

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

**COPY**

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

6 APPLICATION OF COG OPERATING, Consolidated Cases  
7 LLC, FOR A NONSTANDARD SPACING 14845 AND 14850  
8 AND PRORATION UNIT AND COMPULSORY  
9 POOLING, EDDY COUNTY,  
10 NEW MEXICO

10 TRANSCRIPT OF PROCEEDINGS

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

13 June 25, 2012

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, June 25, 2012, 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

23

24 REPORTED BY: PAUL BACA, CCR #112  
25 PAUL BACA COURT REPORTERS  
500 4th Street, NW, Suite 105

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A P P E A R A N C E S

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1 CHAIRMAN BROOKS: We need to go back on  
2 the record.

3 At this time we'll call Case Number 14849,  
4 application of COG Operating, LLC, for a nonstandard  
5 spacing and proration unit, Eddy County, New Mexico.

6 Call for appearances.

7 MR. RANKIN: Thank you, Mr. Examiner.  
8 Adam Rankin with Holland & Hart, Santa Fe, on behalf  
9 of the applicant, COG Operating.

10 And as we indicated in our prehearing  
11 statement, we'd like to present this case for  
12 purposes of the testimony concurrently with Case  
13 Number 14850.

14 CHAIRMAN BROOKS: Okay. And then we will  
15 call Case Number 14850, application of COG  
16 Operating, LLC, for a nonstandard spacing and  
17 proration unit, Eddy County, New Mexico.

18 Call for appearances.

19 MR. RANKIN: Thank you, Mr. Examiner.

20 Adam Rankin on behalf of COG with Holland  
21 & Hart, Santa Fe.

22 I have two witnesses total for these  
23 cases.

24 CHAIRMAN BROOKS: Okay. Case Numbers  
25 14849 and 14850 will be consolidated for purposes of

1 hearing.

2 And have both your witnesses been sworn  
3 today in previous cases?

4 MR. RANKIN: They have not.

5 CHAIRMAN BROOKS: Okay. Very good. Call  
6 your witnesses.

7 MR. BRUCE: Mr. Examiner, Jim Bruce, of  
8 Santa Fe, representing Mewbourne Oil Company. I  
9 have no witnesses.

10 CHAIRMAN BROOKS: Okay. And you're  
11 appearing in both cases, 14849 and 14850?

12 MR. BRUCE: That's correct.

13 CHAIRMAN BROOKS: Very good.

14 You may proceed and swear the witnesses.

15 (Witnesses sworn.)

16 CHAIRMAN BROOKS: Please state your names  
17 for the record, please.

18 THE WITNESS: Brandon Gaynor.

19 THE WITNESS: Harvin Broughton.

20 CHAIRMAN BROOKS: Okay.

21 MR. RANKIN: Thank you, Mr. Examiner.

22 I call my first witness, Mr. Brandon  
23 Gaynor.

24

25

1 BRANDON GAYNOR,  
2 after having been first duly sworn under oath,  
3 was questioned and testified as follows:

4 EXAMINATION

5 BY MR. RANKIN:

6 Q. Mr. Gaynor, can you please restate your  
7 name for the record?

8 A. Brandon Gaynor.

9 Q. And by whom are you employed?

10 A. Concho.

11 Q. And where do you reside?

12 A. In Midland, Texas.

13 Q. And what is your job with Concho?

14 A. I'm a landman.

15 Q. And have you previously testified before  
16 the division, and have your credentials as a  
17 certified -- as a landman in oil and gas been  
18 accepted to the record?

19 A. Yes.

20 Q. And are you familiar with the applications  
21 that were filed in these two cases?

22 A. Yes, I am.

23 Q. Are you familiar with the status of the  
24 lands in these two cases?

25 A. Yes.

1 MR. RANKIN: Mr. Examiner, I would move to  
2 tender Mr. Gaynor as an expert in petroleum land  
3 matters.

4 CHAIRMAN BROOKS: So qualified.

5 Q. (By Mr. Rankin) Mr. Gaynor, can you  
6 please turn to Exhibit Number 1 that has been marked  
7 in your exhibit packet, and review for the Examiners  
8 the first page of that exhibit?

9 A. Yes. The first page of this exhibit is  
10 sort of a broad look at the main part of the Yeso  
11 shelf, which is Township 17 south, Range 27 east  
12 through 32 east.

13 And towards the middle, towards the top  
14 outlined in blue, is what we're calling the Hogan  
15 lease. And that's what we're here about today.

16 Q. Turning to the next page of the exhibit,  
17 is this an ownership plat that depicts the ownership  
18 and percent interest for each owner in the south  
19 half of Section 2?

20 A. Yes, it is. It shows the path -- or the  
21 approximate path of the horizontal well bores for  
22 the Hogan State Com Number 2H and the Hogan State  
23 Com Number 4H. And it goes through these various  
24 different ownership areas.

25 CHAIRMAN BROOKS: And this is Section 2 of

1     what township and range?

2                   THE WITNESS:   Township 17 south, Range 29  
3     east.

4                   CHAIRMAN BROOKS:   I see.

5           Q.     (By Mr. Rankin)   Turning to the next page,  
6     this is an actual list of each of those ownership  
7     interests for each of these wells.  Is that correct?

8           A.     Yes.  This would be the ownership of each  
9     well.

10          Q.     And of these owners, how many remain  
11     uncommitted or noncommitted to the notices for the  
12     wells -- for each well?

13          A.     We have obtained voluntary agreements with  
14     Rubicon, and we have picked up the interest of Maria  
15     de la Luz A. Corral-Espinoza, which is fourth from  
16     the bottom on this.

17          Q.     But you've been unable to reach agreement  
18     with the other parties.  Is that correct?

19          A.     That's correct.

20          Q.     What is it that COG is seeking with these  
21     applications?

22          A.     We're seeking to create a nonstandard  
23     spacing unit comprising the north half of the south  
24     half of Section 2, Township 17 south, Range 29 east,  
25     for the Hogan State Com Number 2H.  And the same

1 exact thing for the south half of the south half for  
2 the Hogan State Com Number 4H, and also to pool all  
3 uncommitted mineral interests thereunder.

4 Q. Within the Yeso formation. Is that  
5 correct?

6 A. Yes, that is correct.

7 Q. And you're also seeking to have COG  
8 designated the operator of the well in those two  
9 locations. Is that correct?

10 A. Yes, that's correct.

11 Q. And what pool is involved? Is there a  
12 pool that's subject to this?

13 A. It's kind of funny. Because even though  
14 the Number 4H will only be 330 feet away from the  
15 northern extremity of the Dodd Glorieta upper Yeso  
16 pool, that pool cannot expand in any direction as  
17 part of the order creating it. So I think,  
18 technically, it's a wildcat.

19 Q. Thank you, Mr. Gaynor. So that would mean  
20 it would be subject to the statewide setback order.  
21 Is that correct?

22 A. Yes.

23 CHAIRMAN BROOKS: You are asking to pool  
24 Abo only?

25 THE WITNESS: Yeso only.



1 CHAIRMAN BROOKS: Yeso, I mean.

2 THE WITNESS: Yes.

3 Q. (By Mr. Rankin) And both of these wells  
4 are on federal land. Is that correct?

5 A. State lands.

6 Q. State lands. I'm sorry. Thank you.

7 Mr. Gaynor, turning to Exhibit Number 2 in  
8 the exhibit packet, this is a sample of a proposed  
9 letter that was sent out to all interest owners in  
10 the well. Is that correct?

11 A. Yes, that is correct.

12 Q. And this is the same as for Exhibit  
13 Number 3. This is -- Exhibit Number 3 is the  
14 well -- the sample letter that went to the 2H  
15 interest owners. Is that correct?

16 A. Well, Number 2 is for the 2H, yes.

17 Q. And 3 is for the --

18 A. The 4H.

19 Q. -- 4H. Thank you.

20 And with these well proposals was there an  
21 AFE that was included as well?

22 A. Yes, there was.

23 Q. And now, looking at the AFE, are these  
24 costs consistent with what COG has incurred for  
25 drilling similar horizontal wells in the area?

1           A.     Yes.

2           Q.     That's true for both wells?

3           A.     For both of them. They're identical AFEs.

4           Q.     And aside from sending the well proposal  
5 letter and the AFEs to all of the interest owners,  
6 what efforts has COG undertaken to acquire the  
7 voluntary agreement of the noncommitted interests in  
8 these wells?

9           A.     It varies from party to party. There have  
10 been phone calls. There have been in-person  
11 meetings. E-mails. A number of different ways to  
12 try to get everybody on the same page.

13          Q.     Now, has COG made an estimate of the  
14 overhead administrative costs while drilling this  
15 well and while producing it successfully?

16          A.     Yes. That's 6,000 well drilling and 600  
17 well producing.

18          Q.     And these costs are also consistent with  
19 what has been charged for similar wells in the area.  
20 Is that correct?

21          A.     That's correct.

22          Q.     And does COG request that these fees be  
23 incorporated into any pooling order that results  
24 from this hearing?

25          A.     Yes, that's correct.

1 Q. And does COG also request that the maximum  
2 200 percent interest rate be assessed against  
3 interests not committed to this well voluntarily?

4 A. Yes.

5 Q. Mr. Gaynor, do you also intend to have a  
6 geologist come present testimony regarding the  
7 formation of a nonstandard unit?

8 A. Yes. Mr. Broughton is here, and he -- he  
9 is going to testify with passion about the geology  
10 in this area.

11 Q. Very good, Mr. Gaynor.

12 Now, has COG also then identified all the  
13 lease mineral interests in the surrounding 40-acre  
14 tracts of these two proposed nonstandard units?

15 A. Yes, we have.

16 Q. And have you provided notice to those  
17 interests as well?

18 A. Yes, we have.

19 Q. Turning to Exhibits Number 4 and 5, this  
20 is an affidavit?

21 A. Yes.

22 Q. Prepared by your attorney, indicating that  
23 notice was provided in accordance with the division  
24 rules. Is that correct?

25 A. Yes, that is correct.

1 Q. And on the second page of each of those  
2 exhibits is a copy of the sample letter that went  
3 out. Is that correct?

4 A. Yes, that is correct.

5 Q. And subsequent pages indicate the parties  
6 that received notice, including the offset  
7 interests --

8 A. Yes.

9 Q. -- along with the green cards indicating  
10 that they received notice?

11 A. Yes, that's correct.

12 Q. And just to point out, the only party that  
13 did not receive a green card was the Maria de la --

14 A. -- de luz A. Corral-Espinoza.

15 Q. Who you have since secured a lease from.  
16 Is that correct?

17 A. Yes, from her heirs.

18 Q. And that's the same for both wells. Is  
19 that correct?

20 A. Yes.

21 Q. Thank you.

22 MR. RANKIN: Mr. Examiner, I move to admit  
23 into evidence Exhibit Numbers 1 through 5.

24 CHAIRMAN BROOKS: 1 through 5.

25 Any objection, Mr. Bruce?

1 MR. BRUCE: No objection.

2 CHAIRMAN BROOKS: 1 through 5 are

3 admitted.

4 MR. RANKIN: Mr. Examiner, I have no

5 further questions of the witness.

6 CHAIRMAN BROOKS: You said they're state

7 lands. So I assume all these interest owners listed

8 are owners of leasehold interests?

9 THE WITNESS: Yes. These are all

10 leasehold interests on state leases.

11 CHAIRMAN BROOKS: Do you have a green card

12 from everybody on your list?

13 THE WITNESS: Yes.

14 CHAIRMAN BROOKS: Okay. Except --

15 THE WITNESS: Except for the one that

16 we --

17 CHAIRMAN BROOKS: Okay. And you're

18 confident, as a professional landman, that you got

19 all the adds?

20 THE WITNESS: Yes, we are.

21 CHAIRMAN BROOKS: Very good.

22 Mr. Ezeanyim?

23 CHIEF ENGINEER EZEANYIM: Are you also

24 testifying with passion?

25 THE WITNESS: I am also testifying with

1 passion.

2 EXAMINATION

3 BY MR. BRUCE:

4 Q. Mr. Gaynor, one of the parties you're  
5 pooling is Mewbourne Oil Company, correct?

6 A. Yes, that's correct.

7 Q. And has Concho been in touch -- in contact  
8 with Mewbourne regarding their enjoiner in some  
9 fashion or another?

10 A. Yes. Perhaps more than any other party in  
11 here.

12 Q. And after this hearing, will you continue  
13 to negotiate with Mewbourne?

14 A. Yes, we will.

15 MR. BRUCE: That's all I have.

16 CHAIRMAN BROOKS: Okay. Is either party  
17 requesting that -- our orders generally say "all  
18 interests whatever they may be are pooled." Is  
19 either party requesting that Mewbourne be excluded  
20 from the reach of the order?

21 MR. BRUCE: No.

22 CHAIRMAN BROOKS: Very good.

23 I have nothing further from this witness.

24 CHIEF ENGINEER EZEANYIM: No questions.

25 MR. RANKIN: Nothing further from myself.

1 Thank you, Mr. Gaynor.

2 THE WITNESS: Thank you.

3 CHAIRMAN BROOKS: Now, we will get to call  
4 the passionate geologist.

5 MR. RANKIN: Mr. Examiner, I call my  
6 second witness, Mr. Harvin Broughton, to testify  
7 about the geology.

8 HARVIN BROUGHTON,  
9 after having been first duly sworn under oath,  
10 was questioned and testified as follows:

11 EXAMINATION

12 BY MR. RANKIN:

13 Q. Mr. Broughton, would you please state your  
14 name for the record.

15 A. Harvin Broughton.

16 Q. Thank you, Mr. Broughton.

17 By whom are you employed?

18 A. Concho Resources.

19 Q. And in what capacity?

20 A. I am a senior geologist.

21 Q. And where do you reside?

22 A. I live in Midland, Texas.

23 Q. And have you testified before before the  
24 division and had your credentials as a petroleum  
25 geologist accepted?

1           A.     Yes, I have.

2           Q.     Are you familiar with the applications  
3     that are filed in these two cases?

4           A.     I am.

5           Q.     Have you conducted a geologic study of the  
6     area?

7           A.     I have.

8                   MR. RANKIN:  Mr. Examiner, I would move to  
9     tender Mr. Broughton as an expert in petroleum  
10    geology.

11                   CHAIRMAN BROOKS:  So qualified.

12                   MR. RANKIN:  Thank you, Mr. Examiner.

13           Q.     (By Mr. Rankin)  Turning to Exhibit  
14    Number 6, Mr. Broughton, can you please review for  
15    the Examiners what this map depicts?

16           A.     Okay.  This is a zoomed-in view of what  
17    we're calling the Hogan lease, which is the south  
18    half of Section 2, 17/29.

19                   The yellow -- well, the blue box around it  
20    is obviously the Hogan lease.  There's a number of  
21    wells on this map.  You'll notice the black dots.  
22    Those are all shallow wells.

23                   Towards the bottom of the map there are  
24    some colored dots.  There's some red, some blue, and  
25    then some half and half.  Those are Yeso wells.



1           The red dots are the Paddock wells, which  
2           is the upper part of the Yeso.

3           The blue dot -- well, I guess there's just  
4           one of them there by itself -- is a Blinebry  
5           exclusive. And then the half and halves are combos.

6           The A to A prime is the cross-section that  
7           we're going to see in the next exhibit. So the four  
8           circles in the pink color there on the A to A prime  
9           are the four wells that will be depicted in the  
10          cross-section.

11          Please pay attention to the second well in  
12          the cross-section, the second-from-the-left, the one  
13          that's -- actually falls on the Hogan lease. It's  
14          a -- it's Well Number 1 with a TB of 10,000. And  
15          so -- or so. It's a deep Morrow well.

16          The reason I use these four wells is that  
17          these are the only wells in the area that go deep  
18          enough to show the entire Yeso section. So the rest  
19          of the wells up in the Section 2 area are all  
20          San Andres wells. None of them make it to the Yeso,  
21          so that's why I've selected these four wells.

22          Q.     Thank you, Mr. Broughton.

23          Moving right on to the cross-section on  
24          the next exhibit, Number 7, there's a pullout map in  
25          the plastic sleeve. If you could, review for the

1 Examiners the cross-section for this.

2 A. Okay.

3 And we -- we produced this at this size to  
4 make it easier to read the numbers and the depths.  
5 8-and-a-half-by-11 sheets, it's very difficult to  
6 read.

7 But, this is the cross-section that we just  
8 referred to from the other exhibit. And it shows  
9 four different well logs, and those are from the  
10 four wells that we have shown you.

11 And from the top down we have marked the  
12 formations here. So you'll notice in yellow, the  
13 yellow band is the Glorieta. That's the sand  
14 interval that is the upper boundary of the producing  
15 Yeso carbonate.

16 The top of the Paddock, in that green  
17 band, that's the Paddock interval.

18 Then you move down to the Blinebry, which  
19 is the top of the Blinebry there in the middle of  
20 the page and that pink band, which indicates the  
21 entire Blinebry interval.

22 And then the lower boundary of the  
23 producing carbonate in the Yeso is the Tubb. So the  
24 Tubb sand is marked in the yellow band below.

25 And I've shown this in a structural

1 cross-section to show -- really, to show two things:  
2 It's the consistency of the thickness of these units  
3 and the relative position of them to one another.  
4 So you have a slightly downdipping to the east and  
5 south/southeast of the formations across these four  
6 wells.

7 Q. Looking at your next exhibit, Number 8,  
8 these are also in a sleeve.

9 What does that reflect?

10 A. Okay. As I have mentioned before, the  
11 second well in the cross-section -- the second  
12 well -- I'm using this well because it actually  
13 falls in Section 2, so it would be the closest well  
14 bore to any of the lands that we are discussing.

15 So this is a depiction of the possible  
16 complete development of the Yeso formation with  
17 three laterals.

18 There's a lower lateral you will notice at  
19 5200 feet. That would be the first well bore that's  
20 drilled.

21 Then after completion, testing, and  
22 production for a designated amount of time we would  
23 propose to come up, and from the same well bore,  
24 exit at a depth of approximately 4800 and drill a  
25 second full-section lateral.

1           The same process with that: Completion,  
2     testing and production.

3           Then at a later date, as determined by our  
4     reservoir engineers, come up and out of the same  
5     well bore, drill a third lateral up in the Paddock  
6     formation doing the same things: Another  
7     full-section lateral, where we would complete it,  
8     test it, produce it, to get the productivity of it.  
9     And then we would pull all of the plugs out of the  
10    rest of it and produce the entire three-leg lateral  
11    together as one.

12           That would be the possible future  
13    development for that entire -- for that thick  
14    interval.

15           Q.     Now, Mr. Broughton, based on your analysis  
16    and your study of the geology of the area and of the  
17    proposed portions, what conclusions have you drawn  
18    about producing within the proposed areas?

19           A.     We believe -- I believe that the -- both  
20    the Paddock and the Blinebry formations in this area  
21    are potentially productive and should be drilled,  
22    completed, and tested.

23           We do have some offset productions very  
24    early in that, that suggests that horizontal is a  
25    good way to develop -- develop this. So we don't

1     have a whole -- long-term data on this, but we --  
2     but early indications are very good that the  
3     horizontal wells in the Blinebry and the Paddock  
4     are -- are ways to economically develop this  
5     formation.

6           Q.     So based on your analysis and your look at  
7     the cross-section and so forth, you've determined  
8     that there's no impediment to developing these areas  
9     horizontally?

10          A.     No, there would be no impediment. It  
11     looks similar to Yeso formations in adjacent and  
12     nearby areas.

13          Q.     And full-section horizontals, in your  
14     opinion, can effectively and efficiently produce  
15     these proposed areas?

16          A.     Yes.

17          Q.     And you also expect that -- based on your  
18     analysis -- that each well will -- each 40-acre unit  
19     will contribute roughly equally to the production of  
20     each well?

21          A.     I believe that to be true, yes.

22          Q.     Now, Mr. Broughton, turning to the final  
23     exhibit, Exhibit Number 9. This is a well bore  
24     diagram schematic, is that correct, and it basically  
25     indicates what?

1           A.     I put this particular schematic together  
2     to show the setbacks. And this -- the red  
3     horizontal well here is just depicting the lower  
4     lateral, so this would be the first one that's  
5     drilled. But the surface and bottom hole location  
6     and all completion would be within our 330-foot  
7     setbacks off the section lines.

8           Q.     Now, Mr. Broughton, in conclusion, in your  
9     opinion, would the granting of COG's application in  
10    both of these cases be in the interest of  
11    conservation, prevention of waste, and the  
12    protection of correlative rights?

13          A.     Yes, I believe it will.

14          Q.     Mr. Broughton, were Exhibits 6 through 9  
15    either prepared by you or under your supervision?

16          A.     Yes, they were.

17                 MR. RANKIN: Mr. Examiner, I have no  
18    further questions, and I move to admit to the record  
19    Exhibits 6 through 9.

20                 MR. BRUCE: No objection.

21                 CHAIRMAN BROOKS: 6 through 9 are  
22    admitted.

23                 MR. BRUCE: I have no questions.

24                 CHAIRMAN BROOKS: Well, I do.

25                 How much of this three-lateral project is

1 \$4,229,000 supposed to buy?

2 THE WITNESS: I believe that is for all  
3 three legs of it, for the complete.

4 CHAIRMAN BROOKS: Okay. So a gentleman in  
5 the audience held up one finger.

6 THE WITNESS: Oh, for the low -- for the  
7 first part, for the lower lateral.

8 CHAIRMAN BROOKS: Okay. Do you propose to  
9 offer the pooled parties a separate election for the  
10 second and third laterals?

11 THE WITNESS: That would be a question for  
12 our land department. I'm not sure how that would  
13 be.

14 CHAIRMAN BROOKS: I will have to recall  
15 Mr. Gaynor, then.

16 Then in that case, I have no further  
17 questions for this witness.

18 Mr. Ezeanyim?

19 CHIEF ENGINEER EZEANYIM: No, I have no  
20 questions for you.

21 CHAIRMAN BROOKS: Could you recall  
22 Mr. Gaynor again, please?

23 MR. RANKIN: Yes. Absolutely.

24 Mr. Gaynor.

25

1 BRANDON K. GAYNOR,

2 after having been previously duly sworn under oath,  
3 was questioned and testified further as follows:

4 CHAIRMAN BROOKS: Mr. Gaynor, this AFE, I  
5 gather from the nonverbal declaration made by a  
6 gentleman in the audience, that this AFE is for only  
7 the first lateral?

8 THE WITNESS: That's correct. It's just  
9 for the lowest leg, which is also the most expensive  
10 leg.

11 CHAIRMAN BROOKS: Okay. Do you propose  
12 that we provide for a separate election for the  
13 subsequent laterals or do you propose that we not  
14 make such a provision?

15 THE WITNESS: Well, the way that we have  
16 been looking at it is that once it's pooled, it's  
17 pooled.

18 In particular, if you nonconsent the first  
19 lateral, coming back into the second lateral poses a  
20 number of real serious problems for us in terms of  
21 being able to allocate what's coming from where and  
22 so on.

23 CHAIRMAN BROOKS: But if you consent to  
24 the first lateral and you don't come forward with  
25 your money at the time you propose the second



1 lateral, what effect does that have?

2 THE WITNESS: Well, what we have proposed  
3 to parties is that if you want out -- we propose the  
4 first one and we drill it. And then we -- you know,  
5 all the consenting parties get another election.  
6 And that if they choose to nonconsent, then they're  
7 back out of production until that second part has  
8 paid out of the production coming from both legs.

9 CHAIRMAN BROOKS: Okay. Now, I didn't  
10 follow your line testimony, because it's not  
11 necessary -- this portion of it's not necessary to  
12 write the order. Are there some of these parties  
13 that -- do you have independent parties with whom  
14 you have a joint operating agreement in this  
15 prospect?

16 THE WITNESS: We have a joint operating  
17 agreement with Rubicon.

18 CHAIRMAN BROOKS: Okay. And is that the  
19 way you have it provided in your joint operating  
20 agreement?

21 A. When we originally did our operating  
22 agreement with them it was structured differently.  
23 But we have since given them our new form, and they  
24 have agreed to sign it, though it's not yet signed.

25 CHAIRMAN BROOKS: What you're saying is

1     that the parties that consent get the opportunity  
2     for a second election?

3             THE WITNESS:   Yes.

4             CHAIRMAN BROOKS:   Which would -- yeah.  
5     That would -- okay.

6             I guess that's all -- all my questions.

7             I assume, from the way you studied it,  
8     that you're proposing that we structure the  
9     compulsory pooling order similarly.

10            THE WITNESS:   Right.   Or, you know, what I  
11     think had come out with our -- from our discussions  
12     with Gabrielle, you know, when we came up to talk  
13     about this, was you're pooling the entire thing and  
14     it's one well.   So how do you get into part of a  
15     well and out of part of a well?   So it's -- you have  
16     to be all in or all out at any given time.

17            CHAIRMAN BROOKS:   Well, despite the rule  
18     provision that this is one well, we can structure --  
19     we have -- the division has considerable flexibility  
20     in the terms -- in terms of the way it structures a  
21     compulsory pooling order.   And -- you know.

22            The proposed -- what I'm trying to  
23     understand, first off, is what you're proposing.

24            THE WITNESS:   Uh-huh.

25            CHAIRMAN BROOKS:   And then I'll ask

1 Mr. Bruce if he agrees with it. And then since  
2 there are other parties, we'll still have to  
3 exercise our judgment.

4 But are you going to -- this estimate is  
5 only for the first line, right, the estimate that's  
6 Exhibit 3?

7 THE WITNESS: Yes, that is correct.

8 CHAIRMAN BROOKS: Now, our typical force  
9 pooling order says that after the entry of the order  
10 you will then -- you will then make an estimate.  
11 This estimate is not binding for purposes of -- the  
12 estimate that you make in your initial proposal is  
13 never binding for purposes of -- on the operator --  
14 for purposes of the election provided in the forced  
15 pooling order.

16 THE WITNESS: Right.

17 CHAIRMAN BROOKS: That is the estimate  
18 that you will furnish to the people -- to the  
19 pooling parties after the pooling order is issued.

20 Now, is that estimate going to be for the  
21 first lateral only or do you propose that that  
22 estimate be for the entire --

23 THE WITNESS: That estimate will be for  
24 the first lateral only. Because at this time it's  
25 hard to guess when we're going to do a second

1 lateral, if it will happen at all. That all just  
2 kind of depends on the performance of the well.

3 CHAIRMAN BROOKS: Okay. What if somebody  
4 puts up their money for the -- in response to the  
5 estimate that you send them after the issuance of  
6 the order --

7 THE WITNESS: Uh-huh.

8 CHAIRMAN BROOKS: -- and then when you get  
9 ready to drill a subsequent well they don't pay up,  
10 what's going to happen to them?

11 THE WITNESS: So they have consented to  
12 the first lateral --

13 CHAIRMAN BROOKS: Yeah. They put up their  
14 money.

15 THE WITNESS: -- and they put up their  
16 money.

17 Then later on we come in and we propose  
18 adding a second lateral.

19 CHAIRMAN BROOKS: Right.

20 THE WITNESS: And they do not put up their  
21 money.

22 CHAIRMAN BROOKS: Right.

23 THE WITNESS: Well, then, what we've  
24 proposed -- and this is what will happen with  
25 Rubicon under our agreement with them, and we would

1     propose to all the other parties, is that until the  
2     amount of money spent on the second lateral pays out  
3     from all of the production from the well -- so  
4     that's including the production from the first leg  
5     that they consented in -- gets to contribute to the  
6     payout of the second lateral, they're now out of  
7     production from the well.

8                   CHAIRMAN BROOKS:   And payout is what,  
9     means what?

10                  THE WITNESS:   Still 200 percent.   The  
11     same.

12                  CHAIRMAN BROOKS:   In other words, 200  
13     percent, which means 300 percent?

14                  THE WITNESS:   Of only the cost of adding  
15     the second lateral.

16                  CHAIRMAN BROOKS:   Okay.   So the party that  
17     doesn't consent to the second lateral is out of the  
18     first lateral until you recover 300 percent of your  
19     cost of the second lateral.

20                  THE WITNESS:   That is it.

21                  CHAIRMAN BROOKS:   Okay.   I understand what  
22     you propose now.

23                  Now, I'll ask Mr. Bruce:   Do you have any  
24     objection to that?

25                  MR. BRUCE:   Well, I haven't spoken with my

1 client about it. But I suppose that under the  
2 current rules -- let's just assume you've got  
3 vertical wells and you're drilling an infill  
4 vertical well, the pooling party participates in the  
5 first vertical well. And under division rules, if  
6 they do not consent in the second vertical well on a  
7 40-acre well unit they're still in the first well.

8 CHAIRMAN BROOKS: That is my understanding  
9 of the rules, and I participated in writing some of  
10 them several years ago.

11 MR. BRUCE: So I don't know how that plays  
12 with vertical wells. That's my only point at this  
13 time.

14 CHAIRMAN BROOKS: Okay. Yeah. I thought  
15 that might be a point of contention.

16 Would you undertake to consult your  
17 clients and advise us if they're agreeable to that?  
18 Because that's not necessarily controlling on us  
19 because we have outside parties, and we have -- we  
20 have an obligation to do what's fair and reasonable,  
21 and which the legislature and the Courts have  
22 indicated they have considerable confidence in us to  
23 do.

24 MR. BRUCE: Right. I will ask them.

25 CHAIRMAN BROOKS: But at the same time,

1     what your client wants is a matter of consideration  
2     here.

3                 MR. BRUCE:   I will ask them.

4                 CHAIRMAN BROOKS:  Okay.  Did you have any  
5     questions of the witness, Mr. Bruce?

6                 MR. BRUCE:  No.  I understood what he was  
7     saying.

8                 CHIEF ENGINEER EZEANYIM:  I have an  
9     observation to make from what's being discussed.

10                In accordance with our horizontal well  
11     rule, I've got three laterals, consists of one well,  
12     right?

13                CHAIRMAN BROOKS:  That's what the rule  
14     says.

15                CHIEF ENGINEER EZEANYIM:  Yeah.  That's  
16     what the rule says.

17                Now you come up with the first lateral,  
18     which is one-third of the well I call it, because  
19     I'm going to have three laterals.  Okay?

20                And then I -- I'm an interest owner in  
21     that one-third of the well.  I am trying to relate  
22     this mainly to see how we -- because this is the  
23     first time we are encountering this.  And we're  
24     going to encounter that because of the new rule.

25                Okay.  I pay my cost on the first well and

1     then decide I don't want to pay on the second well.  
2     Is it that way? I don't want to use "second well."  
3     It's the second lateral, which is part of the well,  
4     right?

5                 THE WITNESS: It's part of the same well,  
6     yes.

7                 CHAIRMAN BROOKS: That works good for  
8     purposes of precision.

9                 CHIEF ENGINEER EZEANYIM: Yes. That's  
10    what I'm trying to do. Because I haven't finished  
11    drilling the well. You see one well. You can have  
12    hundreds of laterals, you see one well.

13                THE WITNESS: Yes.

14                CHIEF ENGINEER EZEANYIM: But now you come  
15    up with only the cost of one-third of the well.

16                THE WITNESS: Yes.

17                CHIEF ENGINEER EZEANYIM: And then you are  
18    anticipating that they are going to drill the other  
19    two-thirds of the second well. And then at that  
20    point you intend to develop an AFE and then share it  
21    with all the participating interests with the  
22    owners.

23                THE WITNESS: Yes, that's right.

24                CHIEF ENGINEER EZEANYIM: Well, if the  
25    well is already pooled, they really don't care, you



1 know, what you're going to do. You are going to  
2 have to pay 900 percent before -- according to what  
3 you are proposing.

4 THE WITNESS: They're already out of the  
5 well until it pays out.

6 CHIEF ENGINEER EZEANYIM: Yeah, until it  
7 pays out.

8 And then when you talk about the well,  
9 what do you mean by "the well"? One lateral or two  
10 laterals or three laterals?

11 THE WITNESS: When I'm talking about the  
12 well, I mean however many laterals are in the well.  
13 That's the well for payout purpose.

14 CHIEF ENGINEER EZEANYIM: Okay. So in  
15 that case I didn't want to participate in the well,  
16 and then I do a nonconsent.

17 THE WITNESS: Okay.

18 CHIEF ENGINEER EZEANYIM: So if you drill  
19 three wells I'm going to be out 900 percent.

20 THE WITNESS: If I'm -- if I'm drilling  
21 three laterals.

22 CHIEF ENGINEER EZEANYIM: Yes. I am going  
23 to be out 900 percent?

24 THE WITNESS: Well, you're out 200 percent  
25 of the total cost of drilling all three laterals. I

1 don't know if it adds up to --

2 CHAIRMAN BROOKS: 300 percent.

3 THE WITNESS: Well, 300 percent of the  
4 cost of drilling all three laterals.

5 CHIEF ENGINEER EZEANYIM: Okay.

6 THE WITNESS: You know, each subsequent  
7 lateral will be a little bit less expensive because  
8 it's not as deep and other things, and you don't  
9 have to drill the vertical hole again. I don't know  
10 if there's much of a difference, but...

11 CHIEF ENGINEER EZEANYIM: Do I have that  
12 300 percent, not 900 percent, because it's one well?

13 THE WITNESS: It's one well. It's 300  
14 percent of the total cost of drilling the whole  
15 thing.

16 CHIEF ENGINEER EZEANYIM: Of the three?

17 THE WITNESS: Yes.

18 CHIEF ENGINEER EZEANYIM: Okay. See,  
19 that's what I wanted to examine this guy about.

20 CHAIRMAN BROOKS: Is that all?

21 CHIEF ENGINEER EZEANYIM: Yes.

22 CHAIRMAN BROOKS: Okay. I have nothing  
23 further from this witness.

24 Did you have anything to follow up?

25 MR. RANKIN: I maybe have one follow-up,

1 Mr. Examiner.

2 CHAIRMAN BROOKS: Okay.

3 MR. RANKIN: I just want to make sure,  
4 just for clarification purposes.

5 FURTHER EXAMINATION

6 BY MR. RANKIN:

7 Q. Mr. Gaynor, you explained to the Examiners  
8 how COG has arranged its operating agreement with  
9 the parties.

10 Can you explain also -- I think you may  
11 have touched on it with Mr. Examiner. But can you  
12 explain what COG's purpose is for a party that's  
13 originally nonconsent, to see that in the order?  
14 You know, what is COG's preference for an order  
15 where the party is a nonconsent from the start?

16 A. If you're nonconsent from the start you're  
17 out until however many laterals they add into the  
18 well have paid out.

19 You know, if you leave that first lateral  
20 producing for so long that it pays out, and then you  
21 propose to add the second lateral, well, that person  
22 is back in.

23 But if it hasn't paid out yet they're  
24 still out, even when we come back in and add the  
25 second lateral or the third lateral or however many.

1 Q. So your preference would be that there  
2 wouldn't be an opportunity for a second -- an  
3 election after the first of the second lateral?

4 A. No. If you're a nonconsenting party and  
5 the well has not paid out you do not receive a  
6 subsequent election.

7 MR. RANKIN: Nothing further,  
8 Mr. Examiner.

9 CHAIRMAN BROOKS: Very good. The witness  
10 may stand down.

11 And if there is nothing further in regards  
12 to these cases, Case Numbers 14849 and 14850 will be  
13 taken under advisement.

14 (Proceedings concluded.)  
15  
16  
17

18 I do hereby certify that the foregoing is  
19 a complete record of the proceedings in  
20 the Examiner hearing of Case No. 14849 & 14850  
21 heard by me on 6-25-12  
22 David K. Brooks, Examiner  
23 Oil Conservation Division  
24  
25

## 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.



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PAUL BACA, RPR, CCR  
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