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STATE OF NEW MEXICO  
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION HEARINGS  
  
-----  
IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:  
  
APPLICATION OF COG OPERATING, Case Nos.  
LLC FOR COMPULSORY POOLING, 22298-22300  
LEA COUNTY, NEW MEXICO;  
  
APPLICATION OF COLGATE Case Nos.  
OPERATING, LLC TO POOL 23149-23156  
ADDITIONAL INTERESTS, LEA  
COUNTY, NEW MEXICO;  
  
APPLICATION OF COLGATE Case Nos.  
OPERATING, LLC FOR COMPULSORY 23093;  
POOLING, EDDY COUNTY, 23107-23114  
NEW MEXICO

1	APPLICATION OF CROCKETT	Case Nos.
2	OPERATING, LLC FOR	23092 & 23096
3	COMPULSORY POOLING, LEA	
4	COUNTY, NEW MEXICO;	
5		
6	APPLICATION OF DEVON ENERGY	Case Nos.
7	COMPANY, L.P. FOR HORIZONTAL	23119, 23120
8	SPACING UNIT AND COMPULSORY	23147, 23148
9	POOLING, LEA COUNTY, NEW	
10	MEXICO;	
11		
12	APPLICATION OF EARTHSTONE	Case Nos.
13	OPERATING, LLC FOR COMPULSORY	22978-22981
14	POOLING, LEA COUNTY, NEW	
15	MEXICO;	
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17	APPLICATION OF FRANKLIN	Case Nos.
18	MOUNTAIN ENERGY FOR	23129-23167
19	COMPULSORY POOLING, LEA	
20	COUNTY, NEW MEXICO;	
21		
22	APPLICATION OF MARATHON OIL	Case Nos.
23	PERMIAN, LLC FOR COMPULSORY	23168, 23169
24	POOLING, EDDY COUNTY, NEW	
25	MEXICO;	

1	APPLICATION OF MATADOR	Case Nos.
2	PRODUCTION COMPANY FOR	22211-22218;
3	COMPULSORY POOLING, LEA	
4	COUNTY, NEW MEXICO;	
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6	APPLICATION OF MATADOR	Case Nos.
7	PRODUCTION COMPANY FOR	22988
8	COMPULSORY POOLING, EDDY	
9	COUNTY, NEW MEXICO;	
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11	APPLICATION OF MATADOR PRODUCTION	Case Nos.
12	COMPANY TO AMEND ORDER, LEA	23121-23128
13	COUNTY, NEW MEXICO;	
14		
15	APPLICATION OF MEWBOURNE OIL	Case Nos.
16	COMPANY FOR COMPULSORY POOLING,	22161-22164
17	LEA COUNTY, NEW MEXICO;	
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19	APPLICATION OF MEWBOURNE OIL	Case Nos.
20	COMPANY FOR COMPULSORY POOLING,	22427, 22428,
21	EDDY COUNTY, NEW MEXICO;	22721, 22722,
22		23115, 23170-
23		23173
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1	APPLICATION OF OXY USA, INC.	Case Nos.
2	FOR APPROVAL OF NON-STANDARD	23116
3	HORIZONTAL WELL, LEA COUNTY,	
4	NEW MEXICO;	
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6	APPLICATION OF SPUR ENERGY	Case Nos.
7	PARTNERS, LLC FOR COMPULSORY	23046, 23094
8	POOLING, EDDY COUNTY, NEW	23100,
9	MEXICO;	
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11	APPLICATION OF STEWARD ENERGY	Case Nos.
12	II, LLC TO POOL ADDITIONAL	23095
13	INTERESTS AND COMPULSORY POOLING	23097-23099
14	LEA COUNTY, NEW MEXICO;	
15		
16	APPLICATION OF TAP ROCK	Case Nos.
17	OPERATING, LLC FOR	23105-23106
18	COMPULSORY POOLING, LEA	
19	COUNTY, NEW MEXICO;	
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21	APPLICATION OF V-F PETROLEUM,	Case Nos.
22	INC. FOR COMPULSORY POOLING AND	23117, 23118
23	HORIZONTAL SPACING UNIT, EDDY	
24	COUNTY, NEW MEXICO;	
25		

1 APPLICATION OF V-F PETROLEUM, Case Nos.  
2 INC. FOR COMPULSORY POOLING AND 23102-23104  
3 HORIZONTAL SPACING UNIT, LEA  
4 COUNTY, NEW MEXICO;  
5  
6 APPLICATION OF WHIPTAIL Case No.  
7 MIDSTREAM, LLC FOR HEARING 22782  
8 ON REMEDIATION AND CLOSURE  
9 PLANS, RIO ARRIBA COUNTY,  
10 NEW MEXICO;  
11  
12 APPLICATION OF FAE II OPERATING, Case Nos.  
13 LLC FOR APPROVAL OF AN ENHANCED 22971, 22972  
14 OIL RECOVERY PROJECT, LEA  
15 COUNTY, NEW MEXICO.

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VIDEOCONFERENCE HEARING

DATE: Thursday, November 3, 2022  
TIME: 8:15 a.m. MDT  
BEFORE: Hearing Examiner Bill Brancard  
Technical Examiner Dean McClure  
Special Guest Examiner, Philip Goetze  
LOCATION: Remote Proceeding  
Santa Fe, NM 87501  
REPORTED BY: Dana Fulton, Notary Public  
JOB NO.: 5529252

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A P P E A R A N C E S

ON BEHALF OF NEW MEXICO ENERGY MINERALS AND NATURAL  
RESOURCES DEPARTMENT:

MARLENE SALVIDREZ, ESQUIRE (by videoconference)  
New Mexico Energy Minerals and Natural Resources  
Department, Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, NM 87505  
marlene.salvidrez@state.nm.us  
(505) 469-5527

ON BEHALF OF CHEVRON U.S.A., INC., APACHE CORPORATION,  
AND FRANKLIN MOUNTAIN ENERGY:

DEANA M. BENNETT, ESQUIRE (by videoconference)  
Modrall Sperling  
P.O. Box 2168  
Albuquerque, NM 87103  
deana.bennett@modrall.com  
(505) 848-1834

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A P P E A R A N C E S (Cont'd)  
ON BEHALF OF MATADOR PRODUCTION COMPANY, MEWBOURNE OIL  
COMPANY, OXY USA, INC., COG OPERATING, LLC, EARTHSTONE  
OPERATING, APACHE CORPORATION, ADVANCE ENERGY  
PARTNERS, CONOCOPHILLIPS COMPANY:

JAMES BRUCE, ESQUIRE (by videoconference)  
P.O. Box 1056  
Santa Fe, NM 87504  
jamesbruce@aol.com  
(505) 982-2043

ON BEHALF OF APACHE CORPORATION; CHEVRON USA, INC.;  
CITATION OIL AND GAS CORPORATION; OXY USA, INC.; XTO  
HOLDINGS, LLC; XTO ENERGY, INC.; TAP ROCK OPERATING,  
LLC; MRC DELAWARE RESOURCES, LLC; MRC PERMIAN;  
EARTHSTONE OPERATING; TAP ROCK OPERATING, LLC;  
CONOCOPHILLIPS; COG OPERATING, LLC; CONCHO OIL AND  
GAS, LLC:

MICHAEL FELDEWERT, ESQUIRE (by videoconference)  
Holland & Hart  
110 North Guadalupe, Suite 1  
Santa Fe, NM 87501  
mfeldewert@hollandhart.com  
(505) 988-4421



1 A P P E A R A N C E S (Cont'd)

2 ON BEHALF OF DOYLE AND MARGARET HARTMAN:

3 J. E. GENE GALLEGOS, ESQUIRE (by videoconference)  
4 Gallegos Law Firm, PC  
5 460 St. Michaels Drive, Building 300  
6 Santa Fe, NM 87505  
7 (505) 983-6686

8  
9 ON BEHALF OF COG OPERATING; CONOCO PHILLIPS; COLGATE  
10 OPERATING; SPUR ENERGY PARTNERS; STEWARD ENERGY; Forty  
11 Acres Energy; FAE II Operating:

12 DANA HARDY, ESQUIRE (by videoconference)  
13 Hinkle Shanor  
14 P.O. Box 2068  
15 Santa Fe, NM 87504  
16 dhardy@hinklelawfirm.com  
17 (505) 982-4554

18  
19 ON BEHALF OF SILVERBACK II OPERATING, COTERRA ENERGY  
20 COMPANY:

21 BENJAMIN HOLLIDAY, ESQUIRE (by videoconference)  
22 Holliday Energy Law Group  
23 4040 Broadway Street, Suite 350  
24 San Antonio, TX 78209  
25 (210) 469-3187

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A P P E A R A N C E S (Cont'd)

ON BEHALF OF SPUR ENERGY PARTNERS, STEWARD ENERGY II,  
LLC; V-F PETROLEUM, INC.; COLGATE OPERATING, LLC:

JACLYN MCLEAN, ESQUIRE (by videoconference)  
Hinkle Shanor, LLP  
218 Montezuma Avenue  
Santa Fe, NM 87501  
(505) 623-9332

ON BEHALF OF COG OPERATING, LLC; CONOCO PHILLIPS:

OCEAN MUNDS-DRY, ESQUIRE (by videoconference)  
ConocoPhillips  
1048 Paseo de Peralta  
Santa Fe, NM 87501  
ocean.munds-dry@conocophillips.com  
(505) 780-8000

ON BEHALF OF EGL RESOURCES:

EARNEST PADILLA, ESQUIRE (by videoconference)  
Padilla Law Firm, P.A.  
P.O. Box 2523  
Santa Fe, NM 87504  
padillalaw@questoffice.net

1 A P P E A R A N C E S (Cont'd)

2 ON BEHALF OF EOG RESOURCES:

3 JAMES PARROT, ESQUIRE (by videoconference)

4 Beatty & Wozniak

5 500 Don Gaspar Avenue

6 Santa Fe, NM 87505

7 jparrot@bwenenergy.com

8 (303) 407-4458

9

10 ON BEHALF OF OXY USA, INC.:

11 ADAM RANKIN, ESQUIRE (by videoconference)

12 Holland & Hart, LLP

13 110 North Guadalupe, Suite 1

14 Santa Fe, NM 87501

15 (505) 954-7294

16

17 ON BEHALF OF TAP ROCK OPERATING, LLC:

18 MICHAEL RODRIGUEZ, ESQUIRE (by videoconference)

19 Tap Rock Operating, LLC

20 523 Park Point Drive

21 Golden, CO 80401

22 mrodriguez@taprk.com

23 (720) 245-2606

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A P P E A R A N C E S (Cont'd)  
ON BEHALF OF WHIPTAIL MIDSTREAM; V-F PETROLEUM, INC.;  
COTERRA ENERGY COMPANY; CIMAREX ENERGY COMPANY; DEVON  
ENERGY PRODUCTION:

DARIN SAVAGE, ESQUIRE (by videoconference)  
Abadie & Schill  
214 McKenzie Street  
Santa Fe, NM 87501  
darin@abadieschill.com  
(970) 385-4401

ON BEHALF OF ADVANCED ENERGY PARTNERS; CROCKETT  
OPERATING, LLC:

PAULA VANCE, ESQUIRE (by videoconference)  
Holland & Hart  
110 North Guadalupe, Suite 1  
Santa Fe, NM 87501  
pmvance@hollandhart.com  
(505) 954-7286

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
Crockett Operating, L.L.C. (Case no. 23092):		
Exhibit A	Compulsory Pooling Checklist	49/50
Exhibit B	Application	49/50
Exhibit C	Landman Affidavit	49/50
Exhibit D	Geologist Affidavit	49/50
Exhibit E	Notice Affidavit	49/50
Exhibit F	Affidavit of Publication	49/50
(Exhibits retained by counsel.)		

NO.	DESCRIPTION	ID/EVD
Crockett Operating, L.L.C. (Case no. 23096):		
Exhibit A	Compulsory Pooling Checklist	52/54
Exhibit B	Application	52/54
Exhibit C	Landman Affidavit	52/54
Exhibit D	Geologist Affidavit	52/54
Exhibit E	Notice Affidavit	52/54
Exhibit F	Affidavit of Publication	52/54
(Exhibits retained by counsel.)		

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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
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Spur Energy Partners (Case no. 23046):

Exhibit A	Landman Affidavit	56/58
Exhibit B	Geologist Affidavit	56/58
Exhibit C	Notice Affidavit	56/58

(Exhibits retained by counsel.)

NO.	DESCRIPTION	ID/EVD
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Colgate Operating (Case no. 23093):

Exhibit A	Landman Affidavit	60/61
Exhibit B	Geologist Affidavit	60/61
Exhibit C	Notice Affidavit	60/61

(Exhibits retained by counsel.)

NO.	DESCRIPTION	ID/EVD
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Steward Energy (Case no. 23099):

Exhibit A	Landman Affidavit	66/68
Exhibit B	Geologist Affidavit	66/68
Exhibit C	Notice Affidavit	66/68

(Exhibits retained by counsel.)

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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
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Spur Energy Partners (Case no. 23100):

Exhibit A	Landman Affidavit	71/72
Exhibit B	Geologist Affidavit	71/72
Exhibit C	Notice Affidavit	71/72

(Exhibits retained by counsel.)

NO.	DESCRIPTION	ID/EVD
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V-F Petroleum, Inc. (Case nos. 23102-23104):

Exhibit A	Landman Affidavit	75/78
Exhibit B	Geologist Affidavit	75/78
Exhibit C	Notice Affidavit	75/78

(Exhibits retained by counsel.)

NO.	DESCRIPTION	ID/EVD
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Colgate Operating (Case nos. 23107-23110):

Exhibit A	Landman Affidavit	81/88
Exhibit B	Geologist Affidavit	81/88
Exhibit C	Notice Affidavit	81/88

(Exhibits retained by counsel.)

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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
Colgate Operating (Case nos. 23111-23114):		
Exhibit A	Landman Affidavit	91/92
Exhibit B	Geologist Affidavit	91/92
Exhibit C	Notice Affidavit	91/92
(Exhibits retained by counsel.)		

NO.	DESCRIPTION	ID/EVD
Mewbourne Oil Company (Case no. 23115):		
Exhibit A	Landman Affidavit	96/98
Exhibit B	Geologist Affidavit	96/98
Exhibit C	Notice Affidavit	96/98
(Exhibits retained by counsel.)		

NO.	DESCRIPTION	ID/EVD
Oxy USA, Inc. (Case no. 23116):		
Exhibit A	Compulsory Pooling Checklist	106/107
Exhibit B	Application	106/107
Exhibit C	Landman Affidavit	106/107
Exhibit D	Geologist Affidavit	106/107
Exhibit E	Facilities Engineer Affidavit	106/107
Exhibit F	Notice Affidavit	106/107
Exhibit G	Affidavit of Publication	106/107
(Exhibits retained by counsel.)		



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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
V-F Petroleum, Inc. (Case no. 23117):		
Exhibit A	Landman Affidavit	110/111
Exhibit B	Geologist Affidavit	110/111
Exhibit C	Notice Affidavit	110/111
(Exhibits retained by counsel.)		

NO.	DESCRIPTION	ID/EVD
V-F Petroleum, Inc. (Case no. 23118):		
Exhibit A	Landman Affidavit	113/117
Exhibit B	Geologist Affidavit	113/117
Exhibit C	Notice Affidavit	113/117
(Exhibits retained by counsel.)		

NO.	DESCRIPTION	ID/EVD
Devon Energy Production Company, LP (Case nos. 23119, 23120):		
Exhibit A	Landman Affidavit	123/126
Exhibit B	Geologist Affidavit	123/126
Exhibit C	Notice Affidavit	123/126
(Exhibits retained by counsel.)		

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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
Matador Production Company (Case nos. 23121-23124):		
Exhibit A	Extension Applications	129/130
Exhibit B	Original Orders	129/130
Exhibit C	Landman Affidavit	129/130
Exhibit D	Notice Affidavit	129/130
Exhibit E	Affidavit of Publication	129/130
(Exhibits retained by counsel.)		

NO.	DESCRIPTION	ID/EVD
Matador Production Company (Case nos. 23125-23128):		
Exhibit A	Extension Applications	133/185
Exhibit B	Original Orders	133/185
Exhibit C	Landman Affidavit	133/185
Exhibit D	Notice Affidavit	133/185
Exhibit E	Affidavit of Publication	133/185
(Exhibits retained by counsel.)		

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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
Devon Energy Production Company, LP (Case nos. 23147, 23148):		
Exhibit A	Landman Affidavit	140/150
Exhibit B	Geologist Affidavit	140/150
Exhibit C	Notice Affidavit	140/150
(Exhibits retained by counsel.)		

NO.	DESCRIPTION	ID/EVD
Marathon Oil Permian, LLC (Case no. 23168):		
Exhibit A	Landman Affidavit	152/155
Exhibit B	Geologist Affidavit	152/155
Exhibit C	Notice Affidavit	152/155
(Exhibits retained by counsel.)		

NO.	DESCRIPTION	ID/EVD
Marathon Oil Permian, LLC (Case no. 23169):		
Exhibit A	Landman Affidavit	158/160
Exhibit B	Geologist Affidavit	158/160
Exhibit C	Notice Affidavit	158/160
(Exhibits retained by counsel.)		

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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
Mewbourne Oil Company (Case no. 23170):		
Exhibit A	Landman Affidavit	164/165
Exhibit B	Geologist Affidavit	164/165
Exhibit C	Notice Affidavit	164/165

(Exhibits retained by counsel.)

NO.	DESCRIPTION	ID/EVD
Mewbourne Oil Company (Case nos. 23171, 23172):		
Exhibit A	Landman Affidavit	168/172
Exhibit B	Geologist Affidavit	168/172
Exhibit C	Notice Affidavit	168/172

(Exhibits retained by counsel.)

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E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID/EVD
Mewbourne Oil Company (Case nos. 22427, 22428, 22721, 22722):		
Exhibit 1	Prehearing Statement	179/182
Exhibit 2	Applications and Notices	179/182
Exhibit 3	Landman Affidavit	179/182
Exhibit 4	Geologist Affidavit	179/182
Exhibit 5	Notice Affidavit	179/182
Exhibit 6	Published Notices	179/182
Exhibit 7	Pooling Checklists	179/182
Exhibit 8	Certified Notice Spreadsheet	179/182

(Exhibits retained by counsel.)

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P R O C E E D I N G S

HEARING EXAMINER: This is the Oil Conservation Division of New Mexico Hearings Docket for November 3, 2022. I'm Bill Brancard, your Hearing Examiner for today. With me is Technical Examiner, Mr. Dean McClure, looking all shiny this morning.

As usual, we have a court reporter so please speak clearly and slowly.

As always, the worksheet for today is on our website. We have 104 cases listed. That's obviously way too much so we added two more; 22971 and 22972 FAE will be heard at the end of docket today. They were previously scheduled through a scheduling order and we just forgot to put it on our worksheet.

So announcements for today. So we're trying to catch up on all of the backlog of orders to be written and we're getting a lot of grief for it. So one of the problems is that we often, at these hearings, request that you all provide us with additional information or corrections. When folks finally get around to drafting the order, they discover that that information has not been provided.

So we will try, going forward, starting today, to give you a deadline for when we would like this information to be provided. Normally, the

1 information is not terribly complicated. It might be,  
2 like, a revised checklist. So two weeks should be  
3 plenty of time to provide us with that information.  
4 And if you don't have it in two weeks, well, the  
5 grumpy person writing the order may just draft a  
6 dismissal instead, so be forewarned.

7 Additionally, and last week I brought  
8 up the fact that, as of a while ago, all our e-mail  
9 addresses, all our website addresses have all changed  
10 as of, I don't know -- I don't know. When was it,  
11 Dean, like, two months ago?

12 MR. MCCLURE: I was going to say, don't  
13 quote me, but that sounds about right.

14 HEARING EXAMINER: Yeah. And so we're  
15 still seeing notices that are being sent out, letters  
16 that are being sent out to parties that are using our  
17 old addresses; okay? And since I only told you last  
18 week and many of these notices were probably already  
19 in progress, it's only fair to clamp down on you  
20 today. But in the future, you need to have the  
21 correct addresses so folks who are given notice by you  
22 know how to find these cases, how to provide  
23 information to us, how to file documents. So please;  
24 thank you. Remember, everything is now emnrd.nm.gov.  
25 It's no longer state.nm.us.

1 I did note with that there's sort of  
2 partial compliance that many of the letters that have  
3 been sent out have the correct address for some of the  
4 e-mails and websites, but not all of them. Anyway,  
5 we're getting there, I guess.

6 So okay. We have 106 cases today.  
7 Many of them are status conferences and that's what we  
8 will start with. And so, I will start the proceedings  
9 today.

10 Looking at the worksheet, we are Items  
11 1 through 8. These are Case Numbers 22161, 22162,  
12 22163, 22164, 22978, 22979, 22980, and 22981. Let's  
13 start off with Mewbourne Oil Company.

14 MR. BRUCE: Mr. Examiner, can you hear  
15 me?

16 HEARING EXAMINER: I can.

17 MR. BRUCE: Okay. Jim Bruce here on  
18 behalf of Mewbourne.

19 HEARING EXAMINER: Thank you. I  
20 believe the new party is Earthstone Operating.

21 MR. FELDEWERT: You are correct,  
22 Mr. Examiner. Good morning, Michael Feldewert, on  
23 behalf of Earthstone Operating.

24 HEARING EXAMINER: Thank you. We have  
25 a few other entries and appearances here. COG



1 Operating?

2 MS. MUNDS-DRY: Good morning, Mr.  
3 Hearing Examiner, Ocean Munds-Dry with COG Operating,  
4 LLC.

5 HEARING EXAMINER: Thank you. Oxy USA?

6 MR. FELDEWERT: Good morning,  
7 Mr. Examiner. Mr. Feldewert with Santa Fe Office of  
8 Holland and Hart. I think Oxy has appeared in the  
9 Mewbourne cases.

10 HEARING EXAMINER: Thank you. That is  
11 correct. Apache Corporation?

12 MS. BENNETT: Good morning,  
13 Mr. Examiner, Deana Bennett on behalf of Apache  
14 Corporation.

15 HEARING EXAMINER: All right. So let's  
16 start with you, Mr. Bruce. Where are we on these  
17 cases?

18 MR. BRUCE: Mr. Examiner, the parties  
19 have been in negotiations at Earthstone and Mewbourne.  
20 I did speak with Mr. Feldewert, or had an e-mail  
21 exchange with him, a couple of days ago. He would  
22 like to continue this to another date for a status  
23 conference. However, Mewbourne would just like to set  
24 a hearing date, so that's where we are.

25 HEARING EXAMINER: Okay. Mr.

1 Feldewert?

2 MR. FELDEWERT: Mr. Bruce, has  
3 accurately communicated the communications.

4 HEARING EXAMINER: All right. So if we  
5 have a hearing, it will be in January. I don't know  
6 if that affects anybody's thoughts, but let me go  
7 around the horn here and see if any other persons have  
8 any comments. COG?

9 MS. MUNDS-DRY: No comment; thank you.

10 HEARING EXAMINER: Negative nod there.  
11 Apache? You were muted but we read your lips, "No  
12 comment."

13 Okay. And I assume, Mr. Feldewert, Oxy  
14 does not have a different position then?

15 MR. FELDEWERT: Correct.

16 HEARING EXAMINER: So we could possibly  
17 do a status conference in December or a hearing in  
18 January.

19 MR. BRUCE: My client would prefer a  
20 hearing, Mr. Examiner.

21 HEARING EXAMINER: Well, let's do a  
22 hearing then. January 19th for a hearing.

23 MR. BRUCE: Fine with us.

24 MR. FELDEWERT: Thank you,  
25 Mr. Examiner.

1 HEARING EXAMINER: Any further comments  
2 on these cases 22161 through 164, 22978 through 981?  
3 Hearing none, these cases will be set for a hearing on  
4 January 19th.

5 All right. With that, we are now on  
6 Items 9 through 19. These would be Case Numbers  
7 22211, 22212, 22213, 22214, 22215, 22216, 22217,  
8 22218, and 22298, 22299, 22300. Matador Production  
9 Company?

10 MR. BRUCE: Mr. Examiner, Jim Bruce for  
11 Matador.

12 HEARING EXAMINER: Thank you. COG  
13 Operating?

14 MS. HARDY: Good morning, Mr. Hearing  
15 Examiner, Dana Hardy with Santa Fe Office of Hinkle  
16 Shanor for COG Operating.

17 HEARING EXAMINER: Thank you. I have  
18 an entry from Advanced Energy Partners, LLC.

19 MS. HARDY: That's also me,  
20 Mr. Examiner.

21 HEARING EXAMINER: Okay. I'm not  
22 seeing anybody else. Any other interested persons  
23 Cases 22211 through 18; 22298 through 22300? Anyone  
24 else? I'll start with Ms. Hardy.

25 MS. HARDY: Mr. Examiner, the parties

1 are still talking and negotiating. But at this point,  
2 I think COG's preference is to set a contested hearing  
3 date.

4 HEARING EXAMINER: Thank you. Mr.  
5 Bruce?

6 MR. BRUCE: No problem with that.

7 HEARING EXAMINER: All right. So let's  
8 also do January 19th.

9 MR. BRUCE: Thank you.

10 MS. HARDY: Thank you.

11 HEARING EXAMINER: Once again, any  
12 other interested persons 22211 through 18; 22298  
13 through 22300? Hearing none, these cases will be set  
14 for hearing on January 19.

15 All right. We are down to Item  
16 Number 21. Case Numbers 23105, 23106; Tap Rock  
17 Operating?

18 MR. FELDEWERT: Mr. Examiner, Michael  
19 Feldewert.

20 MR. BRUCE: Case Number 20, was that  
21 included in the --

22 HEARING EXAMINER: No, you're right,  
23 Mr. Bruce. I skipped right over it. I'm sorry.  
24 Thank you.

25 So let's backtrack a bit. We're on

1 Item Number 20, Case 22988, Matador Production  
2 Company.

3 MR. BRUCE: Mr. Examiner, Jim Bruce on  
4 behalf of Matador.

5 HEARING EXAMINER: All right. Conoco  
6 Phillips Company?

7 MS. HARDY: Mr. Examiner, Dana Hardy on  
8 behalf of Conoco Phillips.

9 HEARING EXAMINER: Okay. And so, Ms.  
10 Hardy, Conoco Phillips finds Matador objectionable  
11 here so is Conoco preparing to file competing case(s)?

12 MS. HARDY: Mr. Examiner, Conoco  
13 Phillips has plans to develop his own acreage that it  
14 owns 100 percent of that Matador is proposing to  
15 include in its spacing unit. So COG is planning to  
16 oppose that earth application and would ask for a  
17 contested hearing date.

18 HEARING EXAMINER: Okay. But we're not  
19 anticipating a new application anytime soon from CP?

20 MS. HARDY: That's correct.

21 HEARING EXAMINER: Thank you. All  
22 right. Mr. Bruce, I guess we'll do a hearing date; is  
23 that correct?

24 MR. BRUCE: I believe so. Thank you.

25 HEARING EXAMINER: All right. Well,

1 let's set this for January 19, since we're on a roll.

2 MR. BRUCE: Seems to be a popular date.

3 HEARING EXAMINER: Yeah.

4 MR. BRUCE: Thank you.

5 HEARING EXAMINER: And are you okay  
6 with that, Ms. Hardy?

7 MS. HARDY: That's fine. Thank you.

8 HEARING EXAMINER: All right. So  
9 anyone else here for Case 22988? Hearing none, it  
10 will be set for a hearing on January 19th.

11 With that, let's go to Case 23105,  
12 23106 Tap Rock Operating.

13 MR. FELDEWERT: Good morning, Michael  
14 Feldewert with Tap Rock Operating, LLC.

15 HEARING EXAMINER: Thank you. We have  
16 an entry from COG Operating.

17 MS. HARDY: Yes, Mr. Examiner. Dana  
18 Hardy for COG Operating.

19 HEARING EXAMINER: And then EGL  
20 Resources?

21 MR. PADILLA: Mr. Examiner, Earnest  
22 Padilla for EGL.

23 HEARING EXAMINER: Are there any other  
24 interested persons for Cases 23105, 23106? Hearing  
25 none.

1                   So COG are you preparing to submit  
2 competing cases?

3                   MS. HARDY: Sorry, Mr. Examiner. COG  
4 has sent out competing proposals and we are planning  
5 to file competing applications by December 5th for the  
6 January 5th docket.

7                   HEARING EXAMINER: Okay. EGL?

8                   MR. PADILLA: Mr. Examiner, I'm not  
9 sure. I think we're just trying to protect appellate  
10 rights at this point. I don't have any direction from  
11 my client as to whether they will oppose the case or  
12 just ride along.

13                   But in terms of setting a date for a  
14 hearing, I'd follow whatever your discretion would be.

15                   HEARING EXAMINER: Gee thanks, Mr.  
16 Padilla. So Mr. Rodriguez, any thoughts, proposals?

17                   MR. RODRIGUEZ: Since COG can meet the  
18 requirements for the January 5th docket, Tap Rock  
19 would prefer that to be set for a contested hearing.  
20 Otherwise, we're also okay with tacking onto the  
21 January 19th docket.

22                   HEARING EXAMINER: All right. Well,  
23 how about if we take a risk here and go for January  
24 5th? It might be less confusing if that's where COG  
25 cases are. Is that okay, Ms. Hardy?

1 MS. HARDY: Mr. Examiner, I need to  
2 confirm with COG's witnesses, but subject to that  
3 confirmation, I believe that's fine.

4 HEARING EXAMINER: Okay. All right.  
5 So we will wait to hear back from COG. Tentatively,  
6 we are setting this for the January 5th docket as a  
7 contested hearing. COG to confirm if January 5th  
8 doesn't work out, we'll pick a random date in 2023 and  
9 -- or you can give us dates. Sorry. I think that  
10 would be preferable.

11 And then, Ms. Hardy, when COG files  
12 applications, please send us an e-mail indicating that  
13 these cases are to be added to a prehearing order.

14 MS. HARDY: I will do that. Thank you.

15 HEARING EXAMINER: Thank you. All  
16 right.

17 Okay. With that, we are, I believe, on  
18 Items 23 all the way up to 40, although we could go  
19 further if we needed to. And these are Cases 23129  
20 23130, 23131, 23132, 23133, 23134, 23135, 23136,  
21 23137, 23138, 23139, 23140, 23141, 23142, 23143,  
22 23144, 23145, and 23146, Franklin Mountain Energy?

23 MS. BENNETT: Good morning,  
24 Mr. Examiner, Deana Bennett on behalf of Franklin  
25 Mountain Energy. And, in fact, you could include also



1 cases on the docket 41 through 50 as well.

2 HEARING EXAMINER: All right. And so,  
3 let me just first check in with COG Operating?

4 MS. HARDY: Yes, Mr. Examiner, Dana  
5 Hardy, for COG Operating in all three cases.

6 HEARING EXAMINER: And is COG fine with  
7 combining this with the next group?

8 MS. HARDY: Yes, that's fine.

9 HEARING EXAMINER: Are there any other  
10 persons here? Okay. Let me -- okay. So the next  
11 group to be combined with this is now Cases 23158,  
12 23159, 23160, 23161, 23162, 23163, 23164, 23165,  
13 23166, and 23167.

14 Are there any other persons here for  
15 Cases 23129 through 23146 or 23158 through 23167?  
16 Hearing none, since we have the same two parties,  
17 let's start backwards here with COG Operating. And is  
18 COG planning to file competing cases or you're just  
19 sort of objecting to everything?

20 MS. HARDY: I'm filing competing  
21 applications and --

22 HEARING EXAMINER: Ms. Hardy, you're  
23 cutting out a bit so please start again.

24 MS. HARDY: Okay. I'll try to speak  
25 up. We are filing competing applications. Should be

1 filed by December 5th to be initially set on the  
2 January 5th docket.

3 HEARING EXAMINER: Now, is that for  
4 both groups of cases?

5 MS. HARDY: Yes.

6 HEARING EXAMINER: Okay. Ms. Bennett,  
7 any thoughts?

8 MS. BENNETT: Yes; thank you. So we  
9 would like to have -- Franklin Mountain Energy would  
10 like to have these cases set for a contested hearing  
11 on January 19th or January 5th, but understanding that  
12 January 5th may not be workable. But we are prepared  
13 to move forward and would like to move forward on  
14 January 5th or January 19th.

15 HEARING EXAMINER: Okay.

16 Ms. Hardy, have you gotten information  
17 from your client about dates?

18 MS. HARDY: I think we would prefer  
19 January 19th, Mr. Examiner.

20 HEARING EXAMINER: Okay. Well, that  
21 could be an exciting one. So let's go for January  
22 19th then.

23 MS. BENNETT: That sounds great. Thank  
24 you.

25 MS. HARDY: Thank you.

1 HEARING EXAMINER: And everybody's okay  
2 if we just do this all as one big prehearing order?

3 MS. HARDY: That's fine.

4 MS. BENNETT: Yeah.

5 HEARING EXAMINER: All right. So with  
6 that --

7 MS. BENNETT: And just to clarify on  
8 these, we will need to file continuances for all of  
9 these cases, is that right, to get them to January  
10 19th?

11 HEARING EXAMINER: That's right.

12 MS. BENNETT: So as the party  
13 protesting our cases, I think that COG -- I'll work  
14 with Ms. Hardy to ensure that the continuances get  
15 filed by COG.

16 HEARING EXAMINER: That would be  
17 wonderful, because otherwise, you'll start getting  
18 those e-mails from Marlene. Wouldn't want to be you.

19 MS. BENNETT: Thank you.

20 MS. HARDY: Thank you.

21 HEARING EXAMINER: Okay. So with that,  
22 we are already through 50 cases today.  
23 Congratulations, everyone.

24 So we are now on Items 51 through 58.  
25 And, gosh, I'm not sure what to do with this, but

1 we'll figure it out.

2                   These are Cases 23149, 23150, 23151,  
3 23152, 23153, 23154, 23155, and 23156; Colgate  
4 Operating?

5                   MS. HARDY: Mr. Examiner, Dana Hardy  
6 with Hinkle Shanor on behalf of Colgate Operating.

7                   HEARING EXAMINER: Okay.

8                   MR. GALLEGOS: Mr. Examiner, Gene  
9 Gallegos on behalf of Doyle and Margaret Hartman.

10                   HEARING EXAMINER: Thank you. Good  
11 morning, Mr. Gallegos.

12                   Any other interested persons for Cases  
13 23149 through 23156? All right. So we have an  
14 objection to this case going forward by affidavit and  
15 then we have a response to the objection to the case  
16 going forward by affidavit. I will give you a brief  
17 opportunity, Ms. Hardy, to explain why you are  
18 objecting to an objection.

19                   MS. HARDY: Thank you, Mr. Examiner.

20                   In these cases, Colgate seeks to pull  
21 record title owners of federal leases. They have not  
22 signed communitization agreements. And Doyle Hartman  
23 owns a minority record title interest in one of the  
24 leases.

25                   Colgate has obtained title opinion but

1 show Hartman does not own a working interest in these  
2 units and is not pooling any working interest held by  
3 Hartman. Object to the pooling of his record title  
4 interest on the grounds that he believes he also owns  
5 a working interest. And then, he objects to the costs  
6 and missed penalty provisions of the pooling order  
7 that apply to working interests not record title  
8 interests.

9 So Colgate is agreeing, we've stated in  
10 our motion, and I'll state it on the record, we're not  
11 pooling any work.

12 So because his objection pertains to an  
13 interest that is not being pooled, I filed a Motion to  
14 Strike the Prehearing Statement. I don't think the  
15 Hartmans should be permitted to hold up Colgate's 24-  
16 well development involving two sections because he  
17 claims to own a working interest that is not being  
18 pooled.

19 And if he ultimately establishes to a  
20 quiet title action or documentation that he does own a  
21 working interest, then Colgate would need to address  
22 the issue with him at that time through pooling or  
23 through negotiations.

24 So I don't think it's valid to object  
25 to the pooling of a record title interest based on

1 your claim that you own an interest that's not being  
2 pooled.

3 That's kind of where we are, and I know  
4 that Hartman's prehearing statement also raised an  
5 argument that his due process rights were violated  
6 because an interest was pooled in the first cases from  
7 these wells, and he didn't receive notice.

8 That's incorrect. His record title  
9 interest wasn't -- just today. So I think that the  
10 objection really isn't valid and I'm not sure what we  
11 would be deciding at a hearing.

12 So I would ask that the cases go  
13 forward by affidavit and that the objection submitted  
14 by Hartman be determined to be invalid or stricken.

15 MR. GALLEGOS: Mr. Examiner?

16 MS. HARDY: Mr. Brancard, I think  
17 you're muted.

18 HEARING EXAMINER: Oh. That was a  
19 great point I made.

20 So, Mr. Gallegos, I have one question  
21 for you, which is, at the end of Ms. Hardy's filing  
22 from yesterday, she indicates that Colgate agrees with  
23 the three conditions requested by Hartman here. It's  
24 Paragraph 8, page 3 of her filing.

25 So my only question, Mr. Gallegos, is

1 if -- does the agreement to those three conditions  
2 remove your objection to this case going forward by  
3 affidavit?

4 MR. GALLEGOS: No, it does not,  
5 Mr. Examiner. And we're -- we're -- I think we're  
6 overlooking by Ms. Hardy trying to address what  
7 amounts to a property interest issue which may end up  
8 having to be settled by the courts, what we're  
9 overlooking is that now it's recognized -- whether  
10 they want to call it record title, working interest,  
11 or whatever -- now, they recognize that they did not  
12 give our clients notice of the prior hearing.

13 We're not here for really the merits  
14 hearing because that happened with the absence of  
15 notice to Doyle Hartman. This case was heard in June  
16 with no notice.

17 So what we're doing here now is saying  
18 by Colgate, oh, now we want to join Hartman, but he's  
19 got to be subject to orders that resulted from a  
20 hearing in June to which he has no opportunity to  
21 object. And he has objections to terms of those  
22 orders.

23 So the issue really here is, now is the  
24 first time that Hartman has a chance to actually be  
25 heard on all of the matters. The risk penalty, the

1 wells to be drilled, and all of that. That's the  
2 issue. And we certainly are entitled to that hearing  
3 on the merits because we weren't able to participate  
4 in June. Because Colgate knew of our interest,  
5 obviously. It's speaking to it in terms of their spin  
6 on what the interest amounts to. They know of the  
7 interest. Did not give -- did not give notice. And  
8 so now they want us to be subject to an order in which  
9 we had no opportunity to address on the merits.

10 So, yeah. We believe this matter  
11 should be set for hearing. In the meantime, if we can  
12 work out something with Colgate, we will continue to  
13 do that.

14 But the conditions that Colgate wants  
15 to set so it can go forward does not overcome the fact  
16 that it knew of the interest, didn't give notice to  
17 which we were entitled, and now is trying to bootstrap  
18 us in and make us subject to an order that resulted  
19 from a hearing which we did not have the opportunity  
20 to participate.

21 HEARING EXAMINER: Okay. Thank you.  
22 Well, let me just say a couple of things. If we have  
23 a hearing on this matter, the Hartmans can raise  
24 whatever issues they like and the amendment to the  
25 order that might result from that hearing could



1 include whatever conditions the Hartmans might want to  
2 impose as to themselves, as opposed to everyone else  
3 who has already been pooled, okay?

4 Second of all, when we pool a record  
5 title owner, we often don't include a lot of the  
6 conditions that you may find objectionable,  
7 Mr. Gallegos, such as, the risk charge, etcetera,  
8 because the record title owner is not participating.

9 Anyway, all that is just sort of for  
10 background. The reality is that, under our  
11 Alternative Procedure Rules 4.12, it simply says if an  
12 interested party objects to the procedure we will have  
13 a hearing with live witnesses. So we will have a  
14 hearing with live witnesses because the Hartmans, as I  
15 just asked Mr. Gallegos to confirm, are still  
16 objecting.

17 Is that correct, Mr. Gallegos? I'm  
18 putting words in your mouth.

19 MR. GALLEGOS: Yes, sir, Mr. Examiner.

20 HEARING EXAMINER: Okay. So we just  
21 need a date now for a live hearing. Is January  
22 workable for the parties? Let's start with you, Ms.  
23 Hardy.

24 MS. HARDY: Given the -- I think it  
25 would be a pretty short hearing if it's only on a

1 record title interest. I and Colgate has plans  
2 evidently to inspect these wells. I would request  
3 that the hearing be set on December 1st, if that's  
4 possible. I think it would be a short hearing.

5 HEARING EXAMINER: Okay. Mr. Gallegos?

6 MR. GALLEGOS: We disagree with that.  
7 First of all, we seem to be accepting a  
8 characterization of the interest of Hartman by  
9 Ms. Hardy, which is incorrect, which we don't agree  
10 with. They do have a operating rights interest.  
11 We're talking about federal leases.

12 And we want a hearing on what you  
13 always address in a pooling application. So yes, we  
14 don't want some kind of shorttail hearing based on  
15 Colgate's view of the case. We have a different view  
16 and we're entitled to a hearing.

17 HEARING EXAMINER: Okay. Mr. Gallegos,  
18 your client may disagree with how Colgate has  
19 characterized their interest, but the reality is, for  
20 this hearing, Colgate is stuck with what they applied  
21 for. And they applied to pool the Hartmans as a  
22 record title owner. Therefore they cannot pool the  
23 Hartmans as whatever, an unleased mineral interest  
24 owner, etcetera, under this proceeding. They would  
25 need to have a new proceeding to do that.

1                   So yes, this case only applies to the  
2                   status of the Hartmans as a record title owner. So I  
3                   will have to agree with Ms. Hardy on that, but that's  
4                   also a real limitation on what Colgate is doing. If  
5                   it turns out the Hartmans own more than what Colgate  
6                   thinks, Colgate's going to have to come back again for  
7                   another amendment. I mean, that is the status of the  
8                   situation here.

9                   So let's set this then for December 15.  
10                  I know I'm really going out on a limb because we  
11                  already have five contested hearings set for that  
12                  date, but what the heck? It's right before Christmas.

13                  Any objections to December 15 for a  
14                  contested hearing on this case?

15                  MR. GALLEGOS: No objection on the part  
16                  of the Hartmans.

17                  HEARING EXAMINER: Ms. Hardy?

18                  MR. GALLEGOS: No objection, Mr.  
19                  Examiner, by Hartman.

20                  HEARING EXAMINER: Thank you -- thank  
21                  you. I'm trying for Ms. Hardy to respond here to  
22                  December 15th.

23                  MS. HARDY: That's fine, Mr. Examiner.  
24                  Thank you.

25                  HEARING EXAMINER: Okay. So with that,

1 Case Numbers 23149 through 23156 will be set for a  
2 contested hearing on December 15.

3 MS. HARDY: Thank you.

4 HEARING EXAMINER: Thank you.

5 MR. GALLEGOS: Thank you.

6 HEARING EXAMINER: With that, we're at  
7 Item 59 Case 22782, the continuing extensions for  
8 Whiptail Midstream.

9 MR. SAVAGE: Good morning, Mr. Hearing  
10 Examiner and Mr. Technical Examiner. Darin Savage  
11 with the Santa Fe Office of Abadie and Schill on  
12 behalf of Whiptail Midstream.

13 HEARING EXAMINER: All right. Is there  
14 anyone here today on behalf of the Oil Conservation  
15 Division? Hearing none, Mr. Savage, can you update us  
16 on the status of this matter?

17 MR. SAVAGE: I believe I can, to an  
18 extent. Ms. Luck [ph] has provided us with good  
19 follow-up by e-mail and phone calls over the past  
20 month letting us know the issues COCD is working  
21 through, which is always appreciated. However, we  
22 have not been informed of a final decision. So I was  
23 going to let Ms. Luck speak to that. I can't speak to  
24 that at this point. That's about as far as I can go  
25 on the status.

1 HEARING EXAMINER: So we would probably  
2 want to set this for another status conference.

3 MR. SAVAGE: I believe so; you know,  
4 we're waiting for a response, and we'd like to respond  
5 to that. So I think another status conference would  
6 be in order.

7 HEARING EXAMINER: All right. How  
8 about December 15?

9 MR. SAVAGE: That sounds appropriate,  
10 thank you.

11 HEARING EXAMINER: All right. So with  
12 that, Case 22782 will be set for a status conference  
13 on December 15. Thank you, Mr. Savage.

14 MR. SAVAGE: All right. Thank you.

15 HEARING EXAMINER: All right. Fifty-  
16 nine down. Let's have a hearing or two. We are now  
17 on Item 60, Case 23092, Crockett Operating?

18 MS. VANCE: Good morning, Mr. Hearing  
19 Examiner. Good morning, Mr. McClure. Paula Vance  
20 with the Santa Fe office of Holland & Hart on behalf  
21 of the applicant, Crockett Operating, LLC.

22 HEARING EXAMINER: Thank you. Are  
23 there any other interested persons here for Case  
24 23092?

25 MR. ENGINEER: Good morning,

1 Mr. Examiner, Percy Engineer with Crockett Operating.

2 HEARING EXAMINER: Thank you, Mr.  
3 Engineer. You really confused me being a landman  
4 named Engineer but I'll try to deal with it.

5 So with that, Ms. Vance, please proceed  
6 with your case.

7 MS. VANCE: Thank you, Mr. Hearing  
8 Examiner. So in Case 23092, Crockett seeks to pool  
9 uncommitted interest within the San Andres formation.  
10 That's the Bronco San Andres pool and the Pool Code is  
11 7500. And that's underlying a standard 480-acre more  
12 or less horizontal well spacing unit comprised of the  
13 W/2 of Section 31 and the SW/4 of Section 30, Township  
14 13 South, and Range 38 East, NMPM, Lea County, New  
15 Mexico. Crockett seeks to dedicate the spacing unit  
16 to the proposed Ackbar 30 31 A Fee Number 1H well.

17 In this case, we have provided the  
18 compulsory pooling checklist, as well as self-affirmed  
19 statement of landman, Percy Engineer, and geologist,  
20 Zachary Koehler [ph].

21 Mr. Engineer previously testified  
22 before the Division one time but that was some years  
23 ago. And Mr. Koehler [ph] has not previously  
24 testified before the Division. Therefore, we've  
25 provided resumes for both Mr. Engineer, which is

1 Exhibit C-2 or Sub Exhibit C-2 in his part of the  
2 packet and Mr. Koehler's [ph] is Sub Exhibit D-1 in  
3 his portion of the hearing packet.

4 Their resumes demonstrate that their  
5 background, qualifications, and educational experience  
6 or demonstrates their background qualifications and  
7 educational experience in their respective fields.

8 And just to give a brief summary, Mr.  
9 Engineer is an Army veteran. He has degrees in  
10 operational management and strategic management. He  
11 has over 14 years' of experience working as a landman  
12 and in oil and gas operations. He's currently the  
13 president of Eight Energy, Inc. in which he manages  
14 land projects in West Texas and Southeast New Mexico.  
15 He's also a consultant land manager for Crockett and  
16 one of its affiliate entities, GO Basic Engineer  
17 Energy One, LLC. Sorry about that.

18 And Mr. Koehler [ph] has a degree in  
19 geology and over 11 years of experience working as a  
20 geologist. He is currently president and senior  
21 geologist at OSV Geological. I'm not sure if I said  
22 that right, but he's the president and senior  
23 geologist there in is contracted to Crockett.

24 Based on their background,  
25 qualifications, and educational experience, I would

1 tender Mr. Engineer as an expert in land matters and  
2 Mr. Koehler [ph] as an expert in geology matters and  
3 ask that their credentials be accepted as a matter of  
4 record before the Division.

5 HEARING EXAMINER: They are so accepted  
6 as expert witnesses.

7 MS. VANCE: Thank you, Mr. Brancard.  
8 Mr. Engineer's Self-Affirmed Statement is Exhibit C,  
9 which includes Sub Exhibit C-1. It's a letter from  
10 Vadar -- from Vadar's CEO which explains the  
11 relationship -- working relationship between Crockett  
12 and the parent company, Vadar. C-2 is Mr. Engineer's  
13 resume; C-3 is the C-102; C-4 is the land track map  
14 and ownership breakdown; C-5 is the sample well  
15 proposal letter and AFE; and C-6 is a chronology of  
16 contacts.

17 This is followed by Mr. Koehler's [ph]  
18 Self-Affirmed Statement which is Exhibit D. It  
19 includes Sub Exhibits D-1, that's Mr. Keller's resume;  
20 D-2 a locator map; D-3 a Sub-C structure map; D-4  
21 cross-section map; and D-5 a stratigraphic cross-  
22 section.

23 In these cases, Mr. Koehler [ph] did  
24 not observe any faulting, pinch outs, or other  
25 geologic impediments to the horizontal drilling of



1     these wells.

2                     And then lastly, is Exhibit E, a Self-  
3     Affirmed Statement of Notice with sample letters that  
4     were timely mailed on October 14, 2022. And Exhibit  
5     F, the Affidavit of Notice of Publication, which was  
6     timely published on October 18, 2022.

7                     And unless there are any questions, I  
8     would ask that all exhibits and sub-exhibits be  
9     admitted into the record and that Case 23092 be taken  
10    under advisement by the Division at this time.

11                    (Exhibits A through F were marked for  
12                    identification.)

13                    HEARING EXAMINER: Thank you. Mr.  
14    McClure, any questions?

15                    MR. MCCLURE: I have no questions,  
16    Mr. Brancard.

17                    HEARING EXAMINER: And I don't believe  
18    I have any questions either.

19                    MS. VANCE: Excellent.

20                    HEARING EXAMINER: So with that, are  
21    there any other interested persons for Case 23092?  
22    Hearing none, the exhibits in this case will be  
23    admitted into the record and Case 23092 will be taken  
24    under advisement.

25    //

1 (Exhibits A through F were admitted  
2 into evidence.)

3 With that, we're on Item 61. This is  
4 Case 23096, Crockett Operating?

5 MS. VANCE: Good morning, again,  
6 Mr. Hearing Examiner and Mr. McClure. Paula Vance  
7 with the Santa Fe Office of Holland & Hart on behalf  
8 of the applicant, Crockett Operating, LLC.

9 HEARING EXAMINER: Thank you. Are  
10 there any other interested persons for Case 23096?  
11 Hearing none, you may proceed, Ms. Vance.

12 MS. VANCE: Thank you, Mr. Hearing  
13 Examiner.

14 So in Case 23096, Crockett seeks to  
15 pool uncommitted interest within the San Andres  
16 formation. The pool is Bronco San Andres South Pool  
17 and the pool code is 7500.

18 This is underlying a standard 480-acre  
19 more or less horizontal well spacing unit comprised of  
20 the W/2 of Section 19 and the NW/4 of Section 30,  
21 Township 13 South, Range 38 East, Lea County, New  
22 Mexico. Crockett seeks to dedicate this spacing unit  
23 to the proposed Anakin 30 19 A Fee Number 1H well.

24 In this case, we have provided the  
25 compulsory pooling checklist as well as the Self-

1 Affirmed Statement of Landman, Percy Engineer, and  
2 geologist, Zachary Koehler [ph], both of whom now have  
3 had their credentials accepted as a matter of record.

4 Mr. Engineer's Self-Affirmed Statement  
5 is Exhibit C, which includes Sub Exhibits C-1, again,  
6 similar to the previous case, a letter from Vadar CEO  
7 that outlines the relationship between the parent  
8 company, Vadar, and operator Crockett.

9 That's followed by C-2, which is  
10 Mr. Engineer's resume; C-3 C-102; C-4 a land track map  
11 and ownership breakdown; C-5 a sample well letter and  
12 AFE; and C-6 a chronology of contacts.

13 This is followed by Mr. Koehler's [ph]  
14 Self-Affirmed Statement, which is Exhibit D and  
15 includes Sub Exhibits D-1, Mr. Koehler's resume; D-2  
16 the locator map; D-3 a Sub-C structure map; D-4 cross-  
17 section map; and D-5 the stratigraphic cross-section.

18 In these cases, Mr. Koehler did not  
19 observe any faulting, pinch outs, or other geologic  
20 impediments to the horizontal drilling of these wells.

21 And lastly, is Exhibit E, a Self-  
22 Affirmed Statement of Notice with sample letters that  
23 were timely mailed on October 14, 2022.

24 And Exhibit F, the Affidavit of Notice  
25 of Publication, which was timely published on

1     October 18, 2022.

2                     And unless there are any questions, I  
3     would ask that all exhibits and sub-exhibits be  
4     accepted into the record and that Case 23092 be taken  
5     under advisement by the Division at this time.

6                     (Exhibits A through F were marked for  
7     identification.)

8                     HEARING EXAMINER: Thank you. Mr.  
9     McClure, questions?

10                    MR. MCCLURE: No questions, Mr.  
11     Brancard.

12                    HEARING EXAMINER: Thank you. Ms.  
13     Vance, you've referred to the proposed Anakin well  
14     here in this case. My emphasis is on the word  
15     "proposed" because in the letter that Mr. Engineer  
16     sent out with the well proposal, it indicates that  
17     this well has already been drilled to depth. Is that  
18     correct?

19                    MS. VANCE: It's been drilled and  
20     that's all. And we kept the word proposed in there  
21     just because, you know, we're still waiting, you know,  
22     on getting the Compulsory Pooling Order and have yet  
23     to finish it, so still currently in the process.

24                    HEARING EXAMINER: So drilled but not  
25     completed?

1 MS. VANCE: That's correct.

2 HEARING EXAMINER: Thank you. And  
3 just, you know, don't want to hold you up as an  
4 example here, but I will. And so, in your packet, the  
5 letter from your law firm sending notice out of this  
6 meeting -- sorry, this hearing -- is one example, just  
7 one example of letters sent out in packets today that  
8 have both a correct and incorrect website address in  
9 the same letter. So just saying, it's an example.

10 MS. VANCE: Yes, and we did actually --  
11 we updated our letters after I -- I think I reached  
12 out to both yourself and Marlene, but we had sent  
13 these letters out prior to getting those updated  
14 e-mails. So it has been corrected and all of our  
15 letters going out moving forward.

16 HEARING EXAMINER: Thank you. And I'm  
17 just using you as an example because you're the first  
18 case up. There's plenty more examples following.

19 MS. VANCE: I have no problem; I have  
20 thick skin. Thank you, Mr. Hearing Examiner.

21 HEARING EXAMINER: Thank you. All  
22 right. Are there any other interested persons for  
23 Case 23096? Hearing none, the exhibits will be  
24 admitted into the record and Case 23096 will be taken  
25 under advisement.

1 (Exhibits A through F were admitted  
2 into evidence.)

3 MS. VANCE: Thank you, Mr. Hearing  
4 Examiner; thank you, Mr. McClure.

5 HEARING EXAMINER: Thank you. With  
6 that, we are on Item 62, Case 23046, Spur Energy  
7 Partners?

8 MS. MCLEAN: Good Morning. Jackie  
9 McLean on behalf of Spur Energy Partners.

10 HEARING EXAMINER: Thank you. We have  
11 an entry of appearance from Apache Corporation?

12 MS. MCLEAN: Mr. Hearing Examiner, I  
13 believe that Apache has withdrawn their appearance in  
14 this case.

15 HEARING EXAMINER: Okay.

16 MS. BENNETT: This is Deana Bennett on  
17 behalf of Apache. I'm not sure if we have withdrawn  
18 but I do know that we don't object to the case moving  
19 forward by affidavit.

20 HEARING EXAMINER: Thank you. That's  
21 all I needed to know. Any other interested persons  
22 then for Case 23046? Hearing none, Spur may proceed.

23 MS. MCLEAN: Thank you. In Case Number  
24 23046, Spur seeks to pool all uncommitted interest in  
25 the Yeso formation underlying a 320-acres standard

1 horizontal spacing unit comprised of the S/2 N/2 and  
2 N/2 S/2 of Section 21, Township 19 South, Range 25  
3 East in Eddy County, New Mexico.

4 And this spacing unit will be dedicated  
5 to the Alto Amm 21 Number 10H, 11H, 20H, 50H, 60H, and  
6 70H wells.

7 The Alto Amm 21 Number 10H, 20H, and  
8 60H wells will be drilled from surface hole locations  
9 in the SW/4, NW/4 Unit E of Section 22 to bottom hole  
10 location in the SW/4 NW/4 Unit E of Section 21.

11 And the Alto Amm 21 Number 11H, 50H,  
12 70H wells will be drilled from surface hole location  
13 in the SW/4 NW/4 Unit L of Section 22 to bottom hole  
14 location in the NW/4 SW/4 Unit L of Section 21.

15 And this is a proximity track spacing  
16 unit with a completed interval of the Alto Amm 21  
17 Number 20 H well located within 330 feet of the 4/4  
18 section line separating the S/2 N/2 and N/2 S/2 of  
19 Section 22 to allow for the creation of the 320-acre  
20 spacing unit.

21 The exhibit packets that we submitted  
22 to the Division for Case Number 23046 contain Exhibit  
23 A, which is the land professional's testimony and  
24 related land exhibits, the plat of tract, ownership  
25 interests, hold parties, a well proposal letter, and a

1 summary of communication.

2 Then we have Exhibit B, geology  
3 testimony, which includes a location map, structure  
4 map, gun barrel diagram, and a structural cross-  
5 section of the intervals of interest.

6 Exhibit C, notice testimony, which sets  
7 out when the notice letter of this hearing and  
8 application were sent out to the parties to be pooled.  
9 As well as Exhibit C-4, which shows that we timely  
10 published notice of this hearing.

11 We also filed supplemental exhibits in  
12 this case on October 4th because this case was  
13 supposed to be heard last month and, with the Apache  
14 issue, it was continued. So we filed supplemental  
15 exhibits that include an updated plat of tracts, a  
16 tract of ownership pooled parties, an updated notice  
17 chart to all interested parties, and then updated --  
18 we have received more certified mail receipts.

19 And with that, I ask that Exhibits A,  
20 B, and C as well as the supplemental exhibits, be  
21 admitted into the record in Case Number 230946 and  
22 that the case be taken under advisement.

23 (Exhibits A through C were marked for  
24 identification.)

25 HEARING EXAMINER: Thank you. Mr.



1 McClure, any questions?

2 MR. MCCLURE: Yes. So just to confirm,  
3 public notice was conducted then back in September;  
4 correct?

5 MS. MCLEAN: That is correct. It was  
6 done -- let me just double-check here and give you the  
7 date -- on September 11, 2022.

8 MR. MCCLURE: Okay. Thank you. That  
9 was the only question I had, Mr. Brancard.

10 MS. MCLEAN: Thank you.

11 HEARING EXAMINER: Thank you. I would  
12 just note that thanks for submitting the updated  
13 exhibits. That's very helpful. What you didn't  
14 update was your checklist, which still has the old  
15 hearing date on it.

16 MS. MCLEAN: Oh, I did not. Yes,  
17 you're -- make sure. Yes, you're correct. We can  
18 submit an updated checklist.

19 HEARING EXAMINER: Okay. That's all I  
20 have. And as I said earlier, there's a deadline.  
21 Within two weeks, you have to submit this changed  
22 checklist.

23 MS. MCLEAN: We will do that. Thank  
24 you, Mr. Examiner.

25 HEARING EXAMINER: Thank you. Are

1 there any other interested persons then for Case  
2 23046? Hearing none, the exhibits, including the  
3 supplemental exhibits will be admitted into the  
4 record. The case will be taken under advisement. The  
5 record left open for a corrected checklist to be  
6 submitted within two weeks.

7 (Exhibits A through C were admitted  
8 into evidence.)

9 With that, we are on Item Number 63  
10 Case 23093, Colgate Operating?

11 MS. HARDY: Mr. Examiner, Dana Hardy  
12 with Hinkle Shanor on behalf of Colgate Operating.

13 HEARING EXAMINER: Thank you. Are  
14 there any other interested persons for Case 23093?  
15 Hearing none, Ms. Hardy, you may proceed.

16 MS. HARDY: Thank you.

17 HEARING EXAMINER: Please speak sort of  
18 slowly and clearly. Your mic is not picking up great  
19 today.

20 MS. HARDY: Okay. Thank you. Colgate  
21 -- virtual connectivity interruption -- uncommitted  
22 interest from the top of the Third Bone Spring to the  
23 base of the Bone Spring Formation underlying a 160-  
24 acre standard horizontal spacing unit comprised of the  
25 N/2 of the S/2 of Section 13, Township 20 South, Range

1 28 East, in Eddy County. That unit will be dedicated  
2 to the Wombat 13 Federal Com 133H well.

3 And due to an ownership depth  
4 severance, Colgate seeks to pool interest from the  
5 stratigraphic equivalent of approximately 7,900 TVD to  
6 approximately 8,966 TVD.

7 Our exhibits include the affidavits of  
8 landman Travis Matcha and geologist David Dageon [ph].

9 Mr. Matcha provides the standard land  
10 exhibits. The plat of tracts, ownership interests,  
11 and pooled parties are shown in Exhibit A-3.

12 Mr. Dageon [ph] provides a location  
13 map, cross-section map, structure map, structural and  
14 stratigraphic cross-sections, and a gun barrel  
15 diagram.

16 My notice affidavit is Exhibit C. It  
17 includes a chart of the address and certified mail  
18 receipts. We do have receipts from all but one owner  
19 and that is Jennings Production. And as shown on  
20 Mr. Matcha's Exhibit A-5, that party has assigned its  
21 interest to Colgate.

22 So with that, unless there are  
23 questions, I would ask that the exhibits be admitted,  
24 and that the case be taken under advisement.

25 //

1 (Exhibits A through C were marked for  
2 identification.)

3 HEARING EXAMINER: Thank you. Mr.  
4 McClure?

5 MR. MCCLURE: I have no questions,  
6 Mr. Brancard.

7 HEARING EXAMINER: Okay. Ms. Hardy,  
8 let's look at your checklist for this case.

9 MS. HARDY: Okay.

10 HEARING EXAMINER: And as I've said,  
11 and I, you know, I hate to repeat this, but the  
12 checklist gets attached to the order so it's real  
13 important. And the order relies on the checklist for  
14 certain things like the description of the spacing  
15 unit. So in this case I'm looking at where it says,  
16 "depth severance".

17 MS. HARDY: Yes.

18 HEARING EXAMINER: And you're simply  
19 referring to an exhibit to describe the depth  
20 severance. That's, you know, we need a description of  
21 the depth severance in the checklist.

22 MS. HARDY: Okay. I'll provide that.

23 HEARING EXAMINER: So, I mean, the  
24 sentence that's in the exhibit, I mean, sorry, that's  
25 in your notice is fine, that one sentence. It doesn't

1 have to be elaborate, but it needs a, you know, I  
2 mean, the details can be provided further in -- I mean  
3 the supporting details can be provided in the exhibit,  
4 but the actual description of the depth severance  
5 should be in the checklist.

6 MS. HARDY: Sure. I'll include that  
7 and submit another checklist. Thank you.

8 HEARING EXAMINER: Okay. With that,  
9 are there any other interested persons then for Case  
10 23093? Hearing none, the exhibits, in this case, will  
11 be admitted into the record. The case will be taken  
12 under advisement. And the record left open for  
13 revised checklist to be submitted within two weeks.

14 (Exhibits A through C were admitted  
15 into evidence.)

16 MS. HARDY: Thank you.

17 HEARING EXAMINER: Thank you. With  
18 that, we are on Item 64, Case 23094, Spur Energy  
19 Partners?

20 MS. HARDY: Mr. Examiner, Dana Hardy on  
21 behalf of Spur Energy Partners.

22 HEARING EXAMINER: Are there any other  
23 interested persons for Case 23094?

24 MR. HOLLIDAY: Mr. Examiner, this is  
25 Benjamin Holliday on behalf of Silverback II

1 Operating.

2 HEARING EXAMINER: Okay. Mr. Holliday,  
3 does Silverback object to this case going forward by  
4 affidavit?

5 MR. HOLLIDAY: We actually, late  
6 yesterday evening, filed a mutual continuance in this  
7 case. The parties are attempting to negotiate a JOA  
8 and just aren't there quite yet.

9 HEARING EXAMINER: You're correct. I  
10 have this on one piece of paper but not on another so  
11 we have a Motion to Continue in this case. What are  
12 we continuing this case to, Ms. Hardy?

13 MS. HARDY: Mr. Examiner, we would  
14 request the November 17th docket. I think at that  
15 point, we should be able to present the case by  
16 affidavit.

17 HEARING EXAMINER: Is that okay with  
18 you, Mr. Holliday?

19 MR. HOLLIDAY: Yes, it is.

20 HEARING EXAMINER: All right. So with  
21 that, Case 23094 will be continued to November 17.  
22 And you've already filed the continuance; correct?

23 MS. HARDY: That's correct.

24 HEARING EXAMINER: Thank you. All  
25 right. Thank you.

1 With that, we're on Item 65, Case 23095  
2 Steward Energy?

3 MS. MCLEAN: Hello, again, Mr.  
4 Examiner. Jackie McLean with Hinkle Shanor on behalf  
5 of Steward Energy.

6 HEARING EXAMINER: Thank you. Are  
7 there any other interested persons for Case 23095?  
8 Hearing none, Ms. McLean, you may proceed.

9 MS. MCLEAN: Thank you. In Case Number  
10 23095 Steward is seeking to pool additional  
11 uncommitted interests under the terms of Division  
12 Order Number R-22192, which was entered in Case Number  
13 22734 on July 25, 2022.

14 And Order Number R-22192 pooled all  
15 uncommitted interests in the San Andres formation  
16 underlying a standard horizontal spacing unit  
17 comprised of the W/2 E/2 and lots 1, 2, 3, and 4 of  
18 irregular Section 14, Township 13 South, Range 28  
19 East, in Lea County, New Mexico. And the Order  
20 designated Steward as the operator of the unit and --

21 HEARING EXAMINER: Ms. Mclean, I'm  
22 going to have to stop you here.

23 MS. HARDY: Yes.

24 HEARING EXAMINER: Because there's a  
25 serious problem in what you've just described and

1       there's a serious problem in the entire application.

2                       MS. HARDY:   Okay.

3                       HEARING EXAMINER:   It's not Range 13  
4       South -- Range 28 East.   It's Range 38 East.   Range 28  
5       East would put you in Eddy County; you're off by about  
6       60 miles.

7                       MS. HARDY:   I see that.   Wow, okay.

8                       HEARING EXAMINER:   And so, because this  
9       mistake is -- I found it.   It's in the application,  
10      it's in the notice, it's in the publication.   We're  
11      just going to have to dismiss this case and you really  
12      just need to start over.

13                      MS. HARDY:   I understand.

14                      HEARING EXAMINER:   I should have  
15      stopped you before you got going.

16                      MS. HARDY:   It's okay.

17                      HEARING EXAMINER:   All right.

18                      MS. HARDY:   Okay.   We will -- do you  
19      want us to file a dismissal, or will you dismiss the  
20      case?

21                      HEARING EXAMINER:   Oh, we can just  
22      dismiss it.

23                      MS. HARDY:   Okay.   All right.   We will  
24      refile.

25                      HEARING EXAMINER:   Thank you.



1 MS. HARDY: Thank you.

2 HEARING EXAMINER: With that, we are on  
3 Item 66, Case 23099, Steward Energy?

4 MS. HARDY: Mr. Examiner, Dana Hardy on  
5 behalf of Steward Energy.

6 HEARING EXAMINER: All right. Are  
7 there any other interested persons for Case 23099?  
8 Hearing none, Ms. Hardy, you may proceed.

9 MS. HARDY: Thank you. In this case,  
10 Steward seeks and order pooling all uncommitted  
11 interests in the San Andres Formation underlying a  
12 320-acre standard horizontal spacing unit comprised of  
13 the W/2 of Section 28, Township 13 South, Range 38  
14 East in Lea County and proposes to dedicate the unit  
15 to the Winnebago Fee 5H well. This is a proximity  
16 tract unit.

17 Our exhibits include the affidavits of  
18 landman Taylor Warren and geologist Shane Field.

19 Mr. Warren provides the standard land  
20 exhibits; the plat of tracts, ownership interests, and  
21 pooled parties are shown are Exhibit A-3.

22 Mr. Field provides a location map,  
23 structure map, cross-section, and gun barrel diagram.

24 My notice affidavit is Exhibit C. It  
25 includes a chart of the addresses and certified mail

1 receipts. Several of the notices were undeliverable  
2 but we did send to multiple addresses and sent several  
3 of those and we also timely published notice.

4 (Exhibits A through C were marked for  
5 identification.)

6 So with that, I would request that the  
7 exhibits be admitted and that the case be taken under  
8 advisement.

9 HEARING EXAMINER: Thank you. Mr.  
10 McClure?

11 MR. MCCLURE: Yes, Mr. Brancard, I do  
12 have some questions. Well, a question I guess, on  
13 this case.

14 Ms. Hardy, on your Exhibit A-3, I'm  
15 assuming it's a typo for your Tract A where it has  
16 your committed working interest owners as totaled to  
17 85.9 percent. I guess, can you confirm that for me?

18 MS. HARDY: On which tract?

19 MR. MCCLURE: On Tract A.

20 MS. HARDY: It looks like it should add  
21 up to more than 85 percent.

22 MR. MCCLURE: Yeah, well 65 plus 30,  
23 you know, would be 95. And then, in addition to that,  
24 you don't have any uncommitted interest owners shown.  
25 So the presumption would be your committed interest

1 owners equal that 100.

2 MS. HARDY: Yes, I think that's right,  
3 Mr. McClure.

4 MR. MCCLURE: Okay. So there are -- it  
5 is accurate that there are no uncommitted interest  
6 owners and that the committed interest owners is 100  
7 percent then?

8 MS. HARDY: In that tract, that's  
9 correct.

10 MR. MCCLURE: Okay. Yeah, so excuse  
11 me. Yes, I meant Tract A. Yup, that's what I was  
12 referring to.

13 MS. HARDY: Yeah.

14 MR. MCCLURE: Thank you, Ms. Hardy.  
15 Thank you, Mr. Brancard, that was my only question.

16 MS. HARDY: Thank you.

17 HEARING EXAMINER: Ms. Hardy, there's a  
18 fair number of unlocatable parties here. And I know  
19 your Exhibit A-5 is a chronology of contacts  
20 locatable, which is normally what we have -- we ask of  
21 you to do. I'm just wondering if you could give us a  
22 little more detail on what efforts were made to find  
23 the unlocatable parties? I got a sense from some of  
24 your exhibits that there were considerable efforts  
25 made. Maybe if you could add that to Exhibit A-5 just

1 so we have it in one place?

2 MS. HARDY: Sure.

3 HEARING EXAMINER: In case anybody ever  
4 comes back again and questions, you know, why didn't  
5 you find me?

6 MS. HARDY: Right. Okay. Sure, I'll  
7 be happy to submit an updated -- a more detailed  
8 Exhibit A-5 on that issue.

9 HEARING EXAMINER: Okay. So again, are  
10 there any other interested parties in Case 23099?  
11 Okay. So that was, Mr. McClure, that was Exhibit A-2.  
12 Is that correct?

13 MR. MCCLURE: Exhibit A-3, I believe,  
14 Mr. Brancard.

15 HEARING EXAMINER: Okay.

16 MR. MCCLURE: Yep, A-3.

17 HEARING EXAMINER: So if we could then  
18 accept the exhibits into to the record. This case is  
19 taken under advisement and the record left open for  
20 revisions to Exhibit A-3 and Exhibit A-5.

21 (Exhibits A through C were admitted  
22 into evidence.)

23 MS. HARDY: Thank you.

24 HEARING EXAMINER: Again, two-week  
25 deadline.

1 MS. HARDY: Thank you.

2 HEARING EXAMINER: All right. With  
3 that, we're on Item 67, Case 23100, Spur Energy  
4 Partners.

5 MS. MCLEAN: Hello, again. Jackie  
6 McLean with Hinkle Shanor on behalf of Spur Energy  
7 Partners.

8 HEARING EXAMINER: Thank you. Are  
9 there any other interested persons for Case 23100?  
10 Hearing none, you may proceed, Ms. McLean.

11 MS. MCLEAN: Thank you. Before I  
12 proceed, is there anything in this -- I just wanted  
13 to --

14 HEARING EXAMINER: You may go forward  
15 and take your risk here.

16 MS. MCLEAN: Okay. Thank you,  
17 Mr. Hearing Examiner.

18 In Case 23100, Spur seeks to pool all  
19 uncommitted interests within the Yeso formation  
20 underlying a 160-acre standard horizontal spacing unit  
21 comprised of the W/2 W/2 of Section 23, Township 17  
22 South, Range 27 [sic] East in Eddy County, New Mexico.

23 Basing unit will be dedicated to the  
24 Sierra Nevada 23 State Com 10H and 60H wells, which  
25 will be horizontally drilled from surface hole

1 locations in the NE/4 NW/4 Unit C of Section 23 to  
2 bottom hole locations in the SW/4 SW/4 Unit M of  
3 Section 23.

4 And the exhibit package submitted to  
5 the Division for Case Number 23100 contains the  
6 Exhibit A, land professional's testimony and related  
7 exhibits, including the plat of tracts, ownership  
8 interests, pooled parties, a well proposal letter, and  
9 summary of communications. And there were no  
10 unlocatable parties in this one.

11 Exhibit B, geology testimony, which  
12 includes a location map, structure map, gun barrel  
13 diagram, and a structural cross-section of the  
14 interval interests.

15 And then Exhibit C is a notice  
16 testimony, which sets out when the notice letter of  
17 this hearing and application were sent to the parties  
18 to be pooled.

19 We also timely published notice of this  
20 hearing. And I just wanted to state that the only  
21 returned mail that we received for this was an  
22 overriding royalty interest. Every other person  
23 received notice of the hearing.

24 And with that, I ask that Exhibits A,  
25 B, and C be admitted into the record in Case 23100 and

1 the case be taken under advisement.

2 (Exhibits A through C were marked for  
3 identification.)

4 HEARING EXAMINER: Thank you. Mr.  
5 McClure, questions?

6 MR. MCCLURE: Yes, Mr. Brancard. Ms.  
7 McLean, hopefully, I'm pronouncing your last name  
8 correct. Is that correct?

9 MS. MCLEAN: McLean, but close.

10 MR. MCCLURE: McLean.

11 MS. MCLEAN: McLean" deluxe, like at  
12 McDonald's, you know.

13 MR. MCCLURE: I noticed in your  
14 structure map it looks like this well is standup  
15 wherein there are surrounding lay-down wells and lay-  
16 down orientation. I guess, do we have any explanation  
17 as to the reason that Spur feels this will be more  
18 productive, I guess, to go in standup orientation?

19 MS. MCLEAN: I believe in the geology  
20 testimony, at Paragraph 8, he states that -- the  
21 geologist states that the standup orientation is more  
22 appropriate to properly develop this acreage. And it  
23 will avoid interference with the offsetting Spur  
24 operated other stand-up wells that are in that same  
25 area.

1                   So I believe that was the explanation,  
2 but if you would like more, we can certainly  
3 supplement that.

4                   MR. MCCLURE: Not necessarily. I was  
5 going to say, what it looks like here, I guess, is in  
6 that paragraph you cite is he's stating that there is  
7 no preferred orientation. So essentially, it was  
8 decided, based upon ownership reasons, then was the  
9 reason for the orientation. Is that kind of your  
10 understanding then?

11                  MS. MCLEAN: I believe so. I think  
12 just because of the other ones.

13                  MR. MCCLURE: Mm-hmm. Okay. Thank  
14 you. I have no other questions. Thank you.

15                  MS. MCLEAN: Thank you.

16                  HEARING EXAMINER: Thank you. Once  
17 again, are there any other interested persons for Case  
18 23100? Hearing none, the exhibits will be admitted  
19 into the record and Case 23100 will be taken under  
20 advisement. Thank you.

21                         (Exhibits A through C were admitted  
22 into evidence.)

23                  MS. MCLEAN: Thank you.

24                  HEARING EXAMINER: Okay. With that, we  
25 are on Items 68, 69, and 70. These are cases 23102,



1 23103, 23104, V-F Petroleum.

2 MS. MCLEAN: Yes, Jackie McLean with  
3 Hinkle Shanor on behalf of V-F Petroleum, Inc.

4 HEARING EXAMINER: Okay. And we have  
5 an entry appearance, COG Operating, Conoco Phillips?

6 MS. MUNDS-DRY: Good morning,  
7 Mr. Hearing Examiner, Ocean Munds-Dry for COG  
8 Operating, LLC, and ConocoPhillips.

9 HEARING EXAMINER: Thank you. Ms.  
10 Munds-Dry, does COG, Conoco object to this case going  
11 ahead by affidavit?

12 MS. MUNDS-DRY: We do not; thank you.

13 HEARING EXAMINER: Thank you. With  
14 that, you may proceed, Ms. McLean.

15 MS. MCLEAN: Thank you. V-F has  
16 consolidated Case Numbers 23102, 23103, and 23104,  
17 which seek to pool all uncommitted interests within  
18 the Bone Spring Formation underlying a 240-acre, more  
19 or less standard horizontal spacing unit comprised of  
20 the E/2 SE/4 of Section 29 and the E/2 E/2 of Section  
21 32, in Township 21 South, Range 35 East.

22 Specifically, in Case Number 23102, V-F  
23 is seeking to pool all uncommitted interests in the  
24 Bone Spring Formation underlying a 240-acre standard  
25 horizontal spacing unit comprised of the E/2 SE/4 of

1 Section 29, and the E/2 E/2 of Section 32. And  
2 dedicate the unit to the Cache River 29 32 State Com  
3 Number 104H, 204H, and 304H wells.

4 In Case Number 23103, V-F seeks to pool  
5 uncommitted interests within the Bone Spring Formation  
6 underlying a 240-acre, standard horizontal spacing  
7 unit comprised of the E/2 SW/4 of Section 29, and the  
8 E/2 W/2 of Section 32. And dedicate this unit to the  
9 Cache River 29 32 State Com Number 102H, 202H, and  
10 302H wells.

11 And then in Case Number 23104, V-F is  
12 seeking to pool the uncommitted interests within the  
13 Bone Spring Formation underlying a 240-acre, standard  
14 horizontal spacing unit comprised of the W/2 SW/4 of  
15 Section 29 in the W/2 W/2 of Section 32. And dedicate  
16 the unit to the Cache River 29 32 State Com Number  
17 101H, 201H, and 301H wells.

18 And the exhibit packet that we  
19 submitted to the Division for Case Numbers 23102,  
20 23103, and 23104 all contain land professional's  
21 testimony, which include a plat of tracts, ownership  
22 interests, pooled parties, well proposal letters, and  
23 a summary of communications.

24 Exhibit B, geology testimony, which  
25 includes a location map, first, second, and third Bone

1 Spring structure maps, stratigraphic cross-sections of  
2 the intervals of interest.

3 And then Exhibit C, notice testimony,  
4 which sets out when the notice letter of this hearing  
5 and application were sent to the parties to be pooled,  
6 as well as publication notice of this hearing which is  
7 Exhibit C-4.

8 And with that, I ask that Exhibits A,  
9 B, and C be admitted into the record in Case Numbers  
10 23102, 23103, and 23104 and that the cases be taken  
11 under advisement.

12 (Exhibits A through C were marked for  
13 identification.)

14 HEARING EXAMINER: Thank you. Mr.  
15 McClure, questions?

16 MR. MCCLURE: Yes, Mr. Brancard. Ms.  
17 McLean, on the acreage that is in the middle of this  
18 acreage, I guess, what I'm referring to is the W/2 of  
19 the SE/4 of 29 and the W/2 of the E/2 of Section 32,  
20 do you know what the plan is for this acreage?

21 MS. MCLEAN: I do not, but I can ask  
22 the client what the plan is and provide you with that  
23 information.

24 MR. MCCLURE: Do you know if V-F owns  
25 that interest or do you know what the status of that

1 interest is in that tract?

2 MS. MCLEAN: I think that V-F does own  
3 it and likely is planning to development -- develop it  
4 but I do believe that V-F owns interest in that  
5 acreage.

6 MR. MCCLURE: The majority of the  
7 interest, or I suppose you probably don't know that  
8 off the top of your head?

9 MS. MCLEAN: I don't know the amount  
10 off the top of my head, but I do know that they own an  
11 interest. Would you like me to provide more specifics  
12 on that? I believe they do plan on developing it, but  
13 I'm, you know, not 100 percent sure exactly what the  
14 plan is.

15 MR. MCCLURE: Yeah, my only concern, I  
16 guess, is if we are going to end up with stranded  
17 acreage, I guess, surrounded by these wells just to  
18 make sure it is going to, you know, actually end up  
19 getting produced.

20 MS. MCLEAN: I do not believe that it  
21 will be stranded.

22 MR. MCCLURE: I have no other  
23 questions, Mr. Brancard. I'll leave it up to your  
24 discretion whether you think that we want them to  
25 actually submit us anything towards this though or

1 just take our verbal testimony here.

2 HEARING EXAMINER: Thank you. Ms.  
3 Munds-Dry, are you still on the call?

4 MS. MUNDS-DRY: I'm here.

5 HEARING EXAMINER: Do you have any idea  
6 if COG has any plans for that acreage?

7 MS. MUNDS-DRY: No, I don't.

8 HEARING EXAMINER: It seems to be a  
9 larger percentage owner than V-F, actually.

10 MS. MUNDS-DRY: No, I don't. All I  
11 know for this area is that we have signed the JOA with  
12 V-F in this particular acreage.

13 HEARING EXAMINER: Okay. Yes; so Ms.  
14 McLean, if you could provide us with information about  
15 the status of the W/2 of the E/2, essentially, of  
16 Section 32, and then up into Section 29. The missing  
17 240-acres.

18 MS. MCLEAN: We can do that,  
19 Mr. Examiner.

20 HEARING EXAMINER: With that, are there  
21 any other persons with comments on Cases 23102, 103,  
22 104? Hearing none, the exhibits will be admitted into  
23 the record. Cases will be taken under advisement, and  
24 we'll be awaiting submittal of information on the  
25 240-acre parcel in between these three parcels.

1 Again, please have that within two weeks.

2 (Exhibits A through C were admitted  
3 into evidence.)

4 MS. MCLEAN: We will do that. Thank  
5 you.

6 HEARING EXAMINER: Okay. With that,  
7 let me just check in with our court reporter, Ms.  
8 Fulton. Are you doing okay?

9 THE REPORTER: I'm doing fine.

10 HEARING EXAMINER: All right. Well,  
11 let's keep going then a little bit here.

12 With that, we are on Items 71 through  
13 74. These will be Cases 23107, 23108, 23109, 23110;  
14 Colgate Operating?

15 MS. MCLEAN: Me again, Mr. Examiner.  
16 Jackie McLean, with Hinkle Shanor, on behalf of  
17 Colgate Operating.

18 HEARING EXAMINER: Thank you. Are  
19 there any other interested persons for Cases 23107,  
20 108, 109, 110?

21 Hearing none, first, Ms. McLean, you  
22 want to do these Bone Spring cases first and then the  
23 Wolfcamp cases. Is that what you would like to do?

24 MS. MCLEAN: Yes, that's the plan,  
25 Mr. Examiner.

1 HEARING EXAMINER: Okay. So please  
2 proceed with these four cases then.

3 MS. MCLEAN: Thank you. Colgate has  
4 consolidated Case Numbers 23107 to 23110, which seeks  
5 to pool uncommitted interests within the Bone Spring  
6 Formation in Sections 16 and 17 of Township 20 South,  
7 Range 28 east, in Eddy County, New Mexico.

8 In Case Number 23107, Colgate is  
9 seeking to pool all uncommitted interests in the Bone  
10 Spring Formation underlying a 320-acre, more or less,  
11 standard horizontal spacing unit comprised of the N/2  
12 N/2 of Sections 16 and 17 and plans to dedicate the  
13 spacing unit to the Dingo 17 Federal Com 121H and 131H  
14 wells.

15 In Case Number 23108, Colgate is  
16 seeking to pool all uncommitted interests, again, in  
17 the Bone Spring Formation, underlying a 320-acre  
18 standard horizontal spacing unit comprised of the N/2  
19 S/2 of Sections 16 and 17 and dedicate the spacing  
20 unit to the Dingo 17 Federal Com 123H and 133H wells.

21 Then we have Case Number 23110, which  
22 we seek to pool all uncommitted interests in the Bone  
23 Spring Formation underlying a 320-acre standard  
24 horizontal spacing unit comprised of the S/2 S/2 of  
25 Section 16 and 17 and dedicate the spacing unit to the

1 Dingo 17 Federal Com 124H and 134H wells.

2 And then finally, Case Number 23109  
3 involves an overlapping spacing unit, which is  
4 comprised of the S/2 N/2 of Sections 16 and 17. And  
5 in this overlapping spacing unit, Colgate seeks to  
6 pool all uncommitted interests from the top of the  
7 third Bone Spring Formation to the base of the Bone  
8 Spring Formation underlying the overlapping spacing  
9 unit and dedicate the spacing unit to the Dingo 17  
10 Federal Com 132H well.

11 And the unit will partially overlap  
12 with a spacing unit for the State Com CV 002H well,  
13 which is also operated by Colgate and is dedicated to  
14 the S/2 N/2 of Section 16 in the second Bone Spring  
15 Interval.

16 And for that reason, Colgate is seeking  
17 to pool the interests from the top of the third Bone  
18 Spring Formation at a stratigraphic equivalent of  
19 approximately 7,480 feet to the base of the Bone  
20 Spring Formation at approximately 8,821 feet TED.

21 And the exhibit packet that we  
22 submitted to the Division for Case Numbers 23107  
23 through 23110 contains Exhibit A, the land  
24 professional's testimony, and related land exhibits.  
25 And you'll see for Case Number 23109, with Exhibit



1 A-3, we have included a plat of the overlapping  
2 spacing unit as well.

3 And then Exhibit B, geology testimony,  
4 we have gun barrel diagrams, location maps, Bone  
5 Spring structure maps, and cross-sections of the  
6 intervals of interest.

7 And then Exhibit C, notice testimony,  
8 which sets out when the notice letter of this hearing  
9 and application were sent to the parties to be pooled,  
10 as well as the publication notice for this.

11 And with that, I ask that Exhibits A,  
12 B, and C be admitted into the record in Case Numbers  
13 23107, 23108, 23109, and 23110 and that the cases be  
14 taken under advisement.

15 (Exhibits A through C were marked for  
16 identification.)

17 HEARING EXAMINER: Thank you. Mr.  
18 McClure, questions?

19 MR. MCCLURE: Yes, Mr. Brancard. Ms.  
20 McLean, is it correct that Case 23109 is the only one  
21 that has a depth severance?

22 MS. MCLEAN: Yes, that is correct.

23 MR. MCCLURE: Okay. Now, the  
24 overlapping well, were all working interest owners  
25 notified of this application that have a working

1 interest in that horizontal spacing unit of that  
2 overlapping well?

3 MS. MCLEAN: We did not because we are  
4 the operator. Colgate is the operator of that well  
5 and that spacing unit. And I believe that they,  
6 Colgate, separately notified them. And that we did  
7 notify all working interest owners that this was an  
8 overlapping spacing unit in this case.

9 MR. MCCLURE: And was that notice  
10 included in this case packet anywhere?

11 MS. MCLEAN: Yes, sir. It is for  
12 Exhibit -- part of Exhibit C-1. And we included a  
13 copy of the application, which was styled as  
14 Application of Colgate Operating --

15 MR. MCCLURE: Let's see. Am I -- maybe  
16 I'm just missing it here.

17 MS. MCLEAN: It should be page 32 of  
18 the PDF is our notice that we sent.

19 MR. MCCLURE: Mm-hmm.

20 MS. MCLEAN: And then we attached --  
21 which we did not include --

22 MR. MCCLURE: Okay. So it's not  
23 included here then.

24 MS. MCLEAN: Yeah, we didn't include  
25 the actual applications that we sent with them. But

1 it is our understanding that all of the working  
2 interest owners in the overlapping spacing unit are  
3 the same working interest owners in this current unit  
4 that we are seeking to pool besides the -- sorry.

5 MR. MCCLURE: Oh, no, I apologize.  
6 Please continue.

7 MS. MCLEAN: I was just going to say,  
8 so the working interest owners received notice of this  
9 application. It was included in this packet. Exhibit  
10 C-1 is the cover letter for the packet that we  
11 included all of the applications behind it, including  
12 the application for the overlapping spacing unit, Case  
13 Number 23109.

14 MR. MCCLURE: Now, were all working  
15 interest owners notified or just the ones to be force  
16 pooled of this case?

17 MS. MCLEAN: We notified all of them.  
18 And you'll see in the chart -- I'm trying to find --  
19 we did not -- so COG had already executed a JOA, but  
20 we notified Devon, Diamond Head, and Dugan, who are  
21 the working interest owners. There's not that many in  
22 this case.

23 MR. MCCLURE: So Concho doesn't have a  
24 working interest in the section with the overlapping  
25 well, then?

1 MS. MCLEAN: So the section with  
2 overlapping well is 132 and I'm just looking, sorry.  
3 I'm just looking at my exhibit here to make sure I'm  
4 giving you the right information.

5 So 132 -- so they had already executed  
6 a JOA and so I believe, I'm not 100 percent sure.  
7 They have -- okay, yeah. They have no working  
8 interest in this -- because they are just in the N/2  
9 N/2.

10 If you look at our Exhibit A-3, and the  
11 overlapping spacing unit is the S/2 N/2, and COG only  
12 has a working interest in the N/2 N/2 of Section 16.  
13 They're highlighted in -- on the top there.

14 MR. MCCLURE: Are you referring to page  
15 12 according to our --

16 MS. MCLEAN: Yes, page 12 of the PDF.

17 MR. MCCLURE: And is Colgate the only  
18 working interest then within the State Lease LG 0794,  
19 Allotment 4, or however you call that last four  
20 digits, I guess?

21 MS. MCLEAN: It appears to be. Hold  
22 on; I'm looking at it. I believe that's the case. So  
23 this is the S/2 just looking at the -- it's so tiny.  
24 They make it so easy for us to read; right?

25 MR. MCCLURE: Yeah, it looks like it's

1 the fourth column over then.

2 MS. MCLEAN: Right.

3 MR. MCCLURE: And it does seem to  
4 indicate that it is 100 percent Colgate. Thank you,  
5 Ms. McLean, that's the only question I had.

6 MS. MCLEAN: Okay. Thank you.

7 HEARING EXAMINER: Thank you. I think  
8 in that regard, first of all, thank you for the map of  
9 the overlapping spacing interests.

10 MS. MCLEAN: We have been listening,  
11 Mr. Examiner.

12 HEARING EXAMINER: Nothing that we have  
13 -- I have requested, and you did exactly -- that's all  
14 it has to show.

15 MS. MCLEAN: Thank you.

16 HEARING EXAMINER: But I think the  
17 other part that we wanted is a statement somewhere.  
18 It could be in the land person's affidavit; it could  
19 be in the notice affidavit that indicates that, you  
20 know, persons were given notice of the overlapping  
21 spacing units.

22 I think what you're saying,  
23 essentially, is the application included both the  
24 compulsory pooling and the overlapping spacing unit  
25 and therefore, by giving them the application, they've

1     gotten notice of both. And really all you need to  
2     confirm is that it's the same people.

3                     MS. MCLEAN: Okay.

4                     HEARING EXAMINER: Because I mean, I  
5     think this is -- for this issue, it's a lot simpler in  
6     this case because you just have three parties you have  
7     to give notice for that.

8                     MS. MCLEAN: Yes.

9                     HEARING EXAMINER: So simply a  
10    statement that you can either add it to the land  
11    person's affidavit or add it to your notice affidavit  
12    that indicates that you have complied with that notice  
13    portion for overlapping spacing units.

14                    MS. MCLEAN: Okay. We will do that  
15    within two weeks, Mr. Examiner.

16                    HEARING EXAMINER: Yes. Okay. So now,  
17    I really got confused on these color-coded maps here  
18    and now I think I understand why I'm confused. I'm  
19    looking at your Exhibit A-3; okay?

20                    MS. MCLEAN: In the same Case 23109?

21                    HEARING EXAMINER: Well, it's the same  
22    exhibit in each case, which is sort of almost the same  
23    exhibit, which is what's troublesome.

24                    So if you look at that page in each  
25    case and you get down to the bottom where it says unit

1 capitulation, it will say, for 23109 S/2 of the N/2.  
2 You look at 23107, it will say N/2 of the N/2.

3 And yet, it will have the same exact  
4 percentages. Whoa. Which, once I started looking at  
5 it more carefully, is not possible because, as you  
6 indicated, COG is really only in the N/2 of the N/2.

7 So for 23107, your Exhibit A-3 unit  
8 capitulation of N/2 N/2 should, based the way I read  
9 this, should just be 50 percent Colgate 50 percent  
10 COG. But instead, the same percentages are used for  
11 each unit. It's just that bottom box, I think that's  
12 the problem.

13 MS. MCLEAN: Yes, I see that. We can  
14 do a revised Exhibit A-3 and have the landman confirm  
15 all the percentages.

16 HEARING EXAMINER: But anyway. But  
17 otherwise, I mean, I think this is all fine. This is  
18 actually fairly simple, even though you have a complex  
19 set of leases in here, the ownership is not that  
20 complex. So it's just a little bit of math, you know?

21 MS. MCLEAN: Not my forte, but I'm glad  
22 you can add it up. But we will submit a revised  
23 Exhibit A that reflects the notice as well as Exhibit  
24 A-3 percentages.

25 HEARING EXAMINER: Right. So the

1 notice is only for 23109.

2 MS. MCLEAN: Right.

3 HEARING EXAMINER: But the A-3 may be  
4 for, you know, you can see when you go back through  
5 it, could be for all of them.

6 MS. MCLEAN: We will check that,  
7 Mr. Examiner.

8 HEARING EXAMINER: With that, are there  
9 any other interested persons for Cases 23107, 108,  
10 109, 110? Hearing none, the exhibits will be admitted  
11 into the record. These cases will be taken under  
12 advisement, the record left open for submittal of  
13 revised Exhibits A-3, and for Case 23109, for a  
14 statement about compliance with notice for overlapping  
15 spacing units to be inserted to the affidavit of your  
16 choice.

17 (Exhibits A through C were admitted  
18 into evidence.)

19 MS. MCLEAN: Thank you.

20 HEARING EXAMINER: Thank you. All  
21 within two weeks.

22 All right. Well, let's try a few more  
23 cases, and then maybe we'll take a little break.

24 So we're on Items 75, 76, 77, 78.  
25 These will be Cases 23111, 23112, 23113, 23114;



1 Colgate Operating?

2 MS. MCLEAN: Jackie McLean with Hinkle  
3 Shanor on behalf of Colgate Operating.

4 HEARING EXAMINER: Are there any other  
5 interested persons for Cases 23111 through 23114?  
6 Hearing none, Ms. McLean, you may proceed.

7 MS. MCLEAN: Thank you. In these  
8 cases, Colgate has consolidated Case Numbers 23111 to  
9 23114, which seek to pool uncommitted interests within  
10 the Wolfcamp Formation in Sections 16 and 17 of  
11 Township 20 South, Range of 28 East, in Eddy County,  
12 New Mexico.

13 Specifically, in Case Number 23111,  
14 Colgate seeks to pool all uncommitted interests in  
15 Wolfcamp Formation underlying a 320-acre standard  
16 horizontal spacing unit comprised of the N/2 N/2 of  
17 Section 16 and 17, Township 20 South, Range 28 East,  
18 and to dedicate the unit to the Dingo 17 Federal Com  
19 201H well.

20 In Case Number 23112, Colgate is  
21 seeking to pool all uncommitted interests in the  
22 Wolfcamp Formation underlying a 320-acre, more or  
23 less, standard horizontal spacing unit comprised of  
24 the N/2 S/2 of Section 16 and 17, Township 20 South,  
25 Range 28 East, and dedicate this unit to the Dingo 17

1 Federal Com 203H well.

2 In Case Number 23113, Colgate is  
3 seeking to pool all uncommitted interests in the  
4 Wolfcamp Formation underlying a 320-acre, standard  
5 horizontal spacing unit comprised of the S/2 N/2 of  
6 Sections 16 and 17, Township 20 South, Range 28 East,  
7 and dedicate the unit to the Dingo 17 Federal Com 202H  
8 well.

9 And then finally, in Case 23114,  
10 Colgate is seeking to pool all uncommitted interests  
11 in the Wolfcamp Formation underlying a 320-acre, more  
12 or less, standard horizontal spacing unit comprised of  
13 the S/2 S/2 of Section 16 and 17, Township 20 South,  
14 Range 28 East, and dedicate this unit to the Dingo 17  
15 Federal Com 204H well.

16 The exhibit packet submitted to the  
17 Division in these cases contain Exhibit A, land  
18 professional's testimony and related land exhibits,  
19 which include a plat of tracts, ownership interests,  
20 pooled parties, a well proposal letter, and summary of  
21 communications.

22 Exhibit B, geology testimony, gun  
23 barrel diagrams, location maps, Wolfcamp structure  
24 maps, and structural and stratigraphic cross-sections  
25 of the intervals of interest.

1                   And Exhibit C, notice testimony, which  
2                   sets out when the notice letter of this hearing and  
3                   application were sent to the parties to be pooled, as  
4                   well as a publication notice.

5                   And with that, I ask that Exhibits A,  
6                   B, and C be admitted into the record in Case Numbers  
7                   23111, 23112, 23113, and 23114 and that the cases be  
8                   taken under advisement.

9                   (Exhibits A through C were marked for  
10                  identification.)

11                  HEARING EXAMINER: Thank you. Mr.  
12                  McClure, questions?

13                  MR. MCCLURE: Mr. Brancard, I don't  
14                  have any questions. Although, it does look like the  
15                  error that you pointed out with Exhibit A-3 for the  
16                  prior four cases is also present in these cases.

17                  HEARING EXAMINER: Thank you. Ms.  
18                  McLean, I guess I would say that.

19                  MS. MCLEAN: I had a feeling.

20                  HEARING EXAMINER: Because it looks  
21                  like the same ownership -- Wolfcamp.

22                  MS. MCLEAN: It is, Mr. Examiner.

23                  HEARING EXAMINER: So again, if you  
24                  could just do a revised Exhibit A-3s for all four of  
25                  these cases. Other than that, I don't have any other

1 questions.

2 Are there any other interested persons  
3 then for Case 23111 through 23114? Hearing none, the  
4 exhibits will be admitted into the record, and Cases  
5 23111 through 23114 will be taken under advisement,  
6 the record left open for two weeks for the submittal  
7 of revised Exhibit A-3.

8 (Exhibits A through C were admitted  
9 into evidence.)

10 MS. MCLEAN: Thank you, Mr. Examiner.

11 HEARING EXAMINER: Thank you. All  
12 right. So since we're about to shift law firms here,  
13 why don't we take a short break till 10:10 a.m.?

14 Thank you, everyone.

15 (Off the record.)

16 HEARING EXAMINER: I think we ended our  
17 last episode at Case Number 78, so we're now on Item  
18 Number 79, Case 23115, Mewbourne Oil Company.

19 MR. FELDEWERT: Good morning,  
20 Mr. Brancard, Mr. McClure. Michael Feldewert with the  
21 Santa Fe Office of Holland & Hart on behalf of the  
22 Applicant.

23 HEARING EXAMINER: Thank you. And we  
24 have an entry from Coterra Energy, et al.

25 MR. SAVAGE: Good morning; Darin

1 Savage, with the Santa Fe Office of Abadie & Schill on  
2 behalf of Coterra Energy and its subsidiaries,  
3 including Cimarex Energy Company.

4 HEARING EXAMINER: Does Coterra, et al.  
5 object to this case going forward by affidavit?

6 MR. SAVAGE: No objection. Thank you.

7 HEARING EXAMINER: Thank you. Are  
8 there any other interested persons in Case 23115?  
9 Hearing none, Mr. Feldewert, you may proceed for  
10 Mewbourne.

11 MR. FELDEWERT: Thank you. Mewbourne  
12 seeks to pool a standard 320-acre horizontal well  
13 spacing unit in the Bone Spring Formation. It's  
14 comprised of the S/2 of the N/2 of Sections 11 and 10  
15 in 19 South 30 East, down there in Eddy County, by  
16 what they call the Scarecrow well, which is a laydown  
17 well.

18 Our exhibit package provides the  
19 compulsory pool and checklist for this particular  
20 matter. The application, along with the notice for  
21 the docket.

22 Exhibit A is the self-affirmed  
23 statement of Tyler Jolly. He is the landman. He  
24 provides a number of exhibits, including A-1 being the  
25 C-102s or the C-102 for this well.

1           A-2 provides a nice map of the general  
2 area with the spacing unit shown in red in the bottom  
3 left-hand side -- left-hand corner, I should say.

4           A-3, Mr. Brancard and Mr. McClure, is a  
5 notice letter for the overlapping spacing unit. And  
6 you will see that in that letter we identify  
7 specifically not only the proposed spacing unit but  
8 also the two existing spacing units that are being  
9 overlapped. And then, as part of Exhibit A-3, he  
10 provides the two working interest owners, besides  
11 Mewbourne, that are impacted by the overlapping  
12 spacing unit.

13           Again, we don't seek approval for that;  
14 nobody's going to object. But I understand that this  
15 is the type of information you wanted for the pooling  
16 case.

17           Exhibit A-4 provides the tracts of land  
18 that are involved here for that S/2 of the N/2  
19 acreage. There are five tracts.

20           Exhibit A-5 -- I'm sorry. As part of  
21 Exhibit A-4, is then a breakdown of the ownership in  
22 each of those five tracts, along with the consolidated  
23 ownership on the last page of that exhibit. And  
24 you'll see the only party that they seek the approval  
25 now is Cimarex or Coterra.

1                   Exhibit A-5 is the well proposal letter  
2                   that went out to Cimarex in August, along with the --  
3                   a follow-up letter in September correcting the  
4                   location description of the well, and that includes  
5                   the AFE that was sent out with the well proposal  
6                   letter.

7                   Exhibit A-6 then provides a chronology  
8                   of contacts with Cimarex dealing with the pooling  
9                   issues.

10                  Exhibit B is the affidavit or self-  
11                  affirmed statement from the geologist, Mr. Crosby. He  
12                  provides a nice, structure map that has a lot of  
13                  information on it. But he does provide the --  
14                  identify the spacing unit there in the S/2 of the N/2  
15                  of Sections 11 and 10 and then the trajectory of the  
16                  proposed well.

17                  Exhibit B-2 is the stratigraphic cross-  
18                  section that corresponds with the A to A Prime on the  
19                  prior exhibit. And on that exhibit, he provides  
20                  the -- with the red arrow, a general location of the  
21                  third Bone Spring Sand Interval that they are  
22                  targeting with this particular well.

23                  Exhibit C is the affidavit from my  
24                  office providing notice or confirming that notice of  
25                  this hearing was provided to Cimarex, and it even has

1 an old-fashioned green card that was signed by  
2 someone.

3 So with that, Mr. Brancard and  
4 Mr. McClure, we ask that Exhibits A, B, and C be  
5 admitted into evidence and that this matter be taken  
6 under advisement.

7 (Exhibits A through C were marked for  
8 identification.)

9 HEARING EXAMINER: Thank you. Mr.  
10 Savage, any questions, or concerns?

11 MR. SAVAGE: Mr. Brancard, we're just  
12 preserving appellate rights so no questions at this  
13 time.

14 HEARING EXAMINER: Thank you. Mr.  
15 McClure?

16 MR. MCCLURE: Yeah, Mr. Brancard, I am  
17 just looking on the overlapping, but I don't have any  
18 questions. Thank you.

19 HEARING EXAMINER: Mr. Feldewert, I  
20 mean, thank you for the information on the overlap.  
21 Again, as you might have noticed, in one of the prior  
22 cases from the Hinkle firm, they actually did a map  
23 which was very helpful. And, in your case, that might  
24 be really helpful because it looks like you have  
25 overlapping like this and then like that, if I read



1 the letter correctly.

2 MR. FELDEWERT: Correct. So if you  
3 look at the letter, it specifically identifies the  
4 overlapping -- the two overlapping spacing units with  
5 the acreage that's involved.

6 HEARING EXAMINER: Right. One unit  
7 seems to be entirely contained within the unit that  
8 you're proposing. I got that, right? And the other  
9 though is, sort of, perpendicular.

10 MR. FELDEWERT: If you need a -- yeah,  
11 Mr. Brancard, if you need a picture and you go to  
12 Exhibit B-1.

13 HEARING EXAMINER: B-1.

14 MR. FELDEWERT: Yeah, you'll see that  
15 stand up well in the E/2 of the E/2 of 11? That's one  
16 of the wells that's identified in spacing units in the  
17 letter.

18 And then you're going to see, kind of,  
19 a, I don't want to call it diagonal, because it's -- I  
20 don't think it's intended to be that way, but you'll  
21 see a well, in -- fully within the existing spacing  
22 unit that starts in the Section 11 in, kind of, the  
23 E/2 of the W/2 that extends then as a lay down into  
24 Section 10. That's what matches the acreage  
25 description that you see of the overlapping spacing

1 unit or units in Exhibit A-3.

2 HEARING EXAMINER: Thank you. All  
3 right. Thank you. Well, I appreciate the information  
4 on the notice. So Great Western got notice but  
5 they're also committed to your unit. I mean, they got  
6 notice of the overlap?

7 MR. FELDEWERT: Yes, and then --

8 HEARING EXAMINER: And they are a  
9 committed party within your spacing unit?

10 MR. FELDEWERT: Yeah; and not to make  
11 it too confusing, but yes. They got notice of the  
12 overlap, and then, separately, they got notice of the  
13 pooling application, but they've since reached an  
14 agreement with Cimarex -- I'm sorry, with Mewbourne  
15 and there's no need to pool them.

16 HEARING EXAMINER: Thank you. All  
17 right.

18 Are there any other questions? Any  
19 other persons interested in Case 23115? Hearing none,  
20 the exhibits will be admitted into the record and Case  
21 23115 will be taken under advisement.

22 (Exhibits A through C were admitted  
23 into evidence.)

24 MR. FELDEWERT: Thank you, gentlemen.

25 MR. MCCLURE: Thank you.

1 HEARING EXAMINER: With that, we are on  
2 Item Number 80, Case 23116; Oxy USA, Inc.?

3 MR. RANKIN: Mr. Examiner, Adam Rankin,  
4 appearing on behalf of the Applicant in this case from  
5 the Santa Fe Office of Holland & Hart.

6 HEARING EXAMINER: Thank you. Mr.  
7 Rankin, your voice is a little soft today, so speak a  
8 little louder or -- that would be great.

9 HEARING EXAMINER: Are there any other  
10 interested persons for Case 23116? Hearing none, Oxy  
11 may proceed.

12 MR. RANKIN: Thank you, Mr. Examiner.  
13 In this case, Oxy seeks an order approving an  
14 approximately 1280-acre nonstandard horizontal well  
15 spacing unit in the Wolfcamp Formation, underlying  
16 Sections 5 and 8, all within Township 24 South, Range  
17 35 East, in Lea County, New Mexico and pooling all  
18 uncommitted mineral interest owners in the proposed  
19 nonstandard horizontal well spacing unit.

20 The proposed spacing unit will be  
21 initially dedicated to six initial wells, identified  
22 as that Maltese 5 8 Fed Com wells, that will be  
23 drilled from the north to the south.

24 In the packet of exhibits that we filed  
25 on Tuesday is a table of contents that identifies each

1 of the exhibits that were pre-filed for this case.

2 Exhibit A is a copy of the compulsory  
3 pooling checklist that identifies the spacing unit and  
4 the other elements required for pooling.

5 Exhibit A -- rather B -- is a copy of  
6 the application that was filed in this case.

7 Exhibit C is the self-affirmed  
8 statement of Oxy's landman, land negotiator,  
9 Mr. Matthew Cole. Mr. Cole has previously testified  
10 before the Division and has been accepted as an expert  
11 in petroleum land matters.

12 His self-affirmed statement reviews the  
13 nature of the spacing unit and the fact that, given  
14 that the configuration of the federal leases involved,  
15 that the BLM will not permit commingling of service  
16 production in this acreage. And therefore, in order  
17 to save on space and reduce impacts on surface -- the  
18 surface facilities, they are seeking a single-spacing  
19 unit through a CA.

20 In order to obtain a CA, the BLM  
21 requires them to have a spacing unit designated by the  
22 Division, and therefore, they are seeking a  
23 nonstandard spacing unit in this case to combine the  
24 acreage to enable them to get a CA from the BLM.

25 Exhibit C-1 is a copy of the proposed

1 CA that would address -- that will be submitted to the  
2 BLM for approval. In Mr. Cole's statement, he  
3 identifies each of the wells and the locations for  
4 those wells that will be drilled in the spacing unit.

5 C-2 is a copy of the C-102s for each of  
6 the wells reflecting that the locations first and last  
7 take points and that the wells will be dedicated to  
8 the Antelope Bridge Wolfcamp Pool, Pool Code 2220.  
9 There are no ownership, depth severances within the  
10 acreage.

11 Exhibit C-3 is a plat of the tracts  
12 that comprise the proposed spacing unit, along with  
13 the interest ownership for each tract. You'll see in  
14 that exhibit, Mr. Examiner, that Oxy is seeking to  
15 pool a single interest owner in this acreage whose  
16 interest is less than one-tenth of a percent across  
17 the spacing unit.

18 Exhibit C-4 is a sample of the well  
19 proposal letters and AFEs that were sent to the owners  
20 of working interest. Mr. Cole confirms that the AFEs  
21 and the costs are consistent with what Oxy and other  
22 operators have occurred for drilling similar wells in  
23 this area within the Wolfcamp Formation.

24 C-5 is a summary of the contacts that  
25 Oxy has undertaken to reach the single interest owner

1 that they're seeking to pool here and efforts to  
2 follow-up with the owner by identifying several  
3 different phone numbers.

4 Also in Mr. Cole's statement, he  
5 identifies that the costs that they are seeking here  
6 are 8500 per month while drilling and 850 while  
7 producing and that these costs are similar and  
8 consistent with what other operators are charging for  
9 similar wells in the area.

10 And then finally, C-6 is a copy of a  
11 notice plat identifying the offsetting tracts and the  
12 operators of those tracts that Oxy has provided notice  
13 to pursuant to the Division rules for nonstandard  
14 spacing units.

15 Exhibit D is a copy of the self-  
16 affirmed statement of Oxy's geologist. This is the  
17 first time that Mr. Pardolly [ph] is testifying in  
18 this -- before the Division. Therefore, attached is  
19 D-1 is a copy of his resume. We ask at this time that  
20 Mr. Pardolly [ph] be recognized as an expert in  
21 petroleum geology.

22 HEARING EXAMINER: Hearing no  
23 objections, so qualified.

24 MR. RANKIN: Thank you. Mr. Pardolly's  
25 [ph] statement reviews the acreage and the tracts that

1 will be dedicated to this spacing unit and identifies  
2 the geology in his review. It confirms that he has  
3 not identified any geologic impediments to drilling  
4 wells in this acreage and confirms that the target  
5 interval is consistent across the entire spacing unit.

6 He testifies further that the approval  
7 of a nonstandard spacing unit will allow Oxy to space  
8 its wells in its preferred spacing; therefore,  
9 minimizing waste. And that the approval of a  
10 nonstandard spacing unit will result in protection  
11 of correlative rights and will reduce waste.

12 Attached to his exhibits, his  
13 affidavit -- rather his self-affirmed statement, are  
14 the exhibits that reflect the location of the spacing  
15 unit, the cross-section -- line of cross-section A to  
16 A Prime that would -- and the wells that were used to  
17 construct a cross-section that is Exhibit D-4  
18 identifying the zones that Oxy is targeting with its  
19 six wells.

20 Exhibit E is a self-affirmed statement  
21 of Oxy's facilities engineer, Mr. Jeffrey Bullock.  
22 Mr. Bullock has not previously testified before the  
23 Division and therefore, attached to his self-affirmed  
24 statement, is Exhibit E-1, which is a copy of his  
25 resume reflecting his credentials to testify as a

1     petroleum -- an expert in petroleum engineering  
2     matters. And at this time, Mr. Examiner, I would  
3     tender Mr. Bullock as an expert in petroleum  
4     engineering.

5                     HEARING EXAMINER: Hearing no  
6     objections, so accepted.

7                     MR. RANKIN: Mr. Bullock reviews the  
8     savings, both in terms of surface acreage and in terms  
9     of costs and emissions, that will result if Oxy is  
10    permitted to drill these wells in a single-spacing  
11    unit.

12                    Exhibits E-1 -- rather E-2 through E-4,  
13    identify that they will realize an approximate two-  
14    acre surface reduction if they're able to drill this  
15    acreage under a single space unit by reducing the  
16    number of production trains from four down to three.

17                    In addition, those will result in a  
18    nearly \$8 million cost savings to Oxy that will allow  
19    them to make the drilling of these wells more  
20    competitive and allow the acreage to be -- result in a  
21    cost savings for the production life of these wells.

22                    And then finally, because there's one  
23    fewer battery train proposed, that it will result in  
24    approximately 25 percent reduction in unavoidable  
25    permitted air emissions from the tanks and related



1 facilities.

2 Therefore, Mr. Examiner, Mr. Bullock  
3 testifies that the proposed nonstandard spacing unit  
4 is necessary to protect -- necessary to reduce waste  
5 and prevent waste and will also be protected  
6 of correlative rights.

7 Exhibit F is a copy of the affidavit  
8 that I prepared reflecting that we provided notice to  
9 the offsets in this tract -- that are on this tract  
10 and as well to the working interest owners that are  
11 being pooled.

12 Attached to that affidavit is a copy of  
13 the letter that was sent to each of those owners and  
14 operators as well as a status of the certified mailing  
15 that went out reflecting, again, the status of each of  
16 those mailings.

17 Exhibit G is a copy of the affidavit of  
18 publication that was run in the newspaper of Lea  
19 County, the Hobbs News-Sun, reflecting each of the  
20 parties that we're seeking to pool and otherwise were  
21 required to give -- to be notified or identified by  
22 name in that publication.

23 And with that, Mr. Examiner, if there's  
24 no further questions, we ask that Exhibits A through G  
25 and their attachments be accepted into the record.

1 (Exhibits A through G were marked for  
2 identification.)

3 HEARING EXAMINER: Thank you. Mr.  
4 McClure, questions?

5 MR. MCCLURE: Mr. Brancard, I don't  
6 have any questions for this case.

7 HEARING EXAMINER: Thank you. So, Mr.  
8 Rankin, looking at your well proposals, it appears  
9 that if you were to pursue this as standard horizontal  
10 spacing units that you have two wells that could be  
11 used as proximity wells. Is that correct, 33H, 35H?  
12 And therefore, this would be two standard horizontal  
13 spacing units; right?

14 MR. RANKIN: Right.

15 HEARING EXAMINER: Am I correct?

16 MR. RANKIN: That's my understanding,  
17 yes.

18 HEARING EXAMINER: So your proposal  
19 then is to combine two standard horizontal spacing  
20 units into one larger nonstandard horizontal spacing  
21 unit.

22 MR. RANKIN: Correct.

23 HEARING EXAMINER: And you have  
24 provided us the information in support of that.

25 So is there anyone else here on behalf

1 of Case 23116? Hearing none, the exhibits will be  
2 admitted into the record and Case 23116 will be taken  
3 under advisement.

4 (Exhibits A through G were admitted  
5 into evidence.)

6 MR. RANKIN: Thank you, Mr. Examiner.  
7 Have a good day.

8 HEARING EXAMINER: Thank you. Gosh, is  
9 he leaving us? With that, I will call Item Number  
10 23117; V-F Petroleum?

11 MR. SAVAGE: Good morning,  
12 Mr. Hearing Examiner and Mr. Technical Examiner.  
13 Darin Savage with the Santa Fe Office of Abadie &  
14 Schill appearing on behalf of V-F Petroleum, Inc.

15 HEARING EXAMINER: All right. Mr.  
16 Salvage, do you want to combine this with the next  
17 case or do them separately?

18 MR. SAVAGE: Let's do these separately.  
19 There might be some differences that justify that.

20 HEARING EXAMINER: All right. So with  
21 that, are there any other interested persons for Case  
22 23117? Hearing none, please proceed.

23 MR. SAVAGE: If it pleases the  
24 Division, we will present Case Number 23117 by  
25 affidavit. This case covers lands in Sections 33 and

1 34, Township 18 South, Range 28 East, Eddy County, New  
2 Mexico.

3 The landman for this case, Ryan Curry,  
4 has not testified previously before the Division as an  
5 expert witness. Mr. Curry graduated in 2020 from  
6 Texas Tech University with a bachelor's degree in  
7 energy commerce. He has worked at V-F Petroleum for  
8 approximately two months and has been working as a  
9 professional landman in New Mexico for approximately  
10 two years.

11 A one-page resume has been attached to  
12 his statement for the Division's review. We ask that  
13 he be accepted as an expert witness in petroleum land  
14 matters.

15 HEARING EXAMINER: Hearing no  
16 objection, so accepted.

17 MR. SAVAGE: Thank you. The geologist  
18 for the case, Jason Lodge, has testified before the  
19 Division as an expert witness and his credentials have  
20 been accepted as a matter of record.

21 In Case Number 23117, V-F Petroleum  
22 seeks an order establishing a standard 320-acre, more  
23 or less, spacing unit comprised of the S/2 N/2 of  
24 Section 34 and 33 and pooling all uncommitted  
25 interests in the Bone Spring Formation. The unit will

1 be dedicated to two initial wells, the Walker 34-33  
2 State Com Number 223H well and the Walker 34-33 State  
3 Com 233H well.

4 Orientation of the well is lay down,  
5 east to west, and setback requirements under statewide  
6 rules are met.

7 Mr. Curry's Exhibit A includes his  
8 landman affidavit, the C-102s, an ownership breakdown,  
9 the well proposal letter with AFEs, and a rather  
10 extensive chronology of contacts.

11 Mr. Lodge's Exhibit B for this case  
12 includes his geology affidavit, along with geology  
13 Exhibits B-1 a location map; B-2 a Sub-C structure map  
14 for the second Bone Spring Sand; B-3 a Sub-C structure  
15 map for the third Bone Spring Sand; and B-4 a  
16 structural cross-section that appeared to show good  
17 potential for development as described in his  
18 affidavit.

19 Exhibit C provides the affidavit of  
20 notice for mailings and publication notice. Notice  
21 was both timely sent and published. There were a  
22 number of cards returned as undeliverable, as you may  
23 note.

24 If I can direct your attention to  
25 Paragraph 13 in Mr. Curry's land statement. It

1 provides an overview of the parties involved with the  
2 undeliverable addresses. These parties were contacted  
3 by either phone or e-mail, or both, as also described  
4 in the chronology of contacts. And the commercial  
5 database used to contact the parties is described.

6 Both Mr. Curry and Mr. Lodge affirm  
7 that the approval of this application is in the best  
8 interest of conservation, protection of correlative  
9 rights and the prevention of waste and will prevent  
10 the drilling of unnecessary wells.

11 At this time, I move that Exhibits A,  
12 B, and C and all sub exhibits be accepted into the  
13 record for Case 23117. And that this case be taken  
14 under advisement.

15 (Exhibits A through C were marked for  
16 identification.)

17 I am available for any questions, thank  
18 you.

19 HEARING EXAMINER: Thank you. Mr.  
20 McClure, any questions?

21 MR. MCCLURE: No, Mr. Brancard, I don't  
22 have any questions for this case.

23 HEARING EXAMINER: Thank you. Mr.  
24 Savage, thank you for the documentation of the efforts  
25 to locate people. That's helpful.

1 MR. SAVAGE: Thank you.

2 HEARING EXAMINER: With that, the  
3 exhibits -- are there any other interested persons  
4 then for Case 23117? Hearing none, the exhibits in  
5 this case will be admitted into the record and Case  
6 23117 will be taken under advisement.

7 (Exhibits A through C were admitted  
8 into evidence.)

9 MR. SAVAGE: Thank you.

10 HEARING EXAMINER: With that, I call  
11 the next Item. Item 82, Case 23118; V-F Petroleum?

12 MR. SAVAGE: Darin Savage with the  
13 Santa Fe Office of Abadie & Schill on behalf of V-F  
14 Petroleum, Inc.

15 HEARING EXAMINER: Are there any other  
16 interested persons for Case 23118? Hearing none, V-F  
17 may proceed.

18 MR. SAVAGE: Thank you. Again, this  
19 case covers lands in Sections 33 and 34, Township 18  
20 South, Range 28 East, Eddy County, New Mexico.

21 The landman for this case is Shawn  
22 Johnson, who has previously testified before the  
23 Division as an expert witness and his credentials have  
24 been accepted as a matter of record acknowledging his  
25 expertise in petroleum land matters.

1                   Somehow, Mr. Ryan Curry's one page  
2     resume got inserted into this hearing packet, so  
3     please disregard that unless you find that  
4     particularly riveting. I apologize for that insertion  
5     there.

6                   The geologist for the case, Jason  
7     Lodge, has testified before the Division as an expert  
8     witness and his credentials have been accepted as a  
9     matter of record.

10                  In Case Number 23118, V-F Petroleum  
11     seeks an order establishing a standard 240-acre, more  
12     or less, spacing unit comprised of the N/2 NW/4 of  
13     Section 34 and N/2 N/2 of Section 33 and pooling all  
14     uncommitted interests in the Bone Spring Formation.

15                  The unit will be dedicated to two  
16     initial wells; the Walker 34-33 State Com 224H well  
17     and the Walker 34-33 State Com 234H well.

18                  Orientation of the unit is lay down  
19     east to west and setback requirements under statewide  
20     rules are met.

21                  Mr. Johnson's exhibit includes his  
22     landman affidavit, the C-102s, an ownership breakdown,  
23     the well proposal letter with AFEs, and a  
24     communications summary describing the contacts.

25                  Mr. Lodge's Exhibit B for this case



1 includes his geology exhibit -- geology affidavit,  
2 along with geology Exhibits B-1 a location map; B-2 a  
3 Sub-C structure map for the second Bone Spring Sand;  
4 B-3 a Sub-C structure map for the third Bone Spring  
5 Sand; and B-4, a structural cross-section that showed  
6 good potential for development as described by his  
7 affidavit.

8 Exhibit C provides the affidavit of  
9 notice for mailings and publication notice. Notice  
10 was both timely sent and published. All owners -- all  
11 working interest owners were located and provided  
12 notice.

13 Both Mr. Johnson and Mr. Lodge affirm  
14 that the approval of this application is in the best  
15 interest of conservation, protection of correlative  
16 rights and the prevention of waste and will prevent  
17 the drilling of unnecessary wells.

18 At this time, I move that Exhibits A,  
19 B, and C and all sub exhibits be accepted into the  
20 record for Case 23118. And that this case be taken  
21 under advisement.

22 (Exhibits A through C were marked for  
23 identification.)

24 I stand available for any questions you  
25 may have, thank you.

1 HEARING EXAMINER: Thank you. Mr.  
2 McClure?

3 MR. MCCLURE: Yes, Mr. Brancard, I do  
4 have a couple of questions.

5 Mr. Savage, I guess, as you're probably  
6 expecting, I guess I'm kind of wondering what the  
7 story is with the N/2 of the NW/4 of Section 34.  
8 Actually, it might be northeast. I might have it  
9 wrote down in my notes wrong.

10 MR. SAVAGE: It should be the  
11 northwest. Northwest N/2, I believe you're correct on  
12 that.

13 MR. MCCLURE: Okay. Then my notes are  
14 right. I guess, what is the thought process of why  
15 we're missing the acreage there where we have it  
16 filled in on the other well?

17 MR. SAVAGE: You know, that's an  
18 interesting question. This is the development plan  
19 that they presented to me and that's what they wanted  
20 to go forward with. I can inquire and find out why  
21 they excluded the northeast -- N/2 northeast but --  
22 I'm sorry. Yeah, N/2 northeast. I'll find out why  
23 they excluded that, but I don't have a specific answer  
24 to that question. This is just what they decided what  
25 they wanted to develop.

1 MR. MCCLURE: Okay; yeah. The only  
2 reason I was wondering is because it just looks like  
3 it's a state active lease and the same lease is a part  
4 of the other little area so I wasn't quite sure.

5 MR. SAVAGE: No, it's a standard unit.  
6 They didn't mention anything about anything being  
7 stranded in that regard but that's a concern, stranded  
8 acreage and I'd be -- about that.

9 MR. MCCLURE: Exactly. Yes -- yes,  
10 sir. And that was the only question I had. Thank  
11 you, Mr. Savage. Thank you, Mr. Brancard.

12 HEARING EXAMINER: Thank you. You  
13 know, Mr. Savage, I was just glancing through your  
14 exhibit packet. You have two wells dedicated to this?

15 MR. SAVAGE: Yes.

16 HEARING EXAMINER: Is that correct?

17 MR. SAVAGE: That's correct.

18 HEARING EXAMINER: I was looking at the  
19 C-102s, and maybe this is explained in the geological  
20 exhibits, but those two wells seem to be just 75 feet  
21 apart from each other?

22 MR. SAVAGE: Okay. If that is the --  
23 if that's the dimensions on that, that they present,  
24 then I would have to go with that. You know, their  
25 technical folks were the ones that developed this

1 particular plan, so I assume that's going to be a  
2 feasible development plan. But if there's a concern  
3 there, I would certainly want to look into that.

4 HEARING EXAMINER: Just curious. I  
5 think that could be probably handled better at the APD  
6 stage, but.

7 MR. SAVAGE: Yes.

8 HEARING EXAMINER: Because one's 330  
9 from the north line and the other one's 405 from the  
10 north line.

11 MR. SAVAGE: Right. Yeah; I'm looking  
12 at that right now. Okay. That's the -- if you look  
13 at his -- that's the service hole location, the bottom  
14 of the location. But they did provide -- the landman  
15 did provide take points in paragraph -- in his landman  
16 affidavit. Take a look at those. Looks like I  
17 accidentally knocked out my exhibit here. Hold on.

18 In Mr. Johnson's landman affidavit, he  
19 did provide take points. I don't know if that  
20 clarifies what the distance is on that, which may be  
21 different. I'm looking at those here now. Those are  
22 Paragraph 7 and Paragraph 8. And those are the same  
23 405 and 330, so that looks like the locations of the  
24 lateral that they're shooting for, Mr. Brancard.

25 MR. MCCLURE: If I may, Mr. Brancard,

1 it does look like they're total vertical depth in  
2 those same Paragraphs 7 and 8 is, you know, like 900  
3 feet deeper for one of them than the other.

4 HEARING EXAMINER: Okay. I was  
5 wondering about that.

6 MR. SAVAGE: That is correct. Yes.  
7 Thank you, Mr. McClure.

8 HEARING EXAMINER: Okay. That makes  
9 sense.

10 MR. SAVAGE: That section there. Yes,  
11 that makes sense.

12 HEARING EXAMINER: They're just  
13 stacking them that way. Okay. All right. Excellent.

14 All right. Are there any other persons  
15 then for Case 23118? Hearing none, the exhibits will  
16 be admitted into the record and Case 23118 will be  
17 taken under advisement. Thank you.

18 (Exhibits A through C were admitted  
19 into evidence.)

20 MR. SAVAGE: Thank you.

21 MR. MCCLURE: Mr. Brancard, were we  
22 going to get any supplemental information regarding  
23 the possibility of stranded acreage or what's your  
24 thoughts?

25 HEARING EXAMINER: Oh, yes, I'm sorry.

1 You did request that information and Mr. Savage was  
2 going to look into the N/2 of the NE; is that correct?

3 MR. MCCLURE: Yes, I believe that's  
4 correct. Yeah, I think my original notes were wrong.

5 MR. SAVAGE: We'd be glad to do that.  
6 Thank you. I'll get that to you within the two weeks.

7 HEARING EXAMINER: Right, because 117  
8 goes all the way across for two miles. It's just 118  
9 that's the mile and a half.

10 MR. SAVAGE: There should be a good  
11 reason for that, I would guess, but we'll find out.

12 HEARING EXAMINER: The record will be  
13 left open for information about this 80-acre tract.  
14 Thank you.

15 MR. SAVAGE: Thank you.

16 HEARING EXAMINER: All right. With  
17 that, we will go to Cases 23119, 23120; Devon Energy  
18 Production?

19 MR. SAVAGE: Good morning,  
20 Mr. Hearing Examiner and Mr. Technical Examiner.  
21 Darin Savage with the Santa Fe Office of Abadie &  
22 Schill on behalf of Devon Energy Production Company,  
23 LP.

24 HEARING EXAMINER: Thank you. So are  
25 there any other interested persons then for Case

1 23119, 23120? Hearing none, Mr. Savage, you indicated  
2 that these cases will need to be continued but you'd  
3 like to put on a presentation today; is that correct?

4 MR. SAVAGE: That is correct.

5 HEARING EXAMINER: All right. Well,  
6 why don't we do that.

7 MR. SAVAGE: All right. Thank you,  
8 Mr. Hearing Examiner. I'll pull these up here. We  
9 are presenting Cases 23119 and 23120, which cover  
10 lands in Sections 22 and 27, Township 25 South, Range  
11 32 East, Lea County, New Mexico.

12 The landman, Beryl [ph] Brown for these  
13 cases has testified before the Division and his  
14 credentials have been accepted and made a matter of  
15 record.

16 The geologist, Kate Houston Kennedy,  
17 has testified previously before the Division as an  
18 expert witness and her credentials have been accepted  
19 as a matter of record.

20 In Case Number 23119, Devon seeks an  
21 order establishing a standard 320-acre spacing unit  
22 covering the E/2 W/2 of Sections 22 and 27 and pooling  
23 all uncommitted interests in the Bone Spring Formation  
24 designated as an oil pool.

25 The unit is dedicated to the Haflinger

1 22-27 Fed Com Number 304H well as the initial well.  
2 Orientation to the well is standup, north to south,  
3 and its location is orthodox.

4 Mr. Brown's Exhibit A for Case 23119  
5 includes his landman affidavit, C-102, an ownership  
6 breakdown, the well proposal letter with an AFE, and a  
7 chronology of contacts.

8 Ms. Houston Kennedy's Exhibit B for  
9 this case includes her geology affidavit along with  
10 the five standard geology exhibits showing a potential  
11 for development as described in her affidavit.

12 Exhibit C provides the affidavit of  
13 notice for mailings and publication notice. Notice  
14 was both timely mailed and all working interest owners  
15 were locatable and received notice.

16 Only eight overriding royalty interest  
17 owners were unlocatable, as described in Paragraph 12  
18 of Mr. Brown's affidavit.

19 Notice by publication was not timely,  
20 unfortunately, and Devon respectfully requests a  
21 continuance that would allow the defect in the  
22 publication notice to be cured.

23 Both Mr. Brown and Ms. Houston Kennedy  
24 affirm that the approval of this application is in the  
25 best interest of conservation, protection of



1 correlative rights, and the prevention of waste and  
2 will prevent the drilling of unnecessary wells.

3 In the next case, Case Number 23120,  
4 Devon seeks an order establishing a standard 640-acre  
5 spacing unit covering the W/2 of Sections 22 and 27  
6 and pooling all uncommitted interests in the Wolfcamp  
7 Formation designated as an oil pool underlying the  
8 unit.

9 The unit is dedicated to seven initial  
10 wells and these are the Haflinger, and they all have  
11 the same prefix, Haflinger 22-27 Fed Com, Number 610H  
12 well; Number 710H well; Number 625H well; Number 715H  
13 well; Number 721H well; Number 821H well; and the  
14 Number 831H well. I believe I covered all seven of  
15 those.

16 Orientation of the wells are standup,  
17 north to south, and their locations are orthodox. The  
18 721H well is positioned to be the proximity well and  
19 its completed interval will be within 330 feet of the  
20 section line separating the E/2 W/2 and W/2 W/2 to  
21 allow for the larger 640-acre spacing unit through the  
22 use of proximity tracts.

23 Mr. Brown's exhibit for Case 23120  
24 includes his landman affidavit, the C-102s, an  
25 ownership breakdown, the well proposal letters with

1 AFEs, and the chronology of contacts.

2 Ms. Houston Kennedy's Exhibit B for  
3 this case includes her geology affidavit, along with  
4 the five standard geology exhibits showing the  
5 potential for development as described in her  
6 affidavit.

7 Mr. Brancard, I would like to direct  
8 you to Paragraph 5 of the geologist's affidavit where  
9 she discusses the Cotton Draw Fault System and  
10 provides an overview of how Devon has addressed any  
11 concerns or issues with this fault system.

12 Exhibit C provides the affidavit of  
13 notice for mailings and publication notice. Notice  
14 was timely mailed and all working interest owners were  
15 locatable and received notice. There were eight  
16 overriding royalty interest owners who were  
17 unlocatable and that's described in Paragraph 18 of  
18 Mr. Brown's affidavit.

19 And again, notice by publication was  
20 not timely and Devon again requests a continuance that  
21 would allow the defect in the publication notice to be  
22 cured.

23 Both Mr. Brown and Ms. Houston Kennedy  
24 affirm that the approval of this application is in the  
25 best interest of conservation, protection of

1 correlative rights, and the prevention of waste and  
2 will prevent the drilling of unnecessary wells.

3 At this time, I move that Exhibits A,  
4 B, and C and all sub exhibits be accepted into the  
5 record for Cases 23119 and 23120. And that this  
6 case -- these cases be taken under advisement.

7 (Exhibits A through C were marked for  
8 identification.)

9 And I'm available for any questions,  
10 regarding the cases that you may have.

11 HEARING EXAMINER: Thank you. Mr.  
12 McClure, questions?

13 MR. MCCLURE: Yes, Mr. Brancard. Mr.  
14 Savage, for Case 23119, for the Wolfcamp.

15 MR. SAVAGE: I believe that's -- that  
16 would be for the Bone Spring?

17 MR. MCCLURE: Looks like it downloaded  
18 from the 23119 and it says Wolfcamp on this Exhibit  
19 A-2.

20 MR. SAVAGE: Okay. That must be a  
21 mistake on our part.

22 MR. MCCLURE: Maybe can you scroll up?  
23 Well, I mean, I guess, well, I'll figure that out here  
24 in a bit. But I guess what my question is though, for  
25 the Wolfcamp, whichever case that is, it looks -- I'm

1       sorry?

2                       MR. SAVAGE:   Excuse me.   I'm sorry.   Go  
3       ahead, please continue.   Go ahead.

4                       MR. MCCLURE:   The Exhibit A-2 for the  
5       tract one ownership, it looks like Providence  
6       Minerals, LLC is listed as being uncommitted?   But  
7       then when your guy goes down to the end where it shows  
8       the uncommitted working interest owners seeking to be  
9       compulsory pooled highlighted in yellow, they are not  
10      included there.

11                      MR. SAVAGE:   Yes.   I believe that  
12      Providence has committed to a JOA in this regard and I  
13      believe that that was an oversight on us.

14                      MR. MCCLURE:   Okay.   So then on the  
15      tract one, the oversight is -- or the discrepancy --  
16      the inaccuracy, I guess, is where it says Providence  
17      is uncommitted because they are committed then?

18                      MR. SAVAGE:   I believe that is correct.  
19      I believe that they got a commitment to that or a  
20      voluntary agreement and we would need to change that  
21      in the exhibit to reflect that.

22                      MR. MCCLURE:   Oh, actually, are both  
23      exhibits on the combined?   You have both exhibits on  
24      both cases then, in both case files?

25                      MR. SAVAGE:   Yeah, I think there's a

1 single difference and I believe it involves Oxy  
2 between the two cases.

3 MR. MCCLURE: Well, what I mean is, is  
4 it a combined packet? So maybe I am looking at the  
5 packet from the wrong case file and just scrolled down  
6 to the wrong place in it.

7 MR. SAVAGE: It is a combined packet;  
8 that's correct.

9 MR. MCCLURE: Okay -- okay. I  
10 apologize. Okay. I got you. Yeah, that's the reason  
11 then. I was looking at one from the other case file  
12 and it's just the combined packet. I hadn't scrolled  
13 all the way down to see all of that. But regardless,  
14 okay. Thank you. Yep. That was all my questions,  
15 Mr. Savage. Thank you.

16 MR. SAVAGE: Thank you, Mr. McClure.  
17 Sorry for the confusion on our end.

18 MR. MCCLURE: No problem.

19 HEARING EXAMINER: Thank you. I think  
20 I noticed the same thing. So it was Exhibit A-2 on  
21 Case 23120. You need to clarify the status of  
22 Providence.

23 MR. SAVAGE: We will do that, clarify  
24 that, and --

25 HEARING EXAMINER: I think you gave

1     them notice anyway, so --

2                   MR. SAVAGE:   Yeah; we gave everybody  
3     notice.   You know, in negotiations, you know, you have  
4     ongoing negotiations and sometimes you run into  
5     something like that; I apologize for that.   But we  
6     will certainly clarify that.

7                   HEARING EXAMINER:   All right.   So any  
8     other questions or concerns for Cases 23119, 23120?  
9     Hearing none, the exhibits will be admitted into the  
10    record.

11                               (Exhibits A through C were admitted  
12                               into evidence.)

13                   We are looking forward to a revised  
14    Exhibit A-2 in Case 23120.   And furthermore, because  
15    of the publication issue, both of these cases will be  
16    continued to the November 17th docket and you don't  
17    need to file a continuance.

18                   MR. SAVAGE:   Okay; thank you.   Thank  
19    you, Mr. Hearing Examiner.

20                   HEARING EXAMINER:   All right; thank  
21    you.   So with that, we are now on, I believe, Items 85  
22    through 88, Cases 23121, 23122, 23123, 23124; Matador  
23    Production Company?

24                   MS. VANCE:   Paula Vance, Santa Fe  
25    office of Holland & Hart --

1 HEARING EXAMINER: Ms. Vance, you're  
2 really quiet.

3 MS. VANCE: Okay; can you hear me now?

4 HEARING EXAMINER: Not very loud. You  
5 can try shouting.

6 MS. VANCE: I can use my command voice,  
7 since I am a lieutenant commander in the Coast Guard.

8 HEARING EXAMINER: Exactly. Those  
9 skills come in handy once in a while.

10 MS. VANCE: Is that better? Can you  
11 hear me now?

12 HEARING EXAMINER: Yes; that's a little  
13 better. Yes. Okay.

14 MS. VANCE: Okay. I apologize for  
15 that. I'm not sure what the issue is. Anyway, Paula  
16 Vance with the Santa Fe office of Holland & Hart on  
17 behalf of the Applicant, Matador Production Company.

18 HEARING EXAMINER: All right. And  
19 you're doing these four cases separate from the next  
20 four cases; is that correct?

21 MS. VANCE: That's correct.

22 THE REPORTER: Thank you. Are there  
23 any other interested persons for Cases 23121, 122,  
24 123, or 124? Hearing none, Matador may proceed.

25 MS. VANCE: All right. Give me one

1 second. I'm going to try to fix my audio. Nope. I  
2 don't know what I'm doing. Okay. I will proceed.  
3 Hopefully, you can hear me. Okay.

4 In Case Numbers 23121, 23122, 23123,  
5 and 23124, Matador seeks to amend the Division orders  
6 for its Bivins Fed Com wells, and those wells are  
7 numbers 137H, Number 138H, 213H and 214H, and is  
8 respectfully requesting an extension of time to  
9 commence drilling the initial wells under the orders  
10 for those wells.

11 In the exhibit packet we provided,  
12 Exhibit A is the extension applications; Exhibit B is  
13 a copy of the original orders in those cases for the  
14 Bivins wells; and then Exhibit C is an affidavit from  
15 landman David Johns in which he attests to why there  
16 is good cause to extend the orders in these cases.

17 And just a brief explanation, Matador  
18 filed federal APDs for the Number 137H and the Number  
19 138H Bivins wells in October 2021 and the Number 213H  
20 and Number 214H Bivins wells in November 2021 and has  
21 not yet received approval. But once Matador receives  
22 approval, Matador intends to promptly drill those  
23 wells.

24 And then Exhibit D is a self-affirmed  
25 statement of notice with sample letters that were



1 timely mailed on October 14, 2022 and an affidavit of  
2 notification of application, which is Exhibit E, which  
3 was timely published on October 16th and 19th for the  
4 respective cases that are indicated.

5 And unless there are any questions, I  
6 would ask that the exhibits be admitted into the  
7 record and that case numbers 23121, 23122, 23123, and  
8 23124 be taken under advisement by the Division at  
9 this time.

10 (Exhibits A through E were marked for  
11 identification.)

12 HEARING EXAMINER: Thank you. Mr.  
13 McClure, any questions?

14 MR. MCCLURE: Yes, Mr. Brancard, I do.  
15 Ms. Vance, it looks like only two persons were noticed  
16 on these first four cases; is that correct?

17 MS. VANCE: I believe that is correct.

18 MR. MCCLURE: Now, the original order  
19 from last year, it looks like there were nine noticed  
20 persons. Do you know what the discrepancy is there or  
21 the reason for the discrepancy, excuse me.

22 MS. VANCE: I apologize for  
23 interrupting. I'm not sure, but I'm happy to follow  
24 up with Matador. I'm not sure if it's a case where  
25 they may have reached agreement with those parties.

1 But again, I'm happy to follow up and get an answer  
2 for you.

3 MR. MCCLURE: Thank you. Yeah. That  
4 was kind of maybe what my presumption might be the  
5 reason for it, but a confirmation of that would  
6 definitely be good. Thank you; that's the only  
7 question I had.

8 HEARING EXAMINER: Thank you. Are  
9 there any other interested persons for cases 23120,  
10 121, 122, 123? Hearing none, these cases will be --  
11 the exhibits will be admitted into the record and the  
12 cases will be taken under advisement. Thank you.

13 (Exhibits A through E were admitted  
14 into evidence.)

15 MS. VANCE: Thank you.

16 MR. MCCLURE: Are we asking for the  
17 additional supplemental information, Mr. Brancard?

18 HEARING EXAMINER: I'm sorry; what was  
19 your information, Mr. McClure?

20 MR. MCCLURE: The reason for the  
21 difference in notice, assuming that we want that,  
22 anyway?

23 HEARING EXAMINER: Yes.

24 MS. VANCE: Does that need to be filed  
25 or can I e-mail the Division with that information?

1 Maybe e-mail Mr. McClure directly?

2 HEARING EXAMINER: Mr. McClure, are you  
3 okay with that?

4 MR. MCCLURE: Oh, I apologize, Mr.  
5 Brancard, I thought you were -- I was going to say, I  
6 would assume you'd want them to file it in the case  
7 file, would we not?

8 HEARING EXAMINER: Well, if there's no  
9 need to correct anything?

10 MR. MCCLURE: Well, I guess you make a  
11 good point.

12 HEARING EXAMINER: You're asking for an  
13 explanation here.

14 MR. MCCLURE: I was going to say, a  
15 follow up by an e-mail would be fine with me if it's  
16 good with you?

17 HEARING EXAMINER: Okay. And then,  
18 based on that, if you need to change anything in the  
19 exhibits, follow up immediately.

20 MS. VANCE: Will do.

21 HEARING EXAMINER: Thank you. All  
22 right. With that, Cases Numbers 89, 90, 91, 92.  
23 These are Case Numbers 23125, 23126, 23127, 23128;  
24 Matador Production Company?

25 MS. VANCE: Hello again; still me. Mr.

1 Hearing Examiner and Mr. McClure, Paula Vance with the  
2 Santa Fe office of Holland & Hart on behalf of the  
3 Applicant, Matador Production Company.

4 HEARING EXAMINER: Thank you. Are  
5 there any other interested persons for cases 23125,  
6 126, 127, 128? Hearing none, please proceed.

7 MS. VANCE: Thank you, Mr. Hearing  
8 Examiner. In Case Numbers 23125, 23126, 23127, 23128,  
9 Matador seeks to amend the Division orders for its  
10 Weinberger Fed Com wells, and those are Number 135H,  
11 Number 136H, Number 211H, and Number 212H, and is  
12 respectfully requesting an extension of time to  
13 commence drilling. The initial wells under those  
14 orders for those wells.

15 In the exhibit packet we have provided  
16 the extension applications, which is Exhibit letter A;  
17 a copy of the original orders, which is Exhibit B; and  
18 Exhibit C is an affidavit from landman David Johns in  
19 which he attests to why there is good cause to extend  
20 the orders.

21 And again, a brief explanation.  
22 Matador filed federal APDs for each of the wells in  
23 September 2021 and has not yet received approval. But  
24 once they receive approval, they plan to drill these  
25 wells promptly.

1           And then, Exhibit D is a self-affirmed  
2 statement of notice with sample letters that were  
3 timely mailed on October 14, 2022 and an affidavit of  
4 notification of publication, which is Exhibit E, and  
5 was timely published on October 16th, 18th, and 19th  
6 for the cases indicated on the affidavits.

7           And unless there are any questions, I  
8 would ask that all exhibits be admitted into the  
9 record and that Case Numbers 23125, 23126, 23127, and  
10 23128 -- or, yes; I'm sorry -- I may have said --  
11 23127 and 23128 -- my apologies -- be taken under  
12 advisement by the Division.

13                   (Exhibits A through E were marked for  
14 identification.)

15           HEARING EXAMINER: Thank you. Mr.  
16 McClure, questions?

17           MR. MCCLURE: Yes, Mr. Brancard, I do.  
18 Ms. Vance, maybe I'm looking in the wrong case file,  
19 but I guess I don't even see any notice information.  
20 I see, like, an example certified notice here, but I'm  
21 not, like, seeing, like, the public notice here. Is  
22 that only in some of the case files, or am I just  
23 blind looking at the exhibit?

24           MS. VANCE: Well, I would have to look.  
25 But the copy that I have that I believe we filed has a

1 sample of the letters and that is followed by the  
2 green cards, and there are five green cards, and then  
3 all of the notices of publication. But I'm happy to  
4 look on the Division's website.

5 MR. MCCLURE: How many pages do you  
6 have on that exhibit? Because there's 56 of them on  
7 the one I'm looking at.

8 MS. VANCE: I had 62.

9 MR. MCCLURE: Okay.

10 HEARING EXAMINER: I don't see any  
11 green cards.

12 MR. MCCLURE: I wonder if it's in one  
13 of the other case files or something?

14 HEARING EXAMINER: Did you have a  
15 spreadsheet on notice, Ms. Vance?

16 MS. VANCE: We did not; just the green  
17 cards were included. And I'm on the Division's  
18 website and I'm pulling up, starting with the first  
19 case, 125. Yeah; I see that there are 56 pages. So,  
20 yeah. I'm not sure why that's not in there? That's  
21 not the complete packet that I have in front of me  
22 that's in our case file. But I'm happy to refile  
23 these with the green cards and the Notice of  
24 Publication. If you give me --

25 HEARING EXAMINER: Do we have a list of

1 the parties who were supposed to receive notice?

2 MS. VANCE: I do. I'm not sure if --  
3 can I e-mail that packet to you right now so you can  
4 see that and we can file it after the hearing? I'm  
5 not sure why the complete packet is not on the OCD's  
6 images.

7 HEARING EXAMINER: Why don't we hold  
8 this case then for a little bit and get back to it  
9 later?

10 MS. VANCE: Yeah. Would it be --

11 HEARING EXAMINER: And you can send  
12 us --

13 MS. VANCE: Oh, I'm sorry. Please go  
14 ahead.

15 HEARING EXAMINER: Can you send us the  
16 information or send it to Marlene.

17 MS. SALVIDREZ: Actually, just file it  
18 online and I will approve it right away.

19 MS. VANCE: Thank you.

20 MR. MCCLURE: So we are just moving  
21 these to the end of the docket then, Mr. Brancard, or?

22 HEARING EXAMINER: Yes; I think that  
23 would be appropriate. Because it sounds like Ms.  
24 Vance has the information. You can get it to us. She  
25 doesn't need two weeks to do it. And we can hopefully

1 evaluate it by the end of today.

2 MR. MCCLURE: Ms. Vance, the only thing  
3 I guess I would point out real fast is these cases  
4 also seem to have the same discrepancy between the  
5 original order notice and these orders notice, in that  
6 if you only noticed 5 people this time I think  
7 initially there were 15 people noticed. So if you  
8 just wanted to include these cases in the follow-up  
9 e-mail that you will be providing to me on the initial  
10 four cases?

11 MS. VANCE: I am happy to do that, Mr.  
12 McClure.

13 MR. MCCLURE: Thank you.

14 HEARING EXAMINER: All right. Why  
15 don't we just stay these cases; 23125 through 23128,  
16 and we will get back to them, hopefully, at the end of  
17 the docket here today.

18 MS. VANCE: That would be much  
19 appreciated, Mr. Hearing Examiner.

20 HEARING EXAMINER: All right; thank  
21 you. So why don't we move on then to our next two  
22 cases. These are Items 93 and 94 on the worksheet.  
23 These are Cases 23147, 23148; Devon Energy Production?

24 MR. SAVAGE: Good morning Mr. Hearing  
25 Examiner and Mr. Technical Examiner, Darin Savage with



1 Abadie & Schill appearing on behalf of Devon Energy  
2 Production Company, LLP.

3 HEARING EXAMINER: Thank you. Are  
4 there any other interested persons for cases 23147,  
5 23148? Hearing none, Devon may proceed.

6 MR. SAVAGE: Thank you. These cases,  
7 Numbers 23147 and 23148, cover lands in the W/2 of  
8 Sections 26 and 35, excluding the SW/4 S/W S/W of  
9 Section 35, all in Township 22 South, Range 33 East,  
10 Lea County, New Mexico.

11 The S/W 4 of Section 35 is excluded due  
12 to BLM restrictions on leasing in this area. In this  
13 area, the BLM has had some restrictions on these  
14 sections in a number of areas. Previously, we pooled  
15 in the E/2 of some of these sections and experienced  
16 the same BLM restrictions.

17 The landman in this case, Matthew  
18 Hoops, has testified previously before the Division as  
19 an expert witness and his credentials have been  
20 accepted as record acknowledging his expertise. The  
21 geologist is Thomas Peryam, who has testified before  
22 the Division as an expert witness and his credentials  
23 have been accepted as a matter of record.

24 In Case Number 23147, Devon seeks an  
25 order establishing a nonstandard 600-acre, more or

1 less, spacing unit comprised of the W/2 of Section 26  
2 and the NW/4 and the N/2 SW/4 and the SE/4 SW/4 of  
3 Section 35 -- and that's basically the W/2, excluding  
4 the S/W S/W -- and pooling all uncommitted interest  
5 owners in the Bone Spring Formation.

6 The unit will be dedicated to four  
7 initial wells; the Serpentine 35-26 State Fed Com 1H  
8 well; the Serpentine 35-26 Fed Com 9H well; the  
9 Serpentine 35-26 Fed Com 11H well; and the Serpentine  
10 35-26 Fed Com 12H well.

11 Orientation of the well is stand up,  
12 south to north, and all setback requirements under  
13 statewide rules are met. Since Devon is requesting a  
14 nonstandard spacing unit, Devon is applying  
15 administratively for approval of the nonstandard unit  
16 and is working with the OCD through this process.

17 Mr. Hoops' Exhibit A includes his  
18 landman affidavit, the C102s, the ownership breakdown,  
19 well proposals with AFEs, and chronology of contacts  
20 showing the extent of negotiations and interactions  
21 with Marathon.

22 Mr. Peryam's Exhibit B for this case  
23 includes his geology affidavit along with the standard  
24 geology exhibits listed as B-1 through B-6 that show  
25 potential for development as described in his

1 affidavit.

2 Exhibit C provides the Affidavit of  
3 Notice for mailings and publication notice. Notice  
4 was both timely sent and published. All owners were  
5 locatable and notice was delivered.

6 In Case Number 23148 Devon seeks an  
7 order establishing a nonstandard 600-acre, more or  
8 less, spacing unit comprised of the W/2 of section 26  
9 and the NW/4 and the N/2 SW/4 and the SE/4 SW/4 of  
10 Section 35 and pooling all uncommitted interest owners  
11 in the Wolfcamp formation.

12 The unit will be dedicated to two  
13 initial wells; the Serpentine 35-26 Fed Com 2H well  
14 and the Serpentine 35-26 Fed Com 10H well.  
15 Orientation of the unit is stand up, south to north,  
16 and setback requirements under statewide rules are  
17 met. Again, Devon is applying administratively for  
18 approval of the nonstandard unit and is working with  
19 the OCD through this process.

20 Mr. Hoops' Exhibit A includes his  
21 landman affidavit, the C102s, the ownership breakdown,  
22 the well proposals with AFEs and chronology of  
23 contacts showing the extent of negotiations with  
24 Marathon.

25 Mr. Peryam's Exhibit B for this case

1 includes his geology affidavit along with the standard  
2 geology exhibits that he lists as B-1 through B-6.

3 Exhibit C provides the Affidavit of  
4 Notice for mailings and publication notice. Again,  
5 notice was both timely sent and published and all  
6 owners, both working interests and overrides, were  
7 locatable and notice delivered.

8 Both Mr. Hoops and Mr. Peryam affirm  
9 that the approval of these applications, the two, is  
10 in the best interests of conservation, protection of  
11 correlative rights, and the prevention of waste and  
12 will prevent the drilling of unnecessary wells.

13 At this time, I move that Exhibits A,  
14 B, and C and all sub exhibits be accepted into the  
15 record for Cases 23147 and 23148 and that the cases be  
16 taken under advisement.

17 (Exhibits A through C were marked for  
18 identification.)

19 And I am available for any questions  
20 that you may have.

21 HEARING EXAMINER: Thank you. Mr.  
22 McClure, any questions?

23 MR. MCCLURE: Yeah, I do, Mr. Brancard.  
24 Mr. Savage, how it kind of seemed from your testimony  
25 here is your NSP is based upon the exclusion of the

1 SW/4 of the SW/4 of Section 35; is that correct?

2 MR. SAVAGE: That's correct. And  
3 that's what we had done in the past with the -- when  
4 we addressed the E/2 of these sections. Correct, Mr.  
5 McClure.

6 MR. MCCLURE: I was going to say, the  
7 only difficulty we're looking at here is your infill  
8 well or, excuse me, your defining well. You're  
9 essentially fitting the SE/4 of the SW/4 to its  
10 spacing unit. You're not excluding the SW/4 of the  
11 SW/4?

12 MR. SAVAGE: That would be the  
13 flipside, I believe. I would have to look at that,  
14 that we added that quarter section; I agree.

15 MR. MCCLURE: Well, the reason I bring  
16 this up because, I mean, they're both NSPs, but the  
17 reason I bring this up is the notice requirements for  
18 NSPs is different based upon whether you're including  
19 or excluding --

20 MR. SAVAGE: That sounds correct.

21 MR. MCCLURE: Yeah. So do you know if  
22 the notice that was conducted was done based upon the  
23 inclusion or the exclusion of that?

24 MR. SAVAGE: Well, you know, it has  
25 gone through that -- I can't remember the exact

1 details of that. I would have to pull that up. But  
2 it's gone through that process and I believe it has  
3 been approved, the NSP. But I do need to talk with  
4 Mr. Lowe.

5 You know, we did some changes with the  
6 wells and I believe we may need to talk with him  
7 either about supplementing or doing something to  
8 account for possibly some of these changes that we did  
9 with this application.

10 MR. MCCLURE: Mm-hmm.

11 MR. SAVAGE: But as I understand, you  
12 know, how we viewed that is, that well, the spacing  
13 unit would have been a standard unit. And the rules  
14 point out, it would have been a standard unit had we  
15 been able to include that SW SW/4 because we would  
16 have used a proximity well, possibly, to bring that  
17 in. And so, how they were looking at that was that  
18 because -- excluded because we could not do the full  
19 standard spacing unit that we had to exclude that SW  
20 SW/4. That's how we were doing that. And I believe  
21 that you would have to do notice of adjacent owners  
22 all the way around.

23 MR. MCCLURE: Correct; yeah, that  
24 essentially would be the difference.

25 MR. SAVAGE: Yeah. And I know we went

1 ahead and accounted for everybody as a precaution. I  
2 know that we did all of the adjoining owners and  
3 potential owners in that regard. But that has been  
4 extensively reviewed -- during the --

5 MR. MCCLURE: And you believe -- and  
6 you believe the admin order for that NSP has already  
7 been approved? Do you happen to have it with you?

8 THE WITNESS: I believe that's already  
9 been approved, but I -- I think I need to talk to Mr.  
10 Lowe about, you know, we did -- we did an amended  
11 application to address the change of the 9H well and I  
12 want to make sure with Mr. Lowe that, that is not an  
13 issue in there.

14 MR. MCCLURE: So then perhaps the  
15 initial NSP has been approved but there may be an  
16 amended NSP that you're going to submit an application  
17 for?

18 MR. SAVAGE: I believe that may be the  
19 proper process for this so I'm going to have to look  
20 that up closely.

21 MR. MCCLURE: Okay.

22 MR. SAVAGE: But we've gone through a  
23 lot of the evaluation at this point on the NSP.

24 MR. MCCLURE: Okay. Do you happen to  
25 have that NSP number?

1                   MR. SAVAGE: I can certainly e-mail  
2 that to you. I'll be glad to e-mail that to you.

3                   MR. MCCLURE: Yes; please e-mail that  
4 to me.

5                   MR. SAVAGE: Yeah.

6                   MR. MCCLURE: And then, has the  
7 Division -- I know in the prior CP orders with these I  
8 thought we were doing the NSP as a part of the CP. I  
9 guess I don't know. Has the Division communicated to  
10 you that we can administratively do an NSP and then do  
11 the compulsory pooling based upon that, or?

12                  MR. SAVAGE: That's been my  
13 understanding. That's how we've done it in the past  
14 and we've never had an objection to that. It's my  
15 understanding that you can do the NSPs and the NSLs  
16 administratively and go through the notice process for  
17 those applications on the backside.

18                  MR. MCCLURE: Okay. Well, the only  
19 other question I have for you, Mr. Savage, is that  
20 your understanding then that, that SW/4 of the SW/4,  
21 the BLM has no intention of leasing it out anytime in  
22 the immediate future then; is that correct?

23                  MR. SAVAGE: Yes. We ran into that  
24 with the E/2 and we tried to lease that -- Devon tried  
25 to lease that numerous times and has been in



1 conversation with the BLM and that's been the  
2 conclusion, is that, that is fully restricted. And I  
3 believe it's based on habitat issues.

4 MR. MCCLURE: Okay; thank you, Mr.  
5 Savage. I have no more questions for you on these  
6 cases.

7 HEARING EXAMINER: Okay. We need to  
8 really clarify what this case is about.

9 MR. SAVAGE: Okay.

10 HEARING EXAMINER: You have applied  
11 through a hearing for a nonstandard spacing unit.

12 THE WITNESS: That is correct.

13 HEARING EXAMINER: But it appears that  
14 you have also applied administratively for a  
15 nonstandard spacing unit.

16 MR. SAVAGE: Well --

17 THE REPORTER: You can do either, okay?

18 MR. SAVAGE: Yes. I thought -- yes.  
19 So, you know, if we are approving the nonstandard  
20 spacing unit through this hearing, we are going to  
21 give you a lot of grief now about your nonstandard  
22 spacing unit application.

23 MR. SAVAGE: Okay.

24 HEARING EXAMINER: Okay? But it  
25 appears that you are already processing this through

1 the administrative process?

2 MR. SAVAGE: That is correct. And, Mr.  
3 Brancard, I apologize if there was some confusion  
4 there. But the language in there about requesting a  
5 nonstandard, I guess that was with an appeal to  
6 provide notice to the OCD that we were wanting  
7 approval of the NSP but that we -- and we wanted the  
8 Division to be aware of that upfront with the pooling  
9 process, but that the intent was to go through the  
10 administrative process on that. There may be a better  
11 way to phrase that --

12 HEARING EXAMINER: Just say what you  
13 just said.

14 MR. SAVAGE: So we would just --

15 HEARING EXAMINER: This is a  
16 nonstandard spacing unit. We will apply for  
17 administrative approval of a nonstandard spacing unit.

18 MR. SAVAGE: Yes; I agree, that  
19 additional request for approval is misplaced in that  
20 application. But the intent is, I believe, expressed  
21 in that desire and the action of pursuing the  
22 administrative process.

23 HEARING EXAMINER: Okay. So the  
24 question then is, what is nonstandard about this  
25 spacing unit? Because we could look at this as a,

1     what?   A 640-acre spacing unit that's missing 40  
2     acres.

3                     THE WITNESS:   That is correct.

4                     HEARING EXAMINER:   Okay.   If that's  
5     correct, then your spacing unit needs to have a  
6     proximity well.

7                     MR. SAVAGE:   I guess with the  
8     configuration that Devon was going forward with that  
9     we felt like we couldn't extend the proximity well  
10    since they were starting from with the drilling pads  
11    in the south and then they were doing take points  
12    where the lateral did not include that -- did not  
13    bring in that S/W S/W4, we felt like the cleaner  
14    approach would be to do a nonstandard to account for  
15    that 4/4 section, as opposed to trying to reach  
16    something where it wasn't operationally feasible do a  
17    lateral to pull in that S/W SW/4.   That was the  
18    thinking behind that.

19                    So we thought it was a cleaner approach  
20    where the, you know, the end result would be analogous  
21    and the only difference it looks like would be that  
22    the additional notice to ensure that correlative  
23    rights were protected, providing that the Division  
24    would approve that approach.

25                    HEARING EXAMINER:   Okay.   Well, your 9H

1 well looks close to being a proximity well.

2 MR. SAVAGE: That's 9? Let me pull  
3 that up here.

4 HEARING EXAMINER: But it's not pooling  
5 in that last 4/4 down there.

6 MR. SAVAGE: That's right. That was  
7 the concern.

8 HEARING EXAMINER: Southeast of the  
9 Southwest, I guess?

10 MR. SAVAGE: Right. That was the  
11 concern, you know, that those laterals were not  
12 extending sufficiently to actually operate fully as a  
13 proximity well. We ran into that in the E/2 too. We  
14 had a lateral that didn't extend all the way up and, I  
15 think, was able to include a restricted 4/4 section  
16 and we went with the nonstandard on that. The  
17 Division agreed to that.

18 HEARING EXAMINER: Okay. So are you  
19 saying that all of these nonstandard issues are being  
20 addressed in your nonstandard application?

21 MR. SAVAGE: That is correct, Mr.  
22 Brancard. I believe that's correct. In the future,  
23 we'll be a little bit more specific on our placement  
24 of approval language. But, yes. We were going  
25 through that process. A lot of it has been reviewed

1 and we'd like to finalize that as part of this process  
2 with the pooling.

3 HEARING EXAMINER: Okay. You need to  
4 provide us with some sort of certificate or revised  
5 landman's affidavit or a certificate from you sort of  
6 saying what the process is.

7 MR. SAVAGE: Okay. We will do that.

8 HEARING EXAMINER: And that this is a  
9 nonstandard spacing unit and the nonstandard spacing  
10 unit will be approved and we will be seeking  
11 administrative approval of a nonstandard spacing unit.

12 MR. SAVAGE: Yes; thank you, Mr.  
13 Brancard. We'll get that to you.

14 HEARING EXAMINER: Mr. McClure, any  
15 other concerns or questions?

16 MR. MCCLURE: If you're asking me, Mr.  
17 Brancard, no. Just the NSP was the only thing I had  
18 questions about and the potentially stranded acreage,  
19 but I think I already asked all of my questions.

20 HEARING EXAMINER: Thank you. And so,  
21 these would apply to both cases, Mr. Savage; just one  
22 is Bone Spring and one is Wolfcamp?

23 MR. SAVAGE: Yes, sir.

24 HEARING EXAMINER: All right. Are  
25 there any other persons then for Cases 23147, 23148?

1 Hearing none, and the exhibits will be admitted into  
2 the record and cases 23147 and 23148 will be taken  
3 under advisement. We will leave the record open for  
4 two weeks for clarification that our approval is only  
5 for compulsory pooling and that all issues related to  
6 nonstandard spacing units will be addressed  
7 administratively.

8 (Exhibits A through C were admitted  
9 into evidence.)

10 MR. SAVAGE: Thank you.

11 HEARING EXAMINER: Thank you. All  
12 right. So with that, I believe we are on Item Number  
13 95, Case 23168, Marathon Oil Permian, LLC?

14 MS. BENNETT: Good morning, everyone.  
15 Deana Bennett on behalf of Marathon Oil Permian, LLC.

16 HEARING EXAMINER: Thank you. Are  
17 there any other persons for Case 23168? Hearing none,  
18 please proceed.

19 MS. BENNETT: Thank you very much. As  
20 a preliminary matter, I did submit a revised exhibit  
21 packet yesterday with a notice that I was filing a  
22 revised exhibit packet and a short summary of what the  
23 revisions were. So I will be working off of the  
24 revised exhibit packet and happy to answer any  
25 questions you may have about the revisions.

1                   So in Case 23168, Marathon seeks an  
2     order from the Division pooling all uncommitted  
3     interests within a standard 640-acre Wolfcamp spacing  
4     unit, which was in the Wolfcamp Purple Sage and the  
5     spacing unit underlies the W/2 of Section 35, Township  
6     22 South, Range 28 East, and the W/2 of Section 2,  
7     Township 23 South, Range 28 East, and this spacing  
8     unit will be dedicated to two wells; the Trojan Horse  
9     35 WXY Fed Com 2H well and the Trojan Horse 35 WXY 4H  
10    well.

11                  So in the materials that I submitted  
12    yesterday, the revised packet, I have included the  
13    declaration of Chase Rice. He's the landman for  
14    Marathon and he has previously testified before the  
15    Division and his credentials have been accepted as a  
16    matter of record.

17                  And behind his self-affirmed  
18    declaration is the application, corrected C102s -- so  
19    that's the change from the original exhibit packet I  
20    submitted -- so the corrected C102s which shows  
21    standard setbacks for the Purple Sage Wolfcamp pool.

22                  Then behind the C102s there are the  
23    tracts, maps, summary of interests. We have also  
24    included a summary of contacts, sample well proposal,  
25    an AFE, and then the Notice Affidavit prepared by my

1 office and the notice affidavit does show that notice  
2 was timely mailed and that it was timely published.  
3 And I have noted for my office to update the website  
4 to the current website in our future mailings, but  
5 thank you for pointing that out today.

6 In the Tab C, that contains the  
7 declaration of Matt Baker; he's a geologist with  
8 Marathon and he has previously testified before the  
9 Division, and his exhibits contain the usual suite of  
10 geology exhibits, including a locator map, well bore  
11 schematic, a structure map, a cross reference well  
12 locator map, a stratigraphic cross-section, an isopach  
13 map and then an excerpt from the Sweeney-Zoback [ph]  
14 paper describing the rationale for the orientation in  
15 this area.

16 With that, I would ask that the revised  
17 exhibits in Case Number 23168 be admitted into the  
18 record and this case taken under advisement and I am  
19 happy to answer any questions the Division may have.

20 (Exhibits A through C were marked for  
21 identification.)

22 HEARING EXAMINER: Thank you. Mr.  
23 McClure?

24 MR. MCCLURE: No, Mr. Brancard, I don't  
25 have any questions for this case.



1                   HEARING EXAMINER: All right. Let me  
2 find the application. First of all, appreciate you  
3 indicating what all of the changes are in your revised  
4 submittal. But I guess just to totally clean things  
5 up so that we have a good checklist that can be  
6 attached to the order, if you could submit a version  
7 that doesn't have red on it?

8                   MS. BENNETT: Oh, sure. Definitely, I  
9 can definitely do that. As you noted, I did indicate  
10 it in red just for your convenience so I am happy to  
11 now remove the red.

12                  HEARING EXAMINER: Okay. So our rules  
13 require that applications for this process have a  
14 statement as to whether the pooled unit is for gas or  
15 oil production. I don't see anything in your  
16 application as to whether these are gas or oil wells.

17                  MS. BENNETT: Well, I think that's  
18 interesting? I've been using this same form of  
19 application for a long time now. So I did note in my  
20 application -- I'm sorry.

21                  HEARING EXAMINER: I think it's in your  
22 checklist. I think you are required to say it in your  
23 checklist, so.

24                  MS. BENNETT: Okay. And in the  
25 application we did say -- I'm looking at Exhibit B-

1 1 -- we said that these wells will be located within  
2 the Purple Sage Wolfcamp gas pool, which, while  
3 perhaps not a direct statement of this being a gas  
4 pool, it is. We did identify the pool and pool code  
5 and that it is a gas pool.

6 HEARING EXAMINER: Yeah. I mean,  
7 that's the thing that always gets me about Purple Sage  
8 because your checklist indicates that, yes, it is a  
9 Purple Sage gas pool and then it says primary product  
10 oil. But that's an ongoing internal debate at the  
11 OCD. I think I'm in the minority in trying to say you  
12 can't use the Wolfcamp Purple Sage for oil wells, but  
13 that seems to be what people use it for.

14 Okay. Was there anything else, Mr.  
15 McClure?

16 MR. MCCLURE: I don't have anything  
17 else. I was going to say, I thought in the past and  
18 once you pointed out that it says oil in the  
19 checklist, it seems like in the past we've been having  
20 gas there for the Purple Sage Wolfcamp because I was  
21 thinking that we default to gas unless -- unless an  
22 operator actually shows that the GOR qualifies it for  
23 oil, I believe?

24 HEARING EXAMINER: Yeah. We actually  
25 have definitions of oil and gas well in our rules.

1 MR. MCCLURE: Yeah, we do. Yeah.

2 HEARING EXAMINER: So. I would hope  
3 that, you know, companies that are spending over \$10  
4 million on a well know what they're shooting for.

5 MS. BENNETT: Mm-hmm. It sounds like a  
6 fix for this could be for me to fix that in the  
7 compulsory pooling checklist when I submit the  
8 checklist, revised.

9 HEARING EXAMINER: Okay. That would be  
10 great.

11 MS. BENNETT: I will definitely do  
12 that.

13 HEARING EXAMINER: Thank you. All  
14 right. Are there any other interested persons for  
15 Case 23168? Hearing none, the exhibits will be  
16 admitted into the record. Case 23168 will be taken  
17 under advisement. We will leave the record open for  
18 two weeks to submit a claim revised checklist. Thank  
19 you.

20 (Exhibits A through C were admitted  
21 into evidence.)

22 With that, we'll call Item 96, Case  
23 23169; Marathon Oil Permian, LLC?

24 MS. BENNETT: Good morning, almost  
25 afternoon. Deana Bennett, Modrall Sperling, on behalf

1 of Marathon Oil Permian, LLC.

2 HEARING EXAMINER: Thank you. Any  
3 other persons here for Case 23169? Hearing none,  
4 please proceed.

5 MS. BENNETT: Thank you. In Case  
6 23169, Marathon seeks an order from the Division  
7 pooling all uncommitted interests within a Wolfcamp  
8 horizontal spacing unit underlying the N/2 of Sections  
9 5 and 6, Township 23 South, Range 28 East, Eddy  
10 County, New Mexico. And again, this is in the Purple  
11 Sage Wolfcamp gas pool.

12 This spacing unit will be dedicated to  
13 the Maximus 5 WXY Fed Com 1H and the Maximus 5 WXY Fed  
14 Com 2H wells. And I submitted the application -- I'm  
15 sorry -- the exhibits on Tuesday and did not have to  
16 revise them on Tuesday but will have to revise them  
17 after today.

18 But going with what I submitted, I  
19 submitted the self-affirmed declaration of Chase Rice,  
20 who has previously testified before the Division and  
21 his credentials have been accepted as a matter of  
22 record. And behind his declaration we have included  
23 the application, C102, the lease tract map and summary  
24 of interests, the sample proposal letter, AFEs, and  
25 the notice affidavit. And you'll see from the notice

1 affidavit that mailings were timely done and  
2 publication was also timely done.

3 Then Tab C contains the self-affirmed  
4 declaration of Matt Becker. Mr. Becker is a geologist  
5 for Marathon and he has previously testified before  
6 the Division and his credentials have been accepted as  
7 a matter of record. And he includes behind his self-  
8 affirmed declaration the usual suite of exhibits,  
9 which are the locator map, well bore schematic,  
10 structure map, cross referenced wells locator map, the  
11 stratigraphic cross-section, the gross interval ISA  
12 core, and an excerpt from the Sweeney-Zoback [ph]  
13 paper discussing the preferred orientation in this  
14 area.

15 I do want to just acknowledge that I  
16 did do oil in the pool or in the compulsory pooling  
17 checklist for this one so I will make that change and  
18 submit the compulsory pooling checklist to you.

19 And then while we've been discussing or  
20 while we've been on the hearing today, marathon has  
21 actually been able to make contact with Ms. Chanly  
22 [ph], who is one of the working interest owners. She  
23 owns a very -- very small interest. We noted in the  
24 summary of contacts that research was ongoing to try  
25 to reach out to her and they were able to reach her

1 today. And so, I am going to remove her from the  
2 pooling. As of now, she's shown as a party that  
3 Marathon is seeking to pool. But because they have  
4 been able to actually contact her today, I am going to  
5 remove her from the pooling list -- pool party list  
6 and I will update that and resubmit the exhibits. And  
7 if Marathon has to come back and pool her at a later  
8 date, they'll do that.

9 So with that, I would ask that the  
10 exhibits in Case Number 23169 be admitted into the  
11 record, that the case be left open for me to submit  
12 additional exhibits, and the case be taken under  
13 advisement.

14 (Exhibits A through C were marked for  
15 identification.)

16 HEARING EXAMINER: Thank you. Mr.  
17 McClure?

18 MR. MCCLURE: Yes, Mr. Brancard, I do  
19 have a question for Ms. Bennett. Ms. Bennett, so  
20 based upon the geologist's testimony here, it looks  
21 like it is equally preferred whether it is a laydown  
22 or stand up well; is that kind of correct then? My  
23 understanding, I mean.

24 MS. BENNETT: That's correct. Yes,  
25 your understanding is correct that it could be either

1 laydown or stand up and Marathon has chosen its  
2 orientation based on its ownership.

3 MR. MCCLURE: Yeah. I was going to  
4 say, based off the -- it looks like the actual thing  
5 would be half way between, it says, 45 degrees. But  
6 from that thought process, I guess, equally stand up  
7 or laydown is equally bad, I guess would be the  
8 thought process, or equally good, but.

9 MS. BENNETT: Yeah; let's go with glass  
10 half -- half full.

11 MR. MCCLURE: Half full; yeah. There  
12 you go. Thank you, Ms. Bennett. Mr. Brancard, that  
13 was all my questions.

14 HEARING EXAMINER: Thank you. Okay.  
15 So for the list of pool parties, your client has made  
16 contact with somebody they hadn't made contact with  
17 before.

18 MS. BENNETT: Mm-hm.

19 HEARING EXAMINER: But I'm sensing that  
20 they're not committed yet but they might be committed  
21 so you want to take them off the list of pool parties?

22 MS. BENNETT: That's right. Yes. They  
23 haven't had a chance to have discussions with her  
24 before today because they haven't been able to find  
25 her so it would be premature to pool her today. But

1 they might not be able to reach an agreement with her  
2 so we would come back if necessary.

3 HEARING EXAMINER: Okay. All right.

4 MS. BENNETT: And she does have -- it's  
5 Norma J. Chanly [ph] and she does have less than 1  
6 percent interest, so it's a very small interest. But,  
7 as I mentioned, the broker, Marathon's broker was able  
8 to find a phone number for her today and called her,  
9 so we'll be back in touch if we need to.

10 HEARING EXAMINER: Thank you. Thank  
11 you for your client's doggedness on this issue. All  
12 right. Any other concerns or questions on Case 23169?  
13 Hearing none, the exhibits in this matter will be  
14 admitted into the record. Case 23169 will be taken  
15 under advisement, the record left open for two weeks,  
16 and I believe we have a revised checklist and a  
17 revised list of pool parties.

18 (Exhibits A through C were admitted  
19 into evidence.)

20 MS. BENNETT: That's correct; that's my  
21 understanding. Thank you.

22 HEARING EXAMINER: Thank you. With  
23 that, I believe we are on Item Number 97, Case 23170;  
24 Mewbourne Oil Company?

25 MR. FELDEWERT: Good morning, Mr.



1 Examiner. Michael Feldewert with the Santa Fe office  
2 of Holland & Hart on behalf of the Applicant.

3 HEARING EXAMINER: Are there any other  
4 interested parties here for Case 23170? Hearing none,  
5 Mewbourne may proceed with the Sig well.

6 MR. FELDEWERT: Thank you, Mr.  
7 Examiner. I split this one out from the other two  
8 cases because this involves an effort to pull a  
9 standard 619.84-acre horizontal well spacing unit in  
10 the Bone Spring Formation using a proximity track  
11 well. There are some lots involved here, but it  
12 essentially seeks to pool the S/2 equivalent of  
13 Section 6 and then the S/2 of Section 5 in 20 South,  
14 29 East, down there in Eddy County for what's been  
15 referred to as the Sig wells; there's three of them.

16 Our package today provides the  
17 application checklist for this case along with the  
18 application. And then, Exhibit A is the affidavit  
19 from the landman, Tyler Jolly, who provides the  
20 description of the spacing unit and the initial  
21 proposed wells; Exhibit A-1 provides the C102s for  
22 those proposed wells. A-2 provides a general location  
23 map at about the middle shows the location of the  
24 acreage at issue here. Exhibit A-3, as we saw in the  
25 previous case, has the -- because we are going to be

1 overlapping some existing Bone Spring spacing units --  
2 Exhibit A-3 contains a letter sent out to the affected  
3 working interest owners identifying not only the  
4 proposed spacing unit that's identifying in detail the  
5 spacing units -- there's four of them -- that will be  
6 overlapped by this proposed spacing unit.

7 And at the end of Exhibit A-3, as Mr.  
8 Jolly points out, is a list of the parties that  
9 received these letters. Now, you'll see that he sent  
10 out a letter for each of the wells so that's why you  
11 do see some duplication here. But at the end of  
12 Exhibit A-3, which is page 26 of the PDF, you'll see a  
13 list of the affected working interest owners in the  
14 proposed spacing unit and then the overlapping spacing  
15 units.

16 Exhibit A-4 provides a tract map of the  
17 acreage at issue here and then an ownership breakdown  
18 by tract and then by spacing unit. And you will see  
19 when you get to the end of that exhibit that they seek  
20 to just pool one party here and that is Magnum Hunter,  
21 the only remaining party that needs to be pooled.

22 Exhibit A-5 is the well proposal letter  
23 that was sent to Magnum Hunter. There was actually  
24 two of them. There was an initial letter that  
25 identified two of the three Sig wells and then a third

1 letter that identified the third Sig Bone Spring well.  
2 And along with those, in that exhibit, we then also  
3 provide the AFEs that are related to each of the three  
4 proposed initial wells.

5 And then Exhibit A-6 provides a summary  
6 of the communications with the party that remains to  
7 be pooled.

8 Exhibit B is the affidavit, or the  
9 statement, I should say, from Charles Crosby, the  
10 geologist, who identifies the target intervals and  
11 then provides a structure map of the area in which he  
12 identifies the spacing unit with a black hash and then  
13 shows the general orientation of the three proposed  
14 wells. And since they are targeting two different  
15 intervals within the Bone Spring Formation, he's  
16 provided a stratigraphic cross-section of 8A prime.  
17 The first one shows the targeted interval with a green  
18 line in the second Bone Spring Sands. And then  
19 Exhibit B-3 provides a stratigraphic cross-section,  
20 the same stratigraphic cross-section, showing the  
21 targeted interval with a red line in the third Bone  
22 Spring sand.

23 Finally, Exhibit C is the affidavit  
24 from my office providing -- confirming that notice of  
25 this hearing was provided to Magnum Hunter and we have

1 provided the actual green card demonstrating receipt  
2 of that notice.

3 So with that, we would ask that this  
4 matter be taken under advisement and that Exhibits A,  
5 B, and C be admitted into evidence.

6 (Exhibits A through C were marked for  
7 identification.)

8 HEARING EXAMINER: Thank you. Mr.  
9 McClure, any questions?

10 MR. MCCLURE: Actually, Mr. Brancard, I  
11 -- I don't think I do have any questions. I mean, we  
12 do have a number of overlapping here, but I don't  
13 think I have any questions on it. Thank you.

14 HEARING EXAMINER: Okay. So Mr.  
15 Feldewert, you are simply putting us on notice that  
16 there is an overlapping spacing unit. You are not  
17 asking in your application for approval of such?

18 MR. FELDEWERT: That is -- that is  
19 correct, Mr. Brancard. We do not expect the need for  
20 that.

21 HEARING EXAMINER: All right. Are  
22 there any other interested persons then for Case  
23 23170? Hearing none, the exhibits in Case 23170 will  
24 be admitted into the record and the case will be taken  
25 under advisement.

1 (Exhibits A through C were admitted  
2 into evidence.)

3 MR. FELDEWERT: Thank you, sir.

4 HEARING EXAMINER: Okay. With that, we  
5 move on to Items 98 and 99. This is Cases 23171 and  
6 23172; Mewbourne Oil Company?

7 MR. FELDEWERT: Good morning -- it's  
8 still morning -- Mr. Brancard and Mr. McClure.  
9 Michael Feldewert from the Santa Fe office of Holland  
10 & Hart on behalf of the Applicant in both of these  
11 consolidated cases.

12 HEARING EXAMINER: Thank you. Are  
13 there any other interested persons for Cases 23171 and  
14 23172? Hearing none, Mewbourne may proceed.

15 MR. FELDEWERT: Gentlemen, under these  
16 consolidated applications, Mewbourne seeks to pool two  
17 standard horizontal spacing units in the Wolfcamp  
18 Formation underlying the S/2 equivalent of Section 6  
19 and the S/2 of Section 5 in 19 South, 29 East. This  
20 is the same acreage that was involved in the prior  
21 case, we are just now dealing with the Wolfcamp  
22 Formation without a proximity tract well.

23 We provided in our hearing packet the  
24 checklist for each of these cases and then also the  
25 applications that were filed in each of these cases.

1 And beginning on page 17 of the PDF, you'll find,  
2 again, the self-affirmed statement of Tyler Jolly.  
3 He's the landman with the company. He identifies what  
4 is sought under each of these two consolidated cases,  
5 identifies the initial wells that will be dedicated to  
6 these proposed spacing units, and then provides as  
7 Exhibit A-1 the C102s for the two proposed wells.

8 A-2, again, is a general location map  
9 showing the location of this acreage and you'll see it  
10 with a blue box at the middle of the page. Again, we  
11 do not have any overlapping spacing units here so we  
12 move directly to Exhibit A-3, which is the tract map  
13 for first the N/2 of the S/2 acreage. And we have an  
14 ownership breakdown there with that exhibit which  
15 notes that Magnum Hunter is the only party that seeks  
16 to be pooled. And then, continuing through that  
17 exhibit, you'll see the tract map that's the same for  
18 the S/2 acreage, again, with the ownership breakdown  
19 providing the ownership by spacing unit. And again,  
20 Magnum Hunter is the only party that remains to be  
21 pooled.

22 Exhibit A-4 is the well proposal letter  
23 that went out for these two Wolfcamp wells. It also  
24 included a Bone Spring well, but what's at issue here  
25 are the wells identified in subparagraph 2 and 3 of

1 this letter, which is the two Wolfcamp wells along  
2 with the AFEs for these two Wolfcamp wells.

3 Exhibit A5 is again the summary of  
4 communications with Magnum Hunter. Exhibit B is then  
5 the statement of the geologist, Charles Crosby. He  
6 provides a structure map of the Wolfcamp Formation as  
7 exhibit B-1, has identified both spacing units there  
8 in the S/2 equivalent of 6 and the S/2 of 5 and the  
9 general orientation of the proposed wells. And yes,  
10 there's some other wells shown on here, but those are  
11 not in the Wolfcamp, okay? There are no overlapping  
12 spacing units here.

13 Then Exhibit B-2 is the stratigraphic  
14 cross-section, 8A prime, that identifies with a red  
15 line the targeted interval within the Wolfcamp sands  
16 underlying this acreage.

17 And finally, Exhibit C is the affidavit  
18 from our office providing -- confirming that notice of  
19 this hearing was provided to the party that remains to  
20 be pooled here and that is Magnum Hunter. There's  
21 actually two letters, one for each case.

22 So with that, we ask that Exhibits A,  
23 B, and C be admitted into evidence and that these two  
24 matters be taken under advisement.

25 //

1 (Exhibits A through C were marked for  
2 identification.)

3 HEARING EXAMINER: Thank you. Mr.  
4 McClure?

5 MR. MCCLURE: Again, Mr. Brancard, I --  
6 I don't have any questions for either of these cases.

7 HEARING EXAMINER: Okay. Mr.  
8 Feldewert, I think we have a problem with notice here  
9 and it has to do with legal descriptions. So 171  
10 involves Lot 6, right? NW SW equivalent. Okay?

11 MR. FELDEWERT: Okay.

12 HEARING EXAMINER: Application for 172  
13 involves Lot 7, SW SW equivalent. But if you go to  
14 the notice you attached to your application for 172,  
15 it refers to Lot 6 NW SW.

16 MR. FELDEWERT: If you can give me a  
17 minute to catch up with you here. So the --

18 HEARING EXAMINER: If you just focus on  
19 the application for 172.

20 MR. FELDEWERT: Yeah; that's what I'm  
21 looking at now.

22 HEARING EXAMINER: Okay.

23 MR. FELDEWERT: So the application  
24 itself lists the correct lot and the 4/4 equivalent.

25 HEARING EXAMINER: Right. But when you



1 look at the notice attached to that application, it's  
2 got the incorrect lot and the incorrect equivalent.

3 MR. FELDEWERT: So that is correct, Mr.  
4 Examiner. I guess I would point out a couple of  
5 things; one, the application that Magnum Hunter  
6 received certainly correctly identifies the spacing  
7 unit and they received actual notice of that  
8 application and that is the only party that they seek  
9 to pool. There's no un-locatable party; it is simply  
10 Magnum Hunter. So clearly, Magnum Hunter, in advance  
11 of this hearing, is fully aware of the acreage that is  
12 involved in both cases and the proposed spacing unit.

13 HEARING EXAMINER: Okay. But it's  
14 wrong in the notice that we send out to the public?

15 MR. FELDEWERT: It would be -- you are  
16 correct in that the docket notice which I submit to  
17 you that would not have been relied upon by anybody  
18 does incorrectly have Lot 6 rather than Lot 7.

19 HEARING EXAMINER: Okay. All right.  
20 So unlike the case earlier today -- and I try to be  
21 consistent here -- where we actually ended up  
22 dismissing the whole case because of this problem,  
23 that case actually had the problem in the application  
24 itself. This problem is just in the notice. It's  
25 also in your landman's affidavit. That's easy enough

1 to correct.

2 MR. FELDEWERT: Mm-hmm.

3 HEARING EXAMINER: So my solution is to  
4 continue just 23172 and, as we have done before with  
5 other cases, provide us with a correct notice  
6 provision and we will put it in the docket for the  
7 next go around.

8 MR. FELDEWERT: The docket notice?

9 HEARING EXAMINER: Yeah. I mean, it's  
10 the notice that was attached to the application.

11 MR. FELDEWERT: Right.

12 HEARING EXAMINER: You need to provide  
13 us with a correct version of it and then when we  
14 notice it for the next hearing, we will have the  
15 correct notice in there.

16 MR. FELDEWERT: If you think that is  
17 necessary here, then we will do that. It seems to be  
18 of far more substance here, given the fact that Magnum  
19 Hunter got the correct application with the correct  
20 legal description.

21 HEARING EXAMINER: I don't know. I  
22 don't know if Magnum Hunter exists. It sounds like a  
23 70s TV show.

24 MR. MCCLURE: That was Magnum PI, which  
25 I actually liked. Gage Garner was the best actor in

1       that; he was great.

2                       MR. FELDEWERT:  Oh, that was Rockford  
3       files.  Magnum PI was something different.

4                       HEARING EXAMINER:  He did a lot.

5                       MR. FELDEWERT:  Yeah.

6                       HEARING EXAMINER:  All right.  So  
7       that's how we will solve this.  So at this point, are  
8       there any other interested persons for Cases 23171 and  
9       23172?

10                      MR. FELDEWERT:  Are we able to get on  
11       the docket -- next docket two weeks from now, Mr.  
12       Examiner?

13                      HEARING EXAMINER:  You've got to get us  
14       a new notice paragraph before the end of the day  
15       because Marlene will be getting out that packet.

16                      MR. FELDEWERT:  We will get that to  
17       Marlene today.

18                      HEARING EXAMINER:  All right.  So with  
19       that, the exhibits in these two cases will be admitted  
20       into the record.  Case 23171 will be taken under  
21       advisement.  Case 23172 will be continued to November  
22       17th, assuming that we can get this notice provision  
23       sent in.  And also, please revise the landman's  
24       affidavit.

25

1 (Exhibits A through C were admitted  
2 into evidence.)

3 MR. FELDEWERT: Yeah; we can get that.

4 HEARING EXAMINER: And make sure that  
5 checklist is correct too. I think it is, but.

6 MR. FELDEWERT: Certainly.

7 HEARING EXAMINER: All right. Thank  
8 you.

9 MR. FELDEWERT: Thank you.

10 HEARING EXAMINER: All right. So I  
11 believe the next case, we've got a late filed  
12 objection. This is Item Number 100, Case 23173;  
13 Mewbourne Oil Company?

14 MR. BRUCE: Mr. Examiner, Jim Bruce  
15 representing Mewbourne.

16 HEARING EXAMINER: Thank you. And we  
17 have an entry from Coterra Energy?

18 MR. SAVAGE: Mr. Hearing Examiner,  
19 Darren Savage on behalf of Coterra Energy Company and  
20 Cimarex Energy Company.

21 HEARING EXAMINER: And I think we have  
22 a late -- well, it's not a late entry -- but we have  
23 an entry from COG Operating?

24 MR. FELDEWERT: Yes, Mr. Examiner.  
25 Michael Feldewert with the Santa Fe office of Holland

1 & Hart on behalf of COG Operating, LLC,  
2 ConocoPhillips, and Concho Oil and Gas, LLC.

3 HEARING EXAMINER: Thank you. And my  
4 understanding is that COG, et al., objects to this  
5 case being heard by affidavit?

6 MR. FELDEWERT: Yes. I spoke with Mr.  
7 Bruce about this yesterday and COG intends to send out  
8 competing well proposals. And therefore, yes, we  
9 would ask that this matter be set for a status  
10 conference whenever you think it's appropriate. I  
11 think the well proposal is going out either today or  
12 tomorrow. Do we have to wait the full 30 days?

13 MR. BRUCE: There may be --

14 HEARING EXAMINER: Not if you want a  
15 status conference, but if you want a hearing, yes.

16 MR. FELDEWERT: No; good point. Good  
17 distinction. So it seems to me that, you know, we can  
18 set this for a status conference in December and see  
19 where things stand with the competing well proposals  
20 and go from there.

21 HEARING EXAMINER: All right. December  
22 1, December 15; Mr. Bruce?

23 MR. BRUCE: Mr. Examiner, I recognize  
24 the practicalities of the situation. I am simply here  
25 to express the displeasure of Mewbourne. I filed my

1 exhibits and if you look at them, Mewbourne sent its  
2 well proposal out over five months ago and they have  
3 negotiated in good faith with Concho/ConocoPhillips  
4 and they received notice of the hearing two-and-a-half  
5 weeks ago. There was never any discussion of any  
6 objection from COG to Mewbourne. And then, less than  
7 24 hours before the hearing, we get this objection.  
8 And I know it's going to be continued, but Mewbourne's  
9 not happy. So I do not want a status conference; I  
10 want it set for a hearing.

11 HEARING EXAMINER: All right. So we  
12 can do that. I would assume then, Mr. Feldewert, that  
13 COG is shooting to get on the January 5th docket?

14 MR. FELDEWERT: I believe that's the  
15 earliest we could get on, right?

16 HEARING EXAMINER: So why don't we set  
17 this for a hearing for January 5th?

18 MR. BRUCE: Thank you, Mr. Examiner. I  
19 will file the continuance notice.

20 HEARING EXAMINER: Thank you. All  
21 right. So Case 23173 is set for hearing on January  
22 5th.

23 MR. FELDEWERT: Thank you.

24 HEARING EXAMINER: All right. So we  
25 have a set of -- a slew of -- well, not a slew, we

1 have four cases that were part of a contested hearing,  
2 prehearing order and all that. But I think we might  
3 be able to do them by affidavit today. I'm going to  
4 ask if that's possible, if we can get that done right  
5 now? These are Cases 22427, 22428, 22721, 22722;  
6 Mewbourne Oil Company?

7 MR. BRUCE: Mr. Examiner, Jim Bruce  
8 entering an appearance for Mewbourne Oil Company.

9 HEARING EXAMINER: All right. I will  
10 go around the horn here, but first I'll just ask, is  
11 there any party that objects to these cases going  
12 forward by affidavit? Hearing none, let's go for some  
13 entries of appearance here. Cimarex Energy?

14 MR. SAVAGE: Darin Savage with the  
15 Santa Fe office of Abadie & Schill on behalf of  
16 Coterra Energy and Cimarex Energy Company.

17 HEARING EXAMINER: All right. And as I  
18 call you, if you've changed your mind and have an  
19 objection, now's your chance. Colgate Operating?

20 MS. BENNETT: Good morning -- well,  
21 good afternoon, Deana Bennett on behalf of Colgate  
22 Operating.

23 HEARING EXAMINER: Thank you. MRC  
24 Delaware Company?

25 MR. FELDEWERT: Michael Feldewert with

1 the Santa Fe office of Holland & Hart on behalf of MRC  
2 Delaware Resources, LLC.

3 HEARING EXAMINER: And I believe in the  
4 other two cases it's MRC Permian?

5 MR. FELDEWERT: The other two -- cases?

6 HEARING EXAMINER: The 721 and 722.

7 MR. FELDEWERT: Okay. Then that would  
8 -- yes. Michael Feldewert with the Santa Fe office of  
9 Holland & Hart appearing on behalf of MRC Permian.

10 HEARING EXAMINER: -- corporation, EOG  
11 resources?

12 MR. PARROT: Good afternoon, Mr.  
13 Examiner. This is James Parrot with Beatty & Wozniak  
14 here for EOG Resources.

15 HEARING EXAMINER: Okay. COG  
16 Operating?

17 MS. MUNDS-DRY: Good afternoon, Mr.  
18 Hearing Examiner. Ocean Munds-Dry with COG Operating,  
19 LLC.

20 HEARING EXAMINER: And is there anyone  
21 else who wants to join the fun? Hearing none, as I  
22 said, there are no objections, correct, to these cases  
23 going forward by affidavit? Hearing none, Mr. Bruce,  
24 you have the floor.

25 MR. BRUCE: Mr. Examiner, in these



1 collective cases, Mewbourne seeks pooling orders  
2 regarding its Corona 25/26 wells, which the four cases  
3 collectively cover Sections 25 and 26, 18 South, 30  
4 East, in Eddy County, seeking to pool the Bone Spring  
5 Formation.

6 I have submitted the exhibits. There  
7 is the prehearing statement, the applications and  
8 notices, the landman's affidavit, which includes, of  
9 course, land plats, tract maps, C102s.

10 The landman, in his affidavit, sets  
11 forth the parties being pooled. Actually, at this  
12 point, the only parties being pooled are Magnum  
13 Hunter, MRC Delaware, and Mike Miller. All of the  
14 other parties have come to terms with Mewbourne.

15 The landman's affidavit, of course,  
16 also contains acknowledgment of contacts, working  
17 interest owners, a sample copy of the proposal letter,  
18 and the AFEs. And his affidavit, of course, was for  
19 the overhead rates requested and the penalty.

20 The geologist -- the landman is Josh  
21 Henderson. There's also an affidavit by the  
22 geologist, Charlie Crosby, which contains the  
23 structure map. And if you look at the structure map,  
24 you will see that these are lay down units and every  
25 other Bone Spring well drilled in this area is a lay

1 down, so that is obviously the favored unit  
2 orientation. This contains the structure map, cross-  
3 section, structural drilling plans for all four wells.

4 Most of these exhibits were filed eight  
5 weeks ago, but I updated Exhibit 5, which is the  
6 notice affidavit. Which, at this point, only contains  
7 the certified green cards or the white slips to the  
8 parties being pooled.

9 I would note just one thing. On the  
10 first cases, the 427 and 428, certified notice was  
11 received by MRC Delaware and Magnum Hunter. We did  
12 not receive a green card back from Mike Miller,  
13 although it shows -- the USPS website shows it was  
14 received almost 11 months ago.

15 On the second set of cases, 721 and  
16 722, it's kind of a flip. The green cards show that  
17 notice was received by Magnum Hunter and Mike Miller  
18 that not by MRC. But regardless, notice was published  
19 as against them so they all, obviously, received  
20 notice. And with the published notices, Exhibit 6.

21 And then Exhibit 7 are the pooling  
22 checklists for the wells and then my supplemental  
23 notice that shows as a certified notice spreadsheet,  
24 Exhibit 8.

25 I would move for the admission of

1 Exhibits 1 through 8, including revised Exhibit 5, and  
2 ask that the matters be taken under advisement. And  
3 with baited breath I await, Mr. Brancard, your  
4 corrections on my pooling checklists, okay? but with  
5 that, I'm done.

6 (Exhibits 1 through 8 were marked for  
7 identification.)

8 HEARING EXAMINER: Thank you. All  
9 right. Do any of the parties have any questions or  
10 concerns at this point? Hearing none, it's up to you,  
11 Mr. McClure.

12 MR. MCCLURE: Yes, Mr. Brancard. Mr.  
13 Bruce, you mentioned on your latest -- which exhibit  
14 packet did you say you had your public notice?

15 MR. BRUCE: Well, the -- well, of  
16 course, Exhibit 2 is the applications and the proposed  
17 notices that were submitted to the OCD when the  
18 applications were filed. The publication affidavits,  
19 there's two different ones, are Exhibit 6. And then,  
20 the supplemental notice I filed -- and I don't  
21 remember when I filed it -- Exhibit 5 contains a  
22 certified notice to the only parties being pooled, the  
23 three parties being pooled.

24 MR. MCCLURE: I was going to say, I  
25 quite literally just found your Exhibit 6 just after I

1 asked; thank you. So then is it correct that the last  
2 notice that went out for this case was back in April  
3 then?

4 MR. BRUCE: Yeah; it was quite some  
5 time ago.

6 MR. MCCLURE: Now, the other question I  
7 had, I guess, your Attachment B-1 through B-4 that was  
8 submitted back in September, it has all of the pooled  
9 parties listed by a tract? My question for you is, it  
10 looks like there isn't actually any description here  
11 but my assumption is the starred persons are the  
12 people that were originally being force pooled; is  
13 that correct?

14 MR. BRUCE: Yes. There were -- yes,  
15 that is correct. And my supplemental or additional  
16 exhibits shows the only three parties being pooled.  
17 Obviously, this was from two months ago. But  
18 Mewbourne has come to terms with almost all of the  
19 parties.

20 MR. MCCLURE: Yeah. So essentially,  
21 all of those starred ones are no longer correct at  
22 this juncture. It's now only the three different  
23 persons that you have listed out in your exhibit that  
24 was submitted 10/28 then; correct?

25 MR. BRUCE: Yeah. Just actually the

1 three -- three parties; Magnum Hunter, MRC and Mike  
2 Miller. Those are the only three parties being  
3 pooled.

4 MR. MCCLURE: Yes, sir. Okay. Yup. I  
5 was just confirming where we're at. Actually, I don't  
6 have any other questions. Thank you, Mr. Bruce; thank  
7 you, Mr. Brancard.

8 HEARING EXAMINER: Everyone's getting a  
9 little silly here.

10 MR. MCCLURE: It's getting to lunch,  
11 see?

12 HEARING EXAMINER: Yeah. Well,  
13 actually, I don't -- I don't have any questions. It's  
14 a pretty thorough application.

15 MR. BRUCE: Excuse me? Did I hear that  
16 correctly?

17 HEARING EXAMINER: Yes; well, you know,  
18 you had months and months to work on it, so it's  
19 pretty good. Thank you for the supplemental  
20 application.

21 MR. BRUCE: Well, thank you; and I'm  
22 done for the day.

23 HEARING EXAMINER: All right. With  
24 that, are there any -- once again -- any other persons  
25 with comments or concerns about Cases 22427, 22428,

1 22721, 22722? Hearing none, the exhibits in these  
2 cases will be admitted into the record and these cases  
3 will be taken under advisement.

4 (Exhibits 1 through 8 were admitted  
5 into evidence.)

6 MR. BRUCE: Thank you.

7 HEARING EXAMINER: Okay. So we have  
8 the matter of Cases 22971 and 22972 and I'm wondering  
9 if it's time for a little break before we get there?

10 MR. FELDEWERT: I vote yes.

11 MR. MCCLURE: Mr. Brancard, it does  
12 look like those prior four cases, the 125 through  
13 128 --

14 HEARING EXAMINER: Oh, yes. I should  
15 address that. But let's first -- so Mr. Feldewert and  
16 Ms. Hardy, you are the prime instigators in the FAE  
17 cases; correct?

18 MS. HARDY: That's correct.

19 HEARING EXAMINER: All right. So we'll  
20 clean up these other cases and then we'll take, I  
21 don't know, maybe a half hour break or so before we  
22 handle the oral argument in those cases?

23 MR. FELDEWERT: Given, since I didn't  
24 bring lunch, can we take a little bit longer than  
25 that; 1:30 Mountain Time, does that work for you, Mr.

1 Brancard?

2 HEARING EXAMINER: Yeah; that works.  
3 We'll get through these other cases and then we'll  
4 come back at 1:30 to hear arguments in 22971 and  
5 22972.

6 MR. FELDEWERT: Thank you.

7 MS. HARDY: Thank you.

8 HEARING EXAMINER: But in the  
9 meanwhile, we have the Weinberger cases; is that  
10 correct? We're back on Items 89 through 92, Cases  
11 23125, 23126, 23127, 23128. We did not close these  
12 cases so we need to do that now. Ms. Vance, what do  
13 you have for us?

14 MS. VANCE: I filed the correct hearing  
15 packet that includes the green cards and the notice of  
16 publication. You should have 62 pages. And if you go  
17 to Exhibit D, that is the self-affirmed statement from  
18 myself regarding the letter notice that went out. A  
19 sample of those letters, which I think was in the  
20 other filing, but if you continue to scroll you'll see  
21 the green cards and then the notice of -- the  
22 affidavit of notice of publication attached at the  
23 end. And that is -- that's been filed in all four  
24 cases.

25 HEARING EXAMINER: Okay. So you simply

1       refiled the whole packet with stuff added at the end?

2                   MS. VANCE:   That's correct.   I'm not  
3       sure what happened.   I'm not sure why what was  
4       originally filed didn't include these exhibits.   The  
5       one that I thought was filed was this one so I just  
6       went ahead and filed the one that was in our case  
7       file.

8                   HEARING EXAMINER:   So, hmm? I see five  
9       green cards, although Oxy may be here twice.   So how  
10      many parties were you having to notice?

11                  MS. VANCE:   It looks to be four, if  
12      that's correct?   Yes.   And I'm happy to follow up.  
13      Just like in the other case, the Bivins case, and just  
14      confirm why there is, you know, the difference in the  
15      number of parties that are being notified of the  
16      request for extension.

17                  HEARING EXAMINER:   All right.   If you  
18      could do that, I believe, Mr. McClure, that's what you  
19      had requested?

20                  MR. MCCLURE:   Yes, sir.   Yes.

21                  HEARING EXAMINER:   Okay.   So please  
22      clarify exactly which parties are being noticed.   You  
23      may have a document earlier in your packet that does  
24      that.   You know, and I know it's only four parties,  
25      but I kind of like it when y'all do a little



1 spreadsheet that just sort of says this is the  
2 parties, this is their address, this is when we mailed  
3 it, this is when they got it.

4 MS. VANCE: I will be -- I'm happy to  
5 do that moving forward if that works for you, Mr.  
6 Hearing Examiner?

7 HEARING EXAMINER: Okay. All right.  
8 So anyone else out there, Cases 23125, 126, 127, 128?  
9 Any other further comments, suggestions? Hearing  
10 none, the cases -- the exhibits will be admitted into  
11 the record. We will take this case under advisement  
12 leaving the record open for two weeks for  
13 clarification about how do we get to the number of  
14 people getting notice in the amendment versus the  
15 number of people that got notice in the original case.  
16 Is that what you wanted, Mr. McClure?

17 (Exhibits A through E were admitted  
18 into evidence.)

19 MR. MCCLURE: Correct; yes, Mr.  
20 Brancard. That's correct.

21 HEARING EXAMINER: Okay. And then,  
22 simply a spreadsheet just showing notice, documenting  
23 the notice, that's all. I mean, if you had something  
24 from the Postal Service I guess that would be fine  
25 too.

1 MS. VANCE: And that spreadsheet, you  
2 want that filed, Mr. Hearing Examiner?

3 HEARING EXAMINER: Yes.

4 MS. VANCE: But the information to Mr.  
5 McClure, that can just be e-mailed directly to him;  
6 correct?

7 HEARING EXAMINER: Yes. But, you know,  
8 please be aware if something shows up in that that's,  
9 like, whoa, why did you, you know? We may have to  
10 reopen this case. Okay?

11 MS. VANCE: Understood; thank you, Mr.  
12 Hearing Examiner. Thank you, Mr. McClure.

13 HEARING EXAMINER: Thank you. And with  
14 that, I believe we are in recess until 1:30 Mountain  
15 Daylight; it's still daylight time. I sure noticed it  
16 walking the dog in the dark this morning. See you all  
17 then.

18 (Off the record.)

19 HEARING EXAMINER: Ms. Fulton, our  
20 court reporter, are you here and ready to go?

21 THE REPORTER: I'm here and ready.

22 HEARING EXAMINER: Excellent. We are  
23 now on Case 22972, which I guess is related to Case  
24 22971, applications of FAE. So let's start with  
25 entries and appearance; FAE, Forty acres.

1 MS. HARDY: Good afternoon, Mr.  
2 Examiner. Dana Hardy with the Santa Fe office of  
3 Hinkle Shanor on behalf of Forty Acres Energy, or FAE  
4 II Operating.

5 HEARING EXAMINER: Okay. And so, I  
6 think we've got a slew of people also here, so let me  
7 see here.

8 MR. FELDEWERT: So Mr. Examiner, I can  
9 make this easy for you. It's Michael Feldewert  
10 appearing on behalf of what I'll call the respondents  
11 during the argument today, but the respondents  
12 include: Apache Corporation; Chevron USA, Inc.;  
13 Citation Oil and Gas Corporation; COG Operating, LLC;  
14 ConocoPhillips; Oxy USA, Inc.; XTO Holdings, LLC; and  
15 XTO Energy, Inc.

16 HEARING EXAMINER: Precisely; I was  
17 just about to say that, reading off the top of your  
18 pleading. Are there any other parties here today for  
19 these cases: 22971, 22972?

20 I should have said that with me also  
21 today is Dean McClure as Technical Examiner and  
22 possibly jumping in, special guest examiner, Mr.  
23 Philip Goetze, who loves when things get injected into  
24 the ground.

25 So we are here on oral arguments. I

1 don't know if the parties have worked any of this  
2 process out. Otherwise, I'll just make something up?

3 MS. HARDY: We haven't. It's fine if  
4 you want to make something up, Mr. Examiner.

5 HEARING EXAMINER: All right. I don't  
6 know. What should I give you, 20 minutes? Is that  
7 too long?

8 MS. HARDY: I don't think I'll need  
9 that long, but I think that's fine.

10 HEARING EXAMINER: Well, why don't you  
11 take 15 minutes and then reserve 5 for a reply?

12 MS. HARDY: That makes sense to me; I  
13 will do that. Thank you.

14 HEARING EXAMINER: And Mr. Feldewert,  
15 can you actually say everything you need to say in 15  
16 minutes or do I have to --

17 MR. FELDEWERT: Well, I didn't, to be  
18 honest with you, I haven't -- I've got some notes. I  
19 haven't timed it out. I don't -- I think I can get it  
20 done in 20-30 minutes; I should be able to, depending  
21 upon if you've got questions, of course, so.

22 HEARING EXAMINER: The referee is in  
23 charge of the clock and will determine how much extra  
24 time there is. So all right. Let's start with Ms.  
25 Hardy on behalf of FAE.

1 MS. HARDY: Thank you, Mr. Examiner,  
2 and thank you also for adding these cases at the end  
3 of the docket. We were very excited to argue them  
4 today, so I'm glad we could fit them in. Thank you.

5 The scope of FAE's motion is limited.  
6 We are seeking a legal ruling that the 75 percent  
7 stratification threshold that is set out in Section  
8 70-7-8A of the Statutory Unitization Act is met when  
9 the owners who will initially bear more than 75  
10 percent of the cost -- and here, those are the Phase 1  
11 owners -- have approved the unit agreement. Section  
12 70-7-8A requires approval by -- and this is a quote --  
13 "Those persons who, under the Division's order, will  
14 be required initially to pay at least 75 percent of  
15 the cost of unit operations." We are asking the  
16 Division to apply the plain language of the statute.  
17 And of course, under New Mexico law, there is a  
18 presumption or understanding that the legislature  
19 meant what it said and said what it meant.

20 The respondents' arguments are based,  
21 in significant part, on misunderstandings about the  
22 unit agreement. FAE's proposal is entirely fair and  
23 it is consistent with the statute. As an initial  
24 matter, the respondents' arguments about sort of what  
25 I'll call nefarious conduct, such as gerrymandering

1 and nondisclosure, are completely unfounded.

2 The BLM required FAE to adopt this  
3 formula and that is set out in Mr. Song's [ph]  
4 affidavit that was attached to our motion. And that  
5 was required by the BLM, even though another method  
6 could have been more favorable for FAE. So the BLM  
7 dictated that result.

8 FAE provided extensive information  
9 regarding the unit and the formula at its working  
10 interest owners meeting. It's not clear if the  
11 respondents attended that meeting; I don't know. FAE  
12 has certainly not hidden any information. The unit  
13 agreement and exhibits, including the tract  
14 participation formula, were attached to our  
15 application and there is a significant amount of  
16 information that's attached there. It includes  
17 spreadsheets and quite a bit of detail.

18 FAE is proposing to develop an enhanced  
19 oil recovery project to produce the remaining reserves  
20 and provide revenue for all involved, including  
21 respondents, the BLM, and the state of New Mexico. No  
22 one else, including respondents, is proposing to  
23 develop this acreage.

24 The Statutory Unitization Act was  
25 adopted precisely to encourage this type of

1 development. It establishes the policy of promoting  
2 secondary recovery to fully produce underlying  
3 reserves.

4 The fundamental premise of the  
5 respondents' argument is incorrect; they argue that  
6 the Phase 2 owners are responsible for bearing the  
7 initial cost incurred during the first three years of  
8 unit operations, but that is not correct. Section  
9 2.1.3 of the Unit Operating Agreement, which we have  
10 attached to our application as Exhibit 2, it states at  
11 Section 2.1.3 that upon the transition from Phase 1 to  
12 Phase 2, the Phase 2 working interest owners will  
13 participate at their Phase 2 working interest and pay  
14 their proportionate share of the current net book  
15 value of invested unit capital spending, plus interest  
16 of 10 percent, as of the transition date to Phase 2.

17 So the Phase 2 owners are only paying  
18 for the net book value of the unit facilities at the  
19 beginning of Phase 2. And of course, they have to pay  
20 for those. I mean, those are the facilities that are  
21 used to develop their interest and any unit has  
22 equipment and that is what they're required to pay.  
23 And they're actually getting a really good deal  
24 because they only pay the net book value at the  
25 beginning of Phase 2. So they're getting handed, at

1 the beginning of Phase 2, an up and running unit  
2 that's already been functioning for three years and  
3 they don't have to bear the operating and maintenance  
4 costs or the costs of getting the unit up and running  
5 for the first three years. So this is actually a good  
6 deal for them. I'm not really sure I understand the  
7 opposition. It seems like it's very fair and  
8 equitable.

9 And again, the unit facilities that  
10 they're paying at the beginning of Phase 2 will be  
11 used to produce their interest and their underlying  
12 reserves. So that's a fundamental misunderstanding, I  
13 think, of the respondents' position and their  
14 argument. Phase 2 owners aren't paying all of the  
15 costs of Phase 1.

16 Second, the statutory language here is  
17 clear. It requires ratification by -- and this is a  
18 quote -- "Those persons who, under the Division's  
19 order, will be required initially to pay at least 75  
20 percent of the cost of the unit operations." Under  
21 New Mexico's Canons of Statutory Construction, the  
22 Division must apply the plain language of the statute.

23 Contrary to respondents' claim, the  
24 application of this language, the plain language, does  
25 not lead to absurd results. The legislature



1 recognized here that units can be developed and costs  
2 can be allocated in different ways. It may be based  
3 on surface acreage or it may not. Here, it's not.  
4 This language gives operators flexibility in that  
5 regard with respect to the development of their units.

6 The respondents argue, in essence, that  
7 the 75 percent ratification requirement really must  
8 apply to the unit area, that 75 percent of the surface  
9 acreage ownership of those parties, 75 percent of them  
10 must approve. And the problem is that that's just not  
11 what the statute says.

12 The statute is very clear that approval  
13 is required by the parties who will pay 75 percent of  
14 the cost. It's a cost-based approval requirement, not  
15 a surface acreage requirement.

16 And so, for that reason, you know, the  
17 respondents' arguments that are based on treatises and  
18 other cases really don't have any bearing here because  
19 it's possible in some units that the participation and  
20 allocations are based on surface acreage, but here  
21 they are not. And the statute says that the 75  
22 percent threshold is met based on the interests who  
23 will bear cost.

24 The respondents' argument that the  
25 statutory language must really have been intended to

1 exclude back end payment interest, you know, parties  
2 who can opt in later, is unpersuasive. If the  
3 legislature had intended that, it could have easily  
4 used that language; that's not what they said. Again,  
5 they said that it's 75 percent of the parties who will  
6 officially bear costs.

7 The OCD decisions discussed by  
8 respondents are also not instructive as in those  
9 cases; again, tract participation was based on surface  
10 acreage. So the 75 percent in those cases was also  
11 based on surface acreage, but it's not here.

12 In conclusion, really the only matter  
13 for purposes -- at issue for purposes of this motion  
14 is whether Section 70-7-8A means what it says, which  
15 is that the ratification threshold is satisfied when  
16 the plan for unit operations has been approved by the  
17 owners who will initially bear 75 percent of the  
18 costs.

19 And FAE has satisfied that requirement  
20 here. We have shown by affidavit that the Phase 1  
21 owners who will bear 75 percent of the costs have  
22 approved the unit. Other issues involving approval of  
23 the unit would need to be addressed at an evidentiary  
24 hearing. And I think respondents are potentially  
25 raising some of those issues in their response. But

1 this motion doesn't seek approval of the entire unit;  
2 we are seeking an initial ruling on the 75 percent  
3 threshold and what that means and that's all that is  
4 addressed by this motion.

5 So I think I did that in much less than  
6 15 minutes. But for those reasons, I would request  
7 that the motion be granted. I am happy to answer  
8 questions, if there are any.

9 HEARING EXAMINER: Thank you. So Mr.  
10 McClure, any questions? Mr. McClure has disappeared.  
11 I have an ugly little triangle in his box. Mr.  
12 Goetze, any questions?

13 MR. GOETZE: No, I have no questions at  
14 this point. I still haven't had much time to look at  
15 the documents prepared, so no. Thank you.

16 HEARING EXAMINER: So Ms. Hardy, in  
17 this case you have filed an application for  
18 unitization; is that correct?

19 MS. HARDY: That's correct.

20 HEARING EXAMINER: And you have  
21 identified the unit area?

22 MS. HARDY: Correct.

23 HEARING EXAMINER: And it's that  
24 19,000-acre area?

25 MS. HARDY: That is right.

1 HEARING EXAMINER: Okay. And so, the  
2 Division has to make a whole series of findings before  
3 we approve the order for unitization?

4 MS. HARDY: Yes.

5 HEARING EXAMINER: Included in that is  
6 a participation formula; correct?

7 MS. HARDY: Correct.

8 HEARING EXAMINER: And then we have to  
9 issue an order that deals with allocations, how costs  
10 are allocated to separately owned tracts, a provision  
11 for carrying a working interest owner who is not  
12 paying. After we do all of that, then we get to the  
13 75 percent ratification.

14 MS. HARDY: Well, Mr. Examiner, so the  
15 reason that we've filed this motion -- and I know that  
16 all of those matters would have to be addressed in  
17 order -- the reason that we've requested sort of a  
18 ruling on this issue first is that Forty Acres, based  
19 on the percentages of ownership, does not have 75  
20 percent of approval of Phase 2. So we are asking,  
21 really, for a legal decision on this provision of the  
22 Statutory Unitization Act and whether having 75  
23 percent of the interests that will bear the costs of  
24 Phase 1 satisfies that requirement. Because if it  
25 doesn't, FAE may need to go back to the drawing board

1 here. So we don't want to go through a whole hearing  
2 process and waste resources of the Division and the  
3 parties and everyone if we can't satisfy this 75  
4 percent threshold.

5 HEARING EXAMINER: So if the Division  
6 issued an order approving the unit, the 19,000  
7 acres -- I think that's right -- and then said you  
8 need to go get approval of 75 percent of the interest  
9 owners in that 19,000 acres, you don't think you can  
10 get that?

11 MS. HARDY: Correct. Based on who the  
12 parties are and, you know, the number of very -- very  
13 small interests, people are unlocatable. And under  
14 the statute, you're required to provide written  
15 approval of 75 percent, so.

16 HEARING EXAMINER: Right. But you're  
17 not excluding unlocatable parties here. You're  
18 excluding some pretty big players, it appears, from  
19 the names of the opponents here

20 MS. HARDY: I don't actually know that  
21 their interests -- I don't have their acreage interest  
22 percentages, but I'm not sure that they would push  
23 over the 75 percent.

24 HEARING EXAMINER: Okay; thanks.  
25 That's -- I don't want to get too further into this

1 before we hear from the other parties. Mr. Feldewert,  
2 are you available?

3 MR. FELDEWERT: Yes, I am; thank you.  
4 So I want to talk about a couple of preliminary  
5 undisputed points that bear on this statutory issue  
6 raised, but I do want you to keep in mind the  
7 statement that they don't have approval from 75  
8 percent of the Phase 2 owners. And if they need it,  
9 they have to go back to the drawing board. Okay?

10 This statutory issue has arisen, Mr.  
11 Examiner, because FAE has proposed a very unusual and  
12 objectionable tract participation formula and payment  
13 provision in its proposed unit operating agreement.  
14 FAE -- if I may share here -- FAE seeks to place  
15 certain tracts -- can you all see that?

16 HEARING EXAMINER: What is it? There's  
17 a share button -- oh, now you're making progress.

18 MR. FELDEWERT: Great; am I doing good  
19 here?

20 HEARING EXAMINER: Oh, there you go.

21 MR. FELDEWERT: All right. So attached  
22 to our brief, just so we understand the context here,  
23 was what they identified as Exhibit C to their papers  
24 that they filed with the Division. And this  
25 identifies what they call the Phase 1 tracts and the

1 Phase 2 tracts.

2 And if you go to the bottom of this,  
3 you'll see that there are 97 tracts in this entire  
4 19,369-acre proposed unit. And they have proposed to  
5 place certain tracts in what they call Phase 1 and  
6 give it a Phase 1 participation formula, and that's  
7 what we've highlighted here.

8 And when you look at and add up what  
9 we've highlighted as Phase 1, those tracts account for  
10 less than a third of their proposed 19,369-acre unit,  
11 with all of the Phase 2 owners, which includes all of  
12 my clients, being stuck into what they call a Phase 2  
13 participation factor, which doesn't occur until three  
14 years later, it accounts for -- and those Phase 2  
15 owners account for over two thirds of the unit area.

16 When you look at Exhibit A-2 that we  
17 attached to our response brief, what we did is we took  
18 their unit area and we identified with red hashmarks  
19 what we understand to be the Phase 1 tracts. And you  
20 will see that they are spread throughout this proposed  
21 unitized area. Okay? Now, if you keep that in mind  
22 then you go to their application, in their  
23 application, they provide the unit operating  
24 agreement.

25 And this is the unusual provision,

1 Section 2.1.3; this is the provision that is creating  
2 the statutory issue. Under this provision, only those  
3 selected, limited Phase 1 owners can elect to  
4 participate and share in the costs and revenues of the  
5 unit operations across the entire unit for the first  
6 three years. Phase 2 owners are not allowed to  
7 participate in the revenue and the costs for the first  
8 three years. However, these Phase 2 owners, while  
9 they are not invoiced for the capital spent for the  
10 first three years, they nonetheless incur those costs.

11 This provision states, "Upon transition  
12 from Phase 1 to Phase 2, the Phase 2 working interest  
13 owners will participate at their Phase 2 working  
14 interest and pay their proportionate share of the  
15 current net book value of invested unit capital  
16 spending plus compounded interest accrued at 10  
17 percent per annum as of the transition date of Phase  
18 2." So they don't -- at the end of this three year  
19 period, they are invoiced for their incurred capital  
20 costs and net book value, plus this wonderful 10  
21 percent compounded interest per annum. And if they  
22 don't pay it, then you get to the last clause in which  
23 it points out they would be considered  
24 nonparticipating working interest owners subject to  
25 cost plus 300 percent. This is the provision that my



1 clients object to in the unit operating agreement.  
2 This is not a good deal; that's why they object to it.  
3 But FAE refuses to change it. It's a  
4 take it or leave it provision from them at this point  
5 in time. And this is the unusual payment provision  
6 that creates the statutory issue because they suggest  
7 that you take this provision and that term initially  
8 in the statute and that by combining those two, it  
9 allows the Division to ignore the level of voluntary  
10 participation by the respondents and the other Phase 2  
11 owners that account for over two thirds of their  
12 proposed unit area.

13 Now, before we get to the Act itself,  
14 there's a couple of additional points here, which Ms.  
15 Hardy touched on. This unusual payment provision that  
16 we see here or an accounting provision or a payment  
17 provision, whatever you want to call it, is in the  
18 proposed unit operating agreement. It applies only to  
19 the cost bearing interest owners, the working interest  
20 owners.

21 This payment provision is not approved  
22 by the BLM; it's not approved by the state land  
23 office. They do not approve a provision in the unit  
24 operating agreement. They don't approve cost  
25 provisions like this because they don't have a cost

1 bearing interest. So it's odd for me to have FAE to  
2 suggest here that this very unique provision was  
3 somehow required -- that's the term they used -- by  
4 the BLM. That simply cannot be the case because the  
5 BLM does not have a cost bearing interest in any of  
6 these tracts and they don't sign off on this kind of  
7 an unusual provision.

8           The second point Ms. Hardy touched upon  
9 briefly is that this was all put forth to my clients,  
10 okay, without disclosing in any detail the methodology  
11 and the data that they used to choose the Phase 1  
12 tracts versus the Phase 2 tracts. In fact, they told  
13 a number of my clients -- and we'll show it at the  
14 hearing as needed -- they said, oh, well, this  
15 methodology is proprietary. This information is  
16 proprietary. So all they said in their motion to you  
17 all and to us is that the Phase 1 tracts are based on  
18 six months of oil production in 2021 and that the  
19 Phase 2 tracts are based on some undisclosed analysis  
20 of the remaining recoverable oil in place.

21           They have further refused to disclose  
22 the total working interest that FAE holds in these  
23 selected Phase 1 tracts, but you can take a look, they  
24 own most of it. They refuse to identify any other  
25 consenting working interest owners in the Phase 1

1 tracts. They just come out and say, well, with our  
2 selected Phase 1 tracts, we have the necessary 75  
3 percent approval, therefore you should rule in our  
4 favor.

5 But putting all of this aside, let's  
6 just put all of this lack of information aside and get  
7 to the statutory issue that's created by this unusual  
8 provision that you see here. This provision in the  
9 statute does not allow the Division to ignore the  
10 voluntary level of participation by the owners in the  
11 Phase 2 tracts, which account for over two thirds of  
12 the unit area that FAE seeks to force them into. They  
13 have filed two briefs to suggest otherwise. And all  
14 they've cited to you is this single word in the first  
15 sentence of Section 70-7-8, the word "initially." And  
16 then they've coupled that with their unusual payment  
17 provision that they have created. And by putting  
18 those two together, they say, well, you just ignore  
19 what my clients at the voluntary level of  
20 participation by over two thirds of the unit area.  
21 But that's not the case here. You can't do that under  
22 the statute, for a couple of primary reasons.

23 First off, FAE's position -- let me go  
24 back to their application; sorry about that -- FAE's  
25 position assumes that the Phase 2 owners do not

1 initially pay the cost of unit operations. Well,  
2 that's not correct. Read this provision. They incur  
3 it from day one, they just aren't invoiced, under  
4 their unique provision, until three years later. And  
5 only three years later, they have an opportunity then  
6 to elect to participate or not, and that's after 10  
7 percent per annum interest has accrued on whatever  
8 their share is of these incurred costs. So to suggest  
9 that they don't incur these costs and aren't  
10 responsible for initially paying these costs is just  
11 not factually correct under their own provision.

12 But let's get to the statute. They do  
13 not try in their brief to try to square their position  
14 with the remainder of this Section 70-7-8. They don't  
15 try in their brief to square their position with the  
16 remainder of the Statutory Unitization Act and the  
17 purpose that is expressed in there. They point to  
18 zero legislative history to support their unique  
19 interpretation. They offer no such interpretation  
20 from any other case or regulatory body. They offer no  
21 supporting discussion in any of the treatises that are  
22 out there on statutory unitization, and there is not a  
23 single Division order adopting this approach to  
24 Statutory Unitization Act.

25 In contrast, we first note in our

1       briefs that a proposed tract allocation formula and  
2       payment provision, like you see here -- which, you're  
3       right, Mr. Examiner, you're going to have to  
4       address -- can you guys still see it? Can y'all still  
5       see it, Mr. Examiner? I can't hear you.

6                       MR. MCCLURE: All we see is your  
7       Word -- PDF --

8                       HEARING EXAMINER: There you go.

9                       MR. MCCLURE: Thank you. But on that  
10       all we see is "export your PDF to any format," is all  
11       we see.

12                      MR. FELDEWERT: How do we get rid of  
13       that? I'm not sure what I clicked there. I'm trying  
14       to get to their payment provision. All right. Well,  
15       first off, what they don't do is they -- we point out  
16       that, that unusual participation formula, accounting,  
17       payment provision, whatever you want to call it, has  
18       nothing to do with the voluntary approval required  
19       here by this statute, okay? The examination of the  
20       participation formula, the payment provision, the  
21       accounting that's in the unit operating agreement is  
22       done under 70-7-6, a completely different statute.  
23       And that is where the Division, as you pointed out,  
24       Mr. Brancard, has to undertake an examination of the  
25       documents, examination of the formula, and they have

1 to conclude, keeping in mind the working interest  
2 owners of all of the tracts in the unit area, whether  
3 that formula is, according to A6, fair, reasonable,  
4 and equitable.

5 Then when you go to 70-7-6B, they also  
6 have to keep in mind whether that formula allocates  
7 production to each tract in proportion that the  
8 relative value of each tract so determined bears to  
9 the relative value of all tracts in the proposed unit  
10 area. This is a different examination, separate and  
11 apart from whether they got a voluntary threshold or  
12 they have met the voluntary threshold requirement.

13 And as you may know, Mr. Brancard, and  
14 others who have dealt with unit agreements like this  
15 over the years, generally, a tract participation  
16 formula which has to be negotiated so that it is fair  
17 and reasonable and that people sign off on it, it is a  
18 means of encouraging and eliciting voluntary agreement  
19 in a proposed unitized area. It's a means of securing  
20 as a carrot, so to speak, the voluntary level of  
21 threshold that you need.

22 The tract participation formula that  
23 the Division has to examine is not a device that an  
24 applicant for a statutory unit gerrymanders or  
25 manipulate to lower the approval threshold required by

1 Section 70-7-8. And I submit to you that that's  
2 exactly what occurred in this case. They  
3 gerrymandered the tracts and they come up with a  
4 participation formula that seeks to exclude the level  
5 of approval by over two thirds of the statutory unit  
6 that they have proposed.

7 The second point here is that when you  
8 look at just 70-7-8, so let's go back to that statute,  
9 it consistently refers to the percentage of working  
10 interest in said unit area. So that term "initially"  
11 that you see up in the first sentence has to be read  
12 in conjunction with the remaining language of the  
13 statute and has to be interpreted in a fashion that  
14 does not ignore the percent of the working interest in  
15 the entire proposed unit area, or in this case over  
16 two thirds of that referenced unit area. And when you  
17 look at the context of this provision, it means that  
18 the Division examines the level of voluntary  
19 participation by the initial working interest owners  
20 in the proposed unit area.

21 The Division, for example, does not  
22 consider parties who may have a future or back end  
23 cost bearing interest over time, like you see under  
24 many contractual agreements, like farmout agreements,  
25 like the lease assignment that we attached to our

1 response, or other contractual arrangements where a  
2 third party is not required to initially pay the costs  
3 of development, but over time, under the agreement,  
4 develops a cost bearing interest. So the term  
5 "initially" has meaning here in this context and it  
6 ensures that these future or back end working interest  
7 owners are not considered in determining compliance  
8 with the 75 percent voluntary approval required by  
9 this statute.

10 And I would also point out that  
11 interpreting the term "initially" to refer to the  
12 initial cost bearing working interest owners in the  
13 unit area chosen by the applicant conforms exactly  
14 with the remaining language that you see in this  
15 statute, which consistently -- and I've highlighted in  
16 blue -- talks about the unit area, the working  
17 interest in the unit area. It's also consistent with  
18 the numerous treatises on statutory unitization that  
19 we cited in our brief. Which all those treatises  
20 uniformly point out that the regulatory body looks at  
21 the voluntary level of participation by the working  
22 interest owners in the unit area that has been  
23 proposed by the Applicant, not a subset of that unit  
24 area.

25 It's also consistent -- what we pointed



1 out -- is also consistent with the prior orders from  
2 this Division interpreting this very Act. The  
3 Division has never -- never looked at the proposed  
4 tract allocation formula or the proposed accounting or  
5 payment provisions to determine whether the voluntary  
6 threshold has been met. Instead, they have  
7 consistently examined the level of voluntary  
8 participation by the initial working interest owners  
9 in the unit area proposed by the Applicant.

10 We also note in our brief that FAE's  
11 invitation here to depart from the treatises and the  
12 Division's precedents does not further the Act's  
13 mandate to protect the correlative rights of all of  
14 the working interest owners in the unitized area.  
15 Here's the purpose of the Act up on the screen,  
16 70-7-1.

17 And one of the stated purposes is that  
18 the Division is to ensure that the correlative rights  
19 are protected of all owners of mineral interests in  
20 each unitized area, all of the working interest owners  
21 in their proposed unitized area. You will not be  
22 acting to protect the correlative rights of all of the  
23 working interest owners in FAE's proposed area if  
24 you're only going to look at the level of  
25 participation by their chosen Phase 1 tracts. Or as

1 applied here, simply ignore the level of participation  
2 by the working interest owners in over two thirds of  
3 their proposed unitized area. And instead, you're  
4 going to incentivize operators like FAE to gerrymander  
5 or manipulate a, what they call, a phased-in tract  
6 allocation formula to actually lower that threshold.  
7 Or here, to silence the objection by the working  
8 interest owners in over two thirds of their unitized  
9 area.

10 Which then brings me to my final point.  
11 And that is, if you guys look at this statute and you  
12 find that either this statute or its context is  
13 somehow ambiguous then it must be interpreted in a  
14 fashion that restricts the police power of the state,  
15 the authority to impose unitization, which is what  
16 they're asking for here. And it must be interpreted,  
17 if it's ambiguous, to protect as broad as possible the  
18 rights of the working interest owners in the entire  
19 unitized area. That is clear from the case law that  
20 we have cited to you and the treatises that we have  
21 cited to you that discuss utilizing the state's police  
22 power to impose compulsory pooling or to impose  
23 statutory unitization.

24 So in sum here, FAE's unprecedented  
25 effort to couple their unusual tract allocation

1 formula and payment provision with this term  
2 "initially" up here for the purpose of ignoring the  
3 working interests in over two thirds of the proposed  
4 unit area is not supported by the language of this  
5 statute; it's not supported by the Act as a whole; it  
6 is inconsistent with the statutory mandate to protect  
7 the correlative rights of all of the working interest  
8 owners in the proposed unit area; it's inconsistent  
9 with every single treatise that you read about  
10 Statutory Unitization Act there; and it is  
11 inconsistent with your prior cases.

12 So focusing on what they have requested  
13 here with this motion, we ask and seek the Division  
14 reject their contention that it can satisfy this  
15 statute, Section 70-7-8, by simply obtaining the  
16 necessary voluntary approval from the working interest  
17 owners in the Phase 1 tracts that they have selected  
18 under their proposed allocation formula and payment  
19 provision.

20 HEARING EXAMINER: Thank you. Mr.  
21 McClure, questions?

22 MR. MCCLURE: I actually only have one  
23 question here. Mr. Feldewert, it seemed like maybe  
24 you were implying that the 10 percent interest, which  
25 starts accruing from year one, is that what you were

1     implying? Is that your interpretation?

2                   MR. FELDEWERT: Well, you know, I'm at  
3     a loss here as to why I can't bring up that darn -- if  
4     anybody knows how to get back to the --

5                   MR. FELDEWERT: I think you had it  
6     highlighted in your left tab there, didn't you, that  
7     response brief, or not? Maybe I was wrong.

8                   MR. FELDEWERT: No, that's our brief.  
9     If you look at the provision in their unit  
10    agreement -- give me a minute -- they talk about 10  
11    percent -- there we go. I got it. Can you see it?

12                  MR. MCCLURE: Yes. That's exactly what  
13    I was referring to. Go ahead.

14                  MR. FELDEWERT: Yeah; I'm sorry. If  
15    they talk about plus compounded interest accrued at 10  
16    percent per annum as of the transition date, then yes.  
17    It's 10 percent per year. And the transition date,  
18    according to their brief, is three years after they  
19    commence unit operations.

20                  MR. MCCLURE: Okay -- okay. I  
21    apologize. Maybe I missed it. I think I  
22    misunderstood what you were saying before. I thought  
23    you were saying it started from, essentially, year  
24    zero, I guess, from initial. And now, what you're  
25    saying is what it almost seemed like it says, I guess,

1 because it starts when it goes from Phase 1 to Phase  
2 2.

3 MR. FELDEWERT: Well, no. As I read  
4 this -- you guys can read it yourself -- I mean, this  
5 is all we've got to go on. But what this indicates to  
6 my clients who have looked at this -- and they're much  
7 smarter than I am -- is that under their proposed  
8 accounting here, okay, they don't get -- they incur  
9 the cost of this unit operation, this invested  
10 capital, from day one -- from day one, their share of  
11 the cost. It accrues, their share, at 10 percent per  
12 annum up until the transition date, okay? And then at  
13 the transition date to Phase 2, three years later,  
14 they then have to make their election. And to make  
15 their election, they've got to pay their accrued  
16 interest, their accrued amount for that first three  
17 years, their share of that under the second tract  
18 allocation formula, plus 10 percent interest. And if  
19 they don't, then they are nonconsenting interest  
20 owners subject to the cost plus 300 percent. That's  
21 how we interpret this. That's what we understand from  
22 it.

23 This has been a take it or leave it  
24 provision; no negotiation whatsoever, which gets me  
25 back to the point here. They should have to go back

1 to the drawing board. Okay?

2 MR. MCCLURE: I was just confirming  
3 what your -- how your clients had interpreted it.  
4 Thank you. So then, in addition to this, even if this  
5 were to come out, then your clients would still not  
6 sign on due to the allocation; is that correct?

7 MR. FELDEWERT: Well, I mean, if this  
8 provision comes out, then at some point we would have  
9 something else to look at. But this is the most --  
10 this is the provision that really raises the statutory  
11 issue. This is what they're relying upon to say, you  
12 know, hook you into the word "initially" and say,  
13 well, we don't need to worry about the Phase 2 tract  
14 owners, even though they own two thirds of the unit  
15 area or own in the tracts that comprise two thirds of  
16 the unit area. This is the provision that creates the  
17 statutory issue.

18 MR. MCCLURE: Thank you, Mr. Feldewert.  
19 That was the only questions I had.

20 HEARING EXAMINER: Mr. Goetze, any  
21 questions?

22 MR. MCCLURE: Is Mr. Goetze with us,  
23 Mr. Brancard?

24 HEARING EXAMINER: Well, his name is on  
25 the list but he's not responding. There he is.

1                   MR. GOETZE: I've got a lot of buttons  
2 on. Thank you. And this was a short call. I'm just  
3 curious your opinion, Mr. Feldewert. In my ten years  
4 of history that these type of units were voluntary and  
5 we rarely had any type of assessment, other than the  
6 fact that you didn't show up with your checkbook, but  
7 not forcing people to participate. Your thoughts?

8                   MR. FELDEWERT: I don't disagree with  
9 you. There has been very few statutory unitization  
10 cases over the last, I don't know, 15 years maybe,  
11 okay? One of them was FAE where they came in and  
12 showed that they had 75 percent approval of all of the  
13 working interest owners in their entire proposed unit  
14 area, and we cite that case in our brief. They didn't  
15 have something squarely like we see up here on the  
16 screen.

17                   But most of the time, yes, they are  
18 able to reach a voluntary agreement because they  
19 actually negotiate the participation formula in this  
20 type of a payment provision. It's not presented as,  
21 oh well, we think it was approved by the BLM,  
22 therefore you must take it or leave it. And that's  
23 what's going on here.

24                   MR. GOETZE: Thank you. That was my  
25 only question.

1 HEARING EXAMINER: Okay. I don't want  
2 to get too lost in the details. In fact, I don't  
3 really want to get into the details at all. So let me  
4 just look at the statute here, Mr. Feldewert. So  
5 70-7-8 -- there we go -- uses the term "initially" I  
6 can see twice in here.

7 MR. FELDEWERT: One of them is a  
8 negative, right? They use the same language whether  
9 you're talking about the positive or what I call the  
10 negative, you know, how you --

11 HEARING EXAMINER: Right; the 75 or the  
12 25?

13 MR. FELDEWERT: You got it.

14 HEARING EXAMINER: You had started to  
15 explain a bit about what you thought "initially"  
16 meant. Perhaps you can give us a little further?  
17 Obviously, the legislature means something here. Do  
18 they mean that there's some, perhaps, some subset of  
19 the total universe of possible interest owners who  
20 would be involved in the initial approval?

21 MR. FELDEWERT: Well, I think, you  
22 know, first off, who knows what the legislature meant.  
23 Nobody can find any statutory history here, right?  
24 Otherwise, if Dana found it, she would have presented  
25 it. We couldn't find anything; we've looked.



1                   But if you recognize the fact that when  
2     you take a big block area like this, there's a lot of  
3     contractual arrangements out there, okay? And some of  
4     those contractual arrangements, like a farmout  
5     agreement or lease assignment, they have parties or  
6     owners in the interests that currently don't have a  
7     cost bearing interest. But as the acreage is  
8     developed over time, they then move into a cost  
9     bearing interest, okay?

10                  So it seems to me that when you look at  
11     the purpose of the Act, you look at the language in  
12     the statute, you look at what all of the treatises say  
13     about what you look at, I think a logical conclusion  
14     is that the legislature wanted to make sure that when  
15     you're talking about 75 percent or more of the -- and  
16     I'm looking at this second clause -- percent of the  
17     working interest in "said unit area," you're talking  
18     about the initial working interest in the unit area,  
19     not somebody who's got a back end or delayed working  
20     interest that may come to rise two or three years down  
21     the road. That, to me, is a logical interpretation of  
22     what this term "initially" means.

23                  So in other words, if you look at the  
24     current working interest owners who are going to bear  
25     that cost bearing interest. Can you hear me -- can

1     you hear me?

2                   HEARING EXAMINER:   Yeah; I can hear you  
3     but you couldn't hear me, and I made a good point.  
4     It's based on cost, right?  It's based on who is  
5     making the original cost.  And your percentage of  
6     interest is based -- your percentage of voting is  
7     based on not what your percentage of the unit is but  
8     the percentage of your -- of the initial cost you are  
9     paying.

10                  MR. FELDEWERT:  Are you talking about  
11     the statute or are you talking about what FAE has  
12     proposed with their unusual --

13                  HEARING EXAMINER:  I'm talking about  
14     the statute.

15                  MR. FELDEWERT:  The statute?  Okay.

16                  HEARING EXAMINER:  Okay?

17                  MR. FELDEWERT:  Yes.

18                  HEARING EXAMINER:  And I think the  
19     second provision is a little more revealing, right?  
20     It says if there is a single owner who is one who  
21     under the Division's order will be required to pay at  
22     least 25 percent.  Okay?  It doesn't say that there is  
23     an owner who owns 25 percent of the interest, but that  
24     they are paying 25 percent of the cost.  Okay?  But  
25     that allocation comes entirely from the Division's

1 order.

2 MR. FELDEWERT: Yes.

3 HEARING EXAMINER: Right? Which kicked  
4 us back to the prior section, 70-7-7, which is the  
5 Division order, under E, "The Division must issue an  
6 order that includes a provision governing how the  
7 costs of unit operations shall be determined and  
8 charged to the separately owned tracts and how the  
9 costs shall be paid." So the Division can approve  
10 some sort of formula allocating the costs to the  
11 various tracts based on some sort of logic. I don't  
12 know what it is, but it's something different than  
13 just simply saying, "You own five acres, you get five  
14 votes." Right? But if it says you own five acres,  
15 you pay \$5000, well, then your vote is based on that  
16 \$5000.

17 MR. FELDEWERT: So I think I'm  
18 following you. I mean, first off, we're responding to  
19 FAE's motion that says, well, here's our squirrely  
20 participation formula. We have satisfied the Phase 1  
21 with 75 percent; therefore, you guys are going to be  
22 brought into the unit.

23 I don't agree with that at all, okay?  
24 I agree that the threshold requirement applies to the  
25 final decision. In fact, you have six months -- you

1 have a period of time -- I think my recollection is,  
2 there's a period of time after the issuance of the  
3 order where parties have an opportunity to participate  
4 or not participate in order to see if they can come up  
5 with the 75 percent threshold, if you read the  
6 statute.

7 So I don't disagree with you, and that  
8 is, the Division has to look at this carefully after a  
9 factual presentation and determine what is fair and  
10 equitable to everyone and determine that it properly  
11 allocates production to the various tracts based on --  
12 what's that statute say? "The relative value of each  
13 tract so determined bears to the relative value of all  
14 tracts in the unit area."

15 FAE is saying something else here.  
16 They say, we've come up with formula. We don't care  
17 if you guys like it or not. But since under our  
18 formula we've got 75 percent of what we call Tract 1,  
19 you guys are in. That's not how it works. That's why  
20 their motion has to be denied.

21 HEARING EXAMINER: Okay. I am going to  
22 allow Ms. Hardy to provide a reply or rebut or what do  
23 we call it? Whatever.

24 MS. HARDY: Whatever.

25 HEARING EXAMINER: The last word.

1 MS. HARDY: Thank you. Okay. So I  
2 think there are a number of issues here that are  
3 really important that are being sort of overlooked by  
4 Mr. Feldewert's argument.

5 First, let me share my screen here, and  
6 hopefully this is going to work. The provision --  
7 let's see here -- can you see my screen?

8 HEARING EXAMINER: Not yet. There is  
9 sometimes a little delay. There it comes.

10 MS. HARDY: Okay.

11 HEARING EXAMINER: There we go.

12 MS. HARDY: So Mr. Feldewert is asking  
13 the Division to ignore not only this "initially"  
14 language, but also the fact that it references the  
15 owners who will pay 75 percent of the costs of the  
16 unit operations.

17 Mr. Feldewert is arguing that that  
18 really means 75 percent of the unit area. And that's  
19 not what the legislature says. I mean, maybe that's  
20 what some people wish they would have said, but that's  
21 just not what they said. So I think that's the first  
22 issue.

23 The second issue that's very  
24 significant. And I have also here, if I can share it,  
25 the provision that we have talked about of the unit

1 operating agreement, which says that it's very  
2 important. I think there's some language here that's  
3 being completely overlooked and that is what I've  
4 marked here in blue, that they pay their share of the  
5 net book value of invested unit capital.

6 So if you buy a car, a used car, three  
7 years after it was new, you're paying for the used  
8 car. That's what they're paying. So it's just not  
9 correct to argue that they are paying all of the costs  
10 of unit operations for the first three years. That's  
11 really important language and I think that that is  
12 being overlooked.

13 So when you look at the statute and the  
14 legislature's use of the term "initially," which had  
15 to mean something and it also meant something, that  
16 they were allowing for approval based on cost bearing  
17 interests. The owners of interest who will bear 75  
18 percent of the cost, the legislature was allowing this  
19 type of a formula.

20 I mean, they have a preference for  
21 statutory units; it's a public policy. I disagree  
22 with Mr. Feldewert that we're ignoring all of the  
23 other provisions of the Statutory Unitization Act.  
24 That's not true. In fact, we've talked about in our  
25 brief the first section regarding the purpose, which

1 Mr. Feldewert also talked about, which is to encourage  
2 production of these underlying reserves through  
3 secondary recovery. And that's exactly what Forty  
4 Acres is trying to do here.

5 With respect to the Division's  
6 decisions and the argument that the Division has never  
7 approved a unit like this or they have only allowed  
8 units to be approved based on 75 percent of the owners  
9 in the unit area ratifying the agreement, I don't  
10 think that the Division has addressed a unit agreement  
11 like this. I haven't seen one. So I think, you know,  
12 sort of the implication that it's been rejected or not  
13 been allowed is not true. I think the other units  
14 that were presented involved tract participation  
15 formulas that were based on surface acreage, so they  
16 were the same. You're looking at the ownership  
17 interest being the same as the cost bearing interests.  
18 And here, in this case, the formula is not determined  
19 in that manner.

20 I think that the other factors that the  
21 Division would need to look at under 70-7-6 would be  
22 matters to be addressed at a hearing. I think, you  
23 know, I don't think it's a take it or leave it deal.  
24 We're only asking for a ruling on the 75 percent  
25 approval requirement in 70-7-8. We're not asking for

1 approval of the entire unit. Of course, the Division  
2 would have to make the other findings that are set out  
3 in the other provisions of the Act if it were going to  
4 ultimately approve the unit.

5 And with respect to going forward and  
6 having a hearing where the Division addresses those  
7 factors and then we try to address the 75 percent  
8 approval requirement, I think I have explained why we  
9 have asked for the ruling on the 75 percent issue  
10 here. This is the formula that the BLM has approved  
11 and the state land office has approved so this is what  
12 we are prepared to go forward with at this time if we  
13 can satisfy and the Division determines that 75  
14 percent threshold requirement is met by having  
15 approval of the Phase 1 owners who will bear 75  
16 percent or more of the cost.

17 So that's what we're doing here and  
18 that's what we have requested and I think that our  
19 request is consistent with the language of the statute  
20 that is very clearly stated and I think that what  
21 we've asked is also consistent with the statute. So  
22 with that, unless there are questions, I would ask  
23 that the motion be granted. Thank you.

24 HEARING EXAMINER: Thank you. Mr.  
25 McClure, final questions?



1 MR. MCCLURE: So the BLM has actually  
2 granted approval for something on this then?

3 MS. HARDY: Yes.

4 MR. MCCLURE: And they have signed off  
5 on it?

6 MS. HARDY: Yes; it's a very long  
7 process that FAE went through to get working with the  
8 BLM to try to put together a unit that the BLM would  
9 approve and this is what they approved.

10 MR. MCCLURE: Having said that though,  
11 they were primarily concerned with federal interests,  
12 correct?

13 MS. HARDY: Most of the land is  
14 federal, so.

15 MR. MCCLURE: So they were more  
16 concerned with the royalty interests, which is not at  
17 dispute here, right? Because we're talking about  
18 working interests?

19 MS. HARDY: I mean, the BLM, this is  
20 the formula that they wanted and this is what they  
21 have approved.

22 MR. MCCLURE: Okay. Thank you, Ms.  
23 Hardy. I don't have any other questions, Mr.  
24 Brancard.

25 HEARING EXAMINER: Thank you. Mr.

1 Goetz?

2 MR. GOETZE: No questions at this time.  
3 Thank you.

4 HEARING EXAMINER: Thank you. Okay.  
5 Well, now I'm thoroughly confused about what the role  
6 of the BLM is here. I mean, if there's a BLM unit,  
7 why do we need to be involved with it? And if it's a  
8 statutory unit under our Statutory Unitization Act,  
9 what the heck are they doing? So I guess that's sort  
10 of my concerns here. You know, I mean, when we have  
11 BLM units that come before us, we don't say yea or nay  
12 anymore because they're BLM units. But if it's a  
13 statutory unit, that's ours to approve, so.

14 MS. HARDY: Mr. Brancard, I think it's  
15 both, and it's also state acreage, so it's a  
16 combination of state, federal, and private acreage.  
17 And the state land office has also approved, so then  
18 we are asking the Division to approve under the  
19 Statutory Unitization Act as well.

20 HEARING EXAMINER: Okay. So let's --  
21 well, I agree, Ms. Hardy, let's get down to the real  
22 question here. What exactly are you seeking from the  
23 Division at this point?

24 MS. HARDY: We are seeking a legal  
25 ruling that the 75 percent approval requirement set

1 out in Section 70-7-8a would be satisfied by a showing  
2 that the Phase 1 interest owners who will bear more  
3 than 75 percent of the cost have approved the unit. I  
4 think I stated that correctly?

5 HEARING EXAMINER: Okay. And by Phase  
6 1, you mean Phase 1 under the plan that FAE has  
7 drafted?

8 MS. HARDY: Exactly.

9 HEARING EXAMINER: Right. A plan that  
10 has not been approved by the OCD?

11 MS. HARDY: Right. Not yet; that's  
12 what we're asking.

13 HEARING EXAMINER: Well, I don't know.  
14 This seems sort of clear to me that the language in  
15 70-7-8, when it refers to "initially," those persons  
16 who are required initially to pay at least 75 percent,  
17 both times it's used it is "those persons who are  
18 required to pay under the Division's order," okay? In  
19 other words, the Division determines who are the ones  
20 who are going to pay, whether it's everybody paying  
21 the same amount or, you know, Group A and Group B or  
22 however you want to do it. But it's part of the  
23 Division's order, which would be issued under 70-7-7,  
24 and we haven't got to that point.

25 So yes, FAE could come to the Division

1 -- I guess it has -- it has applied to the Division  
2 for approval of the statutory unit. It has applied  
3 for the approval of this plan. And so, it could end  
4 up being that the Division will approve that plan with  
5 exactly that phasing.

6 But it could also be, no. That the  
7 Division will come up with its own plan, which is  
8 really a scary idea. Or we will take somebody else's  
9 idea, like Mr. Feldewert may have a better idea and  
10 his clients.

11 So we are, clearly -- I believe we are  
12 in unknown territory here because I think as -- I kind  
13 of agree with Mr. Feldewert that my little experience  
14 with statutory units is that they tend to be sort of  
15 come prepackaged with everybody sort of saying this is  
16 the unit and this is the order we want you to approve  
17 because we've all kind of worked it all out. And the  
18 Division doesn't have to think very hard, which is  
19 good. We don't want the Division to think hard.

20 And so, that's my sense is that,  
21 clearly, the statute is relying on what the Division  
22 decides is the formula. And I don't think at this  
23 point the fact that the Applicant has a formula that  
24 it likes that that formula is necessarily the formula  
25 that it will be there at the end of the day when

1     there's a vote. That's the way I look at the statute.  
2     It creates a process for you to apply and the Division  
3     to approve. And in between that, there is either a  
4     lot of people slapping each other on the back saying  
5     what a great plan this is or having a big hearing to  
6     argue with each other about why it's not a great plan  
7     or why it is a great plan.

8                     And that's kind of where we're at, at  
9     this point. We have an application and we can move  
10    forward on it. But to sort of jump ahead to what  
11    happens after the Division issues an order before we  
12    have even considered the application seems premature  
13    at this point.

14                    So yes, I think you're right. We, you  
15    know, there will be a vote by those people who have to  
16    pay 75 percent of the initial costs, but we are a long  
17    way from figuring out who those people are. I think  
18    that's the bottom line here.

19                    MS. HARDY: So Mr. Brancard, can I ask  
20    a couple of questions?

21                    HEARING EXAMINER: Sure. Now that I've  
22    stuck my foot in my mouth.

23                    MS. HARDY: No; thank you. So is what  
24    you're saying really that we would have to go through  
25    the hearing process and, you know, on the unit as

1 we've proposed it, with our approvals from BLM and the  
2 state land office. If the Division gives thumbs up or  
3 thumbs down and then we would have to address the 75  
4 percent issue?

5 HEARING EXAMINER: Well, you know, the  
6 results -- there are numerous possible results. One  
7 is, you provide an application. People object to it  
8 and we make a ruling going, bad application, go away,  
9 try again. Okay?

10 The other is, we accept your  
11 application, you know, the entire package, and go,  
12 terrific, thanks for this great idea, go forth.

13 The third possibility is that we  
14 approve your application, modified through the  
15 process. Okay? And likely, what we would modify,  
16 from what I'm hearing from the other parties, is how  
17 things get allocated because that seems to, obviously,  
18 be the big issue and, in fact, often is the big issue.  
19 Right? Whenever companies get together to negotiate  
20 and discuss how to develop an area; who gets to pay,  
21 who gets to play?

22 So that's just sort of generically  
23 three possibilities of what happens if you submit an  
24 application. And clearly, I mean, unlike much of what  
25 we do under the Oil and Gas Act, there is a whole

1     playbook here in the Statutory Unitization Act that  
2     tells you exactly what's supposed to be in your  
3     application, exactly the findings that we have to make  
4     in order to approve your application, and then exactly  
5     what has to be in our order when we approve your  
6     application. Okay? So it's, you know, it's unusual  
7     for us to have that much, you know, detail about how  
8     exactly to move forward in this process. So we've got  
9     to hit each of those steps along the way. And you  
10    started it with the application and we can go from  
11    there. I'm sorry if I'm not -- happy, but --

12                   MS. HARDY: I understand what you're  
13    saying and I just, due to this 75 percent issue, we  
14    were just hoping to get a ruling on it as a threshold  
15    matter because I think that impacts whether we go  
16    forward with it. But I understand your discussion of  
17    the statute.

18                   HEARING EXAMINER: Yeah; I think it's a  
19    little bit of the cart before the horse here. All  
20    right. We will review this further and issue an  
21    order. Are there any other comments, questions from  
22    the parties?

23                   MS. HARDY: Not from me, Mr. Examiner.

24                   MR. FELDEWERT: Not from the  
25    respondents, Mr. Examiner. We appreciate your time

1 here.

2 MS. HARDY: Yes; thank you very much.

3 HEARING EXAMINER: I am dismayed that I  
4 will have to say now what I forgot to say at the end  
5 of the rest of the hearing or at the beginning of it,  
6 that everybody needs to get out and vote.

7 MS. HARDY: Will do.

8 HEARING EXAMINER: Thank you, everyone.

9 MS. HARDY: Thank you.

10 MR. FELDEWERT: Thank you.

11 HEARING EXAMINER: Have a great day.

12 (Whereupon, at 3:42 p.m., the  
13 proceeding was concluded.)

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CERTIFICATE OF DEPOSITION OFFICER

I, DANA FULTON, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

*Dana Fulton*

Notary Public in and for the  
State of New Mexico

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I, DIANE OTTO, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



DIANE OTTO, CER, CET 1353

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[christmas - commingling]

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[commitment - conservation]

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**[conservation - correlative]**

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[correlative - darin]

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**[examiner - excluding]**

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[expert - feldewert]

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[feldewert - formation]

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**[formation - gerrymanders]**

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[getting - guess]

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[prevention - proposed]

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