

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

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

APPLICATION OF ARD ENERGY, LLC TO CASE NO. 15185
RE-OPEN CASE NUMBER 15185 PURSUANT (Re-opened)
TO NMAC 19.15.13.13 AND THE PROVISIONS
OF ORDER NUMBER R-13913 TO DETERMINE
REASONABLE WELL COSTS FOR DRILLING OF
THE IVAR THE BONELESS FEDERAL WELL
NUMBER 11H, DEDICATED TO A UNIT,
COMPRISED OF THE WEST HALF-WEST HALF
OF SECTION 15, TOWNSHIP 17 SOUTH,
RANGE 32 EAST, NMPM, LEA COUNTY,
NEW MEXICO (THE UNIT).

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

October 13, 2016

Santa Fe, New Mexico

BEFORE: SCOTT DAWSON, CHIEF EXAMINER
WILLIAM V. JONES, TECHNICAL EXAMINER
DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the
New Mexico Oil Conservation Division, Scott Dawson,
Chief Examiner, William V. Jones, Technical Examiner,
and David K. Brooks, Legal Examiner, on Thursday,
October 13, 2016, at the New Mexico Energy, Minerals and
Natural Resources Department, Wendell Chino Building,
1220 South St. Francis Drive, Porter Hall, Room 102,
Santa Fe, New Mexico.

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1	INDEX	
2		PAGE
3	Case Number 15185 Called	5
4	Ard Energy, LLC's Case-in-Chief:	
5	Witnesses:	
6	Ronald E. Grappe:	
7	Direct Examination by Mr. Padilla	6
	Cross-Examination by Mr. Feldewert	45
8	Redirect Examination by Mr. Padilla	85
	Cross-Examination by Examiner Jones	91
9	Lunch Recess	99
	Cross-Examination by Examiner Brooks	99
10	Recross Examination by Examiner Jones	113
	Cross-Examination by Examiner Dawson	116
11	Redirect Examination by Mr. Padilla	121
	Recross Examination by Examiner Brooks	122
12	Recross Examination by Examiner Dawson	123
	Recross Examination by Mr. Feldewert	124
13		
14	Steven W. Morris:	
	Direct Examination by Mr. Padilla	125
15	Voir Dire Examination by Mr. Feldewert	128
	Continued Direct Examination by Mr. Padilla	129
16	Cross-Examination by Mr. Feldewert	144
	Redirect Examination by Mr. Padilla	155
17	Cross-Examination by Examiner Jones	157
	Cross-Examination by Examiner Brooks	164
18	Cross-Examination by Examiner Dawson	170
	Recross Examination by Mr. Feldewert	173
19	Recross Examination by Examiner Brooks	176
20	The Applicant Rests	177
21	COG Operating, LLC's Case-in-Chief:	
22	Witnesses:	
23	Joseph Scott:	
24	Direct Examination by Mr. Feldewert	178
	Cross-Examination by Mr. Padilla	198
25	Redirect Examination by Mr. Feldewert	213

1	INDEX (Cont'd)	
2		PAGE
3	COG Operating, LLC's Case-in-Chief (Cont'd):	
4	Witnesses:	
5	Joseph Scott (Cont'd):	
6	Cross-Examination by Examiner Brooks	215
	Cross-Examination by Examiner Jones	215
7	Cross Examination by Examiner Dawson	219
	Recross Examination by Examiner Brooks	220
8	Recross Examination by Examiner Dawson	222
	Recross Examination by Mr. Padilla	223
9		
	Kevin C. Hinshaw:	
10	Direct Examination by Mr. Feldewert	226
11	Cross-Examination by Mr. Padilla	230
	Redirect Examination by Mr. Feldewert	235
12	Cross-Examination by Examiner Jones	236
	Cross-Examination by Examiner Dawson	238
13		
14	Proceedings Conclude	239
15	Certificate of Court Reporter	240
16		
17		
18	EXHIBITS OFFERED AND ADMITTED	
19		PAGE
20	Ard Energy, LLC Exhibit Numbers 1 through 9	41
21	Ard Energy, LLC Exhibit Number 10	123
22	COG Operating, LLC Exhibit Numbers 1 through 7	198
23		
24		
25		

1 (8:30 a.m.)

2 EXAMINER DAWSON: We will go ahead now to
3 Case Number 15185, re-opened. This is continued from
4 the August 4th, 2016 Examiner Hearing. It's application
5 of Ard Energy, LLC to re-open Case 15185 pursuant to
6 NMAC 19.15.13.13 and the provisions of Order Number
7 R-13913 to determine reasonable well costs for drilling
8 of the Ivar the Boneless Federal Well #11H, dedicated to
9 the unit comprised of the west half-west half of Section
10 15, Township 17 South, Range 32 East, NMPM, Lea County,
11 New Mexico (The Unit).

12 Please call for appearances.

13 MR. PADILLA: Mr. Examiner, Ernest L.
14 Padilla for Ard Energy, LLC, the Applicant. I have two
15 witnesses.

16 EXAMINER DAWSON: Okay.

17 MR. FELDEWERT: Mr. Examiner, Michael
18 Feldewert, from the Santa Fe office of Holland & Hart,
19 appearing on behalf of COG Operating, LLC. I have one
20 witness who is here someplace today.

21 EXAMINER DAWSON: Okay.

22 MR. FELDEWERT: I think if you give me a
23 minute, I might be able to find him, or we can swear him
24 in later.

25 EXAMINER DAWSON: Okay. We will go ahead

1 and --

2 Will the witnesses please stand up,
3 identify yourselves and be sworn in by the court
4 reporter?

5 MR. GRAPPE: Ronald E. Grappe for Ard
6 Energy.

7 MR. MORRIS: Steven Wayne Morris for Ard
8 Energy.

9 EXAMINER DAWSON: Okay. If you two have a
10 card, can you please give it to the court reporter so
11 that way she'll be able to spell your name correctly?

12 Please be sworn in.

13 (Mr. Grappe and Mr. Morris sworn.)

14 EXAMINER DAWSON: Okay. Mr. Padilla, go
15 ahead.

16 MR. PADILLA: We call Ronald Grappe as our
17 first witness.

18 RONALD E. GRAPPE,
19 after having been first duly sworn under oath, was
20 questioned and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. PADILLA:

23 Q. Mr. Grappe, please spell your last name.

24 A. Ronald E. Grappe.

25 Q. Or state full name, I should say.

1 Where are you from, Mr. Grappe?

2 A. Originally from Louisiana, but I presently
3 reside in Houston, Texas.

4 Q. Mr. Grappe, have you testified before the Oil
5 Conservation Division or the Commission in the past?

6 A. Yes.

7 Q. And how have you been qualified, in what
8 capacity?

9 A. As an expert businessman, I think, was the
10 designation.

11 Q. In oil and gas?

12 A. Right.

13 Q. Can you tell the Examiners your educational
14 background?

15 A. I have a BA from Northwestern State University
16 in Natchitoches, Louisiana, and I have a law degree from
17 South Texas College of Law.

18 Q. Where have you worked in the oil and gas
19 industry?

20 A. Several places over a 40-year period. I began
21 in 1976 with Pennzoil. Then I worked for Shell various
22 lengths of time, but Shell, Pennzoil, Home Petroleum
23 Blocker Drilling and Templeton, or TGX, Corporation in
24 the corporate environment for 20 years. I've been a
25 consultant an additional 20 years representing a whole

1 array of clients, including some of the names of the
2 companies I've already mentioned.

3 I presently am -- one of my major clients
4 is the Ard entities, and in that capacity, I represent
5 them relative to the oil and gas interests, which is
6 pertinent here, but as well as all of their financial
7 interests.

8 Q. Have you worked on land matters in your
9 capacity in the oil and gas business?

10 A. In various capacities. I came up through land
11 and through -- after I obtained my law degree, I was
12 perpetuated up through management, manager of land, vice
13 president of land, senior vice president of land, of
14 marketing and eventually was the chief operating officer
15 and in a senior vice president's capacity, and
16 eventually president of the last corporate position I
17 held.

18 In my consulting --

19 Q. Is that for an oil company?

20 A. All of these were for oil companies.

21 Q. Okay.

22 A. And so in a consulting capacity, I've
23 represented clients, smaller clients, family-size
24 companies, doing a whole array of issues, land, legal,
25 marketing, acquisitions, ventures, the whole ball of

1 wax. I defer to my technical side. I've always had
2 engineers I could rely on, so that's something that I
3 always defer to, someone else's judgment, or advise
4 clients to hire them.

5 Q. And have you hired an engineer for this case?

6 A. We have.

7 MR. PADILLA: Mr. Examiner, we tender
8 Mr. Grappe as an expert in oil and gas matters in
9 various capacities, land, legal and management.

10 EXAMINER DAWSON: Any objection?

11 MR. FELDEWERT: Oil and gas matters?
12 That's pretty general. I guess I may have -- I don't
13 know if he's going to offer opinions. I may have
14 objections to his opinions based on the nature of the
15 opinion, because, I mean, it seems to me his expertise
16 is limited to an attorney to the industry.

17 EXAMINER BROOKS: Have you been in a
18 position where you reviewed and approved expenses for
19 any companies you've worked for?

20 THE WITNESS: Yes. And let me add a caveat
21 to clarify that somewhat, to make sure. I represent
22 myself, in a consultant capacity, as a businessman.
23 Obviously, I have a law degree and I have legal
24 experience. I am primarily in a corporate capacity.
25 While I oversaw all of the legal matters, my primary

1 responsibility was from a corporate executive officer,
2 and that was also -- part of that time, I was senior
3 vice president of Operations, and I approved all
4 expenditures at a certain level, and I had a team of
5 geologists and geophysicists and engineers under me, as
6 well as landmen and accountants, et cetera.

7 EXAMINER BROOKS: In what company did you
8 do that.

9 THE WITNESS: With Templeton, TGX.

10 EXAMINER BROOKS: For what period of time?

11 THE WITNESS: Ten years.

12 EXAMINER BROOKS: Ten years.

13 Okay. Well, I'm probably going to be
14 biased to the subject. I'll let the Examiner make the
15 decisions based on what I asked.

16 EXAMINER DAWSON: Are you familiar with
17 AFEs, or authorization for expenditures, for drilling
18 oil and gas wells?

19 THE WITNESS: I'm familiar with them, yes.

20 EXAMINER DAWSON: You have dealt with
21 those?

22 THE WITNESS: Yes.

23 EXAMINER DAWSON: How many years have you
24 dealt with AFEs?

25 THE WITNESS: Out of the 40 years, probably

1 35 years of them.

2 EXAMINER DAWSON: Okay.

3 THE WITNESS: As far as scrutinizing the
4 AFEs as to anything that is dealing with the drilling,
5 completion, I always referred to the expertise of
6 engineers to advise me. Not at any time, not even in my
7 capacity with Ard do I make legitimacy of certain costs.
8 That's just not my background.

9 However, in these capacities for Ard and in
10 my corporate capacity, it was a matter of looking at the
11 bottom line. Is this operation economic? What are the
12 anticipated returns on investment and that sort of
13 thing? So dealing with AFEs, it was on a high level but
14 a critical level, saying, This AFE -- our initial
15 investment is going to be X, plus the completion, and
16 doing some kind of risk analysis and making a decision
17 and making a recommendation to upper management, when I
18 was in upper management, to participate or not with the
19 consultation of engineers and geologists and technical
20 people.

21 MR. FELDEWERT: You know, I think what I
22 will do is reserve my objection to the nature of the
23 opinion and see what he offers.

24 EXAMINER BROOKS: Well, in that case I
25 think it would be appropriate to qualify the witness as

1 a practical oilman, and that has no real specific
2 boundaries in our practice. But he's a qualified
3 witness as practical oilman.

4 MR. FELDEWERT: And that's assuming he's
5 offering opinions. If he's not offering opinions --

6 EXAMINER BROOKS: I understand that. We
7 would not be going through the exercise if he wasn't
8 going to offer some opinions.

9 So I just suggest to the Examiner that we
10 qualify him as a practical oilman, and if you have
11 objections, we'll rule on it.

12 EXAMINER DAWSON: Mr. Padilla?

13 MR. PADILLA: That's fine with me, as a
14 practical oilman. We've done that many times for owners
15 of oil and gas companies who do their own -- especially
16 independents, who do their own thing and are
17 knowledgeable about all aspects of oil and gas wells,
18 including doing AFEs and that sort of thing. So
19 practical oilman is fine with me.

20 EXAMINER DAWSON: Okay. I think that we
21 will admit him as a practical oilman.

22 Q. (BY MR. PADILLA) Mr. Grappe, can you tell us
23 generally what this case is about? I don't want you to
24 go into any detail. I just want you to tell us
25 generally why we're here.

1 A. Why we're here is a hearing on the
2 reasonableness of the cost that's been expended by COG
3 to drill a well under a forced pooling order of which
4 Ard Oil, Limited was force pooled.

5 Q. And what is the name of that well?

6 A. Ivar the Boneless Federal #11H.

7 Q. And has Ard Energy participated in the drilling
8 of that well?

9 A. Yes.

10 Q. Under what circumstances?

11 A. Under the forced pooling requirements -- or the
12 forced pooling order requirements.

13 Q. So I take it an order was -- you were force
14 pooled -- Ard Energy was force pooled, and then you
15 elected to participate under the terms of the order?

16 A. Correct.

17 Q. You did not sign an operating agreement?

18 A. We did not.

19 Q. At the time that you were force pooled, what
20 were the costs -- total costs as shown by the AFE
21 submitted by COG at the time of the hearing to
22 compulsory pool your interest?

23 A. The rule -- after a review of the file, it
24 indicates they presented a cost estimate, a budget of
25 \$3,100,000 [sic].

1 Q. And, Mr. Grappe, let me direct your attention
2 to Exhibit Number 1, which we have marked, and tell us
3 what that is.

4 A. It's Order Number 13913, application of COG
5 Operating for a nonstandard spacing and proration unit
6 and compulsory pooling, in Lea County, New Mexico. And
7 there was also attached to that an order, Number
8 R-13913A, where there were certain revisions to the
9 original order.

10 Q. Which is the operative order as far as we're
11 concerned here today?

12 A. Well, they're -- the way I look at it is I look
13 at the 13 -- R-13913A, because that shows you where the
14 well was eventually drilled as to the certain amendments
15 in it. But anything that was in Order R-13913 that was
16 not amended by 13913A is in existence, so you have to
17 read in them tandem.

18 Q. Can you tell the Examiner which are the
19 particular provisions of this order that you are
20 focusing on?

21 A. On page 4 of Order R-13913, paragraph 11 and
22 paragraph 12.

23 Q. Summarize what these two paragraphs say.

24 A. It just talks about the requirement that the
25 operator will provide the Division with a -- each of the

1 pooled working interest owners, whether consenting or
2 nonconsenting, within a period of time the actual costs
3 of the well. And then there is an objection to those
4 well costs within a certain time period. Then there
5 could be a public hearing.

6 Q. What did you do to determine whether or not COG
7 had filed a schedule of actual well costs?

8 A. I periodically checked the records online with
9 the OCD. And after the well had been completed for a
10 number of months, I sent a -- I drafted a letter for the
11 client to sign, requesting if they had filed one, that
12 they provide us with a copy of it, of the cost -- the
13 actual costs summary. They're required under paragraph
14 11.

15 Q. And that letter was sent to COG?

16 A. Correct.

17 Q. And did you get a response?

18 A. We did.

19 Q. And is that Exhibit Number 2?

20 A. It is.

21 Q. Tell us about Exhibit Number 2. What does that
22 contain?

23 A. Well, it's a letter from COG Operating advising
24 us -- pursuant to paragraph 11 of Order Number R-13913
25 is an itemized schedule of the actual well costs for the

1 Ivar the Boneless Federal #11H.

2 Q. Now, take us through, I take it, at the page --
3 the second page through -- the second and third pages
4 are what? And they're numbered page 1 and page 2,
5 what's called an "AFE Report (Gross)." Is that what was
6 filed with the Division?

7 A. Yes.

8 Q. Take us through that.

9 A. Well, generally, I'll just read the --

10 Q. Let me -- before I ask --

11 A. Okay.

12 Q. -- this came from COG, correct?

13 A. Correct.

14 Q. Okay. Go ahead.

15 A. The column listed as "Budget," that column, if
16 you follow it through from page 1 all the way down to
17 page 2, that's the total of the \$3,001,000 amount that I
18 referred to in response to an earlier question.

19 Q. Does the 3,001,000 match the AFE that was
20 submitted at the compulsory pooling hearing?

21 A. I've have not verified that per se. I just
22 took it on face value from COG that this is what they
23 had filed with the Commission.

24 Q. Okay. And is it your belief that the total
25 cost of the AFE would be checked -- the Division records

1 would be 3,001,000?

2 A. I have no reason to doubt that this is what COG
3 filed since this is what is reflected on this report.

4 Q. Okay. And then the second column is what?

5 A. It's actual amounts as to -- as of the date of
6 this report, which was sent to us in the transmittal
7 of -- there is just an error in the date -- February
8 19th, 2015, but really it was in February of 2016,
9 evidenced by the stamp when we received it.

10 So the costs up and to that point are
11 reflected on the summary report, and if you follow the
12 column through to page 2, it reflects \$4,170,604.19.

13 The next column is entitled "Variance."
14 And on page 2, likewise, if you go through it, it shows
15 the variance of \$1,169,604.19

16 Q. The rest of the pages are merely certified mail
17 receipts; is that right?

18 A. Correct.

19 Q. What's on the last page?

20 A. The last page is a -- our accountant in Ard's
21 office. I requested that so I could look at those --
22 look at the report that we've been talking about here in
23 Excel and add a column to it and walk through the
24 different batches of costs and create another column as
25 to the variance. They requested a copy be sent in

1 Excel, and COG complied with that request.

2 Q. Let's look at Exhibit Number 3. What is that?

3 A. Exhibit Number 3 is a result of the Excel
4 spreadsheet of which I went in and put an extra column,
5 which is on the last column to the right, and it says,
6 "Variance Percentage, Under/Over." And I simply took --
7 and understand that the variance reflected on the
8 original report is in dollars. I just wanted to go
9 through and see what was that percentage of variance as
10 to the different categories of costs, and also, in the
11 end, how much did that \$1,169,604.19 represent of the
12 original AFE'd amount of 3,001,000, what kind of
13 percentage overage did that reflect.

14 Q. Explain the negative figures, why you used the
15 negative percentages on that last column.

16 A. It's just a matter of choice. It can be
17 reflected in red or whatever. My whole point was saying
18 that this is an expenditure of dollars above and beyond
19 the initial dollars that had been budgeted by COG on the
20 originally AFE, and, therefore, these overruns, in
21 essence, are an additional cost expenditure. And I
22 simply chose to show it as a negative because those are
23 costs that will have to be recouped through revenue.

24 Q. What did you do to try to verify the figures on
25 Exhibits 2 and 3?

1 A. At this point I decided that I would go into
2 Ard's records and pull the actual JIBs presented to Ard
3 for payment for this well. And I did that and put
4 together for quick reference a spreadsheet reflecting in
5 the general categories of costs, not each individual
6 line item.

7 Q. Is that Exhibit 4?

8 A. Yes.

9 Q. What does this show? Well, tell us what it is.

10 A. Okay. The spreadsheet shows the JIBs by its
11 date, the statement number and then the groupings of
12 costs that are reflected on -- on the JIBs, as well as
13 on the Exhibit 3 -- 2 and 3, which are IDCs: ACP,
14 IDC-BCP, L&W Equipment BCP, L&W Equipment BCP and other.

15 Q. Can you tell us what -- for example, for the
16 record, IDC-BCP, in that column, what does that mean?

17 A. That's the tangibles after casing point.

18 Q. Okay. And what does the next column mean,
19 IDC-ACP?

20 A. Okay. IDC-ACP is intangibles after casing
21 point. IDC-BCP is before casing point. Sorry. I
22 misunderstood your question.

23 Q. What is L&W Equipment BCP?

24 A. It's just the tangibles after casing point and
25 then tangibles before casing point.

1 Q. Okay. And then on the next one, "Monthly
2 Subtotals," that you get, all these figures are added on
3 the middle column?

4 A. Right.

5 Q. What does that total?

6 A. Okay. Mr. Padilla, if I could back up just one
7 second and make sure there is no misunderstanding.

8 The JIBs are reflected by the dates and the
9 statement number, and that is going back from August
10 1st, 2015 through August 31st, 2016. And that's the
11 last one we've received. I loaded in the actual --
12 that's reflected -- amounts in the various categories
13 from those JIBs onto the spreadsheet. At the end of it,
14 its total JIBs actual, I added up those columns.

15 For example, the IDCs before casing point
16 came to \$1,356,604.60, et cetera, et cetera, across the
17 entire grouping, various groups, to come to a total that
18 has been billed Ard Energy, Ard Oil, of \$4,424,887.99.

19 Q. Well, that has not been billed to --

20 A. It has not been billed, but it's the total of
21 the JI bills -- JIB invoices for this well, and that's
22 the gross amount that was expended on the well. And all
23 these numbers that we've been talking about are gross
24 amounts.

25 Q. Now, JIBs are attached in Exhibit 4; is that

1 right?

2 A. Attached to it is -- is really -- since this
3 summary of well costs and Ard payments
4 chronologically -- the payments and the joint interest
5 billings are chronologically for 2015 and 2016; they're
6 attached. And this is the data that I used for the
7 input of this spreadsheet on the numbers that we've
8 talked thus far.

9 Q. Explain to us what you're trying to illustrate
10 with the yellow coverage.

11 A. What I was attempting to illustrate or focus in
12 on, emphasize are three major costs that have been used
13 throughout this process. The first -- if you look at
14 the Monthly Subtotal column on the spreadsheet that's
15 marked Exhibit 4 and you go to the total of the JIBs,
16 you have a total charge of \$4,424,887.99.

17 The actuals filed with the OCD by Exhibits
18 2 and 3 were \$4,170,604.19.

19 The last amount that I want to draw your
20 attention to is the AFE amounts filed with the OCD that
21 were reflected on Exhibits 2 and 3, of which I have
22 referred to before, is \$3,001,000.

23 Then as you go down, what I did is I took
24 the difference. And this is reflected on the amounts
25 filed with the OCD. And the difference of what was

1 filed, which is the \$3,001,000, compared to the
2 \$4,170,604.19. You come up with the overage of
3 \$1,169,604.19. That represents the variance that I
4 referred to earlier on Exhibit 3 of 38.97 percent.

5 Now, the last numbers in the yellow, I just
6 said "Overbudget According to the COG JIBs." That
7 number is not totaled there, but it adds up to the
8 difference between the original AFE'd amount with the
9 OCD, of 3,001,000, as compared to the actual total JIBs
10 billed of \$4,424,887.99. That creates a percentage
11 variance of 47.45 percent.

12 Q. Above the \$3,001,000?

13 A. Right. Correct.

14 Q. Now, the first page of Exhibit 4A that's
15 attached, is that -- is that what Ard has paid?

16 MR. FELDEWERT: Where you at, Ernie? I'm
17 sorry.

18 MR. PADILLA: The second page.

19 MR. FELDEWERT: Second page. Okay.

20 THE WITNESS: Exhibit 4A is a check from
21 Ard Energy, LLC, dated August 11, 2015, for \$180,784.38.
22 That payment is reflected on the spreadsheet marked
23 Exhibit 4 under the -- next to the last column to the
24 right, under "Ard Payments." And there you'll see the
25 first amount is the corresponding \$180,784.38. That

1 represented Ard's share of the billing from a notice
2 received from COG that was our required payment to
3 participate under the forced pooling order that we've
4 been referring to today.

5 Q. (BY MR. PADILLA) Have you had to pay any other
6 sums pursuant to the JIBs?

7 A. Because of a health issue, I wasn't closely
8 involved in this at this time, and as the JIBs would be
9 received from COG on a monthly basis, Ard was paying it,
10 even though, in some cases, its total prepayment had not
11 been applied. So there were subsequent payments made
12 that I advised Ard, when I came back and saw that, that
13 the way that I understood it to work is that to
14 participate under a compulsory pooling order, you paid
15 your proportionate share of the initial AFE. And that
16 was a cash call, prepayment. No more would be due from
17 Ard on the drilling and completion of the well until
18 such time that the final cost report could be made to
19 the Commission and Ard had an opportunity to review it
20 and to agree with it or object from it.

21 With all that being said, we paid some
22 additional costs there that now -- in summary, we ended
23 up paying, for drilling and completion, \$198,678.84,
24 above and beyond what was required by the order.

25 Q. And that's shown on the last two columns of

1 your --

2 A. Right, on Exhibit 4. Pardon me. That is shown
3 on the next-to-the-last column to the right about
4 two-thirds down the page.

5 Q. Okay. What does LOE in that column stand for?

6 A. Lease Operating Expenses.

7 Q. And are those separate charges?

8 A. Generally speaking, those are charges after the
9 drilling and completion of the well for the ongoing
10 operation of the well.

11 Q. Has the well been completed?

12 A. It has.

13 Q. How about any billings for drilling and
14 completion? Were those done under the 90-day period
15 under the compulsory pooling order?

16 A. Well, to answer your question as directly as I
17 can, you can see by review of Exhibit 4 and you look at
18 the first four buckets of costs, which are costs for
19 drilling and completion, we have been receiving costs
20 almost on a monthly basis, sometimes more, sometimes
21 less. But we've even received a cost -- I mean a
22 billing for IDCs before casing point. In the statement
23 dated August the 31st, which we received September the
24 13th, for a total of \$14,806. So all I can tell you is
25 we've been billed up until September the 13th, once we

1 received it, costs that were for the drilling and
2 completion of the well in question.

3 Q. Before they even got to the casing point?

4 A. I can't answer that. All I can answer
5 definitively is this is a catalog of all the costs, how
6 they were billed and when they were billed and the
7 backup of the JIBs that supports this summation in this
8 Exhibit 4 spreadsheet.

9 Q. Have you brought some examples of some of the
10 allocation costs or how costs were allocated for
11 drilling this well? Let me direct your attention to
12 Exhibit Number 5 and ask you if that's an example of how
13 costs were allocated.

14 A. Well, Exhibit -- well, Exhibit 5 was prepared
15 for me -- by me for another reason. I have not gone
16 through -- that's not my charge. That's our expert
17 engineer's charge to look at the individual charges for
18 the drilling and the completion of the well and how they
19 were allocated.

20 I designated myself to go through any of
21 the land and legal costs that was billed under the AFE
22 and subsequent JIBs.

23 Now, Exhibit 5, I simply went through the
24 materials that were provided, and the materials that
25 were provided some time ago was a drilling title

1 opinion. And I direct your attention to Exhibit 5, and
2 this is all reflected on here.

3 Let me back up. The costs under the
4 original AFE are really -- as reflected by the table of
5 costs that was provided to the OCD, the budgeted costs
6 were 11,000. The actuals, per the report to the OCD,
7 were \$215,336.65, for an overbudget amount of
8 \$204,336.65.

9 To try and ascertain that -- what I had
10 initially in my files were the JIBs, which I couldn't
11 ascertain too much from there. So I said, Let me look
12 at the title opinions, the extensiveness of the title
13 opinions, what the title opinions covered, what they
14 covered from a surface standpoint and what they covered
15 from a zoning standpoint.

16 The pooling order that's been referred to
17 here was for the Yeso-Maljamar Pool, and it was for the
18 west half of the west half. The drilling title opinion
19 dated April the 16th, as shown on this spreadsheet
20 marked Exhibit 5, shows that the acreage that was
21 examined was the west half, not the west half of the
22 west half.

23 Also in the title opinion, there is a
24 reflection of eight different zones with different
25 ownership. Likewise, the Division-ordered title opinion

1 dated November the 24th, 2015, effective October 1,
2 2015, covered the west half of Section 15 and also the
3 eight zones.

4 I attached to that, because title opinions
5 are rather complicated and voluminous -- but from the
6 title opinions that were provided to us by COG, I
7 provided the cover sheet and several pages of each one
8 of the referenced title opinions to evidence the surface
9 acreage coverage, as well as the eight different zones.

10 I'll just make one deduction here from
11 that. The surface acreage was for twice as much surface
12 acreage. That concerned me. The second aspect of the
13 it is that I went through and examined the various zones
14 that were applicable to this forced pooling order. And
15 of the eight zones, there were only three that applied
16 to this force-pooled acreage and interest.

17 And that's all, just in a matter of summary
18 fashion, what I could come up with.

19 Can I determine, now that I've done that,
20 how much should have billed to the drilling and -- the
21 drilling title opinion and the Division order opinion
22 for the Ivar 11H covering the west half-west half? No,
23 I can't, because not only this, but then we go to some
24 discovery that was provided pursuant to a subpoena that
25 we tendered COG. And there was some additional

1 information that was provided but not a lot.

2 Q. Are you done with Exhibits 4 and 4A?

3 A. Yes. And I'm done with Exhibit 5, unless you
4 have more questions.

5 Q. No.

6 MR. FELDEWERT: Mr. Padilla, hold on one
7 second. Exhibit 4, and then 4A is all under Exhibit 4?

8 MR. PADILLA: We just put it all together.
9 You can separate it if you'd like.

10 MR. FELDEWERT: So Exhibit 4 is the
11 spreadsheet, and then 4A is all the backup material,
12 right?

13 MR. PADILLA: Correct. Got it.

14 MR. FELDEWERT: Okay.

15 Q. (BY MR. PADILLA) Let's go on to Exhibit Number
16 6 and have you tell us what that is.

17 A. Exhibit 6 is, again, an effort, in a summary
18 fashion, not in a comprehensive fashion, to summarize
19 and to evidence that COG is netting -- what COG's
20 revenue from which wells COG is netting against the Ivar
21 the Boneless #11H costs.

22 Q. What does the term "netting" mean?

23 A. It means, very simply, that your revenue that
24 you would have received in a revenue check is netted
25 against what is to be claimed to be an outstanding joint

1 interest billing as to the particular interest owner's
2 interest.

3 So in short, if you go back to the JIBs,
4 which is Exhibit 4A, you can go through here and there
5 are some line items when this netting took place as to,
6 you know, outstanding amounts and the amount that was
7 netted. While this was introduced as an exhibit, it's
8 not a comprehensive. It is showing that netted -- by
9 proof of these netting statements, which are attached to
10 this Exhibit 6 which are the COG netting statements, it
11 reflects that COG is netting Ard's overrides in wells
12 that have nothing to do with the Ivar -- any of the
13 Ivar. It's not even in the same section at all.

14 Q. Which wells are they including in this?

15 A. There are some wells --

16 MR. FELDEWERT: Mr. Examiner, I'm going to
17 interrupt and lodge an objection to the question. This
18 comes as a complete surprise to us. If you look at
19 their application, their application is about reasonable
20 well costs under the pooling order. There is nothing in
21 their application suggesting, as they appear to be
22 suggesting here, that there is some incorrect netting
23 going on using other wells or that there is some
24 accounting issue between the companies. That's not part
25 of this hearing. This is the first time we've heard

1 anything about that, and it's not part of their
2 application.

3 And my understanding is that whatever
4 accounting issues exist between the parties is something
5 they should try to work out first, and, secondly, it's
6 not an issue for the Division. But it certainly is not
7 part of their application in this case.

8 EXAMINER BROOKS: Well, you may be correct
9 that it's not an issue for the Division, but I think
10 it's reasonable for us to listen to the testimony to
11 gain what is involved here before we can make that
12 ruling.

13 So I suggest the Examiner overrule the
14 objection.

15 EXAMINER DAWSON: Okay. The objection will
16 be overruled.

17 Please continue.

18 THE WITNESS: The provision of the order
19 that I became concerned about, the reason I went and
20 addressed the netting issue to make it relevant to
21 today, is on page -- beginning on page 4, paragraph 13,
22 where it says, "The operator is hereby authorized to
23 withhold the following costs and charges from production
24 from each well." And it talks about if you're in a
25 nonconsenting position and that sort of thing. But

1 Provision 14, as it is applicable here because we're a
2 consenting party, it says, "The operator shall
3 distribute the costs and charges" -- pardon me. It's
4 not Provision 14. It's Provision 16.

5 EXAMINER DAWSON: Can we back up a little
6 bit?

7 THE WITNESS: Okay.

8 EXAMINER DAWSON: Can you please explain
9 what exhibit you're reading from?

10 THE WITNESS: I'm sorry. I'm reading from
11 Exhibit 1, which is Order Number R-13913.

12 EXAMINER DAWSON: Okay.

13 THE WITNESS: On page 5, paragraph 16, it
14 says, "Except as provided in Paragraphs (13) and (15),
15 all proceeds from production from the proposed well that
16 are not disbursed for any reason shall be held for the
17 account of the person entitled to Oil and Gas
18 Proceeds... Act," et cetera, et cetera.

19 EXAMINER BROOKS: You're reading paragraph
20 16?

21 THE WITNESS: Yes.

22 Now, the reason I'm referring to that is
23 because it allows, when we are addressing -- in this
24 hearing, we're addressing the reasonableness of the
25 drilling and the completion cost, at least this was my

1 understanding, but also the reasonableness of the lease
2 operating expenses.

3 Page 5 of 6 of Exhibit 1, paragraph 15
4 talks about reasonable charges for supervision, combined
5 rates for the well, are hereby fixed at 6,000 per month,
6 et cetera, et cetera.

7 Continuing on mid-paragraph, it says, "The
8 operator is authorized to withhold from production the
9 proportionate share of both supervision charges and the
10 actual expenditures required for operating the well, not
11 in excess of what are reasonable, attributable to the
12 pooled working interest owners." I read that as yes,
13 lease operating expenses and all expenses are to be
14 addressed at this hearing, as well as any revenue that
15 has been used to offset those charges. And I'm relying
16 on that particular paragraph of the order itself.

17 MR. FELDEWERT: Mr. Examiner, I'll renew my
18 objection. I know you ruled on it. My only point is if
19 you look at their complaint, there is absolutely no
20 notice that there is any issue like this between the
21 companies. So we're not prepared to address that here
22 today.

23 EXAMINER BROOKS: Well, I think your
24 original objection -- the portion of your first
25 objection related to the fact of accounting is that this

1 may partly involve an accounting issue rather than --
2 the charges issue may be well-taken, but I think we also
3 have to know what's involved before we can make those
4 distinctions. So I continue to state that we should
5 overrule the objection.

6 EXAMINER DAWSON: Okay. Objection
7 overruled.

8 Continue, please.

9 Q. (BY MR. PADILLA) Mr. Grappe, what is the effect
10 of this netting revenue attributable to the Ivar the
11 Boneless well?

12 A. The netting that is reflected on the summary
13 sheet, which is Exhibit 6, evidenced by the netting
14 statements from COG to Ard Oil, totals \$11,375.17.
15 However, in getting prepared for this meeting, I went
16 back and compared that to the netting that is reflected
17 in the JIBs, which is our Exhibit 4A. The netting that
18 is reflected through the various JIBs as line items on
19 there exceeds \$35,000.

20 Q. As far as Exhibit 6 is concerned, is the Ivar
21 the Boneless Federal 11H well paying for costs -- well,
22 overriding royalty interests from these other wells?

23 A. Correct.

24 And my confidence is built based on the
25 evidence that I referred to. Number one, the remittance

1 statements themselves that reflect that these overrides
2 and these various other wells have been netted. And one
3 might ask, Well, how do you know it's netted because of
4 the Ivar well? My evidence to that and my confidence in
5 that these overriding royalty revenues were netted
6 against the Ivar well is because an examination of the
7 JIBs of the Ivar 11 well, by our Exhibit 4A, reflect
8 these (indicating), these that I'm showing on Exhibit 6,
9 as well as others. And I'm not trying to insinuate that
10 COG didn't give us other remittances. In preparation
11 for this hearing, I just couldn't tie them together.
12 But there is a netting issue that totals over \$35,000.
13 And part and parcel to that netting issue, COG is
14 netting overrides on wells that have nothing to do with
15 the acreage or any of the wells drilled out there,
16 especially Ivar the Boneless #11H.

17 Q. And you can take that directly from the joint
18 interest billings?

19 A. Correct.

20 Q. Let's go on to Exhibit Number 7. And that's a
21 letter addressed to me from Mr. Feldewert, correct?

22 A. Yes.

23 Q. Tell us about this letter. What does this
24 request?

25 A. Well, the letter makes a number of statements

1 of which I have -- I'm confused by, and I'll just refer
2 to those statements.

3 In the first paragraph under Exhibit A, it
4 says, "The only description of the concern COG has at
5 this point is the incorrect statement in the Application
6 that the cost increased by 38.97 percent." In prior
7 testimony today, I've shown you where that specific
8 relative percentage came from. It came from COG's
9 reported amounts on the actual costs that it filed with
10 the Commission. That's one point.

11 EXAMINER BROOKS: Where are you reading
12 from in Exhibit 7?

13 THE WITNESS: Exhibit 7, if you look at the
14 first paragraph, the last sentence.

15 EXAMINER BROOKS: Okay. Thank you.

16 THE WITNESS: And pardon me if I'm not
17 being too organized.

18 The second sentence of the first paragraph,
19 it says, "This remains the case even after COG fully
20 responded to Ard's subpoena."

21 Q. (BY MR. PADILLA) I want to ask you what your
22 opinion is of that response. What was your response to
23 the subpoena?

24 A. The response to the subpoena initially was a
25 500 well -- 500-page response.

1 Q. And is that in an exhibit here?

2 A. It's Exhibit 8.

3 Q. I don't want you to go through this whole
4 thing, but have you read through this thing?

5 A. Several times.

6 Q. What did you find?

7 A. Well, let me make one statement to make sure
8 there is no confusion. Both I and our expert engineer
9 were given the charge and let's go through it
10 individually, separately. But it was early on that I
11 determined, after my first review of it, it was all land
12 and legal-related costs. So, therefore, I said, I will
13 take charge and take full responsibility of trying to
14 drill down on what this 500 pages reflects.

15 What this 500 pages reflects -- there are
16 57 pages only that reference, even if it's a pencil
17 reference, of the Ivar the Boneless. It may be Ivar the
18 Boneless unit. It may be Ivar the Boneless 11H. It may
19 be just the township and range. I gave it the benefit
20 of the doubt. Of any piece of paper that had a
21 potential relevance in response to our discovery
22 request, I set it aside, and I re-reviewed it again to
23 make sure that I had been very conservative so I
24 wouldn't unduly classify or misclassify something. 57
25 pages of 500 was all that might be responsive to our

1 subpoena request.

2 When I say potentially, it's because we've
3 run into some of the same problems on almost every
4 single one of the pages, billings from landmen and this,
5 that and the other, because they don't specifically
6 designate Ivar the Boneless, the township, range and
7 west half of the west half and the pool area.

8 Q. So I take it what you're saying is that you
9 could not tie any of this information to the JIBs on
10 Exhibit 4A?

11 A. Of the 57 pages, there is -- because I couldn't
12 make a deduction on each one of the 57 pages, I couldn't
13 make a tie back specific to the JIB.

14 Q. I just opened one page to 241, and there is an
15 item there for \$5.50. Do you see it?

16 A. Yes.

17 Q. Do you have any knowledge or any -- how can you
18 tie this into anything?

19 A. I can't. And I don't know how anyone could.
20 So what alarms me is not only the fact that possibly
21 only 57 pages was potentially responsive to our
22 subpoena, is that if they, in due diligence and did
23 their due diligence -- if they're saying that this 500
24 pages of discovery is supportive of their JIBs, we
25 definitely have -- we have a problem, because you can

1 take most any one of these pages -- some of these pages
2 are not in the same county. Some of these references
3 are not even in the same state. Some of these
4 references are not even to a particular well. So as far
5 as the land and legal costs, I could not begin to tie it
6 back to the costs that are reflected and certainly not
7 200-some-odd -- \$215,000 of costs that they expended on
8 the title that was reflected by what they reported to
9 the OCD.

10 Q. Now, at some point after you received it and
11 reviewed it, you asked to have a subpoena issued by the
12 Division, correct?

13 A. We had a discussion, Mr. Padilla, but I can't
14 remember exactly what we decided to do at that
15 particular point in time. But the substance of our
16 conversation was, Mr. Padilla, Ernie, We're not getting
17 anywhere here at all through the first 500 pages.

18 Q. So you asked me to have a subpoena issued for
19 specific information?

20 A. I'm sorry. Yes. Yes, I did.

21 Q. And how did you compile that specific
22 information that you requested?

23 A. I requested Steve Morris, our expert engineer,
24 to compile a list of the specific invoices that he could
25 discern from the -- ascertain from the JIBs, and that's

1 where the list came from. So that list was for -- since
2 we didn't get any backup as to actual drilling --
3 operationally, the drilling and completion of the well,
4 I said, Let's take to a subpoena, and we should -- we
5 can get being very specific. And you filed that
6 subpoena.

7 Q. In communications with COG, did you ask for
8 more specific -- trying to get more -- informally trying
9 to get more detailed data?

10 A. I did. I had one conversation or email -- I
11 can't remember at this point whether it was a
12 conversation or an email with their landman, and it was
13 simply that we needed the detailed drilling reports for
14 the summary drilling reports that they had provided us.
15 And our engineer said that he just really needed those
16 to make his analysis and try and make some deduction
17 about the reasonableness of these costs.

18 Q. So what is Exhibit Number 9?

19 A. Exhibit Number 9 is a subsequent discovery that
20 was presented to us in late July in response to the
21 specific subpoena request of specific invoices.

22 Q. Did you get everything you asked for?

23 A. I'll defer that question in specific to
24 Mr. Steve Morris and let him respond. I did go through
25 this several times as well. But since these are the

1 operational, drilling that go back to the tangibles and
2 intangibles, as far as that's concerned -- when I say
3 operational, it's actually not title, but it's
4 everything but the title, frankly, survey and everything
5 else, that he would be the best person to render an
6 opinion on the completeness or incompleteness of the
7 second batch of discovery.

8 Q. Did you ever get any detailed information as to
9 daily drilling reports?

10 A. No.

11 Q. And what would have been the reason that you
12 wanted to get that information?

13 A. Again, I'll defer that to our expert. But I
14 took it simply on his request that he needed it to be
15 able to drill down on any -- with this amount of
16 override, to this extent, that he wanted to be able to
17 appreciate, on a daily basis, any problems that they may
18 have incurred, and from that, he could say, Now I'm
19 starting to understand some of the overage of these
20 invoices. But, again, I really want to defer to his
21 expertise and to allow him to answer that question.

22 Q. Mr. Grappe, did you prepare Exhibits 1 through
23 9, or under your supervision, did you have them
24 prepared?

25 A. Under my supervision, I had them prepared.

1 MR. PADILLA: We offer Exhibits 1 through
2 9.

3 EXAMINER DAWSON: Any objection,
4 Mr. Feldewert?

5 MR. FELDEWERT: As to my earlier objection
6 about the relevancy of Exhibit 6, I have no other
7 objection; Exhibit 6, the one dealing with the netting
8 issue, which has never been raised before.

9 EXAMINER BROOKS: As I said before, we need
10 to have the full picture. We need to know what costs
11 we're looking at before we can determine if they're
12 reasonable or not. So I would recommended you overrule
13 the objection.

14 EXAMINER DAWSON: The objection will be
15 overruled because I am in agreement with Mr. Brooks. We
16 do need a full accounting of these costs that were
17 billed to Ard.

18 And so we will go ahead and accept Exhibits
19 1 through 9 submitted by Ard Energy. We'll accept these
20 exhibits, 1 through 9, for the record.

21 (Ard Energy, LLC Exhibit Numbers 1 through
22 9 are offered and admitted into evidence.)

23 EXAMINER BROOKS: Let me ask you something,
24 Mr. Padilla. Because of the thread of questioning, I
25 was wondering whether your questioning was going to the

1 merits or whether it was going to the sufficiency of the
2 response to the subpoena. Do you have a motion to
3 compel on file?

4 MR. PADILLA: No, I don't, Your Honor
5 [sic]. And the reason for that is -- I could elicit
6 that reason from Mr. Grappe.

7 EXAMINER BROOKS: Okay. Do you want to go
8 ahead? I think it would be good if you got that into
9 the record before we -- before we move to
10 cross-examination.

11 Q. (BY MR. PADILLA) Mr. Grappe, after we received
12 the documents on Exhibit Number 9, what decisions did
13 you make after evaluation of those exhibits of that
14 exhibit and the information that contained as to whether
15 you wanted to meet and pursue further discovery efforts?

16 A. Well, obviously, one of my charges for Ard is
17 to consider in every respect the economics of doing
18 anything, and, obviously, this exercise can be
19 expensive.

20 But from what we have reviewed that is
21 reflected by the exhibits that we've presented, I could
22 see that there was little or no cooperation whatsoever
23 from COG in attempting to comply with the subpoena. And
24 I pretty much made the strong recommendation that we
25 need to get this before the Commission and have the

1 Commission rule a remedy, that we can't continue just to
2 spend and -- get dribblings or dumps of files where we
3 have to spend the time to go through every single page
4 and make an informed decision of what's there and
5 what's -- pardon me -- garbage and has no relevance
6 whatsoever.

7 And with that being said, I said we need to
8 get it and say, in order for us to even start this
9 process, we need the equivalent of a full audit.
10 Anything short of that -- it is clear from what COG has
11 presented to us and it's also clear from their
12 transmittal letters where they're strongly suggesting
13 that they have been in full compliance, so I just wanted
14 to make sure we got this before the Commission before we
15 got too far into this and because the reasonableness --
16 we don't have the information to determine whether it's
17 reasonable or not, even after we've made these various
18 efforts. And so that's why we're here.

19 Q. Did you instruct me not to pursue further
20 motions to compel, for example, simply because you --
21 for some reason?

22 A. No other reason than I was anxious to get
23 before the Commission to see what -- you know,
24 obviously, this is one of the first of these types of
25 exercises that I've gone through. I've attempted to

1 find, and through your help, evidence of where's the
2 guidepost here? Give me some -- and I couldn't find a
3 lot. And so for lack of a better way to say it, I'm
4 looking to the Commission and saying, We need your help,
5 whether it's through compelling and going through the
6 legal process or just saying, What is going to be
7 required to determine reasonableness of this? I have no
8 guidance. And it's very difficult for me to just agree
9 to go at these nibbles and dribbles constantly that cost
10 money and we're not getting anywhere. So it was pretty
11 much -- I said, Stand down, Ernie, please. But,
12 obviously, I'll defer post this hearing to your
13 expertise, obviously. But --

14 EXAMINER BROOKS: Well, I continue to have
15 some concern about whether or not this is appropriate to
16 argue on the merits or if there should have been a
17 motion to compel filed, which could have been -- we
18 could have considered the question of whether the
19 subpoena was -- if it was adequately responded to.
20 However, we're in this hearing now, so I guess we have
21 to go along with it and see where we get.

22 So you may continue. You may start your
23 cross-examination.

24 EXAMINER DAWSON: We will go on a break for
25 15 minutes, and we'll be back at 10:00. Thank you.

1 (Recess 9:43 a.m. to 10:02 a.m.)

2 EXAMINER DAWSON: We'll go back on the
3 record at this time.

4 Mr. Padilla.

5 MR. PADILLA: Pass the witness.

6 EXAMINER DAWSON: Okay. Mr. Feldewert.

7 CROSS-EXAMINATION

8 BY MR. FELDEWERT:

9 Q. Yes. Mr. Grappe, were you privy to any of the
10 correspondence between my law firm and Mr. Padilla when
11 the documents that you've marked as Exhibit Number 8
12 were provided to him?

13 A. If you reference a specific letter, I could
14 respond that way. I'm not privy to -- I don't know what
15 y'all -- I don't know what I've seen and haven't seen
16 between your-all's communications.

17 Q. So my question is: Do you remember seeing a
18 letter to Mr. Padilla from my associate, Jordan Kessler,
19 that accompanied Exhibit Number 8 that's been marked
20 COG/ARD 1 through 500? Do you recall seeing the letter?

21 A. Is there a date on the letter?

22 Q. My first question is: Do you recall seeing a
23 letter?

24 A. I do not recall seeing a letter.

25 MR. FELDEWERT: May I approach the witness?

1 EXAMINER BROOKS: You may.

2 I'm sorry.

3 EXAMINER DAWSON: You may.

4 Q. (BY MR. FELDEWERT) Mr. Grappe, I show you a
5 letter dated July 14th, 2016, to Mr. Padilla from Jordan
6 Kessler of my law firm. Do you see that?

7 A. Yes.

8 Q. Could you read that paragraph?

9 A. "Dear Ernie, Accompanying this letter are
10 documents that have been labeled 'COG/ARD 1 through
11 500.'" "

12 Q. Stop right there. So that would be your
13 Exhibit Number 8, correct --

14 A. Correct.

15 Q. -- 1 through 500?

16 Continue.

17 A. "These documents are invoices related to land
18 matters for the Ivar the Boneless Federal Well #11H.
19 Additional documents are being reviewed and will be
20 provided."

21 Q. Let me see that.

22 Okay. I think you missed the second
23 sentence. Right there (indicating). Read that second
24 sentence for me again.

25 A. Oh. Again, the second sentence, "These

1 documents are invoices related to land matters for the
2 Ivar the Boneless Well" -- oh, pardon me.

3 Q. That's what I thought we skipped. Go ahead.

4 A. "These documents are responsive to Ard's draft
5 subpoena."

6 Q. Stop right there. They're responsive to a
7 draft subpoena?

8 A. That's what it says?

9 Q. Were you aware that there was an informal draft
10 subpoena that was submitted to COG?

11 A. I don't remember.

12 Q. Did you help formulate an informal draft
13 subpoena that was sent to COG?

14 A. I don't remember my input. I'm sure that I saw
15 it.

16 Q. But that letter reflects that these documents
17 were produced under a draft informal subpoena to COG,
18 correct?

19 A. That's what it says.

20 Q. And it describes what was given to you. Read
21 again what it describes.

22 A. "Accompanying this letter are documents that
23 have been labeled 'COG/ARD 1 through 500.' These
24 documents are responsive to Ard's draft subpoena dated
25 July 5th, 2016. These documents are invoices related to

1 land matters for the Ivar the Boneless Federal Well
2 #11H."

3 Q. Okay. So they gave you invoices related to
4 Ivar the Boneless?

5 A. That's what I read.

6 Q. Okay. Now, would you go to your Exhibit Number
7 8?

8 A. I have it.

9 Q. Now, Mr. Grappe, you're familiar with that?
10 You've seen these types of invoices before?

11 A. I've seen all types of invoices before.

12 Q. Okay. And you're familiar with the fact that
13 when you ask for invoices, it is the company's
14 obligation is to provide you with the paper documents
15 and invoices that they have, correct?

16 A. I have no opinion on what COG's responding to.

17 Q. Okay. They're responding to request for
18 invoices. That's what you asked for --

19 A. That's what we asked for, and that's all I can
20 testify to.

21 Q. -- to send you invoices?

22 A. They sent me 500 pages.

23 Q. And are you aware that a lot of times when
24 brokers and other vendors send invoices to a company, it
25 may relate to various properties?

1 A. Of course.

2 Q. Okay. So, for example, if I go to what's been
3 marked as COG/ARD page 62 --

4 A. I have it.

5 Q. -- you'll see that that is part of a much
6 larger invoice, correct?

7 A. COG/ARD 62 is entitled "Broker Statement."

8 Q. Yes.

9 A. At this point in time, all I can see is a
10 broker statement.

11 Q. Okay. And if you look at the bottom of that
12 particular page, it has a number of totals, correct?

13 A. Correct.

14 Q. And you'll see it lists various properties.
15 And on this particular page, at the top, it has the
16 prospect, Maljamar, 17 South, 32 East, Section 15.
17 That's the property at issue, correct?

18 A. Yes.

19 Q. Okay. And if you go to the prior page of this
20 statement, there are --

21 A. Number, please.

22 Q. Well, the prior page, COG/ARD 61.

23 A. All right.

24 Q. And there are some billings there for
25 properties from Billings, Montana?

1 A. Correct.

2 Q. So then if I go -- keep this. Put this
3 document back in the stack. If I go, for example, then,
4 to -- go to COG/ARD 158, again we see a page as part of
5 a broker statement, correct?

6 A. Yes.

7 Q. And we see the same prospect, Maljamar, 17
8 South, 32 East, Section 15?

9 A. Yes.

10 Q. That's the property at issue, right,
11 Mr. Grappe?

12 A. That is the section, township and range at
13 issue. It's not the property at issue.

14 Q. Okay. And on the prior page, we had some
15 invoice numbers for other properties, right?

16 A. Yes.

17 Q. Okay. All right. So at least at this point in
18 time, on July 14th, which is over three months ago, you
19 received these invoices in response to a draft subpoena,
20 right?

21 A. Correct.

22 Q. Okay. And then I think you testified that you
23 had conversations with Mr. Padilla about formalizing a
24 very specific subpoena?

25 A. Correct.

1 Q. Okay. And did he formulate a very specific
2 subpoena for you?

3 A. He did.

4 Q. And did you assist in that -- in putting
5 together that very specific subpoena?

6 A. Active participation was with our expert, Steve
7 Morris. I simply looked at it.

8 Q. Did you review it?

9 A. I reviewed it, yes.

10 Q. Did that very specific subpoena have requests
11 for the documents that you wanted?

12 A. It requested specific documents.

13 Q. Okay. Let me --

14 MR. FELDEWERT: If I may approach the
15 witness?

16 EXAMINER BROOKS: You may.

17 Q. (BY MR. FELDEWERT) This is a letter,
18 Mr. Grappe, that was sent to Mr. Padilla, dated July
19 27th, 2016, by my associate, Jordan Kessler. Have you
20 seen that letter?

21 A. Yes.

22 Q. Would you read out loud the letter, please?

23 A. "Dear Ernie, Accompanying this letter are
24 documents that have been labeled 'COG/ARD 501-798.'"

25 Q. Stop right there. That would be your Exhibit

1 Number 9, correct?

2 A. Correct.

3 Q. All right. Go ahead.

4 A. "These documents are the remaining invoices
5 listed on Exhibit A, Number 1 of Ard's subpoena, dated
6 July 20th, 2016."

7 Q. Okay. Continue.

8 A. "COG has now produced all documents responsive
9 to Ard's subpoena and is prepared to proceed with the
10 hearing on August 4th, 2016."

11 Q. Okay. Now, what's the date of that letter,
12 Mr. Grappe?

13 A. July 27th, 2016.

14 Q. Almost three months ago, correct?

15 A. Several months ago, yes.

16 Q. And at any point in time since the issuance and
17 submission of that letter, did Ard or anyone on behalf
18 of the company raise any issue with COG about its
19 document production?

20 A. I didn't.

21 Q. Okay. Are you aware of anyone --

22 A. That's all I can speak to.

23 Q. Are you aware of anyone, Mr. Grappe?

24 A. I'm not aware of anyone.

25 Q. All right.

1 MR. FELDEWERT: If I may approach the
2 witness? I don't want to lose those letters.

3 EXAMINER BROOKS: You may.

4 I'm sorry.

5 EXAMINER DAWSON: You may.

6 EXAMINER BROOKS: Just a reflexive
7 response. I did it for so many years.

8 Q. (BY MR. FELDEWERT) Okay. Let's go to the
9 second topic that comes as a surprise today, Mr. Grappe,
10 and that is your Exhibit Number 6. Are you there with
11 your Ard Exhibit Number 6?

12 A. I am.

13 Q. Okay. Now, you've made some allegations with
14 respect to this particular exhibit. First off, let me
15 ask you: Have you had any discussions with COG about
16 the allegations that you've raised concerning this
17 Exhibit Number 6?

18 A. I've had no discussions regarding COG regarding
19 the netting issue.

20 Q. Why not?

21 A. Because I thought we would discuss it today at
22 this hearing.

23 Q. So you thought you'd wait until this hearing --

24 A. No.

25 Q. -- and raise this issue with COG, Mr. Grappe?

1 A. No. In reviewing -- in preparation for this
2 hearing, I was attempting to get the latest invoices and
3 the latest COG checks and the latest of everything. So
4 last weekend, I prepared and spent time in Fort Worth to
5 gather the last month so I'd have the most current
6 information. That's when I obtained these documents.

7 Q. Is it your testimony, Mr. Grappe, that you were
8 not aware of any netting issue that you had concerns
9 with until two weeks ago? Is that your testimony?

10 A. No, it is not.

11 Q. When did you first become aware that there
12 might be a netting issue, as you put it?

13 A. A netting issue as to the Puckett wells on the
14 overrides that is reflected on the exhibit -- our
15 Exhibit 6 was last weekend.

16 Q. That's the first time you became aware of it?

17 A. Yes.

18 Q. Even though some of the supporting invoices
19 that you utilized are dated July 11th, 2016?

20 A. Correct.

21 Q. You never looked at those invoices?

22 A. I don't look at every single invoice on the day
23 it comes in, no.

24 Q. Why did you choose suddenly to look at the
25 invoices for the Puckett well two weeks ago?

1 A. I was looking at all COG revenue statements,
2 and to my surprise, I located these remittances of
3 netting.

4 Q. Dating back to -- let me step back. If I go to
5 your Exhibit Number -- the second page of this exhibit,
6 they date back to July?

7 A. Correct.

8 Q. Okay. All right. Help me understand this
9 exhibit, Mr. Grappe, since this is the first time
10 anyone's heard about this. Would you explain to me
11 where the numbers shown for the Puckett 12 Federal 7H
12 that you have as netted in the right-hand column of the
13 first page, where are they supported by these subsequent
14 pages?

15 A. Okay. The 7/11/2016 date for the Puckett 12
16 Federal 7H override, for \$36.37, is reflected on the
17 first day -- excuse me -- first page following the
18 summary spreadsheet and is in the first "Owner Net"
19 amount reflected corresponding with Puckett 12 Federal
20 7H.

21 Q. All right. And where do I find the next number
22 you have in here, \$28.34?

23 A. You go to the 8/10/2016 remittance date. The
24 first item reflected to the far right on that remittance
25 statement is \$28.34.

1 Q. Okay. Do they follow a similar pattern for the
2 remaining pages, Mr. Grappe?

3 A. Correct.

4 Q. Okay.

5 MR. FELDEWERT: And I apologize. This is
6 the first anybody's heard of this, Mr. Examiner, so I
7 apologize. I kind of need to understand this a little
8 bit. Okay?

9 EXAMINER DAWSON: (Indicating.)

10 Q. (BY MR. FELDEWERT) So I understand where you
11 get the number now.

12 Mr. Grappe, would you please explain to me
13 where on these documents it reflects that they were, as
14 you say, netted. And what I assume you mean by netted
15 is they were withheld by the company. Is that what you
16 mean, these payments?

17 A. Sir, all I can tell you is this a summary sheet
18 of the supporting documentation, which is entitled "COG
19 Operating Revenue Netting Remittance." We did not
20 receive a check for those amounts. That's all I can
21 testify to.

22 Q. All right. That's all you can testify to. You
23 can't testify as to the reason for this netting?

24 A. The only reason, in addition to this amount,
25 which I testified to earlier -- you can go to the -- to

1 our other exhibits where the JIBs are located, and in
2 the months of July and August and September, there are
3 noted netted amounts --

4 Q. Okay.

5 A. -- where these (indicating) total amounts for
6 each remittance statements are reflected. For example,
7 the COG statement netting dated 7/11/2016 --

8 Q. Hold on a minute. September 11th, 2016. I'm
9 going to your exhibit.

10 A. Sir, it's the first remittance statement behind
11 the summary.

12 Q. First page behind the summary.

13 A. Correct.

14 Q. Thank you very much.

15 Now, where are you on that document?

16 A. On the second page of the document.

17 Q. I'm with you. Go ahead.

18 A. Down at the -- close to the midway -- a little
19 beyond the midway page, it says "Netted Revenue,
20 \$15,047.66."

21 Q. Okay. And that's for some of the wells or all
22 of the wells listed there on this sheet?

23 A. Correct.

24 Q. And there are -- one, two three, four, five,
25 six, seven, eight -- nine wells on this sheet?

1 A. Correct.

2 Q. Including the Ivar the Boneless?

3 A. Correct.

4 Q. Okay. So this reflects what? That you take
5 that to mean that these revenues are all netted? And
6 that means they were withheld from the company?

7 A. I'll respond one more time. It reflects to me
8 that this is a revenue-netting statement.

9 Q. Okay.

10 A. We did not receive a check. Therefore, a
11 reasonable deduction is these --

12 Q. So you're assuming? You're making a deduction?

13 A. The deduction is because we didn't receive the
14 check, sir.

15 Q. You don't know why, do you?

16 A. I know why, because they're reflected in a
17 netting column on the COG JIB.

18 Q. Where?

19 MR. FELDEWERT: And I apologize,
20 Mr. Examiner. This is the first we've heard of this.

21 EXAMINER DAWSON: I understand.

22 THE WITNESS: Exhibit 4A.

23 Q. (BY MR. FELDEWERT) Hold on a minute. Exhibit
24 4A. Okay. So you're talking about the supporting
25 documents behind Exhibit 4, right?

1 A. Yes.

2 MR. FELDEWERT: Am I missing something,
3 Ernie? Mine's not marked 4A. Oh, there it is.

4 EXAMINER DAWSON: The second page under
5 Exhibit 4.

6 Q. (BY MR. FELDEWERT) Go ahead, Mr. Grappe.

7 A. These are in chronological order. Everything
8 in this stack is in chronological order.

9 Q. Okay.

10 A. So if you will flip through -- it starts in
11 August of 2015. If you'll go towards the bottom of the
12 stack and look for JIB dated 7/31/2016.

13 Q. Okay. Let me get there. Hold on, sir.

14 Okay. I believe I'm on the first page of
15 that JIB. It's got "scan" down at the bottom of it?

16 A. More importantly, it's owner's statement ending
17 1085.

18 Q. Okay. All right.

19 A. If you'll look at the first section under
20 "Payments and Adjustments," netted --

21 Q. Hold on one second.

22 EXAMINER DAWSON: Is that towards the back
23 of this packet?

24 THE WITNESS: Yes. It's chronological, so
25 you'll have to go back.

1 EXAMINER DAWSON: The very back?

2 THE WITNESS: Yeah. It's the last few
3 statements, but if you come up to August of 2016, you've
4 gone too far.

5 Q. (BY MR. FELDEWERT) Okay. Where are you now on
6 this Joint Owner Statement dated 7/31/2016?

7 A. If I could wait just a second and make sure
8 everybody has located the July 31st, 2016 statement.

9 EXAMINER DAWSON: And that is the one that
10 says "Received August 22nd, 2016" on the top?

11 THE WITNESS: Correct.

12 EXAMINER DAWSON: Okay.

13 THE WITNESS: If you'll look to the first
14 third or the first major portion of the statement, it
15 says: Netting revenue; date, 7/11/2016; amount,
16 \$15,047.66. That corresponds with the netting statement
17 that I earlier referred to as the netting statement
18 dated September -- excuse me -- July 11th, 2016. The
19 total amount for all the wells on that statement was
20 \$15,047.66.

21 Q. (BY MR. FELDEWERT) Okay. So this shows it was
22 netted, right?

23 A. It shows what it shows.

24 Q. It doesn't show why it was netted?

25 A. It shows that it was netted against a JIB that

1 was outstanding for the Ivar well.

2 Q. Well, we have -- if I'm understanding this
3 correctly, it's a JIB for -- see the "Property Name"?

4 A. Yes.

5 Q. Aren't there five properties listed there?

6 A. Correct.

7 Q. So this was netted against those five
8 properties?

9 A. It's not five properties. It's two properties.
10 It's five statements.

11 Q. Five statements. Okay. All right. For --
12 what is that? Five different wells?

13 A. No. It's five statements.

14 Q. Five statements?

15 A. Right.

16 Q. So this was netted against five statements?

17 A. It's netted against, sir, the corresponding
18 support documentation that is attached to this JIB.

19 Q. Okay. And correct me if I'm wrong -- and I
20 don't want to split hairs here, but if I'm understanding
21 this, this was netted against the properties that are
22 listed under "Property Name"; is that right?

23 A. Would you repeat your question?

24 Q. This \$15,047 that was netted on here, this was
25 netted against the properties that are listed under the

1 property name on the first page of this Joint Owner
2 Statement?

3 A. Not necessarily.

4 Q. Okay.

5 A. You have to read the supporting documentation
6 for the -- one, two, three, four -- five statements to
7 determine what was -- and, I mean, it's immediately
8 following the summary statement.

9 Q. Let's make it simple. Where on this statement
10 does it tell me why this amount was netted?

11 A. It does not specifically say why it was netted.

12 Q. Okay.

13 A. But if you're familiar with the oil and gas
14 business and you have a bill or an invoice and you have
15 netted revenue, it is not a huge leap to say you've
16 netted the revenue against the billing because the
17 billing is reduced.

18 Q. But you don't know why. That's my point,
19 Mr. Grappe. Do you?

20 A. Why? Because this is reflecting an outstanding
21 JIB. So yes, I do know why.

22 Q. Okay. Now, let's get to the issue that's
23 before the Division today and that is the reasonableness
24 of the well costs for the Ivar the Boneless --

25 A. Pardon me.

1 Q. -- 11H.

2 A. Could I go back before we finish this? We've
3 gone through a rather laborious trying to say what was
4 netted against what and what property. If you're still
5 on the July statement, you go to the first page --
6 second, third, fourth, fifth, sixth, seventh -- eighth
7 page, the last page of that statement, 1085.

8 Q. Okay. Hold on a minute. Does it look like
9 this (indicating)?

10 A. Yes.

11 Q. What does it say? What's the net revenue
12 invoice number? 120611, on the left-hand side?

13 A. Repeat your question.

14 Q. I'm trying to describe this last page. What do
15 you see on there that's distinctive about this last
16 page?

17 A. The last page is identified as "Invoice
18 Number," and the last three digits are 860.

19 Q. That'll work. Go ahead.

20 A. The total amount that is netted against Ivar
21 the Boneless 11H, not any other property, is a total of
22 \$15,523.79. If you'll hold that page and then go back
23 to the first page and add up those two netted amounts,
24 those two netted amounts account for \$15,523.79. So the
25 revenue netted reflected on the summary statement, first

1 page, was against the Ivar 11H JIBs.

2 Q. Hold on a second. The page you just
3 referenced, the total amount applied was -- total netted
4 revenue applied was 15,523?

5 A. 523.79.

6 Q. Okay. And where do you see that? On the first
7 page of that Joint Owner Statement?

8 A. The two netted amounts, if you add them
9 together, I think you'll find that it will add up to
10 15,523.79.

11 Q. Okay. All right. And you don't know why that
12 was netted, correct?

13 A. It was netted against the outstanding JIB. To
14 answer your question, I don't know why it was netted
15 because it shouldn't have been netted.

16 Q. Okay. Mr. Ard's not responsible for lease
17 operating expenses?

18 A. Repeat your question. I didn't hear it. You
19 have something in your mouth.

20 Q. Mr. Ard's not responsible for lease operating
21 expenses?

22 A. Mr. Ard is responsible for all costs pursuant
23 to the forced pooling order and as specified therein.

24 Q. Okay. All right. Let's then go to your --
25 tell you what, let's stay here on your Exhibit Number 4,

1 since we're here.

2 A. 4 or 4A?

3 Q. Let's start with just 4. All right. Let me
4 try to understand this. The issue before the Division
5 is the reasonableness of the well costs for the Ivar the
6 Boneless 11H, right?

7 A. Correct.

8 Q. That's what we're dealing with, Mr. Grappe?

9 A. Yes.

10 Q. Okay. Now, I'm trying to understand these
11 numbers in the yellow box. Okay? You say, "Actuals
12 filed with the NMOCD," and there is a total of 4.1
13 million. Do you see that?

14 A. I see 4,170,604.19.

15 Q. Okay. When you say "actuals filed with the
16 NMOCD," what do you mean?

17 A. I pulled those numbers from the report that COG
18 filed with the OCD reflected on Exhibit 2.

19 EXAMINER BROOKS: Is that the AFE?

20 THE WITNESS: It's the cost report that was
21 filed pursuant to paragraph 11 of the order.

22 EXAMINER BROOKS: Okay. Thank you.

23 MR. FELDEWERT: Hold on. Let me find my
24 exhibit.

25 THE WITNESS: It's Exhibit 2.

1 EXAMINER DAWSON: It does have the AFE
2 attached to the back.

3 THE WITNESS: If you go to page 2 of the
4 actual report --

5 Q. (BY MR. FELDEWERT) Okay.

6 A. -- not the transmittal letter, but the report,
7 actual amount, total well costs, 4,000 -- pardon me --
8 \$4,170,604.19.

9 Q. Okay. And that was the amount, then, that COG
10 provided for the actual costs for the 11H, right?
11 That's what that means?

12 A. I can only read the report and tell you what
13 the report says, sir.

14 Q. Okay. And that's under the column "Actual
15 Amount"?

16 A. Correct.

17 Q. All right. And then where did the AFE amounts
18 filed with the NMOCD come from?

19 A. They also came from Exhibit 2. You go to the
20 report itself, on page 2, and at the bottom, "total well
21 costs budgeted, \$3,001,000."

22 Q. You labeled that your AFE amounts? Is that how
23 you labeled it on your Exhibit Number 4?

24 A. Yes.

25 Q. Okay. Did you take a look, Mr. Grappe, at the

1 actual AFE that was signed by Mr. Ard?

2 A. I looked at the report filed --

3 Q. Did you look --

4 A. -- as I've testified.

5 Q. Did you look at the actual AFE that was signed
6 by Mr. Ard before they drilled the 11H well?

7 A. I did look at the AFE, yes.

8 Q. You did? Do you recall the number on that AFE?

9 A. I do not.

10 Q. Why didn't you use that in your analysis?

11 A. Because the analysis -- we were coming before
12 the Commission and I wanted to use the numbers that were
13 presented in COG's reports. These are COG's numbers.

14 Q. Okay. So you didn't feel it important to
15 actually present to the Division the actual amount in
16 the AFE that Mr. Ard signed?

17 A. No.

18 Q. That was a higher number, wasn't it?

19 A. Yes, it was.

20 MR. FELDEWERT: May I approach the witness?

21 EXAMINER DAWSON: You may.

22 EXAMINER BROOKS: Which exhibit number is
23 this, Mr. Feldewert?

24 Q. (BY MR. FELDEWERT) Mr. Grappe, if I have you
25 turn to what is marked as COG Exhibit Number 3, did you

1 do any review of the Division file for this particular
2 case in preparation for this hearing, Mr. Grappe?

3 A. I did not.

4 Q. It's online. You're aware of that, correct?

5 A. I am.

6 Q. Okay. Mr. Grappe, I'm going to represent to
7 you that this COG Exhibit Number 3 is from the
8 Division's online Web site under this case file, and
9 you'll see that it contains an affidavit from Joseph
10 Scott, dated April 30th, 2015, that was marked as
11 Exhibit 1 in Case Number 15185. Do you see that
12 affidavit on the second page of this exhibit?

13 A. Yes.

14 Q. And if you flip through the third page of this
15 exhibit, there is a letter dated February 19th, 2015,
16 from Concho to Ard Oil. That's your client, correct?

17 A. Correct.

18 Q. And if you look at the next page, it included
19 an AFE dated February 11th, 2015. Do you see that?

20 A. I see an AFE. I'm looking for a date.

21 Q. Dated February 11th, 2015.

22 A. Yeah, I see it. Yes, I have it, "Date
23 Prepared," "Date Prepared."

24 Q. And the total amount there is not the 3 million
25 you've used, but \$3,403,000. Do you see that?

1 A. Correct.

2 Q. All right. Then if you go to COG Exhibit
3 Number 4 --

4 A. I'm there.

5 Q. -- do you know Carolyn Churella?

6 A. She was a staff member with Ard Energy at the
7 time, in May of 2015.

8 Q. Now, as part of your responsibilities with Ard,
9 do you look at these AFEs?

10 A. I was on a health sabbatical at the time.

11 Q. Okay. Is there someone within the company that
12 examines these AFEs?

13 A. At the time I can't say who looked at the AFE.
14 I wasn't there.

15 Q. So you don't know what examination was done
16 with this AFE before they signed?

17 A. All I saw is what you're seeing.

18 Q. Okay. And if you -- now, did your client
19 provide you, prior to the preparation of this hearing,
20 with this signed AFE that we see on the second page of
21 this exhibit?

22 A. It is in their file, correct.

23 Q. What's that?

24 A. It is in their file.

25 Q. So you were aware of it?

1 A. Yes.

2 Q. And you're aware that in February -- on May
3 21st, 2015, that Mr. Ard signed a \$3.4 million AFE for
4 the 11H?

5 A. If you're referring to the AFE that he signed,
6 yes, that's what it reflects.

7 Q. And it notes he's participating under the
8 pooling order?

9 A. That's somebody else's notation, but it does
10 have "JS" behind it. I suspected that means Joseph
11 Scott.

12 Q. Okay. The signature down there, though, is
13 that Julian Ard?

14 A. It is.

15 Q. What is his position?

16 A. He's president.

17 Q. So Mr. Ard reviewed this and somebody in the
18 company reviewed this in February 11th -- or on May
19 21st, 2015, and then signed the AFE to participate,
20 \$3.4 million, for this 11H?

21 A. Correct.

22 Q. Okay. And then is that when they paid their
23 proportionate share of this AFE?

24 A. There or shortly thereafter.

25 Q. And what was that amount? What did they pay as

1 their proportionate share of this \$3.4 million of AFE?

2 A. \$187-some-odd-thousand -- \$180,784.38.

3 Q. And that was their proportionate share of this
4 AFE?

5 A. Correct.

6 Q. And they participated in the well?

7 A. They participated in the well pursuant to the
8 compulsory pooling order.

9 Q. Now, let me ask you this something, Mr. Grappe.
10 You said you're aware of this AFE. Did you examine the
11 numbers within this AFE?

12 A. I did not.

13 Q. In your opinion, are the amounts that are
14 reflected in this AFE that Mr. Ard signed on May 21st
15 2015 -- are they reasonable for purposes of drilling,
16 completing and then tying this well into the surface
17 facilities?

18 A. I don't have an opinion as for the
19 reasonableness of this AFE.

20 Q. Okay. So you're not testifying here today that
21 this AFE that was signed by Mr. Ard in May of 2015 is
22 unreasonable for purposes of drilling, completing and
23 tying the well into surface facilities?

24 A. I'm not testifying to its reasonableness or its
25 unreasonableness.

1 Q. In your opinion, based upon your experience, is
2 it customary to see this type of an AFE for a Yeso well
3 drilled at this depth?

4 A. I'll offer no opinion in response to your
5 question.

6 Q. One way or the other?

7 A. I'll offer no opinion in response to your
8 question.

9 Q. Okay. But you don't have any objection to this
10 particular AFE?

11 A. I express no opinion at all to this AFE.

12 Q. Do you have an objection to this AFE?

13 A. I have no opinion to -- regarding this AFE.

14 Q. Okay. Okay. So here's what I'm trying to
15 understand, Mr. Grappe. First off, the numbers that you
16 used on your Exhibit Number 4 don't reflect the actual
17 AFE amounts that Mr. Ard signed in May of 2015, correct?

18 A. They do not.

19 Q. All right. With that in mind, what is the
20 nature of Mr. Ard's objection when it comes to the cost
21 which he approved in May of 2015 and the final actual
22 costs for the well that are reflected in your Exhibit
23 Number 2 under the Actual Amount column?

24 A. I don't understand what you mean by approved.
25 He signed an AFE, which is an authorization. It is an

1 estimate. It is not approving those costs. Those costs
2 are approved when you receive --

3 Q. Did you sign this AFE, Mr. Grappe?

4 A. Can I please finish my answer?

5 Q. Did you sign this AFE?

6 A. Can I finish my answer?

7 Q. Did you sign this AFE?

8 A. Can I finish my answer?

9 Q. Did you sign this AFE?

10 A. No, I did not.

11 Q. Were you around when Mr. Ard signed this AFE?

12 A. No, I did [sic] not.

13 Q. In fact, you testified you were on some medical
14 leave and didn't have anything to do with this --

15 A. I was on a medical sabbatical.

16 Q. And you cannot testify as to what Mr. Ard was
17 thinking when he signed this AFE, correct?

18 A. I suppose not.

19 Q. Okay. Here's my question. If I look at the
20 actual amount that is on Exhibit Number 2 for this
21 well --

22 A. Uh-huh.

23 Q. Would you go there, please?

24 EXAMINER BROOKS: Which exhibit,
25 Mr. Feldewert?

1 MR. FELDEWERT: Their Exhibit Number 2.

2 EXAMINER DAWSON: It's marked "Exhibit 2."
3 Page 2, I think he's referring to.

4 THE WITNESS: I'm there.

5 Q. (BY MR. FELDEWERT) I see an actual amount,
6 total, at the bottom of \$4.17 million?

7 A. I see 4.170,604.19, if that's the one you're
8 referring to.

9 Q. Okay. All right. Then if I look at the AFE
10 that Mr. Ard signed in May of 2015, it has a total cost
11 of \$3,403,000, right?

12 A. I make no opinion as to that AFE.

13 Q. Mr. Grappe --

14 A. I wasn't there or anything else.

15 Q. Mr. Grappe, my question is: If I go to Exhibit
16 Number 4 -- COG's Exhibit Number 4 --

17 A. Okay.

18 Q. -- and I look at an AFE that Mr. Ard signed, he
19 signed an AFE for a \$3,403,000 well, correct?

20 A. That's what the exhibit reflects.

21 Q. And if my math is correct, and it's always
22 suspect, the difference between the AFE that he signed
23 and the actual cost of the well is roughly \$700,000.
24 Can we agree on that?

25 A. I make no opinion about the AFE.

1 Q. Can we agree that the difference between the
2 AFE that he signed --

3 A. The difference is whatever the difference is.

4 Q. -- is roughly \$700,000?

5 A. Whatever it is.

6 Q. Okay. So my question to you, as a
7 representative of the company here today, is: What is
8 your dispute with respect to that \$700,000 difference?
9 What's in dispute?

10 A. What's in dispute is the reasonableness. What
11 is at issue here is that we're to have a hearing on the
12 reasonableness of the cost, the actual cost, not the AFE
13 cost. We're trying to determine the reasonableness of,
14 quite frankly, not \$4,170,604.19, reflected by your
15 report, the COG report made to the Commission. We're
16 actually trying to determine the reasonableness of
17 4.4 -- \$4,424,887.99 cents, which is the total drilling
18 and completion cost billed by COG to Ard, coupled with
19 LOE totaling \$503,601.77. So at issue here is the
20 reasonableness of something a few dollars shy of
21 \$5 million.

22 Q. So you're including lease operating expense in
23 your dispute over the reasonableness of the well costs?
24 Is that what you're doing?

25 A. Under the order, under the language in the

1 paragraphs that I referred you to earlier, it talks
2 about the reasonableness of a -- a hearing on the
3 reasonableness of the drilling and completion costs. A
4 subsequent paragraph refers -- pardon me -- refers to
5 lease operating expenses can be charged and reduced,
6 netted from the interest so long as they are reasonable.
7 So yes, I'm saying this hearing is addressing both
8 issues, with a total amount of something approaching
9 \$5 million.

10 Q. All right. Let the Division sort that out.
11 Let me go to the issue that we were aware of prior to
12 the hearing and that is, as you put it, the
13 reasonableness of the drilling and completion costs.
14 Okay? Let's focus just on that. How much do you think
15 the drilling and completion costs should have been?

16 A. I offer no opinion to that.

17 Q. You don't offer any opinion?

18 A. I offer no opinion to that.

19 Q. Is there somebody here that is going to offer
20 an opinion on that?

21 A. Yes, there is. I made reference in my prior
22 testimony.

23 Q. All right. But you can't tell us what that
24 difference is?

25 A. I cannot.

1 Q. Okay. Would you go to what's been marked as
2 your Exhibit Number 2? I'm sorry. Hold on.

3 Do you have someone, Mr. Grappe, that is
4 going to testify as to what they believe reasonable
5 drilling and completion costs were supposed to be, in
6 your opinion -- or in the company's opinion?

7 A. Mr. Morris will testify as to his conclusions
8 made of the JIBs and the subsequent discovery presented
9 by COG.

10 Q. Okay.

11 A. I do not want to characterize or to comment on
12 what his testimony might be.

13 Q. So you can't tell me even as a representative
14 of the company how much of the \$4.1 million shown on
15 your Exhibit Number 2 the company disputes?

16 A. I can't respond to that question because at
17 issue here is not the \$4.1 million dollars. The issue
18 here is the total actual cost billed to date, which is
19 4. -- 4,424,000 -- for about the tenth time,
20 \$4,424,887.99, plus an additional LOE of \$503,601.77,
21 for a cumulative of something approaching \$5 million.

22 Q. Can you tell me how much of that \$4.4 million
23 that you show on your Exhibit Number 4 you dispute? How
24 much?

25 A. I make no opinion relative to that issue.

1 Q. How much do you dispute? I'm not asking for an
2 opinion. How much -- as a representative of the
3 company, how much of that do you dispute?

4 A. We can't determine the reasonableness or
5 unreasonableness of the actual cost with the information
6 that has been provided to us to date.

7 Q. So then your next witness, likewise, cannot
8 inform either us or the Commission as to how much of
9 that \$4.4 million you dispute?

10 A. I do not -- will not comment on what he might
11 testify to in response to questions by Mr. Padilla and
12 yourself.

13 Q. Is he going to be able to tell us how much of
14 that \$4.4 million the company disputes?

15 A. My answer stands as previously testified.

16 Q. Okay. Then let's go to your -- I'm looking for
17 the letter that was marked as an exhibit from myself and
18 to Mr. Padilla.

19 MR. PADILLA: Number 7.

20 MR. FELDEWERT: Number 7. Okay.

21 Q. (BY MR. FELDEWERT) All right. Mr. Grappe, you
22 indicated earlier that you were aware of this letter?

23 A. Give me a second. I'm getting my exhibits
24 organized here.

25 Okay, sir. I'm ready.

1 Q. You said you were aware of this letter?

2 A. Exhibit 7, the letter?

3 Q. Yes.

4 A. Yes.

5 Q. When did you become aware of this letter?

6 A. Sometime in late August.

7 Q. Okay. Did you have discussions with
8 Mr. Padilla about this letter?

9 A. Subsequent discussions, yes.

10 Q. And what did you instruct him with respect to
11 this letter?

12 A. I didn't instruct him to do anything.

13 Q. You didn't instruct him to do anything?

14 A. No.

15 Q. Huh. Okay. I'm going to read the first
16 paragraph to you. Okay? "As we discussed when this
17 case was filed, COG does not have a clear understanding
18 of the specific concerns Ard has with the final well
19 costs." Do you see that?

20 A. I do.

21 Q. Okay. And we go on to say, "This remains the
22 case even after COG fully responded to Ard's subpoena.
23 The only description of the concern COG has at this
24 point is the incorrect statement in the Application that
25 the costs increased by 38.97 percent." Do you see that?

1 A. I do.

2 Q. So you were aware, were you not, Mr. Grappe,
3 that we were informing you that when you examine the AFE
4 that Mr. Ard signed and then the final well costs that
5 were provided to Mr. Ard, that there was not the 38.97
6 percent increase? You were aware of that, right?

7 A. I'm aware of the letter which you make that
8 statement.

9 Q. Okay. Second paragraph, "While the costs did
10 increase, it was not at the percentage represented and
11 most of that increase is associated with surface
12 facilities designed to accommodate subsequent infill
13 wells in the pooled spacing unit." Are you aware of
14 that?

15 A. I'm reading the same letter you are, sir.

16 Q. Do you disagree with that statement?

17 A. I have made no opinion relative to the contents
18 of this letter. I'm just simply reading what you wrote.

19 Q. But you didn't examine whether that increase
20 was associated with surface facilities to accommodate --

21 A. I give no opinion as to the reasonableness of
22 any of the costs here.

23 Q. Did you examine whether the increase, before
24 coming to hearing today, was associated with surface
25 facilities designed to accommodate the infill wells?

1 A. I made no examination and make no opinion.

2 Q. Then COG points out they'd like to resolve this
3 matter without a hearing, right, save everybody some
4 costs, the costs you've been so concerned about? Do you
5 see that statement?

6 A. You want to read the statement, or do you want
7 to commentate on the statement?

8 Q. Given Ard's small interest in the spacing unit,
9 COG would like to resolve this matter without the
10 expense of a hearing." Do you see that?

11 A. I do.

12 Q. Were you aware of that?

13 A. I read the words, yes.

14 Q. Did you make any effort to try to contact COG
15 and resolve this without the expense of a hearing after
16 receiving this letter?

17 A. Subsequent to this letter, no.

18 Q. Why?

19 A. Because of the lack of cooperation we had from
20 COG in the past on this matter and many others.

21 Q. So no effort undertaken by you, prior to coming
22 to hearing today, to try to reach some resolution with
23 respect to this dispute --

24 A. No.

25 Q. -- correct?

1 A. No.

2 Q. Then COG goes on to state, "COG correctly
3 billed all of the facility costs to the 11H, since it
4 was the first well drilled in the pool spacing unit.
5 COG designed and built that surface facility to
6 accommodate additional wells in the spacing unit to
7 avoid unnecessary surface disturbance. The results of
8 the 11H have shown to be a proven course, as COG is now
9 developing the spacing unit with three additional infill
10 wells: The Ivar the Boneless 22H, 12H, and 21H." Do
11 you see that?

12 A. I do.

13 Q. Do you disagree with the proposition that the
14 facility costs -- surface facility costs to accommodate
15 these infill wells -- do you disagree with the
16 proposition that it should be drilled [sic] to the first
17 well that's drilled in the spacing unit -- that it
18 should be billed to that first well?

19 A. I do not make an opinion regarding any of the
20 statements in that paragraph or --

21 Q. How would you --

22 A. -- or in this letter.

23 Q. How would you bill these surface facilities to
24 accommodate infill wells in that same spacing unit? How
25 would you bill it?

1 A. I make no opinion relative to what was done or
2 what I would do at some hypothetical time in the future,
3 on some hypothetical set of circumstances.

4 Q. Let's go with this set of circumstances. Let's
5 say you were the operator, Mr. Grappe, and you were
6 drilling the well. Okay? And you put in surface
7 facilities to accommodate not only the initial well, but
8 the subsequent infill wells, and there was a cost
9 associated with those surface facilities. How would you
10 bill it?

11 A. I make no opinion relative to a hypothetical
12 situation that is proposed on some time in the future,
13 for some limited set of circumstances by which you
14 propose.

15 Q. Okay. So consistent with what we ask in this
16 letter, you're not going to offer any suggestion?

17 A. I make no opinion or comment relative to
18 anything contained in this letter.

19 Q. Fourth paragraph, we're telling you in August,
20 trying to resolve this case, "COG recognizes the
21 3.4 million February 2015 AFE that Ard signed on May
22 21st, 2015, did not correctly reflect the expanded
23 surface facility costs. As a result, the subsequent
24 actual cost statement generated a year later in February
25 of 2016 reflects an increase in costs of roughly

1 \$767,000. A review of those two statements will reflect
2 that the vast majority of this increase is associated
3 with surface facility costs." So before this hearing,
4 we made you aware of that, correct?

5 A. I'm reading the words that you put in there.
6 I'm not making any opinion or comment relative to the
7 validity of any of the statements contained in this
8 letter.

9 Q. So you have no reason to dispute it?

10 A. I make no comment regarding the validity of any
11 statements made in this letter.

12 Q. Second page, "Since Ard has chosen to go
13 nonconsent on the infill wells, COG proposes to allocate
14 the surface facility costs evenly over each of the four
15 wells in the spacing unit. This will reduce the gross
16 facility costs billed to the initial pool well" --
17 that's the Ivar 11H -- "from \$658,980 to and \$164,745.
18 With this adjustment, the total AFE cost is only
19 approximately 5 percent above what was presented in
20 February of 2015." Do you see that?

21 A. I do.

22 Q. Would you disagree with that proposition?

23 A. I stand by my prior answer and testimony.

24 Q. Which is what?

25 A. Which is I make no comment or make any opinion

1 relative to any of the statements or the validity of any
2 of the statements made in this letter.

3 Q. Okay. Last paragraph -- and perhaps now I got
4 my answer as to why we never got a response. "Please
5 advise that this re-allocation of the surface facility
6 cost satisfies Ard's concerns. If not, please inform me
7 of the specific concerns Ard has with the billing. It
8 seems to me this matter is not worth the cost and
9 expense of a hearing, and that before proceeding to
10 hearing we should determine whether we can amicably
11 address Ard's specific concerns."

12 Consistent with the statements here, Ard
13 completely ignored that request; isn't that correct,
14 Mr. Grappe?

15 A. I make no comment relative to this letter, the
16 validity of any statements whatsoever.

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

19 EXAMINER DAWSON: Do you have any more
20 questions, Mr. Padilla?

21 MR. PADILLA: I do.

22 REDIRECT EXAMINATION

23 BY MR. PADILLA:

24 Q. Mr. Grappe, let me direct your attention to
25 COG's Exhibit Number 3?

1 A. Could you bear with me just a minute? Let me
2 get these back in order.

3 Okay, Mr. Padilla.

4 Q. I want you to --

5 A. Which exhibit?

6 Q. Exhibit Number 3.

7 EXAMINER DAWSON: Is that Concho's Exhibit
8 Number 3?

9 MR. PADILLA: Yes, Concho's Exhibit 3.

10 Q. (BY MR. PADILLA) See the affidavit of Joseph
11 Scott there?

12 A. I do.

13 Q. And what is the date of that? When did he sign
14 that affidavit?

15 A. It says he was -- subscribed and sworn before
16 the notary on the 29th of April.

17 Q. Of what year?

18 A. Oh, I'm sorry. 2015.

19 Q. Okay. And the correspondence from Ard
20 transmitting a signed AFE is May 21st, 2015? That's
21 Exhibit 4, right?

22 A. I'm at Exhibit 4, yes.

23 Q. And the date of that letter is May 21st, 2015?

24 A. Correct.

25 Q. When you were looking to see whether COG had

1 complied with violating actual well costs for the
2 Division, how did you go about informing COG of lack of
3 filing?

4 A. I sent -- drafted a letter for Julian Ard's
5 signature requesting, pursuant to the pertinent
6 paragraph, I think it's paragraph 11, of the relevant
7 order that I could not locate in the OCD records where
8 they had filed the necessary report on actual costs. I
9 requested that. And by memory -- I don't have the
10 letter sitting in front of me -- I also said, By the
11 way, the well has produced for a number of months now.
12 We have not received a Division order. We haven't
13 received any revenue. What's up?

14 Q. When was this well completed?

15 A. I'm sorry. I don't recall. I think -- I hate
16 to do this, but I think it was August or September of
17 2005.

18 Q. '15 or --

19 A. 2015. Pardon me.

20 Q. How long after you contacted Concho and filed
21 the actual well cost did they file what's marked as Ard
22 Exhibit Number 2?

23 A. I don't remember how long. I don't have the
24 letter here that I requested it, so, therefore, I can't
25 testify how long it took them to comply with it. I just

1 don't remember.

2 Q. Ballpark?

3 A. Couple -- I just don't know, you know.

4 Q. If they amended the AFE -- or the Division's
5 order, do you have any idea why they would still use the
6 3,000 -- 3,001,000 figure?

7 A. Repeat your question, Mr. Padilla.

8 Q. Do you have any idea why, after they amended
9 the Division's order with respect to well costs, they
10 would continue to use the figure, in their filing of
11 February 19th, 2015, of the original AFE amount?

12 A. I really don't understand the question.

13 Q. It's sort of convoluted.

14 A. If you'll rephrase it, I'll attempt to answer,
15 but I don't understand the question.

16 Q. Well, I just pointed out -- just had you refer
17 to Exhibits 3 and 4 of Concho's exhibits that were dated
18 April 2015 and May 21st, 2015. There is an amendment of
19 the order to include a \$3.4 million AFE, correct?

20 A. I don't remember that being the purpose of the
21 amendment, so I do not know if that's correct or not.

22 Q. Okay. But in any event, Mr. Ard signed the AFE
23 for \$3.4 million?

24 A. Based on -- yes. Yes.

25 Q. Do you have any idea why Exhibit 2, dated

1 February 19th, 2015 -- 2015 or is that 2016?

2 A. What are you referring to, Mr. Padilla? COG's
3 Exhibit 2 or --

4 Q. I'm sort of confused all of a sudden here now.
5 I see the letter to Ard Oil, Ltd. and Ard Energy, dated
6 February 19th, 2015. Do you see that?

7 A. Right. And I made a reference to that in
8 passing in earlier testimony. That obviously was a
9 scrivener's error, because we received it on 2016,
10 February 17th, 2016. So they sent it and dated it
11 February 19th, 2015. I have no idea. But our stamp was
12 2016, and it was clearly in 2016 when we received this.

13 Q. And the AFE -- or the information that you base
14 your figures was printed on February 5th, 2016, as shown
15 on the second page, right?

16 A. Correct. More evidence that this report with
17 the accommodating -- or accompanying transmittal letter
18 was sent sometime in February of 2016, not 2015.

19 Q. Okay.

20 A. Further to that, the -- the backup on the
21 certified letter indicates -- on the certified mail, we
22 always make a copy of the envelope, and the company
23 certified language has the certified dated February
24 the -- I'm having trouble reading it -- February the 5th
25 2016, of which we subsequently accepted the certified on

1 February the 17th.

2 Q. Based on Exhibit 4 and the figure -- your
3 Exhibit 4, on the spreadsheet, even if you use the \$3.4
4 million AFE, you still have a cost overrun of a million
5 dollars, correct?

6 A. That's the calculation you can make,
7 Mr. Padilla. As I said in prior testimony, what's at
8 issue here is the \$4,424,887.99, notwithstanding AFE
9 number one, AFE number two or if there may have been
10 another AFE. That's not what I'm concerned about. My
11 focus in this hearing is to come and present that it's
12 not 3.1. It's not 3.4. It's 4. -- \$4,424,887.99 for
13 drilling and completion, and LOE is \$503,601.77, period.
14 As far as calculations between one AFE or the other, you
15 know, y'all can make the calculations.

16 MR. PADILLA: That's all I have.

17 EXAMINER DAWSON: Okay.

18 EXAMINER BROOKS: I have some questions. I
19 don't know which of the Examiners wants to go first.

20 EXAMINER DAWSON: Do you want to go first,
21 Will?

22 EXAMINER JONES: It's up to you.

23 EXAMINER DAWSON: Mr. Jones goes first.
24
25

1 CROSS-EXAMINATION

2 BY EXAMINER JONES:

3 Q. So did you determine when the well was
4 completed? Do you have a date?

5 A. I could attempt to find one. But right off the
6 top of my head, it was sometime mid-2015. It was either
7 August or September.

8 MR. FELDEWERT: Mr. Examiner, our witness
9 can address that.

10 Q. (BY EXAMINER JONES) Okay. I saw that the
11 original compulsory pooling was approved October of 21
12 of 2014, with an AFE in that case of 3.8 million. And
13 I'm not supposed to be the one testifying here, I guess,
14 so I better just ask questions. But the next revision
15 of the surface location was approved May 26 of 2015, and
16 that AFE was, apparently, 3.4 million. I believe that's
17 correct on that one.

18 Did you -- did your company receive any
19 adjustments to the -- billing adjustments that would
20 have reduced the facility cost and distributed it onto
21 the other wells that you --

22 A. Not that I'm aware of, but I defer that
23 question to our expert, Steve Morris.

24 Q. Are you in charge of the accountants -- oil
25 field accountants with Ard?

1 A. We're a very small operation of three people,
2 and they have their own respective responsibilities, and
3 I get involved as a consultant as they need questions
4 answered. I'm not there on a daily basis. I live in
5 Houston. The office is in Fort Worth. I travel quite a
6 bit to Fort Worth. I made a reference to -- it's not an
7 excuse; it's simply a fact -- a six-month period. I had
8 a massive heart attack and open-heart surgery, and I was
9 limited to travel to Fort Worth for six months. So I
10 had to do most of it electronically and long distance,
11 and that's why I wasn't there on certain of these
12 events.

13 Q. Okay. I'm sorry about all that. I hope you're
14 feeling better.

15 A. Much better.

16 Q. Good. We don't want to stress you too much
17 today.

18 So Ard actually signed on to this first
19 well; is that correct?

20 A. Correct.

21 Q. But they didn't sign on to the subsequent
22 wells?

23 A. That's incorrect.

24 Q. Okay.

25 A. I'm responding to your question. I'm not

1 responding to anything contained in any prior testimony.

2 Ard participated in the first well. It
3 participated in the second well. It did not respond
4 timely -- and all these are under the same order,
5 because they're not drilling -- in essence, they're
6 drilling infill wells. But, in essence, there are three
7 wells going after three stringers in the Yeso.

8 So after we had had enough of the first two
9 wells -- and they continued to drill them. And then we
10 saw these costs, on an ongoing basis, just going through
11 the roof. Notwithstanding the various AFEs, costs are
12 what we're here to talk about. We said we had enough.
13 So on the third well, we chose not to respond, therefore
14 being deemed a nonconsenting working interest owner.
15 But as a nonconsenting pooled working interest owner,
16 we're still concerned about costs, because if they're
17 successful enough, the penalty is dictated on what the
18 costs will be.

19 So while -- to clarify the record, we
20 participated to the full extent of interest in the well
21 of Ivar the Boneless 11H, Ivar the Boneless 22H. And
22 the two subsequent wells, we did not participate in, but
23 we were a forced nonconsenting working interest owner
24 under the force pooling order.

25 Q. Under the Division's forced pooling order?

1 A. Correct.

2 Q. But how did the joint interests -- or the JOA
3 fall into this? Did you sign an original JOA?

4 A. There is no JOA here.

5 Q. There's no JOA.

6 A. We're operating completely under the forced
7 pooling order.

8 Q. Okay. And you're not here to do a comparison
9 of well costs to other Paddock wells drilled; is that
10 correct? You're going to have another witness that
11 might do that?

12 A. Again, I'm here -- my role here was to
13 demonstrate, as a company representative, the cumulation
14 of data through JIBs through discovery and summarize
15 that for y'all so we could talk about, in testimony.
16 The real issue here is the total cost. As far as
17 comparing it -- my role in comparing it to other AFEs
18 filed on this well or other AFEs, I have not done that.
19 And I'm not -- and I'd rather not comment on what might
20 be testified by our expert, Steve Morris, because it
21 depends on the questions that he's asked, and I'd have
22 to know the questions and anticipate his answer to
23 respond to you.

24 Q. You bet. I understand.

25 So you're not -- you're not contesting the

1 percentage that Ard is assessed of the wells? In other
2 words, just the cost, not the percentage that was
3 applied to the costs? There is not a question whether
4 the percentage was incorrect?

5 A. To me the percentage becomes irrelevant. We're
6 here to determine the reasonableness of the approaching
7 \$5 million cost. Yes, I did and others have done
8 relative comparisons to various AFEs. I think we're
9 getting lost -- in my opinion, we're getting lost in
10 that discussion, where the real issue, if we focus in on
11 it, is the actual cost. And what we're saying is we
12 cannot make a determination -- let me back up and say
13 that's what is at issue, and that's what our expert is
14 going to testify to.

15 Q. The 5 million, you're talking well costs plus
16 the LOE?

17 A. Correct.

18 Q. And you are including the LOE in the argument
19 about whether it's reasonable or not?

20 A. Correct.

21 And if you'll bear with me, I'll refer you
22 again to the paragraph in the order that I'm referencing
23 in that regard. And that is Exhibit 1, of the initial
24 order, so it's Order Number R-13913, page 5 of 6,
25 paragraph 15. And I'll read it for you. Just bear with

1 me. It has a lot of language, but I want to make sure.
2 I'm not interpreting. I'll read it to you and you make
3 your own assessment.

4 "Reasonable charges for supervision
5 (combined fix rates) for the well are hereby fixed at
6 \$6,000 per well [sic] while drilling and \$600 per month
7 while producing." I'm sorry. I said 600 [sic] per
8 well. It's 600 [sic] per month while drilling. And
9 "\$600 per month while producing, provided that these
10 rates shall be adjusted annually pursuant to Section
11 III.1.A.3 of the COPAS form titled "Accounting
12 Procedures-Joint Operations. The operator" -- this is
13 the language that's pertinent that I'm referring to.
14 "The operator is authorized to withhold from production
15 the proportionate share of both supervision" costs --
16 "charges" -- excuse me -- "and the actual expenditures
17 required for operating the well, not in excess of what
18 are reasonable, attributable to the pooled working
19 interest owners," Ard.

20 Q. Okay. If you -- we can talk about
21 reasonableness, but the actual -- when the date that LOE
22 begins to be charged, are you contesting it should be
23 charged after the well -- the first well was completed?
24 Is that when you would say the LOEs should be assessed?

25 A. From general experience, a very generous

1 statement made that that's generally -- drilling and
2 completion are under the AFE, even though there are some
3 straggling and months' delay in the billing. Lease
4 operating expenses are for the producing of the well, a
5 very general statement.

6 Getting back to here (indicating), I'm
7 making no assessments, no opinions. Beg my pardon for
8 being redundant, but I want this to reflect and you to
9 see that that rule has kind of gone awry here, because
10 we're receiving -- and I realize there is some drag --
11 delay on some of the billings. We're a year after the
12 well has been completed, based on my estimate, completed
13 in August of 2015. And in August 2016, we're still
14 getting charges towards the before casing point.

15 Conversely, LOE began -- also gave me fair
16 confidence that the well was completed in August or
17 September, because the LOE, based on the spreadsheet of
18 Exhibit 4, begins in September of 2015. And so I just
19 draw your attention to -- I'm not making any opinion or
20 assessment. I'm trying to explain the summary. I've
21 got all the backup attached that this is not my opinion.
22 This is not anybody's opinion. These are JIBs that COG
23 sent us, and I simply took it and summarized it so we
24 could look at real numbers. Those real numbers are
25 approaching \$5 million, notwithstanding any comparison

1 to any other number, AFE, whatever.

2 Now, that's all I can say. I wish I could
3 give you more. But as you can tell, I'm responsible for
4 this, and anything that's here or under this, I'll try
5 and answer your questions.

6 Q. Okay. So you really weren't around when the
7 decision was made to move the surface locations and the
8 case came back to hearing? You weren't -- were you
9 involved -- were you aware of that?

10 A. I was aware of that.

11 Q. Okay.

12 A. I played no role in it. We're bystanders at
13 that point.

14 Q. Were you aware of any reasons why the surface
15 location was changed?

16 A. I don't recall. I did at the time. But I
17 don't recall specific reasons.

18 Q. Okay. Okay. Thank you.

19 EXAMINER BROOKS: Gentlemen, I need to
20 leave here for an extended luncheon meeting, and so I
21 would like to adjourn.

22 Mr. Chairman, I would like to proceed to be
23 recessed until 1:30.

24 EXAMINER DAWSON: 1:30?

25 EXAMINER BROOKS: Yes.

1 EXAMINER DAWSON: Okay. Since we do not
2 have Mr. Brooks at the table, we will recess this
3 hearing until 1:30 p.m. So we will adjourn until then.

4 EXAMINER BROOKS: Thank you very much.
5 (Recess 11:24 a.m. to 1:33 p.m.)

6 EXAMINER DAWSON: We'll go back on the
7 record at this time, and we are going back on Case
8 Number 15185, re-opened.

9 And, Mr. Grappe, we have more questions for
10 you. Mr. Jones has some questions for you.

11 EXAMINER BROOKS: Do you want me to go now?

12 EXAMINER DAWSON: If you want to go, that's
13 fine.

14 EXAMINER JONES: Go ahead.

15 CROSS-EXAMINATION

16 BY EXAMINER BROOKS:

17 Q. Mr. Grappe, good afternoon.

18 A. Good afternoon.

19 Q. You said, I believe, that you examined the land
20 and legal expenses that were charged by COG; is that
21 correct?

22 A. I reviewed the JIBs and the land costs --

23 Q. Yeah.

24 A. -- and then the discovery of 1 through 500,
25 which was almost exclusive, if not totally, land

1 charges.

2 Q. Okay. I ask that question to you because I
3 believe you have said that you would not have the
4 expertise to determine whether specific items of well
5 costs outside the land and legal area would be in
6 accordance with what the Division might consider
7 reasonable. Is that a correct --

8 A. That is correct.

9 Q. Okay. Can you identify for us individual items
10 of the land and legal costs which you think are
11 unreasonable?

12 A. No.

13 Q. Okay. Now, you talked about the allocation of
14 certain expenses. Is it your claim that expenses have
15 been allocated -- well, first of all, let me make -- let
16 me be sure that I'm clear on what we're talking about.
17 Although there have been three wells drilled on this --
18 there have been three wells drilled on the west
19 half-west half; is that correct?

20 A. Correct.

21 Q. Okay. But what you're saying -- what this
22 proceeding is about is the Ivar the Boneless 11H, right?

23 A. Correct.

24 Q. So we're only concerned with what was spent on
25 the Ivar the Boneless #11H, right?

1 A. Correct.

2 Q. Okay. Are you contending that there were
3 expenses that were -- that should have been allocated --
4 that properly related to other wells that have been
5 charged to the Ivar the Boneless #11H?

6 A. From the title opinions that were rendered, in
7 that they were rendered covering the entire west half,
8 and some eight zones of which this -- the cost
9 allocation for those should have been only to the west
10 half of the west half and the relevant zones for the
11 force pooled Maljamar zone. That's one indication.

12 And then the other indication is that from
13 the discovery of the 500 pages of which I was able to
14 discern with specific references to Ivar The Boneless,
15 period -- it may have been Ivar Boneless 11; I didn't
16 make the distinction -- or that made a reference to
17 Section 15 and the correct township and range, I pulled
18 those out to try and drill down on them. And that's the
19 57 pages of the 500 that I was able to say, Now let me
20 take a closer look at those.

21 Because it didn't give me comfort in that
22 those were to only the Ivar 11H, almost without
23 exception, I didn't go through and identify the
24 individuals. Most of it was where I couldn't determine
25 what Ivar well it was, or it may have referenced just

1 Section 15, or it could have referenced just the west
2 half of Section 15.

3 Q. Did you prepare any kind of exhibit where you
4 would identify -- where you identified which specific
5 charges you have those kinds of issues with?

6 A. I did identify the 57 pages, specifically,
7 where those charges -- there appears to be at least a
8 possibility of relevance of the charge.

9 Q. Right.

10 A. Yes. I identified the pages, and there were
11 57. So I have identified those 57 pages.

12 Q. Okay. Now, where would we find that?

13 A. I prepared a list.

14 Q. Has that been offered as an exhibit?

15 A. It has not. I prepared it this morning --

16 Q. Okay.

17 A. -- and I handed it to Mr. Padilla in case we
18 wanted to get into that kind of detail.

19 Q. Well, I think, you know, you're asserting that
20 the charges that are made are unreasonable. And
21 although our statutes and orders really don't say
22 anything about who has the burden of proof, you're the
23 one who filed the application, so we're going to be
24 looking to your company to establish there are some
25 charges that are unreasonable.

1 Now, of course, if charges are properly
2 allocated to another well and they're charging you on
3 this well, well, we would concede that the amount -- I
4 think everybody would concede that the amount of the
5 cost of another well that's charged to this well is
6 unreasonable because the reasonable amount would be
7 zero. But we have to know what the proper allocation
8 is, and we assume some of these things have probably
9 been allocated. And we don't know -- we may not be able
10 to determine from this record.

11 A. I can't determine from the record. And I
12 approached this from reading it as literally as I could,
13 that the hearing would be on the reasonableness of the
14 charges. And I realize I may be splitting hairs here,
15 but I approached it to try to determine the
16 reasonableness of charges. When the support
17 documentation doesn't give me the basis to establish
18 whether it was reasonable or unreasonable, however you
19 skin the cat, then I can't do that.

20 Q. Yes.

21 A. I contend that without additional
22 documentation, no one could do that, based strictly on
23 the face of the 57 documents.

24 Q. Right.

25 Let me ask you, then, a little bit about --

1 I'll ask you one thing conceptually about the operating
2 agreement -- the operating expenses. I realize that
3 both the order and the statutes say that operating
4 expenses as well as well costs must be reasonable. What
5 I have not done -- and I apologize for this -- is I have
6 not read the application in this case, and I don't know
7 if the operating expenses are covered in the
8 application.

9 Do you have something on that point,
10 Mr. Padilla?

11 MR. PADILLA: Mr. Brooks, the application
12 talks in general about reasonable well costs pursuant to
13 the order in paragraphs of the -- of the order, and
14 those paragraphs would be -- let me look at the order
15 itself.

16 EXAMINER BROOKS: I don't remember how the
17 order -- I've read it many, many times, but I don't
18 remember if it's rolled into one.

19 MR. PADILLA: Principally, the ones that
20 we're looking at are 10, 11 and 12, talking about
21 reasonable well costs. Now, this morning, Mr. Grappe
22 also referenced paragraph 16 -- or correction, paragraph
23 15 of the order. That talks about operating expenses,
24 which would be lease operating expenses as provided by
25 order -- or summarized in our Exhibit 4.

1 EXAMINER BROOKS: Yeah. I have never been
2 in a proceeding before where operating expenses -- where
3 the reasonableness of operating expenses were
4 challenged, I guess, because they come up -- those
5 issues might come up at any time in a proceeding --
6 specific procedure for challenging reasonableness of
7 well costs. But I don't have the benefit of
8 Mr. Feldewert's views on this either, so I just raise
9 the issue. I'm not -- I know that well costs have to be
10 reasonable. I don't know if that's been properly pled
11 or properly noticed in this proceeding.

12 And I suppose, Mr. Feldewert --

13 MR. FELDEWERT: I can give you my view
14 right now. Do you have the application in front of you?

15 EXAMINER BROOKS: I don't have the
16 application in front of me. Mr. Dawson was kind enough
17 to hand me a copy.

18 MR. FELDEWERT: "The Applicant requests
19 that the Division re-open Case Number 15185 and set a
20 notice for reasonable well costs for drilling the Ivar
21 well."

22 EXAMINER BROOKS: Yeah.

23 MR. FELDEWERT: And this case, noticed to
24 determine reasonable well costs for drilling the Ivar.

25 EXAMINER BROOKS: Okay. I was a little

1 concerned that might be the case. And in that case, I'm
2 not sure it would be proper for us to enter an order
3 finding either way with regard to operating costs if the
4 proceeding has been neither pled or noticed for that,
5 the reason I raise the issue.

6 MR. FELDEWERT: And I will -- to be fair,
7 in their prehearing statement, the Applicant contends
8 the cost of drilling and completing the well exceeds
9 reasonable well costs. So that's how I viewed this
10 case.

11 EXAMINER BROOKS: Well, I would tend to
12 think that phrase, "drilling," might be stretched to
13 include the pleading context. It's a little more -- a
14 little more -- you're making a little more of a leap
15 when you get to operating costs. But those are merely
16 comments. At this point I'm not sure -- I think we have
17 to hear from the next witness before we know where we're
18 going with this case.

19 Q. (BY EXAMINER BROOKS) I also wanted to ask you
20 one question about the matter of revenue offsets. You
21 said that the revenues should not have been offset.
22 Why -- what is the basis for that statement that you had
23 us look at?

24 A. Well, I meant to say the revenues should not
25 have been offset clearly on other extraneous wells, as

1 the Puckett wells. There are six, seven or eight of
2 those. There is no basis in law and under this forced
3 pooling to offset it against overrides, against a
4 working interest, especially a working interest that's
5 not governed by a joint operating agreement.

6 Q. Well, I recognize that the order -- there is no
7 basis in the order to do that.

8 And this should really be addressed to
9 Mr. Padilla. While you're a licensed attorney and have
10 the basis and knowledge for expressing an opinion, I
11 would want to address the legal issues to the counsel in
12 the case.

13 EXAMINER BROOKS: But it was my impression
14 from when I studied commercial law 40 years ago that
15 legitimate debt that is owed can, with certain
16 exceptions, be offset -- due, regardless of the fact
17 that it may arise from different contracts or
18 circumstances. And that was the general rule, and there
19 are certain exceptions to that. But counsel can address
20 that if it becomes relevant in this case.

21 MR. PADILLA: Well, from my cost accounting
22 days, Mr. Brooks, costs on another project should not --
23 that's correct. What you're saying is correct, if there
24 is debt. But here you have already a balance. You
25 already have participation. It's not debt. I mean,

1 obviously, you're dealing with -- with, you know, issues
2 of recoupment and that kind of thing. I think they're
3 separate and apart from cost accounting for specific
4 wells, especially when we are coming before the Division
5 pursuant to an order of the Division, a compulsory
6 pooling order, that applies strictly to one well, not --
7 not the Puckett wells, as it appears on Exhibit 6, I
8 believe, where you have probably error of some sort, but
9 it's typical of what we have seen in this case. And the
10 costs under the order are specific costs for drilling,
11 completing and operating the well.

12 EXAMINER BROOKS: Yeah. Well, I agree that
13 if a person is overcharged, then there's no debt to
14 that, so it's improper for the other party to offset it,
15 but I would think that our role in this is to determine
16 whether the expenses that were charged are reasonable
17 and not whether there existed a reciprocal obligation
18 between the parties such that it was proper for them to
19 say, Well, this has been paid by offset.

20 But I think -- that was leading me to think
21 that perhaps this issue was irrelevant, of whether or
22 not there was an offset. And our role would simply be
23 to say how much were expenses, and the state of the
24 account of the parties would be another issue.

25 Do you want to speak to that?

1 MR. FELDEWERT: If I may, I think
2 Mr. Grappe quit paying bills, quit paying JIBs, which
3 include operating expenses, quit paying their bills.
4 Now, I'm not sure the Division, in that circumstance,
5 comes in and makes a determination as a matter of law
6 whether it was proper to offset that or not.

7 My point is, as I tried to raise earlier,
8 again, if I go back to their application here, there is
9 no statement in here that there's been an improper
10 offset. All they're challenging is the reasonableness
11 of the drilling costs.

12 EXAMINER BROOKS: Well, I think that has to
13 be the primary issue.

14 MR. FELDEWERT: And I think that is the
15 only issue that has been properly put before the
16 Division. So that's my take on it.

17 EXAMINER BROOKS: Well, I tend to assume
18 that if the Division determined the amount of reasonable
19 costs -- I'm not sure we're going to be able to do so in
20 the record of this case, but we haven't heard the whole
21 case. But I would assume the parties could work out the
22 means of settlement between them --

23 MR. FELDEWERT: Oh, we tried. We sent a
24 letter in August.

25 EXAMINER BROOKS: -- to determine the

1 costs.

2 MR. FELDEWERT: Well, they ignored my
3 letter in August.

4 EXAMINER BROOKS: I think that's all my
5 questions.

6 THE WITNESS: I should follow up with your
7 first question saying why did I make the statement that
8 that the offset shouldn't be made, and I'll refrain from
9 giving a legal opinion and just refer you to the basis
10 of that comment or opinion.

11 In the order, on page 4 of 6, Provision 11
12 talks to the -- the setting up of the hearing and if
13 there is an objection, within 45 days, that the Division
14 will determine the reasonable costs after public notice
15 and hearing.

16 Q. (BY EXAMINER BROOKS) Exactly.

17 A. The next paragraph says, "Within 60 days
18 following determination of reasonable cost, any pool
19 working interest owner who has paid its share of
20 estimated cost in advance as provided above shall pay to
21 the operator its share of the amount that reasonable
22 well costs exceed estimated well costs and shall receive
23 from the operator the amount, if anything, that the
24 estimated well cost it has paid exceeds its share of
25 reasonable well costs."

1 Therefore, if I made the statement that we
2 stopped paying our bills, I'll put it in proper context.
3 When I came back and became a more active role in this
4 process, I saw that we paid, as required by the order,
5 our share of estimated -- estimated well costs.

6 Q. Right.

7 A. Matter of fact, we paid more than our share
8 because they were paying, actually, JIBs when COG hadn't
9 even credited the prepayment. However, when I came
10 back, I said, According to the reading, until there has
11 been a hearing and reasonable well costs have been
12 established, we're not obligated to pay any additional
13 reasonable costs. Conversely, COG's not required to
14 reimburse us. That is a possibility, to determine that
15 they owe us money back.

16 So the natural flow -- and beg my pardon.
17 I'm just reading this. I have interpreted it based on
18 my knowledge and the facts and applied the facts to
19 reading of the order. So the hearing takes place on
20 reasonable costs. I have, personally, a little
21 difficulty separating what is reasonable and, at the
22 same time, not talk about have we fulfilled all our
23 obligations. I will make -- I've been timid and coy in
24 making an opinion. I will make that opinion according
25 to my business background of 40 years. We have paid and

1 fulfilled every obligation that we had to COG on paying
2 drilling and completing and LOE costs. So we just
3 didn't stop paying our bills because we don't want to
4 pay our bills. We made a business -- accurate business
5 decision. I made the recommendation based on that
6 paragraph.

7 And if you could endure with me for just a
8 little bit longer, going to the next page, page 5 of 6,
9 Provision 15, that we've referred to, I've referred to a
10 couple of times today, the last part of that, when it
11 says, "The operator's authorized to withhold from
12 production the proportionate share of both the
13 supervision charges and the actual expenditures required
14 for operating the well, not in excess of what are
15 reasonable, attributable to the pooled working interest
16 owner." Until such time those are being reasonable, I
17 read that as yeah, they could perhaps net LOE if it's
18 deemed to be reasonable.

19 But, again, I'm just reading words and
20 giving -- making application of the facts to the
21 situation. And I just wanted not to leave the subject
22 before I brought those issues back up again.

23 Q. Well, I commend you on the fact that you're
24 giving a business opinion, but it's also pretty good
25 legal argument of the issue before us.

1 But I believe Mr. Feldewert's position -- I
2 don't need to give you a chance to respond, do I, since
3 your position is the issue is not even before us --

4 MR. FELDEWERT: Correct.

5 EXAMINER BROOKS: Which I think is actually
6 correct, because until we determine what reasonable
7 costs are, the question of payment of them doesn't
8 really arise one way or the other.

9 MR. FELDEWERT: Well -- and like I said
10 before, there has been no issue raised about lease
11 operating expenses. That has not been pled.

12 EXAMINER BROOKS: I think that's pretty
13 well fleshed out.

14 Okay. I will give it back to the Examiner.

15 EXAMINER DAWSON: Okay. Mr. Jones, do you
16 have questions?

17 EXAMINER JONES: I have two more questions.
18 And after Mr. Brooks, I'm not sure I shouldn't be asking
19 this as to the attorney.

20 RE CROSS EXAMINATION

21 BY EXAMINER JONES:

22 Q. But you are an attorney.

23 A. Right. But I'm not here to give a legal
24 opinion. I'm here to give a business opinion.

25 Q. Okay. But you're applying for a determination

1 of reasonable well costs. So in 2014, prices started --
2 product prices dropped off, so -- and things have been
3 in flux since then. So at what time period do you want
4 to be compared to reasonable? Do you want to be
5 compared to 2015? Is that --

6 A. Again, that would be a part of the opinion
7 being rendered by our expert engineer.

8 Q. Okay.

9 A. But to give my business opinion and -- with
10 that big qualification, is to compare apples to apples.
11 As you well know, the product price goes down. There is
12 more pipe on the place. We should be talking about
13 costs going down, not going up, necessarily. So my
14 whole point of it is, as a business opinion, I would
15 look at this in hopes of finding 2015 prices or 2014 AFE
16 estimates. Compared to 2016, they have had some sort of
17 drop, and I base that on my experience of other
18 drilling, with other clients and everything I can get my
19 hands on relative to what the oil and gas periodicals
20 are reporting, with excess rigs, excess production,
21 excess labor. And so, again, the qualified expert will
22 address it specifically, but from a general business
23 standpoint, that's the approach that I would look for
24 and hope for.

25 Q. Okay. What about precedent cases or times and

1 cases where the Division or the Commission in New Mexico
2 has made a determination of reasonable well costs? Did
3 you look at those, or do you have any of those in mind?

4 A. I don't.

5 Q. What about in another state that does
6 compulsory pooling, like Oklahoma?

7 A. I have not.

8 And, again, I did some research to that
9 effect. I try and stop it at some point and rely on
10 Mr. Padilla. And, again, I'm paraphrasing our
11 conversations here over a period of time.

12 EXAMINER BROOKS: As I think you may
13 know -- and I'm sure you do -- as an attorney, before
14 you start reciting conversations between you and --

15 THE WITNESS: Privilege.

16 EXAMINER BROOKS: -- and Mr. Padilla, I
17 want to admonish you about the possibility of waiving
18 attorney-client privilege.

19 THE WITNESS: Thank you.

20 MR. FELDEWERT: No, you don't have to do
21 that.

22 (Laughter.)

23 EXAMINER JONES: Okay. Thank you.

24

25

1 CROSS-EXAMINATION

2 BY EXAMINER DAWSON:

3 Q. Okay. Mr. Grappe, in looking at your -- the
4 summary of COG revenue netting against Ivar The Boneless
5 11H, Ard's Exhibit Number 6, and you have these other
6 wells on here, the Puckett 12 Federal 7H, there is
7 roughly eight extra wells on this breakdown?

8 A. Yes, sir.

9 Q. Are those -- those wells that are on this
10 breakdown, are those -- are those wells producing from
11 the same surface facilities as this well?

12 A. No.

13 Q. They aren't?

14 A. No.

15 Q. Are they in the same section as this well?

16 A. No.

17 Q. They're not in the same section?

18 A. No. They're not in the same township.

19 Q. So your feelings are that these wells are
20 totally unaffiliated with this Ivar the Boneless Federal
21 #11H?

22 A. Yes.

23 Q. And you said you are a legal and land expert?

24 A. I'm qualifying myself today as a businessman,
25 giving business opinions. And as I've been admonished a

1 couple of times or called, I'm not giving legal opinions
2 today.

3 Q. And looking at Ard Energy's Exhibit Number 3,
4 which is the AFE of the well in contention, whenever you
5 look at an AFE, you're talking -- you're contesting the
6 drilling -- reasonable drilling costs, correct, on this
7 particular Ivar well?

8 A. The costs that are on Exhibit 3 --

9 Q. Yes.

10 A. -- are only those costs for drilling and
11 completing up to a point on the Ivar 11H. What is at
12 issue here is what has been submitted under Exhibit 4,
13 which is the total well cost billed by COG to date,
14 which is not the 4.170-and-some-odd dollars. It's
15 \$4,424,887.99.

16 EXAMINER BROOKS: And that's including your
17 operating costs?

18 THE WITNESS: No. Including operating
19 costs, that's an additional \$503,601.77. Rough
20 estimates, that's approaching \$5 million at issue here.

21 Q. (BY EXAMINER DAWSON) But your application does
22 not address the operating costs, just the drilling
23 costs?

24 A. Frankly, I didn't prepare it. I looked at. It
25 I don't have it in front me. And I'll leave that to

1 legal to respond as to whether or not we are covered in
2 that regard.

3 Q. Okay. And in the AFE, on the drilling and
4 completion costs, those costs on the AFE also include
5 the land costs or the title opinions, that kind of
6 thing?

7 A. They have it up to a point. Since it's
8 drilling and completing, it depends on the AFE. And
9 every AFE stands on its own. It's whoever the draft
10 drawer is, that sort of thing. Most AFEs have
11 land-associated costs in them. As reflected here --

12 Q. On Exhibit 3?

13 A. -- on Exhibit 3 -- pardon me. I have to look
14 for it for a minute. It's under the second blue line,
15 if you look down, "Titles and Permits." The initial
16 budgeted -- initial AFE was \$11,000. The cost reported
17 by COG, as of whatever they included on the report as of
18 February of 2016, was \$215,336.65. That was an overrun
19 of what initially had been estimated, of 204,336.65.

20 Q. Okay. When I read that, that kind of stood out
21 to me because that's a pretty big overage on costs. And
22 I also looked up above there to -- let's see. Let me
23 find it. I'm sorry. Down below there --

24 A. Yes, sir.

25 Q. -- line number 225, the contract labor --

1 A. Yes, sir.

2 Q. -- that was estimated at 5,000 on the initial
3 AFE, and they spent \$306,898.07, an overage of
4 \$201,898.07. Is it, in your opinion -- that contract
5 labor, was that for land work being done out there? Is
6 that what most of that was?

7 A. When I reviewed this in general and then when I
8 reviewed it with our expert, the way we subdivided this
9 is that I would take care of the landline item, and he
10 would address the contract labor item.

11 Q. Okay. Those are the main two items, when I
12 looked at this AFE, that looked like there was an
13 overage. So I just wanted to ask those questions about
14 those two items mainly, because that's over \$400,000.

15 A. Yes, sir. Unfortunately, because we had this
16 (indicating). And this part is already presented as the
17 record of the OCD. I did this (indicating) to say,
18 Okay, what is the update to this (indicating), so I
19 could appreciate and my consultant could appreciate
20 where are we on the costs today. And with the overall
21 drilling and completion now at \$4,424,887.99 compared to
22 4,170,604.19, you have an additional consideration for
23 drilling and completing costs. And just off the top of
24 my head, it's \$250,000.

25 So, again, I'm referring to these. We're

1 using them as exhibits because that's part of the OCD
2 record. I brought in this (indicating) as an effort to
3 say that this is based on COG's JIBs. This is the
4 numbers that we'll need to be addressing relative to the
5 reasonableness of what was spent. And, again, that
6 doesn't include LOE. LOE is a separate issue that can
7 be addressed whatever it's appropriate.

8 Q. Do you know if Ard is still receiving invoices
9 for drilling and completing the well, on the Ivar well?

10 A. This is up to the minute.

11 Q. Up to the minute?

12 A. This is as of September the 13th. And I was
13 there last weekend, and as of last weekend, none had
14 been received in addition to this.

15 Q. Okay. All right. That's all the questions I
16 have. Thank you.

17 A. You're welcome.

18 EXAMINER BROOKS: Okay. Before this
19 witness is excused, I would be inclined -- if you are to
20 admit that summary -- that list of names he wants to
21 call our attention to, if he identifies it and if you're
22 disposed to offer it, it's up to you. Tell me if you
23 want to offer it.

24 MR. PADILLA: Certainly if it helps the
25 Division.

1 EXAMINER BROOKS: Yeah. I think he's
2 testified to its significance such as it has, unless
3 there is something on it I don't know about.

4 EXAMINER JONES: What exhibit will this be?

5 MR. PADILLA: This will be Exhibit 10.

6 EXAMINER JONES: Do you want me to label it
7 and give --

8 MR. FELDEWERT: This is exhibit what? I'm
9 sorry.

10 EXAMINER DAWSON: This is Ard Exhibit
11 Number 10.

12 Do you have -- let's go over the exhibit.

13 EXAMINER BROOKS: Identify it for the
14 record.

15 REDIRECT EXAMINATION

16 BY MR. PADILLA:

17 Q. Mr. Grappe, what is Exhibit 10?

18 A. As the title indicates, it's a summary of
19 COG -- our discovery that I determined to be potentially
20 pertaining to the cost for the Ivar the Boneless #11H
21 from the discovery presented by COG in this case,
22 identified through the package of the materials of
23 COG/ARD Number 1 through 500, the individual sheets.

24 Q. That would be Exhibit 8, right?

25 A. The detail of the 500 would be Exhibit 8,

1 right. Yes. And there I went through -- after going
2 through it a number of times, but specifically recently
3 three times and pulled those sheets, anything that
4 related to the section -- Section 15, to Ivar the
5 Boneless, regardless whether it was the west half of the
6 west half -- there are a few that identify Ivar the
7 Boneless of the west half-west half. A number of them
8 just say "Section 15." Some of them just say "Ivar the
9 Boneless."

10 RE CROSS EXAMINATION

11 BY EXAMINER BROOKS:

12 Q. So many of them, you don't know whether they --
13 to what extent they relate to this particular well?

14 A. Correct.

15 Q. And on those you've identified as relating to
16 this particular well, are you giving an opinion that
17 they're unreasonable?

18 A. I can't give you an opinion one way or the
19 other without further information.

20 Q. That's all I have.

21 EXAMINER BROOKS: Do you wish to tender the
22 exhibit, Mr. Padilla?

23 MR. PADILLA: Yes. I offer Exhibit 10 into
24 evidence.

25 EXAMINER DAWSON: Any objection?

1 MR. FELDEWERT: No objection.

2 EXAMINER DAWSON: No objection.

3 Ard Exhibit 10 will be admitted to the
4 record.

5 (Ard Energy, LLC Exhibit Number 10 is
6 offered and admitted into evidence.)

7 EXAMINER DAWSON: At this point we'll take
8 a five-minute break. It's ten after 2:00. We'll be
9 back at 2:00 -- be back about 2:17. Thank you.

10 (Recess 2:10 p.m. to 2:17 p.m.)

11 EXAMINER DAWSON: We will go back on the
12 record now for Case Number 15185, re-opened.

13 And I had one more question of Mr. Grappe.
14 Sorry.

15 THE WITNESS: That's all right.

16 RE CROSS EXAMINATION

17 BY EXAMINER DAWSON:

18 Q. On Exhibit Number 10 --

19 A. Yes, sir.

20 Q. -- when you go into Exhibit Number 10 and you
21 look at those COG/ARD numbers, I'm assuming these are
22 the page numbers you're referring to?

23 A. It's stamped page numbers at the bottom, right.

24 Q. And you have on -- for instance, I'm looking at
25 the first one, number five, COG/ARD Number 5, under

1 Exhibit Number 8. And down here on the bottom where I
2 see "15, 17 South, 32 East" --

3 A. Yes, sir.

4 Q. -- are you -- are you the person that put "Ivar
5 The Boneless Fed #1H"?

6 A. I made no marks on these exhibits.

7 Q. So somebody saw that legal description there --

8 A. I assume. But as kind of the base that I used
9 criteria to pull it, it had the description,
10 notwithstanding the notation of "Ivar the Boneless."
11 See, I pulled -- I hope -- everything that is related to
12 Section 15, period. That helped me with that. So
13 that's why number five is in there.

14 Q. Okay. That's all the questions I have. Thank
15 you.

16 MR. FELDEWERT: Mr. Examiner, may I ask a
17 question to this exhibit?

18 EXAMINER DAWSON: Yes, you may.

19 RECROSS EXAMINATION

20 BY MR. FELDEWERT:

21 Q. Mr. Grappe, these pages identified on here,
22 they are for purposes of referring to Exhibit Number 8,
23 right?

24 A. Yes.

25 Q. Which is labeled "COG/ARD 1 through 500"?

1 A. Correct.

2 Q. Okay. And do you recall -- do you know,
3 Mr. Grappe, that these were produced by my office with
4 the statement that these documents and invoices related
5 to land matters for the Ivar the Boneless Federal well
6 11H? Do you recall that?

7 A. I recall the letter. I don't see it right now,
8 at the moment. I do recall it. You showed it to me
9 this morning.

10 Q. And we told you that we produced these for the
11 Ivar the Boneless 11H, correct?

12 A. Correct.

13 Q. All right. That's all I have.

14 EXAMINER BROOKS: No questions.

15 EXAMINER DAWSON: Okay. Mr. Padilla, you
16 may call your next witness.

17 MR. PADILLA: Call Steve Morris at this
18 time.

19 STEVEN W. MORRIS,
20 after having been previously sworn under oath, was
21 questioned and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. PADILLA:

24 Q. Mr. Morris, please state your name.

25 A. Steven Wayne Morris.

1 Q. Where do you live?

2 A. Calgary, Alberta.

3 Q. Is that in Canada?

4 A. Yes, it is.

5 Q. Do you work in the United States?

6 A. Yes, I do.

7 Q. Where in the United States are you
8 headquartered?

9 A. Our office is in Denton, Texas.

10 Q. Mr. Morris, have you testified before the Oil
11 Conservation Division in the past?

12 A. No, I haven't.

13 Q. Have you testified before the -- well, let me
14 ask you first. What do you do?

15 A. I'm an engineer and vice president of MOJO
16 Energy Group.

17 Q. And I take it, that's a petroleum engineer?

18 A. Yes.

19 Q. Have you testified before the Texas Railroad
20 Commission on regulatory matters?

21 A. Yes, I have.

22 Q. Have you been accepted -- have your credentials
23 been accepted there as a matter of record as a petroleum
24 engineer?

25 A. Yes, as well as the AUB in Alberta.

1 Q. Okay. Let me ask you to give us your
2 educational background.

3 A. I have a bachelor's of science in petroleum
4 engineering from Gordon University. I have also
5 completed all the curriculum for the master's program.
6 I have yet to write the thesis and take the final
7 examination.

8 Q. Tell us about your experience in the oil and
9 gas industry.

10 A. I've been in the oil and gas industry for 25
11 years. I started when I was 17. I started out on the
12 drilling rigs, and I worked my way up from a roughneck
13 to a driller, then went to Directional Drilling as a
14 company man.

15 At age 26 is when I went to school for my
16 bachelor of science in petroleum engineering. I
17 received that when I was 30 and then became an engineer
18 and started doing engineering project management and
19 then opening up my own company as vice president with a
20 business partner. I've worked in the capacity of
21 virtually every position on the drilling rig itself and
22 the supervisory positions, as well as offshore and on
23 barges.

24 Q. What experience do you have with AFEs?

25 A. I've created hundreds, probably a thousand AFEs

1 in my career, very extensive AFEs, ranging from platform
2 drilling, pad drilling to individual wells. The
3 majority of them -- I would say 75 percent were for
4 horizontal wells. Only 5 percent of my experience is
5 with vertical wells.

6 Q. Have you drilled or written any AFEs for Yeso
7 wells?

8 A. Yes, I have. In the last four years, I've
9 written AFEs for 15.

10 Q. 15 wells?

11 A. 15 Yeso wells; as well as with those 15, 12 I
12 drilled and completed and put on production.

13 MR. PADILLA: I tender Mr. Morris as an
14 expert in petroleum engineering.

15 MR. FELDEWERT: I just have one question,
16 if I may, or a couple of questions.

17 VOIR DIRE EXAMINATION

18 BY MR. FELDEWERT:

19 Q. Mr. Morris, vice president of what?

20 A. MOJO Energy Group, L.P., and in this case,
21 Canada.

22 Q. And you're in Canada?

23 A. The LP is in the United States, but it's based
24 out of Canada. And the Inc. is based out of Denton.
25 They're two separate entities.

1 Q. And you said you created AFEs. So these are
2 estimated costs --

3 A. Correct.

4 Q. -- for the Yeso wells?

5 A. Correct.

6 Q. What area of the country?

7 A. All over southeast New Mexico.

8 Q. Southeast New Mexico?

9 A. Yes.

10 Q. So you're familiar then with AFEs for the Yeso
11 well?

12 A. Correct.

13 MR. FELDEWERT: Okay. No further
14 questions.

15 No objection.

16 EXAMINER DAWSON: No objection? He is
17 admitted as an expert.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. PADILLA:

20 Q. Mr. Morris, what did you do to prepare for this
21 hearing today? What materials did you review?

22 A. For this hearing, what I did initially is I was
23 given the JIBs and an AFE. I initially took the AFE,
24 reviewed all of the line items and then went into my
25 historical data to pull up vendor bids -- that's how I

1 create an assessment -- and see if those bids correlated
2 with what they had in their AFE, which the AFE of the
3 3,001,000 -- I had three AFEs, 3.3, 3.4 and 3.001. I
4 just took the line items out of, I believe, the 3.001
5 just to see how they would correlate with what I had for
6 bids at that time, in the same time frame as the AFE was
7 created out of.

8 Q. Let's be specific on the time frame. What time
9 frame were you looking at?

10 A. That would have been mid-2015, from about April
11 to August, when the well was drilled. I looked anywhere
12 in there for pricing, if there was a pricing trend
13 decrease and to see if there was a trend and which costs
14 applied to that AFE.

15 Q. Was there a pricing trend at that time?

16 A. Prices were going down. The pricing trend
17 wasn't on a monthly basis. It was probably every three
18 months. I could put it to quarterly seeing drops and
19 vendor pricing. Some were more significant than others,
20 depending which quarter and oil prices and people were
21 speculating at the time.

22 Q. And what did you come up with as far as your
23 evaluation of the AFEs?

24 A. When I took the data that I had available from
25 bids from vendors, I took an average cost from the

1 vendors -- I didn't use the lowest or the highest. I
2 took an average because I wasn't sure who they picked
3 for their vendors -- plugged them into there, and I came
4 up with numbers close to the 3.001. It was \$3.1
5 million.

6 Q. What specific items were you looking for from
7 the JIBs?

8 A. So with the JIBs, what I did is I went line
9 item by line item and created a spreadsheet with the AFE
10 line items on it to see if the invoices matched up to
11 see what they had billed, just to make sure the numbers
12 were what we were looking at. My numbers were virtually
13 the same as what was in there. I was off by pennies
14 here and there, and that included fat-fingering a key
15 while I was inputting.

16 What I did notice was there was large cost
17 overruns just in general, which made me wonder if there
18 were any drilling problems that had occurred. I
19 couldn't ascertain if there was any drilling problems by
20 the drilling summary reports. They are very vague. And
21 I had asked to see if we could get the actual drilling
22 reports that the company man on location generates.
23 That could give me a better idea if there were downhole
24 problems, something that was unforeseen that happens in
25 the oil fields, give me a reason to see these cost

1 overruns.

2 Q. Was there anything that you saw that led you to
3 believe that there may have been any legitimate reason
4 for cost overruns?

5 A. No. From the data that we were provided, I
6 couldn't find any legitimate reason to see the overruns
7 we're we were seeing.

8 Typically when an AFE is created, you'll
9 have your hard numbers from your vendors. And an
10 engineer will always have those a little bit because we
11 know it's not a perfect world. We know stuff can
12 happen. So the intangible items typically are padded a
13 little heavier than the tangible, because the
14 tangible -- when you get a quote for, say, a wellhead,
15 you're paying that price. There's not going to be much
16 movement, so you don't pad it that much. As well, you
17 have your contingency on the AFE, which is between 5 and
18 10 percent, depending on the operator.

19 So to see a cost overrun on the order of
20 2-and-a-half to 5 percent is not understandable to me.
21 I don't see how it's possible if there are no unforeseen
22 downhole problems, i.e., a twisting off and having to do
23 a fishing job or a heavy lost circulation zone.
24 Something of that nature would give me a reason to see
25 why there would be cost overruns, but I didn't see any

1 of that with the data that we were provided.

2 Q. Did you request from Mr. Grappe additional
3 information?

4 A. Yes. I had requested that we acquire 59
5 specific invoices, as well as the detailed drilling
6 reports. Subsequently, I received an email that was
7 forwarded to me from Mr. Grappe that had come from COG
8 stating that Ard had received all it's entitled to.

9 Q. And --

10 A. I then told Mr. Grappe that with the drilling
11 summaries that I have, I can't tell if they had any
12 major issues. Most drilling summaries, when they're
13 sent out to the partners, if there are things that
14 happen, they usually don't put it on there. They don't
15 want to show partners that they were having issues. The
16 summary is very vague. It doesn't allow me to see that
17 they went from this depth to this depth in a 24-hour
18 period. Had the detail reports been furnished and there
19 were complex things that happened downhole, I would have
20 been able to pull that out of there and apply a value to
21 it based on a spread value, that if their daily drilling
22 costs are 50,000 and this cost them four hours, then I
23 could say, Okay, this is where the cost overrun was.
24 But without those detailed drilling reports, I had no
25 way to tell that.

1 Q. Did you review Exhibit 8? That's the 500
2 pages.

3 A. Yes, I did. When that was supplied to
4 Mr. Grappe and Mr. Grappe forwarded that over to myself,
5 I reviewed all 500 pages. I reviewed about the first 15
6 pages fairly detailed and found that there was nothing
7 of any value in there to me that I could use for
8 anything. So I then scanned through the rest of it to
9 see if I could pull out anything that would flag me to
10 say yes, this page would be of value.

11 Q. Were there any references to the well in
12 question here?

13 A. To the well in question, the only references I
14 saw were handwritten on top of a printed page. Other
15 than that, there was references to the township, range
16 and section, prospect names, but not the actual well
17 name.

18 Q. Did you review the documents submitted pursuant
19 to the subpoena that was issued by the Division that
20 included an Exhibit 9?

21 A. Yes, I reviewed those. There were 298 pages.
22 Of the 298 pages that were supposed to be garnered for
23 the 59 specific invoices I had requested, there was --
24 only 28 of the invoices were in there. Twenty-six were
25 legible. Two of them were not legible. The backup

1 documentation that was also requested was not supplied
2 for a lot of those invoices.

3 What was supplied was an internal billing
4 sheet, is what it looked like to me, from COG and then a
5 little description of what happened, but it didn't make
6 much sense.

7 Typically the vendor -- if a contractor is
8 out there, they have their daily note of from 1:00 to
9 2:00, I did this, and from 2:00 to 3:00, I did this.
10 And that's what I was looking for, to see if the work
11 that they were doing actually pertained to the well,
12 because those costs seem to be fairly exorbitant for
13 what we were seeing they were there for, surveying,
14 contract labor. That was where we had the larger cost
15 overruns. That's the reason I wanted to have the actual
16 invoice from the vendor, with their field ticket, so I
17 could see it was actually applicable to this well.

18 Q. Did you provide the language for the subpoena
19 which states -- asking for, quote, "the detailed
20 drilling reports generated by the company representative
21 on location during drilling operations"?

22 A. Yes. I supplied that exact language to
23 Mr. Grappe and yourself so we could get exactly what I
24 needed

25 Q. We didn't get that?

1 A. No, we did not.

2 Q. When you ask for that sort of thing from other
3 operators, what has been your experience?

4 A. In the past, I've encountered where there have
5 been cost overruns and one operator has challenged -- or
6 the working interest partner has challenged the operator
7 and asked me to pay up on that. What I do is I ask them
8 for the drilling reports, and I've never had an issue
9 getting detailed drilling reports. I can't say that
10 I've ever had to ask more than once. Those are usually
11 supplied. It's to their benefit most of the time
12 because then I can pick out -- even if it's an hour a
13 day, still showing, like, \$2,000 per hour for a spread
14 rate, I can say, Yeah, there was \$50,000 accumulated
15 over a 25-day period. I can't really go after them and
16 say that they're in the wrong. So typically they
17 surrender those to me because it's to their benefit.

18 Q. In looking through Exhibit 9, you just stated
19 that you didn't get the backup even for some of those
20 items.

21 A. Correct.

22 Q. Why is that backup necessary?

23 A. For example, with surveying, an invoice will
24 say, We went to the location and surveyed, but it
25 doesn't say what they surveyed. And because the

1 surveying costs were quite high, about four times what
2 they should have been, it made me suspect to what they
3 were actually going out and surveying. So they went out
4 to the location, but they didn't say what they surveyed.
5 Did they survey a production facility, a frac pond,
6 something that would have had to have been billed out to
7 multiple wells that it's used on. I just needed that
8 documentation so I could determine what the surveying
9 charges were.

10 As well as the contract labor, that there,
11 I would like to see where the laborers were out there,
12 what they did from this time to this time. Were they
13 building something for the facilities for that well, or
14 were they building something for the facilities for a
15 different well?

16 Q. How about the tankage, tanks, those sorts of
17 things?

18 A. Yes, as well like the tankage. A well is only
19 going to require so much tankage. And by what we were
20 supplied with and what they ordered the tanks, there
21 were a lots more tanks ordered than required by this
22 well for its production facility, which I couldn't
23 understand. I've done a lot of pad work and done
24 central production facilities --

25 Q. Have you designed central production

1 facilities?

2 A. Yes, numerous ones. And when we design them,
3 we design the battery for an individual well. Once that
4 well is online and we're drilling the next well and we
5 see what the production numbers are, that allows us to
6 know what the subsequent wells are going to require for
7 tankage.

8 When the subsequent well is drilled, you
9 add your tankage, your meter separator, heater treater
10 and plummet in. I've never seen where we buy
11 everything all for the first well, because we don't even
12 know if that first well is going to produce. So as a
13 prudent operator, we wouldn't go and purchase all this
14 equipment without knowing that first well was even going
15 to do anything. It just wouldn't make any sense.

16 Q. What did you see in this case with regard to
17 tankage?

18 A. They bought tanks for numerous wells. They put
19 in flowlines for numerous wells. They bought heater
20 treaters for numerous wells.

21 Q. How about electrical equipment?

22 A. Electrical equipment, couplings and fittings,
23 those were all bought, purchased, in my belief, for
24 numerous wells. There was just too much of it to be
25 used on an individual production facility for one well.

1 Q. From the materials that you did see, were you
2 able to separate or segregate any costs attributable
3 only for the well in question?

4 A. That, I couldn't do because I did not have
5 their production facility design for an individual well.
6 All I could do is say what I would design for a
7 production facility, but I don't think that would be --
8 be of any value for this because they would have already
9 had that facility cost in their AFE based on what they
10 planned to have for the individual well battery.

11 Q. So theoretically, they could have charged all
12 this equipment to -- extra equipment to the Ivar the
13 Boneless #11 well?

14 A. It appears that all of the extra equipment,
15 that I believe is extra equipment, has been charged to
16 the Ivar the Boneless well, according to the JIB
17 statements and the invoices that were provided in
18 Exhibit Number 9.

19 Q. In order to really ascertain how costs were
20 applied in this case, in the drilling of this well, what
21 would you need to do at this point?

22 A. At this point, for me to furnish anything that
23 would give a true valuation of everything, I would
24 require all of the drilling reports, all of the actual
25 billing invoices from the vendors, with their field

1 ticket backup. From there, I would be able to ascertain
2 what charges would have been -- or should be allocated
3 to this well and what should not be allocated to this
4 well.

5 Q. Is that essentially a form of an audit?

6 A. It would be a -- a full audit would be
7 required.

8 Q. So were you able to determine the cost of the
9 casing from what you saw?

10 A. Yes. In the AFEs, I saw the cost of the
11 casing, and I believe the surface casing was almost
12 double the cost. Usually if it's a tangible item, that
13 would have had a hard figure, where they had gone in
14 there and gotten bids from vendors, picked the vendor
15 they were going to use and put that number into the AFE.
16 I believe \$18,000 was the AFE'd amount, and the actual
17 cost was 27,900 and change. So it was considerably more
18 than what it should have been. And I couldn't
19 understand why that was, when it should have been a hard
20 number from a vendor that added 2-and-a-half percent
21 padding in case he drilled 150 feet to get to your
22 landing point.

23 Q. How about stimulation?

24 A. Stimulation --

25 Q. Were you able to -- let me ask you this: Were

1 you able to determine how much was spent on Ivar the
2 Boneless #11 well in stimulation?

3 A. No. I can't make that determination without
4 having the actual invoices and the field tickets. Just
5 according to the JIBs, I just know a value was applied.
6 The value that was applied was over what the AFE was.
7 Is it out of line for what the time period was when it
8 was happening? It was high, but it wasn't exorbitantly
9 high like the total cost of this well is. Was it
10 attributable? Yes. It did attribute to some of the
11 cost overrun, but I can't ascertain as to why the
12 overrun there was without the data reports from the
13 completions operation and the actual invoice.

14 Q. Mr. Morris, let me direct your attention to
15 Exhibit Number 4, which is the spreadsheet.

16 EXAMINER DAWSON: Are you talking about
17 Ard's Exhibit Number 4?

18 MR. PADILLA: Ard's Exhibit 4.

19 EXAMINER DAWSON: Okay.

20 Q. (BY MR. PADILLA) Mr. Morris, do you have an
21 opinion as to the reasonableness of the total well costs
22 of \$4,424,887.99?

23 A. In my opinion, that cost there is not
24 reasonable for the well that was drilled. If I take
25 that cost for the well and the LOE, I get close to

1 \$5 million. I have looked at the production numbers of
2 what this well are, and I believe it was about 92,000
3 barrels of oil that was produced up to the last showing
4 on the OCD. With an average price of \$40 per barrel is
5 what was used in the calculation, and then the gas, I
6 used \$1.96 as an average price. This well now is
7 sitting at \$3.2 million with all the revenue it has
8 generated. With the decline that's taken -- I applied
9 the same decline curves it had for this last 12-month
10 period. This well -- I can't reasonably say that this
11 well will even have a return on investment.

12 Q. But in terms of drilling costs, 4.4 million,
13 it's your opinion that that is unreasonable?

14 A. That cost is unreasonable for this well.

15 Q. What parameters would you give given your own
16 estimate of the \$3.1 million for drilling a similar
17 well? What flexibility would you give to your figure?

18 A. Barring no downhole problems, unforeseen
19 issues, if the well went without any hiccups, 3.3,
20 \$3.4 million at most would be a reasonable value for the
21 well, if it went as it should have. And as I can
22 ascertain from the drilling summaries, there was no
23 major issues that happened, so there shouldn't have been
24 a major cost overrun.

25 Q. How about the LOE column?

1 A. The LOE seems very high. 500,000 over a
2 12-month period is just under \$41,000 a month. For a
3 Yeso well, I would suspect -- in the first three months,
4 you're going to have a little bit higher, but over a
5 12-month average, you shouldn't be over \$5,400 a month
6 on the top end.

7 Q. Do you have any --

8 A. Without having the actual detail billing,
9 again, on the LOE or the AFE'd amounts, I can't tell if
10 what they're putting to LOE possibly should have been
11 allocated to AFE, but because there is such a large
12 overrun on the cost already, that they went and put it
13 into LOE to keep it away from that AFE.

14 Q. So you would need to --

15 A. A full audit, and I would be able to tell if
16 certain items were allocated to the AFE, to the drilling
17 and completion costs.

18 Q. So theoretically, this 4.4 million could be
19 even higher?

20 A. It could be higher, and the LOE could be lower.
21 I'm tending to think that that's the case. If it's
22 not -- if the LOE is actually accurate, I don't see why
23 the operator would continue to drill wells when they
24 have such a high LOE. It wouldn't make sense. It
25 wouldn't make economic sense to drill these wells.

1 Q. And you're talking about the other infill wells
2 that you've --

3 A. The other infill wells, yes. If they have the
4 same LOE as this one, then this commodity environment to
5 drill these wells -- this would tell me that these wells
6 require a lot higher commodity rate in order to make
7 them an economically viable well to drill, which I don't
8 believe is true because there are other operators that I
9 know of and that I am doing work for that are drilling
10 Yeso wells and they are economic, and their LOE is not
11 nearly this high.

12 MR. PADILLA: Pass the witness,
13 Mr. Examiner.

14 EXAMINER DAWSON: Mr. Feldewert.

15 CROSS-EXAMINATION

16 BY MR. FELDEWERT:

17 Q. Mr. Morris, I want to make sure I understood
18 you about the question from Mr. Padilla if you would
19 agree that 3.4 million is reasonable for drilling and
20 completing the Ivar the Boneless.

21 A. Actual costs, yes. I could see it going as
22 high as that.

23 Q. And you also testified that in your experience,
24 you would see a range -- you can see a range of
25 variances up to 5 percent; is that right?

1 A. About 2-and-a-half to 5 percent.

2 Q. 2-and-a-half to 5 percent.

3 So then if I look at -- do you have our
4 package up there?

5 A. Yes, I do.

6 Q. If I look at what's been marked as COG Exhibit
7 Number 4, which is the AFE that Mr. Ard approved in May
8 of 2015 for 3.4 million to drill and complete this well,
9 you would agree that that is a reasonable cost?

10 A. That's not what I'm looking at. I'm looking at
11 4.4 million as what the well cost is. This is just an
12 estimated cost. It's not what the cost is.

13 Q. I understand.

14 But you'd agree that 3.4 million is a
15 reasonable estimate for drilling and completing the
16 well?

17 A. That, I believe, is a little bit high, on the
18 high end. I still believe that that would be
19 reasonable, but anything above that would not be based
20 on my AFE that I was able to generate at 3.1 and having
21 it go up to that 300,000.

22 Q. And you're aware, are you not, that part of the
23 additional costs associated with the well was related to
24 a title opinion?

25 A. Yes, I'm aware.

1 Q. Okay. Are you familiar with that -- with that
2 particular acreage and the nature of the title issues
3 associated with that acreage?

4 A. No, I'm not.

5 Q. Okay. So you don't have any reason to dispute
6 the expense that was incurred to generate a title
7 opinion of that magnitude?

8 A. My reason was that they estimated it at
9 \$11,000. If they estimate it at \$11,000, it should have
10 been near that amount. As high as it is, they should
11 have foreknown that it was going to be a problem and
12 would require a lot more work and put it in the AFE.

13 Q. You're supposed to know what the title looks
14 like before they have somebody examine it? Is that your
15 testimony?

16 A. Generally speaking, they're going to have a
17 good idea of it.

18 Q. Okay. But you don't know anything about this
19 case?

20 A. When I ask to have title work done, I will ask
21 the title worker and they will tell me, This one here is
22 going to cost you about this much.

23 Q. Were you aware that --

24 A. -- if they didn't have a lawyer doing it.

25 Q. Were you aware that this particular title in

1 this acreage, that title opinion was over 200 pages?

2 A. Yes.

3 Q. So it was an extensive title analysis, correct?

4 A. Correct.

5 Q. Those are not cheap?

6 A. Correct.

7 Q. And you're aware, are you not, from the letter
8 that we sent in August, that the additional overrun for
9 this particular well was the result of the installation
10 of surface facilities to accommodate not only this well,
11 but infill wells, also?

12 A. A portion of the overrun would be attributable
13 to that, is what the letter is saying.

14 Q. Okay. So we informed you that the amount of
15 767,000, roughly, was the cost to install surface
16 facilities to accommodate not only this well, but also
17 the infill wells being drilled within that spacing unit?

18 A. I can't make judgment on that because I was not
19 provided the actual invoices with the daily tickets
20 showing what the work actually performed was. So I
21 can't tell you that. I don't know if that's correct or
22 not.

23 Q. Okay. So you haven't done any kind of
24 evaluation as to the reasonableness of the surface
25 facility costs?

1 A. No. What I examined was the JIBs. And the
2 JIBs are showing surface facility costs at X amount of
3 dollars, which are not reasonable. And they're not
4 reasonable because the surface facilities should not
5 have all been completed for all the multiple wells all
6 at one time. That's not reasonable to do. It's not
7 prudent to do.

8 Q. I see. So you think -- you think that they
9 should just put in surface facilities one well at a
10 time?

11 A. I did not say that.

12 Q. That seems to be what you're saying.

13 A. No, it's not. What I said was is you drill
14 your first well and install the production facility for
15 that well. The only thing you would have in place for a
16 subsequent infill well is the land. You get your berm
17 built, and you have it lined. Every time you drill the
18 well, you would attach your tankage, three-phase meter
19 separator and heater treater. Those do not need to be
20 purchased nor installed at the very beginning of it
21 because you're not going to have any more disturbance or
22 anything happening there. You're going to have acreage
23 there to install while you're completing the well.

24 Q. All right. So if I'm understanding -- well,
25 first of all, let me step back.

1 Would you agree with me that you really
2 don't know what surface facilities you're going to need
3 until you actually drill and complete the well and have
4 some idea of what it's going to produce? Correct?

5 A. You can make an educated guess by offset wells
6 on what you're going to require.

7 Q. Okay. But you really need to know what it's
8 going to produce before you can actually determine what
9 types of surface facilities you need, correct?

10 A. Correct.

11 Q. Okay. Then your beef seems to be that COG
12 should not have installed surface facilities at this
13 location to accommodate the infill wells until they were
14 drilled? Is that your beef?

15 A. They are not required.

16 Q. They're not required.

17 A. They are not required. And the cost savings --

18 Q. But you don't have -- are you saying they were
19 acting improperly --

20 A. Yes.

21 Q. -- and not as a reasonably prudent operator to
22 go ahead and install surface facilities to accommodate
23 infill wells if they know they're going to drill those
24 infill wells?

25 A. Then they're allocating costs for a well that

1 it's not for. Yes.

2 Q. So let's get back --

3 A. It's not reasonable.

4 Q. Okay. So let's get back to that point. So
5 you're concerned with the allocation of these surface
6 facility costs?

7 A. Yeah, surface facility.

8 Q. How would you allocate those surface facility
9 costs that were incurred to put in surface facilities to
10 accommodate not only the initial well, but also three
11 other infill wells in that same spacing unit owned by
12 the same --

13 A. I wouldn't do it.

14 Q. How would you allocate it?

15 A. I would build the first production facility for
16 the well that was drilled, the first well, and all of
17 that would be allocated to that well. When an infill
18 well is drilled, you would add the tankage that's
19 required, the three-phase meter separator, the heater
20 treater and plummet in. Those costs would be allocated
21 to that well. A subsequent well after that would have
22 the exact same thing.

23 Q. So you think that the cost ultimately to put in
24 those surface facilities to accommodate what are now
25 four wells in that spacing unit should be allocated

1 amongst the four wells? Is that your opinion?

2 A. They should be allocated amongst the four wells
3 even in --

4 Q. How would you allocate it?

5 A. Just as I just said.

6 Q. What percentage? Let's say it costs -- let's
7 say it costs \$767,000 to put in the surface facilities,
8 including all the plumbing and all the stuff you just
9 talked about, to accommodate not only the initial well
10 but three subsequent infill wells. Let's say that's
11 \$767,000. How should it be allocated amongst the wells?

12 A. I cannot allocate that.

13 Q. What's that?

14 A. I cannot allocate that.

15 Q. You can't?

16 A. No. No. How would you?

17 Q. That's what I'm asking you. How would you do
18 it?

19 A. You can't. That's why you wouldn't build it
20 that way. The whole point is that the way they went
21 about building this facility was incorrect and
22 irresponsible because they allocated all the costs to an
23 individual well.

24 Had they gone in and built the production
25 facility to accommodate the one well, that is your oil

1 plant, heater treater, three-phase meter separator and
2 the flowlines, couplings, fittings, meters, electronics,
3 then the second well, when it's drilled, you would add
4 two more tanks, possibly three, depending on what the
5 flow rate was on the first well. They would have a
6 better idea of how many tanks would be needed. They
7 would need the meter separator and heater treater and
8 flowlines, which can all be put in afterwards once that
9 well is drilled. And the cost to put in all of that
10 would be allocated to that well. And if it happens to
11 have 100 feet of flowline, then they can allocate feet
12 of flowline.

13 Q. So you would just do it one step at a time?

14 A. That's how it's always done. I've never seen
15 it done like this.

16 Q. Now, with respect to the title opinion, I mean,
17 if it costs \$200,000 to sort out that title in that
18 particular acreage, how would you allocate that?

19 A. I can't touch on that. Mr. Grappe is --

20 Q. He couldn't tell us either. How would you
21 allocate that cost?

22 A. I don't know how it would be allocated because
23 it wasn't actually a title opinion for that well.

24 Q. Well, it was the title opinion for the acreage
25 in which that well is located, correct?

1 A. Correct.

2 How many wells are going to be drilled on
3 that in the next 10 years, 15 years? I have no idea
4 what COG plans for that. All I know is that -- the
5 depth that this well was drilled to and the surface area
6 that it's using is 160-acre spacing unit.

7 Q. Do you do title work?

8 A. No, I do not.

9 Q. So you can't tell us -- I mean, if it costs
10 \$200,000 to figure out the title for this acreage, you
11 can't tell us how you would allocate that cost other
12 than to the first well?

13 A. I have no way of knowing how to allocate it. I
14 don't know how many wells are planned to be drilled on
15 it. I don't know the depths of the wells that would be
16 drilled on it.

17 Q. And you are aware, are you not, that Ard agreed
18 to participate in the first two wells?

19 A. Yes.

20 Q. But not in the latter two wells?

21 A. Correct.

22 Q. Are you aware that since these costs are
23 being -- have been billed for the first well, that Ard
24 is not paying any kind of a risk penalty or anything
25 like that on the cost to install these surface

1 facilities for all four wells and to get the title work
2 to drill the initial well?

3 A. Sorry. Repeat that.

4 Q. Ard is not paying a risk penalty on any of
5 those costs, even though he goes nonconsent on the last
6 two wells?

7 A. I'm not aware of that.

8 Q. Are you aware of Concho's percentage ownership
9 in this spacing unit where these four wells were
10 located?

11 A. No.

12 Q. Are you aware it's 68 percent?

13 A. No.

14 Q. You weren't aware that they had by far the
15 majority of the interest in this spacing unit?

16 A. No. It was irrelevant to my study on this.

17 Q. So as a result, I mean, they bear the brunt of
18 most of the costs that you're complaining about today,
19 correct?

20 A. I would assume so, if that number is correct.
21 I don't know if it is.

22 Q. Are you aware that ConocoPhillips owns 25
23 percent of this spacing unit?

24 A. No. It wasn't relevant.

25 Q. So they were bearing 25 percent of the cost

1 that you're now complaining about?

2 A. Sure, if that's what you say. I don't know.

3 Q. What is Ard's percentage?

4 A. I do not know.

5 Q. Is it 5 percent?

6 A. It was irrelevant to my study.

7 Q. You weren't aware that it's 5 percent?

8 A. I'll repeat myself. I do not know. I was not
9 made aware of any of that.

10 Q. You're aware this is federal acreage?

11 A. Yes.

12 Q. And you're aware that there are additional
13 costs that are imposed when drill surface facilities on
14 federal acreage, correct?

15 A. Yes.

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

18 EXAMINER DAWSON: Do you have any
19 questions?

20 Mr. Padilla, go ahead.

21 REDIRECT EXAMINATION

22 BY MR. PADILLA:

23 Q. Mr. Morris, you were just asked about whether
24 this was federal acreage or not. Knowing that you may
25 have higher environmental standards because it is

1 federal acreage, could that be built into your AFE?

2 A. Yes. It would be built into the AFE.

3 Q. Now, can you explain further why the percentage
4 of ownership is irrelevant to you?

5 A. The percentage of the ownership doesn't mean
6 anything to me because it has no basis on the total well
7 cost. The total well cost is the total well cost.
8 However it's distributed amongst partners has no bearing
9 to me. I am just going to see the reasonable amount of
10 well costs. Is it reasonable for a well to cost \$4.4
11 million for the Yeso well at this depth? And I say, No,
12 it's not. So who bears the burden or brunt of most of
13 the cost doesn't matter to me. That's why I wasn't made
14 aware of it or asked about it. It just comes down to
15 the \$4.4 million. Is that a reasonable well cost? Who
16 pays for it doesn't matter to me. It doesn't have any
17 bearing on what my findings are.

18 Q. Now, the title work could be the same as your
19 description of the surface facilities, how they were
20 done. You don't know where exactly there were title
21 problems, correct?

22 A. No, I don't.

23 Q. You don't know whether the title problems
24 affected the west half of the west half, for example?

25 A. No, I don't. I don't know what was affected,

1 which side or any portion or any depth. I don't know
2 where the problems were encountered.

3 Q. Same thing as trying to figure out whether or
4 not COG encountered any downhole problems?

5 A. No. With the information I was provided, I
6 can't determine whether they had any downhole problems.

7 Q. So it's your opinion that an audit is needed in
8 this case?

9 A. Correct. An audit would be required to figure
10 out all this data missing and get an actual picture of
11 what happened and why the costs overrun so much.

12 MR. PADILLA: I don't have any further
13 questions.

14 EXAMINER DAWSON: Will, do you have any
15 questions?

16 EXAMINER JONES: Yeah.

17 CROSS-EXAMINATION

18 BY EXAMINER JONES:

19 Q. Mr. Morris, it looks like they were drilling on
20 a day rate. Is that what --

21 A. Yes. Yes.

22 Q. So around \$20,000 a day for the rig? Is that
23 about right, 18,000 or something? 160,000, they were
24 estimating?

25 A. About 15,000 a day.

1 Q. Oh. So it was 10 to 11 days or so to drill?

2 A. Let me make -- I'm going to assume it would be
3 around 15-, \$16,000 a day. A well at this depth should
4 be 11, 12 days, somewhere around there.

5 Q. Okay. When you did your AFE, did you base that
6 on a day rate or a footage rate?

7 A. That was based on day rate. And the day rate I
8 had for that time was around 12,000, 12,500 a day.

9 Q. Okay. So how did you come up with that 12,500?

10 A. That was bids that I had from, I believe,
11 neighbors.

12 Q. Okay.

13 A. It was three or four drilling companies.

14 My company, what we do is we go every
15 couple of months and we go to all the vendors. We look
16 at wells that we're not drilling, just wells that are
17 being drilled in the area so we have an accurate idea of
18 what our costs are. A lot of times we just prepare AFEs
19 or we scrutinize AFEs for other operators so we have
20 this data in the data bank, I call it. So we have that
21 for the last four years, five years. We collect it
22 about every two months, bids on casing, day-work
23 contracts, directional drilling, everything you would
24 put into an AFE.

25 Q. Okay. Do you have access to a drilling service

1 that provides drill time plots for wells in this area,
2 or do you use that kind of data?

3 A. Yes, if I have Pason. Yeah. We usually pull
4 up the well reports as long as they've been made public.
5 Some operators don't allow them to be public.

6 Q. But there are services that provide those real
7 time --

8 A. Yes. Yes.

9 Q. Now, if COG or any of these line items had
10 contracts to provide, for instance, the drill pipe or
11 drill collars or the -- you know, maybe even the rig,
12 that would be a deviation from a system like you came up
13 with, wouldn't it? That would cause a variance in
14 the --

15 A. It would. If they had a previous contract with
16 a drilling contractor, they had the rig on contract for
17 18 months and still on that contract, their day rate
18 might not have been that 12,500. They may have been
19 held accountable to the contract at 17- or \$16,000 a
20 day. Correct. I don't know if that was there because I
21 don't have the detailed billing. If I did, I would be
22 able to ascertain that.

23 Q. Okay. Let's see here. The time period that
24 you're looking at, you said you did mid-2015; is that
25 correct?

1 A. Correct. I believe it was -- I pulled from
2 April through -- until August, those months there, and
3 then go ahead and average.

4 Q. Okay. So an arithmetic average. So this was a
5 time of gyrating costs?

6 A. Costs were coming down at that time. I believe
7 in 2015, we saw three cost reductions, major cost
8 reductions. By that, I mean over 5 percent reduction in
9 costs.

10 Q. Okay. Let's see here. As far as possibly
11 getting mixed up on which well gets charged the cost,
12 who would make this decision? I mean, it would be the
13 person signing the tickets, wouldn't it? I mean,
14 whoever the contractor submits the bills to, then the
15 oil field accountant has to assign it to a certain well;
16 is that correct?

17 A. Correct. Typically, the company man on
18 location will have a stamp. He'll stamp and sign it.
19 He'll cost-code it to what he believes. Then it would
20 go into town with an actual invoice. That would just be
21 the field ticket. The field ticket and the invoice are
22 generated by the vendor's office. They come into town,
23 and it will go to the drilling engineer. The drilling
24 engineer would cost-code it to make sure that the
25 company man put the right code, and then push it over to

1 accounting to input into their system.

2 Q. So it sounds like there is a big deviation on
3 the title opinion cost and on this other category. This
4 other category, what do you think that included here?
5 That was a big line item. I think it was -- Mr. Dawson
6 asked about it.

7 EXAMINER JONES: Where was that at, Scott?

8 EXAMINER DAWSON: Number 201 on the AFE
9 category, the 204,000.

10 THE WITNESS: So that's the title and
11 permits.

12 EXAMINER DAWSON: Yes. And then the other
13 one Will is asking about --

14 THE WITNESS: Would be the contract labor.

15 EXAMINER DAWSON: -- would be the contract
16 labor.

17 THE WITNESS: Which is 225.

18 EXAMINER DAWSON: Yes.

19 Q. (BY EXAMINER JONES) Okay. On the LOE -- before
20 I forget, the LOE costs, you were estimating 5,500 a
21 month. Is that that \$7,000 a year or something like
22 that?

23 A. Somewhere around there. The first two or three
24 months are typically higher for LOE, and then it tapers
25 off and then kind of just has that homeostasis line

1 where it will stay there for the rest of the -- that
2 type of pumping system.

3 Q. Yeah. And why is it high for the first -- is
4 it because of the labor costs to bring in the --

5 A. You've got more laborers out there.

6 Q. -- facilities?

7 A. Yeah. You've got more laborers out there.
8 Your production numbers are a lot higher, so you've got
9 pumpers out there more often. Once the well levels off
10 and has its just normal decline happening and everything
11 stabilizes, that's when you get your stabilized costs.

12 Q. Okay. And those are going to depend on the
13 lifting costs and the allocated costs from the --

14 A. Yes.

15 Q. And the lifting costs here, you don't have much
16 water in these wells you're making, or why the lifting
17 cost would change?

18 A. Yeah. The production numbers that I looked at,
19 I believe that the water is three times the oil on these
20 wells.

21 Q. Okay.

22 A. So they were making quite a bit of water.

23 Q. Okay. I think that -- okay. That's 25 percent
24 oil cut then or something. So it's not very good.

25 So it's your testimony that the costs are

1 unreasonable?

2 A. Yes. \$4.4 million for this type of well is
3 unreasonable.

4 Q. Okay. And just for the record, can you
5 reiterate why you said it -- why you say it's
6 unreasonable. You've already said it, but let's have it
7 again here.

8 A. Yeah. You know, when I created or looked at
9 the AFE numbers and I plugged in what I had for averages
10 for that time, I came up with \$3.1 million, which had
11 padding in it. I padded certain portions of it just
12 like I would do if I was going to actually use the
13 invoice for drilling. And from there, a 2 to 5 percent
14 variance, even 10 percent, it can happen, which would
15 give us another 300,000. That would put it to 2.4.
16 3.4 million should be the top end of what this well
17 should have come in at barring no downhole issues, which
18 from the drilling summary, there wasn't any. The days
19 on location lead me to believe that there wasn't any
20 major downhole issues, because days on location weren't
21 much more than I figure they should be.

22 Q. Okay. Thank you.

23 EXAMINER DAWSON: Mr. Brooks.

24

25

1 CROSS-EXAMINATION

2 BY EXAMINER BROOKS:

3 Q. What exhibit number was the actual cost report
4 prepared by COG?

5 A. Exhibit 3.

6 Q. Exhibit 3.

7 I got my exhibits out of order, so it's
8 hard for me to find them.

9 Yeah. Can I borrow that for a minute?

10 Which items on this Exhibit 3 do you
11 consider to be the Actual Amount column? It's the
12 second column. Which items do you consider to be
13 excessive?

14 A. The stimulation and treating. I'm not sure why
15 it went over that much.

16 Q. What line?

17 A. That is 332.

18 Q. 332. Okay.

19 A. Most of the stimulation or frac jobs I've been
20 on, the -- the variance between what was bid out and
21 what was actually charged is typically within 15- to
22 \$25,000. This one here is at \$153,200. So without
23 actually having the completion, I can't say whether
24 that's reasonable or not. Face value, without having
25 the data, it's a little higher than I think it should

1 be. It's not within a reasonable amount.

2 The title and permits, obviously we've
3 touched on that, and that seems to be very unreasonable.

4 Q. Okay. Now, the complexity of a title opinion
5 is kind of outside your area of expertise?

6 A. Correct.

7 Q. And as far as what you would have to examine to
8 make a reasonable examination of, you know, whether
9 you're examining more land or more depths than is
10 necessary to come to an opinion about a proposed well,
11 that would depend on what -- that would depend on the
12 details of that particular title; would it not?

13 A. Correct. And I would defer that to someone
14 else. When I create my AFE, I go to the land department
15 and I say, What I am going to be doing here? Do you
16 have extensive land issues, title issues or -- 11,000 in
17 there. So I would defer to them for that.

18 Q. Okay. Go on with what you were telling us
19 about which items are unreasonable.

20 A. The contract labor line, item 225.

21 Q. 225.

22 Let's see. Which line items have you
23 already given me?

24 A. I've given you 201.

25 Q. 201.

1 A. 332.

2 Q. 332. That's on the next page?

3 A. No, no. 332 is on the first page.

4 Q. 332. Okay. That's the stimulation and
5 treating.

6 Okay. Any others?

7 EXAMINER DAWSON: What was 201?

8 THE WITNESS: Titles and permits.

9 EXAMINER BROOKS: Title.

10 EXAMINER DAWSON: Okay.

11 THE WITNESS: Line 209, just the day-work
12 contracts. There, again, I would need to see if they
13 had a contract in place with a drilling contractor. If
14 not, I think they would -- they've overpaid for that,
15 the rate rig.

16 So line 337, on the first page, which is
17 the truck and forklift and rig mob, and then line 237 on
18 the following page, which is the before casing point and
19 after casing point. Combined between the two is a
20 \$70,000 overage.

21 Q. (BY EXAMINER BROOKS) The 237 is 45, roughly,
22 right?

23 A. 237, they budgeted 58,000 and it went to
24 97,000.

25 Q. What was the other one you combined with that

1 to get to 70?

2 A. That was 337, where they budgeted 50,000 and
3 they went over, 72,000. We've got \$61,000 over.

4 Q. Any other you want to identify?

5 A. Line 512, on page 2.

6 Q. Okay. Heater treater, separator.

7 A. Yes. They budgeted 29,000, and they went to
8 175,000.

9 Q. Okay. That's a pretty big slice.

10 A. Yeah.

11 Line 510, which is the tanks; 511 the
12 flowlines and the pipelines; 513, electrical system and
13 equipment; 515, which is couplings, fittings and valves.

14 Q. That's a big item I see. Wait. I'm on the
15 wrong -- oh, no. \$180,000.

16 A. Line 519, miscellaneous other equipment; line
17 521, surface pumps. They budgeted zero for that and had
18 a charge. I'm unsure why they wouldn't have budgeted
19 anything in that line. As well as line item 522, they
20 didn't budget for any SCADA equipment or
21 instrumentation, which I find odd. I don't know why
22 they wouldn't have budgeted that. Most wells -- almost
23 every well I've done has that. As well as line 242,
24 which is closer to the top of page 2, that's
25 miscellaneous. The budget was zero, and that was

1 80,000.

2 And, again, without the actual bills, I'm
3 unsure if the items that were billed to that budget
4 shouldn't have been allocated elsewhere. And if they
5 shouldn't have been allocated, I'm not sure why they
6 budgeted for it. For miscellaneous, typically it's
7 \$25,000 because some items don't fit in the AFE
8 categories.

9 And then line item 401, on page 2, that's
10 the surface casing with a budget of \$18,000. When I
11 went back and looked at my historical data for pricing
12 of surface casing they used, which was 13-and-three-
13 eighths J55, 54-and-a-half pound, my cost on the 977
14 feet that was used would have been \$18,100. So their
15 budget was a correct amount. I'm unsure of why they
16 went over by \$11,000, which is more than 50 percent over
17 on a tangible item. And that might be something that --
18 a lot of the operators carry stock of casing, and they
19 may have to put it out there. And then the purchase
20 price of that casing might have been higher. But
21 according to everything -- the way we've done it,
22 pulling something out of stock, whatever the market
23 value is, 80 percent is allowed to bill to the well if
24 you're the operator.

25 Q. In evaluating these matters, did you consider

1 for various items the time frame in which they were --
2 specific time frame that those expenses were incurred?

3 A. Correct. Correct.

4 Q. So your testimony is that these actual amounts
5 are or appear to be unreasonable at the time they were
6 incurred?

7 A. Yes, at the time they were incurred.

8 My AFE, like I said, was based on from
9 about April to August of that year. The well was
10 completed in -- I believe it was closer to the end of
11 August of 2015. So all the pricing that I used was for
12 that five-month period, and I just used an average that
13 was of those five months.

14 Q. And your AFE would include expenses that you
15 thought was reasonable for this well?

16 A. Correct.

17 When I create an AFE, it's not just the
18 page like we're seeing here. I've actually got five
19 branches. I do a detailed drilling schedule of the
20 first 45 minutes, we're going to have a safety meeting,
21 and then we move the rig. And it's broken down on a
22 timeline like that, which were the work sheet branches I
23 put in my vendor costs. And it'll take how many days on
24 surface and apply for the directional cost -- apply the
25 \$1,800 a day for the four days for surface hole.

1 So it's all formulated so that I can plug
2 in what my vendors give me. I can plug in what my days
3 are going to be on that well, and that's just based on
4 what I pull from Pason or other wells in the area to see
5 how many days I'm going to take on that well.

6 Q. And you performed an AFE for this well?

7 A. No, I did not. All I did was just look at the
8 line items compared to what I had for bids at that time.

9 Q. Okay. Very good.

10 And did you prepare any kind of written
11 summary of your opinions for particular line items?

12 A. No.

13 Q. Okay. Very good.

14 EXAMINER BROOKS: I think that's all I have
15 for this witness.

16 CROSS-EXAMINATION

17 BY EXAMINER DAWSON:

18 Q. Mr. Morris, you said you did -- you've done
19 AFEs for 15 wells?

20 A. 15 Yeso wells.

21 Q. 15 Yeso wells.

22 Were those -- do you have an idea of what
23 time you did those AFEs on?

24 A. They were from 2013 up until 2014, end of 2014.
25 I believe November 2014 would have been the last AFE for

1 wells that I have drilled, Yeso wells.

2 Q. So do you have an idea of what your average
3 costs were for -- you said you drilled 12 and completed
4 12 of them?

5 A. Correct.

6 Q. Do you have an idea of what the AFEs -- the
7 average AFE was for those 12 wells, average at?

8 A. Yeah. The first few wells that we did in 2013,
9 the AFEs were around 4.2, 4.3 million, and when we
10 drilled the wells, they came in around 4, 4.1.

11 Q. Did those wells also have pretty high estimates
12 on the -- when you did your AFEs, did you have pretty
13 high contract labor costs and stimulation and treating
14 costs; do you recall?

15 A. Yes. At that time the stimulation and treating
16 costs were probably 40 percent higher than the time
17 frame of this. Stimulation and treating is one of the
18 line items that I've seen the largest decrease in cost
19 during this downturn, as well as the drilling rig rates.
20 Those have come down considerably from 2013 to this time
21 period here.

22 Q. On the 15 wells -- or the 12 that you drilled
23 and completed, on your AFEs that you -- that you made
24 for those wells, did you have -- do you recall what your
25 contract labor costs and land costs were? Were they

1 pretty high on those wells?

2 A. Contract labor costs, I can't recall offhand on
3 those line items. The ones that stand out the most are
4 the drilling rig day rate and the stimulation, because
5 those are the ones that have come down the greatest
6 amount. Labor costs have come down, I would say,
7 probably 23 to 27 percent. Drilling rigs are around 40
8 percent. Stimulation is about 40 percent at that time
9 frame to this time frame.

10 Q. Did you have -- when you prepared your AFEs for
11 those wells, did you have the convoluted titles, and did
12 you have a pretty rigorous title search associated with
13 those wells, or did you have pretty high title estimates
14 on those wells?

15 A. A few of the wells had higher title costs.
16 Like I said, I didn't prepare any portion of the title.
17 The land department -- I went to them and asked them how
18 much time do you figure it's going to take you to get
19 this. Do you have any third-party costs so that I could
20 budget that into the AFE. Typically, with the land
21 costs, it varies from what the budget is by about 15 to
22 20 percent on either side, because Land only gives me an
23 estimate of what they're required to do for the title
24 work.

25 Q. Do you recall -- on your estimates for those

1 wells, do you recall if any of the title permit work was
2 upwards of \$200,000?

3 A. No, it was not.

4 Q. Okay. That's all the questions I have.

5 MR. PADILLA: I don't have any questions.

6 MR. FELDEWERT: I have one.

7 RECROSS EXAMINATION

8 BY MR. FELDEWERT:

9 Q. Mr. Morris, Mr. Brooks asked you, you know,
10 whether you did a pro forma for your AFE and you said
11 no.

12 A. (Indicating.)

13 Q. Is that right?

14 A. Correct.

15 Q. So do you have any document that would identify
16 the breakdown of the AFE that you came up with for this
17 well?

18 A. No. I just compared line items to the AFE that
19 was provided to me from COG.

20 Q. Okay. Did you compare line items to the AFE
21 that was signed by Ard?

22 A. I compared it to -- there was one for 3.8
23 million, this one here (indicating), and then the one
24 that was submitted for the forced pooling order.

25 Q. So that would be our Exhibit Number 4?

1 A. Yes. I had all three of those AFEs.

2 Q. And Exhibit Number 4 is an AFE that was signed
3 by Ard. It's for 3.4 million?

4 A. Yes. This one is 3.4 million, and it's signed
5 by Ard.

6 Q. I know you testified you thought that was
7 reasonable.

8 I guess my question is: In disputing the
9 line items that you have identified, have you developed
10 an AFE that would reflect the costs that you believe are
11 appropriate for the line items that you identified for
12 Mr. Brooks?

13 A. I'm not understanding what you're asking.

14 Q. You know how you responded to Mr. Brooks and
15 you had identified for him --

16 A. Yes.

17 Q. -- the different line items you had a dispute
18 with?

19 A. Uh-huh.

20 Q. Did you create a document that would identify
21 the amount of costs that you think would be appropriate
22 for each one of those line items?

23 A. No, I couldn't do that. I was unable to do
24 that with the data that was provided by COG. I don't
25 have a way of ascertaining what would be reasonable to

1 apply to this well without the documents requested.

2 Q. Okay. I think you misunderstood my question.
3 You created your own idea of what this well should cost?

4 A. Yes.

5 Q. But you didn't create a line item AFE that
6 would reflect how you would break out the costs of that
7 well?

8 A. No. There is not much variance between the
9 ones that I've seen. The \$3 million one and the \$3.4
10 million one, there wasn't much variance between my AFE
11 and -- closer to the \$3 million one.

12 Q. So I guess we can safely say, then, that the
13 AFE that Ard signed, you would consider that to be a
14 reasonable cost for the time frame of drilling the well?

15 A. That's not the cost of drilling the well,
16 though. The cost we're looking at is 4.4 million.

17 Q. You would consider that to be a reasonable cost
18 for drilling that particular well?

19 A. A reasonable cost for drilling this well -- in
20 actual costs, if it was \$3.4 million, it would be a
21 reasonable cost to drill that well, but I think it would
22 be on the high end.

23 MR. FELDEWERT: That's all the questions
24 I've got.

25 EXAMINER BROOKS: I have one other question

1 that Mr. Grappe talked about, too.

2 RE CROSS EXAMINATION

3 BY EXAMINER BROOKS:

4 Q. What we're looking at on that document is 4.17
5 million, right? That \$8,000 is actually --

6 A. Correct.

7 Q. So what is the difference between the 4.17
8 million and the 4.4 million? Is that operating costs,
9 or is that something else?

10 A. No. That's actual bills to the drilling and
11 completing of the well. That's items that have come in
12 in on the JIB, up until, I believe, August 31st of this
13 year. And that's the total cost of that well that's
14 been applied to drilling and completions to that date of
15 August.

16 Q. So that was after they filed the --

17 A. Correct.

18 Q. -- the total or the actual costs?

19 A. Based on this report here, this was filed on
20 February 1st, 2016, is when this report was generated.

21 Q. February 2016?

22 A. February 1st, 2016.

23 Q. Okay.

24 A. And the 4.424 is as of August 31st, 2016.

25 Q. Okay. Thank you.

1 EXAMINER DAWSON: Do we have any other
2 witnesses?

3 MR. PADILLA: No, no other witnesses. We
4 rest.

5 EXAMINER DAWSON: At this point this case
6 will be taken under advisement.

7 MR. FELDEWERT: Wait a minute. I've got a
8 case.

9 EXAMINER DAWSON: We'll take a break.

10 EXAMINER BROOKS: We need to take a break.

11 EXAMINER DAWSON: Be back at 3:40.

12 (Recess 3:30 p.m. to 3:40 p.m.)

13 EXAMINER DAWSON: Okay. We're back on the
14 record for Case Number 15185. It's 3:40 p.m.

15 Mr. Feldewert, call your next witness,
16 please.

17 MR. FELDEWERT: Yes. We will call
18 Mr. Joseph Scott. And, Mr. Examiner, he has not been
19 sworn in yet.

20 EXAMINER DAWSON: Okay. Mr. Scott, can you
21 please be sworn in by the court reporter?

22 MR. SCOTT: Yes, sir.

23 JOSEPH SCOTT,
24 after having been first duly sworn under oath, was
25 questioned and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. FELDEWERT:

3 Q. Mr. Scott, I'll refer you to the set of
4 exhibits that are in the packet in front of you.

5 Would you please state your name and
6 identify by whom you're employed and in what capacity?

7 A. Joseph Scott. I work for COG Operating, LLC,
8 and I'm a landman.

9 Q. Have you previously testified before this
10 Division as a petroleum landman?

11 A. Yes.

12 Q. And if I turn to what's been marked as COG
13 Exhibit Number 1, there's been some reference to the
14 pooling orders in this case. My question is: Did you
15 testify at the initial Division hearing that resulted in
16 the issuance of the first pooling order?

17 A. Yes, I did.

18 Q. And then did you also testify by way of
19 affidavit in the proceeding that resulted in the
20 amendment to the pooling order that we see here under
21 Exhibit Number 1?

22 A. Yes.

23 Q. Has the company -- the company's drilled the
24 initial well, right?

25 A. Yes.

1 Q. What's the status of the drilling of the infill
2 wells?

3 A. We've drilled two additional infill wells, and
4 we're currently drilling the fourth well right now. It
5 has not been completed.

6 Q. And are they all within the same spacing unit
7 that was pooled under this amended order, 13913A?

8 A. Yes.

9 Q. Okay. If I turn to what's been marked as COG
10 Number 2, does that show the Examiners the four wells
11 that have been or are being drilled in this west
12 half-west half spacing unit?

13 A. Yes.

14 Q. And does it also identify for the Examiners the
15 common surface facility that is being shared by these
16 four wells?

17 A. Yes.

18 Q. And how is that depicted on here?

19 A. You can see, going in the southern part of the
20 west half-west half, the surface-hole locations just
21 right outside the section and the surface hole -- or the
22 facilities in the northwest-northwest quarter.

23 Q. Okay. Now, you've been here at this hearing
24 today?

25 A. Yes.

1 Q. You've also read the application that was filed
2 by Ard contesting the drilling costs for this initial
3 well?

4 A. Yes.

5 Q. Are you familiar with -- familiar with both the
6 costs that were proposed to drill that well and then
7 also the costs that were incurred to drill the initial
8 well?

9 A. Yes.

10 Q. Okay.

11 MR. FELDEWERT: I would tender Mr. Scott as
12 an expert witness in petroleum land matters.

13 EXAMINER DAWSON: Any objections?

14 MR. PADILLA: No objection.

15 EXAMINER DAWSON: He is so admitted.

16 Q. (BY MR. FELDEWERT) Now, if I turn to Concho
17 Exhibit Number 3, does it contain the affidavit that you
18 filed in the Division case resulting in the amendment of
19 the pooling order?

20 A. Yes, it does.

21 Q. And it also contains, does it not, Mr. Scott, a
22 letter you sent to Mr. Ard in February of 2015 updating
23 them on the change in the surface location for the well,
24 correct?

25 A. Yes, and the well name as well.

1 Q. And the change in the well name?

2 A. Yes.

3 Q. And also providing them an updated AFE, dated
4 February 1st, 2015; is that right?

5 A. Yes.

6 Q. I'm sorry. February 11th, 2015.

7 You also identify for Mr. Ard in this
8 letter his share of the 3.4 million estimated well
9 costs, correct?

10 A. Yes.

11 Q. And what is that share?

12 A. It's 180,784.41.

13 Q. Okay. And it also identifies that he has a 5.3
14 percent interest in this spacing unit?

15 A. Yes, 5.3125.

16 Q. Did Mr. Ard elect to participate in this well?

17 A. He did.

18 Q. And did he pay his cash call of 180,784?

19 A. He did.

20 Q. If I turn to what's been marked as COG Number
21 4, is this the actual AFE that Mr. Ard executed prior to
22 sending in his cash contributions?

23 A. Yes, it is.

24 Q. When was this initial well drilled?

25 A. July of 2015 and completed in September -- or

1 late -- late August, early September of 2015.

2 Q. Now, at the time, then, that this well was
3 drilled and completed, did the company then put in place
4 surface facilities to accommodate not only this initial
5 well but also the infill wells that it was anticipating?

6 A. Yes.

7 Q. And were the costs for those surface
8 facilities -- were they included in the final cost
9 billing to the working interest owners for the initial
10 well?

11 A. In the JIB, yes.

12 Q. And was it also then provided -- those
13 additional surface costs, was it also provided as part
14 of the actual cost of this well that was sent to
15 Mr. Ard?

16 A. Yes.

17 Q. So if I turn to what's been marked as COG
18 Exhibit Number 5, which is similar to what we've been --
19 others have been looking at here today -- first off,
20 there is no dispute that this was spent in February of
21 2016, right?

22 A. That's correct.

23 Q. Okay. All right. And if I'm understanding
24 you, the Actual Amount column that we see on this AFE --
25 this AFE reports gross?

1 A. Yes.

2 Q. The Actual Amount column -- and correct me if
3 I'm wrong -- includes the cost to drill and complete the
4 well?

5 A. Yes.

6 Q. It includes the cost to initially tie that well
7 to surface facilities?

8 A. Yes.

9 Q. Okay. And did it also include the costs that
10 were incurred to build the surface facilities to
11 accommodate not only this initial well but also the
12 other three infill wells?

13 A. Yes.

14 Q. All that was included in this Actual Amount
15 column?

16 A. Yes, it was.

17 Q. And isn't it true, Mr. Scott, that all of the
18 parties in this west half-west half spacing unit agreed
19 to participate in this well?

20 A. Yes.

21 Q. So none of these costs would be subject to any
22 kind of risk penalty under the pooling order?

23 A. No.

24 Q. All right. Now, there's also been a lot of
25 talk about the Budget column that's in here. Okay? Do

1 you know when that Budget column was created?

2 A. No. When I prepared the report, the report was
3 to show actuals, so I didn't look at the budgeted column
4 from this report.

5 Q. So you don't know when that budget number was
6 put together or when it was estimated?

7 A. No. No.

8 Q. But what we do know is that it's different from
9 the AFE that Mr. Ard signed, correct?

10 A. Yes.

11 Q. In fact, this shows the Budget column is
12 \$3 million, right?

13 A. Right.

14 Q. And the AFE that Mr. Ard signed, the updated
15 AFE, was 3.4 million?

16 A. Right.

17 Q. Okay. So there is already a \$400,000
18 difference between this Budget column, whenever this was
19 generated, and the actual AFE that was sent to Mr. Ard?

20 A. Yes.

21 Q. Okay. So now that we know all that, did you
22 examine the actual differences between the AFE that was
23 sent and signed by Mr. Ard, that 3.4 million, and the
24 actual amount to drill and complete this well and to tie
25 in the surface facilities and then to install the

1 surface facilities?

2 A. I did.

3 Q. And if I turn to what's been marked as COG
4 Number 6, does that identify the actual difference
5 between the AFE that he signed and the actual costs in
6 that 2016 report that he based his application on?

7 A. Yes.

8 Q. And what is the total difference?

9 A. \$767,604.

10 Q. And that's reflected at the top of this
11 exhibit?

12 A. Yes.

13 Q. Did you then undertake, Mr. Scott, given his
14 concerns about the 4.1 million in the actual costs
15 reflected in the report -- did you undertake an effort
16 to determine the primary reasons for those cost
17 increases?

18 A. I did.

19 Q. And if I look at the second half of this
20 exhibit, does it identify those reasons?

21 A. Yes.

22 EXAMINER BROOKS: What exhibits are you
23 talking about?

24 MR. FELDEWERT: Exhibit Number 6. Our
25 Exhibit Number 6.

1 EXAMINER BROOKS: And Exhibit Number 6?

2 MR. FELDEWERT: Yes [sic].

3 Q. (BY MR. FELDEWERT) So he files his application
4 and says 4.1 million is unreasonable, and you then
5 undertake an examination to determine the difference
6 between the AFE and the cost that he reflected in his
7 application?

8 A. Right.

9 Q. And that difference was 767,604?

10 A. Yes.

11 Q. And you examined the primary reasons for those
12 differences?

13 A. Yes.

14 Q. Now, the first line item that you examined was
15 "Title/Curative/Permit." Do you see that?

16 A. Yes.

17 Q. And they're correct. There is a 204,336
18 difference between the AFE filed and the actual cost of
19 that title work, right?

20 A. Yes.

21 Q. Now, first off, there is part of it in the
22 record one of their exhibits has the title opinions from
23 the attorneys. How big is that title opinion?

24 A. About 205 pages.

25 Q. Okay. Now, were you anticipating that kind of

1 title issue cost?

2 A. I had not examined the title. I did not know
3 it was going to turn out to be broken up as much as it
4 was. I did not know the depth severance created by the
5 chain of title of the owners of the land over time. You
6 know, it was one of largest abstracts the broker ever
7 provided, and it was an unknown until such time title
8 was ordered.

9 Q. Okay. So let's step back. This acreage that's
10 involved in the west half-west half of this section, is
11 it federal lands?

12 A. It's federal lands, yes.

13 Q. Is it part of the single federal lease?

14 A. It's one lease.

15 Q. How old is the lease?

16 A. 1930s.

17 Q. Has that lease been broken into multiple parts
18 over the years?

19 A. The title opinion discovered that it was, yes.

20 Q. And not only is it broken into multiple -- when
21 you say multiple parts, is it broken and divided not
22 only by ownership but also by depth?

23 A. Ownership and depth, yeah. So, for example,
24 Mr. Ard's 5 percent interest -- he owns in the northwest
25 quarter and northwest of the southwest -- every one of

1 those 40s has a different depth severance. No depth
2 severance in the pool now, but there is a depth
3 severance created on every single 40.

4 Q. And does that federal lease cover not only the
5 west half-west half, but it also covers the east
6 half-west half?

7 A. Yes.

8 Q. And doesn't Mr. Ard own an interest in both --

9 A. He does.

10 Q. -- acreage?

11 Okay. And isn't it true, then, if you're
12 going to examine the title of that federal lease, you
13 kind of have to look at it as a whole?

14 A. Yes. You want to make sure that there is
15 nobody that could stake a claim to that interest. And
16 if there is a title defect, then we either (A) have to
17 resolve it by an amended deed, stipulation. If that
18 can't be resolved, we then come to compulsory pooling to
19 pool that interest. But we have to take a look at the
20 entire lease and all the lease to determine if there is
21 any title issues that would cause us to have failed
22 title after we drill the well.

23 Q. And to do it properly, do you have the title
24 attorneys just look at the particular interval that
25 you're going to drill in?

1 A. We need to look at the entire title opinion,
2 since it's a common lease, to determine if anybody in a
3 deeper or shallower zone could potentially claim an
4 interest in the zone where we drill our well.

5 Q. Okay. So you get these title opinions a lot,
6 correct?

7 A. Yes.

8 Q. And they don't -- for example, if they've got a
9 federal lease like this, they don't just look at the
10 west half-west half of the federal lease. That would
11 make no sense, since it covers the entire west half of
12 the section, right?

13 A. You know, we could have looked at just the west
14 half-west half, but it's a common lease. It's a common
15 chain of title. And to protect ourselves from any title
16 from failing, we thought it was prudent to order the
17 title on the entire lease, at least the west half.

18 Q. The cost is basically the same if you did just
19 the west half-west half or if you did the entire west
20 half, right?

21 A. I would agree, because a lot the title issues
22 were from the northwest quarter tract.

23 Q. And as part of title opinions like this, you
24 wouldn't just look at the depth that you're going to
25 drill. You've got to know the ownership from the top to

1 the bottom of this, lease correct?

2 A. Yes, I would agree.

3 Q. Now, what's COG's percentage interest in this
4 acreage?

5 A. Roughly, 68 percent.

6 Q. So it's responsible for 68 percent of these
7 title costs?

8 A. Yes.

9 Q. Would the company incur a 200,000 -- \$215,000
10 title opinion and take responsibility for 68 percent of
11 that cost if they didn't think it was necessary to do
12 that?

13 A. No.

14 Q. Okay. All right. Now, the remaining line
15 items here, they've been addressed somewhat here today.
16 There has been talk about line items being couplings,
17 fittings and valves shown on here, correct?

18 A. Correct.

19 Q. Line items dealing with the topic of contract
20 labor, as shown on here?

21 A. Yes.

22 Q. And there are line items of heater treater,
23 separator that's shown on here?

24 A. Yes.

25 Q. And Mr. Morris talked about miscellaneous being

1 79,525 instead of zero, and that's shown on here,
2 correct?

3 A. Yes.

4 Q. Did you look behind the reason for these
5 differences?

6 A. I did. They were associated with the surface
7 facilities.

8 Q. The surface facilities to accommodate all of
9 the infill wells?

10 A. Yes.

11 Q. So if I go back to Exhibit Number 1, these cost
12 increases that we saw -- that we see on Exhibit 6 -- I'm
13 sorry. If we go back to Exhibit Number 2, that's the
14 purpose of putting in the surface facility that's shown
15 on Exhibit Number 2, correct?

16 A. Correct.

17 Q. To accommodate not only an infill well but all
18 four wells?

19 A. Correct.

20 Q. So you get it done at once. You finish your
21 surface facility, and then you're done?

22 A. Yes.

23 Q. And that's how the company thought it was best
24 to proceed?

25 A. Yes.

1 Q. And, again, it's responsible for 68,000 -- 68
2 percent of those costs, right?

3 A. Yes.

4 Q. Okay. Are these surface facility costs -- are
5 they being used for any other wells?

6 A. No.

7 Q. So are the interest owners -- are the interest
8 owners in these surface facility costs the same?

9 A. Yes.

10 Q. Same interest owners?

11 A. Same interest owners.

12 Q. Whether you're dealing with the initial well or
13 the first infill well or the second infill well or the
14 third infill well, it's all the same owners?

15 A. It's all the same.

16 Q. All right. Now, when you sent the AFE to Ard
17 or the company sent the AFE to Ard in 2015, did it
18 include in that AFE the cost for these surface
19 facilities that were necessary to accommodate all four
20 wells?

21 A. It did not include the surface facilities.

22 Q. You were here when Mr. Grappe testified that an
23 AFE was sent to only include the drilling and completing
24 costs; is that right?

25 A. Right.

1 Q. You would agree with that?

2 A. Right.

3 Q. And is that what that AFE did dealt with? The
4 one he signed in May 2015 dealt with drilling and
5 completion costs for that well, correct?

6 A. Correct.

7 Q. And he eventually elected to participate in the
8 well?

9 A. Yes.

10 Q. And as a result, he had -- he put up his cash
11 share of \$180,000?

12 A. Yes.

13 Q. And he was able to participate. And at that
14 time, the company did not require him to put up front
15 the cash necessary to install those surface facilities,
16 did they?

17 A. No.

18 Q. All right. And then is it true that he's gone
19 nonconsent on the last two infill wells?

20 A. Yes.

21 Q. And as currently billed -- if I look at Exhibit
22 Number 6, none of these cost increases associated with
23 the title work or the surface facilities are being
24 imposed on him under the terms of the pooling order with
25 a risk penalty, correct?

1 A. Correct.

2 Q. And why is that?

3 A. It was billed in the initial well.

4 Q. Billed in the initial well that everybody had
5 already participated in?

6 A. Yes.

7 Q. So nobody is then subject to a risk penalty for
8 these surface facility costs or this title cost?

9 A. No.

10 Q. All right. If you remove, Mr. Scott, those
11 title costs from that final bill -- okay? So I'm
12 looking at Exhibit Number 6. And if you remove the cost
13 for the surface facilities from that final bill, all
14 right, if you take those two costs out, what's the
15 ultimate difference between the AFE that he signed and
16 the actual costs to drill and complete the well?

17 A. The difference is about \$750,000 less than the
18 actual cost.

19 Q. Okay. So in other words, if we take out the
20 title opinion cost --

21 A. Uh-huh.

22 Q. -- that we weren't anticipating and we take out
23 the surface facility cost from the final bill, okay --

24 A. That was an AFE, right.

25 Q. That was an AFE.

1 -- what's the ultimate difference between
2 the AFE that he signed and the actual cost just to drill
3 and complete the well?

4 A. \$748,225.

5 Q. Okay. So it's less than 3 percent?

6 A. It's less than 3 percent, yes.

7 Q. And in your opinion, like that of Mr. Morris,
8 with a 3 to 5 percent variance in between what's your
9 AFE and then the actual cost to drill and complete a
10 well, is that common?

11 A. Yes.

12 Q. All right. Let's turn to Exhibit Number 7. Is
13 this an exhibit that you put together and introduced at
14 the initial hearing that pooled this west half-west half
15 spacing unit?

16 A. Yes.

17 Q. And did it reflect the interests of the parties
18 in that west half-west half spacing unit as known at the
19 time it was put together?

20 A. Yes.

21 Q. Now, if I look down there at the bottom, you
22 identified at that time the owners to the unit there
23 that needed to be pooled, right?

24 A. Yes.

25 Q. What happened to the interest of Zorro

1 Partners, Estate of Josephine Hudson, Edward R. Hudson
2 and his wife, and then Lindy's Living Trust?

3 A. They all term assigned to COG.

4 Q. So as a result, that 42 percent number, for
5 COG, is now 68 percent?

6 A. Right.

7 Q. Who is the next biggest interest owner in this
8 interest?

9 A. ConocoPhillips.

10 Q. And their interest is 25 percent?

11 A. 25 percent.

12 Q. And then who is left?

13 A. Lynx participated with their 1 percent, and Ard
14 participated with 5 percent.

15 Q. Putting aside the fact that COG is responsible
16 for 68 percent of the costs that they're now complaining
17 about, okay, did ConocoPhillips, who is a 25 percent
18 interest owner in this unit -- did they receive the same
19 cost bills?

20 A. They did.

21 Q. Have they raised any concerns about the costs
22 associated to first drill and complete this well?

23 A. They have not.

24 Q. Did they raise any concerns about the title
25 opinion that was necessary to get this well drilled and

1 completed?

2 A. They did not.

3 Q. And did they raise any concerns about the
4 installation of the surface facilities to accommodate
5 not only this well but the three additional infill
6 wells?

7 A. They have raised no complaints.

8 Q. Okay. What about Lynx?

9 A. Lynx has raised no complaints.

10 Q. Same answer across the board, if I ask the same
11 questions again?

12 A. Right.

13 And Conoco and Lynx participated in all
14 four wells.

15 Q. Okay. So if I add up ConocoPhillips' interest
16 and I add up Lynx' interest and I add up your interest,
17 that's 95 percent, correct?

18 A. Roughly, yes.

19 Q. So the parties that are responsible, Mr. Scott,
20 for 95 percent of the costs at issue here today have
21 lodged no objection to those costs, correct?

22 A. No objection.

23 Q. In your opinion, are the costs that the company
24 incurred for drilling this well and completing it and
25 installing these facilities consistent with other wells

1 that have been drilled in this area?

2 A. They are very consistent.

3 Q. Were Concho Exhibits 1 through 7 prepared by
4 you or compiled under your direction and supervision?

5 A. Yes, they were.

6 MR. FELDEWERT: I'd move the admission of
7 Exhibits 1 through 7.

8 EXAMINER DAWSON: Mr. Padilla, do you have
9 any objection?

10 MR. PADILLA: No objection.

11 EXAMINER DAWSON: So COG Exhibits 1 through
12 7 will be admitted to the record.

13 (COG Operating, LLC Exhibit Numbers 1
14 through 7 are offered and admitted into
15 evidence.)

16 MR. FELDEWERT: That concludes my
17 examination of this witness.

18 EXAMINER DAWSON: Mr. Padilla, do you have
19 any questions?

20 MR. PADILLA: Yes, I do.

21 CROSS-EXAMINATION

22 BY MR. PADILLA:

23 Q. Mr. Scott, let me have you refer to your
24 Exhibit Number 7.

25 A. Okay.

1 Q. You testified you submitted this exhibit for
2 the original AFE application, correct?

3 A. Yes.

4 Q. What complications did you have in either Tract
5 1 or Tract 2, as shown on that exhibit?

6 A. Well, we had takeoffs that were prepared prior
7 to me working this area, so I only had the takeoffs to
8 run off of.

9 Q. My question was: What complications did you
10 have with those tracts that would drive up the title
11 opinion to the cost of 2,000 -- \$212,000?

12 A. Oh, that's a good question. So in the
13 northwest quarter, your client and his predecessors term
14 assigned their tract of interest back and forth and back
15 and forth to each other without administering the
16 transfer properly. Therefore, they didn't file with the
17 BLM like they were supposed to do. There were gaps in
18 title. There was huge gaps in title. There was a large
19 stipulation that had to be provided, and it's still not
20 100 percent. But over -- I guess we're just taking a
21 risk on that front.

22 All right. And Tract 2 is all
23 ConocoPhillips, which your client term signed to
24 ConocoPhillips. Retained override right there. Your
25 clients then term assigned the -- that would the east

1 half of the southwest to a company called Pair
2 [phonetic] and a few others.

3 But over time, they kept transferring
4 entity names without doing it correctly, is what I
5 discovered in the title opinion.

6 Q. So did the BLM have to be involved in this --
7 in correcting those assignments?

8 A. They're -- they don't recognize certain parties
9 unless it's administered. They're not getting involved.

10 A lot of times Operation will take a risk
11 and drill wells that chain it out properly within the
12 county. Trust A assigns to Trust B, but Trust A doesn't
13 administer with the BLM properly. A lot of times Trust
14 B will no longer be in existence, and they term assign
15 to Trust C, and there is no way -- well, it's very --
16 it's very -- a lot of busy work to try to get that
17 cleaned up with the BLM, and a lot of people just aren't
18 willing to do it.

19 Q. Did you submit the \$11,000 figure for
20 preparation of the original AFC -- AFE?

21 A. No. That was just an average cost the company
22 has across the board, and that's the -- you know, going
23 into purchasing title, it's unknown how much it's going
24 to cost.

25 Q. But you had a takeoff, you testified, right?

1 A. I had a takeoff.

2 Q. From that takeoff, you couldn't figure out that
3 there would be a problem?

4 A. Well, if the client administered with the BLM
5 properly, there were no gaps in title, it probably would
6 have been \$11,000.

7 Q. I'm asking. You just took the 11,000 figure
8 because that's a companywide figure you use on AFEs?

9 A. That's correct.

10 Q. You didn't have any input into the \$11,000
11 figure for this particular well?

12 A. I didn't show the \$11,000 figure because I
13 didn't know how much it was going to cost. I couldn't
14 give the company a number.

15 Q. But you did have a takeoff that showed all the
16 assignments --

17 A. No. The takeoff just shows the ownership
18 report. It's not a tabulation of the assignments.

19 Q. You didn't get copies of all the assignments
20 with the takeoff?

21 A. No. That would be an abstract, which we
22 ordered for the title claim.

23 Q. Who prepared the takeoff for you?

24 A. I can't recall.

25 Q. It wasn't part of the takeoff?

1 A. No. It was prepared prior to me working this
2 area.

3 Q. Where is Lear & Lear located?

4 A. Salt Lake City.

5 Q. Are they a nationwide company, law firm?

6 A. They have licenses in multiple states.

7 Q. Have you drilled any wells in the east
8 half-west half?

9 A. Well, the owner of --

10 Q. My question is: Have you drilled any wells in
11 the east half-west half?

12 A. No. No, we have not.

13 Q. And did you throw all of the cost, \$212,000,
14 into the west half of the west half for title services?

15 A. It went to the initial well, yes.

16 Q. Why would it go to the initial well?

17 A. Because the parties participating order title
18 to drill a well, and so you bill it to the parties
19 participating. I don't want to order a title opinion if
20 we aren't drilling a well.

21 Q. Did you allocate surface facilities in the same
22 manner as you plug everything -- assign everything to
23 the first well?

24 A. That may have been the only well drilled.

25 Q. So do you know whether or not you assigned all

1 of the surface facilities to the first well?

2 A. Yes. I said yes.

3 Q. Okay. Do you have any flowlines extending into
4 the east half of the west half?

5 A. No.

6 Q. All the flowlines are in the west half-west
7 half?

8 A. Right. And that's going to be the only wells
9 that will ever be tied into that surface facility, is
10 the west half-west half spacing unit.

11 Q. Did the BLM have any stipulations regarding
12 location of the surface facilities?

13 A. Yeah, of course. That's why the surface
14 facility's outside the section because of the sand dunes
15 and other issues that prevent us from putting any
16 surface facility location or anything of that nature.

17 Q. How far away are the surface facilities?

18 A. If you refer back to that -- what is it --
19 Exhibit 2, you can see it butts right up against the
20 section line in Section 22 to the south.

21 Q. So it's right on the section line, essentially,
22 right?

23 A. Right.

24 Q. And the -- and the surface locations to the
25 wells are along the section line, between Section 15 and

1 Section 22, right?

2 A. Right. They're all located in Section 22.

3 Q. Where would you have located the surface
4 facilities had the BLM told you not to put them there?

5 A. We wouldn't have drilled the well if we
6 couldn't get a pad for the surface facility.

7 Q. On this exhibit, the map, is the surface
8 facility that white spot with something dark right in
9 the middle?

10 A. From the plat, I can only -- I can only tell
11 you that it's located where that red L mark is. I can't
12 see where exactly the location is, but that L shape
13 indicates where it's located.

14 Q. So how much extra flowline did you have to
15 have?

16 A. I'm not qualified to answer that question.

17 Q. You're not qualified to testify concerning a
18 lot of items that you testified about, correct --

19 MR. FELDEWERT: Object. Calls for --

20 Q. (BY MR. PADILLA) -- in terms of line items?

21 MR. FELDEWERT: Objection. That's
22 argumentative.

23 EXAMINER BROOKS: Yeah. We do need to
24 respond to the objection. That's kind of a shotgun
25 question. I think you should rephrase.

1 EXAMINER DAWSON: Please rephrase.

2 MR. PADILLA: Well, I'll go item by item.

3 Q. (BY MR. PADILLA) Let's go to Exhibit Number 6.

4 A. Okay.

5 Q. I already asked you about title.

6 A. Yup.

7 Q. Let me ask you this: Is it fair to say that
8 all of the figures on the first column concerning your
9 204,336, followed by the item below it, the 218,934, and
10 go all the way down, you did not -- you took those
11 simply from actual well costs, right, in preparing this
12 exhibit?

13 A. I worked with my engineers to determine what
14 these averages were and to understand what they were.
15 I'm not saying I'm qualified to tell you what they are.

16 Q. But you don't know the reasons for why you had
17 such a high increase in couplings, fittings and valves,
18 correct?

19 A. That's correct.

20 Q. Do you remember the reason why contract labor
21 exceeded -- went up by \$135,000?

22 A. No. I never purported to understand.

23 Q. You're testifying here about these figures, and
24 you just took those figures and plugged them into this
25 exhibit, correct?

1 A. We did the same thing you guys did. We looked
2 at budgeting and actuals and determined what were the
3 greatest overages.

4 Q. And were you here when Mr. Morris testified
5 concerning the reasonableness of the well, costs?

6 A. I was.

7 Q. Did you hear him testify concerning his opinion
8 that the couplings and fittings and valve items were
9 unreasonable?

10 MR. FELDEWERT: Object to the form of the
11 question. Mr. Morris thought they were unreasonable for
12 purposes of drilling and completing the well. As
13 Mr. Scott's already testified, this overage was for
14 surface facilities.

15 EXAMINER BROOKS: Yeah. I'm going to
16 overrule the objection.

17 Mr. Padilla can rephrase it, or Mr. Scott
18 can qualify his answer as necessary.

19 Q. (BY MR. PADILLA) You don't know why this figure
20 went up?

21 A. I don't have an opinion.

22 Q. You don't know?

23 A. I don't have an opinion.

24 Q. All right. But you're purporting here today
25 that they're included in the \$748,000 figure, right?

1 A. Those costs total up to that amount, yes.

2 Q. I agree that they -- I'll give you that. I'll
3 concede that.

4 But you don't know the makeup of any of
5 these individual items, correct?

6 A. I was not involved in billing the facility or
7 overseeing the facility.

8 Q. What discussions did you have with your
9 engineers before coming here?

10 A. Simply, these are facility costs.

11 Q. Was there a discussion about bringing an
12 engineer to testify at this hearing as to the
13 reasonableness of these costs?

14 A. I don't know if we're going to have an engineer
15 testify or not.

16 Q. Did you send an email to Mr. Craft --
17 Grappe -- I'm sorry -- stating, That's all Ard was
18 entitled to get, words to that effect?

19 A. That was a management decision. We do not
20 provide those reports to anybody. We're not, you know,
21 narrowing in on Mr. Ard. We don't give it to the large
22 companies, independents, individuals. It's just
23 something we do not provide.

24 Q. Did you compile Exhibit 8, Ard Exhibit 8?

25 A. I'm not familiar with your exhibit structure

1 here.

2 Q. It's the big one here on your left.

3 A. We had Concho prepare these invoices upon
4 Mr. Grappe's request.

5 Q. My question was: Did you compile those?

6 A. We simply pulled it from our invoice system,
7 copied it and sent it. I didn't compile them. This was
8 something that came from our filing system. You
9 requested said invoice. We printed off said invoice and
10 scanned it to you.

11 Q. Are you the person in charge of seeing to the
12 compilation of these exhibits that were submitted as
13 Exhibits 8 and 9?

14 A. So this is -- this is 9. Like I said, we
15 printed off the exhibits, and we sent them upon your
16 request. We were given certain invoices that you guys
17 wanted. We printed off those invoices, and we sent
18 these invoices to you.

19 Q. Was a decision made that you would not send
20 backup information regarding those invoices?

21 A. I believe I've already answered that question.

22 Q. Well, I'm -- what was your answer?

23 MR. FELDEWERT: Objection. Hold on. It
24 assumes there was a request for backup invoices beyond
25 the invoices that we already sent.

1 EXAMINER BROOKS: Answer the question.

2 MR. PADILLA: I'll rephrase.

3 EXAMINER BROOKS: I understand
4 Mr. Feldewert's qualifications, but I have not reviewed
5 the exhibit, so -- I don't want to take the time to do
6 so now, so I'd just ask you to answer the question.

7 THE WITNESS: The backup -- is the question
8 the backup for the detailed drilling reports?

9 Q. (BY MR. PADILLA) Yes.

10 A. And as I testified previously, our management
11 has decided, even before this hearing, we don't send
12 those reports to anybody.

13 Q. If I'm a paying interest owner in your wells,
14 paying in this case, say, \$180,000, why am I not
15 entitled to have that information?

16 A. You're entitled to the summary reports, and
17 we've provided those reports.

18 Q. And that's all I'm entitled to?

19 A. That's --

20 EXAMINER BROOKS: May I ask a question of
21 Mr. Feldewert here? I didn't look at the subpoena.
22 What does -- is there a subpoena that requires them to
23 produce -- requires COG to produce these detailed
24 reports that he's talking about?

25 MR. FELDEWERT: Mr. Brooks, I haven't

1 looked at the subpoena either because we dealt with that
2 back in July. So I was not made aware of any of these
3 issue concerning the subpoena that they've raised today,
4 so I don't know.

5 EXAMINER BROOKS: Well, it seems it does
6 make a difference, because the subpoena requiring you to
7 produce something, the burden is on you to file a motion
8 for protection. If there is not a subpoena, then the
9 burden is on them to get one. So probably it does make
10 a difference.

11 But go ahead. We'll get the examination
12 done before we start dealing with the issues.

13 EXAMINER DAWSON: I have a copy of the
14 subpoena here, Mr. Brooks, if you want to look at it.

15 EXAMINER BROOKS: It looks like it's very
16 brief.

17 Go ahead with the questioning. I don't
18 want to interrupt.

19 Q. (BY MR. PADILLA) Do you know how many of the
20 invoices you actually submitted -- or let me ask: Do
21 you disagree with Mr. Grappe's testimony this morning
22 that -- or Mr. Morris's testimony that only 26 of the 59
23 requests were submitted?

24 A. I disagree. We provided all the requested
25 invoices.

1 Q. You disagree with his testimony?

2 A. I'm testifying that the list of invoices that
3 was requested were delivered, and we only deliver what
4 was requested.

5 Q. How about the daily drilling reports of the
6 field representative?

7 A. I don't recall ever being asked for those
8 reports. We provided everything on that subpoena. And
9 less the detailed reports, everything else was provided.

10 Q. Item number two. Aside from all the invoices
11 that we listed were the detailed drilling reports
12 generated by the company field representative on
13 location during drilling operations.

14 A. May I see the subpoena?

15 Q. Sure.

16 A. Well, as I testified detailed, drilling
17 reports, we -- I have been advised that we do not
18 provide them. This is not my decision. I am just an
19 employee of the company. And we provided everything
20 else requested.

21 Q. I take it you don't know the basis of why you
22 have a company policy of not providing information?

23 A. I was not provided that information.

24 Q. Mr. Scott, you testified -- let me direct your
25 attention to Exhibit Number 4, which is your AFE you've

1 submitted. It said that Mr. Ard signed the AFE for 3.4
2 million. If you look at the tangible costs --

3 A. Are you on Exhibit 7?

4 Q. No. Exhibit 4 --

5 A. 4.

6 Q. The AFE. See the tangible costs, on the second
7 page of the AFE?

8 A. Tangible costs, right.

9 Q. If you go down that, there is an item called --
10 for flowlines. Is that budgeted into the AFE?

11 A. You know what's on the AFE is the cost that we
12 budgeted at the time.

13 Q. And that's 11,000?

14 A. That's 11,000, is what it says, yes.

15 Q. And we have -- a little below that is
16 couplings, fittings and valves, and you have 36,000
17 budgeted for that item?

18 A. It appears that way, yes.

19 Q. So these items were already budgeted. And your
20 testimony, as I understand it, was that -- on your
21 Exhibit Number 6, you said that these items were not
22 included in the AFE.

23 MR. FELDEWERT: Objection.
24 Mischaracterization of his testimony.

25 THE WITNESS: I don't believe I said that.

1 EXAMINER BROOKS: Yeah. The witness can
2 clarify his testimony if it was mischaracterized.

3 Q. (BY MR. PADILLA) Go ahead and clarify. I'm
4 wondering if I understood your testimony before --

5 A. The exhibit is to highlight the major overages.
6 Simply, I'm here to testify to land matters. Why
7 they're over, why they're in the AFE, I am not qualified
8 to give you any testimony as to the budgeted numbers for
9 the AFE.

10 Q. Okay. But if I understood your testimony
11 before, in compiling this \$748,000 figure that you have
12 in your Exhibit 6, you stated -- and correct me if I'm
13 wrong -- that these items were not budgeted in the AFE?

14 A. The overages apparently were not budgeted,
15 right.

16 Q. Do you know whether or not these budgeted items
17 were for a single well?

18 A. I do not.

19 MR. PADILLA: I believe that's all I have.

20 MR. FELDEWERT: Just a couple of follow-ups
21 right there.

22 REDIRECT EXAMINATION

23 BY MR. FELDEWERT:

24 Q. Mr. Scott, go to Exhibit Number 4, the AFE that
25 they signed, just to address Mr. Padilla's question.

1 This AFE that went out, was it -- did it include the
2 cost to install the surface facilities necessary to
3 accommodate not only the initial well but also the
4 infill wells?

5 A. No.

6 Q. It was just for the drilling and completion of
7 the well?

8 A. That's what I've been advised.

9 Q. So if I'm -- and just to be fair, it would tie
10 in the well to where the surface facilities would
11 eventually be put in?

12 A. I've had conversations with my engineer to
13 explain that, right.

14 Q. Okay. So it didn't have anything to do with
15 the installation of the surface facilities?

16 A. As far as I'm aware, that's correct. However,
17 I'm not familiar with the budgeted facility costs or
18 tying in or anything of that technical nature.

19 Q. Okay. Now, on Exhibit Number 6, all you were
20 showing there is that there were overages in those line
21 items, correct?

22 A. We were simply trying to highlight the
23 overages.

24 Q. Okay. And you were told that the overages were
25 for what?

1 A. Facilities.

2 Q. Surface facilities?

3 A. Surface facilities.

4 Q. To accommodate the initial well and the infill
5 wells?

6 A. Correct.

7 MR. FELDEWERT: That's it.

8 CROSS-EXAMINATION

9 BY EXAMINER BROOKS:

10 Q. There were estimates in the original AFE for
11 those items; were there not?

12 A. Yes, I believe so. Some of the -- the -- yeah.
13 They're listed, right.

14 Q. That's all I have. That's all I can think of
15 right now.

16 EXAMINER BROOKS: I'll turn it over to you.

17 EXAMINER DAWSON: Will, do you have
18 questions?

19 EXAMINER JONES: Oh, yeah. I could ask a
20 couple.

21 CROSS-EXAMINATION

22 BY EXAMINER JONES:

23 Q. On your COG Exhibit Number 4, down at the
24 bottom, is that -- is that your writing, "parties pooled
25 under Order R-13913"?

1 A. Yes. I wrote that on there for internal
2 purposes so nobody was confused that Ard was
3 participating under the joint operating agreement. So
4 if I ever leave the area, they know not to propose a
5 well under the OA, but to propose it under a pooling
6 order.

7 Q. Okay. So there was a JOA for this?

8 A. There is a JOA between COG, ConocoPhillips and
9 Lynx. All of them --

10 Q. Signed the JOA.

11 A. -- are very agreeable for this project, and
12 they are under an OA with us. Ard refused to sign the
13 OA. He decided he wanted to participate under the
14 pooling order.

15 Q. Oh, okay.

16 For the first well?

17 A. It would be all wells.

18 Q. All wells --

19 A. He participated --

20 Q. -- in that spacing unit?

21 A. In that spacing unit, yes. He is just under
22 the pooling order. He is either participating in the
23 two wells under the pooling order, or he's force pooled
24 under the pooling order for the second two.

25 Q. Okay.

1 A. The third and fourth well.

2 Q. Okay. The third and fourth well, they chose
3 not to participate?

4 A. Right.

5 Q. And even though, by that time, all the land
6 costs are paid and a majority of the facilities are
7 paid, at least the --

8 A. Correct. The facility large enough to
9 withstand the flow of four wells, right, or tie in four
10 wells.

11 Q. But is it your understanding that it would just
12 be incremental facilities for the -- in other words, the
13 AFE that Ard would look at for the third and fourth well
14 would not include the land costs --

15 A. It would mirror --

16 Q. -- and a lot of these facility costs?

17 A. Right. It would be very consistent with the
18 AFE that is in question at the hearing today.

19 Q. Okay. So the question -- so the AFE at the
20 hearing today was a bit deceptive in that it didn't
21 include the land costs. But you didn't know what they
22 were going to be, I guess?

23 A. I did not know, sir.

24 Q. But you did know it had to include the whole
25 west half because that was the lease, basically, the

1 assigned -- you probably called the Land people in Salt
2 Lake and said, Focus on the west half; is that correct?

3 A. That's correct.

4 And, again, I'll reiterate, because it's
5 one lease and there is always a risk that somebody --
6 you know, the tracts -- the east half of the west half
7 has been determined from the title opinion that the west
8 half-west half is different, and it -- you know, it's
9 important to examine all the titles so that nobody can
10 make a claim after we drill the well. Because they can
11 make a claim after we drill a 3.4 million well, and then
12 they say, Hey, that's half mine. So --

13 Q. Did you end up drilling the well before you got
14 the title opinion back, at least the first well?

15 A. I don't remember. It was very -- very close.

16 Q. Oh, okay.

17 A. I can tell you we would have had the title
18 opinion when we were at hearing.

19 Q. Okay.

20 A. We pulled it based off of the takeoff. But as
21 far as having the title opinion, it was really close to
22 time we drilled the well. Actually -- we can actually
23 look at the date on the title opinions in one of these
24 exhibits. Oh, I thought -- never mind. I thought it
25 was one of the exhibits.

1 Q. Okay. The land person at Ard, Churello --
2 Churella, did you deal with her?

3 A. She simply sent me a letter of correspondence.
4 I haven't spoken with her. The landman I dealt with at
5 the time of drilling this well was Houston Kaufman
6 [phonetic], great guy, excellent to work with. I wish
7 he was still working there. He's the one that approved
8 all these AFEs and consulted with Ard, as Grappe is now
9 doing for Ard.

10 Q. Okay. I ran out of the knowledge to ask
11 questions, so I'll --

12 A. Well, if you think of anything else.

13 MR. FELDEWERT: Mr. Jones, I might be able
14 to assist you. If you look at Ard's Exhibit Number 5,
15 it reflects -- just to jump ahead, it reflects that the
16 drilling opinion was provided on April 26, 2015, which
17 would have been before the --

18 EXAMINER JONES: So say again. That date
19 was April 16th, 2015?

20 MR. FELDEWERT: 2015.

21 EXAMINER JONES: Okay.

22 CROSS-EXAMINATION

23 BY EXAMINER DAWSON:

24 Q. So most of the contract work and the title work
25 was done. You contracted that out, correct?

1 A. For the curative work that is still being
2 invoiced, right. It's contracted out to a broker, since
3 we live in the Midland office and it's southeast
4 New Mexico and in Carlsbad.

5 EXAMINER BROOKS: Can I ask a couple more
6 questions now?

7 EXAMINER DAWSON: Yes.

8 RE CROSS EXAMINATION

9 BY EXAMINER BROOKS:

10 Q. Is it your opinion -- having examined this
11 title opinion after you got it, do I understand you to
12 be saying that it's your opinion that it was necessary
13 to examine -- because of the complicated nature of the
14 assignments and operating rights and because, as I
15 understand, they weren't all filed in the BLM or weren't
16 approved by the BLM; is that correct?

17 A. Let me give you a prime example of the
18 importance of examining all the title. One of the
19 complaints was the multiple zones that we had title run
20 on.

21 Q. Right.

22 A. One of the requirements in there mentions a
23 Maljamar unit. It's a waterflood unit in the San Andres
24 Formation, and the requirement discusses there is no --
25 there is no depth severance for that OA, and you might

1 want to look to see if they're claiming operatorship of
2 the land that you're going to drill. They haven't. But
3 the fact of the matter is, they could have, and that
4 could have caused a big issue for me and my company if
5 we didn't look into that issue prior to drilling.

6 Q. Well, so your testimony is that having examined
7 this title opinion and the requirements that are in it,
8 you believe it was necessary to examine the entire lease
9 to come to a reasonably secure title conclusion
10 about --

11 A. It could have gone either way. You could
12 have -- it's uncertain at the beginning, when you order
13 the title.

14 Q. Yeah.

15 A. It may have been a waste of time and money, or
16 it may have been one of the best things we could have
17 ever done. Being it was a common lease, common chain of
18 title, it was important that we examine the entire
19 lease.

20 Q. You're not saying, though, that generically in
21 every case, it's necessary to -- with a federal lease,
22 to examine the entire area covered by the lease for the
23 entire -- for both, vertically and horizontally, in
24 order to have a reasonable and clear title opinion?

25 A. I would not. But in this case, having common

1 ownership, I feel like it was important because all of
2 the northwest --

3 Q. You're basing this analysis of this particular
4 title, not on the general --

5 A. Right. In each case, I would have to evaluate
6 on a case-by-case situation.

7 Q. Nothing further.

8 RE CROSS EXAMINATION

9 BY EXAMINER DAWSON:

10 Q. Mr. Scott, the lease in question, it's only the
11 west half-west half of that pertinent section?

12 A. It also covers the --

13 Q. I'm sorry. West half of this section.

14 A. It covers the west half of the southeast. So I
15 guess that validates Mr. Brooks' question. We're
16 limited to the -- we limit to the west half in this
17 case.

18 Q. That section -- I mean, that lease does not
19 cover any other sections?

20 A. No. No, just Section 15.

21 Q. And that was issued in the '30s, I believe you
22 said?

23 A. I believe it was issued in the '30s.

24 Q. And it's been held by production?

25 A. Yes. There is a waterflood unit there.

1 Q. That's all the questions I have. Thank you.

2 MR. FELDEWERT: Mr. Examiner, I call one
3 more witness just to address a couple of points you-all
4 raised.

5 EXAMINER BROOKS: I believe Mr. Padilla has
6 questions.

7 Go ahead, Mr. Padilla.

8 RECROSS EXAMINATION

9 BY MR. PADILLA:

10 Q. Do you have any plans to develop the east half
11 of the east [sic] half of Section 15?

12 A. We're going to drill part of it, yes.

13 Q. Are you going to allocate any of the cost of
14 the title opinion to those wells?

15 A. I think that's what I'm going to recommend to
16 the company, yes. So, for instance, we're going to be
17 drilling -- well, you should have the pooling order.
18 The pooling order for the Nelson Fed Com 13H includes
19 the east half of the northwest, and Legacy's in there.
20 I think it would be fair to everybody to allocate
21 proportionate title costs to Legacy, if they want to
22 participate.

23 Q. In that event, would you credit all the
24 interest owners that portion of title costs?

25 A. Of course. Of course.

1 Q. When is that decision going to be made?

2 A. We need to get the pooling order and OA in
3 place.

4 Q. Should really only charge one-half of the title
5 costs?

6 MR. FELDEWERT: Objection.

7 We asked your client if they wanted to do
8 that, and they wouldn't tell us.

9 MR. PADILLA: I'm asking him. It's a fair
10 question.

11 EXAMINER BROOKS: Well, if you ask him his
12 opinion, he can state it.

13 THE WITNESS: If you're client has certain
14 concerns, we are open ears.

15 Q. (BY MR. PADILLA) I'm not talking about
16 concerns. I said shouldn't you just cut that bill in
17 half because it only includes -- these wells are only on
18 the west half of the west half?

19 A. My testimony is it's prudent to examine the
20 entire lease in order to protect all parties for
21 drilling that well. So everybody benefits from
22 running -- from running title.

23 Q. Are you saying if you had a 10,000-acre lease,
24 you would examine the entire 10,000 acreage?

25 A. A business risk comes into play when talking

1 that large of a lease.

2 Q. Do you cut it down to a section?

3 A. Our business risk was the west half.

4 Q. Let's just say theoretically this lease -- the
5 federal lease covered the entire section, Section 15.
6 Would you run -- would you run title on that?

7 A. I can't speculate. The lease doesn't cover the
8 entire section.

9 Q. But in this case, you've allocated all the
10 costs to the Ivar the Boneless; have you not?

11 A. It was the initial well, yes.

12 MR. PADILLA: That's all I have.

13 EXAMINER DAWSON: Okay. Thank you,
14 Mr. Scott.

15 MR. FELDEWERT: Call the last witness.

16 EXAMINER DAWSON: Mr. Feldewert, you can
17 call your last witness.

18 MR. FELDEWERT: He needs to be sworn.

19 EXAMINER DAWSON: Please raise your hand
20 and be sworn by the court reporter.

21 KEVIN C. HINSHAW,
22 after having been first duly sworn under oath, was
23 questioned and testified as follows:

24

25

1 DIRECT EXAMINATION

2 BY MR. FELDEWERT:

3 Q. Would you please state your name?

4 A. Kevin Curtis Hinshaw.

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

6 A. I work with COG Operating, LLC, and I'm the
7 senior facilities engineer.

8 Q. How long have you been a senior facilities
9 engineer?

10 A. I've worked for a couple of companies in the
11 capacity of facilities engineer, and my total time being
12 a facilities engineer is approximately ten years.

13 Q. Ten years.

14 Okay. All right. And are you familiar
15 with the -- you sat here during this hearing today?

16 A. Yes.

17 Q. Are you prepared to discuss some of the
18 questions that arose with respect to the surface
19 facilities?

20 A. Yes.

21 MR. FELDEWERT: I'd tender Mr. Hinshaw as
22 an expert in petroleum facilities.

23 EXAMINER DAWSON: Any objection?

24 MR. PADILLA: No objection.

25 EXAMINER DAWSON: He is so qualified.

1 Q. (BY MR. FELDEWERT) Would you please turn to
2 what's been marked as COG Exhibit Number 4?

3 A. Yes.

4 Q. And once you have your finger there, I also
5 want you to have your fingers on Exhibit Number 6.
6 Okay?

7 A. Okay. Gotcha.

8 Q. Now, Mr. Hinshaw, isn't it true that the
9 overages that are identified here on Exhibit Number 6,
10 that those amounts are all related to -- putting aside
11 the title, but the ones for couplings, fittings, valves,
12 contract labor, heater treater, separator and
13 miscellaneous deals as a result of the installation of
14 surface facilities to accommodate not only the initial
15 well but the three infill wells?

16 A. That's correct.

17 Q. If that's the case, would you please explain to
18 the Examiners why those line items appeared on Exhibit
19 Number 4 for the AFE that Mr. Ard signed?

20 A. Yeah. Typically -- so if I move to tangible
21 costs, line item 511, flowlines --

22 EXAMINER BROOKS: What exhibit are we
23 looking at?

24 THE WITNESS: Exhibit 4, COG.

25 Q. (BY MR. FELDEWERT) Let's look at Exhibit Number

1 4, COG.

2 EXAMINER BROOKS: Okay.

3 Q. (BY MR. FELDEWERT) Go ahead.

4 A. Under Tangible Costs, item 511, for 11,000,
5 we've prepared these budgets -- we assume that we're
6 just going to have to tie a flowline into a tank
7 battery. So that's where the \$11,000 comes in. If
8 we're drilling infill wells, we shouldn't be more -- you
9 know, at the most, a half mile away from the tank
10 battery. Hopefully, we are closer. That's why that
11 number is there.

12 Heater treater and separator, that's for
13 the installation of a three-phase separator. As pointed
14 out earlier, we do install that.

15 Line item 515, coupling, fittings and
16 valves, that's just part of the construction of the tank
17 battery and adding that extra equipment.

18 Q. And is that to tie into whatever facilities are
19 there?

20 A. Yes.

21 Q. So I've three buckets [sic], four buckets.
22 I've got my drilling costs. I've got my completion
23 costs.

24 A. Yes.

25 Q. And I've got my tie-in to whatever surface

1 facilities.

2 A. Uh-huh.

3 Q. And then I've got costs associated with the
4 installation of surface facilities.

5 A. Yes.

6 Q. Does this AFE just cover the first three
7 buckets [sic]?

8 A. That's correct.

9 Q. Why would -- now, there's been some question
10 here chastising the company for putting in surface
11 facilities and not waiting until they drilled the
12 second, third and fourth infill wells. Why did the
13 company do that? Why did they put them -- drilling on
14 the first well?

15 A. We anticipated the wells to be productive and
16 installed the surface facility to accommodate the
17 production.

18 Q. Okay. And then as a result of that, the
19 installation those facilities, did you also design to
20 accommodate the infill wells?

21 A. Yes.

22 Q. Okay. And you did all that at once?

23 A. Yes.

24 Q. And does the company periodically do that?

25 A. We do it on every single tank battery.

1 Q. So that's something that's commonly done?

2 A. Very commonly, yes, sir.

3 Q. And in this particular case, the company billed
4 that surface facility costs to the initial well, right?

5 A. Yes.

6 Q. The well that everybody participated in?

7 A. Uh-huh.

8 Q. And those costs are not subject to any kind of
9 risk penalty?

10 A. That's correct.

11 Q. That's all the questions I've got.

12 EXAMINER DAWSON: Mr. Padilla, do you have
13 questions?

14 CROSS-EXAMINATION

15 BY MR. FELDEWERT:

16 Q. Mr. Hinshaw --

17 A. Yes, sir.

18 Q. -- these tangible costs that you've testified
19 about on Exhibit 4 -- your Exhibit 4 --

20 A. Uh-huh.

21 Q. -- are these for -- these are facility items,
22 aren't they?

23 A. They are items located at the facility, but
24 it's for the tie-in of a well to the facility.

25 Q. So the costs are already included in here if

1 they're facility costs?

2 A. There are facility costs, but you cannot
3 include -- we built our first battery for the production
4 facilities that we needed to operate one well, and as we
5 drilled our infill wells, we had a test separator for
6 each well.

7 Q. Each well would then have a heater treater,
8 right?

9 A. No. We've got one common heater treater per
10 tank battery. It has its own test separator to measure
11 production.

12 Q. So from the well, do you go to the tank or a
13 facility for --

14 A. We go to a production separator from the well
15 inside the facility.

16 Q. And so how are these items in here intangible
17 costs? How are they accounted for? Isn't it
18 double-dipping?

19 A. No. This budget was done as if we were going
20 to tie a well into an existing facility.

21 Q. Well, you're charging for the tank, right?

22 A. Yes. Sometimes we'll add an additional tank if
23 we add more wells.

24 Q. How many tanks do you have out there?

25 A. Currently, we have five tanks.

1 Q. And four wells?

2 A. Yes.

3 Q. And you have flowlines. Isn't that also a
4 duplication?

5 A. Each well has its own flowline to the tank
6 battery. In this case, dual flowlines.

7 Q. So how many flowlines are between the tanks?

8 A. There are no flowlines between the tanks.

9 Q. Okay. But you have -- this accounts -- the
10 flowlines here account for the well to the tank battery,
11 right?

12 A. To the tank battery, yes.

13 Q. Okay. What am I missing here then?

14 A. I'm sorry. I'm not following you.

15 Q. I assume you'd be missing something. You have
16 a wellhead --

17 A. Yeah.

18 Q. -- and then you have the flowline --

19 A. Yes.

20 Q. -- to your tank battery?

21 A. Yes.

22 Q. And you've already accounted for it or budgeted
23 for it in this AFE?

24 A. Yeah. But that's not the complete tank battery
25 to tie into an existing tank battery.

1 Q. Well, I can understand where you may have
2 larger berms and that kind of thing if you're going to
3 put in four or five tanks in there, but in terms of
4 flowlines and tanks, you've already -- you're already
5 budgeting for that, right, except for one tank that
6 you've added extra? You have five tanks, but --

7 A. That's to include one tank. That's typically
8 one flowline.

9 Q. And this is for the -- this is for the
10 Boneless.

11 A. Ivar the Boneless 11.

12 Q. Right.

13 A. Yeah. This budget is for the tie-in of one
14 well to a typical tank battery. This is not included in
15 the original AFE, as stated before.

16 Q. So -- well, you're just simply disagreeing that
17 it's not a duplication, right?

18 A. A duplication how?

19 Q. Of costs on the AFE. You already budgeted for
20 it, is what my point is.

21 A. Yes. We budgeted for the tie-in.

22 Q. Looking at Exhibit 4 again --

23 EXAMINER BROOKS: COG Exhibit 4?

24 MR. PADILLA: Yes.

25 Q. (BY MR. PADILLA) -- if you were budgeting for

1 one well --

2 A. Uh-huh.

3 Q. -- only, all these items would be applicable?

4 A. Not every time, no. It depends on the
5 situation. If it's the first well in the lease or the
6 last infill well in the lease, it would be different.

7 Q. My question was for one well.

8 A. Okay. Do I know if this one will have a tank
9 battery?

10 Q. No. Assuming you weren't drilling the second,
11 third and fourth wells --

12 A. Uh-huh.

13 Q. -- you would have a flowline and a tank, right?

14 A. Yes.

15 Q. And a heater treater?

16 A. Yes.

17 Q. Maybe a separator.

18 A. Yes. Uh-huh.

19 Q. And you've already budgeted in this AFE for
20 that situation, right?

21 A. Yes.

22 Q. Okay. You drilled a second well?

23 A. Uh-huh.

24 Q. You do the same thing again, right?

25 A. No. Your tank battery -- most -- most of the

1 tank battery has been constructed on your first well.

2 Q. And accountingwise, you charge the first well
3 for everything?

4 A. No. If we know infill wells are coming up
5 soon, we distribute the cost evenly.

6 Q. Has any cost been distributed evenly as far as
7 facility costs?

8 A. I can't testify to that. I know the letters
9 that have been sent are trying to offer a solution to
10 this.

11 Q. Has any offer been made to allocate all these
12 costs that you have in your Exhibit 6 where you would
13 offer the same thing?

14 A. We offered to split these costs amongst four
15 wells.

16 Q. But these are facilities costs?

17 A. Yes. It's every well using the facility.

18 Q. You're only testifying about facilities, right?

19 A. That's correct.

20 MR. PADILLA: I don't have anything
21 further.

22 REDIRECT EXAMINATION

23 BY MR. FELDEWERT:

24 Q. Mr. Hinshaw --

25 A. Yes.

1 Q. -- you said the offer, referring to what they
2 marked as Exhibit Number 7, right?

3 A. Yes.

4 Q. And it's on the second page, first paragraph,
5 right?

6 A. Yes.

7 Q. Since Ard has chosen to go nonconsent in the
8 infill wells, COG proposes to allocate the surface
9 facility costs evenly over each of the four spacing
10 units. This would reduce the initial pooled well costs
11 from 658,980 to 164,745?

12 A. Yes.

13 Q. You made that offer?

14 A. Yes.

15 Q. And they never responded?

16 A. Never got a response.

17 EXAMINER DAWSON: Any questions?

18 CROSS-EXAMINATION

19 BY EXAMINER JONES:

20 Q. The -- excuse me, Mr. Hinshaw.

21 A. Yes.

22 Q. The oil would be sold through a LACT; is that
23 correct?

24 A. Yes.

25 Q. And the gas, where would it be sold?

1 A. It would be sold to a third-party purchaser,
2 DCP Frontier.

3 Q. Okay. They would work a contact out to hook
4 up?

5 A. Unfortunately, no. We have to go to them now.
6 Due to low gas prices, they do not bring meters to us
7 anymore. We have to lay part of the -- usually a long
8 flowline, pipeline to them to tie into gas sales.

9 Q. So where is the custody transfer for the gas?

10 A. At their sales meter.

11 Q. At their sales?

12 A. Uh-huh. We usually have a check meter on our
13 tank battery for these locations to double-check the
14 line [sic].

15 Q. Okay. Is that responsible for -- that and
16 maybe right-of-way charges, was that responsible for
17 some of the higher costs here, you think?

18 A. Yes, that and the SWD lines. Since these wells
19 come in making so much water and we have an SWD system
20 on the shelf, we utilize that and lay lines from each
21 tank battery to tie into the system.

22 Q. Okay. So the people that chose to participate
23 in the first well, they kind of needed to do their
24 homework and know about this, because the AFE's not
25 going to include a lot of stuff, is what I'm hearing,

1 that could possibly be thrown in there, clearing title,
2 facilities?

3 A. That's correct. I prepare and have prepared a
4 lot of estimates for wells. And so every estimate
5 cannot have its own tank battery. The wells don't
6 support those economics. So we give an estimate of what
7 the time fee that that tank battery -- that's what I
8 provide.

9 Q. Okay. And because this is a federal lease and
10 the new surface commingle rules for the Feds, you can
11 use the Coriolis meters and -- in other words, the
12 surface commingling is reduced, your cost -- facilities
13 cost; is that correct?

14 A. Slightly, by one test separator. Not really,
15 no.

16 Q. Okay. Okay. I don't have any more questions.
17 Thanks.

18 A. Uh-huh.

19 EXAMINER DAWSON: Mr. Brooks.

20 MR. BROOKS: Nothing further.

21 CROSS-EXAMINATION

22 BY EXAMINER DAWSON:

23 Q. So all these costs -- these overages that we're
24 talking about here, that was to get the well or wells
25 tied into the gas line? Is that --

1 A. Not all these costs. A portion of the costs
2 were. I don't know exactly which line item it is, but a
3 portion of the costs were, yes.

4 Q. But the current wells that you've drilled are
5 all tied in at this time?

6 A. Yes. So those costs are not being charged.
7 We're not charging a new tie-in. We are not
8 double-dipping or anything.

9 Q. That's all the questions I have. Thank you.

10 A. Okay.

11 MR. FELDEWERT: That's all I have,
12 Mr. Examiner. Thank you.

13 EXAMINER DAWSON: You, too?

14 MR. PADILLA: (Indicating.)

15 EXAMINER DAWSON: At this time Case Number
16 15185, re-opened, will be taken under advisement.

17 That concludes today's hearings.

18 Thank you very much.

19 (Case Number 15185 concludes, 4:56 p.m.)

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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
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11 were reduced to printed form by me to the best of my
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13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
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16 I FURTHER CERTIFY that I am neither
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