

11/29/2014 DATE IN	SUSPENSE	MAm ENGINEER	11/25/2014 LOGGED IN	SWS TYPE	PM 432 958977 APP NO.
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ABOVE THIS LINE FOR DIVISION USE ONLY

- NO NM520  
notice  
- ON AFFECTED  
Perty

## NEW MEXICO OIL CONSERVATION DIVISION

- Engineering Bureau -

1220 South St. Francis Drive, Santa Fe, NM 87505



### ADMINISTRATIVE APPLICATION CHECKLIST

THIS CHECKLIST IS MANDATORY FOR ALL ADMINISTRATIVE APPLICATIONS FOR EXCEPTIONS TO DIVISION RULES AND REGULATIONS WHICH REQUIRE PROCESSING AT THE DIVISION LEVEL IN SANTA FE

#### Application Acronyms:

[NSL-Non-Standard Location] [NSP-Non-Standard Proration Unit] [SD-Simultaneous Dedication]

[DHC-Downhole Commingling] [CTB-Lease Commingling] [PLC-Pool/Lease Commingling]

[PC-Pool Commingling] [OLS - Off-Lease Storage] [OLM-Off-Lease Measurement]

[WFX-Waterflood Expansion] [PMX-Pressure Maintenance Expansion]

[SWD-Salt Water Disposal] [IPI-Injection Pressure Increase]

[EOR-Qualified Enhanced Oil Recovery Certification] [PPR-Positive Production Response]

#### [1] TYPE OF APPLICATION - Check Those Which Apply for [A]

[A] Location - Spacing Unit - Simultaneous Dedication

☐ NSL ☐ NSP ☐ SD

Check One Only for [B] or [C]

[B] Commingling - Storage - Measurement

☐ DHC ☐ CTB ☐ PLC ☐ PC ☐ OLS ☐ OLM

[C] Injection - Disposal - Pressure Increase - Enhanced Oil Recovery

☐ WFX ☐ PMX ☒ SWD ☐ IPI ☐ EOR ☐ PPR

[D] Other: Specify \_\_\_\_\_

#### [2] NOTIFICATION REQUIRED TO: - Check Those Which Apply, or ☐ Does Not Apply

[A] ☐ Working, Royalty or Overriding Royalty Interest Owners

[B] ☒ Offset Operators, Leaseholders or Surface Owner

[C] ☒ Application is One Which Requires Published Legal Notice

[D] ☒ Notification and/or Concurrent Approval by BLM or SLO  
U.S. Bureau of Land Management - Commissioner of Public Lands, State Land Office

[E] ☒ For all of the above, Proof of Notification or Publication is Attached, and/or,

[F] ☐ Waivers are Attached

#### [3] SUBMIT ACCURATE AND COMPLETE INFORMATION REQUIRED TO PROCESS THE TYPE OF APPLICATION INDICATED ABOVE.

[4] **CERTIFICATION:** I hereby certify that the information submitted with this application for administrative approval is **accurate** and **complete** to the best of my knowledge. I also understand that **no action** will be taken on this application until the required information and notifications are submitted to the Division.

Note: Statement must be completed by an individual with managerial and/or supervisory capacity.

BRIAN COLLINS  
Print or Type Name

Signature

Operations Engineering Advisor  
Title

Date

bcollins@concho.com  
e-mail Address

20 NOV 2014

2014 NOV 25 P 3:18

RECEIVED OGD

- SWD 1521  
- COG operating, LLC  
229137  
Well  
- West Penn 36  
State SWD #2  
3D-025-Pending  
POD  
- SWD, Devonian  
96101



November 20, 2014

RECEIVED OCD

2014 NOV 25 P 3: 17

New Mexico Oil Conservation Division  
Attn: Phillip Goetze  
1220 South St. Francis Drive  
Santa Fe, NM 87505

RE: Application For Authorization To Inject  
West Pearl 36 State SWD #2  
Township 19 South, Range 34 East, N.M.P.M.  
Section 36: 990' FNL & 740' FEL  
Lea County, New Mexico

Dear Mr. Goetze:

COG Operating LLC respectfully requests administrative approval for authorization to inject for the referenced well. Attached, for your review, is a copy of the C-108 application. Once we receive the newspaper publication and all certified return receipts, I will send you a copy.

Our geologic prognosis has the top of the Devonian at 14493', Fusselman at 14831', and Simpson at 15988'. I'm permitting the injection interval a couple of hundred feet shallower and deeper than the prognosis just in case the formation tops are different than expected due to the lack of deep well control in this area. We will likely call TD about 1250' to 1500' below the actual top of the Devonian when we drill the well.

Please do not hesitate to contact me at (575) 748-6940 should you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brian Collins".

Brian Collins  
Operations Engineering Advisor

BC/sw  
Enclosures

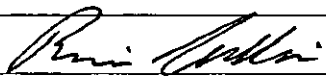
CORPORATE ADDRESS

One Concho Center | 600 West Illinois Avenue | Midland, Texas 79701  
PHONE 432.683.7443 | FAX 432.683.7441

LOCAL ADDRESS

Concho West | 2208 West Main Street | Artesia, New Mexico 88210  
PHONE 575.748.6940 | FAX 575.748.6968

**APPLICATION FOR AUTHORIZATION TO INJECT**

- I. PURPOSE: Secondary Recovery Pressure Maintenance X Disposal Storage  
Application qualifies for administrative approval? X Yes No
- II. OPERATOR: COG Operating, LLC.  
ADDRESS: 2208 West Main St, Artesia, NM 88210  
CONTACT PARTY: BRIAN COLLINS PHONE: 575-748-6940
- III. WELL DATA: Complete the data required on the reverse side of this form for each well proposed for injection.  
Additional sheets may be attached if necessary.
- IV. Is this an expansion of an existing project? Yes X No  
If yes, give the Division order number authorizing the project: \_\_\_\_\_
- V. Attach a map that identifies all wells and leases within two miles of any proposed injection well with a one-half mile radius circle drawn around each proposed injection well. This circle identifies the well's area of review.
- VI. Attach a tabulation of data on all wells of public record within the area of review which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of completion, and a schematic of any plugged well illustrating all plugging detail.
- VII. Attach data on the proposed operation, including:
1. Proposed average and maximum daily rate and volume of fluids to be injected;
  2. Whether the system is open or closed;
  3. Proposed average and maximum injection pressure;
  4. Sources and an appropriate analysis of injection fluid and compatibility with the receiving formation if other than reinjected produced water; and,
  5. If injection is for disposal purposes into a zone not productive of oil or gas at or within one mile of the proposed well, attach a chemical analysis of the disposal zone formation water (may be measured or inferred from existing literature, studies, nearby wells, etc.).
- \*VIII. Attach appropriate geologic data on the injection zone including appropriate lithologic detail, geologic name, thickness, and depth. Give the geologic name, and depth to bottom of all underground sources of drinking water (aquifers containing waters with total dissolved solids concentrations of 10,000 mg/l or less) overlying the proposed injection zone as well as any such sources known to be immediately underlying the injection interval.
- IX. Describe the proposed stimulation program, if any.
- \*X. Attach appropriate logging and test data on the well. (If well logs have been filed with the Division, they need not be resubmitted).
- \*XI. Attach a chemical analysis of fresh water from two or more fresh water wells (if available and producing) within one mile of any injection or disposal well showing location of wells and dates samples were taken.
- XII. Applicants for disposal wells must make an affirmative statement that they have examined available geologic and engineering data and find no evidence of open faults or any other hydrologic connection between the disposal zone and any underground sources of drinking water.
- XIII. Applicants must complete the "Proof of Notice" section on the reverse side of this form.
- XIV. Certification: I hereby certify that the information submitted with this application is true and correct to the best of my knowledge and belief.
- NAME: BRIAN COLLINS TITLE: Operations Engineering Advisor  
SIGNATURE:  DATE: 20 NOV 2014  
E-MAIL ADDRESS: bcollins@concho.com
- \* If the information required under Sections VI, VIII, X, and XI above has been previously submitted, it need not be resubmitted. Please show the date and circumstances of the earlier submittal: \_\_\_\_\_

C-108 Application for Authorization to Inject  
WEST PEARL 36 STATE SWD #2  
990' FNL, 740' FEL  
Unit A, Section 36, T19S, R34E  
Lea County, NM

COG Operating, LLC, proposes to drill the captioned well to 16,000' for salt water disposal service into the Devonian/Silurian/Upper Ordovician from approximately 14,300' to 16,000'. A drilling permit will be submitted upon approval of this C-108.

- V. Map is attached.
- VI. No wells within the ½ mile radius area of review penetrate the proposed injection zone.
- VII. 1. Proposed average daily injection rate = 17,300 BWP  
Proposed maximum daily injection rate = 25,000 BWP
2. Closed system
3. Proposed maximum injection pressure = 2860 psi  
(0.2 psi/ft. x 14,300' ft.)
4. Source of injected water will be Delaware Sand, Bone Spring Sand and Wolfcamp produced water. No compatibility problems are expected. Analyses of Delaware, Bone Spring and Wolfcamp waters from analogous source wells are attached.
- VIII. The injection zone is the Devonian/Silurian/Upper Ordovician, a mixture of non-hydrocarbon bearing limestone and dolomite from 14300' to 16000'.  
Any underground water sources will be shallower than 1812', the estimated top of the Rustler Anhydrite.
- IX. The Devonian/Silurian/Upper Ordovician injection interval will be acidized with approximately 40,000 gals of 20 % HCl acid. *Not advertised to include upper Ord → Devonian/Silurian only*
- X. Well logs will be filed with the Division. There are no nearby Devonian penetrations so no analog well logs are available.
- XI. Unable to locate the well listed on the State Engineer website located in the SW/4 SW/4 SE/4 Sec. 25-19s-34e on field visit. There is a fresh water station at this location that uses water pipelined in from outside this area. *Two expired applications for Ogallala monitoring wells - never completed [1986]*
- XII. After examining the available geologic and engineering data, no evidence was found of open faults or any other hydrologic connection between the disposal zone and any underground sources of drinking water.
- XIII. Proof of Notice is attached. *By Brian Collins per phone conversation*

# **III.**

## **WELL DATA**

## INJECTION WELL DATA SHEET

OPERATOR: COG Operating, LLCWELL NAME & NUMBER: West Pearl 36 State SWD No. 2WELL LOCATION: 990' FNL, 740' FEL A 36 19s 34e  
FOOTAGE LOCATION UNIT LETTER SECTION TOWNSHIP RANGEWELLBORE SCHEMATIC

See Attached Wellbore Schematic

WELL CONSTRUCTION DATASurface CasingHole Size: 2 1/2" / 1 7/8" Casing Size: 20" e ± 1850'  
Cemented with: - sx. or ± 5000 ft<sup>3</sup>  
Top of Cement: Surface Method Determined: DesignIntermediate CasingHole Size: 12 1/4" Casing Size: 9 5/8" e ± 11100'  
Cemented with: - sx. or ± 4300 ft<sup>3</sup>  
Top of Cement: Surface Method Determined: DesignProduction CasingHole Size: 8 1/2" Casing Size: 7" liner ± 10900' - ± 14300'  
Cemented with: - sx. or ± 650 ft<sup>3</sup>  
Top of Cement: Top of Liner Method Determined: Design  
Total Depth: ± 16,000'Injection Interval± 14300' feet to ± 16000'(Perforated or Open Hole indicate which)

## INJECTION WELL DATA SHEET

Tubing Size: 4 1/2" Lining Material: Dualine 20 / CLS Glassbore  
Type of Packer: Nickel plated 10K double grip retrievable or permanent packer  
Packer Setting Depth: ± 14250'  
Other Type of Tubing/Casing Seal (if applicable): N/A

### Additional Data

1. Is this a new well drilled for injection? X Yes \_\_\_\_\_ No  
If no, for what purpose was the well originally drilled? \_\_\_\_\_  
\_\_\_\_\_  
2. Name of the Injection Formation: Devonian / Silurian / Upper Ordovician  
3. Name of Field or Pool (if applicable): -  
4. Has the well ever been perforated in any other zone(s)? List all such perforated intervals and give plugging detail, i.e. sacks of cement or plug(s) used. No.  
\_\_\_\_\_  
5. Give the name and depths of any oil or gas zones underlying or overlying the proposed injection zone in this area:  
Underlying : None  
Overlying : Seven Rivers ± 3950-4100', Queen ± 4550-5100',  
GB/S. Andres ± 5500-5850', Bone Spring ± 9550-10900'  
Morrow ± 13275-13600'

30-025-

West Pearl 36 State SWD 2  
990' FNL 740' FEL  
A-36-19s-34e  
Lea, NM

26"

20" / / /

@ ±1850' ±5000 CF Cmt

17 1/2"

13 3/8" / / /

@ ±3500' ±4000 CF Cmt

12 1/4"

4 1/2" Inj. Tbg.

8 1/2"

9 5/8" / / /

@ ±11100' ±4300 CF Cmt

6 1/8"

Inj. Pkr @ ±14250'

7" / / /

Liner @ ±10900 - ±14300' ±650 CF Cmt

Devonian/Silurian/Ordovician  
OH Inj. Interval  
±14300' - ±16,000'

16000'

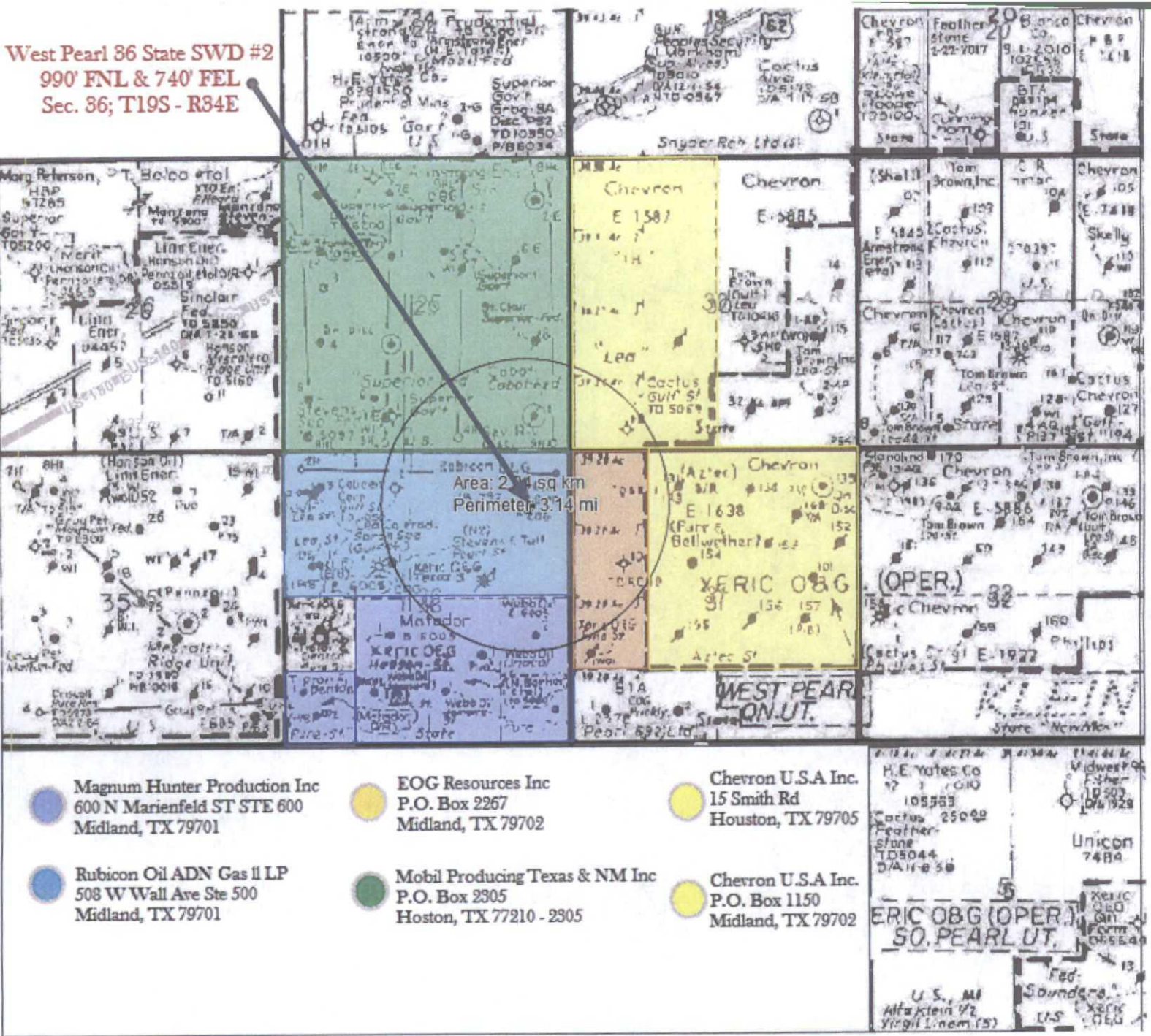
"Not To Scale"



**V.**

**MAP**

West Pearl 86 State SWD #2  
 990' FNL & 740' FEL  
 Sec. 36; T19S - R34E



— Corrected in March 23 submittal  
 — Notification based on second package

# VI.

**No Wells Penetrate  
Proposed Disposal  
Interval Within Half  
Mile Area of Review**

# **VII.**

## **Water Analysis Produced Formation Water**

**No Water Analyses  
Available for Receiving  
Formation**

WATER SAMPLES REPRESENTATIVE OF WATER BEING INJECTED INTO THE PROPOSED SWD WELL

<b>Delaware</b>												
Lab Test #	Lease	Location	Salesman	Date Out	Sample Date	Specific Gravity	Ionic Strength	TDS	pH	conductivity	Ca (mg/L)	Mg (mg/L)
2011128362	Sly Hawk State	1	William D Polk	9/28/2011	9/13/2011	1.17	4.06	256802.26	6.50		26180.00	4101.14
<b>Bone Spring</b>												
Lab Test #	Lease	Location	Salesman	Date Out	Sample Date	Specific Gravity	Ionic Strength	TDS	pH	conductivity	Ca (mg/L)	Mg (mg/L)
2012108003	Boyles	24 1H	William D Polk	4/16/2012	4/3/2012	1.13	3.41	206441.81	6.69		3700.86	841.87
<b>Wolfcamp</b>												
Lab Test #	Lease	Location	Salesman	Date Out	Sample Date	Specific Gravity	Ionic Strength	TDS	pH	conductivity	Ca (mg/L)	Mg (mg/L)
2012105892	Augustus 10	1H		3/15/2012	3/8/2012	1.06	1.46	89771.55	6.60		3963.30	639.83

TH (CaCO3)	Na (mg/L)	K (mg/L)	Zn (mg/L)	Fe (mg/L)	Ba (mg/L)	Sr (mg/L)	Mn (mg/L)	Resistivity	HCO3 (mg/L)	CO3 (mg/L)	OH (mg/L)	SO4 (mg/L)	Cl (mg/L)	CO2 (mg/L)	H2S (mg/L)
83379.63	62970.16	1133.12	38.78	20.06	1.64	905.03	9.33		73.00	0.00		70.00	161300.00	360.00	0.00
TH (CaCO3)	Na (mg/L)	K (mg/L)	Zn (mg/L)	Fe (mg/L)	Ba (mg/L)	Sr (mg/L)	Mn (mg/L)	Resistivity	HCO3 (mg/L)	CO3 (mg/L)	OH (mg/L)	SO4 (mg/L)	Cl (mg/L)	CO2 (mg/L)	H2S (mg/L)
13271.35	69386.15	1109.30	0.00	17.57	0.00	483.07	0.00		1403.00	0.00		700.00	128800.00	400.00	0.00
TH (CaCO3)	Na (mg/L)	K (mg/L)	Zn (mg/L)	Fe (mg/L)	Ba (mg/L)	Sr (mg/L)	Mn (mg/L)	Resistivity	HCO3 (mg/L)	CO3 (mg/L)	OH (mg/L)	SO4 (mg/L)	Cl (mg/L)	CO2 (mg/L)	H2S (mg/L)
13352.51	28320.32	350.70	0.00	17.85	1.77	707.79	0.00		220.00	0.00		950.00	54600.00	60.00	0.00

**X.**

**No Log Available Across  
Proposed  
Devonian/Silurian/Upper  
Ordovician Injection Interval**

**XI.**



**Fresh Water Sample  
Analyses**





e, (quarters are 1=NW 2=NE 3=SW 4=SE)

(quarters are smallest to largest) (NAD83 UTM in meters)

WR File Nbr	Sub basin	Use	Diversion	Owner	County	POD	Number	Code	Grant	Source	q q q 6416 4	Sec	Tws	Rng	X	Y
<u>CP 00680</u>		MON		0 C. W. TRAINER	LE	<u>CP 00680</u>	No data			3 3 4	25	19S	34E	639530	3610685*	
<u>CP 00683</u>		OBS		0 C. W. TRAINER	LE	<u>CP 00683</u>	120' deep - Could not locate well in field visit.	Shallow		3 3 4	25	19S	34E	639530	3610685*	

Record Count: 2

Record Count: 2

**Section(s):** 25, 26, 35, 36      **Township:** 19S      **Range:** 34E

The data is furnished by the NMOSE/ISC and is accepted by the recipient with the expressed understanding that the OSE/ISC make no warranties, expressed or implied, concerning the accuracy, completeness, reliability, usability, or suitability for any particular purpose of the data.



# New Mexico Office of the State Engineer

## Point of Diversion Summary

(quarters are 1=NW 2=NE 3=SW 4=SE)

(quarters are smallest to largest)

(NAD83 UTM in meters)

**POD Number**

**Q64 Q16 Q4 Sec Tws Rng**

**X**

**Y**

CP 00683

3 3 4 25 19S 34E

639530 3610685\*

**Driller License:** ABBOTT BROTHERS COMPANY

**Driller Name:**

**Drill Start Date:** 07/18/1985

**Drill Finish Date:** 07/20/1985

**Plug Date:**

**Log File Date:** 08/16/1985

**PCW Rcv Date:**

**Source:** Shallow

**Pump Type:**

**Pipe Discharge Size:**

**Estimated Yield:**

**Casing Size:**

**Depth Well:** 120 feet

**Depth Water:** 28 feet

\*UTM location was derived from PLSS - see Help

The data is furnished by the NMOSE/ISC and is accepted by the recipient with the expressed understanding that the OSE/ISC make no warranties, expressed or implied, concerning the accuracy, completeness, reliability, usability, or suitability for any particular purpose of the data.

10/4/12 7:20 AM

Page 1 of 1

POD SUMMARY - CP 00683



---

*New Mexico Office of the State Engineer*  
**Active & Inactive Points of Diversion**  
(with Ownership Information)

---

No PODs found.

**PLSS Search:**

**Section(s):** 30, 31

**Township:** 19S

**Range:** 35E

---

The data is furnished by the NMOSE/ISC and is accepted by the recipient with the expressed understanding that the OSE/ISC make no warranties, expressed or implied, concerning the accuracy, completeness, reliability, usability, or suitability for any particular purpose of the data.

---

11/14/14 7:23 AM

Page 1 of 1

ACTIVE & INACTIVE POINTS OF DIVERSION



---

*New Mexico Office of the State Engineer*  
**Active & Inactive Points of Diversion**  
(with Ownership Information)

---

No PODs found.

**PLSS Search:**

**Section(s):** 1, 2

**Township:** 20S

**Range:** 34E

---

The data is furnished by the NMOSE/ISC and is accepted by the recipient with the expressed understanding that the OSE/ISC make no warranties, expressed or implied, concerning the accuracy, completeness, reliability, usability, or suitability for any particular purpose of the data.

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11/14/14 7:24 AM

Page 1 of 1

ACTIVE & INACTIVE POINTS OF DIVERSION



# New Mexico Office of the State Engineer

## Active & Inactive Points of Diversion

(with Ownership Information)

(R=POD has been replaced and no longer serves this file, (quarters are 1=NW 2=NE 3=SW 4=SE)  
C=the file is closed) (quarters are smallest to largest) (NAD83 UTM in meters)

WR File Nbr	Sub basin	Use	Diversion	Owner	County	POD Number	Code	Grant	Source	q	q	q	Sec	Tws	Range	X	Y
L 04157	L	DOL		3 VIRGIL LINAM	LE	L 04157			Shallow	6416	4		3	3	06 20S 35E	640483	3607561*

Record Count: 1

> 1 mi. Outside 1 mile area of review.

### PLSS Search:

Section(s): 6

Township: 20S

Range: 35E

Sorted by: File Number

\*UTM location was derived from PLSS - see Help

The data is furnished by the NMOSE/ISC and is accepted by the recipient with the expressed understanding that the OSE/ISC make no warranties, expressed or implied, concerning the accuracy, completeness, reliability, usability, or suitability for any particular purpose of the data.

11/14/14 7:24 AM

Page 1 of 1

ACTIVE & INACTIVE POINTS OF DIVERSION



November 17, 2014

Hobbs News-Sun  
P.O. Box 850  
Hobbs, NM 88240

Re: **Legal Notice**  
**Salt Water Disposal Well**  
**West Pearl 36 State SWD #2**

To Whom It May Concern:

Enclosed is a legal notice regarding New Mexico Oil Conservation Division C-108 Application for Authorization to Inject for a salt water disposal well.

Please run this notice and return the proof of notice to the undersigned at:

**COG Operating LLC, 2208 W. Main St., Artesia, NM 88210**

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Collins".

Brian Collins  
Operations Engineering Advisor

BC/sw  
Enclosures

**HOBBS NEWS-SUN**  
**LEGAL NOTICES**

COG Operating LLC, 2208 W. Main Street, Artesia, New Mexico, 88210, has filed Form C-108 (Application for Authorization to Inject) with the New Mexico Oil Conservation Division seeking administrative approval for a salt water disposal well. The proposed well, the West Pearl 36 State SWD No. 2 is located 990' FNL and 740' FEL, Section 36, Township 19 South, Range 34 East, Lea County, New Mexico. Disposal water will be sourced from area wells producing from the Delaware, Bone Spring and Wolfcamp formations. The disposal water will be injected into the Devonian formation at a depth of 14,300' to 16,000' at a maximum surface pressure of 2860 psi and a maximum rate of 25,000 BWPd. The proposed SWD well is located approximately 25 miles west of Hobbs. Any interested party who has an objection to this must give notice in writing to the Oil Conservation Division, 1220 South Saint Francis Street, Santa Fe, New Mexico, 87505, within fifteen (15) days of this notice. Any interested party with questions or comments may contact Brian Collins at COG Operating LLC, 2208 W. Main Street, Artesia, New Mexico 88210, or call 575-748-6940.

Published in the Hobbs News-Sun Hobbs, New Mexico  
\_\_\_\_\_, 2014.

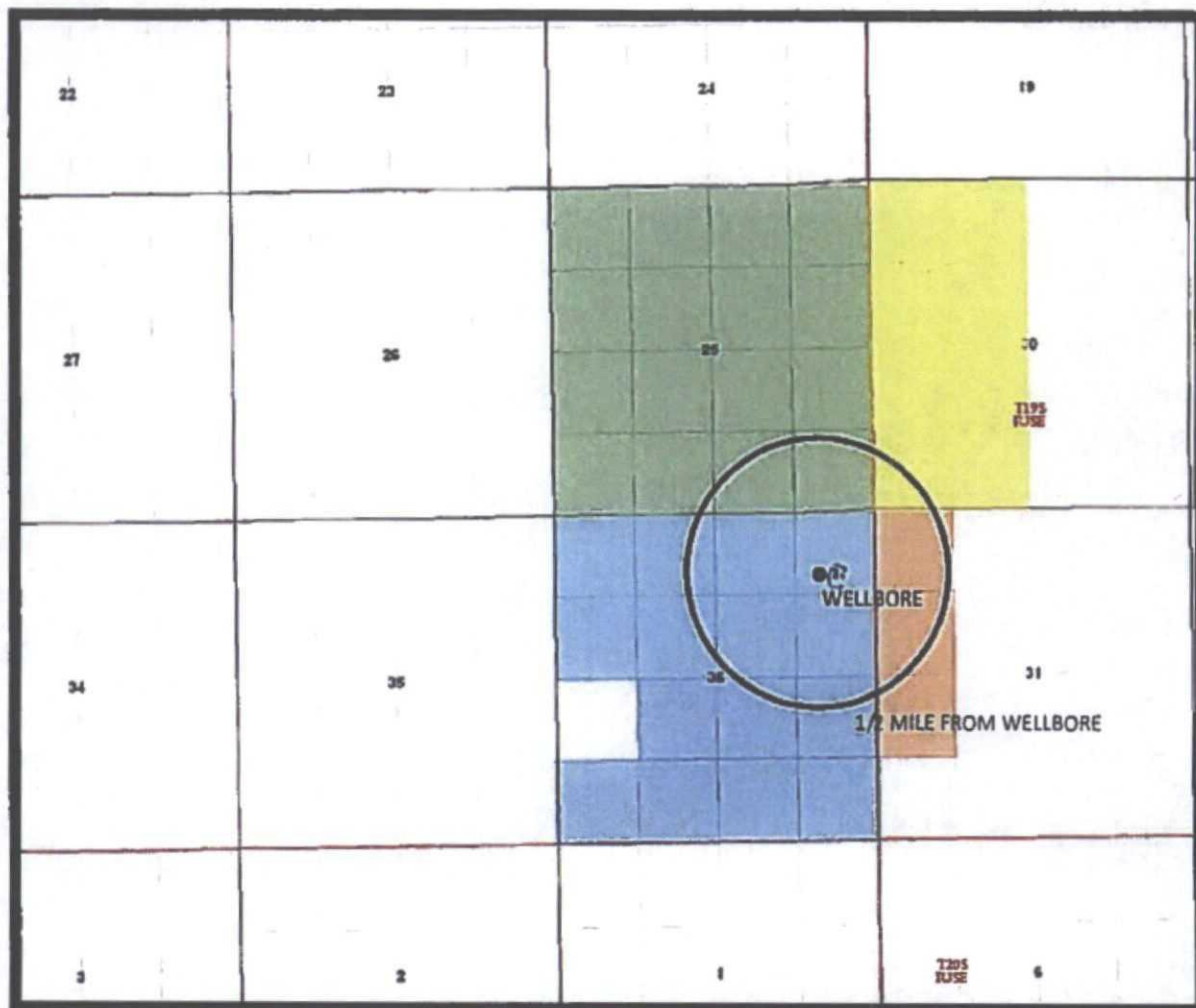
**Goetze, Phillip, EMNRD**






---

**From:** Marissa Villa <MVilla@concho.com>  
**Sent:** Monday, March 23, 2015 12:23 PM  
**To:** McMillan, Michael, EMNRD; Goetze, Phillip, EMNRD  
**Cc:** Brian Collins  
**Subject:** West Pearl 36 State SWD #2  
**Attachments:** Scanned from a Xerox Multifunction Device; Scanned from a Xerox Multifunction Device; Scanned from a Xerox Multifunction Device; west pearl 36 st swd 2 c108 notice letter ocd hobbs.docx; west pearl 36 st swd 2 c108 notice letter ocd santa fe.docx; west pearl 36 st swd 2 c108 offset operator notice letter chevron houston.docx; west pearl 36 st swd 2 c108 offset operator notice letter chevron midland.docx; west pearl 36 st swd 2 c108 offset operator notice letter EOG.docx; west pearl 36 st swd 2 c108 offset operator notice letter Mobil.docx; west pearl 36 st swd 2 c108 offset operator notice letter Rubicon.docx; west pearl 36 st swd 2 c108 offset operator notice letter.docx; west pearl 36 st swd 2 notification letter to state land office .docx

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- |   |                                |   |                      |
|---|--------------------------------|---|----------------------|
|  | Mobil Production TX & NM       |  | Chevron USA Inc.     |
|  | Rubicon Oil and Gas II, LP     |  | EOG Resources Inc. ✓ |
|  | Magnum Hunter Production, Inc. |   |                      |


West Pearl 36 State SWD No. <sup>2</sup>  
 990' FNL & 990' FEL <sup>740</sup>  
 Sec. 36; T19s - R34e  
 Lea county, New Mexico

# Affidavit of Publication


STATE OF NEW MEXICO  
COUNTY OF LEA

I, Daniel Russell, Publisher of the Hobbs News-Sun, a newspaper published at Hobbs, New Mexico, solemnly swear that the clipping attached hereto was published in the regular and entire issue of said newspaper, and not a supplement thereof for a period of 1 issue(s).

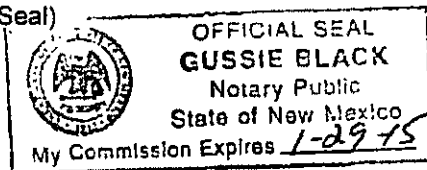
Beginning with the issue dated  
November 21, 2014  
and ending with the issue dated  
November 21, 2014.

  
Publisher

Sworn and subscribed to before me this  
21st day of November 2014.

  
Business Manager

My commission expires  
January 29, 2015  
(Seal)



This newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Laws of 1937 and payment of fees for said

**LEGAL NOTICE**  
November 21, 2014

COG Operating LLC, 2208 W. Main Street, Artesia, New Mexico 88210, has filed Form C-108 (Application for Authorization to Inject) with the New Mexico Oil Conservation Division seeking administrative approval for a salt water disposal well. The proposed well, the West Pearl 36 State SWD No. 2, is located (890' FNT and 740' FEL Section 36, Township 18, South Range 34 East, Lea County, New Mexico). Disposal water will be sourced from area wells producing from the Delaware, Bone Spring and Wolfcamp formations. The disposal water will be injected into the Devonian formation at a depth of 14,300' to 16,000' at a maximum surface pressure of 2860 psi and a maximum rate of 25,000 BWPD. The proposed SWD well is located approximately 25 miles west of Hobbs. Any interested party who has an objection to this must give notice in writing to the Oil Conservation Division, 1220 South Saint Francis Street, Santa Fe, New Mexico 87505, within fifteen (15) days of this notice. Any interested party with questions or comments may contact Brian Collins at COG Operating LLC, 2208 W. Main Street, Artesia, New Mexico 88210, or call 575-748-6840. #29588

*"Devonian" formation*  
*Footage ok*

67112034

00147943

BRIAN COLLINS  
COG OPERATING LLC  
2208 W. MAIN ST.  
ARTESIA, NM 88210

## SENDER: COMPLETE THIS SECTION

- ☒ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.  
☒ Print your name and address on the reverse so that we can return the card to you.  
☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Oil Conservation Division  
 Attn: Paul Kautz  
 1625 North French Dr.  
 Hobbs, NM 88240  
 West Pearl 36 State SWD #2

 2. Article Number  
 (Transfer from service label)

7013 3020 0000 8749 2024

PS Form 3811, July 2013

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*☐ Agent☐ Addressee

B. Received by (Printed Name)

*[Signature]*

C. Date of Delivery

N 2444

 D. Is delivery address different from Item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail☐ Priority Mail Express☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee)

☐ Yes

Domestic Return Receipt

U.S. Postal Service <sup>1,2</sup>CERTIFIED MAIL <sup>1,2</sup> RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

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OFFICIAL USE

Postage \$

Certified Fee

Return Receipt Fee  
(Endorsement Required)Restricted Delivery Fee  
(Endorsement Required)Postmark  
Here

Oil Conservation Division

Attn: Paul Kautz

1625 North French Dr.

Hobbs, NM 88240

West Pearl 36 State SWD #2

PS Form 3800, August 2006

See Reverse for Instructions

7013 3020 0000 8749 2024

## SENDER: COMPLETE THIS SECTION

- ☐ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Magnum Hunter Production Inc.  
600 N Marienfeld ST STE 600  
Midland, TX 79701  
West Pearl 36 State SWD #2

2. Article Number

(Transfer from service label)

7013 3020 0000 8749 1959

PS Form 3811, July 2013

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from Item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Certified Mail<sup>®</sup>☐ Priority Mail Express<sup>®</sup>☐ Registered<sup>®</sup>☐ Return Receipt for Merchandise<sup>®</sup>☐ Insured Mail<sup>®</sup>☐ Collect on Delivery<sup>®</sup>

4. Restricted Delivery? (Extra Fee)

☐ YesU.S. Postal Service<sup>™</sup>CERTIFIED MAIL<sup>™</sup> RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

OFFICIAL USE

Postage \$

Certified Fee

Return Receipt Fee  
(Endorsement Required)Postmark  
Here

Magnum Hunter Production Inc.

600 N Marienfeld ST STE 600

Midland, TX 79701


West Pearl 36 State SWD #2

City, State, ZIP+4

PS Form 3800, August 2006

See Reverse for Instructions

7013 3020 0000 8749 1959

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<input type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:  New Mexico Oil Conservation Division Attn: Phillip Goetze 1220 South St. Francis Drive Santa Fe, NM 87505 West Pearl 36 State SWD #2		B. Received by (Printed Name): STEPHEN M. Z... C. Date of Delivery NOV 24 2014	
2. Article Number: (Transfer from service label)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, enter delivery address below:	
PS Form 3811, July 2013		3. Service Type: <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Priority Mail Express <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

7013 3020 0000 8749 2017

U.S. Postal Service <sup>TM</sup>	
<b>CERTIFIED MAIL<sup>TM</sup> RECEIPT</b> (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage \$ Certified Fee Return Receipt Fee (Endorsement Required) Restricted Delivery Fee (Endorsement Required)	Postmark Here
New Mexico Oil Conservation Division Attn: Phillip Goetze 1220 South St. Francis Drive Santa Fe, NM 87505 West Pearl 36 State SWD #2	
PS Form 3800, August 2005 See Reverse for Instructions	

## SENDER: COMPLETE THIS SECTION

- ☐ Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
☐ Print your name and address on the reverse so that we can return this card to you.  
☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

New Mexico State Land Office  
 310 Old Santa Fe Trail,  
 Santa Fe, NM 87501  
 West Pearl 36 State SWD #2

 2. Article Number  
 (Transfer from service label)

7013 3020 0000 8749 1942

PS Form 3811, July 2013

Domestic Return Receipt

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent  
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

 D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail® ☐ Priority Mail Express®  
☐ Registered® ☐ Return Receipt for Merchandise  
☐ Insured Mail® ☐ Collect on Delivery
4. Restricted Delivery? (Extra Fee) ☐ Yes

U.S. Postal Service™

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Return Receipt Fee  
(Endorsement Required)Restricted Delivery Fee  
(Endorsement Required)Postmark  
Here

New Mexico State Land Office  
 310 Old Santa Fe Trail,  
 Santa Fe, NM 87501  
 West Pearl 36 State SWD #2

PS Form 3800, August 2005

See Reverse for Instructions

7013 3020 0000 8749 1942

## SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mobil Production TX & NM Inc.  
P.O. Box 2305  
Houston, TX 77210-2305  
West Pearl 36 State SWD #2

2. Article Number:  
(Transfer from service label)

7013 3020 0000 8749 1973

PS Form 3811, July 2013

Domestic Return Receipt

## COMPLETE THIS SECTION ON DELIVERY

(A) Signature:

X *James E. Eder*

B. Received by (Printed Name):

JAMES E. EDER

C. Date of Delivery:

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type:

- ☐ Certified Mail® ☐ Priority Mail Express®  
☐ Registered® ☐ Return Receipt for Merchandise  
☐ Insured Mail® ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service

## CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com).

OFFICIAL USE

Postage \$

Certified Fee

Return Receipt Fee  
(Endorsement Required)

Restricted Delivery Fee

Postmark  
Here

Mobil Production TX & NM Inc.  
P.O. Box 2305

Houston, TX 77210-2305  
West Pearl 36 State SWD #2

PS Form 3860, August 2005

See Reverse for Instructions

7013 3020 0000 8749 1973

## SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
☐ Print your name and address on the reverse so that we can return the card to you.  
☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rubicon Oil AND Gas II LP  
 508 W Wall Ave Ste 500  
 Midland, TX 79701  
 West Pearl 36 State SWD #2

2. Article Number

(Transfer from service label)

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *M. Dillard*☐ Agent☐ Addressee

B. Received by (Printed Name)

*M. Dillard*

C. Date of Delivery

*11-27-12*D. Is delivery address different from item 1? ☐ Yes(If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Certified Mail® ☐ Priority Mail Express™  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee)

☐ Yes

PS Form 3811, July 2013

Domestic Return Receipt

U.S. Postal Service

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Certified Fee

Return Receipt Fee  
(Endorsement Required)Restricted Delivery Fee  
(Endorsement Required)Postmark  
Here

Rubicon Oil AND Gas II LP

508 W Wall Ave Ste 500

Midland, TX 79701

West Pearl 36 State SWD #2

PS Form 3800, August 2006

See Reverse for Instructions

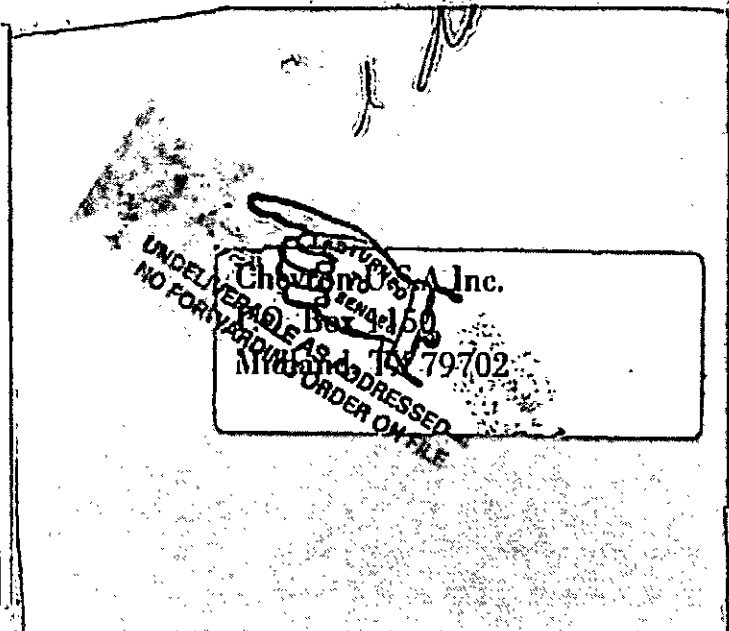
7013 3020 0000 8749 1966



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<input type="checkbox"/> Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.		(A) Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:  <div style="border: 1px solid black; padding: 5px; margin: 5px;">             Chevron U.S.A Inc.              P.O. Box 1150              Midland, TX 79702              West Pearl 36 State SWD #2           </div>		(B) Received by (Printed Name) _____ (C) Date of Delivery _____	
2. Article Number (Transfer from service label)		(D) Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Priority Mail Express <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, July 2013		Domestic Return Receipt	

7013 3020 0000 8749 1997

U.S. Postal Service	
<b>CERTIFIED MAIL RECEIPT</b>	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee	
(F) <b>Chevron U.S.A Inc.</b> <b>P.O. Box 1150</b> <b>Midland, TX 79702</b> <b>West Pearl 36 State SWD #2</b>	
PS Form 3800, August 2006 See Reverse for Instructions	



## SENDER: COMPLETE THIS SECTION

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- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Chevron U.S.A Inc.  
1200 North Farm-to-Market 1788  
Midland, TX 79706  
MV

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

☒ Yes

If YES, enter delivery address below:

☐ No

4200 N. Farm 1788  
79707

Service Type

☐ Certified Mail☐ Priority Mail Express☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7013 3020 0000 8749 2192

PS Form 3811, July 2013

Domestic Return Receipt

8749 2192



2208 West Main Street  
Arlington, New Mexico 88210

Chevron U.S.A Inc.  
1200 North Farm-to-Market 1788,  
Midland, TX 79707

OFFICIAL USE

U.S. Postal Service™

CERTIFIED MAIL™ RECEIPT

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KXIE

797072192-1N

02/17/13

RETURN TO SENDER  
UNCLAIMED  
UNABLE TO FORWARD  
RETURN TO SENDER



Certified Fee

Postage

7013 3020 0000 8749 2000

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
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**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Postmark  
Here

Chevron U.S.A Inc.  
15 Smith Rd  
Houston, TX 79705  
West Pearl 36 State SWD #2

PS Form 3800, August 2006

See Reverse for Instructions

0861 6428 0000 8749 1802

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
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For delivery information visit our website at [www.usps.com](http://www.usps.com)  
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Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee	

Postmark  
Here

EOG Resources Inc.  
P.O. Box 2267  
Midland, TX 79702  
West Pearl 36 State SWD #2



October 31, 2014

**Attorney-Client Privileged Communication  
Attorney Work Product  
Restricted Distribution**

COG Operating LLC  
One Concho Center  
600 W. Illinois Ave.  
Midland, TX 79701

Attn: Jeff Lierly, Senior Landman

**DRILLING AND DIVISION ORDER TITLE OPINION**

(effective May 14, 2014)

**SUBJECT LANDS:**

**Township 19 South, Range 34 East, NMPM**

**Section 36: N $\frac{1}{4}$  (all depths)**

NE $\frac{1}{4}$ SE $\frac{1}{4}$  (below 5,025' subsurface)  
NW $\frac{1}{4}$ SE $\frac{1}{4}$  (below 5,110' subsurface)  
NE $\frac{1}{4}$ SW $\frac{1}{4}$  (below 5,110' subsurface)  
NW $\frac{1}{4}$ SW $\frac{1}{4}$  (below 5,400' subsurface)  
SW $\frac{1}{4}$ SW $\frac{1}{4}$  (below 10,200' subsurface)  
SE $\frac{1}{4}$ SW $\frac{1}{4}$  (below 5,400' subsurface)  
SW $\frac{1}{4}$ SE $\frac{1}{4}$  (below 5,110' subsurface)  
SE $\frac{1}{4}$ SE $\frac{1}{4}$  (below 5,020' subsurface)

(oil and gas only)

(containing 640 acres in Lea County, New Mexico)<sup>1</sup>

**SUBJECT LEASES:**

State of New Mexico Oil and Gas Lease No. VB-0797  
State of New Mexico Oil and Gas Lease No. E-6005<sup>2</sup>

**SUBJECT WELLS:**

West Pearl 36 State Com #3H  
West Pearl 36 State Com #4H  
West Pearl 36 State Com #5H  
West Pearl 36 State Com #6H

<sup>1</sup> Unless otherwise indicated, all descriptions of lands in this Opinion are of lands located in Section 36, Township 19 South, Range 34 East, NMPM, Lea County, New Mexico.

<sup>2</sup> See Comment 2(b) regarding the lease number.

Holland & Hart LLP

Phone (801) 799-5800 Fax (801) 799-5700 [www.hollandhart.com](http://www.hollandhart.com)  
222 South Main Street Suite 2200 Salt Lake City, UT 84101

Aspen Boulder Carson City Colorado Springs Denver Denver Tech Center Billings Boise Cheyenne Jackson Hole Las Vegas Reno Salt Lake City Santa Fe Washington, D.C. D

## INTRODUCTION & QUALIFICATIONS TO OPINION:

COG Operating LLC ("Concho") has requested that we prepare this drilling and division order title opinion ("Opinion") for the above-described wells ("Subject Wells"). For this Opinion, we have examined and solely relied upon the following documents and records:

1. First Supplemental Division Order, Title Opinion, prepared by Rash, Chapman, Schreiber, Leaverton & Morrison LLP, dated February 15, 2013 (effective as of October 26, 2012 at 5:00 p.m.), covering the N $\frac{1}{2}$  and Lease No. VB-0797 (referred to herein as the "Prior Opinion").
2. Selected instruments, purporting to be all applicable documents recorded in the Lea County Clerk's Office from October 26, 2012 to May 14, 2014, covering the N $\frac{1}{2}$ , prepared by Turk McDonald (the "N $\frac{1}{2}$  County Abstract").
3. Abstract of Title No. 60508, obtained from the Offices of the Commissioner of Public Lands of the State of New Mexico, covering State of New Mexico Oil and Gas Lease No. VB-0797 ("Lease No. VB-0797"), purporting to be all instruments noted of record and on file for Lease No. VB-0797, from October 26, 2012 to June 17, 2014 at 8:00 a.m., prepared by Federal Abstract Company (the "N $\frac{1}{2}$  State Abstract").
4. Selected instruments, purporting to be all applicable documents recorded in the Lea County Clerk's Office from February 11, 1952 to May 14, 2014, covering the S $\frac{1}{2}$ , prepared by Turk McDonald (the "S $\frac{1}{2}$  County Abstract").
5. Abstract of Title No. 60489, obtained from the Offices of the Commissioner of Public Lands of the State of New Mexico, covering State of New Mexico Oil and Gas Lease No. E-6005 ("Lease No. E-6005"), purporting to be all instruments noted of record and on file for Lease No. E-6005, from inception to June 3, 2014 at 8:00 a.m., prepared by Federal Abstract Company (the "S $\frac{1}{2}$  State Abstract").
6. New Mexico Oil Conservation Division ("OCD") oil and gas well records and related information, available at <http://ocdimage.emnrd.state.nm.us>.
7. Online records of the Bureau of Land Management maintained through the General Land Office records at [gloreCORDS.blm.gov](http://gloreCORDS.blm.gov) and the Land & Mineral Legacy Rehost 2000 System at [blm.gov/lr2000](http://blm.gov/lr2000), including patents, plats, historical indices, serial register pages, etc.
8. Online records of the New Mexico State Land Office (the "State Land Office") through its Oil & Natural Gas Administration and Revenue Database ("ONGARD") pertaining to the Subject Lands and Subject Leases, searched by the undersigned.
9. Online records of the State Land Office available at <http://gotech.nmt.edu/slo> pertaining to the Subject Lands and Subject Leases, searched by the undersigned.
10. Term Partial Assignment of Oil and Gas Lease dated September 26, 2014, but effective as of July 7, 2014, from Joseph William Foran, et ux. Nancy N. Foran, to Concho, provided by Concho.<sup>3</sup>

<sup>3</sup> See Comment 15.

11. Participation Agreement dated June 1, 2006, by and among Rubicon Oil and Gas II, LP, G&G Limited, and David W. Logan, as sellers, and COG Oil & Gas LP, as buyer, covering the N $\frac{1}{2}$  and Lease No. VB-0797, provided by Concho.

12. Title Opinion dated September 22, 2006, by Lynch, Chappell & Alsup, covering the N $\frac{1}{2}$  of the Subject Lands and Lease No. VB-0797, provided by Concho.

13. A.A.P.L. Form 610-1977 Model Form Operating Agreement dated March 12, 1981, by and among Western Equipment Company, *et al.*, provided by Concho.

The above-described documents are referred to herein collectively as the "Title Materials." Based on the earliest search dates of the respective Title Materials, we report our Opinion effective as of May 14, 2014 ("Effective Date").

Per Concho's consent and instructions, in preparing this Opinion, we have relied solely upon the Title Materials. It appears that Concho, or its landman, represents to have searched title documents, records, information, orders, plats and other records at public offices pertaining to the Subject Lands and Subject Leases and copies of all documents disclosed by such search are included in the Title Materials. Per Concho's instructions and with Concho's consent, we have relied solely and fully on the accuracy and sufficiency of the Title Materials, and have made no effort to independently verify the records or offices searched, the accuracy of the searches, or the analysis of the Title Materials. Also, we understand that in certain circumstances, Concho or its landman utilizes the records or database of a title company or abstractor in lieu of searching the official county records, and Concho confirms that it understands and accepts the risk of conducting title research through third party vendors instead of searching the official records. We have discussed with Concho the risks of relying solely upon land and title records provided by third parties, including, without limitation, the risks arising from the failure of such parties to have errors and omissions insurance. Concho has indicated to us that it has weighed the benefits and risks of using the third parties to search public offices and records, and to provide the Title Materials to us without independent verification, and Concho has instructed us to prepare this Opinion based solely upon the Title Materials provided to us.

With the understanding, consent, and instruction of Concho, we have made the following assumptions, without independent verification, in order to complete our analysis for Concho in an efficient and economical manner, except as expressly noted herein: (i) the genuineness of all signatures on any of the Title Materials; (ii) the authenticity of all the Title Materials submitted to us as originals and the conformity with originals of all Title Materials submitted to us as copies; (iii) each natural person that executed any of the Title Materials was legally competent to do so; (iv) with respect to each entity or trust that executed any of the Title Materials, the person signing on behalf of such entity or as trustee of a trust was duly authorized by such entity or trust to execute such document on behalf of such entity or trust, the execution of such Title Materials was duly authorized and approved by necessary action of the governing body or principals of such entity, or governing trust documents, and such entity or trust was and is (as applicable) duly formed, validly existing and in good standing under the laws of its state of jurisdiction or formation; (v) for all documents signed pursuant to a power of attorney, that the agent signing the document was duly authorized by a valid, binding, and enforceable power of attorney; (vi) each of the Title Materials constitutes the legally valid, duly approved and binding obligation of such parties thereto, as applicable, enforceable against such parties in accordance with their respective terms; (vii) there are no restrictions, regulatory or otherwise, with respect to the Subject Lands and Subject Leases that would

<sup>4</sup> See Comment 19.

prohibit or adversely impact the production of oil and gas therefrom; (viii) there was no misrepresentation, fraud, or other inconsistencies in obtaining the Subject Leases or any assignments thereof; and (ix) the State of New Mexico owns the oil and gas under the Subject Lands, said oil and gas was available for leasing at the time the Subject Leases were issued, and such leasing was conducted in accordance with state law.

As you know, New Mexico is a community property state. Our office has previously advised Concho regarding the risks and challenges involved with potential community property interest claims and the possibility of conveyances being deemed void due to lack of spousal joinder. (With the understanding, consent, and instruction of Concho, and in order to complete our analysis for Concho in an efficient and economical manner, we have made certain assumptions regarding community and separate property. Where it appears from the Title Materials that an interest is owned as community property, we have required a joinder by the non-joining spouse or confirmation that the interest is owned as the separate property of the owner of record. We have presumed that the grantor owned the interest conveyed as his or her separate property and have not required joinder or confirmation unless otherwise indicated herein) in the following instances: (i) it is clear from the Title Materials that the grantor acquired the interest prior to his or her current marriage and there is nothing in the Title Materials indicating the interest was transmuted into community property; (ii) the Title Materials include a written instrument by both spouses or a court order designating the interest as the separate property of the record title owner spouse; (iii) the interest was obtained by inheritance or gift; (iv) the Title Materials do not indicate the grantor's marital status (including at the time the interest was acquired) and the grantor describes himself or herself as an unmarried person (e.g., "as a single person" or "as a widow"); or (v) the grantor is a woman and she acquired the interest prior to July 1, 1973, while married, in her name alone or in her name and the name of a person other than her husband.<sup>5</sup>

Unless otherwise indicated, the status of title expressed in this Opinion is as of the Effective Date. We expressly disclaim any undertaking or obligation to update or supplement this Opinion to reflect any facts or circumstances which may come to our attention after the Effective Date or to advise Concho of changes (including, but not limited to, changes in ownership or in the law which may affect ownership) which may occur or be brought to our attention after the Effective Date. We expressly except from this Opinion any opinion as to any local ordinance or federal or state law or regulation, except as specifically addressed in this Opinion, including, without limitation, any ordinance, law, or regulation purporting to protect public health or the environment. Further, this Opinion is based upon the laws of the United States and State of New Mexico, and we express no opinion as to the law of any other state or jurisdiction unless expressly stated.

Finally, this Opinion is given to Concho solely in connection with proposed drilling operations on the Subject Lands, and shall not be deemed binding for any other purpose. No party other than Concho may rely upon this Opinion for any purpose whatsoever. This Opinion is protected under the attorney-client privilege which exists between Holland & Hart LLP and Concho. If this Opinion, or any part of this Opinion, is disclosed to any other party besides Concho, such disclosure may operate as a waiver of the attorney-client privilege, and as a result, this Opinion could be offered as evidence in an administrative or court proceeding.

<sup>5</sup> See N.M. Stat. § 40-3-12.

**OPINION OF TITLE:**

Based solely upon the Title Materials listed above and subject to the Comments, Qualifications, and Requirements set forth below, title to the Subject Lands and Subject Leases is vested of record as follows:

**OIL AND GAS OWNERSHIP:** Interest

Section 36: All (640 acres)

State of New Mexico 100.000000%

**RIGHTS UNDER SUBJECT LEASES:<sup>6</sup>**

Lease No. VB-0797  
(covering the N½, as to all depths)<sup>7</sup>

Royalty Interest	MI		RI		NRI
State of New Mexico	100.000000%	x	18.750000%	=	18.750000%
Overriding Royalty Interests	WI		ORR		NRI
Jami H. Owen <sup>8</sup>	23.333333%	x	3.750000%	=	0.875000%
	(50% x		(22.5% -		
	[0.875% /		18.75% =		
	1.875%] =		3.75%)		
	23.333333%)				
	18.750000%	x	1.750000%	=	0.328125%
			(22.5% -		
			18.75% - 2%		
			= 1.75%)		
			Sub-total		1.203125%
Michael D. Hayes and Kathryn A. Hayes, Co-Trustees of the Hayes Revocable Trust	50.000000%	x	2.000000%	=	1.000000%

<sup>6</sup> Our report of ownership is based on information provided in the Prior Opinion. We have attempted to reconcile this ownership tabulation with the limited information regarding the assignments of Lease No. VB-0797 that was provided to us, but we are ultimately reliant on the accuracy of the Prior Opinion. Our Opinion is limited accordingly.

<sup>7</sup> See Comment 2(a).

<sup>8</sup> Curative required, see Comments 6 and 7.



Owen Energy, Inc. <sup>9</sup>	26.666667%	x	3.750000%	=	1.000000%
	(50% x [1% / 1.875%])		(22.5% - 18.75% = 3.75%)		
	26.666667%				
					<u>3.203125%</u>

**Record Title Interest**

Rubicon Oil & Gas II, LP 100.000000%

**Operating Rights (of record)**

COG Operating LLC<sup>10</sup> 48.750000%

Liberty Energy, LLC 25.000000%

McCombs Energy, Ltd. 20.000000%

Rubicon Oil & Gas II, LP 6.250000%

Total 100.000000%

Contractual Rights Under JOA <sup>11</sup>	WI	Burdens	NRI
COG Operating LLC <sup>12</sup>	41.437500%		
less NM RI			
(41.4375% x 18.75% = 7.769531%)		- 7.769531%	
less ORRIs			
(41.4375% x 3.75% = 1.553906%)		- 1.553906%	
			= 32.114063%
Liberty Energy, LLC <sup>13</sup>	25.000000%		
less NM RI			
(25% x 18.75% = 4.6875%)		- 4.687500%	
less ORRI			
(25% x 2% = 0.5%)		- 0.500000%	
			= 19.812500%

<sup>9</sup> Curative required, see Comments 6 and 7.

<sup>10</sup> See Comment 9.

<sup>11</sup> See Comment 8.

<sup>12</sup> Curative required, see Comments 9 and 11; see also Comment 18(f).

<sup>13</sup> Curative required, see Comment 12.

COG Operating LLC

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McCombs Energy, Ltd. <sup>14</sup>	17.000000%		
less NM RI			
(17% x 18.75% = 3.1875%)		-	3.187500%
less ORRIs			
(17% x 3.75% = 0.6375%)		-	0.637500%
			= 13.175000%

Rubicon Oil & Gas II, LP <sup>15</sup>	9.062500%		
less NM RI			
(9.0625% x 18.75% = 1.699219%)		-	1.699219%
less ORRIs			
(6.25% x 2% = 0.125%)		-	0.125000%
(2.8125% x 3.75% = 0.105469%)		-	0.105469%
			= 7.132812%

G&G Limited, a Texas limited partnership	5.000000%		
less NM RI			
(5% x 18.75% = 0.9375%)		-	0.937500%
less ORRIs			
(5% x 3.75% = 0.1875%)		-	0.187500%
			= 3.875000% <sup>16</sup>

David W. Logan	1.500000%		
less NM RI			
(1.5% x 18.75% = 0.28125%)		-	0.281250%
less ORRIs			
(1.5% x 3.75% = 0.05625%)		-	0.056250%
			= 1.162500% <sup>16</sup>

Danny W. Jones	1.000000%		
less NM RI			
(1% x 18.75% = 0.1875%)		-	0.187500%
less ORRIs			
(1% x 3.75% = 0.0375%)		-	0.037500%
			= 0.775000% <sup>16</sup>

Total Working Interest:	100.000000%		78.046875%
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Total Net Revenue Interest:			100.000000%
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<sup>14</sup> Curative required, see Comment 11.

<sup>15</sup> Curative required, see Comments 12, 18(b) and 18(c).

<sup>16</sup> As noted in the Prior Opinion, this net revenue interest is "subject to an overriding royalty interest equal to the difference between 22.5% and lease burdens existing as of June 1, 2006. The existing lease burdens affecting [this] interest at that time were limited to the royalty provided in the Lease."

Lease No. E-6005  
(covering the S½, only as to the depths first  
specified above, and only a 1-year term  
assignment)<sup>17</sup>

Royalty Interest	MI		RI		NRI
State of New Mexico	100.000000%	x	12.500000%	=	12.500000%

Overriding Royalty Interest	WI		ORR		NRI
Joseph Wm. Foran <sup>18</sup>	100.000000%	x	12.500000%	=	12.500000%

**Record Title Interests**

NW¼SW¼

Western Equipment Company	100.000000%
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S½, except the NW¼SW¼

Magnum Hunter Production, Inc.	100.000000%
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**Operating Rights<sup>19</sup>**

COG Operating LLC <sup>20</sup> (but presumably there will be an assignment of operating rights to match the contractual interests under the JOA, set forth below)	100.000000%
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Contractual Rights Under JOA <sup>21</sup>	WI		Burdens		NRI
COG Operating LLC <sup>22</sup> less NM RI	41.437500%		5.179687%		

<sup>17</sup> See Comment 2(b).

<sup>18</sup> Curative required, see Comments 13-16. The 12.5% overriding royalty interest of Joseph Wm. Foran in the "Initial Well" (provided in the proposed Partial Assignment of Oil and Gas Lease described in Comment 15) is convertible to a 25% working interest upon "Payout" of the Initial Well under that certain proposed Partial Assignment of Oil and Gas Lease dated effective July 7, 2014. As to any subsequent wells, Joseph Wm. Foran has the right to participate and relinquish his 12.5% overriding royalty interest for a 25% working interest in such subsequent well. If Joseph Wm. Foran does not elect to participate in such subsequent well, then upon Payout of such subsequent well he has the right to relinquish his 12.5% overriding royalty interest for a 6.25% working interest in such subsequent well. See Comment 15.

<sup>19</sup> See Comment 16.

<sup>20</sup> See Comment 9.

<sup>21</sup> See Comments 8, 15 and 16.

<sup>22</sup> Curative required, see Comments 13-16; see also Comments 9 and 18(d)-(f).

(41.4375% x 12.5% = 5.179687%) less ORRIs (41.4375% x 12.5% = 5.179688%)	-	5.179688%	=	31.078125%
Liberty Energy, LLC <sup>23</sup>	25.000000%			
less NM RI (25% x 12.5% = 3.125%)	-	3.125000%		
less ORRI (25% x 12.5% = 3.125%)	-	3.125000%	=	18.750000%
McCombs Energy, Ltd. <sup>24</sup>	17.000000%			
less NM RI (17% x 12.5% = 2.125%)	-	2.125000%		
less ORRI (17% x 12.5% = 2.125%)	-	2.125000%	=	12.750000%
Rubicon Oil & Gas II, LP <sup>25</sup>	9.062500%			
less NM RI (9.0625% x 12.5% = 1.132813%)	-	1.132813%		
less ORRI (9.0625% x 12.5% = 1.132812%)	-	1.132812%	=	6.796875%
G&G Limited, a Texas limited partnership <sup>24</sup>	5.000000%			
less NM RI (5% x 12.5% = 0.625%)	-	0.625000%		
less ORRI (5% x 12.5% = 0.625%)	-	0.625000%	=	3.750000%
David W. Logan <sup>24</sup>	1.500000%			
less NM RI (1.5% x 12.5% = 0.1875%)	-	0.187500%		
less ORRI (1.5% x 12.5% = 0.1875%)	-	0.187500%	=	1.125000%

<sup>23</sup> Curative required, see Comments 12-16; see also Comment 18(d), (e).

<sup>24</sup> Curative required, see Comments 13-16; see also Comment 18(d), (e).

<sup>25</sup> Curative required, see Comments 12-16, 18(b), and 18(c); see also Comment 18(d), (e).

Danny W. Jones <sup>24</sup>	1.000000%	
less NM RI		
(1% x 12.5% = 0.125%)	-	0.125000%
less ORRI		
(1% x 12.5% = 0.125%)	-	0.125000%
		= 0.750000%
Total Working Interest:	100.000000%	75.000000%
Total Net Revenue Interest:		100.000000%

**SUMMARY DESCRIPTION OF SUBJECT LEASES:**

See Appendix A

**LAST ADDRESSES OF RECORD:**

See Appendix B

**CUMULATIVE DIVISION OF INTERESTS:**

See Appendix C

**COST ALLOCATION:**

**COMMENTS, QUALIFICATIONS, AND REQUIREMENTS:**

1. **Scope of Opinion.** Concho has instructed us to render a drilling and division order title opinion for the Subject Lands and Subject Leases. Pursuant to the express instruction of Concho, we have made certain limitations to this Opinion.

The Title Materials indicate that all of the Subject Lands were granted to the State of New Mexico by Patent No. 1202902 dated December 31, 1959, without a mineral reservation, but subject to a right of way for ditches and canals. According to the Title Materials, which are limited to the dates described above, all of the surface and oil and gas interests in the Subject Lands remain owned by the State of New Mexico, and we have reported title to the mineral estate herein in reliance on the Title Materials. The State's oil and gas interests are leased by the Subject Leases. The surface estate is subject to a grazing lease, a salt water disposal lease in favor of Concho, and certain rights-of-way, which are discussed in Comment 3. The Title Materials do not include any further instruments pertaining to the surface estate of the Subject Lands or minerals or subsurface rights other than oil and gas. This Opinion is limited accordingly.

As indicated in the introduction section above, this Opinion is subject to, and we have relied upon, the accuracy and completeness of the Title Materials, which may or may not have included a search of the official records of the Lea County Clerk's Office. Unless otherwise stated in this Opinion, we have not conducted an independent examination of the county records or the State Land Office's records as they pertain to the Subject Lands and Subject Leases. We have also relied on the Prior Opinion for the N $\frac{1}{4}$  leasehold ownership as of October 26, 2012 at 5:00 p.m. This Opinion is limited accordingly.

As to the S $\frac{1}{2}$ , this Opinion is depth limited. We make no report of the ownership, including the leasehold or wellbore ownership, as to any depths other than those depths that are expressly covered by this Opinion.

**Requirement:** If Concho is unwilling to accept any of the risks associated with the limitations set forth above, this Opinion should be resubmitted to us to address those limitations. If not already done, you might have a landman, upon examination of this Opinion, run a grantor-grantee index search in the official county records to confirm our opinion of title.

**2. Status of the Subject Leases.** The status of the Subject Leases is as follows:

(a) **Lease No. VB-0797.** This lease was issued effective November 1, 2005 to Rubicon Oil and Gas II, LP, as Lessee, for a primary term of five years and for so long thereafter as oil or gas is produced in paying quantities. The lease covers the N $\frac{1}{4}$ ; provides for a royalty of 3/16, and requires an annual rental of \$1 per acre. According to the online records of the State Land Office, Lease No. VB-0797 is in an extended primary term, and the Prior Opinion indicates that the lease was held by production as of the effective date of the Prior Opinion. Our review of the online production records available on the OCD's website disclosed that the following wells located in the N $\frac{1}{4}$  produced oil and/or gas during the time periods indicated since November 1, 2010 (the expiration of the primary term of Lease No. VB-0797):

**Well Name**

**Production Period**

Sarah Sue #1

February – March 2014

Sarah Sue #3

November – December 2010;  
September 2011 – March 2012;  
August 2012 – August 2013;  
October 2013;  
January 2014 – March 2014

West Pearl 36 State #2H

July 2012 – May 2014

Based on the foregoing, there was no production in the N $\frac{1}{4}$  during the following months: January 2011 – August 2011 and April 2012 – June 2012. The Prior Opinion indicates that Lease No. VB-0797 contains a shut-in royalty clause. We presume shut-in royalty was properly paid during the periods during which there was no production, or that the lease was otherwise maintained in effect in accordance with its terms, but we cannot be certain. The Prior Opinion does not provide any information as to whether shut-in royalty was paid or whether the lease was otherwise maintained in effect prior to October 26, 2012 (the effective date of the Prior Opinion). Rather, the Prior Opinion only categorizes the lease as being **"HELD BY PRODUCTION"** (emphasis in original). For purposes of this Opinion, we have reported title assuming the lease is still in effect, but we make the requirement below.

The Title Materials indicate that rentals for Lease No. VB-0797 have been paid through November 1, 2014. For purposes of this Opinion, we have assumed that all bonuses, rentals, royalties, shut-in royalties, and other consideration for Lease No. VB-0797 have been duly and timely paid, and that the lease is valid, binding, and enforceable in accordance with its terms.<sup>26</sup>

(b) **Lease No. E-6005.** This lease was issued effective February 11, 1952 to The Pure Oil Company, as Lessee, for a primary term of five years, with an option to extend the primary term for an

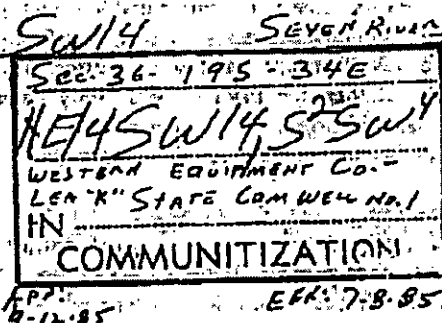
<sup>26</sup> See Comment 18(b), (c) regarding encumbrances upon Rubicon Oil & Gas II, LP's interest in Lease No. VB-0797. See Appendix A for assignments of Lease No. VB-0797.

additional five years, and for so long thereafter as oil or gas is produced in paying quantities. The lease covers the S $\frac{1}{2}$ , provides for a royalty of  $\frac{1}{8}$ , and initially required an annual rental of \$1 per acre. Assignments on file with the State Land Office suggest that the annual rental was increased to \$2 per acre, and our search of the online records of the State Land Office confirmed that the annual rental is indeed \$2 per acre. We note that by virtue of a Stipulation approved by the Commissioner of Public Lands on March 6, 1985, which amended the lease to conform to the terms and conditions of the lease form prescribed by N.M. Stat. § 19-10-3, Lease No. E-6005 provides for a shut-in royalty on gas. According to the online records of the State Land Office, Lease No. E-6005 is in an "extended primary term." Our review of the online production records available on the OCD's website disclosed several wells in the S $\frac{1}{2}$  that have produced oil and/or gas since January 1993 (the earliest date for which production records are available online). One of those wells is the Pure State #1, located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , which has produced continuously from January 1993 through May 2014 (the most recent month for which production records were available as of September 8, 2014). We presume Lease No. E-6005 was held by operations or production such that it did not expire prior to 1993, but we cannot conclusively confirm that this was the case without examining the pre-1993 production records. Therefore, we make the requirement below.

We note that Lease No. E-6005 is known as Lease No. E-6005-1 as to the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , and as Lease No. E-6005-3 as to the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ . We were informed by the State Land Office that these two lease numbers constitute the same lease, and we have referred to them herein collectively as Lease No. E-6005. However, we note that N.M. Stat. § 19-10-54 (1955) provides, in pertinent part, as follows:

[I]n any case where a cooperative or unit agreement heretofore approved by the commissioner of public lands contains a provision segregating any lease committed to such agreement as to lands within and without the cooperative or unit area so as to constitute separate leases as to such portions of said lands, such lease shall be segregated according to the provisions of the cooperative or unit agreement.

The S $\frac{1}{2}$  State Abstract contains an Oil and Gas Record Sheet maintained by the State Land Office, which has affixed to it the following:



Our review of the online records of the State Land Office did not disclose any communitization agreements covering the Subject Lands, but the "communitization" notation on the above stamp and the description of lands other than the NW $\frac{1}{4}$ SW $\frac{1}{4}$  is troubling. If there was a communitization agreement in connection with the "Lea K" State Com Well No. 1" that was noted in the stamp above (apparently a/k/a

the Lea K State No. 1 well, located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , then it is possible that the agreement provided for lease segregation such that production from lands other than the NW $\frac{1}{4}$ SW $\frac{1}{4}$  would not benefit the NW $\frac{1}{4}$ SW $\frac{1}{4}$ . We note that the Lea K State No. 1 well has been plugged and abandoned. The Lea 36 State No. 2 well, also located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , has also been plugged and abandoned. According to the online records of the OCD, there do not appear to be any producing wells located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ . If there was a segregation of Lease No. E-6005 such that Lease Nos. E-6005-1 and E-6005-3 are separate leases, then Lease No. E-6005-1, covering the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , may no longer be in effect. For purposes of this Opinion, given the indication of the State Land Office and our lack of knowledge of a communitization agreement that provided for lease segregation, we have reported title assuming that there has not been a lease segregation, but we make the requirement below.

The Title Materials indicate that rentals for Lease No. E-6005 have been paid through February 11, 2015. For purposes of this Opinion, we have assumed that all bonuses, rentals, royalties, and other consideration for Lease No. E-6005 have been duly and timely paid, and that the Lease is valid, binding, and enforceable in accordance with its terms.<sup>27</sup>

**Requirement:** Confirmation should be made that Lease Nos. E-6005-1 and E-6005-3 are one and the same lease and that there has not been a segregation. If Lease Nos. E-6005-1 and E-6005-3 have indeed been segregated such that the NW $\frac{1}{4}$ SW $\frac{1}{4}$  does not benefit from production in other S $\frac{1}{2}$  lands, then to avoid a subsurface trespass you should obtain a lease from the State Land Office covering the NW $\frac{1}{4}$ SW $\frac{1}{4}$  prior to drilling the West Pearl 36 State Com #6H well, and this Opinion should be revised as appropriate.

The terms and conditions of the Subject Leases should be complied with as applicable. In addition, prior to drilling, it should be confirmed that all bonuses, rentals, royalties, shut-in royalties and other consideration for the Subject Leases have been duly and timely paid and that the Subject Leases have been, and continue to be, held by production. In particular, confirmation should be made that Lease No. VB-0797 was maintained in effect during the periods of non-production outlined above, whether by payment of shut-in royalty or otherwise. If Lease No. VB-0797 was not so maintained, then we should be notified immediately and this Opinion should be revised accordingly. As to Lease No. E-6005, confirmation should be made that the lease was held by production from the expiration of the primary term to January 1993 (the earliest date for which production records are available online).

3. **Surface Access and Zoning.** The rights to conduct surface operations and drill on the Subject Lands are governed by the Subject Leases and applicable state regulations. In the interest of brevity, we do not reiterate the specific regulatory requirements herein. However, we note that the state has established minimum procedures for protecting the surface during oil and gas operations and we briefly describe such procedures as follows: (i) operators must remove all surface trash and debris; (ii) pits must be carefully built and maintained to avoid contamination of water drainages or the surface and must be fenced; (iii) all roads must be built and maintained in accordance with N.M. Code R. § 19.2.20.1, et seq.; (iv) production and storage tanks may need to be surrounded with an earthen berm; (v) oil spills must be treated immediately and reported to the OCD according to OCD regulations; and (vi) surface pipelines should be placed along existing roads or other pipelines, if practicable.<sup>28</sup> The state has also established certain minimum procedures as they relate to closeout and reclamation.

<sup>27</sup> See Comment 18(d), (e) regarding encumbrances affecting (or potentially still affecting) Lease No. E-6005. See Appendix A for assignments of Lease No. E-6005.

<sup>28</sup> N.M. Code R. § 19.2.100.66.



Regarding zoning, we note that the Title Materials did not include any information relating to the Lea County zoning ordinance or other local regulations or ordinances that could impact oil and gas development on the Subject Lands. In New Mexico, the OCD regulates oil and gas activities as to well siting, but local governments may also exert regulatory control through their zoning regulations. As a result, all operations on the Subject Lands must be in compliance with any local government ordinance (including zoning), which relates to oil and gas exploration and development, subject to potential legal arguments of preemption of federal or state regulations over local zoning ordinances. We provide no opinion herein with respect to zoning or other local land use laws or ordinances. We also provide no opinion herein regarding access to the Subject Lands and assume that Concho has or will acquire any necessary road and other right of way access rights.

We note that the surface locations for the West Pearl 36 State Com #3H, #4H, and #5H wells are in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ , and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of adjacent Section 25, Township 19 South, Range 34 East, respectively. We have not examined the title to those lands and can offer no opinion as to Concho's rights or liabilities in drilling from those locations.

With regard to the surface locations of the West Pearl 36 State Com #3H, #4H, and #5H wells, you should be aware that surface easements or rights-of-way from the owners of the affected surface in Section 25 may be necessary to avoid any claim of trespass by those owners; while subsurface easements or rights-of-way are necessary from all owners of minerals (or their lessees) in the above-described Section 25 lands to avoid any claims that operations for these wells will interfere with those owners' surface use rights or will damage their minerals, either physically or economically. We assume that Concho has already obtained or will obtain the necessary surface and subsurface access rights from the applicable owners in Section 25 for the West Pearl 36 State Com #3H, #4H, and #5H wells.

We note that the BLM Master Title Plat appears to reflect a pipeline right-of-way in the NW $\frac{1}{4}$  of Section 36; however, we are unable to determine the current owner of the right-of-way or any other information regarding it. Upon request, we can provide a copy of the BLM Master Title Plat for your reference.

We also note that the Title Materials disclosed the following instruments burdening the surface estate of the Subject Lands:

<u>Number</u>	<u>Type</u>	<u>Company</u>	<u>Location</u>
RW-15102	Right of Way	Southwestern Public Service Co. P.O. Box 1650 Hobbs, NM 88240	NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$
RW-15142	Right of Way	Versado Gas Processors, L.L.C. 1000 Louisiana, Ste. 4300 Houston, TX 77002	SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$
RW-15868	Right of Way	Versado Gas Processors, L.L.C. 1000 Louisiana, Ste. 4300 Houston, TX 77002	NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$

RW-15933	Right of Way	DCP Midstream, L.P. 10 Desta Dr., Ste. 400 Midland, TX 79705	NE $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$
RW-16234	Right of Way	Navajo Refining Co. P.O. Box 159 Artesia, NM 88210	NE $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$
RW-16266	Right of Way	Southwestern Public Service Co. P.O. Box 1650 Hobbs, NM 88240	SE $\frac{1}{4}$ SE $\frac{1}{4}$
RW-16515	Right of Way	Southwestern Public Service Co. P.O. Box 1650 Hobbs, NM 88240	NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$
RW-16554	Right of Way	Navajo Refining Co. P.O. Box 159 Artesia, NM 88210	NE $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ NW $\frac{1}{4}$
RW-17620	Right of Way	DCP Midstream, L.P. 10 Desta Dr., Ste. 400 Midland, TX 79705	NW $\frac{1}{4}$ SW $\frac{1}{4}$
RW-17647	Right of Way	Western Oil Transportation Co., Inc. (address unknown)	W $\frac{1}{2}$ W $\frac{1}{2}$
RW-17655	Right of Way	Versado Gas Processors, L.L.C. 1000 Louisiana, Ste. 4300 Houston, TX 77002	SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$
RW-17669	Right of Way	Phillips 66 Natural Gas Co. (address unknown)	SW $\frac{1}{4}$ NW $\frac{1}{4}$
RW-17674	Right of Way	Targa Midstream Services LLC 1000 Louisiana, Ste. 4300 Houston, TX 77002	W $\frac{1}{2}$ SW $\frac{1}{4}$
RW-18996	Right of Way	Targa Midstream Services LLC 1000 Louisiana, Ste. 4300 Houston, TX 77002	NW $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$
RW-20712	Right of Way	C. W. Trainer P.O. Box 3788 Midland, TX 79702	NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$

RW-23087	Right of Way	Valor Telecommunications of NM, LLC <sup>29</sup> P.O. Box 1001 San Angelo, TX 76902	E $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{4}$ SW $\frac{1}{4}$ <sup>30</sup>
RW-27363	Right of Way	Lea County and the City of Hobbs 100 N. Main Lovington, NM 88260	NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$
RW-30583	Right of Way	DCP Midstream, L.P. 10 Desta Dr., Ste. 400 Midland, TX 79705	NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$
RW-31658	Right of Way	Samson Resources Co. 2 W. 2nd St. Tulsa, OK 74103	NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$
RW-33512	Right of Way	COG Operating LLC	NE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$
RW-33923	Right of Way	COG Operating LLC	NE $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$
SW-342	Salt Water Disposal	COG Operating LLC	NE $\frac{1}{4}$ NE $\frac{1}{4}$
GT-2916	Grazing/ Agriculture	Snyder Ranches Inc. P.O. Box 2158 Hobbs, NM 88240	Sec. 36 (all)

In connection with the S $\frac{1}{2}$  State Abstract, Federal Abstract Company noted that Right of Way No. RW-15869 was issued to Versado Gas Processors, L.L.C. on September 1, 1998, purportedly across the N $\frac{1}{4}$ SW $\frac{1}{4}$ . We note that our search of the online records of the State Land Office did not provide any information regarding this Right of Way.

We also note that the S $\frac{1}{2}$  County Abstract contains the following instruments:

— Pipeline Deed and Assignment dated effective August 31, 1996, recorded September 5, 1996, in Book 748, Page 1, from Chevron U.S.A. Inc., formerly known as Gulf Oil Corporation, successor in interest to Warren Petroleum Corporation, now known as Warren Petroleum Company, to Midstream Combination Corp.; and

<sup>29</sup> Our report of the owner of this Right of Way is based on information provided by Federal Abstract Company.

<sup>30</sup> Our report of the lands affected by this Right of Way is based on information provided by Federal Abstract Company.

Deed, Assignment and Conveyance dated effective as of August 31, 1996, recorded September 5, 1996, in Book 748, Page 506, from NGC Corporation, formerly known as Midstream Combination Corp., to NGC Holding Company, Inc.; and from NGC Holding Company, Inc. to Warren Petroleum G.P., Inc. and WPC LP, Inc.; and from Warren Petroleum G.P., Inc. and WPC LP, Inc. to Warren Petroleum Company, Limited Partnership.

The copies of these Assignments that were provided in the S $\frac{1}{2}$  County Abstract do not describe the Subject Lands, but we were not provided with complete copies of the Assignments. We suspect that one or more of the above-described rights-of-way in favor of Versado Gas Processors, L.L.C. or Targa Midstream Services LLC (which were originally issued to Warren Petroleum Corporation) may have been the subject of these Assignments, but we cannot be certain.

The S $\frac{1}{2}$  County Abstract also contains that certain Business Lease No. BL-0961 dated July 12, 1999, recorded in Book 1014, Page 683, from the Commissioner of Public Lands to Koch Pipeline Company L.P., for a five-year term, for a crude oil storage tank pump station on the following described tract of land in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 36:

Beginning at a point which is 1986.1 feet North and 1910.86 feet East of the Southwest corner of Section 36, Township 19 South, Range 34 East, and running; thence North a distance of 208.71 feet; thence East a distance of 208.71 feet; thence South a distance of 208.71 feet; thence West a distance of 208.71 feet to the point of beginning and containing 1.0 acres, more or less.

The lease was apparently renewed by that certain Business Lease No. BL-961 dated July 12, 2004, recorded in Book 1321, Page 75, from the Commissioner of Public Lands to Koch Pipeline Company, L.P., for a two-year term. The lease, as renewed, has apparently expired.

Due to the proximity of the Subject Lands to possible potash resources, we note the potential for multiple mineral development conflicts on the Subject Lands. The Title Materials do not disclose any potash leases, except for Lease No. M-873, which was released effective as of April 24, 1956. At the time of drilling, or from time to time thereafter, it would be prudent to inquire of the State Land Office to determine whether there is an active potash mining lease on the Subject Lands and, if so, which measures should be taken to ensure any multiple mineral development conflicts are avoided.

N.M. Stat. Ann. § 18-6-9 provides criminal penalties for any person who knowingly excavates, injures or destroys cultural property located on state land without a permit, or who solicits, employs or counsels another person to excavate, injure or destroy cultural property located on state land without a permit. "Cultural property" is defined as "a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance."<sup>31</sup> If Concho discovers or becomes aware of cultural property on the Subject Lands, compliance should be made with applicable state law, including obtaining a permit from the state. We can provide additional guidance upon request.

**Requirement:** You should obtain, or confirm that Concho has already obtained, the necessary surface and subsurface access rights from the applicable owners in adjacent Section 25 for the West Pearl 36 State Com #3H, #4H, and #5H wells. In conducting operations on the Subject Lands, compliance should be made with the provisions of the Subject Leases, all state laws, and any applicable local

<sup>31</sup> N.M. Stat. Ann. § 18-6-3.

government ordinances. Upon request, we can provide guidance as to the extent and manner of compliance with any such applicable local, state, or federal law as it relates to your proposed operations on the Subject Lands. In addition, care should be exercised not to unduly interfere with the rights of the grazing lessee, the rights-of-way owners, or any other party with an interest in the Subject Lands.

4. **Lesser Prairie-Chicken.** As evidenced in the Title Materials, the State Land Office, the Center of Excellence for Hazardous Materials Management, and the United States Fish and Wildlife Service ("USFWS") have entered into a Certificate of Inclusion ("CI") in the Candidate Conservation Agreement with Assurances for the Lesser Prairie-Chicken and Dunes Sagebrush Lizard (the "CCAA"). The CI encompasses all of the Subject Lands, among other lands. It is a voluntary agreement under which the State Land Office (as a participating landowner) has voluntarily committed to implement or fund specific conservation actions to reduce or eliminate threats to the Lesser Prairie-Chicken and Dunes Sagebrush Lizard. The scope of such agreements is for participating landowners to engage in voluntary conservation activities to help make the listing of a species unnecessary. In return for their efforts, the participating landowners will receive certain benefits from the USEWS in the event such species are listed. The State Land Office has agreed to actively encourage lease holders and operators to enroll their operations on State of New Mexico leases under the CCAA and implement certain surface occupancy restrictions. All lease holders and operators will be contacted by the State Land Office and encouraged to participate in the CCAA.

**Requirement:** None, advisory only.

5. **Applications for Permit to Drill and Well Spacing.** Our review of the OCD's online records disclosed Applications for Permit to Drill ("APDs"), approved by the OCD on September 25, 2014 (for the West Pearl 36 State Com #6H well) and September 26, 2014 (for the West Pearl 36 State Com #3H, #4H, and #5H wells). The APDs expire after two years from the approval date.

In accordance with the Well Location and Acreage Dedication Plats that were attached to the approved APDs, the project areas for the Subject Wells are as set forth in Appendix C. The Title Materials do not include any pooling documents as to the Subject Lands. Since the Subject Lands are subject to State of New Mexico leases, state communitization agreements should be entered into to pool and create the proration units relating to the Subject Wells in accordance with the units described in Appendix C as to the formation to be produced (the Bone Spring formation). The state communitization agreement for each spacing unit should be executed by each of the working interest owners and submitted to the State Land Office for approval.<sup>32</sup>

Our review of the OCD's online records disclosed that several wells have been previously located on the Subject Lands. We presume Concho is familiar with the location and status of these wells; therefore, we have not set forth the location and status of each of these wells, but we can do so upon request.

**Requirement:** Prior to the commencement of operations on the Subject Lands, you should have the working interest owners execute a state communitization agreement for each spacing unit and obtain the approval of the State Land Office. The approved communitization agreements should then be recorded in Lea County. If any of the working interest owners refuse to execute a communitization agreement, we can provide additional guidance upon request.

<sup>32</sup> See N.M. Stat. Ann. § 19-10-53.

6. Overriding Royalty Interests of Owen Energy, Inc. and Jami H. Owen in Lease No. VB-0797. The Prior Opinion reported Owen Energy, Inc. as the owner of a 1% overriding royalty interest in Lease No. VB-0797. In Comment 8 of the Prior Opinion, the prior title examiner described a Notice of Probate dated January 26, 2011, recorded in Book 1714, Page 185, whereby "notice was given that Mark Thomas Owen died on December 22, 2009, and Jami Huber Owen was appointed as his personal representative. The notice also attributed Owen Energy, Inc.'s 1% overriding royalty interest under New Mexico State Lease No. VB-0797 to the Estate of Mark T. Owen." According to the Prior Opinion, the Notice of Probate was followed by a Deed and Assignment of Distribution dated November 11, 2011, recorded in Book 1753, Page 712, whereby Jami Huber Owen, as Personal Representative of the Estate of Mark Thomas Owen, "assigned to Jami Huber Owen, Individually and as her sole and separate property all right, title and interests formerly owned by Mark T. Owen, including a .875% overriding royalty under New Mexico State Lease VB-0797." The prior title examiner noted that Mark T. Owen owned overriding royalty interests beyond the 0.875%, which the prior title examiner credited to Jami Huber Owen. The Prior Opinion did not credit the 1% overriding royalty interest of Owen Energy, Inc. to Jami Huber Owen. Rather, the Prior Opinion required that the probate documents for Mark T. Owen be obtained and reviewed, including the Will, the Order "approving" the Will and the Letters appointing the Personal Representative, and that production proceeds attributable to the 1% overriding royalty interest be suspended until verification is made as to whether the overriding royalty interest is owned by Jami Huber Owen or Owen Energy, Inc. Based on the foregoing, we have reported Owen Energy, Inc. as the owner of the 1% overriding royalty interest at issue, subject to the requirement below.

Requirement: Regarding the interest of Owen Energy, Inc., inquiry should be made as to whether Owen Energy, Inc. assigned its 1% overriding royalty interest in Lease No. VB-0797 to Mark T. Owen during his lifetime, as was implied by the January 26, 2011 Notice of Probate described in Comment 8 of the Prior Opinion. If such an assignment was made, then it should be recorded (if not already done) and this Opinion should be revised accordingly.

Regarding the interest of Jami H. Owen, you may wish to confirm that the above-described November 11, 2011 Deed and Assignment of Distribution from Jami Huber Owen, as Personal Representative of the Estate of Mark Thomas Owen, contained catch-all language such that "all right, title and interests formerly owned by Mark T. Owen" were indeed conveyed to Jami Huber Owen (apparently a/k/a Jami H. Owen).

7. Overriding Royalty Conveyances Executed by G&G Limited and David W. Logan.

As outlined in the Prior Opinion (and in Appendix A to this Opinion), by that certain Partial Assignment of Oil and Gas Lease effective as of June 1, 2006 (in favor of COG Oil & Gas, LP), Rubicon Oil & Gas II, LP, G&G Limited and David W. Logan each reserved overriding royalty interests in Lease No. VB-0797 "equal to the difference between 22.5% and existing lease burdens to the effect that the net revenue interest conveyed hereby shall be 77.5%, subject to proportionate reduction." The reserved overriding royalty interests of G&G Limited and David W. Logan totaled 3.75%. Proportionately reduced, the collective 3.75% overriding royalty interests equate to 1.875%. In 2006, G&G Limited, a Texas limited partnership, and David W. Logan and wife, Debra J. Logan, assigned overriding royalty interests equal to 0.875% of production under Lease No. VB-0797, and 1% of production under Lease No. VB-0797, to Mark Owen and Owen Energy, Inc., respectively, "subject to proportionate reduction." It is unclear why the collective 1.875% overriding royalty interests conveyed in 2006 were made "subject to proportionate reduction." We have not reviewed the above-described assignments, but we doubt that the intent of the parties was to only convey overriding royalty interests totaling 1.875% of 3.75% (i.e., 0.070313%). Rather, we presume that the parties intended to assign a total of 1.875% of 8/8ths overriding royalty

interest, and we have reported title on that basis, consistent with the report of ownership in the Prior Opinion, subject to the Requirement below:

**Requirement:** Out of an abundance of caution, you may wish to confirm that G&G Limited and David W. Logan intended for all of their overriding royalty interests in Lease No. VB-0797 to be assigned in 2006 and that they no longer claim any overriding royalty interests in Lease No. VB-0797. If they still claim overriding royalty interests, then we should be notified and this Opinion should be revised as appropriate.

**8. Joint Operating Agreements and Division of Interests for the Subject Wells:** The Title Materials refer to three joint operating agreements that appear to be relevant to the Subject Lands. The first is referred to in a Memorandum of Joint Operating Agreement dated December 30, 1992, recorded January 5, 1993, in Book 565, Page 368 (the "Memorandum"), by which Armstrong Energy Corporation gave notice of an AAPL Form 610-1982 Model Form Operating Agreement, dated effective as of March 28, 1984, as amended on August 6, 1991 (the "1984 JOA"). We have not reviewed the 1984 JOA because it is apparently not of record. Based on the Memorandum, the 1984 JOA apparently covers, among other lands and depths, the S $\frac{1}{4}$  of Section 36 from 5,500' subsurface to 100' below the stratigraphic equivalent of 14,840' subsurface as found in the West Pearl State #1 well, but in no event to extend below the base of the Siluro-Devonian formation.<sup>33</sup> The Memorandum indicates that Lease No. E-6005 is subject to the 1984 JOA and it was contributed by Union Oil Company of California (predecessor of Joseph Wm. Foran<sup>34</sup>). Other parties to the 1984 JOA apparently included Mobil Producing Texas & New Mexico Inc. ("Mobil"), successor in interest to The Superior Oil Company; Armstrong Energy Corporation ("Armstrong"); and Thomas K. Scroggin d/b/a Tomasco Energy ("Tomsco"). The Memorandum also describes Texaco Exploration and Production, Inc. ("Texaco") among the parties whose addresses are included for notice purposes. The Memorandum mentions an assignment of lands other than Section 36 from "MPTM, Union and Texaco to Spectrum 7 Energy Corporation pursuant to those certain farmout agreements dated 3/24/85 and 4/3/85 respectively," so we presume Texaco claims its interest from or through Mobil and Union. We note that the S $\frac{1}{2}$  County Abstract contains an Assignment dated effective as of January 1, 1995, recorded May 4, 1995, in Book 514, Page 853, from Texaco to Truman T. Sanders, Jr. ("Sanders"), conveying an undivided 1.76013% of all of Texaco's right, title and interest in the 1984 JOA, insofar as it covers the S $\frac{1}{2}$  of Section 36, among other lands. We also note that the Memorandum does not disclose the amounts of the parties' contractual interests in the Subject Lands. The Memorandum contains a notation at the top which reads "West Pearl State #1," presumably referring to the Pearl State No. 1 well, which was spudded in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  on May 6, 1995, and plugged and abandoned on July 11, 1997. However, the Memorandum does not indicate whether the 1984 JOA is limited to operations for that well. Likewise, the Memorandum does not indicate the term of the 1984 JOA, but we suspect it may still be in effect (and binding on Joseph Wm. Foran<sup>35</sup>) because Lease No. E-6005 is still in effect. According to the online records of the OCD, Trilogy Operating Inc. is the named operator of the Pearl State No. 1 well. We note that the Title Materials do not contain any instruments relating to the 1984 JOA other than the Memorandum (dated December 30, 1992) and the above-described January 1, 1995 Assignment from Texaco to Sanders.

<sup>33</sup> We note that the proposed total depths of the Subject Wells range from 15,233' (for the West Pearl State Com #6H) to 15,956' (for the West Pearl 36 State Com #4H). However, we do not know the extent of the producing zones for the Subject Wells.

<sup>34</sup> See Comment 15 regarding Joseph Wm. Foran.

<sup>35</sup> See Comment 15.

Concho provided us with a copy of the second joint operating agreement, which is an AAPL Form 610-1989 Model Form Operating Agreement dated June 1, 2006, by and among Concho, as operator, with COG Oil & Gas LP (now Concho, per Comment 9), Rubicon Oil & Gas II, LP ("Rubicon"), Liberty Energy, LLC ("Liberty"), G&G Limited, a Texas limited partnership ("G&G Limited"), David W. Logan ("Logan"), and McCombs Energy, Ltd. ("McCombs"), as non-operators, covering the N $\frac{1}{2}$  of Section 36 (the "N $\frac{1}{2}$  JOA"). The N $\frac{1}{2}$  JOA has been executed by the parties and is apparently still in effect.<sup>36</sup> It appears that the N $\frac{1}{2}$  JOA itself is not of record in Lea County. However, the Prior Opinion indicates that there is a Model Form Recording Supplement to Operating Agreement and Financing Statement dated effective June 1, 2006, recorded in Book 1477, Page 527 ("Recording Supplement"), which provides notice of the N $\frac{1}{2}$  JOA.<sup>37</sup> The N $\frac{1}{2}$  JOA contains many edits to the standard 1989 form, a detailed Article XVI "Other Provisions," a 1985 COPAS, and a gas balancing agreement. Exhibit "A" to the N $\frac{1}{2}$  JOA refers to an area of mutual interest, which includes the S $\frac{1}{2}$  of Section 36, among other lands.<sup>38</sup> We assume Concho is familiar with the terms of the N $\frac{1}{2}$  JOA and, in the interest of brevity, we do not outline all of its special provisions. We note that the N $\frac{1}{2}$  JOA, in Exhibit A, has two tables for ownership of the "Initial Well," and then has a third table breaking out ownership of "After Payout of Initial Test Well, Subsequent Wells, and AMI Acquisitions." As discussed below, we assume that the Term Assignment covering Lease No. E-6005 (discussed below) to Concho will be subject to the AMI in the N $\frac{1}{2}$  JOA and the term interest will ultimately be owned in the same percentages set forth in Exhibit A to the N $\frac{1}{2}$  JOA.

The third joint operating agreement is referred to in the January 5, 2007 Partial Assignment of Term Assignment from COG Oil & Gas LP to Rubicon, Liberty, G&G Limited, Logan, and McCombs, described in Comment 15. Specifically, the January 5, 2007 Partial Assignment is subject to "the terms and conditions of that certain Operating Agreement for West Pearl Prospect dated June 1, 2006 as entered into by and between Assignor and Assignees" (the "S $\frac{1}{2}$  JOA"). It appears the terms of the S $\frac{1}{2}$  JOA (or a form similar to it) may be attached to the January 5, 2007 Term Assignment of Oil and Gas Lease from Joseph Wm. Foran to COG Oil & Gas LP described in Comment 15, but the Title Materials only contain a partial copy of the January 5, 2007 Term Assignment, so we cannot be certain. The partial copy of the joint operating agreement that is attached to the January 5, 2007 Term Assignment is an AAPL Form 610-1989 Model Form Operating Agreement. We presume the S $\frac{1}{2}$  JOA is patterned after the partial copy attached to the January 5, 2007 Term Assignment, and we assume that it is the same form as the N $\frac{1}{2}$  JOA because of the inclusion of both the N $\frac{1}{2}$  and S $\frac{1}{2}$  in the area of mutual interest reflected on Exhibit "A" of the N $\frac{1}{2}$  JOA. Based on the above-described partial copy, it appears the S $\frac{1}{2}$  JOA only covers the S $\frac{1}{2}$  of Section 36. As noted in Comment 15, the January 5, 2007 Term Assignment from Joseph Wm. Foran to COG Oil & Gas LP has apparently expired. Based on the Title Materials, it is not clear whether the S $\frac{1}{2}$  JOA is still in effect.

The project areas for the Subject Wells comprise the E $\frac{1}{2}$ E $\frac{1}{2}$ , W $\frac{1}{2}$ E $\frac{1}{2}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ , and W $\frac{1}{2}$ W $\frac{1}{2}$  of Section 36. If the 1984 JOA is still in effect, and if the Subject Wells will be producing from any part of

<sup>36</sup> We note that Debra J. Logan, wife of David W. Logan, did not sign the N $\frac{1}{2}$  JOA. Under New Mexico law, this calls into question the validity of the N $\frac{1}{2}$  JOA as to Logan's interest, but because we recommend that new joint operating agreements be established for each of the Subject Wells (see below), the resolution of that issue is beyond the scope of this Opinion.

<sup>37</sup> See Comment 18(a) regarding the reciprocal liens granted under the N $\frac{1}{2}$  JOA and the Recording Supplement.

<sup>38</sup> The June 1, 2006 Participation Agreement discussed in Comment 11 contains an area of mutual interest provision affecting the same lands identified in Exhibit "A" to the N $\frac{1}{2}$  JOA.



the depths covered by the 1984 JOA,<sup>39</sup> then the respective parties to the 1984 JOA and the N $\frac{1}{2}$  JOA (or their successors, with the joinder of spouses, as applicable) will need to come to an agreement as to how operations will be governed for the Subject Wells. If the 1984 JOA is still in effect, then part of the interest Concho obtains from Joseph Wm. Foran in the S $\frac{1}{2}$  would also be subject to the 1984 JOA,<sup>40</sup> and the potential interests or claims of Mobil, Texaco, Sanders, Armstrong, and Tomsco (or their successors or other parties) would need to be addressed and clarified in writing, if necessary.

For purposes of this Opinion, and to be able to provide division of interest tables for the Subject Wells, we have reported title as though the 1984 JOA is no longer in effect, or that the Subject Wells will not produce from any depth covered by the 1984 JOA, but we emphasize that the requirement below must be satisfied prior to commencing operations for the Subject Wells:

The Subject Wells will have 160-acre project areas covering the E $\frac{1}{2}$ E $\frac{1}{2}$ , W $\frac{1}{2}$ E $\frac{1}{2}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ , and W $\frac{1}{2}$ W $\frac{1}{2}$ , respectively, in the Bone Spring formation, and we assume separate joint operating agreements will be entered into for each of the project areas that expressly supersede the N $\frac{1}{2}$  JOA (and the 1984 JOA, if applicable). Subject to the requirement below, we have included a cumulative division of interest and cost allocation for the Subject Wells in Appendices C and D. We have further assumed that all working interest owners already have elected or will elect to participate in the cost of the Subject Wells. If this assumption is incorrect, Appendices C and D will need to be revised. We emphasize that we have not reviewed offers to participate or any other documentation relating to the drilling of the Subject Wells and this Opinion is limited accordingly. We also emphasize that the division of interest tables are subject to the requirement below, in particular as it relates to the terms of the joint operating agreements that will govern operations pertaining to the Subject Wells.

**Requirement:** You should confirm whether the Subject Wells will be producing from any part of the depths covered by the 1984 JOA. If so, then you should confirm whether the 1984 JOA is still in effect and binding on the S $\frac{1}{2}$  of Section 36. If the 1984 JOA is still in effect, and if the Subject Wells will be producing from any part of the depths covered by the 1984 JOA, then you should inquire as to the potential contractual interests in the 1984 JOA outlined above, including, without limitation, those of Texaco and Sanders, and we should be notified and this Opinion should be revised accordingly.

Otherwise, the owners of Lease No. E-6005 and the owners of contractual interests in Lease No. VB-0797 by virtue of the N $\frac{1}{2}$  JOA (which we presume will ultimately be the same parties<sup>41</sup>) should enter into new joint operating agreements for each of the Subject Wells. The spouses of the parties, as applicable, should also be requested to execute the joint operating agreements to address any potential community property interests. The joint operating agreements should refer to the N $\frac{1}{2}$  JOA (and the S $\frac{1}{2}$  JOA, as applicable) and indicate that the intent is to preserve the N $\frac{1}{2}$  JOA and S $\frac{1}{2}$  JOA as to wells other than the Subject Wells, and this Opinion should be revised as appropriate. If the provisions of the new joint operating agreements are different from the provisions of the N $\frac{1}{2}$  JOA, then we should be notified and this Opinion should be revised as appropriate.

Prior to the commencement of operations for the Subject Wells, you should ensure that a memorandum of the applicable joint operating agreement is recorded in Lea County and filed with the

<sup>39</sup> The 1984 JOA covers the S $\frac{1}{2}$  of Section 36, from 5,500' subsurface to 100' below the stratigraphic equivalent of 14,840' subsurface as found in the West Pearl State #1 well, but in no event to extend below the base of the Siluro-Devonian formation.

<sup>40</sup> See Comment 15.

<sup>41</sup> See Comments 15 and 16.

State Land Office so that third parties are on constructive notice of the contractual rights of the parties, including the operator's lien. Providing constructive notice of the joint operating agreements will be particularly important given the fact that the contractual rights under the joint operating agreements (assuming the joint operating agreements will be patterned after the N $\frac{1}{2}$  JOA) are different from the operating rights ownership of record. In conducting operations, compliance should be made with the terms and conditions of the applicable joint operating agreement. If any of the working interest owners do not elect to participate in any of the Subject Wells, Appendices C and D should be revised accordingly.

9. **Merger of COG Oil & Gas LP and COG Operating LLC.** The Prior Opinion reported COG Oil & Gas LP as the owner of an interest in Lease No. VB-0797. We are aware that COG Oil & Gas LP merged with and into Concho, as evidenced by that certain Certificate filed with the Texas Secretary of State on December 18, 2008. However, evidence of the merger does not appear to be on file with the State Land Office or recorded in Lea County.

**Requirement:** A certified copy of the Certificate evidencing the merger of COG Oil & Gas LP with and into Concho should be filed with the State Land Office as a miscellaneous instrument for inclusion in the state lease file maintained for Lease No. VB-0797 and recorded in Lea County.

10. [Reserved]

11. **Partial Assignment from COG Oil & Gas, LP to McCombs Energy, Ltd.** Pursuant to that certain Participation Agreement dated June 1, 2006, by and among Rubicon Oil and Gas II, LP, G&G Limited, and David W. Logan, as sellers, and COG Oil & Gas LP, as buyer ("June 1, 2006 Participation Agreement"), the sellers, joined by Debra J. Logan, wife of David W. Logan, executed that certain Partial Assignment of Oil and Gas Lease dated effective June 1, 2006, recorded in Book 1459, Page 279, in favor of COG Oil & Gas LP, conveying 68.75% operating rights in Lease No. VB-0797. The June 1, 2006 Participation Agreement allows COG Oil & Gas LP to assign its interest in Lease No. VB-0797 without the written consent of the Sellers, "provided, however, that any such assignment shall nevertheless be void unless it is made expressly subject to [the June 1, 2006 Participation Agreement]" (emphasis added).

According to the Prior Opinion, by Partial Assignment of Oil and Gas Lease dated effective August 15, 2006, recorded in Book 1566, Page 349 (the "August 15, 2006 Partial Assignment"), COG Oil & Gas LP assigned a 20% operating rights interest in Lease No. VB-0797 to McCombs Energy, Ltd. The August 15, 2006 Partial Assignment was apparently made subject to that certain unreviewed Participation Agreement dated August 15, 2006, by and between COG Oil & Gas, LP and McCombs Energy, Ltd. (the "August 15, 2006 Participation Agreement"), but the Prior Opinion does not indicate whether the August 15, 2006 Partial Assignment was also expressly made subject to the June 1, 2006 Participation Agreement. If it was not, then the August 15, 2006 Partial Assignment would be void under the June 1, 2006 Participation Agreement. We note that Concho provided us with a title opinion dated September 22, 2006, by Lynch, Chappell & Alsup ("Alsup Opinion"), which covers the N $\frac{1}{2}$  and Lease No. VB-0797. Comment 2 of the Alsup Opinion may indicate that the August 15, 2006 Participation Agreement provides that the interest acquired by McCombs Energy, Ltd. is subject to the June 1, 2006 Participation Agreement, but that is not clear. We note that McCombs was a party to the N $\frac{1}{2}$  JOA (described in Comment 8), suggesting that the parties to the N $\frac{1}{2}$  JOA do not object to McCombs' owning at least a 17% (contractual) interest in Lease No. VB-0797, even if the August 15, 2006 Partial Assignment was not made subject to the June 1, 2006 Participation Agreement.

**Requirement:** Confirmation should be made as to whether the August 15, 2006 Partial Assignment was made subject to the June 1, 2006 Participation Agreement. If it was not, then it should be amended to be made subject to the June 1, 2006 Participation Agreement, or you might include a special provision in the joint operating agreements for the Subject Wells (see Comment 8) indicating that the parties recognize the validity of the August 15, 2006 Partial Assignment, notwithstanding the lack of reference to the June 1, 2006 Participation Agreement.

12. **Working Interest of Liberty Energy, LLC in Lease No. VB-0797.** As noted in the ownership tabulation above, Liberty Energy, LLC ("Liberty") is the owner of a 25% working interest in Lease No. VB-0797, which covers the N $\frac{1}{2}$  of Section 36. According to the Prior Opinion, that certain Partial Assignment of Oil and Gas Lease dated effective June 1, 2006, recorded in Book 11471, Page 654, whereby Rubicon Oil & Gas II, LP ("Rubicon") assigned a 25% operating rights interest to Liberty was subject to that certain Lease Acquisition Funding Agreement dated August 8, 2005, by and between Rubicon and Liberty, *et al.* ("Lease Acquisition Funding Agreement"). According to Comment 5 of the Prior Opinion, the Lease Acquisition Funding Agreement "provides for the re-assignment from [Liberty] to [Rubicon] of a portion of the leasehold interest assigned [by the Assignment described above] at 'Cumulative Payout,' as defined in the Lease Acquisition Funding Agreement." The prior title examiner requested a copy of the Lease Acquisition Funding Agreement but was "given a redacted version" and was "unable to determine what portion of the assigned interest is to be re-assigned to Rubicon and when (i.e. what constitutes 'Cumulative Payout')." We suspect the Lease Acquisition Funding Agreement may also affect the parties' interests in the S $\frac{1}{2}$  of Section 36 because the S $\frac{1}{2}$  was included in the area of mutual interest described in Comment 8.

We note that the January 5, 2007 Partial Assignment from COG Oil & Gas LP to Rubicon, *et al.*, discussed in Comment 15 (which covers the S $\frac{1}{2}$  and which has since expired), provided for an allocation of the assigned interest in a manner that is somewhat different from the allocation provided under the N $\frac{1}{2}$  JOA.<sup>42</sup> Specifically, the January 5, 2007 Partial Assignment only provided Liberty with a 20% interest, while Rubicon received a 14.0625% interest. Under the N $\frac{1}{2}$  JOA, Liberty and Rubicon would have been entitled to assignments of 25% and 9.0625%, respectively. We cannot be certain, but we suspect that the Lease Acquisition Funding Agreement may provide for a re-assignment of 5% from Liberty to Rubicon, and we also suspect that the event which triggers the re-assignment from Liberty to Rubicon under the Lease Acquisition Funding Agreement (namely, "Cumulative Payout") may have occurred based on the allocations in the January 5, 2007 Partial Assignment. However, because we have not reviewed the Lease Acquisition Funding Agreement and because we cannot be certain that "Cumulative Payout" has occurred, we have reported title assuming that "Cumulative Payout" has not yet occurred, consistent with the allocations in the N $\frac{1}{2}$  JOA, subject to the requirement below.

**Requirement:** Inquiry should be made as to whether the Lease Acquisition Funding Agreement covers the parties' interests in the S $\frac{1}{2}$  of Section 36 and whether "Cumulative Payout" has occurred under the terms of the Lease Acquisition Funding Agreement. If Cumulative Payout has occurred, then an appropriate portion of the interest at issue should be re-assigned from Liberty to Rubicon, the percentage ownership allocations in the joint operating agreements for the Subject Wells (see Comment 8) should be adjusted to reflect the fact that Cumulative Payout has occurred under the Lease Acquisition Funding Agreement (different from the N $\frac{1}{2}$  JOA allocations for Liberty and Rubicon), and this Opinion should be revised, as appropriate. If "Cumulative Payout" has not yet occurred, then we recommend that you "flag"

<sup>42</sup> We presume the provisions of the N $\frac{1}{2}$  JOA are the same as those intended to govern the S $\frac{1}{2}$  of Section 36, as discussed in Comment 8.

your records so that when it does you can suspend an appropriate amount of the production proceeds attributable to Liberty's interest until the required assignment is made.

13. **Matador E&P Company.** In 1998, Matador Petroleum Corporation acquired 100% record title to Lease No. E-6005 insofar as the lease covers the S $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$  of the Subject Lands (as to the depths covered by this Opinion), and 100% operating rights insofar as the Lease covers the entire S $\frac{1}{2}$  of the Subject Lands (as to the depths covered by this Opinion), less the wellbores of the Lea State #1 and #2 wells. By Conveyance, Assignment and Bill of Sale dated January 20, 1998, but effective as of October 1, 1997, recorded February 6, 1998, in Book 852, Page 538, Matador Petroleum Corporation conveyed its interest in Lease No. E-6005 to Matador E&P Company, Inc., a Texas corporation. As evidenced by an Agreement and Plan of Merger that was filed in the State Land Office, Matador Petroleum Corporation agreed to change its name to Matador E&P Company [no "Inc."] effective January 20, 1998. The Title Materials do not indicate whether the name change actually took place. Later, the S $\frac{1}{2}$  State Abstract contains a Certificate evidencing the merger of Matador E&P Company into Matador Petroleum Corporation effective August 1, 2003. We also note that the S $\frac{1}{2}$  County Abstract contains a Fourth Modification and Supplement of Deed of Trust dated January 20, 1998, executed by Matador E&P Company, Inc.<sup>43</sup> The websites for the New Mexico Secretary of State and the Texas Secretary of State contain online records indicating the name was Matador E&P Company, not Matador E&P Company, Inc. For purposes of this Opinion, we assume that Matador E&P Company was also known as and intended to refer to Matador E&P Company, Inc., but we make the requirement below.

**Requirement:** An affidavit should be recorded which describes the October 1, 1997 Assignment (and, if it is still in effect, the Deed of Trust described in Comment 18(d)) and clarifies that Matador E&P Company was also known as Matador E&P Company, Inc. (or sets forth other acceptable curative if our assumption above is incorrect). If our assumption is incorrect and Matador E&P Company was not the same as Matador E&P Company, Inc., then we should be notified and this Opinion should be revised accordingly.

14. **Interest of Joseph Wm. Foran in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  below 10,200' subsurface and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ .** Via mesne conveyances and mergers, in 2003, Tom Brown, Inc. acquired 100% record title to Lease No. E-6005 insofar as the lease covers the S $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$  of the Subject Lands (as to the depths covered by this Opinion), and 100% operating rights insofar as the lease covers the entire S $\frac{1}{2}$  of the Subject Lands (as to the depths covered by this Opinion), less the wellbores of the Lea State #1 and #2 wells. By Assignment of Oil and Gas Lease dated July 27, 2004, but effective May 1, 2004, approved by the State Land Office on September 22, 2004, with counterpart recorded on August 12, 2004, in Book 1323, Page 188, Tom Brown, Inc. assigned its interest to Magnum Hunter Production, Inc. The state form assignment covers Lease No. E-6005 and the S $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ , and the recorded counterpart covers Lease No. E-6005 and the S $\frac{1}{2}$  of the Subject Lands, less the wellbore of the Lea State #2 well; however, the description of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  in the recorded counterpart includes the notation "5500 to 10200," apparently limiting the depths assigned. We also note, however, that the recorded counterpart covers "[a]ll other oil and gas wells, oil and gas leases, and oil and gas minerals owned by Seller in the State of New Mexico . . ." (emphasis added). This "catch-all" language appears to cover Tom Brown, Inc.'s interest in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  below 10,200' subsurface, and we have reported title on that basis, but we make the requirement below. We also note that the state form assignment was executed by Mark Virant, as Attorney-in-Fact for Tom Brown, Inc.; however, a power of attorney in favor of Mark Virant was not included in the Title Materials. All powers of attorney under which real property is

<sup>43</sup> See Comment 18(d).

conveyed, must be acknowledged and recorded in the county where the real property is located.<sup>44</sup> For purposes of this Opinion, we presume Mark Virant had authority to execute the state form assignment on behalf of Tom Brown, Inc. and have reported title accordingly, subject to the requirement below.

In an Affidavit dated January 18, 2005, recorded January 19, 2005, in Book 1352, Page 60, Joseph Wm. Foran referred to a Texas lawsuit that he filed against Tom Brown, Inc. and Magnum Hunter Production, Inc., apparently to enforce a right of first refusal as to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , and NW $\frac{1}{4}$ SE $\frac{1}{4}$ , "plus any leaseholds associated therewith." It is unclear why only part of the S $\frac{1}{2}$  lands at issue were described in the Affidavit, but in any event this apparently led to that certain Conveyance, Assignment and Bill of Sale dated effective as of May 1, 2004, recorded March 31, 2006, in Book 1434, Page 924, (the "Magnum Hunter Conveyance"), by which Magnum Hunter Production, Inc. purportedly conveyed the following to Joseph Wm. Foran:

(a) The undivided working interests, fee mineral interests, overriding royalty interests, and other interests in the following:

(i) the wells described in Exhibit A hereto, to the extent, and only to the extent, such right, title and interest was conveyed to Grantor at the closing of the transactions contemplated by and pursuant to that certain Purchase and Sale Agreement dated June 18, 2004 (the "PSA"), between Grantor and Tom Brown, Inc., by Assignments recorded in Book 1323, Page 188, and Book 1338, Page 458, Real Property Records of Lea County, New Mexico, or has been or is supplementally conveyed thereafter by EnCana Oil & Gas (USA), Inc. ("EnCana") in connection with the PSA, due to a mistake in the original conveyance corrected by EnCana (although there is no duty of Grantor to threaten a lawsuit or take other action to obtain such supplemental conveyances) (such condition, in its entirety, being termed the "PSA Condition"), any other wells located within the Proration Units (as hereunder defined) that were drilled after May 13, 2003 and that are not subject to the reservations set forth in Article 2 of this Conveyance, and any other wells located within the Proration Unit (as defined below) that have been plugged and abandoned prior to the date hereof (and remain plugged and abandoned as of this date), in all cases above only to the extent of the PSA Condition (the "Wells");

(ii) the proration units assigned to the respective Wells by the New Mexico Oil Conservation Division, or to the extent any of the Wells have previously been drilled to a deeper formation and is now producing from an up hole formation, the proration unit associated with the original drilled depth assigned to such Well by the New Mexico Oil Conservation Division, in either case (A) as described in Exhibit A hereto, (B) to all depths and formations and (C) to the extent of the PSA Condition with all of the foregoing (the "Proration Units");

(iii) together with such Wells, Grantor's interest in the leases and lands described in Exhibit A (subject to the PSA Condition), IN SO FAR AND

<sup>44</sup> N.M. Stat. Ann. § 47-1-7.

ONLY INsofar as the leasehold estates described therein are included in the boundaries of a Proration Unit as designated in Exhibit A (the "Proration Unit Boundary").

We note that the copy of the Magnum Hunter Conveyance that was included in the S $\frac{1}{2}$  County Abstract is incomplete. Therefore, we are unable to confirm, for example, whether the Magnum Hunter Conveyance was made subject to an unrecorded agreement. We also note that the Exhibit "A" attached to the Magnum Hunter Conveyance is very difficult to read. Notwithstanding, it appears that the Exhibit describes the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ , but not the NW $\frac{1}{4}$ SW $\frac{1}{4}$ . We also note that an appropriate assignment was not filed with the State Land Office, resulting in only operating rights being conveyed to Joseph Wm. Foran, even though Magnum Hunter Production, Inc. was (and still is) the owner of 100% record title in Lease No. E-6005 as to the S $\frac{1}{2}$  of the Subject Lands (as to the depths covered by this Opinion), except the NW $\frac{1}{4}$ SW $\frac{1}{4}$ . We suspect Joseph Wm. Foran may be entitled to an assignment of record title, but that is speculation on our part.

In an Affidavit dated March 17, 2006, recorded March 31, 2006, in Book 1434, Page 950, Joseph Wm. Foran referred to the Magnum Hunter Conveyance and indicated that, in addition to the working interests described in the Magnum Hunter Conveyance, he is entitled to:

such other interests in and to the Wells, leases and deeds as were conveyed by Tom Brown, Inc. to Magnum Hunter pursuant to that certain Purchase and Sale Agreement dated June 18, 2004 between Magnum Hunter and Tom Brown, Inc. by Assignments recorded in Book 1323, Page 188, or has been or is supplementally conveyed thereafter by EnCana Oil & Gas (USA), Inc. ("EnCana") in connection with the PSA, due to a mistake in the original conveyance corrected by EnCana. As a result, [Joseph Wm. Foran] may be entitled to certain additional deep rights and other interests relating to, emanating or derived from such specifically named Wells, Proration Units and leases, directly or indirectly, as provided therein.

Thus, it appears that Joseph Wm. Foran may be entitled to receive the operating rights interest in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  (as to the depths covered by this Opinion) that was apparently omitted from the Magnum Hunter Conveyance, as well as 100% record title in Lease No. E-6005 as to the S $\frac{1}{2}$  (as to the depths covered by this Opinion), except the NW $\frac{1}{4}$ SW $\frac{1}{4}$ . For purposes of this Opinion, we have reported title as though Joseph Wm. Foran received Magnum Hunter Production Inc.'s operating rights interest in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , subject to the requirement below. As to the SW $\frac{1}{4}$ SW $\frac{1}{4}$  below 10,200' subsurface, we note that we are independently aware that EnCana acquired all of Tom Brown, Inc.'s stock in 2004, which would explain the reference to EnCana in the Magnum Hunter Conveyance and in Joseph Wm. Foran's Affidavit, but we are not aware of an assignment from Tom Brown, Inc. to EnCana.

We note that the recent Term Assignment (discussed in Comment 15 below) provided to us by Concho includes the SW $\frac{1}{4}$ SW $\frac{1}{4}$  below 10,200', and so Joseph Foran clearly believes that he obtained and owns operating rights in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  below 10,200'.

**Requirement:** If you do not wish to rely on the "catch-all" language contained in the recorded counterpart of the Assignment from Tom Brown, Inc. to Magnum Hunter Production, Inc. and assume the risk of a challenge to Joseph Wm. Foran's title to operating rights in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  below 10,200' subsurface, then Joseph Wm. Foran should obtain from Tom Brown, Inc. (or EnCana, if EnCana has received an assignment of the interest from Tom Brown, Inc.) an assignment of Lease No. E-6005 insofar

as it covers the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 36 below 10,200' subsurface, which should then be recorded in Lea County.

Ideally, a copy of the power of attorney authorizing Mark Virant to execute the above-described state form assignment from Tom Brown, Inc. to Magnum Hunter Production, Inc. should be recorded in Lea County.

A clear, complete copy of the Magnum Hunter Conveyance should be obtained and confirmation should be made as to whether it covers Lease No. E-6005 insofar as the lease covers the NW $\frac{1}{4}$ SW $\frac{1}{4}$ . If it does not, then Joseph Wm. Foran will need to obtain and record an appropriate assignment of Lease No. E-6005 as to the NW $\frac{1}{4}$ SW $\frac{1}{4}$  from Magnum Hunter Production, Inc. If such an assignment will not be forthcoming, then we should be notified and this Opinion should be revised accordingly.

If Joseph Wm. Foran is also entitled to receive 100% record title in Lease No. E-6005 as to the S $\frac{1}{2}$  (as to the depths covered by this Opinion), except the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , from Magnum Hunter Production, Inc., then an appropriate Assignment of Oil and Gas Lease should be filed with the State Land Office.

**15. Term Assignment from Joseph William Foran to Concho of Lease No. E-6005.**  
Subject to the curative required in Comment 14, of record, Joseph William Foran owns 100% operating rights in Lease No. E-6005 (as to the depths covered by this Opinion). The S $\frac{1}{2}$  County Abstract contains a Term Assignment of Oil and Gas Lease effective as of January 5, 2007, recorded in Book 1493, Page 673, from Joseph Wm. Foran, et ux. Nancy N. Foran, to COG Oil & Gas LP, covering the S $\frac{1}{2}$  from the surface down to 100' below the deepest depth drilled in the initial well on the Conveyed Premises as defined in the Assignment (the "January 5, 2007 Term Assignment"). By Partial Assignment of Term Assignment executed on July 10, 2007, but effective as of January 5, 2007, recorded July 25, 2007, in Book 1526, Page 48 ("January 5, 2007 Partial Assignment"), COG Oil & Gas LP assigned 58.5625% of its interest in the January 5, 2007 Term Assignment (below the base of the Queen formation) to the following parties in the proportions set forth opposite their names:

Liberty Energy, LLC	20%
McCombs Energy, Ltd.	17%
Rubicon Oil & Gas II, LP	14.0625%
G&G Limited, a Texas limited partnership	6%
David W. Logan	1.5%
Total	58.5625%

By Notice of Expiration dated January 31, 2008, recorded in Book 1567, Page 967, notice was given that the January 5, 2007 Term Assignment expired effective January 5, 2008. We note that only COG Oil & Gas LP and Liberty Energy, LLC signed the copy of the Notice that was provided in the S $\frac{1}{2}$  County Abstract, but we were only provided with the first page of the Notice for review. We assume that the Notice was fully executed and that the January 5, 2007 Term Assignment indeed expired on January 5, 2008.



Concho provided us with a new Term Partial Assignment of Oil and Gas Lease dated September 26, 2014, but effective July 7, 2014 from Joseph William Foran, et ux. Nancy N. Foran, to Concho (the "Term Assignment"). The Term Assignment has not been filed with the State Land Office file or recorded in the County. The Term Assignment transfers Joseph William Foran's interest in Lease No. E-6005, insofar as it covers the S½ (only as to the depths covered by this Opinion) to Concho, subject to the reservation by Joseph William Foran of an overriding royalty interest equal to the difference between existing lease burdens and 25% (net 12.5% overriding royalty interest), subject to proportionate reduction, post-production costs not deductible. The Term Assignment is for a primary term of one year from the Effective Date of July 7, 2014, and for so long thereafter as oil and/or gas is produced or capable of being produced in paying quantities from the assigned lands or lands pooled therewith. The Term Assignment contains a 180-day continuous drilling operations clause and a depth-limited Pugh clause. The Term Assignment contains other special provisions, including provisions relating to the calculation of the overriding royalty interest reserved by Joseph William Foran. In the interest of brevity, we refer you to the Term Assignment for those provisions rather than outlining them here.

Under the Term Assignment, upon "Payout" (defined therein) of the "Initial Well" (also defined therein), Joseph William Foran has the option to convert his 12.5% overriding royalty interest to a 25% working interest in the Initial Well and the land included within the "Unit" (defined therein) for such well. As to subsequent wells, Joseph William Foran has the option to relinquish his 12.5% overriding royalty interest and participate as a 25% working interest owner. If he elects not to participate (or is deemed to have done so by failing to timely respond to an offer to participate), then he has the option to relinquish his 12.5% overriding royalty interest and participate as a 6.25% working interest owner upon Payout of the subsequent well.

We note that, in the event Joseph William Foran elects to participate in any wells, the Term Assignment contemplates the parties' execution of a joint operating agreement to govern operations for such wells, the form of which was attached to that certain unrecorded Letter Agreement dated May 7, 2014 between Joseph William Foran and Concho. We have not reviewed the referenced May 7, 2014 Letter Agreement. For purposes of this Opinion, we presume the form of the contemplated joint operating agreement will be in the form of the N½ JOA discussed in Comment 8, but we make the requirement below.

We also note that the Term Assignment is subject to "the terms and provisions of any existing contract or obligation affecting the Assigned Premises whether or not of record in Lea County, New Mexico, and whether or not specifically referenced herein." (emphasis added). Without more information, we are not in a position to opine on the effect of any such unrecorded/unfiled agreements on Concho's operations, if any. If there are any such agreements that you would like us to review for a determination as to whether and how they affect operations pertaining to the Subject Wells, please let us know. We also note that the copy of the Term Assignment does not have an Exhibit B attached.

**Requirement:** The Term Assignment should be recorded in the County and a copy filed with the State Land Office. You should comply with all of the provisions of the Term Assignment, including the provisions granting Joseph William Foran the option to participate as to the Initial Well and any subsequent wells. If Joseph William Foran elects to participate in the Initial Well or any subsequent wells, then our opinion of title should be revised to reflect the relinquishment of his overriding royalty interest in such well(s). If the provisions of the joint operating agreement contemplated by the Term Assignment are materially different from the N½ JOA, then we should be notified and this Opinion should be revised, if necessary.



16. **Ownership of Lease No. E-6005.** As noted in Appendix A, Concho and its successors entered into the N $\frac{1}{2}$  JOA and recorded assignments of Lease No. VB-0797 such that the contractual interests and operating rights in that lease are owned as set forth in the ownership tabulation above. It appears the recorded assignments were, at least in part, executed pursuant to the June 1, 2006 and August 15, 2006 Participation Agreements discussed in Comment 11. The June 1, 2006 Participation Agreement and the N $\frac{1}{2}$  JOA indicate that all of Section 36 is within an area of mutual interest. As noted above, the N $\frac{1}{2}$  JOA, in Exhibit A, contains tables setting forth the percentage interest of all of the parties to the N $\frac{1}{2}$  JOA in any "AMI Acquisitions." For purposes of this Opinion, we assume that the interest acquired by Concho in Lease No. E-6005 by the Term Assignment above is an "AMI Acquisition" under the N $\frac{1}{2}$  JOA, and that similar assignments will be executed such that the ownership of operating rights and contractual interests in Lease No. E-6005 (as to the depths covered by this Opinion, and subject to the Term Assignment) will be identical to that of Lease No. VB-0797 and the tables in the N $\frac{1}{2}$  JOA for "AMI Acquisitions", as reported herein, but we make the requirement below. We note that the interests of Liberty Energy, LLC and Rubicon Oil & Gas II, LP may ultimately be different from what we have reported herein, as was the case in the January 5, 2007 Partial Assignment discussed in Comment 12. Finally, we have reported title on the assumption that G&G Limited, a Texas limited partnership, will ultimately execute an assignment of 1% of 8/8ths interest in Lease No. E-6005 to Danny W. Jones, but we are not aware of any agreements in place that would call for such an assignment, and we stress that the requirement below must be satisfied.

**Requirement:** If our assumption above is correct, and the interest acquired by Concho in the Term Assignment for Lease No. E-6005 is an "AMI Acquisition," then an assignment of Lease No. E-6005 should be promptly executed (and filed and recorded after the Term Assignment) which assigns operating rights consistent with the tables in the N $\frac{1}{2}$  JOA and as reported in this Opinion (as was done with the earlier term assignment interests in 2007). If our assumption is incorrect and such assignments of Lease No. E-6005 are not pending, or if our reported percentage interests are not correct, or if joint operating agreements with ownership allocations similar to the N $\frac{1}{2}$  JOA are not executed, or the ownership of Lease No. E-6005 is ultimately different in any way from that which we have outlined in this Opinion, then we should be notified immediately and this Opinion should be revised as appropriate.

17. **Casinghead Gas Contract.** The S $\frac{1}{2}$  County Abstract contains that certain Casinghead Gas Contract dated October 14, 1970, recorded October 30, 1970, in Book 293, Page 139, as amended by that certain Amendatory Agreement dated March 24, 1971, recorded April 30, 1971, in Book 297, Page 203, between Union Oil Company of California (a predecessor of Joseph Wm. Foran), as seller, and Phillips Petroleum Company, as buyer, covering the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 36, between 5,110' and 9,661' subsurface. By Partial Assignment of Agreements dated September 22, 2000, recorded October 10, 2000, in Book 1042, Page 654, Phillips Petroleum Company assigned its right, title and interest in certain agreements, reserving the right to operate, maintain, repair and replace its existing pipelines and facilities, to GPM Gas Company, LP. We do not know whether the October 14, 1970 Casinghead Gas Contract was affected by this Partial Assignment because the copy that was included in the S $\frac{1}{2}$  County Abstract is incomplete. We are independently aware that Phillips Petroleum Company is now known as ConocoPhillips. We note that the October 14, 1970 Casinghead Gas Contract is effective for the life of the oil and gas lease covering the land described therein, but it is terminable after 15 years by giving 60 days' written notice. The Title Materials do not contain any evidence that the October 14, 1970 Casinghead Gas Contract has been terminated.

**Requirement:** The terms of the October 14, 1970 Casinghead Gas Contract should be complied with, as applicable.

**18. Encumbrances:** The following instruments in the Title Materials remain outstanding as of the effective date of this Opinion:

(a) Recording Supplement to Operating Agreement and Financing Statement dated effective June 1, 2006, recorded in Book 1477, Page 527, providing notice of reciprocal liens and security interests to secure the performance of all obligations under the N $\frac{1}{2}$  JOA described in Comment 8.

(b) Third Supplement and Amendment to Deed of Trust, Mortgage, Line of Credit Mortgage, Assignment, Security Agreement, Fixture Filing and Financing Statement dated April 17, 2013, recorded April 24, 2013, in Book 1832, Page 709, from Rubicon Oil & Gas II, LP ("Rubicon") to Union Bank, N.A., Agent, modifying that certain Deed of Trust, Mortgage, Line of Credit Mortgage, Assignment, Security Agreement, Fixture Filing and Financing Statement dated effective April 30, 2008, recorded in Book 738, Page 1057, of the records of Eddy County, New Mexico, as modified from time to time. This instrument purportedly covers Rubicon's interest in Lease No. VB-0797. We note, however, that the copy of this instrument contained in the N $\frac{1}{2}$  County Abstract is incomplete.

We note that the N $\frac{1}{2}$  County Abstract and N $\frac{1}{2}$  State Abstract include that certain First Amended and Restated Deed of Trust, Mortgage, Line of Credit Mortgage, Assignment, Security Agreement, Fixture Filing and Financing Statement dated September 25, 2013, recorded October 25, 2013, in Book 1863, Page 558, from Rubicon to Union Bank, N.A., Agent. This instrument purportedly covers Rubicon's interest in Lease No. VB-0797. We suspect this September 25, 2013 First Amended and Restated Deed of Trust replaces the April 30, 2008 Deed of Trust, as modified from time to time, but we cannot be certain because the copies of the September 25, 2013 First Amended and Restated Deed of Trust included in the N $\frac{1}{2}$  County Abstract and N $\frac{1}{2}$  State Abstract are incomplete. As evidenced by that certain Memorandum of Assignment of Liens dated as of December 17, 2013, recorded December 23, 2013, in Book 1872, Page 1, Union Bank, N.A., as Agent, assigned its interest in the April 30, 2008 Deed of Trust and the September 25, 2013 First Amended and Restated Deed of Trust to Viewpoint Bank, N.A., as Agent.

The N $\frac{1}{2}$  State Abstract also includes that certain Second Amended and Restated Deed of Trust, Mortgage, Line of Credit Mortgage, Assignment, Security Agreement, Fixture Filing and Financing Statement dated December 17, 2013, filed with the State Land Office on January 24, 2014, from Rubicon to Viewpoint Bank, N.A., Agent. This instrument purportedly covers Rubicon's interest in Lease No. VB-0797. We suspect this December 17, 2013 Second Amended and Restated Deed of Trust replaces the September 25, 2013 First Amended and Restated Deed of Trust described above, but we cannot be certain because the copy of the December 17, 2013 Second Amended and Restated Deed of Trust included in the N $\frac{1}{2}$  State Abstract is incomplete.

(c) Deed of Trust, Mortgage, Line of Credit Mortgage, Assignment, Security Agreement, Fixture Filing and Financing Statement dated September 25, 2013, recorded December 23, 2013, in Book 1863, Page 634, from Rubicon to Chambers Energy Management, LP, Agent. This instrument purportedly covers Rubicon's interest in Lease No. VB-0797. We note that the copies of this instrument contained in the N $\frac{1}{2}$  County Abstract and N $\frac{1}{2}$  State Abstract are incomplete, but the copy in the N $\frac{1}{2}$  State Abstract includes a page that contains an assignment of production and production proceeds, such that Chambers Energy Management, LP, as Agent, is entitled to the production proceeds attributable to

Rubicon's interest until the purchaser of such production is notified that the debt has been paid or the Deed of Trust has been released.

The N $\frac{1}{2}$  County Abstract also includes a UCC-1 Financing Statement, apparently related to the September 25, 2013 Deed of Trust, from Rubicon to Chambers Energy Management, LP, as Agent, covering Lease No. VB-0797.

(d) The S $\frac{1}{2}$  County Abstract includes the following document, which encumbers the interest of Joseph Wm. Foran in Lease No. E-6005:

Fourth Modification and Supplement of Deed of Trust dated January 20, 1998, recorded February 3, 1998, in Book 851, Page 777, executed by Matador E&P Company, Inc., a Texas corporation, a/k/a Matador Petroleum Corporation, and Comerica Bank Texas, modifying that certain Deed of Trust, Mortgage, Security Agreement, Assignment of Production and Financing Statement, dated effective July 21, 1995, recorded in Book 709, Page 237, as modified from time to time from Matador E&P Company, Inc. to J. Patrick Faubion, Trustee, and Comerica Bank Texas.

The above-described Deed of Trust was additionally modified thereafter, as follows:

- Fifth Modification of Deed of Trust dated as of June 5, 1998, recorded in Book 890, Page 543.

- Sixth Modification and Supplement of Deed of Trust dated as of June 24, 1999, recorded in Book 969, Page 108.

- Sixth Modification and Extension of Deed of Trust dated as of June 24, 1999, recorded in Book 969, Page 115.

- Seventh Modification and Supplement of Deed of Trust dated as of August 18, 2000, recorded in Book 1039, Page 446.

- Eighth Modification and Supplement of Deed of Trust dated as of February 12, 2001, recorded in Book 1071, Page 383.

- Ninth Modification and Supplement of Deed of Trust dated as of September 30, 2001, recorded in Book 1104, Page 359.

- Tenth Modification and Supplement of Deed of Trust dated as of December 31, 2001, recorded in Book 1123, Page 213.

It is possible that the above-described Deed of Trust, as modified and supplemented, has expired or has been released of record. This is likely the case since the mortgagor, Matador E&P Company, Inc. (apparently a/k/a Matador E&P Company<sup>43</sup>), previously owned, but does not currently own, an interest of record in Lease No. E-6005. Nevertheless, based upon the Title Materials, it appears that the Deed of Trust continues to encumber the interest of Joseph Wm. Foran in Lease No. E-6005, and would encumber the interest of Concho and its successors if not released.

<sup>43</sup> See Comment 13.

(e) The S $\frac{1}{2}$  County Abstract includes the following document, which may encumber the interest of Joseph Wm. Foran in Lease No. E-6005, except for the SW $\frac{1}{4}$ SW $\frac{1}{4}$  below 10,200' subsurface: Mortgage, Deed of Trust, Assignment of Production, Security Agreement and Financing Statement dated as of July 30, 2004, recorded August 12, 2004, in Book 1323, Page 221, from Magnum Hunter Production, Inc. to David E. Sisler, as Trustee, with Deutsche Bank Trust Company Americas, as Collateral Agent. The S $\frac{1}{2}$  County Abstract also includes a Termination and Release of Mortgages, Deeds of Trust, Assignments, Liens and Security Interests, dated as of May 20, 2005, recorded July 18, 2005, in Book 1386, Page 644, from Deutsche Bank Trust Company Americas, as Collateral Agent. We suspect the May 20, 2005 Termination may release the above-described July 30, 2004 Mortgage, but the partial copy of the Termination that was provided in the S $\frac{1}{2}$  County Abstract does not appear to describe Lease No. E-6005 or the Subject Lands. Therefore, we make the requirement below. We also note that the partial copy of the Termination that we reviewed does not contain a signature page, but we assume the Termination was properly executed.

(f) The S $\frac{1}{2}$  County Abstract includes the following instruments issued by COG Oil & Gas, LP or Concho:

Mortgage, Line of Credit Mortgage, Deed of Trust, Assignment, Security Agreement and Financing Statement dated as of February 24, 2006, recorded in Book 1429, Page 559, from COG Oil & Gas LP, a Texas limited partnership, to Wm. Mark Cranmer, as Trustee, and JPMorgan Chase Bank, N.A., as Administrative Agent, as amended by First Amendment dated as of July 31, 2008, recorded in Book 1594, Page 318, and by Second Amendment dated as of October 7, 2010, recorded in Book 1699, Page 808 by and between Concho and JPMorgan Chase Bank, N.A., as Administrative Agent; and by Third Amendment dated as of September 21, 2012, recorded in Book 1798, Page 701 from Concho to JPMorgan Chase Bank, N.A., as Administrative Agent.

Second Amendment to Mortgage, Line of Credit Mortgage, Deed of Trust, Assignment, Security Agreement and Financing Statement dated as of October 7, 2010, recorded in Book 1699, Page 816, by and between Concho and JPMorgan Chase Bank, N.A., as Administrative Agent, which apparently amends that certain Mortgage, Line of Credit Mortgage, Deed of Trust, Assignment, Security Agreement and Financing Statement dated as of March 27, 2007, recorded in Book 1508, Page 279, as amended by First Amendment dated as of July 31, 2008, recorded in Book 1594, Page 318, and Third Amendment dated September 21, 2012, recorded in Book 1798, Page 694 from Concho to JPMorgan Chase Bank, N.A., as Administrative Agent.

UCC Financing Statement recorded in Book 1721, Page 546.

We assume Concho is familiar with its own financing arrangements and the effects of such on its operations:

**Requirement:**

(a) See Comment B regarding the N $\frac{1}{2}$  JOA.

(b) For division order purposes, inquiry should be made as to whether the debt underlying the April 30, 2008 Deed of Trust, the September 25, 2013 First Amended and Restated Deed of Trust, and the December 17, 2013 Second Amended and Restated Deed of Trust remains unpaid. If the debt has been paid, then appropriate release documentation should be executed and recorded in Lea County. Otherwise, written instructions should be obtained from the parties to these instruments (or their

successors) as to how production proceeds should be paid. The production proceeds attributable to the interest of Rubicon should be held in suspense until this requirement is satisfied.

(c) For division order purposes, if the debt underlying the April 30, 2008 Deed of Trust, the September 25, 2013 First Amended and Restated Deed of Trust, and the December 17, 2013 Second Amended and Restated Deed of Trust, described in paragraph (b) above has been paid and those instruments are ultimately released in accordance with paragraph (b) above, then production proceeds attributable to the interest of Rubicon should be paid to Chambers Energy Management, LP, Agent, until the debt underlying the September 25, 2013 Deed of Trust (described in paragraph (c) above) has been paid or the deed of trust has been released. If the debt underlying the deeds of trust described in paragraph (b) above has not been paid, then you should obtain written instructions from the parties to those deeds of trust and the parties to the September 25, 2013 Deed of Trust described in paragraph (c) above as to how payment should be made. The production proceeds attributable to the interest of Rubicon should be held in suspense until this requirement is satisfied.

(d) You should cause the records of Lea County to be searched to locate any release of the July 21, 1995 Deed of Trust, as modified from time to time. If the debt underlying the July 21, 1995 Deed of Trust, as modified, has been paid and the deed of trust has not been released, then appropriate release documentation should be executed and recorded in Lea County. Otherwise, in conjunction with the Term Assignment from Joseph Wm. Foran to Concho described in Comment 15, Concho should obtain from Comerica Bank - Texas and J. Patrick Faubion, Trustee, a subordination of the July 21, 1995 Deed of Trust, as modified from time to time, to the Term Assignment. The subordination should then be recorded in Lea County.

(e) You should confirm that the May 20, 2005 Termination released the July 30, 2004 Mortgage insofar as it covers Lease No. E-6005, except for the SW $\frac{1}{4}$ SW $\frac{1}{4}$  below 10,200' subsurface. If it did not, then in conjunction with the Term Assignment from Joseph Wm. Foran to Concho described in Comment 15, Concho should obtain from Deutsche Bank Trust Company Americas, as Collateral Agent, a subordination of the July 30, 2004 Mortgage to the Term Assignment. The subordination should then be recorded in Lea County.

(f) None, advisory only.

19. Joint Operating Agreement Executed by Western Equipment Company, et al. By Assignment dated November 24, 1980, recorded February 10, 1981, in Book 334, Page 165, Union Oil Company of California conveyed Lease No. E-6005, only insofar as it covers the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , to Western Equipment Company. Two days later, by Assignment of Working Interest and Operating Rights and Overriding Royalty Interest dated November 26, 1980, recorded February 10, 1981, in Book 334, Page 162, Western Equipment Company conveyed all of its interest in "that certain Oil and Gas Lease made by the State of New Mexico to The Pure Oil Company under date of February 11, 1952, only insofar as said lease covers" the NW $\frac{1}{4}$ SW $\frac{1}{4}$  below 5,400' subsurface back to Union Oil Company of California. We assume the referenced lease is Lease No. E-6005. Joseph Wm. Foran ultimately succeeded to this interest, subject to the curative required in Comment 14.

Concho provided us with a copy of an A.A.P.L. Form 610-1977 Model Form Operating Agreement dated March 12, 1981 (the "Western JOA"), executed by Western Equipment Company, James E. Orseith, Roxanne Turpin, C.C. Maloney, and Leslie Turner. The Western JOA purports to cover the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , but it is not depth limited. We do note, however, that the signature page for Roxanne Turpin refers to "NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 36, T-19-S, R-34-E, down to but not below a depth of 5400 feet

subsurface." Based on this notation, and the fact that Western Equipment Company divested itself of its interest in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  below 5,400' subsurface prior to signing the Western JOA, we have not given effect to the Western JOA in our opinion of title.

Requirement: None, advisory only.

20. Stray Documents. The Title Materials include or refer to the following documents, but it is not clear how the parties to these documents claim an interest in the Subject Lands or Subject Leases:

(a) Deed of Distribution, dated effective as of December 17, 2003, recorded February 17, 2006, in Book 1427, Page 671, from Barbara A. McClellan, Personal Representative of the Estate of Jack Love McClellan, Deceased, to Barbara A. McClellan, purportedly conveying the decedent's interest in a 2.5% overriding royalty interest in Lease No. E-6005, insofar as the lease covers the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , "for all depths."

(b) Deed of Distribution dated May 21, 2012, recorded May 23, 2012, in Book 1779, Page 754, from Mark McClellan, Personal Representative of the Estate of Barbara McClellan, Deceased, to Mark McClellan, a married man dealing in his sole and separate property (last address of record: P.O. Box 730, Roswell, NM 88202); Suzanne McClellan Roberts, a married woman dealing in her sole and separate property (last address of record: 2109 Carolina Way, Roswell, NM 88201); and Lisa McClellan, a married woman dealing in her sole and separate property (last address of record: 411 Viale Bond, Roswell, NM 88201), purportedly conveying the decedent's interest in a 2.5% overriding royalty interest in Lease No. E-6005, insofar as the lease covers the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , "for all depths."

(c) Deed dated August 15, 2013, recorded August 26, 2013, in Book 1853, Page 56, from Lisa McClellan, a married woman dealing in her sole and separate property, joined pro forma by her husband, Bradley J. Ussery, to the Lisa C. McClellan Revocable Trust dated May 16, 2013 (last address of record: 411 Viale Bond, Roswell, NM 88201), purportedly conveying the Grantor's interest in a 2.5% overriding royalty interest in Lease No. E-6005, insofar as the lease covers the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , "for all depths."

We note that Jack L. McClellan was apparently a party to an unreviewed Farmout Agreement described in Comment 23(b), but it is not clear whether or to what extent he (or his successors) may claim an interest in the Subject Lands or Subject Leases.

(d) Memorandum of Dedicated Acreage dated March 17, 2014, recorded April 17, 2014, in Book 1887, Page 915, by and between Devon Energy Production Company, L.P. and Oryx Oil Gathering Services, LLC (last address of record: 4000 N. Big Spring, Ste. 210, Midland, TX 79705). This Memorandum pertains to an unreviewed Lease Connection Agreement dated March 17, 2014 and describes all of Section 36, among many other lands.

(e) Assignment of Overriding Royalty Interest dated effective September 1, 2008, recorded in Book 1616, Page 432, from Southwest Royalty Institutional Income Fund, X-C, LP (last address of record: 6 Desta Dr., Ste. 2100, Midland, TX 73705), and Greg McCabe, Trustee of the McFarland Partners Trust (last address of record: P.O. Box 11188, Midland, TX 79702), to Southwest Royalties, Inc. (last address of record: 6 Desta Dr., Ste. 2100, Midland, TX 73705), purportedly assigning 25% of the Assignors' overriding royalty interest acquired by virtue of that certain Assignment of Overriding Royalty Interest dated April 11, 1991, recorded in Book 542, Page 113, from Randall Capps, d/b/a Xeric Oil & Gas Company, to McFarland Partners Trust, covering the NW $\frac{1}{4}$  of Section 36.

As noted in the Prior Opinion, the referenced April 11, 1991 Assignment of Overriding Royalty Interest was dated prior to the date Lease No. VB-0797 was issued (November 1, 2005). Accordingly, the September 1, 2008 Assignment of Overriding Royalty Interest was probably not intended to affect Lease No. VB-0797. Because the wells described in the referenced April 11, 1991 Assignment of Overriding Royalty Interest (a copy of which was included in the S $\frac{1}{2}$  County Abstract) were drilled to depths above those covered by this Opinion, it appears the intent of the September 1, 2008 Assignment was only to affect shallow rights pertaining to Lease No. E-6005.

(f) Assignment and Quit Claim executed on February 28, 2013, recorded June 20, 2013, in Book 1842, Page 500, from Karen Sue Capps, n/k/a Karen Capps, individually and d/b/a Dragon Royalties, to Dragon Royalties LLC (last address of record: 5773 Woodway Dr., #106, Houston, TX 77657), purportedly assigning all of the Assignor's interest in the leases and lands identified in that certain Assignment and Conveyance of Overriding Royalty dated effective January 1, 2000, recorded in Book 1147, Page 419, from HNL Royalty Company to Dragon Royalties.

Because the wells described in the referenced January 1, 2000 Assignment and Conveyance of Overriding Royalty (a copy of which was included in the S $\frac{1}{2}$  County Abstract) were drilled to depths above those covered by this Opinion, it appears the intent of the February 28, 2013 Assignment was only to affect shallow rights pertaining to Lease No. E-6005.

(g) Assignment of Oil and Gas Leases dated July 18, 2011, recorded in Book 1754, Page 337, from Amelia W. Anderson (address unknown) to Daryl A. Sacks (address unknown), purportedly conveying the Assignor's interest in the W $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 36.

For purposes of this Opinion, we have not given effect to these instruments, subject to the requirement below.

**Requirement:** Out of an abundance of caution, you may want to contact the parties to the above-described documents (or their successors) to determine whether they actually claim any interest in the Subject Lands or Subject Leases. If they do, they should be requested to provide documentation supporting their claims, which should then be submitted to us for review and possible revision of this Opinion.

21. **Expired State of New Mexico Oil and Gas Leases.** The S $\frac{1}{2}$  State Abstract indicates that State of New Mexico Oil and Gas Lease Nos. B-11002 and B-11098 at one time burdened portions of the Subject Lands, but have since expired on their own terms on February 10, 1944 and March 10, 1944, respectively. In addition, our online search of the State Land Office records disclosed that State of New Mexico Oil and Gas Lease No. E-3143 once covered the N $\frac{1}{2}$  of Section 36, but it expired on April 30, 2004. Neither the N $\frac{1}{2}$  County Abstract nor the S $\frac{1}{2}$  County Abstract included any instruments pertaining to these leases. As to Lease Nos. B-11002 and B-11098, we note that the Title Materials only include a search of the Lea County records from February 11, 1952 (the effective date of Lease No. E-6005) to May 14, 2014 (the effective date of this Opinion). We have not reviewed the state lease files or any recorded instruments pertaining to these prior oil and gas leases. Thus, it is possible that there are instruments in the state lease files or recorded prior to the issuance of the Subject Leases which might burden or otherwise impact title to the Subject Leases. As a result, there is a risk that there may be recorded agreements, such as an area of mutual interest or extensions and renewal provisions in overriding royalty assignments of the expired leases, which could have an impact on title to the Subject Leases.

**Requirement:** Unless Concho is willing to assume the risk involved, the state lease files and pertinent recorded instruments for the above expired leases should be obtained to confirm that: (a) each of the expired leases did in fact expire; and (b) there are no overriding royalty interest or other production interest owners that could assert a claim in the Subject Leases.

**22. Need to Search for Liens, Judgments, and Pending Litigation:** The Title Materials did not include reports of any search for liens (including federal tax liens or estate tax liens), judgments, or pending litigation in the New Mexico court dockets. In order to ensure the rights of the owners of the Subject Lands and Subject Leases as reported herein a search for liens, judgments, and pending litigation should be conducted for all parties owning an interest in the Subject Leases during the preceding ten year period. We also note that we did not examine any records of the New Mexico Bankruptcy Court or any other United States Bankruptcy Court, and this Opinion is subject to all applicable bankruptcy, insolvency, reorganization, moratorium or other such laws or the possible effect of such laws on title to the Subject Lands and Subject Leases or any interests assigned therefrom.

**Requirement:** Concho should have a landman search the New Mexico court dockets and other public records for any liens, judgments, or pending litigation that may affect the ownership reported herein. We can provide a list of the names to be searched upon request.

**23. Unreviewed Documents:** The following documents, which are not of record and which we have not been provided for review, are mentioned in the Title Materials:

(a) Farmout Agreement dated January 21, 1962, amended by supplemental agreements dated February 1, 1963 and February 15, 1963, by and among The Pure Oil Company, Penrose Production Company, and Cactus Drilling Company, as described in that certain Operating Agreement dated May 1, 1963, recorded May 27, 1963, in Book 200, Page 422, and that certain Operating Agreement dated July 11, 1963, recorded August 5, 1963, in Book 203, Page 93;

(b) Farmout Agreement dated November 11, 1963, amended by supplemental letter agreements dated December 4, 1963 and December 13, 1963, by and among The Pure Oil Company, Jack L. McClellan, and Joseph P. Driscoll, a single man, as described in that certain Operating Agreement dated February 25, 1964, recorded November 5, 1964, in Book 225, Page 210, and that certain Operating Agreement dated June 1, 1985, recorded October 10, 1985, in Book 453, Page 38.

(c) Purchase and Sale Agreement dated June 18, 2004, between Tom Brown, Inc., as Seller, and Magnum Hunter Production, Inc., as Buyer.

(d) Participation Agreement dated August 15, 2006, between COG Oil & Gas, LP and McCombs Energy, Ltd.

We also note that the abstract report for the S½ County Abstract contains the following entries; however, the documents were not included in the S½ County Abstract:

— Grantor/Grantee: Ed Hall, Bamm vs. Jeff D. Hart  
Instrument: DC  
Rec. Date: 7/11/22  
Book: DC #224

— Grantor/Grantee: Frances B. Macatu vs. Reba Snyder, et al  
Rec. Date: 2/21/68



Book: PC 2892

Notes: RE: PC 2892

Without reviewing these documents, we cannot confirm whether they affect title to the Subject Lands or Subject Leases. We suspect they do not because the referenced parties apparently do not otherwise own interests in the Subject Lands or Subject Leases, but we cannot be certain.

**Requirement:** Out of an abundance of caution, copies of the above-described documents should be submitted to us for a determination as to whether and how they affect title to the Subject Lands and Subject Leases.

24. **Four Corners Doctrine Abolished in New Mexico.** In *C.R. Anthony Co. v. Loretto Mail Partners*, 817 P.2d 238 (N.M. 1991), the Supreme Court of New Mexico abolished the common law Four Corners Doctrine, which provided that "[a]mbiguity is determined by the court without the admission of evidence of surrounding circumstances to explain the purposes and context of the contract." Instead, the court found that where a term or an expression in an instrument, such as recorded deed or assignment, is unclear, "a court may hear evidence of the circumstances surrounding the making of the contract and of any relevant usage of trade, course of dealing, and course of performance. . . . The parol evidence rule is a rule of substantive law that bars admission of evidence extrinsic to the contract to contradict and perhaps even to supplement the writing. The rule should not bar introduction of evidence to explain terms. . . . The operative question then becomes whether the evidence is offered to contradict the writing or to aid in its interpretation." The court held that whether this distinction should be made is a case-by-case basis to be determined by the lower courts. As a result of *C.R. Anthony Co.*, it appears that a court in New Mexico can allow extrinsic evidence to aid the interpretation of a deed or assignment of record, even if the assignment does not appear to be ambiguous on its face. In other words, each of the instruments contained in the Title Materials is potentially subject to a different interpretation if evidence of such other interpretation is brought before a court, in the form of aiding interpretation rather than contradicting the writing. Obviously, we cannot be aware of each circumstance whereby a party to an instrument might be able to present an interpretation contrary to the plain meaning of a term or expression in the instrument. This Opinion is therefore limited accordingly.

**Requirement:** None, advisory only.

25. **Payment of Proceeds.** New Mexico has adopted specific provisions dealing with the payment of royalties on state oil and gas leases.<sup>47</sup> We assume Concho is familiar with such provisions, which include the timing of payments, applicable deductions, and reports to be submitted. We can provide additional guidance upon request.

Pursuant to the New Mexico Oil and Gas Proceeds Payment Act, production proceeds for all other interest owners in the Subject Leases must be paid within six months of the first day of the month following the date of first sale and thereafter within 45 days of the end of the calendar month within which payment is received by the payor for production, unless other periods or arrangements are provided for in a valid contract with the party entitled to such proceeds.<sup>48</sup> If payment cannot be made within the time period specified by Section 70-10-3, then the payor must either create a suspense account on its

<sup>46</sup> *Id.* at 243.

<sup>47</sup> See N.M. Code R. §§ 19.2.100.57, 58, 69, and 70.

<sup>48</sup> N.M. Stat. Ann. § 70-10-3.

books for such interest or interplead the proceeds into court.<sup>49</sup> Section 70-10-4 further provides that the party entitled to proceeds is entitled to interest on suspended proceeds from the date payment is due under Section 70-10-3.<sup>50</sup>

If the payor knows the name, address, and percentage ownership of the party entitled to payment, then the interest rate is 18% per year on the unpaid balance due, unless payment is excused by one or more of the following circumstances: (i) the payor relies in good faith on a title opinion by a licensed New Mexico attorney, which objects to a lack of marketable title to the interest, and the payor furnishes a copy of the objection to the party for curative action; (ii) the payor receives information that, in the payor's good-faith judgment, brings into question the entitlement of the party to receive the payment, or renders title to the party's interest unmarketable, or may expose the payor to the risk of multiple liability or liability to third parties if payment is made; (iii) the total amount of unpaid proceeds is less than \$100 at the end of any month; or (iv) the party entitled to payment has failed or refused to execute a reasonable division or transfer order, which provides the proper interest claimed by the party and provides a mailing address for payment.<sup>51</sup> Otherwise, the interest rate is the discount rate charged by the Federal Reserve Bank of Dallas to member banks plus 1.5%. Suspended principal and interest must be paid within 30 days of the date on which the party is determined to be entitled to the suspended funds by a final legal determination.<sup>52</sup>

**Requirement:** None for drilling purposes. You should ensure that payments of proceeds of production from the Subject Wells are in compliance with state laws and regulations.

**26. Persons in Possession and Unrecorded Instruments.** We have described certain surface uses disclosed by the Title Materials in Comment 3. In addition to such surface uses, we note that title to the Subject Lands and Subject Leases is subject to: (i) the rights of any party in possession or claiming a right to possession of the Subject Lands under an instrument not disclosed by the Title Materials; (ii) mechanics', operators', or materialmen's liens not of record; (iii) rights arising by reason of ditches, canals, reservoirs, railroad claims, irrigation facilities, encroachments, or other unrecorded easements or rights-of-way on the lands, which may be determined by physical inspection of the Subject Lands; and (iv) boundary or location discrepancies that may be reflected by a survey of the Subject Lands. Because we have not conducted a physical inspection of the Subject Lands and our review was limited to the Title Materials, we do not give an opinion as to the rights of any party in possession of the Subject Lands by an instrument not disclosed by the Title Materials or otherwise.

**Requirement:** You might perform a physical inspection of the Subject Lands prior to the commencement of any proposed operations. In conducting such operations, Concho should be careful not to unduly interfere with the right of any party validly in possession of the Subject Lands. If there is any dispute as to the rights of a party in possession of the Subject Lands, information related to the claim and dispute should be forwarded to us for further analysis, and additional requirements may be necessary. See also the requirement for Comment 1.

<sup>49</sup> N.M. Stat. Ann. § 70-10-4.

<sup>50</sup> The Supreme Court of New Mexico recently held that "Section 70-10-4 is unambiguous and supports a public policy that entitles payees to receive interest on the oil and gas royalties that are held in suspense for a period longer than six months, and this statutory provision cannot be contracted around." *First Baptist Church of Roswell v. Yates Petroleum Corp.*, No. 33,632, 2014 WL 4495200 (N.M. Sept. 15, 2014).

<sup>51</sup> N.M. Stat. Ann. § 70-10-5.

<sup>52</sup> See N.M. Stat. Ann. § 70-10-4.

COG Operating LLC  
October 31, 2014  
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This Opinion is given for the sole and exclusive use of Concho. No party other than Concho may rely upon this Opinion for any purpose whatsoever, in the absence of our express written consent. This Opinion is protected under the attorney-client privilege which exists between Holland & Hart LLP and Concho.

Very truly yours,

*David B. Hatch*

David B. Hatch  
New Mexico Bar #145313

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APPENDIX A

SUMMARY DESCRIPTION OF SUBJECT LEASES

Lease No. VB-0797

Lessor:

State of New Mexico, acting by and through the  
Commissioner of Public Lands

Lessee:

Rubicon Oil and Gas II, LP

Dated:

November 1, 2005

Recorded:

Book 1410, Page 877

Lands:

Township 19 South, Range 34 East, NMPM

Section 36, N $\frac{1}{2}$

(containing 320 gross acres)

Primary Term:

5 years

Royalty:

3/16

Annual Rental:

\$1.00/acre

Minimum Royalty:

None

Shut-In Royalty:

Twice the annual rental due (\$320) per well per  
year, for any year beginning on or after ten (10)  
years from the date of lease, the annual rental due  
shall be four times the annual rental due (but not  
less than \$2,000).

Special Provisions:

- (1) Clause requiring payment by the 20th day of  
each month for royalties due for the preceding  
month; and
- (2) Consent to Assignment Clause.

Assignments:<sup>53</sup>

1. By Partial Assignment of Oil and Gas Lease dated effective on November 1, 2005, recorded in Book 1414, Page 223, Lea County Records, Rubicon Oil & Gas II, LP assigned 50% of its 100% operating rights interest in New Mexico Oil & Gas Lease No. VB-0797, to G&G Limited, a Texas limited partnership (40%), and David W. Logan (10%).

2. By Assignment of Overriding Royalty dated December 2, 2005, recorded in Book 1414, Page 225, Lea County Records, Rubicon Oil & Gas II, LP assigned an overriding royalty interest equal to 2% of 8/8, subject to proportionate reduction, under New Mexico Oil & Gas Lease No. VB-0797, to Michael D. Hayes.

3. By Partial Assignment of Oil and Gas Lease dated effective on June 1, 2006, recorded in Book 1459, Page 279, Lea County Records, Rubicon Oil & Gas II, LP (18.75% of 8/8), G&G Limited, a Texas limited partnership (40% of 8/8), and David W. Logan (10% of 8/8) assigned 68.75% of Assignors' operating rights interest in New Mexico Oil & Gas Lease No. VB-0797, to COG Oil & Gas, LP. Assignors reserved an overriding royalty interest equal to the difference between 22.5% and existing lease burdens to the effect that the net revenue interest conveyed hereby shall be 77.5%, subject to

<sup>53</sup> These Assignments were described in the Prior Opinion and were not reviewed in the preparation of this Opinion.

proportionate reduction. This Partial Assignment is subject to a Letter Agreement between the parties dated June 1, 2006, purportedly listed as Item #8 of the Additional Materials in the Prior Opinion, although we could not locate such a listing in the Prior Opinion. We presume the referenced Letter Agreement is that certain Participation Agreement between the parties dated June 1, 2006.<sup>54</sup>

4. By Partial Assignment of Oil and Gas Lease dated effective on June 1, 2006, recorded in Book 1471, Page 654, Lea County Records, Rubicon Oil & Gas II, LP assigned a 25% operating rights interest in New Mexico Oil & Gas Lease No. VB-0797, to Liberty Energy, LLC. This Partial Assignment is subject to a Lease Acquisition Funding Agreement dated August 8, 2005, by and between Assignor and Liberty Energy, LLC *et al.*, which provides for the re-assignment from Assignee to Assignor of a portion of the leasehold interest assigned herein at "cumulative payout," as defined in the Lease Acquisition Funding Agreement, purportedly listed as Item #9 of Additional Materials in the Prior Opinion, although we could not locate such a listing in the Prior Opinion.<sup>55</sup>

5. By Assignment of Overriding Royalty dated effective on June 1, 2006, recorded in Book 1474, Page 680, Lea County Records, G&G Limited, a Texas limited partnership, and David W. Logan and Wife, Debra J. Logan assigned an overriding royalty interest equal to 0.875% of production under New Mexico Oil & Gas Lease No. VB-0797, to Mark Owen, subject to proportionate reduction.

6. By Assignment of Overriding Royalty dated effective June 1, 2006, recorded in Book 1474, Page 682, Lea County Records, G&G Limited, a Texas limited partnership, and David W. Logan and wife, Debra J. Logan assigned an overriding royalty interest equal to 1.0% of production under New Mexico Oil & Gas Lease No. VB-0797, to Owen Energy, Inc., subject to proportionate reduction.

7. By Assignment of Overriding Royalty Interest dated effective on June 2, 2006, recorded in Book 1466, Page 314, Lea County Records, Rubicon Oil & Gas II, LP assigned an overriding royalty interest equal to 18.75% of 1.75% (0.00328125) of production under New Mexico Oil & Gas Lease No. VB-0797, to Mark Owen. This Assignment does not contain a proportionate reduction clause.

8. By Partial Assignment of Oil and Gas Lease dated effective on August 15, 2006, recorded in Book 1566, Page 349, Lea County Records, COG Oil & Gas, LP assigned an undivided 20% operating rights interest in New Mexico Oil & Gas Lease No. VB-0797, to McCombs Energy, Ltd. This Partial Assignment is subject to that certain Participation Agreement dated August 15, 2006, by and between Assignor and Assignee, purportedly listed as Item #10 of the Additional Materials in the Prior Opinion, although we could not locate such a listing in the Prior Opinion.<sup>56</sup>

9. By Warranty Deed dated April 19, 2011, recorded in Book 1729, Page 663, Lea County Records, Michael D. Hayes and wife, Kathryn A. Hayes conveyed all of their right, title and interest in the "Quail Ridge Prospect" covering the N½ of the Subject Lands, to Michael D. Hayes and wife, Kathryn A. Hayes, Co-Trustees of the Hayes Revocable Trust.

10. By Deed and Assignment of Distribution dated effective on July 1, 2011, recorded in Book 1753, Page 712, Lea County Records, Jami H. Owen, as Personal Representative and Independent Executor of the Estate of Mark T. Owen, conveyed all of Assignor's right, title and interest in an

<sup>54</sup> See Comment 11.

<sup>55</sup> See Comment 12.

overriding royalty interest from production under New Mexico Oil & Gas Lease No. VB-0797, to Jami H. Owen, individually.<sup>56</sup>

11. By Partial Assignment of Oil and Gas Lease dated effective on January 1, 2012, recorded in Book 1802, Page 416, Lea County Records, G&G Limited, a Texas limited partnership, assigned a 1% interest in New Mexico Oil & Gas Lease No. VB-0797, to Danny W. Jones. This Partial Assignment is subject to that certain Participation Agreement dated June 1, 2006, purportedly listed as Item #8 of the Materials Examined in the Prior Opinion, although we could not locate such a listing in the Prior Opinion. This Partial Assignment states that it is the Assignor's intent to convey a 1% leasehold interest to Assignee, while reserving to Assignor a 5% leasehold interest.

**Lease No. E-6005**

**Lessor:** State of New Mexico, acting by and through the Commissioner of Public Lands

**Lessee:** The Pure Oil Company

**Dated:** February 11, 1952

**Recorded:** Not recorded in Lea County

**Lands:** Township 19 South, Range 34 East, NMPM

Section 36: S½  
(containing 320 gross acres)

**Primary Term:** 5 years, with an option to extend up to an additional 5 years

**Royalty:** 1/8; option to take royalty in kind; *see also* special provisions below

**Annual Rental:** \$2.00/acre<sup>57</sup> (\$6.00/acre minimum)

**Minimum Royalty:** None

**Shut-In Royalty:** An amount equal to the annual rental payable under the terms of the lease (minimum \$100 per well), payable annually.

**Special Provisions:** (1) Clause requiring payment by the 20th day of each month for royalties due for the preceding month;

(2) Consent to Assignment Clause; and

(3) Provisions regarding the payment of gas royalties, as follows:

Subject to the free use without royalty, [provided in the lease], the lessee shall pay the lessor as royalty one-eighth part of the gas produced and saved from the leased premises, including casing-head gas.

Unless said option is exercised by lessor the lessee shall pay the lessor as royalty one-eighth of the cash value of gas, including casing-head gas, produced and saved from the leased premises and marketed or utilized, such value to be equal to the greater of the following amounts:

<sup>56</sup> See Comment 6.

<sup>57</sup> See Comment 2(b).

(a) the net proceeds derived from the sale of such gas in the field, or

(b) five cents (\$.05) per thousand cubic feet (m.c.f.) the volume of gas for such purposes to be computed on a pressure basis of 10 ounces above an assumed atmospheric pressure of 14.4 pounds per square inch, or 15.025 pounds per square inch absolute, at 60° Fahrenheit, and pursuant to appropriate regulations of the commissioner of public lands which may provide, among other things, for a flowing temperature of 60° Fahrenheit to be assumed and applied in volume computation in all cases where a recording thermometer is not employed by the lessee in gas measurement, and for specific gravity tests at the lessee's expense at intervals not greater than one year in all cases where a recording gravitometer is not employed by the lessee in gas measurement; provided, however, the cash value for royalty purposes of carbon dioxide gas and of hydrocarbon gas delivered to a gasoline plant for extraction of liquid hydrocarbons shall be equal to the net proceeds derived from the sale of such gas, including any liquid hydrocarbons recovered therefrom.

Notwithstanding the foregoing provisions, the lessor, acting by its commissioner of public lands, may require the payment of royalty for all or any part of the gas produced and saved under this lease and marketed or utilized at a price per m.c.f. equal to the maximum price being paid for gas of like kind and quality and under like conditions in the same field or area or may reduce the royalty value of any such gas (to any amount not less than the net proceeds of sale thereof in the field) if the commissioner of public lands shall determine such action to be necessary to the successful operation of the lands for oil or gas purposes or to encouragement of the greatest ultimate recovery of oil or gas or to the promotion of conservation of oil or gas.

Amendment:

Stipulation approved by the Commissioner of Public Lands on March 6, 1985, executed in counterpart by Minerals, Inc., Hansen Oil Company, Union Oil Company of California, and Western Equipment Company, amending the lease to conform to the terms and conditions of the lease form prescribed by section 19-10-3, NMSA-1978.

Assignments:

1. By Assignment of Oil and Gas Lease dated November 24, 1980, approved by the New Mexico State Land Office in December 1980, and recorded in Book 334, Page 165, Union Oil Company of California (successor by merger to The Pure Oil Company) assigned Lease No. E-6005, only insofar as the lease covers the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , to Western Equipment Company, a Texas corporation.

2. By Assignment dated November 26, 1980, not filed with the New Mexico State Land Office, but recorded in Book 334, Page 162, Western Equipment Company assigned Lease No. E-6005, only insofar as the lease covers the NW $\frac{1}{4}$ SW $\frac{1}{4}$  below 5,400' subsurface, to Union Oil Company of California.

3. By Assignment of Oil and Gas Lease dated January 20, 1998, approved by the New Mexico State Land Office on April 16, 1998, with a counterpart recorded on January 22, 1998, in Book 849, Page 75, Union Oil Company of California assigned Lease No. E-6005 to Matador Petroleum Corporation. The recorded counterpart of this Assignment is dated effective October 1, 1997. We note that the state form assignment covers the S $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ , and the recorded counterpart covers the entire S $\frac{1}{2}$  of the Subject Lands (less the wellbores of the Lea State #1 and #2 wells).

4. By Conveyance, Assignment and Bill of Sale dated January 20, 1998, but effective October 1, 1997, not filed with the New Mexico State Land Office, recorded on February 6, 1998, in Book 852, Page 538, Matador Petroleum Corporation assigned Lease No. E-6005, insofar as the lease covers the entire S $\frac{1}{2}$  of the Subject Lands (less the wellbores of the Lea State #1 and #2 wells), to Matador E&P Company, Inc.<sup>58</sup> We also note that Articles of Merger were filed with the New Mexico State Land Office, which indicate that Matador Petroleum Corporation agreed to change its name to Matador E&P Company effective January 20, 1998.

5. By Assignment of Oil and Gas Lease dated July 27, 2004, but effective May 1, 2004, approved by the New Mexico State Land Office on September 22, 2004, with counterpart recorded on August 12, 2004, in Book 1323, Page 188, Tom Brown, Inc. (successor by merger to Matador Petroleum Corporation, which was the successor by merger to Matador E&P Company) assigned Lease No. E-6005 to Magnum Hunter Production, Inc., a Texas corporation. We note that the state form assignment covers the S $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ , and the recorded counterpart covers the entire S $\frac{1}{2}$  of the Subject Lands (less the wellbore of the Lea State #2 well and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  below 10,200' subsurface).<sup>59</sup> We also note that the recorded counterpart is subject to that certain unreviewed Purchase and Sale Agreement dated June 18, 2004, between Tom Brown, Inc. and Magnum Hunter Production, Inc.

6. By Conveyance, Assignment and Bill of Sale dated March 17, 2006, but effective May 1, 2004, not filed with the New Mexico State Land Office, but recorded on March 31, 2006, in Book 1434, Page 924, Magnum Hunter Production, Inc. assigned Lease No. E-6005, only insofar as the lease covers the S $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ,<sup>60</sup> to Joseph Wm. Foran. In an Affidavit dated March 17, 2006, recorded March 31, 2006, in Book 1434, Page 950, Joseph Wm. Foran referred to the May 1, 2004 Conveyance and indicated that, in addition to the working interests described in the May 1, 2004 Conveyance, he is entitled to the other interests conveyed by Tom Brown, Inc. to Magnum Hunter Production, Inc. through the recorded counterpart of the Assignment described in paragraph 5 above.

<sup>58</sup> See Comment 13.

<sup>59</sup> But see Comment 14 regarding "catch-all" language contained in the recorded counterpart.

<sup>60</sup> See Comment 14.



7. By Term Assignment of Oil and Gas Lease dated effective January 5, 2007, not filed with the New Mexico State Land Office, but recorded on January 29, 2007, in Book 1493, Page 673, Joseph Wm. Foran, *et ux.* Nancy N. Foran, assigned Lease No. E-6005, only insofar as the Lease covers the S½ "from the surface down to 100' below the deepest depth drilled in the initial well on the Conveyed Premises" as defined in the Assignment. This Term Assignment has apparently expired, as outlined in paragraph 8 below.

8. By Partial Assignment of Term Assignment dated July 10, 2007, but effective January 5, 2007, recorded July 25, 2007, in Book 1526, Page 48, COG Oil & Gas LP assigned an undivided 58.5625% of its interest in the January 5, 2007 Term Assignment described in paragraph 7 above, insofar as it covers Lease No. E-6005 and the S½ of Section 36 below the base of the Queen formation, to Rubicon Oil & Gas II, LP, *et al.* As evidenced by Notice of Expiration of Term Assignment executed by COG Oil & Gas LP and Liberty Energy, LLC, dated January 31, 2008, but effective January 5, 2008, recorded March 5, 2008, in Book 1567, Page 967, the January 5, 2007 Term Assignment has apparently expired.

9. Proposed Term Partial Assignment of Oil and Gas Lease effective July 7, 2014, from Joseph William Foran, *et ux.* Nancy N. Foran, to Concho (not yet executed by Joseph William Foran or Nancy N. Foran).<sup>61</sup>

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<sup>61</sup> See Comment 15.

APPENDIX B

LAST ADDRESSES OF RECORD<sup>62</sup>

Joseph Wm. Foran 5400 LBJ Freeway, Ste. 1500 Dallas, TX 75240	McCombs Energy, Ltd. 5599 San Felipe, Ste. 1200 Houston, TX 77056-2794
G&G Limited, a Texas limited partnership 550 W. Texas Ave., Ste. 600 Midland, TX 79701	New Mexico State Land Office P.O. Box 1148 Santa Fe, NM 87504-1148
Michael D. Hayes and Kathryn A. Hayes, Co- Trustees of the Hayes Revocable Trust 3608 Meadowridge Lane Midland, TX 79707	Owen Energy, Inc. (address unknown)
Danny W. Jones (address unknown)	Jami H. Owen (address unknown)
Liberty Energy, LLC 175 Berkeley, 8th Floor Boston, MA 02116	Rubicon Oil & Gas II, LP 508 W. Wall Ave., Ste. 500 Midland, TX 79701
David W. Logan P.O. Box 184 Midland, TX 79702	Western Equipment Company P.O. Box 5457 Midland, TX 79704
Magnum Hunter Production, Inc. 600 N. Marienfeld St., Ste. 600 Midland, TX 79701	

<sup>62</sup> See Comment 3 for the names and addresses of right-of-way owners.

APPENDIX C

CUMULATIVE DIVISION OF INTERESTS

Township 19 South, Range 34 East, NMPM

Section 36: E $\frac{1}{2}$ E $\frac{1}{2}$  (West Pearl 36 State Com #3H Well)

W $\frac{1}{2}$ E $\frac{1}{2}$  (West Pearl 36 State Com #4H Well)

E $\frac{1}{2}$ W $\frac{1}{2}$  (West Pearl 36 State Com #5H Well)

W $\frac{1}{2}$ W $\frac{1}{2}$  (West Pearl 36 State Com #6H Well)

160-Acre Units in the Bone Spring Formation

Lease No. VB-0797:

E $\frac{1}{2}$ NE $\frac{1}{4}$  (80 acres) (West Pearl 36 State Com #3H Well)

W $\frac{1}{2}$ NE $\frac{1}{4}$  (80 acres) (West Pearl 36 State Com #4H Well)

E $\frac{1}{2}$ NW $\frac{1}{4}$  (80 acres) (West Pearl 36 State Com #5H Well)

W $\frac{1}{2}$ NW $\frac{1}{4}$  (80 acres) (West Pearl 36 State Com #6H Well)

ROYALTY INTEREST:

	<u>NRI</u>	<u>Allocation</u>	<u>Unit NRI</u>	<u>Comment</u>
State of New Mexico	0.18750000	0.50000000	0.09375000	

OVERRIDING ROYALTY INTEREST:

	<u>NRI</u>	<u>Allocation</u>	<u>Unit NRI</u>	<u>Comment</u>
Jami H. Owen	0.01203125	0.50000000	0.00601563	6, 7
Michael D. Hayes and Kathryn A. Hayes, Co-Trustees of the Hayes Revocable Trust	0.01000000	0.50000000	0.00500000	
Owen Energy, Inc.	0.01000000	0.50000000	0.00500000	6, 7
Total Overriding Royalty Interest:	0.03203125		0.01601563	

LEASEHOLD WORKING INTEREST:

	<u>NRI</u>	<u>Allocation</u>	<u>Unit NRI</u>	<u>Comment</u>
COG Operating LLC	0.32114063	0.50000000	0.16057031	9-11, 18(f)
Liberty Energy, LLC (subject to possible adjustment) <sup>61</sup>	0.19812500	0.50000000	0.09906250	12
McCombs Energy, Ltd.	0.13175000	0.50000000	0.06587500	11
Rubicon Oil & Gas II, LP (subject to possible adjustment) <sup>64</sup>	0.07132812	0.50000000	0.03566406	12, 18(b), 18(c)
G&G Limited, a Texas limited partnership	0.03875000	0.50000000	0.01937500	
David W. Logan	0.01162500	0.50000000	0.00581250	
Danny W. Jones	0.00775000	0.50000000	0.00387500	
Total Working Interest:	0.78046875		0.39023437	
Total Lease No. VB-0797:	1.00000000		0.50000000	

<sup>61</sup> See Comment 12.

<sup>64</sup> See Comment 12.

**Lease No. E-6005:**

**E $\frac{1}{4}$ SE $\frac{1}{4}$  (80 acres) (West Pearl 36 State Com #3H Well)**  
**W $\frac{1}{4}$ SE $\frac{1}{4}$  (80 acres) (West Pearl 36 State Com #4H Well)**  
**E $\frac{1}{4}$ SW $\frac{1}{4}$  (80 acres) (West Pearl 36 State Com #5H Well)**  
**W $\frac{1}{4}$ SW $\frac{1}{4}$  (80 acres) (West Pearl 36 State Com #6H Well)**

**ROYALTY INTEREST:**

State of New Mexico

<u>NRI</u>	<u>Allocation</u>	<u>Unit NRI</u>	<u>Comment</u>
0.12500000	0.50000000	0.06250000	

**OVERRIDING ROYALTY INTEREST:**

Joseph Wm. Foran  
(potentially convertible to a working interest)<sup>65</sup>

<u>NRI</u>	<u>Allocation</u>	<u>Unit NRI</u>	<u>Comment</u>
0.12500000	0.50000000	0.06250000	13-16

**LEASEHOLD WORKING INTEREST:<sup>66</sup>**

COG Operating LLC  
Liberty Energy, LLC  
(subject to possible adjustment)<sup>67</sup>  
McCombs Energy, Ltd.  
Rubicon Oil & Gas II, LP  
(subject to possible adjustment)<sup>68</sup>  
G&G Limited, a Texas limited partnership  
David W. Logan  
Danny W. Jones

<u>NRI</u>	<u>Allocation</u>	<u>Unit NRI</u>	<u>Comment</u>
0.31078125	0.50000000	0.15539062	9, 13-16, 18(d)-(f)
0.18750000	0.50000000	0.09375000	12-16, 18(d), (e)
0.12750000	0.50000000	0.06375000	13-16, 18(d), (e)
0.06796875	0.50000000	0.03398438	12-16, 18(b)-(e)
0.03750000	0.50000000	0.01875000	13-16, 18(d), (e)
0.01125000	0.50000000	0.00562500	13-16, 18(d), (e)
0.00750000	0.50000000	0.00375000	13-16, 18(d), (e)
<b>Total Working Interest:</b>	<b>0.75000000</b>	<b>0.37500000</b>	

<b>Total Lease No. E-6005:</b>	<b>1.00000000</b>	<b>0.50000000</b>
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**TOTAL UNIT: 1.00000000**

<sup>65</sup> See Comment 15.  
<sup>66</sup> See Comment 16.  
<sup>67</sup> See Comment 12.  
<sup>68</sup> See Comment 12.

**Recapitulation**

<b><u>Royalty Interest:</u></b>	<b><u>Unit Interest:</u></b>
State of New Mexico	0.15625000
<b><u>Overriding Royalty Interest:</u></b>	<b><u>Unit Interest:</u></b>
Joseph Wm. Foran <sup>69</sup>	0.06250000
Jami H. Owen	0.00601563
Michael D. Hayes and Kathryn A. Hayes, Co-Trustees of the Hayes Revocable Trust	0.00500000
Owen Energy, Inc.	0.00500000
Total Overriding Royalty Interest:	0.07851563
<b><u>Leasehold Working Interest:</u></b> <sup>70</sup>	<b><u>Unit Interest</u></b>
COG Operating LLC	0.31596093
Liberty Energy, LLC	0.19281250
McCombs Energy, Ltd.	0.12962500
Rubicon Oil & Gas II, LP	0.06964844
G&G Limited, a Texas limited partnership	0.03812500
David W. Logan	0.01143750
Danny W. Jones	0.00762500
Total Working Interest:	0.76523437
<b>TOTAL:</b>	<b>1.00000000</b>

<sup>69</sup> But see Comment 15.

<sup>70</sup> See Comment 16.

APPENDIX D

COST ALLOCATION

Township 19 South, Range 34 East, NMPM

Section 36: E $\frac{1}{4}$ E $\frac{1}{4}$  (West Pearl 36 State Com #3H Well)  
W $\frac{1}{4}$ E $\frac{1}{4}$  (West Pearl 36 State Com #4H Well)  
E $\frac{1}{4}$ W $\frac{1}{4}$  (West Pearl 36 State Com #5H Well)  
W $\frac{1}{4}$ W $\frac{1}{4}$  (West Pearl 36 State Com #6H Well)

160-Acre Units in the Bone Spring Formation

<u>Working Interest Owner</u> <sup>67</sup>	<u>Share of Costs</u>
COG Operating LLC	0.41437500
Liberty Energy, LLC	0.25000000
McCombs Energy, Ltd.	0.17000000
Rubicon Oil & Gas II, LP	0.09062500
G&G Limited, a Texas limited partnership	0.05000000
David W. Logan	0.01500000
Danny W. Jones	0.01000000
<b>TOTAL:</b>	<b>1.00000000</b>