

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

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

ORIGINAL

APPLICATION OF NEARBURG EXPLORATION
COMPANY, LLC; SRO2, LLC; AND SRO3,
LLC FOR AN ACCOUNTING AND
LIMITATION ON RECOVERY OF WELL COSTS,
AND FOR CANCELLATION OF APPLICATION
FOR PERMIT TO DRILL, EDDY COUNTY,
NEW MEXICO.

CASE NO. 15441

and

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

CASE NO. 15481

and

APPLICATION OF COG OPERATING, LLC
FOR A NONSTANDARD SPACING AND
PRORATION UNIT AND COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO

CASE NO. 15482

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

May 4, 2016

Santa Fe, New Mexico

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

This matter came on for hearing before the
New Mexico Oil Conservation Division, William V. Jones,
Chief Examiner, and David K. Brooks, Legal Examiner, on
Wednesday, May 4, 2015, at the New Mexico Energy,
Minerals and Natural Resources Department, Wendell Chino
Building, 1220 South St. Francis Drive, Porter Hall,
Room 102, Santa Fe, New Mexico.

1 REPORTED BY: Mary C. Hankins, CCR, RPR
2 New Mexico CCR #20
3 Paul Baca Professional Court Reporters
4 500 4th Street, Northwest, Suite 105
5 Albuquerque, New Mexico 87102
6 (505) 843-9241
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**PAUL BACA PROFESSIONAL COURT REPORTERS
500 FOURTH STREET NW - SUITE 105, ALBUQUERQUE, NM 87102**

APPEARANCES

FOR NEARBURG EXPLORATION COMPANY, LLC; SRO2, LLC; and
SRO3, LLC:

J. SCOTT HALL, ESQ.
and
SHARON T. SHAHEEN, ESQ.
MONTGOMERY & ANDREWS LAW FIRM
325 Paseo de Peralta
Santa Fe, New Mexico 87501
(505) 982-3873
shall@montand.com

and

DAVID H. HARPER, ESQ.
HAYNES BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
(214) 651-5247
davidharper@haynesboone.com

FOR COG OPERATION, LLC:

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

| | | |
|----|--|------|
| 1 | INDEX | |
| 2 | | PAGE |
| 3 | Case Numbers 15441, 15481 and 15482 Called | 6 |
| 4 | Opening Statement by Mr. Feldewert | 9 |
| 5 | Nearburg Exploration Company, LLC; SRO2, LLC and SRO3, LLC's Case-in-Chief: | |
| 6 | Witnesses: | |
| 7 | William Randall "Randy" Howard: | |
| 8 | Direct Examination by Mr. Hall | 33 |
| 9 | Cross-Examination by Mr. Feldewert | 84 |
| 10 | Cross-Examination by Examiner Brooks | 173 |
| 11 | Cross-Examination by Examiner Jones | 177 |
| 12 | Recross Examination by Examiner Brooks | 185 |
| 13 | Recross Examination by Examiner Jones | 186 |
| 14 | Redirect Examination by Mr. Hall | 187 |
| 15 | Michael C. Griffin: | |
| 16 | Direct Examination by Mr. Hall | 191 |
| 17 | Cross-Examination by Mr. Feldewert | 199 |
| 18 | Redirect Examination by Mr. Hall | 207 |
| 19 | Recross Examination by Mr. Feldewert | 210 |
| 20 | Cross Examination by Examiner Brooks | 211 |
| 21 | Cross-Examination by Examiner Jones | 214 |
| 22 | Recross Examination by Examiner Brooks | 216 |
| 23 | COG Operating, LLC's Case-in-Chief: | |
| 24 | Henry Zollinger: | |
| 25 | Direct Examination by Ms. Kessler | 217 |
| 26 | Cross-Examination by Mr. Hall | 222 |
| 27 | Cross-Examination by Examiner Brooks | 224 |
| 28 | Cross-Examination by Examiner Jones | 225 |
| 29 | Recross Examination by Examiner Brooks | 228 |
| 30 | Ryan D. Owen: | |
| 31 | Direct Examination by Mr. Feldewert | 229 |
| 32 | | |

1 INDEX (Cont'd)

2

PAGE

3 COG Operating, LLC's Case-in-Chief(Cont'd):

4 Ryan D. Owen (Cont'd):

| | | |
|---|---------------------------------------|-----|
| 5 | Cross-Examinatoin by Mr. Hall | 244 |
| | Cross-Examination by Examiner Brooks | 257 |
| 6 | Cross-Examination by Examiner Jones | 264 |
| | Redirect Examination by Mr. Feldewert | 266 |
| 7 | Recross Examination by Examiner Jones | 269 |
| | Recross Examination by Mr. Hall | 270 |

8

9 Closing Argument by Mr. Hall 277

10 Closing Argument by Mr. Feldewert 286

11 Proceedings Conclude 297

12 Certificate of Court Reporter 298

13

14 EXHIBITS OFFERED AND ADMITTED

15 PAGE

| | | |
|----|--|----|
| 16 | Nearburg Exploration Company Exhibit Numbers 1 through 19 and 21 through 31 | 84 |
|----|--|----|

17

| | | |
|----|---|----|
| 18 | Nearburg Exploration Company Exhibit Number 20 - Administrative Notice | 84 |
|----|---|----|

| | | |
|----|---|-----|
| 19 | Nearburg Exploration Company Exhibit Numbers 32, 33 and 34 | 199 |
|----|---|-----|

20

| | | |
|----|--|-----|
| 21 | Nearburg Exploration Company Exhibit Number 65 | 275 |
|----|--|-----|

21

| | | |
|----|---|---------|
| 22 | COG Operating, LLC Exhibit Numbers 1 through 24 | 170,172 |
|----|---|---------|

| | | |
|----|--|-----|
| 23 | COG Operating, LLC Exhibit Numbers 25 through 29 | 241 |
|----|--|-----|

| | | |
|----|--|-----|
| 24 | COG Operating, LLC Exhibit Numbers 30 through 33 | 222 |
|----|--|-----|

25

1 (9:00 a.m.)

2 EXAMINER JONES: Okay. Let's go on the
3 record this morning. This is May the 4th, 2016, at 9:00
4 a.m.

5 I'm William V. Jones.

6 This (indicating) is David K. Brooks.

7 We've got three cases, as I see it today.
8 We've got -- one of them is an application of Nearburg,
9 and the other two is the application of COG Operating,
10 LLC.

11 These are mostly legal. I'm going to
12 turn it -- I think I'm going to turn this over --

13 EXAMINER BROOKS: Go ahead and call the
14 cases and appearances.

15 EXAMINER JONES: Okay. First, we'll call
16 Case Number 15441, the matter of the application of
17 Nearburg Exploration Company, SR02, LLC, and SR03, LLC
18 for an accounting and limitation on recovery of well
19 costs and for cancellation of application for permit to
20 drill in Eddy County, New Mexico.

21 Call for appearances in that case.

22 MR. HALL: Mr. Examiners, Scott Hall with
23 Montgomery & Andrews, Santa Fe, appearing on behalf of
24 Nearburg Exploration Company; SR02, LLC; and SR03, LLC.
25 With me from our office is Sharon Shaheen, and also

1 David Harper with the Dallas law firm of Haynes & Boone
2 at the table with me.

3 We have two witnesses this morning.

4 EXAMINER JONES: Okay. Any other
5 appearances?

6 MR. FELDEWERT: Mr. Examiner, Michael
7 Feldewert and Jordan Kessler, from the Santa Fe office
8 of Holland & Hart, appearing on behalf of COG Operating,
9 LLC.

10 We have two witnesses here today.

11 EXAMINER JONES: Other appearances?

12 Okay. Let's call the other two cases,
13 also, and we will combine all three cases in one
14 transcript.

15 And this is -- the first one is the
16 application of COG Operating, LLC for a nonstandard
17 spacing and proration unit and compulsory pooling in
18 Eddy County, New Mexico.

19 The other one is the application of -- that
20 was Case Number 15482.

21 Case Number 15481 is the application of COG
22 Operating, LLC for a nonstandard spacing and proration
23 unit and compulsory pooling in Eddy County, New Mexico.

24 Call for appearances in those two cases.

25 MR. FELDEWERT: Mr. Examiner, Michael

1 Feldewert and Jordan Kessler appearing on behalf of COG
2 Operating, LLC.

3 And we have the same two witnesses.

4 EXAMINER JONES: Other appearances?

5 MR. HALL: Again, Mr. Examiner, Scott Hall
6 and Sharon Shaheen, from Montgomery & Andrews, Santa Fe,
7 along with David Harper with Haynes & Boone in Dallas,
8 appearing on behalf of Nearburg Producing Company.

9 EXAMINER JONES: You have three witnesses?

10 MR. HALL: I have two.

11 EXAMINER JONES: Two witnesses.

12 Would all witnesses that intend to provide
13 fact testimony today please stand?

14 And will the court reporter please swear
15 the witnesses?

16 (Mr. Howard, Mr. Owen, Mr. Griffin and
17 Mr. Zollinger sworn.)

18 EXAMINER JONES: You probably want to start
19 out with some opening statements. I think I'm going
20 to -- because it's mostly a legal matter, I'm going to
21 turn the bulk of the proceedings over to

22 EXAMINER BROOKS: Okay. Very good. I do
23 believe most of the issues in this case are legal. Now,
24 there may be some underlying factual issues. As I
25 pointed out in the discovery conference, I am somewhat

1 unclear on exactly what the issues in this case are, but
2 I'm hopeful that the hearing will clarify that to some
3 extent.

4 Since you are the movant under the case
5 first filed, Mr. Hall, we'd invite you to make an
6 opening statement at this time if you would like to.

7 MR. HALL: Mr. Examiner, we'll waive our
8 opening statements and save our comments for closing and
9 stand for any questions that you might have right now.

10 EXAMINER BROOKS: Okay. Well, I've read
11 your application. You don't have anything to add to it?

12 MR. HALL: Not at this time.

13 EXAMINER BROOKS: There are several
14 admonitions here. It was a good idea to review the
15 application, and I have done so.

16 Mr. Feldewert, would you like to make an
17 opening statement?

18 MR. FELDEWERT: Yes, sir.

19 EXAMINER BROOKS: Go ahead.

20 OPENING STATEMENT

21 MR. FELDEWERT: Mr. Examiner, I'm handing
22 you the order that was entered by the Commission back in
23 2002, 11700-B.

24 EXAMINER BROOKS: That was in the
25 TMBR/Sharp case?

1 MR. FELDEWERT: In the TMBR/Sharp case.

2 And, Mr. Brooks, you probably are familiar
3 with that case because you drafted the Division order
4 that is cited and which was appealed, then, to the
5 Commission and which is cited in this opinion that was
6 issued by the Commission.

7 EXAMINER BROOKS: Yes, I think I did. I
8 don't remember for sure, but I know I drafted one order
9 in that case.

10 MR. FELDEWERT: And one of the reasons I
11 attached this -- or provide you this is because it was
12 also attached to some of the filings by Nearburg earlier
13 in this case. So I think both parties agree this
14 provides the legal framework for the limited issues that
15 are properly before you.

16 And if you turn over to page 5 of that
17 opinion -- and I know you've read their application --
18 it puts things in perspective. So I'm going to read
19 paragraphs 27 and 28. It says: "When an application
20 for permit to drill is filed" -- and I'm on page 5 of
21 the opinion, paragraph 27.

22 EXAMINER BROOKS: Let me unfold my glasses.

23 MR. FELDEWERT: That's all right.

24 EXAMINER BROOKS: Paragraph 25?

25 MR. FELDEWERT: 27.

1 EXAMINER BROOKS: 27.

2 MR. FELDEWERT: "When an application for
3 permit to drill is filed, the Division does not
4 determine whether an applicant can validly claim a real
5 property interest in the property subject to the
6 application, and therefore whether the applicant is" --
7 quote, unquote -- "'duly authorized' and 'is in charge
8 of the development of a lease or the operation of a
9 producing property.' The Division has no jurisdiction
10 to determine the validity of any title, or the validity
11 or continuation in force and effect of any oil and gas
12 lease. Exclusive jurisdiction of such matters resides
13 in the courts of the State of New Mexico. The Division
14 so concluded in its Order in this matter."

15 And I believe that was an order you
16 drafted, Mr. Brooks.

17 Paragraph 28. And this goes to the issue
18 that's properly before you. "It is the responsibility
19 of the operator filing an application for a permit to
20 drill to do so under a good faith claim to title and a
21 good faith belief that it is authorized to drill the
22 well applied for. It appears to this body that
23 Arrington had such a good faith belief when it filed its
24 application, but subsequently the District Court found
25 otherwise."

1 And it goes on on how the District Court
2 looked at the contractual issues and made its
3 determination.

4 Now, when I look at their application that
5 they filed -- and I've handed that to you, and it's got
6 some highlighting on it -- I see requests and there are
7 claims in there, for example, that COG did not have a
8 right to drill, that they are willfully trespassing,
9 that the 43H and the 44H are in trespass. I see that in
10 paragraph A.

11 I look at paragraph B. It contends that
12 they're drilling these wells without obtaining voluntary
13 pooling agreements. In other words, without a voluntary
14 agreement being in place.

15 Paragraph C. It asked for an accounting to
16 Nearburg on the assumption that there is an absence of
17 the pooling. I think what they mean there, an absence
18 of pooling or an absence of a voluntary agreement.

19 Paragraph D. They want to cancel the
20 drilling permit for a 69H well for the reasons that the
21 spacing unit for the well has not been consolidated by
22 voluntary agreement or compulsory pooling.

23 And then my favorite is with respect to the
24 16H well, which is down in paragraph E. That well was
25 drilled in 2011 in their acreage. They ask for

1 appropriate relief, whatever that is, which they say may
2 include designating Nearburg as an operator of the well.

3 EXAMINER BROOKS: Of course, that's an
4 unusual way to word it to me.

5 MR. FELDEWERT: What's that?

6 EXAMINER BROOKS: That's an unusual way to
7 word a pleading.

8 MR. FELDEWERT: It's rather odd.

9 EXAMINER BROOKS: Go ahead.

10 MR. FELDEWERT: Anyway, when I look at the
11 TMBR/Sharp case and I look at what they're asking, most
12 of -- the relief here not only comes as a surprise to
13 Concho, but most of the relief they're asking for, this
14 Division does not have jurisdiction over. These
15 remedies require an examination of parties' course of
16 dealing, their course of conduct, the underlying
17 documents that exist in the case. And once those legal
18 determinations are made, then the courts supply an
19 appropriate contractual remedy, which may include an
20 accounting. But they ask you to determine, apparently,
21 like they did in the TMBR/Sharp case whether COG is duly
22 authorized or has the actual contractual authority to
23 operate the acreage. And that's a matter that the
24 Commission has said is exclusively within the control of
25 the courts.

1 So I don't think you can sit here as this
2 body and look at the parties' course of dealing and look
3 at the course of conduct and look at all the records and
4 look at what was signed and do some kind of analysis of
5 the contracts and determine whether they had an actual
6 right to drill or whether the wells are in trespass or
7 whether there is an accounting remedy that's owed
8 because there is some breach of an agreement or whether
9 they should be removed as an operator. That is for the
10 courts, and that is going to be decided by the courts
11 under the complaint that they filed in Santa Fe District
12 Court, or it's going to be decided by the Eddy County
13 Court down in Eddy County. But that's exclusively
14 within the province of the courts.

15 Here is what is before you. I'd reference
16 paragraph B, that Concho violated some rules of the
17 Division -- certain rules of the Division when they
18 permitted and drilled these wells. That is properly
19 before you. Okay? But that's governed by the
20 TMBR/Sharp case. The question being whether at the time
21 that they permitted and drilled these wells, did they
22 have a good-faith claim to title and a good-faith belief
23 that they're authorized to drill those wells? That's
24 what is at issue, and that's what's going to be
25 presented to you here today.

1 An important thing to keep in mind: The
2 SRO Unit terminated March of 2014. Write that down,
3 important date.

4 EXAMINER BROOKS: I have a chronology.

5 MR. FELDEWERT: 43H was permitted in 2013,
6 and it's still in effect. 43H was drilled in August of
7 2014.

8 44H permitted when the SRO Unit was still
9 in effect in 2013, drilled in October of 2014.

10 So do they have a good-faith belief at the
11 time these are filed and when the wells are drilled.
12 That's what's before you. And I submit to you that that
13 can be answered by a few of our exhibits.

14 So I'd invite you to go to our exhibit
15 book, which is in this binder (indicating). And I'd
16 invite you to write these exhibits numbers down, and
17 keep it in mind as we go through the hearing here today.
18 So it's this exhibit book (indicating).

19 EXAMINER BROOKS: We've got a lot of books
20 here.

21 MR. FELDEWERT: We do have a lot of books.

22 And here's what we understand Nearburg to
23 be saying, having read their pleadings. We understand
24 they claim that when the SRO oil unit terminated, that
25 the Term Assignment that they executed with Marbob in

1 2009 likewise terminated. Under that Term Assignment,
2 they held an overriding royalty interest which involved
3 all of the unit wells. They contend now that that
4 terminated when the SRO Unit terminated and that their
5 interest -- the overriding royalty interest of that
6 converted back to a working interest in their state
7 lease. And they contend that there is absolutely no
8 agreement that encumbers their working interest in their
9 state lease. And that's their position.

10 Exhibit 4 is the Unit Operating Agreement,
11 and that is still in effect. It survived the
12 termination of the SRO Unit. Marbob was the operator
13 under this Unit Operating Agreement. Now it's Concho.

14 Page 29. And fortunately -- I hope yours
15 are paginated. Mine are paginated. I had my secretary
16 do it. Are yours paginated?

17 EXAMINER BROOKS: Well, it's partially
18 paginated, but page 29 -- it goes from page 22 to page
19 31, but I can figure out where the page -- oh. It's --
20 some pages are paginated in the upper right and the
21 lower right and some in the upper right. So page 29 is
22 paginated in the upper right.

23 MR. FELDEWERT: All right. Here's what's
24 important about page 29 of this operating agreement. Do
25 you see it references the west half of Section 17?

1 EXAMINER BROOKS: Yes.

2 MR. FELDEWERT: That's a lease held by
3 Yates Petroleum, and then it shows the working interest
4 owners in that lease. Then it shows the lease held --
5 the lease in the west half of Section 20 that's held by
6 Nearburg, both of which are committed to this Unit
7 Operating Agreement. Okay?

8 What's important here is the west half of
9 17 and the west half of 20 form the spacing units for
10 the 43H and the 44 -- 44H.

11 EXAMINER BROOKS: Did Nearburg sign this
12 operating agreement?

13 MR. FELDEWERT: I'm going to get to that.

14 MR. HALL: No.

15 MR. FELDEWERT: Let's go right there.
16 Let's go to page 18.

17 EXAMINER BROOKS: Page 18.

18 MR. FELDEWERT: Pages 18 to 21 are the
19 signature pages in the Unit Operating Agreement. Okay?

20 EXAMINER BROOKS: Yes.

21 MR. FELDEWERT: And as you flip through
22 there, you'll see that some parties signed it. Some
23 parties did not. In particular, there are four working
24 interests owners that didn't sign this Unit Operating
25 Agreement but have subscribed to it in another fashion.

1 Okay?

2 Page 19. You'll see that Yates Petroleum,
3 Yates Drilling, MYCO Industries and ABO Petroleum never
4 physically signed the operating agreement. They
5 subscribed to it using the state form that is entitled
6 "Ratification and Joinder of Unit Agreement and Unit
7 Operating Agreement." That's from the state's form.
8 That's their Web site. That form was accepted and
9 continues to be accepted by all of the working interest
10 owners in this Unit Operating Agreement as a means of
11 subscribing to the Unit Operating Agreement. The Yates
12 entities shared in the revenues and costs with the other
13 working interest owners by virtue of the fact that they
14 signed this ratification.

15 Now, 2009. Nearburg has their working
16 interest still. They haven't assigned it yet to Marbob.
17 They have their working interest in the west half of
18 Section 20.

19 Exhibit 2. Marbob submits as the operator
20 of the Unit Operating Agreement in the unit, interest in
21 Chesapeake and Nearburg, the State Land Office for
22 inclusion into the unit. And this is what they
23 submitted.

24 EXAMINER BROOKS: You've asked me to look
25 at Exhibit 2, right?

1 MR. FELDEWERT: Exhibit 2. So that is a
2 cover page, with a letter from the State Land Office
3 back to Marbob --

4 EXAMINER BROOKS: Right.

5 MR. FELDEWERT: -- saying in accordance
6 with the unit, they bring Nearburg and Chesapeake in.
7 The second page is what Marbob submitted. Now, Marbob's
8 the operator. Okay? And they submit this -- they state
9 that Chesapeake and Nearburg have both subscribed to the
10 Unit Operating Agreement. And then they include with
11 their submission, if you go to the page on, a
12 ratification form signed by Chesapeake. And the next
13 page, the Ratification and Joinder of Unit Agreement and
14 Unit Operating Agreement signed by Nearburg when
15 Nearburg held a working interest in the state lease.

16 So to the extent Nearburg believes it now
17 has a working interest in that state lease, it would
18 appear from these documents that they are subject to the
19 Unit Operating Agreement by virtue of the same
20 ratification form that was signed by the other working
21 interest owners, including Yates.

22 In 2009, Marbob viewed this as subscribing
23 to the Unit Operating Agreement, and all the other
24 working interests use this form as subscribing to the
25 Unit Operating Agreement. That's how they interpreted

1 it. It was a means of subscribing to the unit operating
2 agreement outside of physically signing it.

3 Now, I look at that and in my opinion, that
4 alone is enough for Concho, who is a successor operator
5 for Marbob -- okay -- to have a good-faith belief that
6 they are authorized under this Unit Operating Agreement
7 to develop the west half of Section 20 just like all the
8 other leases that are subject to this Unit Operating
9 Agreement and had that belief at the time they drilled
10 the 43H and the 44H. That's my point one. Keep this in
11 mind.

12 Secondly, second point, we're going to go
13 through the correspondence here. Mr. Howard's going to
14 testify, they say, for two hours. I don't know what
15 he's going to testify for for two hours, but that's what
16 they say.

17 MR. HALL: Excuse me. How long are you
18 going to testify?

19 MR. FELDEWERT: I'm just going through the
20 exhibits.

21 There was some correspondence between the
22 parties from the time the SRO Unit terminated, which is
23 March 14, until late May of 2015 -- okay -- which is
24 over a year after the SRO Unit terminated. And we're
25 going to show you that, through that correspondence,

1 they led Concho to believe that Nearburg wished and
2 desired and was agreeable to extending the overriding
3 royalty interest under their Term Assignment with Marbob
4 to extend that Term Assignment. They actually sent an
5 email saying, We are agreeable to the language to extend
6 the Marbob Term Assignment. And throughout that entire
7 time, they led COG to believe that they were authorized
8 to continue to develop the lease.

9 Exhibit 10. Let's look at Exhibit 10.
10 Write this one down. It's important because this is
11 months -- remember I said write down when the wells were
12 drilled? This is months before the wells were drilled.
13 Okay? And this is after the SRO Unit terminated. Here
14 are a series of emails from March 2014 between Nearburg
15 and Concho. Mr. Howard was copied on these.

16 And here's what Concho's telling Nearburg.
17 Go to the very last page. And I'm on the last email,
18 date of March 20th. There's a discussion about the SRO
19 Unit terminating, and in the second paragraph, last
20 sentence, Brent Sawyer for Concho tells Nearburg, "By
21 terminating the unit voluntarily, the undrilled
22 proration units are all held by production by existing
23 wells, not subject to the CDC or expiration, but can be
24 drilled at will subject to the JOA already in place."
25 They're talking about that Unit Operating Agreement

1 that's in place. That's number one. That was in March
2 of 2014.

3 Go to the first page -- I'm sorry -- second
4 page, continue up the email string. Go to the second
5 page, at the top. Again, this is Mr. Sawyer telling
6 Nearburg -- and you can see this is even copied to Ken
7 Dixon and Randy Howard at Nearburg. And he's telling
8 them the following. And I'm at the top of page 2. "I
9 believe the most pressing issue is that the Term
10 Assignment for Nearburg to Marbob is effective until the
11 SRO is dissolved so technically it has expired.
12 However, we are moving forward with the assumption that
13 it was intended to keep the assignment and the
14 overriding royalty effective until all the wells in (or
15 formerly in) the unit are plugged, so we will need to
16 paper that up." So we're going to move forward on the
17 assumption you-all wanted to continue the overriding
18 royalty interest and get that papered up. Okay?

19 And then he said -- and this is
20 important -- "However, if that assumption is incorrect,
21 please let me know since it will affect the work the
22 title" lawyers -- "title lawyer is doing on the updated
23 opinions for the wells." This is in March of 2014,
24 after the SRO Unit terminated. They're telling Nearburg
25 very clearly how they're proceeding, and let us know if

1 we're wrong on that assumption. Okay?

2 So what happens? Over the next few months,
3 they engage in efforts to paper up an extension of that
4 Marbob Term Assignment. They had a meeting in October
5 to discuss that, to finalize an extension of that Term
6 Assignment.

7 Exhibit 15. Write this one down, please.
8 This is after their October meeting. This is an email
9 from Randy Howard to Brent Sawyer. Brent Sawyer's the
10 guy we just saw in the March 2014 email. Randy Howard
11 was copied on that. They're talking about two things.
12 One is they've got some JOAs covering some other
13 properties; they're looking at changing them. The
14 second subject is the papering-up of this extension on
15 the Marbob Term Assignment. Okay?

16 He says, We regretfully advise COG that it
17 prefers to remain subject to the original JOA(s). So
18 they don't want to change the JOAs on the other
19 properties.

20 But here's the subject before you. "We
21 are, however, agreeable to your changes to this Term
22 Assignment of Oil and Gas Lease covering the west half
23 of Section 20.... I assume this will actually be an
24 Amendment or Correction to the Term Assignment of Oil
25 and Gas Lease."

1 They talked about the language to extend
2 the Term Assignment at their October meeting, and
3 Mr. Howard says, after that meeting, "We are agreeable."

4 Then he goes on to say, "Also, we would
5 like to see COG's calculations on well-by-well basis for
6 our overriding royalty interest in the wells." They
7 only have an overriding royalty interest -- now, this is
8 after the SRO Unit terminated, right? They only have an
9 overriding royalty interest in the wells if they have
10 agreed to extend the Term Assignment. Otherwise,
11 they've reverted back to a working interest in just
12 their lease. Okay? So that's what he's saying.

13 EXAMINER BROOKS: I do not have the
14 chronology in front of me that I thought I had. I guess
15 I'm disorganized as usual.

16 What date did the unit --

17 MR. FELDEWERT: March of 2014. March 1st
18 of 2014.

19 EXAMINER BROOKS: Thank you.

20 MR. FELDEWERT: Okay?

21 All right. So what are they doing now?
22 Now they engage in efforts to determine what their
23 percentage of override's going to be in all the SRO Unit
24 wells -- okay -- now that they've agreed to an extension
25 of the Term Assignment. In fact, as late as April 2015,

1 a year later, almost -- well, November, December,
2 January, February, March -- five months later. Okay?

3 Write this one down, Exhibit 19. After
4 they say they're agreeable, right, they're meeting
5 again. They had an agenda. You know, they talked about
6 we've got to get this done. They're meeting again.

7 Mr. Howard says, "Attached is the
8 spreadsheet we discussed this morning. I've added the
9 43H and 44H wells pursuant to our discussion." Okay?

10 Here's what's important about the
11 spreadsheet. Take a look at the spreadsheet, next page.
12 He's listing the SRO Unit wells, including the 43H and
13 44H, but here's what's important. All the way over in
14 the right-hand side, you see that column that says "NEX
15 Overriding Royalty Interest"? Okay? As late as April
16 of 2015, Mr. Howard, on behalf of the company, is saying
17 because I was agreeable to the Corrected Term
18 Assignment, we're proceeding under an overriding royalty
19 interest, and here is what we think it is in all of
20 these wells. Okay? That's as late as April of 2015.
21 That is -- October, November, December, January,
22 February, March, April -- six months after the 44H was
23 drilled, six months later. Okay? And all this time,
24 they've led counsel to believe we want to extend the
25 Marbob Term Assignment, we're agreeable to the language

1 to extend the Term Assignment, here is the overriding
2 royalty interest that we will have under that Marbob
3 Term Assignment. Okay?

4 And then something happens in May. I don't
5 know what it is, but we're going to find out. Okay?
6 And they suddenly change their position. May of 2015,
7 they say, Well, we no longer want to have an overriding
8 royalty interest. We no longer want to extend the TA.
9 We want to examine our working interest in our lease.

10 So they send that June letter,
11 Mr. Examiner, Exhibit Number 23. Comes as quite a
12 surprise to Concho. But here's what they say, second
13 paragraph: "The Term Assignment has expired by its own
14 terms and has not been extended." That's what they say
15 in June, just two months after April.

16 EXAMINER BROOKS: Where are you looking at?

17 MR. FELDEWERT: Exhibit 23, second
18 paragraph, last sentence.

19 EXAMINER BROOKS: Second paragraph?

20 MR. FELDEWERT: Yes, sir.

21 EXAMINER BROOKS: Okay. Okay. Very good.
22 Go ahead.

23 MR. FELDEWERT: And they say, down in that
24 last paragraph: "In an effort to further evaluate our
25 working interest in the Wells, Nearburg requests it be

1 provided with the following eight/eighths information
2 for the Wells." And they're referencing the 43H and
3 44H. Now they want to examine a working interest, not
4 the overriding royalty interest that they had
5 represented up to but now a working interest. This is a
6 dramatic change in position.

7 But even with this June letter -- okay --
8 even with this June letter, they extend the
9 communitization agreements, signed by Nearburg, signed
10 by Nearburg in May. They held them until June. They
11 were assigned in May.

12 Communitization agreements -- this is my
13 third and final point and exhibits to keep in mind.
14 Okay? Exhibit 26 and 27. Exhibits 26 and 27 are
15 communitization agreements for the spacing unit for the
16 43H and the 44H. Okay? They confirm, Nearburg does, in
17 the public record, knowing this is going into the public
18 record, that Concho is the operator of this acreage, and
19 they do so in paragraph eight of each of these
20 communitization agreements that they sign. And it's
21 even bolded type. "COG Operating, LLC shall be the
22 operator of said communitized area and all matters of
23 operation shall be determined and performed by COG
24 Operating, LLC," bolded type, into the public record,
25 sent to COG in June, signed by Nearburg, for the spacing

1 units for the very wells that are at issue here. Okay?

2 Not only do they do that, but they backdate
3 them. Look at the dates. Go to the first page of the
4 Exhibit 26. I'm sorry. Second page. This is for the
5 43 -- let me get my -- if I look at the second page, it
6 shows the spacing unit that's involved, the west half
7 and west half of 17 and the west half and west half of
8 20. So this would be for the 43H, backdated, entered as
9 of July 1st, 2014. Why is that important? Remember our
10 time line? 43H is drilled after this, in July of 2014.

11 Exhibits 27. This is the comm agreement
12 they signed for the spacing unit in which the 44H was
13 in. Go to the second page. They backdate it to October
14 1st, 2014. Why? Because the 44H was subsequently
15 drilled in October. Okay?

16 So this exhibit, in my opinion alone,
17 shows, along with this correspondence, that COG all up
18 till this time had a good-faith belief that they were
19 authorized to operate on this acreage. They applied for
20 APDs to drill these wells.

21 And now with the November application that
22 they filed, which is before you, and their November
23 lawsuit in Santa Fe District Court, they're saying,
24 Well, they had no right to drill or operate these wells
25 and that Nearburg was never agreeable to retaining an

1 overriding royalty interest under the Marbob Term
2 Assignment; they were never agreeable to extending that.
3 They're saying all working interest as of March 1st,
4 2014, all overriding royalty interests, reverted to a
5 working interest, and it's not subject to any kind of an
6 operating agreement. And then they stick their head in
7 the sand and say, Well, don't worry about these CAs;
8 don't pay attention to them. Okay?

9 Now, they can proceed to district court
10 with those theories. And like TMBR/Sharp, they can try
11 to get the district court to declare that they never
12 agreed to extend the Term Assignment. They can go try
13 to do that. They can get the court to try to declare
14 and undo what they signed, to declare that that
15 ratification doesn't do what everybody thought it did,
16 to declare that these CAs mean nothing. They can go to
17 district court and try to do that.

18 But to suggest that Concho did not have a
19 good-faith belief that they were entitled to drill these
20 wells at the time that they were drilled is not borne
21 out by the record or that they violated some kind of
22 Division rules, because they had more than a good-faith
23 belief that they were entitled to drill that initial
24 well, the 16H, back in 2011, which is on the west half
25 of the west half of Section 20, to apply for the APDs in

1 2013 for the 43H and 44H and then drill those wells in
2 2014. Because I am not aware -- and if they've got it,
3 we want to see it -- of any communication from Nearburg,
4 before those wells were drilled, that informed COG
5 anything other than what is said in these CAs, that they
6 are the operator of those spacing units.

7 So I want you to keep these exhibits in
8 mind as we go through the testimony here today, and I'm
9 going to ask you to dismiss their application.

10 The second thing we're going to ask you is
11 that since they have now firmly said that there is
12 absolutely no agreement governing their acreage and the
13 parties have been unable to resolve that issue, we're
14 going to ask you to issue pooling orders for these
15 spaces orders to comport with the comm agreement,
16 because that's what the Oil and Gas Act says, that
17 you've got to have a voluntary agreement, which we
18 thought we had, or you've got to have a pooling order.
19 And that pooling order, Mr. Brooks, would be effective
20 until such time as the Court sorts through all these
21 issues and determines that an agreement does indeed
22 cover their -- their lease. And when that determination
23 is made, the pooling orders go away. That's why we're
24 here today.

25 EXAMINER BROOKS: So it would be your

1 position that under the compulsory pooling statute, even
2 though it requires as a condition of precedent to
3 issuance because of the compulsory pooling order that
4 there be no voluntary agreement, that the Division does
5 not have jurisdiction even to determine its own
6 jurisdiction in that respect?

7 MR. FELDEWERT: No, I don't, because we're
8 not saying there is no voluntary agreement. They're
9 saying there is no voluntary agreement. Okay? So
10 now -- it's just like -- now we have a party.

11 EXAMINER BROOKS: Yeah.

12 MR. FELDEWERT: It's just oop, we got no
13 voluntary agreement. And they made that very clear now,
14 and they've firmly held to that. Okay? So it seems to
15 me we now have to go get a pooling order.

16 EXAMINER BROOKS: Okay. We'll take that
17 into consideration in ruling on this matter.

18 Do you wish to reply to Mr. Feldewert's
19 lengthy opening statement?

20 MR. HALL: It was lengthy. And I would
21 just caution the Examiners to remember that arguments of
22 counsel, especially incomplete recountals of counsel, do
23 not constitute evidence on which you may base a
24 decision. So forget about the last 30 minutes of what
25 we heard.

1 EXAMINER BROOKS: Well, perhaps
2 Mr. Feldewert is taking instruction from his former
3 mentor, Mr. Carr, who won a case before me one time with
4 his testimony.

5 MR. HALL: Right.

6 EXAMINER BROOKS: It wasn't appealed. But
7 that was a very unusual case, I would caution.

8 MR. HALL: So now you're going to hear the
9 whole story, and there is lot to be told. We're going
10 to do our best to try to keep you straight. In each of
11 your exhibit notebooks for Nearburg is Exhibit 30 -- 31.
12 I'm sorry. And it's a graphical timeline that you can
13 refer to, which will lay out the current --

14 EXAMINER BROOKS: You said it's in your
15 notebook?

16 MR. HALL: Yes. It's in there.

17 EXAMINER BROOKS: 30?

18 MR. HALL: 31. It's a quick reference for
19 you, so you don't have to write down all these things.
20 We have that outlined for you.

21 EXAMINER BROOKS: Well, that will be
22 helpful.

23 Okay. Are you ready to call your first
24 witness, Mr. Hall?

25 MR. HALL: We are.

1 EXAMINER BROOKS: You may proceed.

2 MR. HALL: We would call Randy Howard to
3 the stand.

4 WILLIAM RANDALL "RANDY" HOWARD,
5 after having been previously sworn under oath, was
6 questioned and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HALL:

9 Q. For the record, please state your name.

10 A. William Randall Howard.

11 Q. Mr. Howard, where do you live and by whom are
12 you employed?

13 A. I live in Midland, Texas, and I'm employed by
14 Nearburg Producing Company.

15 Q. Are you also affiliated by Nearburg Exploration
16 Company?

17 A. Nearburg Exploration Company and SRO2 and SRO3.

18 Q. And what do you do for those companies?

19 A. I'm the land manager.

20 Q. Have you previously testified before the
21 Division, and have your credentials as a landman been
22 established as a matter of record?

23 A. Yes.

24 Q. And are you familiar with the lands and the
25 wells that are the subject of the applications before

1 the Examiners this morning?

2 A. I am.

3 MR. HALL: Mr. Examiner, are his
4 credentials acceptable?

5 EXAMINER BROOKS: Yes. He is so qualified.

6 Q. (BY MR. HALL) Mr. Howard, would you briefly
7 summarize what it is that Nearburg -- NEX we'll call
8 them. Tell us what NEX is seeking to have the Examiners
9 do?

10 A. To determine that COG violated Division rules
11 when they falsely filed documents and certificates
12 stating that they had the right to drill the 43H, the
13 44H and 69H wells across unconsolidated, unpooled
14 acreage owned by Nearburg in the west half of Section
15 20, 26 South, 28 East, in Eddy County, New Mexico.

16 Q. All right. Let's get oriented. If we could
17 turn to Exhibit 1, if you would identify that. What
18 does that show us?

19 A. This is a map of the SRO Unit with the various
20 wells throughout the area, and then in Section 20 in the
21 southwest corner of this, the west half is highlighted
22 in yellow, which shows the acreage owned by Nearburg.

23 Q. All right. If you look at Section 17 and
24 Section 20, the west half of those sections, can you
25 identify the wells that are shown on there?

1 A. Yes. Going from west to east, there is the
2 16H, which is entirely on Section 20. There is the 43H,
3 which runs from Section 17 into Section 20, and the 44H,
4 which runs from 17 down into Section 20.

5 Q. All right. Now, I believe I heard you say they
6 ran from east to west. Did you mean north to south?

7 A. What I was meaning to say is the wells in order
8 are -- the well to the west is the 16H.

9 Q. Thank you.

10 A. They're all stand-up wells.

11 Q. Okay. And Exhibit 1 shows additional Nearburg
12 acreage highlighted in yellow that is outside the unit
13 boundaries; is that right?

14 A. That's correct.

15 Q. Let's look at the second page of that. What
16 does it show us?

17 A. It's just a portion of the -- of the
18 stratigraphic area showing where the lands that were
19 included in the -- some of the lands that were included
20 in the -- or zones that were included in the unit.

21 Q. All right. What depth are unitized?

22 A. Surface to the base of the Bone Spring.

23 Q. Let's look at Exhibit 2. Identify that,
24 please.

25 A. This is a Term Assignment of oil and gas lease

1 from Nearburg to Marbob covering the west half of
2 Section 20, surface to the base of the Bone Spring, and
3 it looks like it's effective July 1st, 2009.

4 Q. Was it by this instrument that Nearburg
5 contributed its acreage to Marbob for a contribution to
6 the SRO Unit?

7 A. Yes. We gave this Term Assignment to Marbob
8 and then put it into the unit.

9 Q. And what consideration did Nearburg receive?

10 A. Nearburg was able to retain an override,
11 including the difference between 25 percent of existing
12 burdens, for any and all wells in the SRO Unit.

13 Q. All right. If you will look at Exhibit A to a
14 Term Assignment, it consists of two pages. Would you
15 briefly explain what that is?

16 A. This is just a standard -- business standard
17 form for information for wells that are required under
18 the Term Assignment, for the wells that are drilled
19 pursuant to the Term Assignment.

20 Q. All right. Any wells within the unit; is that
21 right?

22 A. That's correct.

23 Q. And what types of data were you to receive,
24 just a general -- just by category?

25 A. Drilling and mud-log reports and well data,

1 which would include permits and those kind of things,
2 notification, access to the location. Usually they
3 filed with the regulatory commission those types of
4 things, common standard practice.

5 Q. Nearburg, among other things, was to be
6 notified before drilling?

7 A. Yes. Yes.

8 Q. Who was the original operator of the SRO Unit?

9 A. Marbob was the original operator.

10 Q. And who succeeded them as operator?

11 A. COG.

12 Q. And about when did that transition occur?

13 A. COG took over operations in October of 2010.

14 Q. All right. Now, for the Examiners, let's
15 identify the wells that are the subject of our
16 application. Let's look first at the form on Exhibit
17 Number 3. Identify that, please.

18 A. This is Form C-101 for the 43H well, dated
19 February 21st, 2013.

20 Q. And where is that well situated?

21 A. It is in the west half of the west half of
22 Sections 17 and 20.

23 Q. Let's look at Exhibit 4. Identify that,
24 please.

25 A. It's a C-102 for the 43H with operator

1 certification of 3/5/15, again the same lands, west
2 half-west half of both sections.

3 Q. Now, if your eyes will permit it, can you read
4 us what the operator certification says?

5 A. "I hereby certify that the information
6 contained herein is true and complete to the best of my
7 knowledge and belief and that this organization either
8 owns a working interest or unleased mineral interest in
9 the land, including the proposed bottom-hole location,
10 or has a right to drill this well at this location
11 pursuant to a contract with an owner of such mineral or
12 working interest or to a voluntary pooling agreement or
13 a compulsory pooling order heretofore entered by the
14 Division."

15 Q. All right. And that's signed and dated. What
16 is the date there?

17 A. 3/5/15.

18 Q. And we see these certifications throughout the
19 well files for the subject of this application?

20 A. Correct.

21 Q. Let's identify Exhibit 5.

22 A. It's a Form C-101 for the 44H, dated February
23 21st, 2013.

24 Q. And where is that well situated?

25 A. It is the east half of the west half of

1 Sections 17 and 20.

2 Q. All right. Exhibit 6?

3 A. Form C-102 for the 44H, with an operator
4 certification dated 3/9/15, and, again, it describes the
5 lands, east half-west half of both sections.

6 Q. Turn to Exhibit 7 and talk to us about that.

7 A. This is a C-102 for the 16H well that was
8 drilled entirely in Section 20, in the west half of the
9 west half. It's an operator certification, 3/13/14.

10 Q. And is the 16H well situated entirely on
11 Nearburg's acreage in Section 20?

12 A. Yes.

13 Q. Let's look at Exhibit Number 9. Identify that,
14 please.

15 A. It's a Form C-101 for the 69H, dated 5/5/15.

16 Q. And where is that well situated again?

17 A. It's in the west half of 17 and 20.

18 Q. Speaking of the SRO State Exploratory Unit,
19 what was the term of that unit?

20 A. From May of '09 till -- June of '09 till March
21 of '14.

22 Q. And let's look at Exhibit Number 10. Identify
23 that, please.

24 A. It's a Ratification and Joinder of Unit
25 Agreement and Unit Operating Agreement dated June 26th,

1 2009.

2 Q. Now, why was the SRO Unit terminated?

3 A. Concho -- COG terminated the unit.

4 Q. And what reason did they give for taking its
5 termination?

6 A. My understanding was it had to get out of a
7 continuous development provision that was in the SRO
8 Unit.

9 Q. All right. And referring back, again, to
10 Exhibit 10, in fact, was Nearburg a party to a Unit
11 Operating Agreement for the unit?

12 MR. FELDEWERT: Objection. Calls for a
13 legal conclusion.

14 EXAMINER BROOKS: Repeat the question,
15 please. A party to what?

16 MR. HALL: A Unit Operating Agreement for
17 the unit.

18 EXAMINER BROOKS: Okay. I would sustain
19 the objection. I think that what you will need to do is
20 ask the witness about the facts on which a judgment on
21 that would be made.

22 Q. (BY MR. HALL) Did Nearburg sign a Unit
23 Operating Agreement?

24 A. They did not.

25 Q. Is it customary in the industry for the owners

1 of overriding royalty interests to provide ratifications
2 for a unit agreement even though they own no operating
3 rights?

4 A. Yes.

5 Q. Going back to the Term Assignment, if you look
6 at Exhibit A to that again, you described the well data
7 that was required to be provided by Marbob and
8 its successor COG?

9 EXAMINER BROOKS: Which exhibit?

10 MR. HALL: It's the Term Assignment itself.

11 THE WITNESS: 2.

12 MR. HALL: That's Exhibit 2 and Exhibit A
13 to that.

14 EXAMINER BROOKS: Okay. Very good. Thank
15 you.

16 Q. (BY MR. HALL) And, again, you've discussed for
17 us the various types of materials and information,
18 notification, governmental permits, filings that were
19 supposed to have been provided. What, in fact, was
20 provided to Nearburg?

21 A. Well, COG provided information -- well
22 information on the Avalon wells that were drilled. At
23 some point in time, we stopped getting any information
24 on wells, but we never received any well information on
25 the Delaware, 2nd Bone Spring or 3rd Bone Spring wells.

1 So basically we were unaware of those Bone Spring.

2 Q. There were a number of wells drilled below the
3 Avalon; is that right?

4 A. Six, I believe it was, at one point in time was
5 the count.

6 Q. And you received no notification of those
7 wells?

8 A. Correct. Nothing at all.

9 Q. Let's look at Exhibit 11, if you would identify
10 that, please.

11 A. It's a request for voluntary termination of the
12 SRO State Exploratory Unit.

13 Q. And what date was that termination made
14 effective?

15 A. Effective March 1st, 2014.

16 Q. What was the effect of unit termination on
17 Nearburg's lease acreage?

18 A. The Term Assignment that was given to Marbob
19 initially had a term that expired when the SRO Unit
20 agreement was dissolved. So when the SRO Unit was
21 terminated, any -- any rights and interest previously
22 owned by Marbob or Concho would revert back to Nearburg.

23 Q. All right. And after the unit was terminated
24 and the lease reverted back to Nearburg, did Nearburg
25 continue to receive any well information from COG?

1 A. No.

2 Q. And the last well information you received was?

3 A. I think it was June of 2011.

4 Q. All right. Limited to Avalon --

5 A. Still just Avalon wells, correct.

6 Q. All right. After the unit terminated and the
7 lease reverted back to Nearburg, were you engaged in
8 conversations with COG's land staff about reconciling
9 Nearburg's position?

10 A. Yes.

11 Q. And characterize those for us generally. What
12 were you trying to do at that time?

13 A. Well, we were trying to work with COG. They
14 had come to us and said that the unit had terminated and
15 that basically the Term Assignment had also expired.
16 And we were trying to look at some way of resolving the
17 issue to have us still have our override. We talked
18 with them about we needed to get well information and
19 have a better handle on what all was happening within
20 the SRO Unit.

21 It was fairly new to me at that point in
22 time. I had just come to work for Nearburg not too long
23 before then. So basically what I had done is ask for
24 information on wells. And there was some dispute -- or
25 discrepancies in the overrides, and I was trying to get

1 that -- at the same time get that figured out, why there
2 was a discrepancy in the overrides and just talking
3 about moving forward to try to resolve some of those
4 issues.

5 Q. Is it accurate to say that you were in the
6 process of assessing your situation?

7 A. Yes. Yes.

8 Q. Finding a path forward?

9 A. Right.

10 Q. Let's look at Exhibit 12. Identify that,
11 please.

12 A. This is an email from me to Brent Sawyer at
13 Concho.

14 Q. Dated when?

15 A. It's dated January 8th, 2015. It says, "As
16 promised, please find attached my updated spreadsheet
17 for the SRO Unit Wells." The reason, if I can say what
18 this was about was, I still didn't feel like I had a
19 good hold of -- a good handle on what wells were in the
20 SRO Unit, and I had asked for a list of all the wells
21 and what Concho thought the ownership was in those
22 wells. And after discussing it several times and not
23 getting it, I went ahead and took it upon myself to put
24 together what I thought was a complete, total list of
25 all the wells, and that's what's attached.

1 Q. Okay. Let's look at the next sheet, the next
2 page under Exhibit Number 12. When are the wells that
3 are highlighted here on the left column?

4 A. Looks like the 16H, 20H, 46H, 48H, 53H, 58H,
5 59H, 61H, 62H, 63H, 64H. Are those the ones you're
6 talking about?

7 Q. Yes.

8 Why don't the 43H and the 44H appear on
9 your list?

10 A. We were unaware of the 43 and 44H. In fact, if
11 I remember correctly, the only way we had these well
12 names is because I had gone onto a drilling info site to
13 try to pull up SRO wells.

14 Q. All right. And after you provided this well
15 list to Mr. Sawyer over at COG, did he inform you that
16 your list was incomplete, that there were additional
17 wells out there?

18 A. No. I was under the impression it was
19 complete.

20 Q. Let's look at Exhibit 13, if you'll identify
21 that, please.

22 A. This is an email from Brent Sawyer to myself.
23 It says, "Randy, I just finished putting together the
24 attached list of things we would like to discuss at our
25 meeting on Friday." And he's attached an agenda of what

1 they wanted to discuss whenever they came over.

2 Q. All right. And at this point, let's jump ahead
3 to Exhibit 31 to help the Examiners understanding of the
4 sequence of events here. Is this graphical depiction of
5 a timeline --

6 A. Yes.

7 Q. -- of events that you participated in creating?

8 A. Yes.

9 Q. And, again, referring back to Exhibit Number
10 13, the date of that email was April 22, 2015, correct?

11 A. That's correct.

12 Q. And if we look back on Exhibit 31, does it show
13 when the 43H and 44H wells were actually drilled or
14 spud?

15 A. Yes. The 43H was spud August 2nd, 2014, and
16 the 44H was spud on October 10th, 2014.

17 Q. Okay. Then again jumping to Exhibit 13,
18 jumping forward in time to August 22, 2015, Mr. Sawyer
19 is --

20 MR. FELDEWERT: You mean April?

21 MR. HALL: I'm sorry. Yes. Correct.

22 Q. (BY MR. HALL) -- April 22, 2015, is Mr. Sawyer
23 preparing an agenda for you for a meeting to discuss the
24 SRO Unit issue?

25 A. Yes, he is.

1 Q. Let's look at his agenda and discuss those,
2 very next page at the very top.

3 EXAMINER JONES: I'm sorry. What exhibit
4 are we on?

5 MR. FELDEWERT: We are on Exhibit 13, page
6 2 of that exhibit.

7 EXAMINER JONES: Thank you.

8 MR. FELDEWERT: The agenda.

9 Q. (BY MR. HALL) What's first on the agenda?

10 A. Comm agreements for the 43H and 44H wells.

11 Q. And would you read those entries at A and B?

12 A. Yes.

13 (A) is the SRO State Com 43H, west
14 half-west half of 17, 26 South, 28 East, west half-west
15 half of Section 20, 26 South, 28 East, spud 10/10/14.

16 And B is SRO State Com 44H, east half-west
17 half, 17, 26 South, 28 East, east half-west half, 20, 26
18 South, 28 East, spud 8/2/14.

19 Q. So when you read those spud dates, what was
20 your reaction?

21 A. That's the first that I'd heard that those
22 wells had been spud.

23 Q. And this is in 2015, April?

24 A. When I received this email was the first time
25 that I heard they were spud, yes.

1 Q. All right. And did you discuss with Mr. Sawyer
2 the need to communitize the acreage that the wells had
3 been drilled on?

4 A. I'm sorry. Ask the question again.

5 Q. Were you discussing with Mr. Sawyer the
6 apparent need to communitize the acreage that those two
7 wells had been drilled on?

8 A. Yes.

9 Q. And what was motivating him to raise that issue
10 as the first item on the agenda?

11 A. Well, I can read you this paragraph. It pretty
12 much sums it up.

13 Q. Okay.

14 A. The paragraph under one, it says, "One of our
15 regulatory employees who works in Santa Fe met with
16 someone from the NMOCD who said that the Commissioner is
17 very seriously suing the operators of several wells
18 which have overdue comm agreements. These two wells are
19 some of the ones being considered, so it is crucial that
20 we get these executed and approved as soon as possible."

21 Q. What was your reaction on reading that?

22 A. I was surprised.

23 Q. All right. And let's briefly discuss the
24 second agenda up there. What were you talking about,
25 SRO?

1 A. The SRO, they're talking about correcting the
2 term of the assignment and discussing Nearburg SRO
3 overrides.

4 Q. So were you still in the process of trying to
5 assess your ownership interest?

6 A. We were. We were trying to. And to my
7 recollection, I'm not sure we got past number one on
8 this agenda.

9 Q. All right.

10 A. We knew there was a problem.

11 Q. Yeah.

12 Let's look at Exhibit Number 14. Identify
13 that, please.

14 A. This is a letter from Nearburg to COG, dated
15 May 28th, 2015, regarding the communitization agreements
16 for the 43 and 44H.

17 Q. And could you read the second full paragraph
18 there?

19 A. "Nearburg owns an interest in the SRO State Com
20 43H and SRO State Com 44H wells (collectively the
21 'Wells') by way of Nearburg's State of New Mexico Lease
22 VO-7450-0001," in the west half of Section 20, Township
23 26 South, Range 28 East, N.M.P.M., Eddy County, New
24 Mexico (the 'Lease'). The Lease was subject to a Term
25 Assignment of Oil and Gas Lease from Nearburg in favor

1 of Marbob Energy Corporation (now COG) recorded and
2 booked 790, page 530 in the records of Eddy County, New
3 Mexico (the 'Term Assignment'). The Term Assignment has
4 expired by its own terms and has not been extended. We
5 would request that you inform us as to the source of
6 COG's authority to drill the Wells utilizing the acreage
7 covered by the Lease. Nearburg is not aware of any
8 Operating Agreement related to the Wells or other
9 arrangement which would grant COG the right to drill the
10 Wells with the acreage covered by the Lease."

11 Q. Well, in fact, did COG answer that question for
12 you? Did they inform you as to the source of COG's
13 authority to drill the wells?

14 A. Are you asking if they told me how they had the
15 authority to drill the wells?

16 Q. Did they answer your question?

17 A. They did not.

18 Q. And then the sentence before that where you
19 say, "The Term Assignment has expired by its own terms
20 and has not been extended," did Mr. Myers or anyone else
21 at COG try to disabuse you of that notion?

22 A. No. I got the impression they knew that's
23 where we were.

24 Q. Okay. Now, the paragraph at the bottom of that
25 letter, May 28th, what were you discussing there?

1 A. We had been copied on some emails between
2 Concho and the State Land Office where basically the
3 State was saying that you need to get these comm
4 agreements where we can cancel the lease and charge
5 double royalties.

6 Q. All right. And did the threat of lease
7 cancellation and the possibility of a lawsuit for double
8 royalties influence Nearburg's decision?

9 A. Absolutely. I felt like we were under duress.
10 What Concho did was sent the email to the State Land
11 Office and cc'd Nearburg stating that the only reason
12 that they hadn't been signed was -- Nearburg's signature
13 was all that they were waiting on.

14 Q. All right. And let's turn to the next page.
15 What are you proposing to do there to address that
16 problem?

17 A. Well, we didn't -- we didn't want to lose our
18 lease. Never paid double royalties, obviously. We
19 talked about considering executing some kind of
20 agreement but reserving some rights when we did that.

21 Q. All right. And did you talk about the
22 communitized interval, specifically?

23 A. Yes, we did.

24 Q. What was discussed?

25 A. We discussed the fact that the comm agreement,

1 as presented to us, covered the entire Bone Spring and
2 that we had talked with them about limiting to just the
3 2nd Bone Spring.

4 Q. The interval that had actually been drilled?

5 A. Correct, for both the 43 and 44H.

6 Q. All right. So you communicated that to COG --

7 A. Yes.

8 Q. -- in an agreement?

9 Would you read the last sentence -- last
10 two sentences of that first paragraph on the last page
11 there?

12 A. "Any execution of the Agreements would not
13 extend or ratify the Term Assignment and Nearburg would
14 not waive any rights held by it as owner and holder of
15 the Lease. Nearburg would consider executing the
16 Agreements merely to comply with the State of New Mexico
17 Land Office requirements, but Nearburg would
18 specifically reserve all rights relating to this
19 situation."

20 Q. And did COG ever dispute the resurrection of
21 rights?

22 A. No.

23 Q. Let's look on Exhibit 15, if you would identify
24 that.

25 A. This is a letter from Nearburg to COG, dated

1 June 10th, 2015, regarding communitization agreements.

2 Q. And why don't you summarize what the letter
3 says?

4 A. Basically what we were saying was that we had
5 received the revised comm agreements, and we wanted to
6 execute those comm agreements with the understanding we
7 were still looking to get additional information and
8 that we reserved any and all rights as previously stated
9 in our other letter.

10 Q. And did you ask for additional well
11 information?

12 A. We did, yes, for daily production, reports,
13 cost to drill and complete the -- equip the wells and
14 those type of items.

15 Q. In fact, was the June 10th, 2015 letter a
16 transmittal letter for signed communitization
17 agreements?

18 A. Basically, yes, it was.

19 Q. All right. And if you would read into the
20 record the paragraph on page 2 that begins "Please
21 acknowledge"?

22 A. "Please only as provided below that Nearburg's
23 execution and delivery of the enclosed Agreements does
24 not extend or ratify the Term Assignment and Nearburg
25 does not waive any rights held by it as owners and

1 holder of the Lease and that Nearburg specifically
2 reserves all rights relating to this situation."

3 Q. And then was that reservation of rights
4 acknowledged by COG's landman right there at the bottom?

5 A. Yes, "Aaron Myers, Senior Landman."

6 Q. And, again, after the delivery of this letter,
7 did COG assert that the TA, the Term Assignment, had, in
8 fact, been extended?

9 A. No.

10 Q. Let's look at Exhibits 16 and 17. Please, if
11 you would identify each of those instruments.

12 A. 16 is a correction assignment and bill of sale
13 from Nearburg to SRO2 conveying the 2nd Bone Spring
14 rights for the west half of Section 20.

15 And 17 is a correction assignment and bill
16 of sale from Nearburg to SRO3 for the 3rd Bone Spring
17 rights underneath those same lines.

18 Q. Okay. And if we look at the Exhibits A to each
19 of those assignments, does that reflect the depth
20 limitations to the --

21 A. Yes, it does.

22 Q. -- assignments?

23 A. Yes, it does.

24 Q. And explain to the Examiners why Nearburg
25 assigned those depth limited interests to SRO2 and SRO3.

1 A. It was more of an accounting, as I understand
2 it, and it was handled in the Dallas office, and I
3 wasn't involved a whole lot in that. But I think it had
4 to do with keeping track of possible litigation and
5 revenues and those kind of things for the different
6 formations. Again, I wasn't involved in the
7 preparation, so I don't -- it was more of an accounting
8 situation.

9 Q. I see.

10 When you had delivered signed
11 communitization agreements to COG, did you request that
12 you be provided with copies of the recorded instruments
13 with recording information on them?

14 A. Yes.

15 Q. And did COG ever provide that?

16 A. Not to my knowledge.

17 Q. Let's look at Exhibits 18 and 19, if you would,
18 identify those, please. Explain those.

19 A. 18 is a certificate of approval for the 43H for
20 the communitization of the 43H, and it's recorded in the
21 County Clerk's Office. And 19 is the same thing for the
22 44H. Again, this is the communitization agreements that
23 were filed.

24 Q. All right. And at the top page of each of
25 those instruments, is that the certificate of approval

1 from the State Land Office?

2 A. Yes, it is.

3 Q. And let's look at the next page, which is
4 actually page 1 of the communitization agreements, if
5 you look at the fourth paragraph. Does that reference
6 the depth limitation?

7 A. Yes. It says, "Whereas, said leases, insofar
8 as they cover the Bone Spring formation."

9 Q. And is that true for the communitization
10 agreement that is Exhibit 19?

11 A. Yes, the same -- same verbiage.

12 Q. Both communitization agreements cover the
13 entire vertical extent of the Bone Spring Formation?

14 A. That's the way they're written here, yes.

15 Q. Did Nearburg execute these two instruments?

16 A. Not these, no.

17 Q. These instruments don't reflect the depth
18 limitation that Nearburg proposed; is that right?

19 A. Yeah. We proposed to be just the 2nd Bone
20 Spring Formation, which Concho agreed and then made
21 changes to that effect for the comm agreements that we
22 signed.

23 Q. They had agreed to the 2nd Bone Spring depth
24 limitation?

25 A. I think they actually used our language and put

1 it in this paragraph you're speaking about to limit --
2 further limit to the 2nd Bone Spring, and that's what
3 was delivered to me to be signed, which is not the same
4 as this.

5 Q. All right. Again, noting the Land
6 Commissioner's certificate of approvals, has Nearburg
7 requested that the State Land Office revoke these
8 approvals --

9 A. Yes.

10 Q. -- because they're not what you agreed to?

11 A. Yes.

12 Q. Let's look at Exhibit 20.

13 MR. HALL: And shifting gears a little bit,
14 Mr. Examiner, if you'd like to take a break, that's fine
15 with me. I'm content to go on.

16 EXAMINER BROOKS: Yes. If it's going to be
17 a lengthy time until you pass the witness, I think it
18 would be a good idea to take a break. So I will call a
19 ten-minute recess at this time.

20 (Recess 10:11 a.m. to 10:28 a.m.)

21 EXAMINER BROOKS: Okay. Let us proceed
22 with the hearing on the record.

23 MR. HALL: At this point, Mr. Examiners, I
24 think it would be convenient presentation in my case for
25 me to have you take administrative notice of Exhibit 20,

1 Rules 19.15.14.8B, 19.15.16.15A and F, and I've
2 highlighted those for you there in Exhibit 20. They set
3 forth the requirements for obtaining a permit to drill.

4 It says you can't file for an APD or
5 commence drilling until the operator has either
6 "received the consent of at least one lessee or owner of
7 an unleased mineral interest at the proposed bottom-hole
8 location; or obtained a compulsory pooling order from
9 the division. In addition, an operator filing an
10 application for permit to drill for a horizontal or
11 directional well shall comply with Subsection A of
12 19.15.16.15 NMAC." And I've highlighted that rule for
13 you as well. It says, in essence, the same thing, but
14 it's the rule directed towards horizontal wells.

15 EXAMINER BROOKS: Okay. Mr. Feldewert, any
16 objection to the Division taking administrative notice
17 of its rules?

18 MR. FELDEWERT: No.

19 EXAMINER BROOKS: No.

20 You may proceed, Mr. Hall.

21 Q. (BY MR. HALL) Now, Mr. Howard, what is the well
22 spacing for oil wells in the Hay Hollow Bone Spring
23 pools?

24 A. 40 acres.

25 Q. Did COG ever notify Nearburg that it was

1 proposing a nonstandard spacing and proration unit on
2 Nearburg's acreage in Section 20?

3 A. No.

4 Q. Did it ever notify SR02?

5 A. No.

6 Q. Did it ever notify SR03?

7 A. No.

8 Q. And Nearburg owns offsetting lease acreage
9 immediately adjacent to the spacing unit for the 43H,
10 the nonstandard unit?

11 A. Yes.

12 Q. Did Nearburg, as owner of that tract, receive
13 any sort of notification that a nonstandard unit was
14 being proposed?

15 A. Not to my knowledge.

16 Q. Did COG consolidate the lands in Section 20
17 with the lands in Section 17 before they drilled and
18 completed the 43H and 44H wells?

19 MR. FELDEWERT: Objection. Calls for a
20 legal conclusion.

21 EXAMINER BROOKS: Well, would you re- --
22 rephrase the question explaining what you mean by
23 consolidate?

24 Q. (BY MR. HALL) Did COG obtain a communitization
25 agreement, a voluntary agreement or anything combining

1 Nearburg's interest with COG's interest in Section 20
2 and Section 17 before the 43H and 44H wells were
3 drilled?

4 A. No.

5 Q. Did COG ever solicit a farm-out of Nearburg's
6 interest in Section 20?

7 A. No.

8 Q. Did COG know that Section 17 and Section 20
9 required consolidation?

10 A. Yes.

11 Q. Let's look at Exhibit 21 now, if you would
12 identify that, please.

13 A. This is a supplemental drilling title opinion
14 and Division order title opinion prepared by the offices
15 of Lear & Lear, dated October the 8th, 2014, and it
16 covers lands within the SRO Unit.

17 Q. And is this an excerpted version of the
18 complete title?

19 A. Yes, it is.

20 Q. And does the title opinion address wells in the
21 SRO State Unit?

22 A. Yes, it does.

23 Q. All right. Let's turn to the second page of
24 Exhibit 21, if you'll look at the last paragraph on that
25 page. What does it say?

1 A. The one that starts off "most importantly"?

2 Q. Yes.

3 A. "Most importantly, the Underlying Opinion
4 provides that the interest assigned shall be limited to
5 a term commencing on the effective date of the Term
6 Assignment (July 1st, 2009) and extending so long
7 thereafter as the lease remains subject to the SRO State
8 Exploratory Unit Agreement. Because the SRO State
9 Exploratory Unit voluntarily terminated effective March
10 1, 2014, it appears that the primary term of the Term
11 Assignment is now expired and the interests assigned
12 thereunder in all the Subject Lands except Tracts 7 and
13 8, which comprise the spacing unit for the SRO State
14 Unit Com #11H Well, have reverted back to Nearburg
15 Exploration Company, L.L.C.

16 Q. And if we refer at mid page to item nine there,
17 what does that identify?

18 A. "Term Assignment from Nearburg Exploration
19 Company.... to Marbob Energy Corporation."

20 Q. All right. And this title opinion was
21 delivered to COG Operating, LLC?

22 A. Yes. It was prepared for them.

23 Q. And how did you obtain this?

24 A. I believe it was forwarded over by Concho.

25 Q. Let's look at Exhibit 22 now, if you would

1 identify that, please.

2 A. This is "First Cumulative Supplemental Drilling
3 and Division Order Opinion of Title" prepared by the
4 offices of Hinkle Shanor LLP, dated January 9th, 2015,
5 covering lands within the SRO State Unit.

6 Q. And it identifies a number of wells within the
7 SRO Unit?

8 A. Yes, it does.

9 Q. And in specific, it identifies the SRO State
10 Unit Well #16H, correct?

11 A. It does, yes.

12 Q. And that's one of the wells that is the subject
13 of Nearburg's application here, right?

14 A. Correct.

15 Q. And, again, the date of this is January 9,
16 2015?

17 A. Yes.

18 Q. And if we refer to -- again, this is an excerpt
19 from a very large opinion; is that correct?

20 A. That's correct.

21 Q. If we refer to the next page, it's actually
22 page 19 from the opinion itself.

23 A. Yes. Uh-huh.

24 Q. And if you look at item 24, is that item
25 discussing the Term Assignment of oil and gas lease

1 dated -- effective July 1, 2009, between Nearburg and
2 Marbob?

3 A. It is.

4 Q. And if we turn the page to paragraph 20,
5 highlighted in brackets, what does that paragraph say?

6 A. You said paragraph 20. You mean on page 20?

7 Q. Page 20, the highlighted paragraph in brackets.

8 A. "The term of this Term Assignment has clearly
9 expired, as the SRO State Exploratory Unit was
10 terminated effective March 1, 2014. Pursuant to our
11 discussions with you, we understand you consider this
12 Term Assignment as being in full force and effect. In
13 this regard, we have the following requirement."

14 Q. And what was that requirement? You can
15 summarize that.

16 A. To obtain an amendment of the Term Assignment.

17 Q. And if we turn to page 22 of that opinion,
18 there is a comment C there. What does that comment
19 discuss?

20 A. The "SRO Unit Agreement and Termination."

21 Q. All right. If we look at page 23, there's a
22 comment D.

23 EXAMINER BROOKS: Still on Exhibit 22?

24 MR. HALL: Yes, sir, page 23 of that.

25 EXAMINER BROOKS: Okay. Go ahead.

1 Q. (BY MR. HALL) There is a comment D, labeled
2 "Operating Agreements." Just above that, would you read
3 that highlighted paragraph into the record?

4 A. "As the SRO Unit was terminated,
5 communitization agreements are necessary for those
6 leases with wells within the Unit boundaries with
7 project areas that require more than one lease. We
8 refer you to Section VII, paragraph E for a discussion
9 of these Communitization Agreements."

10 Q. All right. And let's turn to page 24. And is
11 there discussion there about the parties to the Unit
12 Operating Agreement?

13 A. Yes, there is.

14 Q. And is there a list of those parties?

15 A. There is.

16 Q. And is Nearburg included on that list?

17 A. No. We weren't part of the operating
18 agreement.

19 Q. All right. Let's turn to page 32 now. There
20 is item three discussing the SRO State Unit Well Number
21 16H. And where -- tell the Examiners, again, where is
22 the 16H located?

23 A. The 16H is located entirely in the west half of
24 the west half of Section 20.

25 Q. All right. And if you look at the last

1 sentence of that item three, what does that say?

2 A. "You have advised us that the project area for
3 the SRO State Com Number 43H well is the west half-west
4 half of Section 17 and west half-west half of Section
5 20, Township 26 South, 28 East, and we refer you to
6 Exception to Title Number 1 below."

7 EXAMINER BROOKS: Okay. You're still back
8 on Exhibit 22; is that correct?

9 MR. HALL: 32.

10 EXAMINER BROOKS: Exhibit 32. That's what
11 I thought because --

12 MR. HARPER: Page 32.

13 MR. HALL: Page 32 of the title opinion,
14 Exhibit 22.

15 EXAMINER BROOKS: Exhibit 22. And what
16 page?

17 MR. HALL: Page 32.

18 EXAMINER BROOKS: Page 32. I keep getting
19 confused between your exhibit numbers and page numbers.
20 I'm sorry. Exhibit 22, page --

21 MR. HALL: 32.

22 EXAMINER BROOKS: -- page 32.

23 Okay. You may continue.

24 Q. (BY MR. HALL) Now, that highlighted entry on
25 page 32 refers to an exception within the title opinion;

1 does it not?

2 A. Yes.

3 Q. And if we turn to page 33, the next page,
4 Section VIII, "Exceptions to Title and Remarks," and the
5 first item speaks of "Overlapping Project Areas."

6 A. Yes.

7 Q. And if you would look at the fourth paragraph
8 under Section 7 there, begins "A well proposed to be
9 completed." Would you read that into the record?

10 A. "A well proposed to be completed within the
11 interval of an existing horizontal well project area may
12 only be drilled with the approval of all working
13 interest owners in the project area or by order of the
14 New Mexico Oil Conservation Division after notice to all
15 working interest owners in the project area and an
16 opportunity for hearing. We do not know whether the
17 requisite approval and or agreement was obtained with
18 regard to the SRO Unit Numbers 12H, 15H, 16H and 53H
19 wells, and in this regard, we have a requirement on
20 point below."

21 Q. And to be clear, so the project area for the
22 16H well is an overlapping project area with the 43H
23 well?

24 A. Correct.

25 Q. And, again, Nearburg -- did Nearburg receive

1 any notice that that overlapping project area was being
2 proposed or drilled?

3 A. No.

4 Q. And was Nearburg asked to provide any consent
5 to an overlapping project area like that?

6 A. Not that I'm aware of.

7 Q. Let's look at Exhibit 23, if you would identify
8 that.

9 A. This is an email from me to Brent Sawyer.
10 Looks like it's dated January 20th, 2015.

11 Q. And if you would refer to the second page of
12 that exhibit. At the very top what, is Mr. Sawyer
13 telling you?

14 A. "One of the phantom SRO opinions finally came
15 in late last week. I've not had a chance to review it
16 in detail, but requirement E on page 20 is the one we've
17 been working on."

18 Q. All right. And is he referring to the January
19 9, 2015 title opinion; do you believe?

20 A. I believe so, yes.

21 Q. And then let's look at Exhibit 24. What is
22 that?

23 A. This is an email from Brent Sawyer at Concho to
24 me. It says the subject is the second SRO opinion.

25 Q. All right. And if you look at the second page,

1 is that the top page of the opinion that's referred to?

2 A. Yes, I believe so.

3 Q. And is this a supplemental title opinion?

4 A. It's a supplemental drilling title opinion and
5 Division order title opinion from Lear & Lear.

6 Q. All right. And, again, this concerns
7 additional SRO Unit wells and former wells?

8 A. Correct.

9 Q. Let's look at Exhibit 25. Identify that,
10 please.

11 A. This is a Second Non-Cumulative Supplemental
12 Drilling and Division Order Opinion of Title prepared by
13 Hinkle Shanor. It's dated June 17th, 2015, and it
14 covers various wells in the SRO State Unit, including
15 the 16H.

16 Q. It's addressed to COG, correct?

17 A. Yes, it is.

18 Q. And it concerns a number of the wells within
19 the former SRO Unit, correct?

20 A. Yes, it does.

21 Q. Including 16H?

22 A. Correct.

23 Q. Let's refer to page 19 in that opinion. See
24 item 24 there?

25 A. Uh-huh.

1 Q. That's the opinion, again, to discuss the
2 Nearburg-Marbob Term Assignment?

3 A. It does.

4 Q. And if we turn to page 20, the highlighted
5 paragraph there --

6 A. Yes.

7 Q. -- does that, again, discuss that the Term
8 Assignment had clearly expired?

9 A. It does.

10 EXAMINER BROOKS: Okay. Page 20. What
11 document are you looking at? Oh, I see. This is page
12 19, so it's the next page. Okay. Thank you.

13 Q. (BY MR. HALL) So we've run through various
14 stakes [sic] that COG had title opinions about the state
15 of title within the former unit, correct?

16 A. Yes.

17 Q. And, again, let's refresh the Examiners'
18 recollection. Refer again to Exhibit 31, the timeline.
19 Tell us again. When was the 43H spud completed and
20 placed on production?

21 A. 43H was spud August the 2nd, 2014 and completed
22 February 25th, 2015 and was put on production in March
23 of 2015.

24 EXAMINER BROOKS: Now, is the 43H the one
25 in the west half-west half or the one in the east

1 half --

2 MR. HALL: Yes, west half.

3 EXAMINER BROOKS: Thank you.

4 Q. (BY MR. HALL) And the 44H?

5 A. The 44H was spud on October 10th, 2014,
6 completed March 9th, 2015, and put on production in that
7 same month.

8 Q. All right. Let's look at the spud date for the
9 44H, bearing in mind the dates of the title opinions.
10 When COG spudded the 44H, it had in hand more than one
11 title opinion stating that the Term Assignment had
12 expired. Is that accurate?

13 A. I believe so, yes.

14 Q. Now, did COG seek a voluntary agreement pooling
15 Nearburg's interest dedicated to the spacing and
16 proration units?

17 A. No.

18 Q. Designated for the 43H or the 44H?

19 A. No.

20 Q. Let's look at Exhibit 26. Would you explain by
21 these emails what you were communicating to Mr. Sawyer
22 over at COG?

23 A. This is an email from me to Brent, and it
24 starts off talking about some original joint operating
25 agreements which had nothing to do with the SRO Unit.

1 So that's nothing to do with this hearing.

2 We did tell them that we were agreeable to
3 some of the changes as to the form of Term Assignment
4 that they had prepared.

5 Q. All right. And if you look at the very top
6 page, the very first paragraph, it says what about the
7 Term Assignment?

8 A. In this?

9 Q. Yes, the entry for November 3rd.

10 A. "After review," is that what you're talking
11 about?

12 Q. The following sentence.

13 A. "Also, we would still like to see COG's
14 calculations on a well by well basis for our overriding
15 royalty interest in the wells included on the lands
16 subject to the SRO Operating Agreement."

17 Q. No. I'm confused again.

18 Let's look at the first paragraph, third
19 sentence to that. What are you talking about there,
20 first paragraph, third sentence, begins "We are"?

21 EXAMINER BROOKS: That's the second
22 sentence.

23 THE WITNESS: Second sentence. "We are,
24 however, agreeable to your changes to the Term
25 Assignment of Oil and Gas Lease covering the west

1 half...." What we were saying was we were agreeable to
2 their changes in the form of assignment.

3 Q. (BY MR. HALL) All right. Had you delivered a
4 signed amendment to the Term Assignment?

5 A. No.

6 Q. Well, why were you saying that? What process
7 were you going through at that time?

8 A. We were working on trying to put something
9 together. Part of that included trying to get
10 additional information on wells. Part of it had to do
11 with putting some kind of an agreement in place should
12 we decide to amend or correct the prior Term Assignment.
13 And there was verbiage going back and forth about that
14 Term Assignment.

15 Q. Why was it necessary for you to have more
16 information about the wells that had been drilled out
17 there to make a decision?

18 A. We still felt like there was something
19 happening that we didn't know -- we didn't have
20 everything in front of us. We couldn't make an educated
21 decision without having all the wells and all the well
22 information to review so we could decide what we were
23 going to do.

24 Q. Was that information slow in coming to you?

25 A. Slow is an understatement.

1 Q. And let's look at Exhibit 27. There is an
2 entry there, November 3rd, from Mr. Sawyer. What was he
3 discussing?

4 A. From Brent Sawyer to myself?

5 Q. Yes.

6 A. "I'll also draft up amendments to the two
7 farmout agreements for the Cluster State...." Had
8 nothing to do with these.

9 Q. Okay. And the preceding entry?

10 A. Oh. "I was thinking a replacement," that
11 portion?

12 Q. Yes.

13 A. "I was thinking a replacement might be the
14 thing to do on the Term Assignment for 20-26-28 [sic],
15 but there are definitely a few different ways to skin
16 that cat. Once I get the form drafted, I'll run it by
17 Aaron then send it to you for final review."

18 Q. So this email, this communication, preceded
19 that which we just talked about that was Exhibit 26?

20 A. Correct.

21 Q. You were still waiting on additional well
22 information at that point?

23 A. Correct.

24 Q. Let's look at Exhibit 28. Identify that and
25 tell us what was going on there.

1 A. It's a chain of emails between myself and Brent
2 Sawyer. And I was trying to get some information from
3 them still, but we also didn't have a copy of the SRO
4 Unit Operating Agreement. And the fact that they were
5 trying to amend the Term Assignment to be tied to that
6 Unit Operating Agreement, I felt we needed to review it
7 to see what it said.

8 Q. All right. And the entry from you at the very
9 top of the page of the first page of Exhibit 28, is that
10 where you discuss that Nearburg doesn't have a copy of
11 the operating agreement?

12 A. Correct.

13 Q. And, again, if you look at the blank, unsigned
14 correction Term Assignment that was transmitted, there
15 is an Exhibit A to that, correct?

16 A. Yes.

17 Q. And that outlines well information requirements
18 again?

19 A. Correct. Uh-huh. Again, just trying to get
20 well information.

21 Q. And, again, had any of that well information
22 been delivered?

23 A. No.

24 Q. All right. We're going to be jumping back and
25 forth between forms now. Let me ask you: Did COG seek

1 a compulsory pooling order for Nearburg's interest
2 dedicated to the spacing and proration unit of 43H and
3 44H before they were drilled and completed?

4 A. No.

5 Q. Were you aware of any immediate need to drill
6 the 43H and 44H?

7 A. No.

8 Q. What percentage of the project areas for the
9 43H and 44H are comprised of Nearburg lease acreage?

10 A. It's 50 percent.

11 Q. And was Nearburg's lease in Section 20 held by
12 production from the 16H well there?

13 A. To the best of my knowledge, yes.

14 Q. Is that well still producing?

15 A. To the best of my knowledge, yes.

16 Q. Let's go back and look at these APDs, some new
17 ones and the ones we previously discussed with the
18 Examiner. Let's look at Exhibit 29 now. Identify that.

19 A. This is a Form C-102 for the 43H, with a
20 certification of 3/6/14.

21 Q. And remind us again when the SRO Unit
22 terminated.

23 A. March 1st, 2014.

24 Q. All right. And so is the certification shown
25 on that Form C-102 correct at the time it was made?

1 A. It is not.

2 MR. FELDEWERT: A little late, but I was
3 going to object. It calls for a legal conclusion.

4 Go ahead.

5 THE WITNESS: Sorry.

6 EXAMINER BROOKS: Well, I would like to
7 know why -- on what basis he makes that -- that was not
8 the answer I was expecting him to give.

9 But the question was if the certification
10 is correct and proper or not, and I'll overrule that
11 objection.

12 Go ahead.

13 Q. (BY MR. HALL) Let's look back at Exhibit Number
14 4. What is that?

15 A. This is a Form C-102 for the 43H, certified
16 3/5/15.

17 Q. All right. And by that time, the SRO Unit had
18 been terminated for over a year, correct?

19 A. That's correct.

20 Q. And the lease in Section 20 had reverted back
21 to Nearburg, right?

22 A. Correct.

23 Q. And so the operator certification on Exhibit 4,
24 was it correct when made?

25 MR. FELDEWERT: I object. Calls for

1 speculation. There is a lack of foundation, and it
2 calls for a legal conclusion.

3 EXAMINER BROOKS: Okay. Overruled.

4 Go ahead.

5 THE WITNESS: No.

6 Q. (BY MR. HALL) Jump forward again. Let's go to
7 Exhibit 30. Identify that, please.

8 A. This is a Form C-102 for the 44H, and it is
9 certified 3/6/14.

10 Q. And is that operator certification -- was it
11 correct when it was made on that date?

12 A. No.

13 Q. Jump back again, Exhibit Number 6. Identify
14 that again, please.

15 A. It is a Form C-102 for the 44H, certified
16 3/9/15.

17 Q. And was that operator certification correct
18 when it was made on that day?

19 A. No, it wasn't.

20 Q. Go to Exhibit 8.

21 A. I'm sorry?

22 Q. Exhibit 8. Identify that, please.

23 A. This is a Form C-101 for the 69H, dated 5/5/15.

24 Q. All right. And turn to the next exhibit,
25 Exhibit 9. Identify that, please.

1 A. This is a C-102 for the 69H, certified 5/5/15.

2 Q. And was that operator certification correct at
3 the time it was made?

4 A. No.

5 Q. At the time any of these forms were filed,
6 these certifications were made we've just discussed, was
7 there a voluntary pooling agreement with COG that was in
8 effect?

9 MR. FELDEWERT: Objection. Asks for a
10 legal conclusion.

11 EXAMINER BROOKS: Overruled.

12 THE WITNESS: No, there was not.

13 EXAMINER BROOKS: I would like to interrupt
14 at this time. I don't usually do this, but I'm
15 concerned that I will forget to ask these questions
16 after you've completed the examination of this witness.

17 And I'm very curious about the answers the
18 witness gave that the certifications were not correct on
19 Exhibits -- on Exhibit 4 and on Exhibit 30, because both
20 of these certifications were executed, it appears to me,
21 during the time -- not Exhibit 4. That was 3/15.

22 What was the prior? Where's the prior one?
23 Do you see it? Okay. Exhibit 6.

24 I call the witness' attention to Exhibit 6.
25 No. Exhibit 6 -- can you tell me which was the prior --

1 in the earlier C-102 for the Number 44 well? I'm not
2 finding it. No. That's Exhibit 30 for the 43 well.
3 Which is that?

4 MR. HALL: 29.

5 EXAMINER BROOKS: 29.

6 MR. HALL: It's 29.

7 EXAMINER BROOKS: Thank you. Sorry to be
8 confused here.

9 You testified that in your opinion the
10 certification with regard -- on Exhibits 29 and 30 were
11 not correctly made. Did I understand you correctly?

12 THE WITNESS: Yes, sir, you did.

13 EXAMINER BROOKS: And on what theory do you
14 base that opinion?

15 THE WITNESS: Both of the certifications
16 are after March 1st of 2014, when the SRO Unit
17 terminated.

18 EXAMINER BROOKS: Oh, okay. I understand
19 now.

20 Go ahead, Mr. Hall.

21 Q. (BY MR. HALL) Looking back again at the filings
22 for the 69H APD, did COG notify Nearburg of this
23 proposed well?

24 A. They did not.

25 Q. Did they seek Nearburg's approval for the 69H

1 well?

2 A. They did not.

3 Q. Did COG have a right to obtain the drilling
4 permit for the 69H well?

5 A. They did not.

6 Q. Does COG have any right to drill a 69H well?

7 A. No, they do not.

8 Q. And tell us again. How long have the 43H and
9 the 44H been producing now?

10 A. Since March of 2015.

11 Q. And did COG propose the drilling of either of
12 those wells to Nearburg?

13 A. They did not.

14 Q. Has COG provided Nearburg with Division orders
15 for the 43H or 44H?

16 A. Not to my knowledge.

17 Q. And has COG ever admitted to Nearburg any
18 proceeds from the sale of production from the 43H or
19 44H?

20 A. Not to my knowledge.

21 Q. Does COG have any agreement with Nearburg that
22 would allow for the recovery of well costs, overhead
23 charges or nonconsent penalties at a production?

24 A. Not that I'm aware of.

25 Q. Is there any order issued by the OCD that

1 authorizes COG to recover well costs, overhead charges
2 or risk penalty charges?

3 A. None that I'm aware of.

4 Q. Was Nearburg afforded the opportunity to
5 participate in the business decision to drill either of
6 these two wells?

7 A. The 43H and the 44H?

8 Q. Correct.

9 A. No, they were not.

10 Q. So COG was never asserting that the Term
11 Assignment was still in effect after it had expired; is
12 that right?

13 A. That's right.

14 MR. FELDEWERT: Object to the form of the
15 question. Lack of foundation.

16 Q. (BY MR. HALL) And even if they had asserted
17 that, they still didn't comply with its terms, correct?

18 A. That's correct.

19 Q. They never provided the well information
20 materials or notices required?

21 A. That's correct.

22 Q. And the same with respect to a JOA? COG never
23 provided any sort of well proposals, information
24 materials or notices that you would receive typically
25 under a JOA well proposal?

1 A. That's correct.

2 EXAMINER BROOKS: I'm going to call another
3 recess here. Sorry to interrupt the witness' testimony.

4 MR. HALL: I'm about five minutes out, so
5 that's fine.

6 EXAMINER BROOKS: Okay. Well, five
7 minutes, I think I can -- I think we can go for five
8 more minutes. Go ahead. Sorry.

9 Q. (BY MR. HALL) Mr. Howard, in your opinion, did
10 COG make a good-faith effort to obtain Nearburg's
11 participation in the 43H or 44H?

12 A. No.

13 Q. Is Nearburg requesting that COG be required to
14 account for and pay Nearburg's share of production in
15 the 43H, 44H and 16H wells?

16 A. Yes.

17 Q. In your opinion, if the lands in Section 20 are
18 to be consolidated with those in Section 17 by a
19 compulsory pooling order, would it be just and
20 reasonable under these circumstances to allow COG to
21 recover from Nearburg's share of production a share of
22 well costs for the 43H and 44H?

23 A. No.

24 Q. In your opinion, would it be just and
25 reasonable to allow COG to recover a risk penalty from

1 Nearburg's share of production?

2 A. No.

3 Q. In your opinion, has COG been violating
4 Nearburg's correlative rights since the 43H and 44H were
5 placed on production?

6 A. Yes.

7 Q. And, again, we discussed Exhibit 31. Did you
8 participate in the creation of Exhibit 31, the timeline?

9 A. Yes, I did.

10 MR. HALL: At this point, Mr. Examiner,
11 that concludes our direct of the witness. We move the
12 admission of Exhibits 1 through 19, ask you to take
13 administrative notice of Exhibit 20, the rules, and we'd
14 also move the admission of Exhibits 21 through 31.

15 EXAMINER BROOKS: Well, we'll take
16 administrative notice of the Division's rules.

17 Are there any objections to the exhibits he
18 has referenced, Mr. Feldewert?

19 MR. FELDEWERT: No objection.

20 EXAMINER BROOKS: Okay. Could you read
21 them over again for my information?

22 MR. HALL: Yes. So 1 through 19, we have
23 tendered. We've also tendered 21 through 31. And
24 Exhibit 20, you're taking administrative notice of that
25 one.

1 EXAMINER BROOKS: Okay. Exhibits 1 through
2 19 and 21 through 31 are admitted.

3 And we will take a ten-minute recess.

4 (Nearburg Exploration Company Exhibit
5 Numbers 1 through 19 and 21 through 31
6 are offered and admitted into evidence;
7 Exhibit Number 20, Administrative Notice.)
8 (Recess 11:08 a.m. to 11:19 a.m.)

9 EXAMINER BROOKS: Okay, Mr. Feldewert.
10 We're back on the record, and you may cross-examine.

11 CROSS-EXAMINATION

12 BY MR. FELDEWERT:

13 Q. Mr. Howard, do you have our notebook of
14 exhibits there?

15 A. Yes, sir, I do.

16 Q. I'm going to have a couple of questions for you
17 about those.

18 A. Okay.

19 Q. But before we get into that, I'm going to ask
20 you a couple of questions so we're all on the same page
21 here. Would you agree with me that if Nearburg had
22 communicated to COG that they desired to proceed with an
23 overriding royalty, that you would not get a well
24 proposal for the SRO Unit wells? Correct?

25 A. Ask me the question again.

1 Q. If Nearburg had communicated to COG Operating
2 that it desired to proceed with an overriding royalty
3 interest, you wouldn't get a royalty with an overriding
4 royalty interest owner?

5 A. I would agree with that, yes.

6 Q. And you wouldn't get an AFE?

7 A. I would agree with that, too.

8 Q. That's the nice thing about being an overriding
9 royalty interest owner. You don't have to pay your
10 share of cost.

11 A. Correct.

12 Q. And you wouldn't get an election to participate
13 or not participate because you're already in the well as
14 an overriding royalty?

15 A. That's correct.

16 Q. And if the state lease that you hold was
17 subject to the Unit Operating Agreement and had been
18 subscribed to the unit operator, then you'd have your
19 voluntary agreement to develop the acreage, correct?

20 A. Yes.

21 Q. And you wouldn't need a pooling agreement for
22 the 43H and the 44H?

23 MR. HALL: Object. Are you asking to
24 assume that the operating agreement applied?

25 EXAMINER BROOKS: I believe that's the way

1 I understood the question.

2 MR. FELDEWERT: That's why I said "if."

3 THE WITNESS: I would agree.

4 Q. (BY MR. FELDEWERT) Okay. All right. So I now
5 want to go through the events --

6 A. Okay.

7 Q. -- and I want to do it chronologically
8 because --

9 A. Okay.

10 Q. -- it's hard for me to keep all this straight.

11 A. Me too.

12 Q. Okay. Now, first off, in June and July of
13 2009, Nearburg still had its working interest in the
14 west half of Section 20, correct?

15 A. The effective date of the Term Assignment was
16 July 1st of 2009. I believe that's when it --

17 Q. But that Term Assignment wasn't assigned until
18 August, right? Let's go to Exhibit 1?

19 A. Your Exhibit 1?

20 Q. Yes.

21 Looks like late August, correct?

22 A. August 24th.

23 Q. Late August before that's even executed?

24 A. Correct.

25 Q. Right.

1 Okay. So as of June and July of 2009,
2 Nearburg still had its working interest in the west half
3 of Section 4, because this had not been executed yet?

4 A. Correct.

5 Q. All right. If I go to Exhibit Number 2 -- are
6 you there? -- this is the package that was submitted by
7 Marbob at the time, as the operator of the State -- SRO
8 State Exploratory Unit, to the New Mexico State Land
9 Office. You've seen this before, right?

10 A. Yes.

11 EXAMINER BROOKS: Exhibit Number 2 in their
12 notebook?

13 MR. FELDEWERT: I'm sorry, Mr. Examiner.
14 Their notebook.

15 EXAMINER BROOKS: Yeah, that's what I
16 thought.

17 MR. FELDEWERT: Should be the white
18 notebook.

19 EXAMINER BROOKS: Oh, I'm sorry. I'm
20 looking at the -- they're both white. I'm looking at
21 the rule -- at the -- yours is -- COG's has the green
22 splotch on the front (indicating), and the black one
23 here is the OCD rule book. So -- (laughter). Okay.
24 Exhibit 2 in --

25 MR. FELDEWERT: Should be --

1 EXAMINER BROOKS: -- COG's notebook.

2 MR. FELDEWERT: Yes, sir.

3 EXAMINER BROOKS: Okay. Okay. Proceed.

4 Q. (BY MR. FELDEWERT) So at the time -- and you've
5 seen this before, Mr. Howard, correct?

6 A. Yes.

7 Q. So at the time that this was sent to the
8 New Mexico State Land Office, Nearburg still held its
9 working interest in the state lease?

10 A. Correct.

11 Q. Okay. And this cover letter identifies --
12 well, this is the cover letter of -- this the New Mexico
13 State Land Office.

14 Let's go to the next page. This is the
15 Marbob letter that was sent in July when Nearburg still
16 had its working interest, correct?

17 A. Yes, it is.

18 Q. It identifies what was submitted to the
19 New Mexico State Land Office?

20 A. It does.

21 Q. And it indicates that there are some
22 ratifications being submitted, as well as Exhibit B to
23 the unit agreement; is that right?

24 A. Correct.

25 Q. Now, if I then go to the ratification that was

1 submitted, one is from Chesapeake. It's the next page.
2 And then the fourth page of this exhibit is the one
3 that's signed on behalf of Nearburg Exploration Company,
4 correct?

5 A. Correct.

6 Q. Signed in June 2009, and it still had its
7 working interest?

8 A. Correct.

9 Q. All right. Signed by Mr. Terry Gant?

10 A. Correct.

11 Q. And it actually references "Attached Exhibit
12 B," which begins on the next page, right?

13 A. Yes.

14 Q. Okay. Let's stay on the ratification for a
15 minute. Mr. Gant is the -- at that time was the Midland
16 manager; is that right?

17 A. Yes, he was.

18 Q. Fully authorized to execute this on behalf of
19 the company?

20 A. Correct.

21 Q. And if I go to that Exhibit B -- and I'll make
22 it easy. Go to the last two pages. I want to start at
23 the second-to-the-last page. The second-to-the-last
24 page shows that the Section 20 west half is held under
25 State Lease V-7450, by Nearburg, right?

1 A. That's what it says, yes.

2 Q. 320 acres?

3 A. Correct.

4 Q. And that is the only acreage that Nearburg is
5 committing to the Nearburg agreement?

6 A. That's correct.

7 Q. All right. And up there in the
8 second-to-the-last page, it shows the west half of
9 Section 17 is held by Yates Petroleum. Do you see that?

10 A. Yes, I do.

11 Q. And both the west half of 17 and west half of
12 20 are the spacing units that are at issue here today,
13 correct?

14 A. Correct.

15 Q. All right. Now, if I go to the last page, it
16 does confirm what you just said, right? It shows
17 Nearburg as holding a .0498 working interest as a result
18 of its 320-acre lease?

19 A. Correct.

20 Q. Okay. Now, let's go back to the second page of
21 this exhibit. Concho is the successor operator to
22 Marbob, correct?

23 A. Yes.

24 Q. So Concho wasn't involved when this was
25 submitted to the State Land Office?

1 A. That's correct.

2 Q. And Concho was not involved when Terry Gant
3 executed this Ratification and Joinder of Unit Agreement
4 and Unit Operating Agreement?

5 A. Correct.

6 Q. And Terry Gant, who signed on behalf of
7 Nearburg, he's no longer with the company, right?

8 A. That's correct.

9 Q. And you-all didn't bring him here today?

10 A. We did not.

11 Q. And you weren't with the company at that time?

12 A. That's correct.

13 Q. And so the only parties that really had any
14 knowledge as to the intent of what was meant by these
15 documents are not here today, right?

16 A. That's correct.

17 Q. Okay. So you and I have to rely upon what the
18 documents purport to say, right?

19 A. We do.

20 Q. As would anybody looking at this, like Concho
21 years later?

22 A. Correct.

23 Q. All right. Now, this ratification that's
24 signed by Nearburg in 2009, by Mr. Terry Gant, this is a
25 state form, isn't it?

1 A. It is.

2 Q. Okay. In fact, it comports with what is shown
3 on Exhibit Number 3 in our notebook, so keep a finger on
4 this ratification. And go to Exhibit Number 3 in our
5 notebook. That's a correct copy of the state form from
6 the Web site of the New Mexico State Land Office; is it
7 not?

8 A. It is.

9 Q. And doesn't it match almost verbatim what
10 Nearburg signed in 2009?

11 A. It appears to, yes.

12 Q. In fact, the change is that they removed the
13 language "Secretary of the Interior"?

14 A. Okay.

15 Q. Is that right? We can agree this is the same
16 form?

17 A. It's the same form.

18 Q. Okay. All right. So this particular form that
19 Mr. Gant executed in 2009 was not drafted by Marbob?

20 A. No, it was not.

21 Q. And the title of this particular form in caps
22 and underlined reads: "Ratification and Joinder of Unit
23 Agreement and Unit Operating Agreement." Do you see
24 that?

25 A. I do.

1 Q. All right. And that's signed without any
2 changes by Mr. Gant?

3 A. It is.

4 Q. And it's signed for the working interest owner
5 held by Nearburg that's referenced in Exhibit Number B?

6 A. I disagree with that.

7 Q. It's not signed on behalf of the working
8 interest that's held --

9 A. It's --

10 Q. -- that's reflected in Exhibit Number B,
11 referenced in this ratification?

12 A. I read it as a Ratification and Joinder of the
13 Unit Agreement.

14 Q. That's what you believe today?

15 A. Yes.

16 Q. But you weren't around at that time?

17 A. Correct.

18 Q. You don't know what Mr. Gant intended?

19 A. I believe that's what he intended, but I don't
20 know for sure.

21 Q. Have you talked to him?

22 A. No, I have not.

23 Q. Okay. So you have no idea?

24 A. No.

25 Q. But it was signed for the interests that are

1 reflected on the attached Exhibit B, right? That's what
2 it says, "See Attached Exhibit 'B.'" Do you see that
3 underneath the signature?

4 A. I see where it says that, yes.

5 Q. Okay. And if I go to the body of this
6 ratification, Mr. Howard, fourth line down, and you see
7 where it says, "and in consideration of the execution or
8 ratification by other working interest owners of the
9 contemporary Unit Operating Agreement which relates to
10 said Unit Agreement...." Do you see that?

11 A. I do.

12 Q. Okay. Now, the Unit Operating Agreement
13 they're referencing is Exhibit Number 4. Would you
14 agree with that? That's the contemporary SRO State
15 Exploratory Unit Operating Agreement?

16 A. Correct.

17 Q. And so if I look at this state form -- and you
18 would agree with me that this is the only form that is
19 on the state Web site for ratification of the unit
20 agreement or operating agreement?

21 A. I don't know that to be true, but I can't
22 disagree with that.

23 Q. All right. And this indicates, does it not, in
24 the body of the ratification that there are two ways of
25 which working interest owners subscribe to the

1 contemporary Unit Operating Agreement, either by
2 execution, right --

3 A. Correct.

4 Q. -- or ratification?

5 A. For the working interest owners, correct.

6 Q. Okay. And then if I look at the transmittal
7 letter that was sent by Marbob --

8 (Cell phone ringing.)

9 EXAMINER BROOKS: Excuse me. I believe
10 this is from Mr. -- from Scott --

11 (Pause in proceedings.)

12 EXAMINER BROOKS: I have to meet with the
13 Director and the Deputy Director on another case, so I
14 need to take another recess.

15 EXAMINER JONES: You want to take a lunch
16 break, or is it too early?

17 EXAMINER BROOKS: Well, we could do that.

18 MR. FELDEWERT: I'm fine with that.

19 EXAMINER BROOKS: Okay. Let's take a lunch
20 recess until 1:00 -- well, 12:45. Can you-all make
21 that?

22 MR. HALL: Yes.

23 EXAMINER BROOKS: Okay. Let's take a lunch
24 recess.

25 MR. FELDEWERT: 12:45? Is that what you

1 said?

2 EXAMINER BROOKS: Yes.

3 (Recess 11:32 a.m. to 12:55 p.m.)

4 EXAMINER BROOKS: Mr. Feldewert, we're back
5 on the record. You may continue your cross-examination
6 of Mr. Howard.

7 MR. FELDEWERT: Thank you, Mr. Examiner.

8 Q. (BY MR. FELDEWERT) Mr. Howard, I want to stay
9 with Exhibit Number 2 a little bit longer, please.

10 A. Okay.

11 Q. Okay? And I want to see what you and I can
12 agree upon. Let's go to the last page of this
13 agreement --

14 A. (Witness complies.)

15 Q. -- which is where it shows the recapitulation
16 of the interest right for the unit agreement.

17 A. Yes.

18 Q. And it shows Nearburg would have or has a
19 .0498?

20 EXAMINER BROOKS: What exhibit is this?

21 MR. FELDEWERT: Exhibit 2, last page.

22 EXAMINER BROOKS: Thank you.

23 Q. (BY MR. FELDEWERT) And this is the Schedule B
24 that's referenced in this ratification?

25 A. There were several renditions in my files. I

1 mean, there were some of them that had this as an
2 exhibit. Some had Nearburg with an -- with an override
3 instead. I assume this was the first form before the
4 Term Assignment was done.

5 Q. It would appear that this is what was submitted
6 to the State Land Office.

7 A. Oh, I don't know. I mean, I don't know enough
8 to know that.

9 Q. Well, the first page says -- I'm sorry.
10 Marbob's initial letter says words of ratification in
11 Exhibit B. Do you see that? "Also enclosed is a
12 revised Exhibit 'B' to the Unit Agreement...." Do you
13 see that?

14 A. I see that.

15 Q. Okay. All right. So you don't have any reason
16 to believe this is not Exhibit B, do you?

17 A. I don't believe this is the Unit B [sic] final
18 numbers.

19 Q. You don't?

20 A. No.

21 Q. You think the working interests there that is
22 shown for Nearburg is some other different number?

23 A. I believe that Nearburg would have an override
24 and not a working interest.

25 Q. Sounds like we need to step back.

1 A. Okay.

2 Q. Nearburg did not have an override until after
3 it executed the Term Assignment with Marbob, correct?

4 A. Correct, the one that was effective June 1st, I
5 think.

6 Q. But they didn't execute that Term Assignment
7 until August, right?

8 A. Correct.

9 Q. Okay. So when Terry Gant signed this
10 ratification in June, you still had the working
11 interest?

12 A. But the effective date of the term
13 assignment was --

14 Q. I understand that.

15 MR. HALL: Let him finish. Let him finish.

16 Q. (BY MR. FELDEWERT) I'm talking when he signed
17 it. I'm talking about when he signed it.

18 A. When he signed it?

19 Q. When he signed this ratification, Nearburg had
20 a working interest?

21 A. Until such time that a Term Assignment was
22 executed, correct.

23 Q. All right. We're all on the same page.

24 And this ratification that he signed in
25 June of 2009 referenced in Exhibit B, right underneath

1 his name, "Terry Gant, Tract See Attached Exhibit
2 'B'" -- do you see that?

3 A. I do see that.

4 Q. So Exhibit B that would have been attached
5 would have shown a working interest for Nearburg,
6 correct?

7 A. I don't know that -- I'm sorry. I don't know
8 that answer.

9 Q. That's all that they had?

10 A. I don't know the answer to that either.

11 Q. Okay. But this Exhibit B shows a working
12 interest with Nearburg at the time he signed this
13 ratification?

14 A. I would agree that this page says that we had
15 an -- we had a working interest at that time. That's
16 what this page says.

17 Q. All right. Now, would you agree with me -- I
18 want to see what we can agree and we can disagree on.

19 Would you agree with me that when he signed
20 this ratification, he committed Nearburg's working
21 interest that you held at the time to the unit
22 agreement?

23 A. I can't agree to that.

24 Q. So he signs a document that says "Ratification
25 and Joinder of Unit Agreement and Unit Operating

1 Agreement" and you don't concede that he at least -- he
2 at least committed Nearburg's working interest to the
3 unit agreement? Is that what you're saying?

4 A. I would agree that he ratified the unit
5 agreement as to our royalty interest.

6 Q. But you didn't have a royalty interest at that
7 time.

8 A. As of the effective date of the Term
9 Assignment, we did.

10 Q. I'm just focusing on June of 2009. I want you
11 to go back -- let's go to June of 2009. Terry Gant puts
12 pen to paper -- okay? When he puts pen to paper, you
13 have only a working interest, right?

14 MR. HALL: You know, this has been asked
15 and answered a number of times. Now it's cumulative at
16 this point.

17 EXAMINER BROOKS: Yes. I believe we're
18 clear on this point.

19 Go ahead.

20 MR. HALL: Next question?

21 EXAMINER BROOKS: Yeah. I think it's a
22 repetitious question. I think he already answered the
23 question about three questions ago.

24 MR. FELDEWERT: All right.

25 Q. (BY MR. FELDEWERT) Now, when Mr. Gant committed

1 the working interest here to the unit agreement -- all
2 right? And I know you're not --

3 MR. HALL: Objection. Are you asking him
4 to assume that?

5 EXAMINER BROOKS: Go ahead. Finish the
6 question.

7 Q. (BY MR. FELDEWERT) When he signed this -- when
8 Mr. Gant signed it, he was your Midland manager, right?

9 A. He was.

10 Q. Pretty knowledgeable about unit agreements and
11 unit operating agreements?

12 A. I would hope so.

13 Q. So would I.

14 Okay. When he committed what he -- what
15 this purports to show as a working interest to the unit
16 agreement, what document would govern the operation of
17 that working interest that he committed to the unit
18 agreement?

19 MR. HALL: Again, I'm going to object to
20 the form of the question.

21 THE WITNESS: I think you're asking me the
22 same question again about my working interest. And I'm
23 telling you that there is no working interest involved.

24 EXAMINER BROOKS: Well, I think it's a
25 little bit different question, so I'm going to overrule

1 the objection.

2 THE WITNESS: Can you restate it?

3 Q. (BY MR. FELDEWERT) Okay. At the time when
4 Mr. Gant put pen to paper here in June of 2009 and
5 signed a Ratification and Joinder of Unit Agreement and
6 Unit Operating Agreement and added Exhibit B to it that
7 showed a Nearburg working interest, what document do you
8 think governed the operation of the unit and Nearburg's
9 working interest at that time?

10 A. I believe the Unit Operating Agreement governed
11 operations for the working interest owners.

12 Q. Okay. All right. It would explain who the
13 operator of the unit was, right?

14 A. Pardon me?

15 Q. It would identify who the operator of the unit
16 was?

17 A. Yes.

18 Q. It would identify how costs would be shared?

19 A. Correct.

20 Q. How revenues would be shared?

21 A. Absolutely.

22 Q. Okay. And how they would account for the
23 working interest that was at least reflected on the
24 exhibit leading to this document?

25 A. Okay.

1 Q. Do you agree with that?

2 A. To a certain extent.

3 Q. Okay. Now, you and I weren't there. Concho
4 wasn't there.

5 I want to go to the second page of this
6 exhibit.

7 EXAMINER BROOKS: Exhibit 2?

8 MR. FELDEWERT: 2.

9 EXAMINER BROOKS: Continue.

10 Q. (BY MR. FELDEWERT) This is now July of 2009.
11 This is a month after Mr. Gant signed the Ratification
12 and Joinder of Unit Agreement and Unit Operating
13 Agreement. You with me?

14 A. Yes.

15 Q. And it's by Ross Duncan at Marbob?

16 A. Correct.

17 Q. Now, would you expect that Mr. Duncan, before
18 sending this to the State Land Office, would have at
19 least had some conversations with Mr. Gant at Nearburg?

20 MR. HALL: Object. It calls for
21 speculation.

22 EXAMINER BROOKS: Sustained.

23 Q. (BY MR. FELDEWERT) Okay. In this letter, in
24 the second paragraph, it reflects Mr. Duncan's
25 understanding what had been done; does it not?

1 A. Yes, it does.

2 Q. It says, "Chesapeake and Nearburg have both
3 subscribed to the Unit Operating Agreement," right?

4 A. Correct.

5 Q. Okay. And what he includes with this letter or
6 this -- are these two ratification parts. That's what
7 he says here, right, "attached please find Chesapeake
8 and Nearburg's executed Ratification and Joinder of Unit
9 Agreement and Unit Operating Agreement"? Do you see
10 that?

11 A. I do see that, yes.

12 Q. So clearly does it not reflect that he
13 understood that Nearburg had subscribed to the Unit
14 Operating Agreement?

15 A. No.

16 MR. HALL: Well, I'm --

17 Q. (BY MR. FELDEWERT) If I go to the State Land
18 Office's approval there, first page, this is dated July
19 22nd, 2009, right?

20 A. Yes, it is.

21 Q. Nearburg hadn't assigned that assignment to
22 Marbob yet. They still had a working interest because
23 they didn't sign it until August?

24 A. Correct.

25 Q. Okay. And they accept Nearburg's and

1 Chesapeake's inclusion in the -- the State Land Office
2 does, inclusion in the unit agreement, correct?

3 A. Yes.

4 Q. And they do so pursuant to Article 22 of the
5 unit agreement?

6 A. Correct.

7 Q. Have you read that article?

8 A. I have not.

9 Q. Let's go to Exhibit 5?

10 EXAMINER BROOKS: This is in COG's book,
11 right?

12 MR. FELDEWERT: Yes, sir.

13 EXAMINER BROOKS: Exhibit 5 is the
14 communitization agreement?

15 MR. FELDEWERT: It is the certificate of
16 approval of public lands for the unit.

17 EXAMINER BROOKS: Oh, okay. Go ahead.

18 Q. (BY MR. FELDEWERT) And the second page of this
19 has the unit agreement, and then the third page of this
20 exhibit has the index to the SRO Unit area and the unit
21 agreement. And now we go to the third page and we find
22 this paragraph 22, right, Mr. Howard?

23 A. I see that, "Subsequent Joinder."

24 Q. Yeah, the one that's referenced by the State
25 Land Office.

1 And within this paragraph that's referenced
2 by the State Land Office, it says, "And if such
3 owner" -- and I'm on the third line down, halfway
4 through. "And if such owner" -- they're talking about
5 the owner they're bringing in, correct? Is that how you
6 interpret that?

7 A. Yes.

8 Q. "If such owner is also a working interest
9 owner" -- and at this time Nearburg is still a working
10 interest owner, correct?

11 A. I think we can both agree that I disagree with
12 that (laughter).

13 Q. I thought you were going to say we could agree.

14 A. Nope.

15 Q. You hadn't assigned your Term Assignment yet to
16 Marbob?

17 A. Correct.

18 Q. All right. And it says, "If such owner is also
19 a working interest owner, by subscribing to the
20 operating agreement providing for the allocation of
21 costs of exploration, development, and operation." Do
22 you see that?

23 A. I do.

24 Q. So bringing Nearburg in in accordance with this
25 provision, which indicates you're a working interest

1 owner, you had to have subscribed to the working
2 operating agreement.

3 Now, it appears to me that at least Marbob
4 understood that Nearburg had subscribed to the operating
5 agreement. That's clear from the second paragraph of
6 their letter, right?

7 MR. HALL: I'm going to object. He can't
8 testify as to your understanding of Marbob's
9 understanding.

10 EXAMINER BROOKS: I'll sustain the
11 agreement -- the objection.

12 Q. (BY MR. FELDEWERT) The second page of Exhibit
13 Number 2, Marbob's cover letter, says that Marbob
14 communicates with Nearburg, has subscribed to the Unit
15 Operating Agreement. It says that, correct?

16 A. "Ratification and Joinder of Unit Agreement."
17 Yes. I see that language.

18 Q. And the second paragraph of Exhibit 2, on
19 the -- let me step back. Exhibit 2, second page, Marbob
20 letter to the State Land Office, second paragraph.
21 You're there?

22 A. "Chesapeake and Nearburg"? That part?

23 Q. Yeah. Read that.

24 A. "Chesapeake and Nearburg have both subscribed
25 to the Unit Operating Agreement...."

1 Q. So Mr. Duncan at least is subscribing to the --

2 MR. HALL: Same objection.

3 EXAMINER BROOKS: Well, I think it's -- I'm
4 going to overrule that. But I think we've been through
5 this already, so I think we should move on to something
6 else. The letter says what it says. We don't need to
7 have the witness say, Yes, it says that.

8 Q. (BY MR. FELDEWERT) All right. So let's go to
9 the Unit Operating Agreement he's talking about. Let's
10 go to Exhibit Number 4. Now, this is paginated,
11 Mr. Howard, so we can more easily move through this
12 document. Okay?

13 A. Okay.

14 Q. Go to page 23. Well, let me step back. Have
15 you seen this document before?

16 A. Yes, I have.

17 Q. Do you recognize this as the operating
18 agreement for the SRO State Exploratory Unit?

19 A. Correct.

20 Q. If we go to page 23 first.

21 A. I'm having a hard time finding 23.

22 EXAMINER BROOKS: It's numbered in the
23 upper, right-hand corner rather than the upper,
24 left-hand corner, but it's right after 22.

25 THE WITNESS: All right.

1 Q. (BY MR. FELDEWERT) It's Exhibit A-1 to the Unit
2 Operating Agreement. And you know that Exhibit A-1
3 lists the property subject to the operating agreement,
4 correct?

5 A. Correct.

6 Q. All right. And in there it shows that -- they
7 start listing the leases subject to the operating
8 agreement, right?

9 A. Yes.

10 Q. Now, let's go to page 29. And the first lease
11 it shows -- or the 24th lease it shows it being
12 subscribed to the operating agreement -- west half of
13 Section 17, held by Yates Petroleum. Do you see that?

14 A. I do.

15 Q. And it shows that Yates Pet, ABO Petroleum,
16 Yates Drilling, MYCO Industries and now Marbob owns a
17 working interest in that lease. Shows that?

18 A. Yes.

19 Q. Okay. Then I go to the west half of Section
20 20, and it shows -- that's the lease held by Nearburg?

21 A. Yes.

22 Q. And it shows that it's subscribed to the Unit
23 Operating Agreement, right?

24 A. It's listed on here, correct.

25 Q. All right. Then if I go to the last page --

1 while we're here, let's go to page 30. This is a
2 recapitulation of A-1 of the Unit Operating Agreement,
3 and now it shows that you have your overriding
4 royalties?

5 A. Correct.

6 Q. So this was done at a point in time after you
7 had assigned your working interest to Marbob and kept
8 your override, right?

9 A. I would assume that's correct.

10 Q. Okay. And the box here indicates that -- it
11 shows "Nearburg TA'd to all parties proportionately
12 making all working interest." Do you see that?

13 A. I do see that.

14 Q. Now that the work -- that the Term Assignment
15 is in effect?

16 A. I see that, correct.

17 Q. All right. And that working interest owner set
18 includes Yates Petroleum, ABO Petroleum, Yates Drilling
19 and MYCO Industries, correct?

20 A. Correct.

21 Q. Now, let's go to the signature pages, page
22 18 -- and the signature pages comprise pages 18 to 21,
23 which is Exhibit Number 4. Would you agree with that,
24 Mr. Howard?

25 A. Say again. I'm sorry.

1 Q. The signature pages for this Unit Operating
2 Agreement can be found on pages 18, 19, 20, 21 and 22 --
3 or 21?

4 A. Well, 19 is a ratification, but --

5 Q. Okay. And that's what I want to go to, page
6 19.

7 A. Okay.

8 Q. You don't see any signatures next to the lines
9 for Yates Petroleum -- or let me step back.

10 Let's go to page 18 first. Do you see
11 signature lines for Yates Drilling?

12 A. Yes, I do.

13 Q. Yates Petroleum?

14 A. Yes, I do.

15 Q. ABO Petroleum?

16 A. Yes.

17 Q. MYCO Industries?

18 A. Yes.

19 Q. And none of them physically signed this Unit
20 Operating Agreement, did they?

21 A. Correct, not on this page.

22 Q. In fact, instead what we have in here is a
23 ratification that these four working interest owners
24 signed, and that's on page 19 of this exhibit?

25 A. Where they -- yes. Those four parties signed a

1 Ratification and Joinder of Unit Agreement and Unit
2 Operating Agreement.

3 Q. It appears that John Yates, with Yates
4 Petroleum, viewed this as sufficient to subscribe to the
5 Unit Operating Agreement, doesn't it?

6 MR. HALL: I'll object to asking him to
7 testify about John Yates' state of mind.

8 MR. FELDEWERT: I'm just talking about what
9 we can get from the document. This is what appears from
10 the document.

11 EXAMINER BROOKS: The document speaks for
12 itself, so, you know -- clearly it does say that Yates
13 Petroleum Company -- it does appear that Yates Petroleum
14 Company executed that document.

15 I'll overrule the objection, because if you
16 just want him to acknowledge that's the case, that's
17 fine. If he were to deny it, I would have a problem.

18 But you may go ahead.

19 Q. (BY MR. FELDEWERT) And the same would be said
20 for Yates Drilling and Peyton Yates and ABO Petroleum
21 and John Yates and Sharon Snowden for MYCO?

22 A. The same being what?

23 Q. Same being that they used this document in
24 subscribing them to the Unit Operating Agreement.

25 MR. HALL: Again, same objection.

1 EXAMINER BROOKS: Well, I may have
2 misspoke, because they signed it; they all signed it.
3 Now, what they thought it did would not be something
4 this witness would be competent to testify to. And you
5 have to remember we're speaking of a document that some
6 parties contend is ambiguous, with all deference to
7 Mr. Warnell probably in certain respects. So I will --
8 I would not want the witness to be called upon to
9 interpret what was in the mind of the people who signed
10 this document. So I'll sustain that objection on that
11 basis.

12 Q. (BY MR. FELDEWERT) This Ratification and
13 Joinder of Unit Agreement and Unit Operating Agreement
14 that was signed by these four entities, it's the same
15 ratification form that was signed by Mr. Gant back in
16 2009, correct?

17 A. Correct.

18 Q. And are you aware that by virtue of this
19 ratification and joinder signed by the Yates group that
20 they have received revenues and paid costs and expenses
21 in accordance with the Unit Operating Agreement?

22 A. I assume that they have, but I don't know.

23 Q. And if I'm understanding you, Mr. Howard, it's
24 your contention that Nearburg no longer holds an
25 overriding royalty interest? Do you state that this

1 lease reverted to a working interest? Is that your
2 position?

3 A. Yes, it is.

4 Q. And in your opinion, the Division should find
5 that Concho, as a successor operator, could not have a
6 good-faith belief that the working interest held by
7 Nearburg is subject to the Unit Operating Agreement even
8 though Nearburg signed the same ratification form as the
9 Yates entities did? That's your position?

10 MR. HALL: And, again, same objection.
11 He's being asked to testify to third-party beliefs.

12 EXAMINER BROOKS: Sustained.

13 Q. (BY MR. FELDEWERT) Is it your position,
14 Mr. Howard, that -- that Nearburg is not subscribed to
15 the Unit Operating Agreement by virtue of Mr. Gant's
16 signature on the Ratification and Joinder of Unit
17 Agreement and Unit Operating Agreement?

18 A. Yes.

19 Q. And you don't believe anybody else could have a
20 good-faith belief otherwise?

21 A. I don't know the answer to that.

22 Q. All right. Now turn to Exhibit Number 6. This
23 was a complaint filed by Nearburg in the First Judicial
24 District Court of the State of New Mexico; is that
25 right?

1 A. Yes.

2 Q. Have you reviewed this complaint?

3 A. I've seen it briefly, I think.

4 Q. Have you reviewed it?

5 A. No.

6 Q. Okay. You were made aware of it?

7 A. Correct.

8 Q. If I have you turn to what's -- I want you to
9 go to the next page. I want you to go to paragraph 77.
10 And isn't it true that in this the plaintiffs have asked
11 the Court to declare that Nearburg is not subject to the
12 operating agreement. Do you see that?

13 MR. HALL: Again, I think the document
14 speaks for itself.

15 Q. (BY MR. FELDEWERT) Paragraph 77, subparagraph
16 three.

17 A. I can read what it says, that "Plaintiffs are
18 not subject to the Operating Agreement."

19 Q. And you're asking the Court to declare that?

20 A. Yes.

21 Q. And the plaintiffs would be Nearburg?

22 A. Correct.

23 Q. All right. Now I want to go to Exhibit 7.

24 This is the complete well file for the 16H on the
25 Division Web site. Okay?

1 A. Okay.

2 Q. It has the APDs. This is for the 16H in the
3 west half-west half of the Nearburg state lease. Okay?

4 A. Okay.

5 Q. Is that right?

6 A. Yes.

7 Q. The first page reflects that that well was
8 initially permitted by Marbob as a lay-down well in
9 August of 2010; is that right?

10 A. That's correct.

11 Q. And that's when your Term Assignment would have
12 been in effect?

13 A. Are you asking me if our Term Assignment was in
14 effect in August of 2010?

15 Q. Yes.

16 A. Yes.

17 Q. And as we go through this, on the third page,
18 we see a change of operator to Concho. And now on the
19 fourth page, we see that Concho, in December of 2010,
20 changed orientation of the well to a lay-down to the
21 west half-west half well --

22 A. Correct.

23 Q. -- is that right?

24 Okay. And that would be, again, on
25 Nearburg's acreage, its leasehold?

1 A. Yes.

2 Q. And at the time that this was done, there is no
3 debate that Concho was authorized to operate on
4 Nearburg's leasehold, is it?

5 A. That's correct.

6 Q. And then this reflects further that the --
7 well, the next page, and then I'm at C-103. And then in
8 the middle there, it's a sundry notice. It says "March
9 4th, 2011 spudded well." Do you see that?

10 A. I do.

11 Q. And there is no debate at the time Concho
12 spudded that well that they were authorized to operate
13 on Nearburg's state lease?

14 A. I agree.

15 Q. All right. Now let's fast-forward two years,
16 to 2013. And now I want to go to Exhibit 8. And this
17 is the 43H well --

18 A. Correct.

19 Q. -- correct?

20 And this was approved for drilling, got an
21 APD by Concho, on February 26th, 2013. Do you see that?

22 A. I do.

23 Q. And there is no debate at the time this well
24 was first permitted by the Division that COG was
25 authorized to permit this well?

1 A. That's correct.

2 Q. And actually this 43H is in the west half of
3 the west half of Section 17 and the west half-west half
4 of 20, right?

5 A. That is correct.

6 Q. And then if I keep my finger here and I go to
7 the next page -- I'm sorry. Keep my finger here and go
8 to Exhibit Number 9, I see that the 44H was permitted
9 with the Division at the same time, on February 26th,
10 2013.

11 A. I see that, yes.

12 Q. So no debate when this well was permitted that
13 they were authorized to operate on --

14 A. I agree.

15 Q. All right. So let's go back to Exhibit Number
16 8, and let's just go through the timeline real quick.
17 We then have, on the third page, the sundry noting that
18 the SRO Unit terminated on March 1st, 2014?

19 A. I'm sorry. I'm not sure I know where you are
20 right now.

21 Q. Third page of Exhibit 8.

22 A. Exhibit 8, third page.

23 Q. Uh-huh.

24 A. C-103?

25 Q. Yes.

1 A. Okay.

2 Q. So the SRO Unit terminated March 1st, 2014,
3 with a request that the name change -- changes be
4 effective March 1st, 2014, right?

5 A. Correct.

6 Q. And the next page is a sundry I think you-all
7 referenced earlier, dated March 6th, 2014. It actually
8 effectuates the name change, right?

9 A. Correct.

10 Q. It doesn't permit the well, just effectuates
11 the name change?

12 A. Correct.

13 Q. Then the next document indicates, in this
14 exhibit, that the well was spudded on August 2nd, 2014,
15 C-103?

16 A. I don't see the August 2nd date offhand.

17 Q. The second-to-the-last page of Exhibit 8. It's
18 August 2nd, 2014, halfway down in paragraph 13 of the
19 form.

20 A. Oh, yeah. Okay. I see it now. "August 2nd,
21 2014, spudded well."

22 Q. And that would be up and drilled pursuant to
23 the permit issued back in February of 2013, right?

24 A. I'm assuming, yes.

25 Q. Okay. And then we won't do it now, but if you

1 go through this well file for Exhibit Number 9, which
2 relates to the 43H, we see the same information, same
3 initial permit, same filing that you-all referenced
4 earlier, and that was for the purpose of effectuating a
5 name change. And then we see that that well was
6 spudded, second-to-the-last page, in October of 2014,
7 right?

8 A. Correct.

9 Q. Okay. All right. Now I want to talk about,
10 then, what's going on during this time frame that we
11 just walked through. Okay?

12 A. All right.

13 Q. And I want to first go to Exhibit Number 10.
14 Have you seen this email chain before?

15 A. Yes, I have.

16 Q. You're actually copied on it, right?

17 A. On part of it, yeah, looks like.

18 Q. Okay. You recognize how this works, right?
19 You get copied on, let's say, the email on the first
20 page, and you get the string below, right?

21 A. Well, I can look at the first one from Brent to
22 Ken Dixon, and I wasn't copied on that one.

23 Q. Let's go there. So we're going to page 3. Is
24 that where you're at, when you say the first one?

25 A. Okay. I see.

1 Q. That's the first one in time, right, March
2 20th, 2014?

3 A. Correct.

4 Q. Then we kind of go up the chain from there.

5 A. Okay.

6 Q. And as you go up the chain, you eventually get
7 copied with this entire chain; do you not?

8 A. Except for the very last email, yeah. The
9 March 24th email, I'm not copied on that one, doesn't
10 look like, unless I'm misunderstanding.

11 Q. Well, part of the email chain came to you.

12 A. Well, I don't necessarily agree with that. I
13 mean, I could --

14 Q. Okay. Go to the last page.

15 A. So page 3?

16 Q. Page 3.

17 EXAMINER BROOKS: Of which exhibit?

18 MR. FELDEWERT: Exhibit Number 10.

19 Q. (BY MR. FELDEWERT) An email from Brent Sawyer
20 from Concho to Kathie Craft. Who is Kathie Craft?

21 A. She's our division analyst in Dallas.

22 Q. Does she work for you?

23 A. Work for me? Is that what you said?

24 Q. Yes.

25 A. No. She does not work for me. She works for

1 Nearburg.

2 Q. Does she work with you?

3 A. Yes. We work for the same company. I'm in
4 Midland. She's in Dallas.

5 Q. Okay. And then like you, eventually the email
6 right above that there is copied to Ken Dixon and Randy
7 Howard.

8 A. Yes, I see that.

9 Q. Who is Ken Dixon?

10 A. He was the land manager at that time.

11 Q. Took Terry Gant's place?

12 A. Yes.

13 Q. Do you know why Kathie Craft would copy the
14 both of you in her response to the lower team and Brent
15 Sawyer?

16 A. It looks like to me that she copied us because
17 my name was brought up in an email below.

18 Q. Okay. So then you would have gotten the email
19 below?

20 A. Correct.

21 Q. All right. And in that email below, this is
22 not March of 2014. So by that time, SRO Unit had
23 terminated?

24 A. Yes, it had.

25 Q. It was terminated effective March 1st, 2014?

1 A. Correct.

2 Q. And, in fact, Brent Sawyer, just a few weeks
3 later, is telling Kathie Craft, in the first paragraph
4 in the email on page 3, that the unit -- that the SRO
5 Unit had terminated, right?

6 A. Yes.

7 Q. So no big surprise to anybody?

8 A. It was to her, but it wasn't to us.

9 Q. It was to her. That's right. That's right.

10 A. Yeah.

11 Q. It shows here -- in the second sentence, it
12 appears that Randy Howard executed the attached
13 voluntary termination in October. Do you see that?

14 A. I do see that.

15 Q. And you would have executed that because you
16 held the lease, Nearburg did?

17 A. I executed the voluntary termination at the
18 request of COG.

19 Q. Okay. And that's reflected in Exhibit Number
20 11, isn't it?

21 A. I don't know.

22 Q. Is that your letter, October 22nd, 2014?

23 A. It is my letter, October 22nd.

24 Q. And you agreed with the requested voluntary
25 termination?

1 A. Yeah. I didn't understand because I said we're
2 not turning a working interest owner under this unit.
3 So I was questioning why we were -- she was asking us to
4 execute.

5 Q. But you signed -- you sent a letter saying
6 please find the request for voluntary termination.

7 A. Yeah. We -- my understanding was it already
8 had enough, more than 75 percent, and so I was told by
9 Ken Dixon to go ahead and sign.

10 Q. So Ken Dixon told you to sign?

11 A. Correct.

12 Q. Okay. And having done all that, going now back
13 to Exhibit 10, page 3, one of the things that Mr. Sawyer
14 tells Kathie Craft that was eventually communicated to
15 you is at the end of the second paragraph. And it says,
16 "By terminating the unit voluntarily, the undrilled
17 proration units are all HBP by existing wells, not
18 subject to the CDC or expiration, but can be drilled at
19 will subject to the Joint Operating Agreement already in
20 place." Do you see that?

21 A. I do.

22 Q. Now, you would understand he's referencing the
23 Unit Operating Agreement, correct?

24 A. I'm guessing that's what he's talking about,
25 yes.

1 Q. That would have to be; would it not?

2 A. I would think so.

3 Q. Okay. All right.

4 EXAMINER BROOKS: Another interruption to
5 ask a question that I'll probably forget. I would not
6 know what CDC means in this context, and I wouldn't
7 think the Center for Disease Control would have anything
8 to do with this agreement. So can you explain that to
9 me? Do you understand it?

10 THE WITNESS: My understanding -- although
11 I'm not the one who wrote this, my understanding is that
12 is Continuous Development Clause.

13 EXAMINER BROOKS: Okay. You may continue.

14 Q. (BY MR. FELDEWERT) All right. So they
15 communicated first on March 20th, 2014, after the SRO
16 Unit terminated, that the acreage could be drilled at
17 will subject to the JOA already in place. Told you guys
18 that?

19 A. Yes.

20 Q. Now we go to the next day, going up the chain.
21 I'm on page 2 of the exhibit, and we're at March 21st.
22 And again Mr. Sawyer's communicating with Kathie there
23 at the top. Do you see that?

24 A. Yes.

25 Q. And do you see that that's copied to you?

1 A. Yes.

2 Q. As well as Mr. Dixon, the land manager?

3 A. Correct.

4 Q. And you guys are all working together here,
5 right?

6 A. We're trying.

7 Q. And Mr. Sawyer -- I'm at the second paragraph,
8 beginning of the second sentence. He's communicating to
9 all three of you, "I believe the most pressing issue is
10 that the Term Assignment from Nearburg to Marbob is
11 effective until the SRO Unit is dissolved." So
12 technically it had expired. Do you see that?

13 A. I see that.

14 Q. So I know you-all referenced some title
15 opinions during your examination. You reference an
16 October 2015 title opinion.

17 A. We referenced three different title opinions,
18 yes.

19 Q. My recollection was October 2015. Does that
20 sound about right?

21 A. I don't remember, but I can look.

22 Q. October 2014. Okay? It would be Exhibit 21 in
23 your book.

24 A. Yes, October 8th, 2014, Lear & Lear. Uh-huh.

25 Q. So that title opinion would have been seven

1 months after we told you, Concho did, that it appeared
2 that the TA with Marbob had taken --

3 A. Yeah. We never disagreed with that.

4 Q. Okay. And then the other opinion that you
5 referenced after this October one showing the same
6 thing, I was kind of curious why you were doing that
7 because Concho already told you that it had technically
8 terminated, right, in March? They told you that in
9 March 2014?

10 A. They did tell us that, right.

11 Q. All right. Then they tell you -- now back to
12 page 2 of my email. "However, we are moving forward on
13 the assumption that it was intended to keep the
14 assignment and the overriding royalty interest effective
15 until all the wells in (or formerly in) the unit are
16 plugged, so we will need to paper that up." Do you see
17 that?

18 A. I do see that.

19 Q. He's telling you how they want to proceed.

20 A. I see that's his thought, yes.

21 Q. Okay. He communicated that to your group,
22 Mr. Dixon, you and Ms. Craft?

23 A. I see that, correct.

24 Q. And he says, "However, if that assumption is
25 incorrect, please let me know, since it will affect the

1 work the title lawyer is doing on the updated opinions
2 for the wells." Do you see that?

3 A. I do.

4 Q. Okay. So just looking at this change, in March
5 of 2014, shortly after the SRO Unit terminated, COG has
6 communicated to your group, right, that the Term
7 Assignment with Marbob is technically terminated, right?

8 A. Correct.

9 Q. That they believe the development can continue
10 under the Unit Operating Agreement?

11 A. Correct.

12 Q. And that they're moving forward under the
13 assumption that Nearburg desires their Term Assignment
14 and the override to continue?

15 A. Correct.

16 Q. And they tell you if you disagree with that, to
17 let them know?

18 A. Correct.

19 Q. All right. Did anyone, after receiving this
20 email, tell Mr. Sawyer that they disagreed with that
21 approach?

22 A. I think the same day, if this is a complete
23 chain.

24 Q. Do you have that email?

25 A. Yeah. You do, too. It's the one right in

1 front of it, page 1.

2 Q. Page 1?

3 A. So the email from Ken Dixon to Brent says,
4 "Just like you, I'm real busy right now and I won't have
5 any time to talk to you about this until next Wednesday.
6 I'll give you a call on Wednesday morning. Thanks for
7 your patience."

8 Q. Okay. He's not saying he disagreed with
9 what --

10 A. He didn't say he agreed.

11 Q. But he didn't say he disagreed?

12 A. You're correct. He did not say he disagreed.

13 Q. Okay. And then they were going to have
14 meetings?

15 A. Pardon me?

16 Q. They're going to have meetings?

17 A. Right. We had asked to start getting
18 information on wells so that we could make an educated
19 decision on what we wanted to do.

20 Q. All right. Now, at this point in time, in
21 March, there is then going to be some discussions --

22 A. Correct.

23 Q. -- right?

24 And during the course of those discussions,
25 doesn't Concho send you a communitization agreement for

1 the 43H?

2 A. What time frame was this?

3 Q. 2014.

4 A. Yes.

5 Q. Isn't that reflected in Concho Exhibit Number
6 12?

7 A. Yes, it is, for the 43H.

8 Q. For the 43H.

9 So this was three months after they had
10 communicated how they perceived you wanted to proceed?

11 A. Okay.

12 Q. Right? July?

13 And they sent that to you because you're
14 still a record titleholder of that lease, correct?

15 A. Correct.

16 Q. It was sent, actually, to Mr. Dixon, the land
17 manager who had been involved in that March email
18 exchange?

19 A. Yes. He was my boss at that point in time.
20 Yes.

21 Q. And if I go to paragraph eight of what he's
22 saying to Mr. Dixon at that time, paragraph eight of the
23 CA, it's in bold print. It says, "COG Operating LLC
24 shall be the Operator of said communitized area and all
25 matters of operation shall be determined and performed

1 by COG Operating LLC." Do you see that?

2 A. I do.

3 Q. Then if I'm looking at your timeline, Concho
4 actually starts to spud that well in August, right?

5 A. I think that's correct.

6 Q. Okay. Can you point to me, Mr. Howard, any
7 communication, Nearburg to COG, prior to the drilling of
8 that well that suggests anything other than what's set
9 forth in the comm agreement or the March 2014 --

10 A. You mean after Kelly sent the comm agreement
11 over and before the well was spud? Is that what you're
12 talking, July to August?

13 Q. I'm talking about July and August.

14 A. Yeah. We -- we called Kelly Fushek [phonetic]
15 the day we received this comm agreement and told her we
16 weren't going to execute the agreement because the Term
17 Assignment had expired.

18 Q. Who called her?

19 A. I did.

20 Q. You called Kelly Fushek?

21 A. Yes. I called her and talked with her on the
22 phone, and I had, in the room with me, because I had a
23 speakerphone -- I had Kimberly, who was at that point in
24 time my assistant.

25 Q. Okay.

1 A. So she heard the whole conversation, too.

2 Q. And you said you wouldn't execute it because
3 the Term Assignment had expired?

4 A. That's correct, and that we needed more
5 information about what was going on so we could figure
6 out what we were supposed to do.

7 Q. And did you indicate to hear that COG was not
8 authorized to operate on that acreage -- on your
9 acreage?

10 A. Yes, we did.

11 Q. Did you take any notes?

12 A. No, not that I can recall. But I recall the
13 conversation pretty well, and, you know, like I said, it
14 was witnessed by my assistant.

15 Q. Who was your assistant?

16 A. Her name was Kimberly Cradell [sic].

17 Q. How do you spell it?

18 A. It's Crandell, I think, C-R-A-N-D-E-L-L. She's
19 no longer with the company.

20 Q. She's not?

21 A. No, sir.

22 Q. But she was the only one there with you?

23 A. Correct. Correct.

24 Q. And you don't know if you took any notes?

25 A. I don't recall specific notes, but I recall the

1 conversation enough that I prepared an affidavit and had
2 her sign it.

3 Q. Had who sign it?

4 A. My assistant.

5 Q. Had her sign an affidavit?

6 A. About the conversation, yes, because in case
7 something like this was to come up.

8 Q. And do you have that affidavit?

9 A. We can get it, I guess.

10 Q. But you haven't used it up till now, right?

11 A. I haven't had to use it for anything, no.

12 Q. Okay. And so you have that affidavit.

13 And then if you had any notes, where would
14 those be located? Would they be in the well file, or
15 where would you keep those?

16 A. I don't know that they would be anywhere. I
17 mean, it was a conversation that I had, and if it's
18 written down, I don't know where it would be.

19 Q. Okay. And did you -- and what exactly did you
20 tell Ms. Kelly Fushek?

21 A. That the Term Assignment had expired, that we
22 wanted additional information about the wells and what
23 was going on in the area.

24 Q. Anything else?

25 A. I think that covered it pretty much.

1 Q. That would be it?

2 A. That's the gist of it, yes.

3 Q. Okay. All right. Then you get this comm
4 agreement in July.

5 And now I want to go to Exhibit Number 3 --
6 or 13.

7 EXAMINER BROOKS: 13?

8 MR. FELDEWERT: 13.

9 Q. (BY MR. FELDEWERT) And I want to go to page 3.
10 And the reason I go there is you'll see a continuation
11 of the March 21st email chain. Do you see that?

12 A. Okay.

13 Q. Now we're up to May of 2015.

14 A. Okay.

15 Q. Kathie Craft is talking to Mr. Sawyer about the
16 16H Division Order. Do you see that?

17 A. I do.

18 Q. And she says, "Guess I'll go ahead and get the
19 Division Order for the #16H signed and return it to
20 you...so we can get paid, right or wrong!!" Do you see
21 that?

22 A. I do see that.

23 Q. Does that Division order reflect an overriding
24 royalty interest?

25 A. I don't know.

1 Q. You don't know?

2 A. No, I don't know.

3 Q. Okay. And the rest of that chain indicates
4 that they're waiting for an updated title opinion.

5 Walking up the chain now, May and then in
6 June and then into August and then all the way up into
7 September, right?

8 A. Right.

9 Q. Do you recall, then -- here we are -- this
10 email takes us to September 30th. Do you recall a
11 meeting in October with Concho to discuss amendments to
12 the Marbob Term Assignment?

13 A. Yes.

14 Q. And that was for purposes of discussing
15 papering up what Mr. Sawyer had said back in March about
16 continuing with the override, correct?

17 A. This is one of our exhibits you're talking
18 about?

19 Q. Well, I'm going back to my Exhibit Number 10.

20 A. Your Exhibit 10?

21 Q. Uh-huh. And on page 2 -- remember we went
22 through that? It said to proceed on the assumption and
23 continue with your override?

24 A. Right.

25 Q. But we need to paper that up?

1 A. Uh-huh.

2 Q. So now you're having a meeting in October to do
3 that, to paper up that extension?

4 A. To try to figure out what was going on.

5 Q. Okay. Now go to my Exhibit 14. You asked him,
6 Mr. Sawyer -- sent an email to Mr. Sawyer, October 14th,
7 2014: "We would also like to visit with you about the
8 attached Assignment while you are here, and I wanted to
9 give you a heads-up in that regard." Do you see that?

10 A. I do see it.

11 Q. What did you mean by giving him a heads-up?

12 A. I wanted to talk to them about this Term
13 Assignment and where we stood.

14 Q. All right. Anything else about the heads-up?

15 A. No.

16 Q. You're also talking, are you not, about some
17 JOAs for other properties. If I look at the email chain
18 here, page 2, for example, "JOAs on the Way South...."

19 A. "Way South," yes.

20 Q. Do you remember all that?

21 A. I do remember that.

22 Q. So then you had your meeting in October, right?

23 A. Correct.

24 Q. Where did they meet?

25 A. Where did we meet?

1 Q. Uh-huh.

2 A. In Nearburg's offices.

3 Q. Who was present for Nearburg?

4 A. Myself and John Turro.

5 Q. You were there for Nearburg?

6 A. Correct.

7 Q. And John Turro there was for --

8 A. Nearburg. He's a landman. He works with me.

9 Q. Anybody else?

10 A. Not with Nearburg.

11 Q. What was your position at that time?

12 A. I would have been the land manager.

13 Q. You would have taken Mr. Dixon's spot?

14 A. Correct.

15 Q. You had previously taken Terry Gant's spot?

16 A. Correct.

17 Q. All right. Did you take any notes during that
18 meeting?

19 A. If I did, I'm not sure where they are. I don't
20 have them in front of me.

21 Q. What would be your normal, customary practice
22 if you took notes about a meeting related to a Term
23 Assignment for the west half of Section 20? Where would
24 you keep your notes?

25 A. If had any notes, they would probably be

1 written on a notepad.

2 Q. And where would you put your notepad? Where do
3 you keep that?

4 A. Some of it I keep. Some of it I don't. I'm
5 not sure exactly where it would be offhand. I mean, I
6 can look for it.

7 Q. If you kept it, where would you have it?

8 A. On my desk, probably.

9 Q. You don't have a file?

10 A. No, not for this, not for -- not for keeping my
11 notes on that kind of thing, no.

12 Q. You don't. Okay. All right.

13 Now, this was -- this was an important
14 meeting, though, right, you called it?

15 A. We -- we -- we jointly tried to get together to
16 have a discussion, yes.

17 Q. Who was there for Concho?

18 A. If I recall, it was Brent Sawyer that only
19 showed up for that one.

20 Q. Same guy that was on the March 2014 email
21 chain?

22 A. Correct. And I don't think that Aaron was
23 there for that meeting, but I can't absolutely swear to
24 that.

25 Q. At that meeting, did the parties discuss

1 specific language to extend to the Marbob Term
2 Assignment?

3 A. I don't believe so. I'm not sure.

4 Q. You don't recall having a discussion about
5 tying the Term Assignment to the expiration of the Unit
6 Operating Agreement rather than -- rather than the unit
7 agreement?

8 A. We had discussions about doing that, yes, but
9 I'm not sure if happened in that meeting or not.

10 Q. Well, let me -- what else do you recall from
11 that meeting?

12 A. Not a whole lot, to be honest with you.

13 Q. With respect to the Term Assignment?

14 A. The main thing that sticks out in my mind is
15 that we were still looking to get information that we
16 hadn't had.

17 Q. What type of information?

18 A. Well information.

19 Q. What do you mean by well information?

20 A. The information that was due us per the Term
21 Assignment, requirement A of the Term Assignment, you
22 know, permits, anything filed with the regulatory
23 commission, that kind of thing.

24 Q. Under the Marbob Term Assignment?

25 A. Correct.

1 Q. You were still wanting the information under
2 that?

3 A. Correct.

4 Q. And you were talking about, then, at the same
5 time extending that Term Assignment?

6 A. We discussed that possibility.

7 Q. Okay. All right. And if I then turn to what's
8 been marked as Concho Exhibit Number 15 -- this is an
9 email from you to and Mr. Sawyer. That's the guy that
10 was at the meeting, right?

11 A. Correct.

12 Q. On November 3rd, so this would have been after
13 your October meeting?

14 A. Correct.

15 Q. Okay. And you communicate a couple of things
16 here, right?

17 A. Yes.

18 Q. And you're the land manager at this time?

19 A. I am.

20 Q. Who do you report to at this time?

21 A. My boss is Duane Davis.

22 Q. And what was his position?

23 A. He's CCO.

24 Q. And did you meet with Mr. Duane Davis before
25 you sent that email?

1 A. I don't know that I did.

2 Q. Did you have the authority to make the
3 statements set forth in this email?

4 A. That we were agreeable to the changes of the
5 Term Assignment, yes.

6 Q. You had the authority to do that, right?

7 A. I believe I did.

8 Q. You address two topics here, one is the JOAs
9 dealing with the other properties, and the other topic
10 was this extension of the Term Assignment, correct?

11 A. Correct.

12 Q. You say here, Mr. Howard -- and these are your
13 words, right? You were --

14 A. Yes.

15 Q. "We are, however, agreeable to your changes to
16 the Term Assignment of Oil and Gas Lease covering the
17 west half of Section 20. I assume this will actually be
18 an amendment or correction to the Term Assignment of oil
19 and gas lease." Do you see that?

20 A. I do see that, yes.

21 Q. So does this refresh your recollection as to
22 whether they provided to you specific language to extend
23 the Term Assignment with Marbob?

24 A. Yes. We discussed the possibility.

25 Q. But does this refresh your recollection that

1 they provided to you with specific changes to the Term
2 Assignment --

3 A. Yes.

4 Q. -- to extend it, right, specific language?

5 A. To me it says that we were agreeable to the
6 change that they put on the Term Assignment. I don't
7 remember what those exact changes were.

8 Q. Do you recall that one of them was to tie the
9 expiration of the Term Assignment to the operating
10 agreement rather than the unit agreement?

11 A. In form, I probably would have agreed to that,
12 yes.

13 Q. And is that what you were agreeable to when you
14 issued this email in November of 2014?

15 A. With the understanding that I was waiting on
16 additional information --

17 Q. Okay.

18 A. -- well information. I mean, if they had said,
19 you know, We drilled the 43 and 44H on you, but we still
20 want to get an amendment, I think it would have been a
21 different conversation.

22 Q. Okay. Let's step back. By this time, you had
23 received the communitization agreement for the 43H,
24 right?

25 A. Yeah. We got the comm agreement, and we told

1 Kelly that we didn't -- we weren't going to sign it.
2 And so when nothing else happened, we assumed it was a
3 dead issue. We didn't know it was drilled.

4 Q. But I want to go to what you said here. And
5 correct me if I'm wrong. Maybe I'm missing something,
6 but I don't see any caveats here that says you are
7 agreeable to your changes? That's your words.

8 A. These are my words, "We are agreeable to your
9 changes to the Term Assignment."

10 Q. Then the next thing you say here is, "Also, we
11 would still like to see COG's calculations on a
12 well-by-well basis for overriding royalty interests in
13 the wells...." Right?

14 A. Correct.

15 Q. That's your term, "overriding royalty interests
16 in the wells." Do you see that?

17 A. Yes.

18 Q. What do you mean that?

19 A. The past -- I'm talking in the past tense,
20 because what's happened is we've been paying for
21 overrides on wells, different amounts that we couldn't
22 figure out how Concho came up with the numbers. And it
23 was -- part of the first conversations that we had with
24 COG was, We have several issues; one of those issues is
25 how do we come up with the overriding numbers that you

1 say we have, and what are the wells in which we own an
2 override?

3 Q. Now, you say here, "Our overriding interest in
4 the wells." This would have been after the SRO Unit
5 terminated, right?

6 A. That's correct.

7 Q. And after, therefore, the Marbob Term
8 Assignment had technically terminated?

9 A. That's correct, also.

10 Q. So for you to be able to have an overriding
11 royalty interest in the wells, you would have had to
12 have agreed to an extension of the Term Assignment,
13 right?

14 A. That's incorrect. As I mentioned, we were
15 talking about overrides paid in the past. We were still
16 trying to get it straightened out. We had years of
17 payments that were, we thought, incorrect, so we were
18 trying to figure that out.

19 Q. I can just go by what you said here to
20 Mr. Sawyer.

21 A. Well, if Brent was here today, he'd tell you
22 the same thing, I'm sure.

23 Q. Then on the next email -- or the next exchange
24 here that we have in our chronology, anyway, is Exhibit
25 Number 16, which is shortly after your November email

1 saying you were agreeable to the change, right?

2 A. It is shortly after that, correct.

3 Q. And it says to you from Mr. Sawyer: "Attached
4 you should find the form of correction assignment we
5 hope you will find acceptable." Do you see that?

6 A. I do see it.

7 Q. And it says, "As we discussed a few weeks ago
8 in our meeting, this correction will be to tie the term
9 of the assignment to the Unit Operating Agreement." Do
10 you see that?

11 A. I do.

12 Q. Okay. And if I go to this document that was
13 presented with this, the first thing I see is it's
14 titled "Correction of Term Assignment of Oil and Gas
15 Lease." Do you see that?

16 A. I do.

17 Q. If I keep my finger here and I go back to the
18 prior email where you said you were agreeable --

19 A. Which one are you talking about? What number?

20 Q. Exhibit 15.

21 A. Okay.

22 Q. You state to Mr. Sawyer at that time, "I assume
23 this will actually be an amendment or a correction to
24 the Term Assignment."

25 A. Yes, I see that.

1 Q. That's your suggestion, right? You either
2 amend it or you do it as a correction?

3 A. I'm just asking. I'm assuming this is what
4 you're going to do, one or the other. That's what I'm
5 asking.

6 Q. When he sends it to you a week or two later, he
7 takes your suggestion in terms of a correction to the
8 Term Assignment?

9 A. Again, I don't know that it was my suggestion.
10 I was just asking him, I'm assuming that you're going to
11 make either an amendment or a correction. And he
12 decided, I guess, to call it a correction.

13 Q. And this correction to the Term Assignment that
14 he presented to you on November 18, does this contain
15 the language that you said was agreeable a week earlier?

16 A. I would assume it is.

17 Q. Okay. So it contains the language you say was
18 agreeable?

19 A. The language itself, yes.

20 Q. All right. Okay. Now, I want to depart just a
21 little bit, Mr. Howard. Okay? I want you to keep
22 Exhibit Number 15 open in your notebook. That's your
23 email saying it's agreeable. All right? And now I want
24 to take a look at a couple of the emails that you-all
25 referenced earlier in your testimony. Okay?

1 A. All right.

2 Q. Keep this one out.

3 A. I gotcha.

4 Q. Keep your --

5 EXAMINER BROOKS: Mr. Feldewert, you're
6 going to a little bit of a different subject matter.
7 Are you anywhere close to being through with this
8 witness?

9 MR. FELDEWERT: No.

10 EXAMINER BROOKS: Let's take a ten-minute
11 recess.

12 (Recess 1:54 p.m. to 2:11 p.m.)

13 EXAMINER JONES: Mr. Feldewert, you may
14 continue.

15 MR. FELDEWERT: Thank you.

16 Q. (BY MR. FELDEWERT) Mr. Howard, we just went
17 through Exhibit Number 15, and you noted you were
18 agreeable to the language change in the Term Assignment.
19 Okay?

20 A. Okay.

21 Q. And that was in November of 2014?

22 A. Right.

23 Q. I want to now go to what is marked by Nearburg
24 as Exhibit 22. This was one of the title opinions.
25 This is January of 2015, a couple months later, that you

1 referenced during your direct, right?

2 A. Right.

3 Q. And one of the things that was highlighted but
4 nowhere referenced is the third page in, on page 20.
5 Are you there?

6 A. I am.

7 Q. And it says, "The term of this Term Assignment
8 is currently expired, as the SRO State Exploratory Unit
9 was terminated effective March 1, 2014." Then it says,
10 "Pursuant to our discussions with you, we understand you
11 consider this Term Assignment as being in full force and
12 effect. In this regard, we have the following
13 requirement." Do you see that?

14 A. I do.

15 Q. And this would have been after you had stated
16 to Concho that you were agreeable to the changes
17 extending the Term Assignment, right?

18 A. To the form of agreement -- form of Term
19 Assignment, yeah.

20 Q. And then the same thing when I look at Exhibit
21 25, which was a June title opinion, June 2015. And I go
22 to page 20. It shows, again, that in June of 2015,
23 Concho understood that the Term Assignment was in full
24 force and effect, right?

25 MR. HALL: I object. It was characterized

1 in the document itself, if you want him to refer to the
2 full language of the document.

3 EXAMINER BROOKS: I will overrule the
4 objection. The witness can respond as he thinks
5 appropriate.

6 THE WITNESS: I'd like to hear the question
7 again, please.

8 Q. (BY MR. FELDEWERT) I want to go to Exhibit 25.

9 A. Right.

10 Q. Go to page 20.

11 A. I'm there.

12 Q. We see the same statement in June of 2015,
13 right? The statement being that "Pursuant to our
14 discussions with you, we understand you consider this
15 Term Assignment as being in full force and effect." Do
16 you see that?

17 A. I do see that, yes.

18 Q. So they're rendering title opinion on the
19 assumption that this Term Assignment was in full force
20 and effect?

21 A. Well, I don't know that completely agree with
22 that. It talks about getting the amendment executed in
23 Requirement F.

24 Q. But this, at least, is consistent with what you
25 told them in November, that you were agreeable to the

1 extension of the Term Assignment, right?

2 A. I think this is Concho saying that they're
3 agreeable that they're going to be doing it, not me.

4 Q. Huh.

5 Okay. I want to now then go to -- I want
6 to finish this line out here with respect to these
7 emails in November. We have Exhibit 15, where you said
8 you were agreeable.

9 A. Right.

10 Q. We have Exhibit 16, where they sent you a
11 Corrected Term Assignment containing the language you
12 said was agreeable, right?

13 A. There's obviously -- there are changes to this
14 one exhibit, on 16, because in my email I say something
15 about I'm assuming you're going to actually amend or
16 correct. And now there is -- it says "correction" on
17 there. So obviously this isn't the same, exact
18 document. They've done some changes.

19 Q. They took your advice to amend it or correct
20 it?

21 A. Yeah. I'm not sure exactly what else -- I
22 don't have both of them in front of me, so I can't
23 compare them. But I'm assuming that I looked at this,
24 and I had no problem with the format as it was laid out
25 at that point in time.

1 Q. You don't express any disagreement to Concho
2 that this Corrected Term Assignment didn't contain what
3 you thought was agreeable, did you?

4 A. Nor did I sign it.

5 Q. Okay. All right. And, in fact, now if I go on
6 to Exhibit 17, this is right before Thanksgiving. So
7 this is just about a week later after sent you that
8 Corrected Term Assignment. This is to you and Brent
9 Sawyer again. And here's Brent Sawyer telling you, on
10 November 24th, in the middle of the page, "Randy: Here
11 you go! Also, seems I forgot to mention that the body
12 of the form is the one you have seen before. When we
13 spoke in our meeting a few weeks ago you said it was
14 okay." Do you see that?

15 A. I do see it.

16 Q. He's not lying there, is he?

17 A. I don't know if he is or not.

18 Q. But he's telling you that this is the form you
19 said was okay in our meeting?

20 A. I remember seeing this, but I don't really know
21 that I knew what he was talking about.

22 Q. Huh.

23 A. I didn't understand why he would say that.

24 Q. Did you express to him that you didn't
25 understand why he would say that?

1 A. No.

2 Q. In fact, the very next day, you sent an email
3 back to him?

4 A. I did.

5 Q. And the only thing you say, Mr. Howard, is,
6 "The way I read the Correction Term Assignment, Nearburg
7 would own an overriding royalty as allocated under the
8 JOA. However, the JOA states Nearburg owns a point" --
9 whatever -- "overriding royalty interest in all wells.
10 Please confirm how COG plans to allocate for the JOA and
11 not pay based on the interest set out therein. We are
12 not trying to complicate matters, but feel we need to
13 stipulate exactly what we own, or will own, after
14 executing the Corrected Term Assignment."

15 A. Correct.

16 Q. All right. So here we are at Thanksgiving
17 2014, and what you've represented to Nearburg -- or to
18 Concho is that you wish to retain the overriding royalty
19 interest under the Marbob Term Assignment, which you had
20 signed -- Term Assignment has been presented and that
21 you want to move forward on that basis, and you want to
22 know what you're going to own after you execute it.

23 MR. HALL: Object.

24 Q. (BY MR. FELDEWERT) That's in November 2014.

25 MR. HALL: Are you asking him if the

1 document says that?

2 Q. (BY MR. FELDEWERT) Is that correct?

3 THE WITNESS: What is your question? I'm
4 not sure what your question is.

5 EXAMINER BROOKS: Overrule the objection.

6 You may restate the question.

7 Q. (BY MR. FELDEWERT) Is it a fair summary, based
8 on these documents, Mr. Howard, that as of November of
9 2014, as of Thanksgiving 2014, you, number one,
10 represented to Concho that you are agreeable to
11 extending the Marbob Term Assignment and tying it to the
12 Unit Operating Agreement, correct?

13 A. No.

14 Q. You didn't say that on November 18?

15 A. I was trying to get from them exactly what they
16 were wanting from the term agreement -- Term Assignment.
17 I wasn't saying that I was willing to sign the
18 agreement. Again, we needed to have all the information
19 we had been requesting.

20 Q. Let's go back. So as of Thanksgiving of 2015,
21 when I look at 2014, Concho has received an email from
22 you --

23 A. Exhibit 15?

24 Q. Yeah.

25 -- saying, "We are, however, agreeable to

1 your changes to the Term Assignment of Oil and Gas Lease
2 covering the west half of Section 20." They have
3 received that by Thanksgiving of 2014.

4 They then send you, by Thanksgiving of
5 2014, a Corrected Term Assignment that you have said
6 contained the language that you were agreeable to.
7 That's what Exhibit 16 and 17 reflect, correct?

8 A. That I was agreeable to the language, not that
9 I was agreeable to sign the document.

10 Q. And it reflects, as of Thanksgiving of 2014,
11 that you want to move forward on that basis because, as
12 you say, We "feel we need to stipulate exactly what we
13 own, or will own, after executing the Correction Term
14 Assignment." That's what you say as of Thanksgiving
15 2014?

16 A. You're talking about the November 25th email?

17 Q. Yes.

18 A. Yeah. What I'm saying to Concho is --

19 Q. What you're saying --

20 MR. HALL: Don't interrupt the answer.

21 EXAMINER BROOKS: Yeah. We have to talk
22 one at a time.

23 I don't know where to go back to to start,
24 but why don't you restate your question, Mr. Feldewert.

25 Q. (BY MR. FELDEWERT) My question, Mr. Howard, is

1 that as of November 25th, 2014, what you have stated to
2 Concho is in Exhibit 17, right?

3 A. What I -- what I said is in this email.

4 Q. Okay. All right.

5 A. What I meant and what you're saying is two
6 different things.

7 Q. Now, we have Thanksgiving. Then we have
8 Christmas. And at this point in time, when all this is
9 said and done, Mr. Howard, those wells, the 43 -- the
10 16H has already been drilled on your acreage, right?

11 A. I think that's correct. We weren't told by
12 Concho, but I think that's correct.

13 Q. About the 16H?

14 A. Oh, the 16H, yes.

15 Q. And the 43H has been drilled on your acreage,
16 and the 44H has been drilled on your acreage?

17 A. Unbeknownst to us.

18 Q. And you had received a comm agreement for the
19 43H?

20 A. Which we rejected.

21 Q. So now we are into April of 2015. So
22 Thanksgiving's gone by. Christmas has gone by, January,
23 February, March, April. And you send -- and Mr. Sawyer
24 sends an email to you, in Exhibit 18, and you want to
25 meet, Mr. Howard, right?

1 A. I think we all wanted to meet, yes.

2 Q. And he's got the agenda?

3 A. Correct.

4 Q. And on the agenda are the comm agreements for
5 the 43H and the 44H. And the second point on the agenda
6 is the Corrected term of assignment for the west half of
7 Section 20?

8 A. Yes.

9 Q. Okay. And with these -- this agenda provides
10 you, again, comm agreements for the 43H and the 44H?

11 A. They were actually provided with the email, so
12 yeah.

13 Q. And paragraph eight of each of these comm
14 agreements, stated in bold type, that COG is the
15 operator of each of these spacing units?

16 A. Sure does.

17 Q. Okay. And then you have your April meeting --

18 A. Correct.

19 Q. -- with Concho, with all this knowledge?

20 And if I turn now to Exhibit 19, this is
21 your email, same day, after the meeting had been
22 complete.

23 A. Is there a question there?

24 Q. This is the email that you sent right after the
25 meeting had completed, right?

1 A. Correct.

2 Q. It says, "We enjoyed visiting with you this
3 morning. Thanks again for coming by our office." And
4 then you say, "Attached is the spreadsheet we discussed
5 this morning. I've added the 43H & 44H wells pursuant
6 to our discussion. Note that we have well information
7 on wells in red only and that we are not in pay on wells
8 that are highlighted in yellow." Do you see that?

9 A. I do.

10 Q. And with the spreadsheet you present to them,
11 you're setting forth what you understand to be your
12 overriding royalty interest?

13 A. I'm just trying to set forth what I think
14 they're saying our interest is if we were to sign the
15 Term Assignment and 43H and 44H was carried forward if
16 the Term Assignment was executed.

17 Q. Nothing in this email that same day said that
18 you disagree that Concho was the operator of the spacing
19 units?

20 A. Nothing in this does, no.

21 Q. And you sent a second email that afternoon,
22 which is the third page of this exhibit.

23 A. Of which exhibit?

24 Q. Of Exhibit 19.

25 A. 19? Okay.

1 Q. And you're saying, "Attached is our most
2 updated Well Information Requirements" -- do you see
3 that?

4 A. I do.

5 Q. -- following the meeting.

6 And then you attached to that the well
7 information requirements --

8 A. Yes.

9 Q. -- is that right?

10 A. Yes.

11 Q. And nowhere in this email do you suggest to
12 Concho that they're authorized to operate on your
13 acreage?

14 A. Not in this email, no.

15 Q. And, in fact, what you do in this email -- if I
16 go over the well information requirements, you're saying
17 operator agrees to furnish to Nearburg.

18 A. Yes.

19 Q. Who is the operator?

20 A. Well, this is our generic form. This isn't
21 for -- it says that on our form, "operator."

22 Q. Who is the operator referencing?

23 A. I'm not referencing an operator. I'm just
24 saying this is our form that we request well information
25 on.

1 Q. Okay. So you requested well information from
2 Concho using the form that says "Operator shall
3 furnish"?

4 A. Right. This is the form that we attach anytime
5 we're going to get well information. Do you see where
6 it says "well name and footage" and all that? It's all
7 blank.

8 Q. And then I think this was -- if I go on to
9 Exhibit Number 20, this is now a week later, so now May
10 of 2015. This is -- November, December, January,
11 February, March, April -- six months after the wells
12 were drilled, and you're aware of the wells, right?

13 A. On our own, yes.

14 Q. In fact, you wanted information on the wells?

15 A. We sure did.

16 Q. All right. And they're providing you the
17 information you requested on the wells?

18 A. (No response.)

19 Q. In fact, the information is so big, they had to
20 put it on a thumb drive, right? Isn't that reflected on
21 Exhibit 12?

22 A. Yes, it is.

23 Q. And in this email, you don't express any
24 disagreement with Concho's operating on Nearburg's
25 acreage?

1 A. No, not in this email.

2 Q. In fact, you say you want this information
3 because Mr. Charles Nearburg's coming to town; isn't
4 that right?

5 A. I'm not sure where you are now.

6 Q. Oh, I'm sorry. I skipped. I missed a point
7 here. And that is back at Exhibit 19. No. I'm sorry.
8 Excuse me. Exhibit 20, second page, "Well Information
9 Requirements." This is the email before the delivery of
10 the email -- of the information. And you say, "Since
11 Charles Nearburg will be in town this Thursday, we would
12 like to be able to at least show him well information on
13 the 43H and 44H wells (the two wells drilled across our
14 lease in ... Section 20)"?

15 A. Correct.

16 Q. Again expressing no disagreement that COG can
17 operate. It's just you want the well information for
18 Mr. Nearburg?

19 A. This email doesn't say that.

20 Q. In Exhibit 21, you get -- you're copied on an
21 email exchange between Concho and the State Land Office
22 in which they're demanding comm agreements for the 43H
23 and 44H, right?

24 A. Correct.

25 Q. And this is why Mr. Nearburg was in town?

1 A. Is this why he was in town? Because of this?

2 Q. Did this take place -- did this email come to
3 your attention when he was in town?

4 A. I don't know. I don't -- that was Tuesday, the
5 5th. This is -- I'm assuming that Mr. Nearburg had
6 already left.

7 Q. And so you're aware at this point in time that
8 they need the comm agreements, right?

9 A. Say that again.

10 Q. You're aware that Concho -- that the State Land
11 Office wants the comm agreements for the 43H and the
12 44H?

13 A. Yes.

14 Q. And you've expressed no disagreements with
15 Concho Operating in any of these emails?

16 A. Not in this email, no.

17 Q. After being informed that the 43H and 44H had
18 been drilled?

19 A. Correct.

20 Q. Then we get the next letter, which is Exhibit
21 22. This is May 28th, 2015. This is again six months
22 after the wells have been drilled, right, Mr. Howard?

23 A. It's May of 2015, correct.

24 Q. And now you reflect your position?

25 A. Again.

1 Q. "Again."

2 Well, I couldn't find any -- anything in
3 writing consistent with what's said in here. For
4 example, you said, "The Term Assignment has expired by
5 its own terms and has not been extended." You had
6 indicated you were able to extend it?

7 A. Possibly of extending it. Nothing was ever
8 agreed to completely.

9 Q. Okay. And if I go to the second page here,
10 Nearburg says, through you, "In an effort to comply with
11 the State's requirements, Nearburg would consider
12 executing the 'COPY' of the Agreements, subject
13 to" -- and then you have two conditions.

14 A. Correct.

15 Q. And this letter is dated May 28th?

16 A. May 28th, 2015.

17 Q. Isn't it true, Mr. Howard, that before you sent
18 this letter, you kind of put conditions on when you
19 would sign -- sign the comm agreement, that you had
20 already executed the comm agreements on behalf of
21 Nearburg?

22 A. The comm agreement had been executed by me but
23 had not been turned back over to Concho.

24 Q. In fact, you signed it on May 20th?

25 A. That's correct.

1 Q. More than a week before this letter?

2 A. That's correct.

3 Q. And you signed the version that had been sent
4 April 22nd?

5 A. That's correct.

6 Q. Because that's the only version you had; isn't
7 that true?

8 A. It's the one that they brought to the meeting.

9 Q. Yeah.

10 A. Right.

11 Q. And if I look at the version that was sent
12 April 22nd, the one that you signed, which is on Exhibit
13 18 --

14 A. Our Exhibit 18?

15 Q. My Exhibit 18.

16 A. Your Exhibit 18.

17 Q. Either one of them. Okay?

18 A. I'm looking at the 43H.

19 Q. That covers the Bone Spring Formation, right?

20 A. It does.

21 Q. Not the second interval of the Bone Spring
22 Formation?

23 A. That's correct.

24 Q. That's the ones you signed on May 20?

25 A. That's correct.

1 Q. And now, May 28th, you're holding those
2 hostage. You said we'll only deliver them if you agree
3 to change the interval. Who told you to make that
4 demand?

5 MR. HALL: Object to the characterization
6 that Mr. Howard is holding anything or anyone hostage.

7 But if you understand the question, go
8 ahead and answer it.

9 EXAMINER BROOKS: Sustain the objection.
10 Rephrase the question, please.

11 Q. (BY MR. FELDEWERT) Who told you not to turn
12 those over after you signed them on May 20th?

13 A. I was told not to turn anything in until we got
14 all these resolved by upper management.

15 Q. Who is that?

16 A. I believe Duane was the one who told me, but it
17 could have been Charles who was behind it.

18 Q. Charles or Wayne?

19 A. Duane.

20 Q. Duane. I'm sorry.

21 A. Uh-huh.

22 Q. Okay. Then you finally turned them over on --
23 under Exhibit 23; is that right?

24 A. I'm looking at 23. What about it?

25 Q. That's the document under which you finally

1 turned over the CAs which you had signed on May 20th?

2 A. That's correct.

3 Q. At this point in time, you want additional
4 information, and what you want is the working interest
5 in the wells?

6 A. Correct.

7 Q. You want to evaluate the working --

8 A. Try again. Sorry. I couldn't hear you.

9 Q. Exhibit 23 reflects that you're seeking that
10 information because you want "to further evaluate our
11 working interest in the Wells"?

12 A. Yes.

13 Q. And you tender over the communitization
14 agreements that contain the bolded paragraph eight that
15 says COG is the operator of the spacing units identified
16 in the comm agreement?

17 MR. HALL: I'm going to object. He's being
18 asked to answer a question without Exhibit 23. It's
19 clearly a transmittal letter that references enclosures,
20 but they don't provide us with the enclosures so we can
21 see what we're talking about.

22 EXAMINER BROOKS: Well, I think that's what
23 he's asking about.

24 Overrule the objection.

25 THE WITNESS: So you want me to look at the

1 enclosures?

2 Q. (BY MR. FELDEWERT) With this June 10th, 2015
3 letter, Mr. Howard --

4 A. Yes.

5 Q. -- you turned over the comm agreements that you
6 had signed on May 20th?

7 A. Correct.

8 Q. And in each of those comm agreements that you
9 signed and turned over in June 2015, each one of them
10 had a paragraph eight?

11 A. I'm assuming they did.

12 Q. Do you recall that?

13 A. I mean, I don't -- I mean, if I had something
14 to look at, I could tell you.

15 Q. Let's go to Exhibit 22 or Exhibit -- the April
16 submission that you said you signed.

17 A. Are we in yours or in mine?

18 Q. Exhibit 18.

19 A. Of yours?

20 Q. Yes.

21 This is the one you signed on May 20th,
22 right?

23 A. There is nothing signed.

24 Q. You said this is the one you signed on May
25 20th, Mr. Howard. This is the version you signed on May

1 20th. You just testified to that.

2 A. There was another version put together with our
3 signatures.

4 Q. Okay. And this version that you signed on May
5 20th has in paragraph eight, bolded, that "COG Operating
6 LLC shall be the Operator of said communitized area and
7 all matters of operation shall be determined and
8 performed by COG Operating LLC," correct?

9 A. It was never given to Concho. This was never
10 given to Concho.

11 Q. Even though you signed it on May 20th?

12 A. That's correct.

13 Q. The one you signed on May 20th, the one you
14 turned over to Concho, you're saying it's different?

15 A. Than this? Yes.

16 Q. How does it differ?

17 A. On the first page, it's limited to the 2nd Bone
18 Spring.

19 Q. Is that the only difference?

20 A. To my knowledge, yes.

21 Q. So then it would have contained -- the one you
22 actually turned over in June, would have contained the
23 same paragraph eight that we see in Exhibit 18?

24 A. Yes.

25 Q. Okay. And as I look at your June letter, I

1 don't -- is there any statement in this June letter,
2 Mr. Howard, that you disagree with what is reflected in
3 paragraph eight of the comm agreements that you turned
4 over to Concho?

5 A. I'm sorry. I don't know which number you're on
6 now.

7 Q. I'm on Exhibit 23, your June 2015 letter --

8 A. Okay.

9 Q. -- under which you turned over the comm
10 agreements.

11 A. Right.

12 Q. Is there anything in this letter that tells
13 Concho or COG Operating that you disagree with what is
14 stated in paragraph eight of the CAs?

15 A. No, I don't believe so.

16 Q. And to finish this out and --

17 MR. FELDEWERT: Mr. Examiner, I'm almost
18 finished.

19 Q. (BY MR. FELDEWERT) My next exhibit is Exhibit
20 24, and it's comprised of a July 14th, 2015 letter to
21 COG from Emily Sharp. Do you see that?

22 A. I do.

23 Q. And she works for Nearburg?

24 A. Yes. She's the controller.

25 Q. And she works for you?

1 A. She works for Nearburg. She doesn't work for
2 me.

3 Q. Does she work with you?

4 A. We try to work together.

5 Q. In fact, didn't she reference you in the last
6 paragraph?

7 A. Yes, she does.

8 Q. You're aware she was sending this letter?

9 A. Yes.

10 Q. Okay. And is this the letter by which you
11 inform Concho in July of 2015 that you no longer want to
12 be paid an overriding royalty interest?

13 A. That's the letter from Nearburg saying that,
14 yes.

15 Q. I'm sorry. It's a letter from Nearburg telling
16 Concho in July 2015 they no longer want to be paid the
17 overriding royalty interest?

18 A. That's correct.

19 Q. And this is -- October, November, December,
20 January, February, March, April, May, June -- eight
21 months after the 43H and 44H were drilled.

22 And now on the very next page, in August,
23 this is a letter sent by Duane Davis?

24 A. Yes.

25 Q. And this is directed to Concho?

1 A. Correct.

2 Q. And it's under this letter that you now
3 first -- you now for the first time revoke all the
4 Division orders under which you were paid your
5 overriding royalty interest?

6 A. For a period of time, yes, beginning March 1,
7 2014.

8 Q. Okay. And neither the July letter nor on the
9 August letter does Nearburg inform Concho that it is not
10 authorized to operate on their -- on your acreage?

11 A. I do not see that anywhere in there.

12 MR. FELDEWERT: Mr. Examiner, I would move
13 admission into evidence Concho Exhibits 1 through 24.

14 (COG Operating, LLC Exhibit Numbers 1
15 through 24 are offered into evidence.)

16 EXAMINER BROOKS: Any objection, Mr. Hall?

17 MR. HALL: No objection, except as to one.
18 That is Exhibit Number 2. There is contained in there a
19 letter dated July 13, 2009. It's offered without any
20 sponsor whatsoever. It's hearsay.

21 EXAMINER BROOKS: Okay. Now, you're
22 objecting to Exhibit 1 or Exhibit 2?

23 MR. HALL: Exhibit 2, page 2 of that. It's
24 a letter dated July 13th, 2009.

25 EXAMINER BROOKS: Okay.

1 MR. HALL: COG failed to provide a sponsor
2 for this.

3 EXAMINER BROOKS: Any other exhibits you're
4 objecting to?

5 MR. HALL: No.

6 EXAMINER BROOKS: Okay. I do not recall if
7 the witness identified this letter, and the witness was
8 taken through numerous exhibits in the course of
9 examination by Mr. Feldewert.

10 MR. FELDEWERT: Mr. Examiner, with respect
11 to the hearsay rule, you will know that one of the
12 exceptions to the hearsay rule is documents that are
13 contained in the public record. You will see that this
14 letter is directed to Pete Martinez at the New Mexico
15 State Land Office. It is, therefore, a public record.
16 Therefore, it is not objectionable on the grounds of
17 hearsay.

18 EXAMINER BROOKS: Well, it requires to be
19 authenticated by some -- in some manner from the public
20 records, and this is not. It says addressed to Pete
21 Martinez. It's not from Pete Martinez.

22 MR. FELDEWERT: May I then direct your
23 attention to the very first page of this exhibit? This
24 is a letter from the New Mexico Commissioner of Public
25 Lands. It contains their seal, contains a signature

1 from Jami Bailey as the director of the Oil and Gas,
2 Minerals Division. And the first sentence says, "This
3 office has received your letter of July 13th, 2009."
4 And it's directed to Marbob, and it's directed to the
5 same individual who signed the July 13th, 2009 letter.
6 And I think we all know what Jami Bailey's signature
7 looks like.

8 EXAMINER BROOKS: Yes, I do.

9 Well, we're not bound by the technicalities
10 of the Rules of Evidence, so I'm going to overrule that
11 objection. If there is any doubt about the authenticity
12 of this letter, I assume it can be raised, since we're
13 probably going to be here tomorrow anyway.

14 Thank you.

15 Which exhibits did you tender? 1 through
16 21?

17 MR. FELDEWERT: 1 through 24.

18 EXAMINER BROOKS: 1 through 24. That is
19 all accepted.

20 You didn't tender 25 through 33?

21 MR. FELDEWERT: Correct.

22 EXAMINER BROOKS: 1 through 24 are
23 admitted.

24 (COG Operating, LLC Exhibit Numbers 1
25 through 24 are admitted into evidence.)

1 EXAMINER BROOKS: This is COG Exhibits 1
2 through 24?

3 MR. FELDEWERT: Yes, sir.

4 EXAMINER BROOKS: Are admitted.

5 Now, Mr. Hall, I have occasionally
6 presented cases to the Commission, and when I'm doing
7 so, I like the Commissioners to examine a witness before
8 I get my last crack at them so I can take, you know,
9 anything -- any follow-up on the Commissioners'
10 questions.

11 So unless you object, I will go ahead and
12 ask my questions and give Mr. Jones the opportunity to
13 ask questions and then allow you to follow up to both --
14 to both redirect the witness and follow up on our
15 questions. So if you prefer to go ahead and redirect
16 now, that's acceptable, also.

17 MR. HALL: No. That's agreeable.

18 EXAMINER BROOKS: Okay. My questions will
19 be very brief.

20 CROSS-EXAMINATION

21 BY EXAMINER BROOKS:

22 Q. These letters would seem to indicate that there
23 was a prolonged period of time in which Nearburg was in
24 negotiations with COG on -- I don't know whether you
25 want to call it renewing or extending or reinstating the

1 Term Assignment; is that correct?

2 A. Yes, sir.

3 Q. Now, when did Nearburg come to the conclusion
4 that they were unwilling to reinstate the Term
5 Assignment?

6 A. When we uncovered the fact there were several
7 wells drilled that we were not given information on.

8 Q. Okay. And this Exhibit 31, that's your Exhibit
9 31, right, this timeline?

10 A. Yes, sir.

11 Q. And that indicates that you first learned of
12 the drilling of the Number 43H and 44H wells on April
13 22nd, 2015? Is that the date?

14 A. That's correct.

15 Q. Okay. And I am not clear on whether or not
16 that fact is controverted, but I suppose we'll hear
17 before the proceeding is over.

18 Now, you said something about the
19 communitization agreements, and there was a lot of
20 questioning about the dates on which they were signed
21 and the dates on which they were delivered. Now, was
22 there any communication -- was there any delivery of
23 these exhibits -- or transmittal of these signed
24 communitization agreements to COG prior to the dates of
25 the cover letters that are in evidence?

1 A. No, there were not.

2 Q. Okay. What were those dates? Do you have the
3 exhibits where you can refer to them?

4 A. The dates that we gave them the comm agreements
5 executed?

6 Q. Yes.

7 A. Would have been with the July letter.

8 Q. Is it on the -- is it on this --

9 MR. HALL: It's June 10th.

10 THE WITNESS: June. I'm sorry.

11 Q. (BY EXAMINER BROOKS) June 10th?

12 A. June 10th, 2015. It's down in the bottom,
13 right-hand corner, you'll see.

14 Q. Oh, okay.

15 MR. HALL: It's Exhibit 23.

16 Q. (BY EXAMINER BROOKS) Well, June 10th, COG signs
17 the letter agreement?

18 A. Right. They signed that letter agreement when
19 we handed them the completed executed comm agreements
20 for the 43 and 44H.

21 Q. The letter that executed the comm agreements?

22 A. That was subject to the rights that we reserved
23 in that letter.

24 Q. Okay. Mr. Howard, I get the impression, like
25 me, you have spent a large part of your career working

1 in Texas; is that correct?

2 A. Yes, sir.

3 Q. And we all know that Texas is a little bit
4 different --

5 A. It is.

6 Q. -- from New Mexico.

7 A. It is.

8 Q. Texas is different or New Mexico is different.

9 A. I'd rather not say one way or the other.

10 Q. They're not exactly alike.

11 Do you know anything about whether or not
12 the Commissioner of Public Lands of New Mexico has any
13 kind of a policy about approving depth severances of
14 title in a comm agreement?

15 A. I'll try to answer the question as best I can.
16 We talked about doing this and limiting the 2nd Bone
17 Spring. One of the people in our office, John Turro,
18 that works with me called to make sure we could do
19 something like that. And what he was told was you could
20 limit it in the agreement. It doesn't necessarily
21 recognize that the Commission will acknowledge it just
22 as being a 2nd Bone Spring.

23 Q. But he didn't say anything about whether or not
24 the Commissioner would approve --

25 A. No, sir. I can't answer that question.

1 Q. -- a comm agreement with such a provision?

2 A. I'm sorry. I can't --

3 Q. And you don't have any other knowledge about
4 it?

5 A. No, sir, I don't.

6 Q. Okay. Thank you.

7 EXAMINER BROOKS: I guess that's all my
8 questions, because I have some questions of what you're
9 asking for in the application, but I assume that would
10 be appropriate to address to counsel rather than to a
11 witness.

12 So I will pass the witness.

13 Mr. Jones.

14 CROSS-EXAMINATION

15 BY EXAMINER JONES:

16 Q. Mr. Howard, is it true that Nearburg
17 Exploration Company, L.L.C. holds title to this lease --
18 record title owner of the lease?

19 A. Yes, sir.

20 Q. And it's 320 acres we're talking about here?

21 A. That's correct.

22 Q. So where does -- SRO, LLC and SRO2 and SRO3,
23 LLC, those two entities, where do they own and what
24 vertical depths?

25 A. The SRO2 owns the 2nd Bone Spring.

1 Q. Okay.

2 A. And SRO3 owns the 3rd Bone Spring.

3 Q. Okay. That should be easy to remember.

4 Does that include the carbonates, too?

5 A. I think it was described in the agreement, but
6 I couldn't answer that.

7 Q. I saw a description.

8 Because you've got three entities that are
9 making this application in this case, who pays the
10 rentals on that lease? Is it still -- who paid the
11 rentals while it was in the unit?

12 A. I can't answer that question. I don't know
13 offhand. I'm sorry.

14 Q. Once it got out of the unit, who would be
15 paying the rentals on it?

16 A. I can't answer that one either. I'm sorry.

17 Q. Somebody paid them?

18 A. I'm hoping so (laughter).

19 Q. I noticed it's an assignment. It's a dash 1
20 lease. So somebody came up with that lease originally
21 back in 2005 or somewhere, and then they assigned it.
22 So maybe it was Doug Schutz [phonetic]; is that correct?

23 A. I think Doug Schutz was the one who bought it
24 for Nearburg.

25 Q. For Nearburg?

1 A. Correct.

2 Q. Where is the cover letter for these comm
3 agreements? I notice you have comm agreements in here,
4 but I don't see the cover letters to the -- the Land
5 Office always issues cover letters. There is a
6 certificate and actual signed comm agreement.

7 MR. HALL: We may not have given you those.
8 I think we gave you the certificates.

9 EXAMINER JONES: Okay. But there is no
10 signed -- there are no comm agreements in question
11 that -- that limit the Bone Spring from anything but the
12 whole Bone Spring; is that correct?

13 THE WITNESS: The only thing that's been
14 approved, to my knowledge, is for the entire.

15 EXAMINER JONES: Okay.

16 Q. (BY EXAMINER JONES) The applications that COG
17 has, I take it you have read those, haven't you, that
18 apply to compulsory pool Nearburg?

19 A. Yes.

20 Q. I notice there is not a -- there is not a
21 request for a -- for a 200 percent risk penalty in here.
22 Did you notice that?

23 A. I didn't.

24 Q. Are you objecting to paying your share of the
25 cost of these wells?

1 A. We are.

2 Q. You are. I heard you say that earlier, but I
3 wanted to confirm that.

4 And why are you objecting to that?

5 A. We felt like we were -- the wells were drilled
6 without our knowledge at a time when we wouldn't have
7 drilled them, and we had nothing to do with them being
8 drilled, had no say -- had no say in them being drilled
9 or not drilled. We were left out of the loop
10 completely. I don't know why we would have to go back
11 and pay, you know, my share of costs for a well that I
12 didn't want to have drilled to begin with.

13 Q. What about the revenue from the well?

14 A. I like my revenue. It's my revenue.

15 Q. Okay. But are you wanting the revenue in 50
16 percent increment for that 320 -- or for each of those
17 320s, or do you want it -- do you want this Term
18 Assignment to be continued as long as this operating
19 agreement is in effect? Is that what you --

20 A. No, sir, we do not.

21 Q. So you would rather the Term Assignment go away
22 and you revert only to that 320 --

23 A. That's correct.

24 Q. -- in all of those wells that are out there?
25 You'd rather have a small -- a big percentage of those

1 two or three wells than have a small percentage of a lot
2 of wells?

3 A. We would rather have the interest that we have
4 because the Term Assignment expired, and -- I mean, if
5 given the option today, do you want to extend the Term
6 Assignment or not, our answer is still no. We want
7 our -- we would want our 320 acres and not the override
8 in the other well.

9 Q. Okay. But for sure you wouldn't want to have
10 to pay a risk penalty for the two wells?

11 A. No, sir.

12 Q. Our applications ask that the respondent make a
13 plea to reduce the risk penalty. If there is no risk
14 penalty for the applicant, it's not a question.

15 So when did Nearburg know -- notice -- when
16 did they know the termination of the unit? Because you
17 were only an overriding owner. So you weren't notified
18 about the unit being terminated until later on in March;
19 is that correct?

20 A. We were sent a notice, a voluntary request to
21 assign the unit agreement be terminated, and we signed
22 it.

23 Q. That was later in March, after March 1st? That
24 was in the same month but later on in that month?

25 A. March of '14.

1 Q. Yeah.

2 MR. FELDEWERT: Mr. Examiner, if I could
3 interrupt, since you're on that point.

4 EXAMINER BROOKS: I'm sorry. I got through
5 "interrupt." What was the rest?

6 MR. FELDEWERT: Yeah. Since you're on that
7 particular point, it's our Exhibit 11, which is October
8 2013.

9 Right, Mr. Howard?

10 Q. (BY EXAMINER JONES) Okay. So you were aware it
11 was going to happen before it happened?

12 A. Yes.

13 Q. Yeah.

14 A. We weren't -- I wasn't -- when this letter was
15 written, I wasn't aware of all the consequences.

16 Q. Okay. I kind of got out of order here. Let's
17 see here. I think there is -- does Nearburg ever have
18 an issue with the land department and the regulatory
19 department not immediately communicating when there is a
20 change of ownership like this, or how do you communicate
21 with your land -- regulatory people?

22 A. Usually through email, and it's usually pretty
23 quick.

24 Q. So they get notice right quick?

25 A. Right. And this was my fault that they weren't

1 notified that we signed this termination, because I was
2 new on board and didn't know exactly how everything
3 worked.

4 EXAMINER BROOKS: What termination are you
5 referring to?

6 THE WITNESS: The Unit Agreement.

7 Q. (BY EXAMINER JONES) So basically the comm
8 agreement was necessary because the Nearburg lease had
9 not -- the Yates lease -- the well was spud on the
10 Yates' lease. So the comm agreement was necessary
11 because of the Nearburg lease?

12 A. That's correct.

13 Q. Not being in the bottom -- not being on the
14 surface location?

15 A. Because it was no longer in the unit, and we
16 owned 100 percent of the mineral lease.

17 Q. Okay. Okay. And you're still asking for
18 termination of drilling permit for the 64 well; is that
19 correct?

20 A. 69H.

21 Q. 69H.

22 And so nothing's changed on that. You
23 still want that -- you're asking for revoking that
24 permit to drill?

25 A. Yes, sir.

1 Q. And can you briefly summarize why -- why?

2 A. Because we don't feel they have the right to
3 drill across our lands, and it's a two-mile horizontal,
4 half on unit lands and half on our interest. And there
5 is no agreement in place that allows them to do that.

6 Q. There is no signed comm agreement?

7 A. No, sir.

8 Q. No compulsory pooling agreement, anything in
9 place, and they haven't filed a compulsory pooling for
10 the 69H?

11 A. Not to my knowledge.

12 Q. Yeah. Okay.

13 And the 16H, is that an all-Bone Spring?

14 A. It's Avalon, which is a part of the Bone
15 Spring.

16 Q. But it's only a mile-long well?

17 A. Entirely within our boundaries of our lease,
18 yes.

19 EXAMINER BROOKS: I'm sorry. You were
20 talking about the 69H. Are you now asking about the
21 16H?

22 THE WITNESS: I thought you said 16H.

23 EXAMINER BROOKS: He probably did. My
24 hearing is not that good, especially in my right ear.

25 THE WITNESS: Yeah. So the 16H is entirely

1 on the west half of Section 17, our -- our lease. I
2 mean 20.

3 EXAMINER BROOKS: That's the way I
4 understood it. Thank you.

5 EXAMINER JONES: That's all my questions.
6 Thank you very much.

7 EXAMINER BROOKS: Okay. Let me ask a
8 couple more. I'm sorry.

9 RECROSS EXAMINATION

10 BY EXAMINER BROOKS:

11 Q. The 69H, that has not been spud, correct?

12 A. I don't believe so.

13 Q. I guess I should ask COG.

14 A. I think so.

15 Q. Okay. Now, with regard to compulsory pooling
16 applications, you're a land negotiator. Do you have
17 legal training, also?

18 A. No, sir, none whatsoever.

19 Q. Do you know what the courts have said about the
20 ability to recover -- the ability of a -- of a
21 trespasser without -- I'm not making any assumptions
22 about trespass, but there is a doctrine of law with
23 regard to the right of a trespasser to recover costs.
24 Are you familiar with that kind of black letter
25 statement of the law on the subject?

1 A. Not at all.

2 Q. Okay. So if I were to tell you that it depends
3 upon the -- whether or not the trespasser is acting in
4 good faith, then you wouldn't be able to contradict me
5 on that?

6 A. No, sir.

7 EXAMINER JONES: I have two more short
8 questions.

9 EXAMINER BROOKS: Go ahead.

10 RECROSS EXAMINATION

11 BY EXAMINER JONES:

12 Q. On Nearburg's Exhibit 24, what do you mean APO?
13 I'm probably the only one here that --

14 A. After payout.

15 Q. Okay. That makes sense.

16 And on Nearburg Exhibit 13, when you say --
17 I think it's page 2. You said somebody -- NMOCD said
18 the Commissioner was going to charge double. You didn't
19 mean the NMOCD, did you?

20 A. Should have been the State Land Office.

21 Q. That's it. No more questions.

22 A. Sorry.

23 EXAMINER JONES: Okay. Mr. Hall, redirect?

24 MR. HALL: I'll try to keep this brief.

25

REDIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. HALL:

Q. Let's go back and talk about the 2009 Term Assignment --

A. Okay.

Q. -- Nearburg to Marbob. It was signed what day? Was it in July?

A. Let me get it. It's faster to look at it -- sorry I don't remember offhand. It was effective July 1, 2009.

Q. So it had a retroactive effective date; is that correct?

A. Correct.

Q. Now, let's talk about the Joint Operating Agreement. And if you like, you can refer to COG's Exhibit -- Exhibit 3 -- I'm sorry -- Exhibit 4. And you were asked about certain aspects of Exhibit A to that. Do you have Exhibit 4 in front of you?

A. I do. And Exhibit A to that?

Q. Yes.

If you look at the first page of Exhibit A, page 22. It's marked.

A. Okay.

Q. Is Nearburg listed as a working interest owner in that compilation of working interests?

1 A. No, they're not.

2 Q. Then let's go to Exhibit -- I'm sorry -- page
3 30 of the JOA. It's the recapitulation.

4 A. Okay.

5 Q. If you look at that box, does it show Nearburg
6 having a working interest --

7 A. It does not.

8 Q. -- in the JOA?

9 A. Sorry.

10 It does not.

11 Q. At any time did COG ever treat Nearburg as a
12 working interest owner under the JOAs? In other words,
13 did you receive well proposals under the JOA?

14 A. No.

15 Q. Did you receive AFEs under the JOA?

16 A. No, we didn't.

17 Q. Did you receive joint interest billings under
18 the JOA?

19 A. No.

20 Q. Let's refer to Exhibit 13.

21 A. Concho's?

22 Q. COG's Exhibit 13.

23 A. Okay.

24 Q. Let me clarify something. Did COG ever deliver
25 a Division order for the 16H well post-unit dissolution?

1 A. I'm sorry. I don't know the answer to that
2 because it's handled in the Dallas office.

3 Q. And continuing on with COG's exhibits, you can
4 refer to their Exhibit 14. It's an email from you to
5 Brent Sawyer and attached to the email is the 2009 Term
6 Assignment. Do you see that there?

7 A. I do.

8 Q. And was the Term Assignment to be discussed at
9 the meeting you were planning to have with COG?

10 A. Yes.

11 Q. And was it discussed at that meeting that COG
12 had failed to deliver well information under that Term
13 Assignment?

14 A. I believe so, yes.

15 Q. During the period of time before you were aware
16 that the 43H and 44H wells had been drilled, you were
17 negotiating possible extension or amendment to the Term
18 Assignment. What was the process at the time?

19 A. The process was trying to get additional well
20 information and ownership of the wells that were out
21 there resolved and a list of all the wells that were
22 included in the SRO Unit so we could make an educated
23 decision.

24 Q. And you did not succeed in getting that
25 information from COG before you became aware that the

1 43H and 44H had been drilled?

2 A. They didn't provide the data, and they didn't
3 mention anything about the wells being drilled, no.

4 Q. All right. So during that period, before you
5 were aware of those two wells, COG was withholding
6 information from you; is that correct?

7 A. That's correct.

8 MR. HALL: Nothing further of this witness.

9 EXAMINER BROOKS: Thank you.

10 Any objection to excusing the witness,
11 Mr. Feldewert?

12 MR. FELDEWERT: Hold on one second.

13 I have no further questions.

14 EXAMINER BROOKS: Very good. The witness
15 may be excused.

16 We have managed to chuck through most of
17 another hour, so let's take another ten minutes.

18 (Recess 3:05 p.m. to 3:17 p.m.)

19 EXAMINER BROOKS: You may proceed with the
20 examination.

21 MR. HALL: At this time we call Michael
22 Griffin to the stand.

23 MICHAEL C. GRIFFIN,
24 after having been previously sworn under oath, was
25 questioned and testified as follows:

DIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. HALL:

Q. State your name for the record and tell us where you live and by whom you're employed.

A. Michael Griffin, Dallas, Texas, and I'm employed by Nearburg Producing Company.

Q. And in what capacity?

A. Chief technology officer.

Q. All right. Are you a petroleum engineer?

A. Yes.

Q. Have you previously testified before the Division and had your credentials as a petroleum engineer established as a matter of record?

A. No, I have not.

Q. If you would please give the Hearing Examiners a brief summary of your educational background and work experience.

A. I'm a graduate of Texas A & M in 1985, bachelor of science in petroleum engineering. I've been in the industry consistently since that time, 31 years, with various -- various companies, Mitchell Energy, Apache, Devon, and for the last three-and-a-half years with Nearburg in both engineering and management positions.

Q. Does that include working in the Permian Basin of New Mexico and West Texas?

1 A. Yes.

2 MR. HALL: At this point we'd offer
3 Mr. Griffin as a qualified expert petroleum engineer.

4 EXAMINER BROOKS: So qualified.

5 Q. (BY MR. HALL) Mr. Griffin, you're familiar with
6 the lands and the wells that are the subject of
7 Nearburg's application in this case?

8 A. Yes.

9 Q. Have you had an opportunity to examine the
10 productivity of the 2nd Bone Spring interval throughout
11 the spacing units dedicated to the 43H and the 44H?

12 A. Yes.

13 Q. Are they continuous throughout?

14 A. Yes.

15 Q. Is the 2nd Bone Spring interval in
16 communication with any other productive intervals within
17 the vertical extent of the Bone Spring Formation?

18 A. Not to my knowledge.

19 Q. All right. I'd have you refer to our Exhibit
20 Number 2 briefly. If you could look at Exhibit 2, the
21 Term Assignment. Do you have that?

22 A. Yes.

23 Q. And are you familiar with the well information
24 requirements that comprise Exhibit A to the Term
25 Assignment?

1 A. Yes, I am.

2 Q. All right. Do you know if COG abided by the
3 data and deadline requirements set forth in the Term
4 Assignment, Exhibit A?

5 A. No.

6 Q. Now let's refer to Exhibit 32. If you would
7 identify that, please, and explain to the Examiners what
8 that demonstrates.

9 A. Yeah. This is a chronology of data, receipt
10 for the wells in the SRO both in the unit and once the
11 unit was dissolved, and we've tried to group them by
12 formation and whether or not we received the data.

13 Q. All right. What do the wells highlighted in
14 green signify?

15 A. Those are the Avalon Shale wells. And those
16 wells -- we received data on all those wells in a timely
17 fashion with the exception of the 16H.

18 Q. All right. And if you look at the shaded
19 column there, it indicates Y and N. Does that indicate
20 yes or no?

21 A. Yeah. That indicates whether the well in-fill
22 was received timely, which could be anywhere from 60 to
23 120 days after the wells are drilled and completed.

24 Q. All right. And what are the wells indicated by
25 the pink shading?

1 A. Those are wells in the 2nd Bone Spring sand.

2 Q. And were well data information provided on a
3 timely basis for those wells?

4 A. No.

5 Q. If you look out to the right-hand column, it
6 indicates yes. What do you mean by that?

7 A. That was data that was eventually supplied to
8 us on a thumb drive in June of 2015.

9 Q. All right. And there is a single blue well
10 there. What is that well?

11 A. That's a Delaware well.

12 Q. All right. And the wells indicated in yellow,
13 what are those?

14 A. Those are 3rd Bone Spring wells.

15 Q. So none of these 2nd Bone Spring wells, the
16 Delaware wells or 3rd Bone Spring wells had well
17 information delivered to [sic] COG in a timely basis; is
18 that accurate?

19 A. Yes.

20 Q. Did the failure of COG to provide well
21 information in a timely basis adversely affect
22 Nearburg's ability to make an informed business decision
23 with respect to the acreage that had reverted to it
24 under the Term Assignment?

25 A. Yes, it did.

1 Q. Did it also prevent Nearburg from making an
2 informed decision about whether it should reinstate the
3 overrides after the lease in Section 20 had reverted
4 back to Nearburg?

5 A. Yes.

6 Q. Let's look at Exhibit 33. Tell us what Exhibit
7 33 shows.

8 A. Those are production summary reports for the
9 SRO 16H, 43H and 44H.

10 Q. All right. Could you summarize those
11 production volumes for the Hearing Examiners?

12 A. Sure. And as a just -- these came from the
13 NMOCD download.

14 To date, the latest production numbers that
15 we have are through the State, and through February of
16 2016, the 43H had produced 172,833 barrels of oil, 1.071
17 bcf of gas. In February, the 43H averaged 207 barrels
18 of oil a day and 1.9 million cubic feet of gas per day.

19 Through that same time period, the 44H had
20 produced 175,443 barrels of oil and 1.09 bcf of gas. In
21 February, the 44H averaged 227 barrels of oil and 1.9
22 million cubic feet of gas per day.

23 Q. Do you have an opinion whether the decision to
24 drill these wells in this pricing environment that were
25 drilled resulted in premature abandonment of any

1 reserves?

2 A. Certainly with lower product prices, that would
3 result in the wells being abandoned as uneconomic
4 earlier in their life than compared to higher prices,
5 and you would leave otherwise producible reserves in the
6 ground.

7 Q. All right. And without knowing what prices
8 would be in the future, you can't assess that?

9 A. It's tough to say.

10 Q. Let's talk about the disposition of the 16H
11 well.

12 A. The 16H is an Avalon gas well and produces a
13 fair amount of water, 100 to 200 barrels of water per
14 day. The well went down in May of 2015, produced very
15 small amounts of gas in June, September and October. It
16 appears the well was restored to production in November
17 2015, where it produced 18,000,526 mcf and 42 barrels of
18 oil.

19 Q. Do you know whether COG has accounted and paid
20 Nearburg for any production for the 16H?

21 A. No.

22 Q. Let's look at Exhibit 34. Would you identify
23 that, please?

24 EXAMINER JONES: I'm sorry. Did you say
25 no, you didn't know, or no, they have not?

1 THE WITNESS: Can you repeat the question?

2 Q. (BY MR. HALL) Do you know whether COG has
3 accounted and paid Nearburg for any production from the
4 16H?

5 A. I'm not aware of that.

6 Q. Let's go back to Exhibit 34. What is that?

7 A. This is a plot of NYMEX West Texas Intermediate
8 oil and price per barrel.

9 Q. And does this cover a period of time since the
10 43H and 44H wells were drilled?

11 A. Yes. It starts in December of 2011 and goes
12 through March of this year.

13 Q. All right. And how would you characterize the
14 pricing environment during this time?

15 A. Well, it's -- this is all public data. And as
16 you can see, starting in the middle of 2014, there is a
17 precipitous decline in oil prices, which I think we're
18 all painfully aware.

19 Q. And what effect has that decline had on well
20 payout; do you know?

21 A. It's significant. It certainly would cause
22 well payouts to extend and especially with wells of
23 these type that have very -- very high initial
24 production, decline quickly and then flatten out.

25 Q. Now, would Nearburg have agreed to drill the

1 43H and 44H in this pricing environment?

2 A. It's highly doubtful. I will say that.

3 Q. All right. Has Nearburg been deprived of the
4 opportunity to produce its just and equitable share in
5 the spacing units dedicated to the 43H and 44H?

6 A. Yes.

7 Q. Do we know what COG is doing with proceeds from
8 the sale of production from the two wells?

9 A. No.

10 Q. At present time does Nearburg have sufficient
11 information about the 16H well to make an informed
12 decision and recommendation to the Hearing Examiners
13 about what should be done with that well?

14 A. No, we don't.

15 Q. Do you need more information?

16 A. Yes.

17 Q. Were Exhibits 32, 33 and 34 prepared by you or
18 at your direction?

19 A. Yes, they were.

20 MR. HALL: That concludes my direct of this
21 witness.

22 We'd move the admission of Exhibits 32, 33
23 and 34.

24 MR. FELDEWERT: No objection.

25 EXAMINER BROOKS: 32, 33 and 34 are

1 admitted.

2 (Nearburg Exploration Company Exhibit
3 Numbers 32, 33 and 34 are offered and
4 admitted into evidence.)

5 EXAMINER BROOKS: Mr. Feldewert,
6 cross-examination?

7 CROSS-EXAMINATION

8 BY MR. FELDEWERT:

9 Q. Mr. Griffin, looking at Exhibit 34 --

10 A. Uh-huh.

11 Q. -- did you testify you would not drill in this
12 pricing environment?

13 A. As I said -- I did testify that it would be
14 highly unlikely.

15 Q. What pricing environment are you talking about?

16 A. I'm talking about when oil dipped down in
17 November '14 below \$50 a barrel.

18 Q. Okay. You're aware that at the time when COG
19 drilled the 43H, that was in August of 2014, right?

20 A. Yes.

21 Q. And that was when the price of oil was what?

22 A. In August, it's looking like it was in the 70
23 to \$90 range.

24 Q. So above your threshold?

25 A. Yeah. It's on an individual basis.

1 Q. And then in October of 2014, when they drilled
2 the 43H, what was the price then?

3 A. It was --

4 Q. 70?

5 A. Yeah. Looks like 70.

6 Q. You would have drilled then? It's above your
7 threshold?

8 A. It's hard to say. I don't know what the well
9 cost is.

10 Q. It's above the \$50 threshold you identified?

11 A. \$50 doesn't apply to every well.

12 Q. But that's what you identified as the pricing
13 environment in which you wouldn't drill?

14 A. We were never presented with a proposal for a
15 well or an AFE cost.

16 Q. And were you aware that -- that at the time
17 that -- at the time these wells were being drilled, that
18 Nearburg was representing that they wanted to proceed
19 with the overriding royalty interest? Weren't you aware
20 of that?

21 A. Can you say that again?

22 Q. Weren't you aware that at the time that these
23 wells were drilled, that Nearburg was indicating that
24 they wanted to proceed with the overriding royalty
25 interest?

1 A. No.

2 Q. Okay. Look at your Exhibit 32. Now, these are
3 all -- is this a list of the SRO Unit wells?

4 A. To my knowledge, these are the wells.

5 Q. (Indicating.)

6 A. To my knowledge, these are the SRO Unit wells.
7 I don't know if any further have been drilled.

8 Q. How many of these wells were drilled before the
9 SRO Unit was dissolved?

10 A. Well, it appears the ones above that line.

11 Q. Above that line?

12 A. Yeah.

13 Q. Okay. All right. And you were here for the
14 testimony that according to -- according to Nearburg,
15 that the Term Assignment with Concho expired when the
16 SRO Unit dissolved?

17 A. What are you asking me?

18 Q. Are you aware that Nearburg's position that the
19 Term Assignment with Marbob expired when the SRO Unit
20 dissolved?

21 A. Yes.

22 Q. Okay. And that was the Term Assignment that
23 you referenced that was provided -- that required COG to
24 provide certain well information?

25 A. Yes.

1 Q. All right. And so that Term Assignment would
2 have expired for -- and would have been expired for any
3 wells below that SRO Unit dissolved into that, correct?

4 A. State that again, please.

5 Q. That Term Assignment and the obligation under
6 that Marbob Term Assignment did not extend to any wells
7 that were drilled after the SRO Unit was dissolved,
8 right?

9 A. I would think so.

10 Q. So none of the wells listed below your line
11 here on Exhibit 32 have anything to do with the data
12 request under the -- the data of Exhibit A to the Term
13 Assignment for Marbob, correct, because they were all
14 drilled after it dissolved?

15 A. Are you making a statement, or what's the
16 question?

17 Q. Do you agree with that?

18 A. Do I agree with the fact that they should not
19 be governed?

20 Q. I'm looking at the -- you have a line here that
21 says the SRO agreement dissolved 3/1/2014. Okay?

22 A. Yes.

23 Q. All right?

24 And above -- and below that, you're saying
25 that Concho did not provide timely information?

1 A. Yes.

2 Q. Okay. And you're resting that -- and you're
3 resting that position on the Term Assignment with
4 Marbob?

5 A. The data requirements were in the Term
6 Assignment, correct.

7 Q. And that Term Assignment did not apply to --
8 the data requirements in that Term Assignment did not
9 apply to any of the wells that were drilled below that
10 line because --

11 A. I wouldn't think so.

12 Q. Okay. All right. So focusing now on the wells
13 above that line, you list -- one, two, three, four,
14 five, six seven, eight, nine -- ten that you suggest
15 information was not timely provided?

16 A. Yes.

17 Q. When you say not timely provided, what do you
18 mean by that?

19 A. We received no data on those wells until we
20 requested it.

21 Q. When you say that the data was not timely
22 provided, what do you mean by it was not timely
23 provided? When was it supposed to be provided, in your
24 opinion?

25 A. It's typical in the oil and gas business that

1 when companies receive logs or so forth or other
2 information, they distribute them to the partners. That
3 can take anywhere from 30 to 90, 120 days after the
4 drilling of the well.

5 Q. Okay. If I look at the Marbob Term Assignment
6 and Exhibit A to it, there is no time frame when the
7 information is supposed to be provided, is there?

8 A. Not to my knowledge.

9 Q. So that's just a time frame you came up with?

10 A. You could say that.

11 Q. And if I look at the data requirements for this
12 Term Assignment, for the wells above your line that you
13 say was not timely provided, that data was eventually
14 provided, correct?

15 A. The data was provided on the thumb drives in
16 June of '15.

17 Q. Right after Nearburg requested it?

18 A. No.

19 Q. Well, they sent out a request letter in June of
20 2015, right, where they asked for information on various
21 wells?

22 A. Yeah. That was a letter.

23 Q. Okay.

24 A. We had been asking for it for months.

25 Q. Then you got the information in June, right?

1 A. Yes.

2 Q. Are you aware, prior to June, of any requests
3 for information that identified exactly what Nearburg
4 wanted to see?

5 A. Can you restate that?

6 Q. Can you point me to a request for information
7 prior to June of 2015 that identified what the company
8 desired under the Term Assignment with Marbob?

9 A. I can't point you to that.

10 Q. You didn't review that before making a
11 statement that it was not timely provided?

12 A. The data that's -- the data that's requested in
13 the Term Assignment is the data I'm referring to.

14 Q. Okay. And my question to you is when was that
15 first requested?

16 A. And I don't know off the top of my head,
17 because it was in discussions between our land
18 department and COG.

19 Q. Were you involved in those discussions?

20 A. No.

21 Q. No.

22 Did you look -- did you review any
23 documents that indicated when that information was
24 requested?

25 A. No.

1 Q. Okay. So you don't know when it was requested.
2 You just think at some point in time it was requested?

3 A. Yes.

4 Q. Are you and -- Mr. Griffin, you've been --
5 you're in the Nearburg land department, or you're in the
6 engineering?

7 A. I'm chief technology officer. I head up the
8 technology center.

9 Q. Are you aware -- you said you were not involved
10 in any discussions with COG about their right to operate
11 the wells on Nearburg's acreage?

12 A. No.

13 Q. Are you aware of any written statement to COG,
14 before the drilling of the 43H and 44H, that informed
15 COG that they were not authorized to develop the east
16 half of Section 20?

17 MR. HALL: And at this point, Mr. Examiner,
18 I'd object. It's beyond the scope of direct
19 examination.

20 EXAMINER BROOKS: Yeah. I think that's
21 probably true. Did you go into it? I don't remember
22 anything on direct concerning that.

23 MR. FELDEWERT: Okay.

24 Q. (BY MR. FELDEWERT) So you're not here to
25 testify, then, whether or not COG had a good-faith basis

1 to believe that they were authorized to operate on
2 Nearburg's acreage?

3 MR. HALL: Again, same objection, beyond
4 the scope of direct.

5 EXAMINER BROOKS: Well, I don't believe
6 he's offered any testimony to that effect or that would
7 be relevant to the issue, so I'll sustain the objection.

8 MR. FELDEWERT: Okay. Then that's all the
9 questions I have.

10 REDIRECT EXAMINATION

11 BY MR. HALL:

12 Q. Refer back to the Exhibit 2, the Term
13 Assignment and Exhibit A. Is it accurate to say that
14 the requirement to deliver well information is
15 automatic? No request is necessary under the Term
16 Assignment?

17 MR. FELDEWERT: Objection. The document
18 speaks for itself.

19 THE WITNESS: Yes.

20 Q. (BY MR. HALL) Look at some of the provisions of
21 Exhibit A. If you would look under "Well Information
22 Requirements," category A, "Drilling and Mudlogger
23 Reports," how frequently do those -- how quickly are
24 those to be provided and how frequently?

25 A. T says they should be provided daily, also

1 including a weekly recap.

2 EXAMINER BROOKS: Where are you reading
3 from?

4 THE WITNESS: I'm reading under that first
5 paragraph, under A there. It's on the
6 second-to-the-last page.

7 EXAMINER BROOKS: Yeah, I see it. Okay.

8 Q. (BY MR. HALL) Let's look under category B,
9 "Well Data." Look at item two there. When is the
10 operator to deliver drilling and completion procedures?

11 A. It says, a "copy of the drilling and completion
12 procedures 48 hours prior to commencement of operation."

13 Q. And requirement three there, copy of mud logs,
14 how frequently?

15 A. Daily.

16 Q. And for copies of final mud logs, were you
17 provided with those on a timely basis?

18 A. No.

19 Q. Let's turn the page, look at item C,
20 "Notification." What does that first entry, sub-item
21 one require?

22 A. It requires that "Nearburg should receive
23 24-hour notice of the following events: Spudding,
24 wireline logging, open hole testing, core, or plugging
25 of the well." Notification should be by phone to one of

1 the following persons, in the order indicated."

2 Q. All right. Now, let's look down at item F,
3 "Well Prognosis." What's the requirement there?

4 A. "Prior to any operation, Operator shall furnish
5 to Nearburg a well/completion prognosis specifying in
6 reasonable detail the procedure of work for the proposed
7 operation. Such prognosis shall be sent to Nearburg not
8 later than 48 hours prior to commencement of any such
9 operation."

10 Q. All right. And, again, let's refer to your
11 Exhibit 32. For the period of time following the
12 dissolution of the SRO Unit, were you aware that
13 Nearburg had requested the information that was supposed
14 to have been provided under the Term Assignment for
15 those wells as well?

16 A. I was aware that we were supposed to receive
17 information on SRO Unit wells. The problem was we
18 didn't know these wells were being drilled.

19 Q. All right. Were you aware that permits for the
20 drilling of some of these wells had been filed prior to
21 the dissolution of the SRO Unit?

22 A. No.

23 MR. HALL: That's all I have.

24 EXAMINER BROOKS: Thank you.

25 MR. FELDEWERT: Mr. Examiner, I do have one

1 follow-up question because I am confused.

2 EXAMINER BROOKS: Okay. Go ahead. I have
3 a couple of questions, but I'll wait until you finish.

4 RECROSS EXAMINATION

5 BY MR. FELDEWERT:

6 Q. Mr. Griffin, you're not suggesting that the
7 requirements that you just went through here on Exhibit
8 Number 2, that these were in effect after March 1st,
9 2014, are you?

10 A. I'm not making that suggestion, no.

11 Q. Okay. These would have been requirements that
12 would have been in effect prior to March 1st, 2014?

13 A. Yes, I would think so.

14 MR. FELDEWERT: Okay. That's all the
15 questions I have.

16 EXAMINER BROOKS: Well, Mr. Feldewert,
17 don't you have to have it one way or the other? Either
18 the Term Assignment was still in effect or it wasn't.

19 MR. FELDEWERT: Well, my point would be
20 that -- and I guess if I was going to ask another
21 question si -- they're demanding information as if the
22 Term Assignment was in effect, which we understood to be
23 the case.

24 EXAMINER BROOKS: Yeah. But they're saying
25 you didn't provide it. Do you have a witness that's

1 going to testify otherwise?

2 MR. FELDEWERT: They're suggesting we
3 didn't provide it, although they haven't identified what
4 we didn't provide.

5 EXAMINER BROOKS: Well, I will save that
6 issue until closing statements, assuming we have closing
7 statements.

8 CROSS-EXAMINATION

9 BY EXAMINER BROOKS:

10 Q. My question -- first of all, looking at -- this
11 is where Mr. Feldewert began, and I think I'm going to
12 begin there, too.

13 Exhibit Number 34, I have a little trouble
14 interpreting this because there is no vertical -- there
15 is no graphic presentation of the vertical --

16 A. Right.

17 Q. -- lines as to exactly what is parallel to the
18 axis, and when you get to about the time frame of
19 September, October, November, the price trend line
20 becomes very steep.

21 A. Yeah.

22 Q. But is it -- is each of these diamonds on the
23 brass tran line, is that a point that was used to plot
24 this line?

25 A. Yes.

1 Q. And that would be a monthly point, right?

2 A. Yes, monthly average.

3 Q. It looks to me, best I can guesstimate a
4 parallel-ism here, that the August line comes up to a
5 price between 90 and 100.

6 A. Yes.

7 Q. And the September price line comes up to a
8 price just a little above 90.

9 A. That looks right.

10 Q. And the October price line comes up to maybe
11 84.

12 A. Yes.

13 Q. Okay. Now, I remember those times very well.

14 A. They were good.

15 Q. And I think not everybody -- I think there was
16 a lot of surprise -- even though September, October --
17 August, September, October looked kind of bad, there was
18 a lot of surprise in what happened in November and
19 December. Is that your recollection?

20 A. I would agree with that.

21 Q. Yeah. So these decisions were made in August,
22 as to one well, and October as to the other, if I
23 remember the testimony.

24 A. That's when the wells were drilled.

25 Q. Yeah.

1 A. We never received an AFE.

2 Q. Yeah. But if you had received an AFE, you
3 would have made a decision based on that time --

4 A. Yes.

5 Q. -- not on the price environment that --

6 A. Yes.

7 Q. -- existed in December and January?

8 Okay. I just wanted to clarify that.

9 The other thing, I'm not good at quickly
10 converting production numbers into payouts. Can you
11 tell me, based on these production numbers that you got
12 from the NMOCD, how long -- these look like really good
13 wells to me, based on what I'm seeing. Have they paid
14 out 100 percent cost --

15 A. That's difficult to say. COG could probably
16 answer that question.

17 Q. Yeah. Well, I assume they could.

18 You would have to make some assumptions
19 about costs but -- just defer production to that, I'm
20 sure. I have my own way of doing that, but it doesn't
21 necessarily apply to anybody else.

22 Okay. I guess that's all I have.

23 Oh, you said something about the 2nd Bone
24 Spring not being in communication with any of the other
25 zones in the Bone Spring. And I'm familiar with the

1 fact that most people testify -- most experts I've heard
2 testify have testified that's the case generally in the
3 Bone Spring --

4 A. Yes.

5 Q. -- that it's not in communication in most
6 places. Have you made any specific study of this area,
7 or are you just making the same -- you don't know of any
8 exception in this area?

9 A. Yeah. I don't know of any areas where that
10 occurs. It's just more of a general statement.

11 Q. Thank you.

12 EXAMINER BROOKS: Nothing further.

13 Mr. Jones?

14 EXAMINER JONES: You covered most of my
15 questions.

16 CROSS-EXAMINATION

17 BY EXAMINER JONES:

18 Q. Would you say that -- first of all, do you have
19 an engineer working for you that might have talked to
20 COG routinely as these wells were being drilled? In
21 other words --

22 A. No.

23 Q. -- or do you talk --

24 A. No.

25 Q. -- directly to the technical people of COG?

1 A. On other issues, we're partners with COG in a
2 lot of areas, but in this case, with it being an
3 override, we typically would just wait for data to come
4 in.

5 Q. Okay. Do you look at that data quite a bit?

6 A. Typically, yes.

7 Q. So to follow up on Mr. Brooks' question, the
8 well that you showed production numbers on, is that a
9 typical well, or is it a better -- in other words, it's
10 a two-mile well; is that correct?

11 A. The Avalon well, the 16?

12 Q. Oh, that's a 16.

13 A. That's a typical -- that's a typical Avalon
14 well.

15 Q. Okay. 30 percent oil cut. Is that about
16 typical?

17 A. Yeah.

18 Q. That's what it shows there.

19 A. Yes.

20 Q. 6,000 GOR.

21 A. Uh-huh.

22 Q. And do you have anything else to say that these
23 Bone Spring members are not in communication after a big
24 frack job other than the lithology changes on the logs?
25 Maybe the stress implied off the log? Do you have any

1 microseismic data that you would have looked at?

2 A. We don't have any microseismic in house at
3 Nearburg, no, not in the Bone Spring.

4 Q. Have you done frac simulation that showed how
5 far these frac jobs will go?

6 A. We've seen communication laterally, but in
7 terms of vertically, between 2nd and 3rd Bone Spring,
8 they're fairly distant.

9 Q. Okay. So quite a bit of distance?

10 A. Yes.

11 Q. So the frac simulator wouldn't show any
12 communication?

13 A. Right. It would show barrier.

14 Q. But empirically you've seen some communication
15 laterally?

16 A. Laterally, we have.

17 Q. Okay. Okay. Thank you.

18 A. Okay.

19 RE CROSS EXAMINATION

20 BY EXAMINER BROOKS:

21 Q. Mr. Jones didn't follow-up on the 43 and 44.
22 Would you agree that the 43 and 44 are pretty good
23 wells?

24 A. Yes, they are.

25 Q. Would you say they're better than average?

1 A. Yes. And they're certainly better than Avalon
2 wells.

3 Q. Okay. Thank you.

4 EXAMINER BROOKS: That's all I have.

5 MR. HALL: That concludes our case -- our
6 direct case. Turn it over to COG. Reserve the right to
7 recall our witnesses.

8 EXAMINER BROOKS: Okay. Very good.

9 We haven't plow through another hour yet,
10 so, Mr. Feldewert, call your first witness.

11 MR. FELDEWERT: Yes, sir. Call Ryan Owen.
12 Mr. Examiner, can I make a change?

13 EXAMINER BROOKS: Yes.

14 MR. FELDEWERT: I'm going to call -- since
15 Mr. Griffin just testified, I will call our geologist.

16 EXAMINER BROOKS: Okay. And his name is?

17 THE WITNESS: Henry Zollinger.

18 HENRY ZOLLINGER,

19 after having been previously sworn under oath, was
20 questioned and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. KESSLER:

23 Q. Can you please state your name for the record
24 and tell the Examiner by whom you're employed and in
25 what capacity?

1 A. My name is Henry Zollinger. I'm employed by
2 COG Operating, LLC as a geologic team lead.

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

5 A. Yes, I have.

6 Q. And were your credentials as an expert in
7 petroleum geology accepted and made a matter of record?

8 A. Yes, they were.

9 Q. Are you familiar with the pooling application
10 filed in this case?

11 A. Yes, I am.

12 Q. And have you conducted a geologic study of the
13 lands in the subject area?

14 A. Yes, I have.

15 Q. Okay. Can you please --

16 MS. KESSLER: I would tender Mr. Zollinger
17 as an expert in petroleum geology.

18 MR. HALL: No objection.

19 EXAMINER BROOKS: No objection. So he's so
20 qualified.

21 Q. (BY MS. KESSLER) Can you please turn to Exhibit
22 30?

23 A. Yes.

24 Q. What was the targeted interval for these two
25 wells?

1 A. 2nd Bone Spring Sand.

2 Q. Have you prepared a structure map and cross
3 section on the target interval for the Examiners?

4 A. I have.

5 EXAMINER BROOKS: What exhibit did you
6 refer to?

7 MS. KESSLER: Exhibit 30, Mr. Examiner.

8 EXAMINER BROOKS: In which notebook?

9 MS. KESSLER: In the Concho notebook, the
10 COG.

11 Q. (BY MS. KESSLER) Mr. Zollinger, can you please
12 identify this exhibit and explain it for the Examiners?

13 A. Yes. Exhibit 30 is a base map of the sections
14 in question today, with the surrounded wellbores that
15 have also penetrated in the 2nd Bone Spring sand. The
16 wells that are in blue are the two subject wells of this
17 hearing, the SRO State Com 43H and 44H, and they're
18 labeled as such. And then the orange lines are the 2nd
19 Bone Spring landings, the producing wells in the area.

20 Q. What is Exhibit 31?

21 A. 31 is the same land map -- or I'm sorry -- the
22 same reference map, with a subsea structure posted on it
23 with the black contour lines. The subsea structure is
24 the 2nd Bone Spring sand base.

25 Q. What have you identified with respect to this

1 structure in this section?

2 A. I'm sorry?

3 Q. What have you identified with respect to the
4 structure in this section?

5 A. That it's fairly consistent. The dip is to the
6 northeast. There are no faults that we've seen on this
7 map, no stratigraphic pinch-outs or impediments for
8 drilling.

9 Q. Is Exhibit 2 the same locator map with a line
10 of section labeled A to A prime?

11 A. Exhibit 32 is, yes.

12 Q. 32. Excuse me.

13 Do the wells identified on the line labeled
14 A to A prime -- would you consider these wells to be
15 representative of 2nd Bone Spring wells?

16 A. I would.

17 Q. And turning to Exhibit 33, is this an exhibit
18 identifying cross sections on the line labeled A to A
19 prime in the previous exhibit?

20 A. It is.

21 Q. Can you please walk us through this exhibit?

22 A. Sure. The lines are from -- I'm sorry. The
23 wells are from north to south on the line on the
24 previous exhibit. The 2nd Bone Spring sand top is
25 marked at the top of the wells. The 2nd Bone Spring

1 sand base is marked at the bottom labeled at interval of
2 interest, and this cross section has been flattened on
3 the 2nd Bone Spring base to show the relative thickness
4 between wellbores.

5 Q. Can you please discuss the continuity across
6 the nonstandard --

7 A. Yes. It's fairly consistent across the entire
8 area.

9 Q. And you mentioned before. Did you incur any
10 geologic impediments while developing this area?

11 A. We did not.

12 Q. And in your opinion, is the area being
13 efficiently and economically developed through the use
14 of horizontal wells?

15 A. Yes.

16 Q. Do you believe that the nonstandard unit on
17 average contributed more or less equally to the
18 production from the wells?

19 A. Yes.

20 Q. Do the completed intervals for each of the
21 wells comply with the Division's 330-foot statewide
22 setback requirements?

23 A. They do.

24 Q. So first and last perms are at 330 feet?

25 A. Yes, ma'am.

1 Q. In your opinion, is the granting of COG's
2 application in the best interest of conservation, the
3 prevention of waste and the protection of correlative
4 rights?

5 A. Yes.

6 Q. Were Exhibits 30 through 33 prepared by you or
7 prepared under your direction and supervision?

8 A. They were.

9 MS. KESSLER: Mr. Examiner, I move the
10 admission of Exhibits 30 through 33.

11 MR. HALL: No objection.

12 EXAMINER BROOKS: COG Exhibits 30 through
13 33 are admitted.

14 (COG Operating, LLC Exhibit Numbers 30
15 through 33 are offered and admitted into
16 evidence.)

17 MR. HALL: May I?

18 EXAMINER BROOKS: Yeah.

19 I don't believe you said you pass the
20 witness.

21 MS. KESSLER: I pass the witness.

22 CROSS-EXAMINATION

23 BY MR. HALL:

24 Q. Mr. Zollinger, were you responsible for
25 determining the drilling order for the wells drilled in

1 the vicinity of Township 26 South, Range 28 East?

2 A. What do you mean by the vicinity? Of all the
3 wells on my maps?

4 Q. Yes, for starters.

5 A. Or just 43 and 44?

6 Q. Well, all of them. How many were you
7 responsible for? Let's ask it that way.

8 A. For the timing and the drilling?

9 Q. Yes.

10 A. None. That's determined by the team, not by
11 myself.

12 Q. All right. You're a member of the team?

13 A. (Indicating.)

14 Q. You need to indicate --

15 A. I'm sorry, yes. I'm a member of the team. I'm
16 sorry.

17 Q. Did the team determine that the drilling order
18 of the 43H and 44H should be accelerated?

19 A. I'm confused by that question. I don't believe
20 we accelerated them in any extent. They were not
21 planned later. They were just placed on the drill
22 schedule to be drilled at a certain time.

23 Q. All right. Were they ever moved up on the
24 drill schedule?

25 A. I can't testify to that. I can't recall.

1 Q. Do you know whether the wells were drilled, the
2 43H and 44H, without the benefit of a drilling title
3 opinion?

4 A. I can't testify to that.

5 MR. HALL: No more questions.

6 EXAMINER BROOKS: Okay.

7 CROSS-EXAMINATION

8 BY EXAMINER BROOKS:

9 Q. You would not have been the person who --

10 EXAMINER BROOKS: Or, Mr. Feldewert, do you
11 prefer to go forward?

12 MS. KESSLER: That would be my redirect,
13 and I would wait for your questions, yes.

14 EXAMINER BROOKS: Okay.

15 CROSS-EXAMINATION

16 BY EXAMINER BROOKS:

17 Q. You're not the person who would have sent out
18 notices to joint owners for the -- sent or not sent
19 notices to joint owners for the decision made to drill
20 the well, right?

21 A. No, sir, I would not.

22 Q. So you wouldn't have any knowledge of that
23 matter?

24 A. No, sir.

25 Q. Then I don't believe I have any questions.

1 EXAMINER BROOKS: Mr. Jones?

2 CROSS-EXAMINATION

3 BY EXAMINER JONES:

4 Q. Not a lot either, except how are these two-mile
5 long wells working out as far as drilling and as
6 compared to the others, and how are they working out as
7 far as recovery from the others?

8 A. That's a good question. The two-miles wells
9 are still fairly earlier in their production lives. The
10 calculations by reservoir engineers do indicate you get
11 equivalent per lateral foot recovery from the well as
12 you do from a single-mile well.

13 Q. So the reservoir engineers are telling you that
14 it's equal --

15 A. Yes, sir.

16 Q. -- whether you drill a mile-long lateral or a
17 two-mile long --

18 A. Per lateral foot, yes.

19 Q. Per lateral foot.

20 Have you heard any talk about how difficult
21 it is to drill completely a mile long at -- what are
22 you, 8,000 feet deep?

23 A. We're about 7,900 feet deep, yes.

24 I oversee operations on the wells for
25 geologic purposes, and they drill fine.

1 Q. Okay. They're staying in the zone? You
2 monitor them as they're drilled?

3 A. Yes. Yes, sir. Yeah.

4 Q. And how do you know they're in zone?

5 A. We use mudloggers.

6 Q. Two-man mudloggers?

7 A. Two-man mud-logging teams. There is somebody
8 on staff 24 hours a day.

9 Q. And they're sending the data to you constantly?

10 A. Yes, sir.

11 Q. And so you've basically got -- you've got a
12 gamma ray on the bit or not?

13 A. On these wells, they're run on gamma rays.
14 These are from mud logs.

15 Q. Just a mud log?

16 A. Yes, sir.

17 Q. Okay. What -- what control do you have out
18 here as far as logs in this 9- -- or, I guess, section
19 area on Exhibit Number 30? What kind of -- where are
20 the pilot holes and the log holes?

21 A. I don't know if I could tell you each one off
22 of this map. My data points aren't posted on this map,
23 so I wouldn't be able to confidently tell you that at
24 this point, except for the three that are in the cross
25 section.

1 Q. I'm sure you'll be ON the stand later in the
2 other hearings --

3 A. Yup.

4 Q. -- so I'll probably have a chance to gather
5 more information.

6 Why the 2nd Bone Spring? Is it --

7 A. It's fairly well developed in the area, as you
8 can see from Exhibits 30 and 31. We were in the
9 development drilling for this area at the time we
10 drilled these wells.

11 Q. Okay. And these were mostly 2nd Bone Spring,
12 right? The Avalon was early on, and you kind of
13 abandoned the Avalon?

14 A. Well, in the Avalon, there are much more gassy
15 plays than the 2nd Bone Spring, so if you can refer back
16 to the production plots, you'll notice the G-waters.

17 Q. And the oil price of plot -- gas per price per
18 plot?

19 A. Yes, sir.

20 Q. They are a little bit -- 30 percent oil cut is
21 quite a bit of water.

22 A. Yes, sir.

23 Q. So what about the Delaware well? How is it?
24 How good was it?

25 A. I'd have to look on the OCD. It was a higher

1 water cut than the 2nd Bone Spring wells.

2 Q. Okay. But you plan on some 3rd Bone Spring?

3 A. There have been some 3rd Bone Spring ones
4 drilled in the SRO Unit. I believe they were on one of
5 the exhibits from Nearburg.

6 Q. What about the Wolfcamp or the top of the
7 Wolfcamp? Is that a possibility?

8 A. Through the SRO, we might have to -- through
9 this unit, I think the landman would have to testify to
10 that. I don't believe this unit covers anything deeper
11 than the Bone Spring.

12 Q. I saw that it ends at the base of the Bone
13 Spring. But if the unit is not there anymore, your
14 leases should go all the way.

15 A. Sure. I know there is development in the
16 Wolfcamp south across the state line, so --

17 Q. So it's a big possibility?

18 A. -- it certainly is out there.

19 Q. Okay. Okay. Thank you.

20 A. Uh-huh.

21 RE CROSS EXAMINATION

22 BY EXAMINER BROOKS:

23 Q. I neglected to ask you a couple of things.
24 First of all, I asked the last witness this. And I
25 don't know if you're the one that knows this or if I

1 should ask some other COG witness, but the Number 69
2 well that was to be in the 3rd Bone Spring --

3 A. Yes.

4 Q. -- that has not been spud yet?

5 A. No, it has not.

6 Q. Okay. The other one was: Do you agree with
7 the last witness that the Number 43 and Number 44 are
8 good Bone Spring wells?

9 A. Yes, sir.

10 Q. Thank you.

11 MR. HALL: I don't have anymore.

12 EXAMINER BROOKS: I'm through.

13 MS. KESSLER: I have nothing further.

14 EXAMINER BROOKS: The witness may stand
15 down, and you may call your next witness.

16 MR. FELDEWERT: Yes, sir. Call Mr. Owen.

17 RYAN D. OWEN,

18 after having been previously sworn under oath, was
19 questioned and testified as follows:

20

21 DIRECT EXAMINATION

22 BY MR. FELDEWERT:

23 Q. Would you please state your name, identify by
24 whom you are employed and in what capacity?

25 A. I'm Ryan Owen, COG Operating, LLC, as a land

1 lead in the New Mexico Basin.

2 Q. And how long have you been a land lead in the
3 Delaware Basin?

4 A. Just over two years.

5 Q. Okay. Have you previously testified before
6 this Division?

7 A. I have.

8 Q. Have your credentials as a petroleum landman
9 been accepted and made a matter of public record?

10 A. They have.

11 Q. First off, are you familiar with the pooling
12 applications that have been filed by the company in this
13 case?

14 A. I am.

15 Q. Are you familiar with the leases in that
16 subject area and the operating agreement governing the
17 subject area?

18 A. I am.

19 Q. Now, Mr. Owen, we've been through an exhibit
20 that identifies the 43H and 44H wells. Do you recall
21 that today?

22 A. Yes.

23 Q. Okay. And if I go to --

24 MR. FELDEWERT: Just for the Examiner, go
25 to Exhibit Number 6 -- or 8.

1 Q. (BY MR. FELDEWERT) Is that the well file for
2 the first well in the spacing unit for which you seek to
3 pool today?

4 A. This is.

5 Q. Okay. And it's the 43H?

6 A. Yes, sir.

7 Q. And the benefit of this is it gives the
8 Examiner the API number for the well; is that right?

9 A. That is correct.

10 Q. The pool code?

11 A. Yes.

12 Q. All right. And in Exhibit Number 9, likewise,
13 for the 44H, it identifies the spacing unit to be pooled
14 for that well, the API number of that well and the pool
15 code?

16 A. Yes, sir.

17 Q. And is this particular pool governed by the
18 Division statewide rules?

19 A. It is.

20 Q. Does the location of these two wells comply
21 with the setback requirements?

22 A. They do.

23 Q. What's involved with the 17 and 20?

24 A. Two state leases.

25 Q. Turn to what's been marked as COG Number 25.

1 Is this a map that corresponds and identifies the
2 spacing unit for each of the two wells?

3 A. Yes, sir.

4 Q. Why don't you explain to the Examiner how this
5 exhibit is put together?

6 A. Okay. This is an exhibit I put together. The
7 pink acreage is a spacing unit for SRO State Com 43H
8 comprised of the west half of the west half of Section
9 17 and the west half of the west half of Section 20.

10 The green acreage is a spacing unit for the
11 SRO State Com 44H comprised of the east half of the west
12 half of Section 17 and the east half of the west half of
13 Section 20.

14 Q. What do you then provide on the second page of
15 this exhibit?

16 A. Okay. Page 2 shows the two tracts, as shown on
17 page 1, as Tract 1 and Tract 2. Tract 1 shows the
18 lessee of records as Yates Petroleum Corporation, and
19 Tract 2 shows the lessee of record as Nearburg
20 Exploration Company, LLC.

21 EXAMINER BROOKS: What exhibit are you
22 looking at?

23 MR. FELDEWERT: Exhibit 25, Mr. Examiner.

24 EXAMINER BROOKS: 25.

25 THE WITNESS: Yes, sir.

1 EXAMINER BROOKS: Very good. Go ahead.

2 THE WITNESS: Looking at page 2, I just
3 outlined the two leases that comprise both of the
4 spacing units for both the SRO State Com 43 and SRO
5 State Com 44 wells.

6 Q. (BY MR. FELDEWERT) Okay. And then if I go to
7 the third page of this exhibit, what are you showing
8 here?

9 A. Okay. This is an ownership breakdown of the
10 spacing unit for the SRO State Com 43 and 44H wells.
11 Tract 1 and Tract 2 are outlined. Tract 1 shows the
12 contractual working interests outlined by all of the
13 parties within the Joint Operating Agreement or Unit
14 Operating Agreement. And Tract 2 shows Nearburg's
15 interest that is current.

16 Q. Talk about Tract 1 first. The interest owners
17 that are listed on there, you said that's the
18 contractual interest; is that right?

19 A. Yes.

20 Q. And that's under the Unit Operating Agreement
21 that was marked as we've been through today as COG
22 Exhibit Number 4?

23 A. Correct.

24 Q. And it shows actually who the current owners
25 are of the working interest; is that right?

1 A. That is correct.

2 Q. Then we have Tract 2, which is in dispute. Why
3 is there an asterisk by the interest that you show here?

4 A. Okay. Nearburg's interest is in Tract 2, is
5 currently subject to litigation in two courts.

6 Q. And do you believe that this acreage is
7 actually -- does Concho believe that this acreage is
8 actually subject to a voluntary agreement?

9 A. We do.

10 Q. And did the company file these pooling
11 applications because Nearburg now contends that there is
12 no agreement governing their acreage?

13 A. That is correct.

14 Q. In fact, I think Mr. Howard was on the stand
15 and made it very clear, in response to a question from
16 Examiner Brooks, that they are no longer willing to
17 extend Term Assignment?

18 A. That's my understanding.

19 Q. Were you here for that?

20 And you've been here for the testimony in
21 which they suggest that the west half of Section 20 has
22 not been subscribed to the Unit Operating Agreement?
23 Were you here for that testimony?

24 A. I am. I was.

25 Q. If the courts determine that an agreement does

1 govern this state lease that's showing near Tract 2,
2 will COG notify the Division so this pooling order can
3 be released?

4 A. Yes, sir.

5 Q. All right. Now, you're familiar with the Unit
6 Operating Agreement that's been marked as Exhibit Number
7 4?

8 A. I am.

9 Q. And you mentioned that Yates Petroleum is the
10 owner of the lease that comprises the west half of
11 Section 17?

12 A. They are.

13 Q. Did they actually physically sign the Unit
14 Operating Agreements --

15 A. No, they did not.

16 Q. Did they instead sign the same ratification
17 form that Nearburg signed that would find that it held a
18 working interest in their state lease?

19 A. Yes, they did.

20 Q. Is that the only means by which they subscribed
21 to the Unit Operating Agreement?

22 A. Yes, that is correct.

23 Q. And does the same hold true for ABO Petroleum?

24 A. Yes.

25 Q. And does the same hold true for MYCO

1 Industries?

2 A. Yes.

3 Q. And does the same hold true for Yates Drilling?

4 A. Yes.

5 Q. Staying with your Exhibit 25 and looking at
6 page 2, Yates Drilling's interest is now actually held
7 by OXY-Y1; is that correct?

8 A. Yes, sir.

9 Q. Has OXY-Y1 suggested that the ratification form
10 that was filed by Yates Drilling does not subscribe to
11 the Unit Operating Agreement?

12 A. No, they do not.

13 Q. And Marbob was the operator when Yates
14 Petroleum, ABO Petroleum, MYCO Industries and Yates
15 Drilling signed that ratification form, correct?

16 A. Correct.

17 Q. And the records reflect that Marbob, at the
18 time that they were the unit operator, billed and paid
19 the Yates entities under the Unit Operating Agreement
20 pursuant to their ratification?

21 A. That is correct.

22 Q. And when COG took over that as operator, did it
23 continue that practice?

24 A. We did.

25 Q. And have the Yates entities, likewise, viewed

1 this ratification that they signed as binding them to
2 the Unit Operating Agreement?

3 A. They have.

4 Q. So they have accepted their billings under the
5 Unit Operating Agreement?

6 A. They have.

7 Q. They paid the expenses under the Unit Operating
8 Agreement?

9 A. Yes, sir.

10 Q. And, likewise, have the other working interest
11 owners that you list on here who actually physically
12 signed the Unit Operating Agreement, have they likewise
13 accepted Yates' ratification as subscribing to the Unit
14 Operating Agreement?

15 A. They have.

16 Q. All of the Yates have?

17 A. All of them.

18 Q. What are the contractual overhead rates under
19 the Unit Operating Agreement that governs these spacing
20 units?

21 A. 6,000 for drilling and 600 for monthly.

22 Q. Has that amount been subject to escalation of
23 the COPAS provisions?

24 A. It has.

25 Q. Now, I want to turn to what's been marked as

1 COG Exhibits 26 and 27. Do you recognize these as the
2 communitization agreements that have been approved by
3 the Commissioner of Public Lands for the State of
4 New Mexico?

5 A. I have.

6 Q. Okay. And do they correspond to the spacing
7 units, first, for the 43H?

8 A. Yes.

9 Q. And, secondly, for the 44H?

10 A. Yes.

11 Q. And did Yates Petroleum, as the record title
12 owner of the state lease of the west half of Section 17,
13 sign these communitization agreements?

14 A. They did.

15 Q. And did Nearburg, as the record title owner of
16 the state lease in the west half of Section 20, likewise
17 sign these communitization agreements?

18 A. They did.

19 Q. And if I look at either one of them, if I go to
20 paragraph eight, did both of these record title owners
21 in the state lease confirm with these communitization
22 agreements that COG Operating, LLC shall be the operator
23 of said communitized area in all matters of determined
24 performed by COG Operating, LLC?

25 A. Yes.

1 Q. And you received the executed communitization
2 agreements from Nearburg containing this statement as
3 late as June of 2015; is that right?

4 A. We did.

5 Q. Okay. In the preparation of this pooling
6 hearing, did the company identify the leased mineral
7 interest owners in the 40-acre tract in the proposed
8 nonstandard spacing units?

9 A. We did.

10 Q. And did the company include those known mineral
11 interest owners in the notice of this hearing?

12 A. We did.

13 Q. And if I turn to what's been marked as COG
14 Exhibit 29, is that an affidavit prepared by my office
15 with attached letters providing notice of this hearing
16 both to Nearburg, through Scott Hall, and then these
17 offsetting parties?

18 A. It is.

19 Q. Finally, if I look at Exhibit 28 -- Mr. Owen,
20 you're aware, are you not, that Nearburg filed its
21 lawsuit in November of 2015 contending that COG has
22 not -- does not have a right to operate the wells or
23 operate their state lease?

24 A. I am.

25 Q. Okay. And you are aware that they've raised an

1 issue about the communitization agreements that were
2 submitted to the State Land Office?

3 A. Yes, sir, I am.

4 Q. In particular that they want to be -- that the
5 first page of these communitization agreements did not
6 reflect what they intended when they signed the
7 communitization agreements?

8 A. That is correct.

9 Q. Okay. And is Exhibit 28 a letter from Mr. Bill
10 Carr with COG Operating, LLC to Mr. Padilla of the New
11 Mexico State Land Office notifying them that the first
12 page of those comm agreements related to the 2nd Bone
13 Spring interval rather than just the entire Bone Spring
14 Formation?

15 A. Yes, sir, that's correct.

16 Q. And those were actually then -- those
17 substitute pages were filed with the New Mexico State
18 Land Office?

19 A. They were.

20 Q. Were Exhibits 25 through 29, Mr. Owen, prepared
21 by you or prepared under your direction or supervision?

22 A. Yes, sir.

23 MR. FELDEWERT: Mr. Examiner, I move
24 admission into evidence of COG Exhibits 25 through 29.

25 EXAMINER BROOKS: Any objection?

1 MR. HALL: No objection.

2 EXAMINER BROOKS: 25 through 29 are
3 admitted.

4 (COG Operating, LLC Exhibit Numbers 25
5 through 29 are offered and admitted into
6 evidence.)

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

9 EXAMINER BROOKS: Okay. Well, I think it's
10 time to take another recess, about every hour, so take a
11 ten-minute recess.

12 (Recess 4:16 p.m. to 4:42 p.m.)

13 EXAMINER BROOKS: Okay. We're ready to
14 proceed. Back on the record.

15 And let's see. I believe you had passed
16 the witness.

17 Now, have you cross-examined, or do you
18 want me to go? I'm prepared to go ahead.

19 MR. HALL: I haven't asked him anything
20 yet.

21 EXAMINER BROOKS: Oh, this is another
22 witness. The gentleman with the beard back there was on
23 the stand, and we dismissed him. I remember that now.

24 MR. HALL: Right.

25 EXAMINER BROOKS: You may proceed.

1 Mr. Feldewert, has this witness -- this
2 witness has been directed?

3 MR. FELDEWERT: Yes, and we admitted the
4 exhibits.

5 EXAMINER BROOKS: And you passed him?

6 MR. FELDEWERT: Yes. I passed him.

7 EXAMINER BROOKS: Okay. I'm back in the
8 right place.

9 You may begin your cross-examination.

10 MR. HALL: Right. And I'll start my
11 cross-examination. I don't know that I'll finish today.
12 I don't know what you have in mind extending over to
13 tomorrow.

14 EXAMINER BROOKS: Well, what time
15 constraints does anybody have?

16 MR. HALL: Well, there's dinner.

17 EXAMINER BROOKS: Yes. And the court
18 reporter's contract requires that we take a dinner break
19 no later than 7:00 p.m. So that's one constraint that
20 we have as a matter of law, although it's been violated
21 on certain occasions that I can remember, but not by me.

22 Does anybody have any constraints they want
23 to bring up?

24 MR. FELDEWERT: I think we can get done.

25 EXAMINER BROOKS: Do you have a time limit?

1 MR. HALL: I'll start it.

2 EXAMINER BROOKS: On cross, I mean.

3 MR. HALL: Yeah. I'll start that and may
4 ask that we go into tomorrow morning.

5 EXAMINER BROOKS: Let's start, then, and
6 see how far we can get.

7 MR. HALL: Yeah.

8 EXAMINER BROOKS: And I would anticipate
9 going until about 6:00, if that's acceptable, because
10 I'd like to get as much done today as possible. But if
11 somebody has some constraints that make that
12 inconvenient, we can take them into consideration.

13 MR. FELDEWERT: The only thing I would
14 point out is this is the last witness. I think we can
15 get done tonight.

16 EXAMINER BROOKS: Okay. Go ahead. We'll
17 try.

18 MR. HALL: We'll try that. I know I'd like
19 to make some closing comments. I suspect
20 Mr. Feldewert --

21 EXAMINER BROOKS: Well, I want to ask you
22 some questions and probably Mr. Feldewert also about
23 your positions in the case at least.

24 Go ahead. Get as far as -- let's get
25 moving.

1 CROSS-EXAMINATION

2 BY MR. HALL:

3 Q. Mr. Owen, if you could take Nearburg's exhibit
4 notebook and refer to -- turn to Exhibit Number Tab 2.

5 A. 2?

6 Q. Yes.

7 And do you recognize Exhibit Number 2 as
8 the 2009 Term Assignment we've been discussing all day?

9 A. I do.

10 Q. I'm trying to understand what COG's position is
11 with respect to that Term Assignment. COG no longer
12 contends that the Term Assignment was corrected, amended
13 or extended --

14 MR. FELDEWERT: Object.

15 Q. (BY MR. HALL) -- is that correct?

16 MR. FELDEWERT: Calls for a legal position
17 directly contrary to what we've said.

18 EXAMINER BROOKS: Well, he can ask about
19 your legal position, so I'll overrule the objection.

20 Q. (BY MR. HALL) Go ahead.

21 A. No.

22 Q. You testified earlier on direct that you
23 believe that a voluntary agreement for the pooling of
24 the lands dedicated to the 43H and 44H is in place; is
25 that right?

1 A. Yes. Yes, that's correct.

2 Q. In effect, the Joint Operating Agreement --

3 A. Yes.

4 Q. -- right?

5 We finished talking about the Term
6 Assignment as a basis for dedicating acreage to the two
7 wells; is that right?

8 A. That's correct.

9 Q. While the Term Assignment was in effect, can
10 you explain to the Examiners why the well information
11 requirements were not satisfied?

12 A. I'm not sure exactly what information -- I
13 don't have personal knowledge exactly what information
14 was provided and what was not provided.

15 Q. All right. I'd ask you about your two
16 compulsory pooling applications. In connection with
17 that, did COG ever send well proposals to Nearburg for
18 the drilling of either the 43H or 44H wells?

19 A. No, we have not.

20 Q. If the Joint Operating Agreement is the
21 voluntary agreement that's in place that governs the
22 dedication of the lands to these two wells, why weren't
23 the protocols under that agreement followed?

24 A. At the time we were under the impression that
25 Nearburg wanted to proceed with no overriding royalty

1 interest by a Correction Term Assignment.

2 Q. So there is no dispute that no well proposals
3 were ever submitted under the operating agreement or
4 otherwise to Nearburg for the 43H and 44H?

5 A. No, they were not.

6 Q. And did COG ever provide AFEs for the drilling
7 of those two wells to Nearburg?

8 A. We have not and none were requested.

9 Q. Was Nearburg ever afforded the opportunity to
10 elect to go consent or go nonconsent on the drilling of
11 the two wells?

12 A. No, sir, to this point.

13 Q. At any point?

14 A. No, not to my knowledge.

15 Q. Has COG provided Nearburg with estimated well
16 costs or actual well costs?

17 A. I believe we have, but I'm not 100 percent
18 sure.

19 Q. You can't point to any exhibit --

20 A. No.

21 Q. -- that you've offered here today --

22 A. No.

23 Q. -- that demonstrates that?

24 Do you know if Nearburg was ever afforded
25 the opportunity to object to well costs?

1 A. No, I do not.

2 Q. Can you explain to the Hearing Examiner how the
3 43H well got drilled without a drilling title opinion?

4 A. We have -- we had a unit title opinion, and
5 that gives us a good understanding of the ownership
6 within the record title and working interest ownership
7 within the unit. And the Unit Operating Agreement posts
8 a solution of the unit, and we are awaiting -- at the
9 time, we were waiting on revised Division order opinions
10 that we drill the 43 and 44H well.

11 Q. At the time you started the 43H well, it's
12 undisputed that the Term Assignment had expired; is that
13 correct?

14 A. I would say that's a fair statement.

15 Q. And it's certainly the case at the time the 44H
16 well was drilled that you had title opinions in hand at
17 that point that told you the Term Assignment had
18 expired; is that right?

19 A. Yes.

20 Q. In your compulsory pooling applications, why do
21 you seek to pool the entire Bone Spring interval rather
22 than just the 2nd Bone Spring interval?

23 A. We are required to pool the entire pool.

24 Q. By whom?

25 A. By the Commission or NMOCD.

1 Q. What requirement can you point me to that sets
2 that out?

3 A. I don't have it in front of me.

4 Q. Where have you seen this requirement?

5 A. I'm directly aware of pooling orders that have
6 been denied that did not seek to pool the entire pool.

7 Q. And you're also aware that COG has received
8 pooling orders subsequent to those orders that authorize
9 pooling of discrete intervals within the Bone Spring; is
10 that correct?

11 A. I was not directly involved in those cases.

12 Q. So the answer to my question is yes?

13 A. I do not know the details of the final orders.

14 (Cell phone ringing.)

15 EXAMINER BROOKS: Excuse me. I have a
16 call. It could be an emergency. Let's see.

17 I think it's not. It's not.

18 Go ahead.

19 Q. (BY MR. HALL) In COG's compulsory pooling
20 applications, it's not asserted anywhere in there that
21 COG has the right to drill on Section 20. Do you know
22 why?

23 A. No.

24 MR. FELDEWERT: Object to the form of the
25 question. I'm not sure there is a lack of foundation.

1 EXAMINER BROOKS: Well, in view of the
2 answer, I think it's harmless.

3 I'll overrule the objection.

4 Q. (BY MR. HALL) And in the application, COG is
5 not seeking a risk penalty; is that correct?

6 A. That is correct.

7 Q. And today COG has presented no evidence of
8 estimated or actual well costs for either the 43H or
9 44H; is that right?

10 A. We have not.

11 Q. What provision of the Division's rules
12 authorizes the retroactive approval of nonstandard
13 spacing units?

14 A. I do not know.

15 Q. Do you know whether the Division's rules
16 authorize the pooling of overlapping project areas?

17 A. I do not know the answer to that.

18 Q. What is COG hoping to do with the 16H well?

19 A. I don't know at this time.

20 Q. Are you asking that it be included in the
21 compulsory pooling application for the 43H?

22 A. I don't know.

23 Q. Do you know if SRO2, LLC and SRO3, LLC have
24 been notified of COG's applications?

25 A. No, I do not know.

1 Q. What is COG currently doing with proceeds from
2 production from the 43H, 44H and 16H?

3 A. Due to the litigation that was filed,
4 everything -- all proceeds are held in suspense.

5 Q. Are they being held in suspense at a financial
6 institution in Eddy County, New Mexico?

7 A. No, they are not.

8 Q. At this time does COG have any authorization to
9 recover well costs for the 43H or 44H?

10 A. I don't know.

11 Q. Do you know whether it has any authorization to
12 recover administrative and overhead rates for the two
13 wells?

14 A. I do not.

15 Q. Would you turn to Exhibit 15 in Nearburg's
16 exhibits? Do you recall this letter of June 10th, 2015
17 coming to you or to COG?

18 A. To COG?

19 Q. Yes.

20 A. I'm briefly aware of it.

21 Q. All right. If you look at the second
22 paragraph, last sentence on the first page, it says,
23 "The Term Assignment has expired by its own terms and
24 has not been extended." And if you look at the next
25 page, there is an acknowledgment to the component of the

1 letter by Mr. Aaron Myers. Do you agree with that?

2 A. Yes.

3 Q. So can we take the expiration of the Term
4 Assignment off the table? It's no longer at issue; is
5 that right?

6 MR. FELDEWERT: Object, and asks for a
7 legal conclusion.

8 EXAMINER BROOKS: Well, my understanding is
9 that a party -- an individual party would be bound by
10 testimony as to what the contentions of the party is,
11 but I'm doubtful that that applies to employees of a
12 party. I don't really believe it should, unless it's
13 shown that the employee has the authority to make
14 decisions about those subjects. I agree it is not
15 binding, but I would think it is not binding subject to
16 somebody convincing me otherwise by briefing. So
17 perhaps if it's not binding, then it's not even
18 relevant.

19 MR. FELDEWERT: That was going to be my
20 next objection.

21 EXAMINER BROOKS: I will sustain -- yes, I
22 agree -- I recognize that, so I sustain the objection.
23 We have already talked about it. There was a previous
24 question asked and answered about it, but if the
25 testimony's not binding on COG, then it's not relevant.

1 Q. (BY MR. HALL) Let's turn to Nearburg Exhibit
2 10. Do you recognize that as a ratification of the Unit
3 Agreement signed by Nearburg?

4 A. Yes.

5 Q. And setting aside the title of the document,
6 does it say anywhere in the body of that ratification
7 that it's effective to ratify the operating agreement?

8 MR. FELDEWERT: Objection. Calls for a
9 legal conclusion.

10 EXAMINER BROOKS: Well, just ask what it
11 says. We often have objections that -- and I've
12 encountered those in court, too, but the document speaks
13 for itself. And, of course, it does, but it doesn't
14 speak very loud. So I think it's a reasonable use -- a
15 reasonable means of presenting a case, to have a witness
16 read or assent to a reading of a document that counsel
17 wants to bring to the attention of the tribunal.

18 I'll overrule the objection.

19 Q. (BY MR. HALL) Any such language in there?

20 A. I can read the document.

21 Q. Why don't you read it, and you can just tell me
22 whether you see language to that effect?

23 A. (Witness complies.)

24 I'm not an attorney, so I can't make a
25 legal interpretation of the document.

1 Q. You can tell me what you read.

2 MR. FELDEWERT: Do you want him to read the
3 whole thing?

4 EXAMINER BROOKS: Not the whole --

5 MR. HALL: Not into the record, no.

6 EXAMINER BROOKS: Well, we don't want to
7 sit here while he reads the operating agreement,
8 assuming he's got a full copy in front of him.

9 MR. HALL: Not the operating agreement,
10 just the ratification.

11 EXAMINER BROOKS: Oh, okay. Well, the
12 ratification can be read quickly. But I've already read
13 it, and I know Mr. Jones has, too. So I don't believe
14 that's -- I think that's not a good use of time. You
15 can certainly argue.

16 MR. HALL: All right. Message received.

17 EXAMINER BROOKS: You may proceed.

18 Q. (BY MR. HALL) Let's turn to Exhibit Number
19 29 -- Nearburg Exhibit 29. Do you recognize that
20 document?

21 A. Yes.

22 Q. Is it the C-102 for the 43H well that was filed
23 in March of 2014?

24 A. It appears to be.

25 Q. And if you would look at the operator

1 certification, do you agree that that certification was
2 not correct at the time it was made?

3 A. No, I do not.

4 Q. I'm sorry. I can't hear you.

5 A. No, I do not agree.

6 Q. And what's the basis for your assertion that
7 the certification was correct when made?

8 A. Concho believed it had the right to drill both
9 of those wells.

10 Q. Based on what?

11 A. Two items, Ratification and Joinder and Unit
12 Operating Agreement and multiple conversations with
13 Nearburg, under the impression that they wanted to
14 continue with the override and do a correction or
15 amendment of the Term Assignment.

16 Q. Let me have you refer to COG Exhibits 26 and
17 27. Can you identify those?

18 A. Yes.

19 Q. What are they?

20 A. The comm agreement for the 43 and 44H wells.

21 Q. All right. And if you look at the first page
22 of each, they indicate that the comm agreements cover
23 the Bone Spring Formation. Do you see that?

24 A. That's correct.

25 Q. Do you disagree that the communitization

1 agreements that Nearburg transmitted to COG were depth
2 limited to the 2nd Bone Spring interval?

3 A. I'm not 100 percent sure what signature page
4 Nearburg returned.

5 Q. Do you dispute that they transmitted
6 communitization agreements that were limited to the 2nd
7 Bone Spring?

8 A. I believe we already shared our correction
9 documents, as supplied to the Commission.

10 Q. Okay. So what's the answer to my question?

11 A. Repeat it for me one more time.

12 Q. Do you disagree that Nearburg transmitted to
13 COG communitization agreements limited to the 2nd Bone
14 Spring interval?

15 A. No, I do not.

16 Q. And do you disagree that those were signed
17 communitization agreements?

18 A. I do not.

19 Q. Can you explain to the Examiners how Exhibits
20 26 and 27 were submitted to the State Land Office?

21 A. I'd be happy to. Exhibits 26 and 27 are the
22 comm agreements with the original front page standing
23 [sic] Bone Spring Formation.

24 I'm not exactly sure what -- if Nearburg
25 provided complete copies of the comm agreements or just

1 the signature pages back when they returned them to our
2 office. However, whenever my -- our tech that works in
3 our office compiled the signature pages, she was unaware
4 of the revised front pages. She took the signature
5 pages with the original document that was mailed out and
6 filed that with the Commission.

7 Q. And so there's no dispute, then, that those
8 files were incorrect?

9 A. Correct.

10 Q. Mr. Owen, was there anything preventing COG
11 from drilling two one-mile-long laterals within COG's
12 acreage in the west half of Section 17?

13 A. I'm not part of planning the wells, so I
14 wouldn't -- I'm not part of planning the length of the
15 laterals, as to one mile versus a mile and a half and
16 what the factors are that go into those decisions.

17 Q. Okay. From the perspective of the land
18 department, was there any impediment to drilling a
19 one-mile --

20 A. No.

21 Q. -- lateral?

22 A. No.

23 EXAMINER BROOKS: Mr. Jones noticed it.

24 We need to open the door because it's
25 gotten rather hot in here.

1 (Discussion off the record.)

2 EXAMINER BROOKS: You may proceed,
3 Mr. Hall, when you're ready.

4 Q. (BY MR. HALL) Mr. Owen, has COG informed the
5 other working interest owners under the -- agreement
6 that Nearburg's lease had reverted when the unit was
7 dissolved?

8 A. I'm not aware.

9 Q. Have any of the other working interest owners
10 communicated with you about that?

11 A. No.

12 MR. HALL: I believe that's all I have,
13 Mr. Examiner.

14 EXAMINER BROOKS: Okay. That was much
15 faster than I anticipated, from what you said.

16 Do you want to proceed with your redirect,
17 or do you want us to examine first?

18 MR. FELDEWERT: Go.

19 EXAMINER BROOKS: Okay.

20 CROSS-EXAMINATION

21 BY EXAMINER BROOKS:

22 Q. You answered this right at the beginning on
23 direct. I remember the question, but I don't remember
24 the answer. How long have you been the land lead on
25 this unit?

1 A. On this one? I originally said a little over
2 two years. I completed the math, and it's just under
3 two years for this team. But I've been a land lead at
4 Concho for around four years.

5 Q. Okay. Were you working on the SRO Unit during
6 2014?

7 A. Later half of 2014, not whenever the unit was
8 dissolved.

9 Q. No. But you were at the time that the 43 and
10 44 wells were drilled -- were spudded?

11 A. At the time they were spud, I was on the team
12 for approximately two or three months.

13 Q. You were what?

14 A. On the team for approximately two or three
15 months.

16 Q. Okay. Did you make the decision not to propose
17 those wells to Nearburg?

18 A. No. I didn't make that decision.

19 Q. Were you aware of that decision at the time it
20 was made?

21 A. At that time we were still under the
22 impression, due to recent conversations with Nearburg,
23 that they wanted to proceed with the Correction Term
24 Assignment.

25 Q. Okay. You're a land negotiator, right?

1 A. Yes, sir.

2 Q. Your role is to obtain the land -- comply with
3 the requirements to be sure that the company has the
4 legal rights --

5 A. Correct.

6 Q. -- to drill where they want to drill?

7 A. Correct.

8 Q. Now, in that sense, do you have any legal
9 training?

10 A. No, sir.

11 Q. So you're relying on what to qualify you to
12 give that type of advice to the company?

13 A. I attended Texas Tech University and received a
14 degree in energy commerce. I worked for four years at
15 ConocoPhillips as a senior landman, and I've been at
16 Concho for the last five years.

17 Q. Okay. Now, in appraising titles to land for
18 the purpose of acquiring land rights, are you familiar
19 with the statute of frauds as applied to conveyances of
20 interests in land?

21 A. Briefly.

22 Q. Well, like every rule that judges make, it has
23 a lot of exceptions and a lot of technicalities that
24 apply to it, but basically it's correct to say, is it
25 not, that there is a requirement that a conveyance of

1 land be in writing and signed -- or a memorandum,
2 thereof, be in writing and signed for it to be
3 enforceable? Are you familiar with that principle?

4 A. Yes, sir.

5 Q. So what did you have in writing from Nearburg
6 that you would have relied on to believe that Nearburg
7 had agreed to extension of the -- the Term Assignment?

8 A. We believed we had the right to drill the two
9 wells due to the Ratification and Joinder of the
10 Operating Agreement.

11 Q. Okay. Now, that's another issue. So let me go
12 through three possibilities here. As I see it from the
13 testimony I've heard, there are three possibilities
14 whereby -- as to what the situation could be with
15 Nearburg and COG at the time these wells were drilled.

16 A. Yes, sir.

17 Q. One is that the Term Assignment had somehow
18 been extended, even though there is no controversy, as I
19 understand it. The Term Assignment, the document,
20 expired at the time the unit had terminated. I haven't
21 read that entire document, but I haven't heard anybody
22 say that that isn't what it says, right?

23 A. I don't believe anybody's arguing with that.

24 Q. Okay. But one possibility is that that was
25 somehow extended so that Nearburg did not have a working

1 interest in the lease in Section 20.

2 Another possibility is that the joint
3 operating -- that the ratification of the Joint
4 Operating Agreement controls so that COG's rights are
5 controlled by the Joint Operating Agreement.

6 A third possibility is that there is no
7 extension of the Unit Agreement -- there is no extension
8 of the Term Assignment, and there was no ratification --
9 no effective ratification of the Joint Operating
10 Agreement, which means COG didn't have any right to
11 drill those wells, correct?

12 A. I guess.

13 Q. Okay.

14 EXAMINER BROOKS: Mr. Hall, can you tell me
15 what exhibit is the Term Assignment at?

16 MR. HALL: Exhibit 2.

17 EXAMINER BROOKS: I knew that because you
18 asked questions about it earlier.

19 MR. HALL: It's in our notebook, it's 2.

20 EXAMINER BROOKS: 2. Okay.

21 Q. (BY EXAMINER BROOKS) This was pointed out
22 earlier, but paragraph 2C of Exhibit A to the -- to
23 Exhibit 2 reads, "Nearburg should receive 24-hour notice
24 of the following advance spudding, et cetera.
25 Notification should be by phone to one of the following

1 persons." Now, can you testify as to whether any
2 notification of the spudding of the 43 or 44H was given
3 to Nearburg?

4 A. I cannot testify to that.

5 Q. So would you know about that if it had been
6 given, or would you just not --

7 A. No, I probably wouldn't. All of our notices
8 are handled out of our Artesia office.

9 Q. Okay. Very good.

10 So you don't know whether or not Nearburg
11 was ever notified of the spudding, and you've heard
12 Nearburg's testimony that they didn't learn until April
13 of 2015 -- I believe was what they said, or was it even
14 later than that?

15 MR. HALL: That's right.

16 EXAMINER BROOKS: That's what I was
17 thinking.

18 Q. (BY EXAMINER BROOKS) -- that that well had even
19 been drilled, correct? You don't know -- you don't know
20 anything to the contrary?

21 A. I do not know.

22 Q. But you might not know?

23 A. Probably not.

24 Q. Okay. I just wanted to clarify your testimony
25 on that.

1 If the operating agreement governs the
2 rights of COG, then COG would have been in breach of
3 contract if they drilled without proposing the well to
4 Nearburg, right?

5 A. I don't know if we would have or wouldn't have.

6 Q. Okay. So you don't have an opinion?

7 A. I do not.

8 Q. And that's assuming that the Term Assignment
9 had not been extended. That's why I said the operating
10 agreement controls. If the Term Assignment had been
11 extended -- if the Term Assignment was effectively
12 extended, then the Term Assignment would control COG's
13 right to drill.

14 A. Yes, sir.

15 Q. And since the Term Assignment provides that
16 Nearburg assigns all of their working interest, then COG
17 would have the right to drill, but they would also be
18 bound by the terms of this Term Assignment that required
19 notice to Nearburg, right?

20 A. I don't believe it requires notice. I think it
21 just calls for notice.

22 Q. Well, whatever.

23 A. But yes, I agree.

24 Q. And if the operating agreement controls, then
25 COG would be bound by the requirement to propose the

1 well --

2 A. Yes, sir.

3 Q. -- assuming the Term Assignment did not.

4 And if neither the operating agreement nor
5 the Term Assignment applies, then COG would not have a
6 right to drill, right?

7 A. Without an order, no.

8 Q. Okay. That's all -- I think that's all the
9 questions I have.

10 CROSS-EXAMINATION

11 BY EXAMINER JONES:

12 Q. How did COG obtain interest in the 43 and 44H
13 assignment -- or interest from Yates?

14 A. Okay. So Yates, ABO, MYCO and all the other
15 parties, as well as Nearburg executed their Ratification
16 and Joinder of the Unit Agreement and Unit Operating
17 Agreement at the time the Unit Agreement was put in
18 place. So even though Concho does not own an
19 interest -- a record title interest in the Yates' lease
20 in Section 17, we own a contractual interest and are
21 determined to be the operator through the Unit Operating
22 Agreement that is still in effect.

23 Q. It's still in effect because the leases are
24 still going as part of the unit?

25 A. Yes, sir. Not the leases. Article 13, I

1 believe, of the Operating Agreement states -- I believe
2 option two is checked that all wells -- or the Unit
3 Operating Agreement will remain in full force and effect
4 as long as there are producing wells within the
5 contracting area.

6 Q. Okay. I don't guess anybody's contested COG's
7 interest in the wells.

8 At any rate, do you work for Brent Sawyer?

9 A. No. Brent works for me.

10 Q. Okay. So he's the one that had a lot of the
11 conversations, it seems.

12 A. He did. Brent worked a lot of curative for us.

13 Q. And Lisa Winter?

14 A. Lisa's no longer employed with Concho.

15 Q. She did a lot of work out there?

16 A. She sure -- she sure did.

17 Q. Okay. And the acreage for the 43H and the 44H
18 were wholly contained within the SRO Unit?

19 A. Yes, sir.

20 Q. Okay. I don't have any more questions.

21 EXAMINER BROOKS: Okay. Redirect?

22 Mr. Feldewert, he's your witness.

23 MR. FELDEWERT: Sure.

24

25

REDIRECT EXAMINATION

1

2 BY MR. FELDEWERT:

3 Q. Mr. Owen, I want to ask you about the question
4 asked you about whether Nearburg had ever been provided
5 with the well costs of these wells that have been
6 drilled. Do you recall that?

7 A. Yes, sir.

8 Q. If you turn to what's been marked as COG Number
9 20, this is where Mr. Howard had asked for information
10 on the 43H and the 44H. Do you recall this email from
11 Aaron Myers to Randy Howard that was copied to you on
12 May 6?

13 A. Concho exhibit?

14 Q. Concho Exhibit 20.

15 A. 20. Yes.

16 Q. Do you recall that the information that was
17 provided to them on the 43H and 44H was so large that
18 they couldn't email it and had to send it on a thumb
19 drive?

20 A. Yes, sir.

21 Q. And do you recall, Mr. Owen, whether that
22 information included the actual well costs for these two
23 drilled wells?

24 A. I remember the work that went into putting
25 those files together, and I remember Accounting being

1 very involved in that and providing a complete
2 accounting for both of those wells. So I would say yes,
3 I believe, from a personal knowledge at this time, that
4 we did provide not only the well cost drilling complete
5 but the current costs to date of the two properties.

6 Q. Okay. And Mr. Hall went through with you a
7 list of -- a litany that no well proposals had been sent
8 to Nearburg and no AFEs had been sent and that there had
9 been no election to consent or nonconsent or provide the
10 well costs. Do you recall that?

11 A. Yes.

12 Q. If a party has communicated to your land team
13 that they intend to proceed with their interest as a
14 overriding royalty interest rather than as a working
15 interest, wouldn't you send this information to them?

16 MR. HALL: I'm going to object. That
17 assumes facts, testimony that are not in evidence.

18 EXAMINER BROOKS: I'm going to overrule
19 that objection because I believe that there's a basis on
20 which it can be concluded that there is some evidence.
21 I think it's relevant.

22 THE WITNESS: That is correct.

23 Q. (BY MR. FELDEWERT) Okay. And is that why your
24 land team didn't send this information to Nearburg?

25 A. Yes.

1 Q. And indeed don't title opinions that you
2 receive reflect that your land team informed the title
3 attorneys that COG understood that Nearburg desired to
4 continue under the Term Assignment with an overriding
5 royalty interest?

6 A. Yes, that is correct.

7 Q. As a result, did the title attorneys then
8 develop those title attorneys [sic] with the assumption
9 as had been expressed, that Nearburg intended to proceed
10 with an overriding royalty?

11 A. They did.

12 Q. Okay. And do you recall the first time that
13 Nearburg informed you or anyone on your land team that
14 it did not intend to proceed with an overriding royalty
15 interest?

16 A. To the best of my knowledge, I became
17 personally aware that Nearburg did not intend to keep
18 their override at the time that they were refusing to
19 sign the comms in the early first quarter of '15.

20 Q. First quarter of '15.

21 A. Yes, sir.

22 Q. That would have been months after the wells
23 were drilled?

24 A. Yes.

25 Q. And do you recall the emails from your land

1 team informing Nearburg before the wells were drilled
2 that if they did not want to proceed with an overriding
3 royalty interest, that they should let Concho know so
4 you could let the title attorneys know?

5 A. Yes. Are you referring to the March -- March
6 29th email by Brent Sawyer?

7 Q. The 2014 emails, yes, sir --

8 A. Yes.

9 Q. -- Exhibit Number 10.

10 A. Yes. I'm aware of this.

11 Q. And to your knowledge, before those wells were
12 drilled, they never informed COG that they did not
13 intend to proceed as an overriding royalty interest,
14 right?

15 A. That's correct.

16 MR. FELDEWERT: That's all the questions I
17 have.

18 EXAMINER BROOKS: Mr. Jones, did you have
19 any other questions? Yeah, go ahead. And then we'll
20 let Mr. Hall do recross, if he feels it's necessary.

21 RECROSS EXAMINATION

22 BY EXAMINER JONES:

23 Q. I had a question about -- but it's mainly
24 legal, and you're not a legal person.

25 EXAMINER JONES: But I'll just -- this Term

1 Assignment, the signor was Marbob. So it was -- I guess
2 it's being automatically assumed that the signor changes
3 over to when Marbob -- successor to Marbob was COG.

4 EXAMINER BROOKS: Well, that's subject to
5 the interest if it's recorded or if they had notice of
6 it.

7 EXAMINER JONES: There you go.
8 No more questions.

9 EXAMINER BROOKS: I thought I'd make sure
10 I'm giving -- of course, you asked a legal question, and
11 I'm your legal advisor.

12 EXAMINER JONES: Yeah. You can object to
13 my --

14 EXAMINER BROOKS: Okay. Do you wish to
15 recross, Mr. Hall?

16 MR. HALL: Yes.

17 RECROSS EXAMINATION

18 BY MR. HALL:

19 Q. I'd like to discuss briefly when the well costs
20 information were provided to COG. What's that date?

21 A. I don't know if that was the first date that
22 they were provided. I know that we did provide them --
23 I believe that we did provide them in the junk [sic]
24 drive. I'm not sure if the previous -- if the cost, the
25 drilling complete, was previously provided by any of my

1 land staff.

2 Q. All right. So you did discuss Exhibit 20, when
3 it indicates files were so big the information had to be
4 put on thumb drive, and that exhibit is dated May 6th,
5 2015; is that right?

6 A. Yes, sir.

7 Q. Before that time, it not been provided; do you
8 agree?

9 A. I do not agree. I do not know if they provided
10 the drilling and completion costs to anybody at
11 Nearburg.

12 Q. All right. And it's true that Nearburg never
13 actually delivered a signed Corrected Term Assignment or
14 extended Term Assignment; do you agree?

15 A. That's a true statement.

16 Q. Okay. Do you agree that when the Term
17 Assignment extension was being discussed, no well
18 information had been provided at all?

19 A. I'm not 100 percent sure what well information
20 had and hadn't been provided at that point.

21 Q. While that Term Assignment extension was being
22 discussed, Nearburg had no idea, no knowledge that the
23 43H and 44H wells had actually been drilled, correct?

24 A. I can't speak for Nearburg's knowledge.

25 Q. Do you have any indication that they did know?

1 A. I don't know. I do not.

2 Q. That information was withheld from them; was it
3 not?

4 A. I don't know if it was.

5 MR. FELDEWERT: Object. Asked and
6 answered.

7 EXAMINER BROOKS: Overruled.

8 Q. (BY MR. HALL) And you briefly discussed Exhibit
9 Number 10. Do you have that in front of you?

10 EXAMINER BROOKS: Which part is Exhibit
11 Number 10?

12 MR. HALL: It's COG's.

13 THE WITNESS: Yes, I do.

14 Q. (BY MR. HALL) That's an email chain starting in
15 March of 2014; do you agree?

16 A. Yes.

17 Q. Anywhere in that email chain, does COG indicate
18 to Nearburg that the 43H and 44H were to be drilled?

19 A. I've not read this email chain in its entirety.

20 Q. They say nothing more than additional title
21 work is to be performed; isn't that right?

22 A. If you say so.

23 Q. You don't disagree with that?

24 A. I haven't read it in its entirety. Would you
25 like for me to read it?

1 Q. Why don't you take the time to do that?

2 A. (Witness complies.)

3 EXAMINER BROOKS: Go ahead.

4 THE WITNESS: It appears that the start of
5 this email chain is incomplete. There is page 3 but no
6 page 4. By reading through page 3, at the bottom, it
7 doesn't seem like the email is finished. It doesn't
8 have the signature block. So --

9 Q. (BY MR. HALL) So do you have that portion of
10 the email, March 21, 2014, at 9:19 a.m., from Brent
11 Sawyer to Kathie Craft at Nearburg?

12 A. I'm sure we do.

13 Q. And that portion of the email indicates that
14 nothing more was being done, except some additional
15 title work?

16 A. This highlighted section?

17 Q. Yes, sir.

18 A. Brent Sawyer's comments there to me states that
19 he believes: However, we are moving forward with the
20 assumption that it was intended to keep the assignment
21 and the overriding royalty in effect and all the wells.
22 And he goes on to say if that is incorrect, let him
23 know. So I believe he's telling them that Nearburg is
24 going to continue to drill wells in the SRO Unit and let
25 us know that that is not correct. But I cannot speak

1 personally for Brent Sawyer.

2 Q. You'll agree that there is no indication in
3 there that the 43H and the 44H were to be started?

4 A. It does not mention the 43 and 44H wells.

5 Q. All right.

6 MR. HALL: I have nothing more.

7 EXAMINER BROOKS: I'm sorry?

8 MR. HALL: I have nothing more.

9 EXAMINER BROOKS: Very good. The witness
10 may step down.

11 And you said that was your last witness,
12 Mr. Feldewert?

13 MR. FELDEWERT: Yes, sir.

14 EXAMINER BROOKS: Okay. Now, do the
15 parties -- do the attorneys want to make closing
16 statements?

17 MR. HALL: I'd like the opportunity to do
18 that. I have one item of business that I need to take
19 care of.

20 EXAMINER BROOKS: Okay. Go ahead.

21 MR. HALL: I need to tender into evidence
22 what's been marked as Nearburg's Exhibit 65, and it is
23 the notification for this case when it was originally
24 filed.

25 MR. FELDEWERT: 65?

1 EXAMINER BROOKS: You left a large gap in
2 the exhibits. I imagine you didn't know how many you
3 were going to have.

4 MR. HALL: Yeah. That's the way it works
5 sometimes.

6 EXAMINER BROOKS: Yes.
7 Any objection, Mr. Feldewert?

8 MR. FELDEWERT: I don't know.

9 We're here today -- is this the notice of
10 the filing of the application, Scott?

11 MR. HALL: I'm sorry?

12 MR. FELDEWERT: Is this the notice of the
13 filing of the application and the hearing? Is that what
14 you're --

15 MR. HALL: Yes, it is.

16 MR. FELDEWERT: -- that we're here today
17 on?

18 EXAMINER BROOKS: Yeah. I was going to say
19 that if there is any fault of the notice, it's been
20 waived.

21 MR. FELDEWERT: I would think.

22 EXAMINER BROOKS: Exhibit 65 is admitted.
23 (Nearburg Exploration Company Exhibit
24 Number 65 is offered and admitted into
25 evidence.)

1 MR. HALL: And we would also like the
2 opportunity to tender into the record the
3 communitization agreements with the 2nd Bone Spring
4 depth limits that were not included with the transmittal
5 letter today. So we'll follow up with those.

6 EXAMINER BROOKS: Those are not in the
7 record. I think they are in the file. They've been
8 filed.

9 MR. HALL: They are attached to some of the
10 briefs.

11 EXAMINER BROOKS: I thought that was the
12 case. But you haven't filed them, and they have not
13 been filed in evidence?

14 MR. HALL: No. We'd like to supplement
15 those.

16 EXAMINER BROOKS: Any objection,
17 Mr. Feldewert?

18 MR. FELDEWERT: I have no objection.

19 EXAMINER BROOKS: Okay. Anything else
20 before we talk about closing arguments?

21 Okay. Do the parties wish to make --
22 counsel wish to make closing arguments?

23 MR. HALL: Yes.

24 MR. FELDEWERT: Mr. Brooks, before we
25 begin, may we take a five-minute break?

1 EXAMINER BROOKS: I think that's an
2 excellent idea.

3 (Recess 5:36 p.m. to 5:41 p.m.)

4 MR. HALL: If I might approach, I'd like to
5 provide the Hearing Examiners with a timeline of events,
6 which I think is supported by the testimony you've heard
7 today.

8 EXAMINER BROOKS: Okay. There are quite a
9 few more events on this list than there were on my
10 spreadsheet.

11 MR. HALL: Right. And I'm not offering
12 this as an exhibit. It's just -- so when you go to
13 draft an order, I thought it would be helpful to you.

14 EXAMINER BROOKS: I assume it's all
15 supported by the evidence.

16 MR. HALL: I believe it is.

17 EXAMINER BROOKS: Okay. Go ahead.

18 MR. HALL: And I'd like to lay out for you
19 what we're asking the Division do when you do create
20 your order.

21 EXAMINER BROOKS: Well, that's what I'm
22 very curious about. So I'm going to listen to that
23 technically.

24 CLOSING ARGUMENT

25 MR. HALL: Well, let me summarize just what

1 we're asking you to do, and this is set out in our
2 application.

3 But as briefly as I can summarize it, we're
4 asking the Examiners to make the determination that COG
5 did not have the right to drill the 43 and 44H wells on
6 the unconsolidated, uncommunitized and unpooled lease
7 acreage owned by Nearburg in Section 20.

8 We're asking that you make the
9 determination that COG has violated Section 70-2-17C and
10 70-2-18A of the Oil and Gas Act, the compulsory pooling
11 statutes. It was obliged to consolidate lands. In
12 addition, the corollary regulations of 19.15.14.8B,
13 19.15.16.15A and 19.15.16.15F, which address the
14 requirements for filing application for permits to
15 drill, drilling wells and then filing requests for
16 allowables.

17 We're also asking that you require COG to
18 account and pay to Nearburg the amounts which they're
19 entitled in the absence of pooling without recovery of
20 well costs or expenses if you find it appropriate to
21 force pool Nearburg's lands.

22 We're also asking that you cancel the
23 drilling permit for the 69H well, which is proposed on
24 Nearburg's acreage.

25 With respect to the 16H well, that well is

1 something of a problem. Nearburg has not had the
2 opportunity to review technical data related to that
3 well, and what we're asking is that you hold disposition
4 of that well aside and allow us to revisit that with a
5 recommendation for bringing that well into regulatory
6 compliance after Nearburg has been able to conduct its
7 technical review.

8 But just bear in mind that we have a
9 situation where COG is proposing the designation of a
10 nonstandard proration unit which has an overlapping
11 project area for a preexisting well. That's a problem.

12 EXAMINER BROOKS: Well, I see some problems
13 the 16H, but what you're saying is that you want us to
14 hold the order in abeyance and not dispose of that issue
15 until some later time unspecified.

16 MR. HALL: Right. We'd like the right to
17 come back and revisit the 16H with you. And I think --

18 EXAMINER BROOKS: You're not asking that
19 Nearburg be removed as operator as of now -- I mean COG
20 be removed as operator as of now?

21 MR. HALL: We have held out that
22 possibility in our application.

23 EXAMINER BROOKS: Yeah.

24 MR. HALL: We did not ask for that today.
25 We'll give some more thought to that problem.

1 EXAMINER BROOKS: That creates a problem if
2 we're going to take the case under advisement. Of
3 course, there is -- we can always re-open the Division
4 cases. We don't have the kind of -- losing the
5 jurisdiction that's involved in district court, but it
6 seems to me we kind of have to dispose of the issues
7 that have been raised after we take the case under
8 advisement.

9 So since you haven't unequivocally asked
10 for that relief, we would presumably deny it and an
11 order be entered. And, of course, you can always move
12 to re-open and that can be done at a later time. But
13 that's a whole other issue.

14 EXAMINER JONES: Can you repeat number two?

15 MR. HALL: Well, it's -- we're asking for
16 you to make the determination that COG acted in
17 violation of Section 70-2-17C and 70-2-18A, the
18 compulsory pooling statutes.

19 EXAMINER JONES: There was one after that.

20 MR. HALL: And then also the corollary
21 regulations for --

22 EXAMINER JONES: Yeah. But after that. It
23 was before the 69H that you mentioned.

24 MR. HALL: We're asking that you require
25 COG to account and pay to Nearburg the amounts of

1 production proceeds to which they're entitled in the
2 absence of pooling without the recovery of well costs or
3 expenses.

4 EXAMINER BROOKS: Well, the -- you're
5 asking for an accounting under 70-2-18 only if a
6 compulsory pooling order is to be issued; is that
7 correct?

8 MR. HALL: If you feel that COG has made
9 that showing --

10 EXAMINER BROOKS: Yeah.

11 MR. HALL: -- that would be correct. Even
12 if they fail to make the showing to justify compulsory
13 pooling relief, we think they are still obliged to
14 account and pay to us as those statutes require. We
15 think that's mandated.

16 EXAMINER BROOKS: Well, this is interesting
17 because I discovered very recent that there is a
18 Division -- that the Division has a case under
19 advisement that's been under advisement for almost two
20 years, if not more than two years. It was taken under
21 advisement in 2014, involves a 70-2-18 issue. I believe
22 you were one of the counsel in that case. So, you know,
23 hopefully you were on the same side in that one as you
24 are on this one.

25 MR. HALL: I wish I could remember.

1 EXAMINER BROOKS: I wish I could, too. I
2 wasn't here in 2014, though.

3 Okay. Well --

4 MR. HALL: Let me summarize for you what I
5 think the evidence has demonstrated --

6 EXAMINER BROOKS: Okay. Please do.

7 MR. HALL: -- today.

8 We think this is undisputed. COG didn't
9 provide well information on any 2nd or 3rd Bone Spring
10 wells under the Unit Operating Agreement or the expired
11 Term Assignment until troubles arose in May and June of
12 2015. Before that, they were without it.

13 We think we have established that COG knew
14 it had not consolidated separately owned interest within
15 the spacing units for the 43H and 44H either by valid
16 voluntary agreements or by obtaining compulsory pooling
17 orders.

18 We think COG improperly certified and filed
19 APDs and C-102s and began drilling operations without
20 Nearburg's consent or a compulsory pooling order. The
21 evidence showed that Nearburg was unaware of the 43H and
22 44H and the 69H until 2015. It's undisputed.

23 It's undisputed that COG attempted to get a
24 communitization agreement for the 43H, which included
25 the entire Bone Spring interval, and Nearburg refused to

1 execute that communitization agreement informing at that
2 time -- informing COG that the Term Assignment had
3 expired with the unit dissolution, and the interest had
4 reverted back to them. That is undisputed in the
5 record.

6 Nearburg only signed the communitization
7 agreements for the 2nd Bone Spring interval under a
8 threat of loss of lease, and they did so with a
9 reservation of rights in the transmittal letters in May
10 and June of 2015.

11 We know also that COG's compulsory pooling
12 applications are an effective admission that the
13 interest in Section 20 were unconsolidated, and I think
14 it's very unusual that COG does not even assert that it
15 had the right to drill these wells. It's nowhere on the
16 face of their application. It's undisputed that COG has
17 never had the authority to recover well costs or
18 expenses, and I think it's undisputed that the violation
19 of Nearburg's correlative rights is ongoing to this day.

20 Now, I've provided you with copies of the
21 two pooling statutes that I think are relevant to you
22 here, and the first one is Section 70-2-17. If the
23 Division determines that compulsory pooling is
24 appropriate, then the statute directs that you must
25 issue an order upon terms and conditions as are just and

1 reasonable in the circumstances.

2 And I've also provided you 70-2-17.

3 Unequivocally clear that the operator has a statutory
4 obligation to consolidate interest. Again, that's
5 reiterated in Section 70-2-18. I've provided you with a
6 copy of that statute as well.

7 That particular statute is what we were
8 just discussing. Subsection -- Subsection B of Section
9 70-2-18 sets forth consequences if an operator fails to
10 consolidate interests. And it's the provision in the
11 pooling statute that says where the operator fails to
12 obtain pooling, that it must pay the greater of the
13 amount that pooling had occurred or the amount that
14 pooling had not occurred. And no pooling has occurred
15 here. So our interpretation of that -- and that's a
16 section that is a mandate. It contains mandatory
17 language directing the Division to require that that
18 operator --

19 EXAMINER BROOKS: It doesn't in terms
20 direct the Division. It says the operator has that
21 right, but it doesn't say anything about the Division.

22 MR. HALL: It shall. Yeah. And I think it
23 has to be construed with the other provisions on the
24 compulsory pooling statute as well.

25 EXAMINER BROOKS: That's the question.

1 MR. HALL: But it says it shall pay the
2 greater amount. And when you think of that case --

3 EXAMINER BROOKS: It doesn't say whether
4 that's enforceable with the Division or whether that's a
5 right enforced in district court. Right?

6 MR. HALL: It does not say that. That's
7 correct. There is no limitation on the Division.

8 EXAMINER BROOKS: And there is no provision
9 as to how long the operator has to fail to compulsory --
10 to file a compulsory pooling before that provision kicks
11 in.

12 MR. HALL: Well, I think we have some
13 guidance on that under the reliance compulsory pooling
14 cases involving the CO2 leases --

15 EXAMINER BROOKS: Well, Will will be happy
16 to know something about that.

17 MR. HALL: And I can provide him with that.

18 EXAMINER BROOKS: I would appreciate that
19 because I am not familiar with those cases.

20 MR. HALL: And that's all I have today.

21 EXAMINER BROOKS: I mean, I think I wrote
22 one of them, but I don't recall what I did other than I
23 denied the compulsory pooling application in the one
24 that I remember.

25 Okay. Is that all?

1 MR. HALL: That's all I have today.

2 EXAMINER BROOKS: Okay. Mr. Feldewert, do
3 you want to add something?

4 CLOSING ARGUMENT

5 MR. FELDEWERT: Yeah, Mr. Examiner.

6 I sat here today and they talked about --
7 that they suggested defects and data that COG didn't
8 provide or the failure to provide certain notices that
9 they contend were required to be provided under the
10 agreements between parties. And we spent a lot of time
11 on that, and I was always wondering why, because the
12 issue here is not whether there has been any breach of
13 any particular agreement that's in place. Okay? The
14 issue here is really not even whether as a matter of
15 contract COG had a right to drill. Okay?

16 I mean, that's -- as in the TMBR/Sharp
17 case, those types of issues and the issues that they've
18 raised today about their data request, about the spud
19 notices, about what the contracts are that govern the
20 relationship between the party, whether they actually
21 ratified the Unit Operating Agreement -- okay -- these
22 are all issues that get sorted out by the district court
23 lawsuit. This is almost like a preview of what their
24 district court case is. All right?

25 But as I said to you at the beginning here,

1 the issue -- that's not the issue. Right? The issue
2 before you is what they said in TMBR/Sharp, because they
3 said, Well, you breached Division rules, just like in
4 TMBR/Sharp. They said Arrington had breached Division
5 rules. Okay?

6 So in the TMBR/Sharp case, the Commission
7 said -- and that's the claim. The issue for the
8 Division is whether there was -- whether the party that
9 filed the application and drilled did so under a
10 good-faith claim to title and a good-faith belief that
11 it is authorized to drill the well. Okay?

12 So did they have a good-faith belief?
13 You've heard all the evidence today. I went through the
14 exhibits with you. The Unit Operating Agreement,
15 remember we went through that? It lists their lease as
16 subject to the Unit Operating Agreement. It's in there.
17 It falls under that. Anybody looking at that Unit
18 Operating Agreement -- a successor operator like Concho
19 will go to that Unit Operating Agreement. They go to
20 Exhibit A-1, and what does it say? Take a look at our
21 Exhibit 4. It says the west half of Section 20 is under
22 this Unit Operating Agreement, and the parties have
23 pooled their interest under that Unit Operating
24 Agreement, and you have a right to drill. Okay?

25 They say, Well, we didn't -- our interest

1 reverted. We never ratified that, even though they
2 signed the same ratification forms as Yates did. But
3 that's going to get sorted out by the court.

4 The question is: Did COG, looking at that,
5 looking at the fact that the parties are listed in
6 there, that they had signed -- Nearburg itself, they
7 held a working interest. Remember that debate we had?
8 I had to pull teeth to get that they had a working
9 interest when they signed that thing. They said they
10 were ratifying it. They used the same kind of form.
11 Did not want to take that back. But in any event, it's
12 listed in the unit agreement. Marbob thought they
13 ratified it.

14 So did Concho have a good-faith belief that
15 if they had a working interest -- did they have a
16 good-faith belief that it falls under the Unit Operating
17 Agreement, and, therefore, they're authorized to
18 operate? Okay?

19 Then we have the issue of the Term
20 Assignment, right? We tell them in March 2014 it's
21 expired. We went through that email. We said, Here's
22 how we're going to proceed on this presumption that you
23 want to proceed with your override, not be treated as a
24 working interest but as an override. And they never
25 signed the contract. In fact, in writing, Mr. Howard

1 said, We are agreeable to extending the Corrected Term
2 Assignment and treating this as an override.

3 And I spent a long time, as our exhibits
4 reflect, pointing out what their overriding royalty
5 interest is, not working but overriding interest, and at
6 no point in time did they say, COG, you can't operate on
7 our acreage. And COG was operating already. They had
8 the 16H well. They drilled that in 2001. They were
9 still operating on their acreage. They said, Well, we
10 didn't know about the 43H.

11 We filed the APD for the 43H and 44H in
12 February 2014. That's in the well files. We sent them
13 a communitization agreement in July of 2009, or July of
14 2014, there is a communitization agreement for the 43H
15 in the west half of the west half, exactly where the 16H
16 is. And at no point in time did they say, You, COG, are
17 not authorized to operate on our acreage. Never said
18 anything. They admit they didn't sign the TA, the
19 extension of the TA. They said we agreed to it, but we
20 didn't sign it because we were still trying to work out
21 the override.

22 EXAMINER BROOKS: But you never sent a well
23 proposal under the terms of the operating agreement,
24 right?

25 MR. FELDEWERT: Correct, because they said

1 they wanted to be treated as an override. Why would you
2 send a well proposal to somebody -- you tell me,
3 Mr. Brooks. Yeah, we've got this issue. We think it
4 expired, but let's go forward. We are agreeable to
5 extending it. Treat us as an override. I'm not going
6 to send you a well proposal. I'm going to treat you as
7 an override.

8 Then after all of this, it is not until
9 months after the well's drilled that they send their
10 June letter saying, We're not going to be treated as an
11 override anymore. We don't want that Term Assignment.
12 We want a working interest, and we want our information
13 as a working interest owner, months after the wells are
14 drilled. Kind of a big change in position, right?
15 Okay?

16 But even then, there is nothing in those
17 letters that say, You, Concho, can't operate on your
18 acreage. Again, we're operating the 16H. By that time,
19 we've drilled the 43H, and we're operating that. We've
20 got the 44H, and we're operating that. They knew all
21 that, and they didn't say, COG, you're not authorized to
22 operate on our acreage.

23 In fact, they papered it up with a
24 communitization agreement that says -- and those are our
25 Exhibits 26 and 27 -- in no uncertain terms, no caveats,

1 no exceptions, COG Operating, LLC shall be the operator
2 of said communitized area and all matters of operation
3 shall be determined and performed by COG Operating, LLC,
4 for this very acreage that they now dispute. And they
5 know that's going into the public record.

6 And now they're coming here before you
7 saying, They had no good-faith belief that they could
8 operate on our acreage. I don't know how they can say
9 that. Instead, all they seem to be saying is, Well, you
10 know, we think that maybe there was a breach of this --
11 there is no agreement or a breach of that provision, we
12 didn't mean to sign all that stuff.

13 But when you look at this -- at this
14 record, I don't know how you can look at this and say to
15 COG, You did not have a good-faith belief that you could
16 operate on your acreage. That's the question. So any
17 issue is why are we pooling now? Why didn't we pool
18 before? We didn't feel like we needed to pool before,
19 right? Either they had -- were wanting to proceed under
20 their override because they were going to sign a
21 Corrected Term Assignment, or even if they didn't and
22 they got their working interest, the Joint Operating
23 Agreement says we're the operator and it falls under
24 that. So why would you seek pooling when you have a
25 voluntary agreement?

1 The only reason they filed a pooling
2 order -- or filed a pooling application is because in
3 November, they filed their lawsuit. And for the first
4 time, in that lawsuit, they say, COG is not authorized
5 to operate, and they are in trespass. None of that
6 stuff was said before.

7 Now we look at that and we say -- they made
8 it very clear. They say, We have no agreement. Well,
9 now we look at the Oil and Gas Act. Okay. If that's
10 their position, that there is no agreement, then we have
11 to get a pooling order, because it says you've got to
12 have a pooling order or voluntary agreement. They have
13 now said there is no voluntary agreement, so we've got
14 to go get a pooling order. That's why we had filed for
15 the pooling order. We didn't ask for a risk penalty.
16 We filed for our pooling order straight up, and that'll
17 be in effect until the courts determine whether there is
18 a voluntary agreement. And if they determine it's not a
19 voluntary agreement, then we've got the pooling order.

20 So that's what this case is all about. I
21 mean, we spent a lot of time on a lot of side issues.
22 But the real issue under TMBR/Sharp is does this
23 evidence indicate whether or not COG had a good-faith
24 belief that they were authorized to operate on the
25 acreage? Everything beyond that is their contract claim

1 before the district court.

2 EXAMINER BROOKS: Well, let's see if I have
3 any more questions here for counsel. You've cited
4 some -- several provisions of the rules, and I'm not
5 as -- familiar with the rules as I am with the statutes.
6 I know the compulsory pooling statutes are very short,
7 and I've dealt with them extensively.

8 Where is the rule book?

9 In the application, you cited 19.15.14.8B.
10 This is an exhibit book. Where's my rule book? Black
11 letter law, 8B.

12 MR. HALL: You can find those in our
13 Exhibit 20.

14 EXAMINER BROOKS: "Mineral owner or lessee
15 consent required. Operator shall not file" -- yeah.
16 That's the one that requires that they have -- that they
17 have consent to an owner of each tract within the unit
18 to drill a horizontal. Oh, now, that's the vertical
19 well provision.

20 Okay. Now, at the time that the original
21 C-101 application for permit to drill was filed, COG
22 undoubtedly had a -- had an interest, did they not,
23 because that was filed while the unit agreement was in
24 effect?

25 MR. HALL: The rule also says "shall not

1 commence drilling."

2 EXAMINER BROOKS: Yeah. I believe that's
3 another. I believe that's -- "nor commence drilling."
4 Okay.

5 And 19.15.16.15A, I assume that's probably
6 the parallel provision for horizontal wells?

7 MR. HALL: That's right.

8 EXAMINER BROOKS: 19.16.15 is all about
9 horizontal wells. Yeah. That's the one -- I'm familiar
10 with that one.

11 19.15.16.15F, I'm pretty sure I know what
12 that is. Let me find it.

13 MR. HALL: That has to do with filing a
14 C-102.

15 EXAMINER BROOKS: Okay. And there is
16 another applicant provision, if I can find it.

17 Did you find any others in here, Mr. Hall?

18 MR. HALL: I believe that covers them.

19 EXAMINER BROOKS: Those are the two. There
20 is another provision that applies to the 43H, or could
21 apply to the 43H, if I can find it.

22 MR. HALL: Yeah. I believe that would be
23 the permitting provision.

24 EXAMINER BROOKS: The provision -- yeah. I
25 know you-all are aware of it because I remember

1 something being mentioned. It's the overlapping -- the
2 one that deals with overlapping project areas. I don't
3 remember where it is in the rules, but it says you have
4 to have the consent of all the working interests.

5 EXAMINER JONES: That will be the west
6 half-west half.

7 EXAMINER BROOKS: Well, yeah. That would
8 be the one from -- 43 is the west half-west half, right?

9 EXAMINER JONES: It overlaps with 16H.

10 EXAMINER BROOKS: It overlaps the 16H. So
11 it required the consent -- and it appears to require the
12 consent of the working interest owners. Of course, that
13 involves the same issue, was Nearburg a working interest
14 owner. But I don't know why that rule -- I don't right
15 offhand remember where the provision of that rule is in.

16 MR. HALL: We'll find that for you.

17 EXAMINER BROOKS: Okay. I appreciate it.
18 I should know that, but I don't.

19 Okay. Very good. We'll -- I may need some
20 briefing on this case, but right now I'm not sure what
21 issues I would need to be briefed. And I've been given
22 a brief on this TMBR/Sharp issue, and I need to review
23 all those TMBR/Sharp orders.

24 And you're going to provide that one -- I
25 think you already have. Didn't you provide that?

1 MR. HALL: I don't think I have. You were
2 provided a brief from COG; did you say? We haven't seen
3 that.

4 EXAMINER BROOKS: I think I saw that in
5 some of the materials that were presented in some of the
6 pretrial.

7 MR. HALL: They filed a motion to dismiss.

8 MR. FELDEWERT: We attached the TMBR/Sharp
9 case to our brief.

10 EXAMINER BROOKS: I think you did.

11 Right now I'm not going to ask you for any
12 more briefings because I don't know what, if anything, I
13 need at this point. I'm going to study it, and if there
14 is anything I need, I'll --

15 MR. HALL: Let me just suggest that we did
16 attach the TMBR/Sharp order. We also attached the
17 Sampson order which led to the operator certification on
18 the C-102.

19 EXAMINER BROOKS: Right.

20 MR. HALL: It's the requirement that the
21 operator have an ownership interest, which under the
22 Sampson order -- I was involved in both cases.

23 EXAMINER BROOKS: Yes. I remember, and I
24 was, too.

25 MR. HALL: It's more than a good-faith

1 belief. It's a good-faith claim of title. And you've
2 already spotted the statute of --

3 EXAMINER BROOKS: If I remember the facts
4 in the Sampson case correctly, they didn't have any
5 title, period, to drill A side tract, and they were a
6 naked trespasser.

7 MR. FELDEWERT: If you look at the order,
8 the parties STIPULATED they had no interest.

9 EXAMINER BROOKS: That was the way I
10 remembered it. Anyway, I'll review all those orders
11 because it's hard to remember those details.

12 There being nothing further, Case Numbers
13 15441, 15481 and 15482 are taken under advisement.

14 MR. FELDEWERT: Thank you.

15 EXAMINER BROOKS: Thank you, gentlemen.

16 (The proceedings conclude, 6:12 p.m.)

17

18

19

20

21

22

23

24

25

I do hereby certify that the foregoing is
a correct report of the proceedings in
the above captioned case 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, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20 and
7 Registered Professional Reporter, do hereby certify that
8 I reported the foregoing proceedings in stenographic
9 shorthand and that the foregoing pages are a true and
10 correct transcript of those proceedings that were
11 reduced to printed form by 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.

19 DATED at Albuquerque, New Mexico, on May
20 17, 2016.

21 
22

23 MARY C. HANKINS, CCR, RPR
24 New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2016
Paul Baca Professional Court Reporters
25