

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

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

Application of COG Operating
for Compulsory Pooling,
Lea County, New Mexico

Case No. 22474

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, APRIL 14, 2022

COMMISSION HEARING

OIL CONSERVATION COMMISSION:

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Greg Bloom:	Commissioner (State Land Office)
William Ampomah:	Commissioner (NM Energy Dept.)
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A P P E A R A N C E S

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1 (Time noted 11:05 a.m.)

2 COMMISSION CHAIR SANDOVAL: All right. Next up
3 is Agenda Item No. 8, De Novo Case No. 22474. Do we have
4 the parties for that case?

5 MS. HARDY: Yes, Madam Chair. Dana Hardy for
6 COG Operating.

7 MR. TREMAINE: And this is Jesse Tremaine for
8 the Oil Conservation Division.

9 COMMISSION CHAIR SANDOVAL: All right. Are
10 there any other parties? (Note: No response.)

11 All right. Well, let's get started on this
12 one.

13 Ms. Hardy, would you like to make an
14 opening statement?

15 MS. HARDY: Yes, I would, Madam Chair.

16 COMMISSION CHAIR SANDOVAL: Go ahead.

17 MS. HARDY Thank you. In this case COG seeks an
18 Order pooling uncommitted interests in the Wolfcamp Pool,
19 underlying an approximately 960-acre standard or double
20 spacing unit, and seeks to dedicate the unit's six wells.

21 Each well is approximately 1.5 miles in
22 length and runs from south to north. All of the wells are
23 orthodox locations within the 960-acre unit. As a result,
24 they comply with the Division's 330-foot setback
25 requirement and will not impact the tracts that surround

1 the unit.

2 Collectively the wells penetrate every
3 tract of the unit. Three of the wells are proximity tract
4 wells, which means they are within 330 feet of the
5 internal quarter/quarter section lines and incorporate the
6 adjacent tracts.

7 COG will show its development plan is the
8 best way to efficiently develop the acreage, and that the
9 plan will best prevent waste and protect correlative
10 rights.

11 There is no opposition to COG's application
12 to the Division. The working interest owners include
13 multiple experienced operators, and none entered an
14 appearance or expressed any concern regarding the unit.
15 Two individual interest owners entered an appearance but
16 did not object.

17 The case was presented by affidavit and no
18 questions were raised at the Division level regarding the
19 application.

20 On December 7, 2021, the Division issued
21 Order No. R-21930 which rejected the application because
22 the unit is 960 acres and includes three proximity tract
23 wells instead of one. The division's Order relied on Rule
24 19.16.15B, which I will just refer to as the proximity
25 well rule, for the proposition that a standard horizontal

1 spacing unit can only include one proximity tract well,
2 and based on that determination the Division concluded
3 that the unit is nonstandard and requires Notice to
4 interest owners in the surrounding tracts.

5 The Division's decision should be reversed
6 and COG's application should be approved. COG's proposal
7 best protects correlative rights and prevents waste. COG
8 will explain that the proposed development will not impact
9 the surrounding tracts and that notifying interest owners
10 in those tracts would not prevent waste or protect
11 correlative rights.

12 COG will explain the geology in the area
13 supports COG's proposal.

14 And finally COG's engineer will demonstrate
15 that the proposed plan will most efficiently produce
16 reserves underlying the acreage. He will also explain
17 that an alternative plan that would require breaking this
18 proposed unit into two spacing units would result in
19 surface waste, environmental waste, and economic waste.

20 The Division's narrow construction of the
21 proximity well rule is inconsistent with the Oil and Gas
22 Act's fundamental requirement that the Division prevent
23 waste and protect correlative rights.

24 Under New Mexico law, statutes and rules
25 must be construed collectively to effectuate their purpose

1 and avoid an absurd result. The Division's narrow
2 interpretation of the rule is inconsistent with the Act
3 because it does not prevent waste or protect correlative
4 rights; rather, as COG's witnesses will explain, it
5 results in waste and has the opposite effect, it does not
6 protect correlative rights.

7 The Division's determination that COG must
8 provide notification of a nonstandard spacing unit and
9 attain approval of such a unit does not make sense here
10 because COG's unit does not impact the surrounding tracts.

11 The Division's narrow interpretation of the
12 rule is also inconsistent with the rule's purpose. The
13 rule was adopted to modernize development and allow
14 operators to choose the best way to develop their acreage
15 consistent with technological advances. The Division's
16 interpretation is inconsistent with that objective.

17 In addition, neither the Division's rules
18 nor the Oil & Gas Act have ever been construed to only
19 allow one well per spacing unit. The Division relies on
20 the fact that the rule refers to "the" well and "a" well
21 but that's not how the rules have been applied. It is
22 standard practice for operators to include multiple
23 horizontal wells in a spacing unit.

24 The Division also relies on Section 70-2-17
25 of the Act which states that it may establish a proration

1 unit for each pool that is drained by one well. But here
2 we are not talking about establishing a proration unit for
3 a pool, and a proration unit is not the same as a spacing
4 unit. The horizontal well rule expressly recognizes the
5 difference it applies to spacing units.

6 Today with multipad and multiwell drilling
7 an interpretation of the Act and the Rules that would only
8 allow one well in a spacing unit, which is the logical
9 result of the Division's Order, would not make sense and
10 it would results in waste.

11 And, finally, the Division has previously
12 approved spacing units that incorporate proximity tracts
13 from more than one well. In Order No. R-21089 the
14 Division approved a 1280-acre Bone Spring spacing unit
15 that included three proximity tract wells and those were
16 COG's Admiral wells. And in Order No. 21055 the Division
17 approved a 900-acre spacing unit with two proximity wells,
18 and that Order related to COG's Tinfoil wells.

19 So in conclusion, COG's evidence will
20 demonstrate that the Division's decision should be
21 reversed and that its application should be approved.

22 Thank you.

23 COMMISSION CHAIR SANDOVAL: Just one quick
24 question, Ms. Hardy. Could you restate those two Order
25 Numbers again.

1 MS. HARDY: Yes. R-21089 and R-21055.

2 COMMISSION CHAIR SANDOVAL: Thank you.

3 MS. HARDY: Thank you.

4 COMMISSION CHAIR SANDOVAL: Mr. Tremaine, would
5 you like to make an opening statement?

6 MR. TREMAINE: I would. Thank you, Madam Chair.

7 So primarily, you know, the Division is
8 going to rely on the legal argument laid out in their
9 Prehearing Statements. That's, I think, a very
10 straightforward legal argument.

11 The statutory authorities for proration and
12 spacing units, the OCD interprets as being limited to an
13 area which can be developed, produced, and efficiently
14 drained by one well.

15 In response to the distinction between a
16 proration and spacing unit, I think that there is not
17 judicial guidance on this point. They are different
18 concepts, but for the purposes of statutory interpretation
19 and under the Oil & Gas Act, those terms are used
20 interchangeably. So, for instance, in 70-2-18C, the Act
21 refers to proration or spacing units within the context of
22 defining the Division's and the Commission's authority to
23 define nonstandard spacing units. So for the purposes of
24 this analysis, I think that those terms should be treated
25 as analogous and that the Division's interpretation of

1 70-2-17 should control. The OCD's concern with the
2 application does not focus on any of the technical aspects
3 of the application or COG'S argument related to efficiency
4 or, you know, the most productive way to produce this
5 particular acreage that's been referenced in that 960
6 acres; it's based solely on OCD's concern with recognizing
7 the extent of the Division's authority under the enabling
8 statute.

9 I think that the problem here with COG's
10 argument, while generally I would not dispute the rules of
11 statutory interpretation and construction cited by Ms.
12 Hardy, their argument focuses on the interpretation of the
13 rule but overlooks the defining section of the statute.

14 So we are not talking about an absurd
15 result here resulting from OCD's interpretation of just
16 the rule, we're talking about the express intent of the
17 legislature in defining that proration unit and the way
18 the legislature treated proration and spacing units when
19 it updated the statute last.

20 So we are talking about the distinction
21 between a general provision of the statute which Ms.
22 Hardy relies upon in talking about prevention of waste and
23 protection of correlative rights. Those are extremely
24 important under the statute and OCD does not dispute that,
25 but that is a general provision under which OCD has a

1 greater deal of discretion. That conflicts in this case
2 with the very specific provision of the statute which
3 defines that proration unit and spacing unit as the area
4 that can be produced and drained efficiently by one well.

5 The prior Order -- in regards to the prior
6 Orders referenced by COG, you know I think that this is an
7 inappropriate focus, so the argument there essentially
8 boils down to one of precedential value, and the approach
9 focus should be here on whether or not the Division has
10 the statutory authority to define the horizontal spacing
11 unit beyond the extent of its authority under the statute
12 and the rule.

13 So if that is the determination, then COG's
14 argument by extension asks this Commission to view the
15 prior Orders as having precedential overruling the
16 specific language of the rule and the statute. That's not
17 appropriate, an appropriate outcome in this case.

18 So I want to point out that COG's argument
19 I think really just boils down to COG's belief that their
20 development plan is the most effective for this area. I
21 respectfully -- I just think that conflicts with the
22 language of the statute, and if COG has a policy concern
23 or argument related to the definition of those spacing
24 units then that needs to appropriately be made to the
25 legislature. This is not the venue to try and interpret

1 the Oil & Gas Act outside or beyond that specific
2 language.

3 I also just want to disagree completely
4 with COG's statement regarding the historical perspective
5 of spacing units. I think that historically, aside from
6 the potentially referenced Orders, that spacing units have
7 always been treated as being defined or held by one well.
8 There may be more than one well within a spacing unit and
9 those wells are attached to that spacing unit, but the
10 well that has -- a spacing unit has always been defined by
11 the extent of the single well's lateral.

12 So I think that this really all boils down
13 to the Commission needs to review and analyze this
14 according to the appropriate provision of the Oil & Gas
15 Act, which very specifically applies here, rather than the
16 general language, and I would reserve -- at this time I
17 don't take any position regarding the technical aspects of
18 the application, I don't have any objection to COG's
19 exhibits, but I would reserve the right for any
20 cross-examination if the Commission is going to hear the
21 technical aspects of the case.

22 Thank you.

23 COMMISSION CHAIR SANDOVAL: Thank you, Mr.
24 Tremaine.

25 Ms. Hardy, can you rerun through your list

1 of witnesses, please.

2 MS. HARDY Yes, Madam Chair.

3 Our landman Matt Solomon is prepared to
4 testify, and then our geologist Ira Bradford, and then our
5 engineer Eric Angelos.

6 I don't think -- I apologize.

7 COMMISSION CHAIR SANDOVAL: I was just going to
8 make them panelists.

9 MS. HARDY: I believe they are all in one room.

10 COMMISSION CHAIR SANDOVAL: Okay. I see
11 individual names. So I got two. I got Eric Angelus and
12 Ira Bradford. Who was the third? Sorry. Matt Solomon?

13 MS. HARDY: Matt Solomon, correct.

14 COMMISSION CHAIR SANDOVAL: I see them
15 appearing. Great.

16 Just before we go into the case, are you
17 planning to present evidence and witnesses on behalf of
18 the technical case, or some of the regulatory issues, or
19 both?

20 MS. HARDY: It's both, I believe, Madam Chair.

21 COMMISSION CHAIR SANDOVAL: Okay. You know,
22 really it sounds like the issues here are somewhat limited
23 to some of the regulatory issues, but as the technical
24 case dovetails into that, I think it's appropriate.

25 MS. HARDY: Thank you.

1 COMMISSION CHAIR SANDOVAL: Would you like to
2 call your first witness.

3 MS. HARDY: Yes. Thank you, Madam Chair.

4 MATTHEW SOLOMON,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. HARDY:

8 **Q. Can you please state your full name for the**
9 **record -- oh, I'm sorry.**

10 COMMISSION CHAIR SANDOVAL: Yes. I just said go
11 ahead.

12 MS. HARDY: Okay. Thank you.

13 A. Yes. My name is Matthew Solomon.

14 **Q. And on whose behalf are you testifying and in**
15 **what capacity?**

16 A. I'm testifying in the capacity of a staff land
17 negotiator for COG, LLC.

18 **Q. Can you please briefly summarize your education**
19 **and professional qualifications.**

20 A. Sure. I graduated from San Jose State with a
21 degree in broadcast journalism. Thereafter I got a law
22 degree from Oklahoma City University. After law school I
23 worked, I now work a total of 15 years in the industry,
24 three as a landman for Chesapeake developing urban units
25 in the Barnett Shale, then five years with, uhm Hess

1 Corporation developing units in the Baca and the Utica;
2 and then the last part of my career has been with
3 Concho/Conoco working in this area of Southeast New
4 Mexico.

5 **Q. Have you previously testified before the New**
6 **Mexico Oil Conservation Commission?**

7 A. I have.

8 **Q. Were your qualifications as an expert in**
9 **petroleum land matters accepted?**

10 A. They were.

11 MS. HARDY: Madam Chair, I request that Mr.
12 Solomon be qualified as expert in petroleum land matters.

13 COMMISSION CHAIR SANDOVAL: Mr. Tremaine, do you
14 have any objections?

15 MR. TREMAINE: No objection.

16 COMMISSION CHAIR SANDOVAL: Commissioner, do you
17 have any questions or objections for the witness?

18 COMMISSIONER BLOOM: No, Madam Chair.

19 COMMISSION CHAIR SANDOVAL: Dr. Ampomah?

20 COMMISSIONER AMPOMAH: No, Madam Chair.

21 COMMISSION CHAIR SANDOVAL: Okay. The witness
22 is certified as an expert. You can go ahead and continue.
23 Thank you.

24 **Q. Mr. Solomon can you please summarize COG's**
25 **request in this case.**

1 A. Yes. We asked for a 960-acre unit to develop
2 the Wolfcamp Bone Pool. That unit was predicated on three
3 proximity wells, and it was denied.

4 **Q. Has COG previously achieved approval of spacing**
5 **units that incorporate acreage for multiple proximity**
6 **wells?**

7 A. Yes. Two instances I can think of.

8 **Q. And which instances are those?**

9 A. Well, the first was for our Admiral unit. That
10 was approved in Order No. R-21089. That was a 1280-acre
11 unit developing the Bone Spring, and that was predicated
12 on three proximity wells.

13 The second instance was by authority of
14 Order No. 21055. Therein that was a 900-acre unit
15 developing the Bone Spring. That was our Tinfoil unit,
16 and that was predicated upon two proximity wells.

17 MS. HARDY: Madam Chair, I request that the
18 Commission take administrative notice of Orders Nos.
19 R-21089 and R-21055.

20 COMMISSION CHAIR SANDOVAL: Any objection,
21 Mr. Tremaine?

22 MR. TREMAINE: No.

23 COMMISSION CHAIR SANDOVAL: Any questions or
24 objections from the Commission?

25 COMMISSIONER BLOOM: No, Madam Chair.

1 COMMISSIONER AMPOMAH: No, Madam Chair.

2 COMMISSION CHAIR SANDOVAL: Okay. The
3 Commission will take Administrative Notice of Orders
4 R-21089 and R-21055.

5 Q. Mr. Solomon, do you have a document in front of
6 you that's marked as COG Exhibit 1?

7 A. I do.

8 Q. Can you please identify that document.

9 A. Yes. This was the Order in response to our
10 application, Order No. R-21930, which denied our
11 application for a 960-acre spacing unit to develop the
12 Wolfcamp predicated off three proximity wells.

13 Q. Is that the Order that COG is asking the
14 Commission to reverse?

15 A. It is.

16 Q. What is your understanding of the reason that
17 the Division rejected COG's application?

18 A. My understanding is that a unit cannot be held
19 together by more than one proximity well, so if you are
20 asking for more than one proximity well it violates the
21 rules.

22 Q. Mr. Solomon can you please generally identify
23 COG Exhibits 2 through 10.

24 A. Yeah. These were the exhibits that I submitted
25 when we originally -- when this case was originally heard

1 on November 4, 2021.

2 **Q. Can you please identify COG Exhibit 2.**

3 A. Sure. That is my self-affirmed affidavit, and
4 everything that was testified to in this affidavit is
5 still true and correct today.

6 **Q. Can you please identify COG Exhibit 3.**

7 A. Yes. COG Exhibit No. 3, this was the
8 application that we submitted, which was denied in the
9 Order.

10 **Q. How many wells does -- I'm sorry, were you**
11 **finished?**

12 A. No, go ahead.

13 **Q. How many wells does COG propose to include in**
14 **its spacing unit?**

15 A. Six.

16 **Q. And which wells are the proximity tract wells?**

17 A. That would be the 601H, the 602H and the 603H.

18 **Q. Can you please identify COG Exhibit 4.**

19 A. Sure. Yeah, COG Exhibit 4 are the C-102 plats
20 for the six wells that were to be developed in the unit.

21 So 601H, 602H, 603H, 702H, 703H and 704H.

22 **Q. Collectively do the six wells penetrate every**
23 **tract that is included in the spacing unit?**

24 A. They do.

25 **Q. Are any of COG's proposed wells at unorthodox**

1 **locations within the 960-acre spacing unit?**

2 A. No, they are not. They are all further than 330
3 feet from an outside boundary.

4 **Q. Do all of the wells then meet the Division's**
5 **setback requirements?**

6 A. Yes.

7 **Q. Mr. Solomon, at this time what is the percentage**
8 **of COG's interest in the proposed spacing unit?**

9 A. Well, it has increased a bit since the submittal
10 of Exhibit No. 5. We now, having done a deal with OXY-Y-1
11 we now have approximately 93 percent of the working
12 interest in the unit.

13 **Q. With respect to the proceedings before the**
14 **Division, can you please identify COG Exhibit 5.**

15 A. COG Exhibit 5. Yes. This was -- well, this is
16 a map of the unit showing the tracts that are -- that the
17 unit is composed of. And it also shows, on subsequent
18 pages after the map, the interest breakdown of the
19 ownership in the overall unit, and a breakdown on a
20 tract-level basis of the ownership within the tracts.

21 Additionally, it shows on a Pooling
22 Notification List those parties that got notification of
23 the hearing, both working interest owners and people who
24 held clouded unmarketable title.

25 **Q. Can you please identify COG Exhibit 6.**

1 A. Sure. Well, it is two things. One is a copy of
2 the Well Proposal that was sent to working interest owners
3 along with accompanying AFEs, and then a separate letter,
4 very similar but not exact, was sent to unleased mineral
5 interest owners along with, again, accompanying AFEs for
6 each of the six wells.

7 **Q. And does COG Exhibit 7 constitute your Summary**
8 **of Communications with those parties?**

9 A. It does, yeah. Up to the point of the first
10 hearing, yes, this is an accurate accounting of the
11 communications.

12 **Q. Can you please identify COG Exhibit 8.**

13 A. Yes. This was prepared on our behalf by Hinkle
14 Shanor. It was a letter that was sent to all the parties
15 who were due Notice about the hearing on -- that took
16 place on November 4, 2021.

17 **Q. And were Hearing Notices sent to all of the**
18 **interested parties?**

19 A. Yes.

20 **Q. And was Notice also published?**

21 A. It was. It was published -- as can be seen in
22 Exhibit No. 9, we have an Affidavit of Publication.

23 **Q. Did anyone contact you with objections to the**
24 **application?**

25 A. No.

1 Q. Did anyone contact you with concerns about the
2 size of the spacing unit?

3 A. No.

4 Q. Did anyone contact you about the number of
5 proximity wells included in the unit?

6 A. No.

7 Q. Let's talk a little bit, briefly, about the
8 hearing with the Division.

9 When did the Division hear this case?

10 A. It was heard on November 4, 2021.

11 Q. And is COG working to pool other interests held
12 by other operators?

13 A. We are.

14 Q. Which operators are those?

15 A. Flip back to my list.

16 That would be Marathon Oil Permian, LLC;
17 MRC Permian Company; Chief Capital. And that is it.

18 BEXP 1 has signed a JOA, and as you will
19 see, formerly Yates Industries, LLC was listed, but it
20 turns out that we now own that interest, so they no longer
21 have any dog in this.

22 Q. In your experience are those parties large and
23 experienced operators and interest owners?

24 A. Absolutely.

25 Q. And did any of them raise concerns regarding the

1 proposed spacing unit?

2 A. No.

3 Q. How many parties is COG seeking to pool for
4 unmarketable title, approximately?

5 A. Oh, about 60.

6 Q. Did any of those parties object to COG's
7 application on the proposed spacing unit?

8 A. No.

9 Q. Were any questions raised at the hearing
10 regarding the proposed spacing unit?

11 A. No.

12 Q. Can you please identify COG Exhibit 10.

13 A. Yeah. This is the pooling application checklist
14 that we compiled in conformity with the rules.

15 Q. Is that still a true and correct copy of the
16 information regarding the wells that COG proposes to pool?

17 A. It is.

18 Q. Mr. Solomon, I would like to share my screen and
19 pull up COG Exhibit 11. So let me see if I can do that.

20 Madam Chair, it looks like I don't have
21 sharing enabled here.

22 COMMISSION CHAIR SANDOVAL: Let me take two
23 seconds.

24 Okay. Let me give this a shot. You should
25 be able to now. It's coming up.

1 MS. HARDY: Okay. Can you all see that? Okay.

2 Q. Mr. Solomon, can you please identify that
3 exhibit.

4 A. Sure. I composed this exhibit, and what it
5 shows is the 960 that was proposed that is within the red
6 dashed border. And then you will also see the six wells
7 numbered from 1 to 6, the arrow going north indicating
8 that they are spud from the south and drilled northward.

9 And then around that I have highlighted
10 those owners and interests that would need to be notified
11 if we went through the nonstandard route of getting a
12 unit.

13 Q. If I scroll down here, this is a list of the
14 parties who would need to receive Notice of a nonstandard
15 unit?

16 A. Correct.

17 Q. And how did you identify those owners?

18 A. Well, we had to run title, and we had to -- we
19 had to run title on all of those tracts that you see
20 highlighted in either pink, blue or green. That was a
21 total of 960 acres in eight different Townships -- rather,
22 eight separate sections.

23 Q. Is it time consuming to run title on that number
24 of tracts?

25 A. Very.

1 **Q. Can it be costly to run title on all of the**
2 **tracts that surround a spacing unit like this?**

3 A. Very.

4 **Q. And in this case how many interest owners would**
5 **you have to notify if you were notifying all of the**
6 **surrounding tracts of a proposed nonstandard spacing unit?**

7 A. In this case we would have to notify six working
8 interest owners. Additionally we would have to notify
9 five unleased mineral owners that own in that green
10 highlighted section you see.

11 So a total of 11.

12 **Q. Are you familiar with other situations that**
13 **would involve many more interest owners?**

14 A. Oh, it could be hundreds. This eleven is
15 fortuitous.

16 **Q. Based on your understanding from a land**
17 **perspective, are any of the offset tracts affected by**
18 **COG's application?**

19 A. No, not at all, because as can be seen in the
20 table that has the details for the flank wells, which are
21 Wells 1 and 6, not only are those wells not closer than
22 330 to the exterior boundaries but in fact they are three
23 times as far off as what we need it to be. They are 1,000
24 feet off.

25 **Q. Does COG's application affect the correlative**

1 **rights of the interests in these surrounding tracts?**

2 A. Not at all.

3 **Q. Would providing Notice to those parties result**
4 **in potential harm to COG?**

5 A. Absolutely. The problem with notifying these
6 parties when you are not even within 330 feet of them --
7 but, you know, again in this case three times as far -- is
8 they don't need to be protected. They don't need a shield
9 here, because we are not threatening their correlative
10 rights. The problem is we are giving them a sword, and by
11 giving them the opportunity to respond and object they
12 could -- and I've seen it happen before -- use that
13 opportunity as leverage in completely unrelated
14 negotiations.

15 **Q. And if an operator is required to seek approval**
16 **of a nonstandard spacing unit in a situation like this,**
17 **would that create additional administrative burdens?**

18 A. Absolutely.

19 **Q. And would those be burdens to both the operator**
20 **and the Division?**

21 A. Yeah. Yes. Because it is a burden to collect
22 and collate all this title information to send out Notices
23 to the parties, and then of course, you know, the Division
24 has to process those.

25 **Q. And is it your opinion that that shouldn't be**

1 **necessary in a situation like this where the wells are**
2 **meeting the Division's setback requirements?**

3 A. Yes. There's no interest that's threatened
4 here.

5 Q. **Is it your understanding that based on the**
6 **Division's Order COG would not have to notify owners in**
7 **the surrounding tracts if its unit only included one**
8 **proximity tract well?**

9 A. That's correct.

10 Q. **But COG would have to notify owners in**
11 **surrounding tracts if its owner includes more than one**
12 **proximity tract well; is that correct?**

13 A. Correct.

14 Q. **From your perspective and in your experience as**
15 **an expert in petroleum land matters, is there any**
16 **difference between those two scenarios?**

17 A. There's no substantive difference.

18 Q. **Why not?**

19 A. Well, because in either case the correlative
20 rights by the outlying parties are in no way being
21 threatened, because the flank wells meet the setback
22 requirements.

23 Q. **Mr. Solomon, in your opinion would granting**
24 **COG's application prevent waste, prevent the drilling of**
25 **unnecessary wells, and protect correlative rights?**

1 A. That's correct. Yes, our Admiral units and then
2 our Tinfoil unit.

3 And the first one I think was referenced was Order
4 No. R-21089; is that correct?

5 A. That's correct.

6 Q. And was that in OCD Case No. 20836?

7 A. That's correct.

8 Q. That 1280-acre unit, that application and Order,
9 that was identified in COG's Prehearing Statement; is that
10 correct?

11 A. That's correct.

12 Q. Okay. And that application in Case No. 20836,
13 that went to hearing as a compulsory pooling application,
14 correct?

15 A. That is correct.

16 Q. Would you agree with my statement that that
17 application did not either identify the horizontal spacing
18 unit as standard or nonstandard?

19 A. Candidly, I can't recall, but I can get you that
20 information.

21 Q. Okay. And I have the same questions for the
22 other one. I believe you referenced Order R-21055. Is
23 that correct?

24 A. That's correct.

25 Q. That Order was not identified in your Prehearing

1 Statement; is that correct?

2 A. I believe that it was identified in our
3 Prehearing Statement.

4 Q. Okay. And does that Order relate to Case No.
5 20832?

6 A. It does.

7 Q. Okay. And I have the same question from the
8 previous: Is this -- is it fair to say that that
9 application is for a compulsory pooling unit?

10 A. That's correct.

11 Q. Okay. And that application identifies a spacing
12 unit but it does not identify the spacing unit as standard
13 or nonstandard. Correct?

14 A. Again I would have to review the entire Order to
15 get you a proper answer. I do not remember that offhand.

16 Q. Okay. Mr. Solomon, would you agree that the --
17 well, let me preface this.

18 I have heard you make a number of
19 statements into the record about how time-consuming Notice
20 is, the burden on COG, and this proposed development's
21 potential impact on what you argue as a lack of impact
22 threatening correlative rights or impacting interest
23 owners outside of the identified spacing unit.

24 Would you agree that, you know, those are
25 policy statements, not legal argument?

1 A. I would -- I would not agree with, having had a
2 little time to reflect upon that. So I can't say yes or
3 no to either proposition.

4 **Q. Would you agree that if the legislature in New**
5 **Mexico states that a spacing unit over a certain size**
6 **needs to be treated differently than a spacing unit**
7 **identified by a single well, that the Notice impact for**
8 **COG would not override that legislative intent?**

9 MS. HARDY: Madam Chair, I --

10 A. I --

11 MS. HARDY: Mr. Solomon, can you hold on one
12 second? I apologize for interrupting.

13 I would like to object to that question,
14 because I think it calls for a legal interpretation. Mr.
15 Solomon has testified about his experience and
16 interpretation the Division has applied, but he's not
17 offering legal opinions.

18 MR. TREMAINE: I'll withdraw the question. That
19 was a poorly phrased question, Madam Chair.

20 COMMISSION CHAIR SANDOVAL: Okay.

21 MR. TREMAINE: I'll reserve that for argument.

22 No further questions for Mr. Solomon.

23 COMMISSION CHAIR SANDOVAL: Thank you.

24 Commissioners, do you have questions for
25 Mr. Solomon?

1 COMMISSIONER BLOOM: No, Madam Chair.

2 COMMISSIONER AMPOMAH: Madam Chair, I do have a
3 couple of questions.

4 CROSS-EXAMINATION

5 BY COMMISSIONER AMPOMAH:

6 Q. So Mr. Solomon, like the OCD is saying that it
7 is a plain language, you know, in the rule that this type
8 of development needs to be treated differently, like
9 nonstandard. So if COG really wants to proceed with this
10 development, why can't they just follow the rule?

11 A. Well, again I think what our attorneys laid out
12 in the beginning is that they take issue with the
13 interpretation of the rule. And again that is a legal
14 discussion and I am not here in the capacity today of an
15 attorney.

16 Q. You made mention in the Prehearing Statement,
17 and also in your testimony you referenced two Orders by
18 the Division that they approved similar or close to, you
19 know, the same type of development. But I wanted to
20 clarify whether that particular application was standard
21 or nonstandard.

22 A. Again I would have to review the application to
23 see whether or not those particular terms were used. I'm
24 happy to do so and respond with what I find.

25 Q. Now, you made mention of the problems, some of

1 the problems why you feel that you don't necessarily have
2 to go through the nonstandard. You know, you talked about
3 probably to give admissions to the other owners, the other
4 parties to more or less prolong the process and all of
5 that. Don't you feel that that requirement is also more
6 of less to protect correlative rights?

7 A. It certainly is to protect correlative rights
8 when, in fact, correlative rights are in jeopardy. In
9 this case I mean it's been determined that if you are 330
10 feet or further away from an outside boundary that
11 correlative rights are not in jeopardy. So yes, if in
12 fact the correlative rights are in jeopardy, that
13 notification is a proper remedy to protect correlative
14 rights. Here not only are we not 330 feet, closer than
15 330 feet, we're 1,000 feet off of adjoining outer bounds.
16 So in this particular instance there is no jeopardy that
17 warrants any sort of protective Notice.

18 Q. Now, you made it clear that there is no, like
19 there is no problems, I see with that, assuming let's say
20 you still go ahead and give those Notices out. And based
21 on the experience of COG and also even the strong argument
22 you are making now, don't you believe that if you go
23 through the nonstandard application process you still have
24 a strong case to prove that those units are not in
25 jeopardy.

1 A. I think it is a case that we would certainly
2 ultimately prevail on, but wherein the danger comes is if
3 you give somebody who is not in jeopardy the ability to
4 object, you then give them the ability to drag out and
5 delay operations, which in many cases is the leverage they
6 are seeking to try to force you to do something on an
7 unrelated deal.

8 So the people who would object, would, yes,
9 ultimately know they would probably lose their objection,
10 but their goal would not be to win, it would just be to
11 delay and hold your feet to the fire on something else.

12 **Q. So then will you agree also with OCD that they**
13 **are trying to protect the law and not necessarily trying**
14 **to refrain OCD (sic) from more or less proceeding with**
15 **their development plan?**

16 A. I'm sorry, can you say that again, sir?

17 **Q. I'm saying that based on what you just said,**
18 **don't you believe that the OCD is trying to follow the**
19 **law? They are just trying to follow the law, not**
20 **necessarily that -- or do you think that there are parties**
21 **that would object to your application even if it is to be**
22 **nonstandard?**

23 A. Yes, I certainly believe it's possible that if
24 we were to go the nonstandard route parties would object.
25 Sure.

1 Q. But --

2 A. If it was in their interest to object to force
3 some other goal that was unrelated, sure. I've seen it.

4 COMMISSIONER AMPOMAH: Madam Chair, I do not
5 have any other questions. Thank you.

6 COMMISSION CHAIR SANDOVAL: Thank you.

7 I just have a couple of questions.

8 CROSS-EXAMINATION

9 BY COMMISSION CHAIR SANDOVAL:

10 Q. So I think -- I guess have you read the
11 Division's Prehearing Statement?

12 A. I have not read it. I heard it discussed by the
13 counsel.

14 Q. So in their Prehearing Statement it says COG
15 proposes the roughly 960-acre spacing unit as standard;
16 however, the acreage would be held by more than one well,
17 each situated within 330 feet of the respective
18 quarter/quarter boundaries.

19 A. Correct.

20 Q. So that the way I'm reading that, or that reads
21 to me, is that each well would be sort of within that
22 required setback or would be encroaching on that required
23 setback, right?

24 A. It would be encroaching on quarter/quarter
25 setbacks and the middle -- and the line which separates

1 the east half from the west half.

2 **Q. So are you confirming that basically you're**
3 **going over those 330-foot boundaries?**

4 A. For the interior boundaries, yes, that is
5 correct. But for the exterior boundaries which pertain to
6 the people we would have to notice, we are not within 330,
7 we are 1,000 feet away.

8 **Q. Did you get nonstandard location approvals for**
9 **those?**

10 A. I don't know that, if we did or we didn't.

11 **Q. If you're within the setback requirements do**
12 **you -- do you know if you are required to get nonstandard**
13 **location approvals for those wells?**

14 A. Well, from my understanding is that you -- that
15 we can do without nonstandard setback requirements if in
16 fact we are trying to propose as a standard unit. It's
17 only when we are not proposing as a standard unit that we
18 would have to get those nonstandard, we would have to do
19 the nonstandard permitting and get the nonstandard
20 permission.

21 **Q. Okay. So it sounds -- is COG's position that it**
22 **would be hard and costly to have Noticed all of those**
23 **individuals and that is why you treated it as a standard**
24 **spacing unit?**

25 A. No, that is merely one concern. That was not

1 the primary concern. The primary concern was that we
2 wanted to have the efficiency of being able to have one
3 less facility. If we were to do two separate units,
4 because there is not an absolute equality of interest
5 between the two units, that would make it extremely hard
6 to get a 960 CA from the BLM, and just -- which would
7 allow us to do just one larger facility.

8 But the main thrust of our argument is not
9 the cost and time of notifying and the danger of notifying
10 outside parties, but it is one element.

11 COMMISSION CHAIR SANDOVAL: Okay. I don't have
12 any further questions.

13 Ms. Hardy, do you have any redirect for the
14 witness?

15 MS. HARDY: Yes, I do have a couple, Madam
16 Chair.

17 COMMISSION CHAIR SANDOVAL: Okay. How long?
18 I'm just looking at the time. How long do you expect it
19 will take?

20 MS. HARDY: Probably five minutes.

21 COMMISSION CHAIR SANDOVAL: Okay. Go ahead.

22 MS. HARDY: Thank you. And I'll share my screen
23 here again, because I think that will help, I believe.

24 Can you all see that?

25 COMMISSION CHAIR SANDOVAL: Yeah.

1 MS. HARDY: Okay.

2 REDIRECT EXAMINATION

3 BY MS. HARDY:

4 Q. So Mr. Solomon, with respect to the nonstandard
5 versus standard locations, on your map here, Exhibit 11,
6 is it correct that the wells as they are proposed in the
7 960-acre unit are all more than 330 feet from the
8 boundaries of the unit?

9 A. That's correct.

10 Q. Okay. So within the unit as you've proposed it,
11 the wells are at standard or orthodox locations and you
12 wouldn't need unorthodox location approval; is that
13 correct?

14 A. Correct.

15 Q. It's only if the unit were broken out into
16 multiple units that the locations would be unorthodox; is
17 that right?

18 A. Correct.

19 Q. Okay. Thank you.

20 And then I have here the application for
21 GOG's Tinfoil wells. Can you see that?

22 A. I do.

23 Q. And that's the application in Case No. 20832 --

24 A. Right.

25 Q. -- that we've been discussing.

1 A. It says, "Standard 960-acre unit" in the opening
2 paragraph.

3 Q. Right. Okay. Thank you. That's what I was
4 going to ask.

5 And then similarly I pulled up the
6 application from COG's Admiral wells in Case No. 20836.

7 Is that what this document is?

8 A. Yes.

9 Q. And --

10 A. And it's the same thing. In that opening
11 paragraph you'll see the passage on the fourth line down,
12 "a standard 1280 unit."

13 Q. Thank you. And then this is the Order in Case
14 No. 20 -- I'm sorry, 22076. And does it say here that it
15 is a standard unit?

16 A. Yes. Again in the opening paragraph, third line
17 down, it says the unit is expected to be a standard
18 horizontal spacing unit.

19 Q. And then here I've pulled up the Order in Case
20 No. 20832, which is Order No. R-01255, and does this state
21 that the application --

22 The unit is as described in the
23 application, correct?

24 A. Correct.

25 Q. And the application described it as a standard

1 unit; is that right?

2 A. Correct.

3 Q. Okay. And, Mr. Solomon, with respect to the
4 Notice issue, I know you have mentioned the cost and sorts
5 of the burden of giving Notice to parties in surrounding
6 tracts, but is the primary issue really that you would be
7 required to give Notice to parties that don't have
8 correlative rights that are impacted by the proposed unit?

9 A. That's precisely the most important issue.

10 MS. HARDY: Madam Chair, those are all of my
11 questions for Mr. Solomon.

12 COMMISSION CHAIR SANDOVAL: Okay. Thank you.

13 Let's leave -- I mean, you're dismissed for
14 now, but you are still sworn in case we need to recall you
15 later.

16 Looking at the time, why don't we take a
17 break for lunch. I will just note that we will have to
18 end by 4:30 today, so just timing, going over timing for
19 everybody, does coming back at 12:45 work for everybody?

20 COMMISSIONER BLOOM: Madam Chair, if we can
21 extend to 1:00 o'clock, that would be great. I have a
22 commitment (Inaudible).

23 COMMISSION CHAIR SANDOVAL: All right. Let's
24 come back at 1:00 o'clock. I'll leave this up, and so if
25 you are going to stay on, just mute yourself and turn off

1 your video.

2 MS. HARDY: Thank you.

3 COMMISSION CHAIR SANDOVAL: Thanks everybody.

4 See you at 1:00.

5 (Note: In recess from 12:05 p.m. to 1:01 p.m.)

6 COMMISSION CHAIR SANDOVAL: Do you know if your
7 next witness is here?

8 MS. HARDY: I believe he is. Our next witness
9 is Ira Bradford.

10 IRA A. BRADFORD,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. HARDY:

14 Q. Can you please state your full name for the
15 record.

16 A. Ira Andrew Bradford.

17 Q. On whose behalf are you testifying, and in what
18 capacity?

19 I'm testifying for COG Operating as a
20 geoscientist.

21 Q. Have you previously testified before the New
22 Mexico Oil Conservation Commission?

23 A. No, I have not.

24 Q. Can you please briefly summarize your education
25 and professional qualifications.

1 A. Yes, ma'am. I graduated in 2003 from Allegheny
2 College in Meadville, Pennsylvania with a Bachelor's of
3 Science in Geology. I've been with New Mexico State
4 University in Las Cruces. I received my Master's in
5 geology in 2007. I have been employed in the oil & gas
6 industry as a geoscientist since 2007, with COG Operating
7 since 2013, and in my capacity working as a geoscience
8 supervisor for Lea County since 2017.

9 MS. HARDY: Madam Chair, I request that Mr.
10 Bradford be qualified as an expert in geology.

11 COMMISSION CHAIR SANDOVAL: Mr. Tremaine, any
12 objections?

13 MR. TREMAINE: No objection.

14 COMMISSION CHAIR SANDOVAL: Commissioners?

15 COMMISSIONER BLOOM: No objections.

16 COMMISSIONER AMPOMAH: No objections.

17 COMMISSION CHAIR SANDOVAL: All right. Mr.
18 Bradford is certified as an expert in geology.

19 MS. HARDY: Thank you.

20 **Q. Mr. Bradford, can you identify the documents**
21 **that have been marked as COG Exhibits 12 through 16?**

22 A. Yes. This is the Self-Affirmed Statement of
23 Brian Sitek, a COG geologist, for the exhibits that were
24 for the original case.

25 **Q. And based on your review, are the statements**

1 **contained in Mr. Sitek's affidavit true and correct?**

2 A. Yes, they are.

3 **Q. And can you please identify COG Exhibit 13.**

4 A. COG Exhibit 13 is our base map of the area
5 showing the offset producing wells and our six proposed
6 Prenightshade wells on Sections 1 and 12.

7 **Q. Can you please identify COG Exhibit 14.**

8 A. Exhibit 14 is a Structure Map of the top of
9 Wolfcamp based off the offset well control, showing a
10 slight updip to the west in this area.

11 **Q. Can you please identify COG Exhibit 15.**

12 A. COG 15 is the base map again showing the
13 Cross-Section A to A prime, which is on the next exhibit.

14 **Q. And that's Exhibit 16?**

15 A. Yes. Exhibit 16 is the Cross-Section A to A
16 prime showing a gamma ray resistivity and neutron density
17 porosity curves showing that the unit crop -- the targets
18 for this area are correlative and uniform across this
19 area.

20 **Q. Based on the information contained in these**
21 **exhibits is this area suitable for development with**
22 **horizontal wells?**

23 A. Yes, ma'am.

24 **Q. Is the orientation of the wells appropriate?**

25 A. Yes.

1 Q. Is the target interval continuous across the
2 unit?

3 A. Yes.

4 Q. Are there any faults, pinchouts or geologic
5 impediments to the geologic development?

6 A. No.

7 Q. Will each tract contribute more or less equally
8 to production?

9 A. Yes.

10 Q. Is it your opinion that granting COG's
11 application will best protect the correlative rights,
12 prevent waste, and prevent the drilling of unnecessary
13 wells?

14 A. Yes, it is.

15 MS. HARDY: Madam Chair, I move the admission of
16 COG Exhibits 12 through 16.

17 COMMISSION CHAIR SANDOVAL: Any objection, Mr.
18 Tremaine?

19 MR. TREMAINE: No objection.

20 COMMISSION CHAIR SANDOVAL: Commissioners?

21 COMMISSIONER BLOOM: No objection.

22 COMMISSIONER AMPOMAH: No objection.

23 COMMISSION CHAIR SANDOVAL: Okay. COG Exhibits
24 12 through 16 are entered into the record.

25 MS. HARDY: Thank you. I have no further

1 questions for Mr. Bradford and tender him for questioning
2 by the Commission or Mr. Tremaine.

3 COMMISSION CHAIR SANDOVAL: Mr. Tremaine?

4 MR. TREMAINE: No questions.

5 COMMISSION CHAIR SANDOVAL: Commissioner?

6 COMMISSIONER BLOOM: No questions, Madam Chair.

7 COMMISSIONER AMPOMAH: Madam Chair, a quick one.

8 Do we have the exhibits from OCD and COG?
9 I know we have the one that has page 1 through 53, so I
10 don't know if we have all the complete one.

11 And John, I was going to test you, perhaps,
12 in this, but I don't know, because I don't have it.

13 COMMISSION CHAIR SANDOVAL: Is this -- like, are
14 you asking for the exhibit packet?

15 COMMISSIONER AMPOMAH: Yes. I do have 1 through
16 53, and I saw it was showing up until like 120s. So I
17 don't know if we have that.

18 COMMISSION CHAIR SANDOVAL: Yeah, because I'm
19 showing Exhibit 14 on page 123.

20 COMMISSIONER AMPOMAH: Yeah, I don't have that.

21 MS. HARDY: Madam Chair, I think I can clarify.

22 COMMISSION CHAIR SANDOVAL: Okay.

23 MS. HARDY: Okay. I think OCD did submit the
24 Division exhibits but I think it was only maybe half of
25 them because they had been submitted in two parts. But

1 then in our exhibit packet we included all of the Division
2 exhibits, we just renumbered them because we were going
3 through them in this order with the witnesses.

4 So all of the Division exhibits are
5 included in our exhibit packet in this case.

6 COMMISSION CHAIR SANDOVAL: I pulled -- I'm
7 pretty sure I pulled this packet off of the case files,
8 because it's pretty huge.

9 COMMISSIONER BLOOM: 10 megabytes. Let me see
10 if I can email it to you here.

11 COMMISSIONER AMPOMAH: Okay. Thank you.

12 COMMISSION CHAIR SANDOVAL: I would email that
13 through Mr. Kreienkamp.

14 COMMISSIONER AMPOMAH: Uh-huh.

15 COMMISSION CHAIR SANDOVAL: You can also go on
16 the OCD case files in a case file search, and then type
17 in -- I keep losing this case number.

18 COMMISSIONER AMPOMAH: 22294.

19 COMMISSION CHAIR SANDOVAL: 22474.

20 COMMISSIONER BLOOM: Yeah, I don't have Mr.
21 Kreienkamp's address, so...

22 COMMISSION CHAIR SANDOVAL: 22474. Here, let's
23 see which -- this is the...

24 It's the second document listed on there
25 from the left.

1 COMMISSIONER AMPOMAH: Yes. I have it now.

2 Thank you.

3 COMMISSION CHAIR SANDOVAL: I think these
4 exhibits from me, like Exhibit 15 starts on page 124.

5 And maybe just generally, Ms. Hardy, when
6 you are referring to exhibits it might be helpful to share
7 your screen.

8 MS. HARDY: Sure. I'd be happy to do that.

9 My sharing got disabled here.

10 COMMISSION CHAIR SANDOVAL: I'd be happy to give
11 that back to you.

12 Okay. I think we were on Commission
13 questions.

14 Dr. Ampomah, did you have a question for
15 the witness?

16 COMMISSIONER AMPOMAH: No. I couldn't review
17 his testimony, so I cannot ask a question now.

18 COMMISSION CHAIR SANDOVAL: Okay. Well, I don't
19 have any pertinent questions for this witness, but let's
20 keep him on the record and we can recall him as necessary,
21 if there are further questions.

22 Ms. Hardy, I'm assuming you don't have
23 redirect since there were no questions that were asked.

24 MS. HARDY: That's correct. I do not.

25 COMMISSION CHAIR SANDOVAL: Okay.

1 Thank you, Mr. Bradford.

2 THE WITNESS: Thank you.

3 COMMISSION CHAIR SANDOVAL: Would you like to
4 call your next witness?

5 MS. HARDY: Yes, Madam Chair. Our next witness
6 is Eric Angelos.

7 COMMISSION CHAIR SANDOVAL: Ms. Macfarlane,
8 would you please swear in the witness.

9 ERIC ANGELOS,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. HARDY:

13 Q. Can you please state your full name for the
14 record.

15 A. Eric Angelos.

16 Q. On whose behalf are you testifying and in what
17 capacity?

18 A. I'm testifying on behalf of COG Operating, LLC,
19 in the capacity of reservoir engineering supervisor.

20 Q. Have you previously testified before the Oil
21 Conservation Commission?

22 A. No, ma'am.

23 Q. Can you please briefly summarize your education
24 and qualifications.

25 A. Sure. I'm a graduate of New Mexico Tech in

1 Socorro, New Mexico, with a Bachelor of Science in
2 petroleum and natural gas engineering. I was previously
3 employed by Concho Resources and currently employed by
4 ConocoPhillips. I have over eight years of experience,
5 primarily focused in the Delaware Basin.

6 MS. HARDY: Madam Chair, I request that Mr.
7 Angelos be qualified as an expert in reservoir
8 engineering.

9 COMMISSION CHAIR SANDOVAL: Mr. Tremaine, any
10 questions or objections?

11 MR. TREMAINE: No objection.

12 COMMISSION CHAIR SANDOVAL: Commissioner Bloom?

13 COMMISSIONER BLOOM: No objection.

14 COMMISSIONER AMPOMAH: No objection, Madam
15 Chair.

16 COMMISSION CHAIR SANDOVAL: Okay. Mr. Angelos
17 is classified as an expert for the purposes of this
18 hearing.

19 MS. HARDY: Thank you, Madam Chair.

20 **Q. Mr. Angelos, are you familiar with COG's**
21 **application in this case?**

22 A. Yes, ma'am.

23 **Q. Have you reviewed the Division's Order rejecting**
24 **COG's application?**

25 A. Yes, ma'am, I have.

1 **Q. And what is your general understanding of the**
2 **Division's decision.**

3 A. In general the Division has rejected COG's
4 request to develop a 960-acre spacing unit using multiple
5 proximity tract wells?

6 **Q. If COG is not authorized to develop its 960-acre**
7 **unit, what are its alternatives?**

8 A. I think there are two alternative options:
9 either propose a nonstandard spacing unit or break its
10 unit out into multiple units.

11 **Q. If COG were to seek approval of nonstandard**
12 **spacing unit, is there any way to know that the unit would**
13 **be approved?**

14 A. No, ma'am. There is an evident business risk,
15 as parties can object, the hearing can be held. I think
16 Mr. Solomon addressed these issues associated with the
17 Notice and approval of nonstandard spacing units very well
18 in his testimony.

19 **Q. If COG were to break its proposed unit out into**
20 **multiple units, would there be negative implications for**
21 **COG, interest owners, and the public?**

22 A. Yes, ma'am.

23 MS. HARDY: Let me share my screen here.

24 Can you see this, Mr. Angelos?

25 A. Yes, ma'am.

1 **Q. Let me shrink it down a little bit.**

2 **Can you please identify this document.**

3 A. Yes, ma'am. Exhibit 17 displays a surface use
4 diagram for COG's proposed spacing unit in comparison to a
5 multiple-unit scenario.

6 **Q. And did you prepare this exhibit?**

7 A. Yes, ma'am. Someone under my direct supervision
8 did.

9 **Q. And what does the exhibit show with respect to**
10 **surface facilities?**

11 A. As currently premised with the single spacing
12 unit, a single pad and surface facilities are designed to
13 service the entire project of six wells. This can be seen
14 by the area denoting the single pad separation plan.

15 **Q. If COG is unable to develop the unit as it has**
16 **proposed, what additional surface facilities would be**
17 **required?**

18 A. Simply put, a duplicate version of the current
19 facilities would be required, and that would be on the
20 arrows noted "Additional Required Path."

21 **Q. How many additional acres would those additional**
22 **facilities impact?**

23 A. This would impact an additional 3.7 acres.

24 **Q. And what types of surface impacts result from**
25 **more surface facilities?**

1 A. So overall this would be a 21 percent increase
2 in surface use. That's really not including any sort of
3 additional roads or flow lines that would be required, as
4 well.

5 **Q. And does the use of additional surface**
6 **facilities have environmental impacts?**

7 A. Uhm, yes, ma'am. Uhm, the larger surface
8 footprint would most certainly have repercussions from an
9 environmental standpoint.

10 **Q. What types repercussions?**

11 A. So in general the duplicate facilities would
12 double the number of DHG emission points and ultimately
13 increase our exposure to fugitive emissions.

14 **Q. Can you explain what's shown on the exhibit with**
15 **respect to emissions points.**

16 A. Absolutely. So in general the largest culprits
17 within a new facility would be pneumatic devices,
18 additional tanks, eight in this scenario, and then certain
19 combustion sources.

20 **Q. And would those additional emission points**
21 **potentially result in additional emissions?**

22 A. Yes, ma'am.

23 **Q. And does having more surface facilities increase**
24 **costs, as well?**

25 A. Yes, ma'am, absolutely. That's a cost that

1 would be borne by all working interest owners.

2 Q. In your opinion would COG's proposed unit cause
3 less environmental impact than the alternative?

4 A. Yes, ma'am.

5 Q. And will COG's proposed unit prevent surface
6 waste more effectively than an alternative that involves
7 multiple spacing units?

8 A. Yes, ma'am, it would.

9 Q. Would COG's proposed unit prevent economic waste
10 more efficiently than a situation where COG would have to
11 use multiple spacing units?

12 A. Yes, ma'am.

13 Q. And will COG's unit best protect human health
14 and the environment?

15 A. Yes, ma'am.

16 Q. And that would be it would provide better
17 protection than a situation where COG has to develop two
18 separate spacing units; is that right?

19 A. The two separate spacing units, that's correct.

20 Q. Let's look at the impact on well spacing and
21 production. Can you identify the document that has been
22 marked as COG Exhibit 18?

23 A. Yes, ma'am. COG Exhibit 18 is a gunbarrel
24 diagram that shows COG's proposed spacing in comparison to
25 spacing that would be required if COG were to break it out

1 into multiple spacing units.

2 Q. Was this exhibit prepared by you or under your
3 direct supervision and control?

4 A. Yes, ma'am.

5 Q. Can you explain what's shown by the gunbarrel
6 diagram on the top-left side of the exhibit.

7 A. Yes, ma'am. So this is a gunbarrel diagram of
8 the subject project area. The black circles represent the
9 existing parent wells; the grey circles represent the
10 project as proposed by COG; and the yellow circles also
11 represent the adjustments that would be necessary to drill
12 outside 330 of the center line in the event multiple
13 spacing units are created.

14 Q. And what is shown on the bottom-left side of the
15 exhibit?

16 A. So navigating to the bottom left of the exhibit,
17 we've created a diagram to help illustrate spacing, which
18 can be seen -- you know, on the X access, in relation to
19 recovery factor that can be seen on the Y access.

20 The visualization describes the objective
21 of optimizing resource, which you can see on the top
22 graphic.

23 So recovery factor decreases moving away
24 from the wellbore, so spacing wells too far apart will
25 result in suboptimal drainage of the reservoir, as

1 represented in the bottom graphic, while spacing wells too
2 close will simply result in reserves acceleration and
3 overcapitalization of the project.

4 **Q. Based on this information, is it your opinion**
5 **that COG's proposed spacing would more effectively produce**
6 **the reserves underlying the unit than an alternative that**
7 **involves separate spacing units?**

8 A. Yes, ma'am. The proposed spacing is
9 intentionally designed to drain the reserve and not
10 infringe on the correlative rights of our neighbors.

11 **Q. Can you explain what's shown on the right side**
12 **of the exhibit.**

13 A. Yes, ma'am. So scanning to the right of the
14 slide, this diagram examines the implications when
15 considering various scenarios in alternative zones. So
16 labeled are various common spacing stacking arrangements.

17 The red circles represent wells that would
18 not be compliant if two separate spacing units are created
19 because they fall within 330 of the center line. So these
20 wells would most likely be dropped from the program. The
21 setbacks impose artificial barriers, really, that would
22 motivate operators to suboptimally develop resource that
23 will ultimately result in wasted reserves.

24 **Q. Could COG just seek approval of unorthodox well**
25 **locations?**

1 A. Yes, ma'am. But there's no way to know if these
2 applications would be approved, and again that carries
3 serious business risks.

4 **Q. And if they weren't approved would that result**
5 **in waste?**

6 A. Yes, ma'am.

7 **Q. Based on your professional training, education**
8 **and experience, is COG's proposed spacing within the**
9 **960-acre unit the best and most efficient way to produce**
10 **the reserves underlying the acreage?**

11 A. Yes, ma'am.

12 **Q. And would the proposal using the 960-acre unit**
13 **best prevent waste and protect correlative rights?**

14 A. Yes, ma'am, it would.

15 **Q. What is your understanding of the purpose of the**
16 **Division's setback requirements?**

17 A. To simply avoid draining the tracts that
18 surround a given spacing unit.

19 **Q. Within the 960-acre unit do COG's wells comply**
20 **with the Division's setback requirements?**

21 A. Yes, ma'am, they do.

22 **Q. In your opinion will the location of those**
23 **proposed wells within the 960-acre unit impact the tracts**
24 **that surround the unit?**

25 A. No.

1 Q. And would the location of the wells, since they
2 comply with the setback requirements impact at all the
3 correlative rights of the owners in the surrounding
4 tracts?

5 A. No, ma'am.

6 Q. A couple of questions for you about multiple
7 wells within a spacing unit.

8 Is it your understanding that the
9 Division's interpretation of the rule would effectively
10 require one well per spacing unit?

11 A. Yes, ma'am, that does appear to be the case.

12 Q. Do most of COG's s spacing units involve
13 multiple wells?

14 A. Yes, ma'am, absolutely. So the majority of
15 COG's spacing units involve multi-well
16 simultaneously-developed projects.

17 Q. And why is that?

18 A. So the industry has really transitioned.
19 Technology has evolved, technology such as multi-well,
20 extended-reach pad drilling with simultaneous completions
21 to codevelop in order to prevent waste, protect
22 correlative rights, and the very reason we've constructed
23 the horizontal well rules.

24 Q. And is multi-well/multi-pad drilling often the
25 most efficient way to produce the underlying acreage?

1 A. Yes, ma'am, it is.

2 **Q. And then those methods then most effectively**
3 **prevent waste and protect correlative rights?**

4 A. Yes, ma'am, they do.

5 **Q. Do other operators also routinely include**
6 **multiple wells in a spacing unit?**

7 A. Yes, ma'am, this is common industry practice, in
8 my observation.

9 **Q. And would it be less efficient and ultimately**
10 **less productive to have to limit spacing units to one well**
11 **per spacing unit?**

12 A. Absolutely, it would. A single well in a
13 spacing unit would ultimately guarantee waste.

14 **Q. Mr. Angelos, can you please summarize your**
15 **opinions and conclusions.**

16 A. Absolutely, Ms. Hardy.

17 In conclusion, you know, I'm of the opinion
18 that COG's proposed unit and well spacing will best
19 protect correlative rights, prevent waste and prevent the
20 drilling of unnecessary wells. Additionally it will
21 prevent surface, economic waste, and best protect human
22 health and the environment.

23 That's all.

24 MS. HARDY: Thank you.

25 Madam Chair, I move the admission of COG

1 Exhibits 17 and 18.

2 COMMISSION CHAIR SANDOVAL: Any opposition, Mr.
3 Tremaine?

4 MR. TREMAINE: No objection.

5 COMMISSION CHAIR SANDOVAL: Commissioners?

6 COMMISSIONER BLOOM: No objection.

7 COMMISSIONER AMPOMAH: No objection.

8 COMMISSION CHAIR SANDOVAL: All right.

9 Oh, gosh you said 16, 17 right?

10 MS. HARDY: 17 and 18.

11 COMMISSION CHAIR SANDOVAL: Sorry. Exhibits 17
12 and 18 are entered into the record.

13 MS. HARDY: Thank you, Madam Chair. I have no
14 further questions for Mr. Angelos and tender him for
15 questions from Mr. Tremaine and the Commission.

16 COMMISSION CHAIR SANDOVAL: Mr. Tremaine.

17 MR. TREMAINE: I do have a couple of questions,
18 Madam Chair. Thank you.

19 CROSS-EXAMINATION

20 BY MR. TREMAINE:

21 Q. Mr. Angelos, thank you for your testimony. I
22 have just a couple of questions about you testified as to
23 the -- to a certain extent to the Notice burden that
24 applies to the application and to the spacing, so I just
25 want to clarify your concerns there.

1 Am I understanding correctly that COG's
2 position is that there would be a burden placed upon it by
3 having to issue Notice to interests in tracts surrounding
4 the proposed spacing unit?

5 A. The argument -- and I'll leave it pretty
6 simple -- is more of a business risk, not necessarily as
7 much of an administrative burden. So this will allow
8 offsets/competitors leverage in ongoing negotiations that
9 are common within the business.

10 Q. Thank you for that.

11 And just to clarify: That concern applies
12 to the situation in which COG files a nonstandard
13 application, correct?

14 A. Yes, Mr. Tremaine, that's correct.

15 Q. And so COG's concern there would not apply if
16 COG submitted standard spacing units?

17 A. Yes, sir, that's correct.

18 Q. Okay. Thank you. And in the event that COG
19 submitted a nonstandard horizontal spacing unit
20 application, in that situation COG could utilize its
21 existing development plan that's referenced in this case,
22 correct?

23 A. Yes, sir.

24 Q. And again just to clarify, you reference spacing
25 and footprint concerns and increased exposure to fugitive

1 emissions, and I want to make sure I'm clear on this.

2 So your concerns about that spacing unit
3 footprint are relevant if COG pursues separate standard
4 spacing unit applications, correct?

5 A. That's a good clarifying point, Mr. Tremaine.
6 Yes, that situation would be in the scenario of two
7 separate horizontal-well spacing units.

8 Q. So by extension that concern does not apply to a
9 situation in which you were pursuing a nonstandard unit
10 application and utilizing your current development plan.

11 A. Yes, sir.

12 Q. Okay. And will you acknowledge that OCD's
13 practice and rules do permit infill wells within standard
14 spacing units?

15 A. Yes, sir.

16 Q. Okay. So I just want to make sure that it's
17 clear that you agree that under OCD's interpretation the
18 spacing units would be defined by a single well but it is
19 possible to develop standard spacing units utilizing more
20 than one well,

21 A. Yes, sir.

22 Q. Okay. Thank you for that.

23 In terms of -- I also heard you testify to
24 the extent that there may be some concern on COG's part
25 that OCD is not guaranteed to approve subsequent

1 applications. Is that correct?

2 A. Yes, sir.

3 Q. Maybe a better way to phrase that would be you
4 have a concern that's there a potential business risk
5 because you have to resubmit an application. Is that
6 fair?

7 A. Yes, sir.

8 Q. Would you acknowledge that there were not
9 questions or any technical issues raised at the hearing
10 for the application?

11 A. From the technical standpoint that would be
12 correct.

13 Q. Thank you. And would you also agree that there
14 is nothing in the record of this application or the Oil
15 Conservation Division's Order rejecting the application
16 that suggests that OCD would reject the application or
17 object to components of it on technical grounds?

18 A. On technical grounds that is correct, Mr.
19 Tremaine.

20 Q. So your concern and the potential business risk
21 related to submitting a new application amounts to the
22 burden that's placed on COG by resubmitting an application
23 and the hypothetical it could possibly be rejected, but
24 there is no basis to say that OCD has indicated it would
25 in fact reject the application.

1 A. No, ma'am. I would redirect you to counsel.

2 MS. HARDY: Madam Chair, I think Mr. Solomon
3 testified about land and policy issues, but I think the
4 statute and rule questions really would be legal ones that
5 we would address through briefing or on argument.

6 COMMISSION CHAIR SANDOVAL: Okay. Because I
7 guess I have a handful of questions on, you know, the
8 statute and the rule pieces that haven't been addressed,
9 and that seems to be the crux of this entire case.

10 Okay. Well, then, I don't have any
11 additional questions. Thank you.

12 COMMISSIONER AMPOMAH: Madam Chair, I do have
13 one quick one.

14 COMMISSION CHAIR SANDOVAL: Go ahead.

15 CROSS-EXAMINATION

16 BY COMMISSIONER AMPOMAH:

17 **Q. So, Eric, a quick question for you.**

18 **Have you seen any Precedents where NM OCD**
19 **has rejected similar applications in the past?**

20 A. Dr. Ampomah, that's a good question. I can't
21 speak to that. I don't have that information in front of
22 me at this time.

23 **Q. Okay. So you talk about there's going to be 21**
24 **percent increase in proximity use, and thereby also**
25 **increasing cost. So can you tell the Commission in terms**

1 of if you are going for standard and then compared to
2 nonstandard in terms of the revenues that would be
3 generated for the state.

4 Do you know?

5 A. That's a great question. I don't have the
6 revenue number. From an incremental cost standpoint,
7 approximately \$3 million additional to the capital
8 expenditures.

9 COMMISSIONER AMPOMAH: No further questions.
10 Thank you.

11 THE WITNESS: Thank you. (Note: Pause.)

12 COMMISSIONER AMPOMAH: Madam Chair, we can't
13 hear you.

14 COMMISSION CHAIR SANDOVAL: Oh, I'm just talking
15 to myself.

16 I just said thank you, Mr. Angelos, and
17 you're dismissed for now but we may recall you if we have
18 additional questions.

19 THE WITNESS: Thank you.

20 MS. HARDY Madam Chair, I'm sorry, I did have a
21 couple of redirect.

22 COMMISSION CHAIR SANDOVAL: Shoot. I'm sorry.
23 You're not dismissed.

24 MS. HARDY: Sorry.

25 COMMISSION CHAIR SANDOVAL: Sorry, Ms. Hardy.

1 MS. HARDY: That's okay.

2 REDIRECT EXAMINATION

3 BY MS. HARDY:

4 Q. Mr. Angelos, to be clear, if COG proposed
5 standard spacing units with orthodox well locations it
6 wouldn't be able to use the development plan that it has
7 proposed in this case; is that correct?

8 A. That's correct.

9 Q. Because it would have to propose multiple
10 spacing units or unorthodox well locations.

11 A. Correct. Either one.

12 Q. And there's no way to know whether those
13 applications would be objected to or approved.

14 A. Yes, ma'am.

15 Q. And I think I stopped sharing but let me share
16 my screen again here. And I'm putting up here Exhibit 18.

17 So is it correct that that exhibit shows
18 that using orthodox well locations within multiple
19 standard units would result in waste?

20 A. From this exhibit, that is correct. Again
21 panning over to the right, we've shown the implications
22 that are far-reaching of that interpretation of the rule
23 even beyond this project. Looking on the left side of the
24 gunbarrel are more of the direct implications that we're
25 talking about today.

1 Q. And, again, if COG had to use multiple standard
2 spacing units and/or unorthodox well locations, that would
3 result in additional surface facilities that you have
4 shown here on Exhibit 17.

5 A. Yes, ma'am. In the case of multiple units that
6 would be correct.

7 Q. And you were asked a question, I think by Mr.
8 Tremaine, about notifying interests in the surrounding
9 tracts, and I want to be sure it's clear that -- well, let
10 me ask you this: Is it your position that the parties in
11 the surrounding tracts are not impacted by your proposed
12 units?

13 A. That is my position.

14 Q. So their correlative rights aren't impacted
15 because your wells are within the setback requirements of
16 the Division; is that right?

17 A. Yes, ma'am. They are within three times of the
18 setback requirements.

19 MS. HARDY: Thank you. Those are all of my
20 questions.

21 THE WITNESS: Thank you, Ms. Hardy.

22 COMMISSION CHAIR SANDOVAL: Thank you. Okay.
23 Now you're dismissed, but we may recall you if we have
24 additional questions.

25 THE WITNESS: Thank you.

1 COMMISSION CHAIR SANDOVAL: Thanks.

2 Ms. Hardy, do you have any more witnesses?

3 MS. HARDY: I do not, Madam Chair.

4 COMMISSION CHAIR SANDOVAL: Okay. Mr. Tremaine,
5 do you have any witnesses?

6 MR. TREMAINE: Uhm, well, I do not. I did not
7 plan for any witnesses but I would proffer that the OCD
8 has been routinely approving nonstandard units and the OCD
9 is not aware of objections to those units. However, I'm
10 not a witness and so I don't expect you just to take that
11 purely on my representation, so it may be appropriate if
12 that is of concern to the Commission that I could follow
13 up with related information.

14 COMMISSION CHAIR SANDOVAL: Okay.

15 Yes. Mr. -- oh, my gosh, Mr. Kreienkamp,
16 sorry. If we have questions for Mr. Tremaine can we just
17 ask Mr. Tremaine?

18 MR. KREIENKAMP: You can, but like he has
19 indicated he's not under oath. So I mean he is free to,
20 you know, make representations to you, but it's not, you
21 know, formal testimony.

22 COMMISSION CHAIR SANDOVAL: Okay.

23 MR. KREIENKAMP: But I would also say that I
24 note that you had some questions that you wanted to ask, I
25 think both parties, about statutes and regulations, and I

1 think that that's perfectly appropriate. My
2 recommendation on that would be that you might do that as
3 part of closing statements. You could ask questions at
4 that time. That might be the simplest way to do that.

5 COMMISSION CHAIR SANDOVAL: Okay.

6 With that, Commissioners do you have any
7 additional questions for any of the witnesses at this
8 point?

9 COMMISSIONER BLOOM: Madam Chair, I do not, but
10 as I am thinking about how we close this out, I'm
11 wondering if -- perhaps you're already thinking about
12 this, but if we would want to have written closing
13 statements. I think that would be helpful to me, and it
14 sounds like you have some questions that you wanted to see
15 addressed. So that would be all.

16 MR. KREIENKAMP: Madam Chair, if I may?

17 COMMISSION CHAIR SANDOVAL: Okay.

18 MR. KREIENKAMP: One option would be sort of a
19 hybrid of both. You could sort of half the opportunity
20 for the parties, the attorneys to make their arguments,
21 and then you could ask any questions that you have, and
22 then you could let the parties follow up with written
23 closing statements. That might give you everything you're
24 looking for.

25 COMMISSION CHAIR SANDOVAL: Okay.

1 COMMISSIONER AMPOMAH: Madam Chair, so I do have
2 some questions of OCD, so I don't know how it can be
3 answered.

4 COMMISSION CHAIR SANDOVAL: So why don't we -- I
5 kind of like that hybrid option: Do closing statements,
6 the parties can both do closing statements. After your
7 closing statements the commissioners will have an
8 opportunity to ask questions, and then I'm kind of
9 thinking we do written closing statements but with a cap
10 on page number, and potentially an emphasis on the rules
11 and statutes and any sort of previous precedent.

12 Commissioners, does that make sense?

13 COMMISSIONER AMPOMAH: Yes.

14 COMMISSIONER BLOOM: (Inaudible)

15 COMMISSION CHAIR SANDOVAL: All right. I
16 think --

17 MR. KREIENKAMP: Madam Chair, one last
18 recommendation as far as the closing statements/oral
19 arguments go. I also might suggest just for the purposes
20 of doing this more like a court would do it, you might
21 have Ms. Hardy go first, then followed by Mr. Tremaine,
22 and then give Ms. Hardy a brief opportunity for rebuttal.
23 That's most like what the courts would do in a case like
24 this.

25 So that might be helpful.

1 COMMISSION CHAIR SANDOVAL: Okay. Ms. Hardy,
2 would you like to make a closing statement?

3 MS. HARDY: Yes, Madam Chair, I would.

4 I agree with I think it's a good idea for
5 us to provide written closing, as well.

6 Madam Chair and Commissioners, COG is not
7 asking to ignore the rule. COG has a good faith
8 disagreement with OCD about the interpretation and the
9 application of the rule, and the bottom line is that the
10 rules and regulations have to be construed in conjunction
11 with the Oil & Gas Act to prevent waste and protect
12 correlative rights, and when those are all considered the
13 logical outcome is that the rule that the Division has
14 relied on can't be construed to apply just to one well in
15 a spacing unit or one proximity tract well within a
16 spacing unit.

17 The provision of the statute that OCD has
18 relied on, 70-2-17B, which discusses proration units being
19 established for a pool, does not control here, and the
20 horizontal well rule is very specific in that it applies
21 to spacing units. And there's a difference between
22 spacing units and a proration unit, and we are not here
23 establishing a proration unit for a pool, which is what
24 that statute applies to.

25 So when you look at the language of the

1 rule -- we have addressed it in our Prehearing Statement
2 and will address it in our Closing Written Statement, as
3 well.

4 When all the provisions of the rule are
5 read collectively it really has to be construed to allow
6 these proximity tract units that involve more than one
7 proximity tract well. It just doesn't make sense to limit
8 it in the way that the Division has proposed.

9 And in today's world of multiwell pad
10 drilling, it doesn't make sense, either. The purpose of
11 the rule being adopted was really to allow flexibility for
12 operators in best deciding how to develop their acreage,
13 and here COG's proposal, I think our testimony has
14 established and it hasn't been disputed, that it would
15 accomplish that result. It would best prevent surface
16 waste, the waste of resources, environmental waste, and it
17 would also protect correlative rights.

18 And although COG could apply for a
19 nonstandard spacing unit or for multiple spacing units
20 that involve unorthodox well locations, there's no
21 guarantee that those would be approved. And I don't think
22 it's a dispute the Division does approve those and it can,
23 I don't think that's the issue here. I think the issue is
24 that they may not be approved and it depends on what other
25 parties object to, and the result and delay makes it an

1 ineffective way to develop this acreage.

2 And if the applications were denied, as Mr.
3 Angelos had stated, that would result in waste and it
4 would not protect correlative rights.

5 So basically here I think when the rules
6 are construed collectively and according with their
7 purpose and in accordance with the Oil & Gas Act, COG's
8 position is correct and it is that the rule has to be
9 construed to allow multiple proximity tract wells within a
10 spacing unit, especially when that is shown to best
11 prevent waste and protect correlative rights.

12 So we would ask the Commission to approve
13 the application.

14 COMMISSION CHAIR SANDOVAL: Commissioners, do
15 you have questions for Ms. Hardy?

16 COMMISSIONER AMPOMAH: Yes, Madam Chair, a quick
17 one.

18 So Ms. Hardy, you talk about, you know,
19 depending on getting approval. So is that the main
20 objective or is that the main concern, or is it more on
21 the business side? Because in your closing you more or
22 less stressed on that.

23 MS. HARDY: I'm not sure I understand your
24 question, Dr. Ampomah.

25 COMMISSIONER AMPOMAH: So in your closing you

1 talk about let's say there is a possibility that the
2 application might not or might be approved, right? So is
3 that the main concern for COG, or mostly on the business
4 side?

5 MS. HARDY: I think COG's main concern and their
6 objective here is to best develop their acreage in a way
7 that would prevent waste and protect correlative rights.
8 I think that's the objective and I think that's what they
9 proposed to do. And I think we've also shown that the
10 interests in the surrounding tracts aren't impacted.

11 So it just doesn't make sense. It's sort
12 of -- it just doesn't make sense here to notify interest
13 owners in the surrounding tracts when your proposal
14 doesn't impact them and it doesn't impact their
15 correlative rights. It's sort of an arbitrary procedural
16 issue that's inconsistent with the purpose of the rule,
17 which is to allow for flexibility and allow operators to
18 best develop their acreage to prevent waste and protect
19 correlative rights.

20 COMMISSIONER AMPOMAH: Would you please include
21 in your closing statement, the written one, how COG
22 believes that the impressions (phonetic) will not impact
23 any adjacent tracts.

24 MS. HARDY: I think we presented technical
25 testimony today on that. If there's some additional

1 information, I think our engineer has testified to that.

2 But again, questions on that, I could --

3 COMMISSIONER AMPOMAH: I will check it out. I
4 will check it out. So thank you.

5 MS. HARDY: Thank you.

6 COMMISSIONER AMPOMAH: Thank you.

7 COMMISSION CHAIR SANDOVAL: Any additional
8 questions, Commissioners?

9 COMMISSIONER BLOOM: No, Madam Chair. Thank
10 you.

11 COMMISSION CHAIR SANDOVAL: Ms. Hardy I'm
12 just -- can you explain to me how the proposal is a
13 standard horizontal spacing unit and how -- basically how
14 it, like, fits in with the rule so that it's a standard
15 unit.

16 MS. HARDY: Yes, I can, Madam Chair.

17 So the rule talks about standard horizontal
18 spacing units for horizontal wells, right? It's
19 19.16.15B, and subpart (a) states that the horizontal
20 spacing unit shall comprise one or more contiguous tracts
21 that the horizontal oil well's completed interval
22 penetrates, each of which consists of a governmental
23 quarter/quarter section or equivalent.

24 And then on subpart (b) states that you can
25 include the proximity tracts.

1 So it's our position that when you apply
2 the rule and you construe it in accordance with its
3 purpose, it allows multiple proximity tract wells within A
4 spacing unit. Because if the rule was construed,
5 literally where it says "the well" or "a well", if that
6 were construed to mean that there could only be one
7 proximity tract well in the spacing unit, other provisions
8 of the rule would have to be construed that way, as well,
9 and they clearly are not, because multiple wells are
10 included in spacing units all the time. And I don't think
11 anyone has alleged that they can't be. That's just the
12 way that horizontal well development is accomplished at
13 this point.

14 So, you know, if you're looking at subpart
15 (a)(2) of the rule, it says: Each horizontal well shall
16 be dedicated to a standard horizontal spacing unit or an
17 approved nonstandard spacing unit, but the rule is not
18 interpreted to mean that only one well could be included
19 in the spacing unit.

20 By using the Division's interpretation of
21 subpart (b), that would be the result.

22 So basically we are arguing that the
23 interpretation of the rule means that multiple proximity
24 wells can be included in the spacing unit and that that
25 best comports with the Oil & Gas Act obligations to

1 prevent waste and protect correlative rights.

2 Did that answer your questions?

3 COMMISSION CHAIR SANDOVAL: Yeah. And so my
4 similar question would be -- oh, let me look at that.

5 How do you -- so I was on the rule front.
6 All of our rules are derived from statute, which I think
7 in this case is NMSA 70-2-17B. And is that what you were
8 saying was more related to proration units?

9 MS. HARDY: Yes, Madam Chair. Because the
10 provision specifically states that the Division may
11 establish a proration unit for each pool, such being the
12 area that can be efficiently and economically drained and
13 developed by one well. And that is the provision that the
14 Division cited in their statement. It was not cited in
15 their Order, the Order only cited the rule.

16 The Prehearing Statement did cite that
17 provision, but it's not referring to this situation, so I
18 don't think that statute is the controlling one here. I
19 think here we're looking at the overall objective of
20 preventing waste and protecting correlative rights.

21 COMMISSION CHAIR SANDOVAL: Okay. And you
22 believe that, I think, the Orders R-21089 and R-21055 set
23 precedence for this.

24 MS. HARDY: That's correct, Madam Chair. Those
25 similar, almost-identical situations to where the units

1 were approved.

2 COMMISSION CHAIR SANDOVAL: Okay. I don't have
3 any additional questions Ms. Hardy.

4 Commissioners, do you have any additional
5 questions before we go to Mr. Tremaine?

6 COMMISSIONER AMPOMAH: No, Madam Chair.

7 COMMISSIONER BLOOM: No, Madam Chair.

8 COMMISSION CHAIR SANDOVAL: Okay. Mr. Tremaine,
9 would you like to make a closing statement?

10 MR. TREMAINE: Yes, please, Madam Chair.

11 COMMISSION CHAIR SANDOVAL: All right.

12 MR. TREMAINE: So I'll start off by saying there
13 are a number of points where OCD and COG actually agree.
14 I think this really comes down to a dispute regarding
15 which section of the statute controls, because COG is
16 essentially arguing that the section referenced by OCD
17 does not control the definition or limitations placed on
18 horizontal spacing units.

19 I don't think that, uhm, that it follows
20 through in a reasonable way, because spacing unit is
21 not -- I don't see it otherwise defined within the
22 statute. And the statute, although proration units and
23 horizontal spacing units, standard spacing units are
24 different to one extent, they are, those terms are used
25 interchangeably in the statute.

1 So in terms of statutory authority, I think
2 it's clear that the provision cited by the Division
3 defines the extent of OCD's authority to define those
4 standard spacing units.

5 The standard unit is defined, as we've
6 already been over, by the tracts that can be produced by
7 one well. And I do concede that the language in the
8 section specifically refers to proration units; however, I
9 think that it's clear from the construction of the statute
10 that that applies to standard spacing units, and the lack
11 of other direction does not allow the OCD to look to
12 another provision to define spacing units in a broader
13 fashion.

14 The -- that is defined by all tracts that
15 are penetrated by the lateral, in terms of quarter/quarter
16 sections, and in this case there is no dispute that the
17 proposed well's proximity to the quarter/quarter boundary
18 line allows COG to bring in the additional acreage,
19 quarter/quarter tract.

20 So we're talking about adjacent 40-acre
21 quarter/quarters along the length of the lateral.

22 For purposes of statutory authority I would
23 just reiterate that the Oil & Gas Act treats those terms
24 "prorations" and "spacing units" interchangeably, so
25 that's what should control here.

1 Similarly, the structure of the Oil & Gas
2 Act I think clearly treats those terms prorations/spacing
3 units interchangeably, so that's what should control here.

4 Similarly, the structure of the Oil & Gas
5 Act I think clearly treats standard and nonstandard units
6 differently, and that's been reflected in the rule.

7 So the Proximity Rule promulgated in 2018,
8 to get into the history a little bit, I mean that was
9 promulgated after extensive outreach and collaboration
10 with industry. I don't think that a fair review of that
11 record, that process, that hearing allows for a conclusion
12 that anyone, either industry or OCD, at that time intended
13 to treat development such as proposed here as a standard
14 unit. The language of the rule very clearly refers to a
15 single well, which is consistent with historical practice
16 and, I argue, consistent with the construction of the
17 statute.

18 More importantly than that interpretation
19 of the intent is the fact that the language of the rule is
20 consistent with OCD's interpretation of the statute, is
21 consistent with the language of the statute, the plain
22 language. This is not an area where I think there's a
23 great deal of leeway for interpretation. You know, COG
24 provided some testimony related to correlative rights, and
25 I think that this argument, the way it's presented, from

1 OCD's perspective is backwards. Essentially, the fact
2 that the statute treats standard and nonstandard units as
3 distinct, and pursuant to that statute the Commission has
4 promulgated rules that require different notice
5 requirements for standard and nonstandard units, I would
6 argue that there is a potential impact to surrounding
7 tracts as a matter of law. Not as a matter of technical
8 basis but as a matter of law.

9 Before 2018 a standard spacing unit was a
10 40-acre tract, so the 2018 rule brought the rule up to
11 modern practice, but within the context of the statute
12 enacted in 1977. So it's not -- you know, there's a
13 limitation of how far that can go.

14 I think the issue with correlative rights,
15 even if the Commission is concerned or gives weight to
16 COG's argument about the lack of demonstrated impact of
17 correlative rights, that issue is a general matter under
18 the statute. The general provision does not supersede the
19 specific language cited by the OCD.

20 And, further, the technical testimony about
21 the actual technical impact of the proposed development on
22 surrounding tracts, those representations should not
23 control this analysis. I think that if there is an
24 interpretation of the legislature's intent with these
25 provisions, is that standard and nonstandard wells should

1 be treatment differently. I think that's reflected and
2 consistent with the Commission's promulgation of the
3 Notice requirements and the rules that we have been
4 discussing in detail.

5 COG also put on testimony related to
6 business risks, the burden, and the potential risks
7 associated with Notice to tracts outside the standard
8 spacing unit as proposed. You know, I'm not going to
9 delve too much into those policy arguments; I will
10 maintain that this determination hinges on a legal
11 analysis. However, I think it's necessary to point out
12 that the policy concerns are not one-sided in this case.
13 So this is not a set of compelling policy arguments
14 presented by COG without counterpoints. In fact, I'd
15 point out that standard horizontal spacing units that do
16 not involve compulsory pooling applications do not
17 necessarily have to go to hearing. Further, under COG's
18 interpretation of the rules there is no limit to a
19 standard spacing unit, so those would only go to hearing
20 and be noticed for hearing if they involve compulsory
21 pooling units.

22 So if the Commission is considering the
23 policy implications of COG's argument, I would present
24 that the policy implications for their interpretation
25 actually outweigh the concerns raised by COG, which amount

1 to business risk, essentially.

2 You know, I think that the bottom line here
3 is that COG's interpretation and their presentation
4 amounts to their belief that this production plan is the
5 best way to develop this acreage. Further, the rest of
6 their arguments, I would suggest, are strong arguments in
7 support of a nonstandard spacing unit. I see no
8 indication in the record, and I'm certainly not making any
9 representation that OCD has any concerns -- (Note:
10 Pause.) Excuse me -- if it meets the appropriate
11 definitions of nonstandard spacing unit and it provides
12 the appropriate notice to the potentially impacted parties
13 surrounding the acreage.

14 I need to follow up, too, regarding one of
15 the points Ms. Hardy made regarding the wells. There is
16 no limitation in a standard spacing unit to utilize one
17 well, and, you know, the rule that she referenced, I would
18 ask the Commission to go back and review the entire
19 section of the rule, because it does provide for language
20 that says, "...except for infill wells or multilateral
21 horizontal wells."

22 So the issue here is not is COG going to be
23 prevented from utilizing multiple wells to develop the
24 tracts in the event that they pursue standard unit
25 applications. They could still use multiple wells. I'm

1 not going to get into whether or not their development
2 plan needs to be tweaked, but they could still use
3 multiple wells as provided for under the rules and
4 consistent with OCD Orders approving such applications in
5 the past.

6 Frankly, I think that this application
7 makes a lot more sense as a nonstandard unit application
8 and don't foresee any technical issues with that, and OCD
9 cannot contemplate or incorporate into that analysis what
10 competing businesses might in fact do at that hearing.

11 Uhm, if necessary I can try to provide some
12 more information about objections to nonstandard
13 applications, but I don't believe it's supported
14 historically that those are objected to on those grounds.

15 Further, to the extent that COG is making
16 policy arguments, this is not the venue for that because
17 we're talking about a specific interpretation of the
18 statute and the rule that was promulgated pursuant to the
19 statute. They may have valid arguments to present to the
20 legislature to ask them to update the statute, but as of
21 right now standard units are of a certain size -- you
22 know, up to 40 acres each side of the lateral -- and COG's
23 interpretation will put no limit on the size of a standard
24 unit.

25 I think that that outcome, in the face of

1 the construction of the statute, flies in the face of both
2 the plain language and what I think is the apparent intent
3 of the legislature when they enacted that provision.

4 That's all, Madam Commissioner.

5 COMMISSIONER CHAIR SANDOVAL: Okay. Thank you,
6 Mr. Tremaine.

7 Commissioners, do you have questions?

8 COMMISSIONER BLOOM: No, Madam Chair.

9 COMMISSIONER AMPOMAH: Madam Chair, I do.

10 So in OCD's initial statements, you know
11 and you repeated that, you said the flaws in COG's
12 application cannot be cured through here. So, you know, I
13 think the clarification that I need from OCD is COG
14 referenced to Orders, the R-21089 and the R-21055, so can
15 they really explain to us how they approved these Orders
16 which COG is arguing is similar to this particular case,
17 but they want us to deny those applications.

18 MR. TREMAINE: Thank you, Commissioner Ampomah.
19 I think that's a great clarifying question, so I want to
20 first clarify that my statement in opening and in the
21 Prehearing Statement is that to the extent that this
22 cannot be cured through hearing, what I mean by that is
23 that it cannot be cured through "this" hearing. So it
24 needs -- so OCD's position is that it needs to be
25 re-applied, properly Noticed, and then go through the

1 proper hearing. So in a sense it can be cured through
2 hearing, just not this one.

3 In terms of the other cases, you know I
4 acknowledge that those were styled as standard cases. I
5 thank Ms. Hardy for clarifying that in Cross-Examination.
6 Those were approved.

7 But I think we need to be clear about what
8 that argument stands for. Essentially if the Commission
9 concurs with the Division's argument today that those are
10 not permissible under the standard spacing, what that
11 means is that OCD erred in the previous cases. That
12 should not stand for the proposition that it should do so
13 again. That's not legally supportable. I leave that for
14 another day what corrective action would be necessary in
15 those cases.

16 I'm not sure how that should be approached,
17 to be frank, at this time, but I think that the argument
18 is essentially: You missed it in the past so you should
19 agree with that and do it again.

20 I think it's clear that those Orders, if
21 you review those, that the Division did not intentionally
22 take any position that this was in fact a standard unit.
23 I think essentially they missed the distinction in issuing
24 those Orders.

25 So that's where I would draw the line, and

1 I would say that to the extent that those are in error
2 that the OCD should not, and the Commission should not,
3 replicate that error in the future.

4 COMMISSIONER AMPOMAH: Uh, I want to know if,
5 let's say the law that he talked about in 2018, were these
6 stand-up wells approved prior to the 2018 rule?

7 MR. TREMAINE: I'm going to try to answer that.

8 You know, I don't have historical knowledge
9 of what was approved before 2018. What I can speak to
10 that's clear from the record, is that prior to the
11 proximity well rule promulgation in 2018 all laterals were
12 treated as nonstandard units because the standard unit was
13 defined as a single quarter/quarter, so it was a 40-acre
14 tract.

15 And actually you don't have to rely on my
16 representation for that. Counsel for COG cited the
17 Jalapeno case in their Prehearing Statement. That's
18 reiterated and outlined in that case. I think it's very
19 clear that there's an extreme limitation on the acreage,
20 because the prior rule, and for that matter the prior
21 versions of the statute, were focused on vertical wells,
22 and the 2018 rule amendment brought the standard spacing
23 unit up to, you know, the modern day to deal with
24 laterals.

25 So I don't think that those -- I would

1 logically have to conclude that those were not approved as
2 standard. Prior to the 2018 rule my understanding of the
3 practice is that they all went to hearing as nonstandard
4 if the operator was proposing laterals.

5 COMMISSIONER AMPOMAH: Yeah, my question is: As
6 you went through your closing statement, you talked about
7 how COG can still be able to more or less complete this
8 development using the nonstandard application, you know,
9 combined with infill drilling. Can you clarify that
10 assertion?

11 MR. TREMAINE: Yes. The infill well issue and
12 multilateral well issue that I referenced, I think that
13 applies more appropriately to a situation in which-- that
14 is my attempt to clarify this argument around standard
15 applications.

16 So if COG pursued a standard unit
17 application -- like this is 960-acres with the two, uh --
18 based, essentially, on two wells in proximity of the
19 quarter/quarter boundary, so you have 480 acres on each
20 side.

21 And from what I understand from I believe
22 it was Mr. Angelos' testimony, they're going to have a
23 problem drilling that middle well because it would be
24 between two standards. What I'm saying is if they did
25 pursue two standard unit applications, they could still

1 use infill wells.

2 I'd have to refer to -- provide someone for
3 technical testimony, I think, to answer the question of
4 could they actually use that middle well between the
5 standards. I don't think I'm prepared to answer that.
6 But from a legal standpoint they can, in fact, use
7 multiple lateral wells and multiple infill wells, as
8 appropriate, within those two standard spacing units.

9 That was my attempt to clarify that.

10 If they pursued a nonstandard unit
11 application there would be nothing to prevent them from
12 using their proposed development plan as it exists in the
13 current application. The difference is they have to apply
14 for it by calling it a nonstandard unit application, and
15 they have to Notice the surrounding tracts.

16 I mean, that's really the only difference.
17 I'm not aware of any point in this record and the history
18 of this case where there have been technical issues raised
19 about the use of any of the wells, any of the proposed
20 wells.

21 It is possible -- I guess I should clarify
22 also my previous answer to that.

23 Regarding the well down the middle between
24 the two standard units, if they had the two standard units
25 it is possible that COG could use a -- apply for a

1 nonstandard location for that well.

2 But again I go back to the plain language
3 and the -- what I think is clear the intent of the
4 legislature that standard units, at least under this
5 statute, only extend to a certain size.

6 COMMISSIONER AMPOMAH: Yes. So lastly. So is
7 NMOCD's position is that if they made a mistake in the
8 past, they certainly don't want to make the same mistakes
9 in the future. Is that the argument?

10 MR. TREMAINE: Yes.

11 COMMISSIONER AMPOMAH: Thank you.

12 Thank you, Madam Chair. No further
13 questions.

14 COMMISSION CHAIR SANDOVAL: Commissioner Bloom?

15 COMMISSIONER BLOOM: No questions, Madam Chair.

16 COMMISSION CHAIR SANDOVAL: Thank you. I think
17 you answered all of my questions in your previous
18 questions, Dr. Ampomah, so I don't have any additional
19 questions.

20 Ms. Hardy, do you have any rebuttal
21 statements?

22 MS. HARDY: Yes, I do, Madam Chair.

23 COMMISSION CHAIR SANDOVAL: Good.

24 Thank you, Mr. Tremaine.

25 MS. HARDY: Thank you.

1 A significant portion of what Mr. Tremaine
2 just said involved, I think, technical testimony and
3 opinions regarding COG's testimony when COG did not
4 identify a technical witness and didn't present one. So I
5 don't think it's appropriate for Counsel to make technical
6 arguments and present what's basically technical
7 testimony, because I think a lot of what Mr. Tremaine said
8 falls into that category and really can't be considered on
9 that basis. I think it's not appropriate for Counsel to
10 submit evidence.

11 The prior Orders that we've talked about
12 are absolutely precedent. I know that Commissioner
13 Ampomah asked about those.

14 Those were approved. One of those Orders
15 is from 2021 and the other is from 2019. So those were
16 approved under the current version of the horizontal well
17 rule, and at that point in time OCD concluded that those
18 applications should be approved as standard horizontal
19 spacing units. And it says that right in the Order.

20 So it's not correct that it wasn't clear
21 what was being approved. I think it was very clear what
22 was being approved, and they were approved as standard
23 spacing units.

24 So this situation really is no different
25 and this unit needs to be approved, as well.

1 And operators absolutely rely on those
2 Orders in their development plans and they expend
3 significant funds and make development plans based on the
4 Division's Orders. And that is certainly true here. COG,
5 and other operators, as well, have been planning their
6 units and relying on these Orders and now OCD wants to
7 change the way it interpreted the rule.

8 One thing I want to be really clear on, as
9 well, is the statute that OCD really, I think, is relying
10 on for its argument, 70-2-17B. Again, that statute refers
11 to proration units, which really were a concept associated
12 with vertical wells. With horizontal wells we no longer
13 have proration units and that's why the horizontal well
14 rule applies specifically to spacing units.

15 There is a difference, and of course that
16 provision of the Oil & Gas Act predated horizontal wells
17 or horizontal drilling. So I think it's incorrect in this
18 situation to conflate those two concepts, a proration unit
19 and a spacing unit, and I think that the provision of the
20 statute doesn't support OCD's argument for that reason.

21 And when you look at the statute in its
22 entirety and construe that in conjunction with the rule in
23 its entirety, the only reasonable conclusion is that a
24 proximity tract unit can include more than one proximity
25 tract well, and in this case certainly COG has established

1 that's the best method of development to prevent
2 environmental, surface, and resource waste, and also to
3 protect correlative rights.

4 So on that we would ask the Commission to
5 approve the application.

6 And I'd be happy to address any other
7 questions and address any questions, specific questions in
8 our Posthearing submission.

9 Thank you.

10 COMMISSION CHAIR SANDOVAL: Thank you.

11 Commissioners, I think you were talking
12 about doing Written Closing Statements. I would love to
13 put a cap on them. No more than 10 pages?

14 Yeah, maybe, no?

15 COMMISSIONER BLOOM: I could go with that, Madam
16 Chair.

17 COMMISSION CHAIR SANDOVAL: Okay. All right.
18 Our next regularly scheduled meeting is, I believe, the
19 12th. When do we want these? We need at least a week in
20 advance.

21 So that would put it on the 5th.

22 COMMISSIONER AMPOMAH: Okay.

23 COMMISSIONER BLOOM: (Inaudible) Thank you.

24 COMMISSION CHAIR SANDOVAL: So I would move to
25 have counsel -- or in Case No. 22294 (sic) have counsel

1 draft Written Closing Statements, no more than 10 pages,
2 due to the Commission by end of day on the 5th.

3 Is there a second?

4 COMMISSIONER BLOOM: Second, Madam Chair.

5 COMMISSION CHAIR SANDOVAL: Mr. Kreienkamp,
6 would you please do a roll call vote.

7 MR. KREIENKAMP: Yes, Madam Chair. I can do
8 that.

9 I saw that Mr. Tremaine's hand was up. I'm
10 not sure.

11 COMMISSION CHAIR SANDOVAL: I'm sorry, are
12 you...

13 MR. TREMAINE: I just have a question of order.
14 Is the 10 pages inclusive of exhibits or
15 not?

16 COMMISSION CHAIR SANDOVAL: Good question. Not
17 inclusive of exhibits.

18 So let me make a new motion, then.

19 In Case No. 22474 we are asking for Written
20 Closing Statements no more than 10 pages, not including
21 exhibits, due by end of business to the Commission on the
22 5th of May.

23 Is there a second?

24 COMMISSIONER BLOOM: I second.

25 COMMISSION CHAIR SANDOVAL: Would you do a role

1 call vote, Mr. Kreienkamp.

2 MR. KREIENKAMP: Yes, Madam Chair.

3 So on the motion with respect to Case
4 22474, Chair Sandoval?

5 COMMISSION CHAIR SANDOVAL: Approved.

6 MR. KREIENKAMP: Commissioner Bloom?

7 COMMISSIONER BLOOM: Approve.

8 MR. KREIENKAMP: And Dr. Ampomah?

9 COMMISSIONER AMPOMAH: Approved.

10 MR. KREIENKAMP: Madam Chair, the vote was
11 unanimous.

12 MS. HARDY Madam Chair, I apologize, can I ask
13 one question for clarification?

14 COMMISSION CHAIR SANDOVAL: Yeah.

15 MS. HARDY: I'm concerned about this submission
16 of exhibits that weren't considered in the record. I'm
17 not sure what exhibits we would be submitting with our
18 posthearing briefs that wouldn't be in the record.

19 MR. KREIENKAMP: Madam Chair, this is John, your
20 temporary counsel.

21 I do think that because the hearing record
22 is closed with the exception of closing statements, that
23 concern is probably well founded. I think to the extent
24 that they wanted to attach exhibits of documents that were
25 already part of the record, that would be, I think, fine

1 because those are already in the record, but I don't know
2 that closing statement is a procedural vehicle to
3 introduce new evidence into the record, you know, for
4 either party.

5 So that would be my interpretation of that.

6 COMMISSION CHAIR SANDOVAL: Okay. Does that
7 answer your question, Ms. Hardy?

8 MS. HARDY: It does. Thank you.

9 COMMISSION CHAIR SANDOVAL: Well, I guess I will
10 see both of you back here on whatever that day was. What
11 day is that? The 12th of May.

12 MS. HARDY: Thank you. Thank you for your time.

13 MR. TREMAINE: Thank you.

14 (Time noted 2:21 p.m.)

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1 STATE OF NEW MEXICO)

2 : ss

3 COUNTY OF TAOS)

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6 I, MARY THERESE MACFARLANE, New Mexico Reporter
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8 2022, the proceedings in the above-captioned matter were
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13 I FURTHER CERTIFY that I am neither employed by
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