

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

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

7 APPLICATION OF COG OPERATING, LLC CASE NO. 15609
8 FOR A NONSTANDARD SPACING AND
9 PRORATION UNIT AND COMPULSORY
10 POOLING, LEA COUNTY, NEW MEXICO.

11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 EXAMINER HEARING

13 January 5, 2017

14 Santa Fe, New Mexico

15 BEFORE: MICHAEL McMILLAN, CHIEF EXAMINER
16 DAVID K. BROOKS, LEGAL EXAMINER

17 This matter came on for hearing before the
18 New Mexico Oil Conservation Division, Michael McMillan,
19 Chief Examiner, and David K. Brooks, Legal Examiner, on
20 Thursday, January 5, 2017, at the New Mexico Energy,
21 Minerals and Natural Resources Department, Wendell Chino
22 Building, 1220 South St. Francis Drive, Porter Hall,
23 Room 102, Santa Fe, New Mexico.

24 REPORTED BY: Mary C. Hankins, CCR, RPR
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(2:20 p.m.)

EXAMINER McMILLAN: Call the hearing back to order.

I'd like to call Case Number 15609 application of COG Operating, LLC for a nonstandard spacing and proration unit and compulsory pooling, Lea County, New Mexico.

Call for appearances.

MS. KESSLER: Mr. Examiner, Jordan Kessler, for the Santa Fe office of Holland & Hart, on behalf of the Applicant.

EXAMINER McMILLAN: Any other appearances?

MR. MORGAN: Thank you, Your Honor. Scott Morgan, with Cavin & Ingram, on behalf of Tonkin Mineral Interests, LLC.

MS. KESSLER: Two witnesses today.

EXAMINER McMILLAN: Okay. If the witnesses would please stand up and be sworn in at this time.

(Mr. Cason and Mr. Bertalott sworn.)

EXAMINER McMILLAN: Please proceed.

BRYCE CASON,
after having been first duly sworn under oath, was questioned and testified as follows:

1 DIRECT EXAMINATION

2 BY MS. KESSLER:

3 Q. Please state your name for the record and tell
4 the Examiners by whom you're employed and in what
5 capacity.

6 A. My name is Bryce Cason, and I am a landman for
7 COG Operating, LLC.

8 Q. Have you previously testified before the
9 Division?

10 A. Yes, I have.

11 Q. Were your credentials as a petroleum landman
12 accepted and made a matter of record?

13 A. Yes.

14 Q. Are you familiar with the application filed in
15 this case?

16 A. Yes.

17 Q. And are you familiar with the status of the
18 lands in the subject area?

19 A. I am.

20 MS. KESSLER: Mr. Examiners, I would tender
21 Mr. Cason as an expert in petroleum land matters.

22 EXAMINER McMILLAN: Any objection?

23 MR. MORGAN: No objections.

24 EXAMINER McMILLAN: So qualified.

25 Q. (BY MS. KESSLER) Mr. Cason, please tell me what

1 COG seeks under this application.

2 A. We are seeking to create a 320 nonstandard
3 spacing unit comprised of the west half-east half of
4 Section 34, Township 25 South, Range 33 East, as well as
5 the west half-east half of Section 3, Township 26 South,
6 Range 33 East.

7 Q. Do you seek to pool the uncommitted --
8 uncommitted interest owners in the Wolfcamp Formation?

9 A. Yes, we do.

10 Q. Do you seek to dedicate the spacing unit to the
11 initial well?

12 A. Correct.

13 Q. That would be the Columbus Fee #23H and the
14 Columbus Fee #24H?

15 A. Yes, that's correct.

16 Q. What is Exhibit 1?

17 A. Exhibit 1 is the C-102 for the Columbus Fee
18 #23H.

19 Q. Has an APD been approved for this well?

20 A. Yes, it has.

21 Q. And the API number is reflected on the C-102?

22 A. Yes.

23 Q. Has the Division designated a pool for this
24 area?

25 A. Yes, undesignated Wolfcamp.

1 Q. And that is Pool Code 98094?

2 A. Yes.

3 Q. What is the character of these lands?

4 A. They are fee.

5 Q. Is the pool -- the wildcat pool governed by
6 Division statewide rules for oil wells?

7 A. Yes.

8 Q. With 330-foot setbacks?

9 A. Yes.

10 Q. And the two wells will be orthodox pursuant to
11 the pool rules, correct?

12 A. Yes.

13 Q. Are there any depth severances in this pool?

14 A. No.

15 Q. What is Exhibit 2?

16 A. Exhibit 2 is the C-102 for the Columbus Fee
17 #24H.

18 Q. And has an APD been approved for this well?

19 A. Yes, it has.

20 Q. And is the API number right here on the C-102?

21 A. Yes.

22 Q. Is this the same pool as the 23H well?

23 A. Yes, it is.

24 Q. Why does COG seek to dedicate a spacing unit
25 for two initial wells?

1 A. We are seeking to dedicate two initial wells
2 for operational efficiencies and cost-saving items.

3 Q. So will you -- will COG drill and complete the
4 wells back-to-back?

5 A. That's correct.

6 Q. And are you doing this for economic reasons?
7 Are there costs associated with the operational
8 efficiencies?

9 A. Yes, that is right.

10 Q. Were all interest owners provided notice of
11 this plan to drill back-to-back?

12 A. Yes, they were.

13 Q. Have any of them objected to the proposition to
14 drill back-to-back?

15 A. No.

16 Q. What is Exhibit 3?

17 A. Exhibit 3 is a breakdown of ownership by tract.

18 Q. And that would be for both the 23H and 24H
19 wells that are in the same spacing unit?

20 A. Correct. Yes, that's correct.

21 Q. The last page is a recap, correct?

22 A. Yes, that's correct.

23 Q. What interests do you seek to pool? Are they
24 working interest owners, or are there unleased mineral
25 interest owners?

1 A. Both. There are both.

2 Q. Okay. And those interests you're seeking to
3 pool are bolded and italicized, correct?

4 A. Yes, that's correct.

5 Q. Is Exhibit 4 a copy of the well-proposal letter
6 that you sent to the interest owners for the 23H well?

7 A. This one was sent to Tonkin Mineral Interests,
8 LLC.

9 Q. Have similar letters been sent to all the
10 mineral interests?

11 A. Yes.

12 Q. When was this letter sent?

13 A. This was sent on October 13th, 2016.

14 Q. Did it included an AFE?

15 A. Yes, it did.

16 Q. Is Exhibit 5 a well-proposal letter to Tonkin
17 Mineral Interests for the 24H well?

18 A. Yes, it is.

19 Q. And a similar letter was sent to all of the
20 other interest owners?

21 A. Yes.

22 Q. What date was this letter sent?

23 A. It was also sent on October 13th, 2016.

24 Q. And it included an AFE?

25 A. Yes.

1 Q. Are the costs on these two AFEs consistent with
2 what COG has drilled with similar horizontal wells in
3 this area?

4 A. Yes, it is.

5 Q. What efforts did you undertake to reach an
6 agreement with interest owners that you seek to pool?

7 A. Each -- each interest we seek to pool has been
8 contacted whether by phone or email or a combination of
9 the two. There were also well proposals for both of the
10 subject wells with AFEs and an operating agreement with
11 the option to participate with their interest. We also
12 gave each of the interest owners an offer to lease the
13 minerals.

14 Q. With respect to Tonkin Mineral Interests, LLC,
15 can you summarize your communications?

16 A. Yes. I began communications with --

17 Q. Let me interrupt you right after I had you
18 start.

19 I want to clarify, too. You negotiated
20 both with the trustee, but mainly with an attorney
21 with -- on behalf of the trustee; is that correct?

22 A. That's correct. Yes. My communications began
23 the first, second week of September with the trustee of
24 Tonkin Mineral Interests, LLC. We spoke on the phone
25 the very first week, and we had multiple emails

1 following up on that. About a month later, I was
2 referred to their attorney, Sealy Cavin, and from there,
3 I began working with him and negotiating with him
4 further. At this time we have not come to terms on an
5 agreement.

6 Q. And remind me when you started negotiating with
7 Tonkin.

8 A. Early September, yes.

9 Q. Have you sent a well-proposal letter for both
10 of the spacing units?

11 A. Yes. They received well proposals for both
12 wells, AFEs, giving them the option to participate with
13 their interest if they wanted to do so, followed with an
14 operating agreement for them to review. We received
15 back well proposals. Then we sent lease offers out and
16 negotiated with them further on the lease.

17 Q. Okay. You mentioned that you've been
18 negotiating since September. Approximately how often
19 have you communicated with Sealy Cavin, who is an
20 attorney representing Tonkin?

21 A. Yes. I would say three or four times a week.
22 We called each other frequently, left voice mails. As
23 time went on, they became more frequent when we were
24 trying to close on negotiations, but three or four times
25 consistently.

1 Q. By phone or email?

2 A. By phone or email, yes.

3 Q. Have you reached an agreement?

4 A. No, we have not.

5 Q. Will you continue to negotiate with Tonkin?

6 A. Yes.

7 Q. And in the event that you reach an agreement,
8 will you advise the Divison that that supersedes a
9 pooling order?

10 A. Yes, we will.

11 Q. In your opinion, do you believe that has COG
12 made a good-faith effort to try to reach an agreement
13 with Tonkin Mineral Interests?

14 A. Yes, I do.

15 Q. Have you estimated the overhead and
16 administrative costs for drilling and completing these
17 wells?

18 A. Yes. 7,000 a month while drilling and 700 a
19 month while producing.

20 Q. Are these costs in line with what COG and other
21 operators in the area charge for similar wells?

22 A. Yes.

23 Q. Do you ask that those administrative and
24 overhead costs be incorporated into any orders resulting
25 from this hearing?

1 A. Yes.

2 Q. Do you ask that those costs be adjusted in
3 accordance with the COPAS accounting procedures?

4 A. Yes, I do.

5 Q. With respect to uncommitted interest owners, do
6 you request that the Division impose a 200 percent risk
7 penalty?

8 A. Yes, I do.

9 Q. Is Exhibit 6 a plat identifying the offset
10 operators or lessees in the 40-acre tracts surrounding
11 the proposed nonstandard spacing unit.

12 A. Yes, operators and lessees of record.

13 Q. Is Exhibit 7 an affidavit prepared by my office
14 with attached letters providing notice of this hearing
15 to the parties that you seek to pool and to the offset
16 operators and lessees of record?

17 A. Yes, that is correct.

18 Q. And is Exhibit 8 an Affidavit of Publication in
19 Lea County providing notice of this hearing?

20 A. Yes.

21 Q. Were Exhibits 1 through 6 prepared by you or
22 compiled under your direction and supervision?

23 A. Yes, they were.

24 MS. KESSLER: Mr. Examiners, I'd move
25 admission of Exhibits 1 through 8.

1 MR. MORGAN: No objections.

2 EXAMINER McMILLAN: Exhibits 1 through 8
3 may now be accepted as part of the record.

4 (COG Operating, LLC Exhibit Numbers 1
5 through 8 are offered and admitted into
6 evidence.)

7 CROSS-EXAMINATION

8 BY EXAMINER McMILLAN:

9 Q. Were there unlocatable interests?

10 A. No. We were able to locate every owner.

11 EXAMINER McMILLAN: Excuse me, sir. I'm
12 going to let you -- that was -- proceed.

13 EXAMINER BROOKS: Cross-examination?

14 MR. MORGAN: Happily. I will try and make
15 this as quick as possible, as painless as possible in an
16 effort to give Ms. Kessler's voice a little bit of a
17 rest and to get those folks back to Midland, if they
18 want to head back.

19 CROSS-EXAMINATION

20 BY MR. MORGAN:

21 Q. First I'm going to step back to your job just
22 for a moment. You're employed with COG?

23 A. Yes.

24 Q. How long have you been employed with COG?

25 A. I've been with COG for a little over year and a

1 half.

2 Q. Okay. And as a petroleum landman.

3 Had you been employed as a petroleum
4 landman prior to that?

5 A. No.

6 Q. If you could give us a brief description of
7 what your job is with respect to negotiating leases.

8 A. Right. So I, first of all, have to locate who
9 the interest owners are. It's my job to facilitate the
10 voluntary agreement with those owners so that we can
11 drill our wells.

12 Q. Okay. And what's your goal in undertaking
13 those negotiations on behalf of COG?

14 A. The goal would be to come to a mutual agreement
15 with the other party. It's beneficial.

16 Q. Okay. Now I'm going to step just for a moment
17 to this proposed lease or the lease negotiations with
18 Tonkin Minerals.

19 A. Right.

20 Q. And I'm going to ask you to walk us through it
21 for a minute --

22 A. Okay.

23 Q. -- and bear with me just for a moment.

24 The lands that you're seeking to pool are
25 320 acres, and the lease with Tonkin, I believe, covers

1 80 acres; is that correct?

2 A. 80 gross acres.

3 Q. 80 gross acres.

4 And are some of the lands that Tonkin has
5 an interest in already subject to leases?

6 A. For this pool, no.

7 Q. For this pool, no.

8 Are they subject --

9 A. I'm sorry. As far as COG leases go.

10 Q. As far as COG leases go.

11 A. I mean, Tonkin may have leased to other
12 operators and have a piece of this well.

13 Q. They may have a piece of the well?

14 A. But as COG, we do not.

15 Q. Okay. Thank you.

16 But they do have interests -- other
17 interests now are leased in this well? Is your
18 understanding?

19 A. Yes.

20 Q. Just not leased to COG?

21 A. Correct.

22 Q. Okay. And as the operator and as the petroleum
23 landman, you're familiar with those leases?

24 A. I'm familiar somewhat with them. I have not
25 reviewed them personally.

1 Q. Okay. Okay. But you are familiar that they do
2 exist?

3 A. Yes.

4 Q. Okay. Okay. Perfect. Thank you.

5 Now, were these lands that COG is seeking
6 to pool or lease from Tonkin Minerals, were they subject
7 to these prior leases?

8 A. They have been subject to a prior lease before
9 that expired as to certain depths.

10 Q. Okay. Okay. Do you know when about that lease
11 was executed?

12 A. 2007.

13 Q. 2007. Okay. Okay.

14 Are there any other leases that these lands
15 may be subject to that you're aware of to Tonkin
16 Minerals in these wells?

17 A. Can you -- can you --

18 Q. Are there any other leases out there that
19 Tonkin has executed that would affect these wells as to
20 these depths?

21 A. I'm not quite sure what -- as far as like COG
22 leases go?

23 Q. Any leases that you know would be committed to
24 these lands and these wells.

25 A. Yes. There is another Tonkin mineral interest

1 lease.

2 Q. Do you know when that lease was executed?

3 A. I do not.

4 Q. Stepping back as well to your opinion on
5 good-faith efforts in negotiations with respect to
6 leases, what, in your opinion, constitutes good faith or
7 good-faith negotiations?

8 MS. KESSLER: I would object to the extent
9 that he's asking a legal question.

10 MR. MORGAN: I would offer that he has
11 opined in his expert opinion that good-faith
12 negotiations and efforts were entered into, and he can
13 give his opinion as to what that means.

14 EXAMINER McMILLAN: I'll overrule the
15 objection.

16 THE WITNESS: Would you repeat the
17 question?

18 Q. (BY MR. MORGAN) What, in your opinion,
19 constitutes good-faith negotiations or good-faith
20 efforts?

21 A. I think the continual communication streams
22 between the two parties and the strong effort that I've
23 shown to come to a voluntary agreement would qualify as
24 good-faith efforts to negotiate this lease voluntarily.

25 Q. Okay. Do you have any opinion with respect to

1 good-faith efforts on whether -- or what good-faith
2 efforts are constituted when it comes to determining a
3 possible bonus for a lease?

4 A. There are various inputs that go into
5 determining what we were going to offer for a bonus.
6 There is not a straight and easy answer. It's multiple
7 factors.

8 Q. Can you expand on how you determine what a
9 bonus might be, how you would consider maybe the low end
10 and the high end?

11 MS. KESSLER: I would object to that to the
12 extent it offers -- or requests information that's
13 outside of the witness' scope of knowledge.

14 MR. MORGAN: He's testified that he's
15 entered into lease negotiations and that he's an expert
16 in petroleum land matters.

17 EXAMINER BROOKS: I'll overrule the
18 objection.

19 THE WITNESS: Repeat the question, please.

20 Q. (BY MR. MORGAN) How you determine the low end
21 and the high end of what a lease bonus might be.

22 A. Some of the facts that go into that would be a
23 legal description of where the acreage actually is, the
24 number of acres that are available to lease and things
25 of that nature. I mean, there are --

1 Q. Okay. In this particular instance, with
2 respect to Tonkin Minerals --

3 A. Yes.

4 Q. -- can you point to any specific information
5 that went into a decision on what the high-end versus
6 low-end bonus consideration might be?

7 MS. KESSLER: I would object to the extent
8 that he is calling for a confidential and proprietary
9 evaluations for COG.

10 MR. MORGAN: I would take the position it's
11 up to the operator under the statutes and the
12 regulations to provide and prove their good-faith
13 efforts.

14 EXAMINER BROOKS: Well, but they're not
15 required to provide privileged information if they don't
16 want to.

17 I'll sustain the objection.

18 Q. (BY MR. MORGAN) As a professional, have you
19 ever considered how you balance getting the best deal
20 for COG with negotiating in good faith?

21 MS. KESSLER: I'm going to object that that
22 causes the witness to speculate.

23 MR. MORGAN: Opinion testimony.

24 EXAMINER BROOKS: I agree it causes the
25 witness to speculate, but I'm going to overrule the

1 objection anyway. He can say if he has an opinion on
2 the matter.

3 THE WITNESS: Can you repeat the question?

4 Q. (BY MR. MORGAN) Absolutely. Have you
5 considered, in your professional opinion, how you
6 balance and negotiate in good faith with getting the
7 best deal for your company?

8 A. Yes, I've considered it.

9 Q. And how have you considered it?

10 A. I'm not quite sure --

11 MS. KESSLER: Objection. I don't believe
12 that question's very clear.

13 MR. MORGAN: Yeah. I apologize. It was
14 not very clear. I sustain the objection.

15 Q. (BY MR. MORGAN) What do you consider or what
16 have you considered in balancing good faith versus
17 getting the best deal for your company?

18 MS. KESSLER: And I'll object to the extent
19 it calls for any proprietary or confidential
20 information.

21 EXAMINER BROOKS: Well, I guess to be
22 consistent, I will sustain that objection. I don't know
23 whether it does or not, but I don't want a three-day
24 hearing for a product of privileged information.

25 MR. MORGAN: That's fine. Let's move on.

1 Q. (BY MR. MORGAN) With respect to your lease
2 negotiations with Tonkin, do you recall what the initial
3 bonus offer you made to Tonkin Minerals was?

4 A. I believe it was \$500 [sic] an acre. That's --
5 that's what I believe the negotiations began at.

6 Q. Okay. Are you able or prepared to introduce
7 any specific evidence as to why that bonus was started
8 with or offered, other than running into issues with
9 privilege?

10 MS. KESSLER: Again, I'll object for the
11 record it's confidential or proprietary information.

12 EXAMINER BROOKS: Well, he limited his
13 question to exclude any confidential and proprietary
14 information, and the witness can answer with that
15 reservation, if he can't answer without disclosing
16 information with regard to the confidential --

17 MR. MORGAN: I can repeat that, with
18 limited instructions.

19 Q. (BY MR. MORGAN) Are you prepared to provide any
20 specific evidence as to why that particular number was
21 chosen at the beginning of the negotiation point for the
22 bonus with Tonkin?

23 MS. KESSLER: Objection. I think that
24 calls for information that is asking very specifically
25 for Concho to divulge information about their process

1 for evaluating acreage, and I think that that's outside
2 of the realm of what we're dealing with here.

3 EXAMINER BROOKS: The question is whether
4 he's prepared to present any evidence. And if he is not
5 prepared to present any evidence -- if he doesn't have
6 any evidence that Concho is not keeping confidential,
7 not asserting confidentiality that he's not prepared
8 to present evidence, he can answer no. If he has any
9 information that can be presented, he can answer the
10 question.

11 THE WITNESS: Like I mentioned earlier, I
12 can give you the various factors that are considered,
13 but I can't go into how we formulated that specific
14 offer, no.

15 Q. (BY MR. MORGAN) No specifics.

16 EXAMINER BROOKS: Okay. For my
17 information, because I missed it, what was the --

18 THE WITNESS: The initial offer?

19 EXAMINER BROOKS: Yeah.

20 THE WITNESS: It was \$500 an acre.

21 EXAMINER BROOKS: 500 an acre. Okay. Go
22 ahead.

23 Q. (BY MR. MORGAN) When you're negotiating --
24 going back to your job, you've negotiated a lease such
25 as this?

1 A. Yes.

2 Q. There are kind of two major parts. You look at
3 the consideration of the bonus and you look at lease
4 provisions?

5 A. Right.

6 Q. How closely tied together are those? Do you
7 find -- let me expand. Do you find that if you agree on
8 a lease form, that you then get into discussions of
9 consideration, or are they very closely tied together?

10 A. I believe you can do it -- you can structure it
11 how you please. In this instance, they were done more
12 simultaneously. It wasn't one or the other.

13 Q. And if you had -- in your experience, if your
14 negotiating with a potential lessor and you agree on a
15 lease form, do your negotiations on that bonus
16 consideration go back and affect how you might change
17 that lease in the future? Or once that lease form is
18 kind of solidified, then you negotiate your bonus?

19 A. Will you repeat the first part? I just want to
20 be clear.

21 Q. Absolutely. I apologize. I wasn't very clear
22 on that.

23 Once you've negotiated either a bonus or
24 lease terms --

25 A. Right.

1 Q. -- and you've kind of agreed on one or the
2 other, will future negotiations on the other side of
3 that affect the previous? So if you've agreed on a
4 lease form but you haven't agreed on the bonus and the
5 bonus goes up, will that change how your lease form is
6 going to look in the future, or once you agreed on that
7 lease form --

8 MS. KESSLER: Mr. Examiners, I would object
9 to the extent that this calls for information outside of
10 this particular case.

11 EXAMINER BROOKS: Overruled.

12 THE WITNESS: Can you say it one more time?

13 EXAMINER BROOKS: If you can answer, do.
14 If you can't answer, say whatever you feel is
15 appropriate.

16 THE WITNESS: I'm trying to process it
17 correctly.

18 Q. (BY MR. MORGAN) If you were to agree on a lease
19 form --

20 A. Yes.

21 Q. -- but not on a bonus consideration --

22 A. Yes.

23 Q. -- and you were negotiating that bonus
24 consideration and it went up, would you change the lease
25 form or leave the lease form where it is because it's

1 not overly tied to the bonus?

2 A. I don't think you have a done deal until both
3 are finalized. I don't know if that answers your
4 question. But I feel like --

5 Q. It could change?

6 A. What could change?

7 Q. Your lease form could change?

8 A. It may. That situation -- but I don't think it
9 is a done deal until both are agreed upon by both
10 parties.

11 Q. Okay. If you can turn your attention to
12 Exhibit 1 just briefly, our -- Tonkin Minerals. It
13 should be right there. I promise I'll get through this
14 quickly at this point.

15 Exhibit 1 is an email. If you would read
16 that middle portion starting with Sealy. Does that
17 accurately depict the email you sent on November of last
18 year to the best of your recollection?

19 A. Yes. That is the email I sent.

20 Q. Okay. So you've read this, and this accurately
21 depicts it?

22 A. Yes.

23 Q. So if I may, it appears here -- and I'll ask
24 you if this is correct -- that your opinion on this
25 email of November 8th was that the 2007 lease form

1 between Nancy Tonkin Revocable Trust and Peregrine
2 Production, LLC, that you were okay with using that
3 form, that it was acceptable to you with the noted
4 changes?

5 A. Yes. But I will note that there has to be
6 legal review, which has been cleared with Mr. Cavin,
7 before I can accept any final changes.

8 Q. Do you know if that was communicated via email?

9 A. It was via phone call. We actually
10 communicated frequently.

11 Q. And just to be clear, as you go up on that
12 page, Mr. Cavin emailed that same day, "Bryce, I think I
13 can get my client to agree." Does that accurately
14 reflect his response as you recall?

15 A. That's correct.

16 Q. So I'm going to ask this. What happened at
17 that point during negotiations? It appeared that both
18 sides were probably okay with this lease form. What
19 then occurred?

20 A. First of all, we never agreed to the 5,000 per
21 acre on this bonus. Second, I had to submit any changes
22 to my legal team for review.

23 Q. And when you say changes, do you mean changes
24 that he submitted or changes that you had offered?

25 A. Any changes. Both.

1 Q. So just to be clear, you still had to --
2 although you had offered to use this lease form, these
3 changes still had to be submitted to your legal
4 department?

5 A. Yes. And that was made very clear to
6 Mr. Cavin.

7 Q. Can you recall what the specific issues with
8 this lease form were?

9 A. There were various --

10 Q. And if I may, to jog your memory, attached as
11 Exhibit 2 is the lease form in question.

12 MS. KESSLER: If I can just interject, do
13 you mean the lease form at issue in the November 8th
14 email?

15 MR. MORGAN: Excuse me. Yes. Yes. Yes.
16 Yeah.

17 THE WITNESS: So not Exhibit 2?

18 Q. (BY MR. MORGAN) Is this not the lease form that
19 you were talking about?

20 A. It was, but this one was signed 2007. It did
21 not include the changes that we had been conversing
22 about.

23 Q. Excuse me. Not a -- not a -- the lease form --
24 the 2007 lease form has changed, but the general form
25 that didn't have the changes you suggested?

1 A. Yes. This is a -- this is a current lease from
2 2007 that is still active.

3 Q. Okay. Okay. So what were the issues with that
4 lease form?

5 A. My legal team returned a red-lined copy, and
6 there various provisions that they would not sign off
7 on, and, therefore, I could not agree to.

8 Q. What were those provisions?

9 A. The cost for royalty was modified. Absolute
10 obligation was changed.

11 MS. KESSLER: Mr. Cason, can you point out
12 the paragraph numbers as you go along?

13 THE WITNESS: Sure. Sure.

14 Okay. 3D.

15 Q. (BY MR. MORGAN) Okay.

16 A. 3E. There were modifications to six. There
17 were modifications to seven; paragraphs 9, 12, 18. And
18 I believe that is it. But I don't have those changes in
19 front of me, so --

20 Q. That's perfectly okay. Thank you.

21 But in your opinion, at the time you sent
22 this email on November 8th, you were comfortable with
23 that form generally noting these exceptions,
24 understanding your legal team wanted to look at it
25 first?

1 A. In general, yes, but that's not my call to
2 make.

3 Q. Not your call to make, although you were the
4 one handling the negotiations?

5 A. Right. When you asked me about my job
6 description, I said I facilitate negotiations, but I
7 have to get approval, too, contractually by the company
8 to do anything.

9 MR. MORGAN: I'll move to admit Exhibits 1
10 and 2 at this time.

11 EXAMINER BROOKS: Any objection?

12 MS. KESSLER: No objection.

13 EXAMINER McMILLAN: Exhibits 1 and 2 may
14 now be accepted as part of the record for Tonkin
15 Interests.

16 (Tonkin Mineral Interests, LLC Exhibit
17 Numbers 1 and 2 are offered and admitted
18 into evidence.)

19 Q. (BY MR. MORGAN) And I'm going to go back to
20 Exhibit 2 for just a minute and I'll be done.

21 A. Okay.

22 Q. Can you tell me in paragraph seven what the
23 specific issues were, if you recall?

24 A. I believe it was the language describing what
25 would expire.

1 Q. Okay. Do you know what those issues were
2 exactly?

3 A. Yes. The way it reads now, it would create a
4 depth severance within the pool, and we were not
5 comfortable with that.

6 Q. That you weren't comfortable with?

7 A. Correct.

8 Q. Are you aware of any other issues that that
9 type of depth severance might have caused?

10 A. No. That was -- that was the extent of it,
11 from my understanding.

12 Q. Okay. Okay. No further questions.

13 CROSS-EXAMINATION

14 BY EXAMINER BROOKS:

15 Q. Just following up on something that you said,
16 the warranty provision was one of the ones that you were
17 instructed not to change; is that right?

18 A. Which paragraph?

19 MR. MORGAN: It would have been paragraph
20 12, I believe.

21 Q. (BY EXAMINER BROOKS) Paragraph 12. Is that
22 correct?

23 A. Correct.

24 Q. And what was the -- was that an objection to
25 any change in it or an objection to a particular change?

1 A. Our legal team wanted a special warranty to
2 protect ourselves from -- from another party
3 simultaneously.

4 Q. Okay. But you were willing to accept a special
5 warranty in lieu of a general warranty?

6 A. Yes.

7 Q. Okay. Thank you. I think that's all I have.

8 RE CROSS EXAMINATION

9 BY EXAMINER McMILLAN:

10 Q. So realistically, your job was to facilitate,
11 and it's ultimately decided by your expiration manager?

12 A. Expiration manager?

13 Q. Yeah, your expiration manager. That's
14 essentially what it comes down to. You're going to
15 facilitate to your land manager or expiration manager,
16 and then they -- those -- the upper management will give
17 the authority, right?

18 A. Correct.

19 Q. Okay.

20 MS. KESSLER: I was going to ask a couple
21 of redirect, but I don't know if you're finished.

22 EXAMINER McMILLAN: Yeah. I mean, that was
23 my question. Go ahead.

24

25

1 REDIRECT EXAMINATION

2 BY MS. KESSLER:

3 Q. I think this was clear earlier, Mr. Cason. I
4 just wanted to clarify. You were communicating with
5 Sealy Cavin, who is an attorney, correct?

6 A. Yes.

7 Q. And you very clearly made Mr. Cavin aware that
8 any approval -- any changes to the agreement would need
9 to be run by Legal?

10 A. Yes.

11 Q. Okay. What was the most recent bonus payment
12 that you offered?

13 A. The most recent was 4,000 an acre.

14 Q. Thank you.

15 MR. MORGAN: No questions.

16 RECROSS EXAMINATION

17 BY EXAMINER McMILLAN:

18 Q. The royalty?

19 A. The royalty was a quarter.

20 EXAMINER BROOKS: Was what?

21 THE WITNESS: A quarter.

22 EXAMINER BROOKS: Unless anyone has
23 anything else, the witness may stand down.

24 MS. KESSLER: Thank you.

25

1 JOHN BERTALOTT,
2 after having been previously sworn under oath, was
3 questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. KESSLER:

6 Q. Please state your name for the record and tell
7 the Examiners by whom you're employed and in what
8 capacity.

9 A. My name is John Bertalott. I'm a geologist for
10 COG Operating, LLC.

11 Q. Have you previously testified before the
12 Division?

13 A. I have.

14 Q. Were your credentials as a petroleum geologist
15 accepted and made a matter of record?

16 A. Yes, they were.

17 Q. Are you familiar with the application filed in
18 this case?

19 A. I am.

20 Q. And have you conducted a geologic studies of
21 the lands that are the subject of this application?

22 A. I have.

23 MS. KESSLER: Mr. Examiners, I would tender
24 Mr. Bertalott as an expert petroleum geologist.

25 EXAMINER McMILLAN: Any objections?

1 MR. MORGAN: No objections.

2 EXAMINER McMILLAN: So qualified.

3 Q. (BY MS. KESSLER) Mr. Bertalott, turn to Exhibit
4 9. Please identify this exhibit and explain what it is.

5 A. This is a location map. What it shows is the
6 relevant acreage of COG highlighted in yellow. I have
7 highlighted the proposed locations for both the Columbus
8 B 23H and 24H being drilled north to south.

9 Q. What are the red lines?

10 A. The red lines in Section 26 to the northeast
11 are wells that have been landed in the similar target as
12 we are.

13 Q. Is Exhibit 10 a structure map of the Wolfcamp A
14 in this area?

15 A. Yes, it is. It is a subsea structure map of
16 the Wolfbone A Shale, contour intervals of 50 feet.
17 And, once again, I've highlighted where our Columbus Fee
18 23H and 24H will be drilled. There is minimal
19 structure, as they are being drilled parallel to the
20 structure contour lines.

21 Q. Have you identified any geologic hazards, any
22 pinch-outs, any faulting based on the structure in the
23 section --

24 A. I have not.

25 Q. -- in these two sections?

1 A. I have not.

2 Q. What do you see with respect to dip in Sections
3 3 and 34?

4 A. With us drilling parallel to the structure
5 contours, it's minimal dip.

6 Q. Is Exhibit 11 basically what we've seen before
7 broken with a line of section drawn on it?

8 A. Yes. It's a line of section of A to A prime,
9 northeast to southwest.

10 Q. Did you use two wells for your well control for
11 the cross-section exhibit?

12 A. I did.

13 Q. Are these wells considered representative of
14 the wells in the area?

15 A. They are.

16 Q. What is Exhibit 12?

17 A. Exhibit 12 is the cross section that we just
18 pointed out, A to A prime, northwest to southeast. What
19 it is highlighting is the structural cross section
20 showing our lateral interval target, and we see
21 relatively uniform thickness and reservoir continuity
22 throughout the area.

23 Q. You mentioned your landing interval is
24 bracketed here in green, correct?

25 A. Yes, ma'am.

1 Q. Based on your study of this area, have you
2 identified any geologic hazards to drilling two-mile
3 wells?

4 A. I have not.

5 Q. And do you believe that the area can be
6 efficiently and economically developed by horizontal
7 wells?

8 A. I do.

9 Q. Do you believe that each quarter-quarter
10 section will contribute more or less equally to
11 production from the well?

12 A. Yes.

13 Q. And I believe we already discussed this for the
14 23H well and the 24H well. Will these two wells comply
15 with the 330-foot setbacks?

16 A. They will.

17 Q. In your opinion, will granting COG's
18 application be in the best interest of conservation, for
19 the prevention of waste and the protection of
20 correlative rights?

21 A. I do.

22 Q. Did you prepare Exhibits 10 through 12, or were
23 they prepared under your direction and supervision?

24 A. They were.

25 MS. KESSLER: Mr. Examiners, I'd move

1 admission of 10 through 12.

2 MR. MORGAN: No objection.

3 EXAMINER McMILLAN: Exhibits 10 through 12
4 may now be accepted as part of the record.

5 (COG Operating, LLC Exhibit Numbers 10
6 through 12 are offered and admitted into
7 evidence.)

8 MS. KESSLER: That concludes my direct.

9 CROSS-EXAMINATION

10 BY MR. MORGAN:

11 Q. In your capacity with COG, how long have you
12 been reviewing materials, data specifically for this
13 particular project?

14 A. For this -- in this particular area?

15 Q. Yeah, in this particular area.

16 A. Probably a year-and-a-half to two years.

17 Q. That's my only question.

18 CROSS-EXAMINATION

19 BY EXAMINER McMILLAN:

20 Q. Okay. The question I have -- so are you -- for
21 both of these wells, are you landing in almost the same
22 point?

23 A. We're targeting -- well, I mean, we're
24 targeting the same shale package within the proration
25 unit, yes.

1 Q. And the question I have -- I don't know if
2 you're the correct person to ask. But what happens if
3 you only drill one of the wells? What will happen to
4 the order if you drill and complete one well and not the
5 other well? I'm not sure who the correct person is to
6 ask.

7 MS. KESSLER: I would be happy to talk
8 about that.

9 EXAMINER McMILLAN: Yeah. Okay.

10 MS. KESSLER: Our proposal here is both of
11 the wells will be drilled, that the first one will be --
12 I mean, as we discussed, they'll be drilled
13 back-to-back. So that is COG's plan at this time. Both
14 wells are on the drilling schedule.

15 EXAMINER McMILLAN: So then what's going to
16 happen if you complete one well 320 acres and only 80
17 acres in the other one? Okay? How is that going to
18 affect the compulsory pooling order?

19 MS. KESSLER: I don't believe it will,
20 Mr. Examiner. The ownership is identical throughout the
21 spacing unit, so it wouldn't have any effect on the
22 interest owners. But there will be -- both wells will
23 penetrate all quarter-quarter sections as far as we
24 participate. And if for some reason they do not, we can
25 come back in front of the Division.

1 EXAMINER BROOKS: Do you contemplate that
2 you'll be giving your final -- sending out final
3 pre-drill layout, AFE, for the two simultaneously,
4 therefore triggering simultaneous production in the two?

5 MS. KESSLER: That's correct.

6 EXAMINER BROOKS: I understand. Go ahead.

7 EXAMINER McMILLAN: Do you have questions
8 to ask?

9 EXAMINER BROOKS: I don't have any more
10 questions.

11 Oh, yeah. Well, you haven't
12 cross-examined.

13 MR. MORGAN: I have one question.

14 EXAMINER BROOKS: Well, I have one
15 question.

16 THE WITNESS: Yes.

17 CROSS-EXAMINATION

18 BY EXAMINER BROOKS:

19 Q. When is this on the drilling schedule?

20 A. It's currently on our drilling schedule -- I
21 don't know the exact date, but I believe later this
22 month.

23 Q. Later this month?

24 A. Later this month, I believe.

25 Q. Thank you. My surprise was only because the

1 last one was February, and I thought that was awfully
2 prompt.

3 MR. MORGAN: I don't have any further
4 questions. I didn't know if you did, Mr. Examiner.

5 EXAMINER McMILLAN: No.

6 EXAMINER BROOKS: Do you have any more
7 questions?

8 EXAMINER McMILLAN: No.

9 EXAMINER BROOKS: The witness may step
10 down.

11 EXAMINER McMILLAN: Final statements?

12 EXAMINER BROOKS: Do you have witnesses?

13 MR. MORGAN: We have no witnesses.

14 EXAMINER McMILLAN: Sorry about that.

15 MR. MORGAN: You're okay.

16 EXAMINER BROOKS: Okay. Closing
17 statements?

18 MR. MORGAN: Would you like to reserve your
19 right?

20 MS. KESSLER: Yeah. Why don't you go
21 ahead?

22 CLOSING ARGUMENT

23 MR. MORGAN: Absolutely.

24 Mr. Examiners, our position is simply that
25 the statute requires that good faith be shown by the

1 operator -- by the Applicant and that an opinion alone
2 absent actual evidence of market rates, good faith, et
3 cetera with respect to bonuses of these provisions under
4 the statute -- for that reason, we have requested the
5 Division deny the application for compulsory pooling
6 based on that ground.

7 In the alternative, I would move that the
8 Division continue the hearing so that further
9 negotiations may be undertaken so that evidence of those
10 actual numbers can be provided rather than --

11 EXAMINER BROOKS: How long has the
12 negotiation gone on? I don't remember in this case. I
13 get it confused.

14 MR. MORGAN: I've not been involved in the
15 whole process.

16 MS. KESSLER: Since September.

17 MR. MORGAN: The initial letter was in
18 September.

19 EXAMINER BROOKS: The same time as the last
20 one.

21 MR. MORGAN: Yes.

22 EXAMINER BROOKS: Thank you.

23 CLOSING ARGUMENT

24 MS. KESSLER: Mr. Examiner, this case, as
25 with the other case, I think that good faith is plainly

1 demonstrated to the Division. COG's landman negotiated
2 with an attorney three to four times a week to get some
3 sort of agreement together. Unfortunately, an agreement
4 was not reached. That is something that happens. In
5 this particular case, I believe that COG's landman went
6 above and beyond the terms of good faith, and we'd ask
7 simply that this case be taken under advisement.

8 EXAMINER BROOKS: Okay. Well, thank you.
9 Mr. Examiner?

10 EXAMINER McMILLAN: Okay. Case Number
11 15609 shall be taken under advisement.

12 With that, I believe that concludes today's
13 docket.

14 (Case Number 15609 concludes, 3:03 p.m.)
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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

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

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

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

20

21

22 MARY C. HANKINS, CCR, RPR
23 Certified Court Reporter
24 New Mexico CCR No. 20
25 Date of CCR Expiration: 12/31/2017
Paul Baca Professional Court Reporters

24

25