

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 COMMISSION FOR
6 THE PURPOSE OF CONSIDERING:

7 APPLICATION OF NEARBURG EXPLORATION CASE NO. 15441
8 COMPANY, LLC, SRO2, LLC AND SRO3,
9 LLC FOR AN ACCOUNTING AND LIMITATION
10 ON RECOVERY OF WELL COSTS, AND FOR
11 CANCELLATION OF APPLICATION FOR
12 PERMIT TO DRILL, EDDY COUNTY,
13 NEW MEXICO.

Consolidated with

14 APPLICATION OF COG OPERATING, LLC CASE NO. 15481
15 FOR A NONSTANDARD SPACING AND
16 PRORATION UNIT AND COMPULSORY POOLING,
17 EDDY COUNTY, NEW MEXICO.

18 APPLICATION OF COG OPERATING, LLC CASE NO. 15482
19 FOR A NONSTANDARD SPACING AND
20 PRORATION UNIT AND COMPULSORY POOLING,
21 EDDY COUNTY, NEW MEXICO.

22 REPORTER'S TRANSCRIPT OF PROCEEDINGS

23 COMMISSIONER HEARING

24 March 1, 2017

25 Volume 2 of 2

Santa Fe, New Mexico

BEFORE: DAVID R. CATANACH, CHAIRPERSON
PATRICK PADILLA, COMMISSIONER
DR. ROBERT S. BALCH, COMMISSIONER
GABRIEL WADE, ESQ.

1 This matter came on for hearing before the
2 New Mexico Oil Conservation Commission on Wednesday,
3 March 1, 2017, at the New Mexico Energy, Minerals and
4 Natural Resources Department, Wendell Chino Building,
5 1220 South St. Francis Drive, Porter Hall, Room 102,
6 Santa Fe, New Mexico.
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1 (8:33 a.m.)

2 CHAIRMAN CATANACH: Good morning. Call the
3 hearing back to order this morning. And I believe we
4 were still with Nearburg, and I believe you're ready to
5 call your next witness.

6 MR. HALL: Yes.

7 MR. FELDEWERT: Mr. Chairman, members of
8 the Commission, before we do that, I do have a motion
9 for you, and that is I know they're going to call
10 Mr. Griffin. And I went through and looked at his
11 testimony from the Division hearing below. He's an
12 engineer. He's their technology officer. And I'm going
13 to suggest -- ask that you consider the fact that I
14 don't see how his testimony is really relevant to the
15 issue before you here today. Okay? The issue before
16 you here today is whether Concho, COG, had a good-faith
17 belief that they were authorized to operate on their
18 acreage at the time they permitted and drilled the
19 wells. Okay?

20 This is not the district court case. This
21 is not the case where they pursue contractual damages.
22 Okay? Mr. Griffin is an engineer. He's going to
23 discuss why the information about the SRO Unit wells and
24 the production for the 43H was important for them to
25 make a decision, as Mr. Howard said yesterday, whether

1 they wanted to proceed with a working interest or
2 whether they wanted to proceed with an overriding
3 royalty interest. Okay? If they wanted to proceed with
4 an overriding royalty interest, they would have executed
5 a term assignment. My point is even if they wanted to
6 proceed with a working interest, it's still subject to
7 the operating agreement. We get back to the very same
8 issue.

9 So the question of why they needed the
10 information or what they wanted to do with the
11 information or why they wanted -- why it was necessary
12 to decide whether they wanted to pursue an overriding
13 royalty interest or a working interest has no bearing on
14 the issue before you here today. That is an issue for
15 the district court case. And they can craft whatever
16 damage claim they want to and pursue that in district
17 court, but it's not relevant here because that decision
18 and the fact that they thought they needed to make that
19 decision has no bearing here today because the issue is
20 whether COG had a good-faith belief that they were
21 authorized to operate at the time that they permitted
22 and drilled the wells.

23 And, quite frankly, the subjects of
24 Mr. Griffin's testimony, what information they desired,
25 why they wanted it, did they get it in a timely fashion,

1 and the fact they wanted it so that they could decide
2 throughout November, December or January whether they
3 wanted to proceed with an overriding royalty interest or
4 working interest has no bearing on the issue before you.

5 So we can save ourselves some time today
6 because I don't see how Mr. Griffin's testimony bears on
7 the issue that is before you and whether that is a
8 good-faith belief they were authorized to operate, not
9 contract issues, not whether there was a breach of
10 contract, not whether they were supposed to provide
11 information under one or both of the contracts, not
12 whether there was a good-faith failure to follow the
13 terms of the contract. Those are issues they need to
14 pursue in district court, but it's not the issue before
15 you. So I don't see how Mr. Griffin's testimony is
16 relevant.

17 CHAIRMAN CATANACH: Would you like to
18 respond?

19 MR. HALL: Well, you know, the typical
20 order for proof at trial is that the evidence, the
21 testimony, is offered, then an objection is asserted,
22 and you talk about it at that time. So I think we ought
23 to hear from the witness. And I'll just tell you that
24 he's going to testify about good faith, lack of good
25 faith, actually bad-faith conduct. He's going to talk

1 about correlative rights. He's going to talk about
2 waste. He's going to talk about geology, and we're
3 going to discuss how we can bring these wells back into
4 regulatory compliance.

5 MR. WADE: It's going to be hard to
6 determine what's relevant if we don't hear the
7 information.

8 CHAIRMAN CATANACH: Okay. We'll go ahead
9 and deny the motion at this time.

10 Go ahead and present your witness,
11 Mr. Hall.

12 MR. HALL: At this time, Mr. Chairman, we
13 call Michael Griffin.

14 MICHAEL GRIFFIN,
15 after having been first duly sworn under oath, was
16 questioned and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HALL:

19 Q. All right. For the record, state your name.

20 A. Michael Griffin.

21 Q. And, Mr. Griffin, where do you live and by whom
22 are you employed?

23 A. Dallas; Nearburg Producing Company.

24 Q. What's your job title at Nearburg?

25 A. Chief technology officer.

1 Q. Can you tell us what that job title entails?

2 A. Overseeing the operations and engineering for
3 Nearburg.

4 Q. And you are a petroleum engineer?

5 A. Yes.

6 Q. And you've previously testified before the
7 Division and had your credentials as an expert petroleum
8 engineer accepted --

9 A. Yes, I did.

10 Q. -- as a matter of record?

11 A. (Indicating.)

12 MR. HALL: We'd re-offer Mr. Griffin as an
13 expert petroleum engineer.

14 CHAIRMAN CATANACH: Any objection?

15 MR. FELDEWERT: No.

16 CHAIRMAN CATANACH: Mr. Griffin is so
17 qualified.

18 Q. (BY MR. HALL) Now, Mr. Griffin, you're familiar
19 with the lands and the applications that are the subject
20 of this proceeding today?

21 A. Yes.

22 Q. If you would, first of all, refer back in COG's
23 exhibit notebook to Exhibit 2. Exhibit 2 -- I'm
24 sorry -- our notebook.

25 CHAIRMAN CATANACH: Nearburg's 2?

1 MR. HALL: Yes.

2 Q. (BY MR. HALL) Would you identify that, please?

3 A. It's a term of assignment, oil and gas lease.

4 Q. All right. And who are the parties to that?

5 A. Nearburg and, I believe, Marbob.

6 Q. And that's the term assignment we've been
7 discussing for the last two [sic] days?

8 A. Yes.

9 Q. If you'll turn to Exhibit A of that term
10 assignment, are you familiar with those requirements?

11 A. Yes.

12 Q. Briefly summarize those for the Chairman and
13 the Commissioners. What's required there?

14 A. It's typical well information requirements,
15 drilling mud-logger reports, well data and notification.

16 Q. And those are the materials, among others, that
17 Nearburg was to be provided for wells drilled by the
18 unit operator in the SRO Unit?

19 A. Yes.

20 Q. Now let's turn to COG Exhibit 19A. Turn to
21 that email of the well information requirements. Do you
22 recognize that?

23 A. Yes.

24 Q. And what is that?

25 A. It's similar well information requirements that

1 you would get on a nonoperated well.

2 Q. All right. And --

3 EXAMINER WADE: Which exhibit are you on?

4 MR. HALL: It's COG Exhibit 19A, right
5 underneath that first email.

6 Q. (BY MR. HALL) So is this close to the current
7 form that Nearburg uses for its nonoperated wells to
8 obtain information?

9 A. Yes.

10 Q. You do this -- Nearburg does this in the
11 ordinary course of business for its nonoperated wells?

12 A. Yes, typically boilerplate.

13 Q. And in this case, if you look at the well
14 information requirements under Tab 19A, you'll look on
15 the individual to receive the data, and in Dallas, your
16 name is listed a number of times; is that right?

17 A. Yes.

18 Q. So you receive nonoperated well information,
19 well data on an ongoing basis from other operators?

20 A. Yes.

21 Q. Something you work with on a regular day-to-day
22 basis?

23 A. Yes. It's typical.

24 Q. Okay. Now, let's talk about the well data, the
25 well information that was provided to Nearburg by COG in

1 its course of operating the SRO property. If you would
2 turn to Exhibit 32 in the Nearburg exhibit notebook,
3 and, first, did you create this exhibit?

4 A. I'm not certain, but if not, someone who works
5 for me did.

6 Q. It was created at your direction and
7 supervision?

8 A. Yes.

9 Q. Would you identify what this is?

10 A. It's basically a chronology of the wells in the
11 SRO Unit, and it details the zones they were completed
12 in and then whether or not we received the well
13 information timely.

14 Q. All right. So if you go from left to right
15 here, the first column on the left identifies the well
16 by well number?

17 A. Yes.

18 Q. And then its location?

19 A. Yes.

20 Q. And then the third column is spud date?

21 A. (Indicating.)

22 Q. So is it accurate to say that the spud date
23 would have triggered well information requirements --

24 A. Yes.

25 Q. -- to be provided --

1 A. We should have started receiving daily drilling
2 reports.

3 Q. Actually, would you have received any
4 information prior to spud?

5 A. Possibly the permit application and so forth.

6 Q. All right. Then we move to the right, and the
7 fourth column is comp. Is that completion?

8 A. That's completion.

9 Q. All right. And then we move to the next column
10 to the right, "Well Info Received Timely." How does
11 that work, going down?

12 A. That's whether or not we received the data in a
13 reasonable period of time.

14 Q. Okay. And then the next column is the zone; is
15 that right?

16 A. Yes.

17 Q. And for all the wells marked in green, what
18 does that signify?

19 A. That's the wells completed in the Avalon
20 Formation.

21 Q. All right. So you were receiving well -- well
22 information on the Avalon completions in late 2009
23 through 2011; is that accurate?

24 A. Yes.

25 Q. Then if we go on down the chart, we have wells

1 indicated in pink. What do those signify?

2 A. That's the 2nd Bone Spring Formation.

3 Q. And you can identify that by the key at the
4 very bottom of the chart?

5 A. Yes.

6 Q. And so if we look at the first Bone Spring
7 well, it looks like, the 2nd Bone Spring well, the 11H,
8 the spud date is December 2, 2011 and a completion date
9 of February 13, 2012. You indicate that the well
10 information was not received timely; is that right?

11 A. That is correct.

12 Q. And then what does the column on the right --
13 far right show us?

14 A. That indicates which wells that we received
15 data on via a thumb drive that COG provided to us. I
16 believe -- I think it was in June of 2015.

17 Q. All right. And so for the first 2nd Bone
18 Spring well there with a spud date in late 2011, you
19 didn't receive data for four-and-a-half years?

20 A. That's correct.

21 Q. All right, sir. And you can work your way down
22 the chart for all of the 2nd Bone Spring wells, and is
23 it accurate to say that none of the well data for any of
24 the 2nd Bone Spring wells, before the time the unit was
25 dissolved, was provided on a timely basis?

1 A. That's correct.

2 Q. You have one well on there. It's gray or
3 white. What is that?

4 A. That's a Delaware well.

5 Q. All right. You didn't get timely well
6 information on that well either; is that right?

7 A. No, we did not.

8 Q. All right. And then there is a horizontal line
9 there. It says "SRO Unit dissolved 3/1/14," correct?

10 A. Right.

11 Q. And below that, let's review the wells. You
12 received data for those?

13 A. So those are all either 2nd or 3rd Bone Spring
14 wells subsequent to the unit dissolving, and we did not
15 receive data prior to the thumb drive.

16 Q. Okay. So prior to June of 2015?

17 A. Yes.

18 Q. Even for wells that were started as early as
19 March 2014?

20 A. Yes.

21 Q. Those wells were not known to Nearburg?

22 A. No.

23 Q. And of those wells in that second grouping, do
24 we see the 43H in there?

25 A. Yes.

1 Q. And do we also see the 44H in there?

2 A. Yes.

3 Q. And the next horizontal line, what does that
4 signify?

5 A. That's when we learned that the 43H and the 44H
6 had been drilled.

7 Q. All right. And sometime after that point a
8 request was made to COG to deliver the well data?

9 A. Yes.

10 Q. And that's what would have triggered the
11 inclusion of the responses on the far right-hand column;
12 is that right?

13 A. That's correct.

14 Q. What effect did COG's failure to provide timely
15 well data under the term assignment have on Nearburg?

16 A. It left us in the dark as to what was going on
17 in terms of the Bone Spring in the SRO Unit.

18 Q. And were you in the process of trying to decide
19 what to do with your interest that came out of the unit?

20 A. Yes.

21 Q. And did it impair your ability to make a
22 reasonable well-informed business decision about how to
23 handle that?

24 A. Yes.

25 Q. Let's look at Exhibit 33. Tell us what that is

1 and what this information shows.

2 A. These are production summary reports that were
3 downloaded off the NMOCD Web site for both the -- for
4 the SRO 16H, the 43H and the 44H.

5 Q. All right. Could you summarize those producing
6 rates and volumes for each of those wells for the
7 Commission, going through those pages?

8 A. Yeah. The 16H is -- it's had cumulative
9 production of 11,174 barrels of oil and 1.15 bcf of gas.
10 The 43H has cumed 218,809 barrels of oil, just over 1.5
11 bcf of gas. The 43H has cumed 218,170 barrels of oil
12 and 1.427 bcf of gas.

13 Q. And over what periods of time do you have
14 reports for each of those wells?

15 A. For the 16H, the reports are from 2012 -- from
16 July of 2012 through December of '16. For the 43H,
17 production is from March of 2015 through December of
18 2016, and for 44H, the production is from March of 2015
19 through December of '16.

20 Q. So these data are for the full producing lives
21 of these three wells up through the most current data of
22 December 2016?

23 A. Yes, the latest data reported to the State.

24 Q. All right. Tell us about the 16H. How is it
25 doing from what you can tell by this?

1 A. When we first became involved in this, the well
2 was having some problems. It was up and down. It went
3 down in May of 2015 and produced very small amounts of
4 gas in June, September and October. But it appears the
5 well was restored to production in November of 2015, and
6 it's produced fairly consistently since then.

7 Q. All right. From what you've seen from the
8 testimony, your familiarity with this dispute, the
9 acreage positions of the parties here, do you know of
10 any reason why COG could not have drilled one-mile
11 laterals on its acreage in Section 17 after the SRO Unit
12 terminated?

13 A. No.

14 Q. Referring back to Exhibit 33, in your opinion,
15 has Nearburg been deprived of its opportunity to produce
16 its just and equitable share of oil and gas in the
17 spacing units dedicated to the 43 and 44H wells?

18 MR. FELDEWERT: Objection to the form of
19 the question. There is a lack of foundation. I mean,
20 Nearburg hasn't proposed to drill any wells on their
21 acreage.

22 MR. WADE: Do you want to try and lay a
23 foundation or ask additional questions?

24 MR. HALL: Sure. Let's go back.

25 Q. (BY MR. HALL) Do you know if Nearburg has

1 received payment for its share of production
2 attributable to Section 20 -- its acreage in Section 20
3 for these wells?

4 A. No, it did not.

5 Q. All right. And the Bone Spring spacing units
6 in the west half of Section 20, they're already occupied
7 by producing wells, correct?

8 A. Yes.

9 Q. Is that an impediment to Nearburg drilling
10 wells in the Bone Spring in Section 20 now?

11 A. Yes.

12 Q. So in your opinion, you've been deprived of the
13 opportunity to produce your just and fair share of
14 production attributable to your interest?

15 A. Yes.

16 MR. FELDEWERT: Object to the form of the
17 question. There are wells there draining their minerals
18 now. I don't see how it's a deprivation of correlative
19 rights. The minerals are being produced.

20 CHAIRMAN CATANACH: We'll allow it.

21 Q. (BY MR. HALL) Let me ask it this way. Is COG
22 taking your oil?

23 A. To my knowledge, yes.

24 Q. Do we know what COG is doing with the
25 production proceeds that ought to be going to Nearburg,

1 its interest?

2 A. No.

3 Q. Mr. Griffin, in your opinion, is the
4 consolidation of Sections 17 and 20 by way of compulsory
5 pooling an appropriate way for the Commission to
6 reconcile and protect Nearburg's correlative rights in
7 this acreage?

8 A. Yes.

9 Q. Have you looked at the geology associated with
10 this acreage?

11 A. Yes, I have.

12 Q. Let's turn to Exhibit 34.

13 MR. HALL: We might provide our larger
14 copies for the Commission.

15 THE WITNESS: I think you can see these in
16 the book, but we have a larger size for you, too.

17 MR. WADE: Is it 34A and E?

18 MR. HALL: Yes.

19 Q. (BY MR. HALL) All right. Let's look at Exhibit
20 34A. Can you identify this log for us?

21 A. Yeah. That's basically the type log for the
22 SRO Unit, and it's the Marbob Energy SRO State 1H.

23 Q. All right. By looking at this log, can you
24 identify for the Commissioners the picks for the tops
25 and the bottoms of each of the members of the Bone

1 Spring throughout?

2 A. Yeah. The top of the Bone Spring is identified
3 here by the blue line, and it's 6,190 on this log. For
4 the top of the Avalon Shale, it's 6,416, and then the
5 base of the Avalon, it's 6,763. And the top of the 1st
6 Bone Spring, it's 7,014 feet. And the top of the 2nd
7 Bone Spring, it's 7,760 feet, and the base of that 2nd
8 Bone Spring, at 8,130 feet. I believe the 3rd Bone
9 Spring is at 8,805 feet, and the base of the Bone
10 Spring, top of the Wolfcamp is 9,157.

11 Q. And you understand the current project areas
12 for the 16H and the 43H and 44H are comprised of the
13 entire vertical extent of the Bone Spring Formation? Is
14 that your understanding?

15 A. Yes.

16 Q. Now, can you show the Commissioners where each
17 of those wells, starting with the 16 and then the 43 and
18 44, are landed, where their laterals landed?

19 A. Yeah. 16H is roughly 6,600 feet in the Avalon
20 Shale, and the 2nd Bone Spring wells are landed at
21 roughly 8,000 feet within the lower part of the 2nd Bone
22 Spring Sand.

23 Q. Do you have an opinion whether each of these
24 members can be produced independently of each other?

25 A. Yes.

1 Q. Are they in communication with one another?

2 A. No.

3 Q. Let's refer to your cross section now.

4 A. Okay.

5 CHAIRMAN CATANACH: D, as in delta?

6 THE WITNESS: D, as in delta.

7 Michael, do you need a big one?

8 MR. FELDEWERT: I'll take a big one if
9 you've got one.

10 THE WITNESS: You want one?

11 MR. FELDEWERT: Thank you.

12 Q. (BY MR. HALL) Let's look at 34D. Could you
13 tell us what this is?

14 A. Yeah. This is an east-west cross section
15 across -- really going from the SRO State Unit 3H across
16 to what's called the Teddy Graham State #1 well, and
17 then it goes east to west across the surface -- really
18 the surface location of the wells we're talking about
19 here. And it just illustrates the continuity of the
20 Bone Spring sands across the area.

21 Q. Let's do the same thing for the next exhibit,
22 34E. All right? Orient us.

23 A. This is a similar cross section. This is a
24 north-south cross section going from the SRO State Com
25 48H to the Marbob, way south, State #1. And, once

1 again, it illustrates the continuity of the separate
2 Bone Spring members throughout that area across Section
3 20, the area we're talking about.

4 Q. Now, based on your investigation and evaluation
5 of the well logs in the cross sections, are you
6 confident that each of the tracts that are dedicated to
7 each of the three wells are contributing reserves to the
8 well?

9 A. Yes.

10 Q. And you haven't observed any discontinuities in
11 the Bone Spring across the project areas for each of
12 these wells?

13 A. No.

14 Q. Okay. We can get those out of your way for the
15 time being.

16 MR. HARPER: They might want to keep those.
17 They may have some questions.

18 Q. (BY MR. HALL) If I can get you to go back to
19 our first exhibit notebook, if you would look at Exhibit
20 Number 1. And if you look at the Nearburg acreage in
21 the west half of Section 20, are you able to identify
22 the 16H and 43H wells on that exhibit?

23 A. Yes.

24 Q. And is it evident that the project areas for
25 the 43H and the 16H overlap?

1 A. Yes.

2 Q. Now, let's refer to Exhibits 17A and B.

3 CHAIRMAN CATANACH: I'm sorry?

4 COMMISSIONER BALCH: Is that COG?

5 MR. HALL: Yes. It's ours, Nearburg's.

6 Q. (BY MR. HALL) Do you have those?

7 A. Think it's 16A and B. Or 17?

8 Q. 17.

9 MR. HARPER: There is just a blue sheet
10 between them.

11 MR. FELDEWERT: 17's the --

12 MR. HARPER: (Indicating.)

13 THE WITNESS: This is my 17 (indicating).

14 Q. (BY MR. HALL) Do you have Exhibit 17 in front
15 of you now?

16 MR. HARPER: Yeah. This is it.

17 THE WITNESS: Yes.

18 Q. (BY MR. HALL) So Exhibit 17 consists of two
19 instruments. Do you recognize these as the Correction
20 Assignment and Bill of Sale between Nearburg Exploration
21 Company and SRO2, LLC, and then the second one, too,
22 SRO3, LLC?

23 A. Yes.

24 Q. Let's look at the first one, the SRO2, LLC, if
25 will you look at Exhibit A to that.

1 A. Okay.

2 Q. Is that an assignment by Nearburg to SRO2 for
3 interest in the west half of Section 20?

4 A. Yes.

5 Q. And is there a depth limitation?

6 A. Yes.

7 Q. What is that?

8 A. The 2nd Bone Spring productive interval as
9 defined in Marbob Energy's SRO State Unit #1H.

10 Q. All right. So Nearburg Exploration Company
11 would have retained the other depth; is that right?

12 A. Yes.

13 Q. Let's look at the other assignment to SRO3 LLC,
14 and then look at the Exhibit A to that, if you would.

15 A. Okay.

16 Q. Same thing, an assignment of interest in
17 Section 20. Are they depth limited?

18 A. Yes.

19 Q. And what's the depth limitation there?

20 A. 3rd Bone Spring productive interval as defined
21 in the Marbob Energy SRO State Unit #1H.

22 Q. All right. So accurate to say that ownership
23 in Section 20 varies as to depth now?

24 A. Yes.

25 Q. And these assignments were made when?

1 A. Looks like they were executed on the 12th day
2 of November of 2015.

3 Q. And if you look above the signature lines, does
4 it show the effective date for these assignments?

5 A. July 1, 2015.

6 Q. All right. Now, is Nearburg recommending that
7 the Commission vertically contract the project areas for
8 the 43H and the 44H to be limited to the 2nd Bone Spring
9 as you've identified it on the type log?

10 A. Yes.

11 Q. And so will contraction of the resulting
12 project areas conform with SRO2, LLC's depth-limited
13 ownership?

14 A. Yes.

15 Q. As well as SRO3's depth-limited ownership?

16 A. Yes.

17 Q. And with respect to the 16H, is Nearburg
18 recommending that the Commission vertically contract the
19 project area for that well to be limited only to the
20 Avalon member of the Bone Spring?

21 A. Yes.

22 Q. And that would conform to Nearburg Exploration
23 Company's ownership; is that right?

24 A. Yes.

25 Q. With respect to the 16H well, is Nearburg

1 recommending that COG be removed as operator of that
2 well and Nearburg be designated as successor operator?

3 A. Yes.

4 Q. And is it Nearburg's plan to attempt to
5 negotiate an agreement for COG to serve as contract
6 operator on that well?

7 A. Yes.

8 Q. And, again, the 16H well is located entirely on
9 Nearburg's acreage in Section 20; is that right?

10 A. Yes, it is.

11 Q. Now, of the exhibits we've discussed with you
12 today, were Exhibits 32, 33, 34A, D and E prepared by
13 you or at your direction?

14 A. Yes.

15 MR. HALL: We move the admission of those
16 exhibits, and that concludes our direct of this witness.

17 CHAIRMAN CATANACH: Any objection,
18 Mr. Feldewert?

19 MR. FELDEWERT: Sorry. Exhibits what?

20 MR. HALL: 32, 33, 34A, D and E.

21 MR. FELDEWERT: 34 is the A, D, E?

22 MR. HALL: (Indicating.)

23 MR. FELDEWERT: No objection.

24 CHAIRMAN CATANACH: Exhibits 34 -- sorry.
25 32, 33, 34A, D and E are admitted into evidence.

1 (Nearburg Exploration Company, LLC
2 Exhibit Numbers 32, 33, 34A, D and E are
3 offered and admitted into evidence.)

4 CHAIRMAN CATANACH: Feldewert.

5 CROSS-EXAMINATION

6 BY MR. FELDEWERT:

7 Q. Mr. Griffin, let me ask you a few questions.
8 The 43 and 44H wells are completed in the Hay Hollow
9 Bone Spring pool, correct?

10 A. Yes.

11 Q. And that's Division pool that currently covers
12 the entire Bone Spring?

13 A. Yes.

14 Q. And the 16H is completed within that same pool?

15 A. Yes.

16 Q. And the acreage dedicated to the 43 and 44H
17 wells consist of eight adjacent quarter-quarter
18 sections?

19 A. Say that again, please.

20 Q. The acreage currently dedicated to the 43 and
21 44H wells consist of eight adjacent quarter-quarter
22 sections?

23 A. Let me think about that. So, again --

24 Q. In other words, stacked.

25 A. Yeah, stacked 320s.

1 Q. You got it. Thank you.

2 And based on your testimony, there are no
3 structural or geologic impediments in the Bone Spring
4 Formation that would -- that impede development with
5 horizontal wells?

6 A. Not to my knowledge in that area.

7 Q. And the acreage is suitable for development
8 with horizontal wells?

9 A. Yes.

10 Q. And all of the quarter-quarter sections that
11 have been dedicated to the wells are contributing to the
12 production in the wellbore, correct?

13 A. That's the assumption.

14 Q. You don't have any evidence otherwise?

15 A. No.

16 Q. And based on your geologic analysis, it would
17 show that they should equally contribute, correct?

18 A. Yes.

19 Q. Okay. And that Bone Spring Formation is
20 continuous Sections 17 and 20?

21 A. Yes.

22 Q. And, in fact, haven't the east half of Section
23 17 and 20 likewise been developed with two-mile stand-up
24 horizontal wells completed in the same pool?

25 A. The east half of 17 and 20?

1 Q. Yes.

2 A. I don't know if it's been fully developed.

3 Q. But aren't there two stand-up horizontal wells?

4 A. To my knowledge, yes.

5 Q. Included in the same pool?

6 A. Yes.

7 Q. Okay. All right. Now, if I look at Exhibits
8 17A and B, essentially --

9 MR. WADE: COG or --

10 MR. FELDEWERT: I'm sorry. Thank you.
11 Nearburg's Exhibits 17A and B.

12 Q. (BY MR. FELDEWERT) These are the Correction
13 Assignment and Bill of Sale dealing with SRO2 and SRO3.
14 You just went through those. Are you there, Exhibit 17?
15 And you can just go to the first page of Exhibit 17.

16 A. (Witness complies.)

17 Q. Now, this was entered into after Nearburg had
18 made the decision to repudiate the operating agreement
19 governing the acreage?

20 A. That's -- I don't know.

21 Q. July 1st, 2015, that's when they were executed?

22 A. Yes.

23 So what's the question?

24 Q. So these were -- these assignments were
25 executed -- oh, I'm sorry -- in November of 2015, if I

1 look at the last page of the document, the
2 acknowledgements.

3 A. Yeah, 12 November 2015.

4 Q. This was before, on the timeline, Nearburg
5 filed its complaint in district court. I'm going to
6 represent to you the complaint was filed on December
7 30th, 2015. So a month before that?

8 MR. HALL: If you know. If you know.

9 THE WITNESS: Yeah. Yeah, to my knowledge.

10 Q. (BY MR. FELDEWERT) And these assignments
11 essentially then create, now, depth severances within
12 this pool?

13 A. To my knowledge, yes.

14 Q. And if I look at these assignments and bill of
15 sale, if I look at the first page, subparagraph D,
16 they're all subject to existing and valid
17 communitization agreements?

18 A. That's what it says.

19 Q. And operating agreements?

20 A. That's what it says.

21 Q. Now, you mentioned that Nearburg had not been
22 paid any reserves yet for the 16H or the 43H or the 44H
23 wells?

24 A. Yes.

25 Q. Okay. Now, you're aware of the fact that

1 Nearburg has not signed a Division order for the 16H?

2 A. That's -- to my knowledge.

3 Q. Okay. And normally you don't issue payments to
4 parties unless they sign Division orders; isn't that
5 right, Mr. Griffin?

6 A. I would imagine.

7 Q. And are you aware that these funds are in
8 suspense given the complaint and the positions that were
9 taken by Nearburg starting in July of 2015?

10 A. I'm not aware of what's going on with the
11 funds.

12 Q. You're aware, though, that in August of 20- --
13 actually, starting in July and into August of 2015,
14 Nearburg revoked all their previously signed Division
15 orders? Are you aware of that?

16 A. I've heard that. I'm not -- haven't seen any
17 documentation, I've heard it a lot.

18 Q. You saw what we went through, for example, COG
19 Exhibit 24, where there was a July letter and then the
20 August letter where they revoked Division orders?

21 A. Do you want to go there?

22 Q. Were you here yesterday for the testimony?

23 A. Yeah.

24 Q. All right. And you're agreeing that -- as I
25 understand it, that given the position that Nearburg has

1 now taken with respect to the operating agreement, that
2 a pooling order is appropriate?

3 A. You're trying to put words in my mouth. With
4 respect to the operating agreement.

5 Q. Okay. Do you agree now that a pooling order is
6 appropriate for this acreage?

7 A. Yes.

8 Q. And then if a pooling order is issued by the
9 Division and we then have an order in place, there would
10 then be an accounting under that pooling order?

11 A. What's the question?

12 Q. There would be -- could be an accounting done
13 under that pooling order once it's issued by the --

14 A. I would think so.

15 Q. And that pooling order could then be in effect
16 until the Court sorts out whether there is an operating
17 agreement actually in place? Is that how that would
18 work?

19 A. I don't know how it works.

20 MR. HALL: He's asking something that's
21 beyond his expertise.

22 THE WITNESS: Yeah. I don't know what the
23 Court's going to do.

24 Q. (BY MR. FELDEWERT) Now, with respect to the
25 information that was provided to Nearburg after it was

1 requested, I think you testified that that was sent in
2 June of 2015?

3 A. To my knowledge.

4 Q. Okay. If I look at Exhibit Number 20 -- COG
5 Exhibit Number 20 -- and I'm not sure we need to turn to
6 it, but I believe it confirms, Mr. Griffin, that after
7 Nearburg requested information particularly on 43 and
8 44H, that that was sent to them in May -- early May.
9 You don't have any reason to disagree with that, do you?

10 A. No.

11 Q. So maybe you were just off a month?

12 A. I was off a month.

13 Q. Okay. That's fine.

14 And if I look at your Exhibit 31 --
15 Nearburg Exhibit 31 -- no. I'm sorry. It would be
16 Exhibit 32. It's the one we couldn't get the chronology
17 of the --

18 A. Yes.

19 Q. This confirms a couple of things, Mr. Griffin.
20 It appears that this problem with the -- or the issue
21 with the data being provided under the Marbob term
22 assignment began in late, I guess, 2011, right?
23 December of 2011?

24 A. It appears that way.

25 Q. So that would be three years before the 43 and

1 44H wells were drilled --

2 A. Yes.

3 Q. -- if I'm looking at my timeline here? Okay?

4 A. Correct.

5 Q. It looks like it began once development was
6 changed from the Avalon to the 2nd Bone Spring?

7 A. It looks that way.

8 Q. So it appears somebody there dropped the ball,
9 right?

10 A. I would say so. We did not receive any data on
11 those wells.

12 Q. Right.

13 COG didn't send you any under that once
14 they moved to the 2nd Bone Spring, and, likewise,
15 Nearburg didn't ask for any information that you're
16 aware of at that time, right?

17 A. No.

18 Q. And, in fact, you had received Division orders
19 for a number of these wells in the 2nd Bone Spring that
20 you had signed, the company?

21 A. I'm not aware of that.

22 Q. For example, didn't the company receive
23 Division orders for the 11H, the 10H the 18H and the
24 31H?

25 A. I couldn't tell you that.

1 Q. Okay. If we take a look at COG Exhibit 24 --
2 now, I'm just focusing on the 2nd Bone Spring for the
3 problem with the data that started back in 2011. If I
4 look at COG 24 -- are you good?

5 A. Yes.

6 Q. Go to the second page, which is the August
7 letter.

8 A. Okay.

9 Q. They revoke -- the company revokes, in August
10 of 2015, the Division order that they had signed for the
11 11H; I see the 10H in there, the 18H, the 31H, et
12 cetera. Do you see that?

13 A. Yes.

14 Q. Okay. So when I go back now to your Exhibit
15 32, it appears, does it not, that the company had
16 actually received and signed Division orders for wells
17 in which they hadn't received information under the
18 Marbob term assignment?

19 A. You could infer that.

20 Q. Okay. And you don't have any information
21 otherwise?

22 A. No.

23 Q. And at no point in time, it appears, did
24 Nearburg call somebody up at COG and say, Hey, are you
25 guys aware of this term assignment, and are you aware it

1 applies to the 2nd Bone Spring zone? Nobody apparently
2 at Nearburg did that, to your knowledge, did they?

3 A. Not to my knowledge.

4 Q. Okay. And I believe you testified you that
5 were not aware of when the missing information was
6 actually requested by Nearburg?

7 A. Restate that, please.

8 Q. I believe you testified previously at the last
9 hearing that you didn't know when the missing
10 information was actually requested by Nearburg?

11 A. Not the first time, no.

12 Q. But your exhibit shows, does it not, that
13 information was provided after it had been requested by
14 Nearburg? That's your thumb-drive data column?

15 A. Yes. At some point, it was provided.

16 Q. Okay. And this exhibit shows that the company
17 timely received information for the 16H well that was
18 drilled and has been operated by COG on the Nearburg
19 lease, right?

20 A. Not necessarily. I'm not sure we got that
21 data.

22 Q. Well, your chart says, "Well information
23 received timely?" You see "Yes"?

24 A. Yes.

25 Q. So it was received timely, wasn't it?

1 A. Yeah, I believe it was.

2 Q. And I believe you agreed with me at the last
3 hearing that the information requirements under the
4 Marbob term assignment did not apply to any wells
5 drilled after the SRO Unit terminated?

6 A. Well, if we weren't part of the unit, then I
7 wouldn't -- I wouldn't imagine that we received the well
8 information.

9 Q. So then you testified, would you agree with me,
10 that the information requirements in the Marbob term
11 assignment, that it did not apply to the wells drilled
12 after the unit terminated?

13 A. I think it would apply to any wells -- let me
14 think about this. Once -- once you --

15 Q. Because you have your -- you have your line
16 here. Do you see that, Mr. Griffin? In your exhibit,
17 you have a line where the SRO Unit dissolved, 3/1/2014?

18 A. Yes.

19 Q. And you list a number of wells below that line?

20 A. Yes.

21 Q. And you agree with me, at the last hearing,
22 that the Marbob term assignment requirements did not
23 apply to those wells?

24 A. I would agree with that.

25 Q. Okay. Yet, Mr. Griffin, based on your

1 information here, when it was requested by Nearburg,
2 Concho provided it anyway, didn't it?

3 A. Eventually.

4 Q. Okay. And, Mr. Griffin, how long have you been
5 with the company?

6 A. Since August of 2012.

7 Q. Okay. And you're not aware of any written
8 communications to COG prior to the 43 and 44H wells
9 being drilled stating that they were not authorized to
10 operate on Nearburg's lease?

11 A. I'm not aware of any.

12 Q. And you're not aware of any written statements
13 from Nearburg to COG, prior to the wells being drilled,
14 suggesting that the operating agreement did not apply to
15 Nearburg's acreage?

16 A. I'm not aware of any.

17 MR. FELDEWERT: That's all the questions I
18 have.

19 MR. HALL: Brief redirect?

20 CHAIRMAN CATANACH: (Indicating.)

21 REDIRECT EXAMINATION

22 BY MR. HALL:

23 Q. Referring back to your Exhibit 32 for the wells
24 drilled after the unit dissolution, if you look at the
25 43H and the 44H listed on there --

1 A. Yes.

2 Q. -- again, there is no dispute here that
3 Nearburg was not made aware of those wells at all by
4 COG?

5 A. No.

6 Q. Do you believe that COG was absolved from any
7 responsibility to providing information relative to the
8 fact that they had drilled two wells on Nearburg's
9 acreage that reverted back to Nearburg?

10 MR. FELDEWERT: Objection, lack of
11 foundation. The documents speak for themselves.

12 MR. HALL: I think it's related to the
13 questions asked of him on cross-examination about --

14 CHAIRMAN CATANACH: We'll allow it.

15 MR. HALL: Say again.

16 CHAIRMAN CATANACH: We'll allow it.

17 Q. (BY MR. HALL) Do you believe that COG was
18 absolved from any responsibility to inform Nearburg that
19 it had drilled two wells on Nearburg's unconsolidated
20 lease acreage?

21 A. No.

22 Q. Do you know whether Nearburg was provided with
23 Division orders for the 43H and 44H wells at any time?

24 A. Not to my knowledge.

25 MR. HALL: That's all I have.

1 CHAIRMAN CATANACH: I just had a couple.

2 CROSS-EXAMINATION

3 BY CHAIRMAN CATANACH:

4 Q. Mr. Griffin, what is the relationship between
5 Nearburg and SRO2 and SRO3?

6 A. I believe they're just subsidiary companies.

7 Q. Are they the same ownership; do you know?

8 A. To my knowledge.

9 Q. Is that yes?

10 A. Yes.

11 Q. Do you know why -- why the Bone Spring was
12 vertically segregated in that west half of Section 20?

13 A. It's just my opinion, but I think it was -- I
14 think some of it has to do with this dispute. Right?
15 And if we eventually work out something with COG or
16 however it works out, as you know there are multiple
17 horizons out there, and who knows what the future holds
18 in those. So I think it was just a matter of kind of
19 housekeeping.

20 CHAIRMAN CATANACH: This is in the Hay
21 Hollow Bone Spring pool, which encompasses the entire
22 Bone Spring interval, and I think that Nearburg is
23 requesting that we contract the project areas to include
24 only certain portions of the Bone Spring in those wells.
25 It's -- to my knowledge, it's not common for the

1 Division to do that. As a matter of fact, we tend to
2 discourage segregation of pools in that manner, so I
3 don't know -- just for your information.

4 MR. HALL: Well, I can address that. I can
5 provide you with some examples where you have done that
6 within units, to make pool boundaries consistent with
7 ownership. So there is precedent for that.

8 CHAIRMAN CATANACH: It might be helpful if
9 you provide some of that.

10 MR. HALL: I'll do that.

11 CHAIRMAN CATANACH: I know we've gone
12 through a couple of compulsory pooling cases where
13 they've just applied to pool certain portions of the
14 interval, and it's not something we really want to get
15 into.

16 I think that's all I have.

17 CROSS-EXAMINATION

18 BY COMMISSIONER BALCH:

19 Q. I have two questions for you today,
20 Mr. Griffin.

21 A. Sure.

22 Q. Good morning, by the way.

23 A. Good morning.

24 Q. On your Exhibit 32, "Received in a timely
25 manner," what does that mean for you?

1 A. It's a little bit nebulous. You would want
2 daily reports on a daily basis, well logs, be it
3 completion reports, those types of things, frac reports.
4 Those might lag a few weeks or maybe a month, but you
5 would expect to get data on the well within a few months
6 of completion.

7 Q. And you don't track the arrival of thumb-drive
8 data, for example? You don't know how much time lag
9 there is?

10 A. The thumb-drive reference refers to the large
11 sort of data dump that COG eventually gave us after we
12 requested data on all these wells.

13 Q. Okay.

14 A. The other data would typically come in an
15 email.

16 Q. So timely is as it's generated, you should get
17 a copy of it?

18 A. Yes.

19 Q. The next question is maybe more of a curiosity.

20 A. Yeah.

21 Q. Looking at your Exhibit 1, do you know if it
22 really matters for the Bone Spring in this area if you
23 go stand-up or lay-down?

24 A. Typically in this area, they're drilled
25 north-south, so they're typically stand-ups.

1 Q. Is that based on geology or just someone
2 started it that way?

3 A. It's usually based on frac orientation. You
4 want to be perpendicular to where your frac planes are
5 going to go.

6 Q. So it's a stress deal?

7 A. Yes.

8 Q. Thank you.

9 A. Okay.

10 CROSS-EXAMINATION

11 BY COMMISSIONER PADILLA:

12 Q. Just a couple of questions, Mr. Griffin. Good
13 morning.

14 A. Good morning.

15 Q. I had the same question Dr. Balch did.
16 Reasonable period of time, I guess that question got
17 answered. You're not tying that to the requirements of
18 reporting as outlined in that data request under the
19 operating agreement? It's more --

20 A. Yeah. It's outlined timely, but to me it's
21 reasonable, right, that -- I want daily reports every
22 day, but, you know, frac reports and so forth, that
23 information filters in over time, within a couple of
24 months. But, you know, you should get that data within
25 a couple of months.

1 Q. So there is room for interpretation in there?

2 A. Yes.

3 Q. And early on in your testimony, there was just
4 a brief mention of one-mile laterals versus two-mile
5 laterals. What's -- what's Nearburg's preference? Are
6 you drilling mostly one-mile laterals or drilling mostly
7 two-mile laterals in this area?

8 A. Typically we're drilling one-mile laterals.
9 The industry -- we've participated in two-mile laterals.
10 You can make a case either way. Certainly you don't
11 have to drill the surface hole, right, so you're getting
12 an extra mile with your well. Now, the question is are
13 you effectively draining the toe of that well? And
14 that's up for, you know, technical interpretation.

15 Q. What's your technical interpretation for what
16 maximizes recovery?

17 A. You need to perform an effective stimulation
18 frac job. You can make a case for two-mile laterals,
19 but certainly the industry, if you went -- if you did a
20 statistical study, there are many more one-mile
21 laterals.

22 Q. Okay. Thank you. That's all I have.

23 A. All right. Thank you.

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RECROSS EXAMINATION

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BY COMMISSIONER BALCH:

Q. That may also be a factor of the development of horizontal technology. Also, of course, there are a lot more one-mile horizontals because that's what they were drilling for a long time?

A. Yes, I agree. But you introduce an element of mechanical risk the longer your lateral is. And in terms of both -- both the fracturing and drilling out of plugs and so forth, it creates a little bit of risk mechanically.

Q. But you get extra production from losing the offsets?

A. Say again, please.

Q. Two one-mile horizontals from losing the offsets not draining?

A. Can you repeat that?

Q. More -- edges of the unit.

COMMISSIONER PADILLA: You don't have a chunk in the middle that's not completed.

COMMISSIONER BALCH: Right.

THE WITNESS: Yeah. No, you lose 660 feet. So you're right. You effectively drain more.

COMMISSIONER BALCH: Thank you.

THE WITNESS: Thank you.

1 CHAIRMAN CATANACH: Anything further of
2 this witness?

3 MR. HALL: Nothing further.

4 CHAIRMAN CATANACH: You may be excused.
5 Did you have another witness, Mr. Hall?

6 MR. HALL: I do. We will call Ryan Owen.

7 CHAIRMAN CATANACH: Why don't we take a
8 break?

9 I'm sorry. Did you --

10 MR. FELDEWERT: Before we take a break, I'm
11 going to object to that. I mean, first off, it was not
12 disclosed in the pre-hearing statement that they were
13 going to call Mr. Owen, number one. And number two,
14 we're going to call him, so I don't know why we need to
15 do it twice. And more importantly, he was not disclosed
16 as a witness in their pre-hearing statement.

17 MR. HALL: He was disclosed by COG. And
18 remember that we had requested that COG voluntarily and
19 then under subpoena provide two of their land witnesses?
20 We're going to discuss some of the same materials you
21 would have discussed with Mr. Owen.

22 CHAIRMAN CATANACH: Can't you cover that on
23 cross-examination, Mr. Hall?

24 MR. HALL: I can probably do it more
25 quickly on direct in our case-in-chief.

1 MR. FELDEWERT: I'll debate that.

2 CHAIRMAN CATANACH: We'll go ahead and
3 allow you to call that witness.

4 Let's take a break here.

5 (Recess 9:40 a.m. to 10:03 a.m.)

6 CHAIRMAN CATANACH: We'll call the hearing
7 back to order.

8 It is my understanding that one of Concho's
9 witnesses needs to leave early, so we're going to
10 accommodate him and let him put that witness on if there
11 is no objection to that.

12 MR. HALL: That's fine.

13 CHAIRMAN CATANACH: You may proceed.

14 MR. FELDEWERT: I appreciate the
15 accommodation, Mr. Chair. We'll call Ms. Elizabeth
16 Davis to the stand.

17 ELIZABETH DAVIS,

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

20 DIRECT EXAMINATION

21 BY MR. FELDEWERT:

22 Q. Ms. Davis, would you please state your name,
23 identify by whom you're employed and in what capacity?

24 A. My name is Elizabeth Davis. I work for COG
25 Operating, also known as Concho Resources. I'm a legal

1 specialist.

2 Q. And how long have you been with Concho?

3 A. Since 1998, August.

4 Q. Okay. And were you present --

5 A. I'm sorry. Not 1998. I'm sorry. I've been
6 there since 2010, August.

7 Q. You know, I should have caught that (laughter).

8 Were you present for Mr. Howard's testimony
9 yesterday?

10 A. I was.

11 Q. And were you present when he testified that he
12 called Ms. Fuchik in July of 2014 --

13 A. Yes.

14 Q. -- and when he testified that he may have
15 called a number either in her letter that is COG Exhibit
16 Number 12 or he looked her up in the PBLA directory? Do
17 you remember that testimony?

18 A. Yes.

19 Q. What is the PBLA directory?

20 A. That is the Permian Basin Landman's
21 Association.

22 Q. And is that a published directory?

23 A. It is put out by the PBLA, yes.

24 Q. Were you able to access that publication last
25 night electronically?

1 A. I retrieved it, yes.

2 Q. And were you able to pull the PBLA Directory
3 for years 2013 to 2015?

4 A. Yes.

5 Q. And how often do they publish this directory?
6 Is it every two years?

7 A. I think it's every couple years, yes.

8 Q. Does COG Exhibit Number 34 accurately reflect a
9 copy of the directory cover page --

10 A. Yes.

11 Q. -- for the directory in effect for 2014?

12 A. Yes.

13 Q. On page 2, does it likewise contain an accurate
14 copy of the pages -- or the page that has the list of
15 those beginning with the last name of F?

16 A. Yes.

17 Q. And is it the page in which -- if Ms. Fuchik's
18 name appeared in here, is this the page it would appear?

19 A. If it were there, yes.

20 Q. Okay. And was Ms. Fuchik in this directory in
21 2014?

22 A. No, she was not.

23 Q. So this could not have been the source of any
24 number.

25 Then I want you to turn to -- I want you to

1 pull out -- go to our notebook there, COG's notebook,
2 and I want you to go Exhibit 12.

3 A. I don't have a COG notebook. These are
4 Nearburg.

5 Q. There was one up there.

6 MR. FELDEWERT: Is that yours, Gabe?

7 MR. WADE: This is mine.

8 MR. FELDEWERT: Do we know what happened
9 to --

10 I'm sorry. May I approach the witness?

11 CHAIRMAN CATANACH: Yeah.

12 MR. FELDEWERT: Thanks, Gabe.

13 Q. (BY MR. FELDEWERT) Are you at COG Exhibit
14 Number 12?

15 A. Yes.

16 Q. That's the letter from Ms. Fuchik, dated July
17 9th, 2014, in which the company first transmitted a
18 communitization agreement for the 43H well?

19 A. It is.

20 Q. And you'll see down there, Ms. Fuchik, in her
21 letter, informs Mr. Dixon in the last line, "If you have
22 any questions or need additional information, please
23 contact our office," and then there is a number listed?

24 A. Yes.

25 Q. Okay. Are you aware of the issuance of a

1 court-issued subpoena to AT&T for telephone records
2 associated with this number?

3 A. I was.

4 Q. And was it for the purpose of obtaining records
5 of calls made to Ms. Fuchik in July?

6 A. Yes.

7 Q. And, now, Ms. Fuchik left the company fairly
8 recently, right?

9 A. I believe it was in 2015.

10 Q. And did she go to work with another company as
11 a landman?

12 A. That's my understanding, yes.

13 Q. And, actually, she was a land tech with COG; is
14 that correct?

15 A. Yes.

16 Q. And she left the company -- I guess would it be
17 a promotion to go from a land tech to a landman?

18 A. Yes.

19 Q. If I turn to what's marked as COG Exhibit 35,
20 is this an accurate --

21 MR. FELDEWERT: This is the handout that I
22 provided to -- second handout that I provided to the
23 Commission.

24 Q. (BY MR. FELDEWERT) Is this an accurate copy of
25 the records AT&T produced in compliance with the

1 court-issued subpoena?

2 A. Yes, it is.

3 Q. And I want to go through this briefly here,
4 Ms. Davis. If I start on the left-hand side, do you see
5 there is a column that's labeled "Connect, C-O-N, Date,
6 Time"? Do you see that?

7 A. Yes.

8 Q. Is that based on the definitions that are
9 provided on pages -- on the remaining pages of this
10 exhibit, is that the date that the call was connected?

11 A. Yes.

12 Q. Then we have the originating number, and that's
13 a defined term as well, on the second page; is it not?

14 A. Yes.

15 Q. And that would -- as it says, that's the phone
16 number that the call or text originated from?

17 A. Right.

18 Q. All right. And then we have the terminating
19 number. Do you see that?

20 A. Yes.

21 Q. And if I look at the second page, that is the
22 number that the transaction terminated to?

23 A. Correct.

24 Q. And then we have the column called "Dialed
25 Number." Do you see that?

1 A. Yes.

2 Q. And if I looked at the second page of this
3 number -- or this exhibit, that's the number that the
4 originating party dialed?

5 A. Correct.

6 Q. And so, for example, if they dialed -- we may
7 have an originating number, and then we have a
8 terminating number?

9 A. Correct.

10 Q. Now, the number that's listed there in the
11 Terminating Number column, does that match the number
12 that's in the letter marked as Exhibit Number 12?

13 A. Yes, it does.

14 Q. And do these AT&T records, pursuant to their
15 definitions in the subpoena, identify the origin of all
16 telephone calls made to Ms. Fuchik's number?

17 A. Yes.

18 Q. And would that include calls that either went
19 to her number directly or through the switchboard as the
20 original-dialed number?

21 A. That is correct.

22 Q. And are you familiar with Nearburg's office
23 number?

24 A. Yes.

25 Q. And if I look in July of 2014, are there any

1 phone calls made from Nearburg's office to Ms. Fuchik
2 either through the switchboard at COG or directly to her
3 telephone?

4 A. No. There are none.

5 MR. FELDEWERT: Mr. Examiner, I would move
6 admission into evidence COG Exhibits 34 and 35.

7 CHAIRMAN CATANACH: Any objection?

8 MR. HARPER: No objection.

9 CHAIRMAN CATANACH: Exhibits 34 and 35 will
10 be admitted.

11 (COG Operating, LLC Exhibit Numbers 34 and
12 35 are offered and admitted into evidence.)

13 MR. FELDEWERT: And that concludes my
14 examination of this witness.

15 CROSS-EXAMINATION

16 BY MR. HARPER:

17 Q. Ms. Davis, good morning.

18 A. Good morning.

19 Q. Now, when did you come to the hearing,
20 Ms. Davis?

21 A. To the hearing here? Tuesday.

22 Q. Tuesday?

23 A. Yesterday morning.

24 Q. And you work in Midland?

25 A. I do.

1 Q. Does Mr. Myers work in Midland?

2 A. Yes, he does.

3 Q. Does Mr. Sawyer work in Midland?

4 A. He does, I believe, yes.

5 Q. Did you fly Southwest Airlines here?

6 A. Yes.

7 Q. Were there any additional seats on that plane
8 that you came on?

9 MR. FELDEWERT: That would be unusual if it
10 was.

11 THE WITNESS: I don't think so.

12 Q. (BY MR. HARPER) Any reason you know why
13 Mr. Myers or Mr. Sawyer couldn't come just like you
14 came?

15 A. No, I do not know.

16 Q. Do you know -- we looked at these exhibits. Do
17 you know what phone number -- what the Nearburg phone
18 number is?

19 A. I had looked it up, but off the top of my head,
20 no, I do not. But I have reviewed the phone records.

21 Q. Do you have COG's Exhibit Number 22 in front of
22 you?

23 MR. HALL: It's the other one, other
24 notebook.

25 MR. WADE: COG or Nearburg, because she's

1 looking at COG?

2 MS. SHAHEEN: Actually, it's Nearburg.

3 MR. HALL: The white one nearer to you.

4 MR. FELDEWERT: Actually, COG Exhibit 22.

5 MR. HARPER: COG Exhibit 22.

6 THE WITNESS: COG Exhibit 22?

7 Q. (BY MR. HARPER) COG Exhibit 22?

8 A. Okay.

9 Q. And do you see that's a letter from Nearburg,
10 from Mr. Howard?

11 A. Yes.

12 Q. And you see the phone number up at the top from
13 Nearburg, (432) 686-8235?

14 A. Yes.

15 Q. And did you look at Exhibit 35 to see if that
16 phone number appeared on there?

17 A. I believe I did.

18 Q. Do you see that phone number as an originating
19 number on Exhibit 35?

20 A. I see it, yes.

21 Q. Do you see two calls, numbers 23 and 24, on
22 August 2nd, 2014 from that phone number -- the Nearburg
23 phone number?

24 A. Yes. In August, yes.

25 Q. Okay. In August. Okay.

1 And those calls were made to the phone
2 number listed in Ms. Fuchik's letter?

3 A. That's correct.

4 Q. So there were phone calls made from Nearburg to
5 the number in Ms. Fuchik's letter; is that right?

6 A. Yes.

7 Q. And, now, do you know if Ms. Fuchik -- what
8 number does -- did Ms. Fuchik use at the company at the
9 time?

10 A. She used the (432) 688-6646.

11 Q. Do you know if she used any other numbers?

12 A. No.

13 Q. What did you do to find out, if anything, if
14 she used any other telephone numbers?

15 A. I communicated with our HR Department, and I
16 communicated with our I.T. Department, and I
17 communicated with her supervisor.

18 Q. And this was her phone number?

19 A. Yes, it was.

20 Q. If she forwarded her number to a cell phone,
21 would that be recorded on this document, to your
22 knowledge?

23 A. It would.

24 Q. Okay. So you believe if a phone call came into
25 this number, it was forwarded to her cell phone, it

1 would appear on this document, to your knowledge?

2 A. It would. It would, yes.

3 Q. Okay. If there were phone calls that she made
4 back to Nearburg, would those appear on this document?

5 A. Yes, they would.

6 Q. Okay. Did she make any phone calls to
7 Nearburg?

8 A. No, she did not.

9 Q. Did you -- did you get any of her cell phone
10 records?

11 A. No, I did not.

12 Q. So you don't know if her cell phone records
13 would indicate that she might have called Nearburg
14 during this time period?

15 A. No.

16 Q. Did you do anything to contact Ms. Fuchik about
17 this?

18 A. I did not.

19 Q. So you don't know what Ms. Fuchik would say?

20 A. No, I do not.

21 MR. HARPER: That's all I have.

22 CHAIRMAN CATANACH: Okay. No questions.

23 Thank you.

24 THE WITNESS: Thank you.

25 MR. HALL: At this time, Mr. Chairman, we

1 call Ryan Owen.

2 RYAN D. OWEN,

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

5 DIRECT EXAMINATION

6 BY MR. HALL:

7 Q. Good morning, Mr. Owen.

8 A. Morning.

9 Q. Would you tell the Commissioners where you're
10 employed and in what capacity?

11 A. COG Operating, LLC, as a land supervisor in the
12 Delaware Basin.

13 Q. All right. And how long have you been in that
14 position?

15 A. Oh, since June of 2014.

16 Q. All right. As land supervisor, do you
17 supervisor Aaron Myers?

18 A. I do.

19 Q. And Brent Sawyer?

20 A. I do.

21 Q. And is it correct to say that Mr. Myers and
22 Mr. Sawyer have authority to deal on behalf of COG with
23 other operators and interest owners?

24 A. To a certain extent, yes.

25 Q. To what extent?

1 A. I mean, they're not allowed to sign legal and
2 binding documents.

3 Q. I see. But are they authorized to negotiate
4 terms?

5 A. Final terms have to be approved by upper
6 management.

7 Q. All right. So they can negotiate terms?

8 A. They can discuss terms.

9 Q. Let me refer you briefly. You may not need
10 refer to it, but you're familiar with the term
11 assignment from Nearburg to Marbob, I assume?

12 A. I am.

13 Q. You've seen Exhibit 2 --

14 A. I have.

15 Q. -- at various times?

16 And you're familiar with the well
17 information requirements under that?

18 A. Yes, I am.

19 Q. Let me just ask you what you know. In your
20 experience with our unit agreements, is it customary for
21 the owners of overriding royalty interests to ratify
22 unit agreements where they have an interest?

23 A. Yes.

24 Q. And is there any dispute, when the SRO Unit was
25 terminated, that the Marbob-Nearburg term assignment

1 reverted back to Nearburg?

2 A. No.

3 Q. I'm sorry. Reverted back to Nearburg?

4 A. No.

5 Q. With respect to the well requirements under the
6 term assignment, would you turn to Nearburg Exhibit 35,
7 and if you could turn to the documents in there, the COG
8 well distribution requirements sheets. It's about three
9 pages in.

10 A. Nearburg 35?

11 Q. Yes.

12 A. I'm not seeing it.

13 Q. Let me provide you with supplementation to
14 that.

15 COMMISSIONER BALCH: 35 appears to be an
16 email chain.

17 MR. HALL: It should be in that.

18 MR. WADE: In the second half of it?

19 MR. HALL: It's under the slip sheet, and
20 we're supplementing that with a more complete copy.
21 That's what this is (indicating).

22 MR. FELDEWERT: I'm sorry. What are we
23 doing?

24 MR. WADE: This (indicating) supplemented
25 that.

1 MR. FELDEWERT: Hold on. Why are we --
2 first off, we've had a number of substitutions by
3 Mr. Hall since these were -- these notebooks and
4 exhibits were filed with the Commission. I mean, by
5 rule, if you have an exhibit you're going to use, unless
6 it's a rebuttal exhibit, you're required to have it in
7 your notebook and provide it to the Commission ahead of
8 time. So I object to the introduction of this yet
9 another exhibit on the grounds there is no explanation
10 as to why this was not an exhibit included in the
11 exhibit books.

12 CHAIRMAN CATANACH: Mr. Hall?

13 MR. HALL: Yeah. This is not a rebuttal
14 exhibit. This is an exhibit in our direct case, and
15 remember how many additional exhibits came in through
16 COG yesterday that we hadn't seen before. So nothing in
17 the rules prohibits this. It's a more complete set of
18 documentation for the same materials.

19 MR. FELDEWERT: Every exhibit that we went
20 through yesterday was in our exhibit book and was timely
21 provided to the Commission.

22 MR. HALL: That's not true.

23 MR. FELDEWERT: Mr. Hall just -- Mr. Hall
24 just said with the exception of a rebuttal exhibit.
25 Mr. Hall just said that this is not a rebuttal exhibit;

1 it's part of the direct case.

2 Now, by rule, the Commission's rules, if
3 they mean anything, you're supposed to provide this to
4 the Commission and the other parties weeks ahead of time
5 so we're all prepared when we get to hearing today.
6 This was not introduced below. It was not in their
7 exhibit book. I don't know what it says. I haven't
8 gone through it. So we are not prepared to address
9 exhibit, and I object to the introduction of this
10 exhibit on the grounds of the Commission's rules. You
11 have rules for a reason.

12 MR. HALL: Well, you know, that's just not
13 true. For example, COG's Exhibit 33, which came in late
14 in the day yesterday --

15 MR. WADE: That exhibit was not admitted.

16 MR. HALL: It was provided.

17 MR. WADE: But it wasn't proposed to be
18 admitted.

19 How is this exhibit different from what's
20 in the book?

21 MR. HALL: It is more complete. It
22 includes a greater period of time than was in there
23 before, and it shouldn't be a surprise to COG. These
24 are COG documents. If I can tie up, this will allow me
25 to walk the witness through to show how the well

1 information requirements were adhered to or not over
2 time.

3 MR. FELDEWERT: Mr. Wade, my objection
4 stands. I mean, if I know in the future that I can give
5 you some exhibits ahead of time and then hold back
6 others that I intend to use in my direct, that that's
7 what we're communicating to the attorneys, then I guess
8 that's what's going to happen if you allow this in. And
9 it makes no sense to me to have a rule that says, Look,
10 whatever exhibits you want to use as part of your
11 case-in-chief, you've got to give them to the other side
12 ahead of time.

13 MR. WADE: Well, of course, we'll deal with
14 all objections on a case-by-case basis.

15 MR. FELDEWERT: I understand.

16 CHAIRMAN CATANACH: COG provided these
17 documents, Mr. Feldewert.

18 MR. FELDEWERT: I don't see how it's
19 relevant to the issues before the Division. Well,
20 that's a separate question, whether this has been timely
21 disclosed, and it clearly has not been.

22 (Consultation off the record.)

23 CHAIRMAN CATANACH: I would tend to agree
24 with the objection. He has a good point about the late
25 admission of exhibits. So --

1 COMMISSIONER BALCH: Mr. Hall, what we've
2 done before with things like this is have him testify
3 from the original document, and you can add additional
4 information through your direct. Ask him questions --
5 you can add additional information by asking him
6 questions on your direct.

7 MR. HALL: Yeah. That's one way of doing
8 it. So it would be helpful to have --

9 COMMISSIONER BALCH: That's what we've done
10 before in the past when we've dealt with this kind of a
11 situation.

12 MR. HALL: I'm sorry. I didn't hear that.

13 COMMISSIONER BALCH: This kind of
14 substitution has been done before in the past, and we
15 have not allowed it.

16 MR. HALL: I understand. That's okay.

17 Q. (BY MR. HALL) Well, let's turn to the well
18 distribution requirements that are in the book under the
19 slip sheet. If you would look at the first page, do you
20 recognize this?

21 A. Yes. This is Concho's distribution list.

22 Q. And is this the type of document that COG
23 generates in the ordinary course of business when it's
24 transmitting information to --

25 A. Yes, it is.

1 Q. Would you look at the top page of that exhibit?
2 Was this well information for the State Unit Com 16H
3 well?

4 A. It appears so.

5 Q. And if you look over on the far upper,
6 left-hand corner, it has the date. Do you see that?

7 A. Yes.

8 Q. And is that date from May 2011?

9 A. Yes.

10 Q. And if we work down through the pages, we see
11 the parties to whom this information -- well information
12 materials were distributed, first starting in-house,
13 several individuals with Concho; is that right?

14 A. Yes.

15 Q. And about the third page in, there are
16 additional parties who received information, and those
17 include Yates Petroleum, OXY Permian, Allar Company. Do
18 you agree?

19 A. Yes.

20 Q. And continuing on to the next page, they were
21 sent to Chesapeake, to MYCO and Abo. And then at the
22 very bottom of that page, beginning of an entry of
23 information that was transmitted to Nearburg
24 Exploration?

25 A. Yes.

1 Q. And if you turn the page, you see the type of
2 information that was transmitted?

3 A. Yes.

4 Q. And here again is another example if you look
5 at the document, the Bates number on the lower,
6 right-hand corner, 19775. Do you see that?

7 A. Yes.

8 Q. Does that look like a well distribution sheet
9 for the State Unit 9H well?

10 A. It does.

11 Q. And, again, what's the date of this one?

12 CHAIRMAN CATANACH: I'm sorry, Mr. Hall.
13 Where are we at?

14 MR. HALL: If you look at the Bates
15 number -- it's the well distribution sheet for the SRO
16 State Unit 9H, and if you look in the lower, right-hand
17 corner, you can see those Bates numbers there at page
18 19775.

19 COMMISSIONER PADILLA: I don't have that.
20 Do you have that?

21 COMMISSIONER BALCH: I was on the wrong
22 page, though. That's not in this exhibit. Is it in
23 your replacement exhibit?

24 MR. HALL: That's what I'm looking at.

25 CHAIRMAN CATANACH: We have 19784 through

1 19788.

2 MR. FELDEWERT: Dealing with the 16H?

3 MR. HALL: Well, those are the supplemental
4 exhibits, 784 through -- I'm sorry, Mr. Chairman. Let
5 me straighten myself out.

6 COMMISSIONER PADILLA: I have 784 as a
7 supplemental and starting page in the book at 35.

8 COMMISSIONER BALCH: Proposed to replace
9 19788 and then you added pages after that.

10 MR. WADE: You added 19775 through 778.

11 MR. HALL: Let's look at -- I think you
12 have two pages at the end of the set that we provided
13 you. One is for the SRO State Unit 43H.

14 CHAIRMAN CATANACH: Are you talking about
15 the supplemental? Which exhibit are you talking about?

16 MR. WADE: What is in the book, what we
17 should be working off of, is 19785 -- or 84 -- I'm
18 sorry -- through 19788.

19 COMMISSIONER BALCH: It appears to be the
20 16H.

21 CHAIRMAN CATANACH: Yeah. Those are all
22 relative to the 16, and then I think the other pages may
23 be in your supplemental that we just told you that we
24 couldn't admit.

25 MR. HALL: Right. And I think I had

1 supplemented those in my notebook. I apologize for that
2 confusion.

3 May I borrow yours, Mr. Wade?

4 MR. WADE: Yes.

5 MR. HALL: Excuse the mix-up.

6 Q. (BY MR. HALL) If we look back at the initial
7 well distribution sheets that did go out, would you
8 agree that COG did have the ability to provide well
9 information to Nearburg and, in fact, was providing
10 information to Nearburg on certain wells?

11 A. Yes.

12 Q. Do you know whether COG provided well
13 information on the 43H?

14 A. I don't believe we did.

15 Q. And how about the 44H?

16 A. I don't believe we did.

17 Q. Do you know the reason why that was not done?

18 A. I looked into it. And looking back, at some
19 point in 2011 -- well, these are generated out of our
20 regulatory office in Artesia. And starting back in
21 2011, for some reason, Nearburg was taken off the well
22 data distributions. And then probably from that point
23 on, being that all well data information on the SRO Unit
24 was identical, it would have been copied and pasted by
25 the regulatory tech in Artesia throughout the mud

1 loggers, et cetera. So for some reason, they came off
2 in 2011 and they were never put back on, and Nearburg
3 never informed us to the difference.

4 Q. Would they have reason to know that those wells
5 had been drilled otherwise?

6 A. The wells in the unit after 2011?

7 Q. Well said. They should have been given
8 information sheets?

9 A. I believe they received Division orders on
10 several wells that were producing. But as for the 43
11 and 44H, I don't know.

12 Q. And, again, with respect to the term assignment
13 data requirements, do you know why they weren't provided
14 with notices of stakings, notices of intents to drill?

15 A. No, I don't know.

16 Q. Let me turn you back to the initial pages of
17 Exhibit 35 there. And have you seen this email before,
18 the first one?

19 A. I believe so.

20 Q. Okay. Again, this is an email from Brent
21 Sawyer to Kathie Craft at Nearburg, right?

22 A. Yes.

23 Q. And if you look through this email chain, this
24 is when it was first revealed to her that the SRO Unit
25 had terminated. Any disagreement about that?

1 A. No.

2 Q. And that first page there, going back to that,
3 there is some highlighted language there, and it says --
4 Brent said to Kathy, "I believe the most pressing issue
5 is that the term assignment from Nearburg to Marbob is
6 effective until the SRO Unit is dissolved, so
7 technically it has expired." Do you see that?

8 A. Yes.

9 Q. And do you disagree with that statement?

10 A. No.

11 Q. Do you disagree that this email was sent just
12 shortly before the 43H well was to start?

13 MR. FELDEWERT: Objection. I'm looking at
14 my timeline. You mean start drilling?

15 CHAIRMAN CATANACH: Clarify that, Mr. Hall.

16 Q. (BY MR. HALL) Do you know when the 43H well was
17 spud?

18 A. I believe the first well was spud at some point
19 in August.

20 Q. All right. So -- and this email is dated March
21 21st, correct?

22 A. Yes.

23 Q. So the drilling of the 43H was imminent at this
24 time?

25 A. You know, I don't know if it had been moved up

1 on the drill schedule yet.

2 Q. But it was on the drill schedule?

3 A. I believe it was on a drill schedule.

4 Q. But is there any mention of the 43H or even the
5 44H in this string of emails to Kathie Craft?

6 A. No, there is not.

7 Q. So if you go back to the first page again,
8 they're talking about the need to do something about the
9 term-assignment issue, right?

10 A. Correct.

11 Q. And if you'll look in that last statement
12 Mr. Sawyer makes, he says, "However, we are moving
13 forward on the assumption that it was intended to keep
14 the assignment and the override effective until all the
15 wells in, or formally in, the unit are plugged, so we
16 will need to paper that up. However, if that assumption
17 is incorrect, please let me know since it will affect
18 the work the title lawyer is doing on the updated
19 opinions for the wells." Do you see that?

20 A. I do.

21 Q. So as land lead, do you agree that you can't
22 act on an assumption, as you stated earlier. You have
23 to have final approval on executed documents, right?

24 A. I believe that was his assumption of what
25 Nearburg wanted to do.

1 Q. All right. But do you agree that an assumption
2 does not equate to execution of a document? Do you
3 agree with that?

4 A. Well, I agree that we didn't have an executed
5 document.

6 Q. Let's look at Exhibit 43 -- NEX's Exhibit 43.
7 Can you identify that?

8 A. This appears to be our standard well proposal
9 we mail out with an AFE attached for the proposal of
10 drilling wells.

11 Q. All right. So is this a well-proposal letter
12 dated May 6th, 2014 for the SRO State Com 43H?

13 A. It is.

14 Q. And if you look at the second page of that,
15 does this identify all of the interest owners who would
16 have received the well proposal?

17 A. Yes, it does.

18 Q. And this well proposal is sent pursuant to the
19 SRO State Exploratory operating agreement dated May 8th,
20 2009?

21 A. Yes, it was.

22 Q. And, again, on Exhibit A, Nearburg is not
23 listed there; is that right?

24 A. No, they're not.

25 Q. Let's turn to Exhibit 52, and we can go through

1 this. Do you recognize these emails?

2 A. I believe I've seen this email chain before.

3 Q. All right. If we start at the beginning of the
4 email chain, Thursday, May 8th, 2014 --

5 MR. FELDEWERT: I'm sorry.

6 MR. HALL: It's Bates Number 70581.

7 MR. FELDEWERT: Which exhibit are you on,
8 Mr. Hall?

9 MR. HALL: 52.

10 THE WITNESS: Page 3.

11 Q. (BY MR. HALL) And on May 8th, you're
12 communicating with Scott Morgan?

13 A. Aaron Myers is.

14 Q. All right. And Scott Morgan is your title
15 attorney?

16 A. He was at that time.

17 Q. All right. And if you go up -- this email's
18 cut off, but the communication on the next page,
19 Tuesday, May 13th, 2014, at 9:25 a.m., it discusses the
20 need of acquiring a title opinion for the SRO State Com
21 43H well, correct?

22 A. Correct.

23 Q. Then on the next page, "This well is set to
24 spud on July 26, 2014 so it will be a priority" --

25 A. Correct.

1 Q. -- "after the SRO 46 and 48 wells."

2 A. Right.

3 Q. If you go back up to the communication on May
4 13th, 2014, 9:25, there is a reference in there by
5 Aaron. It says, "As I mentioned, I was mistaken about
6 the location of this well. This well is part of the SRO
7 Unit and the SRO Unit/SRO Operating Agreement only...."
8 Do you know what that error was he was discussing?

9 A. No.

10 Q. Then let's turn back again to Exhibit 39. Do
11 you recognize this?

12 A. It appears to be an email from Aaron -- or from
13 Brent Sawyer to Kathy at Nearburg.

14 Q. All right. And it's dated July 9th, 2014?

15 A. It is.

16 Q. And you agree with me that the 43H was spud on
17 August 2, 2014? Does that sound about right?

18 A. 12, I believe.

19 Q. You can refer to the timeline here, if that
20 will help refresh your memory, if you disagree with
21 that.

22 A. That's says "August 2nd, 2014."

23 Q. All right. And so if you look back at the
24 email, there is a reference highlighted there in the
25 third paragraph, and it refers to some complicated

1 issues with the former SRO Unit wells, requesting a
2 meeting to talk about that. Do you see that?

3 A. Correct.

4 Q. So this communication was July 9th, 2014, and
5 it appears that the spudding of the 43H was imminent.
6 Do you agree?

7 A. Yes, probably at that time.

8 Q. Do you see any reference in here to that fact,
9 that there is a well on this acreage spudding soon?

10 A. No.

11 Q. So let's turn to, in the other notebook,
12 Exhibit 11.

13 CHAIRMAN CATANACH: Concho or Nearburg?

14 MR. HALL: It's Nearburg.

15 Q. (BY MR. HALL) Have you seen this document
16 before?

17 A. Yes.

18 Q. And so you'll agree that this is an email
19 starting with communication by Kimberly Crandell to
20 Kelly Fuchik on August 22nd, 2014, and it appears to be
21 transmitting the Nearburg-Marbob term assignment? Do
22 you agree?

23 A. Yes.

24 Q. And so Kelly Fuchik acknowledges receipt of
25 this, and all she says is, "This term assignment affects

1 multiple wells, so they are being addressed all at the
2 same time." Is there any reference by her to the fact
3 that the 43H was already drilling at that time and the
4 44H was imminent?

5 A. No.

6 Q. Let's jump back to the Exhibit 35 in the other
7 notebook, Nearburg exhibits. Can you identify those
8 letters?

9 A. Letter to Yates Petroleum. It's a casing point
10 election letter.

11 Q. All right. And there are several copies of an
12 identical letter. Would you agree that these letters
13 went to Yates, Abo, MYCO, OXY Y-1, Allar Company and
14 Chevron? Do you agree with that?

15 A. Yes.

16 Q. No such letter that was provided to Nearburg?

17 A. No.

18 Q. Let's turn to Exhibit 52. And, again, we've
19 seen this before, but the communication at May 13th,
20 2014 requesting an opinion for the 43H well, do you know
21 whether that drilling opinion was delivered prior to
22 spudding that well?

23 A. No. I don't believe it was.

24 Q. Let's look at Exhibit 20. And do you recognize
25 this document?

1 A. Yes.

2 Q. All right. And is it an excerpt from a title
3 opinion from Lear & Lear to COG dated October 8th, 2014?

4 A. Nearburg 20?

5 Q. Nearburg 20.

6 A. Sorry. I was in Concho's 20.

7 I do recognize that document. This one,
8 yes.

9 Q. And you'll agree it's an excerpted title
10 opinion?

11 A. Say that again.

12 Q. You will agree this is an excerpted drilling
13 opinion?

14 A. Yes.

15 Q. If we turn to page 2 of that, there is a
16 Comment 9 there addressing the term assignment from
17 Nearburg to Marbob. We're talking about the same term
18 assignment, right?

19 A. Yes.

20 Q. If you look at the highlighted language at the
21 bottom, it says, "Because the" State SRO -- I'm sorry --
22 "because the SRO State Exploratory Unit was voluntarily
23 terminated effective March 1, 2014, it appears that the
24 primary term of the Term Assignment is now expired and
25 the interests assigned thereunder in all of the Subject

1 Lands except Tracts 7 and 8, which comprise the spacing
2 unit for the SRO State Com 11H Well, have reverted back
3 to Nearburg Exploration Company, L.L.C. We have
4 recorded title accordingly." Do you see that?

5 A. I do.

6 Q. So there is no dispute that COG was informed
7 that they had a loss of title under the term assignment?

8 MR. FELDEWERT: Object to clarification --

9 Q. (BY MR. HALL) Do you disagree with that?

10 MR. FELDEWERT: -- of loss of title. There
11 is no foundation for that.

12 Q. (BY MR. HALL) Do you understand what
13 title failure, loss of title, those terms, how they're
14 used?

15 A. I do.

16 Q. Is that what happened here?

17 A. No. I don't believe that's a loss of title.

18 Q. What do you call this?

19 A. This is -- it's clear. I think we previously
20 told Nearburg that we agreed that the term assessment
21 had expired, and the working interest under the JOA had
22 reverted back to Nearburg.

23 Q. All right. Now, let's jump to --

24 You don't dispute that the 44H was spud on
25 October 10th, 2014? Do you have any disagreement with

1 that?

2 A. No. No.

3 Q. So let's turn to Exhibit 46. And what are
4 these?

5 A. These are casing point elections for the SRO
6 State Com 44H well.

7 Q. All right. And you can review all of those.
8 They went out to several parties. Would you agree with
9 me that Nearburg was not sent this casing point
10 election?

11 A. I agree.

12 Q. And this is for the 44H, correct?

13 A. It is.

14 Q. Exhibit 47, let's look at that, Nearburg 47.
15 You can review those. But would you agree with me that
16 Sawyer and Randy Howard were discussing a number of
17 matters, but among them was the possibility of Nearburg
18 keeping its override in the SRO Unit?

19 A. Yes. I believe that was one of the topics.

20 Q. All right. And anywhere in there is there any
21 mention of the fact that the 43 and 44H wells had been
22 started?

23 A. No.

24 Q. Now let's go to Exhibit 27, if you'll look at
25 the top page of that, start of the email chain from

1 Brent Sawyer to Randy Howard dated November 18th, 2014,
2 and it's transmitting a form of correction term
3 assignment. Do you agree?

4 A. That's what it appears.

5 Q. They're discussing that they want to try to tie
6 a corrected assignment to the unit operating agreement,
7 right?

8 A. Correct.

9 Q. And at the very top, Randy Howard's response
10 is, Well, we never got a copy of the operating
11 agreement. Do you agree?

12 A. That's what it says.

13 Q. Okay. And, again, in this communication at
14 this time, in November of 2014, no mention of the 43H
15 and 44H wells? Do you see any at all?

16 A. I don't.

17 Q. Turn to Exhibit 41, please.

18 MR. FELDEWERT: 41?

19 MR. HALL: Yes.

20 THE WITNESS: Okay.

21 Q. (BY MR. HALL) Do you recognize this email
22 chain?

23 A. I believe we looked at it yesterday.

24 Q. All right. Let's start with the first one,
25 November 18th, 2014, and it runs forward to November

1 25th, between Brent Sawyer, Randy Howard. Two
2 communications are on November 25th and the final
3 communication response from Randy Howard on November
4 25th at 3:30. Do you recognize that? Have you looked
5 at all of them?

6 A. Yes.

7 Q. And you're still in the process of discussing
8 some sort of an agreement with Nearburg at this time,
9 right?

10 A. Well, I believe some emails are discussing how
11 the override was calculated, and I think they're also
12 talking about continuing with the term assignment.

13 Q. All right. And you were aware of these
14 communications?

15 A. I knew Brent was working through curative
16 matters with Nearburg at the time.

17 Q. And if you would look at the very last entry,
18 last sentence from Randy Howard's email, it says, "Let's
19 touch base after the turkey's been put away and see if
20 we can reach some sort of agreement that suits both
21 sides."

22 A. Yes.

23 Q. Does that indicate to you there had been no
24 agreement reached at that time?

25 A. That's what it appears.

1 Q. And, again, on November 25th, 2014, no
2 reference to the 43 and 44H wells?

3 A. No.

4 Q. Would you agree with me that Nearburg and COG
5 actually never agreed on a corrected term assignment or
6 a replacement term assignment here?

7 A. No, I wouldn't.

8 Q. You would not agree with that?

9 A. No.

10 Q. Do you have any evidence of an executed
11 corrected or replacement term assignment?

12 A. No. There is no filed executed document.

13 Q. Okay. Let's turn to Exhibit 37. It consists
14 of two pages. Can you tell us what these are?

15 A. This appears to be a portion of Concho's
16 spreadsheet that we keep just to track what title
17 opinions have been ordered, who ordered them, who the
18 rendering attorney would be and so forth.

19 Q. All right. If we turn to the second page of
20 that, there are some entries for the SRO State Com 43H
21 and the 44H?

22 A. Correct.

23 Q. And we can go through here. And under these
24 columns at that time, there was an estimated spud date
25 at the beginning of August 2nd, 2014. Do you see

1 that --

2 A. I do.

3 Q. -- 43H?

4 And in the fourth column over, it says
5 "DTO"?

6 A. Yes.

7 Q. Does that mean drilling title opinion?

8 A. Yes, it does.

9 Q. Does that indicate that COG had received a
10 title opinion from Scott Morgan dated January 17th,
11 2014?

12 A. That's what it says.

13 Q. And you'll look under the column labeled
14 "Proposal" --

15 A. Yes, sir.

16 Q. -- and it says, "Proposal sent to partners on
17 5/6/14. Sent elections to Robbie on 7/24/14. All
18 parties participating."

19 A. Correct.

20 Q. That did not include Nearburg, did it?

21 A. No.

22 MR. WADE: What was the answer?

23 THE WITNESS: No.

24 Q. (BY MR. HALL) And then the same for the Casing
25 Point Election column?

1 A. Correct.

2 Q. Everyone elected at the casing point. Is that
3 what this indicates?

4 A. I believe so.

5 Q. And that does not include Nearburg?

6 A. No, it did not.

7 Q. Then there is a column that says "Comm
8 Agreement." What does that say? Can you read that to
9 us?

10 A. "Waiting on Nearburg, 7/11/14, TA issues.
11 Aaron/Brent are IP" -- I guess that's probably "in
12 progress" -- "of having Nearburg sign the TA paperwork,
13 11/19/14. As of 4/24/15, Nearburg has not signed the
14 term assignment. Com sent to the State Land Office for
15 approval."

16 Q. Well, does that tell you that COG recognized
17 that it had to have a signed term assignment?

18 A. All this indicates to me is that it was in
19 progress.

20 Q. That you're waiting on a signature?

21 A. Oh. "In progress for the term assignment."
22 Yes, waiting on Nearburg's signature.

23 Q. And you never received that?

24 A. We did, but not until later.

25 Q. Not on a term assignment?

1 A. Not on a term assignment, but on the comm
2 agreement, we did.

3 Q. Right.

4 But COG, by this time, had gone ahead and
5 completed the 43H well without having any sort of term
6 assignment?

7 A. That's correct.

8 Q. And is the same true for the 44H?

9 A. It appears.

10 Q. Let's go back to the first notebook, the
11 Nearburg notebook, and look at Exhibit 13.

12 A. Okay.

13 Q. Exhibit 13, is this an email from Randy Howard
14 dated January 8th, 2015 to Brent Sawyer? And does the
15 subject matter line say "SRO Unit wells"?

16 A. It does.

17 Q. And do you know what this was all about?

18 A. I know what the email says.

19 Q. Were you aware of upcoming meetings with
20 Nearburg at about this time to discuss the SRO issues?

21 A. Yes. I knew that Brent and Aaron planned to
22 meet with Randy at Nearburg's office several times to
23 discuss ongoing curative matters.

24 Q. All right. And Randy Howard was transmitting a
25 correction to Brent at this time, a spreadsheet showing

1 what he understood all of the SRO Unit wells were?

2 A. Yes.

3 Q. And if you look on here, the 43H and the 44H
4 are not included. Would you agree with that?

5 A. I would agree.

6 Q. And would you agree that COG did not tell
7 Nearburg about the 43 and 44H wells until April of 2015?

8 A. No.

9 Q. Any dispute about that?

10 A. I wouldn't agree with that.

11 Q. I'm sorry?

12 A. I wouldn't agree to that.

13 Q. When did they first tell them?

14 A. We sent them a comm at one point in July for
15 the 43. I don't know about the 44.

16 Q. All right. And that was the comm that was
17 rejected by Nearburg?

18 A. Yes.

19 Q. Let's look at Exhibit 60. And I think you can
20 refer to the very top email, the email dated January
21 8th, 2015, from Brent Sawyer to Aaron Myers regarding
22 the SRO correction term assignment. And they're
23 referring to an upcoming meeting, Going to postpone the
24 meeting until SRO opinions are in. Do you see that? Is
25 that a fair characterization?

1 A. I do.

2 Q. And in this email string, including those
3 involving Randy Howard, is there any mention of the 43H
4 or 44H?

5 A. No. I don't believe there is.

6 Q. And let's turn to Exhibit 22.

7 A. Okay.

8 Q. And would you agree that Exhibit 22 is a
9 January 9, 2015 excerpted title opinion by Scott Morgan
10 at Hinkle Shanor addressed to Aaron Myers at COG?

11 A. Yes.

12 Q. And it references the SRO Unit lands, correct?

13 A. It does.

14 Q. And, in fact, it references one of the wells,
15 the 16H well?

16 A. Yes, it does.

17 Q. Is this one of the title opinions that everyone
18 was waiting on?

19 A. It is.

20 Q. Let's go through that briefly. Maybe not
21 briefly. We'll see. We'll try to be as quick as we
22 can.

23 Let's turn to page 20 of that opinion, and
24 there is some language there highlighted with brackets
25 that starts with "The term of this Term Assignment has

1 clearly expired...." It says, "As the SRO State
2 Exploratory Unit was terminated effective March 1, 2014.
3 Pursuant to our discussions with you, we understand you
4 consider this Term Assignment as being in full force and
5 effect. In this regard, we have the following
6 requirement." Is it the case that Scott Morgan was
7 instructed by COG to disregard the fact that there was
8 no executed replacement term assignment?

9 A. No. I don't think there was any argument at
10 that time between any of the parties that the term
11 assignment had expired. I think we would agree with
12 that.

13 However, in rendering this opinion, we had
14 every indication at that time that Nearburg intended to
15 maintain its overriding royalty interest under the
16 amended term assignment. So there was no point in
17 having anything on -- give credit to Nearburg's interest
18 under the JOA with all these wells, going and set up a
19 bench for everybody and have to come back and revert and
20 redo the opinions that have already taken us six
21 months-plus to get at that point. And so due to the
22 indication from Nearburg that they wanted to make an
23 override, we told him to go ahead and prepare the
24 opinions in that manner that we thought was going to
25 happen.

1 Q. All right. Nevertheless, he had a Requirement
2 E addressing that expired term assignment?

3 A. He did.

4 Q. And it directed COG to obtain an amendment to
5 the term assignment?

6 A. Correct.

7 Q. And it says, "In the event that you are unable
8 to secure the amendment or the calculation of the
9 override is different from how it is reported herein,
10 resubmit this matter for our review, and we reserve
11 further possible requirement." Do you see that?

12 A. Yes.

13 Q. We still had a curative requirement to be
14 fulfilled?

15 A. Correct.

16 Q. And was that requirement ever fulfilled?

17 A. No. We didn't have indication from Nearburg
18 whether they wanted to maintain their override or take a
19 working interest under the JOA.

20 Q. All right. Because at the time of the opinion,
21 they were unaware of the 43H and 44H?

22 MR. FELDEWERT: Object to the form of the
23 question.

24 Q. (BY MR. HALL) Do you disagree with that?

25 A. That's your opinion.

1 Q. Do you have any communication that we reviewed
2 here earlier that shows they were aware that the 43H and
3 44H had been drilled?

4 A. Besides the comm, not emails, no.

5 Q. Let's look to page -- well, starting on page
6 23, there is a subparagraph D1 discussing the SRO State
7 Exploratory Unit operating agreement.

8 A. Yes.

9 Q. So we're in agreement that the operating
10 agreement was the subject of this particular comment in
11 the title opinion.

12 If you turn to page 24, there is a
13 reference in there to the operating agreement being
14 effective only as to the parties who executed the
15 operating agreement. Do you see that? And then there
16 is a list.

17 A. I see the list, yes.

18 Q. And so this is a list of parties who have
19 executed the operating agreement; do you agree?

20 MR. FELDEWERT: Object to the form of the
21 question. I think it misrepresents the document.

22 Q. (BY MR. HALL) Can you tell me what this is,
23 this list?

24 A. This is a list of all the working interest
25 owners currently that we directed Scott Morgan to

1 include with their interest.

2 Q. Oh, I see. All right. And you did not include
3 Nearburg?

4 A. No. Again, at that time we felt that Nearburg
5 was going to maintain its overriding royalty interest.
6 So there was no reason to go in and change everybody's
7 working interest under the unit to reflect Nearburg as a
8 working interest owner in that JOA.

9 Q. Let's look at excerpted page 32. And there is
10 an entry there discussing the SRO State Unit Well Number
11 16H. Do you see that?

12 A. I do.

13 Q. And the very last sentence of that entry says,
14 "You have advised us that the project area for the SRO
15 State Com Number 43H Well is the west half-west half of
16 Section 17 and the west half-west half of Section 20,
17 Township 26 South, Range 28 East, and we refer you to
18 Exception Title Number 1 below." And we turn the page
19 to page 33 in Exception Number 1, it discusses the
20 overlapping project areas.

21 A. Correct.

22 Q. If you look at the highlighted language in
23 there, it says, "The project area for the SRO State Com
24 43H well covers the combined project areas of the State
25 Units Number 15H and 16H wells." Do you see that?

1 A. I do.

2 Q. Then following that, there is a comment. We've
3 highlighted it. It says -- references, "The project
4 area for the SRO State Unit Well 15H is the west
5 half-west half of Section 17. The project area for the
6 SRO Unit #16H well is the west half-west half of Section
7 20. The proposed project area for the SRO State Com 43H
8 well is the west half-west half of Section 17, Section
9 20, again, and the two state leases involved
10 communitized. We understand there is no agreement that
11 deals with the allocation of production from these wells
12 which is necessary to properly allocate production." Do
13 you see that?

14 A. I do.

15 Q. COG was informed of that at the time.

16 Look at the following project area. So
17 we're talking about a new well coming into the project
18 area for an existing well. Does that sound right?

19 A. One was an Avalon. The other was 2nd Bone
20 Spring wells, but yes.

21 Q. All right. So the next paragraph highlighted
22 there says, "A well proposed to be completed within the
23 interval of an existing horizontal well project area may
24 only be drilled with the approval of all working
25 interest owners in the project area whereby ordered by

1 the New Mexico Oil Conversation Division after notice to
2 all working interest owners in the project area an
3 opportunity for hearing."

4 Did COG have either of those? Did it have
5 consent of all working interest owners?

6 A. We had consent of all the working interest
7 owners that we felt were going to be working interest
8 owners in the well.

9 Q. Do you have the consent of Nearburg?

10 A. No, we did not.

11 Q. Did you have an order from the Oil Conservation
12 Division?

13 A. You know, I don't know, but I don't believe we
14 did.

15 Q. So is it accurate to say that Scott Morgan was
16 communicating to COG that these overlapping project
17 areas do not work?

18 A. Five months after the well was already drilled,
19 yes.

20 Q. All right. Let's turn to Exhibit 17 -- I'm
21 sorry -- COG Exhibit 17. Do you have that single-page
22 document, email --

23 A. I do.

24 Q. -- from Amanda Neagle to Savannah Haller, dated
25 February 13th, 2015?

1 COMMISSIONER PADILLA: COG 17?

2 MR. HALL: Yes.

3 MR. FELDEWERT: You may mean --

4 MR. HALL: I'm sorry. 17C. I beg your
5 pardon.

6 THE WITNESS: Yes, I do.

7 Q. (BY MR. HALL) So Amanda Neagle is telling
8 Savannah that "Brent has informed me that Nearburg has
9 verbally said they will sign the above attached Term
10 Assignment, however they are still working out the
11 details on how their override will be calculated." So
12 that made clear to COG at the time that Nearburg would
13 not sign the term assignment until the override issues
14 were resolved?

15 MR. FELDEWERT: Object to the form of the
16 question. It misrepresents the document.

17 CHAIRMAN CATANACH: Restate that question,
18 Mr. Hall.

19 Q. (BY MR. HALL) All right. Let's look back at
20 that email. The communication of February 22nd from
21 Brent to Amanda, and he tells her, "Here is the
22 correction that Nearburg has agreed to but hasn't
23 executed yet. We need to sort out how their retained
24 override is going to be calculated before they are going
25 to sign."

1 A. Correct.

2 Q. So does that tell you -- you understood that
3 they would not sign any correction term assignment until
4 they had all of the information on the override?

5 A. I know they were still working out the override
6 issue on whether this was calculated on a gross basis
7 versus a net basis, trying to figure out exactly what
8 the override was. And I think they also in here
9 indicate that they were -- at least Brent said that they
10 verbally indicated they plan to sign the term
11 assignment.

12 Q. All right. But it indicates also that the
13 override issues were unresolved at that time?

14 A. I believe so.

15 Q. So let's turn to Exhibit 38 -- Nearburg Exhibit
16 38.

17 A. I'm on the wrong -- okay. I'm there.

18 Q. We can look at that, and it appears to be an
19 email from Niranjana Khalsa of the State Land Office to
20 Savannah Haller on March 13, 2015, and she's inquiring
21 about communitization agreements for SRO wells, correct?

22 A. Yes.

23 Q. And Savannah responds to Niranjana and says,
24 "The SRO State Com #43H Comm Agreement is currently on
25 hold due to a term assignment issue with Nearburg. We

1 are still waiting for Nearburg to sign this Comm before
2 sending it to the State for approval. I checked with
3 our Land Specialist a couple of weeks ago and he advised
4 this issue still hadn't been resolved. I will keep you
5 posted." So isn't it true that when this communication
6 was sent to Niranjana, that the term assignment issue had
7 not been resolved as of March 16th, 2015?

8 A. Yes.

9 Q. And isn't it also true that Nearburg hadn't
10 been provided with a comm agreement for the 43H?

11 MR. FELDEWERT: Object to the form of the
12 question. You said for the 43H?

13 MR. HALL: Correct.

14 Q. (BY MR. HALL) If you know.

15 A. March -- as of March 16th, 2015, Nearburg had
16 been provided with a comm, I believe, twice.

17 Q. And Nearburg had not executed that, correct?

18 A. No, they had not.

19 Q. Let's turn to Exhibit 48.

20 A. Yes, sir.

21 Q. Again, this is another communication from
22 Niranjana Khalsa to Savannah Haller. It starts on March
23 26th, 2015, regarding some more outstanding
24 communitization agreements?

25 A. Correct.

1 Q. In this case Naranjan is referring to, among
2 others, the State Com 44H. And then you look at the top
3 and you see Savannah's response at 3:33 on March 30th.
4 And, again, it's stated to her that the SRO State Com 44
5 agreement is currently on hold due to a term assignment
6 issue with Nearburg. Same thing, right?

7 A. Yes.

8 Q. And "We are still waiting for Nearburg to sign
9 this comm before sending it to the State for approval."
10 Let me ask you: Had COG, in fact, provided Nearburg
11 with a comm agreement for the 44H at that time?

12 A. You know, I don't know if we had.

13 Q. At those points in time when you're
14 communicating with the State Land Office about the 43H
15 and the 44H, it's accurate that the Land Office was
16 aware those wells had been drilled, right?

17 A. Yes.

18 Q. It's also accurate that COG had not told
19 Nearburg about those wells?

20 A. I don't believe that's correct, at least the
21 43.

22 Q. And you're referring to the comm agreement that
23 had been rejected previously by Nearburg?

24 A. Yes.

25 Q. Otherwise, they weren't aware the wells were

1 drilled? Agreed?

2 A. I don't know.

3 Q. And let's look at Exhibit 14. And this is an
4 email dated April 22nd, 2015 from Brent Sawyer to Randy
5 Howard regarding an upcoming meeting about the SRO
6 issues?

7 A. Correct.

8 Q. And you've been in the room for the course of
9 this hearing and heard this communication discussed
10 before?

11 A. Yes, sir.

12 Q. And turn to page 2 of that, and, again, issue
13 one is comm agreements. And there again is that
14 statement to Nearburg by COG that regulatory employees
15 that work in Santa Fe met with someone from NMOCD. I
16 believe they meant NMSLO. Would you agree? Do you
17 know?

18 A. I don't know, but probably.

19 Q. They're talking about someone who said that the
20 Commissioner is very seriously suing the operators of
21 several wells which have overdue comm agreements.
22 "These two wells are some of the ones being considered,
23 so it is crucial that we get these executed and approved
24 as soon as possible." So you were aware of that
25 communication to Nearburg at the time?

1 A. I know the State Land Department was putting a
2 lot of pressure on all the operators to make sure the
3 comm agreements were complete and finalized.

4 Q. All right. It's an issue I'm sure COG took
5 quite seriously?

6 A. Absolutely.

7 Q. And were you present at the meeting with Randy
8 Howard and John Turro and Aaron Myers?

9 A. No, I wasn't.

10 Q. Are you aware that at that meeting, Nearburg
11 had requested more well information so it could make an
12 informed decision?

13 A. Yes.

14 Q. And if we turn to Exhibit 57, it's an email
15 string. The first one begins April 24, 2015, from Randy
16 Howard to Brett Gilson, Aaron Myers, and it's a
17 follow-up to the meeting they had to discuss SRO?

18 A. Yes.

19 Q. And by that time, they had been made aware of
20 the 43H and 44H wells?

21 A. Correct.

22 Q. And Randy had transmitted a new spreadsheet
23 adding those wells because he had just learned of them,
24 correct?

25 A. That's what he says.

1 Q. And so then upward in the email chain, there is
2 communication from Aaron Myers to Savannah Haller on
3 April 27th, 2015, a copy to you?

4 A. Uh-huh.

5 Q. And Savannah is requesting everybody start
6 rounding up the information that Nearburg had requested.
7 Do you agree? Is that accurate?

8 A. Yes, that's correct.

9 Q. And does it also show that COG had not provided
10 that information before then?

11 MR. FELDEWERT: Object to the form of the
12 question. This is the new spreadsheet that had the new
13 well information requirements?

14 Q. (BY MR. HALL) Let's look at this. I'll
15 rephrase it.

16 So here's the communication from Savannah
17 Haller to Rosemarie Contreras. Who is Rosemarie
18 Contreras; do you know?

19 A. She was a tech in our office.

20 Q. And she had been sent the spreadsheet and
21 Nearburg's well requirements, correct, if you look at
22 that entry for April 28th, 2015?

23 A. Yes.

24 Q. And she is asked to gather a chronology history
25 for these wells shown on that spreadsheet, correct?

1 A. Yes, sir.

2 Q. And then the follow-up email is the response
3 from Rosemarie Contreras to Savannah, and you see the
4 attachments, a number of chronology reports from a
5 number of the SRO wells?

6 A. Yes.

7 Q. And if you look at the third page of that
8 exhibit, is that an example of a well chronology report?

9 A. Yes.

10 Q. So it's not a complete list of all of the well
11 chronology reports that are referenced in the last page?

12 A. No. This one says for the SRO State 58H.

13 Q. Right.

14 But there are a number of additional wells
15 listed on the subject line. Do you agree?

16 A. Well, yes.

17 Q. So would you agree that Nearburg had requested
18 information like that because they hadn't been provided
19 it before?

20 MR. FELDEWERT: Object to the form of the
21 question.

22 Q. (BY MR. HALL) Do you understand the question?

23 A. I do.

24 Q. And the answer is?

25 A. Mike had an objection.

1 Q. I understand.

2 MR. FELDEWERT: Well, I'm looking at the
3 bottom of this email, Mr. Hall. It says, "Also attached
4 herewith is a revised well requirements spreadsheet...."
5 That's new requirements. That's what the email says.

6 MR. HALL: Right.

7 MR. FELDEWERT: Actually, the back of it,
8 Randy Howard emailed, Friday, April 24th, We enjoyed
9 visiting with you two this morning. Attached is the
10 spreadsheet we discussed this morning. I have added the
11 43H & 44H wells...." These are the revised well data
12 requirements.

13 Q. (BY MR. HALL) Do you understand that Nearburg
14 had not been provided with the well information prior to
15 that time they were requesting it?

16 A. Yes. I believe we established that COG didn't
17 send Nearburg some well information.

18 Q. Okay. And let's look at Exhibit 58. And,
19 again, I'll represent to you that this is another email
20 chain that originated with the one we discussed earlier.
21 It starts with the email from Randy Howard addressing
22 Aaron Myers, April 24th, 2014. It's forwarded to Aaron,
23 and Aaron instructs Savannah Haller on April 27th, 2015,
24 "We need to starting rounding up well information for
25 Nearburg...." do you agree with that?

1 A. I do.

2 Q. So Aaron is copied on that.

3 And there is a second communication, a
4 response. So following the April 27th email at 12:12,
5 the follow-up is cut off. It's on the preceding page.
6 Savannah reacts at 3:00 and she says, "Looking at the
7 spreadsheet, there are several SRO wells that Nearburg
8 did not include on their list." And, "I spoke and he
9 believes that Nearburg should be entitled to well
10 information for ALL SRO wells past, present and going
11 forward. Should I go ahead and add the recent SRO wells
12 to this list and furnish well information for those,
13 also? Please advise. Thank you!" Do you see that?

14 A. I do.

15 Q. And then the response to that, April 28th,
16 2015, 9:25 a.m., Aaron Myers responds, I would just give
17 them what they are asking for. It will take way too
18 much time to round all that information up and time is
19 of the essence as SLO is pretty mad at us re: comm
20 agreements on SRO 43 & 44." Do you see that?

21 A. I do.

22 Q. So at that time, COG was taking the position
23 that it would not give all the information Nearburg was
24 entitled to?

25 MR. FELDEWERT: Object to the --

1 Q. (BY MR. HALL) Do agree with that?

2 MR. FELDEWERT: Object to the form of the
3 question.

4 Q. (BY MR. HALL) Was that the position that Aaron
5 Myers took at that time?

6 A. No. I believe he was trying to be as helpful
7 as possible and appease Nearburg's request for the well
8 information and data that they requested.

9 Q. But does that also acknowledge there was
10 additional well information they weren't going to get?

11 A. Really, I don't know.

12 Q. Let's look at Exhibit 59. And this is an email
13 again originating with Randy Howard's communication of
14 April 24th, to Brett Gilson and Aaron Myers, and this
15 particular email chain goes, again, from Aaron to
16 Savannah. "Once again, Aaron start rounding up well
17 information." And Savannah communicates to Henry
18 Zollinger on April 28th, 2015, and she asks Henry to
19 start gathering logs for a number of wells. Do you
20 agree with that?

21 A. I agree.

22 Q. Who is Henry Zollinger?

23 A. He's a geologist. I believe he testified at
24 the original hearing.

25 Q. Correct.

1 And then later in the day, 4:01, Henry
2 Zollinger communicates with Aaron, "What's this all
3 about? Did they participate in these wells and not get
4 any data?" Do you see that?

5 A. I do.

6 Q. And Aaron responds, 5:08 p.m., "It's a mess
7 with their term assignment and farm out related to SRO
8 unit. We are trying to appease them in order to get
9 comm agreements signed." Do you see that?

10 A. I do.

11 Q. Were you aware of that email before?

12 A. No.

13 Q. Is that consistent with what you believe COG
14 was trying to do, to appease Nearburg to get comm
15 agreements executed?

16 A. I believe we were trying to take every step
17 necessary to be in compliance with the State Land
18 Office.

19 Q. Let's look at Exhibit 49, please.

20 A. Yes, sir.

21 Q. Again, this is an email chain originating with
22 Niranjan Khalsa to Savannah Haller, and she's checking
23 in for some overdue communitization agreements. Do you
24 agree?

25 A. Yes.

1 Q. And among these are the 43H and the 44H?

2 A. Correct.

3 Q. And this is what Niranjan communicated to
4 Savannah, "I have a few Concho wells to follow up on
5 that need Comm Agreements, hoping you can spare a moment
6 to look these over for me. Also, the State Land
7 Commissioner, Aubrey Dunn, has issued a new letter for
8 companies that have wells in production without Comm
9 Agreements on file, which actually threatens to expire
10 the leases involved with the wells and charge the
11 operator DOUBLE the value oil and gas removed from the
12 well." You were aware of that communication from the
13 State Land Office?

14 A. Yes.

15 Q. And the follow-up email to that, Savannah
16 responded to Niranjan on May 13th, 1:57. She says in
17 the highlighted language there, "The SRO State Com #43H
18 and #44H are currently in the works. All parties have
19 executed both these Comms except for Nearburg. I have
20 copied Nearburg on this email to make sure they are
21 aware of the situation."

22 MR. FELDEWERT: Are you talking about the
23 email in May?

24 MR. HALL: It's the one on the chain, the
25 very next one.

1 MR. FELDEWERT: May 2013?

2 MR. HALL: May 13th, yes.

3 Q. (BY MR. HALL) And finally Randy Howard
4 responded to this communication to COG. Look at the
5 very top email. "Nearburg has been made aware of the
6 problem with the State Land Office." And there Randy
7 communicates to Savannah, Aaron Myers, Brent Sawyer and
8 says, "I have been told to request that COG forward any
9 emails, letters or other correspondence between its
10 offices and the State of New Mexico related to this
11 issue to my attention immediately. Providing our office
12 with any and all of the requested information will help
13 expedite in the execution of both Comm Agreements by
14 Nearburg."

15 So is it accurate to say that Nearburg had
16 not been provided with the communications back and forth
17 between COG and the State Land Office regarding the
18 outstanding comms for the 43H and 44H?

19 A. Yes.

20 Q. And the next exhibit is Exhibit 15, the first
21 notebook. And this is a letter dated May 28th, 2015
22 from Randy Howard to Aaron Myers regarding
23 communitization agreements for the SRO State Com 43H and
24 44H wells. Do you recognize this document?

25 A. Yes.

1 Q. And if you look down at the third paragraph,
2 that first page of that letter, it refers to the
3 communication from the State Land Office to COG
4 regarding the possibility that leases could be canceled.
5 Do you agree with that?

6 A. Yes.

7 Q. And the next paragraph on the next page, Randy
8 Howard says, "In an effort to comply with the State's
9 requirements, Nearburg would consider executing the
10 'COPY' of the Agreements, subject to changing the
11 information set out in the Agreements from the 'Bone
12 Spring formation' to the '2nd Bone Spring interval of
13 the Bone Spring Formation....'" Do you agree it says
14 that?

15 A. I do.

16 Q. But in connection with that, did Randy Howard
17 indicate that Nearburg still wished to be supplied with
18 additional well information?

19 A. Are you referencing the two (ii), "COG
20 furnishing Nearburg all communication between COG and
21 the Office regarding the Agreements"?

22 Q. Yes. So it says "would consider" twice in the
23 same paragraph.

24 MR. FELDEWERT: I'm sorry. What's the
25 question?

1 Q. (BY MR. HALL) Let's go about it this way. Look
2 at the next-to-the-last paragraph on that page. It
3 says, "Please send us all documentation requested above
4 as soon as possible." Do you see that?

5 A. Yes.

6 Q. Is it a fair characterization that Nearburg
7 would consider executing communitization agreements if
8 they had additional information, the information they
9 had requested?

10 A. Above, yes.

11 Q. Okay. And did COG deliver communitization
12 agreements to Nearburg with the depth limitation that
13 Nearburg --

14 A. Yes, we did.

15 Q. Okay. And let's look at Exhibit 16.

16 A. Okay.

17 Q. Is Exhibit 16 the June 10, 2015 letter from
18 Randy Howard to Aaron Myers transmitting assigned
19 communitization agreements?

20 A. It is.

21 Q. And is it fair to say that Nearburg had agreed
22 to provide the executed communitization agreements
23 without waiving any rights and that COG agreed with that
24 reservation of rights?

25 A. That's what the letter says.

1 Q. Yeah. And it was acknowledged and signed by
2 Aaron Myers?

3 A. It was.

4 Q. Aaron Myers had authority to sign that letter
5 on behalf of COG, the June 10th letter? Do you agree?

6 A. I believe he did.

7 Q. So let's turn to Exhibits 18A and 18B.

8 A. Okay.

9 Q. So let's look at 18A first. Is this the
10 communitization agreement for the 43H well that was
11 provided to the State Land Office for the Commissioner's
12 approval?

13 A. It is.

14 Q. Is the top page of that the Certificate of
15 Approval for the 43H?

16 A. Yes, it is.

17 Q. And if we look at the first page of the
18 communitization agreement for the 43H itself, this
19 communitization agreement covers the Bone Spring
20 Formation. Do you agree?

21 A. Correct.

22 Q. And same thing for the communitization
23 agreement for the 44H?

24 A. That's correct.

25 Q. These are not the communitization agreements

1 that Nearburg had signed and delivered to COG on June
2 10th. Do you agree?

3 A. I agree.

4 Q. Mr. Owen, is it accurate to say that COG never
5 sought Nearburg's voluntary participation in either the
6 43H or 44H well before they were drilled?

7 A. That would be accurate.

8 Q. I'm sorry. I didn't hear.

9 A. Well, through a term assignment, we thought
10 they were going to commit their term assignment, but no,
11 we did not ever send them elections.

12 Q. No well proposals?

13 A. No well proposals, no, sir.

14 Q. And COG never provided Nearburg with written
15 notice to drill the 43H or 44H?

16 A. I don't believe we did.

17 Q. That was a requirement under the term
18 assignment, correct?

19 A. Under the --

20 MR. FELDEWERT: Object to the form of the
21 question. Under the Marbob term assignment?

22 Q. (BY MR. HALL) Under any of the term
23 assignments. But specifically the one that had been
24 executed with Marbob, was there a requirement that
25 written notice be provided prior to spud?

1 A. I don't know.

2 Q. All right. But it's also true that Nearburg
3 never received an AFE for either the 43H or 44H from
4 COG?

5 A. That's true.

6 Q. And COG never provided joint interest billings
7 to Nearburg for the drilling costs for those two wells?

8 A. We did not.

9 Q. Do you agree that COG has never paid Nearburg
10 for its share of production in the 43H and the 44H?

11 A. Currently, all the revenue due to Nearburg is
12 held in suspense. So yes, I agree it was never issued,
13 checks --

14 Q. All right. Well, is it accurate to say that if
15 COG was operating under the belief that the term
16 assignment was being extended, it would have sent the
17 required well information?

18 A. You know, I don't know.

19 Q. And same for the JOA? If COG was acting on the
20 belief that Nearburg was part of the JOA, wouldn't COG
21 have sent the required information to Nearburg as it had
22 to other JOA parties?

23 A. I don't know.

24 Q. Let's look at Exhibit 54. And this is an email
25 chain beginning on August 14th, 2015, 9:48 in the

1 morning, to Aaron Myers and the subject line is SRO 16H,
2 43H and 44H, and Aaron is told by Randy, "Aaron, In
3 order to make an educated decision as to how to handle
4 the situation regarding the wells in our acreage in the
5 west half of Section 20, 26 South, 28 East, we
6 respectfully request that COG provide the following in
7 regard to the 16H, 43H and 44H wells." We ask for "an
8 update for production volumes and sales and the attached
9 spreadsheet; actual sales volumes and actual oil and gas
10 prices for June"; and "an updated download of COG's
11 LOE." Do you see that?

12 A. I do. That was a subsequent request.

13 Q. Right.

14 And then there is a follow-up email from
15 Aaron Myers to Savannah, copied to Ryan Owen, asking
16 them to start rounding up that information they
17 requested?

18 A. Uh-huh.

19 Q. Well, do you agree that this indicates that COG
20 had not provided this type of information to Nearburg
21 before for these wells?

22 A. No, not at all. We previously provided data
23 they requested, and it continued to roll on month after
24 month after month. They would continually ask for
25 updates, so we would gather the updated pertinent

1 information as for new production, for new LOE, any
2 workovers, anything like that for the SRO wells and give
3 them updated information each month. This was an
4 ongoing process, that we continued to provide Nearburg
5 with the data they requested.

6 Q. Well, in your view, was it reasonable for
7 Nearburg to request this so they could make an educated
8 and informed decision about what to do?

9 A. I don't know what Nearburg was going to do
10 besides what he says in the email.

11 Q. All right. You don't dispute that it was
12 necessary for them to make an educated decision?

13 A. I don't.

14 Q. And in the course of setting the SRO State Com
15 43H and the State Com 44H for drilling, did COG ever
16 notify Nearburg that it was proposing nonstandard
17 spacing and proration units on Nearburg's acreage in
18 Section 20?

19 A. You know, I don't know if we did.

20 Q. And you agree that COG did not consolidate the
21 lands in Section 20 with the lands in Section 17 before
22 it drilled the 43H and 44H?

23 MR. FELDEWERT: Object to the form of the
24 question. Calls for a legal conclusion with respect to
25 the operating agreement.

1 Q. (BY MR. HALL) Do you understand the question?

2 A. I do.

3 Q. And the answer?

4 CHAIRMAN CATANACH: Go ahead and answer.

5 Q. (BY MR. HALL) Let me ask it this way: When the
6 43H and 44H were drilled, were they drilled with Section
7 17 -- in 17 -- in Section 20 in an unconsolidated state?

8 A. No, I don't believe so. I believe then and I
9 believe now that the JOA elected to drill those wells.

10 Q. But you didn't have voluntary agreement,
11 written agreement, from Nearburg under the JOA; is that
12 accurate?

13 MR. FELDEWERT: Object to the form of the
14 question.

15 THE WITNESS: Don't need it.

16 Q. (BY MR. HALL) You didn't have a compulsory
17 pooling order? Agree?

18 A. Didn't need it.

19 Q. Let's turn to Exhibit 42.

20 A. Yes, sir.

21 Q. And I'll have you turn -- is that the operating
22 agreement for SRO State Exploratory Unit?

23 A. Yes, sir.

24 Q. And this is the agreement. You continued to
25 apply for Nearburg's acreage in Section 20?

1 A. Yes, sir.

2 Q. All right. Let's look at page 3, Article 4B
3 [sic]. Let me read this into the record for you.

4 "Loss of Title. 1. Failure of Title:
5 Should any oil and gas interest or lease, or interest
6 therein, be lost through failure of title, which loss
7 results in a reduction of interest from that shown on
8 Exhibit 'A,' the party contributing the affected lease
9 or interest shall have ninety (90) days from final
10 determination of this title failure to acquire a new
11 lease or other instrument curing the entirety of the
12 title failure, which acquisition will not be subject to
13 Article VIII.B., and failing to do so, this agreement,
14 nevertheless, shall continue in force as to all
15 remaining oil and gas leases in interests."

16 A. Yes, sir.

17 Q. Did I read that correctly?

18 A. You did.

19 Q. And you testified earlier there is no dispute
20 that the term assignment acreage reverted back to
21 Nearburg on March 1st, 2014, when the unit was
22 terminated?

23 A. I agree to that.

24 MR. HALL: Reserve direct of Mr. Owen.

25 MR. HARPER: Can we go ahead and offer our

1 exhibits and get that cleaned up and --

2 CHAIRMAN CATANACH: Sure.

3 MR. HALL: Let me tender our exhibits for
4 the record.

5 MR. FELDEWERT: If you go slowly and go in
6 order, I can probably say yea or nay.

7 THE WITNESS: Can I step down? Am I --

8 CHAIRMAN CATANACH: Yes.

9 MR. FELDEWERT: Tell you what, may we take
10 a break so I can get the list in order?

11 MR. HALL: Yeah, we can do that.

12 MR. HARPER: That's fine.

13 CHAIRMAN CATANACH: We'll reconvene at
14 1:30.

15 (Recess 12:12 p.m. to 1:31 p.m.)

16 CHAIRMAN CATANACH: Call the hearing back
17 to order.

18 And did you finish your direct case,
19 Mr. Hall?

20 MR. HALL: Yes, we did. I need to tender
21 the exhibits now.

22 MR. FELDEWERT: If you go in order, I can
23 say yea or nay pretty quick.

24 MR. HALL: I'll try. This is the order
25 they came in, Mike. Exhibits 35, 35A, 37 --

1 MR. FELDEWERT: Hold on. No objection.
2 37, no objection.
3 MR. HALL: 38.
4 MR. FELDEWERT: No objection.
5 MR. HALL: 39.
6 MR. FELDEWERT: No objection.
7 MR. HALL: 41.
8 MR. FELDEWERT: No objection.
9 MR. HALL: 43.
10 MR. FELDEWERT: No objection.
11 MR. HALL: 45.
12 MR. FELDEWERT: No objection.
13 MR. HALL: 46.
14 MR. FELDEWERT: No objection.
15 MR. HALL: 47.
16 MR. FELDEWERT: No objection.
17 MR. HALL: 48.
18 MR. FELDEWERT: No objection.
19 MR. HALL: 49.
20 MR. FELDEWERT: No objection.
21 MR. HALL: 52.
22 MR. FELDEWERT: No objection.
23 MR. HALL: 54.
24 MR. FELDEWERT: No objection.
25 MR. HALL: 57.

1 MR. FELDEWERT: No objection.

2 MR. HALL: 58.

3 MR. FELDEWERT: No objection.

4 MR. HALL: 59.

5 MR. FELDEWERT: No objection.

6 MR. HALL: 60.

7 MR. FELDEWERT: No objection. Hot dog.

8 CHAIRMAN CATANACH: Exhibits 35, 35A, 37,
9 38, 39, 41, 43, 45, 46, 47, 48, 49, 52, 54, 57, 58, 59
10 and 60 will be admitted as evidence.

11 (Nearburg Exploration Co., LLC Exhibit
12 Numbers 35, 35A, 37, 38, 39, 41, 43, 45,
13 46, 47, 48, 49, 52, 54, 57, 58, 59 and 60
14 are offered and admitted into evidence.)

15 MR. FELDEWERT: May I proceed?

16 CHAIRMAN CATANACH: Yes, sir.

17 RYAN D. OWEN,
18 after having been previously sworn under oath, was
19 questioned and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. FELDEWERT:

22 Q. Would you make sure you have the timeline in
23 front of you that's marked as COG Number 42 so we can
24 stay oriented as we move back and forth from some of
25 these exhibits?

1 A. (Witness complies.)

2 Q. Okay. I'm going to try to go in reverse order
3 here real quickly. Exhibit -- Nearburg Exhibit Number
4 15, that's that May 28th letter that Mr. Howard sent to
5 Concho in which they talked about, Mr. Owen, that they
6 would sign a communitization agreement if it was limited
7 to the Bone Spring. Remember that letter?

8 A. Yes, sir.

9 Q. Just to put it in perspective, when that letter
10 was sent, Mr. Howard had already signed the
11 communitization agreement, correct?

12 A. Yes. I believe the execution date was prior.

13 Q. What's that?

14 A. The execution date of the comm agreement was
15 prior.

16 Q. He had already signed them on May 20th?

17 A. Yes, sir.

18 Q. And so they were holding those communitization
19 agreements, Mr. Owen, as I understand it from the
20 correspondence, until we provided them certain well
21 information?

22 A. I believe so.

23 Q. And if I turn to what's been marked as Nearburg
24 Exhibit 59 -- we're going to go through 59, 58 and 57
25 quickly, I hope.

1 A. Okay.

2 Q. First off, the additional information that they
3 wanted was not for all of the wells in the SRO Unit,
4 correct?

5 A. Correct.

6 Q. And what didn't get pointed out when we went
7 through this exhibit is if you look at Exhibit Number 59
8 on the second page -- actually -- I'm sorry -- the third
9 page, when Mr. Howard sent this demand in April of 2015,
10 he said they wanted information on the wells that
11 are -- and I'm looking at the last statement highlighted
12 in yellow. Do you see that?

13 A. Correct.

14 Q. Not all the wells, just the wells highlighted
15 in yellow?

16 A. Yes, sir.

17 Q. And at that time, you were trying to satisfy
18 their new request for the information highlighted in
19 yellow?

20 A. Yes, sir.

21 Q. And if I look, for example, at Exhibit Number
22 58 --

23 A. Okay.

24 Q. -- Mr. Hall made a big deal about going through
25 Aaron Myers' statement there -- I believe it's April 28,

1 2015 -- where he says, "I would just give them what they
2 are asking for." What he's referencing is the wells
3 highlighted in yellow that they had requested; is that
4 right?

5 A. That's correct.

6 Q. Not all the wells in the unit?

7 A. True.

8 Q. Then if I look at Exhibit Number 57, one of the
9 things that was not pointed out that's in this email --
10 this is again in April of 2015. This was after
11 Mr. Howard had sent his updated well requirements,
12 because if you look down at the bottom, Mr. Aaron Myers
13 says to Savannah Haller, "Also attached herewith is a
14 revised well requirement spreadsheet for Nearburg."

15 A. Yes, sir.

16 Q. So they were dead set to submit a revised well
17 information request to Concho for certain wells that
18 were highlighted in yellow on the spreadsheet, correct?

19 A. That's correct.

20 Q. And at this point in time, the company was
21 actually -- I heard this from them. You were kind of
22 under duress to get these communitizations agreements
23 signed, weren't you?

24 A. I think there was a lot of pressure on
25 everybody to get the comm agreements under compliance.

1 Q. The Commissioner was going to sue the
2 operators?

3 A. (Indicating.)

4 Q. And at this point in time, when you were trying
5 to get these comm agreements signed, there was some
6 information they wanted under a new well information
7 requirement, correct?

8 A. Correct.

9 Q. And weren't you also still trying to work out
10 the overriding royalty interest percentage?

11 A. Yes, sir.

12 Q. So if I turn to Exhibit 38 -- Nearburg Exhibit
13 38, which is another exhibit they referenced, there is a
14 statement in there from Ms. Haller to Niranjana where she
15 says, "The SRO State Com 43H Comm Agreement is currently
16 on hold due to a term assignment issue with Nearburg."
17 Do you see that?

18 A. Yes.

19 Q. This takes place in March of 2015, this email?

20 A. Yes, sir.

21 Q. Okay. And isn't it true that during this
22 entire period of time, from March of 2014 through and
23 including March of 2015, the parties are still trying to
24 work out the overriding royalty percentage that Nearburg
25 would have under a corrected term assignment?

1 A. That's correct.

2 Q. And if I go to Exhibit 17C in COG's book, which
3 is another exhibit they referenced --

4 A. Okay.

5 Q. -- this confirms -- February 2015, so we're
6 within our timeline -- that they're still working out
7 the details on how the overriding royalty interest will
8 be calculated. This confirms that.

9 A. Right.

10 Q. And it makes a reference to Stephanie. "When
11 you send this to Stephanie, CC Brent and have her
12 contact him with any Nearburg questions." Do you see
13 that?

14 A. Yes.

15 Q. Okay. And if I turn to what's been marked as
16 COG 17D, is the Stephanie referenced there Stephanie
17 Barber?

18 A. Yes.

19 Q. And that's who this email is to?

20 A. Yes.

21 Q. And she is actually someone the company was
22 working with to try to get these title opinions and
23 ascertain what the Division order for the recovery
24 was, what the percentage would be for the override in
25 the Division orders; isn't that correct?

1 A. Yes, that's correct.

2 Q. And Mr. Sawyer -- this is now March 30th, 2015.
3 So this is -- looking at my timeline, this is months
4 after the wells were drilled; is that correct?

5 A. Correct.

6 Q. This is after the emails back and forth in
7 November of 2014 where Nearburg communicated they were
8 agreeable to a corrected TA. Remember that?

9 A. Yes.

10 Q. And doesn't this confirm what Mr. Sawyer and
11 the company understood at this time when he says, "I can
12 confirm that Nearburg has agreed to sign the attached
13 correction assignment so its term will be tied to that
14 of the Unit Operating Agreement (instead of the unit
15 agreement, which was terminated)"?

16 A. Yes, it did.

17 Q. That reflects the company's understanding based
18 on their correspondence and meetings with Nearburg?

19 A. Yes, it does.

20 Q. Then if I go back to Nearburg's Exhibit 22,
21 which is that January 19th, 2015 title opinion --

22 A. Yes, sir.

23 Q. Let's take the timeline first. Let's get this
24 in perspective.

25 A. Okay.

1 Q. When we're going through these, it's important
2 to know the chronology.

3 This is January of 2015. So if I'm on my
4 timeline, this is about the middle to the right of that,
5 2015, right?

6 A. Yes, sir.

7 Q. If I look at the bottom, this is after all of
8 the November emails where Nearburg is representing that
9 they are agreeable to a corrected term assignment?

10 A. That's correct.

11 Q. And this is after Concho, COG, had sent to them
12 a corrected term assignment for review?

13 A. That's true.

14 Q. And this is months after both the 43H and the
15 44H wells were drilled?

16 A. Yes.

17 Q. And this is during a period of time, Mr. Owen,
18 isn't it true, where Nearburg never objected to the
19 company operating on its state lease?

20 A. No.

21 Q. It never objected to the company operating on
22 its state lease under the operating agreement?

23 A. No.

24 Q. And if I go to page 20 of this term
25 assignment -- I mean of this title opinion, Mr. Hall

1 made reference to this Requirement E --

2 A. Yes, sir.

3 Q. -- an amendment to this term assignment, right?

4 A. Right.

5 Q. Okay. And this is after you had told your
6 title attorney exactly what Nearburg had represented to
7 you, and that is that they were agreeable to a corrected
8 term assignment?

9 A. That's correct.

10 Q. And they say, Well, get that papered up?

11 A. Yes, sir.

12 Q. And isn't that what the company was doing --
13 trying to do from March of 2014 all the way through when
14 Nearburg finally said in July of 2015 --

15 A. Yes, it was.

16 Q. -- that they would not sign a corrected term
17 assignment?

18 A. Correct.

19 Q. And isn't it true that the first time Nearburg
20 said they would not sign a corrected term assignment was
21 July of 2015, that email to Mr. Howard --

22 A. Yes.

23 Q. -- which is reflected on our timeline here?
24 It's the second to the -- third-to-the-last box on the
25 bottom, on the right-hand side, 7/20/2015?

1 A. Yes, sir.

2 Q. Nearburg informs COG it will not execute the
3 corrected TA and suggests that the company has committed
4 trespass?

5 A. Correct.

6 Q. And that's reflected, I will represent to you,
7 in our Exhibit 30. We don't need to go to it. We've
8 already seen it.

9 A. Okay.

10 Q. Okay. So if I go to their Exhibit --
11 Nearburg's Exhibit 13, which is another exhibit they
12 went over with you, this is Mr. Howard's email from
13 January 8th of 2015 to Mr. Sawyer, right?

14 A. Yes.

15 Q. Okay. And he's got attached there his sheet of
16 SRO Unit wells?

17 A. Yes, sir.

18 Q. Now, again, this is after the Thanksgiving-era
19 agreeable emails.

20 A. Okay.

21 Q. And you'll see where he lists the SRO Unit
22 wells.

23 A. Correct.

24 Q. And isn't it true that he lists SRO Unit wells
25 that were drilled after the Marbob term assignment had

1 expired?

2 A. He does.

3 Q. And isn't it true here, if I look at this
4 spreadsheet that Mr. Howard put together, he has a
5 column there that says "NEX Overriding Royalty
6 Interest"?

7 A. Yes.

8 Q. Isn't it true, Mr. Howard [sic], that they
9 would not have an overriding royalty interest unless
10 they were agreeable to the corrected term assignment?

11 A. That's correct.

12 Q. I would to go to Nearburg Exhibit 37. That's
13 another exhibit you reviewed with Mr. Hall.

14 A. Okay.

15 Q. What did you call it? I forget.

16 A. Oh, it's just our working spreadsheet for
17 tracking of the title -- drilling and title opinions.

18 Q. Can you tell -- can you readily ascertain when
19 this was updated? For example, if I look at the second
20 page and I look under Comm Agreements, there is, at the
21 bottom there, under the 44H -- and I'm in the column
22 that says "Comm Agreements."

23 A. All right.

24 Q. At the end, it says, "As of 5/20/2015, Nearburg
25 has not signed the TA." Do you see that? Correct?

1 A. Yes.

2 Q. However, that gives us an idea that it looks
3 like this was updated -- generated May -- sometime
4 around May?

5 A. Probably updated at that time.

6 Q. Now, one of the things they didn't point out
7 when they went through this is your internal records
8 that you kept and had before they communicated to you
9 that they were repudiating the operating agreement --

10 MR. HALL: Objection. That
11 mischaracterizes prior testimony, the testimony from any
12 witness about repudiation of the operating agreement.

13 Q. (BY MR. FELDEWERT) This is before the May 28th,
14 2015 letter --

15 A. Correct.

16 Q. -- correct?

17 A. Yes.

18 Q. And don't your internal records here reflect
19 that the SRO 43H, under the column that says "JOA," it
20 says "Yes"?

21 A. Correct.

22 Q. And then under the column in the row for SRO
23 State Com 44H, it says under the column for the JOA, it
24 says "Yes"?

25 A. Yes.

1 Q. And what are you referring to there?

2 A. Is there a JOA in place.

3 Q. Are you talking about that operating agreement
4 that survived the termination of the unit?

5 A. We are.

6 Q. Okay. Now, I'm just going to go through one of
7 these because it seems like it's the same email three or
8 four times. So let's go to Nearburg's Exhibit 41.

9 A. Okay.

10 Q. Now, this is the correspondence between the two
11 parties, and they're talking about putting this to bed
12 until after Thanksgiving?

13 A. Correct.

14 Q. And isn't it true, Mr. Owen, that what they're
15 talking about putting to bed until after Thanksgiving is
16 this confusion or misunderstanding as to what the
17 overriding royalty interest should be?

18 A. That's what it appears.

19 Q. Just looking at this email? This is all we've
20 got, right?

21 A. Correct.

22 Q. Let's turn over to Exhibit 39.

23 A. Okay.

24 Q. Now, this was the subject of various emails
25 that we saw from March of 2014 through September of '14.

1 Do you recall that, where they were talking about the
2 overriding royalty interest percentage?

3 A. Yes, sir.

4 Q. And just --

5 MR. FELDEWERT: Commissioners, you don't
6 have to turn to it, but that was COG Exhibit 13, when we
7 had the email from March 2014 that went all the way
8 through September, talking about the overriding royalty
9 interest percentage and whether it should be paid on a
10 net acreage or gross acreage.

11 Q. (BY MR. FELDEWERT) This email is during that
12 time frame, right, Mr. Howard [sic] --

13 A. Owen.

14 Q. -- between March of 2014 and September of 2014?

15 A. Yes.

16 Q. To Kathie Craft --

17 A. Yes.

18 Q. -- from Brent Sawyer?

19 A. Yes.

20 Q. So when he says in here that "there are also
21 some complicated issues with the (former) SRO Unit wells
22 I think it might be worthwhile to meet in person with
23 you (and anyone else you think appropriate) to review
24 where this all stands," aren't they talking there,
25 Mr. Owen, what the percentage should be of the

1 overriding royalty interest?

2 A. I believe that's the intent.

3 Q. Wasn't that the complicated issue?

4 A. The one we previously talked about.

5 Q. Finally, then, Nearburg Exhibit 52. Mr. Hall
6 referred you to the bottom of this email from 2014.

7 A. Okay.

8 Q. And he pointed out that "Please proceed with
9 rendering an opinion for the SRO State Com #43H well"?

10 A. Yes, sir.

11 Q. And he pointed out that you hadn't received an
12 opinion before it was drilled?

13 A. Correct.

14 Q. Was it unusual at that time to proceed with
15 drilling without these opinions?

16 A. That was a very busy time, I believe, for
17 everybody, so there were definitely wells we drilled
18 without having the titles.

19 Q. The title attorneys were really backed up then?

20 A. Extremely.

21 Q. It was \$80 to \$100 oil around then?

22 A. Yes. And we have limited New Mexico title
23 attorneys.

24 Q. Great time for title attorneys?

25 A. It was good.

1 Q. Now, the one thing he didn't point out to you
2 that I thought was interesting --

3 A. Okay.

4 Q. This is in May of 2014?

5 A. Okay.

6 Q. This was before the well was drilled. Okay?

7 A. Uh-huh.

8 Q. Says here, "The well is part" -- and I'm
9 looking at the same email, but this is below their
10 highlighted part. "The well is part of the SRO Unit/SRO
11 Operating Agreement only" -- right?

12 A. Right.

13 Q. "And covers...." And it describes the acreage
14 where this well is going to be drilled, correct?

15 A. Correct.

16 Q. So does this reflect the company's
17 understanding at that time when they drilled the well as
18 to whether the operating agreement covered this acreage?

19 A. Yes. And the only reason we were going to need
20 a new title opinion was for NRI purposes.

21 Q. For what?

22 A. NRI. After the unit expired, each spacing unit
23 was paid on a spacing-unit-by-spacing-unit basis instead
24 of a unitwide basis, so the net unit interest of all
25 parties could change. That was about it.

1 Q. All right. And then I got -- I want to go
2 through some other exhibits, but before we --
3 hopefully -- hold on.

4 All right. Let's go to -- I want to work
5 off our notebook. Okay?

6 A. Great.

7 Q. Let's go to our Exhibit 25.

8 A. Do you say 25?

9 Q. 25.

10 A. 25.

11 Q. And does this reflect the spacing and proration
12 units for which the company is seeking a pooling order
13 now that Nearburg has repudiated the operating
14 agreement?

15 A. It is.

16 Q. And I think everybody agrees the pooling order
17 would be appropriate now, since they've repudiated that
18 operating agreement?

19 A. I believe so.

20 Q. And what you've done here for the Examiners
21 [sic] is address each tract?

22 A. Correct.

23 Q. Tract 1 is the surface-hole locations on the
24 Yates lease?

25 A. That's correct.

1 Q. And Tract 2, the bottom-hole locations, is the
2 Nearburg lease?

3 A. That is correct.

4 Q. And you note for them -- on this exhibit, at
5 the end, you put a little asterisk by Nearburg's
6 interest there in Tract 2. Do you see that?

7 A. Yes, sir.

8 Q. Why did you do that?

9 A. Because at this point now, Nearburg is claiming
10 they're not a party to the operating agreement.

11 Q. Now, is Yates Petroleum claiming they're not a
12 party to the operating agreement?

13 A. No, they're not.

14 Q. Is Abo Petroleum claiming they're not a party
15 to the operating agreement?

16 A. No, they don't.

17 Q. What about MYCO?

18 A. No.

19 Q. Now, I look up here in Tract 1 on that same
20 page, and I see that Yates Drilling Company is now OXY
21 Y-1 Company?

22 A. That's correct.

23 Q. OXY Y-1 succeeded to the working interest held
24 by Yates Drilling?

25 A. That's correct.

1 Q. And succeeded to the working interest held by
2 Yates Drilling that was committed to the operating
3 agreement under the same ratification form that Nearburg
4 signed?

5 A. That's correct.

6 Q. Does OXY Y-1 claim that they do not subscribe
7 to the operating agreement?

8 A. No, they don't.

9 Q. Now, Marbob was the operator of record when
10 Yates signed the ratification form promulgated by the
11 State Land Office, correct?

12 A. Yes.

13 Q. And Marbob is the operator of record under this
14 operating agreement when Nearburg signed that
15 ratification form promulgated by the State Land Office?

16 A. That's correct.

17 Q. Do the records reflect that Marbob billed and
18 paid the Yates entities under the unit operating
19 agreement for the wells drilled in the contract area?

20 A. Yes, it does.

21 Q. Including the 16H well?

22 A. Yes.

23 Q. And do the records reflect that COG continued
24 to bill and pay the Yates entities under the operating
25 agreement for all the wells drilled in the contract

1 area?

2 A. Yes.

3 Q. Including 16H?

4 A. Yes.

5 Q. 43H?

6 A. Yes.

7 Q. And 44H?

8 A. Yes.

9 Q. And have the other nonoperators, the ones who
10 have physically signed the operating agreement, have
11 they also acted in a fashion that would indicate that
12 the Yates lease is subscribed to the operating
13 agreement?

14 A. Yes, they have.

15 Q. And have they paid and distributed -- paid
16 expenses and distributed the revenues based on what
17 should be apparent that the Nearburg working interest in
18 the state lease is subscribed to the operating
19 agreement?

20 A. Yes.

21 Q. So just to sum it up, since 2009, has the unit
22 operator, whether it was Marbob or Concho, have they
23 treated the working interest in that state -- in the
24 Nearburg lease as committed to the operating agreement?

25 A. Yes, we have.

1 Q. And since 2009, have the nonoperators in the
2 contract area treated the working interests in the
3 Nearburg state lease as committed to the operating
4 agreement?

5 A. Yes, we have.

6 Q. And paid expenses and shared revenues
7 accordingly?

8 A. Yes, sir.

9 Q. Including all three wells that are drilled on
10 the Nearburg state lease?

11 A. Yes.

12 Q. Now, I don't think we need to turn to it, but
13 you remember all those well-proposal letters that
14 Mr. Hall went through?

15 A. Yes.

16 Q. Okay. I think it's Nearburg Exhibits 43 and
17 46 --

18 A. Correct.

19 Q. -- where he had sent out AFEs to Yates, you had
20 sent out AFEs to nonoperators under the operating
21 agreement --

22 A. Yes.

23 Q. -- is that right?

24 And it covered, as I recall, Mr. Owen, a
25 period of May of 2014, August of 2014 --

1 A. Correct.

2 Q. -- September of 2014 and October of 2014?

3 Okay. When these letters were sent out,
4 did the company believe that the operating agreement
5 still applied to the working interest in the Nearburg
6 state lease?

7 A. Yes.

8 Q. Then why didn't the company list Nearburg as a
9 working interest owner and a recipient of any of these
10 letters?

11 A. You know, at this point in time, Nearburg had
12 given us every indication that they intended to continue
13 with an override under all of the unit wells through a
14 correction or amendment of their existing term
15 assignment.

16 Q. For example, if I look at Nearburg Exhibit 46,
17 this is the casing point election letter that went out
18 to the parties that 2015?

19 A. Yes.

20 Q. This is dated October 28, 2014, right?

21 A. Correct.

22 Q. Okay. Now, if I go my handy-dandy timeline
23 here, this would have been after Nearburg sends the 2009
24 TA, term assignment, to COG for discussion, right?

25 A. That's correct.

1 Q. And it was after their meeting in their offices
2 to discuss changes to the term assignment?

3 A. I believe so.

4 Q. And it was after the -- clearly after the March
5 emails that went out by COG where COG informs them that
6 the TA had expired, right?

7 A. Correct.

8 Q. That the acreage is going to be drilled at will
9 under the operating agreement?

10 A. Yes, sir.

11 Q. And that COG assumed that Nearburg desired to
12 proceed with an overriding royalty interest?

13 A. Yes.

14 Q. And at any point in time prior to these letters
15 going out to the working interest owners, did Nearburg
16 indicate anything other than that they intended to
17 proceed with their overriding royalty interest?

18 A. No, they did not.

19 Q. This whole issue about Nearburg not being
20 provided with the well information under the Marbob term
21 assignment, we went through this ad nauseam. Remember
22 that?

23 A. We did.

24 Q. All of that started, did it not, Mr. Owen,
25 years before the 43H and 44H wells were drilled?

1 A. Yes.

2 Q. So it wasn't anything unique to the 43H and the
3 44H wells?

4 A. No, it wasn't.

5 Q. It was a systemic problem under the Marbob term
6 assignment since everybody moved from the Avalon to the
7 2nd Bone Spring?

8 A. I believe that was in 2011.

9 Q. Okay. And that's reflected in one of their
10 exhibits that I went through with Mr. Griffin, right?

11 A. Correct.

12 Q. Throughout any of that period of time, did
13 Nearburg ever -- are you aware of Nearburg calling COG
14 and saying, Hey, we got these Division orders for these
15 wells; where's the information?

16 A. Not to my knowledge.

17 Q. But when they did ask for the information
18 around the time that you're dealing with the overriding
19 interest percentage and trying to get these comm
20 agreements signed, you gave them the information?

21 A. It was a lot of information, and we got it
22 together as quickly as we could and gave it to them.

23 Q. Including wells not even subject to that Marbob
24 term assignment?

25 A. Correct.

1 Q. Under COG Exhibit 22 is that May 28th letter
2 from Nearburg to COG?

3 MR. HALL: Exhibit 15?

4 MR. FELDEWERT: Exhibit 22 of --

5 THE WITNESS: Okay.

6 Q. (BY MR. FELDEWERT) Do you see that one? We've
7 been through those, where they were asking for some
8 information before they turn over the comm agreement --

9 A. Correct.

10 Q. -- right?

11 And then keep your finger there. Exhibit
12 30 is the email to Mr. Howard, July 20th, 2015, where
13 they say -- suggest for the first time that you
14 committed mineral trespass?

15 A. Correct.

16 Q. And that they reject, then, the effort to
17 extend the term assignment. Do you see that?

18 A. Yes.

19 Q. Okay. Prior to this letter and then the July
20 20th email, were you made aware of any communication --
21 I'm talking about any communication, whether it's
22 written or verbal -- from Nearburg questioning COG's
23 right to operate on a Nearburg lease?

24 A. No, I was not.

25 Q. And at this point in time, you had been -- the

1 company had been operating the 16H on the Nearburg lease
2 under the operating agreement for over four years,
3 correct?

4 A. Correct.

5 Q. And at this point in time, Nearburg was fully
6 aware of the operating agreement; in fact, Mr. Sawyer
7 had sent it to them?

8 A. I believe so.

9 Q. Did Mr. Fuchik work under your direction and
10 supervision in 2014?

11 A. She did.

12 Q. In fact, were you her land lead at that time?

13 A. I was.

14 Q. So did you work with her for a period of time?

15 A. I did.

16 Q. Did you communicate with her regularly after
17 June, July -- July of 2014?

18 A. Yes, sir.

19 Q. If, as Mr. Howard claims, he had told
20 Ms. Fuchik by telephone on January 10th of 2014 that COG
21 was not authorized to drill in the Nearburg lease, would
22 you expect her to have communicated that to you?

23 A. Absolutely would have.

24 Q. And did she ever inform you of any such
25 conversation?

1 A. No. She --

2 MR. HALL: That calls for a hearsay answer.

3 THE WITNESS: No, she didn't.

4 MR. HALL: Hang on.

5 CHAIRMAN CATANACH: Counselor?

6 MR. WADE: Sustain that.

7 Q. (BY MR. FELDEWERT) Have you or anyone else ever
8 been informed of any such conversation between
9 Ms. Fuchik and Mr. Howard in July of 2014?

10 A. I have not.

11 Q. Okay. COG Exhibit Number 4, I want to go to
12 page 5, what's marked as page 5. This is that loss of
13 title provision.

14 A. Yes, sir.

15 Q. Were you here for Mr. Howard's opinion with
16 respect to that?

17 A. I was.

18 Q. Do you agree with that opinion?

19 A. No, I do not.

20 Q. When that -- when that Marbob term assignment
21 expired, what happened to the working interest?

22 A. It would have reverted back to the JOA.

23 Q. It wasn't lost. It just reverted back to the
24 working interest?

25 A. Correct.

1 Q. To Nearburg?

2 A. Yes.

3 Q. And in your opinion, does that constitute a
4 failure of title within this provision of the operating
5 agreement?

6 A. No, it does not.

7 Q. One of the things Mr. Hall asked you is what is
8 a failure of title; when does this apply?

9 A. You know, failure of title would be if the
10 interest that Nearburg contributed to the JOA failed,
11 for instance, if the State didn't own the acreage that
12 they purported to lease to Nearburg. If they ended up
13 not owning that acreage, then the interest that Nearburg
14 contributed to the JOA, that would be a loss of title.

15 Q. Or if the State had canceled that lease?

16 A. Yes.

17 Q. That would be a loss of title?

18 A. I hope -- I don't know. Possibly.

19 Q. All right. When you -- when you inherited this
20 operating agreement and the associated records from
21 Marbob, do those records, in your opinion, reflect that
22 the working interest in the Nearburg state lease had
23 been committed to the operating agreement before
24 execution of the Marbob term assignment?

25 A. Yes.

1 Q. And do the records reflect that the
2 nonoperators subject to the agreement treated that
3 working interest in the Nearburg state lease as
4 committed to the operating agreement?

5 A. They did.

6 Q. And when the working interest in the Nearburg
7 state lease reverted back to Nearburg in March of 2014,
8 did it remain subject to the operating agreement?

9 A. It is.

10 Q. And did the nonoperators treat it as such?

11 A. We have.

12 Q. At any time before this hearing, did anyone at
13 Nearburg suggest to anyone at COG that the termination
14 of the unit way back in March of 2014 constitute a,
15 quote, unquote, "failure of title under the operating
16 agreement"?

17 A. No.

18 Q. Now, Mr. Owen, the company's filed, now,
19 pooling applications?

20 A. We have.

21 Q. And did you file those applications only after
22 Nearburg took the position that no agreement governs
23 this lease?

24 A. Yes, sir.

25 Q. If Nearburg had told anyone at COG prior to

1 filing their complaint on December 30th, 2015 that the
2 operating agreement did not apply to its state lease,
3 what would the company have done?

4 A. Gone through forced pooling procedures.

5 Q. Now, as matter of mechanics for our pooling
6 application --

7 A. Okay.

8 Q. -- what are the overhead rates and the
9 administrative costs being billed under the operating
10 agreement to the contractual interest in these spacing
11 units?

12 A. 6,000 for drilling, 600 for operating plus
13 COPAS.

14 Q. So COPAS adjustments?

15 A. Yes.

16 Q. Are these the amounts that COG suggests would
17 be appropriate to apply for pooling orders?

18 A. Yes.

19 Q. So everybody's on the same page?

20 A. Correct.

21 Q. Okay. Does the company request a risk penalty?

22 A. No, we do not.

23 Q. And once the pooling order is entered, if it's
24 a standard pooling order, will Nearburg be afforded the
25 opportunity to challenge the reasonableness of the well

1 costs for drilling the 43H and the 44H wells?

2 A. I assume they would be.

3 Q. And they could elect to participate or not
4 participate?

5 A. Correct.

6 Q. In preparation of this pooling unit [sic], has
7 the company identified the leased mineral interest
8 owners in the 40-acre tract surrounding each of the
9 proposed nonstandard spacing units?

10 A. We did.

11 Q. And is that notice reflected in what's been
12 marked as COG Exhibit Number 29, which is my affidavit?

13 A. Yes, it is.

14 Q. Okay. Now, I want to talk about the comm
15 agreements, and then we're finished.

16 A. Okay.

17 Q. Exhibits 26 and 27 of our notebook reflect the
18 comm agreements that were approved by the Commissioner
19 of Public Lands, correct?

20 A. Correct.

21 Q. All right. Do they correspond to the spacing
22 units for the 43H and the 44H wells?

23 A. They do.

24 Q. And they're signed by COG as operator of the
25 acreage?

1 A. They are.

2 Q. As operator of the acreage?

3 A. Yes, they are.

4 Q. Yates Petroleum is the record titleholder of
5 the state lease for the surface-hole locations?

6 A. Yes.

7 Q. And Nearburg is the record titleholder of the
8 state lease for the bottom-hole locations?

9 A. Yes.

10 Q. Are you aware that after the filing of these
11 communitization agreements, that the parties discovered
12 there was a clerical error on the first page?

13 A. Yes, I am.

14 Q. What was that clerical error?

15 A. We agreed with Nearburg and Yates Petroleum to
16 depth limit these comm agreements to the specific
17 formation being the 2nd Bone Spring Formation.

18 Q. And how did that happen? How did that clerical
19 error occur? What happened?

20 A. We were going through -- as we've discussed
21 several times, we were going through negotiations to get
22 these comm agreements signed with Nearburg, so there was
23 a lot of back-and-forth. Eventually, we agreed with
24 Nearburg to execute these comm agreements with this
25 depth limitation. And so when we originally sent out

1 the comm agreements to all the parties, this was the
2 cover page. Whenever the tech received back -- when the
3 land tech received back the signature pages, she
4 inadvertently just stuck the signature pages with the
5 original comm agreement that had Concho's original
6 signature on it that she maintained in her records and
7 sent them off for filing. She wasn't aware of the
8 negotiations and the amended front page to the comm
9 agreement at that time.

10 Q. So she was getting signature pages in?

11 A. Yes.

12 Q. Including the signature page that had been
13 signed by Nearburg on May 20th, 2015?

14 A. Correct.

15 Q. Okay. And she just put that signature page
16 with the wrong first page of the communitization
17 agreement?

18 A. Standard practice. She gets the signature
19 pages and stuck them --

20 Q. But she didn't substitute --

21 A. No, she didn't.

22 Q. -- the cover page?

23 A. Huh-uh.

24 Q. And that would be what, the third "whereas"
25 clause?

1 A. Yes.

2 Q. Was there any other revision to the
3 communitization agreement other than revising the
4 interval to which it applied?

5 A. No.

6 Q. Had the same effective date?

7 A. Correct.

8 Q. Okay. And if we look on here, that effective
9 date that everybody agreed to was July 1st, 2014?

10 A. For the 43, yes.

11 Q. And for the 44H well, Exhibit 27?

12 A. Yes.

13 Q. And if we look at the timeline, that would be
14 before the 43H and the 44H wells were drilled?

15 A. Correct.

16 Q. And did the comm agreements that everybody
17 signed also include what we see as paragraph eight here
18 in these communitization agreements?

19 A. Yes.

20 Q. Which state in no uncertain terms in bolded
21 type that COG Operating is the operator of this acreage?

22 A. It does.

23 Q. Did the company then send a letter to the State
24 Land Office advising them of this clerical error when
25 these were filed?

1 A. We did.

2 Q. Turn to COG Exhibit 28. Is that a letter from
3 Mr. Carr of COG to Mr. Padilla at the State Land Office
4 advising them of this clerical error?

5 A. It is.

6 Q. And providing a substitute page limiting the
7 interval to the 2nd Bone Spring interval?

8 A. Correct.

9 Q. And I want you to go to what's been marked as
10 COG Exhibit 31.

11 A. Okay.

12 Q. This is an email that we can see is authored by
13 Mr. Paul Rivera. Do you see that?

14 A. Yes.

15 Q. And he's -- according to his signature line and
16 this stamp on this email, he is a royalty revenue
17 analyst with the State Land Office?

18 A. Yes.

19 Q. And he works in the Royalty Management
20 Division?

21 A. Yes.

22 Q. And does he confirm that royalties have been
23 disbursed?

24 A. In this email, yes.

25 Q. For both the 43H and the 44H?

1 A. Yes.

2 Q. And did you confirm prior to this hearing that
3 the API numbers listed there are for the 43H and the
4 44H?

5 A. I have.

6 Q. And he goes on to confirm that there are no
7 funds suspended in relation to these communitizations?

8 A. Correct.

9 Q. Would the State Land Office, Mr. Owen,
10 distribute royalties under these communitization
11 agreements if they were not in full force and effect?

12 A. I don't know their exact practices, but I don't
13 believe they would.

14 Q. And if the courts -- now, when the courts
15 determine and confirm that an agreement does govern
16 Nearburg's state lease, will COG notify the Commission
17 that this pooling order is no longer needed?

18 A. It will.

19 MR. FELDEWERT: I would move admission into
20 evidence of COG Exhibits 25 through 32, as well as --
21 this is one I didn't want to forget -- 17D, as in dog.

22 CHAIRMAN CATANACH: Any objection?

23 MR. HALL: Let me go back and -- Exhibit
24 25, there is no foundation. There is no sponsor for
25 this exhibit. We don't know who prepared it.

1 MR. FELDEWERT: This is the one Mr. Owen
2 just went through.

3 MR. HALL: It wasn't asked whether he
4 prepared it.

5 Q. (BY MR. FELDEWERT) Mr. Owen, did you prepare
6 Exhibit 25?

7 A. Yes, I did, for the previous hearing.

8 MR. HALL: And you tendered up through?

9 MR. HARPER: 32.

10 MR. FELDEWERT: Actually, I think 31 has
11 already been admitted, but I'm just trying to make it
12 easy.

13 MR. HALL: No objection.

14 MR. FELDEWERT: Thank you.

15 That concludes my examination of this
16 witness.

17 CHAIRMAN CATANACH: I'm sorry. There was
18 no objection?

19 MR. HALL: No objection.

20 CHAIRMAN CATANACH: Exhibits 25 through 32
21 and 17D will be admitted.

22 (COG Operating, LLC Exhibit Numbers 25
23 through 32 and 17D are offered and
24 admitted into evidence.)

25 CHAIRMAN CATANACH: Cross-examination,

1 Mr. Hall?

2 CROSS-EXAMINATION

3 BY MR. HALL:

4 Q. Mr. Owen, I think we discussed this previously,
5 but you indicated in response to Mr. Feldewert's
6 questions that before the May 28th, 2015 letter,
7 Nearburg's Exhibit 15, correspondence from Randy Howard
8 to COG, that before then, Nearburg had never objected to
9 COG operating on this lease in Section 20?

10 A. To my knowledge.

11 Q. I'll have you refer to Nearburg Exhibits 10, 11
12 and 12.

13 A. Okay.

14 Q. And you were present for the discussion of
15 these exhibits and Mr. Howard's testimony?

16 A. Right.

17 Q. So we discussed Exhibit 10. It's the letter
18 from Ms. Fuchik transmitting the communitization
19 agreement back in 2014 to NEX. And we discussed that --
20 we discussed that there was an assignment with the -- or
21 a problem with the term assignment, and that's reflected
22 in Exhibit 12. Do you see that?

23 MR. FELDEWERT: Wait. Which exhibit? COG
24 exhibits?

25 MR. HALL: Exhibit 11.

1 MR. FELDEWERT: Are you talking about our
2 exhibit?

3 MR. HALL: No, Nearburg.

4 MR. FELDEWERT: Nearburg's exhibit.

5 THE WITNESS: Okay.

6 Q. (BY MR. HALL) Do you see the term assignment
7 there?

8 A. Uh-huh.

9 Q. And then Exhibit 12, we had discussed the
10 affidavit.

11 MR. FELDEWERT: Hold on a minute. That is
12 an exhibit that was not admitted, Mr. Hall.

13 MR. HALL: All right. Hang on.

14 MR. FELDEWERT: Are we referencing Exhibit
15 12?

16 Q. (BY MR. HALL) Mr. Owen, were you present for
17 Mr. Howard's testimony with respect to those three
18 exhibits?

19 A. I was here yesterday, yes.

20 Q. Is it fair to say that Nearburg had, in fact,
21 objected to COG operations in Section 20 --

22 A. No.

23 Q. -- back in 2014, assigned the first
24 communitization agreement?

25 A. I was never made aware or heard of any phone

1 call from Nearburg to COG.

2 Q. All right. So your testimony is inconsistent
3 with Mr. Howard's in that respect?

4 A. Yes. I believe we do not agree.

5 Q. Let me ask you how these wells of 43 and 44H
6 got drilled without a title opinion. You provided some
7 testimony on that.

8 A. Sure.

9 Q. And what's the company's policy on starting a
10 well with or without title opinion?

11 A. We had previous title opinions for the unit.
12 The new title opinions, we desired mainly for Division
13 order purposes, not to clear title for the wells.

14 Q. Right. But you had requested -- or Scott
15 Morgan had been requested to provide a drilling opinion
16 for the 43H because spudding of that was imminent,
17 right?

18 A. I believe so.

19 Q. And you didn't get that before you spud?

20 A. No, we did not.

21 Q. Did you have a requirement under the operating
22 agreement to have a drill-site title opinion before
23 beginning any well?

24 A. I believe there are a few requirements within
25 the JOA.

1 Q. All right. So those weren't honored?

2 A. Well, I believe we did have title cleared
3 before we drilled.

4 Q. You didn't have the drilling opinion. You
5 specifically requested --

6 A. We didn't have an updated drilling opinion, no.

7 Q. But, nevertheless, you knew at that time that
8 the lease had reverted to Nearburg, right?

9 A. Yes.

10 Q. And we had talked about some of the other
11 requirements under the provisions of the operating
12 agreement. Mr. Feldewert asked you about the loss of
13 title provision, and as I understand your testimony, it
14 was Nearburg's title -- strike that.

15 You contended that Nearburg contributed its
16 lease in Section 20 under the unit agreement and
17 operating agreement. Is that fair to say?

18 A. That's my opinion.

19 Q. All right. And, in fact, wasn't it Marbob who
20 contributed that lease under the unit agreement and
21 operating agreement?

22 A. You know, I believe probably Marbob sent it in
23 to the State.

24 Q. All right. And that's the reason why the
25 Exhibit A, the working interest ownership for that

1 lease, is attributed to Marbob under the operating
2 agreement?

3 A. No, that's not correct.

4 Q. Shall we look?

5 A. Okay.

6 MR. FELDEWERT: Yeah.

7 Q. (BY MR. HALL) Let's look at the first Exhibit

8 A.

9 A. Which --

10 CHAIRMAN CATANACH: I'm sorry. Where are
11 you at?

12 MR. HALL: I'm sorry. It's our Exhibit 2,
13 the JOA.

14 MR. FELDEWERT: Mr. Chairman, we have been
15 through this joint operating agreement now a number of
16 times. They're the same schedules we've been through
17 numerous times. This is repetitive.

18 CHAIRMAN CATANACH: We'll indulge this and
19 see how far it goes.

20 MR. FELDEWERT: Okay.

21 THE WITNESS: Okay. Go ahead.

22 Q. (BY MR. HALL) So Exhibit A, and it's Bates
23 number 2189.

24 CHAIRMAN CATANACH: Hang on. What page are
25 we on, Mr. Hall?

1 MR. HALL: It's page 2189 of our Exhibit
2 42. It's the operating agreement.

3 CHAIRMAN CATANACH: All right.

4 Got it, Bob?

5 COMMISSIONER BALCH: Yeah.

6 Q. (BY MR. HALL) So Nearburg is not listed as a
7 working interest participant right there?

8 A. Not on Exhibit A, no.

9 Q. That's right.

10 So the percentage interest attributable to
11 Marbob is at that percentage because it concludes the
12 lease took a term assignment from Nearburg?

13 A. Yes. This is after the term assignment, and
14 all the parties are sharing in the Nearburg working
15 interest contributing to the unit agreement and the unit
16 operating agreement. There is a ratification and
17 joinder of unit agreement and unit operating agreement.

18 Q. All right. We discussed that before?

19 A. Yes.

20 Q. Parties are in disagreement about the meeting
21 of a ratification. Do you agree?

22 A. I agree we're in disagreement.

23 Q. And then we look at the recapitulation, and
24 that's page 2197, Exhibit A-1?

25 A. Yes.

1 Q. And there is a reference there in the box that
2 Nearburg had previously TA'd, term assigned, to other
3 parties. And so then you look over at the working
4 interest attributable to Nearburg and it's zero?

5 A. Correct. Look just above that, "Unit Working
6 Interest." It shows Nearburg, 4.18 [sic] percent
7 working interest in the original contribution list.
8 Whereas, recapitulation after the term assignment
9 showing that all the parties have picked up Nearburg's
10 interest, and now Nearburg has nothing.

11 Q. And as you say, that contribution was delivered
12 by Marbob? That was your previous testimony.

13 A. Through Nearburg's ratification and joinder,
14 they gave it to Marbob. Marbob contributed to the unit.

15 Q. Okay. Good.

16 Now, you refer to COG Exhibits 26 and 27,
17 and those just tell you -- we don't have to go through
18 those, but those are the two communitization agreements
19 for the full Bone Spring?

20 A. Yes, sir.

21 Q. After Nearburg had executed the communitization
22 agreements with the depth limitation in there, they had
23 requested to be provided with recorded copies of that,
24 correct?

25 A. Correct.

1 Q. And do you know if they were?

2 A. Yes. Melissa Dimit sent them recorded copies
3 from the State, a P.O. box, but they were returned to
4 COG as return to sender for some reason. I don't know
5 why.

6 Q. So they were not delivered to Nearburg?

7 A. Well, they were delivered to their P.O. box,
8 but they were sent back to us.

9 Q. Do you know what Nearburg's P.O. box is off the
10 top of your head?

11 A. No, not off the top of my head.

12 MR. FELDEWERT: It's COG Exhibit 33. This
13 is one of the exhibits from --

14 MR. HALL: Okay. Hang on. Hang on.

15 MS. SHAHEEN: I don't think that was
16 admitted, right? Exhibit 33 is not admitted?

17 MR. FELDEWERT: Mr. Hall, do you have a
18 copy for me?

19 MR. HALL: Sure.

20 Q. (BY MR. HALL) So let me refer you to Nearburg
21 Exhibit 69. And just a moment ago, you referred to a
22 transmittal letter for the communitization agreements
23 from Melissa Dimit. Here's a letter dated August 28th,
24 2015. Is that this letter?

25 A. It appears to be.

1 Q. All right. And if we look briefly at the first
2 page of the communitization agreement, it's for the
3 vertical extent of the Bone Spring. Would you agree?

4 A. It appears that way.

5 Q. All right.

6 MR. FELDEWERT: This was Exhibit 69?

7 MR. HALL: Yes.

8 Q. (BY MR. HALL) And if we look at the address
9 that it was sent to, it says "P.O. Box 678100"?

10 A. Yes, sir.

11 Q. And if we refer over to the term assignment,
12 that's our Exhibit Number 2.

13 A. Okay.

14 Q. And refer to the well information requirements,
15 page 2.

16 A. Okay.

17 Q. Does that show an address for Nearburg right
18 there?

19 A. It does.

20 Q. And what address is that?

21 A. It's the physical address in Midland.

22 Q. To the right?

23 A. And --

24 Q. Do you see "P.O. Box 823085"?

25 A. No. Oh, yes, I do.

1 Q. Look back at Exhibit 69, the address there is
2 Box 678100?

3 A. Let me get to your exhibit. Oh, yes.

4 Q. So those addresses don't match?

5 A. Right. But I don't know if Nearburg has given
6 us updated -- we would probably need to refer back to
7 the updated drilling requirements they sent to us with
8 the new -- new comm agreement to make sure those don't
9 match either.

10 Q. All right. Look at the last page of Nearburg
11 Exhibit 69.

12 A. Yes, sir.

13 Q. Those comm agreements in that letter, they came
14 back?

15 A. Yes.

16 Q. They were not delivered?

17 A. Correct.

18 Q. So when they came back, what did COG do about
19 that? Did they attempt to follow up?

20 A. I'm not exactly sure what we did once we got
21 them back.

22 Q. So do you agree that it was some time before
23 Nearburg was able to discover on its own that the wrong
24 communitization agreements had been presented to the
25 State Land Office?

1 A. If I recall, they had filed a complaint with
2 the court around Thanksgiving, right around that time,
3 so, you know, looking at this, returned 11/14, it might
4 have been one or two weeks prior to Nearburg finding out
5 on their own.

6 Q. Okay. Now, Mr. Feldewert asked you a series of
7 questions relating to compulsory pooling.

8 A. Yes, sir.

9 Q. Let me ask you: Compulsory pooling is
10 unnecessary if a voluntary agreement exists between the
11 parties, correct?

12 A. I believe so.

13 Q. And would you agree with me that the parties
14 are in disagreement about the existence of a voluntary
15 agreement?

16 A. I would agree with that.

17 Q. Okay. And referring to your Exhibit 28 --

18 A. Yes, sir.

19 Q. -- it's a letter from Mr. Carr who somehow got
20 ahold of Ms. Munds-Dry's letterhead.

21 A. Yes.

22 COMMISSIONER PADILLA: He doesn't have his
23 own.

24 MR. HALL: What does that mean?

25 THE WITNESS: They won't give it to him.

1 MR. CARR: I wanted it to be under my name
2 as well.

3 Q. (BY MR. HALL) Are you aware of whether the Land
4 Office ever acted on that, requesting substitute pages
5 on that recorded document?

6 A. No. I do not know what they have done with the
7 recorded page -- or the substitute page.

8 Q. All right. So someone with a substantial
9 landman's experience, does that strike you as a correct
10 thing to do, to try to obtain substituted pages for
11 documents filed of record?

12 A. I believe replacing pages on an agreement is
13 common practice.

14 Q. And recorded agreements?

15 A. You'd have to re-record them, but yes.

16 Q. Is there some inconsistency with New Mexico's
17 forgery statute when you do that?

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

20 CHAIRMAN CATANACH: Sustained.

21 MR. HALL: Okay. That concludes our cross.
22 Move the admission of Exhibit 69. This
23 witness authenticated it.

24 MR. FELDEWERT: No objection.

25 CHAIRMAN CATANACH: Exhibit 69 will be

1 admitted.

2 (Nearburg Exploration Co., LLC Exhibit
3 Number 69 is offered and admitted into
4 evidence.)

5 MR. FELDEWERT: Mr. Commissioner, while
6 we're on that, just so I don't look bad, I probably did
7 forget to admit Exhibit 33, which is the same letter
8 they have on their Exhibit 69. Can I, just for purposes
9 of the record, move the admission of COG Exhibit 33?

10 MR. HALL: It was, I believe, offered, but
11 not accepted, if I recall correctly.

12 MR. WADE: What I recall is this one was
13 not offered and at that time probably would not have
14 been accepted because you couldn't have laid a
15 foundation, but it looks like you laid a foundation.

16 MR. HALL: Yeah. That's fine.

17 CHAIRMAN CATANACH: Okay. Exhibit 33 --
18 COG Exhibit 33 will be admitted.

19 MR. FELDEWERT: Thank you.

20 (COG Operating, LLC Exhibit Number 33 is
21 offered and admitted into evidence.)

22 CROSS-EXAMINATION

23 BY COMMISSIONER PADILLA:

24 Q. Good afternoon, Mr. Owen.

25 A. Hello.

1 Q. I just have a couple of questions. Some of
2 them are just out of curiosity.

3 Okay. I believe Mr. Howard referred to
4 development requirements as the termination reason for
5 the SRO Unit?

6 A. Yes. Correct.

7 Q. How much acreage were you going to lose on --
8 on the contraction of that unit? I mean, it seems like
9 a pretty drastic step to take.

10 A. No. I believe all of the leases at that time
11 being state -- majority state leases -- I don't think
12 there is any fed acreage in this unit -- were HBP
13 through a well drilled on that acreage. And I
14 believe --

15 Q. In other horizons?

16 A. Say that again.

17 Q. In other horizons in addition to --

18 A. Either Avalon or Bone Spring or -- for some
19 reason, but all of the leases in the unit were at that
20 time were HBP. So at least the well or com well had
21 been drilled to HBP had been released at that time. And
22 I believe -- and I'd have to go back and refer to it,
23 but I believe in the unit operating, we had a 90-day
24 CDC, and everything not within a spacing unit would at
25 that time Pugh out.

1 And so on a recommendation from the
2 nonoperating owners -- Concho had several rigs running,
3 and we were drilling under the CDC. But under
4 recommendation of several of the nonoperating owners,
5 they recommended that we dissolve the unit, each lease
6 would go back to being HBP on its own, and we then could
7 develop under the JOA at will in accordance with what
8 everybody wanted to do.

9 Q. So that's not an undivided interest unit then?

10 A. No. The JOA treats all the working interest
11 owners and all of the -- all the working interest owners
12 as one large unit. However, when it dissolved, each
13 spacing unit was separate, so royalties would have to be
14 recalculated, overrides possibly, and depending on who
15 contributed which lease, your NRI might adjust
16 accordingly.

17 Q. You don't know how many acreage was --

18 A. No, not off the top of my head.

19 Q. It was probably pretty significant to take that
20 kind of step?

21 A. You know, I don't know. I believe this was a
22 common practice of other operators. I really don't
23 know. I wasn't here at that time, so I don't know if
24 this was a standard procedure that operators did when
25 putting together state units.

1 Q. Do you ever wish you had never heard of the SOA
2 [sic]?

3 A. I don't know if I would have accepted the
4 transfer to New Mexico (laughter).

5 Q. That's all I have. Thank you.

6 CHAIRMAN CATANACH: Just a couple.

7 CROSS-EXAMINATION

8 BY CHAIRMAN CATANACH:

9 Q. When the unit was initially established, was
10 that set up -- it was an exploratory unit, correct?

11 A. I believe so.

12 Q. Was it -- was it the type of unit that had
13 to -- they had to establish participating areas?

14 A. No, I don't believe so. But I haven't been
15 here -- I came in after the dissolution of the unit, so
16 to tell you the truth, I haven't really gone back and
17 studied the development and obligations under the unit
18 agreement.

19 Q. So the unit terminated 3/1/2014, right?

20 A. Yes, sir.

21 Q. So at that time -- and I'm sure we've been over
22 this many, many times, but at that time, your assertion
23 is that Nearburg got back its working interest owner --
24 I mean working interest in the unit in that acreage?

25 A. Yes. Nearburg contributed 320 over -- and

1 that's kind of a discrepancy; was it gross or net -- 320
2 acres to the unit, so they would have had approximately
3 4.9 percent interest in the unit. So at that time, they
4 could have come back into the unit for all of the
5 producing wells and wells drilled after the unit, with a
6 4.9 percent working interest.

7 Q. So your assertion is that they were subject to
8 the operating agreement --

9 A. Yes, sir.

10 Q. -- after that time?

11 A. Yes.

12 Q. Well, then, if they were a working interest
13 owner, why weren't they afforded the opportunity to
14 participate in the 43 and 44?

15 A. Correct. So throughout this whole time, from
16 March forward, Nearburg indicated to us they had no
17 intention to be a working interest owner. All they ever
18 indicated to us -- talked to us about was figuring out
19 what their override was and correcting -- doing a
20 corrected or amended term assignment. So it was our
21 understanding of their intention that they just wanted
22 to maintain status quo, maintain their override
23 underneath the unit.

24 Q. So that was the assumption you based all your
25 future actions on, but you had no signed agreement of

1 any kind with that?

2 A. No. We had no actual signed document.

3 Q. Okay. I have no further questions.

4 COMMISSIONER PADILLA: I have one more
5 follow-up, if I might, Mr. Chairman.

6 CHAIRMAN CATANACH: (Indicating.)

7 RECROSS EXAMINATION

8 BY COMMISSIONER PADILLA:

9 Q. You reminded me of something. The contraction
10 clause -- I gave Mr. Howard a hard time, so I have to
11 give you a little bit of a hard time.

12 A. Okay.

13 Q. Did anyone ever call the State Land Office to
14 see if that was actually the case? Because almost every
15 state -- especially -- or state fee unit I've seen,
16 there is a contraction clause, but there is also an out
17 for trust benefit as determined by the Commissioner.
18 So --

19 A. That's good to know.

20 Q. -- did anyone --

21 A. I wasn't on the team or group at that time, so
22 I don't know.

23 Q. -- before pushing you out the window, did the
24 operator --

25 A. Looking back at all of our records we have, I

1 didn't see any communication as to that -- as to that.

2 So that's good for me to know now. But no, I don't

3 believe so.

4 Q. A couple years too late on this one?

5 A. Yes, sir.

6 Q. All right. Thank you.

7 CHAIRMAN CATANACH: I do have one more
8 question.

9 RE CROSS EXAMINATION

10 BY CHAIRMAN CATANACH:

11 Q. Can we refer to Exhibit 28 -- Nearburg Exhibit
12 28? This question is per Commissioner Padilla. Do you
13 know what the status of that letter to Mr. Padilla is?

14 MR. FELDEWERT: You mean COG Exhibit 28?

15 CHAIRMAN CATANACH: COG's Exhibit 28.

16 COMMISSIONER PADILLA: The status is the
17 lawyers have it.

18 CHAIRMAN CATANACH: I have nothing further.

19 COMMISSIONER BALCH: Was that a joke?

20 CHAIRMAN CATANACH: I guess you didn't get
21 it.

22 All right. Anything further of this
23 witness.

24 MR. HALL: No, not from us.

25 CHAIRMAN CATANACH: The witness may be

1 excused.

2 Does that conclude your presentation,
3 Mr. Feldewert?

4 MR. FELDEWERT: Yes, sir.

5 MR. HALL: May I make a suggestion, or were
6 you about --

7 CHAIRMAN CATANACH: I'd be open to
8 suggestions.

9 MR. HALL: Okay. Mr. Balch has to get on
10 the road. I suggest that we do written closings. We'd
11 like the opportunity to do that. That's fine.

12 We'd like to have the benefit of the
13 transcript when we prepare those. Can we agree on a
14 time after those -- after the transcripts are received
15 to provide statements to you, closing briefs? I suggest
16 two weeks after we get the transcript.

17 COMMISSIONER BALCH: The next scheduled
18 hearing is April 3rd.

19 CHAIRMAN CATANACH: 4th.

20 COMMISSIONER BALCH: 4th. That's plenty of
21 time for us to deliberate on the 4th of April.

22 MR. HARPER: How soon do you want the
23 briefs?

24 MR. WADE: Sometime before the hearing, so
25 it's kind of pushing it to give us the ability to read

1 them.

2 COMMISSIONER BALCH: Okay.

3 MR. FELDEWERT: Do we really need the
4 transcript? Do you really need -- entirely up to you.

5 CHAIRMAN CATANACH: Well, personally, I do
6 need the transcript. In my mind, there is a lot of
7 material in this case that I think we need to maybe go
8 over.

9 And I don't know about briefs. I was going
10 to suggest that we get draft orders from both sides that
11 may help us out more than a brief would.

12 MR. WADE: And those orders -- obviously,
13 we're going to discuss stipulated facts, and I don't
14 know that you have come to any final agreement on the
15 stipulated facts.

16 MR. FELDEWERT: Haven't yet.

17 (Consultation off the record.)

18 CHAIRMAN CATANACH: I don't know that we
19 have to --

20 COMMISSIONER PADILLA: 2nd or 3rd of April
21 is a special Commission day.

22 CHAIRMAN CATANACH: We seem to have a lot
23 of special Commission days.

24 (Consultation off the record.)

25 CHAIRMAN CATANACH: I think it would be

1 helpful to have that much time to look over all this
2 stuff.

3 MR. HALL: We can give you draft orders,
4 continue to work with each other on the stipulation and
5 deliver that to you. And I'd suggest give the parties
6 the option to file any sort of post-hearing memorandum
7 on the law.

8 CHAIRMAN CATANACH: You mean like a closing
9 statement?

10 MR. HALL: Sure.

11 CHAIRMAN CATANACH: Yeah. I guess if you
12 want to file a closing statement, that's fine, too. I
13 think draft orders would help you guys. You're asking
14 for a lot of relief, different kinds of relief, and we
15 need to have that all lined out.

16 MR. HALL: I think it would be helpful for
17 us to breach the authority that the Division and --

18 CHAIRMAN CATANACH: So we'll plan on
19 deliberating April 4th, sometime around that. I don't
20 know if we have to designate a date at this time.

21 COMMISSIONER BALCH: We can continue at any
22 time at this point without re-notice?

23 MS. DAVIDSON: Right.

24 COMMISSIONER BALCH: Why don't we continue
25 to April 25th? We can do that right now.

1 CHAIRMAN CATANACH: What day is that?

2 COMMISSIONER BALCH: It's a Tuesday.

3 CHAIRMAN CATANACH: Tuesday. Okay. Why
4 don't we do that, continue the case to April 25th, which
5 is a Tuesday. We'll plan on deliberating that day.

6 And as far as deadlines?

7 MR. HALL: Two weeks out? Two weeks before
8 deliberations?

9 CHAIRMAN CATANACH: Do you know what date
10 that would be?

11 COMMISSIONER BALCH: 25 minus 11th, right?

12 CHAIRMAN CATANACH: So April 11th deadline.

13 MR. WADE: Deliberations will be closed.

14 CHAIRMAN CATANACH: Deliberations will be
15 closed. I don't know when -- we'll have to determine
16 when we announce a decision on that. If we reach a
17 decision on that date, we could contact both parties --

18 MR. FELDEWERT: That would be fine.

19 CHAIRMAN CATANACH: -- and let you know.

20 MR. HALL: Okay.

21 CHAIRMAN CATANACH: I wouldn't expect that
22 we would probably have an order on that for -- well,
23 maybe, maybe not, until the May Commission meeting. So
24 it would probably be the final day.

25 Okay. Anything further?

1 April 11th, deadline date for submittals.
2 If we come up with a decision, we'll announce or let you
3 guys know about the decision.

4 MR. FELDEWERT: Thank you very much.

5 CHAIRMAN CATANACH: Okay.

6 MR. HALL: Thank you.

7 CHAIRMAN CATANACH: Thank you very much,
8 ladies and gentlemen.

9 We're adjourning until the 25th of April,
10 conclude these proceedings. We stand adjourned until
11 then.

12 (The proceedings conclude, 2:49 p.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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CERTIFICATE OF COURT REPORTER

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

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

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

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