

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

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

APPLICATION OF PERCUSSION PETROLEUM CASE NO. 16408
OPERATING, LLC FOR A NONSTANDARD
SPACING AND PRORATION UNIT, AND
COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

September 20, 2018

Santa Fe, New Mexico

BEFORE: WILLIAM V. JONES, CHIEF EXAMINER
 DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the
New Mexico Oil Conservation Division, William V. Jones,
Chief Examiner, and David K. Brooks, Legal Examiner, on
Thursday, September 20, 2018, at the New Mexico Energy,
Minerals and Natural Resources Department, Wendell Chino
Building, 1220 South St. Francis Drive, Porter Hall,
Room 102, Santa Fe, New Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR
 New Mexico CCR #20
 Paul Baca Professional Court Reporters
 500 4th Street, Northwest, Suite 105
 Albuquerque, New Mexico 87102
 (505) 843-9241

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APPEARANCES

FOR APPLICANT PERCUSSION PETROLEUM OPERATING, LLC:

JORDAN L. KESSLER, ESQ.
HOLLAND & HART, LLP
110 North Guadalupe, Suite 1
Santa Fe, New Mexico 87501
(505) 988-4421
jlkessler@hollandhart.com

FOR INTERESTED PARTY SHARBRO ENERGY, LLC:

SETH C. McMILLAN, ESQ.
MONTGOMERY & ANDREWS LAW FIRM
325 Paseo de Peralta
Santa Fe, New Mexico 87501
(505) 982-3873
smcmillan@montand.com

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1 (9:04 a.m.)

2 EXAMINER JONES: And on page 3, we have
3 Percussion, which is Case Number 16408, application of
4 Percussion Petroleum Operating, LLC for a nonstandard
5 spacing and proration unit and compulsory pooling in
6 Eddy County, New Mexico.

7 Call for appearances.

8 MS. KESSLER: Mr. Examiners, Jordan
9 Kessler, from the Santa Fe office of Holland & Hart, on
10 behalf of the Applicant.

11 EXAMINER JONES: Any other appearances?
12 One witness?

13 MS. KESSLER: Two witnesses today.

14 EXAMINER JONES: Will the witnesses stand
15 and the court reporter please swear the witnesses?

16 (Mr. Dalton and Mr. Lipinski sworn.)

17 EVERETT DALTON,
18 after having been first duly sworn under oath, was
19 questioned and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. KESSLER:

22 **Q. Will you please state your name for the record**
23 **and tell the examiners by whom you're employed and in**
24 **what capacity?**

25 A. Everett Dalton. I'm a contract landman for

1 Percussion Petroleum, LLC.

2 Q. Have you previously testified before the
3 Division?

4 A. Yes, I have.

5 Q. Were your credentials as an expert petroleum
6 landman accepted and made a matter of record?

7 A. Yes, they were.

8 Q. Are you familiar with the application that's
9 been filed in this case?

10 A. Yes.

11 Q. And are you familiar with the status of the
12 lands in the subject area?

13 A. Yes.

14 MS. KESSLER: Mr. Examiner, I would tender
15 Mr. Dalton as an expert in petroleum land matters.

16 EXAMINER JONES: He is so qualified.

17 Thank you for coming.

18 Q. (BY MS. KESSLER) Mr. Dalton, what does
19 Percussion seek under this application?

20 A. To pool all uncommitted interests in the
21 Glorieta-Yeso in Section 22, the west half-west half of
22 Township 19 South, Range 25 East, Eddy County, New
23 Mexico.

24 MS. KESSLER: And, Mr. Examiners, let me
25 interrupt myself. We're requesting to dismiss the

1 nonstandard spacing unit portion of this application.

2 EXAMINER JONES: Okay. I assume that's
3 what we were doing in the previous case, too. I don't
4 know about that. We'll hear it the next time it's
5 heard.

6 Q. (BY MS. KESSLER) So, Mr. Dalton, you're seeking
7 to pool uncommitted interest owners in the west
8 half-west half spacing unit, correct?

9 A. Correct.

10 Q. And the spacing unit will be dedicated to two
11 wells?

12 A. Correct. That's the Ross Ranch 22 9H and 10H
13 wells.

14 Q. If I turn to Exhibit 1, is the first page of
15 this exhibit the C-102 for the Ross Ranch 22 #9H well?

16 A. Yes, it is.

17 Q. And does this C-102 identify a pool and pool
18 code?

19 A. Yes, it does.

20 Q. What is that pool?

21 A. The North Seven Rivers-Glorieta-Yeso, Pool Code
22 97565.

23 Q. And this C-102 has been filed and approved; is
24 that correct?

25 A. For this well, yes.

1 **Q. What is the second page of Exhibit 1?**

2 A. This is showing the proposed lateral for the
3 10H well, the Ross Ranch 22 10H well, the surface
4 location and the northwest-northwest of 27 going -- the
5 lateral being drilled from south to north and bottoming
6 in the northwest-northwest of Section 22.

7 **Q. Has the C-102 been filed yet?**

8 A. For the 10H?

9 **Q. Correct.**

10 A. No.

11 **Q. Now, it does not have a pool and pool code on
12 the C-102. Will it be the same as for the 9H well?**

13 A. Yes, it will.

14 **Q. Is this pool governed by Division statewide
15 setbacks?**

16 A. Yes, they are.

17 **Q. And will the completed interval for each of the
18 two wells comply with those setback requirements?**

19 A. Yes, they will.

20 **Q. What type of land is this?**

21 A. This is fee land.

22 **Q. And are there any depth severances in this
23 pool?**

24 A. There are.

25 **Q. Can you please explain those depth severances?**

1 A. Yes. In the northwest-northwest of Section 22,
2 there is a depth severance at 2,477, and in the
3 southwest-southwest, there is a depth severance at 3,052
4 feet.

5 **Q. If I turn to Exhibit 2, does this exhibit**
6 **identify the ownership and tracts of land comprising the**
7 **proposed spacing unit?**

8 A. Yes.

9 **Q. Does it show with asterisks the parties that**
10 **Percussion seeks to pool?**

11 A. Yes, except Sharbro. We made a deal with them,
12 so --

13 **Q. You recently made an agreement with Sharbro?**

14 A. Yes.

15 **Q. But it still reflects they're still being**
16 **pooled on this exhibit?**

17 A. Correct.

18 **Q. So you're requesting that they not be pooled?**

19 A. That's correct.

20 **Q. What type of interest are you seeking to pool?**

21 A. All uncommitted interests.

22 **Q. And that would be unleased mineral interest**
23 **owners, working interest owners, and you're also pooling**
24 **for unmarketable title; is that correct?**

25 A. That is correct.

1 **Q. For unmarketable title, did you locate all**
2 **potential heirs?**

3 A. Yes. These are two families that their mother
4 died out of state, and they have not probated the will.

5 **Q. So you identified all potential heirs, and did**
6 **you offer to lease them?**

7 A. Yes.

8 **Q. Did you provide them notice of this hearing?**

9 A. Yes.

10 **Q. Let's turn to the depth-severance issues. Do**
11 **you have highlighted on this exhibit the ownership**
12 **severances by depth?**

13 A. Yes. The highlighted portions indicate the
14 parties that are gaining and losing. So you'll see
15 St. Devote, which is a wholly owned subsidiary of
16 Percussion Petroleum, would give up some interest in
17 favor of OXY USA in the northwest-northwest, since we
18 have a lease covering OXY's interest from the surface to
19 2,477, but then there was a depth severance per the
20 lease.

21 And in the southwest-southwest, a similar
22 situation, with a depth severance of 3,052, and that
23 would be coming out of St. Devote's interest in favor of
24 Roy Barton.

25 **Q. So St. Devote is Percussion, you mentioned?**

1 A. That is correct.

2 Q. If I turn to the northwest-northwest tract, you
3 mentioned OXY is leased above the severance line; is
4 that correct?

5 A. That is correct.

6 Q. And then there is a depth severance at 2,477?

7 A. That is correct.

8 Q. And OXY is unleased below that severance line?

9 A. That is correct.

10 Q. You've highlighted St. Devote and OXY USA.
11 OXY's interest comes out of St. Devote's interest?

12 A. Correct. You'll see the -- from the surface to
13 2,477, St. Devote's interest is the same percent larger
14 that OXY has shown in the interest below 2,477 feet.

15 Q. So if you add St. Devote's interest and OXY's
16 interest up under the severance line, it equals the --

17 A. The top line.

18 Q. Yeah.

19 Now, let's look at the southwest-southwest
20 tract. It looks like there is a depth severance at
21 3,052 feet, correct?

22 A. Correct.

23 Q. And it's Roy G. Barton, Jr. that has that
24 severance?

25 A. Correct.

1 Q. Is he leased above the severance line?

2 A. He is, yes.

3 Q. And unleased below the severance line?

4 A. That's correct.

5 Q. Has OXY -- what have your discussions been with
6 OXY USA?

7 A. They are ongoing. OXY is trying to decide if
8 they want to participate or do some other type of trade
9 with us.

10 Q. But you've been in negotiations with them?

11 A. Yes. Yes.

12 Q. And they do not object to this hearing,
13 correct?

14 A. No.

15 Q. Now, for Roy Barton's interest, what has he
16 decided to do?

17 A. He has indicated that he would like to
18 participate with his interest that is unleased. We
19 have -- and he has indicated that -- he assigned an AFE
20 and participation agreement, but we have not yet inked
21 the JOA.

22 Q. You're seeking to pool the entire Yeso pool; is
23 that correct?

24 A. That's correct.

25 Q. You're not limiting it to specific portions of

1 the Yeso?

2 A. Correct.

3 Q. Are you seeking to pool depth-severed interest
4 owners?

5 A. Yes.

6 Q. And you're still attempting to reach a
7 contractual interest such that pooling would be
8 unnecessary; is that correct?

9 A. Correct.

10 Q. And if you reach such an agreement, will you
11 notify the Division?

12 A. Absolutely.

13 Q. How will each of the severed interest owners be
14 paid?

15 A. Based on surface acreage, but we're also
16 seeking to have a separate contractual agreement as far
17 as the payment of it.

18 Q. So even if you don't reach an operating
19 agreement or a farm-out, you will reach some type of
20 agreement regarding how they will be paid for each of
21 these two wells?

22 A. That's our intention. Yes.

23 Q. If I turn to the second page of this exhibit,
24 are you also seeking to pool overriding royalty interest
25 owners?

1 A. Yes.

2 **Q. And the second page reflects all of the**
3 **overriding royalty interest owners that you seek to**
4 **pool?**

5 A. Correct.

6 **Q. Does Exhibit 3 include several proposal letters**
7 **that were sent to uncommitted interest owners?**

8 A. Yes.

9 **Q. And both wells were on each of those letters,**
10 **correct?**

11 A. Correct.

12 MS. KESSLER: Now, Mr. Examiners, I've
13 included, I believe, four different well-proposal
14 letters.

15 **Q. (BY MS. KESSLER) Each of them are different,**
16 **correct, Mr. Dalton?**

17 A. Yes, depending on what the parties owned. Some
18 parties had an unleased interest, and we gave them
19 options for their unleased interest. Some were
20 leasehold interests that were not committed to a joint
21 operating agreement, and we gave them options. And then
22 there were some that were committed to operating
23 agreements, and we gave them options too. So
24 whatever they -- we gave them a variety of options.

25 **Q. So you offered various options based on the**

1 **type of ownership; is that correct?**

2 A. That correct.

3 MS. KESSLER: So I've included a sample
4 well proposal for each type of ownership. If you would
5 like all of the well proposals, I'd be happy to provide
6 them, but there are a lot of them.

7 **Q. (BY MS. KESSLER) In addition to sending these**
8 **well-proposal letters, Mr. Dalton, what other efforts**
9 **did you undertake to reach an agreement with the parties**
10 **that you're seeking to pool?**

11 A. I've had ongoing conversations with them for
12 them trying to decide what it is they want to do.

13 **Q. Were you able to locate each of parties that**
14 **you seek to pool?**

15 A. Yes.

16 **Q. In your opinion, did you make a good-faith**
17 **effort to reach an agreement with each of the**
18 **uncommitted interest owners?**

19 A. Yes.

20 **Q. Each of the letters that you sent included an**
21 **AFE; is that correct?**

22 A. That is correct.

23 **Q. And are those AFEs included as the last two**
24 **pages of Exhibit 3?**

25 A. Yes.

1 Q. Are the costs of these AFEs consistent with
2 what other operators in the area charge for Yeso wells?

3 A. For the type that we're drilling, yes.

4 Q. Has Percussion determined overhead and
5 administrative costs for drilling and producing each of
6 the wells?

7 A. Yes, drilling well rates, 7,500, and producing
8 well rates, 750 per month.

9 Q. Is Exhibit 4 an affidavit prepared by my office
10 providing notice of this hearing to the parties that you
11 seek to pool?

12 A. Yes.

13 Q. And even though the interest owners were
14 locatable, is Exhibit 5 an Affidavit of Publication
15 published in Eddy County?

16 A. Yes.

17 Q. Providing notice of this hearing, correct?

18 A. Correct.

19 Q. Were Exhibits 1 through 3 prepared by you or
20 compiled under your direction and supervision?

21 A. Yes.

22 MS. KESSLER: Mr. Examiners, I move
23 admission of Exhibits 1 through 5, which includes my two
24 affidavits.

25 EXAMINER JONES: Exhibits 1 through 5 are

1 admitted.

2 (Percussion Petroleum, LLC Exhibit Numbers
3 1 through 5 are offered and admitted into
4 evidence.)

5 CROSS-EXAMINATION

6 BY EXAMINER BROOKS:

7 Q. I want to ask some questions about this depth
8 severance because there is a lot I -- it went fairly
9 fast, and I don't really understand everything.

10 St. Devote has a lease -- no, wait. OXY
11 has a lease on St. Devote as a mineral owner; is that
12 right?

13 A. St. Devote is the lessee. OXY would be the
14 lessor.

15 Q. Okay. So OXY has an unleased mineral interest,
16 as you so indicate?

17 A. Yes, sir.

18 Q. And as to the northwest-northwest, OXY owns
19 that interest, and as to the southwest-southwest, Roy
20 Barton owns that interest?

21 A. Yes. Yes, sir.

22 Q. And St. Devote has a lease, but St. Devote's
23 lease is depth limited?

24 A. Yes, sir.

25 Q. Different depths on the two tracts?

1 A. Yes, sir. There are different wells on those
2 tracts.

3 **Q. Okay. So this was -- this is a result of some**
4 **kind of Pugh clause arrangement?**

5 A. Yes, sir. Yes, sir, under the terms of an oil
6 and gas lease.

7 **Q. Okay. Now, how can you allocate production**
8 **between depth-severed interests on a surface-acreage**
9 **basis? I don't really understand what you propose to**
10 **do.**

11 A. What our attempt would be is to -- as far as
12 the payment, for example, with Mr. Barton, for him
13 wanting to participate in the unleased interest, that he
14 would be paying his well cost for a horizontal well that
15 is traversing his -- his unleased interest. And then
16 production from that would be paid based on his working
17 interest in the unit.

18 **Q. His working interest in the unit computed as**
19 **though he owned this interest to all depths?**

20 A. But it would be limited. That's what I'm
21 saying. We're talking about getting a separate
22 agreement with these parties where they're
23 depth-severed, to say if you've leased, you'll be paid
24 your royalty interest for a well that is in those leased
25 depths. And if you're unleased, if you want to

1 participate, then you would participate as a working
2 interest owner in that interest proportionally reduced
3 to the spacing unit and be entitled to your interest in
4 that.

5 **Q. Well, that's fine if you get an agreement.**

6 A. Yes, sir.

7 **Q. What if you don't get an agreement?**

8 A. If you don't get an agreement, for the wells
9 that we're proposing right now, the 9 and 10H, they are
10 in OXY's unleased interest, and so they would be
11 entitled to the production based on their unleased
12 interest. The only party affected by that would be
13 St. Devote, and we have no objection that they would be
14 paid on that basis.

15 **Q. Be paid on what basis?**

16 A. As though they had 100 percent of that
17 interest.

18 **Q. In other words, you're going to pay**
19 **St. Devote -- you propose to pay St. Devote their**
20 **interest as though they owned it as to all depths?**

21 A. We would pay OXY.

22 EXAMINER JONES: Because they're -- they're
23 only a lessor, right?

24 THE WITNESS: Well, St. Devote is the
25 lessee, and OXY is the lessor. So in this case, we have

1 the -- so St. Devote has the shallower depths under
2 lease. And so for the unleased portion, we would let
3 OXY have their interest in those wells proportionally
4 reduced to the spacing unit.

5 Q. (BY EXAMINER BROOKS) So you're proposing
6 that -- what you're proposing then -- I'm still having
7 trouble understanding it. You determine the interest in
8 each well by what depth the well is completed in?

9 A. Yes, sir, basically, and using surface acres.

10 Q. So you're paying the interest to the owners of
11 that depth on an unpooled basis as though they -- as
12 though the rule of capture applied to that interest, to
13 whatever is produced from that well --

14 A. That's correct.

15 Q. -- at that --

16 A. At that interval.

17 Q. -- at the perforations, under the Texas rule,
18 not under the Pennsylvanian rule.

19 I don't know whether we can do that or not.

20 A. That's why we're looking to seek a separate
21 agreement with them, but absent that, they are going to
22 be paid on a surface basis.

23 Q. And Percussion will notify us if and when you
24 have an agreement, correct?

25 A. Certainly. Certainly. Yes, sir.

1 **Q. Okay. Well, I would be interested in views of**
2 **counsel as to whether we can do this or not. Thank you.**

3 MS. KESSLER: Mr. Brooks, what Percussion
4 is proposing to do today is to compulsory pool, to
5 aggregate the interests of OXY and Roy G. Barton given
6 that they have not reached an agreement with Percussion
7 yet. And I think it's worth pointing out again that
8 St. Devote and Percussion are the same entity. So
9 St. Devote is 100 percent owned by Percussion. So the
10 only party affected as to the OXY interest is
11 Percussion.

12 What Percussion is proposing to do is to
13 compulsory pool to aggregate the interest, understanding
14 that Percussion must reach some sort of contractual
15 agreement as to what OXY and Roy G. Barton will be paid.
16 I understand that they have reached an agreement -- or a
17 type of agreement with Roy G. Barton regarding what he
18 will be paid. The only outstanding interest is OXY. So
19 we're still seeking to pool Roy G. Barton and OXY as to
20 aggregate their interest, and perhaps a contractual
21 agreement such an operating agreement or farm-out will
22 be reached with those two parties. But with respect to
23 what those parties will be paid, Percussion will reach
24 some type of agreement.

25 THE WITNESS: And I'm sorry. At this

1 point, no one has objected to what we're talking about.
2 I mean, they fully understand that well, if I'm leased,
3 then I'll get a royalty interest, and if I'm unleased, I
4 can participate as a working interest owner, if that's
5 what I want to do, unless I want to lease that interest
6 also.

7 EXAMINER JONES: Which Roy G. Barton has
8 not decided to lease out?

9 THE WITNESS: Well, the proposal that was
10 sent to him, he signed. We just don't have a JOA with
11 him yet. But the proposal said as far as the unleased
12 interest, you have a right to participate in that. As
13 to the leased interest, you don't.

14 Q. (BY EXAMINER BROOKS) But it doesn't stipulate
15 exactly what interest he is to be paid for, though?

16 A. It stipulates his working interest in the
17 unleased portion. Yes, sir.

18 Q. I think that it would be good if somebody could
19 prepare an exhibit showing how this is all going to
20 work, because in the event that there is not an
21 agreement that formalizes the exact amount each party is
22 to receive, I understand that the depth-severed interest
23 is not to be pooled above and below the depth limited --
24 the limiting depth, but I think you would have to do a
25 separate statement of how it's to be distributed above

1 and below -- for a well above and for a well below. But
2 I would like to see a supplemental exhibit that would
3 set this all out.

4 Thank you.

5 CROSS-EXAMINATION

6 BY EXAMINER JONES:

7 Q. But the entire Glorieta-Yeso depth would be
8 participating in the well; is that correct?

9 A. Yes.

10 Q. Okay. And --

11 EXAMINER BROOKS: Now, wait a minute. That
12 raises some questions.

13 RECROSS EXAMINATION

14 BY EXAMINER BROOKS:

15 Q. The entire depth would be participating --
16 would be contributing to costs, and the people that --

17 A. Well, as we talked about as to each depth
18 there. But, I mean, it is a whole -- the pool is a
19 whole, but it just depends on where the horizontal well
20 is in the pool, what we were just talking about.

21 Q. But the participation in costs and the
22 participation in revenues both would depend on the
23 actual depth of the well?

24 A. Correct, where it is, where the horizontal leg
25 is.

1 Q. And I think I understand that, but that's
2 not -- to me is not the same thing as saying the whole
3 Bone Spring will be pooled, because if the whole Bone
4 Spring would be pooled, then everybody would participate
5 on some basis in any well.

6 A. And that's why we're seeking -- that would be
7 the separate agreement as to how they would be paid.
8 Yes, sir.

9 Q. Right. And if -- if you don't get that
10 separate agreement and we decide that we can write an
11 order on this, we're going to have to put all these
12 conditions in the order.

13 Thank you.

14 CONTINUED CROSS-EXAMINATION

15 BY EXAMINER JONES:

16 Q. I guess we're going to have another witness
17 about the depth that was related to these pool
18 division -- depth severances.

19 Do you have any record title owners that
20 are not -- you said you did have record title owners
21 that are not signed up, right? I'm just going through
22 the list here.

23 A. There are some unleased mineral interest
24 owners, and then there are some that have some
25 marketable title issues of unleased owners.

1 **Q. Okay. But there are not pure record title that**
2 **have signed their interests over? Except on this**
3 **depth-severance issue, there is.**

4 EXAMINER BROOKS: Well, the use of the term
5 "record title" -- this is all fee tract.

6 EXAMINER JONES: Okay.

7 THE WITNESS: Yes. Yes, sir.

8 EXAMINER BROOKS: The use of the term
9 "record title" is -- is problematic.

10 THE WITNESS: Working interest owners.

11 EXAMINER BROOKS: Yeah. It's best if we
12 simply say "working interest owners."

13 THE WITNESS: Yes, sir.

14 **Q. (BY EXAMINER JONES) Okay. Are the unmarketable**
15 **title owners -- their interests are not divided?**

16 A. Correct.

17 **Q. Okay. And you've got #9H already permitted.**
18 **Is that the first well you're going to drill?**

19 A. Yes, sir.

20 **Q. Okay. Are you going to ask for an extended**
21 **time to complete both wells? Are you going to complete**
22 **them at the same time?**

23 A. At this present time, the 9H and the 10H will
24 be drilled very close. They're going to be sharing the
25 same pad.

1 Q. So 120 days between spud of first well and
2 completion is fine, or you can ask for that later, I
3 guess.

4 And just dismissing the portion that's
5 asking for an MSP, right?

6 MS. KESSLER: Right.

7 Q. (BY EXAMINER JONES) And why the surface
8 locations down in the other section?

9 A. To maximize the lateral length.

10 Q. So you can have 100 feet from --

11 A. Yes, sir. Yes, sir. Heel to toe, yes, sir.

12 Q. And is that surface location -- do you know who
13 owns the surface at that --

14 A. We do. And we also own -- St. Devote also owns
15 the -- is lessee under that tract. We have production
16 on that tract.

17 Q. Okay. So Roy G. Barton is still not telling
18 you --

19 A. No, no. He has -- he has agreed to -- he's
20 agreed to the proposal that was sent to him. We're just
21 working on the JOA.

22 Q. Okay.

23 A. But he signed an AFE as to his interest.

24 Q. He signed an AFE as a participating person?

25 A. Yes, for his unleased interest.

1 **Q. For his unleased interest? So he's going to**
2 **participate as a -- as a --**

3 A. Yes, sir. If the well -- if a lateral is -- in
4 the unleased portion, yes, sir. If the lateral is in
5 the leased portion, he'll be getting a royalty interest
6 based on his oil and gas lease that he has with us.

7 **Q. Okay. Is this a focus area for Percussion?**

8 A. Yes, sir.

9 **Q. Okay. I knew that Concho had some interest.**
10 **They seem to work on this area.**

11 **But the Seven Rivers pool name, is that**
12 **named because of the little town of Seven Rivers?**

13 A. Or the -- or when this was done by Nearburg,
14 unless -- there is a Seven Rivers that cuts through this
15 area, so it may be named just for geologic reasons
16 there.

17 **Q. Oh, okay.**

18 **Okay. Thank you.**

19 EXAMINER BROOKS: It's always confusing
20 when they use a formation name for the pool name.

21 EXAMINER JONES: Like the Atoka is in some
22 places, too.

23 Okay. Thank you very much.

24 MR. McMILLAN: Mr. Examiner, Seth McMillan,
25 Montgomery & Andrews. I think I completely missed

1 calling for appearances on this matter. I apologize.

2 EXAMINER JONES: Okay.

3 MR. McMILLAN: I had previously entered an
4 appearance on behalf of Sharbro.

5 EXAMINER JONES: Sharbro?

6 MR. McMILLAN: Yeah, a pronunciation that I
7 recently learned.

8 And I would just like to get one thing on
9 the record, if I may, despite my late appearance.

10 EXAMINER JONES: Yes.

11 CROSS-EXAMINATION

12 BY MR. McMILLAN:

13 Q. It's my understanding, sir, that Sharbro and
14 Percussion came to an agreement last night --

15 A. That's correct.

16 Q. -- a sublease?

17 And, sir, do you share that understanding?

18 A. Yes.

19 Q. And as a result, Sharbro's interest will be
20 pooled pursuant to this proceeding?

21 A. As we discussed earlier, right.

22 Q. Thank you very much.

23 EXAMINER JONES: Mr. McMillan, can you
24 please send us an entry -- like a paperwork entry,
25 unless you've already done that?

1 MR. McMILLAN: Already did.

2 EXAMINER JONES: I just didn't have it in
3 my hard file here.

4 MR. McMILLAN: Thank you.

5 EXAMINER JONES: Thank you very much.

6 CHRISTOPHER LIPINSKI,
7 after having been previously sworn under oath, was
8 questioned and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. KESSLER:

11 Q. Please state your name for the record and tell
12 the examiners by whom you're employed and in what
13 capacity.

14 A. Christopher Lipinski, and I'm vice president of
15 geology for Percussion Petroleum.

16 Q. Have you previously testified before the
17 Division?

18 A. I have.

19 Q. Were your credentials as an expert in petroleum
20 geology accepted and made a matter of record?

21 A. They were.

22 Q. Are you familiar with the application filed in
23 this case?

24 A. I am.

25 Q. And have you conducted a geologic study of the

1 **lands that are the subject of this application?**

2 A. Yes.

3 MS. KESSLER: Mr. Examiners, I would tender
4 Mr. Lipinski as an expert in petroleum geology.

5 EXAMINER JONES: Would you please spell
6 your name?

7 THE WITNESS: The last name?

8 EXAMINER JONES: Yes, last name.

9 THE WITNESS: L-I-P-I-N-S-K-I.

10 EXAMINER JONES: Thank you very much.

11 **Q. (BY MS. KESSLER) Mr. Lipinski, have you**
12 **prepared an exhibit or exhibits reflecting your analysis**
13 **and study of this area and the underlying geology?**

14 A. I have.

15 **Q. Please turn to Exhibit 6 and identify this**
16 **exhibit for the examiners.**

17 A. This is a case map showing Percussion
18 Petroleum's acreage in the 19 South, 25 East township
19 and range highlighted in yellow, and then offset
20 horizontal wells drilled in the Yeso in the green and
21 the proposed wells in the black.

22 **Q. Let's turn to Exhibit 7. Is this a structure**
23 **map of the Glorieta in this area?**

24 A. Yes. This is a subsurface depth map for the
25 top of the Glorieta and showing the -- red colors are

1 higher, and the blue colors, lower. This just shows a
2 relatively 1-and-a-half- to 2-degree dip in the area on
3 the Glorieta, so pretty uniform.

4 **Q. Have you identified any geologic impediments**
5 **based on the structure in this section?**

6 A. I have not.

7 **Q. Does Exhibit 8 contain a line with A to A prime**
8 **that corresponds with your cross-section exhibit?**

9 A. Yes.

10 **Q. Why did you select these wells for your cross**
11 **section?**

12 A. These wells go down parallel to the laterals
13 that we'll be drilling.

14 **Q. Do you consider them representative of the Yeso**
15 **pool in the area?**

16 A. Yes.

17 **Q. And is Exhibit 9 your structural cross-section**
18 **exhibit?**

19 A. Yes. So this is a cross section going from
20 A to A prime, going from north to south, showing the
21 gamma ray, the neutron density and the deep resistivity
22 curves for the area, highlighted the Glorieta -- the top
23 of the Glorieta pick, the top of the Yeso, as well as
24 the top of the Bone Spring, which would be the base of
25 the Yeso in this area. So since it's the Glorieta-Yeso

1 Pool, show the entire depths for that, and then included
2 the proposed landing intervals for the 9H and the 10H
3 within the Yeso. And the curves show it's relatively
4 uniform throughout the area, no pinch-outs.

5 Q. You also called out the two depth-severance
6 lines in yellow, correct?

7 A. Yes. The 2,477 OXY depth severance is
8 highlighted above our two landing zones, and the 3,052,
9 Barton, is highlighted below.

10 Q. And you show the two laterals in relation to
11 those depth-severance lines?

12 A. Correct.

13 Q. Based on your study of this area, have you
14 identified any geologic impediments that would prevent
15 development of this area using the one-mile horizontal
16 well?

17 A. I have not.

18 Q. Do you believe that the area can be efficiently
19 and economically developed by horizontal wells?

20 A. Yes.

21 Q. And do you believe that each of the 40-acre
22 tracts will contribute more or less equally to
23 production to each of the wells?

24 A. I do.

25 Q. In your opinion, is granting Percussion's

1 application in the best interest of conservation, for
2 the prevention of waste and the protection of
3 correlative rights?

4 A. Yes.

5 Q. Were Exhibits 6 through 10 prepared by you or
6 compiled under your direction or supervision?

7 A. They were.

8 MS. KESSLER: Mr. Examiner, I'd move
9 admission of Exhibits 6 through 10.

10 EXAMINER JONES: Any objection,
11 Mr. McMillan?

12 MR. McMILLAN: No objection.

13 EXAMINER JONES: Thank you.

14 Exhibits 6 through 10 are admitted.

15 (Percussion Petroleum, LLC Exhibit Numbers
16 6 through 10 are offered and admitted into
17 evidence.)

18 EXAMINER JONES: Mr. McMillan, do you have
19 any questions?

20 MR. McMILLAN: No questions.

21 EXAMINER JONES: Do you agree to let
22 Mr. McMillan ask questions?

23 MS. KESSLER: Yes.

24 MR. McMILLAN: No questions. In fact,
25 nothing further from me at all.

CROSS-EXAMINATION

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BY EXAMINER JONES:

Q. Is this the Paddock you're going after?

A. Yes.

Q. Okay. So it's clearly the Paddock.

And the Blinebry, Tubb and Drinkard would not contribute to this well?

A. That is correct.

Q. Okay. The Paddock -- where is the base of the Paddock on this cross section? Is it easy to find? What depth is it, before I forget to ask?

A. The base of the Paddock is subjective, but in this area, it would be around the 200, if you're looking at the scale on the left. It would be below that Barton depth severance, around the 200 depth on this cross section. So we're off the platform proper here, so the lower part of the Yeso is actually not here. It's the Bone Spring Formation, more basal. So we don't have the entire Yeso Formation in this area. So you'll get a little bit of Blinebry, and it's -- it's different here. So it's not exactly correlative to the northeast when you're in the shelf proper.

Q. Okay. So it's kind of subjective, and it's possibly down at 200 feet below sea level; is that correct? Did you say that, the base of the Paddock?

1 A. Yeah. So these are the subsea depths on the
2 left, so it would be at 200 feet above sea level.

3 Q. Above. Okay. Plus 200?

4 A. Correct.

5 Q. Okay. So there's -- and that is a vertical
6 depth of, oh, 3,300 or so; is that correct?

7 A. It would be around that, yes, or -- ground
8 level is around 3,500 in this area, so a depth of 300 --
9 anywhere from 300 to 3,500, but yeah.

10 Q. Okay. That's quite a bit farther below your
11 target interval, so it seems possible that the entire
12 Paddock would not -- you're not anticipating developing
13 the entire Paddock?

14 A. I do not imagine that like the 9H would drain
15 the entire Paddock interval.

16 Q. Okay. But geologically -- is your evaluation
17 geologically already mature enough to say that these are
18 the only potential targets in the Glorieta-Yeso?

19 A. No. There are -- I believe there is oil all
20 the way throughout the Yeso in this area, so there is a
21 possibility for deeper landing zones.

22 Q. Okay. Just in case you wanted to restyle an
23 application to divide a vertical, have a nonstandard
24 proration unit for vertically. There's been a lot of
25 work to divide the Yeso in the past, you know, based on

1 **supposed zones that weren't going to be productive and**
2 **ownership zones, and so you have to go strategize about**
3 **that?**

4 MS. KESSLER: The issues there,
5 Mr. Examiners, there still remains a depth-severance
6 line at 2,477. There are two severances, so --

7 EXAMINER JONES: In Unit Letter D?

8 MS. KESSLER: Right.

9 EXAMINER JONES: Okay. So you still have
10 that no matter what.

11 **Q. (BY EXAMINER JONES) Okay. So your wells are**
12 **\$5 million wells; is that correct? Do we have an AFE in**
13 **here? And I thought it only said 5 million or so.**

14 A. Yeah. It shouldn't be over 5 million for the
15 well.

16 **Q. Okay. 4 million-something?**

17 A. Yes.

18 **Q. So these are one-mile-long wells at 3,000 feet**
19 **deep. So you're able to actually go out a mile when**
20 **you're only down 3,000 feet?**

21 A. Yeah. Concho's actually done an offset well in
22 the Bone Yard about three miles away from this area down
23 to a 7,500-foot lateral in comparable depths.

24 **Q. I still don't know how they can do that. But I**
25 **guess it's an extremely straight hole and --**

1 A. Yes. It's --

2 Q. -- a nice mud system and mud motor?

3 A. Yeah. You have to have -- you have to have a
4 motor when you're drilling, for sure, in order to do
5 that.

6 Q. What kind of logs are you going to run while
7 you drill?

8 A. So we'll have MWD gamma ray while we're
9 drilling because we're doing directional, but no other
10 logs will be done for these laterals.

11 Q. Okay. You're not proposing any pilot holes,
12 even though the landman said you do own the lease where
13 you're putting the surface location?

14 A. Correct. We do own that lease. We have a fair
15 bit of offset vertical coverage.

16 Q. Okay. You've got plenty definition here?

17 A. Yeah.

18 EXAMINER JONES: Mr. Brooks?

19 CROSS-EXAMINATION

20 BY EXAMINER BROOKS:

21 Q. Actually, there are two depth-severance lines,
22 as I understand this, the 2,477 in the
23 northwest-northwest and the 3,052 in the
24 southwest-southwest. But I do not understand -- well,
25 did you testify as to what depth the projected -- what

1 **is the projected landing depth?**

2 A. No. This is highlighted on here. I did not
3 say what the depth would be. It's going to be around
4 2,500 and 2,800 for the two wells.

5 **Q. So they're going to be above the -- they're**
6 **going to be significantly above the 3,052?**

7 A. Correct.

8 **Q. But you're not saying what they're going to be**
9 **above or below the 2,477 depth?**

10 A. Well, one will be 25 feet below it, and one
11 will be 300 feet below it.

12 **Q. Okay. So one's going to be real close?**

13 A. Correct.

14 **Q. But they're both going to be below?**

15 A. Correct.

16 **Q. Okay. But you're not testifying that there**
17 **will not be drainage across these depth-severance lines**
18 **at 2,477, are you?**

19 A. I have no reason to believe we will be draining
20 below that 3,052. With these wells, there is a
21 possibility that we drain above that 2,477, and that
22 does nothing but hurt ourselves.

23 **Q. Okay. Because Percussion owns a larger**
24 **interest above than they do below?**

25 A. Correct. We would be giving up some of our

1 production to OXY in this case if we were to drain above
2 that, and we're willing to accept that risk.

3 Q. But it's your opinion that you would not drain
4 below the 3,052?

5 A. Correct.

6 Q. Which is how far below where you think the well
7 is going to be landed?

8 A. Be 550 feet below one of them and 250 below the
9 other one.

10 Q. Okay. So the closest well to the 3,052 depth
11 would be 250 feet above it?

12 A. Correct.

13 Q. Okay. And based on your analysis of this -- of
14 this reservoir, you don't believe that -- do I
15 understand your testimony? You do not believe you can
16 drain that far?

17 A. Correct.

18 Q. Thank you.

19 EXAMINER JONES: It is interesting that
20 even on the AFE, there is not -- I don't see the depths
21 on there, and there is not -- there is not -- and in the
22 proposal letters -- the typed proposal letters, I don't
23 see the depth either, but they're pretty lengthy, and I
24 must not be finding them on here.

25 These are your-all's exhibits. Can you

1 tell me where the depths are located here?

2 MR. DALTON: There is not a depth location
3 in the prospect letters. They were being drilled in the
4 Yeso Formation, and we've had following discussions with
5 those parties asking those questions.

6 RECROSS EXAMINATION

7 BY EXAMINER JONES:

8 Q. Okay. Is it true geologically, though, you
9 know exactly where you want to drill, or are you still
10 thinking about it a little bit?

11 A. No. We -- we know where we want to drill, and
12 we've had meetings with these operators on this.

13 Q. It's just not listed here anywhere?

14 A. I guess not. I'm not familiar with those
15 documents.

16 MR. DALTON: But the operators have asked,
17 and we have given them their answer.

18 EXAMINER JONES: Okay. Can you guys give
19 us something supplementally that tells us where the
20 vertical and measured depths are for each of these
21 wells?

22 MS. KESSLER: For each of those wells.

23 EXAMINER JONES: Okay. Do you want to take
24 these under advisement?

25 EXAMINER BROOKS: Well, it's going to be --

1 I think we should get this supplemental information that
2 we're asking for, but we can take it under advisement
3 subject to that, unless the parties have something
4 further they want to offer. There is only one party.
5 Sharbro has agreed, so they're not --

6 They're not a party, correct?

7 EXAMINER JONES: They're an entry.

8 EXAMINER BROOKS: You're a party of record,
9 but you're not, at this point, concerned with what order
10 we enter?

11 MR. McMILLAN: That's correct.

12 EXAMINER JONES: Okay.

13 EXAMINER BROOKS: Okay. So unless
14 Percussion has something further to offer, other than
15 just to respond to our requested supplemental
16 information, we can take it under advisement subject to
17 receiving that supplemental information.

18 EXAMINER JONES: It's up to you, whatever
19 you want to do.

20 MS. KESSLER: We would ask that this case
21 be taken under advisement, and we'll supplement with
22 both the TVD and the measured depth and then also an
23 additional exhibit requested by Mr. Brooks.

24 EXAMINER BROOKS: To show how you expect --
25 how you intend the distribution to work in case there is

1 not a specific agreement that sets out --

2 MS. KESSLER: And perhaps we'll just notify
3 the Division that we've reached an agreement with those
4 other parties.

5 EXAMINER BROOKS: That will make it a whole
6 lot simpler.

7 EXAMINER JONES: Yeah.

8 EXAMINER BROOKS: Thank you.

9 EXAMINER JONES: Thanks very much for
10 coming.

11 We'll take Case 16408 under advisement.

12 And let's take a few-minute break here.

13 (Case Number 16408 concludes, 9:48 a.m.)

14 (Recess 9:48 a.m. to 10:10 a.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither
17 employed by nor related to any of the parties or
18 attorneys in this case and that I have no interest in
19 the final disposition of this case.

20 DATED this 6th day of October 2018.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2018
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