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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:
Case Nos. 23711, 23712

VIDEOCONFERENCE HEARING
DAY TWO

DATE: Friday, December 8, 2023
TIME: 7:00 a.m.
LOCATION: Remote Proceeding
Santa Fe, NM 87501
REPORTED BY: James Cogswell
JOB NO.: 6352101

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A P P E A R A N C E S

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ALSO PRESENT:

Gregory Chakalian, Hearing Examiner (by
videoconference)
Million Gebremichael, Technical Examiner, Oil
Conservation Division (by videoconference)
Phillip Goetze, Technical Examiner, Oil
Conservation Division (by videoconference)
Marlene Salvidrez, OCD Law Clerk, Oil
Conservation Division (by videoconference)
Sheila Apodaca, Law Clerk (by videoconference)

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
23711:		
Exhibit A	A1-A3	419/419
Exhibit B	B1-B7	419/419
Exhibit C	C1-C7	419/419
Exhibit D	D	419/419

NO.	DESCRIPTION	ID/EVD
23712:		
Exhibit A	A1-A10	301/301
Exhibit B	B1-B7	301/301
Exhibit C	C1-C5	301/301
Exhibit D	Affidavit Regarding Publication in Hobbs Newspaper	301/301

1 P R O C E E D I N G S

2 MR. CHAKALIAN: The time is 7 a.m., on
3 December 8. We are continuing this hearing that we
4 began yesterday in Cases number 23711 and 23712.

5 Mr. Padilla, as a preliminary matter, I
6 sent you an email yesterday at about 4:30 p.m. Did
7 you receive it?

8 If you're speaking, no one can hear you
9 because you've not unmuted yourself.

10 MR. PADILLA: I'm sorry. What I
11 determined was that you were looking at -- I was
12 looking at the 23712 case instead of the 23711 case.

13 In the 11 case, Mr. Kent is not a
14 witness on that. The only thing that he has there is
15 an affidavit of mailing. The affidavit of mailing was
16 pretty intense and they did it because we didn't have
17 the capability of sending all our notices out,
18 although that was on our letterhead.

19 But I think Mr. Feldewert suggested we
20 do Case 23712 first. That makes sense and probably we
21 should not have filed the 11 case before the
22 unitization case.

23 MR. CHAKALIAN: Okay. I'm confused.
24 So let me go to the email I sent you yesterday. I
25 said: "Mr. Padilla, you have time to supplement the

1 exhibits filed in 23711 with the missing exhibits that
2 I brought to your attention today. Please file the
3 missing exhibits before 9 a.m., tomorrow morning."

4 You did not respond to my email and now
5 you're saying what?

6 MR. PADILLA: Now I'm saying that we
7 submitted the entire package because --

8 MR. CHAKALIAN: Okay. I understand.
9 You already explained that. So, Mr. Padilla, in the
10 future, maybe you could reply to my emails and let me
11 know why you're not going to do what I'm asking you to
12 do.

13 MR. PADILLA: I certainly will. After
14 I looked at it, I probably should have responded and
15 told you that we were good with what we filed.

16 MR. CHAKALIAN: Okay. All right. So
17 we are going to then begin today's hearing with Case
18 number 23712. We have a complete exhibit set here
19 that was filed timely. Yesterday, I asked if the
20 parties had time to review the exhibits and the answer
21 was yes.

22 So, Mr. Padilla, we don't have an
23 objection to your proceeding by affidavit, so why
24 don't you move for the admission of these exhibits
25 into evidence at the beginning of your case.

1 MR. PADILLA: Very good. Mr. Examiner,
2 as a preliminary matter, however, I'd like the
3 witnesses to be sworn so that their sworn statements
4 are under oath.

5 MR. CHAKALIAN: The witnesses were
6 sworn by myself yesterday.

7 MR. PADILLA: Okay. We therefore move
8 the admission of Exhibit A, B, C, and D.

9 (Exhibit A through Exhibit D were
10 marked for identification.)

11 Are there any objections to admitting
12 these exhibits and their subparts into evidence?

13 MR. FELDEWERT: No, sir.

14 MR. CHAKALIAN: Thank you.

15 So Exhibits A, A1 through A10; B, B1
16 through B7; C, C1 through C5; and D are all admitted
17 into evidence.

18 (Exhibit A through Exhibit D were
19 received into evidence.)

20 The witnesses have been previously
21 sworn, so I will remind the witnesses that you are
22 still under oath.

23 Mr. Padilla, let's try to keep the
24 summaries short since we have all of this evidence and
25 the parties have already reviewed the evidence, the

1 technical evidence. How do you want to proceed?

2 MR. PADILLA: Well, Mr. Examiner, we
3 can skip the whole introduction, but I thought it
4 would be beneficial to the Examiners to have some
5 short summary of what is contained in Exhibits A, B,
6 and C.

7 MR. CHAKALIAN: Okay. Hold on,
8 Mr. Padilla. Let's ask the examiners. I see
9 Mr. Gebremichael and Mr. Goetze on camera, as well as
10 Mr. Feldewert, who is here to ask questions as well.
11 Let's start with Mr. Gebremichael.

12 Do you need a summary, sir?

13 MR. GEBREMICHAEL: Yes, that would be
14 helpful.

15 MR. CHAKALIAN: Okay. Do you want a
16 summary from each of the three witnesses?

17 MR. GEBREMICHAEL: The only thing I
18 would -- is the main --

19 MR. CHAKALIAN: Okay, very good.

20 Mr. Goetze, do you want a summary from
21 the witnesses.

22 MR. GOETZE: Let's start off with the
23 general overview by Mr. Padilla. And I think this is
24 a second go-around for this application.

25 MR. CHAKALIAN: That's right.

1 MR. GOETZE: And we have concerns about
2 the original application. I would put forth to
3 Mr. Padilla to highlight the differences between the
4 last application for the same area and this
5 application if he would in his new discussion.

6 MR. CHAKALIAN: Okay. Mr. Padilla, do
7 you want to make an opening statement and explain the
8 differences between this application and the previous
9 one?

10 MR. PADILLA: Yes, I will,
11 Mr. Examiner.

12 The difference between the first
13 application and the second application was that the
14 first application contained an erroneous legal
15 description. Not so far as Lea County or New Mexico,
16 but as far as the principal meridian. The earlier
17 application had the six prints for meridian which
18 Mr. Goetze said was in Nebraska.

19 So that case was dismissed. We simply
20 refiled the application pretty much the same way as
21 the first one with the corrected legal description.
22 So there's no difference in what we filed earlier. We
23 were ready to proceed with hearing, but we were not
24 allowed to continue the case in order to cure the
25 principal meridian description.

1 MR. CHAKALIAN: Okay, Mr. Padilla.
2 Thank you.

3 So, Mr. Goetze, Mr. Padilla is not a
4 sworn witness in this case and so, you know, the
5 statements that he makes are not evidence. Are there
6 any other statements that he might help you with
7 before we get to the witnesses?

8 MR. GOETZE: No, that's a good
9 indication of where were are. I just wanted to
10 clarify that between the two applications.

11 MR. CHAKALIAN: Thank you. Okay, very
12 good. So, Mr. Goetze, since you're the primary
13 technical reviewer in this case, which of the three
14 witnesses would you like a summary from to begin with?

15 MR. GOETZE: Well, usually in this type
16 of approval of statutory units, we start with the unit
17 owner itself, so Mr. Kent probably would be the first
18 person to discuss how this has been put together.

19 MR. CHAKALIAN: Okay.

20 Mr. Kent?

21 MR. KENT: Yes, hello. Thank you,
22 Mr. Hearing Examiner, and technical examiners. So
23 today, we're asking for the approval of this South Jal
24 unit, which consists of 19,369.77 acres in the
25 Enhanced Oil Recovery unit that is unitizing the

1 Yates, Seven Rivers, and Queens Formations.

2 The proposed unit is going to be
3 located in Lea County, New Mexico, in Townships 25
4 South, 36 East; 25 -- 25 South, 37 East; 26 South, 36
5 East; and 26 South, 37 East. Our proposed
6 participation formula, as approved by the BLM and the
7 SLO is going to be 90 percent remaining oil in place
8 and 10 percent current production.

9 The exhibits I've uploaded, the
10 proposed unit agreement, unit operating agreement,
11 unitized well list, hearing notice, return receipts,
12 preapprovals from both the BLM and the SLO, and return
13 gratifications from those individuals and entities
14 that we have successfully voluntarily joindered.

15 In general, Forty Acres has committed
16 substantial time, resources, and diligence in
17 researching title and researching for exact addresses
18 for all relevant owners within the unit. We provided
19 sufficient and timely notice to all parties required
20 under NMOCD rules.

21 Additionally, we have made good faith
22 effort to voluntarily joinder all interest owners.
23 And as a -- as a general breakdown of the land types
24 in this unit, the unit consists of 67 and a
25 half percent BLM land, 13.9 percent SLO land, and

1 so that's the first time that you had some involvement
2 in the development of this unit?

3 A That is correct.

4 Q Now I understand that over time, you had
5 some discussions and emails with Jess Ritter at
6 ConocoPhillips. Is that right?

7 A Among other parties at ConocoPhillips, yes.

8 Q Okay. I want to go over some of those
9 discussions with you; okay?

10 A Okay.

11 Q Do you have any notes in front of you that
12 you're referring to?

13 A I'm just --- I -- I have a notebook here of
14 just kind of indexing where some of these exhibits
15 start in the -- in the PDF 'cause there's a lot
16 of -- there's a lot of pages of exhibits here.

17 Q I agree with that. Do you have any other
18 notes in front of you?

19 A No.

20 Q Okay, all right. I saw a legal pad.

21 A Yeah, those -- those were the notes I was
22 referring to.

23 Q Those are the notes that you have for the
24 exhibits?

25 A Yeah, that's referring back to the exhibits

1 that I have pulled up on my screen.

2 Q Okay, all right. My understanding is that
3 throughout your discussions with ConocoPhillips, you
4 would not disclose FAE's ownership on a consolidated
5 basis in this proposed unit.

6 A To my knowledge, if I -- I don't recall
7 Conoco specifically requesting that information.

8 Q Did you disclose your ownership interest in
9 any documents to ConocoPhillips in this unit on a
10 consolidated basis?

11 A What do you mean by "consolidated basis"?

12 Q In the unit as a whole. Any interest in the
13 unit.

14 A I'm -- I'm not aware that I have.

15 Q Did you do that with any other working
16 interest owners?

17 A No -- I don't remember off the top of my
18 head, but if somebody would have specifically
19 requested that information, I don't see why we -- we
20 would have withheld it.

21 Q I see. So if someone indicates that they
22 had asked for that information and you refused to
23 provide it, you would agree that that would be
24 inappropriate?

25 A I -- I guess it depends on the circumstance.

1 Q Under what circumstance would you deem it
2 appropriate to not tell a working interest owner what
3 your consolidated interest is in your proposed unit?

4 A I -- I don't know. I can't -- I can't think
5 of any off the top of my head.

6 Q Neither can I. What is FAE's percentage
7 ownership in your proposed unit?

8 A It's going to be roughly 73 percent right
9 now without any sort of, you know, carried interest
10 for nonparticipating working interest owners.

11 Q Where do I find in the numerous pages of
12 exhibits that you have provided, the consolidated
13 ownership breakdown for the unit. In other words,
14 where do I find it showing your 73 percent and then
15 what everybody owns?

16 A In Exhibit B of the proposed --

17 Q Exhibit B?

18 A Yeah, the Exhibit B of the proposed unit
19 agreement.

20 Q Now when I looked at that Exhibit B to the
21 proposed unit agreement, I did not see a consolidated
22 working interest owner percentage on the unit as a
23 whole.

24 A Oh, yeah. Not as a unit as a whole. It's
25 a -- it's a tract-by-tract breakdown.

1 Q Okay. Have you provided anywhere,
2 the percentage ownership of the effective working
3 interest owners in the unit as a whole?

4 A No, sir. That - that interest is evolving
5 day by day based off of deals that we're still
6 continuing to negotiate and other interest owners that
7 might choose to participate.

8 Q I understand, but at that time that you
9 filed your exhibits, you didn't provide one? Your
10 ownership at that time on a consolidated basis and
11 everybody else's?

12 A I have not -- I have not submitted any
13 documentation on a consolidated basis, no. To the
14 extent that somebody would have requested that
15 information, I would have provided it.

16 Q And you would agree that if somebody had
17 requested it, it would be inappropriate not to provide
18 it?

19 A Yes.

20 Q Okay. Didn't you inform ConocoPhillips that
21 the company, FAE, did not have any title opinions for
22 the proposed unit?

23 A Are you -- are you asking me that -- if I
24 said that?

25 Q Did you say that?

1 A I don't recall saying that.

2 Q Okay. Does the company have a title opinion
3 for the proposed unit?

4 A For the entire unit?

5 Q Yeah.

6 A Like a division or a title opinion?

7 Q Do you have a title opinion for the entire
8 unit?

9 A No.

10 Q Okay. Wasn't that a big concern that COG
11 discussed with you? Not having title opinions?

12 A I -- I have not had those discussions
13 specifically with ConocoPhillips myself, no.

14 Q Are you aware that ConocoPhillips raised
15 those concerns with the company?

16 A I do not -- I do not recall any of those
17 concerns being raised with us.

18 Q What about other working interest owners?

19 A I don't recall any other working interest
20 owners raising that concern either.

21 Q Okay. Why don't you have a title opinion
22 for the proposed unit?

23 A We felt like the title that we have is
24 sufficient enough.

25 Q What title do you have?

1 A We have title covering every single tract
2 within the unit.

3 Q How old is that title?

4 A It varies. No more than a couple of years
5 usually.

6 Q Okay. But your testimony is that you have
7 title for every tract?

8 A Yes, sir.

9 Q Okay. Is there a reason why you didn't
10 provide that to ConocoPhillips when they asked for it?

11 A Well, that information contains proprietary
12 data.

13 Q What? The title opinion is proprietary
14 data?

15 A Absolutely it is.

16 Q Okay. So this title that you apparently did
17 you say you have for the unit, that resulted in
18 crediting Meridian Oil Company with a working
19 interest; correct?

20 A That is correct. And --

21 Q And you're aware that Meridian Oil has not
22 been around in existence since the 1990s?

23 A Yes, I'm aware of that now and
24 we've -- whenever Jess brought that to our attention,
25 we corrected our records immediately.

1 Q So whatever records you had were old enough
2 that it showed Meridian Oil as having an interest?

3 A The -- are you saying that the ownership
4 report that we had was from the early '90s?

5 Q I thought you had a title opinion for every
6 tract.

7 A I -- I never said that. I said we had title
8 for every tract.

9 Q Oh, I'm sorry. That made a good
10 clarification. Do you have a title opinion for every
11 tract in the unit?

12 A No, sir. We don't have a title opinion for
13 every tract in the unit.

14 Q When you say you have ownership information,
15 what are you talking about?

16 A We have ownership reports in federal and
17 state abstracts.

18 Q Ownership reports in federal and state
19 abstracts?

20 A That is correct.

21 Q Okay. Now are you aware that
22 abstracts -- you consider abstracts to be reliable
23 title information?

24 A In conjunction with county record research,
25 yes.

1 Q But abstracts are just summaries; right?

2 A Of -- of BLM and -- and state records, yes.

3 Q Do you agree with me that they're not
4 updated?

5 A Yes.

6 Q Okay. As an experienced landman, would you
7 advise your client to rely on federal and state
8 abstracts for title information?

9 A Not solely, no.

10 Q Okay. And the other thing you said you had
11 is ownership reports. Is that right?

12 A That is correct.

13 Q Okay. What do you mean by "ownership
14 reports"?

15 A We've hired a team of brokers to go out and
16 review federal abstracts, state -- state land
17 abstracts, and county records to come to an opinion on
18 ownership.

19 Q Did they give you a title opinion?

20 A Are you referring to what -- what? A title
21 opinion as a -- an opinion given by a law firm?

22 Q I am referring to a title opinion that would
23 be reliable for purposes of developing an Exhibit B to
24 a unit agreement.

25 A Under -- under that definition, then, yes.

1 We have title opinions for all tracts in the unit.

2 Q Okay. And by title opinion, you mean you
3 have broker reports?

4 A That is correct.

5 Q Is that all you're going to do?

6 A Unless the need arises that we would need to
7 research anything further, yes.

8 Q Okay. And you use those broker reports then
9 to send out estimated title to working interest
10 owners?

11 A To my knowledge, we haven't sent out any
12 ownership reports to -- to working interest owners.

13 Q When you send out your ratification forms,
14 it says "estimated title;" didn't it?

15 A That is correct.

16 Q Okay. Are you going to do anything to move
17 it from "estimated title" to "established title"?

18 A Yes. Once the unit is approved, and we've
19 solidified the ownership and no changes have -- no
20 additional changes have been made to either tract
21 participation or the formula in which we came up with
22 the participation formula and how we calculate that,
23 then that will be -- that will be solidified.

24 Q Solidified how?

25 A Upon -- upon approval of the unit.

1 Q So you're not going to get formal title
2 opinions for the unit area?

3 A Define "formal title opinions."

4 Q What would you refer to as a formal title
5 opinion?

6 A I -- I'm -- I'm just going off of trying to
7 answer your question, sir.

8 Q Okay. Are you going to do any other title
9 work other than these ownership reports that was done
10 by your brokers?

11 A If the need -- if we feel like the need
12 arises to research title further, we will -- we will
13 update and get new title -- title reports, yes.

14 Q But you didn't do that in advance of this
15 hearing?

16 A No, sir.

17 Q Okay. And those ownership reports that you
18 utilized that showed Meridian Oil Company having an
19 interest; right?

20 A I believe one of those ownership reports
21 did, yes.

22 Q Which means it had to be at least 20- or
23 25-years old?

24 A Are you referring to the date of the
25 ownership report?

1 Q I'm talking about the title that you looked
2 at? I used to work for Meridian. Are you aware that
3 Meridian hasn't been around since the 1990s?

4 A I am -- I am now, yes.

5 Q Your limited efforts here also didn't show
6 COG Operating as having an ownership in this unit;
7 correct?

8 A No, sir. We -- we show COG Operating as
9 having an interest in this unit.

10 Q But initially, you did not?

11 A I'm -- I'm not aware of any time when we did
12 not have COG Operating as a working interest owner.
13 Or, no. I'm sorry. An owner in the unit.

14 Q So your testimony is that ConocoPhillips
15 didn't have to bring that to your attention?

16 A Not to my knowledge.

17 Q Okay. Would you turn to Exhibit A, A945?

18 A Sorry. I'm trying just to scroll these
19 pages. Okay, I'm there.

20 Q I'm looking at paragraph 2 of your email.
21 Are you there?

22 A Yes.

23 Q And I'm looking at the second sentence of
24 paragraph 2. It says "We have successfully closed
25 deals with other parties within this unit in which

1 their records reflect different acreage similar to
2 what you experienced with Meridian."

3 A Mm-hmm.

4 Q So it appears that -- and you go on to say
5 "We've been able to successfully work with these other
6 parties to fill the gaps of title." Do you see that?

7 A Mm-hmm.

8 Q So your use of ownership reports and simply
9 looking at federal abstracts resulted in gaps in title
10 with ConocoPhillips first; correct?

11 A Mm-hmm, that's correct.

12 Q And then with other working interest owners?

13 A That's correct.

14 Q Okay. And you cheered some of that by just
15 buying them out?

16 A Among other things, correct. Yes.

17 Q Okay, all right. Now when I look at your
18 unit agreement in terms of the unitized substances,
19 it's very broad; right?

20 A I -- I guess it depends on what your
21 definition of "broad" is.

22 Q Includes oil? Gas?

23 A (No audible response.)

24 Q Is that a yes?

25 A I'm -- would you -- I'm going to try and

1 pull up the unit agreement.

2 Q All right. Let's go to Exhibit page 201.
3 Are you familiar with this unit agreement?

4 A Yes, sir.

5 Q Have you looked at it closely?

6 A Yes, sir.

7 Q Okay. So it'd be Exhibit A, page 201?

8 A Okay.

9 Q Wouldn't it?

10 A At page 201?

11 Q Yeah.

12 A Yes, sir.

13 Q See the definition of "unitized substances"?

14 A Yes.

15 Q All oil, gas, gaseous substances, sulfur
16 contained in gas, et cetera.

17 A Mm-hmm.

18 Q Okay?

19 A Okay.

20 Q That's what you seek to use as unitized
21 substances?

22 A Okay.

23 Q Not just oil?

24 A That is correct.

25 Q Okay. As this project proceeds then, you

1 anticipate you'll produce some gas?

2 A I would -- I would refer to the reservoir
3 engineer or the geologist on -- if there would be any
4 additional gas produced.

5 Q Are you generally familiar with these types
6 of operations?

7 A In general, yes.

8 Q Okay. So would you expect that if you're
9 going to unitize gas, that you're going to produce gas
10 at some point?

11 A I -- I wouldn't want to speak to what may or
12 may not be produced when we commence development
13 operations in this unit.

14 Q Okay. Didn't you inform ConocoPhillips that
15 there are -- when you look at the ownership here, that
16 there are owners with gas rights in the unitized area
17 that may differ from owners with oil rights?

18 A I -- I did not. That was a concern that
19 Conoco had raised to me in that -- and I explained
20 that we were capturing gas rights where they were
21 split.

22 Q Okay. So you agree that there are
23 circumstances where the gas rights and the oil rights
24 were split?

25 A Yes, that is correct.

1 Q Okay. Are there are also then circumstances
2 where they may have different percentages of ownership
3 in the oil and gas?

4 A That is correct.

5 Q Okay. Now if I go back to page A945 -- I'll
6 give you a minute to get there and we'll start to
7 scroll through this.

8 A I'm -- I'm there right now, sir.

9 Q Oh, you're quick. I'm looking at paragraph
10 1 of your email.

11 A Mm-hmm.

12 Q Okay? After ConocoPhillips raised that
13 concern, you said, "Gas rights are being tracked
14 through the existing decks." Do you see that?

15 A That is correct.

16 Q Okay. What do you mean by "through the
17 existing decks"?

18 A So as the proposed participation formula
19 indicates that the formula is going to be 90 percent
20 remaining oil in place and 10 percent current
21 production, and to the extent that those gas rights
22 are split in the gas wells that are currently
23 producing, we are capturing those gas rights in the
24 decks.

25 So the percentages that we've come up with

1 for that 10 percent come directly from the decks that
2 we currently have.

3 Q When you say "decks you currently have,"
4 what do you mean by that?

5 A The pay decks that we are currently paying
6 royalties off of.

7 Q Pay decks, okay. And pay decks then would
8 be for those areas where you have producing wells?

9 A That is correct. And any acreage dedicated
10 to those producing wells.

11 Q Okay. So these pay decks would cover only
12 the producing wells and the acreage dedicated to those
13 producing wells; correct?

14 A That is correct.

15 Q Okay. And are these generally vertical
16 wells?

17 A To my knowledge, they are vertical wells.

18 Q Okay. Which means they're most likely -- if
19 they're oil, on Forty Acre spacing?

20 A I -- I don't recall how many oil versus gas
21 wells are currently producing.

22 Q Okay. But your pay decks would be limited
23 to the spacing unit associated with the wells?

24 A Yes. Or the unitized area associated with
25 the wells, yes.

1 Q Is there a unitized area associated with
2 some wells?

3 A That is correct. There is the Rhodes
4 federal gas unit that is completely within the -- our
5 proposed South Jal unit area that the -- that we are
6 proposing, and the BLM and the SLO have approved the
7 dissolution and complete incorporation into our South
8 Jal unit.

9 Q Okay. Any other unitized areas within
10 the --

11 A Not that I'm aware of.

12 Q Okay. So your pay decks would be limited to
13 the producing wells and acreage dedicated to the
14 wells, and then whatever you have for the Rhodes unit?

15 A That is correct.

16 Q How big is the Rhodes unit?

17 A I don't recall the size off the top of my
18 head.

19 Q Roughly?

20 A I -- I don't think I can put a number to it.

21 Q You're the land manager. You don't know how
22 big the Rhodes unit is within the unitized area that
23 you --

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

25 Q And you know where it's located?

1 A Yeah, it's -- we're located generally in the
2 southern part of the South Jal unit. Our proposed
3 South Jal unit.

4 Q Okay. So you agree with me then that your
5 pay decks won't cover your entire unit area?

6 A What -- what do -- could you --

7 Q In other words -- I'm sorry. Your pay decks
8 would not encompass all of the acreage of this nearly
9 20,000 acre unit that you seek to force on these
10 owners?

11 A Yeah, the pay decks wouldn't -- wouldn't
12 cover the unit, no.

13 Q Okay. So have you undertaken any other
14 examination of the gas rights within your proposed
15 unit area other than these existing pay decks?

16 A Yes, sir.

17 Q And how have you done that?

18 A We've -- we've done title -- we've -- those
19 title reports that you -- we've discussed earlier
20 would have captured that.

21 Q These ownership reports?

22 A That is correct.

23 Q Okay. So your testimony is these ownership
24 reports would address gas rights?

25 A Yes, in the -- in event that they were

1 split.

2 Q Give me a minute here. Have you examined
3 whether there are ownership depth severances within
4 your proposed interval? Unitized interval?

5 A Yes, sir.

6 Q Okay. Where do I find identification of
7 those ownership depth severances within your filings?

8 A Those depth splits are going to be located
9 on the Exhibit B of the proposed unit agreement.

10 Q And does it allocate based on the depth
11 severances?

12 A Yes, sir. It does.

13 Q Now we'll look at page 269 of Exhibit A.

14 A Okay.

15 Q I'm trying to get there. Hold on a minute.
16 Sorry about that. Now this is your affidavit of
17 notice, Mr. Kent. Is that right?

18 A It looks like 269 is the signature page to
19 my affidavit.

20 Q Okay, okay. Let's go to paragraph 1 of that
21 affidavit. Are you there?

22 A On Exhibit A269, it is just a signature
23 page.

24 Q So go up a couple then. I think that my
25 pagination was a little off. I want to go to

1 paragraph 1 of your affidavit. Affidavit of Notice.

2 A Can you -- okay. Can you specify what
3 page -- what exhibit page number you're referring to?

4 Q A267.

5 A Okay. I'm there.

6 Q Are you there?

7 A Yes.

8 Q Okay. Now you state you made a good faith
9 effort to secure voluntary unitization?

10 A That is correct.

11 Q Okay. Now your broker reports indicated
12 that you've identified 348 interest owners in the
13 unit?

14 A That's correct.

15 Q Okay. But you secured voluntary agreement
16 with only 36 of those owners?

17 A Working interest owners. That's correct,
18 yeah.

19 Q It'd be about 1 percent?

20 A I -- I can't do that math in my head.

21 Q Okay. So I see you're seeking to force over
22 300 working interest owners into this unit?

23 A Yeah, that is correct. We -- yes, 'cause we
24 have -- we have over 75 percent of the unit ratified
25 working-interest-wise.

1 Q Okay. And you state that you've gotten
2 voluntary agreement of 78.10 percent?

3 A That is correct.

4 Q And 70 -- what did you tell me?
5 Seventy-three percent of that is yours?

6 A That is correct.

7 Q So you've only got 5.10 percent of voluntary
8 agreement?

9 A That is correct.

10 Q Okay. Where is the list of uncommitted
11 owners that you seek to force into this unit?

12 A I mean, there's -- there's not one publicly
13 available, to my knowledge.

14 Q I'm not asking publicly available. In your
15 exhibits that you have filed with the Division, where
16 is your list of uncommitted owners?

17 A I have not uploaded a list of uncommitted
18 owners.

19 Q Okay. So we don't have a list of the
20 uncommitted owners and then we don't have a breakdown
21 of their ownership percentage on a unit-wide basis?

22 A That is correct.

23 Q Where is your chronology of contacts with
24 these over 300 uncommitted owners?

25 A I -- I don't -- I'm not sure I understand

1 the question.

2 Q Where is the document that references the
3 efforts by the company to reach an agreement with over
4 300 interest owners that you seek to force into your
5 20,000 acre unit?

6 A Outside of what I testified to in my
7 self-affirmed statement, there's no -- there's no
8 specific document on the efforts that we've -- that
9 went through to voluntarily joinder of these interest
10 owners.

11 Q You just lumped everybody together and said
12 you undertook good faith efforts?

13 A That is correct.

14 Q Okay. How many of these 348 owners that you
15 seek to force into the unit, how many of those have
16 you been able to locate?

17 A I couldn't think of a number of the top of
18 my head. It's several.

19 Q Several of the 348? Do you know how many
20 you've been unable to locate?

21 A Not off the top of my head.

22 Q I'm not asking at the top of your head. Is
23 it anywhere in your filed exhibits?

24 A No, it's not uploaded into my filed
25 exhibits.

1 Q So we don't have an interest, we don't have
2 a list of the parties you've been unable to locate?

3 A No, sir.

4 Q And we don't have the percentage of those
5 that you've been unable to locate?

6 A No, sir.

7 MR. FELDEWERT: Mr. Examiner, I do have
8 some other questions of not only this witness, but
9 other witnesses. But I would like, at this point, to
10 move to dismiss this application or to continue this
11 application until such time that they can come back
12 and demonstrate that they've done sufficient title
13 work for the entire unit area to ensure that we have
14 an accurate Exhibit B that they want you to adopt as
15 part of its case.

16 But more importantly, to ensure that we
17 have notice to all of the affected parties in this
18 area and to get an understanding of what efforts they
19 have done, who they've not been able to locate and
20 therefore not give notice to, and what efforts were
21 done to try to locate those parties.

22 It's astonishing to me that we don't
23 have a more formal title effort for this entire 20,000
24 acre unit given that they're seeking to use the police
25 power of the state to force into this unit over 300

1 owners. We don't have identified anywhere, the
2 interests that are held by these parties that they
3 seek to force into this unit.

4 There is no list, like I said, of
5 unlocatable parties. All they've done is gone out and
6 relied on some federal abstracts and some broker
7 summaries to bring this application before you for
8 this 20,000 acre unit. It seems to me that if you're
9 going to invoke the police power of the state, we need
10 an accurate ownership information.

11 We need to make sure notice has been
12 provided to all the impacted parties, so we need to
13 know who all is what and what percentage, and they've
14 been unable to locate and why they've been unable to
15 locate them before you can even more forward.

16 MR. CHAKALIAN: All right,
17 Mr. Feldewert, let's hear from Mr. Padilla.

18 THE WITNESS: I think he's coming.

19 Ernie, I think you're on mute.

20 MR. PADILLA: I've done a lot of title
21 opinions based on federal abstracts. Federal
22 abstracts contain all of history of title in oil and
23 gas leases, so that's very good evidence. Same thing
24 with take-offs that landmen prepare for oil pump
25 lease.

1 The issue of title opinion work is
2 actually sort of remote now because there's such
3 strong reliance on landmen discovery, so I don't see a
4 problem. If Mr. Feldewert or the Division wants a
5 supplemental listing of those interest owners that
6 haven't answered or they haven't -- which is typical
7 is that a lot of people --

8 I'm working now in the North Cal unit
9 and I get calls every day from small working interest
10 owners. But they've gotten notice of the hearing.
11 Whether they appear or not at this hearing is another
12 thing. ConocoPhillips and COG have been in this
13 process for well over a year with no meaningful
14 feedback.

15 So raising this issues, it's
16 not -- yeah, it's a nice argument, but otherwise, when
17 you're talking about 20,000 acres and a very minority
18 interest in the unit, people who don't respond or who
19 had been notified and they're not in this hearing,
20 most of them are going to ratify the interest at some
21 point or another.

22 Mr. Kent has testified about continuous
23 work on getting these individual owners, but that's
24 not a reason to dismiss. If the Division wants a
25 breakdown of who has been contacted, a

1 supplemental -- we're willing to do that, but to
2 dismiss this case is improper at this point.

3 Certainly, in terms of even disclosure
4 as to what ConocoPhillips owns, is my information is
5 that they own about 1 percent of this unit and I
6 believe that's a leverage in order to gain a better
7 division in terms of a buyout because my understanding
8 is that they're initiating a buyout.

9 But we're willing to supplement the
10 record with that, but not a dismissal.

11 MR. CHAKALIAN: Thank you, Mr. Padilla.

12 Mr. Feldewert, is there a rule or a
13 statute that you are in fact referring to on your
14 motion?

15 MR. FELDEWERT: There is no rule.
16 Okay? The Statutory Unitization Act requires the
17 operator to come in and demonstrate that they have
18 undertaken good faith efforts to locate all of the
19 affected parties, in trying to reach a voluntary
20 agreement with all the affected parties, and then to
21 provide notice to all of the affected parties.

22 And it's a very high standard because
23 they're asking you, just like the compulsory pooling,
24 they're asking you to force owners into this unit and
25 exercise your police power. So notice is important.

1 Information is important. As Mr. Padilla points out,
2 I think it's more than a nice argument.

3 I think it is a correct argument. And
4 it doesn't matter, just like compulsory pooling, it
5 doesn't matter how small the interest is. You have
6 the same obligation to identify, locate, and then try
7 to reach a voluntary agreement with an interest owner
8 whether they own 90 percent or less than 1 percent.

9 It's the same obligation. Is it very
10 difficult? Yes. Is it very difficult to do for a
11 20,000 acre proposed unit? Yes. Okay? But you're
12 invoking the police power of the state, so you have to
13 demonstrate that you've identified these people, that
14 you provided notice to them, and that you tried to
15 reach a voluntary agreement.

16 And all we just have is just a high
17 level statement. As he admitted, "Yeah, we just
18 lumped everybody together" and said, "Yeah, we
19 undertook a god faith effort." There's no
20 demonstration of the who owners are that they reached
21 out to. We don't even have a list of who they're
22 trying to bring into the unit.

23 So I don't know how you can go forward.
24 So you can dismiss it or continue it. It's up to you.
25 But we don't have enough information to be able to

1 evaluate what they've done.

2 MR. CHAKALIAN: Okay. Thank you.

3 Mr. Padilla, I've not given you an
4 opportunity to ask redirect questions to your witness
5 to establish the compliance with this good faith
6 effort that the statute requires to use the state's
7 police power to compulsory pool. So why don't you
8 establish how the percentage of owners that have been
9 contacted or the good faith efforts that your party
10 has used here?

11 So go ahead.

12 REDIRECT EXAMINATION

13 BY MR. PADILLA:

14 Q Mr. Kent, where do you identify the people
15 that you have sent notices of the hearing?

16 You're muted.

17 A Yes, sorry about that. So yes, I have
18 uploaded all certified mail receipts, notices, and
19 return receipts that -- to all parties that we sent
20 notices to.

21 Q And what part of your exhibits do you have a
22 listing of every owner that you have identified for
23 the proposed unit?

24 A So a listing of all the owners in the unit
25 are -- can be found in Exhibit B of the unit

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1 agreement. And all the return receipts, certified
2 mail receipts can be referred to at Exhibit A8. And
3 that's certified mail receipts, the notice hearing
4 letter, and the return receipts.

5 Q Where do you have a listing of the ownership
6 in your materials?

7 A It's going to be under Exhibit B of the unit
8 agreement.

9 Q And how many pages do you have of ownership?

10 A I mean, it's -- it's hundreds. You know,
11 500 pages.

12 Q And it's your testimony that you sent notice
13 of this hearing to every one of those owners?

14 A That is correct.

15 Q But in particular, what did you do with
16 respect to working interest owners?

17 A So working interest owners would have
18 actually received two notices. They would have
19 received first a notice of -- they would have received
20 first a notice of working interest owners meeting that
21 we had with links and documentation to all the
22 relevant agreements that we were proposing under this
23 unit.

24 All -- all working interest owners had the
25 ability to attend this working interest owners

1 meeting. So that was the first notice. And the
2 second notice would have been the notice of the
3 hearing, which we would have included a notice with
4 the links to this hearing and also additional
5 ratifications.

6 Q Are you still continuing to receive
7 ratifications to the unit as we go along?

8 A Yes, sir. And we are still actually in
9 ongoing negotiations with additional parties to either
10 buy them out or -- or lease them.

11 Q What's your specific time line for
12 negotiating with Conoco or COG?

13 A Up until -- up until yesterday.

14 Q And what's the latest information that you
15 have or what's the latest status for those
16 negotiations?

17 A The latest status was that Conoco had called
18 me and they had lowered their -- their
19 purchase -- purchase price, but it was still not to a
20 point to where we were able to transact on it. And,
21 as a condition of that, where they wanted us to
22 continue this hearing, which we were not amenable to.

23 Q And why did you not want to continue this
24 hearing?

25 A Well, first, this -- this unit has been in

1 the works for two -- two years now and Conoco has been
2 aware of that every step of the way. And negotiations
3 with Conoco have gone on for well over a year at this
4 point.

5 Q Have any of the working interest owners that
6 Mr. Feldewert talks about, have they -- what's your
7 history with those owners in terms of this hearing?

8 A Which owners are you speaking about, Ernie?

9 Q Working interest owners.

10 A All -- all working interest owners that have
11 reached out, we've been responsive to and if -- if it
12 was possible to work out a deal for them to
13 participate, not participate, or for us to buy them
14 out, we have done that.

15 Q Now Mr. Feldewert asked you about what he
16 calls "inappropriate titles." What is the practice in
17 the oil industry with respect to ascertaining pay
18 decks or title?

19 MR. FELDEWERT: Objection.

20 I object to the question on the grounds
21 that it's not been demonstrated Mr. Kent has the
22 appropriate background to answer that. He's not a
23 title attorney.

24 MR. PADILLA: I realize he's not a
25 title attorney, but he is director of land and

1 obviously handles title matters.

2 MR. CHAKALIAN: Mr. Padilla, when an
3 objection is made, please wait for me to understand
4 the objection before I turn to you and ask for your
5 position, which I will do.

6 So, Mr. Feldewert, I want to make sure
7 I understand your objection. You're basically
8 objecting to this question being outside the scope of
9 this witness's expertise. Is that correct?

10 MR. FELDEWERT: Correct. I mean, he's
11 just joined the company on January 1st. He didn't
12 even work in New Mexico prior to January 1st. And
13 he's demonstrated no background as to be able to offer
14 opinions of what is appropriate title, particularly
15 for unit agreements and forced unitization, or even
16 what the customary practice is.

17 MR. CHAKALIAN: Okay.

18 Mr. Padilla, your response?

19 MR. PADILLA: Mr. Feldewert answered
20 the question. My question was related to custom and
21 practice, and I don't see any difference between title
22 in Texas or Montana, or title standards in terms of
23 ascertaining ownership in oil and gas leases.

24 MR. CHAKALIAN: Thank you, Mr. Padilla.
25 I understand your response.

1 Mr. Feldewert, I'm going overrule the
2 objection. I'll give the answer the weight I deem it
3 appropriate.

4 Go ahead and answer the question.

5 THE WITNESS: So yes, we -- it is
6 industry standard in my opinion and what -- every step
7 of the way in my career, that you have -- you obtain
8 ownership reports in ascertaining ownership in oil and
9 gas leases.

10 BY MR. PADILLA:

11 Q Now once a unit is approved, you testified
12 that you would do further title work. Can you
13 describe what further title work you're going to do
14 once a unit is approved?

15 A We would be firming up the interest, and
16 like I mentioned previously, we're -- we're currently
17 in ongoing negotiations with several parties on buying
18 them out, so their -- our interest will, you know, be
19 affected by that. And the parties that might
20 currently be in the exhibit -- owners report right
21 now, may not be there after these deals are done.

22 So to the extent that we need to cure any
23 title in those deals or any -- if any other title
24 needs arise, we will do additional title.

25 Q Now do you do division order title opinions

1 or do you do pay decks now?

2 A It's all about what the policy of that
3 company is comfortable with as far as risk. You know,
4 we -- we were -- we are not planning on doing a
5 division order title opinion, so we are going to base
6 our decks off the current ownership reports.

7 Q Okay. Have you been unable to locate any
8 working interest owners?

9 A Yes.

10 Q And do you know who they are?

11 A Not off the top of my head, but we can
12 certainly gather a list of the -- the parties we have
13 not been able to contact.

14 Q Okay.

15 MR. PADILLA: I think that's all the
16 questions I have, Mr. Examiner.

17 MR. CHAKALIAN: Okay. Mr. Padilla,
18 let's take a five-minute break before we come back for
19 any recross from Mr. Feldewert. But I'd also like to
20 hear questions from our technical examiners who are
21 familiar with this issue before I make a ruling on
22 this motion.

23 So Mr. Goetze and Mr. Gebremichael, I
24 am also looking to you to ask the questions regarding
25 this motion of insufficient notice before I make a

1 ruling.

2 So we'll be back on the record at
3 10:05 a.m. Thank you.

4 (Off the record.)

5 MR. CHAKALIAN: It is 10:05. We're
6 back on the record.

7 Mr. Goetze, I'm going to turn to you.
8 Do you have any questions that might help me?

9 MR. FELDEWERT: I have some additional
10 questions, Mr. Examiner.

11 MR. CHAKALIAN: I know you do,
12 Mr. Feldewert, but before we get to your recross, I'm
13 asking Mr. Goetz whether he has any questions for this
14 witness that might help clarify this notice issue.

15 MR. GOETZE: No, I'll just note that
16 this is a fairly big operation and ownership is quite
17 diverse in this area. I mean, it has been broken up
18 and handed around many times. Some of the questions
19 that Mr. Feldewert was asked is also reflected with my
20 concerns as to how much we have accurately in hand and
21 to what level or degree of trust can we have in
22 the -- whether the oil ownership to be able to move
23 forward with approval.

24 We certainly want to make sure that we
25 have a standard that's met comparable to our other

1 larger water flood operations, say the north opps or
2 south opps. So I have more questions with regards to
3 the participation formulas and the unit agreement as
4 opposed to the notice issues.

5 MR. CHAKALIAN: Okay.

6 Mr. Gebremichael?

7 Okay. I think you're muted, but I
8 think you said you have no questions. Is that right?

9 MR. GEBREMICHAEL: Are you asking me,
10 Mr. Examiner?

11 MR. CHAKALIAN: Sorry?

12 MR. GEBREMICHAEL: Sorry. I didn't
13 hear your question.

14 MR. CHAKALIAN: My question to you was,
15 do you have any questions for this witness?

16 MR. GEBREMICHAEL: No, I don't. I
17 concur with --

18 MR. CHAKALIAN: Okay. Thank you very
19 much.

20 MR. GEBREMICHAEL: Thank you.

21 MR. CHAKALIAN: Mr. Feldewert?

22 Recross?

23 MR. FELDEWERT: Yes.

24 //

25 //

1 A I don't think we included that in the -- in
2 the pre-unit AFE. No, sir.

3 Q Okay. Why not? If you can recover it under
4 your unit operating agreement, why wouldn't you go out
5 and get a title opinion that covers this unit area so
6 there's no questions?

7 A We -- we are comfortable with the title that
8 we have. And to the extent that additional title
9 needed to be done, we -- we would do that.

10 Q But you had working interest owners raising
11 concerns about title; right?

12 A No -- no working interest owners ever
13 has -- has raised a concern over not having additional
14 or title opinion to me.

15 Q You're saying that ConocoPhillips did not?
16 They didn't raise those concerns to you. That's your
17 testimony?

18 A Not to my knowledge.

19 Q As you list parties that you seek to force
20 into the unit, you referenced Exhibit B. Is that
21 right?

22 A The -- are you talking about the ownership
23 lists?

24 Q Whatever you referenced.

25 A I guess I -- I don't understand what you're

1 asking.

2 Q Mr. Padilla asked you where's the list of
3 owners in the unit and you said Exhibit B; correct?

4 A Exhibit B to the unit agreement, yes.

5 Q And you said that includes the owners that
6 you seek to force into the unit.

7 A It includes -- it includes all owners.

8 Q That you've been able to locate?

9 A No, sir. All owners whether they have been
10 located, not located, participating, or not
11 participating. Every single owner that we have.

12 Q Okay. That's your title work -- discussed?

13 A That is correct.

14 Q Okay. If I go to that Exhibit B, is it
15 anywhere identified on there the parties that you seek
16 to force into the unit?

17 A No, sir.

18 Q And we don't know then what their
19 percentages are that you seek to force?

20 A That -- that is not listed in the exhibit.

21 Q Okay. And then in terms of your efforts to
22 reach a voluntary agreement, the only thing you have
23 provided is Exhibit A, page 267. Is that right?

24 A Exhibit A267?

25 Q That's your affidavit. So if I go to

1 Exhibit A, page 267. I may have -- let me see if I've
2 got my number right again. Yeah, I do. Are you
3 there? That's your paragraph 1.

4 A Okay.

5 Q And that's the information you provided the
6 Division about your efforts to reach a voluntary
7 agreement?

8 A That -- that is what it said in the
9 affidavit.

10 Q That's the only thing you provided the
11 Division; correct?

12 A I -- I provided a self-affirmed statement as
13 well.

14 Q I'm talking about on the subject of the
15 efforts to reach a voluntary agreement with the
16 uncommitted owners. The only thing I found, and you
17 correct me if there's something else, is what you say
18 here in paragraph 1 of Exhibit A, page 267.

19 A That is the only thing that is in this
20 affidavit. That is correct.

21 Q Okay. Is there anything else in these
22 exhibits?

23 A We -- I uploaded a -- return receipts,
24 certified mail receipts, notices --

25 Q Let me stop you. I'm talking about efforts

1 to reach a voluntary agreement with these owners;
2 okay?

3 A Yep.

4 Q On that subject, the only thing you provided
5 is what's in paragraph 1 of your affidavit?

6 A That is correct, yes.

7 Q Okay. There's no chronology of contacts?

8 A No.

9 Q Okay. And according to your information,
10 your efforts resulted in reaching an agreement of
11 about 1 percent of the owners out there?

12 A Yes, sir. That's -- that's all we -- that's
13 all we needed to get over the 75 percent threshold.

14 Q So you kind of stopped after you got over
15 the 75 percent threshold?

16 A No, sir. We have not stopped. As I
17 mentioned earlier, we are -- we have ongoing
18 negotiations with several parties.

19 Q Okay. The facts are what the facts are.
20 You've been able to reach with less than 1 percent
21 despite what you call your good faith efforts?

22 A But it will -- it's -- it's actually 4 -- 73
23 to 78 percent. We have 78 percent ratified.

24 Q I mean of the 3 -- all right, let me step
25 back. You're right. You can reach maybe agreement

1 with 5 percent -- you have 73 percent; right?

2 A I'm sorry. Repeat -- repeat the question.

3 Q You had 73 percent interest in the unit?

4 A Yes, that's correct.

5 Q There are 348 interest owners out there?

6 A Yes.

7 Q You've only reached a voluntary agreement
8 with 36 of them?

9 A That's correct.

10 Q Which results in another 5 percent?

11 A That's correct.

12 Q It got you over your threshold?

13 A Yes, that is correct. But that -- that
14 is --

15 Q But you haven't been able to reach
16 agreement -- there's nothing indicating what you've
17 done to reach an agreement with the other owners?
18 Remaining owners?

19 A I have not uploaded any exhibits to the
20 effect -- pertaining to any other interest owners.

21 Q Okay. If I go back to that Exhibit B that
22 you referenced, is there anything on that Exhibit B
23 that identifies the owners that you've been unable to
24 locate?

25 A No, there's nothing in the Exhibit B that

1 would indicate owners that we've tried to locate
2 or -- or have successfully joindered.

3 Q Okay. And so you haven't provided any
4 information about what efforts were undertaken for a
5 specific working interest owner that you've been
6 unable to locate?

7 A No, that -- no.

8 Q Okay.

9 MR. FELDEWERT: That's all I have,
10 Mr. Examiner.

11 I would renew my motion. And I'm
12 saying either continue or dismiss, but I don't know
13 how you can go forward without having this basic
14 information that we provide in all compulsory pooling
15 cases. And this is just one big compulsory pooling
16 effort. 20,000 acres. It's tough, but it's an
17 obligation.

18 MR. CHAKALIAN: All right. Well, while
19 the parties have been asking questions and answering
20 questions, I've been doing a little bit of research
21 and I'm not quite there yet, so I'll reserve my
22 decision till I finish.

23 However, Mr. Feldewert, what I believe
24 I'm being asked to determine is whether or not the
25 efforts, as demonstrated by the exhibits and the

1 answers to your questions, satisfy the standard of
2 good faith, which is in 70-7-6(A)(5), which states
3 "That the operator has made a good faith effort to
4 secure voluntary unitization within the pool or
5 portion thereof directly affected."

6 Is that correct?

7 MR. FELDEWERT: I would say yes and
8 then I would preface it by saying have they provided
9 sufficient evidence, okay, of that? Number 1. Good
10 faith efforts to reach a voluntary agreement and have
11 they identified sufficient evidence of the efforts to
12 locate the unlocatable parties?

13 At this point, we don't even know who
14 the unlocatable parties are.

15 MR. CHAKALIAN: Do you know of any case
16 law, Mr. Feldewert?

17 And I'm going to come to you,
18 Mr. Padilla, in a moment.

19 Do you know any case that elaborates on
20 that term "good faith" and how it applies here to this
21 statute?

22 MR. FELDEWERT: I'm not aware of any
23 case law. I think the easiest thing to go on is what
24 do we do for compulsory pooling. It's the same thing.
25 This is just a much bigger area. And what do we do

1 for compulsory pooling? You need a list of the
2 parties you've been unable to locate and to show the
3 efforts undertaken to locate those parties.

4 You need to identify the parties that
5 you've been unable to reach a voluntary agreement with
6 and you need to demonstrate what we call a "chronology
7 of contacts" that you did undertake an effort with
8 each and every one of those, despite the percentage
9 interest. And it's more than just sending out notice
10 of unitization. It requires more than that.

11 Just like compulsory pooling. And if
12 we don't provide that in a compulsory pooling case, it
13 doesn't even go forward.

14 MR. CHAKALIAN: Okay.

15 Mr. Padilla, you've heard
16 Mr. Feldewert's summation of the problems he's having
17 with the exhibits and the testimony. He's, if I
18 understand him correctly, suggesting that good faith
19 requires that you at least identify the owners, the
20 working interest owners that you have not been able to
21 make contact with that have an ownership interest in
22 this pool.

23 And what do you say about that?

24 It sure would be nice if folks could
25 learn to unmute before they start talking.

1 MR. PADILLA: I'm sorry. That's why we
2 have notice by publication when you can't find
3 anybody. And that's no different than compulsory
4 pooling when you can't find someone. You've
5 identified the ownership, but you have no response
6 after notice. And that's why you have notice by
7 publication.

8 I've handled a number of quiet title
9 cases where publication has been an issue, whether
10 it's proper notice or not. The Hanover case, United
11 States Supreme Court --

12 MR. CHAKALIAN: Let me stop you here.
13 I understand. And I don't think that's the issue
14 here, Mr. Padilla. I think the issue is, has your
15 client identified everyone with a working interest in
16 this pool, not necessarily how have they put them on
17 notice, whether it be mailings or constructive notice.

18 But I think the question is, have they
19 all been identified. Now what is your response to
20 that issue?

21 MR. PADILLA: Based on Mr. Kent's
22 testimony, they've all been identified. Now granted,
23 there's going to be a mistake here and there in a unit
24 of this size and that's going to have to be cured at
25 some point if additional title information comes into

1 being.

2 But to the extent of identifying
3 everyone who is reasonably known, they have done that.

4 MR. CHAKALIAN: Okay. Thank you,
5 Mr. Padilla.

6 Mr. Feldewert, you've heard
7 Mr. Padilla, that everyone with a working interest has
8 been at least identified. Do you disagree with that?

9 MR. FELDEWERT: Do I?

10 MR. CHAKALIAN: Based on the evidence,
11 and the exhibits, and the testimony, do you disagree
12 that everyone with a working interest has been
13 identified?

14 MR. FELDEWERT: I don't think I can
15 answer that question because I think there's an issue
16 as to whether they've done sufficient title work in
17 advance of this hearing to assure that everyone has
18 been identified. Okay? That's first step. Second
19 step is, those they have identified --

20 In other words, those on their Exhibit
21 B. Okay? Who have they been unable to locate? We
22 don't know. What was done to try to locate those
23 parties? We don't know. Okay? Then you go to, of
24 those parties that they've been able to identify and
25 locate, what efforts were undertaken to reach a

1 voluntary agreement with those owners. Okay?

2 All we have is one paragraph that says
3 "We made good faith efforts to secure voluntary
4 unitization, we've identified 348 interest owners, and
5 we've secured voluntary agreement with 36." Okay?
6 Those numbers aren't very good and don't demonstrate
7 good faith in and of themselves.

8 So you better have something else,
9 which means a chronology of contacts. Who did you
10 contact for each of those interest owners? What
11 efforts were undertaken to reach a voluntary
12 agreement? We don't have that. We don't know who
13 they are.

14 We don't know who they're even trying
15 to force into this unit. And we don't know what
16 efforts were taken with those individual interests to
17 reach a voluntary agreement. That's the problem.

18 MR. CHAKALIAN: Okay, Mr. Feldewert. I
19 understand.

20 Mr. Kent, I'm going to ask you some
21 very simple, basic questions. I don't know if you've
22 answered these before, but I'm going to answer [sic]
23 these questions.

24 Number 1. What percentage of the
25 working interest owners have you identified in this

1 pool?

2 THE WITNESS: We've identified all
3 working interest owners in this pool.

4 MR. CHAKALIAN: Okay, all. So
5 100 percent of the working interest owners have been
6 identified?

7 THE WITNESS: To -- to the best of our
8 title abilities, yes.

9 MR. CHAKALIAN: Okay, okay. Once you
10 identified all of the working interest owners, what
11 did you do to negotiate with them?

12 THE WITNESS: First -- first, we sent
13 out offers to purchase their interests and offers to
14 participate and -- or, if they were unleased mineral
15 owners, offers to lease them.

16 MR. CHAKALIAN: Okay. Of the
17 100 percent of the working interest owners, what
18 percentage of the offers were actually received and
19 communicated back to you as either a yes or a no?

20 THE WITNESS: I don't have that exact
21 percentage, but I know that 78 percent of -- well, all
22 working interest owners in this unit have ratified and
23 approved this unit.

24 MR. CHAKALIAN: And you're including
25 yourself as a large owner of it?

1 THE WITNESS: That is correct.

2 MR. CHAKALIAN: Okay. So you own
3 73 percent?

4 THE WITNESS: That is correct.

5 MR. CHAKALIAN: So what you're saying
6 is then 5 percent of the working interest owners have
7 agreed to participate?

8 THE WITNESS: That is correct. As of
9 today with additional negotiations ongoing.

10 MR. CHAKALIAN: I understand. Of the
11 22 percent that have not agreed, have they received
12 either constructive notice or actual notice?

13 THE WITNESS: All 22 percent remaining
14 have received offers to purchase, offers to lease, and
15 notice -- constructive notice of the hearing. Yes.

16 MR. CHAKALIAN: Okay.

17 Mr. Feldewert, my interpretation of
18 good faith effort to secure voluntary cooperation in
19 this unit is somewhat reliant on some research I did
20 when I was at the Environment Department when a
21 similar argument was made on whether an applicant for
22 an air quality permit had made good faith efforts to
23 give notice to the surrounding landowners.

24 And the research I did in the case law
25 in New Mexico -- because the argument by the

1 landowners was that absolute compliance was required.
2 Absolute compliance with the law is required. And the
3 research that I conducted demonstrated that
4 substantial compliance was required in New Mexico and
5 not absolute compliance.

6 And unless you have something that says
7 otherwise, then I believe the evidence so far,
8 supplied through testimony and through exhibits, shows
9 a substantial compliance with this requirement of good
10 faith effort to secure voluntary unitization. So that
11 being said, I'm going to overrule your objection and
12 deny the motion.

13 However, however, I will leave open the
14 option that additional information is required to
15 supplement this record at the end of this hearing if I
16 so determine it or if the technical examiners so want
17 it. So that being said, and your questions and
18 cross-examination questions have been answered, are
19 there any other questions for this witness before we
20 move on to the second witness?

21 Yes, Mr. Feldewert.

22 MR. FELDEWERT: If I may. I'm sorry.
23 You know, I didn't want to waste any more of your time
24 if possible. I do have some additional questions for
25 this witness that have nothing to do with what I

1 perceive to be a lack of evidence sufficient to meet
2 the burden. Okay?

3 MR. CHAKALIAN: Please proceed.

4 MR. FELDEWERT: Thank you.

5 FURTHER RECROSS-EXAMINATION

6 BY MR. FELDEWERT:

7 Q Mr. Kent, when I look at your unit boundary
8 in your exhibits, where is that located in your
9 Exhibit A?

10 A The -- the unit outline boundary is going to
11 be located on the Exhibit A of the proposed unit
12 agreement.

13 Q So if I look at, for example, Exhibit
14 A10 -- if you could go to that.

15 A Exhibit A10?

16 Q Yeah.

17 A Yes, Exhibit A10 is the unit boundary.
18 Correct.

19 Q Okay. Now when the company developed this
20 particular boundary, you're doing this to unitize the
21 Yates, Seven Rivers, Queen reservoir. Is that right?

22 A That is correct.

23 Q Okay. Now is this boundary based on
24 ownership or is it based on the geologic boundary of
25 the reservoir?

1 A I would say it -- it was -- it was an all
2 above the approach. It was -- it was formed in
3 coordination with the BLM, and with geological
4 boundaries, and existing units that -- that bounded it
5 on the north end and the east sides.

6 Q Okay, okay. If I go down to the southeast
7 part of the unit, okay, and I go down to -- do you see
8 Section 23 down there?

9 A Section 23, yes.

10 Q Yeah, there's a little tract. You've got it
11 labeled "Tract 24."

12 A Yes.

13 Q Why are you only including 40 acres out of
14 that section?

15 A I -- I can't recall the reasoning off the
16 top of my head, but it was -- the decision for the
17 outline was made in conjunction with the BLM. And a
18 lot of those decisions happened prior to me joining
19 Forty Acres.

20 Q Do you know who owns the remaining acreage
21 in Section 23?

22 A I do not, no.

23 Q Was there any notice provided to those
24 owners in Section 23 that you are taking only 40 acres
25 out of that section?

1 A To the extent that the owners were required
2 to receive notice under the New Mexico Oil
3 Conservation Division Statutes, they received notice.

4 Q So my question is, did you provide -- this
5 would have been a party outside the unit; okay?

6 A Mm-hmm.

7 Q All right. Did you provide notice to the
8 owner particularly in the west half of the west half
9 of Section 23 that you are taking 40 acres out of that
10 section?

11 A I -- I don't understand why we would have
12 needed to -- to have done that.

13 Q You don't?

14 A No.

15 Q You don't think that owner would be
16 concerned about interference with potential
17 development plans?

18 A To the extent anybody had concerns about
19 that, they -- they would have received notice and that
20 they -- they would have brought it up to us.

21 Q But you didn't give them notice. Did you
22 give notice to any party outside the unit boundary?

23 A To the extent that anybody was required to
24 receive notice under the statute, we -- we sent
25 notice.

1 Q My question is, did you send notice to any
2 party offsetting the unit boundary?

3 A I don't understand why we would have needed
4 to have sent notice to anybody that wasn't required to
5 receive notice.

6 Q So the answer is no, you did not send notice
7 to any offsetting owner?

8 A In circumstances where owners were outside
9 the unit that were statutorily required to receive
10 notice, but they were sent notice.

11 Q And what circumstance was that?

12 A I can't -- I can't name one off the top of
13 my head, but to the extent that they were required to,
14 maybe in a C-108 or something like that, that they
15 received notice.

16 Q Okay. But sitting here today, you can't
17 tell me that the owners in Section 23, particularly
18 the west half of 23, were notified of your proposed
19 unit?

20 A I -- I don't have the ownership of the west
21 half of the west half of that section in front of me,
22 but to the extent that somebody would have received
23 notice or offers, we -- we sent those.

24 Q Now if I go to the east side and I look at
25 Section 35 -- do you see Section 35? If you go to the

1 north where we just were and go up into Section 35 and
2 it looks like Tract 24 -- what's that tract; 24 maybe?

3 A What -- what township are you -- are you
4 referring to?

5 Q It looks like 26 South, 27 East.

6 A 26 South, 27 East?

7 Q I'm sorry. 26 South, 27 East.

8 A 27 East?

9 Q Yeah.

10 A That 27 East is not within this -- this map
11 range.

12 Q Hold on a second. Let's quit messing around
13 here. Can you see my screen now, Mr. Kent?

14 A Yes.

15 Q Okay. So we were just down here in Section
16 23?

17 A Yes.

18 Q Can you see my cursor?

19 A Yes.

20 Q Okay. Now I'm moving north. Help me out
21 here. What section is 35 in?

22 A Yeah, so that's -- if you -- if you look
23 right there to the right, it's going to be 25 South,
24 35 East.

25 MS. NEAL: 37 Section.

1 MR. FELDEWERT: Now we're all having
2 trouble. Not just me. How's that? That better?

3 THE WITNESS: Yeah, that's -- that's
4 fine.

5 BY MR. FELDEWERT:

6 Q Okay. So I was wrong saying 25 South, 37
7 East or is that correct?

8 A I thought you were saying 27 East.

9 Q Okay. All right, my bad. So let's forget
10 that. I'm looking at Section 35. Okay? I'm looking
11 at your unit boundary. Okay? Do you see that?

12 A Mm-hmm.

13 Q You didn't include that 120 acres in the
14 east half of the east half of Section 35?

15 A That -- it doesn't appear that way.

16 Q Okay. Did you give notice to the owner in
17 the east half of the east half of Section 35 that you
18 were only leaving them 120 acres?

19 A To the extent that they were required to
20 receive notice under statute, they received notice.

21 Q That's a nice vague answer. To your
22 knowledge, did the company give notice -- first off,
23 do you know who the owner is in the east half of the
24 east half of 24?

25 A I do not. I do not have the ownership of

1 that in front of me, no.

2 Q And to your knowledge, did the company
3 provide notice of this hearing to the owner in the
4 northeast quarter of the northeast quarter of Section
5 35?

6 A To -- to the extent that those owners were
7 required to receive notice, we -- we sent notice.

8 Q Now if I go to just above that into Section
9 26 -- do you see where my cursor is?

10 A Yes, is that -- are you referring to Tract
11 25 -- Unit Tract 25?

12 Q I think that's right, yeah. Same question
13 there. Do you know why you're not including the
14 remaining portion of the west half of the east half of
15 Section 26?

16 A I don't recall the specific reasoning for
17 this, but the unit outline was made in conjunction
18 with the BLM and -- and pretty much dictated by the
19 BLM.

20 Q Okay. And if I ask you whether you gave
21 notice to the owner in the east half of Section 26 of
22 your unit, are you going to give me the same vague "I
23 don't know answer"?

24 A To the extent that owners outside of the
25 unit were required to receive, we sent them notice.

1 Q Okay. And just to follow-up on that, do you
2 know whether the company gave notice to any offset
3 owner outside the unit?

4 A To the extent that they were required to
5 under statute, then we sent them notice.

6 Q Okay. Is there anywhere in your list of
7 parties that you provided notice to indicate whether
8 they were notified because they were being affected by
9 the unit boundary?

10 A I don't -- I don't -- I'm not sure I
11 understand the question.

12 Q Can I look at any of the information that
13 you provided to the Division and ascertain what owner
14 was being notified, if any, because they were affected
15 by the boundary of the unit?

16 A All -- all the owners that are shown
17 as -- in uploaded exhibits that received notice or
18 were statutorily required to receive notice whether
19 they were inside or outside of the unit.

20 Q My question is, if I go to your list of
21 owners that you notified, okay, does your list
22 identify owners that are outside the unit but that
23 were notified because they were affected by the unit
24 boundary?

25 A I'm sorry. What -- what list are you

1 referring to?

2 Q Well, good question. Is there a list
3 anywhere of owners that you notified?

4 A All the owners in the Exhibit B of the unit
5 agreement were notified.

6 Q Okay. If I look at that Exhibit B then,
7 that means that those were all owners within the unit;
8 correct?

9 A Those are all owners within the unit;
10 correct.

11 Q Okay, all right. Exhibit B does not contain
12 any list of owners outside the unit?

13 A No, sir. I don't see why it would have.

14 Q Okay. And your notice of this hearing was
15 limited to the owners identified on Exhibit B?

16 A Well, to the extent that owners outside of
17 the unit were required to receive notice, we sent them
18 notice.

19 Q Where do I see that in your Exhibit B?

20 A They wouldn't have been differentiated in
21 Exhibit B 'cause Exhibit B is the list for the unit
22 agreement.

23 Q Of owners within the unit?

24 A That is correct.

25 Q Okay. Now I want to go to your proposed

1 unit operating agreement, which I believe is Exhibit
2 A220. And let me stop sharing so I don't give
3 everybody vertigo as I go through the Exhibit here.
4 Can you get to A220 for me, Mr. Kent?

5 A Yes, I am on A220.

6 Q Okay, thank you. Now this is the document
7 that you're asking the Division to adopt and force on
8 the over 300 uncommitted working interest owners in
9 this unit; correct?

10 A On all nonparticipating -- all
11 participating -- all working interest owners; correct.
12 Yes.

13 Q Okay. And did you have discussions with
14 working interest owners about this unit operating
15 agreement?

16 A Yes.

17 Q Okay. Now we know we had objections to the
18 participation formula; correct?

19 A The previous participation formula that was
20 originally proposed on the -- the original application
21 of this unit.

22 Q Okay. Aside from the objection to the
23 participation formula, were there any objections
24 raised by working interest owners to other provisions
25 in the unit agreement?

1 A I wouldn't say objections. There were
2 certainly questions about the operating agreement.

3 Q Were there concerns raised?

4 A Sure, yeah.

5 Q Okay. As a result of those concerns, did
6 the company make any changes?

7 A No.

8 Q Okay. And you would agree with me that
9 neither the BLM nor the State Land Office approve or
10 even look at the unit operating agreement?

11 A That's correct.

12 Q Okay. Because they are a non-cost bearing
13 interest owner?

14 A That is correct.

15 Q And this deals with working interest owners?

16 A Correct.

17 Q Okay. All right. Then if I go to this unit
18 agreement and I go down to Section 3.2.

19 A I'm -- I'm sorry. Which agreement are you
20 referring to?

21 Q The unit operating agreement.

22 A Okay. Sorry, you said -- you said unit
23 agreement. You said 3.2?

24 Q Yeah, are you there?

25 A Yes.

1 Q Okay. Actually, I'll start sharing. Let me
2 share.

3 MR. FELDEWERT: I should ask.
4 Mr. Examiner, is it okay if I share?

5 Can you all see that now?

6 THE WITNESS: Yes.

7 MR. FELDEWERT: Okay.

8 BY MR. FELDEWERT:

9 Q So I am at page -- let's see. A228. Do you
10 see that?

11 A Yes.

12 Q Okay. All right. Do you see where there's
13 Section 3.2.11, 3.2.12, 3.2.13, and 3.2.14?

14 A Uh-huh.

15 Q And there's no text?

16 A Yes, I can see it.

17 Q Okay. Do you agree that there should be
18 proposed language under these headings?

19 A I -- I don't think so. I mean, this
20 operating agreement was reviewed by counsel.

21 Q Whose counsel?

22 A Our counsel.

23 Q Your counsel, okay. So your counsel
24 concluded that what you send out the working interest
25 owners and what you ask the Division should adopt,

1 shouldn't have any provisions on a removal of unit
2 operator and selection of a successor operator?

3 A Yes. I mean, that's what -- that is what
4 we've uploaded as an exhibit.

5 Q So no provisions governing that?

6 A Not unless they're referencing additional
7 provisions in the operating agreement.

8 Q And nothing in your unit operating agreement
9 under 3.2.12 about enlargement of the unit area? And
10 nothing in the unit operating agreement did you
11 disclose under 3.2.13 about the readjustment of
12 investments? And nothing in your proposed unit
13 operating agreement under 3.2.14 about termination of
14 the unit agreement? You just left all that blank.

15 A Yes, I would assume that any provision
16 referring to the termination of the unit agreement
17 would be governed by provisions under the unit
18 agreement and not the unit operating agreement.

19 Q Okay. Now when I go to 3.2.4 -- above this.
20 I'm sorry. Do you see that on my screen?

21 A Yes.

22 Q Okay. This provision allows up to \$600,000
23 of expenditures without an AFE for the working
24 interest owners, or a working interest owner approval
25 or vote?

1 A That's correct.

2 Q Okay. And isn't it true that working
3 interest owners like COG and other experienced
4 operators objected to this level of unapproved
5 expenditure?

6 A COG has not specifically brought an
7 objection to this provision to me.

8 Q What about to the company?

9 A I'm -- I'm -- to the company?

10 Q Yeah.

11 A Not -- not to my knowledge.

12 Q Okay. Has anybody else objected? Well, let
13 me step back. Have you talked to any of the working
14 interest owners about this level of expenditure?

15 A There's -- there's been other parties that
16 have asked several questions about the operating
17 agreement in general.

18 Q Okay. But you didn't change anything?

19 A I have not made any modifications to the
20 operating agreement.

21 Q When I go to Section 3.2, this indicates the
22 type of operations where a working interest owner
23 forced into this unit can decide whether or not to
24 participate; right?

25 A That is correct.

1 Q Okay. And it says "With the exception of
2 the Arnott Ramsey Waterflood Project" -- which we'll
3 talk about here in a minute -- "the matters with
4 respect to which the working interest owner shall
5 decide and take action shall include but not be
6 limited to the following, method of
7 operation" -- right? "Drilling of wells, oil
8 recompletions and change of status."

9 Is that right, Mr. Kent?

10 A That's -- that's what it says, yes.

11 Q Okay. Now with that in mind, I want you to
12 keep that mind; okay? I want to go down to Section
13 11.2 which deals in pre-unitization expenses. Are you
14 familiar with that provision?

15 A I -- I believe so, yes.

16 Q It says "Within 60 days from the effective
17 date of this agreement, the unit operator shall bill
18 all working interest owners their proportionate share
19 of all expenses benefitting the working interest
20 owners incurred prior to the effective date."

21 It goes on to say "These expenses include
22 but are not limited to title work" -- we've talked
23 about that already -- "attorneys' fees, and filing
24 fees associated with unitization. Additionally,
25 pre-unit expenses will include capital workovers and

1 lease operating expenses associated with unitized
2 wells."

3 And then you exclude the Arnott Ramsey
4 project, which we're going to address. And it says
5 "From" and there's a blank "to the effective date."
6 Do you see that?

7 A Yes.

8 Q Now is there anywhere that identifies for
9 the working interest owners that you force to seek
10 into this unit what the pre-unit costs are?

11 A Yes, those were uploaded to a public Google
12 Drive that was -- where a link was sent to all working
13 interest parties, and a letter, and at the working
14 interest owners meeting.

15 Q Okay. All right. And when was that sent?

16 A It would have been sent whenever
17 those -- whenever the working interest owners meeting
18 notices went out. I don't have that date off the top
19 of my head.

20 Q Is that a year ago, two years ago?

21 A It would have been probably first or second
22 quarter of this year.

23 Q Okay. All right. Now you mentioned the
24 existing -- well, while we're on this, let me -- you
25 mentioned the existing Rhodes Federal Unit. Okay?

1 Now you indicated you don't know where that is?

2 A No, I know where it is. What I -- what I
3 didn't know was you were referring to how many acres
4 it covered and I did not have that number off the top
5 of my head.

6 Q Okay, all right. If we go back up
7 and -- let me stop sharing. I want to go back up to
8 the map of the unit area. If you can get there for
9 me.

10 A I'm sorry. You kind of broke up a little
11 bit. What -- where are you wanting me to turn to?

12 Q Let's go back to that map of the unit area.

13 A Okay.

14 Q And if I look at that map of the unit area,
15 can you tell me roughly where the existing Rhodes unit
16 is located?

17 A Are you referring to Exhibit A10? Is that
18 the map area you're referring to?

19 Q Good question. Hold on a second. It would
20 be the Exhibit A to your unit agreement. It's marked
21 as Exhibit A3. Is that right?

22 A Yes, yes. That's it.

23 Q Okay, all right. Here, I'll share so it's
24 easy. Can you tell us roughly where this existing
25 Rhodes unit is?

1 A Can you scroll down a little bit?

2 Q Will this help?

3 A Yeah -- well, now I can't really see the --

4 Q Okay. Tell me when I should stop scrolling.

5 A Yeah, just scroll down to -- to cover the
6 entire south. Yeah. So in general, it covers parts
7 of Section 10 of 26, 37; Section 9; Section 8; Section
8 22; Section 16; Section -- Section 15; and parts of
9 Section 22 and 21. I believe that's roughly -- that's
10 roughly -- that's a -- that's a good ballpark without
11 having it in front of me.

12 Q Where I have my cursor?

13 A Yeah. A little farther east, but yeah,
14 that -- your -- the -- the other east. Yeah.

15 MR. FELDEWERT: So just for anybody
16 looking at the record here, I see a big square that
17 has blue in it. 53 -- Tracts 53, 46, 42.

18 BY MR. FELDEWERT:

19 Q Do you see that?

20 A I see it, yes.

21 Q Is it to the west of that or the east of
22 that?

23 A That would encompass that and to the east.

24 Q And to the east. Okay, all right. So we've
25 got a general area there.

1 MR. CHAKALIAN: Mr. Feldewert?

2 MR. FELDEWERT: Yes.

3 MR. CHAKALIAN: Excuse me. Where is
4 this line of questioning headed?

5 MR. FELDEWERT: You'll see in one
6 minute.

7 MR. CHAKALIAN: Well, what I'm
8 wondering is, I'm trying to determine how relevant
9 this line of questioning is to what we're doing here
10 today.

11 MR. FELDEWERT: Certainly. I'll cut to
12 the chase real quick here.

13 BY MR. FELDEWERT:

14 Q Mr. Kent, this has been unitized already for
15 oil and gas bearing zones?

16 A It is a gas only unit.

17 Q Gas only unit, okay. Why wouldn't you
18 gradually expand this unit rather than forcing owners
19 into a 20,000 acre unit?

20 A Because it is a gas only unit.

21 Q Okay. Why wouldn't you start your -- is
22 there oil in this area?

23 A I -- you would have to refer to our
24 reservoir engineer.

25 Q Okay, all right. But under your proposed

1 agreement, you're going dissolve this unit and create
2 this much larger unit?

3 A That was at the request of the BLM, yes.

4 Q Have you obtained approval from all the
5 working interest owners to dissolve it?

6 A To the extent that approvals were needed,
7 we've obtained approvals.

8 Q So you got the approvals necessary?

9 A That is correct.

10 Q Okay, all right.

11 MR. FELDEWERT: That's all I have
12 there, Mr. Examiner. I just have one other additional
13 line of questioning, then I'm done. Okay?

14 MR. CHAKALIAN: Okay. So you haven't
15 answered the question I asked originally, which is how
16 was this line of questions relevant to what we're
17 doing today.

18 MR. FELDEWERT: I think it might fall
19 into what Mr. Goetze said earlier on this, and that is
20 the ownership in this area is quite diverse, number 1.
21 Number 2, they're seeking a statutory approval of a
22 very large, unitized area rather than a more targeted,
23 smaller area where they could expand. Okay?

24 And I think there's real questions
25 about how prudent that is in this area and this

1 circumstance.

2 MR. CHAKALIAN: Okay. And what is this
3 final line of questioning that you have?

4 MR. FELDEWERT: It's going to deal with
5 this Arnott Ramsey existing waterflood project within
6 this unit.

7 MR. CHAKALIAN: Okay. Go ahead.

8 BY MR. FELDEWERT:

9 Q While we have this picture up here,
10 Mr. Kent, the company currently operates an existing
11 waterflood within this unitized area; correct?

12 A That is correct.

13 Q Okay. And where is that located within this
14 proposed 20,000 acre unit?

15 A That is going to be located in -- so if you
16 look at Unit Tract 43, and that's going to be in -- if
17 you zoom, I can't really see those township numbers,
18 but --

19 Q How am I doing?

20 A Yeah, it's going to be in Section
21 32 -- scroll up, please.

22 Q Scroll up?

23 A Yeah, Section 32 of 25 South, 37 East.

24 Q This blue?

25 A That is a blue tract, yes.

1 Q Blue tract and it's Tract 43?

2 A That is correct.

3 Q And that is your existing waterflood
4 operation?

5 A Yes, sir.

6 Q Okay, all right. And you propose to retain
7 that waterflood operation within this much larger
8 20,000 acre unit?

9 A Yes, sir. That is -- that is a waterflood
10 project in the current zones that we are wishing to
11 unitize.

12 Q Okay. How long has it been in operation?

13 A I -- I don't know that off the top of my
14 head. You would have to refer to our reservoir
15 engineer.

16 Q Okay. Now if I go then, with this in mind,
17 okay, and I go then down to your unit operating
18 agreement -- so I want to get to your unit operating
19 agreement; okay?

20 A Okay.

21 Q I'm going to stop sharing for a second.
22 Everybody get to the unit operating agreement, which
23 is Exhibit A220, right, Mr. Kent?

24 A I'm navigating there now. It's a lot of
25 exhibits.

1 Q It is. That's part of the nature of the
2 game.

3 A Okay, I'm there.

4 Q I'm almost there. There's a provision in
5 there dealing with this existing Ramsey waterflood;
6 right?

7 A I believe so, yes.

8 Q Okay. You recall what section that is?

9 A I don't recall specifically what section
10 that is off the top off my head. I'm scrolling
11 through all the pages.

12 Q How about Exhibit A, page 228?

13 A You said 228? I'm sorry.

14 Q Yeah.

15 A Okay, I am there.

16 Q And is it showing up on my -- can you see it
17 now as well on my screen?

18 A Yes.

19 Q Okay. Great, great. As I read this, once
20 the division forces your working interest owners into
21 this unitized area, third sentence says "Participation
22 in the Arnott Ramsey Waterflood Project by all working
23 interest owners is obligatory." Is that right?

24 A That is correct. That's what it says.

25 Q They have no ability to opt out of this

1 particular project that you all committed on your own
2 within this unit?

3 A That is correct.

4 Q Further, as I understand it, is they don't
5 have any vote or say, so to speak, in the existing or
6 future operations within this many waterflood project?

7 A Well, the -- this would be incorporated into
8 the unit agreement and so it would be -- it would be
9 then governed by the unit agreement.

10 Q Well, I'm trying to understand the next
11 sentence here. It's the fourth sentence. It says
12 "The decision to perform operations or to terminate
13 operations on the Arnott Ramsey Waterflood Project is
14 at the unit operators' sole discretion." Their sole
15 discretion. No vote; right?

16 A Uh-huh.

17 Q Is that how you read that?

18 A That's what it says.

19 Q "And upon electing to perform such
20 operations, all working interest owners' participation
21 is obligatory." So they don't get a vote. Do you see
22 that?

23 A Yes.

24 Q And then it says "Payment of all associated
25 non-paid out expenditures associated with the Arnott

1 Ramsey Waterflood Project" -- and then it goes on to
2 describe the types. And I'm going down now to the
3 next page, "shall be obligatory as to all working
4 interest owners." You must pay.

5 A Mm-hmm.

6 Q No say, but you got to pay; right? Is that
7 how you read that, Mr. Kent?

8 A That's what it says.

9 Q Okay. And it goes on to say that
10 payment -- and I'm down here in the latter part -- is
11 "Payment is made within 60 days of receipt of the
12 AFE." Do you see that?

13 A Yup.

14 Q Okay. And then it says if you don't pay
15 those costs, you're subject to 300 percent risk
16 penalty. Costs plus 300 percent. Is that correct,
17 Mr. Kent?

18 A That's -- that's what it says.

19 Q That's what you all are proposing?

20 A Yes.

21 Q Okay. Have you identified to the working
22 interest owners the current expenditures from this
23 existing waterflood that they are going to be
24 obligated to pay within 60 days of you sending them
25 the bill if this is approved?

1 A That was included in the pre-unit AFE that
2 was provided to all working interest owners, yes.

3 Q Okay. And so if a working interest owner is
4 forced into this unit agreement by the Division, then
5 number 1, they have to pay those costs whether they
6 want to or not; right?

7 A If they are -- if they are a
8 nonparticipating party, they do not have to pay these
9 costs.

10 Q This says they don't get a choice. They
11 have to pay it. It's obligatory; right?

12 A All participating working interest owners.

13 Q Okay. And so if -- it says -- what do you
14 mean by a participating working interest owner?
15 Because it says "Participation in the Arnott project
16 by all working interest owners hereto is obligatory."

17 A I believe it -- what is the definition of
18 working interest owners as defined in that operating
19 agreement?

20 Q Good question. I don't know. Are you
21 saying they get an election whether to participate in
22 that waterflood project or not?

23 A If they -- if they get an election to
24 participate in the unit agreement, yes. And -- and to
25 this -- in -- in this waterflood project, yes.

1 Q Despite this paragraph saying it's
2 obligatory?

3 A Yes, they -- in order to participate in the
4 unit agreement, participation in the Arnott Ramsey
5 Waterflood Project is obligatory.

6 Q Okay. So what happens to those working
7 interest owners who are forced to accept this unit
8 operating agreement by the Division? What happens to
9 them?

10 A I don't understand who would be forced to
11 participate in the waterflood project.

12 Q One of the things you were asking the
13 Division to do in your application is to approve this
14 statutory unitization and to adopt this unit operating
15 agreement to govern the relationship between FAE and
16 all the working interest owners, including those
17 forced into this unit; correct?

18 A Yeah, that is correct.

19 Q Okay. Which then mean that once the
20 Division does that, the owners who have not
21 voluntarily committed to this unit agreement become
22 working interest owners under this unit agreement. Is
23 that what you're asking?

24 A Those parties that have not elected to
25 participate in the agreement become nonparticipating

1 working interest owners; correct.

2 Q Nonparticipating working interest owners?

3 A That is correct.

4 Q Okay. And what does that then mean?

5 A You would have to go to the definition under
6 the operating agreement. I don't know what that is
7 off the top of my head.

8 Q So they are then working interest owners
9 once forced into this are forever treated as
10 nonparticipating working interest owners?

11 A Yes.

12 Q Okay. And they therefore have no voting
13 rights; correct?

14 A I believe that's correct.

15 Q Okay. So they have no say in past or future
16 operations?

17 A You're referring to nonparticipating working
18 interest owners; correct?

19 Q Working interest owners that are forced into
20 this unit agreement?

21 A That -- that would be deemed
22 nonparticipating working interest owners.

23 Q Okay. And so they don't have a vote in
24 future operations?

25 A If -- if they are nonparticipating working

1 interest owners, they do not have a vote. That is
2 correct.

3 Q And they don't get any notice of operations
4 in this unit?

5 A I believe that's correct. I'm not so sure
6 on that.

7 Q Let's go to Section 11.8. I'm sorry. 11.9,
8 Nonparticipating Working Interest Owners. That's what
9 you were talking about; right?

10 A That is correct.

11 Q "Upon entry of an order by the New Mexico
12 Oil Conservation of the agreement, this
13 agreement" -- I'm sorry. Let me slow down. "Upon
14 entry of an order of the New Mexico Oil Conservation
15 Division, this agreement governs the relationship of
16 all working interest owners and lands included in the
17 unit area.

18 Any working interest owner that does not
19 join in and pay their proportionate share of
20 pre-unitization expenses and ratify this agreement,
21 shall" -- number 1, they have no voting rights;
22 correct?

23 A I believe that's what it says.

24 Q Okay. They're deemed to be nonparticipation
25 in all unit operations conducted in accordance with

1 this agreement?

2 A That is correct.

3 Q Okay. And C, "Shall not be entitled to
4 notice of or to attend meetings of the working
5 interest owners"?

6 A That's what it says.

7 Q Okay. Then it goes on to say that for
8 except the Ramsey project, they are subject to actual
9 costs incurred plus 200 percent quote, unquote "risk
10 penalty" if they're forced into this unit.

11 A That's what it says.

12 Q Is that right?

13 A That's what it says.

14 Q And then when it comes to the Ramsey
15 project, okay, they are not only forced into the
16 Ramsey project, but they're subject to costs plus
17 300 percent?

18 A That is correct.

19 Q Okay. And this is what you're asking the
20 Division to force working interest owners?

21 A All -- all working interest parties had an
22 election to make. They had -- they -- they had a
23 decision whether or not they wanted to participate in
24 this unit or not. Nobody's forcing -- the OCD is not
25 forcing costs on working interest parties.

1 Q They have to pay their proportionate share
2 or they're going to be subject to their proportionate
3 share plus 200 percent or 300 percent for the Ramsey
4 project; correct?

5 A If they elected not to participate, that is
6 correct.

7 Q If they're forced into this unit?

8 A If -- if they did not elect to participate,
9 they will be -- they will be forced into this unit as
10 nonparticipating working interest owners; correct.

11 Q Okay.

12 MR. FELDEWERT: That's all the
13 questions I have, Mr. Examiner. Thank you.

14 MR. CHAKALIAN: Okay. Do we have any
15 redirect questions for this witness, Mr. Padilla?

16 MR. PADILLA: Just very briefly. I
17 don't know where this line of questioning really went
18 and I don't know what --

19 MR. CHAKALIAN: Well, then,
20 Mr. Padilla, may I suggest that you object in the
21 future if you don't know where this line is going?

22 MR. PADILLA: Okay. I'll do that. No
23 questions.

24 MR. CHAKALIAN: The technical
25 reviewers, are there any questions for this witness

1 before we excuse him?

2 MR. GOETZE: Mr. Examiner, Phillip
3 Goetze. Is this witness familiar with the unitization
4 participation formula?

5 THE WITNESS: To the extent that it,
6 you know, doesn't cover, you know, any sort of
7 technical reservoir or geological interpretation, I
8 am. Yes.

9 MR. GOETZE: Well, then I'll ask you
10 just general questions. We have a designation of both
11 the Phase 1 and Phase 2. I'm familiar with this as
12 this is a carryover from the last time. So how do we
13 know we're in Phase 1 or Phase 2? How is FAE going to
14 inform working interests whether they're in or out and
15 how is that available?

16 THE WITNESS: To -- to my -- to my
17 knowledge, that Phase 1 and Phase 2 have been
18 completely scraped. They are -- they are no longer
19 applicable. From day 1, the participation formula as
20 proposed, the 90 percent remaining oil in place and
21 10 percent current production will go into effect.

22 And that will be in effect for the life
23 of the unit unless deemed otherwise by the BLM.

24 MR. GOETZE: Well, your unitization
25 participation formula designates these things. Are

1 you saying it's not going to be incorporated as you
2 state in the unit agreement?

3 THE WITNESS: The unit -- maybe you can
4 be more specific of what you're referring to you and I
5 can -- I can answer.

6 MR. GOETZE: Phase 1 is designated to
7 reflect the value of the unit's current development,
8 working interest. It's calculated based on average
9 oil rates from July to December. Effective date after
10 three years' time. Phase 2 -- our participation shall
11 apply. So how do you know if you're in Phase 1 or
12 Phase 2? How does this apply and how do we know where
13 it's applied?

14 THE WITNESS: I'm sorry, Mr. Technical
15 Examiner. Can you refer me to specifically which page
16 you're referring to?

17 MR. GOETZE: It's Exhibit C. It's
18 Exhibit C-10 -- 1002 is the page number.

19 THE WITNESS: Exhibit C?

20 MR. GOETZE: C1002.

21 MS. NEAL: -- Virtual connectivity
22 interruption -- I think it -- that's part of my
23 exhibits.

24 THE WITNESS: Exhibit C1002.

25 MS. NEAL: This is the feasibility

1 study that was presented to the BLM and originally it
2 was not updated to reflect the participation formula.

3 THE WITNESS: Okay, Mr. Technical
4 Examiner. I'm being told that what you're referring
5 to is the original feasibility study that was not
6 modified to reflect the new participation formula.

7 MR. GOETZE: Where do I find the new
8 participation formula?

9 THE WITNESS: That would be in the unit
10 agreement. And the unit agreement will start
11 at -- let's see.

12 MR. GOETZE: Well, it starts at A220?

13 THE WITNESS: It will start at
14 A -- Exhibit A195.

15 MR. GOETZE: Got it. All right.
16 Participation. Well, we have dropped this Phase 1,
17 Phase 2 concept. Is that correct?

18 THE WITNESS: That is correct. There's
19 no -- there's no Phase 1 or Phase 2. It's just -- as
20 soon as the -- as soon as the unit becomes effective,
21 the 90 percent remaining oil in place, 10 percent
22 current production formula will take effect.

23 MR. GOETZE: Thank you for clearing
24 that up. Right now, that's the only thing I was
25 really interested in.

1 MR. CHAKALIAN: Thank you.

2 MR. GOETZE: No further questions.

3 THE WITNESS: Mr. -- Mr. Hearing
4 Examiner?

5 MR. GEBREMICHAEL: Mr. Hearing
6 Examiner, you're muted.

7 MR. CHAKALIAN: Mr. Padilla, who is
8 your second witness?

9 MR. PADILLA: That would be Mr. Hooper,
10 geologist.

11 MR. CHAKALIAN: Okay.

12 Mr. Hooper, do you want to give a
13 summation of your testimony before you go to
14 cross-examination?

15 MR. HOOPER: Sure.

16 Well, my names is Charles Hooper. I am
17 a senior geologist with Forty Acres. I have knowledge
18 and experience in geological and waterflood matters
19 pertinent to this application. And though I know we
20 stated this yesterday, our application seeks order
21 bearing statutory unitization of a proposed enhanced
22 oil recovery that's secondary and tertiary to cover
23 the lands that we've previously gone over.

24 Looking to the exhibits, Exhibit B2 is
25 a well log that penetrates the entirety of the

1 proposed unitized area. It has formation tops on
2 record with the OCD, is in a centralized location.
3 This well is the basis for dividing the unitized
4 interval stratigraphically.

5 And the unitized interval will be from
6 the top -- the Yates formation top to the base of the
7 Queen, otherwise known as the Grayburg formation top.
8 Injected water will be contained within this unitized
9 interval. Exhibit B3 contains a type log with a more
10 modern and complete log sweep.

11 Exhibit B4 contains a structure map of
12 the Yates formation over the unit area. There's a
13 gentle west, southwest dip in a local anticline in
14 Sections 27 and 34. The Sevens Rivers and Queen
15 formations largely mirror the Yates in structure.
16 Exhibits B5 and B6 contain structural cross-sections.

17 These cross-sections illustrate the
18 lateral continuity of land packages that are
19 waterflood targeted zones within these formations.
20 Geologic studies over the area deem these areas
21 well-suited for secondary recovery. There are no
22 faults or other geologic impediments that would
23 negatively impact these -- this project.

24 It is of my professional opinion that
25 injected -- injection into the selected interval will

1 enhance, not impair, oil production and I -- injection
2 will be confined to the injection interval by
3 stratigraphic-confining layers above and below the
4 injection zone.

5 Exhibit B7 shows water analysis from
6 freshwater wells through the project areas and
7 produced water, which will be the source of our water
8 injection. Our team here at FAE has examined all data
9 available to us and found no evidence of faults or any
10 chronological connection between the produced
11 formation water and the shallow freshwater. The two
12 sources of water are compositionally distinct and
13 hydrologically separate.

14 The exhibits listed were prepared by me
15 and FAE II personnel under my purview. It is my
16 opinion that granting this application would serve in
17 the interests of conservation, the prevention of
18 waste, and the protection of relative rights. I
19 understand this statement was -- would be used as
20 testimony in my case and this summary, and I can
21 confirm that my testimony in paragraphs 1 through 15
22 in the submitted affidavit is true and correct to the
23 best of my knowledge.

24 And with that, I'd like to open it up
25 for questions.

1 MR. CHAKALIAN: Mr. Feldewert, do you
2 have any questions for this witness?

3 MR. FELDEWERT: I do.

4 MR. CHAKALIAN: Proceed.

5 CHARLES HOOPER,
6 called as a witness and having been previously duly
7 sworn to tell the truth, the whole truth, and nothing
8 but the truth, was examined and testified as follows:

9 CROSS-EXAMINATION

10 BY MR. FELDEWERT:

11 Q Mr. Hooper?

12 A Yes.

13 Q We've referenced the fact that the company
14 is currently operating that Ramsey waterflood within
15 your proposed unitized area?

16 A Correct.

17 Q Okay. In that, what I'll call a mini
18 waterflood, are you flooding the same interval?

19 A Part of the same proposed unitized interval,
20 yes.

21 Q Okay. When you say "part," does the
22 waterflood operations in the Ramsey unit currently
23 include flooding at a larger or smaller portion of the
24 proposed unitized interval here?

25 A The injection is targeted in the Ramsey

1 section -- the Arnott Ramsey Section 32 waterflood
2 project, water is targeted in the lower Seven Rivers
3 and upper portion of the Queen.

4 Q Okay. And does that relate to what you're
5 seeking to unitize here?

6 A It is a part of the entire unitized
7 interval. In this specific area, the lower Seven
8 Rivers and upper Queen, is what is oil productive.
9 And that is what we're targeting for waterflood
10 operations.

11 Q Okay. In your opinion, have those efforts
12 been successful?

13 A In my opinion, yes.

14 Q Okay. And do you know if it's paid out?

15 A I can't speak to the payout, but technically
16 speaking, we have seen waterflood responses.

17 Q Okay. And based on what you've seen, would
18 you expect the operations in that existing waterflood
19 to pay out?

20 A I -- I believe so. I'm -- I'm not an
21 accountant nor do I pretend to be.

22 Q I understand. I'm just talking about the
23 geologic perspective.

24 A Mm-hmm, yes.

25 Q From what you've seen, you would expect

1 enough production to overcome the costs?

2 A Yes.

3 Q Okay. Do you see any geologic risk in
4 expanding this operation to the entire 20,000 acre
5 proposed waterflood area?

6 A This South Jal development -- can you define
7 what kind of risk do you mean?

8 Q You can only speak about geologic risk;
9 right?

10 A Correct.

11 Q Okay. As a geologist, do you see any
12 geologic risk in taking what you're doing in the
13 Ramsey waterflood and expanding that out to your
14 20,000 acre proposed unit?

15 A No. Now the 20,000 -- the 19,000 acre
16 proposed unit, within that unit, different reservoir
17 segments of the different formations will be targeted,
18 but the unit outline was drawn to encompass lands that
19 we believe to have waterflood feasibility.

20 Q Okay. So I'll get back to my question then.
21 Do you see any geologic risk in undertaking those
22 operations based on what you've seen so far with the
23 Ramsey unit?

24 A Based on the data available to us, I -- I
25 deem it to be low risk.

1 Q Okay.

2 MR. FELDEWERT: Okay. That's all the
3 questions I have. Thank you.

4 MR. CHAKALIAN: Mr. Padilla, any
5 follow-up to those questions?

6 MR. PADILLA: I don't have any
7 questions of Mr. Hooper.

8 MR. CHAKALIAN: Okay. Thank you.
9 Mr. Gebremichael?

10 MR. GEBREMICHAEL: Thank you,
11 Mr. Hearing Examiner.

12 My question is, you keep referring on
13 the waterflooding, but in your application also it
14 includes tertiary recovery. Are you injecting
15 anything else besides water?

16 THE WITNESS: At the moment, we are
17 not.

18 MR. GEBREMICHAEL: But that's what you
19 are proposing to though?

20 THE WITNESS: We are proposing to
21 include tertiary -- to make this an enhanceable
22 recovery unit so that in the future we can inject CO2.

23 MR. GEBREMICHAEL: CO2. Okay. One
24 more question I have is, in the course of the
25 discussion, there was a mention of about hydrogen

1 sulfide, H2S; right? Is that going to be an injected
2 substance or it's going to be the produced part?

3 THE WITNESS: Sorry. In -- in what
4 portion was that?

5 MR. GEBREMICHAEL: About the presence
6 of any H2S.

7 THE WITNESS: I believe that was in
8 reference to produced -- produced use.

9 MR. GEBREMICHAEL: Okay. So do you
10 have the H2S contingency plan in place?

11 THE WITNESS: I believe -- I cannot
12 speak to that directly. I believe that's something I
13 have to get with our operations engineers and confirm.

14 MR. GEBREMICHAEL: That's all the
15 questions I have, Mr. Hearing Examiner.

16 MR. CHAKALIAN: Okay.

17 And, Mr. Goetze?

18 MR. GOETZE: Good morning, Mr. Hooper.

19 THE WITNESS: Good morning.

20 MR. GOETZE: So looking at the scale of
21 this, just out of curiosity, why did we go with
22 something so large instead of doing individual
23 waterfloods?

24 THE WITNESS: Well, these sand bodies
25 are contiguous. I mean, these -- these sands

1 are -- are correlative and -- and mappable for very
2 plus miles. And so the name of the game on a lot of
3 this waterflood stuff is scale and economies in scale,
4 and we believe the whole area to be productive.

5 MR. GOETZE: Okay. I have a question
6 about -- let's see. Let's go back. So we're going to
7 be working mostly looking at the pools that your unit
8 encounters. I see at least three oil and I see one
9 gas. Most of this will be Langlie Mattix, Seven
10 Rivers, Queen, Grayburg.

11 So it is your intention just to use
12 Yates, Seven Rivers, Queen. Is that correct?

13 THE WITNESS: Correct. And additional
14 it -- it has the Rhodes pool, Leonard pool, and -- and
15 Scarborough pool to the south.

16 MR. GOETZE: Those have Yates and Seven
17 Rivers. Langlie Mattix does not include the Yates in
18 most places. Of course, it's always subject to
19 interpretation. Another question I have with regards
20 to previous operations in this area. In particular,
21 you have up to the northwest, a leg of this project
22 area, which is in 25 South, 36 East.

23 The arm that sticks up in the
24 northwest. So in the middle of that, I have a -- no,
25 I don't, but there is an operator who has a very

1 active disposal well and we have the Shoals [ph] B25
2 number 2 -- 25 -- 25 South, 36 East. At this point,
3 they have put in 45 million barrels of water into the
4 Yates and there's contention that it's not necessarily
5 going to stay in the Yates.

6 Have, in your evaluation, taken in
7 consideration a series of disposal wells in this area,
8 especially for those that have turned into commercial
9 as a result of recent activity?

10 THE WITNESS: We have. We plan our
11 development around wells with previous injection,
12 especially untreated or largely untreated for
13 waterflood injection. But to that point, we -- we
14 also operate a well very close to that saltwater
15 disposal well that makes on the order of 30 barrels of
16 oil a day.

17 So we -- we believe that injection to
18 be more so than what was going down into the -- into
19 the -- prior to the waterline.

20 MR. GOETZE: You're not going to say
21 Capitan; are you?

22 THE WITNESS: No, not in the Capitan.

23 MR. GOETZE: Thank you.

24 I will just make one comment to the
25 examiner. We have two applications. One for the

1 statutory unit, which is the case 23712 and then the
2 C-108 application, which is the application for
3 injection and that's the 23711 case. We will note to
4 the examiner that we will require some additional time
5 to review this portion of it, the C-108 application
6 since it encumbers a lot of well review.

7 So our understanding is that we may
8 have questions about, especially in this area where we
9 have very poor records of plugging and completion,
10 that we may come back to this applicant and request
11 either additional information or may have to stipulate
12 that there may be issues with the AOR wells.

13 Other than that, I don't have any more
14 questions. Thank you.

15 MR. CHAKALIAN: Thank you, Mr. Goetze.

16 Mr. Padilla, any follow-up on those
17 cross-examination questions?

18 MR. PADILLA: No, Mr. Examiner. I
19 think the geologist is very --

20 MR. CHAKALIAN: Would you like to call
21 your final witness?

22 MR. PADILLA: We'd call Vanessa Neal at
23 this time.

24 MR. CHAKALIAN: And Ms. Neal, would you
25 like to give a summary of your testimony?

1 MS. NEAL: Yes.

2 My name is Vanessa Neal, senior
3 reservoir engineer at Forty Acres. We're referencing
4 the statutory unitization of proposed South Jal unit
5 as, again, an oil recovery unit. The unitized
6 interval, as Mr. Hooper said, is from the top of the
7 Yates to the bottom of the Queen.

8 We're also requesting injection
9 authority across the entirety of the unitized interval
10 which does span multiple pools across the unit. Those
11 include, but are perhaps not limited to the Jalmat,
12 the Langlie Mattix, the Rhodes, the Scarborough, and
13 the Leonard pools.

14 We have estimated, based off of
15 surrounding analog waterfloods, that there is over 90
16 million barrels of oil in -- for both total and -- and
17 tertiary recovery, and we believe that unitization is
18 the most effective way to recover these reserves.

19 Full development of this unit, on a
20 waterflood basis, we have estimated to cost about \$480
21 million using 2022/2023 pricing and we expect that
22 development to take a minimum of ten years. Economics
23 have been run for this project going over 50 years and
24 we believe that the project will generate about \$3.9
25 billion in oil and gas revenue, gross.

1 After capital -- after taking into
2 account capital expenses and taxes, this would equate
3 to about 2.8 billion in non-discounted cash flow or a
4 discounted cash flow of present value at 10 percent of
5 \$630 million. Without this unitization, the producing
6 wells that are currently active within the
7 South -- the proposed South Jal unit boundaries, have
8 a P/B 10 of \$32 billion.

9 I -- I don't know if you want me to go
10 into the C-108 packets that are not -- well, just a
11 couple of sentences on those. The C-108 packets, that
12 there were three packets submitted and go over three
13 different injection projects would be the initial
14 development targets for this unit. They include 26
15 injectors.

16 We've used the NMOCD guidelines
17 and -- and pressure grading to estimate the max
18 injection pressure based on perforation depth and that
19 max injection pressure ranges from 700 to 1,000 psi,
20 depending on if you were targeting the Yates, Seven
21 Rivers, or Queen formation in your flood.

22 Our average expected injection rate is
23 600 barrels of water injected per day per injector.
24 And we expect the maximum rate to be 1500 barrels of
25 water injected per day per day injector, or as

1 dictated by your max pressure. We've included induced
2 seismicity assessment for the entire proposed unit
3 area and based on our assessment, we believe this is
4 at low risk for inducing seismicity.

5 Additionally, we have included the
6 feasibility study that was provided and approved by
7 the BLM and SLO.

8 That's all I have to say.

9 MR. CHAKALIAN: Mr. Padilla, is your
10 witness ready for cross-examination.

11 MR. PADILLA: Ready. Pass the witness.

12 MR. CHAKALIAN: Okay.

13 Mr. Feldewert?

14 VANESSA NEAL,

15 called as a witness and having been previously duly
16 sworn to tell the truth, the whole truth, and nothing
17 but the truth, was examined and testified as follows:

18 CROSS-EXAMINATION

19 BY MR. FELDEWERT:

20 Q Good morning, Ms. Neal.

21 A Good morning.

22 Q I was reading through your statement and
23 information. Am I correct that in your opinion, you
24 believe it's prudent to introduce waterflood or other
25 enhanced oil recovery methods in areas where primary

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1 production has occurred because the pressure in the
2 reservoir has been depleted. Is that a pretty good
3 summary?

4 A Yes, that's correct.

5 Q Okay. When I go to your affidavit at
6 paragraph 7 -- so I'm on Exhibit C2976. Let me know
7 when you get there.

8 A Is that under the title history of the
9 field?

10 Q Yes.

11 A Okay.

12 Q And in this paragraph you're talking about
13 that existing Rhodes Federal Unit. Is that right?

14 A Yes.

15 Q Okay. You know, first, that that Rhodes
16 Federal Unit was first used primarily for gas storage;
17 right?

18 A Correct.

19 Q And then you say "After the RFU" -- which is
20 Rhodes Federal Unit -- "was converted into a producing
21 gas unit, additional development occurred but was
22 contained to the gas bearing formations, leaving the
23 oil bearing formations undeveloped in this central
24 unit area." Do you see that?

25 A Mm-hmm.

1 Q Then when I go down to paragraph 16 -- are
2 you there?

3 A Yes.

4 Q Your second sentence, again, says "The
5 central part of the unit has not been fully developed;
6 i.e., not all primary recovery has occurred in the
7 unit to date."

8 A Correct.

9 Q Okay. That's still your testimony?

10 A Yes.

11 Q Okay. So you're seeking to force working
12 interest owners into an area that includes the central
13 area that has not been subject to primary recovery for
14 oil?

15 A We are seeking to have working interest
16 owners join us in developing the primary -- the
17 primary reserves that are currently undeveloped, and
18 then to implement secondary recovery in order to
19 increase the production rate and waterflood the
20 entirety of the unit.

21 Q Are you contemplating starting a waterflood
22 before primary recovery has occurred?

23 A We would expand the waterflood unit and do
24 primary at the same time, yes. But expanding into
25 this area.

1 Q Okay. Have you thought about, for example,
2 focusing on a smaller statutory unit area that would
3 encompass where you intend to waterflood and then
4 gradually expand as needed based on primary recovery?

5 A That is one approach. We believe that that
6 would be inefficient and that is why we went for the
7 larger unit. The way a waterflood works, you need
8 boundaries and with the existing unitized outline,
9 there are boundaries of existing waterfloods to the
10 east and the north, and geologic boundaries to the
11 west and south.

12 Q Okay. But one valid approach would be to
13 start a little smaller and then get bigger as you go
14 along; right?

15 A That is a valid approach that could lead to
16 waste, yes.

17 Q The existing Ramsey waterflood unit in the
18 area where you started waterflooding, have you
19 committed to that?

20 A Yes.

21 Q Okay. I think you state somewhere in your
22 affidavit that that has been deemed successful. Do
23 you recall that testimony?

24 A I don't recall it, but I would deem the
25 project successful.

1 Q And if I go to -- I guess we're on the same
2 page. Page C977, paragraph 8. Are you there?

3 A Yes, mm-hmm.

4 Q Okay. So is it your opinion that it's been
5 deemed successful?

6 A Yes.

7 Q What does that mean?

8 A It is a waterflood success in that we
9 injected water and saw oil and gas respond as expected
10 in a waterflood.

11 Q Do you expect then the additional production
12 from the Ramsey federal unit to cover the costs? In
13 other words, do you expect it to pay out?

14 A Yes, I would expect it to pay out.

15 Q Now with your idea of taking this and
16 expanding it to the larger unitized area, I'm going to
17 ask you a similar question. Do you see any
18 engineering or reservoir risk in expanding this
19 waterflood project across your proposed 19,000 acre
20 unit area?

21 A No, I think that the greatest risk would be
22 economic risks as oil price goes up and down.

23 Q Okay. So would you characterize your
24 engineering and reservoir risk as low? How would you
25 characterize it?

1 A I would characterize it as low.

2 Q I'm sorry. I didn't mean to put words in
3 your mouth.

4 A I know this.

5 MR. FELDEWERT: Okay. This is all the
6 questions I have. Thank you.

7 MR. CHAKALIAN: Any redirect questions,
8 Mr. Padilla?

9 MR. PADILLA: No, Your Honor. No, sir.

10 MR. CHAKALIAN: Mr. Gebremichael, any
11 questions?

12 MR. GEBREMICHAEL: Yes, Mr. Hearing
13 Examiner.

14 My question to you is, Ms. Neal, when
15 you put those 26 injectors to wells and then you also
16 mentioned about the waterflood boundary, have you
17 carried out any reservoir simulation to cover this
18 20,000 acres?

19 THE WITNESS: We did a small simulation
20 on the Arnott Ramsey and the area to the south of
21 that, but we have not done it over the entire 20,000
22 acre project.

23 MR. GEBREMICHAEL: And then you didn't
24 see it necessary or ...

25 THE WITNESS: Not really. I mean,

1 these formations have them flooded across the entirety
2 of the Central Basin Platform. There are numerous
3 waterflood analogs that are real-life analogs flooding
4 the same formations. Real-life examples tend to
5 always be better than -- than computer simulations, so
6 we took our direction from them.

7 MR. GEBREMICHAEL: And then also you
8 mentioned the proposed maximum injection is only the
9 water. So when are you planning to start your
10 tertiary recovery scheme?

11 THE WITNESS: So we would want to have
12 an area of the formation that has reached -- a very
13 large area of the formations that have reached
14 fill-ups before introducing CO2 or tertiary injection.
15 Most likely, that would not happen earlier than five
16 years from the start of development.

17 But we have been in talks with a local
18 CO2 provider in preparation for starting at a minimum
19 of -- in the area for tertiary recovery.

20 MR. GEBREMICHAEL: So you said you'll
21 be preparing for the, you know, with the CO2, the gas,
22 that -- issues to your well accordingly?

23 THE WITNESS: Mm-hmm.

24 MR. GEBREMICHAEL: Okay.

25 Those are all the questions I have,

1 Mr. Hearing Examiner. Thank you.

2 MR. CHAKALIAN: Okay. Thank you.

3 Mr. Goetze?

4 MR. GOETZE: Thank you.

5 Good morning, Ms. Neal.

6 THE WITNESS: Good morning.

7 MR. GOETZE: A couple of questions. We
8 did have this -- touch upon bounding of this water.

9 THE WITNESS: Mm-hmm.

10 MR. GOETZE: Pretty much we know to the
11 west, we know the south, the east. How are we going
12 to deal with areas where we don't have a physical
13 feature, such as a pinch-out or a change in -- are we
14 going to have agreements, or are we going to have
15 negative production, or what's the plan considering
16 the scale of this?

17 THE WITNESS: There are a couple of
18 different options that haven't been finalized at this
19 point. But you can either have a row of injectors
20 along the boundary so you lose injection water outside
21 of your -- outside of your boundaries, but you don't
22 lose production.

23 Another alternative is to have a row of
24 producers along the boundary in the efforts to create
25 a -- a significant enough drawdown that you don't lose

1 any reserves outside of the boundary. Those are
2 options and I'm sure there are other options that we
3 can consider in the future as well.

4 MR. GOETZE: Have we identified these
5 areas where we would have to utilize such engineering?

6 THE WITNESS: Yes, I think they would
7 be mostly to -- to the north, but not specifically
8 yet. We'd have to dig down into it a little bit more.

9 MR. GOETZE: Okay. In your proposal,
10 have we given options as to what you would do
11 considering if we get a -- I'm sure you're going to
12 ask for the ability for administrative approval to add
13 and move wells around. How do we make sure that we
14 are not impacting correlative rights?

15 THE WITNESS: I think you could do that
16 with spacing. Well spacing from the -- from the edge
17 of the lease to avoid -- virtual connectivity
18 interruption -- those or outside of the unit.

19 MR. GOETZE: Could it be possible that
20 you would put together a supplemental statement as to
21 how you're going to keep within your boundaries of
22 this waterflood unit? At least options that can be
23 considered, especially since you're going to seek
24 administrative approval of moving wells, that we have
25 options in place?

1 THE WITNESS: Yes.

2 MR. GOETZE: I would recommend that
3 strongly.

4 THE WITNESS: Okay.

5 MR. GOETZE: So that's a request for,
6 Mr. Examiner, is clarification on bounding and
7 maintaining within the waterflood, ensuring
8 correlative rights, what engineering activities or
9 operational activities to deal with it.

10 Next subject. So we're going to be
11 doing waterflood. Do you anticipate requiring makeup
12 water?

13 THE WITNESS: Yes, we will need some
14 makeup water. Our primary source will be produced
15 water and then we have some very high water wells that
16 are producing from these formations that we intend to
17 utilize. But in the event that makeup water is needed
18 and after significant development, we have been in
19 talks with local SDWs and evaluating their water as a
20 potential water source. Makeup water source.

21 MR. GOETZE: So when you reference
22 water wells, you're talking about water wells
23 permitted under the Office of the State Engineer?

24 THE WITNESS: No, no, no. I was
25 talking about producing oil wells that have very high

1 water rates.

2 MR. GOETZE: Okay. So essentially,
3 you're still looking at produced water as a primary
4 makeup?

5 THE WITNESS: Correct, yes.

6 MR. GOETZE: One other item I would
7 ask. In your original package, you provided a
8 feasibility and unitization study.

9 THE WITNESS: Yes.

10 MR. GOETZE: It was dated March 10,
11 2022. In there, you had a development plan?

12 THE WITNESS: Yes.

13 MR. GOETZE: Are you going to update
14 that? And if not, there is a Figure 11 in there that
15 I would like to be able to see. I guess you're going
16 to use the same one again. Let's give it to us on a
17 scale that is readable.

18 THE WITNESS: Okay.

19 MR. GOETZE: Please.

20 THE WITNESS: Sure.

21 MR. CHAKALIAN: Mr. Padilla, are you
22 taking notes for the items that Mr. Goetze is
23 requesting?

24 MR. PADILLA: I am.

25 MR. CHAKALIAN: Okay. Thank you.

1 MR. GOETZE: I don't think I have any
2 more questions for this witness.

3 MR. CHAKALIAN: Okay.

4 Mr. Padilla, do you have anything left
5 in this case?

6 MR. PADILLA: No. The only thing I
7 have is Exhibit D and that is an affidavit for me that
8 we published in the Hobbs newspaper and the
9 certificates of publication are attached to that
10 affidavit. So we ask admission of Exhibit D also.

11 MR. CHAKALIAN: I think I admitted that
12 with the other exhibits when I first admitted all the
13 exhibits.

14 MR. PADILLA: If we didn't, that's
15 fine. If we didn't.

16 MR. CHAKALIAN: We did. So do you rest
17 your case-in-chief?

18 MR. PADILLA: Yes.

19 MR. CHAKALIAN: Okay. So are you
20 asking the Division to take this case under advisement
21 at this point?

22 MR. PADILLA: Yes, of course.

23 MR. CHAKALIAN: Okay. All right. And,
24 Mr. Padilla, you said you had a list of the additional
25 documents that Mr. Goetze -- why don't you read them

1 out so we know what you have.

2 MR. PADILLA: Well, he wants a readable
3 Figure 11 in the feasibility study, wants information
4 on the makeup water, and wants supplemental statement
5 on bounding requirement for options to protect
6 correlative rights. And I think Ms. Neal testified
7 that they had several options, but I think a statement
8 would increase that requirement.

9 MR. CHAKALIAN: Mr. Goetze, is that a
10 complete list?

11 MR. GOETZE: That is correct. It's
12 what I have on my list.

13 MR. CHAKALIAN: Okay. Mr. Padilla,
14 when do you anticipate filing those documents through
15 the portal?

16 MR. PADILLA: Let me defer to Mr. Kent
17 and to my witnesses. I think probably a week we could
18 get something in there.

19 MR. CHAKALIAN: Okay. Let's set a
20 deadline then. Why don't we give you two weeks and
21 we'll say the deadline to submit those documents is
22 December 22.

23 MR. PADILLA: Very good.

24 THE WITNESS: Yes.

25 MR. CHAKALIAN: So that concludes that

1 case and now before we call the next case --

2 MR. FELDEWERT: Mr. Examiner?

3 MR. CHAKALIAN: -- I would like to take
4 a lunch break. We will return at one o'clock to take
5 up Case 23711 and we can incorporate as much
6 information, Mr. Padilla, as you wish from Case number
7 23712. I don't know how much overlap there is, but I
8 leave that to you and your witnesses. I do.

9 MR. PADILLA: Very good. I think
10 there's considerable overlap, so I think we can be
11 briefer on the 711 case.

12 MR. CHAKALIAN: Okay.

13 Okay. So we will be in recess until
14 1:00 p.m., this afternoon.

15 (Off the record.)

16 MR. CHAKALIAN: It is 12:59 p.m., on
17 the 8th of December. We are continuing the hearing in
18 Cases number 23712 and 23711. We have already heard
19 Case 23712 and are taking it under advisement.

20 Mr. Padilla, are you ready to proceed
21 with 23711?

22 MR. PADILLA: Yes, Mr. Examiner. And
23 to begin with, we offer Exhibits A, B, C and D in this
24 case.

25 //

1 (Exhibit A through Exhibit D were
2 marked for identification.)

3 MR. CHAKALIAN: Okay.

4 Mr. Feldewert?

5 MR. CHAKALIAN: Mr. Padilla, I had a
6 chance to -- are they the same as filed in 23712?

7 MR. PADILLA: Slightly different only
8 because -- but essentially, the geology is the same,
9 type logs, cross-sections, that kind of thing. So the
10 only real evidence in this case should be coming from
11 Vanessa Neal, the reservoir engineer. And that one is
12 slightly different, but essentially the same
13 conclusions that she reached this morning.

14 MR. FELDEWERT: Okay.

15 No objection.

16 MR. CHAKALIAN: Thank you,
17 Mr. Feldewert.

18 So Exhibits A1 through A3; B1 through
19 B7; C1 through C7; and D, your affidavit; are admitted
20 into evidence.

21 (Exhibit A through Exhibit D were
22 received into evidence.)

23 MR. CHAKALIAN: Would you like to
24 present your first witness?

25 MR. PADILLA: We would call on

1 Mr. Hooper and have him briefly tell us what is
2 different in this case than what he presented this
3 morning and there shouldn't be that much difference.

4 So go ahead, Mr. Hooper. Give us a
5 brief summary of what your affirmed statement says.

6 MR. HOOPER: Okay.

7 Like Mr. Padilla said, most of this
8 testimony overlaps with the unitization case. In this
9 case, I will highlight the differences. In this C-108
10 case, FAE intends to convert or -- or drill 27 wells
11 for injection in three separate applications. The
12 Queen project, the Yates project, and Mobily [ph]
13 projects and would like the ability in the future,
14 after unit approval, to convert additional wells to
15 the unit administrative rate.

16 And that is it. The exhibits all
17 remain the same.

18 MR. CHAKALIAN: Okay.

19 Mr. Feldewert, any questions for this
20 witness?

21 MR. FELDEWERT: No.

22 MR. CHAKALIAN: Mr. Goetze?

23 MR. GOETZE: Well, the only thing I
24 will say, Mr. Examiner, is they took the hint. Thank
25 you very much.

1 MR. CHAKALIAN: Okay.

2 Mr. Gebremichael?

3 MR. GEBREMICHAEL: Mr. Hearing
4 Examiner, I don't have any questions. Thank you.

5 MR. CHAKALIAN: Okay.

6 Mr. Padilla, your second witness?

7 MR. PADILLA: Vanessa Neal.

8 MS. NEAL: Again, most of the stuff has
9 already been covered in 23712. The exhibits that I
10 submitted specifically go over the C-108 applications
11 for the three initial project areas in the proposed
12 South Jal unit.

13 It goes over our estimated maximum
14 injection pressure, which is based off of the NMOCD
15 guidelines using a pressure gradient to determine the
16 max pressure to be between 700 to 1,0000 psi, with the
17 intent in the future to submit a step-rate test as
18 needed to increase that grade and -- and pressure.

19 MR. PADILLA: Anything else, Ms. Neal?

20 MS. NEAL: No.

21 MR. PADILLA: Pass the witness.

22 MR. CHAKALIAN: Mr. Feldewert?

23 MR. FELDEWERT: Sure.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MR. FELDEWERT:

3 Q Ms. Neal, there was a couple of things that
4 dawned on me after our discussion this morning and
5 that is, as I understand it from your testimony, this
6 unit is being formed for enhanced oil recovery?

7 A Yes.

8 Q Okay. But we also talked about, and I think
9 you referenced the fact, that there are areas within
10 the proposed unit that have not been subject to
11 primary oil recovery efforts. Remember that?

12 A Yes.

13 Q Okay. And I think you indicated that those
14 primary recovery efforts the intention is to implement
15 those under the same unit agreement, unit operating
16 agreement. Is that right?

17 A Yes.

18 Q Okay. If I have you -- I'm going to try to
19 bring it up here. Give me a second. Can you see this
20 unit outline?

21 A Yes.

22 Q Okay. Can you identify for me the area in
23 this unit where you intend to do waterflood operations
24 and then -- or maybe it's easier this -- the area
25 within the unit where you intend to do primary

1 recovery operations?

2 A I cannot with just this general map.
3 They -- it's scattered all across the unit areas that
4 have not been primarily depleted on a 40 acre spacing
5 basis. A lot of -- a large portion of that falls in
6 the area of the Rhodes Federal Unit, but there are
7 places all across the unit.

8 Q And that Rhodes Federal Unit was kind of in
9 the central area here?

10 A Yeah, just south of where your mouse was.

11 Q Okay, all right.

12 MR. CHAKALIAN: Okay. That's all I
13 had. Thank you.

14 MR. PADILLA: Mr. Examiner, we rest.

15 MR. CHAKALIAN: Okay. I was going to
16 ask if you had follow-up and I guess the answer is no.
17 But before you rest, sir, I was going to ask
18 Mr. Goetze and Mr. Gebremichael if they had any
19 cross-examination for Ms. Neal.

20 MR. GOETZE: This is Mr. Goetze. No, I
21 do not have any additional questions for Ms. Neal.
22 Thank you.

23 MR. GEBREMICHAEL: Mr. Hearing
24 Examiner, I just want to emphasis I'm not sure if this
25 is going to be handled by Ms. Neal or Mr. Hooper. The

1 one that I mentioned about H2S contingency plan, as a
2 supplemental, it would be nice if they could provide
3 as identify the wells that produce H2S and then their
4 respective contingency plan as well.

5 Thank you. That's all.

6 MR. CHAKALIAN: Thank you,
7 Mr. Gebremichael.

8 Mr. Padilla, that's been the fourth
9 piece of information that the Division is asking for.

10 MR. PADILLA: I have it, Mr. Examiner.

11 MR. CHAKALIAN: Okay. I just wanted to
12 make sure we were all on the same page. Okay. Then
13 if you rest --

14 Mr. Feldewert?

15 MR. FELDEWERT: Yes, sir?

16 MR. CHAKALIAN: Are you putting on a
17 case?

18 MR. FELDEWERT: No, I have just a
19 statement of concerns that I want to raise with you,
20 so it won't take long.

21 MR. CHAKALIAN: All right. So why
22 don't you go ahead and then we'll leave it to
23 Mr. Padilla to make his closing argument.

24 MR. FELDEWERT: Okay. And I'm not
25 going to repeat what I said earlier. I mean, I've

1 already raised my concerns with four things. The
2 level of title done to identify the affected working
3 interest owners because that directly impacts notice,
4 which is one of most important things here.

5 I also raised concerns with the absence
6 of evidence on the unlocatable parties. Who are they
7 and what was done to locate them? We don't know. I
8 also raised concerns about the absence of evidence on
9 the parties subject to forced unitization. Who are
10 they and what do they own? We don't know.

11 And what efforts were undertaken
12 specifically with those parties to reach agreement
13 with them independent of how small their interest is.
14 What I also want to raise concerns about is that when
15 you look at this Exhibit D, which is their unit
16 outline, I raised concerns about the lack of notice to
17 offset operators.

18 And you're going to say to me "Well,
19 Mr. Feldewert, where does it say they got to provide
20 notice to offset operators"? Okay? And the answer is
21 that there is nothing in the rule, just like there's
22 not in compulsory pooling cases or federal exploratory
23 unit cases.

24 But the division, I can tell you, has
25 authority to require additional notice when they deem

1 it necessary. And I have seen a number of federal
2 voluntary exploratory units that were toothy like
3 this. I mean, you know, jets out and things where the
4 Division said, "Look, because of the potential impact
5 on the offsetting operators and the fact that you're
6 taking away their development rights, you're going to
7 give them notice."

8 And I think that would be totally
9 appropriate here. The other issue I raised involved
10 the unit operating agreement, which I walked through.
11 I tried to do it as efficiently as possible. But as
12 you walk through the unit operating agreement that
13 they have proposed, first thing you need to know is
14 you guys have to decide on this. Okay?

15 This is one of the things you all have
16 to adopt as reasonable for the working interest owners
17 under your authority as a Division under the statutory
18 unitization act. BLM doesn't pass on it and neither
19 does the State Land Office. It's up to you. And I've
20 pointed out to you that they put forth a unit
21 operating agreement here that has some incomplete
22 provisions, particularly the stuff that is so
23 important as the removal of unit operator and
24 successor unit operator. Nothing in there.

25 Those are important provisions. Then

1 you'll see -- I pointed out and I know you were
2 frustrated with me, but I felt like I needed to do it.
3 We got this Ramsey waterflood project that they're
4 going to force onto the working interest owners that
5 are forced into this unit. Okay?

6 And independent of all the concerns I
7 raised about that, it has a 300 percent risk penalty
8 if they don't buck up and pay the costs for that
9 operation for which they have no vote for past
10 operations and no vote on future operations. In fact,
11 zero input. And they want a 300 percent risk penalty?

12 I asked their geologist, I asked their
13 reservoir engineer "What about this Ramsey unit"?
14 Everybody said: "Oh, it's successful. It's going to
15 pay out, so there is zero risk." They provided no
16 evidence whatsoever to support a 300 percent risk
17 penalty on this Ramsey unit project that they're going
18 to force on the working interest owners.

19 Then we go to the standard -- not
20 standard. We go to the 200 percent risk percent
21 penalty that they have proposed for nonparticipating
22 working interest owners forced into this unit. Okay?
23 And independent of the Ramsey unit, Section 11.9 of
24 this unit operating agreement -- if I can get
25 there -- arrives at --

1 Put the Ramsey unit aside. For all
2 these other operations, if you, as a working interest
3 owner, decide not to participate, you lose a lot of
4 rights, number 1, and more importantly, we're going to
5 recoup it from you at cost plus 200 percent. Okay?
6 There is no evidence to support a 200 percent risk
7 penalty. Zero.

8 Both their geologists said, "The
9 geology risk, low." Reservoir engineer, she said the
10 same thing, "Reservoir and engineering risk, low."
11 There's nothing to support a 200 percent risk penalty.
12 And you're going to ask me "Well, Mr. Feldewert, is
13 that something we need to worry about"?

14 And I say, yes, it is because under the
15 Statutory Unitization Act under Section 70-7-7(F),
16 requires the Division to determine what the
17 appropriate risk penalty is. And there is zero
18 evidence here to support a 300 percent risk penalty or
19 a 200 percent risk penalty.

20 And my final point I think is equally
21 important to everything I've just raised, statutory
22 unitization is limited to secondary recovery
23 operations. You don't force people into a unit where
24 you're going to conduct primary operations. Those are
25 voluntary units.

1 Statutory unitization, forced
2 unitization, is only applicable to areas that have
3 been sufficiently depleted or it is determined that
4 secondary recovery operations are necessary. And we
5 have a 19,000 acre proposed unit area here that
6 includes increase where there's not going to be
7 secondary operations.

8 There's going to be primary operations
9 because there have been zero primary operations. So I
10 don't understand how they can bring this 19,000 acre
11 unit under the Statutory Unitization Act. It does not
12 fit.

13 MR. CHAKALIAN: Mr. Padilla, do you
14 have a closing argument?

15 MR. PADILLA: Yes, let me just say a
16 few words.

17 Mr. Feldewert says there's no risk
18 here. Ms. Neal testified that the project, over a ten
19 year period, was going to cost 480 million, somewhere
20 around there. That's a heck of a risk not to have
21 somebody participate. The reason for statutory
22 unitization is so that some operator in the middle of
23 the pool or in the middle of the unit area decides
24 that he's going to benefit without having participated
25 in the cost.

1 I don't see that the unit operating
2 agreement is any different than compulsory pooling in
3 the procedures. That's the standard penalty in JOAs,
4 joint operating agreements, and if you don't
5 participate, you're penalized. And statutory
6 unitization, even taking this primary production,
7 Ms. Neal just testified that there was primary
8 production throughout the unit.

9 But taking the whole unit overall, the
10 whole unit area, it's subject to tertiary recovery now
11 in finalizing the waterflood and then followed by
12 carbon dioxide injection. So you can't have somebody
13 here in the middle of this unit saying "No, I don't
14 want to participate and I'm going to get a free ride."

15 That's not the reason for the Statutory
16 Unitization Act. I don't think that the BLM or the
17 State Land Office would have approved this if it was
18 way out of whack, and they did. There's a requirement
19 to get the BLM. And in terms of the participation
20 formula, the BLM essentially was the driver on this
21 thing.

22 And the reasoning for that formula is
23 that it doesn't take historical production. It takes
24 the last two of years of 10 percent of that and
25 90 percent future. So it just seems equitable to me.

1 It makes sense that most of the participation is going
2 to be on future oil and gas production.

3 Mr. Feldewert makes a big deal about
4 title. I think, as the testimony has been from
5 Mr. Kent, they're still working on title. Pay decks
6 are upgraded. There's no question that somebody dies,
7 there's got to be a probate and then you have
8 different ownership.

9 Some of that is continuously applying
10 in oil and gas. Title work. People die or they sell
11 their interest in their new ownership. But basically
12 having the history that we have here starting in 1920,
13 all of those leases have constantly been upgraded.
14 There's no question that there's a lot of title work
15 here.

16 But in terms of meeting the 75 percent
17 threshold, they already have. Now I don't think
18 there's any problem with supplementing the record to
19 show who is unlocatable and who is not, but it's no
20 reason to deny the application with the requirement
21 that title be upgraded in terms of what the custom and
22 standard is in the oil industry.

23 I've done a title opinion on a United
24 States participating area for an entire unit and it's
25 a tremendous amount of work to upgrade the title, but

1 you do have probates and some people just disappear in
2 the woodwork. So to the extent that we have not
3 received any feedback from some of the owners, then I
4 think we could supply that.

5 We could certainly supplement
6 the -- but, I think that there's been substantial
7 evidence already on efforts to notify every interest
8 owner that is known about this hearing and about the
9 proposal. The working interest owners have had
10 proposals to participate. Whether or not they do or
11 not, or ignore it, that's a different thing.

12 But that also is a reason for statutory
13 unitization, just like it is in compulsory pooling,
14 where somebody doesn't respond or they don't want to
15 drill the well. This is just on a unit-wide basis.
16 There's nothing presented that 19,000 acres is too
17 large an area.

18 I think it's justified based on
19 Ms. Neal's testimony that it makes sense to have this
20 kind of a unit of the size because you don't leave oil
21 in the ground. Smaller units may or may not, but I
22 think her testimony is credible. There's surely
23 nothing from the other side that it is not.

24 Now if you go to the unit agreement,
25 you know, Mr. Feldewert makes a point that there are

1 three paragraphs that don't have any narrative. But
2 if you go to unit agreement, the unit agreement does
3 say how you remove an operator and that requires an
4 election to remove a unit operator that people don't
5 like the person that's operating.

6 So those three paragraphs that are
7 missing narrative are addressed in the unit agreement.
8 And there's nothing magical about removing a unit
9 operator who's not further developing the unit. You
10 get rid of them. And so with that, I'll stop. But
11 there's no reason to delay this applications simply
12 because there seems insufficient title work.

13 The title work is there now, with a
14 caveat that that has to be upgraded every once in a
15 while. That just happens. With that, we ask that
16 this applications be approved.

17 MR. FELDEWERT: Mr. Examiner?

18 MR. CHAKALIAN: I was waiting for
19 Mr. Padilla to finish his sentence. I heard "the
20 applications be" and then I assume you were going to
21 say taken under advisement, but I didn't hear those
22 words.

23 MR. PADILLA: Exactly. Thank you for
24 that. We would ask you to take them under advisement.

25 MR. CHAKALIAN: I figured that's what

1 you were going to do, but I was waiting. All right,
2 Mr. Padilla, for my notes, I'm going to put them in
3 the case here. Would you list the four documents your
4 filing on or before December 22nd?

5 MR. PADILLA: We're going to file the
6 supplemental statement on bounding from Ms. Neal as to
7 how you're going to protect the boundaries from
8 migration and protecting correlative rights on
9 waterflooding neighbors, essentially. We have to do
10 something about makeup water. A report on makeup
11 water.

12 We're going to have to expand Figure
13 11. And I don't know, unless you want us to
14 supplement the record also with the missing folks who
15 haven't responded and we don't know who they are, then
16 we can do that as well.

17 MR. CHAKALIAN: Okay. Well, let's get
18 number 4 and then I'm going to ask Mr. Goetze to
19 clarify number three that you just said. And number 4
20 that Mr. Gebremichael just asked you for?

21 MR. PADILLA: I'm sorry?

22 MR. CHAKALIAN: There was a fourth item
23 that you just wrote down a few minutes ago when
24 Mr. Gebremichael asked you for it.

25 MR. PADILLA: Oh, the wells that

1 produce H2S.

2 MR. CHAKALIAN: Very good.

3 Okay, Mr. Goetze, you heard the list.
4 Does that comport with your understanding or do you
5 want to reword any of that?

6 MR. GOETZE: No, those are the items
7 that I required, Mr. Examiner, as far as what he
8 spelled out. I'm satisfied with that.

9 MR. CHAKALIAN: I wasn't sure about
10 that expanding Figure 11. Is that what you asked for
11 or are there other words that I should have?

12 MR. GOETZE: Yes, Mr. Examiner, I did
13 request it. It was part of their Plan of Development
14 and it showed in a math formula where they were going
15 to do, what wells, and what areas. So I'd like to see
16 it in something other than a thumbnail.

17 MR. CHAKALIAN: Okay, very good. All
18 right, excellent. So I think everyone understands
19 what Mr. Padilla is going to file on or before
20 December 22nd.

21 Is there anything left here before we
22 close the hearing and adjourn?

23 MR. PADILLA: Let me just clarify
24 something on this Figure 11. Sometimes, in order to
25 file it with the OCD, we have to compress something

1 like that and perhaps if it doesn't compress, we could
2 send a hard copy.

3 MR. CHAKALIAN: Mr. Padilla, I'll bet
4 that if you file those four items either as one
5 document or four individual documents, you won't have
6 to compress anything because it'll be just a single
7 item.

8 MR. PADILLA: Okay.

9 MR. CHAKALIAN: Mr. Gebremichael?

10 MR. GEBREMICHAEL: Yes, Mr. Examiner.
11 Mr. Padilla just mentioned identifying the wells that
12 produce H₂S, but also the corresponding H₂S
13 contingency plan. Thank you very much.

14 MR. CHAKALIAN: Thank you,
15 Mr. Gebremichael.

16 Okay. If there is nothing further from
17 either party, we will be adjourned. It is 1:26 p.m.,
18 on the 8th of December.

19 Thank you for everyone's participation.
20 And we will take both cases under advisement.

21 (Whereupon, at 1:26 p.m., the
22 proceeding was concluded.)

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CERTIFICATE

I, JAMES COGSWELL, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

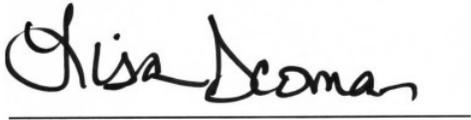


JAMES COGSWELL
Notary Public in and for the
State of New Mexico

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LISA SCOMAN

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[agree - approved]

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