

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

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

APPLICATION OF PERCUSSION PETROLEUM                      CASE NO. 16408  
OPERATING, LLC FOR A NONSTANDARD  
SPACING AND PRORATION UNIT, AND  
COMPULSORY POOLING, EDDY COUNTY,  
NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

September 20, 2018

Santa Fe, New Mexico

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

This matter came on for hearing before the  
New Mexico Oil Conservation Division, William V. Jones,  
Chief Examiner, and David K. Brooks, Legal Examiner, on  
Thursday, September 20, 2018, at the New Mexico Energy,  
Minerals and Natural Resources Department, Wendell Chino  
Building, 1220 South St. Francis Drive, Porter Hall,  
Room 102, Santa Fe, New Mexico.

REPORTED BY:    Mary C. Hankins, CCR, RPR  
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1 (9:04 a.m.)

2 EXAMINER JONES: And on page 3, we have  
3 Percussion, which is Case Number 16408, application of  
4 Percussion Petroleum Operating, LLC for a nonstandard  
5 spacing and proration unit and compulsory pooling in  
6 Eddy County, New Mexico.

7 Call for appearances.

8 MS. KESSLER: Mr. Examiners, Jordan  
9 Kessler, from the Santa Fe office of Holland & Hart, on  
10 behalf of the Applicant.

11 EXAMINER JONES: Any other appearances?  
12 One witness?

13 MS. KESSLER: Two witnesses today.

14 EXAMINER JONES: Will the witnesses stand  
15 and the court reporter please swear the witnesses?

16 (Mr. Dalton and Mr. Lipinski sworn.)

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

20 DIRECT EXAMINATION

21 BY MS. KESSLER:

22 **Q. Will you please state your name for the record**  
23 **and tell the examiners by whom you're employed and in**  
24 **what capacity?**

25 A. Everett Dalton. I'm a contract landman for

1 Percussion Petroleum, LLC.

2 Q. Have you previously testified before the  
3 Division?

4 A. Yes, I have.

5 Q. Were your credentials as an expert petroleum  
6 landman accepted and made a matter of record?

7 A. Yes, they were.

8 Q. Are you familiar with the application that's  
9 been filed in this case?

10 A. Yes.

11 Q. And are you familiar with the status of the  
12 lands in the subject area?

13 A. Yes.

14 MS. KESSLER: Mr. Examiner, I would tender  
15 Mr. Dalton as an expert in petroleum land matters.

16 EXAMINER JONES: He is so qualified.

17 Thank you for coming.

18 Q. (BY MS. KESSLER) Mr. Dalton, what does  
19 Percussion seek under this application?

20 A. To pool all uncommitted interests in the  
21 Glorieta-Yeso in Section 22, the west half-west half of  
22 Township 19 South, Range 25 East, Eddy County, New  
23 Mexico.

24 MS. KESSLER: And, Mr. Examiners, let me  
25 interrupt myself. We're requesting to dismiss the

1 nonstandard spacing unit portion of this application.

2 EXAMINER JONES: Okay. I assume that's  
3 what we were doing in the previous case, too. I don't  
4 know about that. We'll hear it the next time it's  
5 heard.

6 Q. (BY MS. KESSLER) So, Mr. Dalton, you're seeking  
7 to pool uncommitted interest owners in the west  
8 half-west half spacing unit, correct?

9 A. Correct.

10 Q. And the spacing unit will be dedicated to two  
11 wells?

12 A. Correct. That's the Ross Ranch 22 9H and 10H  
13 wells.

14 Q. If I turn to Exhibit 1, is the first page of  
15 this exhibit the C-102 for the Ross Ranch 22 #9H well?

16 A. Yes, it is.

17 Q. And does this C-102 identify a pool and pool  
18 code?

19 A. Yes, it does.

20 Q. What is that pool?

21 A. The North Seven Rivers-Glorieta-Yeso, Pool Code  
22 97565.

23 Q. And this C-102 has been filed and approved; is  
24 that correct?

25 A. For this well, yes.

1           **Q.    What is the second page of Exhibit 1?**

2           A.    This is showing the proposed lateral for the  
3    10H well, the Ross Ranch 22 10H well, the surface  
4    location and the northwest-northwest of 27 going -- the  
5    lateral being drilled from south to north and bottoming  
6    in the northwest-northwest of Section 22.

7           **Q.    Has the C-102 been filed yet?**

8           A.    For the 10H?

9           **Q.    Correct.**

10          A.    No.

11          **Q.    Now, it does not have a pool and pool code on**  
12 **the C-102. Will it be the same as for the 9H well?**

13          A.    Yes, it will.

14          **Q.    Is this pool governed by Division statewide**  
15 **setbacks?**

16          A.    Yes, they are.

17          **Q.    And will the completed interval for each of the**  
18 **two wells comply with those setback requirements?**

19          A.    Yes, they will.

20          **Q.    What type of land is this?**

21          A.    This is fee land.

22          **Q.    And are there any depth severances in this**  
23 **pool?**

24          A.    There are.

25          **Q.    Can you please explain those depth severances?**

1           A.    Yes.   In the northwest-northwest of Section 22,  
2   there is a depth severance at 2,477, and in the  
3   southwest-southwest, there is a depth severance at 3,052  
4   feet.

5           Q.    If I turn to Exhibit 2, does this exhibit  
6   identify the ownership and tracts of land comprising the  
7   proposed spacing unit?

8           A.    Yes.

9           Q.    Does it show with asterisks the parties that  
10   Percussion seeks to pool?

11          A.    Yes, except Sharbro. We made a deal with them,  
12   so --

13          Q.    You recently made an agreement with Sharbro?

14          A.    Yes.

15          Q.    But it still reflects they're still being  
16   pooled on this exhibit?

17          A.    Correct.

18          Q.    So you're requesting that they not be pooled?

19          A.    That's correct.

20          Q.    What type of interest are you seeking to pool?

21          A.    All uncommitted interests.

22          Q.    And that would be unleased mineral interest  
23   owners, working interest owners, and you're also pooling  
24   for unmarketable title; is that correct?

25          A.    That is correct.



1           **Q.    For unmarketable title, did you locate all**  
2           **potential heirs?**

3           A.    Yes.   These are two families that their mother  
4           died out of state, and they have not probated the will.

5           **Q.    So you identified all potential heirs, and did**  
6           **you offer to lease them?**

7           A.    Yes.

8           **Q.    Did you provide them notice of this hearing?**

9           A.    Yes.

10          **Q.    Let's turn to the depth-severance issues.  Do**  
11          **you have highlighted on this exhibit the ownership**  
12          **severances by depth?**

13          A.    Yes.   The highlighted portions indicate the  
14          parties that are gaining and losing.   So you'll see  
15          St. Devote, which is a wholly owned subsidiary of  
16          Percussion Petroleum, would give up some interest in  
17          favor of OXY USA in the northwest-northwest, since we  
18          have a lease covering OXY's interest from the surface to  
19          2,477, but then there was a depth severance per the  
20          lease.

21                   And in the southwest-southwest, a similar  
22          situation, with a depth severance of 3,052, and that  
23          would be coming out of St. Devote's interest in favor of  
24          Roy Barton.

25          **Q.    So St. Devote is Percussion, you mentioned?**

1           A.     That is correct.

2           Q.     If I turn to the northwest-northwest tract, you  
3 mentioned OXY is leased above the severance line; is  
4 that correct?

5           A.     That is correct.

6           Q.     And then there is a depth severance at 2,477?

7           A.     That is correct.

8           Q.     And OXY is unleased below that severance line?

9           A.     That is correct.

10          Q.     You've highlighted St. Devote and OXY USA.  
11 OXY's interest comes out of St. Devote's interest?

12          A.     Correct. You'll see the -- from the surface to  
13 2,477, St. Devote's interest is the same percent larger  
14 that OXY has shown in the interest below 2,477 feet.

15          Q.     So if you add St. Devote's interest and OXY's  
16 interest up under the severance line, it equals the --

17          A.     The top line.

18          Q.     Yeah.

19                     Now, let's look at the southwest-southwest  
20 tract. It looks like there is a depth severance at  
21 3,052 feet, correct?

22          A.     Correct.

23          Q.     And it's Roy G. Barton, Jr. that has that  
24 severance?

25          A.     Correct.

1           Q.    Is he leased above the severance line?

2           A.    He is, yes.

3           Q.    And unleased below the severance line?

4           A.    That's correct.

5           Q.    Has OXY -- what have your discussions been with  
6 OXY USA?

7           A.    They are ongoing. OXY is trying to decide if  
8 they want to participate or do some other type of trade  
9 with us.

10          Q.    But you've been in negotiations with them?

11          A.    Yes. Yes.

12          Q.    And they do not object to this hearing,  
13 correct?

14          A.    No.

15          Q.    Now, for Roy Barton's interest, what has he  
16 decided to do?

17          A.    He has indicated that he would like to  
18 participate with his interest that is unleased. We  
19 have -- and he has indicated that -- he assigned an AFE  
20 and participation agreement, but we have not yet inked  
21 the JOA.

22          Q.    You're seeking to pool the entire Yeso pool; is  
23 that correct?

24          A.    That's correct.

25          Q.    You're not limiting it to specific portions of

1 the Yeso?

2 A. Correct.

3 Q. Are you seeking to pool depth-severed interest  
4 owners?

5 A. Yes.

6 Q. And you're still attempting to reach a  
7 contractual interest such that pooling would be  
8 unnecessary; is that correct?

9 A. Correct.

10 Q. And if you reach such an agreement, will you  
11 notify the Division?

12 A. Absolutely.

13 Q. How will each of the severed interest owners be  
14 paid?

15 A. Based on surface acreage, but we're also  
16 seeking to have a separate contractual agreement as far  
17 as the payment of it.

18 Q. So even if you don't reach an operating  
19 agreement or a farm-out, you will reach some type of  
20 agreement regarding how they will be paid for each of  
21 these two wells?

22 A. That's our intention. Yes.

23 Q. If I turn to the second page of this exhibit,  
24 are you also seeking to pool overriding royalty interest  
25 owners?

1           A.     Yes.

2           Q.     And the second page reflects all of the  
3     overriding royalty interest owners that you seek to  
4     pool?

5           A.     Correct.

6           Q.     Does Exhibit 3 include several proposal letters  
7     that were sent to uncommitted interest owners?

8           A.     Yes.

9           Q.     And both wells were on each of those letters,  
10    correct?

11          A.     Correct.

12                   MS. KESSLER:  Now, Mr. Examiners, I've  
13    included, I believe, four different well-proposal  
14    letters.

15          Q.     (BY MS. KESSLER) Each of them are different,  
16    correct, Mr. Dalton?

17          A.     Yes, depending on what the parties owned.  Some  
18    parties had an unleased interest, and we gave them  
19    options for their unleased interest.  Some were  
20    leasehold interests that were not committed to a joint  
21    operating agreement, and we gave them options.  And then  
22    there were some that were committed to operating  
23    agreements, and we gave them options too.  So  
24    whatever they -- we gave them a variety of options.

25          Q.     So you offered various options based on the

1     **type of ownership; is that correct?**

2           A.     That correct.

3                   MS. KESSLER:   So I've included a sample  
4     well proposal for each type of ownership.  If you would  
5     like all of the well proposals, I'd be happy to provide  
6     them, but there are a lot of them.

7           **Q.     (BY MS. KESSLER) In addition to sending these**  
8     **well-proposal letters, Mr. Dalton, what other efforts**  
9     **did you undertake to reach an agreement with the parties**  
10    **that you're seeking to pool?**

11          A.     I've had ongoing conversations with them for  
12    them trying to decide what it is they want to do.

13          **Q.     Were you able to locate each of parties that**  
14    **you seek to pool?**

15          A.     Yes.

16          **Q.     In your opinion, did you make a good-faith**  
17    **effort to reach an agreement with each of the**  
18    **uncommitted interest owners?**

19          A.     Yes.

20          **Q.     Each of the letters that you sent included an**  
21    **AFE; is that correct?**

22          A.     That is correct.

23          **Q.     And are those AFEs included as the last two**  
24    **pages of Exhibit 3?**

25          A.     Yes.

1           Q.    Are the costs of these AFEs consistent with  
2 what other operators in the area charge for Yeso wells?

3           A.    For the type that we're drilling, yes.

4           Q.    Has Percussion determined overhead and  
5 administrative costs for drilling and producing each of  
6 the wells?

7           A.    Yes, drilling well rates, 7,500, and producing  
8 well rates, 750 per month.

9           Q.    Is Exhibit 4 an affidavit prepared by my office  
10 providing notice of this hearing to the parties that you  
11 seek to pool?

12          A.    Yes.

13          Q.    And even though the interest owners were  
14 locatable, is Exhibit 5 an Affidavit of Publication  
15 published in Eddy County?

16          A.    Yes.

17          Q.    Providing notice of this hearing, correct?

18          A.    Correct.

19          Q.    Were Exhibits 1 through 3 prepared by you or  
20 compiled under your direction and supervision?

21          A.    Yes.

22                   MS. KESSLER: Mr. Examiners, I move  
23 admission of Exhibits 1 through 5, which includes my two  
24 affidavits.

25                   EXAMINER JONES: Exhibits 1 through 5 are

1 admitted.

2 (Percussion Petroleum, LLC Exhibit Numbers  
3 1 through 5 are offered and admitted into  
4 evidence.)

5 CROSS-EXAMINATION

6 BY EXAMINER BROOKS:

7 Q. I want to ask some questions about this depth  
8 severance because there is a lot I -- it went fairly  
9 fast, and I don't really understand everything.

10 St. Devote has a lease -- no, wait. OXY  
11 has a lease on St. Devote as a mineral owner; is that  
12 right?

13 A. St. Devote is the lessee. OXY would be the  
14 lessor.

15 Q. Okay. So OXY has an unleased mineral interest,  
16 as you so indicate?

17 A. Yes, sir.

18 Q. And as to the northwest-northwest, OXY owns  
19 that interest, and as to the southwest-southwest, Roy  
20 Barton owns that interest?

21 A. Yes. Yes, sir.

22 Q. And St. Devote has a lease, but St. Devote's  
23 lease is depth limited?

24 A. Yes, sir.

25 Q. Different depths on the two tracts?



1           A.    Yes, sir.  There are different wells on those  
2   tracts.

3           Q.    Okay.  So this was -- this is a result of some  
4   kind of Pugh clause arrangement?

5           A.    Yes, sir.  Yes, sir, under the terms of an oil  
6   and gas lease.

7           Q.    Okay.  Now, how can you allocate production  
8   between depth-severed interests on a surface-acreage  
9   basis?  I don't really understand what you propose to  
10   do.

11          A.    What our attempt would be is to -- as far as  
12   the payment, for example, with Mr. Barton, for him  
13   wanting to participate in the unleased interest, that he  
14   would be paying his well cost for a horizontal well that  
15   is traversing his -- his unleased interest.  And then  
16   production from that would be paid based on his working  
17   interest in the unit.

18          Q.    His working interest in the unit computed as  
19   though he owned this interest to all depths?

20          A.    But it would be limited.  That's what I'm  
21   saying.  We're talking about getting a separate  
22   agreement with these parties where they're  
23   depth-severed, to say if you've leased, you'll be paid  
24   your royalty interest for a well that is in those leased  
25   depths.  And if you're unleased, if you want to

1 participate, then you would participate as a working  
2 interest owner in that interest proportionally reduced  
3 to the spacing unit and be entitled to your interest in  
4 that.

5 **Q. Well, that's fine if you get an agreement.**

6 A. Yes, sir.

7 **Q. What if you don't get an agreement?**

8 A. If you don't get an agreement, for the wells  
9 that we're proposing right now, the 9 and 10H, they are  
10 in OXY's unleased interest, and so they would be  
11 entitled to the production based on their unleased  
12 interest. The only party affected by that would be  
13 St. Devote, and we have no objection that they would be  
14 paid on that basis.

15 **Q. Be paid on what basis?**

16 A. As though they had 100 percent of that  
17 interest.

18 **Q. In other words, you're going to pay**  
19 **St. Devote -- you propose to pay St. Devote their**  
20 **interest as though they owned it as to all depths?**

21 A. We would pay OXY.

22 EXAMINER JONES: Because they're -- they're  
23 only a lessor, right?

24 THE WITNESS: Well, St. Devote is the  
25 lessee, and OXY is the lessor. So in this case, we have

1 the -- so St. Devote has the shallower depths under  
2 lease. And so for the unleased portion, we would let  
3 OXY have their interest in those wells proportionally  
4 reduced to the spacing unit.

5 Q. (BY EXAMINER BROOKS) So you're proposing  
6 that -- what you're proposing then -- I'm still having  
7 trouble understanding it. You determine the interest in  
8 each well by what depth the well is completed in?

9 A. Yes, sir, basically, and using surface acres.

10 Q. So you're paying the interest to the owners of  
11 that depth on an unpooled basis as though they -- as  
12 though the rule of capture applied to that interest, to  
13 whatever is produced from that well --

14 A. That's correct.

15 Q. -- at that --

16 A. At that interval.

17 Q. -- at the perforations, under the Texas rule,  
18 not under the Pennsylvanian rule.

19 I don't know whether we can do that or not.

20 A. That's why we're looking to seek a separate  
21 agreement with them, but absent that, they are going to  
22 be paid on a surface basis.

23 Q. And Percussion will notify us if and when you  
24 have an agreement, correct?

25 A. Certainly. Certainly. Yes, sir.

1           Q.    Okay.  Well, I would be interested in views of  
2   counsel as to whether we can do this or not.  Thank you.

3                   MS. KESSLER:  Mr. Brooks, what Percussion  
4   is proposing to do today is to compulsory pool, to  
5   aggregate the interests of OXY and Roy G. Barton given  
6   that they have not reached an agreement with Percussion  
7   yet.  And I think it's worth pointing out again that  
8   St. Devote and Percussion are the same entity.  So  
9   St. Devote is 100 percent owned by Percussion.  So the  
10   only party affected as to the OXY interest is  
11   Percussion.

12                   What Percussion is proposing to do is to  
13   compulsory pool to aggregate the interest, understanding  
14   that Percussion must reach some sort of contractual  
15   agreement as to what OXY and Roy G. Barton will be paid.  
16   I understand that they have reached an agreement -- or a  
17   type of agreement with Roy G. Barton regarding what he  
18   will be paid.  The only outstanding interest is OXY.  So  
19   we're still seeking to pool Roy G. Barton and OXY as to  
20   aggregate their interest, and perhaps a contractual  
21   agreement such an operating agreement or farm-out will  
22   be reached with those two parties.  But with respect to  
23   what those parties will be paid, Percussion will reach  
24   some type of agreement.

25                   THE WITNESS:  And I'm sorry.  At this

1 point, no one has objected to what we're talking about.  
 2 I mean, they fully understand that well, if I'm leased,  
 3 then I'll get a royalty interest, and if I'm unleased, I  
 4 can participate as a working interest owner, if that's  
 5 what I want to do, unless I want to lease that interest  
 6 also.

7 EXAMINER JONES: Which Roy G. Barton has  
 8 not decided to lease out?

9 THE WITNESS: Well, the proposal that was  
 10 sent to him, he signed. We just don't have a JOA with  
 11 him yet. But the proposal said as far as the unleased  
 12 interest, you have a right to participate in that. As  
 13 to the leased interest, you don't.

14 Q. (BY EXAMINER BROOKS) But it doesn't stipulate  
 15 exactly what interest he is to be paid for, though?

16 A. It stipulates his working interest in the  
 17 unleased portion. Yes, sir.

18 Q. I think that it would be good if somebody could  
 19 prepare an exhibit showing how this is all going to  
 20 work, because in the event that there is not an  
 21 agreement that formalizes the exact amount each party is  
 22 to receive, I understand that the depth-severed interest  
 23 is not to be pooled above and below the depth limited --  
 24 the limiting depth, but I think you would have to do a  
 25 separate statement of how it's to be distributed above

1     and below -- for a well above and for a well below. But  
2     I would like to see a supplemental exhibit that would  
3     set this all out.

4                     Thank you.

5                     CROSS-EXAMINATION

6     BY EXAMINER JONES:

7             Q.     But the entire Glorieta-Yeso depth would be  
8     participating in the well; is that correct?

9             A.     Yes.

10            Q.     Okay. And --

11                   EXAMINER BROOKS: Now, wait a minute. That  
12     raises some questions.

13                   RECROSS EXAMINATION

14     BY EXAMINER BROOKS:

15            Q.     The entire depth would be participating --  
16     would be contributing to costs, and the people that --

17            A.     Well, as we talked about as to each depth  
18     there. But, I mean, it is a whole -- the pool is a  
19     whole, but it just depends on where the horizontal well  
20     is in the pool, what we were just talking about.

21            Q.     But the participation in costs and the  
22     participation in revenues both would depend on the  
23     actual depth of the well?

24            A.     Correct, where it is, where the horizontal leg  
25     is.

1           Q.    And I think I understand that, but that's  
2   not -- to me is not the same thing as saying the whole  
3   Bone Spring will be pooled, because if the whole Bone  
4   Spring would be pooled, then everybody would participate  
5   on some basis in any well.

6           A.    And that's why we're seeking -- that would be  
7   the separate agreement as to how they would be paid.  
8   Yes, sir.

9           Q.    Right. And if -- if you don't get that  
10   separate agreement and we decide that we can write an  
11   order on this, we're going to have to put all these  
12   conditions in the order.

13                    Thank you.

14                    CONTINUED CROSS-EXAMINATION

15   BY EXAMINER JONES:

16           Q.    I guess we're going to have another witness  
17   about the depth that was related to these pool  
18   division -- depth severances.

19                    Do you have any record title owners that  
20   are not -- you said you did have record title owners  
21   that are not signed up, right? I'm just going through  
22   the list here.

23           A.    There are some unleased mineral interest  
24   owners, and then there are some that have some  
25   marketable title issues of unleased owners.

1           Q.    Okay.  But there are not pure record title that  
2   have signed their interests over?  Except on this  
3   depth-severance issue, there is.

4                   EXAMINER BROOKS:  Well, the use of the term  
5   "record title" -- this is all fee tract.

6                   EXAMINER JONES:  Okay.

7                   THE WITNESS:  Yes.  Yes, sir.

8                   EXAMINER BROOKS:  The use of the term  
9   "record title" is -- is problematic.

10                  THE WITNESS:  Working interest owners.

11                  EXAMINER BROOKS:  Yeah.  It's best if we  
12   simply say "working interest owners."

13                  THE WITNESS:  Yes, sir.

14           Q.    (BY EXAMINER JONES) Okay.  Are the unmarketable  
15   title owners -- their interests are not divided?

16           A.    Correct.

17           Q.    Okay.  And you've got #9H already permitted.  
18   Is that the first well you're going to drill?

19           A.    Yes, sir.

20           Q.    Okay.  Are you going to ask for an extended  
21   time to complete both wells?  Are you going to complete  
22   them at the same time?

23           A.    At this present time, the 9H and the 10H will  
24   be drilled very close.  They're going to be sharing the  
25   same pad.



1           Q.    So 120 days between spud of first well and  
2   completion is fine, or you can ask for that later, I  
3   guess.

4                   And just dismissing the portion that's  
5   asking for an MSP, right?

6                   MS. KESSLER:   Right.

7           Q.    (BY EXAMINER JONES) And why the surface  
8   locations down in the other section?

9           A.    To maximize the lateral length.

10          Q.    So you can have 100 feet from --

11          A.    Yes, sir.   Yes, sir.   Heel to toe, yes, sir.

12          Q.    And is that surface location -- do you know who  
13   owns the surface at that --

14          A.    We do.   And we also own -- St. Devote also owns  
15   the -- is lessee under that tract.   We have production  
16   on that tract.

17          Q.    Okay.   So Roy G. Barton is still not telling  
18   you --

19          A.    No, no.   He has -- he has agreed to -- he's  
20   agreed to the proposal that was sent to him.   We're just  
21   working on the JOA.

22          Q.    Okay.

23          A.    But he signed an AFE as to his interest.

24          Q.    He signed an AFE as a participating person?

25          A.    Yes, for his unleased interest.

1           Q.    For his unleased interest?  So he's going to  
2 participate as a -- as a --

3           A.    Yes, sir.  If the well -- if a lateral is -- in  
4 the unleased portion, yes, sir.  If the lateral is in  
5 the leased portion, he'll be getting a royalty interest  
6 based on his oil and gas lease that he has with us.

7           Q.    Okay.  Is this a focus area for Percussion?

8           A.    Yes, sir.

9           Q.    Okay.  I knew that Concho had some interest.  
10 They seem to work on this area.

11                       But the Seven Rivers pool name, is that  
12 named because of the little town of Seven Rivers?

13          A.    Or the -- or when this was done by Nearburg,  
14 unless -- there is a Seven Rivers that cuts through this  
15 area, so it may be named just for geologic reasons  
16 there.

17          Q.    Oh, okay.

18                       Okay.  Thank you.

19                       EXAMINER BROOKS:  It's always confusing  
20 when they use a formation name for the pool name.

21                       EXAMINER JONES:  Like the Atoka is in some  
22 places, too.

23                       Okay.  Thank you very much.

24                       MR. McMILLAN:  Mr. Examiner, Seth McMillan,  
25 Montgomery & Andrews.  I think I completely missed

1 calling for appearances on this matter. I apologize.

2 EXAMINER JONES: Okay.

3 MR. McMILLAN: I had previously entered an  
4 appearance on behalf of Sharbro.

5 EXAMINER JONES: Sharbro?

6 MR. McMILLAN: Yeah, a pronunciation that I  
7 recently learned.

8 And I would just like to get one thing on  
9 the record, if I may, despite my late appearance.

10 EXAMINER JONES: Yes.

11 CROSS-EXAMINATION

12 BY MR. McMILLAN:

13 Q. It's my understanding, sir, that Sharbro and  
14 Percussion came to an agreement last night --

15 A. That's correct.

16 Q. -- a sublease?

17 And, sir, do you share that understanding?

18 A. Yes.

19 Q. And as a result, Sharbro's interest will be  
20 pooled pursuant to this proceeding?

21 A. As we discussed earlier, right.

22 Q. Thank you very much.

23 EXAMINER JONES: Mr. McMillan, can you  
24 please send us an entry -- like a paperwork entry,  
25 unless you've already done that?

1 MR. McMILLAN: Already did.

2 EXAMINER JONES: I just didn't have it in  
3 my hard file here.

4 MR. McMILLAN: Thank you.

5 EXAMINER JONES: Thank you very much.

6 CHRISTOPHER LIPINSKI,  
7 after having been previously sworn under oath, was  
8 questioned and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. KESSLER:

11 Q. Please state your name for the record and tell  
12 the examiners by whom you're employed and in what  
13 capacity.

14 A. Christopher Lipinski, and I'm vice president of  
15 geology for Percussion Petroleum.

16 Q. Have you previously testified before the  
17 Division?

18 A. I have.

19 Q. Were your credentials as an expert in petroleum  
20 geology accepted and made a matter of record?

21 A. They were.

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

24 A. I am.

25 Q. And have you conducted a geologic study of the

1     **lands that are the subject of this application?**

2             A.     Yes.

3                     MS. KESSLER:   Mr. Examiners, I would tender  
4     Mr. Lipinski as an expert in petroleum geology.

5                     EXAMINER JONES:   Would you please spell  
6     your name?

7                     THE WITNESS:   The last name?

8                     EXAMINER JONES:   Yes, last name.

9                     THE WITNESS:   L-I-P-I-N-S-K-I.

10                    EXAMINER JONES:   Thank you very much.

11             **Q.     (BY MS. KESSLER) Mr. Lipinski, have you**  
12     **prepared an exhibit or exhibits reflecting your analysis**  
13     **and study of this area and the underlying geology?**

14             A.     I have.

15             **Q.     Please turn to Exhibit 6 and identify this**  
16     **exhibit for the examiners.**

17             A.     This is a case map showing Percussion  
18     Petroleum's acreage in the 19 South, 25 East township  
19     and range highlighted in yellow, and then offset  
20     horizontal wells drilled in the Yeso in the green and  
21     the proposed wells in the black.

22             **Q.     Let's turn to Exhibit 7. Is this a structure**  
23     **map of the Glorieta in this area?**

24             A.     Yes. This is a subsurface depth map for the  
25     top of the Glorieta and showing the -- red colors are

1 higher, and the blue colors, lower. This just shows a  
2 relatively 1-and-a-half- to 2-degree dip in the area on  
3 the Glorieta, so pretty uniform.

4 Q. Have you identified any geologic impediments  
5 based on the structure in this section?

6 A. I have not.

7 Q. Does Exhibit 8 contain a line with A to A prime  
8 that corresponds with your cross-section exhibit?

9 A. Yes.

10 Q. Why did you select these wells for your cross  
11 section?

12 A. These wells go down parallel to the laterals  
13 that we'll be drilling.

14 Q. Do you consider them representative of the Yeso  
15 pool in the area?

16 A. Yes.

17 Q. And is Exhibit 9 your structural cross-section  
18 exhibit?

19 A. Yes. So this is a cross section going from  
20 A to A prime, going from north to south, showing the  
21 gamma ray, the neutron density and the deep resistivity  
22 curves for the area, highlighted the Glorieta -- the top  
23 of the Glorieta pick, the top of the Yeso, as well as  
24 the top of the Bone Spring, which would be the base of  
25 the Yeso in this area. So since it's the Glorieta-Yeso

1 Pool, show the entire depths for that, and then included  
2 the proposed landing intervals for the 9H and the 10H  
3 within the Yeso. And the curves show it's relatively  
4 uniform throughout the area, no pinch-outs.

5 Q. You also called out the two depth-severance  
6 lines in yellow, correct?

7 A. Yes. The 2,477 OXY depth severance is  
8 highlighted above our two landing zones, and the 3,052,  
9 Barton, is highlighted below.

10 Q. And you show the two laterals in relation to  
11 those depth-severance lines?

12 A. Correct.

13 Q. Based on your study of this area, have you  
14 identified any geologic impediments that would prevent  
15 development of this area using the one-mile horizontal  
16 well?

17 A. I have not.

18 Q. Do you believe that the area can be efficiently  
19 and economically developed by horizontal wells?

20 A. Yes.

21 Q. And do you believe that each of the 40-acre  
22 tracts will contribute more or less equally to  
23 production to each of the wells?

24 A. I do.

25 Q. In your opinion, is granting Percussion's

1 application in the best interest of conservation, for  
2 the prevention of waste and the protection of  
3 correlative rights?

4 A. Yes.

5 Q. Were Exhibits 6 through 10 prepared by you or  
6 compiled under your direction or supervision?

7 A. They were.

8 MS. KESSLER: Mr. Examiner, I'd move  
9 admission of Exhibits 6 through 10.

10 EXAMINER JONES: Any objection,  
11 Mr. McMillan?

12 MR. McMILLAN: No objection.

13 EXAMINER JONES: Thank you.

14 Exhibits 6 through 10 are admitted.

15 (Percussion Petroleum, LLC Exhibit Numbers  
16 6 through 10 are offered and admitted into  
17 evidence.)

18 EXAMINER JONES: Mr. McMillan, do you have  
19 any questions?

20 MR. McMILLAN: No questions.

21 EXAMINER JONES: Do you agree to let  
22 Mr. McMillan ask questions?

23 MS. KESSLER: Yes.

24 MR. McMILLAN: No questions. In fact,  
25 nothing further from me at all.



1 CROSS-EXAMINATION

2 BY EXAMINER JONES:

3 Q. Is this the Paddock you're going after?

4 A. Yes.

5 Q. Okay. So it's clearly the Paddock.

6 And the Blinebry, Tubb and Drinkard would  
7 not contribute to this well?

8 A. That is correct.

9 Q. Okay. The Paddock -- where is the base of the  
10 Paddock on this cross section? Is it easy to find?  
11 What depth is it, before I forget to ask?

12 A. The base of the Paddock is subjective, but in  
13 this area, it would be around the 200, if you're looking  
14 at the scale on the left. It would be below that Barton  
15 depth severance, around the 200 depth on this cross  
16 section. So we're off the platform proper here, so the  
17 lower part of the Yeso is actually not here. It's the  
18 Bone Spring Formation, more basal. So we don't have the  
19 entire Yeso Formation in this area. So you'll get a  
20 little bit of Blinebry, and it's -- it's different here.  
21 So it's not exactly correlative to the northeast when  
22 you're in the shelf proper.

23 Q. Okay. So it's kind of subjective, and it's  
24 possibly down at 200 feet below sea level; is that  
25 correct? Did you say that, the base of the Paddock?

1           A.    Yeah.  So these are the subsea depths on the  
2   left, so it would be at 200 feet above sea level.

3           Q.    Above.  Okay.  Plus 200?

4           A.    Correct.

5           Q.    Okay.  So there's -- and that is a vertical  
6   depth of, oh, 3,300 or so; is that correct?

7           A.    It would be around that, yes, or -- ground  
8   level is around 3,500 in this area, so a depth of 300 --  
9   anywhere from 300 to 3,500, but yeah.

10          Q.    Okay.  That's quite a bit farther below your  
11   target interval, so it seems possible that the entire  
12   Paddock would not -- you're not anticipating developing  
13   the entire Paddock?

14          A.    I do not imagine that like the 9H would drain  
15   the entire Paddock interval.

16          Q.    Okay.  But geologically -- is your evaluation  
17   geologically already mature enough to say that these are  
18   the only potential targets in the Glorieta-Yeso?

19          A.    No.  There are -- I believe there is oil all  
20   the way throughout the Yeso in this area, so there is a  
21   possibility for deeper landing zones.

22          Q.    Okay.  Just in case you wanted to restyle an  
23   application to divide a vertical, have a nonstandard  
24   proration unit for vertically.  There's been a lot of  
25   work to divide the Yeso in the past, you know, based on

1     **supposed zones that weren't going to be productive and**  
 2     **ownership zones, and so you have to go strategize about**  
 3     **that?**

4                     MS. KESSLER:   The issues there,  
 5     Mr. Examiners, there still remains a depth-severance  
 6     line at 2,477.   There are two severances, so --

7                     EXAMINER JONES:   In Unit Letter D?

8                     MS. KESSLER:   Right.

9                     EXAMINER JONES:   Okay.   So you still have  
 10    that no matter what.

11            Q.     **(BY EXAMINER JONES) Okay.   So your wells are**  
 12    **\$5 million wells; is that correct?   Do we have an AFE in**  
 13    **here?   And I thought it only said 5 million or so.**

14            A.     Yeah.   It shouldn't be over 5 million for the  
 15    well.

16            Q.     Okay.   4 million-something?

17            A.     Yes.

18            Q.     So these are one-mile-long wells at 3,000 feet  
 19    deep.   So you're able to actually go out a mile when  
 20    you're only down 3,000 feet?

21            A.     Yeah.   Concho's actually done an offset well in  
 22    the Bone Yard about three miles away from this area down  
 23    to a 7,500-foot lateral in comparable depths.

24            Q.     I still don't know how they can do that.   But I  
 25    guess it's an extremely straight hole and --

1           A.    Yes.  It's --

2           Q.    -- a nice mud system and mud motor?

3           A.    Yeah.  You have to have -- you have to have a  
4 motor when you're drilling, for sure, in order to do  
5 that.

6           Q.    What kind of logs are you going to run while  
7 you drill?

8           A.    So we'll have MWD gamma ray while we're  
9 drilling because we're doing directional, but no other  
10 logs will be done for these laterals.

11          Q.    Okay.  You're not proposing any pilot holes,  
12 even though the landman said you do own the lease where  
13 you're putting the surface location?

14          A.    Correct.  We do own that lease.  We have a fair  
15 bit of offset vertical coverage.

16          Q.    Okay.  You've got plenty definition here?

17          A.    Yeah.

18                   EXAMINER JONES:  Mr. Brooks?

19                   CROSS-EXAMINATION

20           BY EXAMINER BROOKS:

21          Q.    Actually, there are two depth-severance lines,  
22 as I understand this, the 2,477 in the  
23 northwest-northwest and the 3,052 in the  
24 southwest-southwest.  But I do not understand -- well,  
25 did you testify as to what depth the projected -- what

1     **is the projected landing depth?**

2           A.     No.   This is highlighted on here.   I did not  
3     say what the depth would be.   It's going to be around  
4     2,500 and 2,800 for the two wells.

5           Q.     So they're going to be above the -- they're  
6     going to be significantly above the 3,052?

7           A.     Correct.

8           Q.     But you're not saying what they're going to be  
9     above or below the 2,477 depth?

10          A.     Well, one will be 25 feet below it, and one  
11     will be 300 feet below it.

12          Q.     Okay.   So one's going to be real close?

13          A.     Correct.

14          Q.     But they're both going to be below?

15          A.     Correct.

16          Q.     Okay.   But you're not testifying that there  
17     will not be drainage across these depth-severance lines  
18     at 2,477, are you?

19          A.     I have no reason to believe we will be draining  
20     below that 3,052.   With these wells, there is a  
21     possibility that we drain above that 2,477, and that  
22     does nothing but hurt ourselves.

23          Q.     Okay.   Because Percussion owns a larger  
24     interest above than they do below?

25          A.     Correct.   We would be giving up some of our

1 production to OXY in this case if we were to drain above  
2 that, and we're willing to accept that risk.

3 Q. But it's your opinion that you would not drain  
4 below the 3,052?

5 A. Correct.

6 Q. Which is how far below where you think the well  
7 is going to be landed?

8 A. Be 550 feet below one of them and 250 below the  
9 other one.

10 Q. Okay. So the closest well to the 3,052 depth  
11 would be 250 feet above it?

12 A. Correct.

13 Q. Okay. And based on your analysis of this -- of  
14 this reservoir, you don't believe that -- do I  
15 understand your testimony? You do not believe you can  
16 drain that far?

17 A. Correct.

18 Q. Thank you.

19 EXAMINER JONES: It is interesting that  
20 even on the AFE, there is not -- I don't see the depths  
21 on there, and there is not -- there is not -- and in the  
22 proposal letters -- the typed proposal letters, I don't  
23 see the depth either, but they're pretty lengthy, and I  
24 must not be finding them on here.

25 These are your-all's exhibits. Can you

1 tell me where the depths are located here?

2 MR. DALTON: There is not a depth location  
3 in the prospect letters. They were being drilled in the  
4 Yeso Formation, and we've had following discussions with  
5 those parties asking those questions.

6 RECROSS EXAMINATION

7 BY EXAMINER JONES:

8 Q. Okay. Is it true geologically, though, you  
9 know exactly where you want to drill, or are you still  
10 thinking about it a little bit?

11 A. No. We -- we know where we want to drill, and  
12 we've had meetings with these operators on this.

13 Q. It's just not listed here anywhere?

14 A. I guess not. I'm not familiar with those  
15 documents.

16 MR. DALTON: But the operators have asked,  
17 and we have given them their answer.

18 EXAMINER JONES: Okay. Can you guys give  
19 us something supplementally that tells us where the  
20 vertical and measured depths are for each of these  
21 wells?

22 MS. KESSLER: For each of those wells.

23 EXAMINER JONES: Okay. Do you want to take  
24 these under advisement?

25 EXAMINER BROOKS: Well, it's going to be --

1 I think we should get this supplemental information that  
2 we're asking for, but we can take it under advisement  
3 subject to that, unless the parties have something  
4 further they want to offer. There is only one party.  
5 Sharbro has agreed, so they're not --

6 They're not a party, correct?

7 EXAMINER JONES: They're an entry.

8 EXAMINER BROOKS: You're a party of record,  
9 but you're not, at this point, concerned with what order  
10 we enter?

11 MR. McMILLAN: That's correct.

12 EXAMINER JONES: Okay.

13 EXAMINER BROOKS: Okay. So unless  
14 Percussion has something further to offer, other than  
15 just to respond to our requested supplemental  
16 information, we can take it under advisement subject to  
17 receiving that supplemental information.

18 EXAMINER JONES: It's up to you, whatever  
19 you want to do.

20 MS. KESSLER: We would ask that this case  
21 be taken under advisement, and we'll supplement with  
22 both the TVD and the measured depth and then also an  
23 additional exhibit requested by Mr. Brooks.

24 EXAMINER BROOKS: To show how you expect --  
25 how you intend the distribution to work in case there is



1 not a specific agreement that sets out --

2 MS. KESSLER: And perhaps we'll just notify  
3 the Division that we've reached an agreement with those  
4 other parties.

5 EXAMINER BROOKS: That will make it a whole  
6 lot simpler.

7 EXAMINER JONES: Yeah.

8 EXAMINER BROOKS: Thank you.

9 EXAMINER JONES: Thanks very much for  
10 coming.

11 We'll take Case 16408 under advisement.

12 And let's take a few-minute break here.

13 (Case Number 16408 concludes, 9:48 a.m.)

14 (Recess 9:48 a.m. to 10:10 a.m.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

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

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

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

20 DATED this 6th day of October 2018.

21

22

23 MARY C. HANKINS, CCR, RPR  
24 Certified Court Reporter  
25 New Mexico CCR No. 20  
Date of CCR Expiration: 12/31/2018  
Paul Baca Professional Court Reporters