

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

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

7 APPLICATION OF COG OPERATING, LLC CASE NO. 15499
8 FOR A NONSTANDARD SPACING AND
9 PRORATION UNIT AND COMPULSORY
10 POOLING, LEA COUNTY, NEW MEXICO.

11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 EXAMINER HEARING

13 June 9, 2016

14 Santa Fe, New Mexico

15 BEFORE: SCOTT DAWSON, CHIEF EXAMINER
16 MICHAEL McMILLAN, TECHNICAL EXAMINER
17 DAVID K. BROOKS, LEGAL EXAMINER

18 This matter came on for hearing before the
19 New Mexico Oil Conservation Division, Scott Dawson,
20 Chief Examiner, Michael McMillan, Technical Examiner,
21 and David K. Brooks, Legal Examiner, on Thursday, June
22 9, 2016, at the New Mexico Energy, Minerals and Natural
23 Resources Department, Wendell Chino Building, 1220 South
24 St. Francis Drive, Porter Hall, Room 102, Santa Fe,
25 New Mexico.

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1 (8:24 a.m.)

2 EXAMINER DAWSON: We will go now to case
3 number seven on the docket, which is Case Number 15471,
4 and it's -- I'm sorry. I'm sorry.

5 We'll go back to case number six, Case
6 Number 15499, which is the application of COG Operating,
7 LLC for a nonstandard spacing and proration unit and
8 compulsory poolings, Lea County, New Mexico.

9 I'll please call for appearances.

10 MS. KESSLER: Mr. Examiner, Jordan Kessler
11 and Michael Feldewert, from the Santa Fe office of
12 Hollard & Hart, on behalf of the Applicant.

13 EXAMINER DAWSON: Okay. Are there any
14 other appearances?

15 Okay. You may continue, Ms. Kessler.

16 MS. KESSLER: I have two witnesses today,
17 Mr. Examiner.

18 EXAMINER DAWSON: May the witnesses please
19 stand up and be sworn in?

20 (Mr. Scott and Mr. Bacon sworn.)

21 EXAMINER DAWSON: Go ahead, Ms. Kessler.

22 OPENING STATEMENT

23 MS. KESSLER: Mr. Examiner, I'd like to
24 make a brief opening statement before I get to my
25 witnesses today.

1 In this application, COG is seeking to pool
2 only a portion of the pool that covers the Yeso
3 Formation, and that's the portion that seeks the
4 Blinebry -- covers the Blinebry and Paddock members of
5 the Yeso.

6 As you may recall, the Commission
7 ordered -- or the Commission recently authorized pooling
8 of only a portion of a pool, and, in particular, the
9 Commission recognized the Division's statutory authority
10 to pool only a portion of a pool. And that was for the
11 Sneed 9 Number 23H well, which resulted in Order Number
12 14023-A.

13 The Branex well, which is at issue here, is
14 an offset well, so it's directly adjacent in Section 9
15 to the spacing unit of the Sneed 923H well.

16 And I'll just ask you briefly to turn in
17 your exhibit packet to Exhibit 2, and that's the order
18 for the Sneed well. And that order did several things.
19 It confirmed the Division's authority, as I said, and
20 jurisdiction to pool only a portion of the pool. And
21 you can find that in paragraph three on page 4.

22 Looking then at --

23 EXAMINER BROOKS: What exhibit is that?

24 MS. KESSLER: Exhibit 2, Mr. Examiner.

25 EXAMINER BROOKS: Thank you.

1 MS. KESSLER: Looking at paragraph 6 on
2 page 5, the order determined that the lower portions of
3 the pool in Section 9, the same pool at issue today,
4 would not contribute hydrocarbons to the wellbore
5 because the Tubb in this particular section is
6 considered wet and is not productive of hydrocarbons.

7 Most importantly, in the following
8 paragraph, paragraph seven, the Commission affirmed that
9 to protect COG's correlative rights, the Division should
10 only pool a portion of the pool. And that was because
11 otherwise COG would be in a position where it would be
12 forced to share their production with an owner in a
13 deeper zone where the deeper zone was not
14 contributing -- contributing hydrocarbons to the
15 wellbore.

16 But here we have the exact same set of
17 facts. We identical facts, adjacent acreage in Section
18 9. There is a depth severance that exists at the base
19 of the Blinebry, and COG only seeks to pool the Blinebry
20 and Paddock portion of the Yeso, not the Tubb or the --
21 which are considered unproductive.

22 The only ownership difference here is with
23 Este, Ltd., who owns below the depth severance line.
24 And as you'll see here, just like in the Sneed
25 Commission case, Este has provided a letter confirming

1 that they agree with COG's development plan and agree,
2 in particular, with COG's application to only pool the
3 limited portion of the pool. And, again, this is
4 because they agree that this zone below the base of the
5 Blinebry where Este owns will not contribute
6 hydrocarbons to the wellbore.

7 The only difference we have here is the
8 target interval. So in the Sneed application, remember
9 the depth severance line is at the base of the Blinebry,
10 and the Sneed, the target level, is 400 feet above the
11 base of the Blinebry. Here in the Branex well, we're
12 roughly 1,100 feet above the base of the Blinebry.

13 So for that reason -- for these reasons,
14 COG's asking for a limited pooling order to only pool
15 the Blinebry and Paddock members of the Yeso.

16 And unless the Examiners have any
17 questions, I'll proceed with my witnesses.

18 EXAMINER DAWSON: Any questions, Michael.

19 EXAMINER McMILLAN: No.

20 EXAMINER DAWSON: David?

21 EXAMINER BROOKS: Well, I assume you'll
22 have a geologic witness, and that witness is going to
23 address the subject of communication or presence of
24 hydrocarbon. I don't know whether -- from your opening
25 statement, whether your premise is that the excluded

1 portion of the pool does not -- does not contain any
2 hydrocarbons or whether it's not in communication with
3 the portion of which you're going to. But in either
4 case, I would expect a geologic witness that you would
5 present to discuss that issue.

6 MS. KESSLER: That's correct. Yes.

7 EXAMINER BROOKS: Okay. Go ahead.

8 EXAMINER DAWSON: The question I have is
9 you said you had communication with Este. Is there a
10 letter from Este in the exhibits?

11 MS. KESSLER: There is a letter from Este
12 in the exhibits, and that is Exhibit 6, Mr. Examiner,
13 confirming that they agree with COG's plan.

14 EXAMINER DAWSON: Okay.

15 MS. KESSLER: So I'll proceed with
16 witnesses, Mr. Examiner.

17 EXAMINER DAWSON: Okay. Thank you.

18 JOSEPH SCOTT,
19 after having been previously sworn under oath, was
20 questioned and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. KESSLER:

23 Q. Can you please state your name for the record
24 and tell the Examiners by whom you're employed and in
25 what capacity?

1 A. Joseph Scott, COG Operating, LLC. I'm a
2 landman.

3 Q. Have you previously testified before the
4 Division?

5 A. Yes.

6 Q. Were your credentials as a petroleum landman
7 accepted and made a matter of record?

8 A. Yes.

9 Q. Are you familiar with the application that's
10 been filed in this case?

11 A. Yes.

12 Q. And have you conducted a study of the lands
13 that are the subject in the subject area?

14 A. Yes.

15 MS. KESSLER: I would tender Mr. Scott as
16 an expert in petroleum land matters.

17 EXAMINER DAWSON: He is so admitted.

18 Q. (BY MS. KESSLER) Mr. Scott, can you please turn
19 to Exhibit 1 and identify this exhibit and what COG
20 seeks?

21 A. Yes. This is our C-102 for the Branex COG
22 Federal Com 15H. It is located in the north half-south
23 half of Section 9, 17 South, 32 East. We seek to create
24 a north center spacing unit. We seek to pool the top of
25 the Paddock to the base of the Blinebry, and we seek to

1 pool only a Maljamar; Yeso, West Pool.

2 Q. Is that the Maljamar; Yeso, West Pool
3 designated by the Division?

4 A. Yes.

5 Q. And that's identified on your C-102, as well as
6 the pool code, correct?

7 A. Yes, Pool Code 44500.

8 Q. Does that C-102 also provide the API number for
9 this well?

10 A. Yes.

11 Q. And will the completed interval comply with the
12 Division's statewide 330-foot setback requirements?

13 A. Yes.

14 Q. Is COG Exhibit 2 the Oil Conservation
15 Commission order approving COG's application to pool a
16 portion of the pool for the Sneed 9 Number 23H well?

17 A. Yes.

18 Q. And are you familiar with the Commission Order
19 R14023-A?

20 A. Yes.

21 Q. And this was for the Sneed 23H well, where COG
22 sought to only pool the Blinebry and Paddock portion of
23 the Yeso Formation, correct?

24 A. Yes.

25 Q. In Section 9?

1 A. Yes.

2 Q. And this is acreage that directly offsets the
3 Branex well, correct?

4 A. Yes.

5 Q. Let's see. Turning to page 3 -- I'm sorry --
6 page 4, paragraph three, looking at the highlighted
7 portion here, does the order state that the Division is
8 authorized by statute to compulsory pool all or any part
9 of such lands or interest or both in the spacing or
10 proration unit?

11 A. Yes.

12 Q. And does the language in paragraph three cite
13 to the Oil and Gas Act?

14 A. Yes.

15 Q. Do you understand this -- do you understand
16 this to mean that the Division has the authority to pool
17 only a portion of the Yeso Formation?

18 A. Yes.

19 Q. Did the Commission subsequently find, in
20 paragraph four, that COG's applications within the
21 Blinebry and Paddock portion of the Yeso Formation,
22 Section 9 was, quote, "consistent with the Commission's
23 authority and definition of a proration unit"?

24 A. Yes.

25 Q. Looking at Exhibit 3, is this locator map that

1 shows that the Branex well directly offsets the Sneed
2 23H well?

3 A. Yes.

4 Q. And the Branex well also has a depth severance
5 at the base of the Blinebry; is that correct?

6 A. Correct.

7 Q. What is Exhibit 4?

8 A. Exhibit 4 is showing the well location of our
9 proposed Branex-COG Federal Com 15H located --

10 Q. Oops. I think you may have skipped one.
11 Exhibit 4, I have being a Yeso type log.

12 A. Okay. I have 5 on mine.

13 Q. Okay. We're looking at the type log?

14 A. Yes. This is a Yeso type log prepared by our
15 geologist. It shows the depths Maljamar; Yeso, West
16 Pool.

17 Q. Does it also show the Paddock and the Blinebry?

18 A. Yes, it does.

19 Q. And it shows the top of the Tubb, correct?

20 A. Yes, it does.

21 Q. And that's at 6,852 feet?

22 A. Yes.

23 Q. And that is the same location as the depth
24 severance, correct?

25 A. That's correct.

1 Q. Is the landing zone for this target interval
2 also identified on this exhibit?

3 A. Yes. It's a blue text at 5,750 feet.

4 Q. So that's about 1,100 feet above the depth
5 severance line, correct?

6 A. Correct.

7 Q. Why are you pooling only from the top of the
8 pool to the base of the Blinebry?

9 A. There is a depth severance created by Este
10 prior to COG acquiring this acreage. We seek to pool
11 only the common ownership of the Paddock and the
12 Blinebry.

13 Q. And Este owns only below the base of the
14 Blinebry; is that correct?

15 A. That's correct.

16 Q. All right. So different ownership above and
17 below the baseline?

18 A. That's correct.

19 Q. And you brought a geologist to show that the
20 top interval below the base of the Blinebry is not
21 productive of hydrocarbons?

22 A. That's correct.

23 Q. And, therefore, the owner below the base of the
24 Blinebry will not be contributing hydrocarbons to the
25 well, correct?

1 A. Correct.

2 Q. Is COG's working interest percentage different
3 above and below the base of the Blinebry?

4 A. Yes, it is.

5 Q. And is this because there is divided ownership?

6 A. Yes.

7 Q. And you seek to pool only the portion of the
8 Yeso with common ownership?

9 A. Yes, that's correct.

10 Q. How did the depth severance arise?

11 A. Este made an assignment to a company called
12 Hawking [phonetic], and they retained all depths below
13 the base of the Blinebry. We subsequently acquired the
14 interest from Hawking. So COG did not create the depth
15 severance. This was done by Este, Ltd.

16 Q. And they only conveyed the shallower depth that
17 had been the subject of the development, correct, the
18 Blinebry and Paddock?

19 A. That's correct.

20 Q. Everyone agrees Este created the depth
21 severance?

22 A. That's correct.

23 Q. Looking at the next exhibit --

24 A. All right.

25 Q. -- what is this exhibit?

1 A. This is an exhibit showing a column one. The
2 yellow is Tract 1, our ownership in Tract 1, and another
3 ownership in Tract 2. The second column in blue shows
4 our interest in the Yeso above the depth severance of
5 the Paddock and the Blinebry members. And the third
6 column in red shows the ownership of the depth severance
7 below the base of the Blinebry.

8 Q. And it looks like there is only a depth
9 severance in Tract 2; is that correct?

10 A. That's correct.

11 Q. And Este, in Tract 2, only owns below the base
12 of the Blinebry?

13 A. That's correct.

14 Q. And you mentioned before that COG has a
15 different working interest above and below the baseline?

16 A. Yes. In Tract 2, we own 96.875 percent above
17 the base of the Blinebry, and below the base of the
18 Blinebry, COG only owns 90.625 percent.

19 Q. And prior to this hearing, did COG provide
20 notice to Este that they seek to pool only above the
21 base of the Blinebry?

22 A. Yes, we did.

23 Q. Were there any objections from Este?

24 A. No.

25 Q. And did they, in fact, confirm what they had

1 also stated in the Sneed case, which is that they do not
2 object to COG's development plan?

3 A. Correct.

4 Q. Is Exhibit 6 a letter from Este confirming that
5 they agree with COG's pooling of the --

6 A. Yes.

7 Q. The first two paragraphs discussed there, is
8 that what we've just gone over, the differences in
9 ownership?

10 A. That's correct.

11 Q. Could you please read the last two paragraphs
12 aloud?

13 A. Yes. "Este, Ltd is also the owner of depth
14 severed interests within particular formations or pools
15 throughout New Mexico and will be affected by the
16 NMOCD's current position with regards to denial of
17 pooling subsets of a formation. Allowing pooling of
18 subsets of formations or pools, among other things, will
19 protect correlative rights, prevent waste and inhibit
20 the stranding of reserves.

21 "Este, Ltd. is in support of COG's
22 development of the Branex-COG Federal Com 15H well as
23 discussed in Case Number 15499. Este, Ltd. understands
24 this letter of support will be used at an upcoming
25 hearing in front of the NMOCD [sic]."

1 EXAMINER McMILLAN: What exhibit are you
2 reading from?

3 THE WITNESS: This is 7 in my packet.

4 MR. FELDEWERT: What does it say in the
5 bottom, right-hand corner?

6 THE WITNESS: Say again.

7 MR. FELDEWERT: What does it say in the
8 bottom, right-hand corner?

9 THE WITNESS: "Exhibit 6."

10 MR. FELDEWERT: Okay.

11 MS. KESSLER: Looks like we may be off on
12 our numbering, Mr. Examiner.

13 EXAMINER DAWSON: Yeah, because I was
14 looking at Exhibit 6 in my packet and it's a
15 well-proposal letter, not the Este letter. But I'm
16 reading Michael's, so that's okay.

17 MS. KESSLER: Okay.

18 Q. (BY MS. KESSLER) So it looks like the only
19 interest owner who would be excluded from the pooled
20 interval agrees with COG's application and development
21 plan; is that correct?

22 A. Correct.

23 Q. Okay. If we could turn to the well-proposal
24 letter sent to the working interest owners for this
25 well, what is the status of COG's discussions with the

1 remaining working interest owners?

2 A. The only other working interest owner is
3 Chevron, and they have signed their AFE. They have
4 signed the comm agreement, and we're just finishing up
5 the final stages of negotiating a JOA.

6 Q. Are they aware of this pooling application?

7 A. Yes.

8 Q. And do they have any objection to pooling only
9 a portion of the pool?

10 A. No.

11 Q. Did the working interests -- did the letter to
12 the working interests also include an AFE?

13 A. Yes.

14 Q. And are the costs on this AFE consistent with
15 what COG currently incurs for drilling other horizontal
16 wells in this area?

17 A. Yes.

18 Q. Does the well-proposal letter also identify
19 proposed overhead and administrative costs?

20 A. Yes, 7,000 for drilling and \$700 for producing.

21 Q. And are these costs consistent with what other
22 operators in the area are charging for similar wells?

23 A. Yes.

24 Q. Do you ask that these costs be adjusted in
25 accordance with the COPAS accounting procedures?

1 A. Yes.

2 Q. And with respect to the uncommitted working
3 interest owners, do you request the Division impose a
4 200 percent risk penalty?

5 A. Yes.

6 Q. I'm going to turn now to the lease tract map,
7 which has some yellow highlighting on it. Does this
8 identify the interest in the proposed spacing unit?

9 A. Yes. It identifies the working interest, the
10 overriding royalty interest, the royalty interest and
11 unmarketable title and record title owners.

12 Q. In addition to the working interest owners,
13 what other interest does COG seek to pool in this
14 application?

15 A. The override, royalty, unmarketable title and
16 the record title owners.

17 Q. Is the following exhibit the letter that you
18 sent to the overriding royalty interest owners?

19 A. Yes. This is a letter we sent to the override
20 owners requesting them to ratify our communitization
21 agreement, which is required by the BLM for pooling.

22 Q. And that's why you seek to pool them?

23 A. Yes, because they have not -- there are a few
24 owners that have not signed the ratification to date.

25 Q. Looking at the royalty interest owners -- and

1 you can turn back to the lease tract map to look at
2 those -- why do you seek to pool the royalty interest
3 owners?

4 A. The lease that -- the lease does not have
5 pooling language. We have tried to reach out -- we have
6 tried to locate these parties, all of them, which do not
7 have good addresses.

8 Q. So was there a lease for this Branex well that
9 also covers a portion of the Sneed spacing unit?

10 A. Yes.

11 Q. And did you, in conjunction with the Sneed
12 application, read out to all of those locatable royalty
13 interest owners, and did they sign a lease agreement?

14 A. Yes.

15 Q. So all that's left is the unlocatable royalty
16 interest owners; is that correct?

17 A. Yes.

18 Q. Did you publish notice directly to those
19 royalty interest owners?

20 A. Yes, I did.

21 Q. Looking at Exhibit 10, did you also reach out
22 to the record title owner?

23 A. Yes. They have signed the comm agreement.
24 However, they did not notarize it, so we have sent it
25 back again for them to notarize. And once we get

1 that -- get the notary, we'll send it off -- the comm
2 agreement off for approval.

3 Q. But at this time, you seek to pool the record
4 title --

5 A. Yes, because they haven't signed to date.

6 Q. Are there any other interest owners who are
7 unlocatable?

8 A. Yes.

9 Q. And those are the interests whom you seek to
10 pool for unmarketable title?

11 A. That's correct.

12 Q. Why do you seek to pool them?

13 A. They have a cloud in their title. The owners
14 have not administered their title in accordance with
15 New Mexico title law.

16 Q. And did you attempt to contact them?

17 A. We've contacted some of them. We've contacted
18 some of the heirs. Some of these people are no longer
19 alive, but we have reached out to their heirs, notified
20 them that they had title defects and that they needed to
21 satisfy their title, whether that be ancillary probate,
22 gaps in title, things of that nature, in order to make
23 the title legal.

24 Q. Is the following exhibit -- in my book, it's
25 Exhibit 11, an affidavit with attached letters notifying

1 the pooled parties, the offset parties and the party who
2 owns below the base of the Blinebry of this hearing.

3 A. Yes.

4 Q. And is the exhibit following that, Exhibit 12
5 in my book, an Affidavit of Publication provided to the
6 unlocatable parties?

7 A. Yes.

8 Q. And COG also identified the offset operators in
9 the spacing -- that surround the nonstandard spacing
10 unit; is that correct?

11 A. That's correct.

12 Q. And provided a letter notifying them of this
13 hearing?

14 A. Correct.

15 Q. Were Exhibits 1 through 11 prepared by you or
16 compiled under your direction and supervision?

17 A. Yes.

18 MS. KESSLER: Mr. Examiner, I'd move
19 admission of Exhibits 1 through 12, which includes the
20 affidavit.

21 EXAMINER DAWSON: Exhibits 1 through 12
22 will be admitted.

23 (COG Operating, LLC Exhibit Numbers 1
24 through 12 are offered and admitted into
25 evidence.)

1 MS. KESSLER: That concludes my examination
2 of this witness.

3 EXAMINER DAWSON: All right. Thank you.
4 Do you have any questions, Michael.

5 EXAMINER McMILLAN: You're doing it. Go
6 ahead.

7 CROSS-EXAMINATION

8 BY EXAMINER DAWSON:

9 Q. Mr. Scott, on the unlocatable interest owners,
10 roughly how many of those are there?

11 A. Okay. All of the -- all of the royalty owners
12 are locatable.

13 (Cell phone ringing.)

14 A. There's a large group of royalty owners under
15 this lease. The lease was taken in the 1930s. It has
16 since branched out from there. We have received
17 amendments to the oil and gas lease to allow pooling on
18 all the parties we found. These are the only lacking
19 owners, and we're just not able to find an address for
20 them.

21 Q. You're referring to Exhibit --

22 A. Oh, sorry.

23 Q. -- Exhibit 12?

24 A. This is Exhibit 8. In the corner on the sheet
25 are "Exhibit 9" in my book, possibly your book.

1 MS. KESSLER: And, Mr. Examiners, the
2 exhibits are correctly identified in the bottom,
3 right-hand corner. It has a little sticker on it. I
4 apologize for the confusion.

5 Q. (BY EXAMINER DAWSON) So there are several --
6 several unlocatable interests?

7 A. Yes. All of those royalty interest owners are
8 unlocatable. We have used our online resources for
9 trying to get a good address. We've looked in the
10 County Clerk's Office. We've hired brokers to -- to do
11 a deeper search, and we have not been able to find a
12 solid address for any of these parties. All were
13 returned undeliverable.

14 Under the unmarketable title owners, a lot
15 of these owners -- we published notice because we feel
16 that sending notice to who we feel is the correct owner
17 doesn't give proper notice because they could just be
18 claiming to have that interest. But somebody that sees
19 the publication and see that, hey, that's my
20 grandfather, I've never known about that interest, and
21 who's claiming it? It gives them the opportunity to
22 approach us to claim that interest.

23 Because the title was not administered
24 properly, New Mexico -- you don't have -- ancillary
25 probate, let's say it was done in Colorado. They did

1 probate there in Colorado. What the will and the
2 Probate Court says isn't -- isn't how New Mexico sees
3 that title. They're going to see it through intestate
4 session, and that may create a different set of owners.
5 So in order to have legal title, you have to have
6 certain administrative filings, ancillary probate if
7 there is a gap in title, things of that nature, improper
8 conveyances.

9 But all those heirs, we published notice.
10 There are a couple in there, like Triad and Kiska, that
11 we feel that -- well, there is a -- there is a title
12 dispute, so we're pooling both of them. None of them --
13 there was a bad conveyance, is why we're notifying them
14 and pooling them as unmarketable title owners.

15 Q. Okay. These overriding royalty interest owners
16 and royalty owners, is this -- are these the owners in
17 the entire Yeso Pool?

18 A. They are -- yes. They are the only override
19 owners that have not ratified our comm agreement.

20 Q. Okay.

21 A. The overrides carved out a lease, and it
22 doesn't create -- it doesn't create pooling. They don't
23 have pooling language in the document. So, therefore,
24 we're seeking them to ratify our comm agreement to say,
25 Hey, I agree with you for pooling. A handful of

1 override owners have signed the comm agreement. This
2 group is just lacking. I've been in communication with
3 them. They're working on getting it to us. It's just
4 timing. They haven't gotten it to us yet. So just in
5 case they don't sign it, we're seeking to pool them here
6 at this hearing.

7 Q. A lot of these owners here listed on this
8 Exhibit 8, are they also -- were they also included in
9 that former Sneed well?

10 A. Yes. All of this group was included in that
11 former Sneed well. There were overrides in the Sneed,
12 but we're -- that's just a different lease that was in
13 the Sneed, not in the Branex.

14 Q. So the ownership in both project areas is a
15 little bit different?

16 A. It's a little bit different, yes, sir.

17 Q. And the only productive intervals in that area
18 are the Paddock and the Blinebry?

19 A. I'm going to refer to my geologist to testify
20 as to geological zones.

21 Q. I think that's all the questions I have.

22 EXAMINER DAWSON: Do you have some,
23 Michael?

24

25

1 CROSS-EXAMINATION

2 BY EXAMINER McMILLAN:

3 Q. Your Exhibit 12, does that meet the mandatory
4 amount of time for notice for hearing?

5 MS. KESSLER: It does, Mr. Examiner.

6 EXAMINER McMILLAN: Is it nine days?

7 MS. KESSLER: Ten business days.

8 EXAMINER McMILLAN: The 26th and the 27th,
9 and this the 31st and the 1st.

10 MS. KESSLER: Mr. Examiner, if you recall,
11 our last hearing date was on May 26th, so that would
12 have been a Thursday. So Thursday, Friday --

13 EXAMINER McMILLAN: And then Tuesday.

14 MS. KESSLER: Oh, because of the holiday?

15 EXAMINER McMILLAN: Yeah. That's my giant
16 question.

17 MS. KESSLER: Mr. Examiner, I don't know
18 that the -- that the Division regulations specify
19 holidays as business days or not business days.

20 EXAMINER BROOKS: Well, there is a statute
21 that says everything in New Mexico goes certain ways
22 unless otherwise specified, so regardless of whether --
23 if it's not specified in the -- if there is a rule --
24 and I'm afraid I was out when an important -- when a
25 legal matter came up. But if there is a rule that

1 specifies ten days, it's ten business days in
2 New Mexico, unless the rule specifically says ten
3 calendar days by statute.

4 EXAMINER McMILLAN: What does that mean?
5 Is it fine?

6 EXAMINER BROOKS: I have to know what rule
7 you're talking about and what the rule says to answer
8 that question.

9 EXAMINER McMILLAN: I'm looking at --

10 EXAMINER BROOKS: The rule about the
11 publication of notice?

12 EXAMINER McMILLAN: Yes. I'm looking at
13 412(B), "Such proof" --

14 EXAMINER BROOKS: 412(B).

15 EXAMINER McMILLAN: Here (indicating).
16 Give him the --

17 EXAMINER DAWSON: Here it is.

18 EXAMINER BROOKS: I've got it. Okay.
19 Where in this are you looking? Oh. "Such proof shall
20 consist of a copy of a legal advertisement that's
21 published at least ten business days...." Well, it
22 specifies "business days."

23 EXAMINER McMILLAN: Okay. So are they fine
24 or not?

25 EXAMINER BROOKS: Well, they would have to

1 have published it on May the 26th.

2 EXAMINER McMILLAN: Okay. And it was
3 published the 26th.

4 EXAMINER BROOKS: That's ten business days.
5 No, no, no. I forgot about Memorial Day. So it had to
6 be published on the 25th --

7 EXAMINER McMILLAN: Then we're off.

8 EXAMINER BROOKS: -- because Memorial Day
9 is not a business day.

10 EXAMINER McMILLAN: So they're off a day.

11 EXAMINER BROOKS: Yup. So we'll have to
12 continue this for two weeks.

13 EXAMINER McMILLAN: Okay.

14 Q. (BY EXAMINER McMILLAN) And let's see. Just for
15 my own edification, the override is not seeking a
16 penalty, correct?

17 A. No, sir.

18 Q. Okay. And there are -- okay. Obviously, there
19 are unlocatable interests and locatable interests, also,
20 right? And you're compulsory pooling Chevron?

21 A. Yes.

22 Q. Okay. And I don't have any questions.

23 EXAMINER McMILLAN: Do you have any
24 questions?

25 EXAMINER BROOKS: No. I have no questions.

1 EXAMINER McMILLAN: I don't have any
2 questions.

3 Do you have any questions?

4 EXAMINER DAWSON: I have no questions.

5 MS. KESSLER: Call my next witness.

6 THE WITNESS: Thank you.

7 EXAMINER DAWSON: Call the next witness.

8 CODY BACON,

9 after having been previously sworn under oath, was
10 questioned and testified as follows:

11 EXAMINER DAWSON: Go ahead, Ms. Kessler.

12 DIRECT EXAMINATION

13 BY MS. KESSLER:

14 Q. Can you please state your name for the record
15 and tell the Examiners by whom you're employed and in
16 what capacity?

17 A. My name is Cody Bacon, and I work for COG
18 Operating, LLC as a geologist.

19 Q. Have you previously testified before the
20 Division as an expert petroleum geologist?

21 A. Yes, I have.

22 Q. Are you familiar with the application that's
23 been filed in this case?

24 A. I am.

25 Q. Have you conducted geologic studies of the area

1 that are the subject of this hearing?

2 A. Yes, I have.

3 MS. KESSLER: I would tender Mr. Bacon as
4 an expert in petroleum geology.

5 EXAMINER DAWSON: He is so admitted.

6 Q. (BY MS. KESSLER) Mr. Bacon, can you please turn
7 to Exhibit 3? And it should be a locator map, lease
8 map. Can you please identify the proposed unit, the
9 well and the orientation of the well?

10 A. Sure. This map here shows all the existing
11 Yeso producers in the area and the color coding off to
12 the right indicates which formation.

13 The yellow shading is the proposed -- or
14 the subject acreage -- excuse me -- with the red box
15 pointing to the wellbore. The square would be the
16 surface location, and the circle would be the
17 bottom-hole location so that it is a west-to-east
18 wellbore.

19 Q. And this shows that the Branex well is adjacent
20 to the acreage for the Sneed well, correct?

21 A. That's correct.

22 Q. Have you had the opportunity to review
23 Commission Order 14023-A, which was the order related to
24 the Sneed well?

25 A. I have.

1 Q. If you could turn back to Exhibit 2, did the
2 Commission set forth certain findings related to the
3 geology in Section 9?

4 A. Yes.

5 Q. If you could please turn to page 4 of the
6 order -- I'm sorry. It's page -- yeah, page 4 of the
7 order.

8 A. 4 of 10? Up at the top is 4 of 10.

9 Q. Yes, 4 of 10 at the top, and read paragraph
10 five aloud.

11 A. "Applicant has shown that: (A) the Tubb
12 interval below the base of the Blinebry contains tight
13 sandstone that is wet and does not contain recoverable
14 hydrocarbons." And (B) "The deepest Drinkard interval
15 has not been the target of the development in the
16 subject area and it is unlikely to be productive of
17 recoverable hydrocarbons."

18 Q. Then looking at paragraph six, could you please
19 read that aloud?

20 A. "The Commission finds that pooling only the
21 Paddock and Blinebry intervals of the Maljamar; Yeso,
22 West Pool (Code 44500) underlying the proposed
23 nonstandard spacing unit and project area is just and
24 reasonable, and is necessary to protect correlative
25 rights and prevent waste for the following reasons:"

1 Q. Would you read 6b?

2 A. "COG presented evidence that the Tubb interval
3 below the base of the Blinebry does not contain
4 recoverable hydrocarbons."

5 Q. And finally, 6c.

6 A. "Requiring COG to pool the entire vertical
7 extent of the Maljamar; Yeso, West Pool will result in
8 the owner below the base of the Blinebry (Este, Ltd.)
9 receiving a share of the production from the wellbore
10 even though the intervals below the base of the Blinebry
11 will not contribute oil or gas to the proposed
12 wellbore."

13 Q. Now, as we established earlier, the Sneed
14 acreage, which is the subject of this order is adjacent
15 to the Branex well, correct?

16 A. That's correct.

17 Q. They're both in Section 9?

18 A. Yes.

19 Q. In your opinion, are there any differences in
20 the geology underlying the south half of the north half
21 and the north half of the south half in Section 9?

22 A. No. There is no difference in the geology.

23 Q. In your opinion, do the Commission's findings
24 in Order R-14023-A apply equally to the offsetting
25 acreage for the proposed Branex well?

1 A. Yes.

2 Q. And is the only difference the landing zone
3 between those two wells?

4 A. That is correct.

5 Q. And that is because the Branex well is
6 approximately 1,100 feet off of the depth severance
7 line, correct?

8 A. Yes, that is correct.

9 Q. In your opinion, will the proposed wellbore
10 produce any hydrocarbons from the Tubb Formation?

11 A. No, it will not.

12 Q. Because the Tubb is wet in this area?

13 A. Yes, it is.

14 Q. And it contains no recoverable hydrocarbons?

15 A. Yes, that's true.

16 Q. In your opinion, in the subject area, are the
17 Paddock and the Blinebry -- Yeso common sources of
18 productive hydrocarbons?

19 A. They are.

20 Q. And in your opinion, is it necessary to pool
21 only the interest owners above the base of the Blinebry
22 to protect the correlative rights of the owners?

23 A. Yes.

24 Q. And Este, Ltd., which owns only below the base
25 of the Blinebry, will not contribute hydrocarbons to the

1 well, correct?

2 A. Correct.

3 Q. And turn to what I have marked as Exhibit 14
4 and that should be a structure map.

5 A. Okay.

6 Q. Can you please identify this exhibit and walk
7 us through it?

8 A. Sure. This is the same map as the locator map,
9 except this one has structure on it. This is the subsea
10 structure of the Paddock Formation. It is a 100-foot
11 contour interval. The structure shows that the Paddock
12 dips to the east very consistently. There is no change
13 in structure.

14 As you move to the south of the picture,
15 you see that the contour intervals get closer together,
16 and they start to turn close to south. That's --
17 they're dropping off into the Delaware Basin. But, as
18 you see, where the subject acreage is, it's very
19 consistent structure. There is no major structural
20 change or faulting or anything like that.

21 Q. Let's turn to the following exhibit, Exhibit
22 14, and identify this exhibit and walk us through it.

23 A. Sure. This is a cross-section location map.
24 It shows the proposed Branex 15H, the acreage, and then
25 right below the wellbore it shows the cross-section A to

1 A prime.

2 Q. Do you consider the wells on the line A to A
3 prime representative of the wells in the area?

4 A. Yes, I do.

5 Q. And if you would turn to Exhibit 15, are these
6 the wells depicted on the previous exhibit?

7 A. They are.

8 Q. What have you identified in this exhibit?

9 A. This exhibit just shows the cross section we
10 saw in the previous exhibit, A to A prime. On the left
11 side, it shows the formation names, the Glorieta, the
12 Paddock, the Blinebry and the Tubb. The approximate
13 landing depth is shown in blue, on the left side as
14 well. The green shading is the Paddock Formation, which
15 is the target formation for this wellbore. And the
16 thickness of these intervals is very consistent, and
17 geologically they're extremely similar. There is not
18 much of a change at all across the length of the
19 wellbore.

20 Q. And, again, this landing zone is approximately
21 1,100 feet above the depth severance line?

22 A. That is correct.

23 Q. Based on your geologic study of this area, can
24 you identify any impediments that would prevent the
25 drilling of a horizontal full-section well?

1 A. I have not.

2 Q. And in your opinion, can the area be
3 efficiently and economically developed by horizontal
4 wells?

5 A. Yes, it can.

6 Q. Do you believe that each tract in the proposed
7 nonstandard unit will contribute, on average, equally to
8 the production of the well?

9 A. Yes.

10 Q. And as was mentioned before, the completed
11 interval will comply with the setback requirements under
12 the horizontal rule?

13 A. That's correct.

14 Q. In your opinion, will the granting of COG's
15 application be in the best interest of conservation, for
16 the prevention of waste and the protection of
17 correlative rights?

18 A. Yes.

19 Q. And were Exhibits 13 through 15 prepared by you
20 or compiled under your direction and supervision?

21 A. Yes, they were.

22 MS. KESSLER: Mr. Examiner, I'd move
23 admission of Exhibits 13 through 15.

24 EXAMINER DAWSON: Exhibits 13 through 15
25 will be admitted.

1 (COG Operating, LLC Exhibit Numbers 13
2 through 15 are offered and admitted into
3 evidence.)

4 MS. KESSLER: That concludes my
5 examination.

6 EXAMINER DAWSON: Okay. Thank you very
7 much.

8 CROSS-EXAMINATION

9 BY EXAMINER DAWSON:

10 Q. Mr. Bacon, the other well, the Sneed Number
11 23H, have you completed that well?

12 A. It is in -- in progress.

13 Q. It's in progress?

14 A. Yes, sir.

15 Q. It's not producing?

16 A. No, sir.

17 Q. And you also stated that the Tubb is wet?

18 A. That's correct.

19 Q. Okay. The Drinkard is not productive?

20 A. No, sir, not in this area.

21 Q. The Branex well is 1,100 feet off the line,
22 the -- the top of the Tubb?

23 A. Yes, sir.

24 Q. And the geology is not different, but the
25 proposed well is only 400 -- or -- I'm sorry. The

1 proposed well is 1,100 feet. The other well is 400
2 feet?

3 A. Yes, sir.

4 Q. So the geology is the same?

5 A. Well, different formations. Those -- those are
6 the only differences between them.

7 Q. Oh, okay.

8 A. The Sneed 23H was a Blinebry well, and this one
9 is a Paddock well, which is shallower in the way of
10 depth severance.

11 Q. Are there any producing intervals above the
12 Paddock?

13 A. Yes, sir.

14 Q. There is?

15 A. The San Andres would be productive.

16 Q. What's the vertical separation between the San
17 Andres and the Paddock?

18 A. The common productive interval that is -- is
19 probably an additional 1,500 feet.

20 Q. 1,500 feet?

21 A. Yes, sir.

22 Q. So there will not be communication between the
23 San Andres and the Paddock?

24 A. I would not believe so.

25 Q. Can you -- do you anticipate you'll drill a

1 Blinebry well?

2 A. This Branex 15H will be a Paddock well.

3 Q. But do you anticipate another Blinebry well?

4 A. I think that would be probably -- after viewing
5 the production, the reservoir engineer would probably
6 suggest -- based on the production we see from the oil,
7 it will probably be a decision the team would make.

8 But --

9 Q. And you don't feel there will be any
10 communication between the target zone and the Tubb?

11 A. No, sir.

12 Q. All right. That's all the questions I have.

13 CROSS-EXAMINATION

14 BY EXAMINER McMILLAN:

15 Q. Okay. The question I've got is on Exhibit 7 --
16 and it more or less also relates back essentially -- and
17 13. How did you come up with the 7,000 drilling, the
18 700 overhead, because there have been -- in this area,
19 they've had between 5,450, 545 to 6,000 and 600. Where
20 did you come up with 7,000?

21 A. That's not a number I came up with.

22 Q. Well, I mean, that seems somewhat high. I
23 believe I was at the hearing for the Number 9 and they
24 did give 7,000 and 700, right? But it is a 200-acre
25 project area, and this is only 160.

1 MS. KESSLER: Mr. Examiner, if you look at
2 the order for the Sneed well, that's correct. They did
3 give 7,000 and 700. And I believe that it's partly
4 related to the depth, although I'm not the correct
5 person to be asking about that.

6 EXAMINER McMILLAN: Okay. Well, let's get
7 an engineer just to state why at the next hearing, why
8 it's not --

9 MS. KESSLER: At the next hearing.

10 EXAMINER McMILLAN: -- why it's more, if
11 you can do that. Thank you.

12 I don't have any questions.

13 EXAMINER DAWSON: David, do you have any
14 questions?

15 CROSS-EXAMINATION

16 BY EXAMINER BROOKS:

17 Q. I'm looking at your Exhibit Number 4, the Yeso
18 interval type log, and the depth severance -- I won't
19 say you because I'm not exactly sure who prepared this.
20 But the depth severance is identified in the Tubb at
21 6852. Did you put that annotation on there?

22 A. Yes, sir.

23 Q. And this is a question I should have asked the
24 land person, but how exactly is the depth severance
25 identified in the controlling document, if you know? Is

1 it identified as the -- as the top of the Tubb, or is it
2 identified in some other way?

3 A. I believe -- and the landman should confirm
4 this, but I believe it states the base of the Blinebry.

5 Q. Base of the Blinebry.

6 A. So it's going to be at the top of the Blinebry,
7 yes, sir, which would be the top of the Tubb.

8 Q. Now, this pool, does it include Blinebry, Tubb
9 and Drinkard?

10 A. That is correct.

11 Q. Okay.

12 EXAMINER DAWSON: Blinebry, Tubb and
13 Paddock.

14 EXAMINER BROOKS: Blinebry, Tubb and
15 Paddock. Okay.

16 Q. (BY EXAMINER BROOKS) Does it include the
17 Glorieta?

18 A. I don't believe it does.

19 Q. Okay. Now, in terms of these names that appear
20 here, Paddock, Blinebry, Tubb, et cetera, what is the
21 interval that you call Yeso?

22 A. The Yeso Formation is made up of the Paddock,
23 the Blinebry, the Tubb and the Drinkard.

24 Q. Okay. So the entire -- the entire pool is in
25 the Yeso?

1 A. Yes, sir.

2 Q. But you're asking that the pooling be limited
3 to, what, the Paddock and the Blinebry or just the
4 Paddock?

5 A. The Paddock and the Blinebry, because those are
6 the productive intervals.

7 Q. Okay. Even though this -- this well will
8 penetrate only the Paddock, right?

9 A. Correct.

10 Q. Okay. And have you identified a specific point
11 as being the -- by reference to an identifiable log, as
12 being the level at which the pooled interval will
13 terminate?

14 A. Could you repeat the question, please?

15 Q. Have you identified by reference to a specific
16 log -- existing log in a particular well where this
17 depth severance is to be drawn?

18 A. I think the landman would need to answer that
19 one. I'm not --

20 Q. Well, if it's in the conveyance, the landman
21 would know that. If you've identified -- you have an
22 identification for the base of the Tubb, I would assume
23 you would be the one, as the geologist, would be able to
24 tell us where that -- where that would be best
25 identified in this area.

1 A. Well, the top of the Tubb pick is a fairly easy
2 pick, so it's not going to be changing very much. The
3 geology's very similar, so that top will be very close
4 to --

5 Q. And you picked it at 6,852 in this Branex-COG
6 Federal Number 10 --

7 MS. KESSLER: Mr. Examiner, if I could
8 interrupt. If you look at the Commission order for the
9 Sneed well, it identifies measured depth. I'm looking
10 at page 6 of the order, and that would then be paragraph
11 two. And it says: "The Unit is further defined as
12 being limited to depths from the top of Paddock member
13 to the base of the Blinebry member of the Yeso Formation
14 using the stratigraphic equivalent of the top of the
15 Paddock member at a measured depth of 5517 feet and the
16 base of the Blinebry member at a measured depth 6852
17 feet as encountered in the log run of the Branex COG
18 Federal Well Number 10."

19 And if I could then turn your attention
20 back to the type log --

21 EXAMINER BROOKS: Yeah.

22 MS. KESSLER: -- this is the same type log
23 that was used in the Sneed hearing, which identifies the
24 same tops.

25 EXAMINER BROOKS: That would be the way you

1 would be requesting us to identify in this interval in
2 the northern?

3 MS. KESSLER: Yes, Mr. Examiner.

4 EXAMINER BROOKS: Okay. And has the -- as
5 I understand it, the only owner that owns a separate
6 interest below the Blinebry has furnished a letter of
7 support, as I understood. Which exhibit is that?

8 MS. KESSLER: It's my Exhibit 6.

9 EXAMINER BROOKS: Exhibit 6.

10 MS. KESSLER: It's a letter that's on Este,
11 Ltd. letterhead.

12 EXAMINER BROOKS: Okay. Thank you.

13 MS. KESSLER: Thank you, Mr. Examiner.

14 EXAMINER DAWSON: Okay. Mr. Bacon, I have
15 one more question.

16 THE WITNESS: Yes.

17 RE-CROSS EXAMINATION

18 BY EXAMINER DAWSON:

19 Q. Is the Glorieta productive in that area?

20 A. Not in this area.

21 Q. That's the only question I have.

22 EXAMINER McMILLAN: No questions.

23 EXAMINER DAWSON: Okay. So this hearing
24 will be continued for two weeks for the -- an order for
25 the notice to --

1 David, can you help me on that?

2 EXAMINER BROOKS: Be continued for two
3 weeks because the notice was not timely published. And,
4 of course, it would be -- it would be necessary to
5 re-open it at the hearing scheduled on June the 23rd
6 only if the published party appeared in response to the
7 notice.

8 EXAMINER DAWSON: Okay.

9 EXAMINER McMILLAN: And also the
10 engineering letter.

11 MS. KESSLER: I thought you said that was
12 for a different case.

13 EXAMINER McMILLAN: No. I want it for this
14 case. I want a -- I want a reason why you're asking for
15 7,000 and 700.

16 EXAMINER DAWSON: Okay. So we'll continue
17 the hearing to June 23rd, and that will give the notice,
18 the ten-day business -- ten-business-day period. It
19 will --

20 MS. KESSLER: Mr. Examiner, can I briefly
21 consult with my land witness about the 7,000, 700 before
22 we continue for that purpose?

23 EXAMINER DAWSON: That's fine. We can call
24 him back.

25 Mr. Scott, would you like --

1 Thank you, Mr. Bacon.

2 THE WITNESS: Thank you.

3 EXAMINER DAWSON: Mr. Scott, come back to
4 the stand, please.

5 Thank you.

6 JOSEPH SCOTT,
7 after having been previously sworn under oath, was
8 recalled, questioned and testified as follows:

9 EXAMINER DAWSON: Go ahead, Ms. Kessler.

10 REDIRECT EXAMINATION

11 BY MS. KESSLER:

12 Q. Mr. Scott, are you familiar with the costs that
13 have been identified as the overhead and administrative
14 costs on the well-proposal letter?

15 A. Yes, I am.

16 Q. Do you know the basis for those costs?

17 A. It's just a range between 6,500 and 7,000. We
18 picked 7,000 in this case through the negotiation of the
19 JOA. There is not one thing that Chevron has requested
20 to change, so they're in agreement with those overhead
21 rates.

22 Q. Are those the same rates identified in the JOA?

23 A. That's correct. That's correct. The only
24 thing lacking in the negotiations we have is on the gas
25 balance agreement. That has nothing to do with the

1 overhead rates.

2 Q. So Chevron has not objected to the 7,000 and
3 700 rates in the proposed operating agreement?

4 A. Yes.

5 Q. And do they -- are those rates considered just
6 and reasonable?

7 A. Yes.

8 EXAMINER DAWSON: Okay?

9 EXAMINER McMILLAN: Okay.

10 EXAMINER DAWSON: Okay. We'll accept the
11 7,000 drilling and 700 rate while operating, and we will
12 not require that at the continued hearing on June 23rd.
13 We will only -- the only reason we would continue this
14 hearing to the 23rd is for the notice to be -- for the
15 notice -- for ten business days for the notice, so it'll
16 comply with the requirement in our rules.

17 EXAMINER BROOKS: While we've got this
18 witness back on the stand, I'd like to make one -- ask
19 him one other question.

20 EXAMINER DAWSON: Okay, Mr. Brooks.

21 EXAMINER BROOKS: Doesn't relate to the
22 overhead.

23 EXAMINER DAWSON: Okay, Mr. Brooks.

24 EXAMINER BROOKS: Thank you.

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RECROSS EXAMINATION

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BY EXAMINER BROOKS:

Q. How is the depth severance -- if you know, how is the depth severance defined in the instrument that creates it?

A. I'm pretty confident that it says to the stratigraphic equivalent of the base of the Blinebry will be retained by Este.

Q. Okay. But probably not by reference to a specific type log?

A. I can't testify confidently to that.

Q. You don't know as to that?

A. I feel comfortable that it is the stratigraphic equivalent of the base of the Blinebry.

Q. Yeah. The Blinebry is a fairly thick formation in this area, it looks like, from your type log; is that correct?

A. I believe so. I would defer to the geologist.

Q. Even -- there were some small difference -- well, that would be, again, for the geologist. I don't want to bring him back up, so I'll -- I won't ask that.

EXAMINER DAWSON: Okay. No further questions?

EXAMINER BROOKS: Oh, yeah, one other question.

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

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

20

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