

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

ORIGINAL

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

CASE NO. 14395

APPLICATION OF XTO ENERGY INC. TO
TERMINATE THE SOUTH BLANCO-TOCITO
OIL POOL, INCLUDING ITS SPECIAL RULES
AND REGULATIONS, AND TO EXPAND THE
BASIN-MANCOS GAS POOL, AND FOR AN
EXCEPTION TO RULE 19.15.12.9 NMAC
TO PERMIT DOWNHOLE COMMINGLING OF
PRODUCTION FOR TOCITO FORMATION,
NOW MANCOS, WITH DAKOTA PRODUCTION,
RIO ARriba COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

December 3, 2009
Santa Fe, New Mexico

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BEFORE: DAVID BROOKS: Hearing Examiner
TERRY WARNELL: Technical Advisor

This matter came for hearing before the New Mexico
Oil Conservation Division, David Brooks Hearing Examiner,
on December 3, 2009, at the New Mexico Energy, Minerals
and Natural Resources Department, 1220 South St. Francis
Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: PEGGY A. SEDILLO, NM CCR NO. 88
Paul Baca Court Reporters
500 Fourth Street, NW, Suite 105
Albuquerque, NM 87102

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A P P E A R A N C E S

17	For the Applicant:	W. THOMAS KELLAHIN, ESQ.
18		Kellahin & Kellahin
19		706 Gonzales Road
		Santa Fe, NM 87501
20	For Chevron:	WILLIAM F. CARR, ESQ.
		Holland & Hart, LLC
21		110 N. Guadalupe, Suite 1
		Santa Fe, NM 87501
22	For the OCD:	MIKAL M. ALTOMARE, ESQ.
23		State of New Mexico
		Oil Conservation Division
24		Assistant General Counsel
		1220 South St. Francis Drive
25		Santa Fe, NM 87505

1 HEARING EXAMINER: We will call Case No. 14395,
2 application of XTO Energy, Inc. to terminate the South
3 Blanco-Tocito oil pool and expand the Basin-Mancos gas oil
4 pool, and for an exception to Rule 19.15.12.9. Call for
5 appearances.

6 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
7 the Santa Fe law firm of Kellahin and Kellahin appearing
8 this morning on behalf of the applicant. I have three
9 witnesses to be sworn.

10 HEARING EXAMINER: Any other appearances.

11 MS. ALTOMARE: Mikal Alotmare on behalf of the
12 Oil Conservation Division. I have one witness
13 telephonically this morning.

14 HEARING EXAMINER: Okay.

15 MR. CARR: May it please the Examiner, my name
16 is William F. Carr of the Santa Fe office of Holland and
17 Hart. We represent Chevron MidContinent, LLP. I will
18 call no witness.

19 HEARING EXAMINER: And do you oppose the
20 application.

21 MR. CARR: I oppose it as presented, although
22 Mr. Kellahin and I, I think, have worked out our
23 differences and have an agreement to propose to you.

24 HEARING EXAMINER: Okay, very good. Will the
25 witnesses please stand and identify yourselves?

1 MR. AUSTIN: Aaron G. Austin.

2 MR. KLUTSCH: John Klutsch.

3 MR. FITZGERALD: John T. Fitzgerald.

4 HEARING EXAMINER: And would the witnesses who
5 are going to testify by telephone please identify
6 themselves.

7 STEVE HEYDEN: Steve Heyden, Aztec OCD.

8 HEARING EXAMINER: Okay. Please swear the
9 witnesses in.

10 (Note: The witness were placed under
11 oath by the court reporter.)

12 HEARING EXAMINER: You may proceed,
13 Mr. Kellahin.

14 MR. KELLAHIN: Thank you, Mr. Examiner. As we
15 finally appear before you this morning, I believe we have
16 a case that is not contested.

17 The devil is in the details. The concept is
18 pretty easy to comprehend, it's the execution that has
19 gotten people so -- difficulty. And at this point, I
20 believe Mr. Carr and I are aligned how to suggest to you
21 as the Examiner to proceed with providing XTO with a
22 solution to a serious problem.

23 We've had repeated consultations with Mr. Heyden
24 in Aztec and with my client to discuss his concerns. And
25 at this point, I wish to express to you that one of the

1 Division's pools is in trouble. And that is the South
2 Blanco-Tocito Pool is being strangled by its own rules and
3 is overcome and locked into a bureaucratic quagmire.

4 The difficulty with this pool is that the rules
5 were adopted back in '52 when at that time, the Tocito, as
6 a single zone, had sufficient oil production associated
7 with it, and that Hawkins as the operator what you'll see
8 in the exhibit book as the special rules for that pool,
9 and component in those rules that talk about waterflood
10 assisted oil allowables.

11 After some 57 years, those rules are no longer
12 effective or applicable and they strangle XTO's ability to
13 now salvage the remaining hydrocarbons out of the Tocito.

14 The only way to get those hydrocarbons is not
15 with a standalone well, you have to drill it in connection
16 with a Dakota well.

17 So the concept was to take what Mr. Heyden did
18 last year and with the assistance of the Division, adopted
19 the Basin-Mancos gas pool rules to collectively take the
20 Mancos, one of which those intervals in the Mancos would
21 be the Tocito. His concern at that time was the Gallup,
22 which was on a 160 acre gas spacing.

23 The end result was, it created flexibility for
24 parties such as XTO now to try to move acreage in a
25 difficult pool like Tocito into the more contemporary well

1 spacing and density rules of the Dakota, and thus avoid
2 the bureaucratic nuisance for you and for us of filing
3 potentially 20 or 30 nonstandard locations in the Tocito
4 in order to salvage the Tocito.

5 What we originally filed was an application to
6 simply terminate the Tocito rules. In doing so, it came
7 to my attention through Mr. Heyden that there were
8 participating areas in the Rincon unit operated by Mr.
9 Carr's client, Chevron, that may not have the ability to
10 rededicate a 320 to a former Tocito 80 acre spacing unit.

11 There is a participation inequity within the
12 tracts within the unit. And rather than force Mr. Carr's
13 client to try to do some essential paperwork and balance
14 the equities, there was the suggestion that rather than
15 terminate the Tocito, we simply contract it.

16 So the Tocito acreage would be contracted to the
17 area contained within the Rincon unit, thus isolating the
18 unit under the old rules and leaving them undisturbed.
19 The balance of the Tocito acreage that was formerly in the
20 Tocito pool then, would be incorporated into an expansion
21 of the Basin-Mancos pool.

22 And what that does, it gives us like kind new
23 wellbore locations for Dakota wells that are consistent
24 then with Tocito.

25 Even the Dakota wells on 320 acre spacing with

1 the opportunity for the optional infill wells, as you
2 know, is a nightmare for the operator.

3 The concerns about wildlife, forestry, and
4 surface use, and surface ~~to-servant~~ ^{disturbance} areas severely affect
5 how operators can locate Dakota wells.

6 When you add on that the existing Tocito rules,
7 you invite the operator to have to walk through a quagmire
8 of regulations to do what we want done, which is to
9 recover and salvage the remaining hydrocarbons in the
10 Tocito that might otherwise be left in the ground.

11 So that is sort of the short answer of how we
12 get there. The last part of the equation that we've
13 struggled with lately is when you take 80 acre oil units,
14 existing wells, and rededicate them to 320, do you create
15 an opportunity for inequities either in individuals or
16 percentages by the upspacing to a different pattern.

17 It will be our testimony, that as best we can
18 find, that disturbance does not occur with the exception
19 of the acreage within the Rincon unit.

20 So the last conversations we've had with counsel
21 for the Division, I believe, can be answered by the fact
22 that despite the concerns about inequities, the realty is,
23 they are not there. So we'll have three witnesses for
24 you, a landman to testify, a geologist to show the
25 geologic framework, and then the major witness is the

1 reservoir engineer to put all the pieces of the puzzle
2 together.

3 So at the end of the morning when we've
4 presented our presentation, we believe that we will give
5 you a complete package by which you can grant the relief
6 that XTO seeks from you this morning.

7 HEARING EXAMINER: Okay. Are you ready to call
8 your first witness? Well, I suppose I should give the
9 other attorneys an opportunity to come in if they wish to
10 do so. Mr. Carr?

11 MR. CARR: May it please the Examiner, I concur
12 with the statement made by Mr. Kellahin. Chevron is not
13 opposing what XTO is trying to do to enable it to operate
14 its properties.

15 But if the application as originally filed was
16 approved, we have two small Tocito participating areas
17 that have produced for a very long time on 80 acres within
18 the unit. And not only are we going to have Tocito
19 participants where there's no Tocito, we have potential
20 changes in spacing which would create some very difficult
21 issues in trying to sort that out.

22 You recently in a case for Williams when they
23 were abolishing Gallup pools in the Rosa unit limit it to
24 the Rosa because it would impact some Devon offsetting
25 properties.

1 We're really asking for the same thing, it's
2 kind of a flip of the same thing. But it is to let an
3 operator who needs to change rules to efficiently produce
4 it before their application as it applies to their
5 interests, and we support them in what they're trying to
6 do but we've asked them to leave us out because of the
7 problems it would create for us in continuing to operate
8 the unit.

9 HEARING EXAMINER: All right. Ms. Altomare?

10 MS. ALTOMARE: The Oil Conservation Division
11 does not in general oppose what the parties are attempting
12 to do here. In fact, we commended the efforts that have
13 been entered into with the negotiations to come to a
14 compromise to make sure that all of the equities are
15 maintained in this. However, the geologist in the
16 district does have some remaining concerns.

17 At least at this point, we are letting him stay
18 on the line to hear all of the testimony that is presented
19 to see at that point in time when we do have an
20 opportunity to present him as a witness, if he does still
21 have remaining concerns, he will express them to the
22 Examiners at that time.

23 He does have some concerns about the 80 acre
24 spacing issue. Mr. Kellahin has expressed that he
25 anticipates presenting a witness that might apparently

1 allay some of that concern. So we'll see if Mr. Heyden's
2 concerns are relieved in that regard.

3 But on the whole, we don't oppose the
4 application. We certainly commend the parties for moving
5 forward with a remedy to get this resolved and get the
6 unit producing.

7 So basically, we just want to make sure that
8 everybody's on the same page and that the district office,
9 that they're their concerns are heard as well.

10 HEARING EXAMINER: Okay. You may call your
11 first witness.

12 MR. KELLAHIN: Mr. Examiner, we have distributed
13 to the participants a collective three-ring binder for the
14 XTO exhibits. It's subdivided by tabs that identify
15 different components.

16 Mr. Austin and I will discuss the beginning
17 pages to the exhibit book, and then he and I will talk
18 about the maps to give you some orientation.

19 He'll identify the orders that we think are
20 relevant. And then finally, he'll notify you of his
21 efforts to provide notice to all interest owners that are
22 appropriate in this case.

23

24

25

1 AARON AUSTIN,
2 the witness herein, after first being duly sworn
3 upon his oath, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. KELLAHIN:

6 Q. Mr. Austin, for the record, sir, you would state
7 your name and occupation?

8 A. Aaron G. Austin, Landman for XTO Energy.

9 Q. And where do you reside, sir?

10 A. Arlington, Texas.

11 Q. On prior occasions, have you testified as an
12 expert in petroleum land matters before the Division?

13 A. No.

14 Q. Summarize for us your education.

15 A. I graduated from the University of Oklahoma with
16 a Bachelor's degree in Energy Management.

17 Q. Subsequent to that have you been employed as a
18 petroleum landman within the industry?

19 A. Yes.

20 Q. And where is that?

21 A. Merit Energy and XTO Energy.

22 Q. How long have you been currently employed by
23 XTO?

24 A. Over two years.

25 Q. As part of your duties for XTO, have you been

1 assigned the responsibility for the XTO acreage within
2 what we have characterized as the area associated with the
3 South Blanco-Tocito pool?

4 A. Yes.

5 Q. As part of that effort, have you examined all
6 your land files with regards to ownership, parties and
7 operators within the boundary of that pool?

8 A. Yes.

9 Q. Have you made yourself knowledgeable about your
10 understanding of who the operators are along the outer
11 boundary of that pool that may produce Tocito formation
12 wells?

13 A. Yes.

14 Q. Have you been responsible for your company to
15 send notification to all the parties associated with this
16 application?

17 A. Yes.

18 MR. KELLAHIN: We tender Mr. Austin as an expert
19 petroleum landman.

20 HEARING EXAMINER: Okay well, reluctant as I am
21 to accept somebody who got their education at the
22 University of Oklahoma as an expert, I will accept his
23 credentials.

24 Q. Mr. Austin, if you'll open the three-ring binder
25 and turn it so you can see what we have put in here as the

1 first display, what are we looking at?

2 A. This is a regional map that shows the outline of
3 the South Blanco-Tocito pool.

4 Q. And generally, where would we find that pool,
5 where is it in New Mexico?

6 A. It's in Rio Arriba, New Mexico, roughly 26
7 north, 6 west.

8 Q. If you'll turn past that locator map, would you
9 identify the next map you have on display?

10 A. This is a similar map, I just zoomed in on the
11 pool. The pool is outlined or is in the gray area. It
12 also shows all the currently producing Tocito wells.

13 Q. We have subsequent, larger scale maps that will
14 more readily identify for the Examiner the population of
15 Tocito wells, and then a subsequent map that will show the
16 population of all wells; is that correct?

17 A. That's right.

18 Q. So let's go past the locator map and look at
19 what you identified as "Proposal." Would you summarize
20 for the Examiner what XTO is seeking to accomplish with
21 this application?

22 A. XTO is seeking to contract the South
23 Blanco-Tocito pool specifically to the Rincon unit only
24 and to drill future wells under the Basin-Mancos pool
25 rules.

1 Q. In addition, what do your technical people want
2 to do with regards to the downhole commingling production
3 of Mancos and Dakota wells, is that part of the
4 application, to also commingle?

5 A. Yes.

6 Q. As part of your work in providing the land
7 efforts to this application, have you put in the exhibit
8 book what you understand to be the rules for the Tocito
9 pool?

10 A. Yes.

11 Q. So if you'll turn past the proposal sheet,
12 there's a couple of sheets that are talking about
13 background. Do you find that?

14 A. Yes.

15 Q. With regards to the Tocito rules, what are the
16 general limitations in well locations that are of concern
17 to your company that we can express to the Examiner?

18 A. Currently, Tocito wells must be spaced on an 80
19 acre tract or unit. Wells must be located inside the
20 center of the northwest and southeast quarter quarter
21 sections, and you cannot -- land tolerance of a hundred
22 feet or less from the center of that quarter quarter.

23 Q. As part of your work, have you identified other
24 operators other than XTO that have Tocito wells?

25 A. Yes.

1 Q. And who are those?

2 A. In our packet, it represents that we have --
3 there are three operators total, but there are actually
4 four. There's XTO Energy, Burlington Resources,
5 Chevron, and also Energen Resources.

6 Q. Have you been in contact with all of those
7 companies?

8 A. Yes. Everyone was sent notice.

9 Q. In addition, have you corresponded with and
10 discussed this application with members of the Oil
11 Conservation Division in Aztec?

12 A. Yes.

13 Q. Have you also done the same thing with the
14 representative of the Bureau of Land Management?

15 A. Yes.

16 Q. Can you give the Examiner a general preview of
17 the total volume of wells that XTO is considering moving
18 forward with if this application is granted?

19 A. We plan to drill or recomplete an additional 51
20 wells inside the pool.

21 Q. Will you turn to the second page, Background?
22 What is your understanding of the concept by which XTO
23 would access the Tocito and the Dakota, how would they do
24 that?

25 A. They would commingle production from both zones.

1 Q. Let's turn now to the tab that says "Map." In
2 fact, there are two maps that are associated with this,
3 there's a pocket that has two maps?

4 A. Correct.

5 Q. Let's look at the first map. The first map I
6 have, Mr. Austin, is labeled Exhibit A?

7 A. Correct.

8 Q. Before we talk about the details on this map,
9 generally describe to the Examiner what type of map he's
10 looking at on Exhibit A.

11 A. On Exhibit A, this is a leasehold map of XTO's
12 that shows currently producing Tocito wells. Or actually,
13 excuse me, wells that have not been plugged and abandoned.

14 Q. So it would be the population of Tocito wells
15 with the exception of those wells that have been formerly
16 plugged?

17 A. Yes.

18 Q. So you have on this population, producing wells
19 and those wells that are inactive status but not formally
20 plugged?

21 A. Correct.

22 Q. In addition to that information, what is the
23 purpose of the red outline?

24 A. That is the outline of the current Tocito pool.

25 Q. And without going in detail, tell us what we are

1 to understand by the various color coding on the map.

2 A. Each color represents a lease that XTO own. The
3 yellow hatched is an area where XTO only owns an override.

4 Q. Does this map reflect the collective research
5 that you have personally done?

6 A. Yes.

7 Q. You've spent weeks on this, haven't you?

8 A. Yes.

9 Q. As part of your search, can you now testify to
10 the Examiner to the best of your knowledge that within the
11 area excluding the Rincon operation of XTO can effectively
12 transfer 80 acre spacing and convert that to 320 acre
13 spacing without disrupting equities?

14 A. Yes.

15 Q. Let's turn now to what's marked Exhibit B.
16 Describe for us what you're showing on B.

17 A. This map is similar to Map A with the exception
18 that this map shows all producing -- or all wells that are
19 not plugged and abandoned.

20 Q. So should the Examiner like to see the
21 population of all wells within the area, you've included
22 everything in addition to the Tocito wells?

23 A. Yes.

24 Q. To the best of your knowledge, is this map
25 current and accurate?

1 A. Yes.

2 Q. Let's set aside the other locator maps and let
3 the other witnesses use them as index maps for their
4 presentation, and let me address your attention back to
5 the exhibit book and have you turn to the tab that says
6 "Orders."

7 If you'll turn past the tab, identify for the
8 record the three Division orders that are in the exhibit
9 book starting with the first order that's in the book.

10 A. The first order is the existing order that's in
11 place, the South Blanco-Tocito pool.

12 Q. And when you take the tap and flip over to the
13 second order, what order are we seeing here?

14 A. This is the ^{Basin AP} ~~Banco~~-Mancos Gas Pool Rules.

15 Q. And it's these rules that you're attempting to
16 move the balance of the Tocito acreage into?

17 A. Correct.

18 Q. With the exception of the Rincon unit?

19 A. Yes.

20 Q. The last order in the book has a separated tab
21 on it. Would you look at that tab and turn to the third
22 order in the exhibit book? What are we now seeing?

23 A. This is the application of Williams Production
24 to abolish and contract the Gallup pool in the Rosa unit.

25 Q. We're not describing the order in detail.

1 Generally tell me what is your understanding of the
2 concept of this order?

3 A. That they contracted the Gallup pools in order
4 to drill additional wells under the Basin-Mancos.

5 Q. This is sort of the reverse of what you're
6 seeking to do in the Tocito?

7 A. Correct.

8 Q. And this order, the Williams order, provides the
9 necessary technical findings that supported the fact of
10 what is ordered?

11 A. Yes.

12 Q. Let's turn now to the subject matter of the
13 notices that you sent out, and show Mr. Brooks what you've
14 got. If you'll turn to the tab that says "Notice," after
15 that I have a series of pages that are numbered from Page
16 1 through 28.

17 Starting with Page 1, you would identify what is
18 captioned a letter from "My firm" dated September 24th of
19 this year, what is this letter?

20 A. This is just a letter notifying all owners of
21 our intent to -- intent to terminate the South
22 Blanco-Tocito oil pool.

23 Q. It's a notice of the hearing, is it not?

24 A. Of the hearing, yes.

25 Q. And the original hearing date for this case

1 before it was continued was what date, sir?

2 A. October 29, 2009.

3 Q. Other than inquires from Chevron and the
4 Division, to your knowledge, have any other individual or
5 company expressed opposition or filed opposition to the
6 granting of this application?

7 A. No.

8 Q. Let's talk about the population of people that
9 were sent notice of this hearing. Did the notice also
10 include a copy of the application?

11 A. Yes.

12 Q. And that application had a list of all of the
13 Tocito wells that would be impacted by this application?

14 A. Yes.

15 Q. Did it also include a locator map?

16 A. Yes.

17 Q. If you turn past the notice letter, there's a
18 Page No. 2 that's captioned "Notice List of Operators."
19 Is this your work product?

20 A. Yes.

21 Q. To the best of your knowledge, does this
22 represent the list of operators of Tocito wells that might
23 be affected by this application?

24 A. Yes.

25 Q. On Page 3, starting with Page 3 and going all

1 the way over to Page 8, there is a tabulation of names and
2 addresses of individuals and companies. What does this
3 represent?

4 A. These are all of the overriding owners, royalty
5 owners in XTO operated wells that are producing from the
6 Tocito.

7 Q. And it would also include any working interest
8 owners in your wells?

9 A. And working interest, yes, sir.

10 Q. To the best of your knowledge, is that current
11 and accurate?

12 A. Yes.

13 Q. And you based it on a search of your internal
14 records for all your interest owners in your wells?

15 A. Correct.

16 Q. As a result of that effort, do you have any of
17 your interest owners in any category that has objected to
18 your application?

19 A. No.

20 Q. In addition to this effort, you've also sent
21 notices and copies of your filings to Mr. Heyden of the
22 Division?

23 A. Yes.

24 Q. And you've also sent them to Mr. Jim Lovato of
25 the BLM?

1 A. Yes.

2 MR. KELLAHIN: Mr. Examiner, at this point, that
3 concludes my examination of Mr. Austin. And we move the
4 introduction of the documents starting with the first page
5 of the exhibit book through the last page of the documents
6 after the exhibit tab that says "Notice."

7 MS. ALTOMARE: No objection.

8 MR. CARR: No objection.

9 HEARING EXAMINER: Okay. You're tendering the
10 entire exhibit book at this point?

11 MR. KELLAHIN: No, just the first portion.
12 We're excluding the "Geology" and the "Engineering".

13 HEARING EXAMINER: Okay.

14 MR. WARNELL: So Page 1 through 28.

15 MR. KELLAHIN: Of the notice.

16 HEARING EXAMINER: Okay, portions of the exhibit
17 book prior to the tab "Geology" will be admitted into
18 evidence.

19 MR. KELLAHIN: That concludes my presentation of
20 Mr. Austin.

21 HEARING EXAMINER: Mr. Carr?

22 HEARING EXAMINER: Ms. Altomare?

23 CROSS-EXAMINATION

24 BY MS. ALTOMARE:

25 Q. I just have one clarification. When you

1 referenced the acreage within the Rincon unit, are you
2 referring to the Rincon participating area?

3 A. All of the Rincon unit.

4 Q. So are you distinguishing between the Rincon
5 unit and the Rincon participating area, or are you only
6 referencing the participating area?

7 A. I believe we're referencing the entire unit, not
8 just the participating area. We do not want to affect the
9 Rincon unit in any way.

10 Q. So you're specifying the entire unit, not just
11 the participating area as it exists right now?

12 A. Yes.

13 Q. Okay.

14 HEARING EXAMINER: Mr. Warnell?

15 MR. WARNELL: Mr. Austin, you had mentioned I
16 think on one of those earlier tabs that you had been in
17 contact with Burlington, Chevron and Energen?

18 THE WITNESS: Yes.

19 MR. WARNELL: And that contacted on consisted of
20 just e-mails, or have you spoken with those folks?

21 THE WITNESS: E-mails and phone calls.

22 MR. WARNELL: Okay. And then I made a note of
23 that here, and then when we got over to Page 2 of the last
24 tab that we just looked at, I see those names again.

25 Energen Chevron, and Burlington, but I also see CDX, and

1 it just kind of struck me as strange that we didn't see
2 that earlier. Can you tell me why I'm confused or --

3 THE WITNESS: Notice was sent to CDX at the
4 address we have on file. However, I believe the notice
5 was returned. And we also researched CDX, and I believe
6 they are in bankruptcy.

7 MR. WARNELL: So you haven't been in contact
8 with CDX or --

9 THE WITNESS: We've attempted.

10 MR. WARNELL: Okay. I have no other questions,
11 David.

12 HEARING EXAMINER: Let me follow up on that. I
13 believe you're right that CDX is in bankruptcy. I think I
14 was aware of that from another source. Do they own a
15 working interest, or what character of interest do they
16 own.

17 THE WITNESS: They operate a well. It's --

18 MR. KELLAHIN: It's on the map, Mr. Austin. If
19 you'll turn to Exhibit A, show the Examiner where you
20 believe that well would be located.

21 THE WITNESS: I would actually -- I would have
22 to verify that. I know -- it's down here in the southeast
23 portion, but I can't be certain off the top of my head.

24 HEARING EXAMINER: Is it Tocito pool?
25 Blanco-Tocito pool?

1 THE WITNESS: It's classified as a Tocito well.
2 I believe it falls outside.

3 HEARING EXAMINER: So it would be within the
4 undesignated portion or within one mile, but not within
5 the pool?

6 THE WITNESS: I believe so.

7 MR. KELLAHIN:

8 MR. KELLAHIN: We can verify that.

9 HEARING EXAMINER: Okay. At this point, CDX has
10 not received notice, is that what you're testifying to?

11 THE WITNESS: Yes.

12 HEARING EXAMINER: Okay. Leaving that aside,
13 this is all federal land; is that correct?

14 THE WITNESS: There's federal and state.
15 There's a legend that talks about that, and what each
16 color represents, and it's listed as federal or state in
17 each case. So Section 2 of 26 6, it's state, Section 16.

18 HEARING EXAMINER: The color coding doesn't show
19 anything about that, because it looks like some of the --

20 THE WITNESS: Legend up --

21 HEARING EXAMINER: Yeah. I see those. I don't
22 know how we tell from that where -- which land is what,
23 though, because there's federal and state that's in the
24 same color, it looks like. Well, only with regard to the
25 cross-hatched area. And there is a distinction in color.

1 The distinction of that bottom color is very difficult to
2 distinguish from some of the other colors, but I see what
3 you're doing here.

4 THE WITNESS: We've also listed the leases on
5 the map. And if you look at Section 36 and 27 6, it lists
6 "State of New Mexico" and the lease number.

7 HEARING EXAMINER: All right. Now, I'm sure
8 you've given notice of this to the Bureau of Land
9 Management, have you also given notice to the State Land
10 Office.

11 THE WITNESS: Yes.

12 HEARING EXAMINER: Okay now, you went through
13 all of these people -- or you pointed out all this ~~long~~ *long*
14 group of return receipts that you have. Now, does that
15 include all the overriding royalty owners?

16 THE WITNESS: Yes.

17 HEARING EXAMINER: And you've not received any
18 objection from any of those people.

19 THE WITNESS: No.

20 HEARING EXAMINER: Now, how are you going to
21 adjust the interests where you have producing wells, or do
22 you have producing wells that are within the part you
23 contracted?

24 THE WITNESS: There won't be any difference
25 going from an 80 acre to a 320 acre unit.

1 HEARING EXAMINER: Okay, so there's no
2 situations where there's differences in ownership between
3 existing 80 acre units and the 320 acres units to which
4 those wells will be converted?

5 THE WITNESS: That's correct.

6 HEARING EXAMINER: Or any working interest,
7 overriding royal or royalty?

8 THE WITNESS: Yes.

9 HEARING EXAMINER: Okay, that's all I have. Any
10 follow up?

11 MR. KELLAHIN: No, sir.

12 HEARING EXAMINER: Call your next witness.

13 MR. KELLAHIN: Mr. Examiner, we're turning now
14 to the geologic presentation and we'll start with the tab
15 that says "Geology."

16 JOHN KLUTSCH,
17 the witness herein, after first being duly sworn
18 upon his oath, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. KELLAHIN:

21 Q. For the record, sir, would you please state your
22 name and occupation?

23 A. John Klutsch, geologist for XTO Energy.

24 Q. Mr. Klutsch, on prior occasions have you
25 testified before the Division as a geologist?

1 A. Yes.

2 Q. As part of your work for XTO, have you made
3 yourself knowledgeable about the Tocito interval within
4 the area described as the South Blanco-Tocito pool?

5 A. Yes.

6 Q. In addition, are you knowledgeable about the
7 Mancos in general?

8 A. Yes.

9 Q. Are you also involved as a geologist with your
10 company with the geology for the Dakota locations within
11 this area?

12 A. Yes.

13 Q. As part of your regular work, do you keep a set
14 of maps of the distribution of hydrocarbons and the
15 structural position of those hydrocarbons within what
16 we've characterized as the Tocito?

17 A. Yes.

18 Q. Does the work product with the exception of the
19 locator map represent your geologic representation?

20 A. Yes.

21 MR. KELLAHIN: We tender Mr. Klutsch as an
22 expert petroleum geologist.

23 MR. CARR: No objection.

24 MS. ALTOMARE: No objection.

25 HEARING EXAMINER: So accepted.

1 Q. Mr. Klutsch, if you'll turn to what we've marked
2 as Exhibit 1, let's set the stage for the Examiner about
3 the specific interval from the Mancos that is a portion
4 that we're trying to attend to at this morning's hearing.

5 HEARING EXAMINER: Okay now, you're turning to
6 the exhibit book. I really don't believe there is
7 anything marked as Exhibit No. 1.

8 MR. KELLAHIN: There is not, but the pages are
9 numbered.

10 HEARING EXAMINER: What you're talking about is
11 Page No. 1 behind the tab "Geology" in the exhibit book?

12 MR. KELLAHIN: In this book it's not an exhibit
13 number, it's a page number. It will be Page 1.

14 HEARING EXAMINER: Okay.

15 Q. Looking at Page 1, then, Mr. Klutsch?

16 A. Yes. This is a schematic cross-section of the
17 San Juan basin, a cartoon description of the geology. You
18 can see roughly in the center of the-cross section is a
19 stippled section of rock labeled "Tocito sandstone." It
20 lies within the Mancos formation, and the Mancos is below
21 the Mesaverde on the top and above the Dakota on the
22 bottom.

23 On the left-hand side of the cross-section,
24 you'll see where Tocito grades into what's called Gallup.
25 These are formation names that were derived and they're

1 age-equivalent rocks, just different environments of
2 deposition.

3 Q. Let's turn to Page 2. Would you look at Page 2
4 and before you describe the details, tell us what we're
5 looking at?

6 A. This is a net sand isopach with the Tocito,
7 based on greater than 6 percent density porosity.

8 Q. Is this your work product?

9 A. It is.

10 Q. Describe this for us generically how you
11 prepared this map?

12 A. I examined every well in the area. I picked or
13 identified the Tocito sand. Then determined its thickness
14 and contoured those values. And for this map, I had to
15 use -- wanted to use density porosity, and the large blue
16 numbers adjacent to a wellbore indicate the data that I
17 used to contour this map.

18 I forget the exact number of wells, 30 some odd
19 wells, but there was only approximately ten wells that had
20 density porosity logs, and so that's -- those data are by
21 which I drew this map.

22 Q. Mr. Klutsch, the exhibit Page 2 shows a type
23 well identified?

24 A. That's correct.

25 Q. Why did you select that well as a type well?

1 A. It has a density porosity log and it's central
2 in the Tocito unit.

3 Q. Have you assisted the reservoir engineer so that
4 he can do things his volumetric calculations with your
5 assistance and coming to agreement about the geologic
6 values used in his work?

7 A. Yes, I have.

8 Q. Let's turn to Page 3, sir. Have you examined
9 the structural relationship of the Tocito interval at the
10 Mancos within this area?

11 A. I have, yes.

12 Q. And this represents your work product?

13 A. Yes.

14 Q. What have you concluded from this structure?

15 A. The structure does not affect the accumulation
16 of hydrocarbons at this location.

17 Q. The map is shown to be on the Upper Gallup
18 structure?

19 A. That's correct.

20 Q. Is that appropriate markers to give you a way to
21 look at the Tocito?

22 A. Yes.

23 Q. And again, structure is not a factor in how this
24 was developed?

25 A. Correct.

1 Q. Let's turn to Page 4. What have you put in the
2 exhibit book at Page 4?

3 A. That's where I compiled the data that both of
4 the wells within -- or all the wells within the Tocito
5 unit, plus some additional ones, from which I examined.
6 And I'm giving this to the Commission for them to -- so
7 that they don't have to redo my work. They know where my
8 tops are and what sand thicknesses I picked, so there
9 would be no question as to what -- where to you consider
10 the Tocito to be in such and such well, this identifies
11 it.

12 Q. Let's turn to Page 5, Mr. Klutsch. And what do
13 we see here?

14 A. We see the type log that was pointed out on the
15 isopach map.

16 Q. Interpret the log for us.

17 A. Yes, sir. On the left is a gamma ray induction
18 log from this well, and on the right is the
19 density-neutron log from this well, and the various
20 horizontal lines represent the -- depicts of number of
21 correlation points or tops that I have made and carried
22 throughout the unit.

23 The red correlation point labeled "Tocito Sand"
24 indicates the top of the Tocito sand; below it is a brown
25 labeled "Tocito Base." This well happens to be perforated

1 in the Tocito sand only, and you can see that by a little
2 red rectangle center in the log.

3 MR. KELLAHIN: That concludes my examination of
4 Mr. Klutsch, Mr. Examiner. We move the introduction of
5 Pages 1 through 5 behind the "Geologic" tab.

6 HEARING EXAMINER: Okay, the portion of the
7 exhibit notebook behind the tab labeled "Geology" will be
8 admitted into evidence, assuming there are no objections.

9 MS. ALTOMARE: No objections.

10 MR. CARR: No objections.

11 HEARING EXAMINER: Mr. Carr?

12 MR. CARR: No questions.

13 MR. CARR: MS. ALTOMARE: No objections.

14 HEARING EXAMINER: Mr. Warnell?

15 MR. WARNELL: No questions.

16 HEARING EXAMINER: No questions? Very good.

17 You may call your next witness, Mr. Kellahin.

18 JOHN FITZGERALD,

19 the witness herein, after first being duly sworn

20 upon his oath, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. KELLAHIN:

23 Q. For the record, sir, would you please state your
24 name and occupation?

25 A. John T. Fitzgerald, I'm a reservoir engineer.

1 Q. Have you testified before the Division on prior
2 occasions?

3 A. No.

4 Q. Summarize for us your education.

5 A. I have a Bachelors of Science degree in
6 Petroleum Engineering from the University of Texas at
7 Austin.

8 Q. In what year did you obtain that?

9 A. May of 2008.

10 Q. Since then, have you practiced your profession
11 as a reservoir engineer?

12 A. Yes.

13 Q. Your current status with XTO is what, sir?

14 A. I've been working for XTO for one and a half
15 years.

16 Q. As a reservoir engineer?

17 A. As a reservoir engineer.

18 Q. Among your duties, are you responsible for the
19 reservoir engineering work we're about to see?

20 A. Yes.

21 Q. And based upon that work, you've analyzed the
22 available data for the South Blanco-Tocito pool?

23 A. Yes.

24 Q. And you're aware of your company's plans for
25 development and recompletion in this area using the Tocito

1 and the Dakota?

2 A. Yes.

3 Q. And based upon that work, have you come to
4 certain conclusions and opinions?

5 A. Yes, I have.

6 MR. KELLAHIN: We tender Mr. Fitzgerald as an
7 expert reservoir engineer.

8 HEARING EXAMINER: It seems the quality of your
9 experts' education is improving. His credentials are
10 accepted.

11 Q. Let's set the stage, Mr. Fitzgerald, and let's
12 look at the exhibit tab that says "Engineering," and from
13 there on, there are going to be page numbers. And in my
14 book I have Page 1, and that takes us all the way through
15 Page 11.

16 In addition, you may want to use Mr. Austin's
17 Exhibit A which is the foldout map to give you a locator
18 of where these various wells are.

19 In analyzing the South Blanco-Tocito pool, can
20 you start with Page 1 and identify for us the population
21 of wells associated with that production?

22 A. Yes. Page 1 shows the current production of
23 wells that are currently producing from the South
24 Blanco-Tocito pool.

25 Q. Give us a general range of what the current

1 rates of gas are associated with that production.

2 A. You can see from the table that they range from
3 approximately 30 MCF per day all the way up to about 500
4 MCF a day.

5 Q. This population includes not only those wells
6 operated by XTO, but those operated by Chevron and others?

7 A. Yes.

8 Q. What is the approximate average daily oil rate
9 for wells in the pool?

10 A. The oil rate ranges from approximately producing
11 no oil to producing up to about 12 barrels per day, but
12 there's only well, the Breech A 132R that does. So it
13 doesn't really produce much oil.

14 Q. In analyzing the performance of the reservoir,
15 can you characterize for the Examiner where we are in
16 light of recovery of hydrocarbons from this pool?

17 A. Yes. We're in the completion phase. They used
18 to waterflood it when there was a lot more oil to be
19 recovered, however, most of that oil has been recovered,
20 and currently we're planning on drilling gas wells.

21 Q. We'll show another exhibit later, but at this
22 point, have you examined the gas/oil ratio for these
23 wells?

24 A. Yes, I have. It's close to 100,000 standard
25 cubic feet per barrel.

1 Q. And in general, wells would be characterized or
2 reclassified as gas wells?

3 A. Yes.

4 Q. There's no water plug occurring, it's all sand
5 stock?

6 A. Yes.

7 Q. Are you familiar with the Tocito rules?

8 A. Yes.

9 Q. They provide a complex allowable-base system
10 triggered on water injection. Is anyone using any of
11 those?

12 A. No.

13 Q. Is the production of water associated with these
14 wells any kind of a problem?

15 A. No. These wells are actually producing not that
16 much water. You can also see from this table I've
17 included current water rate. The highest water rate that
18 I see on this table is 30 barrels per day, but that only
19 occurs in one well, which is the Breech F 1-F.

20 Q. As part of your reservoir analysis, do you see
21 any reason to continue the Tocito as a separate identified
22 pool that has not been commingled in the entire Mancos
23 interval?

24 A. No, I do not. I think that would impede on our
25 ability to drill new wells -- produce from new wells.

1 Q. Your purpose is to do what with the Tocito?

2 A. To contract the Tocito to contain only the
3 Rincon unit, and expand the Basin-Mancos and to downhole
4 commingle with Dakota wells.

5 Q. If we delete the nomenclature of the Tocito, it
6 would put you on the same nomenclature categorization as
7 the Gallup wells that would then recharacterize as Mancos
8 wells, would it not?

9 A. Yes.

10 Q. Let's look at some of your data. Have you
11 presented to the Examiner or prepared on Page 2 a sample
12 production decline curve?

13 A. Yes. Page 2 is the normalized production plot
14 for all wells that are producing from the South
15 Blanco-Tocito pool that were drilled after 2005.

16 Q. Read the curve for us?

17 A. The curve shows that there is an estimated
18 ultimate recovery of about 417 MCF. It was forecasted at
19 10 percent. And with that type of recovery, it wouldn't
20 be economically viable to drill a standalone Tocito well,
21 it would need to be commingled with something else to make
22 it economically possible.

23 Q. We'll look at your economics in a moment more
24 specifically, but your conclusion at this point is
25 regardless of who is the operator, if you're going to

1 drill a Tocito well on 80 acre spacing, it is subeconomic?

2 A. Yes.

3 Q. Would you ever think or suggest that you might
4 infill drill an existing 80 acre Tocito spacing unit?

5 A. You mean drill like a 40 acre --

6 Q. Yeah, the infill to the other parent well in an
7 80 --

8 A. No, we would not. It wouldn't be -- I mean, if
9 it's uneconomic to drill a standalone Tocito well, it
10 would definitely be uneconomic to drill a 40 acre well.

11 Q. Are the current well location limitations within
12 Tocito an impediment to your ability to add the Tocito as
13 a salvage zone to the Dakota development?

14 A. Yes, they are. The placement on the type of
15 terrain and the SEA rules make it very difficult. Also,
16 there are problems with drainage with the current rules,
17 which I will show later on in this presentation.

18 Q. So if you're looking for a Dakota location that
19 would be in areas that have not yet been fully depleted of
20 Tocito, that's one of the components of your decision of
21 well locations?

22 A. Yes.

23 Q. But the driver in that analysis is the Dakota?

24 A. Yes.

25 Q. As your principal objective, and that's your

1 target?

2 A. Yes.

3 Q. Without having that as a target, is it going to
4 be possible for you to continue to access and produce the
5 Tocito?

6 A. No, it will not.

7 Q. Let's turn now to the Dakota side of this. The
8 other decline curve is a sample of what do you in the
9 Dakota?

10 A. Yes. This is a normalized production plot.

11 Q. Is that Page 3?

12 A. Yes, a normalized production plot for all wells
13 that are producing from the Basin-Dakota pool that were
14 drilled after 2005 in the area. And this shows that there
15 is an estimated ultimately recovery of 551 million cubic
16 feet. When combined with the Tocito, this would be
17 economic to drill and produce.

18 Q. This analysis on the Dakota would be a
19 standalone Dakota?

20 A. Yes.

21 Q. Let's turn to Page 4 and have you walk us
22 through the economics of a standalone or a well that's
23 combined with the Tocito.

24 A. Okay. From the last two plots, we saw that we
25 could expect a new drill in the Tocito to make about 417

1 million cubic feet and 5,000 barrels of oil.

2 We could expect a new drill in the Dakota to
3 make 551 million cubic feet and 3,000 barrels of oil. And
4 at a gas price of \$5 per MCF and an oil price of \$80 per
5 barrel, we can see that drilling a standalone Tocito well
6 would only give us a rate of return of 5.26 percent, which
7 would have a negative present value of ten percent of
8 negative 138.37. And that's in thousands of dollars.

9 But drilling a -- or commingling with the Dakota
10 would give us a rate of return of 21.10 percent with a
11 much higher positive present value at 10 percent, which
12 would make it economically possible for us to produce from
13 the Tocito.

14 Q. As part of the plan to commingle the Tocito and
15 the Dakota, have you examined the reservoir components of
16 the downhole commingling procedure?

17 A. Yes.

18 Q. Are you familiar with the Division rules and
19 regulations associated with Form C-107A, I think it is?

20 A. Yes, I am.

21 Q. Are you prepared to address with the Examiner
22 this morning those various engineering units associated
23 with the completion of that form?

24 A. Yes.

25 Q. With regard to commingling then, if you'll turn

1 to Page 5, take us through your analysis.

2 A. What we've determined is that existing wells in
3 the Tocito pool will not be negatively affected by
4 inclusion in the Basin-Mancos gas pool and by being
5 commingled in the Dakota pool.

6 I provided a table that lists the compositions
7 of the fluids that are in both these pools. From this
8 table we can see that they're very similar and we
9 shouldn't have any negative affect from combining the two.
10 You can see that they mostly consist of methane, ethane,
11 and propane.

12 Also, we plan to keep the fluid level low in
13 these wells, because they will be on pump, and we plan no
14 further secondary recovery, so there shouldn't be a lot of
15 cross-flow.

16 We've also provided fracture parting pressures
17 for both pools, and current shut-in bottomhole pressures
18 for these pools. And from this, we can see that the
19 bottomhole pressure does not exceed the upper zone's
20 fracture parting pressure.

21 Another reason that we cannot -- we wouldn't
22 expect if we frac'ed one pool, we would enter the other
23 pool -- frac one formation, enter the other formation.
24 And basically, commingling will not reduce the value of
25 the total remaining production.

1 Q. When you examine the pressure relationship
2 between the Tocito, Mancos, and the Gallup, is there
3 enough pressure differential left in those reservoirs to
4 cause substantial cross-flow into one from the other?

5 A. No.

6 Q. These would be wells that would be artificially
7 lifted in some fashion?

8 A. Yes, put them on a pump.

9 Q. Does XTO have a general approved plan for
10 allocation of production between the Tocito, Mancos and
11 the Gallup that the Division has approved on a regular
12 basis?

13 A. Yes. We plan to allocate the production based
14 off currently producing wells that are surrounding the
15 well that we're allocating.

16 Q. And that's a procedure readily accepted by the
17 Division?

18 A. Yes.

19 Q. Do you have a sample of a Division form C-107A
20 to show the Examiners?

21 A. I do, it's on Page 6.

22 Q. Let's look at that. Describe for us again how
23 you would anticipate completing this form in association
24 with all the wells in your population of wells to be
25 measured by the application.

1 A. Could you repeat that?

2 Q. Yeah. I want you to walk through the sample
3 here to show the Examiner that you've hit all the right
4 pegs.

5 A. Right. Well, we filled out this form for a
6 particular well as an example for commingling. And from
7 it we can see that the South Blanco-Tocito pool has a
8 higher bottomhole pressure than the Basin-Dakota pool.

9 We can also see that they both have similar
10 degree API for gravities. And also we can see at the
11 bottom that there was a fixed allocation percentage
12 specified.

13 Q. This would be a sample of the type of form you
14 would file for your application for --

15 A. Yes.

16 Q. And your plan would be to use the transcript and
17 order entered in this case as a reference to approval for
18 commingling?

19 A. Yes.

20 Q. Let's turn back now to the topic of the gas/oil
21 ratios. If you turn now to Page 7, would you identify for
22 us what we're looking at?

23 A. Yes. This is the gas/oil ratios for all active
24 wells in the South Blanco-Tocito pool. From this graph we
25 can see that the gas/oil ratio has been steadily trending

1 upwards and is now at approximately a 100,000 standard
2 cubic feet per barrel.

3 Q. Let's turn to the topic that's caused you the
4 greatest concern, and let's start with Page 8 and set up
5 the context in which you are making this argument to the
6 Examiner.

7 A. Basically, the South Blanco-Tocito pool, the
8 rules are very limiting in the placement of wells. And
9 this infringes on numerous different drainage areas in
10 different parts of the reservoir.

11 We don't want to end up draining another well's
12 reserves. Also, it's difficult because of terrain and
13 because of -- because we want to limit surface
14 disturbance, it is difficult to place the Tocito wells in
15 their current legal locations.

16 From this we can see that in blue I've
17 highlighted what the rule basically states for where we're
18 allowed to place current Tocito wells. And in green I've
19 highlighted where we would like to be able to have the
20 ability to place new Tocito wells. It's also where it's
21 available to place Basin-Mancos gas pool wells.

22 Q. So if you decide to honor both the Mancos and
23 the Tocito rules with a single wellbore, you would have to
24 confine that well to one of the circles that's outline in
25 blue?

1 A. Yes.

2 Q. Conversely, if you want the Basin-Mancos well to
3 be the controlling well location pattern, you would then
4 have the flexibility to put the well within the green
5 rectangles?

6 A. Yes.

7 Q. Let's turn to Page 9. Give us a moment to
8 understand the display when we start talking about the
9 conclusions. Again, this is your work product?

10 A. Yes.

11 Q. Step us through this so we understand each step.

12 A. This is an example of the drainage areas that
13 are found in the South Blanco-Tocito pool. Those are the
14 little black circles that you see on the document.

15 It also shows our proposed locations for new
16 drills. In fact, most of these wells that are on here as
17 new drills have already been staked.

18 We can see that the green diamond represents a
19 currently producing Tocito well. The upside down blue
20 triangle represents a planned new drill or recomplete.
21 And we've highlighted all the new drills or recompletes
22 that would be in a cell with the current rules in red as a
23 red upside down triangle.

24 It's a good map for seeing how the current
25 restricting Tocito rules make it very difficult for

1 placement of Tocito wells.

2 Q. For example, if you go into the upper left-hand
3 corner, you'll see a well drilled back in '86?

4 A. Yes.

5 Q. And the vintage of that well explains why it's
6 got a larger drainage radius than some of the newer wells?

7 A. Yes, it does. The newer wells will have a much
8 smaller drainage radius.

9 Q. And if you're choosing an additional well
10 location for that area, one of those locations is going to
11 require a nonstandard location?

12 A. Yes.

13 Q. And that's the upside down red triangle?

14 A. Yes.

15 Q. On the south side of that drainage circle, you
16 could plan a well that would be standard, and that would
17 be the upside down blue, that's how to read this?

18 A. Yes.

19 Q. And the concluding point is what, sir?

20 A. The concluding point is that it is very -- First
21 of all, we'll create a lot of paperwork, submit a lot of
22 NSL applications.

23 Secondly, you can also see that if we don't have
24 the ability to move the wells freely in different areas,
25 there is a lot of drainage areas in different parts of the

1 pool that we will be -- We'll be placing new wells -- We
2 might end up placing new wells inside other wells'
3 drainage areas and we might not end up drilling the well
4 because of that.

5 Q. You're looking for opportunities in Tocito where
6 it's not been appropriately developed?

7 A. Yes.

8 Q. You're looking for those little pockets of
9 remaining hydrocarbons that you can't access?

10 A. Yes.

11 Q. Let's turn to Page 10. Is this your calculation
12 for your drainage?

13 A. Yes.

14 Q. This is standard engineering drainage
15 calculations?

16 A. Yes, it is.

17 Q. Show us the major components of either your
18 assumptions or your measured values and ranges for the
19 calculation.

20 A. Okay. The "A" is the drainage area which we
21 measured in acres. The "G" is the gas in place in million
22 standard cubic feet. The "H" is the average reservoir
23 thickness which we got from the previously reviewed
24 geology net thickness map.

25 The porosity was read from density porosity

1 logs, and the water saturation was calculated from the
2 resistivity logs. And there is also the gas formation
3 volume factor which we've calculated from pressure
4 surveys.

5 Q. Based upon your collective work, Mr. Fitzgerald,
6 let's turn to Page 11 and have you summarize your
7 engineering conclusions.

8 A. In conclusion, the drilling of the wells is made
9 a lot more difficult with the current rules, and it would
10 cause the NMOCD and XTO to devote a large amount of time
11 and money to file and process these unorthodox well
12 locations.

13 It is also economically advantageous to drill
14 commingled wells that are producing from the South
15 Blanco-Tocito pool and the Basin-Dakota pool. This will
16 help XTO to further develop these pools and it will also
17 help operators in reaching and developing these pools.

18 The existing wells open in the South
19 Blanco-Tocito pool have demonstrated limited drainage
20 areas, which leaves possible production that could be
21 produced in locations that are outside the standard well
22 location windows for the pool. And the bay Basin-Mancos
23 Gas pool should be expanded to include all of the acreage
24 currently within the Tocito pool except for that range
25 within the Rincon unit.

1 MR. KELLAHIN: Mr. Examiner, that concludes my
2 examination of Mr. Fitzgerald. We move the introduction
3 of his exhibits under the "Engineering" tab. That is
4 Pages 1 through 9.

5 HEARING EXAMINER: Any objection to the
6 "Engineering" exhibits?

7 MS. ALTOMARE: No objections.

8 MR. CARR: No objection.

9 HEARING EXAMINER: Okay, the portion of the
10 exhibit book behind the tab labeled "Engineering" is
11 admitted in evidence. Mr. Carr?

12 MR. CARR: No questions.

13 HEARING EXAMINER: Ms. Altomare?

14 CROSS-EXAMINATION

15 BY MS. ALTOMARE:

16 Q. Mr. Fitzgerald, did you participate in the
17 meetings that occurred with Mr. Heyden, the geologist up
18 in Aztec, and I believe the BLM participated at as well?

19 A. Yes, I did.

20 Q. And the information that you've presented today
21 and the conclusions that you've presented today, are they
22 basically the same information that you presented at that
23 meeting?

24 A. Yes, they are.

25 Q. Is there anything additional that you presented

1 today in the form of evidence or testimony or conclusions
2 that you didn't discuss with them at that point in time?

3 A. Not to my knowledge.

4 Q. Okay. I just wanted to -- since we're on that
5 before we move forward.

6 MS. ALTOMARE: Okay, that's it.

7 HEARING EXAMINER: Mr. Warnell?

8 MR. WARNELL: No questions.

9 HEARING EXAMINER: Mr. Warnell has indicated he
10 has no questions. I also have no questions. The witness
11 may stand down. And do you have a summation,
12 Mr. Kellahin?

13 MR. KELLAHIN: No, sir, I think you've heard our
14 case. And we ask for relief.

15 HEARING EXAMINER: Okay. Mr. Carr, do you have
16 anything to present?

17 MR. CARR: No, I'm not intending to call
18 witnesses, Mr. Examiner.

19 HEARING EXAMINER: Ms. Altomare?

20 MS. ALTOMARE: Could we take a brief break
21 before we proceed?

22 HEARING EXAMINER: Very good. We will take a
23 ten minute recess.

24 (Note: A brief break was taken).

25 HEARING EXAMINER: Ms. Altomare, you may call

1 your witness.

2 MS. ALTOMARE: At this time, I'll call Steve
3 Heyden who is appearing telephonically.

4 STEVE HEYDEN,
5 the witness herein, after first being duly sworn
6 upon his oath, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ALTOMARE:

9 Q. Mr. Heyden, can you state your full name for the
10 record, please?

11 A. Steve Heyden.

12 Q. And what is your title?

13 A. I'm a district geologist for NMOCD in Aztec.

14 Q. And how long have you held that position?

15 A. Nine and a half years.

16 Q. Okay. Have you testified before the Oil
17 Conservation Division or Commission in your capacity as
18 the district geologist and as an expert in that field
19 before?

20 A. Yes.

21 MS. ALTOMARE: I would tender Mr. Heyden as an
22 expert in the field of geology.

23 MR. KELLAHIN: No objection.

24 MR. CARR: No objection.

25 HEARING EXAMINER: So accepted.

1 Q. Mr. Heyden, have you heard the testimony that
2 has been presented today so far?

3 A. Yes.

4 Q. And are you familiar with the application that's
5 been submitted by XTO in this matter?

6 A. Yes, I am.

7 Q. There has been reference made to some
8 consultation that's occurred your office and with you
9 personally on this application. Do you recollect
10 participating in meetings and discussions with XTO and its
11 representatives on this?

12 A. Yes. I set up a meeting with XTO and the BLM,
13 and we had Chevron in on conference call.

14 Q. And about when did that occur?

15 A. November 12th, I believe. Yeah, I'm pretty sure
16 it was November 12th.

17 Q. Okay. And what was the purpose of your
18 organizing that meeting?

19 A. I had some concerns and I talked to the BLM, and
20 they had some concerns about the Rincon unit. So we just
21 wanted to iron out any possible differences and look into
22 proposals. And I think we came to an adequate resolution
23 of all the questions.

24 Q. So that meeting was pretty fruitful?

25 A. Yes.

1 Q. Okay. And does the testimony that was presented
2 today reflect what you understand the agreement or the
3 resolution that was come to at that meeting?

4 A. Yes, it does.

5 Q. Okay. Do you have any remaining concerns now
6 that you've heard the testimony regarding the application
7 and the intentions of XTO regarding the Rincon unit and
8 the Tocito?

9 A. On the Rincon unit, I'd like to make clear that
10 there's only a small portion which involves three wells
11 where the Blanco-Tocito pool is actually inside the Rincon
12 unit. And outside of that, any wells drilled to the
13 Mancos interval in the Rincon unit will be done in the
14 Basin-Mancos.

15 So that's why I -- I like the term participating
16 area even though one of the wells hasn't been established
17 and is in the South Blanco-Tocito PA where the unit --
18 Just so there's no misunderstanding about the future of
19 the South Blanco-Tocito as a larger pool within the Rincon
20 unit.

21 Q. So we'd like clarification with any order that's
22 issued relating to this application that -- The reference
23 to the Rincon is with regards to the existing Rincon unit
24 participating area and not with regard to the Rincon unit
25 as a whole which would affect future drills in that area?

1 A. Just the existing acreage that's in the South
2 Blanco-Tocito within the Rincon unit in the south half of
3 Section 32 of 27 north, 6 west, and all of Section 6 of 26
4 north and 6 west.

5 Q. And this was something that you had already
6 discussed with Chevron representatives?

7 A. Yes.

8 Q. And it's your understanding that they understand
9 and concur in this?

10 A. Yes.

11 Q. What, if any, other concerns do you have
12 remaining after hearing today's testimony?

13 A. Okay. Well, one thing I noticed, I haven't
14 found any CDX wells that are dedicated to the South
15 Blanco-Tocito. There's a lot of the Upper Gallup pools
16 that surround this pool that are also developed in the
17 Tocito, although they were called Gallup, and there may be
18 CDX wells in one of them. But I don't find anything
19 within the pool that CDX has, so I'm not really concerned
20 with their interests here.

21 I talked to Marian, which is a partial interest
22 owner in one of the sections, and I also talked to
23 Burlington, who has five wells within the pool, and
24 received no objection.

25 And I also reported to them the dates leading to

1 their notifying the Division of any objections they had,
2 and apparently there were no objections from either of
3 them. And as far as commingling goes --

4 Q. Before you move on to commingling, with regard
5 to notice issues and other parties, at this point, you're
6 comfortable that any party that's entitled to notice or to
7 participate in this proceeding has been provided with
8 notice, has been given the opportunity and has declined to
9 do so?

10 A. To my knowledge, yes.

11 Q. Other than Chevron?

12 A. Right.

13 Q. Go ahead. What were you going to say regarding
14 commingling?

15 A. I was going to say, as far as commingling goes
16 and these other Gallup pools in the area, that the
17 Largo-Gallup, the Ice Canyon-Gallup, and the BS
18 Mesa-Gallup are all Tocito pools. They're all gas pools,
19 and they've all been preapproved for commingling with the
20 Basin-Dakota, and they surround the Blanco-Tocito in three
21 directions. Anyway, that's just a -- regarding the idea
22 of commingling.

23 I also would like to see the Tocito spacing
24 units redone as 320 acre spacing units. For regulatory
25 purposes, they'll be easier to track. And I also think

1 you can have stranded units ranging anywhere from 80 to
2 240 acres depending on where the 80 acres were cut out of
3 the proposed 320 acre spacing unit that the Basin-Dakota
4 would be in that the Tocito would be dualled with.

5 It would possibly raise some difficulties having
6 the 80 acre spacing unit with where you might place infill
7 wells. It will just -- it requires some effort to start
8 with, but in the long run, it will make things a lot
9 simpler to have these converted to 320 acre Basin-Mancos.

10 Q. Okay. Are there any other examples of
11 regulatory or record-keeping issues that keeping them
12 at 80 acre spacing units would cause?

13 A. Well, at present, the Basin-Mancos and Basin-
14 Dakota both allow for three infill wells. They could
15 have -- Say you have a total of four wells for 320, the
16 spacing rules on both specify no more than two wells per
17 quarter section, and no more than one well in any quarter
18 quarter.

19 But if you get an 80 taken up as a special
20 spacing unit, that precludes the second quarter quarter
21 from being the setting of future Dakota-Mancos dual wells,
22 because you've got that 80 taken up as a special proration
23 unit.

24 Whereas, if you got the 320 taken, you can take
25 any unoccupied quarter quarter and put an infill well in

1 it within the confines of two wells per quarter section.

2 Q. Okay. Other than the concerns you've just
3 discussed, are there any remaining concerns that you have
4 regarding the approval of this application?

5 A. No, that's pretty much it.

6 Q. Okay then, with the qualifications of the
7 concerns that you've just discussed, do you support the
8 approval of the application submitted by XTO?

9 A. Yes, I do.

10 MS. ALTOMARE: I'll go ahead and pass the
11 witness.

12 MR. KELLAHIN: No questions.

13 MR. CARR: No questions.

14 MR. WARNELL: No questions.

15 HEARING EXAMINER: Mr. Heyden, I do not
16 understand what you're talking about about the Rincon
17 unit. Let me preface it by saying what I understand that
18 Mr. Kellahin is asking for at this point, and then maybe
19 you can explain to me what you're saying that's different
20 from that.

21 What I understand Mr. Kellahin to be asking for
22 at this point is that the order contract the South
23 Blanco-Tocito pool so that it will -- the remaining South
24 Blanco-Tocito pool will include only that portion of the
25 South Blanco-Tocito pool as it now exists that is also

1 within the boundaries of the Rincon unit. Now, is what
2 you're asking for any different from that?

3 THE WITNESS: No, I was just wanting to define
4 it, constrain it a little bit so recognize that outside of
5 the -- that those are the boundaries of the Tocado on it
6 -- you know, except in the case of someone drilling
7 stand-alone drilling wells, there wouldn't be any further
8 extension the rest of the Rincon unit in the Basin-Mancos.

9 HEARING EXAMINER: Yeah, but the -- you're not
10 asking for anything different in regard to how the
11 boundaries of the South Blanco-Tocado will be defined?

12 THE WITNESS: No, I'm not.

13 HEARING EXAMINER: But of course -- I'm not sure
14 we covered this adequately or properly in the Mancos
15 order, although I have become aware of this issue in a
16 previous situation.

17 Presumably we should state that the South
18 Blanco-Tocado rules will not control anything outside the
19 actual boundaries of the pool. I believe they would not
20 anyway, because it would be within a different pool with
21 the Basin-Mancos pool, but I'm not sure we made that
22 express in the Basin-Mancos order, which probably should
23 have been done.

24 I believe there's not any misunderstanding
25 there. If you think there is, let me know.

1 THE WITNESS: No, I don't think so.

2 HEARING EXAMINER: Okay, very good. Now, I am
3 concerned about this issue of a CDX well, because I
4 understood Mr. Austin to testify that there was a CDX well
5 within the pool.

6 THE WITNESS: I haven't found one within my
7 records.

8 HEARING EXAMINER: And you have, I take it,
9 examined the Division's well lists?

10 THE WITNESS: While he was testifying, I pulled
11 up a list of all South Blanco-Tocito active wells, and I
12 only show Chevron, Burlington, XTO and Energen.

13 HEARING EXAMINER: Okay well, it may be
14 necessary to recall Mr. Austin in order to clarify this
15 issue because I do regard that as being somewhat material.

16 I believe that is all my questions. Anyone have
17 any follow up? Very good. Mr. Kellahin, I do want to
18 clarify this CDX issue, and then I'll let you wrap up any
19 way you wish.

20 MR. KELLAHIN: Mr. Examiner, I'm happy to recall
21 Mr. Austin, but his information is that in Township 26
22 north --

23 HEARING EXAMINER: Let's get the map.

24 MR. KELLAHIN: I'm looking at Exhibit Map A, and
25 I'm looking in the southeast quarter in Township 29 north,

1 5 west, I'm looking at Section 18.

2 THE WITNESS: That's outside the boundaries of
3 the pool.

4 MR. KELLAHIN: That's right. His testimony was
5 it's outside the boundary, but within a mile.

6 HEARING EXAMINER: Okay.

7 THE WITNESS: It hasn't been completed in the
8 pool according to our records.

9 MR. KELLAHIN: Okay. We have that Jicarilla
10 well in the southeast quarter of 18 as a CDX well. That
11 may not be right.

12 HEARING EXAMINER: It is the question whether or
13 not it's a CDX well, or is the question whether or not
14 it's completed in the Mancos formation?

15 MR. KELLAHIN: That's the question, in the
16 Mancos.

17 HEARING EXAMINER: Yeah, so --

18 MS. ALTOMARE: You're referencing the Jicarilla
19 A 2E, is that what you're --

20 MR. KELLAHIN: I think that's an "E." It's the
21 only well in 18 that we have on the map.

22 HEARING EXAMINER: The well name is so small on
23 this map that I can't distinguish it even with my glasses.

24 MS. ALTOMARE: I believe it's Jicarilla A-2E.

25 THE WITNESS: Okay, I've got that as Enervest.

1 I guess they took over from CDX. Let me check my pools on
2 it.

3 HEARING EXAMINER: Okay, so if it's not
4 completed within the Mancos formation -- well, if it were
5 in the Gallup, that would also be within the Mancos, would
6 it not?

7 THE WITNESS: Is it a misname for the Mancos in
8 the San Juan Basin and then --

9 HEARING EXAMINER: Well, the notice rule
10 requires that notice be given to any operators of wells in
11 the same formation within one mile of the pool. So if
12 this well is completed in the Gallup -- That's what you're
13 telling me, Mr. Heyden, that according to the OCD records,
14 it is completed within the Gallup?

15 THE WITNESS: Yes, according to our records.

16 HEARING EXAMINER: Okay. So it would seem that
17 notice to CDX is required.

18 THE WITNESS: It's entered as Enervest now.

19 HEARING EXAMINER: Are they now the operator?

20 THE WITNESS: Yeah. I believe they took over
21 for CDX in that area, at least.

22 HEARING EXAMINER: Is that well -- what does
23 the -- I want to know if you're just testifying from
24 recollection or supposition.

25 THE WITNESS: I'm looking at the change of

1 operator notice right now.

2 HEARING EXAMINER: Okay, you're testifying from
3 Division records then?

4 THE WITNESS: Yes.

5 HEARING EXAMINER: And Division records show
6 that the Jicarilla No. 2 E is operated by Enervest?

7 THE WITNESS: Enervest Operating, LLC.

8 HEARING EXAMINER: Very good.

9 MS. ALTOMARE: What's the effective date of
10 transfer?

11 THE WITNESS: September 10, 2009.

12 MS. ALTOMARE: So when was notice originally
13 sent?

14 MR. KELLAHIN: It would be the date of the
15 application.

16 HEARING EXAMINER: Well, I think that is not
17 going to be particularly relevant, because the fact is
18 that CDX was not notified, as I understand the testimony.
19 So it's going to be necessary to give notice to the
20 operator of that well, I believe.

21 MR. KELLAHIN: We'll contact them and see if we
22 can get a waiver from them.

23 HEARING EXAMINER: Very good. I think the thing
24 to do in that case is to continue this case to the next
25 docket and give you a chance to accomplish that.

1 MR. KELLAHIN: Let's do that.

2 HEARING EXAMINER: There is one other question I
3 have, Mr. Kellahin, and that is, my understanding of the
4 testimony was that XTO's request was same as what
5 Mr. Heyden indicated he wanted.

6 That is, that unlike the original Basin-Mancos
7 order, this order would not grandfather the existing units
8 and the existing wells would go into 320 acre units; is
9 that correct?

10 MR. KELLAHIN: That was Mr. Austin's testimony.
11 And this hearing is so that we have the ability to
12 configure a 320 that will include the former 80.

13 HEARING EXAMINER: So in other words, you are
14 requesting the same thing that Mr. Heyden says he thinks
15 should be done. That is, that the order should not
16 grandfather the existing units. In other words, the
17 existing producing wells will be rededicated to 320 acre
18 units under the rules for the Basin-Mancos?

19 MR. KELLAHIN: The answer is yes. I, however,
20 personally put a step through this as a stranded unit
21 under the Mancos rules, and I don't share the concern that
22 Mr. Heyden has about having an 80 acre unavailable in the
23 160. It's an academic exercise because he can do whatever
24 he wants.

25 HEARING EXAMINER: Yeah, I don't understand that

1 either, but I wanted to be sure how the order should be
2 written.

3 MR. KELLAHIN: The reality is, Mr. Heyden's
4 problem is not going to occur, but the simple answer is we
5 can write the order the way he suggested. We'll just
6 convert the 80s to 320s.

7 HEARING EXAMINER: Very good. Anything further
8 from any party? Very good. Case No. 14395 will be
9 continued for purposes of notice to the December 17, 2009
10 docket.

11 (Whereupon, the proceedings concluded.)
12
13
14
15


16 I do hereby certify that the foregoing is
17 a complete and correct report of the proceedings in
18 the case of 14395
19 heard by me on Dec 3, 2009
20 David K. B... Examiner
21 Oil Conservation Division
22
23
24
25

1 STATE OF NEW MEXICO)
 2) ss.
 3 COUNTY OF BERNALILLO)
 4

5 REPORTER'S CERTIFICATE
 6

7 I, PEGGY A. SEDILLO, Certified Court
 8 Reporter of the firm Paul Baca Professional
 9 Court Reporters do hereby certify that the
 10 foregoing transcript is a complete and accurate
 11 record of said proceedings as the same were
 12 recorded by me or under my supervision.

13 Dated at Albuquerque, New Mexico this
 14 10th day of December, 2009.
 15
 16
 17

18 
 19 PEGGY A. SEDILLO, CCR NO. 88
 20 License Expires 12/31/09
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