

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 COG OPERATING, LLC  
FOR APPROVAL OF THE TOMAHAWK UNIT,  
ELIMINATION OF INTERNAL SETBACKS  
WITHIN UNIT AREA, AND APPROVAL FOR  
SURFACE COMMINGLING, EDDY COUNTY,  
NEW MEXICO. CASE NO. 20659

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

August 23, 2019

Santa Fe, New Mexico

BEFORE: MICHAEL McMILLAN, CHIEF EXAMINER  
KATHLEEN MURPHY, TECHNICAL EXAMINER  
BILL BRANCARD, LEGAL EXAMINER  
DANA Z. DAVID, LEGAL EXAMINER

This matter came on for hearing before the  
New Mexico Oil Conservation Division, Michael McMillan,  
Chief Examiner; Kathleen Murphy, Technical Examiner; and  
Bill Brancard and Dana Z. David, Legal Examiners, on  
Friday, August 23, 2019, 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.

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1 (8:35 a.m.)

2 EXAMINER McMILLAN: Okay. And now we are  
3 going to go to Case Number 20659, application of COG  
4 Operating for the Tomahawk WC Unit, Eddy County, New  
5 Mexico.

6 Call for appearances.

7 MS. RYAN: Elizabeth Ryan here on behalf of  
8 Concho.

9 MR. DeBRINE: Good morning, Mr. Examiner.  
10 Earl DeBrine, from the Modrall, Sperling firm, on behalf  
11 of the protester, EOG Resources.

12 EXAMINER McMILLAN: Are there any other  
13 appearances that you're aware of?

14 MS. RYAN: Yes. Jim Bruce entered an  
15 appearance on behalf of Matador in this case.

16 EXAMINER McMILLAN: Okay.

17 MR. DeBRINE: And he indicated yesterday  
18 that his intent was just to show up for the hearing to  
19 obtain a copy of the exhibits, and he may have been  
20 under the impression that we were starting at 9:00  
21 rather than 8:15, so I think we can proceed without him.

22 EXAMINER McMILLAN: Do you have any  
23 objections to that?

24 MS. RYAN: No objection.

25 EXAMINER McMILLAN: Okay. Hey, someone

1 from EOG gave me this quarter, and he told me that I  
2 should flip it to see who wins.

3 (Laughter.)

4 EXAMINER McMILLAN: I'm not going to say  
5 his name.

6 MS. RYAN: I'm going to object to that.

7 (Laughter.)

8 EXAMINER McMILLAN: What do you think of  
9 that?

10 (Examiner McMillan flips the coin.)

11 EXAMINER McMILLAN: Okay. Tails, EOG  
12 loses.

13 Look, it's tails.

14 Two out of three?

15 Well, that's on the record now.

16 (Laughter.)

17 EXAMINER MURPHY: Mr. DeBrine, who are you  
18 here for?

19 MR. DeBRINE: EOG Resources, Inc.

20 EXAMINER McMILLAN: Proceed.

21 OPENING STATEMENT

22 MS. RYAN: Thank you.

23 Before we get started, I would like to  
24 start, Mr. Examiner, with an opening statement just  
25 stating the law in this case. I'm not going to be

1     testifying to any facts or anything that Concho's done  
2     or not done, but there are certain questions raised in  
3     EOG's prehearing statement and at the prehearing  
4     conference of what the legal process is, what the law is  
5     and what the Code of Federal Regulations say. And so I  
6     would just like to be able to cite those for the  
7     examiner on the record before we get started discussing  
8     putting on the factual witnesses to testify whether  
9     Concho followed those processes or not.

10                   EXAMINER McMILLAN: Okay. Proceed.

11                   MS. RYAN: Okay. I think it's important  
12     for us to know what our -- what our lane is today and  
13     what we should stay in. The process of forming a  
14     federal exploratory unit is set forth in the Code of --  
15     Code of Federal Regulations, and that's primarily set  
16     forth in 43 CFR, Part 3100. And they've established the  
17     procedure for federal exploratory units. If you have  
18     ten -- more than 10 percent of federal lands in your  
19     proposed unit, then you have to follow the BLM  
20     procedure, and the BLM has to consent to it.

21                   The initiator of all communication,  
22     formation and preparation of and the application for a  
23     federal unit is proposed by the proposed unit operator  
24     only, and this is set forth throughout Part 3100.  
25     Because approval of unit agreements has been delegated



1 by the Secretary of Interior to the authorized officer  
2 of the BLM, it's been the policy of the New Mexico State  
3 BLM Office to begin the unitization process by having a  
4 preliminary conference and informal discussion with the  
5 authorized officer. That's been called the  
6 area-and-depth meeting. And that concerns the proposed  
7 unit area, what those boundaries would look like, the  
8 depths of the test well and the formation to be tested,  
9 the text of the unit agreement itself and the form to be  
10 used.

11 The model form for onshore federal unit  
12 agreements is found at 43 CFR 3186.1 and must be used  
13 for all units, like I said, that contain more than 10  
14 percent of federal lands.

15 This preliminary conference of the  
16 area-and-depth meeting should be held prior to the  
17 filing of the application for designation of the  
18 proposed area. The BLM's policy states that it will  
19 help avoid delays, the filing of amended applications,  
20 revisions to the unit boundaries at later dates, and  
21 this is set forth in the BLM manual and in numerous  
22 treatises and publications on the subject. Preliminary  
23 considerations for the BLM are contained in 43 CFR  
24 3181.1.

25 Next, if you have state land -- state lands

1 involved, the federal form of unit agreement states you  
2 have to have consent from a state. In New Mexico, we  
3 have State Trust Lands, and that consent must come from  
4 the Commissioner of Public Lands. And that requirement  
5 is set forth in 43 CFR 3181.4(a), along with New Mexico  
6 Statute 19-10-45 through 47, which requires the proposed  
7 unit operator to obtain consent from the Commissioner if  
8 it includes any state lands -- State Trust Lands.

9 Under New Mexico Statute Section 19-10-46,  
10 the Commissioner of Public Lands cannot approve a form  
11 of unit agreement unless he or she finds that such  
12 agreement promotes "the conservation of oil or gas and  
13 the better utilization of reservoir energy; under the  
14 operations proposed the state and each beneficiary of  
15 the lands involved will receive its fair share of the  
16 recoverable oil or gas in the place under its lands in  
17 the area affected"; and "the agreement is in other  
18 respects for the best interests of the state."

19 In this regard, the proposed unit operator  
20 is required by the State Land Office to attend a meeting  
21 or multiple meetings at the State Land Office to discuss  
22 and work to satisfy these standards to the satisfaction  
23 of the Commissioner of Public Lands, and the State Land  
24 Office does not invite other interest owners to that  
25 meeting.

1                   In addition, the same form of unit  
2   agreement sets forth that the Oil Conservation Division,  
3   as authorized by Chapter 70 and 71 of the New Mexico  
4   statutes must approve the unit agreement and the  
5   conservation provisions set forth in that agreement.  
6   Therefore, the preliminary conference with which the  
7   BLM, State Land Office and district OCD offices are  
8   important in forming these units.

9                   The next step in the process after these  
10   meetings is to file the application for unitization with  
11   the BLM, and that is provided in the regulations to file  
12   an application that designates the proposed unit area  
13   that you've discussed with the authorized officer and  
14   the State Land Office stating it's logically subject to  
15   development under a unit plan of operation, and you ask  
16   for approval of the depth initial test well to be  
17   drilled. The application is required to include lots of  
18   information such as a map or diagram outlining the unit  
19   area, designations of the type of acreage involved such  
20   as federal, state or fee lands or Indian lands that  
21   requires ownership schedules and geologic reports and  
22   information for the unit area. And these requirements  
23   set forth in 43 CFR 3181.2 and 3183.2.

24                  After the application is filed, 43 CFR  
25   3183.3 states that "then the operator must invite other

1 owners in the unit to join the unit agreement."

2               Next, the Oil Conservation is tasked with  
3 preventing waste and protecting correlative rights  
4 within the proposed unit area, and so the form of  
5 federal and state unit agreements require the consent of  
6 the OCD to the unit agreement. And under the OCD rules,  
7 the operator works to obtain this consent by filing an  
8 adjudicatory hearing in front of the OCD by filing an  
9 application for unitization under NMAC 19-15, Part 4.  
10 And as set forth in many unitization orders that have  
11 been issued by the OCD, the Division considers whether  
12 the evidence presented is logically subject to  
13 exploration and development under the unit plan, whether  
14 the unit plan is geologically sound and has received  
15 preliminary approval from the BLM and State Land Office  
16 and whether the unit in principle is a proper  
17 conservation measure.

18               After obtaining an order for unitization  
19 from the Oil Conservation Division, the last thing to do  
20 is to obtain all signatures of all parties who wish to  
21 voluntarily commit their interest to the unit agreement.  
22 And after you have obtained those signatures from the  
23 parties who do intend to commit their interest, then you  
24 submit that final unit agreement -- signed unit  
25 agreement to the BLM for approval, and this is required

1 under 43 CFR 3183.3. And, obviously, if state lands are  
2 involved, you have to obtain the consent signature from  
3 the Commissioner of Public Lands.

4 And as set forth in 43 CFR 3183.4, after  
5 submission of the signed unit agreement, the BLM  
6 authorized officer may approve the unit agreement upon  
7 determination that the agreement is necessary or  
8 advisable to public interest and is for the purpose of  
9 more properly conserving natural resources. And that  
10 approval, if approved, will be incorporated in a  
11 certification determination document that's appended to  
12 the agreement.

13 So that's the formal process that is set  
14 forth in all of the applicable regulations that has led  
15 us to where we are today.

16 And next I'd like to swear in -- I have  
17 three witnesses today.

18 EXAMINER McMILLAN: Opening statements?

19 MR. DeBRINE: Sure, if I could just respond  
20 briefly.

21 OPENING STATEMENT

22 MR. DeBRINE: I think that's a  
23 characterization of the process and regulations, that  
24 that is not actually what's in the regulations  
25 concerning the formulation of federal exploratory units,

1 and she's talking more about practice rather than actual  
2 legal requirements concerning the establishment of  
3 federal units.

4                   One of the things that's very important I  
5 think for the Division to consider is that these units  
6 are voluntary agreements. They can only be reached  
7 voluntarily. You have to have the agreement of all the  
8 working interest owners, and you have to have, in order  
9 to get them approved, a commitment of 85 percent of the  
10 working interests in each of the tracts within the unit  
11 in order for it to eventually be approved by the BLM.  
12 That's a major requirement.

13                   New Mexico does not have a statute or  
14 regulation for the establishment of units for primary  
15 production. The Unitization Act only applies to  
16 secondary recovery units, and as a precondition to  
17 establish a secondary recovery unit, you need to have 85  
18 percent commitment by the working interest owners in the  
19 unit.

20                   Also, because it's a voluntary agreement,  
21 there is an obligation of good faith in fair dealing  
22 when you are forming a unit, and that's a requirement  
23 that I think the operator and the applicant in a  
24 unitization case needs to demonstrate.

25                   It is EOG's position that the obligation of

1 good faith was not met here because if you're going to  
2 comply with your obligation to negotiate in good faith,  
3 you need to invite your partners in and have their  
4 input.

5                   What is going on here, we believe, is that  
6 the Applicant went to the regulatory agencies and is  
7 coming to the Division to try and get approval of a unit  
8 that's not anywhere near close to the 85 percent  
9 requirement for committed tracts and then use that as a  
10 hammer to essentially compulsory pool the remaining  
11 working interest owners into the unit because they would  
12 be faced with a Hobson's choice to either join a unit  
13 that's already been accelerated by the approval of the  
14 regulatory agencies, or they will have their tracts  
15 uncommitted and they will be unable to effectively  
16 develop them. We think they're putting the cart before  
17 the horse. We think they need to come demonstrate that  
18 they've got an 85 percent commitment as a precondition  
19 to seeking approval of the Division for the unit. And  
20 we think the evidence is going to show they don't have  
21 it.

22                   The other odd thing about this particular  
23 unit agreement is it has been contrary to the federal  
24 regulations, which require that you drill an obligation  
25 well to establish the areas logically producing within

1 the target formation. This is a very odd unit agreement  
2 in that it has a south and north participating area that  
3 are provided for in the agreement at the outset, and the  
4 two do not overlap; there are obligation wells to be  
5 drilled, and then the unit merges at a later date. The  
6 participating entry for a unit under the federal  
7 regulations is supposed to include all of the area that  
8 logically extends from the geologic evidence, is able to  
9 contribute to production.

10 And so you're going to have a situation  
11 here where there is going to be a considerable delay  
12 before any of the interest owners of the south part of  
13 the unit would share production because it calls for the  
14 drilling of an initial four-well plan in the north  
15 before you drill the wells in the south, and we think  
16 that's unusual and something that's not contemplated by  
17 the federal regulations.

18 And so we don't think this is a proper  
19 unit, and we would ask that the Division deny the  
20 application.

21 EXAMINER BRANCARD: Ms. Ryan, can you --  
22 you listed a series of standards that the OCD is to  
23 apply to approval of this unit. Where do those  
24 standards come from?

25 MS. RYAN: I reviewed several unitization



1 orders that Division has approved in the past, and it  
2 simply states -- because you're right. There isn't a  
3 specific statute or regulation that says the OCD can't  
4 approve a unitization order or consent without these  
5 specific standards. That doesn't exist, so I looked at  
6 just various pooling orders. And the standards set  
7 forth in the pooling orders, when it says "is therefore,  
8 ordered that" -- so the statement stated that in those  
9 particular instances, the Division determined an order  
10 that those unit areas were logically subject to  
11 exploration and development under a unit plan and that  
12 the unit plan in those cases were geologically sound and  
13 noted that the operator had received preliminary  
14 approval from the BLM and State Land Office and that, in  
15 principle, the unit plan was a proper conservation  
16 measure. And that's just language in those particular  
17 unit orders that the OCD used.

18 EXAMINER BRANCARD: Where is the State's  
19 role in the BLM rules?

20 MS. RYAN: So the form of federal  
21 exploratory unit states that -- and it is also up on the  
22 State Land Office website -- has three "whereases,"  
23 "whereas this must be approved," you know, that cite  
24 CFRs that it must be approved by the authorized officers  
25 of the BLM. And then it cites to the -- the next words

1     add:  If State Trust Lands are involved, under Section  
2     19 of New Mexico Statute Section 19-10-45 through 47,  
3     that the unit operator has to obtain consent from the  
4     Commissioner of Public Lands.  So that's the reference  
5     for the New Mexico statutes.

6                     And then it also has a "whereas" recitation  
7     at the beginning that states that -- well, in any  
8     state -- the federal -- the Code of Federal Regulations  
9     states -- and that is -- 43 CFR 3183.4 states that if  
10    state lands are involved -- and this is in any state in  
11    which an operator is forming a unit.  It has to obtain  
12    consent from the State.  So the way that New Mexico is  
13    set up, of course the Commissioner protects the State  
14    Trust Lands, but the Oil Conservation Division has  
15    jurisdiction of, you know, exploration development,  
16    setting spacing and protecting correlative rights and  
17    preventing waste in our state.  So the third recital in  
18    the form of unit agreement states -- and I quote -- that  
19    "The Oil Conservation, as authorized by Chapter 70-71 of  
20    the New Mexico statutes, must approve the unit agreement  
21    and a conservation provision set forth therein."

22                    EXAMINER BRANCARD:  So you're -- I'm  
23    looking at the unit model form federal unit agreement,  
24    which doesn't say that.  You're looking at the State  
25    Land Office approval.

1 MS. RYAN: State Land Office approval,  
2 that's correct.

3 EXAMINER BRANCARD: So the State Land  
4 Office approval is saying that they want OCD to sign  
5 off --

6 MS. RYAN: That's correct.

7 EXAMINER BRANCARD: -- on the unit?

8 MS. RYAN: It's -- in my research, it's  
9 like a back-door approval process. There is not an  
10 express statutory authority or anything set forth in  
11 19.15 of the New Mexico Administrative Code.

12 EXAMINER BRANCARD: And it's not in the  
13 State Land Office statutes for unitization?

14 MS. RYAN: No. So there is a Statutory  
15 Unitization Act that applies only to secondary recovery  
16 and pressure maintenance --

17 EXAMINER BRANCARD: Right.

18 MS. RYAN: -- and those provisions do -- do  
19 allow, if an operator's proposing under that, of kind of  
20 a pooling and unitizing of owners who may not be willing  
21 to commit. That is not that process. This is a  
22 voluntary exploratory unit in which all owners involved  
23 can choose on whether they want to commit their interest  
24 to this unit or not, and the operator is required to --  
25 for the federal standard is, by the time that final

1 approval, up until that time, the proposed operator  
2 has --

3 Hey, Jim.

4 MR. DeBRINE: Your exhibits are there  
5 (indicating).

6 MR. BRUCE: Thank you.

7 Jim Bruce entering an appearance for MRC  
8 Permian Company.

9 EXAMINER BRANCARD: Thank you.

10 MS. RYAN: So the federal standard is that  
11 the unit operator has up until final approval of the  
12 unit to obtain 85 percent interest commitment across the  
13 entire unit. Nowhere in the federal regulations does it  
14 require it tract by tract. It's a net-spread ownership.

15 EXAMINER BRANCARD: So if you're having a  
16 federal unit that only involved BLM lands, OCD would not  
17 be involved; is that correct?

18 MS. RYAN: I have never brought that case  
19 in front of the Oil Conservation Division. I would  
20 think I still need to come in front of you. I think  
21 that the courtesy between the BLM office here in the  
22 state would want us to come before you. I don't know  
23 the answer to that, though. That's a good question.

24 EXAMINER McMILLAN: That's a mess, because  
25 I was extensively involved in the northwest cases, and

1     that was a sticky issue.  Because in the northwest where  
2     they had those monster units, a lot of times those were  
3     100 percent federal, and they came to the OCD, and the  
4     OCD was extremely uncomfortable issuing an order because  
5     they were 100 percent BLM.  But they still came before  
6     the OCD, and it was really a mess.  And in the northwest  
7     cases where they had federal and state acreage, they  
8     always came to the OCD, because it was always in the  
9     unit agreements in the northwest that they had to come  
10    to get permission from the OCD.

11                   EXAMINER BRANCARD:  All right.  And we do  
12    seem to be mentioned in this unit agreement that you've  
13    given to us here as Exhibit 2.  Okay?

14                   MS. RYAN:  Uh-huh.

15                   EXAMINER BRANCARD:  I'm just trying to  
16    clarify our role in this.

17                   EXAMINER McMILLAN:  Yeah, I understand.

18                   EXAMINER BRANCARD:  Mr. DeBrine got the  
19    lecture from me on Tuesday about what the proper role of  
20    the OCD is in the case.  So I don't want us going into  
21    areas where we really don't have authority here.

22                   EXAMINER McMILLAN:  Yeah.  I think that was  
23    part of the --

24                   MS. RYAN:  Yes.  And I think --

25                   EXAMINER BRANCARD:  And so beyond -- beyond

1 looking at -- I mean, I guess I would prefer -- you  
2 know, but this would take a while -- that we have some  
3 sort of tri-party agreement with the land office and BLM  
4 about what they expect us to do if they want us to  
5 review this, okay, so we have some clear sense of what  
6 our expectation is. Our only potential role is simply  
7 our normal statutory role of prevention of waste and  
8 protection of correlative rights. Okay? We can't -- I  
9 mean, if there is going to be an issue here about  
10 whether this agreement complies with federal  
11 regulations, that's beyond our scope. Okay? That's the  
12 BLM's job to figure out. And so -- and whether this is  
13 properly issued by the State Land Office, that's beyond  
14 our scope. Okay?

15 To the extent there is any discussion,  
16 though, of whether this plan, you know, results in waste  
17 or harms correlative rights, I think that would be our  
18 only possible hook in this situation, because other  
19 than -- we have no standards to apply here, nor do we  
20 have any specific statutory or regulatory authority. As  
21 Ms. Ryan points out, we have a Statutory Unitization Act  
22 in this state that gives us clear authority over units  
23 for EOR --

24 EXAMINER McMILLAN: Right.

25 EXAMINER BRANCARD: -- not for primary

1 production. Okay? So we can't use that statute  
2 specifically in this case. So that's just my warning.

3 I have to run out. Mr. David is here to  
4 take over and run the hearing.

5 But that would be my sense to sort of get  
6 the hearing focused and sort of get the parties focused  
7 on that issue, not whether this thing technically  
8 complies with all the federal requirements. Not our  
9 problem. Okay?

10 MS. RYAN: Thank you.

11 MR. DeBRINE: And, Mr. Brancard, I would  
12 just add the State -- that's an expression of intent by  
13 the legislature as to when the OCD should act in a  
14 unitization case, is you need 85 percent of the  
15 commitment of the working interest owners in order to  
16 come, because otherwise it has a practical effect of  
17 compulsory pooling for primary recovery, because once  
18 this agency blesses it, it does create a Hobson's choice  
19 for the working interest owners if the unit has already  
20 been approved by the OCD.

21 EXAMINER BRANCARD: So the 85 percent,  
22 Mr. DeBrine, you're pulling that out of the Statutory  
23 Unitization Act --

24 MR. DeBRINE: Correct.

25 EXAMINER BRANCARD: -- or you're pulling

1     that out of the federal regs?

2                   MR. DeBRINE: Well, it's actually -- it's  
3     out of the Unitization Act, because it's part of the Oil  
4     and Gas Act, the Unitization Act, and it's a requirement  
5     in the Unitization Act. And the legislature has only  
6     said we're going to allow for unitization for secondary  
7     recovery and not primary recovery. But I think the 85  
8     percent requirement is a significant statement of intent  
9     by the legislature as to what you should have before you  
10    come to the Division in order to get them to bless an  
11    exploratory unit for primary production.

12                  EXAMINER BRANCARD: Mr. Bruce?

13                  MR. BRUCE: The Statutory Unitization Act  
14    requires 75 percent voluntary approval overall in the  
15    unit. And I don't know -- I don't believe it's -- and  
16    perhaps the observer over here (indicating) could help  
17    me on this. I don't think there is a specific federal  
18    regulation or State Land Office regulation, but it's  
19    generally acknowledged there should be overall 85  
20    percent voluntary joinder in a voluntary primary  
21    recovery unit, and no one can be forced in, obviously.

22                  EXAMINER BRANCARD: Right. All right.  
23    We're not ripe to make a decision today, but I will tell  
24    you that it would be my advice to OCD that we're not  
25    going to issue a decision approving a unit. Okay? Not



1     our job here. That's the BLM's job. Okay? We can say  
2     that this proposed unit, in our opinion, does not  
3     result -- we don't think it results in waste or harms  
4     correlative rights, okay, and advise the BLM and State  
5     Land Office on that issue. I think given our lack of  
6     statutory authority over primary production units,  
7     that's really all we can do.

8                     Now, Mr. DeBrine, I think you're going to  
9     make an argument about correlative rights here, I would  
10    assume, and use the 85 percent, which is fine. Okay?  
11    But that's -- I think all we're doing here is giving an  
12    advisory opinion to the BLM and land office.

13                    MS. RYAN: That's my understanding. And I  
14    think every practitioner here, if you look at all the  
15    unitization orders issued by the OCD since its  
16    inception, does exactly what you are pointing out here,  
17    and that has been the practice for decades on what this  
18    hearing is, what the order would look like should you  
19    issue an order, which is what we've asked, and we're not  
20    asking for compulsory pooling in this case. We've  
21    simply asked for the OCD to state that it is in the best  
22    interest of conservation, of protection of correlative  
23    rights and the prevention of waste.

24                    EXAMINER BRANCARD: Okay. I need to run.  
25    Mr. David is here to take charge.

1                   MR. DeBRINE: There is only one issue. I  
2 believe the preliminary letter of approval by the BLM  
3 and the land office states that their approval is  
4 conditioned on the Division's approval of the unit  
5 agreement as well. So if the Division is not going to  
6 give that agreement, then I don't think we should be  
7 having the hearing at all because they have  
8 conditions --

9                   EXAMINER BRANCARD: We can look at prior  
10 orders of the Division.

11                  MS. RYAN: There are hundreds of prior  
12 orders that the OCD can look at. This has been routine  
13 for decades, long before I started practicing here. Ask  
14 Mr. Bruce. This has -- this has been the practice for  
15 decades, so there are oodles of OCD orders for primary  
16 recovery.

17                   (Examiner Brancard exits the room;  
18 Examiner David is present, 9:03 a.m.)

19                  MR. BRUCE: I was going to say I know of  
20 one case where these issues were briefed before the  
21 Commission, and that's the Harvey E. Yates Company unit  
22 down in Otero County. And I can't remember the name of  
23 the unit, even though I did the hearing. And there were  
24 briefs filed by me and by the Division's counsel in  
25 that, and I can get you that.

1 Do you have that case number?

2 MS. RYAN: Not off the top of my head.

3 EXAMINER McMILLAN: There aren't very many  
4 units in Otero County, so it's easy to figure out.

5 MS. RYAN: I'd be happy to locate it and  
6 submit that post-hearing, if that would help the  
7 Division.

8 MR. BRUCE: I can get both counsel the case  
9 number.

10 MS. RYAN: Okay.

11 MR. DeBRINE: Is that the Bennett Ranch  
12 unit?

13 EXAMINER McMILLAN: Yeah, that's it.

14 MS. RYAN: Mr. Examiner, I'm ready to  
15 present my direct case.

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

18 (Mr. Macha, Mr. Fisher, Mr. Hurd,  
19 Ms. Spinks, Mr. Pickell, Mr. Moran sworn.)

20 MS. RYAN: I'd like to call Mr. Travis  
21 Macha to the stand.

22 TRAVIS MACHA,  
23 after having been first duly sworn under oath, was  
24 questioned and testified as follows:

25

1 DIRECT EXAMINATION

2 BY MS. RYAN:

3 Q. Will you please state your name for the record?

4 A. Travis Macha.

5 Q. And who is your employer?

6 A. COG Operating.

7 Q. And what is your position?

8 A. Landman.

9 Q. And how long have you been employed in that  
10 position?

11 A. About one year and three months.

12 Q. Will you please describe your roles and  
13 responsibilities in that position?

14 A. So basically we ensure a clear title ahead of a  
15 multi-rig schedule, as well as negotiating agreements  
16 with third parties.

17 Q. And does your area of responsibility --

18 MS. RYAN: And I may use today COG  
19 Operating and Concho Resources interchangeably. COG  
20 Operating is our operating company, and Concho Resources  
21 is our parent company, so I mean the same thing.

22 Q. (BY MS. RYAN) Does your area of responsibility  
23 at COG include this area in southeastern New Mexico  
24 that's subject to this application?

25 A. Yes. My area includes Eddy County, New Mexico.

1           **Q.    Have you previously testified before the**  
2           **Division?**

3           A.    Yes, by affidavit.

4           **Q.    Okay.  And so you were admitted as an expert**  
5           **via that affidavit?**

6           A.    Yes.

7           **Q.    But still why don't you go ahead and tell us a**  
8           **little bit about your education and background?**

9           A.    I graduated from Texas Tech in May of 2016 with  
10          my energy commerce degree.  After that, I worked as a  
11          contract landman for seven months before moving on to  
12          COG Operating as a lease analyst for a year and four  
13          months where I was promoted to landman in April of 2018.

14                   MS. RYAN:  Mr. Examiner, I would ask that  
15          Mr. Macha be admitted as an expert in petroleum land  
16          matters.

17                   MR. DeBRINE:  No objection.

18                   EXAMINER McMILLAN:  Jim?

19                   MR. BRUCE:  No objection.

20                   EXAMINER McMILLAN:  So qualified.

21           **Q.    (BY MS. RYAN) Okay.  Mr. Macha, if you would**  
22           **turn to Exhibit 1 and identify that for the examiner.**

23           A.    So Exhibit 1 is just a map of the Tomahawk  
24          unit.  It shows you the acreage involved as well.

25           **Q.    And what lands are involved in this proposed**

1     **unit?**

2           A.     Federal, fee and state, roughly 2,000 acres of  
3     Fed, 1,000 acres of state, 1,800 acres of fee. And the  
4     unit is comprised of Sections 17, 18, the east half of  
5     Section 19, Sections 20, 29, 30, 31 and 32 of Township  
6     24 South, Range 28 East, Eddy County, New Mexico.

7           **Q.     Is the unit boundary identified on Exhibit 1 in**  
8     **a blue outline?**

9           A.     Yes. That's correct.

10          **Q.     Okay. And in the upper left corner, does that**  
11     **discuss the land composition of the unit?**

12          A.     Yes.

13          **Q.     Okay. And the legal description is discussed**  
14     **below the map?**

15          A.     Yes. That's correct.

16          **Q.     Okay. Can you tell the examiner why COG is**  
17     **only including the east half of Section 19 in the unit?**

18          A.     Yes. So the west half of Section 19, Matador,  
19     they are going to be spudding four wells in the west  
20     half of Section 19. They have already filed APDs on  
21     those, and they're going to be spudding those in the  
22     third quarter 2019.

23          **Q.     Okay. Thank you.**

24                     **And so what are the three things that**  
25     **Concho is requesting today?**

1           A.    We are requesting for approval of the Tomahawk  
2   WC Unit.  We are requesting approval for surface  
3   commingling throughout the unit, and we are requesting  
4   elimination of internal setbacks.

5           **Q.    Okay.  Right now I'd like to bring your**  
6   **attention to the Exhibit 2.  Can you identify that for**  
7   **the examiners?**

8           A.    Exhibit 2 is our proposed state and federal  
9   agreement for the Tomahawk WC Unit.

10          **Q.    And does it conform to the federal form?**

11          A.    Yes, it does.  And they have used this form in  
12   the past.

13          **Q.    And has it been approved by the BLM?**

14          A.    Yes.

15          **Q.    And has it been approved by the State Land**  
16   **Office?**

17          A.    Yes.

18          **Q.    Are there changes to the standard form?**

19          A.    Section 10 has been modified by the BLM to  
20   their satisfaction.

21          **Q.    Okay.  Let's turn to Section 10.**

22                   MS. RYAN:  There are no page numbers on  
23   this exhibit, but just a few pages in, you'll find  
24   labeled in bold lettering at the bottom, "10.  Plan of  
25   Further Development and Operation," one, two, three,

1 four, five. So it would be page 6 of the unit  
2 agreement, is where Section 10 begins.

3 Q. (BY MS. RYAN) Mr. Macha, will you flip to the  
4 second page where the drilling obligations are  
5 discussed? What are -- what are COG's drilling  
6 obligations in this unit?

7 A. So outlined by the unit agreement and required  
8 by the BLM is a total of four wells shall be drilled in  
9 the unit as a whole pursuant to approved plans of  
10 development within 12 months of the effective date  
11 hereof, the four wells being two wells drilled at legal  
12 locations in Sections 17 and 18 of Township 24 South,  
13 Range 28 East, and two wells to be drilled at legal  
14 locations in Sections 31 and 32 of Township 24 South,  
15 Range 28 East.

16 Q. Okay. And does that obligation -- in  
17 referencing this page in the unit agreement, does that  
18 paragraph begin with "Notwithstanding anything in this  
19 unit agreement to the contrary"?

20 A. Yes, it does.

21 Q. Okay. Will you read that paragraph for the  
22 examiner?

23 A. The entire paragraph?

24 Q. Yes.

25 A. "Notwithstanding anything in this unit



1 agreement to the contrary, except Section 25 of the Unit  
2 Agreement, UNAVOIDABLE DELAY, a total of four wells  
3 shall be drilled in the unit as a whole pursuant to  
4 approved plans of development within 12 months of the  
5 effective date hereof. The (4) wells being, (2) wells  
6 to be drilled at legal locations in Sections 17 and 18  
7 of Township 24 South, Range 28 East and (2) wells to be  
8 drilled at legal locations in Sections 31 and 32 of  
9 Township 24 South, Range 28 East."

10 Q. Okay. And will you read the timing of those  
11 wells? The very next paragraph, will you read that for  
12 the examiner?

13 A. Yes. The "Unit Operator intends to drill such  
14 four wells, subject to the requirements of this Section  
15 10 with not more than six months' time elapsing between  
16 the end of drilling of the first well and the  
17 commencement of drilling operations for each subsequent  
18 well. Regardless of whether a discovery has been made  
19 in any well drilled under this provision, all initial  
20 wells must be drilled in compliance with the above  
21 specified formation or depth requirements in order to  
22 meet the dictates of this section."

23 Q. Okay. If you will then flip a couple of pages  
24 over to Section 12 entitled "Allocation of Production,"  
25 is that where, in the unit agreement, it discusses the

1 establishment of a participating area?

2 A. Yes, it does.

3 Q. Okay.

4 MS. RYAN: I'd like to refer the examiners  
5 to that section.

6 Q. (BY MS. RYAN) So I'd like to refer you back  
7 briefly to Exhibit 1 so we can look at the picture of  
8 what the unit agreement looks like. Can you explain how  
9 the -- what your understanding is as a landman how the  
10 BLM establishes participating area?

11 A. So a participating area will be applied by the  
12 operator to the BLM after a well or wells have been  
13 drilled in a unit area.

14 Q. And so is it true that the unit operator asks  
15 the BLM to establish the participating area, and the BLM  
16 has to approve of that establishment?

17 A. That's correct.

18 Q. Okay. And have you and the unit team today  
19 been communicating with the BLM?

20 A. Yes.

21 Q. And what personnel of the BLM have you been  
22 communicating with?

23 A. James Glover.

24 Q. Tell us in your own words the first time you  
25 read the definition of participating area in 43 CFR

1     **3180 --**

2           A.     Yes.

3           **Q.     Excuse me.**

4                         **-- in 43 CFR 3180.0-5.**

5           A.     Yes, I have.

6           **Q.     And what is your understanding of the**  
7 **definition of participating area?**

8           A.     So the definition there and as repeated by  
9 James Glover, it is a portion of a unit that has been  
10 deemed proven reasonably productive by a single well.

11          **Q.     Okay.   Thank you.**

12                       **So what has the BLM told you specifically**  
13 **about its policy reasons behind its establishment of**  
14 **participating areas not just within this unit but within**  
15 **any unit?**

16          A.     So going back to the definition, they have told  
17 us that they will not establish a participating area  
18 greater than the area that the operator has proven to be  
19 productive by a single well.  So with that being said,  
20 COG has agreed to drill its two -- two obligation wells  
21 in Sections 17 and 18, being the north half of the unit,  
22 and two obligation wells in Sections 31 and 32, being  
23 the south half of the unit.  That being the intent to  
24 form a single PA covering the entire unit as quickly as  
25 possible by proving the reasonable production throughout

1 the unit.

2 Q. So for a few years in the past, had the BLM  
3 been approving unit agreements from the beginning for  
4 the participating area that covered the entire unit  
5 area --

6 A. Yes.

7 Q. -- without areas being --

8 MR. DeBRINE: Object to foundation.

9 THE WITNESS: Yes, they have.

10 Q. (BY MS. RYAN) Have you discussed with James  
11 Glover that the BLM in prior years had approved  
12 agreements with single participating areas?

13 A. Yes, they have. They have told me that while  
14 they have done that in the past, they are trying to go  
15 back to the rule book in establishing those PAs as by  
16 the definition and only establishing those PAs as to  
17 reasonably proven to be productive.

18 Q. Okay. So what are some concerns of an interest  
19 owner that may not be included -- they're in the unit,  
20 but they may not be included in an initial participating  
21 area?

22 A. So the participation area provisions by the  
23 BLM, I believe, are beneficial to leasehold owners due  
24 to the BLM giving the operator the obligation to not  
25 only drill up a portion of the unit but to drill

1 throughout the unit and establishing production and  
2 proving up the entire unit area.

3 Q. Is the cost -- are costs allocated and  
4 production allocated on a participating area basis?

5 A. Yes.

6 Q. And not a unit basis?

7 A. Yes.

8 Q. So if the initial participating area is small  
9 and a unit owner isn't located in that initial  
10 participating area, would it receive -- would it be  
11 allocated production from those initial wells?

12 A. No, it would not.

13 Q. Okay. So let's refer to Exhibit 1. What has  
14 the BLM instructed COG with regard to the timing of the  
15 drilling of the first four obligation wells and the  
16 establishment of participating areas in this unit?

17 A. So the BLM has instructed us that -- so the  
18 four obligation wells, being two in the north and two in  
19 the south, if those are drilled in a relatively same  
20 time frame -- so two in the north, two in the south  
21 (demonstrating) relatively same time frame -- you are  
22 effectively proving up the entire unit as a whole, and  
23 you are going to be able to apply for a single PA right  
24 off the bat throughout the entire unit.

25 However, if you drill and complete the

1 wells in the north and delay produ- -- or delay  
2 operations in the south, the BLM will order that only  
3 the north area, being Sections 17, 18, east half of 19  
4 and 20, be formed into a participating area. At a later  
5 date, if COG were to commence operations in the south in  
6 Sections 31 and 32, after those wells are producing, the  
7 participating area would expand to include the south.

8 Q. So what I understand you saying is that the BLM  
9 has outlined two options for COG and its four unit  
10 obligation wells for 2020; is that correct?

11 A. Yes. Yes. It's just based on timing.

12 Q. Okay. So let's take option one, and can you  
13 identify the yellow line --

14 A. Yes.

15 Q. -- the yellow-dotted line on Exhibit 1?

16 A. Yes. Option one on Exhibit 1 being the yellow  
17 outline, that would be -- in the event COG drilled the  
18 north, Sections 17 and 18, and delayed to drill Sections  
19 31 and 32, that would be your participating area, the  
20 yellow line.

21 However, if we drilled Sections 17 and 18  
22 and 31 and 32 in relatively the same time frame, the BLM  
23 would approve the red outline, the entire Tomahawk WC  
24 Fed Unit, as a single participating area, spreading  
25 production and revenues across the entire unit to begin

1 with.

2 Q. And what is COG's preference and plans with  
3 regard to drilling the four unit obligation wells?

4 A. We prefer to drill them at relatively the same  
5 time frame.

6 Q. So that a single participating area can be  
7 established?

8 A. Yes. That's correct.

9 Q. Can you guarantee today that Concho would be  
10 able to do that?

11 A. No. I cannot guarantee that we're going to be  
12 able to do that. It's just going to be based on the rig  
13 availability at the time and the market.

14 Q. But will COG use its best effort to drill these  
15 four unit obligation wells within this relatively  
16 similar amount of time so that one participating area  
17 can be established?

18 A. Yes. And that is our intent, and we are very  
19 optimistic we will be able to do that.

20 Q. And when was the last time you discussed  
21 this -- I know you've discussed this. Have you  
22 discussed this repeatedly with Mr. Glover?

23 A. Yes, I have.

24 Q. When was the most recent time you discussed  
25 this with Mr. Glover?

1           A.     Wednesday of this week.

2           Q.     Okay.  But ultimately this is still a  
3     decision -- even if COG applies for a single  
4     participating area, this is still ultimately a decision  
5     of the BLM?

6           A.     Yes, it is.

7           Q.     But the BLM has given us assurances that if we  
8     follow this plan, that it will likely approve of it?

9           A.     Yes, they have.

10          Q.     Based on your knowledge and experience as a  
11     landman and your knowledge of the legal processes, has  
12     COG followed the procedure for forming federal  
13     exploratory units as set forth in the model form of unit  
14     agreement and Code of Federal Regulations?

15          A.     Yes, to the best of our knowledge.

16          Q.     Has the BLM commented on how and if COG has  
17     followed this process?

18          A.     Yes.  James Glover on Wednesday stated that --

19                   MR. DeBRINE:  I'll object as hearsay.

20                   MS. RYAN:  It's not hearsay if he spoke to  
21     the BLM directly and he's talking about his  
22     conversation.

23                   MR. DeBRINE:  That's the definition of  
24     hearsay.  It's an out-of-court statement by the BLM.  
25     He's asserting it for truth of the matter.



1 MS. RYAN: The OCD has the option -- it  
2 doesn't have to follow the rules of evidence, and it has  
3 the option to hear whatever it deems relevant. And I  
4 think it's relevant on whether the BLM thinks --

5 EXAMINER DAVID: The rules of evidence  
6 don't apply, so I think we can take the testimony and  
7 give it whatever probative value that it merits.

8 EXAMINER McMILLAN: Okay. We're going to  
9 follow what the lawyer says.

10 Q. (BY MS. RYAN) Okay. So are you quoting what  
11 Mr. Glover said on Wednesday?

12 A. Yes, I am.

13 Q. And what did he say?

14 A. James Glover stated that COG's Tomahawk WC Unit  
15 submission was the most legally complete unit submission  
16 he's seen in this area.

17 Q. And those were his exact words?

18 A. Yes.

19 Q. And you were on the phone with him when he said  
20 that?

21 A. Yes.

22 Q. So let's focus back on the unit itself. What  
23 will the unitized interval be?

24 A. From the top of the Wolfcamp Formation down to  
25 the base of the Wolfcamp Formation.

1           Q.    Okay.  Our geologist will testify to that in  
2  more detail later?

3           A.    Yes.

4           Q.    Okay.  Referring back to Exhibit 2, which is  
5  the unit agreement, there are three exhibits to the unit  
6  agreement.  Can you identify Exhibit A to the unit  
7  agreement for the examiner?

8           A.    Yes.  Exhibit A is, again, just a map of the  
9  Tomahawk Unit, and it shows the breakdown of federal,  
10 fee and state lands, as well as the tracts within the  
11 unit.

12          Q.    Okay.  And if you flip to Exhibit B of the unit  
13 agreement, can you identify that for the examiner?

14          A.    Yes.  This is a breakdown of the interests of  
15 the owners within the unit based on tracts.

16          Q.    Okay.  Thank you.

17                   And is this breakdown what the records  
18 reflect -- what your records reflect currently?

19          A.    Yes, besides Chisholm Energy Operating.  They  
20 have now devolved into Marathon.  And Trabajo Del Spear,  
21 they have now devolved into COG.

22          Q.    How many leases are involved in the proposed  
23 unit?

24          A.    84.

25          Q.    And are there any unleased acreage within the

1     unit?

2           A.     Yes.

3           Q.     What has been your contact with these unleased  
4     mineral interest owners in the unit area?

5           A.     All unleased owners have been taken into  
6     account on the unit agreement, as well as our unit  
7     operating agreement, but we have sent out letters and  
8     offers to lease to every unleased interest owner within  
9     this unit.

10          Q.     So you contacted every unleased mineral  
11     interest owner that you could locate?

12          A.     Yes.   That's correct.

13          Q.     What percentage of the unit area do these  
14     unleased mineral interest owners make up?

15          A.     Roughly 0.25 percent.

16          Q.     Okay.   And you just stated that Concho then has  
17     leased up one of these unleased mineral interest owners?

18          A.     Yes.   That's correct.

19          Q.     And who was that?

20          A.     Trabajo Del Spear.

21          Q.     Does Concho hold all the leases in this unit?

22          A.     No, we do not, but we do have roughly a 75.5  
23     percent working interest spread across this entire unit.

24          Q.     And so there are other owners in addition to  
25     the unleased mineral interest owners?

1           A.    Yes.  There are other owners who are identified  
2   in Exhibit B.

3           Q.    Okay.  And the other owners did receive direct  
4   notice of this hearing?

5           A.    Yes, they did.

6           Q.    What commitment to the unit do you  
7   anticipate -- voluntary commitment do you anticipate?

8           A.    Over 85 percent.

9           Q.    And what is -- what is that based?

10          A.    That is based on the -- the letters we have  
11   received, as well as a verbal commitment from OXY USA,  
12   WTP, Occidental Permian, and OXY Y-1, who holds roughly  
13   a 10 percent interest in that unit.

14          Q.    Does that place Concho over the 85 percent  
15   federal threshold?

16          A.    Yes.

17          Q.    Okay.  I'm going to refer you to Exhibit C of  
18   the unit agreement.  Can you identify that for the  
19   examiners?

20          A.    Yes.  This is our current tract commitment  
21   status, again based on each tract.  This is everyone who  
22   we have signatures back from as of today.

23          Q.    And do you anticipate the BLM approving the  
24   unit based on the recent discussions?

25          A.    Yes, we do.

1           Q.    So let's refer to Exhibit B. Can you identify  
2   that for the examiner -- excuse me -- Exhibit 3, Number  
3   3?

4           A.    Yes. This is the application for  
5   designation -- or I guess the destination letter from  
6   the BLM to COG.

7           Q.    Is this the preliminary approval letter from  
8   the BLM?

9           A.    Yes. This is the preliminary approval letter.

10          Q.    Okay. Approving this unit?

11          A.    Yes. That's correct.

12          Q.    Does the letter discuss that the -- what the  
13   unit obligations will be?

14          A.    Yes. It discusses the initial obligation well  
15   to the unit to satisfy the federal unit.

16          Q.    Does it discuss what the unitized interval will  
17   be?

18          A.    Yes, it does. And this letter was sent out to  
19   all interest owners in this unit as well.

20          Q.    All right. Let's turn to Exhibit 4. Can you  
21   identify that for the examiners?

22          A.    This is the preliminary approval letter from  
23   the State Land Office.

24          Q.    Okay. So is it your understanding that the BLM  
25   and the State Land Office understand the nature of the

1     **unitized area and the proposed development plans by COG?**

2           A.     Yes. And they've both stated that they do  
3     believe this will be in the best interest of  
4     conservation by preventing waste and protecting  
5     correlative rights.

6           **Q.     Mr. Macha, what is the benefit of unitization**  
7     **in general for working interest owners?**

8           A.     So you're going to be able to spread your  
9     working interest across a larger number of wells rather  
10    than one or just a few. Additionally, if approved  
11    today, surface commingling will allow for fewer tank  
12    batteries, which reduces surface disturbance, which also  
13    reduces your costs, which boosts economics per wellbore.

14          **Q.     So the risk is spread across a larger acreage**  
15    **area?**

16          A.     Yes.

17          **Q.     So we've just discussed COG's obligations --**  
18    **obligation wells under the unit agreement. When does**  
19    **COG plan to spud the first well?**

20          A.     So this is going to be based on the BLM  
21    approval, as well as APDs, but we anticipate Q2 or Q3 of  
22    2020.

23          **Q.     What does the unit agreement state with regard**  
24    **to how many months in which COG has to drill the first**  
25    **well from final approval of the unit by the BLM?**

1           A.     So once the BLM formally approves the unit, we  
2     will have six months to spud our initial well.

3           **Q.     And so we're hopeful that that would be**  
4     **approximately the second or third quarter of 2020?**

5           A.     Yes.   That's correct.

6           **Q.     But it's dependent on timing?**

7           A.     But it's completely dependent on timing.

8           **Q.     So let's turn to Exhibit 5.  Can you identify**  
9     **that for the examiners?**

10          A.     This exhibit is again just a map of the  
11     Tomahawk Unit outlined in blue.  It is overlaid with  
12     EOG's current leasehold position that they could  
13     potentially contribute to this unit being the northwest  
14     quarter of Section 17 and 50 percent of Section 30.  And  
15     the red and yellow boxes -- you can see on the map --  
16     those are two well -- or several well proposals, being  
17     two separate designated spacing units that EOG has  
18     proposed recently.  Down in the bottom right, you can  
19     see those spacing units.  And roughly EOG's working  
20     interest in those units will be 25 percent, and COG's  
21     working interest will be roughly 75 percent.

22                     On the table to the left, you can see  
23     everyone in the unit's working interest breakdown with  
24     EOG highlighted in yellow at 10 percent, roughly.

25          **Q.     Okay.  So to confirm, COG's interest spread**

1 across the unit is over 75 percent --

2 A. That's correct.

3 Q. -- ownership?

4 A. Yes.

5 Q. And EOG's interest spread across the unit is  
6 right over 10 percent?

7 A. That's correct.

8 Q. Okay. And then if we're just looking at what  
9 the ownership is in the proposed spacing units and well  
10 proposals by EOG, that even in those proposals, COG has  
11 75 percent ownership in those spacing units?

12 A. Yes, they do.

13 Q. And EOG has about 25 percent?

14 A. Yes.

15 Q. So looking at Exhibit 5, we're talking about  
16 spudding the initial well. Can you point out and  
17 identify for the examiners where that initial well will  
18 be located in the unit?

19 A. For a further visual, we will be surfacing in  
20 Section 18 and bottom-holing in Section 17 in the north,  
21 and our southern wells will surface in Section 31 and  
22 bottom-hole in Section 32.

23 Q. So what is Concho's development plans? You  
24 testified that Concho's required to drill four wells in  
25 this unit next year. Does Concho plan to drill more



1     **than four?**

2           A.     So our minimum is four, which we are going to  
3     meet, but that count can get up -- has the potential to  
4     get all the way up to 16 wells next year. That's just  
5     going to be based on further data that we are currently  
6     analyzing, as well as rig availability and the market.

7           Q.     And so that decision -- that final decision on  
8     well count for 2020 will be made closer to time?

9           A.     Yes. It will be made closer to our spud dates.

10          Q.     Okay. And then will -- under the unit  
11     agreement is COG required to meet annually with the BLM  
12     authorized officer to discuss what the next year's well  
13     obligations will be?

14          A.     Yes. That's correct.

15          Q.     So the BLM will require COG to drill a certain  
16     number of wells in 2021 and 2022 and so on?

17          A.     Yes. That's correct.

18          Q.     Okay. So let's turn to Exhibit 6, and can you  
19     identify that for the examiners?

20          A.     This is COG's Affidavit of Notice for the  
21     hearing.

22          Q.     And is that -- is that affidavit signed by me?

23          A.     Yes, it is.

24          Q.     And with whom did Concho provide notice of this  
25     hearing?

1           A.    This notice was sent out to all interest  
2 parties within the unit, as well as all offset operators  
3 outside of the unit, as well as all working interest  
4 parties and any actively producing Wolfcamp well outside  
5 of the unit.

6           Q.    You mean directly adjacent to the unit  
7 boundary?

8           A.    Directly adjacent, yes.

9           Q.    Okay. And are those forms of notice letters  
10 included in Exhibit 6?

11          A.    Yes, they are.

12          Q.    Okay. And then as far as the status of the  
13 delivery of notice, first let's -- are all of the green  
14 cards -- copies of the green cards and delivery included  
15 within this exhibit?

16          A.    Yes. These are basically return receipts.

17          Q.    And were any of the deliveries returned  
18 undeliverable?

19          A.    Yes. If you look at the back page of Exhibit  
20 6, the names of several parties, these letters were  
21 returned as undeliverable.

22          Q.    Did anyone object to the formation of this  
23 unit, any of these owners?

24          A.    No, they did not. Only EOG.

25          Q.    In referencing the form letter that went out to

1 all of these owners, did it include an email address and  
2 telephone number if anyone had any questions about the  
3 formation of this unit?

4 A. Yes. It included both your email and phone  
5 number, as well as mine.

6 Q. And did EOG ever ask any questions about this  
7 unit until this week?

8 A. No, they did not.

9 Q. When specifically did EOG receive notice of  
10 this hearing?

11 A. July 16th, 2019.

12 Q. Okay. Can you please turn to Exhibit 8? Can  
13 you identify that for the examiners?

14 A. Exhibit 8 is a letter that was sent out  
15 inviting -- this one specific to EOG, inviting EOG to  
16 join in the unit.

17 Q. Wait, wait, wait. My exhibits are -- yeah.  
18 Pardon. Referring to Exhibit 7 --

19 A. Yeah, 7. Correct.

20 Q. Sorry.

21 Referring to Exhibit 7, can you identify  
22 that for the examiners?

23 A. This is a letter specific to EOG that was sent,  
24 inviting them to join in the unit.

25 Q. It was prior to sending notice of this hearing?

1           A.    This is -- yes.  This is prior to sending  
2   notice.

3                       On the back page of this exhibit is the  
4   confirmation of the delivery, which is dated June 24th,  
5   2019.

6           **Q.    So even for this letter was received by EOG,**  
7   **did you discuss this acreage at all prior to that time?**

8           A.    Yes.  Yes.  On June 6th, 2019, I sent an email  
9   to EOG offering to trade them out of this acreage.

10          **Q.    And did they turn down that trade?**

11          A.    Yes.

12          **Q.    What has COG's communication been with EOG**  
13   **since inviting them to join the unit?**

14          A.    So after inviting them to join the unit, our  
15   communication was fairly limited until July 17th when  
16   EOG met at COG's offices to discuss various trade  
17   options.  At this meeting EOG did not bring up the  
18   Tomahawk Unit.  COG did bring up the Tomahawk Unit.

19                       After this meeting on July 23rd, COG  
20   received several well proposals from EOG within the unit  
21   boundaries.  After receiving those, I was copied on  
22   several emails between EOG's management and COG's  
23   management, until August 1st when COG met at EOG's  
24   offices where further trade discussions were involved  
25   attempting to trade EOG out of this unit.

1                   After that, a number of other emails were  
2     exchanged between EOG's management and COG's management,  
3     until August 15th, when EOG notified COG that they would  
4     no longer be pursuing a trade and would be focusing  
5     their efforts on protesting this unit.

6           **Q.     So prior to this week, had EOG ever asked any**  
7     **questions about this unit?**

8           A.     No.

9           **Q.     Did they ask COG any questions about its**  
10    **reasoning behind forming this unit?**

11          A.     No.

12          **Q.     Or its development plans?**

13          A.     No.

14          **Q.     Let's switch to now what is Exhibit 8. Can you**  
15    **identify that for the examiner?**

16          A.     This is the Affidavit of Publication that we  
17    published in the Carlsbad Argus on July 13th.

18          **Q.     And did that notice include all of -- all of**  
19    **the parties, including the parties that -- whose notices**  
20    **were returned to us as undelivered?**

21          A.     Yes. That's correct.

22          **Q.     Were Exhibits 1 through 8 prepared by you or**  
23    **compiled at your direction and supervision?**

24          A.     Yes. That's correct.

25                   MS. RYAN: Mr. Examiner, I request that

1 Exhibits 1 through 8 be admitted.

2 EXAMINER McMILLAN: Objections?

3 MR. DeBRINE: No objection.

4 MR. BRUCE: No objection.

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

7 (COG Operating, LLC Exhibit Numbers 1  
8 through 8 are offered and admitted into  
9 evidence.)

10 MS. RYAN: This concludes my direct  
11 examination.

12 EXAMINER McMILLAN: Okay. We're taking a  
13 ten-minute break.

14 (Recess, 9:39 a.m. to 9:49 a.m.)

15 EXAMINER McMILLAN: Call the hearing back  
16 to order.

17 Here's your quarter back. I refuse to take  
18 your bribe.

19 MS. RYAN: I concluded my direct testimony.  
20 Pass witness.

21 EXAMINER McMILLAN: Cross?

22 CROSS-EXAMINATION

23 BY MR. DeBRINE:

24 Q. Mr. Macha, you talked about the fact that  
25 before you sent notice to the working interest owners,

1     you had been meeting with the BLM concerning the  
2     proposed unit. When was the first -- when did that  
3     first meeting occur?

4           A.     So I was not the landman when this first --  
5     this unit started forming. The first meeting I had with  
6     the BLM was roughly probably May -- roughly the middle  
7     of May. I don't have that exact date.

8                   MS. RYAN: Mr. Fisher was in on those  
9     initial meetings, and he'll be able to testify  
10    personally about that.

11           Q.     (BY MR. DeBRINE) And how many meetings did  
12    anyone at Concho have with the BLM before the letter of  
13    initial approval was given?

14           A.     I believe just two, but that's going to be  
15    better answered by Matt Fisher.

16           Q.     And you testified that EOG never requested  
17    information from Concho concerning the unit?

18           A.     Not specific to the unit itself.

19           Q.     Were you aware that Concho -- or EOG, through  
20    its counsel, requested all the correspondence with the  
21    BLM and the State Land Office concerning the unit last  
22    week and that information was not given to us?

23           A.     I was not aware of that.

24                   MS. RYAN: It was requested this week on  
25    Wednesday -- Tuesday.

1           Q.    (BY MR. DeBRINE) To your information, was that  
2 information ever given to EOG?

3           A.    Not to my knowledge.

4           Q.    If you turn to Exhibit 7, which is the letter  
5 to EOG concerning the approval -- preliminary approval  
6 of the unit by the BLM, when did EOG receive that  
7 letter?

8           A.    The preliminary approval letter, Exhibit 7?

9           Q.    The June 19th letter in Exhibit 7, which is the  
10 letter to the working interest owners.

11          A.    When did EOG receive it?

12          Q.    Yes.

13          A.    June 24th.

14          Q.    When did you file your application in this  
15 case?

16          A.    For the hearing?

17          Q.    Yes.

18          A.    That would be better answered by the --

19          Q.    If the record shows it was filed on June 28th,  
20 would you disagree with that?

21          A.    No.

22          Q.    So you filed four days after EOG received this  
23 letter?

24          A.    I'm not sure.

25          Q.    Was anybody at Concho having any discussions



1 with EOG concerning the development of either acreage in  
2 the Tomahawk Unit or any of the other areas?

3 A. So after sending this letter, it was our  
4 opinion that we should give EOG the time to mull this  
5 over because we had sent them a trade proposal and let  
6 them see if they wanted to participate or would they  
7 rather trade. And we thought that meeting on July 17th  
8 was going to be explicitly for the intent of this unit.

9 Q. When did you first inform EOG that you were  
10 considering forming the unit?

11 A. June 28th, whenever they received this letter.

12 Q. If you turn to Exhibit C, which indicates the  
13 different tract committed status, how many total tracts  
14 are within the unit?

15 A. 49.

16 Q. And of those 49, how many have 85 percent  
17 commitment to the working interest owners?

18 A. I believe about 640 acres, so two tracts. No.  
19 There's definitely more. But that is not required for  
20 this hearing, so I don't think that's substantial.

21 Q. And that wasn't my question. I'm just trying  
22 to gain an understanding as to what percentage  
23 commitment you have with respect to each tract in the  
24 unit. What I'd like to do is if you could just go  
25 through Exhibit C one by one and identify which tracts

1     you've received the 85 percent commitment of the working  
2     interest owners. So let's look at Tract 1. Do you have  
3     85 percent of Tract 1?

4         A.     No.

5         Q.     And how many acres are in Tract 1?

6         A.     360.

7         Q.     Let's look at Tract 2, which is 1081.18 acres.  
8     Do you have 85 percent commitment for Tract 2?

9         A.     No.

10        Q.     What is the commitment at Tract 2?

11        A.     Roughly, 57 -- well, roughly, 56.4 percent.

12        Q.     And that's almost a quarter of the unit of that  
13     one tract?

14        A.     1,000 acres? That's roughly a fifth of the  
15     unit.

16        Q.     Tract 3, which is a 160-acre tract, do you have  
17     85 percent commitment of the working interest owners?

18        A.     No.

19        Q.     Tract 4, which is almost 400 acres, 395.877, do  
20     you have 85 percent commitment?

21        A.     Yes.

22        Q.     Tract 5?

23        A.     Yes.

24        Q.     Tract 6?

25        A.     Yes.

1 Q. Tract 7?

2 A. Yes.

3 Q. Tract 8?

4 A. Yes.

5 Q. Tract 9?

6 A. Yes.

7 Q. Tract 10?

8 A. No.

9 Q. And what is the percentage commitment for tract  
10 10, which is a 160-acre tract?

11 A. 3.3 percent.

12 Q. How about Tract 11? Do you have 85 percent of  
13 that tract?

14 A. Yes.

15 Q. That's a 4.123-acre tract; is that correct?

16 A. Yes.

17 Q. Tract 12, which is a 145-acre tract, what is  
18 the percentage of working interest owners there?

19 A. Roughly -- just roughly 60 percent.

20 Q. Tract 13, what is the commitment in that tract?

21 A. Roughly, 57, 58 percent, again.

22 Q. Tract 14?

23 A. Same.

24 Q. 15?

25 A. Same.

- 1           **Q.    16?**
- 2           A.    Same .
- 3           **Q.    17?**
- 4           A.    Same .
- 5           **Q.    18?**
- 6           A.    Same .
- 7           **Q.    19?**
- 8           A.    Same .
- 9           **Q.    20?**
- 10          A.    Same .
- 11          **Q.    21?**
- 12          A.    Same .
- 13          **Q.    22?**
- 14          A.    Roughly, 47 percent or 48 percent .
- 15          **Q.    That's a 24.52-acre tract; is that correct?**
- 16          A.    Yes .
- 17          **Q.    And Tract 23?**
- 18          A.    Yes .    We have over 85 percent .
- 19          **Q.    How about 24?**
- 20          A.    Yes .
- 21          **Q.    25?**
- 22          A.    Yes .
- 23          **Q.    26?**
- 24          A.    Yes .
- 25          **Q.    27?**

1           A.     Yes.  
2           **Q.     28?**  
3           A.     Yes.  
4           **Q.     29?**  
5           A.     Yes.  
6           **Q.     30?**  
7           A.     Yes.  
8           **Q.     31?**  
9           A.     Yes.  
10          **Q.     32?**  
11          A.     Yes.  
12          **Q.     33?**  
13          A.     Yes.  
14          **Q.     34?**  
15          A.     Yes.  
16          **Q.     35?**  
17          A.     Yes.  
18          **Q.     36?**  
19          A.     Yes.  
20          **Q.     37?**  
21          A.     Yes.  
22          **Q.     38?**  
23          A.     Yes.  
24          **Q.     39?**  
25          A.     Yes.

- 1           **Q.     40?**
- 2           A.     No.
- 3           **Q.     That's a 75-acre tract; is that correct?**
- 4           A.     Yes.
- 5           **Q.     41?**
- 6           A.     No.
- 7           **Q.     That's a 5-acre tract; is that correct?**
- 8           A.     Yes.
- 9           **Q.     42?**
- 10          A.     No.
- 11          **Q.     That's a 60-acre tract?**
- 12          A.     Yes.
- 13          **Q.     Tract 43?**
- 14          A.     No.
- 15          **Q.     That's a 20-acre tract?**
- 16          A.     Yes.
- 17          **Q.     Tract 44?**
- 18          A.     No.
- 19          **Q.     And that's 225-acre tract?**
- 20          A.     Yes.
- 21          **Q.     Tract 45?**
- 22          A.     No.
- 23          **Q.     That's a 5-acre tract?**
- 24          A.     Yes.
- 25          **Q.     How about 46?**

1 A. No.

2 Q. 47?

3 A. No.

4 Q. 48?

5 A. No.

6 Q. 49?

7 A. Yes.

8 Q. So of the 49 tracts, what would you say the  
9 percentage is of the total tracts that you have the 85  
10 percent commitment in?

11 A. I cannot do that mathematics.

12 Q. Have you looked at the record title  
13 commitment --

14 A. Yes.

15 Q. -- Of the lessees of record?

16 A. Yes.

17 Q. And what percentage of the record title  
18 interests are committed to the unit?

19 A. I, again, cannot do that off the top of my  
20 head, but it is indicated in this Exhibit C.

21 Q. And where is that shown?

22 A. It's right below the "Legal Description,"  
23 "Record Title Holders."

24 Q. Let's look at your Exhibit A, which shows the  
25 designation of federal, fee and state acreage, and that

1 exhibit shows the federal acreage in pink; is that  
2 correct?

3 A. Yes.

4 Q. Isn't it true that the lease -- the pink  
5 acreage that's shown in the middle of that plat and the  
6 one that's immediately to the north that's separated is  
7 one single federal lease?

8 A. Yes.

9 Q. And who is the lessee of record of that tract?

10 A. I'm not sure off the top of my head.

11 Q. You don't know that's EOG Resources, Inc.?

12 A. Not off the top of my head, no.

13 Q. You didn't determine the ownership of the  
14 lessee of record when you were putting this together?

15 A. I did. I just can't remember forwarding  
16 address.

17 Q. Based on your knowledge of the land, what  
18 percentage of the total federal acreage is represented  
19 by a tract?

20 A. I'm not sure. Is that Tract 2?

21 Q. Does it look like it's more than half of the  
22 total federal acreage in the unit?

23 A. Of the federal acreage?

24 Q. Yes.

25 A. Yes. Roughly half.



1           Q.    You talked a little bit about the deviation  
2   from the federal form.  Who is responsible for  
3   determining what language should or should not be  
4   included in the statutory form?

5           A.    Out of Section 10?

6           Q.    Out of any of -- any of the form.  Who made the  
7   decision as to what language should be excluded from the  
8   federal form and format?

9           A.    The BLM.

10          Q.    Did you have any negotiations over that  
11   language, or did you resist any of their proposed  
12   changes?

13          A.    We gave our preference, and they showed their  
14   desire to drill -- have us drill multiple wells, which  
15   we agreed to because we thought that was the most fair  
16   thing.

17          Q.    Isn't it true that the proposed unit agreement  
18   that you've identified in your exhibits excludes  
19   specific reference to the New Mexico Oil and Gas Act  
20   that governs the administration of New Mexico state  
21   lands that's in the federal form of agreement?

22          A.    I would have to re-read, but I am unaware.

23          Q.    How many federal exploratory units have you  
24   been involved in putting together before this one?

25          A.    None.

1           Q.    Are you aware of any unit that's been approved  
2   by the BLM before that established two separate initial  
3   participating areas in the same formation of the offset?

4           A.    No.  That is also not what we're seeking.

5           Q.    But isn't that what the agreement describes, a  
6   unit participation area in the north and a unit  
7   participation area in the south?

8           A.    No.

9           Q.    How do you interpret it?

10          A.    It's one initial participation area that has  
11   the option to expand.

12          Q.    And in order to establish the additional PA,  
13   are you required to drill one or two wells?

14          A.    Two.

15          Q.    And how is production going to be allocated  
16   until the PA is approved by the BLM?

17          A.    So it's going to be on a PA basis.  It's going  
18   to be on a PA basis.

19          Q.    So you're going to be allocating -- how are you  
20   allocating production from the date of first production  
21   until the PA is approved to the working interest owners?

22          A.    So what our plan is closer to spud date, we  
23   will know if we're going to drill north and the south in  
24   roughly the same time frame.  We will send out elections  
25   for our wells and notify that it's going to be utilizing

1 a single PA that's going to be submitted to the BLM or  
2 if we're going to delay the expansion of the initial PA.  
3 And in that case, only the interest owners in the  
4 northern portion would be paying for the northern wells  
5 until the PA is expanded.

6 Q. And how long does that approval process take?

7 A. I'm unaware, but James Glover said it was not a  
8 lengthy process.

9 Q. How many months of production do you need to  
10 look at to determine whether you've got a paying well?

11 A. Roughly, two to three, from what I understand.

12 Q. Has Concho had any recent experience with its  
13 wells that showed initial high rates of production that  
14 have a dramatic falloff then later made the  
15 determination the wells weren't economic?

16 A. Not from my understanding.

17 MS. RYAN: I object. It isn't relevant to  
18 this hearing.

19 EXAMINER McMILLAN: I agree with that  
20 comment.

21 Your comment is not relevant. Move on.

22 MR. DeBRINE: And I believe it is relevant  
23 to look at what is the period of the production you need  
24 to look at --

25 EXAMINER McMILLAN: The last comment --

1 he's not an engineer, so he can't give you a viable  
2 answer.

3 MR. DeBRINE: And I'll reserve those  
4 questions.

5 EXAMINER McMILLAN: Okay. That's fine, but  
6 he can't answer them.

7 MR. DeBRINE: Okay.

8 Q. (BY MR. DeBRINE) You do not have a written plan  
9 of development for the unit at this time?

10 A. No, we do not.

11 Q. And so under the terms of the unit agreement as  
12 specified, you're not obligated to drill any wells in  
13 the south if you don't want to?

14 A. So if we want to form our PA in the south, we  
15 are obligated to. However, no, there is no current  
16 obligation by the BLM.

17 Q. Under the terms of this unit agreement, there  
18 is only one initial obligation well; is that correct?

19 A. To form the federal unit itself, yes, but the  
20 BLM will dictate any future development of that unit --  
21 of that unit.

22 Q. And if you just drilled one obligation well,  
23 would you be able to hold all the leases within the  
24 entire unit by that well under the terms of this  
25 agreement?

1           A.    That is my understanding.  However, that is up  
2   to the BLM.

3           **Q.    Are there any leases within the proposed unit**  
4   **that have -- that are about to expire in their primary**  
5   **term?**

6           A.    No.  They're all HBP.

7                         Can I make a correction to that statement?

8           **Q.    Sure.**

9           A.    They're all HBP except the brand-new lease we  
10   just took, which has a three-year primary term.

11          **Q.    I believe you testified that based on oral**  
12   **communications, you believe you have 85 percent**  
13   **commitment to the working -- of the working interest**  
14   **owners in the unit?**

15          A.    Yes.  So we've been working closely with OXY.  
16   We have a letter agreement with them, and we are  
17   anticipating that being signed within the next two to  
18   three weeks.

19          **Q.    When was the last time you spoke to OXY?**

20          A.    Yesterday.

21          **Q.    At what time?**

22          A.    Well, I personally have not spoken to them.  
23   It's our business development group that's leading up  
24   that conversation.

25          **Q.    And the letter agreement with OXY pertains to**

1     **what exactly?**

2           A.     The commitment to the unit, as well --

3                   MS. RYAN:   I'm going to prevent any  
4     discussion as to other terms of the letter agreement,  
5     except that the term providing for commitment to the  
6     unit, because those are confidential between COG and  
7     OXY.

8           **Q.     (BY MR. DeBRINE) How many wells have you staked**  
9     **within the proposed unit area at this time?**

10          A.     I'm unaware.   Matt would be a better reference  
11     for that.

12          **Q.     Has Concho recently dropped rigs that it's**  
13     **utilizing in New Mexico?**

14                  MS. RYAN:   It's irrelevant to this hearing.  
15     I object.

16                  MR. DeBRINE:   I think it's relevant as to  
17     whether -- we're talking about competing development  
18     plans, and it's relevant as to whether Concho's actually  
19     going to drill the wells that it's talking about and  
20     whether they're prepared to drill them.

21                  MS. RYAN:   It has testified it's obligated  
22     to drill the four wells that the BLM has required it to.

23                  EXAMINER McMILLAN:   They can pick up a rig,  
24     though.

25                  EXAMINER DAVID:   I guess my question for

1 the hearing examiner is whether or not --

2 EXAMINER McMILLAN: That question is not  
3 relevant. Move on.

4 EXAMINER DAVID: For our limited review.

5 Q. (BY MR. DeBRINE) What steps have you taken in  
6 order to prepare for development of the unit at this  
7 stage other than just seeking the preliminary approval  
8 of the SLO and the BLM?

9 A. We are currently negotiating surface agreements  
10 with surface owners for surface locations. We are in  
11 the process of -- I don't know where we're at with  
12 staking, but we are in the process of filing APDs. We  
13 have almost complete title throughout the unit, drilling  
14 individual title opinions, and the title that we do not  
15 have is currently being worked and anticipated being  
16 completed by the end of September.

17 Q. So you do not have drilling title opinions for  
18 the four wells that you mentioned for the north and the  
19 south?

20 A. Partially we have everything, but no, we do not  
21 have title as to every tract.

22 MR. DeBRINE: I'll pass the witness.

23 MS. RYAN: I just have a couple of  
24 follow-up.

25 EXAMINER McMILLAN: Okay. Hold on.

1                   MR. BRUCE: First, Mr. Examiner, I'll  
2   revise my entry of appearance, and I'll also enter an  
3   appearance for Matador Production Company.

4                   CROSS-EXAMINATION

5   BY MR. BRUCE:

6           **Q. My question is this: As to each of the fee**  
7   **tracts, do you have voluntary commitment of 85 percent**  
8   **of the royalty, plus overriding royalty interests?**

9           A. So we have ratifications and joinders sent out  
10   to every single overriding party, and we are -- we have  
11   confirmed pooling language within those fee leases, and  
12   the fee leases that do not have sufficient pooling  
13   language, we have sent out joinders.

14          **Q. But do you have 85 percent voluntary commitment**  
15   **of those interest owners at this time?**

16          A. I'm unaware. I realize MRC Permian is probably  
17   one of those owners.

18                   MR. BRUCE: That's all I have,  
19   Mr. Examiner.

20                   MS. RYAN: I just have a couple of  
21   follow-up clarification questions.

22                   EXAMINER McMILLAN: That's fine.

23                   REDIRECT EXAMINATION

24   BY MS. RYAN:

25          **Q. Is COG required to have 85 percent -- under**



1 state or federal statutes or regulations, is COG  
2 required to have 85 percent commitment in every tract,  
3 or are they required to have a commitment spread -- 85  
4 percent spread across the units?

5 A. That has been clarified multiple times by the  
6 BLM, that it is 85 percent spread across the unit on a  
7 tract-by-tract basis.

8 Q. And is 85 percent required before this hearing  
9 today?

10 A. No.

11 Q. Is 85 percent required before COG asks for  
12 final approval of the unit from the BLM?

13 A. Yes.

14 Q. Okay.

15 RE CROSS EXAMINATION

16 BY MR. DeBRINE:

17 Q. You're not a lawyer, are you?

18 A. No.

19 Q. And where are you getting this information as  
20 to what is required by the BLM in terms of the 85  
21 percent commitment?

22 A. From James Glover at the BLM.

23 Q. That's just an oral statement he made to you?

24 A. Yes.

25 Q. What is the effect if a particular tract

1     **doesn't have 85 percent?**

2                     MS. RYAN: I was still asking my follow-up.

3                     MR. DeBRINE: Oh. I thought you were done.

4     I apologize.

5                     MS. RYAN: No.

6                     CONTINUED REDIRECT EXAMINATION

7     BY MS. RYAN:

8             **Q. In addition to OXY, are you still working --**  
9     **are you still visiting with other interest owners in the**  
10    **unit to obtain their commitment?**

11            A. Yes.

12            **Q. And you testified that you don't have actual**  
13    **title opinions on every single tract. But have you done**  
14    **title work in the records to learn what the ownership is**  
15    **in every tract?**

16            A. Yes. And COG Operating, as to the acreage we  
17    do not yet have title opinions on, we have current and  
18    active producing wellbores that does give us insight as  
19    to ownership.

20            **Q. Okay.**

21                     MS. RYAN: That concludes my follow-up.

22                     REXCROSS EXAMINATION

23     BY MR. DeBRINE:

24            **Q. What is the effect if you are unable to obtain**  
25    **85 percent commitment of the working interest owner in a**

1     **tract? Does that tract remain uncommitted within the**  
2     **unit?**

3           A.     So there are different statutes for each tract.  
4     It's dictated by the BLM, either fully committed,  
5     effectively committed or partially committed. So any  
6     tract that does not have 100 percent commitment by  
7     working interest owners is an uncommitted tract.

8           **Q.     And what's the legal effect -- what is the**  
9     **practical effect if a tract is not committed? It**  
10    **doesn't share in the unitized production?**

11          A.     Yes. That is correct. It is just on a unit --  
12    designated spacing unit basis.

13          **Q.     What about the -- if you don't have commitment**  
14    **of the record title owner?**

15          A.     I believe that is just partially committed, but  
16    I'm not -- I can't tell you that for sure.

17          **Q.     So it's possible if you don't have the**  
18    **commitment of the record title owner for a particular**  
19    **tract, that tract also would not share the unitized**  
20    **production?**

21          A.     That would be correct if the definition of  
22    effectively committed, fully committed and partially  
23    committed reads that way.

24                   MR. DeBRINE: No further questions.

25                   EXAMINER McMILLAN: Go ahead, Jim.

1 MR. BRUCE: Just one.

2 RECROSS EXAMINATION

3 BY MR. BRUCE:

4 Q. Are there any unlocatable record title owners?

5 A. Not that I'm aware of.

6 Q. Thank you.

7 EXAMINER McMILLAN: Okay.

8 CROSS-EXAMINATION

9 BY EXAMINER McMILLAN:

10 Q. So is there a contraction clause?

11 A. Yes. So if we were to drill the north  
12 participation area that would require our initial wells  
13 in Sections 17 and 18 and do not due diligently develop  
14 the rest of the unit, the unit will contract.

15 Q. Okay. But what happens if you drill one of the  
16 wells and it's deemed uneconomical, and then you drill a  
17 subsequent well that is deemed economical? Is that  
18 uneconomical removed from the unit? Because that's been  
19 the giant problem we've always had in the northwest,  
20 where you get 13,000 acres and one well holds the whole  
21 thing and there is no contraction clause. Where does it  
22 expressly state a contraction clause in the agreement?

23 A. It's going to be -- we can follow up with that.  
24 I'm not exactly where sure it is in the unit agreement,  
25 but it has been expressly --

1           Q.   Well, let's find it. I think -- to me it's  
2   very important.

3           A.   Right.

4           Q.   If you're looking at -- would it be paragraph  
5   C?

6                   EXAMINER McMILLAN: Is that what  
7   you (indicating) found?

8                   DR. GRUEBEL: I haven't found anything.

9                   MR. BRUCE: The State Land Office form has  
10   always had it.

11                   EXAMINER McMILLAN: Does the State Land  
12   Office have a contraction?

13                   MS. RYAN: Yeah. I mean, it's important  
14   that this -- if we don't prove up --

15                   EXAMINER McMILLAN: Well, then where does  
16   it say it? That's why I said it's been a nightmare in  
17   the northwest, a contraction clause. One well can hold  
18   up to 13,000 acres.

19                   EXAMINER DAVID: Mr. Hearing Examiner, how  
20   about paragraph 11? It's a long paragraph, but how  
21   about looking at 11 and look a little bit below the  
22   middle. The sentence begins "The participating area or  
23   areas so established shall be revised from time to time,  
24   subject to the approval of the AO, to include additional  
25   lands then regarded as reasonably proved to be

1 productive of unitized substances in paying quantities,  
2 or which are necessary for unit operations, or to  
3 exclude lands then regarded as not reasonably proved to  
4 be productive of unitized substances...."

5 EXAMINER McMILLAN: Does that sound about  
6 right?

7 MR. DeBRINE: I think that just excludes  
8 them from the participating area. They don't fall out  
9 of the unit. They're still in the unit. Then you're  
10 going to have all this land tied up with the inability  
11 of the working interest owners in the tracts the  
12 opportunity to develop it, which is --

13 MS. RYAN: That's not -- that's not --  
14 that's not the intent. That's not the intent that we  
15 have, so I need to find where that is. We may need to  
16 give James Glover a call and just ask for clarification.

17 EXAMINER McMILLAN: Yeah. And that issue  
18 has got to be -- that is -- that is a huge issue.

19 MR. DeBRINE: Mr. Examiner, I think we've  
20 got a lot of experienced people in here, including the  
21 former person at the State Land Office who used to  
22 administer these units, and nobody can find automatic  
23 contractual language in this agreement. And I think  
24 that if the intent of Concho is to get it clarified with  
25 the BLM, what needs to be done is we need to recess the

1 hearing and see if we can get a revised form of the  
2 agreement.

3 MS. RYAN: I object to that. I object to  
4 that. This is not the final form of agreement that  
5 we've asked to be approved by the BLM. If there needs  
6 to be clarification or revisions to the agreement, we'll  
7 have clarification on that from the BLM. This is not  
8 the final form.

9 Q. (BY EXAMINER McMILLAN) Okay. And you said  
10 something about an email about discussions with OXY?

11 A. So our BD group has been in discussions mostly  
12 through the phone, but they probably do have emails.

13 Q. Well, I mean, I think it's important that you  
14 provide at least a chronology --

15 A. Right.

16 Q. -- of the emails because there is no -- the OCD  
17 has no way to track whether or not you actually talked  
18 to them. So I think that's a reasonable request.

19 A. Right.

20 MS. RYAN: We can follow up with an  
21 affidavit and exhibit reflecting our communication with  
22 OXY.

23 EXAMINER McMILLAN: Yeah. I think that's  
24 fair, and notify affected parties.

25 MR. DeBRINE: And, Mr. Examiner, I think

1     that it's premature to consider this application if  
2     we're going to be considering additional evidence that  
3     we don't have the opportunity to cross-examine the  
4     witnesses here today.

5                   EXAMINER McMILLAN:   All we're saying is  
6     that we're supplementing the testimony.  They said that  
7     they had contact with OXY, et al.  That's all we're  
8     asking.

9                   MS. RYAN:   And 85 percent is not required  
10    prior to this hearing.  It's required prior to final BLM  
11    approval.  We could be here with 25 percent.  I wouldn't  
12    want to be doing that.  But that's the decision for the  
13    BLM.  So until -- we have to be at that benchmark by the  
14    time we ask for final approval.  So it is important that  
15    we are working with other interest owners in this unit  
16    to obtain that 85 percent, but that's not something that  
17    has to be done today or prior to an OCD order.

18                  MR. DeBRINE:   And, Mr. Examiner, we think  
19    it's important because, one, one of the things that the  
20    examiners have to do is they have to assess the  
21    credibility of the evidence being presented.  We have  
22    contrary evidence that is very recent evidence that OXY  
23    has not given their approval.

24                  EXAMINER McMILLAN:   Okay.  You're going to  
25    have the opportunity.  You have witnesses.



1                   MR. DeBRINE: But we don't -- we don't have  
2 the opportunity to cross-examine Mr. Macha with regards  
3 to the communications that you've requested be provided  
4 the Division with. And that was a concern that we  
5 raised when we asked for a longer continuance, is that  
6 we had requested with -- from Concho all of the  
7 correspondence with the BLM because this is a very  
8 unusual agreement, and so we wanted to have a full  
9 understanding of how did this thing come into being so  
10 we can look and see what the correspondence is, what the  
11 rationale might have been to get where we are today.  
12 And we requested that information and a continuance so  
13 that we could obtain it, and that was denied. And what  
14 we're hearing here today is that it's not complete;  
15 they're going to get clarification as to --

16                   MS. RYAN: It's not required to be  
17 complete.

18                   MR. DeBRINE: -- by the BLM.

19                   EXAMINER McMILLAN: Let him finish.

20                   MR. DeBRINE: But we have an agreement  
21 that -- one of things this witness testified,  
22 notwithstanding Mr. Brancard's statement as to what the  
23 Division is equally authorized to do, there is a  
24 specific request to approve this unit agreement. And  
25 this unit agreement, we just confirmed, did not have

1     automatic contraction language, and they're seeking to  
2     modify the statement of Mr. Glover from the BLM. We  
3     ought to have what they're presenting is the agreement  
4     that they want the Division to approve and put in place.

5                     THE WITNESS: Can I make a comment,  
6     Mr. Examiner?

7                     MR. DeBRINE: And I don't see the harm in  
8     waiting so that we have complete information and we can  
9     make an intelligent decision, and that'll minimize the  
10    likelihood of an appeal to the Commission.

11                    MS. RYAN: EOG has -- it's a 10 percent  
12    owner in this unit, and it can choose to participate or  
13    not participate, whether or not whatever happens today.  
14    Even if we get an order from the OCD approving this  
15    unit, it still isn't going to be formed unless we get  
16    final BLM approval. So this is just a step in the  
17    process today. And it doesn't matter if we have 25 or  
18    75 or 85 percent today. It's completely immaterial.

19                    THE WITNESS: I would like to point out  
20    paragraph three of Section 2 in the agreement. It  
21    begins with "The above-described unit area." It does  
22    include contractual language based on BLM discretion.

23                    MS. RYAN: Can you read that for the  
24    examiner?

25                    THE WITNESS: "The above-described unit

1 area shall when practicable be expanded to include  
2 therein any additional lands or shall be contracted to  
3 exclude lands whenever such expansion or contraction is  
4 deemed to be necessary or advisable to conform with the  
5 purpose of this agreement. Such expansion or  
6 contraction shall be effected in the following manner:"  
7 And the following paragraphs, I can read it if you like.

8 MS. RYAN: That is the contraction language  
9 we were looking for, Mr. Examiner.

10 EXAMINER McMILLAN: Okay.

11 MR. DeBRINE: And, Mr. Examiner, that is  
12 not the automatic contraction language that's in the  
13 normal federal form. That's just a determination that's  
14 made after the unit is formed. You can either expand it  
15 or contract it based on additional information after the  
16 unit is --

17 MS. RYAN: And Mr. Brancard has already  
18 said that that's a decision of the BLM, not of the OCD  
19 today, of the form of the agreement.

20 EXAMINER McMILLAN: Contraction clauses are  
21 important because it comes into question of the  
22 correlative rights.

23 DR. GRUEBEL: 2.(e) is the contractual  
24 language.

25 EXAMINER McMILLAN: What's that?

1 DR. GRUEBEL: 2.(e) is the contractual  
2 language.

3 EXAMINER McMILLAN: Okay. We're stating  
4 2.(e) could be.

5 MS. RYAN: Yes. It does have automatic  
6 contraction in 2.(e). "No parts of which are in or  
7 entitled to be in a participating area (as defined in  
8 Section 11) on or before the fifth anniversary of the  
9 effective date of the first initial participating area  
10 established under this unit agreement, shall be  
11 eliminated automatically from this agreement...." So at  
12 five years, to whatever COG has not proven up or met its  
13 obligation, the participating -- the unit contracts  
14 itself down. That's what we were looking for.

15 EXAMINER McMILLAN: Yeah. Because, like I  
16 said, that's the nightmare in the northwest.

17 REDIRECT EXAMINATION

18 BY MS. RYAN:

19 Q. Mr. Macha, was the BLM in prior years --

20 EXAMINER McMILLAN: Can I -- wait.

21 MS. RYAN: Okay.

22 CONTINUED CROSS-EXAMINATION

23 BY EXAMINER McMILLAN:

24 Q. I'm trying to understand. You're going to  
25 drill -- if you drill four wells within a reasonable

1     **time, you'll be able to expand --**

2           A.     We'll be able to form that one participating  
3     area, cover the entire unit.

4           **Q.     But then if you don't, you'll essentially have**  
5     **two, but through development, you can still merge it**  
6     **back into one, right?**

7           A.     Essentially that's correct.

8           **Q.     Okay. That was -- okay. Those are my**  
9     **questions.**

10                   EXAMINER McMILLAN:   Proceed.

11                   MS. RYAN:   I think that concludes our  
12     examination of the witness.

13                   EXAMINER McMILLAN:   Okay. Well, then --  
14     you said you were going to -- you didn't discuss the  
15     internal setbacks.

16                   MS. RYAN:   That's right. And I do have a  
17     witness who is prepared to discuss that in more detail.  
18     He's an engineer prepared to testify on that.

19                   EXAMINER McMILLAN:   Well, but then -- okay.  
20     So it needs to be clearly stated for the record. The  
21     unitized area, for horizontal well -- the completed  
22     interval of which is wholly located within the unitized  
23     area or an area of uniform interest as to the mineral  
24     estate in the objective formation, the setbacks  
25     described in C of Section 19.16.15.15 NMAC apply only to

1 the outer boundaries of the unitized area, areas of  
2 uniform ownership or any uncommitted or partially  
3 committed tract instead of the outer boundaries of the  
4 horizontal spacing unit. So why are you asking for  
5 internal setbacks?

6 EXAMINER DAVID: Would you just reference  
7 that for the record, what section you're reading from?

8 EXAMINER McMILLAN: Yeah. 19.16.15.15. I  
9 believe it's Section C(7).

10 MS. RYAN: Yes, sir.

11 EXAMINER McMILLAN: It's the horizontal  
12 well portion.

13 MS. RYAN: Yes, sir. Our initial  
14 preliminary discussions with the OCD district office and  
15 Santa Fe office, with their technical team, we pointed  
16 out that provision, and there was some -- just  
17 discussion and uncertainty to confirm that. I agree  
18 with your interpretation, that there would be no  
19 internal setbacks under that provision, but to further  
20 belt-and-suspender the issue, we were asked that if we  
21 want to make sure that we have elimination of internal  
22 setbacks, that we should specifically request that in  
23 our application. So it's really a belt-and-suspender to  
24 the provision you just quoted.

25 EXAMINER McMILLAN: Do you have any

1 objections to that?

2 MR. DeBRINE: We do, Mr. Examiner, because  
3 unless we know what tracts are committed to this unit,  
4 it's going to be a nightmare to determine what setbacks  
5 are because you're going to have holes throughout the  
6 unit that aren't committed.

7 MS. RYAN: I'll put on testimony.

8 REDIRECT EXAMINATION

9 BY MS. RYAN:

10 Q. So, Mr. Macha, for -- if ownership interests  
11 that are uncommitted -- are uncommitted within the unit,  
12 what is the legal process by which -- for which COG, as  
13 unit operator, could penetrate those tracts and drill a  
14 well within those uncommitted tracts?

15 A. So you're just going to go through your  
16 standard NMSV [sic] pooling hearing if they do not  
17 participate in the wellbores.

18 Q. So if there is an interest owner that has not  
19 committed their interest and COG intends to penetrate  
20 that tract, then COG would be required to file a force  
21 pooling application with the OCD, and that would be the  
22 issue in front of the OCD at that time?

23 A. Yes. That's correct.

24 Q. Okay. Thank you.

25 MR. DeBRINE: And that's the problem, is

1     you're effectively compulsory pooling the unit together,  
2     which is not allowed.

3                     MS. RYAN:   We're not asking for that today.

4                     MR. DeBRINE:   That's the practical effect.

5                     EXAMINER McMILLAN:   I understand the  
6     practical effect.   Okay.

7                     MS. RYAN:   Okay.   I would like to reserve  
8     Mr. Macha as a rebuttal witness just in case I might  
9     need him after the presentation of their case.   I don't  
10    plan to ask him further questions but in case I need to  
11    clarify something.

12                    EXAMINER McMILLAN:   Okay.

13                    MS. RYAN:   Thank you, Mr. Macha.

14                    I'd like to call my --

15                    EXAMINER McMILLAN:   Hold on.

16                    Jim?

17                    MR. BRUCE:   Mr. Examiner, I was only  
18    interested in the land portion of this, and I request  
19    permission to be excused.

20                    EXAMINER McMILLAN:   Yes.

21                    MR. BRUCE:   Thank you.

22                    (Mr. Bruce exits the room, 10:30 a.m.)

23                    MS. RYAN:   Mr. Hurd will follow up with an  
24    affidavit concerning our communication and commitment  
25    level with OXY and any other interest owner in the unit.



1 EXAMINER McMILLAN: Okay.

2 MR. DeBRINE: We would ask that the hearing  
3 be held open, and we have the opportunity to call OXY  
4 and cross-examine them concerning any additional --

5 MS. RYAN: OXY's not a party to this  
6 proceeding. They don't need to -- I object. It's not  
7 even -- it's not even a thing to pull -- what would they  
8 do? Pull OXY into our proceeding here and cross-examine  
9 them on how they want to commit? That's an agreement --  
10 a voluntary agreement that OXY or any other interest  
11 owner, including EOG, can make on whether they want to  
12 join this unit. And if they don't, then they don't. If  
13 we don't get to 85 percent, then we don't get to 85  
14 percent, and it won't be formed, period.

15 MR. DeBRINE: And I think we have a right  
16 under the due process clause in the New Mexico  
17 Constitution and the Division rules to have an  
18 opportunity to evaluate any additional evidence that  
19 might be submitted after today's hearing date and come  
20 back and address that either through additional witness  
21 testimony to question it and provide any rebuttal with  
22 regard to that evidence.

23 MS. RYAN: It doesn't matter whether or not  
24 we talk to OXY, come to an agreement with OXY today or  
25 in two weeks or by the time I submit you an affidavit.

1 It doesn't matter. That's not what's in front of you  
2 today, and that's not what you're being asked to do. We  
3 have to get an agreement with the other working interest  
4 owners up to 85 percent before we submit for final  
5 approval, but that's not what we're -- it's not germane  
6 to this hearing. It's never been germane to any  
7 unitization hearing that has ever come before the OCD.  
8 That's not what we're here to do.

9 EXAMINER McMILLAN: They're requesting a  
10 preliminary approval, and the ultimate approval is going  
11 to be by the State Land Office and by BLM. So I don't  
12 see the point of having a continuance.

13 MR. DeBRINE: Well, I think it is germane.  
14 And they made it part of their case-in-chief with regard  
15 to the deal they had in place with OXY, and then they're  
16 going to be presenting evidence to prove it up, and we  
17 ought to have the opportunity to examine that evidence.  
18 And I haven't heard anything as to why a delay of having  
19 a further hearing just limited to that evidence.

20 MS. RYAN: Whether or not we get an  
21 agreement with OXY is -- it's irrelevant to what we're  
22 asking of the OCD. It's relevant to the BLM's decision.

23 EXAMINER McMILLAN: But the -- but the OCD,  
24 in past unit cases, has said -- to approval by the BLM  
25 and the State Land Office. So if you don't get the 85

1     percent, it falls apart.

2                   MS. RYAN:   That's right.   All the prior OCD  
3     orders say that they're subject to final BLM and State  
4     Land Office approval.

5                   MR. DeBRINE:   But the problem is unless you  
6     really have a clear picture of what tracts are going to  
7     be committed, you're not going to know what the  
8     composition is, and you can't really evaluate the  
9     correlative rights of the working interest owners within  
10    the unit because you don't know what opportunity they're  
11    going to have to develop their acreage to their fair  
12    share of the resource within the unit, and then you  
13    really can't make an intelligent decision with respect  
14    to those issues unless you know what's going to be --  
15    what holes are going to be in this unit and what  
16    those -- ownership is going to look like.

17                  EXAMINER McMILLAN:   You're really not going  
18    to know what you've got until you start producing.  
19    That's the other side of the coin.   I mean, that in  
20    itself can create -- just the nature of the reservoir  
21    could create holes in it.

22                  MR. DeBRINE:   That is a possibility.   We're  
23    going to have testimony that we don't believe that this  
24    is an appropriate area for an exploratory unit  
25    because --

1 EXAMINER McMILLAN: Okay. That's fine.

2 That's fine. You'll have that opportunity.

3 Okay.

4 MS. RYAN: Okay. I'd like to call my next  
5 witness.

6 EXAMINER McMILLAN: Proceed.

7 MS. RYAN: I'd like to call Mr. Fisher.

8 EXAMINER MURPHY: Is there any way we can  
9 start moving it along because it's Friday and --

10 MS. RYAN: I'd be happy to.

11 EXAMINER McMILLAN: But there's nothing we  
12 can do about it. They have to have the opportunity --  
13 both sides have to have the opportunity. That's how it  
14 works.

15 MS. RYAN: I'd love to move this along.

16 MR. FISHER: Good morning.

17 MATT FISHER,

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

20 DIRECT EXAMINATION

21 BY MS. RYAN:

22 Q. Can you please state your name for the record?

23 A. Matt Fisher.

24 Q. And by whom are you employed?

25 A. COG Operating.

1           Q.    And what is your position?

2           A.    I am a geologist.

3           Q.    Can you briefly describe your roles and  
4 responsibilities in that position?

5           A.    Yeah. I'm over all the geologic activities in  
6 Eddy County, and I map formations and plan and drill  
7 wells.

8           Q.    How many years total experience do you have in  
9 the oil and gas business?

10          A.    Five years.

11          Q.    And have you previously testified before the  
12 Division?

13          A.    Yes, I have.

14          Q.    So you were admitted as an expert eight times  
15 previously?

16          A.    Six to eight times, around there. I don't  
17 remember exactly.

18          Q.    Well, if you've testified eight times, then you  
19 were admitted eight times?

20          A.    Oh, yes.

21          Q.    So you've been admitted eight times as an  
22 expert?

23          A.    Yes.

24          Q.    Are you familiar with the application in this  
25 case?

1           A.     Yes.

2                       MS. RYAN:  Mr. Examiner, I ask that  
3   Mr. Fisher be admitted as an expert geologist.

4                       MR. DeBRINE:  No objection.

5                       EXAMINER McMILLAN:  So qualified.

6           Q.     **(BY MS. RYAN) Have you conducted a geologic**  
7   **study of the lands that are subject to the application?**

8           A.     Yes, I have.

9           Q.     **So have you been the primary contact with the**  
10  **BLM, State Land Office --**

11          A.     Uh-huh.

12          Q.     **-- and OCD since the very beginning of the**  
13  **initial formation of this unit?**

14          A.     That's correct.

15          Q.     **And who have you been working with at each**  
16  **agency?**

17          A.     So James Glover has been my primary contact at  
18  the BLM.  And to answer a previous question, I believe  
19  our first meeting was in February of this year.

20          Q.     **Okay.**

21          A.     And than Randy Bayliss was my contact at the  
22  State Land Office, and he retired, and Scott Dawson has  
23  been my contact since then.  And then we had a  
24  preliminary meeting with Ray Podany in the Artesia  
25  District Office, and then we had a technical meeting in

1 the Santa Fe office with the OCD.

2 Q. And were all of these agencies in the  
3 preliminary stage preliminarily supportive --

4 A. Yes, they were.

5 Q. -- of moving forward?

6 Okay. And COG's application is requesting  
7 the OCD to grant surface commingling in the unit area.  
8 Can you discuss why Concho's requesting that?

9 A. Yeah. We're requesting it stay in the order so  
10 we don't have to request it for each individual well.  
11 That just allows for a lot of administrative  
12 efficiencies. And our plans right now are to have two  
13 central tank batteries, one in the north and one in the  
14 south, and obviously that saves surface disturbances and  
15 saves money by having less tank batteries.

16 Q. And is administrative efficiency saved for the  
17 OCD as well?

18 A. Yes.

19 Q. And did the OCD direct us to ask for this in  
20 our -- if we wanted this, that it would help to ask for  
21 it in application?

22 A. That's correct.

23 Q. Will you please turn to what's marked as  
24 Exhibit 9 and identify that for the examiner?

25 A. Okay. This is the type log used to define the

1 unitized interval. The unitized interval includes the  
2 entire Wolfcamp Formation. The top of the Wolfcamp  
3 occurs at 9,285 feet measured depth, and the base occurs  
4 at 10,853 feet on the High Brass Fee #1 well, which is  
5 located in Section 20 of 24 South, 28 East, Eddy County,  
6 New Mexico. That is the log shown on the left here.

7           The star represents where the High Brass is  
8 in Section 20. We've identified four main targets in  
9 the Wolfcamp here: The Wolfcamp A Sand, the Wolfcamp A  
10 Shale and then the Wolfcamp C and D. Different  
11 operators have different nomenclature, but this is how  
12 we subdivide the Wolfcamp ourselves.

13           **Q. Okay. And so can you discuss specifically what**  
14 **the unitized interval is that the BLM has placed in the**  
15 **unit agreement?**

16           A. Yeah. The exact verbiage is shown here. The  
17 unitized interval includes the entire Wolfcamp  
18 Formation. The top of the Wolfcamp occurs at the  
19 measured depth 9,285 feet. The base occurs at 10,853  
20 feet on the gamma ray log and the High Brass Fee #1 well  
21 located in the southeast-northwest of Section 20, 24  
22 South, 28 East, Eddy County, New Mexico.

23           **Q. And does the proposed unitized interval extend**  
24 **across the acreage that Concho seeks to unitize?**

25           A. Yes, it does.



1           **Q.    Please turn to what is marked as Exhibit 10 and**  
2           **describe that for the examiner.**

3           A.    Okay.  This is just a locator map showing  
4           southeast New Mexico and West Texas.  The Tomahawk WC  
5           Fed Unit is outlined in yellow.  This is just a  
6           reference of where the unit actually is.  And the next  
7           page is zoomed in, with the township and range overlain  
8           on top of it.  So this shows the unit is about two miles  
9           to the southwest of Malaga, New Mexico.

10          **Q.    Okay.  Please turn to Exhibit 11 and discuss**  
11          **what this map indicates.**

12          A.    Okay.  This is just an activity map of the  
13          producing Wolfcamp wells in the area.  The different  
14          colors represent the different landing zones that I  
15          mentioned on one of the previous exhibits between the  
16          Wolfcamp A Sand, Wolfcamp A Shale and Wolfcamp C and D.  
17          As you can see, this area is very active within the  
18          Wolfcamp.  And then there are no Wolfcamp wells within  
19          the Tomahawk Fed Unit.

20          **Q.    Okay.  Can you please turn to what's marked as**  
21          **Exhibit 12 and describe that for the examiner?**

22          A.    Yes.  This is a subsea structure map on the top  
23          of the Wolfcamp Formation.  The contour interval is 50  
24          feet.  All of the Wolfcamp wells are just shown in red  
25          regardless of where they're landed within the Wolfcamp.

1 The blue crosses show data points for the Wolfcamp, and  
2 as you can see, there are quite a few data points around  
3 this area. This shows that the structure is dipping  
4 gently from west to east.

5 Q. And can you tell us what you observed,  
6 especially comparing the area of current activity to the  
7 proposed unit area?

8 A. Structurally, the unit seems to be analogous to  
9 the offset Wolfcamp-producing wells.

10 Q. And so there are no differences?

11 A. No, none that we can see.

12 Q. Can you please turn to what's identified as  
13 Exhibit 13 and explain that to the examiners.

14 A. Okay. This is just a cross-section map going  
15 from A to A prime. This is just utilizing all the wells  
16 in the unit that have triple combo logs.

17 And the next page shows the actual cross  
18 section going from left to right, from A to A prime, so  
19 left would be north, right would be to the south. This  
20 is hung on the top of the Wolfcamp Formation. This just  
21 shows the different intervals within the Wolfcamp going  
22 from the Wolfcamp A to Wolfcamp B to Wolfcamp C and D.  
23 This is just to represent that these intervals are  
24 continuous throughout the unit.

25 Q. And what pool is the unitized area in?

1           A.    This is Purple Sage.

2           Q.    Okay.  Will the unitization of the unit lands  
3   for purposes of horizontal well development prevent  
4   waste and loss of reserves?

5           A.    Yes.

6           Q.    In your study of this area, did you observe any  
7   faults, pinch-outs or other geologic impediments that  
8   would prevent this unitized area from being efficiently  
9   or effectively developed with horizontal wells in the  
10   Wolfcamp?

11          A.    No, I have not.

12          Q.    Okay.  Let's discuss the name of the federal  
13   unit.

14          A.    Okay.

15          Q.    What initially was the name of the federal  
16   unit?

17          A.    The name initially was just the Tomahawk  
18   Federal Units [sic].  And the State Land Office informed  
19   us on Wednesday -- or Tuesday when we met with them,  
20   that there is an existing Tomahawk Unit that was  
21   terminated.  It was created in the '90s and then  
22   terminated shortly thereafter.  But they asked us just  
23   to put -- like, call it Tomahawk WC, for Wolfcamp, add  
24   that on to the name just so they could input it into  
25   their system.

1           Q.    Okay.  And so is COG requesting that all  
2   references to the Tomahawk Unit be the Tomahawk WC Unit  
3   today in front of the OCD?

4           A.    Yes.

5           Q.    And just to make sure our processes are in  
6   line, did you talk to the BLM about this change of name?

7           A.    Yes.  They were okay with it.  They just want  
8   us to submit a letter indicating that this name is  
9   changing.

10          Q.    And did they indicate they would approve the  
11   name change?

12          A.    Yes.

13          Q.    Okay.  In your opinion, will approval of this  
14   application be in the best interest of conservation, the  
15   prevention of waste and the protection of correlative  
16   rights?

17          A.    Yes.

18          Q.    Were Concho Exhibits 9 through 13 prepared by  
19   you or compiled under your direction and supervision?

20          A.    Yes, they were.

21                   MS. RYAN:  Mr. Examiner, I request that you  
22   admit Exhibits 9 through 13 into evidence.

23                   MR. DeBRINE:  No objection.

24                   EXAMINER McMILLAN:  9 through 13 may now be  
25   accepted as part of the record.

1 (COG Operating, LLC Exhibit Numbers 9  
2 through 13 are offered and admitted into  
3 evidence.)

4 EXAMINER McMILLAN: Cross?

5 CROSS-EXAMINATION

6 BY MR. DeBRINE:

7 Q. Mr. Fisher, did you ever consider notifying any  
8 of the working interest owners within the unit with  
9 regard to your intentions to create it and give them the  
10 opportunity to participate in the discussions with the  
11 BLM concerning the formation of the unit?

12 A. So that's not part of my job as a geologist.  
13 That's not something that we ever do as geologists at  
14 COG.

15 Q. Did the BLM request any specific changes to the  
16 form, that you recall, that you proposed?

17 A. What do you mean? Which form?

18 Q. There was a little testimony earlier about how  
19 this particular unit agreement is somewhat unique and  
20 there is deviation from the federal form that's in the  
21 federal regulations.

22 A. I don't know anything about that specifically.

23 Q. You were involved in the --

24 MS. RYAN: Object to further line of  
25 questioning. It's already been testified to by

1 Mr. Macha, what those changes were in the unit.

2 EXAMINER McMILLAN: He is a geologist.

3 That's a land issue.

4 MR. DeBRINE: Well, but he testified that  
5 he was involved in all of the meetings and Mr. Macha was  
6 not. I'm just trying to understand.

7 EXAMINER McMILLAN: That's not his area of  
8 expertise.

9 MR. DeBRINE: Sure.

10 THE WITNESS: We had an original landman  
11 before Mr. Macha that was involved, and he left the  
12 company sometime this year. So he was involved with the  
13 initial part, but he passed on all of his information to  
14 Mr. Macha. But the specifics of that form, I am not --  
15 I do not want to speak on.

16 **Q. (BY MR. DeBRINE) Do you know whether the**  
17 **federal regulations provide any criteria for**  
18 **establishing the boundaries of the federal exploratory**  
19 **unit?**

20 MS. RYAN: Objection. He's a geologist.  
21 He's already testified on the geology.

22 MR. DeBRINE: My question was whether he  
23 knew if there were any. Apparently not.

24 EXAMINER McMILLAN: That's a land -- that's  
25 a -- landman's going to know that. That's not his area

1 of expertise.

2 MR. DeBRINE: Okay. That's fair. I just  
3 wanted to know if he knew if there was any criteria that  
4 he was trying to meet as part of his geological  
5 presentation. That's all.

6 EXAMINER McMILLAN: Next question.

7 Q. (BY MR. DeBRINE) When proposing the unit, the  
8 BLM requires you to submit geological information to  
9 support the unit; is that correct?

10 A. That's correct.

11 Q. And you prepared that information?

12 A. Yes.

13 Q. And you would agree that the geological  
14 information would support a much broader unit because  
15 the deposition of the sands and the thickness and  
16 porosity of the sands is uniform throughout this area  
17 and could geologically justify a broader unit than the  
18 one that's been proposed by Concho?

19 A. So the -- it depends on which interval of the  
20 Wolfcamp you're talking about. The Wolfcamp A Sand is  
21 really the only true sand we have. As a geologic sand  
22 body, that's obviously going to change throughout an  
23 area. We believe that the Tomahawk Unit will be a great  
24 target for the Wolfcamp A, but I can't say that it is  
25 exactly the same across the entire unit. There are some

1 changes, but we think the entire unit is productive.

2 Q. Okay. And so given the uniform deposition and  
3 characteristic of the Wolfcamp A, you believe that all  
4 the lands within the unit can be logically and  
5 economically developed together as a single unit?

6 A. Yes.

7 Q. Did you have any discussions with the BLM about  
8 having the entire unit consist of a single participation  
9 area from the beginning rather than the division between  
10 the north-south that you ended up with?

11 A. Again, that's more what our landman have dealt  
12 with on that.

13 Q. But there were no discussions concerning the  
14 geology that would support a single participating unit  
15 within that.

16 A. To my understanding, the reason why the BLM  
17 does not like to support large PAs is because one well  
18 could be different from a well that's four miles away  
19 like what we have in the Tomahawk Unit. So from my  
20 understanding, the reason why they don't want to do that  
21 is because the wells could -- you don't want to have one  
22 well in the north proving up the entire unit, so they  
23 like to have multiple in order to show that the wells  
24 are economic in both PAs.

25 Q. And so what was the nature of your specific



1     **discussions and communications with the BLM?**

2           A.     We've had a lot of discussions with them going  
3     back for months just about the process of forming this  
4     unit and if it was a good idea and things like that.

5           **Q.     Can you relate any specific conversations**  
6     **concerning the geological justification for the unit?**

7           A.     Yeah.   So when we initially had our  
8     area-and-depth meeting, which was in February, I  
9     believe, we showed them all of our geology support for  
10    this, and they were okay with that.   They thought this  
11    unit, especially showing the map that shows offset  
12    Wolfcamp production, that this unit is a great place to  
13    do that.

14          **Q.     Given the extent of the Wolfcamp surrounding**  
15    **the unit, do you think that this area would be**  
16    **characterized as relatively proven in terms of the**  
17    **Wolfcamp A, based on your analysis of the geology?**

18          A.     Yes.

19          **Q.     And with respect to Concho's interest in the**  
20    **unit, does it include its Wolfcamp reserves, as proven**  
21    **in its financial statements?**

22          A.     That's something I would let an engineer speak  
23    on.

24                         EXAMINER McMILLAN:   Next question.

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

1 MS. RYAN: Again, reserve him for possible  
2 rebuttal at the end of the hearing, but that's it.

3 CROSS-EXAMINATION

4 BY EXAMINER McMILLAN:

5 Q. Okay. We're going to your map, 12. Okay.  
6 It's nice you have data points --

7 A. Uh-huh.

8 Q. -- but I want to see another map in here that  
9 actually shows the value of all your data points around  
10 your proposed units. There's no way for us -- for  
11 anybody to tell whether or not your contours are true  
12 and correct.

13 A. Okay.

14 MS. RYAN: Can we submit a supplemental?

15 EXAMINER McMILLAN: Yeah. I want to see a  
16 supplement because this map -- simply put, this map has  
17 no relevance because there is no supporting data for it.

18 THE WITNESS: Would you be okay if I zoomed  
19 in just with all the data points with the --

20 EXAMINER McMILLAN: That's fine. Yes.

21 It's a zoomed-in area that actually makes this map true  
22 and relevant.

23 THE WITNESS: Okay. I will get that to  
24 you.

25 EXAMINER McMILLAN: Any objections to that?

1                   MR. DeBRINE: Continuing along on our other  
2     objections, it's basically going to be additional data  
3     submitted, and we would like to have the opportunity to  
4     evaluate it and present testimony to rebut it.

5                   MS. RYAN: There is not going to be -- I  
6     object to any further continuance.

7                   EXAMINER DAVID: Mr. Hearing Examiner, are  
8     you asking for additional data points, or are you just  
9     asking for clarification?

10                  EXAMINER McMILLAN: Clarification of  
11     what -- yeah, what the actual values are. That's all  
12     I'm asking.

13                  EXAMINER DAVID: Actually values are,  
14     right. You're not asking for additional data? You just  
15     want --

16                  EXAMINER McMILLAN: No. I just want  
17     clarification of the data. It can't be clarified with  
18     this.

19                  THE WITNESS: Yeah. I will get you that.

20                  EXAMINER McMILLAN: Okay.

21                  MS. RYAN: We'll do that.

22                  Okay. All right. Thank you, Mr. Fisher.

23                  I'd like to call my next witness.

24                  EXAMINER McMILLAN: Proceed.

25

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

4                                   DIRECT EXAMINATION

5   BY MS. RYAN:

6           **Q.   All right. Will you please state your name for**  
7           **the record?**

8           A.   David Hurd.

9           **Q.   And who is your employer?**

10          A.   COG Operating, LLC.

11          **Q.   What is your position?**

12          A.   Reservoir engineer.

13          **Q.   Can you briefly describe your roles and**  
14          **responsibilities in that position?**

15          A.   I evaluate the optimal development of COG's  
16          resources.

17          **Q.   What is your educational background and**  
18          **experience?**

19          A.   I have a bachelor's of science in petroleum  
20          engineering from Texas A & M University. I graduated in  
21          May of 2015, and I've been working for Concho since I  
22          got out of school, about four years.

23          **Q.   And does your area of responsibility every day**  
24          **include this area in southeastern New Mexico?**

25          A.   Yes.

1           **Q.    Have you previously testified before the**  
2   **Division?**

3           A.    No.

4           **Q.    But are you familiar with the application filed**  
5   **in this case?**

6           A.    Yes.

7           **Q.    And have you conducted an evaluation of the**  
8   **reservoir underlying the unit area?**

9           A.    Yes.

10                       MS. RYAN:  I would request that he be  
11   admitted as an expert reservoir engineer.

12                       VOIR DIRE EXAMINATION

13   BY EXAMINER McMILLAN:

14           **Q.    Okay.  And what relevant organizations are you**  
15   **involved with?**

16           A.    I'm not currently an active SPE member.  I have  
17   been in the past, and I do go to SPE meetings in  
18   Midland.

19           **Q.    Okay.  And you are involved in engineering --**

20           A.    Yeah, SPE, the Society of Petroleum Engineers.

21                       EXAMINER McMILLAN:  Are there any  
22   objections?

23                       MR. DeBRINE:  No objection.

24                       EXAMINER McMILLAN:  So qualified.

25

1 CONTINUED DIRECT EXAMINATION

2 BY MS. RYAN:

3 A. Mr. Hurd, I'd like to bring your attention to  
4 the exhibit labeled 14. Can you identify that exhibit  
5 for the examiner and explain what it reflects.

6 A. Yes. This is a description of internal  
7 setbacks within the unit. So the blue outlines  
8 the outline of the Tomahawk WC Federal Unit, and the red  
9 represents the internal setbacks required currently by  
10 Purple Sage field rules within the unit. Eliminating  
11 the internal setbacks will allow Concho to more  
12 optimally develop all of the resource within the unit  
13 and capture more reserves.

14 Q. So does Concho plan when it obtains -- does  
15 Concho's development plans include utilizing the  
16 elimination of internal setbacks to place its laterals  
17 in the -- in the most prudent place to obtain the most  
18 reserves within the unit?

19 A. Yes.

20 Q. Okay. In your approval -- does this  
21 application -- is this application in the best interest  
22 of conservation, the prevention of waste and the  
23 protection of correlative rights?

24 A. Yes.

25 Q. Was Concho's Exhibit 14 compiled under your

1     **direction and supervision?**

2             A.     Yes.

3                     MS. RYAN:   I request that Exhibit 14 be  
4     admitted into evidence.

5                     MR. DeBRINE:   No objection.

6                     EXAMINER McMILLAN:   Exhibit 14 may now be  
7     accepted as part of the record.

8                     (COG Operating, LLC Exhibit Number 14 is  
9     offered and admitted into evidence.)

10                    MS. RYAN:   Pass the witness.

11                               CROSS-EXAMINATION

12     BY MR. DeBRINE:

13             **Q.     Mr. Hurd, looking at Exhibit 14, as I**  
14     **understand, it represents the internal setbacks required**  
15     **by the Purple Sage pool rules?**

16             A.     (Indicating.)

17             **Q.     Until we know what tracts will actually be**  
18     **committed to this unit and will comprise part of the**  
19     **unitized lands, we're not going to know what -- how the**  
20     **setbacks are going to be determined, is that correct,**  
21     **because we don't know what the legal subdivisions of the**  
22     **tracts --**

23                    MS. RYAN:   Object.   We're asking for  
24     elimination of the setbacks.   So we do know.   We're  
25     asking that today.   If it's not already set forth in the

1 horizontal well rules, we're asking that in our  
2 application.

3 EXAMINER McMILLAN: I'll be honest. I'm  
4 not following your question.

5 MR. DeBRINE: I think it's a --it's a  
6 chicken-and-egg problem we have with regard to this  
7 application because we've got 49 tracts within this  
8 unit. We just heard testimony that maybe half of them  
9 are fully committed. And if they're not committed, then  
10 they're going to have to be developed on their own  
11 through a regular spacing unit process under the  
12 Division's rules. So are we going to be eliminating --  
13 where are we going to calculate the setbacks? We can't  
14 figure it out until we know the individual boundaries of  
15 the lands that comprise the unitized lands and the  
16 nonunitized lands, so it's a chicken-and-egg problem.

17 MS. RYAN: Those wells will be proposed  
18 without -- placed where there is elimination of these  
19 internal setbacks, so it's not really -- even proposals  
20 into noncommitted tracts are going to -- if -- if this  
21 order is approved, would be taking into account and  
22 placed and proposed with elimination of internal  
23 setbacks in place, and we would be coming to the OCD for  
24 a compulsory pooling application for those uncommitted  
25 tracts at that time.



1                   MR. DeBRINE: Which is why I don't think  
2     you can do it now. You have to evaluate with respect to  
3     the -- when the well is proposed. And if they're going  
4     to be pooling people into -- into the well, then those  
5     working interest owners should have the opportunity to  
6     present evidence as to whether their correlative rights  
7     might be impaired if internal setbacks are being -- and  
8     there's going to be some capture of their waste --  
9     capture of their reserves based on the elimination of  
10    those setbacks because they're going to be getting too  
11    close to the tract that they own.

12                  MS. RYAN: And there would be a compulsory  
13    pooling hearing where both parties would present  
14    evidence at that time for the Division to make a  
15    decision on that particularly proposed well. And that's  
16    the process that has been set forth by the Division and  
17    the State for decades. And that's not what we're asking  
18    for today.

19                  MR. DeBRINE: And we just think it's  
20    unnecessary and inappropriate for the Division to make  
21    that determination in advance of something that needs to  
22    be looked at with regard to only knowing what the actual  
23    boundaries that determine the setbacks are, because this  
24    could be a big area where that's not an issue under the  
25    Division's rules, where the internal setbacks don't

1     matter.  We're going to have these pockets of  
2     uncommitted interests throughout this unit based on the  
3     current level of commitment, and that could create big  
4     problems.

5                   MS. RYAN:  Mr. Examiner, you've already  
6     referred to the horizontal well rules, that when you  
7     establish a unitized area, internal setbacks are  
8     eliminated within the unit area.  So that's -- I mean,  
9     we are belt-and-suspending that provision in the  
10    horizontal well rules.  That's all this is.  We would  
11    still have to meet the outer setbacks from the outer  
12    boundaries, but as far as the internal, like you get to  
13    erase those section lines within the unit so that you  
14    can place your laterals the most efficient way.  And so  
15    that's what we would -- that's what a prudent operator  
16    would do, and that's what we're telling the OCD.  We  
17    want to be utilizing these eliminations of internal  
18    setbacks to prudently develop this unit.

19                  EXAMINER McMILLAN:  So if you have a hole,  
20    you'd have notify those affected parties in the hole.

21                  MS. RYAN:  Yes.  Yes.  And we would have to  
22    come -- we could not penetrate that acreage -- that  
23    party's acreage unless we came before you with a  
24    compulsory pooling application, and there would be a  
25    hearing.

1 EXAMINER McMILLAN: The internal setbacks  
2 relate to notification of a --

3 MS. RYAN: And all parties have been  
4 notified -- properly notified with our elimination --  
5 and it's been published -- of elimination of internal  
6 setbacks within this unit.

7 EXAMINER McMILLAN: Okay. I think I'm  
8 understanding it now. When the order is written, it'll  
9 be studied more.

10 MS. RYAN: Right.

11 MR. DeBRINE: Thank you.

12 EXAMINER McMILLAN: Do you have any  
13 questions?

14 CROSS-EXAMINATION

15 BY EXAMINER MURPHY:

16 **Q. Will the wells be stand-up or lay-down?**

17 A. Our current plan is east-west.

18 MS. RYAN: Okay. I would like to reserve  
19 Mr. Hurd as a possible rebuttal witness.

20 MR. DeBRINE: If I could ask a follow-up  
21 question.

22 EXAMINER McMILLAN: Yes, please.

23 RECROSS EXAMINATION

24 BY MR. DeBRINE:

25 **Q. When you said your current plan is east-west,**

1    **have you finalized those plans at this stage?**

2           A.    No.  We evaluate it every day.  That is my job,  
3    to evaluate it.  Right now we don't believe that  
4    north-south or east-west has an impact on production.

5           **Q.    And with regard to your current plan, do you**  
6    **have any plan to drill beyond the four wells that are**  
7    **called for in the unit area?**

8                   MS. RYAN:  It's already been testified by  
9    the landman that it could be anywhere between four and  
10   16 wells in 2020.  That was testified by the landman.

11                  MR. DeBRINE:  Yeah.  And he said to talk to  
12   the engineer because the engineer is the one who is  
13   going to determine it.  So I just want to get  
14   clarification as to what --

15                  MS. RYAN:  No.  I said the engineer would  
16   testify about the internal setbacks.

17                  MR. DeBRINE:  Well, the engineer is the one  
18   who picks the location and determines how the well is  
19   going to be drilled, not the landman.

20                  THE WITNESS:  I agree with what Travis said  
21   before.  Our plans are to drill four to 16 wells next  
22   year, and the reason for that wide range is due to  
23   commodity prices, Concho's budget and allocation of  
24   resources to my particular asset team, just to name a  
25   few.

1           **Q.    (BY MR. DeBRINE) Has your asset team been**  
2   **allocated a budget to drill 16 wells?**

3           A.    Tentatively --

4                   MS. RYAN:  I'm going to object to further  
5   line of questioning on what Concho's budget is.

6                   MR. DeBRINE:  He's the one that testified.  
7   He opened the door to the question.

8                   MS. RYAN:  I'm going to object to any  
9   further questioning regarding our budget.

10                  EXAMINER McMILLAN:  Let's say four to 16.  
11   They don't know because there are too many factors.

12                  Move on.

13                  MS. RYAN:  Thank you.

14                  MR. DeBRINE:  No further questions.

15                  EXAMINER McMILLAN:  Okay.  We're coming  
16   back at 11:15.  I've got to take a break.

17                  (Recess, 11:02 a.m. to 11:16 a.m.)

18                  EXAMINER McMILLAN:  Call the hearing back  
19   to record.

20                         CHARLES "CHUCK" MORAN,  
21           after having been previously sworn under oath, was  
22           questioned and testified as follows:

23                         DIRECT EXAMINATION

24   BY MR. DeBRINE:

25           **Q.    Could you please state your name and address**

1     **for the record?**

2           A.     Charles Moran.

3           **Q.     Mr. Moran, who do you work for?**

4           A.     EOG Resources, Inc.

5           **Q.     And what are your responsibilities as a landman**  
6 **for EOG Resources?**

7           A.     My responsibilities as a landman are to  
8 negotiate trades, to get wells drilled and deal with all  
9 land matters at EOG.

10          **Q.     And how long have you been working as a landman**  
11 **in New Mexico?**

12          A.     27 years.

13          **Q.     Have you been previously testified before the**  
14 **Division?**

15          A.     Yes, I have.

16          **Q.     In those proceedings, were your credentials**  
17 **accepted and made a matter of record in those cases?**

18          A.     Yes, they were.

19          **Q.     Are you familiar with the application filed by**  
20 **COG who's generally been referred to as Concho in this**  
21 **case?**

22          A.     I have reviewed it.   Yes.

23          **Q.     Are you familiar with the status of the lands**  
24 **that are proposed to be included within the unit area**  
25 **that is the subject of that application?**

1           A.    I have done some additional analysis. I've not  
2    been concerned with acreage that is not owned by EOG.

3                   MR. DeBRINE: We would tender the witness  
4    as an expert in petroleum land matters.

5                   MS. RYAN: No objection.

6                   EXAMINER McMILLAN: So qualified.

7           **Q.    (BY MR. DeBRINE) Mr. Moran, could you just**  
8    **briefly explain why EOG is opposing Concho's request for**  
9    **the Division to approve the proposed Tomahawk WC Unit?**

10          A.    EOG does not wish to be a participant in the  
11   unit because we would rather drill our own wells and  
12   operate our own wells.

13          **Q.    If you would turn to what's been marked as**  
14   **Exhibit L1, which is a plat map, and if you could just**  
15   **explain what is depicted here on this exhibit and what**  
16   **you're intending to show by it.**

17          A.    This plat is the acreage that EOG would move  
18   forward with its own development plan, that being based  
19   in Sections 30 and 31 of 24 South, 28 East in Eddy  
20   County, New Mexico, Section 30 being a federal lease,  
21   Section 31 be composed of two state leases.

22                   The ownership in the federal lease is 50  
23   percent EOG, 50 percent COG, and it is my understanding,  
24   although I don't have a title opinion yet, that COG owns  
25   100 percent of Section 31.

1           Q.    And you indicated that there is a federal lease  
2   in Section 30.  Does that same federal lease extend to  
3   any other lands within the unitized area?

4           A.   Yes.  That federal lease is also in Section 29,  
5   the north half-south half and the southwest quarter of  
6   Section 29, and the also the same federal lease in  
7   Section 20, which it is the southeast quarter and, I  
8   believe, the south half of the northeast.

9           Q.    So all of the lands shown in yellow on Sections  
10   30, 29 and -- I can't read it -- 20 is part of that same  
11   federal lease?

12          A.    Yes.

13          Q.    And is EOG the lessee of record for that lease?

14          A.    EOG is record title owner of this federal  
15   lease, EOG Resources, Inc.

16          Q.    If you could turn to what is marked as Exhibit  
17   A in Concho's presentation, which also shows the status  
18   of the lands in the unit.

19                   MS. RYAN:  Which exhibit?

20                   MR. DeBRINE:  Exhibit A, the land status  
21   exhibit.

22                   MS. RYAN:  Oh.  In the unit agreement, 2A?

23                   MR. DeBRINE:  I guess it's 2A.  Sorry.

24                   MS. RYAN:  Uh-huh.

25          Q.    (BY MR. DeBRINE) And so what we're talking



1     about there is the same -- the pink lands in the middle  
2     of that land status map?

3           A.     Yes.   I believe that to be.

4           Q.     By my count, if you count up all the  
5     quarter-quarter sections that are comprised of EOG's  
6     federal lease, you get 23 quarter sections, and if you  
7     count up all the other quarter-quarter sections of the  
8     other federal acreage, so many feet, you get 21  
9     quarter-quarter sections. Is that significant to you?

10          A.     I would trust that you've done that correctly.

11          Q.     Okay. So that would indicate that the federal  
12     land within the unit, the record title ownership of --  
13     more than half is in the -- is owned by EOG, the record  
14     title interest?

15          A.     Yes.

16          Q.     How many -- during your years of experience  
17     working as a landman, how many units have you been  
18     involved in putting together?

19          A.     I tried to count that up the other day, and I'm  
20     not sure I know. I've either touched or been involved  
21     in numerous federal units.

22          Q.     Based on that experience, what do you  
23     understand to be the purpose of the formation of a  
24     federal exploratory unit?

25          A.     I think the name of the unit explains it very

1 well. It's supposed to be for exploration. It was  
 2 developed at a time when you would go chase unproven  
 3 areas for the development. You'd put together large  
 4 blocks to address the risk involved and obtain  
 5 participation of parties to develop, not knowing whether  
 6 the resources were there or not. And through time and  
 7 changes in the industry, the unit agreement has been  
 8 changed to what I'm going to classify as a development  
 9 agreement as opposed to a true exploration agreement.

10 MS. RYAN: Objection to foundation.

11 MR. DeBRINE: I think we already got the  
 12 answer, but that's okay.

13 EXAMINER McMILLAN: Let's move on.

14 **Q. (BY MR. DeBRINE) Have you ever seen a federal**  
 15 **exploratory form where more than half of the federal**  
 16 **acreage, in terms of record title, was not committed to**  
 17 **the unit?**

18 A. I have not seen one that I can think of.

19 **Q. And as I understand your testimony, EOG is not**  
 20 **willing to commit its record title interest in its**  
 21 **federal lease to this unit?**

22 A. We are not in favor of this unit being formed.

23 **Q. Do you know what the consequence is if EOG**  
 24 **refuses to commit its record title interest to the unit?**

25 A. That will make that federal lease a

1 noncommitted tract.

2 Q. Based on your experience in -- as a landman in  
3 New Mexico, can lands be compulsory pooled in order to  
4 form an exploratory unit for primary production?

5 A. I do not believe there is authority to form an  
6 exploratory unit by compulsory pooling.

7 Q. Do you believe that an order approving this  
8 particular unit given the absence of commitment of the  
9 working interest and absence of commitment of record  
10 title interests will have the practical effect of  
11 forcing working interest owners to join the unit  
12 or because they may be unable to develop their acreage  
13 located within the proposed unit boundary if the unit is  
14 approved?

15 A. I am of the opinion that as this process goes  
16 through, the BLM will ask: Did you obtain the OCD's  
17 approval? And that is a yes-or-no question. They don't  
18 ask what happens at the hearing. They just ask whether  
19 you obtained the approval or not, and so they don't  
20 know -- they don't delve into what occurs at this  
21 hearing. And that's why EOG has taken the position that  
22 we do not want this approval to go uncontested, and we  
23 don't want it approved at this point because this will  
24 be effectually rubber-stamped later in the process. So  
25 we recognize that we need to address it here now today

1 to prevent the rubber stamp from coming from the future  
2 approval of the unit if the OCD was to approve it

3 Q. When did you first receive notice from Concho  
4 it was seeking to form the unit?

5 A. I believe the date was June 26th stamped on the  
6 letter.

7 Q. Prior to that time, had you had any ongoing  
8 dealings or negotiations with Concho concerning other  
9 properties in which you were considering development?

10 A. I am actively involved in numerous  
11 conversations with Concho which involve numerous  
12 different lands. In one conversation, these lands were  
13 brought up prior to our knowledge of the unit. I would  
14 agree with that Mr. Macha said, that he sent something  
15 over to me about the 6th of June, and I did review it  
16 and we talked about it. In that conversation, I recall  
17 him saying that these lands were very, very important to  
18 Concho's development plans, but he did not disclose that  
19 those plans were a unit at that time. And, you know, I  
20 took that under advisement and commenced working on  
21 them.

22 Q. Based on your experience, do you think that  
23 Concho made a good-faith effort to seek the joinder of  
24 the working interest owners in the unit before asking  
25 the BLM to give its preliminary approval of the unit?

1           A.    I don't think that they talked to the  
2   working -- I don't really want to speak for Concho, but  
3   I know they did not talk to EOG about joining the unit  
4   prior to sending the letter, and we had numerous  
5   conversations on an ongoing basis. So they played their  
6   cards close to their chest on their development plans.

7           **Q.    At the time when you first heard that EOG had**  
8   **submitted this unit for approval, did EOG already have**  
9   **plans for the development of its acreage in Section 30?**

10          A.    EOG is constantly reviewing its acreage for  
11   development, and this acreage was under review for  
12   development, the EOG acreage.

13          **Q.    Based on the units you've been involved with,**  
14   **does the unit agreement proposed by Concho follow the**  
15   **federal form?**

16          A.    It seems to somewhat follow the federal form as  
17   modified based upon what appears to be the negotiations  
18   between the BLM and Concho.

19          **Q.    Does the federal form make reference to**  
20   **New Mexico law concerning the authority of the State**  
21   **Land Office with respect to the administration of the**  
22   **unit it's lacking in this particular unit agreement?**

23          A.    I believe that the base federal form does not  
24   in that it is set up for only federal acreage. Those  
25   requirements come in when you deal and add acreage other

1     than federal in. And those provisions -- while I have  
2     not reviewed the agreement thoroughly, they appear to  
3     have been, based upon my analysis, modifications to  
4     address State Land Office issues.

5           **Q.     Have you ever seen a federal exploratory unit**  
6     **which at the outset talked about two participating areas**  
7     **within the unit for the formation that would be**  
8     **established through the drilling of wells?**

9           A.     I have not seen a unit with two separate  
10    participating areas. I have seen units with multiple  
11    well commitment requirements. And, again, this seems to  
12    be an evolution of the federal unit process.

13          **Q.     And you'd agree with Mr. Macha that under the**  
14    **terms of this agreement, Concho could only drill one**  
15    **well in order that they would still hold the entire**  
16    **lands located within the unit if that were a paying well**  
17    **for the five-year term of the unit until contraction**  
18    **would occur at that time?**

19          A.     That is what I believe would happen if the  
20    federal unit was approved and the participating area was  
21    established in the north, that the south lands could be  
22    bound in the unit with an operator, which would not be  
23    EOG, charged with developing those resources.

24          **Q.     And under the terms of this agreement, it**  
25    **doesn't obligate Concho to drill more than four wells;**

1     **is that correct?**

2           A.     That is what I understand the agreement sets  
3     forth.

4           **Q.     If you could turn to Exhibit L2 and please**  
5     **explain to the examiner what that exhibit depicts.**

6           A.     Exhibit L2 is a --

7                     EXAMINER McMILLAN:   Hold on.

8                     MS. RYAN:   There's a jackhammer outside the  
9     door.

10                    (Pause in proceedings, 11:29 a.m. to 11:31  
11                    a.m.; jackhammering continues.)

12                    EXAMINER McMILLAN:   Go ahead.

13           **Q.     (BY MR. DeBRINE) So if you could tell us what**  
14     **we've got in front of us on L2, Mr. Moran.**

15           A.     Exhibit L2 is a well proposal sent by EOG  
16     Resources to COG Operating proposing the drilling of  
17     eight wells called the Dakota 30 Federal Com 701 through  
18     704 and 721 through 724H wells, in Sections 30 and 31,  
19     located in 24 South, 28 East, Eddy County, New Mexico.

20           **Q.     Is EOG ready to develop the lands in Sections**  
21     **30 and 31 as indicated in its -- as shown in its**  
22     **developed plan on Exhibit L1 and as indicated in the**  
23     **well-proposal letter in L2?**

24           A.     EOG is moving forward with getting these wells  
25     staked, permitted and ready to drill and have them on

1 the drill schedule to be drilled.

2 Q. And when will the wells be staked under its  
3 current plans?

4 A. The wells are currently scheduled to be staked  
5 next week. The wells have already been -- sundry  
6 notices -- or notice of stakings have already been  
7 turned into the BLM at this point in time to commence  
8 the permitting process.

9 Q. Do you have an opinion whether EOG's  
10 correlative rights will be impaired if this unit  
11 agreement is approved?

12 A. Yes. I believe EOG's correlative rights will  
13 be impaired because EOG will not be allowed to develop  
14 its own resources.

15 Q. Do you believe that the unit -- approval of the  
16 unit will result in wasted resources in Sections 30 and  
17 31?

18 A. Based upon how EOG deems it necessary to  
19 develop the resources, based upon our plans, we believe  
20 that we will adequately develop the resources. Because  
21 I don't know what Concho's plans really are, I haven't  
22 been able to compare ours to theirs to know the waste.  
23 But I believe our plan will prevent waste by developing  
24 them.

25 Q. Will full development occur under EOG's plan



1    **before the five-year term provided for the proposed unit**  
2    **agreement?**

3           A.    I believe EOG will drill initial wells to  
4    determine the development stage of -- of the wells. I  
5    do believe that they will happen timely, conditioned  
6    upon on obtaining the permits necessary to get them in  
7    there. But my understanding is EOG intends to move  
8    forward with drilling these wells in due course, and  
9    thus well before the five-year limit.

10           **Q.    Were Exhibits L1 through L2 prepared by you or**  
11    **compiled under your direction and supervision from the**  
12    **business records of EOG?**

13           A.    Yes, they were.

14                   MR. DeBRINE: We would move to have  
15    Exhibits L1 and L2 into the record in this case.

16                   MS. RYAN: I'm sorry. No objection.

17                   EXAMINER McMILLAN: L1 and L2 may now be  
18    accepted as part of the record.

19                           (EOG Resources, Inc. Exhibit Numbers L1 and  
20    L2 are offered and admitted into evidence.)

21                   MR. DeBRINE: I'll pass the witness.

22                           CROSS-EXAMINATION

23    BY MS. RYAN:

24           **Q.    Mr. Moran, even in EOG's well proposals for the**  
25    **Dakota's --**

1 MR. DeBRINE: Excuse me. I didn't finish.

2 I omitted an exhibit, Mr. Examiner.

3 EXAMINER McMILLAN: Okay.

4 MS. RYAN: Go ahead.

5 CONTINUED DIRECT EXAMINATION

6 BY MR. DeBRINE:

7 Q. If you could turn to Exhibit L3, Mr. Moran, and  
8 explain what is represented by that exhibit.

9 A. L3 is EOG's preferred layout for development of  
10 this section so that we'll be using a limited number of  
11 pads. For conservation of the surface and environmental  
12 concerns, we intend to try to attempt to have a reduced  
13 surface impact in our development plan.

14 Q. And so this is a more specific diagram showing  
15 the well plan for the seven wells that are shown in  
16 Exhibit L1?

17 A. Yes.

18 MR. DeBRINE: We would ask to have Exhibit  
19 L3 admitted.

20 THE WITNESS: Correction, eight wells.

21 MR. DeBRINE: Eight wells. I'm sorry.

22 MS. RYAN: No objection.

23 EXAMINER McMILLAN: L3 may now be accepted  
24 as part of the record.

25 Cross?

1 CONTINUED CROSS-EXAMINATION

2 BY MS. RYAN:

3 Q. How long has EOG been planning on developing  
4 Sections 30 and 31?

5 A. The decision to develop Sections 30 and 31  
6 occurred right after the meeting in COG's offices that I  
7 attended --

8 Q. Okay.

9 A. -- but in a general sense, we have been looking  
10 at development of this area for a lot longer time period  
11 than that. And this area has been on the plans, has  
12 received geologic review and well orientation was  
13 discussed and placement of the wells in full development  
14 of this area, along with other acreage in the area owned  
15 by EOG, has been on the books for a lot longer period.  
16 These plans had to be accelerated because of the actions  
17 of COG.

18 Q. Okay. How much ownership interest in the  
19 proposed wells -- spacing units of your Dakota -- let's  
20 just call it the Dakota proposals, does COG have in that  
21 area?

22 A. My understanding is COG will have 75 percent,  
23 and EOG has 25 percent.

24 Q. So would you have to come before the OCD for  
25 try to compulsory pool COG's interest if we didn't agree

1     **to a JOA in the spacing unit?**

2           A.     If COG does not agree to voluntarily  
3     participate, yes, we would have to come to a force  
4     pooling.

5           **Q.     Do you think that a lessee who only owns 25**  
6     **percent versus 75 percent should be operators of units**  
7     **in New Mexico?**

8           A.     I believe operators that are established in  
9     New Mexico under a capable operator could be. Based  
10    upon the facts of this case and present for us and how  
11    we would like to develop it and that we have a  
12    substantial part of this asset, yes, I believe it is  
13    appropriate in this case.

14          **Q.     Do you think -- so because federal lands are**  
15    **involved, do you have to apply for a federal APD for**  
16    **these Dakota wells?**

17          A.     Yes. We have to apply for a federal APD.

18          **Q.     So do you think the BLM would approve of your**  
19    **APDs if they're supportive of development by this unit**  
20    **instead?**

21          A.     I believe that there is a high chance the BLM  
22    will listen to our development plans for this area based  
23    upon our reduced surface impacts on our well layout. So  
24    I do believe they will listen to us.

25          **Q.     Is COG legally trying to force pool EOG today**

1     **in its application?**

2                     MR. DeBRINE: Object to the form, lack of  
3 foundation. He's not a lawyer.

4             **Q. (BY MS. RYAN) Does COG's application seek to**  
5 **force pool EOG's interest?**

6             A. My reading of the application, those words were  
7 not included in the application. The practical effect  
8 and the effective effect of the OCD granting approval  
9 would effectively take EOG's operatorship ability away  
10 from EOG, and, therefore, we would not be -- have any  
11 avenue to develop our resources. So in a practical  
12 effect, while not legally stated, practically that's  
13 what we would be here to do what we want to do.

14            **Q. Do you agree this is a voluntary unit?**

15            A. I do agree that it is presented as a voluntary  
16 unit that does not have full support.

17            **Q. Do you agree that EOG could still choose to**  
18 **participate or not participate -- you know, until COG**  
19 **submits for final approval, that EOG still has time to**  
20 **still consider its options?**

21            A. I believe COG is trying to negotiate with a  
22 hammer and limit EOG's options by pursuing the approval  
23 here at this point, and that is why we are here  
24 objecting to it, is we do not want our options limited  
25 by COG.

1           Q.    If an operator gets to that 85 percent  
2   commitment level, do you think an owner with a 10  
3   percent interest in the unit should be able to prevent  
4   the unit formation?

5           A.    That question has embedded in it a difference  
6   between record title which has us at a much larger  
7   percentage and our operating rights as a lesser  
8   percentage.  And based upon EOG's development plan, we  
9   would not have such a small interest.  So do I agree  
10   that -- I think it's more properly stated that COG is  
11   trying to capture EOG's acreage and dilute EOG down to  
12   10 percent.  That is what I believe is going on, and I  
13   believe we're here trying to prevent that so that we can  
14   develop our resources at the level that we deem  
15   necessary to move forward.

16          Q.    But even in your own development plans, EOG  
17   only has 25 percent?

18          A.    Yes.  That is what I said.

19          Q.    All right.

20                   MS. RYAN:  No further questions.

21                   CROSS-EXAMINATION

22   BY EXAMINER McMILLAN:

23          Q.    Okay.  My question is -- I wasn't clear about  
24   your when you started -- when you formally started the  
25   development process.  You said -- you said you started

1    **the formal process after you got --**

2           A.    Mr. Examiner, EOG has been reviewing this  
3    acreage in Eddy County with direction from management  
4    above to develop the acreage ever since the acquisition  
5    of Yates in 2016. They have had me working diligently  
6    from since the fall of last year trying to figure out  
7    and put the ownership in an explanation format so that  
8    they knew how they could go develop it. I have been in  
9    numerous meetings with Geology and Engineering talking  
10   about drilling wells over a much larger area because we  
11   are intent on developing a lot of acreage out here. And  
12   so in that -- in those discussions, these lands in  
13   particular were reviewed for development.

14                The aspect of when the -- the decision to  
15   drill these exact wells, when they were named and moved  
16   forward was the date after a meeting with COG. And  
17   because we needed to be proactive and protect our  
18   rights, that is the point in time that the wells were  
19   named and we commenced the permitting process.

20                So it's been under review for a very long  
21   time, and we have been forced to act sooner than we  
22   intended to, but we intend to fully develop.

23           **Q.    Okay. And so your formal decision occurred**  
24   **after you got the -- after you got notification from the**  
25   **BLM -- from COG? Excuse me. Is that correct?**

1           A.    The formal decision to name the wells and send  
2 proposals, yes.

3           Q.    Okay. Well, that's nice that you guys plan to  
4 develop, but that appears to be rather informal. It  
5 appears to me that you're making the decision to go  
6 forward after you got formal notice from COG.

7           A.    Mr. Commissioner [sic], I cannot control the  
8 actions of COG. COG had the opportunity to tell me they  
9 were doing a unit ahead of time when they proposed these  
10 lands in a trade. Those lands were being reviewed for  
11 trade purposes as well between the companies, and EOG  
12 was willing to consider trading these acreage -- acres  
13 to COG, and those discussions were ongoing when they  
14 came forth with their formal plan to unitize the lands.  
15 And we have to protect our rights, and we felt we needed  
16 to come forth with our plans. We're not trying to lay  
17 behind the log and hide and say that we're not  
18 developing.

19          Q.    I mean, after that date is when you submitted  
20 all the formal requirements to the BLM for staking, so  
21 on, so forth?

22          A.    We filed notice of staking with the BLM within  
23 relatively expedient course and commenced permitting and  
24 filing for applications for permit to drill. We'll be  
25 doing our on-site stakings next week. I believe that



8 CROSS-EXAMINATION

10 Q. I just have a question to expand on if you can.  
11 EOG was in talks to trade the acreage with COG  
12 elsewhere? Is that what you just --

21 Q. And so you were discussing these two sections  
22 particularly?

23           A.     We were discussing -- COG was wanting to  
24     acquire EOG's interest in Section 17 and Section 30,  
25     Section 17 being the interest in the north-half unit

1     that we would have.

2           **Q.     Okay. And those talks apparently did not go**  
3     **anywhere?**

4           A.     They're ongoing talks and still continuing.  
5     There have been, I'm going to guess, four renditions of  
6     proposals back and forth, but they easily get confused  
7     when we're doing numerous ones. I need a spreadsheet to  
8     track them myself.

9           **Q.     I understand.**

10                   **Thank you.**

11                   MS. RYAN: I have no questions.

12                   MR. DeBRINE: Just a little follow-up.

13

14                                 REDIRECT EXAMINATION

15     BY MR. DeBRINE:

16           **Q.     Based on those talks, had a complete impasse**  
17     **been reached, or were those talks ongoing and was that**  
18     **the basis of EOG's request for a longer continuance in**  
19     **this case so the parties could continue to negotiate to**  
20     **work out some kind of a solution without having to come**  
21     **to the Division to hear that case?**

22           A.     EOG's preference was to not have to come up  
23     here for this hearing at this date because we believed  
24     that trade talks were moving forward, and we would  
25     rather spend our time doing trades. We did request an

1 extension. I either had the opportunity to work on a  
2 trade or prepare for the hearing, and hence did ask for  
3 a -- asked not directly here, but I asked a counterpart  
4 at COG about moving this hearing off. And I received  
5 back an email saying that they did not want to delay it  
6 and that they had reached their 85 percent threshold of  
7 commitment in this unit in that email. I've since  
8 learned that I don't believe they have reached that 85  
9 percent threshold of commitment to the unit.

10 **Q. And that's reflected in the Concho exhibits**  
11 **that show they're far short of the 85 percent commitment**  
12 **of the working interest owners in the 49 tracts that**  
13 **comprise the unit?**

14 A. I would surmise that quickly based upon the  
15 responses by Mr. Macha today.

16 **Q. And did you have any conversations with OXY as**  
17 **to whether they had committed their interest to the**  
18 **unit?**

19 A. Upon receiving the email from Concho saying  
20 they had received 85 percent commitment, I looked at the  
21 numbers and determined that they probably had acquired  
22 OXY's interest to get them over the 75 percent  
23 threshold. I contacted OXY directly and had a  
24 conversation with OXY about their status of joining or  
25 supporting the unit. They told me that they had not

1     made a decision on the unit and that the -- they had not  
2     committed to the unit, was what I understood them to  
3     say.

4                     This morning, I noticed I had an email from  
5     OXY stating that they had not made any agreement with  
6     Concho and that they were not supporting the unit at  
7     that time. So that email was sent -- my phone said at  
8     2:07 this morning, and I read it this morning just prior  
9     to this hearing.

10                    MR. DeBRINE: That's all the questions I  
11     have.

12                    EXAMINER McMILLAN: I don't have any  
13     questions.

14                    MR. DeBRINE: For our next witness, we'd  
15     like to call Mr. Michael Pickell, P-I-C-K-E-L-L.

16                    MICHAEL PICKELL,  
17             after having been previously sworn under oath, was  
18             questioned and testified as follows:

19                    DIRECT EXAMINATION

20     BY MR. DeBRINE:

21             **Q.     Would you please state your name for the**  
22     **record?**

23             A.     My name is Michael Pickell.

24             **Q.     Who do you work for, Mr. Pickell?**

25             A.     I work for EOG Resources.

1           **Q.    What is your position and responsibilities for**  
2 **EOG?**

3           A.    My position is geological specialist. I am the  
4 geologist covering this portion of Eddy County for  
5 development and exploration.

6           **Q.    Could you give the examiners a brief summary of**  
7 **your educational background in the oil and gas industry?**

8           A.    I graduated undergrad from the University of  
9 Texas at Austin with a Bachelor of Science in geology in  
10 2007.

11                       After that, I worked for a nonoperating oil  
12 and gas company in Dallas for three years, at which time  
13 I went to grad school at Texas A & M University in  
14 College Station where I received a Master of Science in  
15 Geology in 2012. At that time I took a full-time  
16 position with Apache Corporation in Midland, Texas, and  
17 I moved over to EOG Resources two years ago.

18           **Q.    With respect to your responsibilities at EOG,**  
19 **do they include the study and analysis of the Wolfcamp**  
20 **Formation in the Delaware Basin in Eddy County, New**  
21 **Mexico?**

22           A.    Yes, they do.

23           **Q.    Are you familiar with the application that's**  
24 **been filed by Concho in this case?**

25           A.    Yes, I am.

1           Q.    Have you conducted a geological study of the  
2   lands that are included within the proposed Tomahawk WC  
3   Unit area that is the subject of the application, as  
4   well as the development area that's been proposed by EOG  
5   in its plan that Mr. Moran talked about?

6           A.    Yes.

7                   MR. DeBRINE:  We would ask that the witness  
8   be accepted as an expert in petroleum geology.

9                   MS. RYAN:  No objection.

10                  EXAMINER McMILLAN:  So qualified.

11           Q.    (BY MR. DeBRINE) Before this unit was proposed,  
12   had EOG developed -- had plans to develop its acreage  
13   within the proposed unit?

14           A.    Yes, we did.

15           Q.    And what work have you done to look at the  
16   target?

17           A.    So EOG has a large position just to the west of  
18   here.  Part of my duties over the last year or so have  
19   been to evaluate all formations in this area, including  
20   the Wolfcamp.  There are several zones within the  
21   Wolfcamp which I have mapped out as prospective in this  
22   area, which also have offset production from other  
23   operators.

24           Q.    With regard to the geological study that you  
25   prepared for this case, did you prepare some exhibits to

1     **illustrate your analysis of your conclusions?**

2           A.     I did.

3           **Q.     If you could turn to Exhibit G1 and explain to**  
4     **the examiners your purpose in preparing this exhibit and**  
5     **what it is designed to show.**

6           A.     Yes. This is a structural -- structure map  
7     subsea on the top of the Wolfcamp with 100-foot  
8     contours. It shows a local regional dip to the west  
9     with a line of section, A to A prime, A being the north,  
10    A prime being the south.

11                   (Jackhammering stops, 11:55 a.m.)

12          A.     Wells on this map, the light green wells are  
13    Wolfcamp horizontal producers. The light blue wells are  
14    existing Wolfcamp approved permits. The light purple  
15    wells are -- show EOG's planned Wolfcamp development in  
16    the subject leases.

17          **Q.     And so what is the targeted formation or**  
18    **interval for the wells that are proposed by EOG in**  
19    **Sections 30, 31 shown on the map?**

20          A.     These are two-mile laterals targeting, I  
21    believe, what Concho refers to as the Wolfcamp A and B.

22          **Q.     And if you could turn to the next exhibit**  
23    **that's been marked as Exhibit G2 and please explain what**  
24    **you're depicting here and what conclusions can be drawn**  
25    **from it.**

1           A.    Yes.  This is a stratigraphic cross section, A  
2   to A prime, as referenced in the previous map, from  
3   north to south hung on the top of the Wolfcamp  
4   formation.  The red arrows on either side refer to EOG's  
5   target intervals in the Dakota 701H through 704H and  
6   721H to 724H.

7           Q.    Did you identify any faults, pinch-outs or any  
8   other geological impediments to drilling horizontal  
9   wells proposed by EOG in Sections 30 and 31 based on  
10  your study?

11          A.    No, I did not.

12          Q.    And do you anticipate that all of the 40-acre  
13  subdivisions within the proposed wells will contribute  
14  equally -- relatively equally to production within the  
15  units?

16          A.    I do believe so.

17          Q.    Do you have an opinion as to whether the  
18  approval of the Tomahawk Unit by the Division will  
19  impair EOG's correlative rights to develop the lands in  
20  Section 30?

21          A.    I believe it will.

22          Q.    And why do you believe that?

23          A.    I believe that EOG has good viable plan for  
24  developing this acreage based on our experience in the  
25  area in Eddy County.



1           Q.    Do you have an opinion whether EOG will receive  
2   its fair and equitable share of production from its  
3   plans in Section 30 if they were included in the unit  
4   and developed under EOG's four-well plan?

5           A.    COG's four-well plan?

6           Q.    Yes.   In other words, will you receive your  
7   fair -- if EOG's acreage were included in the unit, do  
8   you believe that you would receive your equitable share  
9   of production of the lands in Section 30 under COG's  
10   plan as opposed to EOG's eight-well plan?

11          A.    With reference to COG's plan, with that  
12   four-well plan, I do not.  I believe that our current  
13   eight-well plan, to be followed with deeper targets in  
14   the future, is the best way to develop this acreage.  
15   Also, with respect to COG's proposals with -- or their  
16   four-well plan, if they do not -- they have not  
17   guaranteed that they will develop in the north and the  
18   south.  They intend to, I know, but they do not -- they  
19   can't guarantee that.

20          Q.    And so you could go up to five years without  
21   having the resources that EOG owns in Section 30 be  
22   developed at all?

23          A.    That's correct.

24          Q.    Do you have an opinion whether the approval of  
25   the Tomahawk WC Unit proposed by Concho will cause the

1     **waste of EOG's resources in Section 30?**

2           A.     Without knowing Concho's full development plan  
3     with targets, spacing and time frame, I can't say  
4     whether they would be wasting resources or not.

5           **Q.     Based on your knowledge and analysis of the**  
6     **relative thickness and characteristics of the formation,**  
7     **if only a single -- two wells are drilled in the south**  
8     **half, will that cause a waste of resources in Section**  
9     **30?**

10          A.     If those are the only two wells drilled, then  
11     yes, I believe the depletion from those wells could  
12     hamper future development.

13                     MR. DeBRINE:   Pass the witness.

14                                 CROSS-EXAMINATION

15     BY MS. RYAN:

16           **Q.     Yes.   Can COG propose wells under a unit**  
17     **agreement prior to the unit agreement being approved?**

18          A.     I do not know the answer to that question.

19           **Q.     Has COG sent out well proposals yet in the**  
20     **unit?**

21          A.     Not that I'm aware of.

22           **Q.     Has COG -- did you hear COG testify today that**  
23     **it plans full development of all the unit acreage?**

24          A.     Yes.

25           **Q.     And so you haven't been able to analyze any**

1     **difference -- whether there is any difference to what**  
2     **EOG plans, except maybe well orientation between what**  
3     **EOG's proposing and what COG's proposing?**

4           A.     Well, I know what EOG is proposing. I do not  
5     know what COG is proposing.

6           **Q.     Right.**

7           A.     I do not know their targets. I do not know  
8     their spacing.

9           **Q.     Right.**

10                   **Okay. Thank you.**

11                           **REDIRECT EXAMINATION**

12     BY MR. DeBRINE:

13           **Q.     I just neglected to ask. Were Exhibits G1 and**  
14     **G2 prepared by you or compiled under your direction and**  
15     **supervision through EOG's business records?**

16           A.     Yes, they were.

17                   MR. DeBRINE: We would move the admission  
18     of Exhibits G1 and G2.

19                   MS. RYAN: No objection.

20                   EXAMINER McMILLAN: Exhibits G1 and G2 may  
21     now be accepted as part of the record.

22                           (EOG Resources, Inc. Exhibit Numbers G1 and  
23     G2 are offered and admitted into evidence.)

24

25

1 CROSS-EXAMINATION

2 BY EXAMINER McMILLAN:

3 Q. COG is also planning to develop the deeper  
4 targets. And what is EOG's plan for the deeper targets?  
5 It looks like you're developing what they're calling A  
6 and B, and they've got the C and D.

7 A. I have not seen their development plan.

8 Q. I believe --

9 MS. RYAN: We put on -- we put on testimony  
10 that there are four targets within the unit.

11 THE WITNESS: Yeah.

12 MS. RYAN: Our geologist testified to that.

13 THE WITNESS: How EOG generally develops,  
14 in my experience, is we drill -- especially as we're  
15 moving out west in Eddy County where we have not drilled  
16 as many wells as in Lea County, we start with the two  
17 upper targets in the Wolfcamp, which correspond to  
18 Concho's Wolfcamp A and B. Internally, EOG -- we refer  
19 to these as Wolfcamp clastics for the A and U2 for, I  
20 believe, what Concho calls the B. We see these as, I  
21 suppose, the targets with the most potential right now.  
22 I believe that these lower targets are also viable  
23 targets, and we intend to come back at a future date and  
24 build on to our surface locations and drill these deeper  
25 targets in the Wolfcamp.

1           Q.    (BY EXAMINER McMILLAN) So the eight wells  
2   you're planning are just targeting the A and the B, and  
3   you have not at this point planned to target the deeper  
4   intervals?

5           A.    We have not submitted proposals for deeper  
6   targets, but we do intend to develop those targets in  
7   the future.

8           Q.    And when did you become formally involved in  
9   the selection of this --

10          A.    Of?

11          Q.    -- of the --

12          A.    I've been working this area for about a year  
13   and three months and have been working with the land  
14   team and engineering to develop a -- put together a  
15   development plan for this area broadly. As I mentioned  
16   earlier, EOG has a large operated area just to the west  
17   of here, and this was -- this tract specifically in --  
18   sorry -- Section 30 was part of that plan. And as Chuck  
19   mentioned earlier, when we found out about the potential  
20   unitization of this area, we kind of, you know, had to  
21   accelerate.

22          Q.    And based on your geologic experience, why are  
23   you going north-south instead of east-west?

24          A.    In this area we believe that north-south and  
25   east-west wells are equally productive and stress regime

1 indicates that both directions are equally optimal.

2 Q. So basically you're doing it for land?

3 A. Going north to south?

4 Q. Yeah.

5 A. Yeah. We saw that as the most viable direction  
6 to drill from Section 30, also with what appeared to be  
7 viable surface locations in that north half of Section  
8 30.

9 EXAMINER McMILLAN: Ask your questions.

10 CROSS-EXAMINATION

11 BY EXAMINER MURPHY:

12 Q. You described the A and the B. What was -- how  
13 did you describe the B? The Wolfcamp clastics were  
14 the A, and what did you call the other one?

15 A. The interval that we are targeting, we refer to  
16 as the Wolfcamp U2.

17 Q. U2?

18 A. U2.

19 Q. And what is that for other than a great band?

20 A. It was not named after the band, but it's -- we  
21 have the -- internally at EOG, we have the Wolfcamp  
22 broken into an upper, middle and a lower. And so this  
23 would be the second interval in our upper.

24 Q. Okay. And what is the B, a sand or a --

25 A. It's interbedded siltstones, shales and

1     limestones.

2           **Q.     No more questions.**

3                           **RECROSS EXAMINATION**

4     BY EXAMINER McMILLAN:

5           **Q.     So couldn't you get -- so you said surface**  
6     **disturbance was an issue for going north-south, right?**

7           A.     Uh-huh.

8           **Q.     So couldn't you get -- how is that viable when**  
9     **you could use the same surface and go east-west?**

10          A.     Well, I'm going off of memory here. I don't  
11     have a topographic map with me currently. But I believe  
12     the surface locations on the west half of Section 30  
13     were not as ideal as the north half.

14          **Q.     So the west half --**

15          A.     So the alternative for developing our acreage  
16     in Section 30 would have been to have surface locations  
17     on the west side of Section 30 and drill two miles  
18     laterally into Section 29.

19          **Q.     Okay. Then comes a land question.**

20                   EXAMINER McMILLAN: Go ahead. I'm done.

21                   EXAMINER DAVID: I have nothing.

22                   EXAMINER McMILLAN: So it appears to me --  
23     part of the reason, it appears -- this is really a land  
24     question.

25                   MS. RYAN: Are you talking about well

1 orientation as far as theirs versus ours?

2 EXAMINER McMILLAN: Yes, the well  
3 orientation. My question appears to be a land question.  
4 You (indicating) can't answer it. You're  
5 not qualified.

6 It's true.

7 So it appears --

8 Is it okay if I ask?

9 MS. RYAN: Sure.

10 CHARLES "CHUCK" MORAN,  
11 after having been previously sworn under oath, was  
12 questioned and testified as follows:

13 RECROSS EXAMINATION

14 BY EXAMINER McMILLAN:

15 Q. So it appears, when I look at your land map, if  
16 you go east -- if you drill wells going east-west,  
17 you're decreasing your ownership, right?

18 A. Drilling east-west, our ownership effectively  
19 is the same because the federal lease in Section 29 is  
20 subject to an assignment, and Concho is the owner of  
21 that -- the working interest rights as to Section 29,  
22 and EOG has an override on that aspect of Section 29.

23 The discussion for well orientation that  
24 occurred when the decision was made whether to drill  
25 east-west or to drill north-south centered on how we



1     thought we could drill the best wells. And in that  
2     discussion, we evaluated going east. We evaluated going  
3     south off of Section 30, knowing that our interest was  
4     the same either direction, and we decided the best wells  
5     we could drill were from the north going to the south.

6           **Q. But it appears in the north half of 29, you're**  
7     **not showing any interest?**

8           A. Not in the north half of 29, but the south half  
9     of 29 is that same federal lease.

10          **Q. Yeah, for the south half of the north half and**  
11     **the southwest quarter of the southwest quarter, the**  
12     **remainder is someone else?**

13          A. I'm not following.

14          **Q. All I'm saying is it appears that with the**  
15     **exclusion of the north half of the south half, you'd**  
16     **have identical -- the ownership would be the same. But**  
17     **in the remainder of the sections, your interest would**  
18     **essentially be diluted.**

19          A. Can I ask what map you're looking at?

20          **Q. Yeah. And I'm basing everything on L1.**

21          A. I am now looking at L1. If you put the well  
22     surface location on the west side of Section 30 and  
23     oriented those wells going to the east, that would have  
24     50 percent of the well effectively being in Section 30  
25     and 50 percent of the well being in Section 29.

1                   As to the yellow-colored in Section 29,  
2   that is currently owned by COG as to the working  
3   interest. EOG has an overriding royalty interest based  
4   upon a previous agreement to OGX Resources, I believe,  
5   being a term assignment of the operator rights as to  
6   Section 29. So we could not claim that as a working  
7   interest that we would control. However, EOG does own  
8   record title 100 percent as to that tract only because  
9   operating rights were all -- that was transferred based  
10   upon the previous term assignment.

11                   Thus, mathematically, I believe our  
12   ownership going east-west or north-south is driven by  
13   our ownership in Section 30 of which we have 50 percent  
14   of the operating rights, thus making us 25 percent  
15   whether we go east-west or north-south, with Section 30  
16   being the included section.

17           **Q.    Okay. I'll have to review the testimony.**

18                   MR. DeBRINE: If I could just maybe clarify  
19   with Mr. Moran.

20                   REDIRECT EXAMINATION

21   BY MR. DeBRINE:

22           **Q.    As I understand it, the lands in Section 29,**  
23   **EOG has an overriding royalty interest with respect to**  
24   **the federal lease acreage?**

25           A.    Yes.

1           Q.    So you would -- effectively, you would have a  
2   higher net revenue interest if you went east-west as  
3   opposed to north-south because of that override?

4           A.    I would agree that we would add an additional  
5   economic interest caused by our override in Section 29.  
6   But I was primarily looking at our working interest, not  
7   the effective net revenue interest.

8                   EXAMINER McMILLAN:   Okay.

9                           MICHAEL PICKELL,  
10           after having been previously sworn under oath, was  
11           questioned and testified as follows:

12                           RE CROSS EXAMINATION

13   BY MS. RYAN:

14           Q.    I just wanted to confirm your testimony that  
15   based on your geologic analysis that for well  
16   orientation strictly from a geological perspective that  
17   there are successful wells that are drilled lay-down and  
18   successful wells drilled stand-up in this area?

19           A.    In this area, that is correct.

20           Q.    Okay.   Thank you.

21                   EXAMINER McMILLAN:   Do you have anything  
22   else?

23                           RE CROSS EXAMINATION

24   BY EXAMINER MURPHY:

25           Q.    Do you know who has the permit for those wells

1     **just west of the unit?**

2           A.     Concho.

3           **Q.     Those ones that are 24 and 25?**

4           A.     Yes.

5           **Q.     Okay.   Thank you.**

6                     EXAMINER MURPHY:   No more questions.

7                     MR. DeBRINE:   No further questions.

8                     EXAMINER McMILLAN:   Thank you.

9                     MR. DeBRINE:   Next I'd like to call  
10   Marielle Spinks.

11                                MARIELLE SPINKS,  
12       after having been previously sworn under oath, was  
13       questioned and testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. DeBRINE:

3 Q. Could you please state your name for the  
4 record?

5 A. Marielle Spinks.

6 Q. Who do you work for, Ms. Spinks?

7 A. EOG Resources.

8 Q. And how long worked for them and what is your  
9 position with the company?

10 A. My position is senior reservoir engineer, and  
11 I've been working for them for five years.

12 Q. What are your responsibilities as a senior  
13 reservoir engineer?

14 A. Primarily, I oversee this area of Eddy County  
15 for optimal development.

16 Q. Could you give the examiner a brief summary of  
17 your educational background and experience working in  
18 the oil and gas industry?

19 A. Yes. So I received a Bachelor of Science in  
20 petroleum engineering from Colorado School of Mines in  
21 2014.

22 And prior to finishing my degree, I had a  
23 reservoir engineering internship with EOG in their  
24 Corpus Christi division office that summer. And then  
25 once I graduated, I started working for EOG in their

1 Fort Worth office and was overseeing Barnett assets for  
2 roughly the first year and a half that was working, and  
3 then after that, I was working Marcellus. So all in  
4 all, I was in Fort Worth for a little over three years,  
5 and then I came out to Midland just shy of two years  
6 ago, and I've been working the Delaware Basin ever  
7 since.

8 Q. Do you belong to any professional associations?

9 A. Yes. I'm an SPE member.

10 Q. Do your responsibilities as an engineer for EOG  
11 include evaluating the prospects for development and  
12 determining the optimal developing plans for developing  
13 EOG's gas leases located in Eddy County?

14 A. Yes.

15 Q. Are you familiar with the application filed by  
16 Concho in this case?

17 A. Yes.

18 Q. And are you familiar with the lands that are  
19 included within the proposed Tomahawk WC Unit area and  
20 EOG's proposed development area within Sections 30 and  
21 31?

22 A. Yes.

23 MR. DeBRINE: We would tender the witness  
24 as an expert in reservoir engineering -- or petroleum  
25 engineering.

1 MS. RYAN: No objection.

2 EXAMINER McMILLAN: So qualified.

3 Q. (BY MR. DeBRINE) What plan of development has  
4 EOG prepared for the lands located in Sections 30 and  
5 31?

6 A. Currently, we have an eight-well development  
7 set for Sections 30 and 31. This is pretty standard  
8 first round of development for us. And as Mr. Pickell  
9 talked about just a moment ago, we do come back  
10 typically and hit the Lower Wolfcamp after this with our  
11 second round of development. But right now we're  
12 focusing on the first to get our wells in the ground,  
13 and then we'll come back for the second round.

14 Q. And that's a well plan that's shown graphically  
15 in Exhibit L3?

16 A. Yes.

17 Q. Did you prepare some exhibits as part of your  
18 engineering study for this case?

19 A. I did.

20 Q. If you could turn to those, the first of which  
21 is marked as Exhibit E1, and explain to the examiner  
22 what your purpose was in conducting this study and what  
23 is shown here in this exhibit.

24 A. Sure. So if you look on Exhibit E1, you'll see  
25 we have a map, and outlined in red is the proposed unit

1 and then the yellow is EOG's acreage, again with Section  
2 30 being where we have -- 30 and 31 where we have our  
3 proposed Dakota wells.

4 But you'll notice the wellbores all around  
5 are the Wolfcamp producers within the vicinity of the  
6 proposed unit and EOG's acreage, and associated with  
7 that, you will see a production plot where the wells are  
8 plotted, with the warmer colors being more recent and  
9 the cooler colors are older wells.

10 **Q. How many two-mile laterals has EOG drilled in**  
11 **New Mexico in the last couple years?**

12 A. I believe our two-mile well count in New Mexico  
13 is roughly 140. Of course, that number is dynamic.

14 **Q. And how many horizontal wells would you**  
15 **estimate that EOG has drilled in New Mexico over the**  
16 **last two to three years?**

17 A. Typically, our New Mexico asset is about  
18 two-thirds of our activity within the Delaware Basin,  
19 the other third being our Texas assets. But I believe  
20 we're around -- we've ramped up in 2018 and 2019. In  
21 2017, we still drilled quite a few wells. But I think  
22 in gross for the entire division, it's mid-200s for this  
23 year and was last year as well.

24 **Q. And how many rigs is EOG currently running in**  
25 **the Delaware Basin?**



1           A.    I believe we are at 18 right now.

2           **Q.    And do you have rigs available in the schedule**  
3           **to timely develop and implement the drilling plan that's**  
4           **been proposed by EOG in Sections 30 and 31?**

5           A.    Yes.   Our rig schedule is incredibly dynamic.  
6   We put the rigs where they need to go, whether it be to  
7   mitigate depletion effects for current producing wells  
8   to try to maximize our resource within section, but not  
9   only that, we have land priorities.

10          **Q.    If you could turn to your next exhibit, which**  
11          **is Exhibit E 2, and explain your purpose in preparing**  
12          **this and what it's designed to represent.**

13          A.    Yes.   So this is very similar to the Exhibit 1  
14   that you just saw, the only difference being it's the  
15   exact same well population but the coloring is different  
16   showing that there are multiple operators within the --

17          **Q.    Do you have an opinion as to whether EOG's**  
18          **eight-well development plan is a better plan to achieve**  
19          **a greater recovery of resources in Sections 30 and 31**  
20          **than the plan that COG has talked about, its two-well**  
21          **plan in the southern half of the unit?**

22          A.    Yes.   Given that all we know is the two-well  
23   plan for the southern portion from COG and not knowing  
24   anything else, I believe that our eight-well development  
25   program will more effectively capture this resource.

1           Q.    Do you have an opinion as whether the entry of  
2   an order approving the Tomahawk WC Unit will result in a  
3   waste of resources located in Sections 30 and 31.

4           A.    I think that EOG has proven throughout New  
5   Mexico that they're a very good operator and that we do  
6   continually optimize our development, and we see no  
7   waste here based on our current plan.

8           Q.    Do you have an opinion whether EOG's  
9   correlative rights would be impaired if the Division  
10   were to grant Concho's application to approve the  
11   Tomahawk WC Unit?

12          A.    Yes.  It's my opinion that EOG would prefer to  
13   be operator.  That's been our business plan as a company  
14   pretty much forever.  If we can operate an area, we  
15   would much rather operate than be a non-opt participant  
16   in a well.

17          Q.    And how has your current experience been with  
18   regard to wells that you've drilled in Eddy County in  
19   the Wolfcamp?

20          A.    We recently brought on three different wells  
21   within Eddy County.  They were two-mile -- all three of  
22   them were two-mile Wolfcamp wells, and we had extremely  
23   promising results from those wells, and it's really  
24   encouraged us that we can see -- or expect similar  
25   results in this area as well.

1           **Q.    Were Exhibits E1 and E2 prepared by you or**  
2           **working with persons under your supervision and**  
3           **direction from EOG's business records?**

4           A.    Yes.

5                       MR. DeBRINE:  We would ask the admission  
6           into evidence of Exhibits E1 and E2.

7                       MS. RYAN:  No objection.

8                       EXAMINER McMILLAN:  Exhibit E1 and E2 may  
9           now be accepted as part of the record.

10                      (EOG Resources, Inc. Exhibit Numbers E1 and  
11           E2 are offered and admitted into evidence.)

12                      MR. DeBRINE:  Pass the witness.

13                      EXAMINER McMILLAN:  Cross?

14                               CROSS-EXAMINATION

15   BY MS. RYAN:

16           **Q.    Yes.  You testified that it would be a waste of**  
17           **resources just by definition because EOG couldn't**  
18           **operate the wells.  Why is operatorship equivalent to**  
19           **waste?**

20           A.    Not quite what I said.  I said that based on  
21           our current development, not knowing COG's development  
22           plan whatsoever, we believe that -- and given our  
23           development strategies in other areas of New Mexico,  
24           that what we have currently presented would not be --  
25           there would be no waste.  But I can't speak to COG's

1 plan because I don't know the size of the two wells.

2 Q. Right.

3 So since you haven't reviewed the plans, we  
4 haven't sent out well proposals yet, you don't know  
5 whether COG's plans would prevent waste and protect  
6 correlative rights?

7 A. No, because I haven't been privy to that  
8 information.

9 Q. Okay. Thank you.

10 CROSS-EXAMINATION

11 BY EXAMINER McMILLAN:

12 Q. So are you going to drill these wells back --  
13 are you going to have -- are you insisting on drilling  
14 these wells simultaneously?

15 A. All eight of them?

16 Q. Yeah.

17 A. I believe we'll do one half section at a time.  
18 This is my understanding. But this would be more of a  
19 team effort, conclusion. But typically what we do is we  
20 do one half of the section at a time and then do the  
21 second half.

22 Q. So what's going to happen to the development  
23 plan if the well -- if the wells don't meet your  
24 expectations?

25 A. At that point -- and that's why we're talking

1 about doing potentially just a half section, is that we  
2 can re-evaluate and then maybe try a different target  
3 within the Wolfcamp if we aren't satisfied with the  
4 original results. But like I mentioned earlier, we've  
5 been very pleased with our other results in Eddy County  
6 in the Wolfcamp that we did this year.

7 **Q. Okay. I think that answers that question.**

8 MR. DeBRINE: No further questions.

9 MS. RYAN: No further questions.

10 EXAMINER McMILLAN: Okay.

11 MR. DeBRINE: And that concludes our  
12 presentation, Mr. Examiner.

13 MS. RYAN: I do not plan to call any  
14 rebuttal witnesses.

15 EXAMINER McMILLAN: Okay. Closing?

16 CLOSING STATEMENT

17 MS. RYAN: I think Mr. Brancard set forth  
18 the law in this area at the beginning and that COG has  
19 been following the process, and this is just one step in  
20 the preliminary process and that we're not there yet.  
21 If we don't get OXY to sign on and other owners in the  
22 area, then we won't get to that point and we won't get  
23 final approval. So we are simply tasked, as part of the  
24 process, for you to review the unit agreement and plan  
25 and see if it's in your normal -- that you see the plan

1 so far is supportive of prevention of waste and the  
2 protection of correlative rights. The elimination of  
3 setbacks supports that and so does approval up front for  
4 surface commingling, and we ask that you take this case  
5 under advisement.

6 CLOSING STATEMENT

7 MR. DeBRINE: Mr. Examiner, we think the  
8 evidence presented here today demonstrates that this is  
9 a deeply flawed unit. They have come to the Division  
10 way too soon, before they have the adequate planning and  
11 support of the potentially working interest owners. The  
12 evidence was that a little less than half of the working  
13 interests of the tracts are committed to the unit. The  
14 record title interests, less than half is committed to  
15 the unit. The record title interests of EOG alone would  
16 prevent more than half of the federal acreage -- record  
17 title federal acreage to be committed to the unit. And  
18 the problem that you have with uncommitted tracts is you  
19 do not know what the contours of the unit are going to  
20 consist of. There are going to be holes within the  
21 unit.

22 I think under the Statutory Unitization Act  
23 and based on the practice of the Division, it is an  
24 extremely rare case for someone to come to the Division  
25 to present the unit for its approval that has not been

1 advanced further along in terms of getting commitments  
2 from the working interest owners.

3 We think this whole thing is rushed. It's  
4 designed to effectuate a land-grab. It's going to  
5 prevent EOG from developing its acreage.

6 We believe that EOG -- the testimony has  
7 been that they were looking at this as a potential  
8 target. Its plans were -- its hands were forced and its  
9 plans were accelerated. It has proposed a viable plan  
10 to develop the acreage in Sections 30 and 31. It is an  
11 experienced operator with proven results within Eddy  
12 County, and in this area, its prepared, ready, willing  
13 and able to develop its acreage. We believe that its  
14 plan will result in the greatest recovery of the  
15 resource from these two sections, and it's far superior  
16 than what the thread-growth plan that COG has come  
17 forward with. They could have come forward with a more  
18 comprehensive plan for the Division to consider so that  
19 you have better information in regard to how this unit  
20 going to be developed in the future.

21 We've got problems with regard to unit  
22 contraction. The unit agreement only provides for the  
23 drilling of an initial well. Once they drill that well,  
24 the testimony has been that they can tie up all of these  
25 lands for five years. Because the unit will be

1 established, the leases will be modified under the terms  
2 of the unit agreement so that EOG would be unable to  
3 develop the -- the lessees would be unable to develop  
4 their acreage if, in effect, they're forced to commit  
5 through a back-door process of compulsory pooling by the  
6 Division giving its approval of this unit and then the  
7 skids are greased and then working interest owners are  
8 faced with a Hobson's choice of having to get on board.

9                   And we believe it's premature. They've got  
10 the cart before the horse, where they've asked to submit  
11 additional evidence to try and provide greater support  
12 with regard to whether the commitment of the unit is in  
13 place or not. We believe that the appropriate thing for  
14 the Division to do is continue today's hearing. Let's  
15 take a look at that additional evidence, give EOG the  
16 opportunity to evaluate it and present any testimony and  
17 exhibits that we think the Division ought to consider  
18 that rebut that evidence, and then you can make a  
19 decision in this case.

20                   MS. RYAN: I object to a continuance of  
21 this case. It doesn't matter whether we have that  
22 percentage commitment at this point. That's simply not  
23 what we're in front of you to do. That's not what you  
24 have -- that's not in any kind of rule or statute that  
25 we need to have it.



1                   You have a multitude of orders in the  
2 history of issuing unitization orders where the  
3 operators anticipate that commitment but haven't reached  
4 it. There's been many times where they haven't reached  
5 it, and so even though the unit was approved by the OCD,  
6 it was never actually formed because they never reached  
7 that.

8                   So the burden is on us to actually get  
9 there and seek final approval from the BLM and State  
10 Land Office, and that's what we'll continue to do. So  
11 this is just a step in the process, and there is not any  
12 further evidence that needs to be in front of you today.  
13 We have some clarification points that you asked us to  
14 follow up with, but we don't have well proposals because  
15 we don't have a unit agreement approved to propose them  
16 under. So we're not here to discuss who is a better  
17 operator, who has the best proposals. This isn't a  
18 compulsory pooling proceeding. We're not going back and  
19 forth with spacing and density and all of that. This is  
20 just: Does COG's plan, as it's approved by the BLM and  
21 State Land Office, look to conserve the reserves in this  
22 area and prevent waste, protect correlative rights?

23                   So we ask that this Division take this case  
24 under advisement.

25                   MR. DeBRINE: And we believe that just

1 shows why this case is not ripe for approval. The unit  
2 is in such an early stage. We have no idea whether it  
3 will be accepted by the Division or ultimately by the  
4 BLM or the SLO.

5 MS. RYAN: We do.

6 MR. DeBRINE: But we do have concrete plans  
7 of development for EOG that are going to be thwarted by  
8 this unitization process. And one of the things they've  
9 asked the Division to do is to eliminate the internal  
10 setbacks within that broad area of the lands within the  
11 proposed unit boundaries. And until we know what tracts  
12 are committed to this unit, we don't know where those  
13 setbacks need to be drawn. And so we don't believe it's  
14 ripe for decision until we have a better idea as to what  
15 tracts should be committed to the unit.

16 MS. RYAN: Again, we will be working with  
17 the BLM and the State Land Office. They're simply  
18 setting forth our obligations and our plans. We have to  
19 have all of our development plans approved through them,  
20 and they will be considering the same thing. It's  
21 simply not what's in front of you today, and it's not  
22 what you have jurisdiction to do. And everyone that  
23 comes in front of you for a unitization hearing hasn't  
24 had those final approvals yet. We have to do this  
25 before we can go finish that. So this is a step in the

1 process. This is not -- it's not final.

2 EXAMINER DAVID: Can I ask -- Mr. DeBrine,  
3 I'm sorry if my question is kind of confused. I don't  
4 understand all this very well. Is there any set of  
5 facts that would sustain the State approval of a  
6 unitization application when the unitization is  
7 contested by one of the royalty holders or operating  
8 interest holders?

9 MR. DeBRINE: At least the unitization  
10 cases I've been involved in and I've presented cases on  
11 behalf of the proposed unit operator, you know, when we  
12 came to the Division, we had effective control, we had  
13 85 percent commitment, and there was a question as to  
14 whether a particular tract should be included in the  
15 unit because another operator wanted that. And it was  
16 actually Concho. They wanted to contract the proposed  
17 unit boundaries because they wanted to capture that  
18 tract to develop laterals in their adjacent acreage, but  
19 we still had 85 percent commitment of the unit. And we  
20 believe that that is a key criteria because otherwise  
21 the practical effect of an approval of the unit when you  
22 don't have a sufficient level of commitment is its  
23 effect of the compulsory unitization process. Because  
24 once you approve it and everybody knows that the unit is  
25 going to go in place, it's a Hobson's choice as to

1    whether you're going to choose to commit your tracts to  
2    the unit or not.

3                   EXAMINER DAVID:  Doesn't that kind of put  
4    the OCD in kind of a difficult position of having to  
5    enforce a federal standard under state law?  I mean, if  
6    the 85 -- I mean, 85 percent is not a state -- it's not  
7    a rule of law under state law.  It's basically -- we're  
8    kind of like downward bootstrapping a federal  
9    requirement to a state process, correct?

10                  MR. DeBRINE:  Well, at a minimum, I think  
11   you would need 75 percent because the legislature had  
12   enacted the Statutory Unitization Act for establishment  
13   of secondary recovery units, and there is a 75 percent  
14   requirement in order to get one of those units approved.  
15   And the reason being is you need to have a broad  
16   commitment to parties to commonly develop their lands,  
17   and without that, it really doesn't make sense for the  
18   Division to get involved in blessing the unit or not  
19   without that unanimity that shows that there is a  
20   commitment by a substantial majority of the working  
21   interest owners to pool their lands together for a  
22   common development plan through a unitization process.

23                  MS. RYAN:  Well, I appreciate him  
24   mentioning 75 percent and the Statutory Unitization Act  
25   even though that's not what is applicable here.  Concho

1 has over 75 percent in this unit. So if that were what  
2 we were talking about today, Concho would already have  
3 it.

4 So, again, we're talking about federal  
5 standards, a decision that is made by the Bureau of Land  
6 Management and the State Land Office. The State Land  
7 Office -- it does set forth in New Mexico statutes what  
8 they have to look at and review before they give  
9 preliminary approval and final approval of the unit, and  
10 they have given preliminary approval of this unit. So,  
11 again, he's asking for things that are outside of the  
12 procedures and outside of the process.

13 And simply that COG got on the ball early  
14 in trying to protect its acreage that it owns 75 percent  
15 net in and to try to protect it and operate it, we  
16 simply beat them to the punch, and that's what has  
17 happened here. So we need to move forward. We ask you  
18 to take this under advisement.

19 MR. DeBRINE: And I would just submit that  
20 that's the problem, that this is a beat-to-the-punch  
21 situation where they're trying to BLM-grab, and that's  
22 not how units should be prepared. They need to involve  
23 people in the process, give them the opportunity to  
24 participate, give them the opportunity to weigh in with  
25 regard to whether they feel that the unit is appropriate

1 and logical for development so that they can weigh in on  
2 the process. And we weren't informed that that process  
3 was being undertaken until we got notice of the  
4 application. We got the letter four days before the  
5 application in this case was filed.

6 MS. RYAN: It's simply not required under  
7 the procedure. We followed the procedure. If EOG had  
8 75 percent across all these tracts, I guarantee you, it  
9 would be working very good to protect its interest and  
10 establish itself as operator. And if COG had 10  
11 percent, we would have a very hard time trying to  
12 prevent EOG at 75 to do anything about it. And that's  
13 just the way it is. You seek competing operatorship all  
14 the time. And you've got people with smaller interests  
15 and people with larger, and you have to decide, based on  
16 those factors, who is going to operate it.

17 But in front of you today is not who is the  
18 better operator. It's simply, you know, giving your  
19 consent, subject -- your order would be subject to final  
20 approval. Even your elimination of setbacks and surface  
21 commingling would be subject to final approval by the  
22 State Land Office and the Bureau of Land Management.

23 EXAMINER McMILLAN: Okay.

24 EXAMINER DAVID: I'm satisfied. I've  
25 explored that issue as far as I can go.

1                   EXAMINER McMILLAN:   Okay.   Well, then Case  
2   Number 20659 shall be taken under advisement.

3                   Thank you.

4                   MR. DeBRINE:   Thank you, Mr. Examiners.

5                   EXAMINER DAVID:   Thank you, everybody.  
6   Enjoy the rest of your Friday and have a better weekend.

7                   (Case Number 20659 concludes, 12:38 p.m.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

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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 13th day of September 2019.

21

22

23 MARY C. HANKINS, CCR, RPR  
24 Certified Court Reporter  
New Mexico CCR No. 20  
Date of CCR Expiration: 12/31/2019  
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