

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

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

6 APPLICATION OF BURNETT OIL CO., Docket No. 24-11
INC., FOR COMPULSORY POOLING, Consolidated Cases
7 EDDY COUNTY, NEW MEXICO 14673, 14674, and
14706-14718

8
9 TRANSCRIPT OF PROCEEDINGS

10 EXAMINER HEARING

11 BEFORE: RICHARD EZEANYIM, Technical Examiner
12 DAVID K. BROOKS, Legal Examiner

13 August 29, 2011

14 Santa Fe, New Mexico

15 This matter came on for hearing before the New
16 Mexico Oil Conservation Division, RICHARD EZEANYIM,
17 Technical Examiner, and DAVID K. BROOKS, Legal
18 Examiner, on Monday, August 29, 2011, at the New
19 Mexico Energy, Minerals and Natural Resources
20 Department, 1220 South St. Francis Drive, Room 102,
21 Santa Fe, New Mexico.

22

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1 HEARING EXAMINER EZEANYIM: All right.

2 This hearing will come to order.

3 Before we start, if you have a business
4 card, please give it to the court reporter so that
5 we can, you know, pronounce your name correctly,
6 because this is a hearing of record.

7 As you all know, today is on off-docket
8 hearing. This is not a hearing date. This is an
9 off-docket hearing, Docket Number 24-11, which are
10 consolidated cases today.

11 But before I do, I find something
12 interesting, and I have a comment.

13 I don't know whether most of you -- as the
14 operators, you know about the multiple-operator
15 spacing units. When I went through the cases, I
16 found out that using that 19.15.15.12 NMSE, it's
17 really a win/win situation in this case.

18 Now, I see almost 20 people in the room
19 for these cases. If I look at this line issue --
20 I'm not a lineman -- but I see that using that rule
21 that I cited, you guys who have noticed it, I
22 shouldn't be here, you shouldn't be here. You
23 should be doing your business, and I think that's a
24 win/win situation.

25 However, anyway, you have the right to go

1 to a hearing on these issues themselves. That is
2 why we're here. I know you are here because you
3 couldn't come to an agreement, whatever it is in the
4 case, and that's why you are here. That's okay.

5 Now, you're putting me in a position like
6 King Solomon. You-all know about King Solomon. You
7 want me to divide the baby. I have been in this
8 position before. If you want me to divide the baby,
9 I'll do that.

10 Remember my obligation, the obligation of
11 OCD, is to prevent waste and protect correlative
12 rights. If I have to divide the baby to do that,
13 I'll do that. But if I have to award the baby in
14 whole to one of you, then that will bring another
15 cause to us, since you guys cannot come to an
16 agreement.

17 I can't overemphasize the power of
18 litigation in the industry. You could really
19 eliminate a lot of hassles and headaches and
20 hearings by doing so.

21 But in this case, it appears that it is
22 not. I have another case that is between the two
23 operators, and most cases are coming between the
24 operators. I really encourage you to negotiate so
25 that we can simplify the process.

1 Well, like I said, we're here now. We're
2 going to hear the case. We're going to come to a
3 ruling. But if all of you go back to the drawing
4 board and come to an agreement, that trumps any
5 order that's issued by the division, because that's
6 going to overrule whatever we said.

7 So I wanted to make these comments here
8 for you, to have it in the back of your mind as you
9 present your evidence today.

10 Well, before we go there, I would really
11 like to see if any of you have any comments on what
12 I just said.

13 MR. GRABLE: Mr. Ezeanyim, I will speak
14 briefly, because I think I have been involved in
15 that part of these proceedings for the last several
16 months, more than Mr. Bruce.

17 But without getting to where and when and
18 who met, we have made efforts to try to come to an
19 agreement. It's still conceivable that we could.
20 We are willing to sit down anytime, anywhere with
21 this side and try to come to a reasonable agreement,
22 and I appreciate your comments.

23 And it's difficult, because these two
24 operators have some disagreements on some bedrock
25 issues and how this reservoir can best be developed,

1 but we're trying to bridge that gap.

2 And we have made legitimate efforts at the
3 very highest levels of both companies, and that's
4 really -- all three companies: Hudson, Burnett, and
5 COG. And I am hopeful that may still bear fruit.
6 But so far it has not, so we've got to proceed.

7 But I appreciate your comments. I think
8 they were well taken.

9 HEARING EXAMINER EZEANYIM: Thank you,
10 Mr. Grable.

11 Any other comments?

12 MS. MUNDS-DRY: Mr. Ezeanyim, I would echo
13 what Mr. Grable said, without getting into any
14 specifics. But COG has certainly made tremendous
15 efforts to try to reach an agreement. And we do,
16 also, remain hopeful that we can. But at this
17 point, we're just so far apart.

18 But we do appreciate your comments and do
19 take them to heart.

20 HEARING EXAMINER EZEANYIM: Any other
21 comment?

22 Okay. Thank you very much for that.

23 It's really very good to hear that I see
24 negotiations going on, but you're not getting
25 anywhere. Anyway, that's why we're here.

1 Therefore, we're going to proceed with this docket,
2 Docket Number 24-11. I have put it on the record.

3 And as of those 16 cases, one of them is
4 dismissed. And I'm going to -- Case Number 14691 is
5 dismissed.

6 Are there any other ones dismissed?
7 Continuing?

8 As agreed by the parties we have, then,
9 remaining on the docket 15 cases. Those 15 cases
10 are of the same type, for the purpose of the
11 hearing.

12 So what I will do, for the record, is to
13 read all the 15 cases, so that the court reporter
14 will get them in the record that, you know, this is
15 a hearing for that, and I don't have to muddle them
16 up. I'm going to read them one by one so that we
17 can record it. It's going to take me some time to
18 read it.

19 Case Number 14673. This is the
20 application of Burnett Oil Company, Inc., for
21 compulsory pooling and an unorthodox oil well
22 location, Eddy County, New Mexico.

23 Case Number 14674: Application of Burnett
24 Oil Company, Inc., for compulsory pooling and an
25 unorthodox location, Eddy County, New Mexico.

1 That's on page 1.

2 Then on page 2, Case Number 14706:

3 Application of COG Operating, LLC, for a nonstandard
4 spacing and proration unit, a nonstandard location
5 and compulsory pooling for Eddy County, New Mexico.

6 Case Number 14707: Application of COG
7 Operating, LLC, for a nonstandard spacing and
8 proration unit, a nonstandard well location and
9 compulsory pooling, Eddy County, New Mexico.

10 Case Number 14708: Application of COG
11 Operating, LLC, for a nonstandard spacing and
12 proration unit, a nonstandard location and
13 compulsory pooling, Eddy County, New Mexico.

14 Case Number 14709: Application of COG
15 Operating, LLC, for a nonstandard spacing and
16 proration unit, a nonstandard location and
17 compulsory pooling, Eddy County, New Mexico.

18 Case Number 14710: Application of COG
19 Operating, LLC, for a nonstandard spacing and
20 proration unit and compulsory pooling in Eddy
21 County, New Mexico.

22 Case Number 14711: Application of COG
23 Operating, LLC, for a nonstandard spacing and
24 proration unit, nonstandard location and compulsory
25 pooling, Eddy County, New Mexico.

1 Case Number 14712: Application of COG
2 Operating, LLC, for a nonstandard spacing and
3 proration unit, a nonstandard location and
4 compulsory pooling, Eddy County, New Mexico.

5 Case Number 14713: Application of COG
6 Operating, LLC, for a nonstandard spacing and
7 proration unit, a nonstandard location and
8 compulsory pooling, Eddy County, New Mexico.

9 Case Number 14714: Application of COG
10 Operating, LLC, for a nonstandard spacing and
11 proration unit, a nonstandard location and
12 compulsory pooling, Eddy County, New Mexico.

13 Case Number 14715: Application of COG
14 Operating, LLC, for a nonstandard spacing and
15 proration unit, a nonstandard location and
16 compulsory pooling, Eddy County, New Mexico.

17 Case Number 14716: Application of COG
18 Operating, LLC, for a nonstandard spacing and
19 proration unit, a nonstandard location and
20 compulsory pooling, Eddy County, New Mexico.

21 Case Number 14717: Application of COG
22 Operating, LLC, for a nonstandard spacing and
23 proration unit, a nonstandard location and
24 compulsory pooling, Eddy County, New Mexico.

25 On page 4, Case Number 14718: Application

1 of COG Operating, LLC, for a nonstandard spacing and
2 proration unit, a nonstandard location and
3 compulsory pooling, Eddy County, New Mexico.

4 For the purpose of testimony, we're going
5 to combine all of these 15 cases together.

6 At this point, I call for appearances,
7 please.

8 MR. BRUCE: Mr. Examiner, Jim Bruce, of
9 Santa Fe, representing Burnett Oil Company, Inc.,
10 and Hudson Oil Company of Texas. And I'm appearing
11 here in association with Robert Grable, of the law
12 firm of Kelly Hart & Hallman, of Fort Worth.

13 MS. MUNDS-DRY: Good morning,
14 Mr. Ezeanyim. Ocean Munds-Dry, with the law firm
15 Holland & Hart, LLP.

16 Appearing with me today is Adam Rankin.
17 We represent COG Operating, LLC. We have six
18 witnesses.

19 MR. BRUCE: And we have five possible
20 witnesses, Mr. Ezeanyim.

21 HEARING EXAMINER EZEANYIM: Any other
22 appearances? Okay.

23 At this point, all of the probable, you
24 know, witnesses, everybody that is supposed to
25 testify, stand up, whoever for.

1 State your names, and then you'll be
 2 sworn.

3 Starting from here, state your name.

4 THE WITNESS: John Haiduk.

5 THE WITNESS: David Rhodes.

6 THE WITNESS: Mark Jacoby.

7 THE WITNESS: John Rodgers.

8 THE WITNESS: Randall Hudson.

9 THE WITNESS: Harvin Broughton.

10 THE WITNESS: David Evans.

11 THE WITNESS: Ryan Dehnad.

12 THE WITNESS: Carl Bird.

13 THE WITNESS: Ken Craig.

14 THE WITNESS: Noel Olivas.

15 HEARING EXAMINER EZEANYIM: As I said
 16 before, if you have your business card -- I don't
 17 know if you have got them -- if you will give them
 18 to the reporter before you leave today, so he can
 19 get your name correctly.

20 You may swear them in, please.

21 (Witnesses sworn by the court reporter.)

22 Any opening statements?

23 Mr. Bruce, any opening statements?

24 MR. BRUCE: Yes. I have a very short one,
 25 Mr. Examiner.

1 I'll hand out our exhibits first.

2 HEARING EXAMINER EZEANYIM: Okay. You may
3 continue.

4 Do you have an opening statement, too?

5 MS. MUNDS-DRY: I do.

6 MR. BRUCE: Mr. Examiner, we're here
7 today, ultimately involving three sections of land,
8 although Burnett only has pooling applications for
9 two quarter quarter sections. The ultimate issue is
10 who should operate this acreage and the wells to be
11 drilled on this acreage.

12 Insofar as operatorship, Burnett believes
13 that it should operate because it owns or controls
14 two-thirds of the working interest; whereas, COG
15 owns or controls one-third of the working interest.

16 Obviously, Burnett will be responsible for
17 the lion's share of costs; and, therefore, should
18 operate.

19 The second issue in determining
20 operatorship, we believe, is engineering, who gets
21 better recoveries, who gets better results.

22 We will present testimony today that
23 Burnett's plan of development will result in
24 recovery of more reserves than COG's plan and will
25 also result in orderly development of the unit.

1 Burnett and Hudson have operated on these
2 three sections of land and in this area for anywhere
3 from 40 to 60 years, and Burnett has 10 years of
4 experience in drilling into the Yeso. And it
5 believes that the techniques it has developed over
6 this period of time are superior to those of the
7 other operators.

8 In fact, there are other operators in this
9 area who are now copying Burnett's method of
10 drilling and completing these wells.

11 COG, on the other hand, has recently
12 proposed 13 -- actually 17, I believe at this point,
13 triple lateral horizontal wells to Burnett and to
14 Hudson to the tune of approximately \$160 million,
15 and they want approval to drill right now.

16 These types of wells have never been
17 drilled in New Mexico. We believe it is unproven at
18 this point, and Burnett's techniques of drilling
19 vertical wells to define the reservoir and then
20 subsequently drilling single horizontal laterals is
21 far superior.

22 We believe that approving Burnett as
23 operator of this three-section area will prevent
24 waste, will protect driller rights, and we ask that
25 COG's applications be denied in total and that you

1 grant Burnett's applications.

2 Thank you.

3 HEARING EXAMINER EZEANYIM: Thank you.

4 Before you begin, we're talking about
5 three sections. In those three sections, Burnett
6 owns two-thirds?

7 MR. BRUCE: Roughly two-thirds, yes.

8 HEARING EXAMINER EZEANYIM: 12, 13, and
9 24, right? Is that what you are talking about?
10 Okay. Not those, the 12, 13, and 24 but the whole
11 19 -- 1,930 acres?

12 MR. BRUCE: The owner controls two-thirds
13 of the working interest.

14 HEARING EXAMINER EZEANYIM: Okay. Thank
15 you.

16 Go ahead.

17 MS. MUNDS-DRY: Thank you, Mr. Ezeanyim.

18 As you know, and as you reminded us this
19 morning, Mr. Examiner, the pooling statute in the
20 Oil and Gas Act, 70-2-17, requires you, if a party
21 seeks to pool parties, to pool if you find it will
22 prevent waste and protect correlative rights and
23 avoid the drilling of unnecessary wells.

24 You will hear testimony today that the
25 leases at issue in these cases in 12, 13, and 24 --

1 and there's -- just so you know, for your reference,
2 there is another section involved, but it's really
3 just three sections that are at issue today. All
4 have difficult surface conditions, in that this is
5 lizard habitat.

6 Concho first proposed a vertical well
7 program on this acreage. But it quickly realized,
8 after working and consulting with the BLM, that that
9 would not be possible due to the difficult surface
10 conditions; i.e., the presence of the lizard
11 habitat.

12 So what Concho did was work very closely
13 with the BLM to come up with a program to maximize
14 production from this acreage while minimizing the
15 surface impact, and that's what we are presenting to
16 you today, and that is the key thing to focus on
17 today.

18 The BLM agrees, and Concho is pleased to
19 see that Burnett and Hudson both now agree that a
20 horizontal well program is the best way to proceed
21 with developing this acreage. In fact, you'll see
22 today that their proposed plan of development is
23 very similar to Concho's plan of development.
24 However, only one party before you today has a
25 proposed horizontal well program.

1 Burnett has two -- only two well
2 applications for vertical wells. We are proposing,
3 in these cases, horizontal wells that cover those
4 three sections.

5 Burnett/Hudson still appears to be
6 adhering to the idea that they should drill vertical
7 wells first, and then perhaps move to horizontal
8 wells.

9 You will hear testimony today that those
10 Burnett/Hudson proposed wells will cause waste and
11 will interfere with the horizontal well program
12 which, again, maximizes production and minimizes
13 surface disturbance.

14 Burnett/Hudson also proposes a unit, an
15 exploratory unit, and has received preliminary
16 approval from the BLM.

17 Concho will show you why there are serious
18 flaws and barriers to them receiving final approval
19 of this unit, and there will be absolutely no
20 advantages gained by forming that so-called
21 exploratory unit here, other than the Burnett/Hudson
22 goal of, frankly, slowing play development and
23 trying to kick Concho out.

24 Burnett/Hudson will also argue that Concho
25 wells are -- that we propose, these triple

1 laterals -- are too risky.

2 We will give you testimony today that
3 strongly refutes this assertion. These wells have
4 been successful and will be successful here.

5 Burnett/Hudson will claim that they're a
6 better operator due to their science with how they
7 perform and log their wells and their completion
8 methods.

9 Our experts will show you that although
10 Concho still does routinely run logs, Concho already
11 has done its homework. It already knows how to
12 develop the Yeso. It has over 1,500 wells in the
13 Yeso shelf that it operates -- that it has drilled
14 and operated. Concho already has a firm grasp on
15 how to develop this acreage.

16 Further, we will show you that the
17 Burnett/Hudson completion methods are really no
18 better in obtaining greater reserves at the end of
19 the day and, frankly, are not as likely to be as
20 effective in the horizontal wells that we now agree
21 that should be drilled on this acreage.

22 Yes, Burnett/Hudson has approximately a
23 two-thirds working interest and Concho has or
24 controls the remaining of that, the third. But for
25 some reason, the Hudsons had these leases for

1 generations and did nothing, even back in 2005, when
2 the Yeso proved to be productive. It was not until
3 Concho showed interest in this acreage and proposed
4 to develop the acreage that Hudson and Burnett
5 decided to do something with the Yeso.

6 That, if you look at the division's
7 precedent, is not something that you can give them
8 as a weighty factor of this majority interest, when
9 they sat on their interest for so long until Concho
10 showed interest.

11 Plus, it's not like a split like you had
12 in past precedent, where you had 90/10 or 80/20.
13 It's a much more even split. So we would argue to
14 you, and we will show you today, that that is not
15 the most important factor. It's a factor you can
16 look at, but not the most important factor.

17 Let's clarify about what is before you.
18 Concho is requesting that the interests be pooled
19 for a total of 14 horizontal wells in its
20 applications today.

21 Burnett/Hudson has before you two vertical
22 wells covering 40-acre sections, or units.

23 Concho is capable and is ready to drill
24 every one of those 14 wells as soon as possible. So
25 it's not a fool's errand to consider the large plan

1 of development, the master plan of development, and
2 to anticipate that Concho will, in fact, develop
3 this acreage in a timely manner, and doing so in a
4 way that will have the least surface impact;
5 certainly, less than Burnett/Hudson has proposed,
6 even under its proposed unit plan.

7 What is not before you is any request for
8 approval of the unit or future Burnett/Hudson
9 horizontal drilling plans. It is your duty to pool
10 if you find the applications before you prevent
11 waste and protect correlative rights, and Concho
12 submits that they do.

13 There are a variety of factors the
14 division has looked at over the years to determine
15 who should be awarded operations when you have these
16 sorts of competing applications. We can look at
17 whatever factors you want, but the Oil and Gas Act
18 requires you to judge applications based on whether
19 they prevent waste and protect correlative rights.

20 Concho's applications, we submit to you,
21 will be in the best interest of conservation,
22 prevent waste, and protect correlative rights and
23 ensure, as the language in the pooling statute
24 requires, that each owner has the opportunity to
25 produce his just and equitable share of the oil in

1 the Yeso.

2 Therefore, Mr. Ezeanyim, we respectfully
3 request that you grant Concho's applications and
4 deny Burnett's.

5 Thank you.

6 HEARING EXAMINER EZEANYIM: Thank you.

7 Any rebuttal? Anything you want to say
8 before we continue?

9 MR. BRUCE: No. I would just rather get
10 to the testimony, Mr. Ezeanyim.

11 HEARING EXAMINER EZEANYIM: Okay. I don't
12 know. It appears the witnesses in the room looks to
13 be larger today.

14 In looking at the prehearing statements,
15 it appears to me that you will take about -- maybe
16 two hours. Is that...

17 MR. BRUCE: I think that's about right.

18 HEARING EXAMINER EZEANYIM: Two hours, and
19 three?

20 MS. MUNDS-DRY: We think approximately
21 three for direct.

22 HEARING EXAMINER EZEANYIM: Okay. So are
23 we going to finish today?

24 MS. MUNDS-DRY: Oh, I hope so.

25 HEARING EXAMINER EZEANYIM: If we're going

1 to finish today, then we are not going to divide the
2 time. But if we're not, I might -- I might take a
3 recess and then try to see if I can appoint some
4 time. So -- but since you say we are going to
5 finish, I want you to be done today, because we have
6 something else tomorrow. There are a lot of things
7 to be done, you know.

8 So if you think we're going to finish
9 today we're not going to divide time.

10 LEGAL EXAMINER BROOKS: Well, it's -- I
11 would remind you that it's really hard to divide
12 time fairly once the testimony is started.

13 HEARING EXAMINER EZEANYIM: Yeah. That's
14 why I wanted to establish that. You be the boss.

15 Let me take you at your word that you guys
16 will make it so that -- I mean two and a half, two
17 and a half, I think, you know, we can finish the
18 job. I think what we're going to do is -- I don't
19 want to make you guys -- these guys have come from
20 all over the state.

21 About 10:15 we will take a 10-minute
22 break. And then from 10:30 to 11:30, we'll take a
23 lunch, and then complete after lunch. I think
24 that's good.

25 MS. MUNDS-DRY: Can you tell me the timing

1 again? I'm sorry, Mr. Ezeanyim.

2 HEARING OFFICER EZEANYIM: Maybe 10:15 we
3 will take a break. And then from 10:30 to 11:30,
4 we'll take a lunch break.

5 MS. MUNDS-DRY: 10:30?

6 LEGAL EXAMINER BROOKS: What you mean is
7 you'll take a lunch break at 11:30.

8 HEARING EXAMINER EZEANYIM: 11:30.

9 MS. MUNDS-DRY: Oh, I see.

10 LEGAL EXAMINER BROOKS: What you were
11 saying is that you would take a break at 10:15 and
12 then you would take lunch at 10:30 to 11:30.

13 HEARING OFFICER EZEANYIM: No, no. We
14 will take a break -- I mean it might change,
15 depending on what happens. And then we'll go --
16 have one and a half hours and then come back, and we
17 will complete. I'm happy we're going to do it today
18 and not tomorrow, because tomorrow I have other
19 engagements, and I can't afford it tomorrow. So
20 we'll try to do it today.

21 Okay. So that's what we're going to do.

22 Now, at this point, do you want to go
23 first?

24 MR. BRUCE: Yes.

25 HEARING EXAMINER EZEANYIM: Okay. Now,

1 I'm going to have you present your witness, please.

2 MR. BRUCE: Okay. I call Mr. Rhodes to
3 the stand.

4 DAVID S. RHODES,
5 after having been first duly sworn under oath,
6 was questioned and testified as follows:

7 EXAMINATION

8 BY MR. BRUCE:

9 Q. Where do you reside, Mr. Rhodes?

10 A. In Fort Worth, Texas.

11 Q. Who do you work for and in what capacity?

12 A. Burnett Oil Company, Inc., as land
13 manager.

14 Q. Have you previously testified before the
15 division?

16 A. Yes, I have.

17 Q. Were your credentials as an expert landman
18 accepted as a matter of record?

19 A. Yes, they were.

20 Q. Are you familiar with the land matters
21 involved in these applications?

22 A. Yes, I am.

23 MR. BRUCE: Mr. Examiner, I tender
24 Mr. Rhodes as an expert petroleum landman.

25 MS. MUNDS-DRY: No objection.

1 HEARING EXAMINER EZEANYIM: The Examiner
2 will so find.

3 Q. (By Mr. Bruce) Mr. Rhodes, let's go over
4 in general what Burnett is seeking in these cases
5 and has sought in the past.

6 And I've marked your first package of
7 exhibits, the slides, as Exhibit 1. And this is the
8 first slide in that package.

9 What does this reflect?

10 A. This reflects the three-section area,
11 Sections 12, 13, and 24, and also shows the two
12 previously-heard pooling applications, the ruling of
13 which we are still waiting on.

14 And then it also reflects the two 40s that
15 we are here for this hearing this morning, the
16 southeast southeast of 13 and the southeast
17 southeast of 24.

18 Q. Now, this plat also shows the proposed
19 Taylor Draw unit outline?

20 A. That is correct.

21 Q. Now, we're not here today seeking approval
22 of the unit, correct?

23 A. No. That's correct.

24 Q. Is it fair to say we're here simply to
25 show how the unit works with Burnett's plan of

1 development in this area?

2 A. That's correct.

3 This plan also reflects that we have six
4 approved APDs, indicated by the red diamonds.

5 Q. And this is all federal land?

6 A. That's correct.

7 Q. And the APDs have been approved by the
8 BLM?

9 A. That's correct.

10 Q. Now, what is the zone that -- the interval
11 that Burnett seeks to force pool in these cases?

12 A. The Glorieta-Yeso.

13 Q. What does this slide reflect?

14 A. This shows the working interest in the two
15 40s that we're -- at the hearing today. It shows
16 the Burnett Oil Company with 46.28 percent, and
17 Javelina partners and Zorro partners, which are the
18 Hudson interests, with 16 and 4 respectively, and
19 then Concho with 33.71.

20 Q. And have the Javelina and Zorro partners'
21 interests been committed to Burnett?

22 A. Yes, they have. They're supporting us as
23 operator.

24 Q. And what is this next slide?

25 A. This, basically, just states the -- shows

1 the working interests that are supporting Burnett as
2 operator, Burnett Oil Company, Zorro, and Javelina,
3 totaling 66.28 percent, and COG with 33.7.

4 Q. What is this next slide?

5 A. That is a listing of the record title
6 holders. We have letters of support for us as
7 operator from all record title holders, showing 100
8 percent.

9 Q. The record title owners of the federal
10 leases in this three-section area?

11 A. Yes.

12 Q. What does this map reflect, Mr. Rhodes?

13 A. This is showing the current surface
14 development. The Hudson Oil Company of Texas
15 operates 100 percent of the current surface
16 development. And this shows the various locations
17 that we have the approved APDs for.

18 Q. And so this area has been substantially
19 developed by Hudson Oil for the Grayburg-San Andres.
20 Is that correct?

21 A. That's correct.

22 Q. What is this next exhibit?

23 A. This outlines the Taylor Draw unit,
24 Sections 12, 13, and 24, that we have made
25 application for with the BLM and received

1 preliminary approval from them.

2 Q. And is the next slide the letter of
3 preliminary approval from the BLM?

4 A. Yes, it is.

5 Q. Now, did you meet with the BLM and propose
6 the unit to them?

7 A. Yes, we did.

8 Q. And met with them in Carlsbad, I believe?

9 A. We met with them in Carlsbad. That's
10 correct.

11 Q. Now, again, this is just preliminary
12 approval so that you can go forward to seek final
13 approval of the unit agreement, correct?

14 A. That's correct.

15 Q. As part of that -- and this would be an
16 exploratory unit?

17 A. That's correct.

18 Q. And would you have to go out and seek
19 approval from the various record title owners,
20 working interest owners, and overriding royalty
21 interest owners, and included -- in addition to the
22 BLM?

23 A. That's right.

24 Q. Have letters been sent out to those
25 interest owners?

1 A. Yes, they have. They just went out last
2 week.

3 Q. Seeking their ratification?

4 A. Seeking ratification, correct.

5 HEARING EXAMINER EZEANYIM: Mr. Bruce,
6 your pages are not numbered. So if I want to
7 comment, I don't know what exactly -- can you number
8 them so that we'll know what we're talking about?

9 All the exhibits here, there are no
10 numbers on them. I know it's a mistake. Could you
11 number them, so that when we talk about it -- like
12 I'm trying to make notes here. I don't know what to
13 call them. They're not numbered.

14 MR. BRUCE: Okay. These are,
15 Mr. Examiner.

16 HEARING OFFICER EZEANYIM: Okay. These
17 ones are not, so you might want to do it.

18 THE WITNESS: Let me just clarify one
19 thing.

20 The letters have gone out to the working
21 interest owners and the title owners.

22 HEARING EXAMINER EZEANYIM: Excuse me.
23 Let's get them numbered before you go on, because I
24 have to listen to what you're saying.

25 THE WITNESS: Okay.

1 MR. BRUCE: What I have done,
2 Mr. Examiner, is just identified each slide from A
3 through to the end, either N or O.

4 HEARING EXAMINER EZEANYIM: Okay. Yes.
5 You may proceed.

6 MR. BRUCE: Okay, Mr. Examiner.

7 Q. (By Mr. Bruce) And one point of
8 clarification.

9 Mr. Rhodes, under these three sections of
10 land, it's all federal minerals, correct?

11 A. That's correct.

12 Q. Now, insofar as surface, what is the
13 situation with the surface?

14 A. The surface is all federal with the
15 exception of the east half of 12, which is a private
16 landowner. But it's my understanding that the BLM
17 exerts control over that east half of Section 12.

18 Q. Okay.

19 A. In fact, they have control of all of it.

20 Q. Okay. Now, Mr. Rhodes, next -- and I
21 noted this is Exhibit 1J on the Hearing Examiner's
22 document.

23 What is -- what does this slide reflect?

24 A. That's 3183.4 of the regulations, BLM
25 regulations, and is talking about approval of

1 executed agreement. It says that "A unit agreement
2 shall be approved by the authorized officer upon the
3 determination that such agreements necessary or
4 advisable in the public interest and is for the
5 purpose of more properly constructed natural
6 resources."

7 Q. In Burnett's opinion, will this help
8 conserve the natural resources?

9 A. We think it will, yes.

10 Q. Now, you were here and listened to
11 Ms. Munds-Dry make her opening statement about
12 surface use issues.

13 Burnett has been fully aware of those
14 issues for some time, has it not?

15 A. Yes, we have.

16 Q. And will other witnesses comment on the
17 surface usage?

18 A. Yes, they will.

19 Q. The final area talks about reasonably
20 effective control of the operations.

21 Is it your opinion that if Burnett is
22 granted operations in this area it would have a
23 reasonably effective control of operations?

24 A. Yes, it is.

25 Q. And next, which I've marked K for the

1 Hearing Examiner, what does that reflect?

2 A. This is a lease map of the Taylor Draw
3 unit area showing Sections 12, 13, and 24. It's
4 made up of five different tracts. The ownership is
5 different in each tract.

6 The BLM has the royalty under all of it,
7 but the overrides and working interests are
8 different in each tract.

9 Q. And has Burnett had a title opinion
10 prepared so that it could determine the ownership of
11 the interest in these lands?

12 A. It's -- we have a working interest title
13 opinion that's -- we had working interests that have
14 been submitted to us by our title attorney.

15 The overriding royalties, apparently, are
16 very complicated, and they are still working on
17 that, and so I don't actually have a copy of that.

18 Q. And what is this slide?

19 A. This is the --

20 MR. BRUCE: And, Mr. Examiner, I must
21 mention this was finalized last night, and I didn't
22 get it into the exhibit package.

23 HEARING EXAMINER EZEANYIM: Oh, okay, so
24 it's not in here?

25 MR. BRUCE: It's not in there.

1 But, Mr. Rhodes, go ahead.

2 HEARING EXAMINER EZEANYIM: Okay.

3 A. This reflects -- this is a slide that our
4 title attorney provided to us showing the working
5 interest ownership that would be across the
6 three-section unit area.

7 Q. (By Mr. Bruce) And, again, it shows
8 roughly the same thing, that it's approximately
9 two-thirds Burnett and its working interest partners
10 and approximately one-third --

11 A. That's correct.

12 MS. MUNDS-DRY: Mr. Bruce, could we get a
13 copy of that slide at some point?

14 MR. BRUCE: Yes.

15 MS. MUNDS-DRY: Thank you. Ask and ye
16 shall receive.

17 HEARING EXAMINER EZEANYIM: I would also
18 like to have a copy of that.

19 MR. BRUCE: It's been marked M-1 for you.

20 HEARING EXAMINER EZEANYIM: Thank you.

21 MR. BRUCE: One thing I did include in the
22 exhibit package is -- although we don't need to go
23 into it, Mr. Examiner -- is we have included the
24 proposed Exhibit B to the Taylor Draw unit. And
25 that's marked exhibit pages M, N, O, P.

1 And this is page Q.

2 Q. (By Mr. Bruce) What does this reflect,
3 Mr. Rhodes?

4 A. It just gives us sort of a summary of the
5 Taylor Draw, plus Section 25.

6 It shows that Burnett Oil Company and
7 Javelina and Zorro effectively control 66.28 percent
8 of the working interest in the Yeso.

9 Burnett Oil Company, Inc., is supported
10 for operations by 100 percent of the record title
11 owners.

12 Burnett Oil Company, Inc., has applied for
13 and been granted a preliminary federal unit by the
14 BLM, and it has been designated as the Taylor Draw
15 unit. The unit includes all of Sections 12, 13, and
16 24 of 17/31, Eddy County, New Mexico.

17 Burnett Oil Company, Inc., has an ongoing
18 Yeso drilling program near the Maljamar leases and
19 has contracted a rig to begin development of this
20 property.

21 Burnett Oil Company, Inc., has six
22 approved APDs.

23 And Burnett Oil Company, Inc., is a member
24 company in the Candidate Conservation Agreement,
25 CCA.

1 Q. And the CCA reflects -- that pertains to
2 surface use, does it not?

3 A. That's correct.

4 Q. Of the people on the slide M-1, shown on
5 this slide, which are the only parties Burnett seeks
6 to enforce pool at this time?

7 A. COG and Concho.

8 Q. All of the other interests are committed
9 in writing to Burnett's proposals, correct?

10 A. That is not correct. The Pam Burke
11 trustee -- now, this is a unit we are --

12 Q. Oh, this is a working unit?

13 A. We are actually just here today to force
14 pool the two --

15 Q. Okay.

16 HEARING EXAMINER EZEANYIM: Let me get
17 this straight. COG and Concho, are they two
18 different operators?

19 THE WITNESS: No, they're the same.

20 HEARING EXAMINER EZEANYIM: You said COG
21 and Concho, so I'm beginning to wonder. I thought
22 they were the same operator. Maybe I'm not
23 understanding.

24 MR. BRUCE: Mr. Examiner, if I may -- and
25 Ms. Munds-Dry can correct me -- COG Operating, LLC,

1 filed its applications. It is the operator. It has
2 a sister, or a subsidiary corporation, called Concho
3 Oil & Gas, which also owns working interests in
4 these leases.

5 HEARING OFFICER EZEANYIM: Oh, okay.

6 MS. MUNDS-DRY: That's correct.

7 HEARING EXAMINER EZEANYIM: So when you
8 say COG and Concho -- I used to equate COG as
9 Concho. Do you see what I mean?

10 MR. BRUCE: A lot of us still do that.

11 HEARING OFFICER EZEANYIM: Okay. I'm
12 sorry.

13 MS. MUNDS-DRY: If you asked the COG guys
14 here today, they would call themselves Concho.

15 HEARING OFFICER EZEANYIM: Okay.
16 Whatever.

17 Q. (By Mr. Bruce) Let's move on to the hard
18 copy exhibits, Mr. Rhodes.

19 What are Exhibits 2 and 3?

20 A. Exhibit 2 is the proposal letter written
21 February 7 of 2011 to COG Operating, LLC, proposing
22 the Nosler Fed Number 3 well in the southeast
23 southeast of Section 24, and proposed the drilling
24 of the well to the Yeso, and attached AFE.

25 Q. And also attached to that is the letter to

1 Concho Oil & Gas, correct?

2 A. That's correct, yes.

3 Q. What is Exhibit 3?

4 A. Exhibit 3 is a letter dated February 7,
5 2011, from me to Concho Oil & Gas and to COG
6 proposing the Partition Fed Number 2 well in the
7 southeast southeast of Section 13 of Eddy County,
8 New Mexico.

9 Q. And let's -- I don't want to go into great
10 detail, Mr. Rhodes, but skip over to Exhibit 5.

11 Just briefly inform the Hearing Examiner,
12 what is that?

13 A. This is a chronology of the dates and
14 contacts that we've had with the Concho
15 representatives trying to find some common ground so
16 that we could move forward with drilling this
17 four-section area. And it starts back in
18 November -- November 11 of 2010 was the first
19 contact that we had. And it was -- as you can see,
20 we've had multiple contacts up until just recently.

21 Q. Okay. So to address one of the Hearing
22 Examiner's concerns, there have been contacts for,
23 at this point, nine months between the parties,
24 correct?

25 A. Yes.

1 Q. And you just have not been able to reach
2 terms?

3 A. That's correct.

4 Q. And without getting into them, there have
5 been other confidential contacts between the parties
6 that are not listed herein, correct?

7 A. That's correct.

8 Q. Okay. A couple of things. I don't think
9 we need to point out a lot in here, since it's
10 pretty self-explanatory, Mr. Rhodes.

11 But when this first started in early this
12 year, how many vertical well proposals did Burnett
13 and Hudson receive from COG?

14 A. We received 47 vertical proposals,
15 vertical well proposals, from Concho.

16 Q. And have those ever specifically been
17 retracted?

18 A. No, not to my knowledge.

19 Q. And then recently, you've received how
20 many horizontal well proposals?

21 A. 14 wells.

22 Q. Anyway, quite a few?

23 A. Yes, a number. I don't know. They're
24 listed in here. 14 -- 17, perhaps.

25 Q. Were they all for triple lateral

1 horizontal?

2 A. Triple lateral horizontal.

3 Q. In your opinion, has Burnett made a good
4 faith effort to obtain the voluntary enjoiner of the
5 interest owners in the wells?

6 A. Yes.

7 Q. And do you request that Burnett be
8 appointed operator of the wells?

9 A. Yes.

10 Q. Do you have a recommendation for the
11 amounts which Burnett should be paid for the
12 supervision and administrative expenses?

13 A. Yes, I do. They're 5750 on the producing
14 overhead and 575 -- I'm sorry. On the drilling well
15 overhead -- and 575 on the producing overhead.

16 Q. Are these amounts equivalent to those
17 normally charged by Burnett and other operators in
18 this area for wells of this type?

19 A. Yes, they are.

20 Q. Do you request that the overhead rates be
21 adjusted periodically as required by the appropriate
22 accounting procedures?

23 A. I do.

24 Q. And does Burnett request the maximum cost
25 plus 200 percent risk charge, if any interest owner

1 goes nonconsent in a well?

2 A. Yes, we do.

3 Q. Now, we skipped over one exhibit,
4 Exhibit 4, Mr. Rhodes. What does that reflect?

5 A. These are letters from the record title
6 holders and the other -- and two of the working
7 interest owners supporting Burnett as operator. The
8 two working interest owners are Javelina and Zorro,
9 which are Hudson entities.

10 Q. And so the large majority of interest
11 owners support Burnett operating this acreage?

12 A. Yes.

13 MR. BRUCE: Mr. Examiner, Exhibits A and B
14 are merely my affidavits of notice to the parties
15 being pooled.

16 HEARING OFFICER EZEANYIM: Okay.

17 Q. (By Mr. Bruce) Mr. Rhodes, were Exhibits
18 1 through 5 prepared by you or under your
19 supervision?

20 A. They were.

21 Q. And in your opinion, is the granting of
22 these two applications of Burnett in the interest of
23 conservation and the prevention of waste?

24 A. They are.

25 Q. And you also request that COG's

1 applications be denied?

2 A. I do.

3 MR. BRUCE: Mr. Examiner, I would move the
4 admission of Burnett Exhibits 1 through 5, and then
5 A and B, the notice exhibits.

6 HEARING OFFICER EZEANYIM: Do you have
7 objection?

8 MS. MUNDS-DRY: No objection.

9 HEARING EXAMINER EZEANYIM: Exhibits 1
10 through 5 and Attachments A and B will be admitted.

11 MR. BRUCE: I have no further questions of
12 the witness, Mr. Examiner.

13 HEARING OFFICER EZEANYIM: Ms. Munds-Dry?

14 MS. MUNDS-DRY: Thank you, Mr. Examiner.

15 EXAMINATION

16 BY MS. MUNDS-DRY:

17 Q. Good morning, Mr. Rhodes.

18 A. Good morning.

19 Q. If you could turn to your first slide that
20 shows the approved APDs.

21 Thank you, Mr. Rhodes.

22 Mr. Rhodes, if I understand correctly, you
23 show six approved well locations, in that you have
24 six APDs approved by the BLM. Is that correct?

25 A. Uh-huh.

1 Q. And I understand that you have submitted
2 a -- that Burnett has submitted a plan of
3 development under the proposed Taylor Draw unit. Is
4 that correct?

5 A. Uh-huh.

6 Q. How do these six vertical well locations
7 fit into your plan of development?

8 A. I am going to defer that question to one
9 of our later witnesses, Mr. Jacoby.

10 Q. Mr. Jacoby?

11 A. He's our engineer that was responsible for
12 actually preparing that plan of development.

13 Q. I think I know this as well, but I want to
14 ask, just in case.

15 Mr. Rhodes, are you familiar with the
16 efforts that went into attaining or becoming an
17 enrolled member in the Candidate Conservation
18 Agreement program? Is that Mr. Jacoby?

19 A. I was not involved with that personally.

20 Q. And I believe you've told me before,
21 Mr. Jacoby may have more knowledge about that?

22 A. Yes, ma'am.

23 Q. Do you know if -- and I just want to make
24 sure that you don't have any knowledge of this.

25 Do you know that -- now that you are a

1 member of CCA, whether these APDs comply with that
2 agreement?

3 A. I don't know the answer to that.

4 Q. Do you think Mr. Jacoby might know that?

5 A. Perhaps.

6 Q. And let me just ask you this.

7 Do you plan -- or does Burnett plan to
8 drill these APDs, as they have been approved, given
9 that you're a member of the CCA?

10 A. That would be another question related to
11 the plan of development.

12 Q. Okay. We don't necessarily need to turn
13 to this slide, Mr. Rhodes.

14 Do you know why Burnett has not requested
15 that Section 25 be included in the proposed Taylor
16 Draw unit?

17 A. It's my understanding this really is more
18 of a geologic question. But those are the primary
19 sections for the Yeso. When we get down into
20 Section 25, the Yeso is not prospective -- or as
21 prospective.

22 Q. And you understand this is an exploratory
23 unit?

24 A. That's correct.

25 Q. Maybe Mr. Haiduk could answer that

1 question?

2 A. Perhaps.

3 Q. Mr. Rhodes, I'm looking at the slide -- I
4 didn't catch the lettering, I'm sorry, of the
5 preliminary approval letter.

6 A. Yes, ma'am.

7 MR. BRUCE: That's H and I.

8 MS. MUNDS-DRY: Thank you.

9 Q. (By Ms. Munds-Dry) Mr. Rhodes, were you
10 responsible for drafting the application letter to
11 the BLM for the proposed unit?

12 A. I was a participant in drafting that
13 letter, yes. But it was primarily started by Mary
14 Starkey, who's no longer with our company.

15 Q. And what did Ms. Starkey do for your
16 company?

17 A. She was in charge of our regulatory
18 matters in New Mexico.

19 Q. And when did you first meet with the BLM
20 to discuss this proposed unit?

21 A. We had a meeting with them in Carlsbad
22 on -- July 14 was the first physical meeting that we
23 had.

24 Q. And at that time, as I understand it, you
25 submitted the formal application packet for the

1 unit. Is that correct?

2 A. Yes.

3 Q. I'm curious why you marked all of those
4 documents confidential.

5 A. We wanted to make sure that we had the --
6 all of our information in front of the BLM without
7 having any interference from Concho. We wanted to
8 be able to have our hearings in front of the BLM and
9 discuss the formation of this Taylor Draw unit.

10 And they informed us that we could mark
11 any of our exhibits confidential, so that we could
12 keep it just between ourselves, for the preliminary
13 process of getting the approval letter.

14 Q. Mr. Rhodes, have you ever been responsible
15 for forming an exploratory unit before?

16 A. No, I have not.

17 Q. Do you know if Burnett has ever -- anyone
18 in Burnett, or Burnett, has been an operator in an
19 exploratory unit?

20 A. We have not.

21 Q. You said that you were concerned about
22 interference from Concho. What do you mean by that?
23 What kind of interference?

24 A. Well, we wanted to just make sure that --
25 it seems like all the way through this process,

1 whenever we've made an agreement with someone -- in
2 particular, I think back to the term assignments
3 that we got from some of our parties that we got
4 term assignments from. As soon as Concho got wind
5 or found out about an agreement that we made, or
6 that we were in the process of negotiating, they
7 would immediately go and try to overturn that
8 agreement.

9 This happened to us with a company out of
10 Galveston called Moore & Shelton, where we had a
11 signed letter of intent with them for a term
12 assignment, and we informed COG that we had that
13 term assignment. Even -- or that we had that letter
14 of intent.

15 But because we didn't actually have the
16 final term assignment, they physically went to that
17 office and ended up costing us quite a bit more
18 money to finalize that agreement.

19 So we didn't want to run the risk of
20 having that happen to us again.

21 Q. You understand, Mr. Rhodes, that an
22 exploratory unit is a voluntary agreement?

23 A. Yes.

24 Q. Are you aware whether you can force a
25 party into an exploratory unit?

1 A. I'm not aware of that.

2 Q. Did you discuss with any of the other
3 working interest owners this -- this proposed idea
4 of an exploratory unit before going to the BLM?

5 A. Other than the Hudson entities, no.

6 Q. In your proposed plan of development,
7 Mr. Rhodes, you indicate -- and this is also
8 reflected in the letter here -- that this unit will
9 employ reasonable measures to minimize surface use.

10 How is this unit better in minimizing
11 surface use?

12 A. Well, I'll have to defer that, again, to
13 Mr. Jacoby, on the plan of development.

14 I think the thing that we wanted to point
15 out here is Burnett/Hudson are the current operators
16 on the three-section area. We have the BLM that
17 we've talked to that supports us as operator of that
18 three-section area, and it would keep the operator
19 shift down to just those two companies, instead of
20 having a third with Concho in there. So that...

21 Q. The BLM has stated to you they would
22 rather have just two companies there and not Concho
23 as an operator?

24 A. They have not said that specifically, but
25 they have told us that they would like us to operate

1 it.

2 Q. They would like you to operate these three
3 sections?

4 A. Yes.

5 Q. Have you presented us any evidence of that
6 today?

7 A. I think that's what this letter, giving us
8 preliminary approval for the unit, would do.

9 Q. Doesn't this letter also state that this
10 is a preliminary approval, and that they have the
11 right to deny approval if there are such things as
12 objections or other issues that they're not aware of
13 at this time?

14 A. That's correct.

15 Q. Particularly if you do not have the full
16 commitment of sufficient lands to afford control?

17 A. That's correct.

18 Q. Mr. Rhodes, are you aware that the BLM
19 requires 85 percent control in order to form a
20 voluntary agreement?

21 A. I'm aware that that is a percentage that
22 is a rule of thumb percentage. It's not a
23 hard-and-fast number, according to what we have been
24 told by the BLM.

25 It does show up in their handbook, but

1 that's a draft BLM handbook. It's not even a final
2 handbook. And it's -- as I said, it's a general
3 rule of thumb that they use.

4 And we -- when we went to them, this is
5 what they told us that they wanted to do. So we --
6 and they did indicate that this would be a unit
7 situation, and that that 85 percent rule may not
8 necessarily apply.

9 Q. You're not a lawyer, are you, Mr. Rhodes?

10 A. No, ma'am.

11 Q. So are you not aware of what effect that
12 handbook may have or impact on their
13 decision-making?

14 A. No, ma'am, I'm not.

15 Q. They told you they would treat it as a
16 general rule of thumb?

17 A. They told us that the 85 percent was not a
18 hard-and-fast percentage.

19 Q. And you can tell me if this is a question
20 for Mr. Jacoby.

21 In your plan of development, in your
22 preliminary letter, you indicate you'll be using a
23 combination of vertical and horizontal Yeso wells.
24 Is that correct?

25 A. That's correct.

1 Q. Does Burnett feel that horizontal wells
2 are the best way to develop these properties?

3 A. I think that it -- I think we do. There
4 again, that's going to be a question for Mr. Jacoby.
5 I think we want to drill the vertical wells because
6 it gives us information about the -- where to land
7 our horizontal wells.

8 We, to date, have drilled 15 horizontal
9 wells in the township just west. They have all been
10 very successful wells in the Yeso, and we're only
11 six or seven miles away from this, so we feel like
12 we have a good handle on how to do that properly.

13 Q. In your meeting on July 14, I believe you
14 said, did the BLM indicate that they did not want
15 Concho to operate these properties?

16 A. No, they did not say that.

17 Q. Did they indicate to you that the unit may
18 only be approved if Burnett is successful at the
19 forced pooling?

20 A. They did not say that in the meeting. I
21 don't recall that being said.

22 Q. What did the BLM tell you about the
23 existing JOA for the Knockabout well?

24 A. They didn't really have much -- well, in
25 fact, I don't think they had anything to comment

1 on -- about the existing JOA for the Knockabout
2 well. I don't remember that subject area coming up.

3 Q. So as I understand it, this letter is
4 dated July 18?

5 A. July -- yes, 18th, I'm sorry.

6 Q. And you didn't notify Concho until
7 August 25th that they were planning to form this
8 preliminary approval letter -- or form a unit,
9 sorry. Is that correct?

10 A. Well, until what was the date? I'm sorry.

11 Q. August 25th.

12 MR. GRABLE: Pardon me, Ms. Munds-Dry.

13 May I make a statement for the record?

14 The reason Mr. Rhodes is hesitating is
15 that we had a confidential meeting with Concho's
16 management in Midland substantially earlier than
17 that. And prior to that, we did submit to them
18 certain things regarding the proposed unit.

19 MS. MUNDS-DRY: Under that agreement, can
20 Mr. Rhodes give the date of when that meeting was?

21 MR. GRABLE: It was August 4.

22 MS. MUNDS-DRY: It was August 4 or 5,
23 wasn't it?

24 MR. GRABLE: I believe it was Friday,
25 August 4.

1 Q. (By Ms. Munds-Dry) That's still after the
2 July 18 letter, correct?

3 A. That's correct, yes.

4 Q. Mr. Rhodes, let's turn to your slide M-1,
5 the working interest ownership.

6 LEGAL EXAMINER BROOKS: Actually, I think,
7 Mr. Grable, that August 4 was a Thursday. I think
8 August 4 was a Thursday, if we are talking about --

9 MR. GRABLE: Well, then, it was August 5.
10 My memory has been refreshed.

11 LEGAL EXAMINER BROOKS: I remember we had
12 a hearing here on August 4 to --

13 MR. GRABLE: You are absolutely right. It
14 was Friday, the 5th.

15 Q. (By Ms. Munds-Dry) Mr. Rhodes, I'm
16 looking at the slide that shows the working interest
17 ownership breakdown.

18 A. Is that for the unit?

19 Q. For the unit, yes. And I'm really looking
20 at that in tandem with this Exhibit B that you have
21 included that's to the unit agreement.

22 My understanding is you have some initial
23 working interest ownership title work completed but
24 you're still waiting on a few override title --

25 A. That's correct, yes.

1 Q. Why didn't Burnett do the title work
2 before proposing the unit?

3 A. Well, it was in the process, but it had
4 not been finalized. We had ordered it before we
5 formed the unit, but we just didn't have it.

6 Q. I believe your testimony is that you have
7 term assignments with certain parties, Moore &
8 Shelton being one of them?

9 A. That's correct.

10 Q. When does that term assignment expire?

11 A. Oh, gosh. I may have to get that date for
12 you. It's -- I believe it was a two-year term
13 assignment, and it would have been dated probably
14 November or December. I should know that, but I
15 just don't recall it off the top of my head.

16 Q. I'm sorry. November or December of...

17 A. Of -- let's see. It would have been just
18 before the meeting that we had -- 2010.

19 Q. And what about the term assignment with
20 the Bank of America?

21 A. That's the same date, roughly.

22 Q. Mr. Rhodes, I don't want to spend too much
23 time on this. But Exhibit Number 5, your
24 chronology?

25 A. Yes, ma'am.

1 Q. If you could turn to that, please.

2 A. (Witness complies.)

3 Q. Before Concho contacted Mr. Hudson to
4 discuss development of this property, did Burnett
5 have a plan of development for these leases?

6 A. No. We had talked to the Hudsons about
7 developing the Yeso. We had no formal plan at that
8 time, because up until that point the offsetting
9 wells were not encouraging to us. And we were
10 developing our leasehold over to the west in the
11 Grayburg-Jackson area with the idea that we would
12 eventually come over and drill these Yeso wells.

13 We didn't have term assignments for those
14 Yeso wells at that point. In fact, the Concho
15 interest was owned by Marbob at that time, and we
16 were waiting on the Hudsons to decide when they
17 wanted to develop that.

18 In other words, we didn't have an interest
19 in the Yeso until we got our term assignments.

20 Q. On March 3, on the second page,
21 Mr. Rhodes, you had a meeting with Concho?

22 A. Yes, ma'am.

23 Q. I believe those folks came to see you-all
24 in Fort Worth?

25 A. That's correct.

1 Q. Why did Burnett condition that support in
2 the allowables hearing on getting operations in what
3 you call the Maljamar area?

4 MR. BRUCE: Mr. Examiner, we object,
5 insofar as there were some confidential meetings
6 that we don't want to get into.

7 MS. MUNDS-DRY: That was not a
8 confidential meeting on March 3. There was no
9 agreement, there was absolutely no understanding
10 that it was confidential.

11 MR. BRUCE: Well, I don't recall the dates
12 because I wasn't involved in that phase, but there
13 were some confidential agreements.

14 Other than that, Mr. Rhodes can answer the
15 questions.

16 THE WITNESS: Okay.

17 I'm sorry. Would you ask the question
18 again?

19 Q. (By Ms. Munds-Dry) Sure. Your entry here
20 shows that Concho came to Burnett to ask them to
21 support their position in the allowable case.

22 Mr. Pollard, Bill P., I believe that's the
23 reference, asked, and they wanted an agreement from
24 Concho to support Burnett as the operator for the
25 wells in the Maljamar.

1 Why was Burnett conditioning support in
2 the allowables case in getting operations in
3 Maljamar?

4 A. We were having -- as you can tell from the
5 previous notations in my chronology, we were having
6 a problem with COG, Concho, agreeing to allow us to
7 operate. And we basically got a call from either
8 David Evans or Keith Corbett the day before, saying
9 that they wanted to come and speak to us about an
10 allowables issue, and that they wanted to keep those
11 items separate. They felt that they were separate
12 items.

13 And when they showed up in our office, we
14 wanted -- we thought that if we could tell them that
15 we might consider agreeing to their -- their
16 request, in the event -- in return for them
17 supporting us as operations.

18 But we later realized that that was an
19 incorrect position. The more we got into looking at
20 the information and the data, the more we realized
21 that we had a -- a significant problem with the
22 allowables issue, and we wanted to separate those
23 items at that point.

24 Q. If we could turn to the next page,
25 Mr. Rhodes, page 3.

1 A. (Witness complies.)

2 Q. Your first entry on April 20 indicates
3 that Concho came to you with an offer. Four wells
4 in 2011, I believe is what that reflects. Is that
5 correct?

6 A. That's right.

7 Q. You wouldn't agree to their other .
8 condition, to pull three 160-acre spacing units out?
9 That was a nonstarter for Burnett?

10 A. Yes, ma'am.

11 Q. On April 25 you indicate that -- I believe
12 you responded saying that you were going to move
13 forward with the hearing -- the pooling hearing, I
14 assume you were referring to.

15 A. Yes.

16 Q. And you asked COG again to sign a JOA
17 covering the entire area except the south half of
18 Section 12, naming Burnett as operator, and to vote
19 for Burnett to succeed Hudson as operator under the
20 south half of the JOA?

21 A. Yes.

22 Q. In your April 25 letter, did you
23 mention -- are you sure you mentioned that you asked
24 them to vote Burnett as the successor operator?

25 A. I don't recall.

1 Q. In fact, if we were to look at the
2 letter -- and I have it here if you want,
3 Mr. Rhodes. You didn't mention that, did you?

4 A. Could I see a copy of that?

5 MS. MUNDS-DRY: May I approach, please?

6 HEARING EXAMINER EZEANYIM: Okay.

7 A. You're right. It does not say that.

8 Q. (By Ms. Munds-Dry) So your chronology is
9 incorrect here as to that statement?

10 A. Well, as I recall, we -- I may have had a
11 telephone conversation. I'm trying to remember
12 exactly.

13 Well, that would be -- I -- I would assume
14 the reason I put that in there is because of some --
15 perhaps some telephone conversation that I may have
16 had with David Evans, but I'm not sure about that.

17 Q. Okay.

18 A. But that is what we have been trying to do
19 all along.

20 Q. You have been trying to be appointed
21 successor operator under that JOA?

22 A. Trying to get COG to cooperate with us to
23 operate the properties. I don't specifically
24 remember about the south half of Section 12. I'm
25 sorry.

1 MS. MUNDS-DRY: Thank you, Mr. Rhodes.

2 That's all the questions I have.

3 HEARING EXAMINER EZEANYIM: Rebuttal?

4 FURTHER EXAMINATION

5 BY MR. BRUCE:

6 Q. Just a few questions for you, Mr. Rhodes.

7 Now, did you attend the meetings with the
8 BLM?

9 A. Yes, I did.

10 Q. And there was one in July, correct?

11 A. That's correct.

12 Q. Was there also one a month prior, in June,
13 with the BLM?

14 A. Yes, there was.

15 Q. Now, when you met with the BLM, were the
16 personnel at the BLM aware that Burnett controlled
17 two-thirds of the working interest?

18 A. Yes, they were.

19 Q. So when you talked with them about the
20 unit agreement, they knew you only controlled
21 two-thirds?

22 A. Yes.

23 Q. And did you make them aware that obtaining
24 COG's approval of the unit could be problematic?

25 A. Yes.

1 Q. And then just a couple of questions
2 regarding operatorship.

3 Again, Burnett will be responsible for the
4 lion's share of cost of developing this property,
5 correct?

6 A. That is correct.

7 Q. In the Yeso?

8 A. Yes.

9 Q. And is that one of the reasons why it
10 wants to operate it?

11 A. That's one of the reasons.

12 MR. BRUCE: I think that's all I have,
13 Mr. Examiner.

14 HEARING EXAMINER EZEANYIM: Okay.

15 Mr. Brooks, do you have anything?

16 LEGAL EXAMINER BROOKS: No questions.

17 HEARING EXAMINER EZEANYIM: Let's go back
18 to that Exhibit Number 1, the first page.

19 The two wells right here are the subject
20 of this hearing, right? And then down -- there are
21 two down there, on the south there, is for a hearing
22 on the 26th.

23 THE WITNESS: Of May, yes, sir. That's
24 right.

25 HEARING EXAMINER EZEANYIM: And you are

1 waiting for --

2 THE WITNESS: Waiting for a ruling.

3 That's correct.

4 HEARING EXAMINER EZEANYIM: You're waiting
5 for a ruling on that. Okay.

6 And then one of these two wells, what's
7 happening with this one, the one on the top there,
8 and then the one --

9 THE WITNESS: That's just indicating an
10 approved APD that we've received.

11 HEARING EXAMINER EZEANYIM: Okay. So all
12 of these six wells are awaiting APD --

13 THE WITNESS: Yes.

14 HEARING EXAMINER EZEANYIM: -- from the
15 BLM.

16 THE WITNESS: From the BLM.

17 HEARING EXAMINER EZEANYIM: Have you
18 received also an APD from the OCD? Because, you
19 know, both have to approve them, right? You get an
20 APD from BLM, you still have to get it approved by
21 the OCD. Have any of those six been approved by
22 OCD?

23 THE WITNESS: I would have to defer that
24 question to Mr. Jacoby, who's responsible for
25 obtaining those APDs.

1 HEARING EXAMINER EZEANYIM: Okay. Because
2 I would like to know what is happening with them.
3 Okay?

4 Before you go, those two wells, the one on
5 the top and the one on the middle, there are no
6 proposals yet on that? There isn't an APD?

7 THE WITNESS: That's correct.

8 HEARING EXAMINER EZEANYIM: You haven't
9 proposed it to any working interest on it?

10 THE WITNESS: We proposed the wells.

11 HEARING EXAMINER EZEANYIM: Yeah, but to
12 who?

13 THE WITNESS: To the working interest
14 owners.

15 HEARING EXAMINER EZEANYIM: Okay.

16 THE WITNESS: But we've sent out the well
17 proposals on AFEs for the wells.

18 HEARING EXAMINER EZEANYIM: For those two
19 wells?

20 THE WITNESS: Yes.

21 HEARING OFFICER EZEANYIM: And you are
22 still waiting to see what they say before you know
23 whether to composite the pool or go ahead and drill.
24 I'm talking about the other two wells, the
25 one there in the middle?

1 THE WITNESS: The one in the middle.

2 HEARING OFFICER EZEANYIM: And then the
3 one on top.

4 THE WITNESS: Yeah.

5 HEARING EXAMINER EZEANYIM: You have
6 proposed them and you are still waiting for them to
7 comment?

8 THE WITNESS: That's correct.

9 HEARING EXAMINER EZEANYIM: Including the
10 Concho or COG?

11 THE WITNESS: Yes, including Concho.

12 HEARING EXAMINER EZEANYIM: Okay. Let's
13 go back to the working interest ownership you talked
14 about. That's why I needed to know where it is.

15 Yeah, it's B, 1B. Yeah.

16 When you talk about the Burnett Oil and
17 Zorro partners and Javelina partners, are they, you
18 know, individual independent operators, or are they
19 aligned with the Burnett Oil --

20 THE WITNESS: Yes. Those are -- those --
21 Zorro and Javelina are part of the Hudson family.

22 HEARING EXAMINER EZEANYIM: Zorro and --
23 okay.

24 THE WITNESS: Zorro and Javelina. In
25 fact, both of those principals are here today.

1 HEARING EXAMINER EZEANYIM: Okay. But how
2 does it work? Do both Zorro and Javelina, are they
3 working together with Burnett? I want to see
4 whether they are --

5 THE WITNESS: Yes. They are working
6 interest owners. I mean, they are title owners in
7 that property. And their operating entity is Hudson
8 Oil Company of Texas.

9 HEARING OFFICER EZEANYIM: Okay.

10 THE WITNESS: They are the Hudson family.

11 HEARING OFFICER EZEANYIM: Okay.

12 THE WITNESS: Zorro partners is Bill
13 Hudson, who's here today. Javelina partners is
14 Randall Hudson, who's here today.

15 HEARING OFFICER EZEANYIM: Okay.

16 THE WITNESS: And they separate as Hudson
17 Oil Company of Texas. And Burnett and Hudson have
18 worked together for many, many years and have known
19 each other for many, many years.

20 HEARING EXAMINER EZEANYIM: Okay. So in
21 other words, Burnett is really Burnett/Hudson?

22 THE WITNESS: That's correct.

23 HEARING EXAMINER EZEANYIM: Okay.

24 Let me talk about the confidential --
25 something on that, on this, because you said there's

1 some confidential information you didn't want to put
2 there.

3 Is that relevant to this case? If it is,
4 is it possible for me to see them? I mean you said
5 that, because you are telling us that there is some
6 confidential information not included here.

7 Well, I'm not part of the, you know -- you
8 know, the struggle. If that would help me, is that
9 possible that I see it?

10 MR. BRUCE: Well, Mr. Examiner, I think
11 the parties had some meetings. And I know there
12 have been, at least for some of the meetings, a
13 confidentiality agreement among the parties.

14 And, furthermore, they -- there are
15 certain things that they just have agreed to --

16 HEARING OFFICER EZEANYIM: Not to --

17 MR. BRUCE: -- not to discuss. And I
18 don't think there's any -- I don't think it's
19 material to the ruling.

20 HEARING EXAMINER EZEANYIM: Okay. Now
21 that I know that, I don't actually want to see it.

22 Okay. Now, there was a mention that COG
23 proposed 47 vertical wells, right? Was that 47
24 vertical wells -- or something that you were asked
25 about.

1 THE WITNESS: COG or Burnett?

2 HEARING EXAMINER EZEANYIM: Well, who
3 proposed 47 vertical wells? Maybe I --

4 THE WITNESS: 47 vertical wells.

5 HEARING EXAMINER EZEANYIM: Was proposed
6 by who?

7 THE WITNESS: By Concho.

8 HEARING EXAMINER EZEANYIM: By Concho, in
9 what area?

10 THE WITNESS: In this four-section area.

11 HEARING EXAMINER EZEANYIM: In this
12 four-section area they proposed that.

13 What year did they propose that?

14 THE WITNESS: I'm sorry?

15 HEARING EXAMINER EZEANYIM: What time did
16 they propose that?

17 THE WITNESS: It's on the chronology. We
18 received 32 of those on January 24th of 2011.

19 HEARING EXAMINER EZEANYIM: Okay. Let me
20 get to that. What page is that?

21 MR. BRUCE: The first page, Mr. Examiner.

22 HEARING OFFICER EZEANYIM: Okay. The
23 first page on the --

24 THE WITNESS: On January 24th of 2011. It
25 says that BOCI and Hudson received 32 well proposals

1 from COG on the Maljamar leases.

2 HEARING OFFICER EZEANYIM: Okay.

3 THE WITNESS: The Maljamar leases are the
4 four sections that we are looking at here.

5 HEARING EXAMINER EZEANYIM: Okay. Now
6 that we're on the Maljamar leases, what do you call
7 the Taylor unit?

8 THE WITNESS: The Taylor Draw unit?

9 HEARING EXAMINER EZEANYIM: Yes. What is
10 that?

11 THE WITNESS: That's three sections.

12 HEARING EXAMINER EZEANYIM: Those sections
13 are the Taylor Draw unit?

14 THE WITNESS: Maljamar is Sections 12, 13,
15 24, and 25, those four sections.

16 HEARING OFFICER EZEANYIM: Okay.

17 THE WITNESS: The Taylor Draw takes in the
18 top three, 12, 13, and 24.

19 HEARING EXAMINER EZEANYIM: Okay. It's
20 important that I understand that. Okay.

21 Now, let's go back there. On that 24 --
22 January 24th of this year, they proposed 32 wells,
23 right?

24 THE WITNESS: 32 wells.

25 HEARING EXAMINER EZEANYIM: They're

1 talking about 52 million. Okay.

2 Now, when did they propose the rest? They
3 proposed the rest -- 47 minus 32 is about 15.

4 THE WITNESS: Then we received -- if you
5 look down on February 17th of 2011, Burnett/Hudson
6 received seven more well proposals from COG.

7 HEARING EXAMINER EZEANYIM: Yes.

8 THE WITNESS: And eight well proposals for
9 wells in the north half of Section 12. So that's --
10 15 plus 32 equals 47.

11 HEARING EXAMINER EZEANYIM: Okay. Okay.
12 I see. And now I -- of course you didn't agree.

13 THE WITNESS: No.

14 HEARING EXAMINER EZEANYIM: Okay. And
15 you're then saying that -- those are vertical wells,
16 are they not?

17 THE WITNESS: That's correct. Yes, they
18 are.

19 HEARING EXAMINER EZEANYIM: And you said
20 now, on top of proposing that, what you're trying to
21 say, after proposing 47, and they are divided into
22 being able to drill vertical wells, is that what you
23 are saying? What is your point by doing this?

24 THE WITNESS: What is their point by --

25 HEARING EXAMINER EZEANYIM: No, you, your

1 point. What are you trying to tell me about these
2 47 wells that you are proposing?

3 THE WITNESS: Well, I think we started out
4 by proposing two wells to them, to -- to start the
5 program way back on January 20th of 2011.

6 HEARING OFFICER EZEANYIM: Uh-huh.

7 THE WITNESS: And instead of being able to
8 cooperate, instead of them agreeing that Burnett,
9 who has operations in the area and has the largest
10 interest, instead of saying, "Okay. We will approve
11 your AFEs and let's go ahead and get this drilled,"
12 they immediately came back to us with 32 and 15
13 within a short period of time. And it just looked
14 to us like they were trying to bulldoze us with the
15 number of wells. So we --

16 HEARING EXAMINER EZEANYIM: Go ahead.
17 Make your statement.

18 THE WITNESS: I've made my point there.

19 HEARING EXAMINER EZEANYIM: Okay. Very
20 good.

21 On your request for your overheads, what's
22 the depth of these wells, the vertical wells that
23 you suggest?

24 THE WITNESS: The depth? I've got it on
25 the AFE here. Just one second. 7,200 feet. 71-

1 7,200 feet.

2 HEARING EXAMINER EZEANYIM: Okay. And
3 they're in the Yeso formation?

4 THE WITNESS: Yes.

5 HEARING EXAMINER EZEANYIM: Who knows
6 that? Anyway, I'll find out, because somebody will
7 have to tell me where this depth is, since you only
8 agree that it's approximate.

9 MR. BRUCE: Mr. Examiner, this is commonly
10 referred to as the Yeso, but I think our next
11 witness will give you the elements of that
12 formation.

13 HEARING EXAMINER EZEANYIM: Yeah. I would
14 like to see that.

15 And I would also like to know if the OCD
16 approves the six APDs.

17 THE WITNESS: Mr. Jacoby will answer that,
18 yes.

19 HEARING EXAMINER EZEANYIM: Okay.

20 And it is my understanding that the Taylor
21 Draw unit includes those three sections, 12, 13, and
22 24, right? That's the Taylor Draw unit?

23 THE WITNESS: The Taylor Draw unit is 12,
24 13, and 24.

25 HEARING EXAMINER EZEANYIM: Okay. Very

1 good.

2 Okay. Does anybody have any other
3 questions for this witness?

4 MS. MUNDS-DRY: I have a follow-up on a
5 question you asked, Mr. Ezeanyim.

6 HEARING EXAMINER EZEANYIM: Okay. Go
7 ahead.

8 FURTHER EXAMINATION

9 BY MS. MUNDS-DRY:

10 Q. Mr. Rhodes, you indicated -- Mr. Ezeanyim
11 asked you -- that you got all of these vertical well
12 proposals from Concho, and you said it was the 41 or
13 42 total.

14 And I believe your comment was you felt
15 like you got -- Burnett felt like they were being
16 bulldozed by the vertical well proposals.

17 At the last -- on the March 3 meeting that
18 you had, which was not confidential as we have
19 discussed, what was the proposal that Concho brought
20 to you? How many wells did Concho agree to have be
21 drilled?

22 A. I am afraid I don't have that, and I don't
23 specifically remember the answer to that.

24 Q. Wasn't it four this year?

25 A. It could have been, yes.

1 Q. And didn't Concho agree to let Burnett
2 operate those four wells?

3 A. With strings attached, yes.

4 Q. Okay. There's negotiations, there's
5 compromise. You agree there's give and take when
6 you have these kinds of discussions? Yes?

7 A. That's correct.

8 Q. Coming down from 41 to four is a
9 compromise, is it not?

10 A. Well, it was four this year. It was more
11 than that in the following years.

12 Q. Wasn't it eight in the following year?

13 A. I believe that's correct.

14 MS. MUNDS-DRY: Thank you, Mr. Rhodes.

15 HEARING OFFICER EZEANYIM: Anything
16 further?

17 MR. BRUCE: I have nothing further of the
18 witness.

19 HEARING EXAMINER EZEANYIM: Okay. Very
20 good. You may be excused.

21 And at this point, let's take only a
22 five-minute break.

23 (A recess was taken from 10:25 a.m. to
24 10:39 a.m.)

25 HEARING EXAMINER EZEANYIM: Let us go back

1 on the record.

2 Mr. Bruce, call your next witness.

3 MR. BRUCE: I call Mr. John Haiduk to the
4 stand please.

5 JOHN HAIDUK,
6 after having been first duly sworn under oath,
7 was questioned and testified as follows:

8 EXAMINATION

9 BY MR. BRUCE:

10 Q. Where do you reside?

11 A. Colleyville, Texas.

12 Q. Who do you work for?

13 A. Burnett Oil Company, Inc.

14 Q. What is your job there?

15 A. I am a petroleum geologist. I'm also the
16 geological manager for Burnett Oil Company.

17 Q. Have you previously testified before the
18 division?

19 A. I have.

20 Q. And are your credentials as an expert
21 petroleum geologist accepted as matter of record?

22 A. Yes, sir.

23 Q. And are you familiar with the geology
24 involved in these cases?

25 A. I am.

1 MR. BRUCE: And, Mr. Examiner, I tender
2 Mr. Haiduk as an expert petroleum geologist.

3 HEARING OFFICER EZEANYIM: Any objection?

4 MS. MUNDS-DRY: No objection.

5 HEARING EXAMINER EZEANYIM: Mr. Haiduk is
6 so qualified.

7 Q. (By Mr. Bruce) Mr. Haiduk, if you could
8 refer to the first slide, which I've marked -- this
9 package of exhibits is marked as Exhibit 6, but this
10 is slide A of Exhibit 6. What does that reflect?

11 A. That is a stratographic chart of the
12 northwest shelf area of New Mexico.

13 What I have highlighted in the green at
14 the top is the column that represents the
15 stratigraphy over the Permian -- in the Permian
16 section of the northwest shelf area of New Mexico.

17 And in the red area, the subject of
18 today's pooling hearings, the Glorieta formation.

19 And then the Yeso formation, and the
20 members in descending order of the Yeso formation of
21 the Paddock, Blinebry, Tubb, and Drinkard.

22 HEARING EXAMINER EZEANYIM: Where is the
23 well drilling going to produce on those units?

24 THE WITNESS: The subject of -- in our
25 opinion, the two pay zones are the Paddock and the

1 Blinebry, right now. We have not found production
2 in the Tubb or the Drinkard in the area.

3 HEARING EXAMINER EZEANYIM: In this shelf
4 you can get up to 7,200 feet?

5 THE WITNESS: Yes. Yeah. We're going
6 to -- we'll see it on a type log in just a moment,
7 and it will show you the approximate tops within
8 about 100 feet.

9 HEARING OFFICER EZEANYIM: Okay.

10 Q. (By Mr. Bruce) And what does slide B
11 reflect, Mr. Haiduk?

12 A. That is a regional map covering portions
13 of New Mexico and Texas. It shows the Yeso/Clear
14 Fork productive trends in the Permian Basin. The
15 Clear Fork is the equivalent of the Yeso on the
16 Texas side of this map. And you can see the
17 northwest shelf area is located over here on the
18 western side of the map.

19 And here is the trend of Yeso production
20 that is of interest today.

21 HEARING OFFICER EZEANYIM: Where is the
22 Clear Fork, in relation to the Yeso?

23 THE WITNESS: It's equivalent.

24 HEARING EXAMINER EZEANYIM: Where is that
25 Clear Fork here on this map?

1 THE WITNESS: The Clear Fork is right here
2 at the border. On the Texas side we call it the
3 Clear Fork. On the New Mexico side we call it the
4 Yeso.

5 HEARING EXAMINER EZEANYIM: Okay.

6 THE WITNESS: And on the previous slide
7 you saw a cross-section A-A Prime, which is --
8 basically, this is a diagrammatic shelf-to-slope
9 schematic cross-section demonstrating the position
10 of the Yeso.

11 I've got the Yeso colored here in --
12 tinted in green. You can see it goes basically from
13 the top of the Abo up to the base of the Glorieta.
14 And the Glorieta in this area is only about 40 to 70
15 feet thick, and it is only productive in a handful
16 of wells in the area.

17 Q. (By Mr. Bruce) What does this slide D
18 reflect?

19 A. This is a structure map contoured on the
20 top of the Yeso, and that's what these contours
21 represent. This is a -- I believe it's a 100-foot
22 contour interval on this particular map.

23 And the yellow boxes show where the
24 Burnett leasehold is across the area. The different
25 colored dots -- the red dots indicate the wells that

1 are operated by Burnett Oil Company, Inc.

2 The green dots represent those that are
3 operated by Concho.

4 And then there's a single Yeso well here
5 in Section 12 that is operated by Hudson.

6 There are other operators in the area, in
7 this area, that do have Yeso production, but they
8 are not shown. That's just basically for
9 clarification for this hearing.

10 Actually, I correct myself. The other
11 operators are included. Concho are the -- are in
12 the -- in the green.

13 HEARING EXAMINER EZEANYIM: Mr. Haiduk,
14 can you tell me how many wells have been drilled in
15 Section 13, or that unit, by Burnett Oil Company? I
16 can see a lot of wells. Do you know how many wells
17 have been drilled there?

18 THE WITNESS: In which area, sir?

19 HEARING EXAMINER EZEANYIM: Section 13.

20 THE WITNESS: 13 of --

21 HEARING EXAMINER EZEANYIM: Of, you know,
22 the -- I hope what is the section we are talking
23 about, of 17/30.

24 THE WITNESS: 17/30?

25 HEARING OFFICER EZEANYIM: Yes. Is that

1 not one?

2 THE WITNESS: 17/30 is over here

3 (indicating). It's part of the --

4 HEARING EXAMINER EZEANYIM: No, I'm

5 talking about --

6 Q. (By Mr. Bruce) Mr. Haiduk, the acreage

7 we're here for today.

8 A. Yes.

9 HEARING EXAMINER EZEANYIM: Yeah, the one

10 we are here for today.

11 THE WITNESS: We have not drilled any

12 wells, but we -- in the Yeso -- but we have

13 participated and acted as contract operator for

14 Hudson Oil on several wells in Section 13 recently,

15 the Grayburg-San Andres.

16 HEARING OFFICER EZEANYIM: Okay. The

17 Section 17 plus one. Okay. There are no wells

18 there. Okay.

19 THE WITNESS: Right.

20 HEARING OFFICER EZEANYIM: And the other

21 one is --

22 THE WITNESS: All of our production is

23 over here (indicating).

24 HEARING OFFICER EZEANYIM: Yeah.

25 THE WITNESS: We do have working interest

1 over here, and we're contract operator for Hudson
2 Oil through completion.

3 HEARING EXAMINER EZEANYIM: I saw lot of
4 wells. I thought maybe that area had been developed
5 a lot. But this --

6 THE WITNESS: I think the previous map
7 that you saw, this particular map strips off the
8 shallow wells.

9 HEARING OFFICER EZEANYIM: Oh, okay.

10 THE WITNESS: So this is only for deep
11 wells that penetrate the Yeso formation.

12 HEARING EXAMINER EZEANYIM: Of course --

13 THE WITNESS: There are many, many wells
14 that have been drilled in this area of question
15 today, but they're just shallow wells. And only, I
16 think, four wells --

17 HEARING OFFICER EZEANYIM: Yeah.

18 THE WITNESS: -- have penetrated the Yeso
19 in this yellow area.

20 HEARING EXAMINER EZEANYIM: Yeah, but we
21 are not interested in the shallow wells.

22 THE WITNESS: That's correct.

23 HEARING OFFICER EZEANYIM: We are just
24 interested in the wells that penetrate the Yeso.

25 THE WITNESS: Yes, sir.

1 HEARING EXAMINER EZEANYIM: Okay. Go
2 ahead.

3 Q. (By Mr. Bruce) And, Mr. Haiduk, looking
4 at the area over -- like 17/30 -- what is the
5 structural difference between that area and the area
6 we're here for today?

7 A. The structural style is similar. We're
8 just north of the edge of the northwest shelf. The
9 difference is is that, structurally, we're
10 significantly farther up than the acreage in
11 question today.

12 Q. Okay. So you're going down dip to the --

13 A. We're going down dip from the Loco Hills
14 area down to the Maljamar area.

15 Q. And what does slide E represent?

16 A. This is a blowup of the structure map.
17 This is a very detailed structure map with 10-foot
18 contours on the top of the Yeso. And we constructed
19 this from a 3D seismic survey that we have access to
20 through Hudson Oil Company, for the entire area of
21 12 -- of 12, 13, and 24. And 17/31E is covered by a
22 3D seismic survey.

23 Q. Do you believe that gives Burnett a better
24 handle on the geology in this area?

25 A. I believe that it does, and it's also very

1 critical in terms of, in the future, steering
2 horizontal wells.

3 HEARING EXAMINER EZEANYIM: Normally -- I
4 wanted to make a comment on that, again.

5 Are you saying that the vertical wells and
6 the horizontal wells bears on this geology? Is that
7 what you're saying?

8 THE WITNESS: Based on this geology?

9 HEARING OFFICER EZEANYIM: Yes.

10 THE WITNESS: No, I'm not saying one is
11 better than the other. I'm just saying that in
12 either capacity we are able to optimally pick where
13 we would like to drill, based on the -- with the
14 grade A from this survey.

15 HEARING EXAMINER EZEANYIM: I think that
16 is a good answer.

17 Okay. Go ahead, then.

18 Q. (By Mr. Bruce) And I'm -- excuse me.

19 On the prior exhibit, there's a type log
20 noted on -- just to the west of Section 13, correct?

21 A. Yes, just a few hundred feet away.

22 Q. And is that slide F the type log?

23 A. Yes, it is. This is a log that is made
24 from LAS, or digital data, so we are able to do log
25 analysis on this through -- with that data.

1 I believe you've seen me demonstrate this
2 before on other logs in the area. But we use
3 standard industry formulas, which you will see down
4 here in the burgundy color for generating water
5 saturation and net pay calculations. You'll see the
6 parameters that we've used, so you can go through
7 that.

8 This particular section of the log is the
9 Paddock member of the type log. The top of the Yeso
10 is right here (indicating). The base of the Paddock
11 member is in green, right here (indicating).

12 Resistivity is here (indicating). Gamma
13 ray is here (indicating), depth track.

14 This (indicating) is the density neutron
15 curves. And what we've colored here in red is
16 greater than 3 percent density porosity.

17 This gives us both volume of water in this
18 (indicating) column, and then we generate a water
19 saturation curve here (indicating).

20 So what you see in the brown and the
21 yellow right through here (indicating) is footage,
22 reservoir footage, that is net pay. That is less
23 than 40 percent water saturation. So we think those
24 are the optimum zones to complete in.

25 However, we're still -- the only thing I

1 would like to point out here is in the lower
2 Paddock. We've noted throughout this area of the
3 Maljamar area that many operators avoid this
4 particular area right through here (indicating).
5 And based on the log analysis, we can see why.
6 There doesn't appear to be a whole lot of net pay,
7 and it appears that if you did try to produce it,
8 there may be a high water cut.

9 But what we would like to know is, how do
10 you test that individually? We like to set casing
11 on vertical wells, go ahead at some point and
12 perforate this, acidize it, and then start pumping
13 it and see what kind of a hydrocarbon cut we get.

14 We think that there's a potential that you
15 may have had a lot of hydrocarbons left behind
16 there. And this is one of the critical parameters
17 in doing vertical well testing, like we do over in
18 our Loco Hills area.

19 We test each zone individually as we go
20 up. We don't perforate and frac a thousand feet of
21 Blinbry section and then flow it back all together
22 and then commingle with the Paddock. We do the
23 individual sections first. We do two over there.

24 Once that goes to noncommercial or near
25 noncommercial, or we are at a point where we can no

1 longer pump it efficiently without adding the
2 Paddock to it, then we go ahead and move up to the
3 Paddock and later commingle it.

4 HEARING EXAMINER EZEANYIM: Yeah. Which
5 operators are going after that?

6 THE WITNESS: Well, you can see Chevron
7 here has perforated this, and we have seen other
8 operators that avoid this particular zone as well.

9 And it may be -- it may be very relevant
10 to do that, but we're not seeing enough testing to
11 tell us that that's the prudent thing to do.

12 HEARING EXAMINER EZEANYIM: Well, what is
13 your cutoff porosity?

14 THE WITNESS: The cutoff porosity here is
15 3 percent.

16 HEARING EXAMINER EZEANYIM: And what is
17 the highest porosity you see?

18 THE WITNESS: I think you can see some
19 spikes out to 14 and 17 percent. We've got some
20 core data, sidewall cores and some hole core data,
21 where we've seen some 17 percent porosity.

22 HEARING EXAMINER EZEANYIM: Any idea of
23 variability?

24 THE WITNESS: It's highly variable. We
25 can see as much as 22 millidarcies down to .0 --

1 down as low as you can measure it, .01 or less.

2 HEARING EXAMINER EZEANYIM: Boy, you can
3 get up to 14 MD here?

4 THE WITNESS: Pardon me?

5 HEARING OFFICER EZEANYIM: You can get up
6 to 14 MD?

7 THE WITNESS: In certain areas, you can
8 get some -- there's some nice zones in the
9 intergranular porosity zones. You can get some good
10 permeabilities.

11 HEARING EXAMINER EZEANYIM: I think I've
12 heard some others, depending on what shear you're
13 talking about.

14 THE WITNESS: The average porosity is
15 going to be on the order of 7 to 9 percent.

16 HEARING EXAMINER EZEANYIM: And the
17 permeability?

18 THE WITNESS: It's going to be less than a
19 millidarcy.

20 HEARING EXAMINER EZEANYIM: Okay. That's
21 interesting.

22 Okay. Go ahead.

23 Q. (By Mr. Bruce) And what is this next
24 slide?

25 A. That is the same log that you previously

1 saw, but this is the Blinebry member of that.

2 Just a quick look at it, and you can see,
3 again, we've got the gamma ray here (indicating),
4 the resistivity here (indicating), the density
5 neutron with the greater -- less -- greater than
6 3 percent density porosity colored in red.

7 And you can see just a quick look at it,
8 but there's not near as much net pay in this
9 particular section of it that there is in the
10 Paddock member.

11 And that's pretty typical across the
12 entire area, but it is -- it does have a lot more
13 thickness of this particular member than the other.
14 So that probably helps overcome some of the
15 limitations you might have on production.

16 HEARING EXAMINER EZEANYIM: What is your
17 opinion of Paddock and Blinebry? Which one produces
18 more? Do you have an idea?

19 THE WITNESS: Of what, again, sir.

20 HEARING EXAMINER EZEANYIM: In this area,
21 what is your -- if you -- let's say Burnett asks you
22 which one is better production, would it be Paddock
23 or the Blinebry? Which one is better?

24 THE WITNESS: In this particular area, I
25 don't really know yet. We haven't done the testing,

1 we haven't done the slickwater fracs.

2 We know that over in the Loco Hills area,
3 when we started slickwater fracking the Blinebry, it
4 was commercial. If we just acidized it, which we
5 did on several wells, it was not commercial, and we
6 just moved up to the Paddock. But if we frac it,
7 it's commercial.

8 HEARING EXAMINER EZEANYIM: Okay.

9 THE WITNESS: It does vary across the
10 area, so we're not -- we do understand that there is
11 Blinebry production here, and we do understand
12 there's some good wells, by looking at the
13 production, some decent wells in the Blinebry. So
14 we'd just like to test it individually and determine
15 which zones are best to target and to treat -- how
16 to treat them.

17 HEARING EXAMINER EZEANYIM: Okay.

18 Q. (By Mr. Bruce) Finally, Slide H,
19 Mr. Haiduk. And as you're going through this, could
20 you explain to the Examiner how Burnett's plan of --
21 of completing these wells and testing these wells is
22 critical to a future plan of development for this
23 area from a geological standpoint?

24 A. It's just critical to determine which
25 zones in the Paddock and which zones in the Blinebry

1 might be tight, might be wetter, might be highly
2 permeable, low permeable, what type of matrix that
3 you are looking at.

4 Molded porosity, we're finding out, is not
5 a real good producer. We like to find the
6 intergranular porosities, the dolomites.

7 That doesn't say that we can't produce the
8 molded porosity, but we'd like to -- we'd prefer --
9 we're seeing better results from the -- from the
10 intergranular porosity.

11 So what we would like to do on our
12 vertical wells, and what we've done over in the Loco
13 Hills area, we have run such things as image logs,
14 including FMI, what's called -- our image log is
15 called an FMI for Schlumberger, XRFI for
16 Halliburton, or STAR Log for Baker.

17 And we want to get fracture orientation,
18 fracture type, whether they are open, healed, or
19 drilling-induced, and the fracture frequency.

20 In the future, of course, what we're going
21 to show you is that Burnett has drilled horizontal
22 wells, numerous horizontal wells, in the Yesso in the
23 Loco Hills area. We've run these logs in vertical
24 wells to determine what was the best orientation, so
25 we need to get a stress field.

1 By doing that, we can run what's called a
2 sonic scanner on an advanced Dipole Sonic, which
3 helps with stress field orientation, to find out if
4 we are drilling north/south, which we have been
5 doing. That's the best way over the Loco Hills
6 area, we believe. But we might need to vary that a
7 little bit to get the optimum drainage and intersect
8 the right amount of fractures that might be
9 enhancing the productivity of this reservoir.

10 Again, coring. We initially -- in our
11 vertical program with this particular area, we like
12 to drill rotary sidewall cores, and then we would
13 move it on after a full analysis sweep and
14 production testing of select targets for
15 conventional coring. Because, basically, we don't
16 want to waste -- coring is very expensive when you
17 conventionally core. We don't want to waste any
18 money, when we can get information from the sidewall
19 cores, and then target the zones that we really
20 think are the best targets for the conventional
21 coring.

22 Microseismic, we already microseismic in
23 other plays across the country with Burnett as
24 operator and as a non-op, so we have a significant
25 amount of experience with that.

1 We have not run any microseismic in the
2 Loco Hills/Maljamar area, but we do plan on doing
3 that. In our plan of development, we hope to drill
4 our first horizontal wells next to our vertical
5 wells so that we can -- we can do some microseismic
6 testing on the treatments that we do in our first
7 horizontal wells.

8 And again, what I mentioned to you before
9 is, in our production testing, we like to test these
10 zones individually, and it's going to be real
11 critical in terms of targeting horizontal zones.

12 And one thing that's not on here, because
13 it's not a vertical well test, but in our horizontal
14 wells, in some of our first horizontal wells, we
15 would like to open-hole log the horizontal section
16 through through-bit technology, where we can get a
17 resistivity, a density neutron, and a sonic log
18 throughout the entire drilling interval open-hole
19 log, which is beginning to become a norm in many of
20 the plays across in the United States. We haven't
21 heard of that going on in this particular area yet.

22 Q. Mr. Haiduk, in your opinion, is drilling
23 these initial vertical wells in this area, and
24 taking this type of data, critical to developing the
25 best plan of development for these three sections?

1 A. We're a small company. We don't like to
2 waste money, so it is very critical you get the
3 right zones and get the right performance. Because
4 if we get more money coming back, we can drill
5 more -- drill more development wells, and we want to
6 drill more development wells as we continue on. So
7 good results get you more good results.

8 Q. And our next witness will discuss the
9 results of Burnett wells to the west.

10 A. Yes, Mr. Jacoby.

11 Q. Are slides A through H, part of Exhibit 6,
12 prepared by you or under your supervision?

13 A. Yes, sir.

14 Q. In your opinion, is the granting of
15 Burnett's applications and the denial of COG's
16 applications in the interest of conservation and the
17 prevention of waste?

18 A. Yes, sir.

19 MR. BRUCE: Okay.

20 Mr. Examiner, I would move the admission
21 of Exhibit 6.

22 MS. MUNDS-DRY: No objection.

23 HEARING OFFICER EZEANYIM: Exhibit 6 will
24 be admitted.

25 HEARING OFFICER EZEANYIM: Okay. Cross,

1 Ms. Munds-Dry?

2 MS. MUNDS-DRY: Thank you, Mr. Examiner.

3 EXAMINATION

4 BY MS. MUNDS-DRY:

5 Q. Mr. Haiduk, I'm looking at your structure
6 map, if we could turn to that slide.

7 A. (Witness complies.)

8 Q. I believe you told me before that this is
9 a computer-generated structure map.

10 A. Well, no. This was -- I worked with our
11 geophysicist, Terry Durham, to generate this map.
12 And once he -- once we -- he, mostly, but then me
13 going over it with him -- has picked his Yeso top,
14 which is very small grids. I mean, these are like
15 200- to 300-foot boxes. We have got a data point
16 every 200 to 300 feet, and then it's contoured based
17 on that.

18 Q. Contrary to -- it's a software program?

19 A. Right, but it's not very interpretive when
20 you've got these very small -- basically pixels --
21 to generate. Because at every point, every
22 cross-point you have a data point.

23 Q. Okay. In Section 12, you have the well
24 control unit, the Knockabout?

25 A. Yes.

1 Q. In your opinion, does this sort of tight
2 contouring in here, would that well control point
3 maybe affect that tight area there?

4 A. The data was honored through that. But
5 really and truly, the 3D survey, what we found here
6 and all of the other plays where we were shooting
7 data, is that -- you know, you don't have to
8 interpret between wells any longer. You have all of
9 these data points every 200 to 300 feet away from
10 the wells, between wells, that help you to interpret
11 that, so there's not as much guesswork anymore.

12 It has kind of changed in the last 28
13 years since I started doing this.

14 Q. Okay. You mentioned you have 3D seismic
15 over these three sections.

16 What kind of information does that give
17 you?

18 A. It basically gives us -- it gives us
19 structural tops. Of course from that we can glean
20 IsoPak data. We're going to need to go -- the data
21 through here has not been reprocessed in about eight
22 or nine years. We do need to go through the
23 exercise of getting it reprocessed, to see what we
24 can see in terms of porosity developments.

25 The surveys that are shot, the 3D surveys

1 that are shot correctly -- and, of course, that's
2 depending on the rocks, as well, and how much
3 porosity they have -- you can actually see porosity
4 zones in the rock.

5 I don't believe, at this point, that we
6 have it processed to that degree.

7 Q. With the microseismic, can you use a
8 completed vertical well as a monitor well for
9 microseismic?

10 A. Yes, we just did it.

11 Q. Where did you do that at?

12 A. We did that in the Marcellus, in
13 Pennsylvania.

14 Q. Have you done that here in New Mexico?

15 A. As I stated previously, no, we have not.

16 Q. I'm sorry I missed that.

17 Would you describe the Yeso as
18 heterogeneous?

19 A. Yes.

20 Q. How might the pay differ when you are 100
21 feet from the well than from what -- you know, what
22 you're seeing in the log?

23 A. It depends on -- it depends on the zone.
24 It can vary greatly. But overall, there are trends
25 that you can see. We've noticed in our Loco Hills

1 area that we've got sweet spots that -- maybe half a
2 mile square that may be very -- very similar
3 production characteristics, very similar log
4 characteristics.

5 If we move away from that, we see
6 different pressures on our fracs, treating
7 pressures. We see different porosities, things like
8 that, so it can vary. It can vary.

9 Q. I take it from our previous discussion
10 about how you -- how you create this structure map
11 and using your data points, that you -- you feel
12 pretty confident that there are reserves in the
13 Paddock and Blinebry.

14 A. Yes.

15 Q. It's just a matter of whether -- or how
16 economic they are. Is that a fair statement?

17 A. I -- it's beyond me to calculate the
18 economics right now. I'll leave that to
19 engineering.

20 Q. But you don't see any structural issues,
21 from your review of these three sections, that would
22 indicate that there's not going to be reserves in
23 one of those sections, do you?

24 A. I'm concerned about the southern half of
25 Section 24, yes.

1 Q. The southern half of Section 24?

2 A. More like the southern half southern half.

3 What we're seeing over here in the
4 COG-operated wells is a very, very high water cut.
5 So of the wells that we have to drill vertically,
6 our concern is this particular well may not stand up
7 to being a vertical well. It may be that we want to
8 turn this into a -- which fits our plan of
9 development -- turn that into a horizontal well.

10 Q. And I take it -- I asked this question of
11 Mr. Rhodes. I take it that's why you didn't include
12 Section 25 in your proposed Taylor Draw unit?

13 A. Yeah. The 3D extends on down into that
14 particular area. And we're even more concerned
15 about the northern portions of Section 25 being
16 highly water bearing.

17 Q. But we don't know yet?

18 A. We have a good indication from the COG
19 wells that it's high water cut.

20 Q. Mr. Haiduk, you mentioned, I believe, that
21 you were planning to do some open-hole logging,
22 considering that for your proposed horizontal wells,
23 or planned horizontal wells?

24 A. Uh-huh.

25 Q. Is running radioactive source logging

1 tools in horizontal wells considered risky?

2 A. I'm going to have to defer to the
3 engineering department on that. We've got a witness
4 who has run that many, many times. And in my
5 discussions with the through-bit technology people,
6 I'm going to have to -- I'm going to have to defer
7 to Mr. Rodgers on that when he gets called.

8 Q. Mr. Rodgers?

9 A. Or Mr. Jacoby. Mr. Jacoby is well aware
10 of it, too.

11 Q. So Mr. Jacoby or Mr. Rodgers?

12 A. Yes.

13 Q. Going back to the seismic for a minute,
14 Mr. Haiduk, would open-hole log data be better
15 than -- better quality than the 3D seismic, in your
16 opinion?

17 A. On a localized basis, absolutely. You are
18 measuring a very small area every few inches. It's
19 much finer -- finer data.

20 Q. You said that you thought that the
21 vertical well needed to be drilled to give you the
22 information you need to better develop this
23 property, something along those lines?

24 A. Yes.

25 Q. Don't those vertical wells interfere with

1 your proposed horizontal wells?

2 A. Not at all. Because as we have done
3 many -- several times over in the -- successfully
4 over in the Loco Hills area, if we decide -- we run
5 7-inch casing. I think we discussed this in
6 previous testimony. We run 7-inch casing. We cut
7 windows out of our existing vertical wells and then
8 drill horizontal wells out of it, and have made very
9 commercial horizontal wells.

10 Mr. Jacoby can testify to that fact. He's
11 been directly involved.

12 MS. MUNDS-DRY: Thank you, Mr. Haiduk.
13 That's all I have.

14 THE WITNESS: Thank you.

15 HEARING EXAMINER EZEANYIM: Further
16 questions?

17 MR. BRUCE: I have no more questions.

18 LEGAL EXAMINER BROOKS: No questions.

19 HEARING EXAMINER EZEANYIM: Okay. Good.

20 Mr. Haiduk, how do you spell your name?

21 THE WITNESS: Haiduk.

22 HEARING OFFICER EZEANYIM: H-A-I-D-U-K,
23 right?

24 THE WITNESS: That's correct, sir.

25 HEARING EXAMINER EZEANYIM: Could you tell

1 me the basic difference between the Clear Fork
2 formation and the Yeso formation? Is there any
3 difference between those two?

4 THE WITNESS: Oh, there's reasonable
5 variabilities and permea- -- thickness,
6 permeability, porosity.

7 HEARING OFFICER EZEANYIM: Right.

8 THE WITNESS: You know, we even see it
9 over a short period of -- of distance over in our
10 Section 8 of 17/30, where we think, in this
11 particular area, we have good rock over through here
12 (indicating).

13 We drilled a well here (indicating).
14 That's a very poor well. We logged it, looked at
15 it, went, "Oh, that's low porosity. We're going to
16 go ahead and test it and see how it does," and it
17 has not been a good well.

18 Then when we later came back, even though
19 we had a good well here (indicating) and drilled the
20 B63 well, it looked even worse. And our partners,
21 which is EOG Resources in that well, and I believe
22 Yates, looked at those logs. We discussed it. They
23 said, "Let's not complete the well."

24 So we went up the hole and completed in
25 the Grayburg-San Andres instead.

1 HEARING EXAMINER EZEANYIM: That's in
2 New Mexico.

3 In Texas, has Burnett drilled wells in the
4 Clear Fork?

5 THE WITNESS: Not since I have been there.
6 I have been there for 12 years, so, no.

7 HEARING OFFICER EZEANYIM: Oh. You
8 haven't drilled any wells in Clear Fork?

9 THE WITNESS: Not since I have been with
10 Burnett for 12 years.

11 HEARING EXAMINER EZEANYIM: Okay. So when
12 you do the comparison, how do you get -- how do you
13 compare the Clear Fork and the Yeso?

14 THE WITNESS: I'm not particularly
15 interested in the Clear Fork. Burnett does not have
16 any properties in the Clear Fork in Texas.

17 HEARING OFFICER EZEANYIM: Because it
18 keeps coming up.

19 THE WITNESS: Actually, I apologize. We
20 do have one 800-acre tract in Crane County, Texas,
21 where we do produce from the Tubb section.

22 HEARING OFFICER EZEANYIM: Okay.

23 THE WITNESS: So it is Clear Fork. It's
24 productive in the Tubb. It's not -- it is
25 productive in the whole, which I believe is the

1 equivalent to the Paddock/Blinebry member. But the
2 porosities haven't been good in that area.

3 But, again, that's limited to my
4 investigation of 800 acres, plus maybe a couple of
5 square miles around it.

6 HEARING OFFICER EZEANYIM: Okay. Very
7 good. And let's go back to the New Mexico, because
8 I am not interested in Texas.

9 What is the average net pay of their
10 completions?

11 THE WITNESS: Average net pay in the --

12 HEARING OFFICER EZEANYIM: Yes, in the
13 average good well.

14 THE WITNESS: Based on these parameters --
15 this is just over in this particular area?

16 HEARING OFFICER EZEANYIM: Yes.

17 THE WITNESS: Based on the parameters that
18 I've used, I would say your average net pay is going
19 to be 90 to 150 feet in the Paddock, over in the
20 Maljamar area.

21 HEARING EXAMINER EZEANYIM: Okay. How
22 many wells has Burnett drilled in this -- in the
23 Yeso -- actually, in the Yeso formation?

24 THE WITNESS: Total?

25 HEARING EXAMINER EZEANYIM: Yes.

1 THE WITNESS: Including the Loco Hills
2 area?

3 HEARING OFFICER EZEANYIM: Yes.

4 THE WITNESS: We are at 97 wells.

5 HEARING EXAMINER EZEANYIM: Burnett has
6 drilled 97 wells. So you like those Loco Hills
7 wells?

8 THE WITNESS: We are very, very pleased,
9 yes, sir.

10 HEARING EXAMINER EZEANYIM: Okay. Good.
11 Now, you said on this 17 South, 32 East,
12 if you look at them -- I don't know what -- the
13 Number 6E. It looks like E.

14 Go to slide E, if you can, on those
15 contour maps.

16 THE WITNESS: (Witness complies.)

17 HEARING OFFICER EZEANYIM: Do you see
18 those wells? Those green dots here are COG wells,
19 right?

20 THE WITNESS: I think these (indicating)
21 are Cimarex wells, and I believe these (indicating)
22 are COG wells.

23 HEARING EXAMINER EZEANYIM: COG wells?

24 Have you studied them and found out that
25 they have high water cuts?

1 THE WITNESS: The wells down on the
2 southwest quarter of Section 19.

3 HEARING EXAMINER EZEANYIM: They are high
4 water cuts?

5 THE WITNESS: They have a high water cut.

6 HEARING EXAMINER EZEANYIM: Approximately
7 how much?

8 THE WITNESS: I'd have to go back and
9 look. I looked at them last week, but they are much
10 higher than the average in this particular area.

11 I would say they're -- I'd say they're
12 much -- down to as little as a 5 percent oil cut.

13 HEARING EXAMINER EZEANYIM: So 95 percent
14 water cut?

15 THE WITNESS: Yes.

16 HEARING EXAMINER EZEANYIM: Okay. Now,
17 why is that?

18 THE WITNESS: Well, we're -- as you can
19 see right here -- and we can show you on the larger
20 map. But you're falling off the edge of the shelf.

21 HEARING OFFICER EZEANYIM: Yeah.

22 THE WITNESS: And so, of course, oil
23 floats on top of water. And you see right here --
24 we see the same situation down in here (indicating).

25 We drilled some wells down in here

1 (indicating) to kind of push the limits of the field
2 south, to see how far we could make commercial
3 wells. And we wound up drilling a couple of wells
4 that made very, very high water cuts. In fact, one
5 of them I don't even think made a show of oil.

6 HEARING EXAMINER EZEANYIM: You know, I'm
7 trying -- I'm sorry I have to ask these questions.

8 THE WITNESS: No, sir, I appreciate it.

9 HEARING OFFICER EZEANYIM: If you look at
10 that there, there are a lot of wells that have been
11 drilled. And if COG is getting a lot of high water
12 cut, they wouldn't -- if they wanted, they wouldn't
13 use this -- I wanted to know what you think.

14 Is this completion practices, completion
15 schemes, or why -- why is it having high water cut?
16 I don't want it --

17 THE WITNESS: I can --

18 HEARING OFFICER EZEANYIM: -- to have high
19 water cut, I have no use for water.

20 THE WITNESS: I can only speak to the
21 geological. I did not study the completions, except
22 to see where they were perforated. Some of those
23 wells were drilled, I believe, by their predecessor,
24 into the Paddock. And then, I think since that
25 time -- and I would ask any COG witness to make a

1 clarification on this later on -- then they come
2 back and started drilling wells in the Blinebry
3 section.

4 And so again, what we're seeing with just
5 a quick look right in this particular area as they
6 push to the south, down structure, which is kind of
7 what -- exactly what we've seen over in our
8 particular area right through here (indicating),
9 we're seeing high water cuts.

10 And from a geologic standpoint, to me,
11 apples to apples, we don't want to go any farther
12 south than that. And that's the reason why we
13 didn't include Section 25 in our potential proposed
14 Taylor Draw unit.

15 HEARING EXAMINER EZEANYIM: Because I
16 just -- okay. Anyway, maybe it will be in my e-mail
17 replies. I want to pull the oil, I don't want the
18 water.

19 THE WITNESS: We don't want water either.
20 We have to dispose of it.

21 HEARING EXAMINER EZEANYIM: Okay. You may
22 be excused.

23 THE WITNESS: Thank you, sir.

24 MR. BRUCE: If I could ask just one
25 follow-up question?

1 HEARING EXAMINER EZEANYIM: Go ahead.

2 FURTHER EXAMINATION

3 BY MR. BRUCE:

4 Q. Regarding that high water cutting in, does
5 that reflect why it's best to do the testing
6 completion, like Burnett wants to do in the first,
7 at least, several wells?

8 A. Yes, because we want to find out which
9 zones are high water cut, or if it's actually very
10 commercial to produce it at a higher water cut, and
11 we don't want to leave reserves behind. So it could
12 go both ways.

13 HEARING EXAMINER EZEANYIM: Exactly.

14 MR. BRUCE: That's all I have, Mr. Haiduk.

15 HEARING EXAMINER EZEANYIM: Okay. You may
16 be excused.

17 Call your next witness.

18 MR. BRUCE: One clean-up point. I don't
19 know if I moved the introduction of the land
20 exhibits.

21 HEARING EXAMINER EZEANYIM: You did. I
22 admitted them.

23 MR. BRUCE: I call Mr. Jacoby.

24 HEARING EXAMINER EZEANYIM: Mr. Jacoby,
25 you have been sworn, so you're still under oath.

1 THE WITNESS: Yes, sir.

2 MARK JACOBY,

3 after having been first duly sworn under oath,

4 was questioned and testified as follows:

5 EXAMINATION

6 BY MR. BRUCE:

7 Q. Where do you reside, Mr. Jacoby?

8 A. I reside in Fort Worth, Texas.

9 Q. Who do you work for, and in what capacity?

10 A. I work for Burnett Oil Company as
11 engineering manager.

12 Q. Have you previously testified before the
13 division?

14 A. Yes.

15 Q. And were your credentials as an expert in
16 petroleum engineering accepted as a matter of
17 record?

18 A. Yes, they were.

19 Q. And are you familiar with engineering
20 matters related to these applications?

21 A. Yes.

22 MR. BRUCE: Mr. Examiner, I would tender
23 Mr. Jacoby as an expert petroleum engineer.

24 MS. MUNDS-DRY: No objection.

25 HEARING EXAMINER EZEANYIM: No objection?

1 Mr. Jacoby is so qualified.

2 Q. (By Mr. Bruce) Mr. Jacoby, let's get some
3 of the -- maybe the introductory stuff out of the
4 way.

5 First of all -- and I've just designated
6 these slides A and B together. What are slides A
7 and B, the first two pages?

8 A. This slide is an AFE of expenditure for
9 the Partition Federal Number 2, one of the wells in
10 question in this hearing.

11 This particular AFE has been updated since
12 these were mailed out back in the end of January or
13 early February. So there's been several costs that
14 have increased since that time. The total for this
15 vertical is \$1,800,000, basically.

16 This AFE, I might add, includes some
17 formation testing that Mr. Haiduk just mentioned.
18 We would plan to do some sidewall cores. We plan
19 also to run an XRMI log in conjunction with the
20 sidewall cores.

21 HEARING EXAMINER EZEANYIM: The one is
22 completed well cost?

23 THE WITNESS: Yes, it is, completed well
24 costs.

25 Q. (By Mr. Bruce) And, again, this is for a

1 vertical well?

2 A. Yes, this is for a vertical well.

3 Q. Is this cost fair and reasonable and
4 comparable to other costs of wells drilled at this
5 depth in this area of New Mexico?

6 A. Yes, sir.

7 Q. What do the next -- what is the next
8 slide?

9 HEARING EXAMINER EZEANYIM: Mr. Bruce, so
10 it will be clear in my mind, I asked the question
11 from the land person who was here answering
12 questions.

13 This AFE is prepared to 7,200 feet?

14 THE WITNESS: Yes, sir.

15 HEARING EXAMINER EZEANYIM: He told me you
16 are going to answer the question. So before I
17 forget, the 7,200 feet, is that in the Paddock or
18 the Blinebry?

19 THE WITNESS: That is probably a little
20 bit deeper. That goes below the Blinebry. We
21 often -- we like to drill --

22 HEARING EXAMINER EZEANYIM: Into the Tubb?

23 THE WITNESS: Into the Tubb, yes, sir.

24 HEARING EXAMINER EZEANYIM: Okay.

25 Q. (By Mr. Bruce) Is slide C the well plan

1 for the Partition Number 2?

2 A. Yes, it is. This is a well schematic. It
3 also shows, although you can see -- cannot see on
4 the slide, but you can see on the paper copy, the --
5 roughly the plan of cementing.

6 We set two strings of casing. We set a
7 surface string at about 600 feet, 10 and
8 three-quarter, and then we would drill to 6,800,
9 7,000, depending on mud logs and the picking of the
10 TV. And we would set 7-inch casing and cement both
11 back to the surface.

12 This also shows our plan at this point.
13 We think we would probably do three fracs, two fracs
14 in the Blinebry, one frac in the Paddock.

15 Q. Is that two in the Blinebry and one in the
16 Paddock, is that a pretty common practice among
17 operators in this area in the Yeso?

18 A. From what I have seen, yes. It's been
19 common for us in our other wells.

20 HEARING EXAMINER EZEANYIM: For my
21 information, Mr. Jacoby, do you circulate your
22 cement all the way to the surface in all your
23 vertical wells?

24 THE WITNESS: Yes, sir, we do.

25 HEARING EXAMINER EZEANYIM: All of them?

1 THE WITNESS: Yes. It's a requirement by
2 the OCD as well.

3 HEARING OFFICER EZEANYIM: Yeah.

4 THE WITNESS: We set a DV tool of 27- or
5 2,800 feet. We pick a point as we drill.

6 HEARING EXAMINER EZEANYIM: I know it's a
7 requirement, but I wanted to see if you -- if you do
8 that.

9 THE WITNESS: Yes, sir, we do.

10 HEARING EXAMINER EZEANYIM: Okay.

11 Q. (By Mr. Bruce) And what is the next
12 slide, slide D?

13 A. This is a drilling and geological
14 prognosis that we send out to the field, the rig,
15 and then, also, we keep in-house to keep us on
16 track.

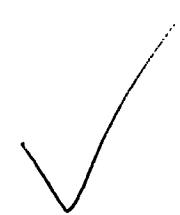
17 The top part of it, this gives the well --
18 the particular well information, the location,
19 et cetera, the API number and so forth.

20 The next segment --

21 Q. Stop right there for a minute.

22 A. Okay.

23 Q. The Hearing Examiner asked this before.
24 Regarding the wells that have permitted -- been
25 permitted with the BLM in these three sections by



1 Burnett, have they also been approved by the
2 division?

3 A. Yes.

4 Q. And they do have API numbers?

5 A. They have API numbers. The six --

6 HEARING EXAMINER EZEANYIM: All the six
7 wells?

8 THE WITNESS: All six wells have API
9 numbers.

10 Q. (By Mr. Bruce) Okay. Sorry for the
11 interruption, Mr. Jacoby.

12 Please go back.

13 A. Okay. Through the heading -- in fact,
14 this shows the API number on this particular well.

15 The next segment are the -- are our
16 estimated tops for various formations, just so we
17 know what to expect as we drill.

18 We have some offset well information, if
19 there is offset wells.

20 The next segment just shows the casing
21 setting, the size of the casing, the setting depths.

22 The next segment shows the mud program --
23 basically, a summary of the mud program. We have a
24 mud company that works with us on the details of
25 that.

1 The next segment is just various
2 information, the primary objective, whether or not
3 we're going to do coring. It shows we would do
4 sidewall coring on this well.

5 And then we list a suite of logs that we
6 would expect to run, so the guys know what to plan
7 for.

8 Mud logging, we mud log all of our wells.

9 And then there's a bottom section that's
10 cut off. It just gives all the pertinent phone
11 numbers for the contacts.

12 Q. Does Burnett do one of these for each of
13 the wells it drills?

14 A. Yes, we do.

15 Q. Let's move on to the next couple of pages.

16 What do the pages E and F -- slides E and
17 F represent?

18 A. These are the same things for the Nosler
19 Federal 3, the other well that is the subject of
20 this hearing.

21 I might point out that this is an AFE that
22 was originally mailed out -- I think it was
23 February 7, I just looked -- to all of the working
24 interest owners. At that time, the AFE cost was
25 1,600,000.

1 Q. This one is slightly lower than the other
2 -- the first AFE. Why is that?

3 A. A couple of reasons. This one did not
4 include the coring and the XRMI. We would not do
5 that on every well. We would do it on some wells.

6 More importantly, the drilling costs have
7 had some increases since the targeted planning of
8 this program. So the drilling cost has gone from
9 9,500 -- at least in our area -- from 9,500 a day to
10 12,000 a day.

11 Q. Is Burnett's AFE for this well fair and
12 reasonable and comparable to the cost of other wells
13 drilled to this depth in this area of the state?

14 A. Yes.

15 Q. And, briefly, what is slide G?

16 A. This slide, again, shows the diagram of
17 the well bore as we were planning to drill it.

18 Surface casing, 10 and three-quarters at
19 about 600 feet, 8 and three-quarter hole TV with
20 7-inch casing cemented back to surface with a DV
21 tool.

22 And then it shows kind of the proposed
23 cementing.

24 Actually on the long string -- I did not
25 mention this -- we always run a caliper so we can

1 fine-tune the cement volumes: And we work with BLM
2 and the folks on fine-tuning the volumes of cement.

3 And then, again, showing the proposed
4 stimulation, the plan as we would think they would
5 be right now.

6 Q. And, briefly, what is slide H?

7 A. It is the geologic and drilling prognosis.
8 I won't detail it as much as the last time, but this
9 gives the plan for -- it gives the well identifier
10 information, the estimated tops, the formations we
11 would penetrate, the casing program, mud program,
12 the miscellaneous information, and then the suite of
13 open-hole logs and all of our contact phone numbers.

14 Q. And the API number is on this slide?

15 A. And the API number is shown on this slide.

16 Q. Okay.

17 HEARING EXAMINER EZEANYIM: Mr. Jacoby,
18 try to speak a little louder so he can understand
19 you. I know you're soft-spoken, but we want to get
20 it on the record.

21 THE WITNESS: Okay. I will. I'll try to
22 be more forceful.

23 Q. (By Mr. Bruce) Now, let's go to the next
24 slide -- several slides, Mr. Jacoby.

25 What is going to be the point of these

1 slides, first off?

2 A. This is a point just to show our
3 completion technique. It also compares it to COG's
4 completion technique. In other words, seeing this
5 slide before, the next slide updates it.

6 But I will say that we picked nine wells
7 of COG, nine wells of Burnett. The reason we chose
8 those, because they were in a pretty close grouping,
9 pretty close proximity to each other. There are
10 more than nine, but we chose nine that were close
11 by, just so we would have nine wells and nine wells,
12 to try to make it as much apples to apples, if you
13 would, on the comparison.

14 The triangles indicate the two wells. We
15 compared the completion of these two wells, a Concho
16 well here (indicating), the Burnett well right here
17 (indicating).

18 Concho's completion, from what I have
19 seen, they typically will do three fracs in the
20 Blinbry at 200-foot blanket perforated intervals,
21 and then they'll move up to the Paddock.

22 From what I can read in the scout tickets,
23 it appears that they frac one, two, three, four, and
24 then they put the well on production, for the most
25 part.

1 As Mr. Haiduk explained, we'll take the
2 log analysis, selective -- select perforations in
3 the Blinebry and then design a frac accordingly.

4 Typically, we will divide that up into two
5 fracs in the Blinebry. We will frac the bottom
6 segment first. We would put it on production
7 because, for one, our volumes are much larger, and
8 we really prefer cleaning the well up. The wells
9 typically do quite well.

10 We'll produce that until the fluid
11 production comes down to a point. We'll move up the
12 hole, complete the next interval, and just do the
13 same thing again in the Paddock.

14 And this also shows a total -- just a
15 comparison on these two jobs, and this seems to be
16 pretty typical.

17 The sand volumes are pretty comparable on
18 this particular well. The Burnett sand volume was
19 750,000-plus pounds of sand. COG was 689,000
20 pounds.

21 But our volume of water is almost 54,000
22 gallons of fluid in three stag- -- for all three
23 stages. Theirs was almost 12,000 barrels of water
24 in four stages.

25 Q. So four and a half -- you used -- Burnett

1 used four and a half times the amount of water?

2 A. Yes.

3 Q. Or fluid, excuse me.

4 HEARING EXAMINER EZEANYIM: Okay. Don't
5 move, because that's important to me.

6 Tell me why the -- using a four-to-one
7 ratio of water is more important.

8 THE WITNESS: We really believe that --
9 the way we design the job, we alternate water and
10 sand in a sweep. The more volume of water contacts
11 the more formation, so we get more rock fracked, a
12 deeper penetration, because of the larger volume of
13 water and the alternating sand and water.

14 HEARING EXAMINER EZEANYIM: What is a
15 typical frac half-length?

16 THE WITNESS: You know, a frac model is an
17 estimation, but approximately 500 feet or so.

18 HEARING EXAMINER EZEANYIM: Okay. You
19 know, this is -- you know, I don't know. It comes
20 with the bulk of something that I'm working on now.

21 But I want to find -- on the left you say
22 is Burnett, right, frac technology? And then on the
23 right is COG frac technology?

24 THE WITNESS: Right.

25 HEARING EXAMINER EZEANYIM: Is there

1 anything wrong with that frac technology on the
2 right, even if they use gel water instead of
3 slickwater? Is there anything wrong with that, from
4 your experience?

5 THE WITNESS: It's a preference.

6 HEARING OFFICER EZEANYIM: It's a
7 preference?

8 THE WITNESS: I have fracked wells that
9 way as well. I prefer this now.

10 HEARING OFFICER EZEANYIM: If you don't
11 have slickwater, would you use that gel water?
12 Let's say you don't have that technology. I know
13 you are writing a paper on that.

14 If you don't have slickwater, would you
15 use that? Is there anything wrong with that?

16 THE WITNESS: There's nothing wrong with
17 that.

18 HEARING OFFICER EZEANYIM: Okay.

19 THE WITNESS: I'm not sure I can answer
20 that question if that would be my choice.

21 HEARING OFFICER EZEANYIM: Yes. That's --
22 I'm trying to establish that, actually, an operator
23 can use whatever fracking technology they want. You
24 know, there are a bunch of them out there. You can
25 use any one of them, and I think it's a matter

1 simply of a business decision whatever you use.

2 I mean, we are here not to recommend what
3 type of frac technology you are going to use.

4 That's not my job.

5 As long as it is presented to us and they
6 are going to do it right, unless they are using a
7 frac technology that is going to do those two
8 things, then that's when I come in. But without
9 that, I have no opinion whatever you use. You can
10 use whatever.

11 And you can use gas, that's one out now.
12 Gas fracking, it is coming up. I don't know if you
13 do that.

14 THE WITNESS: There are several -- I'm
15 sorry.

16 HEARING OFFICER EZEANYIM: There are
17 several -- what do you want to say?

18 THE WITNESS: I was just going to say,
19 there are a lot of things that factor into that, in
20 the cost of the job, the economics.

21 HEARING OFFICER EZEANYIM: Yeah.

22 THE WITNESS: This is water and sand with
23 a little bit of chemical, so it's --

24 HEARING OFFICER EZEANYIM: I know.

25 THE WITNESS: And it has worked very well.

1 HEARING EXAMINER EZEANYIM: I know. I
2 understand. So -- but it's okay.


3 And the point that you are making here is
4 that -- what point -- what are you -- what point are
5 you making here? You know, what point are you
6 making with this?

7 THE WITNESS: I'm just making the point
8 that -- and you will see the production graphs
9 following this -- that this slickwater frac
10 technique has been very successful before.

11 HEARING EXAMINER EZEANYIM: And the
12 production graph you are going to show me is from
13 actual data?

14 THE WITNESS: Yes.

15 HEARING OFFICER EZEANYIM: Okay.

16 Q. (By Mr. Bruce) Is that all on this one, 
17 Mr. Jacoby?

18 A. Yes, sir.

19 Q. What is the next slide, slide G?

20 A. The next slide is just a cross-section,
21 just showing the Paddock across. You see the high
22 porosity. You see the Paddock is very similar wells
23 from the well on our west side of their 160. It
24 goes to the south and then cuts across; just trying
25 to get a cross-section from Burnett to COG and

1 showing a strip along with each one.

2 Q. So the reservoir is present from Burnett's
3 wells across COG's lease and over to the other
4 Burnett well?

5 A. That's correct. Yes. The reservoir looks
6 very -- it's present, and it looks very similar.

7 Q. Okay. You have talked about production
8 comparisons. Is that what slide K shows?

9 A. Yes. Slide K is a 12-month production and
10 GOR comparison, normalizing each of the nine wells
11 back to the first month of production. Just because
12 they have come on at different dates, this
13 normalizes them back to month one.

14 Q. Okay. Now, before you go on, who are the
15 solid lines and who are the dashed lines?

16 A. Okay. The solid lines are COG. The
17 dashed lines are Burnett.

18 The green lines show oil production,
19 barrels of oil per month -- thousands of barrels of
20 oil per month, MBO.

21 The solid lines indicate GOR, the solid
22 red lines. The red lines are GOR.

23 Q. Now, this exhibit has been shown to the
24 hearing examiners before in a slightly different
25 format, correct?

1 A. Correct.

2 Q. What is the change from the prior exhibits
3 to this exhibit?

4 A. The change -- the last exhibit showed the
5 first six months. And since it's been several
6 months, there are -- we added six more months to
7 this slide. It just indicates the trend of the
8 production, of Burnett's production, is fairly flat.
9 This (indicating) is the oil production.

10 Q. And so, number one, this shows that
11 Burnett has better oil production than COG in a
12 comparable area?

13 A. The blue percentage shows they got a
14 percentage higher -- that Burnett's oil production
15 is -- than COG's oil production.

16 Q. And it also shows that Burnett's GOR is
17 lower?

18 A. And Burnett's GOR is lower, yes.

19 Q. And that gold line right in the middle of
20 the chart is the six-month cutoff that the prior
21 exhibits used?

22 A. That's correct.

23 Q. In the six months since, when this exhibit
24 was first prepared, the difference has become even
25 greater than it was for the first six months. Is

1 that correct?

2 A. That's correct. The GOR has increased, it
3 appears, and the oil production has increased. The
4 difference between the two has increased as well.

5 Q. Okay. So in other words, the numbers that
6 showed in the first six months, Burnett's numbers
7 look even better now?

8 A. Correct.

9 Q. What is slide L, Mr. Jacoby?

10 A. Slide L is an attempt to go across three
11 townships. You know, 17/30 is where the Burnett
12 production -- most of our drilling has occurred.

13 The subject of the two wells in this area,
14 they are right on the east edge of 17/31, and then
15 there is some production in this next township in
16 the Maljamar area.

17 This is a comparison of COG EURs across
18 that trend. This analysis was done by a third
19 party, PGH Engineering.

20 They just took a cross-section of wells in
21 17/30 and then a cross-section of wells all the way
22 across to 17/32, for a total of 213 wells. And
23 that -- their analysis showed the average EUR for
24 oil was 66,000 barrels of oil.

25 Q. Per well?

1 A. Per well.

2 Q. Now, this is strictly COG wells?

3 A. These are strictly COG wells.

4 Q. Let's move on to show the results that
5 Burnett is getting in its wells. What does slide M
6 reflect?

7 A. M is for vertical wells only. This
8 analysis was also done by a third party, PGH
9 Engineering. It also breaks out Paddock and
10 Blinebry because of our stimulating them separately
11 and producing them separately.

12 On the left, I knew we did not have a way
13 of breaking out the different stimulation of COG
14 wells, but just took those same 213 wells that were
15 analyzed. Those were stimulated by gel fracs and
16 hot acid fracs. I'm not sure of the number of
17 those, but that average is being shown at 66,000 MBO
18 per well.

19 Early on, Burnett stimulated our Paddock
20 wells with a large volume of gelled water and gelled
21 hot acid. 65 wells were analyzed, and that average
22 was 115,000 barrels.

23 We were not able to make commercial -- as
24 Mr. Haiduk referred to, we were not able to make
25 Blinebry commercial completions with the hot acid

1 jobs.

2 Then we have begun using the slickwater
3 technique, and we analyzed six wells. We have more
4 wells than that now, but we wanted to have, you
5 know, at least six months' production to have --
6 because this was the decline curve analysis.

7 In the Paddock, their determination was
8 that those six wells averaged 100- -- will average
9 149,000 barrels of oil per well.

10 And then we still have 11 wells that were
11 still producing out of the Blinebry only. And that
12 analysis resulted in 157,000 barrels of oil per
13 well.

14 Q. So using the slickwater frac had
15 substantially improved production capabilities in
16 the Paddock?

17 A. Substantially improved in the Paddock,
18 yes.

19 Q. And in the Blinebry, there is really just
20 no comparison?

21 A. That's right.

22 Q. So it looks like if you're looking at
23 those two zones -- and of course it's not on a
24 well-by-well deal. You look at -- if you do that in
25 one well, just from a vertical well, you could get

1 up to 300,000 barrels out of a vertical well?

2 A. That's right. Yes.

3 HEARING EXAMINER EZEANYIM: Did you do
4 this work? Who did this work?

5 THE WITNESS: PGH Engineering.

6 HEARING OFFICER EZEANYIM: Who is PGH?

7 THE WITNESS: A firm -- the principal is
8 Raymond Gore out of Austin.

9 HEARING OFFICER EZEANYIM: You didn't do
10 this yourself?

11 THE WITNESS: He did this for us.

12 HEARING EXAMINER EZEANYIM: Oh, you
13 requested for them to do it for you and they did it?

14 THE WITNESS: Yes.

15 Q. (By Mr. Bruce) Mr. Jacoby, Mr. Gore
16 testified in the prior rulings hearing, correct?

17 A. Yes. Yes, he did.

18 HEARING EXAMINER EZEANYIM: Okay. Yeah, I
19 think I remember. Okay.

20 Q. (By Mr. Bruce) Let's go -- and the
21 Hearing Examiner did ask about the water cut.

22 What does this map reflect?

23 A. This map reflects, basically, the trend in
24 the water cut across these three townships. The
25 purple outline is basically Burnett-operated wells.

1 That average water cut -- this -- we used IHS data,
2 just went out to public information, so that the
3 exact same data was used across this trend.

4 The wells outlined in purple have a little
5 over 77 percent water cut.

6 The producing wells on the west side of
7 this Maljamar area, plus two sections here on the
8 east side that are shaded in blue, a total of 146
9 wells, that number was almost 85 percent water cut.

10 Q. So there is a measurable difference
11 between the two areas?

12 A. There is. There is. It seems to trend.
13 There is a trend in higher water cut as you go down
14 structure, as Mr. Haiduk referred to.

15 Q. Is that a reason to be careful when you
16 are drilling and testing the initial wells in this
17 area?

18 A. Yes. Yes, it is.

19 Q. If you will go to slide O.

20 HEARING EXAMINER EZEANYIM: Before you go,
21 who -- who drilled those wells that have high water
22 cuts? Who drilled those wells that have high water
23 cuts?

24 THE WITNESS: Mr. Haiduk and I worked
25 together on those. We just picked wells out of

1 our --

2 HEARING EXAMINER EZEANYIM: Who drilled
3 them?

4 MR. BRUCE: Who drilled?

5 HEARING OFFICER EZEANYIM: Who drilled
6 them?

7 THE WITNESS: Who drilled? I'm sorry.
8 I'm sorry.

9 Burnett drilled the wells outlined in
10 purple.

11 HEARING OFFICER EZEANYIM: Okay. They
12 have 77 percent water cut?

13 THE WITNESS: Right.

14 HEARING EXAMINER EZEANYIM: And then who
15 drilled them? What color is that? I am colorblind.

16 THE WITNESS: That is blue. I'm
17 colorblind too. They laugh at me when I say the
18 colors. They told me it was purple.

19 HEARING EXAMINER EZEANYIM: Okay. Who
20 drilled those wells?

21 THE WITNESS: COG and Cimarex and probably
22 some Marbob predecessor drilled some of those.

23 HEARING EXAMINER EZEANYIM: Do you think
24 it's geology that caused the high water cut, or is
25 it production practices? I want to understand why

1 you think -- this one is at 77.6 and this one is at
2 84, because -- that's the format I'm getting at. Is
3 it because of production practices, or because
4 you're going down dip?

5 THE WITNESS: I think the big point here
6 is we are going down dip, and it gets wetter.

7 HEARING EXAMINER EZEANYIM: So it's not
8 really the production practices?

9 THE WITNESS: That's not the point here.
10 And, no, I would not say that.

11 HEARING OFFICER EZEANYIM: Okay.

12 THE WITNESS: But it does say we have to
13 be very careful about our production practices.

14 HEARING EXAMINER EZEANYIM: Yes. And that
15 being what? What are you being careful about?

16 THE WITNESS: Just evaluating and knowing
17 where water is and where you will get increased
18 water cut. That we need to drill verticals and have
19 a very good understanding where the water
20 transitions from -- into higher water cuts.

21 HEARING EXAMINER EZEANYIM: Okay. Fine.

22 Q. (By Mr. Bruce) And, Mr. Jacoby, would
23 the -- do you think the selective perforations that
24 Burnett does, would you be better able to evaluate
25 the water cut and control the water cut in your

1 wells than the -- kind of the blanket perforating
2 and fracking that COG does?

3 A. Yes. Yes, I believe so.

4 Q. Okay. Let's talk a little bit about
5 horizontal wells, Mr. Jacoby.

6 And there's a couple of plats showing
7 horizontal wells and operations.

8 What is this first one? This is slide O.

9 A. This slide shows, I believe, all of the
10 horizontal Yeso wells in these three townships that
11 have been drilled by these -- by any operator. It
12 turns out it's four operators.

13 Q. And Burnett has about two-thirds of the
14 wells that have been drilled horizontally on there?

15 A. That's right. Burnett has drilled 12 of
16 the horizontals in the Yeso.

17 Apache has drilled one which, actually, I
18 think -- I know it was drilled by Marbob, that
19 Apache now operates it.

20 Cimarex has drilled two wells right here.

21 COG has drilled four: Three in Paddock
22 and one in the Blinebry.

23 Q. First of all, on this, the wells are not
24 -- the horizontal wells -- there's no standard up
25 here as to the length of the horizontals at this

1 point, correct? Some are 80, it looks like some are
2 120, and there's a couple that are 160?

3 A. That's correct.

4 HEARING EXAMINER EZEANYIM: So in that two
5 sections -- I mean in that two townships -- these
6 are the total number of the horizontal wells drilled
7 by operators?

8 THE WITNESS: Yes.

9 HEARING EXAMINER EZEANYIM: In those two
10 townships?

11 THE WITNESS: We have shown three
12 townships. But, yes, they are all --

13 HEARING EXAMINER EZEANYIM: Yeah, but the
14 third one doesn't have any --

15 THE WITNESS: That's correct.

16 HEARING EXAMINER EZEANYIM: Okay.

17 Q. (By Mr. Bruce) What does this next slide
18 show?

19 A. This just narrows it down so you can see
20 the wells a little bit better in those two
21 townships.

22 The ones in this township are actually
23 right on the west end of that township adjacent to
24 the -- most of the wells -- most of the horizontal
25 wells have been drilled in 17/30, 12 of them by

1 Burnett, and then Burnett operated them.

2 Q. And what does this slide Q show?

3 A. Slide Q just shows the results and what
4 we've realized through our completion of the Yeso
5 wells.

6 Actually, the first three wells that we
7 drilled, two of them were window cuts and they were
8 uncemented casing. They're open-hole completions,
9 these two wells.

10 This well is an open hole completion as
11 well.

12 PGH, again, did the EUR valuation on all
13 of these wells. This shows the MBO, the gas cum.
14 The MBOE is in the range of 120,000 on those two.
15 This well was a better well.

16 All of these wells have been stimulated
17 with large volumes of hot acid.

18 We then started -- we were not quite as
19 pleased with this. Actually, my predecessor began
20 cementing the lateral with -- began with 5 and a
21 half casing, and then we split to 7-inch casing
22 because of producing the wells.

23 Our results were dramatically better. You
24 see our EUR has ranged from 240 to one at 531 MBOE.
25 All of these were drilled in the Paddock.

1 Q. So the cemented casing completion is, in
2 Burnett's opinion, much superior to the uncemented?

3 A. Yes. Yes, in our opinion, it is. It has
4 worked much better for us.

5 These are approximately 2,000-foot
6 laterals on mostly 80-acre units.

7 Q. Most of Burnett's have been 80-acre
8 laterals?

9 A. Most of them have, yes.

10 Q. And at least with the cemented ones, they
11 definitely look commercial?

12 A. Yes.

13 Q. Okay. Let's get into the Taylor Draw
14 unit. And, actually, this slide was included in the
15 land plat exhibit, so I don't know if we really need
16 to get into this much.

17 But this does reflect the Taylor --
18 proposed Taylor Draw unit, correct?

19 A. Right. I might add, this shows the
20 subject of the first two hearings.

21 Q. Uh-huh.

22 A. This shows the subject of the current
23 hearing, today's pooling hearing.

24 It also shows the six APD's -- the six
25 wells that we have APDs for.

1 It shows two diamonds marked in yellow
2 that we have approval -- approved on-sites with the
3 BLM. And we have just received the plats, and we'll
4 be filing for APDs on those two.

5 Q. Now, this has been discussed. But,
6 certainly, Burnett is considering future horizontal
7 wells?

8 A. When I -- I did not mention it on that
9 last slide. Then our thought -- and I know it's
10 been mentioned before. We would drill several
11 verticals at first to evaluate the reservoir. And
12 then our thought would be to begin with probably
13 three horizontals that were close to where we've got
14 good formation evaluation.

15 So that -- then we would move -- that's
16 why we show the AFE for the horizontal.

17 HEARING EXAMINER EZEANYIM: Okay. So
18 before you go, your intention of that slide, you'll
19 drill six wells and then you decide what your
20 horizontal -- what the orientation would be, whether
21 north/south or east/west, where you are going to get
22 the greatest amount of production.

23 Is that what you are trying to do?

24 THE WITNESS: We would drill verticals.
25 We may not drill all six verticals.

1 HEARING OFFICER EZEANYIM: Okay.

2 THE WITNESS: We would probably drill four
3 verticals and evaluate to see if we need another
4 vertical or so. But we would plan to drill these
5 verticals. There are six verticals that we would
6 plan to drill, and then drill three horizontals.

7 HEARING EXAMINER EZEANYIM: In each
8 section?

9 THE WITNESS: Yes, one in each section.
10 That's our --

11 HEARING EXAMINER EZEANYIM: One horizontal
12 in each section?

13 THE WITNESS: One in each section. That's
14 the way we envision it at this point, pending the
15 evaluation of the six verticals.

16 Q. (By Mr. Bruce) And I think you'll get
17 into this a little bit more, Mr. Jacoby.

18 But the plan of development is still
19 preliminary, because you're uncertain of the results
20 you'll get in the initial wells?

21 A. That's correct. This is a preliminary
22 plan.

23 Q. Now, with respect -- moving to slides S
24 and T, what do these slides reflect?

25 A. These slides reflect an AFE to drill a

1 160-acre horizontal, which would result in about a
2 4,600 feet effective frac length in the pay zone.
3 Completed well costs we estimate at about
4 \$2.6 million.

5 Q. And you have drilled the most horizontals
6 in this area, so do you believe that you have a good
7 handle on the well costs for a horizontal well?

8 A. Yes.

9 Q. And this is for a single lateral
10 horizontal?

11 A. Yes, for a single.

12 Q. And what does slide U reflect, Mr. Jacoby?

13 A. Slide U represents what we would see as,
14 possibly, an ultimate plan of development. This was
15 presented to the BLM in the Taylor Draw unit.

16 After the point of the six verticals and
17 the three horizontals that we've discussed, pending
18 evaluation, we have selected horizontals that would
19 fit with the sand dune lizard habitat.

20 The shaded area shows the potential
21 habitat, and so you can see that we have selected
22 locations that would fit. Those could be altered,
23 depending on the evaluation, but this is -- this is
24 what we would envision possibly being the plan at
25 this point.

1 Q. Okay. So the tan areas are the -- are the
2 habitat for various potentially endangered species?

3 A. Yes.

4 Q. And then the blue is just the Taylor Draw
5 itself, the arroyo flowing through that area?

6 A. Yes, it is.

7 Q. Okay. And this -- go ahead.

8 A. Okay. I was just going to say, the BLM
9 asks us -- we're prohibited 600 feet on either side
10 of the Taylor Draw. That's why this is so wide.
11 We're prohibited to drill wells in that area.

12 HEARING EXAMINER EZEANYIM: What did you
13 say? BLM --

14 THE WITNESS: The BLM has a 600-foot
15 prohibited zone on either side of the Taylor Draw.
16 So, effectively, there's a 1,200-foot-wide swath
17 along Taylor Draw that is also -- you cannot
18 locate -- build a location.

19 HEARING EXAMINER EZEANYIM: It appears to
20 me, from your diagram here, that in Section 12
21 you're going to drill these wells as horizontals,
22 right?

23 THE WITNESS: That would be the plan now,
24 based on the sand dune lizard habitat.

25 HEARING OFFICER EZEANYIM: Yeah. Okay.

1 THE WITNESS: But it also, again, depends
2 on the evaluation of, you know, where we think the
3 best orientation would be.

4 HEARING EXAMINER EZEANYIM: And that would
5 be Section 13 and 24, you're going to drill
6 north/south?

7 THE WITNESS: Yes.

8 HEARING EXAMINER EZEANYIM: Okay. The way
9 you drew this, is that one horizontal -- okay. I
10 think it stops at the section line.

11 THE WITNESS: The location would be next
12 to the section.

13 HEARING OFFICER EZEANYIM: Oh, okay.

14 THE WITNESS: You drill horizontal and
15 then you penetrate.

16 HEARING OFFICER EZEANYIM: Okay.

17 Q. (By Mr. Bruce) Now, there was talk in the
18 opening arguments about surface use. Burnett has
19 been -- since it has gotten involved in this area,
20 is fully aware of the surface use restrictions that
21 the BLM imposes on many leases, correct?

22 A. Yes, we are.

23 Q. And we'll get into this. But has Burnett
24 taken steps to come into -- to comply with --
25 whether it's regulations or local BLM

1 requirements -- regarding surface use?

2 A. We have. We discussed that at length. We
3 have entered into a CCA. It has been approved.
4 It's been funded, and we are in that CCA plan.

5 We have worked with the BLM on these three
6 sections -- Hudson has, for many years. As you can
7 see, the dots show the shallower wells. They are
8 not the subject of this hearing, but they just show
9 the surface use with those shallower wells.

10 Q. Okay. Now, just looking at this plat, if
11 horizontal wells are drilled, Burnett plans on
12 drilling single lateral horizontal, correct?

13 A. Yes. Certainly. Yes, that is correct.

14 Q. But are the surface locations chosen such
15 that, if it drilled a first single lateral in the
16 Paddock, it could then drill, right next to that
17 initial well, a single lateral in the Blinebry?

18 A. That's correct.

19 Q. And this has been discussed with the BLM,
20 has it not?

21 A. Yes. Yes, it has.

22 Q. And how far apart could Burnett place
23 those wells?

24 A. The laterals or the surface?

25 Q. On the surface.

1 A. On the surface? You can locate wells as
2 close as -- my cohort just drilled laterals as close
3 as 7 and a half feet. So you can you start off
4 steering, you can locate wells -- I think it's very
5 industry standard in the shale plays, 15 to 20 feet
6 apart.

7 Q. So there would essentially be no more --
8 no additional surface use from having one single
9 lateral as opposed to two single laterals?

10 A. That's correct.

11 Q. What does this next exhibit reflect?

12 A. This next exhibit just highlights the plan
13 that I have just discussed. It shows the verticals
14 that would be drilled. Later on, those verticals --
15 the window could be cut. The horizontal could be
16 drilled after an evaluation.

17 The planned horizontals are shown
18 highlighted, the first three that we would
19 anticipate to be drilled, based on the evaluation of
20 the vertical wells that we would drill first.

21 Q. Now, you are -- the operator of the
22 shallow rights is Hudson Oil?

23 A. Correct.

24 Q. And have you been working with Hudson Oil
25 to use the same drill pads to minimize surface use

1 between their wells and your wells?

2 A. We have, and we would. On the Yeso, we
3 would.

4 We actually, in Section 12 and 13, have
5 jointly worked with Hudson on drilling
6 Grayburg-San Andres wells. We have actually
7 contract operated the drilling and the completion,
8 working very closely with Hudson on the -- on the
9 location of these wells, working with the BLM.
10 These are existing Grayburg-San Andres locations.

11 Q. That's showing 40 or 50 of them out there?

12 A. There are -- I'm not sure of the number.
13 These were drilled -- Burnett has an interest in
14 these. These have been drilled over many, many
15 years in the south end.

16 Q. Now, is there plans, also, to use common
17 facilities -- surface facilities -- to, again,
18 minimize surface use?

19 A. There are plans. The Taylor Draw unit
20 would not require but one tank battery facility from
21 an ownership standpoint, but we would plan two tank
22 battery facilities.

23 One would be north of the highway.
24 There's a major highway that cuts across, Highway
25 62. That has already been approved by the BLM.

1 There are -- there is a shallow well
2 nearby. It would be another well there nearby, so
3 the surface -- there would be a very good -- minimal
4 amount of surface used for a well and a tank
5 battery.

6 And then there's another tank battery
7 approved and planned that is in the -- here, just on
8 the north end of Section 24.

9 There is currently -- that is where the
10 Hudson Grayburg-San Andres tank batteries are
11 already located. So there really is some good
12 synergy of using the surface by locating the tank
13 battery side-by-side.

14 Q. Okay. This next slide, I think, was
15 omitted from the exhibit.

16 HEARING EXAMINER EZEANYIM: It's not here.

17 MR. BRUCE: We'll provide copies to
18 opposing counsel and to the division.

19 Q. (By Mr. Bruce) This one was in the slide
20 show, and it's not in the hard copies that I have
21 for some reason.

22 But what is this, Mr. Jacoby?

23 A. This shows the COG-proposed wells. The
24 circles show the 47 proposed vertical wells that
25 were proposed on two separate days. They had

1 22 percent working interest at that time.

2 Burnett/Hudson had 66 percent at that time.

3 Then, later, COG, or Concho, proposed 17
4 triple laterals. Those are shown on here as well.

5 They did have 33 percent working interest at the
6 time of their proposal of the triple laterals.

7 They do have -- on the verticals, they
8 have received 10 approved APDs, and that is shown in
9 the purple dots.

10 Q. So they initially permitted all of their
11 wells as verticals?

12 A. Yes. They initially applied for permits
13 on the verticals, 47 verticals.

14 Q. And that slide is in the package. I don't
15 know if you really need to comment on that. That's
16 just another slide showing surface restrictions,
17 correct?

18 A. Correct.

19 Q. Well, let's try to summarize the issues
20 out here, insofar as the surface and environmental
21 consideration.

22 What is slide X, Mr. Jacoby?

23 A. This slide just shows a summary of the
24 surface considerations, environmental issues with
25 the Taylor Draw unit.

1 Burnett, as has been mentioned, had
2 received preliminary approval to form the unit from
3 the BLM. We have shown the outline of the sections
4 that would be included. It is limited
5 stratigraphically to the Glorieta-Yeso formations.

6 Burnett does plan to develop the unit
7 primarily with horizontal wells, based on the
8 results of some verticals.

9 The unit is formed by working closely with
10 BLM personnel in Carlsbad.

11 As has been discussed, Burnett would be
12 the designated operator of the unit.

13 As I just mentioned, Hudson has developed
14 the Grayburg-San Andres unit in conjunction with
15 working closely with Burnett. I just described that
16 a few minutes ago. And this would allow a lot of
17 synergy in jointly developing the Yeso and Grayburg
18 reservoirs.

19 As I mentioned, the tank battery could be
20 located side-by-side. There are a lot of
21 significant operational efficiencies and cost
22 savings that would result in Burnett and Hudson
23 continuing to work together on it.

24 And then the last item I mentioned a
25 minute ago. We do have -- it's been approved --

1 Burnett Oil has been approved as operator of the
2 Candidate Conservation Agreement.

3 Q. And that approval was from the BLM?

4 A. And that approval is from the BLM.

5 Q. And again, the BLM has made surface -- has
6 restricted surface use out here for a number of
7 reasons?

8 A. Yes.

9 HEARING EXAMINER EZEANYIM: Before you
10 leave that, where you said that Burnett would be the
11 operator of the unit, you are talking about the
12 Taylor Draw unit, the Section 12, 13, and 24, right?

13 THE WITNESS: Yes.

14 HEARING EXAMINER EZEANYIM: That's what
15 you are talking about, "the unit"?

16 THE WITNESS: Yes.

17 HEARING EXAMINER EZEANYIM: Okay. Because
18 I just want to understand. It's not just one unit
19 related to it, but it's just that -- those three
20 sections?

21 THE WITNESS: Yes.

22 HEARING EXAMINER EZEANYIM: Okay.

23 Q. (By Mr. Bruce) Just another summary
24 sheet, Mr. Jacoby. I don't know if -- let's discuss
25 this briefly.

1 A. This is just to summarize what we have
2 discussed over the last -- Mr. Rhodes and Mr. Haiduk
3 and myself -- for the two wells, the Nosler Federal
4 3, Partition Federal 2, each one 40-acre units that
5 are the subject of this proposed pooling.

6 It shows the working interest ownership,
7 the support that Burnett has of 100 percent of the
8 record title owners.

9 I've described our ongoing drilling
10 program in the Maljamar leases. We have two rigs
11 operating there.

12 Burnett does have six approved APDs on
13 vertical wells.

14 As has been mentioned, Burnett and Hudson
15 have a long working relationship.

16 The real benefit of that is operational
17 efficiencies, cost savings, less surface usage. And
18 then, also, just reducing truck traffic gathering
19 oil.

20 Q. So you and -- Burnett and Hudson plan to
21 construct an oil gathering system?

22 A. We would have a tank battery system. And
23 I think it would not be very -- in short order,
24 those would be connected on a pipeline, which would
25 greatly -- very much reduce trucking.

1 Q. Now, in your opinion, is Burnett's plan of
2 development for these three sections the best plan
3 of development?

4 A. Yes.

5 Q. And in your opinion, from an engineering
6 standpoint, do the well results that you have
7 obtained further to the west support Burnett as
8 operator in the Yeso in this entire three-section
9 area?

10 A. Yes, I do believe so.

11 MR. BRUCE: Mr. Examiner, if I could ask
12 permission of one thing?

13 There were certain things, when I was
14 occupied with other witnesses, that Mr. Grable had
15 discussed with Mr. Jacoby. And if I could allow him
16 to ask a few questions, just on issues that I
17 haven't covered, if that's permissible?

18 HEARING EXAMINER EZEANYIM: Okay. How
19 long will that take you, Mr. Grable?

20 MR. GRABLE: It would take me no more than
21 a minute, hopefully.

22 HEARING EXAMINER EZEANYIM: Okay. Go
23 ahead.

24

25

EXAMINATION

1
2 BY MR. GRABLE:

3 Q. Mr. Jacoby, were you here when
4 Mr. Ezeanyim asked Mr. Haiduk some questions about
5 comparing Texas Clear Fork reservoirs with
6 New Mexico Yeso reservoirs?

7 A. Yes, I was.

8 Q. And those two reservoirs are time
9 equivalent, geologically, are they not?

10 A. Yes. That's correct.

11 Q. Have you had experience with Texas Clear
12 Fork reservoirs?

13 A. Yes, I have.

14 Q. With prior employers?

15 A. Yes. I worked 24 years for a company that
16 had a lot -- we had a lot of Clear Fork.

17 Q. How would you compare the rock quality or
18 reservoir quality between Texas Clear Fork
19 reservoirs and New Mexico Yeso reservoirs, as to
20 porosity, permeability, or other factors that you
21 think could influence their ability to constitute a
22 quality traditional reservoir?

23 A. My experience has been, on the Texas side
24 of the Clear Fork, it's typically a little higher
25 permeability, a little higher porosity.

1 Many of those fields were discovered in
2 the '40s or earlier. Many of those have been put on
3 secondary recovery and tertiary recovery.

4 Whereas the Yeso, my understanding, the
5 reason it was bypassed a long time was wells
6 initially would make all water for a few days, so
7 people bypassed it. It's a bit tighter. It's,
8 actually, different producing characteristics.

9 Q. So these Texas Clear Fork reservoirs,
10 going back into the '40s, were able to produce in
11 commercial quantities at lower oil prices without
12 the big fracture stimulations now employed over here
13 on the New Mexico side of these reservoir fields?

14 A. Yes.

15 MR. GRABLE: That's all I have.

16 HEARING EXAMINER EZEANYIM: Thank you for
17 clearing that for me. That answers my question.
18 That is really what I wanted to get at, because it's
19 important to me. Thank you very much.

20 What I'm going to do -- I'm sorry,
21 Ms. Munds-Dry, you're not going to cross-examine.
22 We have to go to lunch.

23 MS. MUNDS-DRY: You know how I feel about
24 lunch, Mr. Ezeanyim.

25 HEARING EXAMINER EZEANYIM: Yeah, that's

1 why.

2 We are going to come back here in one
3 hour. And let me say again, we must finish today.
4 Even if it takes us to 10:00, we'll finish it today.
5 So take your time, go and have your lunch, and we're
6 going to finish when we come back. Be here at 1:35.

7 (A recess was taken from 12:05 p.m. to
8 1:55 p.m.)

9 HEARING EXAMINER EZEANYIM: Now, we're
10 going to go back on the record and then continue
11 with where we left off in the morning.

12 And I think Mr. Mark Jacoby is on the
13 stand, and it is time for you to cross-examine.

14 MS. MUNDS-DRY: Yes. Thank you,
15 Mr. Examiner.

16 HEARING EXAMINER EZEANYIM: I would like
17 to say that Mr. Brooks is not present this
18 afternoon.

19 EXAMINATION

20 BY MS. MUNDS-DRY:

21 Q. Good afternoon, Mr. Jacoby.

22 A. Good afternoon.

23 Q. How is that paper going for the ESPE?

24 A. It's done.

25 Q. Are you on the way to getting it published

1 yet?

2 A. Not published; it will be presented.

3 Q. It will be presented?

4 A. At a technical conference.

5 HEARING EXAMINER EZEANYIM: Is that in
6 Denver?

7 THE WITNESS: In Denver, yes.

8 HEARING EXAMINER EZEANYIM: Are you going
9 to present this October, November?

10 THE WITNESS: It's in October, early
11 November. John Ely and I will. I'm not sure
12 exactly how we will do that.

13 HEARING EXAMINER EZEANYIM: Okay, good.

14 Q. (By Ms. Munds-Dry) I would like to turn,
15 Mr. Jacoby, to the first slide, the AFE for the
16 Partition Federal Number 2, please.

17 How much are you paying per barrel for
18 water?

19 A. Some of it is trucked and some of it --
20 there's a water supply line that goes through the
21 middle of our lease, a Yates water supply line. And
22 we -- we try to buy as much of the fresh water from
23 that as we can.

24 Q. About how much are you paying per barrel?

25 A. For that, it is 65 cents, I believe.

1 Q. For both the trucked --

2 A. No. For the water out of the Yates --
3 Yates water. And then the trucked water is --
4 probably for about a load, is \$250 a load.

5 Q. And moving to your description of, really,
6 your completion costs, what sand size do you use?

7 A. We pump two large stages, very similar to
8 pads with hundred mesh -- two or three, depending on
9 the desire of the frac -- that has 100 mesh sand in
10 it. And then the alternating stages have 40/70
11 sand.

12 Q. Is that the largest sand size that you can
13 pump into the Yeso?

14 A. I do not think so. We prefer the design
15 of the 40/70. I know some others pump some more.
16 Other people have pumped larger sand. We pump
17 40/70. I'm sure some larger could be pumped.

18 Q. If we could turn to -- I guess it's, like,
19 C. It's the well bore schematic for the Partition
20 Federal Number 2.

21 A. (Witness complies.)

22 Q. What kind of issues do you see when you
23 have this kind of well bore design? Do you get
24 fishing jobs, stuffed pipe, when you don't use
25 intermediate casing? Do you see that?

1 A. We have not -- it's rare. Sometimes you
2 do, but it's a very low percentage of the wells.

3 Q. Have you had stuffed pipe before, when you
4 used no intermediate casing of the -- I believe you
5 said somewhere around 97 wells were drilled that are
6 Yeso wells. Have you had stuffed pipe?

7 A. We have had stuffed pipes before, but it's
8 been very rare.

9 Q. How many times would you say?

10 A. I really am not sure how many. It's a
11 very minimal amount.

12 Q. How about fishing jobs?

13 A. We have had a few, but not very many. I
14 don't know the number. It's a small number.

15 Q. Isn't this a riskier way to drill a well?

16 A. It depends on the area that we are
17 drilling. We have found that it has not been a high
18 risk to drill through there. We have some issues
19 sometimes, but it's not been a -- we've not viewed
20 it as a high-risk.

21 Q. If you could turn to the completion
22 comparison slide, please. I guess it's I.

23 We have had this discussion before,
24 Mr. Jacoby, and so you know what I'm going to ask
25 you. You said that you asked -- Mr. Ezeanyim

1 actually asked you this, so I didn't have to ask you
2 what you design your frac lengths to be.

3 You said you had a half-length design of
4 500 feet, I believe?

5 A. Approximately, yes.

6 Q. Given that you have two well proposals
7 here in unorthodox locations, are you still planning
8 to design for a 500-foot frac length?

9 A. Which location are you --

10 Q. For the Nosler Number 3 and the Partition
11 Number 2, the two applications that are before the
12 OCD today.

13 A. We may -- we would design appropriately
14 for each one of those locations. Typically, these
15 locations are not unorthodox. We have scaled back
16 the design.

17 Q. So you have designed smaller --

18 A. Yes.

19 Q. -- smaller frac jobs as the situation
20 warrants?

21 A. Yes.

22 Q. Would you agree with me that if you do
23 design -- have a smaller frac design, you also get
24 smaller EURs?

25 A. We possibly would. We would prefer to

1 keep the larger frac design where we can.

2 Q. If you could, Mr. Jacoby, if you'd turn to
3 slide K, the GOR and production comparison.

4 A. (Witness complies.)

5 Q. You got this -- the data and the table
6 below there from IHS, I believe?

7 A. Yes, that's correct.

8 Q. And I know I've asked you this before, and
9 I want to see if your answer is any different today,
10 since you have added on additional production in
11 GORs.

12 When you did these -- when you built this
13 table and you looked at the data, did you look also
14 for any workovers or recompletions that would have
15 affected the numbers?

16 A. I did not go through the well histories,
17 no, I did not, to see the work on these wells.

18 Q. So you didn't do anything to determine if
19 there was any downtime in any of those wells, in
20 particular, Concho's wells?

21 A. We took reported production. No, we did
22 not.

23 Q. And have you done any analysis in
24 comparison of Concho and Burnett wells in any other
25 areas besides this small sample?

1 A. No, we have not.

2 Could I add to that?

3 Q. We can let Mr. Bruce ask you that if you
4 have something to add.

5 A. Okay.

6 Q. Mr. Jacoby, I think I got these out of
7 order. I'm looking at I think what is next, which
8 is the analysis of EURs. Is that next?

9 Yes. That's it right there, which I guess
10 it's M, but I lost track.

11 Have you analyzed and done an EUR
12 comparison of any of your horizontal wells to
13 Concho's wells?

14 A. Yes, I have.

15 Q. You didn't present that here today?

16 A. I did not present that.

17 Q. And you know here -- and I understand that
18 this was prepared by -- at least the data came from
19 Mr. Gore's group.

20 Of the 213 wells that were analyzed, do
21 you know if Concho has ever completed with hot acid?

22 A. I'm not certain, but I thought early on
23 that they had completed some work with hot acid. I
24 do not recall.

25 Q. Of these 213 wells that were analyzed, do

1 you know how many were drilled by Concho?

2 A. I do not.

3 Q. And how is the EUR determined in your
4 comparison here? Decline curve analysis?

5 A. Yes. PGH did the decline curve analysis.

6 Q. Of these six wells that Burnett uses here
7 to show for the slickwater completions, when were
8 those drilled?

9 A. They were drilled in over -- probably in
10 2009. We tried -- we wanted to have wells that had
11 at least six months of production.

12 Q. And the same is true for the 11 wells in
13 the Blinebry that were completed?

14 A. Some of those were drilled more recently.
15 The way that I've explained, we produce the Blinebry
16 for a time and then move up to the Paddock. But
17 some of those were drilled more recently.

18 Q. "More recently," meaning this year?

19 A. Some earlier this year and some last year.

20 Q. I'm hoping that the next slide is the
21 water cut slide.

22 I think you discussed this with
23 Mr. Ezeanyim. You've got, if I understand it, this
24 water cut percentage from the Loco Hills area, which
25 is more north, comparing it to the Maljamar area

1 which is south, closer to the shelf?

2 A. Well, it's north and west.

3 Q. Okay. So you have a north and west
4 sample, which as I understand it from Mr. Haiduk, is
5 up dip?

6 A. Yes.

7 Q. And then you have a sample for the
8 Maljamar area, which is to the east and south,
9 closer to the shelf?

10 A. Yes.

11 Q. Is there an oil/water contact in Loco
12 Hills?

13 A. I think that is probably a debate. But as
14 I -- we understand it, it transitions into water
15 where it becomes wet, and -- from my analysis.

16 Q. And do you know where that is? Can you
17 point to where you think that is on the map?

18 A. Not exactly. But it is on the southern
19 end of the shelf edge.

20 And this map is -- it's along the southern
21 end. I can't point exactly. Generally, that's
22 where it is.

23 Q. You indicated that it's important to
24 selectively perf in your wells to avoid water cut.

25 What about designing your frac height in

1 avoiding water cut? Does that make a difference?

2 A. Yes.

3 Q. Would you agree with me that the oil
4 production is generally higher in the Maljamar area
5 than in, say, the Loco Hills area?

6 A. Repeat your question, please?

7 Q. Is the oil production higher in the
8 Maljamar area than in the Loco Hills area?

9 A. I have not seen that.

10 Q. But I am asking if you would agree with
11 me.

12 A. No, I would not agree with you.

13 Q. Why do you not agree with me?

14 A. From what I have seen of production that
15 we have analyzed, it appears that the oil
16 production, the EURs, are a little bit less,
17 possibly. But --

18 Q. As you go east?

19 A. As you go east. But some of that may be
20 transitioning down into water.

21 That's why we think it's very important to
22 evaluate and know exactly where to perforate. I
23 think the completion is very important.

24 Q. Sure.

25 On your next slide, Mr. Jacoby, where you

1 show the horizontal Yeso producers, are there other
2 horizontal wells in the Yeso, outside of these
3 areas, that you're aware of?

4 A. Not that I'm aware of.

5 Q. Have you looked if you go east -- or west,
6 I'm sorry.

7 A. I'm not aware of those.

8 Q. If we could please turn to the slide --
9 and I stopped lettering them, so it's the -- the EUR
10 table for the horizontal Yeso wells.

11 A. (Witness complies.)

12 Q. You noted on you previous slide -- and, in
13 fact, we had an earlier version of the slide, where
14 you included all 12 of the wells that Burnett has
15 drilled horizontally.

16 You didn't show those all here, I think,
17 because you qualified you wanted a certain number of
18 production, is that correct, so you didn't include
19 some of your newer horizontal wells that you
20 drilled. You included nine here, I believe.

21 A. Correct. I included nine here.

22 Q. And it looks like you've drilled all
23 Paddock horizontal wells?

24 A. Yes, that's correct.

25 Q. Of the 12 total that you have drilled,

1 have any of those been in the Blinebry?

2 A. No, not yet.

3 Q. For the uncemented casing completions,
4 what -- approximately what year were those wells
5 drilled, the three that you have listed there? I
6 don't see a vintage on those wells.

7 A. Early 2000s, 2004 or 2005.

8 Q. Approximately?

9 A. Approximately.

10 Q. Now, why did you separate the cemented
11 casing completions from the uncemented casing
12 completions? What are you equating these two
13 different types of completions to?

14 A. We have -- in most plays, we have seen the
15 completion technology has gone more and more towards
16 cemented casing. My thought was to divide this up,
17 and there is certainly a very dif- -- much different
18 EUR in the first two completions that are
19 uncemented.

20 Just intuitively -- early on, cementing
21 horizontals was a real challenge, and that
22 technology has really improved. We can cement
23 laterally, we can perforate selectively and
24 stimulate in stages. We can stimulate the wells
25 better, we think.

1 Q. Are you suggesting that Concho is planning
2 to complete with an uncemented casing? Is that why
3 you showed this?

4 A. I have noticed that they planned -- from
5 the data that I saw, they were planning uncemented
6 casing. And the wells that they had -- the
7 completion records show their horizontals are
8 ported. I believe they were uncemented.

9 Q. How many frac stages were there in the
10 uncemented completions?

11 A. I do not remember exactly.

12 Q. I also notice that all of these are
13 completed with hot acid.

14 A. That is correct.

15 Q. You have some newer wells that just don't
16 have enough production on them you have completed
17 with slickwater fracs?

18 A. We have completed two. They are in
19 evaluation. They have been on production less than
20 six months, one even less than a month, and so we're
21 evaluating that.

22 It's encouraging, but it's not yet -- we
23 want to evaluate that. That's kind of our style, is
24 to move to the next thing that we -- we think that
25 will be -- could have a lot of advantage in

1 stimulating a cemented casing with a slickwater
2 frac. We are evaluating that.

3 Q. In your slickwater fracs, were all stages
4 pumped?

5 A. No. We pumped half of the lateral, to
6 evaluate half the lateral, six stages.

7 Q. Six stages?

8 A. Yes.

9 Q. Did you experience any screenouts?

10 A. No screenouts.

11 Q. Mr. Jacoby, this is that repeat slide,
12 the -- that shows the six approved APDs. That
13 slide, I don't know where that is in order.

14 A. Is this (indicating) the slide?

15 Q. Yes, sir. Thank you.

16 Mr. Rhodes thought you would know the
17 answer to these questions, so it's Mr. Rhodes'
18 fault.

19 A. Yeah. He's my buddy.

20 Q. You indicated you're now enrolled --
21 you're now a member of the Candidate Conservation
22 Agreement program?

23 A. Yes, we are.

24 Q. And have you evaluated your six approved
25 APDs here to see if they comply with that program

1 and the setbacks that are required under the CCA?

2 A. The BLM approved all six of those
3 locations.

4 Q. That was before you were a member of the
5 CCA, correct?

6 A. Yes.

7 Q. But have you done anything to
8 independently evaluate whether you -- whether they
9 comply with the CCA?

10 A. I have not followed up to see that. I
11 mean, the CCA program was -- was -- we had not
12 joined it at that time, but we were very familiar
13 with the CCA program. So I would say they are in
14 compliance, based on -- the BLM, fish and wildlife
15 people, came out and approved these locations,
16 approved the on-sites.

17 Q. Did you participate in those on-sites?

18 A. Not physically on the ground, but I
19 participate very much with the personnel involved in
20 doing those on-sites.

21 Q. So you don't know if there was any
22 discussion about whether the sites comply with the
23 CCA or not?

24 A. I don't know all of their discussion.

25 Q. You were not told or made aware that there

1 was a discussion specific to meeting the setback
2 requirements in the CCA?

3 A. I do not know.

4 Q. Mr. Ezeanyim, I believe, asked you if you
5 intend to drill all six of the locations where you
6 have approved APDs. And you -- I believe you
7 answered him that you were looking, at least
8 initially, at four.

9 Which of the four are you intending to
10 drill?

11 A. Actually, of the first six APDs, one we
12 have pulled out of compulsory pooling. The --

13 Q. Is that the one down in 24?

14 A. Right here (indicating), yes.

15 Q. So you're saying, of the four you intend
16 to drill, are the two that have already gone to
17 pooling, and the two that we're here discussing
18 today?

19 A. The two -- the two, this one (indicating),
20 we'll evaluate this as to how it fits with the
21 horizontal.

22 We have two on-sites approved. We will be
23 filing APDs there. We would like to drill those
24 soon as well.

25 Q. So it's your plan to drill those two

1 verticals before you consider a horizontal well plan
2 as well. Is that correct?

3 A. We'll be considering the horizontal when
4 we evaluate these vertical wells.

5 Q. So you may start a horizontal program
6 before you drill those two vertical wells?

7 A. No. We will drill the verticals to
8 evaluate.

9 Q. So I'm clear, you will plan to drill all
10 the vertical wells first and then evaluate your
11 horizontal well plan?

12 A. Probably drill four to evaluate the
13 horizontals. We'd have one here (indicating) to
14 drill a potential horizontal.

15 We would drill one here (indicating) to
16 evaluate a potential horizontal.

17 We would like to drill this one
18 (indicating) to evaluate horizontal.

19 Of course, this well (indicating) has
20 penetrated the Yeso. It's a Yeso producer, so that
21 would give us some evaluation.

22 Q. Okay. Then I'm confused, because I
23 thought you had told me that you intend to drill all
24 four of the wells, two that are the subject of the
25 hearing today that are in the east half east half of

1 13, and the east half east half of 24, and the two
2 wells that have already gone to hearing.

3 So I ask you: Which four do you intend to
4 drill to evaluate?

5 A. We're going to drill these (indicating)
6 two.

7 We are considering -- we'll probably drill
8 that one (indicating) early on as well.

9 The plan is to drill these (indicating)
10 two.

11 We are not certain yet we'll drill this
12 one (indicating).

13 And we're not certain exactly in which
14 order, one of these (indicating) or this one
15 (indicating).

16 Q. The plan is to drill at least one vertical
17 well per section?

18 A. Yes.

19 Q. If we could turn to the horizontal well
20 which is, hopefully, the next slide.

21 A. (Witness complies.)

22 Q. And I understand this is not an actual
23 well proposal, right? You haven't actually proposed
24 this to anybody. This is based on your experience
25 with AFEs and other horizontal wells that you have

1 drilled?

2 A. Correct.

3 Q. And this is obviously not before the OCD
4 in any sort of official manner. This is to give an
5 idea of how you would drill this sort of well. Is
6 that the idea?

7 A. Yes. That's correct.

8 Q. Is this Burnett's first time drilling a
9 full section lateral? Would this be the first time
10 you would do that?

11 A. No, I do not think so.

12 Q. Where else have you gone a full section in
13 the lateral?

14 A. I think in the Barnett we have and in the
15 Marcellus we have.

16 Q. How about in New Mexico?

17 A. Not in New Mexico, no.

18 Q. And then, obviously, not in the Yeso?

19 A. Correct. Not in the Yeso.

20 Q. How much are you thinking you're going to
21 pay per gallon for diesel? In your experience, how
22 much have you paid?

23 A. I have -- it's about \$3 a gallon. 27-,
24 \$2,800 a day for this rig.

25 Q. I don't know if you know this. You give

1 the measured depth here of 10,700 feet. What is the
2 total -- what is that in total vertical depth? I
3 just didn't see that on the AFEs. I didn't know
4 what your TVD was.

5 A. 6,100. That's about a 4,600-foot
6 effective lateral.

7 Q. Does that put it in the Paddock?

8 A. That would put it in the Paddock, correct.

9 Q. What about the Blinebry?

10 A. This AFE does not account for that. We
11 would -- as I have testified before, we would drill
12 one in the Paddock and one in the Blinebry, once we
13 have more understanding of the reservoir and
14 understanding of the Paddock.

15 Q. And I was curious about that. If you do
16 as you propose, to drill one single lateral for the
17 Paddock and one for the Blinebry, how do you -- what
18 do you plan to design your frac height to be in the
19 Blinebry?

20 A. I'm not sure exactly how we would -- until
21 we evaluate our logs, evaluate the pay, I'm not sure
22 what the answer to that would be.

23 Q. The next -- well, there are two slides, I
24 guess, that show your proposed plan of development
25 for the Taylor Draw unit.

1 And this is really, I guess, a follow-up
2 to my previous question.

3 As we understand it, you do at least two
4 fracs in the Blinebry for your vertical wells?

5 A. Typically, that's what we have done.

6 Q. But you'd only do one horizontal in the
7 Blinebry?

8 A. We are not certain of that.

9 Q. Is it possible that you would do a dual
10 lateral for the Blinebry?

11 A. We have thought that maybe we could do a
12 second lateral, if that's what it calls for, off of
13 the same pad, go deeper, if we needed to drill and
14 chose to drill deeper.

15 Q. I think Mr. Rhodes said this was also in
16 your category.

17 If you show the Taylor Draw going -- going
18 through this map here for these locations, do you
19 know if you have approved surface, in terms of your
20 setbacks, of what you're required to be back from
21 the Taylor Draw? Has the BLM approved those --
22 those sites?

23 A. We've not permitted any of these sites,
24 no.

25 Q. Now, some of these are existing locations.

1 Maybe they're Hudson locations?

2 A. Some of these are, yes.

3 Q. You indicated that -- in terms of where
4 we're talking about surface area, or impact -- that
5 you had experience with drilling your horizontal
6 wells on the surface 7 and a half to 10 feet apart,
7 I believe. You've seen that before, or you have
8 done that before?

9 A. I have not done that. My engineer, my
10 cohort, has done that before. I've seen it done
11 before.

12 Q. Someone here today?

13 A. Yes.

14 MS. MUNDS-DRY: Are you planning to call
15 him as a witness?

16 MR. BRUCE: I don't know.

17 MS. MUNDS-DRY: Okay.

18 Q. (By Ms. Munds-Dry) Do you know what type
19 of rig is required to drill when you are drilling 7
20 and a half to 10 feet apart?

21 A. What type of rig?

22 Q. Yes.

23 A. Well, there are some -- some rigs to drill
24 7 and a half feet that have been -- that are on
25 rails, so they can move the rig over.

1 Q. Is that the type of rig that Burnett is
2 using?

3 A. Currently, no.

4 Q. I've seen those purpose-built, those
5 really cool expensive rigs, where they walk
6 themselves over. I guess you don't have something
7 like that?

8 A. We do not have that.

9 Q. I think if we look at either one of these
10 plans -- I'm just trying to understand your vertical
11 wells and how they relate to your horizontal wells
12 that you have planned, at least in your plan of
13 development here.

14 Don't these vertical wells inhibit your
15 horizontal wells, as you've planned them here?

16 HEARING EXAMINER EZEANYIM: Can I see?
17 What are you looking at?

18 MS. MUNDS-DRY: Well, either one of these
19 slides, Mr. Ezeanyim. If you look at the vertical
20 well proposals, the black circles as they overlies
21 the horizontal wells.

22 HEARING OFFICER EZEANYIM: These
23 (indicating)?

24 MS. MUNDS-DRY: Yes.

25 Q. (By Ms. Munds-Dry) Do they not get in the

1 way of your horizontal well plan?

2 A. No. No, they do not.

3 Q. If we look at the next slide, where it
4 shows the first three that you're planning to --
5 that you -- at least in these initially proposed --
6 to drill for each section, if you drill them as you
7 proposed, how do you change direction with these
8 proposals, if you determine that you need to go
9 north/south rather than lay down or vice versa?

10 If you drill -- let's just take for
11 Section 12, and you drill that well in the south
12 half, how do you change direction, if you determine
13 that's not the right way to go?

14 A. If we have to go north/south?

15 Q. Uh-huh.

16 A. We would have to work with the BLM. It
17 appears that there's some room across the top where
18 you could go north/south.

19 You can -- we've drilled turnizontals, if
20 that's what was required. You can also drill
21 turnizontals, where you go horizontal but you turn
22 out from one location and go east or west and then
23 go north or south.

24 That's way down the road. That would
25 certainly be -- that would have to be evaluated, and

1 those sites would have to be -- that's going to be
2 the process of evaluation. That's why we want to
3 drill the verticals, and that's why we would drill
4 three horizontals and do our testing and determine
5 the frac orientation.

6 Q. One last question, because I think
7 Mr. Haiduk said that you would answer this question.

8 Well, one more before I get there.

9 Have you ever drilled a turnizontal?

10 A. We have. I have been involved with some.
11 We have several --

12 Q. Here in New Mexico you have done that?

13 A. Not in New Mexico.

14 HEARING EXAMINER EZEANYIM: What was the
15 question?

16 MS. MUNDS-DRY: Have you ever drilled a
17 turnizontal, which is a new word for me.

18 HEARING EXAMINER EZEANYIM: Okay.

19 A. It is a well that does not go straight
20 north and south or straight east and west. It turns
21 a little bit and then goes --

22 HEARING OFFICER EZEANYIM: Okay.

23 Q. (By Ms. Munds-Dry) Let's get back to my
24 question.

25 Is running radioactive source logging

1 tools in horizontal wells considered risky?

2 A. In the -- are you -- repeat your question,
3 please.

4 Q. Is running radioactive source logging
5 tools in horizontal wells considered risky?

6 If you remember, Mr. Haiduk was indicating
7 that he would do some open-hole logging in the
8 horizontal, or at least considering that.

9 A. There's a company, or a technology, where
10 you can log through that. And, actually, I called
11 the people that we are visiting with. They have
12 failed on two out of 690 through-bit logging. It
13 seems like the risk is really -- they have really --
14 they have greatly reduced the risk by being able to
15 go through-bit. It seems to be a low risk.

16 MS. MUNDS-DRY: That's all the questions I
17 have. Thank you, Mr. Jacoby.

18 HEARING EXAMINER EZEANYIM: Thank you.

19 Mr. Bruce?

20 FURTHER EXAMINATION

21 BY MR. BRUCE:

22 Q. Let me --

23 MR. BRUCE: This is slide P, Mr. Examiner,
24 of the engineering exhibits.

25 Q. (By Mr. Bruce) Mr. Jacoby, you have

1 mentioned turnizontal. If you look in Section 24,
2 isn't the well in the northeast quarter kind of a --
3 that's what --

4 A. Yes.

5 Q. Some of them are turned at a greater angle
6 than that, but that's essentially what you're
7 talking about?

8 A. Yes, it is. And I'm sorry. I thought,
9 after I answered, we do have -- that one is,
10 obviously, a bit of a turnizontal. Yes, it is.

11 Q. A lot of them have a bigger bend at the
12 beginning and then head a specific direction?

13 A. Yes. Yes. I misspoke that.

14 Q. And the questions about pipe getting stuck
15 and other things in the well bore, Mr. Jacoby, you
16 said that has happened rarely in some of the wells
17 that Burnett has drilled.

18 Have any of those wells been lost?

19 A. Since I have been here, we have not -- I
20 have been here five years -- we have not lost a well
21 bore.

22 Q. Okay. And then going back to the stuff
23 where you're using the samples.

24 Ms. Munds-Dry called the nine-well versus
25 the nine-well comparison a small sample. You're

1 dealing with almost 20 wells there. Do you think
2 that's a fair number to use, to make a comparison
3 between operators?

4 A. Yes, I do. I think it is.

5 Q. And you mentioned some of these wells
6 being drilled 7 and a half feet apart. That's not
7 the intent of Burnett, is it?

8 A. Absolutely not.

9 Q. It would only be if the -- perhaps the BLM
10 said to do it on this surface location?

11 A. Correct.

12 Q. But then there's a question, Mr. Jacoby,
13 about having a vertical well and then having a
14 horizontal well.

15 If you had a horizontal well crossing,
16 perhaps, say, a quarter quarter section where
17 there's already a vertical well, that's permissible
18 under OCD rules, is it not? You can have more than
19 one well bore per well unit?

20 A. Yes.

21 Q. I mean, in the pool rules hearing that was
22 one of the big issues?

23 A. Right. Correct.

24 Q. COG wanted four wells --

25 A. Correct.

1 Q. -- per well unit.

2 So that's not an impediment?

3 A. No.

4 Q. And a horizontal well can be steered to
5 steer it away from the vertical well bore?

6 A. That's correct. That's correct.

7 Q. I'm going to flip back for one final
8 question, Mr. Jacoby. I'm going to turn you into a
9 landman for a minute.

10 Let's go first to the land exhibit.

11 Ms. Munds-Dry asked you about the
12 Partition Federal 2 and about frac lengths. The
13 Partition Federal Number 2 is in the northwest
14 corner of that 40 acres, correct?

15 A. Correct.

16 Q. It's certainly more than 500 feet away
17 from that outer boundary of that section, is it not?

18 A. It is. That's correct.

19 Q. And then when you go back to look at the
20 land plat as a unit, you'll see that virtually all
21 of these interest owners -- Concho and Burnett own
22 in each of these quarter quarter sections, do they
23 not?

24 A. Correct.

25 Q. All of these working interest owners and

1 overriding royalty owners would benefit by
2 maximizing production from the well bore, would they
3 not?

4 A. They would. They would.

5 MR. BRUCE: I think that's all I have,
6 Mr. Examiner.

7 HEARING EXAMINER EZEANYIM: Okay. Thank
8 you very much.

9 MS. MUNDS-DRY: Mr. Ezeanyim, I have one
10 follow-up question, if I may ask it?

11 HEARING OFFICER EZEANYIM: Okay. You may
12 ask it.

13 FURTHER EXAMINATION

14 BY MS. MUNDS-DRY:

15 Q. Mr. Jacoby, you said it's not your intent
16 to drill these wells 7 and a half to 10 feet apart.
17 What is your intent?

18 If you end up drilling single laterals,
19 one in the Paddock and one in the Blinebry, what's
20 your intent for how far you will drill them apart,
21 on the surface perspective?

22 A. We showed the horizontals would be
23 alternating Paddock/Blinebry. We would evaluate
24 each of those.

25 And then if it's determined another

1 horizontal is needed on one of those surface pads,
2 the point is we can use those -- those same surface
3 locations to move over a short distance from a
4 current well bore to drill another horizontal.

5 Q. What do you anticipate that short distance
6 being?

7 A. I'm not sure exactly what that would be,
8 but it would be short enough that we would use,
9 basically, no additional surface. Probably 25 to
10 50 feet -- 25 to 30 feet.

11 MS. MUNDS-DRY: Thank you.

12 That's all I have, Mr. Ezeanyim.

13 MR. BRUCE: I have no follow up,
14 Mr. Ezeanyim.

15 HEARING EXAMINER EZEANYIM: Any other
16 comment? Okay. Thank you.

17 I think I have heard enough from
18 Mr. Jacoby, but let me go to Exhibit 7I. Do you
19 have 7I?

20 THE WITNESS: Yes.

21 HEARING OFFICER EZEANYIM: The
22 cross-section X-X.

23 THE WITNESS: I have it.

24 HEARING OFFICER EZEANYIM: And if you
25 follow it, if you go -- if you follow the X-X, I

1 think that was in 17 South, 30 East, right?

2 THE WITNESS: Correct.

3 HEARING EXAMINER EZEANYIM: Okay. From
4 the results that we see from there, can you
5 extrapolate to other areas of the Yeso? Can you
6 extrapolate that result to any other area of the
7 Yeso? I mean, are you confident doing that?

8 THE WITNESS: I think, from the extent of
9 the completion technique, I think you can
10 extrapolate the comparison of the completion
11 technique. That's why we show the water cut is
12 different. The formation has to be evaluated. And
13 there's some extrapolation that can be done.

14 HEARING EXAMINER EZEANYIM: And even
15 though that variable is constant, can you still
16 extrapolate? Forget about the slickwater or
17 whatever completion technique.

18 If you look at it, there's another way in
19 each operator, and you did it in that section. Can
20 I take that and then put it on the -- even the
21 section in question, 17 South, 31 East, can we
22 extrapolate by inference?

23 THE WITNESS: I think you can extrapolate.

24 HEARING EXAMINER EZEANYIM: How so?

25 THE WITNESS: With some judgment.

1 HEARING EXAMINER EZEANYIM: What do you
2 mean?

3 THE WITNESS: I mean evaluating -- that's
4 why we would drill verticals. That's why we would
5 evaluate the pay.

6 As far as extrapolating the same numbers,
7 I would not extrapolate the exact same numbers. But
8 we think, in order of magnitude, that could be
9 extrapolated.

10 HEARING EXAMINER EZEANYIM: Okay. Go to
11 M.

12 I'm trying to understand what you're
13 trying to demonstrate on that -- on this.

14 Are you trying to say that slickwater is
15 better than hot acid? Is that what you're trying
16 to -- that is kind of what you are trying to say, or
17 is there something else you wanted?

18 THE WITNESS: Yes, that's what I'm saying.
19 That's been our experience. That's been our
20 experience so far. We're going to continue to use
21 slickwater over hot acid.

22 HEARING EXAMINER EZEANYIM: Okay. So that
23 was -- you are trying to demonstrate to me that you
24 don't have to use hot acid, but you want to use
25 slickwater, right?

1 THE WITNESS: We will, in most cases, yes.

2 HEARING EXAMINER EZEANYIM: And this is in
3 the Paddock?

4 THE WITNESS: Paddock. And we are using
5 it in the Blinebry as well.

6 HEARING EXAMINER EZEANYIM: What are these
7 CCA? I'm not familiar with CCA, the conservation
8 agreement. Do they have any stipulations that I
9 don't know? Do they have setback requirements, or
10 what do they have? It's not our rule. What is it?

11 THE WITNESS: I can't give you all of the
12 stipulations. I mean, it's an agreement where you
13 go through and work with the BLM on the surface
14 requirement.

15 I mean, it's a -- we pay some money per
16 well to enter into this agreement. It's supposed to
17 be some protection from the possibility of the sand
18 dune lizard being listed as an endangered species in
19 December.

20 HEARING EXAMINER EZEANYIM: Okay. So
21 that's with BLM?

22 THE WITNESS: That's with BLM.

23 HEARING EXAMINER EZEANYIM: Not with the
24 operators?

25 THE WITNESS: No. No, it's with BLM. The

1 fish and game department with the BLM. It's with
2 the BLM.

3 HEARING EXAMINER EZEANYIM: The agreement
4 is -- any operator can have a CCA with the BLM?

5 THE WITNESS: Yes.

6 HEARING EXAMINER EZEANYIM: Okay. You
7 said in those sections -- if you will go to those
8 sections we are talking about, 12, 13, and 24, you
9 are going to drill one well per section; one
10 vertical well per section, right?

11 THE WITNESS: Yeah.

12 HEARING EXAMINER EZEANYIM: And I see in
13 that development that, on the left-hand side, what
14 you have here as proposing putting on there.

15 If that were approved and these two were
16 approved here (indicating), are you going to drill
17 those four wells in that one section?

18 Can you put it up? Let's see it.

19 THE WITNESS: Can you put the slide up?

20 MR. BRUCE: Which one?

21 HEARING OFFICER EZEANYIM: Where you have
22 the six wells that you're going to drill.

23 THE WITNESS: Taylor Draw, the six wells.

24 MR. BRUCE: This one?

25 THE WITNESS: Yes.

1 HEARING OFFICER EZEANYIM: Okay. Let's
2 start at the bottom.

3 Okay. That one has already gone to
4 hearing.

5 And then this one is the subject of this
6 hearing. And you're going to drill only one of
7 them, right?

8 THE WITNESS: These two (indicating) are
9 the subject of this hearing.

10 HEARING EXAMINER EZEANYIM: Okay. Yes, I
11 know. Those two are the subject -- on that section
12 alone.

13 THE WITNESS: We may drill both of those.

14 HEARING EXAMINER EZEANYIM: What?

15 THE WITNESS: I said -- I'm not saying we
16 would not drill that well. We would -- I would say
17 it's a potential to drill both of those.

18 HEARING EXAMINER EZEANYIM: No, no. Yeah,
19 you can do whatever. You can drill those two.

20 Are you going to drill the other one, this
21 one here (indicating)?

22 THE WITNESS: Yes.

23 HEARING EXAMINER EZEANYIM: You are going
24 to drill -- so you can drill two in that section?

25 THE WITNESS: Yes.

1 HEARING EXAMINER EZEANYIM: The same as in
2 the middle of Section 12 -- I mean section 13.

3 THE WITNESS: This one (indicating)?

4 HEARING EXAMINER EZEANYIM: Yeah, those
5 two.

6 THE WITNESS: Yes.

7 HEARING EXAMINER EZEANYIM: I'm just --
8 you know, I just want to know, because I heard you
9 say one vertical well per section, so I wanted to
10 know what you want to do.

11 THE WITNESS: We plan to drill those. I
12 thought she was trying to ask the order of wells.
13 I'm not sure exactly the order, but we would
14 certainly drill -- plan to drill those wells.

15 HEARING EXAMINER EZEANYIM: Yeah. You
16 have the right to do it, but I wanted to know what
17 your plan is.

18 THE WITNESS: Yeah.

19 HEARING EXAMINER EZEANYIM: Are there any
20 other questions for this witness?

21 MR. BRUCE: Just one follow-up.

22 FURTHER EXAMINATION

23 BY MR. BRUCE:

24 Q. Mr. Jacoby, the slickwater, that is
25 certainly, in your experience, the better way to

1 drill for vertical wells, correct?

2 A. Correct, yes.

3 MR. BRUCE: That's all I have,

4 Mr. Examiner.

5 HEARING EXAMINER EZEANYIM: So you would

6 only use slickwater on vertical wells. You can't

7 use it on horizontal?

8 THE WITNESS: We are -- we are trying

9 that. We think that it could work on horizontals.

10 HEARING EXAMINER EZEANYIM: Have you done

11 it?

12 THE WITNESS: We have done two, just very

13 recently, with not long-term results. We're

14 evaluating.

15 HEARING EXAMINER EZEANYIM: You're just

16 evaluating. You don't know whether you're confident

17 with it yet or not?

18 THE WITNESS: Yes.

19 HEARING EXAMINER EZEANYIM: Okay. That's

20 all I have.

21 Mr. Bruce, do you have any more witnesses?

22 MR. BRUCE: I have one more brief witness,

23 I think.

24 HEARING EXAMINER EZEANYIM: You may call

25 your next witness.

1 MR. BRUCE: I call Mr. Hudson to the
2 stand.

3 HEARING EXAMINER EZEANYIM: Okay.
4 Mr. Hudson, you are sworn already?

5 THE WITNESS: Yes, sir.

6 HEARING OFFICER EZEANYIM: All right.

7 RANDALL HUDSON,
8 after having been first duly sworn under oath,
9 was questioned and testified as follows:

10 EXAMINATION

11 BY MR. BRUCE:

12 Q. Mr. Hudson, where do you reside?

13 A. Fort Worth Texas.

14 Q. Who do you work for?

15 A. Hudson Oil.

16 Q. And what is your -- have you previously
17 testified before the division?

18 A. Yes.

19 Q. And you have testified, I think, as a
20 geologist, right?

21 A. Yes.

22 Q. And you have also -- you help run the
23 operations for Hudson Oil Company in Texas?

24 A. That's correct. I'm president.

25 Q. You're president of the company.

1 And as a result, you're pretty much
2 familiar with everything Hudson does?

3 A. Pretty much.

4 Q. Including probably a little reluctant land
5 work. Is that correct?

6 A. Absolutely.

7 MR. BRUCE: I'm not going to qualify
8 Mr. Hudson as an expert, Mr. Examiner, but he is
9 here just to testify about some factual matters.

10 HEARING EXAMINER EZEANYIM: A fact
11 witness? A fact witness, right?

12 MR. BRUCE: Yes.

13 HEARING OFFICER EZEANYIM: Okay.

14 Q. (By Mr. Bruce) Mr. Hudson, there's been
15 some comments about Hudson, and to a certain extent,
16 Burnett's failure to develop the acreage we're
17 talking about here today.

18 Could you comment on your efforts,
19 Hudson's efforts, to get this acreage drilled?

20 A. Sure. We -- we first noticed Yeso wells
21 being drilled in Section 19, offsetting us to the
22 east, primarily by Mack Energy. And we followed the
23 first 10 or 15 wells that they drilled and completed
24 with great interest, of course, because it was
25 directly offsetting our acreage.

1 And the rate of return Mack was getting
2 was not attractive to us, so we did not pursue the
3 Yeso based on the fact that an offsetting operator
4 was not getting a return that we were interested in.

5 And that's what initially kept us from
6 jumping right in and drilling Yeso wells when
7 someone directly offsetting us had begun to do the
8 same thing.

9 Q. And eventually, looking at the slide
10 that's up there, in Section 12, there's a square
11 around a well in the northeast quarter southwest
12 quarter of Section 12.

13 How was that well drilled? And that is a
14 Yeso well, correct?

15 A. That is a Yeso producer. It was drilled
16 as a Morrow test, I believe, in 2005, or very close
17 to that date. It was not completed in the Morrow,
18 and we made an attempt in the Yeso as a bailout
19 effort. And we have produced about 25,000 barrels
20 from that vertical Yeso completion since that time.

21 Q. Okay. So what did the well eventually
22 come -- originally come in at?

23 A. I think it started at about 100 barrels a
24 day, which got us fairly excited, out of the Paddock
25 only. But it dropped off fairly quickly and has

1 been in single digits now for several years.

2 Based on that, we weren't in a big hurry
3 to do a lot of offsets in the Yeso. It was about
4 that time -- in fact it was that time -- that we had
5 a partnership with Marbob. In fact, they helped
6 drill that particular Morrow test.

7 And at the time discussing the Yeso,
8 Johnny Gray, who was the principal at Marbob, and I,
9 discussed that there didn't seem to be any hurry to
10 offset the Knockabout with the Yeso test, and that
11 we would simply wait and see how the Yeso proved
12 itself, was it was going to be something that was
13 worthy of further exploration on these leases or
14 not.

15 Q. And you've mentioned that well has
16 produced 25,000 barrels or so. I mean, considering
17 the fact that it was originally drilled to the
18 Morrow, it would seem that that well hasn't paid out
19 yet.

20 A. No. In fact, we had to force pool my
21 uncle, Mr. Ard. And I happened to notice that I
22 think the payout option on that is somewhere in the
23 5 to \$10 million left to recover yet. So we're a
24 long way from payout on that well, under either a
25 100 or a 300 percent situation.

1 Q. So you've had -- I mean, obviously, that
2 well was drilled with Marbob. Did you continue to
3 have discussions with Johnny Gray, of Marbob,
4 regarding development of this acreage?

5 A. I did. And we discussed the fact that the
6 acreage might become prospective, and we agreed that
7 we would simply wait and let things develop around
8 us. And if the offsetting production and the price
9 of oil had an attractive rate of return, we would
10 approach it at that time.

11 Q. And did you have kind of a handshake deal
12 with Mr. Gray about sharing acreage or purchasing
13 each other's acreage?

14 A. Yes. Johnny and I had an agreement that
15 if any of the Hudson Oil entities acquired any other
16 interest, we would offer Marbob half.

17 And Marbob, if they acquired any outside
18 interest, would offer us half. And, in fact, that's
19 exactly what happened with respect to a couple of
20 the smaller interests.

21 Q. And, of course, that well, like you say,
22 was drilled seven years ago. There's been a lot of
23 changes, rapid changes, just over the last couple of
24 years in technology, has there not?

25 A. Yes. And the price of oil has gone up as

1 well.

2 Q. And that makes it much more attractive to
3 drill at this time?

4 A. Much more attractive. And I had a
5 conversation with Ray Miller, who works for Johnny,
6 at -- and Mo Gottlieb, two years ago, maybe three
7 years ago, now. And I said, "It's about time to
8 start looking at that."

9 He didn't tell me directly, but he
10 indicated that they were considering other options,
11 as in selling the company, and so there was really
12 no way to pursue it at that point.

13 Q. But there hasn't been a neglect of the
14 acreage?

15 A. There has been no neglect of the acreage
16 whatsoever. In fact, if we had not done what we
17 did, I think it's fair to say that none of us would
18 be sitting here from either side looking at what
19 looks to be a very attractive target for both
20 parties.

21 MR. BRUCE: That's all I have,
22 Mr. Examiner.

23 HEARING EXAMINER EZEANYIM: Okay. Thank
24 you very much.

25 Ms. Munds-Dry?

1 MS. MUNDS-DRY: I have a few questions for
2 Mr. Hudson.

3 I wonder if we could turn to the slide in
4 the land exhibit, slide F, I believe.

5 EXAMINATION

6 BY MS. MUNDS-DRY:

7 Q. It shows -- Mr. Hudson, it shows your
8 current surface development.

9 A. Okay.

10 Q. Of the wells that are shown here,
11 Mr. Hudson, this is showing in Section 12, 13, and
12 24. How many of these wells are candidates, in your
13 opinion, for plugging?

14 A. Probably a handful.

15 Q. Five, six?

16 A. Yes. We plugged two, I think, in the last
17 year, and we are working on plugging some more.

18 Q. How many of these wells are active?

19 A. All of them are active.

20 Q. They all produce some oil?

21 A. They produced, or injected into, to some
22 degree, yes.

23 Q. How do you allocate production on those
24 wells?

25 A. We use a well tester. There are two

1 leases involved. Actually, there are three leases
2 now. You've got the Puckett North, up here
3 (indicating), is one lease.

4 The A lease, which sits right here
5 (indicating). And then everything south of that,
6 including Section 25, is the B lease. We have got a
7 Puckett North battery, an A battery and a B battery.

8 Q. How is it that all your wells are making
9 about the same oil and gas for each lease?

10 A. I don't think that's true. I think the
11 Puckett North average per well is considerably
12 better than the two leases down here (indicating).

13 Q. If you look at it on a per-lease basis,
14 they're making exactly the same, aren't they?

15 A. I don't have those figures in front of me.
16 I would be very surprised, because we're selling --
17 well, actually due to takeaway issues right now,
18 we're having to hold back some up here.

19 But there's no magic effort on our part to
20 try and match them all. The production from each
21 lease goes into its own battery.

22 Q. Were you present for -- I'm sorry I don't
23 have this up. But I think you were present for all
24 the meetings between Concho and Burnett, maybe but
25 one, if I recall?

1 A. That's correct. I believe I missed one in
2 Fort Worth.

3 Q. Were you present for the March -- early
4 March meeting, March 3?

5 A. I don't remember the dates.

6 Q. It was the meeting where Concho came to
7 Fort Worth to discuss the allowables case.

8 Were you present for that meeting?

9 A. No.

10 Q. Maybe that was the one you missed.

11 A. Yes.

12 Q. Were you present for the April 20 meeting?

13 A. I don't remember the dates.

14 Q. That was the meeting where Concho brought
15 its counterproposal to allow Burnett to operate --

16 A. Was Mr. Pollard present at that meeting?

17 Q. I believe so. If you -- you were there, I
18 wasn't, so you would have to tell me.

19 A. I believe every meeting Mr. Pollard
20 attended, except one, I was present at.

21 Q. Okay.

22 A. Again, we have -- there were a lot of
23 meetings. I didn't prepare a chronology for my
24 testimony. So...

25 Q. Okay. Mr. Hudson, one more.

1 If we could just back up to the
2 Grayburg-San Andres production. What zone are you
3 disposing into, do you know?

4 A. Both the Grayburg and the San Andres.

5 Q. Both the Grayburg and the San Andres?

6 A. Yes.

7 Q. When you were watching the Mack wells
8 being developed in Section 19, when was that?

9 A. That was -- I could have prepared dates
10 for you, had I known the question. But I'm going to
11 guess in 2002, '3, '4, somewhere in there.

12 Q. Somewhere in that neighborhood?

13 A. Yes. And that's rough, but, yes.

14 Q. And you said the rate of return wasn't
15 attractive to you at that time?

16 A. That's correct.

17 Q. What were they getting? What was their
18 rate of return?

19 A. I don't remember the numbers, but I
20 remember Johnny and I sitting down looking at the
21 production. We had gathered about 13 wells, based
22 on initial six months' production. And he and Ray
23 Miller and I sat down and looked at it, and none of
24 us were excited about pursuing returns based on the
25 production rates we were seeing.

1 I can't tell you what the rate of return
2 rate was, though.

3 Q. Do you recall what rate of return would
4 have been interesting to you?

5 A. Something above 60 or 70 percent would
6 have been very attractive.

7 Q. When you had the -- and I know Mr. Gray,
8 and I know he -- he's a man of his word, and so you
9 can count on his handshake agreements.

10 And I know, when you had that discussion
11 to wait and see for how the Yeso developed, do you
12 recall when that was?

13 A. It was shortly after we drilled the
14 Knockabout well.

15 Q. And that was drilled approximately seven
16 years ago?

17 A. 2005 or so, something like that, yeah.

18 At that point, we actually had a plan of
19 development written for Section 12 that included
20 several 40-acre locations for the Yeso, in
21 preparation of, should it become attractive enough
22 we would pursue it, and it never did.

23 Q. And then you said it was approximately two
24 or three years ago that you had this discussion with
25 Mr. Miller about taking another look at it?

1 A. Yes. At that point, the Blinebry was
2 being drilled offsetting us, and that appeared to
3 make a difference in the returns on the wells.

4 And I'm loose on those dates, but
5 approximately.

6 MS. MUNDS-DRY: That's all the questions I
7 have. Thank you, Mr. Hudson.

8 HEARING EXAMINER EZEANYIM: Thank you.

9 MR. BRUCE: No more questions.

10 HEARING EXAMINER EZEANYIM: No more other
11 questions?

12 You know, I hate to ask questions of a
13 fact witness, because they are telling you it's a
14 fact. It doesn't need to -- I mean, whatever they
15 say is a fact, right?

16 Okay. Good. But, anyway, I need some
17 clarifications.

18 THE WITNESS: Sure.

19 HEARING EXAMINER EZEANYIM: Some of those
20 wells you pointed out there was related to the
21 Morrow, right? You drilled them to the Morrow
22 formation, right?

23 THE WITNESS: Yes, sir.

24 HEARING EXAMINER EZEANYIM: Your bailout
25 was the Yeso, right?

1 THE WITNESS: In the particular well right
2 here, yes, it was a bailout.

3 HEARING OFFICER EZEANYIM: Yeah. That
4 would --

5 THE WITNESS: We drilled the Morrow dry
6 hole here (indicating), and our bailout was
7 Grayburg-San Andres.

8 HEARING EXAMINER EZEANYIM: Is that where
9 you produced the 5,000? You are producing 5,000
10 from that well now?

11 THE WITNESS: 25,000 came from the well up
12 in here (indicating).

13 HEARING EXAMINER EZEANYIM: Is that in the
14 Grayburg-Jackson?

15 THE WITNESS: Out of the Yeso, yes, sir.

16 HEARING OFFICER EZEANYIM: Okay. That's
17 what I thought it was.

18 THE WITNESS: Yes, sir, out of the Yeso.

19 And then our bailout zone here
20 (indicating) -- this well was drilled prior to this
21 (indicating) well.

22 HEARING EXAMINER EZEANYIM: Oh, okay.

23 THE WITNESS: And this well (indicating),
24 our bailout was the Grayburg-San Andres. Because,
25 as I recall when this well was drilled, the Yeso was

1 not even --

2 HEARING OFFICER EZEANYIM: Yeah.

3 THE WITNESS: -- we were ahead of the game
4 there.

5 HEARING EXAMINER EZEANYIM: What happened
6 with that well in the Grayburg?

7 THE WITNESS: The Grayburg-San Andres,
8 it's a marginal producer.

9 HEARING EXAMINER EZEANYIM: I'm not
10 interested in that.

11 THE WITNESS: Uh-huh.

12 HEARING EXAMINER EZEANYIM: Okay. On
13 those three sections, you said you have 100 percent
14 working interest, right? I thought that's what you
15 wrote there. You said that --

16 THE WITNESS: Operates 100 percent of the
17 current surface. In other words, we're the only
18 operator of any wells on these three sections right
19 now.

20 HEARING EXAMINER EZEANYIM: In the
21 Grayburg-Jackson? How many in Grayburg --

22 THE WITNESS: Any wells.

23 HEARING OFFICER EZEANYIM: Oh.

24 THE WITNESS: They're all
25 Grayburg-San Andres except for one, but there are no

1 other wells drilled on those sections right now
2 producing.

3 HEARING OFFICER EZEANYIM: No operators?

4 THE WITNESS: No other operators.

5 HEARING EXAMINER EZEANYIM: Okay. So only
6 you?

7 THE WITNESS: Yes.

8 HEARING EXAMINER EZEANYIM: In the
9 Grayburg-San Andres, right?

10 THE WITNESS: And one Yeso well right
11 there (indicating), yes, sir.

12 HEARING EXAMINER EZEANYIM: Yeah. Okay.
13 Okay. That one Yeso here.

14 I just want to understand that.

15 THE WITNESS: And Burnett is a partner, a
16 working interest owner and partner, in the
17 Grayburg-San Andres production here as well.

18 HEARING EXAMINER EZEANYIM: Okay. But you
19 are the operator?

20 THE WITNESS: Yes, sir.

21 HEARING EXAMINER EZEANYIM: Could you
22 point me to -- do you know how many wells are in
23 Section 12? Do you have any idea?

24 THE WITNESS: How many total wells?

25 HEARING EXAMINER EZEANYIM: Yes, in

1 Section 12, in the Grayburg-San Andres.

2 THE WITNESS: I think we -- we drilled --
3 on the Puckett North lease we have drilled 11 wells,
4 plus the Knockabout. Two are down here
5 (indicating), so --

6 HEARING EXAMINER EZEANYIM: So how many?
7 11?

8 THE WITNESS: 10 up here, I believe.

9 HEARING EXAMINER EZEANYIM: And then on
10 13, how many?

11 THE WITNESS: If we're going to count the
12 shallow wells here, 11.

13 HEARING EXAMINER EZEANYIM: Okay. 11.
14 And then if --

15 THE WITNESS: These are shallow producers,
16 as well, as are all of these.

17 HEARING EXAMINER EZEANYIM: Okay.

18 THE WITNESS: And we have been operating
19 on those leases since the 1940s, '30s.

20 HEARING EXAMINER EZEANYIM: What?

21 THE WITNESS: We have been operating these
22 wells, some of them, since the 19- -- early 1940s,
23 late 1930s.

24 HEARING EXAMINER EZEANYIM: The Hudson
25 Company?

1 THE WITNESS: Yes. Before I was born.

2 HEARING EXAMINER EZEANYIM: But you are so
3 young. That's what I was trying to say. And, you
4 know, you are the president. And you can be -- and
5 no matter how young you look, you were not born in
6 1930.

7 THE WITNESS: I'm getting older every day.

8 HEARING OFFICER EZEANYIM: Yeah, I know
9 that.

10 THE WITNESS: Some days more than others.

11 HEARING OFFICER EZEANYIM: So there are no
12 more operators. Okay. That's good. I mean, that
13 is a very good job. Okay? Thanks.

14 THE WITNESS: Thank you.

15 MR. BRUCE: That's all I have at this
16 time, Mr. Examiner.

17 HEARING EXAMINER EZEANYIM: Thank you very
18 much.

19 So we come to Ms. Munds-Dry. We're going
20 to take a break before we start.

21 (A recess was taken from 3:01 p.m. to 3:17
22 p.m.)

23 HEARING OFFICER EZEANYIM: We're going to
24 go back on the record for Docket 24-11.

25 And, Ms. Munds-Dry, call your first

1 witness.

2 MS. MUNDS-DRY: Thank you. I call David
3 Evans.

4 HEARING EXAMINER EZEANYIM: Who?

5 MS. MUNDS-DRY: David Evans, who happens
6 to be conveniently sitting there already.

7 HEARING EXAMINER EZEANYIM: Very good.

8 DAVID EVANS,
9 after having been first duly sworn under oath,
10 was questioned and testified as follows:

11 EXAMINATION

12 BY MS. MUNDS-DRY:

13 Q. Mr. Evans, where do you reside?

14 A. In Midland, Texas.

15 Q. And by whom are you employed?

16 A. COG Operating, LLC.

17 Q. What do you do for Concho?

18 A. I'm the landman lead for the shelf team.

19 Q. Have you previously testified before the
20 division?

21 A. I have.

22 Q. And were your credentials accepted and
23 made a matter of record?

24 A. They were.

25 Q. And, Mr. Evans, are you familiar with the

1 applications that have been filed by Concho?

2 A. I am.

3 Q. Are you familiar with the status of lands
4 that are subject to those applications?

5 A. I am.

6 MS. MUNDS-DRY: Mr. Ezeanyim, we tender
7 Mr. Evans as an expert in petroleum land matters.

8 HEARING EXAMINER EZEANYIM: He will be so
9 qualified.

10 Q. (By Ms. Munds-Dry) Mr. Evans, this is
11 going to be a tedious exercise. But because we have
12 so many applications before the division, I'd ask
13 you to summarize for the Examiner in each case what
14 Concho is seeking.

15 A. In these cases, 14706, 14707, 14708,
16 14710, 14711, 14712, 14713, 14714, 14715, 14716,
17 14717, 14718, we are asking for a consolidated -- to
18 create a nonstandard unit for those sections, a
19 nonstandard location for the wells, including all
20 the mineral release of interest within Sections 12,
21 24, and 13.

22 Q. What is Concho's position with respect to
23 the two Burnett pooling cases that are before the
24 Examiner today?

25 A. We believe those applications will cause

1 waste.

2 HEARING EXAMINER EZEANYIM: Is that what
3 you're looking at?

4 MS. MUNDS-DRY: Oh, I'm sorry,
5 Mr. Ezeanyim, yes. And just for your reference and
6 for everybody that's playing along, in the white
7 notebook are all of the exhibits except for 2, 3,
8 and 4. 2, 3, and 4 are in that Redweld file.

9 HEARING EXAMINER EZEANYIM: Okay.

10 MS. MUNDS-DRY: I'm sorry.

11 Q. (By Ms. Munds-Dry) Mr. Evans, you were
12 stating Concho's position with respect to the
13 Burnett applications.

14 HEARING EXAMINER EZEANYIM: Go ahead.

15 A. We believe the applications by Burnett
16 will cause waste. And due to the BLM surface
17 matters and issues, Concho's developed a horizontal
18 well plan to reduce surface impairment and maximize
19 recovery.

20 Vertical well applications will interfere
21 with horizontal patterns and will cause waste and
22 will leave remaining reserves in the ground.

23 Q. (By Ms. Munds-Dry) If you could,
24 Mr. Evans, turn to what has been marked as COG
25 Exhibit Number 1.

1 Identify and review that for the Examiner,
2 please.

3 A. This shows the outline of the two Federal
4 leases and the Knockabout well and the various
5 interests held by the parties.

6 Q. It's hard to read on the screen there. It
7 may be a little easier in the notebook.

8 What is Concho's ownership in each of the
9 leases?

10 A. In the federal leases, Concho's interest
11 is 33.714587. And in the Knockabout well and the
12 proration units, Concho's interest is 44.83 percent.
13 So you see a substantial difference between the two.

14 Q. And in terms of the ownerships in each of
15 the leases, how did Concho obtain its interest?

16 A. Concho acquired its interest from the Ard
17 family and from the Iverson family and from Marbob's
18 acquisition.

19 HEARING EXAMINER EZEANYIM: Who is the Ard
20 family?

21 THE WITNESS: Julian Ard and Mary Ard are
22 owners of about 11 percent, in Fort Worth. They
23 reside in Fort Worth. They're the cousins of the
24 Hudsons.

25 HEARING EXAMINER EZEANYIM: All right.

1 Are they a working interest or...

2 THE WITNESS: They were a working
3 interest, and we acquired that through term
4 assignment.

5 HEARING OFFICER EZEANYIM: Okay.

6 Q. (By Ms. Munds-Dry) What is the Iverson
7 interest?

8 A. Right at 10 percent.

9 Q. And do you also hold a top lease on that
10 interest?

11 A. Yes, we do.

12 Q. Why did you obtain that top lease?

13 A. When we first heard of this project, we
14 believed that we had acquired assignments that
15 were -- that we were capable of drilling and making
16 application to get permits and -- drill permits.
17 And we believed that those assignments allowed us
18 enough time to get our applications through the
19 hearing, through the commission.

20 As time went on, with all of our fights
21 through allowables and with these force pooling
22 hearings, our time started running out. The
23 Iversons were contacted by the Hudson family for a
24 top lease to take away our interest.

25 I received several e-mails with regard to

1 this matter. Although we were not really required
2 to take a top lease at that time, because our
3 interest was not about to expire, we were forced to
4 take it to protect our backside.

5 Q. That cost you some money?

6 A. About a half million dollars.

7 Q. What is Concho's primary objective in each
8 of the proposed horizontal wells before the division
9 today?

10 A. To fully develop the Yeso, which is the
11 Blinebry and Paddock.

12 Q. And we'll be calling a geologist and some
13 engineers to discuss those members of the Yeso?

14 A. Yes, we will.

15 Q. Okay. Let's summarize what Concho's
16 efforts are -- have been to obtain the voluntary
17 participation of all the working interest owners in
18 the proposed project areas.

19 When was your first contact with -- really
20 with Mr. Hudson, as I understand it?

21 A. Yes. November 12, 2010, I called
22 Mr. Hudson, who I had known through a relationship
23 through Oxy, thinking that we may be able to make a
24 joint participation arrangement.

25 We realized that, with our development

1 program at Concho, that we wanted to put two to four
2 rigs in this area, and that the Hudson group could
3 not possibly participate in that number of AFEs that
4 we were proposing. So we were going to go meet with
5 them to discuss some kind of working interest
6 framework, that we would carry them for part and
7 they would participate for part.

8 When we got to the meeting in Mr. Hudson's
9 office, we were immediately told that they did not
10 want to hear what we had to say, that they were
11 going to operate this, that they were a better
12 operator, that we needed to stand back and watch
13 them operate this property. And we were told that
14 we did not have the right to operate on the property
15 because this had been in their family for 80 years.

16 Q. At that time, did Burnett or Hudson
17 indicate how many wells they would plan to drill in
18 a year?

19 A. Yes. They had planned to drill on this
20 property between one to six wells, depending upon
21 results.

22 Q. Okay. When was your next contact? Did
23 you have another meeting with the -- what I'll call
24 the Burnett/Hudson group?

25 A. Yes. This is on March 3, 2011. We --

1 after reviewing the shelf, or after our acquisition
2 of Marbob, we realized that we had an allowable
3 problem on the shelf. We immediately went to all
4 the operators in the field to get support to come to
5 hearing to get the rules changed.

6 We knew that Hudson would be, maybe, a
7 problem because of the -- how upset they were about
8 the Puckett issue, but we approached them to get
9 some support on the allowables. We believed that
10 they were two separate issues. We wanted to get the
11 allowable fixed and then discuss development of the
12 Puckett at a later time.

13 We went to the office where Bill Pollard
14 and Randall met us. We asked to get their support
15 in the allowable.

16 And Mr. Pollard immediately said, "Well,
17 we will support you in the allowable hearing if you
18 will turn over operations on the Puckett. And if
19 you don't turn over operations on the Puckett, we're
20 going to oppose you."

21 And then he got into the discussion of,
22 "If you can't drill your wells because of this
23 allowable problem, that's going to hurt your
24 company, correct?"

25 And we didn't know what he was talking

1 about.

2 And he was -- "It's going to affect your
3 budget. We are not going to allow you to drill
4 these wells."

5 It was a real contested meeting, to where
6 we left with the knowledge that they were going to
7 fight us on allowables and they were going to try to
8 take away operations on the Puckett.

9 HEARING EXAMINER EZEANYIM: Mr. Evans, I
10 know you are angry. Just cool down.

11 THE WITNESS: Yes, sir.

12 HEARING OFFICER EZEANYIM: Yeah. You
13 know --

14 THE WITNESS: I'm excited.

15 HEARING EXAMINER EZEANYIM: I know you are
16 angry. Just cool down a little bit. Okay?

17 THE WITNESS: Okay.

18 MS. MUNDS-DRY: It's just passion,
19 Mr. Ezeanyim.

20 HEARING OFFICER EZEANYIM: Yeah. I know
21 that.

22 THE WITNESS: It's just passion.

23 HEARING OFFICER EZEANYIM: I understand.
24 Everybody understands that. But just cool down.
25 Okay?

1 THE WITNESS: Okay.

2 Q. (By Ms. Munds-Dry) And, Mr. Evans, for
3 the record and so that Mr. Ezeanyim understands, we
4 call them the Puckett leases, and I believe Burnett
5 refers to them as the Maljamar leases or
6 Maljamar area. Is that correct?

7 A. That's correct. The original lessor here
8 was Puckett. Their name was Puckett.

9 HEARING EXAMINER EZEANYIM: But now it's
10 the Maljamar lease?

11 THE WITNESS: It's the Maljamar area.

12 MS. MUNDS-DRY: You will hear Concho refer
13 to it as Puckett, just so you don't think that it's
14 two different --

15 HEARING EXAMINER EZEANYIM: Which is it?
16 Is it Puckett or Maljamar?

17 MS. MUNDS-DRY: It's both. It's the same
18 thing.

19 THE WITNESS: It's both. It's the same
20 thing.

21 HEARING EXAMINER EZEANYIM: Okay. It
22 depends on who is the operator. Is that the same
23 thing?

24 MS. MUNDS-DRY: Yes.

25 HEARING EXAMINER EZEANYIM: It depends.

1 If you're COG, it's Puckett?

2 MS. MUNDS-DRY: Yes.

3 HEARING OFFICER EZEANYIM: If you are
4 Burnett/Hudson, it's Maljamar?

5 MS. MUNDS-DRY: Yes, sir.

6 HEARING EXAMINER EZEANYIM: Okay. I've
7 got the right to call it anything. But...

8 Q. (By Ms. Munds-Dry) Mr. Evans, then, so
9 what was your impression then when you left that
10 meeting?

11 A. Well, that they were not going to support
12 us on the allowables, because we weren't going to
13 give in to operations on the Puckett until we went
14 to hearing.

15 HEARING EXAMINER EZEANYIM: Which
16 allowable are you talking about?

17 THE WITNESS: That is the allowable -- the
18 shelf allowable hearings that we've been going
19 through.

20 HEARING OFFICER EZEANYIM: Yeah, okay.

21 THE WITNESS: That you are reviewing.

22 MS. MUNDS-DRY: I think you're familiar
23 with those, Mr. Ezeanyim.

24 HEARING EXAMINER EZEANYIM: Okay. I am
25 familiar with them. They are giving me a headache.

1 THE WITNESS: So I mean -- and the whole
2 allowable argument was all about Puckett or
3 Maljamar.

4 HEARING OFFICER EZEANYIM: Okay.

5 THE WITNESS: And then right after that,
6 we received a letter from Bill Pollard that more or
7 less said that "if you would turn over operations on
8 Puckett, that we would support you in the allowable
9 hearing. And if you don't, then we will fight you
10 through all the allowable hearings."

11 Q. (By Ms. Munds-Dry) Okay. Mr. Evans, did
12 you have another meeting, then, with the
13 Burnett/Hudson group after that?

14 A. Yes. On March 29 we went back to
15 Fort Worth to meet with Bill Pollard and Randall
16 Hudson, Mark Jacoby, and David Rhodes.

17 You know we're fighting a standoff, just
18 like you said earlier today. We went to see what
19 they would do. If we turned over operations to
20 them, what would they guarantee us to do. Would it
21 be one well in 2011, would it be 30 wells in 2011?
22 Just what was it that they would do for the
23 property? And so we had a long discussion.

24 And at the end it was they would agree to
25 drill four wells in 2011 and eight wells in 2012,

1 and then we would work together after that to do a
2 development of the area. That satisfied our needs
3 and all of the terms of our agreements.

4 So we went -- Keith and I flew back to
5 Midland. I wrote up a letter that had those terms
6 in it --

7 Q. And when was that, that you --

8 A. That was on the 20th.

9 Q. Uh-huh.

10 A. We flew back to Fort Worth to hand deliver
11 it and to go over the terms. And, basically, it had
12 the four wells for 2011 and the eight wells in 2012.
13 Those were our terms, and we would turn over all
14 operations on Puckett, or Maljamar, to Burnett for
15 drilling and we would forego all the other AFEs that
16 we had proposed and work with them to get these
17 wells drilled for this year.

18 HEARING EXAMINER EZEANYIM: Do you have
19 that letter here? Do you have that letter that you
20 wrote on this issue?

21 MS. MUNDS-DRY: I'm sure I do,
22 Mr. Ezeanyim, if you will give me a minute. We can
23 do it at a break or I can try to find it now.

24 HEARING EXAMINER EZEANYIM: Okay. I would
25 like to see that letter during the break.

1 So the letter was really -- I'm sorry I
2 interrupted.

3 THE WITNESS: That's all right.

4 HEARING OFFICER EZEANYIM: But, you know,
5 I need to understand.

6 Go ahead with the letter and tell me what
7 happened.

8 THE WITNESS: There -- in the letter
9 agreement was the four wells and the eight wells.
10 But because in previous meetings one of the members
11 in the Burnett/Hudson group had threatened to cause
12 our term assignments to expire if we didn't agree
13 with them to let them operate, we had to build some
14 protections into our letter.

15 And basically the protections were, as
16 they're drilling the wells under the terms that we
17 agreed to, they would protect our assignments. And
18 at the end of the drilling program which would be,
19 under this theory, 24 wells, horizontal wells, that
20 we would turn over -- we wanted to reserve two
21 locations or three locations in case they couldn't
22 perform, that we can move a rig in and drill the
23 wells to make our lease continue -- continuing, by
24 drilling. And --

25 MS. MUNDS-DRY: Mr. Ezeanyim, I have the

1 letter. I just have one copy of it, though.

2 And so I don't know if you want to look at
3 it first, and then I can give it to Mr. Ezeanyim.

4 HEARING EXAMINER EZEANYIM: Yeah. Let him
5 look at it.

6 MS. MUNDS-DRY: I'm sorry, I didn't know
7 we were going to --

8 HEARING OFFICER EZEANYIM: And then it's
9 important to see the letter, but I would like to
10 have a copy maybe at -- during the break.

11 MS. MUNDS-DRY: We will work on getting
12 some copies made.

13 HEARING OFFICER EZEANYIM: Okay.

14 Go ahead.

15 THE WITNESS: So, apparently, the
16 provisions to protect ourselves were not to
17 Burnett/Hudson's liking.

18 So with their threat, we had to have some
19 kind of protection that, you know, if they failed or
20 stopped drilling we could move a rig in and protect
21 our leasehold.

22 The other part about that was that at the
23 end of our drilling program, should they perform as
24 they said they would, we would turn over the
25 locations that we reserved for ourselves to them.

1 It was never our intent to drill any wells in there
2 as long as they performed under those guidelines.

3 So --

4 HEARING EXAMINER EZEANYIM: The guidelines
5 in the letter?

6 THE WITNESS: Yes, sir.

7 HEARING EXAMINER EZEANYIM: Okay.

8 THE WITNESS: So let's just say the
9 guidelines were 56 wells was complete development of
10 the field. So we would hold out three -- three well
11 locations out of the 56. That would be three, so
12 they had to drill 53. And then to drill 54 we would
13 turn one of the three over to them, they would drill
14 54. And if they drilled 54, we would turn 55 over
15 to them. And if they drilled the 55th location we
16 would let them drill the 56th location, and then we
17 would no longer be an operator, or we would no
18 longer have a reserve drilling location.

19 HEARING EXAMINER EZEANYIM: This was
20 discussed among the parties, right?

21 THE WITNESS: Yes, sir.

22 HEARING EXAMINER EZEANYIM: This was
23 discussed. What you're telling me was discussed,
24 right?

25 THE WITNESS: Yes.

1 HEARING EXAMINER EZEANYIM: Okay. And
2 agreed upon? Okay. Go ahead.

3 Q. (By Ms. Munds-Dry) So you were present
4 for Mr. Rhodes' testimony this morning, were you
5 not?

6 A. I was.

7 Q. I believe Mr. Rhodes described it as they
8 didn't except it because there were strings
9 attached?

10 A. There were strings attached.

11 Q. In your opinion, did Concho make a good
12 faith effort to obtain the voluntary participation
13 in these wells?

14 A. Yes, it did.

15 Q. In your opinion, has the Burnett/Hudson
16 group made a good faith effort to obtain the
17 voluntary participation of Concho in their wells?

18 A. They have not. We made several trips to
19 Fort Worth showing our effort. We made several
20 proposals to them showing our effort, and not once
21 did we get something that we could live with.

22 Q. And I want you to be careful here,
23 Mr. Evans, because as they have mentioned this
24 morning, there's a confidentiality agreement.

25 But have there been other meetings or

1 other efforts to reach an agreement after April 20?

2 A. Yes.

3 Q. Okay. Let's go to what has been marked as
4 Concho Exhibit Number 2.

5 MS. MUNDS-DRY: And, Mr. Ezeanyim, that's
6 in the file folder there, the Redweld.

7 Q. (By Ms. Munds-Dry) What is Exhibit
8 Number 2?

9 A. These are our well proposals and our
10 amended well proposals for the Puckett wells.

11 Q. For all of the wells in Section 12 that we
12 proposed?

13 A. Yes.

14 Q. And with those well proposals, what was
15 included with each of those well proposals?

16 A. Our identification packet, our operating
17 agreement.

18 Q. And how did Concho propose its wells, in
19 terms of each lateral? Did it provide a separate
20 AFE for each lateral?

21 A. Yes.

22 Q. And, hopefully, we've grouped them well
23 enough. But can you give the dry hole and completed
24 well costs for each of those wells in Section 12?

25 A. The lower Blinebry, the dry hole cost is

1 1.5 million and the completed cost is 3.78.

2 And the upper Blinebry, dry hole costs are
3 1.2, basically, and completed was 2.9.

4 Q. And what about for the Paddock?

5 A. And the Paddock was 1.15 dry hole cost,
6 completed at 2.9.

7 Q. I believe that was for the Puckett 12 1H,
8 2H, 3H, 5H, and 7H?

9 A. That's correct.

10 Q. Was there a different AFE cost for the 9H?

11 A. Yes.

12 Q. What were those dry hole and completed
13 well costs?

14 A. Lower Blinebry was 1.7. Dry hole
15 completed was 3.957.

16 Upper Blinebry was 1.2, completed was 2.9.

17 Paddock dry hole was 1.155, and completed
18 was 2.9.

19 MS. MUNDS-DRY: I don't want to rush,
20 Mr. Ezeanyim. But if it's all right, we will turn
21 to the next exhibit, Number 3.

22 Q. (By Ms. Munds-Dry) Which well proposals
23 are contained in Concho Exhibit 3?

24 A. These are the Puckett 13 Federals.

25 Q. And did we also include AFEs for each

1 lateral and a proposed operating agreement?

2 A. Yes, we did.

3 Q. And what are the AFE totals for the

4 Puckett 13 Federal 1H and 7H?

5 A. Dry hole cost of these was 1.5, completed

6 3.7.

7 And for the Puckett 13, Fed 2H, 3H, 5H,

8 8H, lower Blinebry was 1.5, completed was 3.78.

9 Upper Blinebry and Paddock, 1.1, completed

10 2.9.

11 Q. And Exhibit 4, what is -- what well

12 proposals are in Exhibit 4?

13 A. These are Puckett 24.

14 Q. And did we also send AFEs for each lateral

15 and an operating agreement for these proposals?

16 A. We did.

17 Q. What are the AFE totals here?

18 A. 1.7 for the dry hole cost of the lower

19 Blinebry. Completed costs were 3.9.

20 Upper Blinebry and Paddock, 1.1.

21 Completed was 2.9.

22 Q. And that is for the Puckett 2H, 24 2H?

23 A. 2H. I'm sorry, yes.

24 And for the 24 Fed 4H, 6H, 7H, 8H, lower

25 Blinebry of 1.5 for dry hole, completed well was

1 3.7.

2 Upper Blinebry and Paddock dry hole 1.5,
3 completed 2.9.

4 Q. Are these costs that are set forth in
5 these AFEs, do you believe these are in line with
6 what has been charged for similar wells in the area?

7 A. Yes.

8 Q. And will an engineer testify later as to
9 why we think those costs are in line with similar
10 wells?

11 A. Yes, he will.

12 Q. Have you made an estimate of overhead
13 administrative costs while drilling this well and
14 also while producing this well -- these wells, if
15 they're successful?

16 A. Yes, I have.

17 Q. What are those figures?

18 A. 600 and 6,000.

19 Q. 600 a month while drilling and 6,000 a
20 month while producing?

21 A. Yes.

22 Q. Do you recommend that these figures be
23 incorporated into any order that results from this
24 hearing?

25 A. Yes, we do.

1 Q. You indicated earlier that a joint
2 operating agreement had been proposed for these
3 wells.

4 Does it provide for the periodic
5 adjustment of these overhead administrative costs?

6 A. Yes, it does.

7 Q. And does Concho request that those
8 overhead administrative costs be in that -- set out
9 in the order that results from this hearing, be
10 adjusted in accordance with the focus procedures?

11 A. Yes, we do.

12 Q. Does Concho request that the 200 percent
13 charge for risk authorized under the statute be
14 imposed on each cost, barring interest not
15 voluntarily committed to the wells?

16 A. Yes.

17 Q. And does Concho seek to be designated
18 operator of the proposed wells?

19 A. Yes, we do.

20 Q. Okay.

21 MS. MUNDS-DRY: We got that out of the
22 way, Mr. Ezeanyim.

23 HEARING OFFICER EZEANYIM: Okay.

24 Q. (By Ms. Munds-Dry) Let's turn to what has
25 been marked as Concho Exhibit Number 5.

1 What does this slide show us?

2 A. That is the additional revenue that we
3 estimate that will go to the State of New Mexico if
4 Concho drills its wells versus the Burnett plan.

5 Q. This shows, under the 14 wells here that
6 have been proposed, versus Burnett's two wells. Is
7 that correct?

8 A. That's correct.

9 Q. And what's the additional revenue to the
10 State of New Mexico difference?

11 A. \$96,710,843.71.

12 Q. Let's go to Concho Exhibit Number 6.

13 HEARING EXAMINER EZEANYIM: Do you mind if
14 I ask a question?

15 MS. MUNDS-DRY: Please.

16 HEARING EXAMINER EZEANYIM: Okay. This is
17 interesting.

18 You say "additional revenue." What's
19 comprised? Are you comparing apples and apples or
20 what are you comparing?

21 THE WITNESS: Well, we're comparing our
22 drilling program versus the one they have proposed
23 at this hearing, sir.

24 HEARING EXAMINER EZEANYIM: Oh, okay. And
25 it bears on that. Is the tax rate different?

1 THE WITNESS: No.

2 HEARING EXAMINER EZEANYIM: Okay. The
3 same tax rate. Then it's based on ultimate oil
4 recovery, then?

5 THE WITNESS: On what?

6 HEARING EXAMINER EZEANYIM: Ultimate oil
7 recovery.

8 THE WITNESS: It's based on our estimated
9 oil recovery.

10 HEARING EXAMINER EZEANYIM: Your estimated
11 oil recovery. And then what are you estimating
12 here?

13 THE WITNESS: As far as our oil recovery?

14 HEARING EXAMINER EZEANYIM: Yeah. You are
15 going to recover 15.7 million? Is that what you are
16 saying?

17 THE WITNESS: Yes. Our estimate will
18 recover this 15-7.

19 HEARING EXAMINER EZEANYIM: Okay. And
20 then the royalty to New Mexico is what? Is that
21 7-8?

22 THE WITNESS: I'm sorry?

23 HEARING EXAMINER EZEANYIM: What is the
24 royalty to New Mexico? Is that 7-8? Why do you owe
25 the government 7.5?

1 THE WITNESS: I think this is 8 percent
2 tax on the value generated.

3 HEARING OFFICER EZEANYIM: Yeah. What --

4 MS. MUNDS-DRY: These are federal leases,
5 Mr. Ezeanyim, so --

6 HEARING EXAMINER EZEANYIM: Oh, they are
7 federal leases?

8 THE WITNESS: Yes, sir.

9 HEARING OFFICER EZEANYIM: I'm trying to
10 see how you got the calculation.

11 THE WITNESS: Strictly a tax --

12 MS. MUNDS-DRY: This is just a tax.

13 THE WITNESS: -- revenue.

14 HEARING EXAMINER EZEANYIM: Oh, okay. I
15 see.

16 So you're saying -- are you saying now
17 that this ratio of production would be 15.7 million
18 from what is proposed by the other party?

19 THE WITNESS: That is just the difference.

20 HEARING EXAMINER EZEANYIM: That would be
21 the difference?

22 THE WITNESS: Yes, sir.

23 HEARING EXAMINER EZEANYIM: After all is
24 said and done?

25 THE WITNESS: That's our program.

1 HEARING EXAMINER EZEANYIM: Oh, okay.

2 THE WITNESS: Less their program.

3 HEARING EXAMINER EZEANYIM: Yes. We are
4 trying to put it on the record. That is why I'm
5 asking this question. Okay.

6 THE WITNESS: And an engineer can testify
7 later to this better than I can.

8 HEARING EXAMINER EZEANYIM: Okay.

9 Q. (By Ms. Munds-Dry) Okay. Let's turn to
10 Concho Exhibit Number 6.

11 What is this document?

12 A. We received news sometime in August that
13 Burnett had proposed a federal unit. This letter is
14 our response to the BLM rejecting -- or asking the
15 BLM to decline the unit.

16 That's because Burnett does not have
17 85 percent control of the federal unit boundary,
18 that Concho has 33.71 percent not recognized in the
19 preliminary approval.

20 Q. And so this is just -- this is a copy of
21 the letter that we sent to the BLM --

22 A. Yes, it is.

23 Q. -- rejecting the proposal?

24 A. Yes, it is.

25 Q. Let's go to Concho Exhibit Number 7, which

1 should be a slide.

2 What does this show us?

3 A. These are just basic reasons why we
4 believe the unit should be denied.

5 Burnett/Hudson does not have 85 percent
6 approval of the working interest owners.

7 Concho owns roughly 33.72 percent of the
8 leasehold within the proposed unit, and we're not
9 signing it.

10 Burnett can slow play development with a
11 federal unit agreement. A test well is not required
12 until six months after it is approved. And then
13 after completion of the test well, under the terms
14 of the unit agreement, they could file a plan of
15 development that would delay the drilling program by
16 a solid year, as opposed to our proposed drilling
17 program.

18 Concho's harm, by not allowing a
19 reasonable and timely rate of return on its
20 investment if that occurs -- if the unit is
21 approved, Concho is denied its reasonable and timely
22 rate of return on its term assignments that it
23 acquired.

24 Federal exploratory units are developed
25 for areas that are exploratory in nature and, by

1 definition, where development has never occurred.

2 That is not the case here. You have
3 development on both the east and west sides and on
4 the northern, inside the unit boundary. It's the
5 Knockabout well.

6 And then last but not least, Concho
7 objects to Burnett/Hudson's proposed form of
8 agreements. The attempt to distort the operations
9 with a 1989 form of JOA that is subject to the terms
10 of the federal operating agreement form distorts the
11 purpose of the federal operating agreement form.

12 It doesn't make a lot of sense of how it's
13 going to work.

14 Q. Mr. Evans, I asked you previously if you
15 were present for Mr. Rhodes' testimony.

16 Did you hear him state that they didn't --
17 they kept those discussions with the BLM
18 confidential because they were concerned about
19 Concho's interference?

20 A. Yes.

21 Q. When did Concho first become aware that
22 Burnett was proposing an exploratory unit for the
23 three sections, 12, 13 and 24?

24 A. August 5.

25 Q. And did you also receive some sort of

1 official notice by letter?

2 A. August 25th.

3 Q. And have you, either at Concho or in
4 previous jobs as a landman, ever been responsible
5 for performing an exploratory unit?

6 A. Yes, I have.

7 Q. In fact, weren't you involved in one of
8 the largest exploratory units in New Mexico?

9 A. I was involved in the signup for the Bravo
10 Dome unit.

11 Q. What is the custom and practice as a
12 landman, when you're forming a unit -- an
13 exploratory unit, in terms of contacting the working
14 interest owners that you plan to have in that unit?

15 A. In every federal unit that I have ever put
16 together you always contact the working interest
17 owners first to see what the plan would be to
18 develop and formulate a unit. You get consensus of
19 the owners, then you go jointly with the working
20 interest owner group to go before the BLM and
21 propose the unit.

22 Q. Is part of that just to simply determine
23 whether you have enough percentage, according to BLM
24 rules?

25 A. That's correct.

1 Q. Is it highly unusual not to talk to the
2 working interest owners until after the preliminary
3 approval?

4 A. Highly unusual.

5 Q. Let's turn to what has been marked as
6 Concho Exhibit Number 8.

7 What does this show? And we visited a
8 version of this before.

9 A. Yes. This is the difference between the
10 OA interests, which is the operating agreement,
11 which is the south half of 12 and the interest in
12 the -- not subject to the operating agreement -- and
13 then the interest in the proration unit, so they're
14 different.

15 Q. And what effect would forming a unit have
16 on this operating agreement?

17 A. It would dilute our interest in the
18 current existing well.

19 Q. What does the operating agreement require
20 in order to amend that contract?

21 A. 100 percent ratification.

22 Q. And, Mr. Evans, is Exhibit Number 9 my
23 notice affidavit showing notice of this? All of
24 these applications were given to -- which is the
25 green cards and letters and a copy of the

1 publication for each of those cases?

2 A. Yes.

3 Q. Mr. -- were Exhibits 1 through 9 either
4 prepared by you or compiled under your direct
5 supervision?

6 A. Yes, they were.

7 MS. MUNDS-DRY: Mr. Ezeanyim, we would
8 move to admit Exhibits 1 through 9 into evidence.

9 MR. BRUCE: No objection.

10 HEARING EXAMINER EZEANYIM: Exhibits 1
11 through 9 will be admitted.

12 MS. MUNDS-DRY: That concludes my direct
13 examination of Mr. Evans.

14 I pass the witness.

15 HEARING EXAMINER EZEANYIM: Okay.

16 Mr. Bruce?

17 EXAMINATION

18 BY MR. BRUCE:

19 Q. Mr. Evans, without having you reference or
20 go through these Exhibits 2 though 4 again, the only
21 letters I saw in there were to Burnett Oil Company,
22 correct?

23 A. In 2 through 4?

24 Q. 2 through 4, in --

25 A. That's the AFE packages?

1 Q. Yes.

2 A. Yes, but I think the notices correctly
3 provide all the people that were notified.

4 MS. MUNDS-DRY: It should be Burnett,
5 Javelina, the various Hudson entities.

6 THE WITNESS: Zorro, Javelina, Hudson Oil.

7 Q. (By Mr. Bruce) Then looking at Exhibit 9,
8 the notice affidavits, just the very second page,
9 which is talking about the west half west half of
10 Section 12 -- and this is just for example -- did --
11 I'll give you my copy.

12 MR. BRUCE: If I can approach the witness?

13 Q. (By Mr. Bruce) This is part of
14 Mr. Rhodes' land package, which included their
15 proposed Exhibit B to the unit agreement.

16 Now, I've got to memorize these names
17 before I get there. There are some people named
18 John F. Cranz and Ernest Cosult, Jr.?

19 A. Not recognized on our title.

20 Q. So you didn't notify them?

21 A. Not that I'm aware of. Our title team
22 does not reflect that. In fact, that's the first
23 I've seen of that.

24 Q. Did you notify Yates?

25 A. They're not in the west half west half of

1 12 or responsible for notice for a nonstandard unit.

2 Q. Now, when you talked about your contacts
3 with Hudson and Burnett starting in November of 2010
4 and going through at least April of 2011, all of
5 those contacts concerned vertical wells, did they
6 not?

7 A. All of those con- -- no, they did not.

8 Q. At that time, you had proposed -- COG had
9 proposed 47 vertical wells to Hudson and Burnett,
10 correct?

11 A. That's correct.

12 Q. We're here today on triple lateral
13 horizontals.

14 When were the triple lateral horizontals
15 proposed to Hudson and Burnett?

16 A. After that.

17 Q. As a matter of fact, I believe three were
18 proposed in late May before the original hearing?

19 A. That's correct.

20 Q. And then all the rest were just proposed
21 in July, correct?

22 A. Correct.

23 Q. So really, with respect to all the
24 conversations before May 2011, virtually all of your
25 contacts concerned drilling of vertical wells?

1 A. No. Our discussion -- one of the meetings
2 was the allowable. At that time we also discussed a
3 drilling program.

4 During that time we talked about how many
5 wells they could drill; what nature of wells would
6 they be, horizontal or vertical; whether or not they
7 would accept a horizontal program; and whether or
8 not one of the four or eight -- four wells in '11 or
9 eight wells in '12 would be for horizontal.

10 Q. Okay.

11 A. So there was a discussion.

12 Q. Of triple laterals?

13 A. Of laterals.

14 Q. Of triple laterals?

15 A. Not that I recall.

16 Q. Now, let me ask you this. If COG owned 67
17 percent working interest in a lease, would it demand
18 to be named operator?

19 A. It would request that it be operator.

20 Q. And you may want me to ask the drilling
21 engineer about this, Mr. Evans, but -- and I'm using
22 approximate numbers.

23 The AFEs for your proposed triple laterals
24 are now approximately \$9.4, \$9.5 million per well,
25 roughly?

1 A. Roughly. That's correct.

2 Q. Maybe 9.4 might be closer. I don't
3 remember.

4 The first three triple laterals that were
5 proposed were at \$11.5 million, were they not?

6 A. Yes.

7 Q. Why the drastic change?

8 A. You probably want to talk to the drilling
9 engineer.

10 Q. The fact is, COG has no handle on these
11 well costs because it hasn't drilled triple laterals
12 in New Mexico, correct?

13 A. That's a two-part question. Which one do
14 you want me to answer first?

15 Q. Well, they haven't -- has COG drilled any
16 triple laterals in New Mexico?

17 A. Not that I'm aware of.

18 Q. Double laterals in New Mexico?

19 A. I wouldn't know. I've only been there 10
20 months.

21 Q. Has it proposed triple laterals to any
22 other working interest owner in New Mexico?

23 A. I wouldn't know. I'm only the shelf man.

24 Q. Well, in this area, then, has it proposed
25 any triple laterals in 17 South, 30, 31, 32 East or

1 any adjoining townships?

2 A. Not on the shelf.

3 Q. With respect to your triple laterals,
4 outside of COG/Concho, has anybody agreed to join in
5 your triple laterals?

6 A. Would you repeat that question?

7 Q. Has any working interest owner, other than
8 COG and Concho Oil & Gas, agreed to participate in
9 your proposed triple laterals?

10 A. Not at this time.

11 Q. And are any of these -- there has been
12 some testimony about COG obtaining APDs on this
13 acreage. They have obtained some APDs, correct?

14 A. That's correct.

15 Q. Were those all, at least initially, for
16 vertical wells?

17 A. Yes, that's correct. We're having them
18 transferred over for the vertical -- the horizontal
19 program at this time.

20 Q. By filing sundry notices?

21 A. Yes, sir.

22 Q. At this point, you have no approved triple
23 lateral APDs from the BLM?

24 A. I think we have another guy that will
25 testify to that.

1 Q. Okay. I know this isn't one of your
2 exhibits. I just want a broader exhibit, Mr. Evans.

3 If you could go to Exhibit 12 in the
4 booklet.

5 Up to the northwest there is acreage at
6 11; and, therefore, COG has interest in that
7 acreage, correct?

8 A. Section 11?

9 Q. Up to the north, Section 11, Section 10.

10 A. Oh, okay. To the west?

11 Q. Uh-huh.

12 A. Yes.

13 Q. Does it own a greater interest than it
14 does in the three sections that we're here about
15 today?

16 A. I don't know.

17 Q. But your testimony is it hasn't proposed
18 any triple laterals on that acreage?

19 A. Not at this time. We do drill wells.

20 Q. Are you aware that -- of any efforts to
21 form a federal exploratory unit in Sections 3
22 through 10 of the adjoining township?

23 A. I'm not aware.

24 Q. Now, when you say you're the landman for
25 the shelf, could you define that a little bit more

1 for me?

2 A. I am the land manager for the shelf.

3 Q. The land manager for the shelf.

4 A. The landmen on the shelf report to me.

5 That's why I don't know some of the answers here of
6 the questions being asked.

7 Q. How about -- approximately how many Yeso
8 locations does COG have left to drill on the shelf?

9 A. You'll have to ask an engineer.

10 Q. Turning to your Exhibit 5, Mr. Evans, this
11 is basically predicated on the assumption that COG
12 will drill all of its wells and Burnett would only
13 drill five wells, correct?

14 A. Exhibit 5?

15 Q. Exhibit 5.

16 A. It is predicated upon the fact that a
17 unit -- Federal unit is not necessary.

18 Q. Exhibit 5.

19 A. Oh, I'm sorry. I've got 6. I apologize.
20 Ask the question again.

21 Q. Okay. These numbers are simply predicated
22 on the fact that all of the COG wells will be
23 drilled, yet Burnett will drill five wells and then
24 completely stop?

25 A. This is predicated on our drilling program

1 which we know, versus the drilling program that we
2 know of Burnett's.

3 Q. And then on Exhibit 6, the BLM has not
4 retracted their preliminary approval letter, have
5 they?

6 A. We have not been notified yet.

7 Q. Then on your Exhibit 7, here on the very
8 final line, are you aware that you -- you state that
9 Concho objects to Burnett/Hudson's proposed form of
10 agreements.

11 Are you aware that the form of agreement
12 for the unit agreement itself is fixed in the
13 regulations?

14 A. Yes, I am.

15 Q. Okay. So you're not going to object to
16 the form of the unit agreement?

17 A. It's the form of operating agreement
18 placed on top of it, which is a 1989 joint operating
19 agreement.

20 Q. And are you aware that the BLM does not
21 approve a joint operating agreement and the parties
22 are free to negotiate an agreement among themselves?

23 A. Yes.

24 Q. Are you planning on giving any comments on
25 the JOA to Burnett or Hudson?

1 A. No, because we don't believe that there's
2 a need for it.

3 Q. So under no circumstances would you
4 approve a unit agreement?

5 A. On this property, the unit agreement is
6 not necessary. It delays development.

7 Q. And regarding the two applications that
8 we're here for today on Burnett, you said they will
9 cause waste. On what basis?

10 A. We believe that the vertical proposals by
11 Burnett will interfere with our horizontal
12 development.

13 Q. In what way?

14 A. You will be able to talk to an engineer
15 and geologist next.

16 Q. Well, then, it's not your opinion, it's
17 the geologist's or the engineer's opinion, right,
18 that it will cause waste?

19 A. Well, it is my opinion that it will cause
20 waste because it interferes with the progression of
21 the horizontal lateral.

22 Q. Well, I mean, aren't -- in Section 12, for
23 instance, you're proposing four stand-up
24 horizontals, and then right across the top of the
25 section a fifth lateral, aren't you?

1 A. Yes.

2 Q. So there will be multiple wells on a well
3 unit. What's the difference if they're vertical or
4 horizontal?

5 A. That's why you need to talk to an
6 engineer.

7 Q. So it's their opinion, not yours, that it
8 will cause waste?

9 MS. MUNDS-DRY: Objection, Mr. Ezeanyim.
10 I know you don't want legal stuff, but asked and
11 answered.

12 MR. BRUCE: Mr. Ezeanyim, that's fine. It
13 was asked, but it wasn't answered.

14 MS. MUNDS-DRY: Maybe it just wasn't the
15 answer Mr. Bruce wanted.

16 MR. BRUCE: Well, there was no answer.

17 HEARING EXAMINER EZEANYIM: Well, I'm
18 going to have you leave it at that.

19 MR. BRUCE: I will leave it at that.

20 HEARING EXAMINER EZEANYIM: Yes.

21 Do you have more questions?

22 MR. BRUCE: I'm finished with Mr. Evans.

23 HEARING OFFICER EZEANYIM: You have more?

24 MS. MUNDS-DRY: I have a few redirect,
25 Mr. Ezeanyim. Thank you.

1 HEARING OFFICER EZEANYIM: Okay. Go
2 ahead.

3 FURTHER EXAMINATION

4 BY MS. MUNDS-DRY:

5 Q. Now, Mr. Evans, is it your understanding
6 that Burnett has a 46 percent working interest,
7 correct --

8 A. Yes.

9 Q. -- in these leases?

10 A. Yes.

11 Q. The 66 percent or 67 percent is -- is what
12 they control in total, correct?

13 A. Correct.

14 Q. Does an interest owner who has a one-third
15 interest in these leases have the right to propose
16 wells on these leases?

17 A. Yes, they do. They have the right to
18 cause development.

19 Q. Do you have any nonoperated wells that you
20 have a 43 percent working interest in?

21 A. Yes, we do.

22 Q. If Concho were the majority working
23 interest owner here, would it be prepared to fully
24 develop this acreage?

25 A. Yes, it will be. That was the start of

1 our original premise.

2 Q. Because you want a development in a
3 reasonable time frame to get a return on your
4 investment, right?

5 A. Yes.

6 Q. Mr. Bruce asked you if the BLM had
7 retracted the preliminary approval that they have
8 given.

9 Have you seen final approval on that unit
10 yet?

11 A. I have not.

12 Q. Do you know if a unit agreement for a
13 federal unit is modifiable?

14 A. It is modifiable limited to approval by
15 the BLM.

16 MS. MUNDS-DRY: Thank you.

17 That's all I have, Mr. Ezeanyim.

18 HEARING EXAMINER EZEANYIM: Redirect?

19 MR. BRUCE: No questions.

20 HEARING EXAMINER EZEANYIM: Okay.

21 I still have to get that letter that I was
22 asking from the --

23 MS. MUNDS-DRY: I've got it here, and
24 we'll make copies of it at the break for you.

25 HEARING EXAMINER EZEANYIM: Okay. Thank

1 you.

2 In the docket, I wasn't aware that you
3 guys are asking for triple laterals, because it
4 wasn't stated in there. It's when I read your AFE
5 that you are asking for -- all the letters that you
6 sent out that you were going to do triple laterals:
7 One to Paddock, another one to the upper Blinebry,
8 and another one to the lower Blinebry.

9 You should have put it in the docket so
10 that we know that's what you're doing. As a
11 position, you should have put it in this docket.
12 Because right now I was thinking it's one lateral,
13 as it's written.

14 MS. MUNDS-DRY: That's not really covered
15 by the rules, Mr. Ezeanyim. I'm not aware that we
16 have ever had to do that in the past, so I can't
17 really answer your question.

18 HEARING EXAMINER EZEANYIM: Well, I'm
19 asking him.

20 MS. MUNDS-DRY: I'm not sure Mr. Evans
21 knows all the horizontal -- do you know, Mr. Evans,
22 if --

23 THE WITNESS: I rely on counsel.

24 HEARING EXAMINER EZEANYIM: Okay. You may
25 be excused.

1 THE WITNESS: Thank you, sir.

2 MS. MUNDS-DRY: Mr. Rankin will be calling
3 our next witness.

4 MR. RANKIN: Mr. Examiner, I would like to
5 call Concho's next witness, Noel Olivas, please.

6 HEARING EXAMINER EZEANYIM: State your
7 name for the record, please.

8 THE WITNESS: My name is Noel Olivas.

9 HEARING EXAMINER EZEANYIM: Thank you.

10 NOEL OLIVAS,
11 after having been first duly sworn under oath,
12 was questioned and testified as follows:

13 EXAMINATION

14 BY MR. RANKIN:

15 Q. Mr. Olivas, please state your full name
16 for the record -- and you already have.

17 And in which state do you reside?

18 A. Texas.

19 Q. And by whom are you employed?

20 A. COG Operating, LLC.

21 Q. And what's your current position with COG
22 Operating, LLC?

23 A. I'm the lead permitting and right-of-way
24 specialist.

25 Q. And have you previously testified before

1 this division?

2 A. No, I have not.

3 Q. Are you familiar with the application
4 filed in this case?

5 A. Yes.

6 Q. Are you familiar with the status of the
7 lands in the subject area?

8 A. Yes.

9 Q. Mr. Olivas, can you please just provide
10 for the examiner a little bit of the background of
11 your education and your experience?

12 A. I graduated from Texas Tech University
13 with a BBA in management.

14 I have been handling surface issues since
15 2004 to the present. And I am now a supervisor with
16 COG Operating.

17 Q. And in your position with Concho, can you
18 explain to the Examiner what you do on a daily
19 basis?

20 A. Sure. I deal with -- I oversee our
21 permitting of federal and state wells, and even on
22 fee lands.

23 I deal with the BLM. I perform on-sites
24 with the BLM, take care of any surface issues,
25 right-of-way issues, pipelines, and the building of

1 locations.

2 Q. That includes all sorts of permitting
3 requirements for federal and state levels. Is that
4 correct?

5 A. Yes.

6 MR. RANKIN: Mr. Examiner, I would like to
7 tender Mr. Olivas as an expert witness in permitting
8 and right-of-way.

9 HEARING EXAMINER EZEANYIM: Okay. Is that
10 permitting for state agencies?

11 THE WITNESS: Yes, as well.

12 HEARING EXAMINER EZEANYIM: BLM or state's
13 and the fee? Is that it?

14 THE WITNESS: Yes.

15 HEARING EXAMINER EZEANYIM: You are not a
16 land person?

17 THE WITNESS: No, I don't work under
18 Mr. Evans.

19 HEARING EXAMINER EZEANYIM: You just
20 obtain permits for drilling and right-of-way?

21 THE WITNESS: I do that, yes, sir.

22 HEARING EXAMINER EZEANYIM: Okay. Well,
23 he is qualified to testify. Go ahead.

24 MR. RANKIN: Thank you, Mr. Examiner.

25 Q. (By Mr. Rankin) Mr. Olivas, can you

1 please explain what exactly a Candidate Conservation
2 Agreement is, or a CCA, as it has been described?

3 A. Yeah. Mr. Jacoby touched on it earlier.
4 It was developed by fish and wildlife, along with
5 BLM and industry, to help protect the proposed
6 endangered sand dune lizard.

7 Originally, it was -- it was supposed to
8 kind of help to keep this lizard from being listed.
9 But through time it has kind of turned into an
10 insurance policy, it seems like.

11 There's some surface stipulations in there
12 to where we have to be certain feet away from the
13 sand dunes and other stipulations that help protect
14 any potential habitat and any -- and also dunes that
15 are already occupied by this lizard.

16 It's kind of turned into an insurance
17 policy, to where in the event that this lizard is to
18 become listed, that the wells that you do have APD,
19 you'll be able to continue to drill. So it's -- it
20 helps protect our company.

21 And also, as being good corporate
22 citizens, we have taken an initiative. We were the
23 first to sign up for the CCA, as well, and we have
24 kind of been the catalyst to help promote this.

25 Q. When was it that you signed up as a CCA

1 participant?

2 A. Oh, we signed up this year, early this
3 year.

4 Q. And all of the acreage that is in these
5 applications, are they all subject to the CCA?

6 A. Yes.

7 Q. Is that correct?

8 A. Yes.

9 Q. You've already sort of touched on this a
10 little bit. But why -- about the importance of the
11 CCA for Concho.

12 But as far as future development, is
13 that -- that's sort of a target, right?

14 A. Yeah, absolutely. If people are not
15 enrolled, if this gets listed, you're not going to
16 be allowed to drill. So this definitely protects
17 our assets in the area. It keeps us drilling out
18 there. It keeps me having a job.

19 Q. Now, what is your understanding of how
20 well locations are being granted in these
21 environmental sensitive areas?

22 And we will -- I will ask you to describe
23 that for Exhibit Number 10.

24 A. Well, there's an outline -- let me see
25 here.

1 Q. There's two parts to Exhibit 10, is that
2 correct, or three parts?

3 A. Yeah. This is an outline showing, as they
4 described earlier, to where there is dunes that the
5 BLM has considered occupied. So we've got to
6 completely stay way from those. There's not -- we
7 cannot have any surface disturbance whatsoever.

8 Q. So on this Exhibit 10, would that be that
9 sort of bluish area in the middle?

10 A. Yes.

11 Q. Is that right?

12 A. Yes.

13 Q. And on the next page, it's those bluish
14 areas?

15 A. Yes.

16 HEARING EXAMINER EZEANYIM: So what -- I
17 see two of the bluish areas here. What happens
18 there? You're not supposed to drill a well there?

19 THE WITNESS: No, you can't -- you can't
20 disturb the surface at all.

21 HEARING OFFICER EZEANYIM: Okay.

22 THE WITNESS: Yeah. They are showing that
23 there are -- those dunes are either potential
24 habitat for this lizard, or they are occupied by the
25 lizard.

1 HEARING EXAMINER EZEANYIM: So the only
2 way you can do it is to drill somewhere other than
3 the blue?

4 THE WITNESS: Yes, sir.

5 Q. (By Mr. Rankin) And these requirements
6 are the same for anybody who's operating on this
7 lease. Is that right?

8 A. Yes. It's the same for everybody. The
9 same setbacks for everyone that's enrolled in the
10 CCA.

11 Q. Now, where did you receive this exhibit?

12 A. I got it from the BLM.

13 Q. And did Concho -- do you rely on this in
14 developing the location sites for this property?

15 A. Absolutely.

16 Q. Now, are you familiar with Burnett's
17 approved well locations, the APDs, to see if they
18 comply with the CCA?

19 A. I am.

20 Q. They mentioned that they were members and
21 they just signed up for the CCA.

22 A. Yes.

23 Q. Do they comply with the CCA?

24 A. I did look at the Partition Federal Number
25 2 well that they have, and it does not comply with

1 the CCA.

2 HEARING EXAMINER EZEANYIM: Can you ask
3 that question again? What did you say?

4 MR. RANKIN: Yes. I asked him if he was
5 familiar with the Burnett APDs that have been
6 approved, and whether or not they had complied with
7 the CCA requirements.

8 HEARING EXAMINER EZEANYIM: But they're
9 not a member of the CCA, are they?

10 MR. RANKIN: Yes, they are members.

11 HEARING EXAMINER EZEANYIM: Is that -- the
12 CCA the same?

13 THE WITNESS: It's the same requirements
14 for everybody.

15 HEARING OFFICER EZEANYIM: What?

16 THE WITNESS: Everyone who signs up, they
17 have the same requirements for setback and so forth.

18 HEARING EXAMINER EZEANYIM: Okay.

19 Q. (By Mr. Rankin) And your basis for your
20 statement that they are not in compliance comes from
21 what?

22 A. Basically, I -- I physically looked at
23 that well myself. We had a -- when we were
24 proposing our vertical plan, I had a well that was
25 just a few feet away from there that I wanted to

1 propose -- or that COG wanted to. And the BLM had
2 told us that we could not stake it there, due to us
3 being a part of the CCA.

4 Q. Now, Mr. Olivas, could you please turn to
5 Exhibit Number 12?

6 HEARING EXAMINER EZEANYIM: Who developed
7 this thing? Who did it?

8 THE WITNESS: The BLM.

9 HEARING EXAMINER EZEANYIM: Okay.

10 Q. (By Mr. Rankin) I'm sorry, 11.

11 A. Okay.

12 Q. I misstated. Exhibit Number 11. It looks
13 like a great vacation spot.

14 HEARING EXAMINER EZEANYIM: Is that you
15 there?

16 THE WITNESS: That's not me. He works for
17 me. I took that picture.

18 HEARING OFFICER EZEANYIM: Okay.

19 THE WITNESS: I'm a part-time
20 photographer.

21 Q. (By Mr. Rankin) Can you please explain to
22 Mr. Examiner what it is you are looking at here?

23 A. This is just showing the size of the
24 dunes. And I put him there so you can kind of use
25 him as a scale.

1 The terrain out there is consistent like
2 this in a majority of the sections that we are
3 talking about today. Those are the dunes that we
4 need to stay away from.

5 The CCA actually says we need to be 100
6 feet away from these sand dunes that they call
7 blowouts, that the lizard -- they thrive and they
8 live and supposedly reproduce in this area.

9 Q. Now, Mr. Olivas, what was the process for
10 you to get these horizontal wells -- what is the
11 process to get these horizontal wells approved?

12 A. Well, there's -- it's been -- gosh, we've
13 had over a dozen meetings with the BLM. I've met
14 with them in their office looking at aerial maps,
15 doing the preliminary overview, looking at their
16 archeology, their -- this.

17 That's when they gave me this outline of
18 where the dunes are -- they reside. And we have
19 made multiple trips out in the field with not only
20 their natural resource specialist, but also their
21 biologist, and carefully picking these locations to
22 where we're going to least impact the surface to
23 help protect this -- this lizard.

24 Q. And during those meetings, you had
25 discussions about the potential of future horizontal

1 well locations?

2 A. Yes, absolutely. And they were very
3 responsive towards that.

4 Q. So they preferred the horizontal well
5 program to a vertical well program. Is that
6 correct?

7 A. Yes, absolutely. That's correct.

8 HEARING EXAMINER EZEANYIM: Have you
9 proposed those horizontals to them?

10 THE WITNESS: Have I proposed -- I'm
11 sorry, sir?

12 HEARING EXAMINER EZEANYIM: Have you
13 proposed the horizontal wells to the BLM?

14 THE WITNESS: Our lateral wells?

15 HEARING EXAMINER EZEANYIM: Yeah. Yeah,
16 lateral.

17 THE WITNESS: Yes, sir. Yes, sir. And
18 they -- we've looked at all 17 of those locations,
19 and they have approved every one of them on -- on
20 on-sites.

21 HEARING EXAMINER EZEANYIM: Final approval
22 or...

23 THE WITNESS: Not of APDs. They have done
24 a final approval of -- you've got to physically go
25 and take what you call an NRS, a natural resource

1 specialist, and they ground trooped it and approved
2 all 17 of our locations.

3 HEARING EXAMINER EZEANYIM: Okay.

4 Q. (By Mr. Rankin) Mr. Olivas, would you
5 please turn to Exhibit Number 13 in your packet?

6 A. (Witness complies.)

7 Q. Would you please identify and describe
8 what this exhibit is?

9 I'm sorry, I keep skipping ahead. I'm
10 actually looking at the tab. It actually should be
11 Number 12. I'm sorry.

12 A. 12?

13 Q. Yes.

14 A. It's showing -- it's showing the 17
15 proposed wells that the -- the horizontal wells that
16 we've looked at with the BLM.

17 And if you can tell, you can see there are
18 some that are on the northern part of the section,
19 some in the south part of the section.

20 The square indicates our surface location,
21 and that was to -- we had to move those in order to
22 stay away from these -- these significant dunes that
23 the lizard lives at.

24 So this is how we -- this is what we're
25 going to call our plan to develop -- well, this is

1 17 of the wells that we plan to develop out here.

2 Q. And these 17 wells were all approved?

3 These locations were all approved?

4 A. All of these. Every single one, yes, sir.

5 Q. And not shown on this map, but you also
6 are planning, and have already planned, to develop
7 and construct a gathering system and other surface
8 support facilities. Is that correct?

9 A. Yes, absolutely. That's really important
10 to them, as well, how to strategically place tank
11 batteries in order to minimize truck traffic and not
12 have so much caliche dust in the air, as well.

13 Q. That's already been considered?

14 A. That's already been approved.

15 HEARING EXAMINER EZEANYIM: Approved by
16 BLM?

17 THE WITNESS: By the BLM, yes, sir.

18 Q. (By Mr. Rankin) Now, Mr. Olivas, have you
19 submitted APDs for each well?

20 A. All 17 have been submitted. And I have
21 been going and following up and checking, and I
22 believe they are all what they call in a NEPA
23 process, which is an Environmental Protection Act
24 process that the BLM does while approving APDs.

25 Q. So in addition to submitting these APDs

1 and having your earlier discussions, have you been
2 in discussion with BLM?

3 A. Yes.

4 Q. For these APD approvals?

5 A. Yes. Weekly, or maybe even more. We talk
6 a lot. I almost have an office over there.

7 Q. Now, you're familiar with your surface
8 disturbance. Are you also familiar with Burnett's
9 estimates for its surface disturbance under their
10 proposed plan of development?

11 A. Yes. I looked at their -- I looked at
12 their map. And under their 23 proposed -- 23
13 proposed locations, that if they were to drill this
14 horizontally, they had said that they would be using
15 105.5 acres. That's the amount of surface they
16 would use to develop.

17 And if I were to do -- if I were to do 23
18 wells, I could do that in about 66 acres. So
19 there's -- there's about 40 acres' difference that
20 we -- less acres that we would be using than they
21 were.

22 Q. And that's based on what has been
23 approved. Is that right?

24 A. Yes, absolutely.

25 Q. By -- in Concho's plan.

1 Mr. Olivas, were Exhibits 10 --

2 Oh, just one last exhibit.

3 Could you please turn to what has been
4 marked as Exhibit Number 13?

5 A. Yes.

6 Q. Could you please briefly summarize and
7 describe what this exhibit shows?

8 A. Yes. This is depicting all 17 wells that
9 the BLM has looked -- and actually, the natural
10 resource specialist that approved these signed off
11 on this. This is actually a letter that he wrote
12 approving all of these 17 wells -- the locations.

13 Q. Mr. Olivas, were Exhibits 10 through 13
14 prepared by yourself or by your supervision?

15 A. Yes.

16 MR. RANKIN: Mr. Examiner, I would move to
17 admit into evidence Exhibits 10 through 13.

18 HEARING EXAMINER EZEANYIM: Any objection?

19 MR. BRUCE: No objection.

20 HEARING EXAMINER EZEANYIM: Exhibits 10
21 through 13 will be admitted.

22 HEARING OFFICER EZEANYIM: Any questions?

23 MR. BRUCE: Mr. Grable has requested to
24 cross-examine this witness.

25

1 EXAMINATION

2 BY MR. GRABLE:

3 Q. First, sir, do you pronounce your name
4 Olivas?

5 A. Olivas.

6 Q. Olivas. I didn't want to butcher it. I'm
7 sorry. Olivas.

8 As I understand your testimony, Concho
9 does not have any approved APDs for the wells it's
10 proposing in this hearing at this moment?

11 A. They're in process right now.

12 Q. They're not approved?

13 A. Not yet.

14 Q. Okay. Now, when you were testifying about
15 the locations had been approved, you were talking
16 about with respect to surface disturbance?

17 A. Yes, sir.

18 Q. Okay. Not with respect to the APDs?

19 A. Well, the surface has -- has -- I would
20 say that's a part of the APD, that the surface --
21 the APD will not get approved until the surface
22 portion is approved by biology and the NRS, the
23 natural resource specialist.

24 Q. When you said in your testimony that the
25 APD -- or that the BLM has approved your locations,

1 you were speaking only of the surface use portion?

2 A. Yes, that is correct.

3 Q. Thank you.

4 Now you also said, in your opinion, one of
5 Burnett's proposed locations would not comply with
6 the surface use restrictions.

7 A. Not only in my opinion. I had a BLM
8 representative with me that I took, and I asked
9 their opinion.

10 And they said they are not enrolled in the
11 CCA, because they were not at the time, so there was
12 a different set of rules.

13 Q. All right. You are not the person that
14 decides whether or not Burnett's proposed locations
15 are acceptable or not, are you?

16 A. No.

17 Q. And the BLM will make that decision, will
18 it not?

19 A. BLM and fish and wildlife as well.

20 Q. And just as you have negotiated Concho's
21 proposed locations, wouldn't you expect that Burnett
22 will do the same thing, make sure their surface
23 locations are acceptable?

24 A. I don't work for Burnett.

25 Q. Okay. Now, the other thing.

1 Now that you have heard the testimony that
2 Burnett is a contracting party under the CCA, it
3 will have precisely the same benefits under the CCA
4 as Concho will, will it not?

5 A. Absolutely.

6 Q. Just because the surface location of the
7 proposed well is approved by the BLM does not
8 guarantee that the APD will be approved, does it?

9 A. No, there's a lot more to it.

10 MR. GRABLE: Thank you. That's all I
11 have.

12 MR. RANKIN: Mr. Ezeanyim, just one
13 redirect by me.

14 HEARING EXAMINER EZEANYIM: Okay. Go
15 ahead.

16 FURTHER EXAMINATION

17 BY MR. RANKIN:

18 Q. It's true that Burnett/Hudson now will
19 have the same benefits under the CCA program?

20 A. Yes.

21 Q. But they will also have the same
22 obligations, correct?

23 A. The same obligations.

24 MR. RANKIN: Thank you, Mr. Examiner.
25 That's it.

1 HEARING EXAMINER EZEANYIM: What was your
2 question?

3 MR. RANKIN: I just made the point that --
4 I asked whether or not they'd have the same
5 obligations under the CCA as Concho would.

6 HEARING EXAMINER EZEANYIM: Okay. Very
7 good.

8 You are Mr. Olivas?

9 THE WITNESS: Yes, sir.

10 HEARING OFFICER EZEANYIM: You have
11 applied for APD for those 17 wells?

12 THE WITNESS: Yes, sir.

13 HEARING EXAMINER EZEANYIM: When did you
14 apply for those APDs?

15 THE WITNESS: There have been -- they --
16 we -- shoot.

17 We started applying about five weeks ago.
18 Actually, we've had some that we submitted sundries
19 for some of the verticals that were approved. I
20 believe there was five of them that I filed sundry
21 forms to go from vertical to horizontal.

22 HEARING EXAMINER EZEANYIM: Okay. Now,
23 when you apply to BLM, you are waiting for BLM to
24 approve before you apply to OCD?

25 THE WITNESS: Yes, sir. You have got to

1 get an approval from the BLM before the OCD.

2 HEARING EXAMINER EZEANYIM: Because it is
3 federal land.

4 THE WITNESS: Yes, sir.

5 HEARING EXAMINER EZEANYIM: So you haven't
6 applied to OCD at all? You haven't applied to OCD?

7 THE WITNESS: We have -- well --

8 HEARING OFFICER EZEANYIM: You haven't?

9 THE WITNESS: You don't -- you don't apply
10 to the OCD. What you do is -- or what I have been
11 doing is, after the APD is approved from the BLM,
12 the BLM has been giving it to the OCD.

13 HEARING EXAMINER EZEANYIM: For approval,
14 right?

15 THE WITNESS: Yes, sir.

16 HEARING EXAMINER EZEANYIM: How long does
17 it take BLM to approve the APD?

18 THE WITNESS: It's supposed to be four to
19 six weeks, but they are extremely backlogged.

20 Last -- I went last week. They said they
21 were about 380 APDs behind, so I can't really
22 estimate --

23 HEARING EXAMINER EZEANYIM: How many?

24 THE WITNESS: 380 APDs behind. They're
25 really short staffed.

1 HEARING EXAMINER EZEANYIM: Good luck,
2 then.

3 Anyway, I think that's all I have for you
4 now.

5 THE WITNESS: Thank you.

6 HEARING OFFICER EZEANYIM: Call your next
7 witness, Mr. Rankin.

8 MR. RANKIN: Ms. Munds-Dry will call him.

9 MS. MUNDS-DRY: I'll take it back over
10 now, Mr. Ezeanyim.

11 HEARING OFFICER EZEANYIM: Okay.

12 MS. MUNDS-DRY: We will call
13 Mr. Broughton.

14 HARVIN BROUGHTON,
15 after having been first duly sworn under oath,
16 was questioned and testified as follows:

17 EXAMINATION

18 BY MS. MUNDS-DRY:

19 Q. Mr. Broughton, where do you reside?

20 A. Midland, Texas.

21 Q. By whom are you employed?

22 A. Concho Resources, or COG Operating, LLC.

23 Q. What do you do for Concho?

24 A. I am a senior geoscientist.

25 Q. Have you previously testified before the

1 division?

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

3 Q. And were your credentials accepted and
4 made a matter of record at that time?

5 A. They were, yes, ma'am.

6 Q. Are you familiar with the applications
7 that Concho has filed?

8 A. I am.

9 Q. Are you familiar with the geology of the
10 subject lands in both Concho and Burnett's
11 applications?

12 A. I am, yes.

13 MS. MUNDS-DRY: Mr. Ezeanyim, we tender
14 Mr. Broughton as an expert in petroleum geology.

15 MR. BRUCE: No objection.

16 HEARING EXAMINER EZEANYIM: Are you a
17 geologist?

18 THE WITNESS: I am.

19 HEARING EXAMINER EZEANYIM: Okay. You
20 said geoscientist. There might be a difference
21 between geoscientist and geology.

22 THE WITNESS: That's --

23 HEARING OFFICER EZEANYIM: I want to know
24 what you are going to present, you know, define, you
25 know.

1 THE WITNESS: Primarily, I'm talking about
2 geology here.

3 HEARING EXAMINER EZEANYIM: Okay. Yeah.
4 Very good. I think you are well qualified.

5 MS. MUNDS-DRY: Thank you, Mr. Ezeanyim.

6 Q. (By Ms. Munds-Dry) If you would turn to
7 what has been marked as Concho Exhibit Number 14,
8 please. That's this first slide you see here.

9 A. Uh-huh.

10 Q. Identify and review this slide for the
11 Examiner.

12 A. This is a slide that shows Yeso production
13 across the entire shelf area. So you can see over
14 towards the right side of the slide section, here
15 (indicating) is the subject area here, the only --
16 the area that does not have any wells on it.

17 So you can see there's a lot of Yeso
18 production, yeah, from east of the subject area to
19 well west of the subject area. And I handle the
20 geology for this entire Concho part of the shelf.

21 Q. Let's turn to what has been marked as
22 Concho Exhibit Number 15.

23 What does this slide show us?

24 A. This slide shows our original plan to
25 develop these acres, just in the way that we have

1 developed other acreage in the area.

2 We typically drill four wells per 40-acre
3 proration unit, so we -- we devised a scheme where
4 we basically put theoretical locations on all of the
5 40-acre locations. So that came out -- and of
6 course we are excluding Section 25 here.

7 But this came out to 191 vertical 10-acre
8 locations. So this was our original plan for
9 development of this acreage.

10 Q. Okay. Let's turn to the next slide, which
11 has been marked as Concho Exhibit Number 16.

12 What is this slide?

13 A. This shows a cross-section that will be my
14 next slide. So it shows the Puckett, or the
15 Maljamar area, with our proposed -- our planned
16 vertical locations.

17 And then it shows Concho's Skelly unit,
18 which lies just to the west of these subject lands.
19 And they -- what we call the Maljamar area -- Concho
20 calls the Maljamar area -- which lies directly east.
21 I said this is directly west -- or directly east.

22 And then I have selected four wells to
23 show a cross-section, to show the continuity of the
24 formations of the reservoirs across the subject
25 lands.

1 Q. Let's go to the next slide, which has been
2 marked as Concho Exhibit 17. And I believe there's
3 a big version --

4 A. Yeah, there's a foldout version of the map
5 if you need to look at that.

6 Q. -- foldout version of the map in the
7 exhibit notebooks.

8 Go ahead and review this for the Examiner.

9 A. Okay. These are the four wells that you
10 just saw in the previous slide. And let me get it
11 open here.

12 So this just shows what the lower section
13 of a Yeso well will look like. So --

14 HEARING EXAMINER EZEANYIM: Are these the
15 four wells you showed?

16 THE WITNESS: Yes. Those are in the
17 previous slide. Yes, sir. Those are the four wells
18 that I've selected.

19 And really, what we're trying to show here
20 is the continuity of these formations across the
21 subject properties.

22 Up here (indicating) at the top is the
23 Glorieta.

24 This little sandstone here (indicating)
25 marks the top of the Yeso, or the Paddock member of

1 the Yeso.

2 Here (indicating) you have the top of the
3 Blinebry.

4 And then here (indicating), you have the
5 base of the Blinebry, which is the top of the Tubb
6 sand. Okay?

7 So this -- this is the productive
8 reservoir interval that we're looking at.

9 Q. If you could, describe the Yeso for
10 Mr. Ezeanyim. I know he has studied it in some
11 detail, but for this case and to remind us all, what
12 does this rock look like?

13 A. Okay. The Yeso, the Paddock and Blinebry,
14 are -- it's a dolomite formation, highly
15 heterogeneous. Typically, the porosity is quite a
16 bit higher in the Paddock member than it is in the
17 Blinebry member. But it's primarily dolomite with
18 minor silts and some anhydrite component to it,
19 though probably not critical to the production.

20 It's a heterogeneous rock, which means
21 that the porosity and permeability vary. Okay?

22 As an example of this, you can see in this
23 particular well in the Paddock interval, the
24 porosity is all towards the top.

25 Here (indicating), it's further down in

1 the section.

2 And in both, it's a little bit higher than
3 in these (indicating) wells. So I've selected these
4 four wells to demonstrate the heterogeneity of the
5 formation.

6 I will make a note here, also,
7 typically -- not typically, but almost exclusively,
8 there's about a hundred feet of tight Paddock rock
9 at the base of what we call the Paddock porosity.
10 So the bottom 75 to 100 feet of the Paddock is
11 tight. It's not porous or permeable. Okay?

12 Then you get into the Blinebry interval
13 down here, where the porosity is considerably lower,
14 and permeability will be lower also. But we have
15 found all of these intervals to be economically
16 productive, even though the porosity is lower in the
17 Blinebry. It's a much thicker section. It's
18 roughly a thousand feet thick in this area.

19 The Paddock is probably closer to 500 feet
20 thick, with 400 feet of it being porous.

21 HEARING EXAMINER EZEANYIM: What's the
22 typical porosity on the Paddock?

23 THE WITNESS: Typical porosity on the
24 Paddock ranges from -- well, we use a 3 percent
25 porosity cutoff. But I've seen -- I have seen

1 porosity as high as 20 percent in some streaks in
2 the Paddock. It's highly variable, and you can see
3 how variable it is.

4 HEARING EXAMINER EZEANYIM: Yes, I can see
5 it.

6 THE WITNESS: I mean, it ranges -- the
7 productive part probably ranges from 6 to
8 15 percent, but we have seen some instances where
9 it's higher.

10 HEARING EXAMINER EZEANYIM: On the --
11 what's typical on the Blinebry?

12 THE WITNESS: Typical, of course, is --
13 with the low end cutoff of 3, I have seen porosities
14 maybe as high as 10 percent, but it's only over a
15 very small interval. I mean you don't have big
16 thick intervals of 10 percent porosity in it.

17 So it, again, is highly variable
18 laterally, vertically, you know, north, south, east,
19 west. It varies in every direction.

20 HEARING EXAMINER EZEANYIM: And
21 permeability, do you have an idea?

22 THE WITNESS: Permeabilities range from,
23 well, zero to, you know, 20, 30, 40 millidarcies.
24 That would be the highest that you would expect to
25 see.

1 HEARING EXAMINER EZEANYIM: A zero
2 permeability won't produce anything.

3 THE WITNESS: Right. Zero doesn't produce
4 anything. I mean, you've got zero percent porosity
5 rock in here, and I would say the permeability in
6 that is probably zero.

7 HEARING EXAMINER EZEANYIM: Okay. Go
8 ahead.

9 Q. (By Ms. Munds-Dry) Let's turn, then,
10 to -- put that away for now, and let's turn to
11 Concho Exhibit 18. It should be our next slide.

12 A. Okay.

13 Q. What is this slide?

14 A. This is just another depiction of one of
15 the previous slides. It show our 191 proposed
16 vertical well locations, the 10-acre locations.

17 And in this case, it shows it on a -- with
18 an aerial photograph, a satellite photograph.

19 And I did this just to show the draw
20 running through there, the highway, just so you
21 could get some kind of a feel for the -- for the way
22 that the surface looks.

23 And then, of course, just west of that and
24 just east of that, the dots -- the blue and red
25 dots, those are Yeso wells. The red -- the red dots

1 are Paddock wells, the blue dots are Blinebry wells,
2 and then the half-and-halves are combo wells. And
3 those are all operated by Concho, all the ones that
4 you see in this picture.

5 Q. Okay. If you could turn to the next
6 exhibit please, Mr. Broughton, Exhibit Number 19.

7 What does this slide show us?

8 A. Well, we had asked Mr. Olivas and his
9 group to go stake one 10-acre well per 40-acre
10 proration unit across these three sections.

11 He came back, and these were the only
12 locations that he could get -- there were 35 of
13 them -- and that's because of the surface
14 challenges: The draw, the highway, but primarily
15 the dune fields, with the blown out dunes where the
16 sand dune lizards inhabit.

17 So we were quite shocked to find, out of
18 191 possibilities, all we could get was 35. So, I
19 mean, that equated to basically 18 percent of the
20 total number of wells that we would like to drill
21 were actually drillable or approvable by the BLM
22 because of the surface conditions.

23 Q. Okay. Let's go to the next slide, Exhibit
24 Number 20.

25 What does this show us?

1 A. Okay. This is what we're calling our
2 blackout map. So what we tried to show here is
3 the -- with the backed out area -- is the area that
4 is not going to be approved by the BLM. This is
5 areas that are going to be excluded because of the
6 surface challenges.

7 So from an acreage standpoint, we only
8 were able to get 35 10-acre locations. So,
9 basically, we're developing 350 acres out of the
10 total 1,910 available acres. And that, of course,
11 also equates to 18 percent.

12 So what we're saying is 82 percent of
13 this -- of this acreage -- is undevelopable in a
14 vertical sense. That's when we had to back up and
15 say, you know, we are never going to get this done.
16 We have got to go horizontally to do this.

17 So that's -- this is what drove our
18 decision. This -- when we got to looking at this
19 map, how we could fit vertical locations in there,
20 it became obvious we couldn't.

21 Q. Thank you, Mr. Broughton.

22 Let's then turn to what Concho's
23 horizontal development plans are. If you would look
24 at --

25 HEARING EXAMINER EZEANYIM: Before you go

1 on, this blackout section?

2 THE WITNESS: Uh-huh.

3 HEARING OFFICER EZEANYIM: Other than CCA,
4 is that applicable to all operators?

5 THE WITNESS: Pardon me?

6 HEARING EXAMINER EZEANYIM: The blackout
7 section, other than CCA, is that also applicable to
8 all operators?

9 THE WITNESS: Yes. This is the BLM -- you
10 know, these locations were approved in accordance
11 with BLM regulations, and they were applied to us as
12 a member of the CCA. Okay?

13 So, yes, this was approved for any
14 operator who is part of a CCA. This would apply to
15 the --

16 HEARING EXAMINER EZEANYIM: The whole
17 third section is blacked out.

18 THE WITNESS: Pardon?

19 HEARING OFFICER EZEANYIM: The whole third
20 section is blacked out.

21 THE WITNESS: Right. Right. 82 percent
22 of these three sections is undrillable in a vertical
23 sense. That's what we're showing here, yes, sir.
24 This entire area is covered with sand dunes.

25 HEARING EXAMINER EZEANYIM: Okay. Those

1 red dots, are they wells or what are they?

2 THE WITNESS: No, no. The red diamonds
3 are the actual -- those were the wells that we were
4 able to get approved. Okay?

5 So you'll notice that those are -- it is
6 not blacked out around those particular locations.

7 HEARING OFFICER EZEANYIM: Oh, okay.

8 THE WITNESS: So the red diamonds where
9 the drillable locations based on the surface
10 constraints. Those are the ones that the BLM
11 on-site approved. Out of the 191, those are the
12 only 35 that they would approve under -- under the
13 constraints that the CCA put upon us.

14 HEARING EXAMINER EZEANYIM: Okay.

15 Q. (By Ms. Munds-Dry) Let's go to Concho
16 Exhibit 21, and this is another big foldout.

17 Mr. Broughton, what does this show us, and
18 the slide shows it as well?

19 A. So we backed up and we said, "All right,
20 we can't drill vertical wells. We're not ever going
21 to develop all of this acreage vertically. We're
22 going to have to come up with a horizontal scheme."
23 So we went and put two wells per 160-acre -- per
24 160 acres.

25 So you will notice we've got -- at the

1 bottom of Section 24, we lined up two wells per
2 proration unit, or per line.

3 HEARING EXAMINER EZEANYIM: Two wells, two
4 vertical wells?

5 THE WITNESS: Two horizontal wells.

6 HEARING EXAMINER EZEANYIM: Per 160?

7 THE WITNESS: Yes, per 160. So you will
8 see -- as an example, Section 24, the squares are
9 our surface locations, and those wells would go from
10 south to north, completely traversing Section 24.

11 The same thing in Section 13 and in
12 Section 12.

13 And we did this to minimize our surface
14 impact. We tried to align the wells, and you'll
15 notice along the boundary of Section 12 and 13 that
16 we put our surface locations really very near each
17 other, and that was to minimize the surface impact.

18 I mean, that's what's driving the whole
19 thing, is the availability of surface locations.

20 HEARING EXAMINER EZEANYIM: And you're
21 drilling from south to north?

22 THE WITNESS: In Section 24 we had planned
23 to drill from south to north.

24 In Section 13 we would be going from north
25 to south.

1 And then in Section 12 we would be going
2 from south to north.

3 But you'll notice that this changes, when
4 we got our final approvals, in the next exhibit.
5 Okay? So this was -- this was a plan. This was
6 just what we put on paper.

7 When we went to the BLM and tried to get
8 approvals, I think the next -- the next exhibit will
9 address what we were able to actually do.

10 Q. (By Ms. Munds-Dry) I think we have one
11 more slide before that, so let's turn to Concho
12 Exhibit 22.

13 HEARING EXAMINER EZEANYIM: Before you go,
14 on those two wells for the 160 acres, you have two
15 wells there?

16 THE WITNESS: Right.

17 HEARING EXAMINER EZEANYIM: Each of those
18 wells would have three laterals?

19 THE WITNESS: That is correct. Yes, sir.
20 That is correct. That's the only way we can exploit
21 the entire 1,500 feet of Yeso formation, is to have
22 three laterals. You can't do it with one.

23 HEARING EXAMINER EZEANYIM: One to the
24 Paddock or --

25 THE WITNESS: Two in the -- one in the mid

1 to lower Blinebry, another in the mid to upper
2 Blinebry, and then one in the Paddock, yes, sir.
3 That's our plan. That's the only way we believe
4 that we can exploit and produce all the hydrocarbons
5 available to us.

6 Q. (By Ms. Munds-Dry) Okay. Let's go to
7 Exhibit 22, the next slide.

8 This just further discusses the surface
9 impact, correct?

10 A. This is really very similar to the
11 previous slide. This just is demonstrating how we
12 attempted to minimize our surface impact by just
13 drilling -- having surface location in these
14 ellipses that you will see. There is one along the
15 boundary of 24/25, one along the boundary of 12 and
16 13, and then one up in the northwest corner of 12.

17 HEARING EXAMINER EZEANYIM: Can you
18 explain what you're trying to do here?

19 THE WITNESS: Well, we are trying to
20 demonstrate to you how we are minimizing our surface
21 impact. All of the wells are going to be drilled
22 along very, very minimal surface impacts, the
23 surface locations.

24 HEARING EXAMINER EZEANYIM: That's not
25 within the constrained areas?

1 THE WITNESS: That's not within the
2 constraints, yes, sir.

3 So now, still, again, this is a plan.
4 This is not what the BLM finally approved, which I
5 believe you'll be seeing next. Okay? So this was
6 our plan. We were going to -- we were going to try
7 to drill eight laterals -- well bores per section,
8 with three legs in each lateral. And that would
9 reduce the necessity of drilling eight vertical
10 wells. So we're trying to -- trying to use one
11 lateral to cover eight 10-acre locations.

12 Q. (By Ms. Munds-Dry) Okay. Let's go to
13 Concho Exhibit 23 if we could, please, the next
14 slide.

15 HEARING OFFICER EZEANYIM: Is that the
16 same thing we have?

17 THE WITNESS: This is going to be
18 different here.

19 HEARING OFFICER EZEANYIM: Okay. Go
20 ahead.

21 THE WITNESS: We asked Mr. Olivas and his
22 group to go and stake all of the locations that you
23 just saw in the previous slide.

24 HEARING OFFICER EZEANYIM: Okay.

25 THE WITNESS: Well -- and I -- also on

1 this slide we have depicted -- in the gray stippling
2 we have the -- what the BLM calls the exclusion
3 area. These are the areas where you're not going to
4 be allowed to drill.

5 Q. (By Ms. Munds-Dry) That's the same thing
6 that Mr. Olivas showed in a blown-up fashion
7 earlier?

8 A. Right. This is just another depiction of
9 the same exclusion areas, based on the -- based on
10 the lizard habitat.

11 So these are --

12 HEARING EXAMINER EZEANYIM: Those are
13 shown in the yellow?

14 THE WITNESS: Excuse me?

15 HEARING OFFICER EZEANYIM: Forgive me, I
16 don't follow. Are those the exclusion areas in
17 yellow?

18 THE WITNESS: Well, it's actually a gray
19 shading.

20 HEARING OFFICER EZEANYIM: Oh, okay.

21 THE WITNESS: It's a gray shading. The
22 yellow is Concho leasehold, the yellow background.

23 HEARING OFFICER EZEANYIM: Okay.

24 THE WITNESS: The gray area, the odd
25 shapes there that you see --

1 HEARING OFFICER EZEANYIM: Yeah.

2 THE WITNESS: -- that's the lizard
3 exclusion area.

4 HEARING OFFICER EZEANYIM: Oh, the sand
5 dunes?

6 THE WITNESS: The sand dunes, because of
7 the sand dunes.

8 So this is -- this is the 17-well program
9 that we're able to come up with, with BLM approval,
10 under the CCA.

11 The squares, those are the surface
12 locations. And you'll notice we've tried to group
13 those into certain areas to minimize the surface
14 impact.

15 HEARING OFFICER EZEANYIM: Okay.

16 THE WITNESS: So the surface locations,
17 you will notice, are clustered in specific areas
18 that are not within the exclusion area.

19 Those are the nearest locations that the
20 BLM would grant, so that's what we were -- that's
21 what we are dealing with here. It's a very
22 challenging surface issue.

23 HEARING EXAMINER EZEANYIM: Okay.

24 Q. (By Ms. Munds-Dry) Okay. Let's turn to
25 the next exhibit, if we could, please, which should

1 be Exhibit Number 24.

2 HEARING EXAMINER EZEANYIM: Okay.

3 Q. (By Ms. Munds-Dry) What does this show
4 us, Mr. Broughton?

5 A. This is showing Concho's program for
6 developing the three sections in question, overlaid
7 by the six approved APDs that Burnett has -- has
8 secured.

9 And what we're depicting here, or trying
10 to show here, is how those fall right in line with
11 the horizontal well and would -- would impede the
12 ability to drill full-length laterals, which would
13 optimize the development of each of these sections.

14 Q. Mr. Broughton, were you present for
15 Mr. Evans' testimony?

16 A. I was, yes.

17 Q. And were you present for the questions
18 about how it would impact -- how our horizontal well
19 program would be impacted by Burnett's vertical well
20 program?

21 A. Yes, I was.

22 Q. So this is the visual depiction of that?

23 A. This is just a visual depiction to show
24 that those wells fall in line with a lateral well, a
25 horizontal well, and would make -- make drilling of

1 that lateral well difficult, if not impossible.

2 HEARING EXAMINER EZEANYIM: All right. In
3 Section 12, what's that red dot in the forbidden
4 area?

5 THE WITNESS: Okay. That is the Hudson
6 Knockabout well that you've heard reference to
7 several times. That's actually a Yeso well that
8 was -- that's the Hudson Oil Morrow well that was
9 dry-holed in the Morrow and completed in the Yeso.

10 So that is actually producing from the
11 Paddock at this point.

12 HEARING EXAMINER EZEANYIM: But the BLM
13 approved that well?

14 THE WITNESS: Well, they must have, but
15 this was drilled in 2005. And I don't think the
16 lizard issue was quite as big of a deal at that
17 point. So this was done a number of years ago.

18 This was actually drilled in 2005. I'm
19 not certain when it was completed into the Paddock.
20 But, yes, it probably wouldn't be granted today
21 under the current surface constraints.

22 HEARING EXAMINER EZEANYIM: So when did
23 you guys start having CCA with the BLM?

24 THE WITNESS: I don't know the exact date
25 of that. That's -- that's really more -- but I

1 believe it was -- well, I don't know the answer to
2 that. That's really not my -- my area. That's more
3 of a land question.

4 HEARING EXAMINER EZEANYIM: Is that after
5 2005?

6 THE WITNESS: Oh, yeah, much after 2005.

7 HEARING EXAMINER EZEANYIM: Okay. Go
8 ahead.

9 Q. (By Ms. Munds-Dry) Okay. Let's then turn
10 to the next exhibit, Exhibit 25.

11 What are you showing here?

12 A. This slide is kind of a busy slide, but it
13 depicts the data that Concho has in this particular
14 area.

15 The pink circles, the pink -- well, I
16 guess they're octagons -- are wells with open-hole
17 logs.

18 The black diamonds with the stippling in
19 them, those are wells with sidewall cores.

20 The red triangles that face to the left,
21 or to the west, those are wells with FMI logs, image
22 logs.

23 And then the large purple stars, of which
24 there's five, are wells in the immediate area where
25 Concho has full cores.

1 And this is to depict the amount of data
2 that we have developed and analyzed in our -- you
3 know, used in our completions and to determine what
4 to do on a well-to-well basis with the completion.

5 HEARING EXAMINER EZEANYIM: Are these
6 Concho wells?

7 THE WITNESS: Those are all Concho wells.
8 And they're actually -- just in the picture you're
9 looking at, there's 220 wells with open-hole logs,
10 35 with FMI logs, 42 with sidewall cores, and 5 with
11 hole cores.

12 And I would daresay there's not another
13 saturation of data like this anywhere in this part
14 of the world, maybe not in the world.

15 Q. (By Ms. Munds-Dry) Mr. Broughton, besides
16 making me hungry for Lucky Charms, what was your
17 intent in forming this exhibit?

18 A. It was just to show that Concho was
19 actually gathering data, using data, actually
20 high-end data, in the evaluation of our wells. And
21 we're not -- we're not simply drilling holes and
22 fracking them, we're actually using a fair bit of
23 science.

24 Q. And does Concho intend to continue to
25 perform this kind of logging and some of this data

1 if it's awarded operations in Sections 12, 13, and
2 24?

3 A. Absolutely, we will.

4 Q. What would you anticipate Concho -- what
5 kind of logging and other types of data would Concho
6 seek for its horizontal laterals?

7 A. Well, because we have got -- because we've
8 got so many -- so much data right on each side of
9 this, there's places where we might not run full
10 open-hole logs.

11 But in each cluster of surface locations,
12 we would propose running a -- drilling a pilot hole,
13 running a full suite of open-hole logs, which would
14 be spectral, gamma ray, resistivity, neutron density
15 porosity, possibly an FMI, possibly sidewall cores,
16 and we would run a mud log through it.

17 And then we -- in the horizontal section,
18 we would run a mud log and a gamma ray tool.

19 Q. Were you present for -- I believe it was
20 Mr. Haiduk's testimony -- where they went through
21 the list of items that they plan -- the science that
22 they plan to run on their wells?

23 A. I was here for that, yes.

24 Q. And do I understand from your testimony
25 that you will plan to do something similar to that?

1 A. Absolutely. Absolutely. We'll do
2 something very similar to that.

3 Q. I want to ask you about this water cut
4 slide, but let's take care of a few other
5 housekeeping matters.

6 A. Okay.

7 Q. In your opinion, Mr. Broughton, will the
8 production from horizontal wells in these three
9 sections be better than from vertical wells?

10 A. It would be hard to say that, but the
11 problem is the surface. You're not going to drill
12 vertical wells. You won't be able to drill vertical
13 wells.

14 Q. So then given the circumstances here, the
15 horizontal well is the best way to produce these
16 reserves?

17 A. It's the only way that we believe that you
18 could produce these wells, yes.

19 Q. Do you consider each of the quarter
20 quarter sections in each of the project areas that
21 we proposed here today to be perspective?

22 A. Oh, absolutely. There's no reasonable --
23 no reasonable geologist would look at the wells to
24 the east and to the west and come up with any other
25 conclusion.

1 Q. Do you consider each of those quarter
2 quarter sections to be likely to contribute
3 significant production from the Yeso formation and
4 the proposed nonstandard units?

5 A. I do believe that, yes.

6 Q. Does Concho anticipate producing reserves
7 from each of these quarter quarter sections?

8 A. We do anticipate that, yes.

9 Q. Will the granting of Concho's
10 applications, in your opinion, be in the best
11 interest of conservation, the prevention of waste,
12 and the protection of correlative rights?

13 A. Yes, I do.

14 Q. I want to touch on one matter,
15 Mr. Broughton.

16 Were you present for the presentation on
17 the slide regarding water cut that I think
18 Mr. Jacoby discussed?

19 A. I was here for that, yes.

20 Q. In your experience in the shelf, do you
21 see more water as you go east?

22 A. Yes, I do. There's actually an oil/water
23 contact in the Paddock that -- since I'm the
24 geologist for both of these areas, I have the luxury
25 of knowing where that oil/water contact first

1 becomes visible on logs, and it's over on the west
2 side of our Skelly unit, and you get increasing --
3 increasing water column.

4 What I mean by that is an increasing
5 section of water compared to oil as you move to the
6 east.

7 Further out to the east there's some wells
8 one section further that have, really, virtually
9 no -- or very little hydrocarbon column in the
10 Paddock interval.

11 So it's very natural, as this dips to the
12 east, that you would have an increase in water cut.

13 The key with the water is to mitigate it
14 as best you can. But if you're not going to produce
15 water, you're not going to produce oil either. So
16 you have to -- you have to have a way to dispose of
17 the water, which Concho has an extensive SWD system
18 in this very area.

19 Q. Concho is capable of producing the water?

20 A. We're capable of producing water so that
21 we don't leave oil behind. And we are currently
22 injecting well over 100,000 barrels of water a day
23 in the shelf area.

24 Q. And what is your opinion on the amount of
25 oil production as you move east? Does it get higher

1 or lower?

2 A. You know, that's a question for the
3 engineer. The oil cut might come up, but the total
4 volume of fluids might go up also.

5 Q. Is it just a matter of economics, when
6 you're dealing with water and oil ratios?

7 A. Yeah. We don't look really so hard at the
8 oil cut or the water cut. We are concerned more
9 with the economics.

10 And our ability to deal with the water and
11 to eliminate it, or inject it, dispose of it, I
12 guess, makes us not quite so fearful of the water.
13 Because if you don't -- if you can't deal with the
14 water, you are not going to get the oil, basically.

15 Q. Thank you, Mr. Broughton.

16 Did you either prepare -- or were Exhibits
17 14 through 25 compiled under your direct
18 supervision?

19 A. They were.

20 MS. MUNDS-DRY: Mr. Ezeanyim, we move to
21 admit Exhibits 14 through 25 into evidence.

22 HEARING OFFICER EZEANYIM: Any objections?

23 MR. GRABLE: No objection.

24 HEARING EXAMINER EZEANYIM: Exhibits 14
25 through 25 will be admitted.

1 MS. MUNDS-DRY: Thank you. That concludes
2 my direct examination.

3 I pass the witness.

4 MR. BRUCE: Mr. Grable will ask the
5 questions of this witness.

6 HEARING EXAMINER EZEANYIM: We'll take a
7 10-minute break.

8 (A recess was taken from 5:01 p.m. to 5:17
9 p.m.)

10 HEARING EXAMINER EZEANYIM: Okay. Now,
11 let's go back on the record.

12 Where are we? Cross-examine?

13 MR. GRABLE: Cross-examine.

14 HEARING EXAMINER EZEANYIM: Okay. Go
15 ahead, Mr. Grable.

16 EXAMINATION

17 BY MR. GRABLE:

18 Q. Is it Mr. Broughton?

19 A. Broughton.

20 Q. Mr. Broughton, pardon me.

21 A. That's fine.

22 Q. Mr. Broughton, I'm Bob Grable. I
23 represent the Burnett and Hudson entities in this
24 case. And we haven't met or spoken before right
25 now, have we, sir?

1 A. No, we have not.

2 Q. Did you -- well, I don't believe you
3 testified in the pool rules and allowable hearing
4 back in May, did you?

5 A. I testified at the pool rules, not the --
6 they split those two. I testified at the pool rules
7 but not the allowable portion of that. I believe
8 that's correct.

9 Q. Okay. Now, as I understand your
10 testimony --

11 A. Uh-huh.

12 Q. -- COG's preference and your preference
13 would have been to cover up these three sections
14 with 10-acre verticals.

15 A. That was our initial plan, yes, sir.

16 Q. As the company has done in other areas
17 where it operates?

18 A. That's our typical MO, yes, sir.

19 Q. In fact, in these various maps you have
20 presented today -- I just happen to have out Number
21 25.

22 A. Okay.

23 Q. Isn't it true that Concho has not drilled
24 a single horizontal well in any of these yellow
25 areas on this map?

1 A. No. That is true, we have not. When we
2 got this acreage, my -- my thought is that we might
3 develop a lot of the shelf horizontally, but we're
4 impeded by the fact that there's already a lot of
5 vertical development, which leaves you doing
6 horizontals just around the edges.

7 So the answer is no, we haven't. Would we
8 if we had a clean slate? Probably.

9 Q. Well, if you will look at the northwest
10 corner up here in Section 10 and 9, that's under
11 the --

12 A. Uh-huh.

13 Q. It's all covered up with 10-acre vertical
14 locations also?

15 A. Yes. We don't operate that property.

16 Q. But you have a 40 percent working
17 interest?

18 A. I don't know what our interest is, no,
19 sir. That's operated by Apache.

20 Q. I'm just a bit confused.

21 A. Uh-huh.

22 Q. Because I thought you told me at first
23 your preference and your company's preference was to
24 drill these three sections at issue in this hearing
25 with 10-acre verticals.

1 A. That was our initial thoughts, yes, sir,
2 until we were impeded by the surface challenges.

3 Q. But, again, you haven't drilled any
4 horizontals anywhere else?

5 A. Well, we have; not in this immediate area.
6 There's so many vertical wells you couldn't drill a
7 horizontal well.

8 Q. But in these three sections there's one
9 and only one vertical Yeso well operated by Hudson,
10 right?

11 A. I believe that's correct.

12 Q. And despite that, your preference was
13 still to drill these the same way you drilled
14 this --

15 A. That was our initial thoughts, yes, sir.

16 Q. Okay. Now -- and that is how you
17 proposed -- that's how your company proposed wells
18 to Burnett and Hudson, with the 47 --

19 A. Originally, yes, sir.

20 Q. -- originals in January to February?

21 A. That is true. Yes, sir.

22 Q. Now it's also true, is it not, that Concho
23 has not drilled a triple lateral horizontal well
24 anywhere in New Mexico?

25 A. No, sir, we have not.

1 Q. And I presume you haven't done that
2 anywhere else that you operate in the United States.

3 A. Not that I'm aware of, no, sir.

4 Q. Have you drilled any dual horizontal
5 laterals?

6 A. Not that I'm aware of.

7 Q. So this is your pioneering voyage?

8 A. That is true, yes, sir.

9 Q. You want to pioneer with two-thirds of
10 Burnett Hudson's money?

11 A. They can go nonconsent.

12 Q. Well, would it be reasonable to step over
13 here just across the line, where it's -- you have
14 only got one well per 40, and experiment with one of
15 these triple laterals with your own money instead of
16 two-thirds of your partner's money?

17 A. Well, that's a 50-50 lease, also, so I
18 don't -- we would have to get the approval of the
19 50 percent partner in that.

20 Q. All right. Let's go back to the start a
21 minute.

22 Are you intending with your exhibits --
23 and I believe it was 16, when you showed a log
24 cross-section.

25 A. The first big foldout?

1 Q. Yes, sir.

2 A. Okay.

3 Q. Are you intending, with the green coloring
4 on here and your testimony about this, to give any
5 evidence in this case about net pay in these
6 reservoirs?

7 A. Any evidence about net pay?

8 Q. Yes, sir. Do you have net pay criteria?

9 A. 3 percent porosity. And these are neutron
10 logs, so they're not going to have a water
11 saturation on there.

12 But, yeah, our typical, in an open-hole
13 log, would be 40 percent water saturation, 3 percent
14 porosity.

15 Q. These little what I'll call flags down
16 the -- on the first log section of these logs, are
17 those computer-generated net pay flags?

18 A. They're computer-generated, yes, sir, pay
19 flags.

20 Q. Does the owner or an operator of the log
21 have to input information in the computer to tell it
22 what to -- criteria for net pay to generate these
23 net pay flags?

24 A. Yes. And the cutoff here, this would meet
25 a porosity cutoff for these particular logs, yes,

1 sir.

2 Q. All right. Did you use -- which porosity
3 curve or curves did you use to determine that
4 cutoff?

5 A. This was only on a neutr- -- these are
6 neutron logs. The reason I put this slide together
7 was to demonstrate the heterogeneity of the
8 formation and how -- the porosity magnitude and
9 where it lies in the vertical section actually shows
10 up. So that -- that was really the purpose of this
11 particular cross-section.

12 Q. Okay. So you don't have any neutron
13 density porosity curve --

14 A. Not on this -- not on this cross-section,
15 that's correct.

16 Q. Do you have an opinion whether or not in
17 these reservoirs the neutron density curve is a more
18 accurate indicator of true porosity?

19 A. Oh, sure it is. Absolutely.

20 Q. But it's not on there?

21 A. I did not put it on here.

22 Q. Okay. Now, again, despite the
23 heterogeneity of these sections, the perforations
24 actually made in the sections treated in completion
25 are the four separate approximate 200-foot sections

1 shown in the log by these interior big black marks,
2 correct?

3 A. Yes, sir. Those are the perforated
4 intervals, yes, sir.

5 Q. And that's consistent with your company's
6 practice of perforating in four 200-foot blocks
7 across -- one in the Paddock and three in the
8 Blinebry?

9 A. For a combination well, that would be
10 true, yes, sir.

11 Q. So despite the heterogeneity, you
12 perforate in a uniform manner?

13 A. It's not necessarily uniform. The perfs
14 move around based on where the porosity shows up.

15 Q. But you don't even log all your wells, do
16 you?

17 A. Sure we do.

18 Q. You take open-hole logs on all your wells?

19 A. We run open-hole logs on select wells, and
20 we run cased-hole logs on infill wells. All wells
21 are logged.

22 Q. Okay. Are those cased -- cased-logs, they
23 are a considerably poorer indication of porosity
24 than open-hole logs?

25 A. They would be less accurate, yes, sir.

1 Q. Have you done any net pay work on the
2 wells in this reservoir?

3 A. Not net pay, no, sir.

4 Q. Have you done any sort of study to form
5 the basis of an opinion that --

6 Well, let me back up and ask it this way.

7 A. Uh-huh.

8 Q. Did I understand your testimony to give an
9 opinion that you believe your company's plan of
10 development will result in less waste of producible
11 hydrocarbons compared to the Burnett/Hudson plan?

12 A. As I understand the Burnett/Hudson plan,
13 yes, I believe that. Yes, sir.

14 Q. But have you done any kind of study
15 deriving net pay and expected production to form the
16 basis of that opinion, or is that just your
17 off-the-cuff opinion, looking at the various plans?

18 A. Well, I haven't done a study. But if you
19 look at the coverage of our lateral wells with the
20 two completions in the Blinebry and one in the
21 Paddock, you're obviously contacting more rock.
22 You're going to get more pay.

23 Now I haven't, you know, done a
24 foot-by-foot study of it. But, I mean, it's just --
25 logic tells you you are producing more hydrocarbon

1 if you're -- if you're producing the entire Yeso
2 interval.

3 Q. Your plan, as presented, involves 17
4 triple laterals. So that would be 51 laterals?

5 A. 17 times 3, yes, sir. That's correct.

6 Q. And the Burnett/Hudson plan, as submitted,
7 I believe, is 24 double laterals, which would be 48
8 laterals?

9 A. I don't know. I don't remember the
10 numbers.

11 Q. Plus some verticals.

12 But if you don't know, how can you express
13 an opinion that one is better than the other with
14 respect to the range of plays?

15 A. Well, I knew that the -- I know, with two
16 laterals, you're not going to contact as much rock
17 as with three laterals. That, I do know.

18 I'm just basing it on coverage of the
19 roughly 1,500-foot of Yeso formation.

20 Q. Let me ask it again.

21 If the Burnett plan involves 48 horizontal
22 laterals plus four or five verticals versus 51
23 laterals on Concho's side, how is it that you can
24 give an opinion that your plan is materially better
25 for prevention of waste than the Burnett plan?

1 A. Because we are contacting the entire Yeso
2 interval in each of our well bores, where Burnett
3 would not be.

4 Q. Have you calculated the total footage in
5 the productive area between the two plans?

6 A. No, I have not.

7 Q. If they were equivalent, would you have
8 the same opinion?

9 A. If the total footage was equivalent?

10 Q. Yes.

11 A. I don't know how to answer that, sir.

12 Q. But anyway, you haven't done that study?

13 A. I haven't done a study, no.

14 Q. Now, how can you be confident -- well, let
15 me ask you this.

16 Are you confident that these triple
17 laterals will even work, that you can mechanically
18 drill one and produce it without considerable
19 problems?

20 A. Well, that's more a question for our
21 drilling engineer, who will be up. But the belief
22 in Concho is that it can. Multiple lateral wells
23 are drilled in industry all the time. We believe
24 that it's a viable option.

25 Q. But your company hasn't drilled any?

1 A. No, sir.

2 Q. Even dual wells?

3 A. Not to my knowledge, no, sir.

4 Q. Yet, based upon no experience and no real
5 study, you want this division to approve your plan
6 versus the Burnett plan?

7 A. Well, at one time, no one messed with the
8 Blinebry, and now it's an economically viable
9 producer. So you've got to start somewhere.

10 Q. Were you -- you were in the room when
11 Mr. Jacoby presented what I believe were his
12 Exhibits 8, 9, and 10, that were similar to the
13 exhibits that he presented in the pool rules hearing
14 comparing the Burnett production.

15 I'm not going to try to put them back up.
16 I think Mr. Ezeanyim will remember the exhibits.

17 Where we looked at the Burnett/Hudson --
18 the Burnett property surrounding the Concho Harvard
19 Federal and looked at the first six months' and now
20 the first 12 months' production.

21 A. I was here for that, yes, sir.

22 Q. Do you have any basis to dispute the
23 conclusions reached there about the greater
24 productivity and the lower GORs that Burnett --

25 A. That's a reservoir engineering question.

1 I wouldn't -- I wouldn't address that.

2 Q. All right. Now, would you believe it
3 would be an accurate way, as an analogy to that, to
4 compare the Burnett horizontals that's actually
5 drilled in these reservoirs with the COG horizontals
6 it has drilled, and compare them on a lateral foot
7 basis for -- productivity per lateral foot?

8 A. You could probably draw some kind of
9 comparison, yes, sir.

10 Q. To compare a 3,000-foot lateral versus a
11 4,000, or a 4,000 versus a 2,000, you've got to do
12 something to normalize the extra productivity by the
13 extra reach in the reservoir, don't you?

14 A. You -- I mean, you -- I mean, you would
15 have to normalize completion techniques and, you
16 know, mud log shows. And, I mean, there are other
17 things that would go into it.

18 But, in general, I would go with you and
19 say that there's some comparative.

20 Q. Productivity per foot -- perforated foot
21 in the productive interval?

22 A. Could you repeat that? I'm not with you
23 yet.

24 Q. Well, if you look from -- what do you call
25 it, the penetration point of the horizontal coming

1 down?

2 A. Okay. Where it first contacts the Yeso?

3 Q. Out to the toe?

4 A. Okay.

5 Q. And look, maybe, from the first
6 perforation to the last, and look at the number of
7 drilled feet. And then look at the productivity
8 from that well and express it in barrels of oil per
9 foot or something like that.

10 And then you could do the same thing with
11 other wells. And do you think that would be a
12 reasonable way to compare productivity of horizontal
13 wells?

14 A. Well, it could be, except that the rock,
15 laterally, is heterogeneous. So it --

16 Q. Yes. I understand that. But that's true
17 for any well in this reservoir?

18 A. That is absolutely true, yes, sir.

19 Q. Now, just again, a general question. It
20 doesn't matter which map we look at, and I just
21 happen to have this last one out that's 25.

22 A. Okay.

23 Q. If you look over in the two sections, I
24 guess Sections 14 and 23, opposing 13 and 24,
25 immediately to the west.

1 A. 14 and 23, yes, sir. I'm with you.

2 Q. Just eyeballing that, doesn't it look like
3 most of that is developed on a 20-acre pattern
4 rather than a 10-acre pattern?

5 A. No, sir, it's not.

6 Q. It's not? Well, we --

7 A. It's not yet. We have a limited -- this
8 is an area where we have a farmout from Chevron, and
9 we have a very strictly-defined number of wells that
10 we can drill per year there, and so that's why it
11 has not been more developed.

12 Q. Do you also know, or are you aware, that
13 Chevron has, in fact, nonconsented some proposals to
14 downspace from 20 to 10 acres in this area?

15 A. I'm not aware of that, no.

16 HEARING EXAMINER EZEANYIM: Mr. Grable,
17 ask your last question about Chevron. What did you
18 say? What was your question?

19 MR. GRABLE: In that area I was asking him
20 about, to the west of the three sections at issue, I
21 asked him if it appeared to be developed on 20 acres
22 versus 10.

23 And he said, well, their ability to drill,
24 as I understood his answer -- he can speak for
25 himself -- was limited by the terms of the farmout

1 from Chevron.

2 THE WITNESS: That is correct, yes, sir.

3 Q. (By Mr. Grable) And Chevron has a working
4 interest on this section?

5 A. We're 50-50 partners, yes, sir.

6 HEARING EXAMINER EZEANYIM: And then you
7 say Chevron wanted to drill on 10 or 20?

8 MR. GRABLE: Well, I asked him if he knew
9 whether or not Chevron had, in fact, nonconsented a
10 proposal to drill down to 10s in some of these
11 sections. And as I understood his answer, he wasn't
12 aware of it. But that's what I was asking.

13 HEARING EXAMINER EZEANYIM: Okay. So
14 Chevron went nonconsent?

15 MR. GRABLE: Well, I can't testify.
16 But...

17 HEARING EXAMINER EZEANYIM: I'm sorry, I
18 want to understand your question. I wasn't
19 understanding your question.

20 Q. (By Mr. Grable) My question is: Have any
21 10-acre wells been proposed, to your knowledge, in
22 which Chevron went nonconsent in those sections
23 immediately west of the --

24 A. Not to my knowledge, no, sir.

25 Q. Okay. Do you know the number of wells

1 Chevron permitted on the farmout in a density sense,
2 like 40-acre -- one per 40 or one per -- or two per
3 40 or --

4 A. Well, it's actually simpler than that.
5 It's just a number. It's 25 per year in the Skelly
6 unit.

7 So at the beginning of the year, I -- at
8 the beginning of the year we give them a menu of
9 wells that we think they will like, and there's
10 probably 50 or 60 on there, and they pick the ones
11 they want to do.

12 So we don't propose anything to them that
13 they haven't already preselected. So why they would
14 nonconsent something, I'm not certain. They pick,
15 in advance, the ones they want to do on a yearly
16 basis.

17 HEARING EXAMINER EZEANYIM: Now,
18 Mr. Grable, before you go -- I'm not asking you,
19 you're not a witness. You are just an attorney, so
20 don't think I'm asking you as a witness to answer
21 the question.

22 MR. GRABLE: Yes, sir.

23 HEARING OFFICER EZEANYIM: I just wanted
24 to understand the question.

25 MR. GRABLE: Right. Well, I --

1 HEARING OFFICER EZEANYIM: Because, as the
2 legal counsel, you are not a witness, so I'm not
3 asking you to answer the question. I want you to
4 tell me what the question was, and then I will see
5 if I can get an answer from the witness.

6 MR. GRABLE: Yeah. I don't know.

7 We had some information, I don't know
8 whether it's true or not, but some of our people had
9 a belief that Chevron had, in fact, gone nonconsent
10 on some 10-acre wells. But if this witness doesn't
11 know, then that's the end of the inquiry.

12 THE WITNESS: It would have been before I
13 was involved in these fields. Because all of their
14 approvals had been preapproved, you know, so they'd
15 have no reason to nonconsent.

16 HEARING EXAMINER EZEANYIM: And you don't
17 know whether they went nonconsent?

18 THE WITNESS: I don't know about prior to
19 me being the geologist for this field.

20 Q. (By Mr. Grable) When did that begin?

21 A. I have been over this field for
22 probably -- I don't know the exact date, but
23 probably around the beginning of 2010. So I'm
24 certain in the last two -- in 2010 and 2011 they
25 haven't nonconsented any 10-acre wells. That I do

1 know. I'll answer that.

2 Q. Now, looking at your Exhibit 24.

3 A. Okay.

4 Q. As I understand the opinion there
5 expressed that was -- at least in part the basis for
6 your prevention of waste testimony -- was that the
7 Burnett/Hudson proposed vertical wells would
8 interfere with your company's proposed horizontal
9 wells; and, thereby, cause waste.

10 A. It would cause us to not be able to drill
11 the full lateral length that we prefer to drill.

12 Q. But isn't the supposition underlying that
13 opinion that both companies' plans of development
14 would be approved and implemented?

15 I mean if only one company is approved,
16 then there won't be any interference between the
17 Burnett plan and the COG plan, will there?

18 A. If only one company is approved?

19 Q. Yes.

20 A. I would say that's right, yes.

21 Q. All right. Just as a matter of curiosity,
22 do you have an opinion as to how close a projected
23 horizontal path would need to be to a vertical well
24 bore in order for it to interfere with it?

25 A. That wouldn't be my realm. That would

1 be -- the engineers would have to answer that.

2 Q. Just looking at the size of these green
3 diamonds representing the Burnett surface locations,
4 each of those squares in which they reside is a
5 40-acre square, right?

6 A. That is correct, yes, sir.

7 Q. So the size of those little green squares,
8 those location markers, are probably five or more
9 acres as depicted on this map.

10 A. Well, this is not to scale. This is just
11 a -- this is just a depiction of where those wells
12 lie. It's not going to be to scale.

13 I couldn't speak to exactly the size of
14 the Burnett proposed pad.

15 Q. Well, looking at -- as to this
16 interference issue --

17 A. Uh-huh.

18 Q. -- as I understand your plan, at the very
19 tip-top --

20 A. Yes.

21 Q. -- on the north part of Section 12, you're
22 going to drill an east/west lateral across the north
23 line?

24 A. That is a plan, yes.

25 Q. Which intersects at least two of your

1 proposed north/south laterals.

2 A. No, it won't intersect. The two
3 north/south ones that are showing up right there
4 would not contact or penetrate the Yeso until south
5 of that particular location. So this was designed
6 to not have that interference.

7 Q. Okay. Well, couldn't -- you know, even in
8 the bizarre circumstance that Burnett and Hudson
9 could both drill the wells they want to drill there,
10 which I'm not sure how in the world that happens --

11 A. Right.

12 Q. -- but anyway, couldn't you also, you
13 know, move around the existing well bores of
14 Burnett, just as you have moved around existing
15 proposed well bores of COG up there on the north
16 side?

17 A. Well, it's not just the well bore, it's
18 the frac line. So if there's a vertical well that's
19 been fracked and you're drilling a horizontal
20 through it, that might cause some concern on the
21 drilling side.

22 So it's not merely just the actual well
23 bore and the casing that would be there, it would be
24 the extension of that well bore via the fracture,
25 the hydraulic fracture.

1 Q. Yes, sir. But isn't it a general rule the
2 more fractures the better?

3 A. If you have a well that's fracked and
4 producing, I don't think you would want to be
5 drilling through that. You might lose some drilling
6 fluid or cause some other drilling problems.

7 Q. Have you ever heard of simo fracs, or
8 simultaneous fracs?

9 A. Sir, I've not heard of that. I'm sorry.

10 Q. Okay. Now, going back to your Exhibit 25.

11 A. Okay.

12 Q. In general, your company believes, as
13 Mr. Haiduk and the Burnett witnesses have testified,
14 that it's good operator practice, prudent operator
15 practice, to get as much data as you can from a
16 vertical penetration through a section like this
17 before you decide where to kick off and drill
18 horizontally?

19 A. Yes. And that's why we would drill pilot
20 holes in select spots.

21 Q. And pilot holes are just another word for
22 a vertical well?

23 A. That is true.

24 Q. And so you would drill that vertical well
25 and get -- gather the data in the same fashion that

1 Burnett is proposing?

2 A. A similar fashion, sure.

3 Q. In a similar fashion.

4 Would you then drill out the bottom of
5 that pilot well as your bottom lateral?

6 A. No, not out the bottom. We would
7 penetrate the entire Yeso interval through the Tubb,
8 we would set 7-inch, come up, cut a window for the
9 lower lateral in the Blinebry and for the upper
10 lateral in the Blinebry and then for the Paddock,
11 sequentially. It would be from the bottom up.

12 Q. Now -- and again, I don't mean to beat the
13 point to death.

14 A. Okay.

15 Q. But with all of this data that you have
16 gathered from the east to the west --

17 A. Uh-huh.

18 Q. -- your company's decision, based upon
19 that data, has never been to drill a horizontal
20 well. All of these --

21 A. They are already impeded by vertical
22 wells. I mean we would like to, in some spots,
23 probably drill a horizontal well, but you're left
24 nibbling at the edges, off the shelf edge, or up to
25 the north.

1 Q. Well, I don't want to argue with you, but
2 a lot of this area is not fully developed. If you
3 will look at Section 11, it's not even fully
4 developed on 40s yet, is it?

5 A. That's another area where we share with
6 Chevron, and we would have to seek their approval to
7 do a horizontal well.

8 Q. Would you ever try to force pool Chevron
9 into a triple lateral?

10 A. That would be a question for our land
11 department.

12 Q. You haven't done it so far, anyway?

13 A. Not to my knowledge, no, sir.

14 Q. Is it your testimony that you saw an
15 actual oil/water contact in the Paddock?

16 A. Yes, sir.

17 Q. And is that in just one of those larger
18 stratigraphic porous sections?

19 A. It's in the upper porous part of the
20 Paddock.

21 Q. Is there, in your opinion, oil bearing
22 rock in the Paddock below that same oil/water
23 contact?

24 A. There is possibly some hydrocarbon there,
25 but it's largely water. It calculates off the logs

1 to be predominantly water, well above the 40 percent
2 pay flag cutoff.

3 Q. But then as you go down into the Blinebry,
4 you see prospective hydrocarbons in the Blinebry
5 section below this oil/water contact?

6 A. Yes, that is true. It's the nature of a
7 heterogeneous reservoir. It's compartmentalized,
8 when you've got a very tight 100-foot section at the
9 base of the Paddock that I believe is helping
10 isolate that.

11 Q. So it's really multiple reservoirs, in the
12 sense of natural communication?

13 A. I don't know if you'd go that far, but
14 it's got some segregation to it, at least a baffle
15 if not a barrier.

16 Q. You normally don't find the distributions
17 of fluids -- of water above and below oil in the
18 same reservoir, do you?

19 A. You can. San Andres is a good example of
20 that. You've got multiple compartments --

21 Q. It's got some permeability barriers or
22 something --

23 A. It's got to have some kind of a barrier,
24 yes, sir. I'll agree with you.

25 Q. From all of this data you've gathered

1 on -- shown on Exhibit 25, do you have an opinion on
2 the anisotropy?

3 A. Anisotropy?

4 Q. Yes.

5 A. Yes, sir. It's pronounced anisotropy.
6 You're talking about stress anisotropy?

7 Q. Yes.

8 A. Yes, I do. What would you like to discuss
9 on that?

10 Q. Does it have a directional orientation?

11 A. The maximum horizontal stress direction
12 from FMI logs in this area is north/northwest to
13 south/southeast.

14 Q. Is that true both in the Paddock and the
15 Blinebry?

16 A. They might be slightly different. But
17 essentially, it is -- I would call it the same.
18 There might be a slight difference in the Paddock
19 and the Blinebry.

20 Q. North/northwest to south/southeast?

21 A. Yes.

22 Q. So, predominantly, north/south?

23 A. Closer to northwest/southeast. But, yes,
24 skewed towards north/south by some degrees.

25 Q. Would that lead to a preference to

1 drilling your horizontals -- well, would it be your
2 preference to drill your horizontal laterals
3 perpendicular to that stress field?

4 A. That would probably be the best, but it
5 wouldn't fit within the surface land constraints. I
6 mean you're -- you're limited by -- to drill them --
7 to give you maximum coverage of these -- of a
8 section to north/south or to east/west.

9 Q. Have you tried to orient more north/south
10 or east/west laterals?

11 A. Well, that's the reason that we have that
12 east/west lateral on the top of Section 12 there.
13 We would like to compare the two.

14 We have seen good north/south laterals,
15 good east/west laterals. We're not sure that
16 there's a difference. There may not be.

17 But if we drill the east/west lateral and
18 it comes on, you know, on an order of magnitude
19 higher in production, then we would have to rethink
20 our north/south orientation.

21 The north/south orientation is largely
22 governed by surface availability. That's what drove
23 that.

24 Q. All right. And the testimony you've given
25 about blackout areas, or only the surface you may

1 use, or your company may use for surface
2 locations --

3 A. Uh-huh.

4 Q. -- is that from what you've been told by
5 the previous witness? And I am trying not to
6 butcher his name, but Mr.- --

7 A. Olivas?

8 Q. -- Olivas, or do you have personal
9 knowledge?

10 A. That's what I get from the surface land
11 people who go stake the wells.

12 And it was based on the 35 that we were
13 actually able to get BLM on-site approval. That's
14 what drove that slot.

15 Q. Okay. And you don't know, therefore,
16 whether or not the BLM has approved or may approve
17 the surface locations proposed by Burnett, do you,
18 sir?

19 A. I have no idea. No, sir.

20 MR. GRABLE: Thank you. One moment.

21 Q. (By Mr. Grable) Mr. Broughton?

22 A. Yes, sir.

23 Q. Does that Chevron farmout to the west,
24 does it cover the entire Skelly unit?

25 A. Yes, I believe it does.

1 Q. How big is the Skelly unit?

2 A. Let's see. It is one, two, three, four,
3 five sections. It covers five sections, and then it
4 covers the Section 11 just to the north, that's just
5 north of the Skelly unit that's listed as Texmack
6 11. It also covers that, but that is not part of
7 the Skelly unit.

8 Q. So the farmout covers six sections?

9 A. Well, actually, seven. The one just to
10 the north, Section 2, north of Section 11, is
11 involved. It's got some different terms, and I'm
12 not really familiar with the specific terms of that.

13 But 11, and then one, two, three, four,
14 five. So there's six that have the same constraints
15 and one that doesn't. But only five of those
16 sections are in -- actually in the Skelly unit.

17 Q. But does the farmout cover the sixth
18 section?

19 A. Yes, I believe it does. It's really a
20 land question, but I do believe it does.

21 Q. So the 25 wells per year covers -- applies
22 to the whole six sections as a total?

23 A. The 25 covers the Skelly unit, and then
24 there's five in the Texmack 11, so there's a total
25 of 30.

1 Q. 30 in six sections?

2 A. 30 in six sections, yes, sir.

3 Q. So, in effect, that's five wells per
4 section per year?

5 A. Okay. Yes, sir.

6 Q. Okay.

7 MR. GRABLE: Thank you. That's all I
8 have.

9 HEARING EXAMINER EZEANYIM: Redirect?

10 MS. MUNDS-DRY: I think I have just a few
11 questions.

12 FURTHER EXAMINATION

13 BY MS. MUNDS-DRY:

14 Q. Mr. Broughton, are you aware of -- since
15 you've been in charge of the shelf at Concho --
16 Chevron's participating in the new drilling Concho
17 is doing?

18 A. They have participated in all of it that I
19 have been involved in so far.

20 Q. In fact, isn't Chevron asking Concho to
21 drill even more wells?

22 A. Right. They have allowed us to drill an
23 additional -- they sought -- internally sought
24 funding to drill five additional wells in the Skelly
25 unit or Texmack, and we're in the process of

1 modifying our plan of development for the BLM to
2 include those additional five wells.

3 Q. Mr. Grable asked you if a pilot hole was
4 essentially a vertical well.

5 A. It is exactly a vertical well, yes.

6 Q. But isn't the difference that you don't
7 produce a pilot hole?

8 A. You typically don't produce a pilot hole.
9 Not that you couldn't, you just typically don't.

10 Q. And isn't it -- and, Mr. Broughton, I
11 believe you stated this. But what's the main driver
12 behind Concho's drilling plans for these three
13 sections?

14 A. The main driver is to protect our interest
15 and be able to drill wells and produce oil.

16 Q. Given the surface restrictions?

17 A. Oh. Well, it's -- it's to try to contact
18 as much of the formation with the well bore and
19 subsequent frac job as we possibly can while
20 minimizing the surface use.

21 MS. MUNDS-DRY: Thank you, Mr. Broughton.

22 That's all I have for Mr. Broughton,
23 Mr. Ezeanyim.

24 HEARING EXAMINER EZEANYIM: Okay.

25 Anything further, Mr. Grable?

1 MR. GRABLE: Nothing further. Thank you.

2 HEARING EXAMINER EZEANYIM: How long has
3 COG been operating in the Yeso? How long?

4 THE WITNESS: COG started operating in the
5 Yeso with the purchase of Mack Energy, which I
6 believe was in 2006. That was before I started with
7 Concho, but it was October of 2006, somewhere in
8 that time frame.

9 HEARING EXAMINER EZEANYIM: All right. So
10 in 2006 it purchased Mack Energy?

11 THE WITNESS: Purchased Mack Energy, and
12 that was our first arrival into the Yeso.

13 HEARING EXAMINER EZEANYIM: So previous to
14 that, Mack Energy was the operator?

15 THE WITNESS: Mack Energy was the
16 operator. Yes, sir.

17 HEARING EXAMINER EZEANYIM: So state
18 again, what is your main driver in what you are
19 doing now. You were asked that question.

20 THE WITNESS: The main driver is to be
21 able to drill wells and protect our interest and
22 contact as much of the roughly 1,500 feet of Yeso
23 formation with the minimum impact on the surface,
24 because of the -- our participation in the CCA and
25 the BLM surface constraints based on that CCA.

1 HEARING EXAMINER EZEANYIM: Okay. All
2 right. You may step down.

3 MS. MUNDS-DRY: Mr. Ezeanyim, I'm sorry, I
4 forgot one question I meant to ask.

5 HEARING EXAMINER EZEANYIM: Go ahead.

6 FURTHER EXAMINATION

7 BY MS. MUNDS-DRY:

8 Q. Mr. Broughton, Mr. Grable asked you if you
9 performed any comparison of reserve analysis or any
10 other study between the Burnett/Hudson plan, as he
11 characterized it, 48 double -- 48 laterals, or the
12 Concho plan.

13 When did Concho find out about what
14 Burnett/Hudson's plans were for -- under this
15 proposed --

16 A. I'm not certain of that. Today in this --
17 Burnett's testimony was the first that I've
18 personally learned of it, so I wasn't aware of what
19 their plans were until today.

20 MS. MUNDS-DRY: Thank you, Mr. Ezeanyim.

21 HEARING EXAMINER EZEANYIM: You may be
22 excused.

23 THE WITNESS: Thank you.

24 HEARING EXAMINER EZEANYIM: Call your next
25 witness.

1 MS. MUNDS-DRY: Thank you. I call Ken
2 Craig.

3 KEN CRAIG,
4 after having been first duly sworn under oath,
5 was questioned and testified as follows:

6 EXAMINATION

7 BY MS. MUNDS-DRY:

8 Q. Mr. Craig, where do you reside?

9 A. Midland, Texas.

10 Q. By whom are you employed?

11 A. Concho.

12 Q. What is your position with Concho?

13 A. I am the lead reservoir engineer over the
14 shelf team.

15 Q. Have you previously testified before the
16 division?

17 A. Yes, I have.

18 Q. Were your credentials accepted and made a
19 matter of record at that time?

20 A. Yes.

21 Q. Are you familiar with the applications
22 that Concho has filed here today?

23 A. Yes.

24 Q. Have you made an engineering study of the
25 subject acreage?

1 A. Yes.

2 MS. MUNDS-DRY: Mr. Ezeanyim, we tender
3 Mr. Craig as an expert in petroleum engineering.

4 HEARING EXAMINER EZEANYIM: Mr. Craig is
5 so qualified.

6 MS. MUNDS-DRY: Thank you.

7 Q. (By Ms. Munds-Dry) Let's turn, Mr. Craig,
8 if we could, to Concho's Exhibit Number 26, the
9 first slide here.

10 Please review it for the Examiner.

11 A. This was a slide that we put together just
12 to introduce the concept of a triple lateral
13 completion. There is a switchover from going from
14 true vertical development for the area when we found
15 our surface restrictions. So we devised a plan that
16 would cover those same reserves, and this was the
17 proposal slide for that.

18 Q. So this is really a general slide of the
19 plan?

20 A. Yes.

21 Q. And does it show that Concho plans to
22 drill pilot holes?

23 A. In some of the wells.

24 Q. In some of the wells.

25 And what do -- what does the drilling of

1 pilot holes in a horizontal well give -- what kind
2 of information does that give you? ..

3 A. It does allow you to more easily get
4 open-hole logs.

5 Q. Anything else?

6 A. Well, it allows you to do the triple
7 laterals.

8 Q. Well, that's helpful.

9 A. Yeah.

10 Q. And the general plan here as I understand
11 it, and as Mr. Broughton just testified, is to drill
12 a lateral in the Paddock and then two in the
13 Blinbry?

14 A. Yes.

15 Q. And will Concho be calling a drilling and
16 completions engineer to more -- to give these plans
17 in more detail?

18 A. Yes.

19 Q. To provide more information?

20 HEARING EXAMINER EZEANYIM: Did you say
21 tomorrow?

22 MS. MUNDS-DRY: No, today.

23 HEARING OFFICER EZEANYIM: Oh, okay.

24 MS. MUNDS-DRY: Tonight. I hope I didn't.
25 I didn't mean to, if I said tomorrow.

1 Thank you for clarifying that,
2 Mr. Ezeanyim.

3 Q. (By Ms. Munds-Dry) Let's turn to the next
4 exhibit, Concho Exhibit Number 27.

5 What are you showing here?

6 A. The blue table is an earlier table that
7 we've shown before, which showed a comparison of our
8 10-acre vertical development, if we had full access
9 to those three sections, which would have been 191
10 locations, for an average recovery of 120 MBO per
11 well. That represented almost 23 million barrels.

12 After we went out on-site and looked at
13 the surface locations that we could get, which is
14 the 35 that we've talked about earlier, using that
15 same 120 MBO per vertical well, the total reserves
16 were around 4 million barrels.

17 So there was a -- it was pretty
18 apparent -- pretty easy to see that the vertical
19 well development program that we could do with the
20 35 was definitely lacking on trying to recover all
21 of the reserves in those three sections.

22 The second table below that is based on
23 the current development scheme based on the
24 recommendations from COG and Burnett. I believe we
25 have 17 horizontal wells recommended, which

1 represents 16.3 million barrels. And then the five
2 locations -- vertical locations from Burnett, about
3 600,000 barrels.

4 So even though we have 12 additional
5 locations, it's almost 16 million barrels'
6 difference in those two programs.

7 Q. And this includes wells that are not
8 subject to today's hearing, both on our side and
9 their side?

10 A. Well, this is the 17 and the 5.

11 Q. Okay.

12 HEARING EXAMINER EZEANYIM: Now, before
13 you go on, where do these numbers come from? These
14 numbers, where do they come from?

15 THE WITNESS: Well, the location count
16 itself is from the work that we did going into the
17 project, knowing that we would like to develop those
18 three sections.

19 The well count changed as we went out to
20 the on-site and looked and found that that wasn't
21 going to work. And so we backed off and found that
22 we had 35 locations that we could drill vertical
23 wells on.

24 The 120 MBO was based on type curves for
25 the area that we've seen.

1 HEARING EXAMINER EZEANYIM: Where is the
2 number 120?

3 THE WITNESS: 120 MBO?

4 HEARING EXAMINER EZEANYIM: Yeah. Where
5 did that number come from?

6 THE WITNESS: It's based on performance of
7 the offsets, east and west offsets.

8 HEARING EXAMINER EZEANYIM: Okay. So
9 these numbers are based on that 120 MBO?

10 THE WITNESS: Yes, sir.

11 HEARING EXAMINER EZEANYIM: Okay. All
12 right.

13 Q. (By Ms. Munds-Dry) Okay. Let's turn to
14 the next slide and the next exhibit, which is Concho
15 Exhibit Number 28.

16 Explain to us what you're showing here.

17 A. It was just a comparison of the cost of
18 doing a triple lateral versus three individual
19 laterals versus individual vertical wells.

20 The top part of the table shows the lower
21 lateral of about \$3.8 million, the two subsequent
22 laterals of \$2.9 million each, for a total of
23 \$9.6 million for a triple lateral.

24 We looked at just three individual
25 laterals, which would be just the single times -- or

1 three times the single. The estimated cost would be
2 around \$11 million.

3 And then if we look at the vertical wells
4 that are displaced by drilling triple laterals, that
5 would be eight locations. A single well is
6 approximately \$1.75 million. So for drilling those
7 eight locations would be around \$14 million.

8 So from an economic standpoint, triple
9 laterals does appear favorable.

10 Q. You have a few bullet points there as to
11 where you get some of the savings between the triple
12 lateral and the single lateral?

13 A. I do. It's easy to see. If you do the
14 triple lateral, you don't have to have redundant
15 facilities, particularly on the surface. That would
16 be lift equipment, pumping unit, flow lines.

17 And then the other apparent -- what you
18 have is a smaller footprint of doing the triple
19 laterals from one location, and not having to drill
20 a single, move over, add to the pad, drill another,
21 move over, add to the pad, and drill another, if you
22 went with the idea that you had to have three
23 laterals to properly drain the reservoir.

24 Q. Okay.

25 A. So the total cost of just those programs

1 is almost three-quarters of a million dollars.

2 Q. Okay. Let's turn to the next exhibit,
3 Concho Exhibit Number 29.

4 HEARING EXAMINER EZEANYIM: I want to know
5 what is 573 M? What's that? Is that thousand or
6 million? What is that?

7 THE WITNESS: I'm trying to find you, sir.
8 M is thousand.

9 HEARING EXAMINER EZEANYIM: Oh, okay.

10 THE WITNESS: MM is million.

11 HEARING EXAMINER EZEANYIM: I wanted to
12 confirm that, because people use it interchangeably.
13 Sometimes they use the small letter. I don't know
14 what it is. The convention is to use the capital
15 letter.

16 Okay. Go ahead.

17 Q. (By Ms. Munds-Dry) Thank you.

18 Let's go to what has been marked as Concho
19 Exhibit Number 29.

20 Where did this slide come from?

21 A. This came from a previous hearing
22 concerning the performance of this area.

23 Q. This was a slide that Burnett prepared?

24 A. Yes, it was.

25 Q. And what --

1 MR. GRABLE: Pardon me. Which exhibit are
2 you on?

3 MS. MUNDS-DRY: Exhibit 29.

4 Q. (By Ms. Munds-Dry) What are you showing
5 here, with this exhibit?

6 A. Well, the item that caught our eye,
7 particularly on this slide, was the fact that there
8 was a Yeso dry hole immediately north of the lease
9 line of where we do operate 10-acre locations.

10 Q. And if you can, identify that here on the
11 slide.

12 A. It's at the lower part of Section 8. It's
13 Well Number 63.

14 HEARING EXAMINER EZEANYIM: You see a dry
15 hole?

16 THE WITNESS: Yeah. It has "dry hole"
17 there, and I believe we've discussed that today,
18 that they went up and made a Grayburg-San Andres
19 completion from it.

20 This is a -- I believe Concho would have
21 made an attempt to test the Yeso in this location.
22 And you can see we do have 10-acre development to
23 the south.

24 This particular well has Yeso producers
25 east and west and also to the north. So if you are

1 looking at this reservoir as a Yeso reservoir, you
2 would want to test that well. In fact, I would
3 probably anticipate Concho would like to farm out
4 that 40 acres and drill three more 10-acre locations
5 there.

6 Q. (By Ms. Munds-Dry) To your knowledge, has
7 Concho drilled a dry hole in the Yeso in this shelf
8 area?

9 A. No, I don't believe so.

10 Q. Before we go to our next slide,
11 Mr. Craig, did you have a chance to review
12 Mr. Jacoby's slide that compares the nine wells, the
13 nine Gissler wells to the nine Harvard wells?

14 We don't need to pull it out.

15 A. I think I can remember that.

16 Q. Did you have a chance to review that?

17 A. I did. It was the comparison of Gissler
18 lease wells against the Harvard wells that we
19 operate.

20 And if you look that, you can see severe
21 separation between the two curves. And so we broke
22 that down and started looking at the individual
23 completion practices for those wells.

24 There was a map there that allowed us to
25 find out which individual wells were used in the

1 nine-well comparison for both sides.

2 A lot of -- approximately half of the
3 Concho wells that were used in that comparison were
4 drilled back in 2006. Since that time, I believe
5 our completion practices have changed some.

6 And the ones that were used on the Burnett
7 side, I believe, were 2008 wells or later.

8 Also during that time period there was a
9 lot of activity of individual testing of individual
10 zones, where we would go down and test the Blinbry
11 and get an idea of the contribution that it was
12 making in that area, so there was downtime in those
13 numbers.

14 And then the one that concerned me the
15 most was the fact that I had those list of nine
16 wells for both sides and I couldn't duplicate the
17 data.

18 So from a normalization standpoint that
19 should have been pretty easy, just to take industry
20 data, line it up, and come up with a normalized
21 curve.

22 And I am also not a big fan of just
23 choosing nine wells to represent a whole area. If
24 you have 14 wells, use 14 wells. That's what
25 normalization is for.

1 So I don't know what else to comment on
2 that slide, other than the fact that we couldn't --
3 we weren't able to duplicate it, and then we saw
4 some things in the data and completion practices
5 that maybe it wasn't a fair comparison.

6 HEARING EXAMINER EZEANYIM: What do you
7 want to demonstrate today with Exhibit Number 29 --
8 or I mean that's the Burnett exhibit, right?

9 THE WITNESS: This is an exhibit --

10 HEARING EXAMINER EZEANYIM: 29?

11 THE WITNESS: Yes, sir.

12 HEARING EXAMINER EZEANYIM: It's a Burnett
13 slide, right?

14 THE WITNESS: It's from an earlier
15 hearing.

16 HEARING EXAMINER EZEANYIM: Yeah. So what
17 are you trying to demonstrate here?

18 THE WITNESS: I'm trying to demonstrate
19 that when you take a snapshot of one well using your
20 open-hole log data, that may not tell the whole
21 story, especially when you look around and you see
22 10-acre development immediately to the south of you.

23 So I would -- I would say Concho would
24 have completed that well and made a Yeso well out of
25 it.

1 HEARING EXAMINER EZEANYIM: Out of one of
2 these, right?

3 THE WITNESS: Yes, sir.

4 HEARING EXAMINER EZEANYIM: Why?

5 THE WITNESS: Well, it's a dry hole, based
6 on log interpretation. If you look around, we've
7 got a lot of logs that don't look very good, but
8 they're good Yeso wells.

9 Some people didn't think the Blinebry was
10 any good for so long, until we started having the
11 correct completion practices to bring those wells
12 on. And now it's just a common add to drill in a
13 Yeso well.

14 HEARING EXAMINER EZEANYIM: So actually,
15 this is waste? If we leave these plugged and
16 abandoned, and without -- if you just wrongly -- you
17 wrongly said it is dry or wet, we're losing waste.
18 It's not your well, so you can't complete it.

19 THE WITNESS: Well, no. I -- I don't --
20 well, if I could get that well, I would complete it.

21 But I am trying to make a point that if
22 you just look at log interpretation only, you can
23 have an event like that where you could -- may have
24 had a Yeso completion. Because when you frac out,
25 you are starting to get into that rock that you

1 can't see from your log.

2 MS. MUNDS-DRY: Thank you, Mr. Ezeanyim.

3 Q. (By Ms. Munds-Dry) Mr. Craig, if you
4 would, turn to what has been marked as Concho
5 Exhibit 30.

6 Did you review Burnett's exhibit -- it's
7 their L in Exhibit 7. It gives an analysis -- it's
8 really the two slides that give an analysis of
9 Concho's EURs and Burnett's EURs.

10 Do you recall those two slides that
11 Burnett --

12 A. Yes. That's the 60 MBO and the comparison
13 of --

14 Q. What is Concho Exhibit 30? And we have it
15 up on the PowerPoint, too, if that helps you,
16 Mr. Craig.

17 A. That's not how it's in the book, but
18 that's the one that I believe you are referring to.

19 Q. Do I have them backwards? Is that the one
20 you want to discuss first, Concho Exhibit 31?

21 A. The one that was up there before.

22 Q. That one?

23 A. No.

24 Q. Okay. Then we're on the same page.

25 A. It's not in my book.

1 Q. It's not in your book?

2 A. No.

3 MS. MUNDS-DRY: I'm sorry, Mr. Ezeanyim,
4 this one was left out.

5 HEARING OFFICER EZEANYIM: What is it
6 called?

7 MS. MUNDS-DRY: It's called 10-acre COG
8 Yeso average well performance.

9 HEARING OFFICER EZEANYIM: What number?

10 MS. MUNDS-DRY: It should be Exhibit 30.
11 It looks like Exhibit 31 got copied twice. I
12 apologize for that.

13 HEARING OFFICER EZEANYIM: Okay.

14 Q. (By Ms. Munds-Dry) Go ahead Mr. Craig.
15 What is this slide showing us?

16 A. This slide is a normalized curve for the
17 10-acre development that we have done in the Yeso.

18 The solid green line is the normalized
19 data. You can see after 12 months how it's coming
20 off of a hyperbolic part of the curve and starting
21 to exhibit exponential decline.

22 The reason we put this curve together is
23 because of the 60 or 66 MBO finding that Burnett's
24 consultants had. So what I tried to do is show,
25 with that small dotted curve coming down below, is

1 that that normalized curve would have to go on a
2 22 percent decline to get down to 66 MBO. And from
3 what we've seen in the Yeso formation, that's not
4 how it works.

5 So what we've done on there is put the
6 long dashed line at a 10 percent decline, and that
7 gets an ultimate recovery of over 121 MBO, so it's
8 not easy for me to see that sharp inflection point
9 based on the data that we have.

10 In fact, the final decline rate for much
11 of the Yeso is accepted to be around 7 percent. So
12 that 121 MBO is probably a very conservative number.

13 HEARING EXAMINER EZEANYIM: As compared to
14 66?

15 THE WITNESS: Well, I don't believe 66 --
16 or my data doesn't support 66.

17 Q. (By Ms. Munds-Dry) Let's go to what I
18 hope is Concho Exhibit 31. Do you have that one?

19 Mr. Craig, what does this curve show us?

20 A. This is the same data for the green part
21 of the normalized data for approximately 180 10-acre
22 development wells that Concho has drilled, with a
23 10 percent decline shown as the green dashed line.

24 So what we've done is gone back to look at
25 14 of the vertical wells that have done the

1 slickwater frac to the east of this area that we are
2 talking about, and that's shown with a red curve.

3 And this curve does support the fact that
4 you do have higher initial rates, and I think that's
5 a characteristic of slickwater fracs. And I think
6 it's also a characteristic of -- I believe Burnett
7 runs ESPs in their wells immediately after
8 completion, and so you're going to get those high
9 volumes and you are going to get those high rates.

10 What concerns us is the fact that the red
11 line now has shown a tendency to cross the green
12 line. So you may be getting the rate up front, but
13 you are going to be sacrificing reserves at the end.

14 Q. Okay. I think we've covered the exhibits.
15 Let's take care of a few other things.

16 For the wells that Concho has proposed to
17 be at nonstandard locations, will the producing
18 interval and the well bores be within the producing
19 areas of each project area? In other words, by the
20 time you are producing, will you be at a standard
21 setback?

22 A. Yes, we will.

23 Q. Will the horizontal well bore, as we have
24 proposed here today, test a greater reservoir length
25 than the vertical well bore that's been proposed by

1 Burnett?

2 A. Yes.

3 Q. Does this, then, increase the chances for
4 an economic completion and development of the Yeso
5 formation?

6 A. Yes, it will.

7 Q. In your opinion, is it a reasonable and
8 prudent method for the horizontal well plan for
9 developing these units?

10 A. Yes, it is.

11 Q. Will approval of Concho's applications
12 avoid the drilling of unnecessary wells, prevent
13 waste, protect correlative rights, and allow Concho
14 and the other interest owners in the nonstandard
15 units/project areas the opportunity to produce their
16 just and fair share of the oil and gas under the
17 subject lands?

18 A. Yes, it will.

19 Q. Were Exhibits 26 through 31 either
20 prepared by you or compiled under your direct
21 supervision?

22 A. Yes, they were.

23 MS. MUNDS-DRY: Mr. Ezeanyim, I move the
24 admission of Exhibits 26 through 31.

25 HEARING EXAMINER EZEANYIM: Any objection?

1 MR. BRUCE: No objection.

2 MS. MUNDS-DRY: We'll get an Exhibit 30 to
3 the court reporter and to you, Mr. Ezeanyim.

4 HEARING EXAMINER EZEANYIM: Okay.
5 Exhibits 26 through 31 will be admitted.

6 MS. MUNDS-DRY: I pass the witness.

7 HEARING EXAMINER EZEANYIM: Mr. Grable?

8 MR. GRABLE: Is this exhibit that was
9 labeled 31 in our book not an exhibit?

10 MS. MUNDS-DRY: I think it's the same --
11 oh, it's not an exhibit. I apologize.

12 So, Mr. Ezeanyim, we'll fix Exhibit 30 and
13 31 to make sure.

14 EXAMINATION

15 BY MR. GRABLE:

16 Q. Your Exhibit 26, an extremely simplified
17 schematic of the triple lateral. Are you -- well, a
18 subsequent witness testified to the mechanical
19 feasibility of actually completing such oil in the
20 three different laterals, or is that your province?

21 A. That's not my province.

22 Q. And in fact, as Mr. Broughton testified,
23 your company has never completed even a dual
24 lateral?

25 A. I believe we've participated in dual

1 laterals.

2 Q. As a nonoperator?

3 A. Yes, sir.

4 Q. So you haven't been the operator
5 responsible for drilling and completing a dual
6 lateral?

7 A. Not that I'm aware of.

8 Q. And this dual lateral you participated in,
9 was it in some other area than the New Mexico Yeso?

10 A. Yes, sir.

11 Q. Let's look at your Exhibit 27.

12 MR. GRABLE: Can you put that up,
13 Ms. Munds-Dry?

14 Q. (By Mr. Grable) Now, I understand where
15 you got, on the top line, full access, 10-acre
16 vertical, 191 locations, 22.9 million barrels.
17 That's the simple product of multiplying 191 by
18 120,000?

19 A. Yes, sir.

20 Q. And the 120,000 comes from your type curve
21 that is now Exhibit 30. Is that right?

22 A. The data that built that type curve is not
23 just from this immediate area, it's across the
24 shelf.

25 We were trying to get as many locations as

1 possible into that type curve because we didn't
2 know -- on your chart where it had 66 MBO, we didn't
3 know where those wells were, so we grabbed the whole
4 shelf.

5 Q. Okay. Have you found, in your experience,
6 that your decline curve analysis in this immediate
7 area, near these three sections on the eastern part
8 of the play, produced more or less than the ones
9 over in the Loco Hills area and even farther west?

10 A. I have seen those types of curves. But
11 for me to tell you how they all line out, I'm sorry,
12 I can't remember that.

13 Q. So you have no evidence to give to the
14 examiner that 120 is or is not representative of
15 these three sections today?

16 A. The 120 that's listed here --

17 Q. Yes, sir.

18 A. -- is an example of the type curve
19 immediately to the east of this area.

20 Q. I thought you said it occurred all across
21 the shelf, west to east.

22 A. No. You asked me if that was the curve
23 that I showed on this later slide, and so that's not
24 the same data.

25 It did turn out to be a similar number,

1 when I put a 10 percent decline on that.

2 Q. Okay. Let me start again. I'm confused.

3 Maybe I asked a bad question.

4 Are these two -- the 200 wells that you
5 used to construct this type curve on your Exhibit
6 30, do you know where they're located in the Yeso
7 trend?

8 A. Across the shelf. It's not a specific
9 area.

10 Q. That's what I thought.

11 A. Right.

12 Q. From several miles to the west to a mile
13 or two to the east?

14 A. More than several.

15 Q. How much? 10 miles plus?

16 A. Yeah, it could be 10.

17 Q. Now, when I say "miles," that's from these
18 three sections in the Maljamar or Puckett area,
19 there are wells in those 200 that may be 10 or more
20 miles to the west?

21 A. In that curve, yes.

22 Q. In that curve.

23 And then the follow-up question is: Do
24 you know whether or not your wells over there on the
25 west tend to be better wells than the wells over

1 here on the east?

2 A. As I said, I'm not sure how that all lined
3 up.

4 Q. But if that is the case, if the evidence
5 were to show that these wells in Puckett and
6 Maljamar are less productive than the wells to the
7 west, then this 120,000 barrels per well average
8 would not be representative of what one would expect
9 in the Maljamar/Puckett area, would it?

10 A. You're right. We're not communicating.
11 This 120 here --

12 Q. Yes.

13 A. -- is representative of the immediate area
14 in the Maljamar/Puckett area.

15 I wish that it hadn't come so close to the
16 121 MBO that we had on the -- across the shelf, but
17 that's just the way it played out.

18 Q. All right. Well, let's move on.

19 A. I'm sorry.

20 Q. Going back to Exhibit 27.

21 A. All right.

22 Q. Now, in your -- down here in the current
23 development scheme, the 17 wells included are the 17
24 triple laterals that Concho has proposed to
25 Burnett/Hudson?

1 A. Yes, sir.

2 Q. 13 of which are included in the
3 application before Examiner Ezeanyim. Is that
4 correct?

5 A. Yes.

6 Q. Now, we can do the math, but I mean
7 that's -- that's right at a million barrels per
8 well, isn't it, just slightly less than a million
9 barrels per well?

10 A. That would be right.

11 Q. Which is going to be in the range of
12 325,000 barrels per lateral?

13 A. Okay.

14 Q. What evidence have you presented in this
15 hearing that your company, Concho, has actually
16 drilled horizontal wells in this Yeso that can
17 produce 300,000 barrels or more per lateral?

18 You don't have any new evidence, do you?
19 All you have got are your vertical wells?

20 A. To answer your question, yes.

21 Q. So the supposition behind this is that
22 each of those three laterals are going to produce
23 325,000 barrels, more or less, for about 984,000 per
24 well? That's -- but you haven't presented any
25 backup evidence to show how you came to those

1 numbers, have you, sir?

2 A. No.

3 Q. Now, in the Burnett case, the five wells
4 are just five verticals at the 120,000 per vertical?

5 A. Yes.

6 Q. So that's 600,000. So the difference is
7 that.

8 But you're aware now that the Burnett plan
9 is for 24 double laterals which would be 48
10 laterals, right?

11 A. Okay.

12 Q. So if you gave them the same presumed
13 productivity per lateral, plus added this
14 600,000 barrels, you come out within a couple of
15 million barrels of the -- you come out -- 48 versus
16 51 -- you come out about a half a million barrels
17 different. I mean that 15.7 million barrels
18 basically disappears if you take the Burnett plan
19 versus the COG plan?

20 A. When I put this chart together I was
21 unaware of the Burnett plan, so I didn't include
22 that here.

23 Q. Right.

24 A. But to answer your question, I think the
25 difference would be more.

1 Q. We'll come back to that in a minute.

2 But if you apply the same assumptions to
3 the Burnett horizontal wells, and if they're
4 proposing 24 horizontals, each of which has a
5 Paddock horizontal and then a Blinebry horizontal,
6 and you gave them the equal productivity of what you
7 have assumed to be for the COG horizontals, there
8 would only be three horizontals difference, which is
9 right at -- a little less than a million barrels,
10 right? Because each one of these 17 has three
11 laterals.

12 We can write -- I'm trying to go quickly.
13 We can write down --

14 A. Yeah. Now, to do the math the way you
15 said, that's correct.

16 Q. And then from that, you would have to
17 subtract the five verticals in the Burnett program
18 from that million difference. So the difference is
19 going to be -- instead of 15.7 million barrels, it's
20 going to be about 4- or 500,000 barrels using the
21 same assumptions?

22 A. The same assumptions.

23 MR. GRABLE: Can we go to the next slide,
24 Ms. Munds-Dry, Number 28?

25 Q. (By Mr. Grable) All right. Now this

1 slide shows, as I understand it, the drilling cost
2 for your triple laterals as you project, at 11.34
3 million per well, correct?

4 A. Could you repeat that please?

5 Q. Now, the number right here is
6 \$11.34 million? \$11,340,000.

7 A. That's right.

8 Q. I'm confused. Let me start over.

9 You're projecting your triple lateral at
10 9.65 million per well, correct?

11 A. Yes, sir.

12 Q. Okay. And then the 3.78 million you have
13 used on the Burnett proposals, where did that number
14 come from?

15 A. It wasn't directed at a Burnett proposal.
16 It was taking that top middle lower Blinbry initial
17 lateral times three to get the comparison basis.

18 Q. Well, are you aware that Burnett's --
19 Burnett's numbers are about 2.6 million per lateral?

20 A. Not until today.

21 Q. All right. Now, the initial AFEs that COG
22 sent out were about that 11.4, 11.5 number. Isn't
23 that correct?

24 A. I don't see those numbers.

25 Q. So you don't know what they were?

1 A. No, sir.

2 Q. Well, are you able to testify to
3 Mr. Ezeanyim with any certainty that what you
4 projected, either for the AFE for your company's
5 projected at 9.64, or this number derived for
6 Burnett at 11.34, is based on anything specific? Do
7 you know how those numbers were constructed?

8 A. I have a general knowledge of how they
9 were constructed. Our drilling group does those,
10 and I know that they use their actual data from the
11 horizontals that we drill.

12 Q. But in the case of the --

13 MR. GRABLE: Counsel, this is a little
14 hard to find. But one of your proposals in your
15 Exhibit 3 pertaining to the proposed Puckett 13
16 Federal 1H --

17 MS. MUNDS-DRY: I'm with you.

18 MR. GRABLE: -- as proposed to Burnett.

19 Q. (By Mr. Grable) Let me hand you -- and
20 this was an actual proposal from Concho to Burnett.

21 Have you studied any of those?

22 A. No, sir. I do not see these when they go
23 out.

24 Q. But you'll notice that the number in there
25 for the well, as proposed by Concho, is precisely

1 \$11,340,000?

2 A. Okay.

3 Q. And for some reason, that's not the number
4 you used for Concho's wells, but it is precisely the
5 number you used for Burnett's wells.

6 Can you explain that?

7 A. Well, as I explained, I didn't have a
8 Burnett well cost. I was just looking at it from
9 a -- if we were going to do a triple lateral or we
10 were going to do three individual laterals, how
11 would that look?

12 So I believe there's -- and maybe it's not
13 the exact cost savings that's the difference in
14 those two numbers, but it appears to me that the
15 triple laterals would be the more cost efficient way
16 of developing the acreage.

17 Can I comment more about this?

18 Q. No. I'll let you do that with your
19 counsel.

20 A. Okay.

21 MR. GRABLE: Now, let's look at your
22 Exhibit 31, if we may, Counsel.

23 Q. (By Mr. Grable) In the case of the --
24 okay. Were there 200 Concho wells used to construct
25 your type curve? Is that accurate?

1 A. Almost 200.

2 Q. Okay. Do you know how many of those were
3 Paddock wells, Paddock only wells, how many were
4 Blinebry only wells, and how many were Paddock plus
5 Blinebry completions?

6 A. The criteria that we used for that --

7 Q. Yes.

8 A. -- was the third and the fourth well
9 drilled in that 40-acre location. So we didn't try
10 to go in and say this batch is all Yeso, this is a
11 Blinebry test, this is a Paddock test.

12 Q. Why did you use the third and fourth?

13 A. We were trying to compare our 10-acre
14 development against this curve, which was kind of a
15 conservative outlook.

16 Q. So you don't know whether the wells in
17 that group were completed only in the Paddock, only
18 in the Blinebry, or in both Paddock and the
19 Blinebry?

20 A. No.

21 Q. The same question on the Burnett wells.
22 Do you know, of those 14 wells in the Burnett type
23 curve using slickwater frac, whether they were
24 completed in the Paddock only, Blinebry only, or
25 both Paddock and Blinebry?

1 A. No, sir.

2 Q. Are you aware of Burnett's typical
3 completion practices in its wells?

4 A. I have seen some of those.

5 Q. Are you aware that they typically --
6 again, if they're completing in the Blinebry, would
7 the lowest perforations allow them to recover their
8 frac load and kind of reach a normalized steady
9 state before they go up and complete the next set of
10 perforations?

11 A. I have seen that.

12 Q. And if some of the 14 wells included in
13 there were Blinebry wells that had just been
14 perforated in only the lower Blinebry and had not
15 moved up to the upper yet, they would not be
16 representative of the actual EUR potential of those
17 wells, would they?

18 A. No.

19 MR. GRABLE: I pass the witness.

20 MS. MUNDS-DRY: I have a few questions.

21 HEARING EXAMINER EZEANYIM: Okay.

22 FURTHER EXAMINATION

23 BY MS. MUNDS-DRY:

24 Q. Mr. Craig, other than Mr. Grable's
25 assertion that Burnett had some plans to drill 48

1 laterals, did you hear anything today or were you
2 aware previously that that was Burnett/Hudson's
3 plan?

4 A. No.

5 Q. Is Burnett/Hudson's plan sort of an 11th
6 hour plan they put together before the OCD today?

7 A. I'm sorry?

8 Q. This horizontal well plan, is that before
9 the OCD today?

10 A. I don't believe so.

11 Q. Mr. Craig, you wanted to make an
12 additional comment on the AFE that Mr. Grable asked
13 you about for the Puckett 13 Federal 1H?

14 A. Looking at the individual AFEs associated
15 with that well, it looks like there were three of
16 the lower -- or the middle lower Blinebry AFEs
17 attached to that letter, instead of the middle lower
18 Blinebry at the higher dollar cost, and then the
19 subsequent laterals through the upper Blinebry and
20 Paddock being lesser cost.

21 So that's what gets us down to the 9.6
22 versus the 11.34.

23 Q. In fact, Mr. Craig, if we go to the AFE
24 just after that --

25 MS. MUNDS-DRY: May I approach,

1 Mr. Ezeanyim?

2 HEARING EXAMINER EZEANYIM: Yes, go ahead.

3 Q. (By Ms. Munds-Dry) What is the total
4 estimated cost for that AFE?

5 A. This is the Puckett 13 Federal 2H. The
6 total cost is \$9.648 million.

7 Q. So that reflects the numbers you had in
8 your table there?

9 A. Yes.

10 MS. MUNDS-DRY: That's all the redirect I
11 have, Mr. Ezeanyim. Thank you.

12 HEARING EXAMINER EZEANYIM: Mr. Grable,
13 any redirect?

14 MR. GRABLE: No further questions.

15 HEARING EXAMINER EZEANYIM: Okay. Very
16 good.

17 Let's go back to that Exhibit Number 27.

18 Mr. Craig, let me understand what you're
19 trying to do on this development plan comparison.
20 The 10-acre, the -- I mean the one -- who's drilling
21 the four well locations? The four locations you are
22 comparing, where did it come from?

23 THE WITNESS: I want to make sure I am on
24 the same --

25 HEARING EXAMINER EZEANYIM: Your

1 Exhibit Number 27.

2 THE WITNESS: All right.

3 HEARING EXAMINER EZEANYIM: On the bottom
4 line there, you have 24 wells. Who drilled those 24
5 locations?

6 THE WITNESS: The 24 wells is the number
7 of triple laterals that we would propose is
8 necessary to develop the reserves on this acreage.

9 HEARING EXAMINER EZEANYIM: All right.
10 Not the 17?

11 THE WITNESS: We just haven't got to 24
12 yet.

13 HEARING EXAMINER EZEANYIM: What did you
14 say?

15 THE WITNESS: We just haven't got to 24
16 yet. We've only done 17. So for full development,
17 it's 24.

18 HEARING EXAMINER EZEANYIM: Oh, okay. In
19 these three sections?

20 THE WITNESS: Yes, sir. It is eight per
21 section. Eight triple laterals per section is what,
22 ultimately, it will look like.

23 HEARING EXAMINER EZEANYIM: Oh, okay.

24 Okay. I see what you mean. Okay.

25 Okay. I guess I've got the information.

1 You may step down.

2 I'll tell you what, we're going to take
3 another break. How many witnesses do you have,
4 ma'am?

5 MS. MUNDS-DRY: Two, but they're pretty
6 short. At least my direct is short.

7 HEARING EXAMINER EZEANYIM: Okay. Very
8 good.

9 We're going to take another break. But
10 before we do, Mr. Baca, the court reporter here
11 taking the transcript, has advised me that he can
12 get the transcript to you on Friday. That's really
13 very impressive you can do that. So I commend him
14 for doing that.

15 But why I want him to get it by Friday is
16 that I want you, you know, the two parties, to draft
17 your proposed order. So he said he can get it by
18 Friday, so he will get it to you by Friday. And by
19 next Friday I would like to get a proposal out,
20 because I want to get an order in this case as
21 quickly as possible. Maybe by then the other one
22 I'm working on will be out.

23 So if you can get the transcript by
24 Friday, which is what, September 2nd? Then I can
25 get the other one, your proposal done by

1 September 9th; and see if I can get this other out
2 in September. I'm not on vacation in September.

3 MR. GRABLE: You are requesting a proposed
4 order only, not a written closing argument or
5 anything like that?

6 HEARING EXAMINER EZEANYIM: A proposed
7 order, and the closing argument you might do today
8 if you want to, or you can submit it so that we can
9 cut down the -- shorten the time. I can read the
10 closing statements.

11 MR. BRUCE: I would rather have a written
12 closing statement, and I think Ms. Munds-Dry would,
13 too.

14 HEARING EXAMINER EZEANYIM: I would prefer
15 that, because that is more than -- you can say all
16 you want.

17 So we'll take 10 minutes, and we'll have
18 two more witnesses.

19 (A recess was taken from 6:47 p.m. to 7:04
20 p.m.)

21 HEARING EXAMINER EZEANYIM: We'll go back
22 on the record.

23 MS. MUNDS-DRY: We call Carl Bird.

24 HEARING EXAMINER EZEANYIM: Okay. Who's
25 going here?

1 MS. MUNDS-DRY: I will do it.

2 CARL BIRD,

3 after having been first duly sworn under oath,

4 was questioned and testified as follows:

5 EXAMINATION

6 BY MS. MUNDS-DRY:

7 Q. Mr. Bird, where do you reside?

8 A. Midland.

9 Q. By whom are you employed?

10 A. Concho.

11 Q. What do you do for Concho?

12 A. I am a drilling engineer.

13 Q. What do your duties as a drilling engineer
14 involve?

15 A. The main duty of a drilling engineer is to
16 mitigate risk in the most economical way possible,
17 but I drill wells.

18 Q. Are you responsible for this area of the
19 Yeso, on the shelf?

20 A. I am, indeed.

21 Q. Have you previously testified before the
22 division?

23 A. No.

24 Q. Could you give Mr. Ezeanyim a short review
25 of your education and work history as it relates to

1 being a drilling engineer?

2 A. Sure. I graduated in 1978 from Texas A&I.
3 I have been a drilling engineer for nearly 34 years.

4 I drilled my first well deeper than
5 four miles in 1982.

6 I have drilled multiple horizontal wells,
7 starting with the beginning of the technology, back
8 when it was wiggly collars and turbans and bed subs.

9 I drilled the first two horizontal wells
10 in Oklahoma. The second one was the record reach
11 for a few years. And that's been a long time ago
12 now, so I'm sure it's been beat.

13 I drilled one of the first wells -- it may
14 have been the first horizontal well in New Mexico.
15 I'm not positive it was the first, but it was in the
16 Empire Abo unit. And they use my procedure as a
17 go-by even now. It's been 20 years ago.

18 I have drilled dual and multiple laterals.
19 I've drilled turnizontals.

20 And I don't mean to offend you, but
21 your-all's little deal is not a turnizontal.

22 I have drilled probably 3,000 wells in my
23 career. I have drilled 500 wells for Concho, on the
24 shelf, in those four townships.

25 Q. How long have you been working for Concho?

1 A. Three years.

2 Q. And where were you before that?

3 A. Going backwards immediately, I worked for
4 Bass. Before that I worked for Citation. Before
5 that I worked for BP, and then ARCO. Before that it
6 was for Westland and then Texas Oil & Gas.

7 Q. Are you familiar with the applications
8 that Concho has filed here today?

9 A. I am.

10 Q. And have you made a drilling engineering
11 study of the wells that Concho has proposed?

12 A. I have.

13 MS. MUNDS-DRY: Mr. Ezeanyim, we tender
14 Mr. Bird as an expert witness in drilling
15 engineering.

16 HEARING EXAMINER EZEANYIM: Mr. Bird, you
17 have a degree in natural gas engineering?

18 THE WITNESS: That is correct.

19 HEARING EXAMINER EZEANYIM: Are you
20 registered, sir?

21 THE WITNESS: I am, indeed.

22 HEARING EXAMINER EZEANYIM: You are
23 registered?

24 THE WITNESS: Yes.

25 HEARING EXAMINER EZEANYIM: What state?

1 Texas?

2 THE WITNESS: I beg your pardon?

3 HEARING OFFICER EZEANYIM: Where are you
4 registered?

5 THE WITNESS: Oh, no. I'm not registered.
6 No. No.

7 HEARING EXAMINER EZEANYIM: But you have
8 drilled a lot of horizontal wells?

9 THE WITNESS: I have drilled many, many
10 horizontal wells.

11 HEARING EXAMINER EZEANYIM: Good.
12 Mr. Bird is so qualified.

13 Q. (By Ms. Munds-Dry) Thank you, sir.

14 A. Thank you.

15 (Discussion off the record.)

16 Q. (By Ms. Munds-Dry) Mr. Bird, let's turn
17 to the applications that we're here to talk about
18 today.

19 I appreciate your formality and your
20 respect to Mr. Ezeanyim.

21 A. Thank you.

22 Q. You were discussing your experience when
23 we were in the process of qualifying you as to
24 drilling horizontal wells.

25 A. That is correct.

1 Q. How many have -- well, first of all, let
2 me ask you.

3 Have you had experience drilling
4 multilateral horizontals?

5 A. I have.

6 Q. In New Mexico?

7 A. Yes. Up in Farmington, yes.

8 Q. What about outside of New Mexico?

9 A. Yes.

10 Q. What was your experience outside of
11 New Mexico?

12 A. Well, I drilled multiple laterals in the
13 Slaughter field, which is right across the border
14 from New Mexico in Texas.

15 And my mind has gone blank. I'm sorry.

16 Q. When you say you have -- you have had
17 experience drilling multiple laterals, were they
18 dual laterals, triple laterals?

19 A. I have drilled duals and triples. I have.

20 Q. Let me ask you the basic question of why
21 we're here today.

22 Do you have any concern with the third
23 lateral that Concho is proposing to drill here
24 today?

25 A. Not in the least. I would like to share

1 an analogy with you. You know, if you had a
2 little -- if you were going to want to build a house
3 and you had a little lot the size of this room, and
4 on one side of that lot you had a really nice apple
5 tree, and you started building this house on this
6 little lot.

7 Your wife comes along and says, "You know,
8 this lot is too small for a one-story. You better
9 build two stories."

10 So you say "Okay."

11 And about halfway through she looks at
12 that and she says, "You know, that's not going to be
13 tall enough to get the apples off that tree. You
14 better build three stories."

15 It's the same thing with drilling three
16 laterals. If you're going to want to be able to
17 reach out the window and pick those apples on that
18 tall apple tree, you're going to need all three
19 stories. And there's no technical difference
20 between a two-story house and a three-story house.
21 It's all the same.

22 Q. So you're analogizing that to the
23 difference between a dual lateral and a triple
24 lateral?

25 A. I am, indeed.

1 Q. Do you believe that Concho's well
2 proposals, the triple laterals, will be successful
3 here?

4 A. Yes.

5 Q. Will you turn, Mr. Bird, if you would,
6 to -- hopefully in your book it's marked Concho
7 Exhibit 32.

8 A. Okay.

9 Q. What is this showing us?

10 A. This is a depiction of the triple laterals
11 that we're proposing with a cemented casing in the
12 bottom and two additional laterals above it with
13 packers for separation between the zones.

14 Q. Now, we're going to call a completions
15 engineer next, correct?

16 A. That's correct.

17 Q. If you could, Mr. Bird, for the Examiner,
18 explain how Concho proposes to drill these triple
19 lateral wells.

20 A. Okay. Well, let me back up first and say
21 that all horizontal wells start as vertical wells.

22 HEARING EXAMINER EZEANYIM: All what?

23 THE WITNESS: All horizontal wells start
24 as vertical wells.

25 HEARING EXAMINER EZEANYIM: Okay. Yeah.

1 THE WITNESS: You have got to drill from
2 surface down through whatever zones you have to pass
3 through on your journey down to where you are going
4 to build a horizontal.

5 We -- we set three strings of pipe. We
6 set surface pipe, 13 and three-eighths, and then
7 we'll set 9 and five-eighths at about 2,000 feet,
8 which gets you completely through the salt. And
9 then we'll drill down, and we will drill our bottom
10 lateral. We'll run casing in it, 7-inch by 5 and a
11 half, and cement that bottom.

12 We'll perforate, treat, and test. We'll
13 perforate it and treat it down the casing, test it.

14 When we get through with that testing
15 process, then we'll come back up the hole, we will
16 set a plug over that lateral, set a whipstock on top
17 of that plug, and we will drill the next lateral.

18 And these gentlemen have mentioned that
19 they intend to do that, drilling the second lateral
20 out of their well. So this is not anything that
21 anybody is surprised by.

22 And we'll go ahead and run 4-and-a-half-
23 inch liner in there with packers for separation
24 between the zones, and treat it down that 4 and a
25 half.

1 And then when we get through treating and
2 testing that second lateral, then we'll pull that
3 whipstock, take out that plug, set another plug
4 above our new lateral, set another whipstock, and do
5 it again.

6 So, essentially, that second story is the
7 same as the third story.

8 Q. (By Ms. Munds-Dry) Could you explain to
9 the Examiner why, as it is depicted here, at least,
10 why we plan to cement and case the bottom lateral?

11 A. Well, the belief is that we might get
12 better treatments in that bottom lateral with a
13 cemented casing. I'm sure that's something that
14 will be tested, and we might modify that. We might
15 run liners with packers in all three at some point.
16 But the initial ones are planned to be cemented on
17 the bottom.

18 Q. Is there a difference in the cost between
19 cementing and casing?

20 A. After the treatment is over with, it's
21 really a wash. You will spend as much with one as
22 you will with the other.

23 Q. Do you have any concern about setting the
24 whipstock in either the second, the middle, or the
25 shallow lateral?

1 A. No.

2 Q. What makes you say that?

3 A. I have done it 35, 40 times, and I'm sure
4 these gentlemen have, too. It's just not that big a
5 deal.

6 Q. Mr. Bird, did you have an opportunity to
7 review the AFE that Burnett included in its exhibits
8 for a horizontal well?

9 A. Not really. I don't work for Burnett.

10 Q. But did you have a chance to review their
11 exhibits that they proposed here?

12 A. I looked at it some. I didn't go into it
13 in the detail that I might like to. But, yes, I did
14 look at it.

15 Q. Did you have any major concerns about --

16 A. Well, some of their things are a little
17 light on the cost. I will just say I had some minor
18 concerns. I don't think that they are deal
19 breakers.

20 Q. Have you reviewed Burnett's proposals to
21 drill their vertical wells that are the subject of
22 this hearing?

23 A. Yes.

24 Q. Have you had any experience with
25 slickwater fracs?

1 A. I have.

2 Q. What is your opinion about completing with
3 slack water fracs in this area?

4 A. I think slickwater fracs are a real good
5 application for shales, where you're encouraging
6 spalling that self-props. I think slickwater fracs
7 are a real good application for refracking older
8 wells.

9 I don't know -- I don't believe that
10 they're as good an application for a brand-new well
11 as what a conventional gel water frac is.

12 Q. Mr. Bird, were you or someone you have
13 supervision over responsible for creating this
14 cartoon in Exhibit Number 32? Is this someone in
15 your company that prepared this?

16 A. Yes. It was actually prepared by Peak
17 Packers. They sell -- they are one of the brand
18 names of the packers that we use. They're not the
19 only one, but they are one of them.

20 Q. Did they prepare this for Concho?

21 A. Yes, they did.

22 MS. MUNDS-DRY: Mr. Ezeanyim, we move to
23 admit Exhibit Number 32.

24 HEARING EXAMINER EZEANYIM: Any
25 objections?

1 MR. BRUCE: No objection.

2 HEARING EXAMINER EZEANYIM: Exhibit 32
3 will be admitted.

4 MS. MUNDS-DRY: I pass the witness.

5 HEARING EXAMINER EZEANYIM: Thank you.

6 Mr. Grable or Mr. Bruce?

7 MR. GRABLE: Thank you.

8 EXAMINATION

9 BY MR. GRABLE:

10 Q. Mr. Bird, I don't think I can mess your
11 name up. It will be hard to do.

12 When did you leave Bass?

13 A. Three years ago.

14 Q. That was after John Smitherman moved to
15 Fort Worth? Who was head of the office out in
16 Midland then?

17 A. Well, it started off with Keith Bussey
18 being the head of the office there. He's actually
19 who hired me. And then after Keith, it was Kent
20 Adams.

21 And then Kent moved to Fort Worth about
22 the time I left, and it was -- Johnson is his last
23 name. His first name -- he wasn't the boss when I
24 was there.

25 Q. Now, you said you worked on Slaughter

1 field dual laterals. Those were for Bass and its
2 program?

3 A. That is correct.

4 Q. Now those were fairly short laterals,
5 weren't they?

6 A. Some of them were.

7 Q. There weren't any of them 4,600 feet long,
8 though?

9 A. No. Although there were a significant
10 number of them that were turnizontals, and that gets
11 them the ability to be longer than you think they
12 would ordinarily. They would be 3,600-foot total
13 lateral.

14 But you're talking about a TVD that is
15 much shallower than these are, and that makes a
16 significant difference in how far you can get out,
17 because you've got gravity working against you. Or
18 if they are deeper, it's working for you. It's
19 difficult to get farther out than what your TVD is.
20 So...

21 Q. Have you drilled any triple laterals, like
22 you projected on your Exhibit 32?

23 A. Yes. And -- in general, yes.

24 Q. Where?

25 A. There at the Slaughter.

1 Q. A lot of those were singles, some of them
2 were doubles?

3 A. They had a few of them that were triples,
4 too. You know, they were trying to fill in their
5 pattern, make a chain. You seem familiar with it.

6 Q. Right.

7 A. They had a problem with casing.

8 Q. Old wells?

9 A. Old wells. So sometimes the one that you
10 really would like to use was not going to work, so
11 they had to drill some extra laterals out of some of
12 them that still had good casing.

13 Q. Weren't they moving substantially less
14 total fluid volumes than we would project out of one
15 of these wells, like Exhibit 32?

16 A. No. No, they moved a lot of fluid.

17 Q. They had ESPs?

18 A. Some of them did.

19 Q. Have you looked at the fluid volumes that
20 you project to move out of a well like this Exhibit
21 32?

22 A. No, not my job.

23 Q. Is it any part of your responsibility to
24 make recommendations to your management as to
25 whether or not any of these Yeso wells that Concho

1 has drilled should be vertical or horizontal?

2 A. No.

3 Q. They just come to you and say, "We've
4 decided to do this, can you do it?"

5 A. Basically, yeah.

6 Q. Now, the plan you have depicted on Exhibit
7 32 has the two upper horizontals as not cemented?

8 A. That is correct. Yeah. The separation
9 there between zones is achieved with those packers.

10 Q. Did Bass cement all of their casing?

11 A. No. No, a lot of them were open hole. It
12 was San Andres that was kind of...

13 Q. In speaking of slickwater fracs versus gel
14 or water fracs, were you talking more about
15 horizontal wells or vertical wells, or does it make
16 any difference in the opinion you're giving?

17 A. It doesn't make a difference in the
18 opinion I have. They use slickwater a lot on shale
19 plays, so there's a lot of shale plays being drilled
20 horizontally now, so that's a very good application
21 for slickwater.

22 I don't know if it will overapply to
23 others, though.

24 Q. Did Peak give you a more detailed report
25 with this page that's Exhibit 32 as the cover?

1 A. They gave us a procedure that they
2 recommend for running their fliers.

3 Q. Did it mention any potential hazards or
4 risks in these procedures?

5 A. Oh, there's some cautions in there. They
6 are in the business of selling that stuff.

7 Q. Have you had anything to do with meeting
8 with the BLM and working on the permits, either
9 surface access or APDs for these proposed wells?

10 A. Uh-huh.

11 Q. And what was your role in that?

12 A. Drilling engineer.

13 Q. So did you have any -- I take it, then,
14 you didn't have any responsibility for what surface
15 areas could or could not be used?

16 A. More as a bystander than an active
17 participant in that. They asked a lot about what
18 size of pad do you need for your drilling rigs and,
19 you know, how much room would you need between
20 wells, and could you fit a drilling rig here, can
21 you turn it around, can you -- you know.

22 How -- you know, I have been out there and
23 looked at it. I'm not sure what you're getting at.

24 Q. Well, do you think there's any problem
25 with today's technology in drilling two twin

1 horizontals at 20, 25, 30 feet apart, like Burnett
2 has testified about?

3 A. With the technology, no. With the surface
4 constraints that we have here, yes.

5 They asked me early on how close we could
6 get these wells together. And with the idea that
7 they're being rod pumped, you know, they need room
8 for pumping units.

9 But furthermore, you know, where you hear
10 about where it's done where they're 7 and a half,
11 10, 15 feet apart, they are different drilling rigs
12 from what we have available out here so that you
13 could actually do pad drilling, which is what they
14 call that. Those drilling rigs have got windows
15 that -- where they -- in their substructures, where
16 when you move over, it clears the previous well.

17 We don't have those kind of rigs out here.
18 We would have to bring one in from Fort Worth. They
19 cost about \$10,000 a day to run. It is doable,
20 although if you drill them that close together,
21 you're going to have problems with pumping them.

22 Q. How about 30 feet apart?

23 A. You could start making it happen at
24 30 feet apart. You're still going to need a
25 different drilling rig from what you've got.

1 Q. How far apart would you have to get, in
2 your opinion, before you could use the rigs that are
3 typically used out here?

4 A. You'd probably need to get about 75 feet
5 apart so that that last well bore would clear the
6 substructure. And that's dependent on which rig you
7 actually pick for it.

8 MR. GRABLE: All right. I pass the
9 witness.

10 MS. MUNDS-DRY: I have no redirect for
11 Mr. Bird.

12 HEARING EXAMINER EZEANYIM: Okay. Very
13 good.

14 Is it possible for you to give me the
15 actual construction -- schematic construction of
16 this well?

17 THE WITNESS: Sure.

18 HEARING EXAMINER EZEANYIM: I would really
19 like to see that.

20 THE WITNESS: Okay.

21 HEARING EXAMINER EZEANYIM: You know, if
22 you can give it to your counsel, she will share it
23 with everybody, and then I can get a copy --

24 THE WITNESS: Sure.

25 HEARING OFFICER EZEANYIM: -- of this

1 triple lateral, the construction.

2 THE WITNESS: Uh-huh.

3 HEARING OFFICER EZEANYIM: And then I know
4 you may have answered this question. What is the
5 separation between those laterals?

6 THE WITNESS: What is the separation
7 between those laterals?

8 HEARING EXAMINER EZEANYIM: Yes.

9 THE WITNESS: Just quoting from memory, I
10 think that the bottom lateral to the middle lateral
11 was 500 feet.

12 HEARING OFFICER EZEANYIM: Okay.

13 THE WITNESS: And then the middle lateral
14 to the top lateral was 400 feet. But I'm just
15 quoting from memory. I might stand corrected.

16 HEARING EXAMINER EZEANYIM: Okay. Very
17 good. When you give me the construction, give me
18 the actual construction on what you plan to do.

19 THE WITNESS: Okay.

20 HEARING OFFICER EZEANYIM: What are the
21 penetration points? Do they penetrate at the same
22 time or, you know, they -- I mean, let's say you
23 have the two Blinebrys and one Paddock. Do they
24 penetrate the -- like the two branches, leave at the
25 same point or at a different point?

1 THE WITNESS: No, they're not the same
2 penetration points. These penetration points are
3 determined by the packers that are run or the -- or
4 the cement.

5 You know, you don't -- you don't perforate
6 it until you're past your penetration point. You
7 don't have a port or a packer until you're past the
8 penetration point.

9 HEARING EXAMINER EZEANYIM: And you know
10 each of those laterals must meet the same pack
11 requirements?

12 THE WITNESS: That's correct.

13 HEARING EXAMINER EZEANYIM: So you
14 design -- because that's why, really, I want to
15 see -- can I get that tomorrow?

16 MS. MUNDS-DRY: I'm told it might take --

17 HEARING OFFICER EZEANYIM: I mean, he can
18 draw the -- he can do it in a minute.

19 MS. MUNDS-DRY: I'm not sure we can get it
20 to you that quickly, but we'll work to get it to you
21 as soon as we can.

22 HEARING EXAMINER EZEANYIM: Because I'm
23 interested in that construction.

24 And most of these completions are open
25 hole, right, open hole completion?

1 THE WITNESS: No, they're not. The bottom
2 one is set up to be cemented, and then the next two
3 are -- they have got packers for separation, so
4 they're not really open holes.

5 HEARING EXAMINER EZEANYIM: Oh, they're
6 not? Okay.

7 THE WITNESS: Really, the only other point
8 that I'd like to make is we -- since I came to work
9 at Concho, we have been running three strings of
10 pipe and -- because that allows you to case off the
11 salt zone that, of course, you're familiar with.

12 HEARING OFFICER EZEANYIM: Yeah. Yeah.

13 THE WITNESS: If you don't case that off,
14 then you're condemning yourself to drilling the rest
15 of that well with saturated brine because you
16 can't -- you know, whatever water you put in there
17 becomes saturated brine as soon as it passes the
18 salt.

19 The result of that is huge washouts in the
20 brine which prevents you from being able to really
21 accurately get good cement jobs.

22 Without two-staging, and without a whole
23 lot of effort, we get full circulation on all three
24 strings of pipe on all -- you know.

25 And I work with Darryl Gray with OCD and I

1 work with Wesley Ingram with the BLM. They -- they
2 really push for that.

3 But the real benefit of that is your wells
4 are so much cheaper and faster if you will go ahead
5 and set that string of pipe.

6 And after we have drilled, you know, 450,
7 500 wells in this area and people still don't run
8 two strings of pipe, they're not paying attention.
9 Because you can -- you can tell from the bit records
10 how much faster our wells are and, therefore, how
11 much cheaper they are. I -- I question their
12 competence.

13 HEARING EXAMINER EZEANYIM: So, in your
14 wells, you run three strings?

15 THE WITNESS: Three strings.

16 HEARING EXAMINER EZEANYIM: That's what
17 you're going to run. That's not what you are
18 recommending? That's what you're going to do?

19 THE WITNESS: We're going to run three
20 strings.

21 HEARING EXAMINER EZEANYIM: I need that
22 construction. It's really important.

23 MS. MUNDS-DRY: Yes, sir.

24 HEARING EXAMINER EZEANYIM: Okay. And
25 these laterals, now, they call it the four units,

1 which is about 4,600 feet? Is that what you're
2 saying?

3 THE WITNESS: Yes.

4 HEARING OFFICER EZEANYIM: Is that about
5 how long they are, the laterals?

6 THE WITNESS: Yes.

7 HEARING EXAMINER EZEANYIM: They are all
8 the same length?

9 THE WITNESS: Roughly, yes.

10 HEARING EXAMINER EZEANYIM: Okay.

11 THE WITNESS: That's something else that
12 I'd like to mention. We never -- I've never drilled
13 one longer than we were allowed to. I've never
14 exceeded our APD length.

15 HEARING EXAMINER EZEANYIM: Of course
16 you're not supposed to.

17 THE WITNESS: I know. I am glad you
18 brought that up, though. Because it looks like on
19 Burnett's last lateral that they did, that they not
20 only got stuck because they didn't set that pipe,
21 they -- they exceeded the length of their -- their
22 permitted length of their lateral.

23 We downloaded this off of the BLM Web
24 site. I believe it is public record.

25 HEARING EXAMINER EZEANYIM: Well, yes,

1 that's why you can do that.

2 Well, I don't know, you might share it
3 with them, and then...

4 THE WITNESS: It's their well. I mean...

5 HEARING EXAMINER EZEANYIM: Oh, it's their
6 well? Can I see it?

7 THE WITNESS: Sure.

8 And you will notice this notation that
9 Wesley wrote on there.

10 HEARING EXAMINER EZEANYIM: Oh, okay.
11 Yeah. Okay. Very good.

12 Do you mind me looking at this?

13 MR. BRUCE: No, Mr. Examiner. I would
14 like to see what it is.

15 THE WITNESS: It's public record that
16 you-all filed.

17 HEARING EXAMINER EZEANYIM: You might see
18 it before I look at it, because that's why I'm
19 asking you the question.

20 THE WITNESS: I should tell you what the
21 well name is, for the record. Let me put my glasses
22 on.

23 HEARING EXAMINER EZEANYIM: Okay. Do you
24 have any objection?

25 MR. BRUCE: No objection.

1 THE WITNESS: This is the Stevens A
2 Number 17H. And the API number is 30-015-38373.

3 HEARING EXAMINER EZEANYIM: Okay. Well,
4 this is not in evidence. It's just something for
5 me. Okay.

6 All right. You may be excused.

7 THE WITNESS: Thank you.

8 HEARING EXAMINER EZEANYIM: I may re-call
9 you if I remember something else.

10 THE WITNESS: All right, sir.

11 MS. MUNDS-DRY: We have one more witness.

12 HEARING EXAMINER EZEANYIM: Okay. Go
13 ahead.

14 MS. MUNDS-DRY: I call Ryan Dehnad,
15 please.

16 RYAN DEHNAD,
17 after having been first duly sworn under oath,
18 was questioned and testified as follows:

19 EXAMINATION

20 BY MS. MUNDS-DRY:

21 Q. Mr. Dehnad, where do you reside?

22 A. Midland, Texas.

23 Q. And by whom are you employed?

24 A. Concho Resources.

25 Q. What do you do for Concho?

1 A. I am a completion engineer.

2 Q. What does that mean? What do your duties
3 include?

4 A. I design stimulations, I analyze, and I
5 make improvements.

6 Q. Are you responsible for this area of
7 Southeast New Mexico, and particularly the Yeso,
8 what we call the shelf?

9 A. Yes, I am.

10 Q. Have you previously testified before the
11 division?

12 A. No, I haven't.

13 Q. Would you please review for Mr. Ezeanyim,
14 your education and work history?

15 A. Yes, I will.

16 I graduated in 1999 from Mercer -- that's
17 M-E-R-C-E-R -- Mercer University in Macon, Georgia.
18 This was December of '99, with a degree in
19 environmental engineering. I worked for
20 Schlumberger in 2000.

21 I worked for them for a little over two
22 years, and I went back to school to pursue a
23 master's in petroleum engineering.

24 I attended Montana Tech in 2002 to 2004.
25 I moved to Midland, Texas, to work for Chevron. I

1 worked for Chevron for six and a half years. My
2 first two years were drilling engineer, next two
3 years were workover engineer, and then my last years
4 I was a completion engineer focused on the Wolf Camp
5 and Canyon Reservoirs in Sterling County, Texas.

6 And then I hired on with Concho in May of
7 2010.

8 Q. Are you a registered engineer? I know
9 Mr. Ezeanyim likes to ask that.

10 A. I'm not a registered engineer.

11 Q. Are you familiar with the applications
12 that Concho has filed here today?

13 A. Yes, I am.

14 Q. Are you responsible for designing the
15 completion plans for the proposed horizontal triple
16 laterals that are the subject of the applications
17 here today?

18 A. Yes, I am.

19 MS. MUNDS-DRY: Mr. Ezeanyim, we tender
20 Mr. Dehnad as an expert in completions engineering.

21 HEARING EXAMINER EZEANYIM: Mr. Dehnad is
22 qualified.

23 Q. (By Ms. Munds-Dry) Mr. Dehnad, I assume
24 you're familiar with Concho's horizontal well
25 proposals?

1 A. Yes, I am.

2 Q. Have you had any previous experience
3 completing horizontal wells?

4 A. Yes.

5 Q. And were any of those in New Mexico?

6 A. Yes, 12 of them.

7 Q. You have completed 12 horizontal wells in
8 New Mexico?

9 A. Yes.

10 Q. Other than your horizontal well
11 experience, how many Yeso wells have you completed
12 in -- since you've been with Concho?

13 A. Almost 300.

14 HEARING EXAMINER EZEANYIM: Vertical
15 wells?

16 THE WITNESS: Yes, sir.

17 Q. (By Ms. Munds-Dry) Were they multistage
18 wells?

19 A. They were multistage wells.

20 Q. If you could explain to Mr. Ezeanyim -- if
21 it helps you, I don't know if it helps you to refer
22 to Exhibit 32.

23 But if you could, explain to Mr. Ezeanyim
24 how you propose to complete these triple laterals.

25 A. Sure.

1 Mr. Examiner, I looked at vertical wells
2 that we fracked that immediately neighbored the
3 Puckett lease. What was brought to my concern was
4 the fracturing pressures of the Blinebry. In some
5 cases we almost got up to 6,000 PSI. And the frac
6 pressure would decrease almost 600 PSI between my
7 Blinebry intervals. That 600 PSI difference was
8 enough concern for me that I would like to have that
9 lower Blinebry lateral with cement behind it.
10 Cement behind it will give me extra tolerance for
11 frac pressure.

12 The subsequent laterals will be open hole
13 completion, where I will use an open hole packer and
14 sleeve system.

15 Q. Mr. Dehnad, why, in your opinion, do you
16 only need a cement casing design for the bottommost
17 lateral?

18 A. For fracture pressure.

19 Q. For fracture pressure?

20 A. Yes, ma'am.

21 Q. You don't have that same concern in the
22 middle or top lateral?

23 A. You don't. Because as you move up in the
24 Blinebry reservoir, your frac pressure decreases.

25 Q. Okay. What are you designing for your

1 frac length?

2 A. Okay. If my arm is the lateral
3 (indicating), is the lateral portion of the well, my
4 length is going to be in this (indicating)
5 direction. Okay? My half length is going to be
6 300 feet.

7 Q. Does that depend on the vertical pilot
8 hole, your design?

9 A. Yes, it does.

10 Q. What about frac height?

11 A. Okay. Again, if my arm is the lateral, my
12 height is this (indicating) direction, and I'm
13 designing for 400 to 600 feet in height.

14 Q. And what's the distance that you plan
15 between stages?

16 A. That's to be determined. I really need to
17 look at the logs before I can determine stages.

18 Q. And how many stages are you planning?

19 A. Well, I'm planning to get 12 to 16 stages.

20 Q. Do you know where you are going to place
21 your stages in a vertical well before you drill?

22 A. I don't.

23 Q. What do you use to determine the stages?

24 A. Again, I use the logs.

25 Q. And why is that?

1 A. It's a -- it's a heterogeneous log, just
2 like Mr. Broughton testified earlier. You know, the
3 rock characteristics, they can change from immediate
4 well to well, particularly the porosity.

5 Q. Is this the same process that you follow
6 when you're completing a vertical well?

7 A. Yes.

8 Q. So that's a common process that you use?

9 A. Yes, it is.

10 Q. What sand volumes are you planning to use?

11 A. Again, I can give you a range. Each stage
12 will have approximately 100,000 to 150,000 pounds of
13 sand.

14 Q. And what about your fluid volumes?

15 A. Okay. Again, the fluid volumes I will
16 determine from the stages as well. But each
17 lateral -- each lateral will have approximately
18 60,000 to 90,000 barrels of fluid.

19 Q. Is the liner system you're running similar
20 to the uncemented liners that Mr. Jacoby commented
21 were for their poorer wells?

22 A. It's not. My liner system will be
23 mechanically staged with the open hole packers.

24 Q. In terms of the cement case plan and then
25 the packer sleeve plan that you have here, you have

1 performed both of those methods?

2 A. I have performed both of those methods.

3 Q. And have you been successful with both of
4 those methods?

5 A. I have been successful.

6 Q. Have you had any completion failures?

7 A. I have not had any completion failures in
8 horizontal wells.

9 Q. Let me ask you the same question I asked
10 Mr. Bird.

11 Do you have any concern with the third
12 lateral?

13 A. No, I do not.

14 Q. Do you believe Concho's proposals for
15 three laterals will be successful?

16 A. Yes.

17 Q. Has this proposed -- and I'm referring to
18 this particular design in Exhibit 32.

19 Has this proposed multilateral design been
20 done before?

21 A. Yes, it has.

22 Q. And are you aware of whether it's been
23 successful?

24 A. Unfortunately, I haven't done it, and it
25 hasn't been done at Concho. I'm going by our -- our

1 service provider of this type of system.

2 Q. Is that Peak?

3 A. That is Peak.

4 Q. And what is Peak telling you about their
5 success rate?

6 A. It's been an outstanding system for them,
7 very successful, used in Texas and in Canada.

8 Q. Did they give you any indication of how
9 many times they have done this before?

10 A. It was -- an off-the-top-of-the-head
11 number it wasn't -- you know, it wasn't a strong
12 count, but it was just under 100.

13 Q. Mr. Dehnad, what is your goal when you're
14 designing completions for multilateral wells?

15 A. My goal is to optimally develop the entire
16 Yeso.

17 Q. And have you reviewed Burnett's proposals
18 to drill horizontal wells?

19 A. Yes, I have.

20 Q. Do you have any concerns?

21 A. Concerns with particular...

22 Q. With their horizontal completion plan?

23 A. No, ma'am, I don't. Just...

24 Q. Do you believe their single laterals will
25 optimally develop the entire Yeso?

1 A. No, I don't.

2 Q. Why is that?

3 A. The Yeso is a 1,500-foot thick formation.
4 I don't think that one lateral is going to be able
5 to -- is going to be able to allow you to have that
6 much contact fluid with that entire bed. You're
7 going to have to have more laterals.

8 Q. In your opinion, will that cause waste?

9 A. It will cause waste.

10 Q. Have you reviewed Burnett's proposals to
11 drill vertical wells, in particular, the two wells
12 they have in front of the division today?

13 A. Yes, I have.

14 Q. Do you have any opinions on using
15 slickwater frac?

16 A. I do. And this is not a cut at
17 Burnett/Hudson by any means, with their technique.
18 I just prefer the cross-linked gel. I
19 prefer the cross-linked gel because the gel can
20 carry larger sand size. And with larger sand size,
21 Mr. Examiner, you can have higher conductivity.
22 That's just my opinion.

23 Q. What about the ability of the slickwater
24 to carry proppant?

25 A. From what I understand, slickwater is

1 limited on the sand sizes it can carry. Typically,
2 it's 100 mesh or 40/70.

3 HEARING EXAMINER EZEANYIM: How much?

4 THE WITNESS: It's a 100 mesh -- it's a
5 size 100 mesh sand or 40/70 size, so you can't go
6 any larger than that.

7 Q. (By Ms. Munds-Dry) And how does that
8 affect your frac height or width?

9 A. I feel that you would be limited by your
10 frac height, particularly.

11 Q. And in particular, I'm interested in your
12 opinion on how that affects your frac height in the
13 Blinebry.

14 A. Again, the Blinebry being a tight
15 heterogeneous rock, I don't think you'll get the
16 same frac height as you would with the cross-linked
17 gel system.

18 Q. Is that why you are not proposing a
19 slickwater frac for the horizontal wells here?

20 A. That's correct.

21 MS. MUNDS-DRY: Okay. I have no further
22 questions for Mr. Dehnad. I pass the witness.

23 HEARING EXAMINER EZEANYIM: Mr. Grable?

24 MR. GRABLE: Just a couple.
25

EXAMINATION

1

2 BY MR. GRABLE:

3 Q. Mr. Dehnad, when you were talking about
4 the Burnett/Hudson horizontal design, are you
5 assuming they will only drill one lateral per
6 spacing unit?

7 A. I was assuming it was one lateral for the
8 Paddock, yes, sir, and one lateral for the Blinebry.

9 Q. Which is two laterals for the spacing, if
10 there are --

11 A. Yes, sir. Two laterals, yes, sir. Two
12 laterals per spacing, yes.

13 Q. So the difference is the Concho plan has
14 two laterals in the Blinebry versus only one?

15 A. Correct.

16 Q. If you got -- did you say you were
17 planning for a 4- to 600-foot vertical frac height?

18 A. Again, if you're calling this (indicating)
19 direction the frac height, yes, sir.

20 Q. And that would be up and down?

21 A. Predominantly up. The -- your -- your
22 proppant length will be 4- to 600 feet. Your prop
23 length will be 4- to 600 feet.

24 Q. Were you involved in the -- I believe it's
25 four horizontal wells that COG has actually drilled

1 in the Yeso?

2 A. No, sir, I wasn't.

3 Q. They were all single lateral horizontals?

4 A. Correct.

5 Q. And you have never -- have you ever worked
6 on a design of a completion in a multiple lateral
7 horizontal well?

8 A. No, sir, I haven't.

9 Q. So this would be your maiden voyage?

10 A. Yes, it would.

11 Q. When we were discussing the preference for
12 gel, acid gel versus slickwater, what is your
13 understanding with respect to what Burnett/Hudson
14 had done in completing their horizontal wells?

15 A. My understanding is Burnett/Hudson's
16 preference is the slickwater practice. More sand
17 volume -- it's comparable -- again, if I'm going
18 back to a vertical setting, sand volumes will
19 compare. They did have a little bit more, but a lot
20 more fluid.

21 And again, I'm not doubting that they're
22 getting the frac length, I'm just concerned about
23 the frac height.

24 Q. Were you here when Burnett presented its
25 Exhibit 6Q showing its -- showing nine of its --

1 I'll just let you look at mine.

2 Did you see Exhibit 6Q?

3 A. Yes, I did.

4 Q. Doesn't it reflect that all nine of those
5 horizontals were completed with hot acid instead of
6 slickwater?

7 A. Initially when I saw this, it had
8 slickwater only.

9 MR. GRABLE: They've done it. Well, I'll
10 let our people testify about it, but we may be
11 closer in agreement on horizontal wells than you
12 think.

13 Pass the witness.

14 MS. MUNDS-DRY: I have no redirect for
15 Mr. Dehnad.

16 HEARING EXAMINER EZEANYIM: Okay.

17 If I understood your testimony, you say on
18 each lateral you have 16 stages of completion,
19 right?

20 THE WITNESS: Possibly, Mr. Examiner. It
21 will be at least 12.

22 HEARING EXAMINER EZEANYIM: 12 to 16?

23 THE WITNESS: Yes, sir.

24 HEARING EXAMINER EZEANYIM: Okay. And you
25 stated that you didn't like to use the slickwater in

1 the lateral. Why? Why is it bad to use that?

2 THE WITNESS: Again, that's my preference.

3 My preference is that the cross-link gel system --

4 HEARING EXAMINER EZEANYIM: The what?

5 THE WITNESS: The cross-link gel system --

6 HEARING OFFICER EZEANYIM: Yeah.

7 THE WITNESS: -- will allow me to carry a
8 larger grain size of sand.

9 HEARING OFFICER EZEANYIM: Okay.

10 THE WITNESS: Okay? I can use something
11 larger than 40/70. I can go 20/40. And that 20/40
12 sand, Mr. Examiner, will allow me to have greater
13 conductivity.

14 HEARING EXAMINER EZEANYIM: But for
15 slickwater, which has low viscosity, you can't do
16 that?

17 THE WITNESS: That's correct.

18 HEARING OFFICER EZEANYIM: You can't
19 carry...

20 THE WITNESS: That's correct.

21 HEARING EXAMINER EZEANYIM: So you would
22 not recommend that COG use slickwater for this?

23 THE WITNESS: I would not recommend COG to
24 use slickwater. I would recommend them to use the
25 cross-link gel.

1 HEARING EXAMINER EZEANYIM: And did you
2 state -- have you completed any horizontal wells?

3 THE WITNESS: Yes, sir, I have.

4 HEARING EXAMINER EZEANYIM: But not the
5 triples?

6 THE WITNESS: Not the triples.

7 Mr. Examiner, one horizontal completion
8 will mimic the next -- the next ones.

9 HEARING EXAMINER EZEANYIM: And then
10 you -- would you -- would you expect some
11 interference between the laterals?

12 THE WITNESS: Do you mean communication?

13 HEARING EXAMINER EZEANYIM: Yes,
14 communication between the laterals.

15 THE WITNESS: No, sir. Again, the frac
16 heights are to where it will -- it will just reach
17 the next lateral, that's it. They won't -- they
18 won't communicate. That's my design.

19 HEARING EXAMINER EZEANYIM: That's your
20 design?

21 THE WITNESS: Yes, sir.

22 HEARING EXAMINER EZEANYIM: Okay. I think
23 that's all I have, but I would really like to have
24 the schematic. And you might input there, you know,
25 where you -- your stages where you think you might

1 complete it.

2 THE WITNESS: Yes, sir.

3 HEARING OFFICER EZEANYIM: Does anybody
4 have anything further for this witness anymore?

5 MR. BRUCE: Not with this witness,
6 Mr. Examiner.

7 HEARING EXAMINER EZEANYIM: Oh, you want
8 to call somebody else?

9 MR. BRUCE: We would like to call -- do
10 some rebuttal.

11 HEARING EXAMINER EZEANYIM: Okay.

12 Okay. You may step down.

13 MR. GRABLE: We call John Rodgers.

14 HEARING EXAMINER EZEANYIM: Can you spell
15 your last name for the record?

16 THE WITNESS: John Rodgers, R-O-D-G-E-R-S.

17 JOHN RODGERS,

18 after having been first duly sworn under oath,

19 was questioned and testified as follows:

20 EXAMINATION

21 BY MR. GRABLE:

22 Q. Mr. Rodgers, by whom are you employed and
23 in what capacity?

24 A. I'm currently employed by Burnett Oil as
25 an engineering manager.

1 Q. How long have you worked for Burnett?

2 A. I am going on four weeks -- five weeks, I
3 think it is, excuse me.

4 Q. Would you please state your educational
5 experience and job experience in the oil and gas
6 industry for the record, please?

7 A. I graduated from Texas A&M in 1975.
8 Basically, I have been in the oil and gas industry
9 for 36 years.

10 I started out with Amoco, went to work for
11 Bass Enterprises, was with Bass for 19 years. I
12 left Bass and I opened an office in Midland for,
13 back then, Lomak Petroleum, which is now Range
14 Resources.

15 I moved to Fort Worth and went to work for
16 Encore Operating as a drilling engineer, as a
17 production engineer, and as a completion engineer.
18 In fact, we were a little bit of everything. I
19 spent eight years with Encore Operating.

20 I went to work for EOG Resources in
21 Fort Worth, and was with EOG for three and a half
22 years.

23 Most recently, I was with Nutech
24 Engineering designing horizontal well completions
25 for four and a half months.

1 Q. And Nutech is a consulting firm?

2 A. Yes, sir.

3 Q. And what's the nature of their consulting
4 practice?

5 A. Drilling and completion. They do have a
6 small production group, but it's very small.

7 Q. And are horizontal well designs and
8 completions a part of their practice?

9 A. That is their practice.

10 Q. Is it a major part of their practice?

11 A. It's a major part of their practice.

12 Q. About how many engineers does Nutech have?

13 A. All I can speak of is Fort Worth. We had
14 four engineers on drilling and we had three
15 engineers on completions.

16 Q. Let me show you what has been marked as
17 Burnett Exhibit 10.

18 The caption, "Horizontal Drilling
19 Experience, Burnett Staff and Consultants."

20 And have you reviewed this before?

21 A. Yes, I have.

22 Q. Can you just describe, generally, for
23 Mr. Ezeanyim the engineers with Burnett whose total
24 experience in horizontal drilling is represented on
25 this Exhibit 10?

1 A. Primarily, that is myself and Mr. Pollard
2 and two engineers up in the Marcellus area, I
3 believe.

4 Q. And approximately how many horizontal
5 wells have you designed or worked on in your career?

6 A. Approximately 13- to 1,350.

7 HEARING EXAMINER EZEANYIM: Mr. Grable?

8 MR. GRABLE: Yes.

9 HEARING OFFICER EZEANYIM: Have you
10 qualified the witness? Is this a fact witness or an
11 expert witness?

12 MR. GRABLE: I'm still doing it. He just
13 said he has worked on 1,300 --

14 HEARING EXAMINER EZEANYIM: Okay. I
15 thought you were just going to -- okay.

16 MS. MUNDS-DRY: If it helps, Mr. Ezeanyim,
17 I don't plan to object. He's been a drilling
18 engineer -- when I was one. So, I mean, he's had
19 plenty of experience.

20 I don't know if that cuts that short or
21 not.

22 HEARING EXAMINER EZEANYIM: Well, that's
23 okay. I'm sorry to interrupt. Go ahead.

24 MR. GRABLE: That's fine. Well, we will
25 now tender Mr. Rodgers as an expert in drilling

1 engineering.

2 HEARING EXAMINER EZEANYIM: I so will
3 find. I want to get it on the record so that I can
4 then weigh the evidence.

5 Q. (By Mr. Grable) Have you worked on
6 multiple lateral horizontals before?

7 A. In total, I've worked on five multilateral
8 wells. Two of those were what we called in Montana
9 a crow's foot, and three of those were in the Bakken
10 in North Dakota. And we called those coplanar
11 multilateral wells.

12 Q. Have you reviewed the COG plan for triple
13 laterals in their proposed wells in these cases?

14 A. Yes, sir, I have.

15 Q. Did you hear Mr. Bird's testimony about
16 the risks or lack of risks with respect to triple
17 laterals?

18 A. I heard Mr. Bird's testimony on that. I
19 would not do it like COG is proposing.

20 I believe the risk involved in the second
21 and third lateral is minimal on the drilling, but on
22 the completion side, it is maximized.

23 Q. What about the completion side gives you
24 concern about risks?

25 A. It's the open hole packer completion

1 technique. That technique is very outdated. It's
2 been tried over and over in the Barnett shale, in
3 the Hainesville shale, and they are getting away
4 from that completion technique and going to
5 completely cemented laterals, centralized casing
6 strings in the lateral.

7 Q. Does a cemented casing give you greater
8 control over the stimulation and the fracturing
9 operations?

10 A. Yes, sir, it does.

11 Q. Can you explain how that is to
12 Mr. Ezeanyim?

13 A. It gives you more of a pinpoint limited
14 entry technique. It focuses your energy in -- I'll
15 take for example a Barnett -- over a 200, 250-foot
16 interval. And this has been seen over and over by
17 the increase in frac ball pressure from one stage to
18 the next.

19 That's one reason that people were getting
20 away from the Peak Completion technique, is they
21 were not seeing the frac ball pressure increases,
22 they were seeing communication between the packers.

23 And when I was at Encore, we were drilling
24 some Barnett wells. We did talk to Peak Completion.
25 We also talked to other service companies, and we

1 went with cemented laterals because you can make
2 better wells, and it was a more proven technique,
3 more proven technology on fracture stimulation.

4 Q. In your opinion, do open hole methods have
5 a higher chance of mechanical failures in the
6 completion phase?

7 A. Yes, sir. That's -- the open hole
8 packers, again, on frac ball pressures between the
9 stages, we were seeing -- or I heard from certain
10 service companies they were seeing minimal frac ball
11 pressure increase between stages, and that is why
12 they were getting to the cemented centralized casing
13 strings in the laterals.

14 Q. Are there other problems with single
15 laterals versus double or triple laterals in
16 producing from different strata, like the Paddock
17 and the Blinebry in this case?

18 A. One of the main problems I can see, as an
19 old production engineer, is the commingling of
20 downhole waters.

21 The Paddock and the Blinebry are not
22 compatible waters. Thus, you have more of a scaling
23 tendency, which is going to mean you're going to
24 have to go into those second and third laterals
25 several times to clean them out with scale.

1 Q. Are there problems, or potential problems,
2 with gas production in these wells with multiple
3 laterals?

4 A. I don't know how -- well, I'll relate back
5 to my Montana days, when we were doing so many
6 cased-hole exits. We were actually setting our
7 whipstock, cutting our windows. After we cut our
8 window we would remove our whipstock and we would
9 have a sump hole.

10 In both cases with horizontal wells, you
11 do not have that sump hole. You can put one there,
12 but you don't have one unless you put one there.

13 But you are going to have more total fluid
14 coming in from the second and the third lateral.
15 And especially the Paddock, where it mixes with the
16 Blinebry waters, you will see scaling tendencies.
17 And you could actually flood out the lower Blinebry
18 interval, I would assume, unless you put an ESP in
19 there or something, to remove that total fluid. But
20 then, again, you're mixing waters downhole.

21 Q. Is there potential problems with gas
22 locking that are increased with multiple lateral
23 wells?

24 A. Yes.

25 Q. Could you explain?

1 A. Either with a --

2 Q. Could you explain what gas locking is and
3 why it's very dangerous?

4 A. Gas locking is -- basically, your standing
5 valve is on the bottom, you have your traveling
6 valve on top. And if you do not have your pump or
7 your ESP set down in fluid, gas is going to try to
8 enter that pump cavity to be pumped out of the hole.

9 Gas is very compressible; fluid is not as
10 compressible, so you get less and less travel on
11 your traveling -- on your traveling valve than you
12 do -- or you get less and less travel on your
13 traveling valve. And before you know it, your
14 chamber there is full of gas, and you sit there
15 pounding fluid.

16 Q. Are there problems, or potential problems,
17 with lifting the total fluid volumes from multiple
18 lateral wells?

19 A. We think there could be problems in
20 lifting the total fluid. It can be done with an
21 ESP.

22 I noticed EOG -- excuse me -- COG, on
23 their proposal, was setting 7-inch -- I assume at
24 TD -- and not plugging back, which is one thing I
25 would differ in. I believe they could save a lot of

1 money by not setting 7-inch all the way to total
2 depth.

3 But anyway, now that I said that, now I
4 forgot your question.

5 Q. We were talking about lifting total
6 fluids, volumes.

7 A. Oh, lifting total fluids, volumes.

8 Once they get the three laterals
9 stimulated, they're going to have a large
10 increase -- or they are going to have a large volume
11 of total fluid. They're going to need large ESP in
12 the 7-inch, very costly.

13 Once that total fluid drops off, as you
14 saw on the decline curves, total fluid is going to
15 drop off. They're going to have to spend more money
16 and reduce the size of their ESP to handle that
17 total fluid. Again, that's another major expense.

18 I just see it to be a large operational
19 problem.

20 Q. Do you see any greater problems in
21 multiple lateral wells in doing individual zone
22 testing and remedial work?

23 A. I'm sorry. I missed your question.

24 Q. Is there potentially more problems with a
25 multiple lateral horizontal well versus a single

1 lateral, in doing individual zone testing and
2 remedial work?

3 A. Oh, yes, sir. They have to be able to
4 reenter -- they have to be able to reenter that
5 horizontal lateral.

6 What we were experiencing in Montana, when
7 we pulled the whipstock, we went in with a bent
8 joint, as they do recommend. But it took us hours
9 and sometimes days to be able to find that window
10 exit, to be able to go in and either clean out that
11 open hole or to restimulate it.

12 Q. And finally, on these risks with potential
13 corrosive fluids in shallow zones, do you take
14 triple the risk with losing three wells in one from
15 casing corrosion uphole in a triple lateral versus a
16 single lateral?

17 A. I think you could take that -- I think
18 that's a very big risk. And there, if you lose one
19 vertical well bore, you have lost three laterals.

20 Q. Now, If three single laterals can be
21 drilled and completed for approximately the same
22 cost as one triple lateral, which would you
23 recommend to your management?

24 A. I would recommend three. I call them
25 grass root horizontal wells. The Bakken has shown

1 over and over, as the Barnett has shown -- I'm not
2 so sure about the Hainesville in Louisiana.

3 But drilling techniques have come a long
4 way in the last several years. And I really feel
5 that you could drill three wells cheaper than you
6 could do three lateral wells out of one vertical
7 well bore.

8 Take for instance, in North Dakota, the
9 initial -- when those wells were first being
10 drilled, they were 44- or 45-day wells. In talking
11 to some of my EOG buddies up there now, they are
12 getting those wells down in 18 days. That's why
13 they have gotten away from the dual lateral well
14 bores, coplanar well bores.

15 Q. Now, how far apart on the pad do you think
16 Burnett and Hudson can drill these single horizontal
17 laterals with reasonable ease and safety?

18 A. At EOG on pad drilling, we were doing
19 25-foot center to centers.

20 The Barnett, at its peak, was about 182,
21 185 rigs. They're now down to about 60-something, I
22 believe. All of those rigs have moved to West
23 Texas. Those rigs are out here. They do pad
24 drilling. We should not have trouble finding a rig
25 that would do that. We may have to look for one. A

1 lot of them are under contract, but we should be
2 able to find a rig to do pad drilling.

3 EOG did do a couple of wells, not by
4 choice, on 7-and-a-half-foot centers. I would not
5 recommend that again, not unless you have to.

6 MR. GRABLE: Thank you, Mr. Rodgers.

7 I pass the witness.

8 HEARING EXAMINER EZEANYIM: Ms. Munds-Dry?

9 MS. MUNDS-DRY: Thank you.

10 EXAMINATION

11 BY MS. MUNDS-DRY:

12 Q. Mr. Rodgers, have you drilled any
13 horizontal wells in New Mexico?

14 A. No, I have not.

15 Q. If I understand your testimony, your
16 experience is primarily in Texas, drilling
17 horizontal wells?

18 A. Montana, North Dakota, Mississippi, and
19 Texas.

20 Q. Okay. Thank you. I missed -- I did hear
21 Montana.

22 You were testifying that the open hole
23 packer technique is, I believe you said, outdated?

24 A. Yes, ma'am.

25 Q. Does that mean it doesn't work?

1 A. I know everybody in the Barnett was
2 getting away from it.

3 At one time -- this was before Encore
4 started drilling horizontal wells -- it was one of
5 the accepted practices. But people were getting
6 away from it when Encore started drilling their
7 wells on the first ranch. And we did not -- well,
8 we contacted Peak Completion. We found out that
9 they had not done one in the Barnett shale in a
10 couple or three months, because people were getting
11 away from that technique in the Barnett; and,
12 therefore, we didn't want to approach them.

13 Q. I'm not sure you answered my question.

14 Does that mean it doesn't work? I
15 understand new technology has occurred.

16 A. It does not work as well as cemented
17 completion -- casing completions.

18 Q. And you're citing these examples in the
19 Barnett. That's a shale, isn't it?

20 A. Yes.

21 Q. Are shales different than carbonates?

22 A. Very much so.

23 Q. So how is that comparison relevant to this
24 Yeso shelf?

25 A. They are horizontal wells. You start with

1 a vertical well and you go horizontal.

2 The completion techniques are different.

3 The drilling is pretty much the same.

4 Q. But the completion techniques would be
5 different from a shale horizontal well to a Yeso
6 horizontal well?

7 A. I have not completed a carbonate well in a
8 great while, actually, since my Bass days, to be
9 quite honest, so it's been 15 years.

10 Q. You were also noting examples of -- in the
11 shales, of how open hole completions have a higher
12 risk.

13 Did you bring any evidence with you today
14 or a study showing this to be true?

15 A. Open hole completions?

16 Q. You were saying that they're a higher
17 risk. Mr. Grable asked you about these open hole
18 completions that related to higher risks.

19 A. Open hole is a higher risk.

20 Q. Did you bring any of that kind of evidence
21 or study or anything like that to show that here
22 today?

23 A. I think that's evident by operators
24 getting away from the Peak Completion in the shales.

25 Q. So the answer is no?

1 A. I did not bring any evidence, no. But I
2 believe that's published data through SPE. Several
3 papers have been written on that.

4 Q. Do you get danger of washout in shale that
5 is not present in a carbonate environment?

6 A. I'm sorry. Washed out in shales that are
7 not present --

8 Q. You don't have that same issue in a
9 carbonate environment?

10 A. Washout in shales? I'm sorry. I missed
11 your question. I'm not sure I understand your
12 question.

13 Q. Mr. Rodgers, have you performed any
14 attempted open hole packer systems in New Mexico?

15 A. No, I have not.

16 Q. In the open hole packer system that you
17 were discussing in the Barnett, what rate were you
18 dropping the frac ball?

19 A. At what rate was I dropping the frac ball?
20 Well, the frac ball drops at its own rate. We
21 pumped it down.

22 Q. Pump rate. Does that sound better?

23 A. Excuse me. Okay. Well, in Montague and
24 Cooke Counties, primarily Montague County, which is
25 in the Barnett Oil Combo area, we were pumping our

1 jobs somewhere between 25 and 45 barrels a minute.

2 In the Denton County and the Johnson
3 County area, which is more in the gas window, we
4 were pumping our jobs upwards of 70 -- 65 to
5 70 barrels a day.

6 Q. What were your port sharing pins set to?

7 A. Port sharing pins? There are not any
8 ports in a cased cemented lateral. You drop a frac
9 ball and it sits in your frac plug, and you break
10 down your next set. There are not any ports.

11 Q. You were mentioning one of the problems
12 that you have, an issue with the multilaterals, is
13 the commingling of waters between the Blinebry and
14 the Paddock.

15 Does Burnett currently commingle the
16 Paddock and Blinebry waters?

17 A. Yes, they do have commingled wells.

18 Q. Do you see the scalings in the commingling
19 in your vertical or horizontal wells that would be
20 here?

21 A. Just on a larger volume scale with the
22 horizontal wells.

23 Q. And there are methods to treat for scale
24 and the other issues that result from that
25 commingling of waters, aren't there?

1 A. Yes, if you can get back into that lateral
2 to clean it out.

3 Q. In fact, I think Burnett has a pretty
4 extensive treatment program, as I recall.

5 A. I'm not familiar with that.

6 Q. Do you do any individual zone testing in
7 your vertical wells? Does Barnett, do you know?

8 A. Listening to Mark talk, yes, they do do
9 individual zone testing.

10 Q. And do you perform workovers in your
11 vertical wells?

12 A. I am sure, yes. I do not know at what
13 frequency or whatever.

14 Q. The same risks are present when you
15 conduct individual zone testing and remedial work in
16 a vertical well and in a horizontal well, aren't
17 they?

18 A. No. The risk is much greater in a
19 horizontal well.

20 Q. Why is that?

21 A. Well, as I said earlier, you would have to
22 get into that lateral first. And if you're cutting
23 three windows, you have to get into each of the
24 three laterals for a vertical hole.

25 Q. Did you complete your answer?

1 A. Yes. I'm sorry.

2 Q. Mr. Rodgers, you noted that -- I want to
3 make sure I understand your answer -- that you would
4 recommend three grass root wells, three single
5 laterals, essentially?

6 A. Uh-huh.

7 Q. Is that what Burnett's proposing to do
8 now?

9 A. I have not gotten into that much detail on
10 that. I would think that would be a better option
11 than three laterals out of one vertical well bore.

12 Q. Your last testimony was how far apart you
13 could do pad drilling between each lateral.

14 If you were restricted by surface
15 conditions and could not do three laterals, what
16 would you do?

17 A. I don't see that you're restricted by
18 surface conditions, because you can put three
19 laterals on a -- on a -- I believe -- correct me if
20 I'm wrong here.

21 But Mr. Bird -- Mark said about a
22 300-by-300-foot pad you can do three laterals on
23 that.

24 Q. Assuming you can get the right rig to do
25 it, right?

1 A. Assuming you can get the right rig to do
2 it. Again, these are only 6,500-foot TVD wells.

3 Q. This goes back to an earlier question I
4 tried to ask you.

5 Do you think there is a greater danger of
6 washout during completions in an open hole packer
7 setting in a shale than in a carbonate/dolomite
8 environment?

9 A. I'm sorry. I'm going to have to ask you
10 to read it again.

11 Q. Do you think there is a greater danger of
12 a washout during completions in an open hole packer
13 setting in a shale than in a carbonate environment?

14 A. Yes, I think there are. I think you
15 probably would have a little bit more washout in a
16 shale environment than you do in a carbonate
17 environment.

18 Q. But you can't exactly equate the shale
19 environment as you could in a carbonate environment,
20 could you? You are saying it's greater in a shale?

21 A. Well, you have washouts in carbonate,
22 also. When I was working at Bass, working in
23 Slaughter San Andres, as we were drilling new wells,
24 I mean we saw washout in the carbonate all the time.

25 Q. Horizontal wells?

1 A. No, vertical. Well, I left before Bass
2 did the horizontals.

3 MS. MUNDS-DRY: Okay. I think that's all
4 the questions I have for you, Mr. Rodgers.

5 HEARING EXAMINER EZEANYIM: Thank you.
6 Mr. Grable?

7 MR. GRABLE: No redirect.

8 HEARING EXAMINER EZEANYIM: Mr. Rodgers,
9 have you ever done this packer open hole completion
10 anywhere?

11 THE WITNESS: In vertical holes, yes. In
12 horizontal wells, no.

13 HEARING EXAMINER EZEANYIM: Okay. You
14 have done it in vertical but not horizontal, right?

15 THE WITNESS: Yes.

16 HEARING EXAMINER EZEANYIM: Okay. Since
17 you have done it now, and you told me that a lot of
18 people are getting away from that practice, why are
19 they getting away from that practice?

20 THE WITNESS: Again, they were going back
21 to the frac ball pressure increases that they were
22 seeing in the -- in primarily the Barnett. They
23 were not seeing the frac ball pressure increases
24 from one stage to the next that they would see with
25 a cemented case hole lateral.

1 HEARING EXAMINER EZEANYIM: So you're
2 saying that it becomes an old technology. There are
3 new technologies that might be more efficient?

4 THE WITNESS: Correct.

5 HEARING EXAMINER EZEANYIM: Okay.

6 THE WITNESS: That's why COG, in
7 particular, who I can really speak for -- I mean
8 that's all they were doing was cemented case-hole
9 laterals.

10 HEARING EXAMINER EZEANYIM: Okay. So when
11 you say there's no -- well, my concern is if it
12 doesn't work well, are you going to lose different
13 hydrocarbons underground?

14 THE WITNESS: I think the EUR would be
15 less if you use the open hole packer technique.

16 HEARING EXAMINER EZEANYIM: You can
17 definitely say it will be less?

18 THE WITNESS: Because I do not think you
19 get the -- because you -- when you're pumping, I
20 don't know what rate we'll be pumping these out.

21 But when you're pumping -- I'll make up a
22 number, 50 barrels a minute -- through a set of
23 ports between packers that are anywhere between 150
24 and 200 feet apart, that's significantly different
25 than pumping 50 barrels a minute through, say, 30

1 perforations over 250 feet. That's critical on a
2 completion.

3 HEARING EXAMINER EZEANYIM: Okay.

4 THE WITNESS: It is a very limited entry
5 type technique, and it's been more proven in the
6 shale technology.

7 HEARING EXAMINER EZEANYIM: Then the next
8 question is: Why do you prefer three separate
9 laterals, three separate lateral wells, to a
10 multilateral?

11 THE WITNESS: First off, I think we can do
12 three grass root laterals cheaper than three
13 laterals out of a vertical well bore. I think the
14 risk of a vertical well bore with three laterals is
15 greater than the risk of three grass root lateral
16 wells at different elevations.

17 HEARING EXAMINER EZEANYIM: Explain to me
18 what are those risks, from drilling the three
19 laterals, as opposed to drilling three vertical
20 wells. What risks are you talking about?

21 THE WITNESS: You just drill one skid, the
22 15, 20, 25 feet, however far you need to skid to get
23 your next bore hole. You drill your second one,
24 skid it again, and drill your third one, if you
25 choose to drill all three of them back to back to

1 back.

2 HEARING EXAMINER EZEANYIM: So that would
3 minimize your risks?

4 THE WITNESS: That would be the most
5 efficient way to do it. That's correct.

6 HEARING EXAMINER EZEANYIM: And you say
7 it's also going to save you money?

8 THE WITNESS: Yes.

9 HEARING EXAMINER EZEANYIM: I'm not really
10 concerned about money. It's a business decision.

11 MR. GRABLE: I don't think he understood
12 your question.

13 He was asking you about increased risks,
14 dangerous risk of losing a hole versus three grass
15 roots single wells.

16 HEARING EXAMINER EZEANYIM: That was my
17 question.

18 THE WITNESS: I'm sorry. I think you
19 would have less risk on three grass root horizontals
20 than you would on one vertical with three laterals
21 out of it.

22 HEARING EXAMINER EZEANYIM: Yes, that is
23 what I'm saying. Explain to me those risks that's
24 less on three horizontals as opposed to laterals.

25 THE WITNESS: Primarily it comes, I

1 believe, on the completion side, where you're trying
2 to enter that open hole, case-hole packer, open hole
3 completion. You have got to latch on. I assume
4 they use PBRs. I don't know that.

5 Well, I assume the ports are closed. You
6 know, you do your total stage first, then you drop
7 either your ball or whatever you do, your next
8 ported stage, and then you work your way back up the
9 lateral.

10 HEARING EXAMINER EZEANYIM: Okay.

11 THE WITNESS: But just as I said earlier,
12 when we pulled whipstocks in Noonan, North Dakota,
13 we had trouble finding those windows with a bent
14 sub. A lot of times we had to go in with gyros,
15 more costly, to find that window cut in the casing.

16 HEARING EXAMINER EZEANYIM: Okay.

17 THE WITNESS: To me, there's just more
18 risk involved and more costly.

19 HEARING EXAMINER EZEANYIM: Yes, I know
20 you have risks.

21 Is there any circumstance where you would
22 recommend triple lateral or you recommend no one --
23 you wouldn't recommend a triple lateral whatever the
24 condition is?

25 THE WITNESS: As I said, I drilled a

1 couple of crow's foots, but those were all on the
2 same elevation in Montana, in the Red River zone.

3 If they were all on the same plane, I
4 would consider it, and if they were open hole. If
5 they were cased-hole, I would not ever consider it.

6 HEARING EXAMINER EZEANYIM: So if it's
7 cased you wouldn't consider it ever, but if it's
8 open you would?

9 THE WITNESS: Correct.

10 HEARING EXAMINER EZEANYIM: Okay. That's
11 what I wanted to get from you. Nothing further.

12 Do you want to call any rebuttal?

13 MR. BRUCE: Mr. Examiner, I would like to
14 recall Mr. Jacoby to the stand for some brief
15 testimony.

16 HEARING EXAMINER EZEANYIM: Any
17 objections?

18 MS. MUNDS-DRY: No.

19 HEARING EXAMINER EZEANYIM: If the record
20 could reflect Mark Jacoby has been recalled to the
21 stand.

22

23

24

25

1 MARK JACOBY,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 EXAMINATION

5 BY MR. BRUCE:

6 Q. Mr. Jacoby, I have handed you Exhibit 31,
7 and so I'll kind of recite from memory what that
8 exhibit was used to show. That based on 200 COG
9 wells, their estimated ultimate recovery was about
10 121,000 barrels?

11 A. Yes.

12 Q. And they show, based on 14 recent COG
13 wells, Burnett wells, the estimated ultimate was
14 about 109,000 per well, correct?

15 A. Correct.

16 HEARING EXAMINER EZEANYIM: Which
17 exhibit are you talking about?

18 MR. BRUCE: COG Exhibit 31.

19 HEARING EXAMINER EZEANYIM: Okay. Not
20 this one?

21 MR. BRUCE: No.

22 HEARING EXAMINER EZEANYIM: Okay. Go
23 ahead.

24 Q. (By Mr. Bruce) First of all, Mr. Jacoby,
25 could you just very briefly restate Burnett's

1 practice in completing these vertical wells?

2 A. What Burnett does is complete the lower
3 Blinebry first, frac the -- large volume frac. And
4 we much prefer producing that frac water with low
5 water frac. The well makes very good production,
6 but then they decline at different rates, different
7 times. We'll move up. Then after three, six, eight
8 months, a year, sometimes to the next --

9 HEARING EXAMINER EZEANYIM: It's not --
10 you're very soft-spoken, so please talk to us.

11 THE WITNESS: We complete the lower
12 Blinebry, frac it, and then we produce it for a time
13 to recover all of the load water until the well
14 stabilizes and the fluid is decreased.

15 And then we move up to the second zone in
16 the Blinebry, the upper Blinebry, and do the same
17 thing. Once again, produce it for a time, and then
18 move up into the Paddock, the very top, frac it,
19 complete it, produce it for a while until it cleans
20 up. And then we put all the three zones together to
21 commingle the production.

22 Q. (By Mr. Bruce) Okay. So when you're
23 looking at Exhibit 31, if these are recent wells,
24 chances are they only have been completed in one
25 Yeso zone?

1 A. I'm certain there will be some of these
2 wells that are producing from only the lower
3 Blinebry at this point in time.

4 Q. And would that 19,000 EUR comport with the
5 study by PGH Engineering, which showed that even in
6 the -- just out of the Blinebry, you're going to
7 recover in excess of 100,000 barrels in the well?

8 A. Yes. The study at PGH did show that we
9 would recover in excess of 100,000 from both lower
10 and upper Blinebry, the Blinebry together. But if
11 only half of the Blinebry is producing for a time
12 with some of the wells it would really skew this
13 curve.

14 Q. So that does not correct your testimony,
15 that based on the decline curve analysis, the
16 Burnett wells are capable of producing upward of
17 300,000 barrels per well?

18 A. Correct. This does not correct my
19 testimony on that.

20 Q. Okay.

21 MR. BRUCE: Next, Mr. Examiner, now, we
22 are moving to what I've marked Exhibit 8 that I
23 handed you. And very briefly -- Exhibit 8.

24 And I've lettered the pages, Mr. Examiner,
25 A through H.

1 Q. (By Mr. Bruce) First of all, what is that
2 slide A, Mr. Jacoby?

3 A. Slide A, shown up on the screen, depicts
4 Burnett's six vertical APDs. It shows the two
5 verticals that we have on-sites approved. APDs will
6 be filed for very soon.

7 And then it shows the -- currently, what
8 possibly could take place with the horizontals that
9 will be drilled.

10 Q. Okay. Let's go into what you hope to
11 produce on the horizontals.

12 What are exhibits -- slides B and then C?

13 A. This shows -- this depicts the three
14 horizontal wells that COG's drilled in the Paddock.

15 Q. And -- oops, they're out of order.

16 A. Okay. This depicts the McIntyre well that
17 COG is drilling in the Blinebry.

18 Q. This is one COG Blinebry horizontal and
19 three in the Paddock?

20 A. Correct. Correct.

21 Q. And did you look at production from those
22 wells?

23 A. Yes.

24 Q. Okay.

25 A. Yes.

1 Q. Now, we'll move on to slide D, which we've
2 already shown. These are Burnett's horizontal
3 wells, correct?

4 A. Yes, that's correct.

5 Q. That have produced at least six months?

6 A. Yes, that have produced at least six
7 months.

8 Q. Now, in looking at a production
9 comparison, are you going to use the cemented casing
10 completion in those six wells?

11 A. I will definitely use the cemented casing.

12 Q. Now, when you take Burnett's six cemented
13 completion wells and compare them to production from
14 COG's Paddock horizontals, what will you get?

15 A. What we did is we had to take all of the
16 subjectivity out of the comparison. This is actual
17 production in the first six months of each well.

18 And this is added up. The top curve is
19 the Burnett six wells, and the first six months is
20 the cumulative production divided by the total
21 lateral feet of those six wells. The total lateral
22 feet added up from those six wells is almost 12,000
23 lateral feet, for an average of about 2,000.

24 And then we took production, the total
25 production from those six months for each well and

1 calculated the barrels of oil per lateral foot
2 produced.

3 Q. Per month?

4 A. Per month.

5 Q. Okay.

6 A. Correct.

7 Q. And you did that for both Burnett and COG?

8 A. I did that for both Burnett and COG. And
9 the three Paddock wells for COG -- this just takes
10 the subjectivity out. It takes the EURs out, just
11 reduces it to barrels of oil per foot. And you can
12 see the difference in the numbers is very
13 significant.

14 Q. The Burnett wells produced substantially
15 better than the COG horizontal wells?

16 A. Yes, substantially better.

17 Q. And then if you move to the next slide, is
18 this essentially the same thing, just adding in the
19 COG Blinebry completion?

20 A. Yes. This just addresses the Blinebry
21 comparison to show the same thing.

22 Q. And again, this is just comparing
23 production per lateral foot in each of these wells?

24 A. That's correct. It is production per
25 lateral foot.

1 Q. And taking that, what type of return on
2 investment would you see, return on gross
3 investment, would you see from the Burnett wells,
4 from a Burnett horizontal well single lateral?

5 A. Okay. Single lateral, if you extrapolate
6 that barrels of oil per lateral foot, you take the
7 48 laterals times 4,600 fluid feet per lateral, that
8 equals 220,800 total lateral feet.

9 We took the total of that six months of
10 production divided by total lateral feet, so the
11 average for the first six months' normalized
12 production is 4.2 barrels of oil per lateral foot.
13 Multiply that times 220,800 lateral feet, it's
14 927,000 barrels of oil.

15 The Burnett's -- our estimated ~~completed~~
16 well cost on the horizontal is \$2.7 million. \$2.7
17 million, 48 wells, is \$129.6 million total
18 investment.

19 So the projected normalized six-month --
20 first six-month gross sales from the Taylor Draw
21 unit horizontals will be 74 million, using \$80 per
22 barrel.

23 Q. \$74 million?

24 A. \$74 million.

25 Q. Okay. So you would recover -- the first

1 six months of those wells you would recover a
2 majority of the gross investment in the wells?

3 A. The first six months we would recover a
4 calculated 57 percent of the gross cost, gross
5 investment.

6 Q. Moving on to the final slide, how does
7 that compare with the COG?

8 Before you start on this, perhaps we
9 should say that COG's testimony was that they were
10 going to recover a million barrels per triple
11 lateral.

12 Do you see any recoveries like that in the
13 single? Do you see a recovery of 300,000 barrels
14 plus in any single lateral?

15 A. No, I don't. We did the very same thing,
16 taking the 1.4 barrels of oil per lateral foot the
17 first six months of those three wells, multiply it
18 times the total lateral feet, to get 463,680 barrels
19 of oil.

20 I took -- the COG's estimated completed
21 well cost is \$9.6 million. The total investment
22 would be \$230.4 million.

23 Doing the same thing, projecting the
24 normalized six-month gross sales, using, again, \$80
25 per barrel, would be \$37 million.

1 Q. Based on your calculations, Burnett is
2 running a much more economical operation?

3 A. Based on this, they'd recover 16 percent
4 of gross investment. This just takes real numbers
5 and applies it to the cost.

6 Q. Then I am handing you Exhibit 9.

7 Using those same numbers you just talked
8 about, did you then compute recovery of -- or I
9 should say royalty and severance tax benefit to the
10 state and federal government?

11 A. Yes. We just projected the federal
12 royalties of New Mexico State tax revenue at 12 and
13 a half percent.

14 Based on this, the first six-month
15 normalized production with Burnett would be
16 \$9,273,600. The COG number would be \$6 million.

17 The projected state tax revenue at
18 8.2 percent, based on that same first six-month
19 normalized production for Burnett would be 4.6
20 million. COG would be 3 million.

21 Q. Again, substantially more benefit to the
22 state and federal governments would result?

23 A. Burnett numbers here would result in
24 52 percent more revenue to the federal government
25 and the State of New Mexico.

1 Q. Were Exhibits 8 and 9 prepared by you or
2 under your supervision?

3 A. Yes, they were.

4 MR. BRUCE: Mr. Examiner, I would move the
5 admission of Exhibits 8 and 9.

6 MS. MUNDS-DRY: No objection.

7 MR. GRABLE: While we are there, I'm not
8 sure I offered Exhibit 10. If I haven't, I'll offer
9 it now.

10 MS. MUNDS-DRY: No objection.

11 HEARING EXAMINER EZEANYIM: You have got
12 no objection on this?

13 MS. MUNDS-DRY: No objection.

14 HEARING EXAMINER EZEANYIM: Exhibits 8
15 through 10 will be admitted.

16 HEARING EXAMINER EZEANYIM: Now, my
17 question on these Exhibits 8 and 9, why did you not
18 present it before?

19 MR. BRUCE: Well, Mr. Examiner, we were
20 waiting to see what they were going to present with
21 respect to their recoveries.

22 HEARING EXAMINER EZEANYIM: Okay.

23 MR. BRUCE: I pass the witness.

24

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EXAMINATION

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BY MS. MUNDS-DRY:

Q. Mr. Jacoby, what proposals are before the division today -- what's Burnett asking the division to adjudicate today?

A. They're proposing two wells, two vertical wells, compulsory pooling Federal 3 and Partition Federal 3.

Q. And this Exhibit 8 and 9 includes some sort of plan of development from Burnett for a full plan of horizontal well development, correct?

A. It includes some plan, yes.

Q. And that plan, as I understand it, is to perhaps drill two single laterals, one in the Paddock and one in the Blinebry?

A. To begin with, to evaluate, yes.

Q. I guess I'm still wondering how you're going to fully produce the Blinebry with one lateral.

A. It would be alternating laterals in the Blinebry. We feel like with our stimulation technique -- applying this to our stimulation thus far, we feel like this applies to the recovery we would get from horizontals.

Q. Mr. Jacoby, on your slide -- this is a

1 slide that we've seen before on the EUR for the
2 horizontal Yeso wells, comparing the cemented casing
3 completions with the uncemented casing completions.
4 The uncemented casing completions Burnett did are
5 not the same as the system Concho is proposing,
6 right?

7 A. I think that's correct, yes.

8 Q. You used four of Concho's wells to
9 evaluate production in this packet, is that correct,
10 horizontal wells?

11 A. We'd just -- there were only four Yeso
12 Concho wells, taking the actual production on the
13 horizontal wells, three of the Paddock, for this
14 evaluation.

15 Q. There's actually five horizontal wells in
16 the Yeso, aren't there, drilled by Concho?

17 A. I'm not sure. I thought we identified
18 three Paddocks and one Blinbry.

19 Q. On this Exhibit Number 9, this comparison
20 of federal royalty between Burnett and Concho is
21 based on what?

22 A. It's based on the slide that is up on the
23 board there, the actual production per lateral foot.
24 Horizontal, we took -- averaged the production for
25 those six months, added the lateral feet, divided it

1 to get an average of 4.2 barrels per lateral foot.

2 Q. Did you use 24 horizontal wells in that
3 equation or 48 laterals, or what did you use to get
4 there?

5 A. Yes. That is the COG projected income
6 based on their horizontal plan proposed.

7 If you will go back one more slide to
8 Burnett, it would be 48 laterals based on those
9 numbers.

10 Q. And then, again with Exhibit Number 9, the
11 last exhibit you discussed, that's also based on 48
12 laterals?

13 A. Correct.

14 Q. But those are not before the division
15 tonight?

16 A. This just was the potential plan of
17 development, to compare to Concho's plan of
18 development to their horizontals.

19 Q. Mr. Jacoby, assuming you go with the
20 horizontal well plan, what's your anticipated pace
21 of development?

22 A. I don't know exactly what the number of
23 wells would be. We have talked about that some. We
24 would drill verticals to evaluate. We would follow
25 that with three horizontals, one horizontal in each

1 section. I'm not sure exactly what the pace would
2 be.

3 Q. So these royalties and state tax revenue,
4 that is not something that the federal or state
5 government would see in one year, in five years.
6 You just don't know?

7 A. This does not take in the time value. It
8 is just taking the current production.

9 Q. Did you do a calculation of what the
10 projected federal royalty revenue would be for two
11 vertical wells?

12 A. No, I did not.

13 Q. What about the projected state tax revenue
14 for the two vertical wells you produced today?

15 A. No, I did not.

16 MS. MUNDS-DRY: Thank you, Mr. Jacoby. I
17 have nothing further.

18 HEARING EXAMINER EZEANYIM: Any redirect?

19 FURTHER EXAMINATION

20 BY MR. BRUCE:

21 Q. Mr. Jacoby, you have sat through the
22 testimony all day today?

23 A. I have.

24 Q. Unfortunately?

25 A. Yes.

1 Q. It's come up a couple of times, where our
2 witnesses have been questioned about what we're here
3 for today. And of course, we -- Burnett just has
4 the two vertical wells here for forced pooling
5 today?

6 A. That's correct.

7 Q. And 22 cases were heard back in May?

8 A. Yes, that's correct.

9 Q. But there are three sections of land
10 involved.

11 Is it reasonable to think that Burnett is
12 going to develop the three sections of land,
13 ultimately, with only three or four wells of
14 whatever type?

15 A. Say that again.

16 Q. Do you think -- would Burnett seek to
17 reasonably develop these three sections of land with
18 only four or five wells, vertical or horizontal, in
19 total?

20 A. No, absolutely not. It would take more
21 wells.

22 Q. So what we're starting to do here is to
23 get the development rolling. And as we go along,
24 once we learn more data, get more data from the
25 wells, then determine the ultimate plan of

1 development?

2 A. Absolutely. That's correct.

3 Q. Do you think it's premature to go out
4 there and, say, in the next six months, drill 24
5 triple lateral horizontals?

6 A. Yes, it would be premature.

7 Q. When you were asked about how many wells
8 would be drilled, Burnett was ready to start
9 drilling these wells last March, wasn't it?

10 A. Yes, we were. I had the wells in my
11 drilling schedule for March.

12 Q. You're not trying to slow play
13 development, are you?

14 A. We are not trying to slow play. I was
15 ready to drill over in the year.

16 Q. Didn't you have a rig in your inventory so
17 that you could drill more wells out -- in this
18 inventory?

19 A. Yes, I had a rig planned to come. The rig
20 is available this week.

21 MR. BRUCE: Thank you, Mr. Jacoby. That's
22 all.

23 HEARING EXAMINER EZEANYIM: Actually, I
24 don't have any questions for you.

25 (Following the above proceedings there was

1 settlement discussion. The attorneys have made the
2 decision to forego transcription of those
3 discussions. Also, technical difficulties ensued
4 concerning the court reporter's equipment which was
5 beyond anyone's control.)

6 (Proceedings concluded.)

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. _____
heard by me on _____

Oil Conservation Division, Examiner

CERTIFICATE

I, Paul Baca, RPR, CCR in and for the
State of New Mexico, do hereby certify that the
above and foregoing contains a true and correct
record, produced to the best of my ability via
machine shorthand and computer-aided transcription,
of the proceedings had in this matter.

PAUL BACA, RPR, CCR
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