

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

6 APPLICATION OF COG OPERATING, LLC  
7 FOR A NONSTANDARD SPACING AND  
8 PRORATION UNIT AND COMPULSORY  
9 POOLING EDDY COUNTY, NEW MEXICO.

CASE NO. 15054

ORIGINAL

10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 EXAMINER HEARING

12 November 14, 2013

13 Santa Fe, New Mexico

14 BEFORE: DAVID K. BROOKS, CHIEF EXAMINER

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18 This matter came on for hearing before the  
19 New Mexico Oil Conservation Division, David K. Brooks,  
20 Chief Examiner, on Thursday, November 14, 2013, at the  
21 New Mexico Energy, Minerals and Natural Resources  
22 Department, 1220 South St. Francis Drive, Porter Hall,  
23 Room 102, Santa Fe, New Mexico.

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26 REPORTED BY: Mary C. Hankins, CCR, RPR  
27 New Mexico CCR #20  
28 Paul Baca Professional Court Reporters  
29 500 4th Street, Northwest, Suite 105  
30 Albuquerque, New Mexico 87102

1 APPEARANCES

2 FOR APPLICANT COG OPERATING, LLC:

3 MICHAEL H. FELDEWERT, ESQ.  
 4 HOLLAND & HART  
 5 110 North Guadalupe, Suite 1  
 6 Santa Fe, New Mexico 87501  
 (505) 988-4421  
 mfeldewert@hollandhart.com

7 FOR HANNIFIN FAMILY TRUST:

8 MARK A. HANNIFIN, TRUSTEE  
 9 HANNIFIN FAMILY TRUST  
 10 Post Office Box 218  
 11 Midland, Texas 79702

12

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1 (8:42 a.m.)

2 EXAMINER BROOKS: Call Case Number 15054,  
3 application of COG Operating, LLC for a nonstandard  
4 spacing and proration unit and compulsory pooling.

5 Call for appearances.

6 MR. FELDEWERT: Mr. Examiner, Michael  
7 Feldewert, with the Santa Fe office of Holland & Hart,  
8 appearing on behalf of the Applicant. I have two  
9 witnesses here today.

10 EXAMINER BROOKS: Very good. Will the  
11 witnesses stand and identify themselves?

12 MR. CLARK: Greg Clark.

13 MR. DIRKS: Stuart Dirks.

14 (Mr. Clark and Mr. Dirks sworn.)

15 MR. HANNIFIN: Mr. Examiner, I don't know  
16 how this works exactly. I haven't been out here in 30  
17 years, but I'm going to be opposing some of the tenets  
18 that they're proposing.

19 EXAMINER BROOKS: Okay. So you want to  
20 make an appearance in the case?

21 MR. HANNIFIN: Yes, sir.

22 EXAMINER BROOKS: Please state your name  
23 and on whose behalf you're appearing.

24 MR. HANNIFIN: Mark Hannifin,  
25 H-A-N-N-I-F-I-N, trustee for the Hannifin Family Trust,

1 representing them, and McCormick Trust and the Wygocki  
2 Family Trust.

3 EXAMINER BROOKS: Are you going to testify?

4 MR. HANNIFIN: Yes, sir.

5 EXAMINER BROOKS: Then you need to be  
6 sworn, too.

7 (Mr. Hannifin sworn.)

8 MR. FELDEWERT: Call our first witness.

9 EXAMINER BROOKS: Proceed.

10 STUART DIRKS,  
11 after having been previously sworn under oath, was  
12 questioned and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FELDEWERT:

15 Q. Would you please state your name, by whom you  
16 are employed and in what capacity?

17 A. Stuart Dirks. I'm employed by COG Operating as  
18 a senior landman.

19 Q. Mr. Dirks, you've previously testified before  
20 this Division. Have your credentials been accepted as a  
21 matter of record?

22 A. Yes.

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

25 A. Yes, I am.

1 Q. And are you familiar with the status of the  
2 lands in the subject area?

3 A. Yes, I am.

4 MR. FELDEWERT: Mr. Examiner, I'd tender  
5 Mr. Dirks as an expert witness in petroleum land  
6 matters.

7 EXAMINER BROOKS: Any objection?

8 MR. HANNIFIN: No.

9 EXAMINER BROOKS: He's so qualified.

10 Q. (BY MR. FELDEWERT) Would you turn to what's  
11 been marked as COG Exhibit Number 1, identify it and  
12 explain to the Examiner what the company seeks under  
13 this application?

14 A. This is a plat centered on Section 9, Township  
15 19 South, Range 26 East. Our acreage position in  
16 Section 9 is highlighted in yellow. The existing wells  
17 are indicated by black dots for vertical wells and black  
18 lines for horizontal wells. Our proposed Stonewall 9  
19 Fee #3H well is shown with the red line. The square  
20 being the surface location, and the circle being the  
21 bottom-hole location.

22 We are seeking the formation of a 160-acre  
23 nonstandard spacing and proration unit comprising the  
24 west half of the east half of Section 9, 19 South, 26  
25 East for the drilling of our Stonewall 9 Fee #3H well.

1 We seek the pooling of mineral interests within the Yeso  
2 Formation underneath our proposed nonstandard unit, and  
3 we ask that COG Operating, LLC be named operator.

4 Q. Mr. Dirks, has the Division approved a similar  
5 horizontal spacing unit in Section 9?

6 A. Yes, it has.

7 Q. Is the well reflected in the west half of the  
8 west half of Section 9?

9 A. Yes, it is.

10 Q. Has that well been drilled, and is it  
11 producing?

12 A. Yes, that's correct.

13 Q. If I turn to what's been marked as COG Exhibit  
14 Number 2, is this a C-101 and C-102 filed with the  
15 Division for the well that's the subject of the hearing  
16 today?

17 A. Yes, it is.

18 Q. And does it provide the AP number of the  
19 proposed well?

20 A. Yes, it does.

21 Q. As well as the pool code?

22 A. Yes, it does.

23 Q. And provides the footages for the well,  
24 correct?

25 A. Yes.

1 EXAMINER BROOKS: Excuse me. You said the  
2 well had been drilled and is in production. Is that  
3 this well, or is that another well?

4 THE WITNESS: No. This is the -- on  
5 Exhibit 1, the west half-west half, that's the one  
6 that's been drilled and is in production.

7 EXAMINER BROOKS: Thank you.

8 BY MR. FELDEWERT:

9 Q. Exhibit Number 2 is the C-101 and C-102 for the  
10 well that is the subject of the hearing today?

11 A. Correct. Right.

12 Q. All right. And as reflected in this exhibit,  
13 will the penetration point and bottom-hole locations for  
14 this well comply with the Division's setback  
15 requirements?

16 A. Yes.

17 Q. Is Section 9 all fee lands?

18 A. Yes.

19 Q. If I turn to what's been marked as COG Exhibit  
20 Number 3, is this a lease tract map identifying the  
21 working interest owners, first in the spacing unit by  
22 tract, and then, on the second page, does it identify  
23 their interest in the spacing unit as a whole?

24 A. Yes, that's correct.

25 Q. And there are three tracts that are involved in



1 this west half of the east half of the spacing unit?

2 A. Yes, that's correct.

3 Q. If I turn to the second page on Exhibit Number  
4 3, have all of the working interest owners committed to  
5 the proposed well?

6 A. No, they have not.

7 Q. What is the distinction between those which are  
8 bolded and those interests which are in italics?

9 A. Those interests which are bolded we are seeking  
10 to pool because the title is unmarketable, and those in  
11 italics are not -- have chosen not to participate in the  
12 well.

13 Q. So I see that there's a number of estates that  
14 are bolded; is that correct?

15 A. That's correct.

16 Q. And then the italics look like a number of  
17 trusts?

18 A. That's correct.

19 Q. Is Exhibit Number 4 the well-proposal letter  
20 that the company sent to the known mineral owners?

21 A. Yes.

22 Q. With respect to the estates that you had bolded  
23 in the prior exhibits, what efforts did the company take  
24 to locate the potential heirs and mineral owners in  
25 these estates?

1           A.    We believe we have identified all the  
2    successors in interest, and they are under lease and are  
3    participating in the well. And we continue our curative  
4    work to ensure that we have identified everybody.

5           Q.    But you're, at this point, then pooling the  
6    heirs of those estates just to be safe?

7           A.    Yes.

8           Q.    And the trusts that are involved here that are  
9    italicized, to your understanding, are they related or  
10   family trusts?

11          A.    As I understand it, yes.

12          Q.    Is Exhibit Number 5 an Affidavit of Publication  
13   in the local newspaper that has directed both the  
14   potential heirs of the interests that you have bolded,  
15   as well as the trusts that are italicized?

16          A.    Yes, that's correct.

17          Q.    And it provides notice in a local newspaper of  
18   this hearing?

19          A.    Yes, that's correct.

20          Q.    In addition to that, did you also attempt to  
21   provide notice to the trusts that are notified or that  
22   are reflected in Exhibit Number 3?

23          A.    Yes.

24          Q.    If I turn to what's been marked as COG Exhibit  
25   Number 6, is this an Affidavit of Publication -- I'm

1     sorry. Is this an affidavit prepared by my office of  
2     notice to the various parties?

3           A. Yes, it is.

4           Q. And it reflects, does it not, that there were  
5     two efforts to provide notice of the hearing?

6           A. Yes.

7           Q. First off, about three pages in, there is a  
8     letter dated September 27th. Under that letter, did you  
9     attempt to provide notice to the trusts -- those related  
10    family trusts by mail?

11          A. Yes.

12          Q. And that reflects, does it not, that the notice  
13    went to a Midland address?

14          A. Yes.

15          Q. And was a green card received for that Midland  
16    address?

17          A. Yes.

18          Q. Then did you subsequently receive an indication  
19    that Mr. Hannifin, who is actually here today, received  
20    notice of this hearing?

21          A. Yes.

22          Q. He sent you an e-mail or a letter, or how did  
23    that --

24          A. E-mail.

25          Q. An e-mail. Okay.

1 Did he indicate that there were additional  
2 Hannifin family trusts that were involved in this  
3 particular acreage?

4 A. Yes.

5 Q. And as a result, did you then send out a second  
6 round of notices of this hearing in October, which is  
7 reflected in the second page of this exhibit?

8 A. Yes.

9 Q. And did you send it to an address that  
10 Mr. Hannifin had provided, as well as a California  
11 address for these family trusts?

12 A. Yes.

13 Q. And did you subsequently receive an indication  
14 that these family trusts had received notice of this  
15 hearing?

16 A. Yes.

17 Q. So at least with respect to the trusts that are  
18 italicized on your Exhibit Number 3, they received  
19 notice, first, by publication, correct?

20 A. Yes.

21 Q. And then also by mail?

22 A. Yes.

23 Q. Have you undertaken efforts to reach an  
24 agreement with these various Hannifin family trusts?

25 A. Yes, we have.

1 Q. And who have you dealt with primarily in  
2 attempting to reach an agreement?

3 A. Mr. Mark Hannifin.

4 Q. When did those discussions commence?

5 A. Our initial well proposal went out September  
6 17th. I don't remember the exact date, but he responded  
7 pretty quickly after that.

8 Q. And did your discussions continue on into  
9 October and into November?

10 A. Yes.

11 Q. In fact, wasn't the hearing in this case  
12 delayed a second time to allow additional time to  
13 undertake efforts to reach an agreement?

14 A. Yes.

15 Q. But you've been unable to reach an agreement  
16 with these trusts?

17 A. That is correct.

18 Q. Now, with respect to the AFE that was sent with  
19 the well-proposal letters that are reflected on  
20 Exhibit -- reflected in Exhibit Number 4, are the costs  
21 that are reflected on that AFE consistent with what the  
22 company has incurred for drilling similar horizontal  
23 wells in this area?

24 A. Yes.

25 Q. Has the company made an estimate on the

1 overhead and administrative costs while drilling this  
2 well and also while producing if you're successful?

3 A. Yes, we have.

4 Q. What are those rates?

5 A. \$5,450 per monthly drilling, \$545 per month  
6 producing.

7 Q. What were those rates again?

8 A. \$5,450 a month drilling, \$545 a month  
9 producing.

10 Q. Now, are those overhead rates consistent with  
11 the JOA for this area?

12 A. Yes, that is correct.

13 Q. And does the company request these figures  
14 likewise be incorporated into any order from this  
15 hearing and that the order provide for an adjustment in  
16 accordance with the COPAS accounting procedures?

17 A. Yes, sir.

18 Q. With respect to the Notice of Affidavit that's  
19 been marked as Exhibit Number 6, did the notice include  
20 the leased mineral owners in the 40-acre tract  
21 surrounding your proposed nonstandard spacing unit?

22 A. Yes, it did.

23 Q. Were Exhibits 1 through 5 prepared by you or  
24 compiled under your direction and supervision?

25 A. Yes, they were.

1 MR. FELDEWERT: Mr. Examiner, I'd move  
2 admission into evidence of COG Exhibits 1 through 6,  
3 which includes my affidavit.

4 EXAMINER BROOKS: 1 through 6 are admitted.  
5 (COG Operating, LLC Exhibit Numbers 1  
6 through 6 were offered and admitted into  
7 evidence.)

8 MR. FELDEWERT: That concludes my  
9 examination of this witness.

10 EXAMINER BROOKS: Very good.

11 Mr. Hannifin, now that I have a list of the  
12 owners according to the Applicant --

13 Which exhibit is that?

14 MR. FELDEWERT: Number 3. Be on the second  
15 page, Mr. Examiner.

16 EXAMINER BROOKS: Oh, no, here it is.  
17 Thank you.

18 Are you the trustee of some of these  
19 trusts?

20 MR. HANNIFIN: I'm a trustee of the  
21 Hannifin Family Trust, and I have written documents from  
22 the McCormick Trust A and B and the P.J. Hannifin Trust  
23 to represent them here. I believe Nuevo Seis, which is  
24 another interest, has actually decided to join in the  
25 drilling of the well. And the Wygockies, I have a

1 verbal authority.

2 EXAMINER BROOKS: You have an authority  
3 from the Wygocki Family Trust?

4 MR. HANNIFIN: I just have a verbal  
5 authority from the family; not in writing, just  
6 verbally.

7 EXAMINER BROOKS: You are the trustee of  
8 the Hannifin Family Trust?

9 MR. HANNIFIN: Yes, sir.

10 EXAMINER BROOKS: What about the P.J.  
11 Hannifin Trust?

12 MR. HANNIFIN: No. That's Steve Hannifin.  
13 We have written --

14 EXAMINER BROOKS: You have a written  
15 authorization from Steve Hannifin?

16 MR. HANNIFIN: Yes, sir.

17 EXAMINER BROOKS: And you have a verbal  
18 authorization for the Wygocki Family Trust?

19 MR. HANNIFIN: Wygocki, yes, Billy Wygocki.

20 EXAMINER BROOKS: Who is the trustee of  
21 that?

22 MR. HANNIFIN: Billy Wygocki.

23 EXAMINER BROOKS: Pardon me?

24 MR. HANNIFIN: Billy Wygocki or William  
25 Wygocki.



1 EXAMINER BROOKS: You may need to get with  
2 the court reporter on the spelling of some of these  
3 things, but we can do that at a break.

4 And you also represent the McCormick Trust  
5 A and the McCormick Trust B?

6 MR. HANNIFIN: Yes. Beth McCormick is the  
7 trustee for that, and I have written authorization.

8 EXAMINER BROOKS: What was her first name?

9 MR. HANNIFIN: Beth or Elizabeth.

10 EXAMINER BROOKS: Beth. Okay. Very good.

11 Now that we've established who you are  
12 representing, do you wish to ask this witness any  
13 questions?

14 MR. HANNIFIN: The reason we're here is not  
15 to contest whether or not we got notice. We tried to  
16 help straighten that out and everything like that.

17 We leased to COG, two years ago, using our  
18 lease form on these exact same lands, and they accepted  
19 it. We've got the paperwork, in case you want to see  
20 that. When they proposed to lease from us again, we  
21 assumed that that would be an acceptable lease form.  
22 The whole contention ever since then is, they won't use  
23 that lease form. They want to use one of theirs, which  
24 has been rather thoroughly candid to one side. I mean,  
25 I'm used to the Producer's 88s and stuff like that.

1 They gave the producer the edge. They added seven more  
2 provisions, which made sure that we might as well not  
3 show up to the party.

4 EXAMINER BROOKS: Well, I've heard a lot  
5 about the Producer's 88, also, but I don't know exactly  
6 what it is.

7 MR. HANNIFIN: Well, the Producer's 88,  
8 years and years and years ago -- and I've been a landman  
9 since '78. There was a form that was a little more  
10 favorable to the landowners, and some other forms in the  
11 early days back in Pennsylvania, and it was called  
12 Producer's 88, for whatever reason. And anybody who  
13 wanted to kind of help slip something past one of the  
14 landowners would put this Producer's 88 on there, just  
15 because the coffee-shop talk was, you've got to get the  
16 Producer's 88 lease form. So there are five zillion  
17 different copies of it and all of them different and  
18 everything like that. They had the one common title.

19 EXAMINER BROOKS: Yes. I never found  
20 anything by which you could definitely identify a  
21 Producer's 88.

22 MR. HANNIFIN: Oh, no, no, no. It was just  
23 a marketing gimmick.

24 EXAMINER BROOKS: But like you say, there  
25 are many forms that purport to be a Producer's 88.

1 MR. HANNIFIN: Yeah.

2 EXAMINER BROOKS: Well, you will have a  
3 chance to make a statement, Mr. Hannifin, so my question  
4 right now is: Do you want to ask any questions of this  
5 witness?

6 CROSS-EXAMINATION

7 BY MR. HANNIFIN:

8 Q. The only question I have is: Have we ever  
9 entered into good-faith negotiations? Because from the  
10 get-go, I sent you our lease form. We sat face-to-face  
11 with your boss in the office for an hour and a half. We  
12 agreed -- and went through 15 different objections that  
13 you guys had, and we always get these last-second  
14 objections, whether specified or unspecified, two days  
15 before hearing. And I'm kind of curious as to whether  
16 or not there was ever actually any good faith intended  
17 on this or if you were planning on using the NMOC as  
18 your land department going forward?

19 MR. FELDEWERT: And I object. I think  
20 we've got a number of questions within that, so perhaps  
21 we could break that up a little bit.

22 EXAMINER BROOKS: Well, that's true. I  
23 believe, though, that the question was -- it's not an  
24 argument, but argumentative questions are not limited to  
25 laywitnesses -- to lay cross-examiners.

1           The question was, I believe, if COG has  
2     conducted good-faith negotiations to acquire these  
3     interests.

4           A.    Yes, we have.   It was in good faith.

5                   EXAMINER BROOKS:  Anything further?  Any  
6     further questions?

7                   MR. HANNIFIN:  Not at this time.

8                           CROSS-EXAMINATION

9     BY EXAMINER BROOKS:

10           Q.    Okay.  What kind of offers have you made to the  
11     Hannifin group?

12           A.    Our last offer was approximately two weeks ago,  
13     and it was for \$1,500 per month, net acre, quarter  
14     royalty, a three-year term.

15           Q.    Very good.  I don't think I have -- well, let's  
16     see.  I'd like to get this data here, just in case we  
17     write these without -- the API number, I remember, was  
18     on the C-102, and the bottom-hole location and the  
19     surface location are on the C-102.  The bottom-hole  
20     location, again, is nonstandard.  So is the completed  
21     interval going to be entirely within the setbacks?

22           A.    Yes, sir, it is.

23           Q.    Actually, I believe that's the only datum  
24     that's not on here.

25                   EXAMINER BROOKS:  Unless you have anything

1 further for the witness, then, he may stand down.

2 MR. FELDEWERT: I do not know.

3 EXAMINER BROOKS: Call your next witness.

4 GREG CLARK,

5 after having been previously sworn under oath, was  
6 questioned and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FELDEWERT:

9 Q. Would you please state your name, by whom  
10 you're employed and in what capacity?

11 A. Yes. Greg Clark, Concho Resources, senior  
12 geologist.

13 Q. Mr. Clark, you have, likewise, previously  
14 testified before this Division and had your credentials  
15 as a petroleum geologist accepted and made a matter of  
16 record?

17 A. Yes, I have.

18 Q. And are you familiar with the application filed  
19 in this case?

20 A. I am.

21 Q. And have you conducted a geologic study of the  
22 area that is the subject of this application?

23 A. Yes.

24 MR. FELDEWERT: I would tender Mr. Clark as  
25 an expert witness in petroleum geology.

1 EXAMINER BROOKS: Any objection from  
2 Mr. Hannifin?

3 MR. HANNIFIN: Not at all.

4 EXAMINER BROOKS: So qualified.

5 Q. (BY MR. FELDEWERT) Would you turn,  
6 Mr. Clark, to what's been marked as COG Exhibit Number  
7 7? First identify it for us and explain what it shows.

8 A. Yes. This is a regional structure map on the  
9 top of the Paddock. You'll see existing fields are  
10 labeled in blue boxes. The contour interval on this is  
11 25 feet. And what you see here is a regional dip that  
12 goes from the northwest to the southeast basinward.  
13 You'll see Concho acreage in yellow, and in red, you  
14 will see our proposed Stonewall 9 Fee #3H well.

15 And the purpose of this map is to show that  
16 there is not any major geologic impediments that keep us  
17 separated from existing producing fields in the area.

18 Q. So no faults and no pinch-outs?

19 A. That is correct.

20 Q. Anything else about this exhibit?

21 A. Other than the Paddock producers are displayed  
22 in red, and the Blinebry producers are displayed in  
23 blue.

24 Q. Turn to what's been marked as COG Exhibit  
25 Number 8. What does this reflect?

1           A.    This is the same regional base map with the  
2    structure [sic] taken off. And this is going to show  
3    the next exhibit, the line of section for the cross  
4    section, which is going to go from A to A prime from the  
5    southwest to the northeast. And it includes wells from  
6    existing producing fields and goes through our area in  
7    which we want to drill the Stonewall 9 Fee #3H and up to  
8    the Dayton field to show the original similarities in  
9    terms of stratigraphy and rock type.

10          Q.    Now, it demonstrates, does it not, that one of  
11   the wells you utilized is the well on the west half-west  
12   half of Section 9?

13          A.    That is correct. The Stonewall 9 Fee 1H, we  
14   drilled a pilot hole, and we have incorporated that log  
15   into the cross section to show the similarities that I  
16   previously mentioned.

17          Q.    If I then turn to what's been marked as COG  
18   Exhibit Number 9, is this your cross section, A to A  
19   prime, going from south to north?

20          A.    Yes, it is.

21          Q.    What does this demonstrate?

22          A.    This is a stratigraphic cross section. It's  
23   been flattened on top of the Paddock. The structural  
24   component has been taken out in order to show the  
25   stratigraphic relationship of the wells that we feel are

1 representative of the producing fields and going through  
2 the area in which we would like to drill the Stonewall 9  
3 Fee #3H.

4           You will see the red boxes and red marks in  
5 the depth track of the well that is second from the left  
6 and third from the left, and the last well on the right  
7 of the cross section represents wells that have been  
8 perforated and completed in the Paddock interval. The  
9 Stonewall 9 Fee #1H, we did not complete the vertical  
10 part, because it is the pilot hole that you will see in  
11 the red bracket. That is the lateral interval in which  
12 we intend to land the Stonewall 9 Fee 3H.

13           The well that is on the left of the cross  
14 section and second from the right are Morrow gas  
15 producers and, therefore, have not been completed into  
16 the Paddock as to date.

17       Q.   What is the distinction between the solid red  
18 line that we see in the well second from the left and  
19 the last well and the dashes in red that we see in the  
20 third well?

21       A.   The third well was more of a limited entry type  
22 completion. Whereas, the other two were consistent  
23 perforations throughout those intervals.

24       Q.   What conclusions have you drawn from your  
25 study?



1           A.    I've concluded that there are no geologic  
2   impediments that would keep us from producing this area  
3   using full-section horizontal.  I also feel that the  
4   nonstandard unit will be efficiently and effectively  
5   developed using full-section horizontal, and feel that  
6   each 40 will contribute, on average, more or less  
7   equally to the total production of the well.

8           Q.    And finally, Mr. Clark, is COG Exhibit Number  
9   10 a drawing depicting that the completed interval for  
10   this well will indeed comply with the setback  
11   requirements under the Horizontal Well Rules?

12          A.    Yes, it does.

13          Q.    In your opinion, will the granting of this  
14   application be in the best interest of conservation and  
15   the prevention of waste and protection of correlative  
16   rights?

17          A.    Yes.

18          Q.    Were COG Exhibits 7 through 10 prepared by you  
19   or compiled under your direction or supervision?

20          A.    Yes, they were.

21                   MR. FELDEWERT:  Mr. Examiner, I'd move for  
22   admission as evidence COG Exhibits 7 through 10.

23                   EXAMINER BROOKS:  7 through 10 are  
24   admitted.

25                   (COG Operating, LLC Exhibit Numbers 7

1 through 10 were offered and admitted into  
2 evidence.)

3 MR. FELDEWERT: That concludes my  
4 examination of this witness.

5 EXAMINER BROOKS: Very good.

6 Did you have any questions, Mr. Hannifin?

7 MR. HANNIFIN: Just a couple questions.

8 CROSS-EXAMINATION

9 BY MR. HANNIFIN:

10 Q. At what point will the wellbore in this well be  
11 available to produce shallower zones?

12 A. Depth-wise?

13 Q. Yeah. Well, at what point in the production of  
14 this well can we start producing shallower formations  
15 and everything?

16 A. The vertical part would be a nonstandard --  
17 would be at a nonstandard location, so we would have to  
18 get granted approval to do anything.

19 Q. I'm talking about the wellbore itself. When  
20 would the wellbore itself be available for use?

21 A. It is not our intention at this point to  
22 complete anything uphole.

23 Q. Okay. In your definition -- you used the word  
24 "perforations" several times.

25 A. Yes.

1 Q. Specifically, what does that mean?

2 A. That means that you'll go in -- and, again, you  
3 know, I'm not a completion engineer, but to the best of  
4 my knowledge, we'll run a cemented line in, and then  
5 we'll perforate the intervals. And at no point will the  
6 last perforation be within the 330-foot setback.

7 Q. Okay. Thank you.

8 A. You're welcome.

9 EXAMINER BROOKS: I have no questions for  
10 this witness.

11 MR. FELDEWERT: Mr. Examiner, that  
12 concludes our presentation.

13 EXAMINER BROOKS: Mr. Hannifin, do you wish  
14 to take the witness stand?

15 MR. HANNIFIN: Sure.

16 EXAMINER BROOKS: Please do, then.

17 MARK A. HANNIFIN,  
18 after having been previously sworn under oath,  
19 was questioned and testified as follows:

20 MR. HANNIFIN: First of all, we want this  
21 well drilled.

22 I've been in the oil business since 1978.  
23 My parents were in it since the 1950s and my  
24 grandparents since the 1920s. So I've been familiar  
25 with the business.

1                   This is the first time in 30 years I've had  
2   to show up here to defend our interest because we  
3   couldn't negotiate with somebody. I'm a little confused  
4   about exactly why we're here when we leased to them  
5   before, and as far as we were concerned, we had a valid  
6   lease.

7                   When they proposed this well, they told us  
8   that they hadn't paid the delay rental on it, which is a  
9   paid-up lease, we thought -- but anyway. So we were  
10  going to use the same lease form that they had accepted  
11  two years ago.

12                  I guess the only thing we'd ask is to  
13   include in the pooling -- that the same lease form be  
14   used for leasing the unleased interests. That's really  
15   all we're asking. They didn't propose the lease form  
16   when they proposed a lease from us, so that stands open  
17   to discussion, I would think. And the one thing they've  
18   ever done on ours is try and cut stuff off of it and  
19   then say, Well, we're not going to accept it regardless;  
20   we want our lease form. And their lease form is pretty  
21   lopsided.

22                               CROSS-EXAMINATION

23   BY EXAMINER BROOKS:

24       Q.   The business terms -- that is the royalty and  
25   the bonuses -- is that unacceptable to you?

1           A.    No.  We told them we'd give them a free lease.  
2           And I've got the notes in here where the e-mails were  
3           exchanged back and forth.  We thought we actually had a  
4           lease.  We were willing to give them a six-month  
5           extension on the lease or a new lease for that period so  
6           they could go ahead and drill a well.  We have not been  
7           an obstructionist in this thing.

8           Q.    What are the terms that they've demanded that  
9           you find to be unacceptable?

10          A.    Well, basically, they want -- they don't  
11          want -- they want vertical severance but only below the  
12          deepest drilling, well drill.  We want 100-foot above  
13          and below the lease at the time they stop continuous  
14          development so that any shallow zones, we can go ahead  
15          and have produced or whatever.  We've been locked into  
16          that.  You know, many times over the years, we get stuck  
17          in there.  And as the geologist just said, they're not  
18          going to produce in those shallow zones.  Anything that  
19          they perforate -- actually, the lease says anything they  
20          perforate; I think what they meant was penetrate -- that  
21          they want to hold ad nauseam without producing, and  
22          that's not acceptable.  If we have a shallow zone out  
23          there that somebody else will drill a well on, use it or  
24          lose it.

25          Q.    In that context, it makes a big difference

1    whether you use the word "perforate" or "penetrate," and  
2    it's not clear --

3           A.    It does, and their lease actually says  
4    "penetrate," but the word is "perforate."

5           Q.    So your primary concern is about the shallower  
6    zones?

7           A.    That, and they have the right to flare gas  
8    without paying for it, which they've got -- obviously,  
9    by their maps in there, they've got pipelines fairly  
10   closer than -- probably not going to be a big issue.

11                   The payment on royalties doesn't require  
12   that they treat it as a third party. I don't know if  
13   they have gas plants in the area, but we want to  
14   negotiate it as a third-party contract or else payable  
15   at the wellhead, you know, just simple stuff like that.

16                   The lease form that we're using is actually  
17   derived from the State of Texas' lease form. And I'm  
18   suspecting that COG, in their doings in Texas, probably  
19   owns either mineral classified lands or leased mineral  
20   classified lands, Veterans Land Board lands, General  
21   Land Office lands or anything, in which case they're  
22   already using this lease form. And so it should be  
23   acceptable to them. It was acceptable to them two years  
24   ago, and all of a sudden, Nope, we can't do that.

25           Q.    Are there specific prospects or formations in

1 the shallower than the Yeso that you consider to be --

2 A. I'm not a geologist. I couldn't tell you.

3 It's just that if our hands are tied, they're tied.

4 Period.

5 Q. Very good. That's all my questions.

6 EXAMINER BROOKS: Mr. Feldewert?

7 CROSS-EXAMINATION

8 BY MR. FELDEWERT:

9 Q. Mr. Hannifin, have you explored or have you  
10 discussed, then, with the company other options besides  
11 leasing?

12 A. There was no need to until we settled on the  
13 leasing. Generally -- generally speaking, we're not  
14 going to participate in a horizontal. They're very  
15 extensive, and I'm not fully sold on the -- we've  
16 declined for a bond [sic] and everything, so typically  
17 we don't participate in the horizontals.

18 Q. But you're aware that there are other options  
19 in attempting to reach an agreement other than leasing?

20 A. Oh, yeah. We can go nonconsent.

21 Q. And you haven't -- you haven't considered that?

22 A. Of course we considered it. They're all three  
23 listed on there. My objection was, there was no lease  
24 form presented, as there was a JOA, to give us a full  
25 look at what they were proposing. Anyway, we went into

1 good-faith negotiations using the exact same form that  
2 was already accepted, and all of a sudden, that's off  
3 the table.

4 Q. You're not testifying that they have not  
5 provided you a proposed lease form, are you?

6 A. Oh, no, they proposed one.

7 Q. In fact, I think they -- is it not true that  
8 they sent you another lease proposal on November 6th?

9 A. No.

10 Q. You didn't receive that?

11 A. I have not received the second -- all they've  
12 done is changed the bonus.

13 Q. They sent you that proposal, correct?

14 A. For the bonus terms, yeah.

15 Q. And did you indicate, at the time, that you  
16 would review it and provide any changes to their lease  
17 form?

18 A. Their lease form we discussed before, and they  
19 weren't willing to change.

20 Q. But didn't you send an e-mail to them  
21 indicating that you would review their offer and discuss  
22 and provide changes to their proposed form by the first  
23 part of this month?

24 A. I may have.

25 Q. Have you sent any proposed changes to their



1 lease form to the company?

2 A. No. They stated it was on their lease form,  
3 so --

4 Q. That's all the questions I have.

5 EXAMINER BROOKS: Okay. I have nothing  
6 further, but I would like to recall your landman.

7 MR. FELDEWERT: Certainly.

8 STUART DIRKS,  
9 after having been previously sworn under oath, was  
10 recalled and questioned and testified as follows:

11 CROSS-EXAMINATION

12 BY EXAMINER BROOKS:

13 Q. I just wanted to ask you if you had discussed  
14 this issue of the shallow rights with Mr. Hannifin?

15 A. We did discuss.

16 Q. Okay. Given that your geologist testified that  
17 you have no interest in producing or at any time  
18 producing the shallow rights, what would be a reason for  
19 being unwilling to allow the royalty owner to retain  
20 those?

21 A. Well, we believe that once we've drilled  
22 through those horizons, we've earned some right to that.  
23 This is a very -- this is not a standard on any lease  
24 form I've seen out in this area.

25 Q. Yeah. Okay. That's all I have.

1 EXAMINER BROOKS: Did you wish to ask any  
2 further questions, Mr. Hannifin?

3 MR. HANNIFIN: Just one.

4 CROSS-EXAMINATION

5 BY MR. HANNIFIN:

6 Q. When did you begin your career as a landman?

7 A. 1989.

8 Q. You haven't seen any vertical -- verbal  
9 severance clauses?

10 A. In this area, it's not standard. I saw one in  
11 Nebraska once, I think.

12 Q. Uh-huh. If I can provide 80 or 100 of those,  
13 would you believe that they exist in New Mexico?

14 A. Yeah. Well, I've not personally seen them.

15 EXAMINER BROOKS: Mr. Feldewert?

16 MR. FELDEWERT: I have no further  
17 questions.

18 EXAMINER BROOKS: You may step down.

19 You're aware, of course, Mr. Hannifin, that  
20 while the Division has the power to make terms to  
21 provide -- prescribe terms that are fair and reasonable,  
22 there is one thing we don't have any authority to do,  
23 and that's that we don't have any authority to require  
24 any royalty owner to eliminate the royalty. If you get  
25 force pooled, you'll be under one-eighth royalty.

1 MR. HANNIFIN: (Indicating.)

2 MR. FELDEWERT: Mr. Examiner, if I may  
3 state, I mean, you're correct. I mean, the Division  
4 does not get into business terms like those that are  
5 raised by Mr. Hannifin. And I think the primary point  
6 here is, yes, the parties apparently can't reach an  
7 agreement on the lease form. I'm not aware of the  
8 Division requiring that any particular lease form be  
9 accepted by any company. This is a lease form that the  
10 company is using and has been using for quite some time  
11 now. The fact that they may have entered into a  
12 different type of lease form years ago shouldn't be of  
13 any interest to the Division.

14 The second point is that Mr. Hannifin's  
15 concern is the shallow rights. There certainly is a  
16 pooling order dealing with the zone in which they're  
17 producing, so he will retain those shallow rights under  
18 the terms of the pooling order.

19 EXAMINER BROOKS: Yes, you have a good  
20 point there, I believe.

21 Did you have anything further to say,  
22 Mr. Hannifin?

23 MR. HANNIFIN: I'd reiterate that I would  
24 like the lease form entered in as part -- the same as  
25 the JOA that's going to be a part of the case file, that

1 I would like our formal lease entered in as part of  
2 the --

3 EXAMINER BROOKS: So you want to present  
4 your lease form in evidence?

5 MR. HANNIFIN: Yes, sir.

6 EXAMINER BROOKS: Do you have a copy here?

7 MR. HANNIFIN: I do.

8 EXAMINER BROOKS: Okay. Would you tender  
9 it?

10 MR. HANNIFIN: I will.

11 EXAMINER BROOKS: Do you have a copy for  
12 Mr. Feldewert?

13 MR. HANNIFIN: I didn't make a lot of extra  
14 copies. I can certainly --

15 EXAMINER BROOKS: We will need to provide  
16 him with one.

17 MR. HANNIFIN: Not a problem. Let me dig  
18 it out. I wasn't planning on providing a bunch of  
19 stuff.

20 EXAMINER BROOKS: I'm going to mark this as  
21 Hannifin Exhibit Number 1.

22 MR. FELDEWERT: As I understand it,  
23 Mr. Hannifin, that is what you have termed "the Hannifin  
24 lease form"?

25 MR. HANNIFIN: Uh-huh.

1 EXAMINER BROOKS: And, Mr. Hannifin, this  
2 copy -- this exhibit you gave me has a bunch of  
3 handwritten notes on it.

4 MR. HANNIFIN: Those were some of the  
5 negotiating points we were engaged in with COG.

6 EXAMINER BROOKS: Okay. Since this is what  
7 you've -- do you have another copy of this with the same  
8 notes on it, or do you just have a clean copy?

9 MR. HANNIFIN: I've just got a clean copy.

10 EXAMINER BROOKS: Okay. Well, since this  
11 is what you're presenting in evidence, I think we will  
12 need to make a copy of this for Mr. Feldewert. So I  
13 will do that before you-all leave, because that's --  
14 Mr. Feldewert needs to have a copy of exactly what's  
15 been put in evidence.

16 MR. HANNIFIN: Sure.

17 EXAMINER BROOKS: Subject to that, I  
18 believe that if there are further negotiations -- you  
19 know, it usually takes close to 30 days or so to get  
20 these orders out, and the parties will have some more  
21 time to negotiate. And, of course, if you reach an  
22 agreement at any time, that would supersede any  
23 compulsory pooling order.

24 So on that basis, Case Number 15054 will be  
25 taken under advisement.

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MR. FELDEWERT: Thank you, Mr. Examiner.

(Hannifin Exhibit Number 1 was offered and  
admitted into evidence.)

(Case Number 15054 concludes, 9:21 a.m.)

I do hereby certify that the foregoing is  
a complete record of the proceedings in  
the examiner hearing of Case No. \_\_\_\_\_  
heard by me on \_\_\_\_\_.

\_\_\_\_\_, Examiner  
Oil Conservation Division

1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO  
3


4 CERTIFICATE OF COURT REPORTER

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

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

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

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