooling case where during the case it was
21 revealed that one of the parties was not keeping up with
22 their obligations to provide data to the OCD as required
23 by law. And I will treat Cimarex the same way as I did
24 the other applicant in their case, which is until you
25 remedy the situation your application is going nowhere.

1 Am I clear?

2 MS. BENNETT: Yes. Thank you.

3 EXAMINER BRANCARD: By remedy I mean remedy it
4 to the satisfaction of the OCD.

5 MS. BENNETT: Understood. And as Mr. Behm
6 mentioned, when this came to Cimarex's attention the
7 regulatory department has begun coordinating with OCD.

8 EXAMINER BRANCARD: This goes directly to Mr.
9 Behm's assertion in his exhibit that Cimarex is a prudent
10 operator.

11 Okay. Mr. Feldewert, you indicated you
12 were done?

13 MR. FELDEWERT: Yes, sir. Thank you.

14 EXAMINER BRANCARD: Mr. Garcia.

15 EXAMINER GARCIA: I do have a few questions.

16 I'm trying to cross off my questions that
17 Mr. Feldewert has done.

18 CROSS EXAMINATION

19 BY EXAMINER GARCIA:

20 Q. The evidence in this case would it delay
21 development of the east half of Avalon and the Bone Spring
22 Wolfcamp?

23 A. I'm sorry, sir, did you say east half or west
24 half?

25 Q. Of the east half, the other development. I know

1 you mentioned that if Devon's three-mile wins the one-mile
2 will be delayed to potentially 2029. Will the east half
3 also be delayed till 2029 or would you develop that?

4 A. With the two-mile block after proposing our
5 Conoco trade, it would have a two-mile economic.

6 Q. I just wanted to clarify that.

7 Do you have any lease obligations around
8 the area of interest?

9 A. I don't believe so.

10 Q. I'm not going to point to a certain exhibit. I
11 think in most of your exhibits, sorry my exhibits are over
12 here, in general Devon's wells were lower performing than
13 the rest of the wells on multiple exhibits. Other than
14 the production curve that Devon mentioned yesterday, do
15 you have any reasons on why they are lower performing
16 wells?

17 A. Uhm, the three-miles specifically?

18 Q. In general. I mean, is Devon following the
19 spacing that in your opinion isn't efficient, or
20 completion design, or...

21 A. I'm not sure how to answer that.

22 Q. Do you have any reason about just the three-mile
23 wells?

24 A. To me the risk is the depths and pressures. Can
25 I generate effective pipe flows (phonetic) and A half

1 length in the toe of my well in Lea County Wolfcamp.

2 Q. I have a next question to you, but I'll just ask
3 it on my notes.

4 Is there any primary concerns with drilling
5 two-miles (sic) during the drilling completion and
6 production phases?

7 A. The main concern is the completion phase for me.

8 Q. Getting it to full frac range at that length of
9 three miles?

10 A. And good transport of sand. A lot of different
11 variables, I think.

12 Q. I believe in one of your exhibits you assumed a
13 linear degradation of 16 1/2 percent per foot. I know
14 graphs and numbers you assume a lot. In real life do you
15 assume it's going to be linear degradation or do think
16 it's exponential after that two mile/three-mile
17 (inaudible).

18 A. There's not enough data to really have a good
19 answer, but what I did is I could see double the
20 degradation I used. There were not a lot of data points
21 so I used half of that to have an answer for degradation,
22 and the long-term curve of that will show up as we have
23 more production.

24 EXAMINER GARCIA: I believe that's all my
25 questions. I will pass you to Mr. Brancard. Thank you.

1 EXAMINER BRANCARD: Thank you.

2 Mr. Behm, you're going to have to stay with
3 me for a bit here because I'm a lawyer and I don't
4 understand charts and graphs and data. So let's look at
5 your Exhibit D-3. Do you have that?

6 THE WITNESS: Yes, sir.

7 MS. BENNETT: Would you like me to share my
8 screen?

9 EXAMINER BRANCARD: That would be wonderful.

10 MS. BENNETT: Ms. Salvidrez, would you mind
11 giving me sharing capability?

12 EXAMINER BRANCARD: Marlene knows better not to
13 give me sharing capabilities, I guess. I'm too old to
14 handle that.

15 MS. BENNETT: And you said Exhibit D-3?

16 EXAMINER BRANCARD: Yes.

17 CROSS EXAMINATION

18 BY EXAMINER BRANCARD:

19 Q. So I just started -- I was just comparing the
20 first and second, okay, I'm ignoring the stranded
21 scenario, but these numbers don't quite add up to me here.

22 For some reason you end up with overall
23 less production with a three-mile and one-mile than you
24 would do with two two-miles. Is that correct?

25 A. Yes, -- yes, I believe so. And the reason for

1 that? On the bottom is I'm assuming lateral lengths per
2 wells, so a one-mile well in Lea County is roughly 4500
3 feet, 4600 feet, and then a two-mile well I'm assuming
4 9500 feet sometimes, or 96. And then I'm assuming 15,000
5 feet for a three-mile.

6 So I used those distances and a
7 Cum-per-foot curve to calculate my barrels.

8 Q. Okay. So if we just did lateral distances you
9 would end up with 19,500 for a three- and a one-, and only
10 19,000 for two two-miles.

11 A. Correct. You would have slightly more footage.

12 Q. But you end up with less with a three-mile and
13 one-mile. Is that because you have decided to add this
14 degradation just for the three-mile? Is that degradation
15 per foot, is that from the two- to three-mile or is that
16 entirely three-mile?

17 A. That's the entire length of the three-mile your
18 reduction in Cum per foot.

19 Q. So that explains, I guess, why a two-mile
20 lateral will have more than double what a one-mile lateral
21 gets.

22 A. Correct.

23 Q. But a three-mile lateral will not have more than
24 50 percent of a two-mile lateral.

25 A. More than 50 percent of the two-mile...

1 Uhm, sorry, I'm just trying to make sure
2 I'm understanding the question.

3 My three-mile, the ratio of production
4 would be 15,000 over 9500 feet. If I got linear uplift I
5 would take that ratio times my two-mile and that then
6 would be my increase of my production curve that we would
7 be looking at.

8 Q. But that's over 50 percent, but you don't have
9 over 50 percent increase for this three-mile well.

10 If you look at that, that gets -- if you
11 had a 50 percent increase in two-mile to three-mile, the
12 three-mile would be like 14,400.

13 A. I might not be following your...

14 Q. Because you have add- -- degraded this
15 three-mile well.

16 A. Oh, yes. I did degrade that three-mile Wolfcamp
17 well.

18 Q. Okay. But apparently you degraded it in other
19 places, too, because what I'm trying to understand, your
20 Avalon production for the three-mile and one-mile is less
21 than the Avalon production for the two-mile/two-mile but
22 you don't show any stranded reserves.

23 I may be a lawyer but I'm decent at adding
24 numbers in my head.

25 A. Our well counts are slightly different on the

1 Avalon. Let me...

2 All I'm doing is I'm taking my Cum per
3 foot, so my two-mile and one-mile ratio would be 9500 foot
4 over 4500 foot.

5 Let me get my table open, sir.

6 **Q. So that means your two-mile and one-mile -- your**
7 **two-mile is almost going to be more than double the**
8 **one-mile, 9500 and --**

9 A. Let me check something real quick on my curve.
10 I just want to make sure I don't say anything that's not
11 accurate. (Note: Pause.) I'm sorry, it's taking me a
12 minute to open my Excel workbook. (Note: Pause.)

13 EXAMINER BRANCARD: We can move on to other
14 questions.

15 THE WITNESS: I'm sorry, I've got this spinning
16 wheel up, and I'm having difficulty opening.

17 (Note: Pause.)

18 **Q. Mr. Behm, if you just look at this chart, I can**
19 **show you what are some puzzling discrepancies and maybe**
20 **you can...**

21 **Are you ready?**

22 A. Yes, sir.

23 **Q. So based on your length of lateral, the**
24 **assumption would be if you go from a one-mile to a**
25 **two-mile you would more than double, right? Because the**

1 **length of the lateral is more than double.**

2 A. Well, I want to open my spreadsheet to be able
3 to check, just to make sure what my base curve was, if I
4 was going down or up.

5 But, yes, 9500 over 4500 would be my delta.

6 Q. **So if you look at from the yellow chart, the**
7 **Wolfcamp Third, the Second Bone, First Bone, the one-mile**
8 **numbers. When you go up to the two-mile numbers they are**
9 **all more than double. You can do that in your head.**

10 A. Correct.

11 Q. **But when you go to the Avalon from the one-mile**
12 **to the two-mile it's well below a double.**

13 A. But the well count is different, so it's -- the
14 well count for how many wells are drilled is different in
15 each case because we have an additional well in the
16 two-mile case for the Avalon.

17 Q. **You have an additional two-mile well as opposed**
18 **to one-mile wells? Is that what you're saying? Or**
19 **additional one-mile well?**

20 A. I've got an additional -- I've got an additional
21 well. There's the Resolver there, and we've got a
22 different well count proposed into the section. So the
23 Devon case below is two three-miles and a two-mile case.
24 That's where the discrepancy is coming from, sir.

25 Q. **So Cimarex would have a different number of**

1 **one-mile laterals than they would two-mile laterals? I'm**
2 **just looking at Cimarex numbers right now.**

3 A. Oh, okay. In the section due to the Resolver, I
4 would have -- there is an existing well in the east half
5 of the section that's already drilled.

6 **Q. An existing one-mile?**

7 A. Yes.

8 **Q. You're adding that existing one-mile into that**
9 **yellow but not into the green?**

10 A. Let me understand that real quick. I really
11 wish I could get my workbook to open up, so I could tell
12 you exactly what I did, because I don't want to misspeak
13 and say the wrong thing here. Because I've checked this,
14 because I thought the numbers looked kind of goofy, too,
15 but...

16 MS. BENNETT: Mr. Examiner and Mr. Behm, would
17 it be helpful if I showed you the Cimarex Avalon wellbore
18 schematic to show how Cimarex's --

19 THE WITNESS: Yes, that would help.

20 MS. BENNETT: All right with you, Mr. Examiner,
21 if I switched to the Cimarex Wellbore Schematic?

22 EXAMINER BRANCARD: Okay. Just for a second.

23 MS. BENNETT: Can everyone see that?

24 **Q. (BY EXAMINER BRANCARD) Okay. So let me jump to**
25 **a conclusion here and you can tell me if I am wrong or**

1 right.

2 If you did a two-mile development you'd add
3 add two -- you'd add three two-mile wells.

4 A. Correct.

5 Q. If you just did a one-mile development you'd do
6 four one-mile wells.

7 A. Four one-mile wells, correct.

8 Q. And you're not counting this production, then,
9 from this existing one-mile well in either chart.

10 A. Correct. I am crediting this area, this
11 proposed west half HSU with half the barrels I would
12 capture from that, uh -- the way that's drawn, there's a
13 well, and the plan here is to capture the missing slot in
14 our section and then capture barrels in Section 12. So
15 I'm including half of 9500 foot for that well.

16 Q. So this 17H well is another two-mile well and it
17 starts in the west half of the west -- the east half of
18 the west half and it ends up in the west half of the east
19 half?

20 A. That's our plan, yes, sir.

21 Q. So it goes from one spacing unit into another?

22 A. The goal was to find a way to not drill a
23 one-mile well, and that is what we had come up with.

24 Q. So you are actually, then, having four wells but
25 one is just not penetrating the southern half on that

1 spacing unit.

2 A. Correct. It's making a left turn and going into
3 the east half of that section. Correct.

4 Q. Okay. Maybe that's why a lot of these charts
5 should have lots of footnotes.

6 Let me just go to one other thing here.
7 I'm really puzzled by the questioning you had this morning
8 with your counsel over the rebuttal exhibits from Devon.

9 Your exhibits show when you get into D-13,
10 -14, that Devon is just not in the ballpark with you or
11 other operators in terms of production. Correct? They
12 were the bottom line there in D-13 and D-14. Below
13 everybody else.

14 And that was a big part of your testimony
15 in your affidavit.

16 But then when we flipped over to Devon's
17 rebuttal exhibits where their charts showed basically
18 equal production between Devon and Cimarex, you were okay
19 with that.

20 A. Let me think about that.

21 The wells that they included -- I mean, I
22 guess the Dos Equis is more complex, but Dos Equis, based
23 off the wells excluded, to me it would make the same
24 point, because it's only including my densest drilled
25 stuff, it's dropping parent wells that have been since

1 offset, where the Cum out of the section is kind of what
2 it is. I wouldn't necessarily drop those.

3 And then it's dropping all the
4 two-and-a-half -- the kind of the poor performers.

5 Q. Okay. Well, that's leading to my real question
6 here, which is about: What is the data set?

7 And so if we look at Exhibit D-12, you have
8 a map right here, and your data set for these big slides
9 that follow is what you call South Lea County. Is that
10 correct?

11 A. Correct.

12 Q. Is that a geologic unit?

13 A. No, sir.

14 Q. Okay. If you look at your triangle in the map
15 to the right side of here -- sorry, your rectangle.
16 Wrong. The rectangle Area of Interest, right -- what
17 you're including in this by arbitrarily picking Lea County
18 is wells 20 miles to the east, wells 20 miles to the
19 south, but not wells that would be six miles to the west.

20 A. Correct. This is --

21 Q. Do you think there is a problem with anything in
22 Eddy County?

23 A. I'm sorry, sir, could you say that one more
24 time?

25 Q. There's problem geologically with Eddy County?

1 A. No, the intent here was the pressure and the
2 depth are the highest here. I've got significant Wolfcamp
3 development between these two areas where both Cimarex and
4 Devon and Conoco/Concho have drilled a lot of wells. The
5 intent of this was to say what is a good two-mile
6 performance, and then look at three-mile wells. Because
7 there's not a large data set, and I don't have a lot of
8 wells, and so the goal of this was: Well, we can all
9 agree, you know, EOG has drilled a lot of wells in between
10 those two points, that might be a decent baseline to
11 compare performance against if for some reason there was a
12 problem with the curve I proposed for us.

13 **Q. But I guess my question is: Why aren't you**
14 **picking a data set where the Area of Interest is in the**
15 **middle and not way off to the side?**

16 A. Of the -- the Thistle wells are, what, three to
17 four miles to the east, and the risk profile to me moving
18 straight down from there would be very similar due to the
19 depths and pressures.

20 I thought this would be a good data set to
21 use.

22 **Q. Okay. Well then let's flip to what Devon is**
23 **using as a data set. And I'm on Exhibit K, just because**
24 **it has a map.**

25 **Now, this appears to be Devon's data set,**

1 but there the Area of Interest again is way to the north
2 like yours is, but at least it seems to be balanced
3 between the east and the west there.

4 I mean, do you think their data set is a
5 little more centered around the Area of Interest than
6 yours?

7 A. Uhm, I don't know. Uhm, from an approach
8 standpoint, my goal was to take a large area where the
9 pressure and the depth issue and performance was well
10 understood and fully developed, and then drill down
11 specifically to the much smaller data set that we both
12 have to evaluate the wells.

13 Q. Okay. Well, it's always a challenge in these
14 hearings for us to evaluate different approaches to data,
15 so sort of trying to get to the bottom of it here.

16 Anyway, those are my questions.

17 Do we have any redirect?

18 MS. BENNETT: Yes. Thank you, Mr. Brancard.

19 Can you see my slides, Mr. Behm, my screen?

20 THE WITNESS: Yes.

21 MS. BENNETT: Uhm, give me have just a second
22 here, please. I'm going to be turning back to Exhibit D-2
23 just for a minute.

24 Actually, before I do that I wanted to ask
25 you a question.

REDIRECT EXAMINATION

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BY MS. BENNETT:

Q. Mr. Feldewert asked you why you included two-and-a-half mile and three-mile wells. Do you remember that?

A. Yes.

Q. And in your opinion are the two-and-a-half-mile wells subject to the same sort of rate and pressure limitations that are -- that three-mile wells are subject to in this area?

A. I am concerned about those risks materializing beyond two miles in this area that are depth and pressure, yes, ma'am.

Q. Is that why you included the two-and-a-half-miles in your study?

A. Yes. I wanted the biggest data set I could get, because there are not very many wells. I'm uncomfortable excluding any wells.

Q. Mr. Garcia and you discussed this degradation, your 16.5 percent degradation per foot. Do you remember that?

A. Yes, ma'am.

Q. I just want it to be clear that in your opinion is 16.5 percent conservative?

A. It could be. It's half of the average

1 degradation that's there now. But again this is a very
2 small data set with limited production history. So that's
3 how I approached it.

4 Q. When -- yesterday when Devon's witnesses were
5 testifying, did you understand them or hear them testify
6 that near-term production is more optimal than, say,
7 production out in the future?

8 A. Yes.

9 Q. And is that the same -- is that consistent with
10 what you're saying about Section 1?

11 A. Yes.

12 Q. And, uhm, I'm going to go back to that -- uh,
13 just because we all have oriented ourselves to it now, I'm
14 going to just go back to that Avalon structure map, not
15 because I want to talk about the Avalon, but I did just
16 want to note that now this acreage right here in the east
17 half of Section 12, a large portion of that is now Cimarex
18 acreage. Is that right?

19 A. Correct.

20 Q. So Cimarex has the majority interest in Sections
21 1 and 12 as a result of the trade with Conoco; is that
22 right?

23 A. Yes.

24 Q. And Mr. Garcia, I believe, asked you questions
25 about whether you would develop the east half as two-miles

1 even if you are limited by Devon's choice to extend this
2 as a three-mile lateral over your acreage, if you would
3 still drill these two-mile wells. Do you recall that?

4 A. Yes.

5 Q. And if Devon were to drill three-mile laterals
6 up into this area here, would that present the risk of
7 parent/child effect that we discussed earlier today?

8 A. Yes.

9 MS. BENNETT: Thank you. Those are all the
10 questions I have.

11 MR. FELDEWERT: Mr. Examiner, if I may? Can we
12 leave this exhibit up? I had one question -- I have a
13 couple of questions about this.

14 EXAMINER BRANCARD: Mr. Feldewert, could you
15 just speak a little louder?

16 MR. FELDEWERT: I'm sorry. Can you hear me?

17 EXAMINER BRANCARD: Yes.

18 MR. FELDEWERT: May I ask the witness a couple
19 of questions about this exhibit, Mr. Brancard, and then
20 I'm finished.

21 EXAMINER BRANCARD: All right. But you could
22 end up with a re-redirect.

23 MR. FELDEWERT: Oh, boy.

24 RE CROSS EXAMINATION

25 BY MR. FELDEWERT:

1 Q. Mr. Behm, I'm looking at this 17-page -- this is
2 the one with the crooked line on C-3-A.

3 A. Yes, sir.

4 Q. Now, if you -- if Cimarex is awarded
5 operatorship of this proposed two-mile spacing unit in the
6 west half of 12, your proposition is to develop the east
7 half of the west half with a well that would start in the
8 east half of the west half of Section 1 and end up in the
9 west half of the east half of Section 12 outside the
10 spacing unit?

11 A. That's a way to avoid one-mile wells and get
12 two-mile economics.

13 Q. And you would propose to drill this well in the
14 Avalon Interval?

15 A. Yes.

16 Q. The Interval that your geologist indicated has
17 chert and other characteristics that can make drilling
18 challenging?

19 A. Yes.

20 Q. And you want to do a left turn in the middle of
21 the Avalon and go outside of the proposed spacing unit?

22 A. I would have to check and see if this is our
23 actual directional plan. It might be a cartoon for how
24 severe that slant is.

25 Q. Have you done -- has Cimarex done anything like

1 **this in the Avalon in this area?**

2 A. Not in this section. We've drilled 2-mile
3 wells, you know, immediately to the east, and that well
4 specifically, since it's right under the pad and we are
5 not kicking out, might be a little bit easier to do maybe
6 something nonstandard on.

7 **Q. But my question is: Have you drilled a**
8 **deviation like you propose here in this area in the**
9 **Avalon?**

10 A. I'm not sure. I would need to check that.

11 **Q. And if you don't do this deviation and Cimarex**
12 **is awarded their proposed two-mile spacing unit, you would**
13 **then have to drill a one-mile well in the east half of the**
14 **west half of Section 1?**

15 A. That's correct.

16 **Q. Complete the development, correct?**

17 A. Correct.

18 **Q. So even with your proposed spacing unit you're**
19 **looking at drilling a one-mile well.**

20 MS. BENNETT: Objection, Mr. Hearing Examiner.
21 That is not what Mr. Behm testified.

22 EXAMINER BRANCARD: Well, he can always answer
23 no.

24 A. No.

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

1 EXAMINER BRANCARD: All right. Are we finished
2 with Mr. Behm?

3 MS. BENNETT: I believe we are, yes. Thank you.

4 EXAMINER BRANCARD: Mr. Garcia, anything more?

5 EXAMINER GARCIA: I have no further questions
6 and hope Mr. Behm's first time in a hearing was eventful.

7 EXAMINER BRANCARD: Yes. Thank you, Mr. Behm,
8 for your patience. You were on the stand there a while.

9 THE WITNESS: Thank you.

10 MS. BENNETT: Mr. Hearing Examiner, could I just
11 clear up one thing for the record or propose one thing for
12 the record?

13 EXAMINER BRANCARD: Well, we need to clear up a
14 bunch of things for the record.

15 MS. BENNETT: All right. We'll get our pennies
16 and beers ready.

17 EXAMINER BRANCARD: So are we done with today's,
18 and yesterday's testimony and exhibits at this point?

19 Let's start with testimony.

20 MR. DeBRINE: Yes, Mr. Examiner. Cimarex rests
21 its case and submits the matter for consideration of the
22 Division.

23 EXAMINER BRANCARD: Mr. Feldewert?

24 MR. FELDEWERT: Mr. Examiner, I see that it's
25 10:30 anyway. Could we take a five-minute break and let

1 me check with my client?

2 EXAMINER BRANCARD: That would be fine. Why
3 don't we take a 10-minute break. And so 10:50, and then
4 we will figure out how we are going to wrap this package.

5 MR. FELDEWERT: Thank you, sir.

6 MS. BENNETT: Thank you.

7 (Note: In recess from 10:38 a.m. to 10:50 a.m.)

8 EXAMINER BRANCARD: Mr. Feldewert, are you
9 there?

10 MR. FELDEWERT: Yes, Mr. Examiner.

11 EXAMINER BRANCARD: All right.

12 I believe we are at the end of submission
13 of testimony here on these seven cases, so I can start
14 with discussing what other documentation we need. And I'm
15 talking mostly about stuff we've touched upon during the
16 course of the hearing the last two days, and Mr. Garcia
17 may chime in with other items.

18 So for Cimarex, we have two of your
19 witnesses need to provide revised affidavits, Mr. Blake
20 and Mr. Behm.

21 And then I wasn't sure what you wanted to
22 do with the rebuttal exhibits that don't quite replace the
23 existing exhibits. That's D-14 and D-15, the original
24 exhibits.

25 MS. BENNETT: Thank you, Mr. Hearing Examiner.

1 What I would propose is that we meld the two, the original
2 D-14 with the rebuttal exhibit, so that it is complete.
3 And we would do that for both of the exhibits that have
4 information on the original exhibit that we did not cut
5 and paste onto the rebuttal exhibit.

6 EXAMINER BRANCARD: That would be fine, as long
7 as you're just cutting and pasting and not inventing new
8 things.

9 MS. BENNETT: Yes, sir. That's what we would
10 do.

11 EXAMINER BRANCARD: The other issue which we had
12 already addressed yesterday is updated working interest
13 control numbers based on the trade with ConocoPhillips.
14 And so that would be:

15 1: Devon would update their numbers for their
16 proposed spacing unit. And I believe you had three
17 numbers, right, because you had three different spacing
18 units.

19 MR. FELDEWERT: Yes, Mr. Examiner. I'm looking
20 at our Exhibit A-3 now. Obviously Devon's percentage does
21 not change. The only thing that changes would be
22 ConocoPhillips' and Cimarex's percentages. So we can
23 update that fairly quickly.

24 EXAMINER BRANCARD: Right. So that's Exhibit
25 A-3, and it's the last three numbers because it's three

1 different spacing units, right, the entire west half, the
2 east half of the west half, and the west half of the west
3 half.

4 MR. FELDEWERT: Yes, sir.

5 EXAMINER BRANCARD: All right. And then we
6 need -- I guess one number we haven't gotten exactly is
7 the overlap section or half section, west half of
8 Section 12. So we need one or both of you to provide us
9 with a working interest control for that. Again, should
10 be pretty simple.

11 MR. FELDEWERT: We can certainly provide that
12 ownership, Mr. Examiner, in the west half of Section 12.

13 EXAMINER BRANCARD: Okay.

14 MS. BENNETT: And, Mr. Examiner, we will prepare
15 that, as well, given that it's the Cimarex and Conoco
16 trade that's at issue that gives rise to the change there.
17 We will provide that.

18 EXAMINER BRANCARD: Okay. And my understanding
19 was, what, you went from what was Conoco's interest
20 becomes, what, 84 percent Cimarex and 16 percent Conoco?

21 MS. BENNETT: I think that's right, but that's
22 why we need to prepare the exhibit. But I think that's
23 right.

24 EXAMINER BRANCARD: And then of course, you
25 know, the other big issue is that Cimarex needs to work

1 with the Division to resolve whatever filings have not
2 been timely made.

3 Mr. Garcia, I think you may have looked
4 into this. It may not just be the C-115s, but there are
5 also completion reports that needed to be done?

6 EXAMINER GARCIA: I believe it was the water use
7 reports and possibly C-104 packets.

8 EXAMINER BRANCARD: And those are for the three
9 DOS Equis wells, correct, Mr. Garcia?

10 EXAMINER GARCIA: Correct.

11 EXAMINER BRANCARD: Mr. Garcia, did you want to
12 follow up with that or do you want some verification from
13 Cimarex?

14 EXAMINER GARCIA: Yeah. I was going to ask you,
15 Mr. Brancard, on how the party is going to verify with us.
16 Is there going to be an exhibit or is it going to be an
17 email? How will we know that they -- I guess my question
18 on the hearing side. I know I probably won't see it. I
19 just don't know if it will be part of the record when I
20 see it.

21 EXAMINER BRANCARD: I think you need to file
22 something with us on the hearing side. Otherwise, we're
23 just kind of in the --- I mean, people in the compliance
24 side might be working on this but they don't talk to us on
25 the hearing side.

1 EXAMINER GARCIA: Yeah. You know, I (inaudible)
2 those.

3 And Mr. Brancard talked about that. This
4 isn't the first time we've done this in hearing. He did
5 the same thing he did the last time and I'll do the same
6 thing as the last time.

7 If you need to contact, Brandon Pell, the
8 bureau chief, will be probably the best contact for this.

9 MR. DeBRINE: We are happy to work with Mr. Pell
10 and get the information to the hearing side of the
11 Division.

12 EXAMINER BRANCARD: Mr. Feldewert?

13 MR. FELDEWERT: Yes. I'm wondering -- uhm, as
14 you know, Devon has been -- had hoped to get these cases
15 to hearing sooner rather than later. We have now gone to
16 hearing. I'm a little concerned if there is a substantial
17 delay associated with Cimarex correcting their issues.

18 Is there a way that we can move forward?
19 Is there a time limit? In other words, given -- you know,
20 Devon has obviously articulated the reasons why they need
21 to get out there and start their development project, you
22 know. Is there a time frame in mind? Is this going to
23 delay here, I guess the decision and the Order?

24 That's my concern.

25 And it shouldn't -- I mean, it shouldn't,

1 right? We shouldn't be penalized by Cimarex's mistakes.

2 EXAMINER BRANCARD: Hopefully Cimarex will be on
3 the ball about this and get moving quickly on this.

4 Uhm --

5 MR. DeBRINE: Mr. Examiner, obviously we will
6 move as expeditiously as possible to rectify any reporting
7 issues and, hopefully, have that done.

8 We do believe that the restrictions on the
9 praire chicken prevent Devon from doing anything between
10 now and June 14, and I could provide some legal argument
11 with respect to that. But I don't think that's necessary.
12 I think the hurry-up is more of a contention than an
13 actuality.

14 EXAMINER BRANCARD: Don't bother us with what
15 the BLM's doing, it just hurts our brains.

16 So I think this could be resolved from
17 Cimarex's perspective, I think within a few weeks, if not
18 sooner. I mean, it's just numbers, forms.

19 Whether that actually resolves the
20 Division's compliance efforts, I don't know. That's up to
21 other people to decide. But I think at a minimum we would
22 want to see, you know, what needs to be filed, what should
23 have been filed get filed, and then the company can work
24 it out with the OCD about how to finally resolve the
25 compliance issues there.

1 So, you know, I don't think this is going
2 to be much of a deadline buster for us. We have also the
3 hearing from last week we have to do, too. Also Cimarex.

4 MR. FELDEWERT: What hearing?

5 EXAMINER BRANCARD: Already out of your head,
6 huh?

7 MR. FELDEWERT: You forced it out of my head.

8 MR. DeBRINE: We thought about calling Mr.
9 Feldewert as a witness in this case.

10 MR. FELDEWERT: I would have liked to have
11 called your other engineer as a witness in this case, and
12 asked they discuss the (inaudible).

13 I wish I had a transcript of the hearing
14 last week where Cimarex was flip-flopping, but I didn't,
15 so...

16 EXAMINER BRANCARD: Okay. Mr. Garcia, other
17 matters?

18 EXAMINER GARCIA: I have none on this. I don't
19 know how long the timeline will be to correct this. I do
20 know we typically wait to receive transcripts, so there is
21 the initial delay anyways.

22 EXAMINER BRANCARD: Mr. Garcia, do you see any
23 value in post-hearing submittals from the parties?

24 EXAMINER GARCIA: I do not. (Inaudible) was
25 asked for and the clarifying of, essentially, the last

1 schematics. I know sometimes we ask for Proposed Orders.
2 I know how the Orders are going to look, so...

3 EXAMINER BRANCARD: Mr. Garcia may have already
4 flipped the coin.

5 EXAMINER GARCIA: I know what both parties would
6 have said in both Orders, I guess is how I should say it.

7 EXAMINER BRANCARD: All right. Well, I
8 appreciate everyone's efforts. I think there was some
9 good presentations here, a lot of good exhibits. You
10 know, some very colorful.

11 And with that I think if there are no other
12 issues before us we can close this hearing.

13 MR. DeBRINE: Mr. Brancard, just one other issue
14 for the benefit of Ms. Macfarlane. When I was in my
15 opening referring to the Order in the BTA case, the Order
16 is R-21416-A.

17 EXAMINER GARCIA: Can you repeat that one for,
18 me?

19 MR. FELDEWERT: I think it's in our prehearing
20 statement.

21 MR. DeBRINE: It's in the Prehearing Statement,
22 as Mr. Feldewert pointed out, but I thought I'd just put
23 that for the benefit of Ms. Macfarlane. R-21416-A.

24 MR. FELDEWERT: I'm assuming, yeah, you got it
25 right. It's in our Prehearing Statement.

1 EXAMINER BRANCARD: That's the correct one. I
2 looked it up.

3 All right. Thank you, everyone.

4 MR. FELDEWERT: Thank you very much for your
5 time. Have a good weekend.

6 MR. DeBRINE: Thank you.

7 MS. BENNETT: Thank you.

8 (Time noted 11:02 A.M.)

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1 STATE OF NEW MEXICO)
2 : ss
3 COUNTY OF TAOS)
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