

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

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

ORIGINAL

APPLICATION OF COG OPERATING, LLC,
FOR COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO

Case No. 14649,

APPLICATION OF BURNETT OIL COMPANY,
INC., FOR COMPULSORY POOLING, EDDY
COUNTY, NEW MEXICO

Case No. 14640

APPLICATION OF COG OPERATING, LLC,
FOR COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO

Case No. 14650

APPLICATION OF BURNETT OIL COMPANY,
INC., FOR COMPULSORY POOLING, EDDY
COUNTY, NEW MEXICO

Case No. 14641

TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

BEFORE: TERRY WARNELL, Presiding Examiner
DAVID K. BROOKS, Legal Examiner

May 26, 2011

Santa Fe, New Mexico

This matter came on for hearing before the
New Mexico Oil Conservation Division, TERRY WARNELL,
Presiding Examiner, and DAVID K. BROOKS, Legal Examiner,
on Thursday, May 26, 2011, at the New Mexico Energy,
Minerals and Natural Resources Department, 1220 South St.
Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91
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1 EXAMINER WARNELL: For consolidation
2 purposes, we will hear Case 14649, application of COG
3 Operating, LLC, for compulsory pooling, Eddy County, New
4 Mexico; Case 14640, application of Burnett Oil Company,
5 Inc., for compulsory pooling, Eddy County, New Mexico;
6 Case 14650, application of COG Operating, LLC, for
7 compulsory pooling, Eddy County, New Mexico; and Case
8 14641, application of Burnett Oil Company, Inc., for
9 compulsory pooling, Eddy County, New Mexico.

10 Call for appearances.

11 MS. MUNDS-DRY: Good morning,
12 Mr. Examiners. Ocean Munds-Dry with the law firm of
13 Holland & Hart, LLP, here representing COG this morning,
14 and I have three witnesses.

15 MR. BRUCE: Jim Bruce of Santa Fe,
16 representing Burnett Oil Company, Inc., and Hudson Oil
17 Company of Texas. I have three witnesses.

18 MS. MUNDS-DRY: In case you're curious,
19 sitting by me is Mr. Jeff Kendall. He is a summer clerk
20 in the Holland & Hart office.

21 EXAMINER WARNELL: We need to identify the
22 witnesses and swear the witnesses. Would the witnesses
23 please stand and state your name for the court reporter?

24 MR. RHODES: David Rhodes.

25 MR. EVANS: David Evans.

1 MR. HAIDUK: John Haiduk.

2 MR. JACOBY: Mark Jacoby.

3 MR. REYES: Ramon Reyes.

4 MR. CRAIG: Ken Craig.

5 (Six witnesses were sworn.)

6 MR. BRUCE: May I proceed?

7 EXAMINER WARNELL: Please, Mr. Bruce.

8 DAVID RHODES

9 Having been first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BRUCE:

12 Q. Please state your name and city of residence
13 for the record.

14 A. David Rhodes, Fort Worth, Texas.

15 Q. Who do you work for and in what capacity?

16 A. Burnett Oil Company, Inc., land manager.

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

19 A. No, I have not.

20 Q. Please summarize your educational and
21 employment background for the Examiner.

22 A. I graduated in 1973 from TCU with a degree in
23 biology. In 1975, I started in the Land Department as a
24 junior landman for Shenandoah Oil Corporation. And in
25 1979, I went to work for Windsor Oil Company, which was

1 the predecessor in name to Burnett Oil Company, and I've
2 been working for them for the past 32 years.

3 Q. Does your area of responsibility at Burnett
4 include this portion of Southeast New Mexico?

5 A. Yes.

6 Q. Are you familiar with the land matters
7 involved in these applications?

8 A. Yes, I am.

9 MR. BRUCE: Mr. Examiner, I tender Mr.
10 Rhodes as an expert petroleum landman.

11 MS. MUNDS-DRY: No objection

12 EXAMINER WARNELL: So recognized.

13 EXAMINER BROOKS: My only question would
14 be, being a former landman, I would think a person who
15 could understand biology would find something more useful
16 to do than being a landman. I went into that business
17 because I couldn't understand the scientific stuff.

18 THE WITNESS: It helps me with the sand
19 dune lizards.

20 Q. (By Mr. Bruce) Mr. Rhodes, could you identify
21 Exhibit 1 and describe what Burnett seeks in these two
22 cases?

23 A. Exhibit 1 is a plat showing four sections,
24 Sections 12, 13, 24 and 25 in Township 17 South, 31 East.
25 The two areas in the Southwest/Southwest of 13, one in

1 the Southwest/Southwest of 13 and one in the
2 Southwest/Southwest of 24, are the areas that we're
3 seeking compulsory pooling on today.

4 One is for the Partition Fed Number 1, and the
5 other for the Nosler Fed Number 2. And we're seeking a
6 compulsory pooling order on those two 40s.

7 Q. What depths are you seeking to pool?

8 A. Depths below 4,230, basically the
9 Glorieta-Yeso formation.

10 MR. BRUCE: Mr. Examiner, in my
11 application I erroneously said surface to base of the
12 Glorieta-Yeso, but it is just the Glorieta-Yeso.

13 Q. What is Exhibit 2, Mr. Rhodes?

14 A. Exhibit 2 is the current working interest in
15 those four sections, the first page. The second page is
16 a listing of the working interest owners that support
17 Burnett for the Yeso operations. And the third page is
18 list of the record title holders for those four sections.
19 These people are supporting our application. I have
20 letters of support from them.

21 The last page is just another rendition of the
22 two 40s that we're wanting to pool today. It also
23 reflects two additional applications that we filed for
24 pooling in the southeast/southeast of 13 and the
25 southeast/southeast of 24.

1 Q. So it's roughly a two-thirds/one-third split
2 in ownership?

3 A. Correct.

4 Q. Two-thirds Burnett and one-third Concho?

5 A. On the first page of that, Burnett Oil Company
6 has a 46.28 percent working interest, Javelina Partners
7 has 16 percent, and Zorro Partners has 4 percent, and
8 Concho or COG Operating combined have 33.7. And the 46,
9 the 16 and the 4, are all supporting Burnett for
10 operations, and I have letters indicating that in the
11 materials that I submitted.

12 Q. Okay. What is Exhibit 3, Mr. Rhodes?

13 A. Exhibit 3 is just a chronology. As I
14 understand it, one of the important aspects prior to the
15 pooling hearings are to make a good-faith attempt to
16 resolve the issues and avoid the hearings. And this
17 gives a chronology by date of the contacts that we've had
18 with COG in our attempts to work out our issues before
19 coming to the Commission.

20 Q. To be clear, the only two parties to be pooled
21 at this point are COG and Concho Oil & Gas?

22 A. That's correct.

23 Q. Could you go through and summarize your
24 contacts? It looks like there have been a number of
25 contacts between the parties.

1 A. Yes. I won't read these verbatim, but I would
2 like to just hit some of the highlights. We began
3 November 11th of 2010, when Randall Hudson, the owner of
4 Hudson Oil Company of Texas, who's here today, received a
5 phone call from David Evans, with COG, wanting a term
6 assignment from the Hudson interest in what we call the
7 Maljamar area, which is this four-section area, and he
8 wanted to come in the next day.

9 Randall asked me to come and sit in on that
10 meeting, which was held November 12th. Randall and I met
11 with David Evans, Ramon Reyes and Stuart Dirks. Randall
12 told COG representatives that they were supporting BOCI
13 as operator and that we had commitments for term
14 assignments and support from the Hudsons. They would
15 give BOCI and the Hudsons the majority working interest,
16 and we hoped that we could get an operating agreement
17 signed and move forward with drilling soon.

18 Skipping down to January 6th, on or about this
19 date I called David Evans, left a voice message, asking
20 him to call back and discuss a drilling program and
21 execution of an operating agreement, but I did not get a
22 response.

23 On January the 20th, I sent two well proposals
24 to David Evans and Concho Resources. They should have
25 actually gone to COG Operating and Concho Oil & Gas.

1 They did respond to receipt of the email, but he was out
2 of the office and did not open the attachment and wanted
3 to know what it was for.

4 On January 21st, I responded, saying that I
5 had sent two AFEs for two Yeso-Glorieta wells and asked
6 if he had received my phone message of a couple of weeks
7 ago to discuss the drilling program, that I did not get a
8 response to that.

9 On January 24th, Burnett and Hudson received
10 32 well proposals from COG totaling \$53 million in AFE
11 costs. On February 7th, I sent six well proposals to
12 COG, two of which are on the applications today. And
13 this time I named the appropriate parties or the proper
14 parties, COG Operating and Concho Oil & Gas.

15 On February 9th, Bill Pollard, Burnett Oil
16 Company's president, sent a letter to Tim Leach, who is
17 the president of COG, requesting that COG consent to
18 allow BOCI to operate all the wells on the leases.

19 Skipping down, on the 17th of February, Burnett
20 and Hudson received 15 additional well proposals from COG
21 that brought the total well proposals from COG in a
22 25-day period to 47, totaling \$77 million.

23 On February 21st, Tim Leach left a voice mail
24 with Bill Pollard, and he apologized for being slow to
25 respond to Bill's letter of February 9th, said he had

1 been traveling. He said he was not up to speed on the
2 issues, but he would get up to speed and respond.

3 I'll skip down to March 14th. Bill Pollard
4 received a letter from Matthew Hyde with COG, dated March
5 10th, responding to Bill's letter to Tim Leach. In that
6 letter, Mr. Hyde said they owned rights below the base of
7 the San Andres and will pursue operations. Bill Pollard
8 sent a letter to Matt Hyde, David Evans and Keith
9 Corbett, all of COG, responding to Matt Hyde's letter of
10 March 10th.

11 On the 25th of March, Jim Bruce received an
12 email from COG's attorney, informing him that COG
13 acquired the Ard interest, which is a 10.8 percent
14 working interest in those rights. And I received an
15 email from David Evans, saying he and Keith Corbett would
16 like to come to our office on the 29th to discuss
17 operations and development.

18 On the 29th, we had a meeting in our office
19 with David Evans, Keith Corbett and Ramon Reyes. Present
20 at the meeting for us were myself; Bill Pollard; our
21 president, Mark Jacoby, who's an engineer for us; and
22 Randall Hudson. Concho informed us that they had taken a
23 six-month term assignment with a 45-day continuous
24 drilling obligation from the Ard's 10.8 percent.

25 BOCI indicated that we would consider drilling

1 four wells this year and eight next year, which would
2 meet that 45-day continuous drilling obligation.
3 However, they would have to meet our economic parameters.

4 Again, we asked for an operating agreement
5 covering the entire area, but Keith said they would not
6 do that. They would sign an operating agreement on a
7 40-by-40 basis.

8 Skip over to the last page. On April the
9 20th, David Evans and Keith Corbett came to Fort Worth
10 and met with myself and Mark Jacoby. They left a
11 proposal dated April 20th. They want to drill four wells
12 in 2011, adhere to the 45-day continuous drilling
13 obligation in 2012 and 2013, et cetera. And then I asked
14 David for clarification, and he said that the number of
15 wells per year was non-negotiable.

16 On the 25th of April, I responded to COG's
17 proposal by saying it was unacceptable. And since the
18 pooling hearing was set for Thursday the 28th, we were
19 going to move forward with the hearing so we could get
20 started on our drilling program.

21 On the 26th, we found out that COG filed for a
22 continuance to the pooling hearing, and it had been
23 granted and moved to May 26th.

24 On May 12th, Will Giraud, general counsel for
25 COG, contacted Bob Grable, who is an attorney for us in

1 Fort Worth. Bob was in Midland at the time and asked Bob
2 to come by. He wanted to know what we wanted. Bob said
3 to make a proposal. That afternoon Will sent Bob the
4 same proposal that David Evans and Keith Corbett had left
5 with us at their last meeting on the 20th.

6 On the 15th of May, Will Giraud left Bob
7 Grable a voice mail saying that we were too far apart in
8 our proposals and the chances for a deal were remote.
9 Excuse me.

10 On the 13th, Bob Grable sent the
11 counterproposal we prepared to the one they left on the
12 20th. And on the 15th, he got a voice mail saying we
13 were too far apart, and he didn't feel like a deal was
14 possible.

15 Q. Mr. Rhodes, in your opinion, has Burnett made
16 a good-faith effort to obtain the voluntary joinder of
17 the interest owners?

18 A. Yes.

19 Q. You mentioned -- I refer you to Exhibit 4,
20 title owners that have submitted letters of support. Is
21 that reflected in Exhibit 4?

22 A. Yes, it is.

23 Q. Do these -- take a step back. You are seeking
24 to force pool essentially Glorieta-Yeso. Above that
25 zone, does COG or Concho Oil & Gas own any interest?

1 A. No.

2 Q. Who does own that interest?

3 A. Burnett Oil Company and the Hudsons own the
4 rights from the surface down to the base of the San
5 Andres.

6 Q. And these people who signed letters in support
7 also are some of the owners of that interest, the
8 shallower rights?

9 A. That's correct. And Burnett's and Hudson's
10 interest together amount to about 85 percent of the
11 ownership in the shallow on part of the lease and about
12 67 percent on another part, plus Burnett Oil Company is
13 the contract operator currently for Hudson Oil Company.
14 We drill and complete the wells and then turn them over
15 to them to operate.

16 Q. Grayburg-San Andres wells?

17 A. Grayburg-San Andres wells.

18 Q. Do you have a recommendation for the -- will
19 another witness discuss AFEs for these wells?

20 A. Correct. Mark Jacoby will discuss that.

21 Q. Do you have a recommendation for what Burnett
22 should be paid for supervision and administrative
23 expenses?

24 A. We're recommending \$5,750 on a monthly
25 drilling well rate, and \$575 per month for producing.

1 Q. Are these equivalent to those normally charged
2 by Burnett and other operators in this area for wells of
3 this depth?

4 A. Yes.

5 Q. Do you request that these be adjusted
6 periodically, as provided by the COPAS accounting
7 procedures?

8 A. I do.

9 Q. In the event any interest goes nonconsent,
10 does Burnett request the maximum cost plus 200 percent
11 risk charge?

12 A. I do.

13 Q. Were the parties being pooled notified of this
14 hearing?

15 A. Yes.

16 Q. Is that reflected in Exhibits 5A and 5B?

17 A. That's correct.

18 Q. Were Exhibits 1 through 4 prepared by you or
19 under your supervision?

20 A. Yes.

21 Q. In your opinion, is the granting of these
22 applications in the interest of conservation and the
23 prevention of waste?

24 A. They are.

25 MR. BRUCE: Mr. Examiner, I move the

1 admission of Burnett's Exhibits 1 through 5B.

2 MS. MUNDS-DRY: No objection.

3 EXAMINER WARNELL: Exhibits 1 through 5B
4 are admitted.

5 (Exhibits 1 through 5B admitted.)

6 MR. BRUCE: I pass the witness.

7 MS. MUNDS-DRY: Good morning. Mr. Rhodes.

8 MR. RHODES: Good morning.

9 MS. MUNDS-DRY: Nice to see a fresh face.

10 No offense to Mr. Jacoby.

11 CROSS-EXAMINATION

12 BY MS. MUNDS-DRY:

13 Q. I wanted to go through a couple of these
14 exhibits, if we could, please.

15 A. Sure.

16 Q. On Exhibit Number 1, do you have that in front
17 of you?

18 A. Yes.

19 Q. It indicates you have four pooling
20 applications filed. Two of those pooling applications
21 are the subject of today's hearings; is that correct?

22 A. That's correct.

23 Q. When did the other two pooling applications --
24 when were those filed?

25 A. Tuesday of this week.

1 Q. You may have said this, and I'm sorry if I
2 didn't catch it. For which wells are those?

3 A. The Partition Fed Number 2 and the Nosler Fed
4 Number 3. They're marked on the plat there, out to the
5 right.

6 Q. Thank you. If you could turn to Exhibit 2,
7 please, Mr. Rhodes. It indicates Burnett Oil has 46
8 percent of the working interest?

9 A. Yes.

10 Q. How did they acquire that working interest?

11 A. They were from term assignments from some of
12 the title holders of the Glorieta-Yeso rights.

13 Q. Which title owners were those?

14 A. If you look over on page 3, Lindy's Living
15 Trust and the Delmar/Hudson/Lewis Living Trusts, we
16 obtained an interest from Zorro Partners, which William
17 A. Hudson is the general manager for Zorro Partners, and
18 I believe that's all.

19 Q. So Zorro's interest and -- I'm sorry. What
20 was the last one?

21 A. William Hudson has put his interest into Zorro
22 Partners, and they have an interest. And they have given
23 us a term assignment on a portion of their interest.
24 They are going to participate with 4 percent.

25 Q. Is it fair to say that these record title

1 holders, besides Burnett, are all Hudson entities?

2 A. They're related to Hudson. I'm not sure --
3 the Ard interest that I mentioned earlier, they do not --
4 I would not consider them a Hudson entity from the
5 respect of supporting us as operator.

6 But Delmar/Hudson/Lewis, all generated from
7 the Hudson family. All those trusts were generated by
8 the Hudsons.

9 Q. Did Burnett ever have a term assignment with
10 the Ard interest?

11 A. No. I'm sorry, there was an interest. I knew
12 I was leaving one out. Moran Shelton, they are a
13 successor in title to the deep rights. We have a term
14 assignment from them for 11 percent.

15 Lindy's Living Trust, which is a Hudson
16 entity, 16.25 percent; Delmar/Hudson/Lewis, 16.25
17 percent; and then Zorro, 2.67 percent, should total 46.28
18 percent.

19 Q. So I understand it, for the record, what do
20 you mean when you say, "the deep rights"? What interval
21 are you --

22 A. The rights below a depth of 4,230. That's as
23 measured in a well. I can get that exact well for you.

24 Q. I won't make you try to remember that.

25 A. Thank you.

1 Q. You note here on the fourth page of Exhibit 2,
2 the last page at the top, it says, "Maljamar area
3 proposed wells"?

4 A. Yes.

5 Q. You note that COG later acquired an 11 percent
6 working interest with a 45-day continuous drilling
7 clause?

8 A. Yes.

9 Q. Have you seen that term assignment?

10 A. We requested it, but we were told that that
11 could not be given to us.

12 Q. Because it was confidential?

13 A. That's correct.

14 Q. It's your understanding that it's a 45-day
15 continuous --

16 A. That's what we've been told. It's measured
17 from completion to spud. As I understand, completion is
18 measured from the drilling rig release. I think they're
19 allowed to bank the time or accumulate time if you drill
20 faster than 45 days. We have never seen one with 45 days
21 on it before, so it was a pretty tight squeeze for us.

22 Q. All of that is your understanding, since you
23 haven't actually seen the terms?

24 A. Just what we've been told by David Evans.

25 Q. You indicate this small interest is trying to

1 control timing and drilling. Do you mean the interest
2 that Concho now holds?

3 A. Well, I believe that the Ard interest is 11
4 percent, and that's the only interest that has the 45
5 days. And it seems like they're trying to adhere to a
6 45-day continuous development that only relates to an 11
7 percent interest, so it seems like it's pushing things a
8 little bit.

9 But as I indicated earlier, we did indicate
10 that we would try to work with them on those well
11 numbers, the four wells this year and eight next year,
12 and stay within that 45 days, as long as the well
13 economics hold up. If something happened and the wells
14 weren't economic, we would not want to be responsible for
15 holding them to that 45 days.

16 Q. Before we leave Exhibit 2, on -- I guess the
17 last page, we were just discussing -- you indicated that
18 Burnett has six approved APDs; is that correct?

19 A. That's correct.

20 Q. And is this your development plan for 2011,
21 Burnett's development plan for 2011?

22 A. It would be 2011/2012. I'm not sure if we
23 would get all of these in 2011. Our plan would be to
24 drill the first two and test them extensively and see how
25 we do. And then hopefully the economics will look good

1 on them and the wells will perform well.

2 Once that happens and we get the confidence to
3 go forward, then we would ramp up our drilling.

4 Q. Have you or someone at Burnett discussed your
5 development plans for these leases with the BLM?

6 A. That would be a question for Mr. Jacoby, who's
7 our engineer. I don't know if that's been discussed with
8 the BLM or not.

9 Q. You think Mr. Jacoby perhaps had contact or
10 has knowledge of that?

11 A. Perhaps. I have not.

12 Q. Turn to your Exhibit Number 3, please. The
13 first entry is dated November 11, 2010?

14 A. Yes.

15 Q. And it indicates that Mr. Hudson received a
16 phone call from Concho. I assume that's your
17 understanding of what happened in that conversation?

18 A. That's correct.

19 Q. So you don't know if a term assignment was
20 offered?

21 A. I do not know. I don't believe that it was.

22 Q. What does "TA Hudson interest" stand for?

23 A. "TA" is term assignment. That should say,
24 "Wanting term assignment from the Hudson interest."

25 Q. You've indicated that you're not sure if a

1 term assignment was offered by Concho?

2 A. I'm not sure. Mr. Hudson is here, as I
3 indicated earlier, and can answer that question.

4 EXAMINER BROOKS: Let me interrupt at this
5 point. I believe it's the time we want to take our lunch
6 recess. Mr. Warnell?

7 EXAMINER WARNELL: We'll stand in recess
8 until 1:20.

9 (A lunch recess was taken.)

10 EXAMINER WARNELL: Let's go back on the
11 record. It's 1:20.

12 Ms. Munds-Dry, I believe you were
13 cross-examining.

14 MS. MUNDS-DRY: Thank you. Mr. Rhodes, I
15 hope you had a nice lunch.

16 THE WITNESS: I did. Thank you.

17 Q. (By Ms. Munds-Dry) Let's go back to Exhibit
18 Number 3. We were going through your timeline.

19 A. Yes, ma'am.

20 Q. On January 21st, 2011, you note that -- I
21 believe "DR" are your initials. You left a phone message
22 to discuss the drilling program or had a follow up, I
23 guess, is the essence of that; is that correct?

24 A. Yes.

25 Q. What was the drilling program you had

1 discussed with Concho?

2 A. Well, it was really a follow up to the meeting
3 that we had back on the 12th of November. At that
4 meeting, we had discussed the fact that we would have a
5 majority interest and that we wanted to move forward with
6 getting an operating agreement signed and hopefully start
7 with the drilling quickly.

8 And it was really to follow up to discuss the
9 execution of an operating agreement and discuss possible
10 wells and things of that nature.

11 Q. Did you talk about just these two wells that
12 are the subject of the hearing, or did you talk about a
13 certain number of wells?

14 A. There would have been a number of wells.

15 Q. How many; do you remember?

16 A. I don't remember a specific amount. We did
17 not get into specifics because we never had that
18 conversation.

19 Q. Okay. Did you give a rough range, something
20 like four to something?

21 A. No, I don't believe I did.

22 Q. On the second page, Mr. Rhodes, the entry
23 dated March 3rd, 2011, it indicates Bill P. Is that
24 Mr. Pollard?

25 A. That's correct.

1 Q. He said he wanted an agreement from Concho to
2 support Burnett as operator for all wells at Maljamar?

3 A. Yes, that's correct.

4 Q. Didn't Mr. Pollard say that if we agreed to
5 let Burnett operate, Burnett would not oppose
6 Concho's Yeso allowable case?

7 A. I think he followed up with a letter outlining
8 our position in that letter. But that was a privileged
9 and confidential letter, so I'm not really at liberty to
10 discuss the particular terms of that particular --

11 Q. Did Concho agree to keep that letter
12 confidential?

13 A. They did not sign anything or make an
14 agreement.

15 Q. On the third page, Mr. Rhodes, there's an
16 entry, May 12, 2011?

17 A. Yes.

18 Q. It indicates Mr. Giraud contacted Mr. Grable?

19 A. That's correct.

20 Q. Do you know if Mr. Giraud called Mr. Grable,
21 or did Mr. Grable call Mr. Giraud?

22 A. It's my understanding that Mr. Giraud
23 contacted Mr. Grable. He contacted his office in Fort
24 Worth, as I understand it. And his office in Fort Worth
25 knew he was in Midland and got in touch with Mr. Grable,

1 who then called Mr. Giraud. I think the initial contact
2 was with Mr. Giraud.

3 Q. And finally, this May 15, 2011, entry
4 indicates several requirements, the three requirements I
5 guess that Mr. Grable conveyed to Mr. Giraud?

6 A. That's correct. That's my understanding.

7 Q. Now, I guess my concern here is Burnett did
8 ask for a confidentiality agreement for those
9 discussions; did they not?

10 A. For the -- I'm not sure which discussions
11 you're talking about now.

12 Q. Are you aware that Mr. Grable asked Mr. Giraud
13 for a confidentiality agreement for continuing
14 negotiations for these properties?

15 A. Yes.

16 Q. And are you aware that Mr. Giraud signed that
17 confidentiality agreement?

18 A. I don't think he did. At least I haven't seen
19 it, if he did.

20 Q. I can represent to you that he did.

21 A. All right.

22 Q. But assuming there is a confidentiality
23 agreement, doesn't it violate that agreement to talk
24 about those terms?

25 A. Well, these main requirements have been

1 standard throughout all of our discussions. There's
2 nothing in here that I would think would violate the
3 confidentiality because we've discussed these at length
4 in some of our previous meetings. So --

5 Q. Is it Burnett's position that anything that
6 was discussed in those prior meetings is not
7 confidential?

8 A. With respect to these particular items, these
9 are not confidential.

10 Q. Mr. Rhodes, I believe you indicated earlier
11 that you have not had any discussions with the BLM
12 regarding the APDs that you --

13 A. That's correct. I have not.

14 Q. Are you aware of whether these properties have
15 any surface issues, then?

16 A. I have not seen them specifically myself. I
17 understand from the operator -- I understand from
18 Mr. Hudson that they do have surface issues. Well,
19 excuse me. Let me also say I believe that this land is
20 going to be included in the potential area for the sand
21 dune lizard on the possible endangered species, so I'm
22 aware of that.

23 Q. Are you aware if it has any prairie chicken
24 issues?

25 A. I don't know.

1 Q. Do you know if Burnett will call a witness
2 that is knowledgeable about those issues?

3 A. Yes.

4 Q. Who is that?

5 A. I believe that will be Mr. Jacoby.

6 Q. Lucky Mr. Jacoby.

7 A. Yeah.

8 Q. Are you aware whether Burnett has a
9 conservation agreement with the BLM?

10 A. That would be a Mr. Jacoby question, as well.
11 But yes, we have been working on that. I'm aware there
12 has been quite a bit on that.

13 Q. So you're aware of some discussions that maybe
14 you didn't have that somebody at Burnett had in an effort
15 to get a conservation agreement?

16 A. Yes.

17 Q. I'm sorry if I missed this earlier,
18 Mr. Rhodes. When did you say Burnett plans to drill the
19 Partition Fed Number 1 and the Nosler Fed Number 2?

20 A. As soon as possible. We have a rig under
21 contract. And we're ready to drill those wells back to
22 back, as I understand it, as soon as we get the ownership
23 issues resolved.

24 MS. MUNDS-DRY: I think that's all I have
25 for you. Thank you, Mr. Rhodes.

1 EXAMINER WARNELL: David?

2 EXAMINER BROOKS: I don't think I have any
3 questions.

4 EXAMINER WARNELL: I have no questions at
5 this time.

6 MR. BRUCE: I have just a couple of
7 follow-up questions, Mr. Rhodes.

8 REDIRECT EXAMINATION

9 BY MR. BRUCE:

10 Q. There's been some questions about your term
11 assignments. What type of continuous drilling provision
12 do you have in your term assignments?

13 A. 180 days.

14 Q. And regarding some of the questions from
15 Ms. Munds-Dry, both Burnett and Concho have separately
16 asserted that they want to operate these wells; right?

17 A. That's correct.

18 Q. That's a big sticking point, and it has been
19 since day one?

20 A. That's correct.

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

22 MS. MUNDS-DRY: I have one follow up, if
23 that's all right.

24 EXAMINER WARNELL: Yes, please.

25

BY MS. MUNDS-DRY:

Q. Mr. Rhodes, Mr. Bruce just asked you whether one of the sticking points is who has operatorship of these wells. Are you aware of a time when Concho offered to allow Burnett to operate these wells?

A. I'm aware of that. There were some conditions on that operation which we felt weren't appropriate.

Q. Which conditions were those?

A. They wanted to reserve three 160-acre units to drill to satisfy their 45-day timeclock, and we --

Q. Were there any others?

A. That was the main thing. We maintained all along that we would like to have an operating agreement that governed all the operations on the property and that we not have some separate agreements out there that we may have to always be concerned with someone else coming in and operating on the property. So that was something that we did not feel we could work with.

Q. When you say the property, I want to make sure I understand. You mean the full four sections?

A. Yes, ma'am.

MS. MUNDS-DRY: Thank you. That's all I have.

EXAMINER WARNELL: Next witness?

1 JOHN HAIDUK

2 Having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BRUCE:

5 Q. Would you please state your name and city of
6 residence?

7 A. John Haiduk, Fort Worth, Texas.

8 Q. And who do you work for and in what capacity?

9 A. Burnett Oil Co., Inc., geological manager.

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

12 A. Yes, sir.

13 Q. Were your credentials as an expert petroleum
14 geologist accepted as a matter of record?

15 A. Yes, sir.

16 Q. Does your area of responsibility at Burnett
17 include this portion of Southeast New Mexico?

18 A. Yes.

19 Q. Are you familiar with the geology involved in
20 these applications?

21 A. Yes, sir.

22 MR. BRUCE: Mr. Examiner, I tender
23 Mr. Haiduk as an expert petroleum geologist.

24 MS. MUNDS-DRY: No objection to whatever
25 Mr. Bruce was trying to do.

1 EXAMINER WARNELL: So recognized.

2 Q. (By Mr. Bruce) Mr. Haiduk, we've marked your
3 geologic exhibits all as one exhibit. There are several
4 pages. We marked them as Exhibit 6. We have them up on
5 the screen. Why don't you tell us what they show?

6 A. The first couple of slides are to introduce
7 this hearing to the basic geology of the area. This is a
8 stratigraphic chart focusing on the Southwest Shelf area,
9 which I have in green, which the Maljamar leases are
10 positioned in the Northwest Shelf. Highlighted in pink
11 is the Glorieta formation and the Paddock, Blinbry, Tubb
12 and Drinkard members of the Yeso formation.

13 Q. Okay. Next?

14 A. Next is a regional map which includes portions
15 of Southeast New Mexico and West Texas. This is
16 basically the Permian Basin. As you can see, we have the
17 Northwest Shelf. The Maljamar leases are in the purple
18 color. It's right in here on the boundary between Lea
19 and Eddy Counties in Southeast New Mexico.

20 What you see in green are Yeso productive
21 trends. Please note that in Texas, Clear Fork is the
22 name of the Yeso. Across this area, it's pretty much a
23 dolomite reservoir. As you can see, there are numerous
24 fields throughout here and throughout Texas extending
25 through the Northwest Shelf into Southeast New Mexico.

1 On this particular exhibit as well, you'll see
2 a line here, a dashed line, and it's across Section AA
3 prime. And that is where this next schematic
4 cross-section is located.

5 What I've got highlighted in green is the Yeso
6 formation, which includes those four members that I
7 previously mentioned on the stratigraphic chart. Above
8 that in purple is the Glorieta formation. So you can see
9 that the base of the Yeso formation is the Abo. The top
10 is the base of the Glorieta formation.

11 And you can see just to the south, especially
12 just to the south, the dip trend is productive on the
13 Northwest Shelf of the Yeso. You can see it falling into
14 the basin here, where it turns into shales and sandstone
15 equivalents.

16 What I've got in the next two exhibits is a
17 Yeso-type log and log analysis example. This first part
18 is from the Paddock member, which is the one of the two
19 primary productive intervals throughout the Northwest
20 Shelf area, including the Loco Hills area and parts of
21 the Maljamar area, as well. The other is the Blinébry
22 member, which we'll talk about next.

23 But what we do on each log that we drill out
24 here, is we generate -- whenever we log it, we generate
25 not only the hard copy logs, but digital data on which we

1 can come in and make assessments, including water
2 saturations, net pay calculations, et cetera. And what I
3 put down below is all the parameters that we put into the
4 log analysis of each well that we drill.

5 And other times whenever we purchase a vendor
6 log like this one, this type log is located just a few
7 hundred feet off the Maljamar lease, just to the west.
8 It was originally drilled by Chevron USA and now is
9 operated by COG, and they have perforations in the
10 Paddock zone here.

11 But what I've got is several columns of data
12 generated by the logging company and that we use to
13 interpret over in this particular area. This is the
14 gamma ray track. This is the depth track. And what we
15 have here also is the PE, which indicates by my color
16 code that this is pretty much all slightly limey dolomite
17 throughout the entire interval of the Paddock.

18 Then we have the resistivity curves in this
19 track. And in this track we have the neutron and density
20 curves, and anything colored in red is greater than 3
21 percent density porosity. And we have bulk volume water
22 and hydrocarbon saturation generated in this column.

23 And finally, on the far right-hand column is
24 the water saturations at every half foot increment, based
25 on these parameters that we input into the program.

1 One of the things we do each time when we
2 generate a log like this is we go ahead and put in what
3 we call a net pay flag. In this instance, our net pay is
4 anything less than 40 percent water saturated and at
5 least 3 percent or greater density porosity.

6 Another parameter on the logs that Burnett
7 operates is, we have an open hole -- we have a mud log
8 generated while the well is drilling. We use that to
9 assess lithology, because we have a mud logger on full
10 time on our particular wells, so we can see drill-offs
11 and oil and gas shows throughout the drilling of the
12 well.

13 EXAMINER WARNELL: Are you going to
14 incorporate the mud log data?

15 THE WITNESS: Not on this particular well,
16 because it was generated by Chevron and it's a commercial
17 LAS file. On all of our wells, we do have mud logs.

18 This is basically the same log, the Chevron
19 Skelly well. This is the Blinebry member. We went
20 through the same analysis, same formulas. And again, we
21 generated this data from that particular log.

22 So again, we think this is a type of log which
23 is correlated back to our Loco Hills field, where we
24 drilled 86 wells in the last few years that Burnett
25 operated.

1 This next slide is basically a three township
2 area. What you can see in yellow are Burnett leases.
3 This is what we call our Loco Hills leases. Over here,
4 in the eastern portions of 17 South, 30 East, we also
5 operate all but this 40, this northwest/northwest 40 for
6 the Yeso and for the Grayburg-San Andres shallow.

7 We're only showing wells on here that have a
8 TD of at least 4,800 feet. The shallow wells have been
9 removed to remove the clutter.

10 What you see here in terms of the color codes,
11 Burnett Oil-operated Yeso wells are in the red dots.
12 Hudson has one well in Section 12 of 1731, which these
13 are the Maljamar leases in question in 12, 13, 24 and 25,
14 17, 31. And the other operators are listed in green that
15 are Yeso producers.

16 I think a couple of things to note are that
17 Hudson Oil operates the Grayburg-San Andres field
18 overlying the Yeso here. Mark Jacoby is going to show
19 you a map of all the individual wells that they operate.
20 We do contract operate currently in this particular
21 portion of Sections 12 and 14 for Hudson Oil through
22 completion, and then they take over operations after
23 completion. So we use our field personnel and our
24 techniques in this particular area.

25 Over in this particular area, in terms of

1 working interest, Burnett has, depending on the lease,
2 between a 40 and 86 percent working interest over in this
3 particular area. And we do have a continuous drilling
4 program with the well drilling right now.

5 Over in this area, what we call the Maljamar
6 leases, Burnett/Hudson we said had 66.2 percent of the
7 Yeso rights. And the northern part of the lease, we have
8 a 67 and a half percent working interest in the shallow
9 Grayburg-San Andres, and approximately 84 to 85 in the
10 southern parts of the lease between Burnett and Hudson.

11 We do show also in the legend here the six
12 spots where Burnett has approved APDs for the Yeso. This
13 is basically -- let me go back to the other map.

14 What we're showing here, this is a Yeso
15 structure map. These are 50-foot contours. You see the
16 highest structural part of this map over here through the
17 east, with a lower structural geology of about 5- to 600
18 feet difference between this area here, this area being
19 the lowest. And the schematic cross-section that I
20 showed you, where you're diving into the basin to the
21 south, you get a change in lithology to the south. And
22 you see a very sharp increase in the contours, and the
23 lithology changes as you come down in this area.

24 What you see on the next slide is a blowup of
25 that particular area. Again, I mentioned before that the

1 Maljamar leases are on the Eddy/Lea County line. This is
2 10-foot contours. The two wells that are proposed in
3 today's hearing are the Partition Federal Number 1 in the
4 Southwest/Southwest of Section 13, and in the southwest
5 quarter of Section 24, the Nosler Federal Number 2. All
6 the wells through this area where you see blue numbers
7 are associated with -- well, basically all wells, these
8 are Yeso producers.

9 Q. In your opinion, is the geology such that the
10 two wells we're here about today, these are reasonable
11 geologic picks to commence development in the Maljamar
12 leases?

13 A. I believe so.

14 Q. And my only other question is when you go back
15 to the data you have from your logs, the net pay,
16 density, porosity, et cetera, are those critical, in your
17 opinion, to properly developing these leases?

18 A. I do. We went through this in the testimony
19 last week that Mr. Brooks was involved in. Burnett's
20 contention is through our analysis, through the analysis
21 of third-party engineering, that 20 acres are sufficient
22 to drain all the reserves in the Blinebry and the
23 Paddock, and any drilling denser than that is basically
24 wasteful.

25 Q. Was Exhibit 6 prepared by you or under your

1 supervision?

2 A. Yes, sir.

3 Q. In your opinion, is the granting of Burnett's
4 applications in the interest of conservation and the
5 prevention of the waste?

6 A. Yes, sir.

7 MR. BRUCE: I move the admission of
8 Exhibit 6.

9 MS. MUNDS-DRY: No objection.

10 EXAMINER WARNELL: Exhibit 6 is admitted.

11 (Exhibit 6 admitted.)

12 MR. BRUCE: I pass the witness.

13 CROSS-EXAMINATION

14 BY MS. MUNDS-DRY:

15 Q. Good afternoon, Mr. Haiduk.

16 A. Good afternoon.

17 Q. If you could go to the fourth page of Exhibit
18 6, the Yeso type log for the Paddock member, the log for
19 Skelly 905?

20 A. That's the one that's on the screen?

21 Q. Yes, sir. Did I hear you correctly that you
22 used -- the logging here used a 3 percent cutoff?

23 A. A 3 percent density porosity cutoff, yes.

24 Q. And how did you get this average density
25 porosity?

1 A. It's generated by our program. It takes the
2 data, the raw data from the LAS. We set it. What we've
3 done is taken cores throughout the areas, as we talked
4 about last week, and we found that the proper drain
5 density for the dolomites in the Paddock and the Blinebry
6 is 2.84 grams per cubic centimeter. So we put that into
7 our program, and it calculates what the porosity is based
8 on the raw data that the logging company generated.

9 You could change that to a 2.87 if you found
10 your core data was found to be 2.87, which would be pure
11 dolomite. Or if it was 2.71, that would be pure
12 limestone.

13 So you get this raw data from the coring. And
14 in our instance, we send it to either Weatherford Labs or
15 Core Labs for analysis, and they tell us what the drain
16 density is.

17 Q. I just want to make sure I understand. Then
18 is this the average density porosity you calculated for
19 this well, or is this an average for a larger area?

20 A. This particular well, that is for that well.
21 I think you'll see an asterisk next to each of these,
22 and that's the net pay qualified employer used. If it's
23 less than 2 percent or greater than 40 percent water
24 saturation, that wasn't included in the average.

25 Q. I don't want to talk about grain density

1 today. Should we agree to leave that today?

2 A. Your call.

3 Q. And I assume for the next page, for the type
4 log for the Blinebry member, it was the same process for
5 determining average density porosity?

6 A. Yes, ma'am.

7 Q. If we could go to the next slide titled "Yeso
8 Structure Map With Yeso Producers," you indicated here, I
9 believe, that the green dots are other operators?

10 A. Yes.

11 Q. Do you know how many Yeso wells operate in
12 this area?

13 A. Between 12- and 1,400, as I recall. I
14 wouldn't argue with any number over 1,000.

15 Q. I think we agree on that. I meant to ask this
16 of Mr. Rhodes, and I wonder if you know this. Do you
17 have copies of the APDs, the six APDs, with you today?

18 A. I personally do not. You'd have to ask
19 Mr. Rhodes.

20 Q. Do you know if someone in your group has
21 copies of those APDs?

22 A. I do not have them. Sorry.

23 Q. I meant to ask Mr. Rhodes. Hopefully, we
24 don't have to recall him. Maybe Mr. Bruce can let us
25 know.

1 MR. BRUCE: We'll find out. I haven't
2 looked.

3 Q. On the last slide here, the Yeso structure map
4 again, I think we talked about this at the last hearing.
5 Now focusing on just these four sections here, do you see
6 any structural issues in any of these leases that concern
7 you, any pinchouts, anything that you would have trouble
8 locating a well on those four sections?

9 A. I understand -- well, I think there's probably
10 a water contact running through here.

11 Q. That's probably where you fall off the shelf?

12 A. Yes. And we have identified a ridge through
13 here. So your structurally advantageous position and
14 potential is where we see these ridges. In other areas,
15 we've seen enhanced fracturing, which could help with the
16 permeability.

17 I've also seen an area in Sections 12 and 13
18 where it gets very tight that we think there's a
19 potential for faulting right in through there, so we've
20 chosen for initial development not to file for any
21 applications up in that area.

22 Q. In terms of the faulting in Section 13 --

23 A. We can't guarantee it. We haven't depicted it
24 as faulting, just tight contours.

25 Q. That's where I wanted to go with that.

1 Because you don't have much well control data in that
2 area; right?

3 A. Right. This is based on very little well
4 control. If you see the green outline here, that's based
5 on 3D that we have.

6 Q. Okay. I was going to ask you about that, too.
7 Thank you.

8 You said at the end there that you believe in
9 a 20-acre density for developing these four leases,
10 really the three sections, I should say?

11 A. Based on what we've seen in our analysis of
12 the area, yes, I do.

13 Q. And we've exhausted that topic. And that's
14 the subject of another hearing, isn't it?

15 A. Yes, ma'am.

16 MS. MUNDS-DRY: Okay. That's all the
17 questions I have. Thank you.

18 EXAMINER BROOKS: No questions.

19 EXAMINER WARNELL: I'm surprised by that.
20 Because last week, after this hearing that you all
21 referred to, David and I participated in a log analysis
22 seminar for two days. I thought for sure he'd want to
23 ask questions about those logs.

24 EXAMINER BROOKS: When you've had a
25 two-day seminar on a subject, you become an expert.

1 EXAMINER WARNELL: We won't mention grain
2 density.

3 EXAMINER BROOKS: I heard a lot about that
4 last week.

5 EXAMINER WARNELL: I had a question or
6 two.

7 EXAMINATION

8 BY EXAMINER WARNELL:

9 Q. You said on your porosity that anything
10 greater than 3 percent and water saturation less than 40
11 percent, you figure that that's potential production?

12 A. Yes. That's based on our core analysis and
13 basically some outside consultants who looked at these
14 logs and cores and made recommendations to us.

15 I think we mentioned last week Scott Hickman,
16 out of Midland, who's a long-time Permian Basin expert;
17 and Jerry Luscia, who's a consultant for us, as well,
18 have looked at this data.

19 Q. And when you calculate your porosity, are you
20 using just density porosity or density neutron?

21 A. We're using just density porosity. That was
22 based on our statistical analysis of our core data.

23 EXAMINER WARNELL: Okay. I have no more
24 questions.

25 MR. BRUCE: I have no follow-up questions.

1 MS. MUNDS-DRY: I have no follow up.

2 MARK JACOBY

3 Having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BRUCE:

6 Q. Would you please state your full name and city
7 of residence?

8 A. Mark Alan Jacoby. I live in Fort Worth,
9 Texas.

10 Q. Who do you work for and in what capacity?

11 A. Burnett Oil Company, engineering manager.

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

14 A. Yes.

15 Q. And were your credentials as an expert
16 petroleum engineer accepted as a matter of record?

17 A. Yes.

18 Q. Does your area of responsibility at Burnett
19 include this portion of Southeast New Mexico?

20 A. Yes, sir.

21 Q. Are you familiar with the engineering matters
22 related to these applications?

23 A. Yes, sir.

24 MR. BRUCE: I tender Mr. Jacoby as an
25 expert petroleum engineer.

1 MS. MUNDS-DRY: No objection.

2 EXAMINER WARNELL: So recognized.

3 Q. Mr. Jacoby, let's start with well costs. What
4 is Exhibit 7?

5 A. Exhibit 7 is the drilling -- the AFE for
6 drilling and completion of the Partition Federal Number
7 1.

8 Q. What are the well costs and then the
9 associated documents that go with this?

10 A. The well costs -- I might just mention
11 different AFEs have different formats. These are the
12 items of cost for billing and completion. This column is
13 for drilling costs. This column is completion costs. We
14 had to break this into two slides. This shows the bottom
15 of the AFE, the totals. The dryhole costs would be
16 437,000. The total well cost in this case is 1,834,000.

17 That also includes, for the first well on the
18 lease, the tank battery, the production facilities. You
19 take that out, and the drilling and completion cost is
20 1,604,000, I believe.

21 Q. Is that cost reasonable and in line with the
22 costs of other vertical wells drilled to this depth in
23 this area of New Mexico?

24 A. Yes, I believe so. We've drill almost 100
25 wells a few miles to the west, and these costs are very

1 much in line with that.

2 Q. So you have a good handle on well costs?

3 A. Yes.

4 Q. Anything in particular about the prognosis and
5 wellbore sketch?

6 A. The wellbore sketch basically shows a picture
7 of our -- the way we drill our wells. We set a 10 and
8 three-quarter surface casing, per the BLM/OCD
9 requirements. Then we drill out with an eight-and
10 three-quarter hole and drill the entire well and set
11 seven-inch casing.

12 In this case, you'll have -- we designed the
13 casing for collapse tension burst. In this case, we have
14 some 26 pound on the bottom and 23 pounds on the top. We
15 externally coat the seven-inch from the surface to 3,500
16 feet, just to protect it from assault. There's some
17 water up there sometimes. So it just gives us extra
18 protection against corrosion.

19 Q. What type of logging does Burnett propose to
20 do on this?

21 A. We would propose to run our usual sweep of
22 openhole logs once we reach TD. Actually, on the next
23 part of this exhibit -- this is not very legible. I'm
24 sorry. You have it in your packet there.

25 Basically, this is our geologic and drilling

1 prognosis that we use to give to all our people in the
2 field and keep us all on the same page. The top part is
3 just particular well information.

4 The next segment are the tops of the various
5 formations that we drill through, and then to show our
6 people drilling where TD would be, total depth. We drill
7 to the Tubb, which is just below the -- is at the bottom
8 of the Yeso, so we basically drill to that.

9 The next segment is our casing program, as I
10 just went over. The next is our mud program, how we
11 recommend -- we have a mud company that helps us with the
12 engineering of that, as well.

13 And then just some miscellaneous items. There
14 is the primary objective, secondary objective, and any
15 coring, any additional things that we would do. We do
16 not have any coring or anything under that category on
17 this well.

18 Then the next category gives the open hole
19 logging program. We run the dual space spectral density
20 compensated in gamma ray, duolateral log and long-space
21 sonic is our usual sweep of logs, and that's described
22 there. Then directions and equipment on the well and
23 phone numbers for appropriate personnel.

24 Q. Is Exhibit 8 the same type of exhibit, except
25 for the Nosler Federal Well Number 2?

1 A. Yes, sir.

2 Q. So we don't really need to go into that,
3 except I notice that the completed well cost there is
4 1,600,000. So that would not -- that's excising the tank
5 battery cost is what you're telling me?

6 A. That's correct. The Nosler Federal Number 1,
7 we typically put the tank battery equipment on the lease.
8 Subsequent wells on that lease would be the same working
9 interest cost.

10 Q. Is the proposed cost of the Nosler Federal
11 Number 2 reasonable and in line with the costs of other
12 wells drilled to this depth in Eddy County?

13 A. Yes.

14 Q. Let's move on to your Exhibit 9, which is five
15 pages of materials, starting with a completion
16 comparison. Can you discuss that for the Examiner?

17 A. Yes. I might add that this exhibit was
18 included in the last hearing. It's been referred to.

19 This is an exhibit basically just to compare
20 our completion practices and our completion results to
21 COG's. We chose in the area where there was a group of
22 wells COG operates and a group of wells that Burnett
23 operates, and these happen to also be on three sides of
24 them. So we just tried to get the wells as close
25 together so we would know we were pretty much in the same

1 reservoir.

2 This is the COG Harbor Federal lease. Yellow
3 is Burnett Gissler A and B leases. Moving clockwise,
4 these are strip logs, similar to what Mr. Haiduk showed a
5 minute ago. This one on the left is Burnett's Gissler
6 B51. Let me point out those wells on this map. Can you
7 all see the pointer, this triangle in the upper left?
8 And the COG well is the Harbor Federal 13. It's just
9 across the lease line. So we try to get two wells in
10 proximity of each other.

11 The Burnett well began completion in October
12 of 2009. What we do at Burnett is complete generally the
13 lower half of the Blinebry. Generally, the Blinebry will
14 be completed in two stages. We do an acid breakdown and
15 we do large-volume slickwater frack. And we put that
16 interval on production and produce it until it's -- the
17 low water is recovered and the well is stabilized before
18 we move up to the next interval.

19 This well produced for three months. Let me
20 just say the slickwater frack there was almost 20,000
21 barrels of water, 240,000 pounds of sand. That zone was
22 produced for a while. And the upper Blinebry was
23 completed with a little bit smaller frack, but again, a
24 slickwater frack and sand, just a little less pay. As
25 Mr. Haiduk mentioned, what we will do is select the net

1 pay and perforate selectively at those intervals, as
2 compared to a COG well.

3 In their well, they completed -- they have
4 three interval slots of perforations, each 200 feet, that
5 are -- as I understand, most of their wells have 200-foot
6 intervals just to blanket cover and get the pay that's
7 within those 200 feet. And then each one of those wells
8 were fracked with about 3,000 barrels of fluid and 178-
9 or 180,000 pounds of sand.

10 The COG well was actually -- from what I could
11 tell by the reports, these four fracks were just
12 completed consecutively all in one day or two days,
13 however much time it takes to complete those, and then
14 the well is put on production.

15 Our well was produced out of the Blinebry for
16 a time and then the upper part of the Blinebry and then
17 later on in -- just very recently, we completed the
18 Paddock. It's producing the Paddock.

19 Just to show a comparison, our total frack
20 volume for three stages was 54,000 barrels of fluid,
21 754,000 pounds of sand. The COG well was four stages,
22 almost 12,000 barrels of fluid, 689,000 pounds of sand.
23 This bar chart just shows a comparison. Can you see the
24 bar chart on the left?

25 The left bar chart is Burnett. The blue is

1 the fluid, and you can see the difference in the volume
2 of fluid. Burnett fluid is 462 percent greater than the
3 Concho fluid. The sand is pretty comparable. That times
4 10 just means that's the scale. The scale is times 10,
5 so --

6 Q. Anything further on that exhibit?

7 A. I don't think so.

8 Q. Let's move on to the second page, which is a
9 cross-section. What does that reflect?

10 A. This cross-section simply reflects -- this
11 begins at that same B51. It comes to the southeast, to
12 the well on the southwest corner, and crosses the Harvard
13 Federal lease diagonal to the well in the northeast
14 corner and then back to Burnett the well.

15 It's just simply to show that the pay is very
16 similar. The top part of the well, the high amount of
17 red, is the Paddock. That would be the net pay in the
18 Paddock. Then you see the Blinbry is kind of scattered
19 through the bottom of those four. That's simply to show
20 that that's very comparable in the same reservoir.

21 Q. So the wells both on your lease and COG's
22 lease are comparable?

23 A. Yes, I would say, looking at the logs.

24 Q. Let's move on to the next sheet and discuss
25 the production differences among the wells.

1 A. The dashed lines represent Burnett. The red
2 lines represents GOR. Green represents oil rates. What
3 this curve is is six months' production and GOR
4 normalized to the first month of production of each of
5 these nine wells, irregardless of when they started. So
6 that's how it's normalized.

7 The chart of those numbers is on the bottom,
8 and they're graphed up above. I might add also, this was
9 not on the exhibit previously, but to show -- this
10 question was asked. This is kind of a score card of how
11 many wells have both -- had the Paddock and Blinebry
12 opened. There are nine wells, two zones in each well,
13 and then the six months. So we took the months of
14 production for each zone times the number of zones open.

15 COG had 59 production months. Burnett had 62
16 production months. So basically, they're very comparable
17 to the amount of Paddock and Blinebry that was opened in
18 all of these nine wells. The comparison shows that we
19 included the percent difference. COG is in red -- I'm
20 sorry. COG is -- the oil is in green. You see the first
21 rate. I don't remember the numbers, and I can't read the
22 numbers.

23 But Burnett's first month was 400-something
24 percent greater. The second month -- 44 percent. The
25 first month, Burnett's production was 27,700 barrels.

1 COG's was 18,900. And the GOR was 378 -- I'm sorry. Let
2 me go through the oil production first.

3 Burnett was 27,700, and you can follow it
4 across on the dashed line. The sixth month was 27,400,
5 not very much changed. You can see the percentage above.
6 Concho was 44 percent, 54, 88, 111, 131, 208. Then GOR
7 comparison for that same time period, Burnett's GOR
8 ranged from the first month 1,700, the last month was
9 2,500. COG's GOR ranged from 3,800 to 7,100 at the end
10 of the six months.

11 Q. Now, does six months' production give you a
12 good idea of how the well is going to produce overall
13 during its life?

14 A. It gives a good indication. You can look at
15 the decline curve, and it's the beginning of a good
16 indication.

17 Q. So what you're showing by this exhibit is that
18 using Burnett's completion procedures and operations
19 results in substantially more production from the Burnett
20 wells than the COG wells?

21 A. Yes, sir.

22 Q. Combined with the GOR, it was also lower in
23 the Burnett wells?

24 A. Yes, sir.

25 Q. Anything else on this sheet?

1 A. No, I don't believe so.

2 Q. Okay. Let's move on to your next slide.

3 A. This is simply a slide that a consulting
4 engineering firm that worked with us that was in that
5 last hearing, as well, put together. This is to show --
6 one, it shows the evolution of the stimulation of
7 Burnett. Early on, when we were completing the Yeso
8 wells, we completed them with large volume hot acid
9 treatments. I think -- I'm pretty sure COG did the same,
10 as well. And they have evolved into the gel water fracks
11 that we just talked about.

12 Burnett used a few of the gel water fracks.
13 And then we have, in the last 18 months or so, altogether
14 gone to using slickwater fracks. This top part shows the
15 Paddock. Burnett hot acid jobs, we had 65 wells
16 analyzed, and the EUR was 115,000 barrels. Six wells in
17 the Paddock, the EUR was 149,000 barrels.

18 Q. Substantially better results?

19 A. Substantially better results. We see that
20 without fail.

21 Q. That's just from the Paddock zone?

22 A. Yes. Then the Blinebry, we were not able to
23 make commercial production out of Blinebry with hot acid
24 jobs. It needed to be fracked. So we have been
25 completing Blinebry first. Eleven wells were analyzed.

1 And the EUR of the Blinebry wells is 157,00, based on PGH
2 Engineering's analysis.

3 Q. So what you're looking at is roughly 300,000
4 barrels per well?

5 A. It appears so, yes.

6 Q. These are vertical wells?

7 A. Yes. This compares to -- they analyzed 213
8 wells, in COG, not differentiating between hot acid and
9 slickwater. We don't have that detail. But those 213
10 wells average was 66,000 barrels.

11 Q. What is the life of these wells?

12 A. It's early in their life. We think it would
13 be very substantial. I don't recall from our decline
14 curves, but they flatten out in the 20-plus year range.

15 Q. Okay. And what is the final sheet or final
16 slide on your Exhibit 9?

17 A. This final slide is just a breakdown of that
18 number of 66,000 barrels of the 213,000 wells of COG's.
19 And this is to show where the wells are located in
20 Township 17 South, 30 East, several sections in that
21 township range. And in 17 South, 32 East, several
22 sections in that area as well, just to show some
23 cross-section of wells.

24 Q. Next move on to your Exhibit 10.

25 A. This slide shows a map of the Concho -- I mean

1 the Hudson Maljamar acreage of Sections 12, 13, 24, 25
2 North of South. This shows the current surface
3 development.

4 All of the blue dots there are Hudson-operated
5 Grayburg-San Andres wells. The northern end, in Sections
6 12 and 13, are the wells that Mr. Haiduk referred to that
7 Burnett operates, contract operates, the drilling and
8 completion of those wells.

9 And in the southern end, the blue dots are
10 Grayburg-San Andres wells that Hudson has operated for
11 many years. I'm not sure exactly how far back that goes,
12 but they have a lot of development on those four
13 sections.

14 Then the two red triangles on the left, the
15 Partition Federal Number 1 and the Nosler Federal Number
16 2, are the two wells in question today. And then the two
17 green triangles in the southeast of 13 and the southeast
18 of 24 are the two wells that were mentioned as having
19 been applied for.

20 Q. In looking at this exhibit, Mr. Rhodes
21 testified that Burnett and various members of the Hudson
22 group do own the working interest above 4,230 feet;
23 correct?

24 A. Correct.

25 Q. So when you drill the wells -- Burnett has an

1 interest in those wells -- are those wells also going to
2 be prospective in the Grayburg-San Andres?

3 A. Yes.

4 Q. And in your opinion, would it be sensible to
5 have an operator -- not only the same operator not only
6 for the Glorieta Yeso, but for the shallower zones?

7 A. I certainly do.

8 Q. From an operational standpoint?

9 A. Yes. It's one of efficiency and use of
10 wellbores.

11 Q. Finally, let's try to wrap this up. There
12 were some questions asked of the prior witnesses about
13 surface considerations and environmental issues.
14 Although this isn't an exhibit, can you discuss what
15 Burnett is doing out there with respect to the surface
16 issues?

17 A. Yes. Maybe that first bullet point we
18 discussed quite a lot in the previous hearing. But as
19 witnesses prior to me mentioned, we believe, first of
20 all, a 20-acre pattern is the first way to develop this
21 field and then evaluate it for 10 acres.

22 That's based on the fracture stimulation we
23 talked about. We get a larger drainage area, resulting
24 in fewer wells to drain the reservoir and higher
25 production rates initially and EURs. And this results in

1 50 percent less surface needed for development, versus
2 the 10 acres.

3 Hudson Oil has been developing the
4 Grayburg-San Andres, as we just discussed. They operate
5 through the Maljamar lease, currently developing 12 and
6 13, as we discussed.

7 I mentioned Burnett serves as contract
8 operator, drilling and completion. Burnett and Hudson
9 have had a relationship for many years, a good working
10 relationship. This would allow Burnett and Hudson to
11 jointly develop the Yeso and the Grayburg-San Andres
12 reservoirs, which would result in quite a few operational
13 efficiencies and cost savings.

14 I know this question came up a few minutes
15 ago, and I will say that we have been working on the
16 conservation agreement regarding the sand dune lizards
17 and the prairie chickens that have gotten so much
18 attention recently.

19 But we have been talking with Ty Allen, with
20 the BLM, the Fish and Wildlife. The regulatory
21 coordinator that works under my direction and I, she's
22 been to several meetings. I have been to some myself.

23 We have completed all the paperwork. And
24 actually the Fish & Wildlife, Ty has it in his hands.
25 But he wanted to wait until there's an addendum that's

1 being added to that agreement regarding H2S. And he
2 wanted to wait until that's added, because it's evidently
3 going to be finalized this week, possibly. He wanted to
4 wait for us to do our final signature on that.

5 Q. So your conservation agreement with the BLM
6 should be ready within a matter of days?

7 A. It should be ready possibly this week, pending
8 hearing back from the BLM. So we have had a lot of
9 discussions working on that.

10 Q. Finally, if you could, could you summarize why
11 Burnett should be granted -- why its application should
12 be granted and it should be granted operatorship of these
13 two wells we're here today for?

14 A. I would say that Burnett seeks operatorship
15 because of the efficiencies and the history that we have
16 with Hudson in developing this property. We have felt
17 like we have a very good completion method. We know how
18 to drill and operate the wells very effectively and
19 efficiently. We continue to try to determine how we can
20 optimize completion to optimize the use of the surface as
21 well, and we think we've made good progress there.

22 Q. And certainly Burnett -- the Burnett group
23 will be liable for the vast bulk of the drilling and
24 operating expenses on this lease?

25 A. Yes.

1 Q. Were Exhibits 7 through 10 prepared by you or
2 under your supervision or compiled from company business
3 records?

4 A. Yes, sir.

5 Q. In your opinion, is the granting of Burnett's
6 pooling applications and the denial of COG's applications
7 in the interest of conservation and the prevention of
8 waste? A. Yes.

9 MR. BRUCE: Mr. Examiner, I move the
10 admission of Exhibits 7 through 10.

11 MS. MUNDS-DRY: No objection.

12 EXAMINER WARNELL: 7 through 10 are
13 admitted.

14 (Exhibits 7 through 10 admitted.)

15 MR. BRUCE: And I pass the witness.

16 MS. MUNDS-DRY: Good afternoon. I am glad
17 to see you, just for the record.

18 THE WITNESS: Thank you.

19 CROSS-EXAMINATION

20 BY MS. MUNDS-DRY:

21 Q. If we could go to Exhibit 7, please. It's the
22 AFE for the Partition Number 1 well. On the second page
23 of your -- okay.

24 A. Okay.

25 Q. Looking at the second page, the title of my

1 hard copy says, "Geologic and drilling prognosis."

2 A. Okay.

3 Q. You indicate here how you're going to drill
4 out with brine water under your mud program?

5 A. Yes.

6 Q. And you also indicate for your mud program,
7 you're going to use fresh water. How does Burnett plan
8 to dispose of its water?

9 A. If I might clarify, in the mud program, the
10 fresh water is used from the surface hole through the
11 point of the fresh water interval that the OCD and BLM
12 require. And then we set surface casing, and that caps
13 off where we use fresh water. We use a closed loop
14 system. We recover the solids. We haul the solids to a
15 disposal system that I guess everyone in Southeast New
16 Mexico uses and dispose of the liquid.

17 Q. If you could turn to Exhibit 9, your
18 completion comparison? If you could put Exhibits 7 and 8
19 in front of you, as well, the two AFEs for Partition and
20 Nosler?

21 A. Okay.

22 Q. You told me before that Burnett designs frack
23 length to be 500 feet; is that correct?

24 A. Approximately.

25 Q. I notice in your AFE for the Partition, it's

1 proposed to be 430 from the west line and 430 from the
2 south line?

3 A. Yes.

4 Q. If your frack length is successful, won't that
5 be producing someone else's minerals?

6 A. What generally happens the fracks heal. That
7 would be something we may need to re-look at and scale
8 down.

9 Q. The same would be the case for the Nosler
10 Number 2, although I understand that's more interior.

11 A. Right. We will look at that and evaluate the
12 frack length. We can design the frack length to be
13 shorter.

14 Q. I believe you told me before that you don't
15 put tags in your wells. So you don't know how successful
16 your frack job was, in other words?

17 A. I base it on a lot of history, and I have a
18 frack consultant that designs these.

19 Q. So you may need to re-evaluate your surface
20 locations?

21 A. Not the surface locations.

22 Q. But the bottomhole locations?

23 A. The design of the frack.

24 Q. Okay. So in terms of your completion
25 comparison, you may do something different than what

1 you've outlined here for us today?

2 A. All it may be is maybe a little smaller
3 volume.

4 Q. Mr. Jacoby, I'm now looking at the third page
5 of Exhibit 9, the six months' production and GOR
6 comparison. Do you have that in front of you?

7 A. Yes.

8 Q. I believe when we discussed this in the prior
9 hearing, you indicated that not all of these wells had
10 total Yeso production, meaning they weren't all completed
11 in the Paddock and the Blinebry; is that correct?

12 A. That's correct.

13 Q. So I believe there are two Burnett wells and
14 two Concho wells that had total Yeso completions?

15 A. What I did was we went through and added up
16 the wells that were in the Paddock, in the Yeso, and
17 that's what the 59 production months accounts for.
18 Basically, those wells are -- that many wells were open
19 in the Blinebry and the Yeso for maybe six months. The
20 score card came up that COG had 59, Burnett had 62.

21 Q. Let me understand. For those six months, they
22 were all open -- they were open during that six months?

23 A. Some were. There were evidently a few that
24 were a little bit different. But for the most part, out
25 of 18 wells in six months, there was three different --

1 three zones that were not open in some wells in COG
2 versus Burnett.

3 Q. For some of those wells, they weren't open for
4 the entire six months; there was some lesser period?

5 A. That's correct.

6 Q. And I believe, Mr. Jacoby, that the table down
7 at the bottom, you said you got that information from
8 public -- I think OCD data, or maybe it was a service. I
9 don't recall.

10 A. IHS.

11 Q. But I believe you also said you altered the
12 numbers to adjust your scale here in some way. Can you
13 explain to us how you got these numbers?

14 A. I'm not sure exactly what you mean. I didn't
15 alter the numbers; except they're normalized. So that
16 all the wells, when they came on production, regardless
17 of what date they came on production, they're brought
18 back to the first month of production.

19 The numbers are not altered, but they're
20 normalized. So every well's first month of production is
21 shown in the first month of production.

22 Q. Okay. On the next page, the EUR comparison,
23 this was prepared by Mr. Gore's group; is that correct?

24 A. Oh, yes.

25 Q. PGH Engineering?

1 A. Yes.

2 Q. And I know this relates to the last page, but
3 gives more information. Do you know which Concho wells
4 were analyzed of the 213 that are noted here?

5 A. I do not have those exact wells. I can see
6 the sections. I'm sure we could probably get those.

7 Q. Do you know why these 213 wells were picked?

8 A. The main thing I know is it was picked just to
9 have a cross-section from 17 South 30 to 1732, just to
10 try to show some differences across the trend to try to
11 get a cross-section of the wells.

12 Q. But there are specific sections here out of
13 those townships and ranges, and I'm curious about why
14 those wells were picked.

15 A. I'm not sure.

16 Q. Do you know how the EUR was determined for
17 this slide?

18 A. By decline curve analysis.

19 Q. Did Burnett perform that decline curve
20 analysis, or did PGH Engineering do that analysis?

21 A. PGH Engineers.

22 Q. Of the six wells that were analyzed for the
23 slickwater frack that are noted here, when were those
24 wells drilled?

25 A. I would have to get that information for you.

1 They were in -- over about a two- or three-year period,
2 2008, '9, '10.

3 Q. Same question for the 11 wells analyzed. Do
4 you know when those wells were drilled?

5 A. The 11?

6 Q. In the bottom for the Blinebry.

7 A. The same time period.

8 Q. Are those different wells or the same wells as
9 the six wells listed above?

10 A. The six wells? You're talking about the nine
11 wells, the comparison?

12 Q. No. If you go to the next -- do you see the
13 six wells analyzed there?

14 A. Yes.

15 Q. Are these six wells the same as the 11 wells,
16 or are they different?

17 A. Some of them may be the same. But what I do
18 know, irregardless, those six wells were only completed
19 in the Paddock at the time. There was no Blinebry
20 influence in this number or vice versa.

21 Q. You think that they were completed in the
22 Paddock first and then the Blinebry?

23 A. No. They were completed in the Blinebry
24 first. And then we set a bridge plug above the Blinebry,
25 moved up to the Paddock, and completed the Paddock.

1 Q. Okay. You noted in your slide on the surface
2 development issues, Mr. Jacoby, that -- I know it's not
3 an exhibit here -- that Burnett fully intends to develop
4 on a 20-acre pattern?

5 A. That's what our studies and what we feel is
6 the most prudent thing at this point, and then evaluate
7 if 10s are justified beyond that.

8 Q. And I don't want to veer off into the density
9 issues, but I'm curious. In your discussions with BLM,
10 have you discussed your full development plan of these
11 four sections with the BLM?

12 A. We have for the first six wells that we have
13 APDs for. We have shown -- we have gone over that with
14 them, had a meeting with them. And they're scattered
15 throughout the sections, and we have discussed our
16 surface use plan.

17 Q. Beyond those six wells, have you discussed a
18 bigger plan for how you fully intend to develop on
19 20-acre spacing?

20 A. We have not looked at every location, no. I
21 think the plans for the first six wells would apply to
22 the rest of the surface area, although we have discussed
23 it to some extent. Because there's a deep, deep draw
24 that cuts across, so we discussed some of that initially.

25 Q. So at least for some of the area where there's

1 particular surface issues, water being one, you have
2 discussed with the BLM how you could develop around those
3 areas; is that correct?

4 A. Yes.

5 Q. And have you discussed with the BLM, whether
6 it's been in your CCA discussions or more generally in
7 your development, how you mitigate for all the dunal
8 issues that are associated with the lizards and the
9 chickens to a lesser degree?

10 A. We talked generally. We do not have all the
11 detail determined. But yes, we have discussed that.

12 Q. Mr. Jacoby, I think Mr. Rhodes indicated that
13 you would know the answer to this question. Do you know
14 when you plan to drill? Do you have a rig available?

15 A. I keep one rig going. That rig could be moved
16 soon, once it completes drilling the well it's on now. I
17 have a second rig coming the early part of July, so I'll
18 have two rigs. So yes, I'll have a rig available to
19 drill very soon, right away.

20 MS. MUNDS-DRY: Nothing further. Thank
21 you.

22 EXAMINATION

23 BY EXAMINER BROOKS:

24 Q. It looks like you're right in the middle of
25 the lizard habitat; right?

1 A. Right.

2 Q. What do you anticipate -- do you anticipate
3 any problems with your proposed operations coming from
4 that source?

5 A. We will have to -- I'm sure there will be --
6 there may be some situations where we will have to move a
7 location. Some of the first six, I don't remember
8 exactly which one, but we've had to move the surface a
9 little bit. If we need to kick the bottomhole over, we
10 can do that. We've done that before. So that would be
11 one alternative.

12 Q. I assume the subject has been discussed in
13 your discussions with BLM, although since there hasn't
14 been a designation yet, it would be premature for them to
15 take a position on it?

16 A. Yes.

17 Q. I guess it's pretty hard to know at this point
18 what effect it would have?

19 A. That's true.

20 Q. What is the time frame for you to get the
21 wells drilled that are proposed in this proceeding?

22 A. The first two that are under question today,
23 we could move -- as I mentioned, we have a rig that's
24 available to move right away. I have a second rig that
25 is coming in July to continue drilling these obligations,

1 that we could drill the second two wells we've proposed
2 and then continue with our drilling program over on the
3 area in Loco Hills and Cedar Lake that we have ongoing
4 drilling.

5 Q. So would you anticipate that you would get the
6 wells that are the subject of this proceeding drilled and
7 completed within the next four or five months?

8 A. Yes, sir.

9 EXAMINER BROOKS: Okay. Mr. Warnell?
10 Thank you.

11 EXAMINER WARNELL: I had no idea that this
12 was really a question of the chickens and lizards. If
13 you could show some proof that the chickens were eating
14 the lizards, I don't know if that would help you out or
15 not.

16 MR. BRUCE: I think they're going to
17 import roadrunners.

18 EXAMINATION

19 BY EXAMINER WARNELL:

20 Q. Mr. Jacoby, I think you just testified that
21 for several different reasons, Burnett is able to
22 complete a well more efficiently than COG?

23 A. Yes, sir.

24 Q. I bet there's a couple of folks out there that
25 are going to have something to say about that.

1 A. Probably.

2 MR. WARNELL: I guess we'll give them
3 their chance to say it. I have no more questions

4 MR. BRUCE: I have a couple of follow-up
5 questions.

6 REDIRECT EXAMINATION

7 BY MR. BRUCE:

8 Q. With regard to the sand dune lizards,
9 Mr. Jacoby, on your Exhibit 10, you were talking about
10 the wells on the north end of these four sections that
11 you have drilled and then turned over operations to
12 Hudson Oil Company, the Grayburg-San Andres wells.
13 Because of that, number one -- and those are fairly
14 recent wells?

15 A. Yes, sir, they are.

16 Q. So you had to deal with the BLM regarding
17 those locations and the sand dune lizards at those
18 locations?

19 A. Yes, sir.

20 Q. So you have a pretty good handle on what's up
21 there?

22 A. Yes, sir.

23 Q. With respect to the south, again you plan on
24 using, where available, where permissible, existing
25 locations where Hudson Oil Company already operates

1 wells --

2 A. Yes.

3 Q. -- to minimize surface disturbance?

4 A. Yes.

5 Q. And then Ms. Munds-Dry asked you about frack
6 length. You are at orthodox locations for your wells;
7 are you not?

8 A. Yes.

9 Q. You could actually move further to the south
10 and east and be closer to the acreage to the west?

11 A. Yes, sir.

12 Q. And of course, the offset always has the right
13 to drill offset wells; do they not?

14 A. They do.

15 Q. They're not helpless?

16 A. No.

17 MR. BRUCE: Thank you.

18 EXAMINER WARNELL: Any questions?

19 MS. MUNDS-DRY: I'm tempted, but I'm going
20 to leave it. No further questions.

21 EXAMINER WARNELL: Let's take a little
22 break.

23 MR. BRUCE: I'm done with my case,
24 Mr. Examiner.

25 EXAMINER WARNELL: Thank you. Let's take

1 a 10-minute break and come back at, I guess, 2:55.

2 (A recess was taken.)

3 EXAMINER WARNELL: Let's go back on the
4 record then. Ms. Munds-Dry, I believe it's your shot.

5 MS. MUNDS-DRY: Thank you.

6 DAVID EVANS

7 Having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. MUNDS-DRY:

10 Q. Would you please state your full name for the
11 record?

12 A. David Ray Evans.

13 Q. Where do you reside?

14 A. Midland, Texas.

15 Q. By whom are you employed?

16 A. Concho -- or COG, also known as COG Operating.

17

18 Q. What do you do for COG?

19 A. I'm the lead landman for the Shelf Team.

20 Q. When you say, "the Shelf," you mean the Yeso
21 Shelf that's the subject of today's hearing?

22 A. Yes.

23 Q. Have you previously testified before the
24 Division?

25 A. Yes.

1 Q. Were your credentials accepted and made a
2 matter of record at that time?

3 A. They were.

4 Q. Are you familiar with Concho's two pooling
5 applications that are the subject of the hearing today?

6 A. I am.

7 Q. Are you familiar with the two Burnett
8 applications that we are also discussing today?

9 A. Yes.

10 MS. MUNDS-DRY: We tender Mr. Evans as an
11 expert in petroleum land matters.

12 MR. BRUCE: I have no objection.

13 EXAMINER WARNELL: So recognized.

14 Q. (By Ms. Munds-Dry) Mr. Evans, would you
15 briefly state to the Examiners what Concho seeks today?

16 A. I'm here seeking a request that all four
17 vertical applications be denied.

18 Q. Why do you say that?

19 A. Well, due to the BLM issues, surface issues,
20 Concho has needed to take a step back and re-evaluate its
21 development program. There are surface restrictions out
22 here.

23 Q. If you could summarize, how has Concho
24 re-evaluated how it plans to develop the four sections?

25 A. Originally, we believed that this would be a

1 vertical drilling program of up to 192 wells. Since that
2 time, we've had numerous conversations with the BLM, and
3 we've come to realize that the surface is restricted. We
4 can only have 27 to 32 surface locations. And if we
5 don't change to a horizontal program, that the program
6 will cause great waste.

7 Q. Has Concho proposed any horizontal wells at
8 this time?

9 A. We proposed six trilateral horizontals
10 yesterday.

11 Q. And did those go out to the parties that are
12 in this hearing today?

13 A. Yes.

14 Q. Would you turn to what's been marked as Concho
15 Exhibit 1, please, and identify and review this plat for
16 the Examiners, if you would?

17 A. This is a plat showing the ownership of the
18 two federal leases, dated 1934, between the parties.
19 Concho's ownership is by three parties, two term
20 assignments that expire in October and one that expires
21 in May of 2012.

22 Q. You said these leases have been held since the
23 1930s?

24 A. Yes.

25 Q. Has there been any Yeso development on these

1 four sections since that time?

2 A. There was one recompletion of a Morrow
3 dryhole.

4 Q. And I believe Burnett has already identified
5 the record title holders. Who do you understand the
6 record title holders to be of these leases?

7 A. The Hudson family.

8 Q. Various Hudson entities?

9 A. Yes.

10 Q. And this identifies on here, Mr. Evans, the
11 ownership -- Concho's ownership?

12 A. Yes.

13 Q. And what are the interest totals for those
14 leases?

15 A. The total is 33.71 percent for Concho.

16 Q. And you also have on here for the Knockabout?

17 A. Our interest in the Knockabout is 44.83.

18 Q. How did Concho come by its ownership interest?

19 A. Concho has been attempting to acquire term
20 assignments from the Ard and Moran Shelton Trust for well
21 over a year. The Ards, in particular, were very
22 skeptical that any development would be -- would occur,
23 due to the fact that previous assignments that were
24 granted by them to other companies were never developed.

25 This caused them a great lack of confidence

1 that Concho would actually get something developed here,
2 which caused us to go from a standard agreement to a very
3 short-term drilling dedicated term assignment.

4 Q. If you could outline for us the general
5 obligations of that term assignment?

6 A. Basically, a six-month assignment, with a
7 continuous drilling obligation over the primary term of
8 45 days.

9 Q. If you could turn to Concho Exhibit Number 2,
10 please? Are these well proposals that were sent to the
11 various parties?

12 A. Yes.

13 Q. And what are the names of the wells? If you
14 could maybe try to compare the well names that Concho has
15 to the well names for Burnett, so we can understand the
16 difference.

17 A. We have the Puckett 13 Number 61, and I forget
18 Burnett's name for them. The Nosler and --

19 Q. Is that the Partition Federal Number 1?

20 A. Yes.

21 Q. So you have the well proposal letter. What
22 was the date that that well proposal for the Puckett 13
23 61 was sent?

24 A. January 21, 2011.

25 Q. If you go a few pages back, I believe the

1 other well is also in here.

2 A. The Puckett 24 Number 61 in Section 24.

3 Q. Is that what Burnett calls the Nosler Fed
4 Number 2?

5 A. Yes.

6 Q. This well proposal letter was sent out on the
7 same date, January 21st?

8 A. Yes, it was.

9 Q. In it, you included the green cards?

10 A. Yes.

11 Q. And also the AFEs for both those wells?

12 A. Yes.

13 Q. And did you also include an operating
14 agreement with both those well proposals?

15 A. We did.

16 Q. You didn't include those here today?

17 A. No.

18 Q. Before we get into the well proposal letter
19 too much farther, can you tell us when you first made
20 contact with the Hudson record title holders of the
21 lease?

22 A. We first made contact -- I first made contact
23 with Randall in October, late October. We had our first
24 meeting in November.

25 Q. You said you called Mr. Hudson?

1 A. Yes.

2 Q. During that call, did you set up a meeting?

3 A. Yes.

4 Q. When did that meeting occur?

5 A. November the 2nd.

6 Q. Sometime in early November?

7 A. Yes.

8 Q. What happened during that meeting?

9 A. Well, we went to talk to them about the
10 development of this property. We were concerned that any
11 effort we made to make a drilling program out of this,
12 that they could not participate in the number of wells
13 that we were going to propose.

14 So we went to see them to see if there was a
15 way to discuss maybe a carry opportunity for them, for us
16 to carry part of their interest and earn part of their
17 interest so that we could get the wells drilled on a
18 10-acre pattern.

19 Q. What was Mr. Hudson's response to the offer?

20 A. We never even got the offer out. We were told
21 that we needed to step aside, that Hudson/Burnett was
22 going to operate these wells, that we didn't know what we
23 were doing, and that we had no right to operate our
24 proposed wells.

25 Q. Was that the conclusion of that meeting?

1 A. Basically they told us how they planned to
2 develop the property, one to five wells per year.

3 Q. So during that time, they gave you a general
4 development plan?

5 A. They mentioned that they would drill one to
6 five wells.

7 Q. Okay. Let's go to Concho Exhibit 3, please,
8 and let's outline your history of discussions with
9 Burnett, if we could. You previously mentioned the well
10 proposal letter. Let's go to -- what's this first
11 document here?

12 A. This is a letter dated February 9th of 2011.
13 It is a response to our meeting with Burnett/Hudson to
14 Mr. Leach by Mr. Pollard, I believe, basically bringing
15 out that they enjoyed meeting with us, that they've held
16 these properties for four generations, that
17 Burnett/Hudson are working on developing the property,
18 that we need to step aside and let them operate it as
19 they see fit.

20 Q. Was this a reaction to the meeting you had
21 with Mr. Hudson?

22 A. Yes, we believe so.

23 Q. And you had already sent out your well
24 proposal letter?

25 A. That's correct, 32 wells.

1 Q. So not just these two wells that are subject
2 of the hearing? There were 32 other wells you also sent
3 them well proposals for?

4 A. And 15 others.

5 Q. And then 15 others later on?

6 A. Yes.

7 Q. Mr. Rhodes was correct that there was a total
8 of 47 well proposals?

9 A. Yes.

10 Q. And do you recall, Mr. Evans, when the Burnett
11 well proposal came to Concho?

12 A. It was about the same period of time, right
13 after our proposals went out.

14 Q. After this letter that Concho received on
15 February 9th, did Concho meet with the Burnett folks
16 again?

17 A. Yes. We met with them several times. In
18 fact, four times in all. In November, we flew to Fort
19 Worth. We flew to Fort Worth in February. And then in
20 March, twice in March.

21 Q. At the first March meeting, which I guess
22 would be your second meeting of the four, what
23 discussions did you have at that time?

24 A. The first meeting was to discuss the joint
25 development of the property to see if we could relieve

1 them of any concerns.

2 The second meeting was more a discussion of
3 our Yeso allowable problems.

4 The third meeting was about what would they do
5 if we turned over operations to them. Particularly,
6 could they, one, maintain our term assignment so it
7 wouldn't expire and cause us harm? Two, how many wells
8 would that be? Would it be four?

9 We proposed -- they said four in 2011, and
10 they would drill eight, if the program was good, in 2012.

11 Q. Let me stop you there. Let's go back to the
12 letters, so we can trace the timeline. The second letter
13 appears to be from Concho. What is this?

14 A. This is a response to Mr. Pollard's letter to
15 Tim Leach. Mr. Hyde drafted this letter.

16 His response to this was that we had the right
17 to develop the property; that we planned to develop it on
18 10s, rather than on 20; that we are in disagreement with
19 Burnett's assertion that Concho's development plan would
20 cause surface disturbance and damage to the lizard and
21 the prairie chicken; that we are the first to have a CCA
22 with the state.

23 Q. We'll talk about the CCA later in more detail.
24 I believe the March 10th letter is in here twice.

25 The next letter is dated March 16th. What is

1 this letter?

2 MR. BRUCE: Mr. Examiner, at this time I
3 would object to any testimony based on this letter, and I
4 ask that it be removed from this exhibit packet. This is
5 the letter --

6 EXAMINER BROOKS: Which exhibit is this?

7 MR. BRUCE: This is Concho Exhibit 3. If
8 you go down --

9 EXAMINER BROOKS: Yeah, I've got that in
10 front of me.

11 MR. BRUCE: Go to the ninth page. It's a
12 letter dated March 16th.

13 EXAMINER BROOKS: Okay.

14 MR. BRUCE: I object. This is a letter
15 that has been discussed before. It was sent as a
16 privileged settlement communication.

17 Although, as you pointed out many times
18 before, Mr. Examiner, the Rules of Evidence do not
19 strictly apply to Division hearings, they have been used
20 as guidance.

21 And this letter -- basically, these parties
22 have been in litigation for several months. And I don't
23 think an agreement among the parties regarding
24 confidentiality is necessary for one party to send a
25 confidential settlement letter. I would asked that this

1 be excised.

2 As I said, the same argument was used against
3 me in similar cases with Cimarex in Section 18 of 15
4 South, 31 East, a couple of months ago. And I think this
5 letter should not be part of the record.

6 MS. MUNDS-DRY: If I may respond? First
7 of all, there is no law, according to Mr. Bruce's
8 assertion, that you can have confidentiality on one --
9 it's not a one-way street. Both parties need to agree to
10 keep something confidential.

11 In terms of it being labeled as an alleged
12 settlement communication, as Mr. Bruce points out, the
13 Rules of Evidence can be loose guides here. That rule
14 contemplates settlement communications being barred from
15 being presented into evidence if it's to prove the
16 validity or invalidity of a claim or the amount of the
17 claim.

18 If it's being proffered to show bad faith or
19 some ulterior motive, then the courts generally do not
20 require that it be prohibited from being admitted into
21 evidence. And that is New Mexico law, and I have a cite
22 here.

23 EXAMINER BROOKS: I think there's
24 something to that effect the Rule of Evidence, as I
25 recall.

1 MS. MUNDS-DRY: That is in 11-4-08. If we
2 compare that to this situation, the claims here, I guess
3 you could make the equivalent of Burnett wanting to be
4 the operator or Concho being the operator. That's not
5 why we intend to produce this. This is to show that
6 there was an ulterior motive or bad faith.

7 MR. BRUCE: Mr. Examiner, I vehemently
8 object to that.

9 MS. MUNDS-DRY: That is the intent. Not
10 to prove the validity of them being an operator, but to
11 show that there is bad faith and an ulterior motive.
12 That is the intent of submitting this letter.

13 EXAMINER BROOKS: Mr. Bruce, do you want
14 to --

15 MR. BRUCE: Mr. Examiner, there's been no
16 showing of bad faith here whatsoever. Furthermore, I
17 think this came out in the prior hearing, which I did not
18 have to take part in, that at the time this was sent,
19 they were trying to work things out with Concho.

20 And there is no bad faith because after this
21 letter was written, they hired an independent engineering
22 consultant to look at the matters involved in that
23 pooling rules case that was the subject of last week's
24 hearing, and they changed their mind.

25 I do not like the term "bad faith." I could

1 say some things about COG, which I've refrained from
2 doing. I think this letter should be excised, and it
3 should not be part of the record.

4 EXAMINER BROOKS: I do believe that
5 there's not been a basis shown for the admissibility of
6 settlement negotiations. And there's a reason for --
7 well, the Rules of Evidence don't apply, perhaps don't
8 apply, that's very wishy-washy.

9 I think settlement negotiations should be
10 excluded because parties need to be free to make deals,
11 and they don't have to be -- to know that their proposals
12 for deals are going to influence -- well, the decision
13 maker is not going to make a decision based on who he
14 thinks is being more reasonable in proposals during
15 settlement negotiations.

16 So unless the letter is to serve some other
17 purpose to relevant evidence, I would sustain the
18 objection.

19 Q. (By Ms. Munds-Dry) Okay. Let's skip over
20 that letter, Mr. Evans, and go to your set of emails
21 here. And before we go there, let's go -- I believe you
22 said you had a third meeting at the end of March. I
23 think these emails speak to that, so we can discuss
24 those. Maybe you can identify to the Examiners what
25 these are and then talk about the third meeting.

1 A. These are various emails between me and my
2 staff and David Rhodes to set up the next meeting. We
3 finally came to some conclusions about negotiating both
4 the Iverson term assignment and the Ard term assignment.
5 So we went back to Burnett to see if there was yet
6 another possibility of jointly developing these
7 properties.

8 Q. You mentioned the Iverson term assignment.
9 What is that?

10 A. It's an interest of about 10 percent that we
11 took that was going to expire in August of this year. We
12 were planning to be drilling before August of this year.
13 But knowing that with the constant meetings with the BLM,
14 that probably we were going to be delayed, well, we were
15 going to be drilling by August. We were forced to take a
16 top lease to our term assignment because the Hudsons had
17 attempted to top lease that interest and cut us out of
18 it.

19 Q. So you took a top lease on yourself?

20 A. We had to execute a top lease on ourselves.
21 Also, during this time, we were threatened twice with the
22 termination of the Ard term assignment; that if we ever
23 got it, they would make sure that we would not be able to
24 keep it because they wouldn't drill and would cause it to
25 expire.

1 Q. This is what happened at that third meeting?

2 A. It happened in the second and third meetings.

3 Q. That was the end of March?

4 A. Yes.

5 Q. And for each of these meetings, did you go to

6 Burnett, or did Burnett come to Concho?

7 A. We went to Burnett.

8 Q. Let's go to the April 19th email from you.

9 A. I don't think I have it in my stack.

10 Q. If you go -- I'm sorry. Let's go to the April

11 1st email from you to Mr. Rhodes.

12 A. April 21st?

13 Q. April 1st.

14 A. I don't have them here.

15 Q. Don't look at the top of the emails.

16 A. I'm sorry. You're right. Okay.

17 Q. What is this email?

18 A. It's to David Rhodes, the land manager for

19 Burnett. Basically it says, "David, I'm drafting an

20 agreement that I hope solves this matter. It will

21 require enough wells for this year, I think four, and

22 eight next year. Hopefully I can have something next

23 week. If you have any needs, absolutes, now would be the

24 time to advise."

25 Q. And then in the next email, Mr. Rhodes

1 responds to you?

2 A. This is Mr. Rhodes' response to me. "David,
3 our position is and will continue to be that we want to
4 operate the deep rights all four sections, as set out in
5 our March 16th letter to you, Keith Corbett and Matthew
6 Hyde. In a telephone conversation between Joe Wright and
7 Mark Jacoby, Mr. Wright said he would have no objection
8 to Burnett operating. As stated in the March 16th
9 letter, we would like to get a JOA in place between COG
10 and Burnett (naming Burnett as operator) that would cover
11 the entire area, so we don't have to go to the compulsory
12 pooling route on each well. We have approved APDs and
13 are ready to get this started ASAP. Is there any way we
14 can get past all of this and move toward a cooperative
15 effort to develop these leases?"

16 Q. I think the next page of emails are just more
17 back and forth between the two of you?

18 A. Yes.

19 Q. If we skip two more pages to an email dated
20 Tuesday, April 19th?

21 A. My email to David Rhodes. "David, we would
22 like to bring a proposal, to you tomorrow. Would Burnett
23 be available to meet?"

24 Q. Did you meet with Burnett?

25 A. We did.

1 Q. And what happened at that meeting? Did you
2 bring them a proposal as you noted here?

3 A. Yes, we did.

4 Q. And what was that proposal?

5 A. That proposal was dated April 20th. We hand
6 delivered it. This proposal was based upon the
7 conversations that we had a week or two earlier with
8 Burnett. It includes an effort to turn over operations
9 to Burnett, and that's regarding the operation and
10 development of the leases.

11 We had to have certain assurances that they
12 would not cause our term assignments to expire by not
13 drilling. So we said we would allow Burnett to be the
14 operator. Burnett would take immediate steps to acquire
15 a CCA or a CCAA for the sand dune lizard, which we have.

16 All drilling locations should be approved by
17 the parties. Development to include both vertical and
18 horizontal wells. Four wells must be drilled in 2011 to
19 maintain our term assignment, starting no later than
20 September 27th. Our expiration date is October 1st.

21 Beginning in calendar year 2012, a new well
22 must be commenced not later than 45 days after completion
23 of the preceding well. That's the terms of our term
24 assignment. "Completion" means the date on which the rig
25 is released for the preceding well.

1 In 2012 and calendar years thereafter, no
2 fewer than eight wells will be drilled, and the 45-day
3 time period will be in effect.

4 This is -- just a little venture from this.
5 We had shared with the Ards and Iversons that we were
6 going to do an aggressive drilling program, up to
7 probably 60 wells a year. This was going against what we
8 had talked to them about and that we compromised with
9 Burnett to try to get this going.

10 If you go back to the letter, to protect
11 ourselves, we said, "The parties will execute individual
12 operating agreements on each proration unit not less than
13 30 days prior to the commencement of drilling operations
14 for the well." That was to protect us so that if we
15 needed to get a rig and permit in, that we could move a
16 rig in to continue our term assignments.

17 "Burnett/Hudson agrees to execute three
18 operating agreements naming COG as operator, each
19 covering a separate 160-acre proration unit. COG may
20 drill these proration units in the event Burnett fails or
21 is unable to meet drilling deadlines. At such time as
22 COG's continuous drilling obligations under its term
23 assignments have been satisfied, COG will transfer any
24 undrilled proration units to Burnett one unit at a time
25 for drilling until all wells have been drilled. These

1 three operating agreements will be signed on the day the
2 operating agreement for the first well is signed."

3 Q. Mr. Evans, let me stop you there. Were you
4 present for Mr. Rhodes' testimony?

5 A. Yes.

6 Q. He indicated that a nonstarter for Burnett was
7 the fact that Concho wanted to be the designated operator
8 for some separate 160-acre proration units?

9 A. Yes.

10 Q. So explain these terms. Why did you put this
11 condition in?

12 A. Well, again, we have two term assignments that
13 have to be maintained. The main problem is the Ard
14 assignment. And the reason it's difficult terms is
15 because of past operations -- not -- operations that
16 never occurred. Although they have term assigned it
17 several times, they never could get any operations or
18 drilling. They wanted to be assured, the Ards did, that
19 something was going to happen, or they would get their
20 lands back.

21 Q. This was some way to protect your term
22 assignments?

23 A. Yes. So COG will not be responsible for any
24 existing environmental liabilities by the existing San
25 Andres wells. "Operator agreements will be on a mutually

1 agreeable form, with mutually agreeable changes. COG
2 will be named alternative operator under each operating
3 agreement. And in the event, one, Burnett and/or Hudson
4 sells all or part of its interest or, two, Burnett is
5 unable to secure drilling permits (APDs) from the BLM for
6 any reason, COG will automatically become operator under
7 the operating agreement."

8 Q. Did you discuss these terms at the meeting on
9 April 20th?

10 A. We felt that these were a little unusual. And
11 that because of the terms that we agreed to, taken with
12 the assignments, that we needed to discuss these directly
13 with Burnett/Hudson.

14 Q. So you went over each of these terms with
15 them?

16 A. Yes, and explained the reasons why.

17 Q. And what was their response to these terms
18 that you presented?

19 A. I thought they were going to accept it. I
20 left the meeting feeling fairly certain that the matter
21 had been resolved.

22 Q. What is the next letter?

23 A. This is dated April 25th, from Burnett Oil.
24 It says, "Thank you for your most recent offer, dated
25 April 20, 2011, regarding operations of the Maljamar

1 properties. Unfortunately, there are several parts of
2 your proposal that are unacceptable to Burnett/Hudson.
3 Since we have been going back and forth on operational
4 issues since mid-November of last year, we feel it is
5 prudent to go forward with our compulsory pooling
6 hearings set for this Thursday so we can get started on
7 our drilling program. As we stated previously, if COG
8 will sign a JOA (one new; one existing) covering the four
9 section area (less the south half of Section 12) naming
10 Burnett operator, with the added provisions set out in
11 Bill Pollard's letter to you dated 3/16/11, we can avoid
12 numerous pooling hearings."

13 Q. We don't know the conditions of the 3/16
14 letter; right?

15 A. No. We're not allowed to talk about it.

16 Q. Was this the last communication you had from
17 Burnett?

18 A. Yes.

19 Q. Are you aware of the communications between
20 Mr. Giraud and Mr. Grable?

21 A. Somewhat.

22 Q. And do you know if they were able to resolve
23 the issues?

24 A. They were not.

25 Q. In your opinion, Mr. Evans, did Concho make a

1 good-faith effort to obtain voluntary participation from
2 Burnett in these wells?

3 A. I have never worked so hard to get something
4 done on a property in my life. I've been a landman for
5 32 years.

6 Q. With that said, why do you think all the
7 applications should be dismissed?

8 A. We believe, based on our knowledge of the
9 surface locations, we've had five meetings with the BLM
10 in the field trying to locate locations, two meetings in
11 the office, and we now know that a total vertical well
12 program is not possible. And our geologist will show
13 what we have learned.

14 Q. Turn to Concho Exhibit Number 4, please,
15 Mr. Evans. What is this?

16 A. Four is, we believe, the value that the
17 drilling program by Concho brings to the state of \$134
18 million.

19 Q. Is this based on a vertical well program or a
20 horizontal well program?

21 A. This is based upon the horizontal program.

22 Q. And this just includes taxes?

23 A. This is just taxes.

24 Q. This doesn't include any other payments made
25 to the federal government?

1 A. No.

2 Q. This is just the share to the State of New
3 Mexico?

4 A. Yes.

5 Q. Mr. Evans, I want to turn now to the CCAs that
6 we've been talking about. What is a Candidate
7 Conservation Agreement?

8 A. It's an agreement made with a third party for
9 the wilderness that sets certain terms that allow us to
10 develop the property in a safe and environmentally
11 friendly manner, preserving the environment and the
12 culture of this area for the state and for all concerned
13 citizens.

14 Q. Is this important for the BLM; do you know?

15 A. Extremely important.

16 Q. Explain Concho's involvement in the CCA
17 process.

18 A. We are the first to sign the CCA. It sets
19 rules upon us for certain setbacks from the dunes and
20 allows us to get APDs if the lizard and the chicken are
21 listed.

22 Q. And how many companies are currently enrolled
23 in the CCA program or have leases that are enrolled?

24 A. Four, I believe.

25 Q. Besides the setbacks, are there other

1 requirements in the CCA?

2 A. Yes. You do the stipulations. You give the
3 archaeology -- I mean it's a well-rounded program to
4 protect the surface.

5 Q. And hopefully, the lizard and the chicken?

6 A. Hopefully the lizard and the chicken at the
7 same time.

8 Q. How much has Concho spent to date on
9 mitigation programs, pursuant to your obligations under
10 the CCA?

11 A. \$450,000.

12 Q. That goes towards what?

13 A. For studies.

14 Q. Let's go to Exhibit Number 5. Describe what
15 we're seeing in this set of pictures.

16 A. It's kind of hard to see these from an aerial
17 map, so we went out and did a close-up to show what a
18 sand dune looks like. This is one of the larger ones,
19 taller than the guy there. We had to be a certain amount
20 of feet away from these sand dunes. The second one shows
21 a smaller dune. The third one --

22 Q. I understand that is Shinnery Oak that the
23 lizard is very fond of habitating under?

24 A. Yes. We have to stay away from it.

25 The third one, you can see in the background

1 how the sand dunes are really like an ocean. It's very
2 limiting. Your surface locations are very limited in
3 this area.

4 The fourth one shows similar -- lack of clean
5 surface without disturbing the lizard and the chickens.

6 Q. So it just gives us a picture of what the
7 actual on-the-ground conditions are?

8 A. Yes.

9 Q. So you explained that this CCA is beneficial
10 for the lizard and the chicken. How does that allow
11 Concho to move forward with a drilling plan by being in
12 the CCA?

13 A. By being proactive and signing the CCA, the
14 agreement is we'll be able to continue to get APDs to
15 drill wells, where others that do not have it will have a
16 harder time getting APDs.

17 Q. So as I understand it, you have to have your
18 acreage or your lease enrolled in the program?

19 A. Prior to the listing of the species.

20 Q. Given the extra impediments that you agreed to
21 adopt by signing a CCA, why was it important for Concho
22 to participate in this program?

23 A. We're trying to protect the welfare of the
24 lizard and the chicken and the surface environment as a
25 good conscientious corporate citizen.

1 Q. In your opinion, will the granting of any of
2 the four applications that are subject of this hearing be
3 in the best interest of conservation, the prevention of
4 waste or the protection of correlative rights?

5 A. Granting the permits as applied for will cause
6 waste and damage the future operations of the property,
7 the reserves, and may cause some correlative rights
8 issues.

9 Q. And Mr. Evans, Exhibit 6, is that our notice
10 affidavit, affidavit of publication and notice letter,
11 green cards, et cetera, showing that we gave proper
12 notice of this hearing?

13 A. Yes.

14 Q. Were Exhibits 1 through 6 either prepared by
15 you or compiled under your direction and supervision?

16 A. Yes, they were.

17 MS. MUNDS-DRY: Mr. Examiner, we move the
18 admission into evidence of Concho Exhibits 1 through 6,
19 striking the March 16th letter.

20 MR. BRUCE: And that's fine.

21 Mr. Examiner, before we admit Exhibit 4, I'd like to ask
22 the witness a few questions. I don't have any problems
23 with the other exhibits.

24 EXAMINER BROOKS: This is voir dire?

25 MR. BRUCE: Yes.

1 EXAMINER BROOKS: Okay. Go ahead.

2 VOIR DIRE EXAMINATION

3 BY MR. BRUCE:

4 Q. Mr. Evans, on Exhibit 4 you list 18,700,000
5 barrels of oil being produced?

6 A. Yes.

7 Q. Did you come up with that number?

8 A. I did not.

9 Q. Is there going to be testimony today showing
10 that number?

11 A. Our reservoir engineer is here to testify.

12 Q. But whoever operates this property, the same
13 payment will be made to the State, whether it's by Concho
14 or Burnett; correct?

15 A. Not if it's -- not the program that we're
16 proposing.

17 Q. Why is that?

18 A. Well, this is a horizontal program, to my
19 knowledge.

20 Q. But we're here today for vertical wells.

21 A. All the wells that we're proposing and the
22 reserves we're proposing cannot be captured by vertical
23 wells.

24 MR. BRUCE: I'd object, Mr. Examiner,
25 because we're here today on four applications for

1 vertical wells, four wells, two locations for vertical
2 wells. About some future proposed vertical drilling
3 program, I think this is meaningless and objectionable.

4 EXAMINER BROOKS: I'll overrule the
5 objection and advise the Examiner to admit this for
6 whatever relevance it has.

7 MR. BRUCE: Thank you.

8 EXAMINER WARNELL: I'll take that
9 advisement. And we'll admit Exhibits 1 through 6, with
10 the exception of -- what was the date, the 16th?

11 THE WITNESS: March 16th.

12 EXAMINER WARNELL: March 16th.

13 (Exhibits 1 through 6 admitted, excising letter
14 dated 3/16/2011.)

15 MS: MUNDS-DRY: I pass the witness.

16 CROSS-EXAMINATION

17 BY MR. BRUCE:

18 Q. A couple questions on Exhibit 1, Mr. Evans.
19 You do list 40 acres in the northeast quarter/southwest
20 quarter of Section 12. There's already a Yeso well
21 there; is that correct?

22 A. That is the Knockabout well, yes, sir.

23 Q. You're telling me the two wells you proposed
24 by Exhibit 2, COG or Concho does not intend to drill
25 those wells?

1 A. We're asking that all four permits be denied.

2 Q. But you do not intend to drill those wells?

3 A. We have proposed a new plan to develop the
4 property which we think prevents waste and protects
5 correlative rights.

6 Q. And you mentioned with the Ards, you have a --
7 what is the commencement date of the continuous drilling
8 obligation?

9 A. After the rig release or completion of the
10 first well, that has to be drilled before the expiration
11 of the primary term.

12 Q. I guess what I was asking was, when does the
13 primary term end?

14 A. October 1st.

15 Q. And you answered one of my questions. You've
16 been a landman for 32 years. Have you ever taken a
17 farmout or term assignment before with a 45-day
18 continuous drilling obligation?

19 A. I have.

20 Q. How many?

21 A. Four or five, looking back now.

22 Q. Do you think 45 days is an industry standard?

23 A. For us, it was absolutely fine with our, at
24 the time, four-rig program.

25 Q. But is 45 days industry standard?

1 A. It's not uncommon, particularly with what the
2 Ards have gone through in trying to get this property
3 developed over the last five years.

4 Q. Who was present at your first meeting with Mr.
5 Hudson in November 2011?

6 A. Who was present in our first meeting? That
7 was myself, Ramon Reyes and Keith Corbett.

8 Q. Who else besides Mr. Hudson, say, on my side?

9 A. I'm sorry. Randall, David Rhodes --

10 Q. You don't remember any other names?

11 A. No.

12 Q. At that meeting, did Mr. Hudson ask you to try
13 to find a path to try to mutually develop these leases?

14 A. Yes.

15 Q. So that development could start as soon as
16 possible?

17 A. Yes.

18 Q. If an agreement had been reached, there could
19 have already been a couple of wells drilled, don't you
20 believe?

21 A. We have made every attempt to reach an
22 agreement with them, only to be turned away numerous
23 times.

24 Q. I don't have them with me, but I've informed
25 Ms. Munds-Dry that after today's hearing, I will be

1 emailing her the Burnett approved -- BLM approved APDs
2 for the first six wells it intends to drill. Does COG
3 have any approved APDs on these two leases, four
4 sections?

5 A. We have several pending.

6 Q. None approved?

7 A. Not approved. We have a different standard we
8 have to go by with our CCA. We have different
9 requirements than what Hudsons have.

10 Q. Is the CCA -- does it cover these leases?

11 A. Yes, it does.

12 MR. BRUCE: That's all I have,

13 Mr. Examiner.

14 EXAMINATION

15 BY EXAMINER BROOKS:

16 Q. I'm interested in these environmental issues
17 because I don't know as much about them as I should or
18 would like to.

19 CCA, those initials, what does that stand for?

20 A. Candidate Conservation Agreement.

21 Q. And then you used another set of initials that
22 was similar; did you not?

23 A. CCAA.

24 Q. What does that stand for?

25 A. Candidate -- it's the same thing, but it's an

1 additional supplemental agreement on state lands.

2 Q. Does the other A stand for "amended"?

3 A. Yes.

4 Q. This is something that the BLM enters into
5 with operators?

6 A. We enter into it with a third party that helps
7 mitigate or migrate through the BLM system in order to
8 get the review of the area done faster, providing a
9 biologist and --

10 Q. So it's not an agreement with the BLM, as
11 such?

12 A. Not as such.

13 Q. If one of these species is listed as being in
14 danger, then the BLM would be required by law, would they
15 not, to do a formal consultation with the Fish & Wildlife
16 Administration?

17 A. To my knowledge, it's not that deep. We have
18 a full-time specialist working on this matter.

19 Q. Of course, the locations that we're talking
20 about are not on federal land?

21 A. They are.

22 Q. They are?

23 A. Yes, sir, federal leases.

24 Q. I thought we were talking state land.

25 A. No, sir.

1 Q. So the BLM would have to do certain things,
2 whatever they may be. And of course we know that there
3 are people out there who might bring lawsuits to enjoin
4 the BLM from improving anything if there was some
5 argument about whether they had complied with all the
6 things, whether they jumped through all the hoops they
7 were supposed to go through?

8 A. That seems to be the pattern.

9 Q. I'm wondering, with all those things being out
10 there, if these agreements really protect you very much
11 against getting into problems with these things. Do you
12 have any experience that you can shed any light on these
13 issues?

14 A. No, sir. I don't think it's been tested yet.

15 EXAMINER BROOKS: That's all I have.

16 EXAMINER WARNELL: I have no questions.

17 Let's take a real quick recess.

18 (A recess was taken.)

19 MS. MUNDS-DRY: Shall we call our next
20 witness?

21 EXAMINER WARNELL: That's a great idea.

22

23

24

25

1 RAMON REYES

2 Having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. MUNDS-DRY:

5 Q. Would you please state your full name for the
6 record?

7 A. Ramon G. Reyes.

8 Q. Where do you reside?

9 A. Midland, Texas.

10 Q. By whom are you employed, and what do you do?

11 A. I'm employed by Concho, and I'm the lead
12 geologist for the Shelf property.

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

15 A. Yes, I have, many times.

16 Q. Were your credentials accepted and made a
17 matter of record at that time?

18 A. Yes, ma'am, they were.

19 Q. Are you familiar with the applications filed
20 by both Burnett and Concho?

21 A. Yes, I am.

22 Q. Are you familiar with the geology of the
23 subject area?

24 A. Yes, I am.

25 MS. MUNDS-DRY: We would tender Mr. Reyes

1 as an expert in petroleum geology.

2 MR. BRUCE: Absolutely no objection

3 EXAMINER WARNELL: Okay.

4 Q. (By Ms. Munds-Dry) Mr. Reyes, I believe you
5 have a slide presentation, and most of those are exhibits
6 here. If you could turn to the slides and explain to the
7 Examiners what this is.

8 A. I'm going to bore you for a little bit.

9 Q. This is a slide we don't have an exhibit of?

10 A. That's the only one. This is the general --
11 kind of starting at 30,000 foot. A lot of this is going
12 to be a review of what Mr. Haiduk testified for. We're
13 pretty much in agreement with the majority of the stuff
14 that he testified.

15 Just a quick review. And if I go too fast,
16 please slow me down, and I'll repeat or go over anything
17 that I've said.

18 Q. I'll do my best.

19 A. Again, this is Southeast New Mexico, mostly
20 Eddy County. This is the Eddy/Lea County line. The
21 yellow is our acreage position. It also covers this
22 acreage position that we have in the Delaware Basin.
23 It's just a letter that we have in house to show -- we
24 keep it on there. It's not relevant to what we're
25 talking about in here.

1 As Mr. Haiduk talked about earlier, the
2 northwest Shelf is well defined by the production in the
3 Yeso section, which runs down here. That defines the
4 southern limits of the producing interval within the
5 Yeso.

6 As far as the northern part of our Yeso
7 development, that is still being pushed northward. As we
8 continue to drill northward, at some point it's going to
9 go away. I hope it's not any time soon, so we can
10 continue our drilling program and continue to be
11 successful.

12 Q. Could you, before you leave this slide,
13 identify the acreage that's the subject of this hearing?

14 A. The four sections we're talking about now, if
15 you can follow the shaky red dot, those four sections
16 right there, the Lea County line.

17 You'll see the red dots are production that's
18 out there. It's a pretty well-defined trend, except for
19 right there, there's no production as of yet. So it's a
20 very well-defined fairway, if you want to call it that.

21 So we think it's in a great spot, and we look
22 forward to hopefully making money for not only the state,
23 but for everyone involved.

24 Q. Let's turn to the next slide that's marked as
25 Concho Exhibit Number 7. What is this?

1 A. Exhibit 7, we have a little difference of
2 opinion whether 10 acres or 20 acres -- and we kind of
3 hashed that pretty hard in the last hearing. So I'm not
4 really here to talk about that so much, other than the
5 fact that our production over here, the majority of these
6 wells, not all of them, are wells that have been drilled.
7 It's kind of hard to see on this PowerPoint, so your
8 cartoons in front of you are a little better defined.

9 And we also have production established on the
10 other side of this property that we're talking about.
11 Again, we are now -- we've drill this, obviously, the
12 first well on a 40, and we'll drilled the second one as a
13 20. At the end of the day, we hope -- our development
14 plan is to drill them on 10-acre locations. We've had
15 some pretty good success over here, as well as over here.

16 Also defined are the two red arrows, the two
17 locations that we are currently talking about. We're
18 going to get into why we believe that these should be
19 dismissed. Hopefully I can justify and defend why we
20 need to move forward in a different direction.

21 You'll note that in all four sections there's
22 four -- these are 40-acre tracts, so there's 10-acre
23 locations. So just for us to identify how many locations
24 possibly could be on the upside, every one of those
25 10-acre locations are spotted. We identify them and we

1 create a catalogue. So at some point in the future, we
2 already have a database. And our engineering reserve
3 guys can capture that, and we move forward, and it's an
4 easier way for us to establish where we're at.

5 So we have roughly 191 10-acre vertical
6 locations only in these three upper sections. Mr. Haiduk
7 and I agreed that Section 25 is hugging that Shelf edge.
8 And we believe that probably the north half is probably
9 more prospective for the Paddock, and the Blinebry is
10 probably not as prospective.

11 But as Concho -- if this was our sole property
12 and we had 100 percent of it, we would certainly drill
13 one, if not two, wells all the way through the Yeso so we
14 can determine the potential of the Blinebry as we move
15 off the Shelf.

16 So right now we're going to talk about these
17 three sections, because they are -- as I said earlier,
18 they're part of -- it's defined in the fairway, so to
19 speak. We have wells that are producing way up here in
20 Section 11. I think it's the Texmax lease that we have.
21 So we do have established production, and we have some
22 reserve numbers that we have in house, so we feel pretty
23 good about all these three sections.

24 Q. Let's go to Concho Exhibit 8, which is your
25 next slide.

1 A. Okay. Exhibit 8 is a cross-section just to
2 kind of define and talk about the logs that Mr. Haiduk
3 talked about. We were talking about the Yeso. So we
4 picked a couple of wells over here on the west side of
5 the property, and we have two wells on the east side of
6 the property.

7 And just to show some continuity, there's not
8 a whole lot of change between the reservoir or the
9 thickness, any distinguished -- nothing that's changed as
10 far as rock properties.

11 Q. Let's go on then and talk about those logs,
12 which I believe is your cross-section, Exhibit 9, the
13 next slide?

14 A. That's correct.

15 Q. We have bigger versions of these. They are
16 probably easier to see.

17 A. Yes, they are. You know, Burnett has a
18 logging design that they use, and we also have one, too,
19 to identify porosity, calculate water saturations,
20 permeability and such. So these are some of their wells.

21 Just really quickly, the Yeso is directly
22 below the San Andres. It's defined or divided by the
23 Glorieta, which is the sealed section that's roughly
24 about 50 feet thick. And the base of the Yeso is a silt.
25 Another silt member at the bottom is called the Tubb.

1 And so this section is roughly about 1,200 feet thick.

2 The upper third of that section is the
3 Paddock. And it's got a better defined porosity profile,
4 as you can see in these logs. The bottom two-thirds is
5 the Blinebry. We picked this on a little silt that's
6 roughly about 300 feet below the top of the Paddock.
7 That's just an internal pick that we used. That can vary
8 for different reasons, but that's what we used.

9 Overall, this is heterogeneous reservoir. We
10 use a 3 percent cutoff, as well as Burnett does. We also
11 use a pretty -- our water saturations are pretty much
12 identical. Primarily, we use the same parameters to
13 define the reservoir where we went to produce from.

14 The only difference is they have a different
15 fracking technique. We have a different fracking
16 technique. We perforate in a different way. They do it
17 their own way. At the end of the day, they do their
18 thing, we do our thing. For the most part, we believe
19 we're successful in the way we do things. And obviously,
20 they do, too.

21 I don't think there's a lot of argument about
22 what the reservoir is about. It's hard to pick a
23 porosity zone that says, "Hey, here's where you need to
24 be." It's not like you're looking for a 30 foot sand of
25 sorts or something that's distinguishable.

1 We believe that you have to have -- because
2 the rock is so tight and has low permeability and it's
3 heterogeneous, that we're not discriminating in where
4 we're going to set up our perfs and produce from. So we
5 think the whole section is prospective.

6 Q. You said this is a heterogeneous reservoir,
7 and it's lenticular in nature?

8 A. Yes, ma'am.

9 Q. Okay. Let's go to Concho's next exhibit,
10 please, Number 10.

11 A. Let's go back to the -- if we go back one
12 more -- okay, right there. Again, all the 190-some
13 locations are in the three sections. So like I said, if
14 Concho owned 100 percent, we would drill every 10
15 locations. If Burnett had 100 percent, we'd be out of
16 their hair. They'd be doing every 20. They'd be doing
17 their thing, and it's all good.

18 Either way, we both want to develop it. And
19 we both want to do -- not create waste and correlative
20 rights and all that good stuff. The problem is -- and
21 we've touched on it a little bit, and so have you, Mr.
22 Brooks. I believe you've become almost an expert in the
23 Yeso because you've sat in almost every discussion we've
24 had about the Yeso.

25 EXAMINER BROOKS: I've heard a lot about

1 it.

2 A. Yes, sir. Anyway, sticking to the story, in a
3 perfect world we would develop these in 10s, they would
4 develop them in 20s. There's really not a lot of
5 difference in a one-month stretch. This is well
6 established. There's not going to be any surprises. If
7 we drill any of these 10-acre locations, we believe we're
8 going to find roughly about 1,200 feet of Yeso section,
9 and we move forward.

10 Again, in a perfect world, this is not -- this
11 is a prairie chicken, this is lizard. This is pristine
12 lands. You've seen pictures of the dunes. There's a lot
13 of surface issues concerning that.

14 Q. Is that what Exhibit 10 starts to show us?

15 A. Yes. Moving forward, this is an aerial view.
16 It's hard to see, but we've got some big exhibits that
17 you'll be able to view in detail. You can sort of see
18 the well locations that are there.

19 These are the old Grayburg-San Andres wells
20 that they were talking about earlier that have been
21 established. There's some pipelines, some roads. You
22 can you see -- obviously, there's some stuff already on
23 the surface.

24 The rules have changed here now, so now
25 they've declared this to be a habitat for the lizard. So

1 we're going to have a lot of issues in placing viable
2 drillable vertical locations in these three sections.

3 So we went out there to try to stake at least
4 one vertical location in every 40-acre spot in these
5 three sections. Unfortunately for me, I did haven't to
6 do that. We had somebody else in our staff, along with
7 BLM. They spent days and hours out there, trying to pick
8 locations that would satisfy both parties, and it was a
9 tough call.

10 Q. Is that staff member here today?

11 A. Yes, he is.

12 Q. Would you care to point him out?

13 A. Mr. Nolan Olivas, sitting in the corner over
14 there.

15 Q. What does he do for Concho?

16 A. He is -- I'm not exact what his title is. But
17 he supervises -- he's got a staff under him that does the
18 permitting, the staking, the APDs, dealing with the BLM,
19 all the things that I don't care to do. And I'm glad
20 he's on the staff.

21 Q. Anything else on Exhibit 10?

22 A. That's pretty much it. But again, trying to
23 establish -- it's pretty ugly out there, a lot of sand
24 dunes. It's going to be tough to drill 191 locations, if
25 it was all Concho or half that number, a hundred or so

1 that Burnett would drill on 20s in a perfect world.

2 So moving on to the next exhibit --

3 Q. What is Concho Exhibit 11?

4 A. This is a pretty tough thing to see here.

5 Q. It would probably be better on the --

6 A. Right. Mr. Olivas went there and tried to
7 find as many locations as he could in these three
8 sections. And out of those three sections, we were only
9 able to establish with BLM to be able to approve 41
10 10-acre locations, so roughly 21 percent of the surface
11 that we can actually go in there today and go drill a
12 well. So roughly 80 percent of the surface issues there
13 are gone, so --

14 Q. I know it's hard to see on the slide. Is it
15 the red diamonds? Is that the drillable locations?

16 A. Yes, ma'am, that's correct. There's actually
17 red diamonds and blue or purple. If you're color blind,
18 it doesn't matter. But it's that one there.

19 Those are displaced locations where if you
20 can't drill on the exact spot you want, they shove it
21 over as close as they can. And some of these are
22 displaced at 300 feet or more.

23 So we're going to discount those locations
24 because of your -- we can drill them. But we can't
25 maximize our production because you just can't -- the

1 pumps, everything else downhole, it's not going to make
2 it effective enough for us to want to do that.

3 Besides, as you drill directional wells, it
4 adds quite a bit of money to the drilling program as
5 well. The economics get less and less and less to do
6 those directional wells.

7 So I believe there was probably six of those.
8 So we kicked those out so we wouldn't drill those. I
9 think it shows in the next --

10 Q. Let's go to Exhibit Number 12, the next slide.

11 A. Again, you can't see any more. But now we're
12 down to 35 BLM approved locations, and so now we're down
13 to 16 percent of the 10-acre locations, excluding Section
14 25. We're just talking about these three sections here.

15 So now we have only about 35 locations that
16 BLM today would say get after it. Go drill.

17 Again, that's -- if you have ownership of this
18 and you're only going to drill 16 percent of your
19 property, it doesn't fare very well. That's what we're
20 getting at, the vertical drill plan that's in front of us
21 today.

22 Q. Okay. Let's go to Exhibit Number 13. What
23 does this slide show us?

24 A. This is a little more dramatic picture of the
25 acreage that we're talking about. You'll note here these

1 are the 35 surface locations again that were walked
2 through and described through Mr. Olivas. And the BLM
3 went through each one and said here's where they're at.

4 So this kind of shows you -- look at all the
5 nondevelopment you would get on a vertical program that
6 you're not going to be able to drill because you can't
7 get a surface permit. So you're looking at 19 -- a
8 little -- 1,900 total acres that you could drill in 10s
9 or 20s. And now you've got 1,320 acres that are
10 undrillable because of the surface issues. So now we're
11 down to 69 percent of undrillable acreage, if you
12 calculate it by acres.

13 Q. If you're drilling on 20-acre spacing, I
14 assume that would eliminate even more of those locations?

15 A. That's correct. If we were to go on 20-acre
16 locations, some of these right here would not be able to
17 be drilled, probably one of these in here.

18 You'd have to go back and cherry pick the ones
19 that you can and can't do. Even if you did it on 20s,
20 you wouldn't get all 35 locations. You might get maybe
21 30 or so on the 20-acre spacing that Burnett has been
22 proposing. So it's pretty detrimental, as far as
23 developing these three sections, because of the surface
24 issues.

25 Q. Let's go to Exhibit Number 14. It should be

1 the next slide.

2 A. This is a little easier to see. Again, the
3 red ones are within the limits of our -- without going
4 too far directionally. And the purple or the blue ones
5 are the ones that are pretty far off from where they need
6 to be.

7 This is just again showing -- demonstrating
8 how few of these locations we'll be able to drill on on
9 10- or 20-acre locations.

10 Q. On vertical well locations?

11 A. That's correct.

12 Q. There's a couple of directional well
13 locations?

14 A. That's correct. So due to the restrictions
15 before us because of the lizard and the chicken, we took
16 a step back, rather than taking a step forward.

17 So how do we develop this to minimize waste,
18 maximize what we can work with, and how do we move
19 forward? That's what we're bringing to the table today.
20 We're going to demonstrate why these locations need to be
21 dismissed. That would be my next exhibit.

22 Q. Let's go to Concho Exhibit 15. What does this
23 cartoon show us?

24 A. This exhibit shows that we are proposing to
25 drill vertical wells in the Yeso. Again, this is a

1 little bit of overkill, and we'll get to the meat of it.
2 But right now we would minimize our footprint on these
3 three sections because we would put our locations on the
4 section lines.

5 So we would drill -- like, for instance, in
6 Section 12, we would drill from -- again, working with
7 BLM, drilling from south to north on Section 12, and then
8 drilling north to south, going down to Section 13. Then
9 we continue to do the same thing in 24 and, if at all
10 possible, Section 25.

11 So we minimize the footprint that we have on
12 the surface. But we also -- we get to expose ourselves
13 to all the reserves that are in those three sections
14 because now we're drilling vertical wells. So the
15 argument of 10-acre locations or even 20-acre locations
16 is going to be solved if we go with this plan because now
17 we're going to capture as much as we can, we're going to
18 have a lesser footprint, and it's just probably the right
19 thing to do.

20 If you look at the next exhibit --

21 Q. Exhibit Number 16?

22 A. That's correct.

23 You'll note that the surface disturbance will
24 be minimal. So we've been talking to the BLM in trying
25 to move forward on this plan. And so if we were to do

1 these horizontals -- if you go back to this well here in
2 Section 13, this is a vertical hole that they're going to
3 drill here. And Burnett has proposed to drill the well
4 to 7,200 feet, which penetrates the whole Yeso section,
5 which I'm pretty happy they're doing that, because now --
6 because this also shows that they believe that the
7 Blinebry section has some potential. Otherwise, why
8 would you drill that deep to do that? That one, to me,
9 is a no brainer to do that.

10 Unfortunately, if you do a vertical hole
11 there, we won't be able to drill a horizontal well there
12 because of the limitations of the surface. Granted, you
13 can drill that vertical hole and you have your pad. But
14 it's going to be real difficult for us to go back to the
15 BLM and say, "Hey; we want to slide over 100 feet," or
16 whatever the minimum we can get out of them, "to drill a
17 horizontal well and capture the reserves up here in
18 Section 13."

19 The one in Section 24 is a little more
20 problematic. Because of the surface issues, this well is
21 a little farther off the section line. It's going to
22 impede the vertical part of the section of the drilling
23 in Section 24. So that one, we would have to start
24 either up here; or if we were to drill from north to
25 south, you would maximize the full potential of that

1 section, so that would also impede this recommendation of
2 going laterally.

3 Again, it's probably -- it's cleaner. It
4 looks more effective. We're not fighting over whether
5 they're 10- or 20-acre locations. And we're going after
6 the same thing. So that's why we propose that these be
7 dismissed and allow us time to come up with a -- anyway,
8 we have a plan -- but, you know, put it into place.

9 If you click on to the next exhibit, in this
10 cartoon we have already, again through Mr. Olivas' hard
11 work, and with working hand-in-hand with BLM, and having
12 the CCA in hand, all these three components put together,
13 they have -- they are working with us to allow us to put
14 these locations again in these section lines. So we
15 already have nine approved -- on-site approved horizontal
16 locations that we can start developing this process
17 already, the way it is.

18 By looking at what you've got right now, I
19 believe the six proposals that we sent out -- and I can't
20 tell you exactly which six they are -- you can tell
21 there's at least two per section. So by doing these,
22 we'll be able to evaluate the potential for all those
23 three sections by doing it this way.

24 Q. I notice at the top you have a proposed well
25 going east/west or west/east?

1 A. That's correct. If you see here in Section
2 12, that is intentional. We're also again proposing to
3 drill a well east/west. The reason we're doing that --
4 because this is pretty tight rock, 3 percent rock. The
5 permeability is just as bad, if not worse.

6 So your component for the rock and how you get
7 the hydrocarbons is -- what you hope to do is you try to
8 intersect as many of these fractures perpendicular and
9 hope that you get better results and better reserves at
10 the end of the day. So that's another thing that we're
11 considering talking about.

12 And it doesn't necessarily mean that we're
13 going north/south is the best component to do it. We're
14 willing to do one going east and west. So there's lots
15 to think about. This is exciting stuff. We can't wait
16 to start doing it. Again, we've got BLM behind us on
17 this, and I think it's a great idea.

18 Q. And you touched on this in the earlier
19 exhibit. But from Exhibit 17, the slide we have up now,
20 if you can show us how, if Burnett's applications are
21 approved, pooling applications are approved, how does
22 that interfere with recovering the reserves in 13 and 24?

23 A. Again, if you go back to -- you know, they've
24 gone in there. They've got a vertical location here,
25 probably another one here. It's all spotted. Some are

1 in the middle of the section, some are on the sides.
2 They're all over the place.

3 So again, the whole purpose of this is let's
4 not drill this well to impede this vertical test here and
5 capture all of it, rather than just drill that one well
6 and not be able to drill anything else around there.
7 Same thing here. You've got another location here.
8 Again, it messes up your pattern to do these vertical
9 tests. It seems cleaner. It seems better, more
10 economic. It just makes sense.

11 Q. Mr. Reyes, will the granting of the vertical
12 well applications proposed by Burnett or Concho, will
13 that prevent waste or protect correlative rights?

14 A. Burnett's proposal?

15 Q. Both. Concho's, as currently proposed, and
16 Burnett's. Will they prevent waste for the vertical well
17 proposals?

18 A. They will prevent waste if you do it
19 vertically.

20 Q. You mean horizontally?

21 A. Horizontally, it would be a good thing;
22 vertically not. However your question was asked.

23 Q. Let me try that again.

24 A. Okay. You're an attorney. I'm not.

25 Q. There are four well proposals, four

1 applications before the Division now, two Burnett wells
2 and two Concho wells --

3 A. I'm with you.

4 Q. -- for vertical wells; correct?

5 A. That's correct.

6 Q. Do you think that any of those applications
7 would prevent waste --

8 A. Yes.

9 Q. -- for the vertical wells?

10 If any of those applications are granted, will
11 they cause waste or prevent waste?

12 A. They will prevent waste.

13 Q. Okay. We're going to leave that.

14 A. I think I'm going backwards here.

15 MS. MUNDS-DRY: Mr. Warnell, I move to
16 admit Exhibits 7 through 17 into evidence.

17 MR. BRUCE: No objection.

18 EXAMINER WARNELL: Exhibits 7 through 17
19 are admitted.

20 (Exhibits 7 through 17 admitted.)

21 MS. MUNDS-DRY: And I pass the witness.

22 CROSS-EXAMINATION

23 BY MR. BRUCE:

24 Q. Mr. Reyes, in any of your meetings with
25 Burnett and Hudson, did you ask if they would consider

1 horizontal wells?

2 A. No, sir.

3 Q. Did you ever ask if it would be best -- or did
4 it ever come up that it would be best to do at least some
5 vertical wells to determine reservoir properties?

6 A. I'm sure that was brought up, but that was
7 before the surface issues came to the forefront.

8 Q. Mr. Reyes, isn't it fair to say that probably
9 over the last 20 or 30 years, there have been numerous
10 surface issues with respect to the use of federal
11 surface?

12 A. Sure.

13 Q. At this point, COG doesn't have any approved
14 APDs on these four sections; is that correct?

15 A. Not to my knowledge.

16 Q. And is COG here today to withdraw its two
17 pooling applications from consideration by the Division?

18 A. Yes.

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

21 EXAMINER BROOKS: No questions.

22 EXAMINER WARNELL: Mr. Reyes, I must be
23 the only one that's confused, but I have a few questions.

24 THE WITNESS: No problem.

25

EXAMINATION

1

2 BY EXAMINER WARNELL:

3 Q. I'm not sure where to start. Let's start with
4 some of these things right here in front of me in the
5 exhibits.

6 This one here, Exhibit 15, now when you talk
7 about surface disturbance, all these squares here, those
8 are your pads for drilling the wells?

9 A. That's correct.

10 Q. The horizontal wells?

11 A. That's correct.

12 Q. So when I look at that, I see surface
13 disturbance or pads up here between 12 and 13?

14 A. Yes, sir.

15 Q. And then down here between 24 and 25?

16 A. Yes, sir.

17 Q. Only two places?

18 A. Actually -- again, this is -- in a perfect
19 world, if everything works out the way we want it to, we
20 would recommend that we put our surface locations here in
21 Section 12, in the south half, and then drill these wells
22 south to north.

23 Again, some of these may end up that we can't
24 drill them at that spot, so we may have to improvise and
25 drill one going north to south. But again, with BLM,

1 working with them, hopefully we can sort out those deals.

2 And then from the same line of pads or
3 whatever we have here, we would drill wells from the
4 north half of the 13 down southward. So actually there
5 would be 16 wells there, eight going north, eight going
6 south.

7 And then you come here, and you come to 24.
8 And in 24, I believe we'll drill these south to north. I
9 can't see very good from here.

10 So in all actuality, what you're seeing here,
11 this would be -- if we could drill them all south to
12 north, this would be the surface location disturbance,
13 and all these things here, that would be underground.
14 That would be the 12 of the lateral. The 12 of the
15 lateral would be down here in 13. And again, these would
16 all be underground. It would be very minimal as far as
17 surface disturbance.

18 Q. But you have not gotten BLM's blessing for
19 these two areas to be disturbed?

20 A. If you go to the next exhibit -- or go back.
21 Keep going. Right there. We have already nine
22 BLM-approved locations, as noted here in red.

23 Q. These jump from our two pad locations, and now
24 we've got four pad locations; right? On the north of 12,
25 you've got surface locations. On the south of 12, you've

1 got surface locations. On the south of 13, you've got
2 surface locations, and on the south of 24, you've got
3 surface locations?

4 A. Let me clarify it. If you look over here, the
5 circle is the bottomhole location; the square, surface
6 location.

7 Again, like I explained to you, the BLM is
8 trying to work with us because we are trying to minimize
9 disturbance. So instead of drilling it from south to
10 north, we have to drill from north to south, as well as
11 here.

12 So really we have two locations on the north
13 end of that section, and the bottom circle is the
14 bottomhole. So that would be the 12 of the lateral. So
15 there is no disturbance there, on these two wells. It
16 would be here and here.

17 We're also proposing a west-to-east lateral.
18 Hopefully we can come to an agreement with that. If we
19 really want to understand the rock and try to maximize
20 the potential of this, why don't we drill one west to
21 east and see what kind of reserves we get from that? And
22 if those work better, hopefully we can get with the BLM
23 and try to work out going in a different direction.

24 Again, this is a plan that we're currently
25 working on. But we're also trying to show you that the

1 BLM is actually wanting to work with us by allowing us
2 these nine locations already to do these horizontal
3 tests.

4 Q. But this is a plan, and this isn't really what
5 we're here today for me to make a ruling on. I'm here to
6 try to decide or I'm here to decide or to rule on whether
7 or not those two wells, those vertical wells that are on
8 this slide here, are drilled. And if they are drilled,
9 who the operator is, COG or Burnett.

10 A. Yes, sir. But my point being, if you do not
11 dismiss this vertical hole here, then we lose the
12 potential of putting another -- so they drill this well
13 here, a vertical well. BLM would be hesitant to allow us
14 to put another pad right next to it to drill our
15 horizontal well to be able to produce from that going
16 north/south.

17 This other one here, if it's allowed to be
18 drilled, it's in the path of this horizontal well that
19 we're proposing to do. So that would impede or not allow
20 us to maximize the total length of this lateral. So it's
21 kind of disturbing the pattern of what we would like to
22 move forward on. That's what I'm trying to get at.

23 It's not just about these two wells. It's
24 about developing the whole three sections and starting
25 off and doing it right. Because if you allow these two

1 vertical wells to be done, then now we're down to
2 possibly, at a maximum, 35 vertical wells that are going
3 to be spotted in these three sections because of the
4 surface issues. To me, that's waste. That's not
5 maximizing or getting the best bang for your buck on
6 those three sections.

7 EXAMINER WARNELL: Okay. Thank you. No
8 further questions.

9 MR. BRUCE: I do have one question.

10 RE CROSS EXAMINATION

11 BY MR. BRUCE:

12 Q. Are you aware, Mr. Reyes, that in New Mexico,
13 on a 40-acre well unit, you can have four oil wells?

14 A. Yes.

15 Q. And actually looking at your Exhibit 17, on
16 some of these, you're already -- you've got two
17 verticals, like in the west half/west half of Section 13.
18 So you're already proposing more than one well in a 40
19 anyway, aren't you?

20 A. Those aren't producing. There's only one well
21 that's producing from the Yeso, and that would be the one
22 in Section 12.

23 Q. I'm not talking about producing wells. I'm
24 talking about on your own maps, you're showing that
25 you're going to drill two wells per 40; correct?

1 A. No, no, no. We're not proposing to drill two
2 wells per 40. When we start drilling these wells,
3 obviously we'll drill one well per 40. If they become
4 economic and we believe, moving forward, in the potential
5 of drilling on 20s, which you guys agreed on because we
6 already talked about it, you guys prefer 20-acre spacing.
7 That doesn't impede -- as a matter of fact, it doubles
8 your reserve.

9 Just because we have two approved -- I'm not
10 recommending that we drill these two wells back to back
11 and start producing them. That's not the point I'm
12 making.

13 The point I'm making here is that we have nine
14 approved BLM locations to drill, so it would be -- we can
15 call this one here; maybe that one here. We can
16 certainly spread them out. I'm not saying we need to be
17 drilling those wells side-to-side. I think we both agree
18 we want to look at the economics and the reserves and
19 move forward from there.

20 Q. Why would you want, at this point, to cancel
21 any BLM approved APDs?

22 A. Because the APDs that we're talking about are
23 vertical wells. I'm talking about horizontal wells.

24 Q. What's to prevent you from cutting a window in
25 an existing vertical well and using that to move

1 horizontally?

2 A. For one, if you're going to drill that well,
3 more than likely you're going to set five-and-a-half-inch
4 casing. So if we're going to kick off and do a
5 horizontal well, you want to set seven-inch casing so you
6 can have the full potential to frack your well and
7 stimulate it.

8 Q. Have you looked at Burnett's APDs -- not APDs,
9 AFEs? Excuse me. Do you know what size casing they're
10 using?

11 A. I just saw -- I'm not the engineer, and APDs
12 aren't my thing. But I saw where you presented one, but
13 that was probably for a vertical test.

14 Q. I'll represent to you that it's seven-inch
15 casing.

16 A. Okay.

17 Q. So you would still be able to use that to cut
18 a window then; would you not?

19 A. You could.

20 MR. BRUCE: That's all. Thank you,
21 Mr. Examiner.

22 EXAMINER WARNELL: Thank you.

23 MS. MUNDS-DRY: I have nothing further.

24 EXAMINER WARNELL: Thank you, sir.

25 MS. MUNDS-DRY: We'd like to call

1 Mr. Craig.

2 KEN CRAIG

3 Having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MUNDS-DRY:

6 Q. Please state your full name for the record.

7 A. Ken Craig.

8 Q. Mr. Craig, where do you reside?

9 A. Midland.

10 Q. And who do you work for?

11 A. Concho.

12 Q. What do you do for Concho?

13 A. I'm the lead reservoir engineer for the New
14 Mexico Shelf.

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

17 A. Yes, I have.

18 Q. And were your credentials accepted and made a
19 matter of record at that time?

20 A. They were.

21 Q. Are you familiar with the applications that
22 have been filed by Concho and Burnett?

23 A. Yes.

24 Q. Have you made an engineering study of the
25 subject area?

1 A. Yes.

2 MS. MUNDS-DRY: Mr. Warnell, we'd tender
3 Mr. Craig as an expert witness in petroleum engineering.

4 MR. BRUCE: No objection.

5 EXAMINER WARNELL: So recognized.

6 Q. (By Ms. Munds-Dry) Mr. Craig, if we can go to
7 your first slide, Concho Exhibit 18, and if you could
8 identify and review this slide for the Examiners.

9 A. What we're doing here is trying to get an idea
10 of the reserve impact for the different scenarios that we
11 talked about today.

12 The first line, what I called "Full access 10
13 acre-verticals," would be the traditional 10-acre
14 development on the three sections, 191 locations; typical
15 Yeso production for this area estimated to be 120 MBO.
16 So 191 times 120 MBO per well would be almost 23 million
17 barrels of reserves. That was our original target when
18 we started the project.

19 We started having our concerns with the --
20 what I call restricted access with the 35 locations that
21 we were able to work out with the BLM. Thirty-five times
22 120 is the 4.2 million barrels. So that's -- if you were
23 only able to do that, instead of what we would like to do
24 in our traditional drilling programs, that would leave
25 almost 19 million barrels in the ground.

1 With our proposed horizontal development, it
2 comes back down to eight horizontals per section or 24
3 locations. And we think we can recover those same
4 reserves that we had anticipated for the full access
5 development to that.

6 Q. So that puts you back at recovering 23 million
7 barrels?

8 A. That's right.

9 Q. Okay. Let's turn to your next slide, which is
10 Concho Exhibit 19. What is this slide showing you?

11 A. This is the proposed configuration for three
12 laterals from a single wellbore. It would consist of one
13 lateral through the Paddock and two laterals through the
14 Blinebry.

15 Q. Would this allow you then to fully recover
16 reserves from the Yeso?

17 A. Yes, it would.

18 Q. Is this the proposal that went out yesterday?

19 A. Yes, it is.

20 Q. So this just gives us a simple diagram of --

21 A. Right. It's just a schematic to show the
22 configuration that we propose.

23 Q. Does this new plan allow for Concho to
24 maximize production in the Yeso in these three sections?

25 A. Yes.

1 Q. Mr. Craig, were you present for Mr. Jacoby's
2 testimony?

3 A. Yes, I was.

4 Q. And were you present for his explanation of
5 the comparison of completions between how Burnett uses a
6 slickwater frack and Concho's gel water fracks?

7 A. Yes.

8 Q. And what is your response to Mr. Jacoby's
9 statement that they believe Burnett drills and completes
10 better wells?

11 A. I'm unsure of the wells that he picked for the
12 Concho completions or the Burnett completions. We've got
13 a scattering of wells across the Shelf. I think that if
14 we picked our 30, they could be comparable or better. I
15 wasn't real convinced that that was a fair comparison.

16 MS. MUNDS-DRY: Mr. Warnell, we move to
17 admit Exhibits 18 and 19 into evidence.

18 MR. BRUCE: No objection.

19 EXAMINER WARNELL: Exhibits 18 and 19 are
20 admitted.

21 (Exhibits 18 and 19 admitted.)

22 MS. MUNDS-DRY: And I pass the witness.

23 CROSS-EXAMINATION

24 BY MR. BRUCE:

25 Q. Mr. Craig, looking at your Exhibit 18, this is

1 all based on 120,000 barrels per well?

2 A. Yes, it is.

3 Q. Even that would be substantially less than
4 what Burnett is getting on its more recent wells, which
5 is upwards of 300,000 a well; is that correct?

6 A. If you could leave at 300,000 per well, yes.

7 Q. You don't have any reason to dispute that, do
8 you?

9 A. Based on the performance that we've seen in
10 the area, I would think that would be a high number.

11 Q. So you're thinking it's 120,000 barrels?

12 A. Different areas of the field have different
13 recoveries.

14 Q. And did you run any analysis like this, based
15 on Burnett's 20-acre infield proposal?

16 A. The only thing that I thought of, instead of
17 having 191 locations for a 10 acre, it would be 95 for a
18 20 acre, which is still 60 more than the 35 that we could
19 find out there. So there would still be waste.

20 Q. On your Exhibit 19, your proposal, has COG
21 drilled any wells like this in the Yeso trend in New
22 Mexico?

23 A. We have not.

24 Q. Have you drilled wells like this anywhere?

25 A. Not to my knowledge.

1 Q. So you don't really -- you haven't done the
2 necessary economics, I take it, for wells like this?

3 A. Our drilling group has analyzed the drilling
4 program that would be required for this. We've been
5 talking to other operators that have done multilateral
6 wells, and we believe it's a program that could work. I
7 guess I would say it's not new to the industry.

8 Q. It's new to COG?

9 A. Yes.

10 Q. It's new in Southeast New Mexico?

11 A. Yes.

12 Q. And have you also calculated -- these wells do
13 produce quite a bit of water, don't they?

14 A. Yes.

15 Q. Have you calculated if you have disposal
16 capability for that water?

17 A. I have not. But we do have an extensive
18 disposal system.

19 Q. And the final question: Can you lift all
20 these fluids out of the vertical with these three
21 laterals?

22 A. I've worked on projects where we had ESPs that
23 lifted thousands of barrels. I would assume so.

24 Q. How many thousands?

25 A. I think the biggest ESP I ever ran was 3,000.

1 Although I know that on some water source wells, we had
2 8,000.

3 Q. And in this area, what type of fluids do
4 vertical wells produce?

5 A. I believe the initial rates, 3- to 500 barrels
6 per day, and tapering off over time.

7 Q. Is 1,000 barrels a day unusual?

8 A. Maybe at initial completion.

9 Q. And that varies from place to place in the
10 field; does it not?

11 A. I would think so. I'm not sure about that.

12 Q. One of Mr. Reyes' maps -- you do operate this
13 acreage to the east of the four sections we've been
14 discussing generally today?

15 A. That's correct.

16 Q. Do COG's wells in Section 19 to the east
17 produce more water than wells, say, three to four miles
18 to the west?

19 A. I don't know that answer.

20 MR. BRUCE: Okay. That's all I have,
21 Mr. Examiner.

22 EXAMINER BROOKS: No questions.

23 EXAMINATION

24 BY EXAMINER WARNELL:

25 Q. Mr. Craig, on your Exhibit 19, the vertical

1 part of the well -- I guess I have a bad copy -- is that
2 seven-inch casing?

3 A. Yes, sir.

4 Q. Since there's been a lot of discussion this
5 afternoon about slickwater versus gel frack --

6 A. Yes.

7 Q. -- it's kind of like slickwater, Burnett camp;
8 gel frack, COG camp. Is it safe to assume that that's
9 two different fracking companies?

10 A. No, I don't think so. I'm not sure who they
11 use, but I know most of those companies offer both
12 services.

13 Q. I think they use Halliburton, but I'm not
14 sure.

15 A. We do have a lot of usage from them.

16 Q. You use a fair amount of Halliburton services?

17 A. Yes, sir.

18 MR. WARNELL: I was just curious about
19 that.

20 Any closing comments?

21 MR. BRUCE: Mr. Examiner, I would like to
22 call one rebuttal witness. It won't take long. I would
23 like to call Randall Hudson to the stand.

24 EXAMINER BROOKS: Is everyone through with
25 this witness?

1 MS. MUNDS-DRY: Yeah. I have nothing
2 further for Mr. Craig.

3 MR. BRUCE: Mr. Hudson has not been sworn
4 in.

5 (One witness was sworn.)

6 RANDALL HUDSON

7 Having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BRUCE:

10 Q. Mr. Hudson, could you state your name and city
11 of residence?

12 A. Randall Hudson. I live in Fort Worth, Texas.

13 Q. Who do you work for?

14 A. Hudson Oil Company of Texas.

15 Q. What is your job there?

16 A. I'm the president of the company.

17 Q. What type of matters do you handle? I think
18 you handle more than --

19 A. We're fairly small. My background is in
20 geology. But I end up getting involved in a little of
21 everything, from the land and the geologic side, surface
22 issues, a large variety, as you would expect from a small
23 company.

24 Q. So you handle the operational issues insofar
25 as obtaining APDs and stuff like that?

1 A. Yes. We use a consultant to obtain the APDs.
2 But yes, I'm involved in that process.

3 MR. BRUCE: Mr. Examiner, I ask everyone
4 to turn to Exhibit 10, Burnett Exhibit 10, which is this
5 land plat.

6 Q. (By Mr. Bruce) You've sat through the
7 testimony of Mr. Reyes; have you not?

8 A. Yes.

9 Q. And of Mr. Evans?

10 A. Yes.

11 Q. Let's go first to the some of the land
12 testimony. You've been present at virtually all of these
13 meetings with Burnett and COG; have you not?

14 A. Yes. I missed one in Burnett's offices. But
15 the vast majority of them, I've been present, yes.

16 Q. Mr. Evans said something about Burnett or
17 Burnett and Hudson threatening to terminate the Ard term
18 assignment. Did you hear him say something to that
19 effect?

20 A. Yes.

21 Q. Did that ever happen?

22 A. Not to my knowledge, no. I never heard
23 anything to that effect whatsoever.

24 Q. Now, the Ard group, it's -- you're related to
25 them?

1 A. Unfortunately, yes.

2 Q. Is it fair to say that relationships between
3 the Ard group and virtually the rest of the Hudson family
4 are strained?

5 A. That is a fair statement. In fact, we are
6 involved in litigation with the Ards and have been for
7 the last seven or so years.

8 Q. Would you be able to tell or even request the
9 Ards to terminate their agreement with COG?

10 A. The odds of Julian Ard doing anything that I
11 tell him are absolutely zero.

12 Q. Probably less than zero?

13 A. In fact, he'd probably do exactly the
14 opposite.

15 Q. Let's get to the permitting issue. On the
16 Exhibit 10 I've shown you, there are a number of wells
17 already on these leases; correct?

18 A. Yes.

19 Q. I mean I didn't do a calculation. But
20 based -- between the permits that Burnett has gotten for
21 its proposed vertical tests and the APDs you already have
22 for Grayburg-San Andres, it looks like two-thirds and
23 three-quarters of the leases have already been -- have
24 received APDs?

25 A. I think that's a fair eyeball statement, yes,

1 sir.

2 Q. Is there an agreement between Burnett and
3 Hudson, where necessary, to basically use the same well
4 pads to drill these additional Yeso wells?

5 A. Yes. That's the intent and part of the reason
6 for the partnership.

7 Q. In addition to the APDs that are on there, has
8 Burnett or Hudson obtained some additional Grayburg-San
9 Andres permits that aren't on that exhibit?

10 A. Yes. For instance, if you look at our
11 exhibit, up in Section 12, which is where the majority of
12 the sand dune lizard country is, in the west half of the
13 northwest quarter, where there appears to be a blank,
14 there are now two approved APDs for our Puckett 12 and 13
15 wells which we plan to spud in about 30 days. So you can
16 color two more locations in on that 80-acre tract there.

17 And we are currently working with the BLM to
18 permit some wells in the east half/east half of 12. And
19 as far as I know, we haven't run into anything yet that
20 is going to preclude us from drilling inside those
21 40-acre units. When those wells are done, we will have
22 covered Section 12 fairly well on a 40-acre unit basis.

23 And I think it's fair to say that COG probably
24 is precluded from drilling in more places when you're
25 looking at 10-acre spacing. But part of the reason for

1 Burnett's plan on 20s is that I think you could get
2 closer to a majority of vertical development on 20-acre
3 spacing, given the existing lizard situation.

4 Q. COG, in their exhibits, was talking about,
5 "Well, you're going to have to get 95 vertical permits."
6 Based on the well pads that are already out there, it
7 shouldn't be difficult to get close to that number;
8 correct?

9 A. I don't think so at all. Based on what we're
10 seeing in 12 currently in the areas of the sand dunes --
11 and I don't know where the pictures that COG provided of
12 the dunes were taken. They didn't indicate.

13 But we have worked and danced and fit
14 locations inside of the dunes that are actually located
15 in Section 12 without too much effort. And I don't see
16 it as being a problem for vertical Yeso wells any more so
17 than it was for vertical Grayburg-San Andres, which we
18 are developing now.

19 Q. And the wells on the north side of the leases
20 are the newer wells; correct?

21 A. That's correct. Those have all been drilled
22 in the last three years or so.

23 Q. It's actually the north side of those leases
24 that has the bigger sand dune lizard population; correct?

25 A. That's correct. The dunal area -- the bad

1 dunal area is basically the southwest quarter of 12 and
2 the northwest quarter of 13. And as you can see, in the
3 last three years, we've gotten six permits and have
4 drilled six wells in those exact areas.

5 I might add something else here, too.
6 Contrary to, I believe it was Mr. Reyes' testimony, Keith
7 Corbett, with COG, in a meeting in Burnett's offices,
8 asked Burnett if they would be -- if they would consider
9 horizontal drilling as a way to develop these leases.

10 And Burnett and Hudson said, "Yes, absolutely.
11 But before we step out and do any horizontal drilling,
12 we'd like to do some newer contemporary vertical wells to
13 identify exactly where we'd like to go horizontally."

14 The situation with the Paddock and the
15 Blinebry is that the porosity is very low. And trying to
16 go blindly into a horizontal area, to us, seems like a
17 difficult and unjustified task, particularly when we're
18 looking at two vertical applications today, that if we
19 drill those, not only would they help us identify where
20 to potentially go horizontal, they would give us the
21 ability to cut a window and actually move horizontal from
22 those locations.

23 So in my mind, canceling any applications for
24 permits to drill that are approved in this area, given
25 the circumstances, is an imprudent way to consider the

1 development of these leases.

2 Q. It would just slow down development?

3 A. Slow down development. And if COG is in such
4 a big hurry to initiate drilling so that they can abide
5 by the terms of these rather nonindustry terms that they
6 have acquired, I would think they would be willing to
7 proceed.

8 Q. Get the program started?

9 A. Absolutely.

10 MR. BRUCE: That's all I have, Mr.
11 Examiner.

12 MS. MUNDS-DRY: A few questions, please.

13 CROSS-EXAMINATION

14 BY MS. MUNDS-DRY:

15 Q. Mr. Hudson, you said you were at all of the
16 meetings but one between Burnett and Concho?

17 A. Yes. I believe there was one meeting at
18 Burnett's offices where some of the Concho people came
19 in. And neither Bill Pollard nor I were present, so I
20 can't speak to what happened in that meeting.

21 Q. In any of these meetings, did you ever suggest
22 to Concho that unless they conceded operations to
23 Burnett, that you would take efforts to make it difficult
24 for them to meet the obligations in their term
25 assignments?

1 A. I did not. In fact, in the initial
2 conversation with COG in November, I specifically asked
3 David Evans, who I have known from his days at OXY, if we
4 could find a path to allow us to develop these leases so
5 it would mutually benefit all parties. Those were the
6 last words as we were leaving the meeting. We shook
7 hands and discussed lunch plans.

8 The next morning, Moran Shelton, a group in
9 Houston who we had a deal with to acquire their interest
10 in a term assignment for a dollar figure, called me and
11 said that COG sent three people at 7:00 a.m. to their
12 doorstep and tried to circumvent the deal that we had
13 with them.

14 At which point I said to our good friends,
15 Moran Shelton, "If they're offering you more than you've
16 agreed to with us, we will pay you what they're doing."
17 So thanks to COG, we had to increase the amount just to
18 keep the deal alive.

19 Q. So you tried to get a top lease on the Iverson
20 interest?

21 A. Mr. Rhodes with Burnett called to inquire if
22 there was a top lease on the Iverson agreement, making it
23 very clear to the Iverson trustee that this was not an
24 effort to top lease from them, that we were trying to
25 coordinate our drilling schedule. He made it very clear.

1 We did inquire if the interest had a top lease
2 on it. We did not inquire if they would be interested in
3 leasing to us specifically to try and top lease COG. We
4 were trying to determine what the order of drilling would
5 be. By that, I mean the dates.

6 Q. Mr. Hudson, does your company have a CCA?

7 A. We do not have a CCA.

8 Q. If the lizard is listed as an endangered
9 species, do you know how it will affect your future
10 drilling program?

11 A. It could make it significantly more difficult
12 to get an approved APD.

13 Q. And you were discussing that you thought, even
14 under what Mr. Reyes was showing you in his testimony,
15 that 20-acre spacing would be possible with the BLM, if I
16 understand your testimony correctly?

17 A. Well, based on what we have seen permitting
18 shallow wells, I think my summary there would be that I
19 think Mr. Reyes' assessment of the acreage that is
20 available for permitting on 20-acre spacing was extremely
21 conservative.

22 Q. Have you had those discussions with the BLM to
23 determine if that's possible?

24 A. I've had discussions with the BLM to determine
25 where I can put Grayburg-San Andres locations. And in

1 almost every case, we have been able to work out a way to
2 get a well drilled.

3 Q. Have you ever approached the BLM about a
4 master plan of development for those sections, for the
5 Grayburg-San Andres?

6 A. We didn't have to. In January we got a
7 proposal for about 50 wells from COG. I must say that in
8 my 30 years in the business, I have never received 50
9 AFEs in a matter of two weeks, ever. We considered it a
10 bullying tactic, an effort to try to push around a small
11 company like us.

12 When we plotted those locations out, it became
13 clear that I didn't need to pursue the potential for
14 40-acre development on these leases. COG was going to do
15 it for me by proposing so many wells. So we sat back to
16 watch and see what happened.

17 Q. But that doesn't mean you had a conversation
18 with the BLM to --

19 A. I've talked to the BLM. I've talked to Ty
20 Allen about CCAs. As I understand it, only one CCA needs
21 to exist on a given lease.

22 Q. But in terms of getting locations for 20-acre
23 spacing to constitute full development, as Burnett and
24 Hudson sees it, have you had a discussion with Mr. Allen
25 about that?

1 A. No, I have not. Let me back up. I have
2 talked to Mr. Allen about our Grayburg-San Andres, which
3 Hudson Oil operates. Burnett Oil has had conversations
4 with Mr. Allen about the 20-acre spacing for their
5 proposed wells on 20-acre spacing in the Yeso. There is
6 a little bit of a split between the companies.

7 Q. Sure. I understand that.

8 A. Although we're on the same team, they
9 definitely handle more of the Yeso side of this
10 operation.

11 Q. So let me limit it then. Have you had a
12 discussion with Mr. Allen about 20-acre development for
13 the Grayburg-San Andres?

14 A. We have no intention of developing the
15 Grayburg on 20 acres.

16 MS. MUNDS-DRY: That's all the questions I
17 have. Thank you.

18 EXAMINER BROOKS: No questions.

19 EXAMINER WARNELL: I have no questions.

20 MR. BRUCE: I have no further questions.

21 EXAMINER WARNELL: Thank you, Mr. Hudson.
22 Anything further?

23 MR. BRUCE: I have nothing further.

24 MS. MUNDS-DRY: I have nothing further.

25 MR. BRUCE: I would either like a short

1 closing comment, or if you prefer, a page written
2 closing. Either one would be fine with me.

3 MS. MUNDS-DRY: That's fine with me.

4 MR. BRUCE: I'll buy the beer if we quit
5 now.

6 EXAMINER WARNELL: Let's quit now. I'll
7 have to pass on the beer.

8 MR. BRUCE: I would like permission --
9 like I said, I have a very short thing I would like to
10 submit after the hearing.

11 EXAMINER WARNELL: And you'll copy
12 Ms. Munds-Dry?

13 MR. BRUCE: Absolutely.

14 MS. MUNDS-DRY: And I will certainly copy
15 Mr. Bruce.

16 EXAMINER WARNELL: With that, we'll take
17 Cases 14649, 14640, 14650, 14641, all four cases will be
18 taken under advisement. And with that, that concludes
19 Docket 13-11.

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. _____,
heard by me on _____.

_____, Examiner
Oil Conservation Division

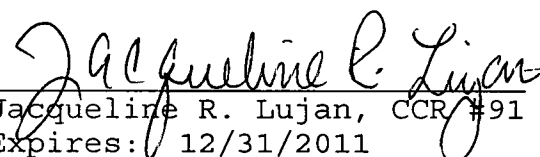
REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on May 26, 2011, proceedings in the
above captioned case were taken before me and that I did
report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with any of the parties or
attorneys in this case and that I have no interest
whatsoever in the final disposition of this case in any
court.

WITNESS MY HAND this 8th day of June, 2011.


Jacqueline R. Lujan, CCR #91
Expires: 12/31/2011