

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

**ORIGINAL**

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

APPLICATION OF CHESAPEAKE ENERGY  
CORPORATION FOR CANCELLATION OF A  
PERMIT TO DRILL ("APDs") ISSUED TO  
COG OPERATING, LLC, EDDY COUNTY,  
NEW MEXICO.

CASE NO. 14323

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Presiding Examiner  
TERRY G. WARNELL, Technical Examiner  
WILLIAM V. JONES, Technical Examiner

August 20, 2009

Santa Fe, New Mexico

This matter came on for hearing before the  
New Mexico Oil Conservation Division, DAVID K. BROOKS,  
Presiding Examiner, WILLIAM V. JONES, Technical Examiner,  
and TERRY G. WARNELL, Technical Examiner, on Thursday,  
August 20, 2009, at the New Mexico Energy, Minerals and  
Natural Resources Department, 1220 South St. Francis  
Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91  
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A P P E A R A N C E S

FOR THE APPLICANT:

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FOR COG OPERATING, LLC:

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1 MR. BROOKS: At this time we will call  
2 Case Number 14323, application of Chesapeake Energy  
3 Corporation for cancellation of a permit drill ("APDs")  
4 issued to COG Operating, LLC, Eddy County, New Mexico.  
5 Call for appearances.

6 MR. KELLAHIN: Mr. Examiner, I'm Tom  
7 Kellahin of the Santa Fe law firm of Kellahin & Kellahin,  
8 appearing on behalf of Chesapeake Energy Corporation this  
9 morning.

10 MR. HALL: Mr. Examiner, Scott Hall of  
11 Montgomery & Andrews law firm, Santa Fe, appearing on  
12 behalf of COG Operating, LLC. We have one witness this  
13 morning.

14 MR. BROOKS: Very good. Would the  
15 witnesses please stand to be sworn?

16 MR. HILL: I'm Tom Hill of Tom Hill, Inc.,  
17 in Midland.

18 MS. SPRADLIN: Jan Spradlin of COG.

19 MR. BROOKS: Please swear the witnesses.

20 (The witnesses were sworn.)

21 MR. BROOKS: Okay. You may proceed, Mr.  
22 Kellahin.

23 MR. KELLAHIN: Thank you, Mr. Examiner.

24 MR. BROOKS: Are you going to make an  
25 opening statement, Mr. Kellahin?

1 MR. KELLAHIN: Yes, Mr. Examiner.

2 MR. BROOKS: Okay. You may do so.

3 MR. KELLAHIN: I've circulated to the  
4 Division and to the attendants a locator map which is  
5 marked Chesapeake Exhibit 1. This map displays what is  
6 described as Section 11. This is the section which is  
7 the subject of the application before the Examiner this  
8 morning.

9 I want to focus your attention on the south  
10 half of the south half of Section 11. The permit that  
11 COG, Concho -- and I use those names interchangeably.  
12 Some people call it Concho and others call it COG  
13 Operating. COG Operating has applied for and obtained a  
14 federal APD for a horizontal wellbore with the surface  
15 location starting off in the southwest of the southwest  
16 of 11 and traversing the south half of the south half to  
17 form a lay-down four-track 160-acre non-standard  
18 proration unit for the drilling of this well.

19 MR. BROOKS: Is this APD the only one  
20 that's subject to this proceeding, not the other one?

21 MR. KELLAHIN: That's right. The one  
22 we're looking for, the south half of the south half, is  
23 the subject of this application. And this was also the  
24 subject of the various motion hearings that you heard and  
25 decided previously.

1 MR. BROOKS: Okay.

2 MR. KELLAHIN: What Chesapeake is  
3 concerned about is the ownership in the south half of the  
4 south half. Concho has no interest in the oil and gas  
5 minerals underlying the south half of the southwest  
6 quarter. That includes the surface location for the well  
7 and the first 1,604 feet of the producing interval for  
8 the wellbore. The actions by COG adversely affect  
9 Chesapeake's correlative rights.

10 As the Examiner is aware, there is a Division  
11 Form C-102 that has a certification on that form. That  
12 certification was altered to have specific language as a  
13 result of a case decided between Chesapeake and Samson  
14 some time ago. It was the KF State 4 dispute. The form  
15 now requires -- and the one that COG used -- declares  
16 that the operator has an interest in the minerals  
17 underlying the surface location or has voluntarily  
18 consolidated those interest owners. Concho has done none  
19 of those things.

20 It is our contention that the evidence will  
21 demonstrate that Concho has violated the rules and  
22 regulations of the Division by obtaining  
23 federally-approved APD, utilizing this C-102 Form, where  
24 the certification has been improperly certified. The  
25 actions of COG threaten mineral trespass against those

1 interest owners in the south half of the southwest  
2 quarter, including Chesapeake.

3 It is our contention that the key facts for  
4 your consideration are not in dispute. The information  
5 shows that on April 20th of last year, Concho filed this  
6 APD with the BLM using the OCD form for the Blackhawk 11  
7 Federal Com Well 1H. Then 11 months later, on May 25th  
8 of this year, Concho files a compulsory pooling  
9 application against Chesapeake. It was not until August  
10 11th of this year that Chesapeake did propose this  
11 wellbore to -- Concho propose this wellbore to  
12 Chesapeake.

13 In summary, Mr. Examiner, Chesapeake urges the  
14 Examiner to cancel Concho's application for permit to  
15 drill, and to prevent Concho from utilizing an approved  
16 APD as a strategy to control the acreage in which it has  
17 no interest. The permit should be the last step in  
18 obtaining the permission to go forward with the well  
19 after the proposal well, after you have a voluntary  
20 agreement or after compulsory pooling. Then you apply  
21 for a permit. That's the subject matter for which we're  
22 asking you to make a decision today. And as I've  
23 contended, we believe the facts are not in dispute.

24 MR. BROOKS: Thank you. Mr. Hall, do you  
25 wish to make an opening statement at this time or defer?

1 MR. HALL: Yes, sir. I'll make a brief  
2 statement.

3 Mr. Examiner, for the second time now in four  
4 years, Chesapeake is placing the Examiner in the position  
5 of having to adjudicate property rights, make a  
6 determination of the right of an operator to occupy  
7 and/or drill on lands, and despite the fact that the  
8 Division and the Commission has repeated in numerous  
9 subsequent cases that they will not do that. Here we are  
10 again.

11 Chesapeake is before you. It wants you to  
12 decide again whether or or not Concho, COG, has the right  
13 to do what it's doing. This stems, I think, from  
14 Chesapeake's failed effort in Case Number 13492. It was  
15 consolidated with Case Number 14393, involving what I  
16 thought was a true case of trespass onto the surface for  
17 a vertical wellbore off Chesapeake's lease interest.

18 The result of that case was Chesapeake was  
19 removed as operator of that well, and as a side light,  
20 the Division and then the Commission made provision for a  
21 certification to be contained on C-102 filings for  
22 operators to fill out that they had an interest in the  
23 lands or the wellbores. If I may approach, I'll provide  
24 you with the text of that certification.

25 I think we'll be referring to this a number of

1 times today. I think this language, this certification,  
2 will be the focus of the testimony of both parties before  
3 you, and I think, really, that's all. Because of that, I  
4 think the Examiner would want to ask the question of  
5 Chesapeake, "How are you harmed here by what Concho has  
6 done? How are your correlative rights adversely  
7 affected," as Mr. Kellahin has said. We'd like to know  
8 that. "What provisions of the Oil and Gas Act, what  
9 provisions of the Division's rules have been violated by  
10 Concho?" I think they're going to have to answer those  
11 questions for you, and I don't think they have an answer  
12 to those questions.

13 I think at the end of the hearing it will be  
14 clear that, once again, there is no present case or  
15 controversy. This case is not right for adjudication,  
16 and Chesapeake seeks nothing more than an advisory  
17 opinion, which I don't think this Division is in the  
18 business of rendering.

19 So given a favorable decision to Chesapeake,  
20 given an unfavorable decision to Chesapeake, what will  
21 they do with that? That's what we're to look at. Thank  
22 you, Mr. Examiner.

23 MR. BROOKS: Mr. Hall, you mentioned --  
24 you said something about asking the Commission or the  
25 Division to adjudicate title, and Mr. Kellahin, in his

1 opening statement, indicated that title was not in  
2 dispute. Is there any title dispute in this case, or is  
3 there going to be evidence regarding any difference of  
4 opinion regarding title?

5 MR. HALL: There shouldn't be a difference  
6 of opinion regarding title. We will put on evidence of  
7 title. But I think implicit in Chesapeake's application,  
8 it calls for a demonstration of the right to occupy, the  
9 right to make the certification and the right to drill  
10 here. We are prepared to do that.

11 MR. BROOKS: I would certainly concede  
12 that if there is a dispute as to title, the OCD has no  
13 jurisdiction to consider that. However, the dealings  
14 I've done with this case before, as well as Mr.  
15 Kellahin's opening statement, indicated to me that there  
16 probably was not a title dispute in this case. You may  
17 proceed, Mr. Kellahin.

18 MR. KELLAHIN: Thank you, Mr. Examiner.  
19 At this time we call Ms. Jan Spalding.

20 MR. BROOKS: Ms. Spalding?

21 MS. SPRADLIN: Spradlin.

22 MR. KELLAHIN: I'm sorry.

23 MR. BROOKS: We apologize for  
24 mispronunciation of your name. Please take the witness  
25 stand. You've already been sworn.

1 MR. KELLAHIN: I apologize for  
2 mispronouncing your name. I've heard it so many times.  
3 I still can't say it.

4 JAN PRESTON SPRADLIN

5 Having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. KELLAHIN:

8 Q. Ms. Spradlin, for the record, would you please  
9 state your name and occupation.

10 A. My name is Jan Preston Spradlin. I'm a senior  
11 landman at Concho, COG.

12 Q. In your capacities as a landman, have you made  
13 yourself familiar with the Blackhawk wells that we're  
14 discussing in Section 11?

15 A. Yes, sir.

16 Q. As part of that effort, are you familiar with  
17 the working interest ownership in the south half of the  
18 south half of Section 11?

19 A. I am to the point of the abstract of title we  
20 have run to do our initial title checks.

21 Q. If you have before you what I have shown the  
22 Examiner --

23 MR. BROOKS: Excuse me, Mr. Kellahin. Are  
24 you going to qualify the witness as an expert?

25 MR. KELLAHIN: Not just yet. I want to

1 lay a better foundation.

2 MR. BROOKS: Okay. You may continue.

3 Q. (By Mr. Kellahin) Would you look at Exhibit  
4 Number 1 for me?

5 A. Exhibit 1?

6 Q. Chesapeake Exhibit 1, which is a color display  
7 map.

8 A. Okay.

9 Q. When you talk about the title information you  
10 have, do you have any disagreement with the data that is  
11 displayed on Chesapeake's Exhibit Number 1?

12 A. I am not aware -- I mean, this is from the  
13 JOA, which I do not have access to. I had access to the  
14 federal records and to the state records on who has  
15 record title and operating rights.

16 Q. Let me ask this a different way.

17 A. I'm not questioning Chesapeake, Devon and  
18 McDonald. I just don't know those percentages.

19 Q. Let me ask it a different way. As part of  
20 your work, you have studied -- do you like to be called  
21 Concho or COG?

22 A. We go by -- interchangeable.

23 Q. I'm going to use COG because I'm used to it.  
24 In terms of your study of COG's interest, to the best of  
25 your knowledge, their interest is confined to the

1 southeast quarter of 11 -- mineral interest?

2 A. Yes. That's correct.

3 Q. And when we look at the southwest quarter  
4 section of 11, the mineral interest, COG or Concho has no  
5 mineral interest in that 160 acres?

6 A. I agree.

7 Q. Are you aware of the permitting by Concho of  
8 the Blackhawk 11 Well in the south half of the south half  
9 of Section 11?

10 A. Yes, sir.

11 Q. On prior occasions have you testified before  
12 the Division Examiner?

13 A. Yes, I have.

14 Q. As part of that testimony, have you been  
15 accepted and qualified as an expert landman?

16 A. Yes, I have.

17 MR. KELLAHIN: We tender Ms. Spradlin as  
18 an expert landman.

19 MR. HALL: I guess I won't object to my  
20 own witness.

21 MR. BROOKS: So qualified.

22 Q. (By Mr. Kellahin) Let me show you another  
23 document.

24 MR. BROOKS: Are you going to give this an  
25 exhibit number?

1 MR. KELLAHIN: It should be Exhibit Number  
2 2, Mr. Examiner. I apologize for not getting that --

3 MR. BROOKS: Very good.

4 Q. (By Mr. Kellahin) Ms. Spradlin, were you  
5 assigned responsibility for contacting the other working  
6 interest owners for participation in the Blackhawk 11  
7 Federal Com Well No. 1?

8 A. Yes, I was.

9 Q. I've shown you what is marked as Chesapeake  
10 Exhibit Number 2.

11 A. Um-hum.

12 Q. This is a facsimile. It contains a cover  
13 sheet and goes all the way over to page 7. Are you  
14 familiar with this transmittal?

15 A. Yes, I am.

16 Q. Is this, in fact, a transmittal that you  
17 executed and sent?

18 A. Yes. At my direction.

19 MR. KELLAHIN: Mr. Examiner, we move the  
20 introduction of Exhibit Number 2.

21 MR. HALL: No objection.

22 MR. BROOKS: Exhibit 2 is admitted.

23 (Exhibit 2 was admitted.)

24 Q. (By Mr. Kellahin) When you turn over to the  
25 next page, it is a letter dated August 11th, just over

1 your signature?

2 A. Yes.

3 Q. Is this the first occasion in which you've had  
4 to send written correspondence to Chesapeake proposing  
5 this particular wellbore to them?

6 A. Yes.

7 Q. When you turn past the letter, there's a --  
8 your signature page. I may have miscollated, but the  
9 next page you should see is an AFE.

10 A. Correct.

11 Q. Following the AFE you've attached a portion of  
12 the federal permit that includes the cover sheet, and it  
13 has, then, attached to that a Division Form C-102?

14 A. Correct.

15 Q. When you turn back to the federal APD page, do  
16 you have an approximate date at which Concho filed this  
17 APD with the BLM?

18 A. I'm trying to remember the dates.

19 Q. Let me show you something and see if it  
20 refreshes your recollection. If you look at the first  
21 page of the APD, in Line 25, there's a signature, Lee Ann  
22 Rollins. It's dated 4/30/08?

23 A. Correct.

24 Q. Would that have been the approximate date in  
25 which this document was filed, or was it done after that?

1           A.       That would have been the approximate date.  
2           That was our contractor who was filing for us and, you  
3           know, doing all our contract work for us on regulatory  
4           and surface.

5           Q.       When you turn past the APD and you get to the  
6           Form C-102, you see the operator certification there?

7           A.       Yes, sir.

8           Q.       Who is this individual?

9           A.       Phyllis Edwards is our regulatory analyst in  
10          house.

11          Q.       What does a regulatory analyst do?

12          A.       She -- currently she files all -- they file  
13          all our permits. They work with our surface landman.  
14          And any issues that we need -- she does all of the  
15          physical permitting.

16          Q.       Do you provide her information when she  
17          executes the certification?

18          A.       As far as --

19          Q.       -- the ownership and who's involved in the  
20          spacing unit.

21          A.       The land department is responsible for -- we  
22          look over the plat and make sure that it covers the  
23          correct area.

24          Q.       Would you have seen this plat before it was  
25          signed and executed?

1           A.     Yes.  I would have been given a copy of it,  
2     yes.

3           Q.     Did you alert Ms. Edwards to the fact that  
4     Concho did not have a mineral interest in the south half  
5     of the southwest quarter?

6                     MR. HALL:  I'll object.  That  
7     mischaracterizes what's shown on the exhibit.

8                     MR. BROOKS:  Overruled.

9           Q.     (By Mr. Kellahin)  Do you have the question?

10          A.     No.  I don't understand your question, either,  
11     so --

12          Q.     When you look at the certification, there's a  
13     certification as to an area that is the producing area  
14     and the project area.

15          A.     Right.

16          Q.     The certification contains language about  
17     information about control of the minerals.

18                     Let me try it this way:  Did you ever advise  
19     Ms. Edwards that Concho did not have a mineral interest  
20     in the south half of the southwest quarter for which this  
21     certification covers?

22          A.     No, I didn't, because it's within -- we own  
23     lands within the project area.

24          Q.     Do you handle all of your horizontal wellbore  
25     filings in this fashion?

1           A.     I assume -- I mean, I would look at the  
2 permit. We have an ownership within the project area in  
3 a horizontal well.

4           Q.     So you're looking only to see if you have the  
5 ownership in any of the tracts in the project area? Is  
6 that what you do?

7           A.     Yes. We look at the project area.

8           Q.     Let's look at this project area. When you  
9 look at the project area which is the south half of the  
10 south half of 11, in that project area, you would have  
11 mineral interest in two of the four quarters?

12          A.     Correct.

13          Q.     Is it your understanding that all you need is  
14 an interest in one of those tracts to file for and obtain  
15 an approved APD?

16          A.     Yes.

17          Q.     That's what you do?

18          A.     We have to own within the project area.

19          Q.     And your ownership could be confined to a  
20 fractional share of one of the 40-acre tracts?

21          A.     Correct.

22          Q.     If you turn back to the letter, itself, if you  
23 look at the first paragraph, you're including within this  
24 well proposal an AFE and a copy of the permit.

25          A.     Correct.

1 Q. Is it Concho's strategy to get permits first  
2 and then propose the well?

3 A. We do the permitting process first. We  
4 determine an area we're going drill in. We geologically  
5 determine that, which is out of my realm. We then either  
6 acquire the acreage, or we have the acreage that we're  
7 going to drill. Then we go through the permit process.  
8 We determine if it's split estate, the ownership,  
9 whatever. Yes, we do get a permit first, because,  
10 without a permit -- you don't know how long permitting is  
11 going to take, whether it's federal or state. And you  
12 want to make sure you have all the people in your lands.  
13 And then once we have a permit, this well goes on to a  
14 drilling schedule. We notify our partners or potential  
15 partners, and that's when we start the process of  
16 notification.

17 Q. You could do this another way, could you not?

18 A. This is the process in our company. It is the  
19 process that I did in my prior company.

20 Q. Let me explain the process, then. As I  
21 understand it, you get the permit first. And then along  
22 with the pooling application, you send that permit and a  
23 well proposal and AFE to the parties?

24 A. Yes.

25 Q. You choose not to determine the ownership in

1 the proposed spacing unit first and send those proposals  
2 to those interest owners first, to see if they want to  
3 participate?

4 A. No. We do our permitting process first  
5 because of the timelines involved.

6 Q. Do you perceive that you're gaining some type  
7 of advantage over other operators by getting a permit  
8 over acreage in which you have no interest?

9 A. No.

10 Q. Where is this well on your rig schedule?

11 A. It is anticipated we'll spud probably in the  
12 first -- end of the first quarter of 2010.

13 MR. KELLAHIN: Mr. Examiner, I'd also move  
14 the introduction of Exhibit 1.

15 MR. BROOKS: Exhibit 1 is admitted.

16 (Exhibit 1 was admitted.)

17 MR. KELLAHIN: I'll pass the witness.

18 MR. HALL: Do you mean Exhibit 2?

19 MR. KELLAHIN: I already --

20 MR. BROOKS: Exhibit 2 was previously  
21 admitted. Exhibit 2 is the map. I'm sorry. I didn't  
22 give you an opportunity to object to Exhibit 1, Mr. Hall.

23 MR. HALL: There's no objection.

24 MR. BROOKS: Exhibit 1 and 2 are admitted.  
25 Are you passing the witness, Mr. Kellahin?

1 MR. KELLAHIN: Yes, sir.

2 MR. HALL: I'll take the witness under the  
3 ambient of cross-examination, subject to the right for me  
4 to call her on my case. That's the way it works; right?

5 MR. BROOKS: Yes. However, you will not  
6 be allowed to ask her leading questions, except that  
7 we're usually fairly tolerant about that, usual  
8 tolerance, but no more.

9 MR. HALL: Seems fair.

10 CROSS-EXAMINATION

11 BY MR. HALL:

12 Q. Ms. Spradlin, let me ask you about  
13 Chesapeake's Exhibit 1, the well proposal for this --

14 MR. WARNELL: That's Exhibit 2.

15 Q. Let's ask about Exhibit 2, then, the well  
16 proposal. Have you had a response from Chesapeake to the  
17 well proposal?

18 A. Not specific to the well proposal. I have  
19 been called by Kevin and asked about an operating  
20 agreement.

21 Q. And Kevin is Kevin Pfister, the addressee on  
22 the well proposal?

23 A. Yes.

24 Q. Was there any indication by Mr. Pfister or  
25 anyone else at Chesapeake that they would not participate

1 in the well?

2 A. He didn't give me any indication either to or  
3 from, but he asked me what operating agreement we would  
4 be using, which is the one that we have used in other  
5 instances, in our 1531 for horizontal wells.

6 MR. HALL: No further questions.

7 MR. BROOKS: Mr. Warnell?

8 MR. WARNELL: No questions.

9 MR. BROOKS: Mr. Jones?

10 MR. JONES: I think I'll wait.

11 EXAMINATION

12 BY MR. BROOKS:

13 Q. Okay. Ms. Spradlin --

14 A. Yes, sir.

15 Q. I got it right this time -- you testified that  
16 the time that -- that your reason for applying for a  
17 permit to drill prior to proposing a well had to do with  
18 the time frames involved in obtaining a permit to drill,  
19 and you said something about whether it was federal or  
20 state. You would agree with me, would you not, that  
21 there's a considerable difference between the time frames  
22 for United States Bureau of Land Management versus NM  
23 OCD?

24 A. Correct. But sometimes it takes up to six to  
25 seven months for us to get a permit if there's any type

1 environment problem -- I mean, just -- we've had them  
2 take that long.

3 Q. You're talking about a federal U.S. BLM --

4 A. Um-hum. If it has federal lands in it, we  
5 still go through the process of each.

6 Q. If your wellbore is penetrating any federal  
7 lands, as I understand it, you have to get a U.S. BLM  
8 approval, even though the surface location is state  
9 lines?

10 A. That's correct.

11 Q. And if you have only state and fee lines, then  
12 the process would be considerably expedited, would it  
13 not?

14 A. If we just had state lands involved?

15 Q. If you had only state or private lands  
16 involved.

17 A. That's correct.

18 Q. You have to file only with the Oil  
19 Conservation Division?

20 A. Um-hum.

21 Q. In your experience, how long does -- you said  
22 it took six to seven months for the BLM to approve?

23 A. Sometimes it -- because doing the horizontal,  
24 they have to have -- and I'm not an engineer, and I don't  
25 know the -- I mean, as far as actual -- but the

1 attachments, the drilling plans that we have to do,  
2 sometimes takes our engineer -- because these wells  
3 are -- they're doing like nine-stage fracs, 10-stage --  
4 you're getting into a realm I have -- I'm just clueless.

5 Q. I'm not an engineer, either.

6 A. But they're -- sometimes it gets thrown back  
7 because there's questions or whatever. It's just been a  
8 process that I have always gotten a permit, because you  
9 have no rights to go out, and then you get the joinder of  
10 all your potential partners, or if you have a split  
11 estate, it's a whole other issue. It took me probably --  
12 on one of my agreements, knowing we were going to be  
13 drilling in multiple locations, it took me about six  
14 months to get a surface agreement in place with a surface  
15 owner.

16 Q. In this case the State of New Mexico owns the  
17 surface.

18 A. That's correct.

19 Q. So since it's not fee surface, you don't --  
20 well, if it were federal surface you would have to -- if  
21 it were private surface and federal minerals, you'd have  
22 to comply with the BLM?

23 A. Um-hum.

24 Q. If it's private surface and state minerals,  
25 then you have to comply with the surface owner

1     protections?

2             A.     Um-hum.

3             Q.     But neither of those apply when the state owns  
4     the surface.

5             A.     That's correct.

6             Q.     So you don't have split estate concerns in  
7     this particular case?

8             A.     Not in this particular case.

9             Q.     Are you aware of the Oil Conservation  
10    Division's policy with regard to the approval of an  
11    application for permit to drill at a location at which a  
12    previous APD has been approved for another operator?

13            A.     I'm not following. I'm sorry.

14            Q.     If Operator A obtains a permit to drill at a  
15    particular location, and Operator B then files an  
16    application with the NM OCD for approval of a permit to  
17    drill at that same location, are you familiar with the  
18    action that would be taken by OCD on that application?  
19    The second application.

20            A.     I would say it would not be processed. I  
21    don't know, since I'm not filing permits.

22            Q.     So you're not aware of it? You're merely  
23    speculating?

24            A.     I'm just speculating.

25            Q.     But your speculation would be that it would

1 not be approved?

2 A. That is what I would think.

3 Q. Okay.

4 A. But I don't know.

5 Q. Given that, would you not conclude that the  
6 approval of an APD has some effect in the present time on  
7 the operator who owns the mineral interest in that land,  
8 in that he cannot, then, go and apply for an APD and get  
9 it approved by the OCD at a particular location?

10 A. I guess it -- obviously, if you can only have  
11 one operator on one location, probably it would affect if  
12 somebody came and applied for a permit subsequent to  
13 yours.

14 MR. BROOKS: Thank you. That's all I  
15 have. Mr. Kellahin?

16 MR. KELLAHIN: Nothing further, sir.

17 MR. BROOKS: The witness may stand down.  
18 Is that your only witness, Mr. Kellahin?

19 MR. KELLAHIN: Yes, sir. I have some more  
20 documents to submit to you.

21 MR. BROOKS: The witness may step down  
22 from the witness stand. You're not excused, because I  
23 understand Mr. Hall plans to call you again.

24 MR. BROOKS: I'm sorry, Mr. Hall. I did  
25 not give you a chance to recross the witness in light of

1 the Examiner's questions.

2 MR. HALL: That's all right.

3 MR. BROOKS: Since you're calling the  
4 witness again, you can address the matters at that time.

5 MR. KELLAHIN: Mr. Examiner, I have  
6 submitted what is marked as Chesapeake Exhibit Number 3.  
7 It's a certification that the OCD Website contains the  
8 federal APD we've been talking about here today.

9 MR. BROOKS: I have Exhibits 1 and 2.

10 MR. KELLAHIN: Three is the one I just  
11 marked. It's got the sticker on it.

12 MR. BROOKS: Okay. Sorry about that.

13 MR. KELLAHIN: The certification is to  
14 indicate that these are true and correct copies of the  
15 Internet of the Division's Web page for the federal APD  
16 for the Blackhawk 11 No. 1 well. The permit is 45 pages.  
17 I have chosen to select the first nine of them, which  
18 more completely explain the approvals and the sequence  
19 for the drilling, and they are the same first pages that  
20 were attached to the letter that Concho sent to  
21 Chesapeake, which is Exhibit Number 2. And so we would  
22 move the introduction of Exhibit Number 3 at this time.

23 MR. HALL: Mr. Examiner, I would object.  
24 It's not a complete APD package. I believe the contents  
25 are accurate but, again, it's not complete. We plan on

1 presenting to you the complete APD package among our  
2 exhibits. So with that caveat --

3 MR. BROOKS: Under the Rule of Option of  
4 Completeness, you have the right to present that at this  
5 time. Although, since we're not dealing with jury  
6 issues, I am not sure what difference it makes. If you  
7 wish to offer the full APD in evidence at this time, you  
8 may do so.

9 MR. HALL: We'll do that,

10 MR. BROOKS: Very good. You may continue,  
11 Mr. Kellahin. The objection is overruled.

12 (Exhibit 3 was admitted.)

13 MR. KELLAHIN: Mr. Examiner, Exhibit 4 is  
14 my certification of notice of hearing indicating that  
15 we've notified COG Operating, Tim McDonald and Devon of  
16 this application. Mr. Hall and his clients have been  
17 actively involved in the case. So with your permission,  
18 we move the introduction of the certificate notice,  
19 which is Concho Exhibit 4.

20 MR. BROOKS: Objection?

21 MR. HALL: No objection. I would only  
22 note that interested parties in the State of New Mexico  
23 and the Bureau of Land Management have not been notified.

24 MR. BROOKS: Exhibit 4 is admitted.

25 (Exhibit 4 was admitted.)

1 MR. KELLAHIN: That concludes our direct  
2 case, Mr. Examiner.

3 MR. BROOKS: Very good.

4 MR. HALL: If that's the case, Mr.  
5 Examiner, I would move to dismiss. We've heard no  
6 Chesapeake witness. Chesapeake has failed to establish  
7 how these facts result in a violation of any provision of  
8 the Oil and Gas Act or any one of the Division's rules or  
9 regulations. It's failed to demonstrate harm. It's  
10 failed to demonstrate how its correlative rights are  
11 impaired, and it's failed to demonstrate the occurrence  
12 of any waste at all. In Mr. Kellahin's opening  
13 statement, he promised us he would provide evidence, at  
14 least of impairment of correlative rights. That's not  
15 forthcoming. I don't think they have a case. Again,  
16 they're asking for an advisory opinion, and I think this  
17 case should go away.

18 MR. BROOKS: I'm going to overrule the  
19 motion to dismiss. I will limit my reasons at this time  
20 to those that are necessary, which is that the Hearing  
21 Examiner and the Oil Conservation Division are here only  
22 for the purpose of conducting a hearing and do not have  
23 the right to make a decision. The decision is to be made  
24 by the director. I believe it is not within our  
25 jurisdiction to entertain what is, in fact, a motion for

1 directed verdict. So I will overrule the motion on that  
2 ground. You may proceed.

3 MR. HALL: I'd like to make an additional  
4 speaking motion. I think there's been a failure to join  
5 necessary parties here. As we understand, the relief  
6 requested by Chesapeake is for the Division to issue a  
7 cancellation of a federally-approved APD. There's been  
8 no effort to notify the Bureau of Land Management. I  
9 think their presence is necessary. It's questionable  
10 whether you can assume jurisdiction over that agency, but  
11 I think it would be necessary for this agency's action at  
12 all. That's the grounds for dismissal.

13 MR. KELLAHIN: To you remind you, Mr.  
14 Examiner, that at the motion hearing we had this same  
15 discussion, and the order you entered in denying Mr.  
16 Hall's motions said the Division had the ability to craft  
17 a solution for answering this case that would not  
18 interfere with the BLM permitting process. I don't know  
19 the exact language, but it was the last language of the  
20 order.

21 MR. BROOKS: I will overrule the motion.  
22 You may proceed, Mr. Hall.

23 MR. HALL: At this time, Mr. Examiner, we  
24 would call Jan Spradlin back to the stand.

25 MR. BROOKS: Okay. You are still under

1 oath. You may proceed.

2 JAN PRESTON SPRADLIN

3 Having been first duly sworn, testified as follows:

4 DIRECT EXAMINTION

5 BY MR. HALL:

6 Q. Again, for the record, state your name.

7 A. It's Jan Preston Spradlin.

8 Q. We've established you are an employee of COG  
9 Operating, Concho?

10 A. Yes, sir.

11 Q. As a landman?

12 A. Yes.

13 MR. HALL: Excuse me for leading on this  
14 portion, Mr. Examiner.

15 Q. (By Mr. Hall) Tell us your exact job title.

16 A. Senior landman.

17 Q. You're familiar with the application that's  
18 been filed by Chesapeake in this case?

19 A. (Witness nods head.)

20 Q. You need to answer verbally.

21 A. Yes, I am.

22 Q. And you're familiar with the lands and well  
23 that are the subject of Chesapeake's application?

24 A. Yes, I am.

25 Q. Okay. Tell the Hearing Examiner what is the

1 primary geologic objective for the Blackhawk Fed Com 1H  
2 Well.

3 A. It's a horizontal lower Abo Wolfcamp 160-acre  
4 project area.

5 Q. All right. Does COG operate a number of other  
6 Abo Wolfcamp wells in this area?

7 A. Yes.

8 Q. Based on Concho's experience, has the company  
9 concluded that these Abo Wolfcamp reserves are best  
10 accessed by the horizontal drilling process?

11 MR. KELLAHIN: Objection. Beyond the  
12 expertise of this witness. It calls for an engineering  
13 geologic conclusion.

14 MR. HALL: I'm asking for her knowledge.

15 MR. BROOKS: I will sustain the objection  
16 insofar as it can be construed as anything more than just  
17 what COG may believe.

18 Q. (By Mr. Hall) Is it Concho's practice now to  
19 access these Abo Wolfcamp reserves with horizontal  
20 drilling projects?

21 A. It is.

22 Q. Have horizontal projects turned out to be  
23 superior producers to vertical drills?

24 A. Yes.

25 Q. How are other operators developing these

1 reserves, if you know?

2 MR. KELLAHIN: Objection. Calls for an  
3 engineering geologic conclusion.

4 MR. BROOKS: It sounds like just a factual  
5 question, not an opinion question, so I'll overrule.

6 A. COG has drilled eight or nine current wells.  
7 One is completing. Eight are producing in 1628 and 1629.  
8 We have multiple proposals out we're working on to drill  
9 additional wells. The results of these wells, from my  
10 standpoint, have been excellent.

11 Q. Are there other operators in this area that  
12 are developing these reserves with horizontal drilling  
13 projects?

14 A. Yes.

15 Q. Can you name some?

16 A. Cimarex, Mack Energy, Chase, Murchinson.  
17 Chesapeake has drilled one and has one permitted. I'm  
18 trying to remember my map. EOG is drilling some wells.

19 Q. In connection with the Blackhawk 11 1H, has  
20 Concho designated a non-standard unit comprised of four  
21 40-acre adjacent units for a horizontal drilling project  
22 area comprising the south half of the south half of  
23 Section 11?

24 A. Yes, we have.

25 Q. And in doing so, is development of this basis

1 consistent with the established development pattern in  
2 the area?

3 A. Yes, it is.

4 Q. If we look at your exhibits, do you have an  
5 exhibit that will demonstrate this for us? Let's look at  
6 Exhibit 1.

7 MR. KELLAHIN: I'll object on the grounds  
8 of relevance. This has nothing to do with the  
9 application before you.

10 MR. BROOKS: I'll overrule the objection  
11 for now.

12 Q. (By Mr. Hall) What does Exhibit 1 show us?

13 A. That shows all the horizontal wells that have  
14 been permitted and drilled in what is considered the  
15 lower Abo Wolfcamp horizontal play as to 16 South 27  
16 through 1531. It's the general area of that play and the  
17 permitted wells, the completion and the various  
18 operators.

19 Q. Tell us what your symbology means here. Can  
20 you distinguish the blue and red and black for us?

21 A. The red are permitted or to be permitted APDs  
22 that are operated by Concho, COG. Black are completed  
23 horizontal completions, and the blue are wells that are  
24 permitted by other operators for lower Abo Wolfcamp  
25 permits.

1 Q. Have you tabulated the number of vertical  
2 wells and horizontal wells operated and non-operated?

3 A. I have. There have been a total number of  
4 permitted horizontal wells in this play, in 16 South, 28  
5 East 29 and 29, 116 of them. There are 235 in the total  
6 play, which is 315 31. COG, as I said earlier, has  
7 producers. One that is currently being completed, and  
8 one we're drilling a step out to this play, which is  
9 quite further east.

10 Q. Let me ask you, with respect to the Blackhawk  
11 1H, when you went through the process of establishing  
12 the non-standard unit for the well, did you follow all of  
13 the applicable state regulations, including the state's  
14 rules for designating special project areas to horizontal  
15 well projects?

16 A. Yes. Back when I started working this play  
17 back in late 2006, after we purchased the Chase  
18 properties, we acquired a lot of acreage in southeast New  
19 Mexico, and that was -- the Ranger built well was one of  
20 those wells. It was the first well drilled. And it --  
21 when I saw the permit for -- I'd never done horizontal  
22 wells before. And when we were working on it, I was  
23 like, "What's a project area?" So I called and talked to  
24 the district office, OCD office, to find out what the  
25 point was of the project area, what it meant, because I

1 knew that spacing was 40 acres for the Wolfcamp, for oil.

2           And they explained it to me that if you -- the  
3 Reindeer wasn't an issue, but we had wells we were  
4 getting ready to permit. The Reindeer was 100 percent  
5 COG, but I had other wells that I was going to be  
6 permitting that weren't a hundred percent in that 160.  
7 They said that you had to designate the project area, and  
8 that was -- it was not in the rules, because horizontal  
9 rules aren't available out -- to look them up and say  
10 it's "a rule."

11           So you use that project area as, basically,  
12 one spacing unit, and it can be comprised of up to four  
13 40s for a Wolfcamp horizontal well. They can be shorter,  
14 and your allowable is based on your 40-acre allowable  
15 that is within the state rules. And I believe that's --  
16 I want to say 146, but I'm not sure on that.

17           So when we do our permits now, I look at that  
18 project area. And I asked about the certification, and I  
19 was told that you didn't have -- in the project area, you  
20 had to own -- that was considered the land was inclusive  
21 of all -- and you had to own in the land, in that project  
22 area. You didn't have to necessarily own all of it to be  
23 able to get a permit. To produce it, you had to have the  
24 joinder of the other mineral owners, by a com -- any kind  
25 of other type of document. So that's my interpretation

1 of a project area.

2 My feeling on the certification is that the  
3 certification is for a vertical hole and you need to own  
4 in the bottom hole. A horizontal -- even in this case,  
5 we own the bottom hole. If you're taking it -- but it's  
6 a different animal than a vertical well.

7 Q. Did you receive this instruction from the  
8 Division's Artesia district office?

9 A. Yes.

10 Q. And, specifically, with reference to the  
11 certification language on the C-102, based on their  
12 instructions to you, was it your understanding that an  
13 operator need only own an interest at any point within  
14 the project area to get an APD approved?

15 A. Yes. One of the things they talked about,  
16 what if we only own 40 acres and we wanted to develop --  
17 I mean, the production has been such that it's so much  
18 greater in a horizontal well, even on the 40 -- I mean,  
19 the hole is much greater than one individual 40-acre can  
20 be, in that we can't be stopped from -- we could own in  
21 only one 40 out of the 160 and still have -- in that  
22 project area and still be able to permit.

23 Q. What was the well -- specific well that  
24 prompted you to call the Division and get clarification  
25 on that?

1           A.     The Reindeer, because we were getting ready to  
2 permit some more wells in Section 22, and I didn't  
3 understand how you -- because it didn't meet my  
4 understanding of what the rules were.

5           Q.     Did you rely on and follow the district  
6 office's instructions to you for permitting the  
7 subsequent wells?

8           A.     Yes. And they told me it was key to make sure  
9 we had the correct offsets on the outside of the project  
10 area, that you have to meet the guidelines of being 330  
11 off all lines.

12          Q.     Are you familiar with the practices of other  
13 operators in this play in permitting their wells?

14                   MR. KELLAHIN: Objection, Mr. Examiner.

15                   MR. BROOKS: On what grounds?

16                   MR. KELLAHIN: It's not relevant.

17                   MR. BROOKS: I guess I have to agree it's  
18 not relevant. However, given the usual administrative  
19 practices, I will overrule the objection and believe it  
20 to be relevant and continue the question.

21          Q.     (By Mr. Hall) Let me ask you, were the  
22 instructions you received from the Division's district  
23 office consistent with what you know to be the practices  
24 of other operators in this area in permitting their  
25 horizontal well projects?

1 A. Yes, it is.

2 Q. Let's turn to the exhibit packet, Exhibit  
3 Number 2. Would you identify this for us, please?

4 A. It's the executed approved permit.

5 Q. Is this the complete APD package?

6 A. Yes. To my knowledge, it is.

7 Q. If we turn to the fifth page, into the federal  
8 APD, does that take us to the state C-102 Form?

9 A. Yes.

10 Q. Here, again, we have the certification now.  
11 In the process of completing these certifications, if you  
12 read the language in there, was it your understanding  
13 that the certification -- that under the certification it  
14 was the project area that comprised, "the lands,"  
15 referred to in this certification?

16 A. Correct.

17 Q. What's the approval date on this C-102?

18 A. The certification was 8/14/08. The approval  
19 was -- the Carlsbad field office -- was August 4th, which  
20 doesn't make any sense.

21 Q. If we look at the --

22 A. OCD was August 15th.

23 Q. Right. Okay. Tell us about COG's practice  
24 for assembling well proposals to give to other operators,  
25 other interest owners.

1           A.       We identified the geologic area. We acquire  
2 the land, make attempts to acquire the land, whatever.  
3 Hopefully, we have some already before we start the  
4 process. We determine a very rough timeline on when we  
5 want to develop certain areas. And it's a moving target  
6 sometimes because of the geology, as you drill wells,  
7 your information reveals other circumstances or  
8 economics, as far as, like, the market last year. We try  
9 to make a schedule out a couple of years on areas that  
10 we're going to drill, and then we start our due  
11 diligence, where there's a joke that land always holds us  
12 up in our company on drilling wells.

13                 So the land department starts very early in  
14 trying to get our permits, get our surface ownership,  
15 title opinions. I've had some title opinions that have  
16 taken up to a year or more to be done for clearing  
17 drilling. That doesn't count the time it takes to cure  
18 those ills.

19                         MR. BROOKS: So it's actually all the  
20 land's fault?

21           A.       So we have to be way far out in what we do.  
22 And then when we permit, we make sure -- we try to have  
23 our surface agreements in place if it's split estate, and  
24 we file for our permits. After my permit -- I have  
25 always done this. It's pretty much -- I always thought

1 everybody did it -- that we -- when we send out our  
2 proposals to potential partners, we include a copy of the  
3 permit. We have a legal location. It is an approved  
4 permit. Because sometimes our locations get moved for  
5 all many reasons.

6 Like on the Blackhawk, our first choice was to  
7 drill on our lease a horizontal well. We are in LaPlaya  
8 in a lake, a dry-bed lake. We could not get surface  
9 ability to drill. We can have our bottom hole there, but  
10 we could not have -- these are issues that we -- that's  
11 why we try to get our permits, and we get them before we  
12 join all our parties. And then we send notice, as we  
13 did, to McDonald, Devon and to Chesapeake.

14 Once we have everything in place and we know  
15 we're going to go and we have this on a basic, more  
16 standard drilling schedule, that we have a better handle  
17 on when we're going to try to drill that well, because  
18 AFEs and times go stale so quickly.

19 Q. Is it correct to say that it is Concho's  
20 established practice to obtain an APD before assembling a  
21 final well proposal to the other interest owners?

22 A. It is.

23 Q. Do you know of any rule that says you can't  
24 get an APD before you send out a well proposal?

25 A. Um-um.

1 Q. You're answering no?

2 A. I do not know of any rules.

3 Q. Since Chesapeake has filed this case, has  
4 Concho sent out a well proposal for the Blackhawk 1H?

5 A. Yes, we have.

6 Q. I'll ask you an the APD and some of other  
7 exhibits. Again, if we look at Exhibit 3 -- let me ask  
8 you, first, does COG have the right to occupy the surface  
9 location with its rig path to drill this well?

10 A. Yes, we do.

11 Q. What is Exhibit 3?

12 A. It's considered a right-of-way agreement with  
13 the state, but it gives us the right to have a 400 by 400  
14 pad on the state surface.

15 Q. Does Concho also have the right of access and  
16 the right to build pipelines and roads across the  
17 southwest quarter of Section 11?

18 A. Right. We have been -- the infrastructure to  
19 drill the well, to lay pipelines, we try to get all of  
20 our right-of-ways prior to drilling our wells.

21 Q. If the Hearing Examiner goes back through the  
22 federal APD, will he find evidence of those right-of-way  
23 approvals in that APD package?

24 A. I'm pretty sure they should be.

25 Q. Let's look at Exhibit 4, which is also a copy

1 of Chesapeake's Exhibit 1 in this case. Do you have that  
2 before you?

3 A. Yes, I do.

4 Q. Does this plat accurately reflect Concho's  
5 ownership in the southeast quarter of Section 11?

6 A. Yes, it does.

7 Q. Concho owns 100 percent; correct?

8 A. Correct.

9 Q. That's your bottom hole location in the  
10 southeast quarter?

11 A. Correct.

12 Q. If we look at Chesapeake's symbology, does it  
13 appear that Chesapeake, Devon and McDonald own operating  
14 rights throughout the southwest quarter?

15 A. According, yes, to the plat. It appears --

16 Q. Those interest owners are Chesapeake, Devon  
17 and McDonald; correct?

18 A. Um-hum.

19 Q. Can you verify the accuracy of the division of  
20 interest that Chesapeake is reflecting on its exhibit?

21 A. I can verify that the names are correct. I  
22 can't verify that the numbers are correct, because I  
23 think those are probably from the operating agreement,  
24 which I do not have a copy of.

25 Q. You believe there's an operating agreement

1 that covers the southwest quarter of Section 11?

2 A. There is for that west half of that section,  
3 which would be inclusive of that.

4 Q. I see. Let's look at Exhibit 5. Would you  
5 identify that for us, please? What is Exhibit 5?

6 A. It is our well proposal to the various  
7 entities that own within the southwest quarter.

8 Q. And in this case, is the --

9 A. This is for Timothy McDonald.

10 Q. And this is the well proposal for the  
11 Blackhawk 11 1 Well we're talking about?

12 A. Correct.

13 Q. If we look at the second page, does it appear  
14 that Mr. McDonald has elected to participate?

15 A. He has.

16 Q. So he's committed his interest in the  
17 southwest quarter to the drilling of your well; is that  
18 correct?

19 A. He has.

20 Q. Referring back to Exhibit 2, the APD package,  
21 when did the BLM approve the APD package for this well?

22 A. From the stamp on this, it was August 4th,  
23 2008.

24 Q. Say that again, the day.

25 A. August 4th, 2008.

1 Q. All right. Ms. Spradlin, in your opinion, has  
2 COG acted diligently to develop the reserves in Section  
3 11?

4 A. Yes.

5 Q. Can you explain to the Hearing Examiner why  
6 it's necessary for Concho to have its permitting work  
7 completed in advance of spudding -- actually, in advance  
8 of proposing the well?

9 A. You know, it is the way we've done it, and  
10 I've always been involved in permitting. You get your  
11 permits. Then you notify. Then you drill. You've got  
12 to be able to -- well, part of it, to me, is that we get  
13 our permits, and we have the intention of drilling. But  
14 until you have that permit, you can't do the process of  
15 determining when you're going to drill.

16 Q. Does it serve an operator's interest to have  
17 the permitting piece be the last action item on his  
18 checklist?

19 A. In my opinion, no. It would be total chaos in  
20 my position.

21 Q. All right. Why don't we walk the Hearing  
22 Examiner through, generally, the overall process for  
23 development, lease acquisition, valuation and then  
24 permitting. How does it all begin? How did you get  
25 involved in this area?

1           A.     As I stated previously, we aquired the Chase  
2 acreage. After we acquired the Chase acreage, we decided  
3 to start developing this area. We entered into some well  
4 proposals with Cimarex in Section 24 where we had some  
5 acreage. We worked on permitting wells in Section 22 and  
6 getting the joinder of Nearburg.

7           Q.     At any point in that process was there a  
8 geologic evaluation undertaken?

9           A.     There's a geologic evaluation.

10          Q.     Then what happens?

11          A.     Then we go and acquire additional acreage,  
12 like the Blackhawk lease, we acquired in 2007. I believe  
13 it was around the first part of August 2007, from a third  
14 party who had taken the lease. And we started the  
15 process of looking and seeing where the play was going,  
16 and then we started permitting various wells in key areas  
17 that were based on the vertical wells that were in the  
18 general area. We wanted to be as close to where you knew  
19 there had to have been a vertical producer.

20                   And the last vertical producer drilled in this  
21 whole area was in, I believe, August of 2000, or was  
22 it -- August 2007, I believe. It was a Mack Energy  
23 well.

24          Q.     Having gone through that part of process, does  
25 Concho have a regulatory department?

1 A. Yes.

2 Q. Explain their function.

3 A. They do all our permitting, and now they're a  
4 part of -- in the last two and a half years, we have  
5 someone who does do a lot of our surface work and deal  
6 with the surface issues that we have. It's a separate  
7 department now from the land department.

8 Q. At what point in this process do you attempt  
9 to identify ownership within a perspective spacing unit?

10 A. Usually, after I get my -- I mean, a lot of  
11 it, I'll do a general check of the area if it's real  
12 split up. If it's one or two parties, then I can  
13 establish who they are. We don't do a drilling opinion  
14 until we're closer to drilling or have actual joinder  
15 from the other parties.

16 Q. Is it your regulatory department's  
17 responsibility to go through the steps that are  
18 prescribed under federal oil and gas Onshore Order Number  
19 1, in order to assemble an APD package?

20 A. Right. They ask us if we own the surface or  
21 the bottom hole, or they'll say, "Do you own in the  
22 project area," if it's a horizontal --

23 Q. All right.

24 A. -- and we have to take the process. After we  
25 get the permits, then we file for coms or whatever

1 necessary things we need.

2 Q. Are you generally familiar with the steps  
3 required under Onshore Order 1 to assemble what the BLM  
4 regards as a complete drilling package?

5 A. Yes, even though I don't have to do all of it.

6 Q. Okay.

7 A. I am aware of most -- I've read it and dealt  
8 with it.

9 Q. Does that process kind of play an early  
10 notification process to the regulators?

11 A. Yes.

12 Q. And then after that, isn't it your next step  
13 that you're assembling the APD package yourself?

14 A. Um-hum.

15 Q. What happens next? Do you look for, as you  
16 say, split estate ownership?

17 A. Yes. That's one of the first things we do  
18 anymore is determine our surface ownership, because that  
19 has been -- it's been somewhat difficult sometimes to --  
20 and I understand the surface owner, he doesn't want you  
21 on his land, especially if he has good grass, because  
22 grass is real important in New Mexico. And so it tends  
23 to take some time to establish routes in, routes out,  
24 where you're going to put your wells, especially if you  
25 have a large surface owner, which we've had some that,

1 basically, own the whole township -- almost the whole  
2 township of your acreage.

3 So you work with them to try to minimize the  
4 use of their surface that will work with your operations.

5 Q. Does BLM have a requirement that you provide  
6 notification to the surface owner?

7 A. Right.

8 Q. Tell us, again, what the surface ownership is  
9 for this special project area.

10 A. This area is state surface.

11 Q. All right.

12 A. There's a tenant named Vogel.

13 Q. Have you worked with this tenant on the state  
14 surface?

15 A. We let the tenant always know before we go out  
16 there to either stake or do anything, even though he has  
17 no ownership in the land. Vogel is a very good tenant,  
18 and he is under -- a lot of our wells are on his lease.

19 Q. As part of an additional part of completing  
20 the APD package, does your engineering department  
21 formulate a drilling plan?

22 A. Yes, it does.

23 Q. And it's provided to your regulatory  
24 department to include in the APD?

25 A. Yes. Our drilling department does that.

1 Q. And is there a requirement that the APD  
2 include a surface use plan of operations, a SUPO?

3 A. Um-hum.

4 Q. You need to say yes.

5 A. Yes.

6 Q. Do you know generally what are the components  
7 that comprise a SUPO?

8 A. Yes, I do. I've worked very hard on a lot of  
9 that stuff.

10 Q. Tell us briefly what you know those components  
11 to be.

12 A. You have to -- it's 15 days' notice before --  
13 you're talking about all the details, like this, that you  
14 have to go out and tell them 15 days before you even  
15 stake a well?

16 Q. Briefly summarize --

17 A. You have 30 days in your notice, and then you  
18 have all these notice provisions, and you -- it's a very  
19 lengthy process. I would have to go back and -- I have a  
20 checklist that I pull out every time I have surface  
21 ownership. It's not committed 100 percent up here. I  
22 just know I have to do it.

23 Q. Is there a substantial amount of time required  
24 to complete the SUPO checklist?

25 A. Yes.

1 Q. And as the APD package is completed, is the  
2 operator required to certify the contents of the APD  
3 package?

4 A. Yes. I believe so.

5 Q. And in the process of getting the APD approved  
6 by the BLM, is an on-site inspection required?

7 A. Yes.

8 Q. Was that done in this case?

9 A. Yes, to my knowledge.

10 Q. If we look at Exhibit 2, is Exhibit 2 the APD  
11 package? Is that the culmination of all of these  
12 efforts?

13 A. Correct.

14 Q. In the course of assembling the APD package,  
15 is it possible that things can happen, things can go  
16 wrong, delays may be experienced?

17 A. Yes. Expect the unexpected.

18 Q. All right. Has Concho obtained a cultural  
19 resources survey for the surface for this project area?

20 A. Yes.

21 Q. What is Exhibit 6?

22 A. That's the cultural -- an abstract of the  
23 cultural resources from the archaeological services  
24 company.

25 Q. And, in this case, does the survey

1 specifically include the well pad location?

2 A. Yes. I believe so.

3 Q. Have you attempted to tabulate all of the  
4 costs and fees incurred by Concho in obtaining its  
5 right-of-ways, its APDs, its various approvals for the  
6 Blackhawk 1H Well?

7 A. Yes.

8 Q. What is Exhibit 7?

9 A. That's what has been booked to the Blackhawk  
10 11 Well as of -- I believe it was yesterday.

11 Q. How much been expended for permitting in terms  
12 of cost and fees?

13 A. \$41,295.69.

14 Q. Does this represent costs and fees only, or  
15 does it include the time and effort?

16 A. It's just costs and fees that we have expended  
17 up to this time.

18 Q. Is this a typical amount you'd spend for  
19 federal BLM APD?

20 A. I believe it would be higher now, because some  
21 of the fees have gone up on certain types of permits,  
22 right-of-ways, things like that. If it were, you know,  
23 doing it today.

24 Q. And you want to avoid having to make  
25 re-application for an APD and incurring these fees again;

1 correct?

2 A. That's correct.

3 Q. If Chesapeake succeeds in having the Division  
4 issue an order that cancels the federal APD, does COG  
5 have the option of developing the reserves it owns on a  
6 40-acre vertical well basis?

7 MR. KELLAHIN: Objection, Mr. Examiner.  
8 It's two questions. We're about to look at Exhibit  
9 Number 8. It's an economic analysis. This witness has  
10 not been qualified as an expert in that area. And the  
11 second question is it's not relevant. If the permit is  
12 cancelled, that doesn't mean they can't get another  
13 permit for the 160 acres, provided they get consolidation  
14 of the interest owners first, before they go about the  
15 process. So this is not relevant.

16 MR. BROOKS: I'll overrule the objection  
17 and let the witness give her own explanation to the  
18 question.

19 Q. (By Mr. Hall) The questions was, does Concho  
20 have the option of developing these reserves on a 40-acre  
21 basis for its ownership in the southeast quarter?

22 A. We can't use the surface. I mean, if we could  
23 use the surface, you have a 40-acre -- you can have a  
24 40-acre vertical well, but that is -- they are not as  
25 economical as the horizontals.

1 Q. So if Chesapeake succeeds in having your APD  
2 denied for the present surface location, will Concho be  
3 denied the opportunity to access its own reserves?

4 A. I would have to say yes at this point, unless  
5 we -- I mean, in this section, yes, there would be no  
6 access.

7 Q. If Chesapeake succeeds in upsetting the  
8 regulatory scheme for the approval of horizontal well  
9 permits, does it --

10 MR. KELLAHIN: Object to the argumentative  
11 nature of the question.

12 MR. BROOKS: Go ahead. He hasn't  
13 completed the question. You may continue completing the  
14 question.

15 Q. To complete the question, does it make sense  
16 for these Abo Wolfcamp reserves to be developed on  
17 40-acre units with vertical wells?

18 A. No.

19 MR. KELLAHIN: Objection, strike the  
20 answer. Ask him to reform the question.

21 MR. BROOKS: I believe that is probably a  
22 question that is not a matter of land expertise. It seem  
23 to me it would require other expertise the witness does  
24 not have, so I'll sustain the objection.

25 Q. (By Mr. Hall) Have you asked your engineering

1 department to provide you with the cost involved of  
2 drilling a vertical well and compared that cost to the  
3 cost of drilling a horizontal well for a 160-acre unit?

4 A. Yes, I did.

5 Q. Are those costs shown on Exhibit Number 8?

6 A. They are.

7 Q. Were those costs compiled for you by the  
8 drilling department at your direction?

9 A. Yes.

10 Q. Let's look at the cost of a single vertical  
11 well.

12 MR. KELLAHIN: Objection, calls for  
13 hearsay from the witness.

14 MR. BROOKS: It sounds to me like this is  
15 hearsay. I'll sustain the objection.

16 Q. (By Mr. Hall) Would it cost more to develop  
17 these reserves on a 40-acre development basis, than a  
18 160-acre horizontal well basis? Do you know that?

19 A. Yes, I do.

20 Q. Based on Concho's experience in drilling both  
21 vertical and horizontal wells in the Abo Wolfcamp  
22 formation, has it been the company's experience that the  
23 horizontal wells result in a more efficient and economic  
24 recovery --

25 MR. KELLAHIN: Objection.

1 MR. HALL: I'm asking her if she knows the  
2 company's experience.

3 MR. BROOKS: I will overrule the objection  
4 and allow her to state an answer and consider the  
5 limitations on her expertise, given the admissibility of  
6 that. You may proceed.

7 A. Our horizontal wells are better than the  
8 vertical wells.

9 Q. (By Mr. Hall) Are they more economically  
10 efficient than vertical wells?

11 A. Yes. And they also save the surface. You  
12 have one surface location for, basically, four 40-acre  
13 units, instead of four vertical locations to recover  
14 fewer barrels of oil.

15 Q. Earlier I asked you whether you received any  
16 indication from Chesapeake of their intention to  
17 participate in the drilling of the Blackhawk 1H.

18 A. I have not heard -- other than Kevin asking  
19 for the operating agreement.

20 Q. Have they told you they would not participate  
21 in the well?

22 A. No, they have not.

23 Q. The only signal they've sent you is they wish  
24 to see your APD cancelled. Is that all --

25 A. That's all I know.

1 Q. Has Chesapeake proposed a well for this  
2 acreage?

3 A. No.

4 Q. Do you know how long Chesapeake has owned its  
5 acreage in this section?

6 A. I do know the com was signed in 1999, and they  
7 were owners of it back then. I don't know how much  
8 before -- it came through some Nearburg and some  
9 Concho -- what I call Concho properties.

10 Q. Do we have any evidence at all that Chesapeake  
11 has any plans to develop this acreage further?

12 A. There have been none indicated to me.

13 Q. Can you identify any interest of Chesapeake  
14 that may have been adversely affected by Concho's efforts  
15 to permit and develop this acreage?

16 MR. KELLAHIN: Objection, Mr. Examiner.  
17 It calls for a legal conclusion.

18 MR. BROOKS: Overruled.

19 Q. Do you know how Chesapeake has been harmed by  
20 all this? Is it apparent to you?

21 A. No.

22 Q. You need answer to verbally.

23 A. No.

24 MR. BROOKS: I believe she did.

25 Q. I'm going to ask you about a Chesapeake well.

1 Are you familiar with the Wrinkle Federal Com 1 located  
2 in the north half, north half of Section 13 up in 15  
3 South, 31 East?

4 A. Yes, I am.

5 Q. Is that well reflected on your Exhibit 1, the  
6 area map?

7 A. Yes, it is. But it used to be called Orion.

8 Q. Was it known as the Orion Federal 2H?

9 A. Yes.

10 Q. Was that a Concho well?

11 A. Yes, it was.

12 Q. Let's look at Exhibit Number 9. What is that?

13 A. It's an agreement that we made with  
14 Chesapeake.

15 Q. For what?

16 A. On development of acreage that we jointly  
17 owned in 1531. It covered Sections 10, 14, 13 and 15.

18 Q. And in that township did Concho have a number  
19 of permits for horizontal wells in the Abo Wolfcamp?

20 A. Yes.

21 Q. And the Wrinkle Orion Well was one of those  
22 permits?

23 A. Correct.

24 MR. KELLAHIN: Mr. Examiner, at this point  
25 I'll object as to relevance.

1 MR. BROOKS: Yeah. I wanted to clarify --

2 MR. KELLAHIN: It's an entirely different  
3 township.

4 MR. BROOKS: -- is there any contention  
5 that this Exhibit 9 has any effects as far as correlative  
6 rights for the parties and the acreages subject to this  
7 proceeding?

8 MR. HALL: Mr. Examiner, we previously  
9 raised to you the issue that it's our belief that  
10 Chesapeake is bound by Doctrine of Estoppel. It's barred  
11 from bringing this application because it has APDs in the  
12 exact same situation as this. That's what we want to  
13 highlight for the record.

14 MR. BROOKS: But in answer to my specific  
15 question, there's no contention that this agreement  
16 applies in any way to the acreage that is the subject of  
17 this proceeding?

18 MR. HALL: That's correct.

19 MR. KELLAHIN: Mr. Examiner, for your  
20 information, if you look at page 2, Item 6, the third  
21 line down says, "In any manner on the subject lands," so  
22 we're in a different township with regard to this  
23 document and these wells. I was going to say it's not  
24 relevant.

25 MR. BROOKS: With the understanding that

1 it's not contended that Exhibit 9 has any contractual  
2 binding effect with regard to the acreage in controversy  
3 in this case, I will overrule the objection and allow Mr.  
4 Hall to proceed for the purposes that he stated in his  
5 explanation.

6 MR. HALL: I would add that Paragraph 6  
7 was not the focus of my intention, but it's certainly  
8 well worth reading.

9 Q. (By Mr. Hall) Let's go back to the main  
10 purpose of the agreement between Chesapeake and Concho.  
11 Chesapeake bargained for and obtained a number of APDs  
12 from Concho.

13 A. That's correct.

14 Q. With respect to the Orion Well, now the  
15 Wrinkle Well, in Section 13, at the time Chesapeake  
16 obtained that permit, was there included in the 160-acre  
17 project area a 40-acre tract that had not been committed  
18 to the well at the time?

19 A. There was.

20 Q. And who owned that 40-acre tract, if you  
21 recall?

22 A. Pinrock, et al.

23 Q. Is COG asking that the Examiner and the  
24 Division deny Chesapeake's application in this case?

25 A. Yes.

1 Q. In your opinion, would the denial of  
2 Chesapeake's application be in the best interest of  
3 conservation and prevention of waste and protection of  
4 correlative rights?

5 A. Yes. And getting a well drilled and  
6 discovering the reserves.

7 Q. Right. Were Exhibits 1 through 9 prepared by  
8 you or at your direction?

9 A. Yes.

10 MR. HALL: One additional exhibit, Mr.  
11 Examiner.

12 Q. (By Mr. Hall) With respect to the  
13 administrative processes permitting horizontal wells in  
14 special project areas in New Mexico, are you aware of the  
15 efforts of any industry committee to formulate and  
16 propose new rules addressing these circumstances,  
17 submitting an application to the Division for  
18 consideration for new rules?

19 A. Yes. There's been a New Mexico Oil and Gas  
20 Association committee formed which is working on  
21 determining various new proposals on, basically, this  
22 same issue and others to address horizontal wells,  
23 whether in the gas play or oil the play.

24 Q. Do you know generally how long that effort has  
25 been underway?

1           A.     I want to say the committee was probably  
2     formed -- I know they had been working as of last NMOGA,  
3     because I visited with several of the members on  
4     horizontal wells. And it had been instituted prior to  
5     that, but I don't think it has been -- I think maybe six  
6     months, at the most. I'm not for sure.

7           Q.     Do you have an opinion as a landman whether  
8     the issues and problems that arise in obtaining  
9     regulatory permits for horizontal development projects,  
10    relatively recent technology, are those issues and  
11    problems best resolved by way of the rule-making process  
12    or a single adjudicatory case?

13                   MR. KELLAHIN: Mr. Examiner, I object to  
14    the question. It's far beyond the scope of anything  
15    we're doing. The letter from NMOGA is so remote in time  
16    as to have any relevance. To suggest that this should be  
17    a rule-making process as opposed to adjudication of an  
18    active dispute is outside the scope of what you would  
19    consider.

20                   MR. BROOKS: I'll sustain the objection.

21                   MR. HALL: We'll note the ruling. Just  
22    let me state, though, that we have a landman who is  
23    charged with complying with and applying the state's  
24    regulations for well permitting. I think she's qualified  
25    to answer that. I understand the ruling.

1 MR. BROOKS: Okay. Continue.

2 Q. (By Mr. Hall) If you will look at what is  
3 soon to be marked as Exhibit 10. Can you identify that?

4 A. The letter from Elizabeth Bush-Ivie?

5 Q. Yes.

6 A. Yes. It's a letter regarding the regulatory  
7 practices committee.

8 Q. Does the letter address the pending  
9 rule-making procedure?

10 A. Yes.

11 Q. If we look at page 2 of that letter, does that  
12 show us who the email recipients were for this letter?

13 A. Yes.

14 MR. KELLAHIN: I'm sorry to interrupt, Mr.  
15 Examiner, but this is not relevant. We move to strike  
16 this discussion about NMOGA's rule making process.

17 MR. BROOKS: I'm going to admit it,  
18 because I think it's harmless. Hopefully, it won't be  
19 too prolonged. I'll overrule the objection.

20 Q. (By Mr. Hall) If we look at the transmittal  
21 email for this letter, listing the recipients, on the  
22 second line there's Bryan Arrant, Ed Birdshead, H. Brown.  
23 They all appear to be Chesapeake Energy employees; is  
24 that correct?

25 A. Um-hum.

1 Q. And does that indicate to you that Chesapeake  
2 is participating in this rule-making effort?

3 A. And they are aware of it. Yes.

4 Q. By bringing this application against Concho  
5 today, is that an indication that Chesapeake is  
6 disavowing the rule-making effort?

7 MR. KELLAHIN: Objection, Mr. Examiner.  
8 That's argumentative, calls for speculation by the  
9 witness.

10 MR. BROOKS: Sustained.

11 MR. HALL: That concludes my direct of  
12 this witness. We move the admission of Exhibits 1  
13 through 10.

14 MR. KELLAHIN: Mr. Examiner, there's an  
15 objection as to Exhibit 8, which is the economic  
16 comparison spreadsheet, with which this witness had not  
17 the proper qualifications to attest to.

18 MR. HALL: I think the Examiner already  
19 ruled on that one.

20 MR. BROOKS: Right. But you're tendering  
21 it, which causes me to -- you tendered Exhibits 1 through  
22 10 without excluding 8. I have already ruled that 8 is  
23 hearsay and, therefore, inadmissible. So Exhibits 1  
24 through 7 and Exhibits 9 and 10 will be admitted.

25 Are you passing the witness, Mr. Hall?

1 (Exhibits 1 through 7 and Exhibits 9 and 10  
2 were admitted.)

3 MR. HALL: Yes.

4 MR. KELLAHIN: This will be very quick.

5 MR. BROOKS: I was going to ask how long,  
6 because we've been going for two hours. You may proceed.

7 CROSS-EXAMINATION

8 BY MR. KELLAHIN:

9 Q. Let me direct your attention back to the  
10 conversations that you had with the district office about  
11 how to file this certificate and what you mean by the  
12 project area. Are you with me?

13 A. Yes.

14 Q. What district office was that?

15 A. Artesia.

16 Q. In Artesia do you recall with whom you spoke  
17 about this?

18 A. I don't, but I know -- I mean, I know the  
19 timeline when I was talking --

20 Q. We'll get to that in a second. Do you  
21 remember what his job description was? Was it a man?

22 A. Yes. It was one of the permitting people.  
23 Because our permit person, regulatory person -- we both  
24 were in on the conversation.

25 Q. Was this the district supervisor?

1           A.     I can't tell you. I mean, to me -- I didn't  
2 write the conversation down.

3           Q.     You didn't make notes of it?

4           A.     I mean, he explained -- I remember it was a  
5 he. I remember the explanation, because I didn't  
6 understand the designation of the project area.

7           Q.     Let's go back to the time frame. When did  
8 this occur?

9           A.     This was in probably -- it was in -- around  
10 March to May of 2006.

11          Q.     Did you have more than one conversation with  
12 this individual about this topic?

13          A.     I did. With our regulatory person, we had  
14 been trying to understand what these projects were. And  
15 then one time I had received a well that was a horizontal  
16 well -- and I can't remember the party that had sent  
17 it -- but a permit that did not have the project area on  
18 it. And I asked why it didn't have it. So we called  
19 again and they said they need to re-submit their plat and  
20 indicate -- and this was not a Concho operated well.

21          Q.     This was the Reindeer Well?

22          A.     No. This was a well that we received a permit  
23 we received from someone else. And I was asking why it  
24 didn't have the project area. And I had come to find out  
25 it had to have the project area, so that -- and I can't

1 remember the well. There have been a lot of wells  
2 that --

3 Q. I understand that. I'm just trying to  
4 understand who has advised you on how to designate the  
5 project area.

6 A. I don't remember their name.

7 Q. Am I correct in remembering that as part of  
8 that conversation, you came away with the understanding  
9 that as long as COG had an interest in one of the 40-acre  
10 tracts, that was sufficient standing, then, to sign off  
11 on the certification?

12 A. Right. Because we owned within that land and  
13 the land identified within the project area.

14 Q. Did you seek advice on that topic within the  
15 Division, from anyone else in the Division?

16 A. No.

17 Q. You didn't call Santa Fe to double check on  
18 that?

19 A. No. Because all permits have the project  
20 area, the permits we get from other operators. They're  
21 signed by their regulatory people. I mean, it is  
22 practice within the companies that I deal with that that  
23 is a valid permit.

24 Q. Did you choose to confirm this by email with  
25 the individual with the district office?

1           A.     I told you I don't remember who it is. No, I  
2 didn't. I have no written --

3                   MR. KELLAHIN: No further questions.

4                   MR. WARNELL: Mr. Warnell?

5                   MR. WARNELL: No questions.

6                   MR. BROOKS: Mr. Jones?

7                   MR. JONES: I'll be real brief.

8                                   EXAMINATION

9 BY MR. JONES:

10           Q.     Did you own any interest in the southwest of  
11 Section 12 offsetting to the east?

12                   MR. BROOKS: For clarification, you're  
13 speaking does COG own, not this witness?

14                   MR. JONES: Yes. I'm sorry.

15           Q.     (By Mr. Jones) Does COG own any interest in  
16 the southwest of Section 12?

17           A.     We did own some. I believe it has -- some  
18 acreage has expired out there as far as in Section 12, 16  
19 South, 28 East. We did have interest, but the lease has  
20 expired. It was a state lease.

21           Q.     Are you trying, for some reason, to stay  
22 within sections, instead of drilling across sections and  
23 making a project area of cross sections?

24           A.     No. That hasn't ever -- we have talked about  
25 that, but the standard way of drilling horizontals, it's

1 east to west and -- I don't know. I've only, in my  
2 career, seen two wells that were drilled across section  
3 lines, and usually -- I think there was a horizontal  
4 well drilled by Mewbourne, if I'm not mistaken. They  
5 drilled a well that was somewhat across, but they owned  
6 100 percent in both leases. And so they got permission  
7 to put their surface and drill across a lease line. I  
8 don't know of very many instances that you drill across  
9 section lines. You stay within your section, typically.

10 Q. We're starting to see some of those, it seems  
11 like.

12 A. And I know North Dakota -- I mean, all the  
13 stuff goes across sometimes 600 and -- I mean, it goes  
14 across multiple sections. That would be great, because,  
15 you know -- but this is a whole different deal. But they  
16 get a permit and they -- you don't even have an operating  
17 agreement. They just send you an AFE and you either  
18 participate or you sign up for your non -- whatever.

19 Q. So it's a generalized. That's oil, also. Why  
20 are you taking great pains to drill at a surface location  
21 that's standard? Do you know the orientation of your  
22 well? Are you drilling it vertically? Are you backing  
23 up and drilling a window and going horizontally, or are  
24 you drilling just down and drilling --

25 A. My understanding is it goes like this. And

1 because of the rules, we don't necessarily -- well, we  
2 don't drill pilot holes in every instance. And in  
3 order -- where you -- to be legal, we -- usually  
4 sometimes we're even 430 off where we're drilling,  
5 because you have lack of some control, it's been --  
6 because our geologist wants it as close to the rule line  
7 as we can get it. The drilling people want it at 430,  
8 where they have, what I call wiggle room, where when they  
9 do the survey where we make our cut, that you're at a  
10 legal location, if you wanted to come up that hole and  
11 produce anything above it, if you did not take the well  
12 or you had a dry hole.

13 Q. What pool is involved here? What's the pool  
14 name?

15 A. It's the Lower Abo Wolfcamp. And it's usually  
16 permitted as a Wildcat or Lower Abo. There's some  
17 Wolfcamp.

18 Q. You don't know the pool name?

19 A. I don't know the pool name.

20 Q. It's in the Lower Abo, and they argue about  
21 whether it's Abo or Wolfcamp?

22 A. Uh-huh.

23 Q. Are you aware of where the horizontal -- where  
24 the taper of the well actually enters the top of pool as  
25 far as the surface X and Y location?

1           A.       I would have defer that to someone who knows  
2 the drilling. I don't know that.

3           Q.       I guess that was one of the points. The other  
4 point is that once you drill across these 40-acre tracts,  
5 you're drilling within a 330 of each 40-acre tract. Of  
6 course, you're within the project area legally. But do  
7 you allocate production equally between four different  
8 tracts --

9           A.       Yes.

10          Q.       -- even though some of them, obviously, have  
11 less exposure to the wellbore?

12          A.       Right. The first one has less, typically,  
13 but --

14          Q.       Because you're being real careful about your  
15 surface location, being legal with it?

16          A.       Okay. Yes.

17          Q.       Are you aware of any of this big case between  
18 Chesapeake and Samson and, obviously, other operators?  
19 This R-12343-E?

20          A.       I am aware of it. I have skimmed the ruling.  
21 I knew about it. I knew the parties involved from  
22 Sampson and Mewbourne. I didn't know parties with  
23 Chesapeake.

24          Q.       But your definition in that ruling, the last  
25 ruling, a bottom hole location, did you think that was a

1 literal bottom hole location, that you had to own or be  
2 in the active process of -- correct me if I'm wrong -- of  
3 obtaining an interest in the bottom hole location before  
4 you propose a well? In your opinion, is that bottom hole  
5 location -- did they mean literally the last foot of that  
6 measured depth of the well, or do they mean under the  
7 surface?

8 A. My understanding is -- and that was for, I  
9 believe, a Morrow well. It was going to be a 328  
10 spacing. I don't know all the facts. My understanding  
11 is that Mewbourne and Samson owned one one-sixteenth,  
12 Chesapeake owned the other one-sixteenth. It would have  
13 been a com of each 160. This is hearsay. Chesapeake  
14 decided that geologically the location would have been  
15 better on the other 160, and went over and drilled the  
16 vertical well to depth on Samson/Mewbourne's acreage  
17 without their approval, which, to me, is a trespass  
18 issue. It really doesn't make any difference. Because  
19 they had not had the joinder, they were physically  
20 trespassing on somebody else's piece of land.

21 Q. If you begin a well on your land and you drill  
22 over, as part of the project area, into someone else's  
23 land, that's okay?

24 A. That's why we're wanting rulings from the  
25 Commission. The project area is determined -- that you

1 have to have joinder before you produce of a com.

2 Q. Before you produce?

3 A. Before you produce.

4 Q. Not before you get an AFE?

5 A. Or a permit, right. You have to have the  
6 joinder before you can --

7 Q. Because you run the risk of losing your well  
8 if you don't get the right to produce.

9 A. Um-hum.

10 MR. JONES: That's all I have. Thank you.

11 EXAMINATION

12 BY MR. BROOKS:

13 Q. I think Mr. Jones' questions may have included  
14 this, and I'm not entirely sure. But I want -- for the  
15 record I want it to be clear. If you know, are you  
16 familiar with what is intended with regard to completion  
17 of this well?

18 A. As far as?

19 Q. Well, my specific question is going to be, is  
20 it the intention of COG to complete this well in all four  
21 quarter quarter sections --

22 A. Yes.

23 Q. -- that are included in this project area?

24 A. Yes.

25 Q. In other words, this is not a situation where

1 COG is simply drilling on a remote location to access its  
2 own acreage. It is actually intending to access the  
3 acreage that it does not own, as well as the acreage that  
4 it does?

5 A. In the com. And proportionately have the  
6 joinder of other people. Our intent is to have the  
7 joinder of Chesapeake and Devon and Tim McDonald to  
8 develop all the minerals in that 160.

9 Q. But this is not simply a directional well to  
10 access Chesapeake's own acreage. It is intended as a  
11 horizontal well to produce from four quarter sections?

12 A. Yes.

13 Q. Okay. You said that Chesapeake could not --  
14 did not have access to the surface in southeast quarter.  
15 Was that your testimony? I'm sorry. COG does not have  
16 access to the surface in the southeast quarter.

17 A. Right. It was told to us that we couldn't  
18 drill on that lease.

19 Q. Is that a no surface occupancy lease?

20 A. I don't know if it's totally a no surface  
21 occupancy, but to get -- I do know our -- Noel told me  
22 that because of the lake bed and everything, we could not  
23 do our surface on that lease. So I'm deferring to the  
24 person who was on the ground and everything.

25 Q. But, of course, if you had appropriate

1 permission from the owner of another tract, you could  
2 drill a well, a directional well, and penetrate that  
3 area.

4 A. Right. And I mean, to be honest, we have our  
5 surface location, and if we have to drill a surface  
6 location from that state lease to our acreage, go across  
7 directionally and only kick off, we'll have to do that.  
8 That is not the most economical and the best interest of  
9 all of us, but --

10 MR. BROOKS: Okay. I believe that's all  
11 my questions. Anything by way of follow-up?

12 MR. HALL: To Mr. Jones, in the APD there  
13 is a drilling profile and drilling plan which shows  
14 projected survey of the wellbore location.

15 MR. BROOKS: Could you point out -- I  
16 think I saw that.

17 MR. HALL: Yes. And I believe in the  
18 drilling plan it's the contemplated completion.

19 MR. BROOKS: The survey you're referring  
20 to is the Pathfinder survey report?

21 MR. HALL: Yes.

22 MR. BROOKS: Where in the drilling plan  
23 does it show the anticipated completion?

24 THE WITNESS: Your measured depth would  
25 be -- where you got into the Wolfcamp is 6,727.18 --

1 would be your measured depth. The formations -- if you  
2 go to page 6 on that Pathfinder survey. Is that what  
3 you're needing? It talks about "plan hits target point."

4 MR. BROOKS: Well, I think we may be  
5 wasting time here.

6 MR. HALL: I think you can look at --

7 MR. BROOKS: I'm sure, between the three  
8 of us, we can find it.

9 MR. HALL: -- the last three pages.

10 MR. BROOKS: Of Exhibit 2?

11 MR. HALL: I believe so.

12 MR. BROOKS: Yeah. I believe that covers  
13 it. Thank you. Anything further, Mr. Hall?

14 MR. HALL: No, sir.

15 MR. BROOKS: Do you have any additional  
16 witnesses?

17 MR. HALL: That concludes our case.

18 MR. BROOKS: Very good. The witness may  
19 step down. Are the attorneys wanting to make closing  
20 statements?

21 MR. HALL: Sure.

22 MR. KELLAHIN: It's up to you, Mr.  
23 Examiner. We briefed this. It would be very short.

24 MR. BROOKS: I think I'm fully advised in  
25 the premises at this point, but I don't want to deprive

1 lawyers of the chance to display their eloquence. Okay.

2 If there's nothing further, Case Number 14323 will be  
3 taken under advisement. And we will take a 10-minute  
4 recess and proceed with the other case.

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I do hereby certify that the foregoing is  
a complete record of the proceedings in  
the Examiner hearing of Case No. 14323  
heard by me on 4-20-2009.  
David K. Burtz Examiner  
Oil Conservation Division

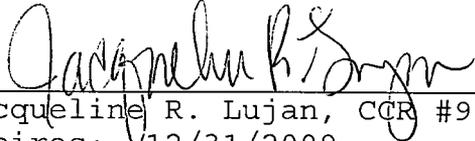
## REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO  
HEREBY CERTIFY that on August 20, 2009, proceedings in  
the above captioned case were taken before me and that I  
did report in stenographic shorthand the proceedings set  
forth herein, and the foregoing pages are a true and  
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by  
nor related to nor contracted with any of the parties or  
attorneys in this case and that I have no interest  
whatsoever in the final disposition of this case in any  
court.

WITNESS MY HAND this 4th day of September,  
2009.

  
Jacqueline R. Lujan, CCR #91  
Expires: 12/31/2009