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1 (8:35 a.m.)

2 EXAMINER McMILLAN: Okay. And now we are
3 going to go to Case Number 20659, application of COG
4 Operating for the Tomahawk WC Unit, Eddy County, New
5 Mexico.

6 Call for appearances.

7 MS. RYAN: Elizabeth Ryan here on behalf of
8 Concho.

9 MR. DeBRINE: Good morning, Mr. Examiner.
10 Earl DeBrine, from the Modrall, Sperling firm, on behalf
11 of the protester, EOG Resources.

12 EXAMINER McMILLAN: Are there any other
13 appearances that you're aware of?

14 MS. RYAN: Yes. Jim Bruce entered an
15 appearance on behalf of Matador in this case.

16 EXAMINER McMILLAN: Okay.

17 MR. DeBRINE: And he indicated yesterday
18 that his intent was just to show up for the hearing to
19 obtain a copy of the exhibits, and he may have been
20 under the impression that we were starting at 9:00
21 rather than 8:15, so I think we can proceed without him.

22 EXAMINER McMILLAN: Do you have any
23 objections to that?

24 MS. RYAN: No objection.

25 EXAMINER McMILLAN: Okay. Hey, someone

1 from EOG gave me this quarter, and he told me that I
2 should flip it to see who wins.

3 (Laughter.)

4 EXAMINER McMILLAN: I'm not going to say
5 his name.

6 MS. RYAN: I'm going to object to that.

7 (Laughter.)

8 EXAMINER McMILLAN: What do you think of
9 that?

10 (Examiner McMillan flips the coin.)

11 EXAMINER McMILLAN: Okay. Tails, EOG
12 loses.

13 Look, it's tails.

14 Two out of three?

15 Well, that's on the record now.

16 (Laughter.)

17 EXAMINER MURPHY: Mr. DeBrine, who are you
18 here for?

19 MR. DeBRINE: EOG Resources, Inc.

20 EXAMINER McMILLAN: Proceed.

21 OPENING STATEMENT

22 MS. RYAN: Thank you.

23 Before we get started, I would like to
24 start, Mr. Examiner, with an opening statement just
25 stating the law in this case. I'm not going to be

1 testifying to any facts or anything that Concho's done
2 or not done, but there are certain questions raised in
3 EOG's prehearing statement and at the prehearing
4 conference of what the legal process is, what the law is
5 and what the Code of Federal Regulations say. And so I
6 would just like to be able to cite those for the
7 examiner on the record before we get started discussing
8 putting on the factual witnesses to testify whether
9 Concho followed those processes or not.

10 EXAMINER McMILLAN: Okay. Proceed.

11 MS. RYAN: Okay. I think it's important
12 for us to know what our -- what our lane is today and
13 what we should stay in. The process of forming a
14 federal exploratory unit is set forth in the Code of --
15 Code of Federal Regulations, and that's primarily set
16 forth in 43 CFR, Part 3100. And they've established the
17 procedure for federal exploratory units. If you have
18 ten -- more than 10 percent of federal lands in your
19 proposed unit, then you have to follow the BLM
20 procedure, and the BLM has to consent to it.

21 The initiator of all communication,
22 formation and preparation of and the application for a
23 federal unit is proposed by the proposed unit operator
24 only, and this is set forth throughout Part 3100.
25 Because approval of unit agreements has been delegated

1 by the Secretary of Interior to the authorized officer
2 of the BLM, it's been the policy of the New Mexico State
3 BLM Office to begin the unitization process by having a
4 preliminary conference and informal discussion with the
5 authorized officer. That's been called the
6 area-and-depth meeting. And that concerns the proposed
7 unit area, what those boundaries would look like, the
8 depths of the test well and the formation to be tested,
9 the text of the unit agreement itself and the form to be
10 used.

11 The model form for onshore federal unit
12 agreements is found at 43 CFR 3186.1 and must be used
13 for all units, like I said, that contain more than 10
14 percent of federal lands.

15 This preliminary conference of the
16 area-and-depth meeting should be held prior to the
17 filing of the application for designation of the
18 proposed area. The BLM's policy states that it will
19 help avoid delays, the filing of amended applications,
20 revisions to the unit boundaries at later dates, and
21 this is set forth in the BLM manual and in numerous
22 treatises and publications on the subject. Preliminary
23 considerations for the BLM are contained in 43 CFR
24 3181.1.

25 Next, if you have state land -- state lands

1 involved, the federal form of unit agreement states you
2 have to have consent from a state. In New Mexico, we
3 have State Trust Lands, and that consent must come from
4 the Commissioner of Public Lands. And that requirement
5 is set forth in 43 CFR 3181.4(a), along with New Mexico
6 Statute 19-10-45 through 47, which requires the proposed
7 unit operator to obtain consent from the Commissioner if
8 it includes any state lands -- State Trust Lands.

9 Under New Mexico Statute Section 19-10-46,
10 the Commissioner of Public Lands cannot approve a form
11 of unit agreement unless he or she finds that such
12 agreement promotes "the conservation of oil or gas and
13 the better utilization of reservoir energy; under the
14 operations proposed the state and each beneficiary of
15 the lands involved will receive its fair share of the
16 recoverable oil or gas in the place under its lands in
17 the area affected"; and "the agreement is in other
18 respects for the best interests of the state."

19 In this regard, the proposed unit operator
20 is required by the State Land Office to attend a meeting
21 or multiple meetings at the State Land Office to discuss
22 and work to satisfy these standards to the satisfaction
23 of the Commissioner of Public Lands, and the State Land
24 Office does not invite other interest owners to that
25 meeting.

1 In addition, the same form of unit
2 agreement sets forth that the Oil Conservation Division,
3 as authorized by Chapter 70 and 71 of the New Mexico
4 statutes must approve the unit agreement and the
5 conservation provisions set forth in that agreement.
6 Therefore, the preliminary conference with which the
7 BLM, State Land Office and district OCD offices are
8 important in forming these units.

9 The next step in the process after these
10 meetings is to file the application for unitization with
11 the BLM, and that is provided in the regulations to file
12 an application that designates the proposed unit area
13 that you've discussed with the authorized officer and
14 the State Land Office stating it's logically subject to
15 development under a unit plan of operation, and you ask
16 for approval of the depth initial test well to be
17 drilled. The application is required to include lots of
18 information such as a map or diagram outlining the unit
19 area, designations of the type of acreage involved such
20 as federal, state or fee lands or Indian lands that
21 requires ownership schedules and geologic reports and
22 information for the unit area. And these requirements
23 set forth in 43 CFR 3181.2 and 3183.2.

24 After the application is filed, 43 CFR
25 3183.3 states that "then the operator must invite other

1 owners in the unit to join the unit agreement."

2 Next, the Oil Conservation is tasked with
3 preventing waste and protecting correlative rights
4 within the proposed unit area, and so the form of
5 federal and state unit agreements require the consent of
6 the OCD to the unit agreement. And under the OCD rules,
7 the operator works to obtain this consent by filing an
8 adjudicatory hearing in front of the OCD by filing an
9 application for unitization under NMAC 19-15, Part 4.
10 And as set forth in many unitization orders that have
11 been issued by the OCD, the Division considers whether
12 the evidence presented is logically subject to
13 exploration and development under the unit plan, whether
14 the unit plan is geologically sound and has received
15 preliminary approval from the BLM and State Land Office
16 and whether the unit in principle is a proper
17 conservation measure.

18 After obtaining an order for unitization
19 from the Oil Conservation Division, the last thing to do
20 is to obtain all signatures of all parties who wish to
21 voluntarily commit their interest to the unit agreement.
22 And after you have obtained those signatures from the
23 parties who do intend to commit their interest, then you
24 submit that final unit agreement -- signed unit
25 agreement to the BLM for approval, and this is required

1 under 43 CFR 3183.3. And, obviously, if state lands are
2 involved, you have to obtain the consent signature from
3 the Commissioner of Public Lands.

4 And as set forth in 43 CFR 3183.4, after
5 submission of the signed unit agreement, the BLM
6 authorized officer may approve the unit agreement upon
7 determination that the agreement is necessary or
8 advisable to public interest and is for the purpose of
9 more properly conserving natural resources. And that
10 approval, if approved, will be incorporated in a
11 certification determination document that's appended to
12 the agreement.

13 So that's the formal process that is set
14 forth in all of the applicable regulations that has led
15 us to where we are today.

16 And next I'd like to swear in -- I have
17 three witnesses today.

18 EXAMINER McMILLAN: Opening statements?

19 MR. DeBRINE: Sure, if I could just respond
20 briefly.

21 OPENING STATEMENT

22 MR. DeBRINE: I think that's a
23 characterization of the process and regulations, that
24 that is not actually what's in the regulations
25 concerning the formulation of federal exploratory units,

1 and she's talking more about practice rather than actual
2 legal requirements concerning the establishment of
3 federal units.

4 One of the things that's very important I
5 think for the Division to consider is that these units
6 are voluntary agreements. They can only be reached
7 voluntarily. You have to have the agreement of all the
8 working interest owners, and you have to have, in order
9 to get them approved, a commitment of 85 percent of the
10 working interests in each of the tracts within the unit
11 in order for it to eventually be approved by the BLM.
12 That's a major requirement.

13 New Mexico does not have a statute or
14 regulation for the establishment of units for primary
15 production. The Unitization Act only applies to
16 secondary recovery units, and as a precondition to
17 establish a secondary recovery unit, you need to have 85
18 percent commitment by the working interest owners in the
19 unit.

20 Also, because it's a voluntary agreement,
21 there is an obligation of good faith in fair dealing
22 when you are forming a unit, and that's a requirement
23 that I think the operator and the applicant in a
24 unitization case needs to demonstrate.

25 It is EOG's position that the obligation of

1 good faith was not met here because if you're going to
2 comply with your obligation to negotiate in good faith,
3 you need to invite your partners in and have their
4 input.

5 What is going on here, we believe, is that
6 the Applicant went to the regulatory agencies and is
7 coming to the Division to try and get approval of a unit
8 that's not anywhere near close to the 85 percent
9 requirement for committed tracts and then use that as a
10 hammer to essentially compulsory pool the remaining
11 working interest owners into the unit because they would
12 be faced with a Hobson's choice to either join a unit
13 that's already been accelerated by the approval of the
14 regulatory agencies, or they will have their tracts
15 uncommitted and they will be unable to effectively
16 develop them. We think they're putting the cart before
17 the horse. We think they need to come demonstrate that
18 they've got an 85 percent commitment as a precondition
19 to seeking approval of the Division for the unit. And
20 we think the evidence is going to show they don't have
21 it.

22 The other odd thing about this particular
23 unit agreement is it has been contrary to the federal
24 regulations, which require that you drill an obligation
25 well to establish the areas logically producing within

1 the target formation. This is a very odd unit agreement
2 in that it has a south and north participating area that
3 are provided for in the agreement at the outset, and the
4 two do not overlap; there are obligation wells to be
5 drilled, and then the unit merges at a later date. The
6 participating entry for a unit under the federal
7 regulations is supposed to include all of the area that
8 logically extends from the geologic evidence, is able to
9 contribute to production.

10 And so you're going to have a situation
11 here where there is going to be a considerable delay
12 before any of the interest owners of the south part of
13 the unit would share production because it calls for the
14 drilling of an initial four-well plan in the north
15 before you drill the wells in the south, and we think
16 that's unusual and something that's not contemplated by
17 the federal regulations.

18 And so we don't think this is a proper
19 unit, and we would ask that the Division deny the
20 application.

21 EXAMINER BRANCARD: Ms. Ryan, can you --
22 you listed a series of standards that the OCD is to
23 apply to approval of this unit. Where do those
24 standards come from?

25 MS. RYAN: I reviewed several unitization

1 orders that Division has approved in the past, and it
2 simply states -- because you're right. There isn't a
3 specific statute or regulation that says the OCD can't
4 approve a unitization order or consent without these
5 specific standards. That doesn't exist, so I looked at
6 just various pooling orders. And the standards set
7 forth in the pooling orders, when it says "is therefore,
8 ordered that" -- so the statement stated that in those
9 particular instances, the Division determined an order
10 that those unit areas were logically subject to
11 exploration and development under a unit plan and that
12 the unit plan in those cases were geologically sound and
13 noted that the operator had received preliminary
14 approval from the BLM and State Land Office and that, in
15 principle, the unit plan was a proper conservation
16 measure. And that's just language in those particular
17 unit orders that the OCD used.

18 EXAMINER BRANCARD: Where is the State's
19 role in the BLM rules?

20 MS. RYAN: So the form of federal
21 exploratory unit states that -- and it is also up on the
22 State Land Office website -- has three "whereases,"
23 "whereas this must be approved," you know, that cite
24 CFRs that it must be approved by the authorized officers
25 of the BLM. And then it cites to the -- the next words

1 add: If State Trust Lands are involved, under Section
2 19 of New Mexico Statute Section 19-10-45 through 47,
3 that the unit operator has to obtain consent from the
4 Commissioner of Public Lands. So that's the reference
5 for the New Mexico statutes.

6 And then it also has a "whereas" recitation
7 at the beginning that states that -- well, in any
8 state -- the federal -- the Code of Federal Regulations
9 states -- and that is -- 43 CFR 3183.4 states that if
10 state lands are involved -- and this is in any state in
11 which an operator is forming a unit. It has to obtain
12 consent from the State. So the way that New Mexico is
13 set up, of course the Commissioner protects the State
14 Trust Lands, but the Oil Conservation Division has
15 jurisdiction of, you know, exploration development,
16 setting spacing and protecting correlative rights and
17 preventing waste in our state. So the third recital in
18 the form of unit agreement states -- and I quote -- that
19 "The Oil Conservation, as authorized by Chapter 70-71 of
20 the New Mexico statutes, must approve the unit agreement
21 and a conservation provision set forth therein."

22 EXAMINER BRANCARD: So you're -- I'm
23 looking at the unit model form federal unit agreement,
24 which doesn't say that. You're looking at the State
25 Land Office approval.

1 MS. RYAN: State Land Office approval,
2 that's correct.

3 EXAMINER BRANCARD: So the State Land
4 Office approval is saying that they want OCD to sign
5 off --

6 MS. RYAN: That's correct.

7 EXAMINER BRANCARD: -- on the unit?

8 MS. RYAN: It's -- in my research, it's
9 like a back-door approval process. There is not an
10 express statutory authority or anything set forth in
11 19.15 of the New Mexico Administrative Code.

12 EXAMINER BRANCARD: And it's not in the
13 State Land Office statutes for unitization?

14 MS. RYAN: No. So there is a Statutory
15 Unitization Act that applies only to secondary recovery
16 and pressure maintenance --

17 EXAMINER BRANCARD: Right.

18 MS. RYAN: -- and those provisions do -- do
19 allow, if an operator's proposing under that, of kind of
20 a pooling and unitizing of owners who may not be willing
21 to commit. That is not that process. This is a
22 voluntary exploratory unit in which all owners involved
23 can choose on whether they want to commit their interest
24 to this unit or not, and the operator is required to --
25 for the federal standard is, by the time that final

1 approval, up until that time, the proposed operator
2 has --

3 Hey, Jim.

4 MR. DeBRINE: Your exhibits are there
5 (indicating).

6 MR. BRUCE: Thank you.

7 Jim Bruce entering an appearance for MRC
8 Permian Company.

9 EXAMINER BRANCARD: Thank you.

10 MS. RYAN: So the federal standard is that
11 the unit operator has up until final approval of the
12 unit to obtain 85 percent interest commitment across the
13 entire unit. Nowhere in the federal regulations does it
14 require it tract by tract. It's a net-spread ownership.

15 EXAMINER BRANCARD: So if you're having a
16 federal unit that only involved BLM lands, OCD would not
17 be involved; is that correct?

18 MS. RYAN: I have never brought that case
19 in front of the Oil Conservation Division. I would
20 think I still need to come in front of you. I think
21 that the courtesy between the BLM office here in the
22 state would want us to come before you. I don't know
23 the answer to that, though. That's a good question.

24 EXAMINER McMILLAN: That's a mess, because
25 I was extensively involved in the northwest cases, and

1 that was a sticky issue. Because in the northwest where
2 they had those monster units, a lot of times those were
3 100 percent federal, and they came to the OCD, and the
4 OCD was extremely uncomfortable issuing an order because
5 they were 100 percent BLM. But they still came before
6 the OCD, and it was really a mess. And in the northwest
7 cases where they had federal and state acreage, they
8 always came to the OCD, because it was always in the
9 unit agreements in the northwest that they had to come
10 to get permission from the OCD.

11 EXAMINER BRANCARD: All right. And we do
12 seem to be mentioned in this unit agreement that you've
13 given to us here as Exhibit 2. Okay?

14 MS. RYAN: Uh-huh.

15 EXAMINER BRANCARD: I'm just trying to
16 clarify our role in this.

17 EXAMINER McMILLAN: Yeah, I understand.

18 EXAMINER BRANCARD: Mr. DeBrine got the
19 lecture from me on Tuesday about what the proper role of
20 the OCD is in the case. So I don't want us going into
21 areas where we really don't have authority here.

22 EXAMINER McMILLAN: Yeah. I think that was
23 part of the --

24 MS. RYAN: Yes. And I think --

25 EXAMINER BRANCARD: And so beyond -- beyond

1 looking at -- I mean, I guess I would prefer -- you
2 know, but this would take a while -- that we have some
3 sort of tri-party agreement with the land office and BLM
4 about what they expect us to do if they want us to
5 review this, okay, so we have some clear sense of what
6 our expectation is. Our only potential role is simply
7 our normal statutory role of prevention of waste and
8 protection of correlative rights. Okay? We can't -- I
9 mean, if there is going to be an issue here about
10 whether this agreement complies with federal
11 regulations, that's beyond our scope. Okay? That's the
12 BLM's job to figure out. And so -- and whether this is
13 properly issued by the State Land Office, that's beyond
14 our scope. Okay?

15 To the extent there is any discussion,
16 though, of whether this plan, you know, results in waste
17 or harms correlative rights, I think that would be our
18 only possible hook in this situation, because other
19 than -- we have no standards to apply here, nor do we
20 have any specific statutory or regulatory authority. As
21 Ms. Ryan points out, we have a Statutory Unitization Act
22 in this state that gives us clear authority over units
23 for EOR --

24 EXAMINER McMILLAN: Right.

25 EXAMINER BRANCARD: -- not for primary

1 production. Okay? So we can't use that statute
2 specifically in this case. So that's just my warning.

3 I have to run out. Mr. David is here to
4 take over and run the hearing.

5 But that would be my sense to sort of get
6 the hearing focused and sort of get the parties focused
7 on that issue, not whether this thing technically
8 complies with all the federal requirements. Not our
9 problem. Okay?

10 MS. RYAN: Thank you.

11 MR. DeBRINE: And, Mr. Brancard, I would
12 just add the State -- that's an expression of intent by
13 the legislature as to when the OCD should act in a
14 unitization case, is you need 85 percent of the
15 commitment of the working interest owners in order to
16 come, because otherwise it has a practical effect of
17 compulsory pooling for primary recovery, because once
18 this agency blesses it, it does create a Hobson's choice
19 for the working interest owners if the unit has already
20 been approved by the OCD.

21 EXAMINER BRANCARD: So the 85 percent,
22 Mr. DeBrine, you're pulling that out of the Statutory
23 Unitization Act --

24 MR. DeBRINE: Correct.

25 EXAMINER BRANCARD: -- or you're pulling

1 that out of the federal regs?

2 MR. DeBRINE: Well, it's actually -- it's
3 out of the Unitization Act, because it's part of the Oil
4 and Gas Act, the Unitization Act, and it's a requirement
5 in the Unitization Act. And the legislature has only
6 said we're going to allow for unitization for secondary
7 recovery and not primary recovery. But I think the 85
8 percent requirement is a significant statement of intent
9 by the legislature as to what you should have before you
10 come to the Division in order to get them to bless an
11 exploratory unit for primary production.

12 EXAMINER BRANCARD: Mr. Bruce?

13 MR. BRUCE: The Statutory Unitization Act
14 requires 75 percent voluntary approval overall in the
15 unit. And I don't know -- I don't believe it's -- and
16 perhaps the observer over here (indicating) could help
17 me on this. I don't think there is a specific federal
18 regulation or State Land Office regulation, but it's
19 generally acknowledged there should be overall 85
20 percent voluntary joinder in a voluntary primary
21 recovery unit, and no one can be forced in, obviously.

22 EXAMINER BRANCARD: Right. All right.
23 We're not ripe to make a decision today, but I will tell
24 you that it would be my advice to OCD that we're not
25 going to issue a decision approving a unit. Okay? Not

1 our job here. That's the BLM's job. Okay? We can say
2 that this proposed unit, in our opinion, does not
3 result -- we don't think it results in waste or harms
4 correlative rights, okay, and advise the BLM and State
5 Land Office on that issue. I think given our lack of
6 statutory authority over primary production units,
7 that's really all we can do.

8 Now, Mr. DeBrine, I think you're going to
9 make an argument about correlative rights here, I would
10 assume, and use the 85 percent, which is fine. Okay?
11 But that's -- I think all we're doing here is giving an
12 advisory opinion to the BLM and land office.

13 MS. RYAN: That's my understanding. And I
14 think every practitioner here, if you look at all the
15 unitization orders issued by the OCD since its
16 inception, does exactly what you are pointing out here,
17 and that has been the practice for decades on what this
18 hearing is, what the order would look like should you
19 issue an order, which is what we've asked, and we're not
20 asking for compulsory pooling in this case. We've
21 simply asked for the OCD to state that it is in the best
22 interest of conservation, of protection of correlative
23 rights and the prevention of waste.

24 EXAMINER BRANCARD: Okay. I need to run.
25 Mr. David is here to take charge.

1 MR. DeBRINE: There is only one issue. I
2 believe the preliminary letter of approval by the BLM
3 and the land office states that their approval is
4 conditioned on the Division's approval of the unit
5 agreement as well. So if the Division is not going to
6 give that agreement, then I don't think we should be
7 having the hearing at all because they have
8 conditions --

9 EXAMINER BRANCARD: We can look at prior
10 orders of the Division.

11 MS. RYAN: There are hundreds of prior
12 orders that the OCD can look at. This has been routine
13 for decades, long before I started practicing here. Ask
14 Mr. Bruce. This has -- this has been the practice for
15 decades, so there are oodles of OCD orders for primary
16 recovery.

17 (Examiner Brancard exits the room;
18 Examiner David is present, 9:03 a.m.)

19 MR. BRUCE: I was going to say I know of
20 one case where these issues were briefed before the
21 Commission, and that's the Harvey E. Yates Company unit
22 down in Otero County. And I can't remember the name of
23 the unit, even though I did the hearing. And there were
24 briefs filed by me and by the Division's counsel in
25 that, and I can get you that.

1 Do you have that case number?

2 MS. RYAN: Not off the top of my head.

3 EXAMINER McMILLAN: There aren't very many
4 units in Otero County, so it's easy to figure out.

5 MS. RYAN: I'd be happy to locate it and
6 submit that post-hearing, if that would help the
7 Division.

8 MR. BRUCE: I can get both counsel the case
9 number.

10 MS. RYAN: Okay.

11 MR. DeBRINE: Is that the Bennett Ranch
12 unit?

13 EXAMINER McMILLAN: Yeah, that's it.

14 MS. RYAN: Mr. Examiner, I'm ready to
15 present my direct case.

16 EXAMINER McMILLAN: Okay. If the witnesses
17 would please stand up and be sworn in at this time.

18 (Mr. Macha, Mr. Fisher, Mr. Hurd,
19 Ms. Spinks, Mr. Pickell, Mr. Moran sworn.)

20 MS. RYAN: I'd like to call Mr. Travis
21 Macha to the stand.

22 TRAVIS MACHA,
23 after having been first duly sworn under oath, was
24 questioned and testified as follows:

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DIRECT EXAMINATION

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BY MS. RYAN:

Q. Will you please state your name for the record?

A. Travis Macha.

Q. And who is your employer?

A. COG Operating.

Q. And what is your position?

A. Landman.

Q. And how long have you been employed in that position?

A. About one year and three months.

Q. Will you please describe your roles and responsibilities in that position?

A. So basically we ensure a clear title ahead of a multi-rig schedule, as well as negotiating agreements with third parties.

Q. And does your area of responsibility --

MS. RYAN: And I may use today COG Operating and Concho Resources interchangeably. COG Operating is our operating company, and Concho Resources is our parent company, so I mean the same thing.

Q. (BY MS. RYAN) Does your area of responsibility at COG include this area in southeastern New Mexico that's subject to this application?

A. Yes. My area includes Eddy County, New Mexico.

1 **Q. Have you previously testified before the**
2 **Division?**

3 A. Yes, by affidavit.

4 **Q. Okay. And so you were admitted as an expert**
5 **via that affidavit?**

6 A. Yes.

7 **Q. But still why don't you go ahead and tell us a**
8 **little bit about your education and background?**

9 A. I graduated from Texas Tech in May of 2016 with
10 my energy commerce degree. After that, I worked as a
11 contract landman for seven months before moving on to
12 COG Operating as a lease analyst for a year and four
13 months where I was promoted to landman in April of 2018.

14 MS. RYAN: Mr. Examiner, I would ask that
15 Mr. Macha be admitted as an expert in petroleum land
16 matters.

17 MR. DeBRINE: No objection.

18 EXAMINER McMILLAN: Jim?

19 MR. BRUCE: No objection.

20 EXAMINER McMILLAN: So qualified.

21 **Q. (BY MS. RYAN) Okay. Mr. Macha, if you would**
22 **turn to Exhibit 1 and identify that for the examiner.**

23 A. So Exhibit 1 is just a map of the Tomahawk
24 unit. It shows you the acreage involved as well.

25 **Q. And what lands are involved in this proposed**

1 **unit?**

2 A. Federal, fee and state, roughly 2,000 acres of
3 Fed, 1,000 acres of state, 1,800 acres of fee. And the
4 unit is comprised of Sections 17, 18, the east half of
5 Section 19, Sections 20, 29, 30, 31 and 32 of Township
6 24 South, Range 28 East, Eddy County, New Mexico.

7 **Q. Is the unit boundary identified on Exhibit 1 in**
8 **a blue outline?**

9 A. Yes. That's correct.

10 **Q. Okay. And in the upper left corner, does that**
11 **discuss the land composition of the unit?**

12 A. Yes.

13 **Q. Okay. And the legal description is discussed**
14 **below the map?**

15 A. Yes. That's correct.

16 **Q. Okay. Can you tell the examiner why COG is**
17 **only including the east half of Section 19 in the unit?**

18 A. Yes. So the west half of Section 19, Matador,
19 they are going to be spudding four wells in the west
20 half of Section 19. They have already filed APDs on
21 those, and they're going to be spudding those in the
22 third quarter 2019.

23 **Q. Okay. Thank you.**

24 **And so what are the three things that**
25 **Concho is requesting today?**

1 A. We are requesting for approval of the Tomahawk
2 WC Unit. We are requesting approval for surface
3 commingling throughout the unit, and we are requesting
4 elimination of internal setbacks.

5 **Q. Okay. Right now I'd like to bring your**
6 **attention to the Exhibit 2. Can you identify that for**
7 **the examiners?**

8 A. Exhibit 2 is our proposed state and federal
9 agreement for the Tomahawk WC Unit.

10 **Q. And does it conform to the federal form?**

11 A. Yes, it does. And they have used this form in
12 the past.

13 **Q. And has it been approved by the BLM?**

14 A. Yes.

15 **Q. And has it been approved by the State Land**
16 **Office?**

17 A. Yes.

18 **Q. Are there changes to the standard form?**

19 A. Section 10 has been modified by the BLM to
20 their satisfaction.

21 **Q. Okay. Let's turn to Section 10.**

22 MS. RYAN: There are no page numbers on
23 this exhibit, but just a few pages in, you'll find
24 labeled in bold lettering at the bottom, "10. Plan of
25 Further Development and Operation," one, two, three,

1 four, five. So it would be page 6 of the unit
2 agreement, is where Section 10 begins.

3 Q. (BY MS. RYAN) Mr. Macha, will you flip to the
4 second page where the drilling obligations are
5 discussed? What are -- what are COG's drilling
6 obligations in this unit?

7 A. So outlined by the unit agreement and required
8 by the BLM is a total of four wells shall be drilled in
9 the unit as a whole pursuant to approved plans of
10 development within 12 months of the effective date
11 hereof, the four wells being two wells drilled at legal
12 locations in Sections 17 and 18 of Township 24 South,
13 Range 28 East, and two wells to be drilled at legal
14 locations in Sections 31 and 32 of Township 24 South,
15 Range 28 East.

16 Q. Okay. And does that obligation -- in
17 referencing this page in the unit agreement, does that
18 paragraph begin with "Notwithstanding anything in this
19 unit agreement to the contrary"?

20 A. Yes, it does.

21 Q. Okay. Will you read that paragraph for the
22 examiner?

23 A. The entire paragraph?

24 Q. Yes.

25 A. "Notwithstanding anything in this unit

1 agreement to the contrary, except Section 25 of the Unit
2 Agreement, UNAVOIDABLE DELAY, a total of four wells
3 shall be drilled in the unit as a whole pursuant to
4 approved plans of development within 12 months of the
5 effective date hereof. The (4) wells being, (2) wells
6 to be drilled at legal locations in Sections 17 and 18
7 of Township 24 South, Range 28 East and (2) wells to be
8 drilled at legal locations in Sections 31 and 32 of
9 Township 24 South, Range 28 East."

10 **Q. Okay. And will you read the timing of those**
11 **wells? The very next paragraph, will you read that for**
12 **the examiner?**

13 A. Yes. The "Unit Operator intends to drill such
14 four wells, subject to the requirements of this Section
15 10 with not more than six months' time elapsing between
16 the end of drilling of the first well and the
17 commencement of drilling operations for each subsequent
18 well. Regardless of whether a discovery has been made
19 in any well drilled under this provision, all initial
20 wells must be drilled in compliance with the above
21 specified formation or depth requirements in order to
22 meet the dictates of this section."

23 **Q. Okay. If you will then flip a couple of pages**
24 **over to Section 12 entitled "Allocation of Production,"**
25 **is that where, in the unit agreement, it discusses the**

1 establishment of a participating area?

2 A. Yes, it does.

3 Q. Okay.

4 MS. RYAN: I'd like to refer the examiners
5 to that section.

6 Q. (BY MS. RYAN) So I'd like to refer you back
7 briefly to Exhibit 1 so we can look at the picture of
8 what the unit agreement looks like. Can you explain how
9 the -- what your understanding is as a landman how the
10 BLM establishes participating area?

11 A. So a participating area will be applied by the
12 operator to the BLM after a well or wells have been
13 drilled in a unit area.

14 Q. And so is it true that the unit operator asks
15 the BLM to establish the participating area, and the BLM
16 has to approve of that establishment?

17 A. That's correct.

18 Q. Okay. And have you and the unit team today
19 been communicating with the BLM?

20 A. Yes.

21 Q. And what personnel of the BLM have you been
22 communicating with?

23 A. James Glover.

24 Q. Tell us in your own words the first time you
25 read the definition of participating area in 43 CFR

1 **3180 --**

2 A. Yes.

3 **Q. Excuse me.**

4 **-- in 43 CFR 3180.0-5.**

5 A. Yes, I have.

6 **Q. And what is your understanding of the**
7 **definition of participating area?**

8 A. So the definition there and as repeated by
9 James Glover, it is a portion of a unit that has been
10 deemed proven reasonably productive by a single well.

11 **Q. Okay. Thank you.**

12 **So what has the BLM told you specifically**
13 **about its policy reasons behind its establishment of**
14 **participating areas not just within this unit but within**
15 **any unit?**

16 A. So going back to the definition, they have told
17 us that they will not establish a participating area
18 greater than the area that the operator has proven to be
19 productive by a single well. So with that being said,
20 COG has agreed to drill its two -- two obligation wells
21 in Sections 17 and 18, being the north half of the unit,
22 and two obligation wells in Sections 31 and 32, being
23 the south half of the unit. That being the intent to
24 form a single PA covering the entire unit as quickly as
25 possible by proving the reasonable production throughout

1 the unit.

2 Q. So for a few years in the past, had the BLM
3 been approving unit agreements from the beginning for
4 the participating area that covered the entire unit
5 area --

6 A. Yes.

7 Q. -- without areas being --

8 MR. DeBRINE: Object to foundation.

9 THE WITNESS: Yes, they have.

10 Q. (BY MS. RYAN) Have you discussed with James
11 Glover that the BLM in prior years had approved
12 agreements with single participating areas?

13 A. Yes, they have. They have told me that while
14 they have done that in the past, they are trying to go
15 back to the rule book in establishing those PAs as by
16 the definition and only establishing those PAs as to
17 reasonably proven to be productive.

18 Q. Okay. So what are some concerns of an interest
19 owner that may not be included -- they're in the unit,
20 but they may not be included in an initial participating
21 area?

22 A. So the participation area provisions by the
23 BLM, I believe, are beneficial to leasehold owners due
24 to the BLM giving the operator the obligation to not
25 only drill up a portion of the unit but to drill

1 throughout the unit and establishing production and
2 proving up the entire unit area.

3 Q. Is the cost -- are costs allocated and
4 production allocated on a participating area basis?

5 A. Yes.

6 Q. And not a unit basis?

7 A. Yes.

8 Q. So if the initial participating area is small
9 and a unit owner isn't located in that initial
10 participating area, would it receive -- would it be
11 allocated production from those initial wells?

12 A. No, it would not.

13 Q. Okay. So let's refer to Exhibit 1. What has
14 the BLM instructed COG with regard to the timing of the
15 drilling of the first four obligation wells and the
16 establishment of participating areas in this unit?

17 A. So the BLM has instructed us that -- so the
18 four obligation wells, being two in the north and two in
19 the south, if those are drilled in a relatively same
20 time frame -- so two in the north, two in the south
21 (demonstrating) relatively same time frame -- you are
22 effectively proving up the entire unit as a whole, and
23 you are going to be able to apply for a single PA right
24 off the bat throughout the entire unit.

25 However, if you drill and complete the

1 wells in the north and delay produ- -- or delay
2 operations in the south, the BLM will order that only
3 the north area, being Sections 17, 18, east half of 19
4 and 20, be formed into a participating area. At a later
5 date, if COG were to commence operations in the south in
6 Sections 31 and 32, after those wells are producing, the
7 participating area would expand to include the south.

8 **Q. So what I understand you saying is that the BLM**
9 **has outlined two options for COG and its four unit**
10 **obligation wells for 2020; is that correct?**

11 A. Yes. Yes. It's just based on timing.

12 **Q. Okay. So let's take option one, and can you**
13 **identify the yellow line --**

14 A. Yes.

15 **Q. -- the yellow-dotted line on Exhibit 1?**

16 A. Yes. Option one on Exhibit 1 being the yellow
17 outline, that would be -- in the event COG drilled the
18 north, Sections 17 and 18, and delayed to drill Sections
19 31 and 32, that would be your participating area, the
20 yellow line.

21 However, if we drilled Sections 17 and 18
22 and 31 and 32 in relatively the same time frame, the BLM
23 would approve the red outline, the entire Tomahawk WC
24 Fed Unit, as a single participating area, spreading
25 production and revenues across the entire unit to begin

1 with.

2 Q. And what is COG's preference and plans with
3 regard to drilling the four unit obligation wells?

4 A. We prefer to drill them at relatively the same
5 time frame.

6 Q. So that a single participating area can be
7 established?

8 A. Yes. That's correct.

9 Q. Can you guarantee today that Concho would be
10 able to do that?

11 A. No. I cannot guarantee that we're going to be
12 able to do that. It's just going to be based on the rig
13 availability at the time and the market.

14 Q. But will COG use its best effort to drill these
15 four unit obligation wells within this relatively
16 similar amount of time so that one participating area
17 can be established?

18 A. Yes. And that is our intent, and we are very
19 optimistic we will be able to do that.

20 Q. And when was the last time you discussed
21 this -- I know you've discussed this. Have you
22 discussed this repeatedly with Mr. Glover?

23 A. Yes, I have.

24 Q. When was the most recent time you discussed
25 this with Mr. Glover?

1 A. Wednesday of this week.

2 Q. Okay. But ultimately this is still a
3 decision -- even if COG applies for a single
4 participating area, this is still ultimately a decision
5 of the BLM?

6 A. Yes, it is.

7 Q. But the BLM has given us assurances that if we
8 follow this plan, that it will likely approve of it?

9 A. Yes, they have.

10 Q. Based on your knowledge and experience as a
11 landman and your knowledge of the legal processes, has
12 COG followed the procedure for forming federal
13 exploratory units as set forth in the model form of unit
14 agreement and Code of Federal Regulations?

15 A. Yes, to the best of our knowledge.

16 Q. Has the BLM commented on how and if COG has
17 followed this process?

18 A. Yes. James Glover on Wednesday stated that --

19 MR. DeBRINE: I'll object as hearsay.

20 MS. RYAN: It's not hearsay if he spoke to
21 the BLM directly and he's talking about his
22 conversation.

23 MR. DeBRINE: That's the definition of
24 hearsay. It's an out-of-court statement by the BLM.
25 He's asserting it for truth of the matter.

1 MS. RYAN: The OCD has the option -- it
2 doesn't have to follow the rules of evidence, and it has
3 the option to hear whatever it deems relevant. And I
4 think it's relevant on whether the BLM thinks --

5 EXAMINER DAVID: The rules of evidence
6 don't apply, so I think we can take the testimony and
7 give it whatever probative value that it merits.

8 EXAMINER McMILLAN: Okay. We're going to
9 follow what the lawyer says.

10 Q. (BY MS. RYAN) Okay. So are you quoting what
11 Mr. Glover said on Wednesday?

12 A. Yes, I am.

13 Q. And what did he say?

14 A. James Glover stated that COG's Tomahawk WC Unit
15 submission was the most legally complete unit submission
16 he's seen in this area.

17 Q. And those were his exact words?

18 A. Yes.

19 Q. And you were on the phone with him when he said
20 that?

21 A. Yes.

22 Q. So let's focus back on the unit itself. What
23 will the unitized interval be?

24 A. From the top of the Wolfcamp Formation down to
25 the base of the Wolfcamp Formation.

1 Q. Okay. Our geologist will testify to that in
2 more detail later?

3 A. Yes.

4 Q. Okay. Referring back to Exhibit 2, which is
5 the unit agreement, there are three exhibits to the unit
6 agreement. Can you identify Exhibit A to the unit
7 agreement for the examiner?

8 A. Yes. Exhibit A is, again, just a map of the
9 Tomahawk Unit, and it shows the breakdown of federal,
10 fee and state lands, as well as the tracts within the
11 unit.

12 Q. Okay. And if you flip to Exhibit B of the unit
13 agreement, can you identify that for the examiner?

14 A. Yes. This is a breakdown of the interests of
15 the owners within the unit based on tracts.

16 Q. Okay. Thank you.

17 And is this breakdown what the records
18 reflect -- what your records reflect currently?

19 A. Yes, besides Chisholm Energy Operating. They
20 have now devolved into Marathon. And Trabajo Del Spear,
21 they have now devolved into COG.

22 Q. How many leases are involved in the proposed
23 unit?

24 A. 84.

25 Q. And are there any unleased acreage within the

1 unit?

2 A. Yes.

3 Q. What has been your contact with these unleased
4 mineral interest owners in the unit area?

5 A. All unleased owners have been taken into
6 account on the unit agreement, as well as our unit
7 operating agreement, but we have sent out letters and
8 offers to lease to every unleased interest owner within
9 this unit.

10 Q. So you contacted every unleased mineral
11 interest owner that you could locate?

12 A. Yes. That's correct.

13 Q. What percentage of the unit area do these
14 unleased mineral interest owners make up?

15 A. Roughly 0.25 percent.

16 Q. Okay. And you just stated that Concho then has
17 leased up one of these unleased mineral interest owners?

18 A. Yes. That's correct.

19 Q. And who was that?

20 A. Trabajo Del Spear.

21 Q. Does Concho hold all the leases in this unit?

22 A. No, we do not, but we do have roughly a 75.5
23 percent working interest spread across this entire unit.

24 Q. And so there are other owners in addition to
25 the unleased mineral interest owners?

1 A. Yes. There are other owners who are identified
2 in Exhibit B.

3 Q. Okay. And the other owners did receive direct
4 notice of this hearing?

5 A. Yes, they did.

6 Q. What commitment to the unit do you
7 anticipate -- voluntary commitment do you anticipate?

8 A. Over 85 percent.

9 Q. And what is -- what is that based?

10 A. That is based on the -- the letters we have
11 received, as well as a verbal commitment from OXY USA,
12 WTP, Occidental Permian, and OXY Y-1, who holds roughly
13 a 10 percent interest in that unit.

14 Q. Does that place Concho over the 85 percent
15 federal threshold?

16 A. Yes.

17 Q. Okay. I'm going to refer you to Exhibit C of
18 the unit agreement. Can you identify that for the
19 examiners?

20 A. Yes. This is our current tract commitment
21 status, again based on each tract. This is everyone who
22 we have signatures back from as of today.

23 Q. And do you anticipate the BLM approving the
24 unit based on the recent discussions?

25 A. Yes, we do.

1 Q. So let's refer to Exhibit B. Can you identify
2 that for the examiner -- excuse me -- Exhibit 3, Number
3 3?

4 A. Yes. This is the application for
5 designation -- or I guess the destination letter from
6 the BLM to COG.

7 Q. Is this the preliminary approval letter from
8 the BLM?

9 A. Yes. This is the preliminary approval letter.

10 Q. Okay. Approving this unit?

11 A. Yes. That's correct.

12 Q. Does the letter discuss that the -- what the
13 unit obligations will be?

14 A. Yes. It discusses the initial obligation well
15 to the unit to satisfy the federal unit.

16 Q. Does it discuss what the unitized interval will
17 be?

18 A. Yes, it does. And this letter was sent out to
19 all interest owners in this unit as well.

20 Q. All right. Let's turn to Exhibit 4. Can you
21 identify that for the examiners?

22 A. This is the preliminary approval letter from
23 the State Land Office.

24 Q. Okay. So is it your understanding that the BLM
25 and the State Land Office understand the nature of the

1 **unitized area and the proposed development plans by COG?**

2 A. Yes. And they've both stated that they do
3 believe this will be in the best interest of
4 conservation by preventing waste and protecting
5 correlative rights.

6 **Q. Mr. Macha, what is the benefit of unitization**
7 **in general for working interest owners?**

8 A. So you're going to be able to spread your
9 working interest across a larger number of wells rather
10 than one or just a few. Additionally, if approved
11 today, surface commingling will allow for fewer tank
12 batteries, which reduces surface disturbance, which also
13 reduces your costs, which boosts economics per wellbore.

14 **Q. So the risk is spread across a larger acreage**
15 **area?**

16 A. Yes.

17 **Q. So we've just discussed COG's obligations --**
18 **obligation wells under the unit agreement. When does**
19 **COG plan to spud the first well?**

20 A. So this is going to be based on the BLM
21 approval, as well as APDs, but we anticipate Q2 or Q3 of
22 2020.

23 **Q. What does the unit agreement state with regard**
24 **to how many months in which COG has to drill the first**
25 **well from final approval of the unit by the BLM?**

1 A. So once the BLM formally approves the unit, we
2 will have six months to spud our initial well.

3 **Q. And so we're hopeful that that would be**
4 **approximately the second or third quarter of 2020?**

5 A. Yes. That's correct.

6 **Q. But it's dependent on timing?**

7 A. But it's completely dependent on timing.

8 **Q. So let's turn to Exhibit 5. Can you identify**
9 **that for the examiners?**

10 A. This exhibit is again just a map of the
11 Tomahawk Unit outlined in blue. It is overlaid with
12 EOG's current leasehold position that they could
13 potentially contribute to this unit being the northwest
14 quarter of Section 17 and 50 percent of Section 30. And
15 the red and yellow boxes -- you can see on the map --
16 those are two well -- or several well proposals, being
17 two separate designated spacing units that EOG has
18 proposed recently. Down in the bottom right, you can
19 see those spacing units. And roughly EOG's working
20 interest in those units will be 25 percent, and COG's
21 working interest will be roughly 75 percent.

22 On the table to the left, you can see
23 everyone in the unit's working interest breakdown with
24 EOG highlighted in yellow at 10 percent, roughly.

25 **Q. Okay. So to confirm, COG's interest spread**

1 across the unit is over 75 percent --

2 A. That's correct.

3 Q. -- ownership?

4 A. Yes.

5 Q. And EOG's interest spread across the unit is
6 right over 10 percent?

7 A. That's correct.

8 Q. Okay. And then if we're just looking at what
9 the ownership is in the proposed spacing units and well
10 proposals by EOG, that even in those proposals, COG has
11 75 percent ownership in those spacing units?

12 A. Yes, they do.

13 Q. And EOG has about 25 percent?

14 A. Yes.

15 Q. So looking at Exhibit 5, we're talking about
16 spudding the initial well. Can you point out and
17 identify for the examiners where that initial well will
18 be located in the unit?

19 A. For a further visual, we will be surfacing in
20 Section 18 and bottom-holing in Section 17 in the north,
21 and our southern wells will surface in Section 31 and
22 bottom-hole in Section 32.

23 Q. So what is Concho's development plans? You
24 testified that Concho's required to drill four wells in
25 this unit next year. Does Concho plan to drill more

1 **than four?**

2 A. So our minimum is four, which we are going to
3 meet, but that count can get up -- has the potential to
4 get all the way up to 16 wells next year. That's just
5 going to be based on further data that we are currently
6 analyzing, as well as rig availability and the market.

7 **Q. And so that decision -- that final decision on**
8 **well count for 2020 will be made closer to time?**

9 A. Yes. It will be made closer to our spud dates.

10 **Q. Okay. And then will -- under the unit**
11 **agreement is COG required to meet annually with the BLM**
12 **authorized officer to discuss what the next year's well**
13 **obligations will be?**

14 A. Yes. That's correct.

15 **Q. So the BLM will require COG to drill a certain**
16 **number of wells in 2021 and 2022 and so on?**

17 A. Yes. That's correct.

18 **Q. Okay. So let's turn to Exhibit 6, and can you**
19 **identify that for the examiners?**

20 A. This is COG's Affidavit of Notice for the
21 hearing.

22 **Q. And is that -- is that affidavit signed by me?**

23 A. Yes, it is.

24 **Q. And with whom did Concho provide notice of this**
25 **hearing?**

1 A. This notice was sent out to all interest
2 parties within the unit, as well as all offset operators
3 outside of the unit, as well as all working interest
4 parties and any actively producing Wolfcamp well outside
5 of the unit.

6 **Q. You mean directly adjacent to the unit
7 boundary?**

8 A. Directly adjacent, yes.

9 **Q. Okay. And are those forms of notice letters
10 included in Exhibit 6?**

11 A. Yes, they are.

12 **Q. Okay. And then as far as the status of the
13 delivery of notice, first let's -- are all of the green
14 cards -- copies of the green cards and delivery included
15 within this exhibit?**

16 A. Yes. These are basically return receipts.

17 **Q. And were any of the deliveries returned
18 undeliverable?**

19 A. Yes. If you look at the back page of Exhibit
20 6, the names of several parties, these letters were
21 returned as undeliverable.

22 **Q. Did anyone object to the formation of this
23 unit, any of these owners?**

24 A. No, they did not. Only EOG.

25 **Q. In referencing the form letter that went out to**

1 all of these owners, did it include an email address and
2 telephone number if anyone had any questions about the
3 formation of this unit?

4 A. Yes. It included both your email and phone
5 number, as well as mine.

6 Q. And did EOG ever ask any questions about this
7 unit until this week?

8 A. No, they did not.

9 Q. When specifically did EOG receive notice of
10 this hearing?

11 A. July 16th, 2019.

12 Q. Okay. Can you please turn to Exhibit 8? Can
13 you identify that for the examiners?

14 A. Exhibit 8 is a letter that was sent out
15 inviting -- this one specific to EOG, inviting EOG to
16 join in the unit.

17 Q. Wait, wait, wait. My exhibits are -- yeah.
18 Pardon. Referring to Exhibit 7 --

19 A. Yeah, 7. Correct.

20 Q. Sorry.

21 Referring to Exhibit 7, can you identify
22 that for the examiners?

23 A. This is a letter specific to EOG that was sent,
24 inviting them to join in the unit.

25 Q. It was prior to sending notice of this hearing?

1 A. This is -- yes. This is prior to sending
2 notice.

3 On the back page of this exhibit is the
4 confirmation of the delivery, which is dated June 24th,
5 2019.

6 **Q. So even for this letter was received by EOG,
7 did you discuss this acreage at all prior to that time?**

8 A. Yes. Yes. On June 6th, 2019, I sent an email
9 to EOG offering to trade them out of this acreage.

10 **Q. And did they turn down that trade?**

11 A. Yes.

12 **Q. What has COG's communication been with EOG
13 since inviting them to join the unit?**

14 A. So after inviting them to join the unit, our
15 communication was fairly limited until July 17th when
16 EOG met at COG's offices to discuss various trade
17 options. At this meeting EOG did not bring up the
18 Tomahawk Unit. COG did bring up the Tomahawk Unit.

19 After this meeting on July 23rd, COG
20 received several well proposals from EOG within the unit
21 boundaries. After receiving those, I was copied on
22 several emails between EOG's management and COG's
23 management, until August 1st when COG met at EOG's
24 offices where further trade discussions were involved
25 attempting to trade EOG out of this unit.

1 After that, a number of other emails were
2 exchanged between EOG's management and COG's management,
3 until August 15th, when EOG notified COG that they would
4 no longer be pursuing a trade and would be focusing
5 their efforts on protesting this unit.

6 **Q. So prior to this week, had EOG ever asked any**
7 **questions about this unit?**

8 A. No.

9 **Q. Did they ask COG any questions about its**
10 **reasoning behind forming this unit?**

11 A. No.

12 **Q. Or its development plans?**

13 A. No.

14 **Q. Let's switch to now what is Exhibit 8. Can you**
15 **identify that for the examiner?**

16 A. This is the Affidavit of Publication that we
17 published in the Carlsbad Argus on July 13th.

18 **Q. And did that notice include all of -- all of**
19 **the parties, including the parties that -- whose notices**
20 **were returned to us as undelivered?**

21 A. Yes. That's correct.

22 **Q. Were Exhibits 1 through 8 prepared by you or**
23 **compiled at your direction and supervision?**

24 A. Yes. That's correct.

25 MS. RYAN: Mr. Examiner, I request that

1 Exhibits 1 through 8 be admitted.

2 EXAMINER McMILLAN: Objections?

3 MR. DeBRINE: No objection.

4 MR. BRUCE: No objection.

5 EXAMINER McMILLAN: Exhibits 1 through 8
6 may now be accepted as part of the record.

7 (COG Operating, LLC Exhibit Numbers 1
8 through 8 are offered and admitted into
9 evidence.)

10 MS. RYAN: This concludes my direct
11 examination.

12 EXAMINER McMILLAN: Okay. We're taking a
13 ten-minute break.

14 (Recess, 9:39 a.m. to 9:49 a.m.)

15 EXAMINER McMILLAN: Call the hearing back
16 to order.

17 Here's your quarter back. I refuse to take
18 your bribe.

19 MS. RYAN: I concluded my direct testimony.
20 Pass witness.

21 EXAMINER McMILLAN: Cross?

22 CROSS-EXAMINATION

23 BY MR. DeBRINE:

24 Q. Mr. Macha, you talked about the fact that
25 before you sent notice to the working interest owners,

1 you had been meeting with the BLM concerning the
2 proposed unit. When was the first -- when did that
3 first meeting occur?

4 A. So I was not the landman when this first --
5 this unit started forming. The first meeting I had with
6 the BLM was roughly probably May -- roughly the middle
7 of May. I don't have that exact date.

8 MS. RYAN: Mr. Fisher was in on those
9 initial meetings, and he'll be able to testify
10 personally about that.

11 Q. (BY MR. DeBRINE) And how many meetings did
12 anyone at Concho have with the BLM before the letter of
13 initial approval was given?

14 A. I believe just two, but that's going to be
15 better answered by Matt Fisher.

16 Q. And you testified that EOG never requested
17 information from Concho concerning the unit?

18 A. Not specific to the unit itself.

19 Q. Were you aware that Concho -- or EOG, through
20 its counsel, requested all the correspondence with the
21 BLM and the State Land Office concerning the unit last
22 week and that information was not given to us?

23 A. I was not aware of that.

24 MS. RYAN: It was requested this week on
25 Wednesday -- Tuesday.

1 Q. (BY MR. DeBRINE) To your information, was that
2 information ever given to EOG?

3 A. Not to my knowledge.

4 Q. If you turn to Exhibit 7, which is the letter
5 to EOG concerning the approval -- preliminary approval
6 of the unit by the BLM, when did EOG receive that
7 letter?

8 A. The preliminary approval letter, Exhibit 7?

9 Q. The June 19th letter in Exhibit 7, which is the
10 letter to the working interest owners.

11 A. When did EOG receive it?

12 Q. Yes.

13 A. June 24th.

14 Q. When did you file your application in this
15 case?

16 A. For the hearing?

17 Q. Yes.

18 A. That would be better answered by the --

19 Q. If the record shows it was filed on June 28th,
20 would you disagree with that?

21 A. No.

22 Q. So you filed four days after EOG received this
23 letter?

24 A. I'm not sure.

25 Q. Was anybody at Concho having any discussions

1 with EOG concerning the development of either acreage in
2 the Tomahawk Unit or any of the other areas?

3 A. So after sending this letter, it was our
4 opinion that we should give EOG the time to mull this
5 over because we had sent them a trade proposal and let
6 them see if they wanted to participate or would they
7 rather trade. And we thought that meeting on July 17th
8 was going to be explicitly for the intent of this unit.

9 Q. When did you first inform EOG that you were
10 considering forming the unit?

11 A. June 28th, whenever they received this letter.

12 Q. If you turn to Exhibit C, which indicates the
13 different tract committed status, how many total tracts
14 are within the unit?

15 A. 49.

16 Q. And of those 49, how many have 85 percent
17 commitment to the working interest owners?

18 A. I believe about 640 acres, so two tracts. No.
19 There's definitely more. But that is not required for
20 this hearing, so I don't think that's substantial.

21 Q. And that wasn't my question. I'm just trying
22 to gain an understanding as to what percentage
23 commitment you have with respect to each tract in the
24 unit. What I'd like to do is if you could just go
25 through Exhibit C one by one and identify which tracts

1 you've received the 85 percent commitment of the working
2 interest owners. So let's look at Tract 1. Do you have
3 85 percent of Tract 1?

4 A. No.

5 Q. And how many acres are in Tract 1?

6 A. 360.

7 Q. Let's look at Tract 2, which is 1081.18 acres.
8 Do you have 85 percent commitment for Tract 2?

9 A. No.

10 Q. What is the commitment at Tract 2?

11 A. Roughly, 57 -- well, roughly, 56.4 percent.

12 Q. And that's almost a quarter of the unit of that
13 one tract?

14 A. 1,000 acres? That's roughly a fifth of the
15 unit.

16 Q. Tract 3, which is a 160-acre tract, do you have
17 85 percent commitment of the working interest owners?

18 A. No.

19 Q. Tract 4, which is almost 400 acres, 395.877, do
20 you have 85 percent commitment?

21 A. Yes.

22 Q. Tract 5?

23 A. Yes.

24 Q. Tract 6?

25 A. Yes.

1 Q. Tract 7?

2 A. Yes.

3 Q. Tract 8?

4 A. Yes.

5 Q. Tract 9?

6 A. Yes.

7 Q. Tract 10?

8 A. No.

9 Q. And what is the percentage commitment for tract
10 10, which is a 160-acre tract?

11 A. 3.3 percent.

12 Q. How about Tract 11? Do you have 85 percent of
13 that tract?

14 A. Yes.

15 Q. That's a 4.123-acre tract; is that correct?

16 A. Yes.

17 Q. Tract 12, which is a 145-acre tract, what is
18 the percentage of working interest owners there?

19 A. Roughly -- just roughly 60 percent.

20 Q. Tract 13, what is the commitment in that tract?

21 A. Roughly, 57, 58 percent, again.

22 Q. Tract 14?

23 A. Same.

24 Q. 15?

25 A. Same.

- 1 **Q. 16?**
- 2 A. Same .
- 3 **Q. 17?**
- 4 A. Same .
- 5 **Q. 18?**
- 6 A. Same .
- 7 **Q. 19?**
- 8 A. Same .
- 9 **Q. 20?**
- 10 A. Same .
- 11 **Q. 21?**
- 12 A. Same .
- 13 **Q. 22?**
- 14 A. Roughly, 47 percent or 48 percent .
- 15 **Q. That's a 24.52-acre tract; is that correct?**
- 16 A. Yes .
- 17 **Q. And Tract 23?**
- 18 A. Yes . We have over 85 percent .
- 19 **Q. How about 24?**
- 20 A. Yes .
- 21 **Q. 25?**
- 22 A. Yes .
- 23 **Q. 26?**
- 24 A. Yes .
- 25 **Q. 27?**

1 A. Yes.
2 **Q. 28?**
3 A. Yes.
4 **Q. 29?**
5 A. Yes.
6 **Q. 30?**
7 A. Yes.
8 **Q. 31?**
9 A. Yes.
10 **Q. 32?**
11 A. Yes.
12 **Q. 33?**
13 A. Yes.
14 **Q. 34?**
15 A. Yes.
16 **Q. 35?**
17 A. Yes.
18 **Q. 36?**
19 A. Yes.
20 **Q. 37?**
21 A. Yes.
22 **Q. 38?**
23 A. Yes.
24 **Q. 39?**
25 A. Yes.

- 1 Q. 40?
- 2 A. No.
- 3 Q. That's a 75-acre tract; is that correct?
- 4 A. Yes.
- 5 Q. 41?
- 6 A. No.
- 7 Q. That's a 5-acre tract; is that correct?
- 8 A. Yes.
- 9 Q. 42?
- 10 A. No.
- 11 Q. That's a 60-acre tract?
- 12 A. Yes.
- 13 Q. Tract 43?
- 14 A. No.
- 15 Q. That's a 20-acre tract?
- 16 A. Yes.
- 17 Q. Tract 44?
- 18 A. No.
- 19 Q. And that's 225-acre tract?
- 20 A. Yes.
- 21 Q. Tract 45?
- 22 A. No.
- 23 Q. That's a 5-acre tract?
- 24 A. Yes.
- 25 Q. How about 46?

1 A. No.

2 Q. 47?

3 A. No.

4 Q. 48?

5 A. No.

6 Q. 49?

7 A. Yes.

8 Q. So of the 49 tracts, what would you say the
9 percentage is of the total tracts that you have the 85
10 percent commitment in?

11 A. I cannot do that mathematics.

12 Q. Have you looked at the record title
13 commitment --

14 A. Yes.

15 Q. -- Of the lessees of record?

16 A. Yes.

17 Q. And what percentage of the record title
18 interests are committed to the unit?

19 A. I, again, cannot do that off the top of my
20 head, but it is indicated in this Exhibit C.

21 Q. And where is that shown?

22 A. It's right below the "Legal Description,"
23 "Record Title Holders."

24 Q. Let's look at your Exhibit A, which shows the
25 designation of federal, fee and state acreage, and that

1 exhibit shows the federal acreage in pink; is that
2 correct?

3 A. Yes.

4 Q. Isn't it true that the lease -- the pink
5 acreage that's shown in the middle of that plat and the
6 one that's immediately to the north that's separated is
7 one single federal lease?

8 A. Yes.

9 Q. And who is the lessee of record of that tract?

10 A. I'm not sure off the top of my head.

11 Q. You don't know that's EOG Resources, Inc.?

12 A. Not off the top of my head, no.

13 Q. You didn't determine the ownership of the
14 lessee of record when you were putting this together?

15 A. I did. I just can't remember forwarding
16 address.

17 Q. Based on your knowledge of the land, what
18 percentage of the total federal acreage is represented
19 by a tract?

20 A. I'm not sure. Is that Tract 2?

21 Q. Does it look like it's more than half of the
22 total federal acreage in the unit?

23 A. Of the federal acreage?

24 Q. Yes.

25 A. Yes. Roughly half.

1 Q. You talked a little bit about the deviation
2 from the federal form. Who is responsible for
3 determining what language should or should not be
4 included in the statutory form?

5 A. Out of Section 10?

6 Q. Out of any of -- any of the form. Who made the
7 decision as to what language should be excluded from the
8 federal form and format?

9 A. The BLM.

10 Q. Did you have any negotiations over that
11 language, or did you resist any of their proposed
12 changes?

13 A. We gave our preference, and they showed their
14 desire to drill -- have us drill multiple wells, which
15 we agreed to because we thought that was the most fair
16 thing.

17 Q. Isn't it true that the proposed unit agreement
18 that you've identified in your exhibits excludes
19 specific reference to the New Mexico Oil and Gas Act
20 that governs the administration of New Mexico state
21 lands that's in the federal form of agreement?

22 A. I would have to re-read, but I am unaware.

23 Q. How many federal exploratory units have you
24 been involved in putting together before this one?

25 A. None.

1 Q. Are you aware of any unit that's been approved
2 by the BLM before that established two separate initial
3 participating areas in the same formation of the offset?

4 A. No. That is also not what we're seeking.

5 Q. But isn't that what the agreement describes, a
6 unit participation area in the north and a unit
7 participation area in the south?

8 A. No.

9 Q. How do you interpret it?

10 A. It's one initial participation area that has
11 the option to expand.

12 Q. And in order to establish the additional PA,
13 are you required to drill one or two wells?

14 A. Two.

15 Q. And how is production going to be allocated
16 until the PA is approved by the BLM?

17 A. So it's going to be on a PA basis. It's going
18 to be on a PA basis.

19 Q. So you're going to be allocating -- how are you
20 allocating production from the date of first production
21 until the PA is approved to the working interest owners?

22 A. So what our plan is closer to spud date, we
23 will know if we're going to drill north and the south in
24 roughly the same time frame. We will send out elections
25 for our wells and notify that it's going to be utilizing

1 a single PA that's going to be submitted to the BLM or
2 if we're going to delay the expansion of the initial PA.
3 And in that case, only the interest owners in the
4 northern portion would be paying for the northern wells
5 until the PA is expanded.

6 **Q. And how long does that approval process take?**

7 A. I'm unaware, but James Glover said it was not a
8 lengthy process.

9 **Q. How many months of production do you need to
10 look at to determine whether you've got a paying well?**

11 A. Roughly, two to three, from what I understand.

12 **Q. Has Concho had any recent experience with its
13 wells that showed initial high rates of production that
14 have a dramatic falloff then later made the
15 determination the wells weren't economic?**

16 A. Not from my understanding.

17 MS. RYAN: I object. It isn't relevant to
18 this hearing.

19 EXAMINER McMILLAN: I agree with that
20 comment.

21 Your comment is not relevant. Move on.

22 MR. DeBRINE: And I believe it is relevant
23 to look at what is the period of the production you need
24 to look at --

25 EXAMINER McMILLAN: The last comment --

1 he's not an engineer, so he can't give you a viable
2 answer.

3 MR. DeBRINE: And I'll reserve those
4 questions.

5 EXAMINER McMILLAN: Okay. That's fine, but
6 he can't answer them.

7 MR. DeBRINE: Okay.

8 Q. (BY MR. DeBRINE) You do not have a written plan
9 of development for the unit at this time?

10 A. No, we do not.

11 Q. And so under the terms of the unit agreement as
12 specified, you're not obligated to drill any wells in
13 the south if you don't want to?

14 A. So if we want to form our PA in the south, we
15 are obligated to. However, no, there is no current
16 obligation by the BLM.

17 Q. Under the terms of this unit agreement, there
18 is only one initial obligation well; is that correct?

19 A. To form the federal unit itself, yes, but the
20 BLM will dictate any future development of that unit --
21 of that unit.

22 Q. And if you just drilled one obligation well,
23 would you be able to hold all the leases within the
24 entire unit by that well under the terms of this
25 agreement?

1 A. That is my understanding. However, that is up
2 to the BLM.

3 **Q. Are there any leases within the proposed unit**
4 **that have -- that are about to expire in their primary**
5 **term?**

6 A. No. They're all HBP.

7 Can I make a correction to that statement?

8 **Q. Sure.**

9 A. They're all HBP except the brand-new lease we
10 just took, which has a three-year primary term.

11 **Q. I believe you testified that based on oral**
12 **communications, you believe you have 85 percent**
13 **commitment to the working -- of the working interest**
14 **owners in the unit?**

15 A. Yes. So we've been working closely with OXY.
16 We have a letter agreement with them, and we are
17 anticipating that being signed within the next two to
18 three weeks.

19 **Q. When was the last time you spoke to OXY?**

20 A. Yesterday.

21 **Q. At what time?**

22 A. Well, I personally have not spoken to them.
23 It's our business development group that's leading up
24 that conversation.

25 **Q. And the letter agreement with OXY pertains to**

1 **what exactly?**

2 A. The commitment to the unit, as well --

3 MS. RYAN: I'm going to prevent any
4 discussion as to other terms of the letter agreement,
5 except that the term providing for commitment to the
6 unit, because those are confidential between COG and
7 OXY.

8 **Q. (BY MR. DeBRINE) How many wells have you staked**
9 **within the proposed unit area at this time?**

10 A. I'm unaware. Matt would be a better reference
11 for that.

12 **Q. Has Concho recently dropped rigs that it's**
13 **utilizing in New Mexico?**

14 MS. RYAN: It's irrelevant to this hearing.
15 I object.

16 MR. DeBRINE: I think it's relevant as to
17 whether -- we're talking about competing development
18 plans, and it's relevant as to whether Concho's actually
19 going to drill the wells that it's talking about and
20 whether they're prepared to drill them.

21 MS. RYAN: It has testified it's obligated
22 to drill the four wells that the BLM has required it to.

23 EXAMINER McMILLAN: They can pick up a rig,
24 though.

25 EXAMINER DAVID: I guess my question for

1 the hearing examiner is whether or not --

2 EXAMINER McMILLAN: That question is not
3 relevant. Move on.

4 EXAMINER DAVID: For our limited review.

5 Q. (BY MR. DeBRINE) What steps have you taken in
6 order to prepare for development of the unit at this
7 stage other than just seeking the preliminary approval
8 of the SLO and the BLM?

9 A. We are currently negotiating surface agreements
10 with surface owners for surface locations. We are in
11 the process of -- I don't know where we're at with
12 staking, but we are in the process of filing APDs. We
13 have almost complete title throughout the unit, drilling
14 individual title opinions, and the title that we do not
15 have is currently being worked and anticipated being
16 completed by the end of September.

17 Q. So you do not have drilling title opinions for
18 the four wells that you mentioned for the north and the
19 south?

20 A. Partially we have everything, but no, we do not
21 have title as to every tract.

22 MR. DeBRINE: I'll pass the witness.

23 MS. RYAN: I just have a couple of
24 follow-up.

25 EXAMINER McMILLAN: Okay. Hold on.

1 MR. BRUCE: First, Mr. Examiner, I'll
2 revise my entry of appearance, and I'll also enter an
3 appearance for Matador Production Company.

4 CROSS-EXAMINATION

5 BY MR. BRUCE:

6 Q. My question is this: As to each of the fee
7 tracts, do you have voluntary commitment of 85 percent
8 of the royalty, plus overriding royalty interests?

9 A. So we have ratifications and joinders sent out
10 to every single overriding party, and we are -- we have
11 confirmed pooling language within those fee leases, and
12 the fee leases that do not have sufficient pooling
13 language, we have sent out joinders.

14 Q. But do you have 85 percent voluntary commitment
15 of those interest owners at this time?

16 A. I'm unaware. I realize MRC Permian is probably
17 one of those owners.

18 MR. BRUCE: That's all I have,
19 Mr. Examiner.

20 MS. RYAN: I just have a couple of
21 follow-up clarification questions.

22 EXAMINER McMILLAN: That's fine.

23 REDIRECT EXAMINATION

24 BY MS. RYAN:

25 Q. Is COG required to have 85 percent -- under

1 state or federal statutes or regulations, is COG
2 required to have 85 percent commitment in every tract,
3 or are they required to have a commitment spread -- 85
4 percent spread across the units?

5 A. That has been clarified multiple times by the
6 BLM, that it is 85 percent spread across the unit on a
7 tract-by-tract basis.

8 Q. And is 85 percent required before this hearing
9 today?

10 A. No.

11 Q. Is 85 percent required before COG asks for
12 final approval of the unit from the BLM?

13 A. Yes.

14 Q. Okay.

15 RE CROSS EXAMINATION

16 BY MR. DeBRINE:

17 Q. You're not a lawyer, are you?

18 A. No.

19 Q. And where are you getting this information as
20 to what is required by the BLM in terms of the 85
21 percent commitment?

22 A. From James Glover at the BLM.

23 Q. That's just an oral statement he made to you?

24 A. Yes.

25 Q. What is the effect if a particular tract

1 **doesn't have 85 percent?**

2 MS. RYAN: I was still asking my follow-up.

3 MR. DeBRINE: Oh. I thought you were done.

4 I apologize.

5 MS. RYAN: No.

6 CONTINUED REDIRECT EXAMINATION

7 BY MS. RYAN:

8 **Q. In addition to OXY, are you still working --**
9 **are you still visiting with other interest owners in the**
10 **unit to obtain their commitment?**

11 A. Yes.

12 **Q. And you testified that you don't have actual**
13 **title opinions on every single tract. But have you done**
14 **title work in the records to learn what the ownership is**
15 **in every tract?**

16 A. Yes. And COG Operating, as to the acreage we
17 do not yet have title opinions on, we have current and
18 active producing wellbores that does give us insight as
19 to ownership.

20 **Q. Okay.**

21 MS. RYAN: That concludes my follow-up.

22 RE CROSS EXAMINATION

23 BY MR. DeBRINE:

24 **Q. What is the effect if you are unable to obtain**
25 **85 percent commitment of the working interest owner in a**

1 **tract? Does that tract remain uncommitted within the**
2 **unit?**

3 A. So there are different statutes for each tract.
4 It's dictated by the BLM, either fully committed,
5 effectively committed or partially committed. So any
6 tract that does not have 100 percent commitment by
7 working interest owners is an uncommitted tract.

8 **Q. And what's the legal effect -- what is the**
9 **practical effect if a tract is not committed? It**
10 **doesn't share in the unitized production?**

11 A. Yes. That is correct. It is just on a unit --
12 designated spacing unit basis.

13 **Q. What about the -- if you don't have commitment**
14 **of the record title owner?**

15 A. I believe that is just partially committed, but
16 I'm not -- I can't tell you that for sure.

17 **Q. So it's possible if you don't have the**
18 **commitment of the record title owner for a particular**
19 **tract, that tract also would not share the unitized**
20 **production?**

21 A. That would be correct if the definition of
22 effectively committed, fully committed and partially
23 committed reads that way.

24 MR. DeBRINE: No further questions.

25 EXAMINER McMILLAN: Go ahead, Jim.

1 MR. BRUCE: Just one.

2 RE-CROSS EXAMINATION

3 BY MR. BRUCE:

4 Q. Are there any unlocatable record title owners?

5 A. Not that I'm aware of.

6 Q. Thank you.

7 EXAMINER McMILLAN: Okay.

8 CROSS-EXAMINATION

9 BY EXAMINER McMILLAN:

10 Q. So is there a contraction clause?

11 A. Yes. So if we were to drill the north
12 participation area that would require our initial wells
13 in Sections 17 and 18 and do not due diligently develop
14 the rest of the unit, the unit will contract.

15 Q. Okay. But what happens if you drill one of the
16 wells and it's deemed uneconomical, and then you drill a
17 subsequent well that is deemed economical? Is that
18 uneconomical removed from the unit? Because that's been
19 the giant problem we've always had in the northwest,
20 where you get 13,000 acres and one well holds the whole
21 thing and there is no contraction clause. Where does it
22 expressly state a contraction clause in the agreement?

23 A. It's going to be -- we can follow up with that.
24 I'm not exactly where sure it is in the unit agreement,
25 but it has been expressly --

1 Q. Well, let's find it. I think -- to me it's
2 very important.

3 A. Right.

4 Q. If you're looking at -- would it be paragraph
5 C?

6 EXAMINER McMILLAN: Is that what
7 you (indicating) found?

8 DR. GRUEBEL: I haven't found anything.

9 MR. BRUCE: The State Land Office form has
10 always had it.

11 EXAMINER McMILLAN: Does the State Land
12 Office have a contraction?

13 MS. RYAN: Yeah. I mean, it's important
14 that this -- if we don't prove up --

15 EXAMINER McMILLAN: Well, then where does
16 it say it? That's why I said it's been a nightmare in
17 the northwest, a contraction clause. One well can hold
18 up to 13,000 acres.

19 EXAMINER DAVID: Mr. Hearing Examiner, how
20 about paragraph 11? It's a long paragraph, but how
21 about looking at 11 and look a little bit below the
22 middle. The sentence begins "The participating area or
23 areas so established shall be revised from time to time,
24 subject to the approval of the AO, to include additional
25 lands then regarded as reasonably proved to be

1 productive of unitized substances in paying quantities,
2 or which are necessary for unit operations, or to
3 exclude lands then regarded as not reasonably proved to
4 be productive of unitized substances...."

5 EXAMINER McMILLAN: Does that sound about
6 right?

7 MR. DeBRINE: I think that just excludes
8 them from the participating area. They don't fall out
9 of the unit. They're still in the unit. Then you're
10 going to have all this land tied up with the inability
11 of the working interest owners in the tracts the
12 opportunity to develop it, which is --

13 MS. RYAN: That's not -- that's not --
14 that's not the intent. That's not the intent that we
15 have, so I need to find where that is. We may need to
16 give James Glover a call and just ask for clarification.

17 EXAMINER McMILLAN: Yeah. And that issue
18 has got to be -- that is -- that is a huge issue.

19 MR. DeBRINE: Mr. Examiner, I think we've
20 got a lot of experienced people in here, including the
21 former person at the State Land Office who used to
22 administer these units, and nobody can find automatic
23 contractual language in this agreement. And I think
24 that if the intent of Concho is to get it clarified with
25 the BLM, what needs to be done is we need to recess the

1 hearing and see if we can get a revised form of the
2 agreement.

3 MS. RYAN: I object to that. I object to
4 that. This is not the final form of agreement that
5 we've asked to be approved by the BLM. If there needs
6 to be clarification or revisions to the agreement, we'll
7 have clarification on that from the BLM. This is not
8 the final form.

9 Q. (BY EXAMINER McMILLAN) Okay. And you said
10 something about an email about discussions with OXY?

11 A. So our BD group has been in discussions mostly
12 through the phone, but they probably do have emails.

13 Q. Well, I mean, I think it's important that you
14 provide at least a chronology --

15 A. Right.

16 Q. -- of the emails because there is no -- the OCD
17 has no way to track whether or not you actually talked
18 to them. So I think that's a reasonable request.

19 A. Right.

20 MS. RYAN: We can follow up with an
21 affidavit and exhibit reflecting our communication with
22 OXY.

23 EXAMINER McMILLAN: Yeah. I think that's
24 fair, and notify affected parties.

25 MR. DeBRINE: And, Mr. Examiner, I think

1 that it's premature to consider this application if
2 we're going to be considering additional evidence that
3 we don't have the opportunity to cross-examine the
4 witnesses here today.

5 EXAMINER McMILLAN: All we're saying is
6 that we're supplementing the testimony. They said that
7 they had contact with OXY, et al. That's all we're
8 asking.

9 MS. RYAN: And 85 percent is not required
10 prior to this hearing. It's required prior to final BLM
11 approval. We could be here with 25 percent. I wouldn't
12 want to be doing that. But that's the decision for the
13 BLM. So until -- we have to be at that benchmark by the
14 time we ask for final approval. So it is important that
15 we are working with other interest owners in this unit
16 to obtain that 85 percent, but that's not something that
17 has to be done today or prior to an OCD order.

18 MR. DeBRINE: And, Mr. Examiner, we think
19 it's important because, one, one of the things that the
20 examiners have to do is they have to assess the
21 credibility of the evidence being presented. We have
22 contrary evidence that is very recent evidence that OXY
23 has not given their approval.

24 EXAMINER McMILLAN: Okay. You're going to
25 have the opportunity. You have witnesses.

1 MR. DeBRINE: But we don't -- we don't have
2 the opportunity to cross-examine Mr. Macha with regards
3 to the communications that you've requested be provided
4 the Division with. And that was a concern that we
5 raised when we asked for a longer continuance, is that
6 we had requested with -- from Concho all of the
7 correspondence with the BLM because this is a very
8 unusual agreement, and so we wanted to have a full
9 understanding of how did this thing come into being so
10 we can look and see what the correspondence is, what the
11 rationale might have been to get where we are today.
12 And we requested that information and a continuance so
13 that we could obtain it, and that was denied. And what
14 we're hearing here today is that it's not complete;
15 they're going to get clarification as to --

16 MS. RYAN: It's not required to be
17 complete.

18 MR. DeBRINE: -- by the BLM.

19 EXAMINER McMILLAN: Let him finish.

20 MR. DeBRINE: But we have an agreement
21 that -- one of things this witness testified,
22 notwithstanding Mr. Brancard's statement as to what the
23 Division is equally authorized to do, there is a
24 specific request to approve this unit agreement. And
25 this unit agreement, we just confirmed, did not have

1 automatic contraction language, and they're seeking to
2 modify the statement of Mr. Glover from the BLM. We
3 ought to have what they're presenting is the agreement
4 that they want the Division to approve and put in place.

5 THE WITNESS: Can I make a comment,
6 Mr. Examiner?

7 MR. DeBRINE: And I don't see the harm in
8 waiting so that we have complete information and we can
9 make an intelligent decision, and that'll minimize the
10 likelihood of an appeal to the Commission.

11 MS. RYAN: EOG has -- it's a 10 percent
12 owner in this unit, and it can choose to participate or
13 not participate, whether or not whatever happens today.
14 Even if we get an order from the OCD approving this
15 unit, it still isn't going to be formed unless we get
16 final BLM approval. So this is just a step in the
17 process today. And it doesn't matter if we have 25 or
18 75 or 85 percent today. It's completely immaterial.

19 THE WITNESS: I would like to point out
20 paragraph three of Section 2 in the agreement. It
21 begins with "The above-described unit area." It does
22 include contractual language based on BLM discretion.

23 MS. RYAN: Can you read that for the
24 examiner?

25 THE WITNESS: "The above-described unit

1 area shall when practicable be expanded to include
2 therein any additional lands or shall be contracted to
3 exclude lands whenever such expansion or contraction is
4 deemed to be necessary or advisable to conform with the
5 purpose of this agreement. Such expansion or
6 contraction shall be effected in the following manner:"
7 And the following paragraphs, I can read it if you like.

8 MS. RYAN: That is the contraction language
9 we were looking for, Mr. Examiner.

10 EXAMINER McMILLAN: Okay.

11 MR. DeBRINE: And, Mr. Examiner, that is
12 not the automatic contraction language that's in the
13 normal federal form. That's just a determination that's
14 made after the unit is formed. You can either expand it
15 or contract it based on additional information after the
16 unit is --

17 MS. RYAN: And Mr. Brancard has already
18 said that that's a decision of the BLM, not of the OCD
19 today, of the form of the agreement.

20 EXAMINER McMILLAN: Contraction clauses are
21 important because it comes into question of the
22 correlative rights.

23 DR. GRUEBEL: 2.(e) is the contractual
24 language.

25 EXAMINER McMILLAN: What's that?

1 DR. GRUEBEL: 2.(e) is the contractual
2 language.

3 EXAMINER McMILLAN: Okay. We're stating
4 2.(e) could be.

5 MS. RYAN: Yes. It does have automatic
6 contraction in 2.(e). "No parts of which are in or
7 entitled to be in a participating area (as defined in
8 Section 11) on or before the fifth anniversary of the
9 effective date of the first initial participating area
10 established under this unit agreement, shall be
11 eliminated automatically from this agreement...." So at
12 five years, to whatever COG has not proven up or met its
13 obligation, the participating -- the unit contracts
14 itself down. That's what we were looking for.

15 EXAMINER McMILLAN: Yeah. Because, like I
16 said, that's the nightmare in the northwest.

17 REDIRECT EXAMINATION

18 BY MS. RYAN:

19 Q. Mr. Macha, was the BLM in prior years --

20 EXAMINER McMILLAN: Can I -- wait.

21 MS. RYAN: Okay.

22 CONTINUED CROSS-EXAMINATION

23 BY EXAMINER McMILLAN:

24 Q. I'm trying to understand. You're going to
25 drill -- if you drill four wells within a reasonable

1 **time, you'll be able to expand --**

2 A. We'll be able to form that one participating
3 area, cover the entire unit.

4 **Q. But then if you don't, you'll essentially have**
5 **two, but through development, you can still merge it**
6 **back into one, right?**

7 A. Essentially that's correct.

8 **Q. Okay. That was -- okay. Those are my**
9 **questions.**

10 EXAMINER McMILLAN: Proceed.

11 MS. RYAN: I think that concludes our
12 examination of the witness.

13 EXAMINER McMILLAN: Okay. Well, then --
14 you said you were going to -- you didn't discuss the
15 internal setbacks.

16 MS. RYAN: That's right. And I do have a
17 witness who is prepared to discuss that in more detail.
18 He's an engineer prepared to testify on that.

19 EXAMINER McMILLAN: Well, but then -- okay.
20 So it needs to be clearly stated for the record. The
21 unitized area, for horizontal well -- the completed
22 interval of which is wholly located within the unitized
23 area or an area of uniform interest as to the mineral
24 estate in the objective formation, the setbacks
25 described in C of Section 19.16.15.15 NMAC apply only to

1 the outer boundaries of the unitized area, areas of
2 uniform ownership or any uncommitted or partially
3 committed tract instead of the outer boundaries of the
4 horizontal spacing unit. So why are you asking for
5 internal setbacks?

6 EXAMINER DAVID: Would you just reference
7 that for the record, what section you're reading from?

8 EXAMINER McMILLAN: Yeah. 19.16.15.15. I
9 believe it's Section C(7).

10 MS. RYAN: Yes, sir.

11 EXAMINER McMILLAN: It's the horizontal
12 well portion.

13 MS. RYAN: Yes, sir. Our initial
14 preliminary discussions with the OCD district office and
15 Santa Fe office, with their technical team, we pointed
16 out that provision, and there was some -- just
17 discussion and uncertainty to confirm that. I agree
18 with your interpretation, that there would be no
19 internal setbacks under that provision, but to further
20 belt-and-suspender the issue, we were asked that if we
21 want to make sure that we have elimination of internal
22 setbacks, that we should specifically request that in
23 our application. So it's really a belt-and-suspender to
24 the provision you just quoted.

25 EXAMINER McMILLAN: Do you have any

1 objections to that?

2 MR. DeBRINE: We do, Mr. Examiner, because
3 unless we know what tracts are committed to this unit,
4 it's going to be a nightmare to determine what setbacks
5 are because you're going to have holes throughout the
6 unit that aren't committed.

7 MS. RYAN: I'll put on testimony.

8 REDIRECT EXAMINATION

9 BY MS. RYAN:

10 Q. So, Mr. Macha, for -- if ownership interests
11 that are uncommitted -- are uncommitted within the unit,
12 what is the legal process by which -- for which COG, as
13 unit operator, could penetrate those tracts and drill a
14 well within those uncommitted tracts?

15 A. So you're just going to go through your
16 standard NMSV [sic] pooling hearing if they do not
17 participate in the wellbores.

18 Q. So if there is an interest owner that has not
19 committed their interest and COG intends to penetrate
20 that tract, then COG would be required to file a force
21 pooling application with the OCD, and that would be the
22 issue in front of the OCD at that time?

23 A. Yes. That's correct.

24 Q. Okay. Thank you.

25 MR. DeBRINE: And that's the problem, is

1 you're effectively compulsory pooling the unit together,
2 which is not allowed.

3 MS. RYAN: We're not asking for that today.

4 MR. DeBRINE: That's the practical effect.

5 EXAMINER McMILLAN: I understand the
6 practical effect. Okay.

7 MS. RYAN: Okay. I would like to reserve
8 Mr. Macha as a rebuttal witness just in case I might
9 need him after the presentation of their case. I don't
10 plan to ask him further questions but in case I need to
11 clarify something.

12 EXAMINER McMILLAN: Okay.

13 MS. RYAN: Thank you, Mr. Macha.

14 I'd like to call my --

15 EXAMINER McMILLAN: Hold on.

16 Jim?

17 MR. BRUCE: Mr. Examiner, I was only
18 interested in the land portion of this, and I request
19 permission to be excused.

20 EXAMINER McMILLAN: Yes.

21 MR. BRUCE: Thank you.

22 (Mr. Bruce exits the room, 10:30 a.m.)

23 MS. RYAN: Mr. Hurd will follow up with an
24 affidavit concerning our communication and commitment
25 level with OXY and any other interest owner in the unit.

1 EXAMINER McMILLAN: Okay.

2 MR. DeBRINE: We would ask that the hearing
3 be held open, and we have the opportunity to call OXY
4 and cross-examine them concerning any additional --

5 MS. RYAN: OXY's not a party to this
6 proceeding. They don't need to -- I object. It's not
7 even -- it's not even a thing to pull -- what would they
8 do? Pull OXY into our proceeding here and cross-examine
9 them on how they want to commit? That's an agreement --
10 a voluntary agreement that OXY or any other interest
11 owner, including EOG, can make on whether they want to
12 join this unit. And if they don't, then they don't. If
13 we don't get to 85 percent, then we don't get to 85
14 percent, and it won't be formed, period.

15 MR. DeBRINE: And I think we have a right
16 under the due process clause in the New Mexico
17 Constitution and the Division rules to have an
18 opportunity to evaluate any additional evidence that
19 might be submitted after today's hearing date and come
20 back and address that either through additional witness
21 testimony to question it and provide any rebuttal with
22 regard to that evidence.

23 MS. RYAN: It doesn't matter whether or not
24 we talk to OXY, come to an agreement with OXY today or
25 in two weeks or by the time I submit you an affidavit.

1 It doesn't matter. That's not what's in front of you
2 today, and that's not what you're being asked to do. We
3 have to get an agreement with the other working interest
4 owners up to 85 percent before we submit for final
5 approval, but that's not what we're -- it's not germane
6 to this hearing. It's never been germane to any
7 unitization hearing that has ever come before the OCD.
8 That's not what we're here to do.

9 EXAMINER McMILLAN: They're requesting a
10 preliminary approval, and the ultimate approval is going
11 to be by the State Land Office and by BLM. So I don't
12 see the point of having a continuance.

13 MR. DeBRINE: Well, I think it is germane.
14 And they made it part of their case-in-chief with regard
15 to the deal they had in place with OXY, and then they're
16 going to be presenting evidence to prove it up, and we
17 ought to have the opportunity to examine that evidence.
18 And I haven't heard anything as to why a delay of having
19 a further hearing just limited to that evidence.

20 MS. RYAN: Whether or not we get an
21 agreement with OXY is -- it's irrelevant to what we're
22 asking of the OCD. It's relevant to the BLM's decision.

23 EXAMINER McMILLAN: But the -- but the OCD,
24 in past unit cases, has said -- to approval by the BLM
25 and the State Land Office. So if you don't get the 85

1 percent, it falls apart.

2 MS. RYAN: That's right. All the prior OCD
3 orders say that they're subject to final BLM and State
4 Land Office approval.

5 MR. DeBRINE: But the problem is unless you
6 really have a clear picture of what tracts are going to
7 be committed, you're not going to know what the
8 composition is, and you can't really evaluate the
9 correlative rights of the working interest owners within
10 the unit because you don't know what opportunity they're
11 going to have to develop their acreage to their fair
12 share of the resource within the unit, and then you
13 really can't make an intelligent decision with respect
14 to those issues unless you know what's going to be --
15 what holes are going to be in this unit and what
16 those -- ownership is going to look like.

17 EXAMINER McMILLAN: You're really not going
18 to know what you've got until you start producing.
19 That's the other side of the coin. I mean, that in
20 itself can create -- just the nature of the reservoir
21 could create holes in it.

22 MR. DeBRINE: That is a possibility. We're
23 going to have testimony that we don't believe that this
24 is an appropriate area for an exploratory unit
25 because --

1 EXAMINER McMILLAN: Okay. That's fine.

2 That's fine. You'll have that opportunity.

3 Okay.

4 MS. RYAN: Okay. I'd like to call my next
5 witness.

6 EXAMINER McMILLAN: Proceed.

7 MS. RYAN: I'd like to call Mr. Fisher.

8 EXAMINER MURPHY: Is there any way we can
9 start moving it along because it's Friday and --

10 MS. RYAN: I'd be happy to.

11 EXAMINER McMILLAN: But there's nothing we
12 can do about it. They have to have the opportunity --
13 both sides have to have the opportunity. That's how it
14 works.

15 MS. RYAN: I'd love to move this along.

16 MR. FISHER: Good morning.

17 MATT FISHER,

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

20 DIRECT EXAMINATION

21 BY MS. RYAN:

22 **Q. Can you please state your name for the record?**

23 A. Matt Fisher.

24 **Q. And by whom are you employed?**

25 A. COG Operating.

1 Q. And what is your position?

2 A. I am a geologist.

3 Q. Can you briefly describe your roles and
4 responsibilities in that position?

5 A. Yeah. I'm over all the geologic activities in
6 Eddy County, and I map formations and plan and drill
7 wells.

8 Q. How many years total experience do you have in
9 the oil and gas business?

10 A. Five years.

11 Q. And have you previously testified before the
12 Division?

13 A. Yes, I have.

14 Q. So you were admitted as an expert eight times
15 previously?

16 A. Six to eight times, around there. I don't
17 remember exactly.

18 Q. Well, if you've testified eight times, then you
19 were admitted eight times?

20 A. Oh, yes.

21 Q. So you've been admitted eight times as an
22 expert?

23 A. Yes.

24 Q. Are you familiar with the application in this
25 case?

1 A. Yes.

2 MS. RYAN: Mr. Examiner, I ask that
3 Mr. Fisher be admitted as an expert geologist.

4 MR. DeBRINE: No objection.

5 EXAMINER McMILLAN: So qualified.

6 Q. (BY MS. RYAN) Have you conducted a geologic
7 study of the lands that are subject to the application?

8 A. Yes, I have.

9 Q. So have you been the primary contact with the
10 BLM, State Land Office --

11 A. Uh-huh.

12 Q. -- and OCD since the very beginning of the
13 initial formation of this unit?

14 A. That's correct.

15 Q. And who have you been working with at each
16 agency?

17 A. So James Glover has been my primary contact at
18 the BLM. And to answer a previous question, I believe
19 our first meeting was in February of this year.

20 Q. Okay.

21 A. And than Randy Bayliss was my contact at the
22 State Land Office, and he retired, and Scott Dawson has
23 been my contact since then. And then we had a
24 preliminary meeting with Ray Podany in the Artesia
25 District Office, and then we had a technical meeting in

1 the Santa Fe office with the OCD.

2 Q. And were all of these agencies in the
3 preliminary stage preliminarily supportive --

4 A. Yes, they were.

5 Q. -- of moving forward?

6 Okay. And COG's application is requesting
7 the OCD to grant surface commingling in the unit area.
8 Can you discuss why Concho's requesting that?

9 A. Yeah. We're requesting it stay in the order so
10 we don't have to request it for each individual well.
11 That just allows for a lot of administrative
12 efficiencies. And our plans right now are to have two
13 central tank batteries, one in the north and one in the
14 south, and obviously that saves surface disturbances and
15 saves money by having less tank batteries.

16 Q. And is administrative efficiency saved for the
17 OCD as well?

18 A. Yes.

19 Q. And did the OCD direct us to ask for this in
20 our -- if we wanted this, that it would help to ask for
21 it in application?

22 A. That's correct.

23 Q. Will you please turn to what's marked as
24 Exhibit 9 and identify that for the examiner?

25 A. Okay. This is the type log used to define the

1 unitized interval. The unitized interval includes the
2 entire Wolfcamp Formation. The top of the Wolfcamp
3 occurs at 9,285 feet measured depth, and the base occurs
4 at 10,853 feet on the High Brass Fee #1 well, which is
5 located in Section 20 of 24 South, 28 East, Eddy County,
6 New Mexico. That is the log shown on the left here.

7 The star represents where the High Brass is
8 in Section 20. We've identified four main targets in
9 the Wolfcamp here: The Wolfcamp A Sand, the Wolfcamp A
10 Shale and then the Wolfcamp C and D. Different
11 operators have different nomenclature, but this is how
12 we subdivide the Wolfcamp ourselves.

13 **Q. Okay. And so can you discuss specifically what**
14 **the unitized interval is that the BLM has placed in the**
15 **unit agreement?**

16 A. Yeah. The exact verbiage is shown here. The
17 unitized interval includes the entire Wolfcamp
18 Formation. The top of the Wolfcamp occurs at the
19 measured depth 9,285 feet. The base occurs at 10,853
20 feet on the gamma ray log and the High Brass Fee #1 well
21 located in the southeast-northwest of Section 20, 24
22 South, 28 East, Eddy County, New Mexico.

23 **Q. And does the proposed unitized interval extend**
24 **across the acreage that Concho seeks to unitize?**

25 A. Yes, it does.

1 **Q. Please turn to what is marked as Exhibit 10 and**
2 **describe that for the examiner.**

3 A. Okay. This is just a locator map showing
4 southeast New Mexico and West Texas. The Tomahawk WC
5 Fed Unit is outlined in yellow. This is just a
6 reference of where the unit actually is. And the next
7 page is zoomed in, with the township and range overlain
8 on top of it. So this shows the unit is about two miles
9 to the southwest of Malaga, New Mexico.

10 **Q. Okay. Please turn to Exhibit 11 and discuss**
11 **what this map indicates.**

12 A. Okay. This is just an activity map of the
13 producing Wolfcamp wells in the area. The different
14 colors represent the different landing zones that I
15 mentioned on one of the previous exhibits between the
16 Wolfcamp A Sand, Wolfcamp A Shale and Wolfcamp C and D.
17 As you can see, this area is very active within the
18 Wolfcamp. And then there are no Wolfcamp wells within
19 the Tomahawk Fed Unit.

20 **Q. Okay. Can you please turn to what's marked as**
21 **Exhibit 12 and describe that for the examiner?**

22 A. Yes. This is a subsea structure map on the top
23 of the Wolfcamp Formation. The contour interval is 50
24 feet. All of the Wolfcamp wells are just shown in red
25 regardless of where they're landed within the Wolfcamp.

1 The blue crosses show data points for the Wolfcamp, and
2 as you can see, there are quite a few data points around
3 this area. This shows that the structure is dipping
4 gently from west to east.

5 **Q. And can you tell us what you observed,**
6 **especially comparing the area of current activity to the**
7 **proposed unit area?**

8 A. Structurally, the unit seems to be analogous to
9 the offset Wolfcamp-producing wells.

10 **Q. And so there are no differences?**

11 A. No, none that we can see.

12 **Q. Can you please turn to what's identified as**
13 **Exhibit 13 and explain that to the examiners.**

14 A. Okay. This is just a cross-section map going
15 from A to A prime. This is just utilizing all the wells
16 in the unit that have triple combo logs.

17 And the next page shows the actual cross
18 section going from left to right, from A to A prime, so
19 left would be north, right would be to the south. This
20 is hung on the top of the Wolfcamp Formation. This just
21 shows the different intervals within the Wolfcamp going
22 from the Wolfcamp A to Wolfcamp B to Wolfcamp C and D.
23 This is just to represent that these intervals are
24 continuous throughout the unit.

25 **Q. And what pool is the unitized area in?**

1 A. This is Purple Sage.

2 Q. Okay. Will the unitization of the unit lands
3 for purposes of horizontal well development prevent
4 waste and loss of reserves?

5 A. Yes.

6 Q. In your study of this area, did you observe any
7 faults, pinch-outs or other geologic impediments that
8 would prevent this unitized area from being efficiently
9 or effectively developed with horizontal wells in the
10 Wolfcamp?

11 A. No, I have not.

12 Q. Okay. Let's discuss the name of the federal
13 unit.

14 A. Okay.

15 Q. What initially was the name of the federal
16 unit?

17 A. The name initially was just the Tomahawk
18 Federal Units [sic]. And the State Land Office informed
19 us on Wednesday -- or Tuesday when we met with them,
20 that there is an existing Tomahawk Unit that was
21 terminated. It was created in the '90s and then
22 terminated shortly thereafter. But they asked us just
23 to put -- like, call it Tomahawk WC, for Wolfcamp, add
24 that on to the name just so they could input it into
25 their system.

1 Q. Okay. And so is COG requesting that all
2 references to the Tomahawk Unit be the Tomahawk WC Unit
3 today in front of the OCD?

4 A. Yes.

5 Q. And just to make sure our processes are in
6 line, did you talk to the BLM about this change of name?

7 A. Yes. They were okay with it. They just want
8 us to submit a letter indicating that this name is
9 changing.

10 Q. And did they indicate they would approve the
11 name change?

12 A. Yes.

13 Q. Okay. In your opinion, will approval of this
14 application be in the best interest of conservation, the
15 prevention of waste and the protection of correlative
16 rights?

17 A. Yes.

18 Q. Were Concho Exhibits 9 through 13 prepared by
19 you or compiled under your direction and supervision?

20 A. Yes, they were.

21 MS. RYAN: Mr. Examiner, I request that you
22 admit Exhibits 9 through 13 into evidence.

23 MR. DeBRINE: No objection.

24 EXAMINER McMILLAN: 9 through 13 may now be
25 accepted as part of the record.

1 (COG Operating, LLC Exhibit Numbers 9
2 through 13 are offered and admitted into
3 evidence.)

4 EXAMINER McMILLAN: Cross?

5 CROSS-EXAMINATION

6 BY MR. DeBRINE:

7 Q. Mr. Fisher, did you ever consider notifying any
8 of the working interest owners within the unit with
9 regard to your intentions to create it and give them the
10 opportunity to participate in the discussions with the
11 BLM concerning the formation of the unit?

12 A. So that's not part of my job as a geologist.
13 That's not something that we ever do as geologists at
14 COG.

15 Q. Did the BLM request any specific changes to the
16 form, that you recall, that you proposed?

17 A. What do you mean? Which form?

18 Q. There was a little testimony earlier about how
19 this particular unit agreement is somewhat unique and
20 there is deviation from the federal form that's in the
21 federal regulations.

22 A. I don't know anything about that specifically.

23 Q. You were involved in the --

24 MS. RYAN: Object to further line of
25 questioning. It's already been testified to by

1 Mr. Macha, what those changes were in the unit.

2 EXAMINER McMILLAN: He is a geologist.

3 That's a land issue.

4 MR. DeBRINE: Well, but he testified that
5 he was involved in all of the meetings and Mr. Macha was
6 not. I'm just trying to understand.

7 EXAMINER McMILLAN: That's not his area of
8 expertise.

9 MR. DeBRINE: Sure.

10 THE WITNESS: We had an original landman
11 before Mr. Macha that was involved, and he left the
12 company sometime this year. So he was involved with the
13 initial part, but he passed on all of his information to
14 Mr. Macha. But the specifics of that form, I am not --
15 I do not want to speak on.

16 **Q. (BY MR. DeBRINE) Do you know whether the**
17 **federal regulations provide any criteria for**
18 **establishing the boundaries of the federal exploratory**
19 **unit?**

20 MS. RYAN: Objection. He's a geologist.
21 He's already testified on the geology.

22 MR. DeBRINE: My question was whether he
23 knew if there were any. Apparently not.

24 EXAMINER McMILLAN: That's a land -- that's
25 a -- landman's going to know that. That's not his area

1 of expertise.

2 MR. DeBRINE: Okay. That's fair. I just
3 wanted to know if he knew if there was any criteria that
4 he was trying to meet as part of his geological
5 presentation. That's all.

6 EXAMINER McMILLAN: Next question.

7 Q. (BY MR. DeBRINE) When proposing the unit, the
8 BLM requires you to submit geological information to
9 support the unit; is that correct?

10 A. That's correct.

11 Q. And you prepared that information?

12 A. Yes.

13 Q. And you would agree that the geological
14 information would support a much broader unit because
15 the deposition of the sands and the thickness and
16 porosity of the sands is uniform throughout this area
17 and could geologically justify a broader unit than the
18 one that's been proposed by Concho?

19 A. So the -- it depends on which interval of the
20 Wolfcamp you're talking about. The Wolfcamp A Sand is
21 really the only true sand we have. As a geologic sand
22 body, that's obviously going to change throughout an
23 area. We believe that the Tomahawk Unit will be a great
24 target for the Wolfcamp A, but I can't say that it is
25 exactly the same across the entire unit. There are some

1 changes, but we think the entire unit is productive.

2 Q. Okay. And so given the uniform deposition and
3 characteristic of the Wolfcamp A, you believe that all
4 the lands within the unit can be logically and
5 economically developed together as a single unit?

6 A. Yes.

7 Q. Did you have any discussions with the BLM about
8 having the entire unit consist of a single participation
9 area from the beginning rather than the division between
10 the north-south that you ended up with?

11 A. Again, that's more what our landman have dealt
12 with on that.

13 Q. But there were no discussions concerning the
14 geology that would support a single participating unit
15 within that.

16 A. To my understanding, the reason why the BLM
17 does not like to support large PAs is because one well
18 could be different from a well that's four miles away
19 like what we have in the Tomahawk Unit. So from my
20 understanding, the reason why they don't want to do that
21 is because the wells could -- you don't want to have one
22 well in the north proving up the entire unit, so they
23 like to have multiple in order to show that the wells
24 are economic in both PAs.

25 Q. And so what was the nature of your specific

1 **discussions and communications with the BLM?**

2 A. We've had a lot of discussions with them going
3 back for months just about the process of forming this
4 unit and if it was a good idea and things like that.

5 **Q. Can you relate any specific conversations**
6 **concerning the geological justification for the unit?**

7 A. Yeah. So when we initially had our
8 area-and-depth meeting, which was in February, I
9 believe, we showed them all of our geology support for
10 this, and they were okay with that. They thought this
11 unit, especially showing the map that shows offset
12 Wolfcamp production, that this unit is a great place to
13 do that.

14 **Q. Given the extent of the Wolfcamp surrounding**
15 **the unit, do you think that this area would be**
16 **characterized as relatively proven in terms of the**
17 **Wolfcamp A, based on your analysis of the geology?**

18 A. Yes.

19 **Q. And with respect to Concho's interest in the**
20 **unit, does it include its Wolfcamp reserves, as proven**
21 **in its financial statements?**

22 A. That's something I would let an engineer speak
23 on.

24 EXAMINER McMILLAN: Next question.

25 MR. DeBRINE: That's all I have.

1 MS. RYAN: Again, reserve him for possible
2 rebuttal at the end of the hearing, but that's it.

3 CROSS-EXAMINATION

4 BY EXAMINER McMILLAN:

5 Q. Okay. We're going to your map, 12. Okay.
6 It's nice you have data points --

7 A. Uh-huh.

8 Q. -- but I want to see another map in here that
9 actually shows the value of all your data points around
10 your proposed units. There's no way for us -- for
11 anybody to tell whether or not your contours are true
12 and correct.

13 A. Okay.

14 MS. RYAN: Can we submit a supplemental?

15 EXAMINER McMILLAN: Yeah. I want to see a
16 supplement because this map -- simply put, this map has
17 no relevance because there is no supporting data for it.

18 THE WITNESS: Would you be okay if I zoomed
19 in just with all the data points with the --

20 EXAMINER McMILLAN: That's fine. Yes.
21 It's a zoomed-in area that actually makes this map true
22 and relevant.

23 THE WITNESS: Okay. I will get that to
24 you.

25 EXAMINER McMILLAN: Any objections to that?

1 MR. DeBRINE: Continuing along on our other
2 objections, it's basically going to be additional data
3 submitted, and we would like to have the opportunity to
4 evaluate it and present testimony to rebut it.

5 MS. RYAN: There is not going to be -- I
6 object to any further continuance.

7 EXAMINER DAVID: Mr. Hearing Examiner, are
8 you asking for additional data points, or are you just
9 asking for clarification?

10 EXAMINER McMILLAN: Clarification of
11 what -- yeah, what the actual values are. That's all
12 I'm asking.

13 EXAMINER DAVID: Actually values are,
14 right. You're not asking for additional data? You just
15 want --

16 EXAMINER McMILLAN: No. I just want
17 clarification of the data. It can't be clarified with
18 this.

19 THE WITNESS: Yeah. I will get you that.

20 EXAMINER McMILLAN: Okay.

21 MS. RYAN: We'll do that.

22 Okay. All right. Thank you, Mr. Fisher.

23 I'd like to call my next witness.

24 EXAMINER McMILLAN: Proceed.

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DAVID HURD,

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

DIRECT EXAMINATION

BY MS. RYAN:

Q. All right. Will you please state your name for the record?

A. David Hurd.

Q. And who is your employer?

A. COG Operating, LLC.

Q. What is your position?

A. Reservoir engineer.

Q. Can you briefly describe your roles and responsibilities in that position?

A. I evaluate the optimal development of COG's resources.

Q. What is your educational background and experience?

A. I have a bachelor's of science in petroleum engineering from Texas A & M University. I graduated in May of 2015, and I've been working for Concho since I got out of school, about four years.

Q. And does your area of responsibility every day include this area in southeastern New Mexico?

A. Yes.

1 **Q. Have you previously testified before the**
2 **Division?**

3 A. No.

4 **Q. But are you familiar with the application filed**
5 **in this case?**

6 A. Yes.

7 **Q. And have you conducted an evaluation of the**
8 **reservoir underlying the unit area?**

9 A. Yes.

10 MS. RYAN: I would request that he be
11 admitted as an expert reservoir engineer.

12 VOIR DIRE EXAMINATION

13 BY EXAMINER McMILLAN:

14 **Q. Okay. And what relevant organizations are you**
15 **involved with?**

16 A. I'm not currently an active SPE member. I have
17 been in the past, and I do go to SPE meetings in
18 Midland.

19 **Q. Okay. And you are involved in engineering --**

20 A. Yeah, SPE, the Society of Petroleum Engineers.

21 EXAMINER McMILLAN: Are there any
22 objections?

23 MR. DeBRINE: No objection.

24 EXAMINER McMILLAN: So qualified.

25

1 CONTINUED DIRECT EXAMINATION

2 BY MS. RYAN:

3 A. Mr. Hurd, I'd like to bring your attention to
4 the exhibit labeled 14. Can you identify that exhibit
5 for the examiner and explain what it reflects.

6 A. Yes. This is a description of internal
7 setbacks within the unit. So the blue outlines
8 the outline of the Tomahawk WC Federal Unit, and the red
9 represents the internal setbacks required currently by
10 Purple Sage field rules within the unit. Eliminating
11 the internal setbacks will allow Concho to more
12 optimally develop all of the resource within the unit
13 and capture more reserves.

14 Q. So does Concho plan when it obtains -- does
15 Concho's development plans include utilizing the
16 elimination of internal setbacks to place its laterals
17 in the -- in the most prudent place to obtain the most
18 reserves within the unit?

19 A. Yes.

20 Q. Okay. In your approval -- does this
21 application -- is this application in the best interest
22 of conservation, the prevention of waste and the
23 protection of correlative rights?

24 A. Yes.

25 Q. Was Concho's Exhibit 14 compiled under your

1 **direction and supervision?**

2 A. Yes.

3 MS. RYAN: I request that Exhibit 14 be
4 admitted into evidence.

5 MR. DeBRINE: No objection.

6 EXAMINER McMILLAN: Exhibit 14 may now be
7 accepted as part of the record.

8 (COG Operating, LLC Exhibit Number 14 is
9 offered and admitted into evidence.)

10 MS. RYAN: Pass the witness.

11 CROSS-EXAMINATION

12 BY MR. DeBRINE:

13 Q. Mr. Hurd, looking at Exhibit 14, as I
14 understand, it represents the internal setbacks required
15 by the Purple Sage pool rules?

16 A. (Indicating.)

17 Q. Until we know what tracts will actually be
18 committed to this unit and will comprise part of the
19 unitized lands, we're not going to know what -- how the
20 setbacks are going to be determined, is that correct,
21 because we don't know what the legal subdivisions of the
22 tracts --

23 MS. RYAN: Object. We're asking for
24 elimination of the setbacks. So we do know. We're
25 asking that today. If it's not already set forth in the

1 horizontal well rules, we're asking that in our
2 application.

3 EXAMINER McMILLAN: I'll be honest. I'm
4 not following your question.

5 MR. DeBRINE: I think it's a --it's a
6 chicken-and-egg problem we have with regard to this
7 application because we've got 49 tracts within this
8 unit. We just heard testimony that maybe half of them
9 are fully committed. And if they're not committed, then
10 they're going to have to be developed on their own
11 through a regular spacing unit process under the
12 Division's rules. So are we going to be eliminating --
13 where are we going to calculate the setbacks? We can't
14 figure it out until we know the individual boundaries of
15 the lands that comprise the unitized lands and the
16 nonunitized lands, so it's a chicken-and-egg problem.

17 MS. RYAN: Those wells will be proposed
18 without -- placed where there is elimination of these
19 internal setbacks, so it's not really -- even proposals
20 into noncommitted tracts are going to -- if -- if this
21 order is approved, would be taking into account and
22 placed and proposed with elimination of internal
23 setbacks in place, and we would be coming to the OCD for
24 a compulsory pooling application for those uncommitted
25 tracts at that time.

1 MR. DeBRINE: Which is why I don't think
2 you can do it now. You have to evaluate with respect to
3 the -- when the well is proposed. And if they're going
4 to be pooling people into -- into the well, then those
5 working interest owners should have the opportunity to
6 present evidence as to whether their correlative rights
7 might be impaired if internal setbacks are being -- and
8 there's going to be some capture of their waste --
9 capture of their reserves based on the elimination of
10 those setbacks because they're going to be getting too
11 close to the tract that they own.

12 MS. RYAN: And there would be a compulsory
13 pooling hearing where both parties would present
14 evidence at that time for the Division to make a
15 decision on that particularly proposed well. And that's
16 the process that has been set forth by the Division and
17 the State for decades. And that's not what we're asking
18 for today.

19 MR. DeBRINE: And we just think it's
20 unnecessary and inappropriate for the Division to make
21 that determination in advance of something that needs to
22 be looked at with regard to only knowing what the actual
23 boundaries that determine the setbacks are, because this
24 could be a big area where that's not an issue under the
25 Division's rules, where the internal setbacks don't

1 matter. We're going to have these pockets of
2 uncommitted interests throughout this unit based on the
3 current level of commitment, and that could create big
4 problems.

5 MS. RYAN: Mr. Examiner, you've already
6 referred to the horizontal well rules, that when you
7 establish a unitized area, internal setbacks are
8 eliminated within the unit area. So that's -- I mean,
9 we are belt-and-suspending that provision in the
10 horizontal well rules. That's all this is. We would
11 still have to meet the outer setbacks from the outer
12 boundaries, but as far as the internal, like you get to
13 erase those section lines within the unit so that you
14 can place your laterals the most efficient way. And so
15 that's what we would -- that's what a prudent operator
16 would do, and that's what we're telling the OCD. We
17 want to be utilizing these eliminations of internal
18 setbacks to prudently develop this unit.

19 EXAMINER McMILLAN: So if you have a hole,
20 you'd have notify those affected parties in the hole.

21 MS. RYAN: Yes. Yes. And we would have to
22 come -- we could not penetrate that acreage -- that
23 party's acreage unless we came before you with a
24 compulsory pooling application, and there would be a
25 hearing.

1 EXAMINER McMILLAN: The internal setbacks
2 relate to notification of a --

3 MS. RYAN: And all parties have been
4 notified -- properly notified with our elimination --
5 and it's been published -- of elimination of internal
6 setbacks within this unit.

7 EXAMINER McMILLAN: Okay. I think I'm
8 understanding it now. When the order is written, it'll
9 be studied more.

10 MS. RYAN: Right.

11 MR. DeBRINE: Thank you.

12 EXAMINER McMILLAN: Do you have any
13 questions?

14 CROSS-EXAMINATION

15 BY EXAMINER MURPHY:

16 **Q. Will the wells be stand-up or lay-down?**

17 A. Our current plan is east-west.

18 MS. RYAN: Okay. I would like to reserve
19 Mr. Hurd as a possible rebuttal witness.

20 MR. DeBRINE: If I could ask a follow-up
21 question.

22 EXAMINER McMILLAN: Yes, please.

23 RECROSS EXAMINATION

24 BY MR. DeBRINE:

25 **Q. When you said your current plan is east-west,**

1 **have you finalized those plans at this stage?**

2 A. No. We evaluate it every day. That is my job,
3 to evaluate it. Right now we don't believe that
4 north-south or east-west has an impact on production.

5 **Q. And with regard to your current plan, do you**
6 **have any plan to drill beyond the four wells that are**
7 **called for in the unit area?**

8 MS. RYAN: It's already been testified by
9 the landman that it could be anywhere between four and
10 16 wells in 2020. That was testified by the landman.

11 MR. DeBRINE: Yeah. And he said to talk to
12 the engineer because the engineer is the one who is
13 going to determine it. So I just want to get
14 clarification as to what --

15 MS. RYAN: No. I said the engineer would
16 testify about the internal setbacks.

17 MR. DeBRINE: Well, the engineer is the one
18 who picks the location and determines how the well is
19 going to be drilled, not the landman.

20 THE WITNESS: I agree with what Travis said
21 before. Our plans are to drill four to 16 wells next
22 year, and the reason for that wide range is due to
23 commodity prices, Concho's budget and allocation of
24 resources to my particular asset team, just to name a
25 few.

1 **Q. (BY MR. DeBRINE) Has your asset team been**
2 **allocated a budget to drill 16 wells?**

3 A. Tentatively --

4 MS. RYAN: I'm going to object to further
5 line of questioning on what Concho's budget is.

6 MR. DeBRINE: He's the one that testified.
7 He opened the door to the question.

8 MS. RYAN: I'm going to object to any
9 further questioning regarding our budget.

10 EXAMINER McMILLAN: Let's say four to 16.
11 They don't know because there are too many factors.

12 Move on.

13 MS. RYAN: Thank you.

14 MR. DeBRINE: No further questions.

15 EXAMINER McMILLAN: Okay. We're coming
16 back at 11:15. I've got to take a break.

17 (Recess, 11:02 a.m. to 11:16 a.m.)

18 EXAMINER McMILLAN: Call the hearing back
19 to record.

20 CHARLES "CHUCK" MORAN,
21 after having been previously sworn under oath, was
22 questioned and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. DeBRINE:

25 **Q. Could you please state your name and address**

1 **for the record?**

2 A. Charles Moran.

3 **Q. Mr. Moran, who do you work for?**

4 A. EOG Resources, Inc.

5 **Q. And what are your responsibilities as a landman**
6 **for EOG Resources?**

7 A. My responsibilities as a landman are to
8 negotiate trades, to get wells drilled and deal with all
9 land matters at EOG.

10 **Q. And how long have you been working as a landman**
11 **in New Mexico?**

12 A. 27 years.

13 **Q. Have you been previously testified before the**
14 **Division?**

15 A. Yes, I have.

16 **Q. In those proceedings, were your credentials**
17 **accepted and made a matter of record in those cases?**

18 A. Yes, they were.

19 **Q. Are you familiar with the application filed by**
20 **COG who's generally been referred to as Concho in this**
21 **case?**

22 A. I have reviewed it. Yes.

23 **Q. Are you familiar with the status of the lands**
24 **that are proposed to be included within the unit area**
25 **that is the subject of that application?**

1 A. I have done some additional analysis. I've not
2 been concerned with acreage that is not owned by EOG.

3 MR. DeBRINE: We would tender the witness
4 as an expert in petroleum land matters.

5 MS. RYAN: No objection.

6 EXAMINER McMILLAN: So qualified.

7 **Q. (BY MR. DeBRINE) Mr. Moran, could you just**
8 **briefly explain why EOG is opposing Concho's request for**
9 **the Division to approve the proposed Tomahawk WC Unit?**

10 A. EOG does not wish to be a participant in the
11 unit because we would rather drill our own wells and
12 operate our own wells.

13 **Q. If you would turn to what's been marked as**
14 **Exhibit L1, which is a plat map, and if you could just**
15 **explain what is depicted here on this exhibit and what**
16 **you're intending to show by it.**

17 A. This plat is the acreage that EOG would move
18 forward with its own development plan, that being based
19 in Sections 30 and 31 of 24 South, 28 East in Eddy
20 County, New Mexico, Section 30 being a federal lease,
21 Section 31 be composed of two state leases.

22 The ownership in the federal lease is 50
23 percent EOG, 50 percent COG, and it is my understanding,
24 although I don't have a title opinion yet, that COG owns
25 100 percent of Section 31.

1 **Q. And you indicated that there is a federal lease**
2 **in Section 30. Does that same federal lease extend to**
3 **any other lands within the unitized area?**

4 A. Yes. That federal lease is also in Section 29,
5 the north half-south half and the southwest quarter of
6 Section 29, and the also the same federal lease in
7 Section 20, which it is the southeast quarter and, I
8 believe, the south half of the northeast.

9 **Q. So all of the lands shown in yellow on Sections**
10 **30, 29 and -- I can't read it -- 20 is part of that same**
11 **federal lease?**

12 A. Yes.

13 **Q. And is EOG the lessee of record for that lease?**

14 A. EOG is record title owner of this federal
15 lease, EOG Resources, Inc.

16 **Q. If you could turn to what is marked as Exhibit**
17 **A in Concho's presentation, which also shows the status**
18 **of the lands in the unit.**

19 MS. RYAN: Which exhibit?

20 MR. DeBRINE: Exhibit A, the land status
21 exhibit.

22 MS. RYAN: Oh. In the unit agreement, 2A?

23 MR. DeBRINE: I guess it's 2A. Sorry.

24 MS. RYAN: Uh-huh.

25 **Q. (BY MR. DeBRINE) And so what we're talking**

1 about there is the same -- the pink lands in the middle
2 of that land status map?

3 A. Yes. I believe that to be.

4 Q. By my count, if you count up all the
5 quarter-quarter sections that are comprised of EOG's
6 federal lease, you get 23 quarter sections, and if you
7 count up all the other quarter-quarter sections of the
8 other federal acreage, so many feet, you get 21
9 quarter-quarter sections. Is that significant to you?

10 A. I would trust that you've done that correctly.

11 Q. Okay. So that would indicate that the federal
12 land within the unit, the record title ownership of --
13 more than half is in the -- is owned by EOG, the record
14 title interest?

15 A. Yes.

16 Q. How many -- during your years of experience
17 working as a landman, how many units have you been
18 involved in putting together?

19 A. I tried to count that up the other day, and I'm
20 not sure I know. I've either touched or been involved
21 in numerous federal units.

22 Q. Based on that experience, what do you
23 understand to be the purpose of the formation of a
24 federal exploratory unit?

25 A. I think the name of the unit explains it very

1 well. It's supposed to be for exploration. It was
2 developed at a time when you would go chase unproven
3 areas for the development. You'd put together large
4 blocks to address the risk involved and obtain
5 participation of parties to develop, not knowing whether
6 the resources were there or not. And through time and
7 changes in the industry, the unit agreement has been
8 changed to what I'm going to classify as a development
9 agreement as opposed to a true exploration agreement.

10 MS. RYAN: Objection to foundation.

11 MR. DeBRINE: I think we already got the
12 answer, but that's okay.

13 EXAMINER McMILLAN: Let's move on.

14 **Q. (BY MR. DeBRINE) Have you ever seen a federal**
15 **exploratory form where more than half of the federal**
16 **acreage, in terms of record title, was not committed to**
17 **the unit?**

18 A. I have not seen one that I can think of.

19 **Q. And as I understand your testimony, EOG is not**
20 **willing to commit its record title interest in its**
21 **federal lease to this unit?**

22 A. We are not in favor of this unit being formed.

23 **Q. Do you know what the consequence is if EOG**
24 **refuses to commit its record title interest to the unit?**

25 A. That will make that federal lease a

1 noncommitted tract.

2 Q. Based on your experience in -- as a landman in
3 New Mexico, can lands be compulsory pooled in order to
4 form an exploratory unit for primary production?

5 A. I do not believe there is authority to form an
6 exploratory unit by compulsory pooling.

7 Q. Do you believe that an order approving this
8 particular unit given the absence of commitment of the
9 working interest and absence of commitment of record
10 title interests will have the practical effect of
11 forcing working interest owners to join the unit
12 or because they may be unable to develop their acreage
13 located within the proposed unit boundary if the unit is
14 approved?

15 A. I am of the opinion that as this process goes
16 through, the BLM will ask: Did you obtain the OCD's
17 approval? And that is a yes-or-no question. They don't
18 ask what happens at the hearing. They just ask whether
19 you obtained the approval or not, and so they don't
20 know -- they don't delve into what occurs at this
21 hearing. And that's why EOG has taken the position that
22 we do not want this approval to go uncontested, and we
23 don't want it approved at this point because this will
24 be effectually rubber-stamped later in the process. So
25 we recognize that we need to address it here now today

1 to prevent the rubber stamp from coming from the future
2 approval of the unit if the OCD was to approve it

3 **Q. When did you first receive notice from Concho**
4 **it was seeking to form the unit?**

5 A. I believe the date was June 26th stamped on the
6 letter.

7 **Q. Prior to that time, had you had any ongoing**
8 **dealings or negotiations with Concho concerning other**
9 **properties in which you were considering development?**

10 A. I am actively involved in numerous
11 conversations with Concho which involve numerous
12 different lands. In one conversation, these lands were
13 brought up prior to our knowledge of the unit. I would
14 agree with that Mr. Macha said, that he sent something
15 over to me about the 6th of June, and I did review it
16 and we talked about it. In that conversation, I recall
17 him saying that these lands were very, very important to
18 Concho's development plans, but he did not disclose that
19 those plans were a unit at that time. And, you know, I
20 took that under advisement and commenced working on
21 them.

22 **Q. Based on your experience, do you think that**
23 **Concho made a good-faith effort to seek the joinder of**
24 **the working interest owners in the unit before asking**
25 **the BLM to give its preliminary approval of the unit?**

1 A. I don't think that they talked to the
2 working -- I don't really want to speak for Concho, but
3 I know they did not talk to EOG about joining the unit
4 prior to sending the letter, and we had numerous
5 conversations on an ongoing basis. So they played their
6 cards close to their chest on their development plans.

7 **Q. At the time when you first heard that EOG had**
8 **submitted this unit for approval, did EOG already have**
9 **plans for the development of its acreage in Section 30?**

10 A. EOG is constantly reviewing its acreage for
11 development, and this acreage was under review for
12 development, the EOG acreage.

13 **Q. Based on the units you've been involved with,**
14 **does the unit agreement proposed by Concho follow the**
15 **federal form?**

16 A. It seems to somewhat follow the federal form as
17 modified based upon what appears to be the negotiations
18 between the BLM and Concho.

19 **Q. Does the federal form make reference to**
20 **New Mexico law concerning the authority of the State**
21 **Land Office with respect to the administration of the**
22 **unit it's lacking in this particular unit agreement?**

23 A. I believe that the base federal form does not
24 in that it is set up for only federal acreage. Those
25 requirements come in when you deal and add acreage other

1 than federal in. And those provisions -- while I have
2 not reviewed the agreement thoroughly, they appear to
3 have been, based upon my analysis, modifications to
4 address State Land Office issues.

5 **Q. Have you ever seen a federal exploratory unit**
6 **which at the outset talked about two participating areas**
7 **within the unit for the formation that would be**
8 **established through the drilling of wells?**

9 A. I have not seen a unit with two separate
10 participating areas. I have seen units with multiple
11 well commitment requirements. And, again, this seems to
12 be an evolution of the federal unit process.

13 **Q. And you'd agree with Mr. Macha that under the**
14 **terms of this agreement, Concho could only drill one**
15 **well in order that they would still hold the entire**
16 **lands located within the unit if that were a paying well**
17 **for the five-year term of the unit until contraction**
18 **would occur at that time?**

19 A. That is what I believe would happen if the
20 federal unit was approved and the participating area was
21 established in the north, that the south lands could be
22 bound in the unit with an operator, which would not be
23 EOG, charged with developing those resources.

24 **Q. And under the terms of this agreement, it**
25 **doesn't obligate Concho to drill more than four wells;**

1 **is that correct?**

2 A. That is what I understand the agreement sets
3 forth.

4 **Q. If you could turn to Exhibit L2 and please**
5 **explain to the examiner what that exhibit depicts.**

6 A. Exhibit L2 is a --

7 EXAMINER McMILLAN: Hold on.

8 MS. RYAN: There's a jackhammer outside the
9 door.

10 (Pause in proceedings, 11:29 a.m. to 11:31
11 a.m.; jackhammering continues.)

12 EXAMINER McMILLAN: Go ahead.

13 **Q. (BY MR. DeBRINE) So if you could tell us what**
14 **we've got in front of us on L2, Mr. Moran.**

15 A. Exhibit L2 is a well proposal sent by EOG
16 Resources to COG Operating proposing the drilling of
17 eight wells called the Dakota 30 Federal Com 701 through
18 704 and 721 through 724H wells, in Sections 30 and 31,
19 located in 24 South, 28 East, Eddy County, New Mexico.

20 **Q. Is EOG ready to develop the lands in Sections**
21 **30 and 31 as indicated in its -- as shown in its**
22 **developed plan on Exhibit L1 and as indicated in the**
23 **well-proposal letter in L2?**

24 A. EOG is moving forward with getting these wells
25 staked, permitted and ready to drill and have them on

1 the drill schedule to be drilled.

2 **Q. And when will the wells be staked under its**
3 **current plans?**

4 A. The wells are currently scheduled to be staked
5 next week. The wells have already been -- sundry
6 notices -- or notice of stakings have already been
7 turned into the BLM at this point in time to commence
8 the permitting process.

9 **Q. Do you have an opinion whether EOG's**
10 **correlative rights will be impaired if this unit**
11 **agreement is approved?**

12 A. Yes. I believe EOG's correlative rights will
13 be impaired because EOG will not be allowed to develop
14 its own resources.

15 **Q. Do you believe that the unit -- approval of the**
16 **unit will result in wasted resources in Sections 30 and**
17 **31?**

18 A. Based upon how EOG deems it necessary to
19 develop the resources, based upon our plans, we believe
20 that we will adequately develop the resources. Because
21 I don't know what Concho's plans really are, I haven't
22 been able to compare ours to theirs to know the waste.
23 But I believe our plan will prevent waste by developing
24 them.

25 **Q. Will full development occur under EOG's plan**

1 **before the five-year term provided for the proposed unit**
2 **agreement?**

3 A. I believe EOG will drill initial wells to
4 determine the development stage of -- of the wells. I
5 do believe that they will happen timely, conditioned
6 upon on obtaining the permits necessary to get them in
7 there. But my understanding is EOG intends to move
8 forward with drilling these wells in due course, and
9 thus well before the five-year limit.

10 **Q. Were Exhibits L1 through L2 prepared by you or**
11 **compiled under your direction and supervision from the**
12 **business records of EOG?**

13 A. Yes, they were.

14 MR. DeBRINE: We would move to have
15 Exhibits L1 and L2 into the record in this case.

16 MS. RYAN: I'm sorry. No objection.

17 EXAMINER McMILLAN: L1 and L2 may now be
18 accepted as part of the record.

19 (EOG Resources, Inc. Exhibit Numbers L1 and
20 L2 are offered and admitted into evidence.)

21 MR. DeBRINE: I'll pass the witness.

22 CROSS-EXAMINATION

23 BY MS. RYAN:

24 **Q. Mr. Moran, even in EOG's well proposals for the**
25 **Dakota's --**

1 MR. DeBRINE: Excuse me. I didn't finish.

2 I omitted an exhibit, Mr. Examiner.

3 EXAMINER McMILLAN: Okay.

4 MS. RYAN: Go ahead.

5 CONTINUED DIRECT EXAMINATION

6 BY MR. DeBRINE:

7 Q. If you could turn to Exhibit L3, Mr. Moran, and
8 explain what is represented by that exhibit.

9 A. L3 is EOG's preferred layout for development of
10 this section so that we'll be using a limited number of
11 pads. For conservation of the surface and environmental
12 concerns, we intend to try to attempt to have a reduced
13 surface impact in our development plan.

14 Q. And so this is a more specific diagram showing
15 the well plan for the seven wells that are shown in
16 Exhibit L1?

17 A. Yes.

18 MR. DeBRINE: We would ask to have Exhibit
19 L3 admitted.

20 THE WITNESS: Correction, eight wells.

21 MR. DeBRINE: Eight wells. I'm sorry.

22 MS. RYAN: No objection.

23 EXAMINER McMILLAN: L3 may now be accepted
24 as part of the record.

25 Cross?

1 CONTINUED CROSS-EXAMINATION

2 BY MS. RYAN:

3 Q. How long has EOG been planning on developing
4 Sections 30 and 31?

5 A. The decision to develop Sections 30 and 31
6 occurred right after the meeting in COG's offices that I
7 attended --

8 Q. Okay.

9 A. -- but in a general sense, we have been looking
10 at development of this area for a lot longer time period
11 than that. And this area has been on the plans, has
12 received geologic review and well orientation was
13 discussed and placement of the wells in full development
14 of this area, along with other acreage in the area owned
15 by EOG, has been on the books for a lot longer period.
16 These plans had to be accelerated because of the actions
17 of COG.

18 Q. Okay. How much ownership interest in the
19 proposed wells -- spacing units of your Dakota -- let's
20 just call it the Dakota proposals, does COG have in that
21 area?

22 A. My understanding is COG will have 75 percent,
23 and EOG has 25 percent.

24 Q. So would you have to come before the OCD for
25 try to compulsory pool COG's interest if we didn't agree

1 **to a JOA in the spacing unit?**

2 A. If COG does not agree to voluntarily
3 participate, yes, we would have to come to a force
4 pooling.

5 **Q. Do you think that a lessee who only owns 25**
6 **percent versus 75 percent should be operators of units**
7 **in New Mexico?**

8 A. I believe operators that are established in
9 New Mexico under a capable operator could be. Based
10 upon the facts of this case and present for us and how
11 we would like to develop it and that we have a
12 substantial part of this asset, yes, I believe it is
13 appropriate in this case.

14 **Q. Do you think -- so because federal lands are**
15 **involved, do you have to apply for a federal APD for**
16 **these Dakota wells?**

17 A. Yes. We have to apply for a federal APD.

18 **Q. So do you think the BLM would approve of your**
19 **APDs if they're supportive of development by this unit**
20 **instead?**

21 A. I believe that there is a high chance the BLM
22 will listen to our development plans for this area based
23 upon our reduced surface impacts on our well layout. So
24 I do believe they will listen to us.

25 **Q. Is COG legally trying to force pool EOG today**

1 **in its application?**

2 MR. DeBRINE: Object to the form, lack of
3 foundation. He's not a lawyer.

4 **Q. (BY MS. RYAN) Does COG's application seek to**
5 **force pool EOG's interest?**

6 A. My reading of the application, those words were
7 not included in the application. The practical effect
8 and the effective effect of the OCD granting approval
9 would effectively take EOG's operatorship ability away
10 from EOG, and, therefore, we would not be -- have any
11 avenue to develop our resources. So in a practical
12 effect, while not legally stated, practically that's
13 what we would be here to do what we want to do.

14 **Q. Do you agree this is a voluntary unit?**

15 A. I do agree that it is presented as a voluntary
16 unit that does not have full support.

17 **Q. Do you agree that EOG could still choose to**
18 **participate or not participate -- you know, until COG**
19 **submits for final approval, that EOG still has time to**
20 **still consider its options?**

21 A. I believe COG is trying to negotiate with a
22 hammer and limit EOG's options by pursuing the approval
23 here at this point, and that is why we are here
24 objecting to it, is we do not want our options limited
25 by COG.

1 **Q. If an operator gets to that 85 percent**
2 **commitment level, do you think an owner with a 10**
3 **percent interest in the unit should be able to prevent**
4 **the unit formation?**

5 A. That question has embedded in it a difference
6 between record title which has us at a much larger
7 percentage and our operating rights as a lesser
8 percentage. And based upon EOG's development plan, we
9 would not have such a small interest. So do I agree
10 that -- I think it's more properly stated that COG is
11 trying to capture EOG's acreage and dilute EOG down to
12 10 percent. That is what I believe is going on, and I
13 believe we're here trying to prevent that so that we can
14 develop our resources at the level that we deem
15 necessary to move forward.

16 **Q. But even in your own development plans, EOG**
17 **only has 25 percent?**

18 A. Yes. That is what I said.

19 **Q. All right.**

20 MS. RYAN: No further questions.

21 CROSS-EXAMINATION

22 BY EXAMINER McMILLAN:

23 **Q. Okay. My question is -- I wasn't clear about**
24 **your when you started -- when you formally started the**
25 **development process. You said -- you said you started**

1 **the formal process after you got --**

2 A. Mr. Examiner, EOG has been reviewing this
3 acreage in Eddy County with direction from management
4 above to develop the acreage ever since the acquisition
5 of Yates in 2016. They have had me working diligently
6 from since the fall of last year trying to figure out
7 and put the ownership in an explanation format so that
8 they knew how they could go develop it. I have been in
9 numerous meetings with Geology and Engineering talking
10 about drilling wells over a much larger area because we
11 are intent on developing a lot of acreage out here. And
12 so in that -- in those discussions, these lands in
13 particular were reviewed for development.

14 The aspect of when the -- the decision to
15 drill these exact wells, when they were named and moved
16 forward was the date after a meeting with COG. And
17 because we needed to be proactive and protect our
18 rights, that is the point in time that the wells were
19 named and we commenced the permitting process.

20 So it's been under review for a very long
21 time, and we have been forced to act sooner than we
22 intended to, but we intend to fully develop.

23 **Q. Okay. And so your formal decision occurred**
24 **after you got the -- after you got notification from the**
25 **BLM -- from COG? Excuse me. Is that correct?**

1 A. The formal decision to name the wells and send
2 proposals, yes.

3 **Q. Okay. Well, that's nice that you guys plan to**
4 **develop, but that appears to be rather informal. It**
5 **appears to me that you're making the decision to go**
6 **forward after you got formal notice from COG.**

7 A. Mr. Commissioner [sic], I cannot control the
8 actions of COG. COG had the opportunity to tell me they
9 were doing a unit ahead of time when they proposed these
10 lands in a trade. Those lands were being reviewed for
11 trade purposes as well between the companies, and EOG
12 was willing to consider trading these acreage -- acres
13 to COG, and those discussions were ongoing when they
14 came forth with their formal plan to unitize the lands.
15 And we have to protect our rights, and we felt we needed
16 to come forth with our plans. We're not trying to lay
17 behind the log and hide and say that we're not
18 developing.

19 **Q. I mean, after that date is when you submitted**
20 **all the formal requirements to the BLM for staking, so**
21 **on, so forth?**

22 A. We filed notice of staking with the BLM within
23 relatively expedient course and commenced permitting and
24 filing for applications for permit to drill. We'll be
25 doing our on-site stakings next week. I believe that

1 EOG's commitment is expressed in that that is not an
2 inexpensive undertaking and that each APD application is
3 approximately \$10,000 in cost to file for a federal APD.
4 And so EOG is moving forward with eight of those at this
5 point in time for \$80,000 in cost in the development of
6 our plans out there.

7 Q. Okay. That answers the question.

8 CROSS-EXAMINATION

9 BY EXAMINER MURPHY:

10 Q. I just have a question to expand on if you can.
11 EOG was in talks to trade the acreage with COG
12 elsewhere? Is that what you just --

13 A. COG and EOG have large leasehold positions, and
14 in trying to develop longer laterals, it is becoming
15 common practice to discuss trades that allowed you to
16 block up your acreage. And so there are numerous
17 conversations going on about these lands in particular
18 and other lands. It's like putting together a jigsaw
19 puzzle, putting together the right combination of lands
20 that both companies can agree to to effectuate a trade.

21 Q. And so you were discussing these two sections
22 particularly?

23 A. We were discussing -- COG was wanting to
24 acquire EOG's interest in Section 17 and Section 30,
25 Section 17 being the interest in the north-half unit

1 that we would have.

2 **Q. Okay. And those talks apparently did not go**
3 **anywhere?**

4 A. They're ongoing talks and still continuing.
5 There have been, I'm going to guess, four renditions of
6 proposals back and forth, but they easily get confused
7 when we're doing numerous ones. I need a spreadsheet to
8 track them myself.

9 **Q. I understand.**

10 **Thank you.**

11 MS. RYAN: I have no questions.

12 MR. DeBRINE: Just a little follow-up.

13

14 REDIRECT EXAMINATION

15 BY MR. DeBRINE:

16 **Q. Based on those talks, had a complete impasse**
17 **been reached, or were those talks ongoing and was that**
18 **the basis of EOG's request for a longer continuance in**
19 **this case so the parties could continue to negotiate to**
20 **work out some kind of a solution without having to come**
21 **to the Division to hear that case?**

22 A. EOG's preference was to not have to come up
23 here for this hearing at this date because we believed
24 that trade talks were moving forward, and we would
25 rather spend our time doing trades. We did request an

1 extension. I either had the opportunity to work on a
2 trade or prepare for the hearing, and hence did ask for
3 a -- asked not directly here, but I asked a counterpart
4 at COG about moving this hearing off. And I received
5 back an email saying that they did not want to delay it
6 and that they had reached their 85 percent threshold of
7 commitment in this unit in that email. I've since
8 learned that I don't believe they have reached that 85
9 percent threshold of commitment to the unit.

10 **Q. And that's reflected in the Concho exhibits**
11 **that show they're far short of the 85 percent commitment**
12 **of the working interest owners in the 49 tracts that**
13 **comprise the unit?**

14 A. I would surmise that quickly based upon the
15 responses by Mr. Macha today.

16 **Q. And did you have any conversations with OXY as**
17 **to whether they had committed their interest to the**
18 **unit?**

19 A. Upon receiving the email from Concho saying
20 they had received 85 percent commitment, I looked at the
21 numbers and determined that they probably had acquired
22 OXY's interest to get them over the 75 percent
23 threshold. I contacted OXY directly and had a
24 conversation with OXY about their status of joining or
25 supporting the unit. They told me that they had not

1 made a decision on the unit and that the -- they had not
2 committed to the unit, was what I understood them to
3 say.

4 This morning, I noticed I had an email from
5 OXY stating that they had not made any agreement with
6 Concho and that they were not supporting the unit at
7 that time. So that email was sent -- my phone said at
8 2:07 this morning, and I read it this morning just prior
9 to this hearing.

10 MR. DeBRINE: That's all the questions I
11 have.

12 EXAMINER McMILLAN: I don't have any
13 questions.

14 MR. DeBRINE: For our next witness, we'd
15 like to call Mr. Michael Pickell, P-I-C-K-E-L-L.

16 MICHAEL PICKELL,
17 after having been previously sworn under oath, was
18 questioned and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. DeBRINE:

21 Q. Would you please state your name for the
22 record?

23 A. My name is Michael Pickell.

24 Q. Who do you work for, Mr. Pickell?

25 A. I work for EOG Resources.

1 **Q. What is your position and responsibilities for**
2 **EOG?**

3 A. My position is geological specialist. I am the
4 geologist covering this portion of Eddy County for
5 development and exploration.

6 **Q. Could you give the examiners a brief summary of**
7 **your educational background in the oil and gas industry?**

8 A. I graduated undergrad from the University of
9 Texas at Austin with a Bachelor of Science in geology in
10 2007.

11 After that, I worked for a nonoperating oil
12 and gas company in Dallas for three years, at which time
13 I went to grad school at Texas A & M University in
14 College Station where I received a Master of Science in
15 Geology in 2012. At that time I took a full-time
16 position with Apache Corporation in Midland, Texas, and
17 I moved over to EOG Resources two years ago.

18 **Q. With respect to your responsibilities at EOG,**
19 **do they include the study and analysis of the Wolfcamp**
20 **Formation in the Delaware Basin in Eddy County, New**
21 **Mexico?**

22 A. Yes, they do.

23 **Q. Are you familiar with the application that's**
24 **been filed by Concho in this case?**

25 A. Yes, I am.

1 Q. Have you conducted a geological study of the
2 lands that are included within the proposed Tomahawk WC
3 Unit area that is the subject of the application, as
4 well as the development area that's been proposed by EOG
5 in its plan that Mr. Moran talked about?

6 A. Yes.

7 MR. DeBRINE: We would ask that the witness
8 be accepted as an expert in petroleum geology.

9 MS. RYAN: No objection.

10 EXAMINER McMILLAN: So qualified.

11 Q. (BY MR. DeBRINE) Before this unit was proposed,
12 had EOG developed -- had plans to develop its acreage
13 within the proposed unit?

14 A. Yes, we did.

15 Q. And what work have you done to look at the
16 target?

17 A. So EOG has a large position just to the west of
18 here. Part of my duties over the last year or so have
19 been to evaluate all formations in this area, including
20 the Wolfcamp. There are several zones within the
21 Wolfcamp which I have mapped out as prospective in this
22 area, which also have offset production from other
23 operators.

24 Q. With regard to the geological study that you
25 prepared for this case, did you prepare some exhibits to

1 illustrate your analysis of your conclusions?

2 A. I did.

3 Q. If you could turn to Exhibit G1 and explain to
4 the examiners your purpose in preparing this exhibit and
5 what it is designed to show.

6 A. Yes. This is a structural -- structure map
7 subsea on the top of the Wolfcamp with 100-foot
8 contours. It shows a local regional dip to the west
9 with a line of section, A to A prime, A being the north,
10 A prime being the south.

11 (Jackhammering stops, 11:55 a.m.)

12 A. Wells on this map, the light green wells are
13 Wolfcamp horizontal producers. The light blue wells are
14 existing Wolfcamp approved permits. The light purple
15 wells are -- show EOG's planned Wolfcamp development in
16 the subject leases.

17 Q. And so what is the targeted formation or
18 interval for the wells that are proposed by EOG in
19 Sections 30, 31 shown on the map?

20 A. These are two-mile laterals targeting, I
21 believe, what Concho refers to as the Wolfcamp A and B.

22 Q. And if you could turn to the next exhibit
23 that's been marked as Exhibit G2 and please explain what
24 you're depicting here and what conclusions can be drawn
25 from it.

1 A. Yes. This is a stratigraphic cross section, A
2 to A prime, as referenced in the previous map, from
3 north to south hung on the top of the Wolfcamp
4 formation. The red arrows on either side refer to EOG's
5 target intervals in the Dakota 701H through 704H and
6 721H to 724H.

7 Q. Did you identify any faults, pinch-outs or any
8 other geological impediments to drilling horizontal
9 wells proposed by EOG in Sections 30 and 31 based on
10 your study?

11 A. No, I did not.

12 Q. And do you anticipate that all of the 40-acre
13 subdivisions within the proposed wells will contribute
14 equally -- relatively equally to production within the
15 units?

16 A. I do believe so.

17 Q. Do you have an opinion as to whether the
18 approval of the Tomahawk Unit by the Division will
19 impair EOG's correlative rights to develop the lands in
20 Section 30?

21 A. I believe it will.

22 Q. And why do you believe that?

23 A. I believe that EOG has good viable plan for
24 developing this acreage based on our experience in the
25 area in Eddy County.

1 Q. Do you have an opinion whether EOG will receive
2 its fair and equitable share of production from its
3 plans in Section 30 if they were included in the unit
4 and developed under EOG's four-well plan?

5 A. COG's four-well plan?

6 Q. Yes. In other words, will you receive your
7 fair -- if EOG's acreage were included in the unit, do
8 you believe that you would receive your equitable share
9 of production of the lands in Section 30 under COG's
10 plan as opposed to EOG's eight-well plan?

11 A. With reference to COG's plan, with that
12 four-well plan, I do not. I believe that our current
13 eight-well plan, to be followed with deeper targets in
14 the future, is the best way to develop this acreage.
15 Also, with respect to COG's proposals with -- or their
16 four-well plan, if they do not -- they have not
17 guaranteed that they will develop in the north and the
18 south. They intend to, I know, but they do not -- they
19 can't guarantee that.

20 Q. And so you could go up to five years without
21 having the resources that EOG owns in Section 30 be
22 developed at all?

23 A. That's correct.

24 Q. Do you have an opinion whether the approval of
25 the Tomahawk WC Unit proposed by Concho will cause the

1 **waste of EOG's resources in Section 30?**

2 A. Without knowing Concho's full development plan
3 with targets, spacing and time frame, I can't say
4 whether they would be wasting resources or not.

5 **Q. Based on your knowledge and analysis of the**
6 **relative thickness and characteristics of the formation,**
7 **if only a single -- two wells are drilled in the south**
8 **half, will that cause a waste of resources in Section**
9 **30?**

10 A. If those are the only two wells drilled, then
11 yes, I believe the depletion from those wells could
12 hamper future development.

13 MR. DeBRINE: Pass the witness.

14 CROSS-EXAMINATION

15 BY MS. RYAN:

16 **Q. Yes. Can COG propose wells under a unit**
17 **agreement prior to the unit agreement being approved?**

18 A. I do not know the answer to that question.

19 **Q. Has COG sent out well proposals yet in the**
20 **unit?**

21 A. Not that I'm aware of.

22 **Q. Has COG -- did you hear COG testify today that**
23 **it plans full development of all the unit acreage?**

24 A. Yes.

25 **Q. And so you haven't been able to analyze any**

1 difference -- whether there is any difference to what
2 EOG plans, except maybe well orientation between what
3 EOG's proposing and what COG's proposing?

4 A. Well, I know what EOG is proposing. I do not
5 know what COG is proposing.

6 Q. Right.

7 A. I do not know their targets. I do not know
8 their spacing.

9 Q. Right.

10 Okay. Thank you.

11 REDIRECT EXAMINATION

12 BY MR. DeBRINE:

13 Q. I just neglected to ask. Were Exhibits G1 and
14 G2 prepared by you or compiled under your direction and
15 supervision through EOG's business records?

16 A. Yes, they were.

17 MR. DeBRINE: We would move the admission
18 of Exhibits G1 and G2.

19 MS. RYAN: No objection.

20 EXAMINER McMILLAN: Exhibits G1 and G2 may
21 now be accepted as part of the record.

22 (EOG Resources, Inc. Exhibit Numbers G1 and
23 G2 are offered and admitted into evidence.)

24

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CROSS-EXAMINATION

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BY EXAMINER McMILLAN:

Q. COG is also planning to develop the deeper targets. And what is EOG's plan for the deeper targets? It looks like you're developing what they're calling A and B, and they've got the C and D.

A. I have not seen their development plan.

Q. I believe --

MS. RYAN: We put on -- we put on testimony that there are four targets within the unit.

THE WITNESS: Yeah.

MS. RYAN: Our geologist testified to that.

THE WITNESS: How EOG generally develops, in my experience, is we drill -- especially as we're moving out west in Eddy County where we have not drilled as many wells as in Lea County, we start with the two upper targets in the Wolfcamp, which correspond to Concho's Wolfcamp A and B. Internally, EOG -- we refer to these as Wolfcamp clastics for the A and U2 for, I believe, what Concho calls the B. We see these as, I suppose, the targets with the most potential right now. I believe that these lower targets are also viable targets, and we intend to come back at a future date and build on to our surface locations and drill these deeper targets in the Wolfcamp.

1 Q. (BY EXAMINER McMILLAN) So the eight wells
2 you're planning are just targeting the A and the B, and
3 you have not at this point planned to target the deeper
4 intervals?

5 A. We have not submitted proposals for deeper
6 targets, but we do intend to develop those targets in
7 the future.

8 Q. And when did you become formally involved in
9 the selection of this --

10 A. Of?

11 Q. -- of the --

12 A. I've been working this area for about a year
13 and three months and have been working with the land
14 team and engineering to develop a -- put together a
15 development plan for this area broadly. As I mentioned
16 earlier, EOG has a large operated area just to the west
17 of here, and this was -- this tract specifically in --
18 sorry -- Section 30 was part of that plan. And as Chuck
19 mentioned earlier, when we found out about the potential
20 unitization of this area, we kind of, you know, had to
21 accelerate.

22 Q. And based on your geologic experience, why are
23 you going north-south instead of east-west?

24 A. In this area we believe that north-south and
25 east-west wells are equally productive and stress regime

1 indicates that both directions are equally optimal.

2 **Q. So basically you're doing it for land?**

3 A. Going north to south?

4 **Q. Yeah.**

5 A. Yeah. We saw that as the most viable direction
6 to drill from Section 30, also with what appeared to be
7 viable surface locations in that north half of Section
8 30.

9 EXAMINER McMILLAN: Ask your questions.

10 CROSS-EXAMINATION

11 BY EXAMINER MURPHY:

12 **Q. You described the A and the B. What was -- how**
13 **did you describe the B? The Wolfcamp clastics were**
14 **the A, and what did you call the other one?**

15 A. The interval that we are targeting, we refer to
16 as the Wolfcamp U2.

17 **Q. U2?**

18 A. U2.

19 **Q. And what is that for other than a great band?**

20 A. It was not named after the band, but it's -- we
21 have the -- internally at EOG, we have the Wolfcamp
22 broken into an upper, middle and a lower. And so this
23 would be the second interval in our upper.

24 **Q. Okay. And what is the B, a sand or a --**

25 A. It's interbedded siltstones, shales and

1 limestones.

2 Q. No more questions.

3 RE CROSS EXAMINATION

4 BY EXAMINER McMILLAN:

5 Q. So couldn't you get -- so you said surface
6 disturbance was an issue for going north-south, right?

7 A. Uh-huh.

8 Q. So couldn't you get -- how is that viable when
9 you could use the same surface and go east-west?

10 A. Well, I'm going off of memory here. I don't
11 have a topographic map with me currently. But I believe
12 the surface locations on the west half of Section 30
13 were not as ideal as the north half.

14 Q. So the west half --

15 A. So the alternative for developing our acreage
16 in Section 30 would have been to have surface locations
17 on the west side of Section 30 and drill two miles
18 laterally into Section 29.

19 Q. Okay. Then comes a land question.

20 EXAMINER McMILLAN: Go ahead. I'm done.

21 EXAMINER DAVID: I have nothing.

22 EXAMINER McMILLAN: So it appears to me --
23 part of the reason, it appears -- this is really a land
24 question.

25 MS. RYAN: Are you talking about well

1 orientation as far as theirs versus ours?

2 EXAMINER McMILLAN: Yes, the well
3 orientation. My question appears to be a land question.
4 You (indicating) can't answer it. You're
5 not qualified.

6 It's true.

7 So it appears --

8 Is it okay if I ask?

9 MS. RYAN: Sure.

10 CHARLES "CHUCK" MORAN,
11 after having been previously sworn under oath, was
12 questioned and testified as follows:

13 RECROSS EXAMINATION

14 BY EXAMINER McMILLAN:

15 Q. So it appears, when I look at your land map, if
16 you go east -- if you drill wells going east-west,
17 you're decreasing your ownership, right?

18 A. Drilling east-west, our ownership effectively
19 is the same because the federal lease in Section 29 is
20 subject to an assignment, and Concho is the owner of
21 that -- the working interest rights as to Section 29,
22 and EOG has an override on that aspect of Section 29.

23 The discussion for well orientation that
24 occurred when the decision was made whether to drill
25 east-west or to drill north-south centered on how we

1 thought we could drill the best wells. And in that
2 discussion, we evaluated going east. We evaluated going
3 south off of Section 30, knowing that our interest was
4 the same either direction, and we decided the best wells
5 we could drill were from the north going to the south.

6 **Q. But it appears in the north half of 29, you're**
7 **not showing any interest?**

8 A. Not in the north half of 29, but the south half
9 of 29 is that same federal lease.

10 **Q. Yeah, for the south half of the north half and**
11 **the southwest quarter of the southwest quarter, the**
12 **remainder is someone else?**

13 A. I'm not following.

14 **Q. All I'm saying is it appears that with the**
15 **exclusion of the north half of the south half, you'd**
16 **have identical -- the ownership would be the same. But**
17 **in the remainder of the sections, your interest would**
18 **essentially be diluted.**

19 A. Can I ask what map you're looking at?

20 **Q. Yeah. And I'm basing everything on L1.**

21 A. I am now looking at L1. If you put the well
22 surface location on the west side of Section 30 and
23 oriented those wells going to the east, that would have
24 50 percent of the well effectively being in Section 30
25 and 50 percent of the well being in Section 29.

1 As to the yellow-colored in Section 29,
2 that is currently owned by COG as to the working
3 interest. EOG has an overriding royalty interest based
4 upon a previous agreement to OGX Resources, I believe,
5 being a term assignment of the operator rights as to
6 Section 29. So we could not claim that as a working
7 interest that we would control. However, EOG does own
8 record title 100 percent as to that tract only because
9 operating rights were all -- that was transferred based
10 upon the previous term assignment.

11 Thus, mathematically, I believe our
12 ownership going east-west or north-south is driven by
13 our ownership in Section 30 of which we have 50 percent
14 of the operating rights, thus making us 25 percent
15 whether we go east-west or north-south, with Section 30
16 being the included section.

17 **Q. Okay. I'll have to review the testimony.**

18 MR. DeBRINE: If I could just maybe clarify
19 with Mr. Moran.

20 REDIRECT EXAMINATION

21 BY MR. DeBRINE:

22 **Q. As I understand it, the lands in Section 29,**
23 **EOG has an overriding royalty interest with respect to**
24 **the federal lease acreage?**

25 A. Yes.

1 **Q. So you would -- effectively, you would have a**
2 **higher net revenue interest if you went east-west as**
3 **opposed to north-south because of that override?**

4 A. I would agree that we would add an additional
5 economic interest caused by our override in Section 29.
6 But I was primarily looking at our working interest, not
7 the effective net revenue interest.

8 EXAMINER McMILLAN: Okay.

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

12 RE CROSS EXAMINATION

13 BY MS. RYAN:

14 **Q. I just wanted to confirm your testimony that**
15 **based on your geologic analysis that for well**
16 **orientation strictly from a geological perspective that**
17 **there are successful wells that are drilled lay-down and**
18 **successful wells drilled stand-up in this area?**

19 A. In this area, that is correct.

20 **Q. Okay. Thank you.**

21 EXAMINER McMILLAN: Do you have anything
22 else?

23 RE CROSS EXAMINATION

24 BY EXAMINER MURPHY:

25 **Q. Do you know who has the permit for those wells**

1 **just west of the unit?**

2 A. Concho.

3 **Q. Those ones that are 24 and 25?**

4 A. Yes.

5 **Q. Okay. Thank you.**

6 EXAMINER MURPHY: No more questions.

7 MR. DeBRINE: No further questions.

8 EXAMINER McMILLAN: Thank you.

9 MR. DeBRINE: Next I'd like to call
10 Marielle Spinks.

11 MARIELLE SPINKS,
12 after having been previously sworn under oath, was
13 questioned and testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. DeBRINE:

3 Q. Could you please state your name for the
4 record?

5 A. Marielle Spinks.

6 Q. Who do you work for, Ms. Spinks?

7 A. EOG Resources.

8 Q. And how long worked for them and what is your
9 position with the company?

10 A. My position is senior reservoir engineer, and
11 I've been working for them for five years.

12 Q. What are your responsibilities as a senior
13 reservoir engineer?

14 A. Primarily, I oversee this area of Eddy County
15 for optimal development.

16 Q. Could you give the examiner a brief summary of
17 your educational background and experience working in
18 the oil and gas industry?

19 A. Yes. So I received a Bachelor of Science in
20 petroleum engineering from Colorado School of Mines in
21 2014.

22 And prior to finishing my degree, I had a
23 reservoir engineering internship with EOG in their
24 Corpus Christi division office that summer. And then
25 once I graduated, I started working for EOG in their

1 Fort Worth office and was overseeing Barnett assets for
2 roughly the first year and a half that was working, and
3 then after that, I was working Marcellus. So all in
4 all, I was in Fort Worth for a little over three years,
5 and then I came out to Midland just shy of two years
6 ago, and I've been working the Delaware Basin ever
7 since.

8 Q. Do you belong to any professional associations?

9 A. Yes. I'm an SPE member.

10 Q. Do your responsibilities as an engineer for EOG
11 include evaluating the prospects for development and
12 determining the optimal developing plans for developing
13 EOG's gas leases located in Eddy County?

14 A. Yes.

15 Q. Are you familiar with the application filed by
16 Concho in this case?

17 A. Yes.

18 Q. And are you familiar with the lands that are
19 included within the proposed Tomahawk WC Unit area and
20 EOG's proposed development area within Sections 30 and
21 31?

22 A. Yes.

23 MR. DeBRINE: We would tender the witness
24 as an expert in reservoir engineering -- or petroleum
25 engineering.

1 MS. RYAN: No objection.

2 EXAMINER McMILLAN: So qualified.

3 Q. (BY MR. DeBRINE) What plan of development has
4 EOG prepared for the lands located in Sections 30 and
5 31?

6 A. Currently, we have an eight-well development
7 set for Sections 30 and 31. This is pretty standard
8 first round of development for us. And as Mr. Pickell
9 talked about just a moment ago, we do come back
10 typically and hit the Lower Wolfcamp after this with our
11 second round of development. But right now we're
12 focusing on the first to get our wells in the ground,
13 and then we'll come back for the second round.

14 Q. And that's a well plan that's shown graphically
15 in Exhibit L3?

16 A. Yes.

17 Q. Did you prepare some exhibits as part of your
18 engineering study for this case?

19 A. I did.

20 Q. If you could turn to those, the first of which
21 is marked as Exhibit E1, and explain to the examiner
22 what your purpose was in conducting this study and what
23 is shown here in this exhibit.

24 A. Sure. So if you look on Exhibit E1, you'll see
25 we have a map, and outlined in red is the proposed unit

1 and then the yellow is EOG's acreage, again with Section
2 30 being where we have -- 30 and 31 where we have our
3 proposed Dakota wells.

4 But you'll notice the wellbores all around
5 are the Wolfcamp producers within the vicinity of the
6 proposed unit and EOG's acreage, and associated with
7 that, you will see a production plot where the wells are
8 plotted, with the warmer colors being more recent and
9 the cooler colors are older wells.

10 **Q. How many two-mile laterals has EOG drilled in**
11 **New Mexico in the last couple years?**

12 A. I believe our two-mile well count in New Mexico
13 is roughly 140. Of course, that number is dynamic.

14 **Q. And how many horizontal wells would you**
15 **estimate that EOG has drilled in New Mexico over the**
16 **last two to three years?**

17 A. Typically, our New Mexico asset is about
18 two-thirds of our activity within the Delaware Basin,
19 the other third being our Texas assets. But I believe
20 we're around -- we've ramped up in 2018 and 2019. In
21 2017, we still drilled quite a few wells. But I think
22 in gross for the entire division, it's mid-200s for this
23 year and was last year as well.

24 **Q. And how many rigs is EOG currently running in**
25 **the Delaware Basin?**

1 A. I believe we are at 18 right now.

2 **Q. And do you have rigs available in the schedule**
3 **to timely develop and implement the drilling plan that's**
4 **been proposed by EOG in Sections 30 and 31?**

5 A. Yes. Our rig schedule is incredibly dynamic.
6 We put the rigs where they need to go, whether it be to
7 mitigate depletion effects for current producing wells
8 to try to maximize our resource within section, but not
9 only that, we have land priorities.

10 **Q. If you could turn to your next exhibit, which**
11 **is Exhibit E 2, and explain your purpose in preparing**
12 **this and what it's designed to represent.**

13 A. Yes. So this is very similar to the Exhibit 1
14 that you just saw, the only difference being it's the
15 exact same well population but the coloring is different
16 showing that there are multiple operators within the --

17 **Q. Do you have an opinion as to whether EOG's**
18 **eight-well development plan is a better plan to achieve**
19 **a greater recovery of resources in Sections 30 and 31**
20 **than the plan that COG has talked about, its two-well**
21 **plan in the southern half of the unit?**

22 A. Yes. Given that all we know is the two-well
23 plan for the southern portion from COG and not knowing
24 anything else, I believe that our eight-well development
25 program will more effectively capture this resource.

1 **Q. Do you have an opinion as whether the entry of**
2 **an order approving the Tomahawk WC Unit will result in a**
3 **waste of resources located in Sections 30 and 31.**

4 A. I think that EOG has proven throughout New
5 Mexico that they're a very good operator and that we do
6 continually optimize our development, and we see no
7 waste here based on our current plan.

8 **Q. Do you have an opinion whether EOG's**
9 **correlative rights would be impaired if the Division**
10 **were to grant Concho's application to approve the**
11 **Tomahawk WC Unit?**

12 A. Yes. It's my opinion that EOG would prefer to
13 be operator. That's been our business plan as a company
14 pretty much forever. If we can operate an area, we
15 would much rather operate than be a non-opt participant
16 in a well.

17 **Q. And how has your current experience been with**
18 **regard to wells that you've drilled in Eddy County in**
19 **the Wolfcamp?**

20 A. We recently brought on three different wells
21 within Eddy County. They were two-mile -- all three of
22 them were two-mile Wolfcamp wells, and we had extremely
23 promising results from those wells, and it's really
24 encouraged us that we can see -- or expect similar
25 results in this area as well.

1 **Q. Were Exhibits E1 and E2 prepared by you or**
2 **working with persons under your supervision and**
3 **direction from EOG's business records?**

4 A. Yes.

5 MR. DeBRINE: We would ask the admission
6 into evidence of Exhibits E1 and E2.

7 MS. RYAN: No objection.

8 EXAMINER McMILLAN: Exhibit E1 and E2 may
9 now be accepted as part of the record.

10 (EOG Resources, Inc. Exhibit Numbers E1 and
11 E2 are offered and admitted into evidence.)

12 MR. DeBRINE: Pass the witness.

13 EXAMINER McMILLAN: Cross?

14 CROSS-EXAMINATION

15 BY MS. RYAN:

16 **Q. Yes. You testified that it would be a waste of**
17 **resources just by definition because EOG couldn't**
18 **operate the wells. Why is operatorship equivalent to**
19 **waste?**

20 A. Not quite what I said. I said that based on
21 our current development, not knowing COG's development
22 plan whatsoever, we believe that -- and given our
23 development strategies in other areas of New Mexico,
24 that what we have currently presented would not be --
25 there would be no waste. But I can't speak to COG's

1 plan because I don't know the size of the two wells.

2 Q. Right.

3 So since you haven't reviewed the plans, we
4 haven't sent out well proposals yet, you don't know
5 whether COG's plans would prevent waste and protect
6 correlative rights?

7 A. No, because I haven't been privy to that
8 information.

9 Q. Okay. Thank you.

10 CROSS-EXAMINATION

11 BY EXAMINER McMILLAN:

12 Q. So are you going to drill these wells back --
13 are you going to have -- are you insisting on drilling
14 these wells simultaneously?

15 A. All eight of them?

16 Q. Yeah.

17 A. I believe we'll do one half section at a time.
18 This is my understanding. But this would be more of a
19 team effort, conclusion. But typically what we do is we
20 do one half of the section at a time and then do the
21 second half.

22 Q. So what's going to happen to the development
23 plan if the well -- if the wells don't meet your
24 expectations?

25 A. At that point -- and that's why we're talking

1 about doing potentially just a half section, is that we
2 can re-evaluate and then maybe try a different target
3 within the Wolfcamp if we aren't satisfied with the
4 original results. But like I mentioned earlier, we've
5 been very pleased with our other results in Eddy County
6 in the Wolfcamp that we did this year.

7 **Q. Okay. I think that answers that question.**

8 MR. DeBRINE: No further questions.

9 MS. RYAN: No further questions.

10 EXAMINER McMILLAN: Okay.

11 MR. DeBRINE: And that concludes our
12 presentation, Mr. Examiner.

13 MS. RYAN: I do not plan to call any
14 rebuttal witnesses.

15 EXAMINER McMILLAN: Okay. Closing?

16 CLOSING STATEMENT

17 MS. RYAN: I think Mr. Brancard set forth
18 the law in this area at the beginning and that COG has
19 been following the process, and this is just one step in
20 the preliminary process and that we're not there yet.
21 If we don't get OXY to sign on and other owners in the
22 area, then we won't get to that point and we won't get
23 final approval. So we are simply tasked, as part of the
24 process, for you to review the unit agreement and plan
25 and see if it's in your normal -- that you see the plan

1 so far is supportive of prevention of waste and the
2 protection of correlative rights. The elimination of
3 setbacks supports that and so does approval up front for
4 surface commingling, and we ask that you take this case
5 under advisement.

6 CLOSING STATEMENT

7 MR. DeBRINE: Mr. Examiner, we think the
8 evidence presented here today demonstrates that this is
9 a deeply flawed unit. They have come to the Division
10 way too soon, before they have the adequate planning and
11 support of the potentially working interest owners. The
12 evidence was that a little less than half of the working
13 interests of the tracts are committed to the unit. The
14 record title interests, less than half is committed to
15 the unit. The record title interests of EOG alone would
16 prevent more than half of the federal acreage -- record
17 title federal acreage to be committed to the unit. And
18 the problem that you have with uncommitted tracts is you
19 do not know what the contours of the unit are going to
20 consist of. There are going to be holes within the
21 unit.

22 I think under the Statutory Unitization Act
23 and based on the practice of the Division, it is an
24 extremely rare case for someone to come to the Division
25 to present the unit for its approval that has not been

1 advanced further along in terms of getting commitments
2 from the working interest owners.

3 We think this whole thing is rushed. It's
4 designed to effectuate a land-grab. It's going to
5 prevent EOG from developing its acreage.

6 We believe that EOG -- the testimony has
7 been that they were looking at this as a potential
8 target. Its plans were -- its hands were forced and its
9 plans were accelerated. It has proposed a viable plan
10 to develop the acreage in Sections 30 and 31. It is an
11 experienced operator with proven results within Eddy
12 County, and in this area, its prepared, ready, willing
13 and able to develop its acreage. We believe that its
14 plan will result in the greatest recovery of the
15 resource from these two sections, and it's far superior
16 than what the thread-growth plan that COG has come
17 forward with. They could have come forward with a more
18 comprehensive plan for the Division to consider so that
19 you have better information in regard to how this unit
20 going to be developed in the future.

21 We've got problems with regard to unit
22 contraction. The unit agreement only provides for the
23 drilling of an initial well. Once they drill that well,
24 the testimony has been that they can tie up all of these
25 lands for five years. Because the unit will be

1 established, the leases will be modified under the terms
2 of the unit agreement so that EOG would be unable to
3 develop the -- the lessees would be unable to develop
4 their acreage if, in effect, they're forced to commit
5 through a back-door process of compulsory pooling by the
6 Division giving its approval of this unit and then the
7 skids are greased and then working interest owners are
8 faced with a Hobson's choice of having to get on board.

9 And we believe it's premature. They've got
10 the cart before the horse, where they've asked to submit
11 additional evidence to try and provide greater support
12 with regard to whether the commitment of the unit is in
13 place or not. We believe that the appropriate thing for
14 the Division to do is continue today's hearing. Let's
15 take a look at that additional evidence, give EOG the
16 opportunity to evaluate it and present any testimony and
17 exhibits that we think the Division ought to consider
18 that rebut that evidence, and then you can make a
19 decision in this case.

20 MS. RYAN: I object to a continuance of
21 this case. It doesn't matter whether we have that
22 percentage commitment at this point. That's simply not
23 what we're in front of you to do. That's not what you
24 have -- that's not in any kind of rule or statute that
25 we need to have it.

1 You have a multitude of orders in the
2 history of issuing unitization orders where the
3 operators anticipate that commitment but haven't reached
4 it. There's been many times where they haven't reached
5 it, and so even though the unit was approved by the OCD,
6 it was never actually formed because they never reached
7 that.

8 So the burden is on us to actually get
9 there and seek final approval from the BLM and State
10 Land Office, and that's what we'll continue to do. So
11 this is just a step in the process, and there is not any
12 further evidence that needs to be in front of you today.
13 We have some clarification points that you asked us to
14 follow up with, but we don't have well proposals because
15 we don't have a unit agreement approved to propose them
16 under. So we're not here to discuss who is a better
17 operator, who has the best proposals. This isn't a
18 compulsory pooling proceeding. We're not going back and
19 forth with spacing and density and all of that. This is
20 just: Does COG's plan, as it's approved by the BLM and
21 State Land Office, look to conserve the reserves in this
22 area and prevent waste, protect correlative rights?

23 So we ask that this Division take this case
24 under advisement.

25 MR. DeBRINE: And we believe that just

1 shows why this case is not ripe for approval. The unit
2 is in such an early stage. We have no idea whether it
3 will be accepted by the Division or ultimately by the
4 BLM or the SLO.

5 MS. RYAN: We do.

6 MR. DeBRINE: But we do have concrete plans
7 of development for EOG that are going to be thwarted by
8 this unitization process. And one of the things they've
9 asked the Division to do is to eliminate the internal
10 setbacks within that broad area of the lands within the
11 proposed unit boundaries. And until we know what tracts
12 are committed to this unit, we don't know where those
13 setbacks need to be drawn. And so we don't believe it's
14 ripe for decision until we have a better idea as to what
15 tracts should be committed to the unit.

16 MS. RYAN: Again, we will be working with
17 the BLM and the State Land Office. They're simply
18 setting forth our obligations and our plans. We have to
19 have all of our development plans approved through them,
20 and they will be considering the same thing. It's
21 simply not what's in front of you today, and it's not
22 what you have jurisdiction to do. And everyone that
23 comes in front of you for a unitization hearing hasn't
24 had those final approvals yet. We have to do this
25 before we can go finish that. So this is a step in the

1 process. This is not -- it's not final.

2 EXAMINER DAVID: Can I ask -- Mr. DeBrine,
3 I'm sorry if my question is kind of confused. I don't
4 understand all this very well. Is there any set of
5 facts that would sustain the State approval of a
6 unitization application when the unitization is
7 contested by one of the royalty holders or operating
8 interest holders?

9 MR. DeBRINE: At least the unitization
10 cases I've been involved in and I've presented cases on
11 behalf of the proposed unit operator, you know, when we
12 came to the Division, we had effective control, we had
13 85 percent commitment, and there was a question as to
14 whether a particular tract should be included in the
15 unit because another operator wanted that. And it was
16 actually Concho. They wanted to contract the proposed
17 unit boundaries because they wanted to capture that
18 tract to develop laterals in their adjacent acreage, but
19 we still had 85 percent commitment of the unit. And we
20 believe that that is a key criteria because otherwise
21 the practical effect of an approval of the unit when you
22 don't have a sufficient level of commitment is its
23 effect of the compulsory unitization process. Because
24 once you approve it and everybody knows that the unit is
25 going to go in place, it's a Hobson's choice as to

1 whether you're going to choose to commit your tracts to
2 the unit or not.

3 EXAMINER DAVID: Doesn't that kind of put
4 the OCD in kind of a difficult position of having to
5 enforce a federal standard under state law? I mean, if
6 the 85 -- I mean, 85 percent is not a state -- it's not
7 a rule of law under state law. It's basically -- we're
8 kind of like downward bootstrapping a federal
9 requirement to a state process, correct?

10 MR. DeBRINE: Well, at a minimum, I think
11 you would need 75 percent because the legislature had
12 enacted the Statutory Unitization Act for establishment
13 of secondary recovery units, and there is a 75 percent
14 requirement in order to get one of those units approved.
15 And the reason being is you need to have a broad
16 commitment to parties to commonly develop their lands,
17 and without that, it really doesn't make sense for the
18 Division to get involved in blessing the unit or not
19 without that unanimity that shows that there is a
20 commitment by a substantial majority of the working
21 interest owners to pool their lands together for a
22 common development plan through a unitization process.

23 MS. RYAN: Well, I appreciate him
24 mentioning 75 percent and the Statutory Unitization Act
25 even though that's not what is applicable here. Concho

1 has over 75 percent in this unit. So if that were what
2 we were talking about today, Concho would already have
3 it.

4 So, again, we're talking about federal
5 standards, a decision that is made by the Bureau of Land
6 Management and the State Land Office. The State Land
7 Office -- it does set forth in New Mexico statutes what
8 they have to look at and review before they give
9 preliminary approval and final approval of the unit, and
10 they have given preliminary approval of this unit. So,
11 again, he's asking for things that are outside of the
12 procedures and outside of the process.

13 And simply that COG got on the ball early
14 in trying to protect its acreage that it owns 75 percent
15 net in and to try to protect it and operate it, we
16 simply beat them to the punch, and that's what has
17 happened here. So we need to move forward. We ask you
18 to take this under advisement.

19 MR. DeBRINE: And I would just submit that
20 that's the problem, that this is a beat-to-the-punch
21 situation where they're trying to BLM-grab, and that's
22 not how units should be prepared. They need to involve
23 people in the process, give them the opportunity to
24 participate, give them the opportunity to weigh in with
25 regard to whether they feel that the unit is appropriate

1 and logical for development so that they can weigh in on
2 the process. And we weren't informed that that process
3 was being undertaken until we got notice of the
4 application. We got the letter four days before the
5 application in this case was filed.

6 MS. RYAN: It's simply not required under
7 the procedure. We followed the procedure. If EOG had
8 75 percent across all these tracts, I guarantee you, it
9 would be working very good to protect its interest and
10 establish itself as operator. And if COG had 10
11 percent, we would have a very hard time trying to
12 prevent EOG at 75 to do anything about it. And that's
13 just the way it is. You seek competing operatorship all
14 the time. And you've got people with smaller interests
15 and people with larger, and you have to decide, based on
16 those factors, who is going to operate it.

17 But in front of you today is not who is the
18 better operator. It's simply, you know, giving your
19 consent, subject -- your order would be subject to final
20 approval. Even your elimination of setbacks and surface
21 commingling would be subject to final approval by the
22 State Land Office and the Bureau of Land Management.

23 EXAMINER McMILLAN: Okay.

24 EXAMINER DAVID: I'm satisfied. I've
25 explored that issue as far as I can go.

1 EXAMINER McMILLAN: Okay. Well, then Case
2 Number 20659 shall be taken under advisement.

3 Thank you.

4 MR. DeBRINE: Thank you, Mr. Examiners.

5 EXAMINER DAVID: Thank you, everybody.
6 Enjoy the rest of your Friday and have a better weekend.

7 (Case Number 20659 concludes, 12:38 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
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

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

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

20 DATED THIS 13th day of September 2019.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2019
Paul Baca Professional Court Reporters

25